

Gearing Up for GST - Understanding “Supply” under GST– Part 2

Published on 08.04.2017

By CA Madhukar N Hiregange &

- CA Roopa Nayak

Background

GST would be levied on supply of goods and or services. The concept of supply needs to be understood to identify transaction of goods or services which are liable to GST. This is to ensure correct taxes are determined collected from customer and paid. GST being indirect tax incidence of which can be passed on to consumer, if taxes are not collected at time of supply, it may be difficult to collect afterwards esp in case of B2C transactions.

In this background, the paper writers have briefly examined the scope of supply under Central GST Bill 2017.

What is supply?

The term supply is defined in an inclusive manner to include:

1. All forms of supply of goods and/or services: It covers sale, transfer, barter[such as transfer of goods for goods/services or vice versa], exchange[exchange of goods/services for a value], license, rental, lease or disposal of goods/services **for consideration by a person in course of business.**

- It covers above transactions when done in exchange for payment /money value in furtherance of business, ie trade, commerce, manufacture, profession, vocation, whether or not for profit.
- It includes incidental transactions done in conduct of business such as scrap sale by manufacturer of aluminum profiles.
- One off transactions, such as sale of computers done by a service provider engaged in providing software development service is taxable. Similar to present casual dealer concept under VAT laws.

2 .Import of services: Supply covers import of services for a **consideration whether or not in the furtherance of business**; Services imported for personal use also covered. Exemption could be expected to be given to import of services for personal use such as design services by US designer for wedding card of an individual Ms X of India.

3.Activities specified in Schedule I, made without any consideration. It covers the following:

- **Permanent transfer/disposal of business assets** when input tax credit had been availed on such assets. Please note: When business assets such as machinery disposed for payment of a value/consideration, GST has to be paid, as it would be supply of goods for consideration.
- **Supply of goods / services or both between related persons or distinct persons** made in the course or furtherance of business: It could cover stock transfers between branch offices located in different states. In addition to stock transfers of goods, stock transfer of services would be liable to GST. Supplies of goods/services between business verticles/divisions such as vehicle trading and vehicle service verticle located in same state, having same PAN, but different GST registration also get covered.Supplies of services by group companies to each other also gets covered.

Specifically excludes gifts exceeding Rs 50,000 in value in a financial year by an employer to an employee: When exceeds Rs. 50000 in value in FY, entire amount to be taxed. Corresponding credit available.

- **Supply of goods by a principal to his agent who undertakes to supply such goods on behalf of the principal; or**
- **By an agent to his principal where the agent undertakes to receive such goods on behalf of the principal;**
- **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. The resource sharing / allocation such as software licenses procured centrally by foreign

branch in USA used at Indian branches would be treated as import of service levied to IGST for Indian branch.

4.Schedule II: What is treated as supply of goods/services-this is not setting out taxability of transactions but clarifying certain activities whether goods/services

- Matters to be treated as a supply of goods or services **as referred to in Schedule II** , the matters are enumerated below:
 - a. Any transfer of the title in goods --Treated as supply of **goods**Eg: Sale of goods
 - b. Any transfer of goods or of right in goods or of undivided share in goods without the transfer of title thereof – treated as supply of **service**. Eg:Transfer of right to use goods such as road roller.
 - c. à 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 - supply of **goods**
 - d. Any lease, tenancy, easement, licence to occupy land –supply of **service**. Eg:long term land lease
 - e. Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly - supply of **service**. Eg:lease of commercial building
 - f. Any treatment or process which is being applied to another person's goods – supply of **service**.Eg: repair of computer belonging to customer.
 - g. Transfer or disposal of goods forming part of business assets by or under the directions of the person carrying on the business whether or not for a consideration –supply of **goods**
 - h. Goods held or used for the purposes of the business are put to any private use or used / made available other than business purpose, whether or not for a consideration - supply of **service**
 - i. Any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him deemed to be supplied unless the business is transferred as a going concern to another person or the business is carried on by a personal representative who is deemed to be a taxable person. - treated as **supply of goods**

- j. **The following are also covered under declared service list in present service tax law. This list sets out the disputed matters on which earlier there was litigation on taxability under service tax**
- k. Renting of immovable property - supply of **service. The matter of taxability of pure renting under earlier ST law is presently pending before SC in Home Solution case.**
- l. 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 entire consideration has been received after issuance of completion certificate or after its first occupation, whichever is earlier - supply of **service. Covered except when entire payment received after completion.**
- m. Temporary transfer or permitting the use or enjoyment of any intellectual property right - supply of **service. It could cover licensing of technical knowhow.**
- n. Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software - supply of **service. Covers software related services.**
- o. Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act - supply of **service. This is applicable when there is legally binding obligation to refrain from act/tolerate act or situation or do an act.**
- p. 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 - supply of **service. This would cover scenario where goods such as servers are given with/without possession and effective control. Similar to earlier entry, transfer of goods without transfer of title.**

What is composite supply?

Supplies by taxable person to receiver made up of two or more taxable supplies of goods/services/both which are bundled in normal course of business and supplied with each other, one of which is principal/essential supply.

“Principal supply” means the supply of goods or services which is the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary/secondary.

Example: Supply of fan with incidental installation charges. Composite supply of essential nature of supply of goods, ie fan.

It would not cover transaction made up of one taxable supply[example-coaching class services] + non taxable supply[example-if we assume that books for reading are exempted under GST]. In such scenario the value of taxable supply to be attributed and the tax to be paid on such taxable supply of coaching service.

Following are composite supplies-treated as service:

Works contract: 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; **Eg:** Construction of building involving material plus labour

Supply of food/drink: 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 - supply of **service**. This would cover outdoor catering, restaurant service.

Supply of goods

à Any supply of goods by any unincorporated association or body of persons to a member for cash, deferred payment or other valuable consideration - treated as supply of **goods**.

The following shall be treated neither as a supply of goods nor a supply of services.

- activities or transactions specified in Schedule III; or
- Specified activities or transactions undertaken by the Central/State Government or any local authority as public authorities, as notified by the Government on the recommendations of the Council,

Third Schedule covers the following:

1. **Services by an employee to the employer:** Services by employee to employer in the course of or in relation to his employment is excluded from GST levy. Vice versa could be liable to GST.

It is interesting to note that in J. P. Morgan Services India Private Ltd Vs CST [2015-TIOL-12-ARA-ST] held the service of "making available" a car to the employee is being rendered by the employer. Firstly, it is in the course of the employment. Second it is only because the employee is in service and in that sense the service becomes in relation to his employment and excluded from service tax levy.

2. **Services by any court or Tribunal established under any law for the time being in force:** This excludes services by District Court, High Court and Supreme Court as well from purview of GST.

3. (a) the functions performed by the MP'/MLA's/ Members of Panchayats/ Members of Municipalities and Members of other local authorities;

(b) the duties done by any person who holds any post under the provisions of the Constitution in that capacity; or

(c) the duties done 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. The funeral burial transport of dead persons services excluded from levy. Similar to present negative list entry under service tax.

5. Sale of land and sale of building. Sale of land is excluded from levy. The sale of buildings also excluded except when payment received before completion or first occupation. Input tax credit related to the sale of immoveable property excluded from the GST levy would not be available.

6. Actionable claims, other than lottery, betting and gambling. Due to subsuming of existing taxes on betting/lottery into GST levy, GST would be levied on lottery, betting gambling. Gift vouchers not covered in this list.

· **Transactions to be specified as supply of goods /services:** Subject to the above, the Central or a State Government may, upon recommendation 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;

Vast powers are given to the GST Council to make recommendations on issues such as treatment of supplies as supply of goods/service.

The definition of supply given above would be applicable under IGST Act as well.

Stock Transfer whether covered?

This is in furtherance of business no doubt but not for any consideration. Therefore appears that not liable. However the intention of revenue is clear not to exempt this. Clarifications in this regard would come.

Conclusion

In the article paper writers have examined basic concept of supply under GST law with objective to understand scope of the same.

