

**Final
Group IV
Paper 18: Indirect Tax Laws & Practice
(SYLLABUS – 2016)**

1. Choose the correct answer with justification/ workings wherever applicable:

- (i) Goods under CGST Act excludes:
 - (a) Securities
 - (b) Unsecured debts
 - (c) Right to participate in the draw to be held in a lottery
 - (d) Growing crops.

- (ii) GST is payable on the services provided by the employee to the employer in the course of employment on:
 - (a) Regular basis;
 - (b) Contract basis as employed by the company;
 - (c) Contract basis as employed by a contractor;
 - (d) None of the above.

- (iii) In computation of aggregate turnover for composition levy, which of the following item should be excluded from the aggregate turnover?
 - (a) The value of exported goods/services
 - (b) Inter-state supplies between distinct persons having same PAN
 - (c) Compensation Cess
 - (d) Supply on own account and on behalf of principal.

- (iv) If a person is liable to be registered on 11th Oct 2017 and he has applied for registration on 17th Oct 2017, the effective date of registration for composition levy will be:
 - (a) 17th Oct 2017
 - (b) 11th Oct 2017
 - (c) 11th Nov 2017
 - (d) 17th Nov 2017.

- (v) The due date to file GSTR-6 (Return for Input Service Distributor) is:
 - (a) 10th of the next month
 - (b) 13th of the next month
 - (c) 18th of the next month
 - (d) 20th of the next month.

- (vi) In cases of change in rate of tax and amount is credited to the bank account after 4 working days from the date of change in rate of tax, the date of receipt of payment will be:
 - (a) Date of book entry or date of bank entry, whichever is earlier

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- (b) Date of bank entry
- (c) Date of book entry
- (d) Date of book entry or date of bank entry, whichever is later.

(vii) ABC Ltd. has income from renting of vacant land to a stud firm of ₹ 1,00,000 and leasing of vacant land to a cattle firm of ₹ 50,000. The value of taxable supply will be:

- (a) ₹ 1,00,000
- (b) ₹ 50,000
- (c) ₹ 1,50,000
- (d) Nil.

(viii) In case of supply of services, the tax invoice shall be prepared in the manner of:

- (a) Only original
- (b) Two copies
- (c) Three copies
- (d) Four copies.

(ix) The form of application for registration, used by a non-resident taxable person is:

- (a) GST REG-01
- (b) GST REG-02
- (c) GST REG-05
- (d) GST REG-09.

(x) If a case involves a substantial question of law and doesn't not involve any issue relating to place of supply, an appeal against orders passed by the State Bench or Area Bench of the Appellate Tribunal shall lie to:

- (a) Supreme Court
- (b) High Court
- (c) Appellate Authority
- (d) None of the above.

Answer:

- (i) (a): Goods means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be served before supply or under a contract of supply. The second & third options are examples of actionable claim.
- (ii) (c): Supply includes the services provided by the employee to the employer in the course of employment on Contract basis as employed by a contractor. So, GST is payable.
- (iii) (c): In computation of aggregate turnover for composition levy, the items like Inward supplies on which the recipient is required to pay tax under Reverse Charge Mechanism (RCM), CGST, SGST, UTGST, IGST and Compensation Cess.
- (iv) (b): Rule 10(2) provides that if person has applied for registration within 30 days from the date when he is liable to obtain registration, the effective date is when he is liable to be registered.
- (v) (b): The GSTR-6 (Return for Input Service Distributor) is to be filed on a monthly basis and the due date is 13th of the next month.

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- (vi) (b): in cases of change in rate of tax, the date of receipt of payment is the date of credit in the bank account if such credit is after four working days from the date of change in rate of tax.
- (vii) (a): renting of vacant land to a stud farm will be liable for GST as rearing of horses has been excluded from exemption but leasing of vacant land to a cattle farm is exempted vide entry no. 54 of exemption notification no. 12/2017-CT (Rate).
- (viii) (b): In case of supply of services, the tax invoice shall be prepared in the manner of two copies — the original copy being marked as original for recipient and the duplicate copy being marked as duplicate for supplier.
- (ix) (d): The form of application for registration, used by a non-resident taxable person is GST REG-09.
- (x) (b): If a case involves a substantial question of law and doesn't not involve any issue relating to place of supply, an appeal against orders passed by the State Bench or Area Bench of the Appellate Tribunal shall lie to High Court and it may admit such appeal.

2.(a) What is Goods and Services Tax Network (GSTN)? State the functions of it.

- (b) Mr. P, located in Mumbai, is a technical consultant to many companies. He is a registered-person under GST. He has been providing technical services to Alpha Ltd., Nagpur since 2011. Consideration is settled for each assignment. On December 10, 2017, Alpha Ltd. has paid ₹ 10 lakhs to Mr. P on his promise of not providing similar technical services to any other business entity in India or abroad for a period of 10 years ending on December 31, 2027. Mr. P is of the view that ₹ 10 lakhs is not chargeable to GST. Do you agree? If not, calculated liability of Mr. P (if cannot be recovered from Alpha Ltd.). A technical service provided by Mr. P is otherwise chargeable to GST at the rate of 18%.

Answer:

- (a) Goods and Services Tax Network (GSTN) is a [Section 8 of the Companies Act, 2013, (i.e. not for profit companies)], non-Government, private limited company. It is a technology backbone for GST in India. GST being a destination based tax, the inter- state trade of goods and services (IGST) would need a robust settlement mechanism amongst the States and the Centre. This is possible only when there is a strong IT Infrastructure and Service back bone which enables capture, processing and exchange of information amongst the stakeholders (including tax payers, States and Central Governments, Accounting Offices, Banks and RBI). As a result Goods and Services Tax Network (GSTN) has been set up.

Functions of the GSTN (i.e. Role assigned to GSTN): Creation of common and shared IT infrastructure for functions facing taxpayers has been assigned to GSTN and these are:

- filing of registration application,
- filing of return,
- creation of challan for tax payment,
- settlement of IGST payment (like a clearing house),
- generation of business intelligence and analytics etc.

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All statutory functions to be performed by tax officials under GST like approval of registration, assessment, audit, appeal, enforcement etc. will remain with the respective tax departments.

- (b) Scope of supply includes deemed supply given under Schedule II. Under Item 5(e) of Schedule II, any consideration received for agreeing to the obligation to refrain from an act, is subject to GST. Consideration received for non-compete agreement is also consideration for supply of services. Consideration of ₹ 10 lakhs received on the promise of Mr. P of not providing similar services to any other person, is consideration for supply which is chargeable to GST. Since GST is not separately collected, it will be assumed that it is included in ₹ 10 lakhs. Consequently, value of taxable supply will be ₹ 8,47,458 (i.e., ₹ 10,00,000 × 100 ÷ 118). GST liability on ₹ 8,47,458 will be calculated as follows (it will be paid by Mr. P out of his pocket) –

	₹
Taxable value of supply	8,47,458
Add: GST –	
CGST (@ 9% of ₹ 8,47,458)	76,271
SGST (Maharashtra) (@ 9% of ₹ 8,47,458)	76,271
Total amount charged by Mr. P	10,00,000

- 3.(a) Roshan of Bengaluru owns 7 properties in different parts of Karnataka. From the information given below, find out GST for the quarter ending on 31st March, 2018. GST rate is 18 per cent (i.e., CGST 9 per cent + SGST 9 per cent) Municipal tax pertaining to these properties is ₹ 44,000. Expenditure on repair is ₹ 1,32,000. Fire insurance premium paid by Roshan is ₹ 48,000 –

	₹
Rent of residential Building I (given on rent to A, a salaried employee for his residence)	10,00,000
Rent of residential Building II (given on rent to a bank for residence of a branch manager)	15,00,000
Rent of vacant plot of Land III (given on rent to a manufacturing company)	8,00,000
Rent of vacant plot of Land IV (given on rent for agriculture purposes)	4,50,000
Rent of residential Building V (given on rent to B Ltd. for residence of employees)	3,00,000
Rent of commercial Building VI (given on rent to C, who has a sole proprietary business)	1,50,000
Rent of residential building VII (it is situated in residential area but used for commercial purposes and it is given on rent on the understanding that the tenant can use it for commercial purposes if there is no objection by the municipal corporation)	6,50,000

- (b) What do you mean by consideration in relation to the supply of goods or services or both?

Answer:

- (a) Computation of GST of Roshan -

	₹

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Rent of residential building I (renting of residential dwelling for use as residence is not chargeable to GST)	—
Rent of residential building II (letting out of residential building for residential purposes is not chargeable to GST)	—
Rent of vacant plot of land III	8,00,000
Rent of vacant plot of land IV (letting out of vacant plot for agricultural purposes is not chargeable to GST)	—
Rent of residential building V (letting out of residential building for residential purposes is not chargeable to GST)	—
Rent of commercial building VI (letting out of commercial property is chargeable to tax)	1,50,000
Rent of residential building VII (letting out of residential property for residential purposes is not taxable, if residential property is let out for commercial purposes, it is chargeable to tax)	6,50,000
Taxable value of supply	16,00,000
GST-	
CGST (@ 9% of ₹ 16,00,000)	1,44,000
SGST (Karnataka) (@ 9% of ₹ 16,00,000)	1,44,000
Total amount charged by Roshan	2,88,000

Note - Roshan has paid fire insurance premium and expenditure on repair of buildings. These expenses are not deductible while calculating taxable value of supply. However, input tax credit pertaining to these expenses can be claimed.

- (b)** As per Section 2(31) of the CGST Act, 2017 “consideration” in relation to the supply of goods or services or both includes—
- any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
 - the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply;

Consideration includes non-monetary consideration. Aggregate of payments received in money and monetary value of the act or forbearance will constitute consideration. Example — A Sports Club agrees to hire services of cricket player Mr. C for a consideration of ₹ 2 crores. In addition to this, the agreement provides that the player shall be provided with the car valued for ₹ 20 lakhs. The entire value of ₹ 2.20 crores will be considered as consideration and subject to tax.

4.(a) State the persons who are not entitled to avail Composition Scheme under GST.

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(b) Discuss whether the following services are chargeable to GST -

1. Dev is a well-known singer. For giving a performance in a musical event (organised by Filmfare), he charges ₹ 1,50,000. Dev is not a brand ambassador of Filmfare or any other person participating in the musical event.
2. Suppose in the above event, amount charged is ₹ 1,51,000 and the entire amount is donated on the same day by Dev to National Defence Fund.
3. Renting of open land in a Gurudwara for marriage function. Rent for this purpose is ₹ 9,800 per day (before GST). Gurudwara is managed by a charitable trust which is registered under section 12AA of the Income-tax Act.
4. Suppose in the above case, rent is ₹ 10,000 per day (before GST).
5. Suppose in the above case, rent is less than ₹ 10,000 per day but the charitable trust (which manages Gurudwara) is not registered under section 12AA of the Income-tax Act.

Answer:

(a) Persons not entitled to avail Composition Scheme:

The Section 10(2) of the CGST Act, 2017 specifies the benefit of composition scheme shall not be granted if a taxable person is:

1. engaged in the supply of services (other than restaurant and outdoor catering service);
2. engaged in making any supply of goods which are not leviable to tax under this Act;
3. engaged in making any inter-state outward supplies of goods;
4. 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. a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

(b)

1. Musical event - Service provided by an artist in a musical event is not chargeable to GST, if amount charged for the performance by the artist is not more than ₹ 1,50,000. Consequently, GST is not applicable. This exemption is not for a brand ambassador.
2. Musical event - If amount charged is more than ₹ 1,50,000, GST is applicable. GST cannot be avoided even if the entire amount is donated to National Defence Fund.
3. Renting of open land in a Gurudwara - If the charitable trust (which manages Gurudwara) is registered under section 12AA of the Income-tax Act and rent of open land is less than ₹ 10,000 per day, GST is not applicable. In the given case, there is no GST. Exemption is provided by Exemption Notification No. 12/2017 – Central Tax (Rate) (Entry 13).
4. Renting of open land in a Gurudwara - Rent being ₹ 10,000 per day, above exemption is not available.
5. Renting of open land in a Gurudwara - The charitable trust (which manages Gurudwara) is not registered under section 12AA of the Income-tax Act. Consequently, exemption is not available.

5.(a) A contract awarded by Bombay Municipal Corporation (BMC) for repair of a particular road to M/s B Ltd. of Mumbai with a total consideration of ₹ 12 lakhs with terms and conditions as stated that:

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- A. It is pure service (excluding works contract service or other composite supplies involving supply of any goods) and
B. the entire work should be completed within 30 days.

The said work has been completed as per terms and conditions. Applicable rate of GST is 18%.

Find the following:

1. Is it taxable supply?
2. Rework if the contract is in the nature of works contract where material is involved in the value of contract. Is it taxable supply? If so who is liable to pay GST.

Note: previous turnover of M/s B Ltd. was ₹ 22 crores.

(b) Write down the services related to agricultural activities which are exempted from GST.

Answer:

(a) (1) Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the local authority exempt from GST.

Therefore, in the given case M/s B Ltd. supplied exempted service.

(2) M/s B Ltd. supplied works contract service which includes material and hence it is taxable supply. M/s B Ltd is liable to pay GST.

CGST 9% = ₹ 1,08,000

SGST 9% = ₹ 1,08,000.

(b) The following agricultural related activities are exempted:

- Cultivation, harvesting,
- Commission on sale of Agricultural Produce
- All types of testing activities which are directly related to production of any agricultural produce
- Supply of farm labour
- Trimming, sorting etc., thereby marketable in the primary market
- Renting of agro machinery
- Loading, unloading, packing, storage and warehousing of agricultural produce
- Agricultural extension services
- Services by any agricultural produce marketing committee.

6.(a) Find the taxability for the following independent cases:

1. Packing of pulses in retail packs for ₹ 42,000.
2. Packing of tomato ketchup for ₹ 54,000
3. Commission on sale of rice for ₹ 10,125.
4. Storage of rice flour in the warehouse for ₹ 12,000.

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(b) Mr. A, a registered person received goods (i.e. Beedi leaves) from Mr. B, an unregistered dealer. Mr. B issues invoice on 1st July 2017.

Find the time of supply of goods in following independent cases:

- (i) Mr. A received goods on 15th July 2017, payment of which is not made yet.
- (ii) Mr. A received goods on 3rd August 2017 & made payment for the same on 4th August 2017.
- (iii) Mr. A made payment on 8th July and received goods on the same date.
- (iv) Mr. A received goods on 10th July 2017 & made payment for the same on 9th July 2017.

Answer:

(a) Taxability:

- (1) taxable supply of services.
- (2) taxable supply of services.
- (3) taxable supply of services.
- (4) taxable supply of services.

(b)

(i) Time of supply of goods = 15-07-2017

Earliest of the following:

Receipt of Goods = 15-07-2017

Date of Payment = not paid

Dt. immediately following 30 days from the date of invoice = 31-07-2017

(ii) Time of supply of goods = 31-07-2017

Earliest of the following:

Receipt of Goods = 03-08-2017

Date of Payment = 04-08-2017

Dt. immediately following 30 days from the date of invoice = 31-07-2017

(iii) Time of supply of goods = 08-07-2017

Earliest of the following:

Receipt of Goods = 08-07-2017

Date of Payment = 08-07-2017

Dt. immediately following 30 days from the date of invoice = 31-07-2017

(iv) Time of supply of goods = 09-07-2017

Earliest of the following:

Receipt of Goods = 10-07-2017

Date of Payment = 09-07-2017

Dt. immediately following 30

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days from the date of invoice

= 31-07-2017

7.(a) What do you mean by location of the supplier of service as per IGST Act?

(b) Mr. X is supplied goods to Mr. Y on 28th January 2018. The GST rate on goods is changed from 12% to 5% w.e.f. 1st January 2018. Mr. X issued invoice on 28th August 2017 and payment is credited in his bank account on 30th December 2017.

- (i) What is the time of supply in this case?**
- (ii) What is the effective rate of GST?**

Answer:

(a) Location of the Supplier of service: As per sec. 2(15) of IGST Act, the definition of location of supplier of service divided into 4 sub clauses:

Supplier of service	Location of the supplier of service
(1) Supply is made from a place of business where registration is obtained.	Location of such place of business
(2) Supply is made from a fixed establishment	Location of such fixed establishment
(3) Supply is made from more than one establishment	The location of establishment most directly concerned with the provision of the supply
(4) Services received at other than above.	The location of the usual place of residence of the supplier.

(b)

- (i) Time of supply = 28th August 2017
- (ii) Effective rate of GST = 12%

8.(a) Zed Ltd. is engaged in fertilizer manufacturing in Karnataka. It has GST registration from Karnataka (Zed Ltd. does not have registration in any other State/ Union Territory). Tapas is head of finance department of the company. On January 10, 2018, Tapas goes to Mumbai to attend a 3 day conference on international finance organised by Harvard Business School at Nariman Point. For this purpose, he incurs the following expenditure -

- 1. Bengaluru-Mumbai air ticket (paid to Air Shakti, Karnataka): ₹ 26,000 + GST.**
- 2. 3 day conference participation fee (paid to Harvard Business School, at the time of registration in Mumbai): ₹ 1,50,000 + GST.**
- 3. Hotel expenditure (paid to Senerio Hotels, Mumbai): ₹ 60,000 + GST.**
- 4. Mumbai-Bengaluru air ticket (paid to Pawan Airways, Mumbai): ₹ 32,000 + GST.**

These expenses are paid by cheque by Zed Ltd. Recipient of supply is Zed Ltd. (GSTIN of Zed Ltd. is given on tax invoices).

What is the place of supply in these cases?

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(b) Swamy Ltd. of Chennai acquires the business of SA Ltd. at Johansberg, South Africa. Swamy Ltd. entered into a contract with M/s Krish & Krish Architects, Chennai to do the interiors of the building of new business at South Africa. The Central Tax department issued a notice demanding GST based on the Place of supply of service provisions. Discuss briefly the applicability of the Place of supply of service to M/s Krish & Krish as the work to be done is outside the taxable territory.

Answer:

(a) Place of supply will be determined as follows –

1. Bengaluru-Mumbai air ticket - This service is pertaining to transportation of passengers. It is covered by section 12(9) of IGST Act. If the recipient is a registered person, place of supply of service is the location of recipient of service. Zed Ltd. is registered in Karnataka. Place of supply of service is in Karnataka. Location of supplier is in Karnataka. Consequently, it is intra-state supply.
2. Conference participation - Training services are covered by section 12(5) of IGST Act. If the recipient is a registered person, place of supply of service is the location of recipient of service. Zed Ltd. is registered in Karnataka. Place of supply of service is in Karnataka. Location of supplier is in Mumbai (it is assumed that Harvard Business School has taken registration in Mumbai as a casual taxable person for this conference). Consequently, it is inter-state supply.
3. Lodging accommodation by Senerio Hotels - It is covered by section 12(3)(b) of IGST Act. Place of supply of service is the location of hotel building (i.e., Mumbai). Location of supplier is in Mumbai. It is, therefore, intra-state supply.
4. Mumbai-Bengaluru air ticket - As discussed above, place of supply of service is in Karnataka. Location of supplier is in Mumbai. Consequently, it is inter-state supply.

(b) Place of supply of services supplied directly in relation to an Immovable Property as per Sec 13(4) of IGST is where immovable property is located or intended to be located.

However, location of supplier and location of recipient is in India we should refer section 12(3)(a) of IGST Act, 2017, accordingly place of supply of service is where immovable property located or intended to be located in India. If location of Immovable property is outside India then place of supply is location of the recipient.

In the given case place of supply of service is Chennai. Location of supplier of service is in Chennai. CGST and SGST will be levied.

9.(a) Sakshitha Pvt. Ltd., a registered supplier, furnish the following details relating to supplies effected during December, 2017:

Particulars	Amount (₹)
Sale price charged to customers within State (Excluding GST)	10,00,000
Service charges levied in the invoices	11,000
Packing and forwarding expenses incidental to sale	14,200

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Weightment charges, shown separately in invoices	7,800
Commission charged to buyers	15,000
Prompt payment discount, indicated in invoice 1%, if payment made within 1 month.	

The rates of taxes for the goods supplied are as under:

Particulars	Rate
CGST	6%
SGST	6%
IGST	12%

Additional information: 60% of the customers did not make the payment within one month from the date of supply. Hence the supplier recovered the prompt payment discount offered to them.

Determine the value of supply and GST liability.

(b) Manas Ltd. is located in Ludhiana. It is in the business of manufacture of cast glass. It has received the following services from different persons during August, 2018 -

1. Service by Department of Posts by way of express parcel post (value of service: ₹ 5,000).
2. Manas Ltd. owns an aircraft. This aircraft is used by directors/officers of the company for business purposes. Aircraft maintenance service is provided by the Government of India. Payment of ₹ 7,50,000 is made for this purpose.
3. For transportation of goods, Manas Ltd. pays ₹ 60,000 to Indian Railways.
4. Manas Ltd. has taken a commercial property on rent from the Punjab Government for which company pays rent of ₹ 1,20,000.
5. Manas Ltd. has taken security services for factory complex from the Punjab Government for which payment of ₹ 30,000 is made.
6. Manas Ltd. has taken security services for office from Labour Power Security Ltd. (a private sector company) for which payment of ₹ 95,000 is made.

The above figures are before GST. Turnover of Manas Ltd. for the financial year 2017-18 was more than ₹ 20,00,000. Discuss the following-

- Whether GST is applicable.
- Whether GST is payable under reverse charge mechanism.

Answer:

(a) Determination of GST liability

Particulars	Amount (₹)
Sale price charged to customers within State (Excluding GST)	10,00,000
Add: Service charges levied in the invoices [See Note 1]	11,000
Packing and forwarding expenses incidental to sale [See Note 1]	14,200
Weightment charges, shown separately in invoices [See Note 1]	7,800
Commission charged to buyers [See Note 1]	15,000
	10,48,000

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Less: Prompt payment discount, indicated in invoice 1% [See Note 2]	10,000
Value of taxable supply	10,38,000
SGST payable at 6%	62,280
CGST at 6%	62,280

Notes:

- As per section 15 of the CGST Act, 2017, all incidental receipts like service charges, commission, packing & forwarding, weighment charges will form part of the taxable supply.
- Prompt payment discount is deductible, since it is known at the time of supply. It is immaterial that 60% of the customers did not make the payment within the eligible period of 1 month. When the supplier issues debit note and recovers the same from buyers, the same will become taxable then.

(b)

Supplier of services	Nature of service	Value of taxable services ₹	Whether reverse charge is applicable
Department of Post	Express parcel post	5,000	Reverse charge mechanism not applicable, supplier will charge GST in its invoice
Government of India	Aircraft maintenance service	7,50,000	Reverse charge mechanism not applicable, supplier will charge GST in its invoice
Indian Railways	Transportation of goods	60,000	Reverse charge mechanism not applicable, supplier will charge GST in its invoice
Punjab Government	Renting of immovable property	1,20,000	Reverse charge mechanism is applicable, if Manas Ltd. is registered under GST.
Punjab Government	Security services	30,000	Reverse charge mechanism is applicable.
Labour Power Security Ltd.	Security services	95,000	Reverse charge mechanism not applicable, supplier will charge GST in its invoice

10.(a) OK Bank has availed credit of ₹ 25,00,000 lacs in the month of December 2017. Total credit, out of which ₹ 5,00,000 pertains to non-business purpose and ₹ 7,00,000 pertains to credit availed under 2nd proviso of section 17(4) of the CGST Act. Find the total input tax credit eligible to OK Bank.

Note: OK Bank opted to avail ITC an amount equal to 50% of eligible credit.

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(b) Ryan and Co., a partnership firm, is in the business of manufacture of perfumes in Madhya Pradesh. It submits the following information pertaining to June, 2018 -

	₹
Input tax credit balance in electronic credit ledger as on June 1, 2018 -	
- IGST	4,00,000
- CGST	1,90,000
- SGST	1,87,000
Purchases (i.e., inward supply of goods/services) for June, 2018	
- Supply of raw material received from A Ltd., Kolkata (taxable value of supply : ₹ 1,00,000 + GST @ 12 per cent)	1,12,000
- Supply of raw material received from B Ltd., Indore (taxable value of supply : ₹ 2,00,000 + GST @ 5 per cent)	2,10,000
- Rent of Indore office paid to C Ltd., Mumbai (taxable value of supply : ₹ 60,000 + GST @ 18 per cent)	70,800
- Rent of Indore factory paid to D Ltd., Bhopal (taxable value of supply : ₹ 1,80,000 + GST @ 18 per cent)	2,12,200
- Packing material received from E Ltd., Nagpur (taxable value of supply : ₹ 20,000 + GST @ 18 per cent)	23,600
- Consultancy fee paid to a local Cost Accountant (taxable value of supply : ₹ 10,000 + GST @ 18 per cent)	11,800
- Fridge (for Indore office staff) received from F Ltd., a retailer in Indore (taxable value of supply before 3.50 per cent discount: ₹ 75,500 + GST @ 28 per cent)	93,258
Sales (i.e., outward supply of manufacture goods) for June, 2018	
- 1,000 units supplied to G Ltd., New Delhi (taxable value of supply : ₹ 10,00,000 + GST @ 18 per cent)	11,80,000
- 6,000 units supplied to H Ltd., Bhopal (taxable value of supply before 10 per cent discount: ₹ 70,00,000 + GST @ 18 per cent)	74,34,000

Find out the amount of GST payable through electronic cash ledger for June, 2018. Give breakup of CGST, SGST and IGST. Assume that all relevant conditions are satisfied but consultancy fee (to the extent of 50 per cent) is utilised for personal benefits of Ryan, one of the partners of the firm.

Answer:

(a) Statement showing eligible ITC to OK Bank for the month of December 2017:

Particulars	ITC Amount in ₹	Remarks
Input tax credit attributable to non-business purpose	Nil	ITC fully not allowed
ITC from its other establishment	7,00,000	ITC fully allowed.
Other ITC	6,50,000	₹ (25,00,000 – 5,00,000 – 7,00,000) × 50%
Total ITC allowed in Form GSTR-2	13,50,000	

(b) Computation of GST payable on outward supply for June, 2018 -

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	CGST ₹	SGST ₹	IGST ₹
Supply to G Ltd. (inter-State supply)	—	—	1,80,000
Supply to H Ltd. (intra-State supply)	5,67,000	5,67,000	—
Total	5,67,000	5,67,000	1,80,000

Computation of input tax credit -

	CGST ₹	SGST ₹	IGST ₹
Opening balance on June 1, 2018	1,90,000	1,87,000	4,00,000
Add: Inward supply during June, 2018 -			
- Supply from A Ltd., Kolkata (inter-State supply)	—	—	12,000
- Supply from B Ltd., Indore (intra-State supply)	5,000	5,000	—
- Rent of office (inter-State supply)	—	—	10,800
- Rent of factory (intra-State supply)	16,200	16,200	—
- Packing material from E Ltd., Nagpur (inter-State supply)	—	—	3,600
- Consultancy (intra-State supply) (50% used for personal purposes of a partner is not eligible for input tax credit)	450	450	—
- Fridge (intra-State supply)	10,200	10,200	—
Total	2,21,850	2,18,850	4,26,400

Computation of GST payable for June, 2018 -

	CGST ₹	SGST ₹	IGST ₹
GST on outward supply (as computed earlier)	5,67,000	5,67,000	1,80,000
Less: IGST on inward supply (balance IGST : ₹ 4,26,400 - ₹ 1,80,000 = ₹ 2,46,400)	—	—	1,80,000
Less: CGST on inward supply	2,21,850	—	—
Less: SGST on inward supply	—	2,18,850	—
Balance	3,45,150	3,48,150	—
Less: IGST on inward supply	2,46,400	—	—
Balance payable by electronic cash ledger	98,750	3,48,150	—

11.(a) State the categories of persons who shall compulsorily be required to be registered under GST.

(b) CMA Manish, an unregistered person under GST, has place of profession in Bhubaneswar, Odisha, supplies taxable services to Infosys Ltd, a registered person under GST in Bangalore.

Answer the following:

(1) Is it inter-State supply or intra-state supply?

(2) Who is liable to pay GST?

Note: turnover of CMA Manish in the P.Y. is ₹ 18 lakhs.

Answer:

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- (a)** The following categories of persons shall be required to be registered under GST:
- (i) Person making any inter-state taxable supply;
 - (ii) Causal taxable persons making taxable supply;
 - (iii) Person who are required to pay tax under reverse charge;
 - (iv) Person who are required to pay tax under sec. 9(5) of CGST Act (i.e. Electronic Commerce Operator);
 - (v) Non-resident taxable person making taxable supply;
 - (vi) Persons who are required to deduct tax under Sec 51, whether or not separately registered under this Act;
 - (vii) Persons who make taxable supply of goods or services or both on behalf of other taxable person whether as an agent or otherwise;
 - (viii) Input Service Distributor, whether or not separately registered under CGST;
 - (ix) Persons who supply of goods or services or both, other than supplies specified under Sec 9(5), through such electronic commerce operator who is required to collect tax at source under Sec 52;
 - (x) Every electronic commerce operator;
 - (xi) Every person supplying online information and database access or retrieval services from place outside India to a person in India, other than a registered person; and
 - (xii) Such other person or class of persons as may be notified by the Govt. on the recommendation of the Council.
- (b)** Any person making inter-state supply has to compulsorily obtain registration and therefore in such cases, section 5(4) of IGST Act will not come into play.

However, Services providers providing aggregate supplies including inter-state services up to ₹ 20 lakhs will be exempted from GST.

(1) It is inter-state supply.

(2) CMA Manish is not liable to pay IGST. Since, registration is not made mandatory to him.

12.(a) What is Bill of Supply and Invoice-cum-bill of supply? State the contents of Bill of Supply.

(b) State the accounts and records which are to be maintained by an agent who carries on the business of supply or receipt of goods or services or both on behalf of another.

Answer:

(a) Bill of Supply: A bill of supply is similar to a GST invoice except that bill of supply does not contain any tax amount as the seller cannot charge GST to the buyer.

A bill of supply is issued in cases where tax cannot be charged:

- Registered person is selling exempted goods/ services,
- Registered person has opted for composition scheme.

Invoice-cum-bill of supply: As per Notification No. 45/2017 – Central Tax, dated 13th October 2017 — If a registered person is supplying taxable as well as exempted goods/services to an unregistered person, then he can issue a single “invoice-cum-bill of supply” for all such supplies.

Contents of Bill of Supply: A bill of supply shall be issued by the supplier containing the

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following details —

- 1) Name, address and GSTIN of the supplier
- 2) A consecutive serial number, in one or multiple series, containing alphabets or numerals or special characters like hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year
- 3) Date of its issue
- 4) Name, address and GSTIN or UIN, if registered, of the recipient
- 5) HSN Code of goods or Accounting Code for Services
- 6) Description of goods or services or both
- 7) Value of supply of goods or services or both taking into account discount or abatement, if any
- 8) Signature or digital signature of the supplier or his authorized representative.

(b) As per Rule 56(11) of the CGST Rules, 2017 every agent referred to in clause (5) of section 2 of the CGST Act 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.

13.(a) X Ltd. has following tax liabilities under the provisions of Act-

S. No.	Particulars	Amount (₹)
1.	Tax liability of CGST, SGST/UGST, IGST for supplies made during August 2018	1,00,000
2.	Interest & Penalty on delayed payment and filing of returns belonging to August 2018	20,000
3.	Tax liability of CGST, SGST/UGST, IGST for supplies made during September 2018	1,20,000
4.	Interest & Penalty on delayed payment and filing of returns belonging to September 2018	20,000
5.	Demand raised as per section 73 or section 74 under CGST Act, 2017 belonging to July 2018	8,00,000
6.	Demand raised as per the old provisions of Indirect Taxes	1,00,000

X Ltd. has ₹ 5,00,000 in Electronic cash ledger. Suggest X Ltd. in discharging the tax liability.

(b) Write a short note on Summary Assessment.

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Answer:

- (a) Balance in Electronic cash ledger can be used in the following manner to discharge tax liability by X Ltd. -

Particulars	Amount (₹)
Balance available in Electronic Cash Ledger	5,00,000
Less-	
Tax liability of CGST, SGST/UGST, IGST for supplies made during August 2018	(1,00,000)
Interest & Penalty on delayed payment and filing of returns belonging to August 2018	(20,000)
Tax liability of CGST, SGST/UGST, IGST for supplies made during September 2018	(1,20,000)
Interest & Penalty on delayed payment and filing of returns belonging to September 2018	(20,000)
Demand raised as per section 73 or section 74 under CGST Act, 2017	(2,40,000)
Balance in electronic cash ledger	Nil
The balance amount of ₹ 5,60,000 towards demand raised under section 73 or section 74 under CGST Act, 2017 to be discharged before discharging liability of demand rose under old provisions of Indirect Taxes.	

- (b) Summary assessment- Summary assessment is permitted only to protect interest of revenue (if delay is likely to affect revenue adversely). The proper officer will have to take prior approval of the Additional Commissioner/Joint Commissioner. Summary assessment can be completed by the proper officer only if he has some evidence pertaining to tax liability of a person. Where the taxable person to whom the liability pertains is not ascertainable and such liability pertains to supply of goods, the person in charge of such goods shall be deemed to be the taxable person liable to be assessed and liable to pay tax. Summary assessment order shall be issued in Form GST ASMT-16.

Withdrawal of summary assessment - On an application made by the taxable person in Form GST-ASMT-17 within 30 days from the date of receipt of summary assessment order, the Additional Commissioner/ Joint Commissioner may withdraw summary assessment order. Suo motu withdrawal is also possible. The order of withdrawal (or rejection of assessee's application for withdrawal) shall be issued in Form GST ASMT-18.

- 14.(a) What is Special Audit under section 66 of the CGST Act, 2017? Write down the procedures to be followed to conduct this audit.**

- (b) M/s X Ltd. being a dealer in new car, sold a Petrol Car on which applicable GST rate is 28% and GST Cess rate is 1%. Transaction value is ₹ 5,00,000/. Find the GST liability.**

Answer:

- (a) Special Audit under section 66 of the CGST Act, 2017: the registered person can be directed to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case.

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Procedure to be followed:

During the scrutiny, inquiry, investigation or any other proceedings of a registered person, the Assistant Commissioner or any officer senior to him, having regard to the nature and complexity of the case and the interest of revenue, might be of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits.

In such cases, with the prior approval of the Commissioner, the Assistant Commissioner or any officer senior to him can direct the registered person in FORM GST ADT-03 to get his records including books of account examined and audited by a specified Chartered Accountant or a Cost Accountant. The Chartered Accountant or a Cost Accountant will be nominated by the Commissioner.

The Chartered Accountant or Cost Accountant so nominated has to submit a report of such audit within the period of ninety days, duly signed and certified by him to the Assistant Commissioner.

On an application made by the registered person or the Chartered Accountant or Cost Accountant or for any material and sufficient reason, the Assistant Commissioner can extend the said period by a further period of ninety days.

The provisions of special audit shall have effect even if the accounts of the registered person have been audited under any other provisions of the GST Act or any other law for the time being in force.

The registered person shall be given an opportunity of being heard in respect of any material gathered on the basis of special audit and which is proposed to be used in any proceedings against him under this Act or the rules made thereunder.

The expenses of the examination and audit of records, including the remuneration of such chartered accountant or cost accountant, shall be determined and paid by the Commissioner.

On conclusion of the special audit, the registered person shall be informed of the findings of the special audit in FORM GST ADT-04.

Where the special audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the process of demand and recovery will be initiated against the registered person.

(b) Transaction value = ₹ 5,00,000

CGST 14% = ₹ 70,000 (i.e. ₹ 5,00,000 x 14%)

SGST 14% = ₹ 70,000 (i.e. ₹ 5,00,000 x 14%)

Cess 1% = ₹ 5,000 (i.e. ₹ 5,00,000 x 1%)

Invoice price of the car = ₹ 6,45,000.

15.(a) State the matters on which advance ruling can be sought as per CGST Act.

(b) State the nature of orders against which no appeals can be filed.

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Answer:

(a) The questions / matters, on which the advance ruling is sought under this Act, shall be in respect of,–

- classification of any goods or services or both;
- applicability of a notification issued under the provisions of this Act;
- determination of time and value of supply of goods or services or both;
- admissibility of input tax credit of tax paid or deemed to have been paid;
- determination of the liability to pay tax on any goods or services or both;
- whether applicant is required to be registered;
- 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.

Advance ruling can be sought only on the above mentioned aspects.

(b) No appeals can be filed against the following orders:-

1. Board can fix monetary limits below which no departmental appeal would be filed with respective authorities.
2. An order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;
3. An order pertaining to the seizure or retention of books of account, register and other documents; or
4. An order sanctioning prosecution under the Act; or
5. An order passed under section 80 of the CGST Act (payment of tax in installments).

16.(a) What do you mean refund under section 54 of CGST Act, 2017?

(b) What are the non-appealable decisions and orders?

Answer:

(a) As per explanation to section 54 of the CGST Act 2017 refund includes 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, or refund of tax on the supply of goods regarded as deemed exports, or refund of unutilized input tax credit as provided under section 54(3) of the CGST Act, 2017.

(b) As per section 121 of CGST and SGST Act, no appeal shall lie against any decision taken or order passed by a GST officer if such decision taken or order passed relates to any one or more of the following matters -

- (a) An order of the Commissioner or other authority for transfer of proceeding from one officer to another officer; or
- (b) An order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) An order sanctioning prosecution under the Act; or

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- (d) An order passed under section 80 [order granting or not granting installments for payment of taxes].

These are overriding provisions. Of course writ jurisdiction of High Court and Supreme Court is not affected.

17.(a) There are various modes of recovery of taxes under section 79 of the CGST Act, 2017. One of these is recovery by sale of goods under the control of proper officer. Write about this mode.

(b) Write down the procedures to be adopted for appeal before Appellate Tribunal.

Answer:

(a) Recovery by sale of goods under the control of proper officer [Rule 144 of the CGST Act] —

- (1) Preparation of inventory and estimation of market value and selection of portion to be sold: Where any amount due from a defaulter is to be recovered by selling goods belonging to such person in accordance with the provisions of clause (b) of sub-section (1) of section 79, the proper officer shall prepare an inventory and estimate the market value of such goods and proceed to sell only so much of the goods as may be required for recovering the amount payable along with the administrative expenditure incurred on the recovery process.
- (2) Auction Notice: The said 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.
- (3) Minimum 15 day's notice for auction: The last day for submission of bid or the date of auction shall not be earlier than fifteen days from the date of issue of the notice referred to in sub-rule (2):

Forthwith selling of perishable/hazardous goods: Where the goods are of perishable or hazardous nature or where the expenses of keeping them in custody are likely to exceed their value, the proper officer may sell them forthwith.
- (4) Pre-bit amount may be specified: The proper officer may specify the amount of pre-bid deposit to be furnished in the manner specified by such officer, to make the bidders eligible to participate in the auction, which may be returned to the unsuccessful bidders, forfeited in case the successful bidder fails to make the payment of the full amount, as the case may be.
- (5) Notice to successful bidder: The proper officer shall issue a notice to the successful bidder in FORM GST DRC-11 requiring him to make the payment within a period of fifteen days from the date of auction. On payment of the full bid amount, the proper officer shall transfer the possession of the said goods to the successful bidder and issue a certificate in FORM GST DRC-12.
- (6) Cancellation of auction, if assessee pays dues: Where the defaulter pays the amount under recovery, including any expenses incurred on the process of recovery, before the issue of the notice under sub-rule (2), the proper officer shall cancel the process of auction and release the goods.
- (7) Re-auction if earlier auction fails: The proper officer shall cancel the process and proceed for re-auction where no bid is received or the auction is considered to be

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non-competitive due to lack of adequate participation or due to low bids.

- (b) Own procedure — Civil Procedure not applicable: The Appellate Tribunal shall not, while disposing of any proceedings before it or an appeal before it, be bound by the procedure laid down in the Code of Civil Procedure, 1908, but shall be guided by the principles of natural justice and subject to the other provisions of this Act and the rules made thereunder, the Appellate Tribunal shall have power to regulate its own procedure.

Powers of Courts : The Appellate Tribunal shall, for the purposes of discharging its functions, 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, namely:—

1. summoning and enforcing the attendance of any person and examining him on oath;
2. requiring the discovery and production of documents;
3. receiving evidence on affidavits;
4. subject to the provisions of sections 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;
5. issuing commissions for the examination of witnesses or documents; dismissing a representation for default or deciding it ex parte.
6. setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
7. any other matter which may be prescribed.

Enforcement just as decree of Court: Any order made by the Appellate Tribunal may be enforced by it in the same manner as if it were a decree made by a court in a suit pending therein, and it shall be lawful for the Appellate Tribunal to send for execution of its orders to the court within the local limits of whose jurisdiction,—

- (a) in the case of an order against a company, the registered office of the company is situated; or
- (b) in the case of an order against any other person, the person concerned voluntarily resides or carries on business or personally works for gain.

Proceedings are judicial proceedings: All proceedings before Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228, and for the purposes of section 196 (45 of 1860.) of the Indian Penal Code, and the Appellate Tribunal shall be deemed to be civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

18.(a) Credit as per the return the period ending 31st March, 2018 is as follows:

Particulars of Input tax	Credit amount as per return (₹)
Central Excise	200,000

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Service Tax	100,000
Krishi Kalyan Cess	5,000
Swachh Bharat Cess	5000
Additional Duty u/s 3(1) of CTA - CVD	40,000
Additional Duty u/s 3(5) of CTA - SAD	30,000
Input Tax Credit under VAT	50,000
Total	445,000

What will be the amount of opening CGST to be brought forward as per GST Law as on 1st April, 2018?

(b) Describe the duties & powers of Anti-profiteering Committee as per CGST Act.

Answer:

(a) The computation is —

CGST Components	Manufacturers (₹)	Service Providers (₹)
Central Excise	2,00,000	2,00,000
Service Tax	1,00,000	1,00,000
Additional Duty u/s 3(1) of Customs Tariff Act	40,000	40,000
Additional Duty u/s 3(5) of Customs Tariff Act	30,000	Not allowed
Swachh Bharat Cess	Not allowed	Not allowed
Krishi Kalyan Cess	Not allowed	5,000
VAT	Not allowed	Not allowed
Total CGST	370,000	3,45,000

(b) The Anti-profiteering Committee shall exercise such powers and discharge such functions as may be prescribed.

The Authority can determine the methodology and procedure for determination as to whether the reduction in the rate of tax on the supply of goods or services or the benefit of input tax credit has been passed on by the registered person to the recipient by way of commensurate reduction in prices.

The Authority would have the following duties:

- (i) to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices;
- (ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;
- (iii) to order,
 - reduction in prices;
 - return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of

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eighteen per cent. from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Consumer Welfare Fund;

- imposition of penalty; and
- Cancellation of registration.

19.(a) ABC Ltd., imported artemia cyst (i.e. brine shrimp eggs). The same has been classified as 'prawn feed' under the heading 2309 (i.e. Heading 2309 of the Customs Act, 1975, includes products of a kind used in animal feeding, not elsewhere specified or included, obtained by processing vegetable or animal materials to such an extent that they have lost the essential characteristics of the original material, other than vegetable waste, vegetable residues and by-products of such processing.) which includes products used as animal feed. However, the Department contended that this product was classifiable under the heading 0511.99 (i.e. which refers to other products in the category of non edible animal products). The contention of importer was that these imported cysts contained little organisms/embryos which later became larva that prawns feed on. Therefore, according to them, the nature and character of the product was not changed by nurturing or incubation. You are required to examine whether the contention of the Department is justified in law.

(b) Venus Udyog Ltd. imported copper scrap for using it as raw material in the manufacture of copper oxy-chloride. It cleared the imported goods by paying the applicable customs duties including additional customs duty. However, on coming to know that imported copper scrap was exempt from payment of additional customs duty under Notification No. 35/81 dated 1st March, 1981, it filed an application for refund of the same. The refund claim was rejected on the ground of unjust enrichment. The contention of the company is that the doctrine of 'unjust enrichment' is not applicable in case of captive consumption of imported material. Discuss the validity of the contention of the company in the light of the decided case law, if any.

Answer:

(a) If a product undergoes some change after importation till the time it is actually used, it is immaterial, provided it remains the same product and it is used for the purpose specified in the classification. Therefore, in the given case, it examined whether the nature and character of the product remained the same.

The Hon'ble High Court held that if the embryo within the egg was incubated in controlled temperature and under hydration, a larva was born. This larva did not assume the character of any different product. Its nature and characteristics were same as the product or organism which was within the egg.

Hence, the Court in the case of Atherton Engineering Co. Pvt. Ltd. v UOI 2010-TIOL-271-HC-Kol-Cus., held that the said product should be classified as feeding materials for prawns under the heading 2309. These embryos might not be proper prawn feed at the time of

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importation but could become so, after incubation.

The contention of the Department is not justified in law.

- (b)** As per the Hon'ble Supreme Court of India in the case of Union of India (UOI) v Solar Pesticide Pvt. Ltd. (2000) (SC), the doctrine of unjust enrichment is attracted even if the incidence of duty is passed on to another person indirectly as in the case of captive consumption of imported materials. Refund of import duty is made to the importer provided he has not passed on the incidence of duty to any other directly or indirectly (Section 27(2) of the Customs Act, 1962).

In the given case Venus Udyog Ltd. imported copper scrap by paying customs duties, not allowed as refund under said notification even though imported goods are used for captive consumption. It means to say that the principle of unjust enrichment applies even in the case of captive consumption of goods.

Therefore, contention of Venus Udyog Ltd. is not valid in law.

- 20.(a) The goods imported by Perfect Ltd., the assessee, were detained on 14th September, 2009. However, the assessee could not produce the documentary evidence. Consequently, the impugned goods were seized on 8th February, 2010. The department issued a show cause notice to the assessee on 15th May, 2010. The assessee put forth a question of limitation alleging that the impugned show cause notice had been issued after a period of six months. The goods were detained on 14th September, 2009, but the show cause notice was issued on 15th May, 2010. Perfect Ltd. has sought for quashing of the show cause notice and also for the return of the goods. Examine.**

- (b) In a case where an appeal against order-in-original of the adjudicating authority has been dismissed by the appellate authorities as time-barred, can a writ petition be filed to High Court against the order-in-original? Justify.**

Answer:

- (a)** Where any goods are seized under section 110(1) and no show cause notice in respect thereof is given under clause (a) of section 124 within six months of the seizure of the goods, the goods shall be returned to the person from whose possession they were seized. [Pro Musicals v Joint Commissioner Customs (Prev.), Mumbai 2008 (227) ELT 182 (Mad)]

Hence, the Court ruled out the assessee's contention that detention and seizure were one and the same. It means detention is not the seizure but seizure includes the detention. Goods were seized on 8th February 2010 and show cause notice to the assessee has been issued on 15th May 2010, which is well within the limit of Six months from the date of seizure. The Court further held that the show cause notice issued by the Department was valid.

Therefore, the contention of Perfect Ltd. is not sustainable in law.

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- (b)** The High Court referred to the case of *Raj Chemicals v. UOI* 2013 (287) ELT 145 (Bom.) wherein it held that where the appeal filed against the order-in-original was dismissed as time-barred, the High Court in exercise of writ jurisdiction could neither direct the appellate authority to condone the delay nor interfere with the order passed by the adjudicating authority. Consequently, it refused to entertain the writ petition in the instant case.

21.(a) Write the differences between “Bill of export” and “import report” under the provisions of the Customs Act, 1962.

(b) What is foreign going Vessel or aircraft under Customs Act? Give an example.

Answer:

(a) Differences between “Bill of export” and “import report”:

Bill of Export	Import Report
As per Section 2(5) of the Customs Act, “Bill of export” means a bill of export referred to in section 50 of the Customs Act, 1962	As per Section 2(24) of the Customs Act, “Import manifest” or “import report” means the manifest or report required to be delivered under section 30 of the Custom Act, 1962
The exporter of any goods shall make entry thereof by presenting to the proper officer in the case of goods to be exported in a vessel or aircraft, a shipping bill, and in the case of goods to be exported by land, a bill of export in the prescribed form.	The person in charge of a vehicle carrying imported goods or any other person as may be notified by the Central Government shall, in the case of a vehicle, deliver to the proper officer an import report within 12 hours after its arrival in the customs station, in the prescribed form.

- (b)** Foreign going Vessel or aircraft: As per section 2(21) of the Customs Act, the foreign going vessel or aircraft means any vessel or aircraft for the time being in the carriage of goods or passengers between any port or airport in India and any port or airport outside India, whether touching any intermediate port or airport in India or not. The following are also included in the definition: (i) A foreign naval vessel doing naval exercises in Indian waters (ii) A vessel engaged in fishing or any other operation (like oil drilling by domestic vessel or foreign vessel) outside territorial waters (iii) A vessel going to a place outside India for any purpose whatsoever.

Example: An ONGC vessel and a vessel owned by A Ltd. of USA are drilling oil beyond 12 nautical miles in the sea. Hence, both the vessels are called as foreign going vessels.

22.(a) RST Ltd. imported drawings and designs in paper form through professional courier and post parcels. However, the Assistant Commissioner of Customs valued these drawings and designs and levied duty on them. RST Ltd. Contended that customs duty cannot be levied on drawings and designs as they do not fall in the definition of goods under the Customs Act, 1962. Do you feel the stand taken by the RST Ltd. is tenable in law? Support your

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answer with a decided case law, if any.

(b) State the circumstances under which no duty will be levied under customs.

Answer:

(a) Associated Cement Companies Ltd. v CC 2001 (128) ELT 21 (SC) The Apex Court observed that though technical advice or information technology are intangible assets, but the moment they are put on a media, whether paper or cassettes or diskettes or any other thing, they become movable and are thus, goods. Therefore, the Supreme Court held that drawings, designs, manuals and technical material are goods liable to customs duty. Therefore, the stand taken by the RST Ltd. is not correct in law.

(b) Circumstances under which no duty will be levied under customs:

- (1) No duty will be levied on pilfered goods under section 13 of the Customs Act. If any imported goods are pilfered after the unloading thereof and before the proper officer has made an order for clearance for home consumption or deposit in a ware house, then the importer shall not be liable to pay the duty leviable on such goods.
- (2) No duty will be levied when the goods are damaged or deteriorated before or during the course of their unloading, where it is shown to the satisfaction of the Assistant or Deputy Commissioner of Customs (Section 22).
- (3) No duty will be levied in case of warehoused goods, when the goods are damaged before their actual clearance from such warehouse, where it is shown to the satisfaction of the Assistant or Deputy Commissioner of Customs (Section 22).
- (4) No duty will be levied in case of goods lost or destroyed due to natural causes like fire, flood, etc. such loss may take place at any time before the clearance of goods for home consumption. The loss may be at the warehouse (Section 22).
- (5) No duty will be levied in case of goods abandoned by importers. Sometimes it may so happen that importer is unwilling or unable to take delivery of the imported goods due to the following reasons:
 - the said goods may not be according to the specification,
 - the goods may have been damaged during voyage,
 - there might have been breach of contract. The relinquishment is done by endorsing the document of title to the goods in favour of the Commissioner of Customs along with invoice.In all the above cases the importer has to relinquish his title to the goods unconditionally and abandon them.
- (6) No duty will be levied, if the Central Government is satisfied that it is necessary in the public interest not to levy import duty by issuing the notification in the Official Gazette.

23.(a) When shall the safeguard duty under section 8B of the Customs Tariff Act, 1975 be not

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imposed? Discuss briefly.

- (b) Determine the safeguard duty payable by Black Ltd., White Ltd., and Red Ltd., and Green Ltd. under section 8B of the Customs Tariff Act, 1975 from the following:

Imports of Sodium Nitrite from developing and developed countries from 26th February, 2017 to 25th February, 2018 (both days inclusive) are as follows:

Importer	Country of Import	₹ in crores
Black Ltd.	Developing country	66
White Ltd.	Developing country	86
Red Ltd.	Developing country	52
Green Ltd.	Developing country	50
Others	Developed country	2,246
Total		2,500

Note: Safeguard duty 30%.

Answer:

- (a) The safeguard duty under section 8B of the Customs Tariff Act, 1975 is not imposed on the import of the following types of articles:

- (i) Articles originating from a developing country, so long as the share of imports of that article from that country does not exceed 3% of the total imports of that article into India;
- (ii) Articles originating from more than one developing country, so long as the aggregate of imports from developing countries each with less than 3% import share taken together does not exceed 9% of the total imports of that article into India;
- (iii) Articles imported by a 100% EOU or units in a Free Trade Zone or Special Economic Zone unless the duty is specifically made applicable on them.

Note: "developing country" means a country notified by the Central Government in the Official Gazette for the purposes of this section.

- (b) According to Section 8B of Customs Tariff Act, 1975, in case of articles originating from a developing country (i.e. a country notified by the Government of India for purpose of levy of such duty), this duty cannot be imposed under following circumstances, -

- (a) If the imports of such article from developing country does not exceed 3% of the total imports of that article into India.
- (b) Where the article is originating from more than one developing countries (each with less than three percent import share), then the aggregate of imports from all such countries taken together does not exceed 9% of the total imports of that article into India.

Hence, the computation of Safeguard duty is as under —

Computation of Safeguard duty payable by Black Ltd., White Ltd., and Red Ltd., and Green Ltd.:

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Importer	Country of import	₹ in crores	% of imports	
Black Ltd.	Developing country	66	2.64%	
White Ltd.	Developing country	86		3.44%
Red Ltd.	Developing country	52	2.08%	
Green Ltd.	Developing country	50	2%	
Others	Developed country	2,246		
	Total	2,500	6.72%	3.44%

Safeguard duty is as follows:

Importer	₹ in crores	Safeguard duty	₹ in crores
Black Ltd.	66	30%	—
White Ltd.	86	30%	25.8
Red Ltd.	52	30%	—
Green Ltd.	50	30%	—

Articles originating from more than one developing countries (each with less than 3% import share), then the aggregate of imports from all such countries taken together does not exceed 9% (i.e. in the given case 6.72%) of the total imports of that article into India. Therefore, Safeguard duty is not applicable to Black Ltd., Red Ltd., and Green Ltd.

24.(a) M/s. Payel Industries Ltd., has imported certain equipment from Japan at an FOB cost of 2,00,000 yen (Japanese). The other expenses incurred by M/s. Payel Industries Ltd. in this connection are as follows:

(i)	Freight from Japan to Indian Port	Yen 20,000
(ii)	Insurance paid to insurer in India (for the importation of the machine)	₹ 15,000
(iii)	Designing charges paid to consultant in Japan	Yen 30,000
(iv)	M/s. Payel Industries Ltd. had expended ₹ 1,00,000 in India for certain developmental activities with respect to the imported machine.	
(v)	Payel Industries Ltd., had incurred road transport cost from Mumbai port to their factory in Karnataka.	₹ 30,000
(vi)	CBEC had notified for purposes of section 14 of the Customs Act exchange rate of 1 yen = ₹ 0.65. The interbank exchange rate as announced by the authorized dealer was 1 yen = ₹ 0.66	
(vii)	M/s. Payel Industries Ltd. had effected payment based on exchange rate 1 yen = ₹ 0.6545	
(viii)	The commission payable to the agent in India was 5% of the FOB cost of the equipment in Indian rupees	

Arrive at the assessable value for purposes of valuation under the Customs Act, 1962 with brief notes wherever necessary for each of the adjustments at (i) to (viii) above.

(b) State the conditions which are to be satisfied to apply transaction value of identical goods method.

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Answer:

(a) Computation of assessable value –

FOB cost	Yen	2,00,000
Add: Freight [WN-1]	Yen	20,000
Add: Design charges [WN-2]	Yen	30,000
Total (A)	Yen	2,50,000
Exchange rate to be applied is 1 yen = ₹ 0.65, as notified by CBEC [WN-3]	₹	0.65
Total sum in Indian ₹	₹	1,62,500.00
Add: Commission to the Agent [5% of FOB value of goods] [WN-4]	₹	6,500.00
Add: Developmental activities with respect to the imported machine [WN-5]		—
Add: Insurance charges [WN-6]	₹	15,000.00
Total CIF Value/ Assessable value	₹	1,84,000.00

Working Notes:

- (1) Only the cost of transport of the imported goods up to the place of importation is includible for the purpose of valuation. Thus, transport cost from Mumbai port (place of importation) to the factory in Karnataka has not been included in the assessable value.
- (2) Value of design work undertaken elsewhere than in India is includible in the value of the imported goods.
- (3) Rate of exchange notified by the CBEC has been considered.
- (4) Buying commission is not includible in the value of the imported goods. Since the agent's commission does not represent buying commission, hence, it is includible.
- (5) Value of development work undertaken in India is not includible in the value of the imported goods. Hence, ₹ 1,00,000 expended in India for developmental activities have not been considered.
- (6) Insurance of the machine is includible in the assessable value.

(b) Transaction value of identical goods method is applicable only when following conditions are satisfied:

- Identical goods can be compared with the other goods of the same country from which import takes place.
- These goods must be valued at a price which is produced by the same manufacturer.
- If price is not available then the price of other manufacturers of the same country is to be taken into account.
- If more than one value of identical goods is available, lowest of such value should be taken.

A condition for adjustment because of different commercial levels or different quantities is

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that such adjustment, whether it leads to an increase or a decrease in the value, be made only on the basis of demonstrated evidence that clearly establishes the reasonableness and accuracy of the adjustment, e.g. valid price lists containing prices referring to different levels or different quantities.

25.(a) State the conditions which are to be satisfied for transshipment of goods without payment of duty.

(b) What is Identical Goods in customs? State the application of transaction value of identical goods in valuation of imported goods.

Answer:

(a) Transshipment of goods without payment of import duty is permissible only if the following conditions satisfy:

- Transshipment of goods with foreign destination
- The goods find place as Transshipment Goods in the Import of General Manifest (IGM) or Import Report in case of goods imported in a vehicle
- Bill of Transshipment or Declaration of Transshipment filed.
- Goods must be transhipped to another vessel to place outside India.

(b) Identical goods means the goods must be same in all respects, including physical quantity.

This method is applicable only when following conditions are satisfied:

- Identical goods can be compared with the other goods of the same country from which import takes place.
- These goods must be valued at a price which is produced by the same manufacturer.
- If price is not available then the price of other manufacturers of the same country is to be taken into account.
- If more than one value of identical goods is available, lowest of such value should be taken.

26.(a) What is deemed export under Customs?

(b) Write a short note Postal Articles in Customs.

Answer:

(a) The term Deemed Export is an export without actual export, it means goods and services are sold and provide respectively within India and payment also received in the Indian Rupees. As per the Foreign Trade Policy, the following few transactions can be considered as deemed exports:

- Sale of goods to units situated in Export Oriented Units, Software Technology Park, and Electronic Hardware Technology Park etc.
- Sale of capital goods to fertilizer plants
- Sale of goods to United Nations Agencies
- Sale of goods to projects financed by bilateral Agencies, etc.

(b) Postal Articles: As per sections 82 to 84 of the Customs Act, 1962, goods can be cleared by

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post. Any label or declaration accompanying the goods showing the description, quantity and value thereof, shall be treated as "an entry for import" under the Customs Act.

The rate of duty and tariff value applicable to goods imported by post shall be the rate and valuation in force on the date on which the postal authorities present to the proper officer a list containing the particulars of such goods for the purpose of assessment of duty.

The procedure for clearance:

- (i) Post parcels are allowed to pass from port/airport to Foreign Parcel Department of Government Post Offices without payment of customs duty.
- (ii) The Postmaster hands over to Principal Appraiser of Customs the memo showing
 - Total number of parcels from each country of origin,
 - Parcel bills or senders' declaration,
 - Customs declaration and dispatch notes, and
 - Other information that may be required.
- (iii) The mail bags are opened and scrutinized by Postmaster under supervision of Principal Postal Appraiser of Customs.
- (iv) Packets suspected of containing dutiable goods are separated and presented to Customs Appraiser with letter mail bill and assessment memos.
- (v) The Customs Appraiser marks the parcels which are required to be detained if —
 - necessary particulars are not available, or
 - mis-declaration or undervaluation is suspected, or
 - goods are prohibited for import.

Appraiser has the power to examine any parcel. After inspection, the parcels are sealed with a distinctive seal. Any mis-declaration or undervaluation is noted or goods are prohibited goods for imports these be detained and the same intimated to Commissioner of Customs.

If everything is in order after verification, goods will be handed over to Post Master, who will hand over the same to the addressee on receipt of customs duty.

27.(a) State the situations where provisional assessment can be granted by Customs Officer.

(b) A person makes an unauthorized import of goods liable to confiscation. After adjudication, Assistant Commissioner provides an option to the importer to pay fine in lieu of confiscation. It is proposed to impose a fine (in lieu of confiscation) equal to 50% of margin of profit. From the following particulars calculate the amount of fine that can be imposed: Assessable value – ₹ 50,000, Total duty payable – ₹ 20,000, Market value – ₹ 1,00,000. Also calculate the total payment to be made by the importer to clear the consignment.

Answer:

(a) Provisional Assessment will be allowed by the Customs Officer, if he, satisfied with the request of the importer or exporter. Provisional assessment can be granted in the following three

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situations:

- An importer or exporter is unable to produce any document or furnish any information necessary for the assessment of duty.
- Any imported goods or export goods need to conduct any chemical or other test for the purpose of assessment of duty thereon.
- Where the importer or the exporter has produced all the necessary documents and furnished full information for the assessment of duty but the proper officer deems it necessary to make further enquiry for assessing the duty.

(b) In the given case Assistant Commissioner intends to impose redemption fine equal to 50% of margin of profit.

Total cost to importer = ₹ 50,000 + ₹ 20,000 = ₹ 70,000.

Margin of profit:

Market value – Total cost to importer = ₹ 1,00,000 – ₹ 70,000 = ₹ 30,000.

Hence, redemption fine will be ₹ 15,000 (@ 50% of ₹ 30,000). In addition, duty of ₹ 20,000 is payable. Thus, importer will have to pay totally ₹ 35,000 to clear the goods from customs.

28.(a) State the features of Foreign Trade Policy (FTP).

(b) What is Advance Authorisation in FTP?

Answer:

(a) Features of Foreign Trade Policy (FTP):

1. Export-Import is free unless specifically regulated by the provisions of the FTP.
2. Export and Import goods are broadly categorized as:
 - I. Free (i.e. general goods freely import or export without any authorization).
 - II. Restricted (i.e. goods allowed to import or export only with authorization).
 - III. Prohibited (i.e. goods are not allowed to import or export)
3. There are restrictions on exports and imports for various strategic, health, and other reasons.
4. Exports are promoted through various promotional schemes.
5. There should be no taxes on exports.
6. Capital goods can be imported at NIL duty for the purpose of exports under the scheme of Export Promotion Capital Goods (EPCG) Scheme.
7. EOU'S and SEZ units are exempted from payment of taxes.
8. Deemed exports concept introduced.
9. Duty credit scrip's schemes are designed to promote exports of some specified goods to specified markets and to promote export of specified services.

(b) Advance Authorization:

- (i) Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorization for Annual Requirement.
- (ii) Materials imported under Advance Authorization will 'Actual User Condition'. These imported goods will not be transferable even after completion of export obligation.

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However, holder of Advance Authorization will have an option to dispose of product manufactured out of duty free inputs once export obligation is completed.

- (iii) Advance Authorization is issued for inputs in relation to the resultant product on the basis of SION (Standard Input Output Norms). If SION for a particular item is not fixed, Regional Authority (RA) based on self-declaration by applicant, except certain specified products, can issue Advance Authorization.
- (iv) It is necessary to establish that inputs actually used in manufacture of the export product should only be imported under Advance Authorization and inputs actually imported must be used in the export product, for redeeming the Authorization.

29.(a) State the situations where MEIS duty credit scrip are not allowed.

(b) List out the benefits available to status holders under FTP 2015-20.

Answer:

(a) MEIS duty credit scrip is not allowed in the following cases:

- (1) EOUs / EHTPs / BTPs/ STPs who are availing direct tax benefits / exemption
- (2) Supplies made from DTA units to SEZ units
- (3) Exports through transshipment, i.e., exports that are originating in third country but transshipped through India
- (4) Deemed Exports
- (5) SEZ/ EOU/ EHTP/ BTP/ FTWZ products exported through DTA units
- (6) Export products which are subject to Minimum export price or export duty.

(b) Benefits available to status holders:

- a. Authorisation and Customs Clearances for both imports and exports may be granted on self- declaration basis;
- b. Fixation of Input Output Norms (SION) on priority by the Norms Committee i.e. within 60 days.
- c. Exemption from compulsory negotiation of documents through banks. The remittance receipts, however, would continue to be received through banking channels by way of e-BRC by DGFT.
- d. Exemption from furnishing of Bank Guarantee in Schemes under FTP.
- e. Two Star Export Houses and above are permitted to establish export warehouses.
- f. Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBEC.
- g. Status holders shall be entitled to export freely exportable items on free of cost basis for export promotion subject to an annual limit of ₹10 lakhs or 2% of average annual export realization during proceeding 3 licensing years, whichever is higher.
- h. Manufacturer exporters who are also Status Holders shall be eligible to self-certify their goods as originating from India.

- 30.(a) State the eligible as well as ineligible capital goods for import under EPCG Scheme.
(b) Write a short note on Special Economic Zone (SEZ).**

Answer:

(a) Eligible capital goods for import under EPCG Scheme:

1. Capital Goods including capital goods in CKD/SKD condition
2. Computer software systems
3. Spares, moulds, dies, jigs, fixtures, tools & refractories for initial lining and spare refractories.
4. Capital goods for Project Imports notified by CBEC.

Ineligible capital goods for import under EPCG Scheme:

1. Second hand capital goods
2. Power Generator Sets

(b) Special Economic Zone (SEZ): The provisions relating to SEZ are contained in Special Economic Zone Act, 2005 and SEZ Rules, 2006.

- SEZs are like a separate island within territory of India.
- SEZs are projected as duty free area for the purpose of trade, operation, duty and tariffs.
- Goods and services coming to SEZ units from domestic tariff area are treated as exports from India and goods and services rendered from SEZ to the DTA are treated as import into India.

Any proposal for setting up of SEZ unit in the Private/ Joint/ State Sector is routed through the concerned State government who in turn forwards the same to the Department of Commerce with its recommendations for consideration.

The following incentives offered to the units in SEZ:

1. Duty free import/ domestic procurement of goods for development, operation and maintenance of SEZ units.
2. Single window clearance for Central and State level approvals.
3. Exemption from State sales tax and other levies as extended by the respective State Governments.
4. "In order to give a boost to exports from SEZs, government has now decided to extend benefits of both the reward schemes (MEIS and SEIS) to units located in SEZs.
5. SEZs have been exempted from payment of IGST on imports. Supplies to SEZs by DTA units also exempted from IGST (i.e. zero rated supply).