



# Goods and Service Tax

**CONCEPT OF SUPPLY**

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# INTRODUCTION

- ❑ Incidence of Tax- A foundation stone for each statute
- ❑ Prior Indirect Tax Laws prone to a variety of interpretations
- ❑ Broadly, the controversies related to issues like whether a particular process amounted to manufacture or not, whether the sale was pre-determined sale, whether a particular transaction was a sale of goods or rendering of services etc. The GST laws resolve these issues by laying down one comprehensive taxable event i.e: "Supply" - Supply of goods or services or both.

# SECTION 2: IMPORTANT DEFINITIONS

Section 2(52) “goods” means every kind of movable property **other than money and securities** but includes

- ❑ actionable claim,
- ❑ growing crops, grass and things attached to or forming part of the land

*Which are agreed to be severed before supply or under a contract of supply*

Actionable Claims included in Definition of Goods Actionable claim, other than lottery, betting and gambling will not be treated as supply of goods or services by virtue of Schedule III

Intangibles like DEPB license, copyright and carbon credit would continue to be covered under ‘goods’.

## SECTION 2: IMPORTANT DEFINITIONS

**Competent authority:** means such authority as may be notified by the Government [Section 2(29) of the CGST Act].

**Family:** means, —  
the spouse and children of the person, and  
the parents, grand-parents, brothers and sisters of the person **if they are wholly or mainly dependent on the said person** [Section 2(49) of the CGST Act].

# SECTION 2: IMPORTANT DEFINITIONS

**Local authority:** means —

a “Panchayat” as defined in clause (d) of article 243 of the Constitution.

a “Municipality” as defined in clause (e) of article 243P of the Constitution.

a 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.

a Cantonment Board as defined in section 3 of the Cantonments Act, 2006.

a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution.

a Development Board constituted under article 371 and article 371J of the Constitution.

a Regional Council constituted under article 371A of the Constitution [Section 2(69) of the CGST Act].

## SECTION 2: IMPORTANT DEFINITIONS

**Section 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;

# SECTION 2: IMPORTANT DEFINITIONS

- ❑ Section 2(17) “business” includes—
  - ❑ (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;

# SECTION 2: IMPORTANT DEFINITIONS

- ❑ Section 2(17) “business” includes—
  - ❑ (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) services provided by a race club by way of totalisator or a licence to 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;

## Section 2(88): Principal

- ❑ Principal: means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both



# SECTION 2: IMPORTANT DEFINITIONS

- ❑ Section 2(31) “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;
  - ❑ (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 that a **deposit given in respect of the supply of goods** or services or both **shall not be considered as payment** made for such **supply unless the supplier applies such deposit as consideration for the said supply**;

# SECTION 2: IMPORTANT DEFINITIONS

## IMPORTANT POINTS IN SECTION 2(31):

- ❑ It refers to the payment received by the supplier in relation to the supply, whether from the recipient or any other person. Therefore, a third party to a contract can also contribute towards consideration;
- ❑ Consideration, therefore, is not the amount that the recipient pays but the amount that the supplier collects whether from the recipient or any third party.
- ❑ Consideration can be in the form of money or otherwise. E.g.: Under a JDA model, the flats handed by the developer to the landowner will be considered as 'consideration' for the development rights given to the developer by the landowner;

# SECTION 2: IMPORTANT DEFINITIONS

## IMPORTANT POINTS IN SECTION 2(31):

- ❑ Deposits, as such, are not liable to tax. However, where such deposits have been applied as consideration for the supply it would be liable to tax. Merely altering the nomenclature of the payment as 'deposit' would not change the nature of the receipt.
- ❑ However, trade practices and the terms, used play an important role in identifying whether an amount is a 'deposit' or an 'advance' or any payment as consideration for the supply;

# SECTION 2: IMPORTANT DEFINITIONS

Section 2(1): Actionable Claim:

- Actionable claim: shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882.

Section 3 of the TOP Act, 1882:

Actionable claim means:

- a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property

# SECTION 2: IMPORTANT DEFINITIONS

Section 3 of the TOP Act, 1882:

Actionable claim means (cont'd):

- ❑ or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent

# SECTION 2: IMPORTANT DEFINITIONS

## Section 2(72): Manufacture

- ❑ “Manufacture” means processing of raw material or inputs in any manner **that results in emergence of a new product** having a distinct name, character and use and the term “manufacturer” shall be construed accordingly

## Important Points:

- ❑ Term “Manufacture” has lost its significance in the GST regime
- ❑ Manufacture: a pre-condition for deemed exports
- ❑ Maintenance of Accounts
- ❑ Used in Section 10- Composition Scheme (2% for manufacturers)

# SECTION 2: IMPORTANT DEFINITIONS

## **Section 2(75): Money:** means:

- ☐ the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, 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
- ☐ but shall not include any currency that is held for its numismatic value

# SECTION 2: IMPORTANT DEFINITIONS

## **Section 2(108)- Taxable Supply:**

Taxable supply: means a supply of goods or services or both which is leviable to tax under this Act

### **Important Points:**

- ☐ The transaction must involve either goods or services, or both of them;
- ☐ Such goods or services should not be specified under Schedule III
- ☐ It should fall within the meaning of 'supply' in terms of Section 7 of the CGST Act;
- ☐ The supply should be leviable to GST – i.e., it should not be covered within the meaning of 'non-taxable supply' as defined under Section 2(78)



# SECTION 2: IMPORTANT DEFINITIONS

**Section 2(109): Taxable Territory:** means the territory to which the provisions of this Act apply

Section 2(84): Person includes:

- ☐ an individual;
- ☐ a Hindu Undivided Family
- ☐ a company
- ☐ a firm
- ☐ a LLP

# SECTION 2: IMPORTANT DEFINITIONS

Section 2(84): Person includes:

- ☐ an AOP or a BOI, whether incorporated or not, in India or outside India;
- ☐ any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in Sec 2 (45) of Companies Act, 2013;
- ☐ any body corporate incorporated by or under the laws of a country outside India;
- ☐ a co-operative society registered under any law relating to co-operative societies;

# SECTION 2: IMPORTANT DEFINITIONS

Section 2(84): Person includes (Cont'd):

- ☐ a local authority;
- ☐ Central Government or a State Government;
- ☐ society as defined under the Societies Registration Act, 1860;
- ☐ trust; and
- ☐ every artificial juridical person, not falling within any of the above

# SECTION 2: IMPORTANT DEFINITIONS

Section 2(93): Recipient of Supply of Goods and/or Services:

Recipient of Supply of Goods and/or Services means:

- (a) **where a consideration is payable** for the supply of goods or services or both, the **person who is liable to pay that consideration**,
- (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available, and
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and **shall include an agent acting as such on behalf of the recipient** in relation to the goods or services or both supplied.

# SECTION 2: IMPORTANT DEFINITIONS

## **Section 2(102): Services** means

- ❑ anything other than goods, money and securities;;
- ❑ but includes activities relating to the use of money or
- ❑ its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

**Section 2(105): Supplier** in relation to any goods or services or both, shall **mean the person supplying the said goods or services or both** and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied

# SCOPE OF SUPPLY- SECTION 7 OF CGST

CHAPTER III OF CGST ACT, 2017 COVERS “SUPPLY”

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 (Section 7(1)(a))**

# SCOPE OF SUPPLY- SECTION 7 OF CGST

Supply includes (Cont'd):

- ❑ Importation of service, for a consideration whether or not in the course or furtherance of business (Section 7(1)(b))
- ❑ Activities specified in **Schedule I** made or agreed to be made without consideration (Section 7(1)(c))
- ❑ Activities to be treated as **supply of goods or supply of services as per Schedule II**. (Section 7(1A))

# SCOPE OF SUPPLY- SECTION 7 OF CGST

Supply includes (Cont'd):

- ❑ Notwithstanding anything contained in sub-section (1), —
  - ❑ activities or transactions specified in Schedule III; or
  - ❑ such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, **shall be treated neither as a supply of goods nor a supply of services.** (Section 7(2))



# SCOPE OF SUPPLY- SECTION 7 OF CGST

- ❑ Section 7(3): Subject to the provisions of sub-sections (1) and (2), 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.

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## ANALYSIS AND UNDERSTANDING OF SECTION 7:

- ❑ Definition of the term “Supply” is in an inclusive manner
- ❑ Provisions made applicable to IGST by virtue of Section 20 of IGST Act
- ❑ Ingredients of Supply:
  - ❑ Should be of Goods and Services
  - ❑ Should be made for a consideration (apart from Schedule I)
  - ❑ Should be in the course or furtherance of business (certain exceptions)
  - ❑ Should be made by a taxable person and should be a taxable supply

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## ANALYSIS AND UNDERSTANDING OF SECTION 7:

- ❑ Section 2(107) defines “taxable person” to mean a person who is registered or liable to be registered u/s 22 or 24 of CGST Act, 2017
- ❑ Barter and Exchange also covered within the definition of Supply
- ❑ Section 7(1)(b) includes importation of service, whether or not in the course or furtherance of business
- ❑ Schedule I covers “Supplies” even though made without consideration. This is a major departure from the prior indirect tax regime

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SECTION 7(1)(a)- A DETAILED ANALYSIS

- ☐ Sale and Transfer
- ☐ Barter and Exchange
- ☐ Anything other than Goods and Services is outside the scope of Supply
- ☐ License, Lease, Rental etc: Lease or License transferring the goods with or without the right to use is treated as “Supply of Service”
- ☐ Supply should be for a Consideration and should be in the course or furtherance of business

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SECTION 7(1)(a)- A DETAILED ANALYSIS

Examples of Events covered within Section 7(1)(a):

- ❑ Sale of a pen by a stationery shop to a customer
- ❑ Transfer of goods from a factory to depot by a Company
- ❑ New Car of Rs. 5,00,000- Exchange of old car and money Rs. 4,00,000
- ❑ CA providing GST consultancy services to landlord and thereby not paying rent for one month

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SECTION 7(1)(a)- A DETAILED ANALYSIS

Significance of the term Consideration:

- ☐ Can be in money or in kind
- ☐ Donations received by charitable institutions without quid pro quo
- ☐ Art works sent by artists to galleries

Significance of course or furtherance of business

- ☐ Rishabh buys a car for his personal use and after a year sells it to a car dealer
- ☐ M sold her gold bangles and earrings to A Jewellers

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SECTION 7(1)(a)- A DETAILED ANALYSIS

Significance of course or furtherance of business

- ☐ Actor paints some painting and sells them. Sale consideration is to be donated to an NGO
- ☐ Admission to circus, amusement parks, etc.
- ☐ Facilitating betting transactions on horses placed through totalisator
- ☐ Taxability of cost petroleum- *[Circular No. 32/06/2018 GST dated 12.02.2018]*.
- ☐ Financial transactions

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SECTION 7(1)(a)- A DETAILED ANALYSIS

- ☐ Financial services by banks: GST would be levied on service charges normally charged for various transactions in money including charges for making drafts, issuance charges for letter of credit etc
- ☐ Derivatives
- ☐ Futures contracts
- ☐ Commodity/currency trading- Actual delivery of commodity/currency in future/forwards contract- GST applicable.
- ☐ Net settlement- No GST applicable



# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SECTION 7(1)(a)- A DETAILED ANALYSIS

- ❑ Lending of Securities under the Securities Lending Scheme: Lending fee charged from borrowers and Commission charged by intermediaries involved in chargeable to GST.  
***[Circular No. 116/35/2019 GST dated 11.10.2019].***

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SECTION 7(1)(b)

- ❑ The connotation of 'supply' gets expanded significantly through the second part of section 7 i.e. 7(1)(b) which brings within the ambit of 'supply', the importation of services for a consideration whether or not in the course or furtherance of business.
- ❑ Example: Ramaiyaa, a proprietor, has received the architect services for his house from an architect located in New York at an agreed consideration of \$ 5,000. The import of services by Ramaiyaa is supply under section 7(1)(b) though it is not in course or furtherance of business.

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## **SECTION 7(1)(c)- SUPPLY WITHOUT CONSIDERATION**

- ❑ This includes all supplies made by a taxable person to a taxable/ non-taxable person, even if the same is without consideration.
- ❑ These are specifically mentioned in Schedule I appended to the CGST Act.

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE I: SUPPLIES WITHOUT CONSIDERATION

- ❑ *Permanent Transfer or Disposal of **Business Assets** where **ITC** has been availed on **such assets***
  - ❑ The Assets have to be transferred to another person
  - ❑ No intention of getting the assets back after the transfer
  - ❑ Business asset which is transferred without consideration, and no ITC was availed at the time of purchase- Not a Supply

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## EXAMPLES:

1. Goods sent on job work or goods sent for testing or goods sent for certification would not qualify as 'supply' under this clause since there is no permanence in transfer.
2. Donation of business assets or scrapping or disposal in any other manner (other than as a sale – i.e., for a consideration) would qualify as 'supply' under this clause, where input tax credit has been claimed on the same
3. Car purchased by Company transferred to Director after 4 years free of cost
4. Dhruv gives old laptops being used in his business to his friend free of cost. This will qualify as supply provided input tax credit has been availed by Dhruv on such laptops

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE I: SUPPLIES WITHOUT CONSIDERATION

- ❑ *Supply of Goods and/or Services between Related persons or Distinct Persons*
  - ❑ *Any supply of goods and / or services in the course of business or furtherance of business **by a taxable person to a related person or by one taxable person to another taxable person (as Provided in Section 25 of the Act), when made without consideration, would qualify as ‘supply’.***
  - ❑ *Provided that gifts not exceeding Rs. 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both*
  - ❑ *Related person is defined as an Explanation to Section 15 of the CGST Act, 2017*

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE I: SUPPLIES WITHOUT CONSIDERATION

### ☐ Supply of Goods and/or Services between Related persons or Distinct Persons (Cont'd)

Persons shall be deemed to be Related Persons if:

- ☐ They are Officers or Directors of one another's business
- ☐ Legally Recognized partners in business
- ☐ Employer and Employee
- ☐ Any person directly or indirectly controls/holds 25% of shares/voting power of both of them
- ☐ One of them directly/indirectly controls the other
- ☐ Both of them are directly or indirectly controlled by a third person
- ☐ Together, they directly or indirectly control a third person
- ☐ Members of same family
- ☐ Sole Agent/Sole Distributor

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE I: SUPPLIES WITHOUT CONSIDERATION

- ❑ Section 2(49) Family:

- ❑ “family” means,—

- (i) the spouse and children of the person, and

- (ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person;

**Distinct persons:** Section 25(5) speaks about Distinct person. 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.



# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE I: SUPPLIES WITHOUT CONSIDERATION

### EXAMPLES FOR DISTINCT PERSON

- ❑ Mr. M is a Chartered Accountant having an office in Hyderabad and an office in Delhi. He has to obtain registrations under both the States. Each office of Mr. M shall be treated as a distinct person for the purposes of law.
- ❑ Stock Transfers between two units of the same person located in different States
- ❑ Diwali gift worth Rs. 60,000 given to an employee
- ❑ Rishabh Enterprises, a registered supplier, owns an air- conditioned restaurant in Virar, Maharashtra. It has opened a liquor shop in Raipur, Uttarakhand for trading of alcoholic liquor for human consumption

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE I: SUPPLIES WITHOUT CONSIDERATION

### STOCK TRANSFER

- ❑ It is a common practice in business that one branch supplies services to another branch of same entity without consideration.
- ❑ Similarly, goods are transferred among different units of same entity free of cost, for instance, distribution of samples manufactured in a factory to different branches or transfer of goods from factory to depot/showroom for sale therefrom, from one warehouse to another warehouse, from one branch to another branch where the demand of the goods is higher.

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE I: SUPPLIES WITHOUT CONSIDERATION

### STOCK TRANSFER

- ☐ These transactions undertaken, even without consideration, will also qualify as supply, provided the transfer of goods or services is between:
- ☐ different locations (with separate GST registrations) of same legal entity as these are transactions
  - ☐ between distinct persons, or
  - ☐ establishments of distinct persons

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE I: SUPPLIES WITHOUT CONSIDERATION

- ❑ **EXAMPLE:** Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Delhi so that the same can be sold from there
- ❑ Raghubir Fabrics transfers 1000 shirts from his factory located in Lucknow to his retail showroom in Kanpur so that the same can be sold from there. In case there is only one single Registration for State of UP, there is no supply. If there are multiple registrations, then there is Supply
- ❑ Moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer, in course or furtherance of business, do not constitute supply since they are not related persons or distinct persons and there is no consideration involved [Circular No. 47/21/2018 GST dated 08.06.2018].

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE I: SUPPLIES WITHOUT CONSIDERATION

- ❑ ***Supply of goods:***
  - ❑ ***by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal***
  - ❑ ***by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.***
- ❑ **Services are not covered. Only goods covered in principal-agent transactions.**
- ❑ **Example: A, a manufacturer of cars has appointed B, to be his agent and sell the cars on his behalf. A has supplied 20 cars to B without consideration.**

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE I: SUPPLIES WITHOUT CONSIDERATION

- ❑ Services are not covered. **Only goods covered in principal-agent transactions.**
- ❑ In order to determine whether a particular principal- agent relationship falls within the ambit, the deciding factor is whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not?
- ❑ Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would be covered
- ❑ Where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not be covered
- ❑ Where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE I: SUPPLIES WITHOUT CONSIDERATION- PRINCIPAL- AGENT

### EXAMPLES:

- ❑ Anmol appoints Bholu to procure certain goods from the market. Bholu identifies various suppliers who can provide the goods as desired by Anmol, and asks the supplier (Golu) to send the goods and issue the invoice directly to Anmol.
- ❑ M/s Tintin, a banking company, appoints Mandaar (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s Tintin. The invoice for the supply of the goods is issued by M/s Tintin to the successful bidder
- ❑ Gautam, an artist, appoints Gambhir (auctioneer) to auction his painting. Gambhir arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. Invoice issued by Gambhir on behalf of Gautam

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE I: SUPPLIES WITHOUT CONSIDERATION- PRINCIPAL- AGENT

- ❑ **Whether del-credere agent covered:** DCA is a selling agent who is engaged by a principal to assist in supply of goods or services by contacting potential buyers on behalf of the principal. The factor that differentiates a DCA from other agents is that the DCA guarantees the payment to the supplier
- ❑ Sometimes DCA extends temporary short term transaction based loan to the buyer in order to make payment to the supplier.
- ❑ Whether such service and interest charged on the loan is to be included in the value of supply; totally depends on whether the DCA is covered in Schedule I or not. Key point is if DCA issues invoice on his name, then he is an agent.



# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE I: SUPPLIES WITHOUT CONSIDERATION

- ❑ ***Import of services by a taxable person from a related person, or from any of his other establishments outside India, in the course or furtherance of business:***
- ❑ Importation of services as covered by the definition does not include importation without consideration. Therefore, this clause is inserted to rope in such services those are received from related persons / their establishments outside India.
- ❑ Example: Jhumroo Associates received legal consultancy services from its head office located in Malaysia. The head office has rendered such services free of cost to its branch office

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE I: SUPPLIES WITHOUT CONSIDERATION

- ❑ Example: Sumedha, a proprietor registered in Delhi, has sought architect services from his father located in US, with respect to his newly constructed house in Delhi. The Services were received without consideration. Please explain whether this is a “Supply” as per Schedule I of GST. Would your answer be different if the services were procured for the purpose of his new office in Delhi?

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## CLARIFICATIONS ON SALES PROMOTION SCHEMES:

- ❑ Free Samples and Gifts: Not a Supply unless it falls under Schedule-I
- ❑ Buy One Get One Free Offers: Technically not a supply without consideration. Will be treated as Mixed/Composite Supply as per Section 8.

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## **Section 7(1A):**

### **Activities to be treated as Supply of Goods or Supply of Services:**

- ❑ This sub-section clearly provides where the particular transaction is to be regarded as Supply of Goods or Supply of Services.
- ❑ Schedule II appended to the CGST Act enlists the matters/transactions to be treated as Supply of either goods or services.
- ❑ The matters listed out are primarily those which had been entangled in litigation in the earlier regime owing to their complex nature and susceptibility to double taxation.

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE II:

Serial No.	Matters	Supply
<b>I</b>	<b>Transfer</b>	
a.	Any transfer of title in goods	GOODS
b.	Any transfer of right in goods or undivided share in goods without the transfer of title thereof (EXAMPLE: RENT OF MACHINERY)	SERVICE
c.	Any transfer of title in goods wherein the property in goods will pass at a future date upon payment of full consideration as agreed (HIRE PURCHASE)	GOODS

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE II:

Serial No.	Matters	Supply
<b>2</b>	<b>Land and Building</b>	
a.	Any lease, tenancy, easement, licence to occupy land	SERVICE
b.	Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly,	SERVICE

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE II:

Serial No.	Matters	Supply
3	Treatment or Process (eg. Jobwork)	SERVICE
4.	Transfer of Business Assets	
a.	Transfer / Disposal of goods forming part of the business so as to no longer to form part of business assets, whether or not for a consideration	GOODS
b.	Goods are <b>put to any private use</b> (on the direction of the person carrying on business) <b>or are used, or made available to any person for use, for any purpose other than a purpose of the business</b> , whether or not for a consideration (Eg) Director using Company Car for travel	SERVICE

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE II:

Serial No.	Matters	Supply
4.	<b>Transfer of Business Assets</b>	
c.	<p>Any person ceases to be a taxable person, any goods forming part of assets of any business carried on by him – shall be deemed to be supply in the course or furtherance of his business immediately before he ceases to be a taxable person, except –</p> <p>(a) Business is transferred as a going concern to another person; or</p> <p>(b) Business is carried on by a personal representative who is deemed to be a taxable person</p> <p>Eg) Trader winding up business: goods lying in stock shall be deemed supplies</p>	GOODS



# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE II:

Serial No.	Matters
5.	<b>Following to be treated as Supply of Service</b>
(a)	Renting of immovable property
(b)	<p>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, <b>except where the entire consideration has been received after issuance of completion certificate</b>, where required, by the competent authority or before its first occupation, whichever is earlier.</p> <p>Construction includes additions, alterations, replacements or remodeling of any existing civil structure</p>

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE II:

Serial No.	Matters
<b>5.</b>	<b>Following to be treated as Supply of Service</b>
(c)	Temporary transfer or permitting the use or enjoyment of any intellectual property right
(d)	Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software  Example:: Supply of GST Software to clients for smooth processing of returns
(e)	Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act <b>Example: Payment of liquidated damages under a contract for non-performance/short performance of an obligation under a contract</b>

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE II:

Serial No.	Matters
<b>5.</b>	<b>Following to be treated as Supply of Service</b>
(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

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE II:

Serial No.	Matters
<b>6.</b>	<b>Following Composite Supplies shall be treated as Supply of Services</b>
(a)	<p>Works Contract as per Sec. 2(119) of CGST Act</p> <p><b>“works contract”</b> means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;</p>
(b)	<p>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> <p><b>Illustration: Restaurant Services or Catering Services</b></p>

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## SCHEDULE II:

Serial No.	Matters
7.	<p>Supply of goods by any unincorporated AOP or BOP to a member thereof for cash, deferred payment or other valuable consideration shall be treated as supply of goods</p> <p>A club sells provision items to its members during its monthly meetings</p>

# FEW CLARIFICATIONS-SCHEDULE II

- ❑ Taxability of tenancy rights- Supply of Service
- ❑ Priority Sector Lending Certificates: Taxable as Goods
- ❑ Joint Venture: Amount contributed by each person to the Venture not in the nature of Supply

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## **SCHEDULE III: ACTIVITIES WHICH ARE NEITHER A SUPPLY OF GOOD NOR A SUPPLY OF SERVICE (NEGATIVE LIST IN GST)**

Serial No.	Matters
1.	Services by an employee to an employer in the course or in relation to his employment;
2.	Services by any Court or Tribunal established under any law for the time being in force;
3.	(a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## **SCHEDULE III:ACTIVITIES WHICH ARE NEITHER A SUPPLY OF GOOD NOR A SUPPLY OF SERVICE**

Serial No.	Matters
3.	<p>(b) the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or</p> <p>(c) the duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.</p>



# SCOPE OF SUPPLY- SECTION 7 OF CGST

## **SCHEDULE III: ACTIVITIES WHICH ARE NEITHER A SUPPLY OF GOOD NOR A SUPPLY OF SERVICE**

Serial No.	Matters
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 lottery, betting and gambling.
7.	Out and out supplies i.e. Merchant Trading: 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

# SCOPE OF SUPPLY- SECTION 7 OF CGST

## **SCHEDULE III: ACTIVITIES WHICH ARE NEITHER A SUPPLY OF GOOD NOR A SUPPLY OF SERVICE**

Serial No.	Matters
8.	Supply of warehoused goods to any person before clearance for home consumption
	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
9	Activities/ transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities

# CLARIFICATIONS FROM CBIC- NON-SUPPLIES

- ❑ Grant of alcoholic liquor license
- ❑ Inter-state movement of various modes of conveyance (trains, buses, tractors, vessels, containers (except when movement is for further supply)
- ❑ Inter-State movement of rigs, tools and spares, and all goods on wheels [like cranes] (except when movement is for further supply)

## SECTION 8: COMPOSITE OR MIXED SUPPLY

- ❑ The tax liability on a composite or a mixed supply shall be determined in the following manner, namely: —
  - ❑ (a) a composite supply comprising two or more supplies, **one of which is a principal supply, shall be treated as a supply of such principal supply;** and
  - ❑ (b) a mixed supply comprising two or more supplies shall be treated as a supply of that **particular supply which attracts the highest rate of tax.**

# SECTION 8: COMPOSITE OR MIXED SUPPLY

## IMPORTANT POINTS:

- ❑ Section 2(30) of the CGST Act defines Composite Supply.
- ❑ Composite Supply means a supply made by a taxable person to a recipient and
  - ❑ Consisting of two or more taxable supplies of goods or services or both, or any combination thereof.
  - ❑ Which **are naturally bundled** and supplied in conjunction with each other, in the ordinary course of business
  - ❑ one of which is a principal supply

# SECTION 8: COMPOSITE OR MIXED SUPPLY

## IMPORTANT POINTS:

- ❑ If it involves more than one goods and / or services which are **naturally bundled together**, these are referred to as composite supply of goods and / or services. It shall be deemed to be a supply of those goods or services, which constitutes the principal supply therein.
- ❑ Example: 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 the principal supply. This implies that the supply will be taxed wholly as supply of goods.

# SECTION 8: COMPOSITE OR MIXED SUPPLY

## IMPORTANT POINTS:

- ❑ **A.travel ticket from Mumbai to Delhi may include service of food being served on board, free insurance, and the use of airport lounge.** In this case, the transport of passenger, constitutes the pre-dominant element and is treated as a principal supply, with all others ancillary.
- ❑ If a contract is entered for supply of certain goods and erection and installation of the same thereto or supply of certain goods along with installation and warranty thereto, it is important to note that these are naturally bundled and therefore would qualify as 'composite supply'.
- ❑ Accordingly, it would qualify as supply of the goods therein, which is essentially the principal supply in the contract. Thus, the value attributable to erection and installation or installation and warranty thereto will also be taxable as if they are supply of the goods therein.

# SECTION 8: COMPOSITE OR MIXED SUPPLY

**Certain Key Factors which aid in determining whether Services are bundled in the Ordinary Course:**

- ☐ Perception of the Consumer or the Service Receiver
- ☐ Majority of the service providers in the particular area of business provide similar bundle of services.
- ☐ Nature of Service
- ☐ Other illustrative indicators



# SECTION 8: COMPOSITE OR MIXED SUPPLY

## **MIXED SUPPLY:**

- ❑ Section 2(74) of the CGST Act defines Mixed Supply
- ❑ 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
- ❑ If it involves supply of more than one goods and / or services which are not naturally bundled together: These are referred to as mixed supply of goods and / or services. It shall be deemed to be a supply of that goods or services therein, which are liable to tax at the highest rate of GST.

# SECTION 8: COMPOSITE OR MIXED SUPPLY

## **MIXED SUPPLY:**

- ❑ A supply of more than one goods and / or services as a bundle will be reckoned as 'Mixed supply' if:
  - ❑ (i) Such goods and / or services are supplied together for a single price
  - ❑ (ii) They are not naturally bundled together and
  - ❑ (iii) It does not qualify as composite supply.

## SECTION 8: COMPOSITE OR MIXED SUPPLY

### **EXAMPLE:**

A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply.

Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately. **This implies that the supply will be taxed wholly as supply of those Goods which are liable to the highest rate of GST.**

# SECTION 8: COMPOSITE OR MIXED SUPPLY

## GUIDING PRINCIPLES FOR DETERMINATION

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” for 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 one is Services	Yes	Yes

# SOME CLARIFICATIONS ON COMPOSITE SUPPLY

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

In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. by the printer using its physical inputs including paper to print the design, logo etc. supplied by the recipient of goods, predominant supply is supply 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**.

# SOME CLARIFICATIONS ON COMPOSITE SUPPLY

**Retreading of tyres:** Pre-dominant element is process of retreading which is a **supply of service**. Rubber used for retreading is an ancillary supply

Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a **supply of goods**

# TEST QUESTIONS

1. What is the taxable event under GST?
2. Supply of all goods and/or services is taxable under GST. Discuss the validity of the statement.
3. Whether transfer of title and/or possession is necessary for a transaction to constitute supply of goods?

# TEST QUESTIONS

State whether the following supplies would be treated as supply of goods or supply of services as per Schedule II of the CGST Act:

- (a) Renting of immovable property
- (b) Goods forming part of business assets are transferred or disposed of by/under directions of person carrying on the business, whether or not for consideration.
- (c) Transfer of right in goods without transfer of title in goods.
- (d) Transfer of title in goods under an agreement which stipulates that property shall pass at a future date.



# TEST QUESTIONS

Determine whether the following supplies amount to composite supplies:

- (a) A hotel provides 4 days-3 nights package wherein the facility of breakfast and dinner is provided along with the room accommodation.
- (b) A toothpaste company has offered the scheme of free toothbrush alongwith the toothpaste.

Whether hire purchase shall be treated as supply of goods or supply of service?

# TEST QUESTIONS

Satyamev Printers is a printing house registered under GST. It receives an order for printing 5000 copies of a book on yoga and meditation authored by a well-known yoga guru. The content of the book is to be provided by the yoga guru to Satyamev Printers. It is agreed that Satyamev Printers will use its own paper to print the said books.

You are required to determine the rate of GST applicable on supply of printed books by Satyamev Printers assuming that rate of GST applicable on printing services is 18% whereas the rate of GST applicable on supply of paper used in printing the books is 12%.

# TEST QUESTIONS

Sudama Associates, a registered supplier, disposes the computers owned by the business without consideration and it has not claimed input tax credit on such computers. Examine whether the disposal of computers by Sudama Associates qualifies as deemed supply under Schedule I of the CGST Act.

Prithvi Enterprises appoints Champak to procure certain goods from the market. Champak identifies various suppliers who can provide the goods as desired by Prithvi Enterprises, and asks a supplier – Satya Manufacturers to send the goods and issue the invoice directly to Prithvi Enterprises. You are required to determine whether Champak can be considered as an agent of Prithvi Enterprises in terms of Schedule I of the CGST Act.

# TEST QUESTIONS

Shivaji Pvt. Ltd., a registered supplier, supplies the following goods and services for construction of buildings and complexes -

- ☐ excavators for required period at a per hour rate
- ☐ manpower for operation of the excavators at a per day rate
- ☐ soil-testing and seismic evaluation at a per sample rate.

The excavators are invariably hired out along with operators. Similarly, excavator operators are supplied only when the excavator is hired out.

For a given month, the receipts (exclusive of GST) of Shivaji Pvt. Ltd. are as follows:

Hire charges for excavators – Rs. 18,00,000

Service charges for supply of manpower for operation of the excavator – Rs.20,000

Service charges for soil testing and seismic evaluation at three sites – Rs. 2,50,000

Compute the GST payable by Shivaji Pvt. Ltd. for the given month. Assume the rates of GST to be as under: Hiring out of excavators – 12% and Supply of manpower services and soil-testing and seismic evaluation services-18%

# TEST QUESTIONS

Vikramaditya is a salaried employee and is planning to invest in stocks. He has opened a trading account with Vaydaa Brokers. During the month, Vikramaditya undertook future contracts (without a physical delivery option, but are cash settled on the expiry of the contract date), amounting to Rs. 35,00,000. Vikramaditya needs your advice whether such future contracts undertaken by him amount to supply and are liable to GST.

Angad Private Ltd. is engaged in the business of distribution of construction material. As an incentive, Angad Private Ltd. pays an amount of ₹ 75,000 to its employees upon achieving a specified sales target. The incentive is part of the salary of the employees and applicable tax is deducted at source as per relevant income tax provisions. Angad Private Ltd. is of the view that GST is not leviable on such incentive paid to the employees. Whether the view taken by Angad Private Ltd. is correct?