PAPER – 8: INDIRECT TAX LAWS

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

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

(iii) All questions should be answered on the basis of the position of (i) GST law as amended by significant notifications/circulars issued till 31st October, 2018 and (ii) Customs law as amended by the Finance Act, 2018 and significant notifications/circulars issued till 31st October, 2018.

Question 1

(a) X, a manufacturer of roofing sheets, has total input tax credit of ₹ 1,60,000 as on 30-06-2018. He provides the following other information pertaining to June 2018:

(1) Input tax on raw materials in June is ₹ 40,000.

(2) Input tax on account of Harvest caterers in connection with his Housewarming is ₹ 10,000.

(3) Input tax on inputs contained in exempt supplies of ₹ 2 lakh in June is ₹ 20,000.

(4) GST paid on cosmetic and plastic surgery of CEO of the company is ₹ 30,000.

(5) Total turnover (interstate, taxable @ 18%) for the month of June 2018 is ₹ 60 lakh.

Compute the ITC available and his output tax liability for the month of June 2018. ***(10 Marks)***

(b) Determine taxable value of supply under the GST law with respect to each of the following independent services provided by the registered persons:

(1) Fees charged from office staff for in-house personality development course conducted by M.V. College - ₹ 10,000.

(2) Bus fees collected from students by M.V. College - ₹ 2,500 per month.

(3) Housekeeping service provided by M/s. Clean well to Himavarsha Montessori school, a play school - ₹ 25,000 per month.

(4) Info link supplied "Tracing Alphabets", an online educational journal, to students of UKG class of Sydney Montessori School - ₹ 2,000. ***(4 Marks)***

Answer

(a) Computation of ITC available and output tax liability of X for June 2018

Particulars	Amount (₹)
Output tax liability for June 2018	
GST on taxable turnover for June 2018	10,80,000

[Being inter-State supply, the same is leviable to IGST @ 18% = ₹ 60,00,000 × 18%]	
Add: Ineligible ITC [Refer working note below] [ITC out of common credit, attributable to exempt supplies shall be added to the output tax liability in terms of rule 42 of the CGST Rules, 2017]	1,290
Total output tax liability	10,81,290
Total ITC available as on 30.06.2018	1,60,000

Working Note:

Computation of ineligible ITC to be added to output tax liability

Particulars	**Amount (₹)**
Input tax on raw materials [Being used in the course or furtherance of business, input tax on raw materials is available as ITC and is credited to the Electronic Credit Ledger – Section 16(1) of the CGST Act, 2017]	40,000
Input tax on catering for housewarming [ITC on outdoor catering is blocked in terms of section 17(5) of the CGST Act, 2017 if the same is not used for making an outward supply of outdoor catering or as an element of a taxable composite/mixed supply. Hence, the same is not credited to the Electronic Credit Ledger – Rule 42 of the CGST Rules, 2017]	Nil
Input tax on inputs contained in exempt supplies [Not available as ITC and thus, not credited to the Electronic Credit Ledger in terms of rule 42 of the CGST Rules, 2017]	Nil
Input tax on cosmetic and plastic surgery of CEO of company [ITC on cosmetic and plastic surgery is blocked in terms of section 17(5) of the CGST Act, 2017 if the same are not used for making the same category of outward supply or as an element of a taxable composite/mixed supply. Hence, the same is not credited to the Electronic Credit Ledger – Rule 42 of the CGST Rules, 2017]	Nil
Total ITC credited to the Electronic Credit Ledger in terms of rule 42	40,000
Common credit [ITC credited to Electronic Credit Ledger (₹ 40,000) – ITC attributable to inputs and input services intended to be used exclusively for effecting taxable supplies (Nil) – Rule 42 of the CGST Rues, 2017.	40,000

It has been assumed that input tax on raw materials is attributable to both taxable and exempt activity]	
ITC attributable towards exempt supplies [Common Credit x (Aggregate value of exempt supplies during the tax period / Total turnover during the tax period) – Rule 42 of the CGST Rules, 2017 = ₹ 40,000 × ₹ 2,00,000/ ₹ 62,00,000 - (rounded off)]	**1,290**

Note: The information provided in the question leaves scope for multiple assumptions. The answer given above is based on one such assumption. Other assumptions can also be made to answer this question.

(b) **(1)** As per *Notification No. 12/2017 CT (R) dated 28.06.2017*, services provided by an educational institution to its students, faculty and staff are exempt from GST. Educational Institution has been defined to mean, *inter alia*, an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

Assuming that M.V. College provides education as a part of a curriculum for obtaining a qualification recognised by a law, the services provided by it to its staff by way of conducting personality development course would be exempt from GST.

(2) As assumed above that M.V. College provides education as a part of a curriculum for obtaining a qualification recognised by a law, the transport services provided by it to its students would be exempt from GST.

(3) As per *Notification No. 12/2017 CT (R) dated 28.06.2017,* services provided to an educational institution, by way of, *inter alia*, house-keeping services performed in such educational institution are exempt from GST. However, such an exemption is available only when the said services are provided to a pre-school education and a higher secondary school or equivalent.

Therefore, house-keeping services provided to *Himavarsha Montessori Play School* would be exempt from GST on the presumption that housekeeping services have been performed in such play school itself.

(4) As per *Notification No. 12/2017 CT (R) dated 28.06.2017,* services provided to an educational institution by way of supply of online educational journals or periodicals is exempt from GST. However, such an exemption is available only when the said services are provided to an educational institution providing education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force.

Therefore, supply of online journal to students of UKG class of Sydney Montessori School will not be exempt from GST. Hence, the taxable value in this case will be ₹ 2,000.

Question 2

(a) *Mr. George, a registered supplier of goods at Kerala who pays GST under regular scheme, has made the following transactions (exclusive of tax) during April 2018:*

Source	*Purchases (₹)*	*Sales (₹)*	*Tax Rate*
New Delhi	*5,00,000*	*10,00,000*	*18%*
Trivandrum	*2,50,000*	*8,00,000*	*9% each for SGST& CGST*
Total	*7,50,000*	*18,00,000*	

He has complied with all the conditions for availing the ITC and has the following ITC credit on 01-04-2018:

Source	*Taxes (₹)*	*Interest (₹)*	*Penalty (₹)*
CGST	*30,000*	*1500*	*500*
SGST	*30,000*	*1500*	*500*
IGST	*1,00,000*	*2000*	*500*

Compute the net CGST, SGST and IGST payable by Mr. George during April 2018 in cash?

(9 Marks)

(b) *Determine the total duties (duty, tax and cess) payable under Customs Act if Mr. Rao imported rubber from Malaysia at landed price of ₹ 25 lakh. It has been notified by the Central Government that share of imports of rubber from the developing country against total imports to India exceeds 5%. Safeguard duty notified on this product is 30%, rate of integrated tax u/s 3(7) is 12% and rate of basic customs duty is 10%.* ***(5 Marks)***

Answer

(a) Computation of net CGST, SGST and IGST payable in cash by Mr. George during April 2018

Particulars	**Amount (₹)**	**CGST @ 9% (₹)**	**SGST @ 9% (₹)**	**IGST @ 18% (₹)**
Sales made outside Kerala (New Delhi) – [Being inter-State sale, the same is liable to IGST.]	10,00,000			1,80,000
Sales made in Trivandrum	8,00,000	72,000	72,000	
Less: ITC available during April 2018 for set off [Refer Working Note Below]		(52,500) CGST (10,000) IGST	(52,500) SGST	(1,80,000)

Net tax liability payable in cash		**9,500**	**19,500**	**Nil**
Working Note: ITC available during April 2018 is computed as under:				
Opening balance of ITC		30,000	30,000	1,00,000
Purchases from New Delhi [Being inter-State purchase, IGST would have been paid on it.]	5,00,000			90,000
Purchases from Trivandrum	2,50,000	22,500	22,500	
Total input tax credit		**52,500**	**52,500**	**1,90,000**
Note: ITC of IGST has been utilized to pay IGST liability first and the balance ITC of IGST has been used to pay CGST liability. Interest and penalty paid are not available as credit.				

(b) Computation of total duties payable under the Customs Act

S. No.	Particulars	(₹)
1	Landed price	25,00,000
2	*Add:* Basic customs duty @ 10%	2,50,000
3	*Add:* Safeguard duty @ 30% on ₹ 25,00,000	7,50,000
4	*Add:* Social welfare surcharge (SWS) @ 10 % on ₹ 2,50,000 [While calculating SWS, safeguard duty is excluded]	25,000
5	*Add:* Integrated tax 12% of ₹ 35,25,000 (₹ 25,00,000 + ₹ 2,50,000 + ₹ 7,50,000 + ₹ 25,000) [Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable SWS]	4,23,000
6	**Total customs duties and tax payable** [₹ 2,50,000 + ₹ 7,50,000 + ₹ 25,000 + ₹ 4,23,000]	**14,48,000**

Question 3

(a) Flowchem Palanpur (Gujarat) has entered into a contract with R Refinery, Abu Road (Rajasthan) on 1st July, 2018 to supply 10 valves on FOR basis for its project, with following terms and conditions:

(1) List price per valve is ₹ 1,00,000, exclusive of taxes.

(2) The valves go through two stage third party inspection during manufacturing, as required by R Refinery. Cost of inspection of ₹ 15,000 is directly paid by R Refinery to testing agency.

(3) A special packing is to be done, as required by R Refinery. Cost of special packing is ₹ 10,000.

(4) After making supply of valves, Flowchem has to arrange for erection and testing at the site for commissioning. Cost of erection etc. is of ₹ 15,000.

(5) The goods were dispatched with tax invoice on 20th July, 2018 and they reached the destination at Abu-Road on 21st July, 2018. The lorry freight of ₹ 5,000 has been paid by R Refinery directly to lorry driver.

Assume the CGST and SGST rates to be 9% each and IGST rate to be 18%. Opening ITC of CGST is ₹ 20,000 and SGST is ₹ 20,000. All the given amounts are exclusive of GST, wherever applicable.

It has also undertaken following local transactions during the month of July, 2018 on which it has paid CGST and SGST as under:

S. No.	***Particulars***	***Amount paid CGST (₹)***	***Amount paid SGST (₹)***
1.	*It has availed services of works contractor to erect foundation for fixing the machinery to earth in the factory.*	*5,000*	*5,000*
2.	*It has laid pipe line upto the gate of its factory to bring the water to the factory for the purpose of production facility.*	*10,000*	*10,000*
3.	*For the purpose of smooth and convenient communication in its factory, it has installed telecommunication tower of a mobile company (with due permission), the mobile phones of which have been provided to staff for factory work.*	*5,000*	*5,000*
4.	*It has entered into an agreement with a travel company to provide home travel facility to its employees when they are on leave.*	*2,500*	*2,500*
5.	*It has entered into an agreement with a fitness centre to provide wellness services to its employees after office hours*	*2,000*	*2,000*

Work out the GST liability [CGST & SGST or IGST, as the case may be] of Flowchem Palanpur (Gujarat) for July, 2018 after making suitable assumptions, if any. ***(9 Marks)***

(b) Determine the Assessable value under customs law of an imported machine based on the following information :

(1) Cost of machine

(Contract price = ₹ 1,00,000, Revised price = ₹ 2,00,000, Negotiated & Agreed price = ₹ 1,50,000)

(2) *Freight from the factory of the exporter to the port for shipment* = ₹ 20,000

(3) *Freight incurred from port of entry to inland container depot* = ₹ 60,000

(4) *Handling charges paid for loading the machine in the ship* = ₹ 5,000

(5) *Demurrage charge paid at port* = ₹ 30,000

(6) *Buying commission paid by importer* = ₹ 5,000

(7) *Commission paid to local agent appointed by exporter* = ₹ 1,000

(8) *Vendor inspection charges (not required under contract)* = ₹ 8,000

(5 Marks)

Answer

(a) Computation of GST liability of Flowchem, Palanpur (Gujarat) for July 2018

Particulars	**CGST @ 9% (₹)**	**SGST @ 9% (₹)**	**IGST @ 18% (₹)**
Output tax liability [Working Note 1]			1,88,100
Less: ITC available for set off [Working Note 2]	25,000	25,000	
			(25,000) CGST
			(25,000) SGST
Net GST liability payable in cash			**1,38,100**

Working Note 1 - Computation of output tax liability of Flowchem for July 2018

Particulars	**Amount (₹)**
List price of 10 valves (₹ 1,00,000 x 10)[1]	10,00,000
Add: Amount paid by R Refinery to testing agency [Note 1]	15,000
Add: Special packing [Note 2]	10,000
Add: Erection and testing at site [Note 2]	15,000
Add: Freight [Note 3]	5,000
Value of taxable supply	10,45,000
IGST @ 18% [Note 4]	**1,88,100**

[1] *It has been assumed that the charges for inspection, special packing, erection and freight are in respect of 10 valves.*

Notes:

(1) As per section 15(2) of the CGST Act, 2017, any amount that the supplier is liable to pay in relation to a supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods shall be included in the value of supply.

Assuming that in the given case, arranging inspection was the liability of the supplier, the same should be included in the value of supply charges for the same, however, have been paid directly to the third party service provider by the recipient. Therefore,

(2) As per section 15(2) of the CGST Act, 2017, any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods shall be included in the value of supply.

(3) As per section 15(2) of the CGST Act, 2017, any amount that the supplier is liable to pay in relation to a supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods shall be included in the value of supply.

Since, in the given case, the supply contract is on FOR basis, payment of freight is the liability of supplier but the same has been paid by the recipient and thus, should be included in the value of supply.

(4) As per section 10(1) of the IGST Act, 2017, where the supply involves movement of goods, the place of supply is the location of the goods at the time at which the movement of goods terminates for delivery to the recipient, which in the given case is Abu Road (Rajasthan). Since the location of the supplier (Gujarat) and the place of supply (Rajasthan) are in two different States, the supply is an inter-State supply liable to IGST.

Working Note 2 - Computation of ITC available with Flowchem for the month of July 2018

Particulars	CGST (₹)	SGST (₹)
Opening input tax credit	20,000	20,000
Wok contract services availed for erecting foundation for fixing the machinery to the earth in the factory [Note 1]	5,000	5,000
Laying of pipe line upto the gate of factory [Note 2]	Nil	Nil
Installation of telecommunication towers [Note 2]	Nil	Nil
Services of travel company to provide home travel facility to employees Note 3]	Nil	Nil
Services of fitness centre to provide wellness services to employees [Note 3]	Nil	Nil
Total ITC	**25,000**	**25,000**

Notes:

(1) As per section 17(5) of the CGST Act, 2017, ITC on works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service, is blocked**.** Further, plant and machinery includes foundation and structural supports used to fix the machinery to earth.

(2) As per section 17(5) of the CGST Act, 2017, ITC on goods and/or services received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such and/or services are used in course/furtherance of business, is blocked. However, plant and machinery excludes pipelines laid outside the factory premises and telecommunication towers.

(3) As per section 17(5) of the CGST Act, 2017, ITC on travel benefits extended to employees on home travel concession and membership of health and fitness centre is blocked unless it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

(b) Computation of assessable value of the imported machine under customs law

Particulars	(₹)
Cost of machine [Note-1]	1,50,000
Add: Commission paid to local agent appointed by exporter [Note-4]	1,000
Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation - 20% of FOB [Note-2 & 5]	35,200
Add: Insurance @ 1.125 % of FOB [Note-3 & 5]	1,980
Assessable value	**1,88,180**

Notes:

1. As per section 14 of the Customs Act, 1962, the value of the imported goods is the transaction value, i.e. the price actually paid or payable for the goods, which in this case is the negotiated and agreed price.
2. The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are includible in the assessable value. Further, where such cost is not ascertainable, it shall be 20% of the free on board (FOB) value of the goods which would also include demurrage charges[2] [Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

[2] *It has been assumed that the demurrage charges have been paid at the port of importation.*

3. Where insurance cost is not ascertainable, it shall be 1.125% of the free on board (FOB) value of the goods [Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
4. Buying commission is not includible in the assessable value. However, commission paid to local agent appointed by exporter is includible since it's not a buying commission [Rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
5. FOB value will be sum total of cost of machine, freight from factory of exporter to port for shipment, handling charges paid for loading the machine in the ship and commission paid to local agent appointed by exporter, which will be ₹ 1,76,000 [(₹ 1,50,000 + ₹ 20,000 + ₹ 5000 + ₹ 1,000)].
6. Freight incurred from port of entry to Inland Container depot is not includible in assessable value [Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
7. Only the payments actually made as a condition of sale of the imported goods by the buyer to the seller are includible in the assessable value. Vendor inspection charges not required under contract are thus, not includible in the assessable value [Rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].

Note: In the above answer, demurrage charges have not been added separately in the cost of transport, loading, unloading and handling charges by taking a view that where unascertainable cost of transport etc. has been computed as 20% of FOB value, the same includes all elements of costs of transport. However, it is also possible to take an alternative view that actual demurrage charges should be separately added in the cost of transport by virtue of explanation to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 irrespective of whether the cost of transport has been computed as 20% of FOB value or on the basis of actual values.

Question 4

(a) *Wye Ltd. provides the following details of September 2018 for computation of refund claim under rule 89(4) of the CGST Rules, 2017. Compute the eligible claim under the said rule assuming that other conditions are fulfilled.*

Particulars	*Amount (₹)*
Opening balance of ITC	*5,00,000*
ITC availed during the period, which includes the claim for refund made of ₹ 5,00,000 eligible under rule 89(4A)/89(4B) of the CGST Rules, 2007	*25,00,000*
Zero rated supply of goods made during the period without payment of tax under bond/LUT, which include the supply of ₹ 1,00,00,000	*6,00,00,000*

for which refund claim is made under rule 89(4A)/89(4B) of the CGST Rules, 2017	
Supply of goods other than zero rated supply	*3,00,00,000*

(5 Marks)

(b) *XYZ carries goods from Vadodara to Pune. The value of the goods is ₹ 80,000 which are chargeable to tax @ 18% IGST and in transit, proper officer intercepted the same under section 68 of the CGST Act, and found contravention.*

Calculate the penalty payable under section 129 of CGST Act, 2017:

– *If XYZ comes forward for payment of tax and penalty,*

– *If XYZ does not come forward for payment of tax and penalty.* ***(4 Marks)***

(c) *Mahesh imported certain goods in May 2018 and 'into bond' bill of entry was presented on 14th May 2018 and goods were cleared from the port for warehousing. Assessable value on that date was US $ 1,00,000. The order permitting the deposit of goods in warehouse for 4 months was issued on 21st May 2018. Mahesh deposited the goods in warehouse on the same day but did not clear the imported goods even after the warehousing period got over on 21st September 2018. A notice was issued under section 72 of the Custom Act, 1962, demanding duty and interest. Mahesh cleared the goods on 14th October 2018. Customs duty paid on removal of the goods is ₹ 7,17,000. You are required to compute interest payable on such removal, explaining the provisions of the Customs Act, 1962.*

(5 Marks)

Answer

(a) As per rule 89(4) of the CGST Rules, 2017, in case of zero-rated supply of goods without payment of tax under bond/LUT, refund of ITC is granted as per the following formula:

$$\text{Refund Amount} = \frac{(\text{Turnover of zero-rated supply of goods} + \text{Turnover of zero-rated supply of services})}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

Net ITC excludes ITC availed for which refund is claimed under rule 89(4A)/(4B) of the CGST Rules, 2017. Further, turnover of zero-rated supply of goods and adjusted total turnover exclude turnover of supplies in respect of which refund is claimed under 89 (4A)/(4B).

Accordingly, turnover of zero rated supply of goods = ₹ 5,00,00,000 [₹ 6,00,00,000 – ₹ 1,00,00,000];

Net ITC = ₹ 20,00,000 [₹ 25,00,000 – ₹ 5,00,000] and

Adjusted Total Turnover = ₹ 8,00,00,000 [₹ 6,00,00,000 + ₹ 3,00,00,000 – ₹ 1,00,00,000]

Thus, maximum refund amount under rule 89(4)

= ₹ 20,00,000 × ₹ 5,00,00,000 / ₹ 8,00,00,000 = **₹ 12,50,000.**

(b) The penalty payable under section 129 of the CGST Act, 2017 is

(a) 100% of the tax payable on goods detained or seized where the owner of the goods comes forward for payment of tax and penalty;

(b) 50% of the value of the goods reduced by the tax amount paid thereon where the owner of the goods does not come forward for payment of tax and penalty.

By virtue of section 20 of the IGST Act, 2017 provisions of penalty payable under section 129 of the CGST Act, 2017 apply in case of IGST as well. However, where the penalty is leviable under the CGST Act, 2017 and the SGST/UTGST Act, 2017, the penalty leviable under the IGST Act, 2017 shall be the sum total of the said penalties. Therefore, penalty payable under IGST Act, 2017 is double the penalty payable under section 129 of the CGST Act, 2017.

Therefore, in the given case the penalty payable will be computed as under:

If XYZ[3] comes forward for payment of tax and penalty –

= ₹ 80,000 × 18% (9% CGST and 9% SGST/UTGST) × 100%

= ₹ 14,400

If XYZ does not come forward for payment of tax and penalty

= [₹ 80,000 × 100% (50% under CGST plus 50% under SGST/UTGST)] – [₹ 80,000 × 18%][4]

= ₹ 80,000 - ₹ 14,400

= ₹ 65,600

Note: In the above answer, the penalty payable has been computed in accordance with the provisions of the IGST Act, 2017 as tax chargeable on the goods is IGST. However, the question can also be answered on the basis of the provisions of section 129 of the CGST Act, 2017.

(c) As per section 61(2) of the Customs Act, 1962, if goods (not meant for being used in an 100% EOU, STP unit, EHTP unit) remain in a warehouse beyond a period of 90 days from the date on which the order permitting deposit in a warehouse is made, interest is payable @ 15% p.a., on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods[5].

Therefore, in the given case, interest payable will be computed as under:

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[3] *It has been assumed that XYZ is the owner of the goods.*

[4] *It has been assumed that tax has been paid on the goods*

[5] *It has been assumed that goods imported are not meant for being used in an 100% EOU, STP unit, EHTP unit.*

(i) Period of 90 days commencing from the date of order permitting deposit in a warehouse expires on - 19.08.2018.

(ii) No. of days for which interest shall be payable = 56 days [12 days of August + 30 days of September + 14 days of October]

(iii) Interest payable = ₹ $7,17,000 \times \frac{15}{100} \times \frac{56}{365}$ = ₹ 16,501 (rounded off)

Question 5

(a) When is an e-way bill required to be generated? ***(5 Marks)***

(b) Zindagi Life Insurance Company Limited (ZLICL) has collected premium from subscribers and it intimates the amount allocated for investment to subscribers at the time of collection of premium. During the month of September 2018, it has collected the following receipts:

Sl. No.	*Particulars*	*Amount*
1.	*Premium for only risk cover*	*25,00,000*
2.	*Premium from new sub*	*40,00,000*
3.	*Renewal Premium*	*80,00,000*
4.	*Single premium on an*	*1,00,00,000*

All amounts are exclusive of tax. You are required to compute the value of supply by ZLICL in accordance with GST laws.

(c) Z Ltd. a 100% export oriented unit cleared some goods to a unit in domestic traffic area and some irregularity was committed and therefore a show cause notice demanding custom duty was issued. Is the show cause notice defective in law? Express your views with reference to some decided case law, if any. ***(5 Marks)***

Answer

(a) As per rule 138 of the CGST Rules, 2017, whenever there is a movement of goods of consignment value exceeding ₹ 50,000:

(i) in relation to a supply; or

(ii) for reasons other than supply; or

(iii) due to inward supply from an unregistered person,

e-way bill needs to be generated prior to the commencement of transport of goods.

Further, in the following situations, e-way bill needs to be issued even if the value of the consignment is less than ₹ 50,000:

(i) Where goods are sent by a principal located in one State/Union territory to a job worker located in any other State/Union territory, the e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment.

(ii) Where specified handicraft goods are transported from one State/Union territory to another State/Union territory by a person who has been exempted from the requirement of obtaining registration under section 24 of the CGST Act,2017, the e-way bill shall be generated by the said person irrespective of the value of the consignment.

(b) As per rule 32(4) of the CGST Rules, 2017, the value of supply of services in relation to life insurance business, when the amount allocated for investment/savings on behalf of the policy holder is not intimated to the policy holder at the time of supply of service, is-

(i) in case of single premium annuity policies, 10% of single premium charged from the policy holder;

(ii) in all other cases, 25% of the premium charged from the policy holder in the first year and 12.5% of the premium charged from the policy holder in subsequent years;

(iii) in case the entire premium paid by the policy holder is only towards the risk cover in life insurance, the premium so paid.

Therefore, in the given case, the value of the services provided by ZLICL will be computed as under:

Computation of value of supply for ZLICL for the month of September 2018

Particulars	**Amount (₹)**
Premium for only risk cover	25,00,000
Premium from new subscribers 25% of ₹ 40,00,000	10,00,000
Renewal Premium 12.5% of ₹ 80,00,000	10,00,000
Single premium on annuity policy 10% of ₹ 1,00,00,000	10,00,000
Total value of supply	**55,00,000**

Note: The words in the first sentence of the question "……it intimates…." may be read as "…….does not intimate…..".

(c) In *CCEx & Cus. v. Suresh Synthetics in 2007 (216) ELT 662 (SC),* the Apex Court held that a show cause notice demanding customs duty from a 100% export oriented unit on clearance in the domestic tariff was defective as the duty leviable in that case was excise duty and not customs duty.

In the given case, IGST would be payable on clearances made by a 100% export oriented undertaking (EOU) to domestic tariff area (DTA). Therefore, applying the ratio of the above-mentioned case, the show cause notice demanding customs duty in this case would also be defective in law.

Note: It may be noted that a 100% EOU (other than gem and jewellery units) can sell finished goods manufactured by them which are freely importable under FTP in DTA, subject to fulfilment of positive NFE, on payment of applicable GST and compensation cess along with reversal of basic customs duty availed as exemption, if any on the inputs utilized for the purpose of manufacturing of such finished goods.

The above answer is based on the assumption that the irregularity committed by the 100% EOU is in respect of IGST payable on the clearances made to DTA. It is also possible to assume that the irregularity committed is in respect of reversal of basic customs duty; in that case the show cause notice would not be defective in law.

Question 6

(a) The supplier opting for composition levy need not maintain certain records as per rule 56(2) and 56(4) of the CGST Rules, 2017. Explain. ***(5 Marks)***

(b) Enumerate any four orders against which appeal cannot be filed under the CGST Act 2017.

(4 Marks)

(c) State export categories/sectors which are ineligible for duty credit scrip entitlement under Merchandise Exports from India Scheme (MEIS) of Foreign Trade Policy. ***(5 Marks)***

OR

Nirav Shah used some duty paid inputs for manufacture of the export products. However, for the rest of the inputs, he wants to apply for advance authorization. Can he do so? Advise him with reference to the Foreign Trade Policy 2015-2020.

Answer

(a) As per rule 56(2) and 56(4) of the CGST Rules, 2017, the supplier opting for composition levy need not maintain the following records:

(i) Accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.

(ii) Account, containing the details of tax payable (including tax payable under reverse charge), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

(b) As per section 121 of the CGST Act, 2017, no appeal shall lie against any decision taken or order passed by a CGST officer if such decision taken or order passed relates to any one or more of the following matters, namely:

(i) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer; or

(ii) an order pertaining to the seizure or retention of books of account, register and other documents; or

(iii) an order sanctioning prosecution under CGST Act; or

(iv) an order passed under section 80 of the CGST Act (payment of tax in instalments).

(c) The following export categories /sectors are ineligible for duty credit scrip entitlement under MEIS:-

(i) Supplies made from DTA units to SEZ units

(ii) Export of prescribed imported goods

(iii) Exports through trans-shipment, i.e., exports that are originating in third country but trans-shipped through India;

(iv) Deemed Exports;

(v) SEZ/ EOU /EHTP/ BTP /FTWZ products exported through DTA units;

(vi) Export products which are subject to minimum export price or export duty.

(vii) Exports made by units in FTWZ.

OR

(c) Yes, he can do so. In case of part duty free and part duty paid imports, both advance authorization and drawback are available.

Drawback can be obtained for any duty paid material, whether imported or indigenous, used in goods exported, as per prescribed drawback rates. Advance authorization can be used for importing duty free material.

Drawback allowed must be mentioned in the application for advance authorization. In such case, All Industry Brand Rates are not applicable. The manufacturer has to get specific brand rate fixed from the Commissioner for these exported goods.