

## PAPER – 8: INDIRECT TAX LAWS

1. Question paper comprises of 6 questions. Answer Question No. 1 which is compulsory and any 4 out of the remaining 5 questions.
2. Working notes should form part of the answer.
3. All the questions should be answered on the basis of position of (i) GST laws as amended by significant notifications/circulars issued till 30<sup>th</sup> April, 2020 and (ii) customs law as amended by the Finance (No. 2) Act, 2019 and significant notifications/circulars issued till 30<sup>th</sup> April, 2020.

### Question 1

Cash and Credit Ltd. is registered with GST Department in the State of Maharashtra. It has its registered office at Mumbai. It is engaged in the business of production, manufacture and supply of fresh fruits, vegetables, fresh juices and fruit pulp etc. It has made the following intra-State supplies during the month of April, 2020:

| S. No. | Particular             | Amount in lakh (₹) |
|--------|------------------------|--------------------|
| 1.     | Fresh fruits           | 1100               |
| 2.     | Vegetables             | 1100               |
| 3.     | Fresh juices           | 2000               |
| 4.     | Carbonated fruit drink | 200                |

GST rate as applicable on above supplies is as follows:

| S. No. | Particular             | CGST | SGST | IGST |
|--------|------------------------|------|------|------|
| 1.     | Fresh fruits           | Nil  | Nil  | Nil  |
| 2.     | Vegetables             | Nil  | Nil  | Nil  |
| 3.     | Fresh juices           | 6%   | 6%   | 12%  |
| 4.     | Carbonated fruit drink | 14%  | 14%  | 28%  |

Further, for making the supplies of fruit juices, it has used the services of Goods Transport Agency ("GTA") based in Ahmedabad who have charged them ₹ 20 lakh as charges for their services. Such GTA have not charged any tax on their invoices. Rate of tax on GTA under reverse charge is 5%.

In respect of the above supply, the company has received the following inward supplies:

| S. No. | Particular              | Amount of purchase (₹ in lakh) | Amount of input tax credit thereon (₹ in lakh) |      |      |
|--------|-------------------------|--------------------------------|------------------------------------------------|------|------|
|        |                         |                                | CGST                                           | SGST | IGST |
| 1.     | Fresh fruits for supply | 800                            | Nil                                            | Nil  | Nil  |

|     |                                                                   |      |     |     |     |
|-----|-------------------------------------------------------------------|------|-----|-----|-----|
| 2.  | Vegetables for supply                                             | 1200 | Nil | Nil | Nil |
| 3.  | Fruit pulp used for fruit juice and carbonated drink              | 200  | 20  | 20  | Nil |
| 4.  | Sugar used for fruit juice and carbonated drink                   | 100  | 6   | 6   | Nil |
| 5.  | Preservatives for fruit juice and carbonated drink                | 100  | Nil | Nil | 12  |
| 6.  | Water for fruit juice and carbonated drink                        | 20   | Nil | Nil | Nil |
| 7.  | Administrative expenses (common)                                  | 40   | 2   | 2   | Nil |
| 8.  | Marketing expenses (common)                                       | 50   | Nil | Nil | 10  |
| 9.  | Purchase of machinery (capital goods) for fruit drink manufacture | 40   | Nil | Nil | 8   |
| 10. | Motor vehicle for director official use                           | 100  | 14  | 14  | Nil |

Compute the output GST liability, available ITC and payment to be made from Electronic Cash and Credit Ledger for the month of April, 2020 (considering that the entire ITC shall be utilized for payment of tax). **(14 Marks)**

**Answer**

**Computation of ITC available with Cash and Credit Ltd. for April, 2020**

| Particulars                                                                                                                                                                                                                                                                | ITC (₹ in lakh) |      |          |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|------|----------|
|                                                                                                                                                                                                                                                                            | CGST            | SGST | IGST     |
| <b>I. Input tax credit on inputs, input services and capital goods</b>                                                                                                                                                                                                     |                 |      |          |
| Fruit pulp                                                                                                                                                                                                                                                                 | 20              | 20   |          |
| Sugar                                                                                                                                                                                                                                                                      | 6               | 6    |          |
| Preservatives                                                                                                                                                                                                                                                              |                 |      | 12       |
| Administrative expenses                                                                                                                                                                                                                                                    | 2               | 2    |          |
| Marketing expenses                                                                                                                                                                                                                                                         |                 |      | 10       |
| Transportation charges for supply of fruit juices<br>[Tax is payable by Cash and Credit Ltd. @ 5% under reverse charge. Further, it is an inter-State supply since supplier is located in Ahmedabad and place of supply is Maharashtra (location of registered recipient)] |                 |      |          |
| Machinery                                                                                                                                                                                                                                                                  |                 |      | 1        |
| Input tax (CGST & SGST/ IGST) paid on inputs, input services and capital goods used in the manufacture of taxable products                                                                                                                                                 |                 |      | <u>8</u> |

|                                                                                                                                                                                                                                                                                                                  |     |     |     |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----|-----|-----|
| viz., fresh juices & carbonated fruit drinks is available as input tax credit                                                                                                                                                                                                                                    |     |     |     |
| Motor vehicle<br>[ITC on motor vehicle for transportation of persons with seating capacity of up to 13 persons is blocked for a supplier who is not engaged in further supply of such vehicles, transportation of passengers or imparting training on driving such vehicles.]                                    | -   | -   |     |
| Total                                                                                                                                                                                                                                                                                                            | 28  | 28  | 31  |
| <b>II. Input tax credit to be reversed on inputs and input services</b>                                                                                                                                                                                                                                          |     |     |     |
| Common credit of CGST on administrative expenses being used commonly for taxable and exempt products = ₹ 2 lakh<br>Exempt turnover = ₹ 2200 lakh; Total turnover = ₹ 4400 lakh<br>Common credit attributable to exempt supply<br>₹ in lakh $[2 \times 2200/4400] = ₹ 1$ lakh<br>Similar reversal for SGST credit | (1) | (1) |     |
| Common credit of IGST on marketing expenses being used commonly for taxable and exempt products = ₹ 10 lakh; Common credit attributable to exempt supply<br>₹ in lakh $[10 \times 2200/4400] = ₹ 5$ lakh                                                                                                         |     |     | (5) |
| Total ITC available for set off                                                                                                                                                                                                                                                                                  | 27  | 27  | 26  |

**Computation of net GST payable for the month of April, 2020**

| Particulars                                 | Value <sup>1</sup><br>₹<br>[in lakh] | CGST<br>₹<br>[in lakh] | SGST<br>₹<br>[in lakh] | IGST<br>₹<br>[in lakh] |
|---------------------------------------------|--------------------------------------|------------------------|------------------------|------------------------|
| Intra-State sale of fresh fruits            | 1100                                 | Nil                    | Nil                    | Nil                    |
| Intra-State sale of vegetables              | 1100                                 | Nil                    | Nil                    | Nil                    |
| Intra-State sale of fresh juices            | 2000                                 | 120                    | 120                    |                        |
| Intra-State sale of carbonated fruit drinks | 200                                  | 28                     | 28                     |                        |
| Total output tax liability                  |                                      | 148                    | 148                    |                        |
| Less: Payment from Electronic Credit Ledger |                                      |                        |                        |                        |

<sup>1</sup> It has been assumed that the amounts given hereunder are exclusive of GST.

|                                                                                                                                                                                                                                            |  |      |      |   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--|------|------|---|
| IGST credit being set off against SGST liability as it can be set off against CGST and SGST liability in any order and in any proportion                                                                                                   |  |      | (26) |   |
| CGST and SGST credit set off against CGST and SGST liability respectively                                                                                                                                                                  |  | (27) | (27) |   |
| Net GST payable from Electronic Cash Ledger [A]                                                                                                                                                                                            |  | 121  | 95   |   |
| GST payable on inward supply of GTA services under reverse charge through Electronic Cash Ledger [B]<br>[Tax payable under reverse charge, being not an output tax, cannot be set off against ITC and thus, will have to be paid in cash.] |  |      |      | 1 |
| Net GST payable through Electronic Cash Ledger [A] + [B]                                                                                                                                                                                   |  | 121  | 95   | 1 |
| Total GST payable by cash                                                                                                                                                                                                                  |  |      | 217  |   |

*Note: In the above answer, tax payable from Electronic Cash Ledger has been computed by setting off the IGST credit against SGST liability. However, since IGST credit can be set off against CGST and SGST liability in any order and in any proportion, the same can be set off against CGST and/or SGST liabilities in different ways as well. In all such cases, net CGST and net SGST payable from Electronic Cash Ledger will differ though the total amount of net GST payable (₹ 217 lakh) in cash will remain the same.*

## Question 2

(a) Determine place of supply along with reasons in the following cases:

- (i) Mr. X, an architect (Kolkata), provides interior decorator services to Mr. Y of New York (USA) in relation to his immovable property located in New Delhi.
- (ii) Mr. A (a Chartered Accountant registered in Kolkata) supplies services to his client in Bhubaneswar (registered in Bhubaneswar, Odisha).
- (iii) ABC Ltd. of Patna imported certain goods from XYZ Inc. of USA. The goods were imported through vessel and delivery of goods was taken at Kolkata, whereafter the movement terminates and the goods are stored.
- (iv) Mr. X, registered in Guwahati, has availed land-line services from BSNL. The telephone is installed in residential premises in Kolkata and the billing address is office of Mr. X in Guwahati.

- (v) Mr. X, residing in Chennai, is travelling with an Indian Airline aircraft and is provided with movie-on-demand service for ₹100 as on-board entertainment during Delhi-Chennai leg of a Bangkok-Delhi-Chennai flight.
- (vi) Mr. X of Kolkata purchased online tickets for Aquatica water park in Mumbai.
- (vii) Mr. Z, an unregistered person of Kolkata, sends a courier from New Delhi to his friend in Chennai, Tamil Nadu while he was on trip to New Delhi.
- (viii) Mr. X, a registered person in Ranchi, Jharkhand, buys shares from a broker in Patna on NSE, Mumbai. Determine the place of supply of brokerage service.
- (ix) XYZ Ltd., New Delhi entered into contract with an Indian airline for the supply of biscuit packets for further supply by airline to the passengers in Kolkata-Guwahati route. The biscuits were loaded on board in Lucknow. **(9 Marks)**
- (b) ABC Trade International Limited has imported one machine from USA. It has given the following particulars:
- |                                                                                                |            |
|------------------------------------------------------------------------------------------------|------------|
| (i) Price of the machine                                                                       | 10,000 USD |
| (ii) Freight paid (air)                                                                        | 2,500 USD  |
| (iii) Design and development charges paid to supplier in USA                                   | 500 USD    |
| (iv) Commission payable to local agent of exporter, paid by<br>ABC Trade International Limited | 14,000     |
| (v) Date of bill of entry                                                                      | 24-10-2019 |
- Rate of Basic Customs Duty (BCD) 10%
  - Exchange rate as notified by CBIC: ₹ 70 per USD
  - Inter-bank exchange rate on the date of bill of entry: ₹ 72 per USD
- (vi) Date of arrival of aircraft 20-10-2019
- Rate of Basic customs duty (BCD) 20%
  - Exchange rate as notified by CBIC ₹ 68 per USD
  - Inter-bank exchange rate on the date of arrival of aircraft: ₹71 per USD
- (vii) IGST rate: 12%
- (viii) Insurance charges have been actually paid but details are not available.
- Compute the total customs duty and IGST payable by ABC Trade International Limited.
- Note: Ignore GST compensation cess and social welfare surcharge. **(5 Marks)**

**Answer**

- (a) (i) New Delhi. In a case where location of the supplier or location of recipient of service is outside India, the place of supply of services supplied directly in relation to an immovable property including that of interior decorators is the place where the immovable property is located.
- (ii) Bhubaneswar, Odisha. The place of supply of services, except the specified services made to a registered person, is the location of such person.
- (iii) Patna. The place of supply of goods imported into India is the location of the importer.
- (iv) Kolkata. The place of supply of services by way of fixed telecommunication line is the location where the telecommunication line is installed for receipt of services.
- (v) Bangkok. The place of supply of services on board an aircraft is the location of the first scheduled point of departure of that aircraft or flight for the journey
- (vi) Mumbai. The place of supply of services provided by way of admission to an amusement park is the place where the park is located.
- (vii) New Delhi. The place of supply of services by way of transportation of goods by courier to a person other than a registered person is the location at which such goods are handed over for their transportation.
- (viii) Ranchi, (Jharkhand). The place of supply of stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services.<sup>2</sup>
- (ix) Where the supply involves movement of goods, the place of supply of such goods is the location of the goods at the time at which the movement of goods terminates for delivery to the recipient. Therefore, the place of supply of biscuit packets sold by XYZ Ltd. to Indian Airlines is Lucknow<sup>3</sup>.

Further, where the goods are supplied on board an aircraft, the place of supply shall be the location at which such goods are taken on board. Thus, the place of supply of biscuit packets sold by Indian Airlines to the passengers in Kolkata-Guwahati route is Lucknow.

**(b) Computation of customs duty and integrated tax**

| Particulars                                                                                               | Amount     |
|-----------------------------------------------------------------------------------------------------------|------------|
| Price of machine                                                                                          | USD 10,000 |
| Add: Design and development charges paid to supplier in USA<br>[since undertaken elsewhere than in India] | USD 500    |
| Total                                                                                                     | USD 10,500 |

<sup>2</sup>It has been assumed that the location of the recipient of service is available in the records of the supplier of service.

<sup>3</sup> It has been assumed that in the given case, the movement of goods (biscuit packets) terminates at Lucknow.

|                                                                                                                                                                      | (₹)         |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------|
| Total in rupees @ ₹ 70 per USD<br>[Rate of exchange notified by the CBIC on the date of presentation of bill of entry]                                               | 7,35,000    |
| Add: Commission payable to local agent of exporter                                                                                                                   | 14,000      |
| FOB value as per customs                                                                                                                                             | 7,49,000    |
| Add: Air freight @ 20% of FOB value<br>[air freight restricted to 20% of FOB]                                                                                        | 1,49,800    |
| Add: Insurance<br>@ 1.125% of FOB value [since actual not available]                                                                                                 | 8426.25     |
| CIF value                                                                                                                                                            | 9,07,226.25 |
| Add: Basic custom duty @10% (rounded off)<br>[Rate in force on the date of presentation of bill of entry or on the date of arrival of aircraft, whichever is later.] | 90,723      |
| Total                                                                                                                                                                | 9,97,949.25 |
| Integrated tax @ 12% (rounded off)                                                                                                                                   | 1,19,754    |
| Total customs duty and IGST payable                                                                                                                                  | 2,10,477    |

**Question 3**

- (a) *M/s. ABC Manufacturers, registered in West Bengal, sold air-conditioner to a retail seller in Bhubaneswar, at a value of ₹ 49,000 (excluding GST leviable @ 18%). Now, it wants to send the consignment of air-conditioning machine to the retail seller in Bhubaneswar. You are required to advise M/s. ABC Manufacturers on the following issues along with suitable explanations:*
- Whether e-way bill is mandatorily required to be generated?*
  - What will be the consequence for non-issuance of e-way bill?* **(5 Marks)**
- (b) (i) *Explain the provisions of Customs Act, 1962 relating to computation of limitation for submission of refund application.* **(2 Marks)**
- Would the period of limitation for claiming refund applicable to refund of amount paid on account of duty paid twice under mistake? Briefly discuss with reference to legal provisions and case law.* **(3 Marks)**
- (c) (i) *Briefly discuss Article 246A of the Constitution of India.* **(2 Marks)**
- Whether the transporters, who are not registered under the GST, are required to maintain any records under the provisions of CGST Act, 2017? Also explain, if any other unregistered persons who are required to maintain records under GS T.* **(2 Marks)**

**Answer**

- (a) (i) E-way bill is mandatorily required to be generated whenever there is a movement of goods of consignment value exceeding ₹ 50,000, *inter alia*, in relation to a supply.  
Consignment value of goods includes the central tax, State/Union territory tax, integrated tax and cess charged, if any.  
Thus, the consignment value of goods, in the given case, will be ₹ 57,820 [₹ 49,000 + (₹ 49,000 × 18%)].  
Since in the given case the movement of goods is in relation to supply of goods and the consignment value exceeds ₹ 50,000, e-way bill is mandatorily required to be generated in respect of movement of goods from West Bengal to Bhubaneswar.
- (ii) Non-issuance of e-way bill may result in the following consequences:
- imposition of penalty of ₹ 10,000/- or tax sought to be evaded (wherever applicable), whichever is greater
  - detention and seizure of goods and the conveyance used to transport the said goods and the same will be released only on payment of appropriate tax and penalty
  - confiscation of goods and the conveyance used to transport the said goods if the tax and penalty is not paid within 14 days of detention or seizure
- (b) (i) The period of limitation for submission of refund application is one year and it is computed in the following manner:

| In case where                                                                                                           | the time limit of one year should be calculated from                                                                               |
|-------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------|
| refund claim is filed by the importer/exporter                                                                          | date of payment of duty/interest                                                                                                   |
| refund claim is filed by another person, from whom duty was collected                                                   | the date of purchase of goods                                                                                                      |
| goods are exempt from duty by a special order                                                                           | date of issue of such exemption order                                                                                              |
| duty is paid provisionally                                                                                              | the date of adjustment of duty after the final assessment thereof or in case of re-assessment, from the date of such re-assessment |
| refund arises as a result of any judgement/decreed/order/direction of the Appellate Authority/ Appellate Tribunal/Court | date of such judgement/ decree/ order/ direction                                                                                   |

The limitation of one year is not applicable if duty is paid under protest.

- (ii) The High Court, in *Parimal Ray v. CCus. 2015 (318) ELT 379 (Cal.)*, has ruled that the law of limitation under Customs Act is applicable to duty or interest paid under that Act.

However, any sum paid to the exchequer by mistake is not the duty or excess duty but is simply money paid to the account of Government.

Hence, limitation of one year applicable to refunds of customs duty will not apply to refunds of amount paid to the Government by mistake. In view of the same, the limitation period of one year will not apply to the duty paid twice by mistake.

- (c) (i) Article 246A grants power to the Parliament and Legislature of every State to make laws with respect to GST imposed by Centre/such State.

Parliament has the exclusive power to make laws with respect to GST in case of inter-State supply of goods and/or services.

However, in respect of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel, the aforesaid provisions shall apply from the date recommended by the GST Council.

- (ii) The transporters, who are not registered under GST, shall obtain a unique enrollment number on GST common portal and maintain records of goods transported, delivered and goods stored in transit by them along with GSTIN of the registered consignor and consignee for each of his branches.

Every owner or operator of warehouse/godown/any other place used for storage of goods, even if unregistered, is also required to maintain records under GST.

#### Question 4

- (a) ABC Ltd., a registered supplier, is engaged in the manufacture of dyeing machines. The company provides the following information pertaining to GST paid on the purchases made/input services availed by it during the month of September 2020 :

|       | Particulars                                                                                              | GST Paid<br>₹ |
|-------|----------------------------------------------------------------------------------------------------------|---------------|
| (i)   | Purchase of 10 apple i-pads which were given as gift to employees                                        | 1,85,000      |
| (ii)  | Payment for club membership availed by employees as per terms of employment                              | 90,000        |
| (iii) | Purchase of maxi cab for transport of its employees to and from home to office                           | 70,000        |
| (iv)  | Purchase of calendars and diaries for distribution as new year compliments to customers and distributors | 25,000        |
| (v)   | Works contract services availed for erection and installation of RO treatment plant in factory           | 35,000        |

*Determine the amount of ITC available to ABC Ltd. for the month of September, 2020 by giving necessary explanations for treatment of various items. None of expenses incurred for staff was under statutory obligation and seating capacity of the maxi cab was excluding driver.*

*Subject to the information given above, all the conditions necessary for availing the ITC have been fulfilled.* **(5 Marks)**

- (b) *Anirudh Ltd. is registered in Telangana and paid IGST on a transaction considering the same to be inter-State supply on the basis that the customer is situated in Delhi.*

*However, GST authorities have raised a dispute and have issued a show cause notice that since the services are rendered within Telangana, it is an intra-State supply leviable to CGST and SGST.*

*Anirudh Ltd. has lost the case before the proper officer and also in first appeal before the Departmental Appellate Authority.*

*Advise Anirudh Ltd. regarding the following:*

- (i) *Can Anirudh Ltd. file an appeal against the order of the first Appellate Authority? If yes, before which forum can Anirudh Ltd. file the said appeal?*
  - (ii) *Once a valid appeal is filed by Anirudh Ltd. before the appropriate forum, can the authorities insist Anirudh Ltd. to deposit the CGST and SGST which the authorities are claiming that Anirudh Ltd. ought to have paid but has not paid.*
  - (iii) *If Anirudh Ltd. loses at the 2nd appellate stage as well, is there any other Statutory forum available for Anirudh Ltd. to file another appeal? If yes, before which forum?*
  - (iv) *Assuming Anirudh Ltd. loses at all levels, would there be any interest liability on Anirudh Ltd. ?* **(4 Marks)**
- (c) *Precise Finishing Ltd. imported consignment of graphic design system and one electronic flat knitting machine. The graphic design system is a computer system required to design the artwork which shall be knitted by the flat knitting machine. Graphic design system is not an integral part of electronic flat knitting machine.*

*In exercise of the powers conferred by sub-section (1) of section 25 of the Customs Act, an exemption had been granted in respect of electronic flat knitting machine and falling within Chapter 85 of the First Schedule to the Customs Tariff Act, 1975. The exemption does not include any specific mention of accessories to the machine. Precise Finishing Ltd. has claimed exemption of the said notification in respect of Graphic Design System also as accessory of Flat Knitting Machine.*

*The Customs Department rejected the importer's claim for exemption on Graphic Design System. Examine whether the Department's action is sustainable in law.* **(5 Marks)**

**Answer****(a) Computation of ITC available with ABC Ltd. for the month of September, 2020**

| Particulars                                                                                                                                                                                                                                          | GST paid (₹)    |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| Apple i-pads given as gifts to the employees<br>[ITC in respect of goods that are disposed of by way of gifts is blocked.]                                                                                                                           | Nil             |
| Club membership availed by employees<br>[ITC on membership of a club is blocked as ABC Ltd. is not under any statutory obligation to provide the same to its employees.]                                                                             | Nil             |
| Maxi cab for transport of employees<br>[ITC on motor vehicles for transportation of persons with seating capacity of more than (or exceeding) 13 persons (including the driver) used for any purpose, is allowed.]                                   | 70,000          |
| Calendars and diaries for distribution as compliments to customers and distributors<br>[ITC in respect of goods that are disposed of by way of gifts is blocked.]                                                                                    | Nil             |
| Works contract services for erection and installation of RO treatment plant in factory <sup>4</sup><br>[ITC on works contract service used for construction of a plant and machinery fixed to earth by foundation or structural support is allowed.] | 35,000          |
| <b>Total ITC available</b>                                                                                                                                                                                                                           | <b>1,05,000</b> |

- (b) (i) Yes, Anirudh Ltd. can file an appeal against the order of the first Appellate Authority to the Appellate Tribunal. National Bench/ Regional Benches of the Tribunal will have jurisdiction to hear the appeal as place of supply is one of the issues in dispute.
- (ii) No, Authority can't insist, because once a valid appeal is filed i.e., on payment of requisite pre-deposit, the recovery proceedings for the balance amount of the demand in dispute gets stayed till the disposal of appeal.
- (iii) Yes, Anirudh Ltd. can file another appeal against the decision of the National Bench/Regional Bench of the Tribunal, directly before the Supreme Court.
- (iv) No, there will be no interest liability on Anirudh Ltd. if it loses at all levels. A registered person who has paid IGST on a transaction considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, is not required to

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<sup>4</sup>It has been logically assumed that the RO treatment plant installed in the factory is to be used for making outward supply of dyeing machines.

pay any interest on the amount of CGST and SGST payable because there is no shortfall of overall tax amount.

- (c) The graphic design system is not an integral part of the electronic flat knitting machine. It is an accessory to the machine.

Hence, electronic flat knitting machine and graphic design system cannot be treated as one single unit and should be classified and assessed separately.

In the given case, the exemption had been granted under the customs law specifically in respect of the electronic flat knitting machine falling under Chapter 85 of the First Schedule to the Customs Tariff Act, 1975 and not to its accessory – the graphic design system.

Therefore, the benefit of the exemption notification available in respect of the electronic flat knitting machine will not be available to graphic design system. The Department's action is sustainable in law.

#### Question 5

- (a) *GER Ltd. of Germany supplies luxurious car worth ₹ 1 crore to IND Ltd. of India. Before the car reached Indian port but after crossing of the territorial waters of India, IND Ltd. sells it to T1 Ltd. by way of transfer of documents of title.*

*T1 Ltd. clears the said car for warehousing and stores said goods in customs bonded warehouse.*

*T1 Ltd. sells the said car from warehouse to T2 Ltd., and T2 Ltd. clears the said car from the customs bonded warehouse.*

*Answer the following with brief reasons:*

- (i) *Is GST leviable on import of goods from GER Ltd. by IND Ltd.?*
  - (ii) *Is GST leviable on supply of goods by IND Ltd. to T1 Ltd.?*
  - (iii) *Is GST leviable on supply of goods by T1 Ltd. to T2 Ltd.?*
  - (iv) *Is GST leviable on clearance of goods by T2 Ltd. from the customs bonded warehouse? (5 Marks)*
- (b) *Elaborate the meaning and historical background of "customs". Also elucidate the constitutional entries/provisions which provide the power to make laws relating to customs duty, and who possesses the power to make such laws. (5 Marks)*
- (c) *Why was there a need for making a constitutional amendment for introduction of GST? Discuss significant provisions of Constitution (101<sup>st</sup> Amendment) Act, 2016. (4 Marks)*

OR

*Elaborate about cognizable and non-cognizable offences under the CGST Act, 2017. What is the difference between these two while exercising powers by the GST authorities?*

**(4 Marks)**

**Answer**

- (a) (i) GST on import of goods is levied at the time when customs duty is levied on the said goods under the Customs Act, 1962, i.e., on importation. Importation gets completed when the goods become part of the mass of goods within the country<sup>5</sup>.

Thus, GST is not leviable on import of goods from GER Ltd. by IND Ltd. since the import of goods is not complete.

- (ii) GST is not leviable on supply of goods by IND Ltd. to T1 Ltd. as supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption is treated neither as a supply of goods nor a supply of services.
- (iii) GST is not leviable on supply of goods by T1 Ltd. to T2 Ltd. since supply of warehoused goods to any person before clearance for home consumption is treated neither as a supply of goods nor a supply of services.
- (iv) Yes, GST is leviable on clearance of goods by T2 Ltd. from the customs bonded warehouse as customs duty is levied on warehoused goods at the time of clearance thereof from the warehouse and as mentioned in point (i), GST on import of goods is levied at the time when customs duty is levied thereon.
- (b) The term 'customs' derives its colour and essence from the term 'custom', which means a habitual practice or course of action that characteristically is repeated in like circumstances.
- Duties on import and export of goods were levied through legislations during the British period before which, during monarchical governance, said duty was collected at the city gates at the time of goods coming in and going out. The legislations of the British period were replaced by the enactment and promulgation of the Customs Act, 1962 and the Customs Tariff Act, 1975.
- The power to make laws is conferred on the Parliament and the legislature of a State by Article 245 of the Constitution of India.
- Further, entry 83 of the List I [Union List] of the Seventh Schedule to Article 246 of the Constitution of India grants the power to frame laws relating to customs duty.
- The power to make laws relating to customs duty vests exclusively with the Parliament.
- (c) There was a need for making constitutional amendment for introduction of GST so as to enable integration of the central excise duty, additional duties of customs, State VAT and certain State specific taxes and service tax into a comprehensive Goods and Services Tax and to empower both Centre and the States to simultaneously levy and collect it.

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<sup>5</sup>*Garden Silk Mills Ltd. UOI 1999 AIR SCW 4150 (SC 3-member bench)*

The significant provisions of Constitution (101st Amendment) Act, 2016 are as under: -

- (i) Concurrent powers on Parliament and State Legislatures to make laws governing taxes on goods and services.
- (ii) Levy of IGST on inter-State transactions of goods and/or services to be levied and collected by the Central Government and apportioned between the Union and States in the manner provided by Parliament by law as per the recommendation of the GST Council.
- (iii) Principles for determining the place of supply and when a supply takes place in the course of inter-State trade/commerce shall be formulated by the Parliament, by law.
- (iv) GST will be levied on all supply of goods and services except alcoholic liquor for human consumption.
- (v) On the following products, GST shall not be levied till a date to be notified on the recommendations of the GST Council:
  - Petroleum Crude
  - High Speed Diesel
  - Motor Spirit (commonly known as Petrol)
  - Natural Gas
  - Aviation Turbine Fuel
- (vi) The Union Government shall retain the power to levy duties of excise on the aforesaid products besides tobacco and tobacco products manufactured or produced in India.
- (vii) President is empowered to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (GST Council).
- (viii) The Union Finance Minister is the Chairman of GST Council and Ministers in charge of Finance/Taxation or any other Minister nominated by each of the States & UTs with Legislatures are its members. Besides, the Union Minister of State in charge of Revenue or Finance is also its member.
- (ix) The function of the GST Council is to make recommendations to the Union and the States on important issues like tax rates, exemptions, threshold limits, dispute resolution etc.
- (x) The provisions relating to GST Council came into force on 12th September, 2016. President constituted the GST Council on 15<sup>th</sup> September, 2016.
- (xi) The concept of 'declared goods of special importance' under the Constitution is done away with. Earlier, certain restrictions were placed on the powers of States in regard to tax on such goods.

- (xii) Transitional provisions to take care of any inconsistency with respect to any law relating to tax on goods or services or both, in force in any State. Such tax to continue to be in force until amended or repealed or until expiration of one year from commencement of GST, whichever is earlier.

Note-Any three points may be mentioned.

**Alternative to Q.5(c)**

All offences specified under section 132 except the offences that are cognizable and non-bailable (as mentioned below) are non-cognizable offences under the CGST Act, 2017.

Cognizable offences under the CGST Act, 2017 are the following offences, where amount of tax evaded or input tax credit wrongly availed or utilised or refund wrongly taken more than (exceeding) ₹ 5 crores, namely:

- (a) Supply without issue of any invoice, in violation of the provisions of GST law, with the intention to evade tax;
- (b) Issue of any invoice/bill without any supply in violation of the provisions of GST law leading to wrongful availment or utilisation of ITC/refund of tax;
- (c) Avails ITC using such invoice/bill referred to in clause (b);
- (d) Collects any amount as tax but fails to pay the same to the Government beyond a period of 3 months from the date on which such payment becomes due;

In case of a cognizable offence, the officer authorised to arrest the person shall inform such person of the grounds of arrest and produce him before a Magistrate within 24 hours.

In case of a non-cognizable offence, the arrested person shall be admitted to bail or in default of bail, forwarded to the custody of the Magistrate.

The Deputy/Assistant Commissioner shall for the purpose of releasing an arrested person on bail or otherwise, have the same powers and be subject to the same provisions as an officer-in-charge of a police station.

**Question 6**

- (a) *X Ltd., a manufacturer of heavy machines registered at Mumbai (Maharashtra), supplied one machine to Y Ltd. in Pune (Maharashtra) on 19.02.2020 under an invoice of the same date. Using the information given below, compute the value of machine and the GST payable (CGST, SGST and IGST as the case may be) in cash for the month of February 2020 by X Ltd. with appropriate working notes.*

Assume rate of CGST, SGST and IGST on the machine to be 9%, 9% and 18% respectively.

| Sl. No. | Particulars                                                                                                                                                                                                                                                                                                                       | Amount (₹) |
|---------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|
| 1       | The basic price of the machine (exclusive of taxes and discount)                                                                                                                                                                                                                                                                  | 18,00,000  |
| 2       | Trade discount is allowed at 10% on the basic price and is shown in the invoice.                                                                                                                                                                                                                                                  | 1,80,000   |
| 3       | Secondary packing (in iron sheets) charged for safe transportation of the machine on the request of buyer                                                                                                                                                                                                                         | 30,000     |
| 4       | Design and engineering charges of the machine paid by Y Ltd. to X Ltd.                                                                                                                                                                                                                                                            | 90,000     |
| 5       | Pre-delivery inspection charges paid by Y Ltd. to an independent agency "Inspection India". In terms of the agreement for supply, it was the discretion of the buyer 'Y Ltd.' to appoint, if it so desires, any agency for pre-delivery inspection, and also to itself pay to such agency.                                        | 22,000     |
| 6       | Interest amount paid by Y Ltd. for delay in payment of the machine, said interest was paid by Y Ltd. in April 2020                                                                                                                                                                                                                | 12,000     |
|         | <b>INWARD SUPPLY:</b><br>IGST paid on food items for consumption by employees working in the factory. The said food items are provided as per the declared company policy which is duly informed to the employees while they are recruited and forms part of their appointment letter, though there is no such obligation in law. | 10,000     |

X Ltd. has no input tax credit balance at the beginning of February 2020. All the other conditions necessary for availing the eligible input tax credit have been fulfilled. There is no other transaction of supplies during the month of February 2020. X Ltd. and Y Ltd. are not related persons.

Provide your answers with reasons and with reference to the provisions of law. **(5 Marks)**

- (b) From the following information of independent cases, your expert advice, with appropriate reasoning, is sought on the applicability of TDS/TCS provisions of the CGST Act, 2017. You shall also quantify the amount of TDS/TCS, as the case be, if the same is applicable.
- (i) Top Fashions, a designer cloth dealer and registered in the State of West Bengal, effected supply through 'QUICK DEAL', an electronic commerce operator. Net value of taxable intra-State supplies effected for the month of October 2019 was ₹ 1,50,000.

- (ii) *M/s Super Builders, a registered supplier in Tamil Nadu, was awarded a works contract by Government of Tamil Nadu amounting to ₹ 4,30,000. Of this, value of exempt supply was ₹ 1,00,000.*
- (iii) *Tasty Caterers, a registered supplier of Kerala, provided catering services in Kochi, Kerala to Government of Andhra Pradesh for its annual training camp held for its staff. Value of said services was ₹ 4,50,000. (4 Marks)*
- (c) *Great Year Ltd. imported a offset printing machine from Germany for ₹ 5.00 crores and the bill of entry for home consumption was cleared in October, 2019 on payment of duty. However, due to certain technical glitches, the said machine could not be started functioning and the said machine was sent-back to the supplier for repairs in November, 2019. The manufacturer of machinery in Germany had made necessary repairs and had sent back the machine again to Great Year Ltd.*

*Accordingly, Great Year Ltd. re-imported the machine without any re-manufacturing or reprocessing in March 2020. Since the machine was having manufacturing defect, the repairs were carried out by the machine manufacturer without charging any amount for the repairs. However, the fair cost of repairs carried out including cost of material consumed during repairs for ₹ 70 lakh, would have been ₹ 90 lakh.*

*Actual insurance and freight charges incurred were ₹ 7.5 lakh each side from India to Germany and from Germany to India. Assume the rate of basic customs duty is 10%, social welfare surcharge is 10% and integrated tax is 18%.*

*You are required to compute the amount of customs duty payable (if any) on re-importation of the machine. Make the necessary assumptions, if required. Also, provide the exemption, if any, with regard to re-importation of goods which had been exported for repairs abroad. (5 Marks)*

### Answer

#### (a) Computation of value of machine and GST payable in cash

| Particulars                                      |                                                                                                                                                                                                                                                                              | Amount (₹)   |
|--------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Price of machine                                 |                                                                                                                                                                                                                                                                              | 18,00,000    |
| Add: Secondary packing                           | Incidental expenses including packing charged by the supplier to the recipient of a supply and 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 are includible in the value of the supply. | 30,000       |
| Design and engineering charges                   |                                                                                                                                                                                                                                                                              | 90,000       |
| Pre-delivery inspection charges                  | The amount incurred by the recipient of the supply is added only if the same was the liability of the supplier.                                                                                                                                                              | Nil          |
| Add: - Interest for delayed payment [12000/118%] |                                                                                                                                                                                                                                                                              | <u>10169</u> |

|                                                                                                                                                                                             |                      |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| [Interest for delayed payment is includible in the value of the machine. Further, it has been assumed to be inclusive of GST.]                                                              |                      |
| Less: Discount @ 10% on basic price<br>[Discount is allowed as the same is given at the time of supply and is shown in the invoice]                                                         | (1,80,000)           |
| Value of the machine                                                                                                                                                                        | 17,50,169            |
| Less: Interest for delayed payment liable to tax only on date of receipt                                                                                                                    | (10,169)             |
| Taxable value of the machine in February, 2020                                                                                                                                              | 17,40,000            |
| Tax liability for the month of February<br>CGST @ 9%<br>SGST @ 9%<br>[Since the movement of goods terminates for delivery to the recipient in the same State, it is an intra-State supply.] | 1,56,600<br>1,56,600 |
| Less: ITC<br>[ITC on supply of, <i>inter alia</i> , food and beverages is blocked if the employer is not under a statutory obligation to provide the same to its employees]                 | Nil                  |
| GST payable in cash<br>CGST @ 9%<br>SGST @ 9%                                                                                                                                               | 1,56,600<br>1,56,600 |

- (b) (i) An electronic commerce operator (ECO) is required to collect TCS - an amount @ 1% (CGST 0.5% and SGST @ 0.5%) of the net value of taxable supplies made through it by other suppliers.
- $$= ₹ 1,50,000 \times 0.5\%$$
- $$= ₹ 750 \text{ (CGST)}$$
- $$\& ₹ 750 \text{ (SGST)}$$
- (ii) A State Government is required to deduct tax from the payment made to the supplier of taxable goods and/or services, where the total value of such supply [excluding GST] under a contract, exceeds ₹ 2,50,000. TDS to be deducted in the given intra-State supply (since place of supply and location of supplier is in Tamil Nadu) is as follows:
- $$= ₹ (4,30,000 - 1,00,000) \times 1\%$$
- $$= ₹ 3,300 \text{ (CGST)}$$
- $$₹ 3,300 \text{ (SGST)}$$

- (iii) Since, in the given case, the location of supplier and place of supply are in the same State, i.e., Kerala and location of recipient is in Andhra Pradesh,

Andhra Pradesh Government is not required to deduct TDS although the total value of supply under the contract is more than ₹ 2,50,000.

*Note: In above question, it has been assumed that the value given is exclusive of GST, wherever applicable, since the rate of tax is not given in the question.*

- (c) Duty payable on re-importation of goods which had been exported for repairs abroad is the duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways. However, following conditions need to be satisfied for availing this concession:
- goods must be re-imported within 3 years, extendable by further 2 years, after their exportation;
  - exported goods and the re-imported goods must be the same;
  - Ownership of the goods should not change.

Since all the conditions specified above are fulfilled in the given case, the customs duty payable on re-imported goods will be computed as under:

| Particulars                                                                                                                                    | ₹ in lakh    |
|------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| Value of goods re-imported after exports [₹ 90 lakh (including cost of materials) + (insurance and freight charges, both ways ₹ 7.5 × 2) lakh] | 105.000      |
| Add: Basic customs duty @ 10% (A)                                                                                                              | 10.500       |
| Add: Social welfare surcharge @ 10% on ₹10.5(B)                                                                                                | <u>1.050</u> |
| Value for computing integrated tax                                                                                                             | 116.550      |
| Integrated tax @ 18% (₹ 117 lakh x 18%) - (C)                                                                                                  | 20.979       |
| Customs duty and integrated tax payable [(A) +(B)+ (C)]                                                                                        | 32.529       |