

PAPER – 8: INDIRECT TAX LAWS

1. Question paper comprises of **6** questions. Answer question no. 1 which is compulsory and any **4** questions out of the remaining **5** questions.
2. Working notes should form part of the answer.
3. All the questions should be answered on the basis of position of (i) GST laws as amended by significant notifications/circulars issued till 30th April, 2021 and (ii) CGST Act, 2017 and IGST Act, 2017 as amended by the Finance Act, 2020 and the Finance (No. 2) Act, 2019, which have become effective up to 30th April, 2021 and (ii) Customs law as amended by Finance Act, 2020 and significant notifications/circulars issued till 30th April, 2021.

Question 1

Priya Infra Ltd., a registered supplier under GST in the State of Kerala, is engaged in the construction business. It provides the following information for the month of April, 2021:

S. No.	Particulars	Amount (₹)
	OUTWARD SUPPLY:	
(i)	Transferred one load of tiles to its branch in Cochin, Kerala, from its head office at Trivandrum, Kerala. Both places are under the same GST registration.	7,50,000
(ii)	Provided pure labour services of construction of single commercial unit not forming part of any complex to a customer in Bengaluru (Karnataka).	15,00,000
(iii)	Supplies a consignment of marbles in the territorial waters to Classic Builders LLP. The said territorial waters is located at a distance of 11 nautical miles from the baseline of State of Kerala and 12 nautical miles from the baseline of State of Tamil Nadu.	6,00,000
(iv)	Received an advance for future supplies of goods and services from a customer in Kerala (of which 70% is related to future supplies of services).	7,00,000
(v)	Computer used for business purpose was given free of cost to an unrelated person based in Kerala, computer was purchased 2 years' back at cost of ₹ 88,500 (including GST of ₹ 13,500,) having a W.D.V. of ₹ 71,685 as on the date of sale. Open market value is ₹ 55,000 (excluding GST). No ITC is taken on this computer at the time of purchase.	Nil
	INWARD SUPPLY:	
(i)	Availed services of an arbitral tribunal In Trivandrum, Kerala to settle a case relating to RERA Act.	7,00,000

(ii)	Purchased construction materials from Baahu Steels Ltd., registered in the State of Andhra Pradesh	15,00,000
(iii)	Purchased a new truck from a dealer in Cochin, Kerala for transport of materials	12,00,000

The company provided the following additional information:

- (i) Paid ₹ 6,00,000 as remuneration to an independent director based at Cochin during the month.
- (ii) The company claimed depreciation under the Income-tax Act, 1961 on the new truck purchased including all applicable taxes.
- (iii) E-invoice portal shows that Baahu Steels Ltd.'s GST number has been enabled for e-invoicing. However, the supplier did not issue e-invoice/ tax invoice with invoice reference number (IRN). The invoice was reflected in GSTR-2A.
- (iv) Turnover of Priya Infra Ltd. for the previous financial year was ₹ 180 lakh.
- (v) Rates of CGST, SGST and IGST are 9%, 9% and 18% respectively for both inward and outward supply of goods and services.
- (vi) All the amounts given above are exclusive of taxes wherever applicable.

From the information given above, you are required to compute the minimum net GST liability payable in cash (CGST, SGST or IGST, as the case may be) for the month of April 2021. Reason for treatment needs to be given. **(14 Marks)**

Answer

Computation of minimum net GST payable in cash by Priya Infra Ltd. for April 2021

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
<u>GST payable under forward charge</u>			
Transfer of tiles to branch within Kerala [Such transfer is not a supply as the branch has the same GSTIN as that of the head office and thus, is not a distinct person]	-	-	-
Inter-State supply of pure labour services for construction of single commercial unit in Bengaluru [Services by way of pure labour contracts of construction of original works pertaining to a single residential unit otherwise than as a part of a residential complex is exempt. Hence, such			2,70,000 [15,00,000 x 18%]

services in relation to a commercial unit shall be taxable.]			
Supply of consignment in territorial waters [Where the place of supply is in the territorial waters, the place of supply is deemed to be in the coastal State where the nearest point of the appropriate baseline is located. Therefore, place of supply will be in Kerala being nearer to base line and hence, supply will be intra-State supply]	54,000 [6,00,000 x 9%]	54,000 [6,00,000 x 9%]	
Receipt of advance from customer in Kerala [Tax will be payable only on advance for services. In case of goods, tax is payable at the time of issuance of invoice and not at the time of receipt of advance.]	44,100 [7,00,000 x 70% x 9%]	44,100 [7,00,000 x 70% x 9%]	
Computer given free of cost to unrelated customer [Since ITC has not been taken on the computer, permanent transfer of the same without any consideration to an unrelated customer shall not amount to deemed supply in terms of Schedule I to the CGST Act, 2017. Further, since no ITC has been taken, question of reversal of ITC attributable to the remaining useful life of the computer does not arise.]	-	-	
Total output GST	98,100	98,100	2,70,000
Less: Input tax credit [Refer working note below] [CGST credit be first utilized for payment of CGST liability and then for payment of IGST liability in that order. Similarly, SGST credit be first utilized for payment of SGST liability and then for payment of IGST liability in that order. ITC of CGST cannot be utilized for payment of SGST and vice versa.]	98,100	98,100	18,900 (CGST)
	-	-	18,900 (SGST)
Net output GST payable in cash [A]	Nil	Nil	2,32,200
<u>GST payable under reverse charge</u>			
Tax on services provided by the arbitral tribunal is payable under reverse charge by the recipient of service.	63,000	63,000	

Tax on remuneration paid to director is payable under reverse charge by the recipient of the service.	<u>54,000</u>	<u>54,000</u>	
GST payable in cash under reverse charge [B] [Tax payable under reverse charge, being not an output tax, cannot be set off against ITC and thus, will have to be paid in cash.]	1,17,000	1,17,000	
Minimum net GST payable in cash [A] + [B]	1,17,000	1,17,000	2,32,200

Working Note:**Computation of ITC available with Priya Infra Ltd. for April 2021**

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Services of an arbitral tribunal [Services provided by an arbitral tribunal to a business entity with an aggregate turnover up to threshold limit of registration in the previous financial year are exempt from GST. Thus, services provided by the arbitral tribunal to Priya Infra Ltd., a business entity whose aggregate turnover in the previous financial year exceeds the applicable threshold limit for registration [viz. ₹ 20 lakh, being a supplier of goods and services in the State of Kerala] shall be liable to tax. Further, being services used in the course of furtherance of business, ITC shall be available thereon.]	63,000 [7,00,000 x 9%]	63,000 [7,00,000 x 9%]	
Purchase of materials from Baahu Steels Ltd. [An e-invoice without IRN is not treated as invoice and hence, without a valid document, ITC cannot be claimed on such inputs]	-	-	
Purchase of truck [Motor vehicle used for transportation of goods is eligible for credit. However, since depreciation has been claimed on applicable taxes as well, ITC of tax paid on purchase of such truck cannot be claimed.]	-	-	
Payment of remuneration to independent director based at Cochin [Services provided by employee to employer in the course of his employment are not a supply. However, independent	54,000 [6,00,000 x 9%]	54,000 [6,00,000 x 9%]	

director is not an employee of the company and hence, remuneration paid to him is taxable. Further, being services used in the course of furtherance of business, ITC shall be available thereon.]			
Total ITC	1,17,000	1,17,000	

Question 2

- (a) *Jupiter Chemicals Ltd. (JC) is a manufacturer of industrial chemicals. It has its factory at Haridwar, Uttarakhand and is registered under GST. It has its subsidiary company, Angel Traders Pvt. Ltd. (AT), with holding of 75% of its share capital. AT is engaged in trading of chemicals manufactured by JC in North India and is registered under GST in Delhi at warehouse address. JC has also appointed a consignment agent - Popular Distributors (PD) - in Chennai which is catering the Southern India market. JC has also setup a state of art research and development centre along with laboratory near the Haridwar factory and undertakes testing and development services for chemicals from outside customers across the country. Following information is available for the month of April 2021 of JC Haridwar:*

S. No.	Particulars	Amount (₹)
(i)	<i>JC supplies the chemicals to PD Chennai during the month. (PD sold the above said goods to the unrelated wholesalers in the States of Tamil Nadu and Andhra Pradesh for ₹60,00,000 during the same month). Open market value is ₹55,00,000</i>	45,00,000
(ii)	<i>JC supplied chemicals to AT during the month. (AT further sold the said chemicals to unrelated retailers in Delhi for ₹42,00,000 and AT is not eligible for full input tax credit). Open Market value is ₹38,00,000</i>	30,00,000
(iii)	<i>JC exports chemicals to South Africa with payment of IGST and consideration for the same was received in convertible foreign exchange.</i>	28,00,000
(iv)	<i>JC provided inter-State supply of testing services to various customers during the month</i>	8,50,000
(v)	<i>Supply of chemical to one of its customers in Mumbai who required the chemical to be tested before dispatch and subject to test report coming according to his parameters. Testing was successful and testing charges of ₹50,000 were charged extra.</i>	6,50,000 (excluding testing charges)
(vi)	<i>Supply of chemical at subsidized rate for research and development activity not related to the business of JC to an unrelated charitable association in Haridwar, Uttarakhand. Open market value of the chemical is ₹6,50,000.</i>	5,00,000

Assume that the rates of GST on chemicals are IGST-12%, CGST-6% and SGST-6%, and on testing and development services are IGST-18% and SGST-9%.

You are required to determine the taxable value (most beneficial) and GST liability (IGST, CGST and SGST separately) of Jupiter Chemicals (JC) Haridwar for the month of April 2021. **(9 Marks)**

- (b) PPR Engineering, a manufacturer of tools and spares of Punjab, imports a CNC machine from USA. Contracted CIF price for import was US \$ 15,500. Due to fluctuation of price of machine in international market, price of the machine was re-negotiated after placing the order and finally the machine was agreed to be imported at US\$ 14,000 CIF. Actual freight paid was US \$ 3,000 and insurance cost was US \$ 1,800. Other information is given below:
- Cost of inspection carried out by foreign supplier on his own account was US \$ 300, and the same was neither required under the terms of contract nor for making the goods ready for shipment.
 - Commission payable to local agent of the exporter was US \$ 184. (It is not a buying commission).
 - Date of bill of entry presentation is 25th February, 2021. On this date, rate of BCD is 10%, rate of exchange notified by CBIC for 1 US \$ is ₹ 73, RBI rate is ₹ 71.
 - Date of arrival of aircraft at customs station is 5th March, 2021. On this date, rate of BCD is 15%, rate of exchange notified by CBIC for 1 US \$ is ₹ 74, RBI rate is ₹ 72.
- You are required to compute the assessable value and calculate basic customs duty payable by PPR Engineering. **(5 Marks)**

Answer

- (a) **Determination of taxable value and GST liability of Jupiter Chemicals (JC) Haridwar for the month of April 2021**

S. No.	Particulars	Taxable value (₹)	CGST (₹)	SGST (₹)	IGST (₹)
(i)	Inter-State supply of chemicals to consignment agent – PD, Chennai [Value, at the option of supplier, is: (i) Open market value (OMV) [55,00,000] or (ii) 90% of price charged for goods of like kind and quality to unrelated	54,00,000*			6,48,000 [54,00,000 × 12%]

	customers who further supply such goods (90% of ₹ 60,00,000) ¹ .]				
(ii)	Inter-State supply of chemicals to related person - AT [Value of supply of goods to a related person who further supplies such goods as such, at the option of supplier, is: (i) OMV, if OMV is available [₹38,00,000] or (ii) 90% of price charged for goods of like kind and quality to unrelated customers (90% of ₹ 42,00,000) ²]	37,80,000*			4,53,600 [37,80,000 × 12%]
(iii)	Export of chemicals to South Africa	28,00,000	--	--	3,36,000 [28,00,000 × 12%]
(iv)	Inter-State supply of testing services	8,50,000			1,53,000 [8,50,000 × 18%]
(v)	Inter-State supply of chemical to customer in Mumbai [Any amount charged for anything done by supplier in respect of supply of goods at the time of/before delivery of goods is includible in the value of supply.]	7,00,000			84,000 [7,00,000 × 12%]
(vi)	Intra-State supply of chemical to an unrelated charitable association in Haridwar [In case of supply made to unrelated recipient where price	5,00,000	30,000 [5,00,000 × 6%]	30,000 [5,00,000 × 6%]	

¹ It has been assumed that the expression "above said goods" in the question means goods of like kind and quality.

² It has been assumed that the expression "said chemicals" in the question means goods of like kind and quality.

	is the sole consideration for supply, value of the supply is the transaction value which is price actually paid for the supply.]				
	Total	1,40,30,000	30,000	30,000	16,74,600

*Note: Since the question requires to compute the most beneficial taxable value of supply, lower of the two values has been taken as value of supply.

(b) Computation of assessable value and basic customs duty payable

Particulars	Amount (\$)
CIF value [Transaction value is re-negotiated price since it is the price actually paid/payable.]	14,000
Less: Air freight	3,000
Less: Insurance	<u>1,800</u>
FOB value	9,200
Add: Vendor inspection charges [Not includible since it is not a payment made as a condition of sale of the imported goods by the buyer to the seller]	Nil
Add: Commission payable to local agent of the exporter [Includible since it is not a buying commission ³]	<u>184</u>
FOB value as per customs	9,384
Add: Freight [Restricted to 20% of FOB value since goods are imported by air.]	1,876.80
Add: Actual insurance charges	<u>1,800</u>
	13,060.80
Exchange rate is ₹ 73 per \$ [Rate of exchange notified by CBIC on the date of filing of bill of entry]	
	₹
Assessable value [\$ 13,060.80 × ₹ 73]	9,53,438.40
Basic custom duty @ 15% (rounded off) [Rate of BCD is the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later.]	1,43,016

³ It has been assumed that the local agent has been appointed by the exporter.

Question 3

- (a) A2X Services Limited, registered under GST, is engaged in providing various services to various educational institutions. The company provides the following information in respect of services provided during the month of April 2021:

S. No.	Description of services provided
(i)	Transportation of students & staff of 'Love All', a deemed University
(ii)	Catering services provided to 'Rank CBSE School'
(iii)	Security services provided to 'Win CBSE School', for its annual sports day held at SAI Sports Complex owned by Government of India
(iv)	Supply of online periodical science journal to 'Merit CBSE School' for its higher secondary students
(v)	Services, in relation to placement of students, to 'SKILL', a Government recognized vocational training college

Comment on the taxability or otherwise of the above transactions under GST law. Also state the correct legal provisions for the same. **(5 Marks)**

- (b) Determine the place of supply in respect of the following independent instances under the provisions of IGST Act, 2017:

- (i) Miss Poorva, an interior design consultant, having office at Chennai (Tamil Nadu), provided professional services to Mr. Nihil who resides in Dubai, for his two immovable properties under single contract, one property is outside India at Singapore and another at Surat (Gujarat).
- (ii) United Traders, having a registered place of business at Bengaluru (Karnataka), imported instruments used in COVID treatment from London (UK) through Vizag (Andhra Pradesh) Port.

Note: Your answer should also include relevant provisions of law. **(4 Marks)**

- (c) Supreme Car Decors imported car music systems and GPS devices from Germany. The importer submits the following issues for your consideration:

- (i) 7 music systems were pilfered before unloading and before the proper officer has made an order for clearance for home consumption.
- (ii) 10 GPS devices were pilfered after unloading and before the proper officer has made an order for clearance for home consumption.
- (iii) 30 music systems were damaged after unloading and examination for assessment by the customs authorities but before actual home clearance.

Supreme Car Decors seeks your expert advice with reason regarding the impact on customs duty on the said goods. **(5 Marks)**

Answer

(a)

S. No.	Particulars	Taxability
(i)	Transportation of students and staff of deemed University [Taxable since transportation services provided to an educational institution are exempt only if such institution provides pre-school education or education up to higher secondary school or equivalent.]	Taxable
(ii)	Catering services provided to "Rank CBSE School" [Catering services provided to an educational institution providing pre-school education or education up to higher secondary school or equivalent are exempt.]	Exempt
(iii)	Security services to "Win CBSE School" for its annual sports day held at SAI Sports complex [Security services provided to an educational institution providing pre-school education or education up to higher secondary school are exempt provided such services are performed in the premises of such institution. However, in this case, security services are being provided outside the school campus, and hence the same are taxable.]	Taxable
(iv)	Supply of online periodical science journal to school for its higher secondary students [Taxable since educational institutions providing service by way of pre-school education and education upto higher secondary school or equivalent are not eligible for exemption in respect of supply of online educational journals.]	Taxable
(v)	Services in relation to placement of students, to Government recognized vocational training college [Taxable since only services related to admission and conducting exams are exempt for vocational educational institutions.]	Taxable

- (b) (i) In a case where location of supplier or recipient of service is outside India, the place of supply of services of interior decorators provided directly in relation to an immovable property is the location of immovable property. Further, where such services are supplied at more than one location, including a location in the taxable territory, the place of supply of said services is the location of immovable property in the taxable territory.

In view of the above provisions, place of supply of Miss. Poorva's (interior design consultant located in India) services provided to Mr. Nihil (recipient located outside India in Dubai) in respect of immovable properties, located in Surat (Gujarat) and in Singapore, is the location in taxable territory, i.e. Surat (Gujarat).

- (ii) The place of supply of goods imported into India is the location of the importer. Thus, in the given case, place of supply of instruments imported by United Traders is Bengaluru (Karnataka).
- (c) (i) Duty is not leviable on the music systems pilfered before unloading since import duty is leviable only when import is completed; import gets completed only when goods become part of the mass of goods within the country.

However, it is also possible to take a view that duty is payable on the music systems pilfered before unloading since an importer is not liable to pay duty leviable on pilfered imported goods only if such goods are pilfered after unloading and before proper officer makes order for clearance for home consumption.

- (ii) Supreme Car Decors is not liable to pay duty leviable on GPS devices pilfered since an importer is not liable to pay duty leviable on any imported goods pilfered after unloading and before proper officer makes order for clearance for home consumption.
- (iii) Abatement of duty on damaged imported goods is available if such imported goods are damaged accidentally after unloading but before examination for assessment by the customs authorities.

In the given case, since imported music systems⁴ are damaged after examination for assessment by the customs authorities, abatement of duty on such goods is not available.

Question 4

- (a) *Jai and Co, a registered supplier under GST, is engaged in weaving yarn into fabrics and has provided the following information:*

<i>Nature of various intra-State supplies during April 2021</i>	<i>Value of supply (excluding GST) (₹)</i>
<i>Outward supply of fabrics (Tax rate of CGST and SGST is 2.5% each)</i>	<i>30,00,000</i>
<i>Inward supply of rayon yarn (Tax rate of CGST and SGST is 6% each)</i>	<i>24,00,000</i>
<i>Inward supply of services for processing the yarn (Tax rate of CGST and SGST is 2.5% each)</i>	<i>4,00,000</i>

⁴ It has been assumed that the imported music systems have not been warehoused.

Inward supply of machineries for weaving the processed yarn into fabrics (Tax rate of CGST and SGST is 9% each)	45,00,000
The concern has not provided any supply other than the outward supply referred above. ITC in respect of all types of inward supplies as given above was claimed in the relevant GSTR 38 as well reflected in GSTR 2A.	
Other applicable conditions for claiming the refund are duly complied with.	

You are required to compute the 'maximum refund amount' eligible under rule 89(5) of CGST Rules, 2017 for inverted duty structure.

Also provide working notes for your calculation.

(5 Marks)

Note - No refund has been claimed under rule 89(3) or rule 89(4) of the CGST Rules, 2017

- (b) Comment on the liability to get registered under the GST law in the given independent situations for the financial year 2020-21. Your answer should also include relevant provisions of law, notifications or circulars.
- Miss Riddhima is exclusively engaged in the export of readymade garments from the State of Rajasthan and her export turnover during the year is ₹ 17 lakh. Apart from export turnover, she has earned interest on bank FDR for ₹ 2 lakh also.
 - Ajanta Enterprises is exclusively engaged in the trading of exempt goods under GST in the State of Haryana and has not taken the GST registration. During the year, its turnover from exempt supplies is ₹ 47 lakh and Ajanta Enterprises also sold old generator for ₹ 1.25 lakh during the year.
 - Mr. P has presence in two States, one in Haryana and other in Rajasthan. He is registered in the State of Rajasthan even without crossing the threshold limit. His turnover during the year in Rajasthan is ₹ 32 lakh and in Haryana is ₹ 5 lakh. Is he mandatorily required to get registered in the State of Haryana also?
 - Mr. John is engaged in the business of buying and selling of shares on his own account from the secondary market and his income from this activity is assessed as business income under the Income-tax Act 1961. During the year his total sales turnover from shares was ₹ 90 lakh. **(4 Marks)**
- (c) With reference to the Customs Act, 1962, decide the validity of the following independent cases with proper legal provisions:
- Apex Rubber Limited is a 100% EOU located in a Special Economic Zone. It imported certain items from China for its production process. Customs officer proposed to impose anti-dumping duty on such imports. The importer contends that no anti-dumping duty can be imposed on imports by a 100% EOU under any circumstances.
 - Customs Department proposed to impose anti-dumping duty retrospectively in respect of certain items. Importer's association claimed that anti-dumping duty cannot be levied with retrospective effect under any circumstances. **(5 Marks)**

Answer

- (a) Maximum refund amount under rule 89(5) of the CGST Rules, 2017 on account of inverted duty structure, is computed as follows –

$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods and services} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{Tax payable on such inverted rated supply of goods and services}$$

where Net ITC means ITC availed only on inputs

= ₹ [(24,00,000×6%) × 30,00,000/30,00,000]-[30,00,000×2.5%] (each for CGST and SGST)

= ₹ 69,000

Thus, maximum refund amount is ₹ 69,000 each for CGST and SGST.

Note: Refund of tax paid on input services and capital goods is not a part of refund of accumulated ITC on account of inverted duty structure.

- (b) (i) Export of goods is treated as inter-State supply.

Miss Riddhima is liable to obtain registration compulsorily irrespective of the quantum of her aggregate turnover since she is engaged in making inter-State supply (exports) of goods⁵.

- (ii) Any person engaged exclusively in making exempt supplies is not liable to registration. However, Ajanta Enterprises is liable to get registered as it has also made a taxable supply along with exempt supplies during the year and its aggregate turnover (₹ 48.25 lakh) exceeds the threshold limit for registration.

- (iii) Since registration in GST is PAN based, once a supplier is liable to register, he has to obtain registration in each of the States/UTs in which he operates under the same PAN. Therefore, Mr. P is liable to get registered in Haryana also, provided he is not engaged exclusively in making exempt supplies from Haryana.

However, it is also possible to take a view that a person who is voluntarily registered in one State needs to obtain registration in other States from where he makes a taxable supply only if his aggregate turnover exceeds applicable threshold limit for registration. In that case, Mr P is not liable to obtain registration from Haryana since the aggregate turnover does not exceed the threshold limit for registration.

- (iv) A supplier is liable to obtain registration in a State/UT from where he makes a taxable supply of goods and/or services. Shares are excluded from the definition of goods as well as services. Hence, buying and selling of shares is not a supply of goods and/or

⁵ It has been assumed that the exporter of goods – Miss Riddhima – has availed the export benefits available under GST.

services under GST law. Thus, Mr. John is not liable to obtain registration since he is not engaged in making a taxable supply of goods and/or services.

- (c) (i) The contention of the importer is partially correct.
- Anti-dumping duty cannot be imposed on imports made by 100% EOU. However, following circumstances are exception to the same:
- (i) where it is specifically made applicable in such notifications or such impositions, as the case may be; or
 - (ii) where such article imported is either cleared as such into the DTA or used in the manufacture of any goods that are cleared into the DTA, and in such cases anti-dumping duty shall be levied on that portion of the article so cleared or so used as was leviable when it was imported into India.
- (ii) The claim of the importer's association is not correct. Anti-dumping duty can be levied with retrospective effect not beyond 90 days from the date of such notification, if Central Government is of the opinion that:
- (a) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury, and
 - (b) the injury is caused by massive dumping of an article imported in a relatively short time which is likely to seriously undermine the remedial effect of anti-dumping duty liable to be levied owing to timing and volume of imported article dumped and other circumstances.

Question 5

- (a) *M/s Fly-by-Night Traders, a taxable person, issued an invoice on 15th April 2021 involving input tax credit (ITC) of ₹ 25 lakh to M/s Runaway Traders who utilised the same. No supply of goods was involved in this transaction between the two traders. M/s Fly-by-Night Traders conducted this transaction at the instance of its tax consultant who was not a qualified professional.*

Explain the relevant provision in brief and determine the amount of penalty leviable under COST Act, 2017, if any, on the persons involved in respect of the above referred transaction.

(5 Marks)

- (b) *In the month of March 2021, during the course of Departmental GST audit under section 65 of the CGST Act, 2017 of Always Right Private Limited, audit team observed that input tax credit claimed by the company was blocked under section 17(5) of the CGST Act, 2017. Audit memo was given to the company for submission of reply on the audit observations mentioned in the memo. Company submitted its reply contending that the said credit was not blocked under section 17(5) and had been rightly claimed. Department was not satisfied with the reply submitted by the company. Audit team served a show cause notice under section 74 of the CGST Act, 2017 and transferred the matter to*

adjudicating officer and also started recovery process under sections 78 and 79 of the CGST Act, 2017 for recovery of the input tax credit wrongly availed.

You are required to comment whether action of the Department to recover the amount is justified with the reference to the legal provisions of the GST law. **(4 Marks)**

(c) Mr. X, an Indian resident, returns to India on 10.04.2021 after visiting France for 3 months. On his return to India, he brings with him following articles:

- (i) Used personal effects like clothes etc. valued at ₹ 1,75,000
- (ii) Music system valued at ₹ 1,20,000
- (iii) Jewellery valued at ₹ 1,30,000 measuring 20 grams brought by Mr. 'X'
- (iv) Laptop worth ₹ 1,20,000
- (v) Wine 1 litre worth ₹ 6,000
- (vi) Mobile phone worth ₹ 50,000

You are required to determine the taxable value of baggage with reference to the Baggage Rules, 2016. **(5 Marks)**

Answer

(a) Where a taxable person:

- (a) issues any invoice without supply of goods, or
- (b) takes/utilises ITC without actual receipt of goods, either fully or partially,

in contravention/violation of the provisions of the GST law or the rules made thereunder, such person shall be liable to pay a penalty of

- (i) ₹ 10,000

or

- (ii) an amount equivalent to the ITC availed of or passed on (₹ 25 lakh), whichever is higher.

Thus, M/s Fly-by-Night Traders and M/s Runaway Traders, both are liable to pay a penalty of ₹ 25 lakh each.

Further, any person at whose instance above transactions are conducted, shall be liable to a penalty of an amount equivalent to ITC availed of/passed on. Thus, the tax consultant will be liable to pay a penalty of ₹ 25 lakh.

(b) The action of the Department to initiate the recovery proceedings without adjudication order being passed is not valid.

Recovery proceedings can be initiated under GST law if a taxable person fails to pay any amount payable in pursuance of an order passed under this law within a period of 3 months (or reduced period by proper officer) from the date of service of such order.

However, in the given case, the recovery proceedings have been initiated only after serving the show cause notice and transferring the matter to the adjudicating officer. The adjudication order has not yet been passed in the given case.

(c) Computation of taxable value of baggage

Used personal effects [Duty free clearance is allowed.]	Nil
Music system	1,20,000
Jewellery [Duty free jewellery allowance is not available to Mr. X since he did not reside abroad for more than 1 year.]	1,30,000
Laptop ⁶ [One laptop computer is exempt when imported into India by a passenger ≥ 18 years of age]	Nil
1 litre wine [Can be accommodated in general free allowance]	6,000
Mobile phone	<u>50,000</u>
Total value	3,06,000
Less: General duty free baggage allowance of ₹ 50,000	<u>50,000</u>
Taxable value of baggage	<u>2,56,000</u>

Question 6

(a) Candidates are required to attempt either part (i) or part (ii)

(i) List any four records required to be maintained by an agent under the CGST Rules, 2017. **(4 Marks)**

OR

(ii) List any four exceptions when theory of unjust enrichment is not applicable under the provisions of CGST Act, 2017. **(4 Marks)**

(b) Director General of Anti-Profitteering Authority, determines that a registered person, has not passed on the benefits of reduction of GST tax rates. List the different possible orders that may be passed by the said authority for the above finding. **(5 Marks)**

⁶ It has been most logically assumed that Mr. X ≥ 18 years of age.

- (c) List the goods (with specific conditions) which are not entitled to drawback under section 74 of the Customs Act, 1962. **(5 Marks)**

Answer

- (a) (i) Every agent shall maintain accounts depicting the-
- (a) particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;
 - (b) particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;
 - (c) particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;
 - (d) details of accounts furnished to every principal; and
 - (e) tax paid on receipts or on supply of goods or services effected on behalf of every principal.
- (ii) Unjust enrichment is not applicable in the following cases:
- (a) refund of tax paid on exports or on inputs/input services used in making such exports;
 - (b) refund of unutilized ITC in case of zero-rated supplies made without payment of tax or accumulated ITC on account of inverted duty structure;
 - (c) refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
 - (d) refund of tax paid on a transaction treated to be an intra-State supply, but which is subsequently held to be an inter-State supply or vice-versa;
 - (e) the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person;
 - (f) the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.
- (b) Where the Authority determines that a registered person has not passed on the benefit, it may order-
- (a) reduction in prices;
 - (b) return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest @ 18% or recovery of the amount including interest not returned, as the case may be
 - (c) the deposit of an amount equivalent to 50% of the amount determined under the above clause along with interest @ 18% and the remaining 50% of the amount in the

Consumer Welfare Fund of the concerned State, where the eligible person does not claim return of the amount or is not identifiable

- (d) imposition of prescribed penalty; and
- (e) cancellation of registration under GST.

Note – Students are advised to read ‘Director General of Anti-Profiteering Authority’ as ‘Anti-Profiteering Authority’.

- (c) Where the imported goods are entered for export after being used, the duty drawback will be available at the reduced rates. However, in case of export of following imported goods, they are not entitled to duty drawback at all if used after their importation in India. If not used, they would be entitled to 98% drawback:
 - (i) Wearing Apparel;
 - (ii) Tea Chests;
 - (iii) Exposed cinematograph films passed by Board of Film Censors in India.
 - (iv) Unexposed photographic films, paper and plates, and X-ray films.