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# AMENDMENTS

*For* SEP'2025 EXAMS

CA Final

Paper - 5  
**Indirect Tax Laws**

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## SEGMENT 1 - INTRODUCTION TO GST

## 1. NON-TAXABLE SUPPLY SCOPE EXPANDED TO INCLUDE ADDITIONAL GOODS – SEC. 9(1) OF CGST ACT/SEC. 5(1) OF IGST ACT – FINANCE ACT, 2024:

- Earlier, alcoholic liquor for human consumption is excluded from the ambit of GST.
- Owing to this amendment, at present, supply of alcoholic liquor for human consumption and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption, are excluded from the ambit of GST.

Alcoholic Liquor for human consumption	Denatured Extra Neutral Alcohol	Rectified spirit used for manufacture of alcohol
		

## 2. POSITION OF GOODS UNDER GST [AFTER IMPLEMENTATION OF GST] IN COMPARISON TO EARLIER SYSTEM – AS AMENDED BY FINANCE ACT, 2024 (W.E.F 1.11.24):

Particulars	Excise Duty		CST	VAT	GST
	Centre Excise	State Excise			
1. Alcohol for human consumption, <b>Denatured Extra Neutral Alcohol &amp; Rectified spirit used for manufacture of alcohol</b>	X	✓	✓	✓	X (Exclusion is permanent)
2. Petroleum products (5) <sup>1</sup>	✓	X	✓	✓	X (Exclusion is temporary)
3. Tobacco & Tobacco products	✓	X	X	X	✓
4. Other Goods	X	X	X	X	✓

<sup>1</sup> Crude Oil, Petrol (Also known as Motor Spirit), High Speed Diesel, Aviation Turbine Fuel and Natural Gas.

## SEGMENT 2 - SUPPLY UNDER GST

## 3. EXCLUSIONS FROM SUPPLY – SECTION 7(2) READ WITH SCHEDULE III – FINANCE ACT, 2024 (W.E.F. 1.11.24)

P	Posts
I	<b>Insurance services jointly supplied</b>
L	Legal fees
L	Land sale (incl. sale of building)
A	Actionable claims other than specified actionable claims
R	<b>Re-insurance commission</b>
L	Liquor licence granted by SG
E	Employee to employer in the course of employment
S	Sovereign functions of Government
S	Sale on high seas
D	Death related
O	Outside the country movement of goods
W	Warehoused goods under customs sold

- **Apportionment of Co-insurance Premium by the Lead Insurer to Co-insurer:**
  - In co-insurance arrangements, where multiple insurers provide coverage, the lead insurer often collects the premium from the insured and distributes a portion to the co-insurers.
  - The proposed provision treats this apportionment of premium between the lead insurer and the co-insurer as neither a supply of goods nor services, **provided that** the lead insurer pays the GST on the entire premium paid by the insured.
- **Services by Insurer to Re-insurer (Reinsurance Commission or Ceding Commission):**
  - In reinsurance agreements, the insurer pays a premium to the reinsurer, while deducting a commission (ceding or reinsurance commission) as part of the arrangement.
  - The proposed insertion clarifies that the provision of these services by the insurer to the reinsurer (due to the deduction of the commission) will not be treated as supply. **However**, this is subject to the condition that the reinsurer discharges the GST liability on the gross reinsurance premium (which includes the reinsurance commission or ceding commission).

**QUESTION 1**

The New India Assurance Co. Ltd., a registered insurance company in India, enters into a co-insurance agreement with ICICI Lombard General Insurance Co. Ltd. to jointly provide insurance coverage to Reliance Industries Ltd. The total premium paid by Reliance Industries for the policy is ₹10 crore. As per the co-insurance agreement, New India Assurance acts as the lead insurer, collecting the entire premium from Reliance Industries, and subsequently apportions 40% of the premium (₹4 crore) to ICICI Lombard. New India Assurance pays GST on the entire premium amount of ₹10 crore, as required by law. The applicable GST rate on insurance and reinsurance services is 18%.

Calculate the GST liability for New India Assurance Co. Ltd. on the full premium collected from Reliance Industries Ltd.

Determine if ICICI Lombard General Insurance Co. Ltd. is liable to pay any GST on the ₹4 crore premium apportioned to it under the proposed insertion in Schedule III of the CGST Act, 2017.

What will be your answer if New India Assurance is not paying GST on the entire premium of ₹10 crore but instead pay GST on the share retained by them?

(i) Services Provided by New India Assurance Co Ltd to Reliance Industries Ltd against consideration of Rs.10 Crores its treated as supply under sec 7(1)(a) GST Payable by new India Assurance Co. Ltd in FCM =  $(10,00,00,000 \times 18\%)$

=1,80,00,000.

(ii) ICICI Lombard General Insurance providing co-insurance services to lead insurer against the consideration of Rs.4 crores is excluded from supply under sec 7(2) Read with Schedule III as the Lead insurer paid GST on total permission.

(iii) If New India Assurance is Paying GST on Rs.6 Crores then the share of premium received by ICICI Lombard insurance is not excluded from supply consequently GST is payable by ICICI Lombard on Rs.4 Crores.

Note: GST is Payable on transaction value determine under Sec 15, However in present case new India assurance Violated they provision of sec 15 by paying GST on Rs.6 Crores instead of paying GST on Rs. 10 Crores.

## QUESTION 2

New India Assurance reinsures a part of its risk with GIC (General Insurance Corporation of India), a domestic reinsurer. The gross reinsurance premium paid by New India Assurance to GIC is ₹5 crore, but New India Assurance deducts a 20% ceding commission (₹1 crore) before making the payment. GIC is responsible for paying GST on the gross premium inclusive of the ceding commission. The applicable GST rate on insurance and reinsurance services is 18%.

Calculate the GST liability for GIC on the gross reinsurance premium of ₹5 crore, including the ceding commission deduction.

Calculate the GST liability on New India Assurance on the services provided by them to GIC for which commission is deducted?

What will be your answer if GIC not paid GST on the gross premium but GST paid on net premium after deduction of commission to New India Assurance?

Answer:

(i) Re-insurance services provided by General Insurance Corporation of India (GIC) to New India Assurance (NIA) against Premium of Rs.5 crores is supply u/s 7(1)(a) is GST Payable under FCM

=5,00,00,000\*18%

=90,00,000.

(ii) Agency Services Provided by insurer (NIA) to (GIC) re-insurance against the consideration of Rs.1 Crore is excluded from supply under section 7(2), read with Schedule-III, as Re-insurance paid GST on gross premium received.

(iii) If re-insurance (GIC) Paid GST on Rs. 4 crores services by (insurer NIC to re-insurers GIC) is not excluded from supply consequently GST Payable by insurer required to pay GST on commission Rs.1 crores \*18%=18,00,000.

Note: GIC Violated they provision of Sec 15 by not paying on transaction value.

## QUESTION 3

(RTP Sept 25)

ABC Insurance Ltd., a registered insurer in Maharashtra, is engaged in providing insurance services. During the current financial year, the company entered into following transactions:

(i) ABC Insurance Ltd. enters into a co-insurance agreement with XYZ Insurance Ltd. where ABC Insurance Ltd. is the lead insurer. The insured – Gyaati Industries- pays a total premium of ₹ 50,00,000 which is apportioned by the lead insurer – ABC Insurance Ltd. between itself and XYZ Insurance Ltd. in the ratio of 60:40 for the insurance services jointly supplied by them to Gyaati Industries. ABC Insurance Ltd. agrees to discharge the entire GST liability on the full amount of premium received from Gyaati Industries.

(ii) A large industrial plant needs an insurance worth ₹ 500 crore. It approaches ABC Insurance Ltd. for the same. However, since ABC Insurance Ltd. is unable to underwrite the entire risk alone, it enters into a reinsurance agreement with a reinsurer – PQR Insurance Ltd. The total premium charged is ₹ 50 lakh. The insurer – ABC Insurance Ltd. pays a reinsurance premium of ₹ 20 lakh to PQR Insurance Ltd. This allows ABC Insurance Ltd. to manage its risk and financial exposure. While paying this amount to PQR Insurance Ltd., ABC Insurance Ltd. deducts a ceding commission of ₹ 1,00,000 which it has charged for the services it provides to PQR Insurance Ltd. PQR Insurance Ltd. pays GST on the gross



reinsurance premium including the ceding commission. Based on the provisions of Schedule III of the CGST Act, 2017, discuss whether the following activities amount to supply:

- a) Apportionment of co-insurance premium by ABC Insurance Ltd. To XYZ Insurance Ltd. for the insurance services jointly supplied by them to Gyaati Industries.
  - b) (b) Services by ABC Insurance Ltd. to PQR Insurance Ltd. for which ceding commission is deducted from reinsurance premium paid by ABC Insurance Ltd. to PQR Insurance Ltd.
- a) As per para 9 of Schedule III of the CGST Act, 2017, activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured is neither supply of goods nor supply of services and hence no GST is charged on the apportionment transaction. However, the lead insurer (ABC Insurance Ltd.) is required to pay the entire GST (CGST and SGST or IGST, as applicable) on the full premium amount paid by the insured – Gyati Industries, of ₹ 50,00,000. The co-insurer – XYZ Insurance Ltd. does not pay GST on its share of the premium separately.
- b) As per para 10 of Schedule III of the CGST Act, 2017, services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer is neither supply of goods nor supply of services, subject to the condition that the central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission. However, the reinsurer (PQR Reinsurers Ltd.) is liable to pay GST on the gross reinsurance premium payable by the insurer (₹ 20 lakh), inclusive of the ceding commission (₹ 1 lakh).

#### 4. CLARIFICATIONS REGARDING APPLICABILITY OF GST ON PENAL CHARGES BEING LEVIED BY THE REGULATED ENTITIES (REs)<sup>2</sup>:

As per RBI instructions dated 18.08.2023, **Regulated Entities (REs)** like banks and NBFCs must **replace penal interest** with **penal charges** for non-compliance with loan terms, effective from 01.01.2024. These instructions do not apply to **credit cards, ECBs, trade credits, or structured obligations**.

The **intent of penal charges** is to **promote credit discipline**, not to treat them as a consideration for "tolerating an act" under GST.

Referring to **earlier circular on Liquidated damages**<sup>3</sup>, CBIC clarifies that such penal charges:

- Are for breach of contract,
- Are not consideration for tolerating a breach,
- As the same is to discourage a person from doing so (Penal in nature) and
- Are not liable to **GST**.

#### QUESTION 4

Mr. Rahul Mehra availed a car loan of ₹12 lakhs from HDFC Bank Ltd. on 10th January 2024. The loan agreement clearly specified that timely EMI payment on the 5th of every month was a material term.

Rahul defaulted on his EMI for April and May 2024. As per the RBI circular dated 18.08.2023, HDFC Bank levied a penal charge of ₹1,500 per default instead of penal interest. On 10th June 2024, the bank raised a debit note for ₹3,000 (₹1,500 × 2 months) and charged 18% GST on the penal charges.

Simultaneously, Rahul also holds a credit card with Bajaj Finance Ltd. He delayed the credit card bill payment due on 15th May 2024, for which Bajaj Finance levied a late payment charge of ₹750 along with 18% GST, citing it as a standard practice for credit card dues.

Rahul has now approached you as his GST consultant to understand:

<sup>2</sup> Circular No. 245/02/2025 GST dated 28.01.2025

<sup>3</sup> Circular No. 178/10/2022 GST dated 03.08.2022

1. Whether HDFC Bank is correct in charging GST on the penal charges levied for loan EMI default.
2. Whether Bajaj Finance is correct in charging GST on late payment charges for credit card dues.

**Penal Charges by HDFC Bank on EMI Defaults:**

HDFC Bank is an RBI Regulated Entity, and the defaulted loan is a car loan—a standard term loan falling under the RBI circular. Penal charges are levied in place of penal interest, following RBI instruction dated 18.08.2023.

As clarified by CBIC, these charges are not for "tolerating an act" (i.e., not a service), but are deterrent in nature and part of loan compliance framework. Hence, HDFC Bank is incorrect in charging GST on penal charges of ₹3,000.

**Late Payment Charges by Bajaj Finance on Credit Card Default:**

Credit card dues are explicitly excluded from the purview of the RBI circular. Such charges are typically included in the product-specific guidelines under credit card operations. CBIC in earlier clarifications (e.g., FAQ and Circular 121/40/2019-GST) has clarified that late payment charges on credit card dues are consideration for supply of financial service, and hence liable to GST. (Circular on liquidated damages is not applied in this case).

Therefore, GST is applicable on late payment charges related to credit card dues and Bajaj Finance is correct in charging GST on ₹750.





## SEGMENT 3 – LEVY AND COLLECTION UNDER CGST

5. AMENDMENTS IN THE LIST OF NOTIFIED SERVICES TAX ON WHICH IS PAYABLE UNDER REVERSE CHARGE BY THE RECIPIENT<sup>4</sup>

Service	Exemptions	Conditions for RCM	Non applicability of RCM i.e., FCM is applicable
R = Renting of immovable property – Commercial property		1. Supplier should be unregistered 2. Recipient should be registered but not opting for composition scheme	- Supplier is registered (or) - Recipient is opting for composition scheme
S = Sponsorship Services		1. Supplier is other than body corporate 2. Recipient is body corporate or firm	- Supplier is body corporate (or) - Recipient is other than body corporate or firm

## QUESTION 1

Who is liable to pay GST in the following scenarios, in case of sponsorship services

1. Mr. Ramesh (unregistered Individual) lets out his commercial shop to Sky Retail Pvt. Ltd., a registered company, on a monthly rent of ₹25,000.
2. Mr. Suresh (Registered Individual) lets out his commercial shop to M/s Tej Foods, a restaurant registered under composition scheme for a monthly rent of 40,000.
3. Mr. Rajesh (Unregistered Individual) lets out his commercial complex to M/s A1 mobiles, a trader registered under composition scheme.

1. As supplier is unregistered and recipient is registered, it is covered under RCM
2. As supplier is registered, it is always covered under FCM
3. Even though supplier is unregistered, but recipient is registered and opting for composition scheme, it is not covered under RCM and GST payable under FCM. As supplier is not registered, GST is not payable.

## QUESTION 2

Who is liable to pay GST in the following scenarios, in case of sponsorship services

1. Tata Steel Ltd. sponsors a sports event organized by Green City NGO (registered as a society but not a body corporate).
2. ABC Pvt. Ltd., a registered partnership firm, is the recipient of the sponsorship benefit and brand display w.r.to an event hosted by Paper Mills Ltd.

Answer:

1. As per amended Entry No. 4, RCM applies only when the supplier (i.e., Organiser) is not a body corporate, and the recipient is a body corporate or partnership firm located in taxable territory. In the present case, Green City NGO is organiser and they are other than body corporate and recipient is Tata Steel Ltd. being a body corporate, RCM is applicable.
2. As the supplier of sponsorship service (i.e., Paper Mills Ltd.) is body corporate, RCM is not applicable and GST payable by Paper Mills Ltd. under FCM, even though recipient is firm.

<sup>4</sup> Notification No. 07/2025 CT(R) dated 16.01.2025 and Notification No. 07/2025 IT(R) dated 16.01.2025

## 6. CLARIFICATION IN RESPECT OF INPUT TAX CREDIT AVAILED BY ELECTRONIC COMMERCE OPERATORS WHERE SERVICES NOTIFIED UNDER SECTION 9(5) OF THE CGST ACT, 2017 ARE SUPPLIED THROUGH THEIR PLATFORM<sup>5</sup>

Electronic Commerce Operators (ECOs) may:

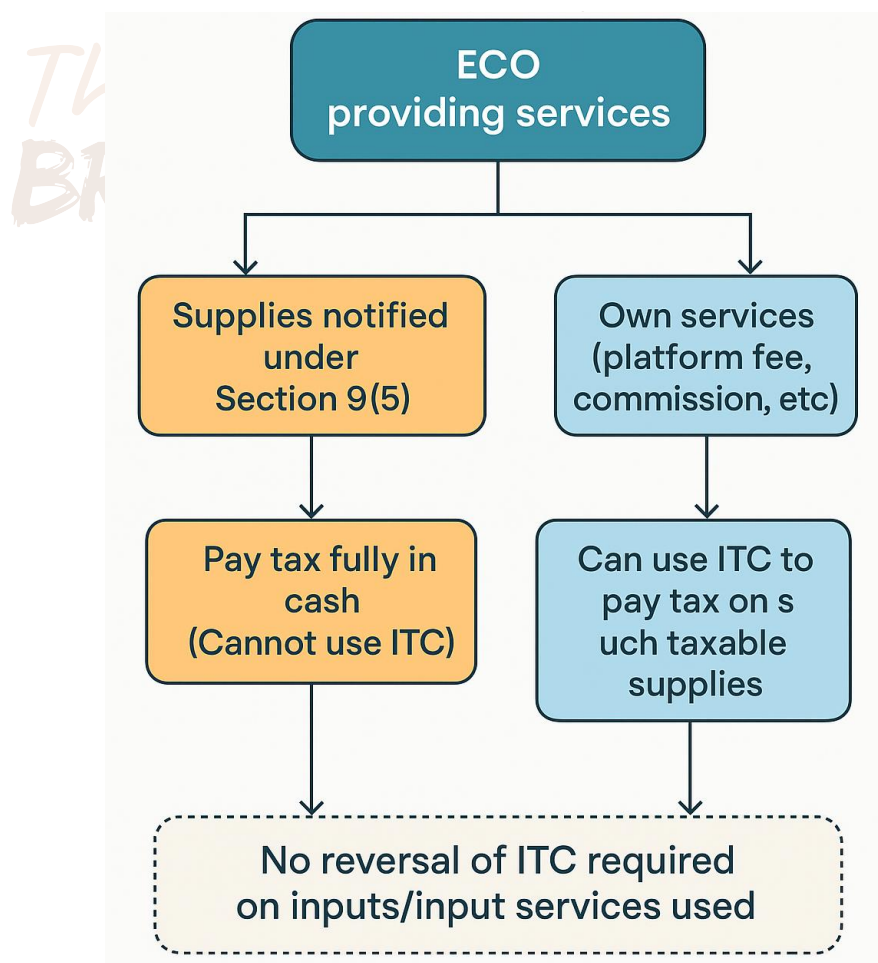
1. Pay tax under Section 9(5) for notified services (HATE), as if they are the supplier.
2. Provide own services (like platform access, commission, listing fee), for which they charge users and pay tax under normal forward charge.

### ISSUE:

- (i) Whether the ECO is required to reverse proportionate ITC on inputs/input services used commonly for Their own taxable services (forward charge), and Section 9(5) supplies
- (ii) Whether ITC available to ECO be utilised for payment of GST under Section 9(5)?

### CLARIFICATION:

1. No reversal of ITC is required under Section 17(1) or 17(2) just because ECO is paying tax under Section 9(5).
2. However, the ITC cannot be used to pay tax under Section 9(5). That tax must be paid fully in cash. (Earlier, this condition was only for restaurant services through ECO, but now it is extended to all notified services through ECO)
3. The ITC can still be used to pay GST liability on ECO's own services.



<sup>5</sup> Circular No. 240/34/2024 GST dated 31.12.2024

**QUESTION 3**

UrbanStay Pvt. Ltd. is an electronic commerce operator (ECO) facilitating short-term accommodation services through its platform (a notified service under Section 9(5) of the CGST Act). In the month of April 2025, it had the following transactions:

Outward supplies:

Nature of Supply	Amount (Excl. GST)	GST Rate
Booking charges for homestays provided by unregistered persons through platform	₹10,00,000	12%
Platform usage fee charged to property owners (commission)	₹2,00,000	18%
Advertising space sold on website to brands	₹1,00,000	18%

Inward supplies:

Description	Amount (Excl. GST)	GST Rate
Google Ads and marketing services	₹1,00,000	18%
Office rent (commercial property)	₹70,000	18%
Laptop purchases for marketing team	₹1,20,000	18%
Food and catering for in-house training	₹20,000	5%
Cloud server subscription	₹60,000	18%

Determine the net GST payable in cash, after adjusting eligible ITC against liability. Clearly bifurcate the amount payable under Section 9(5) and own supplies.

ANSWER:

Inward Supply	Amount	GST Rate	GST Amount	ITC Allowed
Google Ads and marketing	₹1,00,000	18%	₹18,000	₹18,000
Office Rent	₹70,000	18%	₹12,600	₹12,600
Laptops	₹1,20,000	18%	₹21,600	₹21,600
Catering for training	₹20,000	5%	₹1,000	Nil
Cloud Server Subscription	₹60,000	18%	₹10,800	₹10,800
Total ITC				₹63,000

Tax Payable Under Section 9(5):

Nature of Supply	Value	GST Rate	Tax Liability	Payment Mode
Homestay Booking	₹10,00,000	12% (6% CGST + 6% SGST)	₹1,20,000	In Cash only

→ ₹60,000 CGST + ₹60,000 SGST

## 2. Tax on UrbanStay's Own Services (Forward Charge):

Nature	Value	GST Rate	Tax
Platform Fee	₹2,00,000	18%	₹36,000
Ad Revenue	₹1,00,000	18%	₹18,000

→ Total = ₹54,000 (₹27,000 CGST + ₹27,000 SGST)

Can be paid using available ITC.

- Total Tax Payable = ₹1,74,000
- ITC Utilized = ₹54,000 (Only for own supplies)
- Cash Payable = ₹1,20,000 (Only for Section 9(5) liability)

Balance ITC to be carried forward = ₹63,000 (-) ₹54,000 = ₹9,000

## 7. CLARIFICATION WHETHER DDA CAN BE TREATED AS LOCAL AUTHORITY UNDER GST LAW<sup>6</sup>:

- Delhi Development Authority (DDA) is not a local authority, as the same is not an elected municipal body.
- Usually services provided by Local authority to business entities is covered under RCM as per Sec. 9(3) read with Notification No. 13/2017. As DDA is not a local authority, services provided by them to business entity is not covered under RCM.
- However, they fall under Governmental authority as they are setup under an Act of parliament to carry out functions under constitution (Article 243W)
- Any services provided by Government authority is exempted and Consequently services provided by DDA is exempted.

### QUESTION 4

**Skyline Constructions Pvt. Ltd.**, a registered real estate developer in Delhi, enters into a lease agreement with the **Delhi Development Authority (DDA)** in **April 2025** for acquiring a plot of land on long-term lease (99 years) for commercial development.

DDA raises an invoice of ₹50 lakhs as upfront lease premium.

Skyline Constructions intends to **not pay GST under reverse charge**, claiming that since **DDA is a local authority**, the services fall under **Sr. No. 5 of Notification No. 13/2017-CT(R)**, and hence **RCM applies**.

However, the jurisdictional officer contends that **DDA is not a "local authority"** under Section 2(69) of the CGST Act and demands GST payment under **forward charge** by DDA.

Justify your answer with legal provisions and clarification.

#### Answer:

As per Section 2(69) of the CGST Act, 2017, a "local authority" includes only elected self-governing bodies such as municipalities or bodies entrusted with the control of a municipal or local fund. CBIC has specifically clarified that DDA does not qualify as a local authority since it is not an elected body and is not entrusted with the management of a municipal fund. Therefore, the reverse charge mechanism (RCM) under Sr. No. 5 of Notification No. 13/2017 – Central Tax (Rate), which applies only to services provided by a local authority to a business entity, is not applicable in this case.

However, DDA qualifies as a "Governmental Authority" under GST, since it is a statutory body established under the Delhi Development Act, 1957 (an Act of Parliament), is under the administrative control of the Ministry of Housing and Urban Affairs, and performs functions such as urban planning and land development — which are among the functions listed under Article 243W of the Constitution. As such, DDA is eligible for exemption under Notification No. 12/2017 – Central Tax (Rate).

Therefore, the supply of service by DDA in the form of long-term lease of land is exempt from GST. As a result, there is no GST liability under either the reverse charge mechanism (RCM) or the forward charge mechanism. The contention of jurisdictional officer is not correct.

<sup>6</sup> Circular No. 245/02/2025-GST dated 28.01.2025

## SEGMENT 4 – LEVY AND COLLECTION UNDER IGST

## 8. AMENDMENTS TO SEC. 16 OF IGST ACT (ZERO RATED SUPPLY) VIDE FINANCE ACT, 2024 (W.E.F. 1.11.24):

**Government's Power to Specify Conditions – Sec. 16(4):**

The Government, on the recommendation of the **GST Council**, can issue notifications specifying:

- o **Class of persons** who are allowed to make **zero-rated supplies** on payment of integrated tax (IGST) and then claim a refund of the tax paid under **Section 54** of the **CGST Act**.
- o **Class of goods or services (or both)** that can be supplied at **zero-rated** conditions where the supplier can pay IGST and claim a refund of the tax under **Section 54**.

**Refund Restriction for Goods Subject to Export Duty – Sec. 16(5):**

No refund of **unutilized input tax credit (ITC)** or refund of the **IGST paid** on zero-rated supplies will be allowed if the **goods are subject to export duty**.

Note: Similar provision inserted in Sec. 54 of CGST Act – Refund of tax

**QUESTION 1**

Vasudha Agro Exports Pvt. Ltd., a registered person in Madhya Pradesh, is engaged in the export of various agricultural products including raw cotton (HSN 5201) and refined rice (HSN 1006).

For the month of November 2024, Vasudha undertakes the following exports:

Item Exported	Value of Exports (FOB)	Method of Export	Remarks
Raw Cotton	₹1.2 crore	Export with payment of IGST	Raw cotton attracts export duty of 10% w.e.f. Oct 2024
Refined Rice	₹1.5 crore	Export under LUT (without payment of IGST)	Not subject to export duty
Refined Rice	₹50 lakhs	Export with payment of IGST	-

The company applies for refund of ₹18 lakhs of IGST paid on raw cotton and ₹6 lakhs of IGST paid on refined rice. They also apply for refund of accumulated ITC on input services used in LUT-based exports of rice. Explain whether refund is available in the above cases.

Answer:

**1. Refund on Raw Cotton Export – Not Allowed**

As per the newly inserted **Section 16(5)** of the IGST Act, no refund of unutilized ITC or IGST paid on zero-rated supply shall be allowed if the goods are subject to export duty.

- Raw cotton attracts **10% export duty**.
- Refund claim of **₹18 lakhs** IGST paid on its export will be **denied**.

**2. Refund of Accumulated ITC on LUT-Based Export – Allowed**

- Export of refined rice under LUT (without IGST) continues to be covered under **zero-rated supply** provisions.
- Since rice is **not subject to export duty**, and Section 16(5) applies **only when export duty is applicable**, refund of **accumulated ITC** under Section 54 is **eligible**.

**3. Refund of IGST Paid on Refined Rice – Allowed**

Although **Section 16(4)** empowers the Government to notify **restricted classes of persons/goods** who cannot export on payment of IGST and claim refund, **as of now**, only the following are notified:

- **Pan masala**
- **Tobacco and manufactured tobacco substitutes**
- **Essential oils (excluding citrus fruit oils)**

Since **refined rice is not among the notified goods**, and the exporter (Vasudha Agro) is not a notified class of person. Refund of **₹6 lakhs IGST paid** on export of rice is **allowed**.

## SEGMENT 5 - EXEMPTIONS UNDER GST

**9. POWER NOT TO RECOVER GOODS AND SERVICES TAX NOT LEVIED OR SHORT-LEVIED AS A RESULT OF GENERAL PRACTICE – SEC. 11A OF CGST ACT/SEC. 6A OF IGST ACT – FINANCE ACT, 2024 (W.E.F 1.11.24):**

Notwithstanding anything contained in this Act, if the Government is satisfied that-

- a) a practice was, or is, generally prevalent regarding levy of central tax (including non-levy thereof) on any supply of goods or services or both; and
- b) such supplies were, or are, liable to, -
  - (i) central tax, in cases where according to the said practice, central tax was not, or is not being, levied, or
  - (ii) a higher amount of central tax than what was, or is being, levied, in accordance with the said practice, the Government may, on the recommendation of the Council, by notification in the Official Gazette, direct that the whole of the central tax payable on such supplies, or, as the case may be, the central tax in excess of that payable on such supplies, but for the said practice, shall not be required to be paid in respect of the supplies on which the central tax was not, or is not being levied, or was, or is being, short-levied, in accordance with the said practice

**Example,**

A few years ago, **restaurant services** were charging a **service charge** as part of their bill, but they were not applying GST to it because of a common industry practice. The CBIC later clarified that GST should be levied on the entire bill, including service charges. Using this provision, the government could issue a notification that, as a general practice, as the restaurant are not charging GST on service charges, the GST on such service charges may be exempted.

**10. SERVICES PROVIDED BY TRAINING PARTNER APPROVED BY NSDC OR NCVET IS EXEMPTED:**

Any services provided by –

- a) the National Skill Development Corporation set up by the Government of India;
- b) the National Council for Vocational Education and Training;
- c) an Awarding Body recognized by the National Council for Vocational Education and Training;
- d) an Assessment Agency recognized by the National Council for Vocational Education and Training;
- e) a Training Body accredited with an Awarding Body that is recognized by the National Council for Vocational Education and Training,
- f) **a training partner approved by the National Skill Development Corporation**, in relation to-
  - (i) the National Skill Development Programme or any other scheme implemented by the National Skill Development Corporation; or
  - (ii) a vocational skill development course under the National Skill Certification and Monetary Reward Scheme; or
  - (iii) any National Skill Qualification Framework aligned qualification or skill in respect of which the National Council for Vocational Education and Training has approved a qualification package, is EXEMPTED



**QUESTION 1**

SkillBridge Pvt. Ltd., a GST-registered training organization based in Hyderabad, enters into the following arrangements in January 2025:

1. It signs an MoU with the National Skill Development Corporation (NSDC) to act as an approved training partner under the Pradhan Mantri Kaushal Vikas Yojana (PMKVY), a scheme implemented by NSDC. It conducts training on retail sales associate skills aligned to NSQF Level 4 and receives ₹50 lakhs from NSDC for this purpose. However, they are not training body accredited by NSDC.
2. It provides soft skills and spoken English training independently to college students, charging ₹6,000 per student, without any NSDC affiliation or recognition from NCVET (National Council for Vocational Education and Training). The program is not aligned with NSQF.
3. It provides services as awarding body recognised by NCVET by way of designing the curriculum for training in mobile handset repair. The training program is part of a qualification package approved by NCVET and aligned to NSQF Level 3. The program is funded by a State Government skill mission.

Which of the above services provided by SkillBridge Pvt. Ltd. are eligible for GST exemption?

Answer:

Case	Description	Taxability	Reason
1	Training under PMKVY as NSDC-approved training partner	Exempted	They are covered under approved training partner and even if they are not training body, exemption is available
2	Soft skills training not NSQF-aligned or NSDC/NCVET-linked	Taxable	They are neither approved awarding body or assessment agency or training body or training partner
3	Designing curriculum for Mobile repair training with NCVET-recognized Awarding Body	Exempted	They are approved awarding body

**11. EXEMPTION W.R.TO SERVICES PROVIDED BY MOTOR VEHICLE ACCIDENT FUND:**

Services of insurance provided by the Motor Vehicle Accident Fund, constituted under section 164B of the Motor Vehicles Act, 1988, against contributions made by insurers out of the premiums collected for third party insurance of motor vehicles.

Explanation:

- The **Motor Vehicle Accident Fund** is constituted under **Section 164B of the Motor Vehicles Act, 1988**.
- It is a **statutory fund** created by the **Central Government**.
- The fund is used to provide **compensation or medical treatment** to victims of motor vehicle accidents (hit and run cases, unidentified vehicles, etc.).
- Funded through **contributions made by insurance companies**.
- These contributions come **out of the premiums collected on third-party motor vehicle insurance policies**.
- Therefore, the contributions collected under this fund is exempted

**QUESTION 2**

Sure Life Insurance Ltd., a registered general insurance company, collects premiums from policyholders for third-party motor vehicle insurance. As per the Motor Vehicles Act, 1988, the company is mandated to contribute a portion of such premium collections to the Motor Vehicle Accident Fund constituted under Section 164B of the Act. The fund is used to provide insurance or compensation to victims of hit-and-run motor accidents and to meet certain emergency medical expenses.

During FY 2025–26, Sure Life:

- Collected ₹100 crores in third-party insurance premiums.
- Contributed ₹4 crores to the Motor Vehicle Accident Fund, as per statutory obligation.

Sure Life is uncertain whether GST needs to be paid on the services of insurance provided by the Fund against such contributions.

- a) Whether third party insurance premium collected by Sure Life Insurance Ltd. Is chargeable to GST?
- b) Analyze whether the services of insurance provided by the Motor Vehicle Accident Fund are subject to GST by way of collection of contribution from SureLife Insurance Ltd. Is liable to pay GST?
- c) If the fund later makes payments to victims or their families, would such payouts be treated as taxable consideration for any supply under GST?

Answer:

- a) Yes, third-party motor vehicle insurance premium collected by insurers is taxable under GST.
- b) Contributions made by insurers like SureLife to the Fund **are not subject to GST**, as they are statutorily required and the corresponding service provided by the Fund is exempt.
- c) (c) The payouts made by the Fund to accident victims or their legal heirs are **not treated as consideration for any supply** (Liquidated damages which are compensatory in nature) and hence **do not attract GST**.

## 12. CLARIFICATION IN RESPECT OF APPLICABILITY OF GST ON FACILITY MANAGEMENT SERVICES PROVIDED TO MUNICIPAL CORPORATION OF DELHI (MCD) HEADQUARTERS<sup>7</sup>:

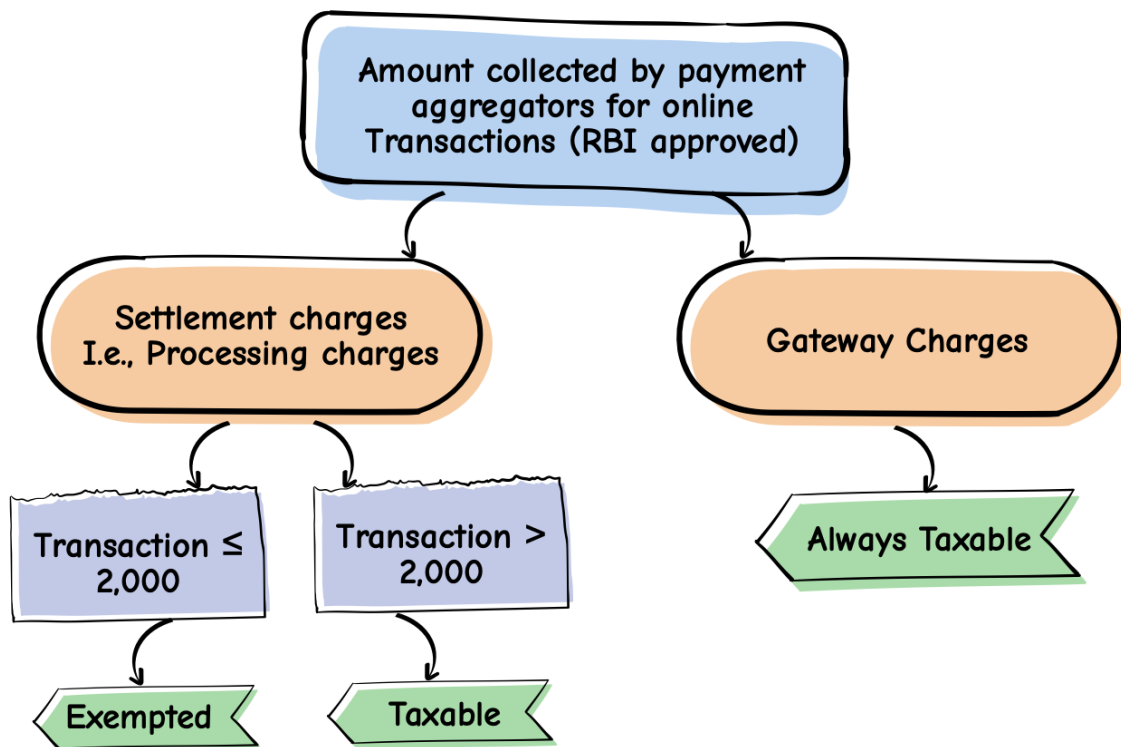
- Entry 3A provides exemption to composite supply of goods and services in which the value of supply of goods constitutes not more than 25% of the value of the said composite supply provided to the Government or local authority by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution of India or in relation to any function entrusted to a Municipality under Article 243W of the Constitution of India.
- The services of facility management such as housekeeping, civil maintenance, furniture maintenance and horticulture agency for the upkeep of office of MCD are not supplied in relation to performing any functions entrusted to a Municipality under Article 243W of the Constitution of India. Such services are not covered under the scope of Entry 3A.
- Thus, it has been clarified that GST is applicable on the services provided by facility management agency to MCD, Delhi HQ for upkeep of its head quarter building at applicable rates as these services are not covered under the scope of Entry 3A.

## 13. CLARIFICATION IN RESPECT OF EXEMPTION TO PAYMENT AGGREGATORS IN RELATION TO SETTLEMENT OF AN AMOUNT, UP TO ₹ 2,000 IN A SINGLE TRANSACTION, TRANSACTED THROUGH CREDIT CARD, DEBIT CARD, CHARGE CARD OR OTHER PAYMENT CARD SERVICES:

- Entry 34 exempts services by an **acquiring bank** related to **settlement of card transactions up to ₹2,000** in a single transaction.
- "Acquiring bank" includes:
  - Banking companies
  - Financial institutions
  - **Any person making payment** to card-accepting merchants

<sup>7</sup> Circular No. 245/02/2025 GST dated 28.01.2025

- **Payment Aggregators (PA)**, regulated by **RBI**, collect payments from customers and **transfer funds to merchants**, hence they:
  - Handle money
  - Qualify as “acquiring banks” under the definition
- Therefore, **RBI-regulated PAs** are **eligible for exemption** under Entry 34 **only for their payment settlement function**.
- **Payment Gateways (PGs)**, who merely provide **technology infrastructure** without handling funds, are **not eligible** for this exemption.



## SEGMENT 6 - TIME OF SUPPLY

**14. TIME OF SUPPLY IN CASE OF SERVICES COVERED UNDER RCM – SEC. 13(3) OF CGST ACT READ WITH RULE 47A OF CGST RULES<sup>8</sup> – FINANCE ACT, 2024 (W.E.F 1.11.24):**

In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earlier of the following dates, namely:

- a) 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; or
- b) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof **by the supplier, in cases where invoice is required to be issued by the supplier, or**
- c) **the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient:**

The proposed amendments to **Section 13** and **Section 31(3)(f)** of the **CGST Act** deal with the provisions for determining the **time of supply** and the issuance of **self-invoice** in cases where reverse charge mechanism (RCM) is applicable.

Here's a breakdown of the proposed changes:

**1. Time of Supply under Reverse Charge:**

Section 13 is being amended to specify that for supplies taxable under **reverse charge**, where the **recipient** is required to issue an invoice (self-invoice), the **time of supply** will be the **date of issuance of the invoice** by the recipient. This clarifies the point at which the tax liability arises for supplies covered under the reverse charge mechanism.

**2. Amendment to Section 31(3)(f):**

Section 31(3)(f) currently mandates the recipient to issue a **self-generated invoice** for supplies received from unregistered suppliers under the reverse charge. The proposed amendment will require that this **self-invoice** be issued within a **prescribed time period**, ensuring more clarity and compliance with time limits.

**3. Time limit for issuing tax invoice (Rule 47A):**

Invoice shall be issued within a period of **30 days** from the date of receipt of the said supply of goods or services.

**4. Explanation for Suppliers Registered Solely for TDS Deduction:**

The amendment also introduces an **explanation** stating that a supplier who is registered **only for deducting TDS** will be considered as an **unregistered person** for the purpose of reverse charge. This means that if a recipient receives supplies from such a TDS-deductor supplier, they will be required to issue a **self-invoice** as though the supplier were unregistered.

**QUESTION 1**

XYZ Pvt. Ltd., a registered company under GST, whose aggregate turnover during the previous year exceeds threshold limit, procures legal consultancy services from Mr. Santhanam, an advocate who is not registered under GST. The legal consultancy services are provided on June 15, 2023, and Mr. Santhanam charges a fee of ₹1,00,000, which is paid by XYZ Pvt. Ltd. on June 16, 2023.

However, the company's accountant issues the invoice for the legal consultancy services only on August 20, 2024, and pays the applicable GST in the GSTR-3B of August 2024 filed on September 18, 2024 and also wanted to avail ITC in August 2024. Answer the following questions:

(i) Who is liable to pay GST in this case?

<sup>8</sup> Notification No. 20/2024 – Central Tax (Dt: 8.10.2024)

- (ii) What is the due date of invoice and who is required to issue invoice?  
 (iii) What is the time of supply of service and due date of payment of GST assuming that due date of GSTR-3B is 20th of next month?  
 (iv) By when XYZ Pvt. Ltd. can avail ITC and whether they can avail ITC in June 2023?  
 (v) Is there any interest payable in the present case?

- (i) As per Sec 9(3) of CGST Act 2017 read with Notification No. 13/2017, advocate services provided by individual advocate to business entity, where aggregate turnover during previous year exceeds threshold limits is taxable under RCM. In the Present Case with respect to legal services by Mr. Santhanam to XYZ Pvt Ltd, GST Payable by XYZ Pvt Ltd Under RCM.  
 (ii) As Supplier is not registered, Invoice to be issued by XYZ Pvt Ltd as per sec 31(3)(f). Self-invoice within 30days from the date of receipt of legal services. Therefore, Due date of invoice (15th June 2023 + 30 days = 15th July 2023).  
 (iii) As Per Sec 13(3) if Invoice is to be issued by recipient to unregistered supplier, Time of Supply is  
 a. Date of Payment to Supplier = 16th June 2023  
 b. Date of Invoice to Supplier = 20th Aug 2024

Whichever is earlier i.e., 16th June 2023. Due date of Payment of GST is 20th July 2023.

- (iv) Time Limit for availment of ITC U/s 16(4) FY in which invoice is issued  
 a. 30th Nov of Next FY i.e., (30/11/2025) or  
 b. Date of Filing of annual return whichever is earlier.

Even though service are received in June 2023, ITC cannot be availed in June 2023 as invoice is issued by recipient to supplier is Aug 2024. Therefore, ITC can be availed in Aug 2024 (or) Later months before time limit for availing of ITC.

- (v) Interest on account of delay in payment of tax shall be payable @18% p.a. from 20th July 2023 till 18<sup>th</sup> Sep 2024. (365+11+31+18=426 days)

Interest Payable = (1,00,000\*18%) \* 18%\*426/366 = 3,771.14/-

**Note:** As invoice is issued by recipient beyond due date penalty can be levied.

## 15. CLARIFICATION ON VARIOUS ISSUES PERTAINING TO GST TREATMENT OF VOUCHERS:<sup>9</sup>

- A **voucher** (Sec. 2(118), CGST Act) is an instrument that can be used as **consideration** or **part consideration** for a future supply of goods or services.
- Prepaid Payment Instruments (PPIs)** like wallets, cards etc., regulated by the **RBI**, are a subset of vouchers.

Whether Voucher is supply?

If Voucher is a PPI recognized by RBI	If Voucher not recognized as PPI
<ul style="list-style-type: none"> <li>Treated as <b>"money"</b> under Section 2(75).</li> <li>Since money is excluded from <b>goods/services</b>, issuing such voucher is:</li> <li><b>Neither supply of goods nor services</b> → No GST</li> </ul>	<ul style="list-style-type: none"> <li>Not treated as money.</li> <li>Such voucher is an <b>actionable claim</b> (not a "specified" actionable claim).</li> <li>Covered under <b>Schedule III, Entry 6:</b></li> <li><b>Neither supply of goods nor services</b> → No GST</li> </ul>

<sup>9</sup> Circular No. 243/37/2024 GST dated 31.12.2024

When transaction in vouchers is chargeable to GST?

Principal-to-Principal (P2P) Basis	Agency/Commission Basis
Distributor <b>buys vouchers</b> at discount, <b>sells</b> at markup. Owns vouchers, operates independently. No GST on voucher sale → It's just trading in "money" or "actionable claim".	<ul style="list-style-type: none"> <li>Distributor acts as <b>agent</b> of voucher issuer.</li> <li>Gets commission/fee for marketing/distribution.</li> <li>GST is payable on such <b>commission or service fee</b></li> </ul>

- Services like **marketing, advertising, tech support, co-branding, customization** provided to voucher issuer by distributors/partners, **GST is payable** at applicable rate on such services
- If voucher **expires unused**, the retained amount by the issuer is called **breakage**. Since **no underlying supply** of goods/services occurs, **No GST is applicable** on breakage.

## QUESTION 2

GiftKart India Pvt. Ltd. is an Indian startup that issues prepaid gift cards and vouchers redeemable at multiple retail outlets and e-commerce platforms. These vouchers are issued both as RBI-recognized PPIs (reloadable digital wallets) and closed-loop gift cards (not recognized by RBI).

GiftKart enters into two types of arrangements for distribution:

- With Happy Distributors Pvt. Ltd. (HDPL) – on a Principal-to-Principal (P2P) basis, where HDPL purchases ₹10 lakh worth of vouchers at a 10% discount and sells them to corporates at face value.
- With ClickPay Solutions LLP – as an agent, where ClickPay distributes vouchers via online platforms and earns a commission of ₹1.5 lakh per month. ClickPay also charges ₹50,000/month for tech support and marketing services related to voucher issuance.

During FY 2024–25, GiftKart reports:

- ₹3 lakh worth of vouchers that expired unredeemed.
- It has issued both RBI-regulated PPIs and closed-loop gift cards under these models.

Examine whether GST is applicable and compute GST liability, if any on the above transactions, if such vouchers are recognized as RBI-regulated PPIs or Not recognized by RBI and hence treated as non-PPI vouchers

a) Sale of vouchers to HDPL on P2P basis –

No GST is applicable.

Since the arrangement is on Principal-to-Principal basis and HDPL takes ownership of vouchers and sells them at its own discretion, the transaction is considered a **trading of vouchers**, which are treated as either:

- Money** (if RBI-recognized PPI) or
- Actionable claim** (if not RBI-recognized)

In either case, it is **neither supply of goods nor supply of services** under GST (as per Section 7 read with Schedule III and CBIC circular).

b) Commission and additional service charges by ClickPay –

ClickPay acts as an **agent**, earning a commission (₹1.5 lakh) and service fees for tech support/marketing (₹50,000).

As per clarification:

- Commission** is consideration for intermediary services → **Taxable**
- Marketing/tech support** are additional services → **Taxable**

Therefore, GST liability = (₹1.5 lakh + ₹50,000) × 18% = ₹36,000

c) Unredeemed vouchers (breakage) –

The ₹3 lakh worth of expired vouchers is **not liable to GST**, since there is **no underlying supply** of goods or services when a voucher is not redeemed.



As per Circular No. 178/10/2022-GST and recent clarification:

- No GST on breakage as it is **not a consideration for supply**.
- There's **no express/implied agreement** to forfeit or charge for non-redemption.

## SEGMENT 7 – PLACE OF SUPPLY

No amendments in this segment

## SEGMENT 8 – VALUATION UNDER GST

No amendments in this segment



## SEGMENT 9 – INPUT TAX CREDIT

**16. CLARIFICATION ON AVAILABILITY OF INPUT TAX CREDIT AS PER CLAUSE (B) OF SECTION 16(2) OF THE CGST ACT, 2017 IN RESPECT OF GOODS WHICH HAVE BEEN DELIVERED BY THE SUPPLIER AT HIS PLACE OF BUSINESS UNDER EX-WORKS CONTRACT<sup>10</sup>**

- In **EXW contracts**, the supplier (e.g., OEM in the automobile sector) completes **delivery at their own factory gate**, and the **property in goods transfers** to the buyer (e.g., dealer) at that point.
- Transport and insurance may be arranged **on behalf of the dealer**, and any loss is **claimable by the dealer**.
- As per **Explanation to Section 16(2)(b)**, Goods are deemed “received” **when handed over to the transporter on behalf of the buyer**, even if physically received later. Therefore, the **dealer can avail ITC on the date goods are billed and handed over to the transporter at OEM’s factory gate**.
- If the Goods diverted for **non-business use (or) the Goods are lost, stolen, destroyed, written off, or given away as free samples/gifts** after receipt, then ITC not available and the ITC already availed needs to be reversed.
- Applies **not only to automobiles**, but to **all goods** under an EXW contract where ownership transfers at supplier’s location.

**QUESTION 1**

SpeedAuto Pvt. Ltd., a registered automobile dealer in Chennai, entered into an Ex-Works (EXW) contract with M/s. Alpha Motors Ltd., an Original Equipment Manufacturer (OEM) located in Pune. As per the terms of the contract, the ownership of the goods (cars) passed to SpeedAuto at the factory gate of Alpha Motors once the cars were handed over to the transporter, M/s. XYZ Logistics, arranged by Alpha Motors on behalf of SpeedAuto.

The details of the transaction are as follows:

- Tax invoice was issued by Alpha Motors on 20<sup>th</sup> April 2025 for 10 cars, each priced at ₹10,00,000 plus GST @ 28%.
- Goods were handed over to the transporter at Pune factory gate on 22nd April 2025.
- Goods reached SpeedAuto’s premises in Chennai on 28<sup>th</sup> April 2025.
- Out of the 10 cars:
  - 6 cars were sold to customers during May 2025.
  - 2 cars were used by company directors for personal use.
  - 1 car was gifted to a business partner.
  - 1 car was damaged in transit and written off in the books of accounts.

Assume that SpeedAuto files GSTR-3B within the prescribed time limit.

Based on the above facts, answer the following:

- What is the date of deemed receipt of goods for the purpose of availing input tax credit (ITC) under Section 16(2)(b) of the CGST Act, 2017?
  - Compute the eligible amount of ITC that SpeedAuto Pvt. Ltd. can claim in the month of April 2025.
  - Would your answer change if the contract had been on FOR (Free on Road) basis instead of EXW?
- As per clause (b) of Section 16(2) of the CGST Act, 2017, a registered person is entitled to avail ITC only when the goods are “received” by him. The Explanation to Section 16(2)(b) provides that where the goods are delivered by the supplier to a transporter for transmission to the recipient, the goods shall be deemed to be received by the recipient at the time of such delivery to the transporter. In the given case, the goods were handed over to the transporter by Alpha Motors at their factory gate on 22nd April 2025. Since

<sup>10</sup> Circular No. 241/35/2024 GST dated 31.12.2024

the contract is Ex-Works, the property in goods and responsibility for transit passes to SpeedAuto at that point. Therefore, the goods shall be deemed to have been received by SpeedAuto on **22nd April 2025**, and ITC can be availed from that date.

- (ii) The invoice issued by Alpha Motors is for 10 cars at ₹10,00,000 each, and GST is chargeable @28%.

Total GST: 10 cars × ₹10,00,000 × 28% = ₹28,00,000

However, ITC is eligible only to the extent the goods are used for business purposes.

Particulars	GST Amount (₹)	ITC Eligibility
6 cars sold to customers	6 × 2,80,000 = 16,80,000	Fully allowed (business use)
2 cars used by directors (personal use)	2 × 2,80,000 = 5,60,000	Not allowed – Not for business
1 car gifted to business partner	1 × 2,80,000 = 2,80,000	Blocked – Sec 17(5)(h)
1 car written off due to damage in transit	1 × 2,80,000 = 2,80,000	Blocked – Sec 17(5)(h)

Therefore, Total Eligible ITC = ₹16,80,000

- (iii) In a **Free on Road (FOR)** contract, the supplier is responsible for delivering the goods to the recipient's premises. Therefore, the ownership and delivery would be deemed to take place at the time the goods physically reach SpeedAuto's location in Chennai.

Accordingly, the **date of receipt for ITC eligibility would shift to 28th April 2025** in this case. However, the amount of ITC eligible (₹16,80,000) remains unchanged, assuming no disqualifications arise later.

## SEGMENT 10 – COMPOSTION SCHEME

No amendments in this segment

## SEGMENT 11 – TAX INVOICE, DEBIT AND CREDIT NOTES

17. CLARIFICATION REGARDING PLACE OF SUPPLY AND MENTIONING OF RECIPIENT DETAILS IN CASE OF ONLINE SERVICES SUPPLIED BY THE SUPPLIERS OF SERVICES TO UNREGISTERED RECIPIENTS<sup>11</sup>:

Before Amendment	After Amendment
In respect of following cases of supplies to unregistered recipients, the suppliers are mandatorily required to record the name of the State of the recipient on the tax invoice, irrespective of the value of supply of such services:- (i) supply of services through ECO (ii) OIDAR services and (iii) online money gaming	In respect of following cases of supplies to unregistered recipients, the suppliers are mandatorily required to record the name of the State of the recipient on the tax invoice, irrespective of the value of supply of such services, <b>and to declare place of supply of the said services as the location of the recipient (based on the name of State of the recipient) in their details of outward supplies in Form GSTR-1/1A:-</b> (i) <b>supply of any such online/ digital services,</b> (ii) OIDAR services and (iii) online money gaming

## QUESTION 1

Digital One Pvt. Ltd., a registered person based in Karnataka, is engaged in providing a range of online/digital services to customers across India. During the month of December 2024, it makes the following supplies to unregistered recipients:

Sr. No.	Type of Service	Mode of Supply	Recipient's Location	Invoice Value	GSTIN of Recipient
1	OTT Subscription (streaming service)	Supplied directly via company's website	Maharashtra	₹1,200	Not registered
2	E-newspaper subscription	Supplied through a third-party ECO (e.g., NewsCart App)	Gujarat	₹800	Not registered
3	Language translation app (OIDAR)	Supplied directly via app store	Tamil Nadu	₹3,000	Not registered
4	Online quiz game credits	Supplied through gaming aggregator (ECO)	Kerala	₹1,900	Not registered
5	Business analytics software (SaaS)	Supplied directly	Delhi	₹10,000	Registered recipient

While preparing invoices and GSTR-1 for the month, Digital One:

- Mentions "Consumer - PAN India" as recipient address for invoices below ₹1,000.
- Leaves the State field blank for some invoices to unregistered customers.
- Declares place of supply as Karnataka (supplier's location) for all B2C supplies, irrespective of recipient's actual state.
- Files B2C summary without state-wise break-up in GSTR-1.

Explain whether the compliance followed by Digital One is correct as per the updated provisions of CGST rules, 2017?

<sup>11</sup> Circular No. 242/36/2024 GST dated 31.12.2024

As per the **amended Rule 46(f) of the CGST Rules, 2017**, read with the clarification issued (effective from **01.11.2024**), and Section 12(2)(b) of the IGST Act:

- Invoices for all **online/digital services** (including services through **ECO, OIDAR, and online money gaming**) made to **unregistered persons** must:
  - **Mention the name of the State of the recipient**, irrespective of the invoice value, and
  - **Declare the place of supply (POS)** as the **recipient's State**, not the supplier's location.
- The **State mentioned** in the invoice is treated as the **address on record**, enabling the application of Section 12(2)(b)(i), i.e., **POS = location of recipient**.
- Reporting in **Form GSTR-1/1A** must reflect this POS and be **state-wise**, even if the value is less than ₹2.5 lakhs.

In the present case, For Sr. Nos. 1–4, **state of the recipient must be mentioned** on the invoice, and **recipient's location must be declared as POS**. Also, in GSTR – 1 or GSTR – 1A, it will be reported as B2C transaction state wise.

Sr. No. 5 is a **B2B transaction** (registered recipient), so general GST rules apply, and **Rule 46(f) is not applicable**. Also, in GSTR – 1 or GSTR – 1A, it will be reported as B2B transaction invoice wise.

#### 18. TIME LIMIT FOR ISSUING TAX INVOICE SPECIFIED IN CASES WHERE RECIPIENT IS REQUIRED TO ISSUE INVOICE [RULE 47A INSERTED]<sup>12</sup>

- Earlier, **Section 31(3)(f)** required a registered person to issue an invoice if they received goods/services from an **unregistered supplier** and were liable to pay tax under **Reverse Charge Mechanism (RCM)** [Section 9(3) or 9(4)].
- However, there was **no specific time limit** for issuing such invoice.
- **Finance (No. 2) Act, 2024** amended Section 31(3)(f) to **enable the government** to prescribe a time limit for issuing such invoice.
- **Rule 47A** (inserted via Notification No. 20/2024 CT) now **prescribes the time limit**.
- It states the "Where a registered person is required to issue an invoice under Section 31(3)(f) (i.e., for RCM supplies from unregistered persons), the **invoice must be issued within 30 days** from the **date of receipt** of goods or services."
- **Effective from 01.11.2024**, under RCM, if you receive supply from an unregistered person, you **must issue an invoice within 30 days** of receiving the goods/services.

#### QUESTION 2

Harsha Textiles Pvt. Ltd., a registered company in Tamil Nadu, is engaged in the manufacture of garments. The company procured the following supplies in November 2024:

Date	Description of Inward Supply	Supplier Type	Value (₹)
3rd Nov 2024	Legal consultancy services from Advocate V. Kumar	Unregistered	50,000
5th Nov 2024	Services of Goods Transport Agency (GTA) – Consignment note issued	Registered	20,000
7th Nov 2024	Raw cotton purchased from farmer	Unregistered	60,000
10th Nov 2024	Manpower supply services received from Sam Workforce Pvt. Ltd.	Unregistered	80,000
13th Nov 2024	Purchase of steel shelves from a local unregistered trader for office infrastructure	Unregistered	30,000
20th Nov 2024	Sponsorship services availed from Chennai Sports Club, a registered entity	Registered	1,00,000

<sup>12</sup> Notification No. 20/2024 CT dated 8th October, 2024 with effect from 01.11.2024.

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Identify the supplies on which Harsha Textiles Pvt. Ltd. is liable to pay tax under reverse charge mechanism and also Determine who shall issue the tax invoice for each transaction. Also specify the due date by which the invoice is to be issued by Harsha Textiles Pvt. Ltd

ANSWER:

S. No.	Description of Supply	Supplier Type	FCM/RCM	Reason	Invoice by	Due date of self-invoice
1	Legal services from Advocate V. Kumar	Unregistered	RCM	Legal services by individual advocate to business – notified under 9(3)	Recipient	03-Dec-2024
2	GTA services (with consignment note)	Registered	RCM	GTA services – notified under 9(3) (Default option)	Supplier	N.A
3	Raw cotton from unregistered farmer	Unregistered	RCM	Raw cotton by agriculturist to registered person – notified under 9(3)	Recipient	07-Dec-2024
4	Manpower services from registered supplier	unregistered	FCM, but no GST	Manpower supply is not notified and only security agency is notified	N.A	N.A
5	Steel shelves from local unregistered trader	Unregistered	FCM, but no GST	Not covered under notified goods for RCM	N.A	N.A
6	Sponsorship from registered club	Registered	RCM	Sponsorship to body corporate – notified under 9(3)	Supplier	N.A

## SEGMENT 12 – REGISTRATION UNDER GST

No amendments in this segment

## SEGMENT 13 – GST PAYMENT PROCESS

No amendments in this segment



SEGMENT 14 – RETURNS UNDER GST

**19. TDS RETURNS TO BE FILED EVERY MONTH, EVEN IF TDS IS NOT DEDUCTED DURING SUCH MONTH – SEC. 39 OF CGST ACT – FINANCE ACT, 2024 (W.E.F 1.11.24)**

Every registered person required to deduct tax at source under section 51 shall electronically furnish a return for every calendar month of the deductions made during the month in such form and manner and within such time as may be prescribed:

**Provided** that the said registered person shall furnish a return for every calendar month whether or not any deductions have been made during the said month.

**20. WAIVER OF LATE FEE FOR DELAY IN FILING NIL GSTR-7<sup>13</sup>:**

Provided further that the total amount of late fee payable under section 47 of the said Act by the registered person, who fails to furnish the return in FORM GSTR-7 for a month by the due date, where the total amount of central tax deducted at source in the said month is nil, shall stand waived.



<sup>13</sup> NOTIFICATION No. 23/2024–Central Tax

SEGMENT 15 – ACCOUNTS AND RECORDS, E-WAY BILL

**21. MANDATORY GENERATION OF UNIQUE ENROLLMENT NUMBER FOR E-WAY BILL:**

- Unregistered person opting for generating E-way bill
- Unregistered interstate supplier of handicraft goods



SEGMENT 16 - REFUND UNDER GST

**22. REFUND UNDER BOTH OPTIONS NOT AVAILABLE IN CASE OF EXPORT OF GOODS IS SUBJECT TO EXPORT DUTY – NEW SECTION 54(15) OF CGST ACT INSERTED VIDE FINANCE ACT, 2024 (W.E.F 1.11.24):**

Notwithstanding anything contained in this section, no refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods is subjected to export duty.

**Note:** Similar provision inserted in Sec. 16 of IGST Act – Zero rated supply

SEGMENT 17 – ASSESSMENT AND AUDIT

No amendments in this segment



## SEGMENT 18 - OFFENCES AND PENALTIES

**23. AUTHORISED REPRESENTATIVE CAN APPEAR IN CASE OF SUMMONS – SECTION 70(1A) OF CGST ACT – FINANCE ACT, 2024 (W.E.F 1.11.24)**

Sub-section (1A) is proposed to be inserted to enable an authorised representative to appear on behalf of the summoned person before the proper officer in compliance of summons issued by the said officer. The persons summoned shall be bound to attend, either in person or by an authorised representative, and shall state the truth during examination or make statements or produce such documents and other things as may be required.

**24. PENALTY UNDER SEC. 122(1B) ONLY TO AN ECO WHO IS LIABLE TO DEDUCT TCS – FINANCE ACT, 2024 (W.E.F 1.11.24):**

- Earlier the penalty under Sec. 122(1B) was levied on any E Commerce Operator (ECO)
- At present, such penalty is restricted only to an ECO who is liable to deduct TCS under Sec. 52

**Note:** Not all ECO's are required to deduct TCS under Sec. 52.



## SEGMENT 19 - DEMAND &amp; RECOVERY

**25. DETERMINATION OF TAX NOT PAID OR SHORT PAID OR ERRONEOUSLY REFUNDED OR INPUT TAX CREDIT WRONGLY AVAILED OR UTILISED FOR ANY REASON PERTAINING TO FINANCIAL YEAR 2024-25 ONWARDS. – SECTION 74A OF CGST ACT INSERTED VIDE FINANCE ACT, 2024 (W.E.F 1.11.25):****Issuance of Notice:**

(1) Where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, he shall serve notice on the person chargeable with tax which has not been so paid or which has been so short paid or to whom the refund has erroneously been made, or who has wrongly availed or utilised input tax credit, requiring him to show cause as to why he should not pay the amount specified in the notice along with interest payable thereon under section 50 and a penalty leviable under the provisions of this Act or the rules made thereunder:

**Provided** that no notice shall be issued, if the tax which has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised in a financial year is less than one thousand rupees.

- If it appears to the proper officer that tax has not been paid, is short-paid, or was erroneously refunded, or that ITC has been wrongly availed, the officer must issue a **show cause notice** requiring the person to explain why they should not pay the amount along with applicable interest and penalties.
- However, no notice will be issued if the amount involved is less than **₹1,000**.

**Timeline for Issuing Notice:**

(2) The proper officer shall issue the notice under sub-section (1) within forty-two months from the due date for furnishing of annual return for the financial year to which the tax not paid or short paid or input tax credit wrongly availed or utilised relates to or within forty-two months from the date of erroneous refund.

The proper officer must issue the notice **within 42 months** from the due date for furnishing the annual return for the relevant financial year or from the date of the erroneous refund.

**Statement in Continuation of Notice:**

(3) Where a notice has been issued for any period under sub-section (1), the proper officer may serve a statement, containing the details of tax not paid or short paid or erroneously refunded or input tax credit wrongly availed or utilised for such periods other than those covered under sub-section (1), on the person chargeable with tax.

(4) The service of such statement shall be deemed to be service of notice on such person under sub-section (1), subject to the condition that the grounds relied upon for such tax periods other than those covered under sub-section (1) are the same as are mentioned in the earlier notice.

The officer may issue a statement covering periods other than those specified in the original notice, and such statements will be treated as part of the original notice if the grounds remain the same.

**PENALTIES:**

(5) The penalty in case where any tax which has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised,-

(i)	for any reason, other than the reason of fraud or any wilful-misstatement or suppression of facts to evade tax, shall be equivalent to ten per cent. of tax due from such person or ten thousand rupees, whichever is higher;
(ii)	for the reason of fraud or any wilful-misstatement or suppression of facts to evade tax shall be equivalent to the tax due from such person.

- For cases **other than fraud, willful misstatement, or suppression of facts**, the penalty will be **10% of the tax due** or **₹10,000**, whichever is higher.
- For cases involving **fraud, willful misstatement, or suppression**, the penalty will be **equal to the tax due**.

**Order of Tax, Interest, and Penalty:**

(6) The proper officer shall, after considering the representation, if any, made by the person chargeable with tax, determine the amount of tax, interest and penalty due from such person and issue an order.

(7) The proper officer shall issue the order under sub-section (6) within twelve months from the date of issuance of notice specified in sub-section (2):

**Provided** that where the proper officer is not able to issue the order within the specified period, the Commissioner, or an officer authorised by the Commissioner senior in rank to the proper officer but not below the rank of Joint Commissioner of Central Tax, may, having regard to the reasons for delay in issuance of the order under sub-section (6), to be recorded in writing, before the expiry of the specified period, extend the said period further by a maximum of six months.

The officer, after considering any representation, must determine the tax, interest, and penalty and issue an order **within 12 months** of issuing the notice. This period may be extended for a further period not exceeding 6 months by Commissioner/addl. Commissioner/Joint Commissioner.

**VOLUNTARY PAYMENT BEFORE NOTICE IN CASES OTHER THAN FRAUD:**

(8) The person chargeable with tax where any tax has not been paid or short paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised for any reason, other than the reason of fraud or any wilful- misstatement or suppression of facts to evade tax, may,-

(i)	before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information shall not serve any notice under sub-section (1) or the statement under sub-section (3), as the case may be, in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;
(ii)	pay the said tax along with interest payable under section 50 within sixty days of issue of show cause notice, and on doing so, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

- ▲ If the person voluntarily pays the tax and interest **before the notice is issued**, no notice will be served.
- ▲ If the tax and interest are paid **within 60 days after the notice**, the person will not be liable to any penalties, and all proceedings in respect of the notice will be deemed to be concluded.

**VOLUNTARY PAYMENT BEFORE NOTICE IN CASE OF FRAUD:**

(9) The person chargeable with tax, where any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax, may,-

(i)	before service of notice under sub-section (1), pay the amount of tax along with interest payable under section 50 and a penalty equivalent to fifteen per cent. of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information, shall not serve any notice under sub-section (1), in respect of the tax so paid or any penalty payable under the provisions of this Act or the rules made thereunder;
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(ii)	pay the said tax along with interest payable under section 50 and a penalty equivalent to twenty-five per cent. of such tax within sixty days of issue of the notice, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded;
(iii)	pay the tax along with interest payable thereon under section 50 and a penalty equivalent to fifty per cent. of such tax within sixty days of communication of the order, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded.

- ▲ In cases involving fraud or suppression, if the person voluntarily pays the tax and interest along with a **15% penalty** before the notice is issued, no further notice will be served.
- ▲ If payment is made **within 60 days** of the notice, the penalty will be **25% of the tax**, and if within **60 days of the order**, the penalty will be **50%**.

(10) Where the proper officer is of the opinion that the amount paid under clause (i) of sub-section (8) or clause (i) of sub-section (9) falls short of the amount actually payable, he shall proceed to issue the notice as provided for in sub-section (1) in respect of such amount which falls short of the amount actually payable.

#### Additional Penalties for Non-Payment of Self-Assessed Tax:

(11) Notwithstanding anything contained in clause (i) or clause (ii) of sub-section (8), penalty under clause (i) of sub-section (5) shall be payable where any amount of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.

A penalty is applicable where any **self-assessed tax** or collected tax has not been paid within **30 days** of the due date.

(12) The provisions of this section shall be applicable for determination of tax pertaining to the Financial Year 2024-25 onwards.

#### Explanation 1. — For the purposes of this section,—

(i)	the expression "all proceedings in respect of the said notice" shall not include proceedings under section 132;
(ii)	where the notice under the same proceedings is issued to the main person liable to pay tax and some other persons, and such proceedings against the main person have been concluded under this section, the proceedings against all the persons liable to pay penalty under sections 122 and 125 are deemed to be concluded.

**Explanation 2.—** For the purposes of this Act, the expression "suppression" shall mean non-declaration of facts or information which a taxable person is required to declare in the return, statement, report or any other document furnished under this Act or the rules made thereunder, or failure to furnish any information on being asked for, in writing, by the proper officer.

Situation	Existing Provision		Proposed Provision
	Sec 73	Sec 74	Sec 74-A
Case Covered	<b><u>BONA-FIDE CASES</u></b> Other than Fraud, wilful misstatement, or suppression of facts	<b><u>MALA-FIDE CASES</u></b> Fraud, wilful misstatement, or suppression of facts	<b><u>ALL CASES</u></b>
Time limit for issuance of SCN	3 months prior to the <u>due date of issuance of Order</u>	6 months prior to the <u>due date</u>	<b><u>42 Months</u></b> <sup>(=3.5 Years)</sup> from <u>due date of Annual Return</u>

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		of issuance of <u>Order</u>	(in case of erroneous refund, <u>42 Months</u> (=3.5 Years) from date of erroneous refund)	
Time limit for issuance of Order	3 years from <u>due date of Annual Return</u> (in case of erroneous refund, 3 years from date of erroneous refund)	5 years from <u>due date of Annual Return</u> (in case of erroneous refund, 5 years from date of erroneous refund)	<u>12 Months</u> (=1 Year) from <u>date of issuance of SCN</u> (+ Extension of <b>6 months</b> can be granted by the PO) * Effective, for all cases total applicable rime period for completion of adjudication proceedings shall now onward be 5 years ( <u>4.5 years + extension of 6 months</u> )	
Applicability	Upto FY 2023-24	Upto FY 2023-24	From FY 2024-2025 & onwards	
Case Covered	<b>BONA-FIDE CASES</b> Other than Fraud, wilful misstatement, or suppression of facts	<b>MALA-FIDE CASES</b> Fraud, wilful misstatement, or suppression of facts	<b>BONA-FIDE CASES</b> Other than Fraud, wilful misstatement, or suppression of facts	<b>MALA-FIDE CASES</b> Fraud, wilful misstatement, or suppression of facts
Penalty in general	Penalty (CGST) = 10% of <u>tax/ITC/refund (or) ₹10,000, whichever is higher</u>	Penalty (CGST) = 100% of <u>tax/ITC/refund (or) ₹10,000</u>	Penalty (CGST) = 10% of <u>tax/ITC/refund (or) ₹10,000, whichever is higher</u>	Penalty (CGST) = 100% of <u>tax/ITC/refund</u>
<b>Pre-SCN</b> [Tax + Interest + Penalty (if any) is paid before issuance of Notice]	<b>No penalty payable</b> No notice shall be issued. [S. 73(5)]	<b>Penalty payable = 15% of tax/ ITC</b> No notice shall be issued. [S.74(5)]	<b>No penalty payable</b> No notice shall be issued. [S. 74-A(8)(i)]	<b>Penalty payable = 15% of tax/ ITC</b> No notice shall be issued. [S.74-A(9)(i)]
<b>Post SCN (within 30 days)</b> [Tax + Interest + Penalty (if any) is paid within 30 days of issuance of Notice]	<b>No penalty payable</b> All proceedings i.r.to said notice deemed to be concluded. [S. 73(8)]	<b>Penalty payable = 25% of Tax / ITC</b> All proceedings i.r.to notice deemed to be concluded. [S. 74(8)]	<b>No penalty payable</b> All proceedings i.r.to said notice deemed to be concluded. ( <b>Period relaxed - now</b> payment can be made within 60 days- instead of earlier 30 days) [S. 74-A (8) (ii)]	<b>Penalty payable = 25% of Tax / ITC</b> All proceedings i.r.to said notice deemed to be concluded. ( <b>Period relaxed - now</b> payment can be made within 60 days- instead of earlier 30 days) [S. 74-A (9) (ii)]
<b>Post passing of Order</b> (Within 30 days) [Tax + Interest + Penalty (if any)]	<b>Penalty payable = Higher of two (10% of Tax/ITC) or (10,000/-)-</b> <b>No relaxation in penalty</b>	<b>Penalty payable = 50% of Tax / ITC</b> All proceedings deemed to be concluded.	<b>Penalty payable = Higher of two (10% of Tax / ITC) or (10,000/-)-</b>	<b>Penalty payable = 50% of Tax/ITC</b> All proceedings deemed to be concluded.

is paid within 30 days of communication of Order.]		[S. 74(11)]	<b>No relaxation in penalty</b>	(Period relaxed – now payment can be made within 60 days – instead of earlier 30 days) [ S. 74-A (9)(iii)]
<b>Post passing of Order (after 30 days)</b> [Tax + Interest + Penalty (if any) is paid after 30 days of communication of Order]	<b>Penalty payable = Higher of two (10% of Tax / ITC) or (10,000/-)-</b> <b>No relaxation in penalty</b>	<b>Penalty payable = 100% of Tax / ITC</b> <b>No relaxation in penalty</b>	<b>Penalty payable = Higher of two (10% of Tax / ITC) or (10,000/-)-</b> <b>No relaxation in penalty</b>	<b>Penalty payable = 100% of Tax /ITC</b> <b>No relaxation in penalty</b>

**26. CONSEQUENTIAL AMENDMENTS IN OTHER SECTIONS ON ACCOUNT OF INSERTION OF SEC. 74A OF CGST ACT VIDE FINANCE ACT, 2024:**

In the following sections, wherever the reference to Sec. 73 or 74 is made, it shall include reference to Sec. 74A w.e.f FY: 2024-25 onwards

<b>Sec. 10</b>	<b>Composition Levy</b>	If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) or sub-section (2A), as the case may be, despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 or section 74A shall, mutatis mutandis, apply for determination of tax and penalty.
<b>Sec. 21</b>	<b>Manner of recovery of credit distributed in excess</b>	Where the Input Service Distributor distributes the credit in contravention of the provisions contained in section 20 resulting in excess distribution of credit to one or more recipients of credit, the excess credit so distributed shall be recovered from such recipients along with interest, and the provisions of section 73 or section 74 or section 74A, as the case may be, shall, mutatis mutandis, apply for determination of amount to be recovered.
<b>Sec. 35</b>	<b>Accounts and other records</b>	Subject to the provisions of clause (h) of sub-section (5) of section 17, where the registered person fails to account for the goods or services or both in accordance with the provisions of sub-section (1), the proper officer shall determine the amount of tax payable on the goods or services or both that are not accounted for, as if such goods or services or both had been supplied by such person and the provisions of section 73 or section 74 or section 74A, as the case may be, shall, mutatis mutandis, apply for determination of such tax.
<b>Sec. 49</b>	<b>Payment of tax, interest, penalty and other amounts</b>	Every taxable person shall discharge his tax and other dues under this Act or the rules made thereunder in the following order, namely:— (a) self-assessed tax, and other dues related to returns of previous tax periods; (b) self-assessed tax, and other dues related to the return of the current tax period;

		(c)	any other amount payable under this Act or the rules made thereunder including the demand determined under <a href="#">section 73</a> or <a href="#">section 74</a> or section 74A.
<b>Sec. 50</b>	<b>Interest on delayed payment of tax</b>	<b>Provided</b> that the 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 in accordance with the provisions of <a href="#">section 39</a> , except where such return is furnished after commencement of any proceedings under <a href="#">section 73</a> or section 74 or section 74A in respect of the said period, shall be payable on that portion of the tax which is paid by debiting the electronic cash ledger.	
<b>Sec. 51</b>	<b>Tax deduction at source</b>	The determination of the amount in default under this section shall be made in the manner specified in <a href="#">section 73</a> or <a href="#">section 74</a> or section 74A.	
<b>Sec. 61</b>	<b>Scrutiny of returns</b>	In case no satisfactory explanation is furnished within a period of thirty days of being informed by the proper officer or such further period as may be permitted by him or where the registered person, after accepting the discrepancies, fails to take the corrective measure in his return for the month in which the discrepancy is accepted, the proper officer may initiate appropriate action including those under <a href="#">section 65</a> or <a href="#">section 66</a> or <a href="#">section 67</a> , or proceed to determine the tax and other dues under <a href="#">section 73</a> or <a href="#">section 74</a> or section 74A.	
<b>Sec. 62</b>	<b>Assessment of non-filers of returns</b>	Notwithstanding anything to the contrary contained in <a href="#">section 73</a> or <a href="#">section 74</a> or section 74A, where a registered person fails to furnish the return under <a href="#">section 39</a> or <a href="#">section 45</a> , even after the service of a notice under <a href="#">section 46</a> , the proper officer may proceed to assess the tax liability of the said person to the best of his judgment taking into account all the relevant material which is available or which he has gathered and issue an assessment order within a period of five years from the date specified under <a href="#">section 44</a> for furnishing of the annual return for the financial year to which the tax not paid relates.	
<b>Sec. 63</b>	<b>Assessment of unregistered persons</b>	Notwithstanding anything to the contrary contained in <a href="#">section 73</a> or <a href="#">section 74</a> or section 74A, where a taxable person fails to obtain registration even though liable to do so or whose registration has been cancelled under sub-section (2) of <a href="#">section 29</a> but who was liable to pay tax, the proper officer may proceed to assess the tax liability of such taxable person to the best of his judgment for the relevant tax periods and issue an assessment order within a period of five years from the date specified under <a href="#">section 44</a> for furnishing of the annual return for the financial year to which the tax not paid relates:	
<b>Sec. 64</b>	<b>Summary assessment in certain special cases</b>	On an application made by the taxable person within thirty days from the date of receipt of order passed under sub-section (1) or on his own motion, if the Additional Commissioner or Joint Commissioner considers that such order is erroneous, he may withdraw such order and follow the procedure laid down in <a href="#">section 73</a> or <a href="#">section 74</a> or section 74A.	
<b>Sec. 65</b>	<b>Audit by tax authorities</b>	Where the audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under <a href="#">section 73</a> or <a href="#">section 74</a> or section 74A.	

Sec. 66	Special audit	Where the special audit conducted under sub-section (1) results in detection of tax not paid or short paid or erroneously refunded, or input tax credit wrongly availed or utilised, the proper officer may initiate action under <a href="#">section 73</a> or <a href="#">section 74</a> or section 74A.
Sec. 75	General provisions relating to determination of tax	<p>Where the service of notice or issuance of order is stayed by an order of a court or Appellate Tribunal, the period of such stay shall be excluded in computing the period specified in sub-sections (2) and (10) of <a href="#">section 73</a> or sub-sections (2) and (10) of <a href="#">section 74</a> or sub-sections (2) and (7) of section 74A, as the case may be.</p> <p>The adjudication proceedings shall be deemed to be concluded, if the order is not issued within the period specified in sub-section (10) of section 73 or in sub-section (10) of section 74 or in sub-section (7) of section 74A.</p> <p>An issue on which the Appellate Authority or the Appellate Tribunal or the High Court has given its decision which is prejudicial to the interest of revenue in some other proceedings and an appeal to the Appellate Tribunal or the High Court or the Supreme Court against such decision of the Appellate Authority or the Appellate Tribunal or the High Court is pending, the period spent between the date of the decision of the Appellate Authority and that of the Appellate Tribunal or the date of decision of the Appellate Tribunal and that of the High Court or the date of the decision of the High Court and that of the Supreme Court shall be excluded in computing the period referred to in sub-section (10) of <a href="#">section 73</a> or sub-section (10) of <a href="#">section 74</a> or sub-section (7) of section 74A where proceedings are initiated by way of issue of a show cause notice under the said sections.</p> <p>Notwithstanding anything contained in <a href="#">section 73</a> or <a href="#">section 74</a> or section 74A, where any amount of self-assessed tax in accordance with a return furnished under section 39 remains unpaid, either wholly or partly, or any amount of interest payable on such tax remains unpaid, the same shall be recovered under the provisions of <a href="#">section 79</a>.</p> <p>Where any penalty is imposed under <a href="#">section 73</a> or <a href="#">section 74</a> or section 74A, no penalty for the same act or omission shall be imposed on the same person under any other provision of this Act.</p>
Sec. 104	Advance ruling to be void in certain circumstances.	The period beginning with the date of such advance ruling and ending with the date of order under this sub-section shall be excluded while computing the period specified in sub-sections (2) and (10) of <a href="#">section 73</a> or sub-sections (2) and (10) of <a href="#">section 74</a> or sub-sections (2) and (7) of section 74A.
Sec. 107	Appeals to Appellate Authority	<b>Provided further</b> that where the Appellate Authority is of the opinion that any tax has not been paid or short-paid or erroneously refunded, or where input tax credit has been wrongly availed or utilised, no order requiring the appellant to pay such tax or input tax credit shall be passed unless the appellant is given notice to show cause against the proposed order and the



		order is passed within the time limit specified under <a href="#">section 73</a> or <a href="#">section 74</a> or section 74A.
Sec. 127	Power to impose penalty in certain cases	Where the proper officer is of the view that a person is liable to a penalty and the same is not covered under any proceedings under <a href="#">section 62</a> or <a href="#">section 63</a> or <a href="#">section 64</a> or <a href="#">section 73</a> or <a href="#">section 74</a> or section 74A or <a href="#">section 129</a> or <a href="#">section 130</a> , he may issue an order levying such penalty after giving a reasonable opportunity of being heard to such person.

**27. PENALTY PAYABLE FOR REASONS OTHER THAN FRAUD, IF THE CHARGE OF FRAUD IS NOT ESTABLISHED – SEC. 75(2A) OF CGST ACT VIDE FINANCE ACT, 2024 (W.E.F 1.11.24):**

- **Penalty Review by Higher Authority:** If an Appellate Authority, Tribunal, or Court reviews the case and finds that the charges of fraud, wilful misstatement, or suppression of facts to evade tax do not hold, the **penalty** under **Section 74A(5)(ii)** (which equals 100% of the tax) is deemed **unsustainable**.
- **Reduced Penalty:** In such a case, the person would still be liable to pay a **reduced penalty** under **Section 74A(5)(i)** i.e., **10% of the tax due** or **₹10,000**, whichever is higher.

Example,

If a business is accused of **evading taxes by wilfully suppressing facts**, leading to a penalty of 100% of the tax due under **Section 74A(5)(ii)**, but during appeal, it is found that the suppression was unintentional or due to a clerical error, the 100% penalty would be dropped. The taxpayer would instead be liable for a 10% penalty under **Section 74A(5)(i)**.

**Question No 1:**

[ICAI SM New Syllabus]

Mohan Enterprises is entitled for exemption from tax under GST law. However, it collected tax from its buyers worth ₹ 50,000 in the month of August. It has not deposited the said amount collected as GST with the Government. You are required to brief to Mohan Enterprises the consequences of collecting tax, but not depositing the same with the Government as provided under section 76 of the CGST Act, 2017.



It is mandatory to pay amount, collected from other person representing tax under GST law, to the Government. Every person who has collected from any other person any amount as representing the tax under GST law, and has not paid the said amount to the Government, shall **forthwith\*** pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

For any such amount not so paid, proper officer may issue SCN for recovery of such amount and penalty equivalent to amount specified in notice.

The Proper Officer shall, after considering the representation, if any, made by the person on whom SCN is served, determine the amount due from such person and thereupon such person shall pay the amount so determined along with interest at the rate specified under **section 50 (18% p.a.) from the date such amount was collected (NOT FIRST DATE AFTER DUE DATE) by him to the date such amount is paid by him to the Government.**

**\*Author's Note:** (No Clarification as to the meaning of forthwith and as per expert opinion it is the date on which such amount is collected. This view is supported by ICAI)

**Question No 2:**

Rajul has been issued a show cause notice (SCN) on 31.12.2021 under Section 73(1) of the CGST Act, 2017 on account of short payment of tax during the period between 01.07.2017 and 31.12.2017. He has been given an opportunity of personal hearing on 15.01.2022.

Advice Rajul as to what should be the written submissions in the reply to the show cause notice issued to him.

The SCN under **section 73 of the CGST Act, 2017** can be issued 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.

The SCN has been issued for the period between 01.07.2017 to 31.12.2017 which falls in the FY 2017-18. **Due date for furnishing annual return for the FY 2017-18 is 31.12.2018** and 3 year's period from due date of filing annual return lapses on 31.12.2021. Thus, SCN under section 73(1) ought to have been issued latest by **30.09.2021**.

Since the notice has been issued after 30. 09.2021, the entire proceeding is barred by limitation.

**Note:** Above given answer is answer as provided by ICAI.

**Alternative presentation is as follows:**

<u>Period of short payment</u>		<u>Due date of filing Annual return</u>	<u>Time limit upto which Order should be passed</u>	<u>Time limitation upto which valid SCN shall be issued</u>
1 July, 2017 to 31 <sup>st</sup> Dec, 2017	= FY 2017-18	= 31 <sup>st</sup> Dec, 2018	= 31 <sup>st</sup> Dec, 2021	= 30th Sep, 2021
Extended time limit	<b>(Not for exam)</b>	= 30th June, 2019	= 30 <sup>th</sup> June 2022	= 31 <sup>st</sup> March, 2022
		(as due date of filing AR for FY 2017-18 has been extended)		(with extension of due date, limitation period for issue of SCN also gets automatically extended)

**Question No 3:**

**[ICSI June 19 – 4 Marks (Similar)]**

Everest Technologies Private Limited has been issued a show cause notice (SCN) on 31.01.2021 under section 73(1) of the CGST Act, 2017 on account of short payment of tax during the period between 01.07.2017 and 31.12.2017. Everest Technologies Private Limited contends that the show cause notice issued to it is time-barred by law.

You are required to examine the technical veracity of the contention of Everest Technologies Private Limited.

Suppose, if in the above cases SCN is issued under Section 74(1) of the CGST Act, 2017, what is the last date by which SCN can be issued?



**The contention of Everest Technologies Private Limited is not valid in law.**

The SCN under **section 73(1) of the CGST Act** can be issued at least 3 months prior to the time limit specified for issuance of order under **section 73(10) of the CGST Act** [**Section 73(2) of the CGST Act**]. The adjudication order under **section 73(10) of the CGST Act** has to be issued within 3 years from the due date for furnishing the Annual Return for the Financial Year to which the short - paid/not paid tax relates to.

The due date for furnishing Annual Return for a Financial Year is 31st day of December following the end of such Financial Year. Thus, SCN under **section 73(1) of the CGST Act** can be issued within 2 years and 9 months from the due date for furnishing the Annual Return for the Financial Year to which the short-paid/not paid tax relates to.

**As per Sec 74(10)** the Proper Officer shall issue the order under sub-section (9) within a period of five years from the due date for furnishing the Annual Return for the Financial Year to which the tax not paid or short paid or Input Tax Credit wrongly availed or utilised relates to or within five years from the date of erroneous refund.

The SCN has been issued for the period between 01.07.2017 to 31.12.2017 which falls in the (FY) 2017-18. **Due date for furnishing annual return for the FY 2017 -18 is 31.12.2018** and 3 year's period from the due date of filing annual return lapses on 31.12.2021.



Thus, SCN under section 73(1) ought to have been issued latest by 30.09.2021. Since, in the given case, the notice has been issued on 31.01.2021, Thus, the notice is not time -barred. The 5 years period from the due date of filing Annual Return lapses on 31.12.2023. Thus, SCN under section 74(1) ought to have been issued latest by 30.06.2023

**Question No 4:**

On 05/07/2021, a Show Cause Notice for ₹5,00,000 was issued to Mr. Vijay Kumar Sharma demanding short payment of GST ₹4,50,000 for the month of January, 2021 and also interest of ₹50,000.

Mr. Sharma raised objections and, after personal hearing on 30/08/2021 Adjudicating Authority passed the final order for ₹3,50,000 for GST, without any reference with regard to payment of interest.

Mr. Sharma deposited the tax of ₹3,50,000 on 02/09/2021 and informed the department on the same day. Subsequently on 15/09/2021 department demanded payment of interest of ₹60,000 on GST of ₹3,50,000.

Mr. Vijay Kumar Sharma is not ready to pay any interest. His contention is that, he is not liable for interest because he deposited all the amount specified in the final Adjudication Order.

Examine with a brief note the validity of the action taken by the Department with reference to the provisions of CGST Act, 2017.

Followings are the relevant facts given to us:

Tax period for which there was short payment of GST – Jan, 2021

Date of issuance of SCN – 05/07/2021 (Short paid tax of ₹4,50,000 + Applicable Interest ₹50,000)

Date of issuance of Demand Order – 30/08/2021 (Short paid tax of ₹3,50,000 + interest liability not mentioned)

Payment of tax liability – 02/09/2021 (₹3,50,000 tax, but interest liability not mentioned)

While Mr. Vijay Kumar, the taxpayer, has paid the GST liability as mentioned in the order, but he has not paid any interest thereon. Accordingly, department has demanded interest from him. Mr. Vijay Kumar, the taxpayer, is contesting that, liability to pay interest on the ground that Demand Order passed by the Adjudicating Authority did not mention any interest liability and also that, whatever GST liability was determined/mentioned in the order has been paid by him.

In this context, **Sec 50 of CGST Act, 2017** is the legal provisions from which liability to pay interest flows. It provides for payment of interest on tax which is not paid by due date. **Interest liability u/s 50 is mandatory and automatic.** Also, **“Sec 75(9) of the CGST Act clearly provides that interest on the tax short paid shall be payable whether or not specified in the order determining the tax liability”.**

Considering the above-mentioned legal provisions, the action of Department as to demand of interest is legally valid.

**Note: Interest is a statutory liability, whereas penalty is not. Therefore, only when amount of penalty specified in the order, Penalty is payable.**

**Question No 5:**

**[ICAI NOV 18(OLD) - 4 MARKS]**

A show cause notice was issued demanding GST of ₹1,80,180 for the month of July, 2021 on 1st October, 2021. However, Adjudicating Authority after the personal hearing found that there was a typographical error while mentioning the amount of GST and he confirmed the demand for ₹10,80,180.

- I. Assessee seeks your advice.
- II. What would be your advice if:
  - a) an assessee comes to you after issue of order or

b) a corrigendum revising amount to ₹10,80,180 on 15th November, 2021, is issued

As per section 75, demand determined in demand order cannot exceed the demand raised in the SCN. In other words, demand order shall be passed only for the amount specified in the show cause notice.

As per section 160, no notice issued in pursuance of any provisions of this Act shall be invalid or deemed to be invalid merely by reason of any mistake, defect or omission therein.

As per section 161, mistakes apparent from record can be corrected and there is no time-limit provided for correction of clerical mistakes.

Keeping in mind above legal provisions, answers to given questions are as follows:

- Since per section 75, the demand cannot be confirmed more than that specified in SCN. Therefore, Adjudication Order can be challenged on this ground.
- If assessee comes after issue of Order, the Order may be sought to be rectified as per section 161. Alternatively, an appeal may be filed against the said Order.
- If a corrigendum revising amount to ₹10,80,180 on 15th November, 2021, is issued in respect of the said SCN, then, such corrigendum shall be a valid exercise of power. As per section 161, any authority who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error apparent on the face of record. Hence, corrigendum may be issued to rectify any typographical error in notice. Thus, notice and consequent demand would be valid and appeal can be filed only on merits / points of law.

#### Question No 6:

Seema has self-assessed GST on service rendered by her and has declared it in the return. She has paid 80% of the self-assessed tax and for want of liquidity the balance 20% has remained unpaid for more than a year. The officer has proceeded to recover the unpaid portion of the self-assessed tax by invoking the provisions of Section 79. Seema argues that she should have been issued a SCN. Invoking section 79 to recover the unpaid portion of the tax is an action beyond his jurisdiction, as fundamental requirement of providing the opportunity of being heard has not been provided. Also, she argues that in absence of fraud, collusion, willful misstatement, suppression of facts and contravention of any of the provisions of the tax law, normal period of limitation should apply. Even if tax is to be paid, she has argued that interest is not payable by her. Discuss whether her arguments are valid.

As per CBIC circular, general penalty under Sec. 125 i.e., Upto ₹25,000 is payable in case of recovery of self-assessed tax and Penalty is not payable as per Sec. 73 or 75 ∴ In the present case, Seema in request to pay penalty upto ₹ 25,000 under CGST Act.

Author's Note:

CBIC Clarification No. 76/50/2018-GST:

Whether penalty is in accordance with section 73 (11) of the CGST Act should be levied in cases where the return in FORM GSTR-3B has been filed after the due date of filing such return?

1. As per the provisions of section 73(11) of the CGST Act, penalty is payable in case of self-assessed tax or any amount collected as tax has not been paid within a period of thirty days from the due date of payment of such tax.
2. It may be noted that a show cause notice (SCN for short) is required to be issued to a person where it appears to the proper officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised for any reason under the provisions of section 73(1) of the CGST Act. The provisions of section 73(11) of the CGST Act can be invoked only when the provisions of section 73 are invoked.
3. The provisions of section 73 of the CGST Act are generally not invoked in case of delayed filing of the return in FORM GSTR-3B because tax along with applicable interest has

already been paid but after the due date for payment of such tax. It is accordingly clarified that penalty under the provisions of section 73(11) of the CGST Act is not payable in such cases. It is further clarified that since the tax has been paid late in contravention of the provisions of the CGST Act, a general penalty under section 125 of the CGST Act may be imposed after following the due process of law.

**Question No 7:**

[ICAI Nov 18 – 5 Marks | ICAI SM New Syllabus]

Mr. Anant Kumar Gupta self-assessed his tax liability as ₹90,000 for the month of April 2021 but failed to make the payment.

Subsequently the Department initiated penal proceedings against Mr. Anant Kumar Gupta for recovery of penalty under section 73 of CGST Act, 2017 for failure to pay GST and issued show cause notice on 10-08-2021 which was received by Mr. Anant Kumar Gupta on 14-08-2021.

Mr. Anant Kumar Gupta deposited the tax along with interest on 25-08-2021 and informed the department on the same day.

Department is contending that he is liable to pay a penalty of ₹45,000 (i.e., 50% of ₹90,000). Examine the correctness of the stand taken by the Department with reference to the provisions of the CGST Act, 2017, explain the relevant provisions in brief.

Due date for payment of tax for the month of April, 2021 is 20.05.2021.

As per section 73(11) of the CGST Act, 2017, where, self-assessed tax is not paid within 30 days from the due date of payment of such tax, penalty equivalent to 10% of tax or ₹10,000, whichever is higher, is payable.

Thus, option to pay tax within 30 days of issuance of SCN to avoid penalty, is not available in case of self-assessed tax.

Since, in the given case, Mr. Anant Kumar Gupta has not paid the self-assessed tax within 30 days of due date [i.e., 20.05.2021], penalty equivalent to: 10% of tax, viz., ₹9,000 (10% of ₹90,000) or ₹10,000, whichever is higher, is payable by him.

Thus, penalty payable is ₹10,000 (Benefit of No penalty is not applicable in case of Self-Assessment Tax).

Note: The above circular (Question 6 Circular No. 76/50/2018 - GST) is not applicable in this case, as the recovery of penalty is in terms of Sec. 73, in case if recovery is initiated under Sec 79 penalty = ₹ 25,000

**Question No 8:**

Mr. Defrauder was served with an order of demand for ₹ 20 Lakhs on 10th June 2021.

He filed an appeal for the said order on 20th June 2021, stating that he is not required to pay tax as per order. However appellate authority upheld the demand order and asked Mr. Defrauder to pay GST as per order.

On 15th June 2021, Mr. Defrauder transferred all the property worth ₹ 35 Lakhs under his name to the name of his wife for a consideration of ₹ 10,000/- and department is unable to recover dues.

Is this act of Mr. Defrauder valid?

As per **section 81**, Any amount has become due from a person, creates a charge on or transfers any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void. Provided that, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or with the previous permission of the proper officer.

Therefore, the said transfer would be void and the property worth ₹35 Lakhs would be considered still to be in the hands of Mr. Defrauder and accordingly recovery can be made.

**Question No 9:**

Raman Row, a registered supplier under GST in Mumbai, is directed by Nero Enterprises, Kolkata to deliver goods valued at ₹12,00,000 to Fabricana of Aurangabad in Maharashtra. Raman Row makes out an invoice at 9% tax rate under CGST and SGST respectively (scheduled rate) and delivers it locally in Maharashtra.



Discuss and comment on the above levy of tax and determine the tax liability of goods in the above circumstances.

There will be 2 invoices raised in a BILL TO – SHIP TO transaction.

**1<sup>st</sup> Invoice Raman Row will raise invoice on Nero Enterprise where IGST will be charged. (Bill to Ship to transaction-- Place of supply of First transaction):**

The supply between Raman Row (Mumbai) and Nero Enterprises (Kolkata) is a bill to-ship to supply where the goods are delivered by the supplier [Raman Row(Mumbai)] to a recipient [Fabricana (Aurangabad)] on the direction of a third person [Nero Enterprises(Kolkata)]. In such a case, it is deemed that the said third person has received the goods and the place of supply of such goods is the principal place of business of such person (**Billing address**) vide **Section 10(I)(b) of IGST Act, 2017**.

Accordingly, the **place of supply** between Raman Row (Mumbai) and Nero Enterprises (Kolkata) will be **Kolkata** and thus, it will be an **inter-State supply liable to IGST**. Hence, Raman Row should charge **18% IGST on ₹ 12,00,000, which comes out to ₹2,16,000**.

**Result of wrong categorization of supply by the supplier:**

- Raman Row has made wrong categorization of his supply - he has categorized his supply as intra-state supply though it is actually an inter-state supply.
- This has resulted into payment of CGST and SGST which were not payable. So, refund thereof shall now be claimed. Refund shall be governed by **Sec 54 of CGST Act. Doctrine of unjust enrichment shall not be applicable to such refund and such refund shall be directly given to Raman Row [Sec 54 of CGST Act]**
- Also, this treatment has also resulted into non-levy and non-payment of IGST. Now, IGST liability shall be paid. However, interest shall not be payable thereon [**Sec 19 of IGST Act**]

**2<sup>nd</sup> Invoice will be raised by Nero Enterprise upon Fabricana (Aurangabad) wherein IGST will be charged.(Bill to Ship to transaction-- Place of supply of Second transaction):**

This situation involves another supply between Nero Enterprises (Kolkata) and Fabricana (Aurangabad). The place of supply in this case will be the location of the goods at the time when the movement of goods terminates for delivery to the recipient (**Ending point of goods**) i.e., Aurangabad in terms of **section 10(1)(a) of IGST Act, 2017**. Thus, being an **inter-State supply**, the same will also be **chargeable to IGST**.

**Question No 10:**

M/s Nose Ltd. reduced the amount of ₹2,25,000 from the output tax liability in contravention of the provisions of the CGST Act, 2017 in the month of August 2022 (vide invoice dated 12th August, 2022), which is ineligible credit at invoice level. As a result, a show cause notice was issued by the Central Tax Department under section 74 of the CGST Act, 2017 along with interest. M/s Nose Ltd. paid the tax and interest on 5th October, 2022. Find the interest liability if any? Ignore penalty.

**As per Sec 50(3)** Where the input tax credit has been wrongly availed and utilised, the registered person shall pay interest on such input tax credit wrongly availed and utilised, at such rate not exceeding, as may be notified by the Government\*, on the recommendations of the Council, and the interest shall be calculated, in such manner as may be prescribed.

It is assumed that ITC is utilised in the month availment.

- Interest rate shall be 18% per annum.
- August month return due date is 20th of September, 2021.

- From 21st September 2022 to 5th October 2021 = 15 days
- Interest = ₹1,664 ( $₹ 2,25,000 \times 18\% \times 15/365$ )

**\*Author's Note: Applicable rate of Interest with effect from 5<sup>th</sup> July, 2022 is 18%**

**Question No 11:**

**[ICSI Suggested Dec 18]**

Vaibhav, a registered supplier under GST law, has furnished the following details for the month of August, 2021:

Particulars	Amounts (₹.)
Purchase of goods made from outside State	8,00,000
Inter-State supply of goods	10,00,000
Goods taken for personal use in above	20,000

The IGST was paid on 10th October, 2021.

Calculate the interest payable for the delayed payment.

You are informed that the IGST rate for all the goods dealt with by Vaibhav is 18%.

**Computation of interest for belated payment of GST :**

IGST on Supply of goods made outside State ( $10,00,000 \times 18\%$ )	1,80,000
<b>Less:</b> Inter-State purchases of goods ( $7,80,000 \times 18\%$ ) [ITC is not available for goods taken for personal use.]	(1,40,400)
Balance IGST payable	₹ 39,600
Due date for payment	20-09-2021
Actual date of payment	10-10-2021
Number of days of delay (21.09.2021 to 10.10.2021)	20
Interest payable at 18% for delay ( $39,600 \times 18\% \times 20/365$ ) (rounded off)	₹ 391

**Question No 12:**

**[ICAI Jul 21 – 4 Marks | RTP May 21]**

Discuss the validity of the following independent cases under the provisions of CGST Act, 2017:

- I. CGST officer had issued a notice under section 74(1) against which appeal was preferred by the assessee. Appellate Authority concluded that the notice issued under section 74(1) was not sustainable for the reason that charges of fraud had not been established. Now the officer wishes to determine the tax payable by treating the said notice as if it was issued under section 73(1). Is the action of the officer valid?
  - II. CGST officer issued an Adjudication Order which did not specify payment of interest on the tax short paid by the registered person. So, the assessee contends that interest cannot be demanded as the said order is silent on the same. Is the contention of the assessee correct?
- I. **Valid.** As per section 75 of the CGST Act, 2017, if the Appellate Authority concludes that the notice issued under section 74(1) is not sustainable for the reason that the charges of fraud has not been established, the proper officer can determine the tax payable by deeming as if the notice was issued under section 73(1) – **Circular No. 185/17/2022**
- II. **Incorrect.** As per section 75 of the CGST Act, 2017, the interest on the tax short paid or not paid shall be payable whether or not the same is specified in the order determining the tax liability.

**Question No 13:**

**[ICAI Dec 21 – 4 Marks]**

In the Month of March, 2021, during the course of departmental GST Audit u/s 65 of the CGST Act, 2017 of Always Right Private Limited, audit team observed that input tax credit has been claimed by the company which is blocked u/s 17(5) of the CGST Act, 2017. Audit Memo was given to the company for submission of reply on the audit observations mentioned in the Memo. Company submitted its reply contending that the said credit is not blocked u/s 17(5) and has been rightly claimed. Department was not satisfied with the reply submitted by the company. Audit team served a show cause notice u/s 74 of the CGST Act, 2017 and transferred the matter to adjudicating



officer and also started recovery process u/s 78 and 79 of the CGST Act, 2017 for recovery of the input tax credit wrongly availed.

You are required to comment whether action of the department to recover the amount is justified with the reference to the legal provisions of the GST law.

As per Sec. 74 of CGST Act, 2017 a Show Cause Notice to be issued to a person, Where it appears to the Proper Officer that any tax has not been paid or short paid or erroneously refunded or where input tax credit has been wrongly availed or utilised by reason of fraud, or any wilful-misstatement or suppression of facts to evade tax.

Recovery under Sec. 78 & 79 can be initiated only against an order passed under Sec. 73 or 74. Only, in case of self-assessed tax direct recovery can be initiated under Sec. 79.

In the present case, the action of the department is not valid as recovery cannot be initiated without passing an Order.

**Question No 14:**

**[ICAI July 21 – 5 Marks]**

Discuss the amount of tax and penalty to be paid if any, in the following independent cases where SCN are issued under Section 74A of the CGST Act, 2017.

s. No.	Date on which credit was taken wrongly	Amount of input tax credit taken wrongly (₹ in lakh)	Present status
1	31st January, 2025	200	Adjudication Order passed on 26 <sup>th</sup> July, 2026 demanding the entire amount of credit with interest and imposing an amount equal to the credit as penalty.
2	30 <sup>th</sup> June, 2025	250	Adjudication Order passed on 26 <sup>th</sup> August, 2026 demanding the entire amount of credit with interest and imposing an amount equal to the credit as penalty.
3	30 <sup>th</sup> October, 2025	120	Show Cause Notice has been issued on 5 <sup>th</sup> September, 2026 demanding the entire amount of credit with interest and proposing penalty equal to 100% of the credit taken.
4	30 <sup>th</sup> January, 2025	50	Statement of the Managing Director has been recorded on 6 <sup>th</sup> September, 2026 wherein he has admitted the non-receipt of the inputs and availing the credit wrongly.

**Note:** In all the cases assessee wants to pay the amount on 20-09-2026.

	On account of fraud	Not on account of fraud
1. Amount to be paid within 60 days from order	50% of original penalty = 200 Lakhs x 50% = 100 lakhs	Normal penalty payable = 200 Lakhs x 10% = 20 Lakhs
2. Amount to be paid within 60 days from order	50% of original penalty = 250 lakhs x 50% = 125 lakhs	Normal penalty payable = 250 Lakhs x 10% = 25 Lakhs
3. Amount to be paid within 60 days from SCN	25% of original penalty = 120 Lakhs x 25% = 30 lakhs	No penalty
4. Amount to be paid before SCN	15% of original penalty = 50 lakhs x 15% = 7.5 lakhs	No penalty

**Question No 15:**

**[ICAI Nov 20 – 4 Marks]**

**[ICAI MTP May 23 – 5 Marks]**

Mr. Jagjeevan has filed the GSTR Form 3B return after the due date prescribed for filing it. The Adjudicating Authority is of the opinion that penalty has to be levied under section 73 (9) & (11) of the CGST Act, 2017 and has decided to pass an order for levying penalty of 10% of

the tax or ₹ 10,000, whichever is higher, on the grounds that amount collected as tax has not been paid within a period of 30 days from the due date of payment of tax. Discuss the decision of the Adjudication Authority as to its correctness or otherwise.

Also, discuss the Law of limitation period for issuing the Show Cause Notice and passing the Adjudication Order under section 73 of the CGST Act, 2017.

The decision of the Adjudicating Authority is not correct in Law.

The provisions of section 73(11) of the CGST Act, 2017 can be invoked only when the provisions of section 73 are invoked and the provisions of Section 73 are generally not invoked in case of delayed filing of return in Form GSTR 3B because tax along with applicable interest has already been paid.

Thus, Penalty under the provisions of section 73(11) is not payable in such cases although a general penalty may be imposed since the tax has been paid late in contravention of the provisions of the CGST Act, as clarified vide Circular No. 76/50/2018 GST dated 31.12.2018.

The time-limit for issuance of SCN is 2 years and 9 months and time-limit for passing the Adjudication Order is within 3 years from:

- a) the due date of filing Annual Return for the Financial Year to which the demand pertains or
- b) the date of erroneous refund, as the case may be.

#### Question No 16:

**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.**

**Section 80 of CGST Act, 2017 provide the provision regarding recovery of installment:**

It provides that commissioner may on application filed by a taxable person for reasons to be recorded in writing, extend the time for payment or allow payment of any amount due under this Act, by such person in monthly installments not exceeding 24 installments subject to payment of interest U/s 50.

The taxable persons can file application electronically in form GST- DRC 20.

In the following situations installment facility is not allowed:-

- Taxable person has already defaulted in payment of any amount and recovery process is already undergoing under GST law.
- The amount for installment facility sought is less than ₹ 25,000.
- Installment facility has not allowed in preceding Financial Year.

#### Question No 17:

[ICAI MTP May 23 – 5 Marks]

Mr. Arihant is engaged in supply of taxable goods and is registered in the State of Orissa. A demand order under GST law of ₹ 50 lakh is served on him on 5th April. On 10th April, despite of having knowledge of said order, Mr. Arihant transferred his ancestral property located in Punjab in the name of his wife Soma for a consideration of ₹ 2 lakh without taking any permission from the authorities under GST.

The value for the purpose of Stamp Duty valuation was ₹ 80 lakh. Subsequently, he filed a reply to said demand order on 15<sup>th</sup> April stating that he would not be able to pay the amount of tax demanded in the notice due to his distressed financial situation.

**Determine the validity of the act of transferring of property by Mr. Arihant to his wife Soma, under the provisions of the GST Law.**

Section 81 of the CGST Act, 2017 stipulates that where a person, after any amount has become due from him, creates a charge on or parts with the property belonging to him or in his possession by way of sale, mortgage, exchange, or any other mode of transfer whatsoever of any of his properties in favour of any other person with the intention of defrauding the Government revenue, such charge or transfer shall be void as against any claim in respect of any tax or any other sum payable by the said person.

However, such charge or transfer shall not be void if it is made for adequate consideration, in good faith and without notice of the pendency of such proceedings under this Act or without notice of such tax or other sum payable by the said person, or with the previous permission of the Proper Officer.



In view of the above provisions, in the given case, transfer of property by Mr. Arihant to his wife Soma is void and the property will still be considered in the hands of Mr. Arihant under GST law for the purpose of recovery of dues under GST from him.

**Question No 18:**

[ICAI SM New Syllabus]

**Briefly discuss the modes of recovery of tax available to the Proper Officer.**

The proper officer may recover the dues in following manner:

- a) Deduction of dues from the amount owned by the tax authorities payable to such person.
- b) Recovery by way of detaining and selling any goods belonging to such person;
- c) Recovery from other person, from whom money is due or may become due to such person or who holds or may subsequently hold money for or on account of such person, to pay to the credit of the Central or a State Government;
- d) Distrain any movable or immovable property belonging to such person, until the amount payable is paid. If the dues not paid within 30 days, the said property is to be sold and with the proceeds of such sale the amount payable and cost of sale shall be recovered.
- e) Through the Collector of the district in which such person owns any property or resides or carries on his business, as if it was an arrear of land revenue.
- f) By way of an application to the appropriate Magistrate who in turn shall proceed to recover the amount as if it were a fine imposed by him.
- g) By enforcing the bond/instrument executed under this Act or any rules or regulations made thereunder.
- h) CGST arrears can be recovered as an arrear of SGST and vice versa [Section 79].

**Question No 19:**

[ICAI SM New Syllabus]

**Subharti Enterprises collected GST on the goods supplied by it from its customers on the belief that said supply is taxable. However, later it discovered that goods supplied by it are exempt from GST.**

**The accountant of Subharti Enterprises advised it that the amount mistakenly collected by Subharti Enterprises representing as tax was not required to be deposited with Government. Subharti Enterprises has approached you for seeking the advice on the same. You are required to advise it elaborating the relevant provisions.**

The provisions of section 76 make it mandatory on Subharti Enterprises to pay amount collected from other person representing tax under this Act, to the Government.

Section 76 stipulates that notwithstanding anything to the contrary contained in any order or direction of any Appellate Authority or Appellate Tribunal or Court or in any other provisions of the CGST Act or the rules made thereunder or any other law for the time being in force, every person who has collected from any other person any amount as representing the tax under this Act, and has not paid the said amount to the Government, shall forthwith pay the said amount to the Government, irrespective of whether the supplies in respect of which such amount was collected are taxable or not.

Where any amount is required to be paid to the Government as mentioned above, and which has not been so paid, the proper officer may serve on the person liable to pay such amount a notice requiring him to show cause as to why the said amount as specified in the notice, should not be paid by him to the Government and why a penalty equivalent to the amount specified in the notice should not be imposed on him under the provisions of this Act.

The proper officer shall, after considering the representation, if any, made by the person on whom show cause notice (SCN) is served, determine the amount due from such person and thereupon such person shall pay the amount so determined.

The person who has collected any amount as representing the tax, but not deposited the same with the Government shall in addition to paying the said amount determined by the proper officer shall also be liable to pay interest thereon. Interest is payable at the rate specified under section

50. Interest is payable from the date such amount was collected by him to the date such amount is paid by him to the Government.

The proper officer shall issue an order within 1 year [excluding the period of stay order] from the date of issue of the notice. The proper officer, in his order, shall set out the relevant facts and the basis of his decision.

**Question No 20:**

**[ICAI MAY 23 SA]**

KK Pvt. Ltd. self-assessed its tax liability as ₹ 1,15,000 for the month of May 2022, but failed to make the payment.

Subsequently the Department initiated penal proceedings against KK Pvt. Ltd. for recovery of penalty under Section 73 for failure to pay GST and issued show cause notice on 12th September 2022, which was received by KK Pvt. Ltd. on 17th September 2022.

KK Pvt. Ltd. deposited the tax along with interest on 27th September 2022 and informed the department on the same day.

Department is contending that he is liable to pay a penalty of ₹ 57,500 (i.e. 50% of ₹ 1,15,000).

Examine the correctness of the stand taken by the Department with reference to the provisions of the CGST Act. Explain the relevant provisions in brief.

The stand taken by the Department that he is liable to pay a penalty of ₹ 57,500 is not correct. In the given case, since KK Pvt. Ltd. has not paid self-assessed tax for the month of May, 2022 within a period of 30 days from the due date of payment of such tax penalty payable will be higher of the following<sup>14</sup>:

(a) 10% of tax, Or

(b) ₹ 10,000

Hence in given case

₹ 11,500 (₹ 1,15,000 × 10%)

Or

₹ 10,000

i.e. ₹ 11,500 each under CGST and SGST.

**Question No 21:**

**[ICAI NOV 23 EXAM]**

M/s. Square & Co. received a notice under section 74(1) of the CGST Act, 2017 demanding tax, interest and penalty on the allegation of suppression of facts for the financial year 2018-19. Notice was issued on 24-11-2022. Square & Co. filed an appeal denying any suppression and on which Appellate Authority concluded that the notice is not sustainable under section 74(1), for the reason that the charges have not been established by the Department. Proper officer deemed the said notice to have been issued under section 73(1) and re-determined the demand. Square & Co. is of the opinion that the action of proper officer is not in line with GST law. Square & Co. filed its annual return for the financial year 2018-19 on 30-11-2019. Assume the due date of such return as 31-12-2019. Square & Co. seeks your advice with reason on the following issues:

(i) Whether the proper officer can proceed to re-determine the demand under section 73(1), in respect of notice issued under section 74(1)?

(ii) If yes, whether the fresh demand is valid?

(iii) If the above notice issued under section 74(1) is assumed to have been issued on 24-09-2022, what would be your answer for the validity of demand?

(i) Since the appellate authority concluded that the notice under section 74(1) is not sustainable for reason that the charges of fraud etc. have not been established by Department against M/s Square & Co., the proper officer can re-determine the demand, deeming as if the notice was issued under section 73(1) of the CGST Act, 2017.

<sup>14</sup>Since the question requires answer with reference to the provisions of the CGST Act, it has been assumed that the tax liability provided in the question is also with respect to CGST only and accordingly amount of penalty payable has been computed.

- (ii) Fresh demand will not be valid since show cause notice under section 74(1) of the CGST Act, 2017 was issued on 24.11.2022, i.e. beyond 2 years and 9 months from the due date of furnishing of annual return for financial year 2018-19, i.e. 30.09.2022.
- (iii) If show cause notice under section 74(1) of the CGST Act, 2017 was issued on 24.09.2022, i.e. within 2 years and 9 months from the due date of furnishing of annual return for financial year 2018-19, demand would be valid.

**Question No 22:**

ABC Ltd. filed its Annual Return for FY 2024–25 on 30th November 2025. The proper officer notices on 15th April 2028 that ABC has wrongly availed ITC of ₹2,50,000 due to clerical errors. He plans to issue notice under Section 74A(1). Is the officer within the prescribed time limit to issue the notice under Section 74A? What is the last date for issuing the order under Section 74A(6)?

As per Section 74A(2), the notice must be issued within 42 months from the due date of furnishing the annual return.

- Due date for GSTR-9 for FY 2024–25 = 31<sup>st</sup> December 2025.
- 42 months from 31<sup>st</sup> Dec 2025 = 30th June 2029.

So, issuing notice on 15<sup>th</sup> April 2028 is valid.

Also, As per Section 74A(7), the order must be passed within 12 months from date of notice (i.e. by 14<sup>th</sup> April 2029).

With Commissioner's approval, it can be extended by 6 months (i.e. max till 14th October 2029).

**Question No 23:**

XYZ & Co. fraudulently claimed ITC of ₹3,00,000 in FY 2024–25. A notice under Section 74A(1) was issued on 1st March 2028. They now want to conclude proceedings within 60 days of notice. What is the total amount payable (including tax, interest, penalty) to conclude proceedings under Section 74A(9)(ii)?

Under Section 74A(9)(ii), within 60 days of notice:

- Pay tax + interest + 25% penalty
- Tax = ₹3,00,000
- Penalty = 25% of ₹3,00,000 = ₹75,000
- (Interest to be computed separately as per Section 50)

Total payable = ₹3,75,000 + interest

Upon payment, proceedings are deemed concluded.

**Question No 24:**

The officer detects that GHI Traders short paid GST of ₹800 for FY 2024–25 due to a rounding-off error. He intends to issue a show cause notice. Can the notice be issued in this case?

As per Proviso to Section 74A(1), No notice shall be issued if tax involved < ₹1,000.

Notice cannot be issued for ₹800.

Note: The threshold is per financial year.

**Question No 25:**

**(RTP SEPT 25)**

Arnav Enterprises, a registered supplier located in Madhya Pradesh, has duly filed its monthly GST returns for the financial year 2024–25. During the scrutiny of its returns for the said financial year in August 2025, the proper officer noticed an inadvertent short payment of CGST and SGST totaling ₹ 4,60,000 in the month of October 2024, on account of a bonafide error. Before issuance of the show cause notice by the proper officer, Arnav Enterprises paid the tax of ₹ 1,00,000 (₹ 50,000 CGST and ₹ 50,000 SGST) on the basis of its own ascertainment along with applicable interest and with penalty, if any, on 15th September 2025 and informed the proper officer in writing of such payment.

Based on the facts above, answer the following:

- 1) Ascertain the last date by which show cause notice can be issued by the proper officer for the amount of tax short paid by Arnav Enterprises.
- 2) Determine the amount of penalty, if any, payable on the payment of tax of ₹ 1,00,000 by Arnav Enterprises on the basis of its own ascertainment along with applicable interest on 15th September 2025.
- 3) Assuming that the proper officer decides to issue a show cause notice under section 74A on 10th October 2025, determine the maximum amount of tax for which he can issue the show cause notice. Ascertain the last date by which the proper officer should issue order under section 74A assuming that show cause notice is issued by proper officer on said date.
- 4) In continuation of sub-part (3) above, if proper officer issues a show cause notice under section 74A on 10th October, 2025 for the amount of tax so allowed and Arnav Enterprises decides to pay said tax along with applicable interest, on 5th December, 2025, you are required to determine penalty, if any, payable by Arnav Enterprises.

In each of the above cases, will your answer be different if the short payment of tax is on account of fraud, other facts remain the same?

**Note – Assume that the due date for furnishing annual return has not been extended and limitation period for issuance of order under section 74A has not been extended by the Commissioner. Ignore computation of interest in the above question.**

- 1) The proper officer can issue a show cause notice within 42 months from the due date of furnishing the annual return for relevant financial year to which short payment relates to [Section 74A(2)]. For the financial year 2024–25, the due date for furnishing the annual return is 31st December, 2025. Therefore, the last date by which show cause notice can be issued by the proper officer for the amount of tax short paid by Arnav Enterprises is 30th June 2029.

Further, section 74A stipulates the same limitation period for issuance of show cause notice whether the short payment is on account of fraud or on account of a bonafide error. Thus, answer will remain same if the short payment of tax is on account of fraud.

- 2) The person chargeable with tax where any tax has been short paid, may, before service of show cause notice, pay the amount of tax along with interest payable under section 50 of such tax on the basis of his own ascertainment of such tax and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information shall not serve any show cause notice in respect of the tax so paid or any penalty payable under the provisions of the CGST Act or the rules made thereunder [Section 74A(8)(i)].

Thus, no penalty is payable by Arnav Enterprises in respect of payment of tax of ₹ 1,00,000 before issuance of show cause notice. No show cause notice will be issued by the proper officer in respect of the tax of ₹ 1,00,000 so paid.

However, in case where the short payment of tax is on account of fraud, the person chargeable with tax, may before service of show cause notice, pay the amount of tax along with interest payable under section 50 and a penalty equivalent to 15% of such tax on the basis of his own ascertainment of such tax or the tax as ascertained by the proper officer and inform the proper officer in writing of such payment, and the proper officer, on receipt of such information, shall not serve any show cause notice, in respect of the tax so paid or any penalty payable under the provisions of the CGST Act or the rules made thereunder [Section 74A(9)(i)]. Thus, a penalty of ₹ 15,000 [ $₹ 1,00,000 \times 15\%$ ] is payable by Arnav Enterprises along with payment of tax of ₹ 1,00,000 with applicable interest, before issuance of show cause notice. No show cause notice will be served by the proper officer after payment of tax along with interest and penalty, in respect of the tax so paid.

Since Arnav Enterprises has paid the tax of ₹ 1,00,000 along with interest before issuance of show cause notice, no show cause notice will be issued by the proper officer in respect of the tax so paid [Section 74A(8)(i)].

However, where the proper officer is of the opinion that the amount paid under section 74A(8)(i) falls short of the amount actually payable, he shall proceed to issue the show cause notice in respect of such amount which falls short of the amount actually payable [Section 74A(10)].

Thus, in the given case, the proper officer will issue the notice for the remaining tax of ₹ 3,60,000 [₹ 4,60,000 - ₹ 1,00,000].

In case where the short-payment is on account of fraud, answer will be as follows:

Since Arnav Enterprises has paid the tax of ₹ 1,00,000 along with applicable interest and penalty before issuance of show cause notice, no show cause notice will be issued by the proper officer in respect of the tax so paid [Section 74A(9)(i)].

However, where the proper officer is of the opinion that the amount paid under section 74A(9)(i) falls short of the amount actually payable, he shall proceed to issue the show cause notice in respect of such amount which falls short of the amount actually payable [Section 74A(10)].

Thus, in the given case, the proper officer will issue the notice for the remaining tax of ₹ 3,60,000 [₹ 4,60,000 - ₹ 1,00,000].

Further, the proper officer is required to issue the order within 12 months from the date of issuance of show cause notice, in both fraud and non-fraud cases [Section 74A(7)]. Thus, in the given case, the proper officer has to issue the order on or before 10<sup>th</sup> October, 2026, whether the short payment is on account of fraud or on account of a bonafide error.

Where the person chargeable with tax, where any tax has been short paid, pays the said tax along with interest payable under section 50 within 60 days of issue of show cause notice, and on doing so, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded [Section 74A(8)(ii)].

Thus, in the given case, since Arnav Enterprises has paid the tax of ₹ 3,60,000 along with applicable interest within 60 days of issuance of show cause notice, i.e. on or before 9<sup>th</sup> December, 2025, no penalty shall be payable and all proceedings in respect of the said notice shall be deemed to be concluded.

In case where the short-payment is on account of fraud, answer will be as follows:

Where the person chargeable with tax, where any tax has been short paid, pays the said tax along with interest payable under

section 50 and a penalty equivalent to 25% of such tax within 60 days of issue of the notice, and on doing so, all proceedings in respect of the said notice shall be deemed to be concluded [Section 74A(9)(ii)].

Thus, in the given case, Arnav Enterprises has to pay penalty of ₹ 90,000 [₹ 3,60,000 × 25%].

If Arnav Enterprises has paid the tax of ₹ 3,60,000 along with applicable interest and penalty of ₹ 90,000 [₹ 3,60,000 × 25%] on 5<sup>th</sup> December, 2025, which is within 60 days of issuance of show cause notice, i.e. on or before 9<sup>th</sup> December, 2025, all proceedings in respect of the said notice shall be deemed to be concluded.



## SEGMENT 20 - APPEALS AND REVISION

**28. REDUCTION IN MAXIMUM AMOUNT OF PRE-DEPOSIT IN CASE OF FIRST APPEAL AND SECOND APPEAL – FINANCE ACT, 2024 (W.E.F 1.11.24)**

Appeal to	Pre-deposit (Before Amendment)	Pre-deposit (After amendment)
Commissioner (Appeals) or Additional/Joint Commissioner (Appeals) [Sec. 107 of CGST Act/ Sec. 20 of IGST Act]	100% of the admitted due in 1 <sup>st</sup> appeal (+) [10% of disputed tax, subject to Max. ₹25 Crores under CGST] In case of IGST, Max. is ₹50 Crores	100% of the admitted due in 1 <sup>st</sup> appeal (+) [10% of disputed tax, subject to Max. ₹20 Crores under CGST] In case of IGST, Max. is ₹40 Crores
GSTAT [Sec. 112 of CGST Act/ Sec. 20 of IGST Act]	100% of the admitted due in 2 <sup>nd</sup> appeal (+) [20% of disputed tax, subject to Max. ₹50 Crores under CGST] In case of IGST, Max. is ₹100 Crores	100% of the admitted due in 2 <sup>nd</sup> appeal (+) [10% of disputed tax, subject to Max. ₹20 Crores under CGST] In case of IGST, Max. is ₹40 Crores

**Question No 1:**

Train tree Ltd. filed an appeal before Commissioner (Appeals) on 16-07-20XX (15-07-20XX being a public holiday) against the Adjudication Order demanding GST which was received by them on 15-03-20XX with request for condonation of delay in filing the appeal under. The appeal was dismissed by the Commissioner (Appeals) on the ground that appeal was filed beyond the condonable time limit. Examine whether the stand of the Commissioner (Appeals) is correct.

As per Section 107 of CGST Act, 2017, appeal to Appellate Authority may be filed within 3 months from date of receipt of Adjudication Order. Hence, normal due date was = 15-03-20XX + 3 Months = 15-06-20XX. Appellate authority can allow condonation of delay upto 1 month, fixing due date as 15-07-20XX. However, since 15-07-20XX is a public holiday, appeal may be filed on next working day viz. 16-07-20XX. Hence, appeal filed on 16-07-20XX was within overall time of 3+1 = 4 months and hence, within the condonation power of the Appellate Authority. Thus, the stand of Commissioner Appeal is incorrect.

**Question No 2: [ICSI June 19 – 5 Marls (Similar)] | [ICMAI June 19 – 4 Marks (Similar)] | [ICAI May 18 – 5 Marks]**

XY Company received an adjudication order passed by the Assistant Commissioner of Central Tax on 1st November under section 73 wherein it was decided as follows:

CGST+SGST due	₹ 6,00,000
Interest	@ 18% p.a. for number of delayed days
Penalty	₹ 60,000

The taxpayer filed an appeal before the Appellate Authority on 26th November.

Determine the amount of pre-deposit to be made by the company for filing the appeal if it disagrees with the entire tax demanded.

Whether your answer would be different, if the taxpayer appeals only against part of the demanded amount say ₹ 4,00,000 and admits the balance liability of tax amounting to ₹ 2,00,000 and proportionate penalty arising from the said order?

Section 107(6) provides that no appeal shall be filed before Appellate Authority, unless the appellant pays\*:- (a) in full, tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and (b) 10% of remaining tax in dispute arising from the impugned order subject to a maximum of ₹ 25 crore, in relation to which the appeal has been filed.

\*Equivalent amount is required to be deposited with respect to SGST liability. Thus, in Case-I, XY Company has to make a pre-deposit of 10% of ₹ 6,00,000, which is ₹ 60,000 (i.e., CGST ₹ 30,000

and SGST ₹ 30,000). However, when XY Company admits the liability of only ₹ 2,00,000 (CGST + SGST) and disputes the balance tax demanded of ₹ 4,00,000, it has to make a pre-deposit of:

- I. ₹ 2,00,000 + ₹ 20,000 [proportionate penalty on tax admitted] + interest @ 18% p.a. payable on the tax admitted for the period of delay, and
- II. 10% of ₹ 4,00,000 which is ₹ 40,000. (i.e., CGST ₹ 20,000 and SGST ₹ 20,000)

Question No 3:

[ICAI NOV 18 - 4 Marks]

The original Adjudicating Authority confirmed a demand of GST of ₹42,50,000 with interest and imposed a penalty of ₹4,25,000 in its order dated 1st September, 2020. The assessee filed an appeal before Appellate Authority challenging the demand as well as penalty. The CAG audited the records of the assessee and therein opined that actual amount demanded should have been ₹48,50,000. While the issue was pending before the Appellate Authority, based on the note, the Commissioner stayed the order of the original authority and issued a show cause notice on 15th march, 2021, proposing revision of the order of the original authority and revise the demand on the basis of the audit note. Examine the correctness of the action taken by the Commissioner in accordance with the provisions of GST law.



Section 108 of the CGST Act contains provisions as to 'revision of orders' by Revisional Authority. Keeping in mind the provisions of Sec 108, the validity of each issue involved in the given case has been discussed below:

- Revision may be initiated based on audit note:  
Revisional Authority may initiate action in consequence of an observation by Comptroller and Auditor General of India.  
Hence, initiation of action based on audit note is valid.
- Power to stay impugned order and modify demand:  
Revisional Authority may stay operation of such decision or order for such period as he deems fit and after giving the person concerned an opportunity of being heard and after making such further inquiry as may be necessary, pass such an order, as he thinks just and proper, including enhancing or modifying or annulling said decision or order.  
Thus, revision order is valid on this issue.
- Revision order is within time-limit: Revisional Authority may pass an order on any point which has not been raised and decided in an Appeal, before expiry of:  
(a) a period of 1 year from the date of the order in such appeal  
(or)  
(b) a period of 3 years after passing of order sought to be revised, whichever is later.  
Since Revision Order is passed within 3 years from date of order of Adjudicating Authority, Revision Order is valid on this point.
- Matters pending in Appeal cannot be revised:  
The Revisional Authority shall not exercise any power, if the order has been subject to an Appeal. However, Revisional Authority may pass an order on any point which has not been raised and decided in an appeal.  
Here, the question reads "While the issue was pending before the Appellate Authority", which clearly depicts that the issue involved in appeal is same as the issue sought to be revised, which cannot be done.  
Therefore, since the matter is pending in appeal, same cannot be revised. Hence, the action taken by the Commission is incorrect.

Question No 4:

An aggrieved person received an order of the Assistant Commissioner of Central Tax in relation to adjudication of a demand on 27-11-2020. However, he was aggrieved by the said order, hence he filed an appeal to Commissioner (Appeals) on 27-02-2021. The Commissioner (Appeals), in response, rejected the appeal as he was of the opinion that it was time barred. Discuss.



Section 107 of the CGST Act, 2017 provides that a person aggrieved by the order of Adjudicating Authority appeal to the Commissioner (Appeals) within 3 months from the date of the communication to him of such decision or order.

In the given case, the aggrieved person received the order of Assistant Commissioner on 27-11-2020, hence he could file the appeal to Commissioner (Appeals) within 3 months from the said date which expires on 27-02-2021.

Therefore, the aggrieved person has made the appeal within the time and the opinion of the Commissioner (Appeals) is not tenable in the eyes of law.

**Question No 5:**

[ICAI RTP Nov 19 (Adapted)]

Compute the quantum of pre-deposit required to be made under Section 107 of the CGST Act, 2017 in each of the following independent cases:

- In an order dated 18-10-2020 issued to M/s. RR Ltd., the Joint Commissioner of Central Tax has confirmed a tax demand of ₹45,00,000. M/s. RR Ltd. has admitted ₹5,00,000 as tax liability and intends to file an appeal with the Commissioner (Appeals) against tax demand of ₹40,00,000.
- In an order dated 18-10-2020 issued to M/s. KK Ltd., the Joint Commissioner of Central Tax has confirmed a tax demand of ₹45,00,000 and imposed a penalty of ₹5,00,000. M/s. KK Ltd. intends to file an appeal with the Commissioner (Appeals) against the said order.

- Section 107(6) of the CGST Act, 2017 require an appellant before Appellate Authority to pre-deposit full amount of tax, interest, fine, fee and penalty, as is admitted by him, arising from the impugned order and a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order

Thus, RR Ltd. has to pre-deposit ₹5,00,000 (admitted tax) and 10% of ₹ 40,00,000 (tax in dispute) (Subject to max. of ₹ 20 Crores under CGST and ₹ 20 Crores under SGST).

= ₹ 9,00,000. (5,00,000 + 4,00,000)

- Section 107(6) of the CGST Act, 2017 require an appellant before Appellate authority to pre-deposit full amount of tax, interest, fine, fee and penalty, as is admitted by him, arising from the impugned order and a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order (Subject to max. of ₹ 20 Crores under CGST and ₹ 20 Crores under SGST).

In this case since, the entire amount of tax demanded is in dispute, hence, KK Ltd. has to pre-deposit 10% of ₹45,00,000 = ₹4,50,000

Note: tax demanded amounting ₹ 45,00,000 is assumed as CGST fully.

Alternatively, if tax demanded amounting ₹ 45,00,000 is assumed as CGST and SGST computation are as follows.

- ₹ 2.5 Lakhs + (10% of 20,00,000) i.e., ₹ 2 Lakhs = ₹ 4.5 Lakhs under CGST Act
- 10% of 22,50,000 = 2,25,000 under CGST Act.

**Question No 6:**

M/s KG Associates deposits ₹ 7,50,000 as pre-deposit on 15-10-2020 and files an appeal with GSTAT. GSTAT decides the appeal in favour of M/s. KG Associates on 25-12-2020. M/s. KG Associates submits a letter seeking refund of the pre-deposit on 30-01-2021. The pre-deposit is refunded to M/s KG Associates on 28-02-2021. Compute the amount of interest payable on refund of such pre-deposit, if any.



Section 115 of CGST Act, 2017 provides for payment of interest at rate specified in Section 56 i.e., @ 9% per annum on the refund of such pre-deposit from the date of its payment to the date of refund.

Thus, interest payable on refund of pre-deposit of ₹7,50,000 will be ₹25,151 (rounded off) [ ₹7,50,000 × 9% × 136/365]. [October = 16 days; Nov = 30 days; Dec = 31 days; Jan = 31 days and Feb = 28 days]

**Question No 7:**

**[ICAI Nov 18 – 5 Marks]**

Rule 112 of the CGST Rules lays down that the appellant shall not be allowed to produce before the Appellate Authority (AA) or the Tribunal any evidence, whether oral or documentary, other than the evidence produced by him during the course of the proceedings before the Adjudicating Authority or, as the case may be, the AA.

What are the exceptional circumstances specified in the rule where the production of additional evidence will be allowed? Can AA or the Tribunal direct production of any document or examination of any witness?

Exceptional circumstances specified in Rule 112 of the CGST Rules, 2017 where the production of additional evidences will be allowed are as follows:

- a) Where the Adjudicating Authority/ Appellate Authority (AA) has refused to admit evidence which ought to have been admitted.
- b) Where the appellant was prevented by sufficient cause from producing the evidence which he was called upon to produce by the Adjudicating Authority/ AA.
- c) Where the appellant was prevented by sufficient cause from producing before the Adjudicating Authority/ AA any evidence which is relevant to any ground of Appeal; or
- d) Where Adjudicating Authority/ AA has made the order appealed against without giving sufficient opportunity to the appellant to adduce evidence relevant to any ground of appeal.

**Yes, the AA or the Tribunal can direct the production of any document or examination of any witness to enable it to dispose of the Appeal.**

**Question No 8:**

**[ICAI MTP MAY 19 – 6 Marks] | [ICAI SM New Syllabus (Similar)]**

Pursuant to audit conducted by the tax authorities under section 65, a show cause notice was issued to Home Furnishers, Surat, a registered supplier, alleging that it had wrongly availed the input tax credit without actual receipt of goods for the month of July. In the absence of a satisfactory reply from Home Furnishers, Joint Commissioner of Central Tax passed an adjudication order dated 20th August (received by Home Furnishers on 22nd August) confirming a tax demand of ₹ 50,00,000 (i.e., CGST 25,00,000 and SGST 25,00,000) and imposing a penalty of equal amount under section 122.

Home Furnishers does not agree with the order passed by the Joint Commissioner. It decides to file an appeal with the Appellate Authority against the said Adjudication Order. It has approached you for seeking advice on the following issues in this regard:

- (1) Can Home Furnishers file an appeal to Appellate Authority against the Adjudication Order passed by the Joint Commissioner of Central Tax? If yes, till what date can the appeal be filed?
  - (2) Does Home Furnishers need to approach both the Principal and State Appellate Authorities for exercising its right of appeal?
  - (3) Home Furnishers is of the view that there is no requirement of paying pre-deposit of any kind before filing an appeal with the Appellate Authority. Give your opinion on the issue.
- 1) An appeal against a decision/order passed by any Adjudicating Authority under the CGST Act or SGST Act/ UTGST Act is appealable before the Appellate Authority [Section 107(1)]. Thus, Home Furnishers can file an appeal to Appellate Authority against the Adjudication Order passed by the Joint Commissioner of Central Tax.  
Further, such appeal can be filed within 3 months from the date of communication of such decision/order [Section 107(1)]. Thus, Home Furnishers can file the appeal to Appellate Authority on or before 22nd November. Further, the Appellate Authority can also condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)].
  - 2) GST law makes provisions for “Cross Empowerment” between CGST and SGST/UTGST officers to ensure that a proper officer under the CGST Act is also treated as the proper officer under the SGST/UTGST Act and vice versa. Thus, a proper officer can issue orders with respect to both, the CGST as well as the SGST/UTGST laws.  
GST law also provides that where a proper officer under one Act (say CGST) has passed

an order, any appeal/review/ revision/rectification against the said order will lie only with the proper officers of that Act (CGST Act).

Accordingly, if any order is passed by the proper officer under a SGST Act, any appeal/ review/ revision/ rectification against the said order will lie only with the proper officer under that SGST Act. Thus, Home Furnishers is required to file an appeal only with the Central Tax Appellate Authority [Section 6 of CGST Act].

- 3) 'Home Furnishers' view is not correct in law. Section 107(6) provides that no appeal shall be filed before the Appellate Authority, unless the appellant has paid—
  - a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
  - b) a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order subject to a maximum of ₹ 25 crore\*.

\*Equivalent amount is required to be deposited with respect to SGST liability.

Since in the given case, Home Furnishers disagrees with the entire tax demanded, it has to make a pre-deposit of 10% of the amount of tax in dispute arising from the impugned order, i.e., 10% of ₹ 50,00,000 which is ₹ 5,00,000 (i.e., CGST ₹ 2,50,000 and SGST ₹ 2,50,000).

**Question No 9: [ICSI June 15 – 5 Marks] | [ICMAI Dec 18 – 5 Marks] | [ICAI SM New Syllabus (Similar)]**

Sarath Pharma Ltd., filed an appeal before the Appellate Tribunal against the order of the Appellate Authority, wherein the issue was revolving around the place of supply. The Tribunal decided the issue against the company and in favour of the Department.

The company is of the strong view that its stand is correct and consequently, there is need to take the issue to an appellate forum higher than the Appellate Tribunal.

You being the Cost Accountant dealing with indirect tax matters, advise the company about filing appeal before the suitable forum

Where the supplier or the Department is not satisfied with the order passed by the State Bench of the Appellate Tribunal, an appeal can be filed before the High Court, if the High Court is satisfied that such an appeal involves a substantial question of law [section 117(1) of the CGST Act, 2017].

Nevertheless, appeal against orders passed by the Principal bench of the Tribunal can be filed only before the Supreme Court and not with the High Court

As per **section 109(5) of the Act**, only the Principal Bench of the Tribunal can decide appeals where one of the issues involved relates to the place of supply (or) Anti profiteering.

Since, the issue involved in the given case, relates to place of supply, the appeal in his case would have been decided by the Principal bench of the tribunal.

Accordingly, **Sarath Pharma Ltd., Will have to file an appeal before the Supreme court and not with the High Court.**

**Question No 10: [ICAI RTP MAY 21]**

Briefly examine whether the appeal/review application filed in the following independent cases is within the time limit prescribed under the GST law:-

- I. The Adjudicating Authority issued the Adjudication Order on 23rd April and the same is communicated to the taxpayer - Mr. X - on 28th April. Mr. X, aggrieved by the order of the Adjudicating Authority filed an appeal to the Appellate Authority on 26th July.
  - II. The Adjudicating Authority passed the order on 3<sup>rd</sup> March (communicated same day to the Commissioner). The Commissioner directs his subordinate officer to file a review application with the Appellate Authority. The subordinate officer filed the review application on 23rd September.
- I. A person aggrieved by any decision/order of an Adjudicating Authority can file an appeal to the Appellate Authority within 3 months from the date of communication of such

decision/order. The Appellate Authority can condone the delay in filing of appeal by 1 month if it is satisfied that there was a sufficient cause for such delay [Section 107 of the CGST Act, 2017].

In view of the aforesaid provisions, in the given case, the relevant date for computing the period of 3 months (for filing the appeal to Appellate Authority) is 28th April (date of communication of order) and not 23rd April. Accordingly, an appeal can be filed by Mr. X to Appellate Authority within 3 months from the date of communication of order (28th April), i.e., 28th July.

**Thus, Mr. X has filed the appeal within the time limit prescribed under the GST Law.**

- II. The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Authority within 6 months from the date of communication of the decision/ order as may be specified by him.

The Appellate Authority can condone the delay in filing of appeal by 1 month if it is satisfied that there are sufficient cause for such delay. [section 107 of the CGST ACT,2017]

In the present case, the Commissioner directs his subordinate officer to file a review application with the Appellate Authority. The subordinate officer should have filed the said application on or before 3rd September (i.e., within 6 months from the date of communication of order). However, the subordinate officer filed the application on 23rd September, i.e. after the expiry of period of 6 months from the date of communication of order.

**Thus, in the given case, appeal has not been filed within the time limit prescribed under the GST law.**

However, **Appellate Authority can condone delay** in filing of Appeal upto 3rd October (up to 1 month) if it is satisfied that there was sufficient cause for such delay.

**Question No 11:**

**[ICAI Jan 21 – 4 Marks]**

Anirudh Ltd. is registered in Telangana and paid IGST on a transaction considering the same to be inter-State supply on the basis that the customer is situated in Delhi.

However, GST authorities have raised a dispute and have issued a show cause notice that since the services are rendered within Telangana, it is an Intra -State supply leviable to CGST and SGST.

Anirudh Ltd. has lost the case before the Proper Officer and also in first appeal before the Departmental Appellate Authority.

Advise Anirudh Ltd. regarding the following:

- I. Can Anirudh Ltd. file an appeal against the order of the first Appellate Authority? If yes, before which forum can Anirudh Ltd. file the said appeal?
  - II. Once a valid appeal is filed by Anirudh Ltd. before the appropriate forum, can the authorities insist Anirudh Ltd. to deposit the CGST and SGST which the authorities are claiming that Anirudh Ltd. ought to have paid but has not paid.
  - III. If Anirudh Ltd. loses at the 2nd appellate stage as well, is there any other Statutory forum available for Anirudh Ltd. to file another appeal? If yes, before which forum?
  - IV. Assuming Anirudh Ltd. loses at all levels, would there be any interest liability on Anirudh Ltd.?
- I. **Yes, Anirudh Ltd. can file an appeal against the order of the first Appellate Authority to the Appellate Tribunal.** Principal bench of the Tribunal will have jurisdiction to hear the appeal as place of supply is one of the issues in dispute.
  - II. **No, Authority can't insist, because once a valid appeal is filed** i.e., on payment of requisite pre-deposit, the recovery proceedings for the balance amount of the demand in dispute gets stayed till the disposal of appeal.
  - III. **Yes, Anirudh Ltd. can file another appeal** against the decision of the Principal bench of the Tribunal, directly before the Supreme Court.
  - IV. **No, there will be no interest liability on Anirudh Ltd.,** if it loses at all levels. A registered person who has paid IGST on a transaction considered by him to be an inter -State supply, but which is subsequently held to be an intra-State supply, is not required to pay any

interest on the amount of CGST and SGST payable because there is no shortfall of overall tax amount. (No loss of revenue to Government)

**Question No 12:**

**[ICAI Nov 20 – 5 Marks]**

Mr. Mahendran is aggrieved by the order of the Revisional Authority (RA) and wants to make an appeal to the First Appellate Authority. While commenting on the decision of Mr. Mahendran, you are also required to state the powers of the Revisional Authority to revise the orders passed by the subordinate officers under section 108 of the CGST Act, 2017.

What is the time period for the Revisional Authority to exercise the powers of revision?

**a) Invalid Decision:**

The decision of Mr. Mahendran of making an appeal to the First Appellate Authority against the order of the RA is not valid in Law. Any person aggrieved by an order passed against him by RA under CGST Act may appeal to the Appellate Tribunal, the second level of appeal.

**b) Powers of Revisional Authority:**

The powers of the RA to revise the orders passed by the subordinate officers under section 108 of the CGST Act, 2017 are as under:

- I. The RA may, on his own motion, or upon information received by him or on request from the SGST/UTGST Commissioner, call for and examine the record of any proceedings.
- II. On examination of the case records, if RA is of the view that the decision/order passed by any officer subordinate to him is erroneous and illegal/improper or has not taken into account material facts, he may stay the operation of such order for such period as he deems fit.
- III. The RA, after giving the person concerned an opportunity of being heard and after making necessary further inquiry, pass such order, as he thinks just and proper, including enhancing or modifying or annulling the said order.

**c) Time Limit for Revision:**

- I. The RA can revise an order after the expiry of a period of 6 months from the date of communication of the said order but not later than the expiry of a period of 3 years from the passing of the said decision/order. (If appeal is not filed).
- II. In case of an order subject to an appeal before Appellate Authority (AA)/Tribunal/High Court/ Supreme Court, the RA can pass an order on any point which has not been raised and decided in the appeal, before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of 3 years from the date of initial order, whichever is later. (if Appeals is filed).

**Question No 13:**

**[ICSI Dec 17 – 5 Marks]**

The proceedings under the CGST Act, 2017 before the authorities including the Appellate Tribunal can be attended by the Authorized Representative". Explain who can act as an Authorized Representative under the Act.

"Authorised Representative" shall mean a person authorised by the person referred to in sub-section to appear on his behalf of a person who is required to appear before an officer (or) Appellate authority (or) Appellate Tribunal, being

- I. his relative or regular employee: or
- II. an advocate who is entitled to practice in any Court in India, and who has not been debarred from practicing before any Court in India; or
- III. any Chartered Accountant, a Cost Accountant or a Company Secretary, who holds a certificate of practice and who has not been debarred from practice: or
- IV. a retired Officer of the Commercial Tax Department of any State Government or Union Territory or of the Board who, during his service under the Government, had worked in



a post not below the rank than that of a Group-B Gazetted Officer for a period of not less than two years:

**Provided that** such Officer shall not be entitled to appear before any proceedings under this Act for a period of one year from the date of his retirement or resignation: or

- V. any person who has been authorised to act as a goods and services tax practitioner on behalf of the concerned registered person.

**Question No 14:**

**[ICAI SM New Syllabus]**

**Does CGST law provide for any appeal to a person aggrieved by any order or decision passed against him by an Adjudicating Authority under the CGST Act?**

**Explain the related provisions under the CGST Act.**

Yes, any person aggrieved by any order or decision passed by an adjudicating authority under the CGST Act has the right to appeal to the Appellate Authority under section 107. The appeal should be filed within 3 months from the date of communication of such order or decision. However, the Appellate Authority has the power to condone the delay of up to 1 month in filing the appeal if there is a sufficient cause for the delay. The appeal can be filed only when the admitted liability and 10% of the disputed tax amount, subject to a maximum of ₹ 25 crore. (₹ 50 crore in case of IGST) is paid as pre-deposit by the appellant. However, no appeal shall be filed before (AA) against an order under section 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant. Further, no appeal can be filed against the following orders in terms of section 121: -

- (a) an order of the Commissioner or other authority empowered to direct transfer of proceedings from one officer to another officer;
- (b) an order pertaining to the seizure or retention of books of account, register and other documents; or
- (c) an order sanctioning prosecution under the Act; or
- (d) an order passed under section 80 (payment of tax in installments).

**Question No 15:**

**[ICAI SM New Syllabus]**

**Describe the provisions relating to Departmental appeal to Appellate Authority under section 107.**

Section 107(2) provides that Department can file a “review application/appeal” with the Appellate Authority.

The Commissioner may, on his own motion, or upon request from the SGST/UTGST Commissioner, examine the record of any proceedings in which an Adjudicating Authority has passed any decision/order to satisfy himself as to the legality or propriety of the said decision /order. The Commissioner may, by order, direct any officer subordinate to him to apply to the Appellate Authority within 6 months from the date of communication of the said decision/order for the determination of such points arising out of the said decision/order as may be specified him.

The AA can condone the delay in filing of appeal by 1 month if it is satisfied that there was sufficient cause for such delay [Section 107(4)]. Such application shall be dealt with by the AA as if it were an appeal made against the decision/order of the Adjudicating Authority [Section 107(3)].

There is no requirement of making a pre-deposit in case of departmental appeal.

**Question No 16:**

**[ICAI SM New Syllabus]**

**With reference to sections 107(6) and 112(8), specify the amount of mandatory pre-deposit which should be made along with every appeal made before the Appellate Authority and the Appellate Tribunal. Does making the pre-deposit have any impact on recovery proceedings?**

Section 107(6) provides that no appeal shall be filed before the Appellate Authority, unless the appellant has paid—

- a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and

- b) a sum equal to 10% of the remaining amount of tax in dispute arising from the impugned order, subject to a maximum of ₹ 20 crore. (₹ 40 crore in case of IGST)

**However, no appeal shall be filed before (AA) against an order under section 129(3), unless a sum equal to 25% of the penalty has been paid by the appellant.**

Section 112(8) lays down that no appeal can be filed before the Appellate Tribunal, unless the appellant deposits

- full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him; and
- 10% of the remaining amount of tax in dispute, in addition to the amount deposited before the AA, arising from the said order, subject to a maximum of ₹ 20 crore (₹ 40 crore in case of IGST), in relation to which appeal has been filed.

The above limits are applicable for the pre-deposits to be made under the CGST Act. Equal amount of pre-deposit is payable under the respective SGST Act as well.

Where the appellant has made the pre-deposit, the recovery proceedings for the balance amount shall be deemed to be stayed till the disposal of the appeal.

**Question No 17:**

**[ICAI SM New Syllabus]**

**With reference to section 108, elaborate whether a CGST/SGST authority can revise an order passed by his subordinates.**

Section 2(99) defines "Revisional Authority" as an authority appointed or authorised under the CGST Act for revision of decision or orders referred to in section 108.

Section 108 of the Act authorizes such "Revisional Authority" to call for and examine any order passed by his subordinates and in case he considers the order of the lower authority to be erroneous in so far as it is prejudicial to revenue and is illegal or improper or has not taken into account certain material facts, whether available at the time of issuance of the said order or not or in consequence of an observation by the Comptroller and Auditor General of India, he may, if necessary, can revise the order after giving an opportunity of being heard to the person concerned.

The "Revisional Authority" can also stay the operation of any order passed by his subordinates pending such revision. The "Revisional Authority" shall not revise any order if-

- the order has been subject to an appeal under section 107 or under section 112 or under section 117 or under section 118; or
- the period specified under section 107(2) has not yet expired or more than 3 years have expired after the passing of the decision or order sought to be revised.
- the order has already been taken up for revision under this section at any earlier stage.
- the order is a revisional order

**Question No 18:**

**[ICAI SM New Syllabus]**

**The Appellate Tribunal has the discretion to refuse to admit any appeal. Examine the correctness of the above statement.**

The statement is incorrect. Though the Appellate Tribunal does have the power to refuse to admit an appeal, it cannot refuse to admit ANY appeal. It can refuse to admit an appeal where –

- the tax or input tax credit involved or
- the difference in tax or the difference in input tax credit involved or
- the amount of fine, fees or penalty determined by such order, does not exceed ₹ 50,000.

**Question No 19:**

**[ICAI SM New Syllabus]**

In an order dated 20th August issued to GH (P) Ltd., the Joint Commissioner of CGST has confirmed IGST demand of ₹ 280 crore. The company is disputing the entire demand of IGST and wants to know the amount of pre-deposit it has to make under the IGST Act for filing an appeal before the Appellate Authority against the order of the Joint Commissioner.

Assuming that the Appellate Authority also confirms the order of the Joint Commissioner and the company wants to file an appeal before the Appellate Tribunal against the order of the



**Appellate Authority, determine the amount of pre-deposit to be made by the company for filing the said appeal.**

Section 107(6) read with section 20 of the IGST Act provides that no appeal shall be filed with the Appellate Authority unless the applicant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and a sum equal to 10% of the remaining amount of tax in dispute arising from the said order subject to a maximum of ₹ 40 crore. Thus, the amount of pre-deposit for filing an appeal with Appellate Authority cannot exceed ₹ 40 crore (for tax in dispute) where IGST demand is involved. In the given case, the amount of pre-deposit for filing an appeal with the Appellate Authority against the order of Joint Commissioner, where entire amount of tax is in dispute, is:

- (i) ₹ 28 crore [10% of the amount of tax in dispute, viz. ₹ 280 crore] or
  - (ii) ₹ 40 crore,
- whichever is less. = ₹ 28 crore.

Further, section 112(8) provides that no appeal shall be filed with the Appellate Tribunal unless the applicant has paid in full, such part of the amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him and a sum equal to 10% of the remaining amount of tax in dispute, in addition to the amount paid as pre-deposit while filing appeal to the Appellate Authority, arising from the said order subject to a maximum of ₹ 40 crores.

Thus, in the given case, the amount of pre-deposit for filing an appeal with the Appellate Tribunal against the order of the Appellate Authority, where entire amount of tax is in dispute, is:

- (i) ₹ 28 crores [10% of the amount of tax in dispute, viz. 280 crores] or
- (ii) ₹ 40 crores, whichever is less. = ₹ 28 crores.

**Question No 20:**

**[ICAI SM New Syllabus]**

**With reference to the provisions of section 120, list the cases in which appeal is not to be filed and also specify other relevant provisions in this respect.**

- 1) The Board may, on the recommendations of the GST Council, issue orders or instructions or directions fixing monetary limits for regulating filing of appeal or application by the CGST officer.
- 2) Non-filing of appeal/application by a CGST officer on account of such monetary limits fixed by the Board shall not preclude such officer from filing appeal or application in any other case involving the same or similar issues or questions of law.
- 3) No person, who is a party in application or appeal can contend that the CGST Officer has acquiesced in the decision on the disputed issue by not filing an appeal or application (on account of monetary limits).
- 4) The Appellate Tribunal or Court hearing such appeal or application shall have regard to circumstances for non-filing of appeal or application by the CGST officer on account of monetary limits fixed by the Board.

**Question No 21:**

**[ICAI MAY 23 – 4M]**

**Mr. Jumbo had filed an appeal before the Appellate Tribunal against an order of the Appellate Authority where the issue involved relates to place of supply. The order of Appellate Tribunal came also in favour of the Department. Mr. Jumbo now wants to file an appeal against the decision of the Appellate Tribunal as he feels the stand taken by him is correct.**

**You are required to advise him suitably with regard to filing of an appeal before the appellate forum higher than the Appellate Tribunal.**

Since the issue involved in Mr. Jumbo's appeal relates to the place of supply, the appeal in his case would have been decided by the Principal Bench

An appeal against the decision of the Principal Bench lies directly to the Supreme Court. Thus, in the given case Mr. Jumbo will have to file an appeal with the Supreme Court against the decision of the Appellate Tribunal.

**Question No 22:**

**[ICAI MAY 24 EXAM]**

In an order passed dated 1st April 2023 issued to Sita Ram Pvt. Ltd., the Commissioner of Central Tax, being Revisionary Authority has confirmed IGST demand of ₹ 1400 crore, penalty of ₹ 200 crore and interest of ₹ 20 crore.

Sita Ram Pvt. Ltd. admits the tax liability, penalty and interest to the extent of ₹ 200 crore, ₹ 20 crore and ₹ 10 crore respectively but wishes to litigate the balance amount of demand and thus, Sita Ram Pvt. Ltd. deposits the required amount of pre-deposit on 12th April 2023 and files an appeal with the GSTAT.

GSTAT decides the appeal in favour of Sita Ram Pvt. Ltd. on 12th June 2023. Sita Ram Pvt. Ltd. submits an application seeking refund of the pre-deposit along with applicable interest on 2nd July 2023 and the department acknowledges the application on the same day. The amount of pre-deposit is refunded to Sita Ram Pvt. Ltd. on 15th October 2023.

With reference to provisions of the GST law, compute the amount of predeposit required to be deposited before filing an appeal to GSTAT and interest payable by the Department on refund of such pre-deposit, if any, along with necessary explanations.

The amount of pre-deposit to be made by Sita Ram Pvt. Ltd. for filing the appeal to the GSTAT is as under-

- (i) full amount of tax, interest and penalty as admitted by it, i.e. ₹ 230 (200+20+10) crores and
- (ii) 10% of the remaining tax in dispute, i.e. ₹ 120 crore (10% of ₹ 1,200 crore) subject to a maximum of ₹ 40 crores (in case of IGST). = ₹ 40 crores

Therefore, total predeposit is ₹ 230 crores + ₹ 40 Crores = ₹ 270 crores

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. shall be payable from the date of payment of the amount till the date of refund of such amount. Refund amount is ₹ 40 crores, as 230 crores is admitted due

Period of delay counted from 12th April 2023 is 186 days

Interest (rounded off)= ₹ 40 crore × 9% × 186/365 = ₹ 1,83,45,205.

**Question No 23:**

**[ICAI MAY 24 EXAM]**

**Under what circumstances, the Revisional Authority (RA) cannot exercise the powers of revision under section 108 of the CGST Act, 2017. Is there any exception to the above provision?**

The RA shall not exercise the power of revision if:

- a) the order sought to be revised has been subject to an appeal before Appellate Authority (AA) or Tribunal or High Court or Supreme Court; or
- b) the period of 6 months (from the date of communication of order) has not yet expired or more than 3 years have expired after the passing of the decision/order sought to be revised; or
- c) the order has already been taken for revision at an earlier stage; or
- d) the order sought to be revised is itself a revisional order.
- e) Non appealable orders and decisions i.e. order covered under section 121.

The RA may still pass an order on any point which has not been raised and decided in an appeal before AA/Tribunal/High Court/Supreme Court, before the expiry of a period of 1 year from the date of the order in such appeal or before the expiry of a period of 3 years from the date of initial order, whichever is later.

**Question No 24:**

**[ICAI NOV 24 EXAM]**

Miss Meena is aggrieved by the order passed by the Assistant Commissioner and wants to file an appeal with Commissioner (Appeals). Her accountant, who looked after her GST related matters including filing of GST returns /other compliances online, is on leave for one month. So, she decides to file the appeal manually.

The order against which appeal is to be filed is available on the GST portal. There was no such notification issued by the commissioner that appeal can be filed manually.

With reference to the provisions of GST law, you are required to ascertain:-

- (i) Whether Miss Meena can file an appeal to the commissioner (Appeals) in this case?
- (ii) Whether decision taken by Miss Meena to manually file an appeal is valid?

Also explain the relevant legal provisions in support of your answer.

I. An appeal may be filed to the Commissioner (Appeals) against an adjudicating order if such an order is passed by the Additional or Joint Commissioner.

However, where the order is passed by the Assistant Commissioner, the appeal is to be filed to any officer not below the rank of Joint Commissioner (Appeals).

Thus, in the given case, appeal cannot be filed to the Commissioner (Appeals), but to any officer not below the rank of Joint Commissioner (Appeals).

II. An appeal to the Appellate Authority may be filed manually only if-

- (i) the Commissioner has so notified, or
- (ii) the decision or order to be appealed against is not available on the common portal.

Therefore, in light of the facts of the given case, the appeal cannot be filed manually.

**Question No 25:**

**[ICAI RTP MAY 25]**

In an appeal filed with the High Court by Prateek Ltd., on the question whether activity undertaken by Prateek Ltd. amounts to supply, the appeal was decided in favour of Prateek Ltd. The amount of tax, interest and penalty involved were IGST of ₹ 1.2 crore, interest of ₹ 60 lakh and penalty of ₹ 50 lakh.

However, the Department does not agree with the order passed by the High Court and contends that the said activity amounts to supply under GST. The Department wants to file an appeal before the Supreme Court relating to the dispute pertaining to demand of tax, interest and penalty. You are required to examine whether appeal can be filed by the Department in the given case. Will your answer change, in case matter is related to valuation of services instead of determining whether the said activity amounts to supply?

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, viz. ₹ 1.2 crore (amount of tax only) in the given case. Thus, appeal cannot be filed by the Department to Supreme Court in the given case as the amount involved as per the circular does not exceed the monetary limit of ₹ 2 crore.

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:

- i. 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
- ii. 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
- iii. 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.

In view of the 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.

**Question No 26:**

**[RTP SEPT 25]**

**The Appellate Authority (AA) passed an order against Venue Automobiles Pvt. Ltd. demanding IGST of ₹ 1,200 crore. Venue Automobiles Pvt. Ltd. wishes to file an appeal against the order of the AA. The company admits the liability of ₹ 100 crore but wishes to litigate the balance demand amount and thus, files an appeal to the Appellate Tribunal. You are required to determine the amount of the pre-deposit, which is required to be paid by Venue Automobiles Pvt. Ltd. for filing the appeal.**

Section 112(8) lays down that no appeal can be filed before the Appellate Tribunal, unless the appellant deposits:

- a) full amount of tax, interest, fine, fee and penalty arising from the impugned order, as is admitted by him, and
- b) 10% of the remaining amount of tax in dispute, in addition to the amount deposited before the AA, arising from the said order, subject to a maximum of ₹ 20 crore (₹ 40 crore in case of IGST), in relation to which appeal has been filed.

Accordingly, in the given case, the amount of pre-deposit to be made by Venue Automobiles Pvt. Ltd. for filing the appeal to the Appellate Tribunal is computed as under-

- (i) Full amount of tax, interest and penalty as admitted by the company,  
i.e. ₹ 100 crore and
- (ii) 10% of the tax in dispute, i.e. ₹ 110 crore (10% of ₹ 1,100 crore) subject to a maximum of ₹ 40 crore

Therefore, total pre-deposit to be made by the company before filing an appeal in the Appellate Tribunal is ₹ 100 crore (total liability admitted by the company) plus ₹ 40 crore, i.e. ₹ 140 crore

SEGMENT 21 – ADVANCE RULING

No amendments in this segment

SEGMENT 22 – ETHICS AND OTHER PROVISIONS

No amendments in this segment

SEGMENT 23 – TAXABLE EVENT UNDER CUSTOMS

No amendments in this segment

SEGMENT 24 – EXEMPTIONS UNDER CUSTOMS

No amendments in this segment

SEGMENT 25 – CLASSIFICATION OF GOODS AND TYPES OF  
CUSTOMS DUTIES

No amendments in this segment

SEGMENT 26 – VALUATION UNDER CUSTOMS

No amendments in this segment



SEGMENT 27 – PROCEDURES UNDER CUSTOMS

29. IMPORT OF GOODS AT CONCESSIONAL RATE OF DUTY RULES OR FOR SPECIFIED END USE RULES, 2022:



FAQ'S IN THIS REGARD:

- What information to be submitted?
  - Name and address of the importer and his job-worker, if any
  - Goods produced or process undertaken
  - Nature and description of imported goods used in above
  - Nature of output service rendered using imported goods
  - Particular of exemption notification applicable on such import
  - The intended port of import



- (vii) Particulars of premises intended to be used in case of unit transfer  
(viii) Details of end use recipient
2. What is the procedure for sending the goods for jobwork?
    - Importer shall maintain the record of goods sent on job work and mention the same in **Quarterly** statement
    - Such goods are sent under the cover of **Delivery challan (+) E-Way Bill**
    - Such goods should be received after processing within 1 year from the date of Delivery challan
    - Job worker shall maintain necessary records w.r.to such goods.
  3. Can the imported goods be transferred from one unit to another?
    - [Yes] The importer can send goods from one unit to another and shall ensure that
    - Goods are sent under the cover of **invoice (+) E-Way Bill**
    - Maintain accounts & records regarding goods send, received and waste generated, if any during manufacturing process and mention the same in **Quarterly** statement
  4. What is the procedure for supplying imported goods to the end use recipient?
    - Importer shall maintain the record of goods sent on job work and mention the same in **Quarterly** statement
    - Such goods are sent under the cover of **Invoice (+) E-Way Bill**
    - In case of supply for replenishment or export against supply, the end use recipient shall maintain records regarding receipt of goods, manufacturing process undertaken, waste generated, if any and produce the details to the concerned officer, as and when asked.
  5. Can capital goods be imported under these rules?  
Capital goods [Goods which are capitalized in the books of importer] can be imported at concessional rate for use in manufacture of notified goods or providing notified services. After that, the goods can be cleared in the domestic market on payment of duty and interest, at **depreciated value**.
  6. What is the type of bond to be executed?  
Continuity bond with such surety (or) security as deemed appropriate by jurisdictional AC/DC of customs, with an undertaking to pay an amount equal to difference between the duty leviable on inputs but for the exemption and that already paid, if any along with applicable interest.
  7. What is the rate of interest and period for which interest is computed?  
Interest @ 15% p.a. from the date of import of goods (i.e., out of customs charge order date) Till the date of payment.
  8. What are the accounts and records to be maintained by importers?
    - (i) Quantity and Value of goods imported
    - (ii) Date of receipt of goods imported in the relevant premises
    - (iii) Quantity of goods consumed
    - (iv) Goods sent for job work and received from job work
    - (v) Goods re-exported if any and
    - (vi) Goods remaining in stock
 The above accounts and records shall be produced to AC/DC of customs as and when demanded

9. How to compute the depreciated value of capital goods and Customs Duty on such capital goods?

Value of the imported goods (-) a % depending upon the period FROM the date it is put to use upto the date of its clearance, as follows

For every quarter or part thereof in **1st year @ 4%**

For every quarter or part thereof in **2nd year & 3rd year @ 3%**

For every quarter or part thereof in **4<sup>th</sup> year & 5<sup>th</sup> year @ 2.5%**

And thereafter for every **quarter or part thereof @ 2% Quarter = Period comprising of 3 months ending march, June, Sept and Dec**

Customs Duty on above shall be equal to difference between the duty leviable on such goods but for the exemption availed and that already paid, if any at the time of importation.

10. When the unutilized or defective goods should be exported or sold in India?

Within **1 year (+) 3 months** from the date of import (Not applicable in case of Capital goods)

11. What are the other compliances to be followed by importer?

A **Quarterly** statement to be filed within 10th of the month following every **quarter**.

**QUESTION:**

Suhasi Electronics Pvt. Ltd., an importer, who availed the benefit of the notification imported the raw materials for manufacturing LED panels. No condition or time period has been specified in the notification in relation to re export of unutilized or defective goods, so imported. The goods were imported on 10th February, 2024.

However, a small portion of the goods received were found to be defective and remained unutilized due to a production shift in the company. Suhasi Electronics approached you to obtain advice for dealing with these defective and unutilized goods. On the basis of provisions of the Customs (Import of Goods at Concessional Rate of Duty or for Specified Purposes) Rules, 2022 as amended, you are required to discuss:

- Whether Suhasi Electronics can re-export these unutilised or defective goods? If yes, what is the maximum permissible time period, in which Suhasi Electronics can re-export the goods?
- What are the conditions applicable in case of re-export of goods?
- If Suhasi Electronics chooses to clear the goods for home consumption, explain the procedure for the same.

- As per rule 10 of the Customs (Import of Goods at Concessional Rate of Duty or for Specified Purposes) Rules, 2022 as amended, the importer who has availed the benefit of a notification shall use the goods imported in accordance with the conditions mentioned in the concerned notification within the period and with respect to unutilised or defective goods, so imported, the importer shall have an option to either re-export or clear the same for home consumption.

Thus, Suhasi Electronics Pvt. Ltd. can re-export such defective and unutilized goods.

The re-export or home clearance must be made within –

- within the period specified in the notification;
- within one year from the date of import, where the time period is not specified in the notification;

However, the said period of one year can be further extended by the jurisdictional Commissioner for a period not exceeding 3 months, if sufficient reason is shown that the causes for not conforming to the time period were beyond the importer's control.

So, re-export can be made by 9th February, 2025 in this case as no condition or time period has been specified in the notification in relation to re export of unutilized or defective goods, so imported. Further, the date of re-export can be extended by the jurisdictional Commissioner upto 3 months.

(b) Conditions applicable for re-export of goods:

- (i) Re export of the unutilized or defective goods shall be recorded by the importer in the quarterly statement by providing the details of necessary export documents.
- (ii) The value of such goods for re-export shall not be less than the value of the said goods at the time of import.

(c) If Suhasi Electronics opts to clear the goods for home consumption:

- It can make voluntary payment of applicable customs duties along with interest on the common portal.
- The details of such duty payment and clearance must be disclosed in the importer's quarterly statement.

## SEGMENT 28 – BAGGAGE PROVISIONS

No amendments in this segment

## SEGMENT 29 – STORES

No amendments in this segment

## SEGMENT 30 – WAREHOUSING

No amendments in this segment

## SEGMENT 31 – REFUND UNDER CUSTOMS

No amendments in this segment

## SEGMENT 32 – FOREIGN TRADE POLICY

### 30. STAKEHOLDER CONSULTATION BY GOVERNMENT:



Government may ask for suggestions from exporters, importers, and experts while making or changing the Foreign Trade Policy (FTP).



If suggestions are asked, 30 days may be given to respond.



However, the Government can make changes without asking anyone



If suggestions are not accepted, the Government may explain why - but only if it wants to



Reasons may not be explained, if



It affects trade with other countries or national security



It goes against government policies or plans



It's irrelevant or benefits only a few people



It requires sharing confidential details



No one has a legal right to demand reasons if their suggestion is not accepted