

Chapter 1

BASIC CONCEPTS OF GST

CHAPTER OVERVIEW

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1.1 INTRODUCTION

1.1.1 Indirect Taxes

1. Meaning:

- (a) Indirect Taxes are paid by one person (Assessee / Dealer), but the same is recovered from another person (Consumer).
- (b) It is levied on Purchase / Sale / Manufacture of Goods and Provision of Services.
- (c) In Direct Taxes, the burden of Tax is borne by the person himself, whereas in Indirect Taxes, the Tax burden is **shifted to the subsequent user**. This is considered to be the Major difference between Direct and Indirect Taxes.
- (d) A number of Indirect Taxes were levied in India, namely, Excise Duty, Customs Duty, Service Tax, Central Sales Tax, Value Added Tax, Entry Tax, Entertainment Tax etc.
- (e) Indirect taxes are levied both by Central Government as well as by State Governments.
- (f) As major reform, **integrating large number of Central and State Indirect Taxes** in to a Single Tax system, **Goods and Services Tax (GST)** was introduced on 01.07.2017.
- (g) GST subsumed 17 different types of Indirect taxes including Central Excise Duty and Value Added Tax. But Customs Duty is not subsumed with GST. Therefore now, the two major Indirect Taxes in India are **GST and Customs Duty**.

2. Features of Indirect Taxes:

- (a) **Reliance on Indirect Taxes as Source of Revenue:** There has been an increasing reliance on Indirect Taxes in the total Tax Revenue of the Government. It contributes about 55% of the total tax revenues of both Central and State Governments.
- (b) **Levy of tax on Commodities as well as on Services:** Indirect taxes are levied on Purchase / Sale / Manufacture of Goods, Import or export of commodities. Hence it is also called as Commodity Taxation. Indirect taxes are levied not only for commodities, but also for Provision of Services. Hence it has wider tax base when compared to Direct Taxes.
- (c) **Taxes inbuilt in Prices:** Indirect Taxes are inbuilt in the price of the commodity or on the services. Hence the tax payer pays indirect taxes without actually knowing that he is paying tax to the Government.
- (d) **Burden of Tax Payment:** Though it is levied on commodities at the time of manufacture or Purchase or at the time of Provision of Services, Intermediaries pass on the tax burden to the subsequent buyers and final tax burden is borne by the end consumer only.
- (e) **Distribution of Taxes:** For essential commodities Taxes are levied at low rates, whereas High taxes are imposed for harmful products (Sin goods) such as Tobacco, Pan, Alcoholic Products, etc.
- (f) **Inflationary Effect and Regressive in Nature:** Since Indirect taxes are levied both on commodities as well as on Services, this leads to, Indirect Taxes fuel inflationary trends in the country. Also, rich and poor have to pay the same rate of Indirect Taxes on certain consumption. This may increase the income disparities between rich and the poor, resulting in Regressive nature.

1.1.2 Advantages and Disadvantages of Indirect Taxes (IDT)

1. Advantages:

- (a) **Easy Management:** Indirect Taxes mainly relate to organised sector. Hence, it is convenient to control, i.e. levy, control and collection of IDT are easy.
- (b) **Assured Collection:** Being easier to control, the incidence of tax evasion is comparatively less. So, the contribution of IDT to the Government shows an increasing trend, as the businesses progress.

- (c) **Psychological Effect:** It creates an impression in the minds of Manufacturers and Dealers/ Service Providers, that they are only collecting the tax and not paying tax out of their pocket. Also, the ultimate taxpayer may not feel the burden of levy, since it is indirectly included in the price of the product.
- (d) **Luxury vs. Necessary Goods:** IDT controls wasteful expenditure on luxury goods by levying higher tax.
- (e) **Industrial Growth:** IDT has a positive impact on industrial growth.
- (f) **Low Cost of Collection:** Cost of collection of IDT is comparatively less.

2. Disadvantages

- (a) **Increases Cost:**
 - Capital Cost of Machinery is higher due to Indirect Taxes.
 - Cost of utilization of various services is increased by levy of GST.
 - This **increases cost of the project**, and in turn increases the cost of the goods produced.
- (b) **Lower Demand:** Levy of IDT leads to increased Selling Price of the product, thereby hampering its demand, which may affect industrial growth.
- (c) **Regressive Nature:** It is regressive in nature and the tax is uniform, irrespective of the user of goods.

1.1.3 Deficiencies in the Earlier Indirect Tax Regime

1. **No Set–Off:** Certain taxes levied by State Governments were not allowed as **set off** for payment of other taxes being levied by them. Example: When Goods are manufactured and sold, both Excise Duty (CENVAT) and State VAT were levied. Though CENVAT and State Level VAT are essentially Value Added Taxes, set–off of one against the credit of another was not possible as CENVAT was a Central Government Levy and State VAT was a State Government Levy.
2. **Variety of Taxes and Rates:** The variety of Value Added Tax Laws in the country with **disparate tax rates and dissimilar tax practices** divides the country into separate economic spheres.
3. **Double Taxation:** Earlier some items are treated both as a commodity as well as Services. Eg. Software. This resulted in Double Taxation of a transaction as both Goods and Services.
4. **High Compliance Cost:** The creation of **tariff and non–tariff barriers** such as octroi, entry tax, check posts, etc. hindered the free flow of trade throughout the country. Besides that, the large number of taxes created **high compliance cost** for the taxpayers in the form of number of Returns, Payments, etc.
5. **Others:**
 - (a) Non–inclusion of several local levies in State VAT such as Luxury Tax, Entertainment Tax, etc.
 - (b) No CENVAT after manufacturing Stage
 - (c) Non–integration of VAT & Service Tax

1.1.4 Meaning of Goods and Services Tax [GST]

1. **Meaning:**
 - (a) “GST is a tax on supply of Goods, or Services or both except on supply of the Alcoholic Liquor for Human Consumption.”[Article 366(12A)].
 - (b) It is implemented from 01.07.2017.
 - (c) It extends to whole of India.

[Note: W.e.f. 01.11.2024, GST shall not be leviable on Un-denatured extra neutral alcohol or rectified spirit used for manufacture of Alcoholic Liquor for Human Consumption]

2. **Value Added Tax:** It is a **Value Added Tax** levied on **Manufacture, Sale and Consumption** of Goods and Services. Only **value addition** will be taxed and burden of tax is to be borne by the final Consumer.
3. **ITC Set-off:** The Supplier at each stage is permitted to avail **credit of GST** paid on purchase of Goods and/ or Services (Input Tax) which can be set-off against the taxes paid on supply of Goods and Services made by him.
4. **Accrual of tax:** The tax would accrue to the taxing authority which has jurisdiction over the Place of Consumption which is also termed as **Place of Supply**. Hence GST is a Destination based consumption tax.

1.1.5 Existing Taxes that are subsumed under GST

GST would replace the following taxes levied and collected by the –

| Central Government | State Government |
|---|--|
| (a) Central Excise duty | (a) State VAT |
| (b) Duties of Excise (Medicinal and Toilet Preparations) | (b) Central Sales Tax |
| (c) Additional Duties of Excise (Goods of Special Importance) | (c) Luxury Tax |
| (d) Additional Duties of Excise (Textiles and Textile Products) | (d) Entry Tax (all forms) |
| (e) Additional Duties of Customs (commonly known as CVD) | (e) Entertainment and Amusement Tax (except when levied by the local bodies) |
| (f) Special Additional Duty of Customs (SAD) | (f) Taxes on advertisements |
| (g) Service Tax, Central Surcharges and Cesses so far as they relate to supply of Goods and Services. | (g) Purchase Tax |
| | (h) Taxes on lotteries, betting and gambling |
| | (i) State Surcharges and Cesses so far as they relate to supply of Goods and Services. |

Note: The GST Council an upper body formed to regulate the GST in India, shall make recommendations to the Union and States on the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed in the GST.

1.1.6 Coverage of GST on Transactions

As a result of Introduction of GST, following are the transactions in which CGST/ SGST/ IGST will be applicable–

- Central GST will replace the existing Central Excise Duty and Service Tax. CGST would also cover Sale transactions.
- State GST will replace State VAT, Entry tax, Octroi, Luxury tax, Entertainment tax etc. SGST would be levied on Services as well.
- Integrated GST (equal to CGST + SGST) will be levied on all supplies of goods and/or services in the course of inter-state trade or commerce. IGST would be applicable to Import of Goods or Services also.

1.1.7 Existing Taxes that will continue even after the introduction of GST

1. Central Excise Duty levied on manufacture/ production of Tobacco, Petroleum Crude, Diesel, Petrol, ATF and Natural Gas.
2. State Excise Duty levied on manufacture/ production of Alcoholic Liquor, Opium, Indian Hemp and Narcotics.
3. VAT levied on Intra-State sale of Petroleum Crude, Diesel, Petrol, ATF, Natural Gas and Alcoholic Liquor.

1.1.8 GST Framework

1. Constitutional Amendment

- (a) **Empowerment:** Article 246A of the Constitution, which was introduced by the Constitution (101st Amendment) Act, 2016 **confers concurrent powers to both, Parliament and State Legislatures** to make laws with respect to GST i.e. Central Tax (CGST) and State Tax (SGST) or union territory tax (UTGST). However, clause 2 of Article 246A read with Article 269A provides exclusive power to the Parliament to legislate with respect to inter-State trade or commerce i.e. integrated tax (IGST).
- (b) **Definition of GST:** As per Article 366 (12A), GST means “Any tax on supply of Goods or Services or both except taxes on Supply of the Alcoholic Liquor for human consumption”.

2. In GST Framework, broadly, three different types of taxes (GST) are levied as follows:

| Name | Expansion | Levied By | When |
|---------------------|--|------------------------------|--|
| CGST | Central Goods and Services Tax | Central Government | On INTRA State supply of Goods and Services |
| SGST / UTGST | State Goods and Services Tax Union Territory Goods and Services Tax | States/ Union Territories | On INTRA State supply of Goods and Services |
| IGST | Integrated Goods and Services Tax | Central Government | On INTER State supply of Goods and Services |

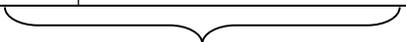
3. Dual GST Framework

- (a) It is a Dual GST framework, wherein, Centre will levy and administer CGST & IGST while respective states /Union Territories will levy and administer SGST/ UTGST.
- (b) India being a federal country where both the Centre and the States have been assigned the powers to levy and collect taxes through appropriate legislation. Both the levels of Government have distinct responsibilities to perform according to the division of powers prescribed in the Constitution for which they need to raise resources. A dual GST will, therefore, be in keeping with the Constitutional requirement of fiscal federalism.

4. Taxable Event under GST

- Taxable event under GST is supply of goods or services or both.
- CGST and SGST/ UTGST will be levied on intra-State supplies.
- IGST will be levied on inter-State supplies.
- The taxable events under the existing indirect tax laws such as manufacture, sale, or provision of services shall stand subsumed in the taxable event known as ‘Supply’.

1.1.9 Governing Acts

| Central Goods and Services Tax Act, 2017 | State Goods and Services Tax Act, 2017 | Union Territory Goods & Services Tax Act, 2017 | Integrated Goods and Services Tax Act, 2017 |
|---|--|--|---|
| CGST | SGST | UTGST | IGST |
|  | | |  |
| Levied on Intra-State Supply | | | Levied on Inter-State Supply |

Note: Though four different Acts will be governing the whole GST System, CGST law is considered to be the base for all other Act(s). Majority of the Provisions of CGST will be equally applicable for all the other 3 Acts with minor modifications. Section references given in the respective provisions are of CGST Act, unless otherwise mentioned.

1.1.10 Benefits of GST

1. **Creation of Unified National Market:** GST aims to make India a common market with common tax rates and procedures and remove the economic barriers. It is paving the way for an integrated economy at the national level.
2. **Mitigating Cascading Effects:** By amalgamating a large number of Central and State taxes into a single tax and allowing set-off of prior-stage taxes, it would mitigate the ill effects of cascading and pave the way for a common national market.
3. **Elimination of multiple taxes and double taxation:** GST will be leviable uniformly on Goods and Services as it has subsumed majority of the indirect tax levies. This will help eliminate the major issue relating to double taxation of transaction as both Goods and Services.
4. **Make in India initiative:** Introduction of GST would also make our Indian products competitive in the domestic and international markets and this would instantly spur economic growth.
5. **Increase in Revenue:** Revenue gain for the Centre and the States due to widening of the tax base, increase in trade volumes and improved tax compliance.

Illustrations

M23

Under which provisions of Constitution of India, government is empowered to levy taxes, custom duty and export duties. You are required to write a note on related provisions and restrictions under the Constitution of India.

- (a) The power for enacting the laws is conferred on the Parliament and on the legislature of a State by **Article 245** of the Constitution.
- (b) The article provides that subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the legislature of a State may make laws for the whole or any part of the state.
- (c) No law made by the Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.
- (d) **Article 246** governs the subject matter of the laws made by the Parliament and by the legislature of a State. The matters are listed in the Seventh Schedule to the Constitution. Parliament has a further power to make any law for any part of India not comprised in a state, notwithstanding that such matter is included in the State List.
- (e) **Article 286** of the Constitution provides for **restrictions** as to imposition of tax on certain supply of goods or services or both. The said Article provides as follows – **No law of a State** shall impose, or authorise the imposition of, a tax on the supply of goods or services or both, where such supply takes place–
 - outside the State, or
 - in the course of the import or export of the goods/ services/ both into or out of, territory of India.
 - Further, the said Article provides that Parliament may by law formulate principles for determining when a supply becomes, import or export.

Thus, the power to levy customs duties on import/export, as well as the power to legislate the principles to determine whether a transaction qualifies as import/export, lies solely with the Union, i.e. the Parliament of India.

1.2 KEY DEFINITIONS under CGST Law

| Sec. | Term | Definition | | | | |
|--|---|---|----------|----------|--|---|
| 2(52) | Goods | <ul style="list-style-type: none"> • Every kind of movable property. • Includes – Actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. • Excludes – Money and Securities. Note: Securities as defined u/s 2(h) of SCRA, 1956. Derivatives (Futures and Forward Contracts) are covered under the above definition of securities, thus not treated as goods/services. But where the settlement takes place by actual delivery of underlying goods, both Futures and Forwards are treated as Supply of goods and are liable for GST. | | | | |
| 2(102) | Services | <ul style="list-style-type: none"> • Anything other than Goods. • 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. • Excludes – Money and Securities. Note: Securities are not covered in the expression “Services.” However, facilitating or arranging transactions in securities are treated as Services. | | | | |
| 2(31) | Consideration | <p style="text-align: center;">Consideration in relation to the supply of Goods or Services or both –</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">Includes</th> <th style="text-align: center;">Excludes</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;"> <ul style="list-style-type: none"> • Any payment made or to be made, whether in money or otherwise, or 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. </td> <td style="vertical-align: top;"> <p>Any subsidy given by the Central Government or a State Government,</p> </td> </tr> </tbody> </table> | Includes | Excludes | <ul style="list-style-type: none"> • Any payment made or to be made, whether in money or otherwise, or 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. | <p>Any subsidy given by the Central Government or a State Government,</p> |
| Includes | Excludes | | | | | |
| <ul style="list-style-type: none"> • Any payment made or to be made, whether in money or otherwise, or 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. | <p>Any subsidy given by the Central Government or a State Government,</p> | | | | | |
| 2(17) | Business | <p>Business Includes –</p> <ol style="list-style-type: none"> (a) Any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit, (b) Any activity or transaction in connection with or incidental or ancillary to sub-clause (a), (c) Any activity or transaction in the nature of sub-clause (a), 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, (f) Admission, for a consideration, of persons to any premises, (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, (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. | | | | |

| Sec. | Term | Definition |
|--------|--------------------------|--|
| 2(72) | Manufacture | Processing of Raw Material or Inputs in any manner that results in emergence of a new product having a distinct name, character and use. The term “Manufacturer” shall be construed accordingly. |
| 2(107) | Taxable Person | Person who is registered or liable to be registered u/s 22 or u/s 24. |
| 2(108) | Taxable Supply | A supply of Goods or Services or both which is leviable to tax under this Act. |
| 2(109) | Taxable Territory | Territory to which the provisions of this Act apply. |
| 2(69) | Local Authority | Local Authority means– (a) Panchayat as defined in Article 243(d) of the Constitution, (b) Municipality as defined in Article 243P(e) of the Constitution, (c) Municipal Committee , a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund, (d) Cantonment Board as defined u/s 3 of the Cantonments Act 2006, (e) Regional Council or a District Council constituted under the Sixth Schedule to the Constitution, (f) Development Board constituted under article 371 and article 371J of the Constitution, or (g) Regional Council constituted under article 371A of the Constitution |
| 2(75) | Money | Indian legal tender or any Foreign Currency, Cheque, Promissory note, Bill of exchange, letter of credit, draft, pay order, traveler 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 but shall not include any currency that is held for its numismatic value. |
| 2(88) | Principal | A Person on whose behalf an agent carries on the business of supply or receipt of Goods or Services or both. |
| 2(5) | Agent | A person, including a factor, broker, commission agent, <i>arhatia</i> , <i>del credere agent</i> , 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. |

1.3 TAXABLE EVENT

1.3.1 Supply

- Taxable Event:** Taxable event under GST is **Supply of Goods** or **Supply of Services** or both.
[Note: As per GST, the term Sale / Services are not used, instead an unified term “Supply” is being used.]
- Meaning of Supply [Sec.7]:**

| Supply includes – | Supply excludes – |
|---|--|
| (a) All forms of Supply of Goods or Services or both such as Sale, Transfer, Barter, Exchange, Licence, Rental, Lease or Disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. (aa) The activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration. [W.r.e.f. 01.07.2017] | (a) Schedule III Activities or transactions, or (b) 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. |

Note: Notwithstanding anything contained in any other law in force or any judgement or decree or order of any Court, Tribunal or Authority, For the purposes of this clause, it is hereby clarified that, the person and its members or constituents shall be **deemed** to be **2 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 and,

(c) **Schedule I Activities** made or agreed to be made without a consideration

(d) Where certain activities or transactions, constitute a supply as above, they shall be treated either as supply of goods or supply of services in accordance with Schedule II. **[Sec.7(1A)]**

[List of Schedule I, II, III Activities are discussed in the respective places in this chapter]

Note: Notwithstanding anything contained in any other law in force or any judgment or decree or order of any Court, Tribunal or Authority, For the purposes of this clause, it is hereby clarified that, the person and its members or constituents shall be deemed to be 2 separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another.

3. **Power of the Government to treat transactions as supply of Goods/ Services [Sec.7(3)]:** The Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as–
- a supply of Goods and not as a supply of Services, or
 - a supply of Services and not as a supply of Goods.

1.3.2 Elements that constitute Supply

In order to constitute a ‘Supply’, the following elements are required to be satisfied, –

- The activity involves **supply of Goods or Services** or both,
- The supply is for a **consideration** unless otherwise specifically provided for,
- The supply is made in the **course or furtherance of business**,
- It is made in the **taxable territory**,
- The supply is a **taxable supply**, and
- It is made by a **taxable person**.

1.3.3 Activities treated as Supply even if it is made without Consideration

| SCHEDULE I | |
|-------------------|--|
| 1 | Permanent transfer/disposal of business assets where ITC has been availed on such Assets. |
| 2 | Supply of Goods or Services or both between related persons or between distinct persons as specified u/s 25, when made in the course or furtherance of business. |

| SCHEDULE I | |
|-------------------|---|
| 3 | Supply of Goods – (a) By a Principal to his agent where the Agent undertakes to supply such Goods on behalf of the Principal, or (b) By an Agent to his Principal where the agent undertakes to receive such Goods on behalf of the Principal. |
| 4 | Import of Services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business. |

1.3.4 Related Person [Sec.15 (5)]

1. Officers or Directors of one another's businesses,
2. Legally recognized Partners in business,
3. Employer and Employee,
4. Any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them,
5. One of them directly or indirectly controls the other,
6. Both of them are directly or indirectly controlled by a third person,
7. Together they directly or indirectly control a third person, or they are members of the same **family**.

| | |
|---|--|
| Gifts from Employer to Employee | Gifts not exceeding ₹ 50,000 in value, in a Financial Year by an Employer to an employee shall not be treated as supply of Goods or Services or both. |
| Definition of Family [Sec.2(49)] | Family means– (a) the spouse and children of the person, and (b) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person. |

1.3.5 Distinct Person and Establishments of Distinct Person

1. **Distinct Person [Sec.25(4)]**: A Person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.
2. **Establishments of Distinct Person [Sec.25(5)]**: Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

1.3.6 Treatment of Gifts / Samples

1. **Gifts by Employer to Employee**: Supply by the Employer to the Employee in terms of Contractual agreement entered into between the Employer and the Employee, will not be subjected to GST.
2. Gifts not exceeding ₹50,000 in value in a financial year by an Employer to an Employee shall not be treated as supply of Goods or Services or both.
3. If such Services are provided free of charge to all the employees by the employer then the same will not be subjected to GST, provided appropriate GST was paid when procured.
4. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to the employer in relation to his employment.
5. It follows that perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, **will not be subjected to GST** when the same are provided in terms of the contract between the employer and employee. **[Circular 172/04/2022]**

Illustration**An Employer provides free housing to his Employee. Will this transaction be subject to GST?**

Free housing to the employees, when provided in terms of the Contract between Employer and Employee and is part and parcel of the Cost to the Company (C2C), will not be subjected to GST.

Illustration**Supply of Drug Samples by pharmaceutical companies to their stockists, dealers, medical practitioners, etc. without charging any consideration. Will this transaction be subject to GST?**

- As per Sec. 7(1)(a), the expression “supply” includes 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.
- Therefore, the goods or services or both which are **supplied free of cost** (without any consideration) shall not be treated as “supply” under GST (except in case of activities mentioned in Schedule I of the CGST Act).
- It is clarified that samples which are supplied free of cost, without any consideration, **do not qualify as “supply”** under GST, except where the activity falls within the ambit of Schedule I of the CGST Act.

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

| SCHEDULE II | |
|-----------------------------|--|
| Transfer | |
| 1 | (1) Any transfer of the title in Goods is a supply of Goods . (2) Any transfer of Goods or of undivided share in Goods without the transfer of title thereof, is a supply of Services . (3) Any transfer of title in Goods under an agreement which stipulates that property in Goods will pass at a future date upon payment of full consideration as agreed, is a supply of Goods . |
| Land and Building | |
| 2 | 1. Any lease, tenancy, easement, licence to occupy land is a supply of Services . 2. Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of Services . |
| Treatment or process | |
| 3 | Any treatment or process which is being applied to another person’s Goods is a supply of Services . |
| Transfer of Business Assets | |
| 4 (a) | where Goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of Goods by the person , |
| 4(b) | Where, by or under the direction of a person carrying on a business, Goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, the usage or making available of such Goods is a supply of Services, |
| 4(c) | Where any person ceases to be a taxable person, any Goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless— (a) the business is transferred as a going concern to another person, or (b) the business is carried on by a personal representative who is deemed to be a taxable person. |

| SCHEDULE II | |
|---|---|
| Items treated as Supply of Service | |
| 5 | <p>The following shall be treated as “supply of service” –</p> <p>(a) renting of immovable property,</p> <p>(b) construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or before its first occupation, whichever is earlier.</p> <p>Note:</p> <p>1. "Competent Authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:–</p> <p>(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972, or</p> <p>(ii) a chartered engineer registered with the Institution of Engineers (India), or</p> <p>(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority,</p> <p>2. "Construction" includes additions, alterations, replacements or remodeling of any existing civil structure.</p> <p>(c) temporary transfer or permitting the use or enjoyment of any intellectual property right,</p> <p>(d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software,</p> <p>(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act,</p> <p>(f) transfer of the right to use any Goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.</p> |
| Composite Supply | |
| 6 | <p>The following composite supplies shall be treated as a supply of Services, namely:—</p> <p>(a) works contract as defined u/s 2(119), and</p> <p>(b) supply, by way of or as part of any service or in any other manner whatsoever, of Goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.</p> |
| Items treated as Supply of Goods Omitted [W.r.e.f. 01.07.2017] | |

[Note: This schedule is considered to be important, as it stipulates whether a given transaction is to be considered as Supply of Goods or Supply of Services. Determination of Supply of Goods / Supply of Services is essential as it is having impact in Taxability.]

Activities or transactions which shall be treated neither as a Supply of Goods nor as Supply of Services

| Schedule III | |
|--------------|---|
| 1 | Services by an employee to the employer in the course of or in relation to his employment. |
| 2 | Services by any Court or Tribunal established under any law for the time being in force. Note: The term "Court" includes District Court, High Court and Supreme Court. |
| 3 | (a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities, (b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity, or (c) Duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause. |
| 4 | Services of funeral, burial, crematorium or mortuary including transportation of the deceased. |
| 5 | Sale of Land and, subject to clause (b) of paragraph 5 of Schedule II, Sale of Building. |
| 6 | Actionable claims, other than [W.e.f. 01.10.2023] Specified Actionable Claims [Refer Note 4] |
| 7 | Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. |
| 8 | (a) Supply of warehoused goods to any person before clearance for home consumption, (aa) Supply of goods warehoused in a Special Economic Zone or in a Free Trade Warehousing Zone to any person before clearance for exports or to the Domestic Tariff Area. (FA 2025) (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption. Note: a) Warehoused goods shall have the same meaning as assigned to it in Customs Act, 1962. b) The expressions "Special Economic Zone", "Free Trade Warehousing Zone" and "Domestic Tariff Area" shall have the same meanings respectively as assigned to them in section 2 of the Special Economic Zones Act, 2005 |
| 9 | [W.e.f. 01.11.2024, Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in coinsurance agreements, subject to the condition that the lead insurer pays the central/State/UT tax and the IGST on the entire amount of premium paid by the insured [Refer Note 5] |
| 10 | Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the central/State/UT tax and the IGST is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission. [Refer Note 6] |

Note:

- W.e.f 01.07.2017**, Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution." undertaken by the Central Government or State Government or any local authority in which they are engaged as public authority, shall be treated neither as a supply of Goods nor a supply of service. [Notification No.14/2017-CT(R), dt:28.06.2017]
- W.re.f 01.07.2017**, Service by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called provided by the State Governments in which they are engaged as public authority, shall be treated neither a supply of goods nor a supply of Service. [Notfn. 25/2019, dt: 30.09.2019]. **Note: No refund** shall be made in respect of tax collected till the time of issuance of this notification.

3. No refund of taxes shall be made for taxes that have been collected, but would not have been collected had the provision of item 7, 8 be in force at all material times. (No refund of taxes collected from 01.07.2017 till 01.02.2019)

4. “Specified Actionable Claims” Means an actionable claim involved in or by way of, –

| | | |
|--------------|-------------------|--------------------------|
| (i) betting | (iii) gambling | (v) lottery |
| (ii) casinos | (iv) horse racing | (vi) online money gaming |

5. Co-insurance is a practice where multiple insurance companies jointly cover a single insurance policy. Instead of a single insurer bearing the entire risk, the risk is shared between two or more co-insurers. In a co-insurance agreement, each insurer agrees to cover a specific risk percentage and receives a corresponding percentage of the total premium. One of the co-insurers is designated as lead insurer.

The lead insurer is responsible for managing the policy, handling claim processing and communicating with the insured etc. The lead insurer collects the total premium from the insured and then apportions the premium between the co-insurers based on their respective shares of the risk, with paying applicable taxes.

6. Reinsurance is a risk management practice where an insurance company (insurer) transfers part of its risk to another insurance company (reinsurer) in exchange for a portion of the premium that insurer collects from policyholders (reinsurance premium). This allows the insurer to manage its risk and financial exposure. The reinsurer often pays ceding commission (reinsurance commission) to the insurer to compensate for administrative costs, underwriting, and acquisition expenses related to issuing and servicing the policies. By receiving this commission, the insurer is compensated for expenses and reduces its overall burden, making reinsurance financially viable. Generally, while paying the reinsurance premium, insurer deducts the ceding commission/ reinsurance commission payable by reinsurer

Illustration

Explain with reasons whether the following transactions are Supplies.

| Transaction | Whether Supply? | Reason |
|---|---|--|
| Supply of Actionable Claims | No. Except Lottery, Betting and Gambling | Schedule III lists actionable claims other than Specified Actionable Claims which shall neither be treated as supply of Goods nor supply of Services. Thus only lottery, betting and gambling shall be treated as supplies under the GST regime. |
| Transaction in Securities | No | Securities have been specifically excluded from the definition of Goods as well as Services. |
| Facilitating transactions in Securities like Stock Broking | Yes | Securities are not covered in the expression “Services.” However, facilitating or arranging transactions in securities are treated as Services. |
| Commodities given by Charitable Institution | No | In order to be a supply which is taxable under GST, the transaction should be in the course or furtherance of business. |
| Individual buys a car for personal use and after a year sells it to a car dealer | No | Supply is not made by the individual in the course or furtherance of business. |
| Dealer of air-conditioners permanently transfers an air conditioner from his stock in trade, for personal use at his residence. | Yes | As per Sl. No.1 of Schedule–I, permanent transfer or disposal of business assets where input as credit has been availed on such assets shall constitute a supply under GST even where no consideration is involved. |
| Provision of service or Goods by a club or association or society to its members | Yes | Provision of facilities by a club, association, society or any such body to its members shall be treated as supply. This is included in the definition of ‘business’ u/s 2(17). |

| Transaction | Whether Supply? | Reason |
|---|-----------------|--|
| A Resident Welfare Association provides the service of depositing the electricity bills of the residents in lieu of some nominal charges. | Yes | Provision of service by a Club or Association or Society to its members is treated as Supply as this is included in the definition of “Business”. |
| Mr. Raju purchased goods from Singapore and sold it to Mr. Ram in Europe, without bringing the goods in India. | No | As per Schedule–III, this transaction is neither supply of goods nor supply of services, as the transaction results in Supply of goods from a place in the non–taxable territory to another place in the non–taxable territory without such goods entering into India. |
| Mr. Sivan imported certain machinery to India, but kept the machinery in custom bonded warehouse without clearing it for home consumption. While the same is in warehouse, Mr. Sivan sold these machinery to Mr. Brito. | No | Supply of warehoused goods to any person before clearance for home consumption is neither supply of goods nor supply of services. |
| Pinaki Ltd imported tea bags from Srilanka. While the goods were in high seas, Pinaki Ltd sold the goods to Ms. AVT Tea Ltd in India by way of endorsement of documents of title of goods. | No | Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption is neither supply of goods nor supply of services. |

Clarification in respect of goods sent / taken out of India for exhibition or on consignment basis for export promotions

The activity of sending / taking the goods out of India for exhibition or on consignment basis for export promotion, do not constitute supply as the said activity does not fall within the scope of supply as there is no consideration at that point in time. Also it is to be noted it cannot also be treated as “Zero rated Supply”.

Note: If the conditions mentioned in Schedule 1 with regard to deemed supply is satisfied for the said activity, the above exception shall not be applicable. [Circular 108/27/2019 dated 18.07.2019]

Clarification in respect of Display of name or placing of name plates of the donor in the premises of Charitable Organizations

Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, advancement of spirituality / Yoga, Charitable Organisations, Schools, Hospitals, Orphanages, Old age homes etc. The recipient institutions place a name plate or similar such acknowledgment in their premises to express the gratitude. Placing such name of the donor is said to be an expression of gratitude and public recognition of donor’s act of philanthropy and is not aimed at providing publicity as that of an advertisement or promotion of donors business. As there is no obligation (quid pro quo) on the part of the recipient of donation or gift to do anything as a supply of service, there is no GST Liability on such consideration.

Examples:

1. “Good wishes from Mr. Rajesh” printed underneath a digital blackboard donated by Mr. Rajesh to a Charitable Yoga Institution.
2. “Donated by Smt. Malathi Devi in the memory of her father” written on the door or floor of a room or any part of a temple complex which was constructed from such donation

Taxability of share capital held in subsidiary company by the parent company

Securities are considered neither goods nor services in terms of definition of goods under clause (52) of section 2 of CGST Act and the definition of services under clause (102) of the said section. Further, securities include 'shares' as per definition of securities under clause (h) of section 2 of Securities Contracts (Regulation) Act, 1956.

This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined under section 7 of CGST Act. It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a SAC entry '997171' in the scheme of classification of services mentioning; "the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.", unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of CGST Act.

Hence, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

1.4 TYPES OF SUPPLY

1.4.1 Different types of supplies under the GST law

- (a) Taxable and Exempt supplies.
- (b) **Inter**–State and **Intra**–State supplies,
- (c) Composite and Mixed supplies.

1.4.2 Taxable and Exempt Supplies

1. **Taxable Supply [Sec.2(108)]**: A supply of Goods or Services or both which is **leviable to tax** under this Act.
2. **Exempt Supply [Sec.2(47)]**: Supply of any Goods or Services or both which attracts **Nil Rate** of tax or which may be wholly exempt from tax u/s 11, or u/s 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply.

1.4.3 Inter–State Supplies and Intra–State supplies

1. **Inter–State Supply of Goods/ Services [Sec.2(64)]**: Inter State Supply of Goods shall have the same meaning as assigned to it in **Sec.7 of the IGST Act**, which is as follows –
 - (a) Supply of Goods in the course of **Inter–State trade or commerce** means any supply where the **location of the supplier and the place of supply are in –**
 - Two different States.
 - Two different Union territories, or
 - A State and a Union territory
 - (b) Supply of Goods or Services or both shall be treated as **Inter–State Supply** of Goods/ Services in the following **situations also**, –
 - (a) When the supplier is located in India and the place of supply is outside India,
 - (b) Supply to or by a Special Economic Zone developer or a Special Economic Zone unit, or
 - (c) Supply is in the taxable territory, not being an Intra–State supply and not covered elsewhere in this section.

Note: Also refer the provisions of Sec.10 of the IGST, Act.

2. **Intra–State Supply of Goods/ Services [Sec.2(65)]:** Intra State Supply of Goods shall have the same meaning as assigned to it in Sec.8 of the IGST Act, which is as follows –
- Supply of Goods where the location of the supplier and the place of supply of Goods/ Services are in the **same State or same Union territory** shall be treated as Intra–State supply.
 - Intra–State supply of Goods **shall not include** –
 - Supply of Goods to or by a Special Economic Zone developer or a Special Economic Zone unit,
 - Goods imported into the territory of India till they cross the customs frontiers of India, or
 - Supplies made to a tourist referred u/s15.
 - Intra–State Supply of Services shall not include supply of Services to or by a Special Economic Zone developer or a Special Economic Zone unit.

Note:

- The following Establishments shall be treated as establishments of distinct persons. Where a person has –
 - an Establishment in India and any other establishment outside India,
 - an Establishment in a State or Union territory and any other establishment outside that State, or
 - An Establishment in a State or Union territory and any other establishment being a multiple place of business registered within that State or Union territory.
- A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

1.4.4 Concept of Composite and Mixed Supply

| Sec. | 2(30) | 2(74) |
|---|--|---|
| Definition | <ul style="list-style-type: none"> “Composite Supply” means a Supply made by a taxable person to a recipient consisting of two or more taxable supplies of Goods or Services or both, or any combination thereof, Which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a Principal Supply? [See Note] | <ul style="list-style-type: none"> “Mixed Supply” means two or more individual supplies of Goods or Services, or any combination thereof, made in conjunction with each other by a taxable person, For a single price where such supply does not constitute a composite supply. |
| Illustration | Where Goods are packed and transported with insurance, the supply of Goods, packing materials, transport and insurance is a Composite supply and supply of Goods is a Principal supply . | <ul style="list-style-type: none"> A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. If these items are supplied separately, then it shall not be considered as mixed supply. |
| Determination of Tax Liability [Sec.8] | Composite Supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply. | Mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax. |

Note: Principal Supply means the supply of Goods or Services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary. [Sec. 2(90)]

**Clarification on Supply of Printed Books / Pamphlets / Printed Letters Etc.,
[Circular No. 11.11.2017 of CGST dated 20.10.2017]**

- (a) Supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. **printed with logo, design, name, address or other contents** supplied by the recipient of such printed goods, are **composite supplies** and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the **Principal Supply**.
- (b) In case of printing of books, pamphlets, brochures, annual reports, and the like, **where only content is supplied by the publisher** or the person who owns the usage rights to the intangible inputs while the **physical inputs including paper used for printing belong to the printer**, – **supply of printing of the content supplied by the recipient of supply is the principal supply** and therefore such supplies would **constitute supply of Service** falling under heading 9989 of the scheme of classification of services.
- (c) In case of supply of **printed** envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. **supplied by the recipient of goods** but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the **supply of printing of the content supplied by the recipient of supply is ancillary to the principal supply of goods** and therefore such supplies would constitute **supply of goods** falling under respective headings of Chapter 48 or 49 of the Customs Tariff.

**Clarification on Supply of foods or beverages in cinema hall is taxable as restaurant services
[Circular No.201/13/2023 Dated 01.08.2023]**

- (a) The cinema operator may run refreshment or eating stalls/kiosks/counters or restaurant themselves or they may give it on contract to a third party. The customer may like to avail the services by these refreshment/snack counters or choose not to avail these services. Further, the cinema operator can also install vending machines, or supply any other recreational service such as through coin-operated machines act. Which a customer may or may not avail.
- (b) Supply of food or beverages in a cinema hall is taxable as 'restaurant service' which attract GST at the rate of 5% as long as:
- (i) the food or beverages are supplied by way of or as part of a service, and
 - (ii) supplied independent of the cinema exhibition service.
- (c) Where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

Clarification on "Buy One Get One Offer" [Circular No. 92/11/2019 of CGST dated 07.03.2019]

Issue: Treatment of promotional offers like 'Buy One, Get One free'.

Example: Offer as "Buy one soap and get one soap free" or "Get one tooth brush free along with the purchase of tooth paste".

Analysis:

- As per Sec. 7(1)(a) of the CGST Act, the goods or services which are supplied free of cost (without any consideration) shall not be treated as "supply" under GST (except in case of activities mentioned in Sch I of the CGST Act).
- It may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration. In fact, it is not an individual supply of free goods, but a **case of two or more individual supplies where a single price is being charged** for the entire supply. It can at best be treated as supplying two goods for the price of one.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per Sec. 8 of the CGST Act.

Indicators for determining whether the supply is a Composite or Mixed

| Description | Composite Supply | Mixed Supply |
|--|------------------|--------------|
| Naturally bundled | Yes | No |
| Supplied together | Yes | Yes |
| Can be supplied separately | No | Yes |
| One is predominant supply for recipient | Yes | No |
| Other supply is not 'aim in itself' of recipient | Yes | No |
| Each supply priced separately | No | No |
| All supplies are goods | Yes | Yes |
| All supplies are services | Yes | Yes |
| One supply is goods and other supply is services | Yes | Yes |

ILLUSTRATION – Supply and Computation of GST Liability

N 22

XYZ Consultancy, registered in Bangalore, supplies technical consultancy services to its clients. It has been providing technical services to BA Ltd. Mumbai since past two years. Consideration is settled by BA Ltd assignment wise. BA Ltd paid ₹37 lakhs to XYZ Consultancy on 10th January, 2022 on XYZ Consultancy for agreeing not to provide similar technical services to any other business entity in India or abroad for a period of 8 years. XYZ Consultancy is of the view that ₹37 lakh is not chargeable to GST.

You are required to examine whether the view taken by XYZ Consultancy is valid in law. Calculate GST liability of XYZ Consultancy, in case you feel that GST is chargeable. Round off the tax amount if due in accordance with law. The technical services provided by XYZ Consultancy is otherwise chargeable to IGST at the rate of 18% and XYZ have been discharging the GST liability on consultancy charges. It may be noted that BA Ltd is not ready to pay any further amount to XYZ Consultancy in addition to amount already agreed.

Solution:

As per Sec. 7(1A) read with Schedule II of the CGST Act, 2017, agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act is treated as supply of service.

In the present case, XYZ received an amount of ₹ 37 lakhs from BA Ltd, for refraining to act, thus the same would be considered as supply of service and the consideration of service is liable to GST.

Thus, the contention of XYZ that the consideration of ₹ 37 Lakhs received for refraining from providing similar technical services to other business entities not liable for GST is not valid.

Thus the value of supply u/s 15 shall be ₹ 37,00,000 and is considered as inclusive of IGST as BA Ltd is not ready to pay any further amount.

Thus, GST Liability of XYZ = ₹ 37,00,000 × 18/118 = ₹ 5,64,407

ILLUSTRATION – Supply under GST

M 24

Mr. Sharma, Director of VEE Ltd. provides personal guarantee on 31.10.2023 to a nationalized bank for sanctioning the cash credit facility of 100 lakhs sanctioned in favour of VEE Ltd. Mr. Sharma was not paid any consideration for the same by VEE Ltd. Whether the said activity provided by Mr. Sharma will be considered as supply? If yes, what will be the value of such services? Explain in brief the relevant provisions of GST Act.

Solution:

The activity of providing corporate guarantee or personal guarantee by a related person/ holding company/ Director to the banks/ financial institutions for securing credit facilities for their companies is to be treated as a **supply of service**, even when made **without consideration**. It is also clarified that the taxable value of such supply of service shall be the **open market value of such supply**.

However, since RBI does not permit payment of any consideration by way of commission, brokerage fees or any other form, to the director by the company, directly or indirectly, in lieu of providing personal guarantee to the bank for borrowing credit limits, there is no question of any open market value. Thus, **no tax is payable on such supply** of service by the director to the company.

ILLUSTRATION –DETERMINATION OF TRANSACTION AS SUPPLY

N 24

Decide with reason whether following independent transactions amount to supply or not as per the provision, rules and notification issued under the GST law:

- (i) **Satyam has lent securities to Kala Enterprises for a consideration of ₹ 10,000 towards lending of securities under the Securities Lending Scheme, 1997 through an approved intermediary. Ignore the transaction between Satyam and intermediary.**
- (ii) **Patta Limited made supply of goods to its agent, Romi, without consideration. Romi issued invoice for the further supply of goods to the customers in his own name. Romi also disclosed the name of principal in the invoice issued.**
- (iii) **Dilasa Limited recruited Miss Chhaya as senior relationship manager. At the time of joining as senior relationship manager, the company paid ₹ 3,00,000 towards "Not joining" Milan Limited, a stiff competitor of Dilasa Limited.**

Solution:

- (a) Facilitating transactions in securities – Supply u/s 7(1)(a) [Covered under RCM – Security Lending Scheme]
- (b) As the agent issued invoice in his own name – Supply u/s 7(1)(c) read with Schedule I.
- (c) The said payment is in the nature of Non-Compete fee and not made in the capacity of employer–employee. Thus taxable Section 7(2) read with Schedule II.

ILLUSTRATION –DETERMINATION OF TRANSACTION AS SUPPLY

M 25

M/s VRM Ltd is a registered job worker in the State of Haryana under GST and providing various job work services related to metal products. On 30.04.2024 VRM Ltd received steel cabinets worth ₹ 48 lakh under a delivery challan with e-way bill for the purpose of job work from M/s Vijay Pvt Ltd a registered manufacturer in Haryana. The scope of job work included mounting the steel cabinets on a metal frame and sending back the mounted cabinets to Vijay Pvt Ltd The metal frames are to be supplied by M/s VRM Ltd along with services relating to job work. VRM Ltd has agreed to charge total consideration of ₹ 6.50 lakh for the entire mounting job work activity including the value of metal frames. During the course of mounting activity, metal waste is generated out of metal frames, which is sold by M/s VRM Ltd for ₹ 52,000. VRM Ltd sent back the steel cabinets mounted on the metal frame to Vijay Pvt Ltd on 13th October,2024 under a delivery challan with e-way bill. You are required to compute taxable value and the GST liability of M/s VRM Ltd related to this transaction in any tax period. Assume GST rate for metal frame as 28%, for metal waste as 12% and for services as 18%. Also, give reason(s) for inclusion or exclusion of the value of cabinets in the job charges for the purpose of payment of GST by VRM Ltd

| Particulars | Amount (₹) | Rate | GST (₹) |
|---|-----------------|------|-----------------|
| Job charges [Since mounting steel cabinets on metal frames by a job worker is treated as a service (even though the metal frames are also supplied as a part of the mounting activity) in terms of Schedule II to the CGST Act, tax is payable @ 18%. Value of steel cabinets supplied by the principal will be excluded from the job charges since supply of cabinets does not fall within the scope of supply to be made by job worker - M/s VRM Ltd.] | 6,50,000 | 18% | 1,17,000 |
| Sale of metal waste [Since M/s VRM Ltd. is registered, the tax on the supply of metal waste being goods will be payable by it @ 12%.] | 52,000 | 12% | 6,240 |
| Total taxable value and GST Payable | 7,02,000 | | 1,23,240 |

Practical Scenarios for Practice

1. Why was the Constitution of India amended in the context of GST?

Currently, the fiscal powers between the Centre and the States are clearly demarcated in the Constitution with almost no overlap between the respective domains. The Centre has the powers to levy tax on the manufacture of goods (except alcoholic liquor for human consumption, opium, narcotics etc.) while the States have the powers to levy tax on the sale of goods. In the case of inter-State sales, the Centre has the power to levy a tax (the Central Sales Tax) but, the tax is collected and retained entirely by the States. As for services, it is the Centre alone that is empowered to levy service tax.

Introduction of the GST required amendments in the Constitution so as to simultaneously empower the Centre and the States to levy and collect this tax. The Constitution of India has been amended by the Constitution (one hundred and first amendment) Act, 2016 for this purpose. Article 246A of the Constitution empowers the Centre and the States to levy and collect the GST.

2. How a particular transaction of goods and services would be taxed simultaneously under Central GST (CGST) and State GST (SGST)?

The Central GST and the State GST would be levied simultaneously on every transaction of supply of goods and services except the exempted goods and services, goods which are outside the purview of GST and the transactions which are below the prescribed threshold limits.

Further, both would be levied on the same price or value unlike State VAT which is levied on the value of the goods inclusive of CENVAT. While the location of the supplier and the recipient within the country is immaterial for the purpose of CGST, SGST would be chargeable only when the supplier and the recipient are both located within the State.

Illustration I: Suppose hypothetically that the rate of CGST is 10% and that of SGST is 10%. When a wholesale dealer of steel in Uttar Pradesh supplies steel bars and rods to a construction company which is also located within the same State for, say ₹ 100, the dealer would charge CGST of ₹ 10 and SGST of ₹ 10 in addition to the basic price of the goods. He would be required to deposit the CGST component into a Central Government account while the SGST portion into the account of the concerned State Government. Of course, he need not actually pay ₹ 20 (₹ 10 + ₹ 10) in cash as he would be entitled to set-off this liability against the CGST or SGST paid on his purchases (say, inputs). But for paying CGST he would be allowed to use only the credit of CGST paid on his purchases while for SGST he can utilize the credit of SGST alone. In other words, CGST credit cannot, in general, be used for payment of SGST. Nor can SGST credit be used for payment of CGST.