

PAPER – 8 : INDIRECT TAX LAWS

QUESTIONS

- (1) All questions should be answered on the basis of the position of GST law as amended up to 30.04.2018 and customs law as amended by the Finance Act, 2017 and notifications and circulars issued till 30.04.2018.
- (2) The GST rates for goods and services mentioned in various questions are hypothetical and may not necessarily be the actual rates leviable on those goods and services. The rates of customs duty are also hypothetical and may not necessarily be the actual rates. Further, GST compensation cess should be ignored in all the questions, wherever applicable.

1. 'All-in-One Store' is a chain of departmental store having presence in almost all metro cities across India. Both exempted as well as taxable goods are sold in such Stores. The Stores operate in rented properties. All-in-One Stores pay GST under regular scheme.

In Mumbai, the Store operates in a rented complex, a part of which is used by the owner of the Store for personal residential purpose.

All-in-One Store, Mumbai furnishes following details for the month of October, 20XX:

- (i) Aggregate value of various items sold in the Store:
- Taxable items – ₹ 42,00,000
- Items exempted vide a notification – ₹ 12,00,000
- Items not leviable to GST – ₹ 3,00,000
- (ii) Mumbai Store transfers to another All-in-One Store located in Goa certain taxable items for the purpose of distributing the same as free samples. The value declared in the invoice for such items is ₹ 5,00,000. Such items are sold in the Mumbai Store at ₹ 8,00,000.
- (iii) Aggregate value of various items procured for being sold in the Store:
- Taxable items – ₹ 55,00,000
- Items exempted vide a notification – ₹ 15,00,000
- Items not leviable to GST – ₹ 5,00,000
- (iv) Freight paid to goods transport agency (GTA) for inward transportation of taxable items – ₹ 1,00,000
- (v) Freight paid to GTA for inward transportation of exempted items – ₹ 80,000
- (vi) Freight paid to GTA for inward transportation of non-taxable items – ₹ 20,000

- (vii) Monthly rent payable for the complex – ₹ 5,50,000 (one third of total space available is used for personal residential purpose).
- (viii) Activity of packing the items and putting the label of the Store along with the sale price has been outsourced. Amount paid for packing of all the items - ₹ 2,50,000
- (ix) Salary paid to the regular staff at the Store - ₹ 2,00,000
- (x) GST paid on inputs used for personal purpose – ₹ 5,000
- (xi) GST paid on rent a cab services availed for business purpose – ₹ 4,000.
- (xii) GST paid on items given as free samples – ₹ 4,000

Given the above available facts, you are required to compute the following:

- A. Input tax credit (ITC) credited to the Electronic Credit Ledger
- B. Common Credit
- C. ITC attributable towards exempt supplies out of common credit
- D. Eligible ITC out of common credit
- E. Net GST liability for the month of October, 20XX

Note:

- (1) Wherever applicable, GST under reverse charge is payable @ 5% by All-in-One Stores. Rate of GST in all other cases is 18%.
 - (2) All the sales and purchases made by the Store are within Maharashtra. All the purchases are made from registered suppliers. All the other expenses incurred are also within the State.
 - (3) Wherever applicable, the amounts given are exclusive of taxes.
 - (4) All the necessary conditions for availing the ITC have been complied with.
2. XYZ Ltd., New Delhi, manufactures biscuits under the brand name 'Tastypicks'. Biscuits are supplied to wholesalers and distributors located across India on FOR basis from the warehouse of the company located at New Delhi. The company uses multiple modes of transport for supplying the biscuits to its customers spread across the country. The transportation cost is shown as a line item in the invoice and is billed to the customers with a mark-up of 2% on total amount of freight paid (inclusive of taxes).

Flour used for the production process is procured from vendors located in Madhya Pradesh on ex-factory basis. The company engages goods transport agencies (GTA) to transport the flour from the factories of the vendors to its factory located in New Delhi.

The company has provided the following data relating to transportation of biscuits and flour in the month of April 20XX:

- For sales within the NCR region (₹ 20,00,000), the company arranged a local mini-van belonging to an individual and paid him ₹ 54,000.
- For sales to locations in distant States (₹ 1,78,00,000), the company booked the goods by Indian Railways and paid rail freight of ₹ 3,17,000.
- For sales to locations in neighbouring States (₹ 55,00,000), the company booked the goods by road carriers (GTAs) and paid road freight of ₹ 3,73,000. Out of the total sales to neighbouring States, goods worth ₹ 10,00,000 were booked through a GTA which paid tax @ 12%. Freight of ₹ 73,000 was paid to such GTA.
- For purchase of flour from Madhya Pradesh (₹ 25,00,000), the company booked the goods by a GTA and paid road freight of ₹ 55,000.
- For purchase of butter from Punjab (₹ 15,00,000), the company booked the goods by a GTA and paid road freight of ₹ 35,000.
- For local purchase of baking powder, the company booked the goods by a GTA in a single carriage and paid road freight of ₹ 1,500.
- For transferring the biscuits (open market value - ₹ 4,00,000) to one of its sister concern in Rajasthan, the company booked the goods by a GTA and paid road freight of ₹ 40,000.
 - (i) Based on the particulars given above, compute the GST payable on the amount paid for transportation by XYZ Ltd. when it avails the services of different transporters.
 - (ii) Compute the GST charged on transportation cost billed by the company to its customers.

Note: - Assume the rate of GST on transportation of goods and biscuits to be 5% and 12% respectively [except where any other rate is specified in the question].

3. Rolex Forex Private Limited, registered in Delhi, is a money changer. It has undertaken the following purchase and sale of foreign currency:
- (i) 1,000 US \$ are purchased from Rajesh Enterprises at the rate of ₹ 68 per US \$. RBI reference rate for US \$ on that day is ₹ 68.60.
 - (ii) 2,000 US \$ are sold to Srinithi at the rate of ₹ 67.50 per US\$. RBI reference rate for US \$ for that day is not available.

Determine the value of supply in each of the above cases in terms of:

- (A) rule 32(2)(a) of the CGST Rules, 2017
 - (B) rule 32(2)(b) of the CGST Rules, 2017.
4. Jaskaran, a registered supplier of Delhi, has made the following supplies in the month of January, 20XX:

S. No.	Particulars	Amount* (₹)
(i)	Supply of 20,000 packages at ₹ 30 each to Sukhija Gift Shop in Punjab [Each package consists of 2 chocolates, 2 fruit juice bottles and a packet of toy balloons]	6,00,000
(ii)	10 generators hired out to Morarji Banquet Halls, Chandigarh [including cost of transporting the generators (₹ 1,000 for each generator) from Jaskaran's warehouse to the Morarji Banquet Halls]	2,50,000
(iii)	500 packages each consisting of 1 chocolate and 1 fruit juice bottle given as free gift to Delhi customers on the occasion of Diwali [Cost of each package is ₹ 12, but the open market value of such package of goods and of goods of like kind and quality is not available. Input tax credit has not been taken on the items contained in the package]	
(iv)	Catering services provided free of cost for elder brother's business inaugural function in Delhi [Cost of providing said services is ₹ 55,000, but the open market value of such services and of services of like kind and quality is not available.]	

*excluding GST

You are required to determine the GST liability [CGST & SGST and/or IGST, as the case may be] of Jaskaran for the month of January, 20XX with the help of the following additional information furnished by him for the said period:

1. Penalty of ₹ 10,000 was collected from Sukhija Gift Shop for the payment received with a delay of 10 days.
2. The transportation of the generators from Jaskaran's warehouse to the customer's premises is arranged by Jaskaran through a Goods Transport Agency (GTA) who pays tax @ 12%.
3. Assume the rates of GST to be as under:

Goods/services supplied	CGST	SGST	IGST
Chocolates	9%	9%	18%
Fruit juice bottles	6%	6%	12%
Toy balloons	2.5%	2.5%	5%

Service of renting of generators	9%	9%	18%
Catering service	9%	9%	18%

5. (i) Parth of Pune, Maharashtra enters into an agreement to sell goods to Bakul of Bareilly, Uttar Pradesh. While the goods were being packed in Pune godown of Parth, Bakul got an order from Shreyas of Shimoga, Karnataka for the said goods. Bakul agreed to supply the said goods to Shreyas and asked Parth to deliver the goods to Shreyas at Shimoga.

You are required to determine the place of supply(ies) in the above situation.

- (ii) Damani Industries has recruited Super Events Pvt. Ltd., an event management company of Gujarat, for organising the grand party for the launch of its new product at Bangalore. Damani Industries is registered in Mumbai. Determine the place of supply of the services provided by Super Events Pvt. Ltd. to Damani Industries.

Will your answer be different if the product launch party is organised at Dubai?

6. Oberoi Industries is a manufacturing company registered under GST. It manufactures two taxable products 'X' and 'Y' and one exempt product 'Z'. The turnover of 'X', 'Y' and 'Z' in the month of April, 20XX was ₹ 2,00,000, ₹ 10,00,000 and ₹ 12,00,000. Oberoi Industries is in possession of certain machines and purchases more of them. Useful life of all the machines is considered as 5 years.

From the following particulars furnished by it, compute the amount to be credited to the electronic credit ledger of Oberoi Industries and amount of common credit attributable towards exempted supplies, if any, for the month of April, 20XX.

Particulars	GST paid (₹)
Machine 'A' purchased on 01.04.20XX for being exclusively used for non-business purposes	19,200
Machine 'B' purchased on 01.04.20XX for being exclusively used in manufacturing zero-rated supplies	38,400
Machine 'C' purchased on 01.04.20XX for being used in manufacturing all the three products – X, Y and Z	96,000
Machine 'D' purchased on April 1, 2 years before 01.04.20XX for being exclusively used in manufacturing product Z. From 01.04.20XX, such machine will also be used for manufacturing products X and Y.	1,92,000
Machine 'E' purchased on April 1, 3 years before 01.04.20XX for being exclusively used in manufacturing products X and Y. From 01.04.20XX, such machine will also be used for manufacturing product Z.	2,88,000

7. Shiva Medical Centre, a Multi-speciality hospital, is a registered supplier in Mumbai. It hires senior doctors and consultants independently, without entering into any employer-employee agreement with them. These doctors and consultants provide consultancy to the in-patients - patients who are admitted to the hospital for treatment – without there being any contract with such patients. In return, they are paid the consultancy charges by Shiva Medical Centre.

However, the money actually charged by Shiva Medical Centre from the in-patients is higher than the consultancy charges paid to the hired doctors and consultants. The difference amount retained by the hospital, i.e. retention money, includes charges for providing ancillary services like nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure, etc.

Further, Shiva Medical Centre has its own canteen – Annapurna Bhawan - which supplies food to the in-patients as advised by the doctor/nutritionists as also to other patients (who are not admitted) or their attendants or visitors.

The Department took a stand that senior doctors and consultants are providing services to Shiva Medical Centre and not to the patients. Hence, their services are not the health care services and must be subject to GST. Further, GST is applicable on the retention money kept by Shiva Medical Centre as well as on the services provided by its canteen - Annapurna Bhawan alleging that such services are not the health care services.

You are required to examine whether the stand taken by the Department is correct provided the services provided by Shiva Medical Centre are intra-State services.

8. Shubhlaxmi Foods is engaged in supplying restaurant service in Maharashtra. In the preceding financial year, it has a turnover of ₹ 90 lakh from the restaurant service and ₹ 10 lakh from the supply of farm labour in said State. Further, it has also earned a bank interest of ₹ 10 lakh from the fixed deposits.

Shubhlaxmi Foods wishes to opt for composition scheme in the current year. You are required to advise Shubhlaxmi Foods on the same.

Would your answer be different if Shubhlaxmi Foods is engaged in milling of paddy into rice on job work basis instead of supply of farm labour and the turnover from the said activity is ₹ 9 lakh?

9. Subharti Enterprises collected GST on the goods supplied by it from its customers on the belief that said supply is taxable. However, later it discovered that goods supplied by it are exempt from GST.

The accountant of Subharti Enterprises advised it that the amount mistakenly collected by Subharti Enterprises representing as tax was not required to be deposited with Government. Subharti Enterprises has approached you for seeking the advice on the same. You are required to advise it elaborating the relevant provisions.

10. Answer the following questions:

- (1) Radhaswamy owns and supplies certain goods costing ₹ 30,00,000 in a conveyance hired from Manikaran Transporters. Market value of said goods is ₹ 40,00,000 and tax chargeable thereon is ₹ 4,80,000.

The goods supplied by Radhaswamy and the conveyance [owned by Manikaran Transporters] used for carriage of such goods are confiscated since Radhaswamy has supplied said goods in contravention of the provisions of the CGST Act, 2017 with an intent to evade payment of tax.

However, the proper officer intends to give an option to Radhaswamy and Manikaran Transporters to pay in lieu of confiscation, a fine leviable under section 130 of the CGST, Act, 2017.

Determine the maximum amount of the fine in lieu of confiscation on:

- (a) the goods liable for confiscation.
(b) the conveyance used for carriage of such goods.

- (2) Raghuraman is a registered supplier in Madhya Pradesh. He failed to pay the GST amounting to ₹ 7,400 for the month of January, 20XX. The proper officer imposed a penalty on Raghuraman for failure to pay tax. Raghuraman believes that it is a minor breach and in accordance with the provisions of section 126 of the CGST Act, 2017, no penalty is imposable for minor breaches of tax regulations. Examine the correctness of Raghuraman's claim.

11. Super Engineering Works, a registered supplier in Haryana, is engaged in supply of taxable goods within the State. Given below are the details of the turnover and applicable GST rates of the final products manufactured by Super Engineering Works as also the input tax credit (ITC) availed on inputs used in manufacture of each of the final products and GST rates applicable on the same, during a tax period:

Products	Turnover* (₹)	Output GST Rates	ITC availed (₹)	Input GST Rates
A	500,000	5%	54,000	18%
B	350,000	5%	54,000	18%
C	100,000	18%	10,000	18%

*excluding GST

Determine the maximum amount of refund of the unutilized input tax credit that Super Engineering Works is eligible to claim under section 54(3)(ii) of the CGST Act, 2017 provided that Product B is notified as a product, in respect of which no refund of unutilised input tax credit shall be allowed under said section.

12. Jai, a registered supplier, runs a general store in Ludhiana, Punjab. Some of the goods sold by him are exempt whereas some are taxable. You are required to advise him on the following issues:
- (i) Whether Jai is required to issue a tax invoices in all cases, even if he is selling the goods to the end consumers?
 - (ii) Jai sells some exempted as well as taxable goods valuing ₹ 5,000 to a school student. Is he mandatorily required to issue two separate GST documents?
 - (iii) Jai wishes to know whether it's necessary to show tax amount separately in the tax invoices issued to the customers. You are required to advise him.
13. Kulbhushan & Sons has entered into a contract to supply two consignments of certain taxable goods. However, since it is unable to determine the value of the goods to be supplied by it, it applies for payment of tax on such goods on a provisional basis along with the required documents in support of its request.

On 12.01.20XX, the Assistant Commissioner of Central Tax issues an order allowing payment of tax on provisional basis indicating the value on the basis of which the assessment is allowed on provisional basis and the amount for which the bond is to be executed and security is to be furnished.

Kulbhushan & Sons complies with the same and supplies both the consignments of goods on 25.01.20XX thereafter paying the tax on provisional basis in respect of both the consignments on 19.02.20XX.

Consequent to the final assessment order passed by the Assistant Commissioner of Central Tax on 21.03.20XX, a tax of ₹ 1,80,000 becomes due on 1st consignment whereas a tax of ₹ 4,20,000 becomes refundable on 2nd consignment.

Kulbhushan & Sons pays the tax due on 1st consignment on 09.04.20XX and applies for the refund of the tax on 2nd consignment same day. Tax was actually refunded to it on 05.06.20XX.

Determine the interest payable and receivable, if any, by Kulbhushan & Sons in the above case.

14. With reference to section 108 of the CGST Act, 2017, elaborate whether a CGST/SGST authority can revise an order passed by his subordinates.
15. Discuss the liability to pay in case of an amalgamation/merger under section 87 of the CGST Act, 2017.
16. Unicalp Textile Industries imported a machine from Eureka Engineering Works Ltd., New Jersey for dyeing the fabric. The price of the machine was settled at US \$ 25,000. The machine was shipped on 10.02.20XX. Meanwhile, Unicalp Textile Industries negotiated for a reduction in the price.

As a result, Eureka Engineering Works Ltd. agreed to reduce the price by \$ 4,250 and sent the revised price of \$ 20,750 on 15.02.20XX. The machine arrived in India on 18.02.20XX. The Commissioner of Customs decided to take the original price of \$ 25,000 as the transaction value of the goods on the ground that the price is reduced only after the goods have been shipped.

Do you agree to the stand taken by the Commissioner? Give reasons in support of your answer with the help of a decided case law, if any.

17. Abhimanyu Enterprises, India imported a machine costing US \$ 17,000 from George Corp., US through a vessel. Determine the assessable value of the said machine under the Customs Act, 1962 with the help of the additional information given below:

	US \$
(i) Transport charges from the factory of George Corp. to the port for shipment	850
(ii) Freight charges from US to India	1,700
(iii) Handling charges paid for loading the machine in the ship	85
(iv) Buying commission paid by Abhimanyu Enterprises	85
(v) Exchange rate to be considered: 1\$ = ₹ 60	
(vi) Actual insurance charges paid are not ascertainable	

18. Raghupati Energy Corporation had imported certain goods and got them cleared for home consumption. Subsequently, the Department discovered that import of such goods was prohibited under the Customs Act, 1962. Consequently, the goods were confiscated under section 111 of the Customs Act, 1962 and a penalty was levied under section 112 of the said Act.

Examine the veracity of confiscation of the goods and imposition of penalty by the Department, in the given case, with the help of a decided case law, if any.

19. Explain with reference to the Customs Act, 1962, the conditions to be fulfilled for filing application to Settlement Commission.
20. Explain the relevant dates as provided in section 26A(2) of the Customs Act, 1962 for purpose of refund of customs duty under specified circumstances, namely:
- (i) goods exported out of India
 - (ii) relinquishment of title to goods
 - (iii) goods destroyed or rendered commercially valueless.

SUGGESTED ANSWERS**1. A. Computation of ITC credited to Electronic Credit Ledger**

As per rule 42 of the CGST Rules, 2017, the ITC in respect of inputs or input services being partly used for the purposes of business and partly for other purposes, or partly used for effecting taxable supplies and partly for effecting exempt supplies, shall be attributed to the purposes of business or for effecting taxable supplies.

ITC credited to the electronic credit ledger of registered person [C_1] is calculated as under-

$$C_1 = T - (T_1 + T_2 + T_3)$$

Where,

T	=	Total input tax involved on inputs and input services in a tax period.
T₁	=	Input tax attributable to inputs and input services intended to be used exclusively for non-business purposes
T₂	=	Input tax attributable to inputs and input services intended to be used exclusively for effecting exempt supplies
T₃	=	Input tax in respect of inputs and input services on which credit is blocked under section 17(5) of the CGST Act, 2017

Computation of total input tax involved [T]

Particulars	(₹)
GST paid on taxable items [₹ 55,00,000 x 18%]	9,90,000
Items exempted vide a notification [Since exempted, no GST is paid]	Nil
Items not leviable to tax [Since non-taxable, no GST is paid]	Nil
GST paid under reverse charge on freight paid to GTA for inward transportation of taxable items - [₹ 1,00,000 x 5%]	5,000
GST paid under reverse charge on freight paid to GTA for inward transportation of exempted items - [₹ 80,000 x 5%]	4,000
GST paid under reverse charge on freight paid to GTA for inward transportation of non-taxable items - [₹ 20,000 x 5%]	1,000
GST paid on monthly rent - [₹ 5,50,000 x 18%]	99,000
GST paid on packing charges [₹ 2,50,000 x 18%]	45,000
Salary paid to staff at the Store	Nil
[Services by an employee to the employer in the course of or in relation to his employment is not a supply in terms of para 1 of the Schedule III to CGST Act, 2017 and hence, no GST is payable]	

thereon].	
GST paid on inputs used for personal purpose	5,000
GST paid on rent a cab services availed for business purpose	4,000
GST paid on items given as free samples	4,000
Total input tax involved in a tax period (October, 20XX) [T]	11,57,000

Computation of T₁, T₂, T₃

Particulars	(₹)
GST paid on monthly rent attributable to personal purposes [1/3 of ₹ 99,000]	33,000
GST paid on inputs used for personal purpose	<u>5,000</u>
Input tax exclusively attributable to non-business purposes [T₁]	<u>38,000</u>
GST paid under reverse charge on freight paid to GTA for inward transportation of exempted items [As per section 2(47) of the CGST Act, 2017, exempt supply means, <i>inter alia</i> , supply which may be wholly exempt from tax by way of a notification issued under section 11. Hence, input service of inward transportation of exempt items is exclusively used for effecting exempt supplies.]	4,000
GST paid under reverse charge on freight paid to GTA for inward transportation of non-taxable items [Exempt supply includes non-taxable supply in terms of section 2(47) of the CGST Act, 2017. Hence, input service of inward transportation of non-taxable items is exclusively used for effecting exempt supplies.]	<u>1,000</u>
Input tax exclusively attributable to exempt supplies [T₂]	<u>5,000</u>
GST paid on rent a cab services availed for business purpose [ITC on rent a cab service is blocked under section 17(5)(b)(iii) of the CGST Act, 2017 as the same is not used by All-in-One Store for providing the rent a cab service or as part of a taxable composite or mixed supply. It has been assumed that the Government has not notified such service under section 17(5)(b)(iii)(A) of the CGST Act, 2017].	4,000
GST paid on items given as free samples [ITC on goods <i>inter alia</i> , disposed of by way of free samples is blocked under section 17(5)(h) of the CGST Act, 2017].	<u>4,000</u>
Input tax for which credit is blocked under section 17(5) of the CGST Act, 2017 [T₃] **	8,000

**Since GST paid on inputs used for personal purposes has been considered while computing T₁, the same has not been considered again in computing T₃.

ITC credited to the electronic credit ledger

$$\begin{aligned}
 C_1 &= T - (T_1 + T_2 + T_3) \\
 &= ₹ 11,57,000 - (₹ 38,000 + ₹ 5,000 + ₹ 8,000) \\
 &= ₹ 11,06,000
 \end{aligned}$$

B. Computation of Common Credit

$$C_2 = C_1 - T_4$$

where C_2 = Common Credit

T_4 = Input tax credit attributable to inputs and input services intended to be used exclusively for effecting taxable supplies

Computation of T_4 ,

Particulars	(₹)
GST paid on taxable items	9,90,000
GST paid under reverse charge on freight paid to GTA for inward transportation of taxable items	5,000
Input tax exclusively attributable to taxable supplies [T_4]	<u>9,95,000</u>

$$\text{Common Credit } C_2 = C_1 - T_4$$

$$\begin{aligned}
 &= ₹ 11,06,000 - ₹ 9,95,000 \\
 &= ₹ 1,11,000
 \end{aligned}$$

C. Computation of ITC attributable towards exempt supplies out of common credit

ITC attributable towards exempt supplies is denoted as ' D_1 ' and calculated as -

$$D_1 = (E \div F) \times C_2$$

where,

'E' is the aggregate value of exempt supplies during the tax period, and

'F' is the total turnover in the State of the registered person during the tax period

Aggregate value of exempt supplies during October, 20XX

$$= ₹ 15,00,000 (₹ 12,00,000 + ₹ 3,00,000)$$

Total turnover in the State during the tax period

$$= ₹ 65,00,000 (₹ 42,00,000 + ₹ 12,00,000 + ₹ 3,00,000 + ₹ 8,00,000)$$

Note: Transfer of items to Store located in Goa is inter-State supply in terms of section 7 of the IGST Act, 2017 and hence includible in the total turnover. Such supply is to be valued as per rule 28 of the CGST Rules, 2017. However, the value declared in the invoice cannot be adopted as the value since the recipient Store at Goa is not entitled for full credit. Therefore, open market value of such goods, which is the value of such goods sold in Mumbai Store, is taken as the value of items transferred to Goa Store.

$$D_1 = (15,00,000 \div 65,00,000) \times 1,11,000$$

$$= ₹ 25,615 \text{ (rounded off)}$$

D. Computation of Eligible ITC out of common credit

Eligible ITC attributed for effecting taxable supplies is denoted as 'C₃', where, -

$$C_3 = C_2 - D_1$$

$$= ₹ 1,11,000 - ₹ 25,615$$

$$= ₹ 85,385$$

E. Computation of Net GST liability for the month of October, 20XX

Particulars	GST (₹)
<i>GST liability under forward charge</i>	
Taxable items sold in the store [₹ 42,00,000 x 18%]	7,56,000
Taxable items transferred to Goa Store [₹ 8,00,000 x 18%]	1,44,000
Ineligible ITC [ITC out of common credit, attributable to exempt supplies]	25,615
Total output tax liability under forward charge	9,25,615
Less: ITC credited to the electronic ledger	<u>11,06,000</u>
ITC carried forward to the next month	(1,80,385)
Net GST payable [A]	Nil
<i>GST liability under reverse charge</i>	
Freight paid to GTA for inward transportation of taxable items - [₹ 1,00,000 x 5%]	5,000
Freight paid to GTA for inward transportation of exempted items - [₹ 80,000 x 5%]	4,000
Freight paid to GTA for inward transportation of non-taxable items - [₹ 20,000 x 5%]	<u>1,000</u>

Total output tax liability under reverse charge [B]	10,000
Net GST liability [A] + [B]	10,000
As per section 49(4) of the CGST Act, 2017 amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82) of the CGST Act, 2017. Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.	

Note: While computing net GST liability, ITC credited to the electronic ledger can alternatively be computed as follows:

Particulars	(₹)
GST paid on taxable items [₹ 55,00,000 x 18%]	9,90,000
Items exempted vide a notification [Since exempted, no GST is paid]	Nil
Items not leviable to tax [Since non-taxable, no GST is paid]	Nil
GST paid under reverse charge on freight paid to GTA for inward transportation of taxable items - [₹ 1,00,000 x 5%]	5,000
GST paid under reverse charge on freight paid to GTA for inward transportation of exempted items - [₹ 80,000 x 5%]	Nil
[As per section 2(47) of the CGST Act, 2017, exempt supply means, <i>inter alia</i> , supply which may be wholly exempt from tax by way of a notification issued under section 11. Hence, input service of inward transportation of exempt items is exclusively used for effecting exempt supplies. Input tax exclusively attributable to exempt supplies is to be excluded]	
GST paid under reverse charge on freight paid to GTA for inward transportation of non-taxable items - [₹ 20,000 x 5%]	Nil
[Exempt supply includes non-taxable supply in terms of section 2(47) of the CGST Act, 2017. Hence, input service of inward transportation of non-taxable items is exclusively used for effecting exempt supplies. Input tax exclusively attributable to exempt supplies is to be excluded]	
GST paid on monthly rent - for business purposes [(₹ 5,50,000 x 18%) - 1/3 of [(₹ 5,50,000 x 18%)]]	66,000
GST paid on packing charges [₹ 2,50,000 x 18%]	45,000
Salary paid to staff at the Store	Nil
[Services by an employee to the employer in the course of or in relation to his employment is not a supply in terms of para 1 of the	

Schedule III to CGST Act, 2017 and hence, no GST is payable thereon]	
GST paid on inputs used for personal purpose [ITC on goods or services or both used for personal consumption is blocked under section 17(5)(g) of the CGST Act, 2017]	Nil
GST paid on rent a cab services availed for business purpose [ITC on rent a cab service is blocked under section 17(5)(b)(iii) of the CGST Act, 2017 as the same is not used by All-in-One Store for providing the rent a cab service or as part of a taxable composite or mixed supply. It has been assumed that the Government has not notified such service under section 17(5)(b)(iii)(A) of the CGST Act, 2017]	Nil
GST paid on items given as free samples [ITC on goods <i>inter alia</i> , disposed of by way of free samples is blocked under section 17(5)(h) of the CGST Act, 2017]	Nil
Total input tax involved in a tax period (October, 20XX) [T]	11,06,000

2. (i) **Computation of GST payable on amount paid for transportation by XYZ Ltd. when it avails the services of different transporters**

Particulars	Freight [₹]	GST payable [₹]
Transportation of biscuits in a local mini van belonging to an individual [Only the transportation of goods by road by a GTA is liable to GST. Therefore, transportation of goods by road otherwise than by a GTA is exempt from GST – <i>Notification No. 12/2017 CT (R) & 9/2017 IT (R) both dated 28.06.2017.</i>]	54,000	Nil
Transportation of biscuits by Indian Railways	3,17,000	15,850
Transportation of biscuits by GTA [GST is payable by XYZ Ltd. under reverse charge in terms of section 5(3) of the IGST Act, 2017 read with <i>Notification No. 10/2017 IT (R) dated 28.06.2017.</i>]	3,00,000	15,000
Transportation of biscuits by GTA @ 12% [When the GTA pays tax @ 12%, tax is payable by the GTA under forward charge and not by the recipient under reverse charge - <i>Notification No. 10/2017 IT (R) dated 28.06.2017.</i>]	73,000	8,760

Transportation of flour by GTA [Services provided by GTA by way of transport (in a goods carriage) of, <i>inter alia</i> , flour are exempt from GST vide <i>Notification No. 9/2017 IT (R) dated 28.06.2017.</i>]	55,000	Nil
Transportation of butter by GTA [Though services provided by GTA by way of transport (in a goods carriage) of, <i>inter alia</i> , milk is exempt from GST vide <i>Notification No. 9/2017 IT (R) dated 28.06.2017</i> , road transport of butter will not be exempted as butter is milk product and not milk. GST is payable by XYZ Ltd. under reverse charge in terms of section 5(3) of the IGST Act, 2017 read with <i>Notification No. 10/2017 IT (R) dated 28.06.2017.</i>]	35,000	1,750
Transportation of baking powder by GTA [Services provided by a GTA by way of transport in a goods carriage of goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed ₹ 1,500, are exempt from GST vide <i>Notification No. 9/2017 IT (R) dated 28.06.2017.</i>]	1,500	Nil
Transportation of biscuits by GTA to sister concern [GST is payable by XYZ Ltd. under reverse charge in terms of section 5(3) of the IGST Act, 2017 read with <i>Notification No. 10/2017 IT (R) dated 28.06.2017.</i>]	40,000	<u>2,000</u>
Total tax payable by XYZ Ltd. on availing services of different transporters		43,360

(ii) **Computation of GST charged on transportation cost billed by XYZ Ltd. to its customers**

Since XYZ Ltd. is supplying biscuits on FOR basis, the service of transportation of biscuits gets bundled with the supply of biscuits. Thus, the supply of biscuits and transportation service is a composite supply, chargeable to tax at the rate applicable to the principal supply (biscuits) i.e., 12% [Section 8(a) of the CGST Act, 2017 read with the definition of 'composite supply' under section 2(30) of the CGST Act, 2017 and 'principal supply' under section 2(90) of the CGST Act, 2017].

Particulars	Freight paid [₹] [A]	GST paid on freight [₹] [B]	Freight billed (with mark-up @ 2% on [A] + [B]) [₹]	GST charged @ 12% [₹]
Transportation of biscuits in a local mini van belonging to an individual	54,000	-	55,080	6,610
Transportation of biscuits by Indian Railways	3,17,000	15,850	3,39,507	40,741
Transportation of biscuits by GTA	3,00,000	15,000	3,21,300	38,556
Transportation of biscuits by GTA @ 12%	73,000	8,760	83,395	10,007
Total tax charged by XYZ Ltd. on transportation cost billed to the customers*				95,914

**Note: It has been assumed that there is no mark-up on transportation cost billed to sister concern (non-customer).*

3. Rule 32(2) of the CGST Rules, 2017 prescribes the provisions for determining the value of supply of services in relation to the purchase or sale of foreign currency, including money changing.

(A) Determination of value under rule 32(2)(a) of the CGST Rules, 2017

- (i) Rule 32(2)(a) of the CGST Act, 2017 provides that the value of supply of services for a currency, when exchanged from, or to, Indian Rupees, shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency. Thus, value of supply is:

$$= (\text{RBI reference for US \$} - \text{Buying rate of US \$}) \times \text{Total number of units of US \$ bought}$$

$$= (\text{₹ } 68.6 - \text{₹ } 68) \times 1,000$$

$$= \text{₹ } 600$$

- (ii) First proviso to rule 32(2)(a) of the CGST Act, 2017 lays down that when the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received by the person changing the money. Thus, value of supply is:

$$\begin{aligned}
 &= 1\% \text{ of the gross amount of Indian Rupees received} \\
 &= 1\% \text{ of } (\text{₹ } 67.50 \times 2,000) \\
 &= \text{₹ } 1,350
 \end{aligned}$$

(B) Determination of value under rule 32(2)(b) of the CGST Rules, 2017

Third proviso to rule 32(2)(a) stipulates that a person supplying the services in relation to the purchase or sale of foreign currency, including money changing may exercise the option to ascertain the value in terms of rule 32(2)(b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

Rule 32(2)(b) provides that value in relation to the supply of foreign currency, including money changing shall be deemed to be –

S. No.	Currency exchanged	Value of supply
1.	Upto ₹ 1,00,000	1% of the gross amount of currency exchanged OR ₹ 250 whichever is higher
2.	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 1,000 + 0.50% of the (gross amount of currency exchanged - ₹ 1,00,000)
3.	Exceeding ₹ 10,00,000	₹ 5,500 + 0.1% of the (gross amount of currency exchanged - ₹ 10,00,000) OR ₹ 60,000 whichever is lower

Thus, the value of supply in the given cases would be computed as under:

- (i) Gross amount of currency exchanged = ₹ 68 × 1,000 = ₹ 68,000. Since the gross amount of currency exchanged is less than ₹ 1,00,000, value of supply is 1% of the gross amount of currency exchanged [1% of ₹ 68,000] or ₹ 250, whichever is higher.
- $$= \text{₹ } 680$$
- (ii) Gross amount of currency exchanged = ₹ 67.50 × 2,000 = ₹ 1,35,000. Since the gross amount of currency exchanged exceeds ₹ 1,00,000, but less than ₹ 10,00,000, value of supply is ₹ 1,000 + 0.50% of (₹ 1,35,000 - ₹ 1,00,000).
- $$= \text{₹ } 1,175$$

4. Computation of GST liability of Jaskaran for the month of January, 20XX

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Supply of 20,000 packages to Sukhija Gift Shop, Punjab [Note-1]			1,09,526 [6,08,475 × 18%]
Renting of 10 generators to Morarji Banquet Halls, Chandigarh [Note-2]			45,000 [2,50,000 × 18%]
500 packages given as free gift to the customers [Note-3]	Nil	Nil	Nil
Catering services provided free of cost for elder brother's business inaugural function in Delhi [Note-3]	5,445 [60,500 × 9%]	5,445 [60,500 × 9%]	
Total GST liability (rounded off)	5,445	5,445	1,54,526

Notes:

- As per section 2(74) of the CGST Act, 2017, mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Supply of a package containing chocolates, fruit juice bottles and a packet of toy balloons is a mixed supply as each of these items can be supplied separately and is not dependent on any other. Further, as per section 8(b) of the CGST Act, 2017, the mixed supply is treated as a supply of that particular supply which attracts the highest rate of tax. Thus, in the given case, supply of packages is treated as supply of chocolates [since it attracts the highest rate of tax]. Consequently, being an inter-State supply of goods, supply of packages to Sukhija Gift Shop of Punjab is subject to IGST @ 18% each.

Further, value of supply includes interest or late fee or penalty charged for delayed payment of any consideration for any supply in terms of section 15(2)(d) of the CGST Act, 2017. Thus, penalty of ₹ 10,000 [considered as inclusive of GST] collected from Sukhija Gift Shop for the delayed payment will be included in the value of supply. The total value of supply is ₹ 6,08,475 [₹ 6,00,000 + (₹ 10,000 × 100/118)]

- Services by way of transportation of goods by road except the services of a Goods Transportation Agency (GTA) are exempt vide *Notification No. 9/2017 IT (R) dated 28.06.2017*. Since Jaskaran is not a GTA, transportation services provided by him are exempt from GST. However, since the generators are invariably hired out along with their transportation till customer's premises, it is a case of composite supply

under section 2(30) of the CGST Act, 2017 wherein the principal supply is the renting of generator.

As per section 8(a) of the CGST Act, 2017, the composite supply is treated as the supply of the principal supply. Therefore, the service of transportation of generators will also be taxed at the rate applicable for renting of the generator (principal supply).

Consequently, being an inter-State supply of service, service of hiring out the generators to Morarji Banquet Halls of Chandigarh is subject to IGST @ 18% each.

3. As per section 7(1)(c) of the CGST Act, 2017, an activity made without consideration can be treated as supply only when it is specified in Schedule I of the CGST Act, 2017. Para 2. of Schedule I provides that supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business, are to be treated as supply even if made without consideration.

However, since the question does not provide that customers are related to Jaskaran, free gifts given to the customers cannot be considered as a supply under section 7. Consequently, no tax is leviable on the same.

Further, the catering services provided by Jaskaran to his elder brother without consideration will be treated as supply as Jaskaran and his elder brother, being members of same family, are related persons in terms of explanation (a)(viii) to section 15 of the CGST Act, 2017 and said services have been provided in course/furtherance of business. Value of supply of services between related persons, other than through an agent is determined as per rule 28 of the CGST Rules, 2017. Accordingly, the value of supply is the open market value of such supply; if open market value is not available, the value of supply of goods or services of like kind and quality. However, if value cannot be determined under said methods, it must be worked out based on the cost of the supply plus 10% mark-up. Thus, in the given case, value of catering services provided to the elder brother of Jaskaran is ₹ 60,500 [₹ 55,000 × 110%]. Further, being an intra-State supply of services, catering services are subject to CGST and SGST @ 2.5% each.

5. As per *Notification No. 13/2017 CT(R) dated 28.06.2017*, GST is payable by the recipient on reverse charge basis on the receipt of services of transportation of goods by road from a goods transport agency (GTA) provided such GTA has not paid GST @ 12%. Since in the given case, Jaskaran has received services from a GTA who has paid GST @ 12%, reverse charge provisions will not be applicable.
5. (i) The supply between Parth (Pune) and Bakul (Bareilly) is a **bill to ship to supply** where the goods are delivered by the supplier [Parth] to a recipient [Shreyas (Shimoga)] or any other person on the direction of a third person [Bakul]. The place of supply in case of bill to ship to supply of goods is determined in terms of section 10(1)(b) of IGST Act, 2017.

As per section 10(1)(b) of IGST Act, 2017, where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person.

Thus, in the given case, it is deemed that the Bakul has received the goods and the place of supply of such goods is the principal place of business of Bakul. Accordingly, the place of supply between Parth (Pune) and Bakul (Bareilly) will be Bareilly, Uttar Pradesh.

This situation involves another supply between Bakul (Bareilly) and Shreyas (Shimoga). The place of supply in this case will be determined in terms of section 10(1)(a) of IGST Act, 2017.

Section 10(1)(a) of IGST Act, 2017 stipulates that where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

Thus, the place of supply in second case is the location of the goods at the time when the movement of goods terminates for delivery to the recipient (Shreyas) i.e., Shimoga, Karnataka.

- (ii) Section 12(7)(a)(i) of IGST Act, 2017 stipulates that when service by way of organization of an event is provided to a registered person, place of supply is the location of recipient.

Since, in the given case, the product launch party at Bangalore is organized for Damani Industries (registered in Mumbai), place of supply is the location of Damani Industries i.e., Mumbai.

In case the product launch party is organised at Dubai, the answer will remain the same, i.e. the place of supply is the location of Damani Industries – Mumbai.

6.

Particulars	₹	Ineligible credit (₹)	Amount to be credited to ECrL (₹)
Machine 'A' [Since exclusively used for non-business purposes, ITC is not available under rule 43(1)(a) of CGST Rules, 2017]		19,200	
Machine 'B' [For ITC purposes, taxable supplies include zero-			38,400

rated supplies under rule 43(1)(b) of CGST Rules, 2017. Hence, full ITC is available]			
Machine 'C'	96,000		96,000
[Commonly used for taxable and exempt supplies – Rule 43(1)(c) of the CGST Rules, 2017]			
Machine 'D'	1,15,200		<u>1,15,200</u>
[Owing to change in use from exclusively exempt to both taxable and exempt, common credit to be reduced by ITC @ 5% per quarter or part thereof in terms of proviso to rule 43(1)(c) of CGST Rules, 2017]			
= ₹ 1,92,000 – ₹ 76,800 (₹ 1,92,000 × 5% × 8 quarters)			
Machine 'E'	<u>1,15,200</u>		
[Owing to change in use from exclusively taxable to both taxable and exempt, common credit to be reduced by ITC @ 5% per quarter or part thereof in terms of proviso to rule 43(1)(d) of CGST Rules, 2017]			
= ₹ 2,88,000 – ₹ 1,72,800 (₹ 2,88,000 × 5% × 12 quarters)			
Total common credit	3,26,400		
Common credit for the tax period (in the given case, a month) under rule 43(1)(e) of CGST Rules, 2017	5,440		
= ₹ 3,26,400 ÷ 60			
Common credit attributable to exempt supplies in April, 20XX under rule 43(1)(g) of the CGST Rules, 2017		2,720	
= (Turnover of exempt supplies/Total turnover) × Common credit			
= (12,00,000/24,00,000) × ₹ 5,440			
[Such credit, along with the applicable interest, shall be added to the output tax liability of Oberoi Industries]			
Amount to be credited to the electronic credit ledger of Oberoi Industries for the month of April, 20XX			2,49,600

7. As per *Notification No. 12/2017 CT (R) dated 28.06.2017*, services by way of health care services by a clinical establishment, an authorised medical practitioner or para-medics are exempt from GST.

Health care services have been defined to mean any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

Circular No. 32/06/2018 GST dated 12.02.2018 has clarified that in view of the above definition, it can be inferred that hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt from GST. In view of the same, GST is not applicable on the retention money kept by Shiva Medical Centre.

The circular also clarified that services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are also healthcare services exempt from GST. Hence, services provided by the senior doctors and consultants hired by Shiva Medical Centre, being healthcare services, are also exempt from GST.

The circular further explained that food supplied by the hospital canteen to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare services and is not separately taxable. Thus, it is exempt from GST. However, other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable. In view of the same, GST is not applicable on the food supplied by Annapurna Bhawan to in-patients as advised by doctors/nutritionists while other supplies of food by it to patients (not admitted) or their attendants/visitors are taxable.

8. As per section 10(1) of the CGST Act, 2017, a registered person, whose aggregate turnover in the preceding financial year did not exceed ₹ 1 crore, may opt to pay, in lieu of the tax payable by him, an amount calculated at the specified rates if, *inter alia*, he is not engaged in the supply of services other than restaurant services.

However, the restriction on service provider not to be engaged in any service other than restaurant service for being eligible for composition levy has been relaxed vide *Order No. 01/2017 CT dated 13.10.2017*. The said order clarifies that:

- (i) if a person supplies goods and/or services referred to in clause (b) of paragraph 6 of Schedule II of the said Act (restaurant service) and also supplies any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, the said

person shall not be ineligible for the composition scheme under section 10 of the CGST Act, 2017 subject to the fulfilment of all other conditions specified therein.

- (ii) in computing his aggregate turnover in order to determine his eligibility for composition scheme, value of supply of any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.

In the given case, the two other services provided by Shubhlaxmi Foods apart from the restaurant service, viz. the services of supply of farm labour and services by way of extending deposits where the consideration is represented by way of interest, are exempt from GST vide *Notification No. 12/2017 CT (R) dated 28.06.2017*.

Thus, in view of the aforementioned order, since other services supplied by Shubhlaxmi Foods apart from restaurant service are exempt services, Shubhlaxmi Foods is not ineligible for the composition scheme.

Further, in computing his aggregate turnover in order to determine the eligibility of Shubhlaxmi Foods for composition scheme, value of supply of exempt services - supply of farm labour and bank interest shall not be taken into account. Thus, the aggregate turnover of Shubhlaxmi Foods is ₹ 90 lakh (turnover from restaurant services).

From the aforesaid discussion, it can be inferred that Shubhlaxmi Foods is eligible for composition scheme.

However, if Shubhlaxmi Foods is engaged in milling of paddy into rice instead of supply of farm labour, it will not be eligible for composition levy since as per *Order No. 01/2017 CT*, a person supplying restaurant services is eligible for composition levy only when other services provided by it are exempt services and milling of paddy into rice on job work basis is not an exempt service as clarified by *Circular No. 19/19/2017 GST dated 20.11.2017*.

9. The provisions of section 76 of the CGST Act, 2017 make it mandatory on Subharti Enterprises to pay amount collected from other person representing tax under this Act, to the Government.

Section 76 of the CGST Act, 2017 stipulates that notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or Court or in any other provisions of the CGST Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

Where any amount is required to be paid to the Government as mentioned above, and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in

the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

The proper officer shall, after considering the representation, if any, made by the person on whom show cause notice (SCN) is served, determine the amount due from such person and thereupon such person shall pay the amount so determined.

The person who has collected any amount as representing the tax, but not deposited the same with the Government shall in addition to paying the said amount determined by the proper officer shall also be liable to pay interest thereon. Interest is payable at the rate specified under section 50. Interest is payable from the date such amount was collected by him to the date such amount is paid by him to the Government.

The proper officer shall issue an order within 1 year [excluding the period of stay order] from the date of issue of the notice. The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

10. (1) (a) In case of goods liable for confiscation, the maximum amount of fine leviable in lieu of confiscation in terms of first proviso to section 130(2) of the CGST Act, 2017 is the market value of the goods confiscated, less the tax chargeable thereon.

Therefore, in the given case, maximum fine leviable:

$$= ₹ 40,00,000 - ₹ 4,80,000 = ₹ 35,20,000$$

- (b) In case where conveyance used for carriage of such goods is liable for confiscation, the maximum amount of fine leviable in lieu of confiscation in terms of third proviso to section 130(2) of the CGST Act, 2017 is equal to tax payable on the goods being transported thereon.

Therefore, in the given case, maximum fine leviable = ₹ 4,80,000

- (2) No, Raghuraman's claim is not tenable in law. Section 126(1) of the CGST Act, 2017 provides that no officer shall impose any penalty under CGST Act, 2017, *inter alia*, for minor breaches of tax regulations or procedural requirements. Further, explanation to section 126(1) of the CGST Act, 2017 stipulates that a breach shall be considered a 'minor breach' if the amount of tax involved is less than ₹ 5,000.

In the given case, breach made by Raghuraman is not a 'minor breach' since the amount involved is not less than ₹ 5,000. So, penalty is imposable under the CGST Act, 2017.

11. Section 54(3)(ii) of the CGST Act, 2017 allows refund of unutilized input tax credit (ITC) at the end of any tax period to a registered person where the credit has accumulated on account of inverted duty structure i.e. rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of

goods or services or both as may be notified by the Government on the recommendations of the Council.

In the given case, the rates of tax on inputs used in Products A and B (18% each) are higher than rates of tax on output supplies of Products A and B (5% each). However, Product B is notified as a product, in respect of which no refund of unutilised ITC shall be allowed under section 54(3)(ii) of the CGST Act, 2017. Therefore, only Product A is eligible for refund under section 54(3)(ii).

Further, rule 89(5) of the CGST Rules, 2017 stipulates that in the case of refund on account of inverted duty structure, refund of ITC shall be granted as per the following formula -

$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{Tax payable on such inverted rated supply of goods}$$

where,-

- A. **"Net ITC"** means input tax credit availed on inputs and input services during the relevant period;
- B. **"Adjusted Total turnover"** means the turnover in a State or a Union territory, excluding the value of exempt supplies other than zero-rated supplies, during the relevant period.

In accordance with the aforesaid provisions, the maximum refund amount which Super Engineering Works is eligible to claim shall be computed as follows:

Tax payable on inverted rated supply of Product A = ₹ 5,00,000 × 5% = ₹ 25,000

Net ITC = ₹ 1,18,000 (₹ 54,000 + ₹ 54,000 + ₹ 10,000) [Net ITC availed during the relevant period needs to be considered irrespective of whether the ITC pertains to inputs eligible for refund of inverted rated supply of goods or not]

Adjusted Total Turnover = ₹ 9,50,000 (₹ 5,00,000 + ₹ 3,50,000 + ₹ 1,00,000)

Turnover of inverted rated supply of Product A = ₹ 5,00,000

Maximum refund amount for Super Engineering Works is as follows:

= [(₹ 5,00,000 × ₹ 1,18,000) / ₹ 9,50,000] - ₹ 25,000

= ₹ 37,105 (rounded off)

12. (i) As per section 31(1) of the CGST Act, 2017, every registered person supplying taxable goods is required to issue a tax invoice. Section 31(3)(c) of the CGST Act, 2017 stipulates that every registered person supplying exempted goods is required to issue a bill of supply instead of tax invoice.

Further, as per section 31(3)(b) of the CGST Act, 2017 read with rule 46 of the CGST Rules, 2017, a registered person may not issue a tax invoice if:

- (i) value of the goods supplied < ₹ 200,
- (ii) the recipient is unregistered; and
- (iii) the recipient does not require such invoice.

Instead such registered person shall issue a Consolidated Tax Invoice for such supplies at the close of each day in respect of all such supplies.

- (ii) As per rule 46A of the CGST Rules, 2017, where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single **“invoice-cum-bill of supply”** may be issued for all such supplies. Thus, there is no need to issue a tax invoice and a bill of supply separately to the school student in respect of supply of the taxable and exempted goods respectively.
 - (iii) As per section 33 of the CGST Act, 2017, where any supply is made for a consideration, every person who is liable to pay tax for such supply shall prominently indicate in all documents relating to assessment, tax invoice and other like documents, the amount of tax which shall form part of the price at which such supply is made. Hence, Jai has to show the tax amount separately in the tax invoices issued to customers.
13. Section 60(4) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is higher than under provisional assessment i.e. tax becomes due consequent to order of final assessment, the registered person shall be liable to pay interest on tax payable on supply of goods but not paid on the due date, at the rate specified under section 50(1) [18% p.a.], from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before/after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 25.01.20XX under provisional assessment is 20.02.20XX.

In view of the provisions of section 60(4), in the given case, Kulbhushan & Sons is liable to pay following interest in respect of 1st consignment:

$$= ₹ 1,80,000 \times 18\% \times 48/365$$

$$= ₹ 4,261 \text{ (rounded off)}$$

Further, section 60(5) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is less than in provisional assessment i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified under section 56 [6% p.a.] from the date immediately after the expiry

of 60 days from the date of receipt of application under section 54(1) till the date of refund of such tax.

However, since in the given case, refund has been made (05.06.20XX) within 60 days from the date of receipt of application of refund (09.04.20XX), interest is not payable to Kulbhushan & Sons on tax refunded in respect of 2nd consignment.

14. Section 2(99) of the CGST Act, 2017 defines “revisional Authority” as an authority appointed or authorised under the CGST Act for revision of decision or orders referred to in section 108 of the CGST Act, 2017.

Section 108 of the CGST Act, 2017 authorizes such “revisional authority” to call for and examine any order passed by his subordinates and in case he considers the order of the lower authority to be erroneous in so far as it is prejudicial to revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, can revise the order after giving opportunity of being heard to the noticee. The “revisional authority” can also stay the operation of any order passed by his subordinates pending such revision.

The “revisional authority” shall not revise any order if-

- (a) the order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118; or
 - (b) the period specified under section 107(2) has not yet expired or more than three years have expired after the passing of the decision or order sought to be revised.
 - (c) the order has already been taken up for revision under this section at any earlier stage.
 - (d) the order is a revisional order.
15. Section 87 of the CGST Act, 2017 stipulates that when two or more companies are amalgamated or merged in pursuance of an order of court or of Tribunal or otherwise and the order is to take effect from a date earlier to the date of the order and any two or more of such companies have supplied or received any goods or services or both to or from each other during the period commencing on the date from which the order takes effect till the date of the order, then such transactions of supply and receipt shall be included in the turnover of supply or receipt of the respective companies and they shall be liable to pay tax accordingly.

Notwithstanding anything contained in the said order, for the purposes of the CGST Act, 2017, the said two or more companies shall be treated as distinct companies for the period up to the date of the said order. The registration certificates of the said companies shall be cancelled with effect from the date of the said order.

16. No, the Commissioner's approach is not correct in law.

As per section 14 of the Customs Act, 1962, the transaction value of the goods is the price actually paid or payable for the goods at the time and place of importation. Further, the Supreme Court in the case *Garden Silk Mills Ltd. v. UOI 1993 (113) E.L.T. 358 (SC)* has held that importation gets complete only when the goods become part of mass of goods within the country.

Therefore, since in the instant case, the price of the goods was reduced while they were in transit, it could not be contended that the price was revised after importation took place. Hence, the goods should be valued as per the reduced price, which was the price actually paid at the time of importation.

17. **Computation of assessable value of the imported machine**

Particulars	US \$
Cost of the machine at the factory	17,000.00
Transport charges up to port	850.00
Handling charges at the port	<u>85.00</u>
FOB	17,935.00
Freight charges up to India	1,700.00
Insurance charges @ 1.125% of FOB [Note 1]	<u>201.77</u>
CIF	19,836.77
CIF in Indian rupees @ ₹ 60/ per \$	₹ 11,90,206.13
Assessable Value (rounded off)	₹11,90,206

Notes:

- (1) Insurance charges have been included @ 1.125% of FOB value of the machine [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
 - (2) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
18. The facts of the case are similar to the case of *Bussa Overseas & Properties P. Ltd. v C.L. Mahar, Asstt. C.C., Bombay 2004 (163) E.L.T. 304 (Bom.)* [maintained by the Supreme Court] wherein the Bombay High Court observed that once goods are cleared for home consumption, they cease to be imported goods as defined in section 2(25) of the Customs Act, 1962. The goods lose its character of imported goods on being granted clearance for home consumption and thereafter the power to confiscate can be exercised only in cases where the order of clearance is revised and cancelled.

Therefore, in the given case the **confiscation of the goods by the Department is illegal.**

The Bombay High Court further observed that section 112(a) of the Customs Act, 1962 provides that any person who in relation to any goods, does or omits to do any act which act or omission would render such goods liable to confiscation under section 111, or abets the doing or omission of such act, is liable to a penalty.

The High Court held that the power to impose penalty could be exercised not only when the goods are available for confiscation but when such goods are liable to confiscation. The expression 'liable to confiscation' clearly indicates that the power to impose penalty can be exercised even if the goods are not available for confiscation. Mere fact that the importers secured such clearance and disposed of the goods and thereafter goods are not available for confiscation cannot divest Customs Authorities of the powers to levy penalty under section 112 of the Act.

Thus, **penalty levied by the Department in the given case is tenable in law.**

19. According to section 127B of the Customs Act 1962, the following conditions are to be fulfilled for filing an application for settlement of cases:

- (i) the applicant has filed a bill of entry, or a shipping bill, or a bill of export, or made a baggage declaration, or a label or declaration accompanying the goods imported or exported through post or courier, as the case may be, and in relation to such document or documents, a show cause notice has been issued to him by the proper officer.
- (ii) the additional duty accepted is more than ₹ 3 lakhs.
- (iii) the applicant has paid the additional amount of customs duty accepted by him alongwith interest due under section 28AA.
- (iv) the case is not pending with CESTAT or any Court.
- (v) the application does not relate to goods to which section 123 applies or to goods in relation to which any offence under the Narcotic Drugs and Psychotropic Substances Act, 1985 has been committed.
- (vi) the application is not for the interpretation of the classification of the goods under the Customs Tariff Act, 1975

Further, application before Settlement Commission can be made only when adjudication is pending.

20. The relevant dates provided under Explanation to section 26A(2) of the Customs Act, 1962 for purpose of refund of duty under specified circumstances are as follows:-

	Case	Relevant date
(i)	Goods exported out of India	Date on which the proper officer makes an order permitting clearance and loading of goods for exportation
(ii)	Relinquishment of title to the goods	Date of such relinquishment
(iii)	Goods being destroyed or rendered commercially valueless	Date of such destruction or rendering of goods commercially valueless

Note: GST law has been subject to frequent changes since its inception. Although many clarifications have been issued by way of FAQs or otherwise, many issues continue to arise on account of varying interpretations on several of its provisions. Therefore, alternate answers may be possible for the above questions depending upon the view taken.