

# Supply under GST

## Theory

Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by the authority of law. The Charging Section is a must in any taxing statute for levy and collection of tax. Before imposing any tax, it must be shown that The transaction falls within the ambit of the taxable event and The person on whom the tax is so imposed also gets covered within the scope and ambit of the charging Section by clear words used in the Section. **“No one can be taxed by implication.”**

Under the GST law, the levy of tax is as follows:

In the hands of the supplier	on the supply of goods and/or services (forward charge mechanism)
In the hands of the recipient	on receipt of goods and/or services (reverse charge mechanism)[ Only for the goods specified by central government under this behalf]

## Levy of tax

Every supply will be liable to tax. The nature of tax would depend upon the nature of supply, viz., inter State supplies will be liable to IGST and intra-State supplies will be liable to CGST and SGST or UTGST

1. Supply should involve goods and/or services, either as wholly goods or wholly services. Even where a supply involves both, goods and services, the law provides that such supplies would be classified either as, wholly goods or wholly services.
2. Supply will be an intra-State supply if the location of the supplier and the place of supply are within the same State.
3. Supply will be an inter-State supply if the location of the supplier and the place of supply are in different States.
4. The tax shall be payable by a ‘taxable person’ i.e. person/separate establishments of persons registered or liable to be registered under Sections 22 and 24 of the CGST Act.
5. The rate of tax will be as specified in the notification that would be issued in this regard, subject to a maximum of 20%.

## Meaning of Goods Section 2(52)

- Goods” means any kind of **movable property**  
*Ex: Furniture, electronics, and clothing.*
- Goods **do not include** **money and securities** *Shares/Deb./bonds.*  
*Ex: Cash, shares of a company, or government bonds are not considered goods.*
- Goods **includes** **actionable claim**



GST = 28%.

Income Tax 30%.

↓ → claim to Any debt  
 Include - **lottery / Betting / Gambling / Casinos / online Gaming**  
 & **Virtual Digital Asset i.e Crypto Currency**

Ex: A right to receive payment from a contract or a right to inherit property.

- **Goods includes** growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

Ex: Fruit trees that are agreed to be cut and sold before supply is considered as goods

### Meaning of Actionable claim — Read.

- Actionable claim includes a claim to any debt
- Actionable claim does not include a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent

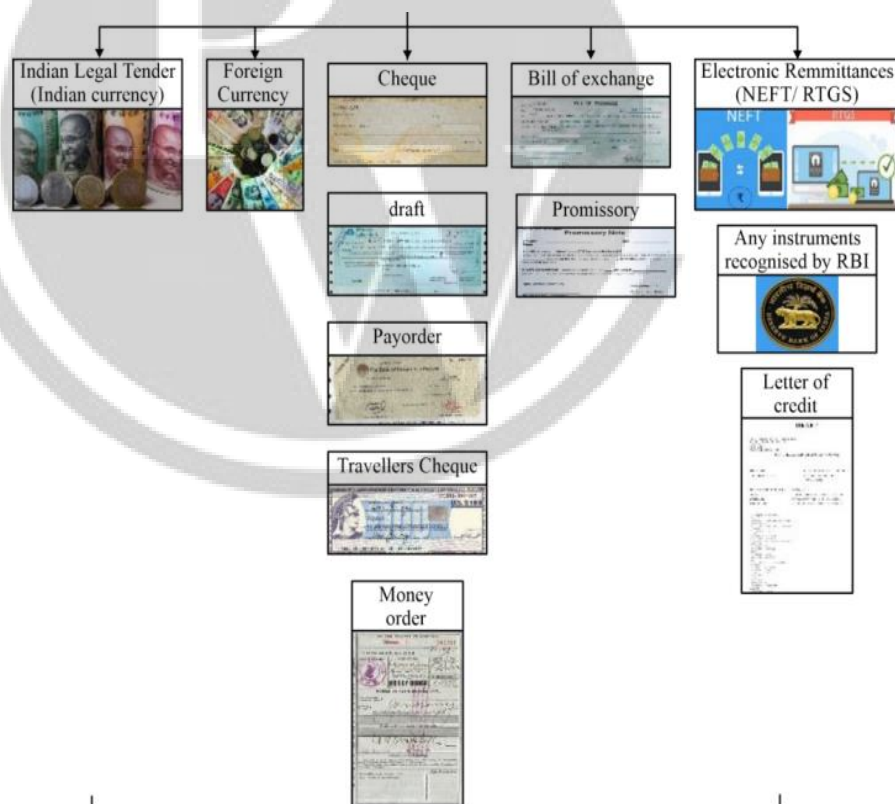
Ex: A person lends money to a friend without requiring any collateral. If the friend fails to repay the loan, the lender has a claim for the debt but not a claim on any specific asset as security

### Meaning of Money

- Money means the **Indian legal tender** (currency officially issued by the Indian government and recognized for transactions within India)

Ex: Indian Rupees (INR), such as 10-rupee or 500-rupee notes

- Money includes any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination.
- Money shall not include any currency that is held for its numismatic value.



Old ⇒ ₹1000 Currency Note  
 ₹500 Currency Note

1 paisa 50 paisa  
 5 paisa  
 25 paisa

Money → Numismatic Value → Consider As "Goods"

Ex: An antique gold coin from the Mughal Empire minted for a significant historical event may be purchased for their historical importance or as an investment, rather than for everyday transactions

### Meaning of Services

- "Services" means anything other than goods, money and securities
  - Services includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged
- Ex: Currency exchange services where a person converts Indian Rupees (INR) to US Dollars (USD). This involves a fee for the conversion service provided.
- it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities.
- Ex: A stockbroker facilitating the purchase of shares for an investor or an investment advisor arranging transactions in bonds. The service charges a commission or fee for these transactions.

### Analysis

Transaction in money (Loan and advances)	No Supply
Issuance of Letter of Credit / Bank Guarantee	No Supply
Issuance of Certificate of Deposit	No Supply
Fees/Brokerage/Transfer fees	Supply
Future/Forward (with delivery)	Supply
Future/Forward (without delivery)	No Supply
Interest and Discount	Supply but exempt

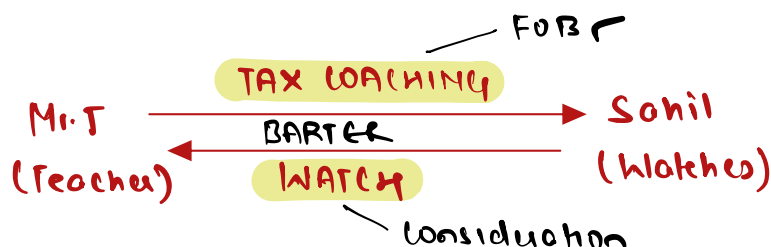
### Section 7 Meaning of Supply

#### Section 7(1)

(a) Supply includes all forms of supply (goods and/or services) and includes agreeing to supply when they are for a consideration and in the course or furtherance of business.

It specifically includes

- Sale
- Transfer
- Barter — CA FINAL
- Licence
- Lease
- Exchange
- Rental



S.25 Purch → Old S.24 Exch + 50,000  
 KIND MONEY

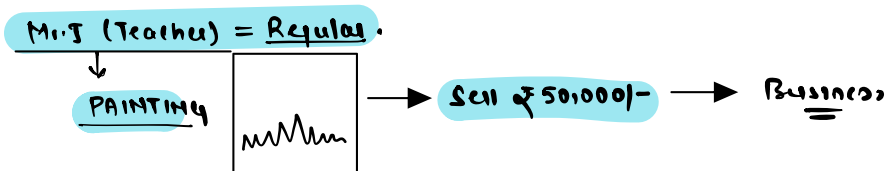
- Disposal → Kabaadi Vaale ko de diya






Examples: → Read.

1. A shopkeeper sells a pen for ₹ 100 to the buyer. After the sale, the pen belongs to the buyer and shopkeeper does not have any right on the pen. This is a transaction of sale.
2. A company transfers goods from its factory to the depot for sale purposes. This is 'transfer' of goods where the sale has not yet taken place.
3. When a new car worth ₹ 5,00,000 is purchased in exchange of an old car along with the monetary consideration of ₹ 4,00,000 paid for the said purchase – Exchange transaction
4. A doctor got his hair cut from a barber and provides him medical consultancy in return. In this transaction, the doctor provided the medical consultancy services to the barber for which consideration was in the form of hair cutting services provided by the barber. Similarly, the barber provided hair cutting services to the doctor for which consideration was in the form of medical consultancy services provided by the doctor – Barter transaction

Meaning of Consideration — only for Knowledge	
✓	Consideration can be in money or in kind.
✓	Further, a consideration need not always flow from the recipient of the supply. It can also be made by a third person.
✓	However, any subsidy given by the Central Government or a State Government is not considered as consideration. i.e. CG/ST subsidy → No GST
✓	A deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.
Meaning of Business — only for Knowledge	
✓	Business Includes Any trade/commerce, manufacture, profession etc. even if there is no monetary benefit.
✓	Supply/acquisition of goods including capital goods & services – in connection with commencement/closure of business. → goods = capitalised In B.O.A (MACHINE/FURNITURE/COMPUTER/AE etc)
✓	Provision of facilities by club/association etc. ZOO/MUSEUM/WATERPARK
✓	Admission to any premises for consideration. CIRCUS/DILIT CONCERT/IPL MATCH
✓	Services as holder of office accepted in course/furtherance of trade, profession.
✓	Activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club.
✓	Any activity by Government/local authority as public authorities.
✓	For any trade, commerce, or any other similar activity to qualify as business, frequency, volume, continuity or regularity of such transaction is not a pre-requisite.



Examples = **READ**

- Rishabh buys a car for his **personal use** and after a year sells it to a car dealer. Sale of car by Rishabh to car dealer is not a supply under CGST Act because said supply is not made by Rishabh in the course or furtherance of business. 
- Manikarnika sold her **old gold bangles** and earrings to '**Aabhushan Jewellers**'. Sale of old gold jewellery by an individual to a jeweller will not constitute supply as the same cannot be said to be in the course or furtherance of business of the individual.
- Sundaram Acharya, a famous actor, paints some paintings and sells them. The consideration from such a sale is to be donated to a Charitable Trust – 'Kind Human'. The sale of paintings by the actor qualifies as supply. 
- A **Resident Welfare Association** provides the service of depositing the electricity bills of the residents in lieu of some nominal charges. Provision of service by a club or association or society to its members is treated as supply as this is included in the definition of 'business'.
- Services by way of **admission to circus, cinema halls, amusement parks including theme parks, water parks, etc.** are considered as supply as these are services by way of admission of persons to any premises for a consideration. 
- **Royal Turf Race Club** is engaged in facilitating the wagering (betting) transactions on horses placed through totalisator 10. For providing the service of facilitating wagering transactions, Royal Turf Race Club gets commission which is deducted and retained by the club from the total bet value. Said services amount to supply as the activities of a race club are included in business.

#### Section 7(1)(aa)

##### Association

the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment/other valuable consideration.

**Explanation**—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.

#### Section 7(1)(b)

Supply includes import of a service, made for a consideration and whether or not in the course or furtherance of business.

This implies that import of services even for personal consumption would qualify as 'supply' and therefore would be liable to tax. This would not be subject to the threshold

limit as tax is expected to be payable on reverse charge basis, and the threshold limits do not apply in case of supplies attracting tax on reverse charge basis.

**Example:** Ramaiyaa, a proprietor, has received the architect services for his personal residence from an architect located in New York at an agreed consideration of \$ 5,000. The import of services by Ramaiyaa is supply under section 7(1)(b) though it is not in course or furtherance of business.

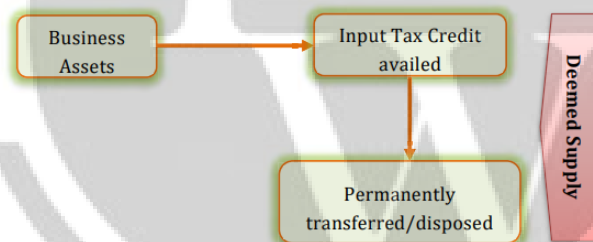
### Section 7(1)(c)

The activities specified in Schedule I, made or agreed to be made without consideration. Schedule I

#### 1/ Permanent transfer of business assets where input tax credit has been availed:

Read: The word 'transfer' in this clause suggests that there should be another person who would receive the business assets at the other end. The use of the words 'permanent transfer' implies that the goods should be transferred without any intention or requirement of having to receive the goods back. However, even in these types of transactions, it is essential that there is delivery of the business assets.

*E.g. Infosys limited upgraded their 1000 Laptops and donated their old laptops (ITC Claimed) to the Government Schools. In this case, such donation is treated as supply as per Schedule I.*



#### 2/ Supply of goods and/or services between related person, or between distinct persons:

Any supply of goods and/or services in the course of business or furtherance of business by a taxable person to a related person (as defined by way of explanation below Section 15(5)), or by one taxable person to another taxable person (as Provided in Section 25 of the Act), when made without consideration, would qualify as 'supply'.

*E.g. Free supplies to related persons, stock transfers to a unit outside the State/a different business vertical, etc. will be reckoned as supplies.*

### Meaning of Distinct Person

Read:

A person who has obtained/is required to obtain more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as distinct persons [Section 25(4) of the CGST Act].

E.g. Mohan, a Chartered Accountant, has a registered head office in Delhi. He has also obtained registration in the State of West Bengal in respect of his newly opened branch office. Mohan shall be treated as distinct persons in respect of registrations in West Bengal and Delhi.

Further, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons

Stock transfers or branch transfers qualify as supply provided the transfer of goods or services is between:

- i. different locations (with separate GST registrations) of same legal entity as these are transactions between distinct persons, or
- ii. establishments of distinct persons.

### Examples

- a) Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Delhi so that the same can be sold from there. The factory and retail showroom of Raghubir Fabrics are registered in the States where they are located. Although no consideration is charged, supply of goods from factory to retail showroom constitutes supply.
- b) Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Kanpur so that the same can be sold from there. It has taken one registration in the State of Uttar Pradesh declaring Lucknow factory as its principal place of business and Kanpur showroom as its additional place of business. Since no consideration is charged, supply of goods from factory to retail showroom in the same State under single registration does not constitute supply.

### Meaning of Related Persons

“Related persons” means

- a) Such persons are partners in business.

**Example** – Mr. A and Mr. B are partners in a business. They will be considered to be related persons.

- b) Any person holds twenty-five per cent or more of shares of both of them.

**Example** – Mr. A has 25% shares in X limited and 25% shares in Y limited, in this case X Ltd & Y Ltd will be considered to be related persons.

- c) One of them controls the other, Holding/subsidiary Relation.

**Example** – A limited is holding 51% shares of X limited, they are related persons.

- d) Together they directly or indirectly control a third person,

**Example** – ABC limited has 26% shares of X limited and PQR limited has 27% shares of X limited, in this case ABC & PQR shall be related person.

- e) Such persons are employer and employee;

- f) They are members of the same family; As per Section 2(49)

“family” means,

A <sup>7(1)(c)</sup> Supply (FOR) w/o consid. → B

Pw (ER) → Mr. J (EE)  
UPSC course  
w/o consid.

↙ S.7(1)(c) Apply.

Dependent/Independent  
 ↑  
 → Dep./Indep./Married/Unmarried

- the spouse and children of the person, and
- the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person.

In-laws → Not A Family for GST Purpose

**Note:** Any prerequisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that prerequisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee will not be subjected to GST.

3. Supply of goods by a principal to his agent, where the agent undertakes to supply such goods on behalf of the principal.

E.g. A company is located in Nagpur and employs an agent in Mumbai to undertake sales on behalf of the company. Goods transferred by the company to the premises of the agent in Mumbai would qualify as a 'supply'.

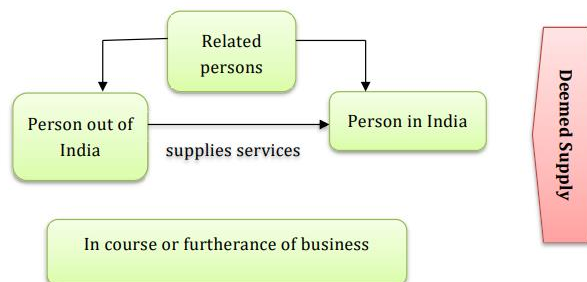


4. Supply of goods by an agent to his principal, where the agent undertakes to receive such goods on behalf of the principal

E.g. A company is located in Kanpur and employs an agent in Jaipur to undertake purchases on behalf of the company. Goods procured and transferred by the agent to the company would qualify as a 'supply'.

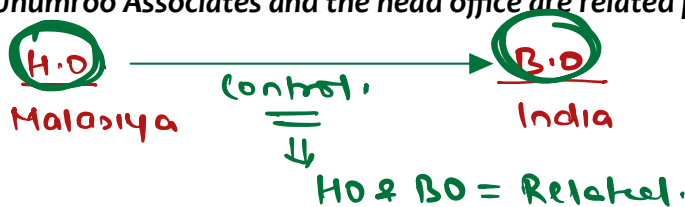
If agent has the authority to pass or receive the title of the goods on behalf of the principal i.e. where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the schedule I. However, where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the schedule I. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by Schedule I.

5. Import of services by a taxable person from a related person, or from any of his other establishments outside India, in the course or furtherance of business



Examples Read.

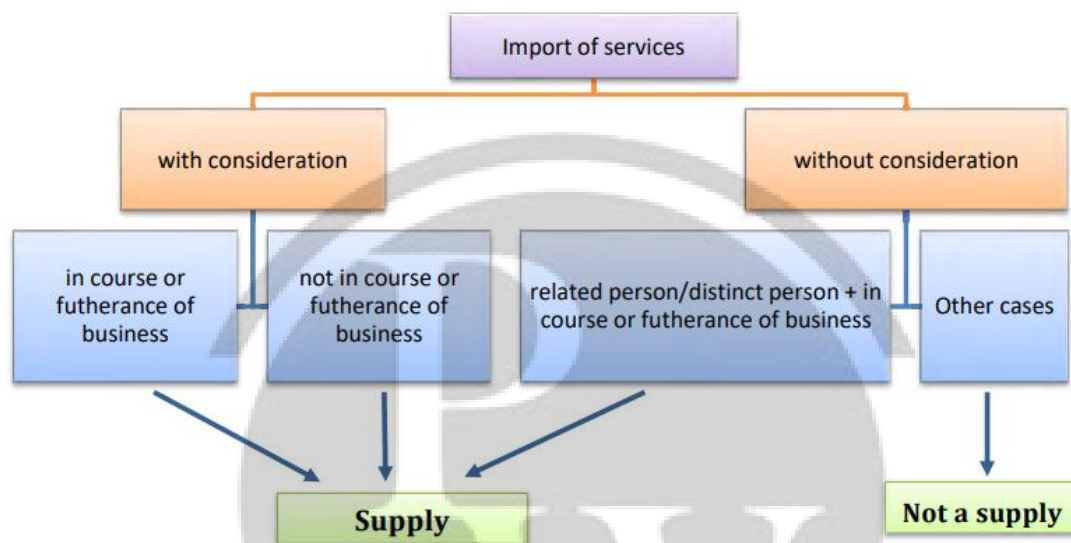
- ✓ Jhumroo Associates received legal consultancy services from its head office located in Malaysia. The head office has rendered such services free of cost to its branch office. Since Jhumroo Associates and the head office are related persons, services received by



*Jhumroo Associates will qualify as supply even though the head office has not charged anything from it.*

• *A Ltd. India has Foreign Subsidiary company B Ltd of USA. A Ltd. Received management consultancy services from B Ltd without consideration. In this case this supply will be covered under this clause of Schedule I.*

• *Chakmak, a proprietor registered in Delhi, has sought architect services from his son located in the US, with respect to his newly constructed house in Delhi. Although services have been received by Chakmak without consideration from his son – a related person, yet it will not qualify as supply since the same has not been received in course or furtherance of business.*



#### Illustration 01

Damodar Private Ltd., registered in Delhi, is planning to transfer some goods to its branch, registered in West Bengal, without any consideration, so that the goods can be sold from the branch. The company believes that the transaction that will be undertaken by it would not qualify as supply as no consideration is involved. Ascertain whether the transfer of goods by Damodar Private Ltd. to its branch office would qualify as supply?

#### Solution

As per Schedule I read with section 7(1)(c), supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business, is deemed as supply even if made without consideration. In the given case, since the Damodar Private Ltd. and its branch located in another State are distinct persons, supply of goods between them would qualify as supply.

#### Illustration 02 – Self Hw.

Prithvi Associates is engaged in supply of taxable goods. It enquires from its tax advisor as to whether any activity can be treated as supply even if made without consideration in accordance with the provisions of the GST law. You are required to enumerate such activities, if any.

## Solution

Section 7(1)(a) stipulates that the supply should be for a consideration and should be in the course or furtherance of business. However, section 7(1)(c) read with Schedule I enumerates the cases where an activity is treated as supply, even if the same is without consideration. These are as follows:

- a) Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
- b) Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business.  
However, gifts not exceeding ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
- c) Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.
- d) Supply of goods —
  - a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
  - b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

### Section 7(1A)

Where a transaction is considered as supply under sub Section (1), they shall be treated either as **supply of goods** or **supply of service** as referred in schedule II.

Schedule II			
S. No.	Activity/Transaction	Type	Nature of Supply
1.	Transfer	Any transfer of title in goods <i>E.g. Rotomac Sells Pen To Customer</i>	Goods
		Any transfer of right in goods/undivided share in goods without transfer of title in goods <i>E.g. Car given on rent by Zoom Car</i>	Services
		Any transfer of title in goods under an agreement which stipulates that property shall pass at a future date upon payment of full consideration as agreed. <i>E.g. Maruti Suzuki Sold car on Hire Purchase To Mr. X</i>	Goods
2. ✓	Land and Building	Any lease, tenancy, easement, licence to occupy land. <i>E.g. Lease agreement for land</i>	Services
		Any lease or letting out of a building including a commercial, industrial or residential complex for business or commerce, wholly or partly. <i>E.g. Shop Is Let-out in shopping mall</i>	Services

3. ✓	Treatment or Process	Any treatment or process which is applied to another person's goods. E.g. XYZ Printer does printing job for Rotomac Pens	Services
4. ✓	Transfer of Business Assets FA = M/F/C CA = Stock	Goods forming part of business assets are transferred or disposed off by/under directions of person carrying on the business so as no longer to form part of those assets.	Goods ✓
		Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/under directions of a person carrying on the business.	Services
	(Imp)	Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable person.	Goods
<p>E.g. Mr. X, a Electronic trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him.</p> <p>Exception</p> <ul style="list-style-type: none"> <li>• Business is transferred as a going concern to another person</li> <li>• Business is carried on by a personal representative who is deemed to be a taxable person.</li> </ul>			
5. ✓	Renting of immovable property	a) Renting of precincts of a religious place b) Renting of property to an educational institution.	Services
6. ✓		Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. E.g. DLF has constructed individual residential units for agreed consideration of Rs.2 crore per unit. Rs.1 crore per unit were received before issuance of completion certificate by the competent authority and balance after completion	Service
7. ✓		Temporary transfer or permitting use or enjoyment of any intellectual property right → INTANGIBLE ASSET - COPYRIGHT/PATENT/LOGO/Brand name	Services
8. ✓ Read.		Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software. E.g. XYZ software developers developed ERP software for A Ltd.	Services
9. ✓		Agreeing to the obligation to refrain from an act, or to tolerate an act or situation, or to do an act. E.g. Late delivery charges recovered from supplier for non-fulfilment of contract within stipulated time	Services
10. ✓		Works contract services. (Construction of building by contractor)	Services

	<p><i>Read.</i></p> <p>“works contract means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of <u>property in goods</u> (whether as goods or in some other form) is involved in the execution of such contract.”</p>	
11.	<p>Supply by way of or as part of any service or in any other manner whatsoever, of <u>goods</u>, being <u>food</u> or any other article for human consumption or any drink. <i>(Restaurant Service)</i></p>	<p><u>Services</u></p>

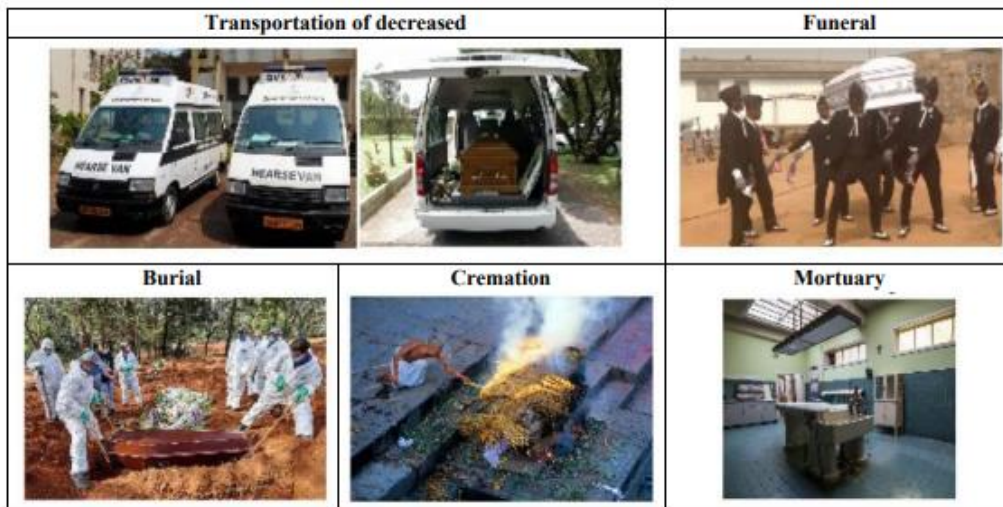
## Section 7(2)

Certain supplies will be neither a supply of goods, nor a supply of services: The law lists down matters which shall not be considered as ‘supply’ for GST. This list includes:

### a) Activities/transactions in Schedule III (Negative List)

- SOME*
- ✓ Services by an employee to an employer in the course or in relation to his employment.
  - ✓ Services provided by casual worker to employer who gives wages on daily basis to the worker are services provided by the worker in the course of employment
  - ✓ Services by any Court or Tribunal established under any law for the time being in force;
  - ✓ Functions performed by MPs, MLAs, etc.; the duties performed by a person who holds any post in pursuance of the provisions of the Constitution in that capacity; the duties performed by specified persons in a body established by the Central State Government or local authority, not deemed as an employee;
  - ✓ Sale of land and Sale of Building (except sale of under-construction premises where the part or full consideration is received before issuance of completion certificate or before its first occupation, whichever is earlier.
  - ✓ Actionable claims, other **specified actionable claims**  
Specified actionable claim means the actionable claim involved in or by way of-
    - a) *Betting*
    - b) *Casinos*
    - c) *Gambling*
    - d) *Horse racing*
    - e) *Lottery*
    - f) *Online money gaming*
  - ✓ Activity of holding of shares of subsidiary company by the holding company cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.
  - ✓ Services of funeral, burial, crematorium or mortuary including transportation of the deceased.





**“Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called, shall be neither supply of Goods nor supply of Services”**

**It may be noted that services provided by the Government to business entities including by way of grant of privileges, licences, mining rights, natural resources such as spectrum etc. against payment of consideration in the form of fee, royalty etc. are taxable under GST. Tax is required to be paid by the business entities on such services under reverse charge.**

**b) An employer and employee are treated as “related persons” and hence any supply of goods or services by employer to employee without consideration would be considered as supply as per schedule I.**

**However, gifts not exceeding ₹50,000 in value in a financial year by an employer to employees shall not be treated as supply of goods or services or both.**

### Illustration 03

**List any 5 (Five) activities/transactions specified under Schedule III of the CGST Act, 2017 which shall be neither treated as supply of goods nor as supply of services. Detailed explanations is not required.**

**[PYQ May 23 & MTP Sep 24]**

4

### Solution

**Activities or transactions which shall be treated neither as a supply of goods nor a supply of services are as under:-**

- 1. Services by an employee to the employer in the course of or in relation to his employment.**
- 2. Services by any court or Tribunal established under any law for the time being in force.**
- 3. Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities.**
- 4. Services of funeral, burial, crematorium or mortuary including transportation of the**

deceased.

5. Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building. (i.e. in case, where entire consideration for sale of building received after issuance of completion certificate or after its first occupation, whichever is earlier).

### Section 7(3) Read.

The Central Government or the State Government may notify such other transactions to either qualify as 'supply of goods' or as 'supply of services'. This notification must be issued only upon recommendations from the Council.

### Supply (Summary)

Includes		Excludes	
1.	Supply for consideration in course or furtherance of Business [Section 7(1)(a)]	Activities to be treated as supply of goods or supply of services [Section 7(1A) + Schedule II]	Negative list of services [Section 7(2) + Schedule III]
2.	Activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa [Section 7(1)(aa)]		
3.	Importation of services for consideration whether or not in course or furtherance of business [Section 7(1)(b)]		
4.	Supply without consideration [Section 7(1)(c) + Schedule I]		

### Section 8 Bundled Supply

As per Section 2(30), "composite supply" means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Principal supply means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

#### Examples:

- When a consumer buys a television set and he also gets a warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance services are ancillary.
- Charger supplied along with the mobile phone is a composite supply.
- Poshak Manufacturers entered into a contract with Cheeku Ltd. for supply of readymade shirts packed in designer boxes at Cheeku Ltd.'s outlet. Further, Poshak Manufacturers would also get them insured during transit. In this case, supply of goods, packing materials, transport & insurance is a composite supply wherein supply of goods is principal supply.

✓ As per Section 2(74), “mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

#### Examples:

- A gift pack comprising of chocolates and sweets is a mixed supply.
- A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply.

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:-

- a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.



#### Illustration 04

Composite supply is treated as supply of that particular goods or services which attracts the highest rate of tax, for the purpose of considering tax liability. Examine the validity of the statement.

#### Solution

The statement is not correct. For considering tax liability, composite supply is treated as supply of the principal supply. It is the mixed supply that is treated as supply of that particular goods or services which attracts the highest rate of tax.

#### Illustration 05

Dumdum Electronics has sold the following electronic items to Akbar Retail Store.

- a) Refrigerator (500 litres) taxable @ 18%
- b) Stabilizer for refrigerator taxable @ 12%
- c) LED television (42 inches) taxable @ 12%
- d) Split air conditioner (2 Tons) taxable @ 28%
- e) Stabilizer for air conditioner taxable @ 12%

Dumdum Electronics has issued a single invoice, indicating price of each of the above items separately in the same.

Akbar Retail Store has given a single cheque of ₹ 1,00,000/- for all the items as a composite discounted price. State the type of supply and the tax rate applicable in this case.



## Solution

In the given case, the items supplied by Dumdum Electronics are not naturally bundled in the ordinary course of business. Therefore, such supply is not a composite supply. Further, although Akbar Retail Store has paid a composite discounted price for these goods, Dumdum Electronics has not charged a single price for the said supply. Therefore, said supply is also not a mixed supply. single price for the said supply. Therefore, said supply is also not a mixed supply.

Supplies given below are the composite supplies. CBIC has clarified as to what constitutes the principal supply in the given composite supplies:

1. Supply of printed books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such printed goods.

In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service.



In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wallpaper etc. by the printer using its physical inputs including paper to print the design, logo etc. supplied by the recipient of goods, predominant supply is supply of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods.

New Grip = Post = Goods.

2. Retreading of tyres → Purane Tyres par Grip banwate ho.

Pre-dominant element is the process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply.

Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods.



React:

### Buy one get one free offer

It may appear at first glance that in case of offers like “Buy One, Get One Free”, one item is being “supplied free of cost” without any consideration. In fact, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined accordingly.

Read.

More than one supply made together and taxed at the individual rates (Heading)  
 There can be a case where an activity/transaction involves more than one supply of goods or services or both, but neither they are composite supplies nor can be categorised as mixed supplies, that is, all supplies carry independent significance. In such a case, if separate consideration is indicated against each supply, each such supply shall be charged at the respective rate applicable to that particular supply.

**Example**

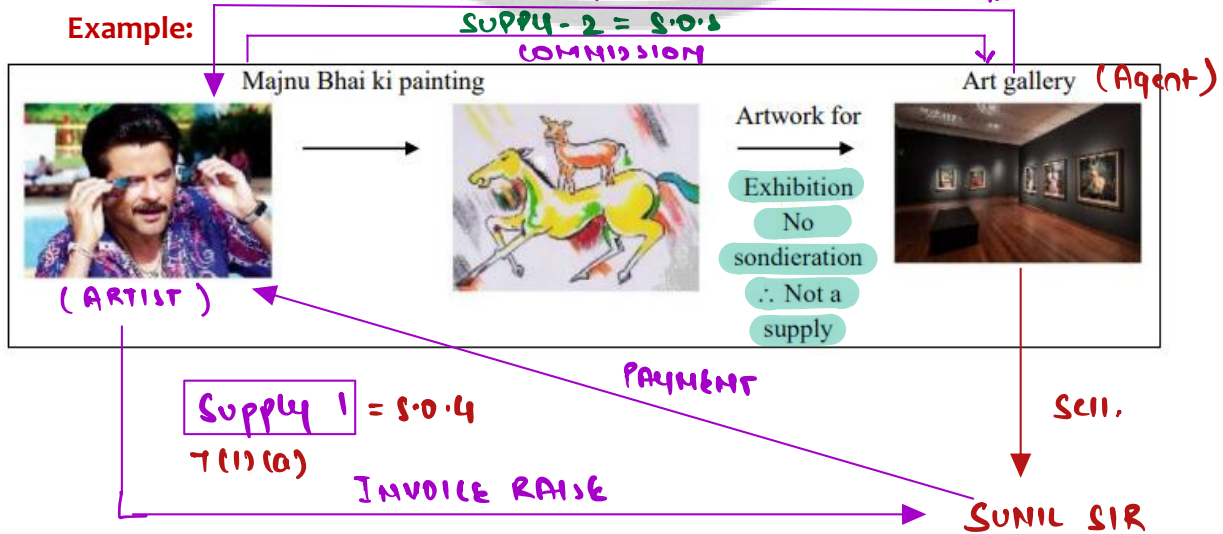
In case of servicing of cars involving supply of both goods (spare parts) and services (labour) where the value of goods and services are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.

**CLARIFICATIONS**

✓ Art works sent by artists to galleries for exhibition is not a supply  
 Artists give their work of art to galleries where it is exhibited for supply. However, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply. It is only when a buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply.



Example:



Read.

✓ 1. **Taxability of 'tenancy rights'/pagadi under GST**  
Pagadi system, i.e. transfer of tenancy rights against tenancy premium, is prevalent in some States. The activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in of Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services.



Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST since merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the 'scope of supply' and from payment of GST.

**Can transfer of tenancy rights be treated as sale of land/building?**

The transfer of tenancy rights cannot be treated as sale of land/building. Thus, it is not a negative list activity and consequently, a consideration for the said activity shall attract levy of GST. To sum up, transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. Further, services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of tenancy premium is liable to GST

✓ 3. **Inter-State movement of various modes of conveyance**

Inter-State movement of various modes of conveyance, between distinct persons as Specified in Section 25(4) of the CGST Act, including Buses, Trains, Trucks, Tankers, Trailers, Vessels, Containers, Aircrafts

a. carrying goods or passengers or both; or

b. for repairs and maintenance,

except in cases where such movement is for further supply of the same conveyance, such inter-State movement shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to IGST.

Thus, above activity may not be treated as supply and consequently IGST will not be payable on such supply.

However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance.

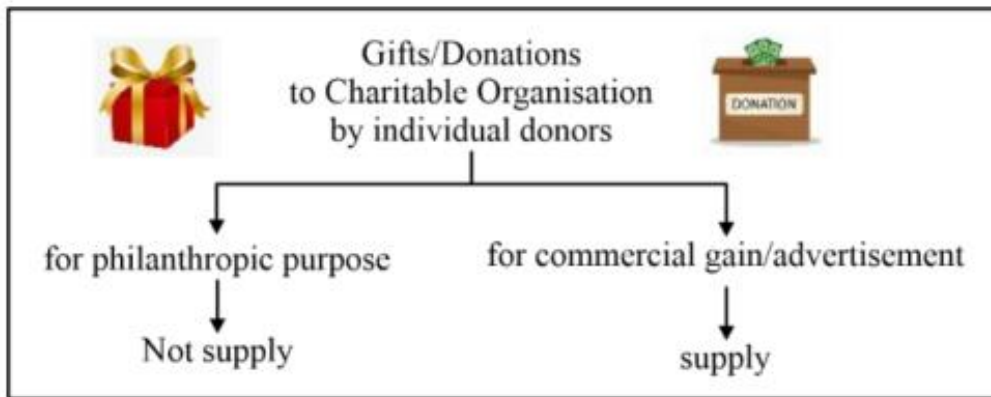
✓ 4. **Donations/Charity/Gift**

GST is not leviable where all the following three conditions are satisfied namely:

a. Gift or donation is made to a charitable organisation

b. Payment has the character of gift or donation

- c. Purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement



### Examples

- Bhushan donated a blackboard to Yoganisht Sansthan – a charitable yoga institution. Yoganisht Sansthan printed underneath the blackboard so donated – “Good wishes from Mr. Bhushan”.
- Smt. Durga Devi donated some money to a temple in the memory of her late father. The Temple Trust constructed a room in the temple complex from such donations and wrote “Donated by Smt. Durga Devi in the memory of her father” on the door floor of the room. In above examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have been advertised.

### 5. Supply of food and beverages at cinema halls

#### a. Taxable as Restaurant Service:

Food or beverages supplied in a cinema hall are treated as "restaurant service" if:

- They are provided as part of a service.
- They are supplied independently of the cinema exhibition service.



#### b. Taxable as Composite Supply:

If the supply of cinema tickets and food/beverages is clubbed together, forming a bundled supply then:

- It qualifies as a composite supply.
- GST will apply at the rate applicable to the cinema exhibition service, which is the principal supply.

Hold ⇒ Along with ITC

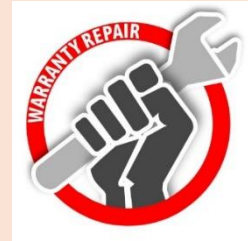
### 6. Replacement of parts and repair services during warranty period

#### Issue 1:

When a manufacturer provides warranty-related replacements or repairs for goods without charging additional consideration, is GST applicable?

#### Clarification:

- a) The value of the original supply already includes the cost of warranty services, and GST would have been paid on it at the time of supply.
- b) Hence, no further GST is payable on replacements or repairs provided during the warranty period if no additional consideration is charged.
- c) However, if the manufacturer charges any extra amount for replacements or services, GST is payable on that additional amount.



**Example:** A manufacturer sells a washing machine for ₹20,000, including a one-year warranty. During the warranty period, the motor malfunctions, and the manufacturer replaces it without charging the customer.

**Solution:**

*Since, the original supply value i.e. ₹20,000 already included the cost of potential warranty services. Therefore, No additional GST is payable on the motor replacement. However, If the manufacturer charges ₹1,000 for the replacement (i.e. for an upgraded motor), then GST will be payable on this additional ₹1,000.*

**Issue 2:**

**Does a distributor need to pay GST when providing warranty-related replacements or repairs on behalf of the manufacturer without charging the customer?**

**Clarification:**

- a) If the distributor provides replacements or repairs under warranty without charging the customer, no GST is payable by the distributor.
- b) However, if the distributor charges any additional consideration from the customer, GST is payable on that amount.

**Example:** A distributor replaces the faulty motor in a refrigerator under the manufacturer’s warranty without charging the customer.

**Solution:**

*The distributor does not charge the customer and acts on behalf of the manufacturer. Therefore, No GST is payable by the distributor for the replacement. If the distributor charges the customer ₹500 for transportation or expedited service, GST will be payable on the ₹500 additional amount.*

**Issue 3:**

**Does the replacement of parts under warranty involve a taxable supply between the distributor and manufacturer?**

Cases	Clarification
Distributor Charges Manufacturer	The distributor replaces parts from their stock or buys them from a third party and issues a tax invoice to the manufacturer for reimbursement. GST is payable on this supply by the distributor to the manufacturer. <b>Example:</b>

	<i>A distributor replaces a refrigerator compressor using their stock and invoices the manufacturer ₹5,000. GST is payable on ₹5,000 by the distributor.</i>
<b>Manufacturer Supplies Parts to Distributor Without Charge</b>	The distributor requests the manufacturer for parts to replace under warranty, and the manufacturer provides the parts at no charge. No GST is payable on the supply of parts by the manufacturer. <b>Example:</b> <i>A distributor requests a faulty motor from the manufacturer, which is provided free of cost for warranty replacement. No GST is applicable.</i>
<b>Credit Note Issued by Manufacturer</b>	The distributor replaces parts using stock received earlier from the manufacturer. The manufacturer issues a credit note for the replaced parts, adjusting tax liability under Section 34(2) of the CGST Act. <b>Example:</b> <i>A distributor replaces a fan blade from their stock, which was earlier purchased from the manufacturer. The manufacturer issues a credit note for ₹2,000, and tax liability is adjusted.</i>
<b>Replenishment of Distributor's Stock</b>	The distributor replaces parts using their stock and later raises a requisition to the manufacturer. The manufacturer replenishes the stock via a delivery challan without charging consideration. No GST is payable on this replenishment. <b>Example:</b> <i>A distributor replaces a motor from their stock and requests replenishment. The manufacturer provides the replacement motor via a delivery challan at no charge. No GST is applicable.</i>

#### Issue 4:

If a distributor provides repair services, including part replacement, to customers as part of a warranty (without charging the customer), but bills the manufacturer for these services via tax invoice or debit note, is GST applicable on this activity?

#### Clarification:

The distributor is supplying repair services to the manufacturer, who is the recipient as per Section 2(93)(a) of the CGST Act, 2017. Therefore, GST is payable by the distributor on the services provided to the manufacturer.

#### Issue 5:

Sometimes companies provide offers of Extended warranty to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period. Whether GST would be payable in both the cases?

#### Clarification:

##### 1. At the time of original supply:

- a) If extended warranty is offered by the same supplier as the goods, it is part of the composite supply, with the principal supply being the goods. GST is calculated on the total value, including the extended warranty.
- b) If provided by a different supplier, it is a separate supply of services, taxable under GST as a distinct service.

##### 2. After original supply:

- a) Extended warranty is treated as a distinct supply of services, separate from the original supply of goods, and GST is payable as applicable on the service.

### Clarification of issues pertaining to Del-credere agent (DCA)

A DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a DCA from other agents is that the DCA guarantees the payment to the supplier.

In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer (effectively providing an insurance against default by the buyer), and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent.

#### Issue 1

Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?

#### Clarification

Whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I of the CGST Act depends on the following possible scenarios: → Principal

- a) In cases where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of the agent. ie Sch. I Not Apply.
- b) In cases where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of the agent. ie Sch. I Apply.

#### Issue 2

Whether the temporary short term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the CGST Act?

#### Clarification

In such a scenario, following activities are taking place:

1. Supply of goods from supplier (principal) to recipient;
2. Supply of agency services from DCA to the supplier or the recipient or both;
3. Supply of extension of loan services by the DCA to the recipient.

It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply. Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier.

#### Issue 3

Where DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?

#### Clarification

Read

Invoice Issue = Sch. I ✓

Princ Invoice Issue → DCA = Sch. IX. ✓

In such a scenario following activities are taking place:

1. Supply of goods by the supplier (principal) to the DCA
2. Further supply of goods by the DCA to the recipient
3. Supply of agency services by the DCA to the supplier or the recipient or both
4. Extension of credit by the DCA to the recipient

It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient.

## ← No Claim Bonus

No supply of service by the insured to the insurance company in lieu of 'No Claim Bonus' offered by said insurance company to him

The issue which arose for consideration was whether the deduction on account of 'No Claim Bonus' (NCB) allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous years.



As per practice prevailing in the insurance sector, the insurance companies deduct 'No Claim Bonus' from the gross insurance premium amount, when no claim is made by the insured person during the previous insurance periods. The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of NCB.

It is, therefore, clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous years and NCB cannot be considered as a consideration for any supply provided by the insured to the insurance company.

Applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law

"Agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" has been specifically declared to be a supply of service in para 5(e) of Schedule II if the same constitutes a "supply" within the meaning of the CGST Act.

Agreeing to the obligation to Refrain from an act

Examples

- Example of activities that would be covered by this part of the expression would include non complete agreements, where one party agrees not to compete with the

other party in a product, service or geographical area against a consideration paid by the other party.

- Another example of such activities would be a builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or an industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

### Agreeing to the obligation to tolerate an act or a situation

This would include activities such as a shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or an RWA tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.

### Agreeing to the obligation to do an act

This would include the case where an industrial unit agrees to install equipment for zero emission/ discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so.

Above three activities must comply with the following conditions:

1. There must be an expressed or implied agreement or contract must exist
2. Consideration must flow in return to this contract/agreement

Taxability of some of the transactions has been discussed in detail as under:

Nature of transaction	Taxability	Clarification
Liquidated Damages	Not Taxable	'liquidated damages' is an amount paid only to compensate for loss or damage suffered by the aggrieved party due to breach of the contract. There is no agreement by the aggrieved party to refrain from or tolerate an act or to do anything for the party paying the liquidated damages. Hence liquidated damages are merely a flow of money for suffering loss or damage due to such breach. Such payments do not constitute consideration for a supply.
Penalty imposed for dishonour of cheque and violation of law	Not Taxable	The penalty imposed was not for tolerating the act or situation but for not tolerating and thereby deterring and discouraging such an act or situation. Hence the fine and penalty is not a consideration for any supply received and not taxable.

✓ Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period	Not Taxable	The amount recovered from the employee is not for tolerating the act of premature quitting of employment, but as penalty for dissuading the employees from taking up employment. Further, employee does not receive anything against the payment made to the employer. Therefore, the payment does not constitute a consideration for the service of agreeing to tolerate an act or a situation.
✓ Late Payment surcharge or fee <u>S.15(2)</u>	Taxable	The facility of accepting late payments with interest or late payment fee is a facility granted by supplier naturally bundled with principal supply. Hence this ancillary supply naturally bundled should be assessed at the same rate as that of principal supply.
Fixed charges for power <u>Self Read.</u> ↓ <u>Electricity</u>	Exempt	Price charged for electricity has two components - minimum fixed charge & variable per unit charge. Minimum fixed charge which remains at all situations does not mean that it is a charge for tolerating act of non-consumption of minimum threshold. Both are charged for sale of electricity and thus not taxable as sale of electricity is exempt from GST.
<u>Cancellation charges</u>	Taxable	Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply. The facilitation service of allowing cancellation against payment made is also a natural part of this bundled service. Hence the same will be assessed as that of the principal supply.

Liquidated Damages	Not a Supply
Cheque Dishonour Penalty	Not a Supply
Penalty for Violation of Law	Not a Supply
Forfeiture of Salary or Bond amount if employee not continue minimum agreed period	Not a Supply
Late payment fees linked with Main Supply Payment	Supply
Fixed Charges for Power	Supply but Exempt
Cancellation Charges	Supply



## Question Bank

### Illustration 01

Meghraj & Co. wishes to commence the business of supplying ready-made garments within Punjab and in the neighbouring States of Delhi and Haryana. Kindly state as to what is the taxable event under GST and leviability of CGST, SGST/UTGST and IGST on the same?

#### Solution

Taxable event under GST is the supply of goods or services or both made for consideration in the course or furtherance of business. CGST and SGST will be levied on intra-State supplies. IGST will be levied on inter-State supplies.

### Illustration 02

Transfer of title and/or possession is necessary for a transaction to constitute supply of goods. Examine.

#### Solution

Title as well as possession both need to be transferred for a transaction to be considered as a supply of goods.

In case title is not transferred, the transaction would be treated as supply of service in terms of Schedule II(1)(b).

In some cases, possession may be transferred immediately, but title may be transferred at a future date like in case of sale on approval basis or hire purchase arrangement. Such transactions will also be termed as supply of goods in terms of Schedule II.

### Illustration 03

Examine whether the following activities would amount to supply under section 7 read with Schedule I:

- a) Sulekha Manufacturers have a factory in Delhi and a depot in Mumbai. Both these establishments are registered in respective States. Finished goods are sent from factory in Delhi to the Mumbai depot without consideration so that the same can be sold from the depot.
- b) Raman is an architect in Chennai. His brother who is settled in London is a well-known lawyer. Raman has taken legal advice from him free of cost with regard to his family dispute.
- c) Would your answer be different if in the above case, Raman has taken advice in respect of his business unit in Chennai?

#### Solution

- a) Schedule I read with section 7(1)(c), inter alia, stipulates that supply of goods or services or both between related persons or between distinct persons as specified in section 25, is supply even without consideration provided it is made in the course or furtherance of business. Further, a person who has obtained more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as distinct persons [Section 25(4)]. In view of the same, factory and depot of Sulekha Manufacturers are distinct persons. Therefore, supply of goods from Delhi factory of Sulekha

HW

Manufacturers to Mumbai Depot without consideration, but in course/furtherance of business, is supply under section 7 read with Schedule I.

- b) Schedule I read with section 7(1)(c), inter alia, stipulates that import of services by a taxable person from a related person located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business. Explanation to section 15, inter alia, provides that persons shall be deemed to be “related persons” if they are members of the same family. Further, as per section 2(49), family means,
- i) the spouse and children of the person, and
  - ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person.
- c) In the above case, if Raman has taken advice with regard to his business unit, services provided by Raman’s brother to him would still not be treated as supply under section 7 read with Schedule I as although the same are provided in course or furtherance of business, but are provided without consideration and such services have not been received from a related person.

#### Illustration 04

State whether the following supplies would be treated as supply of goods or supply of services as per Schedule II.

- a) Renting of immovable property
- b) Goods forming part of business assets are transferred or disposed of by/under directions of person carrying on the business so as no longer to form part of those assets.
- c) Transfer of right in goods without the transfer of title in such goods.
- d) Transfer of title in goods under an agreement which stipulates that property shall pass at a future date upon payment of full consideration as agreed.

#### Solution

- a) Supply of services
- b) Supply of goods
- c) Supply of services
- d) Supply of goods

#### Illustration 05

Determine whether the following supplies would be treated as supply of goods or supply of services as per Schedule II:

- a) Temporary transfer or permitting use or enjoyment of any intellectual property right.
- b) Any treatment or process which is applied to another person’s goods.
- c) Transfer of title in goods.

#### Solution

- a) Supply of services
- b) Supply of services
- c) Supply of good

#### Illustration 06

HW

The goods supplied on hire purchase basis will be treated as supply of services. Examine the validity of the statement.

[MTP May 23]

#### Solution

The statement is not correct. Supply of goods on hire purchase shall be treated as supply of goods as there is transfer of title, albeit at a future date.

#### Illustration 07

Examine whether the activity of import of service in the following independent cases would amount to supply under section 7:

- H/W
- Miss Shriniti Kaushik received interior decoration services for her residence located at Bandra, Mumbai from Mr. Racheal of Sydney (Australia). The amount paid for the said service is 5,000 Australian dollar. → 1.0.2 + cons. Paid = 2.7(1)(b)
  - Miss Shriniti Kaushik received interior decoration services for her residence located at Bandra, Mumbai from her brother, Mr. Varun residing in Sydney (Australia) [wholly dependent on Miss Shriniti]. Further, Miss Shriniti did not pay any consideration for the said service.
  - Will your answer change if in the above case, if Miss Shriniti has taken interior decoration services with regard to her business premises and not her residence?

#### Solution

a) Supply, under section 7, inter alia,

- includes import of services for a consideration
- even if it is not in the course or furtherance of business.

Thus, although the import of service for consideration by Miss. Shriniti Kaushik is not in course or furtherance of business [as the interior decoration services have been availed in respect of residence], it would amount to supply.

b) Schedule I, inter alia, stipulates that import of services by a taxable person from a related person located outside India, without consideration is treated as supply only if it is provided in the course or furtherance of business. Explanation to section 15, inter alia, provides that persons shall be deemed to be "related persons" if they are members of the same family. Further, as per section 2(49), family means, —

- the spouse and children of the person, and
- the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person.

In the given case, Miss Shriniti Kaushik has received interior decoration services from her brother. In view of section 2(49)(ii) above, Miss Shriniti and her brother shall be considered to be related as Miss Shriniti's brother is wholly dependent on her.

However, Miss Shrinti has taken interior decoration services for her residence and not in course or furtherance of business. Consequently, services provided by Miss Shrinti's brother to her would not be treated as supply under section 7 read with Schedule I.

c) In the above case, if Miss Shriniti has taken interior decoration services with regard to her business premises, services provided by Miss Shriniti's brother to her would be treated as supply under section 7 read with Schedule I, as the same are provided in course or furtherance of business.

### Illustration 08

Manikaran, a registered supplier of Delhi, has supplied 20,000 packages at ₹ 30 each to Mukhija Gift Shop in Punjab. Each package consists of 2 chocolates, 2 fruit juice bottles and a packet of toy balloons. Determine the rate(s) of GST applicable in the given case assuming the rates of GST to be as under:

Goods/services supplied	GST rate
Chocolates	18%
Fruit juice bottles	12%
Toy balloons	5%

### Solution

As per section 2(74), mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Supply of a package containing chocolates, fruit juice bottles and a packet of toy balloons is a mixed supply as each of these items can be supplied separately and is not dependent on any other. Further, as per section 8(b), the mixed supply is treated as a supply of that particular supply which attracts the highest rate of tax. Thus, in the given case, supply of packages is treated as supply of chocolates [since it attracts the highest rate of tax] and the rate of GST applicable on the package of ₹ 6,00,000 (20,000 × ₹ 30) is 18%.

### Illustration 09

Gagan Engineering Pvt. Ltd., registered in Haryana, is engaged in providing maintenance and repair services for heavy steel machinery. For carrying out the repair work, Gagan Engineering Pvt. Ltd. sends its container trucks equipped with items like repair equipments, consumables, tools, parts etc. from Haryana workshop to its own repairing centres (registered under GST law) located in other States across India where the clients' machinery are being brought and are being repaired.

Discuss the levability of GST on the inter-State movement of trucks from the workshop of Gagan Engineering Pvt. Ltd. in Haryana to its own repairing centres located in other States across India.

### Solution

As per section 25(4)37, a person who has obtained more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as 'distinct persons'.

Schedule I to the CGST Act specifies situations where activities are to be treated as supply even if made without consideration. Supply of goods and/or services between 'distinct persons' as specified in section 25, when made in the course or furtherance of business is one such activity included in Schedule I under para 2.

However, as per CBIC circular, the inter-State movement of various modes of conveyance including, inter alia, trucks, carrying goods or passengers or both or for repairs and maintenance, between 'distinct persons' as specified in section 25(4), not involving further supply of such conveyance, may be treated 'neither as a supply of goods nor

supply of service' and therefore, will not be leviable to IGST. Applicable CGST/SGST/IGST, however, shall be leviable on repairs and maintenance done for such conveyance [Circular No. 1/1/2017 IGST dated 07.07.2017].

Thus, in the given case, inter-State movement of trucks from the workshop of Gagan Engineering Pvt. Ltd. located in Haryana to its repair centres located in other States is 'neither a supply of goods nor supply of service'.

#### Illustration 10

Sarvanna & Sons wishes to start supplying alcoholic liquor for human consumption in the State of Tamil Nadu. Therefore, it applies for license to the Tamil Nadu Government for selling liquor for which the State Government has charged specified fee from it.

Examine whether the grant of alcoholic liquor license by the Tamil Nadu Government to Sarvanna & Sons qualifies as supply.

#### Solution

Services by way of grant of alcoholic liquor license by the State Governments have been notified to be treated neither as a supply of goods nor as a supply of service. Such licence is granted against consideration in the form of licence fee or application fee or by whatever name it is called. Thus, in the given case, the grant of alcoholic liquor license by the Tamil Nadu Government to Sarvanna & Sons is neither a supply of goods nor a supply of service.

#### Illustration 11

Happy Constructions Ltd., a registered builder under GST in Bengaluru, Karnataka has got permission to build five floors from the Municipal Projects for one of its projects at Suraj Nagar. Aditya Constructions, a neighboring housing project approached Happy Constructions Limited to discuss regarding blockage of sun light issue arising out of construction of five floors and asked it to build only three floors for which 20 lakh was offered as compensation. Happy Constructions Limited agreed to the offer. It may be noted that Aditya Constructions is not ready to pay any further amount to Happy Constructions Ltd. in addition to the amount already agreed.

Briefly explain with correct legal provision whether the above amount received as compensation is liable to GST or not? And if considered as taxable, then calculate the total GST payable by Happy Constructions Ltd. Assume the applicable rate of CGST and SGST is 9% each.

Also state the conditions to be complied with.

[RTP May 24]

#### Solution

Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act has been specifically declared to be a supply of service vide para 5(e) of Schedule II of the CGST Act, 2017 if the same constitutes a supply as per the CGST Act, 2017.

In the given case, Happy Constructions Limited has agreed to build only three floors, even though it is permitted to construct five floors by the Municipal Authorities, for a compensation of 20 lakh. This results in supply of service.

The conditions to be complied with for the above supply will be

- a) There must be an expressed or implied agreement or contract must exist.
- b) Consideration must flow in return to this contract/ agreement.

Since Aditya Constructions is not ready to pay any further amount to Happy Constructions Limited in addition to the amount already agreed, the amount received 20 lakh shall be treated as inclusive of GST and the GST payable will be  $20,00,000 \times 9/118 = 1,52,542.37$  or 1,52,542 (rounded off) as CGST and SGST each.

#### Illustration 12

With reference to provisions of the CGST Act, 2017 discuss in brief, when "Importation of services" is to be considered as supply and when it is not to be considered as supply.

[PYQ Nov 2020]

#### Solution

Importation of services for a consideration whether or not in the course or furtherance of business is to be considered as supply.

Importation of services by a person without consideration is deemed as supply provided the following two conditions are satisfied:-

- (a) such import is from related person or from his establishments located outside India, and
- (b) such import is in the course or furtherance of business.

In case any or both of the above two conditions is/are not satisfied, the import of services without consideration shall not be deemed as supply.

#### Illustration 13

Explain the composite supply and mixed supply. If a trader launches a package sales for marriage containing double bed, refrigerator, washing machine, wooden wardrobe at a single rate. He is issuing invoice showing value of each goods separately. Whether this is case of mixed supply or composite supply. Explain.

[PYQ May 2021]

#### Solution

Composite supply comprises of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price

where such supply does not constitute a composite supply.

Items such as double bed, refrigerator, washing machine and wooden wardrobe are not naturally bundled and also the invoice for the supply shows separate values for each item i.e., the package is not supplied for a single price.

Therefore, supply of such items as a package will neither constitute a composite supply nor a mixed supply. Thus, the various items of the package will be treated as being supplied individually.

Note: The question specifies that the various items are supplied at a 'single rate'. The "single rate" expression is construed as single rate of tax in the above answer. Further, the "single rate" may also be construed as single price as given in the below mentioned answer.

Items such as double bed, refrigerator, washing machine and wooden wardrobe are not naturally bundled. Therefore, supply of such items as a package will not constitute composite supply. Further, a single price has been charged for the package. Consequently, supply of such items as a package will be treated as mixed supply.

#### Illustration 14

*Hw* The temple of ancestral deity of Mr. Aman goel and his family is located at Beri, Haryana. The temple is run by a charitable organisation registered under section 12AA of the Income Tax Act, 1961. The family has got unshakeable faith in their ancestral deity. Mr. Aman is a big entrepreneur having flourishing business of tiles in Gurugram. Upon the birth of their first child, he donated ₹ 10 lakh to the said temple for construction of a sitting hall in the temple. On the main door of the sitting hall, a name plate was placed stating "Donated by Mr. Aman Goel upon birth of his first child". You are required to examine the levability of GST on the donation received from Mr. Aman Goel?

[RTP May 2020]

#### Solution

It has been clarified that when the name of the donor is displayed in the religious institution premises, by placing a name plate or similar such acknowledgement, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.

In the given case, there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus, since the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement, hence GST is not leviable.

#### Illustration 15

Describe the provisions relating to import of services by a registered person as contained in the section 7(1)(b), 7(1)(c) and Schedule 1 of the CGST Act, 2017.

[PYQ Sep 2024]

#### Solution

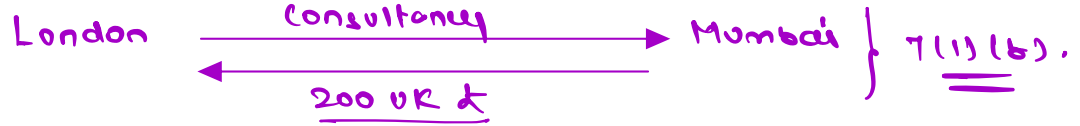
As per the provisions of section 7(1)(b), 7(1)(c) and Schedule I of the CGST Act, 2017, import of services for a consideration shall be considered as supply, whether or not in the course or furtherance of business

Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business shall be treated as supply even if made without consideration

#### Illustration 16

*Hw* Examine whether the following activities would amount to "supply" under GST law?

(i) Glory Ltd. is engaged in manufacturing and selling of cosmetic products. Seva Trust, a charitable organisation, approached Glory Ltd. to provide financial assistance



for its charitable activities. Glory Ltd. donated a sum of ₹ 2 lakh to Seva Trust with a condition that Seva Trust will place a hoarding at the entrance of the trust premises displaying picture of products sold by Glory Ltd. → Don → B. Advt → Supply.

(ii) Mr. Swamy of Chennai is working as a manager with ABC Bank. He consulted M/s. Jacobs and Company of London and took its advice for buying a residential house in Mumbai and paid them consultancy fee of 200 UK Pound for this import of service = 7(1)(b).  
 [PYQ May 2022]

### Solution

(i) An activity qualifies as supply under GST only if it is for a consideration and is in course/furtherance of business. Donations received by the charitable organizations are treated as consideration only when there's an obligation on part of the recipient of the donation to do anything.

Since in the given case, the display of products sold by the donor – Glory Ltd. - in charitable organization's premises aims at advertising/promotion of its business, it is supply for consideration in course/furtherance of business and thus, qualifies as supply under GST law.

(ii) Supply includes importation of services, for a consideration whether or not in the course/furtherance of business. Thus, in the given case, the import of services by Mr. Swamy amounts to supply although it is not in course/furtherance of business.

