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# CA Final 2023 Suggested Answers · Paper 8 Indirect Tax Laws (Old Scheme)

| EXAM | YEAR | TYPE |
| --- | --- | --- |
| CA Final | 2023 | Suggested Answers |

| SUBJECT | DATE |
| --- | --- |
| Paper 8 Indirect Tax Laws (Old Scheme) | November 2023 |

## 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 and by the amendments made by the Finance Act, 2022 which have become effective, till 30.04.2023 and (ii) Customs law as amended by the Finance Act, 2022 and significant notifications/circulars and other legislative amendments made upto 30.04.2023.*

### Question 1

*Poorva Impex Ltd., a registered entity under GST in the State of Maharashtra, is engaged in making various supplies. It provides the following information for the month of April, 2023:*

| S. No. | Particulars | Amount (₹) |
|---|---|---|
| | **OUTWARD SUPPLY:** | |
| (i) | Sold a future derivative contract at NSE (National Stock Exchange) which was due in the month of April. Said contract had no delivery option. | 20,00,000 |
| (ii) | Supplied 50 LED TVs at Hyderabad to the State Government of Telangana. | 8,00,000 |
| | 50 Stands mandatorily required to mount the TV on wall were also supplied along with LED TV. | 72,000 |
| (iii) | Provided intra-State service as a Direct Selling Agent (D.S.A.) to Uday Small Finance Bank Limited for their retail loan products | 5,00,000 |
| (iv) | Passenger transportation service provided to general public by company owned ferries between two islands in the State of Maharashtra. Purpose was to facilitate daily commutation of local people. | 1,20,000 |
| (v) | Supplied goods to its agent in the State of Bihar. Open market value of the said goods were ₹3,00,000. The said agent is supplying goods of like kind and quality to his unrelated customer at ₹3,20,000. | |
| | **INWARD SUPPLY:** | |
| (i) | Availed HR training services for all its employees from "BE HUMBAL", an HR Firm registered under GST in Maharashtra. Training was held at a resort in the State of Himachal Pradesh. | 4,00,000 |

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|---|---|---|
| *(ii)* | *Purchased processing machines from David & Co., registered under GST, in the State of Gujarat. Machines were bought in "as is where is condition" at Gujarat to produce taxable items.* | *1,00,000* |
| *(iii)* | *Purchased 5 two-wheelers with engine capacity of 25 cc for usage of its employees both within and outside factory producing taxable products. Supply was made at Mumbai by a GST registered dealer at Tamil Nadu.* | *2,00,000* |

*The company provided the following additional information:*

*(i) Company wishes to choose the most beneficial option in respect of supply to agent and branch transfer.*

*(ii) Company transferred certain taxable items to its Kerala branch for distributing as free samples on the occasion of inauguration of said branch which is yet to be registered. Value declared in the invoice for transfer was ₹ 2.50 lakh whereas open market value of the same was ₹ 3.00 lakh. Kerala branch has yet not sold such kind of goods to any of the customer.*

*(iii) Rate of CGST, SGST and IGST are 9%, 9% and 18% respectively for both inward and outward supply of goods and services, except TV stand for which the rates are 14%, 14% and 28% respectively.*

*(iv) All the amounts given above are exclusive of taxes, wherever applicable.*

*(v) Except specially written, all the inward supplies were used for taxable as well as exempted outward supplies.*

*(vi) No inward supply is used for non-business purpose.*

*(vii) There was no opening balance of any ITC.*

*From the information given above, you are required to compute the eligible Input Tax Credit (ITC) available and minimum net GST liability payable in cash (CGST, SGST or IGST, as the case may be) for the month of April, 2023 for the Poorva Impex Ltd., Maharashtra.*

*Reason for the treatment of each item needs to be given.* ***(14 Marks)***

**Answer**

**Computation of minimum net GST payable in cash for the month of April, 2023**

| S. No. | Particulars | Amount (₹) | CGST (₹) | SGST (₹) | IGST (₹) |
|---|---|---|---|---|---|
| (i) | Futures derivatives contract [Futures derivative contracts with no delivery option qualify as securities. They are neither goods nor services in terms of Schedule III of the CGST Act, | 20,00,000 | - | - | - |

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| | 2017. Thus, given transaction is not a supply.] | | | | |
| (ii) | Supply of 50 LED TVs<br>[It is an inter-State supply since place of supply here is the location where the movement of goods terminates, viz. Hyderabad.<br>Further, supply of LED TVs with stands is a composite supply, chargeable to tax at the rate applicable to the principal supply (viz. supply of LED TVs) i.e.,18%.] | 8,72,000<br>[8,00,000 + 72,000] | | | 1,56,960<br>[8,72,000 × 18%] |
| (iii) | Intra-State supply as Direct Selling Agent (DSA)<br>[Taxable under forward charge. Reverse Charge Mechanism is not applicable since services are provided by a body corporate and not by an individual DSA.] | 5,00,000 | 45,000<br>[5,00,000 × 9%] | 45,000<br>[5,00,000 × 9%] | |
| (iv) | Passenger transportation service<br>[Passenger transportation service provided by public transport, other than predominantly for tourism purpose, in a vessel between places located in India is exempt.] | 1,20,000 | | | |
| (v) | Supply of goods to an agent<br>[Value of inter-State supply of goods to agent shall be:<br>(i) Open Market Value (3,00,000)<br>or<br>(ii) 90% of the price of goods of like kind and quality charged by recipient to | 2,88,000 | | | 51,840<br>[2,88,000 × 18%] |

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| | unrelated customer (3,20,000 × 90%), at the option of owner. Since the company wishes to choose most beneficial option, least of the two values has been taken.] | | | | |
| (vi) | Inter-State transfer of taxable items to Kerala branch [Since recipient is not eligible for full ITC and goods are not intended for further supply as such by the recipient, value of supply of goods to branch shall be open market value.] | 3,00,000 | | | 54,000 [3,00,000 × 18%] |
| | Total output tax | | 45,000 | 45,000 | 2,62,800 |
| | *Less:* ITC available for set off [Refer note below] | | 33,600 | 33,600 | 36,000 |
| | **Minimum net GST payable in cash (rounded off)** | | **11,400** | **11,400** | **2,26,800** |

**Note - Computation of eligible ITC available for set off**

| S. No. | Particulars | Amount (₹) | CGST (₹) | SGST (₹) | IGST (₹) |
|---|---|---|---|---|---|
| | HR training availed [It is intra-State supply as place of supply of training services provided to registered person is location of recipient, i.e. Maharashtra. Further, ITC of services used in course or furtherance of business is available.] | 4,00,000 | 36,000 [4,00,000 × 9%] | 36,000 [4,00,000 × 9%] | |
| | Machine purchased [It is intra-State supply since place of supply in case of goods not involving movement of goods is location of goods at the time of delivery to recipient, viz. Gujarat. | 1,00,000 | - | - | - |

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|---|---|---|---|---|---|
| | However, ITC of the same will not be available as CGST/SGST of one State cannot be utilized for discharging of CGST/SGST liability of another State.] | | | | |
| | Two wheelers purchased<br>[It is inter-State supply since place of supply is Mumbai. ITC is not blocked as it is eligible on two-wheelers with engine capacity of upto 25cc.] | 2,00,000 | | | 36,000<br>[2,00,000 × 18%] |
| | **Computation of eligible ITC available for set-off** | | | | |
| | Common credit<br>[ITC availed on HR training is common credit.] | | 36,000 | 36,000 | |
| | *Less:* ITC attributable to exempt supplies [Common credit x (Exempt turnover/ Total turnover)] to be reversed<br>[36,000 × 1,40,000/21,00,000] | | 2,400 | 2,400 | |
| | Total Exempt Turnover = Exempt ferry service (120,000) + value of security (20,000)<br>= 1,40,000 | | | | |
| | Value of exempt supply includes transactions in securities and value of transactions in securities is 1% of sale value of security =1% of 20,00,000<br>= 20,000 | | | | |
| | Eligible ITC out of common credit | | 33,600 | 33,600 | |
| | *Add:* ITC on two-wheelers used exclusively in relation to taxable products | | | | 36,000 |
| | **Eligible ITC available for set off** | | **33,600** | **33,600** | **36,000** |

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**Question 2**

(a) *Mr. Dev is registered as a regular tax-payer under GST in Mumbai, Maharashtra since July 2017. His turnover for the previous year 2022-23 was ₹ 2 crore. He provides the following information pertaining to various outward supplies made by him during the month of April, 2023:*

| Sr. No. | Particulars | Amount Charged (₹) |
|---|---|---|
| (i) | Services by way of storage/warehousing of raw vegetable fibre such as cotton flex, jute etc. | 4,00,000 |
| (ii) | Supply of online mathematics journal to 'Model CBSE' school for its secondary and higher secondary students. | 2,00,000 |
| (iii) | Made a composite supply of goods and services to M/s. Maharashtra State Development Corporation, a Government Entity, by way of activity in relation to function entrusted to a Panchayat under article 243G of the constitution. Value of supply of goods constituted 23% of value of said composite supply. | 1,40,000 |
| (iv) | Sitting fees received for attending a committee meeting as an independent director from M/s. ABC Ltd. | 1,00,000 |
| (v) | Insurance commission received as an insurance agent from XYZ Insurance Company Ltd., registered under GST. | 1,25,000 |
| (vi) | Services provided to the State Government of Maharashtra for conducting fitness training program for its employees. 71% of the total expenditure incurred for the program was borne by the State Government. | 1,50,000 |
| (vii) | Honorarium received by Mr. Dev to appear as a guest anchor on a TV channel. | 25,000 |
| (viii) | Amount received for services provided to a recognized sports body as a commentator. | 6,00,000 |

*From the above information, compute the total GST liability of Mr. Dev (on which tax to be paid by Mr. Dev) for the month of April, 2023.*

*All the supplies are intra-State supplies and the rate of taxes are CGST and SGST @ 9% each. All the figures given are exclusive of GST, wherever applicable.*

*Reason for the treatment of each item needs to be given.* ***(9 Marks)***

(b) *Milly Ltd. imported a machinery from USA. The machine reaches Delhi Airport first and then from there, it is transshipped to Dehradun Airport.*

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*From the following details furnished, compute the assessable value (up to nearest rupee) for the purpose of customs duty payment:*

| ***S. No.*** | ***Particulars*** | ***Amount*** |
|---|---|---|
| *(i)* | *Price of the machine* | *US $ 15,000* |
| *(ii)* | *Air freight* | *US $ 4,000* |
| *(iii)* | *License fee relating to imported goods payable by the buyer as a condition of sale* | *15% of price of machine* |
| *(iv)* | *Drawing charges paid to an architect in India* | *₹ 25,000* |
| *(v)* | *Commission (not buying commission) paid by the buyer to agent of exporter in USA* | *US $ 250* |

*Other details for computing the assessable value are as under:*

*(i) Insurance charges paid in India-Not ascertainable.*

*(ii) Material supplied in USA by the buyer free of cost valued at ₹ 75,000.*

*(iii) Importer paid transshipment charges from Delhi Airport to Dehradun Airport ₹ 1,00,000.*

*(iv) Importer paid ₹ 20,000 towards demurrage charges for delay in transport of the machine from Delhi airport.*

*(v) Exchange rate to be considered is ₹ 70 per US$.*

*Note: Price of the machine (US $ 15,000) given at serial number (i) of table above is excluding of any of the amounts given thereafter.*

*Working notes should form part of your answer.* ***(5 Marks)***

**Answer**

**(a) Computation of total GST payable by Mr. Dev**

| | **Particulars** | **Amount (₹)** | **CGST @ 9% (₹)** | **SGST @ 9% (₹)** |
|---|---|---|---|---|
| (i) | Storage/warehousing of raw vegetable fibres<br>[Services by way of storage/ warehousing of raw vegetable fibre is not exempt.] | 4,00,000 | 36,000 | 36,000 |

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|---|---|---|---|---|
| (ii) | Supply of online journal to school<br>[Not exempt, since such services are exempt only when they are provided to an educational institution providing education as a part of a curriculum for obtaining a recognised qualification. Thus, exemption from GST is not available when such services are provided to a secondary and higher secondary school.] | 2,00,000 | 18,000 | 18,000 |
| (iii) | Composite supply of goods and services to State Development Corporation<br>[Not exempt since exemption in respect of composite supply of goods and services by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution is not available when such supply is made to a Government entity.] | 1,40,000 | 12,600 | 12,600 |
| (iv) | Sitting fees for attending meeting as an independent director<br>[Services provided by an independent director to company are not in course/relation of employment are thus outside the scope of Schedule III of CGST Act, 2017. So, they qualify as supply. Further, tax on such services is payable by company under reverse charge.] | - | - | - |
| (v) | Insurance Commission received as an insurance agent<br>[Tax on services provided by insurance agent to insurance company is payable by such company under reverse charge.] | - | - | - |
| (vi) | Services provided to State Government for fitness training program<br>[Not exempt, since services provided to the State Government under any training programme are exempt only when 75% or more of the total expenditure for the same is borne by the State Government.] | 1,50,000 | 13,500 | 13,500 |

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|---|---|---|---|---|
| (vii) | Honorarium received to appear as guest anchor<br>[Liable to GST, since it is not specifically exempt and is not declared as 'neither a supply of goods nor a supply of service' under Schedule III of the CGST Act, 2017.] | 25,000 | 2,250 | 2,250 |
| (viii) | Services provided to a recognized sports body as a commentator<br>[Services by an individual as a commentator to a recognized sports body are not exempt.] | 6,00,000 | 54,000 | 54,000 |
| | **Total GST payable by Mr. Dev** | | **1,36,350** | **1,36,350** |

**(b) Computation of assessable value**

| Particulars | Amount ($) |
|---|---|
| Price of the machine | 15,000 |
| *Add:* License fee<br>[Licence fee relating to imported goods is includible since it is payable by the buyer as a condition of sale.] | 2,250 |
| *Add:* Drawing charges<br>[Not includible since undertaken in India.] | - |
| *Add:* Commission paid by buyer to agent of exporter<br>[Includible since it is not buying commission] | 250 |
| Total | 17,500 |
| | **Amount (₹)** |
| Value in Indian currency<br>[$ 17,500 x ₹ 70] | 12,25,000 |
| *Add:* Material supplied by the buyer free of cost<br>[Includible in the assessable value] | 75,000 |
| FOB value | 13,00,000 |
| *Add:* Air Freight<br>[Restricted to 20% of FOB value since goods are imported by air.] | 2,60,000 |
| *Add:* Demurrage charges<br>[Only ship demurrage charges on chartered vessels are includible in the cost of transport of the imported goods.] | - |

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|---|---|
| *Add:* Insurance Charges<br>[1.125% of FOB value since insurance charges are not ascertainable] | 14,625 |
| *Add:* Transshipment charges from Delhi Airport to Dehradun Airport<br>[Since these charges are incurred within India, they are not includible in the assessable value] | - |
| **Assessable value** | **15,74,625** |

**Question 3**

(a) *Anuja checked-in at the 'Welcome Tourist Lodge' in Madurai on 15th July, 2022. The room rent for the same was ₹ 900 per day for a single room. She checked-out on 17th of July, 2022 and payment in respect to the same was received by the lodge via cheque at the time of checking-out and entered in the books on the same date. The lodge decided to issue her the invoice on the same date when the amount would get credited in its bank account.*

*The lodging of hotel rooms which was exempted upto ₹ 1,000 earlier became chargeable to tax from 18th July, 2022.*

*Under the GST law, determine the time of supply and taxability of the service of lodging in the hands of 'Welcome Tourist Lodge' if the cheque gets credited into the bank account of 'Welcome Tourist Lodge' on 20th of July, 2022.* ***(5 Marks)***

*Note: Assume that all the days covered in the above case are working days.*

(b) (i) *Rhea is a person registered under GST in Mysore, Karnataka. She transports certain goods by air to Mrs. Iyer who resides in Florida, USA. The air cargo operator by which goods are transported is registered in Bengaluru, Karnataka.*

*Determine the place of supply of such transport/courier service under GST law with supporting notes related to legal provisions.* ***(2 Marks)***

(ii) *'Mischievous Muppets' - a Kindergarten school in Pune, Maharashtra, has given the contract of catering service to a Pune based agency viz. 'Toddlers Catering Agency', registered under GST.*

*Whether the said catering service provided by 'Toddlers Catering Agency' in the school is taxable under GST law?*

*Answer with supporting notes related to legal provisions.* ***(2 Marks)***

(c) *'Mezo Blanca', a firm registered in India, imported certain items of machine equipment from China. These items were bestowed with subsidy by the Chinese Government for production as well as export to other countries. Considering the impact of subsidized articles being imported into India, Indian Government imposed countervailing duty under section 9 of the Customs Tariff Act, 1975 on the import of said items. Mezo Blanca managed to import the same product by altering the name of the product. But proper officer imposed countervailing duty on the said import.*

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*Mezo Blanca seeks your advice on the correctness of the action of the Proper Officer and also want to know the different ways of circumvention which are prohibited.* ***(5 Marks)***

**Answer**

**(a)** In the given case,

Date of receipt of payment is:-

(a) Date of entry of payment in books of account [17th July 2022] or

(b) Date of credit of payment in bank account [20th July 2022]

whichever is earlier, viz., 17th July 2022**.**

Date of issue of invoice is 20th July 2022 (since lodge decided to issue invoice on date of credit of payment in its bank account.)

Since in the given case of change in rate of tax (on 18th July, 2022):

- services have been supplied and payment has been received, before such change in rate
- but invoice is issued after the change in rate**,**

time of supply is date of receipt of payment, viz. 17th July, 2022.

Since the service of lodging upto a value of ₹ 1,000 was exempted at the time of supply, no GST is payable in the given case.

**(b)** **(i)** The place of supply of services by way of transportation of goods, including by courier, to a place outside India is the place of destination of such goods.

Hence, in the given case, place of supply of such services would be Florida, USA.

**(ii)** Catering services provided to an educational institution providing services by way of pre-school education and education up to higher secondary school are exempt from GST.

Thus, in the given case, catering service provided by "Toddlers Catering Agency" to "Mischievous Muppets" - a Kindergarten school is exempt from GST.

**(c)** Where the Central Government, on such inquiry as it considers necessary, is of the opinion that circumvention of countervailing duty has taken place by any of the following ways, it may extend the countervailing duty to such other article also from such date, as the Central Government may, by notification in the Official Gazette, specify:

(i) by altering the description or name or composition of the article on which such duty has been imposed

(ii) by import of such article in an unassembled or disassembled form

(iii) by changing the country of its origin or export or

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(iv) in any other manner, whereby the countervailing duty so imposed is rendered ineffective.

In accordance with the above provisions, the action of the proper officer is correct[1].

**Question 4**

*(a) Mr. Broker wrongly availed ₹ 1,25,000 as input tax credit (CGST + SGST) at the time of furnishing return under section 39 of the CGST Act, 2017 for the month of October 2022. This ITC was not utilized against the output tax liability for the month of October 2022. Mr. Broker utilised ITC of ₹ 75,000 from the above wrongly availed ITC of ₹ 1,25,000 against output tax liability for the month of November 2022.*

*Mr. Broker paid the amount of ITC wrongly utilised of ₹ 75,000 on 10th March, 2023 and reversed the unutilized amount of ₹ 50,000 on 20th March 2023. Calculate the total interest payable (CGST + SGST) rounded off to nearest rupee under GST law if Mr. Broker files:*

*(i) Form GSTR-3B for the month of October on 18th November 2022, and*

*(ii) Form GSTR-3B for the month of November on 25th December 2022.*

*Note: Assume there is no extension of due date of filing of Form GSTR-3B and no other transactions were undertaken during the year 2022-23.* ***(5 Marks)***

*(b) M/s Cute and Co., a registered person under GST, filed an appeal with respect to denial of Input Tax Credit (ITC) related to the financial year 2017-18. This appeal was disposed of in favour of M/s Cute and Co. on 30-09-2022. Annual return for the financial year 2017-18 was filed by it on 31-03-2020. Due date for the said return was 07-02-2020.*

*Cute and Co. seeks your advice with reason regarding the time-line upto which they are supposed to retain the books of accounts and other records as per the provisions of the CGST Act, 2017.* ***(4 Marks)***

*(c) M/s. Lotus Auto Weaves imported 10 automated looms from Germany for a price of US $ 70,000. The price was settled and machines were shipped on 20th March, 2023. Meanwhile, the importer made further negotiations with the exporter for reduction of price of looms based on the leads given by them so far and also in future. Due to this negotiation, the exporter further reduced the price of 10 automated looms to US $ 60,000 and confirmed the same by email dated 30th March, 2023. However, consignment arrived in India on 29th March, 2023. Proper officer of customs ignored the revised price confirmed by email and assessed the value based on original price of US $ 70,000. This was contested by the importer as unfair action by the Department. Importer seeks your advice on the correctness of action of the proper officer. Give reason in support of your answer.*

***(5 Marks)***

[1] It is most logically assumed that the Central Government has extended the countervailing duty by notification in the Official Gazette to the product imported (by altering name) by Mezo Blanca.

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**Answer**

**(a)** Where ITC has been wrongly availed and utilised, the registered person shall pay interest on the same

- for the period starting from the date of utilisation of such wrongly availed ITC
- till the date of reversal of ITC or payment of tax in respect of such amount
- @ 18% per annum.

Since wrongly availed ITC of ₹ 50,000 has been reversed without utilizing the same, interest is not payable on the same.

Interest is payable on wrongly availed and utilised ITC of ₹ 75,000.

Date of utilisation of said ITC will be:

(a) Due date of furnishing return for November, 2022 [20th December, 2022] or

(b) Actual date of filing of the return for November [25th December, 2022]

whichever is earlier.

Thus, date of utilisation of said ITC will be 20th December, 2022.

Interest (CGST + SGST) will be payable for 80 days [21st December 2022 to 10th March, 2023 (both days inclusive)] as follows:

₹ 75,000 × 80/365 × 18%

= ₹ 2,959 [CGST+SGST] (rounded off)

**(b)** M/s Cute & Co. who is a party to an appeal is required to retain the books of accounts and other records:

(i) for a period of 1 year after final disposal of such appeal (i.e. 30.09.2023),

or

(ii) for 72 months from the due date of furnishing of annual return for the financial year 2017-18 (07.02.2026),

whichever is later.

Thus, M/s Cute & Co. needs to maintain books of accounts till 07.02.2026.

**(c)** As per section 14 of the Customs Act, 1962, the value of the imported goods is the transaction value, which means the price actually paid or payable for the goods at the time and place of importation.

Further, the Supreme Court in case of *Garden Silk Mills v. UOI 1999 (113) E.L.T. 358* has held that importation gets complete only when the goods become part of mass of goods within the country.

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Since in the instant case, the price of the goods was reduced after the goods arrived in India, the price would be considered to be revised after the importation took place.

Hence, the goods should be valued as per the original price of US $ 70,000, which was the price payable at the time of importation.

The action taken by the proper officer is valid.

**Question 5**

*(a) M/s. Root & Co. filed a refund application under section 54 of the CGST Act, 2017 in respect of export made by them. While declaring the export turnover, their accountant included the exempt turnover also as part of export turnover and claimed excess refund. Amount of refund excess claimed was ₹ 18,000 each under CGST and SGST.*

*Determine the total amount of penalty (CGST + SGST) leviable under GST law in respect of such erroneous refund if:*

*(i) such excess refund claim was proved to be inadvertent and not wilful/fraud.*

*(ii) such excess refund was on account of wilful misstatement/ fraud.* ***(5 Marks)***

*(b) M/s. Square & Co. received a notice under section 74(1) of the CGST Act, 2017 demanding tax, interest and penalty on the allegation of suppression of facts for the financial year 2018-19. Notice was issued on 24-11-2022. Square & Co. filed an appeal denying any suppression and on which Appellate Authority concluded that the notice is not sustainable under section 74(1), for the reason that the charges have not been established by the Department. Proper officer deemed the said notice to have been issued under section 73(1) and re-determined the demand.*

*Square & Co. is of the opinion that the action of proper officer is not in line with GST law. Square & Co. filed its annual return for the financial year 2018-19 on 30-11-2019. Assume the due date of such return as 31-12-2019.*

*Square & Co. seeks your advice with reason on the following issues:*

*(i) Whether the proper officer can proceed to re-determine the demand under section 73(1), in respect of notice issued under section 74(1)?*

*(ii) If yes, whether the fresh demand is valid?*

*(iii) If the above notice issued under section 74(1) is assumed to have been issued on 24-09-2022, what would be your answer for the validity of demand?* ***(4 Marks)***

*(c) You are required to calculate the amount of interest receivable/payable (rounded off to nearest rupee) in the following independent cases along with brief explanation for the same with reference to the provisions of the Customs Act, 1962 and rules made thereunder:*

*(i) Mr. Lolo filed a claim for payment of duty drawback amounting to ₹ 1,80,000 on 25th September 2022. However, amount was received on 30th December 2022.*

***(3 Marks)***

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*(ii) Mr. Golo was erroneously refunded a sum of ₹ 45,000 in excess of actual drawback on 15th April 2022. Department issued demand notice for recovery of excess amount on 25th July 2022. Thereafter, Mr. Golo returned excess erroneous refund amount on 27th Aug 2022.* ***(2 Marks)***

**Answer**

**(a)** Amount of penalty (each under CGST and SGST) in respect of the erroneous refund claimed by M/s Root & Co.:

**(i) Where the excess refund claim was proved to be inadvertent and not wilful/fraud**

Penalty payable will be higher of the following:

(a) 10% of tax due, i.e. ₹ 1,800 (18,000 x 10%)

(b) ₹ 10,000

Penalty will be ₹ 10,000 each under CGST and SGST

**(ii) Where the excess refund claim was on account of wilful misstatement/fraud**

Penalty payable will be higher of the following:

(a) Tax due, i.e. ₹ 18,000

(b) ₹ 10,000

Penalty will be ₹ 18,000 each under CGST and SGST

**(b) (i)** Since the appellate authority concluded that the notice under section 74(1) is not sustainable for reason that the charges of fraud etc. have not been established by Department against M/s Square & Co., the proper officer can re-determine the demand, deeming as if the notice was issued under section 73(1) of the CGST Act, 2017.

**(ii)** Fresh demand will not be valid since show cause notice under section 74(1) of the CGST Act, 2017 was issued on 24.11.2022, i.e. beyond 2 years and 9 months from the due date of furnishing of annual return for financial year 2018-19, i.e. 30.09.2022.

**(iii)** If show cause notice under section 74(1) of the CGST Act, 2017was issued on 24.09.2022, i.e. within 2 years and 9 months from the due date of furnishing of annual return for financial year 2018-19, demand would be valid.

**(c) (i)** Since the claim of duty drawback is not paid to Mr. Lolo within 1 month from the date of filing such claim, interest @ 6% per annum is payable from the date after the expiry of the said 1 month period till the date of payment of such drawback [26th October, 2022 to 30th December, 2022 (both days inclusive)] that is 66 days as follows:

= ₹ 1,80,000 x 66/365 x 6/100

= ₹ 1,953 (rounded off)

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**(ii)** Interest is payable by Mr. Golo on erroneous refund of duty drawback @ 15% per annum for the period beginning from the date of payment of such drawback to the claimant, till the date of recovery of such drawback [16th April, 2022 to 27th August, 2022 (both days inclusive)]. i.e. 134 days.

= ₹ 45,000 x 134/365 x 15/100

= ₹ 2,478 (rounded off)

**Question 6**

*(a) List the instances when TDS is not liable to be deducted under the GST law.* ***(4 Marks)***

*OR*

*(a) With reference to provision of section 93(1) of the CGST Act, 2017, discuss the liability to pay tax, interest or penalty on death of a person so liable.* ***(4 Marks)***

*(b) Write short note on "Summary Assessment" under section 64 of the CGST Act, 2017.* ***(5 Marks)***

*(c) List the rights of the owner of the warehoused goods with reference to the section 64 of the Customs Act, 1962.* ***(5 Marks)***

**Answer**

**(a) Tax is not liable to be deducted at source under GST law when:**

(i) Location of the supplier and the place of supply are in a State/ Union territory which is different from the State/ Union territory of registration of the recipient.

(ii) Goods and/or services are supplied from a public sector undertaking (PSU) to another PSU, whether or not a distinct person

(iii) Supply of goods and/or services takes place between one person to another person specified in clauses (a), (b), (c) and (d) of section 51(1) of the CGST Act, 2017, i.e.

(a) Department/establishment of Central/State Government

(b) Local authority

(c) Governmental agencies

(d) Notified persons or category of persons

(iv) Total value of taxable supply ≤ ₹ 2.5 lakh under a contract

**Alternative Answer to Q. 6(a)**

Where a person, liable to pay tax, interest or penalty under the CGST Act, 2017 dies, then—

(1) if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall

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be liable to pay tax, interest or penalty due from such person under the CGST Act, 2017; and

(2) if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under CGST Act, 2017, whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

The successor shall be liable to pay any tax, interest or any penalty due from the transferor in cases of transfer of business due to death of sole proprietor.

**(b)** Summary assessments may be initiated to protect the interest of revenue with the previous permission of Additional/Joint Commissioner when:

(i) the proper officer has evidence that a taxable person has incurred a tax liability, and

(ii) the proper officer has sufficient grounds to believe that delay in passing an assessment order may adversely affect the interest of revenue.

In case Additional/Joint Commissioner considers such order to be erroneous, either on his own motion or on an application made by the taxable person within 30 days of receipt of order, he may withdraw such order.

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 and any other amount due.

**(c)** The owner has every access to the goods.

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

(a) inspect the goods;

(b) ensure that the goods do not deteriorate or get damaged during storage in the warehouse;

(c) sort the goods; or

(d) show the goods for sale.

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