

PAPER – 19 : INDIRECT TAX LAWS AND PRACTICE
SUGGESTED ANSWERS
SECTION – A

1.

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

SECTION - B

2. (a)

Statement is not fully correct

E-way bill generation facility to be blocked only in respect of outward movement of goods, by the defaulting registered person

Rule 138E contains provisions pertaining to blocking of e-way bill generation facility, i.e. disabling the generation of e-way bill.

Earlier, a user was not able to generate e-way bill for a GSTIN if the said GSTIN became ineligible for e-way bill generation in terms of rule 138E. It implies that the GSTINs of such blocked taxpayers could not be used to generate the e-way bills either as supplier (consignor) or as recipient (consignee)

Said rule has been amended to relax such restriction.

Henceforth, blocking of GSTIN for e-way bill generation facility is only in respect of any outward movement of goods of the registered person who is ineligible for e-way bill generation as per rule 138E.

E-way bills can be generated in respect of inward supplies received by said registered person.

2. (b)

Quarterly Return, Monthly Payment of Taxes (QRMP) Scheme is a scheme to simplify compliance for small taxpayers. Under this scheme, taxpayers having an aggregate turnover at PAN level up to ₹5 crore in the preceding financial year can opt for quarterly GSTR-1 and GSTR-3B filing. Payment can be made in the first 2 months by a simple challan in Form GST PMT-06.

In case the aggregate turnover exceeds ₹5 crores during any quarter in the current financial year, the registered person shall not be eligible for the Scheme from the next quarter.

The option to avail the QRMP Scheme is GSTIN wise. Therefore, some GSTINs for a PAN might be eligible for the QRMP Scheme, and the remaining GSTINs might not be able to opt for the Scheme.

Details of Outward Supply to be furnished through Invoice Furnishing Facility (IFF)

The registered persons opting for the Scheme would be required to furnish the details of an outward supply in Form GSTR-1 every quarter. However, the supplier has been given an option to furnish the details monthly. For this, the Invoice furnishing facility ('IFF'), which is optional in nature, has been introduced for furnishing the details of invoices of supply made to registered persons for the first two months of the quarter.

It is to be noted that the taxpayer can upload a maximum of ₹50 lakhs invoices in each of the two months of the quarter. The invoices may be uploaded at once or continuously in IFF from the 1st day of the month till the 13th day of the succeeding month.

The details uploaded in the IFF shall be duly reflected in the Form GSTR-2A and Form GSTR-2B of the concerned recipient.

Quarterly Filing of Form GSTR-3B

The registered persons opting for the QRMP Scheme would be required to furnish Form GSTR-3B, for each quarter, on or before the 22nd or 24th day of the month succeeding such a quarter for the category 1 States and the category 2 States respectively or such notified date. Any excess payment may either be claimed as a refund after filing Form GSTR-3B of that quarter or may be used for any other purpose in subsequent quarters.

Monthly Payment of Tax

The registered person under the QRMP Scheme would be required to pay the tax due in each of the first 2 months of the quarter by depositing the due amount in Form GST PMT-06. The amount shall be deposited by the 25th day of next month.

The amount deposited by the registered person in the first two months shall be utilized for offsetting the liability furnished in that quarter's Form GSTR-3B.

3. (a)

GST liability of M/s PNR. for the month of March 2024

S..	Particulars	CGST(₹)	SGST(₹)
1.	Loading, unloading, packing and warehousing of potato chips	1,350	1,350
2.	Fees paid for yoga camp	NIL	NIL
3.	Interest received on fixed deposits	NIL	NIL
4.	Professional services provided to foreign diplomatic mission located in India	4,500	4,500
5.	Receipts from running an educational institution (including receipts for residential dwelling service)	NIL	NIL
6	Renting of motor vehicle service	5,000	5,000
	Total GST liability	10,850	10,850

3. (b)

Computation of GST and interest payable by Avni Ltd.

Interest on tax payable in respect of supplies made during a tax period and declared in the return for the said period furnished after the due date shall be levied only on tax paid through electronic cash ledger.

- (i) In the given case, since return is filed belatedly, net tax payable in cash and interest thereon is computed as follows:

Particulars	CGST (₹)	SGST (₹)
Output tax payable	1,80,000	1,80,000
Less: Credit of CGST and SGST be utilized for payment of CGST and SGST respectively	(70,000)	(70,000)
Net tax	1,10,000	1,10,000
Tax under reverse charge is payable in cash	40,000	40,000
Total tax payable in cash	1,50,000	1,50,000
Rate of interest	18%	18%
Number of days delay	51 days Or 50 days	51 days Or 50 days
Interest payable @ 18% per annum	₹ 3762.30 3,762 (R/off) OR 3698.63 3,699 (Round off)	₹ 3762.30 3,762 (R/ off) OR 3698.63 3,699 (Round off)

- (ii) In the above case, if ITC available is ₹ 2,50,000 of CGST and SGST each, output tax payable in cash shall be nil (CGST as well as SGST). However, remaining ITC available cannot be utilised for payment of tax payable under reverse charge (RCM liability, to be paid in cash) as it is not an output tax.

Therefore, interest on delayed payment of tax will be as follows:

Particulars	CGST (₹)	SGST (₹)
Interest payable @ 18% per annum (rounded off)	986.30 986 (R/off) OR 1003.28 1003 (R/off)	986.30 986 (R/off) OR 1003.28 1003 (R/off)

4. (a)

Consequences of not complying with the TCS provisions specified under section 52 of CGST Act, 2017. -

Sr. No.	Event	Consequence
1	TCS not collected	As per Sec. 122(1) (vi) of the CGST Act, 2017 failure to collect the tax as per Sec. 52(1) can invite penalty of ₹ 10,000/- Or the amount not collected or short collected, whichever is higher.
2	TCS collected but not paid to the Government	Sec. 76 of the CGST Act, 2017 may be invoked by the officer to recover such TCS along with interest. And Penalty u/s 122(1) (vi) may also be imposed subject to principles of natural justice.
3	Late filing of TCS returns	Provisions of Sec. 47 of the CGST Act, 2017 imposing late fees shall not apply to the TCS return since the same is to be filed u/s 52(4) of the said Act (which is not covered u/s 47). However general penalty up to ₹ 25,000/- can be imposed u/s 125. It must however be noted that unless the return is filed, the concerned supplier shall not get the credit in his electronic cash ledge

4. (b)

This issue was discussed in Switching Avo Electro Power Ltd. (2018) 96 taxmann.com 106 (AAAR-West Bengal) In the case of Switching Avo Electro Power Ltd. (2018) 96 taxmann.com 106 (AAAR-West Bengal), the Appellant Authority for Advance Ruling upheld the ruling of Authority for Advance Ruling that when the storage battery or electric accumulator is supplied separately with the static converter (UPS), it would be considered as a mixed supply or not naturally bundled supply.

Here the appellant contended that the UPS cannot function without battery as the same is an integral part of UPS and it is naturally bundled and supplied in conjunction with each other, therefore the supply of static converter along with the external battery should be considered as a composite supply and not mixed supply.

However, the AAAR opined that the when a UPS is supplied with built-in batteries in a manner that the supply of the battery is inseparable from the supply of the UPS, and the two items are ‘naturally bundled’ then it should be treated as a composite supply under Section 2(30) of the CGST Act,

but when the storage batteries having multiple uses is supplied with the static converter i.e. UPS, it cannot be said that they are naturally bundled even if the same is supplied under a single contract at a combined single price.

Therefore, the supply of external storage battery supplied with UPS would be considered as a ‘mixed supply’.

5. (a)

As per Section 12(1) of Central Goods and Services Tax Act, 2017, the time of supply of goods shall be the earlier of the following dates, namely:—

- (a) the date of issue of invoice by the supplier or the last date on which he is required to issue invoice under section 31 of Central Goods and Services Tax Act, 2017;
- or
- (b) The date on which the supplier receives the payment with respect to the supply.

However, advance received in respect of supply of goods is not liable to be taxed at the time of receipt vide Notification No. 66/2017 Central Tax dated 15.11.2017. Therefore, the date of payment in respect of supply of goods shall not be relevant for determining the time of supply.

Further, Section 31 of the Central Goods and Services Tax Act, 2017 provides that a registered person supplying taxable goods shall issue a tax invoice, before or at the time of, —

- (a) removal of goods for supply to the recipient, where the supply involves movement of goods;
- or
- (b) Delivery of goods or making available thereof to the recipient, in any other case.

As per the above scenario, various dates are as under:

- Actual date of issue of invoice: April 18, 2024
- Due date for issue of invoice: April 9, 2024 (as supply involves movement of goods)
- Date of receipt of payment: April 19, 2024
(earlier of entry in books of accounts and credit made in the bank account)

Therefore, as per rule, the time of supply would be the earliest of the above dates, that is, April 9, 2024

5. (b)**Determination of value under rule 32(2)(b) of the CGST Rules, 2017**

Third proviso to rule 32(2)(a) stipulates that a person supplying the services in relation to the purchase or sale of foreign currency, including money changing may exercise the option to ascertain the value in terms of rule 32(2)(b) for a financial year and such option shall not be withdrawn during the remaining part of that financial year.

Rule 32(2)(b) provides that value in relation to the supply of foreign currency, including money changing shall be deemed to be

S. No.	Currency exchanged	Value of supply
1.	Upto ₹1,00,000	1% of the gross amount of currency exchanged OR ₹ 250 ,whichever is higher
2.	Exceeding ₹ 1,00,000 and upto ₹ 10,00,000	₹ 1,000 + 0.50% of the (gross amount of currency exchanged - ₹ 1,00,000)
3.	Exceeding ₹ 10,00,000	₹ 5,500 + 0.1% of the (gross amount of currency exchanged - ₹ 10,00,000) OR ₹ 60,000 whichever is lower

Thus, the value of supply in the given cases would be computed as under:

Gross amount of currency exchanged = $77 \times 250 = ₹ 19,250$. Since the gross amount of currency exchanged is less than 1,00,000, value of supply is 1% of the gross amount of currency exchanged [1% of 19250] ie 192.50 or ₹ 250, whichever is higher. = ₹ 250

Gross amount of currency exchanged = $76.50 \times 2,300 = 175950$. Since the gross amount of currency exchanged exceeds 1,00,000, but less than ₹10,00,000, value of supply is $1,000 + 0.50\%$ of (1,75,950 - 1,00,000). = ₹ 1379.75 or say ₹ 1380

RBI rate is irrelevant for this purpose

6. (a)**Export Promotion Capital Goods (EPCG) Scheme:**

The objective of the EPCG Scheme is to facilitate import of capital goods for producing quality goods and services and enhance India's manufacturing competitiveness.

Export Promotion Capital Goods Scheme (EPCG) permits exporters to import capital goods (except specified goods) for pre-production, production and post-production at zero customs duty or procure them indigenously without paying duty in the prescribed manner. In return, exporter is under an obligation to fulfil the export obligation.

Applicability of IGST and Compensation cess:

Capital goods imported under EPCG Authorisation for physical exports are also exempt from IGST and Compensation.

In case integrated tax and compensation cess are paid in cash on imports under EPCG, incidence of the said integrated tax and compensation cess would not be taken for computation of net duty saved provided, input tax credit is not availed.

Actual User Condition:

Imported capital goods shall be subject to Actual User condition till export obligation is completed and Export Obligation Discharge Certificate (EODC) is granted.

Validity:

Authorisation shall be valid for import for 24 months from the date of issue of Authorisation. Revalidation of EPCG Authorisation shall not be permitted.

Indigenous Sourcing of Capital Goods and benefits to Domestic Supplier:

A person holding an EPCG authorisation may source capital goods from a domestic manufacturer either through Invalidation letter or through Advance Release Order. Such domestic manufacturer shall be eligible for deemed export benefits. Such domestic sourcing shall also be permitted from 100% EOUs.

Export Obligation (EO) consist of average export obligation and specific export obligation.

Import under EPCG scheme shall be subject to an export obligation equivalent to 6 times of duties, taxes and cess saved on capital goods to be fulfilled in 6 years reckoned from the date of issue of authorization.

Exports under Advance Authorisation, DFIA, Duty Drawback, RoSCTL and RoDTEP Schemes would also be eligible for fulfilment of EO under EPCG Scheme.

Exports made from DTA units shall only be counted for calculation and/or fulfilment of AEO and/or EO

EO can also be fulfilled by the supply of Information Technology Agreement (ITA-1) items to DTA, provided realization is in free foreign exchange.

Both physical exports as well as specified deemed exports shall also be counted towards fulfilment of export obligation.

Specific EO is over and above the Average EO.

6. (b)**Advance Authorisation (AA) Scheme:**

Advance Authorisation is issued to allow duty free import of input, which is physically incorporated in export product (making normal allowance for wastage). In addition, fuel, oil, catalyst which is consumed / utilized in the process of production of export product, may also be allowed.

(i) Eligible Applicant / Export:

- Advance Authorisation can be issued either to a manufacturer exporter or merchant exporter tied to supporting manufacturer.
- Advance Authorisation for pharmaceutical products manufactured through Non-Infringing (NI) process shall be issued to manufacturer exporter only

(ii) Eligible Supply:

Advance Authorisation is issued for procurement of inputs for the following kinds of supply:-

- Physical export (including export to SEZ)
- Intermediate supply; and/or
- Deemed exports
- Supply of 'stores' on board of foreign going vessel / aircraft, subject to condition that there is specific SION in respect of item supplied

(iii) Validity Period for Import

Import of goods under the Advance Authorisation must be made within 12 months from the date of issue of Authorisation.

Validity of Advance Authorisation for supplies under deemed exports shall be co-terminus with contracted duration of project execution or 12 months from the date of issue of Authorisation, whichever is later.

Revalidation for another period of 12 months can be allowed once only. Application for re- validation can be made online.

7. (a)**Assessable Value, Basic Customs duty, Social Welfare Surcharge and IGST**

Particulars	Amount (\$)
FOB value computed by Customs Officer	18,500
Add: Commission paid to local agent in India	3,100
FOB value as per customs	21,600
Add: Air freight	4,320
Add: Actual insurance charges	2,500
Assessable value in \$	28,420
Assessable value in rupees	₹ 21,31,500
Add: Basic custom duty @ 15%	₹ 3,19,725
Add: Social Welfare surcharge @ 10% on ₹ 3,19,725	₹ 31,973
Total	₹ 24,83,198
Integrated tax @ 18% on ₹ 24,83,198 [rounded off]	₹ 4,46,976

7. (b)**Provisional assessment and computation of interest**

Before, the provisional assessment of duty, the importer shall execute a bond for the purpose of undertaking to pay on demand the deficiency between the duty as may finally assessed and the duty provisionally assessed and shall furnish prescribed amount of security for the payment of the duty deficiency.

The importer is liable to pay interest, on any amount payable consequent to the final assessment order @ 15% p.a. from the first day of the month in which the duty is provisionally assessed till the date of payment thereof.

Accordingly, amount of interest payable will be for 62 days = 3,567.12 or ₹ 3,567 (rounded off)

8. (a)**Supply of smokes in restaurant, nature of supply**

In Re: Mfar Hotels & Resorts Pvt. Ltd. [2020 (42) G.S.T.L. 470 (A.A.R. - GST - T.N.)], the applicant sought a similar question for the opinion of the AAR. The AAR held thus:

KL, the taxpayer supplies cigarettes as a separate supply in the restaurant to a casual guest who do not avail of any other services offered by KL other than buying cigarettes at the restaurant.

KL in the menu for restaurant has various cigarette products, i.e., any guest who comes to the restaurant can have cigarettes alone also as these are in the menu of the restaurant. When a guest (resident or non-resident) comes to the restaurant and orders from the menu tobacco products, it involves supply of goods (cigarettes) and supply of services by the restaurant. In this case both the supplies are taxable.

The serving of any items by a restaurant involves the supply of the items along with the use of the facilities/staff of the restaurant. However, in this case the sale of cigarette products are not naturally bundled together with the restaurant services as the services of the restaurant involve serving of food and beverages alone in the normal course.

Hence is not a composite supply as per Section 2(30) of the Act.

However, when such cigarettes products are supplied by the restaurant, a single price is charged as seen in the invoices submitted by the applicant (given in the case study).

Section 2(74) of the CGST/TNGST Act states: "Mixed supply" means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply."

In the instant case, supply of tobacco products by KL in the restaurant is not a composite supply but involves supply of two individual supplies of goods (tobacco products) and supply of services of serving by the restaurant. Such a supply is a mixed supply.

8. (b)

Denial of ITC to taxpayer on the ground that supplier had not remitted the GST

Attention is invited to the following two Press releases:

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.

Press release dated 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.

The Calcutta High Court, which had occasion to deal with the issue on hand, [Suncraft Energy Private Limited and Another Vs Assistant Commissioner, State Tax (Calcutta High Court); MAT 1218 OF 2023; 02/08/2023] pointed out these aspects:

1. The SCN does not allege that the 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.
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 SEPL) 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.

Hence, as per above discussion in our case in hand, action of the department is not correct,