

2.	<p>Where DCA makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?</p> <p>Possible Scenarios in the given situation :-</p> <ol style="list-style-type: none"> 1. Supply of goods by the supplier (principal) to the DCA; 2. Further supply of goods by the DCA to the recipient; 3. Supply of agency services by the DCA to the supplier or the recipient or both; 4. Extension of credit by the DCA to the recipient 	<p>Whether stock transfer by principal to agent is a supply? 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 para 3 and stock transfer is liable to GST.</p> <p>Whether interest charges is included in the value of supply of goods by DCA? the value of the interest charged for such credit included in the value of supply of goods as per sec 15(2)(d) of the CGST Act.</p>

4.	<p>Import of Service without consideration</p> <p>Import of services 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.</p> <p>Example (related person) John Ltd, USA is the holding company of VB Ltd., India. VB Ltd. imports Business Consultancy Service from John Ltd. in September, 2017 in the course of furtherance of business. The aforesaid importation of services shall fall within the ambit of term “supply” and VB Ltd. shall be liable to pay integrated tax under IGST Act, 2017.</p> <p>Example (other establishment) 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. Since ABC Associates and the branch office are related persons, services received by ABC Associates will qualify as supply even though the head office has not charged anything from it.</p>
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Analysis

Sec 7(1)(b)	Schedule I - Entry 4
<p>Import of services ⇒ for a consideration ⇒ whether or not in the course or furtherance of business</p>	<p>Import of services by person ⇒ from a related person outside India or ⇒ from any of his other establishments outside India, in the course or furtherance of business.</p>

Lets try to understand Taxability of import of service with the help of Chart

SCHEDULE- III [Sec 7] - Negative List under GST

Activities or Transactions Which shall be treated neither as a supply of goods nor a supply of Services							
1	<p>Services by an employee to the employer in the course of or in relation to his employment.</p> <p>Analysis - Departmental Clarification</p> <p>i) Compensation for premature termination :- Amounts received by an employee from employer on premature termination of contract of employment - Not supply, as it arises in course of employment</p> <p>ii) Non-compete fees charged by employee to employer :- Not in the course of employment as it is separate contract - Taxable</p> <p>iii) Services provided by casual worker to employer who gives wages on daily basis - not supply</p> <p>iv) Director remuneration :</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Category of Director</th><th style="text-align: center;">GST Liability</th></tr> </thead> <tbody> <tr> <td>Independent director</td><td>It is supply, GST is payable</td></tr> <tr> <td>Whole time director</td><td>Employee of the company, hence no GST covered in Schedule III</td></tr> </tbody> </table> <p>v) Perquisites given in the course of employment or in relation to employment are not liable to GST</p>	Category of Director	GST Liability	Independent director	It is supply, GST is payable	Whole time director	Employee of the company, hence no GST covered in Schedule III
Category of Director	GST Liability						
Independent director	It is supply, GST is payable						
Whole time director	Employee of the company, hence no GST covered in Schedule III						
2	<p>Services by any court or Tribunal established under any law for the time being in force.</p> <p>Explanation For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.</p> <p> Tutorial Notes Arbitral Tribunal is not a tribunal established any law for the time being in force. Arbitral tribunal is a private tribunal constituted by the parties for the settlement of mutual dispute. therefore, its services are subject to GST</p>						

3	<p>(a) The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities</p> <p>(b) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity</p> <p>Example Diplomats, Governors of the States, C&AG of India, Attorney General of India (AGI) etc.</p> <p>(c) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.</p> <p>Example Finance Commission is a body established by President of India (under Article 280 of Constitution of India). Chairman/Mamber/Directors (who are not employees) of these bodies shall be out of GST.</p>
4	<p>Services of funeral, burial, crematorium or mortuary including transportation of the deceased.</p> 
5	<p>Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building</p>

6		Actionable claims, other than lottery, betting and gambling.
7		Supply of goods from a place a non-taxable territory to a another place in the non-taxable territory without such goods entering in India
8	a)	Supply of warehoused goods to any person before clearance for home consumption <div> <div>Explanation</div> <div>For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962.(52 of 1962)</div> </div>

	b)	Supply of goods by the consignee to any other person, by endorsement of document 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
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SCHEDULE- II [Sec 7]

Activities or **Transactions** to be treated as Supply of Goods or Supply of Services

Sec 7 is amended by Central GST (Amendment) Act, 2018


Section 7 - Meaning and scope of supply

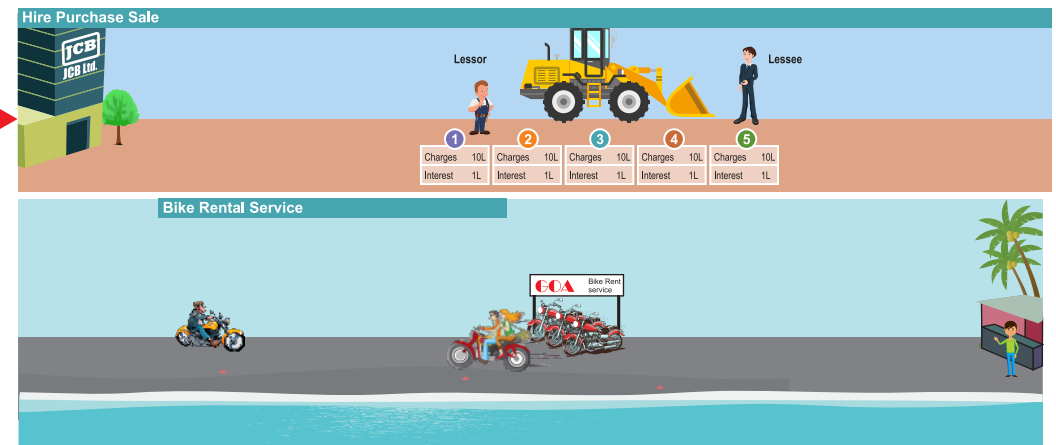
1	Supply includes -
(a)	All forms of supply of goods and/or services or both such as <ul style="list-style-type: none"> ➔ sale transfer, barter, exchange, licence, rental, lease or disposal ➔ made or agreed to be made ➔ for a consideration by a person ➔ in the course or furtherance of business.
(b)	Importation of services , for a consideration <i>whether or not in the course or furtherance of business</i> and
(c)	The activities specified in Schedule I, made or agreed to be made without a consideration.
1A	<i>Where certain activities or transaction constitute a supply in accordance with the provisions of subsection (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.</i>

SCHEDULE- II [Sec 7]

Activities or Transactions to be treated as Supply of Goods or Supply of Services

1. Transfer

Supply of Goods	Supply of Service
<p>(a) Any transfer of the title in goods is a supply of goods.</p> <p>Example Furniture House sold furniture to Mr. Ganesh. This will be treated as supply of goods, because on sale, the title of the furniture is transferred to Mr. Ganesh.</p> <p>(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.</p> <p> Typically, it will cover 'hire purchases transaction' and 'installment purchase transaction'</p>	<p>(b) Any transfer of right <ul style="list-style-type: none"> ➔ in goods or ➔ of undivided share in goods <i>without the transfer of title therefore, is a supply of services.</i> </p> <p>Example Mr. X and Mr. Y are joint-owner/co-owner of a movable property. Mr. X sells his share in movable property (goods) to another person. It would be treated as transfer of undivided shares in goods.</p>



2. Land and building

Supply of Service

- (a) Any lease, tenancy, easement, licence to occupy **land** is a supply of services
- Example Mr. Suresh lets out land on lease to Furniture House. The letting out of land on lease is considered as 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, is a supply of service.

3. Treatment of process

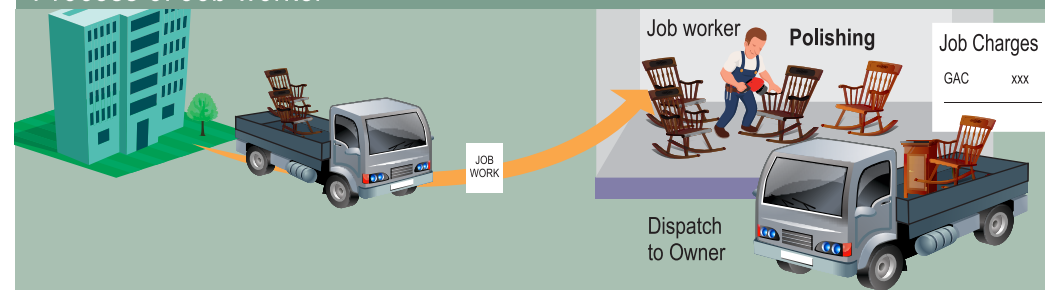
Supply of Service

- (a) Any **treatment or process** which is applied to another person's **goods** is a supply of services.
- Example 1 XYZ Tools sent their tools to Mercury for heat treatment to harden them. The heat treatment done by Mercury is a supply of services.
- Tutorial Notes** A careful perusal of this entry reveals that any job-work carried out by a job-worker on another person's goods shall be treated as a supply of services. Further, it shall be immaterial, whether the job-work is carried out by a job-worker with or without any material.

4. Transfer of business assets

Supply of Goods	Supply of Service
<p>(a) where goods forming part of the assets of a business are</p> <ul style="list-style-type: none"> ➔ 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, <p>whether or not for a consideration, such transfer or disposal is a supply of goods by the person</p> <p>omitted by F.A. 2020 Restrospectively w.e.f. 01.07.2017 to remove ambiguity in the scope of the term supply]</p> <p>Example 1:- An insurance company disposes its Ramesh used computer for ₹ 500 (its book value is more than ₹ 500) by giving it to a charitable organisation. The disposal of the computer is a supply of goods and subject to GST.</p>	<p>(b) where,</p> <ul style="list-style-type: none"> ➔ by or under the direction of a person carrying on a business, ➔ goods held or used for the purposes of the business <p>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, whether or not for a consideration, the usage or making available of such goods is a supply of services</p> <p>Example 1:- Ramesh Enterprise is a supplier of tents for its business. The company lends a few tents to its manager for his son's wedding. The private usage of the tents by the manager (with or without a consideration) is deemed as a supply of services by the company to him.</p>
<p>(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him</p> <p>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—</p> <ol style="list-style-type: none"> the business is transferred as a going concern to another person; or the business is carried on by a personal representative who is deemed to be a taxable person. 	

Process of Job worker



Example : Mr. Raj being an owner of shop is a registered person under GST. He has decided to close the business. At the time of deregistration he has closing stock of ₹ 15,00,000 and value of movable furniture and machinery ₹ 20,00,000. Find the amount of supply. Is it supply of goods or services?

5. Supply of services

The following shall be treated as supply of service, namely:—

(a) Renting of immovable property.

(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received

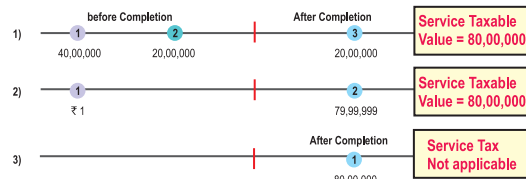
- ➔ after issuance of completion certificate, where required, by the competent authority or
- ➔ after its first occupation, whichever is earlier.

Explanation

For the purposes of this clause—

- (1) the expression "**competent authority**" means the Government or 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, then certificate can be obtain from
 - (i) an architect (ii) a chartered engineer (iii) a licensed surveyor of the respective local body
- (2) the expression "**construction**" includes additions, alterations, replacements or remodelling of any existing civil structure.

Construction of Service intended for sale before completion



Example : Mehta builder has entered into agreement to sale a flat (carpet area 1500 sq ft) to customer. The additional information is as follows :

- (a) Price of flat (including apportioned value of cost of land) : ₹ 42,00,000 (includes Prime Location charges namely charges for getting Garden view ₹1,25,000.
 - (b) Charges for providing space for covered parking : ₹1,25,000.
- The builder received part payment before construction was completed and balance amount was received after obtaining completion certificate from the Corporation. Find the GST liability (CGST 6% and SGST 6%)? Would your answer differ if entire amount is paid after completion Certificate.

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



Tutorial Notes

1) Intellectual property right in common trade parlance includes the following:

- ☞ Copyright ☞ Patents ☞ Trademarks ☞ Designs ☞ Any other similar right to an intangible property

Supply of Goods	Supply of Service
Sale /permanent transfer of IPR shall be treated as supply of goods under sec 7(1A) read with Schedule II (Para 5(c))	Temporary transfer or permitting the use or enjoyment of any intellectual property right shall be treated as supply of service under Sec 7(1A) read with Schedule II(Para 5(c))

(d)

Development,
design,
programming,

customization,
adaptation,
upgradation,

enhancement,
implementation

of information technology software"

Customized Software

- 1) If is tailor made software made as per requirement of customer.
- 2) These contract involved
 - provision of service &
 - transfer of property in goods [HDD/CD]

3) Pre-dominant nature of transaction is supply of service

Supply of Service

Pre-packed / canned / Shrink-Wrapped Software

- 1) There software treated as goods when put on any media [Tata Consultancy Service 2002]

Sale of Pre-packed software

Supply of goods

License to use prepacked Software

Supply of Service


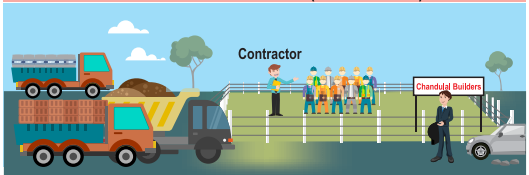





Example : M/s Blue Cat Ltd. provides the following relating to information technology software. Compute the value of taxable service and GST liability (Rate for supply of goods 12% & Services 18%)

- a) Development and Design of information technology software : ₹ 15 lakhs
- b) Sale of pre-packaged software, which is put on media : ₹ 52 lakhs.
- c) Licence fees for use of pre-pack software ₹ 10,00,000

S.No	Particulars	Value	Nature of Supply	Applicable rate	GST	
					CGST	SGST
a)	Development and Design of information technology software	15 Lakhs	Supply of Service	18%	1,35,000	1,35,000
b)	Sale of pre-packaged software, which is put on media	52 Lakhs	Supply of goods	12%	3,12,000	3,12,000
c)	Licence fees for use of pre-pack software	10 Lakhs	Supply of Service	18%	90,000	90,000

(e)	<p>Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act, For Example:</p> <ul style="list-style-type: none"> a) Penalty on early termination of rental or lease agreement. b) Prepayment charges on early payment of loan installment. c) Demurrage charges paid to the port authorities for not clearing the goods within a specified period of time.
(f)	<p>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.</p>

6. Composite supply

<p>The following composite supplies shall be treated as a supply of services, namely:</p>	
(a)	<p>works contract as defined in clause (119) of section 2; and</p> <div style="border: 1px solid black; padding: 5px; margin-bottom: 10px;"> <p> Sec 2 (119) "works contract" : Already discussed</p> <p><small>Tutorial Notes</small></p> </div> <div style="display: flex; justify-content: space-between;"> <div style="width: 48%;"> <p>Works Contract of immovable property = Supply of Service Entry 6(a) Schedule II</p> <p>Labour + Material = Works Contract (construction)</p>  </div> <div style="width: 48%;"> <p>Labour + Material Contract on movable goods = processing of goods = supply of service (Entry 3 Schedule II)</p> <p>Labour + Material (AMC of Computer)</p>  </div> </div>
(b)	<p>Restaurant, Catering Services etc.</p> <p>supply,</p> <ul style="list-style-type: none"> ➔ by way of or as part of any service or ➔ in any other manner whatsoever, <p>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.</p> <div style="display: flex; justify-content: space-around; margin-top: 10px;">     </div>

<p>7. Supply of Goods The following shall be treated as supply of goods, namely</p> <p>Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.</p>	
Activity	Treatment under GST
(a) Supply of Goods ➔ by unincorporated AOP/BOI ➔ to its members	Supply of Goods [Sec 7(1A) read with Schedule II (Para7)]
(b) Supply of Services ➔ by unincorporated AOP/BOI ➔ to its members	Para 7 is not applicable However, it shall still be applicable as 'Supply of services' ➔ Definition of 'supply' is wide to cover 'supply of services' also. ➔ This activity has been specifically included in the definition of 'business'

Other Important Definition

2(108) : Taxable Supply	means a supply of goods or services or both which is leviable to tax under this Act
2(78) : Non-Taxable Supply	means a supply of goods or services or both which is not leviable to tax under this Act (i.e. CGST Act) or under the Integrated Goods and Services Tax Act
2(47) : Exempt Supply	means a supply of any goods or services or both <ul style="list-style-type: none"> ➤ which attracts nil rate of tax or ➤ which may be wholly exempt from tax under section 11, or under section 6 of the integrated Goods and Services Tax Act, and includes non-taxable supply

Sec 16 : ZERO RATED SUPPLY (IGST Act, 2017)

1	“zero rated supply” means any of the following supplies of goods or services or both, namely:—
(a)	Export of goods or services or both; or
(b)	supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.
Zero Rated Supply is allowed without payment of GST	

Sec 8 : Composite Supply & Mixed Supply

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

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

Definition - Composite Supply

Composite Supply as per Sec 2 (30) : means a supply made by a taxable person to a recipient consisting of

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



Sec 2(90) Principal Supply - means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary

Illustration.— **(Goods + Service)** 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;

Example : When a consumer buys a television set and he also gets warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance services are ancillary.

Concept

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

Following factors to be considered

1. Large number of recipient reasonably expect such supply to be provided as a package Example : Breakfast with hotel room booking	4. Elements are normally advertised as a package Example : Dosa pan with wooden spoon
2. Majority of Supplier in a particular area or business provide such supply in bundle Example : Television Set with warranty and servicing	5. The different elements are integral to one overall supply. If one or more is removed, the nature of the supply would be affected. Example : Spectacles with glass and frame
3. Nature of various supply of goods or services in a bundle Example : Stay in a Hotel with Laundry Free	

Definition - Mixed Supply

Mixed Supply as per Sec 2 (74) : 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

Example : A Shopkeeper selling storage water bottles along with refrigerator. Bottles and the refrigerator can easily be priced and sold independently and are not naturally bundled. So, such supplies are mixed supplies.

Classification of Supply (Goods + Goods)- Examples

Situations	Classification	Composite or Mixed Supply	Applicable Rate
Supply of Laptop with Bag and Power Cable	Laptop Rate 18%	Composite Supply	18 % rate is applicable
A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. All can be sold separately.	Aerated waters, containing added sugar or other sweetening matter or flavoured is taxed at 28% with 12% Compensation Cess. Dry Fruits is taxed at the rate of 12%. Cake is taxed at the rate of 18%.	Mixed Supply	Aerated drinks will be treated as principal supply. Hence rate of aerated drinks will be considered i.e. 28%
Consider a kit which contains a tie, a watch, a wallet, and a pen, as a combo, for Rs. 4,500. Tie, watch, wallet, and pen are bundled as a kit. The supply of a tie does not naturally necessitate the supply of other elements (watch, wallet, pen) and vice versa. The kit is supplied for a single price.	Watch is taxed at 28%. Wallet is taxed at 28%. Pens are taxed at the rate of 12%.	Mixed Supply	Hence rate applicable will be 28%

Classification of Supply (Service + Service)- Examples

Situations	Classification	Composite or Mixed Supply	Applicable Rate
A 5-star hotel in Mumbai provides a 4 days/3 nights package, with breakfast. This is a composite supply as the package of accommodation facilities and breakfast is natural combination in the ordinary course of business for a hotel.	Supply of food/drinks in 5-star hotel is taxed at the rate of 28%. Accommodation in a 5 star hotel where rate is Rs 5000 and above per night is taxed at the rate of 18%.	Composite Supply	In this case, the hotel accommodation is the principal supply, and breakfast is ancillary to the hotel accommodation. Hence applicable rate is 18%
A 5-star hotel in Mumbai provides a 4 day/3 nights package with the breakfast and one day Mumbai Darshan. The inclusion of Mumbai Darshan in this package is not a natural requisite to accommodation in the hotel.	Accommodation in a 5-star hotel where rate is Rs 7500 and above is taxed at the rate of 28% . Supply of services of Tour Operator is taxed at 5%. The rate applicable will be 28%. (The hotel would hire an operator for sight seeing purpose)	Mixed Supply	Highest rate 28% is applicable

Classification of Supply (Goods + Service)- Examples

Situations	Classification	Composite or Mixed Supply	Applicable Rate
Mr C buys a car from a car dealer. The contract for the purchase of the car is inclusive of its delivery. In this case, the principal supply is the goods (the car) and the incidental supply is the services (its delivery).	Transportation of Goods is taxed at the rate of 5%. Motor Cars are taxed at the rate of 28%.	Composite Supply	Hence rate applicable will be 28%
A car repair workshop supplies both repair services and car batteries to its customers. When it charges a customer for supply of repair services and a car battery at a single inclusive price.	Batteries are taxed at the rate of 28%. Service of Repair (others) is at 18%.	Mixed Supply	Hence it will be taxed at 28%

Important Clarifications

Supply of Goods

Clarification on certain issues related to Banking & Financial Services via Circulars

Issue:

Whether Priority Sector Lending Certificates (PSLCs) are outside the purview of GST and therefore not taxable? [Circular no. 34/8/2018 dt 01/03/2018]

Clarification :

Levy: as per Circular no. 34/8/2018 dt 01/03/2018 & RBI FAQ on PSLC

- PSLC is in nature of goods
- It is akin to freely tradable duty scrips
- It is treated as supply of goods
- Liable to GST as there is no exemption

Rate: As regard to applicable rate on PSLC (Circular no 46/2018 – GST dt 06/06/2018)

Further clarification as regard to applicability of GST rate on PSLCs and REC's and other similar scrip was issued via Certificates like REC's , PSLCs are classified under heading 4907 & will accordingly attract GST @ 12 % .

Payment: As per N/N 11/2018 – CT (R) dt 28.05.2018 on such supply of PSLC tax shall be paid under reverse charge & here person liable to pay tax shall be the recipient

Issue:

whether IGST or CGST/ SGST is payable for trading of PSLC by the banks on e-Kuber portal of RBI (Circular No. 93/12/2019-GST dt 8/3/ 2019)

Clarification:

Sl.No.	Period	Who is liable to pay	GST Rate	Circular No.
1.	1.7.1017 to 27.5.2018	Seller bank on forward charge	12%	62/36/2018- GST, dt 12.9.2018
2.	From 28.5.2018	Buyer bank under reverse charge	12%	11/2018 CT ®,dt 28.5.2018

Notes :

- 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 of RBI for both periods above
- where the bank liable to pay GST has already paid CGST/SGST or CGST/UTGST as the case may be, such banks for payment already made, shall not be required to pay IGST towards such supply

Supply of Service

Clarification regarding levability of GST on taxable services provided by the members of the JV to the JV and vice versa and inters se between the members of the JV. [Circular No. 35/09/2018 GST dated 05.03.2018]

Issue 2:- Whether GST is to be levied on taxable services provided by the members of the JV to the JV and vice versa and inters se between the members of the JV

Clarifications: As per Circular no 35/2018 dt 05.03.2018

- Whether cash call in JV is taxable or not depends on the facts & circumstances of each case
- Normally cash call in JV is transaction in money & hence not treated as supply of goods or services

Let's analyse the taxability in details :-

- Cash Calls as a Capital Contribution :-** Cash call, sometimes, could be in the nature of Capital Contributions made by members to raise the funds for JV and would be consideration **merely 'a transaction in money'**, hence , **will not be taxable under GST**, as it not in nature of consideration.
- Cash Calls by way of advance towards supplies :-** Cash call, sometime, could be in the nature of advance payment made by members towards taxable services received from JV, hence will be taxable under GST.

Example:- JV which receives cash call from its members may in return agree to do something of direct benefits either to member or on behest of a member to a third party, such as granting of right , reserving production capacity or providing an option on future supplies. Some may attract GST.

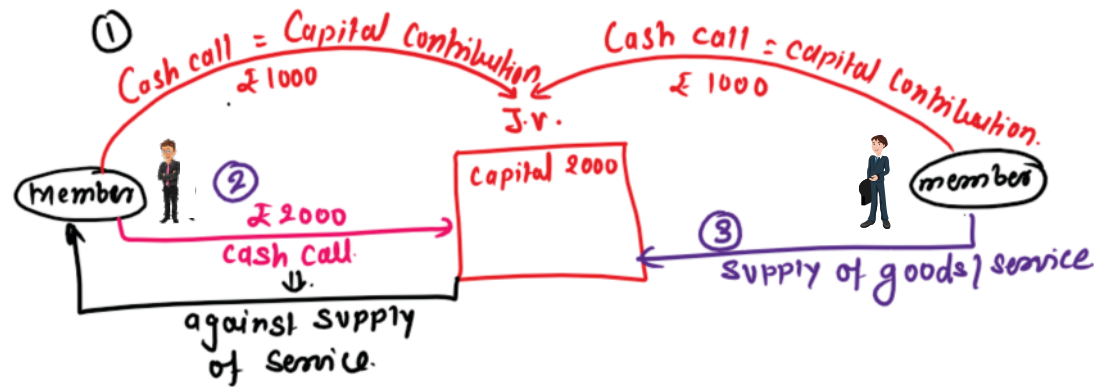
- Supply from member to JV :-** Further, taxable services received by JV from a member or a third party against payments made by JV out of amount collected through cash call, is in the nature of consideration and hence, attracts GST

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

In this situation it will not be the subject matter of 'GST' for the reason that the operating member is not carrying out an activity for another for consideration. In Illustration A, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.

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

In this situation the operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio



Issue related to taxability of 'tenancy rights' under GST Circular no 44/2018 – CT dt 02/05/2018

Facts: The transfer of tenancy rights against tenancy premium which is also known as “pagadi system” is prevalent in some States. In this system the tenant acquires, tenancy rights in the property against payment of tenancy premium (pagadi). 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.

Also, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.

Issue:

(I) Whether transfer of tenancy rights to an incoming tenant, consideration for which is in form of tenancy premium, shall attract GST when stamp duty and registration charges is levied on the said premium?

(ii) Further, in case of transfer of tenancy rights, a part of the consideration for such transfer accrues to the outgoing tenant, whether such supplies will also attract GST?

Objection by Industry: The stamp duty and registration charges is levied on such transfers of tenancy rights, and such transaction thus should not be subjected to GST

Legal Provision:- As per section 9(1) of the CGST Act there shall be levied central tax on the intra-State supplies of services.

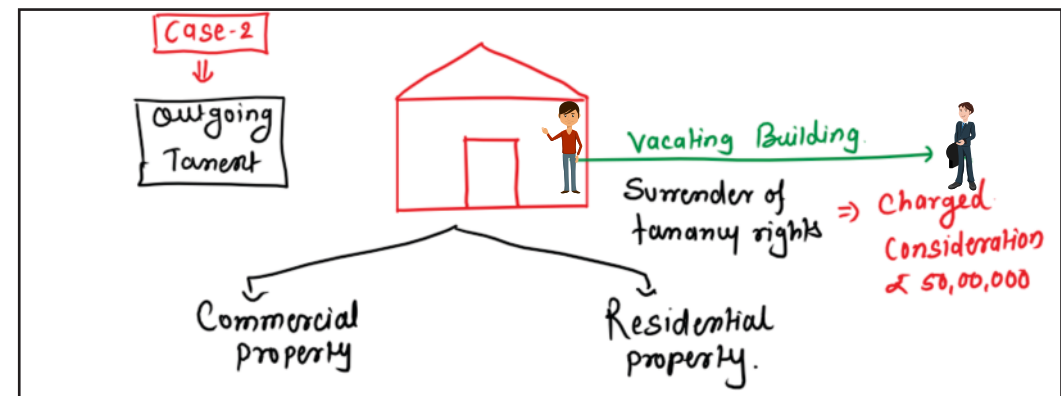
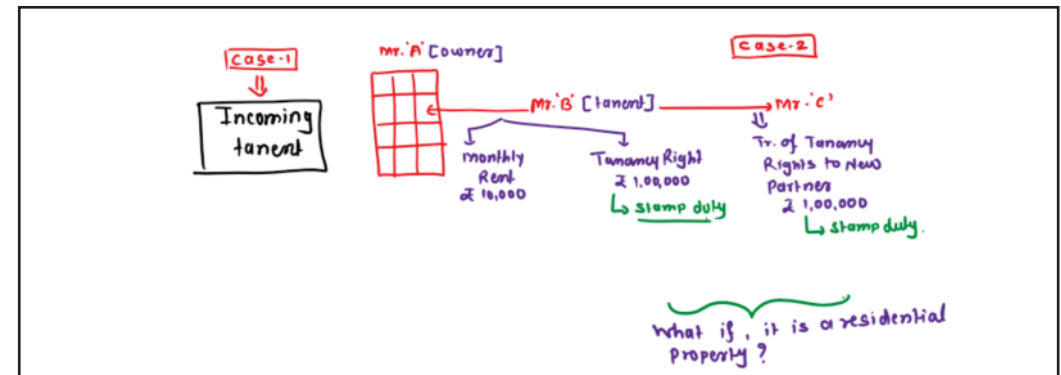
As per para 2 of Schedule II any lease, tenancy, easement, licence to occupy land is classified under supply of service.

Also renting of residential dwelling for use as a residence is exempt as per Sl. No. 12 of **notification No. 12/2017-Central Tax(Rate)**.

Observations: 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.



Clarification

Cases	Situations	Clarifications	Examples
1	Transfer of tenancy rights to an incoming tenant, consideration for which is in form of tenancy premium	Taxable	A is the owner of a property. B takes this property from A on rent. B pays ₹10,000 monthly to A as rent. In addition, B has paid ₹1,00,000 to A to get a right partly in A's property. This ₹1,00,000 is called Tenancy Premium and liable to GST
2	Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium	Taxable	A is the owner of a property. B takes this property from A on rent. B pays ₹10,000 monthly to A as rent. In addition, B has paid ₹1,00,000 to A to get a right partly in A's property. B has further transfer rights to C for premium. Such premium also Taxable.

3	Transfer of tenancy rights to a new tenant against consideration for residential property in the form of tenancy premium	Exempt	X is the owner of a residential property. Y takes this property from X on rent. Y pays ₹10,000 monthly to X as rent for residence. Before the end of the agreement, Y pays ₹1,00,000 to X, so that Y get rights to stay in the property. This ₹1,00,000 is also called Tenancy premium. This will be exempt as the amount of tenancy premium paid is for residential purpose.
4	Services provided by outgoing tenant (by way of vacating the building) by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium Note :- If it is related to vacating residential dwelling then such tenancy premium will be exempt.	Taxable	X is the owner of a property. Y takes this property from X on rent. Y pays ₹10,000 monthly to X. Before the end of the agreement, X pays ₹1,00,000 to Y, so that Y vacates the property. This ₹1,00,000 is also called Tenancy premium and liable to GST. Here X is paying Y so that Y surrenders his right to stay in the property.

Important points need to be understood :-

- 1) Transfer of tenancy rights is not similar to sale of land and building as covered under Schedule III. Hence, it is liable to GST even though stamp duty is paid.
- 2) Transfer of tenancy right in relation to residential dwelling for use of residence (including tenancy premium is paid to vacate the building) is exempt.

“Consideration”

Clarification on Levy of GST on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors (Circular No. 116/35/2019-GST dated 11/10/2019)

Issue:- whether GST is leviable on the service of display of name or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors.

Clarification:-

- a. 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.
- b. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude.
- c. 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
- d. It is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business,
- e. then it can be said that there is no supply of service for a consideration (in the form of donation).
- f. There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service).
- g. Therefore, there is no GST liability on such consideration.

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

- (a) “Good wishes from Mr. Rajesh” printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.
- (b) “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.

2) GST shall not be leviable if 3 conditions are satisfied which are:

- a. gift or donation is made to a charitable organization
- b. the payment has the character of gift or donation
- c. the purpose is neither commercial gain nor advertisement

Schedule III

Clarification on certain issues regarding GST applicability on fees, penalty etc paid to Consumer Disputes Redressal Commission [Circular No. 32/06/2018 GST dated 12.02.2018]

➔ Is GST leviable on the fee/amount charged in the following situations/cases: –

A customer pays fees while registering complaints to Consumer Disputes Redressal Commission office and its subordinate offices. These fees are credited into State Customer Welfare Fund's bank account

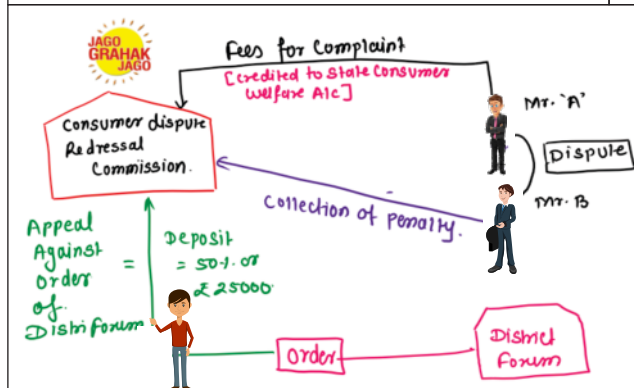
Consumer Disputes Redressal Commission office and its subordinate offices charge penalty in cash when it is required

When a person files an appeal to Consumers Disputes Redressal Commission against order of District Forum, amount equal to 50% of total amount imposed by the District Forum or ₹ 25000/- whichever is less, is required to be paid

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

In view of the aforesaid, it is hereby clarified that fee paid by litigants in the Consumer Disputes Redressal Commissions are not leviable to GST.

Any penalty imposed by or amount paid to these Commissions will also not attract GST.



Circular No. 32/06/2018 - GST, dt 12/2/2018 [F.No. 354/17/2018 - TRU Petroleum - Recovery of contract cost by a oil exploration contracts viz. 'Cost petroleum - Not supply to GOI']

Question :- As per the production sharing contract (PSC) between the Government and the exploration & production contractors in case of a commercial discovery of petroleum, the contractors are entitled to recover from the sale proceeds all expenses incurred in exploration, development, production and payment of royalty. Portion of the value of petroleum which the contractor is entitled to take in a year for recovery of these contract costs is called "Cost petroleum" chargeable to GST?

Answer:-

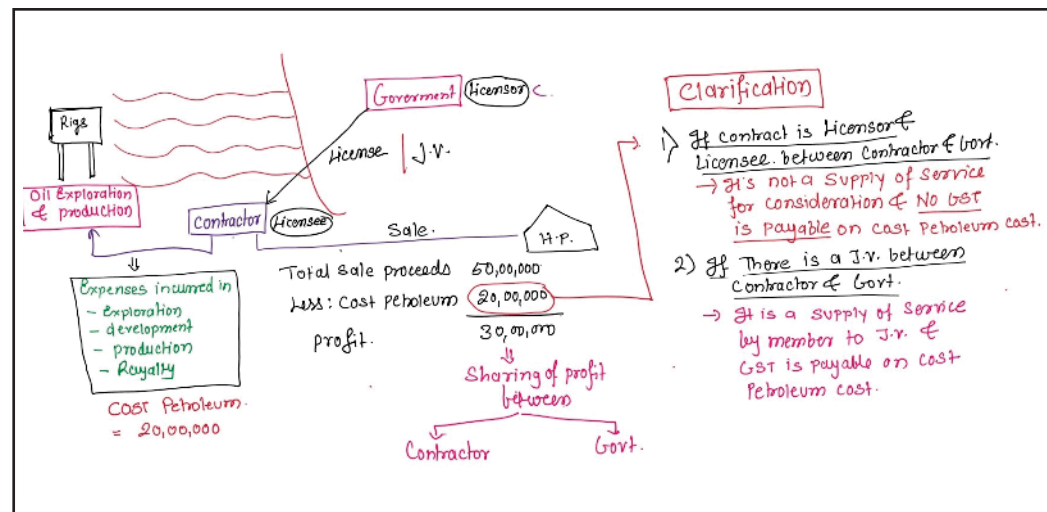
Cost Petroleum : In case of commercial discovery of petroleum, under production sharing contracts (PSC) between Governmental and oil exploration & production contractors are entitled to recover from sale proceeds all expenses incurred in exploration, development, production and payment of royalty. Portion of the value of petroleum which contractor is entitled to take in a year for recovery of contract costs is called "Cost petroleum"

Share in cost petroleum in self-service by contractors :- No GST on cost petroleum : Relationship of oil exploration and production contractors with Government is not that of partner but that of licensor/lessor and licensee/lessee.

Having acquired right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum, contractors carry out exploration and production of petroleum for themselves and not as a service to Government.

The oil exploration and production contractors conduct all petroleum operations at their sole risk, cost and expenses. Hence, cost petroleum is not a consideration for service to Govt. and thus not taxable per se.

Cost Petroleum may be basis for valuing services by member of JV to JV :- But, cost petroleum may be an indication of value of mining/exploration services provided by operating member to joint venture, in a situation where the operating member is found to be supplying service to the oil exploration and production joint venture.



Composite & Mixed Supply

Circular No. 11/11/2017 GST dated 20.10.2017 Clarification on taxability of printing contracts


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 falling under Chapter 48 or 49 of the First Schedule to the Customs Tariff Act, 1975 or supply of services falling under heading 9989 of the scheme of classification of services annexed to Notification No. 11/2017CT(R)?

Clarification:

Whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

Principal supply has been defined in section 2(90) of the CGST Act as supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

Cases	Situations	Facts	Clarification on Classification of supply
1	In the case of printing of books, pamphlets, brochures, annual reports, and the like 	where original 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,	Classification: Supply of Service Reason: supply of printing on the content supplied by the recipient of supply (another person) is the principal supply and therefore such supplies would constitute supply of service falling under heading 9989 of the scheme of classification of services Note: Eventhough printer is using his physical inputs including paper used for printing, but main supply is job work on the content of another's Person.

2

In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc



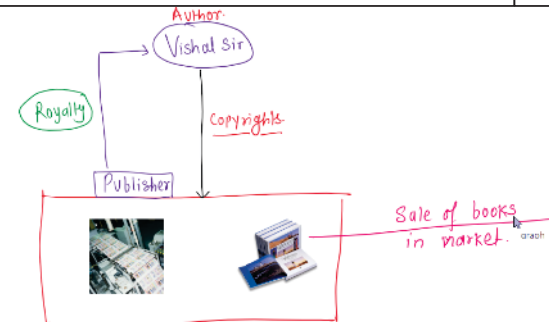
If supplied by the recipient of goods but made using physical inputs including paper belonging to the printer,

Classification: Supply of Goods

Predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff.

Clarification on levy of GST on printing - [Circular no. 27/01/2018 dt 04/01/2018]

Cases	Situations	Clarification on Classification of supply
1	The books are printed/ published/ sold on procuring copyright from the author or his legal heir. [e.g. White Tiger Procures copyright from Ruskin Bond]	The supply of books shall be treated as supply of goods as long as the supplier owns the books and has the legal rights to sell those books on his own account.
2	The books are printed/ published/ sold against a specific brand name. [e.g. Manorama Year Book]	
3	The books are printed/ published/ sold on paying copyright fees to a foreign publisher for publishing Indian edition (same language) of foreign books. [e.g. Penguin (India) Ltd. pays fees to Routledge (London)] The books are printed/ published/ sold on paying copyright fees to a foreign publisher for publishing Indian language edition (translated). [e.g. Ananda Publishers Ltd. pays fees to Penguin (NY)]	



Clarifications regarding GST in respect of certain services [Circular No. 34/08/2018 GST dated 01.03.2018]

Issue	Clarification
i) Whether activity of bus body building, is a supply of goods or services?	<p>Principle:- In the case of bus body building there is supply of goods and services both.</p> <p>Classification :- Thus, classification of this composite supply, as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case.</p>
ii) Whether retreading of tyres is a supply of goods or services?	<p>Principle :- The primary question that should be asked is what the essential nature of the composite supply is and which element of the supply imparts that essential nature to the composite supply. <i>Value may be one of the guiding factors in this determination, but not the sole factor.</i></p> <p>Classification for Jobworker :- In retreading of tyres, which is a composite supply, the pre-dominant element is the process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply.</p> <p>Classification for Supplier :- Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods (retreaded tyres under heading 4012 of the Customs Tariff attracting GST @ 28%)</p>

Clarification regarding applicability of GST on the superior kerosene oil [SKO] retained for the manufacture of Linear Alkyl Benzene [LAB]

Issue: Whether GST is applicable on the superior kerosene oil [SKO] retained for the manufacture of Linear Alkyl Benzene [LAB]? [Circular No. 12/12/2017 GST dated 26.10.2017]

Facts: LAB manufacturers have stated that they receive superior Kerosene oil (SKO) from, a refinery, say, Indian Oil Corporation (IOC). They extract n- Paraffin from SKO and return back the remaining of SKO to the refinery.

In this context, the issue has arisen as to whether in this transaction GST would be levied on SKO sent by IOC for extracting n-paraffin or only on the n-paraffin quantity extracted by the LAB manufactures. Further, doubt have also been raised as to whether the return of remaining Kerosene by LAB manufactures would separately attract GST in such transaction.

Clarification:-

- ➞ GST will be payable by the refinery i.e. IOC **on the value of net quantity** of superior kerosene oil (SKO) retained (i.e., 15% to 17%) for the manufacture of Linear Alkyl Benzene (LAB).
- ➞ The refinery (IOC) would be liable to pay GST on such returned quantity of SKO, when the same is supplied by it to any other person.

Clarification regarding applicability of GST on the petroleum gases retained for the manufacture of petrochemical and chemical products. [Circular No.53/2018 GST dt 09/08/2018]

Facts:- Manufacturers of other petrochemical and chemical products for issue of clarification on applicability of GST on petroleum gases, which are supplied by oil refineries to them on a continuous basis through dedicated pipelines, while a portion of the raw material is retained by these manufacturers (recipient of supply), and the remaining quantity is returned to the oil refineries.

In this regard, an issue has arisen as to whether in this transaction GST would be leviable

- ➞ on the whole quantity of the principal raw materials supplied by the oil refinery or
- ➞ on the net quantity retained by the manufacturers of petrochemical and chemical products.

Clarification:- The provisions as stated in Circular 12/12/2017 – GST dt 26.10.2017 shall mutatis mutandis apply in the above case also i.e

- ➞ GST will be payable by the refinery only on the net quantity of petroleum gases retained by the recipient manufacturer for the manufacture of petrochemical and chemical products
- ➞ Refinery would be liable to pay GST on such returned quantity of petroleum gases, when the same is supplied by it to any other person

Clarification on Servicing of cars involving both supply of Goods & services (Circular no. 47/21/2018 dt 08/06/2018)

Issue :-

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

