

PAPER-8: INDIRECT TAX LAWS

QUESTIONS

Zoom Air is an airline company operating domestic as well as international flights. The head office of Zoom Air is in Mumbai and the company has also obtained registration under GST in each of the States from where the flight operations are being conducted.

During the month of January, following transactions were undertaken by it:

- (i) Zoom Air sold air tickets worth ₹ 5,00,000 during the month from its head office and the breakup of air fare is as follows:

Basic fare excluding GST – ₹ 4,00,000

Passenger Service Fee (PSF) and User Development Fee (UDF) inclusive of GST – ₹ 1,00,000

Both PSF and UDF are statutory fees which are required to be collected by the airlines as per Government directions and authorization given to airlines. The aforesaid amount of PSF and UDF are inclusive of GST @ 18%. PSF and UDF are remitted by the airlines to the airport authority. Further, the amount of PSF and UDF is separately disclosed in the invoice issued to customers by Zoom Air along with applicable GST. The airport authority pays an amount of 5% of PSF and UDF (inclusive of GST amount) collected as collection charges to the airlines on which GST is applicable. There is no levy of PSF and UDF on the tickets booked by Zoom Air for its own crew or other employees.

- (ii) Zoom Air (Head Office) has collaborated with Supertrip India, an online travel portal, providing services to the customers by way of booking air tickets through its electronic commerce platform and registered under GST in the State of Maharashtra. During the month, Supertrip India booked tickets for ₹ 2,00,000 (base fare excluding GST, PSF and UDF) for the customers of Zoom Air. The amount was remitted by Supertrip India to Zoom Air after required adjustments as per GST law in terms of tax collection at source @ 1% as IGST or @ 0.5% of CGST and @ 0.5% of SGST as applicable. In addition to the aforesaid amount, Supertrip India charged commission from Zoom Air at the rate of 5% of the base fare of air tickets booked.
- (iii) Zoom Air (Head Office) charged 100% cancellation fee from the customers for bookings made in prior months. The amount of cancellation fee charged was ₹ 1,00,000 inclusive of GST. Instead of actually collecting the cancellation fee from the customers, such amount was adjusted against the booking amount and GST discharged at the time of initial bookings. However, the PSF and UDF amounting to ₹ 10,000 (inclusive of GST) charged from the customers against such bookings were refunded.
- (iv) Zoom Air provided gifts in the form of air tickets to 10 of its employees based at its head office for an amount equivalent to ₹ 60,000 each. No amount was recovered from the employees for such air tickets.

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- (v) Zoom Air has a corporate tie-up with Welcome Hotel located in Rajasthan for stay of its crew members. For January, the hotel issued an invoice of ₹ 5,00,000 in the name of Zoom Air, Head office, Mumbai.

Haryana office of Zoom Air has provided services by way of sale of online advertisement space to Amazing Pvt. Ltd. (a company registered in the State of Haryana) for promotion of Amazing Pvt. Ltd.'s products. The amount charged for such service by Haryana office of Zoom Air is ₹ 5,00,000.

All the amounts given above are exclusive of GST unless otherwise provided. The opening balance of input tax credit of Zoom Air and Supertrip India for the relevant tax period is nil. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled. Assume that there is no other outward or inward supply transaction apart from aforesaid transactions, in the month of January.

GST is applicable in the aforesaid case scenario @ 18% ignoring CGST, SGST and IGST bifurcation for the sake of simplicity.

In case of cancellation of tickets, the airport authority and Zoom Air had an agreement that PSF and UDF related adjustment shall be finalized at the end of financial year, i.e., during the month of March. Further, separate GST invoice shall be issued to carry out such adjustment in books of accounts.

Based on the facts of the case scenario given above, choose the most appropriate answer to Q. Nos. 1 to 5 below:

1. The gross GST liability of Mumbai Head Office of Zoom Air for the month of January is:
 - (a) ₹ 1,08,000
 - (b) ₹ 72,000
 - (c) ₹ 1,80,000
 - (d) ₹ 2,16,900
2. Determine all kinds of credits available to Mumbai Head Office of Zoom Air for setting off against its GST liability for the month of January is:
 - (a) ₹ 3,800
 - (b) ₹ 93,800
 - (c) ₹ 6,800
 - (d) ₹ 96,800
3. Assuming that the customers, in point (i) of the case scenario above, are registered customers and all other conditions for availment of input tax credit are complied with, the amount of input tax credit available to such customers would be:



- (a) ₹ 90,000
 - (b) ₹ 72,000
 - (c) ₹ 87,254
 - (d) ₹ 76,272
4. Choose the correct answer in relation to the transaction between Haryana office of Zoom Air and Amazing Pvt. Ltd.:
- (a) The service is in the nature of online information and database access or retrieval services and Amazing Pvt. Ltd. is liable to pay IGST of ₹ 90,000.
 - (b) The sale of advertisement space is a deemed sale of services as per Schedule II of CGST Act, 2017 and liable to CGST of ₹ 45,000 and SGST of ₹ 45,000.
 - (c) Zoom Air is required to pay IGST of ₹ 90,000 and Amazing Pvt. Ltd. is required to collect tax at source on consideration paid to Zoom Air.
 - (d) Zoom Air is required to pay CGST of ₹ 45,000 and SGST of ₹ 45,000 and full credit shall be allowed to Amazing Pvt. Ltd.
5. Supertrip India purchases 1000 air tickets in bulk for an amount of ₹ 1,000 per ticket from Zoom Air and provides booking of air ticket facility at its electronic portal to the customers on its own account. Supertrip India was able to sell only 800 air tickets for which the total amount collected from customers was ₹ 15,00,000. As per the agreement, the remaining 200 air tickets purchased by Supertrip India from Zoom Air lapsed, and amount was forfeited by Zoom Air. Rate of TCS is 1%.

Choose the correct statement.

- (a) Supertrip India shall be liable to pay GST of ₹ 90,000 and deduct TCS of ₹ 10,000.
- (b) Supertrip India is acting as an agent of Zoom Air and shall be liable to pay GST of ₹ 1,26,000 and no GST will be payable by Zoom Air separately.
- (c) Supertrip India shall be liable to pay GST of ₹ 90,000 and Zoom Air shall be liable to pay GST of ₹ 1,80,000.
- (d) Supertrip India shall be liable to pay GST of ₹ 1,57,500 and Zoom Air shall be liable to pay GST of ₹ 1,80,000.

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6. Kwality Bells Private Limited, registered under GST in Chennai, Tamil Nadu, provided following outward supplies in the current year:

Particulars	Amount (₹)	
	Taxable	Exempt
Intra-State supplies	40,00,000	15,00,000
Inter-State supplies (zero-rated supplies)	30,00,000	10,00,000
Supply of goods procured from China directly from China to UK without such goods entering into India	20,00,000	-
Supply of goods imported from UK, in high seas, to a local vendor by way of endorsement of documents of title to the goods before clearance for home consumption	5,50,000	6,00,000

Compute the aggregate turnover of Kwality Bells Private Limited under GST law for the current year.

- (a) ₹ 95,00,000
(b) ₹ 1,26,50,000
(c) ₹ 1,20,50,000
(d) ₹ 1,15,00,000
7. Which of the following statements is correct in respect of warehousing under customs?
- (a) Special warehouses are not under physical control of the customs authorities (i.e. not under lock of customs). Control is record based.
(b) The importer of warehoused goods is required to submit bond for an amount equal to twice the duty amount involved.
(c) In case of imported goods for use in any 100% EOU, the warehousing period for capital goods is till their ex-bonding and for goods other than capital goods, it is till their ex-bonding/consumption.
(d) In case of imported goods for use in any 100% EOU, the warehousing period for goods other than capital goods is 1 year from the date of order permitting deposit of goods in warehouse.
8. No drawback of import duty will be allowed in respect of _____, if they have been used after their importation in India:
- (i) Wearing Apparel
(ii) Tea Chests
(iii) Silver utensils

- (iv) Exposed cinematograph films passed by Board of Film Censors in India
- (a) (i) and (iii)
- (b) (i), (ii) and (iii)
- (c) (i), (ii) and (iv)
- (d) (i), (ii), (iii) and (iv)
9. Adityanath Private Limited is registered under GST in the State of Uttar Pradesh. It is engaged in supplying three products – Product Alpha, Product Beta and Product Gamma, from its factory located in Rampur, Uttar Pradesh. Product Alpha and Product Beta are taxable whereas Product Gamma is exempt from GST. Besides, it also supplies cigarettes from its factory located in Kanpur and owns a petrol pump in Lucknow. It is also engaged in supply of certain services.

It has furnished the following information with regard to the supplies made by it in the month of August:

Particulars	(₹)*
Supply of Product Alpha	50,00,000
Supply of Product Gamma	1,00,00,000
Supply of management consultancy services	50,00,000
Renting of commercial complex to local traders of electronic goods	50,00,000
Export of Product Beta	1,00,00,000
Export of consultancy services [including exports made to a Nepal based company of ₹ 5 lakh (payment is received in Indian currency in said case)]	20,00,000
Sale of building (excluding stamp duty of ₹ 2.50 lakh being 2% of value adopted for paying stamp duty) [Entire consideration is received post issuance of completion certificate; building was occupied thereafter]	2,50,00,000
Interest received on investment in fixed deposits with Manimani bank	10,50,000
Sale of shares of a public company (Purchase price of such shares is ₹ 2,40,00,000)	2,50,00,000
Supply of cigarettes [GST being levied @ 28%.] (including excise duty of ₹ 12,50,000)	1,00,00,000
Supply of petrol and diesel (including VAT of ₹ 5,00,000 and excise duty of ₹ 12,50,000)	80,00,000
Amount received from Durga Das Private Limited of Lucknow, Uttar	6,00,000

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Pradesh. It has sponsored the business exhibition organized in Delhi by Adityanath Private Limited.	
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*excluding GST

With the help of the above-mentioned information, compute the gross GST liability of Adityanath Private Limited for the month of August on the outward supplies made by it during said period.

Note: Assume that rates of GST on outward supply of goods and services are 12% and 18% respectively unless otherwise specified (Ignore CGST, SGST or IGST for the sake of simplicity). Exports made by Adityanath Private Limited, if any, have been made to persons other than distinct/related persons and are made by furnishing LUT without payment of IGST.

10. In the above question, all other things remaining the same, compute the net GST payable from Electronic Cash Ledger if Adityanath Private Limited furnishes the following additional information:

Particulars	(₹)*
Consideration paid for repair of machinery used for manufacturing Product Alpha by George Inc. of USA [Said machinery was sent to George Inc. in August for carrying out repair work on the same.]	5,20,000
Life insurance premium paid by the company for the life insurance of employees as per the policy of the company. There is no legal obligation for such insurance for employees.	48,50,000
Audit fees paid	6,50,000
Raw material purchased [including raw material of ₹ 1,50,000 imported from China. Basic customs duty of ₹ 15,000, social welfare surcharge of ₹ 1,500 and integrated tax of ₹ 29,970 are separately paid on the imported raw material]	10,00,000
Transportation charges paid for transporting the goods [₹ 4,00,000 is paid to Goods Transport Agency (GTA) registered in Uttar Pradesh and ₹ 1,00,000 is paid for transport of goods by horse pulled carts. GST applicable on the services of GTA is 5%.]	5,00,000
Telephone expenses paid [Such expenses pertain to bills for landline phone installed at the factory and mobile phones given to employees for official use.]	4,25,000
Bank charges paid towards company's current account maintained with Manimani Bank	2,00,000



Legal services received from an advocate during the period only in relation to Product Beta	3,50,000
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*excluding GST

Note: Assume that rates of GST on all inward supply of goods and services are 12% and 18% respectively unless otherwise specified (Ignore CGST, SGST or IGST, for the sake of simplicity). Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled. Turnover of Adityanath Private Limited was ₹ 40 crores in the preceding financial year. The inputs and input services received during August are commonly used for making all the outward supplies unless otherwise specified. The opening balance of Electronic Credit Ledger for the relevant tax period is Nil.

11. Determine the place of supply in the following independent cases:-
- (i) Mr. Sahukaar (New Delhi) boards the New Delhi - Sawai Madhopur train at New Delhi. Mr. Sahukaar sells the goods taken on board the train by him (at New Delhi), in the train, at Bharatpur during the journey.
 - (ii) Vidhyut Pvt. Ltd. imports electric food processors from USA for its Electronic Store in Varanasi, Uttar Pradesh. Vidhyut Pvt. Ltd. is registered in Uttar Pradesh.
 - (iii) Mr. Aatmaram (unregistered under GST), a manager in a Bank, is transferred from Bareilly, Uttar Pradesh to Bhopal, Madhya Pradesh. Mr. Aatmaram's family is stationed in Kanpur, Uttar Pradesh. He hires Gokul Carriers of Lucknow, Uttar Pradesh (registered in Uttar Pradesh), to transport his household goods from Kanpur to Bhopal.
 - (iv) Bholunath, a resident of New Delhi, opens his saving account in New Delhi branch of Best Bank after undergoing the KYC process. He goes to Amritsar for some official work and withdraws money from Best Bank's ATM in Amritsar thereby crossing his limit of free ATM withdrawals. Thus, withdrawal charges were levied by the Best bank.
12. Chandra is engaged in supplying certain goods in the State of Punjab from his factory located in Jalandhar, Punjab. He is not yet registered under GST. As his turnover is moving towards the applicable threshold limit for registration under GST, he approaches his tax advisor to ascertain the applicability of GST on the supply made by him.
- His tax advisor is unable to determine whether supply of goods by Chandra amounts to supply of goods under GST law and also, the classification of said goods. He advises Chandra to apply for the advance ruling in respect of said issues. He told Chandra that the advance ruling would bring him certainty and transparency in respect of the said issues and would avoid litigation later. Chandra agrees with his view, but has some apprehensions.

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In view of the information given above, you are required to advise Chandra with respect to following:

- (i) The tax advisor asks Chandra to get registered under GST law before applying for the advance ruling as only a registered person can apply for the same. Whether Chandra needs to get registered before applying for advance ruling?
 - (ii) Can Chandra seek advance ruling to determine whether supply of goods by Chandra amounts to supply of goods under GST law and if yes, to determine the classification of said goods?
 - (iii) Chandra is doubtful whether he can seek advance ruling in relation to an activity/transaction already being undertaken. Whether Chandra's doubt is correct?
 - (iv) Chandra is apprehensive that Authority for Advance Ruling may take years to pronounce its ruling. Whether his apprehension is correct?
13. Mr. Arihant is engaged in supply of taxable goods and is registered in the State of Orissa. A demand notice under GST law of ₹ 50 lakh is served on him on 5th April. On 10th April, despite having knowledge of said notice, Mr. Arihant transferred his ancestral property located in Punjab in the name of his wife Soma for a consideration of ₹ 2 lakh without taking any permission from the authorities under GST. The value for the purpose of stamp duty valuation was ₹ 80 lakh.

Subsequently, he filed a reply to said demand notice on 15th April stating that he would not be able to pay the amount of tax demanded in the notice due to his distressed financial situation.

Determine the validity of the act of transferring of property by Mr. Arihant to his wife Soma, under the provisions of the GST law.

14. State the prosecution, arrest and bail implications, if any, in respect of the following independent cases pertaining to June:
- (i) 'Ashuram' fraudulently avails input tax credit of ₹ 200 lakh without any invoice or bill. However, he is yet to utilize the same.
 - (ii) 'Bahubali' fraudulently avails the refund of tax of ₹ 550 lakh. The said tax has been recovered from the buyer also.
 - (iii) 'Chintamani' knowingly supplies false information sought by the CGST Officer. The amount of tax involved is ₹ 250 lakh.
 - (iv) 'Deendayal' collects ₹ 650 lakh as tax in January from its clients but has deposited only ₹ 50 lakh with the Central Government till date.

Note: Assume that in all above cases, offence, if any, has been committed for the first time.



15. Mr. Ajit Basu is the director of Dharma Private Limited of Kolkata for past 5 years. He resigned from the company on 1st April of the current financial year. He receives a notice of demand on 5th July for the recovery of tax dues of Dharma Private Limited pertaining to the preceding financial year as the said dues cannot be recovered from the company owing to its poor financial condition. Mr. Ajit Basu is of the view that the tax dues of Dharma Private Limited cannot be recovered from him as he is no more a director in the company. You are required to advise him on the same taking into count the relevant provisions of the GST law.
16. Raghuram Pvt. Ltd., Pune, Maharashtra, provides house-keeping services. The company supplies its services exclusively through an e-commerce website owned and managed by Technosavvy Pvt. Ltd., Pune. The turnover of Raghuram Pvt. Ltd. in the current financial year is ₹ 18 lakh.
- Advise Raghuram Pvt. Ltd. as to whether it is required to obtain GST registration. Will your advice be any different if Raghuram Pvt. Ltd. sells readymade garments exclusively through the e-commerce website owned and managed by Technosavvy Pvt. Ltd.?
17. Radheysham is engaged in manufacture of goods in Rajasthan. It imported certain goods for using in the manufacture of the finished goods in the month of May. However, it did not clear the goods from the port for home consumption. Instead, it presented an 'into bond' bill of entry on 14th May. Assessable value on that date was US \$ 2,35,000. The order permitting the deposit of goods in warehouse for 4 months was issued on 21st May. Radheysham deposited the goods in warehouse on the same day, but did not clear the imported goods even after the warehousing period got over on 21st September.
- A notice was issued under section 72 of the Custom Act, 1962, demanding duty and interest. Radheysham cleared the goods on 14th October. Customs duty paid on removal of the goods is ₹ 8,28,000.
- You are required to compute interest payable on such removal, explaining the provisions of the Customs Act, 1962 assuming that the imported goods are not meant for being used in an 100% EOU, STP unit, EHTP unit.
18. Lunar Technologies Ltd. has imported a machine from its holding company in Japan on 25th February after paying customs duty of ₹ 38,00,000 for use in its factory and is re-exported on 10th October.
- You are required to advise Lunar Technologies Ltd. regarding duty drawback that will be available to the company, when it sends back the machinery to its holding company after completion of the project.
- Will your answer be different if, other things remaining the same, instead of machinery, the company had imported and re-exported the X-ray films after using the same for the aforementioned period.
19. Dhruvtaara Enterprises imported a machine from Japan in January for ₹ 48.75 lakh. However, the machine was exported back in June for repairs. The supplier had agreed to

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carry out the repairs as the machine was still in warranty period. The fair cost of the repairs would cost ₹ 8.90 lakh. Since repair process was expected to take a time of 6 months, Dhruvtaara Enterprises requested the supplier to provide it another machine so that it could carry out its operations without hindrance in the meantime.

Acceding to the request, the supplier provided it with another machine which was imported in a vessel during October. The value of the new machine (FOB value) was ₹ 49.50 lakh. Freight charges incurred from load port to port of importation were ₹ 1.80 lakh. You are required to compute the assessable value and total duty payable on the replaced machine received by Dhruvtaara Enterprises.

Note – Rates of customs duty is 10% and IGST is 12%. Social Welfare Surcharge to be taken at 10%. Ignore GST compensation cess and agriculture infrastructure and development cess.

20. Parsvnath Ltd. is engaged in supply of goods. It imported certain raw material from Lummus Inc. of US. Lummus Inc. is controlled by Parsvnath Ltd. In the given case, the transaction value has been rejected since Parsvnath Ltd. and Lummus Inc. are related.

However, since no similar/ identical goods are imported in India, rules 4 and 5 of the Customs Valuation (Determination of value of Imported goods) Rules, 2007 are found inapplicable. Parsvnath Ltd. requests Customs Authorities to determine value accordingly as per rule 8 of the said rules. It furnishes following cost related data of imports to the authorities:

Particulars	Amount (\$)
<u>Cost incurred by Lummus Inc.</u>	
Cost of raw material	2,280
Fabrication charges	1,140
Other chargeable expenses	456
Other indirect costs	285
Normal net profit margin of Lummus Inc. is 20% of FOB	
<u>Cost incurred for import of raw material</u>	
Freight from Lummus Inc.'s factory to US port	285
Loading charges at US port	114
Air freight from US port to Indian port	1,710
Insurance from US port to Indian port	57
Exchange rate ₹ 69 per \$	

The Customs Authorities are of the opinion that since value as per rule 7 can be determined at ₹ 5,48,000, there is no need to apply rule 8.

Is the request of Parsvnath Ltd. legally tenable? If so, compute the assessable value under the Customs Act, 1962.



SUGGESTED ANSWERS

1. (d)
2. (a)
3. (c)
4. (d)
5. (c)
6. (a)
7. (c)
8. (c)
9. **Computation of gross GST liability on outward supply of Adityanath Private Limited for the month of August**

Particulars	Value (₹)	GST (₹)
Supply of Product Alpha [Liable to GST @ 12%]	50,00,000	6,00,000
Supply of Product Gamma [Exempt from GST]	1,00,00,000	Nil
Supply of management consultancy services [Liable to GST @ 18%]	50,00,000	9,00,000
Renting of commercial complex to local traders of electronic goods [Services by way of renting of residential dwelling for use as residence are exempt from GST. Thus, renting of commercial complex is taxable and GST is payable on the same @ 18%.]	50,00,000	9,00,000
Export of Product Beta [Export of goods is a zero-rated supply in terms of section 16(1)(a) of the IGST Act, 2017. A zero-rated supply can be made without payment of tax under a LUT in terms of section 16(3)(a) of that Act.]	1,00,00,000	Nil
Export of consultancy services [As per section 2(6) of the IGST Act, 2017, an activity is treated as export of service if, <i>inter alia</i> , payment for the service is received in convertible foreign exchange or in Indian rupees wherever permitted by the RBI. Since in case of exports to Nepal, RBI regulations allow	20,00,000	Nil

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receipt of payment in Indian rupees, exports of services to Nepal are treated as 'normal exports'. Export of services is a zero-rated supply in terms of section 16(1)(a) of the IGST Act, 2017. A zero-rated supply can be made without payment of tax under a LUT in terms of section 16(3)(a) of that Act.]		
Sale of building [Sale of building is neither a supply of goods nor a supply of services in terms of para 5 of Schedule III to the CGST Act, 2017, provided the entire consideration has been received after issue of completion certificate by the competent authority or after its occupation, whichever is earlier. Hence, the same is not liable to GST.]	2,50,00,000	Nil
Interest received on investment in fixed deposits with Manimani Bank [Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest are exempt vide <i>Notification No. 12/2017 CT (R) dated 28.06.2017</i>]	10,50,000	Nil
Sale of shares [Shares are neither goods nor services in terms of section 2(52) and 2(102) of the CGST Act, 2017. Hence, sale of shares is neither a supply of goods nor a supply of services and hence, is not liable to GST.]	2,50,00,000	Nil
Supply of cigarettes [Liable to GST @ 28%] [Excise duty is included in the value since as per section 15(2)(a) of the CGST Act, 2017, value of supply includes all taxes, duties, cesses other than GST.]	1,00,00,000	28,00,000
Supply of petrol and diesel [Supply of petrol and diesel is not leviable to GST as per section 9 of the CGST Act, 2017.]	80,00,000	Nil
Amount received from Durga Das Private Limited for sponsorship of the business exhibition [Tax on services provided by any person by way of sponsorship to any body-corporate located in taxable territory is payable by the recipient (Durga Das Private Limited) under reverse charge. Thus, tax on such services is not payable by Adityanath Private Limited.]	6,00,000	Nil
Total GST liability on outward supply		52,00,000



10. Computation of net GST payable by Adityanath Private Limited for the month of August

Particulars	(₹)
Gross GST liability on outward supply [as computed in Answer 9 above]	52,00,000
Less: Input tax credit (ITC) [Refer Working Note 2] [Since the value of taxable supply other than exempt supply and zero-rated supply of Adityanath Private Limited in August exceeds ₹ 50 lakh, amount available in electronic credit ledger which it can use to discharge its output tax liability of said month cannot exceed 99% of such tax liability in terms of rule 86B of the CGST Rules, 2017.]	2,74,417
GST payable from Electronic Cash Ledger [A]	49,25,583
Add: GST payable on inward supplies under reverse charge	
Legal services [₹ 3,50,000 × 18%] [Tax on legal services provided by an advocate to a business entity, is payable under reverse charge by the business entity in terms of Notification No. 13/2017 CT (R) dated 28.06.2017.]	63,000
Services received from GTA [₹ 4,00,000 × 5%] [Tax on services provided by a GTA (who has not paid GST @ 12%) to a body corporate, is payable under reverse charge by the body corporate in terms of Notification No. 13/2017 CT (R) dated 28.06.2017.]	20,000
Tax payable under reverse charge [B]	83,000
Total GST paid from Electronic Cash Ledger [A] + [B] [As per section 49(4) amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82). Therefore, input tax credit cannot be used to pay tax payable under reverse charge and thus, tax payable under reverse charge will have to be paid in cash.]	50,08,583

Working Note - 1

Computation of common credit attributable to exempt supplies during August

Particulars	Amount (₹)	ITC (₹)
Repair of machinery by George Inc. of USA [In case where either supplier or recipient is located outside India, the place of supply of services supplied in respect of goods required to be made physically available	5,20,000	Nil



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<p>by recipient to supplier is the location where the services are actually performed in terms of section 13(3)(a) of the IGST Act, 2017. Hence, place of supply of repair services received in the given case is outside India.</p> <p>Since the location of supplier and place of supply are outside India, said repair services are not liable to GST.]</p>		
<p>Life insurance premium paid by the company for the life insurance of employees</p> <p>[ITC on life insurance service is available only when it is obligatory for an employer to provide said services to its employees under any law for the time being in force. Since it is not obligatory for the employer in the instant case and thus, the ITC thereon is blocked in terms of second proviso to section 17(5)(b).]</p>	48,50,000	Nil
<p>Audit fees [6,50,000 × 18%]</p> <p>[Credit of tax paid on input services used in the course or furtherance of business is available in terms of section 16(1) of the CGST Act, 2017]</p>	6,50,000	1,17,000
<p>Raw material [₹(10,00,000 - 1,50,000) × 12% + ₹ 29,970]</p> <p>[Credit of tax paid on inputs used in the course or furtherance of business is available in terms of section 16(1) of the CGST Act, 2017. Further, IGST charged on raw material imported from China is also available because input tax, <i>inter alia</i>, includes IGST charged on import of goods (Section 2(62) of the CGST Act).]</p>	10,00,000	1,31,970
<p>Transportation charges for transporting the goods</p> <p>[₹ 4,00,000 × 5%]</p> <p>[Services by way of transportation of goods by road are exempt from GST except the services of a GTA. Hence, GST is not payable on transportation charges paid for horse pulled carts.]</p>	4,00,000	20,000
<p>Telephone expenses [₹ 4,25,000 × 18%]</p> <p>[Credit of tax paid on input services used in the course or furtherance of business is available in terms of section 16(1) of the CGST Act, 2017.]</p>	4,25,000	76,500
<p>Bank charges paid towards company's current account maintained with bank [₹ 2,00,000 × 18%]</p> <p>[Credit of tax paid on input services used in the course or furtherance of business is available in terms of section 16(1) of the CGST Act, 2017.]</p>	2,00,000	36,000



Common credit on inputs and input services		3,81,470
Common credit attributable to exempt supplies (rounded off) = Common credit on inputs and input services x (Exempt turnover during the period / Total turnover in State during the period) = ₹ 3,81,470 x ₹ 29,60,00,000 / ₹ 66,40,00,000 Exempt turnover = ₹ 29,60,00,000 and total turnover in State = ₹ 66,40,00,000 [Refer note below]		1,70,053
Legal services received from advocate [₹3,50,000 × 18%] [Legal services are not eligible for exemption provided under Notification No. 12/2017 CT (R) dated 28.06.2017 as the turnover of the business entity (Adityanath Private Limited) in the preceding financial year exceeds ₹ 20 lakh. Further, credit of tax paid on input services used in the course or furtherance of business is available in terms of section 16(1) of the CGST Act, 2017. Full credit is available as these services are exclusively used for effecting taxable supply.]	3,50,000	63,000

Note:

As per section 17(3) of the CGST Act, 2017, value of exempt supply includes supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building. As per explanation to Chapter V (Input Tax Credit) of the CGST Rules, 2017, the value of exempt supply in respect of land and building is the value adopted for paying stamp duty and for security is 1% of the sale value of such security.

Further, as per explanation to rule 42 of the CGST Rules, 2017, the aggregate value of exempt supplies, *inter alia*, excludes the value of services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances. Aggregate value of exempt supplies and total turnover excludes the central excise duty, State excise duty, central sales tax and VAT.

Therefore, **value of exempt supply** in the given case will be the sum of value of output supply on which tax is payable under reverse charge (₹ 6,00,000), value of sale of building (₹ 2,50,000 / 2 x 100 = ₹ 1,25,00,000), value of sale of shares (1% of ₹ 2,50,00,000 = ₹ 2,50,000), supply of Product Gamma (₹1,00,00,000) and supply of



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petrol and diesel (₹ 80,00,000 - ₹ 5,00,000 - ₹ 12,50,000 = ₹ 62,50,000), which comes out to be ₹ 29,60,00,000.

Total turnover in State = ₹ 66,40,00,000 [₹ 50,00,000 + ₹ 1,00,00,000 + ₹ 50,00,000 + ₹ 50,00,000 + ₹ 1,00,00,000 + ₹ 20,00,000 + (₹ 2,50,000 / 2 x 100 = ₹ 1,25,00,000) + ₹ 10,50,000 + (1% of ₹ 2,50,00,000 = ₹ 2,50,000) + (₹ 1,00,00,000 - 12,50,000 = ₹ 87,50,000) + (₹ 80,00,000 - ₹ 5,00,000 - ₹ 12,50,000 = ₹ 62,50,000) + ₹ 6,00,000]

Working Note 2

Computation of ITC available in the Electronic Credit Ledger of Adityanath Private Limited for the month of August

Particulars	(₹)
Common credit on inputs and input services [Refer working note-1]	3,81,470
Legal services used in the manufacture of taxable Product 'Beta' [Refer Working Note-1]	<u>63,000</u>
ITC available in the Electronic Credit Ledger	4,44,470
Less: Common credit attributable to exempt supplies during August [Refer Working Note 1]	1,70,053
Net ITC available	2,74,417

11. (i) Section 10(1)(e) of the IGST Act, 2017 lays down that place of supply of goods supplied on board a conveyance like aircraft, train, vessel, or a motor vehicle, is the location where such goods have been taken on board. Thus, in the given case, the place of supply of the goods sold by Mr. Sahukaar is the location at which the goods are taken on board, i.e. New Delhi and not Bharatpur where they have been sold.
- (ii) As per section 11(a) of the IGST Act 2017, if the goods have been imported in India, the place of supply of goods is the place where the importer is located. Thus, in the present case, the place of supply of the goods imported by Vidhyut Pvt. Ltd. is Varanasi, Uttar Pradesh.
- (iii) As per section 12(8) of the IGST Act, 2017, the place of supply of services by way of transportation of goods, including by mail or courier provided to an unregistered person, is the location at which such goods are handed over for their transportation. Since in the given case, the recipient – Aatmaram – is an unregistered person, the place of supply is the location where goods are handed over to Gokul Carriers for their transportation, i.e. Kanpur.
- (iv) As per section 12(12) of the IGST Act, 2017, the place of supply of banking and other financial services, including stock broking services to any person is the

location of the recipient of services in the records of the supplier of services. Thus, in the given case, the place of supply is the location of the recipient of services in the records of the supplier bank, i.e. New Delhi.

12. (i) Advance ruling under GST can be sought by a registered person or a person desirous of obtaining registration under GST law [Section 95(c) of the CGST Act, 2017]. Therefore, it is not mandatory for a person seeking advance ruling to be registered.
- (ii) Section 97(2) of the CGST Act, 2017 stipulates the questions/matters on which advance ruling can be sought. It provides that advance ruling can be sought for, *inter alia*, determining whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term as well as the classification of any goods or services or both. Therefore, Chandra can seek the advance ruling for determining whether supply of goods by him amounts to supply of goods under GST law as well as for determining the classification of said goods.
- (iii) As per the definition of advance ruling under section 95(a) of the CGST Act, 2017, advance ruling decision can be provided by the Authority to an applicant on matters/questions specified in section 97(2) of the said Act, in relation to the supply of goods or services or both being undertaken or proposed to be undertaken by the applicant. Thus, advance ruling can be sought not only for activities/transactions proposed to be undertaken but also for activities/transactions already undertaken by the applicant.
- Hence, in the given case, Chandra can seek the advance ruling in relation to the supply of goods being already undertaken by him.
- (iv) No, Chandra's view is not correct. As per section 98(6) of CGST Act, 2017, the Authority for Advance Ruling shall pronounce its ruling in writing within 90 days from the date of receipt of application.
13. Section 81 of the CGST Act, 2017 stipulates that where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person.

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However, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the proper officer.

In view of the above provisions, in the given case, transfer of property by Mr. Arihant to his wife Soma is void and the property will still be considered in the hands of Mr. Arihant under GST law for the purpose of recovery of dues under GST from him.

14.

Person	Offence	Prosecution	Arrest	Bail
'Ashuram'	Non-cognizable offence [Section 132(1)(c) read with section 132(4)]	Upto 1 year [Section 132(1)(c)(iii)]	No arrest [Section 69(1)]	Bailable Offence [Section 132(4)]
'Bahubali'	Non-cognizable offence [Section 132(1)(e) read with section 132(4)]	Upto 5 years [Section 132(1)(e)(i)]	No arrest [Section 69(1)]	Bailable Offence [Section 132(4)]
'Chintamani'	Non-cognizable offence [Section 132(1)(f) read with section 132(4)]	Upto 3 years [Section 132(1)(f)(ii)]	No arrest [Section 69(1)]	Bailable Offence [Section 132(4)]
'Deendayal'	Cognizable offence [Section 132(1)(d) read with section 132(5)]	Upto 5 year [Section 132(1)(d)(i)]	Arrest can be ordered by Commissioner without arrest warrant [Section 69(1)]	Non-Bailable [Section 132(5)]

15. Section 89 of the CGST Act, 2017 stipulates that notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.



Thus, in the given case, since Mr. Ajit Basu was the director of Dharma Private Limited during the preceding financial year for which the demand is raised, he shall, jointly and severally, be liable for the payment of the tax dues unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

16. As per section 22 of the CGST Act, 2017, every supplier of goods or services or both is required to obtain registration in the State/ Union territory from where he makes the taxable supply if his aggregate turnover exceeds threshold limit in a financial year.

However, section 24 of the CGST Act, 2017 enlists certain categories of persons who are mandatorily required to obtain registration, irrespective of their turnover. Persons who supply goods or services or both through such electronic commerce operator (ECO), who is required to collect tax at source under section 52 of the CGST Act, 2017, is one such person specified under clause (ix) of section 24. However, where the ECO is liable to pay tax on behalf of the suppliers of services under a notification issued under section 9(5), the suppliers of such services are entitled for threshold exemption.

Section 2(45) of the CGST Act, 2017 defines ECO as any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. Electronic commerce is defined under section 2(44) of the CGST Act, 2017 to mean the supply of goods or services or both, including digital products over digital or electronic network. Since Technosavvy Pvt. Ltd. owns and manages a website for e commerce where both goods and services are supplied, it will be classified as an ECO under section 2(45).

Notification No. 17/2017 CT (R) dated 28.06.2017 issued under section 9(5) of the CGST Act, 2017 specifies services by way of house-keeping, except where the person supplying such service through ECO is liable for registration under section 22(1), as one such service where the ECO is liable to pay tax on behalf of the suppliers.

In the given case, Raghuram Pvt. Ltd. provides house-keeping services through an ECO. It is presumed that Technosavvy Pvt. Ltd. is an ECO which is required to collect tax at source under section 52 of the CGST Act, 2017. However, house-keeping services provided by Raghuram Pvt. Ltd., which is not liable for registration under section 22(1) of the CGST Act, 2017 as its turnover is less than ₹ 20 lakh, is a service notified under section 9(5) of the CGST Act, 2017. Thus, Raghuram Pvt. Ltd. will be entitled for threshold exemption for registration and will not be required to obtain registration even though it supplies services through ECO.

In the second case, Raghuram Pvt. Ltd. sells readymade garments through ECO. Such supply cannot be notified under section 9(5) as only supplies of services are notified under that section. Therefore, in the second case, Raghuram Pvt. Ltd. will not be entitled for threshold exemption and will have to compulsorily obtain registration in terms of section 24(ix).



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17. As per section 61(2) of the Customs Act, 1962, if goods (not meant for being used in an 100% EOU, STP unit, EHTP unit) remain in a warehouse beyond a period of 90 days from the date on which the order permitting deposit in a warehouse is made, interest is payable @ 15% p.a., on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

Therefore, in the given case, interest payable will be computed as under:

- (i) Period of 90 days commencing from the date of order permitting deposit in a warehouse expires on – 19th August.
- (ii) No. of days for which interest shall be payable= 56 days [12 days of August + 30 days of September + 14 days of October]
- (iii) Interest payable = ₹ 8,28,000 × $\frac{15}{100} \times \frac{56}{365}$ = ₹ 19,055 (rounded off)

18. Since in the given case, the imported goods have been used for more than 6 months but not more than 9 months before re-exportation, 75% of the import duty paid shall be allowed as duty drawback to Lunar Technologies Ltd. Thus, amount of duty drawback available to Lunar Technologies Ltd. is:

$$= ₹ 38,00,000 \times 75\%$$
$$= ₹ 28,50,000$$

However, no drawback of import duty is allowed in respect of X-ray films, if they are used after their importation in India. Hence, if, other things remaining the same, instead of machinery, Lunar Technologies Ltd had imported and re-exported the X-ray films after using the same, no duty drawback will not be allowed to it.

19. As per *Notification No. 45/2017 Cus. dated 30.06.2017*, duty payable on re-importation of goods which had been exported for repairs abroad is the duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways. However, following conditions need to be satisfied for availing this concession:

- (a) goods must be re-imported within 3 years, extendable by further 2 years, after their exportation;
- (b) exported goods and the re-imported goods must be the same;
- (c) ownership of the goods should not change.

However, above special provisions relating to payment of concessional duty in case of re-importation of goods exported for repairs are not applicable in the given case as the



goods exported for repairs and the re-imported goods are not the same. Therefore, full customs duty will be payable on the machine received as replacement.

Computation of assessable value and total duty payable

Particulars	Amount (₹)
Value of new machine (FOB)	49,50,000.00
Add: Freight charges	1,80,000.00
Insurance charges @ 1.125% of FOB [₹ 49,50,000 × 1.125%] [Insurance charges have been included @ 1.125% of FOB value since actual charges are not ascertainable]	55,687.50
Assessable Value	51,85,687.50
Add: Basic customs duty @ 10% of ₹ 51,85,687.50 (rounded off) (A)	5,18,569
Social welfare surcharge @ 10% of ₹ 5,18,569 (rounded off) (B)	51,857
Total	57,56,113.50
Add: Integrated tax @ 12% of ₹ 57,56,113.50 (rounded off) (C)	6,90,734
Total duty payable [(A) +(B) + (C)] (rounded off)	12,61,160

20. The value of the imported goods is determined under rule 8 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 (hereinafter referred to as Import Valuation Rules) if the same cannot be determined under the earlier rules. However, the order of application of rules 7 and 8 can be reversed at the request of the importer and with the approval of the proper officer.

Thus, request of Parsvnath Ltd. for determination of value under rule 8 is legally tenable, if the same is also approved by the proper officer.

Assuming that the request of Parsvnath Ltd. has been approved by the proper officer, the assessable value of the imported goods under rule 8 will be the sum of-

- (a) the cost of materials and fabrication or other processing;
- (b) an amount for profit and general expenses
- (c) the cost or value of all other expenses under rule 10(2) of the said rules.

Computation of assessable value

Particulars	Amount (\$)
Cost of materials	2,280
Add: Fabrication charges	1,140
Other chargeable expenses	456
Other indirect costs	285

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Cost of the goods at Lummus Inc.'s factory	4,161
<i>Add:</i> Net profit margin @ 20% of FOB, i.e. 25% of total cost Total cost till US port = Cost of the goods at factory + Freight from factory to US port and loading charges at US port = \$ 4,560 [\$ 4,161+ \$ 285 + \$ 114] FOB value = Total cost till US port + profit = \$ 5,700 (\$ 4560 + \$ 1,140)	1,140
<i>Add:</i> Freight & loading/unloading charges [In case of import by air, the cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are restricted to 20% of FOB value]	1,140
Insurance charges (actual)	<u>57</u>
Assessable value	6,498
Assessable value in Indian Rupees (Exchange rate - ₹ 69 per \$)	4,48,362

