

MOCK TEST PAPER 2
FINAL COURSE: GROUP – II
PAPER 8: INDIRECT TAX LAWS
SUGGESTED ANSWERS

Division A**Answer Key**

Question No.	Answer
1.1	(d) on Chilly Hot under reverse charge and GST of ₹ 9,18,000 shall be paid by Chilly Hot.
1.2	(a) Sitting fees paid to the directors is liable to GST under reverse charge and the salary paid to executive directors shall not be liable to GST.
1.3	(c) ₹ 9,36,000
1.4	(c) ₹ 35,00,000
1.5	(c) ₹ 9,36,000
2.1	(a) ₹ 98 lakh
2.2	(d) Mr. Shorya is entitled to take the ITC of inputs held in stock on 1 st April, 2021.
2.3	(d) ₹ 2,70,000
2.4	(c) (ii) and (iii)
2.5	(d) No input tax credit is available.
3	(c) (i), (ii), (iii), (iv)
4	(d) (i), (ii), (iii), (iv)
5	(a) Mr. Rohan should apply for a new registration under GST in the name M/s Food Paradise Restaurant under his own PAN w.e.f. the date of succession and file Form GST ITC 02 for transfer of ITC to the new entity.
6	(a) (i), (ii) and (iii)
7	(a) nil
8	(a) ₹ 95

Division B**1. Computation of ITC available with Pihu Ltd.**

S. No.	Particulars	Eligible input tax credit		
		CGST (₹)	SGST (₹)	IGST (₹)
1.	Raw Material			
	Purchased from local registered suppliers [Note 1(i)] (₹ 1,06,250 x 9%)	9,562.50	9,562.50	
	Purchased from local unregistered suppliers [Note 1(ii)]	Nil	Nil	
	Purchased from Punjab from registered supplier			18,000

	[Note 1(i)] (₹ 1,00,000 x 18%)			
	Raw material imported from USA [Note 1(iii)]			22,732
2.	Consumables [Note 2] (₹ 1,56,250- ₹ 31,250) x 9%]	11,250	11,250	
3.	Monthly rent for the factory building to the owner in Rajasthan [Note 3]	9,000	9,000	
4.	Salary paid to employees on rolls [Note 4]	Nil	Nil	Nil
5.	Premium paid on life insurance policies taken for specified employees [Note 5] (₹ 2,00,000 x 9%)	18,000	18,000	-
Total		47,812.50	47,812.50	40,732
Add: Opening balance of ITC		<u>20,000</u>	<u>15,000</u>	<u>15,000</u>
Total ITC [Note 7]		67,812.50	62,812.50	55,732

Computation of net GST payable

Particulars	CGST (₹)	SGST (₹)	IGST (₹)
Intra-State supply	78,750	78,750	
Inter-State supply			67,500
Exports under LUT [Note 6]	<u>Nil</u>	<u>Nil</u>	<u>Nil</u>
Total output tax liability	78,750	78,750	67,500
Less: ITC	67,812.50	62,812.50	55,732
Net GST payable	10,937.50	15,937.50	11,768

Notes:

- Credit of input tax (CGST & SGST/ IGST) paid on raw materials used in the course or furtherance of business is available in terms of section 16 of the CGST Act, 2017.
 - Tax on procurements made by a registered person from an unregistered supplier is levied only in case of notified goods and services in terms of section 9(4) of the CGST Act, 2017. Therefore, since no GST is paid on such raw material purchased, there does not arise any question of ITC on such raw material.
 - IGST paid on imported goods qualifies as input tax in terms of section 2(62) of the CGST Act, 2017. Therefore, credit of IGST paid on imported raw materials used in the course or furtherance of business is available in terms of section 16 of the CGST Act, 2017.
- ITC on consumables, being inputs used in the course or furtherance of business, is available. However, since levy of GST on high speed diesel has been deferred till a date to be notified by Government, there cannot be any ITC of the same.
- ITC on monthly rent is available as the said service is used in the course or furtherance of business.
- Services by employees to employer in the course of or in relation to his employment is not a supply in terms of section 7 read with Schedule III to the CGST Act. Therefore, since no GST is paid on such services, there cannot be any ITC on such services.
- ITC on life insurance service is available if the same is obligatory for an employer to provide to its employees under any law for the time being in force as per proviso to section 17(5)(b) of the CGST Act, 2017.

6. Export of goods is a zero rated supply in terms of section 16(1)(a) of the IGST Act. A zero rated supply under LUT/bond is made without payment of IGST in terms of section 16(3)(a) of the IGST Act, 2017.
7. Since export of goods is a zero rated supply, there will be no apportionment of ITC and full credit will be available as per section 17(2) of the CGST Act, 2017.
2. (a) Section 15(3)(a) of the CGST Act, 2017 allows discounts to be deducted from the value of taxable supply if the same is given before or at the time of the supply and if such discount has been duly recorded in the invoice issued in respect of such supply. In other words, pre-supply discounts recorded in invoices are allowed as deduction.

Further, post supply discounts are also allowed as deduction from the value of supply under section 15(3)(b) of the CGST Act, 2017 if-

- (i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices; and
- (ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

In the given case, Relish Electronics is entitled for 10% discount on televisions supplied by BEL for the quarters April-June as well as July-September as it has sold more than 500 televisions in each of these quarters. However, since the sales targets are achieved after the entire stock for the respective quarters of April-June and July-September has been dispatched, the discounts on the televisions supplied to Relish Electronics for the quarters of April-June and July-September is a post-supply discount.

Such post-supply discount will be allowed as a deduction from the value of supply since the discount policy was known before the time of such supply and the discount can be specifically linked to relevant invoices (invoices pertaining to televisions supplied to Relish Electronics for the quarters of April-June and July-September) provided Relish Electronics reverses the input tax credit attributable to the discount on the basis of document issued by BEL.

The value of supply for the quarters of April-June and July-September will thus, be computed as under:

Computation of value of supply for the quarter - April-June

Particulars	Amount (₹)
Price at which the televisions are supplied to Relish Electronics [Note 1]	8,400
Add: Packing expenses [Note 2]	1,200
Less: Discount [Note 3]	<u>Nil</u>
Value of taxable supply of one unit of television	9,600
Value of taxable supply of televisions for the quarter April-June [₹ 9,600 x 750]	72,00,000

Notes:

- (1) The value of a supply is the transaction value, which is the price actually paid or payable for the said supply, in terms of section 15(1) presuming that the supplier and the recipient of supply are not related and price is the sole consideration for the supply as the supplier and recipient are not related parties.
- (2) The value of supply includes incidental expenses like packing charges in terms of section 15(2)(c).

- (3) Since Relish Electronics has not reversed the input tax credit attributable to such discount on the basis of document issued by BEL, the conditions specified in section 15(3)(b) have not been fulfilled. Thus, the post-supply discount will not be allowed as deduction from the value of supply.

Computation of value of supply for quarter - July-September

Particulars	Amount (₹)
Price at which the televisions are supplied to Relish Electronics [Note 1]	8,400
Add: Packing expenses [Note 2]	1,200
Less: Discount [Note 3]	(840)
Value of taxable supply of one unit of television	8,760
Value of taxable supply of televisions for the quarter July-September [₹ 8,760 x 1,000]	87,60,000

Notes:

- (1) The value of a supply is the transaction value, which is the price actually paid or payable for the said supply, in terms of section 15(1) presuming that the supplier and the recipient of supply are not related and price is the sole consideration for the supply as the supplier and recipient are not related parties.
- (2) The value of supply includes incidental expenses like packing charges in terms of section 15(2)(c).
- (3) Since all the conditions specified in section 15(3)(b) have been fulfilled, the post-supply discount will be allowed as deduction from the value of supply. The input tax credit to be reversed will work out to be ₹1,51,200 [$1,000 \times (8,400 \times 10\%) \times 18\%$].

(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 @ 10% [Note 3]	7,00,000

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) (1) Services provided by an educational institution to its students, faculty and staff are exempt from GST vide exemption notification. 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 recognised by any law for the time being in force.

Since Elite College provides education as part of a curriculum for obtaining a qualification recognised by Indian law, the services provided by it to its staff by way of conducting soft skills development course would be exempt from GST, it being an educational institution.

- (2) Since Richfold College provides education as a part of a curriculum for obtaining a qualification recognised by Indian law, the transport services provided by Richfold College to its students are exempt from GST.

- (3) Services provided to an educational institution, by way of, *inter alia*, house-keeping services performed are exempt from GST vide exemption notification where such services are performed in such educational institution. However, such exemption is available only when the said services are provided to a pre-school education and a higher secondary school or equivalent.

In view of the above discussion, house-keeping services provided to First Step Play School are exempt from GST since housekeeping services have been performed in such play school itself.

- (4) Services provided to an educational institution by way of supply of online educational journals or periodicals is exempt from GST vide exemption notification. However, such exemption is not available to an educational institution providing services by way of pre-school education and education up to higher secondary school or equivalent.

Therefore, supply of online journal to students of UKG class of Fun Thrill School is not exempt from GST.

(b) Case I

As per section 12(3) of the IGST Act, 2017, where both the service provider and the service recipient are located in India, the place of supply of services directly in relation to an immovable property, including services provided by interior decorators is the location of the immovable property. However, if the immovable property is located outside India, the place of supply is the location of the recipient.

Since in the given case, both the service provider (Mr. Rajat Chawla) and the service recipient (Mr. Aman Malhotra) are located in India and the immovable property is located outside India (New York), the place of supply will be the location of recipient, i.e. Maharashtra.

Case II

As per section 13(4) of the IGST Act, 2017, where either the service provider or the service recipient is located outside India, the place of supply of services directly in relation to an immovable property including services of interior decorators is the location of the immovable property.

Since in the given case, service provider (Mr. Rajat Chawla) is located in India and service recipient (Mr. Aman Malhotra) is located outside India (New York), the place of supply will be the location of immovable property, i.e. Pihus (France).

- (c) The facts of the case are similar to the case of *BPL Display Devices Ltd. v. CCEx., Ghaziabad* (2004) 174 ELT 5 (SC) wherein the Supreme Court has held that the benefit of the notifications cannot be denied in respect of goods which are intended for use for manufacture of the final product but cannot be so used due to shortage or leakage.

The Apex Court has held that no material distinction can be drawn between loss on account of leakage and loss on account of damage. The benefit of said exemption cannot be denied as inputs were intended for use in the manufacture of final product but could not be so used due to shortage/leakage/damage. It has been clarified by the Supreme Court that words “for use” have to be construed to mean “intended for use”.

Therefore, the importer can claim the benefit of the notification in respect of the entire lot of the inputs imported including those that were damaged in transit.

4. (a) (i) As per section 31(3)(e) of the CGST Act, 2017, where advance payment is received against a supply for which receipt voucher has been issued, but subsequently no supplies are made and no tax invoice is issued in pursuance thereof, a refund voucher may be issued to the person who had made the advance payment.
- (ii) As per section 31(7) of the CGST Act, 2017, where the goods are sent on approval for sale or return and are removed before the supply takes place, the invoice shall be issued before or at the time of supply or 6 months from the date of removal, whichever is earlier.
- (iii) As per section 31(5)(b) of the CGST Act, 2017, in case of continuous supply of services, where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment.
- (b) As per clause (i) of first proviso to section 54(3) of the CGST Act, 2017, refund claim admissible to Deva Ltd. on account of export of services being a zero-rated supply, is the unutilized ITC of ₹ 6,00,000.

Where the supply of services had been completed prior to the receipt of payment, relevant date is the date of receipt of payment in convertible foreign exchange, i.e. 28th February [Explanation to section 54].

As per section 56, where any tax ordered to be refunded to any applicant is not refunded within 60 days from the date of receipt of application, interest shall be payable @ 6% p.a. from the date immediately after the expiry of 60 days from the date of receipt of application till the date of refund of such tax.

Since in the given case, tax ordered to be refunded is not refunded within 60 days from the date of receipt of application, viz., 31st March, interest @ 6% p.a. is payable.

- (c) The Central Government has power to levy anti-dumping duty on dumped articles in accordance with the provisions of section 9A of the Customs Tariff Act, 1975 and the rules framed thereunder.
- (i) In a case where no provisional duty is imposed, the date of commencement of anti-dumping duty will be the date of publication of notification, imposing anti-dumping duty under section 9A(1), in the Official Gazette.
- (ii) In a case where provisional duty is imposed under section 9A(2), the date of commencement of anti-dumping duty will be the date of publication of notification, imposing provisional duty under section 9A(2), in the Official Gazette.
- (iii) In a case where anti-dumping duty is imposed retrospectively under section 9A(3) from a date prior to the date of imposition of provisional duty, the date of commencement of anti-dumping duty will be such prior date as may be notified in the notification imposing anti-dumping duty retrospectively, but not beyond 90 days from the date of such notification of provisional duty.
5. (a) The provisions of section 76 of the CGST Act, 2017 make it mandatory on Raksha 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 of the CGST Act, 2017. 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.

- (b) (i) Advance ruling under GST can be sought by a registered person or a person desirous of obtaining registration under GST law [Section 95(c) of the CGST Act, 2017]. Therefore, it is not mandatory for a person seeking advance ruling to be registered.
- (ii) Section 103(2) of the CGST Act, 2017 stipulates that the advance ruling shall be binding unless the law, facts or circumstances supporting the original advance ruling have changed. Therefore, once Sonak has sought the advance ruling with respect to an eligible matter/question, it will be binding till the time the law, facts and circumstances supporting the original advance ruling remain same.
- (iii) No, the tax advisor's view is not correct. As per section 100 of the CGST Act, 2017, if the applicant is aggrieved with the finding of the AAR, he can file an appeal with Appellate Authority for Advance Ruling (AAAR). Similarly, if the concerned/ jurisdictional officer of CGST/SGST does not agree with the findings of AAR, he can also file an appeal with AAAR. Such appeal must be filed within 30 days from the date on which the ruling sought to be appealed against is communicated. The Appellate Authority may allow additional 30 days for filing the appeal, if it is satisfied that there was a sufficient cause for delay in presenting the appeal.
- (iv) Section 103 of the CGST Act, 2017 provides that an advance ruling pronounced by AAR is binding only on the applicant who had sought it and on the concerned officer or the jurisdictional officer in respect of the applicant. This implies that an advance ruling is not applicable to similarly placed other taxable persons in the State. It is only limited to the person who has applied for an advance ruling.

Thus, Sridhar will not be able to apply the classification of the goods that will be decided in the advance ruling order to be obtained by Sonak, to the goods supplied by him in Delhi.

- (c) Yes, charges are payable for late filing of bill of entry if an importer fails to present the bill of entry before the end of the day (including holidays) preceding the day on which the aircraft/vessel/vehicle carrying the goods arrives at a customs station at which such goods are to be cleared for home consumption or warehousing, and the proper officer is satisfied that there was no sufficient cause for such delay [Section 46(3) of the Customs Act, 1962]. However, the Board may, in such cases as it may deem fit, prescribe different time limits for presentation of the bill of entry, which shall not be later than the end of the day of such arrival.

Yes, a bill of entry can be filed in advance. It can be presented within 30 days of the expected arrival of the aircraft/vessel/vehicle by which the goods have been shipped for importation into India vide proviso to section 46(3) of the Customs Act, 1962.

In the given case also, the time period as described above will be available - with reference to the date of arrival of vessel/aircraft - for filing the bill of entry.

6. (a) Section 90 explains the liability of partners of firm to pay tax as under:-

Partners of the firm jointly and severally liable to pay any tax, interest or penalty of the firm: Notwithstanding any contract to the contrary and any other law for the time being in force, where any firm is liable to pay any tax, interest or penalty under this Act, the firm and each of the partners of the firm shall, jointly and severally, be liable for such payment.

Retiring partner liable to pay any tax, interest or penalty of the firm due up to the date of his retirement: Where any partner retires from the firm, he or the firm, shall intimate the date of retirement of the said partner to the Commissioner by a notice in that behalf in writing and such partner shall be liable to pay tax, interest or penalty due up to the date of his retirement whether determined or not, on that date.

However, if no such intimation is given within 1 month from the date of retirement, the liability of such partner shall continue until the date on which such intimation is received by the Commissioner.

- (b) Section 168 empowers the Board (CBIC) to issue orders, instructions or directions to the CGST officers for the purpose of uniformity in the implementation of the CGST Act. All officers and all other persons employed in the implementation of the Act observe and follow such orders, instructions or directions.

The binding nature of such orders, instructions and directions has been a matter of debate and scrutiny. The general understanding that prevails now is that a circular is binding on the officers, but not on the assessee. However, in case such circular states something contrary to the law, the law shall prevail over the circular.

- (c) Section 75A of the Customs Act provides for payment of interest on delayed payment of drawback. Where any drawback payable to a claimant under section 74 or 75 is not paid within a period of one month from the date of filing a claim for payment of such drawback, interest @ 6% p.a. shall be paid along with the amount of drawback. Such interest shall be paid from the date after the expiry of the said period of one month till the date of payment of such drawback [Section 75A(1)].

Where any drawback has been paid to the claimant erroneously or it becomes otherwise recoverable under the Customs Act or the rules made thereunder, the claimant shall, within a period of two months from the date of demand, pay in addition to the said amount of drawback, interest at the rate fixed under section 28AA [presently such interest has been fixed @ 15% p.a.] and the amount of interest shall be calculated for the period beginning from the date of payment of such drawback to the claimant till the date of recovery of such drawback. [Section 75A(2)].