

MOCK TEST PAPER - 1
FINAL (NEW) GROUP - II
PAPER 8: INDIRECT TAX LAWS
SUGGESTED ANSWERS

GST law is in its nascent stage and has been subject to frequent changes. Although various clarifications have been issued in the past few months by way of FAQs or otherwise, many issues continue to arise on account of varying interpretations on several of its provisions. Therefore, alternate answers may be possible for the questions depending upon the view taken.

For the sake of brevity, Central Goods and Services Tax, Integrated Goods and Services Tax, Central Goods and Services Tax Act, 2017, Integrated Goods and Services Tax Act, 2017 and Central Goods and Services Tax Rules, 2017 have been referred to as CGST, IGST, CGST Act, IGST Act and CGST Rules respectively.

1. (a) Computation of net GST payable by Manohar Lal Company Ltd.

Particulars	GST payable (Rs.)
Gross GST liability [Refer working note (2) below]	91,200
Less: Input tax credit [Refer working note (1) below]	<u>62,000</u>
Net GST liability	29,200

Working Notes:

(1) Computation of Input Tax Credit (ITC) available with Manohar Lal Company Ltd. in the month of November 2017

Particulars	GST (Rs.)
Health insurance of factory employees [Note – 1]	Nil
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 challan [Note -4]	50,000
Purchase of car used by director for business meetings only [Note -5]	Nil
Outdoor catering service availed for business meetings [Note -6]	<u>Nil</u>
Total ITC available	62,000

Notes:

- ITC of health insurance is blocked in the given case since said services are not notified by Government as obligatory for employer to provide to its employees under any law - in terms of section 17(5)(b)(iii) of the CGST Act, 2017.
- Where the goods against an invoice are received in lots/instalments, ITC is allowed upon receipt of the last lot/instalment vide first proviso to section 16(2) of the CGST Act, 2017. Therefore, Manohar Lal Company Ltd. will be entitled to ITC of raw materials on receipt of second instalment in December, 2017.

3. Section 17(5)(c) of 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 CGST Act, 2017 read with rule 45(1) of CGST Rules, 2017.
5. Section 17(5)(a) of CGST Act, 2017 provides that ITC on motor vehicles is allowed only when the same are used:

- (1) 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

- (2) for transportation of goods.

Since Manohar Lal Company Ltd is a supplier of machine and it does not use the car for transportation of goods, ITC thereon will not be available.

6. Section 17(5)(b)(i) of 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 Manohar Lal Company Ltd is a supplier of machine, ITC thereon will not be available.

(2) Computation of gross GST liability

	Value received (Rs.)	Rate of GST	GST payable (Rs.)
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) of the CGST Act, 2017 read with section 2(90) of that Act]. 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.

- (b) (i) When service by way of organization of an event is provided to a registered person, place of supply is the location of recipient in terms of section 12(7)(a)(i) of IGST Act, 2017.

Since, in the given case, the award functions at New Delhi and Singapore are organized for Shagun Jewellers (registered in Chennai), place of supply in both the cases is the location of Shagun Jewellers i.e., Chennai.

- (ii) As per section 12(7)(a)(ii) of IGST Act, 2017, when service by way of organization of an event is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient.

Since, in the given case, the service recipient [Dr. Banta] is unregistered and event is held in India, place of supply is the location where the event is actually held i.e., Mumbai.

However, if the wedding is to take place outside India [Malaysia], the place of supply is the location of recipient, i.e. Kochi.

(c) Computation of assessable value of the imported machine

Particulars	US \$
Cost of the machine at the factory	17,000.00
Add: Transport charges up to port	850.00
Add: Handling charges at the port	<u>85.00</u>
FOB	17,935.00
Add: Freight charges up to India	1,700.00
Add: Insurance charges @ 1.125% of FOB [Note 1]	<u>201.77</u>
CIF	19,836.77
CIF in Indian rupees @ Rs. 60/ per \$	Rs. 11,90,206.13
Assessable Value (rounded off)	Rs.11,90,206

Notes:

- (1) Insurance charges have been included @ 1.125% of FOB value of the machine [Third proviso to rule 10(2) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
 - (2) Buying commission is not included in the assessable value [Rule 10(1)(a)(i) of the Customs Valuation (Determination of Value of Imported Goods) Rules, 2007].
2. (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 of the Income-tax Act are exempt vide *Notification No. 12/2017 CT (R) dated 28.06.2017 /Notification No. 9/2017 IT (R) dated 28.06.2017[exemption notification]*. However, exemption is not available if:
- (i) charges for rented rooms are Rs. 1,000 per day or more;
 - (ii) charges for rented community halls, Kalyan mandapam, open area are Rs.10,000 per day or more;
 - (iii) charges for rented shops are Rs. 10,000 per month or more.

In view of the aforesaid provisions, value of supply of Niwas Sadan Charitable Trust for August, 2017 has been computed as under:

Computation of value of supply of Niwas Sadan Charitable Trust for August, 2017

Particulars	Amount (Rs.)
Renting of residential dwellings for use as residence [Exempt vide exemption notification]	Nil
Renting of rooms for pilgrims [Since charges per day are not below Rs. 1,000]	8,00,000
Renting of rooms for devotees [Since charges per day are below Rs. 1,000]	Nil
Renting of Kalyana Mandapam [Since charges per day are not below Rs. 10,000]	12,00,000
Renting of halls	Nil

[Since charges per day are below Rs. 10,000]	
Renting of shops for business	Nil
[Since charges per month are below Rs. 10,000]	
Renting of shops for business	<u>7,50,000</u>
[Since charges per month are not below Rs. 10,000]	
Value of taxable supply	27,50,000

- (b) Section 15(3)(a) of the CGST Act 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 if-

- 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
- 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, Gupta Sales is entitled for 10% discount on fans supplied by Cool Trade Links Pvt. Ltd. for the quarter July-September as it has sold more than 500 fans in the preceding quarter April-June. However, since the entire stock for the quarter July-September has already been despatched by Cool Trade Links Pvt. Ltd. in the month of June, the discounts on the fans supplied to Gupta Sales for the quarter July-September will be 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 fans supplied to Gupta Sales for the quarter July-September) provided Gupta Sales reverses the input tax credit attributable to the discount on the basis of document issued by Cool Trade Links Pvt. Ltd.

The value of supply will thus, be computed as under:

Particulars	Amount (Rs.)
Price at which the fans are supplied to Prakash Sales [Note 1]	7,000
Add: Packing expenses [Note 2]	1,000
Less: Discount [Note 3]	<u>(700)</u>
Value of taxable supply of one unit of fan	7,300
Value of taxable supply of fans for the quarter July-September [Rs. 7,300 x 1,000]	73,00,000

Notes:

- 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) of the CGST Act.
- The value of supply includes incidental expenses like packing charges in terms of section 15(2)(c) of the CGST Act.
- Since all the conditions specified in section 15(3)(b) of the CGST Act have been fulfilled, the post-supply discount will be allowed as deduction from the value of supply presuming that

Gupta Sales has reversed the input tax credit attributable to such discount on the basis of document issued by Cool Trade Links Pvt. Ltd. The input tax credit to be reversed will work out to be Rs. 1.26 lakh $[1,000 \times (7,000 \times 10\%) \times 18\%]$.

- (c) **Similarity:** In both the schemes, duty free import of inputs, oil and catalyst required for export products is permitted.

Differences:

- (i) Advance Authorisation (AA) is not transferable. DFIA is transferable after export obligation is fulfilled.
- (ii) While AA requires 15% value addition, DFIA requires minimum 20% value addition.
- (iii) AA is available to gem and jewellery sector, but DFIA is not.
- (iv) DFIA cannot be issued where Standard Input Output Norms (SION) prescribe actual user condition.
- (v) AA can be issued even if SION for the product to be exported is not fixed. DIFA can be issued only if SION has been fixed for the product to be exported.

OR

The benefits available to Status holders are as under:

- (a) Authorization and custom clearances for both imports and exports on self-declaration basis.
- (b) Fixation of Input Output Norms (SION) on priority i.e. within 60 days.
- (c) Exemption from compulsory negotiation of documents through banks. The remittance receipts, however, would continue to be received through banking channels.
- (d) Exemption from furnishing of Bank Guarantee for Schemes under FTP unless otherwise specified.
- (e) Two Star Export Houses and above are permitted to establish export warehouses.
- (f) Three Star and above Export House shall be entitled to get benefit of Accredited Clients Programme (ACP) as per the guidelines of CBEC.

[Note : Any of the above five points may be mentioned.]

3. (a) Computation of GST payable

Particulars	Rs.
Basic Price of the machinery [Note 1]	20,00,000
Add: Design and engineering charges [Note 1]	20,000
Loading charges [Note 1]	10,000
Warranty cost [Note 2]	1,00,000
Consultancy charges in relation to pre-installation planning [Note 3]	10,000
Freight and insurance charges [Note 2]	20,000
Subsidy received from Central Government [Note 4]	Nil
Receipts from Joint Venture of ABC Enterprises [Note 4]	50,000
Less: 1% discount on basic price = Rs. 20,00,000 x 1% [Note 5]	<u>(20,000)</u>
Value of supply	21,90,000
CGST @ 9% [Note 6]	1,97,100
SGST @ 9% [Note 6]	1,97,100

Notes:

1. In terms of section 15(1) of the CGST Act, 2017, the value of the supply is the transaction value i.e., price actually paid or payable for the machinery by ABC Enterprises.

Design and engineering charges are includible in the value of supply as 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 so includible in terms of section 15(2)(c) of CGST Act, 2017.

Further, loading charges being incidental expenses charged by the supplier to the recipient of supply, are includible in the value as per section 15(2)(c) of the CGST Act, 2017.

2. Supply of machinery (goods) with supply of ancillary services like warranty and freight and insurance is a composite supply, the principle supply of which is the supply of machinery. [Section 2(30) of the CGST Act, 2017 read with section 2(90) of that Act]. Thus, value of such ancillary supply is includible in the value of composite supply.
3. 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.
4. Subsidies 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. However, subsidy directly linked to the price received from a non-Government body is includible in the value in terms of section 15.
5. Cash discount has been given to ABC Enterprises upfront at the time of supply and thus would have been recorded in the invoice and hence, the same is excluded from the value of supply in terms of section 15(3)(a) of the CGST Act, 2017.
6. In the given case-
 - the location of the supplier is in Bhopal (Madhya Pradesh); and
 - the place of supply of machinery is the location of the machinery at the time at which the movement of the same terminates for delivery to the recipient i.e., Indore (Madhya Pradesh) vide section 10(1)(a) of IGST Act, 2017.

Therefore, as per section 8(1) of IGST Act, 2017, the given supply is an intra-State supply as the location of the supplier and the place of supply are in the same State. Thus, the supply will be leviable to CGST and SGST.

(b)

Particulars	Amount (Rs.)
Rent of the commercial building	18,00,000
Maintenance charges collected by the local society from the owner and reimbursed by the tenant [Note-1]	2,50,000
Refundable advance [Note-2]	Nil
Municipal taxes paid by the owner [Note-3]	Nil
Value of supply	20,50,000
CGST @ 9%	1,84,500
SGST @ 9%	1,84,500

Notes:-

1. Being reimbursed by the tenant, such charges ultimately form part of the rent paid by the tenant to the owner and thus, will form part of the value.

2. Being refundable, the advance is in the nature of security deposit which does not constitute consideration in terms of section 2(31) of the CGST Act, 2017 and thus, is not includible in the value.
 3. Being an expenditure incurred by the supplier, the same is not includible in the value, assuming that such taxes are not charged to the recipient.
- (c) As per section 18(3) of the Customs Act, 1962, an importer is liable to pay interest at the rate of 15% p.a. (*Notification No. 33/2016-Cus. (NT) dated 01.03.2016*), on any amount payable consequent to the re-assessment order from the first day of the month in which the duty is provisionally assessed till the date of payment.

Therefore, in the given case, Shyam Lal is liable to pay following interest in respect of 1st consignment:

$$= \text{Rs. } 1,80,000 \times 15\% \times 67/365$$

$$= \text{Rs. } 4,956 \text{ (rounded off)}$$

If any amount refundable consequent to the re-assessment order is not refunded within 3 months from date of re-assessment of duty, interest is payable to importer on unrefunded amount at the specified rate till the date of refund of such amount in terms of section 18(4) of the Customs Act, 1962.

Since in the given case, refund has been made (28.04.2018) within 3 months from the date of re-assessment of duty (02.02.2018), interest is not payable to Shyam Lal on duty refunded in respect of 2nd consignment.

4. (a) (i) As per section 22 of the CGST Act every supplier of goods or services or both is required to obtain registration in the State/ Union territory from where he makes the taxable supply if his aggregate turnover exceeds Rs. 20 lakh [Rs. 10 lakh in case of specified Special Category States] in a financial year.

However, section 24 of the said Act enlists certain categories of persons who are mandatorily required to obtain registration, irrespective of their turnover. Persons who supply goods or services or both through such electronic commerce operator (ECO), who is required to collect tax at source under section 52, is one such person specified under clause (ix) of section 24.

However, where the ECO is liable to pay tax on behalf of the suppliers of services under a notification issued under section 9(5), the suppliers of such services are entitled for threshold exemption.

Further, persons making supplies of **services**, other than supplies specified under section 9(5) through an ECO who is required to collect tax at source under section 52, and having an aggregate turnover, to be computed on all India basis, not exceeding an amount of Rs. 20 lakh [Rs. 10 lakh for specified special category States] in a financial year, have been exempted from obtaining registration vide *Notification No. 65/2017 CT dated 15.11.2017*.

Section 2(45) of the CGST Act defines ECO as any person who owns, operates or manages digital or electronic facility or platform for electronic commerce. Electronic commerce is defined under section 2(44) to mean the supply of goods or services or both, including digital products over digital or electronic network. Since Clean Indya Pvt. Ltd. owns and manages a website for e commerce where both goods and services are supplied, it will be classified as an ECO under section 2(45).

Notification No. 17/2017 CT (R) dated 28.06.2017 issued under section 9(5) specifies services by way of house-keeping, except where the person supplying such service through ECO is liable for registration under section 22(1), as one such service where the ECO is liable to pay tax on behalf of the suppliers.

In the given case, Alpha Pvt. Ltd. provides house-keeping services through an ECO. It is presumed that Clean Indya is an ECO which is required to collect tax at source under section 52. However, house-keeping services provided by Alpha Pvt. Ltd., which is not liable for registration under section 22(1) as its turnover is less than Rs. 20 lakh, is a service notified under section 9(5). Thus, Alpha Pvt. Ltd. will be entitled for threshold exemption for registration and will not be required to obtain registration even though it supplies services through ECO.

In the second case, Alpha Pvt. Ltd. sells readymade garments through ECO. Such supply cannot be notified under section 9(5) as only supplies of services are notified under that section. Therefore, in the second case, Alpha Pvt. Ltd. will not be entitled for threshold exemption and will have to compulsorily obtain registration in terms of section 24(ix).

- (ii) As per section 31(3)(a) of the CGST Act, 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 CGST Rules 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, LMN Enterprises has applied for registration within 30 days of becoming liable for registration and the registration has been granted. Thus, the effective date of registration is the date on which LMN Enterprises became liable for registration i.e., October 3, 20XX. Therefore, since in the given case there is a time lag between the effective date of registration (October 3, 20XX) and the date of grant of certificate of registration (November 5, 20XX), 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, 20XX till November 5, 20XX. Further, the revised invoices can be issued for the said period till December 5, 20XX.

- (b) As per section 97(2) of CGST Act, 2017, advance ruling can be sought for the following questions: -

- (a) classification of any goods or services or both
- (b) applicability of a notification issued under the CGST Act
- (c) determination of time and value of supply of goods or services or both
- (d) admissibility of input tax credit of tax paid or deemed to have been paid
- (e) determination of the liability to pay tax on any goods or services or both
- (f) whether applicant is required to be registered
- (g) whether any particular activity with respect to any goods and/or services, amounts to/results in a supply of goods and/or services, within the meaning of that term.

Note: Any of the four points may be mentioned.

- (c) (i) As per section 74(2) of Customs Act, 1962 read with *Notification No. 19/65 Cus dated 06.02.1995* as amended, 65% of import duty is to be paid as duty drawback if goods are used after importation and have been out of customs control for export for a period of more than 12 months but not more than 15 months.

Therefore, amount of duty drawback = Rs. 14,00,000 x 65% = Rs. 9,10,000

- (ii) Amount of duty drawback = Rs. 86,000 x 40% = Rs. 34,400

However, the drawback amount should not exceed one third of the market price of the export product as per rule 9 of Customs & Central Excise Duties Drawback Rules, 2017.

Thus, upper limit of drawback amount = Rs. 96,000/3 = Rs. 32,000

Thus, the amount of duty drawback in the present case will be restricted to Rs. 32,000

5. (a) (i) Due date for payment of tax collected on 18.12.2017 is 20.01.2018. However, since tax is actually paid on 26.02.2018, interest @ 18% p.a. is payable for the period for which the tax remains unpaid [37 days] in terms of section 50 of CGST Act, 2017 read with *Notification No. 13/2017 CT dated 28.06.2017*. Amount of interest is:

$$= \text{Rs. } 80,000 \times 18\% \times 37/365 = \text{Rs. } 1,460 \text{ (rounded off)}$$

As per section 73(11) of CGST Act, 2017, where self-assessed tax/any amount collected as tax is not paid within 30 days from due date of payment of tax, then, *inter alia*, option to pay such tax before issuance of SCN to avoid penalty, is not available.

Consequently, penalty equivalent to

(i) 10% of tax, viz., Rs. 8,000 or

(ii) Rs. 10,000,

whichever is higher,

is payable in terms of section 73(9) of CGST Act, 2017. Therefore, penalty of Rs. 10,000 will have to be paid by Richmond.

- (ii) As per section 126(1) of the CGST Act, 2017, no penalty shall be leviable under the Act for minor breaches of tax regulations. In terms of Explanation (a) to section 126(1), a breach shall be considered as "minor breach", if tax involved is less than Rs. 5,000. Breach made by Tripathi is not a 'minor breach' since the amount involved is not less than Rs. 5,000. So, penalty is imposable.

Any omission or mistake in documentation which is easily rectifiable and made without fraudulent intent/gross negligence is not liable for penalty in terms of section 126(1) of the CGST Act, 2017. Thus, penalty is imposable in the present case, since the omission in the documentation is not easily rectifiable and has occurred due to gross negligence.

As per section 126(5) of the CGST Act, 2017, where there is a voluntary disclosure of breach, prior to its discovery by the officer, the proper officer may consider this fact as a mitigating factor when quantifying the penalty. Since Tripathi has voluntarily disclosed the breach of procedural requirement to the officer, the proper officer may consider this fact as a mitigating factor when quantifying the penalty. Therefore, the quantum of penalty will depend on the facts and circumstances of the case.

As per section 125 of the CGST Act, 2017, when no specific penalty has been specified for contravention of any of the provisions of the Act or any rules made there under, it shall be liable to a penalty which may extend to Rs. 25,000. Therefore, general penalty upto Rs. 25,000 may be imposed on Tripathi as when no specific penalty is provided for any contravention, a general penalty may be imposed.

- (b) Section 90 of the CGST Act 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.

- (c) Rule 1 of the general rules for interpretation states that the titles of sections, chapters and sub-chapters in the First Schedule to the Customs Tariff Act, 1975 are provided for ease of reference only. For legal purposes, classification shall be determined according to the terms of the headings

and any relative section or chapter notes and provided such headings or chapter notes do not otherwise require, according to the subsequent rules.

Thus, the titles of sections, chapters and sub-chapters cannot be used to determine classification of a product.

6. (a) (i) In terms of section 27(1) read with proviso thereto, the certificate of registration issued to a “casual taxable person” or a “non-resident taxable person” shall be valid for a period specified in the application for registration or 90 days from the effective date of registration, whichever is earlier. However, the proper officer, at the request of the said taxable person, may extend the validity of the aforesaid period of 90 days by a further period not exceeding 90 days.
- (ii) (1) The Board may, on the recommendations of the GST Council, issue orders or instructions or directions fixing monetary limits for regulating filing of appeal or application by the CGST officer.
- (2) Non-filing of appeal/application by a CGST officer on account of such monetary limits fixed by the Board shall not preclude such officer from filing appeal or application in any other case involving the same or similar issues or questions of law.
- (3) No person, who is a party in application or appeal can contend that the CGST Officer has acquiesced in the decision on the disputed issue by not filing an appeal or application (on account of monetary limits).
- (4) The Appellate Tribunal or Court hearing such appeal or application shall have regard to circumstances for non-filing of appeal or application by the CGST officer on account of monetary limits fixed by the Board.

- (b) The procedure for issue of adjudication order under section 74 of CGST Act, 2017 is as under: -

Where a show cause notice/statement is issued to a person chargeable with tax, he may furnish a representation to the proper officer in his defence, if he is of the view that he is not so liable to pay whole/part of the amount mentioned in the show cause notice.

The proper officer after considering the representation, if any, made by the person chargeable with tax, pass an order determining the amount of tax, interest and penalty due from such person [Section 74(9)].

Where any person served with an adjudication order pays the tax along with interest payable thereon under section 50 and a penalty equivalent to 50% of such tax within 30 days of communication of the order, all proceedings in respect of the said notice shall be deemed to be concluded [Section 74(11)].

As per section 74(10) of CGST Act, 2017, the proper officer shall issue the adjudication order within 5 years from the due date for furnishing of Annual Return for the financial year to which the tax not paid/short paid/input tax credit wrongly availed/utilised relates to or within 5 years from the date of erroneous refund.

- (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.