Chapter A-1

Preamble

The basic aim of this book is to understand and discuss, in length, the concepts and implication in respect of taxability of GST on the services. Nevertheless, no service can be envisaged without the involvement of goods. Even a doctor or an advocate requires a piece of paper to give prescription or opinion. Works contract and catering activities, which involves a substantial amount of goods, have been considered as services under the GST. Therefore, even while discussing services, taxability on goods cannot be completely ignored. Thus, this book focuses the discussion on the taxability of output services; and the inputs (goods) and/or input services qua service providers.

This Guide has been compiled keeping in mind the CGST Act and the IGST Act. The relevant provisions under the State/Union Territory Laws are similar to that of the CGST Act; hence, the entire discussion would be equally applicable to the State GST and UT GST also. Further, this book has dealt the concepts and principles, involved in taxation of services in the GST; thus procedural aspects in relation to the filing of various returns, forms and due dates have not been dealt with in this book.

Wherever GST Acts are silent either on the definition of services or clarifications on the taxability, an effort has been made to look into the erstwhile Service Tax under the Finance Act, 1994 for reference. Similarly, Education Guide on Service Tax released on June 20, 2012 has also been referred to locate the answers of the questions being faced by the taxpayers under the GST regime.

1.1 Brief Introduction

(i) Under the erstwhile indirect structure in India, there was a dual system of taxation of goods and services: by the Union as well as the State. Taxes on goods were described as "VAT" at both central and state level. It had adopted value-added tax principle with input tax credit mechanism for taxation of goods and services, respectively, with limited cross-levy set-off. Inter-state sales were taxable under the Central Sales Tax Act, 1956.

Until the introduction of MODVAT Scheme in 1986 under the central excise duty, duty was levied as origin-based single point taxation system on the manufacture of goods with some exceptions where set-off scheme was used to reduce cascading effect of taxes.

Import of goods was subject to Customs duties, which was primarily of three types:

(a) Basic Customs Duty (levied under sec 12 of the *Customs Act, 1962*);

(b) Additional Customs Duty/Countervailing Duty (CVD) under sections 3(1) and 3(3) of the *Customs Tariff Act*, in lieu of excise duty, now subsumed under GST;

(c) Special Additional Duty of Customs (SAD) under sec 3(5) of the *Customs Tariff Act*, now subsumed under GST, to counter-balance the sales tax, value added tax, local tax or any other charges for the time being leviable on a like article on its sale, purchase or transportation in India to bring manufactured products in India at par with the imported goods.

(ii) Services contribute more than 55 per cent of the GDP of India. Service tax was first imposed in India in the year 1994 with three services through Chapter V of the *Finance Act, 1994*. More and more services were brought into the tax-net. Since there was no separate legislation for the imposition of service tax in India, it was governed and administered by the *Finance Act, 1994.* The tax was administered by the Central Government under the authority of Residual Entry 97 of the Union List (List I) under Sch VII of the Constitution of India.

Up till 30 June 2012, service tax was levied on specified services by the Central Government, commonly known as the positive regime. With effect from 1 July 2012, the negative regime was brought in, whereby all the services were considered as taxable services, except services specifically excluded or exempted under the Act.

(iii) **Double taxed activities:** Few activities, due to the definition in the respective law or ambiguity therein, invited double taxation on the total value of the transaction: both as sale and service. *For example,* sale of software along with the license to use was subjected to VAT as well as service tax.

(iv) **Tax on the overlapping value of service** – These are those activities, where part of the value was subject to VAT and part was subject to service tax. However in this process, due to overlapping, the person used to pay tax on more than 100% of the consideration/taxable value. *For example,* the supply of food and beverage was liable to VAT on the entire value paid by the customer, and at the same time, service tax was leviable on 40% of the same value. *Similarly,* works contracts were liable to VAT on 65% to 75% of the contract value; and service tax was liable on 40 to 60% of the said contract value.

(v) GST has subsumed various Central indirect taxes and levies, such as, Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, Service Tax, Additional Customs Duty (CVD), Special Additional Duty of Customs (SAD), and Central Surcharges & Cesses relatable to supply of goods and services.

It has also subsumed State VAT/Sales Tax, Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax (levied by the Centre and collected by the States), Octroi and Entry tax, Purchase Tax, Luxury tax, Taxes on Lottery, Betting and Gambling; and State cesses and surcharges in so far as they relate to the supply of goods and services.

Under the GST, in lieu of CVD and SAD, the IGST has been levied on import of goods, and shall be available as input tax credit for further transactions. However, BCD shall be continued and levied in the present manner.

1.2 Goods and Services Tax (GST)

(i) The term "GST" stands for **"Goods and Services Tax"**, which is a comprehensive indirect tax levy on manufacture, sale and consumption of goods as well as services at the national level.

(ii) Its main objective is to cover most of the indirect tax levies into a single tax, replacing multiple tax levies, overcoming the limitation of earlier indirect tax structure, and creating efficiencies in the tax administration. GST has facilitated seamless credit across the entire supply chain and across all states under a common tax base except where GST rates without availing ITC have been notified.

The pre-GST framework allowed limited inter-levy credits between excise duty (tax on manufacture) and service tax (tax on specified services). However, no cross credits were available between the input VAT paid on the purchase of goods against the CENVAT credit paid on import/manufacture of goods and provision of services, or *vice-a-versa*.

(iii) To summarize, GST may be defined as a tax on supply of goods and services, which is leviable at each point of sale of goods or provision of service, where the seller of the goods or provider of services may claim the credit of input tax which he has paid while purchasing the goods or procuring the services.

(iv) The Constitutional Amendment has conferred concurrent taxing powers on the Union as well as the States (including Union territory with Legislature) to make laws for levying GST on every transaction of supply of goods or services or both.

Instead of amending List I and II of the Schedule VII of the Constitution of India, Article 246A has been inserted in the Constitution to confer simultaneous power to Union and State legislatures to legislate upon the GST. Both Centre and States can simultaneously levy GST across the value chain.

Parliament has exclusive powers to make laws with respect to GST where the supply of goods, or of services, takes place in the course of inter-State trade or commerce.

States have powers to make laws in respect to supply of goods and/or services takes place within the State.

(v) The Central and State GST are levied on all transactions involving intra-State supply of goods and/or services, except those which are kept out of the purview of the GST. Integrated GST is being levied on inter-State transactions of goods and/or services.

(vi) Exports and supplies of goods and/or services to a Special Economic Zone developer or a Special Economic Zone unit have been considered as zero-rated and will be relieved of all embedded taxes and levies at both Central and State level. As per the Finance Act, 2021, supplies to SEZ units and SEZ developers are treated as zero rated if supplied for authorised operations.

(vii) Import of goods and services has been treated as inter-state supplies and would be subject to IGST in addition to the applicable customs duties (BCD). This IGST would be levied in lieu of CVD and SAD; and shall be available as input tax credit for further transactions.

(viii) GST Council has been empowered to examine issues relating to goods and services tax and make recommendations to the Union and the States on parameters like rates of tax, exemption list and threshold limits.

1.3 Services

(i) In accordance with the Art 366(26A) of the Constitution of India, the term "services" means anything other than goods.

As per the Art 366(12) of the Constitution, the term "goods" includes all materials, commodities, and articles.

(ii) As per sec 2(102) of the GST Act, the term "services'' means anything other than-

- Goods,
- Money, and
- Securities.

The term 'service' has been defined in the widest sense. Everything, which is not goods, is defined as service.

However, as per the definition, the term **"services" 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. Thus, exchange of currency from one form/denomination to another has been considered as service, if separate consideration has been charged for the same.

[1]Further, "transactions of facilitating or arranging transactions in securities" are included under the definition of "services" and thereby under the GST.

The term "service" under the GST Act has been defined in the negative sense: which is not goods or money or securities, would be termed as "service". Therefore, one has to first find out, whether the activity is "goods"; and if not, it would be termed as "service". Land or completed building is neither goods nor service.

As per sec 2(52) of the GST Act, the term "goods" means every kind of movable property, and includes:

(i) actionable claim;

(ii) growing crops;

(iii) grass; and

(iv) things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply.

The term "goods" does not include -

- Securities, and
- Money.

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1 Inserted vide CGST (Amendment) Act, 2018, w.e.f. 01.02.2019.

Schedule II of the GST Act enumerates various circumstances when a given activity/ [1][transaction] would be treated as goods or services.

Sec 7(2) of the GST Act empowers the Central/State Govt., on the recommendation of GST Council, to notify certain supplies as neither supply of goods nor services. The details of such supplies have been included in Schedule III of the GST Act.

1.4 Ascertaining taxability of output services – Steps

Step 1	Verify whether a given activity is "goods" or "service". Schedule II of the GST Act enumerates various circumstances when a given transaction or activity would be treated as goods or services. In case of composite supply, find out what is the "principal supply". If it is not "goods", then only it would be termed as "service".
Step 2A	If it is goods, refer N. No. 1/2017-CT(R) and 2/2017-CT(R), both dated 28 June 2017 "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975, including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification
Step 2B	If it is service, refer the "Scheme of Classification" [Annexure to N. No. 11/2017-CT(R) dated 28 June 2017] and Explanatory Notes and find out nature of service and its appropriate HSN Code. Exemption and rates of tax of services are notified with reference to a particular HSN Code.
Step 3	After ascertaining the HSN Code, check whether that given service is exempt under the GST Act. N. No. 12/2017-CT(R) dated 28 June 2017 (as amended from time to time through various notifications) is the main notification for ascertaining the exemption. There are few other exemption notifications.
Step 4	If given activity does not fall in the exemption Notifications, then the rate of tax on that service will be ascertained in accordance with N. No. 11/2017-CT(R) dated 28 June 2017 (as amended from time to time through various notifications).

[1] Inserted vide CGST (Amendment) Act, 2018, w.e.f. 01.07.2017.

Step 5	Verify whether GST is payable on reverse charge basis by the recipient of service (RCM). For this purpose, refer N. No. 13/2017-CT(R), dated 28 June 2017 w.e.f. 01 July 2017 and N. No. 10/2017-IT(R), dated 28 June 2017 w.e.f. 01 July 2017, as amended from time to time. If tax is not payable on RCM basis, then the GST shall be paid by the supplier of services.

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Chapter A-2

Meaning of Service and key definitions

2.1 Definitions relating to Goods, Services, Business, etc.

2.1.1 Services

In accordance with sec 2(102) of the GST Act, the term "services" means *anything other than* -

- Goods,
- Money, and
- Securities.

However, as per the definition, the term **"services" 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. Thus, exchange of currency from one form/denomination to another has been considered as service, if separate consideration has been charged for the same.

Further, [1]"transactions of facilitating or arranging transactions in securities" are included under the definition of "services' and thereby under the GST.

The term 'service' has been defined in the widest sense. Everything, which is not goods, is defined as service.

Schedule II of the GST Act enumerates various circumstances when a given activity/ [2][transaction] would be treated as supply of goods or services.

Sec 7(2) of the GST Act empowers the Central/State Govt., on the recommendation of GST Council, to notify certain supplies as neither supply of goods nor services. The same has been defined under Schedule III of the GST Act.

What kind of activities would come under 'transaction only in money'?

[Vide Para 2.8.1 of Service Tax Education Guide-2012]

- The principal amount of deposits in or withdrawals from a bank account.
- Advancing or repayment of principal sum on loan to someone.
- Conversion of INR1,000 currency note into one rupee coins to the extent amount is received in money form.

Goods vs. Services: Please refer Para no. 2.4 of this Chapter.

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1 Inserted vide CGST (Amendment) Act, 2018, w.e.f. 01.02.2019.

2 Inserted vide CGST (Amendment) Act, 2018, w.e.f. 01.07.2017.

2.1.2 Goods

(a) In accordance with the Art. 366(12) of the Constitution of India, the term “goods” includes all materials, commodities, and articles.

(b) As per sec 2(52) of the GST Act, the term “goods” means every kind of movable property and includes:

- (i) actionable claim;
- (ii) growing crops;
- (iii) grass; and
- (iv) things attached to or forming part of the land which are agreed to be severed before supply or under the contract of supply.

(c) As per the definition, the term “goods” does not include -

- (1) Securities, and
- (2) Money.

(d) Immovable property

(1) Immovable property is out of the purview of the definition of goods. The definition of immovable property as given in the General Clauses Act is, “land and benefits arising out of land and things attached to earth or permanently fastened”.

(2) In accordance with sec 3 of the Transfer of Property Act, 1882, the phrase “attached to the earth” means-

- (a) rooted in the earth, as in the case of trees and shrubs;
- (b) embedded in the earth, as in the case of walls or buildings; or
- (c) attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached.

(3) Though transfer of immovable property (after completion of construction as defined under entry 5 of Schedule III of the GST Act) is not subject to GST, yet, lease or renting of immovable property has been considered as service; and is subject to GST.

(4) **Case laws on immovable property: Pl refer Para No. 1.4.5 of Chapter B-1 (Works Contract)**

(e) Marketability

Under the GST Act, marketability is not a criterion to ascertain whether a given commodity is goods or not. It may or may not be marketable. It is not necessary that the goods in question should be generally available in the market. The taxability under the GST Act depends upon supply of movable property at a valuable consideration; and in some cases, even without consideration.

(f) Electricity

Merely because electric energy is not tangible or cannot be moved or touched like, for instance, a piece of wood or a book, it cannot cease to be movable property when it has all the attributes of such property. It is capable of abstraction, consumption and use which, if done dishonestly, would attract punishment under sec 39 of the Indian Electricity Act, 1910. It can be transmitted, transferred, delivered, possessed, etc., in the same way as any other movable property.[1] Even though electricity cannot be touched, but it can certainly be felt; therefore, for the GST purpose**, the electricity has been treated as "goods"**. Under the VAT/CST Act, electricity was specifically exempted.

Electricity duty has not been subsumed in GST. Therefore, following exemptions have been allowed in the GST Act in relation to electrical energy:

(i) ***As goods:*** Exemption has been allowed vide entry no. 104 of N. No. 2/2017-CT(R), dated 28 June 2017, which reads as "electrical energy - HSN 2716 00 00" has exempted electrical energy

(ii) ***As service:*** Exemption has been allowed vide entry no. 13 of N. No. 12/2017-CT(R), dated 28 June 2017 which reads as "Transmission or distribution of electricity by an electricity transmission or distribution utility".

(g) Livestock

The expression "All kinds of movable property" is comprehensive enough to include within its ambit both animate as well as inanimate kinds of movable properties. The expression "goods" as defined by Article 366, clause (12) of the Constitution of India is an inclusive definition; thus, the expression "goods" takes within its ambit live-stock, which is admittedly movable property.[2] One day old chick is also livestock.[3]

(h) Intangible goods

Intangible goods are those goods which are not tangible, such as software, goodwill, trademarks, DEPB/REP licences, etc.

In case of *Tata Consultancy Services vs. State of A.P.*[4], the Supreme Court observed that the term "goods", as used in Article 366(12) of the Constitution of India, is very wide and include all types of movable properties, whether those properties are tangible or intangible. The term "all materials, articles and commodities" includes both tangible and intangible/incorporeal property which is capable of abstraction, consumption and use and which can be transmitted, transferred, delivered, stored, possessed etc.

(i) Actionable claims

In accordance with sec 2(1) of the GST Act, "actionable claim" shall have the meaning assigned to it under sec 3 of the *Transfer of Property Act, 1882*.

As per sec 3 of *Transfer of Property Act*, "Actionable claim" means a claim to any debt, other than the debt secured by mortgage of immovable property or by hypothecation or pledge of movable property or to any beneficial interest in movable property not in possession, either actual or constructive, of the claimant, which the civil courts recognize as affording grounds for relief, whether such debts or beneficial interest be existent, acquiring, conditional or contingent.

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1 *CST vs. M.P. Electricity Board* (1970) 25 STC 188 (SC); *State of A.P. vs. National Thermal Power Corp. Ltd.* (2002) 127 STC 280 (SC).

2 *K. Srinivasulu vs. Dy. CTO* (1975) 35 STC 262 (AP).

3 *Royal Hatcheries Pvt. Ltd. vs. State of A.P.* (1994) 92 STC 239 (SC).

4 (2004) 137 STC 620 (SC).

This definition, as analyzed in *Mulla's Transfer of Property Act* (at page 805 of the 6th Edition), comprises of two types of claims –

"(a) a claim to unsecured debts, and

(b) a claim to beneficial interest in movable property which is not in possession, actual or constructive-whether present or future, conditional or contingent".

In simpler words, to fall under (b), if the beneficial interest in movable property is not in possession of the claimant, it will be an actionable claim; but if it is in his possession or enjoyment, it will not be actionable claim but a chose-in-possession.

The definition of goods under sec 2(52) of the GST Act does not violate any constitutional provision nor it is in conflict with the definition of goods given under Article 366(12), which contains an inclusive definition. The Parliament by the Constitution (101st Amendment) Act, 2016 inserted Article 246A, a special provision with respect to GST. Article 246A begins with the non obstante clause. Thus, the inclusion of actionable claim in definition "goods" as given in sec 2(52) of the GST Act is not contrary to the legal meaning of goods, and is neither illegal nor unconstitutional.[1]

The following are held to be actionable claims:

- The company carried on the business of manufacturing and selling beer in bottles. It raised separate invoices, one for the beer and another for the deposit of the price of bottles. In the event of the purchasers failing to return the empty bottles, the deposit stood forfeited. Security deposits kept by the petitioner and which the petitioner forfeited upon the failure of the purchasers to return the bottles do not come within the meaning of an "actionable claim".[2]
- Right to recover insurance money.[3]
- A partner's right to sue for an account of a dissolved partnership.[4]
- The right to claim the benefit of a contract not coupled with any liability.[5]
- A claim for arrears of rent has also been held as actionable claim.[6]
- A right to the credit in a provident fund account.[7]
- Profit Sharing Agreement was entered between the CMD of the Company, in his individual capacity, and the investors/shareholders of the Company, who agreed to pay certain sum in the event of either a Strategic Sale where at least 51% of paid-up Equity Share capital of the Company is sold at a price not less than INR 75 per equity share or in the event of an initial public offering where the mid-point of the price band as per the prospectus is not less than INR 75 per equity share and subsequent listing on Stock Exchange and few other

[1] *Skill Lotto Solutions Pvt. Ltd. vs. U.O.I.* - 2020 (12) TMI 140 dated 03.12.2020 (SC).

[2] *Kalyani Breweries Ltd. vs. State of West Bengal* (1990) 78 STC 441 (WBTT).

[3] *Union of India vs. Sri Sarada Mills Ltd*. (2) (1972) 2 SCC 877, 880.

[4] *Union of India vs. Sri Sarada Mills Ltd.* (2) (1972) 2 SCC 877, 880.

[5] *Union of India vs. Sri Sarada Mills Ltd.* (2) (1972) 2 SCC 877, 880.

[6] *State of Bihar vs. Maharajadhiraja Sir Kameshwar Singh of Darbhanga* (1952) SCR 889, 910.

[7] *Official Trustee, Bengal vs. L. Chippendale AIR* 1944 Cal 335; *Bhupati Mohan Das vs. Phanindra Chandra Chakravarty* AIR 1935 Cal 756.

conditions. ***It was held*** that Profit Sharing Agreement between the parties is an actionable claim.[1]

- **Lottery tickets:**

  In the case of *Sunrise Associates vs. Govt. of NCT of Delhi*[2], the Apex Court opined that sale of a lottery ticket involved a sale of goods, but in the form of an "actionable claim".

  Lottery is an actionable claim as proposition of the GST law.[3]

- **Redeemable vouchers/Gift cards**

  These are actionable claim as per the GST law. *[Circular No. 243/37/2024-GST dt. 31.12.2024; TVL. Kalyan Jewellers India Ltd. vs. U.O.I.[4]]*

Since, the actionable claims have been considered as goods under the GST Act, transfer thereof would be taxable accordingly. However, actionable claims other than "specified actionable claims" *(defined in the next para)* have not been considered as supply under Schedule III and therefore, are non-taxable in GST.

(j) Specified actionable claims

[5]In accordance with sec 2(102A) of the GST Act, **"Specified actionable claim"** means the actionable claim involved in or by way of—

(i) betting;

(ii) casinos;

(iii) gambling;

(iv) horse racing;

(v) lottery; or

(vi) online money gaming.

(k) Schedule II of the GST Act enumerates various circumstances when a given activity/ transaction would be treated as goods or service.

(l) Schedule III of the GST Act defines certain activities or transactions, which shall be treated neither as a supply of goods nor a supply of services.

Further, sec 7(2) of the GST Act empowers the Central/State Govt., on the recommendation of GST Council, to notify certain supplies as neither supply of goods nor services. N. No. 14/2017 (CT-Rate) and N. No. 11/2017 (IT-Rate) dated 28.06.2017, w.e.f. 01.07.2017 specify such supplies.

Goods vs. Services: Please refer Para no. 2.4 of this Chapter.

2.1.3 Money

In accordance with sec 2(75) of the GST Act, the term "**money**" means **-**

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1 *Venkatasamy Jagannath* – No. 19/AAR/2019 dated 21.05.2019 (AAR-T.N.).

2 Appeal (civil) 4552 of 1998 decided on 28.04.2006 by five judges bench of SC.

3 *Skill Lotto Solutions Pvt. Ltd. vs. U.O.I.* - 2020 (12) TMI 140 dated 03.12.2020 (SC).

4 2024 (1) TMI 920 dated 27.11.2023 (Mad. HC).

5 Inserted w.e.f. 01.10.2023 (vide Notification No. 48/2023-CT, dated 29.09.2023) by CGST (Amendment) Act, 2023 (30 of 2023), vide Ministry of Law and Justice notification dated 18.08.2023.

- Indian legal tender,
- Foreign currency,
- Cheque,
- Promissory note and bill of exchange,
- Letter of credit,
- Draft and pay order,
- Traveller cheque,
- Money order, postal or electronic remittance, or
- Any other instrument recognised by the Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination.

"Money" shall, however, not include any currency that is held for its numismatic value.

In accordance with sec 2(52) (defining the term "goods") and sec 2(102) (defining the term "services"), "money" is neither a good nor a service.

In the opinion of the authors, amount received as duty drawback is in the nature of 'cash incentive' and is in the nature of 'money'; therefore, outside the purview of the GST.

2.1.4 Securities

In accordance with sec 2(101) of the GST Act, the term "securities" shall have the same meaning as assigned to it in sec 2(h) of the Securities Contracts (Regulation) Act, 1956.

For detailed discussion: Pl refer Para no. 9.3.9 & other Paras of Chapter B-9 (Banking)

2.2 Definition of Business

[Sec 2(17) of the GST Act]

Definition of the term "business" is very significant in the GST Act, and is the basis of term 'supply'.

Supply includes all forms of supply (goods and/or services) and includes agreeing to supply when they are for a consideration and in the course or **furtherance of business**.

The term "**business**" includes –

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

(b) any transaction in connection with or incidental or ancillary to (a) above;

(c) any transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;

(d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;

(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;

(f) admission, for a consideration, of persons to any premises; and

(g) services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation.

[1][(h) 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]

(i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities.

(A) Ancillary or incidental transactions

In a landmark judgment, the apex court held that if the main activity is in the nature of trade, commerce or manufacture, then any sale in connection with any ancillary or incidental transaction would also be treated as "business". But, if the main activity does not amount to business, normally sales made in connection with ancillary or incidental to the main activity will not be "business", unless an independent intention to do **business** is proved. Therefore, sale of scrap and unserviceable items by the Port Trust of India, whose main activity is not a business, was held not liable to sales tax.[2] Therefore, to categorize any incidental or ancillary activity as business under clause (b) of sec 2(17) of the Act, it is essential that the main activity must be "business" falling under clause (a) of this sub-section.

(B) Occasional transactions

Any **occasional** transaction in the nature of such service, trade, commerce, manufacture, adventure or concern, whether or not there is volume, frequency, continuity or regularity of such transaction, have also been termed as business.

(C) Profit motive not essential

Profit motive in business is not essential for the purpose of exigibilty to GST. It is also immaterial whether the person earns profit or incurs loss. Thus, supply of scrap and unserviceable goods, even if made for reduction of space or for other similar reasons and even if there were no profit motive, it would be liable to GST.

(D) Charitable and social welfare activities

The definition of 'business' under the GST Act is wide enough to include trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activities. The charitable trust may be formed with the fundamental objectives of carrying out spiritual activity and salvation; but, it also, at the same time, sells goods and services under the auspices of the trust; hence, it can be said that the appellant is engaged in supply of goods and services.

Case Laws:

- *Shrimad Rajchandra Adhyatmik Satsang Sadhana Kendra*[3]
- *The Association of Inner Wheel Club of India*[4]

For Detailed discussion: Please refer Chapter B-23 of this Book

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1 *Subs.* vide CGST (Amendment) Act, 2018, w.e.f. 01.02.2019. Earlier read as "(h) services provided by a race club by way of totalisator or a licence to book maker in such club".

2 *State of T.N. vs. Board of Trustees of the Port of Madras* (1999) 114 STC 520 (SC).

3 2019 (1) TMI 25 dated 24.12.2018 (AAAR-Maha.).

4 2019 (4) TMI 300 dated 20.03.2019 (AAAR-W.B.).

(E) Clubs and Associations

For Detailed discussion: Please refer Chapter B-23 of this Book

(F) Supply or acquisition of goods including capital goods and services in connection with commencement or closure of business

Definition of the term business not only includes supply of goods; it also includes the acquisition of goods, capital goods and services in connection with commencement or closure of business.

(G) Holder of an office

This term has not been defined under the Act. As per *(https://www.gov.uk/employment-status/office-holder)*, a person who's been appointed to a position by a company or organisation but doesn't have a contract or receive regular payment, may be an office holder. This includes:

- statutory appointments, such as registered company's directors or secretaries, board members of statutory bodies, or crown appointments
- appointments under the internal constitution of an organisation, such as, club, treasurers or trade union secretaries,
- appointments under a trust deed, such as trustees,
- ecclesiastical appointment, such as members of the clergy.

Office holders are neither employees nor workers. However, it is possible for someone to be an office holder and an employee if they have an employment contract with the same company or organisation that meets the criteria for employees.

(H) Totalisator (up to 19.10.2023) and book maker

For Detailed discussion: Please refer Para 24.4.18 Chapter B-24 of this Book

2.3 Other key definitions not discussed in forthcoming Chapters

2.3.1 Address of delivery *- Sec 2(2)*

"Address of delivery" means -

- the address of the recipient of goods or services or both,
- indicated on the tax invoice issued by a registered person,
- for delivery of such goods or services or both.

2.3.2 Address on record *- Sec 2(3)*

"Address on record" means the address of the recipient as available in the records of the supplier.

Deemed address on record of the recipient in relation to taxable services

[Proviso to Rule 46(f) of the GST Rules[1]]

- Where taxable service is <u>supplied by</u> an electronic commerce operator or by a supplier of OIDAR services to an unregistered recipient: Name and address of the

[1] Inserted w.e.f. 26.12.2022 vide N. No. 26/2022-CT, dated 26.12.2022 w.e.f. 01.10.2022.

recipient along with its PIN code and the name of the State, irrespective of the value of such supply, and the said address shall be deemed to be the address on record of the recipient.

- Where taxable service is supplied through an electronic commerce operator to an unregistered recipient: Name and address of the recipient along with its PIN code and the name of the State, irrespective of the value of such supply, and the said address shall be deemed to be the address on record of the recipient.

2.3.3 Agent - *Sec 2(5)*

"Agent" means a person, including a factor, broker, commission agent, *arhatia*, *del credere* agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

The principle of agency is defined in sec 182 of Indian Contract Act, 1872. Agency is a relationship that can be formed validly even without consideration. Even e-commerce companies like Flipkart, Snapdeal, etc., wherever they are not selling goods as owners, are covered within the definition of agent.

A person can act as agent for more than one principal even if all his principals jointly authorize him to pool their goods, sell them, and pay the sale price to them in the manner prescribed by them.

2.3.4 Aggregate turnover - *Sec 2(6)*

"Aggregate Turnover" for a person having the same PAN, to be computed on all India basis, is aggregate value of:

(i) All taxable supplies made by the supplier, whether his supplies are taxable on forward charge or on RCM basis by his counterparty recipient;

(ii) Exempt supplies including non-taxable supplies;

(iii) Exports of goods and/or service;

(iv) Inter-state supplies;

(v) All supplies whether on own account or made on behalf of all the principals (by an agent);

(vi) Supply of goods, after completion of job-work, by a *registered job-worker* to be treated as the supply of goods by the "principal" as per sec 143 and the value of such goods would not to be included in the aggregate turnover of the registered job worker. In other words, such supply shall be included in the aggregate turnover of the principal.

Exclusion

(i) Taxes charged under the CGST Act, SGST Act, UTGST Act and the IGST Act;

(ii) Value of inward supplies on which tax is levied on reverse charge basis.

It is important to mention that exempt supplies includes non-taxable supplies defined under sec 2(78) [sec 2(47)]; therefore, the person shall include the supply of specified petroleum goods and alcoholic liquor for human consumption in the aggregate turnover.

Inter-state supplies to own branches:

It may be noted that the definition of 'aggregate turnover' includes inter-state supplies of a person, having the same PAN, to be computed on all India basis. Therefore, inter-branch inter-state outward supplies shall also be included in the value of 'aggregate turnover', even if such supplies become Nil while making consolidated annual accounts of the PAN. *[Page 54 of GST Flyers by CBIC] Suppose*, ABC has 3 branches; inter-branch supplies are INR 50 Cr.; Total Turnover as per consolidated P&L A/c is INR 40 Cr → Aggregate Turnover of ABC would be INR 90 Cr.

2.3.5 Agriculturist - *Sec 2(7)*

"Agriculturist" means an individual or a Hindu Undivided Family who undertakes cultivation of land –

(a) by own labour, or

(b) by the labour of family, or

(c) by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family.

It is important to mention that –

(i) Ownership in land is not necessary. Land might have been acquired on lease or *batai*.

(ii) Cultivation of land is necessary requirement.

(iii) As per freedictionary.com, the term cultivation includes: -

  (a) planting, tending, improving, or harvesting of crops or plants;

  (b) preparation of ground to promote their growth.

(iv) Cultivation of land would ***not*** comprise of following activities, even though these are commonly considered as agriculture, such as,

  – sericulture,

  – dairy farming,

  – poultry farming,

  – stock breeding,

  – mere cutting of wood or grass,

  – gathering of fruits, etc.

(v) Cultivation must be undertaken by an individual or HUF. Thus corporate and co-operative farming are not covered within the definition of agriculturist.

(vi) As per sec 23(1)(b), an agriculturist, to the extent of supply of produce out of cultivation of land, is not liable for taking registration.

(vii) As per N. No. 12/2017-CT(R) dated 28 June 2017, the term "**Agricultural produce**" means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market.

2.3.6 Associated enterprise - *Sec 2(12)*

"Associated enterprises" shall have the same meaning as assigned to it in sec 92A of the Income-tax Act, 1961.

The term "associated enterprise" is referred only under sec 13 of the GST Act in the context of determination of time of supply of services under reverse charge mechanism where the supplier is located outside India.

2.3.7 Business vertical - *Sec 2(18)*

The definition of "Business vertical" has been omitted vide CGST (Amendment) Act, 2018 w.e.f. 01 Feb. 2019.

The definition of 'business vertical' was relevant if the person intended to obtain multiple registrations in the same State before notification of provisions of Central Goods and Services Tax (Amendment) Act, 2018. After amendment, the person having multiple places of business in a State/UT may be granted a separate registration for each such place of business, subject to such conditions as may be prescribed.

It is important to note that business verticals in a State before amendment and multiple registrations in a state/UT post-amendment have been treated as distinct persons. Therefore, supply of goods and /or services, within such entities, shall be liable for payment of GST.

2.3.8 Casual taxable person - *Sec 2(20)*

"Casual taxable person" means a person, -

- who **occasionally** undertakes transactions involving supply of goods or services or both in the course or furtherance of business,
- whether as principal, agent or in any other capacity,
- **in a State or a Union territory where he has no fixed place of business**.

No threshold limit for registration has been specified for the casual taxable persons under sec 24 of GST Act. Thus, even if a small transaction of supply in the State, other than the State where that person has been already registered, would make him liable for registration.

However, N. No. 8/2017-IT, dated 14 Sep. 2017 has exempted the persons making inter-State taxable supplies of handicraft goods, and [1]N. No. 32/2017-CT, dated 15 Sep. 2017 has exempted casual taxable persons making taxable supplies of handicraft goods under sec 23(2) of the Act, from obtaining registration; subject to certain conditions.

For further discussion: Please refer Chapter A-13 (Casual taxable person).

2.3.9 Consideration - *Sec 2(31)*

(1) "**Consideration**" in relation to the supply of goods or services or both includes—

(a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

[1] *Subs.* vide N. No. 56/2018-CT, dated 23.10.2018.

(b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Provided 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.

(2) Consideration can flow from anyone else. It is not necessary that it must be received only from the recipient, which is defined under sec. 2(93) of the GST Act.

(3) The payment to be considered as advance or deposit would depend on the circumstances and terms of contract.

(4) **Compulsory acquisition** of goods, without free consent, for money will be covered within the definition of consideration.

(5) Any subsidy given by the Central Government or a State Government is not considered as consideration.

(6) 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.

(7) **Money or otherwise**

Money is a defined term under the GST Act and refers to legal tender, negotiable instruments, electronic payment modes etc. Word '**otherwise'** is used to expand the scope of consideration to include consideration paid in the form of goods (barter or exchange) or immovable property (such as a flat given in consideration for redeveloping a house into a multi storeyed building).

A contract for reciprocal supply of service, such as, a doctor agreeing to treat a chartered accountant in consideration of that chartered accountant filing his/her return of income, will also get covered under the word 'otherwise'.

Likewise, when there is barter of goods of services, the same activity constitutes supply as well as a consideration. When a barber cuts hair in exchange for a painting, hair cut is a supply of services by the barber. It is a consideration for the painting received.

(8) **Meaning of 'monetary value of any act or forbearance'**

Term 'monetary value of any act' aims to cover provision of service in satisfaction of payment obligation for supply of goods and vice-versa. ABC promises to give a car to 'B' in exchange of promise by 'B' for appearance in a sales promotion event.

'Forbearance' is agreeing for not doing something. XYZ agrees not to open dry clean shop in PQR's neighbourhood for which PQR agrees to make a payment (non-compete agreements).

(9) **Meaning of 'whether by the recipient or by any other person'**

It signifies that for being covered under taxable event, it is not necessary that consideration should necessarily flow from recipient of supply. 'M' orders PQR, a flowers bouquet supplier, to deliver a bouquet to 'O' on his/her birthday. Here supply is to 'O' whereas consideration will flow from 'M'.

Likewise, a pharmaceutical company asking its distributor to place sample medicines with doctor for which distributor is separately compensated, is another example for consideration paid by the third party.

Suppose, a new brand of cosmetics asking its dealers to sell at below their purchase price and compensating the loss through credit notes, is another examples of consideration for taxable supplies being paid wholly or partly by a third person.

Executive Council of Insurers[1]: The applicant is rendering services to the aggrieved persons who have grievances against insurance companies/insurers (as Ombudsman). The said service is provided by way of resolving the disputes of the said aggrieved persons with insurance companies. The aggrieved persons do not pay any fees to the applicant, and the amounts are received from Life Insurance and General Insurance Council. It was held that consideration may be received from 'any other person', i.e. the Life Insurance and General Insurance Council.

(10) Financial Assistance

If the consideration relates to supply of goods or services, it may be in the form of financial assistance. In the present case, the activities undertaken by the applicant are to promote the investments of German companies in India; and are undertaken only on the directions of Prettl Gmbh, i.e. the holding company. The AAR observed that as per the agreement, applicant has consented/agreed to do some acts and as per clause 5 of Schedule II appended to GST Act, 'an agreement to do an act' will be considered as supply of services. Hence, ***it was held*** that the applicant is rendering supply of services for which it is receiving consideration in the form of "financial assistance".[2]

(11) Security deposit

Ordnance Factory Bhandara[3]: Security deposits, which are refundable in nature, are not liable to tax as per the GST Laws. But, if such **security deposits are forfeited**, then it would be considered as 'additional consideration' flowing to the applicant on account of supply of goods by them and this additional consideration will be subject to GST. However, when security charges are forfeited by the Government, these are not liable for GST.

(12) Subsidy from the Central / State Government

Circular No. 190/02/2023-GST, dated 13 Jan. 2023 (Extracts)

Incentive paid to banks by the Ministry of Electronics and Information Technology (MeitY) under the scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions are in the nature of subsidy and thus not taxable.

Circular No. 228/22/2024-GST dated 15 July 2024 (Extracts)

Further sharing of the incentive amount by the acquiring bank with other stakeholders, up to the point where the incentive is distributed in the proportion and manner as decided by National Payments Corporation of India (NPCI) in consultation with the participating banks under the notified Incentive Scheme for promotion of RuPay Debit Cards and low value BHIM-UPI transactions, is in the nature of a subsidy; and is thus, not taxable.

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1 2022 (6) TMI 192 dated 31.05.2022 (AAR-Maha.).

2 *Prettl Automotive India (P) Ltd.* 2020 (12) TMI 836 dated 15.12.2020 (AAR-Maha.).

3 2020 (6) TMI 703 dated 18.10.2019 (AAAR-Maha.).

Rashmi Hospitality Services Pvt. Ltd.[1]

In the instant case, the applicant firm was engaged in the business of supply of food and beverages. The applicant entered into a contract with Government of Karnataka for supplying food (breakfast, lunch and dinner) in the premises under the name and style of "Indira Canteen" in various districts located in the state of Karnataka at subsidized cost. Part of the consideration was received from the beneficiaries of the meals. ***It was held*** that the consideration received in the form of subsidy from the State/Central Government for the supply of service of food and drinks to the end-user is excluded from the definition of consideration; and hence, would not form the part of the consideration and the turnover. However, amount collected for the supply from the beneficiaries, will be subject to GST.

Megha Agrotech (P) Ltd.[2]

The subsidy may be received by the supplier either directly or through any other agency, such as, bank in the cases of farmers. The method of receipt of payment has no bearing on the price of the supply; and also the receipt of payment either from the Bank or the Government Department (on the authorization of the supplier concerned) is on the account of the supplier only.

Hitze Boilers Private Limited[3]

HB manufactured and supplied plant and machineries to CS for INR 23 lacs, and cost was based on the quotation. CS was eligible for 90% subsidy grants from the Government, which was deposited in an Escrow account opened with Bank where the CS is the account holder; and from this account, funds were transferred to HB. It was held that the subsidy received from the Government cannot be excluded from the value of supply of HB as the same is not affecting the price of supply.

(13) **Grants to a Government entity from the Central / State Government**

Supply of goods by a Government entity to Central/State Government, UT, local authority or any person specified by Central/State Government, UT or local authority, against consideration received from Central/State Government, UT or local authority in the form of grants is exempt vide Sl. No. 150 of N. No. 2/2017-CT(R) dt. 28 June 2017.

Supply of goods is also exempt when the amount of consideration is adjusted by the supplier entity against the unspent amount of grant received earlier.[4]

(14) **Notional interest on security deposit in case renting of immovable property**

There is no connection between the payment of interest by the third person and the renting service supplied by the supplier to the lessee. For the purpose of arriving at the total rental income, the notional interest earned on the security deposit is not to be taken into consideration. *[Midcon Polymers Pvt. Ltd.*[5]*]*

2.3.10 Exempt supply - *Sec 2(47)*

"Exempt supply" means supply of any goods or services or both -

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1 2019 (10) TMI 755 dated 20.09.2019 (AAR-Karn.).

2 2020 (4) TMI 691 dated 23.03.2020 (AAR-Karn.).

3 2023 (9) TMI 1122 dated 15.09.2023 (AAR-Karn.).

4 *Tamil Nadu Textbook and Educational Services Corp.* - 2020 (10) TMI 852 dated 12.05.2020 (AAR-T.N.).

5 2021 (1) TMI 554 dated 11.01.2021 (AAAR-Karn.).

- which attracts nil rate of tax, or
- which may be wholly exempt from tax under sec 11 of this Act, or
- which may be exempt under sec 6 of the IGST Act,

and includes non-taxable supply (e.g., specified petroleum products and alcoholic liquor for human consumption).

2.3.11 Fixed establishment - *Sec 2(50)*

"Fixed establishment" means a place,

- other than the registered place of business,
- which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources,
- to supply services, or
- to receive and use services for its own needs.

Temporary presence of staff by way of a short visit at a place cannot be called a fixed establishment. Also, the number of staff at a location is not important. What is relevant is the adequacy of the arrangement (of human and technical resources), to carry out an activity for a consideration, or to receive and use a service supplied. Similarly, it will be important to evaluate the permanence of the arrangement i.e. whether it is capable of executing the task. *[Para 5.2.6 of ST-Education Guide-2012]*

Further, the definition of fixed establishment is used only in the context of 'Location of recipient of services' and 'Location of Supplier of services', therefore, the same is not applicable in relation of goods.

IZ-Kartex Named after PG Korobkov Ltd.[1]: In the present case, the Applicant, Russian company has entered into the AMC Contract with BCCL. It deployed DDP, an Indian company as the sub-contractor, who issues invoice to the Russian company. The Russian company is raising bills on BCCL against supply of service. ***The AAAR observed*** that the domestic entity IZ-Kartex, even if registered with GST authorities, cannot be termed a fixed establishment since it did not maintain suitable structures in terms of human and technical resources in India to provide the service for which the agreement has been entered into between the parties.

Tokyo Electric Power Company, Holding Inc.[2]***:*** In another case, the applicant was providing consultancy services rendered to Odisha Power Transmission Corp. Ltd. (OPTCL) through its sub-station engineer/expert. ***The AAR observed*** that the experts maintain suitable structures in terms of human and technical resources at the sites of OPTCL, which would be termed as fixed establishments as defined under sec 2(7) of the IGST Act.

2.3.12 Input Service Distributor - *Sec 2(61)*

For detailed discussion: Please refer Chapter A-11 (Input Service Distributor)

2.3.13 Location of the recipient of services - *Sec 2(70)*

"Location of the recipient of services" means,-

[1] 2020 (11) TMI 528 dated 10.11.2020 (AAAR-W.B.).

[2] 2020 (12) TMI 900 dated 19.11.2020 (AAR-Odi.).