

Chapter 7: Supply

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7.0 Taxable Event

Taxable event under GST law is supply of goods or services or both. It means no supply no GST.

The term, “supply” has been inclusively defined in the Act. The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply:

1. Supply of goods or services. Supply of anything other than goods or services does not attract GST.
2. Supply should be made for a consideration.
3. Supply should be made in the course or furtherance of business.
4. Supply should be made by a taxable person.
5. Supply should be a taxable supply.
6. Supply should be made within the taxable territory

Exceptions:

- (1) Any transaction involving supply of goods or services without consideration is not a supply, barring few exceptions, in which a transaction is deemed to be a supply even without consideration.
- (2) Further, import of services for a consideration, whether or not in the course or furtherance of business is treated as supply.

7.1 Scope of supply (Section 7 of CGST Act, 2017)

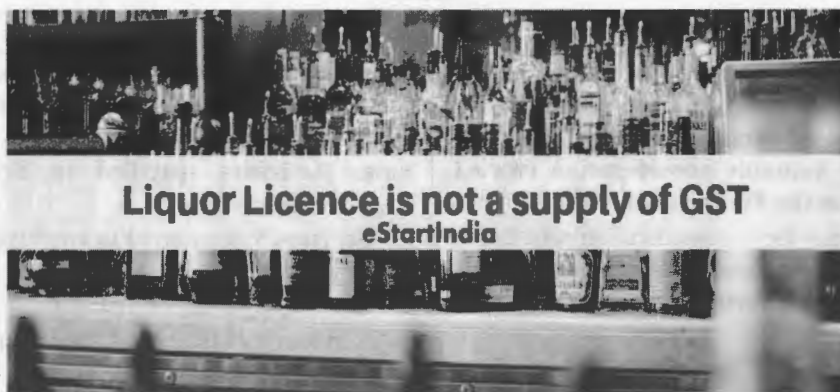
As per Section 7(1) Supply includes	As per Section 7(2) Supply excludes
(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;	(a) activities or transactions specified in Schedule III ; or (b) such activities or transactions undertaken by the Central Government, a State Government or (Union territory w.e.f. 27th June, 2018) any local authority

<p>As per Section 7(1) Supply includes</p> <p>(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration (w.r.e.f. 1-7-2017, inserted in the Finance Act, 2021)</p> <p>(b) import of services for a consideration whether or not in the course or furtherance of business; ('and' w.e.f. 29th Aug., 2018 inserted retrospectively from 1.7.2017)</p> <p>(c) the activities specified in Schedule I, made or agreed to be made without a consideration; (w.e.f. 29th Aug., 2018 'and' omitted retrospectively from 1.7.2017)</p> <p>(d) w.e.f. 29th Aug., 2018, omitted retrospectively from 1.7.2017: the activities to be treated as supply of goods or supply of services as referred to in Schedule II.</p> <p>w.e.f. 29th Aug., 2018, applicable retrospectively from 1.7.2017</p> <p>(1A) where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II."</p>	<p>As per Section 7(2) Supply excludes</p> <p>in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,</p> <p>Note: Activities specified in Schedule III (i.e. Negative list):</p> <ol style="list-style-type: none"> 1. Services by employee to employer in the course of or in relation to his employment. 2. Services by court or Tribunal 3. Services by Member of Parliament and others 4. Services by funeral, burial etc. 5. Sale of land/Building 6. Actionable claim other than lottery, betting and gambling. <p>w.e.f. 1-2-2019:</p> <ol style="list-style-type: none"> 7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. 8. (a) Supply of warehoused goods to any person before clearance for home consumption; (b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption."; <p><i>Explanation 1:</i> For the purpose of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.</p> <p><i>Explanation 2:</i> For the purpose of this paragraph, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962</p>
<p>As per Section 7(3) Subject to the provisions of sub-sections (1), (1A) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—</p> <p>(a) a supply of goods and not as a supply of services; or</p> <p>(b) a supply of services and not as a supply of goods.</p>	
<p>Amendment of Schedule II of CGST Act, 2017: (Activities or transactions to be treated as supply of goods or supply of services)</p>	<p>Consequent to the amendment in section 7 of the CGST Act, paragraph 7 of Schedule II to the CGST Act has been omitted retrospectively, with effect from the 1st July, 2017.</p>

w.e.f. 1-10-2019: Alcoholic liquor licence – Grant thereof not to treated as supply of goods/services:

As per section 7(2) of CGST Act, 2017 Central Government of India on the recommendation of the GST Council notifies that the following activities or transaction under taken by the State Governments in which they are engaged as public authorities, shall be treated neither as a supply of goods nor a supply of service namely:—

“services by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name it is called”



CBIC Circular No. 121/40/2019-GST, dated 11.10.2019 has clarified that the above special dispensation applies only to supply of service by way of grant of liquor licenses by the State Government as an agreement between the Central and States.

7.1.0 Supply made in the course or furtherance of business:

7.1.0a In the course of business: Every person carries out certain activities regularly for running trade or commerce.

Example: Mr. CA Ram a practicing Chartered Accountant carries out the activity of Accounting, Auditing, filing returns, Certifying documents and so on so forth. These activities can be considered as performed in the course of business.

7.1.0b Furtherance of business: Every business person uses to think how to develop his business or carrying out new activities. Such activities called as furtherance of business.

Example: M/s X Ltd. manufacturing of motor cars. Company use to sell a greater number of cars in Southern India. In view of demand in Southern India, company intends to establish manufacturing unit in Chennai. M/s X Ltd. appointed Mr. Y as a consultant for searching, evaluating and shortlisting places for prospective targets. Finally, company decided to establish unit at Ambattur Industrial Estate Chennai. Hence, Mr. Y carried out various activities is in furtherance of business of M/s X Ltd.

GST is essentially a tax only on commercial transactions. Hence, only those supplies that are in the course or furtherance of business qualify as supply under GST. Hence, 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 as defined in the Act.

Sale of goods or service even as a vocation is a supply under GST. Therefore, even if a famous politician paints painting for charity and sells the paintings even as a one-time occurrence, the sale would constitute supply.

7.1.1 Section 7(1)(a) of CGST Act, 2017: All forms of supply of goods or services or both such as—

- (i) sale,
- (ii) transfer,
- (iii) barter,
- (iv) exchange,
- (v) licence,
- (vi) rental,
- (vii) lease, or
- (viii) disposal

made or agreed to be made for a consideration by a person in the course or furtherance of business;

Note: The above activities are specified as an example as they are preceded by words 'such as'.

(i) Sale: The term sale is defined under various states VAT laws. Sale means a sale of goods made within the State for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge.

Sale involves transfer of property in goods from one person to another person for consideration.

Under CGST law sale is treated as supply leviable to GST. However, the definition of Sale has not been provided under the GST Law.

Note: mortgage, hypothecation, charge or pledge is not supply and hence GST will not be levied.

Example 1: Mr. X sold laptop worth ₹1,00,000 and issued invoice in favour of Mr. Y. Now ownership in laptop transferred to Mr. Y. Such transaction shall be covered in sale. It is a supply of goods leviable to GST.

Example 2: Illegal Activity vs Prohibited Activity:

1. Mr. T a thief has stolen motorbike and sells the motorbike to Mr. Q. It is illegal to steal a motorbike. Sale of motorbike considered as supply of goods liable to be taxed.
2. Mr. T sold Narcotic drugs and psychotropic substances, to Mr. Q for ₹3 Lakhs. These goods are prohibited goods. Such activity cannot constitute supply. Mr. T is punishable under the law.

Example 3: Mr. X is an official liquidator provided various services like valuation of assets with the help of valuers, inviting and evaluating the tenders, selling assets, making payment to borrowers/creditors and so on. Activities of Mr. X are treated as supply of service and the commission earned by him is subject to GST.

Example 4: Mr. A being a dealer of furniture deliver the goods to the branch office of M/s X Ltd., upon directions of M/s X Ltd., head office. The contract to supply furniture is between Mr. A and M/s X Ltd., head office. Mr. A is liable to pay GST on the consideration received from M/s X Ltd. head office.

(ii) Transfer: the term transfer means, where the ownership may not be transferred but the right in the goods is transferred.

Example 1: Goods sent for a demonstration on returnable basis. Is it supply?

Answer: No. It would not be considered supply, as there is no transfer of title involved.

Example 2: Mr. A is the owner of Xerox machine. He transferred the right to operate the Xerox machine to Mr. B for a consideration of ₹10,000 per month for four months. Hence, ownership of the machine is not transferred but the right in the machine is transferred. It is supply of service leviable to GST.

(iii) Barter: it means, the exchange of goods and productive services for other goods and productive services, without the use of money.

Example 1: Mr. C a practicing Chartered Accountant provided services to M/s A Ltd., dealer of laptops, in return M/s A Ltd., given to Mr. C two laptops. Here, two-way supply takes place. Mr. C is making taxable supply of service and M/s A Ltd., is making taxable supply of goods. Hence, tax is payable by both.

Example 2: Mr. X a dealer in laptops. He supplied a laptop for ₹40,000 to Mr. Y along with a barter of printer. The value of the printer known at the time of supply is ₹4,000 but the open market value of the laptop is not known, the value of the supply of laptop is ₹44,000. Hence, Mr. X is liable to pay GST on ₹44,000. At the same time Mr. Y is also is liable to pay GST on ₹4,000 if he is registered person.

(iv) Exchange: when two persons mutually transfer the ownership of one thing for the ownership of another, neither thing nor both things being money only, the transaction is called an exchange.

Exchange offers on products such as televisions, mobile phones and refrigerators are leviable under GST.

Example 1: Mr. A is a dealer of new phones. He supplied for ₹20,000 to Mr. B along with exchange of an old phone and if the price of the new phone without exchange is ₹24,000, the open market value of the new phone is ₹24,000. Mr. A is liable to pay GST on ₹24,000. Mr. B also liable to pay GST on ₹4,000 if he is registered person.

Example 2: Mr X is a dealer of new cars. He sells new cars for ₹8,25,000, agrees to reduce ₹1,25,000 on surrendering of old car. Mr. Y who intends to buy new car worth ₹8,25,000 agreed to exchange his old car with new car.

Under GST law, it will be treated as Mr. Y has made supply of old car to dealer Mr. X and Mr. X has made supply of new car to Mr. Y.

If Mr. Y is registered person, he will be liable to pay GST on ₹1,25,000. Mr. X will be liable to pay GST on ₹8,25,000 whether Mr. Y is a registered person or not.

(v) Licence: Where one-person grants to another, or to a definite number of other persons, a right do or continue to do in or upon the movable property or immovable property of the grantor, the right is called a licence.

Example 1: Mr. X a developer of information technology software and holder of licence thereon. License to use software was given to different clients: ₹18 lakhs; hence, Mr. X is liable to pay GST whether he transfer such right permanently or temporarily as the case may be.

Example 2: A Chennai based company has been awarded mineral exploration contract for 18 months in respect of specific sites in Mumbai by a Mumbai based corporation (i.e. local authority). As a result, Chennai based company got licence to extract mineral exploration for a period of 18 months. Mumbai based company supplied taxable services. GST is liable to pay by Chennai based company on licence fee paid to supplier under Reverse Charge.

(vi) Rentals: Periodical payment for use of another's property. Rent is to pay on monthly.

Example 1: Mr. A owns a residential building in a prime commercial locality. Large vacant land in the backyard is given on rent of ₹1,80,000 per month to a parking contractor, Mr. B who has set up a parking facility on the said land. It is a taxable supply of service and hence, Mr. A is liable to pay GST.

Example 2: Mr. X the owner of a residential building in a commercial locality, Ground Floor is given on rent to Mr. C for a monthly rent of ₹60,000. Mr. Y uses the same as his residence. It is a supply of service. However, specifically exempted from GST. Hence, Mr. X is not liable to pay GST.

(vii) Lease: A lease is an agreement whereby the lessor conveys to the lessee in return for a payment or series of payments the right to use an asset for an agreed period of time. A lease may be financial lease or operating lease.

Example: M/s X Bank Ltd., given an asset under financial lease to M/s Y Ltd. Repayment of financial lease made by the customer to the bank ₹80 lakhs which includes a principal amount of ₹50 lakhs.

Financial leases shall be taxed as supply of services. M/s X Bank Ltd. is liable to pay GST.

(viii) Disposal: Disposal normally considered as selling of assets when the organization is about to close down, and various assets are required to be disposed of. Such transactions will also be considered as supply of liable to tax under GST Law.

7.1.1a Consideration:

As per Section 2(31) of the CGST Act, 2017 “consideration” in relation to the supply of goods or services or both includes—

- (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
- (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

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

Donation or charity does not attract GST:

Supply of service without Consideration (i.e. Donation. Hence, no GST)



Example 1: Akbar Travels Pvt. Ltd., a travel agent books ticket for a customer Mr. X. Travel agent raises invoice on customer Mr. X for transportation of passenger by air of ₹10,000 and his commission of ₹500. The entire amount of ₹10,500 is not his consideration. The amount of ₹500 retained by the air travel is to be considered as his consideration.

Example 2: M/s X Ltd., being an authorized dealer of the TATA brand, rendered services to buyer of car, but payment is made to authorized dealer by the TATA Company. It is called as consideration is given by third person. Therefore, it is treated as supply of service and liable to tax in the hands of M/s X Ltd.

Example 3: Consideration includes non-monetary consideration.

7.1.1b Aggregate of payments received in money and monetary value of the act or forbearance will constitute consideration:

Example 1: A Sports Club agrees to hire services of cricket player Mr. B for a consideration of ₹2 crores. In addition to this, the agreement provides that the player shall be provided with the car valued for ₹20 lakhs. The entire value of ₹2.20 crores will be considered as consideration and subject to tax.

Example 2: Mr. X sells office furniture to Mr. Y on the condition that donation of ₹10,000 is payable by Mr. Y to a trust. The amount of ₹10,000 is paid by Mr. Y is by reason of purchase of furniture. Hence, ₹10,000 will be treated as consideration for sale of furniture. Thereby Mr. X is liable to pay GST on ₹10,000 in addition to the value of furniture.

Example 3: M/s Lakshman Ltd. agreed to sell its business to M/s Ram Ltd., for a consideration of ₹50,00,000. M/s Lakshman Ltd. further agrees that it will not conduct same or similar business for a period of 10 years, for which M/s Ram Ltd., paid ₹20,00,000. Hence, M/s Lakshman Ltd., consideration is ₹70,00,000.

7.1.1c No consideration:

Example 1: Mr. Rajesh during long drive with his wife Manju violated traffic rules and was imposed fine of ₹1,000. The amount received as fine or penalty for violation of statutory provisions will not be considered as consideration.

Example 2: the following generally not considered as consideration:

- Grant of pocket money;
- Gift or reward (which has not been given in terms of reciprocity); or
- Amount paid on alimony for divorce.

Example 3: Subsidy given by the Government to benefit the farmers cannot be considered an additional consideration:

The Government provides subsidy, for the benefit of farmers but it is given to the manufacturer of fertilizers will not be considered as consideration.

Example 4: Deposits: If refunded then, it is not a consideration. Therefore, the same does not attract GST. If tax has already been paid the taxpayer would be entitled to refund.

If not refunded then, it is relating to a service, attract service tax.

Clarifications of the CBIC:

Example 1: Equipment and instruments sent to manufacturers' factory for repairs and calibration within India on a returnable basis. Is it supply?

Answer: It is not a supply. Since, no sale has taken place. It is enough to issue a challan for movement of goods without supply.

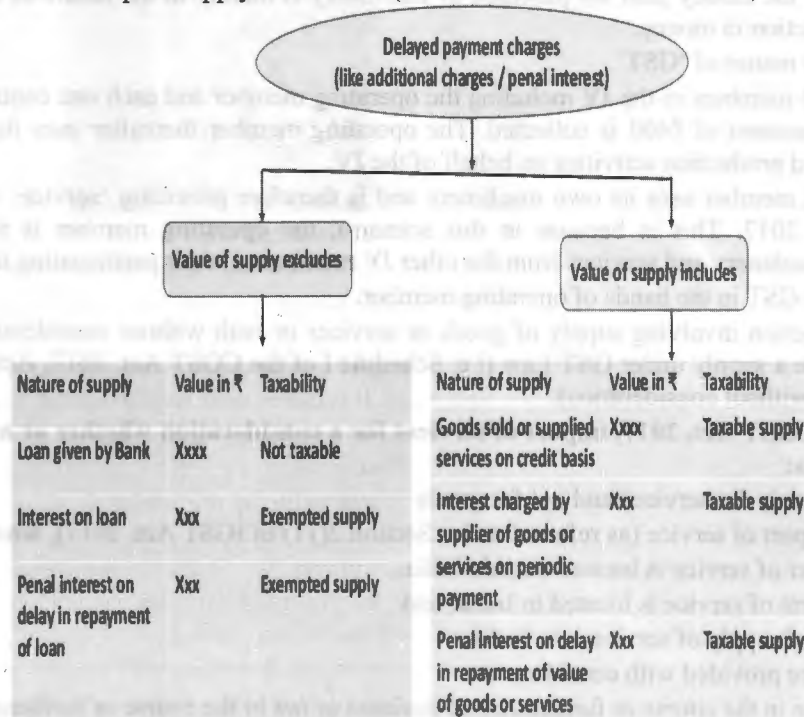
Example 2: X Ltd. supplied spare parts freely to replace during warranty period. Is it supply and chargeable to GST?

Answer: It is not supply.

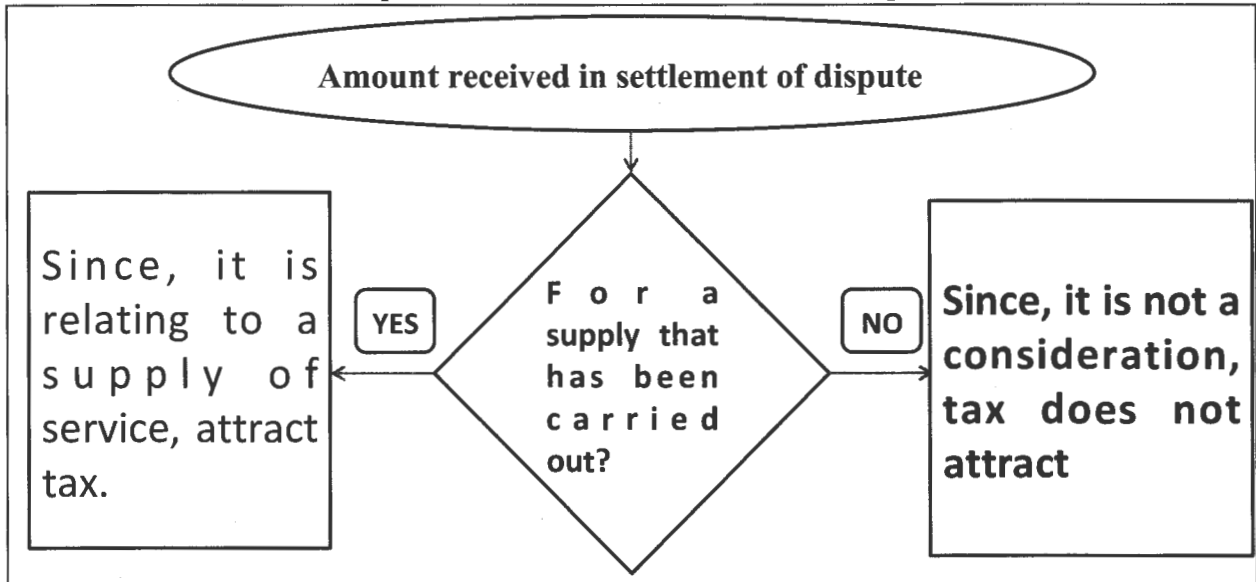
GST is not chargeable if free replacement is provided by a business to customers without consideration under warranty.

Example 3: Penalties levied on late or delayed payment of loans and advances are taxable supply?

Answer: No. These are exempted supply under GST (Circular No. 102/21/2019-GST, dated 28.06.2019)



[Circular No. 102/21/2019-GST dated 28.06.2019]

Example 4: Amount received in settlement of dispute:**Services provided by the members of the Joint Venture (JV) to the JV and vice versa or between the members of the JV:**

JV (an unincorporated temporary association constituted for the limited purpose of carrying out a specified project) and the members of the JV are treated as distinct persons and therefore, taxable services provided for consideration, by the JV to its members or vice versa and between the members of the JV are taxable [*Circular No. 35/9/2018-GST, dated 5th March, 2018*].

If cash calls are merely a transaction in money, they are excluded from the definition of service and not taxable.

If cash calls are not merely a transaction in money, they are included in the definition of service and hence taxable.

Example 1: There are 4 members in the JV including the operating member and each one contributes ₹100 as part of their share. A total amount of ₹400 is collected. The operating member purchases machinery for ₹400 for the JV to be used in oil production.

Answer: In given case, the money paid for purchase of machinery is merely in the nature of capital contribution and is therefore a transaction in money.

It will not be the subject matter of 'GST'.

Example 2: There are 4 members in the JV including the operating member and each one contributes ₹100 as part of their share. A total amount of ₹400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.

Answer: The operating member uses its own machinery and is therefore providing 'service' within the scope of supply of CGST Act, 2017. This is because in this scenario, the operating member is recovering the cost appropriated towards machinery and services from the other JV members in their participating interest ratio.

Therefore, it will attract GST in the hands of operating member.

Conclusion: any transaction involving supply of goods or services or both without consideration is not a supply unless it is deemed to be a supply under GST Law (i.e. Schedule I of the CGST Act, 2017, Activities to be treated as supply even if made without consideration).

7.2 Section 7(1)(b) of CGST Act, 2017, import of services for a consideration whether or not in the course or furtherance of business:

- (a) it is applicable only for services and not for goods
- (b) It should be import of service (as referred under Section 2(11) of IGST Act, 2017), where
 - (i) The supplier of service is located outside India;
 - (ii) The recipient of service is located in India; and
 - (iii) The place of supply of service is in India.
- (c) Services shall be provided with consideration
- (d) Services may be in the course or furtherance of business or not in the course or furtherance of business.



7.2.1 Section 7(1)(b) vs Section 7(1)(c) of CGST Act, 2017

Section	Nature of Service	Consideration	Business Test
Section 7(1)(b) of CGST	Import of service	Necessarily required	Not required
Section 7(1)(c) of CGST	Import of services by a taxable person from a related person or from any of his other establishments outside India (i.e. distinct person).	Not Required	Necessarily required.

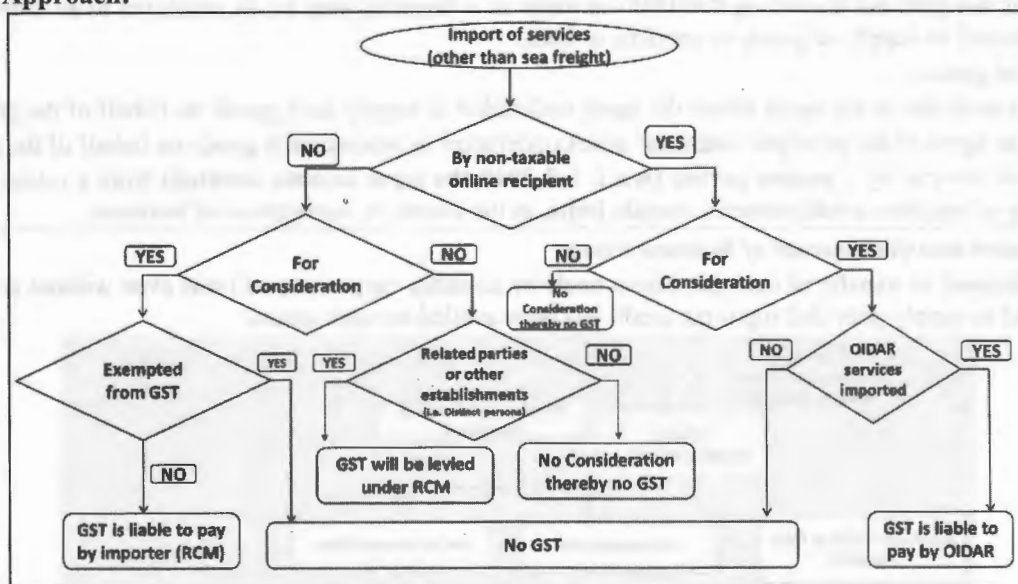
Important Points: (1) As per the provisions contained in Section 21 of the IGST Act, 2017, all imports of services made on or after the appointed day (i.e. 1st July 2017) will be liable to IGST regardless of whether the transactions for such import of services had been initiated before the appointed day.

(2) If the tax on such import of services had been paid in full under the existing law (i.e. as per Service Tax Finance Act, 1994), no tax shall be payable on such import under the IGST Act.

(3) In case the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under the IGST Act.

Section 7(1)(b) and Section 7(1)(c) read with Para 4 of Schedule I of the CGST Act, 2017:

Simplified Approach:



Example 1: suppose a supply of service for ₹1 crore was initiated prior to the introduction of GST, a payment of ₹20 lacs has already been made to the supplier and service tax has also been paid on the same, then IGST shall have to be paid on the balance ₹80 lacs.

Example 2: Online information and data base access or retrieval services, where import of free services from Google and Facebook by Mr. Ram located in India, without any consideration. Is it subject to GST?

Answer: These are not considered as supply and hence not attract GST.

Note: GST will be levied only when services are provided with consideration.

Example: Import (Downloading) of a song for consideration for personal use by Mr. Bharath. Is it supply of service?

Answer: Yes. It is supply of service and IGST will be levied.

Note: Services may be in the course or furtherance of business or not.

Example 4: Mr. C of Chennai paid fees for on-line coaching obtained from a teacher located in USA for coaching of Accountancy course for his son.

Is it supply? If so who is liable to pay GST.

Answer: Yes, it is supply. Even if receipt of this service is not for business or furtherance of business.

Mr. C is not liable to pay GST under reverse charge mechanism.

It is exempt from GST. Since, it is not OIDAR service.

Example 5: Ramesh Apparels in Chennai, Tamil Nadu, avails fashion designing services of ₹50,00,000 from Suresh Designs in Singapore.

Is it supply? If so, who is liable to pay GST?

Answer: Yes. It is supply (i.e. import of service).

Ramesh Apparels in Chennai being recipient of service is liable to pay IGST.

Example 6: Import of some services by an Indian branch from their parent company, in the course or furtherance of business, without consideration. Is it taxable supply in India?

Answer: Yes. It is a taxable supply in India and hence IGST will be levied.

Note: 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 will be subject to GST even if made without consideration (as per Schedule I of CGST Act, 2017 i.e. point no. 4).

7.3 Section 7(1)(c) of the CGST Act, 2017 the activities specified in Schedule I, made or agreed to be made without a consideration:

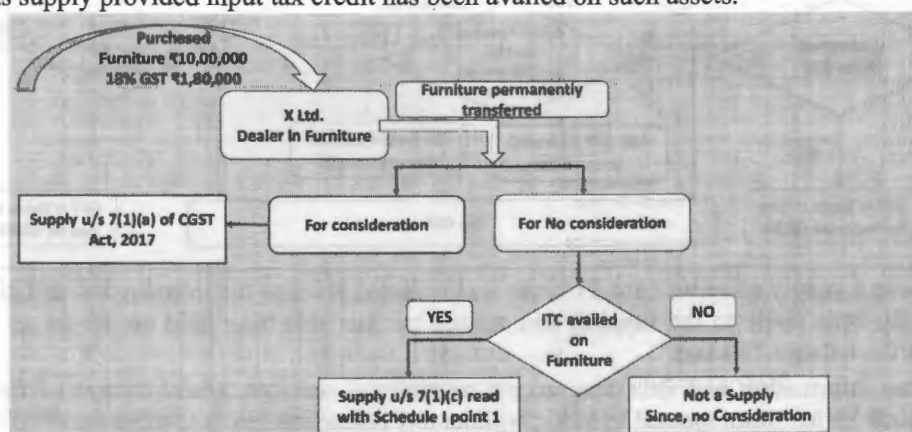
SCHEDULE I

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.
2. Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:
Provided that gifts not exceeding ₹50,000/- in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.
3. Supply of goods—
 - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
4. Import of services by a **taxable person (w.e.f. 1-2-2019 the term taxable omitted)** from a related person or from any of his other establishments outside India, in the course or furtherance of business.

7.3.1 Permanent transfer/disposal of business assets:

All kind of disposal or transfer of business assets made by an entity on permanent basis even without consideration will be treated as supply provided input tax credit has been availed on such assets.



Example 1: M/s X Ltd., upgrades the computer system. The existing computers and laptops, which do not support the upgraded version, donated to a Trust. This amounts to permanent transfer of business assets. The same will be treated as supply of goods and liable to GST in the hands of X Ltd., provided if company availed input tax credit on such computers and laptops.

Example 2: M/s Peter England Pvt. Ltd., being a trader in clothes permanently transfers 50% of its stock to a Society free of cost. In this case, transfer of business stock would amount to supply if the company had availed input tax credit on purchase of clothes.

Example 3: Mr. Raj purchased a car for personal use and after a year sold it to a car dealer for ₹2 lac. Will the transaction be a supply in terms of GST Act?

Answer: This transaction is not a supply. Moreover, supply is made by the individual is not in the course or furtherance of business. Further, no input tax credit was admissible on such car at the time of its acquisition as it was meant for non-business use.

Example 4: Mr. Rahim purchased a car for Business use and after 2 years transferred car for personal consumption to use at home. Will the transaction be a supply in terms of GST Act?

Note: ITC not availed by Mr. Rahim.

Answer: No, because supply is not made by the individual in the course or furtherance of business. Further, input tax credit will not be admissible on such car at the time of its acquisition and it is not be a supply under GST as per Schedule I.

Example 5: M/s A & Co., a sole proprietor, is in the business of selling furniture. Its owner took a set of furniture to furnish his house permanently. Will the transaction be a supply in terms of GST Act?

Note: ITC on such furniture not availed.

Answer: No, the transfer of the furniture by the owner without consideration is not a supply of goods, because credit is not allowed in case of personal consumption of business assets under section 17(5)(g) of CGST Act.

Example 6: M/s B Ltd., is in the business of Hotel. He purchases AC for business purpose and after 2 years, he transfers the AC to director without consideration. Will the transaction be a supply in terms of GST ACT?

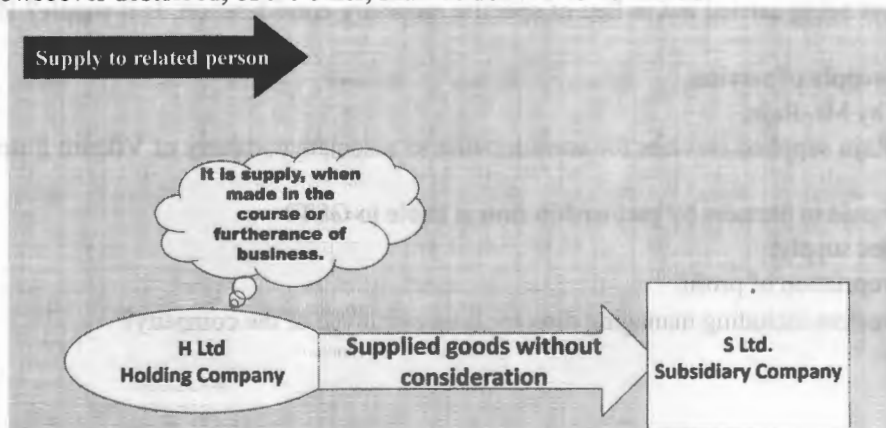
Note: AC machines on which ITC availed.

Answer: Yes, it shall be a deemed supply (as per schedule I).

7.3.2 Supply between related persons or distinct persons:

As per *Explanation* to Section 15 persons shall be deemed to be “related persons” if—

- (i) such persons are officers or directors of one another’s businesses;
 - (ii) such persons are legally recognized partners in business;
 - (iii) such persons are employer and employee;
 - (iv) any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
 - (v) one of them directly or indirectly controls the other;
 - (vi) both of them are directly or indirectly controlled by a third person;
 - (vii) together they directly or indirectly control a third person; or
 - (viii) they are members of the same family;
- (b) the term “person” also includes legal persons;
- (c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.



Example 1: Any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them:

M/s Ram & Co., holds 30,000 shares in M/s X Ltd. and 25,000 shares in Y Ltd.

Share Capital of M/s X Ltd: 1,00,000 Equity Shares of ₹10 each.

Share Capital of M/s Y Ltd: 80,000 Equity Shares of ₹10 each.

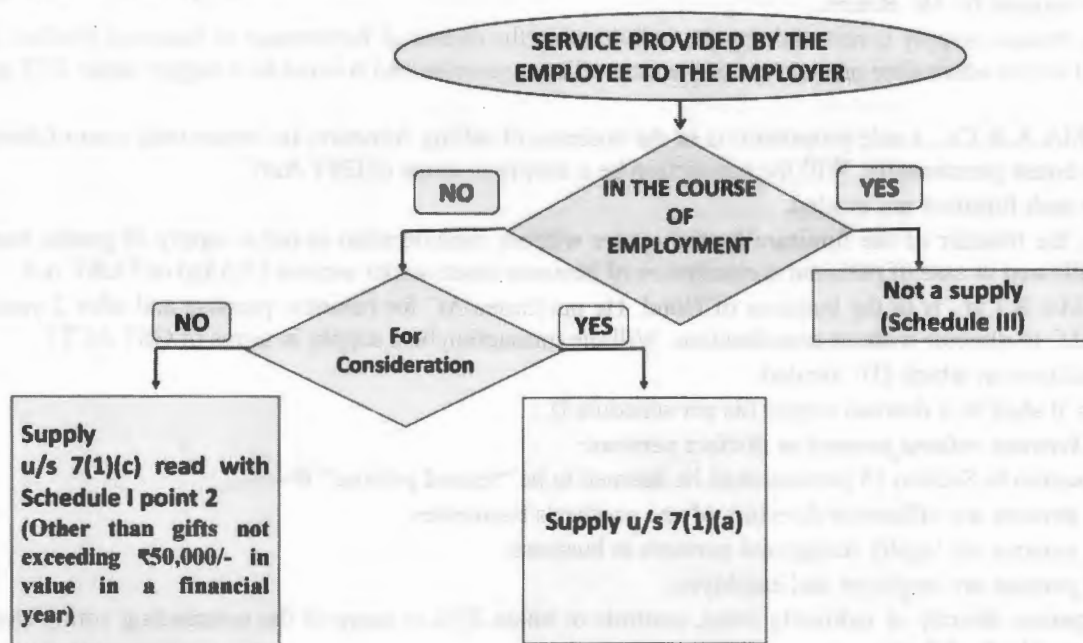
Since, M/s Ram Ltd., holds more than 25% of the share in the company X Ltd and Y Ltd, they will be considered as related persons.

Example 2: Reliable group has three companies namely M/s A Ltd., M/s B Ltd., and M/s C Ltd., as group companies and M/s Reliable Ltd., as a parent company. M/s Reliable Ltd., holds 25% of the shares in each group company. Therefore, A, B & C companies will be considered as related persons.

Example 3: Raman & Co., (a CA firm) employer who is represents his employee before the Income Tax authorities but does not charge any professional fee in respect of the same. Is it supply? Liable to GST?

Answer: It would constitute a taxable supply under GST and be subject to levy and collection of taxes.

Employee to the employer:



Example 1: Pragyan has received a sum of ₹5,00,000 from his employer on premature termination of his contract of employment. Pragyan needs your advice as to whether such receipts are liable to GST.

Answer: It is not a supply. As per Section 7(2)(a) of CGST Act, 2017 supply excludes services provided by the employee to the employer in the course of employment (covered under Schedule III of CGST Act, 2017).

Hence, amounts so paid would not be chargeable to GST.

Example 2: Mr. Raju, an employee provides his service on contract basis to an associate company of Vikram Enterprises, the employer.

The above activity is being carried out in lieu of specific monetary consideration. Is it supply? If so, who is liable to pay GST?

Answer: Yes. It is supply of service.

Liable to pay GST by Mr. Raju.

Note: Since, Mr. Raju supplied services for consideration to associate company of Vikram Enterprises but not to his employer.

Example 3: Salary paid to partners by partnership firm is liable to GST?

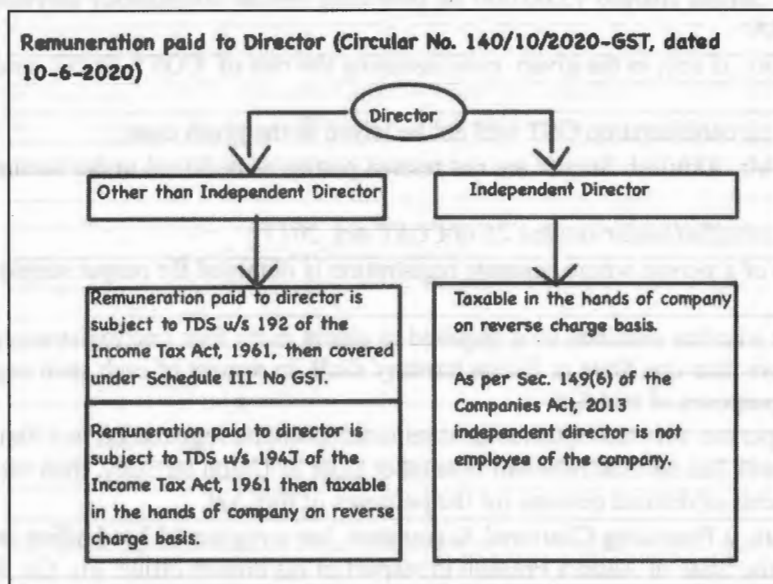
Answer: No. It is not supply.

It is merely an appropriation of profit.

Whether all the directors including managing director is an employee of the company?

Directors	Contractual relationship of master and servant	GST is liable to pay	Who is liable to pay
Managing Director	No	Yes	Company (under RCM)
Whole-time Director	Yes	No	Nil
Executive Director	Yes	No	Nil
Non-executive Directors	No	Yes	Company (under RCM)
Independent Directors/Nominee Director	No	Yes	Company (under RCM)

Director Remuneration (CBIC Circular No. 140/10/2020-GST, dated 10-6-2020):



Fringe benefits - GST

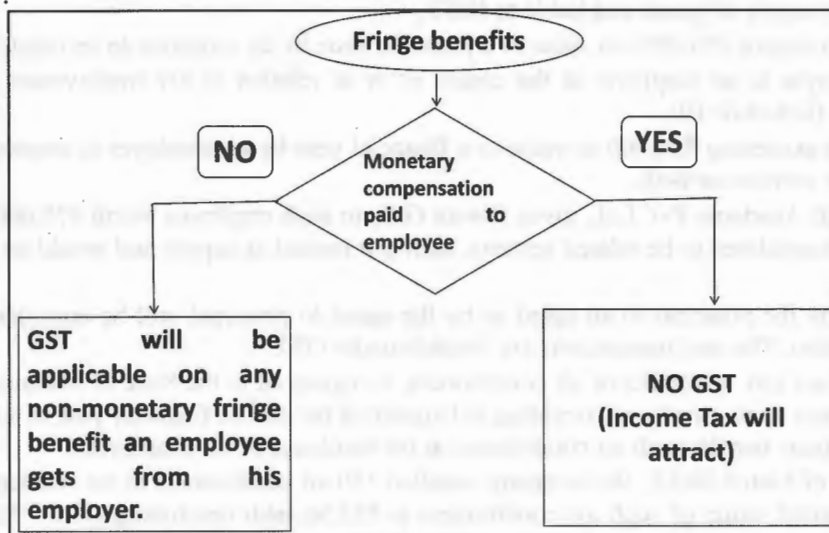
"The compensation to employees in the form of money is not a supply.

However, fringe benefits are supply of goods or services and are liable to tax if not exempted," as per the CBIC clarification.

The fringe benefits are transactions in furtherance of business. "Even if supplied without consideration, the same are deemed supply" and will attract GST.

Fringe Benefits:

Reimbursement to staff is an expense in the course or furtherance of business and if same is against a taxable supply will attract GST.



Section 2(49) of CGST Act, 2017, Family means:-

- (i) The spouse and children of the person, and
- (ii) The parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person.

Example: Mr. Rajesh Surana has a proprietorship firm in the name of Surana & Sons in Jaipur. The firm, registered under GST in the State of Rajasthan, manufactures taxable products. The firm also provides taxable consultancy services.

Mr. Rajesh Surana has provided the consultancy service to his brother - Mr. Akhilesh Surana (located in USA) without any consideration. The products manufactured by Mr. Akhilesh are similar to the ones manufactured by Mr. Rajesh Surana. Mr. Surana charges ₹3,00,000 for providing similar consultancy services to other independent customers located in USA.

Compute the GST liability, if any, in the given case assuming the rate of CGST, SGST and IGST to be 9%, 9% and 18% respectively. (CA Final MTP)

Answer: Since, there is no consideration GST will not be levied in the given case.

Mr. Rajesh Surana and Mr. Akhilesh Surana are not related parties as defined under section 2(49) of CGST Act, 2017.

7.3.2a Distinct persons specified under section 25 of CGST Act, 2017

Every place of business of a person where separate registration is obtained for output supply will be considered as distinct person.

Section 25(4), A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.

Section 25(5), Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.

Example 1: Mr. CA Ram, a Practicing Chartered Accountant, has a registered head office in Chennai. He has also obtained registration in the State of Andhra Pradesh in respect of his branch office. Mr. CA Ram shall be treated as distinct persons in respect of registrations in Tamil Nadu and Andhra Pradesh. Transactions between head office and branch office will be considered as supply of service even though there is no consideration.

Example 2: Mr. C of Chennai makes taxable supply from Tamil Nadu exceeds ₹20 lakhs. Therefore, Mr. C will be required to obtain registration in Tamil Nadu. Such person may have establishment in the State of Telangana where no taxable supplies are made but only the establishment in Telangana helps in handling of materials like procuring and storing. Hence, establishment in Tamil Nadu and establishment in Telangana will be considered as distinct person even when establishment in Telangana is not registered (Section 25(5) of CGST Act, 2017).

Example 3: M/s C Ltd. has 3 branches A, B & C in different states. A in Telangana has run out of stock and B from Andhra Pradesh transfers its excess stock.

Is it supply of goods? GST will be levied?

Answer: Yes. It is supply of goods and liable to IGST.

7.3.2b Gifts not exceeding ₹50,000/- in value in a financial year by an employer to an employee:

Services by employee to an employer in the course of or in relation to his employment shall not be treated as supply of services (Schedule III).

However, Gift not exceeding ₹50,000 in value in a financial year by an employer to employee shall not constitute supply of goods or services or both.

Example: M/s Rafi Academy Pvt. Ltd., gives Diwali Gifts to each employee worth ₹75,000/-. Since, an employee and employer are considered to be related persons, such gift treated as supply and would be leviable to GST on the entire value.

Supply of goods by the principal to an agent or by the agent to principal will be considered as a supply even if without consideration. The said transactions are leviable under GST.

MCQ 1. M/s Aircool Ltd. a supplier of air conditioners, is registered in the State of Maharashtra. It has a policy to gift an air conditioner to its employees (residing in Gujarat) at the end of financial year in terms of the employment contract. The company installs such air conditioners at the residence of the employees.

During the month of March 20XX, the company installed 150 air conditioners at the residence of these employees. The total open market value of such air conditioners is ₹52.50 lakh (excluding GST). The tax rate on such air conditioners is 28% (14% CGST, 14% SGST and 28% IGST).

Compute the GST liability of M/s Aircool Ltd. if any

- (a) ₹7,35,000 CGST, ₹7,35,000 SGST
- (b) ₹14,70,000 IGST
- (c) Nil
- (d) None the above

Answer: (c) Nil

Supply by employees of a unit to another of a company is taxable:

Recently, *M/s Columbia Asia Hospitals Pvt. Ltd.* (AAR No.-KAR ADRG 15/2018) filed an application to sought an answer to the question whether the services provided by the employee of corporate office to the other units of the company is taxable plus charging consideration against allocation of common expenditure of units would tantamount to levy GST or not. The Karnataka AAR held the ruling in favour of revenue, briefing the findings in relation with the Entry 2 of Schedule I of CGST Act, 2017.

In the instance case, the applicant is a private limited company engaged in providing health care services categorizing them as In-patient (IP) and Out-patient (OP) services. The applicant is also engaged in supply of medicines (pharmacy) to in-patients and out-patients. The relevant facts on the basis of which ruling have been sought after are:—

As clarified by the applicants through the facts that the person delivering the service are employed by the corporate office & not by the other units of the applicant. Hence there is an employer-employee relationship with corporate office only and no relationship exists with the employees of the corporate office & other units of the applicant. Therefore, the entry no. 1 of schedule III of CGST Act, 2017 would not be applicable.

The services provided by such employees to the other units would be treated as the transaction between the corporate office & its units located in other states. Though the corporate office & its units are the distinct person u/s 25 of CGST Act, 2017, the transaction would be covered under the Entry no. 2 of Schedule I of CGST Act, 2017 i.e. "Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business" & therefore becomes taxable. The valuation of the transaction includes all cost incurred by the corporate office after considering employee cost in the form of salary, incentive & perquisites.

Additionally, corporate office raises an invoice for the allocation of the expenses such as rent, travel expense, consultancy, etc. incurred on behalf of other units. Such reimbursement from the other units would be covered under the term 'TRANSFER' u/s 7(1)(a) of CGST Act, 2017. Furthermore, the transaction between the distinct person without consideration is covered under the definition of the SUPPLY under Entry No. 2 of Schedule I of CSGT Act, 2017. Hence the reimbursement of the expenditure would be attracting the tax liability.

Example: Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?

Answer: Perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST (CBIC Circular No. 172/04/2022 GSTdt. 6th July 2022).

7.3.3 Supply to agents or by agents

Supply of goods by the principal to an agent or by the agent to principal will be considered as a supply even if without consideration. The said transactions are leviable under GST.

The term "agent" has been defined under sub-section (5) of section 2 of the CGST Act as follows:

"agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.

Example 1: M/s X Ltd., registered person located in Cochin and having a godown in Cochin transfers the goods to clearing and forwarding agent (C&F Agent) located in Chennai. Such activity of transfer shall be considered as supply even if there is no consideration for such transfer and hence, leviable to GST.

Example 2: Sundaram & Co. engages Honda Cars Ltd. as an agent to sell cars on its behalf. Honda Cars Ltd. has supplied 50 cars to the showroom of Sundram & Co., located in Chennai. Supply of cars by Honda Cars Ltd. to Sundaram & Co., will qualify as supply and the same is leviable to GST.

Example 3: M/s M Ltd. being a garment manufacturer appoints Mr. Ram as an agent, who stores garments manufactured by M Ltd. and sends to dealers whenever M Ltd. asks Mr. Ram to do so. Is it a supply?

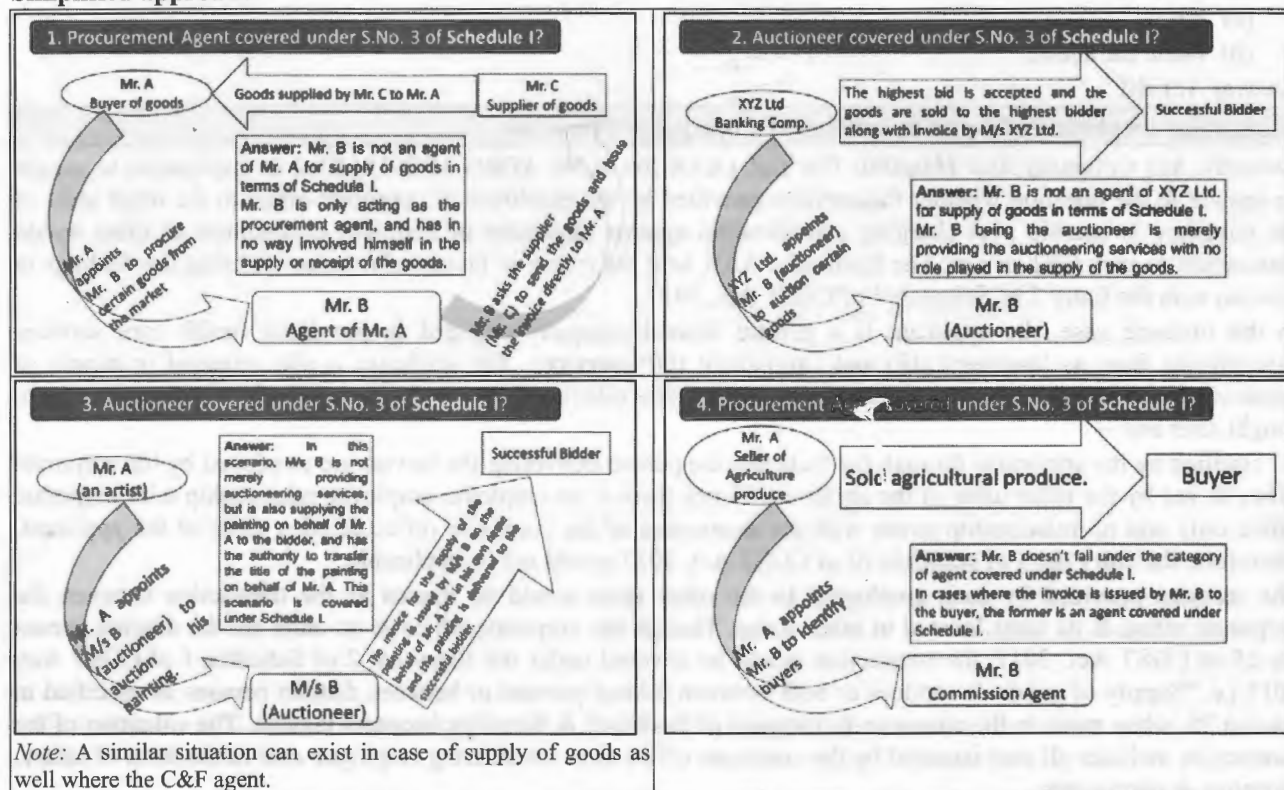
Answer: Yes. Transfer of garments from M Ltd. to Mr. Ram is taxable supply under GST.

GST will be levied.

Circular No. 57/31/2018-GST, dated 4th September, 2018:

Scope of Principal-agent relationship in the context of Schedule I of the CGST Act, 2017

Simplified approach:



Summary:

The key ingredient for determining relationship under GST would be whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not.

However, it may be noted that in cases where the invoice is issued by the agent to the customer in the name of the principal, such agent shall not fall within the ambit of Schedule-I of the CGST Act, 2017.

MCQ 1. Mr. James Bond is a registered person under GST in the State of Maharashtra who sells footwear to his customers locally within the same State. He has been appointed as an agent by M/s Toto Shoes (P) Ltd., a company registered under GST in the State of Karnataka. During a financial year, M/s Toto Shoes (P) Ltd., sends taxable goods worth ₹5.00 crore from its Bengaluru stores to Mr. James Bond who sells such goods for ₹5.00 crore by raising invoices using the GSTIN of M/s. Toto Shoes Ltd. Mr. James Bond receives a commission of ₹60.00 lakh from M/s Toto Shoes (P) Ltd., during the said financial year.

Compute the value of supply of Toto Shoes (P) Ltd. and Mr. James Bond for the financial year.

- M/s Toto Shoes (P) Ltd.: Nil and James Bond ₹5.60 crore
- M/s Toto Shoes (P) Ltd.: ₹5 crore and James Bond ₹5.60 crore
- M/s Toto Shoes (P) Ltd.: ₹5 crore and James Bond: ₹60 lakh
- None of the above

(CA Final, RTP May 2019)

Answer: (c) M/s Toto Shoes (P) Ltd.: ₹5 crore and James Bond: ₹60 lakh

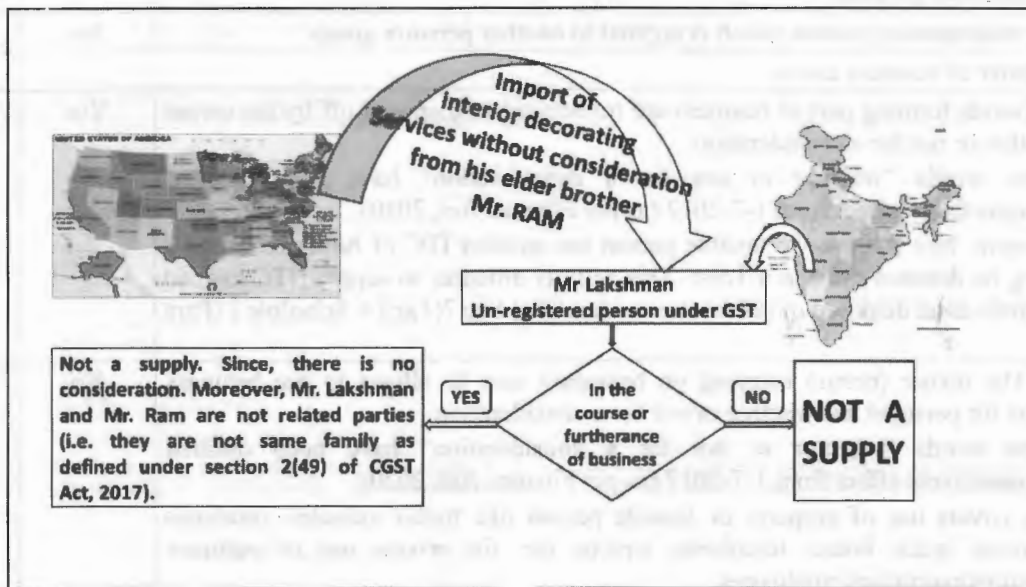
7.3.4 Importation of Services:

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

Example 1: Apte & Apte Ltd is located in India and holding 51% of shares of Wilson Ltd, a USA based company. Wilson Ltd provides Business Auxiliary Services to Apte & Apte Ltd., will be treated as supply.

Example 2: Sparsh Ltd. of Mumbai imports business support services from its head office located in USA. The head office has rendered such services free of cost to its branch office. Services received by Sparsh Ltd. will qualify as supply even though the head office has not charged anything from it.

Exampe 3:



Example 4: Raman is an architect in Chennai. His brother who is settled in London is a well-known lawyer. Raman has taken legal advice from him free of cost with regard to his family dispute. Examine whether the said activity would amount to supply under section 7 read with Schedule I of the CGST Act.

Would your answer be different if in the above case, Raman has taken advice in respect of his business unit in Chennai?

Answer:

Import of Services by a person from a related person located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business. In the given case Raman and his brothers are not related persons. Since Raman's brother who is not wholly or mainly dependent on Mr. Raman.

Therefore, services provided by Raman's brother to him would not be treated as supply under section 7 read with Schedule I of the CGST Act, 2017.

In the above case, if Raman has taken advice with regard to his business unit, services provided by Raman's brother to him still not be treated as supply under section 7 of the CGST Act, 2017 read with Schedule I, as although the same are provided in course or furtherance of business, such services have not been received from a related person.

7.4 Section 7(1)(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II (omitted in the Finance Act, 2018 retrospectively w.e.f. 1.7.2017):

New sub-section 7(1A) w.e.f. 29th Aug., 2018, applicable retrospectively from 1.7.2017:

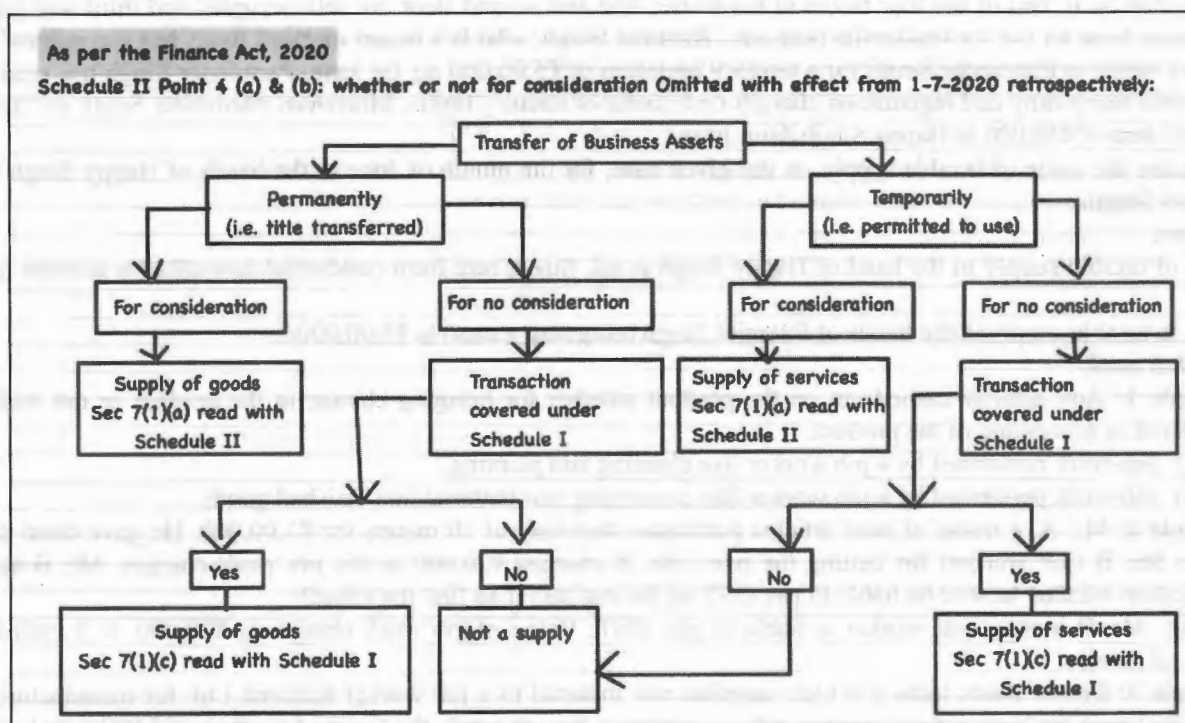
Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II."

Schedule II of the CGST Act, 2017 has certain ACTIVITIES or w.e.f. 29th August, 2018 the term TRANSACTIONS inserted retrospectively w.e.f. 1st July 2017) transactions clearly classified as goods or services under GST to avoid any such confusion.

S.No.	Transaction	Supply of Goods	Supply of Service
1	Transfer		
	(a) Transfer of the title in goods.	Yes	No
	(b) Transfer of right in goods or share (undivided) in goods without the transfer of title.	No	Yes
	(c) 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	Yes	No
2	Land and Building		
	(a) Lease, tenancy, easement, licence to occupy land	No	Yes
	(b) Lease or letting of any building including for business or commerce. (Building might be a commercial, industrial or residential complex rent out wholly or partly)	No	Yes

3	Treatment or process		
	Any treatment or process which is applied to another person's goods	No	Yes
4	Transfer of business assets		
	(a) Goods forming part of business are transferred or disposed off by the owner whether or not for a consideration. These words “whether or not for a consideration” have been omitted retrospectively effect from 1-7-2017 (as per Finance Act, 2020). <i>Example:</i> M/s Ram & Co taxable person has availed ITC of furniture. After 2 years, he donated same to a Trust. This activity amounts to supply (ITC availed business asset disposed of (without consideration) Sec 7(1)(c) + Schedule I (Para 1))	Yes	No
	(b) The owner (person carrying on business) uses or allows to use business assets for personal use whether or not for a consideration. These words “whether or not for a consideration” have been omitted retrospectively effect from 1-7-2017 (as per Finance Act, 2020). This covers use of property or taxable person like motor vehicles, residence premises, guest house, telephone, laptops etc. for private use of partners/directors/executives/employees.	No	Yes
	(c) If the owner ceases to be a taxable person then business assets will be assumed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person. This is not applicable when:— (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.	Yes	No
5	Supply of services		
	(a) Renting of immovable property	No	Yes
	(b) Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.	No	Yes
	(c) Temporary transfer or permitting the use or enjoyment of any intellectual property right;	No	Yes
	(d) Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software; If software is designed/developed, put in a media and sold, it could still be treated as sale of goods by applying the Supreme Court decision in Tata Consultancy Services v State of AP 2004 (178) ELT 22 (SC) . In the said case, it was held that goods may be tangible property or an intangible one. It would become goods provided that attributes thereof having regard to (a) utility (b) capable of being bought and sold, (c) capable of being transmitted, (d) transferred, (e) delivered (f) stored and (g) possessed If a software, whether customised or non-customised, satisfies these attributes, the same would be goods.	No	Yes
	(e) Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act	No	Yes

	(f) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.	No	Yes
6	Composite supply ^{SEP}		
	(a) Works contract services;	No	Yes
	(b) Supply by way of or as part of any other 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)	No	Yes
7	Supply of Goods (omitted retrospectively, with effect from the 1 st July, 2017).		
	Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.	Yes	No



7.4.1 Un-divided share in goods

Example: A shopping complex owned by M/s X Ltd and M/s Y Ltd. At a later date M/s X Ltd. sold his share in shopping complex to M/s Z Ltd. and hence, ownership is not transferred to M/s Z Ltd., but only share in property is transferred to M/s Z Ltd. It is a supply of service.

7.4.1a Transfer of title in future:

Example 1: Mr. A provides machine to Mr. B and he permits Mr. B to use the machine, provided Mr. B pays for the machine after two months, when the property of goods will be transferred to Mr. B. It will be considered as a transaction in goods and service. Therefore, it is a supply of goods.

Example 2: If a residential premise is used for residential purposes as well as for some business purpose, the said activity of leasing of residential complex would be covered in the definition of supply and exigible to GST.

Such activities could be:

- coaching by teacher at his residence or
- carrying out professional activities from the residence of an Advocate or Chartered Accountant or
- even storing of business goods in the residential premise.

Tenancy rights taxability under GST – CBIC Circular No. 44/18/2018-CGST, dated 2-5-2018):

Example 3: You are required to answer the following:

- Whether transfer of tenancy rights to an incoming tenant, consideration for which is in form of tenancy premium, shall attract GST when stamp duty and registration charges is levied on the said premium, if yes what would be the applicable rate?
- Further, in case of transfer of tenancy rights, a part of the consideration for such transfer accrues to the outgoing tenant, whether such supplies will also attract GST?

Answer:

- (i) The activity of transfer of 'tenancy rights' is squarely covered under the scope of supply and taxable per se. Transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable.
However, renting of residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt.
- (ii) As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

Note: The applicable rate of GST 18%.

Example 4:

Happy Singh is the lawful owner of a residential house situated in Chandigarh. The property has four floors constructed on it. Out of the four floors in his house, first and second floor are self-occupied and third and fourth floor have been let out for residential purposes. Ratanjot Singh, who is a tenant on third floor, has surrendered his tenancy rights to Parminder Singh for a tenancy premium of ₹5,00,000 on 1st June. Parminder Singh has paid the applicable stamp duty and registration charges on transfer of tenancy rights. Moreover, Parminder Singh will pay a monthly rent of ₹50,000 to Happy Singh from June.

Determine the value of taxable supply, in the given case, for the month of June in the hands of Happy Singh and Ratanjot Singh.

Answer:

Value of taxable supply in the hand of Happy Singh is nil. Since, rent from residential dwelling is exempt from GST.

Value of taxable supply in the hands of Ratanjot Singh (outgoing tenant) is ₹5,00,000/-.

7.4.2 Job work:

Example 1: Any activity carried out on the product whether for bringing change in the product or not will be considered as processing of the product.

- (a) Job-work performed by a job worker like cleaning and painting.
(b) Job-work performed by a job worker like converting raw material into finished goods.

Example 2: Mr. A, a trader of steel articles purchases steel bars of 10 meters for ₹1,00,000. He gave these steel bars to Mr. B (job worker) for cutting the bars. Mr. B charged ₹20,000 as his job work charges. Mr. B seeks clarification whether he will be liable to pay GST on the cut bars if so find the value?

Answer: Mr. B being a job worker is liable to pay GST. Value of job work charges is ₹20,000. It is called as supply of service.

Example 3: Crown Beers India Pvt Ltd., supplies raw material to a job worker Kareena Ltd. for manufacture of alcoholic liquor for human consumption. After completing the job-work, the finished product of 5,000 beer bottles are returned to Crown Beers India Pvt Ltd., putting the retail sale price as ₹200 on each bottle (inclusive of duties and taxes). Kareena Ltd., charged ₹100 per bottle as job work charges of carrying out of intermediate production process of alcoholic liquor for human consumption from Crown Beers India Pvt. Ltd.

Find the GST liability if rate is 18% (CGST 9% and SGST 9%) any in the hands of Kareena Ltd.

Answer:

Carrying out of intermediate production process of alcoholic liquor for human consumption on job work basis attract GST.

CGST	= ₹45,000
(5,000 bottles x ₹100 x 9%)	
SGST	= ₹45,000
(5,000 bottles x ₹100 x 9%)	
Total tax liability of Kareena Ltd.	= ₹90,000

Note: GST does not attract on manufacture of alcoholic liquor. Since, it is the State subject, which will attract State Excise Duty.

Example 4: Mr. J, a registered person supplied the following goods to Miss N for further processing on job work basis:

S.No.	Goods	Particulars
1	A	Taxable goods under GST
2	B	Exempted vide an exemption notification under CGST Act, 2017
3	C	Non-taxable under GST

You are required to examine whether the provisions of job work will be applicable to all categories of goods.

Answer:

S.No.	Goods	Particulars	Job work provisions
1	A	Taxable goods under GST	Applicable
2	B	Exempted vide an exemption notification under CGST Act, 2017	Not applicable
3	C	Non-taxable under GST	Not applicable

7.4.3 Transfer of business assets:

Example 1: Sale of office computers or furniture is supply of goods.

Example 2: Free samples freely supplied to others are also supply of goods.

Example 3: Mr. Raj purchased a car for Business use and after one year sold it to a car dealer for ₹2 lac. Will the transaction be a supply in terms of GST Act?

Answer: Transfer for a consideration shall be supply of goods, even if credit is not claim (as per Schedule II).

7.4.3a Business assets used for personal purpose:

Schedule I of the CGST Act, 2017 does not provide that use of goods for private or personal purpose, whether without consideration will be considered as supply. Hence, no GST is payable on use of the goods for private or personal purpose. However, ITC proportionately will be denied.

Example 1: Mr. A is engaged in the business of transportation of passengers. He provides vehicle for the marriage of his Accounts Manager free of cost. It is supply of service, but no GST is payable (provided business not claiming Input Tax Credit).

If Mr. A charged ₹2,500 it will be subject to GST.

Example 2: Mr. X is engaged in the business of selling furniture. He organizes function in his house. As a result, he used business furniture for the function. It is supply of service. Since, there is no consideration and hence no GST will be levied provided business not claiming ITC.

Example 3: M/s X Ltd. provided car to one of its directors for his personal purposes and charge fee ₹30,000 per month. It is supply of service and the same is taxable under GST.

Example 4: A director takes a computer home for his private use. This computer is the company's business asset. It is supply of service.

GST is accountable on the use of the computer based on its cost.

However, if the company chose not to claim input tax on the computer purchased, the private use of the computer will not attract GST.

Example 5: A director uses the company's car for his family outing.

It is supply of service.

The company was not entitled to claim the input tax incurred on the purchase of the car as it is disallowed.

The company does not need to account for GST on the private use of the car as no input tax was claimed.

Example 6: X Ltd. and Y Ltd. are related companies. Y Ltd. uses X Ltd.'s business asset, namely, large format printer to print high-resolution architectural plans for its client.

GST is accountable on the use of the printer based on its cost.

However, if X Ltd. chose not to claim input tax on the asset purchased, the use of this asset by another person will not attract GST.

7.4.3b Business Discontinued:

Example 1: M/s Ravan & Co a partnership firm decided to dissolve the partnership firm. Goods left in stock taken over by partners. Taking over of goods by partners will be considered as a supply of goods. Since, business is not continued further.

Exceptions:

- 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.

In both the above cases, the business is continued. Therefore, it will not be considered as supply of goods.

Example 2: Mr Raj being an owner of shop is a registered person under GST. He has decided to close the business. At the time of deregistration, he has closing stock of ₹15,00,000. Mr. Raj final GST return will show his supplies made during the last taxable period plus Stock in hand of ₹15,00,000 during the deregistration. Find the amount of supply. It is supply of goods or services?

Answer: Amount to supply = ₹15,00,000

It is treated as supply of goods.

Note:

- (1) Mr. Raj has to pay GST on ₹15 lac.
- (2) However, Mr. Raj is not required to pay to GST on closing stock of ₹15 lac, provided ITC not availed on such stock.

7.4.4 Renting of Immovable Property:

Example 1: Renting of vacant land to a stud farm for ₹1,50,000. It is a supply of service. GST will be leviable.

Answer:

It is supply of service.

GST is liable to pay.

Example 2: Leasing of vacant land to a poultry farm for ₹76,000. It is a supply of service. However, specifically exempted from GST. It is an agricultural activity.

Answer:

It is a supply of service.

However, specifically exempted from GST.

Note: It is an agricultural activity.

7.4.5 Construction Service:

Example 1: Construction service where land value is included – GST liability:

Builder obtained completion certificate from GHMC on 31st March.



The GST will only apply to amount paid for flats under construction. If a person buys a ready to move in flat, GST is not applicable.

Fist Floor:

Occupied by Mr. A on 1st Feb.
Entire consideration received on 1st Feb.
No GST.

Second Floor:

Part amount paid by Mr B during construction.
GST will be levied on the entire value.

Third Floor:

No one occupied till 31st March.
On 1st April sold to Mr. C.
No GST.

Fourth Floor:

Occupied by Mr. D on 3rd April.
However, part payment is paid on 3rd Feb.
No GST.

Example: A builder has entered into agreement to sale a flat (carpet area 1900 sq ft) to customer. The additional information is as follows:

- (a) Price of flat (including apportioned value of cost of land): ₹42,00,000 (includes Prime Location Charges namely charges for getting sea view ₹2,00,000).
- (b) Charges for providing space for covered parking: ₹1,25,000.
- (c) Stamp duty paid for ₹3,60,000.

The builder received part payment before construction was completed and balance amount was received after obtaining completion certificate from the Corporation. Find the GST liability (CGST 6% and SGST 6%)?

Answer: It is supply of service. Builder is liable to pay GST.

CGST = ₹2,81,100

(₹42,00,000 + 1,25,000 + 3,60,000) x 6%

SGST = ₹2,81,100

(₹42,00,000 + 1,25,000 + 3,60,000) x 6%

Total liability = ₹5,62,200

Note: Stamp duty is form part of value of supply u/s 15(2)(a) of CGST Act, 2017

7.4.6 Information Technology software:

The issue was raised whether software is a goods or services. Clause 5(d) Schedule II of the CGST Act provides that development, design, programming, customization, adaptation, up-gradation, enhancement, implementation of Information Technology software **shall be treated as service**. This explanation removes the uncertainty as to whether such software is goods or service.

As Information Technology software has been **declared as service**, place of supply of IT software can easily be determined. Place of supply of software shall always be the location of the recipient.

Example: M/s. ABC Ltd. provides the following relating to information technology software. Compute the value of taxable service and GST liability (Rate of CGST 9% and SGST 9%)?

(a) Development and Design of information technology software: ₹15 lakhs;

(b) Sale of pre-packaged software, which is put on media: ₹52 lakhs.

Answer: Value of Taxable supply of service is ₹15 Lakhs.

CGST is ₹1.35 lakhs

[i.e. ₹15 Lakhs × 9%].

SGST is ₹1.35 lakhs

[i.e. ₹15 Lakhs × 9%].

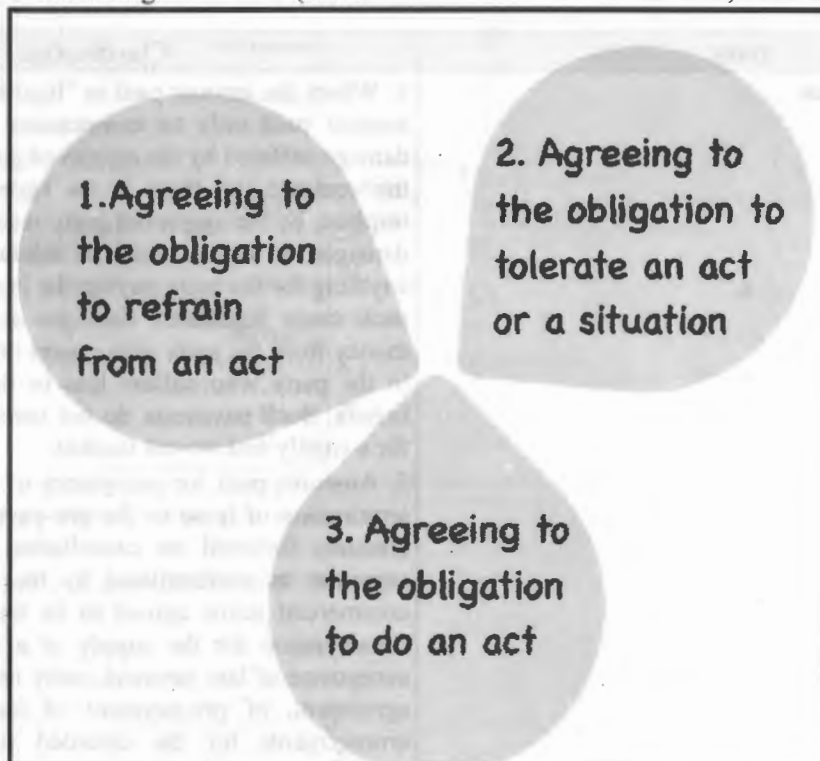
Note: Pre-packaged software, which is put on media treated as supply of Goods.

Value of Taxable supply of goods is ₹52 Lakhs.

7.4.7 Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act

Para (e) of Schedule II of CGST Act, 2017, Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; specifically declared to be a supply of service:

The said expression has following three limbs (CBIC Circular No. 178/10/2022-GST, dated 03.08.2022):



Situation	Examples
1. Agreeing to the obligation to refrain from an act	<p>1. Non-compete agreements, where one party agrees not to compete with the other party in a product, service or geographical area against a consideration paid by the other party.</p> <p>2. A builder refraining from constructing more than a certain number of floors, even though permitted to do so by the municipal authorities, against a compensation</p>

Situation	Examples
	<p>paid by the neighbouring housing project, which wants to protect its sunlight, or</p> <p>3. An industrial unit refraining from manufacturing activity during certain hours against an agreed compensation paid by a neighbouring school, which wants to avoid noise during those hours.</p>
2. Agreeing to the obligation to tolerate an act or a situation	<p>1. A shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker, or</p> <p>2. An Residential Welfare Association (RWA) tolerating the use of loud speakers for early morning prayers by a school located in the colony subject to the school paying an agreed sum to the RWA as compensation.</p>
3. Agreeing to the obligation to do an act	<p>An industrial unit agrees to install equipment for zero emission/discharge at the behest of the RWA of a neighbouring residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the industrial unit to do so.</p>

Issue	Clarification
1. Liquidated damages	<p>1. Where the amount paid as 'liquidated damages' is an amount paid only to compensate for injury, loss or damage suffered by the aggrieved party due to breach of the contract and there is no agreement, express or implied, by the aggrieved party receiving the liquidated damages, to refrain from or tolerate an act or to do anything for the party paying the liquidated damages, in such cases liquidated damages are mere a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.</p> <p>2. Amounts paid for acceptance of late payment, early termination of lease or for pre-payment of loan or the amounts forfeited on cancellation of service by the customer as contemplated by the contract as part of commercial terms agreed to by the parties, constitute consideration for the supply of a facility, namely, of acceptance of late payment, early termination of a lease agreement, of pre-payment of loan and of making arrangements for the intended supply by the tour operator respectively.</p> <p>Therefore, such payments, even though referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where the principal supply is taxable. Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Hence, such payments will not be taxable if the principal supply is exempt.</p>

Issue	Clarification
2. Compensation for cancellation of coal blocks	There was no contract/ agreement between the prior allottees and the Government that the previous allottees shall agree to or tolerate cancellation of the coal blocks allocated to them if the Government pays compensation to them. The compensation was given to them for such cancellation, not under a contract between the allottees and the Government, but under the provisions of the statute and in pursuance of the Supreme Court Order. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable.
3. Cheque dishonour fine/penalty	The fine or penalty that the supplier or a banker imposes, for dishonour of a cheque, is a penalty imposed not for tolerating the act or situation but a fine, or penalty imposed for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. Therefore, cheque dishonor fine or penalty is not a consideration for any service and not taxable.
4. Penalty imposed for violation of laws	Penalties imposed for violation of laws cannot be regarded as consideration charged by Government or a Local Authority for tolerating violation of laws. Fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to GST.
5. Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period.	The employee does not get anything in return from the employer against payment of such amounts. Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.
6. Late payment surcharge or fee	The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with the main supply. Since it is ancillary to and naturally bundled with the principal supply it should be assessed at the same rate as the principal supply.
7. Fixed Capacity charges for Power	The minimum fixed charges/capacity charges and the variable/energy charges are charged for sale of electricity and are not taxable as electricity is exempt from GST. Power purchase agreements which ensure assured supply of power to State Electricity Boards/ DISCOMS are ancillary arrangements, the contract is essentially for supply of electricity.
8. Cancellation charges	For example, cancellation charges of railway tickets for a class would attract GST at the same rate as applicable to the class of travel. The amount forfeited in the case of non-refundable ticket for air travel or security deposit, or earnest money forfeited in case of the customer failing to avail the travel, tour operator or hotel accommodation service or such other intended supplies should be assessed at the same rate as applicable to the service contract, say air transport or tour operator service, or other such services.

Issue	Clarification
	However, forfeiture of earnest money by a seller in case of breach of 'an agreement to sell' an immovable property by the buyer or such forfeiture by Government or local authority in the event of a successful bidder failing to act after winning the bid for allotment of natural resources, is a mere flow of money, as the buyer or the successful bidder does not get anything in return for such forfeiture of earnest money. Such payments being merely flow of money are not a consideration for any supply and are not taxable.

Example: M/s X Ltd. paid penalty under section 73(9) of the CGST Act, 2017, ₹2,00,000 to the Department in the month of October 2018. Is it taxable under the GST law?

Answer: It is not a supply of service. The fine or penalty chargeable by Government or local authority imposed for violation of statute, bye-laws, rules or regulations are not leviable to GST. Such fines or penalty are not recovered for tolerating non-performance of a contract.

Refrain means restricting oneself to do or not to do one act:

Example 1: Mr. C is a Practicing Chartered Accountant given appointment to a client Mr. B representing the company for 10AM on Tuesday. Mr. B cancels the appointment at 9AM on Tuesday (i.e. one hour before appointment time). Advance paid by Mr. B for seeking the appointment is forfeited by Mr. C for cancelling the appointment.

In the given case Mr. C, refraining from entering any other person at the given appointment time.

However, forfeiture is a mere flow of money, as such payments being merely flow of money are not a consideration for any supply and are not taxable.

Example 2: ABC Consultancy, registered in Delhi, supplies technical consultancy services to its clients. It has been providing technical services to CBA Ltd., Delhi since, past two years. Consideration is settled by CBA Ltd. assignment wise. CBA Ltd. paid ₹45 lakh to ABC Consultancy on 10th January, 20XX and ABC consultancy agreeing to not provide similar technical services to any other entity in India or abroad for a period of 8 years. ABC Consultancy is of the view that ₹45 lakh is not chargeable to GST.

You are required to examine whether the view taken by ABC Consultancy is valid in law. Calculate GST liability of ABC Consultancy, if any. The technical services provided by ABC Consultancy is otherwise chargeable to GST at the rate of 18%. It may be noted that CBA Ltd. is not ready to pay any further amount to ABC Consultancy in addition to the amount already agreed.

Answer: The view taken by ABC Consultancy of Delhi is not valid in law.

As per the paragraph 5(e) of Schedule II provides that agreeing to the refrain from an act, or to tolerate an act or a situation, or to do an act is treated as supply of service.

Thus, any consideration received for agreeing to the obligation to refrain from an act, is subject to GST.

Since, GST is not separately collected, it will be assumed that it is included in ₹45 lakh.

Rule 35 of CGST Rules, 2017 provides that where the value of supply is inclusive of GST, the tax amount is determined in the following manner.

Value of taxable supply	=
₹45 lakhs x 100/118	= ₹38,13,559/-
GST liability	CGST = ₹45 lakhs × 9/118 = ₹3,43,220/-
	SGST = ₹45 lakhs × 9/118 = ₹3,43,220/-

Tolerate an act or a situation:

Services provided by Government or a local authority by way of tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract; is exempted from GST.

Example: A contract awarded by Bombay Municipal Corporation (BMC) for repair of a particular road to M/s B Ltd., with terms and conditions that the entire work should be completed within 30 days. However, there is a delay of 10 days to complete the work. BMC charged liquidated damages of ₹1,20,000 and the same recovered from M/s B Ltd. Applicable rate of CGST 9% and SGST 9%. Previous year turnover of M/s B Ltd. ₹2 crores.

Find the following:

- Is it taxable supply?
- who is liable to pay GST on what amount?
- total tax liability if any?

Answer: (a) It is not taxable supply of service.

(b) M/s B Ltd. being recipient of service is liable to pay GST if it is taxable supply. In this case it is exempted supply. Since, main service is exempt and hence ancillary service is also exempt (vide CBIC Circular No. 178/10/2022 GST, dated 03.08.2022). Since, the contractor has performed the contract, but there is a delay of 10 days.

(c) tax liability is nil.

7.4.8 Transfer of the right to use any goods for any purpose

In the case of *Bharat Sanchar Nigam Ltd. v Union of India* 2006 (2) STR 161 (SC), transfer of right to use goods is not transaction of service but transaction of sale of goods. However, the clause 5(f) of Schedule II of CGST Act, 2017 specifically provides that transfer of right to use goods for any purpose shall constitute supply of service. As a result, the above judgment will not be helpful under GST.

Example: Shyam has given his tempos on hire to Mohan Brothers for transportation of foodstuff for ₹40,00,000. He has also transferred the right to use such tempos to Mohan Brothers. Discuss whether Shyam is liable to pay GST on the said transaction.

Answer: It is treated as supply of service. Shyam is liable to pay GST.

7.4.9 Composite supply:

- Works contract.
- Supply of food or any other article for human consumption (other than alcoholic liquor for human consumption).

7.4.9a Section 2(119) of CGST Act, 2017 “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;

Example: Shambhu Pvt. Ltd. was awarded a contract in July 2017 for providing flooring and wall tiling services in respect of a building located in Delhi by Nath Ltd. As per the terms of contract, Shambhu Pvt. Ltd. was to provide all the required material for execution of the contract. However, Nath Ltd also provided a portion of the material. Whether the services provided by Shambhu Pvt. Ltd. are subject to GST? If yes, determine the GST liability of Shambhu Pvt. Ltd. from the following particulars—

Particulars	₹
(i) Gross amount charged by the Shambhu Pvt. Ltd.	6,00,000
(ii) Fair market value of the material supplied by Nath Ltd.	1,00,000
(iii) Amount charged by Nath Ltd. for the material [included in (i) above]	60,000

Note: CGST 9% and SGST 9%.

Answer: Works contract is treated as supply of service.

Gross amount charged by the Shambhu Pvt. Ltd.	6,00,000
Add: Fair market value of the material supplied by Nath Ltd.	1,00,000
Less: Amount charged by Nath Ltd. for the material	(60,000)
Total value subject to GST	6,40,000
CGST 9% x 6,40,000 = ₹57,600	
SGST 9% x 6,40,000 = ₹57,600	
Total GST liability = ₹1,15,200	

Note: The value would have to be in tune with Section 15(4) of CGST Act, 2017 read with Rule 27 of CGST Rules, 2017(i.e. open market value of service) as consideration is not in monetary terms.

7.4.9b Supply of food or any other article for human consumption (other than alcoholic liquor for human consumption).

Example: Food supplied in a restaurant has the facility of air-conditioning:

Particulars	Amount ₹
Total Food Bill	1,000
Service charges @10%	100
Total bill (before GST)	1,100
Add: CGST 2.5% on ₹1,100 (rounded off)	28
Add: SGST 2.5% on ₹1,100 (rounded off)	28
Total Bill payable by customer (rounded off)	1,156

Note: Supply of alcoholic liquor for human consumption will not be considered as a service. It will continue to be taxed by the State in the manner currently being taxed.

Activities specified in Schedule III (Negative list)

1. Services by an employee to the employer in the course of or in relation to his employment.

Question: Whether various perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are liable for GST?

Answer: Perquisites provided by the employer to the employee in terms of contractual agreement entered into between the employer and the employee, will not be subjected to GST (CBIC Circular No. 172/04/2022 GSTdt. 6th July 2022).

2. Services by court or Tribunal established under any law for the time being in force.

Explanation 1: For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

Example: Is GST leviable on the fee/amount charged in the following situations/cases: –

- (1) A customer pays fees while registering complaints to Consumer Disputes Redressal Commission office and its subordinate offices. These fees are credited into State Customer Welfare Fund's bank account.
- (2) Consumer Disputes Redressal Commission office and its subordinate offices charge penalty in cash when it is required.
- (3) When a person files an appeal to Consumers Disputes Redressal Commission against order of District Forum, amount equal to 50% of total amount imposed by the District Forum or ₹ 25,000/- whichever is less, is required to be Paid.

Answer: As per CBIC Circular No. 32/06/2018-GST dated 12th February 2018, fee paid by litigants in the Consumer Disputes Redressal Commissions are not leviable to GST.

Any penalty imposed by or amount paid to these Commissions will also not attract GST.

Thus, GST will not be levied in case of (1), (2) and (3) above.

3. (a) The functions performed by the Members of Parliament, Members of State Legislatures, Members of Panchayats, Members of Municipalities and Members of other local authorities;

(b) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or

(c) The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.



4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.



5. Sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.



CBIC Circular No. 177/09/2022 TRU, dated 03.08.2022:

It has been clarified that sale of a land after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc., is also a sale of land and is covered by Sr. No. 5 of Schedule III and thus, does not attract GST.

However, it may be noted that any service provided for development of land, like levelling, laying of drainage lines (as may be received by developers) shall attract GST at applicable rate for such services.

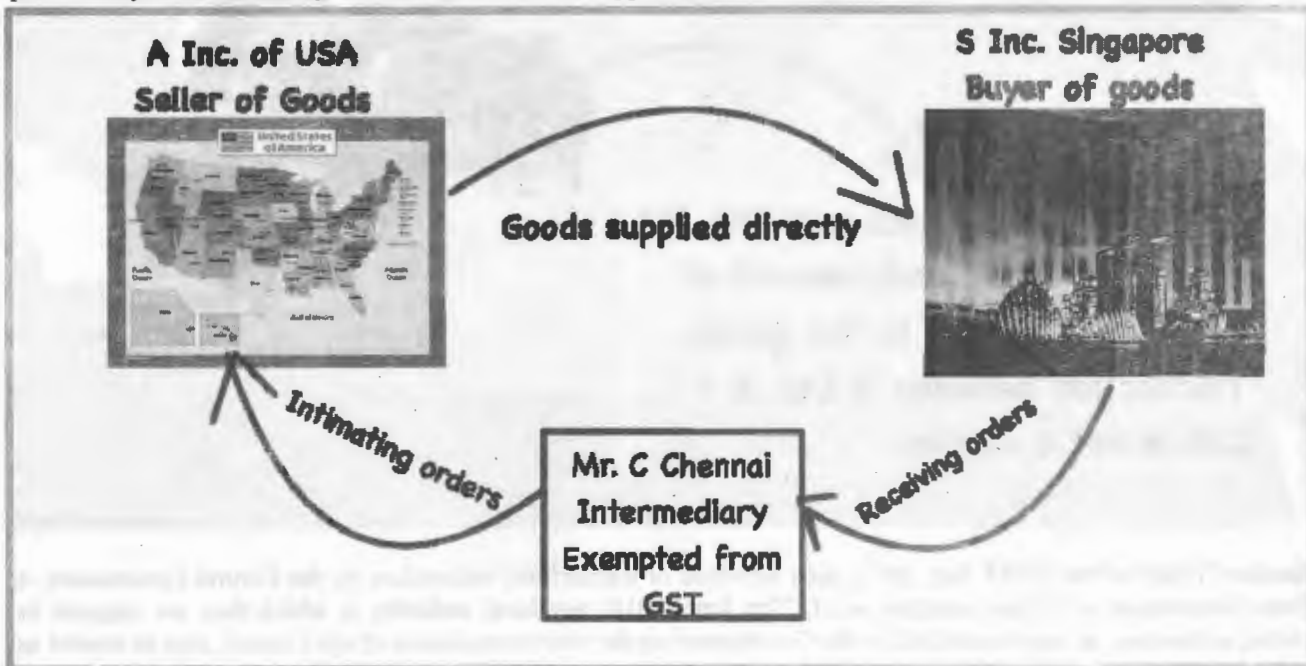
6. Actionable claims, other than lottery, betting and gambling.

Examples:

- Right to recover insurance money,
- Claim for arrears of rent,
- Unsecured debentures or unsecured loans,
- Bills of exchange, promissory notes, bank guarantee, Fixed Deposit Receipts etc.

7. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India.

w.e.f. 1-10-2019, Notification No. 20/2019- (IT Rate) dated September 30, 2019: so as to exempt "Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory".



Example: Mr. Zombi, a supplier registered in Hyderabad (Telangana), procures goods from China and directly supplies the same to a customer in US. With reference to the provisions of GST law, examine whether the said activity of supply of goods by Mr. Zombi to customer in US is taxable under GST. If yes, determine the place of supply of the same.

Answer: w.e.f. 1-2-2019 it is treated as supply exclude "Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India".

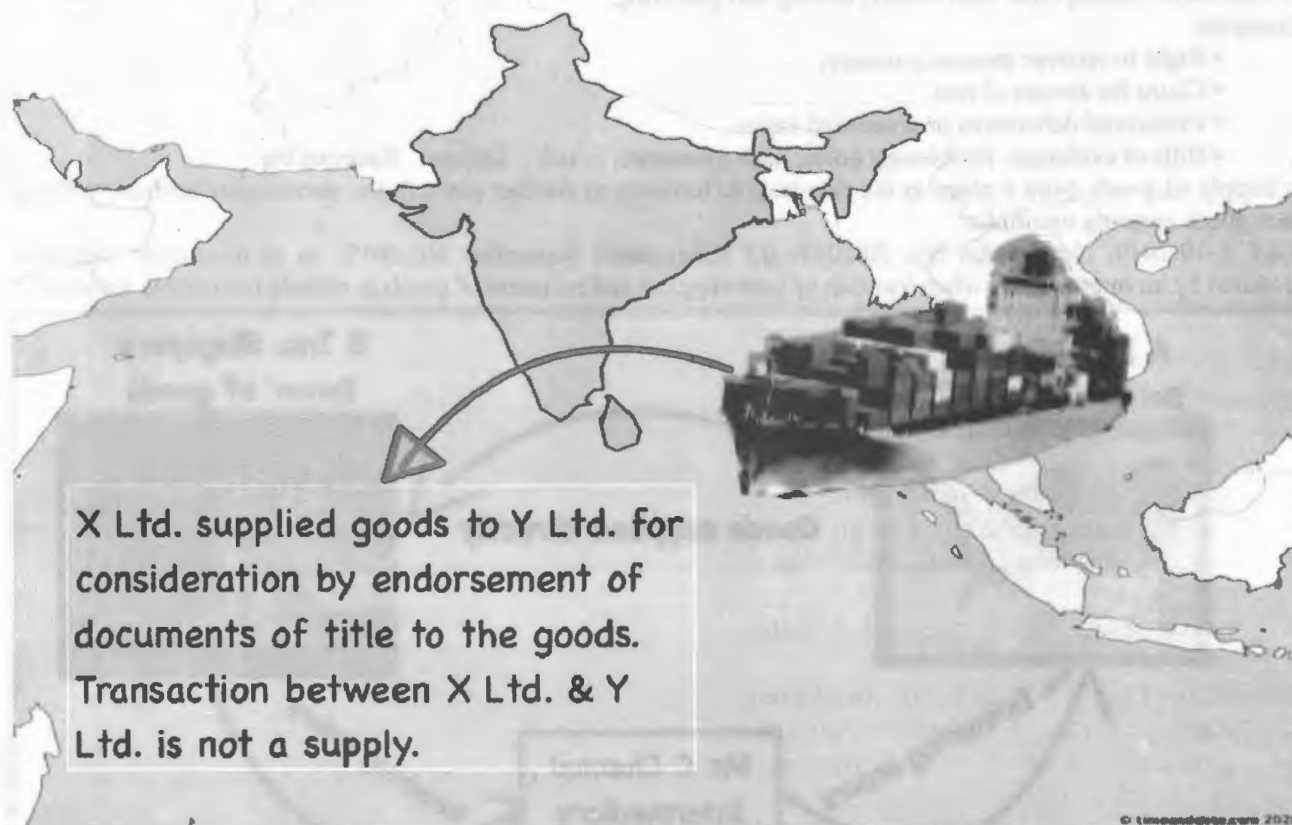
8. (a) supply of warehoused goods to any person before clearance for home consumption:

Example: X Ltd. supplied warehoused goods to Y Ltd. for consideration before clearance for home consumption.

Transaction between X Ltd. and Y Ltd. is not a supply



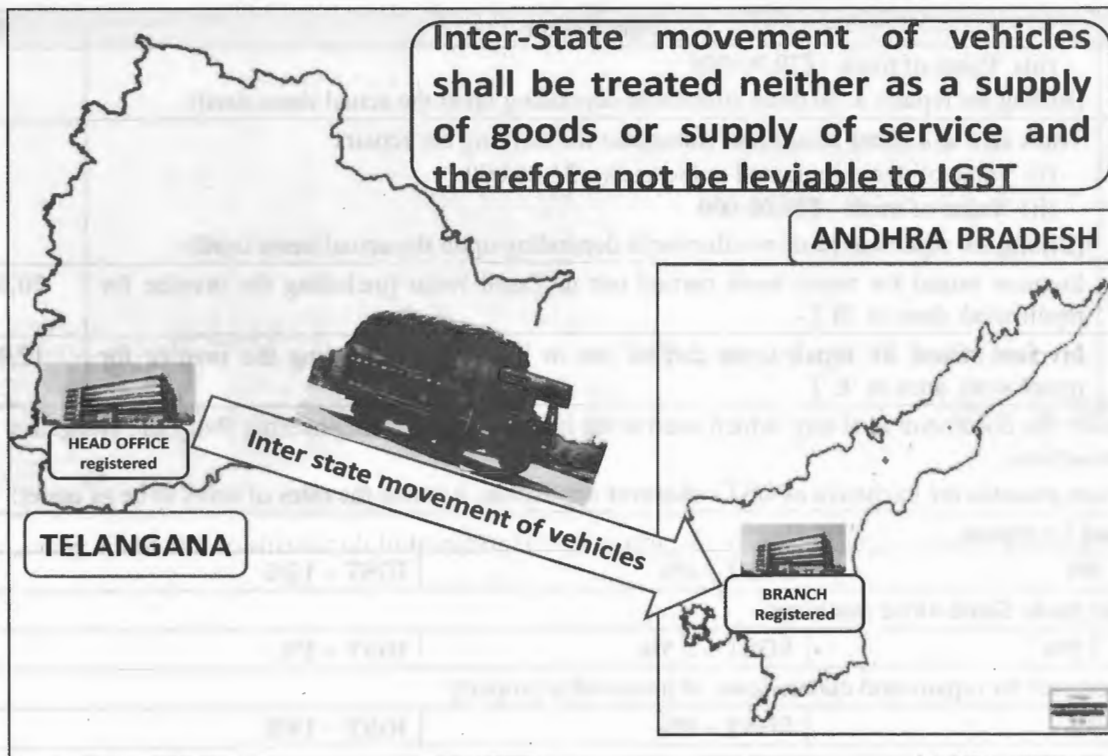
(b) Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.



Section 7(2)(b) of the CGST Act, 2017, such activities or transactions undertaken by the Central Government, a State Government or (Union territory w.e.f. 27th June, 2018) any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, also be treated as not a supply.

CBIC clarification on inter-State movement of Vehicles:

Clarification on Inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance (*vide* Circular No. 1/1/2017 IGST, dated 07/07/2017):

**Note:**

- (i) Inter-State movement of vehicles are treated as supply if it is meant for further supply.
- (ii) However, applicable CGST/SGST/IGST, as the case, may be shall be leviable on repairs and maintenance done for such conveyance.

Supply of goods between distinct person u/s 25(4) of the CGST:

Example: Power Engineering Pvt. Ltd., a registered supplier, is engaged in providing expert maintenance and repair services for large power plants that are in the nature of immovable property, situated all over India. The company has its Head Office at Bangalore, Karnataka and branch offices in other States. The work is done in the following manner.

- The company has self-contained mobile workshops, which are container trucks fitted out for carrying out the repairs. The trucks are equipped with items like repair equipment's, consumables, tools, parts etc. to handle a wide variety of repair work.
- The truck is sent to the client location for carrying out the repair work. Depending upon the repairs to be done, the equipment, consumables, tools, parts etc. are used from the stock of such items carried in the truck.
- In some cases, a stand-alone machine is also sent to the client's premises in such truck for carrying out the repair work.
- The customer is billed after the completion of the repair work depending upon the nature of the work and the actual quantity of consumables, parts etc. used in the repair work.
- Sometimes the truck is sent to the company's own location in other State(s) from where it is further sent to client locations for repairs.

Work out the GST liability [CGST & SGST or IGST, as the case may be] of Power Engineering Pvt. Ltd., Bangalore on the basis of the facts as described, read with the following data for the month of November 20XX.

S. No.	Particulars	₹
A	Truck sent to own location in Tamil Nadu (i) Value of items contained in the truck - ₹3,00,000 (ii) Value of truck - ₹25,00,000	
B	Truck sent to a client location in Tamil Nadu for carrying out repairs. Stand- alone machine is also sent in the truck to client location for repairs (i) Value of items contained in the truck - ₹2,85,000 (ii) Value of stand-alone machine - ₹4,00,000	

S. No.	Particulars	₹
	(iii) Value of truck - ₹20,00,000 (Billing for repairs to be done afterwards depending upon the actual items used)	
C	Truck sent to a client location in Karnataka for carrying out repairs (i) Value of items contained in the truck - ₹1,06,000 (ii) Value of truck - ₹20,00,000 (Billing for repairs to be done afterwards depending upon the actual items used)	
D	Invoices raised for repair work carried out in Tamil Nadu [including the invoice for repair work done in 'B'] -	70,00,000
E	Invoices raised for repair work carried out in Karnataka [including the invoice for repair work done in 'C']	12,00,000

Also, specify the document(s), if any, which need to be issued by Power Engineering Pvt. Ltd., Bangalore for the above transactions.

All the given amounts are exclusive of GST, wherever applicable. Assume the rates of taxes to be as under:

Items used for repairs		
CGST - 6%	SGST - 6%	IGST - 12%
Container truck, Stand-alone machines		
CGST - 2.5%	SGST - 2.5%	IGST - 5%
Works contract for repairs and maintenance of immovable property		
CGST - 9%	SGST - 9%	IGST - 18%

You are required to make suitable assumptions, wherever necessary.

(CA Final RTP May 2018)

Answer:

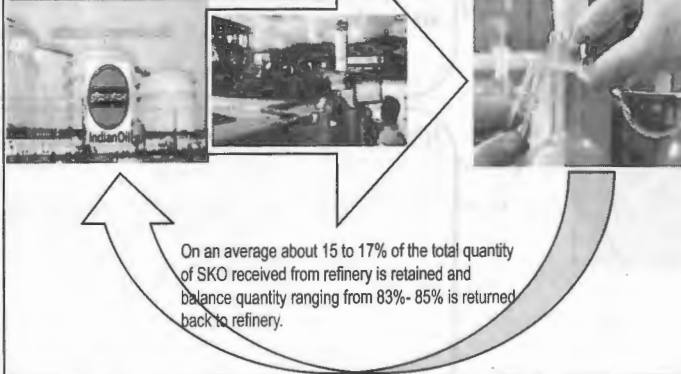
S.No.	Particulars	₹
A.	Items sent in container truck to own location in Tamil Nadu - IGST @ 12% x ₹3,00,000 =	36,000
	Container truck sent to own location in Tamil Nadu Since the activity is not a supply, tax invoice is not required to be issued by Power Engineering Pvt. Ltd. However, a delivery challan is to be issued by the company in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the truck to its own location in Tamil Nadu. W.e.f. 1-4-2018 E-way Bill is also made mandatory where the value of consignment exceeds ₹50,000.	-
B.	Stand-alone machine sent in container truck to client location in Tamil Nadu, for carrying out repairs a delivery challan is to be issued in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the stand-alone machines and container truck to client location.	-
	Container truck sent to client location in Tamil Nadu a delivery challan is to be issued in terms of rule 55(1)(c) of CGST Rules, 2017 for sending the stand-alone machines and container truck to client location. W.e.f. 1-4-2018 E-way Bill is also made mandatory where the value of consignment exceeds ₹50,000.	-
	Items sent in container truck to client location in Tamil Nadu, for carrying out repairs It is form part of works contract service and taxable only when supply of service takes place.	-
C.	Container truck sent to client location in Karnataka	-
	Items sent in container truck to client location in Karnataka, for carrying out repairs	-
D.	Invoices raised for repair work carried out in Tamil Nadu: IGST @ 18% on ₹70,00,000	12,60,000
E.	Invoices raised for repair work carried out in Karnataka: CGST 9% on ₹12,00,000 is ₹1,08,000 + SGST 9% on ₹12,00,000 is ₹1,08,000	2,16,000
Total GST liability		15,12,000

Whether GST is applicable on the superior kerosene oil [SKO] retained for the manufacture of Linear Alkyl Benzene [LAB]?

GST will be payable by the refinery only on the net quantity of superior kerosene oil (SKO) retained for the manufacture of Linear Alkyl Benzene (LAB). Though, refinery would be liable to pay GST on such returned quantity of SKO, when the same is supplied by it to any other person [Circular No. 12/12/2017 GST dated 26.10.2017].

Indian Oil Corporation supplies superior kerosene oil (SKO) from its refinery through a dedicated pipeline.

Manufacture of Linear Alkyl Benzene (LAB).



CBIC Circular No. 53/27/2018-GST, dated 9th August 2018.

Clarification regarding applicability of GST on the petroleum gases retained for the manufacture of petrochemical and chemical products:

Applicability of GST on petroleum gases, which are supplied by oil refineries to them on a continuous basis through dedicated pipelines, while a portion of the raw material is retained by these manufacturers (recipient of supply), and the remaining quantity is returned to the oil refineries. In this regard, an issue has arisen as to whether in this transaction GST would be leviable on the whole quantity of the principal raw materials supplied by the oil refinery or on the net quantity retained by the manufacturers of petrochemical and chemical products.

It is hereby clarified that, in the aforesaid cases, GST will be payable by the refinery only on the net quantity of petroleum gases retained by the recipient manufacturer for the manufacture of petrochemical and chemical products. Though, the refinery would be liable to pay GST on such returned quantity of petroleum gases, when the same is supplied by it to any other person. It is reiterated that this clarification would be applicable mutatis mutandis on other cases involving supply of goods, where feed stock is retained by the recipient and remaining residual material is returned back to the supplier. The net billing is done on the amount retained by the recipient.

GST will be payable by the refinery only on the net quantity of petroleum gases retained by the recipient manufacturer for the manufacture of petrochemical and chemical products.



Oil refineries supplied Petroleum gases

Remaining quantity is returned after retaining a portion of petroleum gases.

Manufacture of petrochemical and chemical products



Clarification on issues regarding treatment of supply by an artist in various States and supply of goods by artists from galleries

[Circular No. 22/22/2017-GST, dated 21-12-2017]



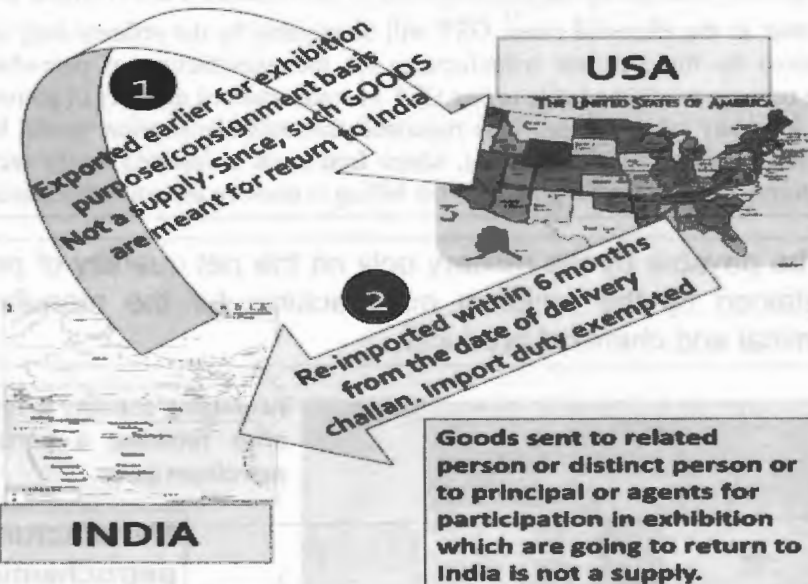
The art work for supply on approval basis can be moved from the place of business of the registered person (artist) to another place within the same State or to a place outside the State on a delivery challan along with the e-way bill wherever applicable and the invoice may be issued at the time of actual supply of art work.

[Circular No. 22/22/2017-GST, dated 21-12-2017]

Goods sent on Sale or Approval Basis:

Goods sent for Exhibition:

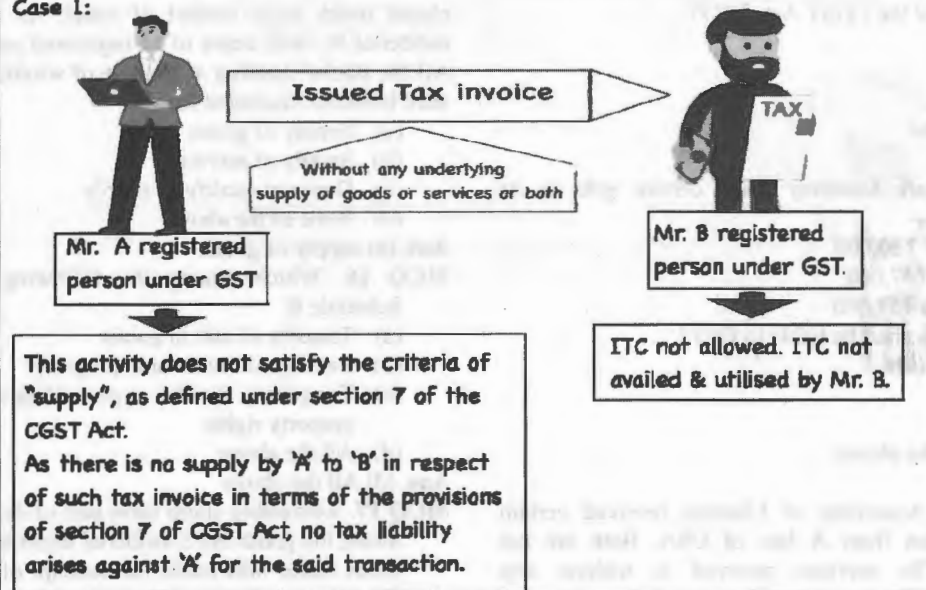
Goods which are exported earlier for exhibition purpose/consignment basis
[CBIC Circular 21/2019Cus. Dt. 24.10.2019]



A circular has been issued clarifying various issues relating to applicability of demand and penalty provisions under the CGST Act, 2017 in respect of transactions involving fake invoices:

[Circular No. 171/03/2022-GST dt. 6th July, 2022]

Case 1:



LEVY OF GST ON Extra Neutral Alcohol (ENA):

GST will be levied on extra-neutral alcohol (ENA), which is used for manufacturing alcoholic liquor for human consumption, ENA is a derivative of sugarcane molasses (95% high-purity ethyl alcohol) and is not an alcoholic liquor for human consumption but can be used as raw material or input, after processing and substantial dilution, in the production of whisky, gin, country liquor etc.