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CA FINAL NOVEMBER 2018 EXAM

SUBJECT - IDT

Test Code - FNJ 7013 N

BRANCH - () (Date :)

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Answer 1:
(A)

Computation of GST liability of Singhal Brothers

Particulars	Rs.
Price of chemicals (Rs. 50,000 x 30 tons) [Note-1]	15,00,000
Freight [Note-2]	1,80,000
Packing charges [Note-3]	1,10,000
Weighing charges [Note-3]	20,000
Cost of special instrument [Note-4]	3,10,000
Inspection charges [Note-5]	12,000
Government subsidy [Note-6]	-
Interest for late payment [Note 7] (Rs.15,000 x 100/118)	<u>12,712</u>
Value of taxable supply	21,44,712
Tax liability for the month of September 20XX	
Value of taxable supply (Rs. 21,44,712- Rs. 12,712) [Note-8]	21,32,000
CGST @ 9%	1,91,880
SGST @ 9%	1,91,880
Tax liability for the month of November 20XX	
Interest for late consideration [Note-9]	12,712
CGST payable @ 9%	1,144
SGST payable @ 9%	1,144

Due date of deposit of GST

Particulars	Time of Supply	Due date
GST liability of Rs. 3,83,760 for the taxable supply made by Singhal Brothers [Note-10]	September 8, 20XX	October 20, 20XX
Interest amounting to Rs. 2,288 [Note-9]	November, 20XX	December 20XX

Notes:

- (1) As per section 15(1) of the CGST Act, 2017, the value of a supply is the transaction value i.e., the price actually paid or payable for the said supply when the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.
- (2) The given supply is a composite supply involving supply of goods (chemical) and services (freight) where the principal supply is the supply of goods.
As per section 8(a) of the CGST Act, 2017, a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly. Thus, tax rate applicable to the goods (chemical) has been considered.
- (3) All incidental expenses including packing charged by the supplier to the recipient of a supply are includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017.
- (4) Any amount charged for anything done by the supplier in respect of the supply of goods at the time of, or before delivery of goods is includible in the value of supply in terms of section 15(2)(c) of CGST Act, 2017.
- (5) Any amount that the supplier is liable to pay in relation to supply but incurred by the recipient of supply and not included in the price actually paid for the goods is includible in the value of

supply in terms of section 15(2)(b) of CGST Act, 2017.

- (6) Subsidies not directly linked to the price and provided by the Central Government and State Governments are not includible in the value of supply in terms of section 15(2)(e) of the CGST Act, 2017.
- (7) Interest for the delayed payment of any consideration for any supply is includible in the value of supply in terms of section 15(2)(d) of the CGST Act, 2017.

The interest has to be considered as cum tax value and tax payable thereon has to be computed by making back calculations in terms of rule 35 of CGST Rules, 2017.

- (8) The tax liability for the month of September, 20XX will not include the tax payable on the amount of interest as the tax liability for the delayed payment of interest arises on the date of receipt of interest in terms of section 12(6) of CGST Act, 2017.
- (9) As per section 12(6) of the CGST Act, 2017, the time of supply in case of addition in value by way of interest for delayed payment of consideration for goods is the date on which the supplier receives such addition in value. Thus, the time of supply of interest received on account of delayed payment of consideration is the date of receipt of interest.
- (10) The time of supply for suppliers of goods having aggregate turnover up to Rs. 1.5 crore in the preceding financial year (excluding composition suppliers) will be the time of issue of invoice vide **Notification No. 40/2017 CT dated 13.10.2017**. Thus in the present case, the time of supply would be date of issue of invoice i.e. September 8, 20XX assuming that aggregate turnover of Singhal Brothers in the preceding financial year is upto Rs. 1.5 crore.

However, if the aggregate turnover of Singhal Brothers in the preceding financial year is more than Rs. 1.5 crore, then also the time of supply would be the date of issue of invoice i.e. September 8, 20XX in terms of section 12(2) of CGST Act, 2017 as the invoice for the supply has been issued earlier than the date of receipt of payment

- (11) As per section 39(1) of CGST Act, 2017 every person registered under regular scheme of payment of tax has to furnish the prescribed return on or before 20th of the succeeding month. Further, section 39(7) provides that every regular registered person is liable to pay tax due to the Government by the last date on which he is required to furnish such return. Thus, GST is liable to be paid on or before 20th of the succeeding month.

(B)

As per section 13(2) of the IGST Act, 2017, in case where the location of the supplier of services or the location of the recipient of services is outside India, the place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services. Sub-sections (3) to (13) provide the mechanism to determine the place of supply in certain specific situations.

The given case does not fall under any of such specific situations and thus, the place of supply in this case will be determined under sub-section (2) of section 13. Thus, the place of supply of services in this case is the location of recipient of services i.e., USA.

As per section 2(6) of the IGST Act, 2017, export of services means the supply of any service when,—

- (a) the supplier of service is located in India;
- (b) the recipient of service is located outside India;
- (c) the place of supply of service is outside India;
- (d) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (e) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Since all the above five conditions are fulfilled in the given case, the same will be considered as an export of service.

(C)

As per rule 3 of the Baggage Rules, 2016, an Indian resident arriving from any country other than Nepal, Bhutan or Myanmar, shall be allowed clearance free of duty articles in his bona fide baggage, that is to say, used personal effects and travel souvenirs; and articles [other than certain specified articles], upto the value of Rs. 50,000 if these are carried on the person or in the accompanied baggage of the passenger.

Thus, there is no customs duty on used personal effects and travel souvenirs and general duty free baggage allowance is Rs. 50,000 per passenger. Thus, duty liability of Mr. Iyer and his wife is nil for the used personal effects worth Rs. 83,000 and 2 music systems each worth Rs. 50,000.

As per rule 5 of the Baggage Rules, 2016, the jewellery allowance is as follows:

Jewellery brought by	Duty free allowance
Gentleman Passenger	Jewellery upto a weight of 20 grams with a value cap of Rs. 50,000
Lady Passenger	Jewellery upto a weight of 40 grams with a value cap of Rs. 1,00,000

However, the jewellery allowance is applicable only to a passenger residing abroad for more than 1 year.

Consequently, there is no duty liability on the jewellery brought by Mr. Iyer as he had stayed abroad for period exceeding 1 year and weight of the jewellery brought by him is 20 grams with a value less than Rs. 50,000.

However, his wife is not eligible for this additional jewellery allowance as she had stayed abroad for a period of less than a year. Thus, she has to pay customs duty on the entire amount of jewellery brought by her as she has already exhausted the general duty free baggage allowance of Rs. 50,000 allowed under rule 3.

Answer 2:

(A)

Yes, the company will succeed. The facts of the given situation are similar to the case of *CCus vs. Biecco Lawrie Ltd. 2008 (223) ELT 3 (SC)* wherein the Supreme Court has held that where duty on the warehoused goods is paid and out of charge order for home consumption is made by the proper officer in compliance of the provisions of section 68, the goods allowed to be retained for storage in the warehouse as permitted under section 49 of the Customs Act are not treated as warehoused goods and importer would not be required to pay anything more.

Section 49 of the Customs Act, 1962 inter alia also provides that imported goods entered for home consumption if stored in a public warehouse, or in a private warehouse on the application of the importer and if the same cannot be cleared within a reasonable time, shall not be deemed to be warehoused goods for the purposes of this Act, and accordingly the provisions of Chapter IX shall not apply to such goods.

(B)

In case of domestic supply

If the recipient is registered, the location of such person is the place of supply. However, if the recipient is not registered, the place of supply is the place where the goods are handed over for transportation [Section 12(8) of the IGST Act].

In case of international supply

The place of supply of transport services, other than the courier services, is the destination of goods. For courier, the place of supply of services is where goods are handed over to courier. However, if

the courier services are performed even partially in India, the place of supply is deemed as India [Section 13(2), 13(6) and 13(9) of the IGST Act].

(C)

Rule 32(2) of the CGST Rules, 2017 prescribes the provisions for determining the value of supply of services in relation to the purchase or sale of foreign currency, including money changing.

(A) Determination of value under rule 32(2)(a) of the CGST Rules, 2017

(i) Rule 32(2)(a) of the CGST Act, 2017 provides that the value of supply of services for a currency, when exchanged from, or to, Indian Rupees, shall be equal to the difference in the buying rate or the selling rate, as the case may be, and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency. Thus, value of supply is:

$$= (\text{RBI reference for US \$} - \text{Buying rate of US \$}) \times \text{Total number of units of US \$ bought}$$

$$= (\text{Rs. } 68.6 - \text{Rs. } 68) \times 1,000$$

$$= \text{Rs. } 600$$

(ii) First proviso to rule 32(2)(a) of the CGST Act, 2017 lays down that when the RBI reference rate for a currency is not available, the value shall be 1% of the gross amount of Indian Rupees provided or received by the person changing the money. Thus, value of supply is:

$$= 1\% \text{ of the gross amount of Indian Rupees received}$$

$$= 1\% \text{ of } (\text{Rs. } 67.50 \times 2,000)$$

$$= \text{Rs. } 1,350$$

(B) Determination of value under rule 32(2)(b) of the CGST Rules, 2017

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

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

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

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

- (i) Gross amount of currency exchanged = Rs. 68 × 1,000 = Rs. 68,000. Since the gross amount of currency exchanged is less than Rs. 1,00,000, value of supply is 1% of the gross amount of currency exchanged [1% of Rs. 68,000] or Rs. 250, whichever is higher.

= Rs. 680

- (ii) Gross amount of currency exchanged = Rs. 67.50 × 2,000 = Rs. 1,35,000. Since the gross amount of currency exchanged exceeds Rs. 1,00,000, but less than Rs. 10,00,000, value of supply is Rs. 1,000 + 0.50% of (Rs. 1,35,000 - Rs. 1,00,000).

= Rs. 1,175

(D)

The action of the Revenue is not justified in law. The High Court in a similar case of Vishnu M Harlalka v. Union of India 2013 (294) ELT 5 (Bom) directed the Department to pay interest on the balance of the sale proceeds.

The High Court observed that inordinate delay in payment of balance sale proceeds by the Department is not justifiable. The Department cannot plead that the Customs Act, 1962 provides for the payment of interest only in respect of refund of duty and interest and hence, the assessee would not be entitled to interest on the balance of the sale proceeds which were directed to be paid by the Settlement Commission.

The High Court clarified that acceptance of such a submission would mean that despite an order of the competent authority directing the Department to grant a refund; the Department can wait for an inordinately long period to grant the refund.

Answer 3:

(A)

In both DFIA and Advance Authorization schemes, import of inputs, oil and catalyst which are required for export products are permitted without payment of customs duty.

The differences between DFIA and Advance Authorisation schemes are as follows -

- (i) Advance Authorisation is not transferable. DFIA is transferable after export obligation is fulfilled.
- (ii) Advance Authorisation scheme requires 15% value addition, while in case of DFIA, minimum 20% value addition is required.
- (iii) Advance Authorisation scheme is available to gem and jewellery sector but not DFIA is not available to the said sector.
- (iv) DFIA cannot be issued where SION (Standard Input Output Norms) prescribes actual user condition [as the material is transferable after fulfillment of export obligation].
- (v) Advance Authorisation can be issued even if SION for that product is not fixed. DIFA can be issued only if SION has been fixed for the product to be exported.

(B)

“Mensrea” means guilty mind, or criminal intent in committing the act. It is the mental element of a person's intention to commit a crime or knowledge that one's action or lack of action would cause a crime to be committed.

Yes, ‘mensrea’ or culpable mental state is necessary for prosecution under CGST Act. However, Section 135 of CGST Act, 2017 presumes the existence of a state of mind (i.e. “culpable mental

state” or mensrea) required to commit an offence if it cannot be committed without such a state of mind.

(C)

Yes, transfer of stock made by Modest Ltd. are taxable under GST. The definition of supply given under section 7 of CGST Act, 2017 is an inclusive one. It does not specify that supply is to be made by one person to the another. So, self-supplies are to be treated as supply in terms of section 7 of CGST Act. Further, section 25(5) provides that where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons.

Clause (2) of Schedule I of CGST Act, 2017 inter alia provides that supply of goods between distinct persons as specified in section 25 made in the course or furtherance of business is to treated as supply even if made without consideration.

Inter-state self-supplies such as stock transfers, branch transfers or consignment sales shall be taxable under IGST even though such transactions may not involve payment of consideration. Every supplier is liable to register under the GST law in the State or Union territory from where he makes a taxable supply of goods or services or both in terms of Section 22 of the CGST Act. However, intra-state self- supplies are not taxable subject to not opting for registration as business vertical.

(D)

As per section 117(1) of the CGST Act, 2017, an appeal against orders passed by the State Bench or Area Benches of the Tribunal lies to the High Court if the High Court is satisfied that such an appeal involves a substantial question of law.

However, appeal against orders passed by the National Bench or Regional Benches of the Tribunal lies to the Supreme Court and not High Court. As per section 109(5) of the Act, only the National Bench or Regional Benches of the Tribunal can decide appeals where one of the issues involved relates to the place of supply.

Since the issue involved in Mr. A’s case relates to place of supply, the appeal in his case would have been decided by the National Bench or Regional Bench of the Tribunal. Thus, Mr. A will have to file an appeal with the Supreme Court and not with the High Court.

(E)

Section 60(4) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is higher than under provisional assessment i.e. tax becomes due consequent to order of final assessment, the registered person shall be liable to pay interest on tax payable on supply of goods but not paid on the due date, at the rate specified under section 50(1) [18% p.a.], from the first day after the due date of payment of tax in respect of the goods supplied under provisional assessment till the date of actual payment, whether such amount is paid before/after the issuance of order for final assessment.

In the given case, due date for payment of tax on goods cleared on 25.01.20XX under provisional assessment is 20.02.20XX.

In view of the provisions of section 60(4), in the given case, Kulbushan & Sons is liable to pay following interest in respect of 1st consignment:

= Rs. 1,80,000 × 18% × 48/365

= Rs. 4,261 (rounded off)

Further, section 60(5) of the CGST Act, 2017 stipulates that where the tax liability as per the final assessment is less than in provisional assessment i.e. tax becomes refundable consequent to the order of final assessment, the registered person shall be paid interest at the rate specified under section 56 [6% p.a.] from the date immediately after the expiry of

60 days from the date of receipt of application under section 54(1) till the date of refund of such tax.

However, since in the given case, refund has been made (05.06.20XX) within 60 days from the date of receipt of application of refund (09.04.20XX), interest is not payable to Kulbhushan & Sons on tax refunded in respect of 2nd consignment.

Answer 4:

(A)

As per rule 39(d) of CGST Rules relating to ITC, -

- Rs. 3 lakh is attributable to Tumkur unit, and will be transferred to Tumkur unit only.
- Of the remaining Rs. 6 lakh, Hassan unit will not be entitled to any credit as ITC is distributed to only those recipients which supply goods and /or services.
- Rs. 6 lakh have to be distributed among Tumkur unit and the service centres in Hyderabad and Chennai in proportion of their turnover in the previous FY, that is, in 2017-18.
 - Tumkur unit will get $(27 \text{ crore} / 30 \text{ crore}) \times 6 \text{ lakh} = \text{Rs. } 5.4 \text{ lakh}$;
 - Hyderabad service centre will get $(1 \text{ crore} / 30 \text{ crore}) \times 6 \text{ lakh} = \text{Rs. } 20,000$; and
 - Chennai service centre will get $(2 \text{ crore} / 30 \text{ crore}) \times 6 \text{ Lakh} = \text{Rs. } 40,000$.

(B)

No, Trend Footwear cannot opt for composition scheme. Section 10 of CGST Act, 2017 inter alia provides that registered person, whose aggregate turnover in the preceding financial year does not exceed one crore rupees, can opt to pay tax under composition scheme in the current year.

However, section 10(2) inter alia provides that registered person is eligible to opt for composition scheme if he is not engaged in the supply of services other than restaurant services. In the present case, Trend Footwear is engaged in the supply of services other than restaurant services, as Trend Footwear has rental income from the basement of a commercial building, so it cannot opt for composition scheme irrespective of its aggregate turnover in the preceding financial year.

(C)

Computation of total customs duty and integrated tax payable

Particulars	Amount
FOB value computed by Customs Officer (including design and development charges)	20,000 US \$
Exchange rate [Note 1]	Rs. 60 per \$
	(Rs.)
FOB value computed by Customs Officer (in rupees)	12,00,000.00
Add: Commission payable to agent in India	12,500.00
FOB value as per customs	12,12,500.00
Add: Air freight (Rs. 12,12,500 × 20%) [Note 2]	2,42,500.00
Add: Insurance (1.125% of Rs. 12,12,500) [Note 3]	13,640.63
CIF value for customs purposes	14,68,640.63

Assessable value	14 68,640.63
Add: Basic custom duty @ 10% (Rs. 14,68,640.63 × 10%) – rounded off [Note 4]	1,46,864.00
Add: Education Cess @ 2% & Secondary and higher education cess @ 1% on Rs. 1,46,864-rounded off	<u>4,406.00</u>
Total	16,19,910.63
Integrated tax leviable under section 3(7) of Customs Tariff Act, 1975 @ 12% (Rs. 16,19,909.63 × 12%) [Rounded off] [Note 5]	1,94,389.15
Total customs duty and integrated tax payable	3,45,659.00

Notes:

1. Rate of exchange notified by CBEC on the date of filing of bill of entry has to be considered [Third proviso to section 14 of the Customs Act, 1962].
2. In case of goods imported by air, cost of loading, unloading & handling charges associated with the delivery of the imported goods to the place of importation cannot exceed 20% of FOB value [Fifth proviso to rule 10(2) of the Customs (Determination of Value of Imported Goods) Rules, 2007].
3. Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
4. Rate of duty will be the rate in force on the date of presentation of bill of entry or on the date of arrival of the aircraft, whichever is later [Proviso to section 15(1) of the Customs Act, 1962].
5. Integrated tax leviable under section 3(7) of the Customs Tariff Act, 1975 is levied on the sum total of the assessable value of the imported goods, customs duties and applicable education cess and secondary and higher education cess.

(D)

Casual Taxable Person	Non-resident Taxable Person
Occasionally undertakes transactions involving supply of goods or services or both in a State or Union territory where he has no fixed place of business.	Occasionally undertakes transactions involving supply of goods or services or both, but has no fixed place of business or residence in India.
Has a PAN Number	Do not have a PAN Number; A non-resident person, if having PAN number may take registration as a casual taxable person
Same application form for registration as for normal taxable persons.	Separate application form for registration by non-resident taxable person.
Has to undertake transactions in the course or furtherance of business	Business test is absent in the definition.
Can claim input tax credit of all inward supplies	Can get input tax credit only in respect of import of goods and /or services.

(E)

(i) As per section 74 of the Customs Act, 1962, the duty paid imported goods are required to be entered for export within two years from the date of payment of duty on the importation. This period can be extended by CBEC if the importer shows sufficient reason for not exporting the goods within two years.

(ii) If duty paid imported goods are exported without use, then 98% of such duty is re-paid as drawback.

(iii) Yes, duty drawback is allowed when wearing apparels are re-exported without being used. However, *Notification No. 19/65 Cus dated 06.02.1965* as amended provides that if wearing apparels have been used after their importation into India, drawback of import duty paid thereon shall not be allowed when they are exported out of India.

Answer 5:

(A)

Section 54(3)(ii) of the CGST Act, 2017 allows refund of unutilized input tax credit (ITC) at the end of any tax period to a registered person where the credit has accumulated on account of inverted duty structure i.e. rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council.

In the given case, the rates of tax on inputs used in Products A and B (18% each) are higher than rates of tax on output supplies of Products A and B (5% each). However, Product B is notified as a product, in respect of which no refund of unutilised ITC shall be allowed under section 54(3)(ii) of the CGST Act, 2017. Therefore, only Product A is eligible for refund under section 54(3)(ii).

Further, rule 89(5) of the CGST Rules, 2017 stipulates that in the case of refund on account of inverted duty structure, refund of ITC shall be granted as per the following formula –

$$\text{Maximum Refund Amount} = \frac{\text{Turnover of inverted rated supply of goods} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} - \text{Tax payable on such inverted rated supply of goods}$$

where,-

A. "Net ITC" means input tax credit availed on inputs and input services during the relevant period;

B. "Adjusted Total turnover" means the turnover in a State or a Union territory, excluding the value of exempt supplies other than zero-rated supplies, during the relevant period.

In accordance with the aforesaid provisions, the maximum refund amount which Super Engineering Works is eligible to claim shall be computed as follows:

Tax payable on inverted rated supply of Product A = Rs. 5,00,000 × 5% = Rs. 25,000

Net ITC = Rs. 1,18,000 (Rs. 54,000 + Rs. 54,000 + Rs. 10,000) [Net ITC availed during the relevant period needs to be considered irrespective of whether the ITC pertains to inputs eligible for refund of inverted rated supply of goods or not]

Adjusted Total Turnover = Rs. 9,50,000 (Rs. 5,00,000 + Rs. 3,50,000 + Rs. 1,00,000)

Turnover of inverted rated supply of Product A = Rs. 5,00,000

Maximum refund amount for Super Engineering Works is as follows:

$$= [(Rs. 5,00,000 \times Rs. 1,18,000) / Rs. 9,50,000] - Rs. 25,000$$

$$= Rs. 37,105 \text{ (rounded off)}$$

(B)

(i) 'Clear first-Pay later' i.e., deferred duty payment is a mechanism for delinking duty payment and customs clearance. The aim is to have a seamless wharf to warehouse transit in order to facilitate just-in-time manufacturing. This scheme is in force w.e.f. 16th November, 2016.

(ii) Central Government has permitted importers certified under Authorized Economic Operator programme as AEO (Tier-Two) and AEO (Tier-Three) to make deferred payment of import duty (eligible importers).

As a part of the ease of doing business focus of the Government of India, the CBEC has rolled out the AEO (Authorized Economic Operator) programme.

It is a trade facilitation move wherein benefits are extended to the entities who have demonstrated strong internal control systems and willingness to comply with the laws administered by the CBEC.

(iii) The due dates for payment of deferred duty are -

S. No.	Goods corresponding to bill of entry returned for payment from	Due date of payment of duty, inclusive of the period (excluding holidays) as mentioned in section 47(2)
1.	1 st day to 15 th day of any month	16 th day of that month
2.	16 th day till the last day of any month other than March	1 st day of the following month
3.	16 th day till the 31 st day of March	31 st March

(iv) If there is default in payment of duty by due date more than once in three consecutive months, the facility of deferred payment will not be allowed unless the duty with interest has been paid in full.

The benefit of deferred payment of duty will not be available in respect of the goods which have not been assessed or not declared by the importer in the bill of entry.

(C)

The view taken by ABC Consultancy is not valid in law. The scope of supply is defined by section 7(1) of CGST Act, 2017. It includes deemed supply given under Schedule II. The paragraph 5(e) of Schedule II provides that agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act is treated as supply of service.

Thus, any consideration received for agreeing to the obligation to refrain from an act, is subject to GST. Consideration received for non-compete agreement is deemed as consideration for supply of services. Consideration of Rs. 45 lakh received on the promise of ABC consultancy of not providing similar services to any other person, is consideration for supply which is chargeable to GST.

Since GST is not separately collected, it will be assumed that it is included in Rs. 45 lakh. Rule 35 of CGST Rules, 2017 provides that where the value of supply is inclusive of GST, the tax amount is determined in the following manner:

Tax amount = (Value inclusive of taxes x GST rate in %) [IGST or CGST, SGST/UTGST] / (100 + sum of GST rates in %)

Consequently, value of taxable supply will be Rs.38,13,559 (i.e., Rs.45,00,000 x 100/118). GST liability on Rs.38,13,559 will be calculated as follows-

Particulars	Rs.
Taxable value of supply	38,13,559
Add: CGST @ 9% of Rs. 38,13,559	3,43,220
SGST @ 9% of Rs. 38,13,559	3,43,220
Total GST liability	6,86,440

(D)

The provisions relating to liability of directors of private company are contained in section 89 of the CGST Act. It provides that notwithstanding anything contained in the Companies Act, 2013, where any tax, interest or penalty due from a private company in respect of any supply of goods or services or both for any period cannot be recovered, then, every person who was a director of the private company during such period shall, jointly and severally, be liable for the payment of such tax, interest or penalty unless he proves that the non-recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

Where a private company is converted into a public company and the tax, interest or penalty in respect of any supply of goods or services or both for any period during which such company was a private company cannot be recovered before such conversion, then, above provisions shall apply to any person who was a director of such private company in relation to any tax, interest or penalty in respect of such supply of goods or services or both of such private company. However, this exception does not apply to any personal penalty imposed on such director.

Answer 6:

(A)

Computation of GST Liability of Super Engineering Works Ltd., Chennai for the month of January 20XX

S.No.	Particulars	Rs.
A.	Items sent in container truck to own location in Karnataka - IGST @ 12% [Note 1]	36,000
	Container truck sent to own location in Karnataka [Note 2]	-
B.	Stand-alone machine sent in container truck to client location in Karnataka, for carrying out repairs [Note 3]	-
	Container truck sent to client location in Karnataka [Note 3]	-
	Items sent in container truck to client location in Karnataka, for carrying out repairs [Note 4]	-
C.	Container truck sent to client location in Tamil Nadu [Note 3]	-
	Items sent in container truck to client location in Tamil Nadu, for carrying out repairs [Note 4]	-
D.	Invoices raised for repair work carried out in Karnataka: IGST @ 18% [Note 5 and Note 6]	16,20,000

E.	Invoices raised for repair work carried out in Tamil Nadu: CGST 9% + SGST 9% [Note 5 and Note 7]	3,24,000
Total GST liability		19,80,000

Notes:

- (1) Movement of goods without any consideration to a 'distinct person' as specified in section 25(4) of the CGST Act, 2017 is deemed to be a supply in terms of Schedule I of the said Act. The purchase value is taken as taxable value, being the open market value in terms of rule 28(a) of the CGST Rules 2017. (However, if the regional office is eligible to take full input tax credit, any value may be declared in the tax invoice and that will be taken to be the open market value in terms of the second proviso to the same rule.)

In the given case-

- the location of the supplier is in Chennai (Tamil Nadu); and
- the place of supply of items contained in the truck is the location of such goods at the time at which the movement of goods terminates for delivery to the recipient i.e., Karnataka in terms of section 10(1)(a) of the IGST Act, 2017.

Therefore, the given supply of items is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017]. Thus, the supply is leviable to IGST in terms of section 5(1) of the IGST Act, 2017.

Since the activity is a supply, a tax invoice is to be issued by Power Engineering Pvt. Ltd. in terms of section 31(1)(a) of the CGST Act, 2017 for sending the items to its own location in Tamil Nadu.

- (2) As per section 25(4) of the CGST Act, 2017, a person who has obtained more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as 'distinct persons'.

Schedule I to the CGST Act, 2017 specifies situations where activities are to be treated as supply even if made without consideration. Supply of goods and/or services between 'distinct persons' as specified in section 25 of the CGST Act, 2017, when made in the course or furtherance of business is one such activity included in Schedule I under para 2.

However, in view of the GST Council's recommendation, it has been clarified that the inter-State movement of various modes of conveyance between 'distinct persons' as specified in section 25(4), not involving further supply of such conveyance, including trucks carrying goods or passengers or both; or for repairs and maintenance, may be treated 'neither as a supply of goods nor supply of service' and therefore, will not be leviable to IGST.

Applicable CGST/SGST/IGST, however, shall be leviable on repairs and maintenance done for such conveyance [Circular No. 1/1/2017 IGST dated 07.07.2017].

Since the activity is not a supply, tax invoice is not required to be issued by Power Engineering Pvt. Ltd. However, a delivery challan is to be issued by the company in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the truck to its own location in Tamil Nadu.

- (3) Supply of goods without consideration is deemed to be a supply inter alia when the goods are supplied to a 'distinct person'. However, in this case, stand-alone machine and container truck are moved to client location and not between 'distinct persons'. Hence, the same will fall outside the scope of definition of supply and will not be leviable to GST.

Here again, a delivery challan is to be issued in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the stand-alone machines and container truck to client location.

- (4) As per section 2(119) of the CGST Act, 2017, 'works contract' means a contract for, inter alia, repair, maintenance of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such

contract.

In this case, the supplier provides maintenance and repair services for power plants that are in the nature of immovable property and uses consumables and parts, wherever necessary, for the repairs. Hence, the contract is that of a works contract.

Further, as per section 2(30) of the CGST Act, 2017, a works contract is a 'composite supply' as it consists of taxable supplies of both goods and services which are naturally bundled and supplied in conjunction with each other. The composite supply of works contract is treated as supply of service in terms of para 6(a) of Schedule II to the CGST Act, 2017.

The items used in relation to the repair and maintenance work could be consumables or could be identifiable items/parts. In either case, the transfer of property in goods is incidental to a composite supply of works contract service. Thus, the value of the items actually used in the repairs will be included in the invoice raised for the service and will be charged to tax at that point of time.

Here again, a delivery challan is to be issued in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the items for carrying out the repairs.

- (5) The activity is a composite supply of works contract, which is treated as supply of service. As per section 8(a) of the CGST Act, 2017, a composite supply is treated as a supply of the principal supply involved therein and charged to tax accordingly.

Since the activity is a supply of service, a tax invoice is to be issued by Power Engineering Pvt. Ltd. in terms of section 31(2) of the CGST Act, 2017.

- (6) In the given case-
- the location of the supplier is in Chennai (Tamil Nadu); and
 - the place of supply of works contract services relating to the power plant (immovable property) is the location at which the immovable property is located i.e., Karnataka in terms of section 12(3)(a) of the IGST Act, 2017.

Therefore, the given supply is an inter-State supply as the location of the supplier and the place of supply are in two different States [Section 7(1)(a) of IGST Act, 2017]. Thus, the supply will be leviable to IGST in terms of section 5(1) of the IGST Act, 2017.

- (7) In the given case, the location of the supplier and the place of supply of works contract services are within the same State. Therefore, the given supply is an intra -State supply in terms of section 8(1) of IGST Act, 2017 and thus, chargeable to CGST and SGST.

(B)

Particulars	Rs.	Ineligible credit (Rs.)	Amount to be credited to ECrL (Rs.)
Machine 'A' [Since exclusively used for non-business purposes, ITC is not available under rule 43(1)(a) of CGST Rules, 2017]		19,200	
Machine 'B' [For ITC purposes, taxable supplies include zero-rated supplies under rule 43(1)(b) of CGST Rules, 2017. Hence, full ITC is available]			38,400

Machine 'C' [Commonly used for taxable and exempt supplies – Rule 43(1)(c) of the CGST Rules, 2017]	96,000		96,000
Machine 'D' [Owing to change in use from exclusively exempt to both taxable and exempt, common credit to be reduced by ITC @ 5% per quarter or part thereof in terms of proviso to rule 43(1)(c) of CGST Rules, 2017] = Rs. 1,92,000 – Rs. 76,800 (Rs. 1,92,000 × 5% × 8 quarters)	1,15,200		<u>1,15,200</u>
Machine 'E' [Owing to change in use from exclusively taxable to both taxable and exempt, common credit to be reduced by ITC @ 5% per quarter or part thereof in terms of proviso to rule 43(1)(d) of CGST Rules, 2017] = Rs. 2,88,000 – Rs. 1,72,800 (Rs. 2,88,000 × 5% × 12 quarters)	1,15,200		
Total common credit	3,26,400		
Common credit for the tax period (in the given case, a month) under rule 43(1)(e) of CGST Rules, 2017 = Rs. 3,26,400 ÷ 60	5,440		
Common credit attributable to exempt supplies in April, 20XX under rule 43(1)(g) of the CGST Rules, 2017 = (Turnover of exempt supplies/Total turnover) × Common credit = (12,00,000/24,00,000) × Rs. 5,440 [Such credit, along with the applicable interest, shall be added to the output tax liability of Oberoi Industries]		2,720	
Amount to be credited to the electronic credit ledger of Oberoi Industries for the month of April, 20XX			2,49,600