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FOR CA FINAL EXAM PREPARATION

CA Final 2022 Suggested Answers · Paper 8 Indirect Tax Laws (Old Scheme)

EXAM
CA Final

YEAR
2022

TYPE
Suggested Answers

SUBJECT
Paper 8 Indirect Tax Laws (Old Scheme)

DATE
May 2022

PAPER – 8: INDIRECT TAX LAWS

*(i) Question paper comprises of **6** questions. Answer Question No. 1 which is compulsory and any **4** questions out of the remaining **5** questions.*

(ii) Working notes should form part of the answer.

(iii) All questions should be answered on the basis of the position of (i) GST law as amended by significant notifications/circulars issued till 31.10.2021 and (ii) Customs law as amended by the Finance Act, 2021 and significant notifications/circulars issued till 31.10.2021.

Question 1

Supermarket is a proprietary firm and a GST registered supplier in Ahmedabad, Gujarat. The details of supplies, purchases and expenses for the month of December 2021 of Supermarket are as given below:

Particulars	*Amount (₹)*
Details of outward supplies:	
(i) Intra-State	*45,00,000*
(ii) Inter-State	*15,00,000*
(iii) Exempt supplies under GST	*6,00,000*
Details of inward supplies:	
(i) Intra-State	*40,00,000*
(ii) Inter-State	*10,00,000*
(iii) Exempt supplies under GST	*5,00,000*
Details of expenses:	
(i) Freight paid to GTA for intra-State transportation of goods [20% of the freight paid was towards transportation of goods not liable to GST.]	*60,000*
(ii) Telephone expenses	
[Out of the above, ₹ 18,000 was spent on landline installed in the sales outlet and ₹ 12,000 was spent on phones provided to employees in relation to the work of the firm.]	*30,000*
(iii) Premium paid on insurance taken on car used by proprietor of the firm in relation to the work of the firm (intra-State)	*8,500*
(iv) Outdoor catering service expenses incurred during Diwali celebrations in the sales outlet	*40,000*
(v) Monthly rent for the premises of sales outlet	*60,000*

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It is further given that -

All the amounts given are exclusive of all taxes, wherever applicable.

All the inward and outward supplies are made by Supermarket from / to registered place of business in Gujarat. Inward supplies of ₹ 50 lakh were used only for making taxable supplies and exempt inward supplies of ₹ 5 lakh were used only for making exempt outward supplies.

Wherever applicable for the purposes of reverse charge payable by Supermarket, CGST, SGST and IGST rates are 2.5%, 2.5% and 5% respectively. In all other cases, CGST, SGST and IGST rates are 9%, 9% and 18% respectively.

There is no opening balance in the electronic cash ledger or in electronic credit ledger.

Subject to the information as given above, all the other conditions necessary for availing ITC have been fulfilled.

You are required to compute the following -

(1) Input Tax Credit (ITC) credited to Electronic Credit ledger;

(2) Common ITC available for apportionment;

(3) ITC attributable to exempt supplies out of common ITC;

You are required to examine the applicability of rule 86B of the CGST Rules relating to utilisation of ITC and if applicable, calculate the amount of ITC available for utilisation towards payment of GST. However, there is no need to explain exceptions to rule 86B.

Make suitable assumptions, wherever required and working notes as may be needed.

Brief notes are required only to support the calculation and the numerical outputs required in the case of common ITC available for apportionment and applicability of rule 86B of the CGST Rules.

Ensure that every transaction in the question is covered in the answer for the purpose of calculation of numerical outputs. ***(14 Marks)***

Answer

(1) Computation of ITC credited to Electronic Credit Ledger

Particulars	Value (₹)	CGST (₹)	SGST (₹)	IGST (₹)
GST paid on intra-State inward supplies taxable @ 9%	40,00,000	3,60,000	3,60,000	
GST paid on inter-State inward supplies taxable @ 18%	10,00,000			1,80,000
Inward supplies exempt from GST [Since exempt, no GST is paid.]	5,00,000	--	--	--

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Freight paid to GTA for intra-State of taxable goods[1]@ 2.5% [Since rate of GST on GTA services is 2.5%, tax is payable under reverse charge.]	48,000 [60,000 × 80%]	1,200	1,200	--
GST on freight paid to GTA for intra-State of exempt goods[2] @ 2.5%under reverse charge [ITC on input services used exclusively in relation to exempt supplies is not available.]	12,000 [60,000 × 20%]	--	--	
GST on telephone expenses[3] @ 9% [ITC of services used in the course or furtherance of business is available.]	30,000	2,700	2,700	
Premium paid on insurance taken on car used for firm's work [ITC is blocked u/s 17(5) on general insurance services relating to those motor vehicles which are ineligible for ITC.]	8,500	--	--	
Outdoor catering services [ITC on outdoor catering is blocked u/s 17(5) if the same is not used for making an outward supply of outdoor catering or as an element of a taxable composite/ mixed supply.]	40,000	--	--	

*[1] It has been most logically presumed that remaining 80% of the freight has been paid exclusively on transportation of **taxable outward supply** of goods and GTA providing said services is registered in the State of Gujarat.*

*[2] It has been most logically presumed that freight has been paid on transportation of **outward supply** of exempt goods.*

*In case it is assumed that freight has been paid on transportation of **inward supply** of exempt goods, amount of ITC available with regard to the same will change accordingly.*

[3] Telephone expenses have been considered to be in the nature of input services. Further, it has been assumed that the supplier is registered in the State of Gujarat.

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GST on monthly rent for premises of sales outlet @ 9%[4] [ITC of services used in the course or furtherance of business is available.]	60,000	5,400	5,400	
ITC credited to the electronic ledger		**3,69,300**	**3,69,300**	**1,80,000**

(2) Computation of common ITC available for apportionment

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
ITC credited to Electronic Credit Ledger	3,69,300	3,69,300	1,80,000
Less: ITC on taxable goods	3,60,000	3,60,000	1,80,000
Less: ITC on freight paid to GTA for transportation of **taxable** goods	1,200	1,200	
Common credit for apportionment	**8,100**	**8,100**	**--**

(3) Computation of ITC attributable towards exempt supplies

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
ITC attributable towards exempt supplies = Common credit x (Aggregate value of exempt supplies during the tax period/ Total turnover during the tax period			
[₹8,100 x (₹6,00,000/₹ 66,00,000)][5]	**736**	**736**	

(4) Computation of ITC available for utilization towards payment of tax in terms of rule 86B

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Maximum amount of output tax liability that can be discharged from ECrL [99% of Output tax liability]	4,00,950 [45,00,000 × 9%× 99%]	4,00,950 [45,00,000 × 9%× 99%]	2,67,300 [15,00,000 × 18%× 99%]

[4] It has been assumed that supplier of services of renting of premises is registered in the State of Gujarat.
[5] Telephone expenses have been considered to be in the nature of input services.
However, it is also possible to consider the telephone expenses to be in the nature of capital goods to be reversed in accordance with provisions with rule 43 of the CGST Rules, 2017.

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[Since the value of taxable supply other than exempt supply in December 2021 (₹ 45 lakh + ₹ 15 lakh) exceeds ₹ 50 lakh, amount from electronic credit ledger which it can use to discharge its output tax liability of said month cannot exceed 99% of such tax liability in terms of rule 86B of the CGST Rules, 2017.]			
Amount of ITC available for utilization towards payment of tax [Since the ITC available in ECrL after reversal thereof is lower than the aforesaid amount, entire ITC can be utilised towards payment of GST.]	**3,68,564** [3,69,300 – 736]	**3,68,564** [3,69,300 – 736]	**1,80,000**

Question 2

(a) *M/s A2Z, a proprietary firm registered under GST, is engaged in providing various services under one roof. The firm provides the following information pertaining to supplies made/input services availed by it during the month of March, 2022:*

S. No.	*Particulars*	*Amount (₹)*
1.	*Amount collected for loading, unloading, packing and warehousing of potato chips*	*15,000*
2.	*Fees paid for yoga camp conducted by a charitable trust registered under section 12AA of the Income-tax Act, 1961 for employees of the firm*	*20,000*
3.	*Interest received on fixed deposits with APNA Bank by the firm*	*30,000*
4.	*Professional services provided to foreign diplomatic mission located in India*	*50,000*
5.	*Recovery agent services provided to ABC Finance Ltd. - an NBFC located in Delhi*	*1,00,000*
6.	*Security services provided to XYZ Ltd. - a registered person under GST*	*80,000*
7.	*Receipts from running an educational institution (including receipts for providing residential dwelling service of ₹ 18,20,000 by the institution to the students)*	*35,00,000*
8.	*Supply value including cost of fuel for provision of renting of motor vehicle service to NPS Ltd.*	*88,000*

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Determine the GST liability (inclusive of liability for the supplies received also) of M/s A2Z for the month of March 2022 with necessary explanation for treatment of each item. Rate of tax for both inward and outward supply is CGST and SGST @ 9% each except for the service of renting a vehicle for which CGST and SGST @ 2.5% each is applicable. All the supplies are intra-State only. ***(9 Marks)***

(b) *A non-resident Indian from USA donated food processing machinery to Om Charitable Trust (OCT). OCT, however, paid commission to local agent in India.*

Assistant Commissioner of Customs determined the FOB value of machine at US $ 17,500 including design and development charges. The trust accepted the value determined. Actual air freight paid was US $ 4,000 and insurance cost was US $ 1,500. Other details available are given below:

(i) Commission paid to local agent of the exporter is US$ 2,100 (paid in ₹ 1,57,500).

(ii) Date of Bill of Entry presentation is 25th March, 2022. On this date, rate of BCD is 10%. Rate of exchange notified by CBIC is ₹ 75 per US $; Reserve Bank Rate is ₹ 76 per US $.

(iii) Date of arrival of aircraft at customs station is 5th April, 2022.

On this date, rate of BCD is 15%, rate of exchange notified by CBIC is ₹ 74 per US $; Reserve Bank Rate is ₹ 75 per US $.

(iv) Social welfare surcharge is leviable @ 10% and applicable IGST rate is 18%

Compute the assessable value under the Customs Act and also calculate basic customs duty payable, social welfare surcharge and IGST on import of machine. Assume that no exemption is available on this transaction and make suitable assumptions, if required.

(5 Marks)

Answer

(a) Computation of GST liability of M/s A2Z for the month of March 2022[6]

S. No.	Particulars	CGST (₹)	SGST (₹)
1.	Loading, unloading, packing and warehousing of potato chips [Loading, unloading, packing and warehousing of agricultural produce is exempt. However, potato chips is not an agricultural produce.]	1,350 [15,000 × 9%]	1,350 [15,000 × 9%]

[6] *The amounts given in the question have been assumed to be exclusive of GST. However, it is also possible to assume that the amounts given in the question are inclusive of GST.*

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2.	Fees paid for yoga camp [Services provided by a charitable trust registered under section 12AA of the Income-tax Act by way of advancement of yoga are exempt.]	--	--
3.	Interest received on fixed deposits [Services of extending fixed deposits in so far as the consideration is represented by way of interest are exempt.]	--	--
4.	Professional services provided to foreign diplomatic mission located in India [Not exempt.]	4,500 [50,000 × 9%]	4,500 [50,000 × 9%]
5.	Recovery agent services provided to ABC Finance Ltd., an NBFC [Since such services are being provided to an NBFC, tax on the same is payable by recipient - ABC Finance Ltd. - under reverse charge [RCM].]	--	--
6.	Security services provided to XYZ Ltd., a registered person [Since such services are being provided by a non-body corporate to a registered person, tax on the same is payable by recipient - XYZ Ltd. - under reverse charge [RCM].]	--	--
7.	Receipts from running an educational institution[7] (including receipts for residential dwelling service) [Services provided by an educational institution and services by way of renting of residential dwelling for use as residence are exempt.]	--	--
8.	**Alternative -I: It is assumed that motor vehicle is designed to carry passengers** Renting of motor vehicle service [Since services of renting of motor vehicle including cost of fuel with tax payable	--	--

[7] *It has been most logically assumed that educational institution is the institution as defined under Notification No. 12/2017 CT (R) dated 28.06.2017/ Notification No. 9/2017 IT (R) dated 28.06.2017. Further, the balance receipts (apart from the receipts for providing residential dwelling service) from running the educational institution pertains to services provided by it to its students, faculty and staff.*

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	@ 2.5% CGST/SGST is being provided by a non-body corporate to a body corporate, tax on the same is payable by recipient – NPS Ltd. - under reverse charge [RCM].]		
	OR		
	Alternative -II: It is assumed that motor vehicle is designed to carry goods Renting of motor vehicle service [Not exempt.]	2,200 [88,000 × 2.5%]	2,200 [88,000 × 2.5%]
	Alternative -I: It is assumed that motor vehicle is designed to carry passengers **Total GST liability**	5,850	5,850
	OR		
	Alternative -II: It is assumed that motor vehicle is designed to carry goods **Total GST liability**[8]	8,050	8,050

(b) Computation of assessable value, basic customs duty, social welfare surcharge and IGST

Particulars	Amount ($)
FOB value computed by Customs Officer (including design and development charges[9])	17,500
Add: Commission paid to local agent in India [Includible since it is not a buying commission]	2,100
FOB value as per customs	19,600
Add: Air freight ($ 19,600× 20%) [Restricted to 20% of FOB value since goods are imported by air.]	3,920
Add: Actual insurance charges	1,500
Assessable value in $	25,020
Assessable value in rupees [$ 25,020 × ₹ 75] [Rate of exchange notified by CBIC on the date of filing of bill of entry is considered.]	**₹ 18,76,500**

[8] Since the question requires computation of GST liability of the supplier – M/s A2Z, those outward supplies of M/s A2Z where recipient is liable to pay tax under reverse charge have not been taken into consideration while arriving at its GST liability.

[9] It has been most logically presumed that design and development is undertaken in USA and necessary for the production of imported goods.

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Particulars	₹
Add: **Basic custom duty** @ 15% on ₹ 18,76,500 [Rate of BCD is the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later]	**2,81,475**
Add: **Social Welfare surcharge** @ 10% on ₹ 2,81,475 (rounded off)	**28,148**
Total	21,86,123
Integrated tax @ 18% on ₹ 21,86,123 [rounded off]	**3,93,502**

Question 3

(a) In the case of transactions at (i) and (ii) below, determine whether the amounts received are liable to GST. Briefly explain the applicable statutory provisions in support of your conclusions.

(i) ABC Ltd., a registered bank, recovered cheque discounting charges of ₹ 5,250 from a customer, C & Co. ***(2 Marks)***

(ii) T Ltd., a dealer in air-conditioners, supplies each unit at a list price of ₹ 30,000 per unit. He also has an EMI scheme where the customer can take delivery of air conditioner on a monthly EMI of ₹ 10,500 payable in three installments. T Ltd. charges ₹ 600 extra for any delay in payment of monthly installments and this amount was recovered from customer Venkat for delay in payment of his 2nd installment.

(2 Marks)

(iii) M/s Aerospace Airlines, having registered place of business in Mumbai under GST, issued a ticket from London to Delhi to Mr. Ajit Khanna, a resident of Agra, UP, who is not registered under the GST. Determine the 'place of supply' with supporting notes related to legal provisions. ***(1 Mark)***

(b) Mangesh Enterprises, Goa, a registered supplier, has made the following supplies in the month of February 2022:

(i) Supply of guest house accommodation with facilities of cooling, heating, internet and parking to customers on daily rentals of ₹ 1,500. Mangesh Enterprises has 20 guest suites. During the month, there was 50% occupancy. Catering and food service were supplied separately to those who opted for it at a cost of ₹ 500 per day of occupancy. Total amount collected for catering and food service was ₹ 70,000.

(ii) Supplied monthly air-conditioner maintenance services (intra-State) to a software company under a contract effective 1st February, 2022 for six months. According to the terms of service in the contract, the software company is liable to pay service charges of ₹ 12,000 for the entire period plus cost of spares and replacements at actuals. Taxes are separate and payable in accordance with statute. Mangesh Enterprises is yet to raise an invoice, though service was provided for February, 2022. During the month, the company has not provided any spares or replacements as part

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of maintenance service. Further, the concern has not received any amount towards above services.

Assume rates of GST as under:

S.No.	*Particulars*	*Rate of GST (CGST + SGST)*
1	*Air conditioner maintenance*	*18%*
2	*Food catering service*	*5%*
3	*Renting of guest house service*	*18%*
4	*Parking service*	*18%*

With the help of the above information, examine each of the above supplies made by Mangesh Enterprises for the month of February, 2022 and determine the rate and the amount of GST applicable on the supplies made. ***(2 + 2 = 4 Marks)***

(c) "The laptop supplied along with software loaded on hard disk drive has to be classified as laptop and valuation has to be made as one unit. The classification also has to be determined accordingly." Examine this statement with reference to classification and valuation of laptop under Customs Act, 1962 read with relevant rules and relevant judicial pronouncement, if any. ***(5 Marks)***

Answer

(a) (i) Cheque discounting is exempt from GST only to the extent consideration is represented by way of discount.

Any charges other than discount is not exempt from GST.

Thus, charges recovered on cheque discounting by ABC Ltd. are liable to GST.

Note: In the above answer, it has been assumed that the cheque discounting charges are the service charges collected over and above discount. However, it is also possible to assume that the said charges represent the discount amount. In that case, said charges will be exempt from GST.

(ii) Service of extending deposits, loans or advances in so far as the consideration is represented by way of interest is exempt.

Extra charges recovered for delay in payment of 2nd monthly instalment is taxable and is includible in the value of supply of the air conditioner.

(iii) The place of supply of passenger transportation service to Mr. Ajit Khanna –an unregistered person – is London, i.e. the place where he embarked on the conveyance for a continuous journey.

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(b) (i) Determination of rate and amount of GST

Particulars	Rate of GST	GST [CGST+SGST] (₹)
Composite supply of renting of guest house with other facilities [Renting of guest house being principal supply.]	18% (Rate of principal supply)	75,600 [37,800+37,800] [₹ 1,500 × 20 suites × 50% ×28 days × 18%]
Separate supply of catering and food services	5%	3,500 [1,750+1,750] [₹ 70,000 × 5%]

(ii) Rate of GST applicable in the given case is 18%, i.e., the rate of GST applicable on air-conditioner maintenance service. Since the given supply is a continuous supply of service where in terms of contract, due date is not ascertainable, the time of supply of said services does not fall in February 2022 and thus, no GST is payable for said month.

(c) Operating Software preloaded in the laptop forms an integral part of the laptop.

In a judicial pronouncement by Supreme Court[10], the question as to whether the laptop supplied alongwith the software loaded on hard disk drive is to be classified as laptop has been answered in affirmative.

The Court observed that a laptop cannot work without operating system like windows. Therefore, the laptop along with software has to be classified as laptop and for valuation also, the laptop along with software has to be classified as one unit / laptop.

Hence, the statement is correct.

Question 4

(a) Agni Limited filed GST return (under section 39) for the month of January 2021 on 11th April 2021. Original due date for the said return was 20th February 2021. Details of tax assessed as payable for the said month are given below:

Particulars	*CGST (₹)*	*SGST (₹)*
Output tax payable	*1,80,000*	*1,80,000*
Tax payable under reverse charge	*40,000*	*40,000*
Input tax credit available for utilization	*70,000*	*70,000*

(i) Compute the net tax payable in cash while filing the said return as well as the interest payable for the delayed remittance of tax.

(ii) Assuming that the company has an ITC balance of ₹ 2,50,000 each under CGST and SGST for the said month, compute the interest payable, if entire tax due for the said month was paid through the Electronic Credit Ledger to the extent possible as per the provisions of Act. ***(5 Marks)***

[10] *vide CC v. Hewlett Packard India Sales (P) Ltd. 2007 (215) E.L.T. 484 (S.C.)*

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(b) Comment on the given independent situations relating to GST procedures. Your answer should include relevant provisions of law, as may be applicable:

(i) Jugnoo Enterprises, a trader engaged in the buying and selling of medicines within the State of Delhi, is not registered under GST. It exceeded the turnover of ₹ 20 lakh on 15th July 2021 and also exceeded the turnover of ₹ 40 lakh on 14th February 2022. It applied for registration under GST on 28th February and registration certificate was granted on 2nd March 2022. Determine the date on which liability to register arises and the effective date of registration in this case.

(ii) GoToDress is a chain of stores dealing in readymade garments through five showrooms in Delhi. It has a single GSTIN for all its showrooms in Delhi and has a principal place of business at Karol Bagh, Delhi. One of the consultants has suggested GoToDress to maintain books of accounts of all of its five showrooms at principal place of business at Karol Bagh, Delhi for better administration and control. Give your comment on the above advice according to the provisions of GST law.

(2 + 2 = 4 Marks)

(c) Joginder & Co. imported goods valued at ₹ 12,00,000 vide a bill of entry presented before the proper officer on 15th December 2021, on which date the rate of customs duty was 20%. The proper officer decided that the goods should be subject to chemical test and therefore, the same were provisionally assessed at a value of ₹ 12,00,000 and Joginder & Co. paid provisional duty of ₹ 2,40,000 on the same date after fulfilling the requirements for provisional assessment.

What are the conditions which are to be complied before payment is made for the purpose of provisional assessment?

Determine the amount of interest payable, if any, under section 18 of the Customs Act, 1962 assuming that the payment of the final duty is assessed on 31st January 2022 at ₹ 3,80,000 and the balance duty is paid on the same day. ***(5 Marks)***

Answer

(a) (i) Interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date shall be levied only on tax paid through electronic cash ledger.

In the given case, since return is filed belatedly, net tax payable in cash and interest thereon is computed as follows:

Particulars	CGST (₹)	SGST (₹)
Output tax payable	1,80,000	1,80,000
Less: Credit of CGST and SGST be utilized for payment of CGST and SGST respectively	70,000	70,000
Net tax (A)	1,10,000	1,10,000

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Tax under reverse charge is payable in cash (B)	40,000	40,000
Total tax payable in cash [(A) + (B)]	1,50,000	1,50,000
Interest payable @ 18% per annum (rounded off)	**3,699** [1,50,000 × 18% × 50/365]	**3,699** [1,50,000 × 18% × 50/365]

(ii) In the above case, if ITC available is ₹ 2,50,000 of CGST and SGST each, output tax payable in cash shall be nil (CGST as well as SGST). However, remaining ITC available cannot be utilised for payment of tax payable under reverse charge as it is not an output tax. Therefore, interest on delayed payment of tax will be as follows:

Particulars	CGST (₹)	SGST (₹)
Interest payable @ 18% per annum (rounded off)	**986** [40,000 × 18% × 50/365]	**986** [40,000 × 18% × 50/365]

(b) **(i)** Since Jugnoo Enterprises is engaged exclusively in intra-State taxable supply of goods in Delhi, it becomes liable to register when its aggregate turnover exceeds ₹ 40 lakh, i.e., on 14th February, 2022.

Further, since it has applied for registration within 30 days from the date of becoming liable to register, the effective date of registration is the date on which it becomes liable to register, i.e., 14th February, 2022.

(ii) The suggestion of the consultant is not correct.

Every registered person is required to keep and maintain, his books of accounts at his principal place of business.

Where more than one place of business is specified in the certificate of registration, the accounts relating to each place of business shall be kept at such places of business.

(c) Before, the provisional assessment of duty, the importer shall execute a bond for the purpose of undertaking to pay on demand the deficiency between the duty as may finally assessed and the duty provisionally assessed and shall furnish prescribed amount of security for the payment of the duty deficiency.

The importer is liable to pay interest, on any amount payable consequent to the final assessment order @ 15% p.a. from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

Accordingly, amount of interest payable will be

= ₹ 1,40,000 x 15% x 62/365

= ₹ 3,567 (rounded off)

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Question 5

(a) *On scrutiny of returns filed by Chandan & Co., the Department found some discrepancy in ITC claimed by the company and consequently a Departmental audit was conducted under section 65 of the CGST Act. On conclusion of the audit in February, the Department issued a Show Cause Notice (SCN) alleging that the company had wrongly and deliberately claimed ITC in the returns without actual receipt of goods for the month of January. The Joint Commissioner of Central Tax, not being satisfied by the reply given by the company to the SCN, passed a written order on 28th April which was received by the company on 1st May. The order confirmed the tax demand of ₹ 30,00,000 (i.e., CGST ₹ 15,00,000 and SGST ₹ 15,00,000) and imposed a penalty of equal amount under section 74.*

Aggrieved by the order, Chandan & Co. decides to contest the order of adjudication in its entirety. It seeks advice on the following issues -

(i) To whom should it make an appeal? Can it directly approach the High Court?

(ii) What is the time limit for filing the appeal in the given case?

(iii) Is there any requirement of pre-deposit of any amount and if so, what would be the amount?

Provide your legal and reasoned advice to Chandan & Co. ***(5 Marks)***

(b) *Octa Manufacturers, Jalandhar, a registered supplier, instructs its supplier Dawson Ltd. to send a CNC machine directly to the job worker, J Enterprises, outside its factory to carry out certain operations on the goods. The CNC machine was sent by the supplier on 7th March 2018 and was received by the job worker on 10th March. J Enterprises carried out the job work and returned the CNC machine to the principal, Octa Manufacturers on 1st March 2021.*

(i) Can Octa Manufacturers retain the ITC availed by them on the CNC machine?

(ii) Would your answer be the same if in place of CNC machine, jigs and fixtures were supplied to the job worker which were returned to the principal on 1st March 2021.

(4 Marks)

(c) (i) *Mr. Cliff Paul, a resident and citizen of USA, visits India on a business tour. He made declaration to the proper officer about his baggage under section 77 of the Customs Act, 1962 for the purpose of clearance. During the scrutiny of the declaration, proper officer found that some of the articles declared in baggage brought with him were prohibited to be entered in India and were detained by the officer.*

Although Mr. Paul did not insist to clear those articles, value of those articles was very high and it was a difficult situation for him. You are required to advise any procedure prescribed under customs law to overcome the situation. Give your advice on the basis of relevant statutory provisions. ***(3 Marks)***

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(ii) Raghu Limited imported a machine from Japan. The payment includes ₹2,00,000 for post importation charges for installation and testing at the site of Raghu Limited in India. These charges are payable as a condition for sale of the imported machine. The department contends that this amount is includible in the assessable value. Examine the correctness of the stand taken by the Department. ***(2 Marks)***

Answer

(a) (i) An appeal against the order passed by Joint Commissioner lies before the Appellate Authority - Commissioner (Appeals).

Chandan & Co. cannot directly approach the High Court. It needs to first file an appeal to Appellate Authority and then to Appellate Tribunal. However, a writ petition can be filed directly before the High Court for relief.

(ii) The time-limit for filing an appeal in the given case is 3 months from the date of communication of the order appealed against, i.e., 3 months from 1st May. Hence, the appeal must be filed on or before 1st August.

(iii) No appeal can be filed before the Appellate Authority unless appellant – Chandan & Co. has paid pre-deposit of ₹ 3,00,000, computed as sum of the following:

(a) Full amount of tax, interest and penalty arising from the order as admitted by him, viz. nil, and

(b) 10% of the remaining tax in dispute (₹ 30,00,000) arising from the order, viz. ₹ 3,00,000.

(b) (i) The capital goods directly sent to a job worker are required to be returned to the principal within 3 years from the date of receipt of such capital goods by the job worker. In such a case, principal can avail the credit of tax paid on such capital goods.

Octa Manufacturers is entitled to take and retain ITC on capital goods – CNC machine directly sent to the job worker for the job work– J. Enterprises - without being brought into its premises since said machine was returned within specified time period of 3 years from the date its receipt by J. Enterprises.

(ii) The aforesaid time period of 3 years does not apply to moulds and dies, jigs and fixtures or tools sent out for job work.

Hence, in that case also, Octa Manufacturers is entitled to take and retain ITC in respect of moulds and dies etc.

(c) (i) Where the baggage of a passenger contains any prohibited article which has been declared by him under section 77, the proper officer may, at the request of the passenger, detain such article for the purpose of being returned to him on his leaving India.

In the given case, proper officer has detained the prohibited article declared and brought by Mr. Cliff Paul. Such articles shall be returned to him on his leaving India.

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Further, if for any reason, he is not able to collect it at the time of his leaving India, the said article may be returned to him through any other passenger authorized by him and leaving India or as cargo consigned in his name.

(ii) Payment made for installation and testing at the site of the importer is includible in the assessable value of imported goods since said payment is made as a condition of sale of such goods by the buyer to the seller, even though imported goods are subjected to said process after their importation.

The stand of Department is correct.

Question 6

(a) Enumerate the suppliers to whom the Dynamic Quick Response (QR) code is not applicable when they issue an invoice to an unregistered person. ***(4 Marks)***

OR

With reference to section 90 of the CGST Act, 2017, briefly discuss the liability of the partners of a firm to pay tax.

(b) List the safeguards provided in section 67 of the CGST Act, 2017 in respect of the power of search or seizure. ***(5 Marks)***

(c) Distinguish between Advance Authorization and DFIA (Duty Free Import Authorization) schemes. ***(5 Marks)***

Answer

(a) Dynamic Quick Response (QR) code is not applicable to following suppliers when they issue an invoice to an unregistered person:-

(i) Insurer or banking company or financial institution including NBFC

(ii) GTA (Goods transport agency) supplying services in relation to transportation of goods by road in a goods carriage

(iii) Supplier of passenger transportation service

(iv) Person supplying services by way of admission to exhibition of cinematograph films in multiplex screens

(v) Supplier of OIDAR (online information and database access or retrieval) services.

(vi) In case of exports

(a) Alternative

Where any firm is liable to pay any tax, interest or penalty under GST law, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment.

Where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing.

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Where intimation is given within 1 month from the date of retirement, such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.

However, if no such intimation is given within 1 month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner.

(b) The safeguards provided in section 67 of the CGST Act, 2017 in respect of the power of search or seizure are as under:

(i) Seized documents/goods/things should not be retained beyond the period necessary for their examination.

(iii) Photocopies/extracts of the documents can be taken by the person from whose custody documents are seized.

(iv) In case of seized goods, where a notice is not issued within 6 months [extendible for further 6 months] of their seizure, goods shall be returned to the person from whose possession they were seized.

(v) An inventory of seized goods is required to be made by the seizing officer.

(vi) Certain specified categories of goods such as perishable, hazardous etc. can be disposed of immediately after seizure.

(vii) Searches and seizures shall be carried out in accordance with the provisions of Code of Criminal Procedure. Instead of sending copies of any record made in the course of search to the nearest magistrate, it has to be sent to the Principal Commissioner / Commissioner of CGST

(c) The key differences between Advance Authorisation and DFIA schemes are as follows -

(i) 'Advance Authorisation' is not transferable.

DFIA is transferable after export obligation is fulfilled.

(ii) Advance Authorisation scheme requires 15% value addition, while in case of DFIA, minimum 20% value addition is required.

(iii) Advance Authorisation scheme is available to gem and jewellery sector, but DFIA is not.

(iv) DFIA cannot be issued where SION (Standard Input Output Norms) prescribes actual user condition. DFIA can be issued only if SION has been fixed for that product to be exported. Advance Authorisation can be issued even if SION for that product is not fixed.

(v) IGST has been exempted on physical imports or specified deemed exports under Advance Authorisation scheme upto 31.03.2022, but there is no such exemption available if imports are under DFIA scheme.

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