

## **Paper - 18 : Indirect Tax Laws and Practice**

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Full Marks: 100

Time allowed: 3 hours

The figures in the margin on the right side indicate full marks.  
Working notes should form part of the answer.

**Section A: GST  
Part - I**

Answer Question No. 1 which is compulsory.

1. Choose the correct answer with justification/ workings wherever applicable: [7×2=14]

- (i) Under Reverse Charge Mechanism, when can credit for tax paid be taken?
  - (a) No credit is available
  - (b) In the same month during which payment of tax has been made
  - (c) In the same month during which liability of tax has occurred
  - (d) Either of (b) or (c)
- (ii) Trader A sold goods to Trader B worth Rs. 4,50,000. The invoice was issued on 10<sup>th</sup> February, 2022. The payment was received on 28<sup>th</sup> February, 2022. The goods were supplied on 18<sup>th</sup> February, 2022. The time of supply of goods will be: —
  - (a) 10<sup>th</sup> February, 2022
  - (b) 18<sup>th</sup> February, 2022
  - (c) 28<sup>th</sup> February, 2022
  - (d) None of the above
- (iii) The value of supply of goods or services or both based on cost shall be on what % of cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services, according to Rule 30 of the CGST Rules inter alia?
  - (a) 100
  - (b) 110
  - (c) 125
  - (d) 150
- (iv) Who among the following can take input tax credit?
  - (a) Unregistered dealer
  - (b) Registered dealer opting for composition scheme
  - (c) Registered dealer not opting for composition scheme
  - (d) None of the above
- (v) For which of the following values of the goods or services or both supplied, subject to such conditions and in such manner as may be prescribed, a registered person may not issue a tax invoice?
  - (a) Rs. 190
  - (b) Rs. 210
  - (c) Both (a) and (b)
  - (d) None of the above
- (vi) What is the rate of TDS under GST?
  - (a) 1%
  - (b) 2%
  - (c) 3%
  - (d) 4%

- (vii) In which form, the e-commerce operator collecting tax u/s 52 is required to file its monthly return?
- (a) Form GSTR 7 by 10<sup>th</sup> of the succeeding month
  - (b) Form GSTR 7 by 20<sup>th</sup> of the month succeeding the quarter
  - (c) Form GSTR 8 by 10<sup>th</sup> of the succeeding month
  - (d) Form GSTR 8 by 20<sup>th</sup> of the succeeding month

**Answer:**

- (i) (b) In the same month during which payment of tax has been made  
Reason: ITC will be available in the month in which the tax under reverse charge has been paid.
- (ii) (a) 10th February, 2022  
Reason: The time of supply of goods will be the due date of raising invoice 10<sup>th</sup> February 2022.
- (iii) (b) 110  
Reason: Rule 30 of the CGST Rules inter alia provides value of supply of goods or services or both based on cost shall be 110% of cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.
- (iv) (c) Registered dealer not opting for composition scheme  
Reason: As per sec. 16, every registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person. However, registered dealer opting for composition scheme is not eligible for availing input tax credit.
- (v) (a) Rs.190  
Reason: As per sec. 31(3)(b), a registered person may not issue a tax invoice if the value of the goods or services or both supplied is less than Rs.200.
- (vi) (b) 2%  
Reason: 1% TDS is required to be deducted under both the CGST and the SGST Act and therefore the total TDS to be deducted is 2%. In case of an inter-state transaction, IGST would be levied and 2% TDS would be levied in this case as well.
- (vii) (c) Form GSTR 8 by 10th of the succeeding month  
Reason: The e-commerce operator collecting tax u/s 52 shall file its monthly return in Form GSTR 8 by 10th of the succeeding month.

**Part – II**

**Answer any four questions from question number 2 to 7. Each question carries 14 marks.**

**[14x4=56]**

- 2.(a) Determine the place of supply in case of online information and database access or retrieval service? [7]
- (b) A Ltd., a biscuits manufacturing company based in UK, intends to launch its products in India. However, the company wishes to know the taste and sensibilities of Indians before launching its products in India. For this purpose, A Ltd has approached ABC Consultants, Ranchi, to carry out a survey in India to enable it to make changes, if any, in its products to suit Indian taste. The survey is to be solely based on oral replies of the surveyees; they will not be provided any sample by A Ltd, to taste. ABC Consultants will be paid in convertible foreign exchange for the assignment. With reference to the provision of GST Law, determine the place of supply of the service. Also, explain whether the said supply will amount to export of service? [7]

**Answer:**

(a) As per sec. 13(12) of the IGST Act, the place of supply of the online information and database access or retrieval services will be location of recipient of service. However, person receiving such service will be deemed to be located in taxable territory (i.e. India) if any two of the following non-contradictory conditions are fulfilled:

- (i) the location of address presented by the recipient of service via internet is in taxable territory;
- (ii) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of service settles payment has been issued in the taxable territory;
- (iii) the billing address of recipient of service is in the taxable territory;
- (iv) the internet protocol address of the device used by the recipient of service is in the taxable territory;
- (v) the bank of recipient of service in which the account used for payment is maintained is in the taxable territory;
- (vi) the country code of the subscriber identity module (SIM) card used by the recipient of service is of taxable territory;
- (vii) the location of the fixed land line through which the service is received by the recipient is in taxable territory.

(b) As per Sec 13(2) of the IGST Act, 2017 in case where the location of the supplier of services or the location of the recipient of services is outside India, the place of supply of services except the services specified in sub-section (3) to (13) shall be the location of the recipient of services.

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

As per sec 2(6) of the IGST Act, 2017 export of services means the supply of any services when –

- (i) the supplier of service is located in India;
  - (ii) the recipient of service is located outside India;
  - (iii) the place of supply of service is outside India;
  - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
  - (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;
- Since all the above 5 conditions are fulfilled in the given case, the same will be considered as an export of service.

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

**3.(a) Write briefly on GSTR-4A? State the details that are required to be submitted in Form GSTR-4? [2+4]**

(b) The following information relating to services provided and the gross amount received by A Bank Ltd.:

Particulars	Rs. in Lakhs
Services of Merchant Banking	10.00
Asset Management (including portfolio management)	5.00
Service charges for services to the Government of India	2.00
Interest on overdraft and cash credits	2.50
Banker to the issue	7.00
Rent for Locker	2.50

A customer repays the financial lease to the bank for Rs.80 lakhs which includes a principal amount of Rs.50 lakhs.

Compute the value of taxable supply of services under Banking and other financial services as per the Central Goods and Services Tax Act, 2017 and also find the CGST and SGST where rate of GST is 9% each.

**Note:** Input Tax Credit availed by the bank on the asset which is given on financial lease. [8]

**Answer:**

(a) Form GSTR-4A contains the details of inward supplies received by composition suppliers from registered taxable persons, debit/credit notes received, and tax deducted at source. This statement is auto populated from Forms GSTR-1, GSTR-5 and GSTR-7 filed by other assesses.

While furnishing the return in Form GSTR-4, the assessee has to furnish the following details:

1. Invoice wise details of inter-State and intra-State inward supplies received from registered and unregistered persons
2. Import of goods and services
3. Consolidated details of outward supplies
4. Debit and credit notes issued and received, if any
5. TCS Credit received
6. Consolidated statement of advances paid/adjusted
7. Amendment of outward supplies furnished in earlier returns

**(b) Statement showing GST liability of A Bank Ltd.**

Particulars	Rs.in Lakhs
Services of Merchant Banking	10.00
Asset Management (including portfolio management)	5.00
Service charges for services to the Government of India	2.00
Interest on overdraft and cash credits	Nil
Banker to the issue	7.00
Rent for locker	2.50
Financial lease (supply of service)	80.00
Taxable supply of services	106.50
CGST 9%	9.585
SGST 9%	9.585

4. (a) M/s. K Ltd. is a dealer dealing with second-hand goods. M/s K Ltd. is a registered person under GST. M/s. K Ltd. supplies a used camera to a consumer in Mumbai for selling price of Rs. 20,000. The used camera (i.e. second hand) was purchased for Rs. 12,000 from a registered dealer in Chennai, on which CGST + SGST of Rs. 1,680 each was charged (i.e. GST rate applicable to cameras is 28%).

M/s. K Ltd. charged IGST 28% on inter State supply. Find the net GST liability in the following independent cases:

(i) if input tax credit availed.

(ii) if input tax credit not availed.

[6]

**(b) The following tax liabilities are belongs to X Ltd. under the provisions of Act-**

Sl. No.	Particulars	Amount (Rs.)
1	Tax liability of CGST, SGST/UGST, IGST for supplies made during July 2021	1,00,000
2	Interest & Penalty on delayed payment and filing of returns belonging to July 2021	20,000
3	Tax liability of CGST, SGST/UGST, IGST for supplies made during August 2021	1,20,000
4	Interest & Penalty on delayed payment and filing of returns belonging to August 2021	20,000

5	Demand raised as per section 73 or section 74 under CGST Act, 2017 belonging to June 2021	8,00,000
6	Demand raised as per the old provisions of Indirect Taxes	1,00,000

X Ltd. has Rs.5,00,000 in Electronic cash ledger. Advise X Ltd. in discharging the tax liability.

[8]

Answer:

(a) (i) **Computation of Net GST liability in case of input tax credit availed:**

Particulars	Value in Rs.	GST (Rs.)	Remarks
Output supply	20,000	5,600	IGST 28% on Rs.20,000
Less: ITC	12,000		
CGST 14%		(1,680)	
SGST 14%		(1,680)	
<b>Net GST liability</b>		<b>2,240</b>	

(ii) **Computation of Net GST liability in case of input tax credit not availed:**

Particulars	Value in Rs.	28 % IGST (Rs.)	Remarks
Output supply	20,000		
Less: purchase price	15,360		ITC will form part of cost
Difference known as margin	4,640	1299.20	Charge GST on the margin or profit earned on the goods (Rs.4,640 x 28%)

(b) Balance in Electronic cash ledger can be used in the following manner to discharge tax liability by X Ltd.

Particulars	Amount (Rs.)
Balance available in Electronic cash ledger	5,00,000
Less	
Tax liability of CGST, SGST/UGST, IGST for supplies made during July 2021	(1,00,000)
Interest & Penalty on delayed payment and filing of returns belonging to July 2021	(20,000)
Tax liability of CGST, SGST/UGST, IGST for supplies made during August 2021	(1,20,000)
Interest & Penalty on delayed payment and filing of returns belonging to August 2021	(20,000)
Demand raised as per section 73 or section 74 under CGST Act, 2017	(2,40,000)
Balance in electronic cash ledger	Nil

The balance amount of Rs. 5,60,000 towards demand raised under section 73 or section 74 under CGST Act, 2017 to be discharged before discharging liability of demand rose under old provisions of Indirect Taxes.

5.(a) Write in short about the Assessment of Unregistered Person (u/s 63). [8]

(b) State the circumstances where the refund amount shall be paid to the applicant. [6]

Answer:

(a) Section 63 is applicable to unregistered persons i.e., persons who are liable to obtain registration under Section 22 and have failed to obtain registration will come within scope of operation of this Section. This provision also covers the cases whose registration was cancelled as per section 29 (2) claiming of the GST Act. Section 29(2) of the Act covers 5 instances as follows:

1. A person who contravenes the provisions of this Act or Rules made thereunder;
2. A composition person who fails to furnish returns for 3 consecutive tax periods.

3. A person other than composition person who fails to furnish returns for 6 consecutive months.
4. A person who has sought voluntary registration but has failed to commence business within 6 months.
5. Where registration has been obtained by way of fraud, willful misstatement or suppression of facts.

This Section is applicable to unregistered taxable persons. In such cases, the proper officer is required to give a reasonable opportunity of being heard to such persons before proceeding to assess such person. The section begins with the phrase "Notwithstanding anything to the contrary contained in section 73 or section 74". It therefore appears that, assessment under section 63 can be completed independent of section 73 and Section 74, however, procedures contained in section 73 or 74 to the extent they are not inconsistent with section 63 need to be followed, while completing the assessment on principles governing best judgment assessment. Even though no return would have actually been filed in such cases, the authority to pass such assessment order is extinguished on the expiry of 5 years from due date applicable for filing annual return for the year to which tax not paid relates.

- (b) As per sec. 54(8), the refundable amount shall, instead of being credited to the Consumer Welfare Fund, be paid to the applicant, if such amount is relatable to:
1. refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;
  2. refund of unutilized input tax credit;
  3. refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
  4. refund of tax in pursuance of sec. 77;
  5. the tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
  6. the tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

- 6.(a)(i) A reduction from the output tax liability of Rs.2,25,000 has been made by K Ltd. in contravention of the provisions of section 42(10) of the CGST Act, 2017 in the month of January 2022 (vide invoice date 12.01.2022), which is ineligible credit at invoice level. As a result, a show cause notice issued Central Tax Department under section 74 of the CGST Act, 2017 along with interest. M/s. K Ltd. paid the tax and interest on 5th March 2022. Find the interest liability if any? Note: Ignore the penalty. [4]

- (ii) Mr. R, a Customs Broker, issues an invoice for reimbursement of few expenses and for consideration towards agency services rendered to an importer. The amounts charged by the Customs Broker are as below:

Sl. No.	Component charges in invoice	Amount in Rs.
1	Hotel expenses	11,000
2	Customs duty	60,000
3	Travelling expenses	7,000
4	Dock dues	3,000
5	Agency income	12,000

Calculate the value of taxable supply of service in the hands of Customs Broker. [4]

- (b) State the differences between Section 65 (Audit by Tax Authorities) and Section 66 (Special Audit) of the CGST Act, 2017. [6]

**Answer:**

- (a)(i) As per section 42(10) read with section 50(3) of the CGST Act, 2017 amount reduced from

the output tax liability in contravention of the provisions of section 42(7) shall be added to the output tax liability of the recipient in his return for the month in which such contravention takes place and such recipient shall be liable to pay interest on the amount so added at the rate specified in section 50(3) of the CGST Act, 2017. Therefore, applicable rate of interest is @24% per annum.

January month return due date is 20th of February 2022.

Interest = Rs. 1,923/- (Rs. 2,25,000 x 24% x 13/365)

Note: from 21st February 2022 to 5th March 2022 = 13 days

**(ii) Statement showing taxable value of supply of service:**

Sl. No.	Component charges in invoice	Amount in Rs.	Remarks
1	Agency income	12,000	Addable into the value
2	Travelling expenses	7,000	Addable into the value
3	Hotel expenses	11,000	Addable into the value
4	Customs duty	Not addable	Pure agent reimbursement
5	Dock dues	Not addable	Pure agent reimbursement
	<b>Total</b>	<b>30,000</b>	

Sl. No.	Component charges in invoice	Amount in Rs.	Remarks
1	Hotel expenses	11,000	Addable into the value
2	Customs duty	Not addable	Pure agent reimbursement
3	Travelling expenses	7,000	Addable into the value
4	Dock dues	Not addable	Pure agent reimbursement
5	Agency income	12,000	Addable into the value
	<b>Total</b>	<b>30,000</b>	

**(b)**

Components	Section 65 of the CGST Act, 2017	Section 66 of the CGST Act, 2017
Nature of Audit	In this section, we have a departmental audit	In this section, we have a special audit
Conducted by	It is conducted by officers of the department authorized by the commissioner	It is conducted by Chartered Accountant/Cost Accountant nominated by the commissioner
Prior Notice	Prior notice of 15 days is required	No such notice/intimation is required
Time for conclusion of the audit	The conclusion of the audit is given in 3 months, further extension of 6 months is allowed	The conclusion of the audit is given in 90 days, further extension of 90 days is allowed
Audit Findings / Report	Audit reports should be intimated soon upon completion of the	Audit reports should be shown to deputy/ assistant commissioner
The opportunity of being heard	No specific provision	Yes, where material gathered during the audit is to be used in any proceedings against the auditee

**7.(a) What do you mean by an E-way bill? State the situations under which E-way bill is not necessary to generate. [7]**

**(b) The output tax liability of Mr. A, a registered supplier in respect of supplies made to Mr. B, for the month of July 2017 is ₹135,000 after considering his claim for reduction in his output tax liability on account of issuance of a credit note of ₹10,000. Whereas the corresponding input tax credit claimed by Mr. B in his valid return (after considering the reduction in ITC admitted and discharged on such credit note) is ₹132,000. What shall be impact of such**

transactions.

[7]

**Answer:**

(a) E-way bill is an Electronic Way bill for movement of goods to be generated on the E-way bill portal. A GST registered person cannot transport goods in a vehicle whose value exceeds Rs. 50, 000/- without an e-way bill that is generated on [ewaybillgst.gov.in](http://ewaybillgst.gov.in) Alternatively, E-way bill can also be generated or cancelled through SMS, Android App and by site-to-site integration through API. When an E-way bill is generated, a unique E-way Bill Number (EBN) is allocated and is available to the supplier, recipient, and the transporter.

In the following cases it is not necessary to generate E-way Bill:

- (i) The mode of transport is non-motor vehicle
- (ii) Goods transported from Customs port, airport, air cargo complex or land customs station to Inland Container Depot (ICD) or Container Freight Station (CFS) for clearance by Customs.
- (iii) Goods transported under Customs supervision or under customs seal
- (iv) Goods transported under Customs Bond from ICD to Customs port or from one custom station to another.
- (v) Transit cargo transported to or from Nepal or Bhutan
- (vi) Movement of goods caused by defence formation under Ministry of defence as a consignor or consignee
- (vii) Empty Cargo containers are being transported
- (viii) Consignor transporting goods to or from between place of business and a weighbridge for weighment at a distance of 20 kms. accompanied by a Delivery challan.
- (ix) Goods being transported by rail where the Consignor of goods is the Central Government, State Governments or a local authority.
- (x) Goods specified as exempt from E-way bill requirements in the respective State/Union territory GST Rules.
- (xi) Transport of certain specified goods- Includes the list of exempt supply of goods, Annexure to Rule 138(14), goods treated as no supply as per Schedule III, Certain schedule to Central tax Rate notifications.

(b) As per Explanation (ii) to Rule 69 of CGST Rule, 2017, claim of reduction in the output tax liability shall be considered as matched, where the amount of reduction claimed is equal to or less than the claim of reduction in ITC admitted and discharged on such credit note by the corresponding recipient in his valid return.

In the given case net output tax liability of Mr. A is Rs. 35,000 after taking into accounting the reduction claimed which is more than input tax credit by Mr. B in respect of same supply i.e Rs.32,000 so, no output tax liability shall be added to the account of Mr.A as a result of such Mismatch.

### **Section – B: Customs & FTP**

#### **Part - I**

#### **Answer Question No. 8 which is compulsory**

8. Choose the correct answer with justification/ workings wherever applicable: [3×2=6]
- (i) Warehoused goods specified in sec. 61(1)(c) remained in a warehouse beyond the date on which the proper officer has made an order u/s 60, interest shall be payable @ 15% in which of the following cases?
- (a) 40 days
  - (b) 60 days
  - (c) 80 days
  - (d) 100 days

- +/(ii) The capital punishment u/s 132 for false declaration, documents, etc. is imprisonment for a term which may extend to
- (a) 6 months
  - (b) 1 year
  - (c) 2 years
  - (d) 4 years
- (iii) In order to be considered for establishment as EOU, a project should have a minimum investment of Rs. \_\_\_\_\_ in Plant & Machinery.
- (a) 25 lakhs
  - (b) 50 lakhs
  - (c) 1 Crore
  - (d) 2 Crores

**Answer:**

- (i) (d) 100 days  
Reason: As per sec. 61, where any warehoused goods specified in sec. 61(1)(c) remain in a warehouse beyond a period of 90 days from the date on which the proper officer has made an order u/s 60, interest shall be payable @ 15%
- (ii) (c) 2 years  
Reason: As per sec. 132, whoever makes, signs or uses, or causes to be made, signed or used, any declaration, statement or document in the transaction of any business relating --to the customs, knowing or having reason to believe that such declaration, statement or document is false in any material particular, shall be punishable with imprisonment for a term which may extend to two years, or with fine, or with both.
- (iii) (c) 1 Crore  
Reason: Only projects having a minimum investment of Rs. 1 crore in plant & machinery shall be considered for establishment as EOUs. However, Board of Approvals (BoA) may allow establishment of EOUs with a lower investment criteria also.

**Part – II**

Answer any two questions from question number 9 to 11. Each question carries 12 marks.

**[12x2=24]**

9. (a) A commodity which is covered by a notification issued by the Central Government under section 9A of the Customs Tariff Act, 1975, is imported into India from a country. Following particulars are made available:  
Quantity imported: 500 kgs.  
CIF value of the consignment: US\$ 30,000  
Exchange rate applicable: Rs. 70 = US\$1  
Basic customs duty: 12 %  
Social Welfare Surcharge @ 10%  
As per the notification, the anti-dumping duty is applicable and it will be equal to the difference between the cost of commodity calculated @ US\$80 per kg. and the landed value of the commodity as imported.  
Compute the liability on account of normal duties and the anti-dumping duty.  
Assume that only Basic Customs Duty (BCD) and Social Welfare Surcharge are payable.  
IGST @12% is also being applicable. **[8]**
- (b) An unauthorized import has been made by a person and such goods are liable to be confiscation. After adjudication, Assistant Commissioner provides an option to the importer to pay fine in lieu of confiscation. It is proposed to impose a fine (in lieu of confiscation) equal to 50% of margin of profit. The following particulars are available:  
Asse714 +10-+10 00 /--+ssable value Rs. 50,000,  
Total duty payable Rs. 20,000,

Market value Rs. 1,00,000.

Calculate the amount of fine that can be imposed and also calculate the amount of fine and the total payment to be made by the importer to clear the consignment. [4]

**Answer:**

**(a) Statement showing landed value of imported goods and customs duties:**

Particulars	US \$
CIF value	30,000
	<b>Value in Rs.</b>
Assessable value (i.e. 30,000 × Rs.70)	21,00,000
Add: Customs duty 13.2% on Assessable value	2,77,200
Landed value (or value of imported goods)	23,77,200
Anti-dumping duty (Rs. 28,00,000 –Rs. 23,77,200)	4,22,800
Market value of imported goods (500 kgs. X Rs.70 x US \$80) = Rs. 28,00,000	
Open Market Value	28,00,000
Add: IGST @12% on Rs. 28,00,000	3,36,000
Total	31,36,000

Total customs duty payable is Rs.10,36,000 (i.e. 2,77,200+ 4,22,800+3,36,000)

Note: In cases where imported goods are liable to Anti - Dumping Duty or Safeguard Duty, calculation of Anti - Dumping Duty or Safeguard duty would be as per the respective notification issued for levy of such duty. It is also clarified that value for calculation of IGST as well as Compensation Cess shall also include Anti - Dumping Duty amount and Safeguard duty amount

**(b)** In the given case Assistant Commissioner intends to impose redemption fine equal to 50% of margin of profit.

Total cost to importer = Rs. 50,000 +Rs. 20,000 = Rs. 70,000.

Margin of profit:

Market value – Total cost to importer = Rs. 1,00,000 – Rs. 70,000 = Rs. 30,000.

Hence, redemption fine will be Rs. 15,000 (@ 50% of Rs. 30,000). In addition, duty of Rs. 20,000 is payable. Thus, importer will have to pay totally Rs. 35,000 to clear the goods from customs.

**10.(a)** Pranav and Parul, the petitioners, were engaged in the business of import in trading of textiles and some other consumable goods. During search, the statements of both the petitioners were recorded and the petitioners were arrested for the offence under sections 132 and 135 of the Customs Act, 1962 on account of alleged false declaration, false documents and evasion of customs duty. Simultaneously, adjudication proceedings were also initiated under the Act. The accused persons were exonerated by the competent authority/tribunal in the adjudication proceedings. Criminal proceedings were carried on simultaneously and petitioners were alleged to have committed offences punishable under sections 132 and 135(1)(b). Whether the criminal prosecution can be permitted to continue against both when the adjudication proceedings are in favour of them? Discuss. [6]

**(b)** Describe the term “Standard Input Output Norms” (SION)? What are the basic requirements for fixation/modification of Standard Input Output Norms (SION)? [6]

**Answer (a)**

In case of Kapil Rai and Jatin Kapoor v Union of India (2008) (HC) New Delhi, court held that where the accused persons are exonerated by the competent authorities/Tribunal in adjudication proceedings, one will have to see that reasons for such exoneration to determine whether these criminal proceedings could still continue.

If the exoneration in departmental adjudication is on technical ground or by giving benefit of

doubt and not on merits or the adjudication proceedings were on different facts, it would have no bearing on criminal proceedings.

If, on the other hand, the exoneration in the adjudication proceedings is on merits and it is found that allegations are not substantiated at all and the concerned persons(s) is/are innocent, and the criminal prosecution is also on the same set of facts and circumstances, the criminal prosecution cannot be allowed to continue.

If the departmental authorities themselves, in adjudication proceedings, record a categorical and unambiguous finding that there is no such contravention of the provisions of the Act, it would be unjust for such departmental authorities to continue with the criminal complaint.

From the above discussion it is evident that the criminal prosecution can not be permitted to continue against both when the adjudication proceedings are in favour of them. Because, charges in the departmental proceedings as well as criminal complaint are identical and the exoneration of the concerned person in the departmental proceedings is on merits holding that there is no contravention of the provisions of any Act.

- (b) **Standard Input Output Norms:** Standard Input Output Norms or SION in short is standard norms which define the amount of input/inputs required to manufacture unit of output for export purpose. Input output norms are applicable for the products such as electronics, engineering, chemical, food products including fish and marine products, handicraft, plastic and leather products etc. SION is notified by DGFT in the Handbook, and is approved by its Boards of Directors. An application for modification of existing Standard Input-Output norms may be filed by manufacturer exporter and merchant-exporter. The Directorate General of Foreign Trade (DGFT) from time to time issue notifications for fixation or addition of SION for different export products. Fixation of Standard Input Output Norms facilitates issues of Advance License to the exporters of the items without any need for referring the same to the Headquarter office of DGFT on repeat basis.

For fixation / modification of Standard Input Output Norms (SION) following details are required:

- (i) Technical Details of the export product as per the details given in Appendix 33.
- (ii) Chartered Engineer certificate certifying the import requirements of raw materials in the format given in Appendix 32B.
- (iii) Production and Consumption data of the manufacturer/supporting manufacturer of the preceding three licensing years as given in serial no 3 of sub section XII, duly certified by the Chartered accountant / Cost Accountant / Jurisdictional Excise Authority.

**11.(a) Write down the conditions are to be satisfied for claiming refund of import duty? [6]**

- (b) **As a Cost Accountant, you are required to discuss whether benefit of Service Exports from India Scheme (SEIS) can be availed with respect to notified services provided by service providers located in India in the current financial year in the following independent cases:**

- (i) **Net Foreign Exchange (NFE) earned by Mr. R, a service provider, in the preceding financial year is USD 3,700.**
- (ii) **X & Co., is a partnership firm, supplier of taxable services, has earned net foreign exchange to the tune of USD 19,000 in the preceding financial year.**
- (iii) **A service provider, Mr. R, has earned net foreign exchange of USD 13,000 in the preceding financial year. Out of this, USD 4,000 has been paid to Mr. R through the credit card of the foreign client.**

**Note: all the above services providers have an active IEC at the time of rendering services.**

**[6]**

**Answer:**

- (a) **Importer who has actually paid the duty on import, which is not required to be paid alone, is eligible to claim refund.**

As per Section 26A of the Customs Act, 1962, duty paid on imported goods can be claimed for refund on account of satisfying the following conditions:

**(I) Goods are found defective:** The goods are found to be defective or otherwise not in conformity with the specifications agreed upon between the importer and the supplier of goods:

Provided that the goods have not been worked, repaired or used after importation except where such use was indispensable to discover the defects or non-conformity with the specifications;

**(II) Goods are easily identifiable as imported goods:** The goods are identified to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs as the goods which were imported;

**(III) No drawback claim is made:** The importer does not claim drawback under any other provisions of this Act; and

**(IV) Activities carried out after importation**

(i) The goods are exported; or

(ii) The importer relinquishes his title to the goods and abandons them to customs; or

(iii) Such goods are destroyed or rendered commercially valueless in the presence of the proper officer, in such manner as may be prescribed and within a period not exceeding 30 days from the date on which the proper officer makes an order for the clearance of imported goods for home consumption under section 47.

**Note:**

(1) However, the period of 30 days may, on sufficient cause being shown, be extended by the Commissioner of Customs for a period not exceeding three months.

(2) No refund under section 26 is allowed in respect of perishable goods and goods which have exceeded their shelf life.

**(b) (i)** Mr. R is not eligible for SEIS Scheme as his net foreign exchange earnings are less than USD 10,000 (minimum limit for individuals).

(ii) X & Co., being a partnership firm eligible for SEIS Scheme as their net foreign exchange exceeds the limit of USD 15,000 (minimum limit for firms).

(iii) Foreign exchange earned through credit cards is counted for the purpose of computing the limit of minimum net foreign exchange required for being eligible to SEIS Scheme. Thus, Mr. R is eligible for SEIS Scheme.