

CA INTER GST PATH

(CHAPTERS PDF BY CA YASHVANT MANGAL)

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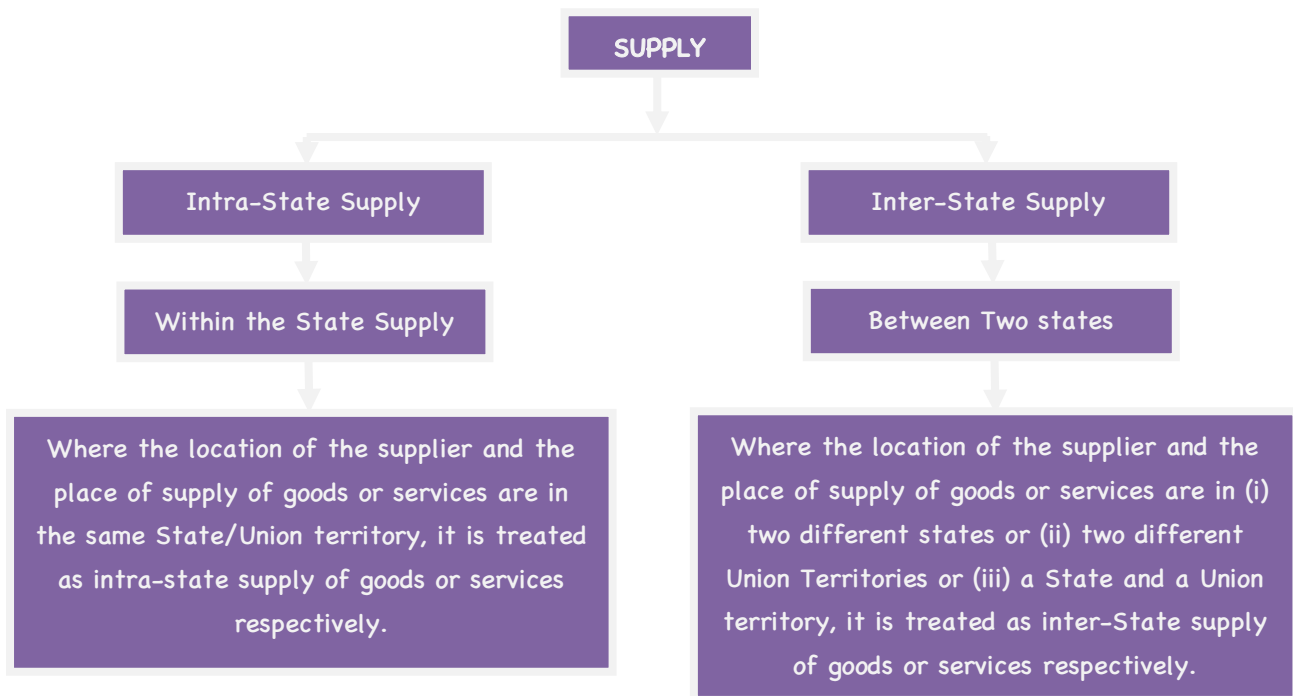
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LEVY OF GST

Introduction

- Power to levy tax is drawn from the Constitution of India. Introduction of GST necessitated the Constitutional amendment to enable integration of the central excise duties including additional duties of customs, State VAT and certain State specific taxes and service tax levied by the Centre into a comprehensive goods and services tax.
- The very basis for the charge of tax in any taxing statute is the taxable event i.e. the point on which the levy of tax gets attracted. As discussed earlier, the taxable event under GST is SUPPLY. CGST and SGST/UTGST are levied on all intra-State supplies of goods and/or services while IGST is levied on all inter-State supplies of goods and/ or services.



I. EXTENT & COMMENCEMENT OF CGST ACT / SGST ACT / UTGST ACT

- As per Sec 1 of the CGST Act, 2017, Central Goods and Services Tax Act, 2017 extends to the whole of India.
- State GST law of the respective State extends to whole of that State*.

(E.g. Rajasthan GST Act, 2017 extends to whole of the State of the Rajasthan.)

*As per Section 2(103) of the CGST Act, **State**: includes a Union territory with Legislature (i.e. Delhi, Puducherry and Jammu & Kashmir).

- Union Territory Goods and Services Tax Act, 2017 extends to the Union territories** of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli and Daman and Diu, Ladakh, Chandigarh and other territory, i.e. the Union Territories without State Legislature [Section 1 of the UTGST Act, 2017].

As per Section 2(114) of CGST Act, **Union territory means the territory of—

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

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

Note: Our discussion in this Book will principally be confined to the provisions of CGST and IGST laws, as the specific State GST laws are outside the scope of syllabus. (Provisions of SGST laws are same as provisions of CGST Act, except few exceptional provisions.)

II. LEVY & COLLECTION OF CGST [SECTION 9 OF THE CGST ACT]

Statutory Provisions	
Sec. 9	Levy and Collection
(1)	Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
(2)	The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.
(3)	The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
(4)	The Government may, on the recommendations of the Council, by notification, specify a <u>class of registered persons</u> who shall, in respect of supply of <u>specified categories of goods or services or both</u> received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.
(5)	The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

ANALYTICAL VIEW OF THE TOPIC

1. Analysis of Section 9(1) :

- (i) A tax called the Central Goods and Services Tax (CGST) shall be levied on all **intra-State supplies** of goods or services or both.
- (ii) However, intra-State supply of **alcoholic liquor for human consumption is outside** the purview of CGST.
- (iii) **Value for levy** : Transaction value under section 15 of the CGST Act.
- (iv) **Rates of CGST** : Rates for CGST on goods / services are rates as may be notified by the Government on the recommendations of the GST Council [Broadly, rates notified are NIL / 0%, 0.125%, 1.5%, 2.5%, 6%, 9% and 14%]. Maximum rate of CGST will be 20%. [Note: These are the rates of CGST. Equal rates of SGST shall also be levied on each transaction of Intra State supply. Therefore, maximum rate of GST is 40%.]
- (v) The tax shall be collected in such manner as may be prescribed and shall be paid by the taxable person.

2. Analysis of Section 9(2) : However, CGST on supply of the **following items has not been levied** immediately. It shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council:

- (i) Petroleum crude
- (ii) High speed diesel
- (iii) Motor spirit (commonly known as petrol)
- (iv) Natural gas and
- (v) Aviation turbine fuel

3. Analysis of Section 9(3) and 9(4) : **Reverse Charge Mechanism (RCM)** – Tax payable by recipient of supply of goods or services or both. (Detailed discussion will be done in later chapters.)

- CGST shall be paid by the recipient of goods or services or both, on reverse charge basis, in the following cases:
 - (i) Supply of goods or services or both, **notified by the Government** on the recommendations of the GST Council.
 - (ii) Supply of **notified categories of goods or services** or both **by an unregistered supplier to notified classes of registered persons.**
- All the provisions of the CGST Act shall apply to the recipient in the aforesaid cases as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
- It is important to note that GST being an indirect tax, burden of the tax is always passed on to the recipient. But, the supplier collects the tax from his customers (i.e. recipients of Goods or services) and then, pays it to the Govt. But, Under RCM, the recipient himself pays the tax to the Govt. directly and supplier collects only value of goods or services from the recipients. Therefore, under RCM, the burden of

the compliance requirements, i.e. to obtain registration under GST, deposit tax, filing returns with the Government, etc. has been shifted from supplier to recipient.

4. Analysis of Section 9(5): Tax payable by the Electronic Commerce Operator (ECO) on notified services:

- The Government may notify specific categories of services, the tax on intra-State supplies of which shall be paid by the ECO, if such services are supplied through it. Such services shall be notified on the recommendations of the GST Council.
- Here, **only Services (not goods)** can be **notified** by the Government u/s 9(5).
- **Note:** The provisions of Section 9(3), Section 9(4) and Section 9(5) are discussed in detail in chapter 7.

III. EXTENT & COMMENCEMENT OF IGST ACT [SECTION 1 OF THE IGST ACT]

- Integrated Goods and Services Tax Act, 2017 extends to the whole India. IGST is levied on the inter-state supply of goods or services or both.
- It is pertinent to note that the IGST Act applies to the State of Jammu and Kashmir also [Central Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017, w.e.f. 08.07.2017].

IV. LEVY & COLLECTION OF IGST [SECTION 5 OF THE IGST ACT]

Statutory Provisions	
Sec. 5	Levy & Collection of Tax
(1)	Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter- State supplies of goods or services or both; except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person. Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.
(2)	The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.
(3)	The Government may, on the recommendation of the council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this act shall apply to such recipient as if he is the person liable for paying tax in relation to the supply of such goods or services or both.
(4)	The Government may, on the recommendations of the Council, by notification, specify a <u>class of registered persons</u> who shall, in respect of supply of <u>specified categories of goods or services or both</u> received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both.

- (5) The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:
- Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:
- Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

ANALYTICAL VIEW OF THE TOPIC

1. Analysis of Section 5(1) :

- (i) A Tax called Integrated Goods and Services Tax (IGST) shall be levied on all **inter-state supplies** of goods or services or both.
- (ii) **Goods Imported in India:** Import of goods or services are treated as inter-state supplies. Therefore, for the goods imported into India, the **IGST** shall be levied and collected as per section 3 of Customs Tariff Act, 1975, i.e. the additional duty shall be as per the Customs Tariff Act, 1975 and the value shall also be determined as per the said act. In other words, IGST shall be levied as additional duty of customs in addition to basic customs duty under the Customs Tariff Act, 1975.
- However, the credit of such levy be allowed under GST law and thus, it is inherently embedded in GST mechanism.
- (iii) However, inter-state supply of **alcoholic liquor for human consumption is outside** the purview of IGST
- (iv) **Value of Levy:** Transaction value under Section 15 of the CGST Act.
- (v) **Rates of IGST:** IGST is the sum total of CGST and SGST/UTGST. **Maximum** rate of IGST will be **40%**.
- (vi) The tax shall be collected in such manner as may be prescribed and shall be paid by the taxable person.

$$\text{Rate of IGST} = \text{CGST Rate} + \text{SGST Rate}$$

2. **Analysis of Section 5(2) :** However, IGST on supply of **following items has not been levied** immediately. It shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

- (i) Petroleum crude
- (ii) High speed diesel
- (iii) Motor spirit (commonly known as petrol)
- (iv) Natural gas and
- (v) Aviation turbine fuel

3. **Analysis of Section 5(3) and 5(4): Reverse Charge Mechanism (RCM) – Tax payable by recipient** of supply of Goods or Services or both. (Detailed discussion will be done in later chapters.)

- IGST shall be paid by the recipient of goods or services or both, on reverse charge basis, in the following cases:

- (i) Supply of goods or services or both, **notified by the Government** on the recommendations of the GST council.
 - (ii) Supply of **notified categories of goods or services** or both by an **unregistered supplier to notified classes of registered persons**.
- All the provisions of the IGST Act shall apply to the recipient in the aforesaid cases, as if he is the person liable for paying tax in relation to the supply of such goods or services or both.

4. Analysis of Section 5(5) : Tax payable by the Electronic Commerce Operator (ECO) on notified services:

- The Government may notify specific categories of services, the tax on inter-State supplies of which shall be paid by the ECO, if such services are supplied through it. Such services shall be notified on the recommendations of the GST Council.
- Here, **only Services (not goods)** can be notified by the Government u/s 5(5).
- The provisions of Section 5(3), Section 5(4) and Section 5(5) are discussed in detail in chapter 7.

V. CONCEPT OF SUPPLY UNDER GST [SECTION 7 OF THE CGST ACT]

Introduction : The taxable event is the key point of any taxation system. It determines the point at which tax would be levied. Under GST, **taxable event is "Supply"**, i.e. GST will be levied on "Supply" of Goods or Services or both.

Sec. 7	Meaning and scope of supply	
	Schedule I	Matters to be treated as supply even if made without consideration
	Schedule II	Matters to be treated as supply of goods or as supply of services
	Schedule III	Matters or transactions which shall be treated neither as supply of goods nor as supply of services.
Sec. 8	Taxability of composite and mixed supplies	

Statutory Provisions	
Sec. 7	Meaning and Scope of Supply
(1)	Supply includes -
(a)	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 ;
(aa)	the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration. Explanation.--For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another; [Clause (aa) inserted retrospectively by Finance Act, 2021, w.e.f. 01.07.2017, vide Notification No. 39/2021 - Central Tax, dated 21.12.2021]

	(b)	importation of services, for a consideration whether or not in the course or furtherance of business and
	(c)	the activities specified in Schedule I , made or agreed to be made without a consideration .
	(d)	the activities to be treated as supply of goods or supply of services as referred to in schedule II [omitted retrospectively by CGST (Amendment) Act, 2018, w.e.f. 01.07.2017]
(1A)		where certain activities or transactions constitute a supply in accordance with the provisions of sub section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II . [sub-section (1A) inserted retrospectively by CGST (Amendment) Act, 2018, w.e.f. 01.07.2017]
(2)		Notwithstanding anything contained in sub-section (1),
	(a)	activities or transactions specified in Schedule III ; or
	(b)	such activities or transactions undertaken by the Central Government , a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council
		shall be treated neither as a supply of goods nor a supply of services .
(3)		Subject to sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as –
	(a)	a supply of goods and not as a supply of services; or
	(b)	a supply of services and not as a supply of goods.

Supply in Brief

Supply should be of Goods or Services or both

Includes			Excludes
1.	Supply for consideration in course or furtherance of business [Sec. 7(1)(a)]	Activities to be treated as supply of goods or supply of services [Section 7(1A) + Schedule II]	Negative list of services [Section 7(2) + Schedule III]
2.	Activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa [Sec. 7(1)(aa)]		
3.	Importation of services for consideration whether or not in course or furtherance of business [Sec. 7(1)(b)]		
4.	Supply without consideration [Sec. 7(1)(c) + Schedule I]		

ANALYTICAL DISCUSSIONS

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

- As per Sec. 2(52) of CGST Act, **Goods means every kind of movable property** other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

2. As per Sec. 2(102) of CGST Act, **Services means anything other than goods**, money and securities but includes activities relating to use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Explanation.- For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities [Explanation inserted by CGST (Amendment) Act, 2018, w.e.f. 01.02.2019].

Definitions		
	Goods	Services
Means	Every kind of movable property	Anything other than goods
Excludes	Money and securities	Money and securities
Includes	(i) actionable claim	Activities relating to :
	(ii) growing crops, grass and things attached to/ forming part of the land which are agreed to be severed before supply or under a contract of supply.	(i) Use of money or
		(ii) Conversion of money by cash/by any other mode, from one form/currency/ denomination, to another, for which a separate consideration is charged.
		(iii) facilitating or arranging transactions in securities

II. Analysis of Sec. 7(1)(a) [Supply for Consideration in the Course or Furtherance of Business]

- The definition of "Supply" is an **inclusive definition** i.e. the modes of supply mentioned in Section 7(1)(a) are only examples and the list is not exhaustive because, the opening words employed are "supply includes", not "supply means". This is further substantiated by the use of words 'such as' in the definition.
- Provisions of section 7 (i.e. scope of supply) under CGST Act have also been made applicable to IGST Act vide section 20 of the IGST Act and same provisions are contained in all SGST Acts.
- Following are the essential ingredients for any transaction to be considered as "Supply" as per sec 7(1)(a):
 - Supply should be of goods or services. Supply of anything other than goods or services like money, securities etc. does not attract GST.
 - Supply should be made for a consideration.
 - Supply should be made in the course or furtherance of business.
 - Aforesaid ingredients describe the concept of supply. However, there are a few exceptions where a transaction would qualify to be treated as "Supply" even if it is without consideration, which are specified in Schedule I [Sec. 7(1)(c)]. Similarly, import of services for a consideration is treated as supply whether or not it is in the course or furtherance of business [Sec. 7(1)(b)].
 - Further, there is a list of activities which shall be treated as neither supply of goods nor supply of services despite the existence of the above ingredients. In other words, they are outside the scope of GST [Sec. 7(2)(a)].
 - Government is also empowered to notify transactions that are to be treated as a supply of goods and not as a supply of services, or as a supply of services and not as a supply of goods.

4. Analysis of the various illustrative modes of supply mentioned in section 7(1)(a):

- (i) **Sale and Transfer:** Earlier, VAT was levied by the State on the sale of goods which was defined under most State VAT laws as transfer of property in goods for consideration. Under the CGST Act, although sale has been treated as a form of supply leviable to GST, the definition of 'sale' has not been provided.

Further, the term 'transfer' which has also been included as a form of supply is also not defined.

- (ii) **Barter and Exchange:** While barter may deal with a transaction which only includes an exchange of goods/ services, exchange may cover a situation where the goods are partly paid for in goods and partly in money. When there is a barter of goods or services, same activity constitutes supply as well as consideration.

By making a specific inclusion in the definition of supply, all barter and exchanges would be leviable to GST.

Example of exchange: When a new Mobile Phone worth Rs. 50,000 is purchased in exchange of an old Mobile Phone along with the monetary consideration of Rs. 40,000 paid for the said purchase.

Example of barter: Mr. Yash teaching GST to Mr. Rohit and in turn, Mr. Rohit teaching Income Tax to Mr. Yash. [In this case, it is supply of services for both Mr. Yash and Mr. Rohit.]

- (iii) **Licence, Lease, Rental, etc.:** Under the GST regime, licenses, leases and rentals of goods with or without transfer of right to use are covered under the supply of service because there is no transfer of title in such supplies. Such transactions are specifically treated as supply of service in Schedule-II of CGST Act.

5. Analysis of the term "Consideration":

- (i) One of the essential conditions for the supply of goods and/or services to fall within the ambit of GST is that a supply is made for a consideration.
- (ii) However, consideration does not always means money. It covers anything which may be in money or may be in kind.
- (iii) Further, a consideration need not always flow from the recipient of the supply. It can also be made by a third person.
- (iv) As per Section 2(31) of the CGST Act, **Consideration** in relation to the supply of goods or services or both includes –
- 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 and 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.
 - 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.

- (v) **Important note:** Any transaction involving supply of goods and/or services without consideration is not a supply unless it is deemed to be a supply under law [as deemed u/s 7(1)(c) read with Schedule I of the CGST Act].
- (vi) The Supply must be carried out for a consideration. The concept 'supply for a consideration' involves an element of contractual relationship wherein the person supplying goods or service does so at the desire of the person for whom the supply is made in exchange for a consideration. The supply made without such a relationship i.e. without the express or implied contractual reciprocity of a consideration would not be a

'supply for consideration'. Providing free tourism information, access to free channels on TV, discussion on any topic with friends or family members and large no. of governmental activities for citizens, etc. are some of the examples of supply of services without consideration.

- (vii) The implications of the condition that supply should be carried out for a consideration are:
- (a) To be taxable, a supply should be carried out by a person for a 'consideration'.
 - (b) Supply made without any consideration like donations, gifts or free charities are therefore outside the ambit of the term "supply" [except if covered by sec. 7(1)(c)].
 - (c) There should be a direct link between supply and consideration, and not only any casual link.
 - (d) There should be an immediate connection between supply and consideration, and not only a remote connection. Consideration may actually be payable at a later point of time but linkage should be immediate. If there is no such immediate connection, then there is no supply [except if covered by sec. 7(1)(c)].
 - (e) An act by a charity for consideration would be a supply of service and hence, taxable unless otherwise exempted.
 - (f) Condition in a grant stipulating merely proper usage of funds & furnishing of account will not result in making it a supply of service.
 - (g) Donations to a charitable organization are not consideration unless charity is obligated to provide something in return e.g. display or advertise the name of donor in a specified manner or such that it gives a desired advantage to the donor.
- (viii) **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 applicable on donations or gifts received from individual donors by charitable organisations involved in advancement of religion, spirituality or yoga which is acknowledged by them by placing name plates in the name of the individual donor

Clarification:

- Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organisations, schools, hospitals, orphanages, old age homes etc. The recipient institutions place a name plate or similar such acknowledgement in their premises to express the gratitude. When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration.
- Some examples of cases where there would be no taxable supply are as follows:-
 - (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
- In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus where all the three conditions

are satisfied namely the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e. it leads to no commercial gain) and not advertisement, GST is not leviable.

- **Summarised Conclusion:** If display of name is aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it will be supply of service for a consideration (in the form of donation) and will be chargeable to GST. Otherwise, donation will not be chargeable to GST, as it is not a consideration.

(ix) Art works sent by artists to galleries for exhibition is not a supply as no consideration flows from the gallery to the artists [Circular No. 22/22/2017 GST dated 21.12.2017]

Artists give their work of art to galleries where it is exhibited for supply. However, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply.

It is only when a buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply.

6. Analysis of "in the Course or Furtherance of Business":

- (i) GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Resultantly, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of business.

Illustration 1 : Mrs. A buys jewellery for her personal use and after a few years, sells it to a jeweller. Sale of jewellery by Mrs. A to jeweller is not a supply under CGST Act because supply is not made by Mrs. A in the course or furtherance of business.

- (ii) In order to understand the term 'in the course or furtherance of business', we need to understand the term 'business'.

- (iii) As per Sec 2(17) of the CGST Act, **Business includes**

- any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- any activity or transaction in connection with or incidental or ancillary to (a) above;
- any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;
- supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;
- provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;
- admission, for a consideration, of persons to any premises;
- 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;
- activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and
- any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

(iv) Any activity undertaken in course/for furtherance of business would constitute a supply. Since, 'business' includes vocation, sale of goods or service even as a vocation (whether or not there is volume, frequency, continuity or regularity of such transaction) is a supply under GST.

Illustration 2 : Mr. Kapil, a Chartered Accountant, paints some paintings and sells them. The consideration from such sale is to be donated to a Charitable Trust. The sale of paintings by Mr. Kapil qualifies as supply even though it is a one-time occurrence.

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

Illustration 3 : A Resident Welfare Association provides the service of lift maintenance to the residents in lieu of some charges. Provision of service by a club or association or society to its members is treated as supply as this is included in the definition of 'business'.

(vi) **Important note :** There is one exception to this 'course or furtherance of business' rule i.e., import of services for a consideration. [will be discussed in later paras]

III. Analysis of section 7(1)(aa) [Activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa]

1. The Government has included the following clause specifically in the term 'Supply' retrospectively w.e.f. 01.07.2017 through Finance Act, 2021, to remove the prevailing ambiguities in the market:

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

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

2. If any person (including Association of Persons or Body of Individuals) is incorporated, then, undoubtedly it becomes a separate person by itself and supplies between such person and its members or vice versa will be chargeable to GST. But, to remove the ambiguity, it is specifically inserted in the term 'Supply' retrospectively w.e.f. 01.07.2017, that supply of goods or services or both by any person (including unincorporated AOP/BOI), other than an individual, to its members or constituents or vice versa, shall also be supply and will be chargeable to GST.

Examples:

(i) Membership fee or any other consideration paid by members to unincorporated AOP/BOI (e.g. Friends Club/Club Mahindra/etc.) for availing various services is Supply of Service and will be chargeable to GST.

(ii) A local club supplies snacks, etc. to its members during its monthly meeting for a nominal payment is supply of goods and will be chargeable to GST.

Clarification regarding supply of goods or services or both by the members of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV [Circular No. 35/9/2018 – GST, dated 05.03.2018] [Modified according to the amendment]

Issue No. 1: Whether GST can be levied on supply of goods or services or both by the members of the Joint Venture (JV) to the JV and vice versa; and inter se between the members of the JV ?

Clarification: GST is levied on intra-State and inter-State supply of goods or services or both. According to section 7(1)(aa) of CGST Act, 2017, the expression "supply" includes activities or transactions, by a person, other than an

individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration. Further, the definition of "business" in section 2(17) of CGST Act states that "business" includes 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. Further, the term person is defined in section 2(84) of the CGST Act, 2017 to include an association of persons or a body of individuals, whether incorporated or not, in India or outside India. Furthermore, an explanation is inserted in section 7(1)(aa) which clearly states that "the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another" and over and above, this explanation states that this clause has overriding effect over all the laws for the time being in force and all the judgments, decrees or orders of any Court, tribunal or authority.

A conjoint reading of the above provisions of the law implies that supply of goods or services or both by an unincorporated association or body of persons (AOP/BOI) to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods or services or both. Hence, GST will be levied on the same. Similarly, GST will be levied on the supply of goods or services or both by member of an unincorporated joint venture (JV) to the JV or to other members of the JV.

Issue No. 2: Whether GST can be levied on the cash calls or capital contribution made by the members to the JV ?

Clarification: JV is an unincorporated temporary association constituted for the limited purpose of carrying out a specified project within a time frame. Contribution from the members of the JV is called 'Cash Calls'. 'Cash calls' are raised by the joint venture from the members of the JV to meet the expenditure on the operations to be carried out by the JV.

The question whether cash calls are taxable or not will entirely depend on the facts and circumstances of each case.

- (a) 'Cash calls', sometimes, could be in the nature of advance payments made by members towards taxable services received from JV, hence, will be taxable under GST.
- (b) 'Cash calls', sometimes, could be in the nature of Capital Contributions made by members to raise the funds for JV and would be considered merely 'a transaction in money', hence, will not be taxable under GST, as it is not in the nature of consideration.

Issue No. 3: Whether GST can be levied on supply of goods or services or both received by a JV from its members ?

Clarification: Supply of goods or services or both by a member to a JV, for cash, deferred payment or other valuable consideration, is specifically covered in the term Supply u/s 7(1)(aa) and hence, attracts GST.

Illustration 4 : An association has been temporarily constituted, by several members, without being registered. The object of the unregistered association was to render taxable services to its members for a consideration. The association, through its members, argued that the association was not registered and any service rendered to its members constituted service rendered to oneself and therefore the activity of rendering service by the association to its members was not a service at all and hence not liable to GST. Comment on the stand taken by the unregistered association with suitable explanations, if any. On the same analogy, the GST Officer intends to tax capital contributions made by members to the association. Whether the action of the officer is tenable in law ?

Solution : According to section 7(1)(aa) of CGST Act, 2017, the expression "supply" includes activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration. Further, an explanation is inserted in section 7(1)(aa) which clearly states that "the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another".

Hence, any service rendered by the association (whether registered or not) to its members for consideration is chargeable to GST.

Further, capital contributions made by members to the Association are not consideration for any supply of goods or service. Capital Contributions are mere transactions in money, hence, not liable to GST.

IV. Analysis of section 7(1)(b) [Importation of services for consideration whether or not in course or furtherance of business]

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

Illustration 5 : Mr. Pankaj, has subscribed online videos (TV Shows, Movies, etc.) for entertainment of his family from www.netflix.com (an Online Information and Database access or retrieval service supplier from outside India) at an agreed consideration of \$ 100. The import of services by Mr. Pankaj is supply under section 7(1)(b), though it is not in the course or furtherance of business.

V. Analysis of Section 7(1)(c) read with schedule I [Supply without consideration - Deemed Supply]

1. This includes all supplies made by a person, even if the same is without consideration. These are specifically mentioned in Schedule I of the CGST Act.
2. As per Schedule I, in the following four cases, supplies made without consideration will be treated as supply under section 7 of the CGST Act:

Schedule I

Statutory Provisions	
1.	Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2.	Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business: Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3.	Supply of goods - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4.	Import of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business ["Taxable person" word substituted by "person" by CGST (Amendment) Act, 2018, w.e.f. 01.02.2019].

3. Analysis of transactions specified in Schedule I:

- (i) **Permanent Transfer / Disposal of Business Assets:** Any kind of disposal or transfer of business assets made by an entity on permanent basis even though without consideration qualifies as supply, if Input Tax Credit (ITC) was availed on such assets.

Illustration 6 : ABC & Co. donates old A.C. to Charitable Schools. This will qualify as supply provided input tax credit had been availed by ABC & Co. on such A.C.

Illustration 7 : Transfer of business assets (in respect of which ITC was availed) from holding to subsidiary company for NIL consideration, will qualify as supply.

Illustration 8 : A dealer of air-conditioners permanently transfers an air conditioner from his stock in trade, for personal use at his residence. The transaction will constitute a supply as it is a permanent transfer/disposal of business assets. The only condition is that input tax credit should have been availed on such assets.

- (ii) **Supply between related person or distinct persons:**

- (a) **Related persons:** As per explanation to section 15, related persons have been defined as follows:

Person (Includes Legal person) deemed as related person, if :

- Such persons are officers/directors of one another's business
- Such persons are legally recognised partners
- Such persons are employer & employee
- A third person controls/own/holds (directly/indirectly) at least 25% voting stock/shares of both
- One of them controls (directly/indirectly) other
- A third person controls (directly/indirectly) both of them
- Such person together control (directly/indirectly) a third person
- Such persons are member of the same family
- One of them is the sole agent/sole distributor/sole concessionaire of the other.

- (b) **Family :** As per sec. 2(49) of the CGST Act, 2017, "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.

- (c) **Distinct Persons specified under section 25 :** A person who has obtained/is required to obtain more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as distinct persons. Further, where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons.

Illustration 9 : Mr. Ram, has a registered head office in Mumbai. He has also obtained registration in the State of Punjab in respect of his newly opened branch office. Mr. Ram shall be treated as distinct persons in respect of registrations in Maharashtra and Punjab.

- (d) **Stock transfers or branch transfers:** In view of the aforesaid discussion, transactions between different locations (with separate GST registrations) of same legal entity (e.g., stock transfers or branch transfers) will qualify as 'supply' under GST.

Illustration 10 : Does inter-state branch transfer of the goods without any consideration amounts to Supply of goods?

Solution : Yes, inter-state branch transfer of the goods without any consideration amounts to Supply of goods.

Because, movement of goods in the course or furtherance of business without any consideration to a 'distinct person' as specified in section 25(4) of the CGST Act, 2017 is deemed to be a supply in terms of Para 2 of Schedule I of the said Act.

As per section 25(4) of the CGST Act, 2017, a person who has obtained more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as 'distinct persons'.

Illustration 11 : Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Delhi so that the same can be sold from there. The factory and retail showroom of Raghubir Fabrics are registered in the States where they are located. Although no consideration is charged, supply of goods from factory to retail showroom constitutes supply.

(e) Supply of goods or services or both between an employer and employee:

- By virtue of the definition of related person given above, employer and employee are related persons. However, services provided by an employee to the employer in the course of or in relation to his employment are not treated as supply of services [Schedule III of CGST Act (discussed in subsequent paras)].
- But, any of the goods or services supplied by the employer to the employee (in the course or furtherance of business) will be covered under the scope of the term "supply" although it is supplied without consideration.
- **Gifts by employer to employee :** Further, Schedule I provides that gifts not **exceeding Rs. 50,000** in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both. However, gifts of value more than Rs. 50,000 made without consideration are subject to GST, when made in the course or furtherance of business.
- The term 'gift' has not been defined in the GST law. In common parlance, gift is made without consideration, is voluntary in nature and is made occasionally.

(f) Clarifications regarding applicability of GST and availability of Input Tax Credit [Circular No. 16/16/2017-GST, dated 15.11.2017] :

Issue 1 : Is GST leviable on inter-state transfer of aircraft engines, parts and accessories for use by their own airlines?

Clarification: Under Schedule I (Para 2) of the CGST Act, 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, even if, without consideration, attracts GST. Therefore, GST is leviable on inter-state transfer of aircraft engines, parts and accessories for use by their own airlines.

Issue 2 : Whether Input Tax Credit of GST paid on aircraft engines, parts & accessories will be available for discharging GST on inter-state supply of such aircraft engines, parts & accessories for use by their own airlines?

Clarification : It is hereby clarified that Input Tax Credit of GST paid on aircraft engines, parts & accessories will be available for discharging GST on inter-state supply of such aircraft engines, parts

& accessories by way of inter-state stock transfers between distinct persons as specified in section 25 of the CGST Act.

(g) Clarification on Inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance [Circular No. 1/1/2017 IGST dated 07.07.2017]

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

Clarification: In the above context, the legal provisions in GST laws are as under:

- (a) Under Schedule I (Para 2) of the CGST Act, 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, even if, without consideration, attracts GST.
 - (b) Against the above background, the issue of inter-state movement of goods like movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the said Act, not involving further supply of such conveyance, including Trains, Buses, Trucks, Tankers, Trailers, Vessels, Containers, Aircrafts, (1) carrying goods or passengers or both; or (2) for repairs and maintenance, [except in cases where such movement is for further supply of the same conveyance] was discussed in GST Council's meeting and the Council recommended that such inter-state movement shall be treated 'neither as a supply of goods nor supply of service' and therefore, not be leviable to IGST.
 - (c) In view of above, it is clarified that the inter-state movement of goods like movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the CGST Act, may not be treated as supply and consequently, IGST will not be payable on such supply.
 - (d) However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done by a distinct person for such conveyance.
- (h) Clarification on Inter-state movement of rigs, tools and spares, and all goods on wheels [like cranes] [Circular No. 21/21/2017 IGST dated 022.11.2017]**

Issue : Whether inter-state movement of rigs, tools and spares, and all goods on wheels [like cranes, etc.], between distinct persons as specified in section 25(4) of the CGST Act, 2017 [except in cases where such movement is for further supply of these goods] is leviable to IGST?

Clarification : The issue pertaining to inter-state movement of rigs, tools and spares, and all goods on wheels [like cranes] was discussed in GST Council's meeting held on 10th November, 2017 and the Council recommended that the circular 1/1/2017-IGST (as discussed above) shall mutatis mutandis (as it is) apply to inter-state movement of such goods, and except in cases where movement of such goods is for further supply of the same goods, such inter-state movement shall be treated 'neither as a supply of goods nor supply of service,' and consequently no IGST would be applicable on such movements.

However, applicable CGST/SGST/IGST, as the case may be, is leviable on repairs and maintenance done for such goods.

(iii) Principal – Agent:

- (a) Supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply.

- (b) Similarly, supply of goods by an agent to his principal, without consideration, where the agent undertakes to receive such goods on behalf of the principal is considered as supply.
- (c) **Note** : Points which merit consideration, in this regard, are as follows:
- Only supply of goods is covered here.
 - Supply of goods between principal and agent without consideration is also supply.

Illustration 12 : Wonder Cement Ltd. engages Siddharth & Sons as an agent to sell goods on its behalf. For the purpose, Wonder cement Ltd. has supplied the goods to Siddharth & Sons located in Rajasthan. Supply of goods by Wonder Cement Ltd. to Siddharth & Sons will qualify as supply even though Siddharth & Sons has not paid any consideration yet.

Illustration 13 : Wonder Cement Ltd. engages Mr. Pankaj as an agent to purchase some raw materials on its behalf. For this purpose, Mr. Pankaj bought certain raw materials on behalf of Wonder Cement Ltd. and after receiving the same, Mr. Pankaj supplied the goods to Wonder Cement Ltd. Supply of goods by Mr. Pankaj to Wonder Cement Ltd. will qualify as 'Supply' even though Wonder Cement Ltd. has not paid any consideration.

Clarification regarding Scope of Principal-agent relationship in the context of Schedule I of the CGST Act – [Circular No. 57/31/2018-GST, dated 04.09.2018]

1. In terms of Schedule I of the CGST Act, 2017, the supply of goods by an agent on behalf of the principal without consideration has been deemed to be a supply. In this connection, various representations have been received regarding the scope and ambit of the principal-agent relationship under GST. In order to clarify some of the issues and to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred under section 168 (1) of the CGST Act has clarified the issues in the succeeding paras.
2. Here it is worth noticing that the supply of services between the principal and the agent and vice versa is outside the ambit of the said entry, and would therefore require "consideration" to consider it as supply and thus, be liable to GST.
3. The key ingredient for determining principal-agent relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the scope of the said entry. However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule I of the CGST Act. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said entry. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.
4. Looking at the convergence point between the character of the agent under both the CGST Act and the Indian Contract Act, 1872, the following scenarios are discussed:

Scenario 1 : Mr. A appoints Mr. B to procure certain goods from the market. Mr. B identifies various suppliers who can provide the goods as desired by Mr. A, and asks the supplier (Mr. C) to send the goods and issue the invoice directly to Mr. A. In this scenario, Mr. B is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Mr. B is not an agent of Mr. A for supply of goods in terms of Schedule I.

Scenario 2 : M/s XYZ, a banking company, appoints Mr. B (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s XYZ. The invoice for the supply of the goods is issued by M/s XYZ to the successful bidder. In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mr. B is not an agent of M/s XYZ for the supply of goods in terms of Schedule I.

Scenario 3 : Mr. A, an artist, appoints M/s B (auctioneer) to auction his painting. M/s B arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by M/s B on the behalf of Mr. A but in his own name and the painting is delivered to the successful bidder. In this scenario, M/s B is not merely providing auctioneering services, but is also supplying the painting on behalf of Mr. A to the bidder, and has the authority to transfer the title of the painting on behalf of Mr. A. This scenario is covered under Schedule I.

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

Scenario 4 : Mr. A sells agricultural produce by utilizing the services of Mr. B who is a commission agent as per the Agricultural Produce Marketing Committee Act (APMC Act) of the State. Mr. B identifies the buyers and sells the agricultural produce on behalf of Mr. A for which he charges a commission from Mr. A. As per the APMC Act, the commission agent is a person who buys or sells the agricultural produce on behalf of his principal, or facilitates buying and selling of agricultural produce on behalf of his principal and receives, by way of remuneration, a commission or percentage upon the amount involved in such transaction.

In cases where the invoice is issued by Mr. B to the buyer, the former is an agent covered under Schedule I. However, in cases where the invoice is issued directly by Mr. A to the buyer, the commission agent (Mr. B) doesn't fall under the category of agent covered under Schedule I.

5. **Clarification regarding Registration:-** In scenario 1 and scenario 2, Mr. B shall not be liable to obtain registration in terms of clause (vii) of section 24 of the CGST Act. He, however, would be liable for registration if his aggregate turnover of supply of taxable services exceeds the threshold specified in sub-section (1) of section 22 of the CGST Act. In scenario 3, M/s B shall be liable for compulsory registration in terms of the clause (vii) of section 24 of the CGST Act. In respect of commission agents in Scenario 4, notification No. 12/2017 Central Tax (Rate) dated 24.06.2017 has exempted "services by any APMC or board or services provided by the commission agents for sale or purchase of agricultural produce" from GST. Thus, the 'services' provided by the commission agent for sale or purchase of agricultural produce is exempted. Such commission agents (even when they qualify as agent under Schedule I) are not liable to be registered according to sub-clause (a) of sub-section (1) of section 23 of the CGST Act, if the supply of the agricultural produce, and /or other goods or services supplied by them are not liable to tax or wholly exempt under GST. However, in cases where the supply of agricultural produce is not exempted and liable to tax, such commission agent shall be liable for compulsory registration under sub-section (vii) of section 24 of the CGST Act.

Clarification regarding Scope of principal and agent relationship under Schedule I of CGST Act, 2017 in the context of del-credere agent (DCA) [Circular no. 73/47/2018-GST, dated 05.11.2018]

1. In commercial trade parlance, a DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a DCA from other agents is that the DCA guarantees the payment to the supplier. In such scenarios where the buyer fails to make payment to the principal by the due date, DCA makes the payment to the principal on behalf of the buyer (effectively providing an insurance against default by the buyer), and for this reason the commission paid to the DCA may be relatively higher than that paid to a normal agent. In order to guarantee timely payment to the supplier, the DCA can resort to various methods including extending short-term transaction-based loans to the buyer or paying the supplier himself and recovering the amount from the buyer with some interest at a later date. This loan is to be repaid by the buyer along with an interest to the DCA at a rate mutually agreed between DCA and buyer. Issues have been raised regarding the valuation of supplies from Principal to recipient where the payment for such supply is being discharged by the recipient through the loan provided by DCA or by the DCA himself. Issues arising out of such loan arrangement have been examined and the clarifications on the same are as below:

Sl.	Issue	Clarification
1	Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?	As already clarified vide circular No. 57/31/2018-GST dated 4th September, 2018, whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I of the CGST Act depends on the following possible scenarios: <ul style="list-style-type: none"> • In case where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent. • In case where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.
2	Whether the temporary short-term transaction based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the CGST Act?	In such a scenario following activities are taking place: <ol style="list-style-type: none"> 1. Supply of goods from supplier (principal) to recipient; 2. Supply of agency services from DCA to the supplier or the recipient or both; 3. Supply of extension of loan services by the DCA to the recipient. It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal to Principal basis and is an independent supply. <p>Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier. It may be noted that vide notification No. 12/2017-Central Tax (Rate) dated 28th June, 2017 (S. No. 27), services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) has been exempted.</p>
3.	Where DCA is an agent under Para 3 of Schedule I of the CGST	In such a scenario following activities are taking place: <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;

	<p>Act and makes payment to the principal on behalf of the buyer and charges interest to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?</p>	<p>3. Supply of agency services by the DCA to the supplier or the recipient or both;</p> <p>4. Extension of credit by the DCA to the recipient.</p> <p>It is clarified that in cases where the DCA is an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient.</p> <p>It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per clause (d) of sub-section (2) of section 15 of the CGST Act.</p>
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- (iv) **Importation of services:** Import of services by a ~~taxable~~ person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business shall be treated as "supply" ["Taxable person" word substituted by "person" by CGST (Amendment) Act, 2018, w.e.f. 01.02.2019].

Illustration 14 : Mangal Associates received legal consultancy services from its head office located in USA. The head office has rendered such services free of cost to its branch office. Since Mangal Associates and the branch office are related persons, services received by Mangal Associates will qualify as supply, even though the head office has not charged anything from it.

Illustration 15 : Amit, a proprietor registered in Mumbai, has sought architect services from his related person located in US, with respect to his newly constructed house in Mumbai. Although services have been received by Amit without consideration from a related person, yet it will not qualify as supply, since, the same has not been received in course or furtherance of business.

V. Analysis of Section 7(1A) read with schedule II [Activities or Transactions to be treated as supply of goods or Supply of Services]

- Section 7(1A) of the Act refers to Schedule II for determining whether a particular transaction is a supply of goods or supply of service. This helps in resolving the disputes which existed in earlier laws.
- **Example:** Under earlier laws, the Contractors providing works contract service used to charge both service tax and VAT on the value of the contract. This was because both sale of goods and provision of service were involved and therefore taxes under both the Statutes i.e. respective VAT law and service tax law were levied.
- Under GST, the works contract is treated as composite supply [discussed in detail in subsequent paras] as material used and service is naturally bundled in ordinary course of business. However, Entry 6(a) of Schedule II to the CGST Act specifically provides that such composite supply shall be treated as supply of service. Hence, the entire value of invoice shall be treated as value of service and leviable to GST accordingly.
- Schedule II appended to the CGST Act enlists the matters/transactions to be treated as Supply of either goods or services. The matters listed out are primarily those which had been under in litigation in the earlier regime owing to their complex nature and possibility to double taxation.

Schedule II

Activities or transactions to be treated as supply of Goods or supply of services

Sr. No.	Transaction	Type	Nature of Supply
1	Transfer	(a) Title in goods	Supply of Goods
		(b) Right in goods/undivided share in goods without transfer of title in goods	Supply of Services
		(c) 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.	Supply of Goods
2	Land and Building	(a) Lease, tenancy, easement , licence to occupy land	Supply of Services
		(b) Lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly. Example : Lease rentals collected shall be taxable as supply of services under GST.	Supply of Services
3	Treatment or Process	Applied to another person's goods Example : "Job Work" performed by a job worker like dyeing of fabric in various colours.	Supply of Services
4	Transfer of Business Assets	(a) Goods forming part of assets of a business are transferred or disposed off by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration [Omitted words, omitted by Finance Act, 2020, retrospectively w.e.f. 01.07.2017 to remove ambiguity in the scope of the term 'Supply']. Example : ABC & Co. donates old A.C. to Charitable Schools. This will qualify as supply of goods, if input tax credit had been availed by ABC & Co. on such A.C.	Supply of Goods
		(b) Goods held/used for business are put to private use or are made available to any person for use, for any purpose other than a purpose of the business, by/under the direction of a person carrying on the business, whether or not for a consideration [Omitted words, omitted by Finance Act, 2020, retrospectively w.e.f. 01.07.2017 to remove ambiguity in the scope of the term 'Supply']. Example : A director using car provided by the company for personal travels.	Supply of Services
		(c) Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be a taxable	Supply of Goods

	<p>person.</p> <p>Example : Mr. A, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him and GST shall be payable.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> • Business is transferred as a going concern to another person. • Business is carried on by a personal representative who is deemed to be a taxable person. 	
5	<p>(a) Renting of immovable property</p> <p>Analysis :</p> <p>(i) As per this clause, renting of immovable property for any commercial activity, permitting use of immovable property for placing vending/dispensing machines, allowing erection of communication tower on a building for consideration, renting of land or building for entertainment or sports and renting of theatres by owners to film distributors are all chargeable to GST.</p> <p>(ii) Halls, rooms, etc. let out by hotels/restaurants for a consideration for organizing social, official or business functions or letting out of halls for cultural functions are covered within the scope of renting of immovable property and would be taxable.</p>	Supply of Services
	<p>(b) Construction of complex, building, civil structure, etc.: 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.</p> <p>The term construction includes additions, alterations, replacements, or remodelling of any existing civil structure.</p> <p>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, from any of the following, namely:</p> <p>(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or</p> <p>(ii) a chartered engineer registered with the Institution of Engineers (India); or</p> <p>(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority.</p> <p>Analysis :</p> <p>If the builder/developer is constructing flats, offices, etc. in a complex, and then booking them against advance payment before grant of completion certificate from competent authority, then, the value of the flats, offices, etc. (which are booked before grant of completion certificate) shall be</p>	Supply of Services

	chargeable to GST under the heading of "construction service".	
	(c) Temporary transfer or permitting use or enjoyment of any Intellectual Property Right (IPR)	Supply of Services
	(d) Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of Information Technology Software . Example : Supply of software to run video classes for smooth processing, encryption and decryption of videos is a supply of service. encryption and decryption of videos is a supply of service.	Supply of Services
	(e) Agreeing to obligation to refrain from an act, or to tolerate an act or situation, or to do an act. Analysis : In non-compete agreement, where one party agrees, for consideration, not to compete with the other in any specified products, services, geographical location or in any other manner, such action on the part of one person is also a supply of service for consideration and will be covered by this clause.	Supply of Services
	(f) Transfer of right to use any goods for any purpose	Supply of Services
6	Following composite supplies : (a) Works contract as defined u/s 2(119) As per sec. 2(119) of the CGST Act, 2017, 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. Analysis: (i) If the construction, repairs, etc. contract is a composite contract of labour plus material (i.e. material is also supplied by service provider along with construction, repairs, etc. service), then, it is a supply of service and GST would be charged on such contract under the heading of "Works Contract Service". (ii) If the construction, repairs, etc. contract is a pure labour contract (i.e. no materials are supplied by service provider), then, GST would be charged on such service under the heading of "construction service" or "repairing, etc. service".	Supply of Services
	(b) Restaurant and Outdoor Catering Services - Supply by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration. Analysis: The activities of supply of food or drinks in a restaurant, etc. and supply of foods and drinks by an outdoor caterer are covered in this clause.	Supply of Services
7	Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration. [Omitted by	Supply of Goods

Finance Act, 2011 retrospectively w.e.f. 01.07.2017, as it is specifically included in the term 'Supply' u/s 7(1)(aa)]	
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Clarification regarding Issue related to taxability of 'tenancy rights' under GST [Circular No.44/18/2018-CGST, dated 02.05.2018]

Doubts:

- (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, if yes what would be the applicable rate?
- (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?

Clarification:

1. The issue has been examined. 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. Alternatively, 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.
2. As per section 9(1) of the CGST Act there shall be levied central tax on the intra-State supplies of services. The scope of supply includes all forms of supply of goods and services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business and also includes the activities specified in Schedule II. The activity of transfer of tenancy right against consideration in the form of tenancy premium is a supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in para 2 of Schedule II i.e. any lease, tenancy, easement, licence to occupy land is a supply of services.
3. The contention that stamp duty and registration charges is levied on such transfers of tenancy rights, and such transaction thus should not be subjected to GST, is not relevant. 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.
4. To sum up, the activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable per-se. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. However, renting of residential dwelling for use as a residence is exempt [Sl. No. 12 of NN. 12/2017 - C.T. (R)]. Hence, grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

Clarification regarding taxability of goods imported under lease [Circular No. 113/32/2019-GST, dated 11.10.2019]

Goods like aircrafts, aircraft engines, other aircraft parts, rigs & ancillary items for oil / gas exploration / production, etc. which are imported into India on temporary basis are the transactions which are covered by item 1(b) or 5(f) of Schedule II of the CGST Act, 2017 and are liable to pay IGST leviable u/s 5(1) of the IGST Act, 2017. Further, these are exempted from Customs duty as per notifications issued under Customs Act, subject to certain conditions.

Illustration 16 : Explain briefly the correctness of the following statements with reference to the GST Act, 2017. With regard to construction of residential complex, unless the entire payment for the property is paid by the buyer after completion of construction, the activity of construction would be deemed to be a supply of service.

Solution : The statement is correct. The activity is covered under clause (b) of para 5 of schedule II of CGST Act, 2017 as supply of service which is reproduced herein below:

“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 is received after issuance of completion certificate by the competent authority or its first occupation, whichever is earlier”.

VI. Analysis of Section 7(2)

1. Activities/transactions specified under Schedule III of the CGST Act [Section 7(2)(a)] [Negative List under GST]:

Activities specified under schedule III can be termed as “Negative list” under the GST regime. This schedule specifies transactions/ activities which shall be neither treated as supply of goods nor a supply of Services.

Schedule III

S. No.	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:</p> <p>(i) Any amount paid to a director of a company for attending board of director’s meeting, etc., shall be chargeable to GST, because it is not paid in the capacity of an employee. But, if any amount is paid to whole time director in the capacity of employee, then, no GST will be charged on the same.</p> <p>(ii) Further, GST on the services provided by a director to the company or body corporate is chargeable to GST under Reverse Charge Mechanism u/s 9(3) of the CGST Act, 2017 (i.e. company or body corporate will be liable to pay GST to the government directly on the amount paid to director). It means, every company or body corporate paying any amount to director, not in the capacity of employee, shall be compulsorily required to get themselves registered under GST law and consequentially, all the provisions of GST law would be attracted.</p>
2.	<p>Services by any Court or Tribunal established under any law for the time being in force.</p> <p>Explanation : The term “Court” includes District Court, High Court and Supreme Court.</p>
3.	<p>(a) 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) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or</p> <p>(c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.</p>

4.	Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
5.	Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.
6.	<p>Actionable claims, other than lottery, betting and gambling.</p> <p>Illustration 17 : M/s Rohit ASREC Ltd. procured a portfolio of NPAs (of Rs. 50 crores) from Pankaj Bank Ltd. for a consideration of Rs. 7 crores (under the provisions of SRFAESI Act, 2002). Whether GST is leviable on Rs. 7 crores ?</p> <p>Solution : A transaction of procurement of a portfolio of NPAs is a transaction in actionable claim and is covered under para 6 of Schedule III of the CGST Act, 2017. Therefore, no GST would be charged on this transaction.</p>

Clarification in respect of levy of GST on Director's remuneration [Circular No: 140/10/2020-GST, dated 10.06.2020]

1. Leviability of GST on remuneration paid by companies to the independent directors or those directors who are not the employee of the said company

The primary issue to be decided is whether or not a "Director" is an employee of the company. In this regard, from the perusal of the relevant provisions of the Companies Act, 2013, it can be inferred that:

- the definition of a whole time-director under section 2(94) of the Companies Act, 2013 is an inclusive definition, and thus he may be a person who is not an employee of the company.
- the definition of "independent directors" under section 149(6) of the Companies Act, 2013, read with Rule 12 of Companies (Share Capital and Debentures) Rules, 2014 makes it amply clear that such director should not have been an employee or proprietor or a partner of the said company, in any of the three financial years immediately preceding the financial year in which he is proposed to be appointed in the said company.

Therefore, in respect of such directors who are not the employees of the said company, the services provided by them to the Company, in lieu of remuneration as the consideration for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable. In terms of entry at Sl. No. 6 of the Table annexed to notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

Accordingly, it is hereby clarified that the remuneration paid to such independent directors, or those directors, by whatever name called, who are not employees of the said company, is taxable in hands of the company, on reverse charge basis.

2. Leviability of GST on remuneration paid by companies to the directors, who are also an employee of the said company

Once, it has been ascertained whether a director, irrespective of name and designation, is an employee, it would be pertinent to examine whether all the activities performed by the director are in the course of employer-employee relation (i.e. a "contract of service") or is there any element of "contract for service". The issue has been deliberated by various courts and it has been held that a director who has also taken an employment in the company may be functioning in dual capacities, namely, one as a director of the company and the other on the basis of the contractual relationship of master and servant with the company, i.e. under a contract of service (employment) entered into with the company.

It is also pertinent to note that similar identification and treatment of the Director's remuneration is also present in the Income Tax Act, 1961 wherein the salaries paid to directors are subject to Tax Deducted at Source ('TDS') under Section 192 of the Income Tax Act, 1961 ('IT Act'). However, in cases where the remuneration is in the nature of professional fees and not salary, the same is liable for deduction under Section 194J of the IT Act.

Accordingly, it is clarified that the part of Director's remuneration which are declared as "Salaries" in the books of a company and subjected to TDS under Section 192 of the IT Act, are not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

It is further clarified that the part of employee Director's remuneration which is declared separately other than "salaries" in the Company's accounts and subjected to TDS under Section 194J of the IT Act as Fees for professional or Technical Services shall be treated as consideration for providing services which are outside the scope of Schedule III of the CGST Act, and is therefore, taxable. Further, in terms of notification No. 13/2017 - Central Tax (Rate) dated 28.06.2017, the recipient of the said services i.e. the Company, is liable to discharge the applicable GST on it on reverse charge basis.

Clarifications regarding applicability of GST on Perquisites provided by employer to the employees as per contractual agreement [Circular No. 172/04/2022 - GST, dated 06.07.2022]

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

Clarification: Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment. It follows therefrom that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST when the same are provided in terms of the contract between the employer and employee. [Examples of perquisites: company car, fuel reimbursement, interest-free loan, medical facilities, credit cards, rent free accommodation, etc.]

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

- (i) As per Sl. no. (5) of Schedule III of the CGST Act, 2017, 'sale of land' is neither a supply of goods nor a supply of services, therefore, sale of land does not attract GST.
- (ii) Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc. It is clarified that sale of such developed land is also sale of land and is covered by Sr. No. 5 of Schedule III of the CGST Act, 2017 and accordingly does not attract GST.
- (iii) However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

Clarification on GST chargeable on the amount payable to Consumer Disputes Redressal Commission office and its subordinate offices [Circular No. 32/06/2018-GST, dated 12.02.2018]

Services by any court or Tribunal established under any law for the time being in force is neither a supply of goods nor services. 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 having regard to their functioning.

Having regard to their functioning & characteristics, 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.

2. Activities/Transactions notified by the Government [Sec. 7(2)(b)]:

Such activities/transactions undertaken by the central Government, a state government or union territory or any local authority in which they are engaged as public authorities, as may be notified by the government on the recommendations of the Council shall be treated neither as supply of goods nor supply of services.

Using this power, following activities have been notified which shall be treated neither as supply of goods nor supply of services:

- (i) Services provided by Central Government, State Government, Union territory or any local authority by way of any activity in relation to a function entrusted to a Panchayat under **article 243G** of the constitution or to a Municipality under **article 243W** of the constitution [NN 14/2017 – CT(R.), dated 28.06.2017, as amended by NN 16/2018 CT(R) w.e.f. 27.07.2018].
- (ii) Service provided by State Government by way of **grant of alcoholic liquor license**, against consideration in the form of license fee or application fee or by whatever name it is called. [inserted by NN 25/2019 – CT(R.), w.e.f. 30.9.2019] **[made applicable retrospectively w.e.f. 01.07.2017, vide Finance Act, 2022]**

Note: [Circular No. 121/40/2019–GST, dated 11.10.2019]

This special dispensation applies only to supply of service by way of grant of liquor licenses by the State Governments as an agreement between the Centre and States and has no applicability or precedence value in relation to grant of other licenses and privileges for a fee in other situations, where GST is payable.

Note: Further, Government has power to grant exemption to any goods or services or both from the GST leviable u/s 11 of the CGST and u/s 6 of the IGST. And, by using this power, Government has exempted many goods and services from GST, which will be discussed in later chapters of this book.

Illustration 18 : Fifty persons, each contributing Rs. 2,000 per month, have come together to organise a chit for a period of 50 months. At the end of each month, an amount of Rs. 1,00,000 (2,000 x 50) is available in the kitty of the Chit Fund. Rs. 1,00,000 is put to auction and subscribers who are interested in drawing the money early because of their needs may participate in the auction. The auction is organised by a 'Key Member' who manages and conducts the proceedings. The successful bidder who is normally the person who offers the highest interest/discount is given that chit amount. From this interest/discount amount, after deducting a fixed amount representing the commission payable to the 'Key Member', balance becomes the dividend which is distributed among all the subscribers. The auction is repeated in the subsequent months and the same procedure is followed. Explain briefly if GST could be levied on the services rendered in connection with the Chit Fund Business.

Solution : The services carried out by a foreman of chit fund for conducting or organising a chit in any manner for a consideration (commission) qualifies to be covered under the scope of the term "supply" and will not be considered as "merely a transaction in money or actionable claim". Hence, it is chargeable to GST. Therefore, the commission payable to the "key member (i.e. foreman of chit fund)" is taxable. Further, interest/discount earned by each person is exempt under GST as per entry no. 27 of Notification No. 12/2017 CT (R), dated 28.06.2017.

Clarification regarding taxability of supply of securities under Securities Lending Scheme, 1997 [Circular No. 119/38/2019–GST, dated 11.10.2019]

Issue : Whether the supply of securities under Securities Lending Scheme, 1997 ("Scheme") by the lender is taxable under GST

Facts :

1. Securities and Exchange Board of India (SEBI) has prescribed the Securities Lending Scheme, 1997 for the purpose of facilitating lending and borrowing of securities. Under the Scheme, lender of securities lends to a borrower through an approved intermediary to a borrower under an agreement for a specified period with the condition that the borrower will return equivalent securities of the same type or class at the end of the specified period along with the corporate benefits accruing on the securities borrowed. The transaction takes place through an electronic screen-based order matching mechanism provided by the recognised stock exchange in India. There is anonymity between the lender and borrower since there is no direct agreement between them.
2. The lenders earn lending fee for lending their securities to the borrowers. The security lending mechanism is depicted in the diagram below: -



3. In the above chart :

- (i) Lender is a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the scheme.
- (ii) Borrower is a person who borrows the securities under the scheme through an approved intermediary.
- (iii) Approved intermediary is a person duly registered by the SEBI under the guidelines/scheme through whom the lender will deposit the securities for lending and the borrower will borrow the securities;

Clarification:

1. It may be noted for the purpose of GST Act, "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 [Section 2(101) of CGST Act]. The definition of services as per Section 2(102) of the CGST Act, is extracted as below: -
 "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;
 Explanation.--For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities;
2. Securities as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 are not covered in the definition of goods under section 2(52) and services under section 2(102) of the CGST Act. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.
3. The explanation added to the definition of services w.e.f. 01.02.2019 i.e. "includes facilitating or arranging transactions in securities" is only clarificatory in nature and does not have any bearing on the taxability of the services under discussion (lending of securities) in past since 01.07.2017 but relates to facilitating or arranging transactions in securities.
4. The activity of lending of securities is not a transaction in securities as it does not involve disposal of securities. The clause 4 of para 4 relating to the Scheme under the Securities Lending Scheme, 1997 doesn't

treat lending of securities as disposal of securities and therefore is not excluded from the definition of services.

5. The lender temporarily lends the securities held by him to a borrower and charges lending fee for the same from the borrower. The borrower of securities can further sell or buy these securities and is required to return the lended securities after stipulated period of time. The lending fee charged from the borrowers of securities has the character of consideration and this activity is taxable in GST since 01.07.2017.
6. Apart from above, the activities of the intermediaries facilitating lending and borrowing of securities for commission or fee are also taxable separately.
7. For the past period i.e. from 01.07.2017 to 30.09.2019, GST is payable under forward charge by the lender and request may be made by the lender (supplier) to SEBI to disclose the information about borrower for discharging GST under forward charge. The nature of tax payable shall be IGST. However, if the service provider has already paid CGST / SGST / UTGST treating the supply as an intra-state supply, such lenders shall not be required to pay IGST again in lieu of such GST payments already made.
8. Further, w.e.f. 1st October, 2019, the borrower of securities shall be liable to discharge GST as per Sl. No 16 of Notification No. 22/2019-Central Tax (Rate) dated 30.09.2019 under reverse charge mechanism (RCM). The nature of GST to be paid shall be IGST under RCM.

Circular No. 76/50/2018-GST, dated 31.12.2018

Issue: Whether the supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by Government departments are taxable under GST?

Clarification:

1. It may be noted that intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority is a taxable supply under GST.
2. Vide notification No. 36/2017-Central Tax (Rate) and notification No. 37/2017- Integrated Tax (Rate) both dated 13.10.2017, it has been notified that intra-State and inter-State supply respectively of used vehicles, seized and confiscated goods, old and used goods, waste and scrap by the Central Government, State Government, Union territory or a local authority to any registered person, would be subject to GST on reverse charge basis as per which tax is payable by the recipient of such supplies.
3. A doubt has arisen about taxability of intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by the Central Government, State Government, Union territory or a local authority to an unregistered person.
4. It was noted that such supply to an unregistered person is also a taxable supply under GST but is not covered under notification No. 36/2017-Central Tax (Rate) and notification No. 37/2017- Integrated Tax (Rate) both dated 13.10.2017.
5. In this regard, it is clarified that the respective Government departments (i.e. Central Government, State Government, Union territory or a local authority) shall be liable to get registered and pay GST on intra-State and inter-State supply of used vehicles, seized and confiscated goods, old and used goods, waste and scrap made by them to an unregistered person subject to the provisions of sections 22 and 24 of the CGST Act.

VI. COMPOSITE AND MIXED SUPPLIES [SECTION 8]

Statutory Provisions	
Section 8	Tax liability on composite and mixed supplies

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

ANALYTICAL DISCUSSIONS

- GST is payable on individual goods or services or both at the notified rates. The application of rates poses no problem if the supply is of individual goods or individual services, which is clearly identifiable and such goods or services are subject to a particular rate of tax.
- However, in certain cases, supplies are not such simple and clearly identifiable supplies. Some of the supplies are a combination of goods or combination of services or combination of goods and services both and each individual component of such supplies may attract a different rate of tax.
- In such a case, the rate of tax to be levied on such supplies may be a challenge. It is for a reason, that the GST law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies.
- In order to determine whether the supplies are 'Composite supplies' or 'mixed supplies', one needs to determine whether the supplies are naturally bundled or not naturally bundled in ordinary course of business.

Analysis of Composite Supplies

1. As per Section 2(30) of the CGST Act, Composite supply means a supply made by a taxable person to a recipient and :
 - Comprises two or more taxable supplies of goods or services or both, or any combination thereof.
 - Are naturally bundled and supplied in conjunction with each other, in the ordinary course of business.
 - One of which is a principal supply.
2. This means that in a composite supply, goods or services or both are bundled owing to natural necessities. The elements in a composite supply are dependent on the 'principal supply'.
3. As per Section 2(90) of the CGST Act, Principal Supply means the supply of goods and services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.
4. How to determine the tax liability on composite supplies?

Composite supply comprising of two or more supplies, one of which is principal supply, shall be treated as a supply of such principal supply.

Illustration 19 : Suvarna Manufacturers entered into a contract with XYZ Ltd. for supply of readymade shirts packed in designer boxes at XYZ Ltd.'s outlet. Further, Suvarna Manufacturers would also get them insured during transit. In this case, supply of goods, packing materials, transport & insurance is a composite supply wherein supply of goods is principal supply.

Illustration 20 : 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.

Illustration 21 : A travel ticket from Mumbai to Delhi may include service of food being served on board, free insurance, and the use of airport lounge. In this case, the transport of passenger, constitutes the predominant element of the composite supply, and is treated as the principal supply and all other supplies are ancillary.

5. Works contract and restaurant services are classic examples of composite supplies. However, the GST law identifies both as supply of services and such services are chargeable to specific rate of tax mentioned against such services (works contract and restaurants).
6. How to determine whether the services are bundled in the ordinary course of business?

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

- The perception of the consumer or the service receiver: If large number of service receivers of such bundle of services reasonably expect such services to be provided as package, then such package could be treated as naturally bundled in the ordinary course of business.
- Majority of service providers in a particular area of business provide similar bundle of services: For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.
- The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. If the nature of services is such that one of the services is the main service and the other service is combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of main service.

Illustration 22 : Service of stay in hotel is often combined with a restaurant service. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in ordinary course of business.

- Other Illustrative indicators, not determinative but indicative of bundling of services in the ordinary course of business are:
 - There is a single price or the customer pays the same amount, no matter how much package they actually receive or use.
 - The elements are normally advertised as a package.
 - The different elements are not available separately.
 - The different elements are integral to one overall supply. If one or more is removed, the nature of supply would be affected.
- No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above. The above principles explained in the light of what constitutes a naturally bundled service can be gainfully adopted to determine whether a particular supply constitutes a composite supply under GST and is so what constitutes the principal supply so as to determine the right classification and rate of tax of such composite supply.

Analysis of Mixed Supplies

1. As per Sec. 2(74) of the CGST Act, Mixed supply means:

- two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person;
 - for a single price where such supply does not constitute a composite supply.
2. The individual supplies are independent of each other and are not naturally bundled.
 3. How to determine if a particular supply is a mixed supply?
 - In order to identify if the particular supply is a mixed supply, the first requisite is to rule out that the supply is a composite supply.
 - A supply can be a mixed supply only if it is not a composite supply. As a corollary it can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business, then, it would be a mixed supply.
 - Once the amenability of the transaction as a composite supply is ruled out, it would be a mixed supply, classified in terms of supply of goods or services attracting highest rate of tax.
 4. How to determine the tax liability on mixed supplies?

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

Illustration 23 : A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.

Illustration 24 : 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.

Illustration 25 : Agrawal Carriers is a Goods Transport Agency (GTA) engaged in transportation of goods by road. As per general business practice, Agrawal Carriers also provides intermediary and ancillary services like loading/unloading, packing/ unpacking, transshipment and temporary warehousing, in relation to transportation of goods by road.

With reference to the provisions of GST law, analyse whether such services are to be treated as part of the GTA service, being a composite supply, or as separate supplies.

[MTP, May 2018], [CA Final (old) Nov.2018 – Q.1(b)– 5 Marks]

Solution : Composite supply 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 the ordinary course of business, one of which is a principal supply [Section 2(30) of the CGST Act].

The GTA provides various intermediary and ancillary services, such as, loading/unloading, packing/unpacking, transshipment and temporary warehousing, which are provided in the course of transport of goods by road. These services are not provided as independent services but as ancillary to the principal service, namely, transportation of goods by road. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services.

In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service, being a composite supply, and would not be treated as a separate supply. However, if such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies.

Illustration 26 : Whether retreading of tyres is a supply of goods or services?

Solution : Retreading of tyres is a composite supply, in which the pre-dominant element is the process of retreading which is a supply of service. Further, rubber used for retreading is just an ancillary supply. Which part of a composite supply is the principal supply, must be determined keeping in view the nature of the supply involved. Value may be one of the guiding factors in this determination, but not the sole factor. The primary question that should be asked is what is the essential nature of the composite supply and which element of the supply imparts that essential nature to the composite supply. Since, in retreading of tyres, pre-dominant element is the supply of service of processing of retreading, therefore, retreading of tyres is a supply of services. [Circular No. 34/8/2018 – GST, dated 01.03.2018]

Illustration 27 : Whether supply of retreaded tyres is a supply of goods or services?

Solution : Where owner of the retreaded tyre sells the retreaded tyres, then, it is a supply of goods (i.e. retreaded tyres) [Circular No. 34/8/2018 – GST, dated 01.03.2018].

Illustration 28 : Whether activity of bus body building, is a supply of goods or services?

Solution : In the case of bus body building, there is supply of goods as well as services. This is composite supply of goods and services. The principal supply in this case is "Supply of Service", as per explanation added in NN. 11/2017 – C.T. (R), by NN. 26/2019 – C.T. (R), dated 22.11.2019. [~~Circular No. 34/8/2018 – GST, dated 01.03.2018~~]

Illustration 29 : [Taxability of Printing Contracts]

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

Solution : In the above context, it is clarified that the above mentioned supplies are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

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.

In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service.

In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc., printed with design, logo, etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, 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 and therefore such supplies would constitute supply of goods. [Circular No. 11/11/2017 – GST dated 20.10.2017]

Illustration 30 : "Diligent Force" a professional training institute gets its training material of "Aptitude Quotient" printed from "Durga printing House" a printing press. The content of the material is provided by the Diligent Force who owns the usage rights of the same while the physical inputs including paper used for printing belong to the Durga Printing House.

Ascertain whether supply of training material by the Durga Printing House constitutes supply of goods or supply of services.

(RTP – Nov. 19; Q.19)

Solution : Circular No. 11/11/2017 GST dated 20.10.2017 has clarified that supply of books printed with contents supplied by the recipient of such printed goods, is composite supply and the question, 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.

In the case of printing of books where content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore, such supplies would constitute supply of service.

Thus, in view of the above-mentioned provisions, the supply of training material by the Durga Printing House would constitute supply of services.

Illustration 31 : Whether supply in the situations listed below shall be treated as a supply of goods or supply of service:

- (i) 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]
- (ii) The books are printed/ published/ sold against a specific brand name. [e.g. Manorama Year Book]
- (iii) 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)].

Solution : 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. [Circular No. 27/01/2018 – GST dated 04.01.2018]

Illustration 32 : 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?

Solution : 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. [Circular No. 47/21/2018 – GST, dated 08.06.2018]

Illustration 33 : Whether GST will be levied on the admission charge or entry fee charged for admission into casino?

Solution : Yes, it is a supply of service. Hence, it is chargeable to GST. Further, it is chargeable under the service Heading 9996 (Recreational, cultural and sporting services) @ 28% on the amount charged for entry/admission. [Circular No. 27/01/ 2018 – GST, dated 04.01.2018]

Note: Service heading and rate of tax is not relevant for examination purpose.

Illustration 34 : Whether GST will be levied on betting / gambling services being provided by casinos?

Solution : Yes, it is a supply of service. Hence, it is chargeable to GST. Further, Gambling is specified as a separate service under the service Heading 9996 (Recreational, cultural and sporting services) chargeable to GST @ 28%. [Circular No. 27/01/ 2018 – GST, dated 04.01.2018]

Note: Service heading and rate of tax is not relevant for examination purpose.

Illustration 35 : On which amount GST will be levied on betting/gambling services being provided by casinos?

Solution : GST is leviable at 28% on the transaction value of betting/gambling, i.e. the total bet value. For example, If entire bet value is Rs. 100, GST leviable will be Rs. 28/-.

Further, in pre-GST regime also, Betting was subjected to betting tax on full bet value. [Circular No. 27/01/2018 – GST, dated 04.01.2018]

Illustration 35 : Whether GST will be levied on horse racing?

Solution : Yes, it is a supply of service. Hence, it is chargeable to GST. Further, “Services provided by a race club by way of totalisator or a license to bookmaker in such club” is specified as a separate service under the service Heading 9996 (Recreational, cultural and sporting services) chargeable to GST @ 28%. [Circular No. 27/01/2018 – GST, dated 04.01.2018]

Note: Service heading and rate of tax is not relevant for examination purpose.

Illustration 36 : On which amount GST will be levied on betting in horse racing?

Solution : GST is leviable at 28% on the transaction value of betting, i.e. the total bet value i.e. total of face value of any or all bets paid into the totalisator or placed with licensed book makers, as the case may be.

For example, If entire bet value is Rs. 100, GST leviable will be Rs. 28/- . [Circular No. 27/01/2018 – GST, dated 04.01.2018]

“Baccha Kabil Bano, Kabil...
Kamyabi Toh Saali Jhak
Maarke Peeche Bhagegi”