

MOCK TEST PAPER 1
FINAL COURSE: GROUP – II
PAPER 8: INDIRECT TAX LAWS
SUGGESTED ANSWERS

Division A**Answer Key**

Question No.	Answer
1.1	(b) 105,000
1.2	(c) ₹ 1,63,82,500
1.3	(b) ₹ 75,000
1.4	(b) Guwahati, Assam
2.1	(c) (1) IGST - ₹ 1,08,000; (2) IGST - ₹ 1,526
2.2	(d) is not payable at all.
2.3	(b) not a supply
2.4	(d) nil as catering services provided by Jaskaran to his elder brother is not a supply.
3	(d) (i), (ii), (iii) and (iv)
4	(c) Tent and security services: Taxable; Catering services: exempt.
5	(b) D & Co.: ₹ 90,00,000; P & Co.: ₹ 90,00,000; Mr. Sunil ₹ 90,00,000
6	(a) CGST: ₹ 4,50,000; SGST: ₹ 4,50,000; IGST: Nil
7	(b) Mumbai, Maharashtra
8	(d) Only (iii)
9	(a) Only (iv)
10	(b) Date of presentation of ex-bond bill of entry i.e. bill of entry for home consumption.

Division B**1. Computation of net GST payable by LMN Company Ltd.**

Particulars	GST payable (₹)
Gross GST liability [Refer working note (2) below]	91,200
Less: Input tax credit [Refer working note (1) below]	<u>82,000</u>
Net GST payable from Electronic Cash Ledger	9,200

Working Notes:**(1) Computation of ITC available with LMN Company Ltd.**

Particulars	GST (₹)
Health insurance of factory employees [Note – 1]	20,000
Raw material received in factory [Note – 2]	Nil
Work's contractor's service used for installation of plant and machinery [Note -3]	12,000
Manufacturing machinery directly sent to job worker's premises under	50,000

challan [Note -4]	
Purchase of car used by director for business meetings only [Note -5]	Nil
Outdoor catering service availed for business meetings [Note -6]	Nil
Total ITC available	82,000

Notes:

1. ITC of health insurance is available in the given case in terms of proviso to section 17(5)(b) of the CGST Act, 2017 since it is obligatory for employer to provide health insurance to its employees under the Factories Act, 1948.
2. Where the goods against an invoice are received in lots/ installments, ITC is allowed upon receipt of the last lot/ installment vide first proviso to section 16(2) of the CGST Act, 2017. Therefore, ABC Company Ltd. will be entitled to ITC of raw materials on receipt of second installment in next month.
3. Section 17(5)(c) of the CGST Act, 2017 provides that ITC on works contract services is blocked when supplied for construction of immovable property (other than plant and machinery) except when the same is used for further supply of works contract service.
Though in this case, the works contract service is not used for supply of works contract service, ITC thereon will be allowed since such services are being used for installation of plant and machinery.
4. ITC on capital goods directly sent to job worker's premises under challan is allowed in terms of section 19(5) of the CGST Act, 2017 read with rule 45(1) of the CGST Rules, 2017.
5. Section 17(5)(a) of the CGST Act, 2017 provides that motor vehicle for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), except when they are used for making taxable supply of-
 - (i) further supply of such vehicles,
 - (ii) transportation of passengers,
 - (iii) imparting training on driving, flying, navigating such vehicles and
 Since LMN Company Ltd is a supplier of machine and it does not use the car for transportation of passengers or any other use as specified, ITC thereon will not be available.
6. Section 17(5)(b)(i) of the CGST Act, 2017 provides that ITC on outdoor catering is blocked except where the same is used for making further supply of outdoor catering or as an element of a taxable composite or mixed supply.

Since LMN Company Ltd is a supplier of machine, ITC thereon will not be available.

(2)

Computation of gross GST liability

	Value received (₹)	Rate of GST	GST payable (₹)
Hiring receipts for machine	5,25,000	12%	63,000
Service charges for supply of manpower operators	2,35,000	12%	28,200
Gross GST liability			91,200

Note:

Since machine is always hired out along with operators and operators are supplied only when the machines are hired out, it is a case of composite supply, wherein the principal supply is the hiring out of machines [Section 2(30) read with section 2(90) of the CGST Act, 2017]. Therefore, service of supply of manpower operators will also be taxed at the rate applicable for hiring out of machines (principal supply), which is 12%, in terms of section 8(a) of the CGST Act, 2017.

2. (a) As per explanation to rule 33 of the CGST Rules, 2017, a “pure agent” means a person who-
- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
 - (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
 - (c) does not use for his own interest such goods or services so procured; and
 - (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

The supplier needs to fulfil **all** the above conditions in order to qualify as a pure agent.

In the given case, Kartik Logistics has entered into a contractual agreement with recipient of supply, RP Manufacturers Ltd., to incur, on behalf of such recipient, the **expenses mentioned in S. No. (ii) to (vii)** incurred in relation to clearance of the imported machine from the customs station and bringing the same to the warehouse of the recipient. Further, Kartik Logistics does not hold any title to said services and does not use them for his own interest.

Lastly, Kartik Logistics receives only the actual amount incurred to procure such services in addition to agency charges. Thus, Kartik Logistics qualifies as a pure agent.

Further, rule 33 of the CGST Rules, 2017 stipulates that notwithstanding anything contained in the provisions of Chapter IV – Determination of Value of supply, the expenditure or costs incurred by a supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the following conditions are satisfied, namely-

- (I) the supplier acts as a pure agent of the recipient of the supply, when he makes the payment to the third party on authorisation by such recipient;
- (II) the payment made by the pure agent on behalf of the recipient of supply has been separately indicated in the invoice issued by the pure agent to the recipient of service; and
- (III) the supplies procured by the pure agent from the third party as a pure agent of the recipient of supply are in addition to the services he supplies on his own account.

Since conditions (I) to (III) mentioned above are satisfied in the given case, expenses (ii) to (vii) incurred by Kartik Logistics as a pure agent of RP Manufacturers Ltd. shall be excluded from the value of supply.

Accordingly, value of supply made by Kartik Logistics is as follows:

Particulars	Amount (₹)
Agency charges	5,00,000
Add: Unloading of machine at Kandla port, Gujarat	Nil
Charges for transport of machine from Kandla port, Gujarat to its godown in Ahmedabad, Gujarat	Nil

Charges for transport of machine from Kartik Logistics' Ahmedabad godown to the warehouse of RP Export Import House in Mumbai, Maharashtra	Nil
Customs duty	Nil
Dock charges	Nil
Port charges	Nil
Hotel expenses	45,000
Travelling expenses	50,000
Telephone expenses	<u>2,000</u>
Value of supply	5,97,000

Yes, the answer would be different. If lump sum amount of ₹ 13,00,000 is paid then the value of supply shall be ₹ 13,00,000 and tax shall be charged on value of supply since individual cost are not given.

(b) Computation of export duty

Particulars	Amount (US \$)
FOB price of goods [Note 1]	1,00,000
	Amount (₹)
Value in Indian currency (US \$ 1,00,000 x ₹ 70) [Note 2]	70,00,000
Export duty @ 8% [Note 3]	5,60,000

Notes:

1. As per section 14(1) of the Customs Act, 1962, assessable value of the export goods is the transaction value of such goods which is the price actually paid or payable for the goods when sold for export from India for delivery at the time and place of exportation.
 2. As per third proviso to section 14(1) of the Customs Act, 1962, assessable value has to be calculated with reference to the rate of exchange notified by the CBIC on the date of presentation of shipping bill of export.
 3. As per section 16(1)(a) of the Customs Act, 1962, in case of goods entered for export, the rate of duty prevalent on the date on which the proper officer makes an order permitting clearance and loading of the goods for exportation, is considered.
3. (a) Renting of precincts of a religious place meant for general public, owned/managed by, *inter alia*, an entity registered as a charitable trust under section 12AA/12AB of the Income-tax Act are exempt from GST vide exemption notification. However, said exemption is not available if:
- (i) charges for rented rooms are ₹ 1,000 per day or more;
 - (ii) charges for rented community halls, Kalyan mandapam, open area are ₹ 10,000 per day or more;
 - (iii) charges for rented shops are ₹ 10,000 per month or more.

Further, services by way of renting of residential dwelling for use as residence are also exempt vide exemption notification.

Computation of GST liability of Sabka Niwas Charitable Trust for August

Particulars	Value (₹)	GST @ 18% (₹)
Renting of residential dwelling for use as residence [Exempt vide exemption notification]	18,00,000	Nil

Renting of rooms for devotees [Exempt since charges per day are below ₹1,000]	6,00,000	Nil
Renting of Kalyanamandapam [Taxable since charges per day exceed ₹10,000]	12,00,000	2,16,000
Renting of community halls and open spaces [Exempt since charges per day are below ₹ 10,000]	10,75,000	Nil
Renting of shops for business [Exempt since charges per month are below ₹10,000]	4,75,000	Nil
Renting of shops for business [Taxable since charges per month exceed ₹ 10,000]	7,50,000	<u>1,35,000</u>
Total		3,51,000

- (b) The supply between A Enterprises (Kota, Rajasthan) and D Traders (Jalandhar, Punjab) is a bill to ship to supply where the goods are delivered by the supplier [A Enterprises] to a recipient [Jain Sons (Patiala, Punjab)] on the direction of a third person [D Traders].

In case of such supply, 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 [Section 10(1)(b) of the IGST Act, 2017]. Thus, the place of supply between A Enterprises (Rajasthan) and D Traders (Punjab) will be Jalandhar, Punjab.

Since the location of supplier and the place of supply are in two different States, the supply is an inter-State supply in terms of section 7 of the IGST Act, 2017, liable to IGST.

This situation involves another supply between D Traders (Jalandhar, Punjab) and Jain Sons (Patiala, Punjab). In this case, since the supply involves movement of goods, place of supply will be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient, i.e. Patiala, Punjab [Section 10(1)(a) of the IGST Act, 2017].

Since the location of supplier and the place of supply are in the same State, the supply is an intra-State supply in terms of section 8 of the IGST Act, 2017, liable to CGST and SGST.

- (c) The facts of the case are similar to the case of *Commissioner v. Hanil Era Textile Ltd. 2005 (180) ELT A044 (SC)* wherein the Supreme Court agreed to the view taken by the Tribunal that in the absence of a restrictive clause in the notifications that imported goods are to be solely or exclusively used for manufacture of goods for export, there is no violation of any condition of notification, if surplus power generated due to unforeseen exigencies is sold in domestic tariff area.

Therefore, no duty can be demanded from M/s AB for selling the surplus power in domestic tariff area for the following reasons:

- (i) They have used the DG sets and furnace oil imported duty free for generation of power, and
- (ii) such power generated has been used for manufacturing goods for export, and
- (iii) only the surplus power has been sold, as power cannot be stored.

4. (a) As per section 31(3)(a) of the CGST Act, 2017, a registered person may, within one month from the date of issuance of certificate of registration, issue a revised invoice against the invoice already issued during the period beginning with the effective date of registration till the date of issuance of certificate of registration to him.

Further, rule 10(2) of the CGST Act, 2017 lays down that the registration shall be effective from the date on which the person becomes liable to registration where the application for registration has been submitted within a period of 30 days from such date.

In the given case, Pink Enterprises has applied for registration within 30 days of becoming liable for registration. Thus, the effective date of registration is the date on which Pink Enterprises became liable for registration i.e., October 3. Therefore, since in the given case there is a time lag between the effective date of registration (October 3) and the date of grant of certificate of registration (November 5), revised invoices can be issued. The same can be issued for supplies made during this intervening period i.e., for the period beginning with October 3 till November 5. Further, the revised invoices can be issued for the said period till December 5.

- (b) Nature Cosmetics Ltd. would be required to prepare two separate e-way bills since each invoice value exceeds ₹ 50,000 and each invoice is considered as one consignment for the purpose of generating e-way bills.

The *FAQs on E-way Bill* issued by CBIC clarify that if multiple invoices are issued by the supplier to one recipient, that is, for movement of goods of more than one invoice of same consignor and consignee, multiple e-way bills have to be generated. In other words, for each invoice, one e-way bill has to be generated, irrespective of the fact whether same or different consignors or consignees are involved. Multiple invoices cannot be clubbed to generate one e-way bill. However, after generating all these e-way bills, one consolidated e-way bill can be prepared for transportation purpose, if goods are going in one vehicle.

- (c) Section 9A(3) of the Customs Tariff Act, 1975 provides that the anti-dumping duty can be imposed with retrospective effect provided the Government is of the opinion that:-

- (a) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury, and
- (b) the injury is caused by massive dumping of an article imported in a relatively short time, which in the light of timing and volume of the imported article dumped and other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied.

The duty can be levied retrospectively by issuing a notification but not beyond 90 days from the date of notification.

Thus, Radhey Shyam Industries would succeed in its contention only if all of the above conditions are not satisfied.

5. (a) Due date for payment of tax for the month of April is 20th May.

As per section 73 of the CGST Act, 2017, where self-assessed tax is not paid within 30 days from 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, A & Co. has not paid the self-assessed tax within 30 days of due date [*i.e.* 20th May], penalty equivalent to:

- (i) 10% of tax, viz., ₹ 9,000 (10% of ₹ 90,000) or
- (ii) ₹ 10,000,

whichever is higher, is payable by him. Thus, penalty payable is ₹ 10,000.

Hence, the stand taken by the Department that penalty will be levied on A & Co. is correct, but the amount of penalty of ₹ 45,000 is not correct.

- (b) 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 would lie 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 would lie to the Supreme Court and not High Court. As per section 109(5) of the CGST Act, 2017, 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. P'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. P will have to file an appeal with the Supreme Court and not with the High Court.

- (c) (1) As per the Baggage Rules, 2016, an Indian resident arriving from a country other than Nepal, Bhutan, or Myanmar, is allowed duty free clearance of-
- (i) Used personal effects and travel souvenirs without any value limit.
 - (ii) Articles [other than certain specified articles] up to a value of ₹ 50,000 carried as accompanied baggage [General duty free baggage allowance].
 - (iii) Further, such general duty free baggage allowance of a passenger cannot be pooled with the general duty free baggage allowance of any other passenger.
- (2) One laptop computer when imported into India by a passenger of the age of 18 years or above (other than member of crew) is exempt from whole of the customs duty [Notification No. 11/2004 Cus. dated 08.01.2004].
- (3) (i) Accordingly, there will be no customs duty on used personal effects (worth ₹ 1,40,000) of Mrs. and Mr. Bansal and laptop computer brought by them will be exempt from duty.
- (ii) Duty payable on personal computer after exhausting the duty free baggage allowance will be ₹58,000 – ₹ 50,000 = ₹ 8,000.
- (iii) Effective rate of duty for baggage = 38.50% [including Social Welfare Surcharge]
- (iv) Therefore, total customs duty = ₹ 3,080.

6. (a) Save as otherwise provided in the Insolvency and Bankruptcy Code, 2016, where a person, liable to pay tax, interest or penalty under CGST Act, dies, then:

Business is continued after his death: if a business carried on by the person is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from such person under this Act.

Business is discontinued after his death: if the business carried on by the person is discontinued, whether before or after his death, his legal representative shall be liable to pay, out of the estate of the deceased, to the extent to which the estate is capable of meeting the charge, the tax, interest or penalty due from such person under this Act,

whether such tax, interest or penalty has been determined before his death but has remained unpaid or is determined after his death.

(b) Section 161 of the CGST Act, 2017 lays down that any authority, who has passed or issued any decision or order or notice or certificate or any other document, may rectify any error which is apparent on the face of record in such decision or order or notice or certificate or any other document, either on its own motion or where such error is brought to its notice by any GST officer or by the affected person within a period of three months from the date of issue of such decision or order or notice or certificate or any other document, as the case may be.

However, no such rectification shall be made after a period of six months from the date of issue of such decision or order or notice or certificate or any other document. Further, the said period of six months shall not apply in such cases where the rectification is purely in the nature of correction of a clerical or arithmetical error, arising from any accidental slip or omission.

Principles of natural justice should be followed by the authority carrying out such rectification, if it adversely affects any person.

- (c) The exporter may be granted provisional duty drawback when he executes a bond binding himself to repay the entire or excess amount of drawback. Where an exporter desires that he may be granted drawback provisionally, he may make an application in writing to the Principal Commissioner of Customs or Commissioner of Customs, as the case may be, that a provisional amount be granted to him towards drawback on the export of such goods pending determination of the final amount of drawback. The exporter may be allowed provisional duty drawback of an amount not exceeding the amount claimed by him in respect of such export.

However, it is to be noted that rate of drawback is determined provisionally only when exporter intends to get Brand Rate of duty drawback for his exports. The provision has no applicability when exporter intends to get duty drawback on the basis of All Industry Drawback Rates.