



CONCEPTUAL LEARNING ON

# INDIRECT TAX LAWS

FOR CA, CS, CMA FINAL & PROFESSIONALS

**VOL. 1**



## SPECIAL FEATURES OF THIS BOOK

- Every topic with its complete analysis and interpretation
- Easy understandability through soft language
- Solved analytical illustrations as per current amended law
- 100% coverage with conceptual clarity

**CA. YASHVANT MANGAL**



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# LEVY OF GST

## CHAPTER 01

**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.)

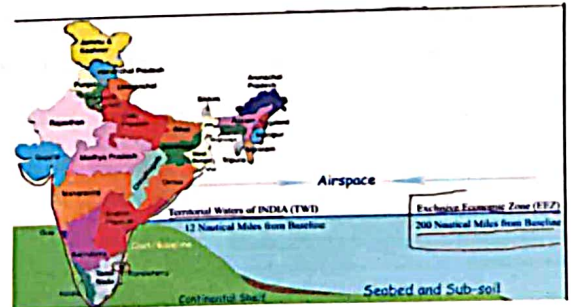
### Extent of CGST Act / SGST Act / UTGST Act/ IGST Act (Section 1)

Applicability	CGST	SGST	UTGST	IGST
	Intra-State supply			Inter-State supply
All States of India	✓	✓		✓
Union Territories with Legislature (Delhi, Puducherry and Jammu & Kashmir)	✓	✓		✓
Union Territories without Legislature (UT) (a) the Andaman and Nicobar Islands; (b) Lakshadweep; (c) Dadra and Nagar Haveli and Daman and Diu; (d) Ladakh; (e) Chandigarh; and (f) Other territory.	✓		✓	✓

### Definition of India [Sec. 2(56) of CGST Act, 2017] :

"India" means


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



- the air space above its territory and territorial waters.

**Commencement of Acts** - 01.07.2017 (J & K - 08.07.2017)

**Levy and collection of CGST / IGST**

Particulars	CGST [SEC. 9(1)] of CGST Act, 2017	IGST [SEC. 5(1)] of IGST Act, 2017
Levied on	Intra State supplies of goods/services/both	Inter State supplies of goods/services/both
Goods not leviable to GST	Alcoholic liquor for human consumption	
Value for levy	value u/s 15 of the CGST Act	
Rates	Rates as notified by Government Maximum rate of CGST can be 20%	IGST rate= CGST rate + SGST rate Maximum rate of IGST can be 40%
Collected and paid by	Taxable person ["Taxable Person" means a person who is registered or liable to be registered u/s 22 or 24]	
5 Supplies on which tax would be levied w.e.f. a notified date [Sec. 9(2)/5(2)] [Which is not yet notified]	<ul style="list-style-type: none"> <li>➤ petroleum crude</li> <li>➤ high speed diesel</li> <li>➤ motor spirit (commonly known as petrol)</li> <li>➤ natural gas and</li> <li>➤ aviation turbine fuel</li> </ul>	
Tax payable under reverse charge mechanism (RCM) by recipient of supply	<ul style="list-style-type: none"> <li>➤ Supply of goods or services or both, notified by the Government. [Sec. 9(3)/5(3)]</li> <li>➤ Supply of specified categories of goods or services or both by an unregistered supplier to specified class of registered persons. [Sec. 9(4)/5(4)]</li> <li>➤ All the provisions of the act shall apply to such recipient as if he is the person liable for paying the tax.</li> </ul>	
Tax payable by the electronic commerce operator (ECO) [Sec. 9(5)/5(5)]	The Government may notify categories of services, the tax on supplies of which shall be paid by ECO as if such services are supplied through it and all the provisions of the act shall apply to such ECO as if ECO is the supplier liable for paying the tax. [Eg. Uber, Ola, Swiggy, etc.]	

GHUM LO OR JHUM LO...



**Person liable to pay tax :**

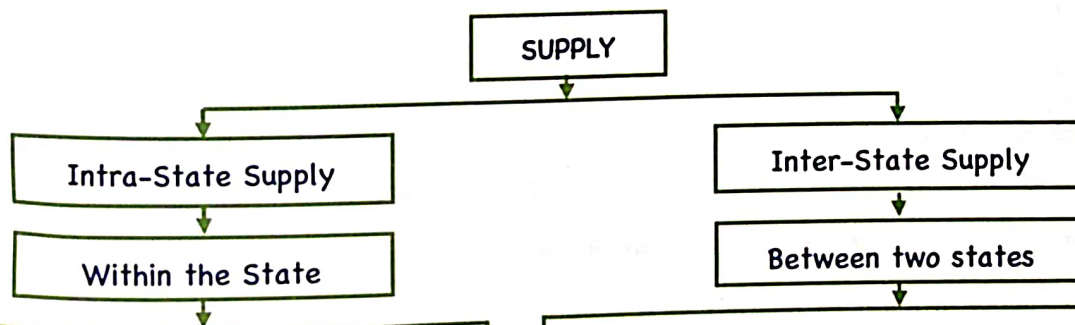
Forward Charge Sec. 9(1) / 5(1)	Supplier of Goods/Service
Reverse Charge Sec. 9(3) / 9(4) / 5(3) / 5(4)	Recipient of Goods/Service
E- Commerce Sec. 9(5) / 5(5)	ECO

**Goods or Services imported in India:**

- Import of goods or services are treated as inter-state supplies as per provisions of IGST Act, 2017.
- On import of goods, IGST is levied alongwith Customs duty. But, on import of services, only IGST is levied.
- On the goods imported into India (other than "online money gaming"), IGST shall be levied and collected (as additional duty of customs in addition to basic customs duty) and the value shall also be determined as per the Customs Laws.
- Further, under GST, "online money gaming" is treated as goods on import of which only IGST is levied but Customs duty is not levied.

**Central / State Levies to be Levied after introduction of GST**

Goods	(Supply)	(Manufacture)	(Sale)	
	GST	ED	VAT	GST
Alcoholic Liquor for human consumption	×	✓	✓	✓
Petroleum crude, High speed diesel, Motor spirit (Petrol), Natural gas, Aviation Turbine fuel	×	✓	✓	✓
Tobacco & Tobacco products	✓	✓	×	×
Opium, Indian Hemp and other Narcotic Drugs	✓	✓	×	×
All other Goods & Services	✓	×	×	×

**TAXABLE EVENT UNDER GST = SUPPLY [SECTION 7]****सीधी बात...Supply होगा तो GST लगेगा...NO SUPPLY NO GST**

Where the location of the supplier and the place of supply of goods or services are in the same State/Union territory, it is treated as intra-state supply of goods or services respectively.

Where the location of the supplier and the place of supply of goods or services are in (i) two different states or (ii) two different Union Territories or (iii) a State and a Union territory, it is treated as inter-state supply of goods or services respectively.

### Statutory Provisions

Sec. 7	Meaning and Scope of Supply	
(1)	Supply includes (सिर्फ "तुम ही हो" नहीं... "तुम भी हो" ...)-	
(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;	
(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.	
(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.	
(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 [Section 7(1)(a)]	Activities to be treated as	Negative list of services

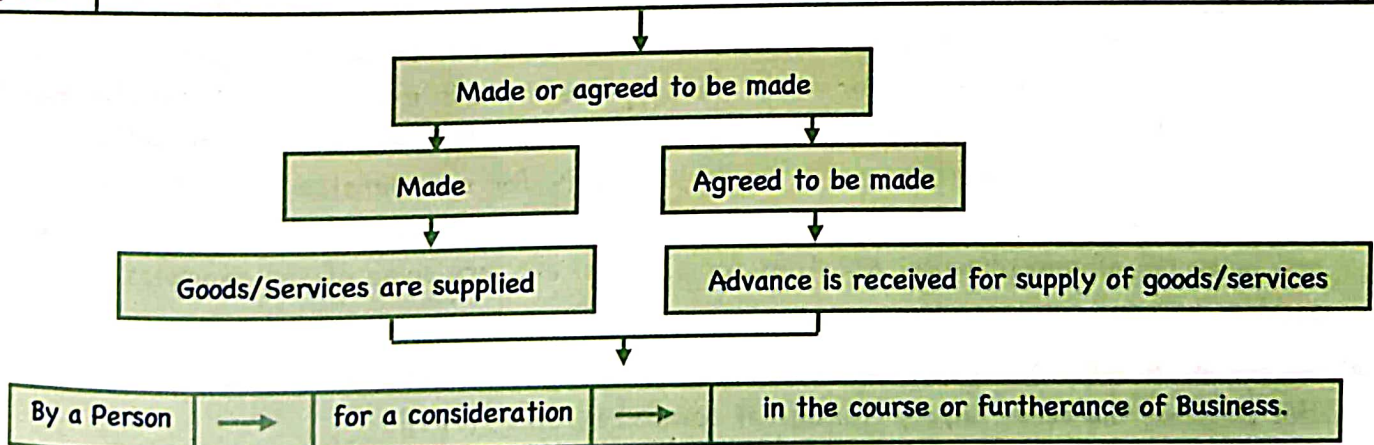
2	Activities or transactions, by AOP/BOI/Club etc. to its members or constituents or vice-versa [Section 7(1)(aa)]	supply of goods or supply of services [Section 7(1A)+ Schedule II]	[Section 7(2) + Schedule III]
3	Importation of services for consideration whether or not in course or furtherance of business [Section 7(1)(b)]		
4	Supply without consideration [Section 7(1)(c) + Schedule I]		

**ANALYTICAL DISCUSSIONS**

**ANALYSIS OF SEC. 7(1)(a)**

Supply Includes All forms of supply of goods or services or both such as

Sale	A laptop dealer sells laptop to XYZ
Transfer	A branch transfers goods to another branch
Barter	Mr. XYZ exchanges his laptop with Mr. PQR's camera without cash exchange between the two parties
Exchange	A laptop dealer sells new laptop for Rs. 40,000 along with an exchange of old laptop [Price of new laptop without exchange is Rs. 50,000]
License	A developer (license holder) of information technology software gives license to use the software to his various clients
Rental	Bike is given on rent
Lease	A machinery is given on finance lease or operating lease
Disposal	Sale of Old machineries after expiry of its useful life






Following are the essential ingredients for any transaction to be considered as "Supply" as per Sec. 7(1)(a):

- (i) Supply should be of goods or services. Supply of anything other than goods or services like money, securities etc. does not attract GST.
- (ii) Supply should be made for a consideration.
- (iii) Supply should be made in the course or furtherance of business.



2. 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

DEFINITIONS		
	Goods [Sec. 2(52)]	Services [Sec. 2(102)]
Means	Every kind of movable property 	Anything other than goods 
Excludes	Money and securities 	
Includes	(i) actionable claim (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.	Activities relating to : (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

### 3. Analysis of the term "Consideration":

- (i) To be taxable, a supply should be carried out by a person for a 'consideration'.
- (ii) Consideration does not always mean money. It covers anything which may be in money or may be in kind.
- (iii) 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.
- (iv) 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)].
- (v) There should be a direct link between supply and consideration, and not only a casual link.
- (vi) 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)].
- (vii) Condition in a grant stipulating merely proper usage of funds & furnishing of account will not result in making it a supply of service.

(viii) 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.

(ix) 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]

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, then, it can be said that **there is no supply** of service for a consideration (in the form of donation) and hence, donation will **not be chargeable to GST**.

पुण्य का काम पुण्य के लिए किया तो NO GST

Example : "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

But, if **institution is under an obligation for display of name** which 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**.

पुण्य का काम Publicity के लिए किया तो GST लगेगा

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.

Example : Deepika padukone buys jewellery for her personal use and after a few years, sells it to a jeweller. Sale of jewellery by Deepika padukone to jeweller is not a supply under CGST Act because supply is not made by Deepika padukone in the course or furtherance of business. But if the same jewellery is supplied by jeweller to any buyer, then it will be covered under the term "supply" because it is made by the jeweller in the course or furtherance of his business.

Example : Mr. Darshan sells a car of his personal use to a any person. Sale of car by Mr. Darshan to any person is not a supply under CGST Act because this supply is not made in the course or furtherance of business. But, in the same case, if Mr. Darshan sells a car which he is been using in his business (as a business asset) to any person, then, it will be covered under the term "supply", although selling car is not his business, but, it will be deemed that this sale is made in the course or furtherance of his business.

(ii) 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 transactions is a supply under GST.

Example : 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. Further, donating the