

IDT QUESTION PAPER SOLUTION MAY 2018 (Test held on 14.04.2018)

Solution 1(a) (10 Marks)

Computation of input tax credit available with V-Supply Pvt. Ltd. in the month of November 20XX

S. No.	Particulars	Eligible input tax credit			
		CGST* Rs.	SGST* Rs.	IGST* Rs.	Total Rs.
1.	Raw Material				
	Raw material purchased from Bihar [Refer Note 1 (i)]			14,400	14,400
	Raw material purchased from unregistered suppliers within West Bengal [Refer Note 1 (iii)]	Nil	Nil		Nil
	Raw material destroyed due to seepage [Refer Note 1 (iv)]	Nil	Nil		Nil
	Remaining raw material purchased from West Bengal [Refer Note 1 (i)]	7,650	7,650		15,300
	Total	7,650	7,650	44,181	59,481
2.	Consumables [Refer Note 2]	9,000	9,000		18,000
3.	Transportation charges for bringing the raw material to factory [Refer Note 3]	1,500	1,500		3,000
4.	Salary paid to employees on rolls [Refer Note 4]	Nil	Nil	Nil	Nil
5.	Premium paid on life insurance policies taken for specified employees [Refer Note 5]	14,400	14,400	-	28,800
6.	Audit fee [Refer Note 6]	4,500	4,500	-	9,000
7.	Telephone expenses [Refer Note 6]	2,700	2,700		5,400
8.	Bank charges [Refer Note 6]	900	900		1,800
		40,650	40,650	44,181	1,25,481

Computation of net GST payable

Particulars	CGST* Rs.	SGST* Rs.	IGST* Rs.	Total Rs.
On Intra-state sales in West Bengal	63,000	63,000		1,26,000
On Inter-state sales other than West Bengal			54,000	54,000
On exports under bond [Note 7]	Nil	Nil	Nil	Nil
On inward supply of GTA services under reverse charge [Note 3]	1,500	1,500		3,000
Total output tax liability	64,500	64,500	54,000	1,83,000
Less: Cash paid towards tax payable under reverse charge [Note 10]	(1,500)	(1,500)		(3,000)
Less: Input tax credit [Note 8]				
Opening balance of input tax credit on 01.11.20XX	(15,000)	(8,000)	(10,000)	(33,000)
Input tax credit availed during the month	(40,650)	(40,650)	(44,181)	(1,25,481)
	181 (IGST)			
Net GST payable	7,169	14,350	Nil	21,519

1) Notes:

- (i) Credit of input tax (CGST & SGST/ IGST) paid on raw materials used in the course or furtherance of business is available in terms of section 16(1) of the CGST Act.
- (ii) IGST paid on imported goods qualifies as input tax in terms of section 2(62)(a) of the CGST Act. Therefore, credit of IGST paid on imported raw materials used in the course or furtherance of business is available in terms of section 16(1) of the CGST Act.
- (iii) All intra-State procurements made by a registered person from an unregistered supplier have been exempted from CGST leviable thereon till 31.03.2018 [Notification No. 8/2017 CT (R) dated 28.06.2017 as amended by Notification No. 38/2017 CT (R) dated 13.10.2017]. Therefore, since no GST is paid on such raw material, there does not arise any question of input tax credit on such raw material.

(iv) Input tax credit is not available on destroyed inputs in terms of section 17(5)(h) of the CGST Act.

- 2) Consumables, being inputs used in the course or furtherance of business, input tax credit is available on the same in terms of section 16(1) of the CGST Act. However, levy of CGST on diesel has been deferred till such date as may be notified by the Government on recommendations of the GST Council [Section 9(2) of the CGST Act]. Hence, there being no levy of GST on diesel, there cannot be any input tax credit of the same.
- 3) In respect of intra-State road transportation of goods undertaken by a GTA, who has not paid CGST @ 6%, for any person registered under the GST law, CGST is payable under reverse charge by the recipient of service. The person who pays or is liable to pay freight for the transportation of goods is treated as the person who receives the service [Notification No. 13/2017 CT (R) dated 28.06.2017]. Thus, V-Supply Pvt. Ltd. will pay GST under reverse charge on transportation service received from GTA.

Further, tax payable under section 9(3) of the CGST/SGST Act qualifies as input tax in terms of clauses (b) and (d) of section 2(62) of the CGST Act. Thus, input tax paid under reverse charge on GTA service will be available as input tax credit in terms of section 16(1) of the CGST Act as the said service is used in course or furtherance of business.

Furthermore, intra-State services by way of transportation of goods by road except the services of a GTA and a courier agency are exempt from CGST vide Notification No. 12/2017 CT (R) dated 28.06.2017. Therefore, since no GST is paid on such services, there cannot be any input tax credit on such services.

- 4) Services by employees to employer in the course of or in relation to his employment is not a supply in terms of section 7 to the CGST Act. Therefore, since no GST is paid on horse pulled cart services, there cannot be any input tax credit on such services.
- 5) Input tax credit on supply of life insurance service is not blocked if the Government has made it obligatory for an employer to provide such service to its employees [Section 17(5)(b)(iii)(A) of the CGST Act].

Therefore, GST paid on premium for life insurance policies will be available as input tax credit in terms of section 16(1) of the CGST Act as the said service is used in the course or furtherance of business.

- 6) Audit fee, telephone expenses and bank charges are all services used in the course or furtherance of business and thus, credit of input tax paid on such service will be available in terms of section 16(1) of the CGST Act.
- 7) Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act. A zero rated supply under bond is made without payment of integrated tax [Section 16(3)(a) of the IGST Act].
- 8) Since export of goods is a zero rated supply, there will be no apportionment of input tax credit and full credit will be available [Section 16 of the IGST Act read with section 17(2) of the CGST Act].
- 9) As per section 49(5) of the CGST Act, input tax credit of-
 - (i) IGST is utilised towards payment of IGST, CGST and SGST in that order.
 - (ii) CGST is utilised towards payment of CGST and IGST in that order.
 - (iii) SGST is utilised towards payment of SGST and IGST in that order
- 10) Section 49(4) of the CGST Act lies down that the amount available in the electronic credit ledger may be used for making payment towards output tax. However, tax payable under reverse charge is not an output tax in terms of section 2(82) of the CGST Act. Therefore, tax payable under reverse charge cannot be set off against the input tax credit and thus, will have to be paid in cash.
- 11) CGST and SGST are chargeable on intra-State inward and outward supplies and IGST is chargeable on inter-State inward and outward supplies.

Solution 1(b) (5 Marks)

Particulars	Value in Rs.	GST Rs.	Remarks
(a) Declared tariff Rs. 950	Nil		Since, declared tariff less than Rs. 1,000. It is exempted supply of service.
(b) Declared tariff Rs. 1,800	1,800	216	Taxable supply. GST @12% is applicable
(c) Declared tariff Rs. 7,000	8,800	1,584	Taxable supply. Since, declared tariff not exceeds Rs. 7,500, applicable rate is 18%. However, GST will be charged on transaction value
(d) Declared tariff value Rs.10,000	7,000	1,960	Taxable supply. Since, declared tariff exceeds Rs.7,500, applicable rate is 28%. However, GST will be charged on transaction value.
Total		3,760	

Solution 1(c) (5 Marks)

Composite supply means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply [Section 2(30) of the CGST Act].

In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service, being a composite supply, and would not be treated as a separate supply.

Solution 2(a) (8 Marks)

Value of supply will thus, be computed as under:

Particulars	Amount (Rs.)
Price at which the fans are supplied to Prakash Sales	7,000

Prepared by CA Vijay Gaurav

Faculty CA-Final DT, IDT and International Taxation

Add: Packing expenses	1,000
Less: Discount [Note]	(700)
Value of taxable supply of one unit of fan	7,300
Value of taxable supply of fans for the quarter July-September [Rs. 7,300 x 1,000]	73,00,000

Notes:

Post-supply discount will be allowed as deduction from the value of supply presuming that Prakash Sales has reversed the input tax credit attributable to such discount on the basis of document issued by Kaya Trade Links Pvt. Ltd. The input tax credit to be reversed will work out to be Rs. 1.26 lakh [1,000 x (7,000 x 10%) x 18%].

Solution 2(b) (8 Marks)

The place of supply of service if contract specifies clear details:

City	No. of Days	Fee in Crore	Location of supplier of service	Place of supply of service = where the respective Event is held.	GST
New Delhi	12	12	New Delhi	New Delhi	CGST & SGST
Chennai	18	18	New Delhi	Chennai	IGST
Mumbai	20	20	New Delhi	Mumbai	IGST
Total	50	50			

The place of supply of service if contract specifies lump sum amount:

City	No. of Days	Rs. in crore	Location of supplier of service	Place of supply of service = where the respective Event is held.	GST
New Delhi	12	11.52	New Delhi	New Delhi	CGST & SGST
Chennai	18	17.28	New Delhi	Chennai	IGST
Mumbai	20	19.20	New Delhi	Mumbai	IGST
Total	50	48.00			

Solution 3(a) (10 Marks)

Computation of GST Liability of Honeycure Laboratories Ltd. for the month of January, 20XX

Particulars	CGST (Rs.)	SGST (Rs.)	IGST (Rs.)
Advance received for drug development services supplied to Orochem Ltd., a drug manufacturer, located in Delhi [Note - 1]	45,000 [5,00,000 × 9%]	45,000 [5,00,000 × 9%]	
Advance received for bulk drugs to be supplied to Novick Pharmaceuticals, a wholesale dealer of drugs in Gurgaon, Haryana [Note - 2]			Nil
Supply of bulk drugs to wholesale dealers of drugs in Delhi [Note - 3]	1,50,000 [60,00,000 × 2.5%]	1,50,000 [60,00,000 × 2.5%]	
Bulk drugs supplied to Anchor Pharmaceuticals Inc., USA [Note - 4]			Nil
Supply of drug development services to Unipharma Ltd., a drug manufacturer, located in Delhi [Note - 5]	54,000 [6,00,000 × 9%]	54,000 [6,00,000 × 9%]	
Supply of bulk drugs to consignment agents - Cardinal Pharma Pvt. Ltd. and Rochester Medicos of Punjab and Haryana [Note - 6]			4,95,000 [99,00,000 × 5%]
Supply of bulk drugs to Ronn Medicos of Gurgaon, Haryana [Note - 7]			1,50,000 [30,00,000 × 5%]
Total GST liability	2,49,000	2,49,000	6,45,000

Notes:

1. Being an intra-State supply of services, supply of drug development services to Orochem Ltd. of Delhi is subject to CGST and SGST @ 9% each. Further, in terms of section 13(2) of the CGST Act, the time of supply of services is the earlier of the date of invoice or date of receipt of payment, if the invoice is issued within 30 days of the supply of service. In the given case, invoice is issued within 30 days of the supply of service. Therefore, time of supply of services will be date of receipt of advance and hence, GST is payable on the advance received in January, 20XX.
2. Being an inter-State supply of goods, supply of bulk drugs to Novick Pharmaceuticals of Gurgaon, Haryana is subject to IGST @ 5%. Further, 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. 40/2017 CT dated 13.10.2017 has postponed the time of supply of advance received for suppliers of goods having aggregate turnover up to Rs. 1.5 crore in the preceding financial year (excluding composition suppliers) till the time of issue of invoice. Thus, GST is not payable at the time of receipt of advance against supply of goods in case of such suppliers.

Since the aggregate turnover of Honeycure Laboratories Ltd. does not exceed Rs. 1.5 crore [Rs. 1.15 lakh = Rs. 70 lakh + Rs. 45 lakh] in the preceding financial year, the time of supply of the advance received for bulk drugs to be supplied to Novick Pharmaceuticals is the time of issue of invoice, which is in March, 20XX. Thus, said advance will be taxed in March, 20XX and not in January, 20XX.

3. Being an intra-State supply of goods, supply of bulk drugs to wholesale dealers of drugs in Delhi is subject to CGST and SGST @ 2.5 % each.
4. Section 2(5) of the IGST Act defines export of goods as taking goods out of India to a place outside India. In view of the said definition, supply of the bulk drugs to Anchor Pharmaceuticals Inc. of USA under bond is export of goods.

Export of goods is a zero-rated supply [Section 16(1) of the IGST Act]. A zero-rated supply under bond is made without payment of integrated tax [Section 16(3)(a) of IGST Act].

5. Being an intra-State supply of services, supply of drug development services to Unipharma Ltd. of Delhi is subject to CGST and SGST @ 9% each.
6. Value of supply of goods made through an agent is determined as per rule 29 of the CGST Rules. Accordingly, the value of supply of goods between the principal and his agent is the open market value of the goods being supplied, or at the option of the supplier, is 90% of the price charged for the supply of goods of like kind and quality by the recipient to his unrelated customer, where the goods are intended for further supply by the said recipient.

In the given case, since open market value is not available, value of bulk drugs supplied to consignment agents - Cardinal Pharma Ltd. and Rochester Medicos – will be Rs. 99,00,000 [90% of (Rs. 60,00,000 + Rs. 50,00,000)]. Further, being an inter-State supply of goods, supply of bulk drugs to the consignment agents is subject to IGST @ 5%.

7. If any person directly or indirectly controls another person, such persons are deemed as related persons. [Clause (a)(v) of explanation to section 15 of the CGST Act]. In the given case, since Honeycure Laboratories Ltd. owns 60% shares of Ronn Medicos, both are related persons.

Value of supply of goods between related persons (other than through an agent) is determined as per rule 28 of the CGST Rules. Accordingly, the value of supply of goods between related persons is the open market value of such goods and not the invoice value. Furthermore, since Ronn Medicos is not eligible for full input tax credit, value declared in the invoice cannot be deemed to be the open market value of the goods. Thus, open market value of the bulk drugs supplied to Ronn Medicos i.e., Rs. 30,00,000 is the value of supply of such goods. Further, being an inter-State supply of goods, supply of bulk drugs to Ronn Medicos is subject to IGST @ 5%.

Solution 3(b) (6 Marks)

As per para 3 of Schedule II to the CGST Act, any treatment or process which is applied to another person's goods is a supply of services and accordingly is subject to GST rate applicable for services.

In the given case, M/s Prem Tools (job worker) undertakes the process of mounting the steel cabinets of Alok Pvt. Ltd. (principal) on metal frames. In view of para 3 of Schedule II to the CGST Act cited above, the mounting activity classifies as service even though metal frames are also supplied as a part of the mounting activity. Accordingly, the job charges will be chargeable to rate of 18%, which is the applicable rate for services.

Further, the value of steel cabinets will not be included in the value of taxable supply made by M/s Prem Tools as the supply of cabinets does not fall within the scope of supply to be made by M/s Prem Tools. M/s Prem Tools is only required to mount the steel cabinets, which are to be supplied by Alok Pvt. Ltd., on metal frames, which are to be supplied by it.

As regards sale of waste generated during the job work, since M/s Prem Tools is registered, the tax leviable on the supply will have to be paid by it in terms of section 143(5) of the CGST Act. Such supply will be treated as supply of goods and subject to GST rate applicable for metal waste.

Accordingly, the GST liability of M/s Prem Tools will be computed as under:

Particulars	Amount (Rs.)
Job charges	5,00,000
GST @ 18% (A)	90,000
Sale of metal waste	45,000
GST @ 12% (B)	5,400
Total GST payable (A) + (B)	95,400

Solution 4(a) (10 Marks)

- (i) As per section 22 of the CGST Act every supplier of goods or services or both is required to obtain registration in the State/ Union territory from where he makes the taxable supply if his aggregate turnover exceeds Rs. 20 lakh [Rs. 10 lakh in case of specified Special Category States] in a financial year.

However, section 24 of the said Act enlists certain categories of persons who are mandatorily required to obtain registration, irrespective of their turnover. Persons who supply goods or services or both through such electronic commerce operator (ECO), who is required to collect tax at source under section 52, is one such person specified under clause (ix) of section 24.

However, where the ECO is liable to pay tax on behalf of the suppliers of services under a notification issued under section 9(5), the suppliers of such services are entitled for threshold exemption.

Section 2(45) of the CGST Act defines ECO as any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. Electronic commerce is defined under section 2(44) to mean the supply of goods or services or both, including digital products over digital or electronic network. Since Hi-Tech Indya Pvt. Ltd. owns and manages a website for e commerce where both goods and services are supplied, it will be classified as an ECO under section 2(45).

Notification No. 17/2017 CT (R) dated 28.06.2017 issued under section 9(5) specifies services by way of house-keeping, except where the person supplying such service through ECO is liable for registration under section 22(1), as one such service where the ECO is liable to pay tax on behalf of the suppliers.

In the given case, AB Pvt. Ltd. provides house-keeping services through an ECO. It is presumed that Hi-Tech Indya is an ECO which is required to collect tax at source under section 52. However, house-keeping services provided by AB Pvt. Ltd., which is not liable for registration under section 22(1) as its turnover is less than Rs. 20 lakh, is a service notified under section 9(5). Thus, AB Pvt. Ltd. will be entitled for threshold exemption for registration and will not be required to obtain registration even though it supplies services through ECO.

In the second case, AB Pvt. Ltd. sells readymade garments through ECO. Such supply cannot be notified under section 9(5) as only supplies of services are notified under that section. Therefore, in the second case, AB

Pvt. Ltd. will not be entitled for threshold exemption and will have to compulsorily obtain registration in terms of section 24(ix).

- (ii) As per section 31(3)(a) of the CGST Act, a registered person may, within one month from the date of issuance of certificate of registration, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him.

Further, rule 10(2) of CGST Rules lays down that the registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of 30 days from such date.

In the given case, Avtaar Enterprises has applied for registration within 30 days of becoming liable for registration and the registration has been granted. Thus, the effective date of registration is the date on which Avtaar Enterprises became liable for registration i.e., October 3, 20XX. Therefore, since in the given case there is a time lag between the effective date of registration (October 3, 20XX) and the date of grant of certificate of registration (November 5, 20XX), revised invoices can be issued. The same can be issued for supplies made during this intervening period i.e., for the period beginning with October 3, 20XX till November 5, 20XX. Further, the revised invoices can be issued for the said period till December 5, 20XX.

Solution 4(b) (6 Marks)

- 1) As per the Baggage Rules, 2016, an Indian resident arriving from an country other than Nepal, Bhutan or Myanmar is allowed duty free clearance of-
- (i) Used personal effects and travel souvenirs without any value limit.
 - (ii) Articles [other than certain specified articles] upto a value of Rs. 50,000 carried as accompanied baggage [General duty free baggage allowance].

Further, such general duty free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.

- 2) One laptop computer when imported into India by a passenger of the age of 18 years or above (other than member of crew) is exempt from whole of the customs duty [Notification No. 11/2004 Cus dated 08.01.2004].
- 3) Accordingly, there will be no customs duty on used personal effects (worth Rs. 1,20,000) of Mrs. and Mr. Subramanian and laptop computer brought by them will be exempt from duty.

Duty payable on personal computer after exhausting the duty free baggage allowance will be Rs. 54,000 – Rs. 50,000 = Rs. 4,000.

Effective rate of duty for baggage = 36.05% [including education cess & secondary & higher education cess]

Therefore, total customs duty payable = Rs. 1,442

Solution 5(a) (6 Marks)

- 1) An appeal against a decision/order passed by any adjudicating authority under the CGST Act or SGST Act/UTGST Act is appealable before the Appellate Authority [Section 107(1) of the CGST Act]. Thus, Home Furnishers can file an appeal to Appellate Authority against the adjudication order passed by the Joint Commissioner of Central Tax.

Further, such appeal can be filed within 3 months from the date of communication of such decision/order [Section 107(1) of the CGST Act]. Thus, Home Furnishers can file the appeal to Appellate Authority on or before 22.11.20XX. Further, the Appellate Authority can also condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)].

- 2) GST law makes provisions for cross empowerment between CGST and SGST/UTGST officers so as to ensure that if a proper officer of one Act (say CGST) passes an order with respect to a transaction, he will also act as the proper officer of SGST for the same transaction and issue the order with respect to the CGST as well as the SGST/UTGST component of the same transaction.

The law further provides that where a proper officer under one Act (say CGST) has passed an order, any appeal/review/ revision/rectification

against the said order will lie only with the proper officers of that Act only (CGST Act). Similarly, if any order is passed by the proper officer of SGST, any appeal/review/revision/rectification will lie with the proper officer of SGST only. Thus, Home Furnishers is required to file an appeal only with the Central Tax Appellate Authority [Section 6 of CGST Act].

3) Home Furnishers' view is not correct in law. Section 107(6) of the CGST Act provides that no appeal shall be filed before the Appellate Authority, unless the appellant has paid—

a. full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

b. a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order.

Since in the given case, Home Furnishers disagrees with the entire tax demanded, it has to make a pre-deposit of 10% of the amount of tax in dispute arising from the impugned order, i.e., 10% of Rs. 50,00,000 which is Rs. 5,00,000.

Solution 5(b) (5 Marks)

Circular No. 11/11/2017 GST dated 20.10.2017 has clarified that supply of books printed with contents supplied by the recipient of such printed goods, is composite supply and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

Principal supply has been defined in section 2(90) of the CGST Act as supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

In the case of printing of books where content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore, such supplies would constitute supply of service.

Solution 5(c) (5 Marks)

Computation of customs duty payable by Siya

Particulars	Amount (US \$)
Assessable value	1,00,000
	Amount (Rs.)
Value in Indian currency (US \$ 1,00,000 x Rs. 65.20) [Note 1]	65,20,000
Customs duty @ 10% [Note 2]	6,52,000
Add: Education cess @ 2%	13,040
Add: Secondary and higher education cess @ 1%	6,520
Total customs duty payable	6,71,560

Notes:

1. As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange prevalent on the date on which the into bond bill of entry is presented for warehousing under section 46 of the Customs Act, 1962.
2. Goods which are not removed within the permissible period are deemed to be improperly removed in terms of section 72 of the Customs Act, 1962 on the day they should have been removed [Kesoram Rayon v. CC 1996 (86) ELT 464 (SC)]. The applicable rate of duty in such a case is the rate of duty prevalent on the last date on which the goods should have been removed.

As per section 61(2) of the Customs Act, 1962, if goods (not meant for being used in an 100% EOU, STP unit, EHTP unit) remain in a warehouse beyond a period of 90 days from the date on which the order under section 60(1) of the Customs Act, 1962 is made, interest is payable at such rate as may be fixed by the Central Government under section 47 of the Customs Act, 1962 [i.e. 15% p.a.], on the amount of duty payable at the time of clearance of the goods, for the period from the expiry of the said 90 days till the date of payment of duty on the warehoused goods.

Therefore, interest payable will be computed as under:

Period of ninety days commencing from the date of order made under 60(1) of the Customs Act, 1962 expires on	19.08.20XX
--	------------

No. of days for which interest shall be payable [12 days of August + 30 days of September + 14 days of October]	56 days
Interest payable = [6,71,560 x(15/100)x (56/365)] Rs. (rounded off)	Rs. 15,455

Solution 6(a) (5 Marks)

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.

Solution 6(b) (5 Marks)

Computation of assessable value

Case I

Particulars	US \$
FOB value	1,000
Add: Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation [20% of FOB value in terms of first proviso to rule 10(2) of CVR]	200
Cost of insurance [Includible in terms of rule 10(2)(b) of CVR]	10
Assessable value [CIF value]	1,210

Case II

Particulars	US \$
FOB value plus insurance charges	1,010
Add: Cost of transport, loading, unloading and handling charges	202

associated with the delivery of the imported goods to the place of importation [20% of sum of FOB value of the goods and the cost of insurance in terms of second proviso to rule 10(2) of CVR]	
Assessable value [CIF value]	1,212

Case III

Particulars	US \$
FOB value	1,000
Add: Cost of sea transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation [Includible in terms of rule 10(2)(a) of CVR]	60
Insurance [1.125% of sum of FOB value of the goods in terms of third proviso to rule 10(2) of CVR]	11.25
Assessable value [CIF value]	1,071.25
Assessable value rounded off	1,071

Case IV

Particulars	US \$
FOB value plus sea freight and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation	1,060
Add: Insurance [1.125% of sum of FOB value of the goods and sea freight and loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation in terms of fourth proviso to rule 10(2) of CVR]	11.925
Assessable value CIF value	1071.925
Assessable value rounded off	1,072

Case V

Particulars	US \$
FOB value	1,000
Add: Cost of air transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation is restricted to 20% of FOB value when transportation of goods is through air [Fifth proviso to rule 10(2) of CVR]	200
Cost of insurance	10
Assessable value [CIF value]	1,210

Solution 6(c) (6 Marks)

During the course of any enquiry under this Act, the duly empowered officer can have access to any business premises, which may be required for the purpose of such enquiry. During such access, the officers can inspect the books of accounts, documents, computers, computer programs, computer software and such other things as may be required.

It is the duty of the persons in charge of such premises to furnish the required documents. Similarly, the persons in charge of business premises are also duty bound to furnish such documents to the audit party deputed by the proper officer or the Chartered Accountant or Cost Accountant, who has been deputed by the Commissioner to carry out special audit. The following records are covered by this provision and are to be produced, if called for.

- (i) The records prepared and maintained by the registered person and declared to the proper officer in the prescribed manner.
- (ii) Trial balance or its equivalent.
- (iii) Statements of annual financial accounts, duly audited.
- (iv) Cost audit report, if any.
- (v) The income - tax audit report, if any.
- (vi) Any other relevant record.

Solution 7(a) (4 Marks)

In both DFIA and Advance Authorization schemes, import of inputs, oil and catalyst which are required for export products are permitted without payment of customs duty.

The differences between DFIA and Advance Authorisation schemes are as follows –

- (i) Advance Authorisation is not transferable. DFIA is transferable after export obligation is fulfilled.
- (ii) Advance Authorisation scheme requires 15% value addition, while in case of DFIA; minimum 20% value addition is required.
- (iii) Advance Authorisation scheme is available to gem and jewellery sector but not DFIA is not available to the said sector.

(iv) DFIA cannot be issued where SION (Standard Input Output Norms) prescribes actual user condition [as the material is transferable after fulfilment of export obligation].

(v) Advance Authorisation can be issued even if SION for that product is not fixed. DFIA can be issued only if SION has been fixed for the product to be exported.

Solution 7(b) (4 Marks)

The written submissions in reply to SCN issued to Rajul are as follows:

- i. The show cause notice (SCN) issued for normal period of limitation under section 73(1) of the CGST Act, 2017 is not sustainable.
- ii. The SCN under section 73(1) of the CGST Act, 2017 can be issued at least 3 months prior to the time limit specified for issuance of order under section 73(10) of the CGST Act, 2017. The adjudication order under section 73(10) of the CGST Act, 2017 has to be issued within 3 years from the due date for furnishing of annual return for the financial year to which the short-paid tax relates to.

The due date for furnishing annual return for a financial year is on or before the 31st day of December following the end of such financial year [Section 44 of the CGST Act, 2017]. Thus, SCN under section 73(1) of the CGST Act, 2017 can be issued within 2 years and 9 months from the due date for furnishing of annual return for the financial year to which the short-paid tax relates to.

- iii. The SCN has been issued for the period between 01.07.2017 to 31.12.2017 which falls in the financial year (FY) 2017-18. Due date for furnishing annual return for the FY 2017-18 is 31.12.2018 and 3 years' period from due date of filing annual return lapses on 31.12.2021. Thus, SCN under section 73(1) ought to have been issued latest by 30.09.2021.
- iv. Since the notice has been issued after 30.09.2021, the entire proceeding is barred by limitation and deemed to be concluded under section 75(10) of the CGST Act, 2017.

Solution 7(c) (4 Marks)

Yes, action can be taken for transportation of goods without valid documents or if goods are attempted to be removed without proper record in books. If any person transports any goods or stores any such goods while in transit without the documents prescribed under the Act (i.e. invoice and a declaration) or supplies or stores any goods that have not been recorded in the books or accounts maintained by him, then such goods shall be liable for detention along with any vehicle on which they are being transported [Section 129 of CGST Act].

Where owner comes forward: -

Such goods shall be released on payment of the applicable tax and penalty equal to 100% of the tax payable on such goods or upon furnishing of security equivalent to the said amount.

In case of exempted goods, penalty is 2% of value of goods or Rs. 25,000/- whichever is less.

Where owner does not come forward: -

Such goods shall be released on payment of the applicable tax and penalty equal to 50% of value of goods reduced by the tax amount paid thereon or upon furnishing of security equivalent to the said amount.

In case of exempted goods, penalty is 5% of value of goods or Rs. 25,000/- whichever is lesser.

Solution 7(d) (4 Marks)

The contention of Everest Technologies Private Limited is not valid in law. The SCN under section 73(1) of the CGST Act can be issued at least 3 months prior to the time limit specified for issuance of order under section 73(10) of the CGST Act [Section 73(2) of the CGST Act]. The adjudication order under section 73(10) of the CGST Act has to be issued within 3 years from the due date for furnishing of annual return for the financial year to which the short-paid/not paid tax relates to.

The due date for furnishing annual return for a financial year is 31st day of December following the end of such financial year [Section 44 of the CGST Act]. Thus, SCN under section 73(1) of the CGST Act can be issued within 2 years and 9 months from the due date for furnishing of annual return for the financial year to which the short-paid/not paid tax relates to.

The SCN has been issued for the period between 01.07.2017 to 31.12.2017 which falls in the financial year (FY) 2017-18. Due date for furnishing annual return for the FY 2017-18 is 31.12.2018 and 3 years' period from due date of filing annual return lapses on 31.12.2021. Thus, SCN under section 73(1) ought to have been issued latest by 30.09.2021. Since in the given case, the notice has been issued on 31.01.2021, notice is not time-barred.