

PAPER – 19 : INDIRECT TAX LAWS AND PRACTICE

SUGGESTED ANSWER

SECTION - A

1.

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

SECTION - B

2. (a)

The following are the persons who are exempted from issuing E-Invoice at entity level:

- (a) Insurance Company
- (b) Banking Company/
- (c) Financial Institution
- (d) NBFC (Non-Banking Finance Company)
- (e) Goods Transport Agency
- (f) Persons supplying passenger transport service
- (g) Person supplying services by way of admission to exhibition of cinematography films in multiplex screens –
- (h) A SEZ unit
- (i) A Government department
- (j) A Local authority

Persons not exempted from complying with E – invoice provision at the entity level.

- (a) A SEZ developer
- (b) An Input service distributor (ISD)
- (c) A Domestic Tariff Area (DTA) unit even though SEZ unit of the same entity is exempt.

2. (b)

As per proviso to rule 59(1), a registered person may, after furnishing the details of outward supplies of goods or services or both in Form GSTR-1 for a tax period but before filing of return in Form GSTR-3B for the said tax period, at his own option, amend or furnish additional details of outward supplies of goods or services or both in Form GSTR-1A for the said tax period.

Thus, in light of the above we can say in the given case:

Yes, Shah Traders can amend the details of outward supply furnished in Form GSTR 1 of February.

Shah Traders has the option to furnish the details of the invoice issued to Bhuvana Traders in Form GSTR-1A on or after 11th March (or 14th March in our case) but before filing Form GSTR-3B for February.

The corresponding effect of the changes made through Form GSTR-1A on the liability of Shah Trader shall be reflected in Form GSTR-3B for February.

Restriction on Amendments:

GSTR-1A does not allow the amendment of documents related to changes in the recipient's GSTIN.

Impact on GSTR-2B:

Rule 60 (7) (iia) provides that the additional details or amendments in details of outward supplies furnished by his supplier in FORM GSTR-1A filed between the day immediately after the due date of furnishing of FORM GSTR-1 for the previous tax period to the due date of furnishing of FORM GSTR-1 for the current tax period shall be reflected in Form GSTR-2B for the current tax period.

OR

The GSTR-2B of the recipient will include all the supplies declared or amended in GSTR-1A by the supplier. However, these changes will only appear in the subsequent open GSTR-2B.

Thus, in the given case the details of missing invoice of Bhuvana Traders will not be available in its Form GSTR-2B for the month of February'

OR

Will be available in its Form GSTR-2B for the month of March

3. (a)

- (i) Cloak room services provided to passengers
Exempt / Not Taxable
[since services provided by Ministry of Railways (Indian Railways) to individuals by way of cloak room services are exempt.]
- (ii) Service of transportation of passengers in second class
Exempt / Not Taxable
[since service of transportation of passengers by railways in a class other than first class or an air-conditioned coach is exempt.]
- (iii) Platform tickets sold to passengers
Exempt / Not Taxable
[since services provided by Ministry of Railways (Indian Railways) to individuals by way of sale of platform tickets are exempt.]

- (iv) Renting of warehouse located in Kolkata railway station to Sree leathers Traders, registered in West Bengal
Taxable / Not Exempt
[Since services supplied by the Ministry of Railways (Indian Railways) by way of renting of immovable property to a person registered under GST law are not exempt. Further, tax on said services is payable by the Railways under forward charge.]
- OR**
not covered under RCM
- (v) Service of transportation of passengers in air-conditioned coaches
Taxable / Not Exempt
[Service of transportation of passengers by railways in a class other than first class or an air-conditioned coach is exempt. Thus, service of transportation of passengers in air-conditioned coaches is taxable.]
- (vi) Service of transportation of relief materials meant for victims of flood affected area
Exempt / Not Taxable
[since service of transportation of relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap by rail is exempt.]
- (vii) Service of transportation of organic manure
Exempt / Not Taxable
[since service of transportation of organic manure by rail is exempt.]

3. (b)
where any registered person ceases to pay tax under composition scheme, he shall be entitled to take credit of input tax in respect of inputs held in stock, inputs contained in semi-finished or finished goods held in stock and on capital goods on the day immediately preceding the date from which he becomes liable to pay tax under section 9:

Provided that the credit on capital goods shall be reduced by –

- (i) 5 % points per quarter of a year
(ii) or part thereof (as the total life is taken a 5 years amounting to 20 Quarters)

The amount of ITC which can be taken by Vijayalalitha upon shifting from composition to regular scheme shall be computed as under.

Alternate 1:

As per section 18(2), a registered person shall not be entitled to take input tax credit in respect of any supply of goods or services or both after the expiry of one year from the date of issue of invoice relating to such supply

Since in given case date of eligibility is from 01/04/2025 whereas date of invoice of plant is 01/10/2023 which is more than 1 year old

So, NO ITC shall be available to Vijayalalitha in the given case.

OR

Alternate 2:

- (i) Time gap between the date of purchase under composition scheme and shifting to regular scheme = 1 year and 6 Months (i.e. 6 quarters)
(ii) Total reduction in tax paid for 6 quarters or part thereof – Five percentage points * 6 quarters = 30%

- (iii) Tax Paid on purchase of plant and machinery ₹ 4,50,000 so Amount of Reduction in tax paid 30% of ₹ 4,50,000 = ₹ 1,35,000
- (iv) Amount of ITC on capital goods allowed on shifting from composition Scheme to regular scheme – ₹ 4,50,000 – ₹ 1,35,000 = ₹ 3,15,000.

4. (a)

CGST Notification No. 15/2024 dated 10 July 2024 - Rate applicable for TCS under Sec 52 of CGST Act is reduced from 1 % (0.5%+ 0.5%) to 0.50% IGST (0.25% CGST + 0.25% SGST)

TCS to be collected by Flykart (e-commerce operator)

- (i) Since taxable accommodation service is provided by DF Hotels, Maharashtra to a customer, Flykart is liable to collect TCS at 0.25% CGST and 0.25% SGST, since It is an Intra state supply
So, on ₹ 2,00,000 TCS Will be ₹ 500 CGST and ₹ 500 SGST
- (ii) For the services of transportation of passengers through an omni bus by a member of the flykart to another company, TCS has to be collected at 0.5% (0.25% SGST and) 0.25% CGST). Since it is It will be Intra state supply
Hence for omni bus services TCS will be 0.25% on 1,80,000 i.e., ₹ 450 CGST and ₹ 450 SGST
- (iii) No TCS is to be collected for services of transportation of passengers through other vehicles, since the same is notified service.
- (iv) Since it is an Inter State supply, Fly kart is liable to collect 0.50% IGST on net value of supplies (Gross value less sales returns).

TCS will be 0.5% on ₹ 1,10,000 (2,00,000 less 90,000 at 0.50% as ₹ 550 IGST

4. (b)

1. Rule 28 of the CGST Rules 2017 value of supply of goods or services or both between distinct or related persons other than through an agent

Rule 28(1) The value of the supply of goods or services or both between distinct persons as specified in section 25(4) and section 25(5) of the CGST Act, 2017 or where the supplier and recipient are related, other than where the supply is made through an agent, shall—

- (a) be Open market value of such supply
- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality.
- (c) If value is not determinable under clause (a) or (b), be the value as determined by application of rule 30 or rule 31, in that order

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to 90% of the price charged of the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services.

2. Rule 28(2):

Value of supply of services by a supplier to a recipient who is a related person “located in India” , by way of providing corporate guarantee to any banking company or financial institution on behalf of the said recipient, shall be deemed to be 1% of the amount of such guarantee offered per annum

or

the actual consideration,

\Whichever is higher.

Provided that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the value of said supply of service

3. In case of import of services by a registered person in India from a related person located outside India, the tax is required to be paid by the registered person in India under reverse charge mechanism.

In such cases, the registered person in India is required to issue self-invoice under Section 31(3)(f) of CGST Act and pay tax on reverse charge basis.

4. It is clarified that in cases where the foreign affiliate is providing certain services to the related domestic entity, and where full input tax credit is available to the said related domestic entity, the value of such supply of services declared in the invoice by the said related domestic entity may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules.

Further, in cases where full input tax credit is available to the recipient, if the invoice is not issued by the related domestic entity with respect to any service provided by the foreign affiliate to it, the value of such services may be deemed to be declared as Nil, and may be deemed as open market value in terms of second proviso to rule 28(1) of CGST Rules

5. (a)

- (i) As per section 12(4) of the CGST Act, 2017, the time of supply of vouchers exchangeable for goods is- Date of issue of the voucher, if the supply that it covers is identifiable at that point of time

In the given case, supply can be identified at the time of purchase of the coupons. Therefore, the time of supply of the coupons is the date of their issue i.e. 23.06.2024.

- (ii) As per section 12(4) of the CGST Act, 2017, the time of supply of vouchers exchangeable for goods is- Date of redemption of the voucher in other cases (or if the supply that it covers is NOT identifiable at that point of time)

In the given case, supply cannot be identified at the time of purchase of the coupons. Therefore, the time of supply of the coupons is the date of their redemption i.e. 18.08.2024.

- (iii) Section 12(6) of the CGST Act, 2017 prescribes that time of supply in case of addition in value on account of interest/ late fee/penalty for delayed payment of consideration for goods is the date on which the supplier receives such addition in value.

Therefore, time of supply in the given case is 11.11.2024.

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.	Up to ₹ 1,00,000	1% of the gross amount of currency exchanged OR ₹ 250 whichever is higher
2.	Exceeding ₹ 1,00,000 and up to ₹ 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:

- (i) Gross amount of currency exchanged = ₹ 83 × USD 280 = ₹ 23,240. 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 ₹ 23240] i.e., ₹ 232.40 or ₹ 250, whichever is higher. = ₹ 250
- (ii) Gross amount of currency exchanged = ₹ 82.50 × USD 2,400 = ₹ 198000. 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 ₹ (1,98,000 - 1,00,000). = ₹ 1490

RBI rate is irrelevant for this purpose

6. (a)

National Trade Facilitation Action Plan under the FTP

The National Trade Facilitation Action Plan aims to achieve:

1. Improvement in ease of doing business through reduction in transaction cost and time
2. Reduction in cargo release time
3. A paperless regulatory environment
4. A transparent and predictable legal regime
5. Improved investment climate through better infrastructure

The following trade facilitation measures are provided under FTP:

1. Free passage will be provided to export consignment
2. There will not be any seizure of export related stock except in exceptional cases.
3. Single window system to facilitate export of perishable agricultural produce
4. DGFT is implementing the Niryat Bandhu Scheme for mentoring new and potential exporter on the intricacies of foreign trade through counseling, training and outreach programmes including the 'Districts as Export Hubs'.

5. DGFT online customer portal provides information relating to export and import including Acts, rules, policy and procedures.
6. Online facilities for e-RCMC/RC related processes, e-Certificate of Origin (e-CoO) and Quality Control and Trade Disputes (QCTD) are also available on said common digital platform.
7. DGFT has undertaken a number of IT Initiatives to enable a paperless, contactless and transparent environment for availing benefits under the export promotion schemes.
8. A dedicated 24 X 7 Helpdesk facility has been put in place to assist the exporters in filing online applications on the DGFT portal and other matters pertaining to the FTP.
9. A large number of Trade Facilitation measures have been taken by Customs Department.
10. Authorised Economic Operator (AEO) Programme
11. Towns of Export Excellence (TEE)
12. Duty Free Entitlements to Select Sectors
13. Special privileges granted to Status Holders
14. DGFT is committed to function as a facilitator of exports and imports.
15. Continuous efforts are being made for better collection, compilation and wider dissemination of Trade Data and Statistics to help the policy makers, researchers, exporters and importers to formulate their trade strategy.
16. DGFT has in place a Citizen's Charter, giving time schedules for providing various services to clients.

6. (b)

Deemed Exports (i.e. Supply of goods from DTA to EOU):

Goods manufactured in India and supplies from DTA to EOU, EHTP, STP & BTP units will be regarded as deemed exports and DTA supplier shall be eligible for export incentives.

The following supplies are considered as deemed exports:

A. Goods supplied by a manufacturer:

1. Supply of goods against Advance Authorization/Advance Authorization for Annual Requirement/ DFIA.
2. Supply of goods to units located in EOU/STP/BTP/EHTP.
3. Supply of capital goods against EPCG authorization.
4. Supply of marine freight containers by 100% EOU provided said containers are exported within 6 months by another 100% EOU.

B. Goods supplied by a Main contractor/sub-contractor:

1. Supply of goods to projects or turnkey contracts financed by multilateral or bilateral agencies/Funds notified by Department of Economic Affairs (DEA), under International Competitive Bidding.
2. Supply of goods to any project where import is permitted at zero customs duty.
3. Supply of goods to mega power projects against International Competitive Bidding.
4. Supply of goods to UN or international organisations.
5. Supply of goods to nuclear projects through competitive bidding (need not be international competitive bidding).

7. (a)

Customs duty payable for baggage

Particulars	₹
Personal effects, cloths etc.	Nil/ Exempt
A personal Computer	2,72,000
A laptop	Nil/ Exempt
Two Liters of liquor bought for	3,200
New Camera bought for	1,74,800
Plasma TV	Covered in annexure 1
Total	4,50,000
Less: General free allowance for Mr. and Mrs. Ajith Kumar ₹ 50,000 each (₹ 50,000 + ₹ 50,000)	(-) 1,00,000
Value of Baggage taxable at concessional rate	3,50,000
Plasma TV (Fully taxable as covered in annexure 1)	2,50,000
Total taxable Value	6,00,000

Calculation of Customs Duty

Alternate 1:

(If rate of duty considered @ 38.50% on Plasma TV)

Applicable Customs Duty rate on Baggage	38.50%
Customs duty on baggage (₹ 3,50,000*38.50%)	1,34,750
Customs duty on Plasma TV (₹ 2,50,000*38.50%)	96,250
Total Customs duty payable	2,31,000

OR

Alternate 2:

(If rate of duty considered @ 100 % on Plasma TV)

Applicable Customs Duty rate on Baggage	38.50%
Customs duty on baggage (₹ 3,50,000*38.50%)	1,34,750
Customs duty on Plasma TV – (₹ 2,50,000*110%)	2,75,000
Total Customs duty payable	4,09,750

7. (b)

As per Notification No. 45/2017 Cus. dated 30.06.2017, duty payable on re-importation of goods which had been exported for repairs abroad is the duty of customs which would be leviable if the value of re-imported goods after repairs were made up of the fair cost of repairs carried out including cost of materials used in repairs (whether such costs are actually incurred or not), insurance and freight charges, both ways.

However, following conditions need to be satisfied for availing this concession:

- (a) goods must be re-imported within 3 years, extendable by further 2 years, after their exportation;
- (b) exported goods and the re-imported goods must be the same;
- (c) ownership of the goods should not change.

Since all the conditions specified above are fulfilled in the given case, the customs duty payable on re-imported goods will be computed as under:

Particulars	₹
Cost of materials	12,75,000
fair cost of repairs	6,25,000
actual insurance and freight , Both way	8,00,000
<u>Value of goods re-imported after exports</u>	<u>27,00,000</u>
Add: Basic customs duty @ 15% (A)	4,05,000
Add: Social Welfare Surcharge @ 10% on ₹. 4,05,000 (B)	<u>40,500</u>
Value for computing integrated tax	31,45,500
Integrated tax @ 12% (₹ 31,45,500 x 12%) - (C)	3,77,460
Customs duty and integrated tax payable [(A) +(B)+ (C)]	8,22,960

8. (a)

Section 120 of the CGST Act, 2017 provides that the Board may, on the recommendations of the Council, from time to time, issue orders or instructions or directions fixing such monetary limits, as it may deem fit, for the purposes of regulating the filing of appeal or application by the officer of the central tax under the provisions of this Chapter. CBIC vide Circular No. 207/1/2024 GST dated 26.06. 2024 has fixed the following monetary limits for filing appeals/ applications/ Special Leave Petition by the Department before GSTAT, High Courts and Supreme Court subject to specified exclusions:

Appellate forum	Monetary limit (Amount involved in ₹)
GSTAT	20 lakh
High Court	1 crore
Supreme Court	2 crore

Further, where the dispute pertains to demand of tax (with or without penalty and/or interest), the aggregate of the amount of tax in dispute (including CGST, SGST/UTGST, IGST and Compensation Cess) only shall be considered while applying the monetary limit for filing appeal,

However, the circular further provides that the monetary limits specified above for filing appeal or application by the Department before GSTAT or High Court and for filing Special Leave Petition or appeal before the Supreme Court shall not be applicable in the following circumstances where the decision to file appeal shall be taken on merits irrespective of the said monetary limits:

- Where any provision of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act has been held to be ultra vires to the Constitution of India; or
- Where any rules or regulations made under the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act have been held to be ultra vires the parent Act; or
- Where any order, notification, instruction, or circular issued by the Government or the Board has been held to be ultra vires of the CGST Act or SGST/UTGST Act or IGST Act or GST (Compensation to States) Act or the rules made thereunder; or

- iv. Where the matter is related to -
 - a. valuation of goods or services; or
 - b. classification of goods or services; or
 - c. refunds; or
 - d. place of supply; or
 - e. any other issue,
which is recurring in nature and/or involves interpretation of the provisions of the GST law/ the Rules/ notification/ circular/ order/ instruction etc.; or
- v. Where strictures/adverse comments have been passed and/or cost has been imposed against the Government/Department or their officers; or
- vi. Any other case or class of cases, where in the opinion of the Board, it is necessary to contest in the interest of justice or revenue.

Decision in given case

Alternate 1:

Thus, in the given case as the amount involved is ₹ 1.2 crore (amount of tax only) which as per the circular does not exceed the monetary limit of ₹2 crore.

So, in the given case appeal cannot be filed by the Department to Supreme Court

OR

Alternate 2:

As per Circular the Department cannot ordinarily file an appeal to the Supreme Court if the tax amount in dispute is below ₹2 crore.

In this case, the tax amount is ₹1.20 crore, so the monetary threshold is not met.

However, Clause 4(iv) (e) of the circular provides that this threshold does not apply where the matter Involves a recurring issue, and/or

Requires interpretation of GST law, rules, notification, circular, etc.

Since the issue relates to whether an activity constitutes “supply”, which involves interpretation of Section 7 of CGST Act and related schedules, it can fall under this exception clause.

☞ Therefore, the Department may file an appeal to the Supreme Court on merits, if the issue is treated as interpretational and recurring, subject to approval by the competent authority.

If matter related to valuation of services

In view of the Clause 4(iv) (a) of the circular stated above, if in the given case the matter is related to valuation of services, appeal can be filed by the Department to the Supreme Court based on the merits irrespective of the monetary limits.

8. (b)

- (i) as per Section 11 of the IGST Act, 2017 in case of Import of goods so Place of supply will be Location of the importer

So in the given case Place of supply will be the location of unregistered customers

- (ii) In case of intangible goods, it is not possible to levy and collect IGST on imports under the provisions of section 3 of the Customs Tariff Act, 1975, as the goods do not cross the customs frontiers physically.

It is notified that, with effect from 1st October 2023, the supply of certain goods including supply of online money gaming as the supply of goods on import of which, IGST shall be levied and collected under sub-section (1) of section 5 of the IGST Act, 2017 and not under the provisions of section 3 of the Customs Tariff Act, 1975 [Notification No 3/2023-IT dt 29-09-2023 w.e.f 01.10.2023].

So, This implies that import of specified actionable claim of online money gaming will be taxed under IGST as import of goods without applicability of customs duty.

Section 24(xia) every person supplying online money gaming from a place outside India to a person in India to obtain mandatory registration irrespective of quantum of aggregate turnover the said supplier shall obtain a single registration under the Simplified Registration Scheme[referred to in sub-section (2) of section 14 of the IGST Act, 2017] for payment of integrated tax

w.e.f. 01-10-2023, Insertion of new Section 14A in the IGST Act, 2017 [Special provision for specified actionable claims supplied by a person located outside taxable territory] to provide that, -

A supplier of online money gaming [as defined in 2(80B) of CGST Act, 2017] not located in the taxable territory, shall be liable to pay integrated tax in respect of said supply by him to a person in the taxable territory. Any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay the integrated tax on behalf of the said supplier.

If such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable territory for the purpose of paying IGST and such person shall be liable for payment of such tax.

Accordingly, the contention of department is correct in this case and

Yes, in the given case, GST will be leviable on the subscription fees that it charges from unregistered Indian customers and

Viv Richards Inc is required to pay, the IGST in the manner specified above.