

MOCKTEST PAPER 1
FINAL (OLD) COURSE: GROUP – I
PAPER 8: INDIRECT TAX LAWS
SUGGESTED ANSWERS

Division A

1. (c)
2. (d)
3. (c)
4. (c)
5. (d)
6. (a)
7. (d)
8. (d)
9. (b)
10. (a)
11. (b)
12. (b)
13. (a)
14. (a)
15. (c)
16. (b)
17. (d)
18. (b)
19. (b)
20. (a)

Division B

1. **Computation of GST Liability of Power Engineering Pvt. Ltd., Bangalore for the month of November 20XX**

S.No.	Particulars	Rs.
A.	Items sent in container truck to own location in Tamil Nadu - IGST @ 12% [Note 1]	36,000
	Container truck sent to own location in Tamil Nadu [Note 2]	-
B.	Stand-alone machine sent in container truck to client location in Tamil Nadu, for carrying out repairs [Note 3]	-
	Container truck sent to client location in Tamil Nadu [Note 3]	-
	Items sent in container truck to client location in Tamil Nadu, for carrying out repairs [Note 4]	-

C.	Container truck sent to client location in Karnataka [Note 3]	-
	Items sent in container truck to client location in Karnataka, for carrying out repairs [Note 4]	-
D.	Invoices raised for repair work carried out in Tamil Nadu: IGST @ 18% [Note 5 and Note 6]	12,60,000
E.	Invoices raised for repair work carried out in Karnataka: CGST 9% + SGST 9% [Note 5 and Note 7]	2,16,000
Total GST liability		15,12,000

Notes:

- (1) Movement of goods without any consideration to a 'distinct person' as specified in section 25(4) of the CGST Act, 2017 is deemed to be a supply in terms of Schedule I of the said Act. The purchase value is taken as taxable value, being the open market value in terms of rule 28(a) of the CGST Rules 2017. (However, if the regional office is eligible to take full input tax credit, any value may be declared in the tax invoice and that will be taken to be the open market value in terms of the second proviso to the same rule.)

In the given case-

- the location of the supplier is in Bangalore (Karnataka); and
- the place of supply of items contained in the truck is the location of such goods at the time at which the movement of goods terminates for delivery to the recipient i.e., Tamil Nadu in terms of section 10(1)(a) of the IGST Act, 2017.

Therefore, the given supply of items is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017]. Thus, the supply is leviable to IGST in terms of section 5(1) of the IGST Act, 2017.

Since the activity is a supply, a tax invoice is to be issued by Power Engineering Pvt. Ltd. in terms of section 31(1)(a) of the CGST Act, 2017 for sending the items to its own location in Tamil Nadu.

- (2) As per section 25(4) of the CGST Act, 2017, a person who has obtained more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as 'distinct persons'.

Schedule I to the CGST Act, 2017 specifies situations where activities are to be treated as supply even if made without consideration. Supply of goods and/or services between 'distinct persons' as specified in section 25 of the CGST Act, 2017, when made in the course or furtherance of business is one such activity included in Schedule I under para 2.

However, in view of the GST Council's recommendation, it has been clarified that the inter-State movement of various modes of conveyance between 'distinct persons' as specified in section 25(4), not involving further supply of such conveyance, including trucks carrying goods or passengers or both; or for repairs and maintenance, may be treated 'neither as a supply of goods nor supply of service' and therefore, will not be leviable to IGST. Applicable CGST/SGST/IGST, however, shall be leviable on repairs and maintenance done for such conveyance [Circular No. 1/1/2017 IGST dated 07.07.2017].

Since the activity is not a supply, tax invoice is not required to be issued by Power Engineering Pvt. Ltd. However, a delivery challan is to be issued by the company in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the truck to its own location in Tamil Nadu.

- (3) Supply of goods without consideration is deemed to be a supply *inter alia* when the goods are supplied to a 'distinct person'. However, in this case, stand-alone machine and container truck

are moved to client location and not between 'distinct persons'. Hence, the same will fall outside the scope of definition of supply and will not be leviable to GST.

Here again, a delivery challan is to be issued in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the stand-alone machines and container truck to client location.

- (4) As per section 2(119) of the CGST Act, 2017, 'works contract' means a contract for, *inter alia*, repair, maintenance of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.

In this case, the supplier provides maintenance and repair services for power plants that are in the nature of immovable property and uses consumables and parts, wherever necessary, for the repairs. Hence, the contract is that of a works contract.

Further, as per section 2(30) of the CGST Act, 2017, a works contract is a 'composite supply' as it consists of taxable supplies of both goods and services which are naturally bundled and supplied in conjunction with each other. The composite supply of works contract is treated as supply of service in terms of para 6(a) of Schedule II to the CGST Act, 2017.

The items used in relation to the repair and maintenance work could be consumables or could be identifiable items/parts. In either case, the transfer of property in goods is incidental to a composite supply of works contract service. Thus, the value of the items actually used in the repairs will be included in the invoice raised for the service and will be charged to tax at that point of time.

Here again, a delivery challan is to be issued in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the items for carrying out the repairs.

- (5) The activity is a composite supply of works contract, which is treated as supply of service. As per section 8(a) of the CGST Act, 2017, a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly.

Since the activity is a supply of service, a tax invoice is to be issued by Power Engineering Pvt. Ltd. in terms of section 31(2) of the CGST Act, 2017.

- (6) In the given case-

- the location of the supplier is in Bangalore (Karnataka); and
- the place of supply of works contract services relating to the power plant (immovable property) is the location at which the immovable property is located i.e., Tamil Nadu in terms of section 12(3)(a) of the IGST Act, 2017.

Therefore, the given supply is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017]. Thus, the supply will be leviable to IGST in terms of section 5(1) of the IGST Act, 2017.

- (7) In the given case, the location of the supplier and the place of supply of works contract services are within the same State. Therefore, the given supply is an intra-State supply in terms of section 8(1) of IGST Act, 2017 and thus, chargeable to CGST and SGST.

2. (a) (1) As per Notification No. 12/2017 CT (R) dated 28.06.2017, services provided by an educational institution to its students, faculty and staff are exempt from GST. Educational Institution has been defined to mean, *inter alia*, an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

Since Markanday College provides education as a part of a curriculum for obtaining an engineering degree recognised by law, the services provided by it to its staff by way of conducting personality development course would be exempt from GST.

- (2) As Starward College is an educational institution, the transport services provided by it to its students would be exempt from GST.
- (3) As per Notification No. 12/2017 CT (R) dated 28.06.2017, services provided to an educational institution, by way of, *inter alia*, house-keeping services performed in such educational institution are exempt from GST. However, such an exemption is available only when the said services are provided to a pre-school education and a higher secondary school or equivalent.

Therefore, house-keeping services provided to Smart Kids Play School would be exempt from GST.

- (4) As per Notification No. 12/2017 CT (R) dated 28.06.2017, services provided to an educational institution by way of supply of online educational journals or periodicals is exempt from GST. However, such an exemption is available only when the said services are provided to an educational institution providing education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

Therefore, GST is payable in case of supply of online journal to students of UKG class of Kidzee School.

- (b) As per rule 32(2)(b) of CGST Rules, the value in relation to the supply of foreign currency, including money changing, is deemed to be-
- (i) 1% of the gross amount of currency exchanged for an amount up to Rs. 1,00,000, subject to a minimum amount of Rs. 250;
- (ii) Rs. 1,000 and 0.5% of the gross amount of currency exchanged for an amount exceeding Rs. 1,00,000 and up to Rs. 10,00,000.

Therefore, the value of supply, made by Mr. X, under rule 32(2)(b) of CGST Rules is computed as under:

Particulars	Rs.	Rs.
Value of currency exchanged in Indian rupees [Rs. 64 x US \$ 10,000]	6,40,000	
Upto Rs. 1,00,000	1,000	
For Rs. 5,40,000 [0.50% x Rs. 5,40,000]	<u>2,700</u>	
Value of supply		3,700

(c) Computation of total customs duty and integrated tax payable

Particulars		Amount
CIF value		2000 US Dollars
Less: Freight	500	
Insurance	<u>100</u>	<u>600</u> US Dollars
FOB Value		1400 US Dollars
Add: Air Freight [Note 1]	280	
Insurance (actual amount)	<u>100</u>	<u>380</u> US Dollars
		1780 US Dollars
		Rs.
Value @ Rs. 70.00 [Note 2]		1,24,600.00
Assessable Value		1,24,600.00
Basic Custom Duty @ 10% (a) [Note 3]		12,460.00
Add: Social Welfare Surcharge @ 10% on 1,24,600 (b)		<u>1,246.00</u>

Sub-total	1,38,306.00
Integrated tax under section 3(7) (12% on Rs. 1,38,306) (c) [Note 4]	<u>16,596.72</u>
Total duty and integrated tax (a +b + c) (rounded off)	30,303

Notes:

- (1) If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to Rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
 - (2) Rate of exchange notified by CBIC on the date of presentation of bill of entry would be the applicable rate. [Proviso to Section 14(1) of the Customs Act, 1962].
 - (3) Rate of duty would be the rate as prevalent on the date of filing of bill of entry or arrival of aircraft, whichever is later [proviso to section 15 of the Customs Act, 1962].
 - (4) Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.
3. (a) No, the store is not correct in issuing supplementary invoice with revised rate of tax. The revised rate of tax is not applicable to the transaction, as the issuance of invoice as well as receipt of payment occurred before the supply. Therefore, in terms of section 14(b)(ii), the time of supply is earlier of the two events namely, issuance of invoice or receipt of payment, both of which are before the change in rate of tax, and thus, the old rate of tax remains applicable.
- (b) Where the immovable property is located in more than one State, the supply of service is treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf [Explanation to section 12(3) for domestic supplies].
- In the absence of a contract or agreement between the supplier and recipient of services in this regard, the proportionate value of services supplied in different States/Union territories (where the immovable property is located) is computed on the basis of the area of the immovable property lying in each State/ Union territories [Rule 4 of the IGST Rules].
- (c) The facts of the case are similar to the case of *BPL Display Devices Ltd. v. CCEx., Ghaziabad (2004) 174 ELT 5 (SC)* wherein the Supreme Court has held that the benefit of the notifications cannot be denied in respect of goods which are intended for use for manufacture of the final product but cannot be so used due to shortage or leakage.
- The Apex Court has held that no material distinction can be drawn between loss on account of leakage and loss on account of damage. The benefit of said exemption cannot be denied as inputs were intended for use in the manufacture of final product but could not be so used due to shortage/leakage/damage. It has been clarified by the Supreme Court that words "for use" have to be construed to mean "intended for use".
- Therefore, the importer can claim the benefit of the notification in respect of the entire lot of the inputs imported including those that were damaged in transit.
4. (a) Section 77, *inter alia*, stipulates that a registered person who has paid the Central tax and State tax or, as the case may be, the central tax and the Union territory tax on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall be refunded the amount of taxes so paid in such manner and subject to such conditions as may be prescribed.

The IGST liability cannot be adjusted against the CGST and SGST wrongly paid.

- (b) As per section 25 read with CGST Rules, 2017, where an applicant submits application for registration within 30 days from the date he becomes liable to registration, effective date of registration is the date on which he becomes liable to registration. Since, Sangri Services Ltd.'s turnover exceeded Rs. 20 lakh on 12th August, it became liable to registration on same day. Further, it applied for registration within 30 days of so becoming liable to registration, the effective date of registration is the date on which he becomes liable to registration, i.e. 12th August.

As per section 31 read with CGST Rules, 2017, every registered person who has been granted registration with effect from a date earlier than the date of issuance of certificate of registration to him, may issue Revised Tax Invoices. Revised Tax Invoices shall be issued within 1 month from the date of issuance of certificate of registration. Revised Tax Invoices shall be issued within 1 month from the date of issuance of registration in respect of taxable supplies effected during the period starting from the effective date of registration till the date of issuance of certificate of registration.

Therefore, in the given case, Sangri Services Ltd. has to issue the Revised Tax Invoices in respect of taxable supplies effected during the period starting from the effective date of registration (12th August) till the date of issuance of certificate of registration (6th September) within 1 month from the date of issuance of certificate of registration, i.e. on or before 6th October.

(c) **Computation of customs duty and integrated tax payable thereon**

Particular	Amount (Rs.)
Assessable value of sodium nitrite imported	30,00,000
Add: Basic custom duty @ 10% (Rs. 30,00,000 × 10%)	3,00,000
Safeguard duty @ 30% on Rs. 30,00,000 [Safeguard duty is imposable in the given case since share of imports of sodium nitrite from the developing country is more than 3% of the total imports of sodium nitrite into India (Proviso to section 8B(1) of the Customs Tariff Act, 1975)]	9,00,000
Social welfare surcharge @ 10% x Rs. 3,00,000	30,000
Total	42,30,000
Integrated tax leviable under section 3(7) of Customs Tariff Act (Rs. 42,30,000 × 12%) [Note]	5,07,600
Total customs duty payable (Rs. 3,00,000 + Rs. 9,00,000 + Rs. 30,000 + Rs. 5,07,600)	17,37,600

Note: It has been clarified by DGFT vide Guidance note that value for calculation of integrated tax shall also include safeguard duty amount.

5. (a) Both Mr. X and Mr. Y will be offender and will be liable to penalty as under:

Mr. X – Penalty under section 122(3) which may extend to Rs. 25,000/-;

Mr. Y – Penalty under section 122(1), which will be higher of following, namely (i) Rs. 10,000/- or (ii) 100% of tax evaded.

The levy of penalty is subject to a certain disciplinary regime which is based on jurisprudence, principles of natural justice and principles governing international trade and agreements. Such general discipline is enshrined in section 126 of the Act. Accordingly—

- (i) no penalty is to be imposed without issuance of a show cause notice and proper hearing in the matter, affording an opportunity to the person proceeded against to rebut the allegations levelled against him,
- (ii) the penalty is to depend on the totality of the facts and circumstances of the case, the penalty imposed is to be commensurate with the degree and severity of breach of the provisions of the law or the rules alleged,
- (iii) the nature of the breach is to be specified clearly in the order imposing the penalty,
- (iv) the provisions of the law under which the penalty has been imposed is to be specified.

Since SCN issued to Mr. X suffers from lack of clarity about nature of breach which has taken place and about provision of law under which penalty has been imposed, SCN issued by department may be challenged.

- (b) As per section 75 of the CGST Act, 2017, the interest on the tax short paid has to be paid whether or not the same is specified in the order determining the tax liability.

Thus, in view of the same, Mr. Janak Singhal will have to pay the interest even though the same is not specified in the final adjudication order. His contention that he is not liable for interest because he deposited all the amount specified in the final adjudication order is not valid in law.

However, the amount of interest demanded in the order cannot be in excess of the amount specified in the notice.

Therefore, in the given case, Department cannot demand the interest in excess of the amount specified in the notice, which will be Rs. 50,000.

- (c) As per rule 3 of the Baggage Rules, 2016, an Indian resident arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, used personal effects and travel souvenirs; and articles [other than certain specified articles], upto the value of Rs. 50,000 if these are carried on the person or in the accompanied baggage of the passenger.

Thus, there is no customs duty on used personal effects and travel souvenirs and general duty free baggage allowance is Rs. 50,000 per passenger. Thus, duty liability of Mr. Sujoy and his wife is nil for the used personal effects worth Rs. 80,000 and 2 music systems each worth Rs. 50,000.

As per rule 5 of the Baggage Rules, 2016, the jewellery allowance is as follows:

Jewellery brought by	Duty free allowance
Gentleman Passenger	Jewellery upto a weight of 20 grams with a value cap of Rs. 50,000
Lady Passenger	Jewellery upto a weight of 40 grams with a value cap of Rs. 1,00,000

However, the jewellery allowance is applicable only to a passenger residing abroad for more than 1 year.

Consequently, there is no duty liability on the jewellery brought by Mr. Sujoy as he had stayed abroad for period exceeding 1 year and weight of the jewellery brought by him is 20 grams with a value less than Rs. 50,000.

However, his wife is not eligible for this additional jewellery allowance as she had stayed abroad for a period of less than a year. Thus, she has to pay customs duty on the entire amount of

jewellery brought by her as she has already exhausted the general duty free baggage allowance of Rs. 50,000 allowed under rule 3.

6. (a) The proper officer may recover the dues in following manner:
- (a) Deduction of dues from the amount owned by the tax authorities payable to such person.
 - (b) Recovery by way of detaining and selling any goods belonging to such person;
 - (c) Recovery from other person, from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government;
 - (d) Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered.
 - (e) Through the Collector of the district in which such person owns any property or resides or carries on his business, as if it was an arrear of land revenue.
 - (f) By way of an application to the appropriate Magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him.
 - (g) By enforcing the bond/instrument executed under this Act or any rules or regulations made thereunder.
 - (h) CGST arrears can be recovered as an arrear of SGST and vice versa [Section 79].
- (b) Assessment Order passed by proper officer may be withdrawn in the following cases:-
- (i) **Assessment of Non-filers of return** – The best judgment order passed by the Proper Officer under section 62 of CGST Act shall automatically stand withdrawn if the taxable person furnishes a valid return for the default period (i.e. files the return and pays the tax as assessed by him), within thirty days of the receipt of the best judgment assessment order
 - (ii) **Summary Assessment** – A taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the jurisdictional Additional/Joint Commissioner within thirty days of the date of receipt of the order. If the said officer finds the order erroneous, he can withdraw it and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of CGST Act. The Additional/Joint Commissioner can follow a similar course of action on his own motion if he finds the summary assessment order to be erroneous.
- (c) (i) As per section 74 of the Customs Act, 1962, the duty paid imported goods are required to be entered for export within two years from the date of payment of duty on the importation. This period can be extended by CBIC if the importer shows sufficient reason for not exporting the goods within two years.
- (ii) If duty paid imported goods are exported without use, then 98% of such duty is re-paid as drawback.
- (iii) Yes, duty drawback is allowed when wearing apparels are re-exported without being used. However, *Notification No. 19/65 Cus dated 06.02.1965* as amended provides that if wearing apparels have been used after their importation into India, drawback of import duty paid thereon shall not be allowed when they are exported out of India.