

CHAPTER 6

SUPPLY

includes

CHAPTER OVERVIEW

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1	MEANING OF GOODS & SERVICES
2	PARAMETERS & CHARACTERISTICS OF SUPPLY
3	SCOPE OF SUPPLY
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SUPPLY [SECTION 7 & 8]

INTRODUCTION

GST Law, by levying tax on '**SUPPLY**' of goods and/or services, departs from historically understood concepts of 'taxable event' under the State VAT Laws, Excise Laws and Service Tax Laws i.e. sale, manufacture and service respectively



Broadly, the controversies related to issues like whether a particular process amounted to manufacture or not, whether the sale was pre-determined sale, whether a particular transaction was a sale of goods or rendering of services etc. The GST laws resolve these issues by laying down one comprehensive taxable event i.e.: "**Supply**" - Supply of goods or services or both.



Inclusive (not exhaustive)

CONCEPT OF SUPPLY [SECTION 7 OF CGST]

Supply includes all forms of supply of goods or services or both. Supply of anything other than goods or services does not attract GST. Let us analyse terms goods and services as defined under the Act:

Goods means every kind of movable property

✓ other than money and securities but ^{MS}

✓ includes actionable claim, 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.

Services means anything other than goods, money and securities but ^{MS}

✓ 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.
F.P.D. → Interest on loan → Stock Broker Commission

✓ Explanation clarifies that "services" includes facilitating or arranging transactions in securities.

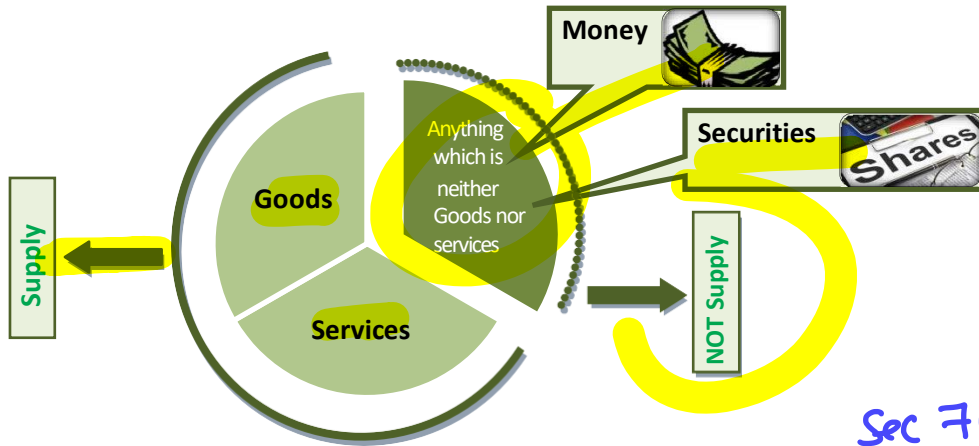
STATUTORY PROVISIONS

Section 7	Meaning and scope of supply
Section 8	Taxability of composite and mixed supplies
Schedule I	Matters to be treated as supply <u>even if made without consideration</u> ^{CXB ✓}
Schedule II	Matters to be treated as supply of goods or as supply of services
Schedule III	Matters or transactions which shall be treated <u>neither as supply of goods nor as supply of services</u>

CHARACTERISTICS OF SUPPLY

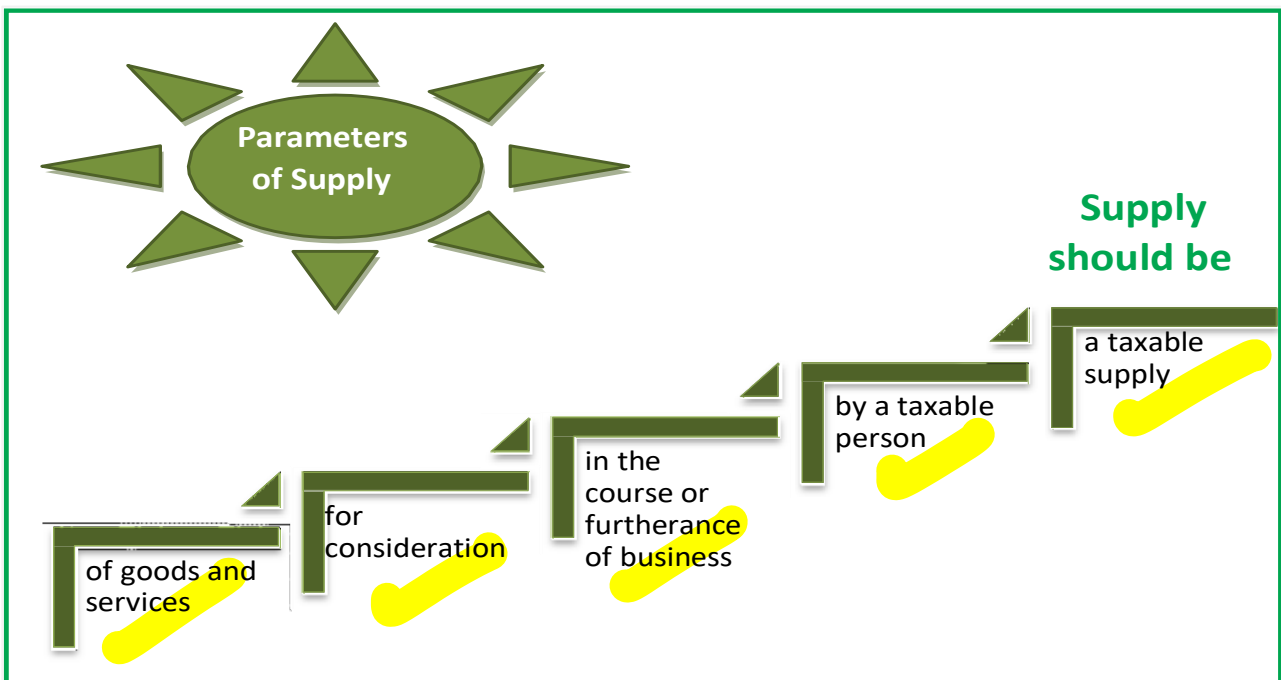
The meaning and scope of supply taxable under GST can be understood in terms of following parameters, which can be adopted to characterize a transaction as supply:

1. Supply should be of goods or services. Supply of anything other than goods or services like money, securities etc. does not attract GST.



2. Supply should be made for a **CONSIDERATION** (Exemption: Schedule I (4 Activities))
3. Supply should be made in the **"course or furtherance of business"**. (Exemption: Import of Service Sec 7(1)(b))
4. Supply should be made by a **"taxable person"**. (Registered or liable to be registered)
5. Supply should be a **"taxable supply"**.

PARAMETERS OF SUPPLY



RELEVANT DEFINITIONS:

(i) **Taxable supply:** means a supply of goods or services or both which is leviable to tax under this Act [Section 2(108) of CGST Act].

(ii) **Consideration** includes:

- (a) any payment made or to be made, whether in money or otherwise, for inducement of, the supply of goods or services or both, whether by the recipient or by any other person
- (b) Monetary value of any act or forbearance, for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person

but shall not include any subsidy given by the Central Government or a State Government

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.

Situations	Whether there is consideration or not
Akbar Travels Pvt. Ltd., a travel agent books ticket for a customer Mr. X. Travel agent raises invoice on customer Mr. X for transportation of passenger by air of ₹ 10,000 and his commission of ₹ 500	The entire amount of ₹ 10,500 is not his consideration. The amount of ₹ 500 retained by the air travel is to be considered as his consideration.
M/s X Ltd., being an authorized dealer of the TATA brand, rendered services to buyer of car, but payment is made to authorized dealer by the TATA Company.	It is called as consideration is given by third person. Therefore, it is treated as supply of service and liable to tax in the hands of M/s X Ltd.
A Sports Club agrees to hire services of cricket player Mr. B for a consideration of ₹ 2 crores. In addition to this, the agreement provides that the player shall be provided with the car valued for ₹ 20 lakhs	The entire value of ₹ 2.20 crores will be considered as consideration and subject to tax.
Mr. X sells office furniture to Mr. Y on the condition that donation of ₹ 10,000 is payable by Mr. Y to a trust.	The amount of ₹ 10,000 is paid by Mr. Y is by reason of purchase of furniture. Hence, ₹ 10,000 will be treated as consideration for sale of furniture. Thereby Mr. X is liable to pay GST on ₹ 10,000 in addition to the value of furniture.
M/s Lakshman Ltd. agreed to sell its business to M/s Ram Ltd., for a consideration of ₹ 50,00,000. M/s Lakshman Ltd. further agrees that it will not conduct same or similar business for a period of 10 years, for which M/s Ram Ltd., paid ₹ 20,00,000.	M/s Lakshman Ltd., consideration is ₹ 70,00,000

Mr. Rajesh during long drive with his wife Manju violated traffic rules and was imposed fine of ₹ 1,000	The amount received as fine or penalty for violation of statutory provisions will not be considered as consideration.
The Government provides subsidy, for the benefit of farmers but it is given to the manufacturer of fertilizers	It will not be considered as consideration.
Equipment and instruments sent to manufacturers' factory for repairs and calibration within India on a returnable basis. Is it supply?	It is not a supply. Since, no sale has taken place. It is enough to issue a challan for movement of goods without supply
X Ltd. supplied spare parts freely to replace during warranty period. Is it supply and chargeable to GST	It is not supply. GST is not chargeable if free replacement is provided by a business to customers without consideration under warranty
Penalties levied on late or delayed payment of loans and advances are taxable supply	No. These are exempted supply under GST

Delayed payment charges (Like additional charges/penal interest)

Value of Supply excludes	Value of Supply includes
Loan given by Bank – Not Taxable	Goods sold or supplied services on credit basis – Taxable Supply
Interest on loan – Exempt Supply	Interest charged by supplier on periodic payment - Taxable Supply
Penal Interest on delay in repayment of loan – Exempt Supply	Penal Interest on delay in repayment of value of goods or services – Taxable Supply

[CBIC Circular dated 28/06/2019]

(iii) Taxable person

A "taxable person" is a person who is registered or liable to be registered under Section 22 or Section 24. Hence, even an unregistered person who is liable to be registered is a taxable person. Similarly, a person not liable to be registered, but has taken voluntary registration and got himself registered is also a taxable person. A supply between two non-taxable persons does not constitute taxable supply under GST. It is important to note that supply can be made to a non-taxable person also. The restriction of being a taxable person is only on the supplier whereas the recipient can be either taxable or non-taxable. Further, there is no condition that supply needs to be made to another person, i.e. supplies made to self are also taxable.

Handwritten notes: T/Based, Compulsory Regn, NTP → NTP

(iv) Course or furtherance of Business

Every person carries out certain activities regularly for running trade or commerce.

1. GST is essentially a tax only on "commercial transactions". Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Resultantly, any supplies made by an

individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of business.

Example: 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 supply is not made by Rishabh in the course or furtherance of business.

Note: The above view is taken by the Departmental FAQs/Press Release. However, as already seen, business includes trade, commerce, or any other similar activity, **whether or not there is frequency, volume, continuity or regularity** of such transaction.

Accordingly, it is also possible to take a view in the above example that sale of car have been in the course or furtherance of business and thus constitute a supply. However, since this view may not always lead to logical conclusions, it is more prudent to take a purposive approach as followed in Departmental FAQs/press release given above.

2. Any activity undertaken in course/ for furtherance of business would constitute a supply. Since 'business' includes vocation, sale of goods or service even as a vocation is a supply under GST.

Example: Sundaram Acharya, a famous actor, paints some paintings and sells them. The consideration from such sale is to be donated to a Charitable Trust – 'Kind Human'. The sale of paintings by the actor qualifies as supply even though it is a one-time occurrence.

3. Services provided by the club/association to its members for consideration is a supply

7(D)(aa)

Example: 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'.

ONE exception to this 'course or furtherance of business' rule i.e., import of services for a consideration 7(D)(b)

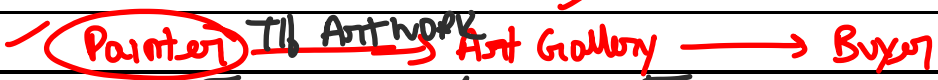
Art works sent by artists to galleries for exhibition is not a supply

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. NO consideration

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.

As per Rule 55, art work for supply on approval basis can be moved from the place of business of the registered person (artist) to another place within same State / place outside the State on a delivery challan along with the e-way bill and the invoice may be issued at the time of actual supply of art work. [Circular No. 22/22/2017 GST dated 21.12.2017].

INVOICING



CA NIKUNJ GOENKA

SUPPLY

consideration paid to painter

6.8

consideration paid to gallery

EXCEPTIONS TO THE SECOND AND THIRD PARAMETERS

- A. Prescribed transactions are deemed to be a supply **even without consideration** – Schedule 1 of CGST Act, 2017. *4 Activities*
- B. **"Import of services"** for a consideration, **whether or not in the course or furtherance of business** is treated as supply. *7(1)(b)*
- C. Prescribed transactions are kept **out of scope of supply despite existence of the above parameters**, i.e. a list of activities shall be treated as **neither supply of goods nor supply of services**. In other words, they are outside the **scope of GST**.

Government is also empowered to notify transactions that are to be treated as a supply of goods and not as a supply of services, or as a supply of services and not as a supply of goods.

Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organizations receiving donation or gifts from individual donors [Circular No. 116/35/2019-GST dated 11 October 2019]

Issue: Whether GST is applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor?

Facts: Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. **When the name of the donor is displayed in recipient institution premises, in such a manner, 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

Clarification: 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.**

Examples: Case where there would be no taxable supply:

"Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution"

It may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. **Thus, where following three conditions are satisfied, GST is not leviable.**

- 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,

SCOPE OF SUPPLY

Supply for consideration in course or furtherance of business
[Section 7(1)(a)]

Activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.
[Section 7(1)(aa)]

Importation of services for consideration whether or not in course or furtherance of business
[Section 7(1)(b)]

Supply without consideration **[Section 7(1)(c) + Schedule I]**

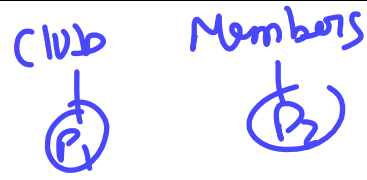
Where certain activities or transactions is treated as supply u/s 7(1), they shall be treated as supply of goods or supply of services **[Section 7(1A) + Schedule II]**

SUPPLY excludes NEGATIVE LIST OF SERVICES **[Section 7(2) + Schedule III]**

Scope of Supply expanded **[Section 7(1)(aa) inserted vide Finance Act 2021 notified from 1st January 2022]**

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

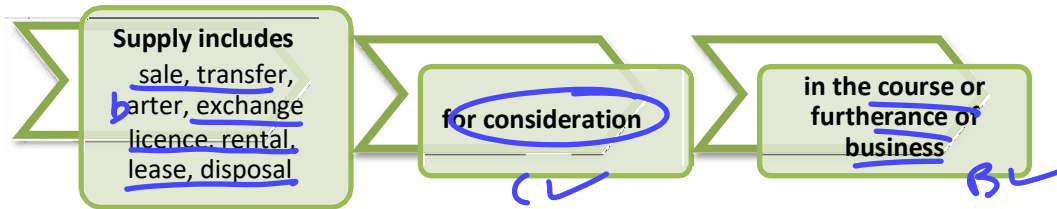
Explanation: For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate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



CUBV

Supply for consideration in course or furtherance of business [Section 7(1)(a)]

The definition of supply begins with the term 'Supply includes' thus making it clear that CGST Act intends to give an extensive meaning to the term 'supply'.



Thus, the forms of supply as contemplated in this first part have two pre-requisites:

- (i) the supply should be for a consideration; and
- (ii) in the course or furtherance of business

Meaning of certain prescribed terms:

(a) Sale

Sale means a sale of goods made within the State for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge.

Sale involves transfer of property in goods from one person to another person for consideration.

Under CGST Law sale is treated as supply leviable to GST. However, the definition of Sale has not been provided under the GST Law.

Examples on Sale:

- (1) Mr. X is an official liquidator provided various services like valuation of assets with the help of valuers, inviting and evaluating the tenders, selling assets, making payment to borrowers/creditors and so on. Activities of Mr. X are treated as supply of service and the commission earned by him is subject to GST.
- (2) Mr. A being a dealer of furniture deliver the goods to the branch office of M/s X Ltd., upon directions of M/s X Ltd., head office. The contract to supply furniture is between Mr. A and M/s X Ltd., head office. Mr. A is liable to pay GST on the consideration received from M/s X Ltd. head office.

(b) Transfer

It means, where the ownership may not be transferred but the right in the goods is transferred.

possession / right to use

Examples:

- (1) Goods sent for a demonstration on returnable basis is not a supply as there is no transfer of title involved

(2) Mr. A is the owner of Xerox machine. He transferred the right to operate the Xerox machine to Mr. B for a consideration of ₹ 10,000 per month for four months. Hence, ownership of the machine is not transferred but the right in the machine is transferred. It is supply of service leviable to GST.

(c) **Barter:** It means, the exchange of goods and productive services for other goods and productive services, without the use of money.

Examples:

(1) Mr. C, a practicing Cost Accountant provided services to M/s A Ltd., dealer of laptops. In return M/s A Ltd., given to Mr. C two laptops. Here, two-way supply takes place. Mr. C is making taxable supply of service and M/s A Ltd., is making taxable supply of goods. Hence, tax is payable by both.

(2) Mr. X, a dealer in laptops. He supplied a laptop for ₹ 40,000 to Mr. Y along with a barter of printer. The value of the printer known at the time of supply is ₹ 4,000 but the open market value of the laptop is not known. The value of the supply of laptop is ₹ 44,000. Hence, Mr. X is liable to pay GST on ₹ 44,000. At the same time Mr. Y is also liable to pay GST on ₹ 4,000 if he is registered person.

(d) **Exchange:**

When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an exchange. Exchange offers on products such as televisions, mobile phones and refrigerators are leviable under GST.

Examples:

(1) Mr. A is a dealer of new phones. He supplied for ₹ 20,000 to Mr. B along with exchange of an old phone and if the price of the new phone without exchange is ₹ 24,000, the open market value of the new phone is ₹ 24,000. Mr. A is liable to pay GST on ₹ 24,000. Mr. B also liable to pay GST on ₹ 4,000 if he is registered person.

(2) Mr X is a dealer of new cars. He sells new cars for ₹ 8,25,000 agrees to reduce ₹ 1,25,000 on surrendering of old car. Mr. Y who intends to buy new car worth ₹ 8,25,000 agreed to exchange his old car with new car. Under GST law, it will be treated as Mr. Y has made supply of old car to dealer Mr. X and Mr. X has made supply of new car to Mr. Y. If Mr. Y is registered person, he will be liable to pay GST on ₹ 1,25,000. Mr. X will be liable to pay GST on ₹ 8,25,000 whether Mr. Y is a registered person or not.

(e) **Licence, Lease, Rental etc.:**

Licence: Where one person grants to another, or to a definite number of other persons, a right to do or continue to do in or upon the immovable property of the grantor, the right is called a licence.

Example: Mr. X, a developer of information technology software and holder of licence thereon. License to use software was given to different clients: ₹ 18 lakhs; hence, Mr. X is liable to pay GST whether he transfer such right permanently or temporarily as the case may be.

Rentals: Periodical payment for use of another's property. Rent is to pay on monthly.

Example: Mr. A owns a residential building in a prime commercial locality. Large vacant land in the backyard is given on rent of ₹ 1,80,000 per month to a parking contractor, Mr. B who has set up a parking facility on the said land. It is a taxable supply of service and hence, Mr. A is liable to pay GST.

Lease: A lease is an agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period of time. A lease may be financial lease or operating lease.

Example: M/s M Bank Ltd., given an asset under financial lease to M/s N Ltd. Repayment of financial lease made by the customer to the bank ₹ 80 lakhs which includes a principal amount of ₹ 50 lakhs. Financial leases shall be taxed as supply of services M/s M Bank Ltd., is liable to pay GST.

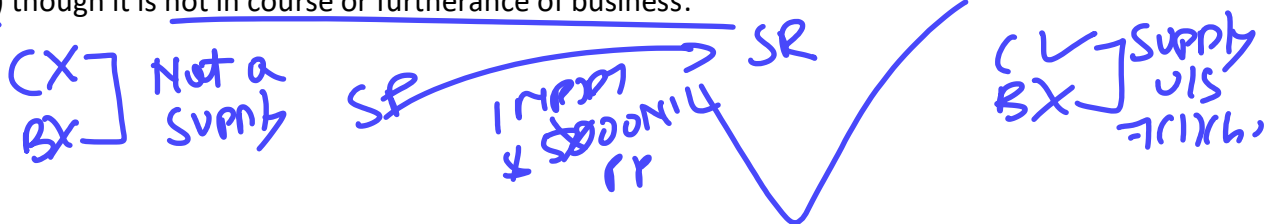
(f) **Disposal:** Disposal normally considered as selling of assets when the organization is about to close down and various assets are required to be disposed of. Such transactions will also be considered as supply of liable to tax under GST Law.



Importation of services for consideration whether or not in course or furtherance of business [Section 7(1)(b)]

Section 7(1)(b) which brings within the ambit of 'supply', the importation of services for a consideration whether or not in the course or furtherance of business. This is the only exception to the condition of supply being in course or furtherance of business.

Example: Ramaiyaa, a proprietor, has received the architect services for his house 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.



DDP / WB / NIL / ARISA / Customer

2. SUPPLY BETWEEN RELATED PERSONS OR DISTINCT PERSONS:

Supply between related person or distinct persons: Supply of goods or services or both between related persons or between distinct persons as specified in Section 25, will qualify as supply provided it is made in the course or furtherance of business.

27(1) & 25(S)

Thus, even if goods or services are transferred from head office to branch office, GST liability will arise. Although gifts from an employer to an employee not exceeding Rs. 50,000 will not be considered as supply.

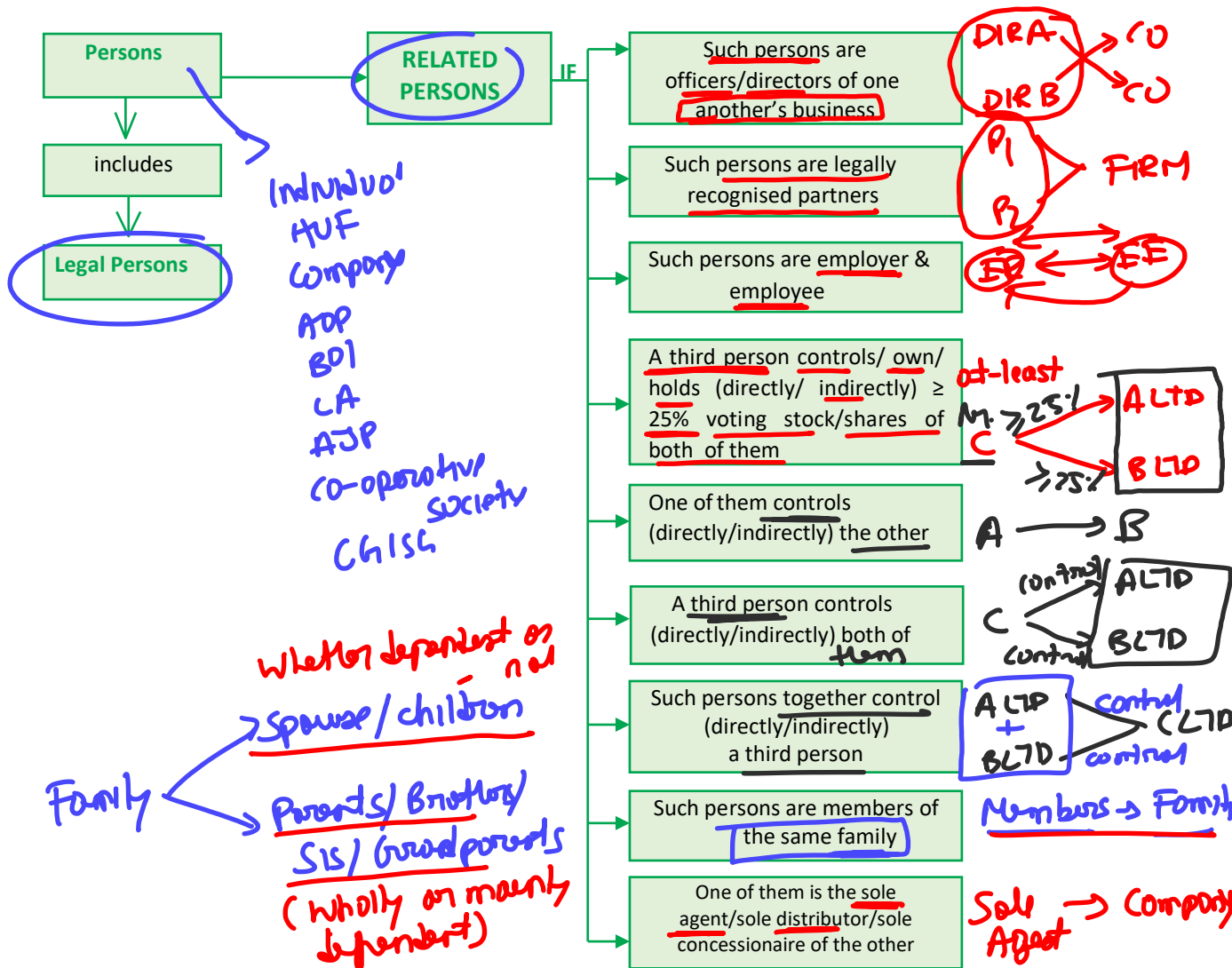
41000/- N GST



An employer gives Diwali Gifts to employees worth ₹ 55,000. Since an employee and employer are considered to be related persons, such supply would be leviable to GST.

MEANING OF RELATED PERSONS

Related persons have been defined as follows:



Facts of the Case	Whether Supply or not
Ms. Priya holds 30% shares of ABC Ltd. and 35% shares of XYZ Ltd.	ABC Ltd. and XYZ Ltd. are related.
Q Ltd. has a deciding role in corporate policy, operations management and quality control of R Ltd	It can be said that Q Ltd. controls R Ltd. Thus, Q Ltd. and R Ltd. are related.
M/s Ram & Co., holds 30,000 shares in M/s X Ltd and 25,000 shares in Y Ltd Share Capital of M/s X Ltd: 1,00,000 Equity Shares Share Capital of M/s Y Ltd: 80,000 Equity Shares	Since, M/s Ram Ltd., holds more than 25% of the share in the company X Ltd and Y Ltd, they will be considered as related persons.
Reliable group has three companies namely M/s A Ltd., M/s B Ltd., and M/s C Ltd., as group companies and M/s Reliable Ltd., as a parent company holds 25% of the shares in each group company	A, B & C companies will be considered as related persons

Deemed Distinct Person (DPP)

Reliable I Ltd 90%
25%
25%
25%

MEANING OF DISTINCT PERSONS SPECIFIED U/S 25

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)]

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. [Section 25(5)]

Example:

(i) 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. Sec 25(4)

(ii) Rishabh Enterprises, a registered supplier, owns an air-conditioned restaurant in Virar, Maharashtra. It has opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption. Since supply of alcoholic liquor for human consumption in Uttarakhand is a non-taxable supply, Rishabh Enterprises is not required to obtain registration with respect to the same in Uttarakhand. In this case, air-conditioned restaurant in Maharashtra and liquor shop in Raipur [though unregistered] shall be treated as establishments of distinct persons. Supply by Maharashtra office to Uttarakhand office, in course or furtherance of business even without consideration will qualify as supply.

25(5)

REG X
Exclusively M1

STOCK TRANSFERS OR BRANCH TRANSFERS

TS(4)

Transactions between different locations (with separate GST registrations) of same legal entity (eg., stock transfers or branch transfers) will qualify as supply under GST which is in contrast to the earlier regime.

Example: 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.

TKL

SUPPLY OF GOODS OR SERVICES OR BOTH BETWEEN AN EMPLOYER AND EMPLOYEE:

Employer and employee are related persons. Services provided by an employee to the employer in the course of or in relation to his employment are not treated as supply of services [Schedule III of CGST Act]

Schedule I provides that 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. However, gifts of value more than ₹ 50,000 made without consideration are subject to GST, when made in the course or furtherance of business.

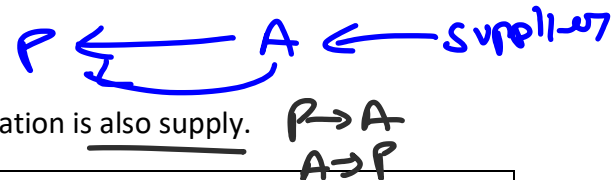
3. SUPPLY OF GOODS BETWEEN PRINCIPAL AND AGENT & VICE VERSA

Principal – Agent : Supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply. Similarly, supply of goods by an agent to his principal, without consideration, where the agent undertakes to receive such goods on behalf of the principal is considered as supply.

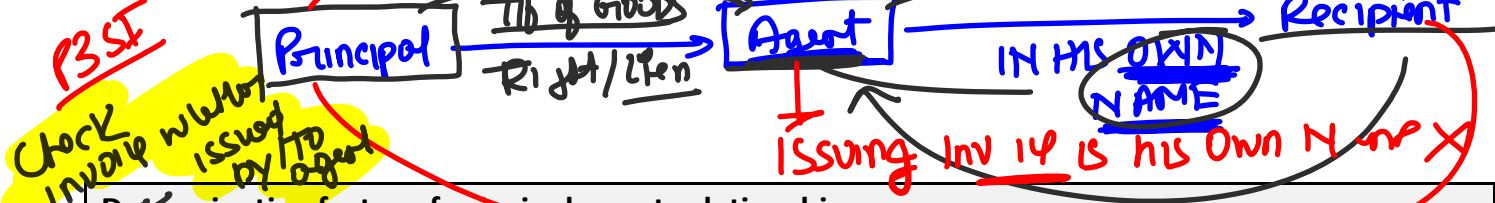


Points which merit consideration, in this regard, are as follows:

- Only supply of goods is covered here
- Supply of goods between principal and agent without consideration is also supply.



Facts of the Case	Whether Supply or not
M/s X Ltd., registered person located in Cochin and having a godown in Cochin transfers the goods to clearing and forwarding agent (C&F Agent) located in Chennai.	Such activity of transfer shall be considered as supply even if there is no consideration for such transfer and hence, leviable to GST
Sundaram & Co. engages Honda Cars Ltd. as an agent to sell cars on its behalf. Honda Cars Ltd. has supplied 50 cars to the showroom of Sundaram & Co., located in Chennai	Supply of cars by Honda Cars Ltd. to Sundaram & Co., will qualify as supply and the same is leviable to GST
M/s M Ltd. being a garment manufacturer appoints Mr. Ram as an agent, who stores garments manufactured by M Ltd. and sends to dealers whenever M Ltd. asks Mr. Ram to do so. Is it a supply?	Yes. Transfer of garments from M Ltd. to Mr. Ram is taxable supply under GST. GST will be levied.

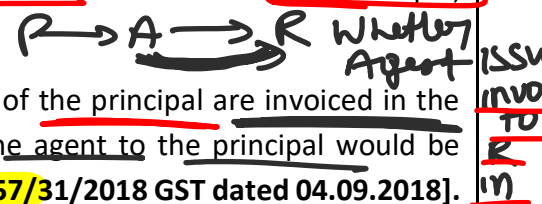


Determinative factor of principal-agent relationship

In order to determine whether a particular principal-agent relationship falls in the scope of supply, the deciding factor is **whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not?** In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.

(i) 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 ambit of supply above**. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall **not fall within the ambit of supply above**.

(ii) 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 in the scope of supply without consideration. [Circular No. 57/31/2018 GST dated 04.09.2018].



Scenario based examples to understand this circular



Facts of Scenario	Answer
Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by Mr. A, and asks the supplier (Mr. C) to send the goods and issue the invoice directly to Mr. A. (Principal)	Mr. B is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Mr. B is not an agent of Mr. A for supply of goods in terms of Para 3. of Schedule I.
M/s XYZ, a banking company, appoints Mr. B (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s XYZ. The invoice for the supply of the goods is issued by M/s XYZ to the successful bidder.	In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mr. B is not an agent of M/s XYZ for the supply of goods in terms of Para 3. of Schedule I.
Mr. A, an artist, appoints M/s B (auctioneer) to auction his painting. M/s B arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by M/s B on the behalf of Mr. A but in his own name and the painting is delivered to the successful bidder.	In this scenario, M/s B is not merely providing auctioneering services, but is also supplying the painting on behalf of Mr. A to the bidder, and has the authority to transfer the title of the painting on behalf of Mr. A. This scenario is covered under Para 3. of Schedule I.

Invoice issued in own name of Agent

<p>A C&F agent or <u>commission agent</u> takes <u>possession</u> of the goods from the principal and <u>issues the invoice in his own name.</u></p>	<p>In such cases, the C&F <u>commission agent</u> is an <u>agent of the principal for the supply of goods</u> in terms of <u>Para 3. of Schedule I.</u> The <u>disclosure or non-disclosure</u> of the name of the <u>principal</u> is immaterial in such situations</p> <p style="text-align: right;"><i>Agent</i></p>
<p>Mr A sells <u>agricultural produce</u> by <u>utilizing the services</u> of Mr B who is a <u>commission agent</u> as per the <u>Agricultural Produce Marketing Committee Act (APMC Act)</u> of the State. Mr B identifies the <u>buyers</u> and sells the <u>agricultural produce on behalf of Mr. A</u> for which he charges a <u>commission</u> from Mr. A.</p> <p>As per the <u>APMC Act</u>, the <u>commission agent</u> is a <u>person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction.</u></p>	<p>In cases where the <u>invoice is issued by Mr. B to the buyer</u>, the former is an <u>agent covered under Para 3. of Schedule I.</u> However, in cases where the <u>invoice is issued directly by Mr. A to the buyer</u>, the <u>commission agent (Mr. B) doesn't fall under the category of agent covered under Para 3.</u></p> <p>It is important to note that <u>services provided by the commission agent for sale or purchase of agricultural produce are exempt from GST.</u></p> <p style="text-align: center;"><u>SERVICE</u></p>

Read

Applicability of registration provisions

After completion of registration chapter

<p>Scenario 1 & 2</p>	<p>Mr. B shall not be liable to obtain registration in terms of Section 24(vii) of the CGST Act. He, however, would be liable for registration if his aggregate turnover of supply of taxable services exceeds ₹ 20 lakhs.</p>
<p>Scenario 3 & 4</p>	<p>M/s B shall be liable for compulsory registration in terms of Section 24(vii) of the CGST Act</p>
<p>Scenario 5</p>	<p>N/No. 12/2017 Central Tax (Rate) dated 28.06.2017 has exempted "services by any APMC or board or services provided by the commission agents for sale or purchase of agricultural produce" from GST.</p> <p>Thus, the "services" provided by the commission agent for sale or purchase of agricultural produce is exempted. Such commission agents (even when they qualify as agent under Schedule I) are not liable to be registered according to Section 23(1)(a) of the CGST Act, if the supply of the agricultural produce, and /or other goods or services supplied by them are not liable to tax or wholly exempt under GST.</p> <p>"Further, according to Section 24(vii) of the CGST Act, a person is liable for mandatory registration if he makes taxable supply of goods or services or both on behalf of other "taxable persons". Accordingly, the requirement of compulsory registration for commission agent, under the said clause shall arise when both the following conditions are satisfied, namely: -</p>

	<p>a. the principal should be a taxable person; and</p> <p>b. the supplies made by the commission agent should be taxable.</p> <p>Generally, a commission agent under APMC Act makes supplies on behalf of an agriculturist. Further, as per Section 23(1)(b) of the CGST Act an agriculturist who supplies produce out of cultivation of land is not liable for registration and therefore does not fall within the ambit of the term “taxable person”. Thus, a commission agent who is making supplies on behalf of such an agriculturist, who is not a taxable person, is not liable for compulsory registration under Section 24(vii) of the CGST Act.</p> <p>However, where a commission agent is liable to pay tax under reverse charge, such an agent will be required to get registered compulsorily under section 24 (iii) of the CGST Act.”</p>
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Clarification on scope of principal and agent relationship under Schedule I of CGST Act, 2017 in the context of del-credere agent (DCA) [Circular No. 73/47/2018 GST dated 05.11.2018]

1. Who is DCA?

DCA is an agent who guarantees the payment to the principal supplier. In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date. This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer.

2. Clarifications on certain issues

Issues	Clarification
<p>Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?</p> <p><i>Same as above</i></p>	<p>As already clarified vide earlier Circular No. 57/31/2018 - GST, 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:</p> <ul style="list-style-type: none"> In case 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 agent. In case where the invoice for supply of goods is <u>issued by the DCA in his own name, the DCA would fall under the ambit of agent.</u>
<p>Whether the <u>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</u></p>	<p>Following activities are taking place:</p> <ol style="list-style-type: none"> Supply of goods from supplier (principal) to recipient; Supply of agency services from DCA to the supplier or both; Supply of extension of loan services by the DCA to the recipient. <p>It is clarified that in cases where the DCA is not an agent under</p>

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Use of M ray

goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the CGST Act?

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, interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier.

Following activities are taking place:

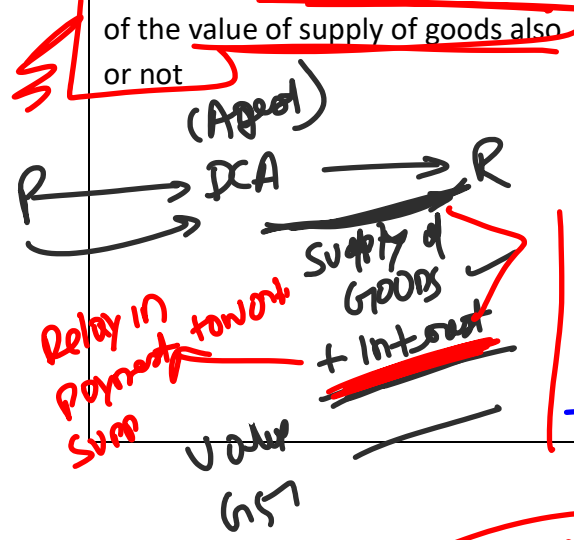
- Supply of goods by the supplier (principal) to the DCA;
- Further supply of goods by the DCA to the recipient;
- Supply of agency services by the DCA to the supplier or the recipient or both;
- Extension of credit by the DCA to the recipient.

Whether 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 part of the value of supply of goods also or not

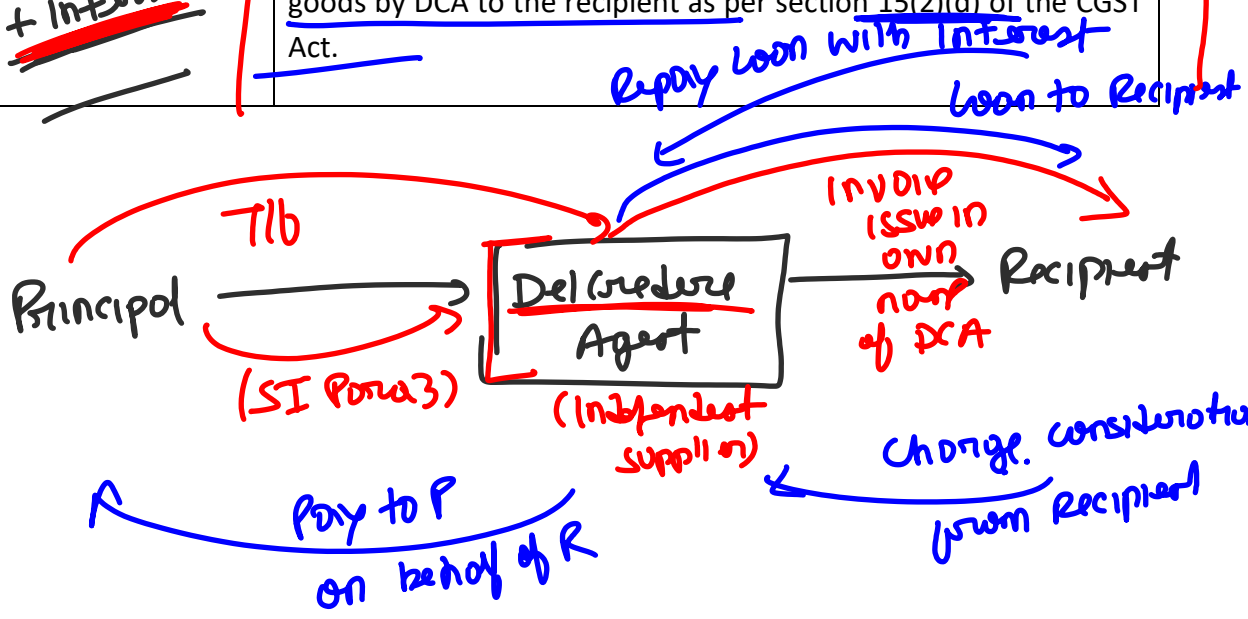
In cases where the DCA is an agent under Para 3 of Schedule I of the CGST Act:

- 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.

It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per section 15(2)(d) of the CGST Act.



VALUATION CHART



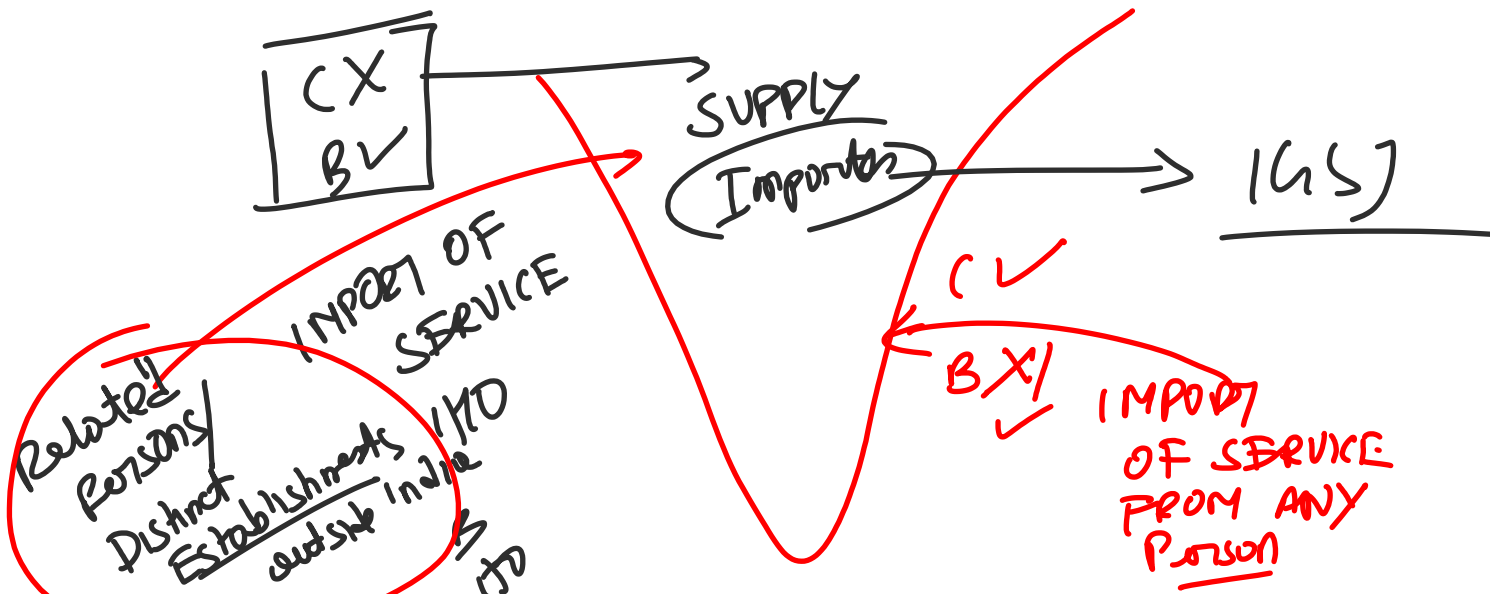
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7(1)(b) ✓
BX/✓

4. IMPORTATION OF SERVICES

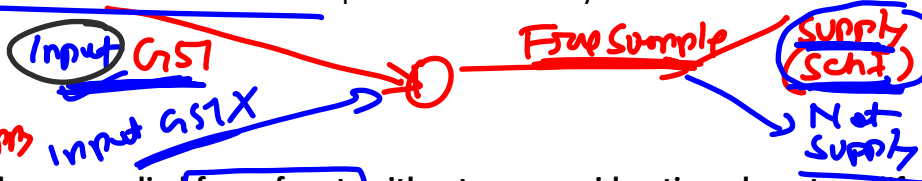
Importation of services: Import of services by a person from a related person or from his establishments located outside India, in the course or furtherance of business shall be treated as "supply".

Facts of the Case	Whether Supply or not
Apte & Apte Ltd is located in India and holding 51% of shares of Wilson Ltd, a USA based company	Wilson Ltd provides Business Auxiliary Services to Apte & Apte Ltd., will be treated as supply
Sparsh Ltd. of Mumbai imports business support services from its head office located in USA. The head office has rendered such services free of cost to its branch office	Services received by Sparsh Ltd. will qualify as supply even though the head office has not charged anything from it
Ram is an architect in Chennai. His brother who is settled in London is a well-known lawyer. Ram has taken legal advice from him free of cost with regard to his family dispute	Ram and his brothers are not related persons. Since Ram's brother who is not wholly or mainly dependent on Mr. Ram. Therefore, services provided by Ram's brother to him would not be treated as supply
Would your answer be different if in the above case, Ram has taken advice in respect of his business unit in Chennai	In the above case, if Ram has taken advice with regard to his business unit, services provided by Ram's brother to him still not be treated as supply under section 7 of the CGST Act, 2017 read with Schedule I, as although the same are provided in course or furtherance of business, such services have not been received from a related person.



Clarification on various doubts related to treatment of sales promotion schemes under GST

It has been noticed that there are several promotional schemes which are offered by taxable persons to increase sales volume and to attract new customers for their products. Taxability of two such schemes has been clarified as under:



(a) Free samples and gifts:

7(1)(a) -> Not a supply

- It is clarified that samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of Schedule I of the CGST Act.
- It has been clarified that ITC shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration as per Section 17(5) of Act.
- However, where the activity of distribution of gifts or free samples falls within the scope of "supply" as per Schedule I of the said Act, the supplier would be eligible to avail the ITC.

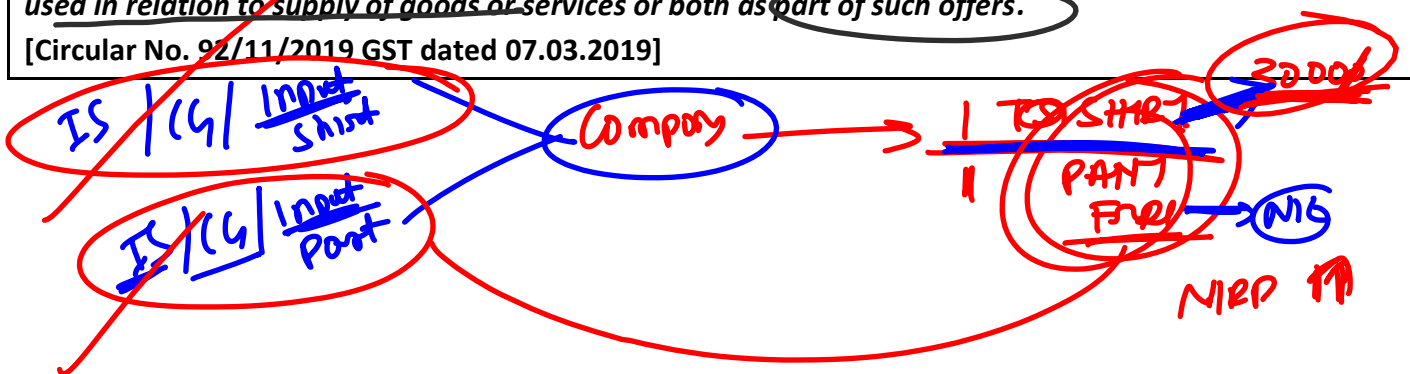
(b) Buy one get one free offer:

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 as per the provisions of section 8 of the CGST Act.

It is clarified that ITC shall be available to the supplier for the inputs, input services and capital goods used in relation to supply of goods or services or both as part of such offers.

[Circular No. 92/11/2019 GST dated 07.03.2019]



7(1) Activities to be treated as Supply of goods or Supply of services


Section 7(1A) of the CGST Act stipulates that where certain activities or transactions, constitute a supply in accordance with the provisions of section 7(1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II. It enlists the activities/transactions to be treated as supply of either goods or services. The matters listed out are primarily those which had been entangled in litigation in the earlier regime owing to their complex nature and susceptibility to double taxation.

SCHEDULE II OF CGST ACT 2017



Under existing laws, the restaurants charge both service tax and VAT on the value of food served. This is so because both sale of goods and provision of service is involved and therefore taxable event under both the Statutes i.e. respective VAT law and service tax law gets triggered.

S.I No.	Transaction	Type	Nature of Supply
1.	Transfer	Title in goods Example: Mohan sells electronic goods to customers	Supply of Goods
		Right in goods/ undivided share in goods without transfer of title in goods Example: A shopping complex owned by M/s X Ltd and M/s Y Ltd. At a later date M/s X Ltd. sold his share in shopping complex to M/s Z Ltd. and hence, ownership is not transferred to M/s Z Ltd., but only share in property is transferred to M/s Z Ltd.	Supply of Services
		Title in goods under an agreement which stipulates that property shall pass at a future date upon payment of full consideration as agreed. EXAMPLE: (i) An agreement to sell ascertained goods at a future date. (ii) Supplier supplied goods on "hire purchase basis" to customers (iii) Manufacturer supplies chocolates to retailers on "sale or return basis"	Supply of Goods
2.	Land & Building	Lease, tenancy, easement, licence to occupy land	Supply of Services

		<u>Lease or letting out of building wholly or partly</u> EXAMPLE: Lease rentals collected shall be taxable as supply of service under GST	Supply of <u>Services</u>
3.	<u>Treatment or Process</u>	Applied to other person's goods ' <u>Job Work</u> ' performed by a job worker like <u>dyeing of fabric</u> in various colours. Example: Dying House dyes the clothes given by Sumit Textiles Ltd. on job work basis.	Supply of <u>Services</u>
4.	<u>Transfer of Business Assets</u>	<u>Goods forming part of business assets are transferred or disposed off by/under directions of person carrying on the business</u>	Supply of <u>Goods</u>
		<u>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 person carrying on the business. Example: A director using car provided by the company for</u>	Supply of <u>Services</u> for mulling purpose
		<u>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</u>  A, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him and GST shall be payable. Exceptions: <u>Not apply</u> <ul style="list-style-type: none"> Business is transferred as a going concern to another person. Business is carried on by a personal representative who is deemed to be a taxable person 	Supply of <u>Goods</u> No longer liable to be registered in GST
5.	<u>Renting of immovable property</u> <u>Construction of complex, building, civil structure, etc.* (Note 1)</u> <u>Temporary transfer or permitting use or enjoyment of any intellectual property right (Intangibles like Brand / Copyright / Trademark)</u> <u>Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of IT software</u> EXAMPLE: Supply of GST related software to businesses for smooth processing of returns and accounts.	Supply of <u>Services</u>	

Change in USE

Discontinuity of Business

Para 5

Para 5(b) Connected with Para 5 of Sch. III

UUVUM
CBIC
Circular
Ex N of contract fees

Stopping

	<p>Agreeing to obligation to refrain from an act, or to tolerate an act or situation or to do an act.</p> <p>EXAMPLE: Payment of liquidated damages under a contract for non-performance/ short performance of obligation under a contract. Non-compete agreements/Late delivery charges recovered from supplier for non-fulfillment of contract within stipulated time/Notice pay recovered from employee for leaving their job before agreed period of notice for leaving a job</p>	
	<p>Transfer of right to use any goods for any purpose</p>	
<p>6 Restaurant Service</p>	<p>Following COMPOSITE SUPPLIES :- 2 of now</p> <ul style="list-style-type: none"> Works contract services; (Note 2) Supply by way of or as part of any other service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink 	<p>Supply of Services</p>

Construction service → Part consideration received before CC date

Note 1: Construction services

Construction of a complex, building, civil structure 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. CC

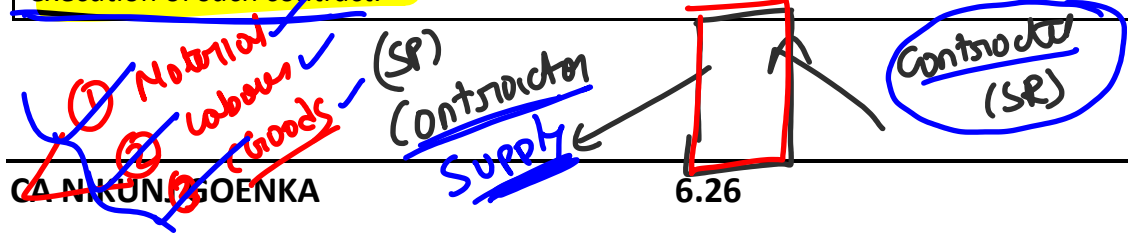
Example: Swati Builders has constructed individual residential units for agreed consideration of ₹ 1.1 crore per unit. ₹ 60 lakhs per unit were received before issuance of completion certificate by the competent authority and balance after completion.

Meaning of certain terms

- (i) Construction includes additions, alterations, replacements, or remodeling of any existing civil structure.
- (ii) Competent authority means the Government or any authority authorised to issue completion certificate under any law and in case of non-requirement of such certificate from such authority, from registered architect or chartered engineer or licenced surveyor.

Note 2: Works contract services

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 property in goods is involved in execution of such contract.





Negative list under GST

Sec 7(2)(a)

SCHEDULE III OF CGST ACT 2017

SCHEDULE III in the CGST Act is akin to the negative list under the service tax regime. This schedule specifies transactions/ activities which shall be **neither treated as supply of goods nor a supply of services.**

ENAGIL - I

(i) Services **by an employee to the employer** in the course of or in relation to his employment

(within employment contract)

Examples of services provided in the course of employment

- (a) Amounts received on **premature termination** of contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer
- (b) Services provided by **casual worker to employer** who gives wages on daily basis to the worker are services provided by the worker.
- (c) Casual workers are employed by a contractor, like a building contractor or a security services agency, who deploys them for execution of a contract or for provision of security services to a client.

Examples of services provided NOT in the course of employment and thus, it would be treated as supply.

- (a) An employee provides his services on **contract basis to an associate company of the employer.**
- (b) Services provided on **contract basis i.e. principal-to- principal basis. (Audi hor, Export)**
- (c) Any amount paid for **not joining a competing business** would be liable to be taxed being paid for providing the service of forbearance to act **Non- compete Fee**

(ii) Services by any court or **Tribunal established under any law** for the time being in force. The "Court" includes District Court, High Court and Supreme Court. **NCLT / IAT / GSTAT / HC / SC**

Levy of GST on amounts/fees charged by **Consumer Disputes Redressal Commission**

In order to provide inexpensive, speedy and summary redressal of consumer disputes, quasi-judicial bodies are set up in each District and State and at the National level, called the District Forums, the State Consumer Disputes Redressal Commissions and the National Consumer Disputes Redressal Commission respectively.

Consumer Disputes Redressal Commissions (National/ State/ District) may not be tribunals literally as they may not have been set up directly under Article 323B of the Constitution. However, they are clothed with the characteristics of a Tribunal on account of specified factors.

Consequently, **fee paid by litigants while registering complaints to said Commissions are not leviable to GST.** Any penalty in cash imposed by or amount paid to these Commissions will also not attract GST [Circular No. 32/06/2018 GST dated 12.02.2018].

(iii) (a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities; **NPs/MLAs**

(b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

Example: President of India, Vice President of India, Prime Minister of India, Chief Justice of India, Speaker of the Lok Sabha, Chief Election Commissioner, Comptroller and Auditor General of India, Chairman of Union Public Service Commission, Attorney General of India.

(c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.

(iv) Services of funeral, burial, crematorium or mortuary including transportation of the deceased. **Death**

(v) Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building. **Immovable Property**

(vi) Actionable claims, other than lottery, betting and gambling (CBG) **Entire consideration after CC received**
Examples: Lottery, gambling, betting, right to benefit of a contract, debentures, bills of exchange, promissory notes, bank guarantee, Fixed Deposit Receipt, arrears of rent, etc **Caused in Goods Ref'n**

(vii) Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. **outside India** **outside India**

(viii) (a) Supply of "warehoused goods" to any person before clearance for home consumption. "Warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.

Example: Mr. X imported some goods in India, but kept the goods in custom bonded warehouse without clearing it for home consumption. In the meantime, Mr. X sold these goods to Mr. Y while they were in warehouse. This transaction between Mr. X and Mr. Y is neither supply of goods nor supply of services. **SIII** **Imports**

(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

Example: Mr. P of India imported some goods from Japan. While the goods were in high seas, Mr. P sold the goods to Mr. Q in India by way of endorsement of documents of title of goods. This transaction between Mr. P and Mr. Q is neither supply of goods nor supply of services. **High seas sale**

Activities/ transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council shall be treated neither as a supply of goods nor a supply of services.

CG/SA/LA

7(2)(b)

Notification No 14/2017 CT (R) dated 28.06.2017 has notified

“the services by way of any activity in relation to a function entrusted to a Panchayat under Article 243G or Municipality under Article 243W of the Constitution for the said purpose”

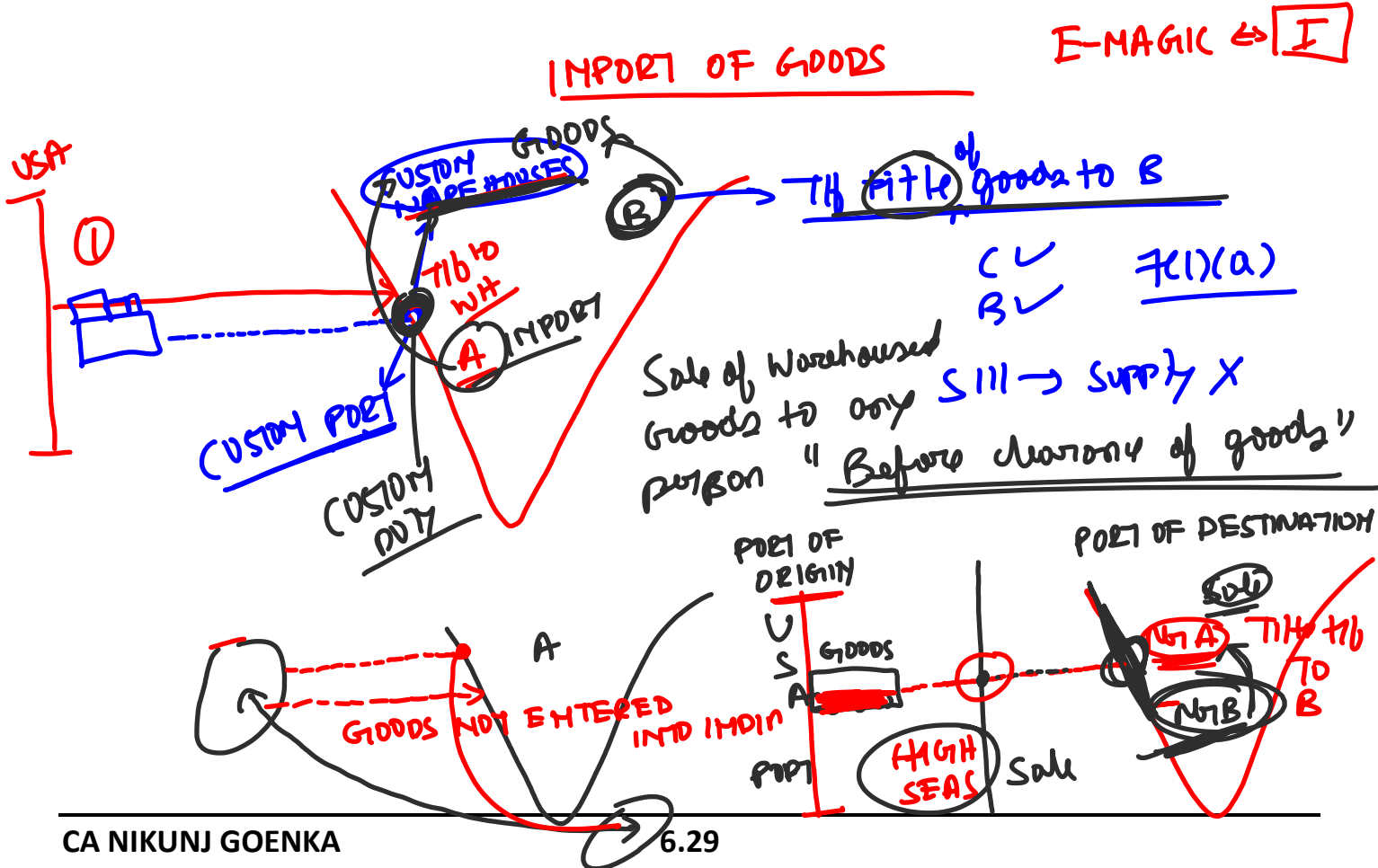
Notification No 25/2019 CT (R) dated 30.09.2019 has notified

“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.”

GST on license fee charged by the States for grant of Liquor licences to vendors [Circular No. 121/40/2019-GST dated 11 October 2019]

GST Council decided in the 37th meeting held on 20.09.2019, to clarify that this special dispensation applies only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.

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



CIRCULARS ISSUED BY THE CBIC ON SUPPLY

1. 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 Trains, Buses, Trucks, Tankers, Trailers, Vessels, Containers, Aircrafts

- (i) carrying goods or passengers or both; or
- (ii) for repairs and maintenance,

[except in cases where such movement is for further supply of the same conveyance]. The GST Council recommended that 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 [Circular No. 1/1/2017 IGST dated 07.07.2017].

2. Inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes]

The above circular shall *mutatis mutandis* apply to inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes], [except in cases where movement of such goods is for further supply of the same goods], such inter-State movement shall be treated 'neither as a supply of goods or supply of service,' and consequently no IGST would be applicable on such movements.

In this context, it is also reiterated that applicable CGST/SGST/IGST, as the case maybe, is leviable on repairs and maintenance done for such goods [Circular No. 21/21/2017-GST dated 22.11.2017].

3. Taxability of Cost Petroleum

- (i) As per the Production Sharing Contract (PSC) between the Government and the oil exploration & production contractors, in case of a commercial discovery of petroleum, the contractors are entitled to recover from the sale proceeds all expenses incurred in exploration, development, production and payment of royalty. Portion of the value of petroleum which the contractor is entitled to take in a year for recovery of these contract costs is called "Cost Petroleum".
- (ii) The relationship of the oil exploration and production contractors with the Government is not that of partners but that of licensor/lessor and licensee/lessee in terms of the Petroleum and Natural Gas Rules, 1959. Having acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum, contractors carry out the exploration and production of petroleum for themselves and not as a service to the Government. Para 8.1 of the Model Production Sharing Contract (MPSC) states that subject to the provisions of the PSC, the Contractor shall have exclusive right to carry out Petroleum Operations to recover costs and expenses as provided in this Contract. The oil exploration and production contractors conduct all petroleum operations at their sole risk, cost and expense. Hence, cost petroleum is not a consideration for service to GOI and thus not taxable per se.

However, cost petroleum may be an indication of the value of mining or exploration services provided by operating member to the joint venture, in a situation where the operating member is found to be supplying service to the oil exploration and production joint venture.

[Circular No. 32/06/2018 GST dated 12.02.2018]

4. Whether moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer is leviable to tax and whether OEMs are required to reverse input tax credit in this case?

- (i) **Not a supply:** Moulds and dies owned by the original equipment manufacturer (OEM) which are provided to a component manufacturer (the two not being related persons or distinct persons) on FOC basis does not constitute a supply as there is no consideration involved.
- (ii) **No reversal of ITC:** There is no requirement for reversal of input tax credit availed on such moulds and dies by the OEM since the moulds and dies are provided on FOC basis by the OEM to the component manufacturer in the course or furtherance of his business by the OEM.
- (iii) **Value of Supply:** The value of moulds and dies provided by the OEM to the component manufacturer on FOC basis **shall not be added to the value of such supply because the cost of moulds/dies was not to be incurred by the component manufacturer** and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b) of the Act.
- (iv) **Reversal of ITC in specified cases:** If the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, **the amortised cost of such moulds/dies shall be added to the value of the components.** In such cases, the **OEM will be required to reverse the credit availed on such moulds/ dies**, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the former's business. [Circular No. 47/21/2018-GST dated 8 June 2018]

5. Taxability of 'tenancy rights / pagadi' under GST

JUMP

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 Para 2 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.

The transfer of tenancy rights cannot be treated as sale of land/ building in Para 5 of Schedule III. 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 a portion of tenancy premium is liable to GST.

Note: Grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt from tax. [Circular No.44/18/2018 CGST dated 02.05.2018]

COMPOSITE SUPPLY AND MIXED SUPPLIES [SECTION 8]

PART A - INTRODUCTION

GST is payable on individual goods or services or both at notified rates. However, in certain cases, supplies are not such simple and clearly identifiable supplies. Some of the supplies are a combination of goods or combination of services or combination of goods and services both and each individual component of such supplies may attract a different rate of tax.

In such a case, the rate of tax to be levied on such supplies may be a challenge. It is for this reason, that the GST Law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies.

Composite Supplies

Composite supply means a supply made by a taxable person to a recipient and:

G + S
G + G
S + S

✓ comprises two or more taxable supplies of goods or services or both, or any combination thereof, and

✓ are naturally bundled and supplied in conjunction with each other, in the ordinary course of business.

✓ one of which is a principal supply

This means that in a composite supply, goods or services or both are bundled owing to natural necessities.

The elements in a composite supply are dependent on the 'principal supply'.



Suvarna Manufacturers entered into a contract with XYZ Ltd. for supply of readymade shirts packed in designer boxes at XYZ Ltd.'s outlet. Further, Suvarna 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

39,000
3,000 33,000

When a consumer buys a television set and he also gets 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.

Meaning of Principal Supply:

significant part of overall value

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.

Other examples: Works contract and restaurant services. However, the GST law identifies both as supply of services and such services are chargeable to specific rate of tax mentioned against such services (works contract and restaurants).

SAT

How to determine whether the services are bundled in ordinary course of business?

It would depend upon normal or frequent practices followed in area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below:

(i) The perception of the consumer or the service receiver - If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package, then such package could be treated as naturally bundled in the ordinary course of business.

(ii) Majority of service providers in a particular area of business provide similar bundle of services.

Example: bundle of catering on board and transport by air is a bundle offered by a majority of airlines.

(iii) Nature of various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service.

Example: Service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in ordinary course of business.

(iv) Other illustrative indicators, not determinative but indicative of bundling of services in the ordinary course of business are:

a. There is a single price or the customer pays the same amount, no matter how much package they actually receive or use.

b. The elements are normally advertised as a package

c. The different elements are not available separately

d. The different elements are integral to one overall supply. If one or more is removed, the nature of the supply would be affected

No straight jacket formula can be laid down to determine whether a service is naturally bundled in ordinary course of business. Each case has to be individually examined in backdrop of several factors



Mixed Supplies

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**.

Not naturally bundled in ordinary course of business

The individual supplies are independent of each other and **are not naturally bundled**

not dependent



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. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.



A shopkeeper selling storage water bottles along with refrigerator. Bottles and the refrigerator can easily be priced and sold separately. So, such supplies are mixed supplies.

A mixed supply comprising of two or more supplies shall be treated as supply of that **particular supply that attracts highest rate of tax.**


How to determine if particular supply is mixed supply?

In order to identify if the particular supply is a mixed supply, the first requisite is to rule out that the supply is a composite supply.

A supply can be a mixed supply only if it is not a composite supply. As a corollary it can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business then it would be a mixed supply.

CIRCULARS ISSUED BY THE CBIC ON COMPOSITE & MIXED SUPPLY

Illustrative list determining what constitutes the principal supply in the given composite supplies:

<p>Whether supply of <u>books</u>, <u>pamphlets</u>, <u>brochures</u>, <u>envelopes</u>, <u>annual reports</u>, <u>leaflets</u>, <u>cartons</u>, <u>boxes</u> etc., printed with <u>design</u>, <u>logo</u>, <u>name</u>, <u>address</u> or other contents supplied by the recipient of such supplies, would constitute supply of goods or supply of services?</p> <p style="color: red; font-size: 2em; font-weight: bold; transform: rotate(-15deg); position: absolute; left: 50px; top: 380px;">SERVICE</p>	<p>Printing of <u>books</u>, <u>pamphlets</u>, <u>brochures</u>, <u>annual reports</u>, and the like is SUPPLY OF SERVICE: (content is the principal supply)</p> <p>Only content is supplied by the publisher or the person who owns the <u>usage rights</u> to the <u>intangible inputs</u> while the <u>physical inputs</u> including <u>paper</u> used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply. SERVICE</p> <p>Supply of <u>printed envelopes</u>, <u>letter cards</u>, <u>printed boxes</u>, <u>tissues</u>, <u>napkins</u>, <u>wall paper</u> etc. is SUPPLY OF GOODS:</p> <p>Predominant supply is that of <u>goods</u> 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. [Circular No. 11/11/2017 GST dated 20.10.2017] (goods is the principal supply)</p>
<p>Activity of <u>bus body building</u></p>	<p>The principal supply may be determined on the basis of facts and circumstances of each case. [Circular No. 34/8/2018-GST dated 01.03.2018].</p>
<p>Retreading of <u>tyres</u></p> 	<p>Pre-dominant element is <u>process of retreading</u> which is a supply of service. Rubber used for retreading is an ancillary supply.</p> <p>Supply of <u>retreaded tyres</u>, where the <u>old tyres</u> belong to the supplier of retreaded tyres, is a supply of goods [Circular No. 34/8/2018-GST dated 01.03.2018].</p>
<p>How is <u>servicing of cars</u> involving both supply of <u>goods</u> (spare parts) and <u>services</u> (labour), where the <u>value of goods and services</u> are shown separately, to be treated under GST</p>	<p>The taxability of supply would have to be determined on a case-to-case basis looking at the facts and circumstances of each case.</p> <p>Where a supply involves supply of <u>both goods and services</u> and the <u>value of such goods and services</u> supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately. [Circular No. 47/2018 – CGST, dated 08/06/2018]</p>