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SUGGESTED SOLUTION

CA FINAL NOV '19

SUBJECT- INDIRECT TAX

Test Code – FNJ 7314

BRANCH - () (Date :)

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ANSWER : 1

1. B
2. C
3. C
4. D
5. D
6. B
7. D
8. A
9. C
10. C
11. D
12. A
13. A
14. C
15. C
16. A
17. D
18. C
19. B
20. C

ANSWER : 1

(a) Computation of ITC available and output tax liability of X for June 2018

Particulars	Amount (Rs.)
GST on taxable turnover for June 2018 [Being inter – State supply, the same is leviable to IGST @ 18% = Rs. 60,00,000 × 18%]	10,80,000
Add : Ineligible ITC [ITC out of common credit, attributable to exempt supplies shall be added to the output tax liability in terms of rule 42 of the CGST Rules, 2017]	1,290
Total output tax liability	10,81,290
Total ITC available as on 30.06.2018	1,60,000

(4 MARKS)

Working Notes :

Computation of ineligible ITC to be added to output tax liability

Particulars	Amount (Rs.)
Input tax on raw materials [Being used in the course or furtherance of business, input tax on raw materials is available as ITC and is credited to the Electronic Credit Ledger – Section 16(1) of the CGST Act, 2017]	40,000
Input tax on catering for housewarming [ITC on outdoor catering is blocked in terms of section 17(5) of the CGST Act, 2017 if the same is not used for making an outward supply of outdoor catering]	Nil

or as an element of a taxable composite/ mixed supply. Hence, the same is not credited to the Electronic Credit Ledger – Rule 42 of the CGST Rules, 2017]	
Input tax on inputs contained in exempt supplies [Not available as ITC and thus, not credited to the Electronic Credit Ledger in terms of rule 42 of the CGST Rules, 2017]	Nil
Input tax on cosmetic and plastic surgery of CEO of company [ITC on cosmetic and plastic surgery is blocked in terms of section 17(5) of the CGST Act, 2017 if the same are not used for making the same category of outward supply or as an element of a taxable composite/ mixed supply. Hence, the same is not credited to the Electronic Credit Ledger – Rule 42 of the CGST Rules, 2017]	Nil
Total ITC credited to the Electronic Credit Ledger in terms of rule 42	40,000
Common Credit [ITC credited to Electronic Credit Ledger (Rs. 40,000 – ITC attributable to inputs and input services intended to be used exclusively for effecting taxable supplies (Nil) – Rules 42 of the CGST Rules, 2017.	40,000
It has been assumed that input tax on raw materials is attributable to both taxable and exempt activity]	
ITC attributable towards exempt supplies [Common Credit × (Aggregate value of exempt supplies during the tax period / Total turnover during the tax period) – Rule 42 of the CGST Rules, 2017 = Rs. 40,000 × Rs. 2,00,000 / Rs. 62,00,000 – (rounded off)	1,290

Note : The information provided in the question leaves scope for multiple assumptions. The answer given above is based on one such assumption. Other assumptions can also be made to answer this question.

(6 MARKS)

- (b) (1)** As per Notification No. 12/2017 CT (R) dated 28.06.2017, services provided by an educational institutions to its students, faculty and staff are exempt from GST. Educational Institution has been defined to mean, inter alia, an institution providing services by way of education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force.

Assuming that M.V. College provides education as a part of a curriculum for obtaining a qualification recognized by a law, the services provided by it to its staff by way of conducting personality development course would be exempt from GST.

- (2)** As assumed above that M.V. College provides education as a part of a curriculum for obtaining a qualification recognized by a law, the transport services provided by it to its students would be exempt from GST.

- (3)** As per Notification No. 12/2017 CT (R) dated 28.06.2017, services provided to an educational institution, by way of, inter alia, house – keeping services performed in such educational institution are exempt from GST. However, such an exemption is available only when the said services are provided to a pre – school education and a higher secondary school or equivalent.

Therefore, house – keeping services provided to Himavarsha Montessori Play School would be exempt from GST on the presumption that housekeeping services have been performed in such play school itself.

- (4) As per Notification No. 12/2017 CT(R) dated 28.06.2017, service provided to an educational institution by way of supply of online educational journals or periodicals is exempt from GST. However, such an exemption is available only when the said services are provided to an educational institution providing education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force.

Therefore, supply of online journal to students of UKG class of Sydney Montessori School will not be exempt from GST. Hence, the taxable value in this case will be Rs. 2,000.

(4*1 = 4 MARKS)

ANSWER : 2

- (a) Computation of net CGST, SGST and IGST payable in cash by Mr. George during April 2018

Particulars	Amount	CGST @ 9%	SGST @ 9%	IGST @ 18%
		(Rs.)	(Rs.)	(Rs.)
Sales made outside Kerala (New Delhi) - [Being inter – State sale, the same is liable to IGST.]	10,00,000			1,80,000
Sales made in Trivandrum	8,00,000	72,000	72,000	
Less : ITC available during April 2018 for set off		(52,500)	(52,500)	(1,80,000)
		CGST	SGST	
		(10,000)		
		IGST		
Net tax liability payable in cash		9,500	19,500	Nil
Working Note : ITC available during April 2018 is computed as under				
Opening balance of ITC		30,000	30,000	1,00,000
Purchases from New Delhi [Being inter – State purchase, IGST would have been paid on it.]	5,00,000			90,000
Purchases from Trivandrum	2,50,000	22,500	22,500	
Total input tax credit		52,500	52,500	1,90,000

Note : ITC of IGST has been utilized to pay IGST liability first and the balance ITC of IGST has been used to pay CGST liability. Interest and penalty paid are not available as credit.

(9 MARKS)

- (b) Computation of total duties payable under the Customs Act

S.No.	Particulars	Rs.
1	Landed price	25,00,000
2	Add : Basic customs duty @10%	2,50,000
3	Add : Safeguard duty @ 30% on Rs. 25,00,000	7,50,000
4	Add: Social welfare surcharge (SWS) @10% on Rs. 2,50,000 [While calculating SWS, safeguard duty is excluded]	25,000
5	Add : Integrated tax 12% of Rs. 35,25,000 (Rs. 25,00,000 + Rs. 2,50,000 + Rs. 7,50,000 + Rs. 25,000) [Integrated tax is levied on the sum total of the assessable value of the imported goods, customs duties and applicable SWS]	4,23,000

6	Total customs duties and tax payable [Rs. 2,50,000 + Rs. 7,50,000 + Rs. 25,000 + Rs. 4,23,000]	14,48,000
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(5 MARKS)

ANSWER : 3

(A) Computation of GST liability of Flowchem, Palanpur (Gujarat) for July 2018

Particulars	GST @ 9% (Rs.)	SGST @ 9% (Rs.)	IGST @ 18% (Rs.)
Output tax liability [working Note 1]			1,88,100
Less : ITC Available for st off [Working note 2]	25,000	25,000	
			(25,000) CGST
			(25,000) SGST
Net GST Liability payable in cash			1,38,100

(2 MARKS)

Working Note 1 – Computation of output tax liability of Flowchem for July 2018

Particular	Amount (Rs.)
List price of 10 valves (Rs. 1,00,000 × 10) ¹	10,00,000
Add : Amount paid by R Refinery to testing agency [Note 1]	15,000
Add : Special packing [Note 2]	10,000
Add : Erection and testing at site [Note 2]	15,000
Add : Freight [Note 3]	5,000
Value of taxable supply	10,45,000
IGST @ 18% [Note 4]	1,88,100

Note :

- (1) As per Section 15 (2) of the CGST Act, 2017, any amount that the supplier is liable to pay in relation to a supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods shall be included in the value of supply.

Assuming that in the given case, arranging inspection was the liability of the supplier, the same should be included in the value of supply charges for the same, however, have been paid directly to the third party service provider by the recipient.

- (2) As per section 15(2) of the CGST Act, 2017, 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 shall be included in the value of supply.
- (3) As per section 15(2) of the CGST Act, 2017 any amount that the supplier is liable to pay in relation to a supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods shall be included in the value of supply.

Since, in the given case, the supply contract is on FOR basis, payment of freight is the liability of supplier but the same has been paid by the recipient and thus, should be included in the value of supply.'

- (4) As per section 10(1) of the IGST Act, 2017, where the supply involves movement of goods, the place of supply is the location of the goods at the time at which the movement of goods terminates for delivery to the recipient, which in the given case is Abu Road (Rajasthan). Since the location of the supplier (Gujarat) and the place of supply (Rajasthan) are in two different States, the supply is an inter – State supply liable to IGST.

(4 MARKS)

Working Note – 2 – Computation of ITC available with Flowchem for the month of July 2018

Particulars	CGST (Rs.)	SGST (Rs.)
Opening input tax credit	20,000	20,000
Work contract services availed for erecting foundation for fixing the machinery to the earth in the factory [Note 1]	5,000	5,000
Laying of pipe line upto the gate of factory [Note 2]	Nil	Nil
Installation of tele - communication towers [Note 2]	Nil	Nil
Services of travel company to provide home travel facility to employees Note 3]	Nil	Nil
Services of fitness centre to provide wellness services to employees [Note 3]	Nil	Nil
Total ITC	25,000	25,000

Notes :

- (1) As per section 17(5) of the CGST Act, 2017, ITC on works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service, is blocked. Further, plant and machinery includes foundation and structural supports used to fix the machinery to earth.
- (2) As per section 17(5) of the CGST Act, 2017, ITC on goods and / or services received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such and /or services are used in course / furtherance of business, is blocked. However, plant and machinery excludes pipelines laid outside the factory premises and telecommunication towers.
- (3) As per section 17(5) of the CGST Act, 2017, ITC on travel benefits extended to employees on home travel concession and membership of health and fitness centre is blocked unless it is obligatory for an employer to provide the same to its employees under any law for the time being in force.

(3 MARKS)

(B) Computation of assessable value of the imported machine under customs law

Particulars	(Rs.)
Cost of machine [Note – 1]	1,50,000
Add Commission paid to local agent appointed by exporter [Note – 4]	1,000
Add : Cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation – 20% of FOB [Note – 2 & 5]	35,200
Add : Insurance @ 1.125% of FOB [Note – 3 & 5]	1,980
Assessable value	1,88,180

Notes :

1. As per section 14 of the Customs Act, 1962, the value of the imported goods is the transaction value, i.e. the price actually paid or payable for the goods, which in this case is the negotiated and agreed price.
2. The cost of transport, loading, unloading and handling charges associated with the delivery of the imported goods to the place of importation are includible in the assessable value. Further, where such cost is not ascertainable, it shall be 20% of the free on board (FOB)

- value of the goods which would also include demurrage charges [Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
3. Where insurance cost is not ascertainable, it shall be 1.125% of the free on board (FOB) value of the goods [Rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
 4. Buying commission is not includible in the assessable value. However, commission paid to local agent appointed by exporter is includible since it's not a buying commission [Rule 10(1) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
 5. FOB value will be sum total of cost of machine, freight from factory of exporter to port for shipment, handling charges paid for loading the machine in the ship and commission paid to local agent appointed by exporter, which will be Rs. 1,76,000 [(Rs. 1,50,000 + Rs. 20,000 + Rs. 5000 + Rs. 1,000)].
 6. Freight incurred from port of entry to Inland Container depot is not includible in assessable value [Rule 10(2) of the Customs Valuation (Determination of Value of value of Imported Goods) Rules, 2007].
 7. Only the payments actually made as condition of sale of the imported goods by the buyer to the seller are includible in the assessable value. Vendor inspection charges not required under contract are thus, not includible in the assessable value [Rule 10(1) of the Customs valuation (determination of value of imported goods rules, 2007.)]

Note: In the above answer, demurrage charges have not been added separately in the cost of transport, loading, unloading and handling charges by taking a view that where unascertainable cost of transport etc. has been computed as 20% of FOB value, the same includes all elements of costs of transport. However, it is also possible to take an alternative view that actual demurrage charges should be separately added in the cost of transport by virtue of explanation to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007 irrespective of whether the cost of transport has been computed as 20% of FOB value or on the basis of actual values.

(5 MARKS)

ANSWER : 4

(A) Section 22(1) of the CGST Act, 2017 read with *Notification No. 10/2019 CT dated 07.03.2019 inter alia* provides that every supplier who is **engaged in intra-State exclusive supply of goods** is liable to be registered under GST in the State/ Union territory from where he makes the taxable supply of goods only when aggregate turnover in a financial year exceeds Rs. 40,00,000.

However, the above provisions are not applicable to few specified States, *i.e.* States of Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Puducherry, Sikkim, Telangana, Tripura, Uttarakhand.

Further, a person exclusively engaged in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax is not liable to registration in terms of section 23(1)(a) of CGST Act, 2017.

In the given case, the turnover of the company for the half year ended on 30.09.20XX is Rs. 45 lakh which is more than the applicable threshold limit of Rs. 40 lakh. Therefore, as per above mentioned provisions, the company should be liable to registration. However, since LMN Pvt. Ltd. supplied exempted goods till 31.10.20XX, it was not required to be registered till that day; though voluntary registration was allowed under section 25(3) of the CGST Act, 2017.

(4 MARKS)

However, the position will change from 01.11.20XX as the supply of goods become taxable from that day and the turnover of company is above Rs. 40 lakh. It is important to note here that in terms of section 2(6) of the CGST Act, 2017, the aggregate turnover limit of Rs. 40 lakh includes exempt turnover also.

Therefore, turnover of 'X' will be considered for determining the limit of Rs. 40 lakh even though the same was exempt from GST. Therefore, the company needs to register within 30 days from 01.11.20XX (the date on which it becomes liable to registration) in terms of section 25(1) of the CGST Act, 2017.

(2 MARKS)

(B) Schedule III to the CGST Act specifies transactions/ activities which shall be neither treated as supply of goods nor supply of services. A new activity has been added in the said Schedule III vide the CGST (Amendment) Act, 2018 namely, supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. Thus, it seeks to exclude from the tax net such transactions which involve movement of goods, caused by a registered person, from one non-taxable territory to another non-taxable territory.

(2 MARKS)

Therefore, in view of the above-mentioned provisions, the said activity is not a supply. Hence, it is not leviable to GST since "supply" is the taxable event for chargeability of GST. Therefore, since the transaction is not leviable to GST, the question of place of supply does not arise in the given case.

(2 MARKS)

(C) As per section 9A(1A) of the Customs Tariff Act, 1975, following are the ways that would constitute circumvention (avoiding levy of duty by unscrupulous means) of antidumping duty imposed on an article that may warrant action by the Central Government:

- a. altering the description or name or composition of the article subject to such anti-dumping duty,
- b. import of such article in an unassembled or disassembled form,
- c. changing the country of its origin or export, or
- d. any other manner, whereby the anti-dumping duty so imposed is rendered ineffective.

(4*1 = 4 MARKS)

In such cases, investigation can be carried out by Central Government and then anti-dumping can be imposed on such articles.

(1 MARK)

ANSWER : 5

- (a) As per rule 138 of the CGST Rules, 2017, whenever there is a movement of goods of consignment value exceeding Rs. 50,000;
- (i) in relation to a supply, or
 - (ii) for reasons other than supply, or
 - (iii) due to inward supply from an unregistered person,

e – way bill needs to be generated prior to the commencement of transport of goods.

Further, in the following situations, e – way bill needs to be issued even if the value of the consignment is less than Rs. 50,000 :

- (i) Where goods are sent by a principal located in one State / Union territory to a job worker located in any other State/ Union territory, the e – way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment.
- (ii) Where specified handicraft goods are transported from one State / Union territory to another State/Union territory by a person who has been exempted from the requirement of obtaining registration under section 24 of the CGST Act, 2017, the e- way bill shall be generated by the said person irrespective of the value of the value of the consignment.

(5 MARKS)

(b) As per rule 32(4) of the CGST Rules, 2017, the value of supply of services in relation to life insurance business, when the amount allocated for investment / savings on behalf of the policy holder is not intimated to the policy holder at the time of supply of service, is –

- (i) in case of single premium annuity policies, 10% of single premium charged from the policy holder;
- (ii) in all other cases, 25% of the premium charged from the policy holder in the first year and 12.5% of the premium charged from the policy holder in subsequent years;
- (iii) In case the entire premium paid by the policy holder is only towards the risk cover in life insurance, the premium so paid.

Therefore, in the given case, the value of the services provided by ZLICL will be computed as under :

Computation of value of supply for ZLICL for the month of September 2018

Particulars	Amount (Rs.)
Premium for only risk over	25,00,000
Premium from new subscribers	10,00,000
25% of Rs. 40,00,000	
Renewal Premium	10,00,000
12.5% of Rs. 80,00,000	
Single premium on annuity policy	10,00,000
10% of Rs. 1,00,00,000	
Total value of supply	55,00,000

Note : The words in the first sentence of the question” it intimates....” may be read as “..... does not intimate.....”.

(4 MARKS)

(c) In CCEx & Cus. v. Suresh synthetics in 2007 (216) ELT 662(SC), the Apex Court held that a show cause notice demanding customs duty from a 100% export oriented unit on clearance in the domestic tariff was defective as the duty leviable in that case was excise duty and not customs duty.

In the given case, IGST would be payable on clearances made by a 100% export oriented undertaking (EOU) to domestic tariff area (DTA). Therefore, applying the ratio of the above mentioned case, the show cause notice demanding customs duty in this case would also be defective in law.

Note : It may be noted that a 100% EOU (other than gem and jewellery units) can sell finished goods manufactured by them which are freely importable under FTP in DTA, subject to fulfillment of positive NFE, on payment of applicable GST and compensation cess along with reversal of basic customs duty availed as exemption, if any on the inputs utilized for the purpose of manufacturing of such finished goods.

The above answer is based on the assumption that the irregularity committed by the 100% EOU is in respect of IGST payable on the clearances made to DTA. It is also possible to assume that the irregularity committed is in respect of reversal of basic customs duty; in that case the show cause notice would not be defective in law.

(5 MARKS)

ANSWER : 6

- (a) As per rule 56(2) and 56(4) of the CGST Rules, 2017, the supplier opting for composition levy need not maintain the following records.
- (i) Accounts of stock in respect of goods received and supplied by him, and such accounts shall contain particulars of the opening balance, receipt, supply, goods lost, stolen, destroyed, written off or disposed of by way of gift or free sample and the balance of stock including raw materials, finished goods, scrap and wastage thereof.
 - (ii) Account, containing the details of tax payable (including tax payable under reverse charge), tax collected and paid, input tax, input tax credit claimed, together with a register of tax invoice, credit notes, debit notes, delivery challan issued or received during any tax period.

(5 MARKS)

- (b) As per section 121 of the CGST Act, 2017, no appeal shall lie against any decision taken or order passed by a CGST office if such decision taken or order passed relates to any one or more of the following matters, namely :
- (i) an order of the Commissioner or other authority empowers to direct transfer of proceedings from one officer to another officer ; or
 - (ii) an order pertaining to the seizure or retention of books of account, register and other documents ; or
 - (iii) an order sanctioning prosecution under CGST Act ; or
 - (iv) an order passed under section 80 of the CGST Act (payment of tax in installments).

(4*1 = 4 MARKS)

- (c) The following export categories / sectors are ineligible for duty credit scrip entitlement under MEIS :-
- (i) Supplies made from DTA units to SEZ units
 - (ii) Export of prescribed imported goods
 - (iii) Exports through trans – shipment, i.e., exports that are originating in third country but trans – shipped through India ;
 - (iv) Deemed Exports;
 - (v) SEZ / EOU/ EHTP/ BTP/ FTWZ products exported through DTA units ;
 - (vi) Export products which are subject to minimum export price or export duty.

(vii) Exports made by units in FTWZ.

(5 MARKS)

OR

(c) Yes, he can do so. In case of part duty free and part duty paid imports, both advance authorization and drawback are available.

Drawback can be obtained for any duty paid material, whether imported or indigenous, used in goods exported, as per prescribed drawback rates. Advance authorization can be used for importing duty free materials.

Drawback allowed must be mentioned in the application for advance authorization. In such case, All Industry Brand Rates are not applicable. The manufacturer has to get specific brand rate fixed from the Commissioner for these exported goods.