

Test Series: May, 2020

MOCK TEST PAPER 1
FINAL (NEW) COURSE: GROUP – II
PAPER 8: INDIRECT TAX LAWS
SUGGESTED ANSWERS

Division A

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Division B**1. Computation of net GST payable by M/s XYZ**

Particulars	GST payable (Rs.)
Gross GST liability [Refer Working Note 1 below]	2,63,400
Less: Input tax credit [Refer Working Note 2 below]	2,00,000
Net GST liability	63,400

Working Notes**(1) Computation of gross GST liability**

Particulars	Value received (Rs.)	Rate of GST	GST payable (Rs.)
Hiring charges for excavators	18,00,000	12%	2,16,000
Service charges for supply of manpower for operation of excavators [Refer Note 1]	20,000	12%	2,400

Service charges for soil testing and seismic evaluation [Refer Note 2]	2,50,000	18%	45,000
Gross GST liability			2,63,400

Notes:

- (i) Since the excavators are invariably hired out along with operators and excavator operators are supplied only when the excavator is hired out, it is a case of composite supply under section 2(30) of the CGST Act, 2017 wherein the principal supply is the hiring out of the excavator.

As per section 8(a) of the CGST Act, 2017, the composite supply is treated as the supply of the principal supply. Therefore, the supply of manpower for operation of the excavators will also be taxed at the rate applicable for hiring out of the excavator (principal supply), which is 12%.

- (ii) Soil testing and seismic evaluation services being independent of the hiring out of excavator will be taxed at the rate applicable to them, which is 18%.

(2) Computation of input tax credit available for set off

Particulars	GST paid (Rs.)	ITC available (Rs.)
Annual maintenance services for excavators [Refer Note 1]	1,00,000	1,00,000
Health insurance for excavator operators [Refer Note 2]	11,000	-
Scientific and technical consultancy [Refer Note 1]	1,00,000	<u>1,00,000</u>
Total input tax credit available		2,00,000

Notes:

- (i) Excavators are special purpose vehicles whose credit is not restricted under section 17(5)(a), therefore, ITC on annual maintenance service for excavators shall be allowed in terms of section 17(5)(ab). Further, section 17(5)(d) of the CGST Act, 2017 blocks credit on goods and/or services received by a taxable person for construction of an immovable property on his own account. Here, though the excavators are used for building projects, the same are not used by M/s XYZ on its own account for construction of immovable property; instead they are used for outward taxable supply of hiring out of machinery.

Therefore, the annual maintenance service for the excavators does not get covered by the bar under section 17 of the CGST Act, 2017 and the credit thereon will be available. The same applies for scientific & technical consultancy for construction projects because in this case also, the service is used for providing the outward taxable supply of soil testing and seismic evaluation service and not for construction of immovable property.

- (ii) Section 17(5)(b)(i) of the CGST Act, 2017 allows input tax credit on health insurance only where an inward supply of such services is used by a registered person for making an outward taxable supply of the same category of goods or services or both or as an element of a taxable composite or mixed supply or where it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

In the given case, it is assumed that it is not obligatory for employer to provide health insurance to its employees under any law for the time being in force, therefore the credit thereon will not be allowed.

2. (a) Computation of Input Tax Credit (ITC) available with PQR Ltd. for the month of April, 20XX

Particulars	Rs.
Life Insurance premium paid by the company on the life of factory employees [Note 1]	Nil
Raw materials purchased [Note 2]	Nil
Raw materials used for zero rated outward supply [Note 3]	50,000
Work contractor's service [Note 4]	30,000
Capital goods purchased wherein the depreciation is claimed on the tax component [Note 5]	<u>Nil</u>
Total ITC available	<u>80,000</u>

Notes:

- (1) ITC on life insurance service is available only when it is obligatory for an employer to provide said services to its employees under any law for the time being in force. In the absence of any information, it is assumed that such services are not obligatory for the employer in the instant case and thus, the ITC thereon is blocked [Proviso to section 17(5)(b) of the CGST Act, 2017].
- (2) ITC cannot be taken since invoice is missing and delivery challan is not a valid document to avail ITC [Section 16 of the CGST Act, 2017]
- (3) ITC can be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply – [Section 16 of the IGST Act, 2017]
- (4) ITC is blocked on works contract services when supplied for construction of an immovable property. However, "construction" includes only that repairs which are capitalized along with the said immovable property. In this case, since repairs of building is debited to P & L Account, the same does not amount to 'construction' and hence ITC thereon is available - [Section 17(5)(c) of the CGST Act, 2017].
- (5) ITC is not available when depreciation has been claimed on the tax component of the cost of capital goods under the Income-tax Act - [Section 16(3) of the CGST Act, 2017]
- (6) The principal is entitled to take ITC of inputs sent for job work even if the said inputs are directly sent to job worker. However, where said inputs are not received back by the principal within a period of 1 year of the date of receipt of inputs by the job worker, it shall be deemed that such inputs had been supplied by the principal to the job worker on the day when the said inputs were received by the job worker – [Section 19 of the CGST Act, 2017].

Hence, the ITC taken by PQR Company Ltd. in September, 20XX is valid and since 1 year period has yet not lapsed in April, 20XX, there will be no tax liability on such inputs.

(b) Computation of assessable value

Particulars	Amount
CIF value	5000 US \$
Less: Freight	1500 US \$
Less: Insurance	<u>500 US \$</u>
Therefore, FOB value	<u>3000 US \$</u>
Assessable value for Customs purpose	
FOB value	3000 US \$

Add: Freight (20% of FOB value) [Note 1]	600 US \$
Add: Insurance (actual)	<u>500 US \$</u>
CIF for customs purpose	4100 US \$
Exchange rate as per CBIC [Note 2]	Rs. 70 per US \$
Assessable value (Rs. 70 x 4100 US \$)	Rs. 2,87,000

Notes:

1. If the goods are imported by air, the freight cannot exceed 20% of FOB price [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
 2. Rate of exchange determined by CBIC is considered [clause (a) of the explanation to section 14 of the Customs Act, 1962].
3. (a) As per section 13(2) of the IGST Act, 2017, in case where the location of the supplier of services or the location of the recipient of services is outside India, the place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services. Sub-sections (3) to (13) provide the mechanism to determine the place of supply in certain specific situations.

The given case does not fall under any of such specific situations and thus, the place of supply in this case will be determined under sub-section (2) of section 13. Thus, the place of supply of services in this case is the location of recipient of services i.e., USA.

As per section 2(6) of the IGST Act, 2017, export of services means the supply of any service when,—

- (a) the supplier of service is located in India;
- (b) the recipient of service is located outside India;
- (c) the place of supply of service is outside India;
- (d) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- (e) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Since all the above five conditions are fulfilled in the given case, the same will be considered as an export of service.

- (b) In terms of section 12(2) of the CGST Act, the time of supply of goods is the earlier of the date of issue of invoice/last date on which the invoice is required to be issued or date of receipt of payment. However, Notification No. 66/2017 CT dated 15.11.2017 specifies that a registered person (excluding composition supplier) has to pay GST on the outward supply of goods at the time of supply as specified in section 12(2)(a) of the CGST Act, 2017, i.e. date of issue of invoice or the last date on which invoice ought to have been issued in terms of section 31.

As per section 31(1), the invoice in case of supply of goods needs to be issued either before or at the time of removal/delivery of goods.

In this case, the invoice is issued before the removal of the goods and is thus, within the time limit prescribed under section 31(1). Therefore, time of supply is the date of issue of invoice, which is 16th April, 20XX.

(c) Section 9A(3) of the Customs Tariff Act provides that the anti-dumping duty can be imposed with retrospective effect provided the Government is of the opinion that-

- (i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and
- (ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of the imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied.

The duty can be levied retrospectively by issuing a notification but not beyond 90 days from the date of notification.

Thus, Dream & Desire Industries would succeed in its contention if all the above conditions are not satisfied.

4. (a) **Computation of aggregate turnover of Rajesh Dynamics:**

Particulars	Rs.
Supply of petrol at Chennai, Tamil Nadu [Being a non-taxable supply, it is an exempt supply and thus, includible in aggregate turnover vide section 2(6) of CGST Act, 2017]	18,00,000
Value of inward supplies on which tax is payable on reverse charge basis	Nil
Supply of transformer oil at Chennai, Tamil Nadu	2,00,000
Value of branch transfer from Chennai, Tamil Nadu to Bengaluru, Karnataka without payment of consideration [Being a taxable supply, it is includible in aggregate turnover]	1,50,000
Value of taxable supplies of Manipur Branch	11,50,000
Aggregate turnover	33,00,000

Rajesh Dynamics is not liable to be registered in Chennai, Tamil Nadu, if his aggregate turnover in a financial year does not exceeds Rs. 40 lakh. However, since Rajesh Dynamics also makes supplies from Manipur, a specified Special Category State, the threshold exemption gets reduced to Rs. 10 lakh in terms of section 22(1) of CGST Act, 2017 [Notification No.10/2019-CT dated. 07.03.2019].

Rajesh Dynamics' argument that it is not liable to registration since the threshold exemption of Rs. 40 lakh is not being crossed either at Chennai, Tamil Nadu, Bengaluru, Karnataka or Manipur is not correct as firstly, the aggregate turnover to be considered in its case is Rs. 10 lakh and not Rs. 40 lakh and secondly, the same is computed on all India basis and not State-wise.

Further, Rajesh Dynamics is also wrong in believing that aggregate turnover is computed only for the purpose of determining the eligibility limit for composition levy since the aggregate turnover is required for determining the eligibility for both registration and composition levy.

Further, Rajesh Dynamics is compulsorily required to register under section 24 of the CGST Act, 2017 irrespective of the turnover limit as it is liable to pay tax on inward supplies under reverse charge and it also makes inter-State taxable supply.

- (b) 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 = Rs. 5,00,00,000 [Rs. 6,00,00,000 – Rs. 1,00,00,000];

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

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

Thus, maximum refund amount under rule 89(4)

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

- (c) This issue has been addressed by the Supreme Court in the case of *Commissioner of Customs v. Tullow India Operations Ltd. (2005) 189 ELT 401 (SC)*. The Apex Court has observed that if a condition is not within the power and control of the importer and depends upon the acts of public functionaries, non-compliance of such a condition, subject to just exceptions cannot be held to be a condition precedent which would disable it from obtaining the benefit for all times to come.

In the given case also the certificate has not been granted within a reasonable time. Therefore, in view of the above-mentioned judgement, the importer M/s Pure Energy Ltd. cannot be blamed for the lapse by the authorities. The Directorate General of Hydrocarbons is under the Ministry of Petroleum and Natural Gas and such a public functionary is supposed to grant the essentiality certificate within a reasonable time so as to enable the importer to avail of the benefits under the notification.

5. (a) Due date for payment of tax for the month of April, 20XX is 20.05.20XX.

As per section 73 of the CGST Act, 2017, where self-assessed tax is not paid within 30 days from due date of payment of such tax, penalty equivalent to 10% of tax or Rs. 10,000, whichever is higher, is payable. Thus, option to pay tax within 30 days of issuance of SCN to avoid penalty, is not available in case of self-assessed tax.

Since in the given case, Mr. Anant Kumar Gupta has not paid the self-assessed tax within 30 days of due date [i.e. 20.05.20XX], penalty equivalent to:

- (i) 10% of tax, viz., Rs. 9,000 (10% of Rs. 90,000) or
(ii) Rs. 10,000,

whichever is higher, is payable by him. Thus, penalty payable is Rs. 10,000.

Hence, the stand taken by the Department that penalty will be levied on Mr. Anant Kumar Gupta is correct, but the amount of penalty Rs. 45,000 is not correct.

- (b) As per section 117(1) of the CGST Act, 2017, an appeal against orders passed by the State Bench or Area Benches of the Tribunal lies to the High Court if the High Court is satisfied that such an appeal involves a substantial question of law.

However, appeal against orders passed by the National Bench or Regional Benches of the Tribunal lies to the Supreme Court and not High Court. As per section 109(5) of the Act, only the

National Bench or Regional Benches of the Tribunal can decide appeals where one of the issues involved relates to the place of supply.

Since the issue involved in Mr. A's case relates to place of supply, the appeal in his case would have been decided by the National Bench or Regional Bench of the Tribunal. Thus, Mr. A will have to file an appeal with the Supreme Court and not with the High Court.

- (c) Acme Sales received an order finalizing provisional assessment on the basis of a verification report, and requiring payment of Rs. 12 Lakhs. They did not contest this order, but made the payment, and allowed the appeal period of sixty days to lapse. After appeal became time-barred they filed a claim for refund in which they challenged the order. This was a backdoor method of seeking relief against the order; it also asked an officer of the same rank to review the order passed; and it sought to bypass the time limitation for appeal by presenting the appeal as a claim for refund. The Supreme Court has held, in the case of *Priya Blue Industries Limited, 2004 (172) ELT 145 (SC)*, that such a refund claim is not permissible for all these reasons. A person who is aggrieved with an assessment order cannot seek refund without filing an appeal against the assessment order.

6. (a) As per rule 138 of the CGST Rules, 2017, whenever there is a movement of goods of consignment value exceeding Rs. 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 Rs. 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) Audit by Tax authorities under section 65 of the CGST Act, 2017:-

- 1 The Commissioner or any officer authorized by him can undertake audit of any registered person for such period, at such frequency and in such manner as may be prescribed.
- 2 The audit shall be completed within a period of 3 months from the date of commencement of audit. However, the Commissioner can extend this period by a further period upto maximum 6 months.

Special Audit under section 66 of the CGST Act, 2017:-

- 1 The registered person can be directed to get his records including books of account examined and audited by a chartered accountant or a cost accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case. Any officer not below the rank of Assistant Commissioner may order special audit, with the prior approval of the Commissioner, if he is of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits.
- 2 Audit is to be completed within 90 days. However, the Assistant Commissioner can extend this period by a further period of 90 days.

(c) Following issues are covered under FTP 2015-2020 -

- ◆ General provisions regarding import and export of goods – Chapter 2 of FTP 2015-2020.
- ◆ Export from India Scheme [MEIS and SEIS] to encourage exports of specified goods to specified countries and also export of services – Chapter 3 of FTP 2015-2020.
- ◆ Duty Exemption and Remission Schemes [Advance Authorisation, DFIA and Duty Drawback Scheme and duty remissions schemes under GST law] to enable exporters to import inputs without payment of customs duty – Chapter 4 of FTP 2015-2020.
- ◆ Export Promotion Capital Goods (EPCG) scheme [to obtain capital goods without payment of customs duty] – Chapter 5 of FTP 2015-2020.
- ◆ EOU/EHTP/STP and BTP schemes – Chapter 6 of FTP 2015-2020.
- ◆ Deemed Exports – Chapter 7 of FTP 2015-2020.
- ◆ Quality Complaints and Trade Disputes – Chapter 8 of FTP 2015-2020.

Policy in respect of Special Economic Zones [SEZ] is contained in SEZ Act, 2005 and Rules.