CASE STUDY 4

Para A - Home Fab Private Limited incorporated in May 2023 having its registered office in New Delhi started construction of its premises building in NOIDA by using pre-fabricated structure common and prevalent in these times and building comprising about 1,00,000 square ft of covered area was ready to use by the end of July 2023 at a cost of ` 6.50 crores. The company also obtained GST registration in month of May 2023 in State of Uttar Pradesh.

The company had already ordered in advance import of certain new textile machinery from South Korea at a cost of about ` 8.65 crore. Further, previously used indigenous machinery at a cost of about ` 2.00 crores was also planned for installation. The company was able to bring imported as well as indigenous machinery to its premises in *NOIDA* only in 1st week of August 2023 and was able to kick start its commercial production of textile made-ups from 1st September 2023 only. The company has earned huge profits during P.Y. 2023-24.

Para B - The made ups of company got a very good response in the overseas market of USA under brand *of Home Fab* and the company had captured good chunk of export orders via *digital and online marketing platforms* beating its Chinese rivals.

The company has chosen to export on payment of IGST.

The company has achieved export turnover of `50 crores during year ended 31st March,2024. It has also credited duty drawback from customs authorities amounting to ` 2.00 crores in its statement of profit and loss for the same period. During the year ended 31st March 2024, the company has also incurred research and development expenditure of ` 10.00 lakhs. The financial statements of the company reflected a net profit before tax amounting to ` 7.50 crores. for the same period.

Para C- The inhouse staff GST team of the company was marred in confusion from the very first month of export sales regarding discharge of GST liability on payment of IGST and refund issues. The export sales had begun from October 2023 and made-ups valuing ` 5 crores were exported during month of October 23 carrying a GST rate of 5%. The break-up of ITC for month of October 2023 is as under: -

Eligible ITC on inputs	0.15 crores
Eligible ITC on capital goods	0.03 crores
Eligible ITC in input services	0.02 crores

There were divergent opinions among team members pertaining to discharge of tax liability and refund issues given below before they could approach their tax consultant.

Opinion I - The overall IGST liability of the company pertaining to supplies in relation to export in Oct 2023 is ` 0.25 crores and it would be discharged by the company by availing ITC on inputs of ` 0.15 crores and balance of ` 0.10 crore would be discharged by company in cash. After discharge of liability and filing of periodical returns consisting of GSTR- 3B and GSTR-1, the above said amount of ` 0.25 crore would be refunded/refundable directly by customs in bank account of company.

Opinion II - The overall IGST liability of the company pertaining to supplies in relation to export in Oct 2023 is ` 0.25 crores and it would be discharged by the company by availing ITC on inputs of ` 0.15 crores, ITC on capital goods of ` 0.03 crore and ITC on services of ` 0.02 crores and balance of ` 0.05 crore would be discharged by company in cash. After discharge of liability and filing of periodical returns consisting of GSTR- 3B and GSTR-1, the above said amount of ` 0.25 crore would be refunded /refundable directly by customs in bank account of the company.

Opinion III - The overall IGST liability of the company pertaining to supplies in relation to export in Oct 23 is ` 0.25 crores and it would be discharged by the company by availing ITC on inputs of ` 0.15 crores, ITC on capital goods of ` 0.03 crore and ITC on services of ` 0.02 crores and balance of ` 0.05 crore would be discharged by company in cash. After discharge of liability and filing of periodical returns consisting of GSTR- 3B, GSTR-1, and GSTR-9, the above said amount of ` 0.25 crore would be refunded/refundable directly by customs in bank account of the company.

Opinion IV - The overall IGST liability of the company pertaining to supplies in relation to export in Oct 2023 is ` 0.25 crores and it would be discharged by the company by availing ITC on inputs of ` 0.15 crores, ITC on capital goods of ` 0.03 crores and ITC on services of ` 0.02 crores and balance of ` 0.05 crore would be discharged by company in cash. After discharge of liability and filing of periodical returns consisting of GSTR- 3B and GSTR-1, the above said ITC amounting to ` 0.20 crore would be refunded/refundable directly by customs in bank account of the company.

Para D-The company had imported machinery worth ` 8.65 crores from South Korea. The said cost was CIF Mundra port. However, the company had incurred ` 2.36 lakhs as clearing charges paid to DK Services Private Limited (including ` 0.36 lakhs on account of IGST) for availing services for getting consignments cleared from port.

Further, company had also incurred ` 3.00 lakhs on account of freight paid to D Transport

services (a proprietary concern). This proprietary concern is not registered taxpayer under GST and company has deposited IGST of ` 0.15 lakhs on account of reverse charge.

Further, company had paid ` 1.77 crore to another company providing services relating to building construction (including ` 27,00,000/- on account of IGST) during year 2023-24.

I. Multiple Choice Questions

1. Regarding tax liability of the said company for the month of October 2023 under provisions contained in GST laws and rules, which statement is correct?

   (a) Opinion II is correct.

   (b) Opinion III is correct.

   (c) Opinion I is correct.

   (d) Opinion IV is correct.

2. In context of the information given in Para D of the case study, consider the following table of compliances under income tax law as well as under GST law:

Nature of Compliances	***Appropriate response of company in accordance with law***
(1) Deduction of TDS under income tax law and availing of eligible ITC under GST law	(i) TDS of ` 3,07,000/- is deducted on account of above three transactions and company is availing ITC of ` 51,000/- in respect of these transactions
(2) Deduction of TDS under income tax law and availing of eligible ITC under GST law	(ii) TDS of ` 2,30,250/- is deducted on account of above three transactions and company is availing ITC of ` 36,000/- in respect of these transactions
(3) Deduction of TDS under income tax law and availing of eligible ITC under GST law	(iii) TDS of ` 2,30,250/- is deducted on account of above three transactions and company is availing ITC of ` 27,51,000/- in respect of these transactions
(4) Deduction of TDS under income tax law and availing of eligible ITC under GST law	(iv) TDS of ` 3,07,000/- is deducted on account of above three transactions and company is availing ITC of ` 27,36,000/- in respect of these transactions

Which of the following forms appropriate response by the company in accordance with law?

(a) Combination (1) and (i)

(b) Combination (2) and(ii)

(c) Combination (3) and (iii)

(d) Combination (4) and (iv)

3. Under provisions of Companies Act, 2013, the books of accounts and records are required to be kept at registered office of the company. However, the manufacturing facilities of company are located in NOIDA in state of Uttar Pradesh. In light of above, which of the following statements is in accordance with law?

(a) The company can keep books of accounts and records at NOIDA by filing form AOC-2 within 30 days of passing board resolution.

(b) The company can keep books of accounts and records at NOIDA by filing form AOC-4 within 30 days of passing board resolution.

(c) The company can keep books of accounts and records at NOIDA by filing form AOC-5 within 7 days of passing board resolution.

(d) There is no recourse available to the company as books of accounts and records are to be kept at registered office of company.

4. Which element of McKinsey's 7S Framework is primarily illustrated by this integration of machinery?

(a) Structure

(b) Strategy

(c) Systems

(d) Skills

5. Given this scenario, in which stage of the product life cycle is Home Fab's made-up products most likely positioned?

(a) Shakeout

(b) Maturity

(c) Growth

(d) Introduction

II. Descriptive Questions

6. The promoters of the company are law compliant and do not want to be seen on the wrong side of law. However, they are also prudent minded and want to take tax benefits available legally and seek your advice.

Advise promoters of company of any such legally permissible benefits to lower its income tax liability for A.Y. 2024-25. Ignore the adjustment on account of depreciation under the Income-tax Act, 1961.

7. The company has exported made ups of ` 50 crores on payment of IGST during year 2023-24 carrying a GST rate of 5%. Further, the company had availed ITC of ` 2.00 crore during year 2023-24. The details of same are as under: -

Eligible ITC on inputs	` 1.50 crore
Eligible ITC on capital goods	` 0.36 crore
Eligible ITC on services	` 0.14 crore

Discuss whether there was any other legally permissible way to export its goods keeping in view provisions of GST law assuming that there are no domestic sales. Also make a cross comparison of export on payment of IGST vs. other legally compliant way in terms of financial burden/benefit and procedural requirements to the taxpayer company. Make suitable assumptions.

ANSWERS TO THE CASE STUDY 4

I. Answers to the Multiple Choice Questions

1. (a) Opinion II is correct.

Reason: The IGST liability of company pertaining to zero-rated supplies (export) in Oct 23 is 5% of ` 5crores i.e. ` 0.25 crore. It is discharged by setting off eligible ITC of ` 0.20 crore. It is immaterial whether ITC is availed on inputs, capital goods or input services. The export supplies are zero-rated supplies and IGST paid of ` 0.25 crore would be refunded/refundable directly in bank account of the company by customs upon monthly filing of GSTR-3B and GSTR-1 for each tax period. Further, filing of GSTR-9 is an annual affair and hence nothing to do with refund of IGST.

The refund by customs is system generated upon filing of GSTR-3B and GSTR-1 for each tax period. The invoices transmitted to customs via GST network are

matched with shipping bills and others details which are also system driven and refund scroll is generated. After scroll generation, refund is credited in bank account of exporter.

2. **(a)** Combination (1) and (i).

Reason: The TDS amount to be deducted during financial year 2023-24 is as under -

TDS to be deducted on clearing charges of ` 2.00 lakhs u/s 194 C is 2% in case of payment to companies.

TDS to be deducted on freight paid of ` 3.00 lakhs u/s 194 C is 1% in case of payment to individuals.

TDS to be deducted on payment made to building contractor company of ` 1.50 crore u/s 194 C is 2% in case of payment to companies.

Hence, total TDS to be deducted by company comes to ` 3,07,000/- (4,000 + 3,000 + 3,00,000).

It is to be remembered that TDS is not to be deducted on GST amount included in payments made to above service contractors in accordance with provisions of CBDT circular number 23/2017 dated 19.7.2017. Hence, for calculation of TDS, pre-GST amounts have to be arrived at.

Further, company has correctly availed IGST on services amounting to ` 51,000/-. The company is eligible to avail ITC on services for import of machinery amounting to ` 36,000/-. Further, credit of IGST paid on reverse charge basis by the company on freight services amounting to ` 15,000/- is also available to the company. The IGST on building contactor services is not eligible as amount would be capitalised under building and the same is blocked under section 17(5) of CGST Act.

3. **(c)** The company can keep books of accounts and records at NOIDA by filing form AOC-5 within 7 days of passing board resolution.

Reason: Books of accounts and records can be kept at place other than registered office of the company. The relevant form is AOC-5 which is to be filed on MCA portal in 7 days of passing board resolution.

4. (**c**) Systems

Reason: Systems refer to the processes and procedures that the company uses to get work done. Efficient integration of machinery highlights the company's operational systems enabling smooth and profitable production.

5. **(c)** Growth

Reason: Given the scenario, Home Fab's made-ups have received a very good response, and they have captured a significant share of export orders, indicating that the product is experiencing rapid market acceptance and sales growth.

II. Answers to the Descriptive Questions

6. In a major tax policy initiative, section 115BAB has been inserted w.e.f. A.Y. 2020-21 to provide an option to new manufacturing or electricity generating domestic companies set up and registered on or after 1.10.2019 and commences manufacturing or generating electricity on or before 31.3.2024 for availing concessional income tax rates subject to fulfilment of certain conditions contained thereunder like non-availability of profit-linked deductions and investment-linked tax deduction under the Act, non-availability of deduction for contribution to research and development, additional depreciation etc.

Section 115BAB provides for concessional rate of tax @15% (plus surcharge@10% plus HEC@4%).

The option for section 115BAB has to be exercised in the **very first year** in which the **eligible company is set up**, failing which it cannot exercise such option in the future years. However, once the company exercises such option under 115BAB, as the case may be, in a year, it would continue to be governed by the special provisions u/s 115BAB thereafter and cannot opt for regular provisions in any subsequent year.

It may be noted that companies exercising option under section 115BAB are not liable to minimum alternate tax under section 115JB.

The following are the conditions specified under section 115BAB:

(a) the company has been set-up and registered on or after the 1.10.2019, and has commenced manufacturing or production of an article or thing on or before the 31.3.2024 and, —

(i) the business is not formed by splitting up, or the reconstruction, of a business already in existence:

(ii) does not use any machinery or plant previously used for any purpose.

Any machinery or plant which was used outside India by any other person shall not be regarded as machinery or plant previously used for any purpose, if the following conditions are fulfilled -

(A) such machinery or plant was not, at any time previous to the date of the installation used in India;

(B) such machinery or plant is imported into India from any country outside India; and

(C) no deduction on account of depreciation in respect of such machinery or plant has been allowed or is allowable under the provisions of this Act in computing the total income of any person for any period prior to the date of the installation of machinery or plant by the person.

Further, where in the case of a person, any machinery or plant or any part thereof previously used for any purpose is put to use by the company and the total value of the machinery or plant or part so transferred does not exceed 20% of the total value of the machinery or plant used by the company, then, the condition specified that the company does not use any machinery or plant previously used for any purpose would be deemed to have been complied with.

(b) the company is not engaged in any business other than the business of manufacture or production of any article or thing and research in relation to, or distribution of, such article or thing manufactured or produced by it.

The business of manufacture or production of any article or thing referred to in clause (b) shall not include business of,—

(i) development of computer software in any form or in any media;

(ii) mining;

(iii) conversion of marble blocks or similar items into slabs;

(iv) bottling of gas into cylinder;

(v) printing of books or production of cinematograph film; or

(vi) any other business as may be notified by the Central Government in this behalf; and

(c) the total income of the company has to be computed -

(i) without any deduction under the provisions of section 10AA or clause (iia) of sub-section (1) of section 32 or section 32AD or section 33AB or section 33ABA or sub-clause (ii) or sub-clause (iia) or sub-clause (iii) of sub-section (1) or sub-section (2AA) or sub-section (2AB) of section 35 or section 35AD or section 35CCC or section 35CCD or under any provisions of Chapter VI-A other than the provisions of section 80JJAA or section 80M;

(ii) without set-off of any loss or allowance for unabsorbed depreciation deemed so under section 72A where such loss or depreciation is attributable to any of the deductions referred to in sub-clause (i).

(iii) by claiming the depreciation under the provision of section 32, except clause (iia) of sub-section (1) of the said section, determined in such manner as may be prescribed.

In the present case, company is eligible to opt for concessional tax rate of 15% (plus surcharge@ 10% plus HEC @ 4%), since it satisfies the following condition -

(1) It is a company registered after 1.10.2019 and has started production on or before 31.3.2024.

(2) Its business is not formed by splitting or reconstruction of business already in existence.

(3) Although it has used plant and machinery previously used, it falls within overall cap of 20% stipulated u/s 115BAB. The total value of plant and machinery used by the company is ` 10.65 crores. However, value of machinery previously used is only ` 2.00 crore which is 18.78% of total value of plant and machinery. Hence, this newly set up domestic company satisfies this criterion also.

(4) The company is engaged in business of manufacturing of an article or thing and research in relation to it.

(4) The company's business does not fall into prohibited categories.

(5) The company has not taken benefit of other beneficial provisions as listed out under section 115BAB.

(6) The company has to exercise the option by filing Form 10-ID by due date of filing first return of income under section 139 for A.Y. 2024-25.

7. As per section 16(3) of the IGST Act, 2017, a registered person making zero rated supply may supply goods and/or services under bond or Letter of Undertaking (LUT) without payment of IGST and claim refund of unutilized ITC. Further, notified class of persons may make zero-rated supply or notified class of goods or services may be exported, on payment of IGST and refund of such tax paid on goods and/or services supplied may be claimed. Accordingly, suppliers of textiles made-ups are permitted to export on payment of IGST and claim refund of such tax paid.

Rule 89(4) of the CGST Rules, 2017 stipulates that in the case of zero-rated supply of goods or services or both without payment of tax under bond/LUT in accordance with the provisions of section 16(3) of the IGST Act, 2017, refund of ITC shall be granted as per the following formula:

$$\text{Refund Amount} = \frac{\text{(Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services)}}{\text{Adjusted Total Turnover}} \times \text{Net ITC}$$

Here, Net ITC means ITC availed on inputs and input services during the relevant period other than the ITC availed for which refund is claimed under sub-rules (4A) or (4B) or both. Thus, refund of ITC on capital goods is not allowed.

However, in case of export on payment of IGST, entire IGST paid would be refunded and ITC on input, input services and capital goods can be utilized for making payment of IGST. Refund under both the cases will be computed as follows:

Export under LUT or bond

Tax liability	0
Refund of unutilized ITC	` 1.64 crore

Export on payment of IGST

Tax liability	` 2.50 crore
Set off by using ITC	` 2.00 crore
Set off by payment of cash	` 0.50 crore

Refund of IGST paid ` 2.50 crore

In export under bond/LUT, ITC of input and input services amounting to ` 1.64 crore is refundable. In case of export on payment of IGST, refund of IGST paid of ` 2.50 crore is available and IGST payable in cash is ` 0.50 crore.

In terms of procedural requirements, a separate refund application has to be filed electronically for exports under LUT. However, for exports on payment of IGST, refund is automatically granted by customs on valid filing of GSTR-3B and GSTR-1 and validation of tax invoice data with shipping bills and other information.

Further, in case of export under LUT, no tax is to be deposited by the company and refund of ITC has to be applied by way of separate application. Therefore, it does not involve any cash outflow at the time of export.

In case of export on payment of IGST, it involves cash outflow of ` 50.00 lakh which is refunded subsequently. Therefore, it involves temporary blockage of working capital for certain period of time. However, since refund process is system driven and automated as provided in rules under this route, it results in quicker refunds including refund of entire ITC and cash deposited.