

MOCK TEST PAPER
FINAL (NEW) COURSE: GROUP – II
PAPER 8: INDIRECT TAX LAWS
SUGGESTED ANSWERS

Division A

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|---|-----|-----|
| 1 | I | (d) |
| | II | (b) |
| | III | (a) |
| | IV | (d) |
| | V | (c) |
| 2 | I | (a) |
| | II | (b) |
| | III | (b) |
| | IV | (c) |
| 3 | | (c) |
| 4 | | (c) |
| 5 | | (d) |
| 6 | | (b) |
| 7 | | (c) |
| 8 | | (d) |
| 9 | | (a) |

Division B**1. Computation of net GST payable by ABC Company Ltd.**

Particulars	GST payable (₹)
Gross GST liability [Refer working note (2) below]	91,200
Less: Input tax credit [Refer working note (1) below]	<u>82,000</u>
Net GST liability	9,200

Working Notes:**(1) Computation of Input Tax Credit (ITC) available with ABC Company Ltd. in the month of November, 2019**

Particulars	GST (₹)
Health insurance of factory employees [Note – 1]	20,000
Raw material received in factory [Note – 2]	Nil
Work's contractor's service used for installation of plant and machinery [Note -3]	12,000
Manufacturing machinery directly sent to job worker's premises under challan [Note -4]	50,000

Purchase of car used by director for business meetings only [Note -5]	Nil
Outdoor catering service availed for business meetings [Note -6]	Nil
Total ITC available	82,000

Notes:

- ITC of health insurance is available in the given case in terms of proviso to section 17(5)(b) of the CGST Act, 2017 since it is obligatory for employer to provide health insurance to its employees under Factory Act -.
- Where the goods against an invoice are received in lots/ installments, ITC is allowed upon receipt of the last lot/ installment vide first proviso to section 16(2) of the CGST Act, 2017. Therefore, ABC Company Ltd. will be entitled to ITC of raw materials on receipt of second installment in December, 2019.
- Section 17(5)(c) of CGST Act, 2017 provides that ITC on works contract services is blocked when supplied for construction of immovable property (other than plant and machinery) except when the same is used for further supply of works contract service.
Though in this case, the works contract service is not used for supply of works contract service, ITC thereon will be allowed since such services are being used for installation of plant and machinery.
- ITC on capital goods directly sent to job worker's premises under challan is allowed in terms of section 19(5) of CGST Act, 2017 read with rule 45(1) of CGST Rules, 2017.
- Section 17(5)(a) of CGST Act, 2017 provides that motor vehicle for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), except when they are used for making taxable supply of-
 - further supply of such vehicles,
 - transportation of passengers,
 - imparting training on driving, flying, navigating such vehicles and
 Since ABC Company Ltd is a supplier of machine and it does not use the car for transportation of goods or any other use as specified, ITC thereon will not be available.
- Section 17(5)(b)(i) of CGST Act, 2017 provides that ITC on outdoor catering is blocked except where the same is used for making further supply of outdoor catering or as an element of a taxable composite or mixed supply.
Since ABC Company Ltd is a supplier of machine, ITC thereon will not be available.

(2) Computation of gross GST liability

	Value received (₹)	Rate of GST	GST payable (₹)
Hiring receipts for machine	5,25,000	12%	63,000
Service charges for supply of manpower operators	2,35,000	12%	28,200
Gross GST liability			91,200

Note:

Since machine is always hired out along with operators and operators are supplied only when the machines are hired out, it is a case of composite supply, wherein the principal supply is the hiring out of machines [Section 2(30) of the CGST Act, 2017 read with section 2(90) of that Act]. Therefore, service of supply of manpower operators will also be taxed at the rate applicable for

hiring out of machines (principal supply), which is 12%, in terms of section 8(a) of the CGST Act, 2017.

2. (a) Computation of gross value of taxable supply on which GST is to be paid by Mr. Nagarjun

Particulars	Amount (₹)
Supplies on which Mr. Nagarjun is liable to pay GST under forward charge	
Amount charged for service provided to recognized sports body as selector of national team [Note 1]	50,000
Commission received as an insurance agent from insurance company [Note 2]	Nil
Amount charged as business correspondent for the services provided to the urban branch of a nationalised bank with respect to savings bank accounts [Note 3]	15,000
Services provided to foreign diplomatic mission located in India [Note 4]	28,000
Funeral services [Note 5]	Nil
Supplies on which Mr. Nagarjun is liable to pay GST under reverse charge	
Services received from GTA [Note 6]	<u>45,000</u>
Value of taxable supply on which GST is to be paid	1,38,000

Notes:

- (1) Services provided to a recognized sports body by an individual only as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt from GST vide Exemption *Notification No. 12/2017 CT(R) dated 28.06.2017*. Thus, service provided as selector of team is liable to GST.
- (2) Though commission for providing insurance agent's services is liable to GST, the tax payable thereon is to be paid by the recipient of service i.e., insurance company, under reverse charge in terms of *Notification No. 13/2017 CT(R) dated 28.06.2017*. Thus, Mr. Nagarjun will not be liable to pay GST on such commission.
- (3) Services provided by business correspondent to a banking company with respect to accounts in its rural area branch are exempt from GST vide Exemption *Notification No. 12/2017 CT(R) dated 28.06.2017*. Thus, such services provided in respect of urban area branch will be taxable.
- (4) While services provided by a foreign diplomatic mission located in India are exempt from GST vide Exemption *Notification No. 12/2017 CT(R) dated 28.06.2017*, services provided to such mission are taxable.
- (5) Funeral services being covered in entry 4 of Schedule III to CGST Act, 2017 are not a supply and thus, are outside the ambit of GST.
- (6) GST on services provided by a GTA to *inter alia* a registered person is payable by the recipient of service i.e., the registered person, under reverse charge in terms of *Notification No. 13/2017 CT(R) dated 28.06.2017*. The turnover of previous year is irrelevant in this case.

(b) Computation of total customs duty and integrated tax payable

Particulars	₹
Assessable value (\$ 10,100 x 72) [Note-1]	7,27,200.00
Add: Basic custom duty @ 10% [Note-2]	72,720.00
Add: Social Welfare Surcharge @ 10% on ₹ 72,720	7,272.00
Total	8,07,192.00
Add: Integrated tax @ 12% [Note-3]	96,863.04
Total Customs duty and integrated tax payable (rounded off to nearest rupee)	1,76,855

Notes:

1. Rate of exchange notified by CBIC as prevalent on the date of filing of bill of entry would be the applicable rate [Proviso to section 14(1) of Customs Act, 1962].
 2. Rate of duty would be the rate as prevalent on the date of filing of bill of entry or entry inwards whichever is later. [Proviso to section 15 of the Customs Act, 1962].
 3. Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable social welfare surcharge.
3. (a) The supply between Raman Row (Mumbai, Maharashtra) and Nero Enterprises (Kolkata, West Bengal) is a bill to ship to supply where the goods are delivered by the supplier [Raman Row] to a recipient [Fabricana (Aurangabad, Maharashtra)] or any other person on the direction of a third person [Nero Enterprises]. In such a case, it is deemed that the said third person has received the goods and the place of supply of such goods is the principal place of business of such person [Section 10(1)(b) of IGST Act, 2017].

Accordingly, the place of supply between Raman Row (Mumbai, Maharashtra) and Nero Enterprises (Kolkata, West Bengal) will be Kolkata and thus, it will be an inter-State supply liable to IGST. Hence, Raman Row should charge 18% IGST on ₹ 12,00,000, which comes out to ₹ 2,16,000.

This situation involves another supply between Nero Enterprises (Kolkata, West Bengal) and Fabricana (Aurangabad, Maharashtra). The place of supply in this case will be the location of the goods at the time when the movement of goods terminates for delivery to the recipient i.e., Aurangabad, Maharashtra in terms of section 10(1)(a) of IGST Act, 2017. Thus, being an inter-State supply, the same will also be chargeable to IGST.

- (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.
- Since 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) Since 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 as 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.

(c) Computation of customs duty and integrated tax payable thereon

Particular	Amount (₹)
Assessable value of sodium nitrite imported	30,00,000
Add: Basic custom duty @ 10% (₹ 30,00,000 × 10%)	3,00,000
Safeguard duty @ 30% on ₹ 30,00,000 [Safeguard duty is imposable in the given case since share of imports of sodium nitrite from the developing country is more than 3% of the total imports of sodium nitrite into India (Proviso to section 8B(1) of the Customs Tariff Act, 1975)]	9,00,000
Social welfare surcharge @ 10% x ₹ 3,00,000	<u>30,000</u>
Total	42,30,000
Integrated tax (₹ 42,30,000 × 12%) [Note]	5,07,600
Total customs duty payable (₹ 3,00,000 + ₹ 9,00,000+ ₹ 30,000+ ₹ 5,07,600)	17,37,600

Note: It has been clarified by DGFT vide Guidance note that value for calculation of integrated tax shall also include safeguard duty amount.

4. (a) Section 22(1) of the CGST Act, 2017 provides that every supplier is liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds the threshold limit.

Section 25(1) of the CGST Act, 2017 provides that a supplier whose aggregate turnover in a financial year exceeds the threshold limit in a State/UT is liable to apply for registration within 30 days from the date of becoming liable to registration (i.e., the date of crossing the threshold limit).

Where the application is submitted within the said period, the effective date of registration is the date on which the person becomes liable to registration vide rule 10(2) of the CGST Rules, 2017; otherwise it is the date of grant of registration in terms of rule 10(3) of the CGST Rules, 2017.

In the given case, since Pari & Sons have applied for registration on 27.08.2019 which is within 30 days from the date of becoming liable to registration (10.08.2019), its effective date of registration is 10.08.2019.

Further, every registered person who has been granted registration with effect from a date earlier than the date of issuance of registration certificate to him, may issue revised tax invoices in respect of taxable supplies effected during this period within one month from the date of issuance

of registration certificate [Section 31(3)(a) of the CGST Act, 2017 read with rule 53(2) of CGST Rules, 2017].

In view of the same, Pari & Sons may issue revised tax invoices against the invoices already issued during the period between effective date of registration (10.08.2019) and the date of issuance of registration certificate (01.09.2019), on or before 01.10.2019.

- (b) As per section 19(5) of the CGST Act, 2017, the principal is entitled to take input tax credit of capital goods sent for job work even if the said goods are directly sent to job worker.

Further, section 19(6) of the CGST Act, 2017 stipulates that where the capital goods sent directly to a job worker are not received back by the principal within a period of 3 years of the date of receipt of capital goods by the job worker, it shall be deemed that such capital goods had been supplied by the principal to the job worker on the day when the said capital goods were received by the job worker.

In view of aforementioned provisions, Bedi Manufacturers are eligible to retain the input tax credit availed by them on the capital goods.

However, if the capital goods are not returned by Rajesh Enterprises within 3 years from 15.04.2019 (date of receipt of capital goods by job worker), it shall be deemed that such capital goods had been supplied by Bedi Manufacturers to Rajesh Enterprises on 15.04.2019 and Bedi Manufacturers shall be liable to pay the tax along with applicable interest.

However, there is no time limit for return of moulds and dies, jigs and fixtures or tools sent out to a job worker for job work [Section 19(7) of the CGST Act, 2017].

However, if Rajesh Enterprises does not return the jigs and fixtures to Bedi Manufacturers, it shall not be considered as a supply of jigs and fixtures to Rajesh Enterprises by Bedi Manufacturers. In this case also, Bedi Manufacturers will be eligible to retain the input tax credit availed by them.

- (c) The facts of the case are similar to the case of *BPL Display Devices Ltd. v. CCE., Ghaziabad (2004) 174 ELT 5 (SC)* wherein the Supreme Court has held that the benefit of the notifications cannot be denied in respect of goods which are intended for use for manufacture of the final product but cannot be so used due to shortage or leakage.

The Apex Court has held that no material distinction can be drawn between loss on account of leakage and loss on account of damage. The benefit of said exemption cannot be denied as inputs were intended for use in the manufacture of final product but could not be so used due to shortage/leakage/damage. It has been clarified by the Supreme Court that words "for use" have to be construed to mean "intended for use".

Therefore, the importer can claim the benefit of the notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

5. (a) As per section 75 of the CGST Act, 2017, the interest on the tax short paid has to be paid whether or not the same is specified in the order determining the tax liability.

Thus, in view of the same, Mr. Vijay Kumar Sharma will have to pay the interest even though the same is not specified in the final adjudication order. His contention that he is not liable for interest because he deposited all the amount specified in the final adjudication order is not valid in law.

However, the amount of interest demanded in the order cannot be in excess of the amount specified in the notice.

Therefore, in the given case, Department cannot demand the interest in excess of the amount specified in the notice, which will be ₹ 50,000.

- (b) Where the aggregate turnover of a supplier making supply of services from a State/UT exceeds ₹20 lakh in a financial year, he is liable to be registered in the said State/UT. The said supplier must apply for registration within 30 days from the date on which he becomes liable to registration. However, in the given case, although Shagun became liable to registration on 25.01.2020, she didn't apply for registration within 30 days of becoming liable to registration.

Section 122(1)(xi) of the CGST Act, 2017 stipulates that a taxable person who is liable to be registered under the CGST Act, 2017 but fails to obtain registration shall be liable to pay a penalty of:

- (a) ₹ 10,000
or
(b) an amount equivalent to the tax evaded [₹ 1,26,000 in the given case],
whichever is higher.

Thus, the amount of penalty that can be imposed on Shagun is ₹ 1,26,000.

- (c) Mr. N's invoices show that he collected duty of ₹ 250 per unit on 1,000 items. However, he paid duty on 200 items more. This payment, in the normal course, was made before the order permitting the clearance of the goods. It would be evident from the bill of entry that the amount paid was more than the amount of duty assessed. Thus, Mr N's case falls within the exception to unjust enrichment listed at clause (g) of the first proviso to section 27(2). He will be able to refute the charge of unjust enrichment. Furthermore, clause (a) of the same sub-section provides that the doctrine of unjust enrichment will not apply to the refund of duty and interest, if any, paid on such duty if such amount is relatable to the duty and interest paid by the importer/exporter, if he had not passed on the incidence of such duty and interest to any other person. Mr. N's invoices will show how much duty he collected from his customers, hence he may be covered by this clause also to escape the bar of unjust enrichment.

6. (a) As per section 54(3) of the CGST Act, 2017, a registered person may claim refund of unutilised input tax credit at the end of any tax period in the following cases:

- (i) **Zero rated supplies made without payment of tax:** Supply of goods or services or both to an SEZ developer/unit or export of goods or services or both qualifies as zero rated supplies. However, refund of unutilized input tax credit shall not be allowed if:

- the goods exported out of India are subjected to export duty;
- the supplier of goods or services or both avails of drawback in respect of CGST or claims refund of the IGST paid on such supplies.

- (ii) **Accumulated ITC on account of inverted duty structure:** Where the credit has accumulated on account of 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.

- (b) Section 69 of CGST Act, 2017 provides following safeguards to a person who is placed under arrest:

- (a) If a person is arrested for a cognizable offence, he must be informed of the grounds of arrest and be produced before a magistrate within 24 hours.
- (b) If a person is arrested for a non-cognizable offence, he shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate.
- (c) All arrest must be in accordance with the provisions of the Code of Criminal Procedure relating to arrest in terms of section 69(3) of CGST Act, 2017.

- (c) DFIA is issued to allow duty free import of inputs, oil and catalyst which are required for production of export product. The goods imported are exempt ONLY from basic customs duty.

DFIA shall be issued on post export basis for products for which SION have been notified. Separate DFIA shall be issued for each SION and each port.

No DFIA shall be issued for an export product where SION prescribes 'Actual User' condition for any input.

Holder of DFIA has an option to procure the materials/ inputs from indigenous manufacturer/STE in lieu of direct import against Advance Release Order (ARO)/ Invalidation letter/ Back to Back Inland Letter of Credit. However, DFIA holder may obtain supplies from EOU/EHTP/BTP/STP/SEZ units, without obtaining ARO or Invalidation letter.

Drawback as per rate determined and fixed by Customs authority shall be available for duty paid inputs, whether imported or indigenous, used in the export product.

DFIA or the inputs imported against it can be transferred after the fulfillment of the export obligation. A minimum 20% value addition is required for issuance of DFIA except for items in gems and jewellery sector.