

Unit - 1 □ GST in India : Levy and Collection

Structure

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1.1 Introduction

Goods and Services Tax (GST) has been identified as one of the most important tax reforms in post-independence. GST is a path breaking indirect tax reform which will create a common national market by removing inter-state trade barriers. GST has subsumed (absorbed or include) multiple indirect taxes imposed by central and state governments.

Power to levy any tax is derived from the Constitution of India. As per article 265 of The Constitution of India no tax shall be imposed or collected except by the authority of any Law. The charging section is the must in any Taxing Law for levy(impose) and collection (payment) of taxes. The very basic for the charge of tax in any taxing statute is taxable event, i.e. the point of time when tax will be imposed. Under pre GST regime, each indirect taxes have separate taxable event (such as manufacture in case of Excise Duty, provision of services in case of Service Tax, sale of goods in case of VAT/CST, etc.) Under the GST regime, the taxable event is supply of goods or services or both. The scope of supply has been discussed in detail in unit-2.

GST subsumed the following:

Central taxes	State taxes
Central excise duty	Sate VAT
Additional excise duty	Entertainment tax
Service tax	Entry tax
Surcharge and cess	Luxury tax
Central sales tax	Purchase tax

GST was first introduced in France in the year 1954. Within 62 years of its introduction about 160 countries across the world have adopted GST. Generally, GST is popular for single model but Canada and Brazil also have dual model of GST. India has adopted a dual GST which will be imposed concurrently by Centre and States.

1.2 Genesis of GST in India

2004	The idea of GST was emerged in India from the recommendation of Kelkar Task Force.
2007	Union Finance Minister, Shri P. Chidambaram, while presenting the central budget (2007-08) announced the GST for introduction in India.
2014	NDA government tabled the Constitution (122 nd Amendment) Bill
2016	It got assent of the president on 8th September, 2016 and became Constitution (101 st amendment) Act, 2016, which paved the way for the introduction of GST in India.
2017 (March)	Central Goods and Services Tax Bill, 2017, Integrated Goods and Services Tax Bill, 2017, Union Territory Goods and Services Tax Bill, 2017 and Goods and Services Tax (Compensation to States) Bill, 2017 were introduced and passed in Lok Sabha and on receipt of President assent on 12 th April, 2017 became enacted. Subsequently State GST laws had been enacted by respective State Government.
2017 (July)	w.e.f 1 st July 2017, GST was implemented across India.

1.3 Constitutional Amendment for GST

Constitution (101st amendment) Act, 2016 was enacted on 8.09.2016 for the following significant amendments.

- (a) Concurrent (simultaneously) power on Parliament and State legislatures to make

laws for imposing taxes on goods and services.

- (b) GST will be levied on all supply of goods and services except alcoholic liquor for human consumption.
- (c) Parliament has exclusive power to make laws with respect to goods and services tax of inter-state (from one state to another state) supply.
- (d) Parliament shall decide principles for determining the place of supply and when supply takes place in course of inter-State trade and commerce.
- (e) The explanation to Article 269A of Constitution of India provides that the import of goods and services will be deemed as a supply takes place in course of inter-State trade and commerce.
- (f) For the following items Central Excise duty will be imposed on their production and respective States will impose Sales tax the on their sales.
 - i) Petroleum crude
 - ii) High speed diesel
 - iii) Motor spirit (commonly known as petrol)
 - iv) Natural gas
 - v) Aviation turbine fuel
 - vi) Tobacco and tobacco products
- (g) Article 279A of the Constitution of India empowers the president of India to constitute Goods and Service Tax Council (GST Council) under the chairmanship of the Union Finance Minister to recommend about (Article 279A):
 - i) the GST rate
 - ii) Valuation and other fundamental rules
 - iii) Exemption
 - iv) Future changes
 - v) Return
 - vi) Registration

1.4 Legislative Framework

There are total 35 GST Acts in India:

- 1- The Central Goods and Service Tax Act, 2017 for imposing CGST on intra-State supply of goods and services.
- 31- State Goods and Service Tax Act, 2017 for imposing SGST by respective state on intra-State supply of goods and services.

- 1 – The Union Territory Goods and Services Tax Act, 2017 for levying UTGST in 6 union Territories without State Legislatures on intra-Territory supply of goods and services. (Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Chandigarh and Ladakh)
- 1 – The Integrated Goods and Service Tax Act, 2017 for levying IGST and
- 1 – The Goods and services Tax (Compensation to states) Act, 2017 for levying GST Compensation Cess.

1.5 Structure of GST

1. GST is levied on supply of goods and services across India (including Jammu and Kashmir). It is a single tax on the supply of goods and services, right from the manufacturer to the consumer. Under GST credit of taxes paid at previous stages is available as set-off from the output tax.
2. GST is destination based consumption tax. Benefit of tax (STCG/ UTGST) will accrue to the consuming state.
3. Centre and states will impose tax on goods and services simultaneously. Centre now can impose tax on sale of goods within State and States can impose tax on services.
 - (a) **Intra-State supply of goods and services**
 - CGST-Payable to Central Government
 - SGST/ UTGST-Payable to State Government/ Union Territory (as applicable) where they are consumed
 - (b) **Inter-States Supply of goods and services**
 - IGST - Payable to Central Government
4. Centre will levy and administer CGST and IGST while respective States/ UTs will levy and administer SGST/UTGST.
5. Import will be treated as inter-States supply and IGST will be chargeable along with basic Customs duty.
6. However, in GST Export will be treated as Zero rated supplies and no IGST is payable.
7. The rates of GST are 0.5%, 3%, 5%, 12%, 18% and 28%. In addition , compensation cess will be payable on pan masala, coal, aerated water and motor cars (Sin cess). There is no education cess or Swach Bharat cess or Krishi Kalyan cess on GST.

8. GST will be calculated on value of supply of goods and services, which is transaction value. (subject to some exceptions)
9. Under GST, every supplier who have made taxable supply shall require to get himself registered under GST Law.
10. A registered person is entitled to take credit (deduction) of input tax paid from the output tax (if any) subject to following restriction:
 - (a) **Utilisation of IGST** : first utilized for the payment of IGST then the balance may be utilized towards payment of CGST and SGST/UTGST
 - (b) **Utilisation of CGST**: first utilized for the payment of CGST then the balance may be utilized towards payment of IGST.
 - (c) **Utilisation of SGST/UTGST**: first utilized for the payment of SGST/UTGST then the balance may be utilized towards payment of IGST.
11. Under GST regime there is a seamless (without any obstruction) credit flow in case of inter-state supplies, which was not possible in pre GST period. No credit was available for CST paid by the buyer. Under GST regime the seamless credit will flow as follows:
 - (a) The inter-state supplier in exporting state is allowed to set off the available credit in IGST, CGST and SGST/UTGST against the IGST payable on inter-state supply made by him.
 - (b) The buyer of importing state in inter-state supply can avail the credit of IGST paid on purchase from the output tax payable.
 - (c) The exporting state transfers to the centre the credit of SGST/ UTGST utilised for the payment of IGST.
 - (d) The Centre transfers to the importing state the credit of IGST used in payment of SGST/UTGST.
12. A common portal or platform is needed which could act as a clearing house and verify the claims and inform the respective government to transfer the funds. This is possible with the help of a strong IT infrastructure. Accordingly, Government has established common GST Electronic Portal (www.gst.gov.in), a website managed by Goods and Services Network (GSTN) for the tax payer and common IT infrastructure for Central and States. Primarily, GSTN provides three services to taxpayers.
 - (a) Facilitating Registration.
 - (b) Forwarding the returns to Central and States authorities.
 - (c) Computation and settlement of IGST.

- (d) Matching of tax payment details with banking network.
- (e) Providing analysis of taxpayers' profile.

1.6 Benefits of GST

GST is a win-win situation for the entire country. It provides benefits to all the stakeholders of industry, Government and customers. It is expected that it will reduce cost of goods and services and make them globally competitive. The significant benefits of GST are discussed hereunder:

- (a) **Creation of unified national market:** GST aims to make India a common market with common tax rates and compliances (procedures) and remove the economic barriers to form an integrated economy in the national level.
- (b) **Mitigation of ill effects of cascading:** GST subsume most of the Central and States indirect taxes into a single tax and allow the credit of tax paid from the output tax for the transaction across the entire value chain process. Eradication of “tax on tax” gives the benefit to the industry.
- (c) **Boost to ‘Make in India’ initiative:** GST will give major boost to the ‘Make in India’ initiative of government of India by making goods and services produced in India competitive in the national as well as international market.
- (d) **Increase in government revenue:** GST is expected to increase the Government revenue by widening the tax base and improving the taxpayer compliances.

1.7 Extent of CGST Act/ SGST Act/ UTGST Act/ IGST Act

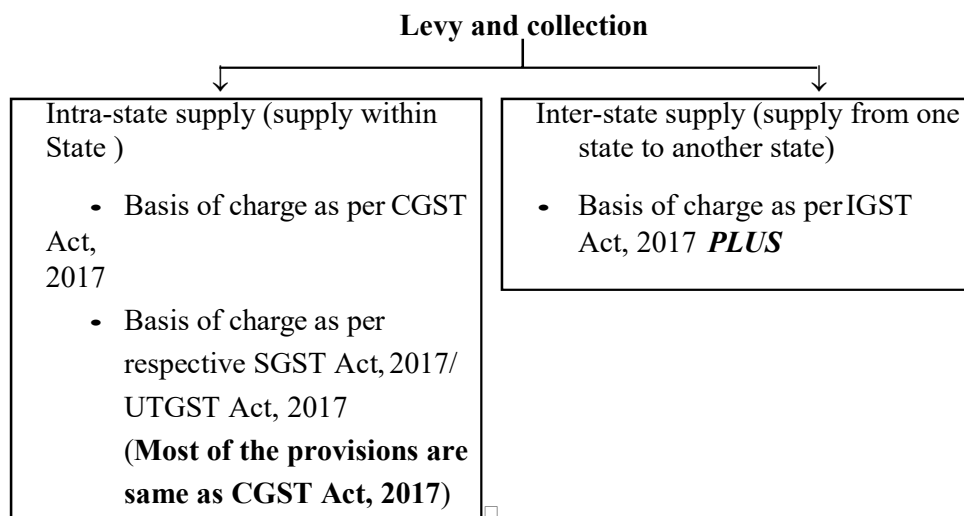
- The Central Goods and Service Tax Act, 2017 for imposing CGST on intra-state supply of goods and services, extends whole of India including Jammu and Kashmir.
- Respective State Goods and Service Tax Act, 2017 for imposing SGST by respective state on intra-state supply of goods and services, extends whole of that state/ Union territory having state legislature (Delhi and Puducherry).
- The Union Territory Goods and Services Tax Act, 2017 for levying UTGST in 6 Union Territories without State Legislatures on intra-Territory supply of goods and services. (Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Chandigarh and Ladakh)
- The Integrated Goods and Service Tax Act, 2017 for levying IGST and whole of India including Jammu and Kashmir.

1.8 Applicability of GST in India

India means

- Territory of India (i.e. entire landmass of India including states and union territory)
- Indian territorial waters, seabed and sub-soil underlying such waters, continental shelf, excluding Special Economic Zone (SEZ) and any other notified maritime zone.
- The air space above its territory and territorial waters.

1.9 Levy and collection



1.9.1. Levy and collection as per CGST Act, 2017

- (a) U/s 9(1) of CGST Act, 2017 there shall be levied a tax –
- Called the Central Goods and Services Tax(CGST);
 - On all the intra-state supplies of goods or services or both, except on supply of alcoholic liquor for human consumption;
 - On the value determined u/s 15; and
 - At such a rate (maximum 20%,) as notified by the Central Government on recommendation of GST Council; and
 - Collected in such a manner as may be prescribed; and

- Shall be paid by the taxable person.
- (b) U/s 9(2) of CGST Act 2017, the CGST of following supply shall be levied with the effect from such date as notified by the Central Government on recommendation of GST Council-
 - Petroleum crude
 - High speed diesel
 - Motor spirit (commonly known as petrol)
 - Natural gas
 - Aviation turbine fuel
- (c) U/s 9(3), CGST is to be paid on reverse charge basis by the recipient on notified goods/ services or both (liability to pay tax by the recipient of supply of goods / services rather than supplier of goods/ services under forward charge)
- (d) U/s 9(4), CGST on taxable supply of goods/ services to registered supplier from unregistered supplier is to be paid on reverse charge basis by the recipient.
- (e) U/s 9(5), E-Commerce operator is liable to pay CGST on notified intra-state supplies.

1.9.2. Levy and collection as per IGST Act, 2017

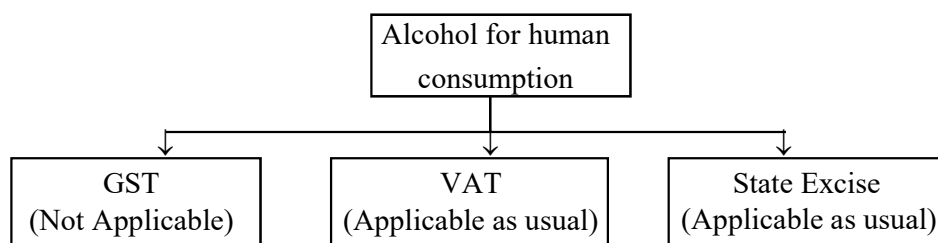
- (a) U/s 5(1) of IGST Act, 2017 there shall be levied a tax –
 - Called the Integrated Goods and Services Tax (IGST);
 - On all the inter-state supplies of goods or services or both, except on supply of alcoholic liquor for human consumption;
 - On the value determined u/s 15 of CGST Act, 2017; and
 - At such a rate (maximum 40%,) as notified by the Central Government on recommendation of GST Council; and
 - Collected in such a manner as may be prescribed; and
 - Shall be paid by the taxable person.

Provided further that IGST will be imposed on goods/ services imported into India.

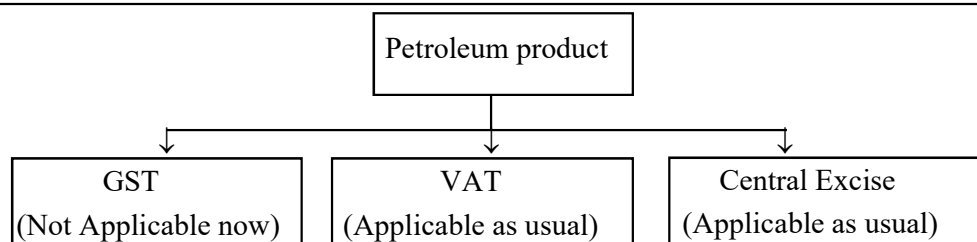
- (b) U/s 5(2) of IGST Act, 2017, the CGST of following supply shall be levied with the effect from such date as notified by the Central Government on recommendation of GST Council-
 - Petroleum crude
 - High speed diesel
 - Motor spirit (commonly known as petrol)
 - Natural gas
 - Aviation turbine fuel

- (c) U/s 5(3), IGST is to be paid on reverse charge basis by the recipient on notified goods/ services or both (liability to pay tax by the recipient of supply of goods / services rather than supplier of goods/ services under forward charge).
- (d) U/s 5(4), IGST on taxable inter-state supply of goods/ services to registered supplier from unregistered supplier (agriculturist) is to be paid on reverse charge basis by the recipient.
- (e) U/s 5(5), E-Commerce operator is liable to pay CGST on notified inter-state supplies.

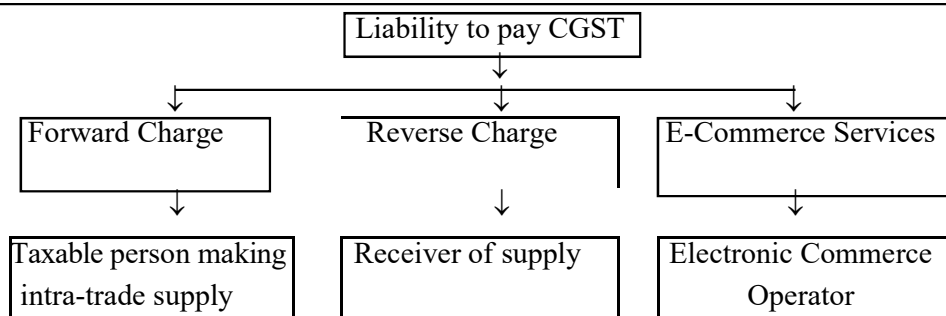
1.10 GST on Alcohol for human consumption



1.11 GST on Petroleum



1.12 Liability to pay CGST



1.13 Exercises

1. Briefly describe the structure of GST in India.
2. How does the seamless Credit flow under GST?
3. How the GST is levied and collected?
4. Briefly describe the provisions of levy and collection of taxes under CGST Act 2017.
5. Briefly describe the provisions of levy and collection of taxes under IGST Act. 2017.

Multiple Choice Questions (MCQ)

1. Authority to levy and collect taxes in India is given to the Central and State Government by
 - (a) Article 246 of Constitution of India
 - (b) Article 265 of Constitution of India
 - (c) Article 269 of Constitution of India
 - (d) Article 279A of Constitution of India
2. The exclusive right to make laws for matters containing in List-I of Schedule VII of the Constitution of India has been given to
 - (a) State Governments
 - (b) Central Government
 - (c) Both Centre and State Governments
 - (d) None of the above
3. The exclusive right to make laws for matters containing in List-II of Schedule VII of the Constitution of India has been given to
 - (a) State Governments
 - (b) Central Government
 - (c) Both Centre and State Governments
 - (d) None of the above
4. The exclusive right to make laws for matters containing in List-III of Schedule VII of the Constitution of India has been given to
 - (a) State Governments
 - (b) Central Government
 - (c) Both Centre and State Governments
 - (d) None of the above

5. Power to make laws with respect to goods and service tax has been given by the Constitution vide,
 - (a) Article 279A
 - (b) Article 246A
 - (c) Article 246
 - (d) Article 366
6. Which of the following taxes have been subsumed in GST?
 - (a) Central Sales Tax
 - (b) Central Excise Duty and service tax
 - (c) VAT
 - (d) All of the above
7. GST is levied on supply of all goods and services except:
 - (a) Alcoholic liquor for human consumption
 - (b) Tobacco
 - (c) Legal services
 - (d) All of the above
8. GST on Petroleum Crude, High Speed Diesel, Motor Spirit (commonly known as Petrol), Natural Gas and Aviation Turbine Fuel:
 - (a) Is not levied at all
 - (b) Is levied, but exempt
 - (c) Will be levied from a date to be notified on the recommendations of the GST Council
 - (d) Will be levied from 1.4.2018
9. The GST Council shall, besides other recommendations, make recommendations to the Union and the States on—
 - (a) The goods and services that may be subjected to, or exempted from the goods and services tax
 - (b) The threshold limit of turnover below which goods and services may be exempted from goods and services tax
 - (c) The rates including floor rates with bands of goods and services tax
 - (d) All the above -
10. Which article of the Constitution empowered the President to Constitute Goods and Service Tax Council?

- (a) 270
 - (b) 246A
 - (c) 279A
 - (d) 269A
11. Who shall be empowered to levy and collect GST on supplies in the course of Inter-State trade or commerce?
- (a) Government of India
 - (b) State Governments
 - (c) Union Territories
 - (d) All the above

Solution to multiple choice Questions

1 (b) 2.(b) 3(b) 4 (c) 5(b) 1.6(d) 7 (a) 8 (c) 9 (d) 10(c) 11 (a)

Unit - 2 □ Concept of Supply under GST

Structure

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27 Value of Supply

2.7.1 Determination of Supply

2.7.2. Illustration

28 Exercises

2.1 Introduction

The incidence of tax is the foundation stone of any taxation system. It determines the point at which tax would be levied (i.e. the taxable event). The earlier framework of taxable event across various areas of indirect taxes was subject to varying interpretations resulting in endless litigation since decades. Broadly, the controversies related to issues like whether a particular process amounted to manufacture or not, whether a particular transaction was sale of goods or rendering of services, etc. The GST laws resolve these issues by laying down one comprehensive taxable event, i.e. 'supply of goods or services or both'. GST law, by levying tax on the 'supply of goods and/or services', departs from the historically understood concepts of 'taxable event' under the erstwhile indirect tax laws (i.e. sale under state VAT laws, manufacture under excise laws and provisioning of service under service tax laws). For a better understanding of this topic, it is imperative to understand the meaning of a few important terms which have been explained in this unit.

2.2 Definition of important terms

Meaning of 'Goods' {Section 2 (52) of CGST Act}

'Goods' means every kind of movable property other than money and securities but includes:

- actionable claim;
- growing crops, grass and things attached to/forming part of the land which are agreed to be severed before supply or under a contract of supply.

Meaning of 'Services' {Section 2(102) of CGST Act}:

Services means anything other than goods, money and securities.

Services include activities relating to the use of money or its conversion of money by cash or by any other mode, from one form of currency or denomination to another form, currency or denomination for which a separate consideration is charged.

Meaning of ‘Consideration’ {Section 2(31) of CGST Act}:

The scope of the word ‘consideration’ in relation to the supply of goods or services or both would include:

- any payment made or to be made, whether in money or otherwise, by the recipient or by any other person; and
- the monetary value of any act or forbearance by the recipient or by any other person.

However, any subsidy given by Central Government or State Government shall not be treated as a part of consideration; and

a deposit given in respect of supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies the deposit as consideration for the said supply.

Meaning of ‘Money’ {Section 2(75) of CGST Act}:

Money means 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.

However, money shall not include any currency that is held for its numismatic value.

Meaning of ‘Business’ (Section 2(17) of CGST Act):

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 (a) above;
- c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;
- d) supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;
- e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;
- f) admission, for a consideration, of persons to any premises;

- 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.

Meaning of 'Person' {Section 2(84) of CGST Act):

Person includes:

- an individual (i.e. a natural human being);
- a Hindu Undivided Family ('HUF') (The meaning of HUF has not been given under the tax laws. As per the Hindu law, it means a family which consists of all persons lineally descended from a common ancestor including their wives and daughters. Married daughters are no longer treated as a member of HUF after they get married in other families);
- a firm;
- a limited liability partnership firm;
- a company;
- a trust;
- a body -corporate incorporated by or under the laws of a country outside India;
- an association of persons (AOP), whether incorporated or not (an AOP refers to a situation where two or more persons join hands to carry on any business);
- a body of individuals (BOI), whether incorporated or not (a BOI is similar to AOP; however, all the participants of BOI are only individuals whereas in case of AOP, one or more participant is a non-individual);
- government (Central Government as well as State Government);
- a local authority (ie, panchayat, municipality, cantonment board, etc); and
- a co-operative society registered under any law relating to cooperative societies;
- a society as defined under the Societies Registration Act, 1860;
- a corporation established by/under any Central, State or Provincial Act or Government company as defined u/s 2(45) of Companies Act, 2013;
- every artificial juridical person not covered above (artificial juridical persons are entities which are not natural persons but are separate entities in the eyes of law. Though they may not be sued directly in a court of law, but they can be sued through persons managing them. Examples are universities, ICAI, ICSI, etc);

Meaning of ‘Related Persons’ {Explanation to Section 15 of CGST Act}

Persons shall be deemed to be ‘related persons’ if:

- such persons are officers or directors of one another’s businesses;
- such persons are legally recognised partners in business;
- such persons are employer & employee;
- a third person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
- one of them directly or 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;
- they are members of the same person; or
- one of them is the sole agent, sole distributor or sole concessionaire of the other.

2.3 Scope of Supply {Section 7 of CGST Act}

- **Section 7(1):** For the purposes of this Act, the expression “supply” includes:
 - 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;
 - b) import of services for a consideration whether or not in the course or furtherance of business;
 - c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
 - d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.
- **Section 7(2):** Notwithstanding anything contained in sub-section (1),
 - a) activities or transactions specified in Schedule III; or
 - b) 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(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) a supply of goods and not as a supply of services; or
- b) a supply of services and not as a supply of goods.

Overview of Supply:

Inclusions	Exclusions
<ul style="list-style-type: none"> ✓ Supply for consideration in course or furtherance of business {Section 7(1)(a)} ✓ Importation of services for consideration whether or not in course or furtherance of business {Section 7(1)(b)} ✓ Supply without consideration {Section 7(1)(c)+ Schedule I} ✓ Activities to be treated as Supply of goods or Supply of services {Section 7(1)(d) + Schedule II} 	<p>Activities to be treated neither as Supply of goods nor Supply of services {Section 7(2) + Schedule III}</p>

2.3.1 Supply for consideration in course or furtherance of business {Section 7(1) of CGST Act}

Section 7(1)(a) of CGST Act provides that a supply of goods/services should be carried out for consideration in the course or furtherance of business.

Modes of Supply:

- Section 7(1)(a) of CGST Act 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 consideration in the course or furtherance of business.
- **Sale and Transfer:**
Earlier, VAT was levied by State Governments on sale of goods within their respective states wherein 'sale was defined to mean transfer of property in goods for consideration. Under CGST Act, sale has been treated as a form of supply leviable to GST.
- **Barter and Exchange:**
 - Barter transactions involve only exchange of goods/services whereas exchange

may cover a situation where the goods are partly paid for in goods and partly in money.

- When there is a barter of goods or services, same activity constitutes supply as well as consideration. By making a specific inclusion in the definition of supply, all barter and exchanges have been made liable to GST.
- **Licence, Lease, Rental etc:**
 - Licences, leases and rentals of goods were earlier treated as services where the goods were transferred without transfer of right to use (effective possession and control over the goods) and were treated as sales where the goods were transferred with transfer of right to use.
 - Under the GST regime, such licences, leases and rentals of goods with or without transfer of right to use are covered under the scope of 'supply of services' because 'there is no transfer of title in such supplies. Such transactions are specifically treated as 'supply of services' under Schedule II of CGST Act.

CONSIDERATION:

- One of the essential conditions for the supply of goods and/or services to fall within the ambit of GST is that the supply should have been made for a consideration.
- However, consideration does not always mean money. It covers anything which might be possibly done, given or made in exchange for something else.
- Further, consideration need not always flow from the recipient of the supply. It can also be made by a third person.

In Course or Furtherance of Business:

- GST is essentially a tax on only commercial transactions. Hence, only those supplies which are made in the course or furtherance of business qualify as 'supply' under GST.

Resultantly, any supplies made by an individual in his personal capacity do not come under the ambit of GST unless they fall within the definition of business.

Example: Rishabh buys a car for his personal use and after a year sells it to a car dealer. Sale of car by Rishabh to car dealer is not a supply under CGST Act because supply is not made by Rishabh in the course or furtherance of business.

- In order to understand the term 'in the course or furtherance of business', we need to understand the term 'business'. Business has been defined u/s 2(17) of CGST Act to include, inter-alia, any trade, commerce, manufacture, profession, vocation etc whether or not undertaken for a monetary benefit. Business also

includes any activity or transaction which is incidental or ancillary to the afore mentioned listed activities.

Example: Sundaram Acharya, a famous actor, paints some paintings and sells them. The consideration from such sale is to be donated to a Charitable Trust - 'Kind Human'. The sale of paintings by the actor qualifies as supply even though it is a one-time occurrence.

Import of Services for Consideration {Section 7(1)(b) of CGST Act}

- Section 7(1)(b) of CGST Act expands the scope of the term 'supply' by including importation of services for a consideration within its ambit irrespective of the fact whether such importation is in the course or furtherance of business or not.
- Section 7(i)(b) of CGST Act (ie importation of services for consideration) is the only exception to the condition of supply being in course or furtherance of business.

Example: Mr. M, a proprietor, has received designing services for his house from an architect located in New York at an agreed consideration of US \$5,000. The import of services by Mr. M shall be treated as a supply u/s 7(1)(b) of CGST Act even though it is not in the course of or furtherance of business.

2.3.2 Supply without Consideration

As a general rule, for an activity to qualify as supply, the same should have been provided for consideration. However, Section 7(1)(c) of CGST Act read along with Schedule I of CGST Act lists down the following four cases where existence of consideration is not a pre-requisite for an activity to qualify as supply:

1. Permanent Transfer/ Disposal of Business Assets:

- Transfer/disposal of business assets by an entity on permanent basis without consideration shall be regarded as supply if input tax credit has been availed on procurement of such assets.
- This clause is wide enough to cover transfer of business assets from holding to subsidiary company or vice versa without consideration.

Example: Donation of old laptops to charitable schools by XYZ & Co. At the time of purchase of new laptops will qualify as supply provided input tax credit has been availed by XYZ & Co. on such laptops.

Example: A cloth retailer gives clothes from his business stock to his friend free of cost. In this case, transfer of business stock would amount to supply if he had claimed input tax credit on his procurement of such business stock.

2. Supply to Related Persons/Distinct Persons:

Transactions involving supply of goods/services/both without consideration between related persons or distinct persons as specified u/s 25 of CGST Act will qualify as supply provided such supply has been made in the course or furtherance of business.

➤ **Taxability of Stock Transfers/Branch Transfers:**

Under the earlier law, no tax was applicable on stock transfers/branch transfers since such transactions do not involve transfer of property in goods. However, under the GST regime, stock transfers/branch transfers between different locations (with separate GST registrations) of same legal entity will qualify as 'supply'.

Example: Raghubir Fabrics transfers 1,000 shirts from his factory located in Lucknow to his retail showroom in Delhi so that the same can be sold from there. The factory and retail showroom of Raghubir Fabrics are registered in the states where they are located. Although no consideration is charged, supply of goods from factory to retail showroom constitutes supply.

➤ **Employer-Employee Transactions:**

- The definition of 'related persons' covers employer-employee relationship within its scope. Accordingly, all employer-employee transactions should be regarded as supply irrespective of the fact whether consideration is involved or not.
- However, Schedule I of CGST Act provides that gifts given by an employer to an employee shall not be treated as supply if the amounts of gifts given during a financial year does not exceed Rs 50,000. However, gifts exceeding Rs 50,000 shall be subject to GST.
- Moreover, Schedule III of CGST Act clearly states that services provided by an employee to the employer in the course of or in relation to his employment shall not be treated as supply of services. Therefore, any kinds of benefits given by an employer to his employee in terms of contractual agreement entered into between the employer and the employee will not be subject to GST.
- **Example:** Where an employer provides free housing to his employee, when the same is provided in terms of the contract between the employer and employee and is part and parcel of the employee's remuneration package, no GST implications should arise on such free housing.

3. Supply of Goods Between Principal & Agent:

Supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply. Similarly, supply of goods by an agent to his principal, without

consideration, where the agent undertakes to receive such goods on behalf of the principal is also considered as supply.

Example: ABC Manufacturers Ltd. engages Raghav & Sons as an agent to sell goods on its behalf. For this purpose, ABC Manufacturers Ltd. has supplied the goods to Raghav & Sons. Supply of goods by ABC Manufacturers Ltd. to Raghav & Sons will qualify as supply even though no consideration has been recovered from Raghav & Sons.

4. Import of Services from Related Persons Located Outside India:

Import of services by a taxable person from a related person or from any of his establishments located outside India in the course or furtherance of business shall be treated as supply irrespective of the presence of consideration.

Example: ABC 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. Since ABC Associates and the branch office are related persons, services received by ABC Associates will qualify as supply even though the head office has not charged anything from it.

Example: Sumit, a proprietor registered in Delhi, has sought architect services from his brother located in US with respect to his newly constructed house in Delhi. Although services have been received by Sumit without consideration from a related person, the transaction will not qualify as supply since the same has not been received in course or furtherance of business.

2.3.3 Activities to be treated as Supply of goods/services

Section 7(1)(d) of CGST Act read along with Schedule II of CGST Act enlists various matters/transactions which are to be treated as supply of either goods or services. The matters listed under Schedule II are primarily those which had been entangled in litigation in the earlier regime owing to their complex nature and susceptibility to double taxation.

SL.No.	Nature of Transaction	Nature of Supply
1.	a) Transfer of title in goods	Supply of Goods
	b) Transfer of right in goods/undivided share in goods without transfer of title in goods.	Supply of Goods
	c) Transfer of title in goods under an agreement which stipulates that property shall pass at a future date.	Supply of Goods
2.	a) Lease, tenancy, easement, license to occupy land	Supply of Goods
	b) Lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly.	

3.	<p>Any treatment or process which is applied to another person's goods.</p> <p>Example: Job work performed by a job worker like dyeing of fabric in various colours.</p>	Supply of Goods
4.	<p>a) Goods forming part of business assets are transferred or disposed-off by/under directions of person carrying on the business so as no longer to form part of those assets, whether or not for consideration.</p> <p>b) Goods held/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, whether or not for a consideration, by or under the direction of a person carrying on a business, whether or not for consideration.</p> <p>Example: A director using company's car for personal travels</p> <p>c) Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, 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.</p> <p>Exceptions:</p> <ul style="list-style-type: none"> ➤ Business is transferred as a going concern to another person; or ➤ Business is carried on by a personal representative who is deemed to be a taxable person 	<p>Supply of Goods</p> <p>Supply of Goods</p> <p>Supply of Goods</p>
5.	<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 before its completion provided some part of the consideration is received before the issuance of completion certificate</p> <p>c) Temporary transfer or permitting the use or enjoyment of any intellectual property right</p> <p>d) Development, design, programming, customization,</p>	Supply of Goods

- Services provided by an employee to his employer during the course of employment are not taxable under GST law.
- Services provided outside the course of employment for a consideration would qualify as a supply and thus liable to GST.

Example: If an employee provides private coaching to his employer's children, such services would not get covered under the above exclusion and would be liable to GST.

- Amounts paid by the employer to the employee for premature termination of a contract of employment are treated as amounts paid in relation to services provided by the employee to the employer in the course of employment. Thus, such amount would not be liable to GST.

Nature of Transaction	Whether regarded as 'services carried out during the course of employment'?
Services provided by a casual worker to employer who gives wages on daily basis to the worker	Yes. These are services provided by the worker in the course of employment.
In case the casual workers are employed by a contractor, like a building contractor or security agency services, who deploys them for execution of a contract or for provision of security services	<ul style="list-style-type: none"> ■ Yes. Services provided by the casual workers to the contractors are in the course of employment. ■ However, services provided by the contractor to his client by deploying such workers would not be a service provided by the workers to the client in the course of employment. The consideration received by the contractor would therefore be taxable if other conditions of taxability are present.
Services provided on contract basis by a person to another	No. Services provided on contract basis (ie principal-to-principal basis) are not services provided in the course of employment.

2. Services by any Court or Tribunal established under any Law for the time being in force

3. Functions/Duties Performed By Following Persons:

- the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;

- the duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
 - 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.
4. Services of Funeral, Burial, Crematorium or Mortuary including transportation of the Deceased
 - 5 . Sale of Land and Sale of Building Subject to Paragraph 5(b) of Schedule II
 6. Actionable Claims, other than Lottery, Betting and Gambling

2.3.5 Activities notified by Government

Section 7(2)(b) of CGST Act provides that activities undertaken by Central Government/State Government/Local Authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the GST Council, shall be treated neither as supply of goods nor as supply of services. In terms of the above provision, services by way of any activity in relation to a function entrusted to a Panchayat under Article 243G of the Constitution has been notified.

2.3.6 Illustration

Problem 1:

R is a supplier of goods located in Mumbai. In October, 2017 he has imported Consultancy Services for Development of IT Software from U.S.A. for a stipulated consideration of \$ 80,000. Will the import of consultancy services be treated as supply?

Solution : The importation of service in the above case shall fall within the ambit of term “**supply**” as it is for a **consideration** and in the course or furtherance of business and shall be liable to IGST.

Problem 2 :

R is a supplier of goods located in Chandigarh. In November, 2017, he has imported ‘ ‘Architecture Services’ from a relative consultant located in Germany, without any consideration (**monetary or non-monetary**) for construction of his personal house.

- (a) Will the import of architecture services for personal use be treated as supply and liable to IGST?
- (b) What will be your answer if the above services have been imported by R in the course or furtherance of business?

Solution : (a) Since, there is no consideration and it is for personal use,

importation of service in the given case shall not fall within the ambit of term **‘supply’ and not liable to IGST.**

However, in the above example if the import of Architecture Service is for a consideration, it shall fall within the scope of term ‘supply’, although services have been imported for personal purposes.

- (b) Since the services have been imported from a related person and these are in the course or furtherance of business, it will be treated as supply even if it is without consideration,

Problem 3 :

A dealer of washing machines, who has availed input tax credit on washing machines, **permanently transfers** a washing machine from his stock-in-trade, for personal use at his residence.

Will this transfer for personal use be treated as supply and liable for GST?

Solution : Such transaction though without, a consideration shall constitute supply and be liable to GST, as it is a permanent transfer of washing machine for his personal use.

Problem 4 :

R, a Chartered Accountant, purchased 3 laptops of value Rs. 2,40,000 on 1.10.2017 and paid IGST amounting Rs. 67,200 thereon. He availed ITC of Rs. 67,200 in his books on the same day. After 3 years of using the laptops, he has donated one laptop to a college when its fair market value is Rs. 30,000.

Will such donation be treated as supply and liable to GST?

Solution : In the above case, R shall be liable to pay an amount under GST equivalent to:

- (a) The input tax credit availed on the said laptop as reduced by the input tax credit attributable to 3 years for which asset has been used in business, Input credit availed at the time of purchase of laptop = Rs. 22,400 (1/3 of the total input credit of Rs.67,200)

Useful life of the laptop 5 years

Unused period 2 years

Therefore, GST amount payable (Rs. 22,400 x 2/5): Rs.8,960

- (b) Tax payable on the fair market value of such capital goods as determined under section 15, i.e. 30,000 x 28% = 8,400.

Whichever is higher.

Thus, R shall be liable to pay GST amounting to Rs. 8,960 on donation of such laptop.

Problem 5 :

R is engaged in supply of certain goods in Delhi and Haryana. He wishes to transfer goods worth Rs. 1,40,000 from Delhi to its branch in Haryana. Will such transfer be treated as supply and liable for GST?

Solution : R shall be treated as distinct persons. Thus any supply of goods or services or both between Delhi to branch at Haryana shall be subject to integrated tax in terms of IGST Act, even though such transaction may not involve any payment of consideration.

Problem 6 : Employees of a R Ltd., which is a subsidiary of G Limited, have been sent on deputation basis to its Holding Company namely G Limited.

Will such transfer on deputation be treated as supply and liable to GST?

Solution : Such transfer of employee shall fall within the ambit of the term 'supply' even in the absence of any consideration. As both the companies fall under the definition of related person.

Problem 7:

R, the Principal located in Nagpur (Maharashtra) supplies certain goods to his agent G, located in Delhi. G undertakes to supply the said goods in Delhi on behalf of R. Will the above activity be treated as supply and liable for GST?

Solution : As per Schedule I of CGST Act, supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal is treated as supply even if such supply is without any consideration. Thus, such supply of goods by R to G shall fall within the ambit of the term 'supply' even if made without consideration and shall be liable for integrated tax under IGST Act.

Problem 8:

R works as an agent and is located in Mumbai. G is a manufacturer located in Delhi. R agrees to purchase certain goods from Mumbai on behalf of G every month and supply the same to G. Will the above activity be treated as supply and liable for GST?

Solution : As per Schedule I of CGST Act, supply of goods by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal shall be treated as supply even if it is without consideration. Thus such supply of goods by R to G shall fall within the term of supply, even if made without consideration. This supply of goods from R to G shall be subject to integrated tax under IGST Act.

Problem 9:

R lives in Germany. His brother G is carrying on business in India. G imports technical services from R without any consideration in November, 2017 in the course or furtherance of business. Will this be treated as supply or services although G did not pay any consideration to R?

Solution : As per Schedule I of the CGST Act, 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 shall be treated as supply even if it is without any consideration. The said importation of service shall fall within the ambit of term “supply” and G shall be liable to pay integrated tax under IGST Act, 2017 even if R has provided consultancy services without any consideration. However, if such services are for personal use then it will not be treated as supply unless there is a consideration.

Problem 10:

Under a scheme of finance, Maruti Ltd. gives the possession of car to the buyer in November, 2017. It agrees to transfer the ownership of the car to the buyer in January, 2019 upon payment of full consideration of Rs. 9,60,000, in installments as agreed.

What will be the nature of this transaction?

Solution : As per Schedule II of the CGST Act, transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed shall be treated as supply of goods.

Thus, the aforesaid transaction shall be treated as supply of goods on hire purchase and liable to GST.

Problem 11:

R, the owner of a specific piece of land in Delhi, leases the same to G for one year for an agreed, Consideration in November, 2017.

What will be the nature of this transaction?

Solution :

As per Schedule II of the CGST Act, any lease, tenancy, easement, license to occupy land shall be treated as supply of services.

Thus, the aforesaid lease of land shall be treated as a supply of services and liable to GST.

Problem 12:

R is a manufacturer of goods. He sends his goods for the purpose of special packaging to G on job work. The packaging material has also been provided by R.

What is the nature of this activity?

Solution : As per Schedule II of the CGST Act, treatment or process applied to another person's goods (job work) shall be treated as supply of services. Further, it shall be immaterial, whether the job-work is to be carried out by a job-worker with or without any material.

In the given case, the activity of special packing by G shall be treated as supply of services. Further, it shall be immaterial whether G uses his own packing material or the

same is provided by R.

Problem 13 :

R is carrying on the business of consumer durable products. He disposed of a defective TV for Rs. 20,000 to G whereas its normal price is Rs.2,00,000.

- (a) Will the aforesaid disposal be treated supply of goods or services.
- (b) Assume in the above example, R donated the above-refrigerator to an NGO and he has claimed the input tax credit on such refrigerator at the time of purchase.

Solution : (a) As per Schedule II of the CGST Act, 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, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.

Thus, the aforesaid disposal shall be considered as supply of goods by R and liable to GST.

- (b) The aforesaid donation shall be considered as supply of goods by R. Valuation of the defective refrigerator for payment of GST shall be done on fair market value basis in accordance with CGST Rules, 2017 concerned with determination of value.

Problem 14 :

R deals in home appliances like washing machines, refrigerator, etc. He uses computers in his shops for keeping track of inventory and for other business purposes. Out of 2 computers, R takes home one computer to be used by his son for his studies during the month of October, 2017 and thereafter computer is brought back to the show room of R.

What will be the nature of this transaction?

Solution :

As per Schedule II of the CGST Act, where 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, whether or not for a consideration, the usage or making available of such goods is supply of services.

The aforesaid private use of a computer by R/his son shall be treated as a ‘**supply of services**’, although it is without consideration and thus liable to GST.

Problem 15 :

R gives generator-sets on rental basis to various customers. He gives a generator-set to his brother-in-law for a period of one month in September, 2017 on the occasion of some function in the home of his brother-in-law and thereafter generator is brought back to the show room of R. What will be the nature of this transaction?

Solution : As per Schedule II of the CGST Act, where 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, whether or not for a consideration, the usage or making available of such goods is supply of services.

The activity of making available the said generator for the private use of brother-in-law of R shall be treated as a 'supply of services' although it is without consideration and thus liable to GST.

Problem 16 :

R has closed down his business but was left with certain capital goods and inputs forming part of the assets of the business carried on by him. The closure of the business is due to his ill health.

What will be the nature of this transaction?

Solution : As per Schedule II of the CGST Act, where goods forming part of the assets of any business carried on by a person 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—

- (i) the business is transferred as a going concern to another person; or
- (ii) the business is carried on by a personal representative who is deemed to be a taxable person.

In this case, such goods shall be deemed to be supplied by him in the course of furtherance of his business immediately before he ceases to be a taxable person. Thus, the capital goods which have some useful life and such inputs lying with him on which credit has been availed should be treated as deemed supply and shall be subject to GST.

2.4 Composite Supply and Mixed Supply

GST is payable on supply of goods/ services at a rate notified by the government. In case of supply of single goods/ services poses no problem for determination of applicable GST rate, if they are clearly identifiable. However, some of the supplies are a combination of goods/combination of services/ combination of services and goods wherein each individual component of such supply attracts a different rate of tax. In such cases, determination of applicable rate of tax to be levied on such supplies may be a challenge. To address this issue, the GST law categorises such supplies into composite supplies and mixed supplies.

2.4.1 Composite Supply

U/s 2(30) of CGST Act, 2017 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 ordinary course of business,
- and out of all supplies, one of which is principal supply. (Principal supply means predominant element of composite supply for which other supplies forming part of composite supply play an ancillary role)

Condition for Composite Supply

Any supply of goods or services will be treated as composite supply if it satisfies the following conditions simultaneously:

- ii) supply of two or more taxable supply
- ii) it is naturally bundled i.e., goods or services are usually provided together in normal course of business. They cannot be separated.
- iii) One of the supplies must be principal supply.

Tax liability for Composite Supply

As per Sec. 8 of CGST Act, 2017 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. Accordingly the tax rate applicable for the goods or services which is treated as principal supply is the rate of tax for Composite Supply.

2.4.2 Mixed Supply

As per Sec. 2(74) 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.

Condition for Mixed Supply

Any supply of goods or services will be treated as mixed supply if it satisfies the following conditions simultaneously:

1. Supply of two or more individual supply
2. It is not naturally bundled i.e., goods or services are usually not provided together in normal course of business. They can be separated.
3. None of the supplies is principal supply.

Tax liability for Composite Supply

As per Sec. 8 of CGST Act, 2017 a Mixed Supply comprising two or more shall be treated as a supply of that particular supply which attracts the highest rate of tax.

2.4.3 Guiding principles for determining a supply as Composite Supply or Mixed Supply

Following guiding principles could be adopted to determine whether it would be a Composite Supply or Mixed Supply.

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
Each supply priced separately	No	No

Criteria for determining natural bundle

- Perception of customer about the supply.
- Market trend i.e. how other supplier supplies.
- Nature of ingredient of supply.

2.4.4 Illustration

Problem 1 :

R is selling hampers consisting of canned foods, sweets, chocolates, cakes and dry fruits on Diwali and other festivals. What is the kind of supply and at which rate will GST be payable by R?

Solution : The supply of hamper consisting of canned foods, sweets, chocolates, cakes and dry fruits if sold for a single price shall be a mixed supply and the GST rate shall be rate of any of these items which attracts the highest rate of tax. However, if each of the items is supplied separately and is not dependent on any other item, it shall not be mixed supply and GST rate applicable shall be the rate applicable for each supply.

Problem 2:

R dispatched chocolates to G from Delhi to Punjab after getting it packed and paying insurance charges of such goods. What is the kind of such supply of chocolates and what rate will GST be applicable?

Solution : 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. GST rate applicable in this case shall be the GST rate of chocolates.

Problem 3 :

R purchases air travel ticket of Air India from Delhi to Bangalore for Rs. 9,000 which includes free food on board and free insurance. What is the kind of such supply and what rate will GST be applicable?

Solution: Air travel ticket from Delhi to Bangalore costing Rs. 9,000 includes free food on board and free insurance. Therefore, it is a case of composite supply. In this case, the transport of passenger, institutes the pre-dominant element of the composite supply, and is treated as the principal supply and all other supplies are ancillary. Hence, GST rate applicable in this case shall be the GST rate of transportation of passenger by air.

Problem 4 :

Mr. Ram being a dealer in laptops, sold laptop to a customer in Laptop Bag, for Rs. 55,000. CGST and SGST for laptop @ 18% and for laptop bag @ 28%. What would be the rate of tax leviable? Also find the GST liability.

Solution : If the laptop bag is supplied along with the laptop in the ordinary course of business, the principal supply is that of the laptop and the bag is an ancillary.

Therefore, it is a composite supply and the rate of tax would that as applicable to the laptop. Hence, applicable rate of GST 18% on Rs.55,000. CGST is Rs.4,950 and SGST is Rs. 4,950

Problem 5 :

Mr. A booked a Rajdhani train ticket, which includes meal. Is it composite supply or mixed supply?

Solution : It is a bundle of supplies. It is a composite supply where the products cannot be sold separately. The transportation of passenger is, therefore, the principal supply.

Rate of tax applicable to the principal supply will be charged to the whole composite bundle.

Therefore, rate of GST applicable to transportation of passengers by rail will be

charged by IRCTC on the booking of Rajdhani ticket.

Problem 6 :

Big Bazar offers a free bucket with detergent purchased. Is it composite supply or mixed supply? Assume rate of GST for detergent @ 28% and bucket @ 18%.

Solution : This is a mixed supply. These items can be sold separately. Product which has the higher rate will apply on the whole mixed bundle.

Problem 7:

XYZ Ltd. is a manufacturer of cosmetic products, supplied a package consisting of hair oil (GST Rate -18%), Sun screen cream (GST Rate - 28%), Shampoo (GST rate - 28%) and hair comb (GST Rate -12%). The Price per package is Rs. 500 (exclusive of taxes). 10,000 packages were supplied by the company to its dealers. Determine the nature of supply and its tax liability.

Solution : This supply would be regarded as mixed supply, since in this case each of the goods in the package have individual identity and can be supplied separately, but are deliberately supplied conjointly for a single consolidated price. The tax rates applicable in case of mixed supply would be the rate of tax attributable to that one supply (goods, or services) which suffers the highest rate of tax from amongst the supplies forming part of the mixed supply. Therefore, the package will be chargeable to 28% GST.

The tax liability will be arrived as under :

Particulars	Rs.
Value of taxable supply per package	Rs. 500
No. of packages	<u>10,000</u>
Total Taxable Value of supply	Rs. 50,00,000
Applicable GST Rate	28%
Total Tax liability	Rs.14,00,000

Problem 8 :

A Ltd. a manufacturing concern in Rajasthan has opted for composition scheme furnishes you with the following information for Financial Year 2018-19. It requires you to determine its composition tax liability and total tax liability. In Financial Year 2017-18 total value of supplies including inward supplies taxed under reverse charge basis are Rs. 68,00,000. The break up of supplies are as follows –

Particulars	Rs.
(1) Intra State Supplies of Goods X chargeable @ 5% GST	30,00,000
(2) Intra State Supplies made which are chargeable to GST at Nil rate	18,00,000
(3) Intra state supplies which are wholly exempt under section 11 of CGST Act, 2017	2,40,000
(4) Value of inward supplies on which tax payable under RCM (GST Rate 5%)	5,00,000
(5) Intra State Supplies of Goods Y chargeable @ 18 % GST	30,00,000

Solution: The composite tax liability of A Ltd. shall be as under :

(1) Computation of Aggregate Turnover and composite tax :

Particulars	Rs.
(1) Supplies made under forward charge	30,00,000
(2) Supplies made which are chargeable to GST at Nil rate	18,00,000
(3) Supplies which are wholly exempt under section 11 of CGST Act, 2017	2,40,000
(4) Value of inward supplies on which tax payable under RCM (GST Rate 5%) (not to be included)	NIL
(5) Intra State Supplies of Goods Y chargeable @ 18 % GST	30,00,000
Aggregate turnover	30,00,000
Rate of composite tax	2%
Total Composite tax [Rs. 30,00,000 × 2%]	60,000

(2) Tax payable under reverse charge basis:

Particulars	Rs.
Value of inward supplies on which tax payable under RCM	5,00,000
Rate of GST	<u>5%</u>
Tax payable under RMC	<u>25,000</u>
Total Tax liability (Rs. 60,000+2,5000)	85,000

2.5 Place of Supply

Under the GST environment, Place of Supply (PoS) of Goods and Services is the most important concept because the chargeability of GST is based on three pillars.

- Taxable event i.e supply
- Time of supply of Goods / Services (point of taxation)
- Place of Supply of Goods and Services.

Therefore it can be said that Place of Supply is very significant for computation of tax under GST regime. In case the Place of Supply is wrongly determined, it has vast implication under provision of Section 77. According to that section if a person wrongly collect and paid the CGST and SGST assuming the transaction is a Intra- State supply, while the actual transaction is a Inter-State supply, shall refund the CGST/SGST and paid IGST along with interest and vice versa. Under GST it is very important to determine the nature of supply because it's only after determining the same we can make sure the tax that is to be collected and paid. Hence, in case the nature of supply is Inter-State we shall apply Integrated Goods and Service Tax (IGST) on the transaction and in case of Intra-State supply we need to apply both i.e. Central Goods and Service Tax (CGST) and State Goods and Service Tax (SGST). As per Section 7 of IGST Act, a transaction is said to be a Intra-State supply if the location of supplier and the Place of Supply of goods and services are in same state or same Union Territory. As per Section 8 of IGST Act, a transaction is said to be a Inter-State supply if the location of supplier and the Place of Supply of goods and services are two different States or two different Union Territory or one in Union Territory and another is State Territory. Inter- State supplies also includes the supply of goods or services imported into India, where LoS (location of supplier) is outside India and PoS (Place of Supply) is in India, and supply of goods and services exported from India, where LoS in India but PoS is outside India. Apart from this, there are some specified transactions which actually looks like Intra- State supplies but deemed to be a Inter- State supplies, for example supplies made to or by SEZ units even within the State would be considered as Inter- State Supplies. All Intra-State supplies are governed by Central GST Act and State/ Union Territory GST Act, 2017 and applicable taxes are CGST plus SGST/UGST. So imposition of two different kinds of taxes on the same transaction indicates the equal share of taxes by Central and State/ UT Government. All Inter-State supplies are governed by the IGST Law applicable levy on the transaction is IGST. This IGST include the share of both Central Government and respective state/ UT Government which is consider as the Place of Supply. Thus the concept of Place of Supply is the utmost important from the point of Government to determine which State or Union Territory will get the share of

IGST and it is also important for the business to identify which taxes to be imposed depending upon whether the transaction is Inter State supply or Intra- State supply.

251 Scope of the Provisions

Sections 10 to 13 of the IGST Act, 2017 indicate the principles to determine the Place of Supply.

1. Section 10 governs the Place of Supply of goods other than goods imported into and exported from India.
2. Section 11 governs the Place of Supply of Goods imported into or exported from India.
3. Section 12 governs the Place of Supply of services, where location of supplier and location of recipient is in India.
4. Section 13 governs the Place of Supply of services, where the location of supplier or location of recipient is outside India.

It is important to state that where Sections 10 and 12 deal with domestic transaction but Sections 11 and 13 deal with cross border transactions of goods and services. Also Sections 10 and 11 cover the Place of Supply of goods, but Sections 12 and 13 cover the supply of services, both are independent provisions.

252 Place of Supply of goods other than export and import

According to the related provisions, Rules governing the Place of Supply of Goods other than Imports and export (for Domestic supply) are as under-

1) where the supply involves movement of goods:

Supply involves movement of goods whether by the supplier or the recipient, the Place of Supply of such goods shall be the location of the goods when the movement of goods terminates for delivery to the recipient. This implies that place of supplier or receiver is of no consequence to determine the Place of Supply when it comes to those transactions which involve the movement of goods. The place where delivery terminates i.e. where the ownership is passed on shall be critical to determine the Place of Supply.

Case study 1:

A Ltd. of West Bengal sold 300 units of computer to Info Traders of Bihar, to be delivered at his office at Jharkhand. Place of Supply of goods is Jharkhand and IGST will be levied as it is a Inter- State supply.

2) where the goods are delivered on the direction of a third person:

where the goods are delivered by the supplier to a recipient on the direction of a third person, whether acting as an agent or otherwise, before or during movement of

goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the Place of Supply of such goods shall be the **principal place of business** of such person. When goods are delivered to a party on the direction of a third person the Place of Supply will be the location of such third person and not where the delivery terminates.

Case study 2:

Samanta Traders, a dealer in Furniture, located in west Bengal place an order to Rahim traders located at Assam, for 100 units of Chairs, with the direction that to deliver the Chairs to City College of Kolkata, West Bengal, who is the customer of Samanta Traders.

There are two legs of the Transaction

Leg 1: Samanta Traders and Rahim Traders, Place of Supply is West Bengal and IGST will be levied as Inter- State sale.

Leg 2: Samanta Traders and City College (having registered under GST), PoS of goods is West Bengal and Intra- State supply, CGST plus SGST will be charged.

3) *Where supply involves no movement of goods:*

Where the supply does not involve movement of goods, whether, by the supplier or the recipient, the Place of Supply shall be the location of such goods at the time of the delivery to the recipient. However, when goods are of such nature which does not require any movement, Place of Supply shall be the location of such goods.

Case study 3:

Silk Traders of Gujarat Sold 20 pieces of silk salwar to Amit traders of west Bengal at Gujarat show room. Here the transaction is Intra -State Supply of goods, as Place of Supply is Gujarat.

4) *When Goods are Installed :*

Where the goods are assembled or installed at site, the Place of Supply shall be the place of such installation or assembly.

Case study 4:

Ramco Limited registered in Bihar opens a new office in Delhi. It purchases 10 ACs to be installed at its Delhi office from Patil electronics in Bihar. In this case, the location of the supplier is Bihar, but a Place of Supply of goods will be Delhi. Hence, IGST will be levied.

5) *Goods on Board a conveyance :*

In case the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the Place of Supply shall be the location at which such goods are taken on board. This provision includes those purchases which are

done while travelling on a conveyance.

Case Study 5:

Mr. Mehta is travelling on a cruise liner from Mumbai to Goa. He purchases a book from the in-house store in the cruise liner. These books were on-boarded from Mumbai. Registered place of business of the book shop is in Mumbai. Place of location of supplier is Maharashtra and Place of Supply of goods, in this case, will be Maharashtra. This is an Intra-State supply, and CGST and SGST will be charged.

253 Place of Supply of services other than export and import

Broad principles governing the Place of Supply of services where the location of service supplier (provider) and recipient (Receiver) is in India, are 13 in numbers, out of which 1 is general principle and 12 are specific situation based principles. For the most supplies of services, the places of supply of services are determined by “General Rule”. However, some supplies are subject to special rules for fixing the Place of Supply of services, depending upon the nature of services referred in those respective rules.

1) General Rules:

Where both supplier and recipient are located in India, the Place of Supply of service would be:

- a) When the service supplied or provided to persons registered under the GST the Place of Supply of service is the location of registered person.

Case Study 7:

Mr. Rahaman is the chartered accountant of West Bengal, provided professional services to ABC Ltd, of Assam. The PoS of the Service is the location of Registered person. Here it is Assam. So Mr. Rahaman will charge IGST for his service as Inter- State Supply.

- b) When the services are provided to an un-registered person but the address exists on records of the supplier of service, the Place of Supply of service is the location of service recipient of to un-registered persons.

Case study 8:

Samanta Furniture of Kolkata is providing services of renting of furniture to Amit of Midnapur. Then the location of supply of services is at West Bengal, hence Intra- States supply. So both CGST and SGST will be levied.

- c) When the services are provided to an un-registered person but the address doesn't exist on records of the supplier of service, the Place of Supply of service is the location of service supplier or provider.

Case study 9:

InfoTech Kolkata is providing computer repair services to Rahul of Jharkhand, unregistered person and address is not available in its records. In this situation Place of Supply is location of service provider i.e West Bengal (Intra- State supply)

The general rule has been framed keeping in the view the difference between B to B and B to C supplies. The rule is very well aligned with the overall philosophy of GST Act which is destination based consumption tax.

2) Specific Rules :

- a) Place of Supply of the Services in relation to immovable property is the location of the immovable property without differentiating the B to B and B to C supplies (Availing input tax credit from a state where the service receiver has no place of business may difficult). The rule covers
 - Services like architecture, interior decoration, construction or any others similar in nature.
 - Services of accommodation for staying in hotel, guest house, lodge, inn etc. or for organising any function or events.
- b) Place of Supply for the restaurant and catering services personal grooming, health and beauty services etc., is the location of actual performance.
- c) Place of Supply for services like training and performance appraisal is the
 - For Registered service recipient –location of the service recipient (can claim input tax credit)
 - For un-registered recipient – place of actual performance (no question of claiming input tax credit)
- d) Place of Supply for the services provided by way of admission to an event or amusement park or any other place is the location of the event or park without differentiating the B to B and B to C supplies.
- e) Place of Supply for the services provided by way of organising such events and other ancillary services in this connection is the
 - For Registered service recipient –location of the service recipient (can claim input tax credit)
 - For un-registered recipient – location of actual performance.(no question of claiming ITC). If the event is outside India then location of service recipient will be Place of Supply for un-registered person..

- f) Place of Supply for the services transportation of goods, including mail or courier is the
- For Registered service recipient –location of the service recipient (can claim input tax credit)
 - For un-registered recipient – location where goods are handed over for transportation
- g) Place of Supply for the services of **Passenger transportation** is
- For Registered service recipient –location of the service recipient (can claim input tax credit)
 - For un-registered recipient – location where passenger embarks on a conveyance for the continuous journey.
- h) Place of Supply for the services on the board of conveyance like aircraft, vessel, train, motor vehicles is the first departure point of the conveyance of that journey.
- i) Place of Supply for the telecommunication services like data transfer, broadcasting, cable and DTH services to any person has been prescribed differently
- For fixed line, leased circuits, cable or dish antenna – place of installation
 - For post paid mobile/ internet connection – location of billing address.
 - For pre paid mobile/ internet connection – address of the selling agent or the location of sale in different situation.

This is largely in the line with the provision followed by other developed nations.

- j) Place of Supply for banking and financial services including services of stock broking firm shall be
- Location of receiver is available in records - the location of service receiver.
 - Location of receiver is not available in records – the location of service provider

Such provision is similar to the previous provision in service tax.

- k) Place of Supply for insurance services shall be the location of the service recipient in case of business or otherwise.
- l) A special rule is framed for the advertising services provided to the government whether central or state / union territory. Place of Supply is the respective state for which the advertisement is meant for.

After discussing the principles governing PoS for the entire domestic supplies of services, it may be seen that overall objective of the principle is to capture the location of consumption of services and to ascertain the PoS accordingly.

254 Illustration

Problem 1 :

- (a) What shall be the place of supply and kind of GST chargeable, if R of Delhi makes a supply of goods to G of Gujarat?
- (b) What shall be your answer if G is also located in Delhi?

Solution : (a) The place of supply in this case shall be Gujarat where the movement goods terminate and it will be a case of inter-State supply liable to IGST.

(b) On the other hand, if G is also located in Delhi, the place of supply shall be Delhi and it will be a case of intra-state supply liable to CGST and Delhi SGST.

Problem 2 : R of Ghaziabad (UP) comes to Delhi and wishes to buy a washing machine for his residence at Ghaziabad. He visited a showroom of washing machine of G in Delhi. G agreed to transport and deliver the washing machine to R at his residence in Ghaziabad for a sum of Rs. 20,000 including transportation charges.

- (a) What shall be the place of supply and kind of GST chargeable in this case?
- (b) Will the situation be different if R agrees to take the washing machine himself to Ghaziabad?

Solution : (a) In this case, supply involves movement of goods from Delhi to Ghaziabad (UP) and responsibility of movement of goods is of the supplier G. The place of supply in this case shall be Ghaziabad where the movement terminates for delivery. Hence, it shall be a case of inter-state supply and liable to IGST.

- (b) The situation will not be different if R agrees, that he will himself move the goods to Ghaziabad.

Problem 3 :

R of Delhi has supplied goods to G of Ambala (Haryana). During the movement of goods G directed R to transfer the documents of title to S of Chandigarh (Union Territory). What shall be the 'place of supply' and kind of GST chargeable in this case?

Solution : The place of supply of such goods shall be Chandigarh (Union Territory) and it will be a case of Inter-State supply liable to IGST.

Problem 4 :

R of Haryana, books an order to supply toys to J of Jaipur (Rajasthan). R places the order on G Itoys Ltd. Mumbai, the manufacturer of such toys and instructs G

Toys Ltd. to deliver the toys directly to J of Jaipur to save the transportation cost. What shall be the place of supply and kind of GST Chargeable in this case?

Solution : In this case goods are delivered to J in Jaipur by G Toys Ltd. the supplier of goods located at Mumbai on the direction of R. Delivery of goods by G Toys Ltd. to J of Jaipur (Rajasthan) shall be considered as supply to R of Haryana and the place of supply of this transaction shall be Haryana being the principal place of business of R. This supply shall be considered as inter-state supply and shall be subject to IGST which will be charged by G Toys Ltd. of Mumbai in his invoice raised to R of Haryana.

Problem 5 :

R of Mumbai (Maharashtra) enters into an agreement with G to Ahmedabad (Gujrat) for installation of a machine in his factory at Goa.

- (a) What shall be the place of supply and kind of GST chargeable to this case
- (b) What shall be your answer if the machine has to be installed on G's factory at Pune (Maharashtra)

Solution : (a) The place of supply in this case shall be the place of installation of machine i.e. Ahmedabad (Gujrat). Thus it will be a case of inter-state supply and R will have to pay IGST at Delhi.

- (b) If this machine has to be installed by R on behalf of G in Pune (Maharashtra). It will be a case of intra-state supply and R will have to pay CGST and Maharashtra SGST at Mumbai.

Problem 6 :

R, a flight caterer, of Gurgaon (Haryana) has loaded food and drinks on Air India aircraft at Delhi on its flight from Mumbai to Amritsar via Delhi for passengers on board. What shall be the place of supply and kind of GST chargeable in this case?

Solution : The place of supply in this case shall be Delhi from where foods and drinks were loaded on the aircraft and it will be a case of inter-State supply as R is in Gurgaon (Haryana) and the place of supply is in Delhi. Thus R will have to pay IGST at Delhi.

Problem 7 :

A ticket for anywhere travel in India is issued by Jet Airways to R. How would you determine the 'place of supply' in this case?

Solution : In this case the place of embarkation will not be available at the time of issue of invoice as the right to passage is for future use. Accordingly, place of supply cannot be the place of embarkation. In such case, the place of supply of such

service shall be determined in accordance with the provisions of section 12(2) i.e. if the services are made to—

- (a) a registered person, it shall be the location of such person;
- (b) any person, other than a registered person it shall be—
 - (i) the location of the recipient where the address on record exists: and
 - (ii) the location of the supplier of services in other cases.

Problem 8 :

A person travels from Delhi to Chennai and back to Delhi. How would you determine the place of supply in this case?

Solution : The place of supply shall be determined as under:

If the person is registered, the place of supply shall be the location of recipient. If the person is not registered, the place of supply for the for on ward journey from Delhi to Chennai shall be Delhi, the place where he embarks.

However, for the return journey, the place of supply shall be Chennai as the return journey has to be treated as separate journey.

Problem 9 :

From the following information determine the place of supply of goods as per IGST Act, 2017, where the goods are delivered by the supplier to a recipient on the direction of a third person during the course of movement of goods. Also determine the nature of supply -whether inter state or intra-state supply?

Supplier and his location	Location of the buyer (third person)	Recipient and his location	Place of delivery of the goods
A Ltd. Jaipur	A Ltd. Jaipur	M Ltd. Mumbai	Mumbai
A Ltd. Jaipur	M Ltd. Mumbai	B Ltd. Jaipur	Jaipur
A Ltd. Jaipur	S Ltd. Surat	M Ltd. Mumbai	Mumbai
A Ltd. Jaipur	M Ltd. Mumbai	P Ltd. Mumbai	Mumbai

Solution: The place of supply of goods shall be determined as under—

Supplier and his location	Location of the buyer (third person)	Recipient and his location	Place of delivery of the goods	Place of Supply (As per Section 10(l)(b) shall be the principal place of business of third person i.e. buyer)	CGST/IGST
A Ltd. Jaipur	B Ltd. Jaipur	M Ltd. Mumbai	Mumbai	Jaipur	Intra-State - CGST
A Ltd. Jaipur	M Ltd. Mumbai	B Ltd. Jaipur	Jaipur	Mumbai	Inter-State - IGST
A Ltd. Jaipur	S Ltd. Surat	M Ltd. Mumbai	Mumbai	Surat	Inter-State - IGST
A Ltd. Jaipur	M Ltd. Mumbai	P Ltd. Mumbai	Mumbai	Mumbai	Inter-State - IGST

Problem10 :

Determine place of supply of goods in the following cases and also state the nature of supply and the type of tax leviable:

Supplier and his location	Recipient and his location	Place of assembly/ installation of goods
A Ltd. Jaipur	B Ltd. Jaipur	Kolkata
A Ltd. Jaipur	M Ltd. Mumbai	Surat
A Ltd. Jaipur	S Ltd. Surat	Allahabad
A Ltd. Jaipur	M Ltd. Mumbai	Jaipur

Solution : The place of supply shall be determined as under—

Supplier and his location	Recipient and his location	Place of assembly/ installation of goods	Place of Supply	Nature of supply and tax leviable
A Ltd. Jaipur	B Ltd. Jaipur	Kolkata	Kolkata	Inter-State -IGST
A Ltd. Jaipur	M Ltd. Mumbai	Surat	Surat	Inter-State -IGST
A Ltd. Jaipur	S Ltd. Surat	Allahabad	Allahabad	Inter-State -IGST
A Ltd. Jaipur	M Ltd. Mumbai	Jaipur	Jaipur	Intra-State - CGST