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Supply under GST

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Tax is a burden which an individual or property pays the Government, which is used for public services.¹ It is not a donation or voluntary payment. Tax is divided into two major categories, i.e., Direct Taxes and Indirect Taxes. Direct Taxes² are those taxes that are to be paid by a person who earns income. The liability cannot be shifted to another person. In the case of Indirect Taxes,³ these taxes are those which adds and is passed to one other until it reaches the final consumer. Indirect taxes are important as it is a major source of revenue which a government earns. The burden of tax can be shifted and can be recovered from the buyer. Indirect Taxes are regressive in nature as every person who is rich or poor must pay tax. In the earlier times, VAT (Value Added Tax) was levied in India.⁴ There was no distinguishment between the goods and the services due to which there was double taxation of a transaction. VAT did not include the chain of value addition below the stage of production.⁵ There was no facility

¹ Vishnu, 'Taxation' (Cleartax, 18 August 2021) <<https://cleartax.in/g/terms/taxation>> accessed 23 July 2021

² Julia Kagan, 'Direct Tax' (Investopedia, 24 March 2021)
<<https://www.investopedia.com/terms/d/directtax.asp>> accessed 23 July 2021

³ 'What are Indirect Taxes?' (Corporate Finance Institute)
<<https://corporatefinanceinstitute.com/resources/knowledge/other/indirect-taxes/#:~:text=What%20are%20Indirect%20Taxes%3F,tax%20on%20cigarettes%20and%20alcohol>> accessed 23 July 2021

⁴ Investopedia Team, 'Value-Added Tax (VAT)' (Investopedia, 18 February 2021)
<[https://www.investopedia.com/terms/v/valueaddedtax.asp#:~:text=A%20value%2Dadded%20tax%20\(VAT\)%20is%20a%20consumption%20tax,that%20have%20already%20been%20taxed](https://www.investopedia.com/terms/v/valueaddedtax.asp#:~:text=A%20value%2Dadded%20tax%20(VAT)%20is%20a%20consumption%20tax,that%20have%20already%20been%20taxed)> accessed 23 July 2021

⁵ 'FAQs on Goods and Service Tax (GST)' (The Tax Guru, 11 November 2009) <<https://taxguru.in/goods-and-service-tax/frequently-asked-questions-and-answers-on-goods-and-service-tax-gst.html>> accessed 23 July 2021

for setting off taxes from one another.⁶ The CENVAT credit cannot be used to set off State-level VAT.⁷ For every service provided, an additional tax, for example, entertainment tax, would be levied when a person goes to watch a movie.⁸

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INTRODUCTION

Goods and Service Tax (GST) was introduced in the year 2000 but was launched on 1 July 2017.⁹ GST is a value-added tax that is levied on any manufacture, sale, or consumption of goods and services. GST is a continuous chain of credit.¹⁰ Every supplier is permitted to avail GST credit on the purchase of goods or services or both and can set off against the amount of GST payable on the supply of goods or services or both.¹¹ There is no double taxation as all the indirect taxes (except custom duty) does been subsumed in Goods and Service tax.¹² GST has given the entire country benefits as GST aims to make India a common market with a standard tax rate.¹³ This would help the country to become an integrated economy.¹⁴ Implementation of Input Tax Credit would help in enhancing investment and employment as it reduces the cost of manufactured goods and services.¹⁵

Goods in this act mean every movable property except money and securities.¹⁶ Goods also include actionable claims, growing crops, grass, and things which are attached or forming part

⁶ *Ibid*

⁷ 'A brief on Input Tax Credit of VAT' (*The Tax Guru*, 21 July 2013) <<https://taxguru.in/goods-and-service-tax/input-tax-credit-vat.html>> accessed 23 July 2021

⁸ *Ibid*

⁹ FE Knowledge Desk, 'What is Goods and Services Tax (GST)?' (*Financial Express*) <<https://www.financialexpress.com/what-is/goods-and-services-tax-gst-meaning/1620322/>> accessed 23 July 2021

¹⁰ *Ibid*

¹¹ Input Tax (n 7)

¹² *Ibid*

¹³ 'Benefits of GST: Goods and Service Tax' (*CBIC.gov.in*) <<https://www.cbic.gov.in/resources//htdocs-cbec/gst/Benefit.pdf;jsessionid=5CE856E7CD94B9B34AB9C07092717A46>> accessed 23 July 2021

¹⁴ *Ibid*

¹⁵ Input Tax (n 7)

¹⁶ Neerja Gurnani, "'Goods" under the Sale of Goods Act, 1930' (*Lawoctopus*, 27 March 2015)

<<https://www.lawoctopus.com/academike/goods-under-the-sale-of-goods-act-1930/>> accessed 23 July 2021

of the land.¹⁷ Services mean anything except those included in the definition of goods.¹⁸ Services also include the usage of money and conversion of money from one form of currency to another.¹⁹ Goods and Service Tax (GST) is levied on the supply of any goods, services, or both.²⁰ This act has laid down any taxable event, i.e., manufacture, sale, purchase, providing of services, etc., shall be sum up as SUPPLY.²¹

SCOPE OF SUPPLY (SECTION 7 OF CGST ACT)

Section 7 of the CGST Act,²² explains the concept of GST. There are three parameters on which supply of GST can be understood²³ –

- The supply shall be goods or services as mentioned in the above definition.
- The supply shall be made for consideration.
- The supply shall be made in the course or furtherance of business.

Section 7(1)(a)²⁴ explains the parameters as, firstly, supply includes all forms of supply. The sale shall include any sale, transfer, barter, exchange, license, rental, lease, or disposal. Supply can be any goods or services or both.²⁵ Secondly, consideration (general or dictionary meaning 'payment') can be in the form of money or in kind. Any consideration should exclude the subsidy received by Central Government or State Government.²⁶ In one of the Circular No. 116/35/2019 GST dated 11.10.2019, any gift or donation which is made to a charitable

¹⁷ *Ibid*

¹⁸ Bimal Jain, 'Goods Vs. Services in GST: Concept and Open Issues' (*Tax Management System.com*, 5 September 2016)

<https://www.taxmanagementindia.com/visitor/detail_article.asp?ArticleID=6964#:~:text=The%20term%20services%20has%20been,but%20does%20not%20include%20money.%E2%80%9D> accessed 23 July 2021

¹⁹ *Ibid*

²⁰ 'GST – Goods & Services Tax' (*Bank Bazaar*) <<https://www.bankbazaar.com/tax/gst.html>> accessed 23 July 2021

²¹ *Ibid*

²² Central Goods & Service Tax Act 2017, s 7

²³ 'Meaning and Scope of Supply Under GST- What you Must Know' (*Tax Guru*, 6 January 2018)

<<https://taxguru.in/goods-and-service-tax/meaning-scope-supply-gst-what-you-must-know.html>> accessed 23 July 2021

²⁴ Central Goods & Service Tax Act 2017, s 7(1)(a)

²⁵ *Ibid*

²⁶ Meaning and Scope (n 23)

organisation, any payment with a characteristic of donation or gift, or a transaction which has not led to any gain and no advertisement was made for the same. In such cases, it is not considered as supply as these considerations are made for any business purpose. There was another Circular that was passed stating that any artwork which is sent by an artist to exhibit in a gallery shall not be considered as supply (Circular No. 22/22/2017 GST dated 21.12.2017).

Lastly, the last parameter is the furtherance of business.²⁷ To understand this, what does the definition of a business (Section 2(17)²⁸) says is essential. Business means any transaction or activity which took place by trading or manufacturing etc., even if there is no monetary benefit.²⁹ These activities may or may not be continuous.³⁰ An activity that is done by the Government is also included in this definition.³¹ Any transaction which comes within the definition of Business shall be considered as Supply.³² Import of service for consideration is an exception for the furtherance of business.³³

IMPORTATION OF SERVICE FOR A CONSIDERATION

Section 7(1)(b)³⁴ states that importation of service for a consideration, whether it is for the furtherance of business or not, shall be considered as Supply.

For example, A has taken legal advice for some personal matters from a lawyer in New York. Even if this activity does not come under furtherance of business, the services are to be deemed as Supply.

²⁷ *Ibid*

²⁸ Central Goods & Service Tax Act 2017, s 2(17)

²⁹ *Ibid*

³⁰ *Ibid*

³¹ 'Business under Section 2(17) CGST Act' (*finactservices.com*) <<https://www.finactservices.com/business-under-section-217-cgst-act/>> accessed 23 July 2021

³² Meaning and Scope (n 23)

³³ Business (n 31)

³⁴ Central Goods & Service Tax Act 2017, s 7(1)(b)

SCHEDULE - 1³⁵

Section 7(1)(c)³⁶ states the circumstances in which activities shall be considered as Supply even if these are done without consideration. Schedule - 1³⁷ means the following circumstances in which activities shall be deemed supply.

PERMANENT TRANSFER OR DISPOSAL OF BUSINESS ASSETS

If the following two conditions are satisfying, it will qualify for being treated as Supply. Firstly, there should be a transfer or disposal of a business asset. This transfer shall be permanent. Lastly, Input Tax Credit shall be availed for business assets.

SUPPLY BETWEEN A RELATED PERSON OR DISTINCT PERSON

When the supply of goods and services is between two related people (Section 15³⁸) or a distinct person (Section 25³⁹), it shall be considered as Supply even if the supply is done without consideration. There is a condition which shall be considered; only those supplies which undergo for the furtherance of business shall qualify for being a Supply. Section 15⁴⁰ explains persons who are related person under CGST Act. Persons like legally recognised partners, employer and employee, a superior and a subordinate, any third person directly or indirectly holds or controls at least 25% of the voting shares, any third person who has the control, a company's officer or director, any member of the family or is a sole distributor.⁴¹ These are some of the cases in which a person is related to the other and would constitute Supply.

However, employer and employee are related persons, but the services which are given with relation to employment do not constitute Supply. But when an employer gives a gift to an employee worth more than Rs. 50,000 without consideration, it will be Supply. Section 25⁴²

³⁵ Central Goods & Service Tax Act 2017, schedule 1a

³⁶ Central Goods & Service Tax Act 2017, s 7(1)(c)

³⁷ Central Goods & Service Tax Act 2017, Schedule 1

³⁸ Central Goods & Service Tax Act 2017, s 15

³⁹ Central Goods & Service Tax Act 2017, s 25

⁴⁰ CGST Act (n 38)

⁴¹ *Ibid*

⁴² CGST Act (n 39)

explains what a district person means under CGST Act. As per the requirements, every supplier shall get registered. Every State shall have one registration. A person who shall have more than one registration shall be a district person. When one registered State transfers the goods to the other registered State, it shall be Supply under GST.⁴³ But when the goods are transferred from one place to another within the State, it does not constitute Supply.

PRINCIPLE - AGENT

In this case, the only supply of goods is covered, and the supply of services is excluded. Supply of goods between the principal and the agent without consideration is also covered under Supply. The services which are between principle and agent would require consideration, and this will be covered under Supply and shall be liable to GST.⁴⁴ The invoice may be issued in the agent's name or the principal's name. Which one of them shall be regarded as Supply was one of the questions. Para 3 of Schedule - 1,⁴⁵ gives a clarification. When the invoice is issued in the agent's name, it shall be covered under this schedule and will be deemed to be a supply. But when the invoice is issued in principle's name, it shall not be covered under this schedule.

There was a clarification raised in Circular No. 73/47/2018 GST dated 05.11.2018 for Del-Credere Agent (DCA) about what is covered under Schedule - 1. When the invoice is issued by the supplier or principle to his customer, it shall not be covered in this Schedule. But when the invoice is issued by the DCA agent on behalf of the principle, it shall be covered under this Schedule (deemed supply).

IMPORTATION OF SERVICES

Import of services from outside India from a related person or his business without consideration shall be eligible to be covered under Supply.⁴⁶ For example, A ltd had received legal services from Singapore. Since this falls under the category of a related person, it shall be considered as Supply even if it is without consideration and is for the furtherance of business.

⁴³ *Ibid*

⁴⁴ Jain (n 18)

⁴⁵ CGST Act (n 37)

⁴⁶ Jain (n 18)

But for instance, Mr. X had taken architect services from New York. This will not be considered as Supply as this is not for the furtherance of business. Suppliers use sales promotion techniques to promote their goods and services. But sales promotion like free samples does not constitute Supply even if these are without consideration. Only those techniques of sale promotion will constitute to be Supply which comes under Schedule - 1.⁴⁷ In the case of technique, buy one get one free; this is a composite supply as more than one good is involved.

ACTIVITIES OR TRANSACTIONS TO BE TREATED AS SUPPLY OF GOODS OR SERVICE

Section 7(1A)⁴⁸ states the certain transaction which will be considered as Supply and Schedule - 2⁴⁹ states the list which is classified as Supply of Goods or Supply of Service as the case may be. The list under Schedule - 2 is as follows -

Transfer

When there is a transfer of title in goods, it would be Supply of Goods, whereas when there is the transfer of goods but no transfer of title, it would be Supply of Service.

In the case of property, when there is an agreement that there will be a change of ownership by transferring the title of the Goods (Property) after consideration on a specific date in the future. This shall be the Supply of Goods.

Land and Building

Any lease or license of land by an individual shall be Supply of Service. In the case of any lease or license of building partly or wholly also be Supply of Service.

⁴⁷ CGST Act (n 37)

⁴⁸ Central Goods & Service Tax Act 2017, s 7(1A)

⁴⁹ Central Goods & Service Tax Act 2017, Schedule 2

Treatment and Process - When a good is a transfer to another person for further treatment or process which must take place, this would be considered as a Supply of Service.

Transfer of Business Assets - Goods which are a part of the business when transferred or disposed of this shall be Supply of Goods. But when a business asset is used for a personal purpose other than business, it shall be a Supply of Service.

RENTING OF IMMOVABLE PROPERTY

When an immovable property is given on rent, it shall be Supply of Service. This is because the ownership of the property has not changed. In the case of construction, when property to transfer to another to construct for the purpose of sale, it shall be Supply of Service. Construction includes addition, alteration, replacement, or remodeling of a property. Further, in many cases, like transfer of rights to use an asset or IT services provided by a firm shall be considered to Supply of Service.

COMPOSITE SUPPLY

Works Contract means when a contract is made to build, construct, fabricate, modify, or alter an immovable property. The property is transferred to the contractor, and when the work is complete, the property is returned to the owner. This is a Supply of Service.

NON - SUPPLIES UNDER GST

Section 7(2)⁵⁰ means non- Supplies under GST. Schedule - 3⁵¹ specifies the activities or transactions which are neither Supply of Goods nor Supply of Services mentioned in Section 7(2)(a) as -

- Services that are rendered by an employer to an employee with relation to employment.
- Services which are rendered by a Court or Tribunal which is currently in force.

⁵⁰ Central Goods & Service Tax Act 2017, s 7(2)

⁵¹ Central Goods & Service Tax Act 2017, Schedule 3

- Duties or functions which are performed by any Government authority like Members of Parliament, Members of Panchayats, etc.
- Services of funeral, burial, etc., including services of transportation of deceased.
- Sale of land as mentioned in Schedule – 2 (Sale of the building).
- Actionable claims, except lottery, betting, and gambling. Lottery, betting, and gambling are considered Supplies.

As per Section 7(2)(b),⁵² Government has the powers to give a notification regarding which shall be treated as Supply of Goods and Supply of services. Services by Panchayat and Municipality are the two notifications made by the Government.⁵³

COMPOSITE AND MIXED SUPPLY (SECTION 8)

When there is more than one good is supplied, and they are naturally connected to each other, this is what composite supply.⁵⁴ For example, a phone cannot be sold without a charger or services of staying in a hotel has free breakfast. To explain it further when the elements are used as an advertisement. The rate of tax which shall be good is the principal. For example, in the case of a phone and a charger, the rate of the phone will be applicable for both.

Mixed Supply means when more than one good is supplied, and they are not naturally bound or connected to each other.⁵⁵ For example, a package includes chocolates, cake, dry fruit, etc. In such a case, the rate of tax will be applicable with the highest tax rate.

CONCLUSION

By the introduction of GST in India, there is a clear picture of what tax will be levied, i.e., supply. There are many notifications and circulars issued as the days go by. This is because it is newly introduced, and amendments will be required.

⁵² Central Goods & Service Tax Act 2017, s 7(2)(b)

⁵³ *Ibid*

⁵⁴ Meaning and Scope (n 23)

⁵⁵ *Ibid*