

PAPER – 19 : INDIRECT TAX LAWS AND PRACTICE

SUGGESTED ANSWER

SECTION A

1.

- (i) (B)
- (ii) (B)
- (iii) (A)
- (iv) (C)
- (v) (C/ D)
- (vi) (A)
- (vii) (D)
- (viii) (A)
- (ix) (A/ B/ C/ D)
- (x) (D)
- (xi) (D)
- (xii) (D)
- (xiii) (B)
- (xiv) (D)
- (xv) (A/ B)

SECTION B

2. (a)

- (i) When goods are packed and transported with insurance, the supply of goods packing materials transport and insurance is a composite supply

Reason:

As per Section 2(30) of the CGST Act, composite supply consists of two or more supplies that are naturally bundled and supplied together in the ordinary course of business, where one of them is a principal supply.

Packing and insurance are ancillary to the supply of goods and are naturally bundled with the main supply.

Supply of goods is a principal supply.

- (ii) It is a bundle of supplies. It is a composite supply where the products cannot be sold separately.

Reason:

The provision of meals is ancillary to the main service of passenger transport.

The meal is not provided as a standalone service but is naturally bundled with the transportation service, making it part of a composite supply.

The transportation of passenger is, therefore, the principal supply.

2. (b)

“Non-resident taxable person” means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India.

Filing of Returns by Non-Resident Taxable Persons (NRTP) [Section 39(5) read with Rule 63 of CGST Rules]:

(A) Monthly return

A registered NRTP is not required to file separately the Statement of Outward Supplies, Statement of Inward Supplies and Return like a normal tax Payer. In place of the same, a simplified monthly tax return has been prescribed in Form GSTR-5 for a NRTP for every calendar month or part thereof.

NRTP shall incorporate the details of outward supplies and inward supplies in GSTR-5

(B) Last date of filing return

The details in GSTR-5 should be furnished within 13 days after the end of the calendar month or within 7 days after the last day of validity period of the registration. Whichever is earlier.

(C) Payment of Interest, penalty fee or any other amount payable.

NRTP shall pay the interest, penalty, fees or any other amount payable under the CGST Act or rule thereunder if return is not furnished as per the above time limit.

3. (a)

- (i) The Exemption Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017 and Notification No. 9/2017 Integrated Tax (Rate) dated 28.06.2017 has exempted the said service wholly from GST. The said notification provides exemption to services by a person inter alia by way of renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a trust or an institution under section 10(23C)(v) of the Income-tax Act, 1961. However, this exemption does not apply where renting charges of premises, community halls, kalyanmandapam or open area are ₹ 10,000 or more per day.

Renting of community hall by Vishnu Temple Charitable Trust is exempt (or not required to pay tax) from GST, as rent is less than ₹ 10,000 per day

- (ii) Rule 33 of the CGST Rules 2017 provides that the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply.

In view of the same, GST is payable only on ₹ 16,000 and not on ₹ 4,000 which were paid by him while acting as a Pure Agent.

- (iii) The answer to the question of taxability of free samples can be given after referring to Section 7 and Schedule I of the CGST Act, 2017. According to section 7 Supply includes “All forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business; Schedule I specifies activities made or agreed to be made without a consideration and as per that supply made without consideration to unrelated person will not be treated as supply.

Therefore, GST will not be levied on free samples distributed, because it is not considered as a supply.

- (iv) The Exemption Notification No. 12/2017 Central Tax (Rate) dated 28.06.2017/ Notification No. 9/2017 Integrated Tax (Rate) dated 28.06.2017 provides exemption to services by way of giving on hire inter alia to a goods transport agency, a means of transportation of goods.

Hence No tax is payable (Exempt) in the given case.

3. (b)**Computation of amount of ITC available for the month of October, 2023**

S. No	Particulars	GST
(i)	Inputs used for the manufacture of the final product (Inputs are used in the course or furtherance of business and hence, ITC thereon is allowed)	₹ 35000
(ii)	Goods destroyed due to natural calamities (u/s 17(5),it is blocked credit)	Nil
(iii)	Food and beverages used in dealer's meet (ITC on food or beverages is blocked u/s 17(5) unless the same is used in same line of business or as an element of the taxable composite or mixed supply)	Nil
(iv)	Food and beverages purchased for the employees during office hours (ITC on food or beverages is blocked u/s17(5) unless the same is used in same line of business or as an element of the taxable composite or mixed supply)	Nil
(v)	Goods used for setting up Telecommunication Towers being immovable property (Goods received by taxable person for construction of an immovable property (other than Plant and Machinery) on his own account is blocked. Since Plant and Machinery excludes telecommunication tower, ITC is blocked under section 17(5).	Nil
(vi)	Account paper for photocopying machine used in administrative office (Inputs are used in the course or furtherance of business and hence, ITC thereon is allowed)	₹ 6000
(vii)	Goods used for providing services during warranty period (Inputs are used in the course or furtherance of business and hence, ITC thereon is allowed)	₹ 12000
Total Input Tax Credit (ITC) available		₹ 53000

4. (a)

The Statement is not correct.

When tax deduction is required to be made in GST:

Tax is required to be deducted from the payment made/credited to a supplier, if the total value of supply under a contract in respect of supply of taxable goods or services or both, exceeds ₹ 2,50,000/- excluding GST

Person liable to deduct TDS under GST law:

- 1) A department or an establishment of the Central Government or State Government; or
- 2) Local authority; or
- 3) Governmental agencies; or
- 4) An authority or a board or any other body,—
 - i. Set up by an Act of Parliament or a State Legislature; or
 - ii. Established by any Government
 - with 51% or more participation by way of equity or control, to carry out any function; or
- 5) A society established by the Central or any State Government or a Local Authority and the society is registered under the Societies Registration Act, 1860.
- 6) Public sector undertakings. (PSU)

4. (b)

(1) For goods, Earlier of the followings:

- (a) The date of receipt of goods
- (b) The date of payment as entered in the books of account of the recipient
Or
The date on which the payment is debited in his bank account, whichever is earlier.
- (c) Date Immediately following 30 days from the date of issue of invoice by the supplier

(2) For service, Earlier of the followings:

- (i) Associated Enterprises (Supplier of service located outside India):
Date of entry in the books of account of the recipient of supply
Or
The date of payment
- (ii) Other cases:
Date of payment
Or
Date immediately following 60 days from the date of issue of invoice by the supplier

5. (a)

The supply of gaming software is in the nature of OIDAR service.

The transaction is for personal consumption of Mr. Sachin and the payment has also been made from the personal bank account of Mr. Sachin and not from the bank account of his GST registered firm. Therefore, being an unregistered person receiving OIDAR service in taxable territory, Mr. Sachin is a non-taxable online recipient.

Services received from a provider of service located in a non- taxable territory by an individual in relation to any purpose other than commerce, industry or any other business or profession is exempt from IGST.

However, such exemption is not available in case of OIDAR services.

Therefore, being an OIDAR service provided by a supplier located outside India and received by a non-taxable online recipient, the same is liable to GST.

Tax on service supplied by any person located in a non-taxable territory to any person other than non-taxable online recipient is payable by the recipient of such service under reverse charge.

Therefore, tax on OIDAR services provided by the company located in USA to Mr Sachin, a non-taxable online recipient, will be payable by such company under forward charge.

5. (b)

Under normal Provision

Statement showing GST liability of Mr. Kishan for the quarter ending 31st March 2024:

	₹
Commission received from the airlines	4,95,000
Year ending bonus or incentive	30,000
Total Taxable supply of services	5,25,000
GST	94,500

As per Rule 32(3) of the CGST Rules, 2017

Statement showing GST liability of Mr. Kishan for the quarter ending 31st March 2024:

	₹
Basic air fare (international booking)	6,50,000
Basic air fare (domestic booking)	2,65,000
Total Taxable supply of services	9,15,000
GST	1,64,700

Note: The GST liability of Mr. Kishan would not be reduced in the aforesaid option. Therefore, special provision under Rule 32(3) of CGST Rules, 2017 is not economical.

6 (a)

Government is encouraging and promoting Indian exports in international markets and initiate suitable interventions from time to time. The Foreign Trade Policy has formulated a number of incentive schemes for Indian exporters.

The major schemes announced for exporters are

- 1) Advance Authorization Scheme,
- 2) Duty Free Import Authorization (DFIA) Scheme,
- 3) Export Promotion Capital Goods Scheme (EPCG),
- 4) New Scheme Remission of Duties and Taxes on export products (RoDTEP) scheme.
- 5) New scheme Rebate of State and Central Levies and Taxes (RoSCTL) Scheme
- 6) EOU,
- 7) EHTP,
- 8) STP
- 9) BTP Schemes
- 10) Deemed Exports
- 11) Status Holder.
- 12) Duty Drawback Scheme
- 13) TIES: Trade Infrastructure for Export Scheme supports infrastructure development to aid exporters.

6. (b)

The statement is not correct.

Special Economic Zone (SEZ) vs Export Oriented Unit (EOU): Few differences between SEZ and EOU are as under

SEZ	EOU
Supply to SEZ is called as export	Supply to EOU is called as deemed export
Supply from DTA to SEZ will attract IGST at zero rate	Supply from DTA to EOU will attract GST as per applicable rate.
Refund of tax does not arise. Since, no tax suffered by SEZ unit	Refund of GST allowed to supplier or receiver (i.e. either one can claim refund of GST)
For SEZ units, export and import customs clearance is achieved within the zone itself.	For the clearance of imported consignments for EOU, there is a Fast Track Clearance Scheme (FTCS).
In SEZ, units can be set up only at the designated sites.	It can be set up anywhere in India. In other words, it is not bound by the location or any boundaries across India.
For SEZ units no specific minimum investment is required.	Only projects having a minimum investment of ₹ 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.

7. (a)**Exemption from e-invoicing**

Following persons are exempt from applicability of e-invoicing provisions even if their turnover exceeds the threshold limit:

- Government department
- Local authority
- SEZ units
- Insurers companies
- Banking companies
- Financial institutions including NBFC
- Goods Transport Agency (GTA) supplying services in relation to transportation of goods by road in a goods carriage
- Suppliers of passenger transportation service
- Suppliers of services by way of admission to exhibition of cinematograph films in multiplex screens
- Persons registered in terms of Rule 14 of CGST Rules (OIDAR service providers)

7. (b)

Duty-free importable items under the AA scheme

The following items can be imported without payment of duty under the Advance Authorisation scheme:

- Inputs that are physically incorporated in the product to be exported after making normal allowance for wastage
- Fuel, oil, catalysts which are consumed or utilized to obtain the export product.
- Mandatory spares that are required to be exported along with the resultant export product – up to 10% of the CIF value (Cost, Insurance and Freight) of Authorization
- Specified spices would be allowed to be imported duty-free only for activities like crushing, grinding, sterilization, manufacture of oil or oleoresin and not for simpler activities like cleaning, grading, re-packing, etc.

Eligibility for Advance Authorization

The Advance Authorization Scheme is available to either a manufacturer exporter directly or a merchant exporter tied with a supporting manufacturer.

The authorization is available for the following:

- Physical exports(including export to SEZ)
- Intermediate supply
- Supplies made to specified categories of deemed exports
- Supply of ‘stores’ on board of a foreign going vessel/aircraft provided that there are specific Standard Input Output Norms (SION) in respect of items supplied.

8. (a)

Computation of pre-deposit amount and interest on refund Amounts of tax, penalty and interest accepted and 20% of disputed tax amounts

The details of amounts accepted and disputed areas under:

	₹
Amounts of tax, penalty and interest accepted	565 Cr
20% of disputed tax amounts	40 Cr
Total Amount	605 Cr

If the pre-deposit made by the appellant before the Tribunal is required to be refunded consequent to any order of the Tribunal, interest @ 9% p.a.

The same shall be payable from the date of payment of the amount till the date of refund of said amount.

The number of days from the date of pre-deposit (5thNov., 2023) to the actual date of refund (14th May, 2024) is (26+31+31+29+31+30+13) 191 days.

Interest @ 9% ₹ 1,88,38,356.16

OR

(₹ 1,88,38,356 R/off)

(40,00,00,000 * 9/100*191/365)

OR

(if considered 366 days in year)

Interest @ 9% ₹ 1,87,86,885.24

OR

(₹ 1,87,86,885 R/off)

(40,00,00,000 * 9/100*191/366)

8. (b)

Reversal of ITC, whether justified Sanvitha & Co., may take advantage of the following two Press Releases:

Press release dt. 04.05.2018 clarified that ITC would not be automatically reversed from the buyer in case of non-payment of tax by the seller. Recovery would be made from the seller, but reversal of credit from the buyer could be done in exceptional cases like missing dealers, supplier closure, or lack of assets.

Press release dated 18.10.2018 clarified that Form GSTR-2A is in the nature of taxpayer facilitation and does not impact the ability of the taxpayer to avail ITC on self- assessment basis in consonance with the provisions of Section 16 of the Act.

The Calcutta High Court, which had occasion to deal with similar issue given in the Case Study, [Sun craft Energy Private Limited & Another Vs Assistant Commissioner, State Tax [MAT 1218 OF 2023; 02/08/2023] pointed out the following aspects:

1. The SCN does not allege that the buyer-appellant was not in possession of a tax invoice issued by the supplier registered under the Act. There is no denial of the fact that the Appellant has received the goods or services or both. All documentary evidences were available.
2. The GST Department, without resorting to any action against the supplier have ignored the tax invoices, bank statement substantiating payment of taxes, hence the action of the first respondent has to be branded as arbitrarily.
3. Before directing the Appellant (here Sanvitha & Co) to reverse the ITC, action should have been taken against the selling dealer and unless there is an exceptional case of collusion between the Appellant and the selling dealer or where the selling dealer is missing or has closed down its business or does not have any assets, direct action against the Appellant is unjustified.

The High Court held that the demand raised by the first respondent was unwarranted and directed authorities to first proceed against the supplier and only in established exceptional circumstances before proceed against the Appellant.

The Supreme Court has dismissed the SLP filed by the Department.

In the light of the above, the contention of Sanvith & Co is tenable in law.
