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**CHARTMASTER'S**

Textbook on

**INDIRECT TAX LAWS**

For

**CA, CMA Final & CS Professional  
Nov/Dec 2023 & May/June 2024**

**CA RAMESH SONI**

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## **CHARTMASTER'S TEXTBOOK**

On Indirect Tax Laws

**For CA | CS | CMA**

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**Laws stated in this book is amended upto 30<sup>th</sup> April, 2023**

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# CHARTMASTER's GST

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## Chapter wise recent amendments between 1<sup>st</sup> November 22 – 30<sup>th</sup> April 23

### GST

Chapter name	Areas of amendments
<b>Charge of GST</b>	<ul style="list-style-type: none"> <li>Explanation in relation to Government – amended to include courts &amp; tribunals.</li> </ul>
<b>Registration</b>	<ul style="list-style-type: none"> <li>Rule 8, 9, 12 amended.</li> </ul>
<b>Exemptions</b>	<ul style="list-style-type: none"> <li>Entry no. 12 – Explanation inserted</li> <li>Entry no. 23A omitted</li> <li>Explanation inserted in Entry no. 66.</li> <li>Circular: GST applicability on accommodation services supplied by Air Force Mess to its personnel, GST applicability on incentive paid by MeitY to acquiring banks .</li> </ul>
<b>Value of Supply</b>	<ul style="list-style-type: none"> <li>Clarification on taxability of No Claim Bonus</li> </ul>
<b>Tax Invoice, Credit and Debit Notes</b>	<ul style="list-style-type: none"> <li>Rule 46(f): Proviso inserted, Rule 46A proviso inserted.</li> <li>Clarification on applicability of e-invoicing w.r.t an entity.</li> </ul>
<b>E-way Bill</b>	<ul style="list-style-type: none"> <li>Rule 138(14) in the Annexure, “excepting Imitation Jewellery” inserted.</li> </ul>
<b>Input Tax Credit</b>	<ul style="list-style-type: none"> <li>Rule 37 amended, New Rule 37A inserted</li> </ul>
<b>Payment of Tax</b>	<ul style="list-style-type: none"> <li>Proviso inserted in Rule 87(8),</li> <li>Rule 88C inserted.</li> </ul>
<b>Returns</b>	<ul style="list-style-type: none"> <li>Rule 59(6)(d) inserted.</li> <li>Rationalization of late fee for GSTR – 9.</li> </ul>
<b>Demand &amp; Recovery</b>	<ul style="list-style-type: none"> <li>Rule 161 amended.</li> <li>Clarification with regards to applicability of provisions of section 75(2).</li> <li>Clarification regarding the treatment of statutory dues in respect of taxpayers for whom the proceedings have been finalised under IBC.</li> </ul>
<b>Appeals &amp; Revision</b>	<ul style="list-style-type: none"> <li>Rule 108, 109 amended.</li> <li>New Rule 109C inserted.</li> </ul>
<b>Place of Supply</b>	<ul style="list-style-type: none"> <li><b>Circular:</b> Clarification on the entitlement of ITC where POS is determined in terms of the proviso to section 12(8).</li> </ul>
<b>Refunds</b>	<ul style="list-style-type: none"> <li>Rule 89(2)(ka), (kb) inserted.</li> <li>Second Proviso inserted in Rule 89(2)(m).</li> <li>Circular on refund related issues in case of Inverted duty structure.</li> <li>Circular: Manner of filing an application for refund by unregistered persons.</li> </ul>
<b>Miscellaneous Provisions</b>	<ul style="list-style-type: none"> <li>W.e.f. 01.12.22: Work of NAA had been shifted to Competition Commission of India.</li> </ul>

### Customs & FTP

Chapter name	Areas of amendments
<b>Levy &amp; Exemption from Custom duty</b>	Section 25(4A): Second Proviso inserted.
<b>Importation Exportation &amp; Transportation</b>	No. 47/2022-Customs (N.T.) dated 31.05.22 – amended, Board Extend exemption from deposit through E-cash till 31 <sup>st</sup> March 23.
<b>FTP</b>	Foreign Trade Policy 2023

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## **A Note to All My Dear Students,**

All the amendments applicable for Nov 23 Exams have been incorporated in this book. However, in the due course once ICAI releases the statutory update material applicable for Nov 23, there may be some additional amendment(s) that may be required to be covered. If there are any additional amendment(s) post release of the statutory updates by the ICAI, the same will be uploaded on our website [www.rameshsoni.com](http://www.rameshsoni.com) **under free resources tab.**

**Link:** <https://rameshsoni.com/free-resources/>

In free resources, go to the folder "CA Final Nov 23"

The file will be named as "**CA Final IDT additional amendments applicable for Nov 23**"

**Note for the students writing their Exam in May 24 attempt:** Since this book is amended till 30<sup>th</sup> April 23, all the amendments made between 1<sup>st</sup> May – 31<sup>st</sup> October 2023 will also be provided to you separately on our website [www.rameshsoni.com](http://www.rameshsoni.com) **under free resources tab.** The amendments will be uploaded once ICAI releases the statutory updates material applicable for May 24 exams.

**Link:** <https://rameshsoni.com/free-resources/>

In free resources go to folder "CA Final May 24"

The file will be named as "Statutory updates\_amendments applicable for May 24"

**Also, stay connected via our telegram group and get regular updates on amendments & revision videos:** <https://t.me/cameshsoni>

**All the best**

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# 1. GST: Introduction, Overview & Administration

## What is Tax?

Tax is

- a compulsory payment made by a person
- under a law to the government
- in order to fund various public expenditures and fulfil the developmental needs like infrastructure, health care, education, security, military, defence etc.

## Types of Taxes

Taxes are broadly classified into **direct taxes** and **indirect taxes**.

Let us understand the difference between Direct Taxes and Indirect taxes

Direct taxes	Indirect taxes
Direct tax is <b>imposed directly on the taxpayer</b> and paid directly to the Government by the persons on whom it is imposed. The <b>burden of this tax cannot be shifted</b> by the taxpayer.	Indirect taxes are <b>imposed on goods and services</b> and its <b>incidence is borne by the consumers</b> who ultimately consume the goods/services.
Significant direct tax in India is <b>income tax</b> .	Significant Indirect taxes in India are <b>GST &amp; Customs</b> .
Direct taxes are <b>progressive in nature</b> . Rich pays more taxes compared to poor.	Indirect taxes are <b>regressive in nature</b> because they equally impact the rich or poor.

## What is GST – Goods and Services Tax?

### As per Article 366: Definitions of Goods and Services Tax

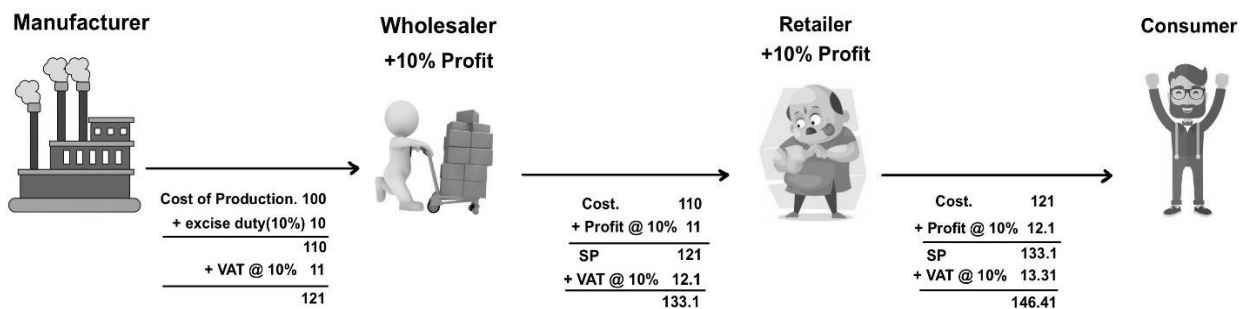
#### Clause 12A: Goods and services tax means

- any tax on supply of goods, or services or both
- except taxes on the supply of the alcoholic liquor for human consumption.

**Author’s comment:** Alcoholic liquor for human consumption has always been a major source of revenue for the states & hence all the states disagreed to subsume it into GST and so the government in order to ensure smooth transition into GST, agreed to keep alcoholic liquor for human consumption out of the ambit of GST.

## Why is GST Introduced? i.e., Deficiencies in the erstwhile indirect tax regime

1. Cascading effect (also known as tax on tax) of tax is one of the vital ill of existing Indirect Tax.



2. Non-integration of VAT and Service Tax causes double taxation by not allowing set off between VAT & Service tax.
3. No CENVAT Credit after manufacturing stage to a dealer/trader.
4. Being an origin-based tax, CST was another source of distortion in terms of its cascading nature.

5. There were several taxes in the States, such as, Luxury Tax, Entertainment Tax, etc. which were not subsumed in the VAT. Hence for a single transaction, multiple taxes in multiple forms were required to be paid.

**Various features of GST are as under:**

- **GST is a tax on supply of goods or services or both.**
- **GST is a consumption tax i.e.; burden is shifted to ultimate consumers.**
- **GST is a destination-based tax (DBT).**
- **GST is a Value added tax: VAT as a model is adopted in GST.**

**Pre and Post GST Scenario**

Tax	Goods/ Service	Taxable Event	Tax Imposed	Taxable person	levied by & paid to
<b>Pre GST</b>					
Excise	Goods	Manufactured	Central Excise duty	Manufacturer	CG
VAT	Goods	Sales – Intrastate	Value added tax	Trader/Dealer	SG
CST	Goods	Sales – Interstate	Central Sales tax	Trader/Dealer	SG
Service tax	Services	Provisioning of service	Service tax	Service provider	CG
<b>Post GST</b>					
GST	Goods/ Services	Supply	Goods and Services tax	Taxable person	CG + SG

**Note:** CG: Central government, SG: State government

**Dual Model of GST**

- India has adopted dual model of GST which is imposed concurrently by the centre and the state i.e., both centre and state will impose tax on a transaction simultaneously.
- GST to be levied by centre will be called CGST & that to be levied by states (incl. states with legislature) will be called SGST. GST to be levied by UTs to be called UTGST (UTs without legislature).

**Note:** India has adopted GST model from **Canada**.

**Nature of supply and types of GST charged on different types of trade and Commerce**

**Intrastate Supply:** Where the Location of supplier and place of supply is within the same state/ union territory **it is known as intrastate supply.**

**Interstate Supply:** Where the Location of supplier and place of supply are in

- Two different states,
- Two different Union Territories,
- A State and a Union territory

**it is known as interstate trade.**

**In case of Intrastate supply within state/UT:** we always charge CGST & SGST/CGST & UTGST.

**In case of Interstate supply:** we always charge IGST (i.e., CGST & SGST integrated together).

**Taxes Subsumed into GST**

**Central taxes subsumed**

- Central Excise duty
- Service tax
- Countervailing duty (CVD) & Special CVD (Special additional duty) levied under Customs



- Central Sales Tax
- Surcharges and Cesses

**State taxes subsumed**

- State surcharges and cesses in so far as they relate to supply of goods & services
- Entertainment Tax (except those levied by local bodies)
- Tax on lottery, betting and gambling
- Entry Tax (All Forms)
- VAT/Sales tax
- Luxury tax

**Taxes not subsumed into GST**

- Basic custom duty
- Property tax and stamp duty
- Electricity duty
- Excise duty on Alcoholic liquor for Human consumption
- Excise duty on petrol, diesel etc.
- Entertainment tax charged by local bodies (municipality)

**Note:** In case of tobacco and tobacco products, the centre alone would have the power to levy excise duty in addition to GST. The levy of excise duty is only in manufacturing stage, GST is leviable on the amount (inclusive of excise duty).

**Entertainment tax by local bodies** is levied on cinema, video shows, cable T.V. operators, amusement, performance, pageant and game/sports and horse races.

**Various Taxes on Goods/Services (Summary)**

<b>Goods/Services</b>	<b>SED</b>	<b>CED</b>	<b>VAT/CST</b>	<b>GST</b>
Alcoholic Liquor for Human Consumption	<b>Yes</b>		<b>Yes</b>	
High Speed Diesel, Crude Petroleum, Motor Spirit, Aviation turbine fuel, Natural Gas <b>(HPMAN)</b>		<b>Yes</b>	<b>Yes</b>	
Tobacco and tobacco products		<b>Yes</b>		<b>Yes</b>
Opium Indian hemp & Other narcotic substances	<b>Yes</b>			<b>Yes</b>
Other Goods/Services				<b>Yes</b>

**SED:** State excise duty **CED:** Central excise duty

**Principles adopted for subsuming the above taxes under GST**

- Taxes or levies to be subsumed should be primarily in the nature of indirect taxes, either on the supply of goods or on the supply of services.
- Taxes or levies to be subsumed should be part of the transaction chain which commences with import/manufacture/ production of goods or provision of services at one end and the consumption of goods and services at the other.
- The subsuming of taxes should result in free flow of tax credit in intra and inter-State levels. The taxes, levies and fees that were not specifically related to supply of goods & services would not be subsumed under GST.
- Revenue fairness for both the Union and the States individually would need to be attempted.

**Benefits of GST**

- **Creation of Unified national market** with common tax rates and procedures.
- **Boost to 'Make in India' initiative** by making goods and services produced in India competitive in the national as well as international market.

## GST: Introduction, Overview & Administration

- **Enhanced investment and employment** by complete and comprehensive set off of input tax on goods and services and phasing out of CST reduces the cost of locally manufactured goods and services and increases the competitiveness of Indian goods and services in the international market and thus, gives boost to investments and Indian exports. With a boost in exports and manufacturing activity, more employment is generated and GDP is increased.
- **Ease of doing business:** Simpler tax regime along with reduction in multiplicity of taxes.
- **Automated procedures with greater use of Information technology (IT):** Simplified and automated procedures for various processes such as registration, returns, refunds, tax payments.
- **Reduction in compliance costs:** There is lesser investment of resources and manpower due to reduction in maintaining multiple records.
- **Mitigation of ill effects of cascading** by subsuming most of the Central & State taxes into a single tax and by allowing a set-off of prior-stage taxes.
- **Benefits to small traders and entrepreneurs:** GST has increased the threshold for GST registration for small businesses. Further, single registration is needed in one State. Small businesses have also been provided the additional benefit of composition scheme. With the creation of a seamless national market across the country, small enterprises have an opportunity to expand their national footprint with minimal investment.

### Genesis of GST (History from origin)

GST is a path breaking indirect tax reform which will create a common national market. GST has subsumed multiple indirect taxes like excise duty, service tax, VAT, CST, luxury tax, entertainment tax, entry tax, etc.

Year	Events
1954	<b>France</b> was the first country to implement GST. At present about <b>160 countries have adopted GST.</b>
2004	Kelkar Task force strongly recommended fully integrated GST on national basis.
2007-08	Union FM, P. Chidambaram, while presenting the Budget, announced that GST would be introduced from April 1, 2010
19.12.14	The <b>Constitution (122nd Amendment) Bill, 2014</b> introduced in the Lok Sabha
06.05.15	The Lok Sabha passed the Constitution (122nd Amendment) Bill, 2014
2016	The Rajya Sabha passed the Bill on <b>August 03, 2016.</b> <ul style="list-style-type: none"><li>• The Constitution (122nd Amendment) Bill, 2014 received the assent of the President on <b>08.09.16</b> &amp; it became the Constitution (101st Amendment) Act, 2016, which paved the way of GST in India</li></ul>
March 17	<b>On 27th March, 2017, the Central GST legislations introduced</b> – CGST Bill, 2017, IGST bill 2017, UTGST bill 2017, (GST compensation to states) bill, 2017 in Lok Sabha & <b>On 29th March, 2017</b> , Lok Sabha passed these bills.
12.04. 17	President's assent was given and bills were enacted.
01.07. 17	GST rolled out in India.
08.07. 17	GST law was made applicable to the state of Jammu and Kashmir

### Constitutional Provisions

A study of the basic provisions of the Constitution is essential for understanding the genesis of the various taxes being imposed in India. The significant provisions of the Constitution relating to taxation are as under.

#### Article 265: No tax to be levied without authority of Law

Article 265 of the Constitution of India prohibits arbitrary collection of tax. It states that “**no tax shall be levied or collected except by authority of law**”.

**Article 245: Power to make laws by Parliament and by state legislature**

This Article empowers

- **Parliament** may make laws for the whole or any part of the **territory of India**, and
- **The legislature of a State** may make laws for the whole or any part of the **State**”

**Article 246: Distribution of Power to make Law**

Article 246 gives the **respective authority to Union and State Governments for levying tax.**

**Seventh Schedule to Article 246:** Divides the legislative powers into the following three lists:

Union list – List I (Parliament)		State list – List II (State legislature)		Concurrent list - List III	
Entry no.	Items (1 to 97)	E No.	Items (1 to 66)	E No.	Items (1 to 47)
82	Taxes on income other than agricultural income	46	Taxes on agricultural Income	1	Criminal law
83	Duties of customs including export duties	51	SED on AL for HC, opium, Indian hemp and other narcotics drugs	25	Education
84	Duties of excise on HPMAN and Tobacco and Tobacco products.	62	Taxes on entertainments and amusements to the extent levied and collected by a Panchayat or a Municipality.		
92A	Central sales tax			44	Stamp duties
97	Any other matters not enumerated in List II/III				

**AL for HC:** Alcoholic Liquor for Human Consumption

**HPMAN:** High speed diesel; Petroleum crude; Motor spirit (petrol); Aviation turbine fuel; Natural gas.

**Article 254** of the constitution deals with the effect of inconsistency between the law of parliament and law of state legislature. Article 254 deals with the supremacy of the laws made by Parliament.

**Article 248: Residuary powers of legislation:** Subject to article 246A, Parliament has exclusive power to make any law with respect to any matter not enumerated in the Concurrent List or State List.

**Constitutional Amendment:** Introduction of the GST required amendment in the Constitution so as to enable integration of the central excise duty, additional duties of customs, State VAT and certain State specific taxes and service tax into a comprehensive GST and to empower both Centre and the States to levy and collect it. Earlier CG had power to levy taxes on manufacture, whereas state government had power to levy VAT on sale of goods within the state, with the introduction of GST both the government wanted to simultaneously levy and collect the tax, and existing Article 246 does not provide for making taxation laws together by centre and state. Hence the constitution of India had to be amended and Article 246-A is introduced in order to empower the centre & the state to levy and collect the GST simultaneously.

**Article 246A: Special provisions with respect to GST**

(1)	<b>Notwithstanding</b> anything contained in Articles 246 and 254, <ul style="list-style-type: none"> <li>➤ <b>Parliament</b>, and,</li> <li>➤ subject to clause (2), <b>the Legislature of every State</b>,</li> <li>➤ <b>have power to make laws</b> with respect to GST imposed <b>by the Union or by such State.</b></li> </ul>
	<b>Author’s comments:</b> This article overrides article 246 and 254, Article 246 distributes power between the parliament & state legislature and 254 deals with situation when there is inconsistency between the law of parliament and law of state legislature, where it says law by parliament shall prevail. Article 246A provides concurrent power to CG & SG to levy GST.
(2)	<b>Parliament has exclusive power to make laws</b> with respect to GST where the supply of goods, or of services, or both takes place in the course <b>of inter-State trade or commerce.</b>

## GST: Introduction, Overview & Administration

	<b>Author's comments:</b> Parliament to make law regarding interstate supply and state will have no power in case of interstate trade.
	<b>Explanation:</b> The provisions of this article, shall, in respect of GST referred to in clause (5) of article 279A, take effect from the date recommended by the GST Council
	<b>Author's comments:</b> Provisions in respect of petroleum crude, high speed diesel, motor spirit, natural gas, aviation turbine fuel shall apply from the date recommended by GST council.

### Article 269A: Levy and collection of GST on inter-State supply

(1)	<b>GST on supplies in the course of inter-State trade or commerce (IGST)</b> <ul style="list-style-type: none"> <li>➤ shall be levied &amp; collected by the government of India (CG) &amp;</li> <li>➤ such tax shall be apportioned between the Union &amp; the States</li> <li>➤ in the manner provided by Parliament by law on the recommendations of the GST Council.</li> </ul>
	<b>Explanation:</b> for the purpose of this clause, Supply of goods, or of services or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-state trade or commerce
(5)	<b>Parliament may, by law,</b> <ul style="list-style-type: none"> <li>➤ formulate the principles for determining the place of supply,</li> <li>➤ and when a supply of goods, or of services, or both takes place in the course of inter-state trade or commerce.</li> </ul>

#### Author's comments:

1. IGST shall be levied by CG and apportioned between union and state.
2. The principles for determining place of supply are in section 10, 11, 12 & 13 of IGST act & the principles for determining the nature of supply i.e., Intra or inter-state shall be as per section 7 & 8 of IGST act.

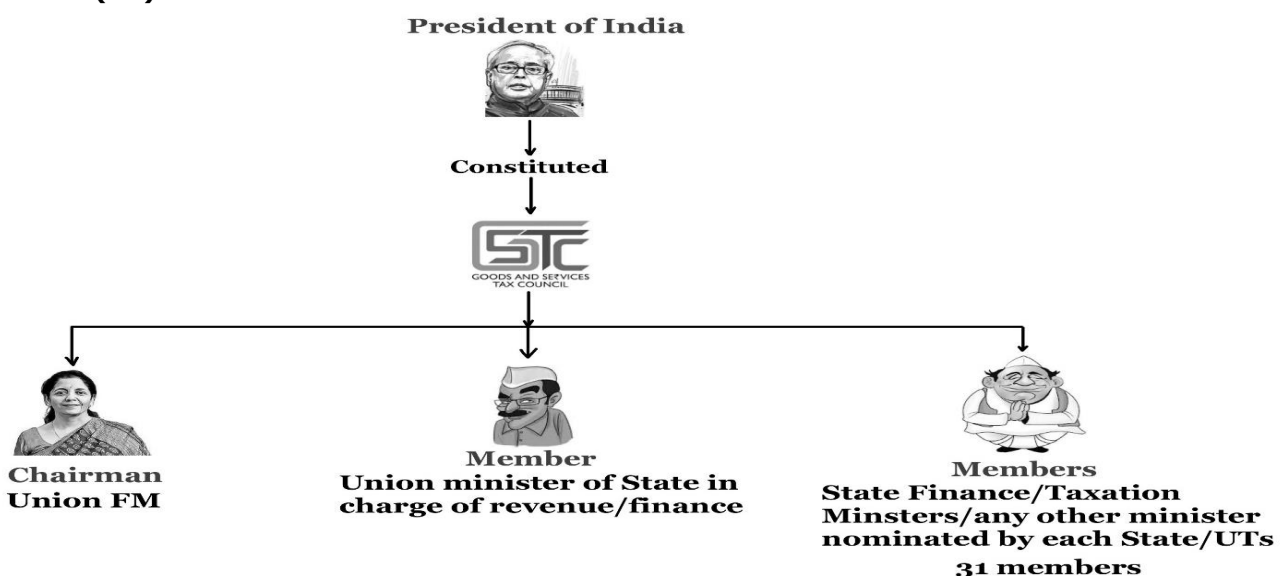
### GST (Compensation to states) act 2017

A GST Compensation Cess at specified rate has been imposed under the GST (Compensation to States) Cess Act, 2017 on the specified luxury items or demerit goods, like pan masala, tobacco, aerated waters, motor cars etc., computed on value of taxable supply. Compensation Cess is leviable on intra-State supplies & inter-State supplies with a view to provide for compensation to the States for the loss of revenue arising on account of implementation of the GST. Compensation is to be provided to a State for a period of 5 years from the date on which the State brings its SGST Act into force.

**Initially, GST compensation cess was levied for a period of 5 years upto 30th June, 2022. However, its levy and collection has been extended till 31st March, 2026.**

### Article 279A: GST Council-Constitutional body

**Section 2(36): Council** means the GST Council established under article 279A of the Constitution.



- (1) Article 279A of the Constitution empowers the President to constitute a joint forum of the Centre and States namely, Goods & Services Tax Council (GST Council).
- (2) The joint forum of the Centre & States namely, GST Council.
  - a. The provisions relating to GST Council came into force on **12th September, 2016**.
  - b. President constituted the GST Council on **15th September, 2016**.
- (3) **Members of the GST council-total 33 members**
  - The Union Finance Minister - **Chairman**
  - The Union Minister of State in charge of Revenue or Finance- **Member**
  - Ministers in charge of Finance/Taxation **or** any other Minister nominated by each of the States & UTs with Legislatures - **Members**.
- (4) **The function of the Council is to make recommendations to the Union & the States on important issues like:**
  - The taxes, cesses and surcharges which may be subsumed in the GST;
  - The Goods and services subjected to/ exempted from GST
  - Model GST laws, principles of levy, apportionment of GST levied on Inter-State supplies & the principles that govern the place of supply;
  - Threshold limit of turnover below which no GST shall be charged on goods/services
  - Rates of GST,
  - Special rates for specified period to raise additional resources during any natural calamity or disaster.
  - Special provisions with respect to the States of Arunachal Pradesh, Assam, Jammu and Kashmir, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh and Uttarakhand; and
  - Any other matter relating to the GST, as the Council may decide.
- (5) The Goods and Services Tax Council shall recommend the date on which the goods and services tax be levied on petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.
- (6) One half of the total number of members of the GST Council shall constitute the quorum at its meetings.
- (7) Every decision of the GST Council is taken by a majority of not less than **three-fourths** of the weighted votes of the **members present and voting**.
  - ✓ Vote of the Centre has a weightage of **one-third (i.e., 33.33%)** of total votes cast and
  - ✓ Votes of all the State governments (31) taken together have a weightage of **two-thirds (i.e., 66.67%)** of the total votes cast, in that meeting.

### **Common Portal**

- GST Portal – **www.gst.gov.in** – is a website managed by Goods and Services Tax Network.
- **The functions of the GSTN include**
  - facilitating registration;
  - forwarding the returns to Central and State authorities;
  - computation and settlement of IGST;
  - matching of tax payment details with banking network;
  - providing various MIS reports to the CG and the SGs based on the taxpayer return information;
  - providing analysis of taxpayers' profile.
- The portal is one single common portal for all GST related services like obtaining registration, paying tax, filing of returns, etc.
- GSTN provides three front end services to the taxpayers namely registration, payment and return through GST Common Portal.
- GSTN is a not-for-profit (u/s 8 of companies' act), non-Government, private limited company.
- The Common GST Electronic Portal for furnishing electronic way bill is [www.ewaybillgst.gov.in](http://www.ewaybillgst.gov.in) [managed by the National Informatics Centre, Ministry of Electronics & Information Technology, Government of India].
- **The Common GST Electronic Portal for e-invoicing**, namely:
  - [www.einvoice1.gst.gov.in](http://www.einvoice1.gst.gov.in);
  - [www.einvoice2.gst.gov.in](http://www.einvoice2.gst.gov.in);
  - [www.einvoice3.gst.gov.in](http://www.einvoice3.gst.gov.in);
  - [www.einvoice4.gst.gov.in](http://www.einvoice4.gst.gov.in);
  - [www.einvoice5.gst.gov.in](http://www.einvoice5.gst.gov.in);
  - [www.einvoice6.gst.gov.in](http://www.einvoice6.gst.gov.in);
  - [www.einvoice7.gst.gov.in](http://www.einvoice7.gst.gov.in);
  - [www.einvoice8.gst.gov.in](http://www.einvoice8.gst.gov.in);
  - [www.einvoice9.gst.gov.in](http://www.einvoice9.gst.gov.in);
  - [www.einvoice10.gst.gov.in](http://www.einvoice10.gst.gov.in);

**GST Suvidha Providers (GSPs) & Application Service Providers (ASPs)**

- GSTN has selected certain IT, ITes and financial technology companies, to be called GST Suvidha Providers.
- GSPs develop applications to be used by taxpayers for interacting with the GSTN.
- They facilitate the tax payers in uploading invoices as well as filing of returns and act as a single stop shop for GST related services.
- They customize products that address the needs of different segment of users.
- GSPs may take the help of ASPs who act as a link between taxpayers and GSPs.
- **Hence**, we can say that GSPs will act as link between taxpayer and GSTN portal, and ASP will act as link between taxpayer and GSPs.

**GST Laws: Act and Rules**

Particulars	ACT			
	CGST	IGST	SGST	UTGST
<b>Act</b>	CGST Act, 2017	IGST Act, 2017	SGST Act, 2017	UTGST Act, 2017
<b>Applicable on</b>	Intra-state supply	Inter-state supply	Intra-state supply	Intra-state supply
<b>No of Acts</b>	1 CGST act	1 IGST act	31 SGST acts	1 UTGST act
<b>No of Sections</b>	1 to 174	1 to 25	1 to 174	1 to 26
<b>No of definition</b>	Sec 2(1) to 2(121)	Sec 2(1) to 2(25)	Sec 2(1) to 2(121)	Sec 2(1) to 2(10)
	Rules			
<b>Rule</b>	CGST rules, 2017 Refer: Section 164 of CGST act	IGST rules, 2017 Refer: Section 22 of IGST act	State wise rules. E.g.: Karnataka GST rules, 2017	NA
<b>No of rules</b>	1 to 162	1 to 3	1 to 162	NA

**Sec 164 of CGST Act/Sec 22 of IGST act: Power of Government to make rules**

- (1) The Government may, on the recommendations of the Council, by notification, **make rules for carrying out the provisions of this Act.**
- (2) Without prejudice to the generality of the provisions of sub-section (1), **the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.**
- (3) The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.
- (4) Any rules made under sub-section (1) or sub-section (2) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.

**Author's comments:**

- CG on recommendation of council to make rules for carrying out provisions under CGST act,
- Contravention of rules may attract a penalty of up to Rs 10,000.

**Administration under GST**

**Central board of Indirect taxes and Customs (The Board)**

CBIC is the administrative body, responsible for the administration of GST law. CBIC will also administer the work related to levy and collect of excise duty on petroleum products, tobacco and also Custom duty.

**Section 168: Power to issue instructions or directions (Circulars)**

- (1) The Board may, if it considers it necessary or expedient so to do for the purpose of uniformity in the implementation of this Act,

- issue such orders, instructions or directions to the central tax officers as it may deem fit, and
  - thereupon all such officers and all other persons employed in the implementation of this Act shall observe and follow such orders, instructions or directions
- (2) Refer miscellaneous topics.....

**Author's comment:** Whenever the CBIC observes that there is ambiguity relating to a matter and there is difference of opinion between the central tax officers, the CBIC i.e., board may issue orders i.e., circulars in order to ensure uniformity in the implementation of GST provisions. This power has been given to the board via section 168.

### **Section 3: Officers under this Act**

The Government shall, **by notification, appoint the following classes of officers for the purposes of this Act, namely: –**

- (a) Principal Chief Commissioners of Central Tax or Principal Directors General of Central Tax,
- (b) Chief Commissioners of Central Tax or Directors General of Central Tax,
- (c) Principal Commissioners of Central Tax or Principal Additional Directors General of Central Tax,
- (d) Commissioners of Central Tax or Additional Directors General of Central Tax,
- (e) Additional Commissioners of Central Tax or Additional Directors of Central Tax,
- (f) Joint Commissioners of Central Tax or Joint Directors of Central Tax,
- (g) Deputy Commissioners of Central Tax or Deputy Directors of Central Tax,
- (h) Assistant Commissioners of Central Tax or Assistant Directors of Central Tax, and
- (i) any other class of officers as it may deem fit:

**Provided that** the officers appointed under the Central Excise Act, 1944 shall be deemed to be the officers appointed under the provisions of this Act.

### **Section 4: Appointment of officers**

- (1) **The Board** may, in addition to the officers as may be notified by the Government under section 3, appoint such persons as it may think fit to be the officers under this Act.
- (2) Without prejudice to the provisions of sub-section (1), **the Board may, by order, authorise any officer** referred to in clauses (a) to (h) of section 3 to appoint officers of central tax below the rank of Assistant Commissioner of central tax for the administration of this Act.

### **Section 5: Powers of officers**

- (1) Subject to such conditions and limitations as the Board may impose, an officer of central tax may exercise the powers and discharge the duties conferred or imposed on him under this Act.
- (2) An officer of CT may exercise the powers and discharge the duties conferred or imposed under this Act on any other officer of central tax who is subordinate to him.
- (3) The Commissioner may, subject to such conditions and limitations as may be specified in this behalf by him, delegate his powers to any other officer who is subordinate to him.
- (4) Notwithstanding anything contained in this section, an Appellate Authority shall not exercise the powers and discharge the duties conferred or imposed on any other officer of central tax.

#### **Author's comments:**

- CT officers to exercise powers and duties given by the act.
- CT officer may exercise the power and discharge duties of his subordinates.
- Even commissioner can delegate his powers to subordinate but subject to conditions & limitations.
- Appellate Authority cannot exercise the powers and discharge duties of the CT officers.

**Section 6: Authorization of officers of State tax or UTT as PO in certain circumstances (concept of Cross Empowerment)**

- (1) The officers appointed under the SGST Act/UTGST act are authorized to be the POs for the purposes of CGST Act, subject to such conditions as the Government shall, on the recommendations of the Council, by notification, specify.
- (2) **Subject to the conditions specified in the notification issued under sub-section (1), –**
  - a. where any PO issues an order under CGST Act, he shall also issue an order under the SGST/UTGST Act, as authorized by the SGST Act/UTGST Act, as the case may be, under intimation to the jurisdictional officer of State tax or Union territory tax;
  - b. where a PO under the SGST/UTGST Act has initiated any proceedings on a subject matter, no proceedings shall be initiated by the PO under CGST Act on the same subject matter.
- (3) Any proceedings for rectification, appeal and revision, wherever applicable, of any order passed by an officer appointed under CGST Act **shall not lie** before an officer appointed under the SGST Act or the UTGST Act.

**Author's comments:**

- Officers appointed under the SGST/UTGST act authorized to act as officers under CGST act also.
- If a PO under CGST act issues an order, he shall also issue an order under SGST/UTGST act and intimate the SGST/UTGST officer.
- If a PO under SGST/UTGST initiates proceedings on a matter, no proceedings shall be initiated by PO under CGST act.
- If any order is passed by PO under CGST, then rectification, appeal or revision shall not lie with the officer under SGST/UTGST act.



## 2. Supply

### Introduction

- A taxable event is any transaction or occurrence that results in a tax consequence.
- Various taxable events that existed under the previous law were manufacture, sale, rendering of service, etc. have been done away with and now the taxable event under GST is supply.
- **Taxable event under GST law is supply** of goods or services or both. Hence no supply no GST.

### Goods: Section 2(52):

**Goods means** every kind of movable property

- **Other than** money and Securities
- **But 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.

### Movable property:

**Movable property** shall mean property of every description, except immovable property

### Immovable property

**Immovable property shall include**

- land,
- benefits to arise out of land, and
- things attached to the earth, or
- permanently fastened to anything attached to the earth;

### Author's comment:

**Immovable property hence means**

- **Land**
- **Benefits to arise out of land:** Transfer of development rights (TDRs), rights to ways, the right to catch away fish, right to collect dues from a fair or market on a land.
- **Things attached to the earth:** Things rooted/embedded in the earth like trees, buildings, walls.
- **Things permanently fastened to anything attached to the earth:** Telecommunication towers, lift, etc.

### Money: Section 2(75):

**Money means**

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

### **Notes: Commercial Paper ('CP') and Certificate of Deposit ('CD')**

- CPs are issued by highly rated companies, primary dealers & financial institutions at a discount to the face value.
- CDs can be issued by Scheduled Commercial Banks and Financial Institutions permitted by RBI.
- **CP and CD** are in the nature of promissory notes and hence money.
- **However**, the related activity, for which a separate consideration is charged, would be chargeable to GST. Example: issuance charges.

## Securities Section 2(101)

As defined in the Securities Contracts (Regulation) Act, 1956; "Securities" include—

- (i) **shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities** of a like nature in or of any incorporated company or other body corporate;
- (ia) **derivative**;
- (ib) **units** or any other instrument issued by any collective investment scheme to the investors;
- (ic) **security receipt**;
- (id) **units** or any other such instrument issued to the investors under any **mutual fund** scheme;
- (ii) **Government securities**;
- (iia) such other instruments as may be declared by the Central Government to be securities; and
- (iii) **rights or interest in securities**.

### Notes:

1. **Derivatives** are securities, hence neither goods nor services and not liable to GST.
2. **Future contracts** are in the nature of derivatives, these qualify as securities & thus, are not subject to GST.  
**However**, where the future contracts have a delivery option and the settlement of contract takes place by way of actual delivery of underlying commodity, then such forward contracts would be treated as normal supply of goods and liable to GST.
3. **Forward contract**: An agreement, executed, to purchase or sell a predetermined amount of a commodity or currency at a pre-determined future date at a pre-determined price.  
**Where the settlement takes place**
  - **by way of actual delivery of underlying commodity**, then such forward contracts would be treated as normal **supply of goods and liable to GST**.
  - **by way of net settlement** of differential of the forward rate over the prevailing market rate on the settlement date, the same would be falling within the purview of '**securities**' and thus, are **not chargeable to GST**.
4. **Service charges/service fees/documentation fees/broking charges** charged on the derivatives/future/forward contracts are consideration for provision of service and subject to GST.

## Actionable claim (Section 3 of The Transfer of Property Act, 1882)

### Actionable claim means a claim

- **to any debt, other than a debt secured** by mortgage of immoveable property or by hypothecation or pledge of moveable property, **or**
- **to any beneficial interest in moveable property not in the possession**, either actual or constructive, of the claimant,
- **which the Civil Courts recognize as affording grounds for relief**,
- whether such debt or beneficial interest be **existent, accruing, conditional or contingent**.

### Examples of Actionable claims are:

- **Lottery, Betting, gambling**: Right to claim the prize or the amount.
- **Claim for arrears of rent**: Right to receive rent
- **Claim for the money due under insurance policy**: Right to receive policy amount



**Priority Sector Lending Certificates (PSLCs) [Circular no. 34/8/2018-GST dated 01.03.18]****Issue: Whether Priority Sector Lending Certificates (PSLCs) are outside the purview of GST and therefore not taxable?****Clarification:**

- PSLC are not securities and are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which earlier attracted VAT.
- In GST, there is no exemption to trading in PSLCs. Thus, PSLCs are taxable as goods.
- GST payable on the certificates would be available as ITC to the bank buying the certificates.
- Nature of supply of PSLC between banks may be treated as a supply of goods in the course of inter-State trade or commerce & IGST shall be payable on the supply of PSLC traded over e-kuber portal (RBI).

**Crux:**

- PSLCs are goods & not securities,
- Sale of PSLC by bank is supply of goods u/s 7(1)(a) and taxable,
- Nature of supply - interstate & IGST is applicable.

**Services: [Section 2(102)]****Services means anything**

- **other than** goods, money and securities
- **but 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.**

**Explanation - For the removal of doubts,** it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities.

**Author's comment:**

- 1. Services means anything other than goods,** hence we can say that immovable property is not goods but it will fall within the preview of services.
- 2. Activities relating to use of Money:** Even if money is not service but activities relating to use of money is a service, for example lending money and receiving interest.
- 3. Examples for Conversion:**
  - Giving cash to bank and getting DD/traveller's cheque for which bank charges a service charge
  - Converting Dollar to INR for which bank charges conversion charges
  - Getting Rs 2000 converted in Rs 10 notes for which bank charges fees.
- 4. Securities are neither goods nor services** but if stock broker charges a commission/ brokerages charges/ portfolio maintenance charges/Investment management fees/demat charges those will be services.

**Section 7: Scope of Supply**

**Section 7(1):** For the purposes of this Act, the expression "supply" **includes**—

**Section 7(1)(a):**

**All forms of supply of goods or services** or both **such as:**

- **Sale** (transfer of property in goods from one person to another person for consideration)
- **Transfer** (where the ownership may not be transferred but the right in the goods is transferred)
- **Barter** (the exchange of goods & services for other goods & services, without the use of money)
- **Exchange** (It is kind of Barter but money is also involved)

- **Licence** (When one person give right to other person to use IPR, software licenses, etc)
  - **Rental** (Periodical payment for use of another's property for a short term generally upto 12 months)
  - **Lease** (A lease is an agreement whereby the lessor conveys to the lessee, the right to use an asset for an agreed period of time, generally > 12 months)
  - **Disposal** (Disposal is a term generally used for selling of old scrap/items unfit for sale)
- ❖ **made or agreed to be made**
  - ❖ for a **consideration** by a person
  - ❖ In the **course or furtherance of business**

**Author's comment:**

**The important things for a transaction to fall in the definition of supply are:**

1. **A form of supply** – Example: Sale, transfer, barter, exchange, etc.
2. **Made or agreed to be made**
3. **For a Consideration**
4. **In the Course or furtherance of business.**

**Consideration [Section 2(31)]**

**Consideration** in relation to the supply of goods or services or both includes:

**(a) any payment made or to be made, whether in money or otherwise,**

- in respect of, in response to, or 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,

**(b) the monetary value of any act or forbearance** (not to do something),

- in respect of, in response to, or 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.

**Proviso: a deposit** given in respect of the supply of g/s/b shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

**Author's comments:**

**Points to be noted in the definition of consideration:**

- Payment made for supply - in respect of, in response to or for inducement of
- Payment may be by recipient or any other person (NGO/company doing CSR)
- Somethings which are never consideration: subsidy received from government, security deposits.
- It can be monetary or non-monetary (in kind)
- Forbearance is also consideration.

**Examples:**

1. A cricket player is offered an Audi as an inducement for him in turn joining the club. Here the car is the consideration for inducing the player to join the club and play for the club.
2. A restaurant offers free meal to a bus driver as an inducement to bring potential clients to his restaurant. Here the consideration is free meal for the service of getting clients to the restaurant owner (basically marketing).

**Recipient [Section 2(93)]**

Recipient of supply of goods and/or services **means-**

- **where a consideration is payable for the supply of g/s/b**, the person who is liable to pay that consideration,
- **where no consideration is payable for the supply of goods**, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and
- **where no consideration is payable for the supply of a service**, the person to whom the service is rendered,

- and **any reference to a person to whom a supply is made** shall be construed as a reference to the recipient of the supply and
- shall include an agent** acting as such on behalf of the recipient in relation to the g/s/b supplied.

**Crux: Who is a Recipient?**

- A person to whom supply is made** – always means recipient
- If consideration payable** – person liable to pay
- No consideration payable** – person to whom goods delivered/made available/service rendered
- Agent acting on behalf of recipient** – also recipient of supply.

**Business [Section 2(17)]**

**Business** includes –

As stated in GST act	Author's comment
(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit.	<b>Trade:</b> Action of buying and selling goods/services <b>Commerce:</b> Buying & selling activity on a large scale. <b>Profession:</b> Profession refers to a career with training and qualification. <b>Example:</b> CA, doctor. <b>Vocation:</b> Job that requires set of skills acquired through training. <b>Example:</b> Plumbing, electrician, mechanic, etc. (skill based). It can also be an innate ability. <b>Example:</b> a poet. <b>Wager:</b> Formal term for bet. Example: Betting, gambling, lottery. <b>Pecuniary benefit:</b> monetary benefit
(b) any activity or transaction in connection with or incidental or ancillary to (a) above;	In relation to/Incidental activities <b>Example:</b> Disposal of garbage, sale of scrap, sale of old machineries, sale of old newspaper, sale of repossessed items by banks/financial institutions, buying a truck to deliver goods to customer, etc.
(c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;	Volume, frequency, continuity or regularity are irrelevant.
(d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;	Acquisition of goods/CG for commencement of business is also business activity, or sale of goods/CGs on closure also considered as business.
(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;	When Club receives, membership fees, any other consideration from members, even such transactions shall be considered as business. <b>Link: Entry 77 of Exemption notification no. 12/2017</b>
(f) admission, for a consideration, of persons to any premises; and	Entry fees for entry into business premises also considered as business <b>Link: Entry 79, 79A, 81 of Exemption notification no. 12/2017</b>
(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;	A Practicing CS accepting the post of a director in a company, due to his expert knowledge is for the furtherance of his trade or professions and hence a business activity.
(h) <b>activities</b> of a race club <b>including</b> by way of totalisator or a license to book maker or <b>activities</b> of a licensed book maker in such club; and	Supply of license to operate a race club, betting or activities by way of totalizator.
(i) any activity or transaction undertaken by the	Government activities are also considered as

As stated in GST act	Author's comment
CG/SG/any LA in which they are engaged as public authorities.	business; however, they are not supply. <b>Refer:</b> section 7(2) of supply definition.

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'.

#### Examples:

1. Ram buys a car for his personal use and after a year sells it to a car dealer. Sale of car by Ram to car dealer is not a supply under CGST Act because said supply is not made by Ram in the course or furtherance of business
2. Reena sold her old gold bangles and earrings to 'Aabhushan Jewellers'. Sale of old gold jewellery by an individual to a jeweler will not constitute supply as the same cannot be said to be in the course or furtherance of business of the individual

#### The view taken in above two examples is based on the view taken in the Departmental FAQs/press release/flyer.

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. In view of this, it is also possible to take a view in the above examples that sale of car by Ram and sale of old gold jewellery by Reena have been made in the course or furtherance of business and thus will constitute a supply.

Since business includes vocation, therefore sale of goods or service as a vocation is also a supply.

#### Art works sent by artists to galleries for exhibition is not a supply as no consideration flows from the gallery to the artists.

**Issue:** Artists give their work of art to galleries where it is exhibited. However, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition, is it supply?

**Clarification:** The same is not a supply. It is only when a buyer selects a particular art work displayed at the gallery, that the actual supply takes place & applicable GST would be payable at the time.



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

**(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;".

**Author's Analysis:** Earlier there was an ambiguity whether activities or transactions involving supply of goods or services, by any person, other than an individual, to its members or vice-versa fall within the purview of supply or not. Section 7(1)(aa) brings the certainty that said activities or transactions are covered within the scope of supply under GST and ensures GST is levied on such activities or transactions.

**Also an explanation has been inserted to section 7(1)(aa),** in order to prevent the use of doctrine of mutuality and clarify that the person/ its members/ constituents shall be deemed to be two separate persons and the supply of activities/ transactions inter se shall be deemed to take place from one person to another.

This subsection was inserted to overrules the judgment of the Hon'ble Supreme Court in State of West Bengal v. Calcutta Club Limited wherein it was held that the transactions between a Club and its members cannot be taxed owing to the doctrine of mutuality, i.e., a person cannot make a profit from himself.

### **Section 7(1)(b):**

#### **Importation of services,**

- For a **consideration**
- Whether or not in the course or furtherance of **business** and

#### **Import of service (Section 2(11) of IGST Act, 2017)**

Importation of services means the supply of any service, where-

- (i) The supplier of service is located outside India;
- (ii) The recipient of service is located in India; and
- (iii) The place of supply of service is in India.

#### **Author's comments: Points to be observed while applying this provision**

- It should be **importation of services**, not goods (for goods GST is levied & collected under customs)
- Import should be for a **consideration**
- Import may or may not be for in the course or furtherance of **business**

#### **Exemption under IGST (Extract)**

**Services received from a provider of service located in a non- taxable territory by –**

- (a) the CG, SG, UT, a LA, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;
- (b) an entity registered under section 12AA of the Income-tax Act, 1961 for the purposes of providing charitable activities; or

**However, the exemption shall not apply to –**

- (i) online information and database access or retrieval services (OIDAR) received by persons specified in entry (a) or entry (b);

#### **Online Information Database Access and Retrieval Services (OIDAR Services)**

**OIDAR services provided to NTOR:** Not exempt & hence Forward charge mechanism shall apply.

OIDAR shall be required to take registration and remit the GST under FCM.

#### **Non - Taxable Online Recipient (NTOR):**

- Any govt, LA, governmental authority, An Individual or any other person **not registered** and
- receiving OIDAR services in relation to any purpose other than commerce, industry or any other business or profession,
- located in taxable territory.

#### **Examples:**

##### **1. Ramesh & Co. received legal services from Lakshman in Malaysia for \$ 1000**

**Answer:** Transaction covered under 7(1)(b), it is supply and GST leviable. Business entity to pay GST under RCM.

##### **2. Ramesh wanted to construct his house and has taken interior designer service for his residential house from China for Yen 10000.**

**Answer:** Transaction covered under 7(1)(b), it is supply. However, GST is exempt on such transactions (refer exemptions under IGST).

**3. Ramesh wants to study abroad and receives some admission consultancy services from London based consultants for 1000 pounds**

**Answer:** Transaction covered under 7(1)(b), it is supply. However, GST is exempt on such transactions (refer exemptions under IGST).

**4. Ram in India imported free services from Google and Facebook, without any consideration. Is it supply subject to GST?**

**Answer:** These are not considered as supply and hence not attract GST. GST will be levied only when services are provided with consideration.

**5. Ram an Individual took Netflix subscription for personal purpose. Is it supply and subject to GST?**

**Answer:** Yes, this is considered as supply and will attract GST, however OIDAR shall be liable to register in India and pay the GST under FCM.

### Section 7(1)(c): Deemed supply (Supply without consideration)

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

#### Activities specified in Schedule I

As per Schedule I, in the following four cases, supplies made without consideration will be treated as supply under section 7 of the CGST Act:

- 1. Permanent transfer or disposal of business assets** where input tax credit has been availed on such assets.
- 2. Supply of goods or services or both between related persons or between distinct persons** as specified in section 25, when made in the course or furtherance of business:  
Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
- 3. Supply of goods—**
  - (a) **by a principal to his agent** where the agent undertakes to supply such goods on behalf of the principal; or
  - (b) **by an agent to his principal** where the agent undertakes to receive such goods on behalf of the principal.
- 4. Import of services by a person from a related person** or from any of his other establishments outside India, in the course or furtherance of business.

**Let us now analyse each of them one by one:**

#### **1. Permanent Transfer/Disposal of Business Assets (PTDOBA) where ITC has been availed on such assets:**

**Author:** Business asset means goods held for sale or used for the purpose of business

#### **Conditions to be satisfied to qualify as supply**

1. There must be disposal or transfer of business assets
2. Transfer must be on permanent basis.
3. Input tax credit has been availed on **such** assets.

#### **Hence Permanent transfer or disposal will not cover the following assets**

1. Business assets on which ITC is blocked under GST.
2. Business assets though eligible for ITC, ITC has not been availed by the registered person.

#### **Examples:**

1. Ram a trader in clothes permanently transfers stock of Rs 1 lakh to a trust free of cost.
2. A coaching institute donated its projector to charity (ITC was taken on the projector).
3. Ramesh has an electronic shop, transfer a TV to his home (ITC was taken on the TV).



**Let us understand some examples:**

Taxable person	Inward	ITC	Outward	Relevant section	Consequence
Trader of mobile	Mobile	Availed	Gifted mobile	7(1)(c) – Para a - Supply PTOBA	GST payable – value as per valuation rules
Trader of mobile	Capital goods (Machine)	Availed	Sold after 1 year	7(1)(a) – Supply	GST payable on transaction value. (Value as per section 18(6) – discussed in ITC chapter.
Trader of mobile	Capital goods (Car)	Blocked hence not availed	Sold after 2 years	7(1)(a) – Supply	GST payable on Margin i.e., profit (refer discussion below)
Trader of mobile	Capital goods (Car)	Blocked hence not availed	Gifted	Not supply since not covered under any section	GST not payable

**Margin scheme made applicable in case of sale of Motor Vehicles [NNo. 8/2018- CT (R)]**

- Margin scheme made applicable to all taxpayers on the sale of motor vehicle held as capital asset.
- **where depreciation has been claimed by the taxpayer:** GST has to be paid on the excess of selling price over the written down value as per the Income Tax Act, 1961.
- **Where no depreciation has been claimed:** GST shall be paid on the difference in the selling price and the purchase price.

**Note: The relaxation is only in case of sale of old & used motor vehicles.**

**2. Supply of goods, services or both between related person/ distinct persons as specified in section 25, when made in the course or furtherance of business:**

**Proviso:** Gifts not exceeding Rs 50,000 in value in a FY by an employer to an employee shall not be treated as supply of goods or services or both.

**Related persons [Explanation to Section 15]: For the purposes of this Act, -**

- (a) Persons shall be deemed to be "related persons" if -
- Such persons are **officers or directors** of one another's businesses;
  - Such persons are legally recognised **partners** in business;
  - Such persons are **employer and employee;**
  - Any third person directly/indirectly owns/controls/holds at least **25% of voting stock/ shares** of both of them;
  - One of them directly or indirectly **controls** the other; (holding-Subsidiary)
  - Both of them are directly or indirectly **controlled by a third person;** (subsidiaries of 1 holding co.)
  - Together they directly or indirectly **control a third person;** or
  - They are members of the same **family;**
- (b) The term "person" also includes legal persons;
- (c) Persons who are associated in the business of one another in that one is the **sole agent or sole distributor or sole concessionaire** (trading rights), howsoever described, of the other, shall be deemed to be related.

**Section 2(49): Family means, -**

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

**Author's comments:**

- Sole agent means only one agent. If the person has more than one agent, they will not be considered related.
- Parents, Grandparents, brother and sister are related only if dependent.

**Examples on Gift**

Gift to	Whether supply or not?
1. Employee Rs 45,000	No, it is not supply since within limit of Rs 50,000
2. Employee Rs 55,000	Yes, it is supply since it crosses the limit of Rs 50,000, accordingly Value of supply Rs 55,000 and GST applicable on Rs 55,000
3. All Other (RPs) Rs 5,000	Yes, it is supply, no monetary limit applicable.

**Whether the following are related person?**

SN	Particulars	Yes or no with reason
1	M/s Ram & Co., holds 40,000 shares in A Ltd. and 25,000 shares in B Ltd. Share Capital of M/s A Ltd: 1,00,000 Equity Shares of Rs 10 each. Share Capital of M/s B Ltd: 80,000 Equity Shares of Rs 10 each.	Yes, Since M/s Ram & Co. directly owns /holds at least 25% of voting stock/shares of both.
2	Q Ltd. has a deciding role in corporate policy, operations management and quality control of R Ltd. Hence having effective control over Q Ltd	Yes, since Q Ltd directly controls R Ltd.

**Distinct persons (as specified in section 25)****Separate registration makes distinct person:**

A person who has obtained or is required to obtain more than one registration, whether in one state/UT or more than one state/UT shall, in respect of each such registration, be treated as distinct person for the purpose of this act.

**Examples:**

- Ram has an electronics shop registered in Bangalore (Karnataka) and another electronic shop in Mangalore (Karnataka) and he has obtained separate registration for both the shops. Ram shall be treated as distinct person in respect of both registrations.
- Ram, a Chartered Accountant, has a registered head office in Karnataka. He has also obtained registration in Delhi in respect of his newly opened branch office. Ram shall be treated as distinct persons in respect of registrations in Karnataka and Delhi.
- Stock transfer:** Ram Fabrics transfers 100 shirts from his factory located in Karnataka to his retail showroom in Tamil Nadu. The factory and retail showroom of Ram 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, since both are distinct person.

**Establishment in another state is a separate person:**

Where a person 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 for the purpose of this act.

**Example:** Ram has electronics shop registered in Bangalore (Karnataka) and a liquor shop in Tamil Nadu. Since supply of alcoholic liquor for human consumption is a non-taxable supply i.e., exempt supply, Ram is not required to obtain registration in the state of Tamil Nadu. **In such a situation** the electronic shop and liquor shop shall be treated as establishment of distinct person.

**Summary (Distinct person):**

- Different premises in same state: DP provided separate registration
- Different premises in different states: DP.

**Clarification on Interstate movement of various modes of conveyance, carrying goods or passengers or for repairs & maintenance between distinct persons**

**Issue: Whether inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance, between distinct persons as specified in section**

**25(4) of the CGST act, 2017, [except for further supply of the same conveyance is leviable to IGST]?**

**Clarification:** The issue of inter-state movement of goods like movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the CGST Act, not involving further supply of such conveyance, including **Trains, Buses, Trucks, Tankers, Trailers, Vessels, Containers, Aircrafts,**

(a) carrying goods or passengers or both; or

(b) for repairs and maintenance, [except in cases where such movement is for further supply of the same conveyance] was discussed in GST Council's meeting held on 11th June, 2017 and the 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.**

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

**Crux:**

- 1. Inter-state movement of conveyances carrying goods/passengers or both in conveyance:** shall be treated 'neither as a supply of goods nor as a supply of service' and therefore not be leviable to IGST.
- 2. On Repairs and maintenance or work done:** applicable CGST/SGST/IGST, as the case may be, shall be leviable
- 3. If movement is for further supply of conveyance:** Treated as supply and IGST leviable.

**Clarification on Interstate movement of rigs, tools & spares and all goods on wheels (like cranes) Circular No. 21/21/2017-GST dated 22.11.2017**

**Issue: Whether the inter-state movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the CGST Act, 2017, carrying goods or passengers or both; or for repairs and maintenance, [except in cases where such movement is for further supply of the same conveyance] is leviable to GST?**

**Clarification:** The issue pertaining to inter-state movement of rigs, tools and spares, and all goods on wheels [like cranes] was discussed in GST Council's meeting held on 10th November, 2017 and the Council recommended that the circular 1/1/2017-IGST shall mutatis mutandis apply to inter-state movement of such goods, and 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.

**Crux (same as the above circular):**

- 1. Inter-state movement rigs, tools & spares and all goods on wheels** shall be treated 'neither as a supply of goods nor as a supply of service' & therefore not be leviable to IGST.
- 2. On Repairs and maintenance or work done:** applicable CGST/SGST/IGST, shall be leviable
- 3. If movement is for further supply of conveyance:** Treated as supply and IGST leviable.

**3. Principal to Agent supply or vice-versa****Supply of goods**

- a. **by a principal to his agent,** where the agent undertakes to supply such goods on behalf of the principal is considered as supply.
- b. **by an agent to his principal,** where the agent undertakes to receive such goods on behalf of the principal is considered as supply.

**Section 2(88): Principal means** a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both

**Section 2(5): Agent means**

- a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called,
- who carries on the business of supply or receipt of goods or services or both **on behalf of another**.

**Author's comment: Points to be noted:**

1. Only supply of goods is covered and not supply of services.
2. This section covers only transactions without consideration.
3. Supply of services between principal and agent will be covered only if for a consideration.

**Circular explaining scope of Principal-agent relationship in the context of Schedule I of the CGST Act (Circular No. 57/31/2018-GST dated 04.09.18)**

**Issue: How to determine whether the agent is wearing the representative hat and is supplying or receiving goods on behalf of the principal i.e., the agent is an agent in terms of Schedule I?**

**Clarification: The key ingredient for determining relationship** under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not.

- **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 fold of the said entry.
- **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 Schedule I of the CGST Act.

**Similarly**, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry.

**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.

**Crux:**

- **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 fold of the said entry.
- **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 Schedule I of the CGST Act.

**Let us discuss some scenarios:**

1. 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.

**In this scenario**, 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 Schedule I.

2. 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 Schedule I.

3. 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 Schedule I.

**A similar situation** can exist in case of supply of goods as well where the C&F agent or commission agent takes possession of the goods from the principal and issues the invoice in his own name. In such cases, the C&F/commission agent is an agent of the principal for the supply of goods in terms of Schedule I. The disclosure or non-disclosure of the name of the principal is immaterial in such situations.

**In scenario 1 and scenario 2,** 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 the threshold specified in section 22(1) of the CGST Act.

**In scenario 3,** M/s B shall be liable for compulsory registration u/s 24(vii) of the CGST Act.

#### **4. Import of services by a person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business**

##### **Examples:**

1. Ram 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 Ram Ltd. will qualify as supply even though the head office has not charged anything from it.
2. Ram, a proprietor registered in Karnataka, has sought architect services from his son located in London, with respect to their new home constructed house in Karnataka. Although services have been received by Ram is without any consideration from his son - a related person, still it will not qualify as supply since the same has not been received in course or furtherance of business.

#### **Section 7(1A): Activities or transactions to be treated as supply of goods/supply of services**

Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods/services as referred to in Schedule II;

##### **Schedule II is as follows:**

#### **1. Transfer**

- (a) any transfer of the **title in goods** is a **supply of goods**;
- (b) any transfer of **right in goods/of undivided share** in goods without the transfer of title thereof, is a **supply of services**;
- (c) any transfer of **title in goods under an agreement** which stipulates that **property in goods shall pass at a future date** upon payment of full consideration as agreed, is a **supply of goods**.

#### **Right in goods/Undivided share in goods**

Ram and Shyam are co-owner of a JCB machine. Which they give on rent. Shyam sells his share in goods to another person Lakshman. This is also known as transfer of undivided share in goods. In this scenario only, the undivided share is transferred to Lakshman and not the title in goods and hence it is supply of service. However, if both Ram and Shyam transfer the share to Lakshman, it will involve transfer of title also and hence will be termed as Supply of goods.

##### **Example:**

- (a) Audi sold a car to Ram for Rs 50 lakhs – **Supply of goods**
- (b) Ram supplied a machine to Shyam on hire purchase basis (i.e., possession given immediately but title to be transferred on payment of last instalment) – **Supply of goods**

#### **2. Land and Building**

- (a) any lease, tenancy, easement, licence to occupy land – **Supply of Services**
- (b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly- **Supply of Services**

**Circular on Issue related to taxability of 'tenancy rights' under GST, Circular no. 44/18/2018-CGST dated 02.05.2018**
**Issue:**

1. **Whether Transfer of tenancy rights to a new tenant against consideration would attract GST although stamp duty & registration charges have been levied on such transfer?**
2. **Whether services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium would be liable to GST?**

**About Pagadi system [Tenancy rights against tenancy premium (pagadi)]**

The transfer of tenancy rights against tenancy premium which is also known as "**pagadi system**". In this system the tenant acquires, tenancy rights in the property against payment of tenancy premium. The landlord may be owner of the property but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceed with owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated.

**Clarification:**

- The scope of supply includes all forms of supply of goods and services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business.
- The activity of transfer of tenancy right against consideration in the form of tenancy premium is a supply under section 7(1)(a).
- It is a form of lease or renting of property and such activity is specifically declared to be a supply of service in para 2 of Schedule II.
- Merely because a transaction or a 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 of goods and services and from payment of GST.
- The transfer of tenancy rights cannot be treated as sale of land or building declared as neither a supply of goods nor of services in para 5 of Schedule III to CGST Act, 2017. Thus, a consideration for the said activity shall attract levy of GST.

**Crux:**

- The activity of transfer of 'tenancy rights' is covered under the scope of supply and taxable.
- Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable.
- However, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt.
- As regards 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.

**3. Treatment or Process**

Any treatment or process which is applied to **another person's goods** is a supply of services.

**Example:** Varnishing chairs and tables, Heat treatment on glass, printing logo on tees, etc.

**Circular No. 34/8/2018-GST dated 01.03.18**
**Whether rethreading of tyres is a supply of goods or services?**

<b>Activity</b>	<b>Supply of Goods or Service</b>
Supplier buys old tyres, does the re-treading and supplies re-treaded tyres.	Supply of re-treaded tyres, where the old tyres belong to the supplier of re-treaded tyres, is <b>a supply of goods.</b>
Supplier only does re-threading on old tyres for customers, using rubber and other material.	Pre-dominant element is process of re-treading which is <b>a supply of service.</b> Rubber used for re-treading is an ancillary supply.

**Whether activity of bus body building, is a supply of goods or services?**

Activity	Supply of Goods or Service
If the Bus body building entity build a bus by working on the chassis that is owned by him & supplies bus.	<b>Supply of goods</b>
Only building the body of the bus on the chassis provided by a customer and charging fabrication charges (material also used during fabrication)	Fabrication of body on chassis is the principal supply, and it is <b>a supply of service.</b>

**4. Transfer of Business Assets**

**(a)** where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is **a supply of goods by the person;**

**Author's comment:**

- Permanent transfer of business asset with consideration – **supply of goods**
- Permanent transfer of business asset without consideration (ITC availed) – **supply of goods.**
- Permanent transfer of business asset without consideration (ITC not availed) – **Not supply, no GST.**

**Examples:**

1. Ram sold his office laptop for Rs 50000 – **Supply of goods**
2. Ram a wholesaler of medicines distributed medicines free of cost – **supply of goods**
3. Ram purchased a car for business and sold it for 5 lakhs after a year – **supply of goods**

**(b)** where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are

- put to any private use or
- are used, or made available to any person for use, for any purpose other than a purpose of the business,
- the usage or making available of such goods **is a supply of services;**

**Author's comment:** Temporary transfer or use of business assets for non-business purpose: **supply of services.**

**Example:** M/s Ram Ltd. provided car to one of its directors for his personal purposes and charged Rs 30,000 per month. It is supply of service and the same is taxable under GST.

**(c) where any person ceases to be a taxable person,**

- any goods forming part of the assets of any business carried on by him
- 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,

**unless-**

- (i) Business is transferred as a going concern to another person; or
- (ii) Business is carried on by a personal representative who is deemed to be a taxable person.

**Examples:**

1. Ram-Shyam & Co a partnership firm decided to dissolve the partnership firm. Goods left in stock taken over by the partners. Taking over of goods by partners will be considered as a supply of goods. Since, business is not continued further by the partners.
2. Ram is in the business of running a restaurant. It intends to sell its business as a going concern to Shyam. It would not be required to pay GST on such sale of its business.

**5. Supply of Services****(a) Renting of immovable property**

**Author:** Land and building has already been covered under para 2, hence we can say the intention of law under this para is to cover all other immovable property like telecommunication towers, furniture which is attached in a building, etc.

**(b) Construction of complex, building, civil structure, etc.**

**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.

**Explanation - for the purposes of this clause—**

- (1) the expression "**competent authority**" means the Government/any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely: -
  - (i) **an architect registered** with the Council of Architecture constituted under the Architects Act, 1972; or
  - (ii) **a chartered engineer registered** with the Institution of Engineers (India); or
  - (iii) **a licensed surveyor** of the respective local body of the city or town or village or development or planning authority;
- (2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

**Author's comment:** Construction contract involving labour only is supply of service, however if it involves material and labour both, it shall be classified as works contract under para 6(a).

**Valuation:** Value of Land shall be considered as 1/3<sup>rd</sup> of the total consideration and remaining value will be subject to GST. (Refer value of supply chapter).

**(c) Temporary transfer or permitting use or enjoyment of any intellectual property right.**

**Author's comments:** IPR means patents, trademarks, copy rights, etc.

**(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software****(e) Agreeing to obligation**

- to **refrain** from an act, or
- to **tolerate** an act or situation, or
- to do an **act**

**Author's comments:** **Refrain:** stop oneself from doing something, **Tolerate:** allow the existence, occurrence, or practice of (something that one dislikes or disagrees with) without interference.

**(f) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.****6. Composite Supplies**

**The following composite supplies shall be treated as a supply of services, namely: —**

- (a) **works contract** as defined in section 2(119); and



- (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

### Section 2(119): 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 (whether as goods or in some other form) is involved in the execution of such contract.

### Section 7(2): Notwithstanding anything contained in sub-section (1),

(a) Activities or transactions specified in Schedule III or

(b) Such activities or transactions undertaken by the CG, SG, 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.

### Schedule III: Activities/transactions shall be treated as neither supply of goods nor supply of services

#### 1. Services by an employee to the employer in the course of or in relation to his employment

SN	Examples	GST applicability
1	Ram is an employee of RSS pro corp ltd receiving salary and perquisites	Neither supply of goods nor supply of services
2	Shyam is appointed as a whole-time director with RSS pro corp ltd	Neither supply of goods nor supply of services
3	Lakshman is a Part time director with RSS pro corp ltd.	GST is applicable on his services since Lakshman is not an Employee of RSS.
4	Amounts received by an employee from the employer on premature termination of contract of employment	Neither supply of goods nor supply of services, it is treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment.
5	Service provided by casual worker to employer who gives wages on daily basis to the worker	Services provided by the worker in the course of employment. Neither supply of goods nor supply of services

### Clarification on perquisite provided by the employer to its employees in terms of contractual agreement [Circular No. 172/04/2022-GST dt. 06.07.22]

**Issue: Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?**

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

**Crux:** Any perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST.

## 2. Services by any court or Tribunal established under any law for the time being in force

**Author's comment: Tribunal means** the one established under any law, an Arbitral tribunal is a private tribunal constituted by parties for settlement of any dispute between themselves, services of Arbitral tribunal are services and subject to GST.

**Court includes:** District court, high court and Supreme Court.

**Clarification on levy of GST on amounts/fees charged by Consumer Disputes Redressal Commission. [Circular no. 32/06/2018-GST dated 12.02.2018]**

**Issue: Whether GST is leviable on fees/penalty/any other amount charged by Consumer Disputes Redressal Commissions (CDRCs)?**

**Clarification:** CDRCs (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. 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.

**Crux:** CDRCs have the characteristics of a Tribunal, Consequently No GST on fees/penalty/any other amount charged by CDRCs.

## 3. Services by Government officials (name given by author).

### (a) Functions performed by the

- Members of Parliament, Members of State Legislature,
- Members of Panchayats, Members of Municipalities and Members of other local authorities;

**(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, Attorney General of India, in that capacity.

### (c) Duties performed by

- any person as a Chairperson or a Member or a Director
- in a body established by the CG/SG/LA and who is not deemed as an employee before the commencement of this clause.

**Example:** Chairman of Telecom regulatory authority of India (TRAI), Members and directors of finance commission who are not employees.

## 4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

## 5. Sale of land and, subject to clause (b) of para 5 of schedule II, sale of building

Particulars	Supply of Goods or Service	GST Liability
Sale of Land	Neither supply of goods nor service – Schedule III	No GST
Sale of building – Entire consideration received after issuance of completion certificate or first occupancy (whichever is earlier)	Neither supply of goods nor service – Schedule III	NO GST
Sale of building – where part or full consideration received before issuance of completion certificate or first occupancy (whichever is earlier)	Supply of service (schedule II- Para 5(b))	Liable to GST – Supply of service

## Clarifications regarding applicability of GST on sale of land after levelling, laying down of drainage lines etc. [Circular No. 177/09/2022 GST dated 03.08.2022]

**Issue:** Whether GST is applicable on sale of land after levelling, laying down of drainage lines etc.

**Clarification:** Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the Central Goods and Services Tax Act, 2017 and accordingly does not attract GST.

However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

**Crux:** Sale of developed land is also sale of land and is covered by Para 5 of Schedule III & accordingly, does not attract GST.

### 6. Actionable claims, other than lottery, betting and gambling.

Actionable claims are goods, supply of actionable claims is supply of goods, however GST shall be leviable only lottery, betting and gambling.

### 7. Supply of goods from a place in the non-taxable territory (NTT) to another place in the non-taxable territory without such goods entering into India. (Merchant trading/Out & Out supplies)

**Example:** Ram purchased goods from China and sold it to Shyam in USA without bringing the goods in India. This transaction is neither supply of goods nor supply of services.

### 8. High seas sale or Bond to bond transfer

#### (a) Supply of warehoused goods to any person before clearance for home consumption;

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

#### (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.

#### Examples: (ICAI study material)

1. 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.
2. 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.

### Notified services under section 7(2)(b)

- Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution. [NNo. 14/2017 CT (R)]
- Services 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. [NNo. 25/2019-CT(R)]

**Author's comment:** No GST shall be leviable on licence fee and application fee, by whatever name it is called, payable for alcoholic liquor for human consumption.

**Clarification: Circular No. 121/40/2019 GST dated 11.10.2019**

**Issue: Whether in case of all other licenses and privileges for a fee in other situations also no GST is payable?**

**Clarification:** 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.

**Crux:** Supply of service by way of grant of Alcoholic liquor license by the SG is out of scope of supply, any other services by way of grant of mining right, natural resources against fees/royalty are taxable.

**Section 7(3): Power of Government to notify transaction as SOG and not SOS/vice versa**

**Subject to sub-sections (1), (1A) and (2)**

- The Government may, on the recommendations of the Council, specify, by notification
- The transactions that are to be treated as —
  - (a) **a supply of goods and not as a supply of services; or**
  - (b) **A supply of services and not as a supply of goods.**

**Section 8 - Tax liability on Composite & Mixed Supply****Composite supply [Section 2(30)]**

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

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

**Illustration:** Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;

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

- **The perception of the consumer** or the service recipient (expectation of consumer).
- **Majority of service providers** in a particular area of business provide similar bundle of services.
- The nature of the 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.
- **Other illustrative indicators, not determinative but indicative of bundling of services in the ordinary course of business are:**
  - The elements are normally **advertised** as a package.
  - The **different elements are not available separately.**
  - The **different elements are integral** to one overall supply. If one or more is removed, the nature of the supply would be affected.

**Principal supply**

**Principal supply means** the supply of goods/services

- which constitutes the predominant element of a composite supply and
- to which any other supply forming part of that composite supply is ancillary;

**Section 8(a): Composite supply**

A composite supply comprising two or more supplies, one of which is a principal supply,

- shall be treated as a supply of such principal supply.

**Mixed supply Section 2(74)****Mixed supply means**

- two or more individual supplies of goods or services, or any combination thereof,
- made in conjunction with each other by a taxable person
- for a single price where such supply does not constitute a composite supply.

**Illustration** — A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks 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;

**Section 8(b): Mixed Supply**

A mixed supply comprising of

- two or more supplies
- shall be treated as supply of that particular supply which attracts highest rate of tax.

**Some Examples:**

SN	Supply	Are they naturally bundled	Is there a principal supply	Composite or Mixed supply?	Treated as supply of?
1	Air transport along with meal on board. The meal is included in the ticket.	Yes	Yes	CS	Principal supply
2	Hotel-stay along with complimentary breakfast.	Yes	Yes	CS	Principal supply
3	Gift package consisting of sweets, chocolates, candles, perfume, and crackers.	No	No	MS	That supply attracting highest rate
4	Buying a new bike along with insurance and free maintenance service for a year.	Yes	Yes	CS	Principal supply
5	Hotel facility along with free laundry service and airport pickup included in the hotel package.	Yes	Yes	CS	Principal supply
6	Cosmetic package with Hair oil, lotion, cream, comb, shampoo, and face wash.	No	No	MS	That supply attracting highest rate
7	Buying a laptop along with laptop bag for Rs 40,000	Yes	Yes	CS	Principal supply
8	Buying a computer and a printer together for Rs 50,000	No	No	MS	That supply attracting highest rate
9	Booking a trip with make my trip for Rs 20000, services provided travel, guide, hotel and food.	Yes	Yes	CS	Principal supply
10	Buying a TV with free installation and getting one-year free warranty	Yes	Yes	CS	Principal supply

**Clarification on servicing of cars involving both supply of goods (spare parts) & services (labour) [Circular no. 47/21/2018-GST dated 08.06.18]**

**Issue: Servicing of cars involving both supply of goods (spare parts) & services (labour), where the value of goods and services are shown separately, to be treated under GST?**

**Clarification:** The taxability of supply would have to be determined on a **case-to-case basis** looking at the facts and circumstances of each case. Where a supply involves supply of both goods & services & the value of such goods and services supplied are shown separately, the goods & services would be liable to tax at the rates as applicable to such goods & services separately.

**Clarification on taxability of printing contracts [circular no. 11/11/17-GST dated 20.10.17]**

**Issue: whether supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such supplies, would constitute supply of goods or supply of services.**

**Clarification:** Supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, **are composite supplies** and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

Activity	Supply of Goods or Service
In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer,	Supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service.
In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. by the printer using its physical inputs including paper to print the design, logo etc. (supplied by the recipient of goods).	Predominant supply is supply of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods

**Clarification on various doubts related to treatment of sales promotion schemes under GST [Circular No. 92/11/2019-GST dated 07.03.2019]**

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:**

- It is a common practice among certain sections of trade & industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration.
- The samples which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Schedule I of the CGST Act).
- Further, section 17(5)(h) of the said Act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Thus, it is clarified that input tax credit 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.
- However, where the activity of distribution of gifts or free samples falls within the scope of "supply" on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC. (to be discussed in detail in Input tax credit chapter)

**Crux:**

- **Where activity of distribution of gifts/free samples does not falls within the scope of supply:** that ITC shall not be available.
- **Where activity of distribution of gifts/free samples falls within the scope of supply (schedule I):** ITC would be available.

**B. Buy one get one free offer:** Example, "buy one soap and get one soap free"/ "Get one tooth brush free along with the purchase of tooth paste".

As per section 7(1)(a), the goods/services which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Schedule I of the CGST Act).

- 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 also 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.  
(To be discussed in Input tax credit chapter)

**Crux: Buy One, Get One Free** 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 either composite or mixed supply.

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.

### Clarification on Taxability of Cost Petroleum [Circular No. 32/06/18-GST dated 12.02.18]

#### **Production Sharing Contract**

- When an oil exploration & production contractor gets a license/lease to explore/mine the petroleum crude and/or natural gas from the Government, it enters into a Production Sharing Contract (PSC) with the Government.
- The relationship of the contractors with the Government is not that of partners but that of licensor/lessor and licensee/lessee.
- As per these PSCs, when a contractor discovers oil/gas, he is at first entitled to recover the contract cost [expenses incurred in exploration, development, production and payment of royalty] involved in the extraction of oil/gas from the total sale proceeds and thereafter, he is expected to share with the Government the profit from his venture [known as profit petroleum], as per the PSC.
- **The value of petroleum which the contractor is entitled to take in a year for recovery of the contract costs is called the cost petroleum.**
- **Further, the total value of petroleum produced and saved from the contract area in a particular period, as reduced by cost petroleum, is called the profit petroleum.**
- The Government's share of profit petroleum which is the consideration paid by the contractor to the Central Government for the services of grant of license/lease to explore/mine petroleum crude and/natural gas **is exempt from GST (refer exemption below).**
- The cost petroleum is not a consideration received by the contractor for the services provided to Government and thus not taxable per se. The reason for the same is that the contractors carry exploration and production of petroleum for themselves and not as a service to Government.
- They had acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum.

**Crux:**

- Government grants license/lease to explore/mine the petroleum crude and/or natural gas in consideration for profit petroleum, which is exempted from GST.
- The cost petroleum is not a consideration received by the contractor for the services provided to Government and thus not taxable.

**Exemption: Central Government's share of profit petroleum exempted**

The CG has exempted the intra-State/inter-state supply of services by way of grant of license/lease to explore/mine petroleum crude/natural gas/both, from so much of the central tax/integrated tax as is leviable on the consideration paid to the CG in the form of CG's share of profit petroleum as defined in the contract entered into by the CG in this behalf.

**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 11.10.2019]**

**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.**

**About donations to Charitable organisation:** 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 (generosity) and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.

**Some examples of cases where there would be no taxable supply are as follows: -**

- (i) "Good wishes from Mr. Rajesh" printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.
- (ii) "Donated by Smt. Malati Devi in the memory of her father" written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

**In each of these examples,** 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 all the three conditions are satisfied namely

- 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,
- **GST is not leviable.**

**Crux:**

- 1. If three tests satisfied** (donation to charitable organisation, payment has character of donation and no commercial gain) – **Activity will not fall within scope of supply hence no GST.**
- 2. All other cases** – Where the name plate is basically for promoting business of donor – **Activity will fall in supply and GST is leviable.**

**Clarification on Joint Venture (JV) - taxable services provided by the members of JV to the JV & vice versa & inter se between the members of the JV-reg (cir. no. 35/9/2018-GST)**

Supply of services by an unincorporated association or body of persons (AOP) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of services.



JV being an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame, a comprehensive examination of the various JV agreements (at times, there could be number of inter se agreements between members of the JV) holds the key to understanding of the taxation of transactions involving taxable services between the JV and its members or inter-se between the members of a JV. **Thus**, whether a cash call is merely a transaction in money and hence not in the nature of consideration for taxable service, would depend on the terms of the Joint Venture Agreement, which may vary from case to case.

'**Cash calls**' are raised by an operating member of the joint venture on other members in proportion to their participating interests in the joint venture (unincorporated) to meet the expenditure on the operations to be carried out as per the approved work Programme and budget. Let us understand the taxability of cash calls with the help of following examples:

**Example:** There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member purchases machinery for Rs 400 for the JV to be used in oil production.

**In above case**, cash calls will not be subject to GST since the operating member is not carrying out an activity for another for consideration. Here, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.

**Example:** There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.

**In above case**, the operating member uses its own machinery and is therefore providing 'service' within the scope of 'supply' because here operating member is recovering the cost appropriated towards machinery & services from other JV members in their participating interest ratio.

#### **GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law [Circular No. 178/10/2022-GST dated 03.08.22]**

In certain cases/instances, questions have been raised regarding taxability of an activity or transaction as the supply of service of **agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act.**

Applicability of GST on payments in the nature of liquidated damage, compensation, penalty, cancellation charges, late payment surcharge etc. arising out of breach of contract or otherwise and scope of the entry at para 5 (e) of Schedule II of CGST Act in this context has been examined in the following paragraphs.

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

**a. Agreeing to the obligation to refrain from an act-**

**Examples of activities** that would be covered by this part of the expression would include

- **Non-compete agreements**, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.
- **a builder refraining from constructing more than a certain number of floors, even though permitted** to do so by the municipal authorities, against a compensation paid by the neighbouring housing project, which wants to protect its sunlight, or
- **An industrial unit refraining from manufacturing activity during certain hours** against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.

**b. Agreeing to the obligation to tolerate an act or a situation-**

**Some Examples** would include activities such as

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

**c. Agreeing to the obligation to do an act-**

This would include the case

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

The description "agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act" was intended to cover services such as described above. However, over the years doubts have persisted regarding various transactions being classified under the said description.

**Some of the important examples of such cases are Service Tax/GST demands on –**

- i. Liquidated damages paid for breach of contract;
- ii. Compensation given to previous allottees of coal blocks for cancellation of their licenses pursuant to Supreme Court Order;
- iii. Cheque dishonor fine/penalty charged by a power distribution company from the customers;
- iv. Penalty paid by a mining company to State Government for unaccounted stock of river bed material;
- v. Bond amount recovered from an employee leaving the employment before the agreed period;
- vi. Late payment charges collected by any service provider for late payment of bills;
- vii. Fixed charges collected by a power generating company from State Electricity Boards (SEBs) or by SEBs/DISCOMs from individual customer for supply of electricity;
- viii. Cancellation charges recovered by railways for cancellation of tickets, etc.

In some of these cases, tax authorities have initiated investigation and in some advance ruling authorities have upheld taxability.

**A perusal of the entry at serial 5(e) of Schedule II would reveal that it comprises the aforementioned three different sets of activities viz. (a) the obligation to refrain from an act, (b) obligation to tolerate an act or a situation and (c) obligation to do an act.**

**Above three activities must comply with the following conditions:****1. There must be an expressed or implied agreement or contract must exist**

Above three activities must be under an "agreement" or a "contract" (whether express or implied) to fall within the ambit of para 5(e) of Schedule II. **In other words**, one of the parties to such agreement/contract (the first party) must be under a contractual obligation to either (a) refrain or (b) tolerate or (c) do.

Such contractual arrangement must be an independent arrangement in its own right. Such arrangement/agreement can take the form of an independent stand-alone contract or may form part of another contract.

**Thus**, a person (the first person) can be said to be making a supply by way of refraining from doing something or tolerating some act or situation to another person (the second person) if the first person was under an obligation to do so and then performed accordingly.

**Such a contract cannot be imagined or presumed to exist just because there is a flow of money from one party to another.** There must be an expressed or implied promise by the recipient of money to agree to do or abstain from doing something in return for the money paid to him.

**2. Consideration must flow in return to this contract/agreement**

Further some "consideration" must flow in return from the other party to this contract/agreement (the second party) to the first party for such (a) refraining or (b) tolerating or (c) doing.

**Taxability of these transactions is discussed in greater detail in the following paragraphs.**

**Liquidated Damages**

It is common for the parties entering into a contract, to specify in the contract itself, the compensation that would be payable in the event of the breach of the contract. Black's Law Dictionary defines 'Liquidated Damages' as cash compensation agreed to by a signed, written contract for breach of contract, payable to the aggrieved party.

**The taxability or otherwise of liquidated damages is clarified as under:**

It is argued that performance is the essence of a contract. Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract. They are rather payments for not tolerating the breach of contract. Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance.

Liquidated damages are a measure of loss and damage that the parties agree would arise due to breach of contract. They do not act as a remedy for the breach of contract. They do not reconstitute the aggrieved person. A contract is entered into for execution and not for its breach. The liquidated damages or penalty are not the desired outcome of the contract. By accepting the liquidated damages, the party aggrieved by breach of contract cannot be said to have permitted or tolerated the deviation or non-fulfilment of the promise by the other party. Where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are merely a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.

**Examples of such cases are:**

- (1) damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright,
- (2) penalty stipulated in a contract for delayed construction of houses,
- (3) forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or by Government or local authority in the event of a successful bidder failing to act after winning the bid, for allotment of natural resources.

**The key in such cases is to consider whether the impugned payments constitute consideration for another independent contract envisaging tolerating an act or situation or refraining from doing any act or situation or simply doing an act. If the answer is yes, then it constitutes a 'supply' irrespective of by what name it is called, otherwise it is not a "supply".**

If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'.

**On the contrary, consider the following examples:**

- (1) A contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty.
- (2) A contract for transport of passengers may stipulate that the ticket amount shall be partly or wholly forfeited if the passenger does not show up.
- (3) A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer.
- (4) A contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty.
- (5) Some banks similarly charge pre- payment penalty if the borrower wishes to repay the loan before the maturity of the loan period.

**In the above examples,** amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of prepayment of loan and of making arrangements for the intended supply by the tour operator respectively.

Therefore, such payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable.

Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Naturally, such payments will not be taxable if the principal supply is exempt.

**Cheque dishonour fine / penalty**

The supplier wants payment to be received on time and does not want cheque to be dishonoured. There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine

or penalty. The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonour fine or penalty is not a consideration for any service and not taxable.

**Penalty imposed for violation of laws**

Penalty imposed for violation of laws such as traffic violations, or for violation of pollution norms or other laws are also not consideration for any supply received and are not taxable.

Same is the case with fines, penalties imposed by the mining Department of a Central or State Government or a local authority on discovering mining of excess mineral beyond the permissible limit or of mining activities in violation of the mining permit.

Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration.

In short, fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to tax.

**Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period**

The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated in the employment contract to discourage non-serious candidates from taking up employment.

The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation.

Further, the employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.

**Late payment surcharge or fee**

The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. It is not uncommon or unnatural for customers to sometimes miss the last date of payment of electricity, water, telecommunication services etc.

Almost all service providers across the world provide the facility of accepting late payments with late fine or penalty. Even if this service is described as a service of tolerating the act of late payment, it is an ancillary supply naturally bundled and supplied in conjunction with the principal supply, and therefore should be assessed as the principal supply. Since it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc. it should be assessed at the same rate as the principal supply. However, the same cannot be said of cheque dishonour fine or penalty as discussed earlier.

**Fixed charges for power**

The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMs from individual customers has two components, namely, a minimum fixed charge (or capacity charge) and variable per unit charge.

The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted or available capacity or a minimum threshold, does not mean that minimum fixed charge or part of it is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.

Both the components of the price, the minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are thus not taxable as electricity is exempt from GST.

**Cancellation charges**

It is a common business practice for suppliers of services such as hotel accommodation, tour and travel, transportation etc. to provide the facility of cancellation of the intended supplies within a certain time period on payment of cancellation fee.

Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways.

Services such as transportation travel and tour constitute a bundle of services. The transportation service, for instance, starts with booking of the ticket for travel and lasts at least till exit of the passenger from the destination terminal.

All services such as making available an online portal or convenient booking counters with basic facilities at the transportation terminal or in the city, to reserve the seats and issue tickets for reserved seats much in advance of the travel, giving preferred seats with or without extra cost, lounge and waiting room facilities at airports, railway stations and bus terminals, provision of basic necessities such as soap and other toiletries in the wash rooms, clean drinking water in the waiting area etc. form part and parcel of the transportation service; they constitute the various elements of passenger transportation service, a composite supply.

The facilitation service of allowing cancellation against payment of cancellation charges is also a natural part of this bundle. It is invariably supplied by all suppliers of passenger transportation service as naturally bundled and in conjunction with the principal supply of transportation in the ordinary course of business. Therefore, facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit in such cases should be assessed as the principal supply.

**For example**, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel (i.e., 5% GST on first class or air-conditioned coach ticket and nil for other classes such as second sleeper class). Same is the case for air travel.

Accordingly, the amount forfeited in the case of non-refundable ticket for air travel or security deposit or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

However, as discussed earlier, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Forfeiture of earnest money is stipulated in such cases not as a consideration for tolerating the breach of contract but as a compensation for the losses suffered and as a penalty for discouraging the non-serious buyers or bidders. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

**Crux: Schedule II: Para 5(e) considers: Agreeing to the obligation**

- to refrain from an act, to tolerate an act or a situation or to do an act as a supply of service.

**To be considered as supply of service, above three activities must comply with the following conditions:**

- There must be an expressed or implied agreement or contract must exist to fall within Para 5(e)
- Consideration must flow in return to this contract/agreement.

### 3. Nature of Supply

#### Relevant definitions

##### India: Section 2(56) of CGST act

**India** means

- **the territory of India** as referred to in article 1 of the Constitution,
- **its territorial waters,**
- **seabed and sub-soil** underlying such waters,
- **continental shelf,**
- **exclusive economic zone** or any other maritime zone as referred to in the Territorial Waters, **Continental Shelf, Exclusive Economic Zone** and other Maritime Zones Act, 1976, and
- **the air space** above its territory and territorial waters

##### State: Section 2(103) of CGST act

**State includes** a Union territory with Legislature

##### Union territory: Section 2(114) of CGST act

**Union territory means the territory of –**

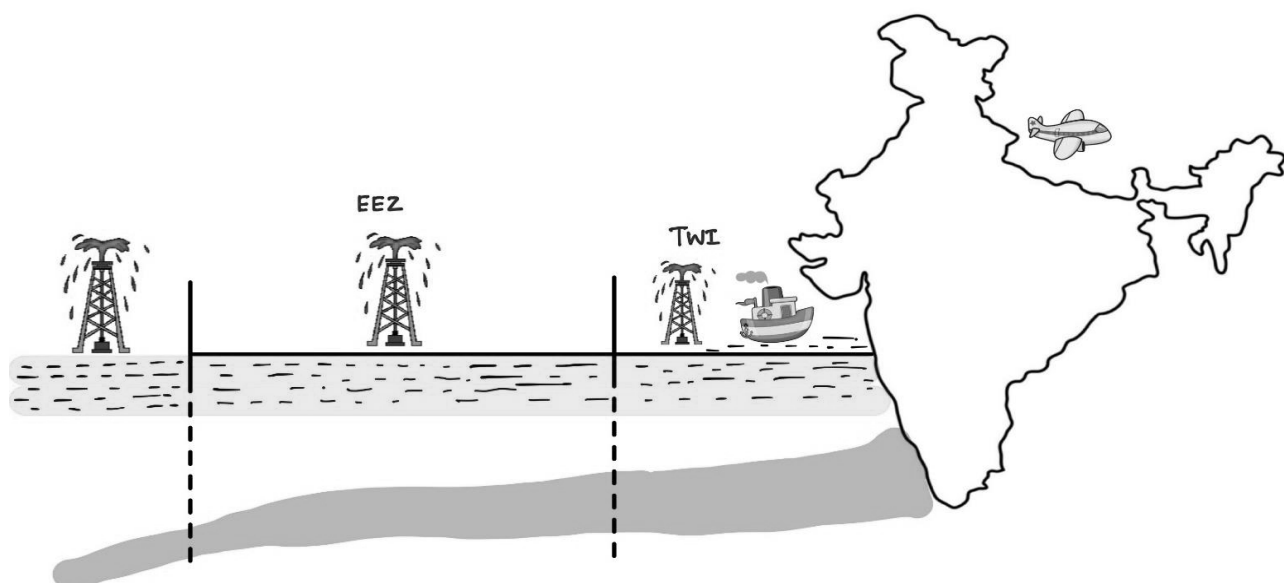
- the Andaman and Nicobar Islands;
- Lakshadweep;
- Dadra and Nagar Haveli and Daman and Diu;**
- Ladakh**
- Chandigarh; and
- other territory.

**Explanation -** for the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory;

##### Other territory: Section 2(81) of CGST act

**Other territory** includes

- territories other than those comprising in a State and
- those referred to in sub-clauses (a) to (e) of clause (114);



**Section 9 of IGST act: Supplies in territorial waters**

**Notwithstanding anything contained in this Act, –**

(a)	where the location of the supplier is in the territorial waters,	<b>the location of such supplier; or</b>	shall, for the purposes of this Act, be <b>deemed to be in the coastal State or UT</b> where the nearest point of the appropriate baseline is located.
(b)	where the place of supply is in the territorial waters,	<b>the place of supply,</b>	

**Section 7 of IGST act: Inter-State supply**

<b>(1)</b>	<b>Supply of goods between different states/UTS</b>
	<b>Subject to the provisions of section 10,</b> supply of goods, where the location of the supplier and the place of supply are in— (a) two different States; (b) two different Union territories; or (c) a State and a Union territory, shall be treated as a supply of goods in the course of inter-State trade or commerce.
<b>(2)</b>	<b>Import of goods be treated as inter-state</b>
	Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade/commerce.
<b>(3)</b>	<b>Supply of services between different states/UTS be treated as inter-state</b>
	<b>Subject to the provisions of section 12,</b> supply of services, where the location of the supplier and the place of supply are in— (a) two different States; (b) two different Union territories; or (c) a State and a Union territory, shall be treated as a supply of services in the course of inter-State trade or commerce.
<b>(4)</b>	<b>Import of services be treated as be treated as inter-state</b>
	Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.
<b>(5)</b>	<b>LOS(India) &amp; POS (o/s India), Supply to/by SEZ, Supply which is not intra- be treated as Inter state</b>
	<b>Supply of goods or services or both, –</b> (a) when the supplier is located in India and the place of supply is outside India; (b) to or by a SEZ developer or a SEZ unit; or (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

**Section 8 of IGST act: Intra-State supply**

<b>(1)</b>	<b>Supply of goods within same state/UT- intrastate supply</b>
	Subject to the provisions of section 10, <ul style="list-style-type: none"> <li>supply of goods where the LOS and the POS of goods are in the same State or same UT shall be treated as intra-State supply:</li> </ul> <b>Provided that</b> the following supply of goods <b>shall not be treated as intra-State</b> supply, namely: – (i) supply of goods to or <b>by a SEZ developer or a SEZ unit;</b> (ii) <b>goods imported</b> into the territory of India till they cross the customs frontiers of India; or (iii) supplies made to a <b>tourist</b> referred to in section 15.
<b>(2)</b>	<b>Supply of services within same state/UT- intrastate supply</b>
	Subject to the provisions of section 12, <ul style="list-style-type: none"> <li>supply of services where the LOS and the POS of services are in the same State or same UT shall be treated as intra-State supply:</li> </ul>

	<b>Provided that</b> the intra-State supply of services <b>shall not include supply of services to or by a SEZ developer/a SEZ unit.</b>
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**Explanation 1. — For the purposes of this Act, where a person has, —**

- (i) an establishment in India and any other establishment outside India;
  - (ii) an establishment in a State or UT and any other establishment outside that State or UT; or
  - (iii) an establishment in a State or UT and any other establishment registered within that State/UT,
- then such establishments shall be treated as establishments of distinct persons.**

**Explanation 2. —** A person carrying on a business through a branch/an agency/a representational office in any territory shall be treated as having an establishment in that territory.

### Circular

#### Services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ developer/SEZ unit – whether to be treated as an inter-State supply or an intra-State supply

**Issue:** Services of short-term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as Intrastate or Interstate supply.

#### Clarification & Analysis:

- **As per section 7(5)(b)** of the IGST Act, the supply of goods or services or both to a SEZ developer/unit shall be treated to be a supply in the course of inter-State trade or commerce.
- **However, as per section 12(3)(c)** of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State.
- **It is an established principle** of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.
- In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit, which states that such supplies shall be treated as inter-State supplies.
- It is therefore, clarified that services of short-term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.

<b>Crux:</b> Services of short-term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.
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### Relevant definition

#### Export of goods – Section 2(5) of IGST act

Export of goods, means taking goods out of India to a place outside India;

#### Export of services – Section 2(6) of IGST act

Export of services means the supply of any service when, —

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

**Note:** Section 10, 11, 12, 13 of IGST act to be discussed later in the chapter Place of supply.



**Section 16: Zero rated supply**

<b>(1)</b>	<b>Zero rated supply (ZRS) means export and supply to SEZ</b>
	ZRS means any of the following supplies of goods or services or both, namely: (a) <b>export</b> of goods or services or both; or (b) supply of goods or services or both to a <b>SEZ developer or a SEZ unit</b> .
<b>(2)</b>	<b>ITC may be availed for making ZRS, even if no tax on outward supplies i.e., exempt supply</b>
	Subject to the provisions of section 17(5) of the CGST Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.
<b>(3)</b>	<b>Export under bond/LUT and don't pay IGST, or Exports on payment of IGST and claim refund</b>
	<b>A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely: —</b> (a) he may <ul style="list-style-type: none"> <li>supply g/s/b under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and</li> <li>claim refund of unutilised input tax credit; or</li> </ul> (b) he may <ul style="list-style-type: none"> <li>supply g/s/b, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and</li> <li>claim refund of such tax paid on goods or services or both supplied,</li> </ul> in accordance with the provisions of section 54 of the CGST Act or the rules made thereunder.

