

PAPER-8: INDIRECT TAX LAWS

QUESTIONS

- (1) All questions should be answered on the basis of position of (i) GST law as amended by the Finance Act, 2022 including significant notifications and circulars and other legislative amendments made, up to 31st October, 2022 and (ii) customs law as amended by the Finance Act, 2022 including significant notifications and circulars and other legislative amendments made, up to 31st October, 2022.
- (2) Unless otherwise specified, the section numbers and rules referred herein pertain to the Central Goods and Services Tax Act, 2017 and the Central Goods and Services Tax Rules, 2017 respectively.
- (3) The GST rates for goods and services mentioned in various questions are hypothetical and may not necessarily be the actual rates leviable on those goods and services. The rates of customs duty are also hypothetical and may not necessarily be the actual rates. Further, GST compensation cess should be ignored in all the questions, wherever applicable.

Mr. X is engaged in the business of supplying FMCG (Fast-moving consumer goods) to the customers on retail as well as wholesale basis. X has its head office located in Delhi and branches in Rajasthan and Madhya Pradesh. It is registered under GST in all the three States.

During the month of January, following transactions were undertaken:

- (i) X supplied goods to its agent A from its factory located in Rajasthan. A sold them to the unrelated wholesalers in the State of Rajasthan by issuing an invoice in his own name. The goods of like kind and quality were sold by A to an unrelated customer for ₹ 1,00,000. A also purchased goods of like kind and quality from another independent supplier for ₹ 80,000 on the same day.
- (ii) X appointed a consultancy firm – Rudra Consultancy registered in Rajasthan- to incorporate a new company and to undertake all the legal formalities for incorporation of said company, for an agreed consideration of ₹ 35,000. Rudra Consultancy paid the legal fee of ₹ 15,000 to the relevant Government Department during the process of incorporation of the company. The GST invoice was issued by Rudra Consultancy on X's branch in Rajasthan for an amount of ₹ 35,000 without any breakup of its own service charges and other legal expenses or fees.
- (iii) X imported certain digital data warehousing services from Mazon Inc. located in USA. The amount charged by Mazon Inc. was ₹ 5,00,000. The services were for personal consumption of X and were not used in course or furtherance of business of X. The transaction was billed to X on the GST registration number of Rajasthan.

- (iv) X imported certain online gaming services from Balibaba Inc. located in China. The services were provided to X on free of cost basis. The open market value of such services was ₹ 1,00,000. These services were also for personal consumption of X and were received on a device whose internet protocol address was registered in India. The transaction was billed to X on the GST registration number of Rajasthan.
- (v) Madhya Pradesh branch of X purchased goods worth ₹ 15,00,000 (liable to GST @ 5%) from a Madhya Pradesh dealer and procured certain input services worth ₹ 5,00,000 (liable to GST @ 28%) in Madhya Pradesh. In the later part of the month, X sold these goods for ₹ 18,00,000 (liable to GST @ 5%).
- (vi) Rajasthan branch paid the sponsorship fee of ₹ 5,00,000 to Ganga Solutions, registered in Rajasthan, for an entertainment event organised by Ganga Solutions in Haryana.

The opening balance of input tax credit of X in the States of Delhi, Rajasthan and Madhya Pradesh is nil. Further, there is no other inward or outward supply transaction for X in the months of January apart from the aforementioned transactions. Subject to the information given above, assume that all the other conditions necessary for availing ITC have been fulfilled.

All the above transactions are exclusive of GST, wherever applicable. GST is applicable in the aforesaid case scenario at the following rates unless otherwise specified:

- I. Intra-State supply – 9% CGST and 9% SGST
- II. Inter-State supply – 18% IGST

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

1. In respect of the goods supplied by X to its agent A in Rajasthan, the value of supply shall be _____.
 - (a) ₹ 1,10,000
 - (b) ₹ 72,000
 - (c) Nil, since the supply between agent and principal without consideration is not a supply.
 - (d) ₹ 80,000 or at the option of X - ₹ 90,000
2. GST payable on the services of incorporation of the company provided by Rudra Consultancy to X is _____.
 - (a) ₹ 6,300 and full input tax credit of the same is available to X
 - (b) ₹ 3,600 and full input tax credit of the same is available to X
 - (c) ₹ 6,300 and input tax credit of ₹ 3,600 is available to X
 - (d) ₹ 6,300 and no input tax credit is available to X

3. Which of the following statements is true in respect of import of digital data warehousing services and online gaming services?
- (a) IGST of ₹ 1,08,000 is payable by X under reverse charge mechanism and full input tax credit of the same is available to X.
 - (b) Service providers i.e. Mazon Inc. and Balibaba Inc. need to obtain registration as OIDAR (Online Information Database Access and Retrieval) service providers and pay IGST of ₹ 1,08,000 and no input tax credit is available to X.
 - (c) IGST of ₹ 90,000 is payable by X under reverse charge mechanism and no input tax credit of the same is available to X.
 - (d) No GST is payable since import of services by individuals for personal use is specifically exempt under GST.
4. Which of the following statements is true in respect of the sponsorship fee paid by Rajasthan branch of X to Ganga Solutions?
- (a) X is liable to pay IGST of ₹ 90,000.
 - (b) Ganga Solutions is liable to pay IGST of ₹ 90,000.
 - (c) X is liable to pay CGST and SGST of ₹ 45,000 each.
 - (d) Ganga Solutions is liable to pay CGST and SGST of ₹ 45,000 each.
5. Compute the net GST liability of X in Madhya Pradesh and amount of input tax credit refund, if any, available to X.
- (a) Net GST liability is ₹ 15,000 and eligible refund amount under inverted duty structure is ₹ 1,40,000.
 - (b) Net GST payable is nil and eligible refund amount under inverted duty structure is ₹ 1,25,000.
 - (c) Net GST payable is nil and no refund is available.
 - (d) Net GST payable is nil and eligible refund amount under inverted duty structure is ₹ 75,000.
6. Dhoomketu, registered under GST in Virar, Maharashtra, is appointed as a del-credre agent by Bigbang Ltd. He sells shoes to his customers locally within the same State. Bigbang Ltd. is also registered under GST in Maharashtra.
- During the current financial year, Bigbang Ltd. supplied taxable goods worth ₹ 9.50 crore whose open market value is ₹ 9.82 crore, from its Navi Mumbai unit to Dhoomketu. Dhoomketu has further sold these goods for ₹ 10.10 crore by raising invoices using his own GSTIN.
- Dhoomketu has received a commission of ₹ 65 lakh from Bigbang Ltd. during the year and has guaranteed the payment of the value of such goods from the customers to

Bigbang Ltd. Dhoomketu has also provided financial assistance in the form of larger credit period to his customers, on which he has also earned interest of ₹ 25 lakh.

Compute the value of supply of Bigbang Ltd. and Dhoomketu for the current financial year assuming that both of them wish to adopt minimum value of supply to the extent possible.

- (a) Bigbang Ltd.: ₹ 9.09 crore and Dhoomketu: ₹ 11.00 crore
 - (b) Bigbang Ltd.: ₹ 10.05 crore and Dhoomketu: ₹ 10.85 crore
 - (c) Bigbang Ltd.: ₹ 10.15 crore and Dhoomketu: ₹ 10.85 crore
 - (d) Bigbang Ltd.: ₹ 10.15 crore and Dhoomketu: ₹ 75.00 lakh
7. Which of the following activity is liable to GST?
- (i) Supply of food by a hospital to patients (not admitted) or their attendants or visitors
 - (ii) Transportation of passengers by non-air-conditioned railways
 - (iii) Services by a brand ambassador by way of folk-dance performance where consideration charged is ₹ 1,40,000
 - (iv) Transportation of agriculture produce by air from one place to another place in India
 - (v) Services by way of loading, unloading, packing, storage or warehousing of rice
- Choose the most appropriate option.
- (a) (i), (v)
 - (b) (iii), (iv), (v)
 - (c) (i), (iii), (iv)
 - (d) (iv), (v)
8. Which of the following statements is correct in relation to value of imported goods determined under rule 4 of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007, i.e. transaction value of identical goods?
- (a) The transaction value of identical goods in a sale at any commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.
 - (b) The transaction value of identical goods in a sale at same commercial level and in any quantity as the goods being valued shall be used to determine the value of imported goods.
 - (c) The transaction value of identical goods in a sale at same commercial level and in substantially the same quantity as the goods being valued shall be used to determine the value of imported goods.

- (d) The transaction value of identical goods in a sale at any commercial level and in any quantity as the goods being valued shall be used to determine the value of imported goods.
9. Safeguard duty cannot be imposed if:
- (a) the article on which it is proposed to be imposed originates from a developed country provided its share of imports is not more than 3% of total imports of that article in India.
 - (b) the article on which it is proposed to be imposed originates from a developing country provided its share of imports is not more than 5% of total imports of that article in India.
 - (c) the article on which it is proposed to be imposed originates from more than one developing country and its aggregate share of imports from developing countries each with less than 3% share taken together does not exceed 9% of total imports of that article into India.
 - (d) the article is imported by a person in special category State.
10. Jankinandan Associates, a proprietorship firm in Lucknow registered under GST, manufactures three taxable products 'Zeta', 'Sigma' and 'Omega'. The following information has been provided by Jankinandan Associates for a particular tax period.
- (i) 'Omega' and 'Zeta' are sold in the domestic market as well as exported outside India. The domestic turnover (excluding export sales) of 'Zeta' and 'Omega' are ₹ 21 lakh and ₹ 15 lakh respectively. Export turnover of 'Zeta' with payment of IGST (not eligible to avail benefit of merchant exports under *Notification No. 41/2017*) is ₹ 3.75 lakh. 'Omega' worth ₹ 15 lakh is exported.
 - (ii) Tax on 'Sigma' is payable under reverse charge. 'Sigma' is being sold only domestically and the domestic turnover of 'Sigma' is ₹ 9 lakh.
 - (iii) The firm is also engaged in providing taxable consultancy services. Consultancy services of ₹ 30 lakh have been provided to unrelated clients located in foreign countries. In all cases, consideration has been received in convertible foreign exchange.
 - (iv) The firm sold the shares held by it for ₹ 375 lakh which were earlier purchased at a price of ₹ 360 lakh.
 - (v) Due to shortage of funds, it sold one of its factory buildings for ₹ 180 lakh (excluding stamp duty of ₹ 3.50 lakh, being 2% of value). The entire consideration is received post issuance of completion certificate; building was occupied thereafter.
 - (vi) The firm earned an interest of ₹ 6 lakh on the money invested in fixed deposits with Gaba Bank.

The details of the inputs/input services availed by the firm during the said tax period are as under:

- (i) The firm received legal services from an advocate in relation to product 'Zeta' for a consideration of ₹ 5.25 lakh.
- (ii) Remaining inputs and input services availed during the tax period worth ₹ 52.50 lakh and ₹ 22.50 lakh respectively have been commonly used for supply of goods and services mentioned above.

You are required to compute the net GST liability of Jankinandan Associates, payable from Electronic Credit Ledger and/or Electronic Cash Ledger, as the case may be, for the given tax period using the above-mentioned information.

Note: All the above transactions are exclusive of GST, wherever applicable. Assume that rates of GST on inward and outward supply of goods and services are 12% and 18% respectively (Ignore bifurcation of 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 Jankinandan Associates was ₹ 72 lakh in the preceding financial year. Unless otherwise mentioned, exports are made under letter of undertaking.

11. Jigyasa Ltd. has multiple wholesale outlets of toys in Mumbai, Maharashtra. It receives an order for toys worth ₹ 1,20,000 (inclusive of GST leviable @ 18%) from Upasana, owner of a retail toy store in Delhi. While checking the stock, it is found that order worth ₹ 55,000 can be fulfilled from the company's Bandra (Mumbai) store and remaining goods worth ₹ 65,000 can be sent from its Goregaon (Mumbai) store.

Both the stores are instructed to issue separate invoices for the goods sent to Upasana. The goods are transported to Upasana in Delhi, in a single conveyance owned by Jaidev Transporters.

You are required to advise Jigyasa Ltd. with regard to issuance of e-way bill(s).

12. Vividh Pvt. Ltd. is engaged in supplying various services in Bangalore. It is registered in the State of Karnataka. It has furnished the following information for the month of June:

S.No.	Particulars	Amount (₹)
(i)	Services provided by way of fumigation in a warehouse of agricultural produce.	13,00,000
(ii)	Service of transportation of passengers by metered cabs provided through Webcastle Ltd., an electronic commerce operator (ECO)	5,40,000
(iii)	4 buses each with a seating capacity of 72 passengers given on hire to State Transport Undertaking (STU). Such buses run on a route and timing as decided by STU.	6,00,000

(iv)	Goods transport services received from GTA for transporting the goods to be used in respect of the buses given on hire to STU. Tax on such services is payable @ 12%.	1,80,000
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Compute net GST payable in cash by Vividh Pvt. Ltd. for the month of June assuming that the above amounts are exclusive of GST and rate of GST, wherever applicable, is 18% unless otherwise mentioned.

13. Swasthya Nursing Home, a clinical establishment, offers the following services:
- (i) Rooms provided to the in-patients where the room charges per day are ₹ 6,500.
 - (ii) Plastic surgery conducted to repair cleft lip of a new born baby.
 - (iii) Air ambulance services to transport critically ill patients from distant locations to Swasthya Nursing Home.
 - (iv) Supply of food to the in-patients as per the advice of the doctor/nutritionist from its restaurant – Annapurna Bhawan - located in the basement of Swasthya Nursing Home. The food is prepared by its employees and nothing is outsourced to any third-party vendors.
 - (v) Homeopathic medical treatment.
- Swasthya Nursing Home also operates a cord blood bank which provides services in relation to preservation of stem cells.
- Determine whether GST is payable in respect of each of the above services provided by Swasthya Nursing Home.
14. Alpha is a manufacturer and supplier of a machine in India. Gamma of USA helps Alpha in selling the machine by identifying client in USA, viz., Beta who wants to purchase this machine and helps in finalizing the contract of supply of machine by Alpha to Beta. Gamma charges Alpha for his services of locating Beta and helping in finalizing the sale of machine between Alpha and Beta, for which Gamma invoices Alpha and is paid by Alpha for the same. Determine the place of supply of the services provided by Gamma to Alpha.
15. Answer the following questions elaborating the relevant provisions of section 44:
- (a) Who is required to furnish the annual return and what is the due date for furnishing the same?
 - (b) What is the prescribed form for furnishing annual return/statement?
 - (c) Who is required to furnish a self-certified reconciliation statement?
16. Nitya Associates is engaged in supplying taxable services in Kerala. The Assistant Commissioner of Central Tax passed an adjudication order under section 73 which was received by Nitya Associates on 18th October. In the said order, GST liability of ₹ 6,00,000 (CGST + SGST) was decided alongwith interest payable @ 18% p.a. for

number of delayed days and a penalty of ₹ 60,000. Nitya Associates was in complete disagreement with said order. So, it filed an appeal before the Appellate Authority on 31st October.

Determine the amount of pre-deposit to be made by Nitya Associates for filing the appeal.

Whether your answer would be different if Nitya Associates appeals only against part of the demanded amount, say ₹ 4,00,000 and admits the balance liability of tax amounting to ₹ 2,00,000 and proportionate penalty arising from the said order?

17. Robert & Sons is engaged in the supply of taxable goods. It enters into a contract to supply a consignment of said goods. However, since it is unable to determine the value of the goods to be supplied by it, it applies for payment of tax on such goods on a provisional basis along with the required documents in support of its request. On 7th January, an order allowing payment of tax on provisional basis was passed by the proper officer indicating the value on the basis of which the assessment is allowed on provisional basis and the amount for which the bond is to be executed and security is to be furnished.

Robert & Sons complies with the same and supplies the goods on 29th January thereafter paying the tax on provisional basis in respect of said consignment on 19th February.

Consequent to the final assessment order passed by the proper officer on 18th March, a tax of ₹ 1,80,000 becomes due on the consignment. Robert & Sons pays the tax due on 9th April.

Determine the interest payable, if any, by Robert & Sons in the above case.

18. Jumbo Steels imported heavy machine from USA. The cost of the machine at the factory of the exporter was US \$ 10,000. The transport charges of US \$ 500 were incurred from the factory of exporter to the port for shipment. At the load port, handling charges of US \$ 50 were paid for loading the machine in the ship. Freight charges from exporting country to India were US \$ 1,000. Jumbo Steels paid a buying commission of US \$ 50.

From the information given above, you are required to compute the assessable value of the imported goods under the Customs Act, 1962 assuming that actual insurance charges paid are not ascertainable and exchange rate is 1\$ = ₹ 70.

19. Balu Ltd. imported Super Kerosene Oil (SKO) and stored it in a warehouse. An ex-bond bill of entry for home consumption was filed and duty was paid as per the rate prevalent on the date of presentation of such bill of entry; and the order for clearance for home consumption was passed.

On account of highly combustible nature of SKO, the importer made an application to permit the storage of such kerosene oil in the same warehouse until actual clearance for sale/use. The application was allowed. However, the rate of duty increased when the goods were actually removed from the warehouse.

The Department demanded the differential duty. Balu Ltd. challenged the demand. Will it succeed? Discuss briefly taking support of decided case law, if any.

20. ABC Ltd. imported an offset printing machine from Germany for ₹ 5 crores and the bill of entry for home consumption was cleared in April on payment of duty. However, due to certain technical glitches the said machine could not start functioning and the said machine was sent-back to the supplier for repairs in May.

The manufacturer of machinery in Germany had made necessary repairs and had sent back the machine again to ABC Ltd. Accordingly, ABC Ltd. re-imported the machine without any re-manufacturing or reprocessing in September.

Since the machine was having manufacturing defect, the repairs were carried out by the machine manufacturer without charging any amount for the repairs. However, the fair cost of repairs carried out including cost of material consumed during repairs of ₹ 70 lakh, would have been ₹ 90 lakh. Actual insurance and freight charges incurred were ₹ 7.5 lakh each side from India to Germany and from Germany to India.

Assume that the rate of basic customs duty is 10%, social welfare surcharge is 10% and integrated tax is 18%.

You are required to compute the amount of customs duty payable (if any) on re-importation of the machine.

SUGGESTED ANSWERS

1. (d)
2. (a)
3. (c)
4. (d)
5. (c)
6. (a)
7. (c)
8. (c)
9. (c)
10. (i)

Computation of GST payable on outward supply

Particulars	Value (₹)	GST (₹)
Turnover of 'Zeta' [liable to GST @ 12%]	21,00,000	2,52,000
Turnover of 'Sigma' [Tax on 'Sigma' is payable under	9,00,000	Nil

reverse charge by the recipient of such goods]		
Turnover of 'Omega' [liable to GST @ 12%]	15,00,000	1,80,000
Export of 'Zeta' with payment of IGST @ 12%	3,75,000	45,000
Export of 'Omega' [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 supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.]	15,00,000	Nil
Consultancy services provided to independent clients located in foreign countries. [The activity is an export of service in terms of section 2(6) of the IGST Act, 2017 as the supplier of service is located in India; the recipient of service is located outside India; place of supply of service is outside India (in terms of section 13(2) of the IGST Act, 2017); payment for the service has been received in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and supplier of service and recipient of service are not merely establishments of distinct person. [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 supplied without payment of tax under a LUT in terms of section 16(3)(a) of that Act.]	30,00,000	Nil
Sale of shares [Shares are neither goods nor services in terms of section 2(52) and 2(102). Hence, sale of shares is neither a supply of goods nor a supply of services and hence, is not liable to any tax.]	3,75,00,000	Nil
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, 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]	1,80,00,000	Nil

Interest received on investment in fixed deposits with a bank [Exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017]	6,00,000	Nil
Total GST payable on outward supply		4,77,000

(ii) **Computation of common credit attributable to exempt supplies during the tax period**

Particulars	(₹)
Common credit on inputs and input services [Tax on inputs - ₹ 6,30,000 (₹ 52,50,000 x 12%) + Tax on input services - ₹ 4,05,000 (₹ 22,50,000 x 18%)]	10,35,000
Common credit attributable to exempt supplies (rounded off) = Common credit on inputs and input services x (Exempt turnover during the period / Total turnover during the period) = ₹ 10,35,000 x ₹ 1,87,75,000 / ₹ 2,78,50,000 Exempt turnover = ₹ 1,87,75,000 and total turnover = ₹ 2,78,50,000 [Refer note below]	6,97,742

Note:

As per section 17(3), 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 of the CGST Rules, 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, 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.

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 (₹ 9,00,000), value of sale of building (₹ 3,50,000 / 2 x 100 = ₹ 1,75,00,000) and value of sale of shares (1% of ₹ 3,75,00,000 = ₹ 3,75,000), which comes out to be ₹ 1,87,75,000.

Total turnover = ₹ 1,94,00,000 (₹ 21,00,000 + ₹ 9,00,000 + ₹ 15,00,000 + ₹ 3,75,000 + ₹ 15,00,000 + ₹ 30,00,000 + ₹ 1,75,00,000 + ₹ 6,00,000 + ₹ 3,75,000)

(iii) Computation of ITC available in the Electronic Credit Ledger of the Jankinandan Associates for the tax period

Particulars	(₹)
Common credit on inputs and input services	10,35,000
Add: Legal services used in the manufacture of taxable product 'Zeta'	<u>94,500</u>
ITC available in the Electronic Credit Ledger	11,29,500
Less: Common credit attributable to exempt supplies during the tax period [As calculated in above table]	6,97,742
Net ITC available	4,31,758

(iv) Computation of net GST liability of Jankinandan Associates for the tax period

Particulars	(₹)
GST payable on outward supply [As computed earlier]	4,77,000
Less: Input tax credit (ITC) [As computed earlier]	4,31,758
GST payable from Electronic Cash Ledger [A]	45,242
Add: GST payable on legal services under reverse charge [₹ 5,25,000 X 18%] [B] [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. Further, such 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 (Jankinandan Associates) in the preceding financial year exceeds ₹ 20 lakh.]	94,500
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.]	1,39,742

11. Jigyasa Ltd. would be required to prepare two separate e-way bills since each invoice value exceeds ₹ 50,000 and each invoice is considered as one consignment for the purpose of generating e-way bills.

The FAQs on E-way Bill issued by CBIC clarify that if multiple invoices are issued by the supplier to one recipient, that is, for movement of goods of more than one invoice of same consignor and consignee, multiple e-way bills have to be generated. In other words, for each invoice, one e-way bill has to be generated, irrespective of the fact whether same or different consignors or consignees are involved.

Multiple invoices cannot be clubbed to generate one e-way bill. However, after generating all these e-way bills, one consolidated e-way bill can be prepared for transportation purpose, if goods are going in one vehicle.

12. Computation of gross GST liability of Vividh Pvt. Ltd.

Particulars	GST (₹)
Services by way of fumigation in a warehouse of agricultural produce. [Taxable since the exemption earlier available with respect to the services provided by way of fumigation in a warehouse of agricultural produce has been withdrawn.]	2,34,000 [13,00,000 ×18%]
Service of transportation of passengers by metered cabs through Webcastle Ltd., an ECO [Taxable since services of transport of passengers by metered cabs supplied through ECO are not exempt from GST. However, tax on such services shall be paid by ECO. Therefore, Vividh Pvt. Ltd. is not liable to pay GST on the same.]	Nil
Buses with seating capacity of 72 passengers each given on hire to State Transport Undertaking [Services by way of giving on hire to a state transport undertaking (STU), a motor vehicle meant to carry more than 12 passengers, are exempt from GST irrespective of whether such vehicles are run on routes and timings as decided by the State Transport Undertakings.]	Nil
Total GST payable	2,34,000
Less: Goods transport services availed [Since GST is payable @ 12% on goods transport services, GST is payable by the GTA ¹ under forward charge mechanism and not by Vividh Pvt. Ltd.]	Nil

¹ It has been most logically assumed that since the applicable rate of GST is 12%, GTA must have exercised the option to itself pay GST on the services supplied by it.

Further, ITC of the same is not available as such services are exclusively used for supplying the exempt services of giving on hire the buses to STU.]	
Net GST payable in cash	2,34,000

13. Health care services provided by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST vide *Notification No. 12/2017 CT (R) dated 28.06.2017*. In light of the same, the eligibility to exemption in respect of each service offered by Swasthya Nursing Home is examined below:

(i) **Not Exempt.** Exemption available to health care services provided by a clinical establishment shall not apply to the services provided by a clinical establishment by way of providing room [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] having room charges exceeding ₹ 5000 per day to a person receiving health care services.

(ii) **Exempt.** Health care service does not include, *inter alia*, cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

Therefore, plastic surgeries will not be entitled to the said exemption, but the plastic surgery conducted to repair a cleft lip will be eligible for exemption as it reconstructs anatomy or functions of body affected due to congenital defects (cleft lip).

(iii) **Exempt.** Health care service includes services by way of transportation of the patient to and from a clinical establishment. Thus, air ambulance service to transport critically ill patients to Swasthya Nursing Home would be eligible for exemption under the said notification.

(iv) **Exempt.** *Circular No. 32/06/2018 GST dated 12.02.2018* has clarified that food supplied by the hospital canteen to the in-patients as advised by the doctor/nutritionists is a part of composite supply of health care services and is not separately taxable. Thus, it is exempt from GST.

(v) **Exempt.** Since Homeopathy is a recognized system of medicine in terms of section 2(h) of Clinical Establishments Act, 2010, the same would be eligible for exemption under the said notification.

Further, exemption available to services provided by cord blood banks by way of preservation of stem cells or any other service in relation to such preservation has been withdrawn and thus, said services are no longer exempt from GST. Therefore, services provided in relation to preservation of stem cells by the cord blood bank operated by Swasthya Nursing Home will be liable to GST.

14. As per section 13(8)(b) of the IGST Act, 2017, the place of supply of the intermediary services shall be the location of the supplier of services. 'Intermediary' has been defined in of section 2(13) of the IGST Act, as a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

Further, the concept of intermediary services has been clarified vide *Circular No. 159/15/2021 GST dated 21.09.2021* as follows:

- (i) **Minimum of three parties and two distinct supplies:** There must be minimum of three parties, two principals transacting in the supply of goods or services or securities (the main supply) and one intermediary arranging or facilitating (the ancillary supply) the said main supply.
- (ii) **Intermediary service provider to have the character of an agent, broker or any other similar person:** Intermediary only arranges or facilitates the main supply and does not himself provide the main supply. Thus, the role of intermediary is only supportive.
- (iii) **Does not include a person who supplies such goods or services or both or securities on his own account:** It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal-to-principal basis, the said supply cannot be covered under the scope of "intermediary".
- (iv) **Sub-contracting for a service is not an intermediary service:** Sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary.

In the backdrop of the above discussion, while Alpha and Beta are the two principals involved in the main supply of the machinery, Gamma, is facilitating the supply of machine between Alpha and Beta. In this arrangement, Gamma is providing the ancillary supply of arranging or facilitating the 'main supply' of machine between Alpha and Beta and therefore, Gamma is an intermediary and is providing intermediary service to Alpha.

Resultantly, in terms of section 13(8)(b) of the IGST Act, 2017, the place of supply of the intermediary services provided by Gamma shall be the location of the supplier of services, viz. outside India (USA).

15. (a) All registered persons are required to file an annual return. However, following persons are not required to file annual return:
- (i) Casual taxable persons
 - (ii) Non-resident taxable person
 - (iii) Input service distributors

(iv) Persons authorized to deduct/collect tax at source under section 51/52.

The Commissioner may, on the recommendations of the Council, by notification, exempt any class of registered persons from filing annual return under this section. The department of the Central/State Government or a local authority, whose books of account are subject to audit by the Comptroller and Auditor-General of India or an auditor appointed for auditing the accounts of local authorities under any law for the time being in force, are exempt from the requirement of furnishing an annual return including self-certified reconciliation statement.

The annual return for a financial year needs to be filed by 31st December of the next financial year.

(b) The annual return is to be filed electronically in Form GSTR-9 through the common portal.

However, a person paying tax under the composition scheme is required to file the annual return in Form GSTR-9A.

Further, an ECO required to collect tax at source is required to file an annual statement referred to in section 52(5) in Form GSTR-9B (yet to be notified). The statement for a financial year needs to be filed by 31st December of the next financial year.

(c) All registered persons are required to file furnish a self-certified reconciliation statement alongwith annual return if their aggregate turnover during a financial year exceeds ₹ 5 crores. Such registered persons should furnish, electronically, the annual return along with a copy of self-certified reconciliation statement, duly certified, in Form GSTR-9C. A Self-certified reconciliation statement will reconcile the value of supplies declared in the return furnished for the financial year with the audited annual financial statement.

However, following persons are not required to file self-certified reconciliation statement:

- (a) Casual taxable persons
- (b) Non-resident taxable person
- (c) Input service distributors
- (d) Persons authorized to deduct/collect tax at source under section 51/52, and

16. Section 107(6) provides that no appeal shall be filed before Appellate Authority (AA), unless the appellant pays*:-

- (a) in full, tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and
- (b) 10% of remaining tax in dispute arising from the impugned order subject to a maximum of ₹ 25 crore, in relation to which the appeal has been filed.

However, no appeal shall be filed to AA against an order under section 129(3) [order for payment of penalty for release of detained/seized goods/conveyances], unless a sum equal to 25% of the penalty has been paid by the appellant.

*Equivalent amount is required to be deposited with respect to SGST liability.

Thus, in the given case, Nitya Associates has to make a pre-deposit of 10% of ₹ 6,00,000, which is ₹ 60,000 (i.e. CGST ₹ 30,000 and SGST ₹ 30,000).

However, when Nitya Associates admits the liability of ₹ 2,00,000 (CGST + SGST) and disputes only the balance tax demanded of ₹ 4,00,000, it has to make a pre-deposit of:

- (i) ₹ 2,00,000 + ₹ 20,000 [proportionate penalty on tax admitted] + interest @ 18% p.a. payable on the tax admitted for the period of delay, and
- (ii) 10% of ₹ 4,00,000 which is ₹ 40,000.

17. Section 60(4) stipulates that where the tax liability as per the final assessment is higher than under provisional assessment i.e. tax becomes due consequent to order of final assessment, the registered person shall be liable to pay interest on tax payable on supply of goods but not paid on the due date, at the rate specified under section 50(1) [18% p.a.], from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before or after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 25th January under provisional assessment is 20th February.

In view of the provisions of section 60(4), in the given case, Robert & Sons is liable to pay following interest in respect of the consignment of goods supplied:

$$= ₹ 1,80,000 \times 18\% \times 48/365$$

$$= ₹ 4,261 \text{ (rounded off)}$$

18. **Computation of assessable value of the imported machine**

		US \$
(i)	Cost of the machine at the factory	10,000.00
(ii)	Transport charges up to port	500.00
(iii)	Handling charges at the port	<u>50.00</u>
	FOB	10,550.00
(iv)	Freight charges up to India	1,000.00
(v)	Insurance charges @ 1.125% of FOB [Note 1]	<u>118.69</u>
	CIF	11,668.69

	₹
CIF in Indian rupees @ ₹ 70/ per \$	₹ 8,16,808.30
Assessable Value	₹ 8,16,808.30
Assessable Value (rounded off)	8,16,808

Notes:

- (1) Insurance charges have been included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
- (2) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
19. Yes, Balu Ltd. will succeed. The facts of the given situation are similar to the case of *CCus vs. Bienco Lawrie Ltd. 2008 (223) ELT 3 (SC)* wherein the Supreme Court has held that where duty on the warehoused goods is paid and out of charge order for home consumption is made by the proper officer in compliance of the provisions of section 68 of the Customs Act, 1962, the goods allowed to be retained for storage in the warehouse as permitted under section 49 of the Customs Act are not treated as warehoused goods and importer would not be required to pay anything more.
- Section 49 of the Customs Act *inter alia* provides that imported goods entered for home consumption if stored in a public warehouse, or in a private warehouse on the application of the importer and if the same cannot be cleared within a reasonable time, shall not be deemed to be warehoused goods for the purposes of this Act, and accordingly the provisions of Chapter IX shall not apply to such goods.
20. 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:
- goods must be re-imported within 3 years, extendable by further 2 years, after their exportation;
 - exported goods and the re-imported goods must be the same;
 - Ownership of the goods should not change.

Since all the conditions specified above are fulfilled in the given case, the customs duty payable on re-imported goods will be computed as under:

Particulars	₹ in lakh
Value of goods re-imported after exports [₹ 90 lakh (including cost of materials) + (insurance and freight charges, both ways ₹ 7.5 × 2) lakh]	105.000
Add: Basic customs duty @ 10% (A)	10.500
Add: Social Welfare Surcharge @ 10% on ₹10.5 (B)	<u>1.050</u>
Value for computing integrated tax	116.550
Integrated tax @ 18% (₹ 117 lakh × 18%) - (C)	20.979
Customs duty and integrated tax payable [(A) +(B)+ (C)]	32.529