

**FINAL EXAMINATION
GROUP - IV
(SYLLABUS 2016)**

SUGGESTED ANSWERS TO QUESTIONS

JUNE - 2018

Paper-18 : INDIRECT TAX LAWS AND PRACTICE

Time Allowed : 3 Hours

Full Marks : 100

The figures in the margin on the right side indicate full marks.
Wherever necessary, you may make suitable assumptions and state them clearly in your answer.
Working notes should form part of the answer.

Section – A

Answer Question No. 1 which is compulsory and any four from the rest of this section.

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

- (i) GST is a _____ based tax.
- (a) Territory
 - (b) Origin
 - (c) Destination
 - (d) None of the above
- (ii) A new supplier has taxable intra-State sales, exempt intra-State sales and export sales of goods. He should get himself registered under GST law, where
- (a) the aggregate value of taxable intra-State goods exceeds ₹ 20 lakhs.
 - (b) the aggregate value of taxable as well as exempt intra-State goods exceeds ₹ 20 lakhs.
 - (c) the aggregate value of all the three items exceeds ₹ 20 lakhs.
 - (d) the aggregate value of taxable intra-State goods as well as export sales exceeds ₹ 20 lakhs.
- (iii) Following is an intra-State supply:
- (a) Goods sent from Delhi to another dealer in Delhi.
 - (b) Goods sent from Delhi to a SEZ in Noida, Uttar Pradesh.
 - (c) Goods sent from Delhi to Chandigarh branch (Haryana) of the same supplier.
 - (d) None of the above
- (iv) A casual taxable person is required to obtain registration where he makes
- (a) Taxable inter-State supply.
 - (b) Taxable inter-State or intra-State supply.
 - (c) Taxable inter-State or intra-State supply whose proposed value exceeds ₹20 lakhs.
 - (d) In none of the above situations.
- (v) Subbu, a registered supplier based at Erode coached the staff of a software company in Hyderabad, which is registered. The classes were held at Erode. The place of supply is:
- (a) As mutually agreed upon
 - (b) As decided by the Department, whichever is more favourable to them.
 - (c) Erode
 - (d) Bengaluru

Suggested Answers_Syl2016_June2018_Paper 18

- (vi) Advance ruling can be declared to be void by the Authority if it has been obtained by an applicant/appellant by:
- Fraud
 - Suppression of facts
 - Misrepresentation of facts
 - Any one of the above
- (vii) For the year 2017-18 due date of filing of annual return is 31.12.2018. The books and records of 2017-18 must be maintained till
- 31.03.2024
 - 31.12.2024
 - 31.12.2026
 - 31.03.2034

Answer:

1.

(i)	c	Under GST law, the share of GST goes to the State where the destination lies or where the movement of goods ends, unlike VAT, where it went to the State where the movement originated.
(ii)	c	For the purposes of registration under the GST law, aggregate turnover has to be considered. All three items given in the problem are included in the ambit of the term aggregate turnover.
(iii)	a	For intra-State supply, the origin and destination must be in the same State or Union Territory.
(iv)	b	As per section 24 of the CGST Act, 2017, a casual taxable person making supply of taxable goods is required to obtain registration. It does not matter whether such supply is intra-State or inter-State.
(v)	All four choices given are incorrect	As per sec 12(5) of the IGST Act, PoS for service in relation to training provided to a registered person is the place of recipient of service. Here, the software company in Hyderabad is the recipient of service. So, the correct answer will be Hyderabad.
(vi)	d	Sec 104 of CGST Act 2017 specifies the three cases - Viz. fraud, suppression of material facts, mis-representation of facts as reasons for holding advance ruling to be void.
(vii)	b	31.12.2024 - As per section 36 of CGST Act books and records are to be maintained for 72 months (6 Years) from the date of furnishing the return.

2. (a) What is the difference in tax consequence between intra-State (from HO to branch in same State) and inter-State stock transfers (from HO to branch in different State) of the same supplier, which is a private limited company? What kind of GST will be levied? 6

- (b) Sakshitha Pvt. Ltd., a registered supplier, furnish the following details relating to supplies effected during December, 2017: 8

Particulars	Amount (₹)
Sale price charged to customers within State (Excluding GST)	10,00,000
Service charges levied in the invoices	11,000
Packing and forwarding expenses incidental to sale	14,200
Weighment charges, shown separately in invoices	7,800
Commission charged to buyers	15,000
Prompt payment discount, indicated in invoice 1%, if payment made within 1 month.	

The rates of taxes for the goods supplied are as under:

Suggested Answers_Syl2016_June2018_Paper 18

Particulars	Rate
CGST	6%
SGST	6%
IGST	12%

Additional information: 60% of the customers did not make the payment within one month from the date of supply. Hence the supplier recovered the prompt payment discount offered to them.

Answer:

2. (a) GST will be leviable only where the supply is made by an entity having a GST number to another GST number.

Where a supplier has branch within the same State, only one GST registration and GST number will be there.

Hence transfer to a branch within the same State will not attract any GST.

Where the company has a branch in another State, separate registration is required in the said State, hence the GST number in that State will be different.

As a consequence, when the company transfers stock to its branch in different State, it will be treated as inter-State supply. As a consequence, IGST will be leviable.

Intra-state stock transfer is taxable only when entity has more than one registration in one state. In that case, CGST plus SGST will be levied.

- (b) Determination of GST liability

Particulars	Amount (₹)
Sale price charged to customers within State (Excluding GST)	10,00,000
Add: Service charges levied in the invoices [See Note 1]	11,000
Packing and forwarding expenses incidental to sale [See Note 1]	14,200
Weighment charges, shown separately in invoices [See Note 1]	7,800
Commission charged to buyers [See Note 1]	15,000
	10,48,000
Less: Prompt payment discount, indicated in invoice 1% [See Note 2]	10,000
Value of taxable supply	10,38,000
SGST payable at 6%	62,280
CGST at 6%	62,280

Notes:

- As per section 15 of the CGST Act, 2017, all incidental receipts like service charges, commission, packing & forwarding, weighment charges will form part of the taxable supply.
- Prompt payment discount is deductible, since it is known at the time of supply. It is immaterial that 60% of the customers did not make the payment within the eligible period of 1 month. When the supplier issues debit note and recovers the same from buyers, the same will become taxable then.

3. (a) **Mr. X a dealer dealing with intra-State supply of goods and services has place of business in India furnished the following information in the financial year 2017-18:**

- Sale of taxable goods by Head Office located in Chennai for ₹ 1,00,000.
- Supply of taxable services by Branch office at Bengaluru for ₹ 50,000.
- Supply of goods exempted from GST ₹ 10,000.
- Export of goods and services for ₹ 2,00,000.
- Sale of goods acting as agent on behalf of principal for ₹ 15,00,000.

Advice Mr. X whether he is required to register himself under GST law.

7

Suggested Answers_Syl2016_June2018_Paper 18

- (b) Vimala Transports & Co., a partnership firm based at Chennai, is running a regular tourist bus service, carrying passengers and goods from Chennai to Bengaluru in Karnataka State and Trivandrum in Kerala State, with effect from 1st September, 2017.

The firm wants to know whether such inter-State movement of various modes of conveyance carrying goods or passengers or both, between distinct persons as specified in section 25(4) of the CGST Act [except in cases where such movement is for further supply of the same conveyance], is coming under IGST.

You are required to advise the firm suitably.

7

Answer:

3. (a)

Statement showing aggregate turnover in a Financial Year

Particulars	Value in (₹)
Sale of taxable goods by Head Office located in Chennai	1,00,000
Supply of taxable services by Branch office at Bengaluru	50,000
Supply of goods exempted from GST	10,000
Export of goods and services	2,00,000
Sale of goods acting as agent on behalf of principal	15,00,000
Aggregate turnover	18,60,000
Since, aggregate turnover does not exceeds ₹ 20 lakhs, Mr. X is not required to register under GST.	

Alternative answer: As per sec. 24(vii) of the CGST Act where it is states that persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise, have to mandatorily take registration irrespective of their amount of turnover. As per this provision, threshold limit of ₹ 20 lakhs (₹ 10 lakhs in special categories of states) is not applicable for intermediaries.

Further "As per Section 22 of the Central Goods and Service tax Act, "Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category states, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees."

(b) Case study

The legal provisions in GST laws are as under:

- As per section 24(1)(i) of the CGST Act, persons making any inter-State taxable supply shall be required to be registered under this Act. [Persons making inter- State supplies of taxable services and having an aggregate turnover upto ₹ 20 lakh in a financial year have been exempted from obtaining compulsory registration under section 24(i) of the CGST Act
- As per section 25(4) of the said Act a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.
- Schedule I to the said Act specifies situations where activities are to be treated as supply even if made without consideration which also includes supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business
- Section 7(2) of the CGST Act envisages that activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

Suggested Answers_Syl2016_June2018_Paper 18

Against the above background, the issue of inter-state movement of goods like movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the said Act, not involving further supply of such conveyance, including trucks, buses, etc., (a) carrying goods or passengers or both; or (b) for repairs and maintenance, [except in cases where such movement is for further supply of the same conveyance] was discussed in GST Council's meeting held on 11th June, 2017 and the Council recommended that such inter-state movement shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to IGST.

In view of the above, the inter-state movement of goods like movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the CGST Act including the bus services, may not be treated as supply and consequently IGST will not be payable on such supply. [Circular No. 1/1/2017 IGST dated 07.07.2017]

4. (a) (i) **Explain the concept of recovery in installments under Section 80 of CGST Act 2017 giving the circumstances in which such facility can be allowed and will not be allowed to the defaulter.** 5
- (ii) **Write a brief note on provisional assessment under section 60 of the CGST Act, 2017.** 4
- (b) **Balaji & Co., a partnership firm, intend to start a business in Rajasthan, for supply of garments, mostly meant for overseas buyers. As regards the classification of the goods, there some difficulties in determination. Can the firm seek advance ruling from the Authority for Advance ruling in respect of the issue of classification of goods? Can the firm also seek ruling on issues involving place of supply of goods?** 5

Answer:

4. (a) (i) Recovery in installments (Sections 80 of the CGST Act, 2017)
- Commissioner can allow payment with interest by defaulter in monthly installments not exceeding 24 installments.
 - In case of default in payment of any one installment on its due date, the whole outstanding balance payable on such date shall become due.
 - For seeking installment facility, taxable persons can file application electronically in form GST DRC-20.

The installment facility will not be allowed if:

- The taxable person has already defaulted on the payment of any amount under GST law and recovery process is already undergoing;
- The taxable person has not been allowed to make payment in installments in the preceding financial year under GST law; and
- The amount for which installment facility is sought is less than ₹ 25,000/-

- (ii) Provisional assessment (Section 60 of the CGST Act, 2017):

According to section 60(1) of the CGST Act, 2017 where the taxable person is unable to determine the value of goods or services or both or determine the rate of tax applicable thereto, he may request the proper officer in writing giving reasons for payment of tax on a provisional basis.

The proper officer (i.e. The Asst. Commissioner/Dy. Commissioner of Central Tax) shall pass an order, within a period not later than 90 days from the date of receipt of such request, allowing payment of tax on provisional basis at such rate or on such value as may be specified by him.

The Asst. Commissioner/Dy. Commissioner of Central Tax provisionally determines

Suggested Answers_Syl2016_June2018_Paper 18

the amount of tax payable by the supplier and is subject to final determination.

On provisional assessment, the supplier can pay tax on provisional basis but only after he executes a bond with security, binding them for payment of the difference between the amount of tax as may be finally assessed and the amount of tax provisionally assessed (Section 60(2) of the CGST Act, 2017).

(b) Advance Ruling

Advance ruling under GST can be sought by a registered person or a person desirous of obtaining registration under GST law [Section 95(c) of the CGST Act, 2017]. Therefore, it is not mandatory for a person seeking advance ruling to be registered.

Section 97(2) of the CGST Act, 2017 enjoins that the questions/matters on which advance ruling can be sought. It provides that advance ruling can be sought for, inter alia, determining the classification of any goods or services or both. Therefore, Balaji & Co. can seek the advance ruling for determining the classification of the goods proposed to be supplied by him.

Determination of place of supply is not one of the specified questions/matters on which advance ruling can be sought under section 97(2). Further, section 96 of the CGST Act, 2017 provides that AAR constituted under the provisions of an SGST Act/UTGST Act shall be deemed to be the AAR in respect of that State/Union territory under CGST Act also.

Thus, AAR is constituted under the respective State/Union Territory Act and not the Central Act. This implies that ruling given by AAR will be applicable only within the jurisdiction of the concerned State/Union territory.

It is also for this reason that the questions on determination of place of supply cannot be raised with the AAR. Hence, the applicant cannot seek the advance ruling for determining the place of supply of the goods proposed to be supplied by the applicant.

5. (a) Enumerate and Explain the types of Audits envisaged under GST law. 10

(b) Admission to True Theater is ₹ 90 per ticket for a Tamil Movie as well as for a Hindi Movie plus entertainment tax 10% on Tamil Movies and 20% on other languages. In the month of November, True Theater sold 2000 tickets of Tamil Movies and 1500 tickets of Hindi Movies. Find the value of taxable supply of service. Applicable rate of GST 18% & 28% respectively. Find the GST liability if any? 4

Answer:

5. (a) GST envisages three types of Audit.

1. By a Chartered Accountant or a Cost Accountant.
2. By Tax Authorities
3. Special Audit

1. Audit by Chartered Accountant or a Cost Accountant:

Every registered person whose aggregate turnover during a financial year exceeds two crore rupees has to get his accounts audited by a Chartered Accountant or a Cost Accountant and furnish a copy of audited annual accounts and a reconciliation statement, duly certified, in FORM GSTR-9C.

2. Audit by Tax Authorities (section 65 of the CGST Act, 2017):

The Commissioner or any officer authorised by him, can undertake audit of any

Suggested Answers_Syl2016_June2018_Paper 18

registered person for such period, at such frequency and in such manner as may be prescribed.

Section 65(3) of the CGST Act, 2017 the registered person shall be informed by way of a notice not less than fifteen working days prior to the conduct of audit in such manner as may be prescribed.

Section 65(4) of the CGST Act, 2017 the audit under sub-section (1) shall be completed within a period of three months from the date of commencement of the audit:

Provided that where the Commissioner is satisfied that audit in respect of such registered person cannot be completed within three months, he may, for the reasons to be recorded in writing, extend the period by a further period not exceeding six months.

3. Special Audit [Section 66 of the CGST Act, 2017]:

The registered person can be directed to get his records including books of account examined and audited by a Chartered Accountant or a Cost Accountant during any stage of scrutiny, inquiry, investigation or any other proceedings; depending upon the complexity of the case.

Procedure:

During the scrutiny, inquiry, investigation or any other proceedings of a registered person, the Assistant Commissioner or any officer senior to him, having regard to the nature and complexity of the case and the interest of revenue, might be of the opinion that the value has not been correctly declared or the credit availed is not within the normal limits.

In such cases, with the prior approval of the Commissioner, the Assistant Commissioner or any officer senior to him can direct the registered person in FORM GST ADT-03 to get his records including books of account examined and audited by a specified chartered accountant or a cost accountant. The chartered accountant or a cost accountant will be nominated by the Commissioner.

The chartered accountant or cost accountant so nominated has to submit a report of such audit within the period of ninety days, duly signed and certified by him to the Assistant Commissioner, extendable by further 90 days. On conclusion of the special audit, the registered person shall be informed of the findings of the special audit in FORM GST ADT-04.

Where the special audit results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the process of demand and recovery will be initiated against the registered person.

(b) Statement showing value of taxable supply of service and GST liability:

Value of taxable services:

Tamil Movie	₹ 1,98,000	(₹ 99 × 2000 tickets)
Hindi Movie	₹ 1,62,000	(₹ 108 × 1500 tickets)

Particulars	9% CGST	9% SGST	14% CGST	14% SGST
GST liability (₹)	17,820	17,820	22,680	22,680

Working note:

Particulars	Tamil Movie (₹)	Hindi Movie (₹)
Rate per ticket	90	90

Suggested Answers_Syl2016_June2018_Paper 18

Add: Entertainment tax	9	18
Value of taxable supply	99	108
Applicable GST rate	18%	28%

6. (a) Achutha Motors Pvt. Ltd., have been served a show cause notice (SCN) on 2nd November, 2021 under section 73(1) of the CGST Act, 2017, alleging that the supplier had made short remittances of GST for the months of September, October and November, 2017. The department has afforded a personal opportunity of being heard on 15th November, 2021.

The company seeks your expert advice in drafting the written submissions to be tendered at the time of personal hearing, in respect of the SCN. You are required to draft the reply on their behalf. You may assume that there is no change in legal position during November, 2021 and that it remains the same as it is at present. 8

- (b) Which are the input goods and services on which a registered dealer cannot claim Input Tax credit under Section 17(5) of CGST Act, 2017. Give any six points/items. 6

Answer:

6. (a) Reply to SCN received from Department

Against the SCN, the reply to the SCN in the written submissions should incorporate the following major points:

- (i) The SCN issued by the Department under section 73(1) of the CGST Act, 2017, alleging under payment of GST for the months of September, October and November, 2017 is not warranted on the facts and circumstances of the case and is opposed to equity, law and justice.
- (ii) The time limit for issue of SCN under section 73(1) of the CGST Act, 2017 is at least 3 months prior to the time limit specified for issuance of order under section 73(10) of the Act.

The adjudication order under section 73(10) of the 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 tax relates to.

The due date stipulated 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].

Consequently, SCN under section 73(1) of the Act, can be issued by the Department 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 encompassing the months of September, October and November, 2017, which falls in the financial year (FY) 2017-18.

Due date for furnishing annual return for the F.Y. 2017-18 is 31.12.2018 and 3 years' period from due date of filing annual return lapses on 31.12.2021.

As a logical corollary, SCN under section 73(1) ought to have been issued latest by 30.09.2021.

- (iv) Since the SCN 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 Act.

Suggested Answers_Syl2016_June2018_Paper 18

- (v) It is therefore prayed that the entire proceedings which are barred by limitation, may kindly be dropped and justice rendered.
- (b) Item on which Input Tax Credit (ITC) is not applicable Goods & Services Sec. 17(5) of the CGST Act, 2017:
- A) Motor vehicle (except few cases)
 - B) Goods and/or services provided in relation to:
 - i) Food and beverages, outdoor catering, beauty treatment, health services, cosmetic and plastic surgery, except under specified circumstances;
 - ii) Membership of a club, health and fitness center;
 - iii) Rent-a-cab, life insurance, health insurance except where it is obligatory for an employer under any law;
 - iv) Travel benefits extended to employees on vacation such as leave or home travel concession;
 - C) Works contract services when supplied for construction of immovable property, other than plant & machinery, except where it is an input service for further supply of works contract;
 - D) Goods or services received by a taxable person for construction of immovable property on his own account, other than plant & machinery, even when used in course or furtherance of business;
 - E) Goods and/ or services on which tax has been paid under composition scheme;
 - F) Goods or services or both received by a non-resident taxable person except on goods imported by him;
 - G) Goods and/or services used for private or personal consumption, to the extent they are so consumed;
 - H) Goods lost, stolen, destroyed, written off, gifted, or free sample;
 - I) Any tax paid due to short payment on account of fraud, suppression, mis-declaration, seizure, and detention.

7. (a) State the duties and powers of the Anti-profiteering Committee under GST law. 6

(b) Shankar Texmaco P Ltd. (STPL), having its registered office at Salem, Tamil Nadu, is a manufacturer of dyeing machinery. It manufactures and installs the machinery at the places opted by the buyers. For each machine manufactured and installed by it, STPL gets a subsidy of ₹ 3 lakhs.

Poorni Dyers Ltd. (PDL), having their registered office at Coimbatore, Tamil Nadu have ordered a machinery from STPL, to be erected at their place of manufacture at Palghat, Kerala.

The base price of the machine is ₹ 25 lakhs. For each machinery, there is a separate handling charge of ₹ 50,000.

PDL have opted to take an additional warranty for ₹ 20,000 for an extended service period of 1 year, in addition to the free warranty provided by STPL. The installation costs of ₹ 80,000 charged by STPL, will be met by PDL. STPL offers a cash discount of 2%, where the payment is made within a month. If the payment is not so made, it not only recovers the discount earlier offered, but also charges interest at 18% for the period of delay.

A machinery was supplied on 21st November, 2017, the tax invoice also being issued the same day.

Ascertain the transaction value of the machine sold to MTL and the GST payable [SGST & CGST or IGST] by STPL. You are further informed that MTL made the actual payment only on 10th January, 2018.

Suggested Answers_Syl2016_June2018_Paper 18

You are informed that the GST rates applicable for the product as under:

8

SGST	6%
CGST	6%
IGST	12%

Answer:

7. (a) Duties of Anti-profiteering committee-Section 171(3)

The Authority would have the following duties:

- (i) to determine whether any reduction in the rate of tax on any supply of goods or services or the benefit of input tax credit has been passed on to the recipient by way of commensurate reduction in prices;
- (ii) to identify the registered person who has not passed on the benefit of reduction in the rate of tax on supply of goods or services or the benefit of input tax credit to the recipient by way of commensurate reduction in prices;
- (iii) to order,
 - reduction in prices;
 - return to the recipient, an amount equivalent to the amount not passed on by way of commensurate reduction in prices along with interest at the rate of eighteen percent, from the date of collection of the higher amount till the date of the return of such amount or recovery of the amount not returned, as the case may be, in case the eligible person does not claim return of the amount or is not identifiable, and depositing the same in the Consumer Welfare Fund;
 - imposition of penalty; and
 - Cancellation of registration.

(b) Computation of transaction value

	Amount (₹)
Basic price of the machinery	25,00,000
Add: Handling charges met by the buyer [All incidental expenses are includible in transaction value]	50,000
Additional warranty charges [Includible since transaction value includes all items, except those which are specifically excluded]	20,000
Installation costs [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 is includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017]	80,000
Subsidy provided by agent of foreign manufacturer [As per Sec. 15(2)(e) of the CGST Act, subsidies directly linked to the price excluding subsidies provided by the Central Govt. and State Govt. is to be added to the price of the machinery]	3,00,000
	29,50,000
Less: Cash discount at 2% of 25L [Cash discount offered at the time of original supply to be deducted. It is immaterial that the payment was not made in time. At that time, debit note can be issued for recovering discount as well as for interest chargeable]	50,000
Transaction value of the machine supplied	29,00,000
IGST at 12% on above	3,48,000

Note:

The place of supply of the machine is the place of installation of the machinery. Thus, this will be an Inter-state supply and hence IGST is payable.

It is assumed that subsidy is received from agent of foreign manufacturer and hence

Suggested Answers_Syl2016_June2018_Paper 18

is added to the price. In case it is subsidy from Central/State Govt. same will not be added to the price.

Section – B (Customs Duty and FTP)

Answer Question No. 8 which is compulsory and any two from the rest of this section.

8. Choose the most appropriate option for the following [Option to be given in capital letters A, B, C or D] and give brief reason/justification for your choice the correct choice or conclusion [1 mark for the correct choice and 1 mark for reason] : 2×3=6

- (i) For filing an appeal before the Commissioner (Appeals), the amount of pre-deposit required under the Customs Act, 1962 is
 (A) 5% of the demand, subject to a maximum of ₹ 5 crore
 (B) 5% of the demand, subject to a maximum of ₹ 7.5 crore
 (C) 7.5% of the demand, subject to a maximum of ₹ 7.5 crore
 (D) 7.5% of the demand, subject to a maximum of ₹ 10 crore
- (ii) Where a person of Indian origin stays abroad for 36 months and returns to India on 21-1-2017 for having residence in India, the GFA for used household articles (Baggage) is
 (A) ₹ 1 lakh
 (B) ₹ 3 lakhs
 (C) ₹ 5 lakhs
 (D) None of the above
- (iii) Anti-dumping duty payable by a SEZ in respect of an import is
 (A) Nil
 (B) 5% of the customs duty
 (C) 7.5% of the customs duty
 (D) 10% of the customs duty

Answer:

8.

(i)	D	As per Section 129E of the Customs Act, 1962, as amended by Finance (No. 2) Act, 2014 w.e.f. 6-8-2014, provides that for filing appeal before the Commissioner (Appeals), a pre-deposit of 7.5%, subject to a maximum of ₹ 10 crore shall be made.
(ii)	C	The GFA is linked to the period for which the person has stayed abroad. If the same exceeds 2 years, the GFA is ₹ 5 lakhs for transfer of residence.
(iii)	A	No anti-dumping duty is payable by a SEZ, as they are exempted from the same.

9. (a) Explain the importance of Inland Container Terminal (ICT) and Container Freight Station as an infrastructure facility for export or import. Distinguish between the two. 2+4=6

- (b) An importer imported some goods for subsequent sale in India at \$10,000 on Assessable value basis. Relevant exchange rate and rate of duty are as follows:

Particulars	Date	Exchange rate declared by the CBEC	Rate of Basic Customs Duty
Date of submission of bill of entry	25th February, 2018	₹ 58/USD	10%

Suggested Answers_Syl2016_June2018_Paper 18

Date of entry inwards granted to the vessel	5th March, 2018	₹ 58.75/USD	12%
---	-----------------	-------------	-----

Calculate Assessable value and Customs Duty in Indian rupees? (Education cess is 2% & SAH education cess is 1%) **6**

Answer:

9. (a) Inland Container Depot (ICD) and Container Freight Station (CFS)

Generally, an exporter or importer placed far away from the gateway port for clearance of import or export of goods. However, irrespective of distance from the servicing gateway port, prefers to move cargo by road to CFS (a transit facility where he stuffs cargo in containers and containers are transported to port for loading on board the ship). Both ICD and CFS is an infrastructure facility, owned and operated by public or private authority, especially designed for offering services of handling, storage and movement of containerized cargo and cargo under Customs supervision.

Distinction between ICD and CFS

Inland Container Depot (ICD)	Container Freight Station (CFS)
It is a place where containers are aggregated for onwards movement to or from the ports.	It is a place where containers are stuffed. Unstuffed and aggregation / segregation of cargo takes place.
ICD's are located outside the port towns.	No site restrictions apply for CFS.
An ICD may have a CFS attached to it	CFS is treated as an extension of a port / ICD/air-cargo complex.
Movement of shipment by road and rail.	Movement of shipment by road.

(b) Relevant rate of duty for the imported goods is 12% (i.e. Date of submission of bill of entry or Date of entry inwards granted to the vessel whichever is later)

Exchange Rate is ₹ 58 per USD (i.e. the rate of CBE & C as on the date of submission of Bill of entry by the importer)

Assessable value	=	₹ 5,80,000 (i.e. USD 10,000 × ₹ 58)
Basic Customs Duty	=	₹ 69,600 (i.e. ₹ 5,80,000 × 12%)
2% Education cess	=	₹ 1,392 (i.e. ₹ 69,600 × 2%)
1% SAH education cess	=	₹ 696 (i.e. ₹ 69,600 × 1%)
Total Customs Duty	=	₹ 71,688.

10. (a) (i) **The assessee imported furnace oil and supplied the same to sister unit for generation of electricity, which is used by the assessee. The assessee claimed exemption on import of furnace oil. The assessee also obtained a clarification from Development Commissioner for claiming exemption. However, irrespective of the clarification from Development Commissioner, a show cause notice (SCN) demanding duty was issued on the assessee more than 1 year (i.e. longer limitation) after he had imported furnace oil on behalf of its sister unit.**

Is the issue of the SCN in the extended period of limitation valid in law? **4**

(ii) **The assessee filed an appeal to Commissioner, but mistakenly gave it to the adjudicating officer who had passed the original order, who sent it to the Commissioner after few days delay. The appellate authority rejected the appeal on the ground that the appeal was not received in time in his office.**

Is the rejection of appeal justified? **4**

(b) Under Indian FTP, write a brief note on Advance Authorisation.

4

Answer:

10. (a) (i) Validity of SCN using extended period of limitation

Issue

The issue for consideration is whether the issue of SCN under the longer period of limitation is valid in law.

Analysis

Longer period of limitation is available under section 28 of the Customs Act, 1962, where the assessee has misstated facts or there has been wilful suppression or misstatement of facts.

The assessee had shown bona fide conduct by seeking clarification from Development Commissioner and in a sense had offered its activities to assessment.

Therefore, mere non-payment of duties could not be equated with collusion or willful misstatement or suppression of facts. Judgment is given in favour of the assessee.

Reference may be made to the decision in Uniworth Textiles Ltd. v. CCE. 2013 (288) ELT161 (SC)

(ii) Rejection of appeal by Commissioner, whether justified

The issue to be decided is whether the appeal can be rejected on the ground that it was not filed in time.

The appeal had been filed in time, but reached different wing of the same building. Since, the appeal was received by the adjudicating officer who has passed the original order, he ought to have sent it to the other wing of the same building, but he had not done the same.

Therefore, the order passed by the appellate authority cancelling the appeal on the ground that it was not received in time, could not be accepted.

Hence the appellate authority should entertain the appeal of the assessee and pass appropriate orders on merits and in accordance with law, after affording him an opportunity of being heard. The rejection of appeal is not justified.

Reference may be made to the decision in Chakiat Agencies vs. UOI 2015 (37) STR 712 (Mad.).

(b) Advance Authorization:

- (i) Exporters having past export performance (in at least preceding two financial years) shall be entitled for Advance Authorization for annual requirement.
- (ii) Materials imported under advance authorization will 'Actual user condition'. These imported goods will not be transferable even after completion of export obligation. However, holder of advance authorization will have an option to dispose of product manufactured out of duty free inputs once export obligation is completed.
- (iii) Advance authorization is issued for inputs in relation to the resultant product on the basis of SION (Standard Input Output Norms). If SION for a particular item is not fixed, Regional Authority (RA) based on self-declaration by applicant except certain specified products, can issue advance authorization.
- (iv) It is necessary to establish that inputs actually used in manufacture of the export

Suggested Answers_Syl2016_June2018_Paper 18

product should only be imported under advance authorization and inputs actually imported must be used in the export product, for redeeming the authorization.

11. (a) (i) **Mr. Amol owns a sole proprietorship firm, 'Safe and Super Importers'. Mr. Amol has never been to any place outside India. The firm proposes to import a product. Mr. Amol is not sure of the correct classification of the product under Customs Tariff. His Tax Consultant has informed him that the said classification issue has been decided by the CESTAT in a different case. However, Mr. Amol does not want to take any chances and is desirous of obtaining a ruling from the Authority for Advance Ruling under section 28H of the Customs Act, 1962 with respect to the classification of the product to be imported by it.**

In the light of recent amendments, state whether Safe and Super Importers can seek advance ruling in the present case under the Customs Act, 1962? 3

- (ii) **Basant, a non-resident intends to provide a taxable service under a joint venture in collaboration with a non-resident, but has entertained some doubts above its valuation.**

Aarohi, Basant's friend, has obtained an 'Advance Ruling' from the Authority for Advance Ruling on an identical point. Basant proposes to follow the same ruling in his case. Basant has sought your advice as his consultant whether he could follow the ruling given in the case of Aarohi. Explain with reasons. 3

- (iii) **Explain relevance of Boat Note as per Boat Note Regulations. 2**

- (b) **The Scope of Foreign trade policy 2015-2020 provides direction to promote Indian Exports. In this context outline the Scope of FTP. 4**

Answer:

11. (a) (i) With effect from 01.03.2015, a resident firm can also apply for AAR. The sole proprietorship will have to satisfy the test of residency as per section 2(42) of the Income Tax Act, 1961 to be eligible to apply for an advance ruling.

Therefore, Safe and Super Importers, being a resident proprietorship firm, is an eligible applicant for advance ruling.

Since in the given case, question intended to be raised by Safe and Super Importers is already decided by the CESTAT. Advance ruling cannot be sought by it.

- (ii) An advance ruling is binding only on the applicant who has sought it. In the given problem, in view of the aforesaid provision, Basant cannot make use of the advance ruling pronounced in the identical case of his friend, Aarohi. Basant should obtain a ruling from the Authority of Advance Ruling by making an application along with a fee of 2,500.

- (iii) Boat Note:

In India we have certain ports where the ship cannot come to the shore for unloading or loading goods due to depth of the Sea or vessel may not find the time in having berth in the port. In such cases goods are sent to shore in a small cargo (i.e. it may be loaded in a small boat and sent to shore). As per the Boat Note Regulations such a small boat must be accompanied by a Boat Note issued by the Customs Officer. The boat note must be in duplicate and machine numbered. Separate forms are prescribed for export cargo, import cargo and transshipment cargo.

Suggested Answers_Syl2016_June2018_Paper 18

(b) Scope of FTP is as under:

- 1) Policy for regulating import and export of goods and services.
- 2) Exports Promotional Measures.
- 3) Duty Remission and Duty Exemption Scheme for promotion of exports.
- 4) Export Promotion Capital Goods (EPCG) Scheme.
- 5) Export Oriented Undertakings (EOU/EHTP/STP & BTP) Schemes.
- 6) Deemed Exports.
- 7) Quality complaints and Trade Disputes.

Thus the policy provides direction to promote Indian Exports through export promotion, duty remission, EOU Schemes and quality improvement

Note: Special Economic Zones covered under separate Act namely Special Economic Zones Act, 2015 and are not part of FTP.