

- b. Service centre in Hyderabad, Telangana; turnover of Rs. 1 crore in 2017-18;  
 c. Service centre in Chennai, Tamil Nadu; turnover of Rs. 2 crores in 2017-18;

Ceramy Ltd.'s corporate office functions as ISD. It has to distribute ITC of Rs. 9 lakh for December, 2018. Of this, an invoice involving tax of Rs. 3 lakh pertains to technical consultancy for Tumkur unit.

What should be the distribution of the credit?

**Answer :** As per rule 39(d) of CGST Rules relating to ITC, -

- **Rs. 3 lakh is attributable to Tumkur unit, and will be transferred to Tumkur unit only.**
- **Rs. 6 lakh have to be distributed** among Tumkur unit and the service centres in Hyderabad and Chennai **in proportion of their turnover** in the previous FY, that is, in 2017-18.
  - Tumkur unit will get  $(27 \text{ crore} / 30 \text{ crore}) \times 6 \text{ lakh} = \text{Rs. 5.4 lakh}$ ;
  - Hyderabad service centre will get  $(1 \text{ crore} / 30 \text{ crore}) \times 6 \text{ lakh} = \text{Rs. 20,000}$ ; and
  - Chennai service centre will get  $(2 \text{ crore} / 30 \text{ crore}) \times 6 \text{ Lakh} = \text{Rs. 40,000}$ .

### Question 10

A registered supplier of taxable goods supplied goods valued at Rs 2,24,000 (inclusive of CGST Rs 12,000 and SGST Rs 12,000) to Mohan Ltd. under the forward charge on 15-10-2022 for which tax invoice was also issued on the same date. The inputs were received by Mohan Ltd. on 15-10-2022. Mohan Ltd. availed credit of Rs 24,000 on 18-10-2022. But Mohan Ltd. did not make any payment towards such supply along with tax thereon to the supplier. Is Mohan Ltd. eligible to avail input tax credit on such supply? What are the consequences of such non-payment by Mohan Ltd.?

Discuss input tax credit provisions if Mohan Ltd. makes the payment of Rs 2,24,000 to the supplier on 18-05-2023.

[CA Final Nov. 2018, 5 Marks]

**Answer :** As per section 16 of the CGST Act, 2017, Mohan Ltd. is eligible to avail input tax credit (ITC) of the tax paid on inputs received by it on the basis of the invoice issued by the supplier, provided other conditions for availing ITC are fulfilled.

Payment of value of the goods along with the tax to the supplier is **not a pre-requisite at the time of availing credit, but Mohan Ltd. has to pay the said amount within 180 days from the date of issue of invoice.**

**If Mohan Ltd. Failed to make payment within 180 days from the date of invoice:** As per Rule 37 of CGST Rules, 2017, a registered person, who has availed input tax credit on any inward supply of goods or services or both, fails to pay to the supplier, the value of the goods and/or services along with the tax within 180 days from the date of issue of invoice, then, such ITC availed by the registered person would be paid or reversed along with applicable interest while furnishing the return in Form GSTR-3B for the tax period in which the said 180 days expired.

In this case, since, Mohan Ltd. fails to make any payment within 180 days from date of invoice i.e. up to 13-04-2023, therefore, amount equal to input tax credit availed by Mohan Ltd. shall be paid or reversed towards its output tax liability along with applicable interest while furnishing the return in Form GSTR-3B for April, 2023.

Interest shall be calculated @ 18% p.a. [as given u/s 50] for the period starting from the date of utilising the credit till the date when input tax credit is paid or reversed.

If Mohan Ltd. makes the payment of Rs. 2,24,000 (Value + tax) to the supplier on 18.05.2023, then, it shall be entitled to re-avail the credit of input tax of Rs. 24,000, which was paid or reversed earlier.

### Question 11

What are the conditions applicable to Input Service Distributor to distribute the credit? [CA Final Nov. 2018, 4 Marks]

**Answer :** The following conditions are applicable to Input Service Distributor to distribute the input tax credit (ITC):

- (i) The credit can be distributed to the recipients of credit against an ISD invoice containing prescribed details.
- (ii) The amount of the credit distributed shall not exceed the amount of credit available for distribution.
- (iii) The credit connected to an input service must be distributed only to the particular recipient to whom that input service is attributable.

S.N.	Particulars	ITC (₹)
I.	Life insurance premium paid by the company for factory employees [ITC is blocked under section 17(5) since it is not obligatory for the employer to provide life insurance service to its employees under any law.]	Nil
II.	Raw material sent to job worker [ITC taken in the month of September last year is valid since. Further, since 1 year period from of the date of receipt of inputs by the job worker has yet not lapsed in April, there will be no tax liability on such inputs.]	Nil
III.	Raw materials used for zero rated supply [ITC can be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply]	50,000
IV.	Work contractor's service [ITC on works contract services supplied for construction of an immovable property is blocked. Repairs of building debited to P & L Account does not amount to 'construction' and it is not blocked under section 17(5), hence ITC is available]	30,000
V.	Capital goods purchased in respect of which depreciation is claimed <sup>8</sup> on the tax component [ITC is not available when depreciation has been claimed on the tax component of the cost of capital goods under the Income-tax Act.]	Nil
VI.	Goods purchased from Neha Traders [ITC is available assuming that that invoice is received in the month of April in the current financial year, but goods were received in the month of June in the preceding financial year.]	20,000
VII.	Cars purchased for making further supply [Though ITC on motor vehicles used for further supply of such vehicles is not blocked, ITC on goods destroyed is blocked under section 17(5)]	Nil
VIII.	Goods used for setting telecommunication towers [ITC on goods used by a taxable person for construction of immovable property (other than plant and machinery) on his own account is blocked. Since plant & machinery excludes telecommunication tower, ITC is blocked under section 17(5). Further, such goods are not used in course or furtherance of business.]	Nil
	<b>Total ITC available</b>	<b>1,00,000</b>

**Question 43**

Ram Kumar, a registered supplier under GST in the State of Gujarat, provides the following information pertaining to the supplies made/received for the month of January:

SN.	Particulars	Amount in (Rs.)
(i)	IGST of Rs. 90,000 paid in December on machinery imported from Japan [Goods landed in Gujarat port and reached at his registered premises on 31st January.]	
(ii)	Availed services of transportation of raw material from unregistered GTA - M/s Ghoomghoom Transporters of Kolkata	1,00,000
(iii)	20 invoices involving IGST of Rs. 1,20,000 received during the current month [Only 16 invoices involving IGST of Rs. 1,00,000 were furnished by the suppliers in their GSTR-1 statement and their details were reflected in his GSTR-2B. Supplies received against all the invoices were otherwise eligible for claiming ITC.]	--
(iv)	Supplied machinery (purchased from an unregistered supplier) free of cost to his brother for manufacturing goods in his factory in Punjab (Market value of supply was Rs. 16,32,000)	Nil
(v)	Supplied a consignment of 5 machines to M/s KK & Co. in the State of Gujarat at the	6,00,000

P.T.O.

	instruction of third person being XX Enterprises of Tamilnadu.	
(vi)	Provided stock counting service to Gungun Manufacturers registered with GST in the State of Gujarat. Stock counting was carried out at the godown located in Gujarat	1,10,000
(vii)	Direct Selling Agent (DSA) services provided to ICIDI Bank, registered in Delhi, for providing services relating to opening of bank account/credit card & loan products	2,00,000
(viii)	Advance received during the month for future intra-State supply [Advance of Rs. 5,00,000 was related to supply of goods and the rest was related to service]	9,00,000
(ix)	Sent goods valued Rs. 80,000 to job worker, registered in the State of Kerala, who further processed the said goods and made direct supply on 31st January from its premises in Kerala to a buyer in the State of Gujarat at a price of Rs. 1,00,000	--

Apart from the above information, Ram Kumar also availed inter-State services of Rs. 4,00,000, tax on which was payable under reverse charge, from Viral Shah Enterprises, Maharashtra. Payment for the same to Viral Shah Enterprises was not made till the current month (overdue for 181 days as on 1st January). However, tax due under the said transaction was paid to Government and credit availed in the month of transaction itself.

From the information given above, you are required to compute the net GST liability payable in cash from Electronic Cash Ledger (CGST and SGST or IGST, as the case may be) for the month of January assuming that Ram Kumar wishes to make the cash payment of GST under SGST head as far as possible and that his turnover for the previous financial year was Rs. 21 lakh.

Notes-

- CGST, SGST & IGST rates on all inward and outward supplies were 9%, 9% and 18% respectively, except in case of services received from GTA where the rate of CGST/SGST @ 2.5% each and IGST @ 5% was applicable.
- All the amounts given are exclusive of taxes wherever applicable. The necessary conditions for availing ITC have been complied with by Ram Kumar, wherever applicable. [MTP- Nov. 2022]

**Answer :** Computation of net GST payable in cash from Electronic Cash Ledger for the month of January

SN	Particulars	Amt. (Rs.)	CGST (Rs.)	SGST (Rs.)	IGST (Rs.)
<b>A.</b>	<b>GST liability on outward supply</b>				
(i)	Machinery supplied without consideration [Not a supply as it is made without consideration and is also not covered in Schedule I because machinery has been supplied to an unrelated person (brother not being wholly dependent on Ram Kumar) and ITC has also not been availed on the same.]	Nil	-	-	-
(ii)	Consignment of machines supplied at the instruction of third person [Since supply is a bill to ship to supply where the goods are delivered on the direction of a third person-XX Enterprises, goods are deemed to be received by XX Enterprises and thus, the place of supply is Tamil Nadu. Hence, it is an inter-State supply.]	6,00,000			1,08,000 [6,00,000 × 18%]
(iii)	Stock counting service to Gungun Manufacturers of Gujarat [Intra-State supply as the place of supply is the location of recipient, viz. Gujarat.]	1,10,000	9,900 [1,10,000 × 9%]	9,900 [1,10,000 × 9%]	NIL
(iv)	Direct Selling Agent services provided by an individual (Ram Kumar) to a bank [Tax is payable by bank under reverse charge.]	2,00,000	-	-	-

P.T.O.-

(v)	Advance received for intra-State supply [Tax on advance received for supply of goods of Rs. 5,00,000 will be payable at the time of issuance of invoice.]	4,00,000	36,000 [4,00,000 × 9%]	36,000 [4,00,000 × 9%]	
(vii)	Finished goods sold from the premises of the job worker [Supply of goods by principal from the job worker's premises is regarded as supply by principal only irrespective of the location of job worker. Therefore, since the place of supply is the location where movement of goods terminates for delivery to recipient, i.e., Maharashtra, it is an intra-State supply.]	1,00,000	9,000 [1,00,000 × 9%]	9,000 [1,00,000 × 9%]	
Total tax liability on outward supplies			54,900	54,900	1,08,000
<b>B.</b>	<b>GST liability on inward supplies under reverse charge</b>				
(i)	GTA services availed from M/s Ghoomghoom Transporters [Tax is payable under reverse charge on the GTA services received by a registered person from an unregistered GTA]. Further, it is an inter-State supply since supplier is located in Kolkata and place of supply is Gujarat (location of registered recipient).]	1,00,000			5,000 [1,00,000 × 5%]
<b>C.</b>	<b>Input tax credit</b>				
	Import of machinery [Input tax, inter alia, includes IGST charged on import of goods.]				90,000
	GTA services availed	1,00,000			5,000
	IGST on invoices received during the month [Full ITC can be claimed only on the invoices furnished by supplier in Form GSTR-1 and the details of the same have been communicated to the registered person in Form GSTR-2B.]				1,00,000
	Less: Input tax reversed [Outward supply, tax on which is payable under reverse charge is considered as exempt supply for the purpose of reversal of ITC.] = Rs. 1,95,000 × Rs. 2,00,000 / Rs. 19,10,000 (Rs. 1,95,000 × turnover of exempt supply / total turnover) [The condition for making the payment for the supply within 180 days so that the ITC availed does not get reversed, not apply to reverse charge supplies. Thus, ITC on Rs. 4,00,000 will not be affected.]				(20,419)
	Total ITC available for set off		-	-	1,74,581
<b>D.</b>	<b>Computation of net GST payable in cash</b>				
	Total tax liability on outward supplies		54,900	54,900	1,08,000
	Less: ITC of IGST		(54,900)	(11,681)	(1,08,000)
	Forward charge liability on outward supplies payable in cash after set off of ITC		-	43,219	
	Reverse charge liability on inward supplies payable in cash without set off of ITC [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.]				5,000
	<b>Total net GST liability payable in cash</b>		-	<b>43,219</b>	<b>5,000</b>

Further, Shubhlaxmi Foods is expected to provide the exempt services of supply of farm labour worth Rs. 10 lakh in current financial year. Thus, turnover of supply of farm labour [Rs.10 lakh] alongwith the turnover of restaurant services [Rs. 130 lakh] will be eligible for composition scheme, in the current financial year.

Tax rate applicable for restaurant services under **composition scheme is 5%** [2.5% CGST and 2.5% SGST]. Estimated tax payable by Shubhlaxmi Foods is as under:

$$= \text{Rs. 140 lakh} \text{ [Rs. 130 lakh} + \text{Rs. 10 lakh]} \times 5\%$$

$$= \text{Rs. 7 lakh} \text{ [CGST} = \text{Rs. 3.5 lakh and SGST} = \text{Rs. 3.5 lakh]}$$

### Question 5

Bansal and Chandiook is a partnership firm of Chartered Accountants in Jaipur (Rajasthan). The firm specialises in bank audits providing services to banks across India. It has an annual turnover of Rs. 60 lakh in the preceding financial year.

With reference to the provisions of the CGST Act, 2017, examine whether the firm can opt for the composition scheme. Will your answer change, if

- (a) The turnover of the firm is Rs. 40 lakhs?  
 (b) Bansal and Chandiook is not a partnership firm of Chartered Accountants but a partnership firm providing support services to restaurants like booking tables, advertisement etc.?  
*[RTP - May 2018]*

### Answer :

Sec. 10(2A) of the CGST Act, 2017 provides for Composition Scheme for Supplier of Services, which a supplier of services can opt, subject to the following conditions:

Supplies are made by a registered person, -

- (i) **whose aggregate turnover in the preceding financial year was fifty lakh rupees or below;**  
 (ii) who is not eligible to pay tax under sub-section (1) of section 10 of the said Act;  
 (iii) who is not engaged in making any supply which is not leviable to tax under the said Act;  
 (iv) **who is not engaged in making any inter-State outward supply;**  
 (v) who is neither a casual taxable person nor a non-resident taxable person;  
 (vi) who is not engaged in making any supply of services through an electronic commerce operator who is required to collect tax at source under section 52; and                      **A**  
 (vii) who is not engaged in making supplies of the following goods:


Tariff	Description
2105 00 00	Ice cream and other edible ice, whether or not containing cocoa
2106 90 20	Pan masala
2202 10 10	Aerated Water, containing added sugar or other sweetening matter or flavoured [Eg. Pepsi, Coca-cola, etc.] [inserted by NN 43/2019 - C.T., w.e.f. 01.10.2019]
Chapter 24	All goods, i.e. Tobacco and manufactured tobacco substitutes
6815	Fly ash bricks; fly ash aggregates; Fly ash blocks
6901 00 10	Bricks of fossil meals or similar siliceous earths
6904 10 00	Building bricks
6905 10 00	Earthen or roofing tiles

On the basis of the above provisions, Bansal and Chandiook, firm of Chartered Accountants, is not eligible for the composition scheme because of the following both the reasons:

- (a) Its turnover in the preceding financial year was more than Rs. 50 lakhs (given turnover is Rs. 60 lakhs in the preceding financial year);

**In the absence of a contract** or agreement between the supplier and recipient of services, the proportionate value of services made **in each State** (where the event is held) will be computed in accordance with rule 5 of the IGST Rules by the application of **generally accepted accounting principles**.

#### Question 6

What is the place of supply of services by way of transportation of goods, including by mail or courier when both the supplier and the recipient of the services are located in India? 

**Answer :** If the recipient is **registered**, the **location of such person** is the place of supply. However, **if** the recipient is **not registered**, the place of supply is the place **where the goods are handed over** for transportation [Section 12(8)].

#### Question 7

What will be the place of supply of passenger transportation service, if a person travels from Mumbai to Delhi and back to Mumbai?

**Answer :** If the person is **registered**, the place of supply of passenger transportation service will be the **location of recipient**. If the person is **not registered**, the **place of supply** for the forward journey from **Mumbai** to Delhi will be Mumbai, the **place where he embarks** [Section 12(9)].

However, for the **return journey**, the **place of supply** will be **Delhi** as the **return journey** has to be **treated as separate journey** [Explanation to section 12(9)].

#### Question 8

What is the place of supply for mobile connection? Can it be the location of supplier?

**Answer :** For **domestic supplies** - The location of supplier of mobile services cannot be the place of supply as the mobile companies are providing services in multiple states and many of these services are inter-state. The consumption principle will be broken if the location of supplier is taken as place of supply and all the revenue may go to a few states where the suppliers are located.

The place of supply for mobile connection would depend on whether the connection is on postpaid or prepaid basis. In case of **postpaid connections**, the place of supply is the **location of billing address of the recipient of service**.

In case of pre-paid connections, the place of supply is the place where payment for such connection is received or such pre-paid vouchers are sold. However, if the recharge is done through internet/e-payment, the location of recipient of service on record will be taken as the place of supply.

**For international supplies** - The place of supply of telecom services is the location of the recipient of service.

#### Question 9

A person from Mumbai goes to Kullu-Manali and takes some services from ICICI Bank in Manali. What is the place of supply?

**Answer :** If the service is not linked to the account of person, place of supply will be Kullu i.e., the **location of the supplier of services**. However, if the service is linked to the account of the person, the place of supply will be Mumbai, the location of recipient **on the records** of the supplier.

#### Question 10

An unregistered person from Gurugram travels by Air India flight from Mumbai to Delhi and gets his travel insurance done in Mumbai. What is the place of supply of insurance services ?

**Answer :** When **insurance service** is provided to an unregistered person, the **location of the recipient** of services on the records of the supplier of insurance services is the place of supply. So, **Gurugram** is the place of supply [Section 12(13)].

#### Question 11

XY Ltd. (registered in Rajasthan) received legal services from an attorney in UK (unrelated person) in relation to registration of a trademark in UK. A consideration of £ 8,000 was paid by the company to the attorney in UK. Determine the place of supply for the service and suggest if XY Ltd. is required to pay tax under reverse charge on this transaction.



The place of supply in respect of each of the above supplies is determined as under:

- (i) As per the provisions of section 12(5)(a) of the IGST Act, 2017, the **place of supply of services provided in relation to training and performance appraisal to a registered person, shall be the location of such person.**

Therefore, the place of supply of services supplied by Mindsharp Associates to the registered recipient - Dobriyal Technocrats Ltd. by way of providing motivational training to its top management is the location of Dobriyal Technocrats Ltd., i.e. **Gurgaon, Haryana.**

- (ii) As per the provisions of section 12(3)(c) of the IGST Act, 2017, the **place of supply of services, by way of accommodation in any immovable property for organizing, inter alia, any official/ business function including services provided in relation to such function at such property, shall be the location at which the immovable property is located.**

Therefore, the place of supply of services supplied by Hotel Chumchum to Mindsharp Associates by way of accommodation of conference hall alongwith the rooms of Hotel Chumchum for the training programme shall be the location of the **Hotel Chumchum, i.e. Neemrana, Rajasthan.**

### Question 31

Elaborate the difference between zero rated supplies and exempt supplies.

[RTP- Nov. 2022]

**Answer :** The difference between zero rated supplies and exempted supplies is as follows:

Exempted Supplies	Zero rated supplies
Exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply.	Zero-rated supply means (i) export of goods and/or services or (ii) supply of goods and/or services <u>for authorized operations</u> to SEZ unit/SEZ developer. <b>(A)</b>
No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed	No tax on the outward supplies; Input supplies also to be tax free (by way of refund of ITC)
Credit of input tax needs to be reversed, if taken.	Credit of input tax may be availed for making zero-rated supplies, even if such supply is an exempt supply.
No ITC allowed on the exempted supplies.	ITC allowed on zero rated supplies.
Value of exempt supplies, for apportionment of ITC, shall include 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.	Value of zero rated supplies shall be added along with the taxable supplies for apportionment of ITC.
Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under the CGST or IGST Act shall not be liable to registration.	A person exclusively making zero rated supplies needs to register as refund of unutilized ITC or IGST paid shall have to be claimed.
A registered person supplying exempted goods and/or services shall issue, instead of a tax invoice, a bill of supply.	Normal tax invoice shall be issued.

### Question 32

Answer the questions in the light of the place of supply provisions contained in the IGST Act, 2017 :

Quick deal Enterprises (Ahmednagar, Gujarat) opens a new branch office at Hissar, Haryana. It purchases a building for office from Ruhani Builders (Hissar) along with pre-installed office furniture and fixtures. Determine place of supply of the pre-installed office furniture and fixtures.

**Answer :** Section 10(1)(c) of the IGST Act stipulates that if the supply does not involve movement of goods, the place of supply is the location of goods at the time of delivery to the recipient. Since there is no movement of office furniture and

(d) Any one of the above

### Question 3

Which of the following is an OIDAR service?

- (i) Online course consisting of pre-recorded videos and downloadable PDFs
  - (ii) PDF document manually emailed by provider
  - (iii) Individually commissioned content sent in digital form e.g., photographs
  - (iv) Stock photographs available for automatic download
  - (v) PDF document automatically downloaded by provider's system.
- (a) (i), (iv), (v)                      (b) (iv), (v), (vi)                      (c) (i), (iv), (v)                      (d) All of the above

### Question 4

Mr. R, a resident of Delhi, holds an account in ICICI Bank in Delhi. Mr. R goes to Jaipur for work. During his visit to Jaipur he takes certain services relating to his account from ICICI bank in Jaipur in relation to some transaction to be carried out at Mumbai. What will be place of supply in this case?

- (a) The place of supply shall be Delhi
- (b) The place of supply shall be Jaipur
- (c) The place of supply shall be Mumbai
- (d) None of the above

### Question 5

Mr. Palliwal Desai, a registered practicing Chartered Accountant, located in Jaipur, in the State of Rajasthan, is providing professional and consultancy services to its various clients from his firm.

He has taken some professional consultancy services from another establishment of its firm in UK. He has not paid any consideration for the same.

Such services would have been taxable @ 18% (9% under CGST + 9% under SGST and 18% under IGST), had they been received in India. Also, Mr. Palliwal Desai would have paid Rs. 4.00 Lakh, had he not received the said services from the UK establishment.

State the liability of Mr. Palliwal Desai, under CGST/ IGST Act, 2017, out of the following options-

- (a) Rs. 72,000/- as Integrated Tax
- (b) CGST Rs. 36,000/- & SGST Rs. 36,000/-, since POS is in India
- (c) Nil, since no foreign exchange was paid
- (d) Nil, since such services are exempt

### Question 6

Mr. Salman Khan, a resident of Mumbai, has booked a Videocon D2H connection at his other home in Delhi. His friend Shah Rukh Khan, is resident of Kerala, paid the charges for Salman's D2H connection in Delhi at the time of actual installation. Mr. Shah Rukh Khan went to Kolkatta after making the payment. Both Salman Khan and Shah Rukh Khan are not registered in GST.

Determine the place of supply of D2H service provided by Videocon to Mr. Salman Khan:

- (a) Mumbai
- (b) Kerala
- (c) Delhi
- (d) Kolkatta

### Question 7

Mr. Sunil Shetty, a resident of Mumbai, went to Vaishno Devi by train. Mr. Sunil Shetty, after visiting Vaishno Devi temple, purchased a JIO prepaid SIM from Tantan Communications in Jammu by paying cash. Mr. Sunil Shetty took the JIO SIM and the same day boarded the train to Delhi. He went to Agra thereafter, to visit Taj Mahal.

Determine the place of supply of JIO SIM by Tantan Communications to Mr. Sunil Shetty:

- (a) Mumbai
- (b) Jammu
- (c) Delhi
- (d) Agra

### Question 8

State whether the following statements are true or false:

1. Zero rated supply means supply of any goods or services or both which attracts nil rate of tax.

P. T. O.



2. Exempt supply means export of goods or services or both, or supply of goods or services or both for authorized operations to a Special Economic Zone developer or a Special Economic Zone unit. A
3. Non-taxable supply means supply of goods or services or both which is not leviable to tax under CGST Act, 2017 but leviable to tax under the Integrated Goods and Services Tax Act, 2017.
4. ITC may be availed for making zero rated supply of exempt goods.
- (a) False, False, False, True (b) True, False, False, False  
(c) True, True, False, False (d) False, False, False, False

**Question 9**

M/s. Dhoom Furniture Mart, located and registered under GST in the State of Chhattisgarh, sells furniture from its showroom to M/s. Lucky Dhaba (located and registered under GST in the State of Jharkhand). M/s. Lucky Dhaba requested to deliver the furniture to Mr. Pyare Lal (his landlord at his new rented home at Patna, Bihar). M/s. Dhoom Furniture Mart sends the furniture with a proper E-way bill to Patna through a transporter, who made the delivery to Mr. Pyare Lal.

Determine the place of supply of furniture sold by M/s. Dhoom Furniture Mart to M/s. Lucky Dhaba in the above case.

- (a) Chhattisgarh (b) Jharkhand (c) Patna, Bihar (d) None of the above

**Question 10**

M/s. Buildwell Engineering Consultants, located and registered in Gurugram, Haryana provided consultancy services to M/s. Taj India Ltd., (located and registered in Mumbai, Maharashtra) for its hotel to be constructed on land situated in Dubai.

Determine the place of supply of consultancy services provided by M/s. Buildwell Engineering Consultants to M/s. Taj India Ltd.:

- (a) Gurugram, Haryana (b) Mumbai, Maharashtra (c) Dubai (d) None of the above

**Question 11**

Aflatoon Spares (P) Ltd., located and registered in Haryana, supplied spare parts (FOB basis) to Mr. Laxmi Khurana, an unregistered person, located in Rajasthan. Mr. Laxmi Khurana booked the courier himself with Black Dart Courier (P) Ltd., registered in Delhi for delivery in Rajasthan. Black Dart Courier (P) Ltd. picked up the goods from Haryana handed over by Aflatoon Spares (P) Ltd. and delivered the courier in Rajasthan while passing through the State of Uttar Pradesh.

Determine the place of supply of service provided by Black Dart Courier (P) Ltd. to Mr. Laxmi Khurana:

- (a) Haryana (b) Delhi (c) Rajasthan (d) Uttar Pradesh

**Question 12**

Mr. Javed, an unregistered person residing in Hisar, Haryana, went to Delhi for seeking admission of his child - Mr. Arjun - in CA Intermediate. Mr. Javed got the demand draft generated at ICIDI Bank Ltd., registered under GST in Sahibabad, Uttar Pradesh against cash, for depositing the registration fee to the ICAI.

Mr. Javed does not have a bank account in ICIDI Bank Ltd. and the bank doesn't have any policy of KYC requirements (name, address and other identity verification policy) for customers requiring demand draft and not having account with any of its branch in India.

Determine the place of supply of service provided by ICIDI Bank Ltd., Delhi to Mr. Javed.

- (a) Delhi (b) Uttarpradesh (c) Either Delhi or Uttarpradesh, at the option of the receipt (d) Haryana

**Question 13**

Fury Ltd. has received an order for supply of services amounting to \$ 5,00,000/- from a US based client. Fury Ltd. is unable to supply the entire services from India and asks Neik Inc., Mexico (who is not an establishment of Fury Ltd.) to supply a part of the services, i.e. 40% of the total contract value to the US client. Fury Ltd. raised the invoice for entire value of \$ 5,00,000 but the US client paid \$ 3,00,000 to Fury Ltd. and \$ 2,00,000 directly to Neik Inc., Mexico which is approved by a special order of RBI. Fury Ltd. also paid IGST @ 18% on the services imported from Neik Inc.

The provider of AMC service outside India has entered into an agreement for an aircraft company PQR located in India . The service provider provides repair service to the aircraft when it was in India. The place of service in this case is:

- (a) Outside India                      (b) India                                      (c) Either (a) or (b)                      (d) None of Above

#### Question 23

If XYZ Ltd a company based out of Bangalore, awards online maintenance contract of its servers located in Mumbai office to Y INC, a company based out of USA, and as per the terms of the online maintenance Y INC shall be required to perform regular maintenance from USA using Internet, then the place of supply is

- (a) Bangalore                      (b) Mumbai                                      (c) USA                                      (d) None of Above

#### Question 24

If NM shipping Co. registered in Chennai charges ocean freight charges for transport of goods to California for a customer registered in Bangalore, the place of supply of service will be:

- (a) Chennai                                      (b) California                                      (c) Bangalore                                      (d) None of Above

#### Question 25

If the person makes export supplies or supplies to SEZ for authorized operations, will he be eligible to avail the ITC?

- (a) Yes, if he supplies under Bond / LUT                                      (b) Yes, if he doesn't supply under Bond / LUT  
(c) Yes, he can avail ITC in any situation                                      (d) None of the above

#### Question 26

Mr. P, an OIDAR service provider providing services to non taxable online recipients in different States in India. He shall have:

- (a) Multiple registration in India for different State  
(b) Take a single registration under simplified registration scheme  
(c) Shall appoint different representative for different scheme  
(d) None of the above

#### Question 27

At what time tourists can claim refund?

- (a) After reaching their own country                                      (b) After leaving India  
(c) At the time of purchase of goods                                      (d) At the time of taking exit at port

#### Question 28

The supply of goods for authorized operations to SEZ unit is treated as \_\_\_\_\_ in the hands of the supplier:

- (a) Exempt Supply - Reversal of credit                                      (b) Deemed Taxable Supply - No reversal of credit  
(c) Zero Rated Supply - No reversal of credit                                      (d) Non-Taxable Supply - Outside the Scope of GST

#### Question 29

Mr. Rohit, a registered practicing Chartered Accountant, located in Udaipur, in the State of Rajasthan, is providing professional and consultancy services to its various clients from his firm.

He has taken some professional consultancy services from another establishment of its firm in USA. He has not paid any consideration for the same.

Such services would have been taxable @ 18% (9% under CGST + 9% under SGST and 18% under IGST), had they been received in India. Also, Mr. Rohit would have paid Rs. 5.00 Lakh, had he not received the said services from the USA establishment.

State the liability of Mr. Rohit, under CGST/ IGST Act, 2017, if any, out of the following options-

- (a) Nil, since such services are exempt  
(b) Rs. 90,000/- as Integrated Tax  
(c) CGST Rs. 45,000/- & SGST Rs. 45,000/-, since POS is in India  
(d) Nil, since no foreign exchange was paid

**Question 30**

Lucky Singh, a resident of Noida, U.P. (working in a private firm), went to Himachal Pradesh for a family vacation via Delhi-Chandigarh- Himachal Pradesh in his own car. After entering Chandigarh, his car broke down due to some technical issue. He called 'ONROADS' - an emergency roadside car assistance company (registered under GST in Delhi) to repair the car. The car was repaired by the staff of 'ONROADS'. 'ONROADS' does not have a record of the addresses of the persons taking the car assistance service. The value of supply amounted to Rs. 50,000 (being labour charges Rs. 40,000 and spares Rs. 10,000). The bill was supposed to be generated online through the server, but due to some technical issue, it was not so generated. Determine the place of supply in the given case.

- (a) Delhi (b) Chandigarh (c) Noida, U.P (d) Himachal Pradesh

**Question 31**

Sukhamani Traders, registered in Maharashtra, purchased machinery two years back worth Rs. 2,00,00,000 and did not avail ITC on said machinery at the time of its purchase. After using the machinery for two years, it gave said machinery free of cost in the month of September (in the current year) to an unrelated person in Punjab. On the date of transfer, open market value of the machinery was Rs. 1,25,00,000 and the written down value was Rs. 1,53,00,530.

In the month of September, it also supplied taxable goods worth Rs. 50,00,000 to Royal Oil Corporation Limited in the territorial waters. The said territorial waters are located at a distance of 5 nautical miles from the baseline of the State of Maharashtra and 7 nautical miles from the baseline of the State of Kerala.

All above amounts are exclusive of GST and rates of applicable CGST, SGST and IGST in above cases are 9%, 9% and 18%.

You are required to determine the amount of net CGST and SGST and/or IGST payable in the month of September.

- (a) CGST: Rs. 4,50,000; SGST: Rs. 4,50,000; IGST: Nil  
 (b) CGST: Nil; SGST: Nil; IGST: Rs. 9,00,000  
 (c) CGST: Nil; SGST: Nil; IGST: Nil  
 (d) CGST: Rs. 4,50,000; SGST: Rs. 4,50,000; IGST: Rs. 22,50,000

**Question 32**

M/s Fair Engineering Consultants, located and registered under GST in Gurugram, Haryana, provided architectural services to Mahal India Ltd., located and registered under GST in Mumbai, Maharashtra, for its hotel to be constructed on land situated in Dubai.

Determine the place of supply of architectural services provided by M/s Fair Engineering Consultants to Mahal India Ltd.:

- (a) Gurugram, Haryana (b) Mumbai, Maharashtra  
 (c) Dubai (d) Either Maharashtra or Dubai, at the option of the recipient

**Answer Key**

01	(a)	02	(a)	03	(c)	04	(a)	05	(a)	06	(c)	07	(b)	08	(a)	09	(b)	10	(b)	11	(a)
12	(b)	13	(b)	14	(c)	15	(a)	16	(a)	17	(a)	18	(a)	19	(a)	20	(a)	21	(c)	22	(b)
23	(b)	24	(c)	25	(c)	26	(b)	27	(d)	28	(c)	29	(b)	30	(a)	31	(a)	32	(b)		

↓  
A

**Question 16**

An exempt supply includes-

- (a) Supply of goods or services or both which attracts Nil rate of tax
- (b) Non-taxable supply
- (c) Supply of goods or services or both which are wholly exempt from tax under section 11 of the CGST Act or under section 6 of IGST Act
- (d) All of the above

**Question 17**

Which of the following is treated as exempt supply under the CGST Act, 2017?

- (a) Sale of liquor
- (b) Supply of health care services
- (c) Supply of nil rated goods
- (d) All of the above

**Question 18**

Which of the following is exempt under health care services provided by clinical establishments?

- (a) Chemist shop in the hospital selling medicines to public at large
- (b) Food supplied from an outsourced canteen to in-patients as per diet prescribed by the hospital dietitian
- (c) Advertisement services provided by the hospital to a pharmaceutical company for their asthma pump by displaying it prominently in the hospital building
- (d) All of the above

**Question 19**

An exemption notification is issued on 14.02.2018 to provide for an exemption in the tax rate charged on a particular goods (The goods has become taxable on 10.08.2018 vide a notification dated 05.08.2018), stating the exemption would be applicable from 21.02.2019. From which date onwards the assessee can claim exemption?

- (a) 14.02.2019
- (b) 10.08.2018
- (c) 21.02.2019
- (d) 05.08.2018

**Question 20**

Services by a Non-Profit entity (Registered or Unregistered) are exempted -

- (a) If they are to its own members provided the contribution received is up to Rs. 7,500 per month from a member
- (b) If they are to its own members, provided the contribution received is up to Rs. 7,500 per month from a member towards sourcing goods/services from any third person for the common use of its members in a housing society or a residential complex
- (c) If they are to its own members, provided the contribution is less than Rs. 7,500 per month from a member towards sourcing goods/services from any third person for the common use of its members in a housing society or a residential complex
- (d) If they are to its own members, provided the contribution is up to Rs. 7,500 per month per member for common use specified members

**Question 21**

A. GST shall be payable on transportation of goods by vessel from customs station of clearance in India to a place outside India.

P.T.O.

B. In case of Services supplied by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India, the importer in India is liable to pay GST under reverse charge.

Comment on the above statements.

(a) A - Correct, B - Incorrect

(b) A - Incorrect, B - Correct

(c) Both A and B - Correct

(d) Both A and B - Incorrect

### Question 22

Shree Ram Seva Trust, registered under GST, is a charitable institution registered under section 12AB of the Income-tax Act, 1961. It has organized a skill development programme relating to persons over the age of 65 years residing in a well-planned city, in the month of April. It has received following amounts under the programme:

Particulars	Amount (Rs.)
Subscription fees for the programme	50,000
Sponsorship fees received from Mahesh Enterprises - a sole proprietorship firm	1,00,000
Consideration for supply of goods	3,00,000

Besides, the trust has received the donations of Rs. 2,00,000 in April. Hanuman, accountant of Shree Ram Seva Trust, is not able to determine the taxability of the above amounts received under GST law. He seeks your expertise in determining the same.

Determine the value of taxable supply of Shree Ram Seva Trust, for the month of April assuming that the amounts given above are exclusive of GST, wherever applicable.

(a) Nil

(b) Rs. 6,50,000

(c) Rs. 6,00,000

(d) Rs. 4,50,000

### Question 23

Rajkamal Cooperative Housing Society, registered under GST charges Rs. 21,000 as a general maintenance charge for the quarter April, 2020 to June, 2020 from Jaimin Sinha holding Flat No. 101. Jaimin Sinha forgot to pay the maintenance charges on time, resulting into levy of interest. The total amount charged from him was Rs. 24,000 (Rs. 21,000 + Rs. 3,000 for interest).

Whether Jaimin Sinha is liable to pay GST, if yes on what amount?

[MTP- May 2021, 1 Mark]

(a) Yes, Rs. 21,000

(b) Yes, Rs. 24,000

(c) Yes, Rs. 1,500

(d) No, not liable to pay GST.

### Question 24

The Resident Welfare Association (RWA) of Kutumb Housing Society is registered under GST in the State of Maharashtra. There are 100 three BHK flats and 100 four BHK flats in the society. It received/paid the following amounts (excluding GST, wherever applicable) in the months of January and February:

Particulars	January (Rs.)	February (Rs.)
Maintenance charges per flat received from all 3 BHK flat owners	7,000	7,000
Maintenance charges per flat received from all 4 BHK flat owners	10,000	10,000
Interest received on the fixed deposit with Dhansukh Bank	5,00,000	5,00,000
Generator purchased for the power back-up of 4 BHK flats		1,00,000
Taps, pipes, other sanitary fittings purchased for 3 BHK flats	50,000	

- Determine the net GST liability to be paid for the months of January and February, assuming that the GST rate is 18% on all inward and outward supplies. [RTP - May 2021]

(a) January - Rs. 1,71,000; February - Rs. 1,62,000

(b) January - Rs. 1,80,000; February - Rs. 1,62,000

- (c) January - Rs. 1,80,000; February - Rs. 1,80,000      (d) January - Rs. 1,71,000; February - Rs. 1,80,000

### Question 25

Diksha Public School (DPS) situated in Bilaspur in the State of Chhattisgarh has planned to celebrate its sports day in Bilaspur Stadium located at a distance of 20 km from the school precincts on 15th April. DPS has invited quotes from various suppliers for arranging tent, security and catering for students and teachers. The price has to be quoted including all applicable taxes.

Raman & Co., a supplier providing the services required above, is not sure of the GST impact on the above transactions. It seeks your help to determine whether GST is applicable on all the above services or not, so that it can quote the competitive price accordingly.

- (a) Tent, security and catering services: All taxable  
 (b) Tent, security and catering services: All exempt  
 (c) Tent and security services: Taxable; Catering services: exempt  
 (d) Tent: Taxable; Security and catering services: exempt

### Question 26

Nivedita Foundation, a charitable trust registered under section 12AB of the Income-tax Act, 1961, owns and manages a newly constructed Dharamshala "GOVINDAM" in the precincts of a temple in Haridwar. GOVINDAM has 50 rooms, a huge party lawn and other amenities. Nivedita Foundation has received following receipts during the period from April to September:

- Rent of Rs. 25,00,000 from renting of rooms @ Rs. 1,000/- per day.
- Rent of Rs. 9,00,000 from renting of party lawns for marriage and social functions @ Rs. 9,000/- per day.
- Donations of Rs. 20,00,000 (including one donation of Rs. 15,00,000/- received with specific direction to advertise the business activity of the donor).

You are required to determine the value of taxable supply of GOVINDAM during the period from April to September:

- (a) Rs. 55,00,000      (b) Rs. 50,00,000      (c) Rs. 25,00,000      (d) Rs. 40,00,000

## Answer Key

01	(a)	02	(c)	03	(a)	04	(b)	05	(c)	06	(c)	07	(c)	08	(a)	09	(a)	10	(a)	11	(c)
12	(d)	13	(a)	14	(a)	15	(a)	16	(d)	17	(d)	18	(b)	19	(c)	20	(b)	21	(a)	22	(d)
23	(b)	24	(b)	25	(c)	26	(d)														



**There is no substitute for  
hard work.**



- (i) all **taxable** supplies,
- (ii) all **exempt** supplies,
- (iii) **exports** of goods and/or services and
- (iv) all **inter-State** supplies of persons having the same PAN.

The above is computed on **all India basis**. Further, the **aggregate turnover excludes central tax, State tax, Union territory tax, integrated tax and cess**. Moreover, the value of inward supplies on which tax is payable under reverse charge is **not taken into account** for calculation of 'aggregate turnover'.

In the light of the aforementioned provisions, the aggregate turnover of Rishabh Enterprises is computed as under:

#### Computation of aggregate turnover of Rishabh Enterprises

Particulars	Turnover of February (Rs.)	Cumulative turnover of February & March (Rs.)
Serving of cooked food and cold drinks/non-alcoholic beverages in restaurant in Maharashtra	5,50,000	12,00,000 [Rs. 5,50,000 + Rs. 6,50,000]
Add: Sale of alcoholic liquor for human consumption in Nagaland [Note-1]		5,00,000
Add: Interest received from banks on the Fixed Deposits [Note-2]	1,00,000	2,00,000 [Rs. 1,00,000 + Rs. 1,00,000]
Add: Supply of packed food items from restaurant in Maharashtra	1,50,000	3,50,000 [Rs. 1,50,000 + Rs. 2,00,000]
<b>Aggregate Turnover</b>	<b>8,00,000</b>	<b>22,50,000</b>

#### Notes:

- As per section 2(47) of the CGST Act, 2017, exempt supply includes non-taxable supply. Thus, supply of alcoholic liquor for human consumption in Nagaland, being a non-taxable supply, is an exempt supply and is, therefore, includible while computing the aggregate turnover.
- Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) is exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017. Thus, interest received from banks on the fixed deposits is an exempt supply and is, therefore, includible while computing the aggregate turnover.
- Rishabh Enterprises was not liable to be registered in the month of February since its aggregate turnover did not exceed Rs. 20 lakh in that month. However, since its aggregate turnover exceeds Rs. 20 lakh in the month of March, it should apply for registration within 30 days from the date on which it becomes liable to registration.

#### Question 4

AB Pvt. Ltd., Pune provides house-keeping services. The company supplies its services exclusively through an e-commerce website owned and managed by Hi-Tech Indya Pvt. Ltd., Pune. The turnover of AB Pvt. Ltd. in the current financial year is Rs. 18 lakh.

Advise AB Pvt. Ltd. as to whether they are required to obtain GST registration. Will your advice be any different if AB Pvt. Ltd. sells readymade garments exclusively through the e-commerce website owned and managed by Hi-Tech Indya Pvt. Ltd.?

[RTP- May 2022] [MTP - Nov. 2018], [MTP - May 2018]

**Answer :** As per section 22 of the CGST Act 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 Rs. 20 lakh** [Rs. 10 lakh in case of specified Special Category States] in a financial year.

P.T.O.

However, section 24 of the said Act 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, 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**. [Persons making supplies of services, other than supplies specified under section 9(5) through an ECO who is required to collect tax at source under section 52, and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of Rs. 20 lakh [Rs. 10 lakh for specified special category States] in a financial year, have been exempted from obtaining registration vide Notification No. 65/2017 CT dated 15.11.2017.]

Section 2(45) of the CGST Act 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) to mean the supply of goods or services or both, including digital products over digital or electronic network. Since Hi-Tech Indya 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) 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**, AB Pvt. Ltd. provides house-keeping services through an ECO. It is presumed that Hi-Tech Indya is an ECO which is required to collect tax at source under section 52. However, **house-keeping services provided by AB Pvt. Ltd., which is not liable for registration under section 22(1) as its turnover is less than Rs. 20 lakh, is a service notified under section 9(5)**. Thus, AB 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**, AB 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. Such suppliers are required to get registration compulsorily in terms of section 24(ix). But, w.e.f. 01.10.2023, as per NN 34/2023 - CT, the suppliers making supplies of goods through an ECO who is required to collect tax at source u/s 52 of the said Act, and having an aggregate turnover not exceeding threshold limit for registration in the preceding & current financial year, are exempted from obtaining registration under GST, subject to fulfilment of certain conditions. In the current case, since, turnover of AB Pvt. Ltd. is less than the threshold limit for registration, therefore, it is not required to obtain registration even if it is selling readymade garments through ECO. [Assuming all other conditions are fulfilled.]

#### Question 5

Discuss the procedure for amendment of registration under CGST Act and rules thereto?

[MTP - May 2018]

**Answer :** The procedure for amendment of registration is contained in section 28 read with rule 19 of CGST Rules. The significant aspects of the same are discussed hereunder:

1. **Where there is any change** in the particulars furnished in registration application/UIN application, registered person shall submit an application in prescribed manner, **within 15 days of such change, along with documents** relating to such change at the Common Portal.
2. In case of **amendment of core fields of information**, the **proper officer may**, on the basis of information furnished or as ascertained by him, **approve or reject amendments** in the registration particulars in the prescribed manner. Such amendment shall take effect from the date of occurrence of event warranting such amendment.
3. However, where **change relates to non-core fields** of information, **registration certificate shall stand amended upon submission of the application** for amendment on the Common Portal.
4. Where a change in the constitution of any business results in **change of PAN of a registered person**, the said person shall **apply for fresh registration**. The reason for the same is that **GSTIN is PAN based. Any change in PAN would warrant a new registration.**

#### Question 6

## TDS & TCS

### Question 10 (SM Illustration)

Mr. X is a supplier selling his own products through a web site hosted by him. Does he fall under the definition of an "electronic commerce operator"? Whether he is required to collect TCS on such supplies?

**Answer :** As per the definitions in Section 2(44) and 2(45) of the CGST Act, 2017, **Mr. X** will come under the definition of an "electronic commerce operator". However, according to Section 52 of the Act **ibid**, **TCS is required to be collected on the net value of taxable supplies made through it** by other suppliers where the consideration is to be collected by the ECO. In cases where someone is selling their own products through a website, there is no requirement to collect tax at source as per the provisions of this Section. These transactions will be liable to GST at the prevailing rates.

### Question 11 (SM Illustration)

If Mr. A purchase goods from different vendors and in turn Mr. A, is selling them on his own website under his own billing, Is TCS required to be collected on such supplies?

**Answer :** No. According to Section 52 of the CGST Act, 2017, TCS is required to be collected on the net value of taxable supplies made through E-commerce operator by other suppliers where the consideration is to be collected by the ECO. In this case, there are two transactions - Mr. A purchase the goods from the vendors, and those goods are sold through his own website. For the first transaction, GST is leviable, and will need to be paid to vendor, on which credit is available to Mr. A. The second transaction is a supply on own account of Mr. A, and not by other suppliers and there is no requirement to collect tax at source. The transaction will attract GST at the prevailing rates.

### Question 12

Whether the rate of tax of 1% notified under section 52 is CGST or SGST or a combination of both CGST and SGST?

**Answer :** The **rate of TCS** as notified **under CGST Act** is payable under CGST and the equal rate of TCS is expected under the **SGST Act** also, in effect **aggregating to 1%**.

### Question 13

Is every e-commerce operator required to collect tax on behalf of actual supplier?

**Answer : Yes, every e-commerce operator is required to collect tax** where consideration with respect to the supply is being collected by the e-commerce operator.

However, **no TCS** is required to be collected in the following cases:-

1. On **supply of services notified under section 9(5)** of the CGST Act, 2017;
2. On **exempt supplies**;
3. On supplies on which the **recipient is required to pay tax on reverse charge basis**;
4. On supplies of goods or services made by unregistered suppliers.

### Question 14

State whether the provisions pertaining to tax collected at source under section 52 of CGST Act, will be applicable in below mentioned scenarios - [MTP Nov. 2023]

- a) Titane sells watch on his own through its own website?
- b) ABC limited who is dealer of Titane brand sells watches through flipkarte, an electronic commerce operator ?

**Answer :** Answers for both the scenarios are as follows:

As per Section 52 of CGST Act, every electronic commerce operator not being an agent, shall collect an amount calculated at such rate not exceeding 1%, as may be notified by the Government on the recommendations of the Council, of the net value of taxable supplies made through it by other suppliers where the consideration with respect to such supplies is to be collected by the operator.

- a. Hence, if the **person sells on his own**, provisions pertaining to tax collected at source (**TCS**) **won't be applicable**.

# Refunds Under GST

## Section A – ICAI Study Material Questions

### Question 1

Is there any time limit for sanctioning of refund under section 54?

**Answer :** Yes, refund has to be **sanctioned within 60 days** from the date of receipt of application complete in all respects. **If refund is not sanctioned within the said period of 60 days, interest @ 6% p.a.** will have to be paid in accordance with section 56.

However, in case where provisional **refund to the extent of 90%** of the amount claimed is refundable in respect of **zero-rated** supplies made by certain categories of registered persons in terms of sub-section (6) of section 54, the provisional refund has to be given **within 7 days from the date of acknowledgement of the claim of refund.**

### Question 2

Discuss the provisions relating to refund of the amount of advance tax deposited by a casual taxable person under section 27(2).

(A)

**Answer :** The amount of advance tax deposited by a casual taxable under section 27(2), shall be **refunded** only when such person has, in respect of **the entire period for which the certificate of registration granted** to him had remained in force, furnished all the returns required under section 39 [Section 54(13)]. Further, **refund of any amount, after adjusting the tax payable** by the applicant out of the **advance tax deposited** by him under section 27 at the time of registration, **shall be claimed only after the last return required to be furnished by him** has been so furnished.

### Question 3

In case of refund under exports of goods, whether BRC/FIRC is necessary for granting refund?

**Answer :** In case of refund on account of **export of goods**, the refund rules **do not prescribe BRC/FIRC as a necessary document** for filing of refund claim. However, for **export of services** details of **BRC/FIRC is required to be submitted** along with the application for refund. However, in respect of export of goods, if sale proceeds are not realized in India (in full or in part) within the period allowed under the Foreign Exchange Management Act, 1999, including any extension of such period, the person to whom the refund has been made shall deposit the amount so refunded, to the extent of non-realisation of sale proceeds, along with applicable interest within 30 days of the expiry of the said period or, as the case may be, the extended period.

### Question 4

When is a deficiency memo issued in respect of a refund claim made under section 54?

**Answer :** Rule 90(3) of the CGST Rules provides for communication in prescribed form (deficiency memo) where deficiencies in the refund application are noticed by the proper officer. The said sub-rule also provides that **once the deficiency memo has been issued, the claimant is required to file a fresh refund application after the rectification of the deficiencies.**

However, the time period, from the date of filing of the original refund application till the communication of deficiencies by the proper officer, shall be excluded for counting the limitation period of 2 years, in respect of any such fresh refund claim filed by the applicant after rectification of the deficiencies.

### Question 5

State the exceptions to the principle of unjust enrichment as applicable to refund claims.

# Assessment

## Section A – ICAI Study Material Questions

### Question 1

ABC Limited is a supplier of medical equipment to various hospitals. While supplying the equipment ABC Limited is not sure about the rate of IGST applicable on such supplies, i.e. 18% or 28%. You are required to advise ABC Ltd. in this situation.

**Answer :** In such an event, ABC Limited can **move an application for provisional assessment** for seeking permission to discharge the tax liability provisionally @ 18% **upon the submission of bond and security** and subject to finalization of the assessment.

**Upon finalization** of the assessment, **ABC Limited would be liable to pay the differential tax liability along with applicable interest if it is found** that the applicable rate was 28% whereas ABC Limited paid the tax @ 18% pursuant to the order passed initially on its application for seeking provisional assessment.

### Question 2

Is summary assessment order to be necessarily passed against the taxable person?

**Answer : No.** In certain cases, like when **goods are under transportation or are stored in a warehouse**, and the taxable person in respect of such goods cannot be ascertained, the **person in charge of such goods shall be deemed to be the taxable person** and will be assessed to tax.

### Question 3

Whether principal of natural justice is must to be followed before passing assessment order against the unregistered person?

**Answer : Yes, principal of natural justice is must to be followed** before passing assessment order against an unregistered person seeking to impose any financial burden on him.

### Question 4

Explain in what cases, assessment order passed by proper officer may be withdrawn under CGST Act, 2017?

*[CA Final May 2018][MTP- Nov. 21] [CA Final Nov. 2022][MTP- Nov. 21]*

**Answer :** Assessment order passed by the proper officer may be withdrawn in following cases:-

- a) **Assessment of non-filers of returns** - The best judgement order passed by the proper officer under section 62 of the CGST Act shall automatically stand withdrawn **where a registered person files a valid return within 60 days** of the service of the best judgment assessment order. **However, the liability for payment of interest u/s 50(1) or for payment of late fee u/s 47 of the CGST Act, 2017 shall continue.**

However, where the registered person fails to furnish a valid return within the aforesaid 60 days of the service of the assessment order, he may furnish the same within a further period of 60 days on payment of an additional late fee of Rs. 100 for each day of delay beyond 60 days of the service of the said assessment order and in case he furnishes valid return within such extended period, the said assessment order shall be deemed to have been withdrawn, but the liability to pay interest u/s 50(1) or to pay late fee u/s 47 shall continue.

- (c) Delivering such goods (d) None of the above

**Question 6**

What are the consequences, where a registered person fails to furnish the return required u/s 39, even after the service of a notice for assessment?

- (a) The proper officer may proceed to assess the tax liability of the said person to the best of his judgment.  
 (b) Issue an assessment order within a period of 3 years from the date specified u/s 44  
 (c) Both (a) & (b)  
 (d) None of the above

**Question 7**

Mr. Karan has failed to furnish a return u/s 39. For which proper officer issued a notice for assessment. What is the condition for which such assessment order shall be deemed to have been withdrawn?

- (a) File a valid return within 60 days of serving notice (b) File a valid return within 30 days of serving notice  
 (c) File a valid return within 60 days of serving of assessment order (d) File a valid return within 30 days of serving of assessment order

**Question 8**

In respect of a consignment supplied on 20<sup>th</sup> August, provisional assessment was resorted to by a person who files return on monthly basis. The assessment was finalized on 20<sup>th</sup> November and the taxpayer became liable to pay differential IGST of Rs. 10,000. The taxpayer paid this amount on 20<sup>th</sup> December. The number of days for which the taxpayer is liable to pay interest are-

- (a) 122 days (b) 91 days (c) 61 days (d) 30 days

**Answer Key**

01	(a)	02	(c)	03	(c)	04	(d)	05	(b)	06	(a)	07	(c)	08	(b)
----	-----	----	-----	----	-----	----	-----	----	-----	----	-----	----	-----	----	-----

**We Should not give up and we should not allow the problem to defeat us.**



Rs. 280 crore. The company is disputing the entire demand of CGST and wants to know how much pre-deposit it has to make under the CGST Act, 2017 for filing an appeal before the Appellate Authority against the order of the Joint Commissioner.

Assuming that the Appellate Authority also confirms the order of the Joint Commissioner and the company wants to file an appeal before the Appellate Tribunal against the order of the Appellate Authority, how much pre-deposit it has to make under the CGST Act, 2017 for filing the said appeal? [RTP- Nov. 2019]

**Answer :** Section 107(6) of the CGST Act, 2017 provides that **no appeal shall be filed** with the Appellate Authority unless the applicant has **paid in full, such part of the amount of tax, interest, fine, fee and penalty** arising from the impugned order, as is admitted by him **and a sum equal to 10% of the remaining amount of tax** in dispute arising from the said order **subject to a maximum of Rs. 25 crore**. Thus, the amount of pre-deposit for filing an appeal with Appellate Authority cannot exceed Rs. 25 crore.

Thus, in the given case, the amount of **pre-deposit for filing an appeal** with the Appellate Authority against the order of Joint Commissioner, where entire amount of tax is in dispute, is:

(i) **Rs. 28 crore** [10% of the amount of tax in dispute, viz. Rs. 280 crore] or

(ii) **Rs. 25 crore,**

**whichever is less.**

**= Rs. 25 crore.**

Further, section 112(8) of the CGST Act, 2017 provides that **no appeal shall be filed with the Appellate Tribunal unless** the applicant has **paid in full, such part of the amount of tax, interest, fine, fee and penalty** arising from the impugned order, as is admitted by him **and a sum equal to 20% of the remaining amount of tax in dispute**, in addition to the amount paid as pre-deposit while filing appeal to the Appellate Authority, arising from the said order subject to a maximum of Rs. 50 crores.

Thus, in the given case, **the amount of pre-deposit** for filing an appeal with the Appellate Tribunal against the order of the Appellate Authority, where entire amount of tax is in dispute, is:

(i) **Rs. 56 crores** [20% of the amount of tax in dispute, viz. Rs. 280 crores] or

(ii) **Rs. 50 crores,**

**whichever is less.**

**= Rs. 50 crores.**

### Question 7

With reference to the provisions of section 121 of the CGST Act, 2017, specify the orders against which no appeals can be filed. [MTP- Nov.2022][CA Final May 2019, 4 Marks] [RTP - May 2019]

**Answer :** As per section 121 of the CGST Act, 2017, no appeal shall lie against any decision taken or order passed by a CGST officer if such decision taken or order passed relates to any one or more of the following matters, namely: –

- (a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or
- (b) an order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) an order sanctioning prosecution under the CGST Act, 2017; or
- (d) an order passed under section 80 of the CGST Act, 2017 (payment of tax in installments).

### Question 8

Mr. A had filed an appeal before the Appellate Tribunal against an order of the Appellate Authority where the issue involved relates to place of supply. The order of Appellate Tribunal is also in favour of the Department. Mr. A now wants to file an appeal against the decision of the Appellate Authority as he feels the stand taken by him is correct.

You are required to advise him suitably with regard to filing of an appeal before the appellate forum higher than the Appellate Tribunal. [CA Final May 2023][MTP - Nov. 2022] [RTP - May 2018] [MTP - May 20, 5 Marks]

**Answer :** As per section 117(1) of the CGST Act, 2017, an **appeal against orders passed by the State Bench of the Tribunal lies to the High Court if the High Court** is satisfied that such an appeal involves a substantial question of law.

However, appeal against orders passed by the **Principal Bench of the Tribunal lies to the Supreme Court and not High Court**. As per section 109(5) of the Act, only the **Principal Bench** of the Tribunal can decide appeals where one of the issues involved relates to the place of supply.

Since, the issue involved in Mr. A's case relates to place of supply, the appeal in his case would have been **decided by the Principal Bench** of the Tribunal. Thus, **Mr. A will have to file an appeal with the Supreme Court and not with the High Court.**

### Question 9

Pursuant to audit conducted by the tax authorities under section 65 of the CGST Act, 2017, a show cause notice was issued to Home Furnishers, Surat, a registered supplier, alleging that it had wrongly availed the input tax credit without actual receipt of goods for the month of July, 20XX. In the absence of a satisfactory reply from Home Furnishers, Joint Commissioner of Central Tax passed an adjudication order dated 20.08.20XX (received by Home Furnishers on 22.08.20XX) confirming a tax demand of Rs. 50,00,000 and imposing a penalty of equal amount under section 122 of the CGST Act, 2017.

- (1) Home Furnishers does not agree with the order passed by the Joint Commissioner. It decides to file an appeal with the Appellate Authority against the said adjudication order. It has approached you for seeking advice on the following issues in this regard:  
Can Home Furnishers file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax? If yes, till what date can the appeal be filed?
- (2) Does Home Furnishers need to approach both the Central and State Appellate Authorities for exercising its right of appeal?
- (3) Home Furnishers is of the view that there is no requirement of paying pre-deposit of any kind before filing an appeal with the Appellate Authority. Give your opinion on the issue. *[MTP - May 2018]*

**Answer :**

- (1) An **appeal against** a decision/order passed by any **adjudicating authority** under the CGST Act or SGST Act/UTGST Act is **appealable before the Appellate Authority** [Section 107(1) of the CGST Act]. Thus, Home Furnishers can file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax.

Further, such appeal can be filed **within 3 months from the date of communication of such decision/order** [Section 107(1) of the CGST Act]. Thus, Home Furnishers can file the appeal to Appellate Authority on or before 22.11.20XX. Further, the **Appellate Authority can also condone the delay in filing of appeal by 1 month** if it is satisfied that there was sufficient cause for such delay [Section 107(4)].

- (2) GST law makes provisions for **cross empowerment between CGST and SGST/UTGST officers** so as to ensure that if a proper officer of one Act (say CGST) passes an order with respect to a transaction, he will also act as the **proper officer of SGST for the same transaction and issue the order with respect to the CGST as well as the SGST/UTGST component of the same transaction.**

The law further provides that where a **proper officer under one Act** (say CGST) **has passed an order, any appeal/review/revision/rectification against the said order will lie only with the proper officers of that Act only (CGST Act)**. Similarly, if any order is passed by the proper officer of SGST, any appeal/review/revision/rectification will lie with the proper officer of SGST only. Thus, **Home Furnishers is required to file an appeal only with the Central Tax Appellate Authority** [Section 6 of CGST Act].

- (3) Home Furnishers' **view is not correct in law**. Section 107(6) of the CGST Act provides that **no appeal shall be filed** before the Appellate Authority, unless the appellant has paid –
  - (a) **full amount of tax, interest, fine, fee and penalty** arising from the impugned order, as is admitted by him; and

**Answer :** The decision of Mr. Mahendran of making an appeal to the First Appellate Authority against the order of the RA is **not valid in law**. Any person **aggrieved by an order passed against him by RA** under CGST Act may **appeal to the Appellate Tribunal**, the second level of appeal.

The powers of the RA to revise the orders passed by the subordinate officers under section 108 of the CGST Act, 2017 are as under: -

- (i) The RA may, **on his own motion, or upon information received** by him or on request from the SGST/ UTGST Commissioner, **call for and examine the record** of any proceedings.
- (ii) On examination of the case records, if RA is of the view that the decision/order passed by any officer subordinate to him is **erroneous and illegal/improper or has not taken into account material facts, he may stay the operation of such order** for such period as he deems fit.
- (iii) The RA, after **giving the person concerned an opportunity of being heard and after making** necessary further **inquiry, pass such order**, as he thinks just and proper, **including enhancing or modifying or annulling the said order**.

The RA **can revise an order after the expiry of a period of 6 months** from the date of communication of the said order **but not later than expiry of a period of 3 years** from the passing of the said decision/order.

In case of an order subject to an appeal before Appellate Authority (AA)/Tribunal/High Court/ Supreme Court, the RA **can pass an order on any point which has not been raised and decided in the appeal, before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of 3 years from the date of initial order, whichever is later**.

#### Question 15

Anirudh Ltd. is registered in Telangana and paid IGST on a transaction considering the same to be inter-State supply on the basis that the customer is situated in Delhi.

However, GST authorities have raised a dispute and have issued a show cause notice that since the services are rendered within Telangana, it is an intra-State supply leviable to CGST and SGST.

Anirudh Ltd. has lost the case before the proper officer and also in first appeal before the Departmental Appellate Authority.

Advise Anirudh Ltd. regarding the following:

- (i) Can Anirudh Ltd. file an appeal against the order of the first Appellate Authority? If yes, before which forum can Anirudh Ltd. file the said appeal?
- (ii) Once a valid appeal is filed by Anirudh Ltd. before the appropriate forum, can the authorities insist Anirudh Ltd. to deposit the CGST and SGST which the authorities are claiming that Anirudh Ltd. ought to have paid but has not paid.
- (iii) If Anirudh Ltd. loses at the 2nd appellate stage as well, is there any other Statutory forum available for Anirudh Ltd. to file another appeal? If yes, before which forum?
- (iv) Assuming Anirudh Ltd. loses at all levels, would there be any interest liability on Anirudh Ltd.?

**Answer :**

[CA Final Jan. 2021, 4 Marks]

- (i) **Yes, Anirudh Ltd. can file an appeal** against the order of the first Appellate Authority **to the Appellate Tribunal. Principal Bench of the Tribunal will have jurisdiction to hear the appeal as place of supply is one of the issues in dispute.**
- (ii) **No, Authority can't insist**, because once a valid appeal is filed i.e., **on payment of requisite pre-deposit, the recovery proceedings for the balance amount of the demand in dispute gets stayed** till the disposal of appeal.
- (iii) **Yes, Anirudh Ltd. can file another appeal against the decision** of the Principal Bench of the Tribunal, **directly before the Supreme Court.**

Accordingly, an appeal can be filed by Mr. X to Appellate Authority within 3 months from the date of communication of order (28th April), i.e. 28th July.

Thus, Mr. X has filed the appeal within the time limit prescribed under the GST law.

- (ii) The **Commissioner may**, by order, **direct any officer subordinate to him to apply to the Appellate Authority within 6 months** from the date of communication of the decision/order for the determination of such points arising out of the said decision/ order as may be specified by him.

The Appellate Authority **can condone the delay in filing of appeal by 1 month** if it is satisfied that there was sufficient cause for such delay [Section 107 of the CGST Act, 2017].

In the present case, the Commissioner directs his subordinate officer to file a review application with the Appellate Authority. The subordinate officer should have filed the said application till 3rd September (i.e. within 6 months from the date of communication of order). However, the subordinate officer filed the application on 23rd September, i.e. after the expiry of period of 6 months from the date of communication of order. Thus, in the given case, appeal has not been filed within the time limit prescribed under the GST law.

However, Appellate Authority can condone delay in filing of appeal upto 3rd October (up to 1 month) if it is satisfied that there was sufficient cause for such delay.

## Multiple Choice Questions

### Question 1

An appeal to the High Court can be filed under the CGST Act, 2017 in the following cases:

- (i) By a person aggrieved against the order passed by the State bench of the Appellate Tribunal. A
- (ii) By a person aggrieved against the order passed by the Principal Bench of the Appellate Tribunal.
- (iii) For matter involving substantial question of law.
- (iv) All of the above.

Choose the correct option from the following:

[RTP - Nov. 2019]

- (a) (i) and (ii)      (b) (i) and (iii)      (c) (ii) and (iii)      (d) (iv)

### Question 2

Rupam wishes to file an appeal to Appellate Tribunal. In which of the following cases, the Appellate Tribunal cannot refuse to admit his appeal?

- i. Amount of tax/ ITC or difference in tax/ difference in ITC involved exceeds Rs. 50,000
- ii. Amount of fine, fee or penalty determined by the order exceeds Rs. 50,000
- iii. Amount of tax/ ITC or difference in tax/ difference in ITC involved is Rs. 50,000
- iv. Amount of fine, fee or penalty determined by the order is Rs. 50,000
- v. Amount of tax/ ITC or difference in tax/ difference in ITC involved is less than Rs. 50,000
- vi. Amount of fine, fee or penalty determined by the order is less than Rs. 50,000

[MTP - Nov. 2019]

- (a) i. and ii.      (b) i. and iii.      (c) ii. and iv.      (d) v. and vi.

### Question 3

Mr. Shyam furnished an application form GST APL -01 for filing an appeal against an order issued by the department on 12.01.2020. Consequently a provisional acknowledgement was issued to him immediately. Mr. Shyam also furnished a self-certified copy of order to the appellate authority on 17.01.2020. What shall be the date of filing of appeal in this case?

- (a) 12.01.2020      (b) 17.01.2020      (c) Either (a) or (b) at the option of appellate authority      (d) None of the above

**Question 4**

What shall be the ultimate solution in case where there stands difference in the opinion of members of Benches constituted under Section 109 CGST Act?

- (a) Opinion of President of Principal Bench shall prevail
- (b) Opinion of Members of Principal Bench shall be preferred
- (c) Opinion of Majority shall be accepted
- (d) None of the above

A

**Question 5**

Where shall a person appeal if aggrieved by the order of decision of Principal Bench of Appellate Tribunal?

- (a) Supreme Court
- (b) High Court
- (c) District Court
- (d) None of the above

A

**Question 6**

What shall be the period for which interest shall be paid to the Appellant on the refund of amount paid by him as required by the Appellate Authority and Appellate Tribunal?

- (a) From the date of payment till the date of order of such refund
- (b) From the date of order till the date of refund
- (c) From the date of payment of such amount till the date of refund
- (d) None of the above

**Question 7**

The Appellate Authority or the Appellate Tribunal shall not take any additional evidence produced unless the adjudicating Authority or an officer authorised in this behalf by the said authority has been allowed a reasonable opportunity \_\_\_\_\_

- (a) To examine the evidence or documents or to cross-examine any witness produced by the appellant.
- (b) To produce any evidence or any witness in rebuttal of the evidence produced by the appellant
- (c) Either (a) or (b)
- (d) None of the above

**Question 8**

What are the instances under which additional evidence is called upon and allowed to be submitted by the appellant with the Appellate Tribunal?

- (a) Where the adjudicating authority or, Appellate Authority has refused to admit evidence which ought to have been admitted
- (b) Where the Appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the adjudicating Authority or, as the case may be, the Appellate Authority
- (c) Where the Appellant was prevented by sufficient cause from producing before the adjudicating Authority or, as the case may be, the Appellate Authority any evidence which is relevant to any ground of Appeal.
- (d) Any of the above

**Question 9**

What are the instances under which an order passed by the Appellate Tribunal could be amended by the Tribunal itself?

- (a) Where any error is apparent from record

Therefore, the **fine leviable = Rs. 3,60,000.**

### Question 13

Department initiated prosecution proceedings against a taxable person who had evaded GST of Rs. 4.20 crores by supplying goods without issuing invoice with the intention to evade tax. He has approached the Commissioner with a request for compounding the offence. After considering the request, the Commissioner has directed him to pay an amount of Rs. 2.50 crores as compounding amount. Indicate the minimum and maximum limits for compounding amount. Is the amount fixed by the Commissioner in this case within the limits prescribed under the law? What is the consequence of the decision of the commissioner allowing the request for compounding the offence?

(A)

[CA Final Nov. 2018, 4 Marks]

**Answer :** In the present case, the assessee has committed offence u/s 132(1)(a) which is punishable u/s 132(1)(ii) [as the tax evaded is Rs. 4.20 crores].

As per section 138 of the CGST Act, 2017 read with rule 162(3A) of the CGST Rules, 2017, if any assessee commits any offence u/s 132(1)(a) which is punishable u/s 132(1)(ii), then, the minimum compounding amount shall be 40% of the amount of tax evaded and Maximum compounding amount shall be 60% of the amount of tax evaded.

In the present case, the **minimum limit for compounding** is Rs. 1.68 crores (40% x Rs. 4.20 crores).

The **maximum limit for compounding** in this case is Rs. 2.52 crores (60% x Rs. 4.20 crores).

Thus, the amount fixed by the Commissioner at Rs. 2.50 crores is within the limits prescribed under the law.

If the taxable person **pays the compounding amount** decided by the Commissioner, **no further proceedings** shall be initiated under GST law against the accused person in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

### Question 14

From the following details, calculate the amount to be paid, for release of goods detained or seized under section 129 of the CGST Act, 2017, if owner of the goods does not come forward for payment of applicable penalty.

Details are as follows:

Particulars	Amount (Rs.)
Value of goods	30,00,000
Applicable CGST on such goods	2,70,000
CGST already paid on such goods	1,80,000

Would your answer be different if goods were exempted from GST and value remains the same namely Rs. 30,00,000?

[CA Final May 2019, 5 Marks]

**Answer :** If owner of the goods does not come forward for payment of applicable penalty, the amount of penalty to be paid for release of goods detained or seized under section 129 of the CGST Act, 2017 is = 50% of the value of the goods or 200% of the tax payable on such goods, whichever is higher.

Therefore, in the given case, the Penalty payable = [(50% of Rs. 30,00,000) or (200% of Rs. 2,70,000)], whichever is higher

= Rs. 15,00,000 or Rs. 5,40,000, whichever is higher

= **Rs. 15,00,000 (under CGST).**

However, **in case of exempted goods**, amount to be paid for release of goods detained is equal to 5% of the value of goods or Rs. 25,000, whichever is less.

= 5% of Rs. 30,00,000 or Rs. 25,000, whichever is less

= **Rs. 1,50,000 or Rs. 25,000, whichever is less**

= **Rs. 25,000 (under CGST).**

### Question 15



XYZ carries goods from Vadodara to Pune. The value of the goods is Rs. 80,000 which are chargeable to tax @ 18% IGST and in transit, proper officer intercepted the same under section 68 of the CGST Act, and found contravention.

Calculate the penalty payable under section 129 of CGST Act, 2017:

- If XYZ comes forward for payment of penalty,
- If XYZ does not come forward for payment of penalty. [CA Final Nov. 2022, 4 Marks] [CA Final May 2019, 4 Marks]

**Answer :** The penalty payable under section 129 of the CGST Act, 2017 is

- (a) **Where owner comes forward:** on payment of **penalty equal to 200% of the tax payable** on such goods;
- (b) **Where owner does not come forward:** on payment of **penalty equal to 50% of the value of the goods or 200% of the tax payable** on such goods, **whichever is higher.**

By virtue of section 20 of the IGST Act, 2017 provisions of penalty payable under section 129 of the CGST Act, 2017 apply in case of IGST as well. However, where the penalty is leviable under the CGST Act, 2017 and the SGST/UTGST Act, 2017, the penalty leviable under the IGST Act, 2017 shall be the sum total of the said penalties. Therefore, penalty payable under IGST Act, 2017 is double the penalty payable under section 129 of the CGST Act, 2017.

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

- (a) **If XYZ comes forward for payment of penalty** [It has been assumed that XYZ is the owner of the goods] –
- $$= [\text{Rs. } 80,000 \times 18\% \text{ (IGST) i.e. Rs. } 14,400] \times 200\%$$
- $$= \text{Rs. } 28,800$$
- (b) **If XYZ does not come forward for payment of penalty**
- $$= [\text{Rs. } 80,000 \times 100\% \text{ (IGST = CGST + SGST)}] \text{ or } 200\% \text{ of Rs. } 14,400, \text{ whichever is higher.}$$
- $$= \text{Rs. } 80,000 \text{ or Rs. } 28,800, \text{ whichever is higher.}$$
- $$= \text{Rs. } 80,000$$

**Note:** In the above answer, the penalty payable has been computed in accordance with the provisions of the IGST Act, 2017 as tax chargeable on the goods is IGST. However, the question can also be answered on the basis of the provisions of section 129 of the CGST Act, 2017.

### Question 16

Ganesh Enterprises, a registered supplier under the GST law, has committed an offence that is compoundable. The Department has instituted prosecution against the proprietor of Ganesh Enterprises and he is of the opinion that he shall not be able to apply for compounding of the offence as the prosecution has been launched. He seeks your advice whether he has the opportunity to apply for compounding of the offence and the consequences arising therefrom.

[CA Final Nov. 2019, 4 Marks]

**Answer :** A person accused of an offence is permitted to make an application for compounding of an offence even after the institution of prosecution against him.

Therefore, in the given case, Ganesh Enterprises can apply for compounding of offence even though prosecution has been instituted/launched against him.

On payment of compounding amount determined by the Commissioner, the criminal proceedings which have been initiated against Ganesh Enterprises in respect of the said offence, shall stand abated.

The amount for compounding of offences under this section shall be such as may be prescribed, subject to the **minimum amount** not being less than **25% of the tax involved** and the **maximum amount** not being more than **100% of the tax involved**.

### Question 17

M/s. ABC Manufacturers, registered in West Bengal, sold air-conditioner to a retail seller in Bhubaneswar, at a value of Rs. 49,000 (excluding GST leviable @ 18%). Now, it wants to send the consignment of air-conditioning machine to the retail seller in Bhubaneswar. You are required to advise M/s. ABC Manufacturers on the following issues along with suitable explanations:

**Answer :** 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,

then, such person shall be liable to pay a **penalty of**

- (i) **Rs. 10,000**  
 or  
 (ii) **an amount equivalent to the ITC availed of or passed on (Rs. 25 lakh, in this case), whichever is higher.**

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

### Question 20

Arjun has committed offence under CGST Act which can be compounded as per provisions of section 138(1) of the CGST Act, 2017. He has evaded GST of Rs. 10 crores by supplying goods without issuing invoice with the intention to evade tax. He wishes to apply to Commissioner for compounding the said offence. You are required to compute minimum and maximum compounding amount as per provisions of section 138(2) of the CGST Act, 2017 payable by Arjun. What are the consequences, if Arjun pays such compounding amount as may be determined by Commissioner? [CA Final Nov. 2022, 5 Marks]

**Answer :** In the present case, the Arjun has committed offence u/s 132(1)(a) which is punishable u/s 132(1)(i) [as the tax evaded is exceeding Rs. 5 crores].

As per section 138 of the CGST Act, 2017 read with rule 162(3A) of the CGST Rules, 2017, if any assessee commits any offence u/s 132(1)(a) which is punishable u/s 132(1)(i), then, the minimum compounding amount shall be 50% of the amount of tax evaded and Maximum compounding amount shall be 75% of the amount of tax evaded.

In the present case, the minimum limit for compounding shall be Rs. 5 crores (50% x Rs. 10 crores).

The maximum limit for compounding in this case is Rs. 7.50 crores (75% x Rs. 10 crores).

If Arjun pays such compounding amount as may be determined by Commissioner, no further proceedings shall be initiated under this Act against him in respect of the same offence and any criminal proceedings, if already initiated in respect of the said offence, shall stand abated.

### Question 21

Whether action can be taken for transportation of goods without valid documents or if goods are attempted to be removed without proper record in books? If yes, explain the related provisions under the CGST Act, 2017.

[MTP - May 2018]

**Answer :** Yes, action can be taken for **transportation of goods without valid documents** or if goods are attempted to be removed without proper record in books.

Where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made thereunder, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such **goods and conveyance shall be liable to detention** or seizure and after detention or seizure, shall be released,-

- (a) **Where owner comes forward:** on payment of **penalty equal to 200% of the tax payable** on such goods **and, in case of exempted goods**, on payment of an amount **equal to 2% of the value of goods or Rs. 25,000/-, whichever is less**, where the owner of the goods comes forward for payment of such penalty;
- (b) **Where owner does not come forward:** on payment of **penalty equal to 50% of the value of the goods or 200% of the tax payable** on such goods, **whichever is higher, and in case of exempted goods**, on payment of an amount **equal to 5% of the value of goods or Rs. 25,000/-, whichever is less**, where the owner of the goods does not come forward for payment of such penalty;

**Question 6**

A, a partnership firm committed an offence. Who shall be liable for the same?

- (a) All the partners
- (b) All the partners unless they prove offence committed without their knowledge
- (c) All the employees
- (d) None of the above

**Question 7**

In which of the following cases, compounding of offence is not allowed under section 138 of CGST Act, 2017?

- (i) a person who has been allowed to compound once in respect of any of the offences specified in clauses (a) to (f), (h), (i) & (l) of section 132(1).
  - (ii) a person who has been allowed to compound once in respect of any offence, other than those in clause (i) in respect of supplies of value exceeding one crore rupees.
  - (iii) a person who has been accused of committing an offence under clause (b) of sub-section (1) of section 132.
  - (iv) a person who has been convicted for an offence under this Act by a Court.
- (a) (i), (iii), (iv)                      (b) (ii), (iii)                      (c) (ii), (iii), (iv)                      (d) All of the above

**Question 8**

Mr. Motilal, a trader registered in Delhi, receives an order from Mr. Chotilal, registered in Noida, Uttar Pradesh, for supply of goods of Rs. 1,00,000/- taxable @ 18%. Mr. Motilal, agrees to supply the goods ex-factory. Mr. Motilal, supplied goods on 3-Nov-2018 and issued a tax invoice of Rs. 1,18,000/- (Rs. 1,00,000/- + 18,000/- IGST) in the name of Mr. Chotilal. Mr. Chotilal, arranged his own vehicle for transportation of goods from Delhi to Noida. However, during transportation of goods, the vehicle of Mr. Chotilal, was stopped and checked by the Proper Officer. The Proper officers found that there was no e-way bill along with the tax invoice. The owner of the goods decided to pay the penalty and got the goods released himself. According to the provisions of section 129 of the CGST Act, 2017, what is the amount to be paid for release of goods and who shall make the payment,-

- (a) Payment of penalty equal to 200% of the tax payable by Mr. Motilal, i.e. Rs. 36,000/- Penalty
- (b) Payment of penalty equal to 200% of the tax payable by Mr. Chotilal i.e. Rs. 36,000/- Penalty
- (c) Payment of penalty equal to 100% of the value of goods by Mr. Motilal i.e. Rs. 1,00,000/- penalty
- (d) Payment of penalty equal to 100% of the value of goods by Mr. Chotilal i.e. Rs. 1,00,000/- penalty

**Question 9**

Shagun started supply of goods in Vasai, Maharashtra from 01.01.20XX. Her turnover exceeded the threshold limit for registration on 25.01.20XX. However, she didn't apply for registration. Determine the amount of penalty, if any, that may be imposed on Shagun under section 122(1) of the CGST Act, 2017 on 31.03.20XX, if the tax evaded by her, as on said date, on account of failure to obtain registration is Rs. 1,26,000:

- (a) Rs. 10,000                      (b) Rs. 1,26,000                      (c) Rs. 12,600                      (d) None of the above

**Question 10**

Sukanya, a supplier registered under GST, failed to pay the GST amounting to 5,000 for the month of January. The proper officer imposed a penalty on Sukanya for failure to pay tax. Sukanya believes that it is a minor breach and in accordance with the provisions of section 126 of the CGST Act, 2017, no penalty is imposable for minor breaches of tax regulations. In this regard, which of the following statements is true?

- (a) Penalty is leviable on Sukanya since the breach is considered as a minor breach only if amount of tax involved is less than 5,000.
- (b) Penalty is leviable on Sukanya since the breach is considered as a "minor breach" if amount of tax involved is less than 2,500.



- SEZ Act does not contain any provision for levy and collection of export duty on goods supplied by a DTA unit to a Unit in a Special Economic Zone for its authorised operations. Since, there is no charging provision in the SEZ Act providing for the levy of customs duty on such goods, export duty cannot be levied on the DTA supplier.
- Reading section 12(1) of the Customs Act, 1962 along with sections 2(18), 2(23) and 2(27) makes it apparent that customs duty can be levied only on goods imported into or exported beyond the territorial waters of India.

Since, both the SEZ unit and the DTA unit are located within the territorial waters of India, supplies from DTA to SEZ would not attract section 12(1) [charging section for customs duty].

### Question 6

Goods manufactured or produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India. Is the proposition correct or any concession is provided on such import? Discuss briefly.

**Answer :** The given proposition is correct i.e., goods produced in India, which were earlier exported and thereafter imported into India will be treated at par with other goods imported into India [Section 20 of the Customs Act, 1962]. However, the following concessions are being provided in this regard:

- (i) Maximum import duty will be restricted to duty drawback or refund availed or integrated tax not paid or amount of RoDTEP or RoSCTL allowed at the time of export. Ⓐ
- (ii) Where the goods were originally exported for repairs, the duty or tax or cess on re-importation is restricted to the fair cost of repairs including cost of materials used in repairs whether such costs are actually incurred or not, insurance and freight charges, both ways done abroad.

The above two concessions are given subject to the condition that:

- (a) the re-importation is done within 3 years or 5 years if time is extended.
- (b) the exported goods and re-imported goods must be the same.

### Question 7

Write a brief note on stages of imposition of taxes and duties.

**Answer :** Three stages of imposition of taxes and duties

All taxes and duties are imposed in three stages, which are levy, assessment and collection:-

- (a) **Levy** is the stage where the declaration of liability is made and the persons or the properties in respect of which the tax or duty is to be levied is identified and charged.
- (b) **Assessment** is the procedure of quantifying the amount of liability. The liability to pay tax or duty does not depend upon assessment.
- (c) The final stage is where the tax or duty is actually collected. The **collection of tax** or duty may for administrative or other reasons be postponed to a later time.

### Question 8

Discuss the provisions relating to denaturing or mutilation of goods.

**Answer :** Section 24 of the Customs Act, 1962 empowers Central Government to make rules for permitting to denature/mutilate the imported goods, which are ordinarily used for more than one purpose, so as to render them unfit for one or more of such purpose.

If any imported goods can be used for more than one purpose and duty is leviable on the basis of its purpose of utilisation, then denaturing or mutilation of such goods is useful. **By denaturing, goods are made unfit for other purposes. After denaturing process, goods can be used only for one purpose and accordingly duty can be levied.**

Denaturing of Spirit Rules, 1972 specify procedure for denaturing spirit.

### Question 9

State and summarise the provisions and procedure in the Customs Act, 1962 governing preparation and filing of a bill of entry.

**Answer :** It is the duty of the importer of any goods to make an application electronically on the customs automated system to the proper officer for clearance of the goods. The importer is required to make an electronic integrated declaration to the Customs Computer Systems through network facility. The Bill of Entry (Electronic Integrated Declaration and Paperless Processing) Regulations, 2018 provides the detailed provisions in this regard.

**Time limit for filing :** According to section 46(3), the importer shall present the bill of entry before the end of the day (including holidays) preceding the day on which the aircraft/vessel/vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing. The proviso to section 46(3) provides that the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival.

Further, a bill of entry may be presented at any time not exceeding thirty days prior to the expected arrival of the aircraft/vessel/vehicle by which the goods have been shipped for importation into India.

However, where the bill of entry is not presented within the time so specified and the proper officer is satisfied that there was no sufficient cause for such delay, the importer shall pay prescribed charges for late presentation of the bill of entry.

### Question 16

With reference to the recent facility, 'Clear first-Pay later' extended to importers under the customs law, answer the following questions:

- (i) What is the objective of the facility?
- (ii) Who is eligible to avail this scheme?
- (iii) What are the due dates for payment of duty under this facility?
- (iv) What are the circumstances when the deferred payment facility will not be available? [RTP - May 2018]

OR

State the salient features of "Deferred duty payment facility" with reference to Customs Act, 1962 and rules thereunder. [CA Final May 2018, 5 Marks]

**Answer :**

- (i) 'Clear first-Pay later' i.e., deferred duty payment is a mechanism for de-linking duty payment and customs clearance. The aim is to have a **seamless wharf to warehouse transit** in order to facilitate just-in-time manufacturing.
- (ii) The Central Government has permitted the following class of importers to make deferred payment of import duty:
  - (a) Importers certified under **Authorised Economic Operator Programme as AEO (Tier - Two) and AEO (Tier - Three);**
  - (b) **Authorised Public Undertaking.**

Explanation : For the purpose of this notification :

- (a) AEO means Authorised Economic Operator;
- (b) Authorised Public Undertaking means Authorised Public Undertaking,

approved by the Directorate of International Customs under the Central Board of Indirect Taxes and Customs.

As a part of the ease of doing business focus of the Government of India, the CBIC has rolled out the AEO (Authorized Economic Operator) programme.

It is a trade facilitation move wherein benefits are extended to the entities who have demonstrated strong internal control systems and willingness to comply with the laws administered by the CBIC.

- (iii) **The due dates for payment of deferred duty are -**

P.T.O.



S.N.	Goods corresponding to bill of entry returned for payment from	Due date of payment of duty (excluding holidays)
1.	1 <sup>st</sup> day to 15 <sup>th</sup> day of any month	16 <sup>th</sup> day of that month
2.	16 <sup>th</sup> day till the last day of any month other than March	1 <sup>st</sup> day of the following month
3.	16 <sup>th</sup> day till the 31 <sup>st</sup> day of March	31 <sup>st</sup> March

(A) However, the Central Government may, under exceptional circumstances, and for reasons to be recorded in writing, allow payment to be made on a different due date.

The eligible importer **shall pay the duty electronically** except where Assistant/Deputy Commissioner of Customs allow payment by any other mode for reasons to be recorded in writing.

(iv) If there is default in payment of duty by due date more than once in 3 consecutive months, the facility of deferred payment will not be allowed unless the duty with interest has been paid in full.

(A) However, the eligible importer shall be permitted to make the deferred payment if he has-

1. paid the duty for a bill of entry within due date in terms of rule 4; and
2. paid the differential duty for the same bill of entry along with the interest on account of reassessment within 1 day (excluding holidays).

The **benefit** of deferred payment of duty **will not be available in respect of the goods which have not been assessed** or not declared by the importer in the bill of entry.

#### Question 17

An importer filed a bill of entry after 60 days of filing Import General Manifest. The Deputy Commissioner of Customs imposed a penalty of Rs. 10,000 for late filing of the bill of entry. Since, importer wanted to clear the goods urgently, he paid the penalty. Can penalty be imposed for late filing of the bill of entry? Can bill of entry be filed in advance? Examine the issue regarding period available for filing bill of entry in the light of relevant statutory provisions?

[CA Final May 2018, 5 Marks]

**Answer :** Yes, charges are payable for late filing of bill of entry if an importer fails to present the bill of entry before the end of the day (including holidays) preceding the day on which the aircraft/vessel/vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing, and the proper officer is satisfied that there was no sufficient cause for such delay [Section 46(3) of the Customs Act, 1962]. **Yes, a bill of entry can be filed in advance.** It can be presented at any time **not exceeding 30 days prior to the expected arrival of the aircraft or vessel or vehicle** by which the goods have been shipped for importation into India vide proviso to section 46(3) of the Customs Act, 1962. In the given case also, the time period as described above will be available - with reference to the date of arrival of vessel/aircraft - for filing the bill of entry.

## Section B – Additional Questions For Practice

### [ ICAI Past Exam Papers, MTPs And RTPs ]

#### Question 18

What is the maximum period of storage allowed for warehousing without warehousing under section 49 of the Customs Act, 1962?

[CA Final May 2014]

**Answer :** The maximum period of storage allowed for warehousing without warehousing u/s 49 of the CA, 1962 in a public warehouse is 30 days, which can be extended by Commissioner of Customs for a further period not exceeding 30 days at a time.

#### Question 19

Hence, **limitation of one year** applicable to refunds of customs duty will **not apply to refunds of amount paid to the Government by mistake**. In view of the same, the limitation period of one year will not apply to the duty paid twice by mistake.

### Question 13

Mr. X, a chemical manufacturer, imports a machine from Germany on 12<sup>th</sup> January, 2019 for ₹20 lakh. Mr. X is eligible for concessional rate of customs duty on capital goods imported by him subject to the condition that he follows the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. Machinery was put to use on 1<sup>st</sup> February, 2019. On 5<sup>th</sup> April, 2022, Mr. X wants to clear the machine for home consumption after having used the machine for the specified purpose for which it was imported. Mr. X requires your help in calculating the customs duty he will be liable to pay for such clearance as per rule 7 of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017. Concessional rate of basic customs duty is 5%. Normal rate of basic customs duty is 20%. Calculate the basic customs duty payable by Mr. X on clearance of such capital goods for home consumption on 5th April, 2022. Ignore interest calculation. [CA Final Nov. 2022, 5 Marks]

**Answer :** **Computation of basic customs duty payable by Mr. X**

An importer who has imported the capital goods availing benefit of an exemption notification, may clear such goods after using them for specified purpose, on payment of duty equal to difference between the duty leviable on such goods without exemption and duty already paid at the time of importation, along with interest, on the depreciated value allowed in straight line method, as below:

- (i) for every quarter in the first year @ 4%;
- (ii) for every quarter in the second year @ 3%;
- (iii) for every quarter in the third year @ 3%;
- (iv) for every quarter in the fourth and fifth year @ 2.5%;
- (v) and thereafter for every quarter @ 2%.

Computation corrected  
as per interpretation  
of LAW

Thus, depreciation % [for the period from 1<sup>st</sup> February, 2019 to 5<sup>th</sup> April, 2022] will be computed as follows :

01.02.2019 to 31.01.2020 = 4 quarters x 4 = 16%

01.02.2020 to 31.01.2021 = 4 quarters x 3 = 12%

01.02.2021 to 31.01.2022 = 4 quarters x 3 = 12%

01.02.2019 to 05.04.2022 = 1 quarter x 2.5 = 2.5%

Total depreciation % will be 42.5%

Depreciation amount will be : 42.5% of ₹ 20 Lakh = ₹ 8.50 lakh

Depreciated value of the machine is ₹ 20 Lakh - ₹ 8.50 lakh = ₹ 11.50 lakh

Accordingly, basic customs duty payable [20% - 5%] by Mr. X will be computed as follows:

= [₹ 11.50 lakh × 15%] = ₹ 1,72,500

### Question 14

Rishabh Traders is engaged in trading of cast iron moulds. It imported a total of 600 units of cast iron moulds in two consignments of 200 and 400 units which has been valued at Rs. 1,500 per unit. The customs duty on the imported moulds has been assessed at Rs. 250 per unit. Rishabh Traders sells the moulds for Rs. 2,030 per unit after adding its profit margin of Rs. 280 per unit.

After one month of selling the entire consignment of cast iron moulds, Rishabh Traders found that there had been an error in payment of amount of duty, in which duty for the consignment of 200 units was paid as if it was 400 units, resulting in excess payment of duty. Rishabh Traders files an application for refund for Rs. 50,000 (200 X 250). You are required to determine whether the unjust enrichment is attracted in the given case? [RTP- Nov. 2021]

Particulars	CGST (Rs.)	SGST (Rs.)
ITC on inputs and capital goods claimed on 02.10.20XX [Refer Ans. of last question]	99,000	99,000
ITC on air conditioner used in the office purchased on 15.10.20XX	18,000	18,000
ITC on freight paid to GTA	500	500
ITC on packing charges	2,700	2,700
Total ITC available with the firm	1,20,200	1,20,200
ITC reversal on input services [Refer Working Note 1]	(363)	(363)
Net ITC available with the firm	1,19,837	1,19,837

**Working Note 4**

Particulars	Total turnover for the month of October, 20XX* (Rs.)	Turnover in the month of October under regular scheme [03.10.20XX-31.10.20XX] (Rs.)
'P'	8,00,000 [(10,00,000 - 3,60,000) × 125%]	6,25,000 [8,00,000 - 1,00,000 - 31,250 - 43,750]
'Q'	1,00,000 [(2,00,000 - 1,20,000) × 125%]	80,000 [1,00,000 - 3,000 - 2,000 - 15,000]
Aggregate turnover	9,00,000	7,05,000

Note - Turnover for October, 20XX will be computed as under:

\*Turnover = Cost of goods sold\*\* × 125% (20% margin on sales = 25% margin on cost)

\*\*Cost of goods sold = Stock as on 30.09.20XX less stock as on 31.10.20XX (since no purchases are made after September, 20XX)

**Question 19**

Super Lever Limited is engaged in manufacturing of taxable electronic goods. Its two manufacturing units are located in Mumbai and Nagpur and both the units are registered under GST in the State of Maharashtra. The company has another manufacturing unit in Bangalore, registered under GST in the State of Karnataka and a retail showroom located in Ahmedabad, registered under GST in the State of Gujarat.

The company has provided the following details of the activities/transactions undertaken in a tax period:

S.N.	Particulars	Mumbai unit (Rs.)	Nagpur unit (Rs.)
(i)	Sale of taxable goods	12,50,000	13,50,000
(ii)	Interest received on fixed deposits with a nationalised bank		1,08,000
(iii)	Sale of securities [Such securities were purchased for Rs. 2,75,000]	4,50,000	
(iv)	Sale of agricultural land in the vicinity of the manufacturing plant [Stamp duty was paid on Rs. 1,85,00,000]		1,85,00,000
(v)	Sale of old factory building which was not used anymore [Stamp duty was paid on Rs. 75,00,000]	90,00,000	
(v)	Transfer of actionable claims ( <u>other than specified actionable claims</u> )		2,00,000

With the help of above information, you are required to determine the value of exempt supply provided by Nagpur unit and Mumbai unit. Will your answer be different if the value of exempt supply provided by Nagpur unit and Mumbai unit is to be determined, for the purpose of apportionment of ITC under section 17(3)? [RTP- Nov. 2022]

**Answer :** As per section 2(47), exempt supply means supply of any goods or services or both which attracts nil rate of GST or which may be wholly exempt from GST and includes nontaxable supply. An activity or transaction which is not a supply per se is not an exempt supply.

In view of the same, the value of exempt supply by Nagpur unit and Mumbai unit has been computed as under:

Particulars	Mumbai unit (Rs.)	Nagpur unit (Rs.)
Sale of taxable goods	--	--
Interest received on fixed deposits [Services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest are exempt vide Notification No. 12/2017 CT (R) dated 28.06.2017]	--	1,08,000
Sale of securities [Securities are neither goods nor services in terms of section 2(52) and 2(102) of the CGST Act, 2017. Hence, sale of securities is neither a supply of goods nor a supply of services. Thus, the same is not an exempt supply.]	--	--
Sale of agricultural land [Sale of land is neither a supply of goods nor a supply of services in terms of para 5 of Schedule III to the CGST Act, 2017. Hence, the same is not an exempt supply.]	--	--
Sale of old factory 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 an exempt supply.]	--	--
Transfer of actionable claims (other than specified actionable claims) [Transfer of actionable claims (other than specified actionable claims) is neither a supply of goods nor a supply of services in terms of para 6 of Schedule III to the CGST Act, 2017. Hence, the same is not an exempt supply.]	--	--
<b>Total value of exempt supply</b>	<b>Nil</b>	<b>1,08,000</b>

However, value of exempt supply by Nagpur unit and Mumbai unit for the purpose of apportionment of ITC under section 17(3) is not same and is determined as follows:

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 section 17(3), the expression "value of exempt supply" shall not include the value of activities or transactions specified in Schedule III, except sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building and Supply of warehoused goods to any person before clearance for home consumption. Further, 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 1 to rule 43, the aggregate value of exempt supplies for the purpose of rules 42 and 43, 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.

In view of the aforesaid provisions, value of exempt supply by Nagpur unit and Mumbai unit for the purpose of apportionment under section 17(3) is as follows:

Particulars	Mumbai unit (Rs.)	Nagpur unit (Rs.)
Sale of taxable goods	--	--

Interest received on fixed deposits [Excluded from value of exempt supply by virtue of explanation 1 to rule 43]	--	--
Sale of securities [1% of Rs. 4,50,000] [Includible as per section 17(3). Value of exempt supply in respect for security is 1% of the sale value of such security.]	4,500	--
Sale of agricultural land [Includible as per section 17(3). Value of exempt supply in respect of land is the value adopted for paying stamp duty.]	--	1,85,00,000
Sale of old factory building [Includible as per section 17(3). Value of exempt supply in respect of building is the value adopted for paying stamp duty.]	75,00,000	--
Transfer of actionable claims (other than specified actionable claims) [Excluded from value of exempt supply by virtue of explanation to section 17(3).]	--	--
<b>Total value of exempt supply</b>	<b>75,04,500</b>	<b>1,85,00,00</b>

### Question 20

In the above question, all other things remaining the same, compute the value of supply (most beneficial) made by Bangalore unit as well as the value of supply (most beneficial) made by Ahmedabad Retail Showroom, with respect to transfer of goods by these units to M/s. Equilibrium Sales, M/s. Paridhi Sales and M/s. Dhara Enterprises, if Super Lever Limited furnishes the following additional information for the month of October:

- Bangalore unit has appointed M/s. Equilibrium Sales as its sole selling agent. M/s. Equilibrium Sales sells the electronic goods of Bangalore unit under the invoice issued in its own name. The Bangalore unit transferred the goods costing Rs. 7,25,000 to M/s. Equilibrium Sales on 20th October which were sold by M/s. Equilibrium Sales on 31st October at Rs. 7,65,000. On 20th October, another electronic goods' manufacturer supplied the goods of like kind and quality to M/s. Equilibrium Sales as the one supplied by the Bangalore unit at a price of Rs. 7,75,000.
- The Retail Showroom at Ahmedabad transfers goods costing Rs. 85,000 to its agent, M/s. Paridhi Sales on 12th October. M/s. Paridhi Sales sells such goods on 18th October at Rs. 5,00,000 under the invoice issued in the name of Retail Showroom at Ahmedabad. On 17th October, M/s Paridhi Sales has sold goods of like kind and quality as the one supplied by the Retail Showroom at Ahmedabad to an unrelated customer at Rs. 4,70,000.

The Retail Showroom at Ahmedabad also transfers goods costing Rs. 95,000 to its agent, M/s. Dhara Enterprises on 15th October. M/s. Dhara Enterprises sells such goods on 20th October at Rs. 1,00,000 under the invoice issued in its own name. On 19th October, M/s Dhara Enterprises has sold goods of like kind and quality as the one supplied by the Retail Showroom at Ahmedabad to an unrelated customer at Rs. 98,000.

Note: M/s. Equilibrium Sales, M/s. Paridhi Sales and M/s. Dhara Enterprises are not eligible for full input tax credit. Further, open market value of the goods is not available in any of the above cases. [RTP- Nov. 2022]

### Answer :

- As per clause (c) of explanation to section 15, persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related. Thus, in the given case, since M/s. Equilibrium Sales is a sole selling agent of Bangalore unit, both are related persons.

Further, an activity/transaction qualifies as supply under GST only if it is undertaken for a consideration and is in course/furtherance of business. However, supply of goods between 'related persons' made in the course or furtherance of business qualifies as supply even if made without consideration [Section 7(1)(c) read with Schedule I].

Furthermore, value of supply of goods between related persons (other than through an agent) is determined as per rule 28(1). Accordingly, the value of supply of goods between related persons will be determined as follows:

- the open market value of such supply;
- if open market value is not available, the value of supply of goods or services of like kind and quality;
- if value cannot be determined under the above methods, it must be worked out based on the cost of the supply plus 10% mark-up or by other reasonable means, in that sequence.