



Chapter 2

Charge of Tax & Concept of Supply

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Sec.9(1)/5(1)- Levy of GST

SNC 02.01.00

What is a taxable event under GST? (ICAI Material)

Answer:- As per section 9 of CGST Act & section 5 of IGST Act, **Taxable event under GST is supply of goods or services or both.** CGST and SGST/ UTGST will be levied on intra-State supplies. IGST will be levied on inter- State supplies.

Sec.9(2)/5(2)- Goods out of scope of GST

SNC 02.02.00

Supply of all goods and/or services is taxable under GST. Discuss the validity of the statement. (ICAI Material)

Answer:- The statement is incorrect. Supplies of all goods and services are taxable except alcoholic liquor for human consumption.

Supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be taxable with effect from a future date. This date would be notified by the Government on the recommendations of the GST Council.

Important Definitions

SNC 02.03.00

Differentiate between a taxable supply & non-taxable supply under GST?

Answer:

Taxable Supply	Non- Taxable Supply
As per section 2(108) of CGST Act, means supply of goods or services or both which is leviable to GST under this act	As per section 2(78) of CGST Act, means supply of goods or services or both which is not leviable to GST under this act or under Integrated Goods & Service Tax Act.
Falls under the purview of 'Supply' as per section 7 of CGST Act.	Does not fall under the purview of 'Supply' as per section 7 of CGST act.
For eg:- Supply of Gold jewellery or Silver Articles etc.	For eg:- Supply of Petrol or Diesel

SNC 02.04.00

What is the difference in between 'Nil Rated', 'Zero Rated' supply of goods and services?

Answer:- There exist a difference between a Nil Rated Supply and a zero rated supply as per GST law

'1) Nil Rated Supply' means a supply of goods or services which has Nil rate in tariff or exempt by notification.'

ii) Zero rated Supplies means a supply of goods or services for export or to SEZ units [Sec 16 of IGST]. Where tax is leviable but export incentive is given.

SNC 02.05.00

Define the following terms

i) Person ii) Supplier iii) Recipient

Answer:-

(1) As per **section 2(84)** of CGST Act, 2017, "person" includes—

- (a) an individual
- (b) a Hindu Undivided Family
- (c) a company
- (d) a firm
- (e) a Limited Liability Partnership
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in **clause (45) of section 2** of the Companies Act, 2013;
- (h) any body corporate incorporated by or under the laws of a country outside India
- (i) a co-operative society registered under any law relating to co-operative societies
- (j) a local authority;
- (k) Central Government or a State Government;
- (l) society as defined under the Societies Registration Act, 1860
- (m) trust; and

(n) every artificial juridical person, not falling within any of the above

ii) As per section 2(105) of CGST Act, the term 'Supplier' in relation to any goods or services or both, shall

mean the person supplying the said goods or services or both and

shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied

iii) As per section 2(93) of CGST Act, "recipient" of supply of goods or services or both, means—

(a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;

(b) 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

(c) 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 goods or services or both supplied.

Deemed Distinct Person (DDP)

SNC 02.06.00

Smart Pvt Ltd has head office located in Bangalore (Karnataka). However, the branch of Smart Pvt Ltd is located in state of Gujarat. Will they fall under the ambit of deemed distinct person under GST Act?

Answer: As per clause (4) of section 25 of CGST Act, Smart Pvt Ltd shall be required to obtain a separate registration in State of Karnataka & Gujarat in respect of its head office & branch respectively. Thus, head office & branch shall be treated as distinct persons.

SNC 02.07.00

Shreya Ltd is having an establishment in Goa. It has another establishment in the Union Territory of Chandigarh. Will they be treated as establishments of distinct persons under GST Act?

Answer: As per section 25(5) of CGST Act, a person obtained/required to obtain registration in a State or UT, in relation to an establishment in another State/ UT, then such establishment shall be treated as establishment of distinct person.

Shreya Ltd shall be required to obtain separate registration in Goa & Chandigarh in respect of both the establishments & shall be treated as distinct establishments.

SNC 02.08.00

Define the following term as in accordance with GST

i) Goods ii) Services

Answer:- i) As per section 2(52) of CGST Act, 2017 **Goods:-**

means ⇒ every kind of movable property

Other than ⇒ money & 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.

ii) As per section 2(102) of CGST Act, 2017 **"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 removal of doubts, it is hereby clarified that the expression "Services" includes facilitating or arranging transaction in securities.

SNC 02.09.00

Vikramaditya is a salaried employee and is planning to invest in stocks. He has opened a trading account with Vaydaa Brokers. During the month, Vikramaditya undertook future contracts (without a physical delivery option, but are cash settled on the expiry of the contract date), amounting to ₹ 35,00,000. Vikramaditya needs your advice whether such future contracts undertaken by him amount to supply and are liable to GST. [ICAI Material]

Answer- For a transaction to fall within the purview of supply, it must be a supply of either goods or services or both.

The definitions of the terms “goods” and “services” specifically exclude “securities” from their purview.

Further, ‘derivatives’ are included in the definition of ‘securities’. As ‘derivatives’ fall in the definition of securities, they are neither goods nor services and hence, are not liable to GST.

Future contracts are in the nature of financial derivatives, the price of which is dependent on the value of underlying stocks or index of stocks or certain approved currencies and the settlement happens normally by way of net settlement with no actual delivery.

Since future contracts are in the nature of derivatives, these qualify as ‘securities’ and thus, are not subject to GST.

In view of the above discussion, it can be inferred that since the future contracts undertaken by Vikramaditya are in the nature of derivatives, these qualify as ‘securities’ and do not qualify as supply and thus, are not subject to GST.

SNC 02.10.00

Will GST be applicable on any interest charged for payment after the credit period?

Answer: As per sec 2(102) Service means anything other than goods, money or securities.

Hence, Interest charged for the following activities are liable to GST:

(1) Interest for use of money (i.e. loan, advances, deposits)

(2) Interest for delay payment of consideration (i.e. interest from debtors, receivables)

Interest on loan advances or deposit is subject to exemption but any interest, late fee or penalty for delay payment of consideration is liable to GST.

SNC 02.11.00

Rob Shareholding Ltd., an approved intermediary, has entered into a transaction wherein certain securities were to be lent to Dhandhan Bank, under Securities Lending Scheme, 1997. Dhandhan Bank shall pay specified lending fee against such lending of securities to it. Explain the taxability of transactions involved in the Securities Lending Scheme, 1997. [ICAI Material]

Answer- Securities Lending Scheme, 1997 (hereafter referred to as SLS) facilitates the lending and borrowing of securities. Securities are neither covered in the definition of goods nor covered in the definition of services.

Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.

However, SLS doesn’t treat lending of securities as disposal of securities and therefore is not excluded from the definition of services. The lending fee charged from the borrowers of securities has the character of consideration and is taxable under GST.

Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately [Circular No. 119/38/2019 GST dated 11.10.2019].

Sec.2(17)- Business

SNC 02.12.00

Define the term ‘Business’ under CGST Act.

Answer: As per section 2(17) of CGST Act, ‘business’ includes-

(a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit

- (b) any activity or transaction in connection with or *incidental or ancillary* to sub-clause (a)
- (c) any activity or transaction in the *nature of sub-clause (a)*, whether or not there is volume, frequency, continuity or regularity of such transaction
- (d) supply or acquisition of goods including capital goods and services in connection with *commencement or closure of 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
- (f) *admission*, for a consideration, of persons to any *premises*
- (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
- (h) *Activities of a race club* including by way of totalisator or a licence to book maker or activities of a licensed book maker in such club and (Amended) and
- (I) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities

SNC 02.13.00

Determine whether the following activities fall under the scope of business?

- i) M/s X pvt ltd is engaged in the manufacture of auto parts for industrial purposes
- ii) M/s ABC ltd acquired capital goods lying in stock of M/s S ltd as on takeover of business of M/s S ltd.
- iii) ETA Star adventure club provides a free trekking camp to non-members of the club
- iv) Adlabs Imagica charges ₹ 1500 as an entry fee into the park to its customers

Answer:

- i) **Yes**, the given activity of manufacture has been included in the definition of business.

- ii) **Yes**, as per the definition of business, supply or acquisition of goods including capital goods and services in connection with commencement or closure of business.
- iii) **No**, as per the definition of business, provision of services to members as in return for subscription fee, thus in the given case as free trekking camp is organized for non-members.
- iv) **Yes**, as per definition of business, admission, for a consideration, of persons to any premises as in the given case the entry fee is charged for admission into the park.

SNC 02.14.00

Determine whether the below activity covered under definition of business? (Case Study)

- i) Goods sold in store maintained by the company for the welfare of the employees.
- ii) If Mr. chotu want to hire a premises but the same is already hired by Mr. Motu. Now Mr. Motu agrees to vacant on payment of ₹ 3lakh to him which is popularly called Pagadi”.
- iii) Activities of Pune Race club for horse race collected ₹5 lakh through licensed book marker or totalizer or activities of licensed book marker in such a club.

Answer:

- i) Turnover of goods sold in the store maintained by the company for the welfare of the employees was held to be INCIDENTAL TO MAIN BUSINESS.
- ii) Business include admission to any premises for consideration Now Mr. Motu receiving payment of ₹ 3 lakh for allowing is covered in definition of business.
- iii) Activities by a race club are covered in definition of business.

Sec.2(119)- Works contract under GST

SNC 02.15.00

Define the term 'Works Contract'

Answer: As per section 2(119) of CGST Act, "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

SNC 02.16.00

Aspire Ltd enters into contract with Beta Ltd for execution of works contract for ₹ 50,00,000 excluding taxes for following activities pertaining to construction of a complex. Determine whether the following activities fall under the ambit of 'works contract'

- Erection & installation of structural designs to the complex which involved material.
- Fabrication works relating to the structure of complex no material is involved.
- Assembling of units pertaining to movable property which involved material and goods.
- Tiling & painting work of the entire building which involved material.

Answer: As per section 2(119) of CGST Act, defining the term works contract. Only if the activities fall under the definition it shall be considered as a works contract.

- Yes**, the given activity is in relation to an immovable property thus qualifies as a works contract
- No**, even though the given activity of fabrication is in relation to immovable property thus it does not qualifies as works contract because material is not involved.

iii) **No**, the activity of assembling units will not qualify as works contract as it is relation to a movable property.

iv) **Yes**, the given activity is in relation to building which is immovable property & thus qualifies as works contract.

Sec.7(1)- Meaning and scope of supply

SNC 02.17.00

When does a particular activity attract GST? Explain the scope?

Answer: As per section 9 of CGST act, GST is leviable on supply of goods / services or both & also

As per section 7 of CGST act, supply includes

(1) All forms of supply of goods or 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

(2) import of services for a consideration whether or not in course or furtherance of business and

(3) the activities specified in Schedule I, made or agreed to be made without a consideration

Thus, all the activities specified above falling under the scope of supply shall attract GST excluding

(a) those activities as specified in Schedule III.

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

- Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G OR to a Municipality under article 243W of constitution.
- Service by way of grant of alcoholic liquor licence, against consideration by

the State Government in which they are engaged as public authorities.

Shall be treated neither as a supply of goods nor a supply of services.

SNC 02.18.00

Discuss whether the following activities constitute 'Supply' in accordance with section 7 of CGST Act

- (i) Mr. Raj sold electronic gadgets to XYZ Co.
- (ii) Arya pvt. ltd. entered into a hire purchase agreement with AB pvt. ltd. for supply of a machine unit.
- (iii) Asha purchase an LED TV of 24 inch from Sony electronics store and in return gave away her old TV.
- (iv) VB associates a CA firm appointed Mr. Urja as an interior decorator to design it's office outlet in exchange for such service, VB associates rendered tax compliance services to Mr. Urja.
- (v) M/s Bharat Electronics disposed scrap part of electric unit to a scrap dealer.
- (vi) Supply of Beer Shampoo @ 28%

Answer:-

- i) Yes, as term sale is included in the expression supply
- ii) Yes, it is supply as per sec 7(1) and it is classified as a supply of goods as per sec 7(1A) read with schedule II
- iii) Yes, as the above supply falls under barter transaction which is also included under the scope of supply
- iv) Yes, it is a form of exchange which is included under the scope of supply
- v) Yes, if the disposal is in course or furtherance of business of M/s Bharat electronics then it shall be considered as a supply.
- vi) Yes, it is a supply, only the supply of alcoholic liquor for human consumption is out of the scope of GST

SNC 02.19.00

Ajatasatru Industries enters into a contract with an actor – Chandragupta – to act as a brand ambassador of products manufactured by Ajatasatru Industries. The duration of the contract is 5 years and the contract fee payable to Chandragupta for being a brand ambassador is ₹ 50 lakh per annum. As per the terms of the contract, in case the contract is terminated by Chandragupta before the end of the contract period, Chandragupta will have to repay to Ajatasatru Industries, 50% of the contract fee received by him till the time of termination of contract.

At the end of 3rd year, Chandragupta terminates the contract with Ajatasatru Industries. He has received the contract fee for 3 years at the time of termination of contract.

You are required to determine whether the given transaction(s) qualifies(y) as supply(ies). [ICAI Material]

Answer- As per section 7(1)(a), supply includes all forms of supply of goods or services or both made or agreed to be made for a consideration by a person in the course or furtherance of business.

In the given case, Chandragupta has agreed to provide his services as a brand ambassador of the products manufactured by Ajatasatru Industries at an agreed annual consideration.

Thus, his services fall within the purview of the term “supply” under GST where the consideration charged for such supply is ₹ 50 lakh per annum.

Further, section 7(1A) provides that when certain activities or transactions constitute a supply in accordance with the provisions of section 7(1), they shall be treated either as a supply of goods or supply of services as referred to in Schedule II of the CGST Act.

Tolerating non-performance of a contract is an activity or transaction which is treated as a supply of service as per Schedule II and the person is deemed to have received the consideration in the form of fines or penalty and is, accordingly, required to pay tax on such amount.

In the given case, since Ajatasatru Industries is tolerating the act of Chandragupta of

terminating the contract before the expiry of its contract period, 50% of contract fee for 3 years amounting to ₹ 75 lakh is being received by it as a penalty for the same. The act of tolerating the nonperformance of a contract by Chandragupta by Ajatasatru Industries is a supply of service where the consideration charged for such supply is ₹ 75 lakh [50% of (₹ 50 Lakh × 3 years)].

Sec. 7(1) (a) – Supplies for consideration in course of business

SNC 02.20.00

Whether transfer of title and/or possession is necessary for a transaction to constitute supply of goods? [ICAI Material]

Answer: Under sec 7(1)(a) Supply include sale, transfer, barter, exchange, lease, license, rental or disposal for a consideration in the course of business. Thus, any transaction without transfer of title in goods also treated as supply.

Therefore,

- (i) Transfer of Possession as well as title is classified as supply of goods.
- (ii) Transfer of possession with future transfer of title is also classified as supply of goods
- (iii) In case of Transfer of possession and not title is classified as supply of service in terms of schedule II of the CGST Act.

SNC 02.21.00

(a) Rudraksh Kapoor, owner of Rudraksh Publishing House, Ghaziabad, U.P., donated some money to a Divyaprakash Charitable Trust in the memory of his late father. The Divyaprakash Charitable Trust constructed a room in the school run by it from such donation and wrote “Donated by Rudraksh Kapoor in the memory of his father” on the door of the room so constructed. Examine whether the money donated by Rudraksh Kapoor is leviable to GST.

(b) In the above question, if the Divyaprakash Charitable Trust had written on the door of the room constructed in the school run by it from the money donated by Rudraksh Kapoor “Donated by Rudraksh Publishing House, Ghaziabad, U.P.”, would the given transaction/activity qualifies as supply. [ICAI Material]

Answer– Circular No. 116/35/2019 GST dated 11.10.2019 has clarified that in case of donations received by a charitable institution, GST is not leviable where all the following three conditions are satisfied namely:

- ➔ Gift or donation is made to a charitable organization
- ➔ Payment has the character of gift or donation
- ➔ Purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement.

(a) In the backdrop of the above discussion, since in the given case, the way the name of Rudraksh Kapoor is displayed on the door of the room constructed in the school run by Divyaprakash Charitable Trust, it is only an expression of gratitude and public recognition of Rudraksh’s act of philanthropy and is not aimed at advertising or promoting his business. There is no reference/mention of his publishing house which otherwise would have got advertised.

Thus, the money donated by Rudraksh Kapoor is not a leviable to GST.

(b) In the given case, since the name of Rudraksh Publishing House has been displayed on the door of the room constructed in the school run by Divyaprakash Charitable Trust, it might be aimed at advertising or promoting his business. There is a direct mention of his publishing house which is being advertised.

In such a case, it is a supply of service by Divyaprakash Charitable Trust for a consideration received in the form of donation.

Meaning of consideration/Supply for consideration

SNC 02.22.00

Explain the term consideration?

Answer: As per section 2(31) of CGST Act, 2017, “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**, 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:

Provided that a **deposit given in respect of the** supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply

Section 7(1) (b)– Import of service for consideration

SNC 02.23.00

Shreya a student of engineering plans to pursue her higher education in US. He receives career consultancy services from a US based consultant for ₹ 2, 50,000. Does it qualify as a supply?

Answer: Yes, As per section 7(1)(b) of CGST Act, 2017, Supply includes import of services for a consideration whether or not in the course or furtherance of business. Hence, in the above case it will be treated as a supply.

Note:- As per Sr. No. 10 of Exemption N/N 9/2017(IT), If service is received from a person located in non-taxable territory by as individual for the purpose other than commerce, Business or profession then such service is exempted from payment of tax

Section 7(1) (c)– Activities to be treated as supply even if made without consideration read with schedule I

SNC 02.24.00

Whether supply of goods or services without consideration is liable to tax?

Answer: Normally as per **Sec 7(1)(a)** supply of goods or services for consideration is liable to GST.

The activities enumerated in Schedule I will qualify as supply even if made without consideration. Following are the transactions mention in Schedule I.

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

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.

SNC 02.25.00 (Para 1 & Para 3)

Answer the following questions:

(a) **Sudama Associates, a registered supplier, disposes the computers owned by the business without consideration and it has not claimed input tax credit on such computers.**

Examine whether the disposal of computers by Sudama Associates qualifies as deemed supply under Schedule I of the CGST Act.

(b) **Prithvi Enterprises appoints Champak to procure certain goods from the market. Champak identifies various suppliers who can provide the goods as desired by Prithvi Enterprises, and asks a supplier – Satya Manufacturers to send the goods and issue the invoice directly to Prithvi Enterprises.**

You are required to determine whether Champak can be considered as an agent of Prithvi Enterprises in terms of Schedule I of the CGST Act. [ICAI Material]

Answer :- (a) As per section 7(1)(c) read with Schedule I of the CGST Act, permanent transfer or disposal of business assets is treated as supply even

though the same is made without consideration. However, this provision would apply only if input tax credit has been availed on such assets.

Therefore, the disposal of computers by Sudama Associates is not a supply as the input tax credit has not been availed on the same.

(b) As per section 7(1)(c) read with Schedule I of the CGST Act, supply of goods by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal qualifies as supply even if the same is made without consideration.

Further, Circular No. 57/31/2018 GST dated 04.09.2018 clarifies that principal-agent relationship falls within the ambit of the Schedule I only where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent. In that case, further provision of the said goods by the agent to the principal without consideration, would be covered in Schedule I and thus would qualify as supply.

In the given case, Champak is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. The invoice is being issued in the name of Prithvi Enterprises and not Champak. Hence, Champak is not an agent of Prithvi Enterprises for the supply of goods in terms of Schedule I of the CGST Act.

SNC 02.26.00 (Para 2)

Mokshabhumii Industries has its manufacturing unit in the State of Maharashtra. It stores the finished goods manufactured by it at a depot located in the State of Gujarat. The depot is owned by Punyabhumi Ltd. – a related person of Mokshabhumii Industries. Punyabhumi Ltd. has not charged any consideration from Mokshabhumii Industries for usage of depot for storage purpose. Whether the storage of goods permitted by Punyabhumi Ltd. to Mokshabhumii Industries qualifies as supply under GST? [ICAI Material]

Answer– As per section 7(1)(c) read with Schedule I of the CGST Act, supply of goods or services or both between related persons without consideration when made in the course or furtherance of business qualifies as supply.

Thus, the storage services provided by Punyabhumi Ltd. to Mokshabhumii Industries in course or furtherance of business qualifies as supply under GST even though no consideration has been charged for the same.

SNC 02.27.00 (Para 2)

Whether transfer of goods to another branch located outside the State is taxable? What would be your opinion on taxability of goods are transfer to another branch of same state.

Answer: In terms of Section 25(4) of the CGST Act, 2017, every person is required to obtain separate registration for every branch located in different state or union territory and shall be treated as distinct persons. Also after amended provision he can take separate registration of branch located in same state. Accordingly, the supply of goods (stock transfers) to a branch located outside the State would qualify as supply liable to tax in terms of para 2 to Schedule I of the CGST Act, 2017.

Further, it is important to note that, supply of goods to a branch / unit located within the same State is not liable to GST if such branch is not separately registered.

In case branch in a same state having separate registration then it would also be liable to tax since both such units (supplying unit and recipient unit) would qualify as distinct person in terms of Section 25(4).

SNC 02.28.00 (Para 2)

Daksh gold pvt ltd. On occasion of Diwali distributes gift hamper to its employee worth ₹ 3, 00,000. Does it qualify as supply? Would your answer differ if gifts of ₹ 42,000 have been given to a employee?

Answer: As per section 7(1) (c) read with Schedule I of CGST Act, 2017, Supply of goods or services between related persons is treated as supply even if it is without consideration.

As per explanation to section 15 of CGST Act 2017, persons shall be deemed to be as “related persons” if such persons are employer and employee.

Thus, Diwali gifts to employee worth ₹ 3,00,000, will qualify as supply and such supply would be leviable to GST.

If gift of ₹42,000 is given instead of ₹ 3,00,000 , the same will not qualify as supply since it has been specifically mentioned in proviso of para 2 of schedule 1 that gifts not exceeding ₹ 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

SNC 02.29.00

Rishabh Enterprises, a registered supplier, owns an air- conditioned restaurant in Virar, Maharashtra. It has opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption. State whether Supply by Maharashtra restaurant to Uttarakhand shop, in course or furtherance of business without consideration will qualify as supply or not. [ICAI Material]

Answer- Since supply of alcoholic liquor for human consumption in Uttarakhand is a non-taxable supply, Rishabh Enterprises is not required to obtain registration with respect to the same in Uttarakhand.

In this case, air-conditioned restaurant in Maharashtra and liquor shop [though unregistered] in Uttarakhand shall be treated as establishments of distinct persons. Supply by Maharashtra restaurant to Uttarakhand shop, in course or furtherance of business even without consideration will qualify as supply.

SNC 02.30.00

Modest Ltd., registered in Delhi dealing in supply of electronic items transferred some of its stock to its another unit located in Haryana (inter-state transfer). Whether such self-supplies are taxable under GST?

Answer: Legal Provision:- As per sec 7 of CGST Act, 2017 the term 'Supply' has been defined in an inclusive manner.

As per section 25(5) of CGST act, provides that where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons.

As per clause (2) of Schedule 1 of CGST Act, 2017 inter alia provides that supply of

goods between distinct persons as specified in section 25 made in the course or furtherance of business is to be treated as supply even if made without consideration.

Explanation:- With reference to the above provision, Yes, transfer of stock made by Modest Ltd. are taxable under GST. Though the definition of supply it does not specify that supply is to be made by one person to the another. Hence, self-supplies are to be treated as supply in terms of section 7 of CGST Act.

Further, as per the above provision pertaining to distinct person, Inter-state self-supplies such as stock transfers, branch transfers or consignment sales shall be taxable under IGST even though such transactions may not involve payment of consideration. Every supplier is liable to register under the GST law in the State or Union territory from where he makes a taxable supply of goods or services or both in terms of Section 22 of the CGST Act. However, intra-state self-supplies are not taxable provided that separate registration has not been obtained.

SNC 02.31.00

Mr. Raj has head office in pune and has branches in state of Gujarat, Goa, and Punjab. Mr. Raj send goods to its branch Goa worth ₹ 2,00,000 in its own conveyance. Value of conveyance ₹ 15,00,000 and With the conveyance some tools and spares parts are also send worth ₹ 50,000. Calculate total value of taxable supply on which GST is payable.

Answer:- Transfer of goods to the own branch is treated as supply. As per section 25(4) both head office and branch is treated as demand distinct person. Therefore supply of goods is liable to GST. VALUE OF TAXABLE SUPPLY IS ₹ 2,00,000.

As per the Circular no. 1/1/2017, carrying goods or passenger or both in conveyance between deemed distinct person shall be treated neither as supply of goods nor supply of services and no IGST to be levied. Therefore supply of conveyance carrying goods is not treated as supply.

As per the Circular no. 21/21/2017, on inter- state movement of rigs, tools and spares and all goods on wheels in conveyance between deemed distinct person shall be treated neither as supply of goods nor supply of services and no IGST to be levied.

Therefore supply of tools and spare part is not treated as supply.

Therefore the value of taxable supply will be ₹2,00,000.

SNC 02.32.00 (Para 3)

Mr. Veer is a supplier of goods located in Mumbai has appointed Mr Rudra to procure goods based on a specification given by him. As the same kind of goods are not available in area of Mr. Veer & So on his behalf Mr. Rudra buys the specified goods from M/s XYZ Ltd. and for this activities invoice is issued in the name of principal. Whether it is to be treated as a supply under GST? Would your answer differ if invoice is issued in name of an agent Mr Rudra?

Answer: Legal Provision:- As per sec 7 read with Para 3 of Schedule I of CGST Act, 2017 –

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. All the activity carried by agent where agent issues their own invoice are included.

Is covered under the scope of supply, However as per recent clarification issued by CBIC via **Circular No. 57/31/2018-GST** where invoice for further supply is being issued by agent in his name, then it would be covered under schedule I para 3.

Discussion:-

As per the aforesaid provisions in the given case above, Mr Rudra has been appointed just to procure the goods on behalf of Mr Veer (Principal) and is issuing invoice also in name of Mr Veer & 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. Rudra is not an agent of Mr. Veer for supply of goods in terms of Schedule I.

SNC 02.33.00

Mr. Raj, 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. Raj but in his own name and the painting is delivered to the successful bidder. Whether it is to be treated as a supply under GST?

Answer: Legal Provision:-

As per sec 7 read with Para 3 of Schedule I of CGST Act, 2017 – 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

Is covered under the scope of supply, However as per recent clarification issued by CBIC via **Circular No. 57/31/2018-GST** All the activity carried by agent where agent issues their own invoice are included.

Discussion:-

As per the aforesaid provisions in the given case above, 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.

Del credere Agent

SNC 02.34.00

Mr. Viraj is a registered dealer under GST supplying taxable goods to large number of customers either directly or through Mr. Tushar, who guarantees payment on behalf of buyer to the seller. Mr. Tushar charges a commission of 12% whereas other agent charges commission @ 10% for similar services. The only difference was that Mr. Tushar guarantees payment from buyers whereas other agent does not provide any such guarantee to the principal supplier. Goods worth ₹ 5 lakhs

were supplied by Mr. Viraj to Mr. Somesh routed through Mr. Tushar where invoice was issued by Mr. Tushar in the name of Mr. Viraj (Principal Supplier). The buyer Mr. Somesh fails to pay ₹ 5 lakhs within the prescribed time. So Mr. Tushar who has undertaken a guarantee, makes payment to Mr. Viraj on behalf of Mr. Somesh and charges ₹ 15000 as interest to Mr. Somesh. The open market value for supply of such goods was ₹ 5.10 lakhs.

- Whether Mr. Tushar a DCA would fall within the ambit of Para 3 of Schedule I?
- What is the value of supply for Mr. Viraj, assuming GST @ 12%?
- Whether commission charged by Mr. Tushar (DCA) to Mr. Viraj (Supplier) would be liable to GST?
- Whether interest charged by Mr. Tushar to Mr. Somesh will form part of value of supply of goods?
- Would your answer differ if Mr. Tushar issues invoice in his own name for supply of goods on behalf of Mr. Viraj?

Answer:

Legal Provision:-

As per section 7 of CGST Act, 2017, supply includes all forms of supply of goods/services such as sale, transfer, barter, exchange, lease, rental, licence along with activities specified in Schedule I, made or agreed to be made without consideration.

Para 3 of Schedule I of sec 7 is as follows -

Supply of goods:-

- by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
- by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal Also as per recent clarification issued by CBIC via Circular no 73/47/2018 dt 5/11/2018 that defines the term Del-credere agent & in context to scope of principal agent relationship under Schedule I

Possible Scenario in the given case:

- Supply of goods by Mr. Viraj (principal) to Mr. Tushar (DCA)
- Further supply of goods by Mr. Tushar (DCA) to Mr. Somesh (recipient)
- Supply of agency services by the DCA to the supplier or the recipient or both;

- Extension of credit by the DCA to the recipient

- As Mr. Tushar is supplying goods on behalf of Mr. Viraj and issuing invoice in the name of Mr. Viraj (Supplier), he does not fall within the scope of para 3 of Schedule I
- The Value of supply for Mr. Viraj will be 5 lacs plus GST @ 12% which does not include the amount of interest charged by Mr. Tushar to Mr. Somesh as it is a contract on principal to principal basis.

Particulars	₹
Price of Goods	5,00,000
Add :- GST @ 12% on above	60,000
Total	5,60,000

- Commission charged by Mr. Tushar to Mr. Viraj for supplying goods to the ultimate buyer on behalf of supplier will be liable to GST as it is contract on principal to principal basis.

$$\text{Commission} = 500000 * 12 \% = ₹ 60,000$$

On Commission earned by Mr. Tushar of ₹ 60,000 GST will be charged at the applicable rate.

- There is levy on interest charged by Mr. Tushar to Mr. Somesh but via exemption notification such interest is exempted from GST and will not be included in the value of supply of goods.
- As supply of goods by Mr. Viraj (principal) to Mr. Tushar (agent) where Mr. Tushar undertakes to supply such goods on behalf of the Mr. Viraj and issues invoice in his own name instead of issuing invoice in the name of principal supplier, the principal - agent relationship will be established between Mr. Viraj and Mr. Tushar and thus Mr. Tushar would fall under the ambit of Para 3 of Schedule I

As per rule 29 of CGST Rules, value of supply of goods between the principal and his agent shall:

- be the open market value of the goods being supplied, **OR**
- be 90% of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person. (Detailed discussion under Rule 29 of Valuation)

The value of supply by Mr. Viraj to Mr. Tushar will be as follows:-

Particulars	₹
Open market value of goods supplied to agent (As per rule 29)	5,10,000
Add:- GST @ 12%	61,200
Total	5,71,200

Note – As per rule 29, value shall be open market value or 90% of price charge for supply of goods of like kind and quality by agent to his customer not being related.

- Open market value is 5,10,000
- Calculation of 90% of price charge -

Value of goods	5,10,000
Commission	61,200
Interest	13,393
Total	5,84,593
90% of price charge	5,26,134

Therefore, Open market value is beneficial to the assessee

The value of supply by Mr. Tushar to Mr. Somesh will be as follows:-

Particulars	₹
Price of goods	5,00,000
Add:- Commission @ 12% on above	60,000
Add:- Interest for delayed payment (15000*100/112)	13,393
Total Value	5,73,393
Add:- GST @ 12%	68,807
Less:- ITC on inward supply	(61,200)
Net GST Payable	7,607

Note:- i) The value of the interest charged by Mr. Tushar to Mr. Somesh will be included in the value of supply of goods as per sec 15(2)(d) of the CGST Act.

ii) Interest is inclusive of GST (detailed discussion under Valuation Chapter)

iii) When agent issues his own invoice the commission charged by DSA is recovered from customer and hence added in the price charged by DSA to customer

Note- Rule 29 is applicable for All Agents (Issuing his own invoice or suppliers Invoice.)

Para 4- import of services without consideration

SNC 02.35.00

Discuss the taxability of import of services under GST. (RTP – ICAI)

Answer : As per section 7(1)(b) of CGST Act, 2017 supply includes the importation of services for a consideration whether or not in the course or furtherance of business. Thus, import of services with consideration is taxable in both of the following situations:

- in course or furtherance of business
- not in course or furtherance of business

Further, Schedule I of CGST Act, inter alia, stipulates that import of services by a person from a related person or from his establishments located outside India is treated as “supply” even if made without consideration if it is provided in the course or furtherance of business.

SNC 02.36.00

Mr. Sagar import interior design service for designing his office from his brother Mr. Raj who resides in UK from last 1 year whether it is treated as supply under GST law?

Answer: Legal Provision: As per the provision of para 4 schedule -I of CGST act import of any service without consideration by a person from a related person outside India or from any of his other establishments outside India in the course or furtherance of business is treated as supply.

Person are treated as related party if they are members of same family.

As per section 2 (49) family means, i. the Spouse and children of the person and, ii. the Parents, Grandparents , Brothers and Sisters of the person if they are wholly or mainly dependent on the said person.

Conclusion: Since the question doesn't specifically mentioned that brother is dependent, & he resides in UK from last one year (on his own), so brother is not dependent therefore he will not be considered as related party.

Therefore in the given case referring to the above provision Importation of service by Mr. Sagar for designing his office from his brother Mr. Raj without

consideration will not be treated as supply of service even if it is in the course of business, since Mr. Raj is not dependent on Mr. Sagar he will not be considered related party.

SNC 02.37.00

John Ltd., USA is the holding company of VB Ltd., India. VB Ltd. imports Business Consultancy Service from John Ltd. without consideration in September, 2017, does it qualify as a supply.

Answer: Yes, As per para 4 of Schedule -I import of services by person from related person outside India in the course or furtherance of business without consideration would be treated as supply.

In given case import of business consultancy service by V.B. Ltd. from John Ltd. without consideration qualify as supply.

SNC 02.38.00

ABC Associate received legal consultancy services from its head office located in Malaysia. The head office has rendered such services free of cost to its branch office, does it qualify the supply?

Answer: Yes, As per para 4 of Schedule -I import of services by person from any of his other establishment outside India in the course or furtherance of business without consideration would be treated as supply.

Since ABC Associates and the branch office are related persons (as per explanation to sec 8 of IGST Act), services received by ABC Associates will qualify as supply even though the head office has not charged anything from it.

Section 7(1A) & 7(3)- Activities or transactions to be treated as supply of goods or supply of services (Classification as 'supply of goods' or 'supply of services') read with schedule II

SNC 02.39.00

Is it important to distinguish between supply of goods and services?

Answer:- Yes. The CGST Act, 2017 specifies certain provisions separately for supply of goods and supply of services viz.,

Section 12 and Section 13 provides for ascertaining time of supply of goods and time of supply of services respectively;

similarly separate provisions have been specified for ascertaining place of supply of goods and place of supply of services.

Further, the rate of tax applicable to supply of goods and supply of services may be different. Accordingly, it is important to distinguish whether a particular transaction involves supply of goods or supply of services.

SNC 02.40.00

Mr. Happy has a huge residential property located at a prime location in Mumbai, Maharashtra. He has let out the 1st and 2nd floor to Mr. Peace for residential purposes in April. Mr. Peace surrenders his tenancy rights to Mr. Serene for a tenancy premium of ₹ 10,00,000 on 1st June. Mr. Serene has also paid the applicable stamp duty and registration charges on transfer of tenancy rights. Moreover, Mr. Serene has agreed to pay a monthly rent of ₹ 1,00,000 to Mr. Happy from June.

Determine the taxability of the transaction(s) involved in the given case, for the month of June. [ICAI Material]

Answer- Circular No. 44/2018 CT dated 02.05.2018 clarifies that the activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST.

It is a form of lease or renting of property and such activity is specifically declared to be a service in Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services.

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

The transfer of tenancy rights cannot be treated as sale of land/ building in Schedule