

INDIRECT TAX LAWS AND PRACTICE

**GROUP - IV
PAPER - XVIII**



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THE INSTITUTE OF COST ACCOUNTANTS OF INDIA
(Statutory body under an Act of Parliament)

SYLLABUS - 2016

WORK BOOK

INDIRECT TAX LAWS AND PRACTICE

FINAL

GROUP – IV

PAPER – 18



The Institute of Cost Accountants of India

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Preface

Professional education systems around the world are experiencing great change brought about by the global demand. Towards this end, we feel, it is our duty to make our students fully aware about their curriculum and to make them more efficient.

Although it might be easy to think of the habits as a set of behaviours that we want students to have so that we can get on with the curriculum that we need to cover. It becomes apparent that we need to provide specific opportunities for students to practice the habits. Habits are formed only through continuous practice and to practice the habits, our curriculum, instruction, and assessments must provide generative, rich, and provocative opportunities for using them.

The main purpose of this volume is to encourage our students as we are overwhelmed by their response after publication of the first edition. Thus, we are delighted to inform our students about the **e-distribution of the second edition of our 'Work book'**.

This book was written to meet the needs of students as it offers the practising format that will appeal to the students to read smoothly. Each chapter includes unique features to aid in developing a deeper understanding of the chapter contents for the readers. The unique features provide a consistent reading path throughout the book, making readers more efficient to reach their goal.

Discussing each chapter with illustrations integrate the key components of the subjects. In the second edition, we expand the coverage in some areas and condense others.

It is our hope and expectation that this second edition of work book will provide further an effective learning experience to the students like the first & revised editions.

The Directorate of Studies,

The Institute of Cost Accountants of India



Work Book : Indirect Tax Laws and Practice

INDIRECT TAX LAWS AND PRACTICE

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SUGGESTED MARKS DISTRIBUTION FROM EXAMINATION POINT OF VIEW

Only for Practice Purpose

Total 100 Marks	3 Hours	MCQ = 20 Marks
		Others = 80 Marks

Objective Question

20 Marks (2 Marks each questions)	MCQ	1 mark for correct answer
		1 mark for justification

Short Notes / Case Study

Minimum Marks for each Questions	3 Marks
Maximum Marks for each Questions	10 Marks

Practical Problem

Minimum Marks for each Questions	4 Marks
Maximum Marks for each Questions	16 Marks



GOODS & SERVICES TAX (GST)



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Study Note – 1, 2 & 3

INTRODUCTION, LEVY AND COLLECTION OF TAX, CLASSIFICATION OF GOODS AND SERVICES UNDER GST – Reading the Rate Schedule

Learning Objective:

- **GST is levied on supply. The goal of the study note is to learn basic concepts of GST and to understand the concept of supply. This also covers method of classification of goods and services.**

1. Choose the correct alternative and also provide your justification:

- i. GST is a:
- Destination base tax**
 - Source base tax
 - Person base tax
 - State base tax

Reason:

GST is a destination base consumption tax.

- ii. One of the following products is out of GST -
- Natural Gas**
 - Milk
 - Medicine
 - All of the above

Reason:

Petroleum products, natural gas and aviation turbine fuel are out of GST.



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- iii. The activities to be treated as supply of goods or supply of services are referred to in –
- Schedule I
 - Schedule II**
 - Schedule III
 - None of the above

Reason:

As per sec. 7, the activities to be treated as supply of goods or supply of services are referred to in Schedule II

- iv. Gifts not exceeding _____ in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
- ₹ 50,000**
 - ₹ 1,00,000
 - ₹ 75,000
 - ₹ 5,000

Reason:

As per Schedule I, gifts not exceeding ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both

- v. "Composite supply" means:
- a supply made by any person to a recipient consisting of two or more supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other;
 - a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;**
 - two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price
 - None of the above



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Reason:

As per sec. 2(30), composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

vi. "Mixed supply" means:

- a. a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;
- b. **two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply**
- c. two or more individual supplies of goods, made in conjunction with each other by any person for a single price where such supply does not constitute a composite supply
- d. None of the above

Reason:

As per sec. 2(74), mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

vii. Out of the following transactions, identify which of them is composite supply:

- a. **Goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance;**
- b. Supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price
- c. Both of the above
- d. None of the above

Reason:

Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply.



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viii. What are the taxes levied on an intra-State Supply?

- a. IGST
- b. CGST
- c. SGST
- d. **CGST and SGST**

Reason:

In case of intra-State supply, CGST is payable to the Central Government and SGST is payable to the State Government.

ix. What is the maximum GST rate that can be levied on any product or service (combinedly – CGST + SGST)?

- a. 30%
- b. **28%**
- c. 18%
- d. 32%

Reason:

The maximum rate of GST is 28%.

x. Services by an employee to the employer in the course of or in relation to his employment is –

- a. Supply of goods
- b. Supply of service
- c. **Neither a supply of goods nor supply of service**
- d. None of the above

Reason:

As per sec. 7 read with Schedule III, services by an employee to the employer in the course of or in relation to his employment is neither supply of goods nor supply of service



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- xi.** Services of funeral, burial, crematorium or mortuary including transportation of the deceased is:
- a. Supply of goods
 - b. Supply of service
 - c. **Neither a supply of goods nor supply of service**
 - d. None of the above

Reason:

As per sec. 7 read with Schedule III, Services of funeral, burial, crematorium or mortuary including transportation of the deceased is neither supply of goods nor supply of service

- xii.** Renting of immovable property is:
- a. Supply of goods
 - b. **Supply of service**
 - c. Neither a supply of goods nor supply of service
 - d. None of the above

Reason:

As per sec. 7 read with Schedule II, renting of immovable property is supply of service.

- xiii.** Any treatment or process which is applied to another person's goods is:
- a. Supply of goods
 - b. **Supply of service**
 - c. Neither a supply of goods nor supply of service
 - d. None of the above

Reason:

As per sec. 7 read with Schedule II, any treatment or process which is applied to another person's goods is supply of service.



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- xiv.** Which of the following persons can opt for composition scheme?
- a. Person making any supply of goods which are not leviable to tax under this Act;
 - b. Person making any inter-State outward supplies of goods;
 - c. Person effecting supply of goods through an e-commerce operator liable to collect tax at source
 - d. **None of the above**

Reason:

As per sec. 10, registered person shall be eligible to opt for composition scheme provided:

- 1. he is not engaged in the supply of services other than few specified supplies;
- 2. he is not engaged in making any supply of goods which are not leviable to tax under this Act;
- 3. he is not engaged in making any inter-State outward supplies of goods;
- 4. he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and
- 5. he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

- xv.** What is the rate applicable under CGST to a registered person opting to taxes under composition scheme, not being a manufacturer or a hotelier?
- a. **0.5%**
 - b. 1%
 - c. 2.5%
 - d. None of the above

Reason:

As per sec. 10, a registered trader opting to taxes under composition scheme is liable to pay CGST @ 0.5%



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- xvi.** Can a registered person opt for composition scheme only for one out of his 4 business verticals having same Permanent Account Number?
- Yes
 - No**
 - Yes, subject to prior approval of the Central Government
 - Yes, subject to prior approval of the concerned State Government

Reason:

No, Composition scheme is levied for all business verticals with the same PAN. A taxable person will not have the option to select composition scheme for one, opt to pay taxes as per regular provision for other.

- xvii.** Which of the following will be excluded from the computation of 'aggregate turnover'?
- Value of Taxable supplies
 - Value of Exempt Supplies
 - Non-taxable supplies
 - Value of inward supplies on which tax is paid on reverse charge basis**

Reason:

As per sec. 2(6), "aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess.

- xviii.** Silk yarn procured by A Ltd. from a trader, GST is payable by:
- A Ltd.**
 - Trader
 - Both of the above i.e., joint charge (50% of the tax shall be paid by each of them)
 - None of the above



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Reason:

As per sec. 9(3), in case of procurement of silk yarn, reverse charge is applicable. Thus, A Ltd. is liable to pay GST.

xix. When can credit for tax paid under reverse charge mechanism be taken?

- a. **Same month in which payment of tax has been made**
- b. Same month in which liability of tax has occurred
- c. Either of the above
- d. No credit is available

Reason:

ITC will be available in the month in which the tax under reverse charge has been paid.

xx. Threshold limit of turnover for levy of GST in the case of a person exclusively engaged in the supply of goods in the State of Gujarat is:

- a. **₹ 40,00,000**
- b. ₹ 10,00,000
- c. ₹ 75,00,000
- d. ₹ 50,00,000

Reason:

Threshold limit of turnover for levy of GST in the case of a person carrying on business in the State of Gujarat is ₹ 40,00,000.

2. (a) What are the functions of GSTN?

Answer:

The functions of the GSTN, inter alia, include:

- facilitating registration;
- forwarding the returns to Central and State authorities;
- computation and settlement of IGST;
- matching of payment of tax with banking network
- providing tax payers profile
- providing various MIS reports to Central and State Governments based on taxpayers information provided through returns



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(b) Define person as per GST law?

Answer:

As per sec. 2(84), "person" includes—

- a. an individual;
- b. a Hindu Undivided Family;
- c. a company;
- d. a firm;
- e. a Limited Liability Partnership;
- f. an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- g. any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in sec. 2(45) of the Companies Act, 2013;
- h. any body corporate incorporated by or under the laws of a country outside India;
- i. a co-operative society registered under any law relating to co-operative societies;
- j. a local authority;
- k. Central Government or a State Government;
- l. society as defined under the Societies Registration Act, 1860;
- m. trust; and
- n. every artificial juridical person, not falling within any of the above

3. (a) Comment on the followings:

- (i) Where services of an architect from outside India are taken by a person for the construction of his residential property in India. Is it considered as supply for the purpose of GST?
- (ii) Will a not-for-profit entity be liable to tax (if registered under GST) on any supplies effected by it – e.g.: sale of assets received as donation?

Answer:

- (i) Where services of an architect from outside India are taken by a person for the construction of his residential property in India, then although the person in India is not obtaining these services in the course or furtherance of business in India but for his personal purposes, the import of service is covered by the definition of supply and hence taxable.
- (ii) Yes, it would be liable to tax on value as may be determined under Section 15, for said sale of donated assets.

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(b) Which taxes at the Centre and State level were subsumed into GST?

Answer:

At the Central level, the following taxes are being subsumed:

- Central excise duty (Cenvat)
- Additional duties of excise
- Excise Duty under Medicinal and Toilet Preparation Act
- Service Tax
- Additional Customs Duty (CVD)
- Special Additional Duty of Customs (SAD)
- Central Surcharge and Cess

At the State level, the following taxes are being subsumed:

- State VAT/Sales Tax
- Central Sales Tax [levied by Centre but collected by State]
- Octroi and Entry Tax
- Luxury Tax
- Taxes on Lottery, Betting and Gambling
- State Surcharge and Cess

4. (a) ABC Ltd. has provided following information for the month of Sep, 2018:

- **Intra-State outward supply ₹ 8,00,000/-**
- **Inter-State exempt outward supply ₹ 5,00,000/-**
- **Turnover of exported goods ₹ 10,00,000/-**
- **Payment made to GTA ₹ 80,000/-**

Calculate the aggregate turnover of ABC Ltd.

Answer:

Computation of aggregate turnover

Particulars	Amount
Intra-State outward supply	8,00,000
Inter-State exempt outward supply	5,00,000
Turnover of exported goods	10,00,000
Payment made to GTA	-
Aggregate Turnover	23,00,000



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(b) Enlist the activities or transactions which shall not be considered as 'supply' for GST by way of Schedule III?

Answer:

Following are the activities or transactions which shall not be considered as 'supply' for GST by way of Schedule III:

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any Court or Tribunal established under any law for the time being in force.
3. (a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building
6. Actionable claims, other than lottery, betting and gambling.

5. Comment on the following:

- a. Whether supply of laptop and a carry case would constitute a composite supply?**
- b. Whether supply of repair services of laptop with parts would constitute a composite supply?**
- c. Which HSN code is to be used in case of composite supplies?**
- d. Which HSN code is to be used in case of mixed supplies?**

Answer:

- a. In this case, the carry case only adds value to the supply of laptop and therefore, the case would be ancillary while the laptop comprises the predominant element of the supply. Even where the brand of the case is not the same as that of the laptop, and the supplier establishes that the case is naturally bundled with the laptop in the ordinary course of his business, the supply can be treated as a composite supply.
- b. As such, it is the skill and expertise of the supplier that makes the laptop function as desired. Whether replacement is necessary or a mere resetting of the existing parts restores the functionality of the laptop is not known to the customer. Where the object of the contract is unknown to the customer, that object cannot be the purpose of the contract. The only object that is known to the customer is the 'repair service' which makes it the predominant object of supply. This would be the position even if the cost of the parts replaced is higher than the cost of service.
- c. As per sec. 8(a), in case of composite supplies, the HSN code of the principal supply is to be used.
- d. As per sec. 8(b), in case of mixed supplies, the HSN of the supply that attracts the highest rate of tax is to be used.

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6. (a) TPI, a registered as religious trust u/s 12AA of the Income-tax Act, has provided the following information with respect to the activities undertaken by it. You are requested to compute its value of taxable supply:

Particulars	₹
Renting of rooms where charges are ₹ 400 per day	5,00,000
Renting of rooms where charges are ₹ 2,000 per day	6,00,000
Renting of community hall where charges are ₹ 22,000 per day	8,00,000
Renting of kalyanmandapam hall where charges are ₹ 6,000 per day	6,00,000
Renting of shops for business purpose where charges are ₹ 12,000 per month	7,00,000
Renting of shops for business purpose where charges are ₹ 6,000 per month	5,00,000

Answer:

Computation of value of taxable supply:

Particulars	₹
Renting of rooms where charges are ₹ 400 per day	Exempt
Renting of rooms where charges are ₹ 2,000 per day	6,00,000
Renting of community hall where charges are ₹ 22,000 per day	8,00,000
Renting of kalyanmandapam hall where charges are ₹ 6,000 per day	Exempt
Renting of shops for business purpose where charges are ₹ 12,000 per month	7,00,000
Renting of shops for business purpose where charges are ₹ 6,000 per month	Exempt
Value of Taxable Supply	21,00,000

- (b) What is the difference between reverse charge u/s 9(3) and u/s 9(4) of the CGST Act, 2017?

Answer:

The Government has notified a list of goods and services along with the type of recipient who is liable to pay tax on those supplies covered under reverse charge as per sec. 9(3). If the goods or the services are not listed or the recipient is not notified, then reverse charge is not applicable.

On the other hand, as per sec. 9(4) of the CGST Act, the Government may notify a class of registered persons who shall be liable to payment of tax on reverse charge basis, in respect of supply of specified categories of goods or services or both received from an unregistered supplier. However, the supplies made by unregistered suppliers to a registered person are exempted without any threshold limit till 30.09.2019 vide Notification No. 22/2018-Central Tax (Rate) dated 06.08.2018.

7. Write brief note on composition scheme.

Answer:

Composition scheme is an optional scheme available to a taxable person. This scheme is available for a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1 crore.

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However, a reduced limit of ₹ 75 lakhs has been kept for special category states (Assam, Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Tripura, Sikkim and Himachal Pradesh)

The eligible persons and rates of tax under composition scheme is as follows:

S. No.	Eligible Person	Rate of Tax		Total Tax
		Central Tax (CGST)	State Tax (SGST)	
1.	Manufacturer	0.5%	0.5%	1%
2.	Restaurant (which does not serve alcoholic liquor for human consumption)	2.5%	2.5%	5%
3.	Other Suppliers	0.5%	0.5%	1%

Condition & Restrictions to opt for Composition Scheme [Section 10(2)]

- (a) The scheme is not available for services sector, except restaurants.
- (b) Supplier of goods which are not taxable under the GST is not eligible to register under this scheme.
- (c) Tax payers making inter-state supplies is not eligible for composition scheme
- (d) Tax payer making supplies through ecommerce operators who are required to collect tax at source shall not be eligible for composition scheme
- (e) The dealer is neither casual taxable persons nor non-resident taxable persons.
- (f) Tax Payer who is not a manufacturer of such goods as may be notified by the Government on the recommendation of the council is also not eligible for composition scheme

Restrictions:

- A registered person under composition scheme is not permitted to collect tax and neither he will be eligible for any input tax credit.
- A Composition dealer cannot claim input tax credit for goods or services.
- The composition scheme is optional and the option availed of by a registered person under section 10(1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the specified limit.
- A person under composition scheme shall issue a bill of supply and cannot charge tax from recipients of goods or services.
- The dealer under composition scheme shall mention the words "composition taxable person, not eligible to collect tax on supplies" at the top of the bill of supply issued by him; and shall mention the words "composition taxable person" on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business
- Composition scheme would become applicable for all the business verticals having separate registrations within the State and all other registrations outside the State which are held by the person with same PAN. That means, if a taxable person has multiple business verticals and if he has opted for separate registrations for each such vertical, composition scheme would become applicable for all the business verticals and it cannot be applied for selected verticals only.

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Rate of tax in case of composition levy with supply of service - Notification No. 03/2019 CT dated 29-01-2019
 Now a supplier opting for composition scheme has also been permitted to supply services other than restaurant services, with effect from 01-02-2019, tax rate being ½% of turnover of taxable supplies of goods and services in the State or Union territory shall be applicable.

8. (a) Discuss the general rule of interpretation for classification.

Answer:

Where the description read with section or Chapter notes is not enough to correctly classify the goods, then general rules of interpretation have to follow. The principles governing the appropriate classification of goods under the Tariff, as set out in the 'General Rules for Interpretation of this Schedule' to the Customs Tariff are as under.

- Rule 1: Headings are for reference only and do not have statutory force for classification
- Rule 2(a): Reference to an article in an entry includes that article in CKD-SKD condition
- Rule 2(b): Reference to articles in an entry includes mixtures or combination
- Rule 3(a): Where alternate classification available, specific description is required to be preferred
- Rule 3(b): Rely on the material that gives essential character to the article
- Rule 3(c): Apply that which appears later in the tariff
- Rule 4: Examine the function performed that is found in other akin goods
- Rule 5: Cases-packaging are to be classified with the primary article
- Rule 6: When more than one entries are available, compare only if they are at same level

Note: These Rules should be applied sequentially.

(b) Mr. C of Tamil Nadu supplied goods/services for ₹ 20,000 to Mr. M of Maharashtra. SGST and CGST rate on supply of goods and services is 9% each. IGST rate is 18%. Find the following:

- (1) Total price charged by Mr. C.**
(2) Who is liable to pay GST?

Answer:

Computation of total price charged by Mr. C

Particulars	₹
Supply of goods/services	20,000
IGST @ 18%	3,600
Total price charged by Mr. C from Mr. M	23,600

Mr. C is liable to pay GST

Note: Location of supplier and place of supply are in different States. Therefore, IGST is applicable



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9. (a) Is there any option for registered taxable person to withdraw from the composition scheme?

Answer:

The registered taxable person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in Form GST CMP-04. Where the option of composition scheme is lapsed due to non-compliance of any of the eligibility conditions u/s 10 or rules made thereunder, then taxable person shall file an intimation of withdrawal in the same Form GST CMP-04 within 7 days of the occurrence of event leading to disability under the scheme. An intimation for withdrawal or cancellation of permission in respect of any place of business in a State or UT shall be deemed to be an intimation in respect of all other places of business registered on the same PAN.

(b) Write a brief note on GST Council.

Answer:

According to Article 279A of the Constitution, the GST Council has to be constituted by the President within 60 days of the commencement of Article 279A. The notification for bringing into force Article 279A with effect from 12th September, 2016 was issued on 10th September, 2016.

Members of GST Council:

The GST Council is a joint forum of the Centre and the States, and consists of the following members:

1. Chairperson: Union Finance Minister
2. Vice chairperson: to be chosen from amongst the members of Ministers of State government
3. Members:
 - a) The Union Minister of State, in-charge of Revenue/Finance
 - b) The Minister In-charge of finance or taxation or any other Minister nominated by each State Government

Quorum for GST Council Meetings:

- The quorum of GST council is 50% of total members
- Decision is taken by 3/4th majority (75%), wherein-
 - a. the Central Government would have the weightage of 1/3rd of the total vote cast; and
 - b. the State Governments would have a weightage of 2/3rd of the total votes cast.

Functions of the GST Council:

GST Council is basically entrusted with task to make recommendations on the different aspects of GST to the Union as well as states. GST Council under the Constitution is required to make recommendations on the following:

- a. the taxes, cesses and surcharges which may be subsumed in the goods and services tax;
- b. the goods and services that may be subjected to, or exempted from the goods and services tax;
- c. model GST Laws, principles of levy, apportionment of IGST and the principles that govern the place of supply;



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- d. the threshold limit of turnover below which goods and services may be exempted from goods and services tax;
- e. GST rates including floor rates;
- f. any special rates for a specified period, to raise additional resources during any natural calamity or disaster;
- g. special provision with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and
- h. any other matter relating to the GST, as the Council may decide.

The GST Council shall also recommend the date on which GST will be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

10. Whether supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such supplies, would constitute supply of goods or supply of services?

Answer:

The Government vide Circular No. 11/11/2017-GST dated 20.10.2017 has clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

Principal supply has been defined in sec. 2(90) of the Central Goods and Services Tax Act as supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

Printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service falling under heading 9989 of the scheme of classification of services.

While, supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff.



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11. Whether GST will apply wherein goods are moved within the State or from the State of registration to another State for supply on approval basis?

Answer:

In terms of Circular No. 10/10/2017-GST dated 18.10.2017, the goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of delivery of goods. For this purpose, the person carrying the goods for such supply can carry the invoice book with him so that he can issue the invoice once the supply is fructified.

Hence, all such supplies, where the supplier carries goods from one State to another and supplies them in a different State, will be inter-State supplies and attract IGST in terms of Section 5 of IGST Act. And those within the State will be exigible to CGST and SGST in terms of Section 9 of the CGST Act and SGST Act, respectively.

12. (a) Whether import of services will be liable to tax under GST regime?

Answer:

The following import of service will qualify as supply under the CGST Act, 2017:

1. As per sec. 7, import of service for a consideration whether or not in the course or furtherance of business is a supply;
2. As per Schedule I, import of service by a taxable person, even if made without consideration, from a related person or from any of his other establishments outside India, in the course or furtherance of business.

(b) Whether supply of goods by principal to his agent or by agent to his principal is taxable in the absence of consideration?

Answer:

As per sec. 7 read with Schedule I, following shall qualify as supply even if made without consideration:

1. Supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
2. Supply of goods by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.



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Study Note – 4, 5 & 6

TIME OF SUPPLY UNDER GST, VALUE OF SUPPLY UNDER GST PLACE OF SUPPLY UNDER GST

Learning Objective:

- *The goal of the study note is to learn time, value and place of supply. Through this study note one can learn when the liability of GST arises and in which State, person is liable to pay GST.*

1. Choose the correct alternative and also provide your justification:

- i. What is the time of supply of goods, in case of forward charge?
- Date of issue of invoice
 - Due date of issuance of invoice
 - Earlier of (a) and (b)**
 - None of the above

Reason:

As per sec. 12, the time of supply of goods shall be the earlier of the following dates:

- the date of issue of invoice by the supplier or the last date on which he is required to issue the invoice with respect to the supply; or
- the date on which the supplier receives the payment with respect to the supply.

- ii. What is the time of supply of service if the invoice is issued within 30 days from the date of provision of service?
- Date of issue of invoice
 - Date on which the supplier receives payment
 - Date of provision of service
 - Earlier of (a) & (b)**

Reason:

As per sec. 13, the time of supply of services shall be the earliest of the following dates:

- the date of issue of invoice by the supplier, if the invoice is issued within due date of issuance of invoice or the date of receipt of payment, whichever is earlier; or
- the date of provision of service, if the invoice is not issued within such due date or the date of receipt of payment, whichever is earlier



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- iii. What is the time of supply of service for the supply of taxable services up to ₹ 1,000 in excess of the amount indicated in the taxable invoice?
- At the option of the supplier – Invoice date or Date of receipt of consideration**
 - Date of issue of invoice
 - Date of receipt of consideration
 - Date of entry in books of account

Reason:

As per sec. 13, where the supplier of taxable service receives an amount up to ₹ 1,000 in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount

- iv. What is the time of supply of service in case of reverse charge mechanism?
- Date of payment as entered in the books of account of the recipient
 - Date immediately following 60 days from the date of issue of invoice
 - Date of invoice
 - Earlier of (a) & (b)**

Reason:

As per sec. 13(3), in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates:

- the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
 - the date immediately following 60 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier
- v. What is time of supply of goods liable to tax under the reverse charge mechanism?
- Date of receipt of goods
 - Date on which the payment is made
 - Date immediately following 30 days from the date of issue of invoice by the supplier
 - Earlier of (a) or (b) or (c)**

Reason:

As per sec. 12(3), in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates:

- the date of the receipt of goods; or
- the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier

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- vi. The value of supply of goods and services shall be the
- Transaction Value**
 - Market Value
 - Maximum Retail Price
 - None of the above

Reason:

As per sec. 15, the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

- vii. When can the transaction value be rejected for computation of value of supply
- When the buyer and seller are related and price is not the sole consideration
 - When the buyer and seller are related or price is not the sole consideration**
 - It can never be rejected
 - When the goods are sold at very low margins

Reason:

As per sec. 15, the value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.

- viii. What deductions are allowed from the transaction value
- Discounts offered to customers, subject to conditions**
 - Packing Charges, subject to conditions
 - Amount paid by customer on behalf of the supplier, subject to conditions
 - Freight charges incurred by the supplier for CIF terms of supply, subject to conditions

Reason:

As per sec. 15(3), the value of the supply shall not include any discount which is given:

- before or at the time of the supply if such discount has been duly recorded in the invoice issued in respect of such supply; and
- after the supply has been effected, if:
 - such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
 - input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.



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- ix. Rule 30 of the CGST Rules inter alia provides value of supply of goods or services or both based on cost shall be% of cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.
- a. 100
 - b. **110**
 - c. 125
 - d. 150

Reason:

Rule 30 of the CGST Rules inter alia provides value of supply of goods or services or both based on cost shall be 110% of cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services

- x. What will be the value of supply if Manu supply television set for ₹ 35,000 along with the exchange of an old TV and if the price of the television set without exchange is ₹ 50,000, the open market value of the television set is:
- a. **₹ 50,000**
 - b. ₹ 35,000
 - c. ₹ 65,000
 - d. ₹ 15,000

Reason:

As per Rule 27, "Open market value" of supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and price is the sole consideration, to obtain such supply at the same time when the supply being valued is made.

- xi. Supply of goods in the course of import into the territory of India is:
- a. Intra-State supply
 - b. **Inter-State supply**
 - c. Export
 - d. Neither Export nor Import

Reason:

As per sec. 7(2) of the IGST Act, supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.



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- xii. Which of the following is an inter-State supply?
- Supplier of goods located in Kolkata and place of supply of goods is to an SEZ located in Kolkata
 - Supplier of goods located in Kolkata and place of supply of goods in Delhi
 - Supplier of goods located in Kolkata and place of supply of goods is to an SEZ located in Chandigarh
 - All of the above**

Reason:

As per sec. 7 of the IGST Act, supply of goods, where the location of the supplier and the place of supply are in:

(a) two different States;

(b) two different Union territories; or

(c) a State and a Union territory,

- shall be treated as a supply of goods in the course of inter-State trade or commerce.

- xiii. Place of supply in case of installation of elevator is
- Where the movement of elevator commences from the supplier's place
 - Where the delivery of elevator is taken
 - Where the installation of elevator is made**
 - Where address of the recipient is mentioned in the invoice

Reason:

As per sec. 10 of the IGST Act, where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

- xiv. Place of supply of food taken on board at Delhi for an aircraft departing from Delhi to Bangalore via Hyderabad is
- Address of the aircraft carrier mentioned on the invoice of the supplier
 - Delhi**
 - Bangalore
 - Hyderabad

Reason:

As per sec. 10 of the IGST Act, where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.



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- xv. Which of the following is an intra-State supply?
- Supplier of goods located in Delhi and place of supply of goods SEZ located in Delhi
 - Supplier of goods located in Delhi and place of supply of goods in Jaipur
 - Supplier of goods located in Delhi and place of supply of goods in Delhi**
 - All of the above

Reason:

As per sec. 8 of the IGST Act, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply.

2. (a) What do you mean by export of service?

Answer:

“Export of services” means the supply of any service when,—

- the supplier of service is located in India;
- the recipient of service is located outside India;
- the place of supply of service is outside India;
- the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in sec. 8

(b) What is the place of supply of online information and database access or retrieval service?

Answer:

As per sec. 13(12) of the IGST Act, the place of supply of the online information and database access or retrieval services will be location of recipient of service. However, person receiving such service will be deemed to be located in taxable territory (i.e. India) if any two of the following non-contradictory conditions are fulfilled:

- the location of address presented by the recipient of service via internet is in taxable territory;
- the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of service settles payment has been issued in the taxable territory;
- the billing address of recipient of service is in the taxable territory;
- the internet protocol address of the device used by the recipient of service is in the taxable territory;
- the bank of recipient of service in which the account used for payment is maintained is in the taxable territory;
- the country code of the subscriber identity module (SIM) card used by the recipient of service is of taxable territory;
- the location of the fixed land line through which the service is received by the recipient is in taxable territory.

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3. (a) Determine the time of supply if supply involves movement of goods:

S. No.	Date of removal of goods	Date of invoice	Date when goods made available to the recipient	Date on which payment recd.
1.	16-08-2018	17-08-2018	18-08-2018	07-09-2018
2.	18-08-2018	16-08-2018	19-08-2018	07-09-2018
3.	19-10-2018	19-10-2018	21-10-2018	07-09-2018

Answer:

Section 12 which defines time of supply of goods, provides that time of supply of goods shall be earlier of following date:

- (i) The date of issue of invoice by supplier or last date on which supplier is liable to issue invoice as per provision of sec. 31(1) of CGST Act; or
- (ii) The date on which the supplier receives the payment with respect to the supply

Further, as per sec. 31(1), if supply involves movement of goods then invoice shall be issued before or at the time of removal of such goods to recipient. In any other cases, invoice shall be issued at the time of delivery of goods or making available thereof to the recipient.

S. No.	Date of removal of goods	Date of invoice	Date when goods made available to the recipient	Date on which payment is recd.	Time of Supply
1.	16-08-2018	17-08-2018	18-08-2018	07-09-2018	16-08-2018
2.	18-08-2018	16-08-2018	19-08-2018	07-09-2018	16-08-2018
3.	19-10-2018	19-10-2018	21-10-2018	07-09-2018	19-10-2018

Advance received is not taxable at the time of receipt – Notification No. 66/2017-CT dated 15-11-2017.

(b) What is the place of supply of advertisement services are provided to Central Govt., a State Govt., a statutory body or a local authority meant for the States or Union territories?

Answer:

As per Section 12(14) of IGST Act, 2017, the place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis of Rule 3 of the IGST Rules, 2017.

In the case of advertisements over internet, the service shall be deemed to have been provided all over India [Rule 3(h)]

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4. (a) What is the meaning of location of recipient of service?

Answer:

As per sec. 2(14) of the IGST Act, location of recipient of service means:

- a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
- b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- d) in absence of such places, the location of the usual place of residence of the recipient.

(b) From the following particulars, compute the taxable value of supply as per Rule 30 of the CGST Rules

	₹
Direct material consumed (inclusive of IGST @ 18%)	2,36,000
Direct labour	1,60,000
Other direct expenses	40,000
Indirect material	25,000
Factory overhead	80,000
Administrative overhead (20% relating to production capacity)	1,50,000
Selling and distribution expense	1,25,000
Quality Control	36,000
Realisable value of scrap/wastage	20,000
Profit Margin	18%

Answer:

Computation of taxable value of supply

Particulars	₹
Direct material consumed [₹ 2,36,000 / 118%]	2,00,000
Direct labour	1,60,000
Other direct expenses	40,000
Indirect material	25,000
Factory overhead	80,000
Administrative overhead (20% of ₹ 1,50,000)	30,000
Selling and distribution expense	-
Quality Control	36,000
Realisable value of scrap/wastage	(20,000)
Cost of Production	5,51,000
Taxable Value of Supply as per Rule 30 [110% of ₹ 5,51,000]	6,06,100

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5. Comment on the following:

- a. What will be the place of supply for services in relation to organising events?**
- b. What will be the place of supply of services for admission to sporting events?**
- c. What will be the place of supply for restaurant and catering services?**
- d. What is the place of supply of services by way of transportation of goods?**

Answer:

- a. As per sec. 12(7) of the IGST Act, the place of supply of services provided by way of:
- A. organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or
 - B. services ancillary to organisation of any of the events or services referred to above, or assigning of sponsorship to such events:
 - (i) to a registered person, shall be the location of such person;
 - (ii) to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.

However, where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

- b. As per sec. 12(6) of the IGST Act, the place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.
- c. As per sec. 12(4) of the IGST Act, the place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.
- d. As per sec. 12(8) of the IGST Act, the place of supply of services by way of transportation of goods, including by mail or courier to,—
- (i) a registered person, shall be the location of such person;
 - (ii) a person other than a registered person, shall be the location at which such goods are handed over for their transportation.



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6. (a) What will be the time of supply, where tax is liable to be paid on goods under reverse charge mechanism?

Answer:

As per sec. 12(3), in case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates:

- a) the date of the receipt of goods; or
- b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- c) the date immediately following 30 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:

Where the time of supply cannot be ascertained as above, the date of entry in the books of accounts of the recipient shall be the time of supply of goods.

(b) What will be the time of supply in case of supply of vouchers?

Answer:

As per sec. 12(4), time of supply of vouchers shall be the earliest of the following:

- a. date of issue of voucher, if the supply is identifiable at that point; or
- b. date of redemption of voucher, in all other cases.

(c) What do you mean by continuous supply of goods?

Answer:

As per sec. 2(32) "continuous supply of goods" means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;

7. State the provision in respect of time of supply of services.

Answer:

As per sec. 13, the liability to pay tax on services shall arise at the time of supply, as determined in accordance with the following provisions:



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- The time of supply of services shall be the earliest of the following dates:
 - a) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed u/s 31(2) [i.e. 30 days and in few cases 45 days] or the date of receipt of payment, whichever is earlier; or
 - b) the date of provision of service, if the invoice is not issued within the period prescribed u/s 31(2) or the date of receipt of payment, whichever is earlier; or
 - c) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (a) or clause (b) do not apply.
- However, where the supplier of taxable service receives an amount up to ₹ 1,000 in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.
- In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates:
 - a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
 - b) the date immediately following 60 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:
- In case of supply of vouchers by a supplier, the time of supply shall be:
 - a) the date of issue of voucher, if the supply is identifiable at that point; or
 - b) the date of redemption of voucher, in all other cases
- Where it is not possible to determine the time of supply as per aforesaid provisions, the time of supply shall:
 - a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
 - b) in any other case, be the date on which the tax is paid.

8. (a) When will the recipient and supplier be treated as related?

Answer:

As per sec 15, persons shall be deemed to be "related persons" if:

- (i) such persons are officers or directors of one another's businesses;
- (ii) such persons are legally recognised partners in business;
- (iii) such persons are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family.



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Note

- Further, 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.
- The term "person" also includes legal persons.

(b) What will be the value of supply of goods or services if the consideration is not wholly in money?

Answer:

Value of supply of goods or services if the consideration is not wholly in money shall be determined in the following sequential order:

- a. open market value of such supply;
- b. sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;
- c. value of supply of goods or services or both of like kind and quality;
- d. sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined as per Rule 30 or Rule 31 in that order.

Example:

- Where a new phone is supplied for ₹ 20,000 along with the exchange of an old phone and if the price of the new phone without exchange is ₹ 24,000, the open market value of the new phone is ₹ 24,000.
- Where a laptop is supplied for ₹ 40,000 along with the barter of a printer that is manufactured by the recipient and the value of the printer known at the time of supply is ₹ 4,000 but the open market value of the laptop is not known, the value of the supply of the laptop is ₹ 44,000.

9. (a) Ram & Co., being dealer in electronics and electrical items, issued gift voucher to its customer for ₹2,000 on 15th November. Customer can use gift voucher to purchase anything which is available. Customer purchased goods worth ₹ 1,400 on 20th Nov 2018. Applicable CGST and SGST 9% each. Find the following:

- (1) time of supply
- (2) value of supply
- (3) GST liability in the hands of Ram & Co.

Answer:

- (1) Time of supply is 20th November 2018.
- (2) Value of supply is ₹ 1,400
- (3) GST liability: CGST is ₹ 126 (i.e., ₹ 1,400 x 9%) and SGST is ₹ 126 (i.e., ₹ 1,400 x 9%)



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(b) Define pure agent.

Answer:

As per explanation to Rule 33 of the CGST Rules, pure agent means a person who -

- a. enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- b. neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
- c. does not use for his own interest such goods or services so procured; and
- d. receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.



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Study Note – 7, 8 & 9

INPUT TAX CREDIT (ITC),

REGISTRATION UNDER GST,

TAX INVOICE, CREDIT AND DEBIT NOTES AND OTHER DOCUMENT UNDER GST

Learning Objective:

- *GST is payable on net of ITC. Registered person is eligible for ITC against proper documents like tax invoice, etc. This study note will help to understand the various provisions relating to registration, input tax credit and tax invoice.*

1. Choose the correct alternative and also provide your justification:

i. Whether definition of Inputs includes capital goods?

- a. Yes
- b. **No**
- c. Few of them
- d. None of them

Reason:

As per sec. 2(59), “input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;

ii. Who can take input tax credit?

- a. **Registered dealer not opting for composition scheme**
- b. Unregistered dealer
- c. Registered dealer opting for composition scheme
- d. None of the above

Reason:

As per sec. 16, every registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person. However, registered dealer opting for composition scheme is not eligible for availing input tax credit.

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- iii. Input tax credit on capital goods and inputs can be availed in _____ instalment(s):
- One**
 - Two
 - Thirty Six
 - Six

Reason:

Input tax credit on capital goods and inputs can be availed in one instalment

- iv. The time limit to pay the value of supply with taxes to avail the input tax credit?
- Three months
 - Six Months
 - One hundred and eighty days**
 - Till the date of filing of Annual Return

Reason:

As per sec. 16(2), where a recipient fails to pay to the supplier of goods or services or both, other than the supplies on which tax is payable on reverse charge basis, the amount towards the value of supply along with tax payable thereon within a period of 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon, in such manner as may be prescribed.

- v. What is the maximum time limit to claim the Input tax credit?
- Till the date of filing annual return
 - Due date of September month which is following the financial year
 - Earliest of (a) or (b)**
 - Later of (a) or (b)

Reason:

As per sec. 16(4), a registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return u/s 39 for the month of September following the end of financial year to which such invoice or invoice relating to such debit note pertains or furnishing of the relevant annual return, whichever is earlier.

- vi. Which one of the following is true?
- Registered person not liable to collect tax till his aggregate turnover exceeds threshold limit
 - A person can't collect tax unless he is registered**
 - A person can collect the tax during the period of his provisional registration
 - Both (a) and (b) are correct

Reason:

Unregistered dealer cannot collect tax. Further, a registered person (voluntarily) can collect tax though his turnover does not exceed the threshold limit.



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- vii. Within how many days a person should apply for registration?
- Within 90 days from the date he becomes liable for registration
 - Within 60 days from the date he becomes liable for registration
 - Within 30 days from the date he becomes liable for registration**
 - No time limit

Reason:

As per sec. 25, every person who is liable to be registered shall apply for registration within 30 days from the date on which he becomes liable to registration.

- viii. What is the validity of the registration certificate?
- One year
 - Two years
 - Five years
 - Valid till it is cancelled**

Reason:

The registration certificate is valid till it is cancelled. However, Certificate of registration issued to a casual taxable person or a non-resident taxable person shall be valid for the period specified in the application for registration or ninety days from the effective date of registration, whichever is earlier

- ix. Within how many days an application for revocation of cancellation of registration can be made?
- Within 7 days from the date of service of the cancellation order
 - Within 15 days from the date of service of the cancellation order
 - Within 30 days from the date of service of the cancellation order**
 - Within 45 days from the date of service of the cancellation order

Reason:

As per sec. 30, any registered person, whose registration is cancelled by the proper officer on his own motion, may apply to such officer for revocation of cancellation of the registration within thirty days from the date of service of the cancellation order.

- x. Under what circumstances physical verification of business premises is mandatory?
- Physical verification of business premises is a discretionary power of proper officer.**
 - If additional information for registration asked by the proper officer is not submitted within specified time.
 - If photograph of the business premise is not uploaded in the common portal within specified time
 - If certificate of registration is obtained on misrepresentation of facts.

Reason:

Physical verification of business premises is a discretionary power of proper officer.



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- xi. Tax invoice must be issued by_____
- a. Every supplier
 - b. Every taxable person
 - c. **Registered persons not paying tax under composition scheme**
 - d. All of the above

Reason:

As per sec. 31, tax invoice must be issued by registered persons not paying tax under composition scheme.

- xii. A bill of supply can be issued in case of inter-State and intra-State:
- a. **Exempted supplies**
 - b. Supplies to unregistered persons
 - c. Both of above
 - d. None of the above

Reason:

As per sec. 31(3), a registered person supplying exempted goods or services or both or paying tax under the provisions of sec. 10 shall issue, instead of a tax invoice, a bill of supply.

- xiii. The tax invoice should be issued _____the date of supply of service.
- a. **Within 30 days from**
 - b. Within 15 days from
 - c. Within 1 month from
 - d. On

Reason:

As per sec. 31(2), the tax invoice should be issued within 30 days from the date of supply of service.

- xiv. How many digits HSN code is required to be mentioned in the tax invoice by a registered person if his annual turnover is below ₹ 1.5 crores in the preceding financial year
- a. **No HSN required**
 - b. 2 digits HSN code
 - c. 4 digits HSN code
 - d. None of the above

Reason:

The number of digits of HSN code that a registered person needs to specify in the tax invoice issued by him based on the annual turnover of the said person in the preceding financial year. The number of digits of HSN code based on annual turnover are as follows –



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Annual Turnover in the preceding financial year	Number of digits of HSN Code
Upto ₹ 150 lakhs	Nil
more than ₹ 150 lakhs and upto ₹ 5 crores	2
more than ₹ 5 crores	4

- xv. A registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than _____ subject to such conditions and in such manner as may be prescribed.
- ₹ 100
 - ₹ 500
 - ₹ 200
 - ₹ 1,000

Reason:

As per sec. 31(3)(b), a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than ₹ 200.

2. (a) What are the conditions to be fulfilled for entitlement of input tax credit?

Answer:

As per sec. 16(2), a registered person will be entitled to claim input tax credit only upon fulfillment of the following conditions:

- He is in possession of tax invoice/ debit note issued by a registered supplier or any other prescribed tax-paying documents;
- He has received the goods and /or services or both;
- The tax charged on such supply has actually been paid to the Government by the supplier (by way of cash or by utilizing input tax credit)
- He has furnished a valid return.

Notes:

- Where the goods against an invoice are received in lots or instalments, the registered person shall be entitled to take credit upon receipt of the last lot or instalment;
- Where a recipient fails to pay to the supplier (other than the supplies liable under reverse charge basis), the amount towards the value of supply along with tax payable thereon within 180 days from the date of issue of invoice by the supplier, an amount equal to the input tax credit availed by the recipient shall be added to his output tax liability, along with interest thereon. However, the recipient shall be entitled to avail of the credit of input tax on subsequent payment made by him.

(b) What are the conditions for transfer of credit on account of sale, merger, amalgamation, de-merger, lease, transfer of business?

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Answer:

The conditions prescribed under Rule 41 of the CGST Rules, 2017 are:

- (a) A registered person shall, in the event of sale, merger, de-merger, amalgamation, lease or transfer or change in the ownership of business for any reason, furnish the details of sale, merger, de-merger, amalgamation, lease or transfer of business, in Form GST ITC-02, electronically on the common portal along with a request for transfer of unutilized input tax credit lying in his electronic credit ledger to the transferee
- In the case of demerger, the input tax credit shall be apportioned in the ratio of the value of assets of the new units as specified in the demerger scheme. Here, value of assets means the value of the entire assets of the business, whether or not input tax credit has been availed thereon.
- (b) The transferor shall also submit a copy of a certificate issued by a practicing chartered accountant or cost accountant certifying that the sale, merger, de-merger, amalgamation, lease or transfer of business has been done with a specific provision for the transfer of liabilities.
- (c) The transferee shall, on the common portal, accept the details so furnished by the transferor and, upon such acceptance, the un-utilized credit specified in Form GST ITC-02 shall be credited to his electronic credit ledger.
- (d) The inputs and capital goods so transferred shall be duly accounted for by the transferee in his books of account

3. (a) Compute ITC available to the X Ltd. for the month of Nov, 2018 from the following details:

Inward supplies	GST in the invoice (₹)
Raw material	2,20,000
Electrical Transformer to be used in the manufacturing process	2,80,000
Eatable items for consumption of the employee working in the factory	4,000
Material purchased for repairing of factory building which is capitalized	30,000
Packing material used in the factory	1,40,000
Goods procured for giving the same as Diwali gift	50,000
Inputs stolen from the factory	20,000
Machinery purchased (depreciation is claimed on the GST component)	10,000

Answer:

Statement showing Input tax Credit available during the month of Nov 2018

Particulars	Amount
Raw material	2,20,000
Electrical Transformer to be used in the manufacturing process	2,80,000
Eatable items for consumption of the employee working in the factory	Nil



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Material purchased for repairing of factory building	Nil
Packing material used in the factory	1,40,000
Goods procured for giving the same as Diwali gift	Nil
Inputs stolen from the factory	Nil
Machinery purchased (depreciation is claimed on the GST component)	Nil
Input tax credit available	6,40,000

(b) For claiming ITC, one of the conditions to claim credit is that the receiver is in possession of tax invoice or debit note or any other tax paying documents. What are those tax paying documents?

Answer:

As per Rule 36, the input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents:

- an invoice issued by the supplier of goods or services or both as per sec. 31;
- an invoice issued by the recipient in case of inward supplies from unregistered persons or reverse charge mechanism supplies, subject to the payment of tax;
- a debit note issued by a supplier as per sec. 34;
- a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;
- an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor as per rule 54(1).

4. (a) Comment on the following:

- 1) Whether the Registration granted to any person is permanent?**
- 2) Whether the proper Officer can reject an Application for Registration?**
- 3) Is possession of a Permanent Account Number (PAN) mandatory for obtaining a Registration?**
- 4) Can a person without GST registration claim ITC and collect tax?**

Answer:

- 1) The registration once granted to any person is permanent except for non-resident taxable person and casual taxable person unless surrendered, cancelled, suspended.
- 2) The Proper officer can reject the Application for registration in Form GST REG 05, if after filling the Application of registration in Form GST REG 01 the proper officer issued notice in Form GST REG 03 for further clarification and no response or no satisfactory response is given by the applicant.
- 3) Every person should have a Permanent Account Number issued under the Income Tax Act, 1961 in order to be eligible for grant of registration u/s 25. However, as per sec. 25(7), PAN is not mandatory for a non-resident taxable person for obtaining registration.
- 4) A person without GST registration can neither collect GST from his customers nor claim any input tax credit of GST paid by him.



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(b) Who is (I) casual taxable person; (II) non-resident taxable person? Is there any Advance tax to be paid by such persons at the time of obtaining registration?

Answer:

As per sec. 2(20), casual taxable person means a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business.

As per sec. 2(77), non-resident taxable person means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India.

A casual taxable person or a non-resident taxable person shall, at the time of submission of application for registration u/s 25(1), make an advance deposit of tax in an amount equivalent to the estimated tax liability of such person for the period for which the registration is sought. If registration is to be extended beyond the initial period of 90 days, an advance additional amount of tax equivalent to the estimated tax liability is to be deposited for the period for which the extension beyond 90 days is being sought. Such deposited amount can be utilised against the output tax liability and balance amount shall be refunded to the applicant subject to sec. 54.

5. (a) Can the proper Officer Cancel the Registration on his own?

Answer:

As per sec. 29(2), the proper officer may cancel the registration, after giving an opportunity of being heard, of a person from such date, as he may deem fit, where:

1. a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
2. a person paying tax u/s 10 has not furnished returns for three consecutive tax periods; or
3. any registered person, other than a person specified above, has not furnished returns for a continuous period of 6 months; or
4. any person who has taken voluntary registration u/s 25(3) has not commenced business within 6 months from the date of registration; or
5. registration has been obtained by means of fraud, wilful misstatement or suppression of facts.

(b) Define “removal” and “inward supply”.

Answer:

- As per sec. 2(96), removal in relation to goods, means:
 - a) despatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier; or



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- b) collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient;
- As per sec. 2(67), inward supply in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration;

6. Describe the details to be mentioned in a tax invoice.

Answer:

A tax invoice referred to in sec. 31 shall be issued by the registered person containing the following particulars:

- a. name, address and Goods and Services Tax Identification Number of the supplier;
- b. a consecutive serial number not exceeding 16 characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as "-" and "/" respectively, and any combination thereof, unique for a financial year;
- c. date of its issue;
- d. name, address and Goods and Services Tax Identification Number or Unique Identity Number, if registered, of the recipient;
- e. name and address of the recipient and the address of delivery, along with the name of the State and its code, if such recipient is un-registered and where the value of the taxable supply is ₹ 50,000 or more (on the request of the recipient if the value of the taxable supply is less than ₹ 50,000);
- f. Harmonised System of Nomenclature code for goods or services (number of digits of HSN code as prescribed by the Board);
- g. description of goods or services;
- h. quantity in case of goods and unit or Unique Quantity Code thereof;
- i. total value of supply of goods or services or both;
- j. taxable value of the supply of goods or services or both taking into account discount or abatement, if any;
- k. rate of tax (central tax, State tax, integrated tax, Union territory tax or cess);
- l. amount of tax charged in respect of taxable goods or services (central tax, State tax, integrated tax, Union territory tax or cess);
- m. place of supply along with the name of the State, in the case of a supply in the course of inter-State trade or commerce;
- n. address of delivery where the same is different from the place of supply;
- o. whether the tax is payable on reverse charge basis; and
- p. signature or digital signature of the supplier or his authorised representative

7. Comment on the following:

- a) What is the time limit to raise an invoice for services?
- b) What is the time limit for issuing invoices by Banking Companies?
- c) Can an Unregistered person issue a tax invoice?
- d) Can a consolidated bill of supply be issued on a periodic basis?



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Answer:

- a) As per Rule 47, invoice has to be raised within 30 days of supply of service.
- b) In case of banking companies, financial institutions including NBFCs, the time limit for issuing an invoice is extended to 45 days (instead of 30 days in respect of other supplier) from the date of supply of service.
- c) Only a registered person can issue a tax invoice. Further, sec. 32 prohibits collection of tax by persons who are not registered under the GST law.
- d) A separate 'Bill of Supply' is not necessary if the value of the goods or services supplied is less than ₹ 200 unless the recipient demands for such a bill. In such a case, a consolidated 'Bill of Supply' should be prepared at the close of each day in respect of all such supplies to each recipient, separately.

8. (a) What are the contents of a 'Bill of Supply'?

Answer:

A Bill of Supply should have the following details:

- a. Name, address, GSTIN of the supplier
- b. Consecutive Serial Number not exceeding sixteen characters, unique for a financial year having alphabets/ numerals and special characters being "-" or "/" only
- c. Date of Issue
- d. Name, address of the recipient and GSTIN/UID of the recipient, if registered, of the recipient;
- e. HSN code of Goods or Services
- f. Description of Goods / Services
- g. Post discount/abatement value of Goods and Services
- h. Signature/Digital Signature of the Supplier or his authorized representative.

Further, any tax invoice or any other similar document issued under any other Act for the time being in force in respect of any non-taxable supply shall be treated as a bill of supply for the purposes of the Act.

(b) There are few purchases against which input tax credit is not available. Please mention.

Answer:

As per sec. 17(5), input tax credit shall not be available in respect of the following:

- (a) Motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), **except when used for** making following taxable supplies:
 - A. Further supply of such vehicle;
 - B. For transportation of passenger e.g. travels agency, airlines agency etc.
 - C. For imparting training e.g. motor driving schools.
- (aa) Vessels and aircraft except when they are used—
 - (i) for making the following taxable supplies, namely:—



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- (A) further supply of such vessels or aircraft; or
- (B) transportation of passengers; or
- (C) imparting training on navigating such vessels; or
- (D) imparting training on flying such aircraft;
- (ii) for transportation of goods;
- (ab) services of general insurance, servicing, repair and maintenance in so far as they relate to motor vehicles, vessels or aircraft referred above. However, the input tax credit in respect of such services shall be available:
 - (i) where the motor vehicles, vessels or aircraft are used for the purposes specified above;
 - (ii) where received by a taxable person engaged—
 - (I) in the manufacture of such motor vehicles, vessels or aircraft; or
 - **Where** ITC on purchase of vehicle is blocked credit then the ITC of maintenance, insurance and servicing on such vehicles will also not be available.
 - (II) in the supply of general insurance services in respect of such motor vehicles, vessels or aircraft insured by him;
- (b) Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, leasing, renting or hiring of motor vehicle, vessels or aircrafts referred above **except where** inward supply of these is used for making an outward supply of **same category** or as an element of a taxable composite or mixed supply.
- (c) Membership of club, health & fitness center.
- (d) Rent a cab, life insurance and health insurance **except where** the government has made it obligatory for an employer to provide any of these services to its employees Inward supply of these services is used for making an outward supply of **same category** or as element of a taxable composite supply or mixed supply.
- (e) Travel benefits to employees on vacation such as Leave travel concession or home travel concession e.g. foreign trip provided to employee on leave.
- (f) Works contract services for construction of immovable property **except when**
 - It is input service for further supply of works contract service e.g. Subcontract
 - Immovable property is plant and machinery i.e. ITC on works contract services used for construction of immovable plant and machinery is available.
- (g) Inward supply received by a taxable person for the construction of an immovable property (other than plant and machinery) on **his own account** even when such supplies are used in the course of or furtherance of business.
- (h) Inward supplies on which tax has been paid under **Composition scheme**.
- (i) Inward supplies received by **non-resident taxable person except goods imported** by him.
- (j) Goods or services used for **personal consumption**.
- (k) Goods that are lost, stolen, destroyed, written off, or disposed of by way of free samples or gift.
- (l) Tax paid u/s. 74(Fraud), 129(Seize), 130 (Confiscation).



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Study Note – 10, 11 & 12

ACCOUNTS AND RECORDS UNDER GST, PAYMENT OF TAX, TDS & TCS UNDER GST

Learning Objective:

- *This study note will help to understand the provisions relating to maintenance of various account and records by a registered person and computation of tax liability and payment thereof and also discuss about the various provisions of TDS and TCS.*

1. Choose the correct alternative and also provide your justification:

- i. The books and other records are to be maintained at:
- place where the books and accounts are maintained
 - Place of address of the Proprietor/ Partner/Director/Principal Officer
 - Principal place of business mentioned in the Certificate of Registration**
 - Any of the above

Reason:

As per sec. 35, every registered person shall keep and maintain books and other records, at his principal place of business, as mentioned in the certificate of registration.

- ii. Accounts are required to be maintained in:
- Manual form
 - Electronic form
 - Manual and electronic form
 - Manual or electronic form**

Reason:

Accounts shall be maintained in either of the form.

- iii. Who among the following, even if not registered, is required to maintain records?
- Owner or operator of warehouse or godown
 - Owner or operator of any other place used for storage of goods
 - Every transporter
 - All of the above**



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Reason:

As per sec. 35(2), every owner or operator of warehouse or godown or any other place used for storage of goods and every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed.

- iv. Taxable person has to maintain his records for a period of:
- expiry of 72 months from the due date of filing of Annual Return for the year**
 - expiry of 36 months from the due date of filing of Annual Return for the year
 - expiry of 48 months from the due date of filing of Annual Return for the year
 - expiry of 90 months from the due date of filing of Annual Return for the year

Reason:

As per sec. 36, every registered person required to keep and maintain books of account or other records, shall retain them until the expiry of 72 months from the due date of furnishing of annual return for the year pertaining to such accounts and records.

- v. Amounts credited to electronic Credit Ledger are _____.
- Input Tax Credit**
 - Output Tax payable
 - Amount Transferred through NEFT
 - Amount paid through Credit Card

Reason:

As per sec. 49(2), the input tax credit as self-assessed in the return of a registered person shall be credited to his electronic credit ledger.

- vi. Balance in electronic credit ledger under IGST can be used against which liability?
- IGST, CGST and SGST liability**
 - IGST and CGST liability
 - IGST liability only
 - None of them

Reason:

As per sec. 49(5), IGST shall first be utilised towards payment of IGST and the amount remaining, if any, may be utilised towards the payment of CGST and SGST, or as the case may be, UTGST, in that order.



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- vii. What is the due date for payment of tax?
- a. Last day of the month to which payment relates
 - b. Within 10 days of the subsequent month
 - c. Within 15 days of the subsequent month
 - d. **Within 20 days of the subsequent month**

Reason:

Tax is required to be paid by 20th of the subsequent month (i.e., due date of filing of GSTR 3B).

- viii. What is the rate of TDS?
- a. **1%**
 - b. 5%
 - c. 12%
 - d. 18%

Reason:

As per sec. 51, tax is required to be deducted @ 1%.

- ix. On what value TDS needs to be deducted?
- a. Contract value
 - b. Invoice value including tax
 - c. **Invoice value excluding tax**
 - d. Contract value excluding tax

Reason:

As per Explanation to sec. 51(1), for the purpose of deduction of tax, the value of supply shall be taken as the amount excluding the central tax, State tax, Union territory tax, integrated tax and cess indicated in the invoice.

- x. What is e-commerce?
- a. Supply of goods and/or services on an electronic platform for commerce other than the e-commerce operator himself
 - b. Supply of goods and/or services on an electronic platform for commerce including the e-commerce operator
 - c. Supply of goods and/or services on an electronic platform for commerce
 - d. **Supply of goods or services or both including digital products over digital or electronic network.**

Reason:

As per sec. 2(44), "electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network;



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2. (a) What are the basic accounts required to be maintained by a person at the principal place of business?

Answer:

As per sec. 35, every registered person shall keep and maintain, at his principal place of business, as mentioned in the certificate of registration, a true and correct account of:

1. production or manufacture of goods;
2. inward and outward supply of goods or services or both;
3. stock of goods;
4. input tax credit availed;
5. output tax payable and paid; and
6. such other particulars as may be prescribed.

(b) What are the additional accounts to be maintained by the registered person as per Chapter VII of the CGST Rules, 2017?

Answer:

Every registered person, in addition to the records to be maintained under section 35 of the CGST Act, is required to maintain following additional accounts on a true and correct basis:

- a) Goods or services imported or exported;
- b) Supplies attracting payment of tax on reverse charge along with relevant documents (including invoices, bill of supply, delivery challans, credit notes, debit notes, receipt vouchers, payment vouchers, refund vouchers);
- c) Accounts of stock in respect of goods received and supplied – containing particulars of opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and balance of stock including raw materials, finished goods, scrap and wastage thereof (these details need not be maintained by a composition dealer);
- d) Advances received, paid and adjustments made thereto;
- e) Tax payable on reverse charge basis;
- f) TDS/TCS (not to be maintained by composite dealer)
- g) Tax payable, tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period (Not applicable to composition dealer);
- h) Names and complete addresses of suppliers from whom he has received the goods or services;
- i) Names and complete addresses of the persons to whom he has supplied the goods or services; and
- j) Complete addresses of the premises where the goods are stored by him, including goods stored during transit along with the particulars of the stock stored therein.

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3. (a) Is an agent required to maintain any set of books of account?

Answer:

As per sec. 2(5), "agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

As per Rule 56(11), every agent shall maintain accounts depicting the,-

- a) particulars of authorisation received by him from each principal to receive or supply goods or services on behalf of such principal separately;
- b) particulars including description, value and quantity (wherever applicable) of goods or services received on behalf of every principal;
- c) particulars including description, value and quantity (wherever applicable) of goods or services supplied on behalf of every principal;
- d) details of accounts furnished to every principal; and
- e) tax paid on receipts or on supply of goods or services effected on behalf of every principal.

(b) For claiming ITC, one of the conditions to claim credit is that the receiver is in possession of tax invoice or debit note or any other tax paying documents. What are those tax paying documents?

Answer:

As per Rule 36, the input tax credit shall be availed by a registered person, including the Input Service Distributor, on the basis of any of the following documents:

- a. an invoice issued by the supplier of goods or services or both as per sec. 31;
- b. an invoice issued by the recipient in case of inward supplies from unregistered persons or reverse charge mechanism supplies, subject to the payment of tax;
- c. a debit note issued by a supplier as per sec. 34;
- d. a bill of entry or any similar document prescribed under the Customs Act, 1962 or rules made thereunder for the assessment of integrated tax on imports;
- e. an Input Service Distributor invoice or Input Service Distributor credit note or any document issued by an Input Service Distributor as per rule 54(1).

4. Comment on the following:

- a) Is it possible to use input tax credit for payment of interest/penalty?
- b) Is it possible to use input tax credit for payment of tax under reverse charge basis?
- c) Is it possible to pay CGST, IGST, UTGST and SGST together or should be paid separately in different challans?
- d) What is the threshold limit for tax deduction at source?



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Answer:

- a) As per sec. 49(4), the amount available in the electronic credit ledger may be used for making any payment towards 'output tax' payable only. Further, as per sec. 2(82), 'Output tax' in relation to a taxable person, means the CGST/SGST chargeable under this Act on taxable supply of goods and/or services made by him or by his agent and excludes tax payable by him on reverse charge basis. Therefore, input tax credit cannot be used for payment of interest/penalty.
- b) The amount available in the electronic credit ledger may be used for making any payment towards 'output tax'. Further, the definition of output tax u/s 2(82) specifically excludes tax payable under reverse charge basis. Therefore, input tax credit cannot be used for payment of tax under reverse charge basis
- c) Form GST PMT-06 contains separate columns for CGST, IGST, UTGST and SGST which shall deposit the amount to the respective account of the government though paid through a single challan, therefore, CGST, IGST, UTGST and SGST can be paid together in a single challan.
- d) The threshold limit for tax deduction at source is ₹ 2.5 Lakh. However, for the purpose of ascertaining the amount of deduction, the value of supply shall be considered as the amount excluding taxes.

5. (a) Who is liable to deduct tax at source?

Answer:

In terms of sec. 51(1), the Government may mandate the following person to deduct tax at source:

- a. A department or establishment of the Central or State Government, or
- b. Local authority, or
- c. Governmental agencies, or
- d. Such persons or category of persons as may be notified, by the Central or a State Government on the recommendations of the Council. Following are the notified person:
 1. an authority or a board or any other body, -
 - (i) set up by an Act of Parliament or a State Legislature; or
 - (ii) established by any Government,
 - with 51 % or more participation by way of equity or control, to carry out any function;
 2. society established by the Central Government or the State Government or a Local Authority under the Societies Registration Act, 1860;
 3. public sector undertakings.

Aforesaid persons are required to deduct tax at source from 01-10-2018.

Tax point: No tax is required to be deducted on supply of goods or services or both from a public sector undertaking to another public sector undertaking, whether or not a distinct person.

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(b) What is the manner in which transfer of credit takes place on utilization of Central tax credit for payment of integrated tax?

Answer:

As per sec. 53, upon utilization of central tax credit for payment of integrated taxes, the amount collected as central tax will stand reduced to that extent and the Central Government will transfer an amount equal to the credit from the central tax account to the integrated tax account in such manner and within such time as may be prescribed.

6. Write brief notes on provision relating to Tax Collected at Source.

Answer:

- Every electronic commerce operator, not being an agent, shall collect an amount calculated at such rate not exceeding 1% (plus 1% SGST) [at present rate of TCS is 0.5% + 0.5%] 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.
 - "Net value of taxable supplies" shall mean the aggregate value of taxable supplies of goods or services or both, other than services notified u/s 9(5), made during any month by all registered persons through the operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month.
 - Taxable value for the purposes of GST shall include the TCS amount collected under the provisions of the Income Tax Act.
- The power to collect the amount shall be without prejudice to any other mode of recovery from the operator.
- The amount collected shall be paid to the Government by the operator within 10 days after the end of the month in which such collection is made.
- Every operator who collects the amount shall furnish a statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected during a month, in such form and manner as may be prescribed, within 10 days after the end of such month.
- Every operator who collects the amount shall furnish an annual statement, electronically, containing the details of outward supplies of goods or services or both effected through it, including the supplies of goods or services or both returned through it, and the amount collected during the financial year, in such form and manner as may be prescribed, before 31st December following the end of such financial year.
- If any operator after furnishing a statement discovers any omission or incorrect particulars therein, other than as a result of scrutiny, audit, inspection or enforcement activity by the tax authorities, he shall rectify such omission or incorrect particulars in the statement to be furnished for the month during which such omission or incorrect particulars are noticed, subject to payment of interest.

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- However, no such rectification of any omission or incorrect particulars shall be allowed after the due date for furnishing of statement for the month of September following the end of the financial year or the actual date of furnishing of the relevant annual statement, whichever is earlier.
- The supplier who has supplied the goods or services or both through the operator shall claim credit, in his electronic cash ledger, of the amount collected and reflected in the statement of the operator furnished.
- The details of supplies furnished by every operator shall be matched with the corresponding details of outward supplies furnished by the concerned registered supplier.
- Where the details of outward supplies furnished by the operator do not match with the corresponding details furnished by the supplier u/s 37, the discrepancy shall be communicated to both persons in such manner and within such time as may be prescribed.
- The amount in respect of which any discrepancy is communicated and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated, shall be added to the output tax liability of the said supplier, where the value of outward supplies furnished by the operator is more than the value of outward supplies furnished by the supplier, in his return for the month succeeding the month in which the discrepancy is communicated in such manner as may be prescribed.
- The concerned supplier, in whose output tax liability any amount has been added shall pay the tax payable in respect of such supply along with interest from the date such tax was due till the date of its payment.
- Any authority not below the rank of Deputy Commissioner may serve a notice, either before or during the course of any proceedings under this Act, requiring the operator to furnish such details relating to—
 - a. supplies of goods or services or both effected through such operator during any period; or
 - b. stock of goods held by the suppliers making supplies through such operator in the godowns or warehouses, by whatever name called, managed by such operator and declared as additional places of business by such suppliers, as may be specified in the notice.
- Every operator on whom a notice has been served shall furnish the required information within 15 working days of the date of service of such notice.
- Any person who fails to furnish the information required by the notice served shall, without prejudice to any action that may be taken u/s 122, be liable to a penalty which may extend to ₹ 25,000.

The provision relating to TCS is effective from 01-10-2018.

7. (a) What are the provisions in relation to interest under GST?

Answer:

As per sec. 50, interest is applicable on delayed payment of tax at the rate to be notified (not exceeding 18%) [Notified rate is 18%] and on undue or excess claim of input tax credit or on undue or excess reduction of output tax liability at the rate to be notified (not exceeding 24%) [Notified rate is 24%], calculated from the from the day succeeding the day on which such tax was due to be paid. Interest is applicable in case of undue or excess claim of input tax credit also.



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(b) Is there any order in which liability of a person shall be discharged?

Answer:

Every taxable person shall discharge his tax and other dues in the following order:

- a. self-assessed tax, and other dues related to returns of previous tax periods;
- b. self-assessed tax, and other dues related to return of current tax period;
- c. any other amount payable under the Act or the rules made thereunder including the demand determined under section 66 or 67.

Notes:

- "Tax dues" means the tax payable under this Act and does not include interest, fee and penalty.
- "Other dues" means interest, penalty, fee or any other amount payable under the Act or the rules made thereunder.



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Study Note – 13, 14 & 15 RETURNS UNDER GST, MATCHING CONCEPT UNDER GST, EXPORT, IMPORTS AND REFUND UNDER GST

Learning Objective:

- *This study note will help to understand the provisions to filing of various return under GST laws. Further, one can learn the formalities to be done for export and import and refund thereof and can also learn the matching concept under GST.*

1. Choose the correct alternative and also provide your justification:

- i. Every tax payer paying tax u/s 10 (Composition levy) shall file the return in:
- a. Form GSTR 3 by 18th of the month succeeding the quarter
 - b. **Form GSTR 4 by 18th of the month succeeding the quarter**
 - c. Form GSTR 4 by 18th of the succeeding month
 - d. Form GSTR 4 by 20th of the month succeeding the quarter

Reason:

As per sec. 39, tax payer covered under composition scheme is required to file Form GSTR 4 by 18th of the month succeeding the quarter.

- ii. The e-commerce operator collecting tax u/s 52 shall file its monthly return in:
- a. Form GSTR 8 by 18th of the succeeding month
 - b. Form GSTR 7 by 20th of the month succeeding the quarter
 - c. Form GSTR 8 by 17th of the succeeding month
 - d. **Form GSTR 8 by 10th of the succeeding month**

Reason:

The e-commerce operator collecting tax u/s 52 shall file its monthly return in Form GSTR 8 by 10th of the succeeding month.



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- iii. The First return shall be filed by every registered taxable person for the period from:
- The date on which he became liable for registration till the date of grant of registration**
 - The date of registration to the last day of that month
 - The date on which he became liable for registration till the last day of that month
 - All of the above

Reason:

As per sec. 40, every registered person who has made outward supplies in the period between the date on which he became liable to registration till the date on which registration has been granted shall declare the same in the first return furnished by him after grant of registration.

- iv. Every registered taxable person who is required to get his accounts audited u/s 35(5) shall furnish electronically:
- Annual return
 - Audited copy of annual accounts
 - Reconciliation statement reconciling the value of supplies declared in the return and the financial statement
 - All of the above**

Reason:

Every registered taxable person who is required to get his accounts audited u/s 35(5) is required to furnish all of the above electronically.

- v. Refund application is to be filed before the expiry of _____ from the relevant date.
- Two years**
 - One year
 - 180 days
 - 270 days

Reason:

As per sec. 54, any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application before the expiry of 2 years from the relevant date.

- vi. What is the time limit for filing of refund application by a specialised agency of the UNO?
- Before the expiry of eight months from the last day of the quarter in which such inward supply received
 - Before expiry of eight months from the last day of the month in which such inward supply received
 - Before expiry of six months from the last day of the month in which such inward supply was received
 - Before expiry of six months from the last day of the quarter in which such inward supply was received.**



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Reason:

As per sec. 54(2), a specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries or any other person or class of persons, as notified u/s 55, entitled to a refund of tax paid by it on inward supplies of goods or services or both, may make an application for such refund before the expiry of 6 months from the last day of the quarter in which such supply was received.

- vii. Refunds would be allowed on a provisional basis in case of refund claims on account of zero-rated supplies of goods and/or services made by registered persons. At what percentage, would such provisional refunds be granted?
- 65%
 - 70%
 - 80%
 - 90%**

Reason:

As per sec. 54(6), 90% of refunds may be allowed on a provisional basis in case of refund claims on account of zero-rated supplies of goods and/or services made by registered persons.

- viii. The applicant is not required to furnish documentary evidence if the amount of refund claimed is less than:
- ₹ 6 lacs
 - ₹ 2 lacs**
 - ₹ 10 lacs
 - ₹ 12 lacs

Reason:

As per proviso to sec. 54(4), where the amount claimed as refund is less than ₹ 2 lacs, it shall not be necessary for the applicant to furnish any documentary and other evidences but he may file a declaration, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

- ix. Interest on refund amount is required to be paid after expiry of _____ from the date of receipt of the application
- 60 days**
 - 90 days
 - 180 days
 - 240 days

Reason:

As per sec. 56, interest on refund amount is required to be paid after expiry of 60 days from the date of receipt of the application.

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2. What is the meaning of relevant dates in the context of refund?

Answer:

As per explanation to sec. 54, relevant date means:

- a) in the case of goods exported out of India where a refund of tax paid is available in respect of goods themselves or, as the case may be, the inputs or input services used in such goods,:
 - (i) if the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are loaded, leaves India; or
 - (ii) if the goods are exported by land, the date on which such goods pass the frontier; or
 - (iii) if the goods are exported by post, the date of despatch of goods by the Post Office concerned to a place outside India;
- b) in the case of supply of goods regarded as deemed exports where a refund of tax paid is available in respect of the goods, the date on which the return relating to such deemed exports is furnished;
- c) in the case of services exported out of India where a refund of tax paid is available in respect of services themselves or, as the case may be, the inputs or input services used in such services, the date of:
 - (i) receipt of payment in convertible foreign exchange, where the supply of services had been completed prior to the receipt of such payment; or
 - (ii) issue of invoice, where payment for the services had been received in advance prior to the date of issue of the invoice;
- d) in case where the tax becomes refundable as a consequence of judgment, decree, order or direction of the Appellate Authority, Appellate Tribunal or any court, the date of communication of such judgment, decree, order or direction;
- e) in the case of refund of unutilised input tax credit, the end of the financial year in which such claim for refund arises;
- f) in the case where tax is paid provisionally, the date of adjustment of tax after the final assessment thereof;
- g) in the case of a person, other than the supplier, the date of receipt of goods or services or both by such person; and
- h) in any other case, the date of payment of tax.

3. (a) What are the details to be submitted while furnishing the details of outward supply in Form GSTR-1?

Answer:

The supplier has to furnish the details of invoices, debit notes, credit notes and revised invoices issued in relation to outward supplies made during the tax period. Key points to be disclosed are as follows:

- Supplies made to registered persons
- Inter-State supplies to a consumer (non-registered person) where invoice value is more than ₹ 2,50,000/- should be separately captured.
- Zero Rated Supplies and Deemed Exports.



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- Consolidated amount of Inter State Supplies and Intra-State supplies to a consumer (non-registered person) for each rate of tax.
- Zero rated supplies, Exempted supplies, Nil-rated supplies, Exports (including deemed exports) and non-GST supplies should each be captured, separately.
- Tax liability arising in the current tax period where invoice is not issued in the current tax period (i.e., yet to be raised, in case of advance).
- Invoices issued in the current tax period for which tax was already paid earlier (adjusting the previous advances).
- Supplies made through e-commerce portal of other companies to registered taxable persons and other consumers, separately.
- Harmonized System of Nomenclature for goods and Service Accounting Code.
- Documents issued during the tax period

(b) What is GSTR-4A? What are the details that are required to be submitted in Form GSTR-4?

Answer:

Form GSTR-4A contains the details of inward supplies received by composition suppliers from registered taxable persons, debit/credit notes received, and tax deducted at source. This statement is auto populated from Forms GSTR-1, GSTR-5 and GSTR-7 filed by other assesses.

While furnishing the return in Form GSTR-4, the assessee has to furnish the following details:

- a) Invoice wise details of inter-State and intra-State inward supplies received from registered and unregistered persons
- b) Import of goods and services
- c) Consolidated details of outward supplies
- d) Debit and credit notes issued and received, if any
- e) TCS Credit received
- f) Consolidated statement of advances paid/adjusted
- g) Amendment of outward supplies furnished in earlier returns.

4. (a) What do you mean by self-assessment?

Answer:

Under the GST regime, the responsibility to compute the correct output tax liability, eligible input tax credit and net tax liability lies with the assessee. The assessee must determine the rate of tax, value of supply and the output tax payable. The assessee must also decide the eligibility of input tax credit in respect of the various inward supplies. The determination of turnover, rate of tax, value of supply, eligibility to input tax credit, reversal of input tax credit, etc. done by the assessee himself is called as self-assessment.

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(b) Whether the credit note issued by the supplier has to be matched with the corresponding reduction of input tax by recipient?

Answer:

As per sec. 43, the details of credit notes issued by the supplier in respect of outward supply and claimed as reduction in output tax liability has to be matched with a corresponding reduction of input tax by the recipient of the supply. Further, the credit note issued shall also be matched for duplication of reduction of output tax liability.

5. (a) What are the documents to be enclosed along with refund claim?

Answer:

Following documents are required to be enclosed along with the refund application:

- a. Documentary evidence to establish that a refund is due to the applicant (prescribed under Rule 89(2) of the CGST Rules, 2017, and
- b. Documentary evidence to prove that incidence of tax and interest had not been passed on to any other person. However, such evidence is not required where refund is being claimed on account of zero-rated supplies, inverted duty structure, etc.

(b) Under what circumstances, refund amount shall be paid to the applicant?

Answer:

As per sec. 54(8), the refundable amount shall, instead of being credited to the Consumer Welfare Fund, be paid to the applicant, if such amount is relatable to:

1. refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;
2. refund of unutilised input tax credit;
3. refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
4. refund of tax in pursuance of sec. 77;
5. the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
6. the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.



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6. (a) Whether bond or Letter of Undertaking (LUT) is required in the case of zero-rated supply of exempted or non-GST goods and whether refund can be claimed by the exporter of exempted or non-GST goods?

Answer:

As per sec. 16(2) of the IGST Act, credit of input tax may be availed for making zero rated supplies, notwithstanding that such supply is an exempt supply. Whereas, as per sec. 2(47) of the CGST Act, exempt supply includes non-taxable supply. Further, as per sec. 16(3) of the IGST Act, a registered person making zero rated supply shall be eligible to claim refund when he either makes supply of goods or services or both under bond or letter of undertaking (LUT) or makes such supply on payment of integrated tax.

However, in case of zero rated supply of exempted or non-GST goods, the requirement for furnishing a bond or LUT cannot be insisted upon. It is thus, clarified that in respect of refund claims on account of export of non-GST and exempted goods without payment of integrated tax; LUT/bond is not required. Such registered persons exporting non-GST goods shall comply with the requirements prescribed under the existing law (i.e. Central Excise Act, 1944 or the VAT law of the respective State) or under the Customs Act, 1962, if any.

Further, the exporter would be eligible for refund of unutilized input tax credit of central tax, state tax, union territory tax, integrated tax and compensation cess in such cases.

(Circular No. 45/19/2018-GST dated 30-05-2018)

- (b) What will be the amount of bond furnished for exports and how will the bond be secured?

Answer:

The bond would cover the amount of tax involved in the export based on estimated tax liability as assessed by the exporter himself. **FORM RFD -11** under Rule 96A of the CGST Rules requires furnishing a bank guarantee with bond as a security. A bond, in all cases, shall be accompanied by a bank guarantee of 15% of the bond amount.

Since the facility of export under LUT has been extended to all registered persons, bond will be required to be furnished by those persons who have been prosecuted for cases involving an amount exceeding ₹ 2,50,000

(Circular No. 8/2017-GST October 4,2017)

7. What is the Processing of refund applications filed by Canteen Stores Department?

Answer:

The Canteen Stores Department (the CSD), under the Ministry of Defence, as a person who shall be entitled to claim a refund of 50% of the applicable IGST/CGST paid by it on all inward supplies of goods received by it for the purposes of subsequent supply of such goods to the Unit Run Canteens of the CSD or to the authorized customers of the CSD in terms of Notifications No. 6/2017-Central Tax (Rate), No. 6/2017-Integrated Tax (Rate) both all dated 28.06.2017.



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In this regard, Central Government vide Circular No. 60/34/2018-GST dated 4.09.2018 has provided a manner and procedure for filing and processing of refund claims by CSD which is explained as below:

1. Invoice-based refund: It is clarified that the instant refund to be granted to the CSD is not for the accumulated input tax credit, but refund based on the invoices of the inward supplies of goods received by them.
2. Manual filing of claims on a quarterly basis: the CSD are required to apply for refund on a quarterly basis the CSD shall apply for refund by filing an application in FORM GST RFD-10A manually to the jurisdictional tax office which shall be accompanied with prescribed documents
3. Processing and sanction of the refund claim: Upon receipt of the complete application in FORM GST RFD-10A, an acknowledgement shall be issued manually within 15 days of the receipt of the application in FORM GST RFD-02 by the proper officer. In case of any deficiencies in the requisite documentary evidences the same shall be communicated to the CSD by issuing a deficiency memo manually in FORM GST RFD-03. The proper officer may scrutinize:
 - a The details contained in FORM RFD-10A, FORM GSTR-3B and FORM GSTR-2A.
 - b The proper officer should ensure that the amount of refund sanctioned is 50 % of the taxes paid on the supplies received by CSD.
4. Sanctioning of Refund: The proper officer shall issue the refund sanction/rejection order manually in FORM GST RFD-06 along with the payment advice manually in FORM GST RFD-05 for each tax head separately.

Further, it is clarified that the CSD will apply for refund with the jurisdictional Central tax/State tax authority to whom the CSD has been assigned. However, the payment of the sanctioned refund amount in relation to central tax / integrated tax shall be made by the Central tax authority while payment of the sanctioned refund amount in relation to State Tax / Union Territory Tax shall be made by the State tax/Union Territory tax authority.



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Study Note – 16, 17 & 18

ASSESSMENT, INSPECTION, SEARCH & SEIZURE,

AUDIT UNDER GST,

GOODS AND SERVICES TAX, (Compensation to State) ACT, 2017

Learning Objective:

- ***This study note will help to understand the provisions to filing of various return under GST laws. Further, one can learn the formalities to be done for export and import.***

1. Choose the correct alternative and also provide your justification:

- i. Assessment means:
- Determination of tax liability under the GST law**
 - Determination of refund under the GST law
 - Determination of no tax under the GST law
 - None of the above

Reason:

As per sec. 2(11), assessment means determination of tax liability and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment.

- ii. A taxable person may apply for provisional assessment:
- when the taxable person is not able to determine the value of goods and/or services
 - when the taxable person is not able to determine the rate of tax.
 - (a) or (b)**
 - (a) and (b)

Reason:

As per sec. 60, where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis.

- iii. What are the consequences, where a registered person fails to furnish the return required u/s 39 or sec. 45, even after the service of a notice u/s 46?
- The proper officer may proceed to assess the tax liability of the said person to the best of his judgement.



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- b. issue an assessment order within a period of five years from the date specified under Section 44
- c. (a) or (b)
- d. **(a) and (b)**

Reason:

As per sec. 62, where a registered person fails to furnish the return u/s 39 or sec. 45, even after the service of a notice u/s 46, the proper officer may proceed to assess the tax liability of the said person to the best of his judgement taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of 5 years from the date specified u/s 44 for furnishing of the annual return for the financial year to which the tax not paid relates.

- iv. If the registered person furnishes a valid return withinof the service of the assessment order u/s 62(1), the said assessment order shall be deemed to have been withdrawn.
 - a. **30 days**
 - b. 60 days
 - c. 1 month
 - d. 2 months

Reason:

As per sec. 62(2), where the registered person furnishes a valid return within 30 days of the service of the assessment order, the assessment order u/s 62(1) shall be deemed to have been withdrawn.

- v. The tax authorities may conduct audit u/s 65 at:
 - a. the place of business of the registered person
 - b. the place of residence of the registered person
 - c. the office of the tax authorities
 - d. **(a) or (c)**

Reason:

As per sec. 65(2), the officers tax authorities may conduct audit at the place of business of the registered person or in his office.

- vi. The time limit for completion of the audit u/s 65(1) is:
 - a. **3 months from the date of commencement of audit**
 - b. 6 months from the date of commencement of audit
 - c. 12 months from the date of commencement of audit
 - d. None of the above

Reason:

As per sec. 65(4), the audit u/s 65(1) shall be completed within a period of 3 months from the date of commencement of the audit



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- vii. Who can direct the registered person to get its records specially audited u/s 66?
- An officer not below the rank of Assistant Commissioner, with the prior approval of the Commissioner**
 - An officer not below the rank of Joint/Additional, with the prior approval of the Chief Commissioner
 - An officer not below the rank of Chief Commissioner, with the prior approval of the Principle Chief Commissioner
 - None of the above

Reason:

As per sec. 66, if at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

- viii. Special Audit can be directed by a proper officer if he is of the opinion that:
- Value requires verification
 - Value has been overstated
 - Value has not been correctly stated**
 - All of the above

Reason:

As per sec. 66, if at any stage of scrutiny, inquiry, investigation or any other proceedings before him, any officer not below the rank of Assistant Commissioner, having regard to the nature and complexity of the case and the interest of revenue, is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits, he may, with the prior approval of the Commissioner, direct such registered person by a communication in writing to get his records including books of account examined and audited by a chartered accountant or a cost accountant as may be nominated by the Commissioner.

- ix. The order u/s 64 may be withdrawn:
- On an application made by taxable person,
 - If the Additional/Joint Commissioner considers that such order is erroneous
 - (a) or (b)**
 - The order passed u/s 64 cannot be withdrawn

Reason:

As per sec. 64(2), on an application made by the taxable person within 30 days from the date of



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receipt of order passed u/s 64(1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order

2. (a) What is the time limit for passing final assessment order in case of provisional assessment?

Answer:

As per sec. 60(3), the proper officer shall, within a period of 6 months from the date of communication of the provisional assessment order u/s 60(1), pass the final assessment order after taking into account such information as may be required for finalizing the assessment. However, the time limit of 6 months can be further extended on sufficient cause being shown and for reasons to be recorded in writing in the following manner:

- (a) by the Joint / Additional Commissioner for a further period of 6 months;
- (b) by the Commissioner for such further period not exceeding 4 years.

(b) What are the consequences on conclusion of provisional assessment by way of passing final assessment order in so far as short / excess remittance of tax is concerned?

Answer:

The consequences on concluding the provisional assessment by way of passing final assessment order would be as follows:

- (a) **Additional tax liability:** In case of short remittance of taxes in terms of final assessment order, the additional tax liability, if any should be remitted along with interest at the rate prescribed u/s 50(1) from the first day after the due date of remittance of taxes as prescribed u/s 39(7) till the date of actual payment [Sec. 60(4)];
- (b) **Excess remittance of tax on provisional basis:** In case of excess remittance of taxes in terms of final assessment order, the registered person is entitled to refund of such excess remittance in the manner as provided in sec. 54(8) along with interest as provided u/s 56 [Sec. 60(5)]

3. Write brief note in respect of assessment u/s 62.

Answer:

As per Section 62 of the CGST Act, 2017 (i.e. assessment of non-filers of return) provides for best judgment assessment where a registered person fails to furnish the return even after the service of a notice and pass order taking into account all the relevant material which is available or which he has gathered within a period of five years from the due date of filing annual return.

1. Sec. 62 can be invoked only in case of registered taxable persons who have failed to file returns, as required, u/s 39 or as the case may be, or final return on cancellation of registration u/s 45 of the Act. Issuing notice u/s 46 appears to be a pre-condition for initiating proceedings u/s 62 of the Act.

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2. Non-compliance with the notice u/s 46 paves the way for intimating the proceedings under this section. If the assessee fails to furnish the return, the Proper Officer may after serving him notice u/s 46 proceed to assess the tax liability in accordance with the provision of Rule 100 to the best of his judgment, taking into account all the relevant material available on record, and issue an assessment order. This is also known as 'best judgment assessment'. It can be completed without giving notice of hearing to the assessee.
3. It may be noted that a return filed u/s 39 can be revised not later than the due date of furnishing of return for the month of September following the end of the financial year or actual date of filing annual return u/s 44, whichever is earlier.
4. Therefore, issuance of notice u/s 46 is a necessity for commencing proceedings u/s 62. Non-issuance of notice u/s 46 closes the door on invoking sec. 62 although other provisions are available to recover the tax dues.
5. If, however, a registered person furnishes a 'valid return' within 30 days of the service of assessment order, the said assessment order shall be deemed to be withdrawn. 'Valid return' is defined in sec. 2(117) to mean a return filed u/s 39(1) of the Act on which self-assessed tax has been paid in full. In order to avail the facility of withdrawal of the assessment order passed, filing of a valid return is required, including payment of taxes declared therein.
6. Time limit of 5 years (extended period for cases covered u/s 73), is also applicable for issuing order u/s 62.
7. Consequence of late fee u/s 47 and interest u/s 50 will both be applicable in cases of conclusion of best judgement assessment made under this Section.
8. An order passed under this section shall be communicated to the registered person in FORM GST ASMT 13.

4. Comment on the following:

- a. What action may be taken by the proper officer in case no satisfactory explanation is sought after the discrepancies are brought to the notice of the registered person?
- b. What kind of audits are envisaged under the GST law?
- c. When shall special audit u/s 66 be applicable?
- d. What is a non-cognizable offence?

Answer:

- a. In case, after accepting the discrepancies, no satisfactory explanation is furnished within 30 days or such further period as may be permitted, proper officer may:
 - (i) Initiate Audit of accounts by the tax authorities u/s 65; or
 - (ii) Initiate special audit u/s 66; or
 - (iii) Initiate inspection, search and seizure u/s 67; or
 - (iv) proceed to determine the tax and other dues u/s 73 or sec. 74
- b. Following audits are envisaged under law:
 - (i) Audit by Tax Authorities [Sec. 65]
 - (ii) Special Audit by Chartered Accountant or Cost Accountant nominated by Commissioner [Sec. 66]



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(iii) Audit of Accounts by Chartered Accountant or Cost Accountant where turnover exceeds ₹ 2 crores
[Sec. 35(5), 44(2), Rule 80(3)]

- c. Direction for special audit is given having regard to nature and complexity of the case and the interest of the revenue. Direction can be given if officer is of the opinion that value has not been correctly declared or the credit availed is not within normal limits [Sec. 66(1)]
- d. Non-cognizable offence means an offence in respect of which a police officer does not have the authority to make an arrest without a warrant and an investigation cannot be initiated without the permission of a Court.

5. (a) What are the safeguards provided for a person who is placed under arrest?

Answer:

The following are the safeguards provided for a person who is placed under arrest:

- a. If a person is arrested for a cognizable offence, he must be informed in writing of the grounds of arrest and he must be produced before a Magistrate within 24 hours of his arrest;
- b. If a person is arrested for a non-cognizable and bailable offence, the Deputy/Assistant Commissioner shall, for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station

(b) Enlist the goods which are subject to compensation cess.

Answer:

Following goods are subject to compensation cess:

- Pan Masala
- Tobacco and tobacco products
- Cigarettes
- Coal, briquettes, ovoids and similar solid fuels manufactured from coal, lignite excluding jet and peat.
- Aerated waters
- Motor vehicles

6. (a) Are there any other class of officers who are required to assist proper officers in implementation of the CGST Act, 2017?

Answer:

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As per sec. 72, following officers are required to assist proper officers in the implementation of GST Act.

The categories specified in Act are as follows:

- a. Police
- b. Railways
- c. Customs
- d. Officers of State/Union Territory engaged in collection of GST
- e. Officers of State/Central Government engaged in collection of land revenue
- f. All village officers
- g. Any other class of officers as may be notified by the Government.

(b) What process of audit is required to be followed by the officer?

Answer:

As per Rule 101, following process is to be followed for conduct of audit by officer:

- (i) Proper Officer shall verify the documents, correctness of turnover, exemptions and deductions claimed, the rate of tax applied, input tax credit availed and utilized and refund claimed.
- (ii) Proper Officer shall record the observations in audit notes.
- (iii) Proper Officer may inform discrepancies noticed during audit to registered person
- (iv) Registered Person shall reply to discrepancies
- (v) Proper officer shall finalize findings of audit only after due consideration of reply
- (vi) On the conclusion of audit, Proper Officer shall inform the Registered Person whose records are audited about findings, reason for findings and assessee's right and obligations within 30 days in Form GST ADT-02.

7. What is the purpose of GST compensation cess?

Answer:

Cess under GST is a compensation cess that will be levied on certain goods and services under section 8 of the GST (Compensation to States) Act, 2017. It is levied on inter-State and intra-State transactions of goods and services to compensate the revenue losses occurred to the States because of the implementation of GST in the country. It means Under GST, in addition to tax on supply (which are CGST + SGST/UTGST on intrastate supplies and IGST on interstate supplies), a GST Cess is to be levied on supply of certain goods.



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It is levied to compensate states who may suffer any loss of revenue due to the implementation of GST. As GST is a consumption based tax, the state in which consumption of goods or services happens will be eligible for the revenue on supplies. As a result, manufacturing states like Maharashtra, Tamil Nadu, Gujarat, Haryana and Karnataka are expected to face a decrease in revenue from indirect taxes. In order to compensate these states for this loss of revenue, GST Cess will be levied on supply of certain goods, which will be distributed to these states. This Cess will be levied for 5 years from the date of implementation of GST.

According to the GST cess (Compensation to State) Act, 2017, a compensation cess would be levied on specific items and services for compensation to the States for the loss of revenue on account of implementation of the goods and services tax in pursuance of the provisions of the Constitution (101st Amendment) Act, 2016.

GST cess levied this way would be credited to the GST compensation fund, from where it will be used to compensate the tax revenue losses of the States caused by GST implementation. The unutilized funds, if any, would be distributed among the Centre and the States equally. The state governments would receive cess in the ratio of the indirect tax revenues generated by them in the last year before the implementation of GST.



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Study Note – 19, 20 & 21

ADVANCE CONCEPTS UNDER GST, JOB WORK UNDER GST, E-WAY BILLS UNDER GST

Learning Objective:

- *This study note will help to understand the various advance concepts of the GST like recovery, appeals and revisions. Further, one can learn the mechanism required to be followed in case of job work and transportation of goods.*

1. Choose the correct alternative and also provide your justification:

- i. What is the time limit for issue of order in case of fraud, misstatement or suppression?
- 30 months
 - 18 months
 - 3 years
 - 5 years**

Reason:

As per sec. 74(10), the proper officer shall issue the order within a period of 5 years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within 5 years from the date of erroneous refund.

- ii. What is the maximum amount of demand for which the officer can issue an order u/s 73 in case of other than fraud, misstatement or suppression?
- Amount of tax + interest + penalty of 10% of tax or ₹ 10,000/- whichever is higher**
 - Amount of tax + interest + penalty of 10% of tax
 - ₹ 10,000/-
 - Amount of tax + interest + 25% penalty

Reason:

As per sec. 73(9), the proper officer shall determine the amount of tax, interest and a penalty equivalent to 10% of tax or ₹ 10,000, whichever is higher, due from such person and issue an order.



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- iii. Is there any time limit for issue of notice u/s 76 in cases where tax collected but not paid?
- a. **No time limit**
 - b. 1 year
 - c. 3 years
 - d. 5 years

Reason:

There is no time limit for issue of notice u/s 76 in cases where tax collected but not paid?

- iv. Recovery of amount payable by a defaulter can be made from:
- a. Customer
 - b. Bank
 - c. Post Office
 - d. **All of the above**

Reason:

As per sec. 79, recovery of amount payable by a defaulter can be made from bank, post office, customer, etc.

- v. Who may make an application for Advance Ruling?
- a. Jurisdictional officer
 - b. **Applicant**
 - c. Both (a) and (b)
 - d. Concerned Officer

Reason:

As per sec. 97, an applicant desirous of obtaining an advance ruling may make an application stating the question on which the advance ruling is sought

- vi. Within how many days the Authority shall pronounce its decision on Advance Ruling from the date of receipt of application?
- a. 30 days
 - b. 60 days
 - c. **90 days**
 - d. 120 days

Reason:

As per sec. 98(6), the Authority shall pronounce its advance ruling in writing within 90 days from the date of receipt of application.

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- vii. What is the valid tenure for the e-way bill for a distance of upto 100 KMS?
- One day**
 - Two days
 - One week
 - None of the above

Reason:

As per Rule 138, validity tenure for the e-way bill for a distance upto 100 KMS is one day.

- viii. From what time will the period of one or three years be calculated u/s 143?
- The day when such inputs and/or capital goods are sent to job-worker
 - The day when a job-worker receives the said goods directly
 - Both (a) and (b)**
 - None of the above

Reason:

As per sec. 143(3), where the inputs sent for job work are not received back by the principal after completion of job work or are not supplied from the place of business of the job worker within a period of 1 year of their being sent out, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were sent out. Similarly, as per sec. 143(4), where the capital goods, other than moulds and dies, jigs and fixtures, or tools, sent for job work are not received back by the principal within a period of 3 years of their being sent out, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were sent out.

- ix. When should a job-worker go for registration?
- Always
 - Only if his aggregate turnover exceeds the threshold limits specified u/s 22 of the Act**
 - Never
 - None of the above

Reason:

A job worker is required to obtain registration only if his aggregate turnover exceeds threshold limit, irrespective of the fact whether job worker and principal are situated in same state or different states.

2. (a) Under what circumstances, the proper officer shall invoke provisions of sec. 73(1) to serve show cause notice on the person chargeable with tax? What is the time limit for issue of show cause notice by the proper officer u/s 73(2)?

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Answer:

The proper officer shall serve notice u/s 73(1) along with a summary, electronically in Form GST DRC-01 on the person chargeable with tax for any reason other than fraud, willful misstatement or suppression of facts, when he has reasons to believe that tax has not been paid or short paid or erroneously refunded or input tax credit has been wrongly availed or utilized. The proper officer shall issue show cause notice at least 3 months prior to the time limit of 3 years for issuance of order i.e. Before completion of 3 years from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilized relates to, or within 3 years from the date of erroneous refund, as the case may be.

(b) What is the prescribed monetary limit for different levels of officers for issuance of show cause notices and orders under Section 73 and 74?

Answer:

As per Circular No. 31/05/2018-GST dated 9.02.2018, the monetary limit prescribed for different levels of officers for issuance of show cause notices and orders under Section 73 and 74 is as below:

Officer of Central Tax	Monetary limit for issuance of show cause notices and passing of orders u/s 73 and 74 of CGST Act / section 20 of IGST Act		
	Central	Integrated	Central & Integrated
Superintendent of Central Tax	Not exceeding Rupees 10 lakhs	Not exceeding ₹ 20 lakhs	
Deputy or Assistant Commissioner of Central Tax	Above ₹ 10 lakhs and not exceeding ₹ 1 crore	Above ₹ 20 lakhs and not exceeding ₹ 2 crore	
Additional or Joint Commissioner of Central Tax	Above ₹ 1 crore without any limit	Above ₹ 2 crores without any limit	

3. What are the modes of recovery of tax available to the proper officer?

Answer:

As per sec. 79, the following options are available to the proper officer:

- a) **Adjustment with Refund:** The proper officer may deduct or may require any other specified officer in Form GST DRC-09 to deduct the amount so payable from any money owing to such person.
- b) **Detaining and selling of goods:** The proper officer may recover or may require any other specified officer to recover the amount so payable by detaining and selling any goods belonging to such person. The goods shall be sold through a process of auction including e-auction, for which a notice shall be issued in Form GST DRC-10 clearly indicating the goods to be sold and the purpose of sale. The proper officer shall issue a notice to the successful bidder in Form GST DRC-11 requiring him to make the

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payment within a period of 15 days from the date of auction. On payment of the full bid amount the possession of the said goods shall be transferred to the successful bidder and issue a certificate in Form GST DRC-12.

- c) **Recovery from third parties:** The proper officer may, by a notice in Form GST DRC-13, require any other person from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government. Where the third person makes the payment of the amount specified in the notice in Form GST DRC-13, then the proper officer shall issue a certificate in Form GST DRC-14 to the third person clearly indicating the details of the liability so discharged.
- d) **Recovery through execution of a decree, etc.:** Where any amount is payable to the defaulter in the execution of a decree of a civil Court for the payment of money or for sale in the enforcement of a mortgage or charge, the proper officer shall send a request in Form GST DRC-15 to the said court and the court shall, subject to the provisions of the Code of Civil Procedure, 1908, execute the attached decree, and credit the net proceeds for settlement of the amount recoverable.
- e) **Detaining / attachment of movable or immovable property and adjustment of tax dues from sale proceeds:** The proper officer may, on an authorization by the competent authority, distrain any movable or immovable property belonging to or under the control of such person, and detain the same until the amount payable is paid. Thereby issue an order of attachment or distraint and a notice for sale in Form GST DRC-16 prohibiting any transaction with regard to such movable and immovable property as may be required for the recovery of the amount due. If the due remains unpaid for a period of 30 days after any such distress, he may cause the said property to be sold. The property attached or distrained shall be sold through auction, including e-auction, for which a notice shall be issued in Form GST DRC-17 clearly indicating the property to be sold and the purpose of sale. With the proceeds of such sale, proper officer may satisfy the amount payable and the costs including cost of sale remaining unpaid and pay the surplus amount, if any, to such person.
- f) **Recovery of tax dues as arrears of land revenue:** The proper officer may prepare a certificate signed by him specifying the amount due from such person and send such certificate to the Collector of the District in Form GST DRC-18 in which such person owns any property or resides or carries on his business and on receipt of such certificate, the Collector shall proceed to recover from such person the amount specified as if it were an arrear of land revenue.
- g) **Recovery through Court:** Where an amount is to be recovered as if it were a fine imposed under the Code of Criminal Procedure, 1973, the proper officer shall make an application before the appropriate Magistrate in Form GST DRC-19 to recover from the defaulter, the amount specified there under as if it were a fine imposed by him.
- h) **Recovery from Company in liquidation:** Where the Company is under liquidation, the Commissioner shall notify the liquidator for the recovery of any amount representing tax, interest, penalty or any other amount due under the Act in Form GST DRC-24.

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4. (a) Can the applicant / Department file an appeal against the Ruling pronounced by the AAR?

Answer:

- Appellate Authority for advance ruling is set up for each state for:
 - Deciding the question involved where members of authority for advance ruling differ with each other. In this case, reference shall be made by authority for advance ruling
 - Filing appeal against the order of authority for advance ruling by the aggrieved applicant, concerned officer or jurisdictional officer.
- Appeal shall be filed within 30 days from the date of communication of order of authority for advance ruling.
- The period may be further extended by 30 days where appellant is prevented by sufficient cause from presenting the appeal.
- The appeal shall be decided within 90 days from date of filing appeal or making of reference by authority for advance ruling.

(b) Can an Advance Ruling given be nullified?

Answer:

As per sec. 104, where the Authority or the Appellate Authority finds that advance ruling pronounced by it has been obtained by the applicant or the appellant by fraud or suppression of material facts or misrepresentation of facts, it may, by order, declare such ruling to be void ab-initio

(c) What are the questions or matters on which advance ruling can be obtained?

Answer:

As per sec. 97, the Advance Ruling can be obtained on the following questions or matters:

- a) classification of any goods or services or both;
- b) applicability of a notification issued under provisions of the Act;
- c) determination of time and value of the supply of goods or services or both;
- d) admissibility of input tax credit of tax paid or deemed to have been paid;
- e) determination of the liability to pay tax on any goods or services or both;
- f) whether applicant is required to be registered;
- g) whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

5. (a) Under what circumstances Revisional Authority can revise the order passed under the CGST Act?



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Answer:

As per sec. 2(99), "revisional authority" means an authority appointed or authorised for revision of decision or orders as referred to in sec. 108.

As per sec. 108, the Revisional Authority may either on his own motion or based on the information received by him or based on the request of the Commissioner of State Tax or Commissioner of Union Territory tax, could call for and examine the record of any proceeding, and if he considers that any decision or order passed under the CGST Act, or SGST Act or UTGST Act, by any officer subordinate to him is:

- (a) erroneous in so far as it is prejudicial to the interest of the revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not; or
- (b) in consequence of an observation by the Comptroller and Auditor General of India,

he may, if necessary, stay the operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said decision or order.

Tax point: 'Record' shall include all records relating to any proceedings under this Act available at the time of examination by the Revisional Authority.

(b) Whether the Appellate Tribunal has the same powers as that of Civil Court?

Answer:

As per sec. 111, the Appellate Tribunal shall, for the purposes of discharging its functions under the CGST Act, have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters:

- a) summoning and enforcing the attendance of any person and examining him on oath;
- b) requiring the discovery and production of documents;
- c) receiving evidence on affidavits;
- d) subject to the provisions of sec. 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or a copy of such record or document from any office;
- e) issuing commissions for the examination of witnesses or documents;
- f) dismissing a representation for default or deciding it ex parte;
- g) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- h) any other matter which may be prescribed.



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6. (a) What are the general disciplines to be followed while imposing penalties?

Answer:

As per sec. 126, following general disciplines to be followed while imposing penalties:

1. No officer shall impose any penalty for minor breaches of tax regulations or procedural requirements and in particular, any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent or gross negligence.
 - A breach shall be considered a 'minor breach' if the amount of tax involved is less than ₹ 5,000;
 - An omission or mistake in documentation shall be considered to be easily rectifiable if the same is an error apparent on the face of record.
2. The penalty imposed under this Act shall depend on the facts and circumstances of each case and shall be commensurate with the degree and severity of the breach.
3. No penalty shall be imposed on any person without giving him an opportunity of being heard.
4. The officer shall while imposing penalty in an order for a breach of any law, regulation or procedural requirement, specify the nature of the breach and the applicable law, regulation or procedure under which the amount of penalty for the breach has been specified.
5. When a person voluntarily discloses to an officer under this Act the circumstances of a breach of the tax law, regulation or procedural requirement prior to the discovery of the breach by the officer under this Act, the proper officer may consider this fact as a mitigating factor when quantifying a penalty for that person.

However, the provisions of this section shall not apply in such cases where the penalty specified under this Act is either a fixed sum or expressed as a fixed percentage.

(b) Is there any penalty on the persons who aids or abets in offences attracting penalty in terms of sec. 122(1)?

Answer:

As per sec. 122(3), any activity pertaining to aiding or abetting the offence would be an offence attracting a penalty to the extent of ₹ 25,000/-. Further, following offences shall also be punishable with a penalty to the extent of ₹ 25,000:

- a) acquires possession of, or in any way concerns himself in transporting, removing, depositing, keeping, concealing, supplying, or purchasing or in any other manner deals with any goods which he knows or has reason to believe are liable to confiscation under this Act or the rules made thereunder;
- b) receives or is in any way concerned with the supply of, or in any other manner deals with any supply of services which he knows or has reason to believe are in contravention of any provisions of this Act or the rules made thereunder;
- c) fails to appear before the officer of Central Tax, when issued with a summon for appearance to give evidence or produce a document in an enquiry;
- d) fails to issue invoice in accordance with the provisions of this Act or rules made thereunder, or fails to account for an invoice in his books of account.



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7. (a) Is a job-worker required to take registration?

Answer:

As per Notification No. 07/2017-Integrated Tax, dt.14-09-2017, the job workers engaged in making inter-State supply of services to a registered person are exempted from obtaining registration. However, such exemption is not available to a job-worker who is liable to be registered u/s 22(1) i.e., threshold limit or who opts for voluntarily u/s 25(3) ; or of section 25 of the said Act; or job worker is involved in taking supply of services in relation to the goods mentioned against serial number 151 in the Annexure to Rule 138 of the CGST Rules, 2017 i.e. Jewellery, goldsmiths' and silversmiths' wares as covered under Chapter 71 which do not require e-way bill (hereinafter referred to as "specified job worker").

Further, Notification No. 10/2017 – Integrated Tax dated 13.10.2017 has exempted the persons making inter-State supplies of taxable services and having an aggregate turnover not exceeding an amount of ₹ 20 lakhs in a financial year from obtaining registration.

(b) What are the documents and evidence deemed to be documents and evidence for the purpose of proceedings?

Answer:

As per sec. 145, the following shall be deemed to be documents and evidences for the purpose of any proceedings:

1. a micro film of a document or the reproduction of the image or images embodied in such micro film (whether enlarged or not); or
2. a facsimile copy of a document; or
3. a statement contained in a document and included in a printed material produced by a computer, subject to such conditions as may be prescribed; or
4. any information stored electronically in any device or media, including any hard copies made of such information.

8. (a) What is an E-Way bill?

Answer:

E-way bill is an Electronic Way bill for movement of goods to be generated on the E-way bill portal. A GST registered person cannot transport goods in a vehicle whose value exceeds ₹ 50, 000/- without an e-way bill that is generated on ewaybillgst.gov.in Alternatively, E-way bill can also be generated or cancelled through SMS, Android App and by site-to-site integration through API. When an E-way bill is generated, a unique E-way Bill Number (EBN) is allocated and is available to the supplier, recipient, and the transporter.



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(b) Explain the circumstances under which e-way bill is not required?

Answer:

In the following events, no e-way bill is required to be generated:

- a) where the goods being transported are specified in Annexure of Rule 138 of the CGST Rules;
- b) where the goods are being transported by a non-motorized conveyance;
- c) where the goods are being transported from the port, airport, air cargo complex and land customs station to an inland container depot or a container freight station for clearance by Customs;
- d) In respect of movement of goods within such areas as are notified under Rule 138(14) of the Goods and Services Tax Rules of the concerned State.
- e) where the goods are transported for a distance of less than ten kilometers within the State or Union territory from the place of business of the consignor to the place of business of the transporter for further transportation, the supplier or the transporter may not furnish the details of conveyance in Part B of Form GST EWB-01.

(c) When can an e-way bill be cancelled?

Answer:

Where an e-way bill has been generated however, goods are either not transported or are not transported as per the details furnished in the e-way bill, the e-way bill may be cancelled electronically on the common portal within 24 hours of generation of the e-way bill. However, an e-way bill cannot be cancelled if, it has been verified in transit in accordance with the provisions of Rule 138B.



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Study Note – 22, 23, 24 & 25

TRANSITIONAL PROVISIONS,

ANTI-PROFITEERING,

REPLYING TO DEPARTMENT NOTICES UNDER GST,

OPERATION OF GST PORTAL

Learning Objective:

- *This study note will help to understand the various transitional provisions of the GST along with anti-profiteering mechanism.*

1. Choose the correct alternative and also provide your justification:

- i. The ITC in respect of the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, shall be claimed by filing Form
- Form GST Tran 1**
 - Form GSTR 1
 - Form GST Tran 3
 - None of the above because it will be automatically transferred

Reason:

As per sec. 140, the ITC in respect of the amount of CENVAT credit carried forward in the return relating to the period ending with the day immediately preceding the appointed day, shall be claimed by filing Form GST Tran 1.

- ii. As per sec. 171, any benefit of input tax credit is required to be
- Passed on to the recipient by way of commensurate reduction in price**
 - Transferred to the special reserve account
 - Passed on to the account of Central Government and State Government (50% each)
 - None of the above

Reason:

As per sec. 171, any benefit of input tax credit is required to be passed on to the recipient by way of commensurate reduction in price

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- iii. What is the address of the website of common portal of GST
- www.gst.gov.in**
 - www.gst.gov.in
 - www.cgst.gov.in
 - www.sgst.gov.in

Reason:

The address of the website of common portal of GST is www.gst.gov.in

- iv. The GSTN portal is handling:
- Various return
 - Registration
 - Payment of GST
 - All of the above**

Reason:

The GSTN portal is handling all of the given functions.

2. Enlist the services available at the GST portal.

Answer:

Following important services are available at the GST portal:

- Application for Registration for Normal Taxpayer, ISD, Casual Dealer
- Application for GST Practitioner
- Opting for Composition Scheme (GST CMP-02)
- Stock intimation for Composition Dealers (GST CMP-03)
- Opting out of Composition Scheme (GST CMP-04)
- Filing GST Returns
- Payment of GST
- Filing Table 6A of GSTR-1 (Export Refund)
- Claim Refund of excess GST paid (RFD-01)
- Furnish Letter of Undertaking (LUT) (RFD-11)
- Transition Forms (TRAN-1, TRAN-2, TRAN-3)
- Viewing E-Ledgers

3. What are the silent features of the GSTIN?

Answer:

The GSTN is a complex IT initiative. It will establish a uniform interface for the taxpayer and also create a common and shared IT infrastructure between the Centre and States.

- **Trusted National Information Utility:** The GSTN is a trusted National Information Utility (NIU) providing reliable, efficient and robust IT backbone for the smooth functioning of GST in India.
- **Handles Complex Transactions:** GST is a destination-based consumption tax. The adjustment of IGST (for inter-state trade) at the government level (Centre & various states) will be extremely complex, considering the sheer volume of transactions all over India. A rapid settlement mechanism amongst the States and the Centre will be possible only when there is a strong IT infrastructure and service backbone which captures, processes and exchanges information.
- **Secure Information:** The government will have strategic control over the GSTN, as it is necessary to keep the information of all taxpayers confidential and secure. The Central Government will have control over the composition of the Board, mechanisms of Special Resolution and Shareholders Agreement, and agreements between the GSTN and other state governments. Also, the shareholding pattern is such that the Government shareholding at 49% is far more than that of any single private institution.
- **Sharing of Expenses:** The user charges shall be paid entirely by the Central Government and the State Governments in equal proportion (i.e. 50:50) on behalf of all users. The state share will be then apportioned to individual states, in proportion to the number of taxpayers in the state.

4. What are the procedures to be followed for recovery of arrears arising out of proceedings under the erstwhile law?

Answer:

The Central Government vide Circular No. 42/16/2018-GST dated 13th April, 2018 specified the procedure to be followed for recovery of arrears arising out of proceedings under the erstwhile law is as under:

Recovery of central excise duty, service tax or wrongly availed CENVAT credit thereof under the existing law and inadmissible transitional credit:

- The CENVAT credit of central excise duty or service tax wrongly carried forward as transitional credit shall be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (Form GST PMT-01).
- The arrears of central excise duty, service tax or wrongly availed CENVAT credit shall, unless recovered under the existing law, be recovered as central tax liability to be paid through the utilization of amounts available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (Form GST PMT-01).



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Recovery of interest, penalty and late fee payable:

- The arrears of interest, penalty and late fee in relation to CENVAT credit wrongly carried forward, arising out of any of the situations discussed above, shall be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (Form GST PMT-01).
- Further, the arrears of interest, penalty and late fee in relation to arrears of central excise duty, service tax or wrongly availed CENVAT credit shall, unless recovered under the existing law, be recovered as interest, penalty and late fee of central tax to be paid through the utilization of the amount available in the electronic cash ledger of the registered person and the same shall be recorded in Part II of the Electronic Liability Register (Form GST PMT-01).

Payment of central excise duty & service tax on account of returns filed for the past period.

With effect from 1st April 2018, the return filed on portal www.aces.gov.in, the registered person shall be automatically taken to the payment portal i.e. ICEGATE portal for the payment relating to Central Excise / Service Tax return.

Recovery of arrears from assesseees under the existing law in cases where such assesseees are not registered under the CGST Act, 2017

Such arrears shall be recovered in cash, under the provisions of the existing law and the payment of the same shall be made as per aforesaid procedure.

It is pertinent to mention here, the aforesaid Circular inter alia provides that the recovery of arrears arising under the existing law shall be made as central tax liability to be paid through the utilization of the amount available in the electronic credit ledger or electronic cash ledger of the registered person, and the same shall be recorded in Part II of the Electronic Liability Register (Form GST PMT-01). However, the functionality to record this liability in the electronic liability register is not available on the common portal. Therefore, alternative method of recovery has been provided vide Circular No. 58/32/2018-GST dated 4th September, 2018 this method of recovery, taxpayers may reverse the wrongly availed CENVAT credit under the existing law and inadmissible transitional credit through Table 4(B)(2) of Form GSTR-3B. The applicable interest and penalty shall apply on all such reversals which shall be paid through entry in column 9 of Table 6.1 of Form GSTR-3B.

5. (a) What is the Constitution of National Anti-profiteering Authority?

Answer:

In terms of Rule 122 of the CGST Rules, the Authority shall consist of:

- a) a Chairman who holds or has held a post equivalent in rank to a Secretary to the Government of India; and



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- b) four Technical Members who are or have been Commissioners of State tax or central tax for at least one year or have held an equivalent post under the existing law, to be nominated by the Council.

(b) Who can issue summon to give evidence and produce documents in case of Anti profiteering?

Answer:

As per Rule 132, the Director General of Anti-profiteering, or an officer authorised by him in this behalf, shall be deemed to be the proper officer to exercise the power to summon any person whose attendance he considers necessary either to give evidence or to produce a document or any other thing u/s 70 and shall have power in any inquiry in the same manner, as provided in the case of a civil court under the provisions of the Code of Civil Procedure, 1908. Further, every such inquiry shall be deemed to be a judicial proceedings within the meaning of sec. 193 and 228 of the Indian Penal Code

6. (a) Can the proper Officer Cancel the Registration on his own?

Answer:

As per sec. 29(2), the proper officer may cancel the registration, after giving an opportunity of being heard, of a person from such date, as he may deem fit, where:

1. a registered person has contravened such provisions of the Act or the rules made thereunder as may be prescribed; or
 2. a person paying tax u/s 10 has not furnished returns for three consecutive tax periods; or
 3. any registered person, other than a person specified above, has not furnished returns for a continuous period of 6 months; or
 4. any person who has taken voluntary registration u/s 25(3) has not commenced business within 6 months from the date of registration; or
- registration has been obtained by means of fraud, wilful misstatement or suppression of facts.



CUSTOMS LAW



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Study Note – 1, 2 & 3 CUSTOMS LAW – BASIC CONCEPTS, CLASSIFICATION UNDER CUSTOMS, TYPES OF DUTIES

Learning Objective:

- *Customs duty is leviable on import or export. This study note will help to understand the various types of duties leviable as Customs.*

1. Choose the correct alternative and also provide your justification:

- i. Road & infrastructure cess on imported goods is levied as a duty of customs @ _____ on motor spirit (petrol) and high speed diesel imported into India
- ₹ 8 per liter
 - ₹ 10 per liter
 - ₹ 5 per liter
 - ₹ 1 per liter

Reason:

As per sec. 111 of the Finance Act, 2018, Road & infrastructure cess on imported goods is levied as a duty of customs @ ₹ 8 per liter on motor spirit (petrol) and high speed diesel imported into India for the purpose of financing infrastructure projects.

- ii. Territorial water of India extends to ___ nautical miles from the base line
- 12
 - 24
 - 8
 - 10

Reason:

Territorial water of India extends to 12 nautical miles from the base line

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- iii. _____ 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
- Levy**
 - Assessment
 - Collection of tax
 - All of the above

Reason:

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

- iv. Section _____ makes it abundantly clear that importation or exportation of goods into or out of India is the taxable event for payment of the duty of customs
- 10
 - 11
 - 12**
 - 13

Reason:

Section 12 makes it abundantly clear that importation or exportation of goods into or out of India is the taxable event for payment of the duty of customs

- v. _____ refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery
- Derelict**
 - Jetsam
 - Flotsam
 - Wreck

Reason:

Derelict refers to any cargo, vessel, etc. abandoned in the sea with no hope of recovery

2. (a) In the context of the Customs Act, what is the meaning of assessment?

Answer:

As per sec. 2(2), "assessment" means determination of the dutiability of any goods and the amount of duty, tax, cess or any other sum so payable, if any, under this Act or under the Customs Tariff Act, 1975 (hereinafter referred to as the Customs Tariff Act) or under any other law for the time being in force, with reference to

- the tariff classification of such goods as determined in accordance with the provisions of the Customs Tariff Act;



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- b. the value of such goods as determined in accordance with the provisions of this Act and the Customs Tariff Act;
- c. exemption or concession of duty, tax, cess or any other sum, consequent upon any notification issued therefor under this Act or under the Customs Tariff Act or under any other law for the time being in force;
- d. the quantity, weight, volume, measurement or other specifics where such duty, tax, cess or any other sum is leviable on the basis of the quantity, weight, volume, measurement or other specifics of such goods;
- e. the origin of such goods determined in accordance with the provisions of the Customs Tariff Act or the rules made thereunder, if the amount of duty, tax, cess or any other sum is affected by the origin of such goods;
- f. any other specific factor which affects the duty, tax, cess or any other sum payable on such goods, and includes provisional assessment, self-assessment, re-assessment and any assessment in which the duty assessed is nil;

(b) Explain the legal provisions relating to duty on pilfered goods.

Answer:

Duty on pilfered goods

All imported goods unloaded in a customs area shall remain in the custody of an approved person (being approved by the Commissioner) until they are cleared for home consumption or are warehoused or are transhipped - [Sec. 45(1)]

If any imported goods are pilfered after unloading thereof in a custom area while in the custody of such approved person, then that person shall be liable to pay duty on such goods at the rate prevailing on the date of delivery of an import manifest or an import report to the proper officer – [Sec. 45(2)]

If any imported goods are pilfered after the unloading thereof but before the proper officer has made an order for clearance for home consumption or deposit in a warehouse, the importer shall not be liable to pay the duty leviable on such goods except where such goods are re-stored to the importer after pilferage - [Sec. 13]

3. (a) Explain the provision relating to levy of social welfare surcharge.

Answer:

Social Welfare Surcharge (SWS) [Sec. 110 of the Finance Act, 2018]

1. SWS is a duty of Customs levied for the purpose of Union on the goods, specified in the First Schedule to the Customs Tariff Act, being imported into India.

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2. SWS has been levied to fulfil the commitment of the Government to provide and finance education, health and social security.
3. SWS shall be calculated @ 10% on the aggregate of duties, taxes and cesses which are levied and collected by the Central Government u/s 12 of the Customs Act, 1962 and any sum chargeable on such imported goods under any other law for the time being in force, as an addition to, and in the same manner as, a duty of customs, but not including:
 - a. the safeguard duty referred to in sec. 8B and 8C of the Customs Tariff Act;
 - b. the countervailing duty referred to in sec. 9 of the Customs Tariff Act;
 - c. the anti-dumping duty referred to in sec. 9A of the Customs Tariff Act;
 - d. the Social Welfare Surcharge on imported goods [No SWS on SWS]
4. SWS on IGST and GST Compensation cess has been exempted [Notification No. 11/2018 dated 02-02-2018]
5. The Social Welfare Surcharge on imported goods shall be in addition to any other duties of customs or tax or cess chargeable on such goods, under the Customs Act, 1962 or any other law for the time being in force.

(b) Write a note on project imports.

Answer:

- Normally, imported goods are classified separately under different tariff headings and assessed to applicable Customs duty, but as a variety of goods are imported for setting up an industrial project their separate classification and valuation for assessment to duty becomes cumbersome. Further, the suppliers of a contracted project, do not value each and every item or parts of machinery which are supplied in stages. Hence, ascertaining values for different items delays assessment leading to demurrage and time and cost overruns for the project.
- Project Imports Scheme is a concept, unique to Indian Customs, wherein all the goods imported for the purpose of setting up of Industrial Project or substantial expansion of existing industrial projects is subjected to single classification under heading 98.01 of Custom Tariff Act, 1975 and subjected to single rate of duty instead of merit assessment of imported goods.
- Under the Scheme of Project Import, the following projects are covered:-
 - a. Industrial Plant,
 - b. Irrigation Project,
 - c. Power Project,
 - d. Mining Project,
 - e. Project for the exploration for oil or other minerals, and
 - f. Such other projects as the central government may, having regard to the economic development of the country notify in the Official Gazette.

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4. (a) Write note on safeguard duty leviable u/s 8B of the Customs Tariff Act.

Answer:

Safeguard duty [Sec. 8B of Customs Tariff Act]

Where the Central Government is satisfied that -

- a) An article is imported into India in increased quantities; and
 - b) Such article is imported in such manner which shall cause or is threatening to cause serious injury to the domestic market,
- then it may impose safeguard duty on such imported articles.

Notes:

1. If the following conditions are satisfied then safeguard duty shall not be imposed –
 - (a) Such article is originating from a developing country or countries;
 - (b) Aggregate import from country or countries shall not exceed –

Where the article is originating from one developing country	The share of imports of that article from that country does not exceed 3% of the total imports of that article into India
Where the article is originating from more than one developing country	The aggregate of the imports from developing countries each with less than 3% does not exceed 9% of the total imports of that article into India

2. Provisional safeguard duty: The Central Government may, pending the enquiry, impose a provisional safeguard duty on the basis of preliminary determination that increased imports have caused or is threatened to cause serious injury to a domestic industry. However, such provisional safeguard duty shall not remain in force for more than 200 days from the date on which it was imposed.
3. Unless and until specifically mentioned in the notification, safeguard duty or provisional safeguard duty shall not apply on articles imported by a 100% export oriented undertaking or a unit in free trade zone or in special economic zone.
4. Safeguard duty shall be ceased to have effect on the expiry of 4 years (unless revoked earlier) from the date of its imposition. However, the Central Government may extend the period of levy to 10 years.

(b) Explain the provision relating to remission of duty on lost, destroyed and abandoned goods.

Answer:

Remission of duty on lost, destroyed or abandoned goods [Sec. 23]

1. Where it is shown to the satisfaction of the Assistant Commissioner or Deputy Commissioner that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed at any time before clearance for home consumption, then the Assistant Commissioner or Deputy Commissioner shall remit the duty on such goods.

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2. The owner of any imported goods may, before an order for clearance of the goods for home consumption or an order for permitting the deposit of goods in a warehouse, relinquish his title to the goods and thereupon he shall not be liable to pay the duty thereon.
3. However, the owner of any such imported goods shall not be allowed to relinquish his title to such goods regarding which an offence appears to have been committed under this Act or any other law.

5. (a) From the following information, compute the amount of customs duty payable:

(i) Assessable value under customs: ₹ 1,50,000;

(ii) Basic customs duty: 10%;

(iii) IGST: 12%; and

(iv) SWS @ 10%

Solution:

Computation of Customs Duty Payable

Particulars	Details	Amount
Assessable Value under Customs	1,50,000	
Add: Basis Customs Duty [10% of ₹ 1,50,000]	15,000	15,000
	1,65,000	
Add: SWS @ 10% [10% of ₹ 15,000]	1,500	1,500
Value for IGST	1,66,500	16,500
Add: IGST [₹ 1,66,500 x 12%]	19,980	19,980
Total Customs Duty Payable		36,480

(b) M/s Hind IT Co. imported laptops with Hard Disc Drives (HDD) preloaded with operating software like Windows XP, XP home etc. The department has claimed that the said laptop along with the operating software was classifiable and assessable as a single unit. It is the claim of the assessee that the software loaded HDD should be classified and assessed separately as an exemption is available as per notification issued under section 25(1) of the Customs Act, 1962. Decide with a brief note whether the action proposed by the department is correct in law.

Answer:

The pre-loaded operating systems recorded in Hard Disc Drive in the laptop (item of import) forms an integral part of the laptop as the laptop cannot work without the operating system. A laptop without an operating system is like an empty building. Hence, laptop should be treated as one single unit classifiable under the Customs Tariff Act, 1975. The Apex Court held that when a laptop is imported with in-built pre-loaded operating system recorded on HDD, the said item forms an integral part of laptop (computer system). Hence, laptop should be treated as one single unit classifiable under Heading 84.71. However, if the operating system is imported as packaged software like an accessory, then it would be classifiable under Heading 85.24. There will be no question of adding the cost of the software. [CCus. - vs.- Hewlett Packard India Sales (P) Ltd. (2007) 215 ELT 484 (SC)]



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Study Note – 4, 5 & 6 VALUATION UNDER CUSTOMS, IMPORT AND EXPORT PROCEDURE, WAREHOUSING

Learning Objective:

- *This study note will help to understand the various provision relating to valuation under customs and procedure relating to import and export. Among other, sometime goods are required to be stored in warehouse, in this study note one can learn various provision relating to warehousing too.*

1. Choose the correct alternative and also provide your justification:

- i. Value of export goods under the Customs Act, 1962 is not determined by —
- a. **Market value**
 - b. Computed value
 - c. Transaction value
 - d. Deductive method

Reason:

Value of export goods under the Customs Act, 1962 is determined by transaction value. Further, valuation rules also provide valuation through computed value and deductive value.

- ii. Social welfare surcharge is leviable @
- a. 4%
 - b. 3%
 - c. 2%
 - d. **10%**

Reason:

Social welfare surcharge is leviable @ 10%

- iii. Maximum penalty for non filing of import manifest within time limit is
- a. ₹ 10,000
 - b. **₹ 50,000**
 - c. ₹ 25,000
 - d. ₹ 5,000



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Reason:

As per sec. 30, maximum penalty for non-filing of import manifest within time limit is ₹ 50,000

- iv. Who is liable to pay duty on pilfered goods?
- Custodian**
 - Importer
 - Proper Officer
 - None of the above

Reason:

As per sec. 45, custodian is liable to pay duty on pilfered goods.

- v. As per sec. 61, where any warehoused goods specified in sec. 61(1)(c) remain in a warehouse beyond a period of ___ days from the date on which the proper officer has made an order u/s 60, interest shall be payable @ 15%
- 60
 - 90**
 - 45
 - 30

Reason:

As per sec. 61, where any warehoused goods specified in sec. 61(1)(c) remain in a warehouse beyond a period of 90 days from the date on which the proper officer has made an order u/s 60, interest shall be payable @ 15%

2. State the provision of sec. 14 regarding valuation of goods.

Answer:

Valuation of goods [Sec. 14]

- For the purposes of the Customs Tariff Act, 1975, or any other law for the time being in force, the value of the imported goods and export goods shall be the transaction value of such goods, that is to say, the **price actually paid** or payable for the goods when sold for export to India for **delivery** at the **time and place of importation**, or as the case may be, for export from India for delivery at the time and place of exportation, where the **buyer and seller** of the goods are **not related** and **price is the sole consideration** for the sale subject to such other conditions as may be specified in the rules made in this behalf.
- Such transaction value in the case of imported goods shall include, in addition to the price, any amount paid or payable for costs and services, including commissions and brokerage, engineering, design work, royalties and licence fees, costs of transportation to the place of importation, insurance, loading, unloading and handling charges to the extent and in the manner specified in the rules made in this behalf.



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3. The rules made in this behalf may provide for:
 - (i) the circumstances in which the buyer and the seller shall be deemed to be related;
 - (ii) the manner of determination of value in respect of goods when there is no sale, or the buyer and the seller are related, or price is not the sole consideration for the sale or in any other case;
 - (iii) the manner of acceptance or rejection of value declared by the importer or exporter, as the case may be, where the proper officer has reason to doubt the truth or accuracy of such value, and determination of value for the purposes of this section.
4. Such price shall be calculated with reference to the rate of exchange as in force on the date on which a bill of entry is presented u/s 46, or a shipping bill of export, as the case may be, is presented u/s 50.
 - a. "rate of exchange" means the rate of exchange –
 - (i) determined by the Board, or
 - (ii) ascertained in such manner as the Board may direct, for the conversion of Indian currency into foreign currency or foreign currency into Indian currency;
5. Where the Board is satisfied that it is necessary or expedient so to do, it may, by notification in the Official Gazette, fix tariff values for any class of imported goods or export goods, having regard to the trend of value of such or like goods, and where any such tariff values are fixed, the duty shall be chargeable with reference to such tariff value.

3. Write a brief note on the distinction between identical goods and similar goods.

Answer:

Identical goods means imported goods –

- (a) which are same in all respects, including physical characteristics, quality and reputation as the goods being valued except for minor differences in appearance that do not affect the value of goods;
- (b) produced in the country in which the goods being valued were produced; and
- (c) produced by the same person who produced the goods or where no such goods are available, then goods produced by a different manufacturer.

However, identical goods do not include goods imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.

Similar goods means imported goods –

- (a) which although not alike in all respect, have like characteristics and like component materials which enable them to perform the same function. Such goods shall be commercially interchangeable with the goods being valued having regard to the quality, reputation and the existence of trade-mark.
- (b) produced in the country in which the goods being valued were produced; and
- (c) produced by the same person who produced the goods or where no such goods are available, then goods produced by a different manufacturer.

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However, similar goods do not include imported goods where engineering, development work, art work, design work, plan or sketch undertaken in India were completed directly or indirectly by the buyer on these imported goods free of charge or at a reduced cost for use in connection with the production and sale for export of these imported goods.

4. From the data given below relating to import of a machinery, you are required to compute the assessable value for customs duty purpose:

	(in USD)
FOB value of machinery	1,10,000
Air Freight	24,000
Expenses incurred by seller for improving the design, at buyer-importer's request	5,000
Transit insurance	Not ascertainable

Exchange rate 1 USD = ₹ 70

Answer:

Computation of assessable value for customs duty purposes

	(USD)
FOB value of machine	1,10,000.00
Add: Expenditure for improvement of design incurred at buyer's request	5,000.00
Customs FOB	1,15,000.00
Air freight [To be restricted to 20% of Customs FOB value]	23,000.00
Insurance @ 1.125% of Customs FOB value	1,293.75
CIF value being assessable value	1,39,293.75
	(Rupees)
Assessable value in INR @ ₹ 70	97,50,563

5. State the provisions relating to stores.

Answer:

Stores means goods for use in a vessel or aircraft including fuel and spare parts and other articles of equipment, whether or not for immediate fittings – Sec. 2(38)

The term 'goods' as defined in sec. 2(22) also include stores. Therefore, restrictions and regulations regarding import or export of any other goods is also applicable on stores.

Special provisions regarding stores

Stores shall be warehoused without assessment to duty [Sec. 85]

Where any imported goods are entered for warehousing and the importer makes and subscribes to a declaration that the goods are to be supplied as stores to vessels or aircrafts, without payment of import duty, then the proper officer may permit the goods to be warehoused without assessment to duty.



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Transit and transshipment of stores [Sec. 86]

Transit of stores: Any stores imported in a vessel or aircraft may remain on board such vessel or aircraft while it is in India without payment of duty.

Transshipment of stores: With the permission of the proper officer, any stores imported in a vessel or aircraft may, without payment of duty, be transferred to any vessel or aircraft as stores for consumption therein.

Imported stores may be consumed on board a foreign going vessel or aircraft [Sec. 87]

Any imported stores on board a vessel or aircraft may, without payment of duty, be consumed thereon as stores during the period such vessel or aircraft is a foreign going vessel or aircraft.

Supply of import duty paid stores [Sec. 88]

Where any duty paid goods is supplied (i.e. re-exported) to a foreign going vessel or aircraft as stores, then 98% of custom duty paid shall be allowed as 'duty drawback'. However, in case of fuel and lubricating oil, 100% of custom duty paid shall be allowed as 'duty drawback'.

Stores to be free of export duty [Sec. 89]

Goods produced or manufactured in India and required as stores on any foreign going vessel or aircraft may be exported free of duty in such quantities as the proper officer may determine. Proper officer shall determine such quantities after considering following factors –

- a) the size of the vessel or aircraft;
- b) the number of passengers and crew;
- c) the length of the voyage or journey on which the vessel or aircraft is about to depart.

Concession in respect of imported stores for the Navy [Sec. 90]

In relation to supply of stores for the use of a ship of the Indian Navy and stores supplied free by Government for the use of the crew of a ship of the Indian Navy (in accordance with their conditions of service), following special provisions shall be applicable -

- a) It may be supplied without payment of duty.
- b) Where any duty paid goods is supplied as stores, then 100% of custom duty paid shall be allowed as 'duty drawback'.

6. Explain the manner of payment of customs duty, interest and penalty as provided u/s 51A

Answer:

Payment of duty, interest, penalty, etc. [Sec. 51A]

1. Every deposit made towards duty, interest, penalty, fee or any other sum payable by a person under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder, using authorised mode of payment shall, subject to

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such conditions and restrictions, be credited to the electronic cash ledger of such person, to be maintained in such manner, as may be prescribed.

2. The amount available in the electronic cash ledger may be used for making any payment towards duty, interest, penalty, fees or any other sum payable under the provisions of this Act or under the Customs Tariff Act, 1975 or under any other law for the time being in force or the rules and regulations made thereunder in such manner and subject to such conditions and within such time as may be prescribed.
3. The balance in the electronic cash ledger, after payment of duty, interest, penalty, fee or any other amount payable, may be refunded in such manner as may be prescribed.
4. However, if the Board is satisfied that it is necessary or expedient so to do, it may, by notification, exempt the deposits made by such class of persons or with respect to such categories of goods, as may be specified in the notification, from all or any of the provisions of this section.

7. Write short notes on:

- a. Warehousing bond u/s 59
- b. Permission for removal of goods for deposit in warehouse u/s 60
- c. Owner's right to deal with warehoused goods

Answer:

a. Warehousing Bond [Sec. 59]

1. The importer of any goods in respect of which a bill of entry for warehousing has been presented u/s 46 and assessed to duty u/s 17 or 18 shall execute a bond in a sum equal to thrice the amount of the duty assessed on such goods, binding himself:
 - (a) to comply with all the provisions of the Act and the rules and regulations made thereunder in respect of such goods;
 - (b) to pay, on or before the date specified in the notice of demand, all duties and interest payable u/s 61(2); and
 - (c) to pay all penalties and fines incurred for the contravention of the provisions of this Act or the rules or regulations, in respect of such goods.
2. The Assistant Commissioner of Customs or Deputy Commissioner of Customs may permit an importer to execute a general bond in such amount as the Assistant Commissioner of Customs or Deputy Commissioner of Customs may approve in respect of the warehousing of goods to be imported by him within a specified period.
3. The importer shall, in addition to the execution of aforesaid bond(s), furnish such security as may be prescribed.
4. Any bond executed under this section by an importer in respect of any goods shall continue to be in force notwithstanding the transfer of the goods to another warehouse.



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5. Where the whole of the goods or any part thereof are transferred to another person, the transferee shall execute a bond and furnish security

b. Permission for removal of goods for deposit in warehouse u/s 60

1. When the provisions of sec. 59 have been complied with in respect of any goods, the proper officer may make an order permitting removal of the goods from a customs station for the purpose of deposit in a warehouse.

However, such order may also be made electronically through the customs automated system on the basis of risk evaluation through appropriate selection criteria.

2. Where an order is made, the goods shall be deposited in a warehouse in such manner as may be prescribed.

c. Owner's right to deal with warehoused goods [Sec. 64]

The owner of any warehoused goods may, after warehousing the same, —

- a. inspect the goods;
- b. deal with their containers in such manner as may be necessary to prevent loss or deterioration or damage to the goods;
- c. sort the goods; or
- d. show the goods for sale.



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Study Note – 7, 8 & 9

DUTY DRAWBACK, BAGGAGE AND POSTAL ARTICLES, ADMINISTRATIVE AND OTHER ASPECTS

Learning Objective:

- *Various incentives are provided by the Government on export. This study note will help to understand various provision relating to duty drawback. Further, in this study, one can also learn various provision relating to baggage etc.*

1. Choose the correct alternative and also provide your justification:

- i. Rate of duty on baggage is _____ ad valorem
- 30%
 - 33%
 - 35%**
 - 40%

Reason:

Rate of duty on baggage is 35% ad valorem

- ii. U/s 74(1) when goods capable of being easily identified, which have been imported into India and upon which any duty has been paid on importation are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation, _____ % of such duty shall be re-paid back.
- 50
 - 98**
 - 100
 - 48

Reason:

U/s 74(1) when goods capable of being easily identified, which have been imported into India and upon which any duty has been paid on importation are entered for export and the proper officer makes an order permitting clearance and loading of the goods for exportation, 98% of such duty shall be re-paid back.



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- iii. Which of the following conditions are to be satisfied for the purpose of section 74(1)?
- the goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported
 - the goods are entered for export within two years from the date of payment of duty on the importation thereof
 - Both a & b**
 - Either a or b

Reason:

As per sec. 74, both the condition should be satisfied.

- iv. As per notification, no drawback of import duty will be allowed in respect of which of the following goods, if they have been used after their importation in India?
- Wearing Apparel
 - Tea Chests
 - Exposed cinematograph films passed by Board of Film Censors in India
 - All of the above**

Reason:

No drawback is available on any of the aforesaid goods.

- v. GFA will be allowed without payment of duty for bona fide baggage upto _____ per persons
- ₹ 50,000**
 - ₹ 45,000
 - ₹ 35,000
 - ₹ 75,000

Reason:

General Free Allowance of ₹ 50,000 shall be allowed without payment of duty for bona fide baggage.

2. (a) Write a brief note on payment of drawback and interest.

Answer:

Payment of drawback and interest [Rule 15]

- The drawback and interest, if any, shall be paid by the proper officer of Customs to the exporter or to the agent specially authorised by the exporter to receive the said amount of drawback and interest.



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2. The officer of Customs may combine one or more claims for the purpose of payment of drawback and interest, if any, as well as adjustment of any amount of drawback and interest already paid and may issue a consolidated order for payment.
3. The date of payment of drawback and interest, if any, shall be deemed to be, in the case of payment:
 - (a) by cheque, the date of issue of such cheque; or
 - (b) by credit in the exporter's account maintained with the Custom House, the date of such credit.

(b) Calculate the amount of duty drawback allowable u/s 74 of the Customs Act, 1962 in following cases;

- (i) Salman imported a motor car for his personal use and paid ₹ 5,00,000 as import duty. The car is re-exported after 6 months and 10 days.**
- (ii) Manu imported wearing apparel and paid ₹ 50,000 as import duty. As she did not like the apparel, these are re-exported after 20 days.**
- (iii) Super Tech Ltd. imported 10 computer systems paying customs duty of ₹ 5 lakh. Due to some technical problems, the computer systems were returned to foreign supplier after 14 months without using them at all.**

Answer:

- (i) The amount of drawback allowable to Salman will be ₹ 4,40,000 (88% of ₹ 5,00,000).
- (ii) Drawback is not allowed on re-export of wearing apparel after use. Hence no drawback shall be allowed to Manu.
- (iii) The company shall be eligible for drawback claim @ 65% of the duty. Amount of duty drawback will be ₹ 3,25,00 (65% of ₹ 5,00,000).

3. Write a brief note on following:

- a. Statement or declaration to be made on exports other than by post**
- b. Access to manufactory by the officer to verify drawback claim**

Answer:

a. Statement or declaration to be made on exports other than by post [Rule 13]

1. In the case of exports other than by post, the exporters shall at the time of export of the goods –
 - a. state on the shipping bill or bill of export, the description, quantity and such other particulars as are necessary for deciding whether the goods are entitled to drawback, and if so, at what rate or rates and make a declaration on the relevant shipping bill or bill of export that:
 - (i) a claim for drawback under these rules is being made;
 - (ii) in respect of duties of Customs and Central Excise paid on containers, packing materials and materials used in the manufacture of the export goods on which drawback is claimed, no

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separate claim for rebate of duty under the Central Excise Rules, 2002 or any other law has been or will be made to the Central excise authorities.

However, if the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, is satisfied that the exporter or his authorised agent has, for reasons beyond his control, failed to comply with the above provisions, he may, after considering the representation, if any, made by such exporter or his authorised agent, and for reasons to be recorded, exempt such exporter or his authorised agent from this provisions.

- b. furnish to the proper officer of Customs, a copy of shipment invoice or any other document giving particulars of the description, quantity and value of the goods to be exported.
2. Where the amount or rate of drawback has been determined under rule 6 or rule 7, the exporter shall make an additional declaration on the relevant shipping bill or bill of export that –
- a. there is no change in the manufacturing formula and in the quantum per unit of the imported materials or components, if any, utilised in the manufacture of export goods; and
 - b. the materials or components, which have been stated in the application under rule 6 or rule 7 to have been imported, continue to be so imported and are not being obtained from indigenous sources.

b. Access to manufactory [Rule 11]

Whenever an officer of the Central Government specially authorised in this behalf by an Assistant Commissioner of Customs or Deputy Commissioner of Customs, as the case may be, considers it necessary, the manufacturer shall give access at all reasonable times to the officer so authorised to every part of the premises in which the goods are manufactured, so as to enable the said officer to verify by inspection the process of, and the materials or components used for the manufacture of such goods, or otherwise the entitlement of the goods for drawback or for a particular amount or rate of drawback under drawback rules.

4. (a) Mr. Kapoor visited Germany and brought following goods while returning to India:

- (i) The personal effects like cloths, etc., valued at ₹ 35,000.
- (ii) Mobile bought for ₹ 46,000
- (iii) A laptop bought for ₹ 95,000
- (iv) 1 litre of liquor bought for ₹ 1,600
- (v) A new camera bought for ₹ 47,400

What is the amount of customs duty payable?

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Answer:

Computation of Customs Duty Payable by Mr. Kapoor

Particulars	Amount
Personal effects (exempt)	–
Mobile	46,000
Laptop (exempt)	–
1 liter of liquor	1,600
Camera	47,400
Total Value of dutiable goods	95,000
Less: General Free Allowance (GFA)	50,000
Taxable Value	45,000
Customs Duty payable @ 38.5%	17,325

(b) Briefly discuss the provision relating to date for the purpose of determination of rate of duty and tariff valuation in respect of goods imported or exported by post or courier.

Answer:

Rate of duty and tariff valuation in respect of goods imported or exported by post or courier [Sec. 83]

- Import: The rate of duty and tariff value, if any, applicable to any goods imported by post or courier shall be the rate and valuation in force on the date on which the postal authorities or the courier authorities present to the proper officer a list containing the particulars of such goods for the purpose of assessing the duty thereon. However, if such goods are imported by a vessel and the list of the goods containing the particulars was presented before the date of the arrival of the vessel, it shall be deemed to have been presented on the date of such arrival.
- Export: The rate of duty and tariff value, if any, applicable to any goods exported by post or courier shall be the rate and valuation in force on the date on which the exporter delivers such goods to the postal authorities or the courier authorities for exportation.

Regulations regarding goods imported or to be exported by post or courier [Sec. 84]

The Board may make regulations providing for –

- a. the form and manner in which an entry may be made in respect of goods imported or to be exported by post or courier;
- b. the examination, assessment to duty, and clearance of goods imported or to be exported by post or courier;
- c. the transit or transshipment of goods imported by post or courier, from one customs station to another or to a place outside India.



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5. (a) Write note on presumption of culpable mental state.

Answer:

Presumption of culpable mental state [Sec. 138A]

- "Culpable mental state" includes intention, motive, knowledge of a fact and belief in, or reason to believe, a fact.
- In any prosecution for an offence which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.
- A fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

(b) State the provision relating to date for determination of rate of duty and tariff valuation of imported goods.

Answer:

Date for determination of rate of duty and tariff valuation of imported goods [Sec. 15]

The rate of duty and tariff valuation, if any, applicable to any imported goods, shall be the rate and valuation in force, -

- a. in the case of goods entered for home consumption u/s 46, on the date on which a bill of entry in respect of such goods is presented;
- b. in the case of goods cleared from a warehouse u/s 68, on the date on which a bill of entry for home consumption in respect of such goods is presented;
- c. in the case of any other goods, on the date of payment of duty

Tax point

- However, if a bill of entry has been presented before the date of entry inwards of the vessel or the arrival of the aircraft or the vehicle by which the goods are imported, the bill of entry shall be deemed to have been presented on the date of such entry inwards or the arrival, as the case may be.
- This provision is not applicable on baggage and goods imported by post.

6. (a) State the provision relating to Prohibition and regulation of drawback.

Answer:

Prohibition and regulation of drawback in certain cases [Sec. 76]

1. No drawback shall be allowed –
 - a. in respect of any goods the market-price of which is less than the amount of drawback due thereon;
 - b. where the drawback due in respect of any goods is less than ₹ 50.
2. If the Central Government is of opinion that goods of any specified description in respect of which drawback may be claimed are likely to be smuggled back into India, it may, by notification in the Official Gazette, direct that drawback shall not be allowed in respect of such goods or may be allowed subject to such restrictions and conditions as may be specified in the notification.

(b) What are the export incentives available to the exporter in lieu of duty drawback?

Answer:

The following are the export promotion schemes available to the exporters

- Duty Exemption Entitlement Certificate (DEEC) (Advance Licence);
- The Duty Free Replenishment Certificate (DFRC) Scheme;
- The Export Promotion Capital Goods Scheme (EPCG);
- Duty Exemption Pass Book Scheme (DEPB scheme);
- MEIS & SEIS, EPCG



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Study Note – 10, 11 & 12

CUSTOMS (Import of Goods at concessional Rate of Duty) RULE 2017, SEARCH, SEIZURE, CONFISCATION AND MISCELLANEOUS PROVISIONS, COMPREHENSIVE ISSUES UNDER CUSTOMS

Learning Objective:

- *This study note will help to understand the various advance concepts like recovery, appeals and revisions and various provision relating to search, seizure, etc.*

1. Choose the correct alternative and also provide your justification:

- i. Any person aggrieved by any order passed by a proper officer, lower in rank than Principal Commissioner or Commissioner of Customs, may appeal to the Commissioner of Customs (Appeals) within ___ days from the date of the communication of the order to him.
- 30
 - 60**
 - 90
 - 120

Reason:

As per sec. 128, any person aggrieved by any order passed by a proper officer, lower in rank than Principal Commissioner or Commissioner of Customs, may appeal to the Commissioner of Customs (Appeals) within 60 days from the date of the communication of the order to him.

- ii. What is the fee payable for obtaining advance ruling?
- ₹ 10,000**
 - ₹ 5,000
 - ₹ 500
 - ₹ 2,000

Reason:

The application for advance ruling shall be accompanied by a fee of ₹ 10,000



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- iii. What is the capital punishment u/s 132 for false declaration, documents, etc.
- Imprisonment for a term which may extend to 2 years**
 - Imprisonment for a term which may extend to 5 years
 - Imprisonment for a term which may extend to 1 year
 - Imprisonment for a term which may extend to 6 months

Reason:

As per sec. 132, whoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.

- iv. An application for revision u/s 129DD shall be made within ____ from the date of communication of the order to the applicant.
- 30 days
 - 12 months
 - 1 month
 - 3 months**

Reason:

An application for revision u/s 129DD shall be made within 3 months from the date of communication of the order to the applicant.

2. (a) Discuss the provision relating to Re-export or clearance of unutilised or defective goods imported following the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

Answer

Re-export or clearance of unutilised or defective goods [Rule 7 of the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017]

1. The importer who has availed benefit of an exemption notification, prescribing observance of these rules may re-export the unutilised or defective imported goods, within 6 months from the date of import, with the permission of the jurisdictional Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service. However, the value of such goods for re-export shall not be less than the value of the said goods at the time of import.



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2. The importer who has availed benefit of an exemption notification, prescribing observance of these rules may also clear the unutilised or defective imported goods, with the permission of the jurisdictional Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, within a period of 6 months from the date of import on payment of import duty equal to the difference between the duty leviable on such goods but for the exemption availed and that already paid, if any, at the time of importation, along with interest, at the rate fixed by notification issued u/s 28AA of the Act, for the period starting from the date of importation of the goods on which the exemption was availed and ending with the date of actual payment of the entire amount of the difference of duty that he is liable to pay.

(b) State the provision relating to maintenance of records and giving information regarding receipt of imported goods where goods are intended to import following the Customs (Import of Goods at Concessional Rate of Duty) Rules, 2017.

Answer:

Importer who intends to avail the benefit of an exemption notification to give information regarding receipt of imported goods and maintain records [Rule 6]

1. The importer who intends to avail the benefit of an exemption notification shall provide the information of the receipt of the imported goods in his premises where goods shall be put to use for manufacture, within 2 days (excluding holidays, if any) of such receipt to the jurisdictional Customs Officer.
2. The importer who has availed the benefit of an exemption notification shall maintain an account in such manner so as to clearly indicate the quantity and value of goods imported, the quantity of imported goods consumed in accordance with provisions of the exemption notification, the quantity of goods re-exported, if any, under rule 7 and the quantity remaining in stock, bill of entry wise and shall produce the said account as and when required by the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service.
3. The importer who has availed the benefit of an exemption notification shall submit a quarterly return, in the Form appended to these rules, to the Deputy Commissioner of Customs or, as the case may be, Assistant Commissioner of Customs having jurisdiction over the premises where the imported goods shall be put to use for manufacture of goods or for rendering output service, by the 10th day of the following quarter.

3. (a) Vishal has made an unauthorised import of 1,000 pieces of a product. Other particulars are as under:

Total assessable value	:	₹ 5,00,000
Total customs duty payable (all)	:	₹ 1,20,000
Market price in India	:	₹ 800 per piece

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Customs authorities have confiscated the said goods and importer has been given an option to get the said goods released on payment of a fine equal to 50% of margin of profit. Compute - (i) amount of fine payable; and (ii) maximum amount of fine u/s 125 of the Customs Act, 1962.

Answer:

Computation of amount of fine

Assessable value of goods	₹ 5,00,000
Add: Customs Duty	₹ 1,20,000
Total Imported Cost [A]	₹ 6,20,000
Market Value (₹ 800 x 1000) [B]	₹ 8,00,000
Margin of Profit [C = B – A]	₹ 1,80,000
Fine [50% of C]	₹ 90,000

As per sec. 125, fine shall not exceed the market price of the goods confiscated, less in the case of imported goods the duty chargeable thereon. Thus, fine payable u/s 125 cannot exceed the following:

Market Value of goods	₹ 8,00,000
Less: Duty	₹ 1,20,000
Maximum Fine u/s 125	₹ 6,80,000

(b) Describe the power of the Board to simplify procedures to facilitate trade as provided u/s 143AA

Answer:

Power to simplify or provide different procedure, etc., to facilitate trade [Sec. 143AA]

Notwithstanding anything contained in any other provision of this Act, the Board may, for the purposes of facilitation of trade, take such measures or prescribe separate procedure or documentation for a class of importers or exporters or for categories of goods or on the basis of the modes of transport of goods, in order to,—

- (a) maintain transparency in the import and export documentation; or
- (b) expedite clearance or release of goods entered for import or export; or
- (c) reduce the transaction cost of clearance of importing or exporting goods; or
- (d) maintain balance between customs control and facilitation of legitimate trade.

4. Write Short Notes on the following:

- a Power to take samples u/s 144**
- b Liability of the agent appointed by the person in charge of a conveyance u/s 148**
- c Issue of show cause notice before confiscation of goods, etc. u/s 124**



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Answer:

a) Power to take samples u/s 144

The proper officer may, on the entry or clearance of any goods or at any time while such goods are being passed through the customs area, take samples of such goods in the presence of the owner thereof, for examination or testing, or for ascertaining the value thereof, or for any other purposes of this Act.

After the purpose for which a sample was taken is carried out, such sample shall, if practicable, be restored to the owner, but if the owner fails to take delivery of the sample within 3 months of the date on which the sample was taken, it may be disposed of in such manner as the Principal Commissioner of Customs or Commissioner of Customs may direct.

No duty shall be chargeable on any sample of goods taken under this section which is consumed or destroyed during the course of any test or examination thereof

b) Liability of the agent appointed by the person in charge of a conveyance u/s 148

- Where the Customs Act requires anything to be done by the person in charge of a conveyance, it may be done on his behalf by his agent.
- An agent appointed by the person in charge of a conveyance and any person who represents himself to any officer of customs as an agent of any such person in charge, and is accepted as such by that officer, shall be liable for the fulfilment in respect of the matter in question of all obligations imposed on such person in charge by or under the Customs Act or any law for the time being in force, and to penalties and confiscations which may be incurred in respect of that matter.

c) Issue of show cause notice before confiscation of goods, etc. [Sec. 124]

No order confiscating any goods or imposing any penalty on any person shall be made unless the owner of the goods or such person –

- is given a notice in writing with the prior approval of the officer of Customs not below the rank of an Assistant Commissioner of Customs, informing him of the grounds on which it is proposed to confiscate the goods or to impose a penalty;
- is given an opportunity of making a representation in writing within such reasonable time as may be specified in the notice against the grounds of confiscation or imposition of penalty mentioned therein; and
- is given a reasonable opportunity of being heard in the matter

Note

- The notice and the representation may, at the request of the person concerned be oral.
- The proper officer may issue a supplementary notice under such circumstances and in such manner as may be prescribed.

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5. Describe the cases where goods being exported are liable to confiscation u/s 113 of the Customs Act 1962.

Answer:

The following export goods shall be liable to confiscation u/s 113:-

- a. any goods attempted to be exported by sea or air from any place other than a customs port or a customs airport appointed for the loading of such goods;
- b. any goods attempted to be exported by land or inland water through any route other than a route specified in a notification issued u/ 7(c) for the export of such goods;
- c. any goods brought near the land frontier or the coast of India or near any bay, gulf, creek or tidal river for the purpose of being exported from a place other than a land customs station or a customs port appointed for the loading of such goods;
- d. any goods attempted to be exported or brought within the limits of any customs area for the purpose of being exported, contrary to any prohibition imposed by or under this Act or any other law for the time being in force;
- e. any goods found concealed in a package which is brought within the limits of a customs area for the purpose of exportation;
- f. any goods which are loaded or attempted to be loaded in contravention of the provisions of sec. 33 or sec. 34;
- g. any goods loaded or attempted to be loaded on any conveyance, or water-borne, or attempted to be water-borne for being loaded on any vessel, the eventual destination of which is a place outside India, without the permission of the proper officer;
- h. any goods which are not included or are in excess of those included in the entry made under this Act, or in the case of baggage in the declaration made u/s 77;
- i. any goods entered for exportation which do not correspond in respect of value or in any material particular with the entry made under this Act or in the case of baggage with the declaration made u/s 77;
- j. any goods entered for exportation under claim for drawback which do not correspond in any material particular with any information furnished by the exporter or manufacturer under this Act in relation to the fixation of rate of drawback u/s 75;
- k. any goods on which import duty has not been paid and which are entered for exportation under a claim for drawback u/s 74;
- l. any goods cleared for exportation which are not loaded for exportation on account of any wilful act, negligence or default of the exporter, his agent or employee, or which after having been loaded for exportation are unloaded without the permission of the proper officer;
- m. any specified goods in relation to which any provisions of Chapter IVB or of any rule made under this Act for carrying out the purposes of that Chapter have been contravened.



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6. (a) What are the presumptions as to documents in certain cases?

Answer:

Presumption as to documents in certain cases [Sec. 139]

Where any document -

- (i) is produced by any person or has been seized from the custody or control of any person, in either case, under this Act or under any other law, or
- (ii) has been received from any place outside India in the course of investigation of any offence alleged to have been committed by any person under this Act, and such document is tendered by the prosecution in evidence against him or against him and any other person who is tried jointly with him, the court shall -
 - a. presume, unless the contrary is proved, that the signature and every other part of such document which purports to be in the handwriting of any particular person or which the court may reasonably assume to have been signed by, or to be in the handwriting of, any particular person, is in that person's handwriting, and in the case of a document executed or attested, that it was executed or attested by the person by whom it purports to have been so executed or attested;
 - b. admit the document in evidence, notwithstanding that it is not duly stamped, if such document is otherwise admissible in evidence;
 - c. in a case falling under clause (i) also presume, unless the contrary is proved, the truth of the contents of such document.

Note: "Document" includes inventories, photographs and lists certified by a Magistrate u/s 110(1C).

(b) What are the modes of service of notice as stated u/s 153?

Answer:

Modes for service of notice, order, etc. [Sec. 153]

1. An order, decision, summons, notice or any other communication under this Act or the rules made thereunder may be served in any of the following modes:
 - a. by giving or tendering it directly to the addressee or importer or exporter or his customs broker or his authorised representative including employee, advocate or any other person or to any adult member of his family residing with him;
 - b. by a registered post or speed post or courier with acknowledgement due, delivered to the person for whom it is issued or to his authorised representative, if any, at his last known place of business or residence;



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- c. by sending it to the e-mail address as provided by the person to whom it is issued, or to the e-mail address available in any official correspondence of such person;
 - d. by publishing it in a newspaper widely circulated in the locality in which the person to whom it is issued is last known to have resided or carried on business; or
 - e. by affixing it in some conspicuous place at the last known place of business or residence of the person to whom it is issued and if such mode is not practicable for any reason, then, by affixing a copy thereof on the notice board of the office or uploading on the official website, if any.
2. Every order, decision, summons, notice or any communication shall be deemed to have been served on the date on which it is tendered or published or a copy thereof is affixed or uploaded
 3. When such order, decision, summons, notice or any communication is sent by registered post or speed post, it shall be deemed to have been received by the addressee at the expiry of the period normally taken by such post in transit unless the contrary is proved.

7. Explain the provisions relating to applicability of advance ruling u/s 28J.

Answer:

Applicability of advance ruling [Sec. 28J]

1. The advance ruling pronounced by the Authority under section 28-I shall be binding only –
 - a. on the applicant who had sought it;
 - b. in respect of any matter for which it has been obtained;
 - c. on the Principal Commissioner of Customs or Commissioner of Customs, and the customs authorities subordinate to him, in respect of the applicant.

The advance ruling shall be binding as aforesaid unless there is a change in law or facts on the basis of which the advance ruling has been pronounced.



FOREIGN TRADE POLICY



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FOREIGN TRADE POLICY 2015 - 2020

Learning Objective:

- This study note will help to understand the various provision relating to indirect tax in foreign trade policy.

1. Choose the correct alternative and also provide your justification:

- i. One of the following capital goods is ineligible for the purpose of EPCG
- Second hand capital goods**
 - Computer software systems
 - Both (a) and (b)
 - None of the above

Reason:

Second hand capital goods is ineligible

- ii. Import under EPCG Scheme shall be subject to an export obligation equivalent to ____ times of duties, taxes and cess saved on capital goods
- 6**
 - 5
 - 10
 - 8

Reason:

Import under EPCG Scheme shall be subject to an export obligation equivalent to 6 times of duties, taxes and cess saved on capital goods

- iii. Only projects having a minimum investment of ₹ _____ in plant & machinery shall be considered for establishment as EOUs
- 10 Crore
 - 50 lakhs
 - 5 Crore
 - 1 Crore**

Reason:

Only projects having a minimum investment of ₹ 1 Crore in plant & machinery shall be considered for establishment as EOUs. However, this shall not apply to existing units, units in EHTP/STP/BTP and EOUs in Handicrafts/Agriculture/Floriculture/Aquaculture /Animal Husbandry/Information Technology, Services, Brass Hardware and Handmade jewellery sectors. BOA may allow establishment of EOUs with a lower investment criteria.

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- iv. _____ and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBEC
- Two Star
 - Three Star**
 - Four Star
 - Five Star

Reason:

Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBEC

2. State the principal of restriction under FTP.

Answer:

Principal of Restriction are as under:

- Reason: DGFT may, through a Notification, impose restrictions on export and import necessary for: -
 - Protection of public morals;
 - Protection of human, animal or plant life or health;
 - Protection of patents, trademarks and copyrights, and the prevention of deceptive practices;
 - Prevention of use of prison labour;
 - Protection of national treasures of artistic, historic or archaeological value;
 - Conservation of exhaustible natural resources;
 - Protection of trade of fissionable material or material from which they are derived;
 - Prevention of traffic in arms, ammunition and implements of war
 - Relating to the importation or exportation of gold or silver.
- Export/Import of Restricted Goods/Services: Any goods/service, the export or import of which is 'Restricted' may be exported or imported only in accordance with an Authorisation / Permission or in accordance with the Procedures prescribed in a Notification / Public Notice issued in this regard.
- Actual User Condition: Goods which are importable freely without any 'Restriction' may be imported by any person. However, if such imports require an Authorisation, actual user alone may import such good(s) unless actual user condition is specifically dispensed with by DGFT.

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3. Highlight the provision relating to import and export of passenger baggage under FTP.

Answer:

Import of Passenger Baggage

- a. Bona-fide household goods and personal effects may be imported as part of passenger baggage as per limits, terms and conditions thereof in Baggage Rules notified by Ministry of Finance.
- b. Samples of such items that are otherwise freely importable under FTP may also be imported as part of passenger baggage without an Authorisation.
- c. Exporters coming from abroad are also allowed to import drawings, patterns, labels, price tags, buttons, belts, trimming and embellishments required for export, as part of their passenger baggage without an Authorisation.

Export of Passenger Baggage

- a. Bona-fide personal baggage may be exported either along with passenger or, if unaccompanied, within 1 year before or after passenger's departure from India.
 - However, items mentioned as restricted in ITC (HS) shall require an Authorisation.
 - Government of India officials proceeding abroad on official postings shall, however, be permitted to carry along with their personal baggage, food items (free, restricted or prohibited) strictly for their personal consumption.
 - The Provisions of the Para shall be subject to Baggage Rules issued under Customs Act, 1962.
- b. Samples of such items that are otherwise freely exportable under FTP may also be exported as part of passenger baggage without an Authorisation.

4. What are the provisions of FTP with respect to denomination of export contracts?

Answer:

The provision are as under:

- a. All export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees but export proceeds shall be realized in freely convertible currency.
- b. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan. Additionally, rupee payment through Vostro account must be against payment in free foreign currency by buyer in his non- resident bank account. Free foreign exchange remitted by buyer to his non-resident bank (after deducting bank service charges) on account of this transaction would be taken as export realization under export promotion schemes of FTP.
- c. Contracts (for which payments are received through Asian Clearing Union (ACU) shall be denominated in ACU Dollar. However, participants in the ACU may settle their transactions in ACU Dollar or in ACU Euro as per RBI Notifications. Central Government may relax provisions of this paragraph in appropriate cases. Export contracts and invoices can be denominated in Indian rupees against EXIM Bank/Government of India line of credit.

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5. What is the meaning of status holder? What is the average export value to be achieved to become the status holder?

Answer:

Status Holders are business leaders who have excelled in international trade and have successfully contributed to country's foreign trade. Status Holders are expected to not only contribute towards India's exports but also provide guidance and handholding to new entrepreneurs.

Status Category

Status Category	Export Performance FOB / FOR (as converted) Value (in US \$ million)
One Star Export House	3
Two Star Export House	25
Three Star Export House	100
Four Star Export House	500
Five Star Export House	2000

For granting status, export performance is necessary in at least 2 out of 4 years.

6. What are the provisions relating exit from EOU Scheme?

Answer:

The provision is enumerated below:

- With approval of DC, an EOU may opt out of scheme. Such exit shall be subject to payment of applicable Excise and Customs duties and on payment of applicable IGST/ CGST/ SGST/ UTGST and compensation cess, if any, and industrial policy in force.
- If unit has not achieved obligations, it shall also be liable to penalty at the time of exit.
- In the event of a gems and jewellery unit ceasing its operation, gold and other precious metals, alloys, gems and other materials available for manufacture of jewellery, shall be handed over to an agency nominated by DoC, at price to be determined by that agency.
- An EOU / EHTP / STP / BTP unit may also be permitted by DC to exit from the scheme at any time on payment of applicable duties and taxes and compensation cess on capital goods under the prevailing EPCG Scheme for DTA Units. This will be subject to fulfillment of positive NFE criteria under EOU scheme, eligibility criteria under EPCG scheme and standard conditions indicated in HBP.



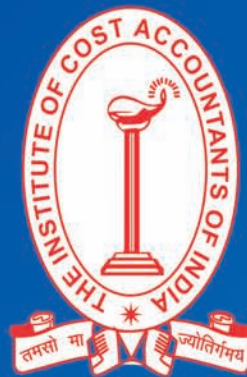
Work Book : Indirect Tax Laws & Practice

7. What are the benefits of deemed exports?

Answer:

Deemed exports shall be eligible for any / all of following benefits in respect of manufacture and supply of goods, qualifying as deemed exports, subject to terms and conditions as given in HBP and ANF-7A:

- a. Advance Authorisation / Advance Authorisation for annual requirement / DFIA.
- b. Deemed Export Drawback for BCD.
- c. Refund of terminal excise duty for excisable goods mentioned in Schedule 4 of Central Excise Act 1944 provided the supply is eligible under that category of deemed exports and there is no exemption.



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