CHAPTER 2 – SUPPLY UNDER GST

INTRODUCTION:

- Before levying any tax, taxable event needs to be ascertained
- Various taxable events namely
  - Manufacture (Excise Laws)
  - Sale (State VAT Laws)
  - Rendering of service (Service Tax Law)
  - Purchase
  - Entry into a territory of State

  that existed prior to introduction of GST have been done away with in favour of just one event i.e. Supply
- In the GST regime, entire value of supply of G/S is taxed in an integrated manner, unlike the earlier indirect taxes, which were charged independently either on manufacture or sale of goods, or on provision of services

MEANING & SCOPE OF SUPPLY (SEC 7):

<table>
<tr><th>SUB-SEC</th><th colspan="4">PROVISIONS</th></tr>
<tr><td>1(a)</td><td rowspan="4">Supply includes</td><td>All forms of supply of goods or services</td><td>For consideration</td><td>In the course or furtherance of business</td></tr>
<tr><td>1(aa)</td><td>Activities or transactions</td><td>For consideration</td><td>Between a person (other than individual) & its members/ constituents*</td></tr>
<tr><td>1(b)</td><td>Importation of services</td><td>For consideration</td><td>Whether or not in the course or furtherance of business</td></tr>
<tr><td>1(c)</td><td>Activities in Schedule-I</td><td colspan="2">Even if made without consideration</td></tr>
<tr><td>1A</td><td colspan="4">Activities/ transactions constituting supply u/s 7(1) = Treated either as Supply of goods or Supply of services (Schedule II)</td></tr>
<tr><td>2(a)</td><td rowspan="2">Supply excludes</td><td colspan="3">Activities/ transactions specified in schedule III</td></tr>
<tr><td>2(b)</td><td colspan="3">Activities/ transactions undertaken by CG/ SG/ LA in which they are engaged as public authorities, as may be notified by the Govt on the recommendations of the Council</td></tr>
<tr><td>3(a)</td><td colspan="2" rowspan="2">Govt may specify transactions that are to be treated as</td><td colspan="2">Supply of goods & not as a supply of services</td></tr>
<tr><td>3(b)</td><td colspan="2">Supply of services & not as a supply of goods</td></tr>
</table>

** Person & its members/ constituents are deemed as separate persons; prevents the application of doctrine of mutuality*

Forms of supply includes:

- Sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made
- When there is a barter of G/S, same activity constitutes supply as well as consideration
- Disposal = Sale, pledge, giving away, use, consumption or any other disposition of a thing

POINTS TO REMEMBER:

Donation received by charitable institutions from individual donors without quid pro quo	Donor name is displayed in recipient institution's premises to express gratitude	No consideration, as the purpose is philanthropic	Not a supply
	Donor name is displayed in recipient institution's premises to advertise or promote his business	Consideration, as it is aimed at giving publicity to donor	Supply
Artworks sent by artists to galleries for exhibition		No consideration flows from the gallery to artist	Not a supply
No claim bonus allowed by insurance company to insured		No consideration, as insured is not under any contractual obligation not to claim insurance claim	Not a supply

Supply made in the course or furtherance of business:

- 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
- 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'

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION (SCHEDULE - I):

PARA NO	PROVISIONS
1	Permanent transfers/ disposal of business assets* ✓ ITC must be availed on such business assets
2	Supply of G/S ✓ Between related/ distinct persons ✓ In the course or furtherance of business
3	Supply of goods by ✓ A principal → His agent (Agent undertakes to supply such goods on behalf of principal) ✓ An agent → His principal (Agent undertakes to receive such goods on behalf of principal)
4	Import of services ✓ By a person from a related person/ any of his other establishments located outside India ✓ In the course or furtherance of business

** Include transfer of business assets from holding to subsidiary for no consideration*

Related persons - A person who is under influence of another person:

- Members of the family
- Subsidiaries of group company
- E'er – e'ee
- Legally recognised partners
- Officers/ directors of one another's business
- One is sole agent/ distributor/ concessionaire of the other
- One of them controls the other
- Third person controls/ owns/ holds ≥ 25% voting shares of both of them
- Third person controls both of them
- Third person is controlled together by both of them

Registration provisions:

- Under GST law, a supplier is required to obtain State-wise registration
- He has to obtain registration in every S/UT from where he makes a taxable supply, if his aggregate turnover exceeds a specified threshold limit
- He is normally required to obtain single registration in a S/UT
- However, where he has multiple places of business in a S/UT, he can get a single registration for said S/UT

- He may also get separate registration for any place of business in such S/UT

Distinct persons:

- Establishments of a person with separate registrations whether
  - Within same State/UT or
  - In different States/UT

  are considered as distinct persons

Establishments of distinct persons:

- A person has
  - 1 registered establishment in a State/UT &
  - Another establishment in a different State/UT (whether registered or unregistered),

  these establishments are considered as establishments of distinct persons

Stock transfers or branch transfers without consideration (Self-supplies):

- These transactions will also qualify as supply, if transfer of G/S is between:
  - Distinct persons
  - Establishments of distinct persons

Whether the establishments have same PAN?	Whether separate registrations have been obtained for two places of business within same state?	Whether transfer between them will be considered as supply under GST?
Yes	No	No
Yes	Yes	Yes

AGENT UNDERTAKES TO SUPPLY GOODS ON BEHALF OF PRINCIPAL:

Invoice for further supply is issued by agent to the customer in the name of	Agent in terms of Para 3 of Schedule II	Is interest included in value of supply of goods
Principal	No	No (Independent supply)
Agent/ DCA	Yes	Yes

AGENT UNDERTAKES TO RECEIVE GOODS ON BEHALF OF PRINCIPAL:

Goods being procured by agent on behalf of principal are invoiced in the name of	Agent in terms of para 3 of schedule II	Is interest included in value of supply of goods
Principal	No	No (Independent supply)
Agent/ DCA	Yes	Yes

Del-credere agent:

- ✓ Selling agent, engaged by a principal to assist in supply of G/S by contacting potential buyers on behalf of the principal
- ✓ If buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer, and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent
- ✓ In order to guarantee timely payment to the supplier, 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

EXAMPLES OF ACTIVITIES/ TRANSACTIONS WITHOUT CONSIDERATION:

Supply of services	By e'ee to e'er	In course or in relation to his employment	Outside the scope of GST
Perks	By e'er to e'ee	In terms of contractual agreement	Outside the scope of GST
Supply of gifts of value more than ₹50,000	By e'er to e'ee	In course or furtherance of business	Supply under GST (E'er can avail ITC on purchase of gifts)
Membership of a club, health & fitness centre	By e'er to e'ee	ITC scheme does not allow ITC	Outside the scope of GST
Free housing	By e'er to e'ee	In terms of contract & is part and parcel of the cost-to company	Outside the scope of GST
Buy one get one free offer	Treated as supplying 2 goods for the price of 1		Supply under GST

Free samples & gifts	Except where the activity falls within the ambit of Schedule I	Outside the scope of GST

ACTIVITIES/ TRANSACTIONS TO BE TRATED AS SUPPLY OF GOODS/ SUPPLY OF SERVICES (SCHEDULE - II):

PARA NO	ACTIVITIES/ TRANSACTIONS			NATURE OF SUPPLY
1	Transfer	Title in goods	Eg: Sale of goods	Goods
		Right/ undivided share in goods without transfer of title	Eg: Supplying goods on rent	Services
		Title of goods under an agreement where property pass at a future date	Eg: Hire purchase/ sale or return basis	Goods
2	Lease, tenancy, easement, license, letting out of land/ building			Services
	Transfer of tenancy right to a new tenant against tenancy premium (Pagadi system)			Services
	Grant of tenancy right in a residential dwelling for residential use against tenancy premium to UP*			Exempt
3	Treatment/ process on another person' goods			Services
4	Transfer/ Disposal of goods forming part of business assets by the owner			Goods
	Transfer of business assets to his personal use/ any other person's personal use			Services
	Goods forming part of business assets carried on by a person who ceases to be a taxable person = Deemed to be supplied, immediately before he ceases to be a taxable person Exceptions: ➢ 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			Goods
5(a)	Renting of immovable property			Services

5(b)	Construction of complex, building, civil structure, etc., (including a complex building intended for sale to buyer)	Entire consideration received after issuance of CC/ FO, w.i.e.,	Neither goods nor services
		Whole/ part of consideration received before issuance of CC/ FO, w.i.e.,	Services
5(c)	Intellectual property rights	Temporary (Eg: Music director composing music for a movie)	Services
		Permanent	Goods
5(d)	Development/ design/ implementation of IT software		Services
5(e)	Agreeing to obligation to refrain from an act/ tolerate an act/ do an act Conditions: Express/ implied contract/ agreement + Consideration must flow in return		Services
5(f)	Transfer of right to use any goods for any purpose (Machinery given on hire)		Services
6	Works contract (Immovable property)		Services
	Supply of foods or any drink for human consumption (except liquor)		Services

**Renting of residential dwelling for use as a residence to an UP is exempt [Entry 12 Notification No. 12/2017]*

SUPPLY (For tolerating)	**NOT A SUPPLY (Not for tolerating, but for not tolerating)***
Non-compete fees	Liquidated damages or Damages to property
Late payment surcharge/ fee	Penalty for delayed construction
Pre-payment penalty charged by bank	Cheque dishonour fine or penalty
Fee for early termination of a lease agreement	Fixed charge for electricity (However, it is exempt)
Cancellation charges	Penalty imposed for violation of laws
Amount forfeited in case of non-refundable tickets	Forfeiture of salary or payment of bond on leaving the employment before the maximum agreed period
Forfeiture of security deposit in the event of cancellation of tour package	Forfeiture of money in case of breach of an “agreement to sell” an immovable property

	by the successful bidder failing to act after winning the bid

** If a contract is entered into for execution & not for its breach & liquidated damages or penalty are not the desired outcome of the contract, it is NOT A SUPPLY, as aggrieved party cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party, by accepting the liquidated damages*

If the impugned payments constitute consideration for another independent contract envisaging tolerating or refraining or doing an act, then it constitutes a SUPPLY

ACTIVITIES/ TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS SUPPLY OF GOODS NOR AS SUPPLY OF SERVICES (SCHEDULE-III):

<table>
<tr><td>A.</td><td colspan="3">SPECIFIED UNDER SCHEDULE – III</td></tr>
<tr><td>1</td><td colspan="3">Services by e'ee to e'er in the course of/ in relation to his employment*</td></tr>
<tr><td>2</td><td colspan="3">Services by any court/ tribunal (Only legal fees collected by them is excluded)</td></tr>
<tr><td rowspan="3">3</td><td colspan="3">Functions of MP/ MLA/ Member of panchayat/ municipalities/ other local authority (Govt. posts)</td></tr>
<tr><td colspan="3">Duties of persons holding any post in pursuance of the provisions of the constitution (Constitutional posts)</td></tr>
<tr><td colspan="3">Duties of Chairperson/ Member/ Director in CG/SG/LA established body & not deemed as an e'ee (Nominated posts)</td></tr>
<tr><td>4</td><td colspan="3">Services of funeral, burial, crematorium or mortuary including transportation of the deceased</td></tr>
<tr><td rowspan="2">5</td><td colspan="3">Sale of land</td></tr>
<tr><td colspan="3">Sale of building, if entire consideration received after issuance of CC or its FO, w.i.e.,</td></tr>
<tr><td>6</td><td colspan="3">Actionable claims other than lottery, betting, gambling, horse racing, casinos & online money gaming (Eg: Dream 11, not PS)</td></tr>
<tr><td>B.</td><td colspan="3">NOTIFIED VIDE NOTIFICATIONS</td></tr>
<tr><td>1</td><td colspan="3">Activities in relation to panchayat/ Municipality functions</td></tr>
<tr><td>2</td><td colspan="3">Grant of alcoholic liquor license by SG</td></tr>
<tr><td>C.</td><td colspan="3">CLARIFIED BY WAY OF CIRCULAR</td></tr>
<tr><td>1</td><td>Inter- state movement of</td><td>Various modes of conveyance between distinct person
➢ carrying goods or passengers or both; or
➢ for repairs and maintenance</td><td>Except where such movement is for the further supply of the same conveyance/ goods</td></tr>
</table>

		Rigs/ tools/ spares & all goods on wheels like cranes	

** Services provided on contract basis by a person to another i.e., principal-to-principal basis & amount paid by e'er to e'ee for not joining a competing business (Paid for providing the service of forbearance to act) = Supply under GST*

SUPPLY TO ATTRACT GST:

- Supply must be made by a taxable person (Supplier)
- Supply must be a taxable supply

✓ Supply attracting GST can be made to a non-taxable person also

COMPOSITE AND MIXED SUPPLIES (SEC 8):

COMPOSITE SUPPLY	MIXED SUPPLY
Two/ more taxable supplies of G/S + Naturally bundled + In ordinary course of business + One of which is principal supply	Two/ more individual supplies of G/S + Not naturally bundled + For single price + But not a composite supply
Treated as = Supply of principal supply	Treated as = Supply of that particular supply that attracts highest rate of tax
Eg: Works contract, Restaurant services	Eg: Gift pack comprising of chocolates/ sweets/ balloons

Factors determining whether the supplies are naturally bundled/ not:

- Majority of the recipient expects bundle of services
- Majority of the supplier provide similar bundle of services in a particular business area
- Nature of service (if one is principal service & the other is ancillary)
- Single price or the customer pays same amount no matter how the package they receive/ use
- Elements are normally advertised as a package & not available separately
- Different elements are integral to one overall supply; If one/ more is removed, the nature of the supply would be affected

More than one supply made together and taxed at the individual rates:

- ✓ Activity/ transaction involves more than one supply of G/S
- ✓ Neither they are composite supplies nor can be categorised as mixed supplies
- ✓ All supplies carry independent significance
- ✓ Separate consideration is indicated against each supply

⇒ Each such supply shall be charged at the respective rate applicable to that particular supply

<table>
<tr><th>S.NO</th><th colspan="2">SUPPLY OF GOODS/ SERVICE</th><th>PRINCIPAL SUPPLY & ANCILLARY SUPPY</th></tr>
<tr><td rowspan="2">1</td><td rowspan="2">Printing industry (Content is supplied by recipient & paper to print belongs to supplier)</td><td>Supply of books/ pamphlets/ brochures/ annual reports</td><td>PS = Supply of service (Printing)</td></tr>
<tr><td>Supply of printed envelops/ letter cards/ printed boxes/ tissues/ napkin/ wall papers</td><td>PS = Supply of goods
AS = Supply of service (Printing)</td></tr>
<tr><td rowspan="2">2</td><td rowspan="2">Supply of foods to</td><td>In patients</td><td>Composite supply</td></tr>
<tr><td>Patients (not admitted) & their attendants</td><td>Separately taxable</td></tr>
<tr><td>3</td><td colspan="2">Activity of bus building</td><td>PS = Determined on the basis of facts & circumstances</td></tr>
<tr><td rowspan="2">4</td><td colspan="2">Retreading of tyres</td><td>PS = Supply of service; AS = Rubber used</td></tr>
<tr><td colspan="2">Supply of re-treaded tyres (Old tyre belongs to supplier)</td><td>PS = Supply of goods</td></tr>
<tr><td rowspan="2">5</td><td rowspan="2">Supply of food and beverages in a cinema hall</td><td>Sale of cinema ticket & supply of food/ beverages are clubbed together (Composite supply)</td><td>PS = Service of exhibition of cinema</td></tr>
<tr><td>Food/ beverages are supplied:
✓ By way of or as part of a service &
✓ Independent of cinema exhibition service</td><td>Taxable as restaurant service</td></tr>
</table>

TAXABILITY OF SHARES HELD IN A SUBSIDIARY COMPANY BY HOLDING COMPANY:

- Securities are considered neither as goods nor as services in terms of definition of goods & services
- Further, securities include 'shares' as per definition of securities
- This implies that securities held by HC in the SC are neither goods nor services
- Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services
- For a transaction/activity to be treated as supply of services, there must be a supply as defined u/s 7
- It cannot be said that a service is being provided by the HC to the SC, solely on the basis that there is a specific SAC entry in the scheme of classification of services, unless there is a supply of services by the HC to the SC in accordance with section 7

Therefore, activity of holding of shares of SC by the HC per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST