

Introduction and Coverage

It will not be an overstatement that Goods and Services Tax ('GST') is a biggest tax reform till date in India, which has changed the entire system of indirect tax administration across the length and breadth of the country.

Introduction of GST has changed the way the indirect taxes were levied, way of their administration, the dispute resolution mechanism between various stakeholders viz. States, Central Government or assessees, credit mechanism, etc.

In this chapter, it is endeavoured to give a perspective on broad structure of GST as to how it is levied. Since, GST is levied at both Central and State level another pertinent question related to how GST proceeds are shared between Centre and the State?

While the answer to first question will help a person in understanding the nuances of taxes in terms of chargeability, tax payments, return filings and other provisions. The answer to other question though will not affect the routine day-to-day work of an assessee, but will give an insight to understand the GST holistically.

In this background, we now proceed to examine the process of evolution of structure of GST.

1.1 Evolution of GST Structure

Initially there was a debate about the basic model of GST. Three different kinds of GST were suggested as follows:—

1. Central Government to levy all taxes and then share with State in agreed ratio;
2. State Government to levy all taxes and then share with Centre in agreed ratio;
3. Lastly both Centre and State levy GST on all transactions.

As India has a federal structure, the first two models were perceived by the respective Governments, both Centre and State Governments as encroachment on their respective turfs. Accordingly, the third model was preferred wherein both the Governments will be eligible to levy GST on all transactions. In line with above both First Discussion Paper and 13th Finance Commission recommended following:—

- GST to have two components: State GST ('SGST') and Centre GST ('CGST');
- SGST and CGST will be levied concurrently by State Government and Central Government respectively;
- Both CGST and SGST will be levied on the common base.

Another important issue relates as to whether GST will be based on gross income, net income or consumption basis. Since, the consumption basis taxes the retail sales price, the 13th Finance Commission recommended to adopt the consumption based taxation wherein there is no distinction between goods and services and also between raw material and capital goods insofar as credit is concerned. Lastly, whether GST should be origin based or destination based, the 13th Finance Commission recommended GST to be destination based consumption tax which will: (i) eliminate all origin based taxes; (ii) subsume all the other presently levied indirect taxes on goods and services (excluding customs) and (iii) will not be exported across tax jurisdictions.

On the basis of above and further deliberations, the broad features of GST are as follows:–

- GST is dual levy wherein both Centre and State levy GST on same transaction;
- GST is a consumption based tax; and
- GST is a destination based tax, i.e., it will be the consuming State which will get the GST in an inter-State transaction.

1.2 Method for Computation of GST—General Concept

13th Finance Commission discussed the two methods for calculation of GST: one the subtraction method and second the credit method. The credit method is more transparent since the VAT amount for each transaction is required to be depicted on the underlying invoice. Accordingly, 13th Finance Commission recommended to adopt the credit methodology wherein:

- Computation of CGST and SGST will be based on invoice credit method, i.e., allow credit for tax paid on all intermediate goods or services on the basis of invoices issued by the suppliers and hence proving to be passed through;
- CGST and SGST are to be credited to the accounts of Centre and States separately;
- Credit of CGST and SGST should be utilised only against CGST and SGST respectively;
- Cross utilisation of input credit between CGST and SGST should not be allowed.

Having ascertained the general features of GST, we now proceed to examine the basic features of GST on inter-State supplies of goods or services.

1.3 GST on Inter-State supplies

Under the erstwhile system of levying taxes on sales of goods, Central Sales Tax (CST) was levied by the Central Government on sales of goods on inter-State sales basis. CST though was levied under Central Sales Tax Act, 1956, it was administered by the State Government from where the movement of goods commenced. The CST so collected was assigned to the originating State Government collecting the tax from the dealer. The rate of CST had been decreased on phased manner from 4% to 2%. It was earlier planned to completely phase out CST, however, the rate was not reduced further on account of revenue implications.

CST constituted a distorting factor in the inter-State trade and commerce, since the purchasing dealer was not able to get the credit of CST paid by it on inter-State purchases. The 13th Finance Commission mentioned various models considered by a Working Group as formulated by the Empowered Committee of State Finance Ministers for treatment of inter-State transactions:

- Bank model;
- TDS model;
- SGST authority model;
- CGST authority model;
- TINXSYS model;
- TINXSYS with reverse charge model;
- Full de-mat model;
- Inter-State de-mat model; and
- IGST model.

The 13th Finance Commission preferred the bank model with some modifications having the major features as follows:–

- The seller in the origin State will collect the SGST from the buyer in the destination State;
- The seller will issue the invoice containing the prescribed details to buyer;
- The seller will utilise the input SGST credit against both intra-State and inter-State transactions. Seller will pay the SGST on the inter- State sales basis to the credit of the destination State;
- The buyer in the destination State will avail the credit of SGST so paid by it to the seller.

On the other hand, the Discussion Paper advocated of IGST model with following characteristics:–

- Centre will collect IGST (CGST + SGST) from the seller;
- Seller will issue the invoice to buyer by mentioning the IGST amount on the invoice;
- The buyer can utilise the IGST towards output GST payment in prescribed manner;

- The selling State will transfer the amount equivalent to SGST credit used for payment of IGST to the Centre;
- Centre will transfer to the buying State the amount equivalent to IGST credit used for payment of SGST in the buying State.

The Discussion Paper provided the following benefits in relation to IGST model:-

- Maintenance of uninterrupted ITC chain on inter-State transactions.
- No upfront payment of tax or substantial blockage of funds for the inter-State seller or buyer.
- No refund claim in exporting State, as ITC is used up while paying the tax.
- Self-monitoring model.
- Level of computerization is limited to inter-State dealers and Central and State Governments should be able to computerize their processes expeditiously.
- As all inter-State dealers will be e-registered and correspondence with them will be by e-mail, the compliance level will improve substantially.
- Model can take 'Business to Business' as well as 'Business to Consumer' transactions into account.

On comparing the above two approaches vis-à-vis the existing model, the following emerges:-

Particulars	Earlier system of taxing inter-State sales	IGST model	Bank model
Liability to pay tax on inter-State sales	Seller	Seller/recipient in case of reverse charge	Seller
Tax to be paid to multiple authorities or one authority	To State Government from where the movement starts	To State Government as per the Place of Supply Rules	To multiple State Governments in whose States the Goods are sold
Assessing Authority	State from which the movement commenced	CG and respective SG/UG	NA
Adjustment between Centre and State	Not required since revenue assigned to State	Assessee not concerned. To be taken care of by Centre and State	Assessee to ensure appropriate tax to be paid to each State Government
Credit of CST/ IGST	Not available	Available	Available
Place of supply for inter-State sales	State from where movement of goods commenced	As prescribed	NA

Thus, the IGST model is nearer to existing model and hence will require modest changes by the trade in the manner in which it conducts its business presently.

1.4 How IGST Model Works?

In accordance with the recommendations in Discussion Paper, the Government in the Constitution 101st Amendment Act, 2016 has provided appropriate provisions for levying and apportioning the IGST. We provide below the relevant text of the Amendment Act in this respect:

“269A. Levy and collection of goods and services tax in course of inter-State trade or commerce

(1) Goods and services tax on supplies in the course of inter-State trade or commerce shall be levied and collected by the Government of India and such tax shall be apportioned between the Union and the States in the manner as may be provided by Parliament by law on the recommendations of the Goods and Services Tax Council.

Explanation: For the purposes of this clause, supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce.

(2) The amount apportioned to a State under clause (1) shall not form part of the Consolidated Fund of India.

(3) Where an amount collected as tax levied under clause (1) has been used for payment of the tax levied by a State under article 246A, such amount shall not form part of the Consolidated Fund of India.

(4) Where an amount collected as tax levied by a State under article 246A has been used for payment of the tax levied under clause (1), such amount shall not form part of the Consolidated Fund of the State.

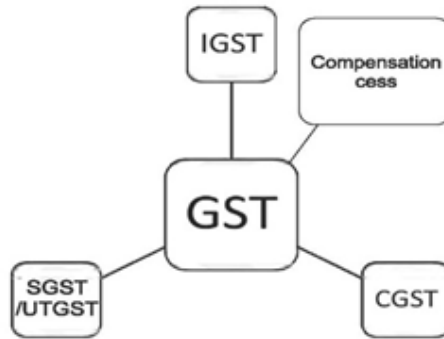
(5) Parliament may, by law, formulate the principles for determining the place of supply, and when a supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.”

Some of the salient features of the above changes are as follows:–

- Central Government will levy the GST on supplies in the course of inter-State trade or commerce;
- For the purposes of levying GST, the imports of goods or services or both will be treated as supplies in the course of inter-State trade or commerce. In other words, on the imports also, the Central Government will levy GST;
- The GST so collected will be apportioned between the State and the Centre in accordance with the law as framed by Parliament on recommendations of GST Council;
- Parliament will frame the principles for determining the place of supply rules for goods and/or services for supplies in the course of inter-State trade or commerce;
- Parliament will also frame the principles for determining the time of supply rules for goods and/or services for supplies in the course of inter-State trade or commerce.

From the above it is apparent that the Amendment Act has made appropriate provisions in the Constitution empowering the Centre to levy IGST on inter-State supplies and imports. The modalities of appropriation between States and Centre have been formulated by Parliament on the recommendations of GST Council.

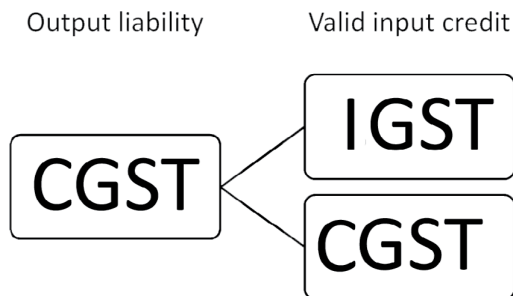
Components of GST



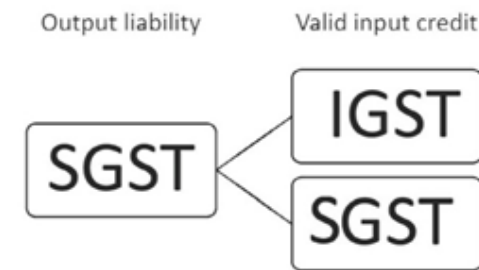
1.5 Flow of credits under GST

As discussed in the earlier paragraphs of this Chapter that the 13th Finance Commission suggested for adoption of credit methodology for calculation of output GST liability. Discussion Paper had recommended similarly on the credit methodology. The scenario can be better depicted pictorially as follows:—

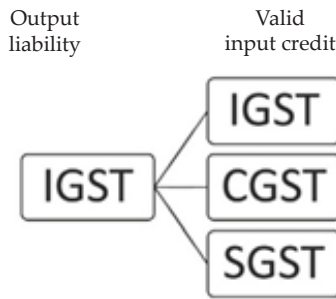
Credit Utilisations



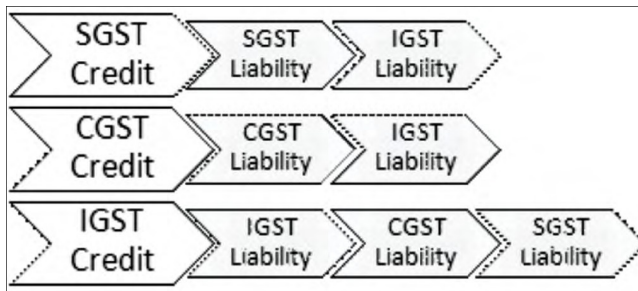
Output CGST liability cannot be paid by utilising the input SGST credit



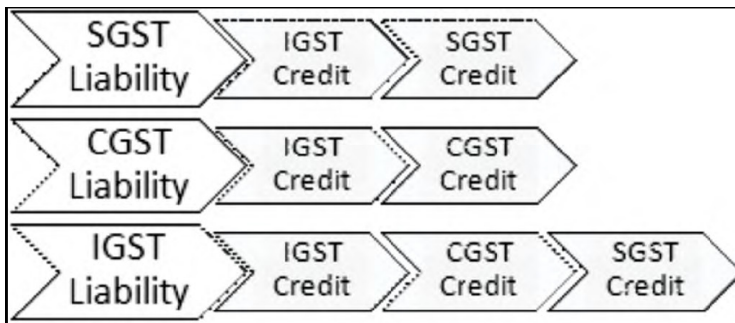
Output SGST liability cannot be paid by utilising the input CGST credit



Output IGST liability can be paid by utilising any of the GST components. Also the following hierarchy needs to be maintained for utilisation of input taxes for discharging output liability:-



Also, w.e.f. 01.02.2019 vide CGST Amendment Act, 2018, the order for credit utilisation will be as follows where liability under the respective head will be paid by utilising the credit in said order:-



In other words, first exhaust IGST credit for payment of all tax liabilities.

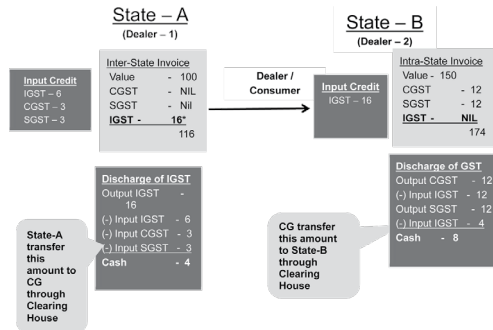
Further, the Compensation cess credit can be used for compensation liability only.

In a nut shell, the following tables need to be remembered for GST payment by credit:

Credit Type	Order of Utilisation for Output Liability of		
IGST	IGST	Remaining credit of IGST can be utilised against either CGST or SGST at the option of an assessee	
CGST (only after exhaustion of IGST Credit as above)	CGST	IGST	NA
SGST (only after exhaustion of IGST Credit as above)	SGST	IGST	NA

1.6 Sharing of GST between Centre and the State

As noted earlier the Constitution (One Hundred and First) Amendment Act, 2016 has provided for levy of IGST by the Central Government with appropriate apportionment between Centre and the State. Following is the methodology to be adopted for such apportionment:-



It may be noted that both CGST and IGST will be collected by the Central Government. Since, the GST is a destination based tax, i.e., the destination State will get the GST, the only adjustment to take place between Central Government and State Government will be the SGST credits and IGST credit utilised for discharging IGST and SGST output liability respectively.

Another important feature of IGST concept is that such an adjustment between Centre and the State will not impact the assessee. Like the existing scenario of inter-State sales on payment of CST, under IGST Scenario also assessee will interface only with the Central Government. Thus, assessee will not be much impacted by the IGST concept.

1.7 Earlier Tax structure and GST – A Comparison

Following tables provide the difference between the earlier tax structure and proposed GST in terms of taxing events and credits:-

Taxes

Earlier Scenario	Taxable Event	Tax Liability
	Manufacture of Goods	Excise Duty – on removal of Goods
	Sale of Goods	CST/VAT

GST Scenario	Taxable Event	Tax Liability
	Provision of Services	Service Tax – on provision of services and in case of associated entity on making a book entry of the transaction
	Supply of Goods	GST
	Supply of Services	GST

Credits

Earlier Scenario	Credit of	Can be Utilized Against	Cannot be Utilized Against
	Excise Duty	Excise Duty, Service Tax	VAT & CST
	Service Tax	Service Tax, Excise Duty	VAT & CST
	Central Sales Tax (CST)	None	Excise Duty, Service Tax, CST, VAT
	VAT	VAT, CST	Excise Duty, Service Tax

GST Scenario	Credit of	Can be Utilized Against	Cannot be Utilized Against
	CGST	CGST, IGST (in the same order)	SGST
	SGST	SGST, IGST (in the same order)	CGST
	IGST	IGST, CGST, SGST (in the same order)	None

1.8 Framework of GST Laws

Keeping in view the positive impact of GST on the Indian economy, the Government has levied the GST from 1st July, 2017. In this direction, the Government has enacted a few laws which will together form the GST Framework:

- The Central Goods and Services Tax Act, 2017 ('CGST Act');
- The Integrated Goods and Services Tax Act, 2017 ('IGST Act');
- The Goods and Services Tax (Compensation to States) Act, 2017 ('Compensation Act');
- The Union Territory Goods and Services Tax Act, 2017 ('UTGST Act').

Additionally, the GST framework will include the GST laws framed and enacted by the respective State Governments. Thus, the GST framework can be depicted pictorially as follows:-



Government has issued CGST Rules, 2017 vide Notification No. 3/2017/CT, dated 19.06.2017.

CBIC has adopted the CGST Rules vide Notification No. 4/2017-Integrated Tax, dated 28.06.2017 and named then IGST Rules, 2017.

Similarly vide Notification No. 2/2017-Compensation Cess, dated 01.07.2017, Government has issued Compensation Cess Rules, 2017 by adopting CGST Rules, 2017 with some requisite modifications.

1.9 Coverage of CGST Act

1.9.1 Coverage under GST

Introduction of GST necessitated Constitutional amendment in view of the earlier scheme of law wherein both Centre and State levy taxes in their respective domain. 101st Constitution Amendment Act defines the goods and services tax as tax on supply of goods and services other than liquor for human consumption.

One striking feature emanating from the above definition is that the imposition of GST has become independent of Lists as defined under the Schedules to the Constitution of India. Simultaneously, it is interesting to note that:

- Entry 54 of the List II has been substituted so that crude oil, diesel, Petrol, etc. remain in list of items on which States can levy sales tax;
- Entry 38 relating to electricity has not been deleted.

As we are aware and amply clarified by CBIC through frequently asked questions that presently the specified petroleum products will not be subjected to GST but later on GST Council can decide on the inclusion of such products under GST. In other words, though the Constitution has given power to the States and Centre to levy GST on specified petroleum products but for the time being these products will remain outside the ambit of GST and will be subjected to sales tax.

Whether GST can be imposed on electricity?

Continuing the above discussion in respect of electricity it can be argued that similar conclusions can be reached for applicability of GST on electricity as well. The High Courts in various cases have held that electricity is goods. Since, GST is applicable on supply of goods or services, it can be argued that the Government is empowered to levy GST on supply of electricity.

However, the Government in frequently asked questions have clarified that electricity has been kept outside the scope of GST.

1.9.2 Territorial Coverage of Act

The question of nexus of a tax with the territory on which it is applicable is always a question of debate. In the matter of *GVK Ind Ltd. v. ITO*, 2017 (048) STR 0177 SC, the SC held that though Article 245 of the Constitution of India does confer power upon Government to enact the laws which have extra territorial application, the power can be applied only if India has some nexus with the activity. The Supreme Court held that:

“For the aforesaid reasons we are unable to agree that Parliament, on account of an alleged absolute legislative sovereignty being vested in it, should be deemed to have the powers to enact any and all legislation, *de hors* the requirement that the purpose of such legislation be for the benefit of India. The absolute requirement is that all legislation of the Parliament has to be imbued with, and at the core only be filled with, the purpose of effectuating benefits to India. This is not just a matter of the structure of our Constitution; but the very foundation”

Thus, it is of utmost importance that the territorial nexus of any tax with the activity undertaken in India should be amply clarified in the statute.

The preamble to CGST Act provides as follows:-

- (1) *This Act may be called the Central Goods and Services Tax Act, 2017.*
- (2) *It extends to the whole of India [xxx]¹.*
- (3) *It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:*

Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

From the above though it is clear that the CGST Act does not apply to Jammu and Kashmir. However, w.e.f. 08th July, 2017, the CGST Act was extended to Jammu and Kashmir vide the Central Goods and Services Tax (Extension to Jammu and Kashmir) Act, 2017.

The definition of India is as follows:

Section 2(56) “India” means the territory of India as referred to in Article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred

¹ Words “except the State of Jammu and Kashmir” have been deleted w.e.f. 8.7.2017 vide the Central Goods and Services Tax (Extension to Jammu and Kashmir) Act, 2017.

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;

Thus, India will mean:

1. Territory of India as per Article 1 of Constitution;
2. Territorial waters, seabed and sub-soil underlying such territorial waters;
3. Continental shelf (CS) and Exclusive Economic Zone (EEZ) or any other maritime zone;
4. Air space above territory as per Article 1 of Constitution and above territorial waters.

Territory of India as defined under Article 1, clauses (2) & (3) of Constitution of India are as follows:-

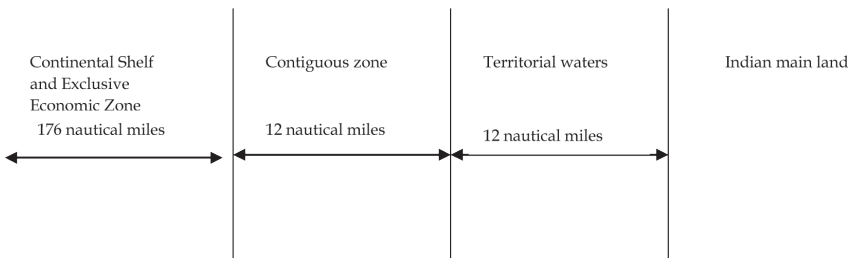
- (1) *India, that is Bharat, shall be a Union of States.*
- (2) *The States and the territories thereof shall be as specified in the First Schedule.*
- (3) *The territory of India shall comprise—*
 - (a) *the territories of the States;*
 - (b) *the Union territories specified in the First Schedule; and*
 - (c) *such other territories as may be acquired.*

'CS' and 'EEZ' as defined under Sections 6(1) & 7(1) of Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976 are as follows:-

"6. (1) The continental shelf of India (hereinafter referred to as the continental shelf) comprises the seabed and subsoil of the submarine areas that extend beyond the limit of its territorial waters throughout the natural prolongation of its land territory to the outer edge of the continental margin or to a distance of two hundred nautical miles from the baseline referred to in sub-section (2) of section 3 where the outer edge of the continental margin does not extend up to that distance.

7. (1) The exclusive economic zone of India (hereinafter referred to as the exclusive economic zone) is an area beyond and adjacent to the territorial waters, and the limit of such zone is two hundred nautical miles from the baseline."

Pictorially it can be depicted as follows:-



A noteworthy exception to above inclusions is the airspace above the CS and EEZ. Although the airspace above the landmass and territorial waters is covered, the airspace above CS and EEZ has not been mentioned.

Also it will not be out of context to mention that the Centre has acquiesced to State demand of acknowledging the territorial waters as the territory of the coastal State or Union Territory. Section 9 of IGST Act, provides in this respect.

1.10 Common Portal and Authentication

One of the important and noteworthy features of GST is the full computerisation. A registered person is mandatorily required to undertake all activities such as tax payment, return filing, registration, computation and settlement of IGST and Eway Bill from a common portal.

Government has notified www.gst.gov.in as the common portal in this respect (Notification No. 4/2017-Central Tax, dated 19.06.2017) Furthermore, w.e.f. 22.06.2017 and vide Notification No. 6/2017-Central Tax, dated 19.06.2017, Government has prescribed the following modes for verification:–

- (i) Aadhaar based Electronic Verification Code ('EVC');
- (ii) EVC generated through net banking login on common portal; and
- (iii) EVC generated on common portal.

It has also been provided that such verification should be undertaken within 2 days of furnishing of information.

1.11 Appointed Day

Section 2(10) of CGST Act defines the term as “date on which the provision of this Act shall come into force”.

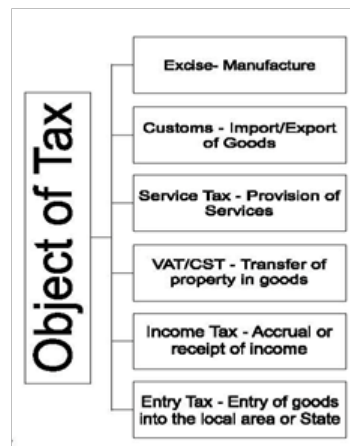
Vide various notifications, Government has prescribed various dates to bring into force different provisions of the CGST Act. In our ensuing discussions, date of 1st July, 2017, as notified by Government will be interpreted as Appointed Day or Appointed Date (used interchangeably).

1.12 Judgments

GST Council Recommendations are not binding on the States and Centre: *UOI v. Mohit Minerals Pvt. Ltd.*, 2022-TIOL-49-SC-GST-LB.

In all tax statutes, Direct or Indirect, the underlying statute provides for the object of tax, i.e., occurrence of which will trigger upon the tax. This may be called the taxable event as well. Some examples in this direction can be:

On similar lines, CGST (in fact all components of GST) will be levied on supply of goods or services or both. The term 'supply' is the fulcrum in entire GST framework. Accordingly, it is important to understand this term both in general parlance and the way it is defined:



Dictionary meanings

Oxford Advanced Learner Dictionary defines the term as *“to provide somebody/ something with something that they need or want, especially in large quantity”*

Cambridge’s Learner Dictionary defines as *“to provide things that people want or need, often over a long period of time”*

Accordingly, a direct inference as to the meaning of term juxtaposed in context of goods or services can be to put in possession of the buyer. The act of putting the goods in possession or providing the services can be treated as supply.

However, the CGST Act has comprehensively defined the term as follows:

2.1 Supply – Section 7

Section 7 of the CGST Act has defined the term ‘supply’ for the entire Act. In other terms wherever the term “supply” appears, the term needs to be understood in accordance with the definition as provided under Section 7.

7. (1) For the purposes of this Act, the expression “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;

¹ [(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) import of services for a consideration whether or not in the course or furtherance of business;² [and]
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration; ³[xxx]

⁴ [xxx]

⁵ [(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 the provisions of ⁶[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.

¹ Inserted by Finance Act, 2021, w.e.f. 01-01-2022 vide Notification No. 39/2021-Central Tax, dt. 21-12-2021.

² Inserted by the CGST (Amdt.) Act, 2018, dt. 30-8-2018, w.r.e.f. 1-7-2017.

³ Word “and” omitted, *ibid*.

⁴ Clause (d) omitted by CGST (Amdt.) Act, 2018 (31 of 2018) hereinafter referred as CGST Amendment Act, 2018, dt. 30.08.2018, w.r.e.f. 01-07-2017. Prior to omission, it read as under: “(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.”

⁵ Inserted, *ibid*.

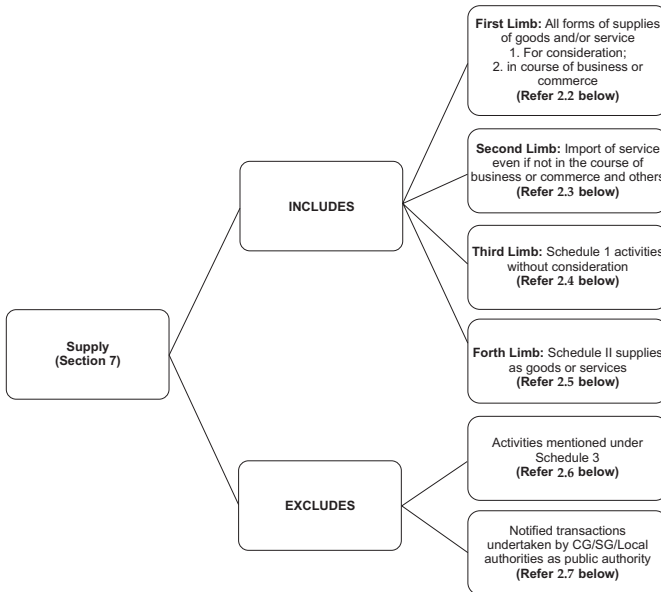
⁶ Substituted for “sub-sections (1) and (2)”, *ibid*.

Although the definition is an inclusive definition, implying an expansive meaning,⁷ unlike other definitions the Government in its wisdom has not provided the terms which can be extrapolated for inclusion. In other words, the 'include part' refers to three clauses (a), (b), (c) and (d) (prior to amendment by CGST Amendment Act, 2018 (31 of 2018), dated 30.08.2018) which are self-contained in themselves without any scope of expansion. The definition could have been a true inclusive definition if the 'include part' refers to the form of supplies as mentioned in clause (a) of the definition.

Thus, if the Courts also consider the above anomaly it can very well read down the provision to straighten out the creases in the statute.

The Government amended the definition of Supply retrospectively w.e.f. 01.07.2017, vide CGST Amendment Act, 2018 (31 of 2018), dated 30.08.2018 and provided that the Schedule II activities will be treated as supply of goods or that of services only when these transactions are supply at the first instance.

The term 'supply' can be defined pictorially as follows:–



2.2 Inclusions

Section 7(1)(a): First Limb of 'supply'

Clause (a) of Section 7(1) provides as follows:–

- (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

7. Doypack Systems Pvt. Ltd., 1988 (36) E.L.T. 201 (S.C.), Ramala Sahkari Chini Mills Ltd. v. CCE, 2016 (334) ELT 3 (SC).

The clause is analysed as follows:-

Particulars	Remarks
Whether term 'supply' is defined in clear term?	No, there is no categorical meaning of supply. But under the first limb it has been defined illustratively.
Whether the limb is limited to said item or will include other items as well?	By using the term 'such as' ⁸ , the term will include many more similar transactions. <i>"Expressions such as "arising out of" or "in respect of" or "in connection with" or "in relation to" or "in consequence of" or "concerning" or "relating to" the contract are of the widest amplitude and content and include even questions as to the existence validity and effect (scope) of the arbitration agreement."</i> ⁹
How will the other items be determinable?	Other items that can be included in the definition needs to be determined in accordance with the principle of <i>ejusdem generis</i> ¹⁰ . Since, the specific items are preceded by the general term 'supply', similar transactions resulting in putting in possession of something by somebody will be includible. E.g., hire purchase transactions, transfer of right to use goods will be includible.
What are the specified items?	Sale, transfer, barter, exchange, licence, rental, lease or disposal of goods or services or both. We will analyse meaning of these terms later on in this Chapter.
Whether consideration is necessary to constitute supply?	Yes, Link between the forms of supply and the associated consideration is necessary. This term was already there under negative list regime of service tax and will advert to this later on in this chapter.
What is the definition of the term "consideration"?	Term 'consideration' is defined under Section 2(31) of CGST Act. We will analyse this definition subsequently in this Chapter.
What is the significance of the term 'made or agreed to be made'.	It may be worth-while to note that Central Excise and VAT/ CST were not payable on receipt of advance, i.e., till the time the goods are not manufactured and removed or sold, duty or taxes were not payable respectively. Though one definite reason of inclusion is levying GST on receipt of advances, we will discuss the concept later on based on similar terms as existed under Service Tax.
Whether existence of two persons is required to constitute supply?	The first limb is conspicuous with the absence of phrase 'by one person to another' as was there in VAT/CST/Service Tax. It is worthwhile to note that Section 25 of CGST Act, 2017 treats the branches (registered in respective State) of a legal entity as separate persons. Accordingly, it may be inferred that though not mentioned specifically, existence of two persons is necessary for tax imposition. These persons may be separate persons owing to legal fiction (e.g., Section 25 as mentioned above) or otherwise.

⁸ Deepak Agro Solution Ltd., 2008 (227) ELT 0052 (SC).

⁹ Power Co. Ltd. v. General Electric Company and Anr. (1984) 4 SCC 679.

¹⁰ Kartos International, 2011 (268) ELT 289 (SC); Collector of Central Excise, Bombay v. Maharashtra Fur Fabrics Ltd., (2002) 7 SCC 444; Asstt. Collector of C. Ex. v. Ramdev Tobacco Company, 1991 (51) ELT 631 (SC).

Whether goods or services or both should be supplied in the course or furtherance of business?	As far as first limb is concerned it is of paramount importance that the supplies are made in the course or furtherance of business or commerce. The term 'business' has been defined under CGST Act, which will be analysed later on in the Chapter.
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2.2.1 Meaning of the specified transactions

Sale or Transfer: Since GST is essentially a tax on goods and services, the term 'sale' or "transfer" needs to be understood in light of Sale of Goods Act, 1930. As per Section 4 of the Sale of Goods Act, 1930, the essential attributes of sales are as follows:-

- There should be a contract for sale of goods;
- The property in goods should be transferred by virtue of such a contract;
- There should be an underlying consideration.

The term 'transfer' is defined by dictionary as follows:-

Oxford Advanced Learner Dictionary: *to officially arrange for something to belong to somebody else or for somebody else to control something;*

Cambridge Dictionary: *To change who owns or controls something.*

Thus, on the basis of above both sale and transfer will need to be understood in accordance with Sale of Goods Act, 1930.

Barter or exchange: These terms are defined in the dictionaries as follow:

Oxford Advanced Learner Dictionary

Barter: to exchange goods, property, services, etc., for other goods, etc. without using money;

Exchange: an act of giving something to somebody or doing something for somebody and receiving something in return; changing an amount of currency for an equal amount of another;

It is important to note that VAT/CST was not applicable on the barter/exchange because the way sales was defined, neither barter nor exchange constituted consideration¹¹. However, all excise, customs and service tax have taken care of these transactions and elaborate rules were issued to quantify the consideration in case of barter/exchange so as to levy duty or tax respectively. GST has also considered barter/exchange supply of goods.

Licence: The Supreme Court had in the matter of *Bharat Sanchar Nigam Ltd*, 2006 (002) STR 0161 SC differentiated between licence to use goods and right to use goods and held that VAT/CST are not applicable on the mere licence to use the goods. Thus, license implies a permission to use the asset on agreed terms.

The concept can be better understood with the help of an example as with the telecom tower company. The Companies were saddled with VAT demand on the lease rentals collected by treating them as right to use. The Delhi High Court in *Indus Tower v. UOI*, 2014 (035) STR 0459 negated these and held that:

11. Devidas Gopal Krishan, 1967 (3) SCR 557, Steel Authority of India 1996 Karnataka, HC 1136

“21. When Indus has not transferred the possession of the passive infrastructure to the sharing telecom operators in the manner understood in law, the limited access provided to them can only be regarded as a permissive use or a limited licence to use the same. The possession of the passive infrastructure always remained with Indus.....”

Transfer of trademark use is not to the exclusion of the transferor since, the Company retains the right to transfer the same to others also will be licence to use: *Malabar Gold v. CTO*, 2013 (32) S.T.R. 3 (Ker.)

Letting out of bank lockers is mere licence to use and not right to use the goods: *Oriental Bank of Commerce v. UOI*, 2008 (12) S.T.R. 423 (All.)

Rental: Term “Rental” needs to be understood as related to rent. Rentals will imply periodic payment in lieu of usage of goods or immovable property.

Lease: The term “lease” has not been defined under the Act. Accounting Standard-19 issued by the Institute of Chartered Accountants of India defines this term as:

“A lease is an agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period of time.”

In other words, the lease entitles the lessor to obtain a series of payments from the lessee in lieu of grant of right to use an asset for an agreed period of time.

Leases are of two types : Finance lease and Operating lease. AS-19 defines these two types of leases as follows:–

“A finance lease is a lease that transfers substantially all the risks and rewards incidental to ownership of an asset.

An operating lease is a lease other than a finance lease.”

Reference can be made to following judgments to understand the true import:–

- *Association of Leasing & Financial Service Companies 2010-VIL-17-SC-LB-ST*
- *CCE Delhi v. Lufthansa Technik Services India Pvt. Ltd.*, 2013-TIOL-1041-CESTAT-DEL
- *Vidarbha Iron & Steel Corporation Ltd. v. CCE, Nagpur*, 2013 TIOL 1182 CESTAT-MUM

Disposal: This term normally means getting rid of something. Thus, if such disposal is for a consideration, it will constitute a supply.

2.2.1.1 Supply on approval basis

Under the VAT/CST regime, in such circumstances, the goods are delivered to the recipient and sale took place when the buyer accepts the goods. Since, supply is no more dependent on the concept of transfer of property in goods, this will be no more relevant.

However, as per Section 31(7) of CGST Act, the lawmakers have differentiated between the removal of goods and the supply thereof. Though the Section relates to raising of invoice, the concept will be relevant for determining the supply as well. It seems that when the goods are removed and sent on approval basis, the supply will be said to have taken place when the goods are approved.

This inference is further strengthened the way the time of raising the invoice is prescribed as earlier of : before or at the time of supply; or 6 months from date of removal.

The Government has also clarified regarding the movement of goods and raising of invoice¹².

The goods which are taken for supply on approval basis can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of delivery of goods. For this purpose, the person carrying the goods for such supply can carry the invoice book with him so that he can issue the invoice once the supply is fructified. It is also clarified that all such supplies, where the supplier carries goods from one State to another and supplies them in a different State, will be inter-State supplies and attract integrated tax in terms of Section 5 of the Integrated Goods and Services Tax Act, 2017.

This is an important clarification for all the persons engaged in sale of goods on approval basis. The clarification will also give respite from obtaining multiple registrations across India.

2.2.1.1.1 Export of Goods for Exhibitions

CBIC has clarified on the applicability of GST when the goods are exported by a person for exhibition or on consignment basis vide Circular No. 108/27/2019-GST, dated 18.07.2019.

Particulars	Remarks						
Whether such an export will be a supply under CGST Act or IGST Act?	No. It has been clarified that since there is no consideration when the goods are sent for exhibition or on consignment, it will not be a supply under CGST Act and hence will also not be a zero-rated supply under IGST Act.						
How the transaction will be subjected to GST?	The transaction will be treated at par with sales on approval basis as specified under Section 31(7) of CGST Act. Accordingly, it will be treated as follows: <table border="1" data-bbox="418 1161 1064 1628"> <thead> <tr> <th>Particulars</th> <th>Remarks</th> </tr> </thead> <tbody> <tr> <td>100 pcs exported for exhibition on 01.08.2019</td> <td> <ul style="list-style-type: none"> • Is neither a supply nor a zero-rated supply; • To be sent on delivery challan; • Bond or LUT not required for such sending of goods on consignment/exhibition; • No GST Payable </td> </tr> <tr> <td>60 Pcs are sold on 01.09.2019 and remaining 40 returned</td> <td> <ul style="list-style-type: none"> • Raised tax invoice on 1.9.2019 for 50 items. No GST payable since zero rated. LUT/Bond to be filed to obtain facility of non-payment of IGST. • Remaining 40 to come back. No GST payable as no supply for these goods </td> </tr> </tbody> </table>	Particulars	Remarks	100 pcs exported for exhibition on 01.08.2019	<ul style="list-style-type: none"> • Is neither a supply nor a zero-rated supply; • To be sent on delivery challan; • Bond or LUT not required for such sending of goods on consignment/exhibition; • No GST Payable 	60 Pcs are sold on 01.09.2019 and remaining 40 returned	<ul style="list-style-type: none"> • Raised tax invoice on 1.9.2019 for 50 items. No GST payable since zero rated. LUT/Bond to be filed to obtain facility of non-payment of IGST. • Remaining 40 to come back. No GST payable as no supply for these goods
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12. Circular No. 10/10/2017-GST, dated 18-10-2017.

	None of the goods are sold till 6 months of removal	<ul style="list-style-type: none"> • Goods will be treated to have been supplied if not brought back within 6 months of removal; • Tax invoice to be raised on completion of 6 months' period; • Bond/LUT required to obtain zero rated benefits.
	Whether refund can be filed for such supplies	<ul style="list-style-type: none"> • <i>Initial sending of goods</i>: Not a supply and hence no question of refunds • <i>Raising of invoices</i>: For subsequent supplies (Actual supplies or deemed post completion of 6 months' period), the supplier can claim refund of input tax credit. Refund of IGST paid on tax invoices will not be available as goods were dispatched earlier on challan and tax invoices were raised subsequently.
What are to the records to be maintained?	Supplier to maintain the records as provided under Annexure to the Circular.	

2.2.1.2 Clarification on GST implications on Cost Petroleum earned by Oil Exploration Contractor

Typically Government, when awards a contract for oil exploration and production to a contractor, allows such a contractor to take out certain amount towards recovery of expenses incurred towards exploration, development, etc. CBIC has clarified towards the applicability of GST on such recoveries made by the contractor¹³:

As per the Production Sharing Contract (PSC) between the Government and the oil exploration & production contractors, in case of a commercial discovery of petroleum, the contractors are entitled to recover from the sale proceeds all expenses incurred in exploration, development, production and payment of royalty. Portion of the value of petroleum which the contractor is entitled to take in a year for recovery of these contract costs is called "Cost Petroleum". The relationship of the oil exploration and production contractors with the Government is not that of partners but that of licensor/lessor and licensee/lessee in terms of the Petroleum and Natural Gas Rules, 1959. Having acquired the right to explore, exploit and sell petroleum in lieu of royalty and a share in profit petroleum, contractors carry out the exploration and production of petroleum for themselves and not as a service to the Government. Para 8.1 of the Model Production Sharing Contract (MPSC) states that subject to the provisions of the PSC, the contractor shall have exclusive right to carry out petroleum operations to recover costs and expenses as provided in this contract. The oil exploration and production contractors conduct all petroleum operations at their sole risk, cost and expense. Hence, cost petroleum is not a consideration for service to GOI and thus not taxable *per se*. However, cost petroleum may be an indication of the value of mining or exploration services provided by operating member to the joint venture, in a situation where the

13. Circular No. 32/06/2018-GST, dated 12.02.2018.