Chapter 3
Levy and Collection of Tax

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Statutory Provisions

7. Scope of supply

(1) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

[1][(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.

Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;]

(b) import of services for a consideration whether or not in the

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[1] *Inserted w.r.e.f. 01.07.2017 vide The Finance Act, 2021 – Brought into force on 01.01.2022 vide Notf No. 39/ 2021-CT, dt. 21.12.2021.*

course or furtherance of business; [2][and]

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; [3][***]

(d) [4][***]

[5][(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.]

(2) Notwithstanding anything contained in sub-section (1), —

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

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

(3) Subject to the provisions of [6][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—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

SCHEDULE I
[See section 7]

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[2] Inserted w.r.e.f. 01.07.2017 vide The CGST (Amendment) Act, 2018 – Notified through Notf No. 2/2019-CT dt. 29.01.2019. Brought into force on 01.02.2019.

[3] The word "and" omitted w.r.e.f. 01.07.2017 vide The Central Goods and Services Tax (Amendment) Act, 2018 – Brought into force on 01.02.2019

[4] The words and letters "the activities to be treated as supply of goods or supply of services as referred to in Schedule II" omitted w.r.e.f. 01.07.2017 vide The Central Goods and Services Tax (Amendment) Act, 2018 - Brought into force on 01.02.2019

[5] Inserted w.r.e.f. 01.07.2017 vide The Central Goods and Services Tax (Amendment) Act, 2018 - Brought into force on 01.02.2019

[6] Substituted vide The Central Goods and Services Tax (Amendment) Act, 2018 w.r.e.f. 01.07.2017 - Brought into force on 01.02.2019. Prior to substitution it read as sub-sections (1) and (2)"

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 fifty thousand rupees 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 [7][person] from a related person or from any of his other establishments outside India, in the course or furtherance of business*

SCHEDULE II

[See section 7]

ACTIVITIES OR [8][TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

1. *Transfer*
   - *(a) any transfer of the title in goods is a supply of goods;*
   - *(b) any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services;*
   - *(c) any 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, is a supply of goods*
2. *Land and Building*
   - *(a) any lease, tenancy, easement, licence to occupy land is a*

[7] *Substituted "taxable person" vide The Central Goods and Services Tax (Amendment) Act, 2018 through Notf No. 2/2019-CT dt. 29.01.2019 w.e.f. 01.02.2019.*

[8] *Inserted vide The CGST (Amendment) Act, 2018 w.r.e.f. 01.07.2017 - Brought into force on 01.02.2019.*

supply of services;

(b) any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.

3. Treatment or process

Any treatment or process which is applied to another person's goods is a supply of services.

4. Transfer of business assets

(a) where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, [9][***], such transfer or disposal is a supply of goods by the person;

(b) where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, [9][***], the usage or making available of such goods is a supply of services;

(c) where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—

(i) the business is transferred as a going concern to another person; or

(ii) the business is carried on by a personal representative who is deemed to be a taxable person.

5. Supply of services

The following shall be treated as supply of services, namely:—

(a) renting of immovable property;

(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

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[9] The words and letters "whether or not for a consideration" omitted w.r.e.f. 01.07.2017 vide The Finance Act, 2020 – Brought into force w.e.f. 01.01.2021 vide Notf No. 92/2020-CT dt. 22.12.2020.

has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.

Explanation.— For the purposes of this clause—

(1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—

(i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

(ii) a chartered engineer registered with the Institution of Engineers (India); or

(iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

(2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;

(c) temporary transfer or permitting the use or enjoyment of any intellectual property right;

(d) development, design, programming, customisation, adaptation, up gradation, enhancement, implementation of information technology software;

(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and

(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.

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:—

(a) works contract as defined in clause (119) of section 2; and

(b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

7. *[10][****]*

SCHEDULE III

[See section 7]

ACTIVITIES OR TRANSACTIONS WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES

1. *Services by an employee to the employer in the course of or in relation to his employment.*
2. *Services by any court or Tribunal established under any law for the time being in force.*
3. *(a) the functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;*

   (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.*

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[10]The words and letters "7.Supply of Goods.-The following shall be treated as supply of goods, namely:-
Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration" omitted w.r.e.f. 01.07.2017 by The Finance Act, 2021 through Notf No. 39/ 2021-CT, dated 21.12.2021 – Brought into force on 01.01.2022.

6. *Actionable claims, other than [11][specified actionable claims].*

7. *[12][[13][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.]]

[14][Explanation 1].—For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

[15][Explanation 2.— For the purposes of paragraph 8, the expression "warehoused goods" shall have the same meaning as assigned to it in the Customs Act, 1962]

Related provisions of the Statute

Sections/ Rules	Descriptions
Section 2(5)	Definition of 'Agent'
Section 2(17)	Definition of 'Business'

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[11]Substituted vide CGST (Amendment) Act, 2023 dt. 18.08.2023 through Notf No. 48/2023-CT dt. 29.09.2023 w.e.f. 01.10.2023, before it was read as, "lottery, betting and gambling".

[12]Inserted w.r.e.f. 01.07.2017 vide the Finance Act, 2023, notified through Notf No. 28/2023- CT dt. 31.07.2023- Brought into force w.e.f. 01.10.2023. It has also been clarified that no refund shall be made of all the tax which has been collected but which would not have been so collected, had paragraph 7 and 8 of schedule III and explanation 2 thereof, been in force at all material times.

[13]Inserted vide The CGST (Amendment) Act, 2018, notified through Notification No. 02/2019- CT dt. 29.01.2019, w.e.f. 01.02.2019.

[14]Explanation re-numbered as Explanation-1 by The Central Goods and Services Tax (Amendment) Act, 2018, notified through Notification No. 02/2019- CT dt. 29.01.2019, w.e.f. 01.02.2019.

[15] Inserted vide The CGST (Amendment) Act, 2018, notified through Notf No. 02/2019- CT dt. 29.01.2019, w.e.f. 01.02.2019. Effective retrospectively w.e.f. 01.07.2017 vide the Finance Act, 2023 dt. 31.03.2023, notified through Notf No. 28/2023-CT dt. 31.07.2023- Brought into force w.e.f. 01.10.2023.

Section 2(31)	Definition of 'Consideration'
Section 2(88)	Definition of 'Principal'
Section 15	Value of Taxable Supply
Section 16	Eligibility and Conditions for taking Input Tax Credit
Section 25	Procedure for Registration
Chapter IV-Rules	Determination of Value of Supply

7.1 Introduction

The definition of the word 'supply' is inclusive, the legislature has carefully chosen not to use the word(s) such as "means", or "means and includes", "shall mean", or "shall include", etc. A careful consideration of the above explanation would indicate that the draftsmen were cautious about any transaction of supply that might escape the levy. It is for this reason that despite being exhaustive, the legislature has used the word "includes".

A plain reading of the definition of the word 'supply' contained in section 7(1) would invite anybody's attention to the 8 words – sale, transfer, barter, exchange, license, rental, lease or disposal. Look at these 8 words – they are arranged in descending order. Words 2 to 8 were a subject matter of challenge under the erstwhile State-level VAT Laws. This ambiguity has been done away within the GST Laws. These 8 words together form a 'continuum'. The last 7 words taper-off in their absoluteness starting from the first of the forms of supply, that is, 'sale'. It is important to note that *ejusdem generis* as a rule of statutory construction cannot be employed while considering these 8 forms since there are no generic words that follow these specific words. However, the words 'such as' permits sub species of these 8 forms to be taxed such as sub-lease, sub-license, sub-contract, etc., as these are not a form of supply and not listed in the provision but merely involving different persons compared to the primary lease, license, etc.

The Model GST Law released in June, 2016 had included the meaning of the term 'supply' within the clauses of the definition section. However, in GST law, the term 'supply' is defined by way of a separate and distinct Section. One understands that the meaning attributed to the term "supply" is of very wide amplitude, but yet, an inclusive one. It must be noted that this term is ordinarily attributable to an 'outward supply', unless the context so requires that the term refers to an inward supply – say, in case of importation of services or in respect of transactions without consideration etc. Many things come within the scope of 'supply' but not everything is 'supply'. Supply too has boundaries and many transactions are excluded from its grasp. This points to a clear understanding that the expression 'supply', although

inclusively defined, does have a recipe or a set of ingredients that each transaction must be tested against to see if it is or is not a 'supply'.

The word 'supply' could be understood as actual or implied. Implied supplies are governed by the relevant Schedule. The three pillars of a supply would be:

(a) subject–viz. goods, services or goods treated as services. One cannot find an instance in the GST statute where a supply of services is treated as a supply of goods.

(b) place of supply–to identify whether the transaction is an inter-State supply or an intra-State supply

(c) time of supply–where legislature specifies 'when' the tax incidence is attracted.

7.2 Analysis

Supply:

(a) Generic meaning of 'supply': Supply includes all forms of supply (goods and/ or services) and includes agreeing to supply when the supply is for a consideration and in the course or furtherance of business (as defined under section 7 of the Act). It specifically provides for the inclusion of the following 8 classes of transactions:

(i) Sale

(ii) Transfer

(iii) Barter

(iv) Exchange

(v) License

(vi) Rental

(vii) Lease

(viii) Disposal

The word 'supply' is all-encompassing, subject to exceptions carved out in the relevant provisions. There are various ingredients that differentiate each of these eight forms of supply. On a careful consideration of the purposeful usage of these eight adjectives to enlist them as 'forms' of supply, it becomes clear that the legislature makes its intention known by the choice of words that are deliberate and unambiguous. However, the definition starts off with the phrase–"For the purpose of this Act", which means that wherever the term supply has been used anywhere in

the Act, the meaning should always be derived from this section 7 and cannot be substituted by any other understanding of the term supply.

Barter means a "thing or commodity" given 'in return of' another. In other words, no value is fixed-viz., barter of wrist watch with a wall clock.

Disposal means distribution, transferring to new hands, extinguishment of control over, forfeit or pass over control to another but in respect of goods that are 'unfit for sale'. Surely, discounted sale is not called disposal if the articles are still 'fit for sale'.

Transfer means to pass over, convey, relinquishment of a right, abandonment of a claim, alienate, each or any of the above acts, lawfully.

An attempt at identifying the characteristics of each of these forms of supply is provided below:

Forms of Supply	Two Capable Persons	Consideration in Money (Price)	Willingness to Contract		Delivery of Possession	Permanent alienation	Object of Supply			
							Consensus	Identity of Object		
			Seller	Buyer				Services	Movable	Immovable
Sale	✓	✓	✓	✓	✓	✓	✓	×	✓	NA
Transfer	✓	✓	×	✓	✓	✓	✓	×	✓	✓
Barter	✓	×	✓	✓	✓	✓	✓	✓	✓	×
Exchange	✓	×	✓	✓	✓	✓	✓	×	×	✓
License	✓	✓/×	✓	✓	×	×	✓	✓	✓	✓
Rental	✓	✓/×	✓	✓	✓	×	✓	×	✓	×
Lease	✓	✓/×	✓	✓	✓	×	✓	×	✓/×	✓
Disposal	✓	✓	✓	×/✓	✓	✓	×	×/✓	✓	×

On an understanding of the above chart, one may infer that 'supply' is not a boundless word of uncertain meaning. The inclusive part of the opening words in this clause may be understood to include everything that supply is generally understood to be plus the ones that are enlisted. It must be admitted that the general understanding of the word 'supply' is an amalgam of these 8 forms of supply.

Please follow the brief discussion of the 8 forms of supply:

- Sale is a lawful, permanent and absolute transfer of ownership of property in goods for money consideration under a valid contract such that no rights are left behind with the transferor;
- Transfer is to lawfully convey property from one person to another. Here, consent of transferor and capacity of transferee need not be present although all other ingredients of a lawful contract are incumbent;
- Barter is where the consideration is in the form of goods or services (and not in money) for a sale or transfer. So, in general, barter in itself is not a supply but the form that consideration takes. But, when barter is called one of the forms of supply, it covers

other forms of supply whose consideration is non-monetary. Therefore, barter will involve two supplies and not one. Each of these supplies would need to be examined for its respective taxability;

- Exchange is where consideration is still not in money but in form of immovable property (*CIT v. Motors and General Stores (P) Ltd. AIR 1968 SC 200*). Similar to barter, exchange also involves two supplies. Given that land and (completed) building is excluded from supply, exchange would be the supply whose consideration is immovable property. And the object of supply itself may be of goods or of services;
- Lease is where possession is transferred along with the right to use immovable property with a duty to care, protect and return subject to normal wear and tear along with consideration in the form of non-recurring premium only or along with recurring rent. Essence of lease being delivery of possession along with user rights is the reason lease is also used in the context of movable property (under the earlier laws). Supplier of a lease does not have possession, hence does not enjoy the right to use but retains right to repossess after term of lease. Lease is discussed first to contrast it with rental and license;
- License is similar to lease except that possession is not transferred but mere permission to enter and use the property (movable or immovable) is allowed along with all other ingredients of a lease. Supplier of a license retains possession of the property during the term of license without right to use (if license precludes joint use). And after expiry of the term of license or on termination of license, the licensee will be a trespasser;
- Rental is lease in respect of movable property. And since recurring payment in lease (of immovable property) is called rental, transfer of possession with user rights for recurring payment of consideration is interchangeably applied for movable and immovable property; and
- Disposal is sale or transfer but property that does not possess merchantable warranty. Articles that are not merchantable are not 'fit for sale' but trade does take place for the reason that the supplier disposes the article without ascribing any worth but the recipient accepts the article for some intrinsic worth that he is able to extract or obtain. Article that does not answer to its description cannot normally bring a valid contract into existence but due to the

respective motivation of each party, such articles are lawfully disposed off. In other words, although there is no consensus as to the object of supply, the parties are consenting to enter into such a contract for the respective reasons and considerations.

Any attempt at expanding this list of 8 forms of supply, in case of goods, must be attempted with great caution. Attempting to find other forms of supply in the normal course did not yield the desired results. However, transactions that do not amount to supply have been discovered viz., transactions in the nature of an assignment where one person steps into the shoes of another, appears to slip away from the scope of supply, as well as transactions where goods are destroyed without a transfer of any kind taking place. Perhaps, the case of destruction of goods is not included within the meaning of 'supply' considering that the input tax credit in respect of destroyed goods is a blocked credit. However, the contradiction may continue until a clarification is issued to state whether the blocked credits is in respect of goods that have been destroyed before taking such credits or is applicable even in case where goods are destroyed after the credits have been availed in respect of such goods.

Now looking at 'services', we find that the adjectives used to list the 8 forms of supply in this clause are akin to transactions involving goods and not services. Services other than licensing, rental and leasing services have not been specifically included in the meaning of the term 'supply'. However, transactions involving services are also required to be passed through the same criteria for determination of supply. In doing so, a slight adjustment in the way of looking at transactions involving services is necessary so as to substitute the object of supply from goods to services while administering the tests for determining the forms of supply involving services. In other words, the same 8 forms of supply must be applied in relation to services but with adjustment that is understood by the expression *mutatis mutandis.*

The law has provided an inclusive meaning to the word 'supply' which implies that the specific transactions which are listed in the said section are only illustrative.

It is essential that such supplies should be by the supplier who is engaged in business [(refer discussion under section 2(17)]. However, in case of import of services for a consideration, even if, such services are imported otherwise than in the course or furtherance of business, it would still be a supply. Refer discussion on inward supply in section 2(67) and compare it with outward supply in section 2(83).

The word 'supply' should be understood as follows:

- It should involve delivery of goods and/ or services to another person; the word 'delivery' must be understood from allied laws such as Sale of Goods Act, 1930 or Indian Contract Act, 1872; delivery could be actual, physical, constructive, deemed, etc.
- Supply will be treated as 'wholly one supply'–if the goods and/ or services supplied are listed in Schedule II or could be classified as a composite supply or mixed supply.
- It should involve *quid-pro-quo*–viz., the supply transaction requires something in return, which the person supplying will obtain, which may be in money/ monetary terms/ in any other form (except in cases of activities specified in Schedule I which are deemed to be supplies, even when made without consideration). What is received in return need not be always in 'money'; it can partly/ wholly be in money's worth too (non-monetary in nature);
- Transfer of property in goods from the supplier to recipient is not necessary viz., lease or hiring of goods.

(b) It is essential that all the above forms of transactions including the extended and generic meaning given to the word 'supply' should be made for a 'consideration'. The only exception for this rule of construction will be cases specified in Schedule I. Absence of consideration [(as defined in section 2(31)] will take away the character from the word 'supply' under this clause, and accordingly, the transaction will not attract tax. It is important to note that supplies listed in Schedule I, would nevertheless attract the wrath of tax, even when made without consideration. One has to, therefore, be very careful, while analysing the tax implications in respect of supplies listed in Schedule I. **Supply should be in the course or furtherance of business:** For a transaction to qualify as 'supply', it is essential that the same is 'in the course' or 'furtherance of business'. This implies that only such supplies of goods and/ or services by a business entity would be liable to tax, which are 'in the course' or 'furtherance of business'. Supplies that are not in the course of business or in furtherance of business will not qualify as 'supply' for the purpose of levy of tax, except in case of import of service for consideration, where the service is treated as a supply, even if, it is not made in the course or furtherance of business.

The expression 'in the course of' must be construed differently from 'in the course or'. The GST Laws uses the expression 'in the course or' and careful analysis is, therefore, essential. The expression 'in the course' appearing in section 7(1)(a) does not appear in section 7(1)(b). However, one cannot lose sight of the fact that the expression 'in the course' is

used selectively in respect of transactions listed in Schedules I, II or III. The import of this would mean that the meaning attributable to the expression 'in the course' would apply only in respect of those transactions, so listed, in the relevant Schedules.

Let us now try to understand the meaning of the phrase 'in the course'. The expression 'in the course' implies not only a period of time during which the movement or transaction is in progress but postulates a connected relationship. Therefore, the class of transactions need to be analysed and cannot be randomly applied to the provisions of section 7 or section 8. So construed, the word 'or' appearing in the phrase or expression 'in the course **or** furtherance of business' assumes importance. When read in a proper perspective, the preposition 'or' actually bisects the entire phrase into two limbs. Therefore, the 8 forms of supply would tantamount to transaction of supply when such supplies are in the *course of business*, or in the *furtherance of business*. Therefore, the legislature has supplied huge amount of elasticity in understanding the meaning of the term 'supply'.

The term 'business' has been defined under the GST Laws to include:

(i) a wide range of activities (being "trade, commerce, manufacture, profession, vocation, adventure, wager or any similar activity")

(ii) "whether or not it is for a pecuniary benefit"

(iii) regardless of the "volume, frequency, continuity or regularity" of the activity

(iv) and those "in connection with or incidental or ancillary to" such activities.

A question came up before ***Authority for Advance Ruling – Karnataka*** in the matter of ***Columbia Asia***, whether allocation of expenses to other registered units by Corporate Office tantamount to supply of services between related or distinct persons as per para-2 of schedule I to CGST Act and accordingly liable to tax. The Authority ruled that the activities performed by the employees at the Corporate Office in the course of or in relation to employment such as accounting, other administrative and IT system maintenance for the units located in the other States as well, i.e., distinct persons as per section 25(4) of the CGST Act shall be treated as supply as per Para-2 of Schedule I of the CGST Act. It is known to all that a corporate body being a separate legal entity, its head office can also be treated as a branch. It is interesting that CBIC has issued *Circular 199/11/2023-GST dated 17.07.2023* highlights the following points:

a. inter-branch transactions are real and liable to be taxed without requirement of any flow of consideration from destination-branch to originating-branch of such supplies.

b. originating branch is permitted to avail and utilize input tax credit when discharging output tax in respect of such inter-branch transactions.

c. exclusion from tax is permitted to originating-branch only if such tax, if charged, were to be fully creditable in destination-branch.

d. exclusion to originating-branch from paying output tax on inter-branch transactions becomes inapplicable if such tax is not fully or partially creditable in destination-branch.

e. originating branch claiming full input tax credit but not paying output tax on account of this exclusion may be answerable for reversal of such credit since exclusion from paying output tax implies admission of outward supply for a taxable value of Rs. Nil.

Further, inter-branch transactions are taxable when destination-branches are located outside India and also when related persons (not being mere distinct persons) located in India are involved.

Identifying inter-branch transactions that command this treatment, is not simple. While supply must be real to be subject to tax, absence of consideration alone is furnished by fiction in schedule I. Artificial supplies cannot be imagined based on benefits enjoyed by destination-branches (or related persons). GST is imposed on transaction value, i.e., unique facts of each case affects the extent of GST chargeable in each case. GST does not authorize normalizing the taxable value. That concept existed in Central Excise but was let go of in 2014 itself when normal transaction value was replaced with transaction value. It is seen that every benefit enjoyed by a branch feeds an inquiry into the source of such benefit – an originating-branch (or related person) – to impute supply. Non-existent supply cannot be forced into a business based on flow of benefits without a real supply. GST is a tax on supply and not a tax on benefits. GST is a tax on actual price (of each supply) and not a tax on comparable price. Refer additional discussion under section 7(1)(c) below.

(c) 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:

Clause (aa) in sub-section (1) of Section 7 of the CGST Act was inserted, retrospectively with effect from the 1st July, 2017 *vide The Finance Act,*

2021. This amendment has been notified on 1st January 2022 *vide Notification No. 39/2021- Central Tax dated 21.12.2021.* The purpose for the amendment was tabled at the 39th Meeting of the GST Council in the light of the Hon'ble Supreme Court judgement in the case of *State of West Bengal v. Calcutta Club Limited [2019 (29) G.S.T.L. 545 (S.C.)]* and *CCCE & ST & Ors. v. Ranchi Club Limited [2019-VIL-34-SC-ST]*. Considering the implications in the GST regime, it has been ensured to levy of tax on activities or transactions involving supply of goods or services by any person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.

For understanding the aforesaid clause, let us understand the following ingredients:

Activities or transactions – seems not limited by "sale, transfer, barter….." but every activity or transaction is covered.

Other than an individual – covers all forms of organizations including HUF, partnership firms, societies, trusts, association of persons, body of individuals and companies.

Further, an explanation has also been inserted to state that the members or constituents shall be deemed to be two separate persons notwithstanding anything contained in any other law for the time being in force or any judgement, decree or order of any Court, Tribunal or Authority.

As inferred from above, the scope of supply is expanded as now services rendered by a club, association, society, or any such body (for a subscription or any other consideration) to its members constitute supply and are exigible to GST.

Further it is pertinent to mention that an important relief is provided to RWA / CHS under entry no. 77 of *Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017*, as amended, which provides an exemption in respect of service by an unincorporated body or a non-profit entity registered under any law for the time being in force, to its own members by way of reimbursement of charges or share of contribution for-

(i) the provision of carrying out any activity which is exempt from the levy of GST (e.g., recovery from members for electricity charges and statutory dues levied on the RWA or CHS as a whole); or

(ii) sourcing of goods or services from a third person for the common use of its members in a housing society or a residential complex, up to Rs. 7,500 per month per member

The exemption under clause (i) is in addition to the exemption referred to in clause (ii).

These exemptions, particularly one up to Rs. 7,500 per month per member is a major relief for RWA or CHS. The point to note is that this exemption is restricted to sourcing of goods or services from a third person for the common use of its members such as provision of security, conservancy, maintenance of common property and facilities etc. and not to facilities and services provided by the RWA or CHS to its members on chargeable basis such as supply of electricity by DG sets, use of Society Hall on rental basis, paid parking space, penalty for delayed payment of charges etc.

An issue related to the above exemption - If the contribution per month per member exceeds `7,500/-, is the entire amount exigible for tax or it is the excess over `7,500/- that will be exigible? There are contrary views on this. In CBIC *Circular No.109/28/2019-GST, dated 22.07.2019*, view has been expressed that "in case the charges exceed ` 7,500 per month per member, the entire amount would be taxable". In other words, this Circular provides that the limit in entry 77(c) of *Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017* is NOT slab-based but absolute. i.e., if maintenance charges are 9,000/- then GST will apply on `9,000 and not `2,500 (9,000-7,500) over and above `7,500/. However, this part of the Circular has been quashed by the Hon'ble Madras High Court in *Greenwood Owners Association & Ors. v. UoI that on 01.07.2021 [2021 (55) G.S.T.L. 529 (HC Mad.)]* as "contrary to the express language of the entry in question", the Court held that the term 'upto' connotes an upper limit and means that any amount till the ceiling of ` 7,500 would be exempt for the purposes of GST, that is, it is only the excess over ` 7,500 which will be liable to tax.

This decision was appealed before the Division Bench of Hon'ble Madras High Court by the Department. The Division Bench has stayed the decision of the Single Bench with respect to the quashing of the Circular and posted the matter for further hearing i.e., still pending.

Another interesting aspect if that with the retrospective introduction of section 7(1)(aa), it is an affirmation that GST would otherwise not be payable by such clubs and associations. And when this provision came to be notified from 01.01.2022, taxpayers (clubs and associations) could not be denied input tax credits, even though there is no saving clause in

section 16(4) to save these taxpayers from a double burden – retrospective output tax without input tax credit. Refer further discussions under section 16(4) later. Such taxpayers (clubs and associations) would be liable to discharge output tax on 20.02.2022 not just for the period from 01.01.2022 but from 01.07.2017 up to 31.01.2022 (55 months).

(d) Import of service will be taxable in the hands of the recipient (importer): The word 'supply' includes import of a service, made for a consideration [(as defined in Section 2(31)] and whether or not in the course or furtherance of business. This implies that import of services even for personal consumption would qualify as 'supply' and, therefore, would be liable to tax. This would not be subject to the threshold limit for registration, as tax would be payable in case of import of services on reverse charge basis, requiring the importer of service to compulsorily obtain registration in terms of section 24(iii) of the Act. Although, import for personal purposes is included in the definition of supply, entry 10(a) to *Notification No. 9/2017-Integrated Tax (Rate) dated 28.6.2017*, exempts import of services under entire Chapter 99 from payment of GST. However, the GST law has ensured that persons who are ***not*** engaged in any business activities will not be required to obtain registration and pay tax under reverse charge mechanism, and in turn, requires the supplier of services located outside India, to obtain registration for the OIDAR (Online Information and Database Access and Retrieval) services only.

Note: Import of services is included within the meaning of 'supply' under the CGST/ SGST Acts. However, it would be liable to IGST since it would not be an intra-State supply. In fact, section 2(21) of IGST Act has adopted the meaning of 'supply' from CGST/ SGST Acts.

(e) Transactions without consideration: The law lists down, exhaustively, cases where a transaction shall be treated as a 'supply' even though there is no consideration. Such transactions are listed in Schedule I. Once an activity is deemed to be a 'supply' under Schedule I, the value of taxable supply shall be determined in terms of provisions of section 15(4) of the Act read with Chapter IV (Determination of Value of Supply) of CGST Rules.

In this regard, it may be noted that on careful consideration of the essential ingredients of a valid contract, it cannot be disputed that a contract without consideration is not a contract at all. The reference made to 'transactions without consideration' in Schedule I does not imply that a void contract is being made valid, by GST laws. It must be understood that transactions that otherwise bear all the indicia of a valid

contract but not so due to absence of consideration, such absence is furnished by legal fiction. Notice the instances that are covered by this legal fiction – transactions *inter se* branches of same legal entity, principal and agent – are good examples to show the limited purposes that this legal fiction serves. Even though they are not contracts, but by legal fiction, flowing from section 7(1)(c) read with Schedule I, they will be nevertheless regarded as a 'supply' and made taxable. As can be seen from the above, in all other clauses of section 7(1), supply exists only when a valid contract subsists, but in these select circumstances, supply is imputed by legal fiction in the absence of a contract. It is, therefore, important not to extrapolate this legal fiction beyond the specific cases to which the law imputes this fiction.

The activities specified in Schedule I are analysed in the ensuing paragraphs:

1. **Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.**
   (a) Of the 8 forms of supply, the only forms that qualify as a supply, under this category are 'transfer' and 'disposal'. Other 6 forms of supply listed in Section 7(1)(a) would not stand categorised in this paragraph, given that there is (a) an element of a consideration that is intrinsic to the form, such as the case of a sale or barter or exchange, or (b) there is no business asset that is permanently transferred such as in the case of a licence or rental or lease, or any other service for that matter.
   (b) Ordinarily, there can be no permanent transfer in case of goods sent for job work. The aspect of sending goods on job work is not a supply, as clarified *vide Circular No. 38/12/2018, dated 26.03.2018*. However, where a registered person has purchased any moulds, tools, etc. and has sent the same to the job worker, there is a good chance that the goods are never returned, given that the time limits specified in section 143 for goods sent for job work does not apply to moulds, tools and other specified goods.
   (c) In the above context, business asset need not always be goods, it can as well be service that could be permanently transferred which could attract the above provisions. E.g., unexpired right in a business franchise permanently transferred to another person. Assignment of benefits left to be enjoyed in an executed contract is not a case of transfer of business assets. But assignment for a consideration is a supply in the nature of tolerating an act or situation.

(d) While the word 'transfer' in this entry suggests that there should be another person who would receive the business assets, there is no requirement of another person in the case of 'disposal'. Therefore, if a business asset on which credit is claimed has been discarded, the transaction shall be regarded as a supply.

(e) Business assets procured for the purpose of serving the requirements of 'Corporate Social Responsibility', being a statutorily imposed obligation' may be contended to be a procurement made in the course or furtherance of business. However, there would be no escape from the levy of tax on the transaction, if the asset is permanently transferred. The treatment would be no different even in the case of a donation. But amendment in section 17(5)(fa) must be given due consideration while examining certain CSR activities.

(f) Tax treatment attendant to permanent transfer (or disposal) of business assets applies to pre-GST business assets too. It is for this reason that in case of motor vehicles, *Notification No. 20/2018-Central Tax (Rate) dated 25 Jan 2018* gives some relief on their transfer to allow 'margin method' with full exemption of cess by notification 1/2018-Cess dated 25 Jan 2018.

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 fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both

(a) The deemed supplies covered in this paragraph are based on a relationship between the supplier and recipient. The relationship covered under this paragraph as related persons defined by way of an explanation to section 15 and distinct persons in terms of section 25(4) and 25(5) of the Act.

(b) Transactions with distinct persons are normally without consideration since they are part of the same entity located in different geographies, unless the accounting system is so sophisticated or so devised, that it treats the locations in each State as a separate/ independent entity, even for book-keeping purposes and effects payments in monetary terms. Let us take instances of transactions between distinct persons that are not traceable in the books of account, but requires attention from the perspective of this paragraph in the Schedule:

(i) Stock transfers e.g., transfer of sub-assemblies, semi-finished goods or finished goods.
(ii) Transfer of new or used capital goods/ fixed assets–including movement of laptops when employees are transferred from one location to another.
(iii) Bill-to ship-to transactions wherein the vendor issues the invoice to the corporate office and ships the goods to the branch office.
(iv) Centralised management function like Board of Directors, Finance, Accounts, HR, Legal, Procurement Functions and Other Corporate Functions at one location say Corporate Office and the entity having multiple registrations in various States results in supply of Management Services by the Corporate Office to distinct persons;
(v) A head office may not be supplying services to its branch offices, if these branches are implementation sites for the project secured by head office. No two identical contracts are required to be implemented in exactly the same manner;
(vi) A transaction of sale of goods from one registration and providing after sales support or warranty services/ replacement services by another registration of the same entity;
(vii) Contractor registered in one State moving machinery for use in project secured by branch in another State when project execution is without recourse to former State;
(viii) Contract awarded by a customer to an entity at the corporate office from where the centralized billing to the customer is made but the execution of the contract is carried out through various registrations of the same entity located in other/ multiple States.
(ix) Permitting employees to make use of the office assets for personal use – say usage of motor vehicles, laptops, printers, scanners, etc.

(c) This paragraph is independent of the scope of paragraph 1. A transaction involving business asset permanently transferred to a distinct person, would fall outside the scope of paragraph 1, but would still be liable to be treated as a supply in terms of this paragraph. The provisions would equally apply even in the case of assets procured in the pre-GST regime. Please note that a transaction that is already a 'supply' is now furnished a special

treatment by the fiction in Schedule I in this paragraph and in the next unlike paragraph 1 (which was not a supply but is deemed to be one by this fiction).

(d) The explanation appended to section 15 of the CGST Act provides that an employer and employee will be deemed to be "related persons". Accordingly, supplies by employer to employees would be liable to tax, if made in the course or furtherance of business, even though these supplies are made without consideration, except:
   (i) Gifts by an employer to an employee of value up to Rs 50,000 (to be understood as inclusive of taxes, as read with Rule 35 of the CGST Rules) in a financial year (whether this value needs to be pro-rated in the first year of implementation of GST/ first year of commencement of business is a moot question; however, the presumption is that a part of the financial year would be construed as a whole year).
   (ii) Cash gifts of any value, given that the 'transaction in money' is not a subject matter of supply as the same receives treatment as a taxable salary in the hands of the employee.
   (iii) Services by employee to the employer in the course of or in relation to his employment–treated as neither a supply of goods nor a supply of services.

(e) It is interesting contradiction that where gifts are given by the employer to the employee in excess of Rs. 5,000, income-tax law treats the same as emoluments in the course of employment attracting income tax. Care must be taken to ensure that divergent tax treatment of common facts is not applied in different laws.

(f) Transfer of business assets of employer to employee when it is nearing end-of-life must be examined whether it would be (i) disposal of business assets (ii) gifts or (iii) supply. Where there is some reasonable residual useful life, then employer giving away such business assets to employees at written down value would be supply (and not the other two possibilities) and would attract the incidence of tax.

(g) Where business assets are given to employees at 'nominal value', the existence of relationship would attract valuation at Open Market Value (OMV), if it is a supply.

(h) The question that arises as to what constitutes a gift is discussed in the following paras:

(i) Gift has not been defined in the GST laws.

(ii) In common parlance, gift when made without consideration is voluntary in nature and is normally made occasionally.

(iii) It cannot be demanded as a matter of right by the employee and the employee cannot move to a Court of law for obtaining a gift. However, if any gift, by whatever name called, is a right of the employee in terms of the employment contract/ employee policy of the entity, then such gift shall be treated as emoluments arising out of the employment (including perquisites) and cannot be treated as a supply.

It is apposite to mention here the clarification on perquisite issued by *CBIC vide Circular No.172/04/2022-GST, dated 6.07.2022*. The relevant extract of which is as under:

Perquisites provided by employer to the employees as per contractual agreement		
S No.	***Issue***	***Clarification***
5.	*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?*	*1. Schedule III to the CGST Act provides that "services by employee to the employer in the course of or in relation to his employment" will not be considered as supply of goods or services and hence GST is not applicable on services rendered by employee to employer provided they are in the course of or in relation to employment.* *2. Any perquisites provided by the employer to its employees in terms of contractual agreement entered into between the employer and the employee are in lieu of the services provided by employee to*

		the employer in relation to his employment. It follows therefrom that 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 when the same are provided in terms of the contract between the employer and employee.

(iv) As a corollary, one can argue that the scope and ambit of the word 'supply' also includes a transaction of a barter/ exchange, in which case, the transaction may be regarded a taxable supply. In such a case, the question that would arise is whether a salary paid in non-monetary terms will attract GST. However, the CGST Act contains a dedicated valuation rule (rule 27) which contains the *modus operandi* to arrive at the value of the supply, the consideration of which is made either wholly or partly in non-monetary terms.

(v) The credit restriction on membership of a club, health and fitness centre [under section 17(5)(b)(ii)] would not apply where the employer provides the facilities to its employees, whether or not for a consideration, given that such a supply without consideration, would also be deemed to be an outward supply under this paragraph of the Schedule.

(vi) Where gifts are liable to tax under this Schedule, it would be fair and proper to treat such gifts as taxable outward supplies, and therefore, credit thereon may not be required to be restricted under Section 17(5)(h).

(vii) It may also be noted that a gift need not always be in terms of goods. A service can also constitute a gift, such as gift vouchers for a beauty treatment.

(viii) Another question which arises that is on what value will the GST liability be calculated in case the gift amount exceeds Rs.50,000/-. Although it is not expressly mentioned in the CGST Act, but a reasonable construction can be drawn that GST shall be levied on the whole amount in case the gift amount exceeds Rs. 50,000/-.

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.

(a) It is of utmost importance to note that this paragraph substitutes actual relationship of Principal-Agent with Buyer-Seller and accordingly, tax on such buyer-seller to be applied. In the books of, say, the Agent, revenue by way of fee or commission will be recognized for GST purposes, turnover of sale with credit on purchases will have to be reported. Key is to locate Reseller-Agent and Agent *simplicitor** because compulsory registration will apply to former and not the latter.
*"Agent simplicitor" is a simple or straightforward agent. This might be an entity or individual that acts as an agent without the additional aspect of reselling products or services.

(b) The definition of the terms 'agent' and 'principal 'have to be understood contextually and have been reproduced below:
- Section 2(5) of the Act – "agent" means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another.
- Section 2(88) of the Act – "principal" means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both.

(c) Where an Agent receives goods directly from the Principal or if the Principal's vendor directly dispatches goods to the location of the agent, the Principal shall be required to treat the movement as an outward supply of goods by virtue of this clause. If understood in its proper perspective, when an agent receives goods on behalf of the Principal and thereafter issues the goods to the Principal, the transaction will be regarded as a supply by the Agent to the Principal.

(d) An important question that may arise here is - as to how the transaction would appear to the ultimate recipient of a supply, when affected by the Principal through the Agent, or to the supplier who effects the supply to the Principal through an Agent.

(e) There are two Circulars issued clarifying scope of transactions between Principal and Agent which clarifies the above aspects:

(i) *Circular No. 57/31/2018-GST, dated 4.09.2018* (in the context of scope of principal-agent relationship). The entire jurisprudence under Indian Contract Act,1872 has been brought to bear in GST by making reference to section 182 thereof and states as:

"Thus, 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. Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the fold of the said paragraph. 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. Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent then further provision of the said goods by the agent to the principal would be covered by the said paragraph. In other words, the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal".

There are various scenarios which are discussed to analyse and conclude the scope of this paragraph in Schedule I. One interesting aspect to highlight in this Circular is that 'whether the agent is required to issue invoice to customer in his own name or in the name of the Principal' is a question that must be determined by the flow of transactions and not left flexible in the hands of the agent. But this Circular appears to wait upon the agent to confirm who will issue the invoice. This aspect can cause great concern because a C&F agent who handles the goods–receive, store and dispatch–on the Principal, may pay GST on commission and later it might be imposed on this agent to pay tax 'as if' this entire arrangement were a 'trading transaction' by fiction in Para 3 of Schedule I. At

that time, things would have already concluded and irreversible.

Experts hold the view that 'if agent handles the goods belonging to Principal', this fiction applies and even though commission earned would be income for income-tax purposes, GST requires total turnover to be treated as outward supply with credit for inward supplies from Principal. If the agent does not handle the goods but merely introduces buyer and seller, this fiction would not apply. Yet another category would be the case of Customs Broker who handles the goods not for making further supplies of such goods but to clear them with customs for import or export.

(ii) *Circular No. 73/47/2018-GST, dated 5.11.2018* (in the context of del-credere agent or DCA) states as:

Sl. No.	***Issue***	***Clarification***
1.	*Whether a DCA falls under the ambit of agent under Para 3 of Schedule I of the CGST Act?*	*As already clarified vide Circular No. 57/31/2018-GST dated 4th September, 2018, whether or not the DCA will fall under the ambit of agent under Para 3 of Schedule I of the CGST Act depends on the following possible scenarios:* • *In case where the invoice for supply of goods is issued by the supplier to the customer, either himself or through DCA, the DCA does not fall under the ambit of agent.* • *In case where the invoice for supply of goods is issued by the DCA in his own name, the DCA would fall under the ambit of agent.*
2.	*Whether the temporary short-term transaction-*	*In such a scenario following activities are taking place:* *1. Supply of goods from supplier (principal) to recipient;*

	based loan extended by the DCA to the recipient (buyer), for which interest is charged by the DCA, is to be included in the value of goods being supplied by the supplier (principal) where DCA is not an agent under Para 3 of Schedule I of the CGST Act?	*2. Supply of agency services from DCA to the supplier or the recipient or both;* *3. Supply of extension of loan services by the DCA to the recipient.* *It is clarified that in cases where the DCA is not an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction-based loan being provided by DCA to the buyer is a supply of service by the DCA to the recipient on Principal-to-Principal basis and is an independent supply.* *Therefore, the interest being charged by the DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier. It may be noted that vide NN-12/ 2017-Central Tax (Rate,) dated 28th June, 2017 (S. No. 27), services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services) has been exempted.*
3.	*Where DCA is an agent under Para 3 of Schedule I of the CGST Act and makes payment to the principal on behalf of the buyer and charges interest*	*In such a scenario following activities are taking place: 1. Supply of goods by the supplier (principal) to the DCA; 2. Further supply of goods by the DCA to the recipient; 3. Supply of agency services by the DCA to the supplier or the recipient or both; 4. Extension of credit by the DCA to the recipient.* *It is clarified that in cases where*

	to the buyer for delayed payment along with the value of goods being supplied, whether the interest will form a part of the value of supply of goods also or not?	*the DCA is an agent under Para 3 of Schedule I of the CGST Act, the temporary short-term transaction-based credit being provided by DCA to the buyer no longer retains its character of an independent supply and is subsumed in the supply of the goods by the DCA to the recipient. It is emphasised that the activity of extension of credit by the DCA to the recipient would not be considered as a separate supply as it is in the context of the supply of goods made by the DCA to the recipient.* *It is further clarified that the value of the interest charged for such credit would be required to be included in the value of supply of goods by DCA to the recipient as per clause (d) of sub-section (2) of section 15 of the CGST Act.*

(iii) As per *Notification No. 15/2018- Central Tax (Rate), dated 26.07.2018, the* services supplied by Direct Selling Agents (Other than Body Corporate, Partnership or LLP) to Bank or NBFC shall be covered under Reverse Charge.

(f) It would be remarkable if an Agent *simplicitor* who did not claim input tax credit is actual found to be a Reseller-Agent who ought to have discharged output tax (and claimed input tax credit). Tests to identify either will be key and there are examples such as Auctioneer or APMC Agents who 'handle' goods belonging to seller yet are Agents' *simplicitor*.

4. Import of services by a [16][person] from a related person or from any of his other establishments outside India, in the course or furtherance of business.

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[16] *Substituted for "taxable person" by The CGST (Amendment) Act, 2018, notified through Notf No.02/2019-CT dt. 29.01.2019 - Brought into force w.e.f. 01.02.2019.*

(a) The expression 'import of service' has been defined to bear an innate requirement of an outflow of foreign convertible currency, and, therefore, excludes any form of importation of services without consideration. Therefore, this clause was inserted to encompass such of those services, which are received from related persons/ their establishments outside India. It is important for one to refer to *Explanation* 1 to Section 8 of the IGST Act, 2017 which deems any establishment outside India as an establishment of a distinct person. By virtue of this treatment, all services received by a person in India from its branches/ establishments located outside India would be considered to be a supply, even when made without consideration.

(b) For instance, say A Ltd. is a holding company in USA and B Ltd., a subsidiary in India. Many business operations are centralized in the USA such as accounting, ERP and other software, servers for the backup, legal function, etc. For the purpose of this clause, the back-end support provided by the holding company to the subsidiary company in India shall be regarded as a supply, whether or not there is a cross-charge, even if, the same is not recognised in the books, or any contracts, since it is categorized as an import of service by a person from a related person without consideration, in the course of business.

(f) Activities or Transactions to be treated as supply of goods or supply of services:

It is important to understand as to what constitutes a transaction of supply of goods or a transaction of supply of services. Section 7(1A) creates a fiction under the statute and specifies which supply is to be treated as a transaction of supply of goods or a transaction of supply of services. So understood, one can list out 17 supply transactions enlisted in Schedule II of which 4 classes of supply transactions are listed out as supply of goods while 13 others would tantamount to supply of services. On a careful consideration of the relevant clauses, it can be noticed that all the 6 classes of transactions listed out in Article 366(29A) of the Constitution of India are covered within the scope and ambit of Schedule II, except Para-7 being omitted[17] by the Finance Act, 2021, w.r.e.f. 1-Jul-2017 As such, 1 transaction, out of the 5, is treated as supply of goods, the other 4 are deemed to be supply of services.

Importantly, paragraph 6(a) relating to works contracts [(as defined in section 2(119)] is treated as a composite supply, of services. However, Section 2(119) has 14 distinct words, all of which are required to be read

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[17] *Notified vide Notf No. 39/2021-CT dt. 21.12.2021*

in conjunction with the words “immovable property”. Contracts relating to construction of immovable property are specifically covered in paragraph 5(b) of Schedule II. Therefore, all works contracts other than those relating to construction of immovable property would amount to composite supply in terms of section 2(30) read with Section 8.

It is important for one to understand that **what is** specified/ listed in Schedule II not only provides clarity but also **what has to be** treated as supply of goods or supply of services. Yet it must be borne in mind that ‘treatment’ in schedule II does not ‘dictate’ existence of supply. In fact, the language in section 7(1A) is very clear to confer a secondary role to schedule II and give primacy to all clauses in section 7(1).

Transactions listed out in Schedule II DO NOT enlarge scope of supply as defined under section 7(1) of the Act. By shifting the ‘placement’ of Schedule II from clause (d) of section 7(1) to a separate section 7(1A), it is made clear that firstly, a transaction must already be determined to be ‘supply’ and then, for the limited purposes of ‘treatment’ by fiction, entries in Schedule II must be referred. This amendment was introduced with retrospective effect from 1.7.2017 vide CGST (Amendment) Act, 2018.

It is not that Schedule II is exhaustive. But where it is listed, then those transactions will receive the ‘treatment’ as specified. Transactions involving ‘goods’ if specified in Schedule II to be treated as supply of ‘services’ then, all provisions of GST law that are applicable to supply of services must be extended (without exception) to this transaction even though it involves goods.

It is important to understand the intent of the legislature. For example, Para 5(a) of Schedule II reads “renting of immovable property”. In this situation, how does one understand the taxability of the transaction where consideration is not involved? The only way to understand this lacuna is that such transactions that lack consideration would be relegated to valuation principles, but, importantly, the transaction would be treated as a supply.

Another instance to consider is Para-1(c) of Schedule II to CGST Act which deals with ‘hire purchase’ transactions. Although Hire Purchase Act, 1972 has been repealed in 2005. Trade understands hire-purchase versus lease (even though lease is divided into operating and finance lease). In GST law, all kinds of lease are treated the same–supply of services. Lease without possession is legally a license and license too is treated as a supply of services, but not hire-purchase. While Para-1(b) and 5(f) deal with lease and license, Para-1(c) treats hire-purchase as a supply of goods. Invoice for goods delivered under a hire-purchase will

follow time and place of supply provisions applicable to goods and not to services.

This presents an anomaly which is explained in the illustration below:

- Let's start with simple operating lease arrangement where goods, say, electricity generator whose normal sale price is Rs.1,00,000 is lying in stock at Puri, Orissa is sent to a customer-site situated in Bhilai, Chhattisgarh.
- Supplier is registered in Orissa and Recipient-customer is registered in Chhattisgarh.
- Supplier makes an inter-State supply and issues invoice for Rs.12,000. This is the lease rental invoice of first month of a 10-month lease including interest built into this lease rental amount.
- Goods travel from Puri to Bhilai and is clearly an inter-State movement of goods and IGST has been charged on the invoice.
- At the end of first month, recipient-customer does NOT return the generator by transport from Bhilai back to Puri. It is retained in Bhilai to be used in the second month.
- So, the question to consider is, whether 10-month lease agreement, is one agreement with 10 instalments to pay or is it 10 monthly agreements contained in one document
- Quick answer that comes to mind is that it is 'one agreement with 10 instalments to pay'. But it is well understood that time of supply does not get deferred simply because payment is collected in instalments. And if it is one agreement to supply, then it is one supply and, therefore, has one time of supply which is the first day of the first month. By this reasoning, entire GST at, say, 18% on Rs. 1,20,000 (Rs.12,000 x 10 instalments) will be payable in first month (within due date permitted).
- On a more careful consideration of that question, it becomes clear that this lease (exceptions to be examined) is a 'month-to-month' agreement. And as all monthly agreements are identical, it is executed in a single document. Now there are 10 supplies and will have 10 times of supply and hence, GST is payable on Rs.12,000 at 18% each month.
- Now, that it is clear that lease is a month-to-month arrangement, the next question to consider is whether the lease rental invoice for the second month, will be inter-State (as the first month) or will it become an intra-State supply.
- Recollect that generator is lying with the Recipient-customer at Bhilai at the end of first month and will be continued to be used in second month

without actually being returned to Puri and then received back to Bhilai.

- Now, location of supplier of services is defined in IGST Act (and also in CGST Act) but location of supplier of goods is NOT defined. To examine location of supplier of goods, reference must be had to 'place of business' as defined in section 2(85) of CGST Act which provides that it will be (i) place where business is ordinarily carried on, in this case, it would be Puri or (ii) place where goods are stored, in this case, it would be Bhilai or (iii) place from where supplies are made or supplies are received or (iv) place where books are maintained or (v) place of an agent appointed to carry on business. Applying the above 5 tests, it appears (ii) would be the appropriate test and hence location of goods in second month would be place of business.
- Business of lease is not concluded every month. It has already been concluded at the start of first month. Hence, the first limb in the definition is non-operative in the present case and second limb in the definition comes into operation to decide the 'location of supplier of goods'.
- As a result, location of supplier of goods will be the location of the goods for the supply by way of lease in the second month. Goods being located in Bhilai will be an intra-State supply by the Supplier who is located in Puri.
- It is for this reason, that Schedule II contains Para-1(b) (and even 5(f) in case of license) that the supply of goods by way of lease will be 'treated' as supply of services.
- When transaction is treated as supply of services, then location of goods becomes irrelevant and location of supplier of services (as defined in section 2(15) of IGST Act and 2(71) of CGST Act) will determine all months to be inter-State supplies; and
- Supplier situated in Puri, Orissa will NOT be required to take registration in every State where customers' sites are located in lease or license supplies.

Now, the above concept DOES NOT apply to hire-purchase because Para-1(c) states that hire-purchase will be treated as supply of goods. The new question that arises here is whether the Supplier under hire-purchase arrangements will be liable to take registration in all States where customers' sites are located.

Experts opine that in hire-purchase, it is not a month-to-month hire-purchase but a single agreement for the entire duration and each periodic payment is only an instalment, therefore, there is only one supply with one time of supply and tax is payable at the rate applicable to those goods and on ENTIRE hire-purchase price. There is a pressing

need for a Circular on this aspect of difference between HP and Lease. FAQs dated 27.12.2018 on Banking, Financial Services, and Insurance (BFSI) released by Government only refers to the aspect that exemption from tax on interest is NOT AVAILABLE to finance lease (which can be extended to HP also) even though each periodic payment clearly contains an element of 'interest' (FAQ 47).

Reason for the divergent treatment of HP compared to Lease provided by experts is stated to be in the definition of 'hire-purchase agreement' from IND AS 17 (which carries the essence from definition in section 2(c) of the (now repealed) HP Act.) It states that HP is a single agreement for the entire duration where (i) possession is already passed (ii) option to purchase (actually, option to reject) is granted on payment of last instalment and (iii) each periodic amount paid is merely an instalment within HP-Price. Therefore, in case of HP, since GST has already been paid at the start of HP agreement, there is no requirement for HP-Supplier to be registered in every State where the HP-stock is supplied and put to use.

Care must be taken to study what is sought to be achieved by each entry in Schedule II. As an exercise one may think about Para-5(b) versus Para-6(a). And examine 'why' only 'goods are referred in Para-7 and not 'services' also. Para-7 being omitted retrospectively from 1st July, 2017 vide the Finance Act, 2021 with effect from 1.1.2022.

The activities pertaining to this clause are listed in Schedule II to the Act and discussed in the following paragraphs:

Entry in Schedule II	Analysis
1. Transfer	
a. *Any transfer of the title in goods is a supply of goods;*	This would be a clear case of a transfer of goods. It may be noted that this paragraph covers even a plain vanilla transfer of **title in** goods, either by way of sale or otherwise. Accordingly, where any goods are gifted to any person, say a motor car gifted by a businessman to his successor would be a supply of goods, provided there is a transfer of "title in" such goods. In legal parlance, the phrase "title in" and "title to" have different connotations.
b. *Any transfer of right in goods or of undivided share in*	This paragraph can be construed to be a case of a temporary transfer whereas a transfer of **title in** goods would be a sale

Entry in Schedule II	Analysis
goods without the transfer of title thereof, is a supply of services;	simpliciter. One must pay attention to the language employed in this paragraph which speaks of **transfer of right** and not transfer of title. Even though the activity is categorized as a supply of service, the rate of tax applicable on the supply has been linked to the rate of tax as applicable to the supply of same goods involving transfer of **title in** goods. Hence, for all practical purposes to determine the rate of tax on such services, all notifications in respect of that particular goods would merit equal consideration to determine the rate of tax for the service. Refer the entries for Heading 9971 and 9973 to the *Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017*prescribing the rate of tax on services, covering operating lease and financial lease transactions. Illustration: *Notification No. 37/2017- Central Tax (Rate), dated 13.10.2017*was issued to reduce the rate of tax on motor vehicle to 65% of the tax rate as applicable with certain conditions. Considering the rate of tax for leasing of such motor vehicle to be same as that of the rate of tax as applicable on the motor vehicle, even the rate of tax on leasing services stands reduced if the conditions specified in the notification are met.
c. *Any 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, is a supply of goods.*	Any instalment sale or hire purchase transaction with a pre-condition that the possession is transferred on day one, but the ownership is subject to payment of full consideration/ all instalments, would get categorized as a supply of goods at the time of transfer of possession. However, where the transaction is to be valued at the open market value, due care needs to be exercised so as to determine the value of instalments as against the value of the

Entry in Schedule II	Analysis
	goods being transferred. One may also note that transactions of movables that could get covered under BOOT, BOLT, BOT etc., may also get covered under this paragraph.
2. Land and Building	
a. *Any lease, tenancy, easement, licence to occupy land is a supply of services;*	• While a transfer (sale) of land is outside the scope of GST laws, the law seeks to tax certain other transfers pertaining to land, by way of this paragraph *Notification No. 6/2019-Central Tax (Rate), dated 29.03.2019*, as amended by *Notification No. 3/2021- Central Tax (Rate), dated 2.06.2021*, warrants attention in this regard. One issue which clearly emerges from the notification is that in case of a joint development agreement (JDA), the activity of providing the right to construct on a land belonging to the owner, is an independent supply in the hands of the owner and that supply, is treated as a supply of service in terms of this clause. It is inferred that such a service is independent of the construction service which the developer provides to the landowner. The challenge that arises would relate to the valuation for both these supplies. It is important to note that such transactions are vivisected for the purposes of levy of tax and have not been construed as a single demise. Please also note that this entry throws much needed light on the limits to the exclusion available in Para-5 of Schedule III to 'sale of land and (completed) building'. It appears only absolute sale would be excluded from GST and any arrangement inferior to or less than absolute sale, would not be excluded by Schedule III. Arrangements less than absolute sale would be transactions such

Entry in Schedule II	Analysis
	as lease, license, easement, etc., that create 'interest' in immovable property. • The activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service liable to GST. It is a form of lease or renting of property and such activity is specifically declared to be a service in para 2 of Schedule II is a supply of service. Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST. Merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, would not preclude them from the 'scope of supply' and from payment of GST. The transfer of tenancy rights cannot be treated as sale of land/ building in Schedule III. Thus, it is not a non-supply under GST and consequently, a consideration for the said activity shall attract levy of GST. 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. Since renting of residential dwelling for use as a residence is exempt [*Entry 12 of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017*], grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt. As regards services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a

Entry in Schedule II	Analysis
	portion of tenancy premium is liable to GST. [*Circular No. 44/ 18/ 2018-GST dated 02.05.2018*]
b. *Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.*	The activity of leasing or letting out of complexes for the purpose of business or commerce is covered under this clause, and not those used for the purpose of residence. It may be noted that the services by way of renting of residential dwelling for use as residence is exempt vide *Notification No. 12/ 2017–Central tax (Rate), dated 28.06.2017*, except when given to a registered person for business purposes. While on the subject, it is pertinent to note the distinction between a transaction of rent, lease and a transaction of "letting out". A transaction of rent is what is lawfully payable by a tenant; a transaction of lease is an alienation or conveyance for the purpose of enjoyment whether or not for a specified period. The word 'let' is to be understood as a verb meaning allow, permit, grant or hire.
3. Treatment or process	
Any treatment or process which is applied to another person's goods is a supply of services.	While this transaction may not be *pari materia* with a works contract activity, which could get categorized under this clause, it appears, would be "job work" as defined under section 2(68) of the Act. The only difference between the definition clause in terms of section 2(68) and this paragraph – is that the activity would be regarded as a job work only if carried out for a registered principal. However, regardless of the registration of the principal, the activity would be categorized as service by this clause. Certain clarifications have been provided

Entry in Schedule II	Analysis
	vide Circular *No. 11/11/2017-GST, dated 20.10.2017; Circular No. 34/8/2018-GST, dated 1.03.2018*; *Circular No. 38/12/2018, dated 26.03.2018 and Circular No. 126/45/2019-GST, dated 22.11.2019* on job work which would be relevant and are a useful read.
4. Transfer of business assets	
a. *Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, such transfer or disposal is a supply of goods by the person;*	This clause provides for taxability of such of those transactions where business assets stand transferred. Typically, assets donated could be an example of such a transaction. One must pay attention to the fact that this clause abstains from the usage of the expression "in the course or furtherance of business" or "consideration". But, when read along with 2(17)(d), shutting down of a business is also included within business. Also, goods 'forming part' of business assets when applied for non-business purposes covers all cases of 'diversion from intended end-use in business'. Such diversion may be conscious or by a *force majeure* event. Ultimately, end-use of business assets requires careful examination. And these assets may be tangible or intangible. Care must also be taken when such assets are partly used for business and partly for non-business which may not escape incidence of GST.
b. *Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are*	Any part of the business assets if put to use for (a) private purpose or (b) made available to another person to apply it to any non-business use, are covered under this Para. Please note that this sub-para holds its own field compared to previous sub-para regarding end-use of business assets that are goods. Also, supply involving goods may

Entry in Schedule II	Analysis
used, or made available to any person for use, for any purpose other than a purpose of the business, the usage or making available of such goods is a supply of services;	be treated as supply of goods or supply of services but Para-4 is attracted when 'goods' are used as observed by these sub-paras whichever way they may be treated under other paras in Schedule II. One must exercise caution while determining what amounts to private use/ non-business use, since this will have a direct bearing on the deductions claimed under the Income tax law. In this regard, it may be noted that a service by way of transfer of a going concern, as a whole or an independent part thereof, is an exempted service in terms of *Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017*.
c. *where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—* *i. the business is transferred as a going concern to another person; or* *ii. the business is carried on by a personal representative who is deemed to be a*	The supply under this clause can be understood to be a supply of goods, although the paragraph does not explicitly specify so. Attention is drawn to section 29(5) of the Act dealing with "Cancellation of Registration", wherein the law provides that the person applying for cancellation of registration is required to pay an amount equivalent to the credit of input tax or the output tax payable thereon, in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation, whichever is higher. It is important to understand the subtle usage of the expression "ceases to be a taxable person". Cessation of being a taxable person could result from either closure of business, voluntarily or otherwise, while the clause also speaks of transfer of

Entry in Schedule II	Analysis
taxable person.	business in the latter part. In case of cancellation of registration, a person ceases to be a registered person and not a taxable person. One can reasonably infer that in terms of this clause if a business is transferred on a 'lock, stock and barrel' basis as a going concern then such transactions cannot be subjected to tax; even in situations where the transfer of business takes place and a representative (acting as a taxable person) carries on such business, the question of subjecting such a transaction to tax, as a cessation of business does not arise. For this reason, there is an express exemption in entry 2 to *Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017.*
5. Supply of services: The following shall be treated as supply of service, namely: —	
a. *renting of immovable property;*	Renting wholly or partly of any immovable property is treated as a service. Therefore, unless the supply is otherwise exempted (such as renting of residential dwelling for the purpose of residence), the activity shall be regarded as a supply. Please note that 'immovable property' covers a wide variety of property that includes interests in immovable properties.
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*	Paragraph 5 of Schedule III of the Act reads "sale of land and, subject to clause (b) of Para-5 of Schedule II, sale of building. We need to pay attention as to how this clause is to be read and understood. Let us now read the clause as follows: • Sale of land • Sale of building

Entry in Schedule II	Analysis
received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.	• Sale of land and sale of building • Sale of land and building in which an undivided share in land stands transferred It must be noted with caution that Para-5 of Schedule III is 'subject to clause (b) of Paragraph 5 of Schedule II'. It is for this reason that development contracts in the real estate sector have been a subject matter of tax only if they are not saved by the exclusion in Paragraph 5 of Schedule III. Any agreement for sale of an immovable property (being in the nature of transfer of UDS in land plus building or in case of revenue share agreements which equally stipulates transfer of UDS in land plus constructed part) would be subject to tax as a service. But a plain agreement to sell land which later results in a sale deed for land being executed will not be liable to GST. Some experts are of the view that the legislature intends to overcome the Constitutional Bench decision of the Hon'ble Supreme Court in the Larsen & Toubro's case (65 VST 1) and where any part of the consideration is received, prior to obtaining completion certificate or first occupation, would be taxed while all transactions entered into thereafter, would be excluded by Para-5 of Schedule III as sale of land and sale of (completed) building.
c. *Temporary transfer or permitting the use or enjoyment of any intellectual property right;*	The words 'or' in this clause is to be understood as a disjunctive that carves out alternatives. So, this clause envisages three separate classes of transactions which could be as follows: • Temporary transfer of any IPR; • Permitting the use of any IPR;

Entry in Schedule II	Analysis
	• Permitting the use or enjoyment of any IPR. In respect of temporary transfer or usage of IPRs, one needs to travel to the relevant notification to understand their import. The scheme of classification of services for the heading 9973 provides for temporary as well as permanent transfer of IPR in respect of goods. However, with effect from 15.11.2017, the rate notification for goods has also incorporated a paragraph for the permanent transfer of IPR in respect of goods and there has been no corresponding deletion of the words "or permanent" in the rate notification for services. Due care needs to be exercised by the registered person in order to determine whether supply is of goods or services.
d. *Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;*	The dichotomy which prevailed in the erstwhile service tax and VAT regime (i.e., the question of whether software should suffer service tax or VAT or both) has been put to rest under GST. While this paragraph takes care of certain activities in respect of IT software, it must be noted that the supply of pre-developed or pre-designed software in any medium/ storage (commonly bought off-the-shelf) or making available of software through the use of encryption keys, is treated as a supply of goods, classifiable under heading 4907 or 8523.
e. *Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an*	Some examples that may get covered under this clause are as under: • Non-compete agreement for a fee • Notice period recovery • Additional amount agreed upon for

Entry in Schedule II	Analysis
act;	settlement of any dispute/ matter etc • Liquidated damages • Forfeiture amounts actually forfeited or adjusted • Punitive recoveries (even if computed based on quantity and price of material not delivered or piece-rate for work not completed); • Payment to induce another transaction (being itself taxable or non-taxable). Consider a situation where a supplier would supply product 'A' only if the recipient agrees to buy product 'B'- readers can think as to whether such transactions would amount to supply of goods or supply of services? Reference may be made to Maharashtra AAR decision in the case of Maharashtra State Power Generation Company Limited, ruling liquidated damages as supplies under GST. Payment made for purchase of goodwill will not come within this transaction as goodwill is goods and may be taxed under restrictive HSN or residuary Entry No. 453 of Schedule-III forming part of *Notification No. 1/2017-Central Tax (Rate), dated 28.06.2017*. However, if transferee of a business accounts 'goods' being the premium paid over and above the cost of assets received in this acquisition, no supply under this Para can be implied. As this goodwill is a term applied as part of purchase price accounting process. *Circular No. 102/21/2019-GST, dated 28.06.2019* has been issued in order to provide clarification regarding applicability of GST on additional / penal interest. *Further, Circular No. 178/10/2022-GST, dated 3.08.2022* has also been issued to

Entry in Schedule II	Analysis
	provide Clarification on GST applicability on liquidated damages, compensation and penalty arising out of breach of contract or other provisions of law (i) *Liquidated damages;* 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. If a payment constitutes a consideration for a supply, then it is taxable irrespective of by what name it is called; it must be remembered that a "consideration" cannot be considered de hors an agreement/contract between two persons wherein one person does something for another, and that other pays the first in return. If the payment is merely an event in the course of the performance of the agreement and it does not represent the 'object', as such, of the contract then it cannot be considered 'consideration'. Amounts paid for acceptance of late payment, early termination of lease or for prepayment 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

Entry in Schedule II	Analysis
	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. However, CBIC vide *Circular 178/10/2022-GST dated 03.08.2022* has categorically stated that charges recovered for breach or termination of contract is not liable to GST. (ii) *Compensation for cancellation of coal blocks*: Due to cancellation of coal block/mine allocations on the order of Hon'ble Supreme Court, the prior allottees were given compensation by the Government. 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 allottees had no option but to accept the cancellation. 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, it cannot be said that the prior allottees of the coal blocks supplied a service to the Government by way of agreeing to tolerate the cancellation of the allocations made to them by the Government or that the compensation paid by the Government was a consideration for such service. Therefore, the compensation paid for cancellation of coal blocks pursuant to the order of the Supreme Court in the above case was not taxable. (iii) *Cheque dishonor 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

Entry in Schedule II	Analysis
	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. (iv) *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. Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations. There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty. There cannot be such an agreement as violation of law is never a lawful object or consideration. The service tax Education Guide issued in 2012 on advent of negative list regime of services explained that fines and penalties paid for violation of provisions of law are not considerations as no service is received in lieu of payment of such fines and penalties. It was also clarified *vide Circular No. 192/02/2016-Service Tax, dated 13.04.2016* that fines and penalty chargeable by Government or a local authority imposed for violation of a statute, byelaws, rules or regulations are not leviable to service tax. The same holds true for GST also. (v) *Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agreed period*: The provisions for forfeiture of salary or recovery of bond amount in the event of the employee leaving the employment before the minimum agreed period are incorporated

Entry in Schedule II	Analysis
	in the employment contract. The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation. 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. (vi) *Compensation for not collecting toll charges during the period 08.11.2016 to 01.12.2016*: During the period from 8.11.2016 to 1.12.2016, the service of access to a road or bridge continued to be provided without collection of toll from users. Consideration came from the project authority. The fact that for this period, for the same service, consideration came from a person other than the actual user of service does not mean that the service has changed. (vii) *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. (viii) *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

Entry in Schedule II	Analysis
	arrangements, the contract is essentially for supply of electricity. (ix) *Cancellation charges*: Cancellation fee can be considered as the charges for the costs involved in making arrangements for the intended supply and the costs involved in cancellation of the supply, such as in cancellation of reserved tickets by the Indian Railways. Facilitation supply of allowing cancellation of an intended supply against payment of cancellation fee or retention or forfeiture of a part or whole of the consideration or security deposit should be assessed as the principal supply. 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. 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.

Entry in Schedule II	Analysis
	Further, clarification has been issued *vide Circular No. 186/18/2022-GST, dated 27.12.2022* in respect of "*whether the deduction on account of No Claim Bonus allowed by the insurance company from the insurance premium payable by the insured, can be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s)".* It has been clarified that there is no supply provided by the insured to the insurance company in form of agreeing to the obligation to refrain from the act of lodging insurance claim during the previous year(s) and No Claim Bonus cannot be considered as a consideration for any supply provided by the insured to the insurance company.
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.*	Transfer of 'right to use goods' is treated as a supply of service and taxed at par, with the rate of tax as applicable to the goods involved in the transaction. *(Refer discussion under clause 1(a) of Schedule II).*
6. Composite supply: The following composite supplies shall be treated as a supply of services, namely: —	
a. Works contract as defined in clause (119) of section 2;	Our understanding of works contract under the erstwhile VAT/ sales tax/ service tax laws has no relevance in the GST regime. In the GST regime, only such of those contracts that results in an immovable property is a 'works contract'. Every other contract which was understood to be a 'works contract 'under the erstwhile laws will be treated as a composite/ mixed supply under the Act. In such cases, the transaction

Entry in Schedule II	Analysis
	may be treated as goods or services, based on the principles laid down in Section 8 (discussed separately in this Chapter).
b. Supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.	The Law categorises the supplies referred to in this clause as a composite supply, given that there are multiple goods and/ or services which are essentially involved in such a transaction culminating into a composite supply of service. Under this clause both restaurant and outdoor catering services get covered. It may also be contended that the clause also covers other forms such as parcels, take-away, home-delivery, etc. As long as the circumstances where the goods supplied are 'for the purpose of immediate consumption', whether or not it is actually consumed, it would be treated as supply of services. E.g., bottled-water supplied to Railways will be supply of goods but transforms into supply of services when supplied by Railways to its passengers. Please note that the expression used here (and repeated in HSN 9963) are 'supply of goods as part of any service' will come within this fiction. Irrespective of the rate of tax as applicable on independent goods or services that are being supplied, the rate of tax as applicable to a restaurant service or outdoor catering service would apply to these goods being supplied but in the circumstances of immediate consumption, e.g., aerated drink which is served in a restaurant would be subject to tax at the rate applicable to the entire supply (restaurant service) although aerated drinks are otherwise subjected to a higher rate of tax as well as cess. By this reasoning, some experts argue that tobacco products which are sold in a restaurant and billed along with the supply of food/ beverage will also be taxed at the rate

Entry in Schedule II	Analysis
	as applicable to restaurant services - as a composite supply. The test that one needs to apply in the given situation is to find out as to whether tobacco products are "other article for human consumption".

(g) Certain supplies will be neither a supply of goods, nor a supply of services: The law lists down matters which shall not be considered as 'supply' for GST by way of Schedule III. Since these are transactions that are not regarded as 'supply' under the GST Laws, there is no requirement to report the inward/ outward supply of such activities in the returns.

Activities listed in Schedule III	Analysis
1. Services by an employee to the employer in the course of or in relation to his employment.	The Paragraph includes only services and not goods. Further, the paragraph only covers those services which are provided by an employee to the employer and not *vice versa*. Please note that 'in the course or in relation to' does not save every transaction between employer-employee. Only those transactions occurring within the four corners of the 'master-servant' relationship will be saved. The same two persons (who have employer-employee) can constitute another relationship and those will be taxed on their own merits. It is also important to identify if the consideration that is claimed to be for 'services of employee' can be verified and validated with the amount reported for income-tax or provident fund purposes as 'salary'.

Activities listed in Schedule III	Analysis
	But where there is a barter of (i) remuneration payable for services of employee and (ii) transfer of title of articles with intrinsic value to the said employee, exclusion from GST will be available on one leg of the transaction but GST will be payable on the other. After all the transfer of title in the said article is (i) a valid transfer (ii) in the course or furtherance of business and (iii) being an enforceable contract involves consideration (*quid pro quo*) in non-monetary form.
2. Services by any Court or Tribunal established under any law for the time being in force; The term "court" includes District Court, High Court and Supreme Court.	The word Tribunal does not cover Arbitral Tribunal. Since the Tribunal is dissolved after the adjudication proceedings are concluded.
3. Functions performed by MPs, MLAs, etc.; the duties performed by a person who holds any post in pursuance of the provisions of the Constitution in that capacity; the duties performed by specified persons in a body established by the Central/ State Government or local authority, not deemed as an employee;	Persons included in this clause may be Governor, Prime Minister, President etc.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.	This clause is in consonance with the exemption available in the erstwhile service tax regime.
5. Sale of land and, subject to clause (b) of paragraph 5 of	It is intriguing as to why two activities being (i) sale of land

Activities listed in Schedule III	Analysis
Schedule II, sale of building (i.e., excluding sale of under-construction premises where the part or full consideration is received before issuance of completion certificate or before its first occupation, whichever is earlier);	and (ii) sale of building, have been clubbed into a single paragraph. However, one may expand the paragraph to read the two activities as distinct activities, so as to treat a sale of land without the sale of building, also to be outside the purview of GST. Refer to discussions in Schedule II Para-5(b) *(supra).* Care must be taken to resist the urge to expand the words 'land and building' to cover 'all immovable properties'. Immovable property includes far more rights and interests that can be supplied without land and/ or building. Also, sale is absolute sale and not lease or license. If transactions other than sale were to be excluded, then legislature should have employed suitable words or given some indication within the law to authorize expansion of the coverage. Unlike service tax, GST very cautiously allows this relief to (a) just land and (completed) building and (b) absolute sale and no other forms of interests inferior to absolute sale. Experts are divided on the issue of whether (a) sale includes absolute sale or something less also and (b) land includes land only or rights, benefits and interests in land also.

Activities listed in Schedule III	Analysis
6. Actionable claims, [18][other than specified actionable claims].	A plain reading of this Para would mean that actionable claims are neither a supply of goods nor a supply of services. The definition of the word 'goods' includes the words 'actionable claims'. It has to be therefore, necessarily understood that the classes of actionable claims viz. lottery, betting and gambling if and when subjected to tax, must be taxed as goods. The irony is, while lottery is subject to tax as goods, betting and gambling have been subjected to tax as services under the heading 9996. *Notification No. 03/2023 – IT dt. 29.09.2023, w.e.f. 01.10.2020, notifies the supply of online money gaming as the goods on import of which the proviso to sub-section (1) of section 5 of the said Act shall not apply, but on which integrated tax shall be levied and collected under sub-section (1) of section 5 of the said Act.*
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.	This insertion w.e.f. 01.02.2019 puts to rest the confusion which had arisen on such transactions and keeps them outside the ambit of GST. Therefore, any transaction involving supply of goods by a person in India would not be called a supply when they

[18] Substituted vide The CGST (Amendment) Act, 2023 dated 18.08.2023, notified through Notf No. 48/2023–CT dated 29.09.2023 - Brought into force w.e.f. 01.10.2023, prior to its substitution, it was read as: "lottery, betting and gambling".

Activities listed in Schedule III	Analysis
	are supplied from one place to another, both of which are outside India.
8. Supply of warehoused goods to any person before clearance for home consumption; Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.	The levy of the IGST on import of goods would be levied under the Customs Act, 1962 read with the Custom Tariff Act, 1975. IGST is payable when the goods are cleared for home consumption, however, high sea sales were considered akin to inter-State transactions. Even though *Circular No. 33/2017-Cus., dated 1.08.2017*, clarified this matter that IGST on high sea sale, shall be levied and collected only at the time of importation i.e., when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. However, the point of reversal of ITC was always contentious and various advance rulings, ruled in favour of revenue, further added on to it. Now after insertion of this entry in Schedule III, reversal of ITC would no longer be required. Debate that now rages on is whether this was always the intention and, therefore, this amendment ought to be read not from 1.2.2018 but from 1.7.2017 or not, so that credit reversal can be saved. Some experts believe that the retrospective effect comes from the fact that an 'explanation' has also been inserted in section 17(3) of CGST Act.

(h) **Power to notify pursuant to section 7(2):** The Government has vested itself powers to notify 'activities or other transactions' which shall neither be treated as supply of goods nor a supply of services in terms of section 7(2). Such notification would be issued from time to time based on the recommendations of the GST Council.

- The Government has notified the following supplies in this regard:
  (i) Services by way of any activity in relation to a function entrusted to Panchayat under Article 243G of the Constitution or to a Municipality under article 243W of the Constitution

  (*Inserted vide Notification No. 14/2017-Central Tax (Rate), dated 28.06.2017 w.e.f 1.07.2017read with Notification No. 16/2018-Central Tax (Rate), dated 26.07.2018, w.e.f. 27.07.2018*)

  (ii) Service 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.

  (*Inserted vide Notification No. 25/2019- Central Tax (Rate), dated 30.09.2019*)
- The inter-State movement of goods like movement of various modes of conveyance, between 'distinct persons' as explained in this Chapter, including trains, buses, trucks, tankers, trailers, vessels, containers & aircrafts, carrying goods or passengers or both, or for repairs and maintenance, would also not be regarded as supplies except in cases where such movement is for further supply of the same conveyance (Clarified *vide Circular No. 1/1/2017-IGST, dated 7.07.2017*).

The above logic would apply to the issue pertaining to inter-State movement of jigs, tools and spares, and all goods on wheels like cranes, except in cases where movement of such goods is for further supply of the same goods and consequently no IGST would be applicable on such movements (Clarified *vide Circular No. 21/21/2017-GST, dated 22.11.2017*).

(i) The Government is also empowered to specify which supply shall be treated as a supply of goods/services, as is the function of Schedule II, based on the recommendation of the GST Council, by specifying that a supply is to be treated as:

i) A supply of goods and not a supply of service;

ii) A supply of service and not a supply of goods.

(j) In summary, supply can be understood as follows:

Section	Specified 'forms' of supply	Furtherance of Business	Existence of Consideration	*Supply*	
				'made'	*'agreed to be made'*
7(1)(a)	✓	✓	✓	✓	✓
7(1)(b)	✓	✓/x	✓	✓	x
7(1)(c)	✓	✓	✓/x	✓	x

(k) The GST Law also treats certain transactions to be supplies by way of a deeming fiction imposed in the statute.

(i) The law expressly uses the phrase 'deemed supply' in section 19(3) and 19(6) in respect of inputs/ capital goods sent to a job worker but are not returned within the time period of 1 year/ 3 years permitted for their return.

(ii) The bill-to-ship-to transactions wherein the supply is deemed to have been made to the person to whom the invoice is issued, imposes an intrinsic condition that such person who receives the invoice should in turn issue an invoice to the recipient unless the transaction demands a treatment otherwise. For instance, where an order is placed on a vendor based on an order received from a customer, the registered person may request the vendor to directly ship the goods to the customer. In this case, although there is a single movement of goods, there is a dual change of title to goods, and, therefore, there would be 2 supplies. However, the other limb of the transaction would get independently tested for supply under section 7.

Clarification on taxability of shares held in a subsidiary company by the holding company [*Circular 196/04/2023-GST dated 17.07.2023*]

Securities are considered as neither goods nor services as per section 2(52) and 2(102) of the CGST Act, 2017. Further, securities include 'shares' as per definition of securities u/s 2(h) of Securities Contracts (Regulation) Act, 1956. This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Therefore, purchase or sale of shares or securities, is neither a supply of goods nor services.

The SAC entry '997171' in the scheme of classification of services mentioning; *"the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.*", does not construe that merely by holding the shares of subsidiary company, the services are being provided by holding company to

the subsidiary, unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of CGST Act. Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services by a holding company to the said subsidiary company and cannot be taxed under GST.

Applicability of GST in case extended warranty services are provided by manufacturers/ distributors to the customers which can be availed at the time of original supply or before the expiry of standard warranty period [*Circular 195/07/2023-GST dated 17.07.2023*]

• If the customer enters into an agreement for extended warranty at the time of original supply, then it would be considered as composite supply (principal supply being supply of goods). GST would be payable on the consideration for such extended warranty along with the principal supply at the rate applicable on the principal supply.

• If the customer enters into an agreement for extended warranty at any time after the original supply, then it would be considered as separate contract. GST would be payable by the service provider whether it be manufacturer or distributor or any third party depending on the nature of the contract.

Statutory Provisions

8. Tax liability on composite and mixed supplies

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely: —

(a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and

(b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

Related provisions of the Statute

Section or Rule	Description
Section 2(30)	Definition of 'Composite Supply'
Section 2(74)	Definition of 'Mixed Supply'
Section 2(90)	Definition of 'Principal Supply'
Schedule II	Activities OR Transactions to be treated as a supply of goods or a supply of services

8.1. Introduction

Every supply should involve either goods, or services, or a combination of goods or a combination of services, or a combination of both. The law provides that such supplies would be classifiable for the purpose of tax treatment, either as wholly goods or wholly services, in the case of all such combinations. Schedule II of the Act provides for this classification in some of the listed instances thereunder.

8.2. Analysis

Where a supply involves multiple (more than one) goods or services, or a combination of goods and services, the treatment of such supplies would be as follows:

(a) If it involves more than one, goods and/ or services which are naturally bundled together and supplied in conjunction with each other in the ordinary course of business and one such supply would be a principal supply:

(i) These are referred to as composite supply of goods and/ or services. It shall be deemed to be a supply of those goods or services, which constitutes the principal supply therein. Only where all of the conditions specified for a supply of a combination of goods and/ or services to be treated as a composite supply are satisfied, the supply can be regarded as a composite supply. The conditions are as follows:

1. *The supply must be made **by a taxable person***: This condition presumes that composite supplies can only be effected by a taxable person.

2. *The supply must comprise two or more **taxable supplies***: The law merely specifies that the supplies included within a composite supply must contain two or more taxable supplies. A question may then arise as to what would be the treatment in case of a supply, that fulfils all the conditions, but involves an exempt supply – say, purchase of fresh vegetables from a store which offers home delivery for an added charge. Fresh vegetables are exempt from tax, whereas the service of home delivery would attract tax. No clarification has been issued in this regard. However, on a plain reading of the provision, it appears that this condition would not be satisfied where the composite supply involves an exempt supply. One could argue that taxable supply includes exempt by virtue of the definition of taxable supply under section 2(108).

3. *The goods and/ or services involved in the supply must be **naturally bundled**:* The concept of natural bundling needs to be examined on a case-to-case basis. What is naturally bundled in one set-up may not be regarded as naturally bundled in another situation. For instance, stay with breakfast is naturally bundled in the hotel industry, while the supply of lunch and dinner, even if they form part of the same invoice, may not be considered as naturally bundled supplies along with room rent.
4. *They must be supplied in conjunction with each other in the **ordinary course of business***: Where certain supplies could be naturally bundled, it is essential that they are so supplied in the ordinary course of business of the taxable person. For instance, it is possible to consider the supply of a water purifier along with the first-time installation service as a naturally bundled supply. However, if a supplier of water purifiers does not ordinarily provide the installation service and arranges for a person to provide the installation service in the case of an important business customer, the supply would not satisfy the said condition.
5. *Only one of the supplies involved must qualify as the **principal supply***: In every composite supply, there must be only one principal supply. Where a conflict between the various components of the supply, as to which of those qualify as the principal supply, cannot be resolved and results in multiple predominant supplies, the supply cannot be regarded as a composite supply.
    (a) A principal supply is defined under section 2(90) to mean the predominant element of a composite supply to which any other supply forming part of that composite supply is ancillary.
    (b) Therefore, mere identification of the predominant element would not suffice and it must be ascertained that all other supplies composed in the composite supply are ancillary to that predominant element of the supply.
    (c) Consider the case of a supply of dining table with chairs. There would normally be no issue in this regard if both the components are made of the same material. However, if the dining table is made of granite, while the chairs are made of superior quality wood, there would be

a conflict. Normally, the dining table would be regarded as the principal supply to which the supply of chairs is ancillary. However, in this case, it may not be possible to determine which of the two make the principal supply.

Where any of the aforesaid conditions are not satisfied, the transaction cannot be treated as a composite supply.

(ii) The matters such as time of supply, invoicing, place of supply, value of supply, rate of tax applicable to the supply, etc. shall all be determined in respect of the principal supply alone, since the entire supply shall be deemed to be a supply of the principal supply alone.

(iii) Some Illustrations and cases of composite supplies have been discussed in the following paragraphs:

- *Illustration (provided in section 2(30)): Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply.* This implies that the supply will be taxed wholly as supply of goods.
- *Para* 5(3) of *Circular No. 32/06/2018-GST, dated 12.02.2018* clarifies that "food supplied to the in-patients as advised by the doctor/ nutritionist is a **part of composite supply of health care** and not separately taxable". It also goes on to clarify further that supplies of food by hospital to patients (not admitted) or their attendants or visitors are taxable.
- *Circular No. 11/11/2017-GST, dated 20.10.2017* has provided clarification on treatment of printing contracts. It is clarified that:
  - ✓ In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing of the content supplied by the recipient of supply is the principal supply and therefore such supplies would constitute supply of service falling under heading 9989 of the scheme of classification of services.
  - ✓ In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wallpaper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs *including paper belonging to the printer, the predominant supply is*

that of goods and the supply of printing of the content supplied by the recipient of supply is ancillary to the principal supply of goods and, therefore, such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff.

- *Circular No. 34/8/2018-GST, dated 1.03.2018* provides a clarification on some *matters including* the following:
  - ✓ The activity of bus body building is a composite supply. As regards which of the components is the principal supply, the Circular directs that it be determined on the basis of facts and circumstances of each case.
  - ✓ Re-treading of tyres – In re-treading of tyres, which is a composite supply, the pre-dominant element is the process of re-treading which is a supply of service, and the rubber used for re-treading is an ancillary supply. The Circular also specifies that *"Value may be one of the guiding factors in this determination, but not the sole factor. The primary question that should be asked is what the essential nature of the composite supply is and which element of the supply imparts that essential nature to the composite supply"*.
- *Circular No. 92/11/2019-GST, dated 7.03.2019 interalia* clarified that "*It may appear at first glance that in case of offers like 'Buy One, Get One Free', one item is being 'supplied free of cost' without any consideration. In fact, it is not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.*

  ii. *Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined as per the provisions of section 8 of the said Act."*
- *Circular No. 100/19/2019-GST, dated 30.04.2019* clarified that: *"seed testing and certification is a multi-stage process, the charges for which are collected from the seed producers at different stages. Supply of seed tags to the seed producer is nothing but an element of the one integrated supply of seed testing and certification. All the above charges, including those for issue of seed certificates/tags by the Seed Certification Agency of Tamil Nadu and Uttarakhand to the seed producing*

*organization/companies are **collected for the composite supply of seed testing and certification**, which is exempt under Notification No. 12/2017-Central Tax (Rate) Sl. No. 47 (services by Central/State Governments by way of testing/certification relating to safety of consumers and public at large, required under any law). This clarification would apply to supply of seed tags by seed testing and certification agencies of other states also following similar seed testing and certification procedure."*

- Other examples: If a contract is entered for (i) supply of certain goods and erection and installation of the same thereto or (ii) supply of certain goods along with installation and warranty thereto, it is important to note that these are naturally bundled and, therefore, would qualify as 'composite supply'. Accordingly, it would *qualify* as supply of the goods therein, which is essentially the principal supply in the contract. Thus, the value attributable to erection and installation or installation and warranty thereto will also be taxable as if they are supply of the goods therein.

(b) If it involves supply of more than one goods and/ or services which are not naturally bundled together but sold for a single price:

(i) These are referred to as mixed supply of goods and/ or services. It shall be deemed to be a supply of that goods or services therein, which are liable to tax at the highest rate of GST. The characteristics of a mixed supply are as follows:

(1) *It involves two or more **individual supplies***: It may be noted that the term used in the case of mixed supply is "individual supplies" as against "taxable supplies". Therefore, a mixed supply can include both taxable and exempted supplies.

(2) *It is made by a **taxable person***;

(3) *The supply is made for a **single price***: The fact that a composite supply does not include this condition merits consideration. Where a supply of two or more goods or services is made for different prices, the supplies cannot be regarded as mixed supplies.

(4) *The supply does **not constitute a composite supply***: The expression "constitute" has a large ambit to include cases where the supply results in a composite supply, as well as a case where some of the components together make a

composite supply, whereas the bundle together would make a mixed supply. While the condition as such is not explicit, given that there is no provision for treatment of a bundled supply where only some components together qualify as a composite supply, it may be safe to interpret that a mixed supply is one which is not regarded as a composite supply.

(ii) The matters such as time of supply, invoicing, place of supply, value of supply, rate of tax applicable to the supply, etc. shall all be determined in respect of that supply which attracts the highest rate of tax. However, the law remains silent on what is the treatment required to be undertaken where more than one component is subjected to the highest rate of tax. For instance, consider a case where a commercial complex is let out for a consideration of monthly rentals, and the owner of the complex also supplies parking lots to those tenants who opt for the facility. While both the supplies attract tax @ 18%, the law does not prescribe for treatment of the transaction as that of only one of the two supplies.

(iii) Some illustrations and cases of mixed supplies have been discussed in the following paragraphs:

- ✓ *Illustration [section 2(74)]: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.* **This implies that the supply will be taxed wholly as supply of those goods which are liable to the highest rate of GST.**
- ✓ Other examples: If a toothpaste (say for instance it is liable to GST at 12%) is bundled along with a toothbrush (say for instance it is liable to GST at 18%) and is sold as a single unit for a single price, it would be reckoned as a mixed supply. This would, therefore, be liable to GST at 18% (higher of 12% or 18% applicable to each of the goods therein).
- ✓ Another example would be where Rs.10,000 is collected as 'cover charge' to provide (i) access to a restaurant (ii) unlimited food and beverage (even alcoholic beverage) and (iii) some form of entertainment or amusement, would be a mixed supply due to (a) single price and (b) unusual accompaniments bundled together.
- ✓ Yet another example would be where a Builder for Rs. 1 crore supplies (i) 2BHK apartment and (ii) all essential white goods

to all Customers. Or supplies (a) apartment and (iii) motor car to select Customers. These would also be mixed supply based on the same criteria.

(c) While there are no infallible tests for such determination, the following guiding principles could be adopted to determine whether a supply would be a composite supply or a mixed supply. However, every supply should be independently analysed.

Description	**Composite Supply**	**Mixed Supply**
Naturally bundled	Yes	No
Each supply available for supply individually	No	Yes / No
One is predominant supply for recipient	Yes	Yes / No
Other supply(ies) is/ are ancillary or they are received because of predominant supply	Yes	No
Each supply priced separately	Yes / No	No
Supplied together	Yes	Yes
All supplies can be goods	Yes	Yes
All supplies can be services	Yes	Yes
A combination of one/ more goods and one/ more services	Yes	Yes

Advance Ruling on Composite/ Mixed Supply: The AAR ,West Bengal opined in *Switching Avo Electro Power Ltd. [2018 (13) G.S.T.L. 84 (A.A.R. - GST)].-" Whether a combination of goods that does not amount to a composite supply is being offered at a single price, such supplies are to be treated as mixed supplies - Held, yes - Whether where UPS and battery are supplied as separate goods, but a single price is charged for combination of goods supplied as single contract, supply of UPS and battery is to be considered as mixed supply within meaning of section 2(74), as they are supplied under a single contract at a combined single price - Held, yes"*

Further *In Re : Switching Avo Electro Power Ltd. [2018 (15) G.S.T.L. 636 (App. A.A.R. - GST)]* the Appellate Authority For Advance Ruling (AAR) disposed of the appeal as they find no infirmity in the Ruling rendered by the West Bengal Authority for Advance Ruling.

Statutory Provisions

9. Levy and Collection

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty percent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

(3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

(4) [19][The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both].

(5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not

[19] Substituted vide Notf No.-2/2019-Central Tax dated 29-Jan-2019, w.e.f. 1st February, 2019.

have a physical presence in the taxable territory and also, he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Related provisions of the Statute

Section or Rule	Description
Section 1	Short title, extent and commencement
Section 2(45)	Definition of Electronic Commerce Operator
Section 2(84)	Definition of 'Person'
Section 2(98)	Definition of 'Reverse Charge'
Section 2(107)	Definition of 'Taxable Person'
Section 2(108)	Definition of 'Taxable Supply'
Section 7 (IGST)	Inter-State supply
Section 8 (IGST)	Intra-State supply
Section 10	Composition levy
Section 11	Power to grant exemption from tax
Section 15	Value of supply
Section 25	Procedure for Registration

9.1. Introduction

Article 265 of the Constitution of India mandates that no tax shall be levied or collected except by the authority of law. The charging section is a must in any taxing statute for levy and collection of tax. Before imposing any tax, it must be shown that the transaction falls within the ambit of the taxable event and that the person on whom the tax is so imposed also gets covered within the scope and ambit of the charging section by clear words used in the section. No one can be taxed by implication. The scope of the taxable event being 'supply' has been discussed in the earlier part of this Chapter. This section will provide an insight into the chargeability of tax on a supply. Section 9 is the charging provision of the CGST Act. It provides the maximum rate of tax that can be levied on supplies leviable to tax under this law, the manner of collection of tax and the person responsible for paying such tax.

It is interesting to note that the 4 pillars of taxation that together constitute the cornerstone for levy are couched in section 9(1). The taxable event, tax rate, collection or levy, and the person to pay are so worded that there is no escape. It appears that the law laid down by the Hon'ble Supreme Court in

Govind Saran Ganga Saran's [2002-TIOL-589-SC-CT] case has been followed.

9.2. Analysis

The IGST Law provides the basis for determination of a supply as an intra-State supply or an inter-State supply – simply put, if the location of the supplier and the place of supply are within the same State, the transaction will be an intra-State supply, barring the case of supplies made by/ to SEZ, and all other supplies which will be regarded as inter-State supplies. Please refer to the discussion in the IGST Chapters for a holistic understanding of 'Levy' as a concept under the GST law.

a. **Taxable supply:** Every taxable supply will be subjected to GST. A taxable supply refers to any supply of goods or services or both, which qualifies as a supply in terms of section 7. The exception to this rule would be all supplies that the levy section forgoes to tax, as also all those supplies that have been notified to be nil-rated or exempted from tax. The provisions imposing GST are phrased in such a manner so as to e*xclude the supply of alcoholic liquor for human consumption* from the scope of levy itself. However, the law specifies certain other goods whereby the levy of GST has been deferred until such time the goods are notified in this regard to be taxable supplies (by the Government, based on the recommendations of the GST Council):

   i. petroleum crude

   ii. high speed diesel

   iii. motor spirit (commonly known as petrol)

   iv. natural gas and

   v. aviation turbine fuel

b. **Tax payable:** The nature of tax would depend upon the nature of supply, viz., inter-State supplies will be liable to IGST and intra-State supplies will be liable to CGST and SGST/ UTGST (i.e., UTGST in case intra-State supplies within a particular Union Territory). Every intra-State supply will attract CGST as well as SGST (or UTGST), as follows:

   i. Imposition of CGST by the Union Government of India

   ii. Imposition of SGST by the respective State Government or (in case of UTGST, by the Central Government through the appointed Administrator)

c. **Taxing ingredients**: Without showing the taxing ingredients, mere arithmetic computation of demand would be contrary to law. Taxing

ingredients are all those elements that must exist to attract the incidence of tax under section 9(1):

i. Nature of transaction – whether contractual or not – to determine existence of actual supply (section 7(1)(a)) or as per fictional definitions (sections 7(1)(aa), (b) and (c), 19(3)/(6), 31(7) or 35(6)).

ii. Categorization of object of supply – whether goods or services or both.

Note: inapplicability of exclusions (i) alcohol (ii) 5 petro products (iii) Schedule III supplies is burden on person making assertion about incidence of tax (taxpayer in self-assessment and Revenue in notice of demand).

iii. Fictional treatment of object of supply – goods as services or services as goods – Schedule II.

iv. Ascertain of whether transaction is composite, mixed or independent supply.

v. HSN classification as per tariff understanding of commercial terms used to describe including tariff conditions – whether mandatory to given tariff or optional with alternate tariffs.

Note: Applicability of exemption is a burden of taxpayer to demonstrate eligibility to any exemption and satisfaction of all conditions attendant to such classification.

vi. Time of supply;

vii. Place of supply – to determine intra-State or inter-State character of supply.

viii. Valuation of supply – whether based on contract price (subject to specific adjustments under section 15(2) and (3)) or OMV (section 15(4)) or prescribed transaction value (section 15(5)).

Note: Inapplicability of three (3) disqualifications listed in section 15(1) is a burden on taxpayer for tax incidence to apply on contract price (transaction value) and not OMV.

ix. Determination of liability on forward charge, that is, show the inapplicability of liability on reverse charge basis.

Note: Tax payable on reverse charge cannot be discharged on forward charge or vice versa, not even by a willing taxpayer

Whenever incidence of output tax is examined, all nine (9) taxing ingredients must be shown to exist, whether in self-assessment or in a notice of demand. Without these taxing ingredients, demand will be incomplete and not payable. And even if any one of these ingredients

are missing or unsubstantiated, it will be fatal to any demand. It is for this reason that no demand for output tax can be lawfully made based on estimation. Contrast the minimal requirements to demand tax under section 63 and compare the complete set of taxing ingredients required to demand tax under section 73 or 74.

Claim of input tax credit and its utilization to discharge output tax is independent of incidence of output tax, whether in self-assessment or against a notice of demand. Omission to claim credit or reversal of admissible credit does not excuse incidence of full extent of output tax.

d. **Tax shall be payable by a 'taxable person':** The tax shall be payable by a 'taxable person' i.e., a person who is liable to obtain registration, or a person who has obtained registration. Please note that there can be multiple taxable persons for a single supply. It comprises separate establishments of persons registered or liable to be registered under sections 22 or section 24 of the CGST Act. *Please refer to the discussion under section 25 for a thorough understanding of this concept.* Under the GST law, the person liable to pay the tax levied on a supply under the statute would be one of the following:

   i. The supplier, in terms of section 9(1) – Referred to as forward charge. This is ordinarily applicable in case of all supplies unless the supplies qualify under the other two categories, i.e., this would be the residual category of supply wherein the supplier would be liable to pay tax. (In this regard, it must be noted that the term 'supplier' is attributed to an establishment, and not to the PAN as a whole. Therefore, if the supply is effected from an establishment in Karnataka, the establishment of the same entity located in say Delhi, cannot discharge the liabilities);

   ii. The recipient – In such a case, all the provisions of the Act as are applicable to the supplier in a normal case, would apply to the recipient of supply (being a taxable person, and not the PAN as explained above). A supply would be subjected to tax in the hands of the recipient only in the following cases:

      (i) *Notified supplies under section 9(3):* The supply of goods or services is notified as a supply liable to tax in the hands of the recipient vide *Notification No. 4/2017-Central Tax (Rate), dated 28.06.2017* in case of goods and *Notification No. 13/2017-Central Tax (Rate), dated 28.06.2017* in case of services, as amended from time to time. Please note that in such cases, the supplier would not discharge the liability,

since, the law imposes the obligation on the recipient. The recipient of supply would be liable to discharge the taxes.

(ii) *Supplies received from unregistered persons* under section *9(4):* The supply is an inward supply of goods and/ or services affected by a registered person from an unregistered supplier. In this regard, it may be noted that the levy under this sub-section applies (as amended by CGST Amendment Act) only in respect of (a) 'class of registered persons' and (b) 'categories of goods or services', as may be notified. W.e.f. 1st April, 2019, the Central Government *vide Notification No. 7/2019- Central Tax (Rate), dated 29.03.2019*, notified the following categories of goods or services or both, in respect of which registered person shall pay tax on reverse charge basis as recipient of such goods or services or both:-

Sl. No.	Category of supply of goods and services	Recipient of goods and services
1.	Supply of such goods and services or both [other than services by way of grant of development rights, long term lease of land (against upfront payment in the form of premium, salami, development charges etc.) or FSI (including additional FSI)] which constitute the shortfall from the minimum value of goods or services or both required to be purchased by a promoter for construction of project, in a financial year (or part of the financial year till the date of issuance of completion certificate or first occupation, whichever is earlier) as prescribed in notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017, at items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	Promoter

2.	[20]Cement falling in chapter heading 2523 in the first schedule to the Customs Tariff Act, 1975 (51 of 1975	Promoter
3.	Capital goods falling under any chapter in the first schedule to the Customs Tariff Act, 1975 (51 of 1975) supplied to a promoter for construction of a project on which tax is payable or paid at the rate prescribed for items (i), (ia), (ib), (ic) and (id) against serial number 3 in the Table, in notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017, published in Gazette of India vide G.S.R. No. 690, dated 28th June, 2017, as amended.	Promoter

Section 9(3): Tax shall be payable by the registered person

(i) Central Government on the recommendation of the GST Council has notified goods in respect of which intra-State and inter-State supplies, central/ integrated tax shall be paid by the recipient of such goods under reverse charge *vide Notification No. 4/2017-Central Tax (Rate), dated 28.06.2017* and *Notification No. 4/2017-Integrated Tax (Rate), dated 28.06.2017* respectively. These goods are as under:

S. No.	Tariff item, sub-heading, heading or Chapter	Description of supply of Goods	Supplier of goods	Recipient of supply
(1)	(2)	(3)	(4)	(5)
1.	0801	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person
2.	1404 90 10	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person
3.	2401	Tobacco leaves	Agriculturist	Any registered person

[20] *Substituted vide Notf No. 24/2019-CT (R), dt. 30.09.2019 w.e.f 1.10.2019*

[21][*3A*	*3301 24 00, 3301 25 10, 3301 25 20, 3301 25 30, 3301 25 40, 3301 25 90*	*Following essential oils other than those of citrus fruit namely: -* *(a) Of peppermint (Mentha piperita);* *(b) Of other mints: Spearmint oil (ex-mentha spicata), Water mint-oil (ex-mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex-mentha citrate), Mentha arvensis*	*Any unregistered person*	*Any registered person*]
4.	5004 to 5006	Silk yarn	Any person who manufactures silk yam from raw silk or silk worm cocoons for supply of silk yarn	Any registered person
[22][4A.	5201	Raw cotton	Agriculturist	Any registered person]
5.		Supply of lottery	State	Lottery

[21] Substituted by Notf No. 14/2022-CT (R), dated 30.12.2022 and Notf No. 14/2022- IT(R), dated 30.12.2022, both w.e.f. 1.01.2023

[22] Inserted by Notf No. 43/2017-CT(R), dated 14.11.2017 and Notf No.45/2017- IT(R), dated 14.11.2017, both w.e.f. 15.11.2017

			Government, Union Territory or any local authority	distributor or selling agent. *Explanation.*— For the purposes of this entry, lottery distributor or selling agent has the same meaning as assigned to it in clause (*c*) of Rule 2 of the Lotteries (Regulation) Rules, 2010, made under the provisions of sub-section (1) of section 11 of the Lotteries (Regulation) Act, 1998 (17 of 1998).
[23] [6.	Any Chapter	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap	Central Government, State Government, Union territory or a local authority	Any registered person]
[24] [7.	Any Chapter	Priority Sector Lending Certificate	Any registered person	Any registered person]

(ii) Central Government on the recommendation of the Council has notified the category of supply of services on which GST shall be paid by the recipient on reverse charge basis *(**Notification No. 13/2017-Central***

[23] Inserted by Notf No.36/2017-CT(R), dt.13.10.2017 and Notf No.37/2017- IT(R), dt. 13.10.2017, both w.e.f. 13.10.2017

[24] Inserted by Notf No. 11/2018-CT(R), dt. 28.05.2018 and Notf No. 12/2018- IT(R), dt. 28.05.2018, both w.e.f. 28.05.2018

***Tax (Rate), dated 28.06.2017* as amended from time to time**)

Sl. No.	*Category of Supply of Services*	*Supplier of Service*	*Recipient of Service*
(1)	*(2)*	*(3)*	*(4)*
1	*Supply of Services by a goods transport agency (GTA)* [25]*[~~who has not paid central tax at the rate of 6%~~] in respect of transportation of goods by road to—* *(a) any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or* *(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or* *(c) any co-operative society established by or under any law; or* *(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act*	*Goods Transport Agency (GTA)*	*(a) Any factory registered under or governed by the Factories Act, 1948 (63 of 1948); or* *(b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or* *(c) any co-operative society established by or under any law; or* *(d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods*

[25] *Omitted vide Notf. No. 5/2022-CT(R) dt. 13.07.2022, w.e.f. 18.07.2022. Prior to its omission said words as inserted by Notf. No. 22/2017-CT(R) dt. 22.08.2017*

	or the Union Territory Goods and Services Tax Act; or *(e) anybody corporate established, by or under any law; or* *(f) any partnership firm whether registered or not under any law including association of persons; or* *(g) any casual taxable person.* *[26][Provided that nothing contained in this entry shall apply to services provided by a goods transport agency, by way of transport of goods in a goods carriage by road, to, -* *(a) a Department or Establishment of the Central Government or State Government or Union territory; or* *(b) local authority* *(c) Governmental agencies,* *which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 and not for making a taxable supply of goods or services:]]*		*and Services Tax Act; or* *(e) any body corporate established, by or under any law; or* *(f) any partnership firm whether registered or not under any law including association of persons; or* *(g) any casual taxable person; located in the taxable territory.*

[26] Inserted vide Notf No. 29/2018 – C T (R) dt 31.12.2018, w.e.f. 01.01.2019.

	[27]*[Provided further that nothing contained in this entry shall apply where, -* *(i) the supplier has taken registration under the CGST Act, 2017 and exercised the option to pay tax on the services of GTA in relation to transport of goods supplied by him under forward charge; and* *(ii) the supplier has issued a tax invoice to the recipient charging Central Tax at the applicable rates and has made a declaration as prescribed in Annexure III on such invoice issued by him.]*		
2	[28]*[Services provided by an individual advocate including a senior advocate or firm of advocates by way of legal services, directly or indirectly.* *Explanation.—"Legal service" means any service provided in relation to advice, consultancy or assistance in any*	*An individual advocate including a senior advocate or firm of advocates.*	*Any business entity located in the taxable territory.*

[27] *Inserted vide Notf. No. 5/2022-CT(R) dt. 13.07.2022 w.e.f. 18.07.2022*
[28] *Corrected vide M.F. (D.R.) Corrigendum F. No. 336/20/2017-TRU, dt.25.09.2017 to Notf No. 13/2017-C T (R) dt. 28.06.2017*

	branch of law, in any manner and includes representational services before any court, tribunal or authority]		
3	*Services supplied by an arbitral tribunal to a business entity.*	*An arbitral tribunal*	*Any business entity located in the taxable territory.*
4	*Services provided by way of sponsorship to any body corporate or partnership firm.*	*Any person*	*Any body corporate or partnership firm located in the taxable territory.*
5.	*Services supplied by the Central Government, State Government, Union territory or local authority to a business entity excluding,-* *(1) renting of immovable property, and* *(2) services specified below-* *(i) services by the Department of posts [29][and the Ministry of Railways (Indian Railways)] [30][****];* *(ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a port or an airport;* *(iii) transport of goods or passengers*	*Central Government, State Government, Union territory or local authority*	*Any business entity located in the taxable territory.*

[29] *Inserted vide Notf No. 14/2023- CT (R) dt. 19-10-2023 w.e.f. 20.10.2023.*
[30] *Omitted vide Notf. No. 5/2022-CT(R) dt. 13.07.2022 w.e.f. 18.07.2022.*

[31][5A	*Services supplied by the Central Government [32][[excluding the Ministry of Railways (Indian Railways)]], State Government, Union territory or local authority by way of renting of immovable property to a person registered under the Central Goods and Services Tax Act, 2017 (12 of 2017)*	*Central Government, State Government, Union territory or local authority*	*Any person registered under the Central Goods and Services Tax Act, 2017.]*
[33][5AA	*Service by way of renting of residential dwelling to a registered person.*	*Any person*	*Any registered person]*
[34][5B	*Services supplied by any person by way of transfer of development rights or Floor Space Index (FSI) (including additional FSI) for construction of a project by a promoter.*	*Any Person*	*Promoter*
5C	*Long term lease of land (30 years or more) by any person against consideration in the form of upfront amount (called as premium, salami, cost, price, development charges or by any other name) and/or periodic rent for*	*Any Person*	*Promoter]*

[31] *Inserted vide Nof No. 3/2018-CT (Rate), dt. 25.01.2018 w.e.f. 25.01.2018.*
[32] *Inserted vide Notf No. 14/2023- CT(R) dt.19.10.2023 w.e.f. 20.10.2023.*
[33] *Inserted vide Notf. No. 5/2022-CT(R) dt. 13.07.2022, w.e.f. 18.07.2022*
[34] *Inserted vide Notf. No. 5/2019-CT(R) dt. 29.03.2019, w.e.f. 01.04.2019*

	construction of a project by a promoter.		
6	*Services supplied by a director of a company or a body corporate to the said company or the body corporate.*	*A director of a company or a body corporate*	*The company or a body corporate located in the taxable territory.*
7	*Services supplied by an insurance agent to any person carrying on insurance business.*	*An insurance agent*	*Any person carrying on insurance business, located in the taxable territory.*
8	*Services supplied by a recovery agent to a banking company or a financial institution or a non-banking financial company.*	*A recovery agent*	*A banking company or a financial institution or a non-banking financial company, located in the taxable territory.*
[35][9	*Supply of services by a music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original dramatic, musical or artistic works to a music company, producer or the like.*	*Music composer, photographer, artist, or the like*	*Music company, producer or the like, located in the taxable territory.]*
[36][9A	*Supply of services by an author by way of transfer or permitting the use or enjoyment of*	*Author*	*Publisher located in the taxable territory:* *Provided that nothing contained in this entry*

[35] Substituted vide Notf No.-22/ 2019-CT(R), dt. 30.09.2019, w.e.f. 01.10.2019

[36] Inserted vide Notf No.-22/ 2019-CT(R), dt. 30.09.2019, w.e.f. 01.10.2019

	a copyright covered under clause (a) of sub-section (1) of section 13 of the Copyright Act, 1957 relating to original literary works to a publisher.		*shall apply where -* *(i) the author has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017), and filed a declaration, in the form at Annexure I, within the time limit prescribed therein, with the jurisdictional CGST or SGST Commissioner, as the case may be, that he exercises the option to pay central tax on the service specified in column (2), under forward charge in accordance with section 9(1) of the Central Goods and Services Tax Act, 2017 under forward charge, and to comply with all the provisions of Central Goods and Services Tax Act, 2017 (12 of 2017) as they apply to a person liable for paying the tax in relation to the supply of any goods or services or both and that he shall not withdraw the said option within a period of 1 year from the date of exercising such option;*

			(ii) the author makes a declaration, as prescribed in Annexure II on the invoice issued by him in Form GST Inv-I to the publisher.]
[37][10	*Supply of services by the members of Overseeing Committee to Reserve Bank of India*	*Members of Over-seeing Committee constituted by the Reserve Bank of India*	*Reserve Bank of India.]*
[38][11	*Services supplied by individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm to bank or non-banking financial company (NBFCs).*	*Individual Direct Selling Agents (DSAs) other than a body corporate, partnership or limited liability partnership firm.*	*A banking company or a non-banking financial company, located in the taxable territory.]*
[39][12	*Services provided by business facilitator (BF) to a banking company*	*Business facilitator (BF)*	*A banking company, located in the taxable territory.*
13	*Services provided by an agent of business correspondent (BC) to business correspondent (BC)*	*An agent of business correspondent (BC)*	*A business correspondent, located in the taxable territory.*
14	*Security services (services provided by way of supply of security personnel)*	*Any person other than a body corporate*	*A registered person, located in the taxable territory]*

[37] Inserted vide Notf No.33/2017-CT (R) dt.13.10.2017, w.e.f. 13.10.2017.
[38] Inserted vide Notf No.15/2018-CT(R) dt.26.07, 2018, w.e.f. 27.07.2018.
[39] Inserted vide Notf No.29/2018-CT(R) dt.31.12.2018, w.e.f. 01.01.2019.

	provided to a registered person: *Provided that nothing contained in this entry shall apply to,-* *(i) (a) a Department or Establishment of the Central Government or State Government or Union territory; or* *(b) local authority; or* *(c) Governmental agencies;* *which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or* *(ii) a registered person paying tax under section 10 of the said Act.*		
[40][41][15	*Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged*	*Any person, other than a body corporate who supplies the service to a body*	*Any body corporate located in the taxable territory.]*

[40] Substituted vide Notf No 29/ 2019-CT(R), dt. 31.12.2019 w.e.f. 31.12.2019
[41] Inserted vide Notf No. 22/2019-CT(R) , dt. 30.09.2019 w.e.f. 01.10.2019

	from the service recipient, provided to a body corporate.	*corporate and does not issue an invoice charging central tax at the rate of 6 per cent to the service recipient*	
[16	*Services of lending of securities under Securities Lending Scheme, 1997 ("Scheme") of Securities and Exchange Board of India ("SEBI"), as amended.*	*Lender i.e., a person who deposits the securities registered in his name or in the name of any other person duly authorised on his behalf with an approved intermediary for the purpose of lending under the Scheme of SEBI*	*Borrower i.e., a person who borrows the securities under the Scheme through an approved intermediary of SEBI.]*

(iii) In addition to the above list given under Central Tax- Rate, following additional
category of supply of services are listed under *Notification No. 10/2017-Integrated Tax (Rate), dated 28.06.2017* on which GST shall be paid by the recipient on reverse charge basis:-

Sl. No.	**Category of Supply of Services**	**Supplier of Service**	**Recipient of Service**
(1)	**(2)**	**(3)**	**(4)**
1	Any service supplied by any person who is located in a non-taxable territory to any person other than non-	Any person located in a non-	Any person located in the taxable territory other than non-taxable online

	taxable online recipient.	taxable territory	recipient.
[42][~~10~~	~~Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.~~	~~A person located in non -taxable territory~~	~~Importer, as defined in clause (26) of section 2 of the Customs Act, 1962 (52 of 1962), located in the taxable territory.~~]

ANALYSIS:

- No partial reverse charge is applicable under GST. 100% tax will be paid by the recipient if reverse charge mechanism applies.
- All taxpayers required to pay tax under reverse charge have to mandatorily obtain registration and the threshold exemption is not applicable on them.
- Payment of taxes under reverse charge cannot be made with utilisation of input tax credit and has to be made in cash.
- The recipient can take the credit of tax paid on inward supplies liable to reverse charge once he makes payment of tax in cash.
- It must be borne in mind that tax leviable under section 9(1) is only discharged under section 9(3) (or 9(4) for that matter). No demand for tax under section 9(3) can survive without the incidence being established under section 9(1).
- A goods transport agency (GTA) has an option to pay GST under forward charge [5% without ITC or 12% with ITC] or reverse charge [5% without ITC]. GTA has to exercise the option to pay GST under forward charge for a financial year by making a declaration in Annexure V by 15th March of the preceding financial year [*Notification No. 11/2017- CT (Rate) dated 28.06.2017* amended vide *Notification No. 3/2022-CT(R) dt. 13.07.2022*].
- *Notification No. 05/2023-CT(R) dt. 09.05.2023* has further amended Notification No. 11/2017- CT (Rate) to extend the last date for filing Annexure V by a GTA for the financial year 2023-24 to 31st May, 2023. A GTA who commences a new business or crosses the threshold for registration during any financial year, may

[42] *Omitted vide Notf No. 13/2023- IT(R) dt. 26.09.2023 w.e.f. 01.10.2023.*

file Annexure V within 45 days from the date of applying for GST registration or 1 month from the date of obtaining registration, whichever is later.

Note: Payment of tax under reverse charge is the default mode of payment of tax for a GTA. Annexure V is required to be filed only when GTA wishes to pay tax under forward charge.

- Amendment in the option to be exercised by the GTAs to pay GST under forward charge. *Notification No. 11/2017-CT(R) dt. 28.06.2017* and *Notification No. 13/2017-CT(R) dt. 28.06.2017* have been amended as under:
  - Goods Transport Agencies (GTAs) shall not be required to file Annexure V of Notification No. 11/2017-CT(R) dt. 28.06.2017 for opting to pay GST under forward charge every year. Such option can be exercised by GTAs during the period from 1st January to 31st March of the preceding financial year as against the earlier due date of 15th March of the preceding financial year. Amendments have been made in Annexure V to this effect.
  - If a GTA has exercised the option to pay tax under forward charge for a particular financial year, it shall be deemed that the option has been exercised for the next and future financial years also unless the GTA files a declaration in Annexure VI that it wants to revert to the reverse charge mechanism during 1st January to 31st March of the preceding financial year. Annexure VI titled as "Form for exercising option by a Goods Transport Agency intending to revert under reverse charge mechanism to be filed before the commencement of any financial year to be submitted before the jurisdictional GST Authority" has been inserted in Notification No. 11/2017-CT(R) dt. 28.06.2017 for this purpose. Consequential changes have been made in Annexure III to Notification No. 13/2017-CT(R) dt. 28.06.2017.
  - The above amendments have become effective from 27.7.2023.
  - Notification No. 08/2023- CT(R) dt. 26.07.2023, Notification No. 06/2023-CT(R) dt. 26.07.2023.

RCM on Sponsorship-Clarification

Advertisement falls under forward charge basis of taxation whereas sponsorship falls under reverse charge basis of taxation. The differentiation lies in the object of the contract, that is, if the Payee offers publicity and Payer

contributes directly and inextricably with publicity as the purpose of the payment then it is advertisement. But if publicity is incidental, and the purpose of the payment is to defray costs incurred or expected to be incurred by the Payee, then it would be sponsorship.

The Board has clarified in circular 116/35/2019-GST dated 11.10.2019 where the nature and extent of publicity procured as a direct result of this payment is brought out. Although this circular is not in the context of RCM notification, it greatly illuminates the understanding to be applied and in a very conservative manner.

RCM on Motor Vehicles-Clarification

The Board clarified Reverse Charge Mechanism (RCM) on renting of motor vehicle *vide Circular No. 130/49/2019-GST, dated 31.12.2019*, which is as under-

1. Suppliers of service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient have an option to pay GST either at 5% with limited ITC (of input services in the same line of business) or 12% with full ITC.

2. The GST Council in its 37th meeting dated 20.09.2019 examined the request to place the supply of renting of motor vehicles under RCM and recommended that the said supply when provided by suppliers paying GST @ 5% to corporate entities may be placed under RCM. RCM was not recommended for suppliers paying GST @12% with full ITC, so that they may have the option to continue to avail ITC. RCM otherwise would have blocked the ITC chain for them.

   Accordingly, the following entry was inserted *vide Notification No. 22/2019- Central Tax (Rate), dated 30.09.2019*in the RCM notification i.e., *Notification No. 13/2017-Central Tax (Rate), dated 28.06.2017*with effect from 01.10.19 :

Sl. No.	Category of Supply of Services	Supplier of Service	Recipient of Service
(1)	(2)	(3)	(4)
15	Services provided by way of renting of a motor vehicle provided to a	Any person other than a body corporate, paying central tax at the rate of 2.5% on	Any body corporate located in the taxable territory.

	body corporate.	renting of motor vehicles with input tax credit only of input service in the same line of business	

3. Post issuance of the notification, references has been received stating that when a service is covered by RCM, GST would be paid by the service recipient and not by the supplier. Therefore, the wording of the notification that "any person other than a body corporate, paying central tax at the rate of 2.5%" is not free from doubt and needs amendment/ clarification from the perspective of drafting.

4. The matter has been examined. When any service is placed under RCM, the supplier shall not charge any tax from the service recipient as this is the settled procedure in law under RCM. There are only two rates applicable on the service of renting of vehicles, 5% with limited ITC and 12% with full ITC. The only interpretation of the notification entry in question would be that–

   (i) where the supplier of the service charges GST @ 12% from the service recipient, the service recipient shall not be liable to pay GST under RCM; and,

   (ii) where the supplier of the service doesn't charge GST @ 12% from the service recipient, the service recipient shall be liable to pay GST under RCM.

5. Though a supplier providing the service to a body corporate under RCM may still be paying GST @ 5% on the services supplied to other non-body corporate clients, to bring in greater clarity, Serial No. 15 of the *Notification No. 13/2017-Central Tax (Rate), dated 28.06.2017* has been amended *vide Notification No. 29/2019-Central Tax (Rate), dated 31.12.2019 (relevant extract below)* to state that RCM shall be applicable on the service by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient only if the supplier fulfils all the following conditions:

   (a) is other than a body-corporate;

   (b) does not issue an invoice charging GST @12% to the service recipient; and

(c) supplies the service to a body corporate.

Sl. No.	Category of Supply of Services	Supplier of Service	Recipient of Service
(1)	(2)	(3)	(4)
15	Services provided by way of renting of any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient, provided to a body corporate.	Any person, other than a body corporate who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 per cent. to the service recipient	Any body corporate located in the taxable territory.".

6. It may be noted that the present amendment of the notification is merely clarificatory in nature and therefore for the period 01.10.2019 to 31.12.2019 also, clarification given at Para-5 above shall apply, as any other interpretation shall render the RCM notification for the said service unworkable for that period.

7. It may also be important to examine if renting of motor vehicle is on (i) activity basis or (ii) time basis. In the former it would be passenger transport service not attracting RCM but latter would be renting attracting RCM since even idle time would be charged for. Careful study of the principle brought out in (i) leasing (ii) right to use tangible goods, both under earlier laws, would give invaluable insight into the working of RCM provisions.

(iv) *Gujarat High Court in Mohit Minerals-Ocean freight is not subject to RCM in case of CIF transaction.*

In the case of *Mohit Minerals (P) Ltd. v. UOI 2020 (33) G.S.T.L. 321 (Guj.), dated 23.01.2020*, the Hon'ble High Court has held that no IGST is leviable on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India. Entry 9(ii) of *Notification No. 8/2017-Integrated Tax (Rate), dated 28.06.2017* and Entry No. 10 *of Notification No. 10/2017-*

Integrated Tax (Rate), dated 28.06.2017 declared as *ultra vires* the IGST Act due to lack of legislative competency and accordingly held to be unconstitutional. Under section 5(3) of the IGST Act, the person liable to pay tax can only be "the recipient" of supply. The term "recipient" has to be read in the sense in which it has been defined in the CGST Act. Importer cannot be said to be the recipient of the ocean freight service in the instant case since the importer has neither availed the service of transportation of goods nor he is liable to pay consideration for such service. The foreign shipping line is engaged by foreign exporter. The importer cannot be made liable to pay tax on a mere premise that the importer is directly or indirectly recipient of service.

The Court observed that it is neither an inter-State supply under section 7 nor an intra-State supply under Section 8 of the IGST Act as follows:

For section 8, both the location of the supplier and place of supply should be in India. The same is not applicable since location of foreign shipping line is outside India. Section 7(1) & section 7(2) are dealing with goods and are not relevant. For section 7(3), both the location of the supplier and place of supply should be in India. The same is not applicable since location of foreign shipping line is outside India. Section 7(4) i.e., import of service, is not applicable since the location of recipient of service, i.e., the foreign exporter being outside India. Section 7(5)(a) is not applicable since location of foreign shipping line is outside India. Section 7(5)(b) pertaining to SEZ is also not applicable.

A supply where both provider and recipient are outside India can be made leviable to tax only under Section 7(5)(c) i.e., residuary clause, provided that "supply is in taxable territory". The same cannot be equated with "place of supply". Supply in the taxable territory shall mean a supply, all the aspects or majority of aspects, of which takes place in taxable territory. Thus, the provision may cover cases such as a foreign tour operator conducting a tour in India for a foreign tourist. Mere fact that transportation of goods terminates in India, will not make such supply of transportation of goods as taking place in India. Thus, no tax can be levied and collected from importer/ petitioner. In the instant case, the freight has already suffered IGST as a part of value of goods imported. Dual levy of IGST cannot be imposed treating it as supply of service. Double taxation, through delegated legislation, where statute does not provide, is not permissible.

Hon'ble **Supreme Court** in the case of ***UOI v. Mohit Minerals (P) Ltd., 2022 (61) G.S.T.L. 257 (SC)***, *inter-alia*, held that in case of CIF contract of imports, the importer cannot be subjected to RCM, once the ocean freight is paid by the foreign seller to the foreign shipping line. On a conjoint reading of sections 2(11) and 13(9) of the IGST Act read with

section 2(93) of the CGST Act, the import of goods by a CIF contract constitutes an "inter-state" supply which can be subject to IGST where the importer of such goods would be the recipient of shipping service. The IGST Act and the CGST Act define reverse charge and prescribe the entity that is to be taxed for these purposes. The specification of the recipient (in this case the importer) by *Notification No. 10/2017-Integrated Tax (Rate), dated 28.06.2017* is only clarificatory. The Government by notification did not specify a taxable person different from the recipient prescribed in section 5(3) of the IGST Act for the purposes of reverse charge. In the given case, the person liable to make payment of the consideration would be the foreign supplier. The Indian importer cannot be considered as the recipient of the services.

In view of the above, the Hon'ble Supreme Court held:

Since, the Indian importer is liable to pay IGST at the point of importation on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line by vivisecting the CIF contract would be in violation of section 8 of the CGST Act. Hence, the tax collected under ocean freight was violative of Article 265 of the Constitution i.e., without authority of law.

(v) **The e-commerce operator, in terms of section 9(5):** The Government is empowered to notify categories of services wherein the person responsible for payment of taxes would neither be the supplier nor the recipient of supply, but the electronic commerce operator ('e-commerce operator') through which the supply is affected. It is important to note that, in case of such supplies, the e-commerce operator is neither the supplier nor does it receive the services. The e-commerce operator is merely the person who owns, operates or manages digital or electronic facility or platform for e-commerce purposes. Under the erstwhile service tax law, the e-commerce operator in such an arrangement was referred to as an 'aggregator'.

- The Government has notified following services in this regard *vide Notification No. 17/2017-Central Tax (Rate), dated 28.06.2017* as amended from time to time:

  i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle, [43][omnibus or any other motor vehicle except omnibus];

[43] *Substituted vide Notf No. 16/2023-CT(R) dt.19.10.2023 w.e.f. 20-10-2023 before it was read as, "omnibus or any other motor vehicle".*

ii) [44][ia) services by way of transportation of passengers by an omnibus except where the person supplying such service through electronic commerce operator is a company.]

iii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act;

iv) services by way of housekeeping, such as plumbing, carpentering etc., except where the person supplying such service through electronic commerce operator is liable for registration under sub-section (1) of section 22 of the said Central Goods and Services Tax Act.

v) supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.

- Where the e-commerce does not have a physical presence in the taxable territory, any person representing him in the taxable territory would be liable to pay the taxes. If no such representative exists, the e-commerce operator is liable to appoint such a person in order to discharge this obligation.
- All other provisions of the Act will apply to the e-commerce operator or his representative (as the case may be) in respect of such services, as if, he is the supplier liable to pay tax on the services.
- In this regard it may be noted that liability to pay tax on the supply by the e-commerce operator is not another provision imposing tax on the reverse charge basis. Reference to the definition of reverse charge in section 2(98) makes it clear that reverse charge is limited to tax payable under section 9(3) and 9(4). It is very important to note that the language employed in section 9(5) makes it clear that the liability to pay tax on the supply is placed on the e-commerce operator, "as if", the e-commerce operator were the "supplier liable to tax". The marked departure of the language from that used in case of the reverse charge provisions suggests that:

  (a) The tax that is applicable on the supply is to be paid by the e-

[44] *Inserted vide Notf. No. 16/2023-CT (R) dt. 19.10.2023 w.e.f. 20.10.2023.*

commerce operator, as if, such e-commerce operator was the supplier liable to tax. The provisions require the e-commerce operator to step into the shoes of the actual supplier, for the limited purpose of discharging his liability, and the supply by the e-commerce operator to the actual supplier (facilitation services, commission services or by any service *inter se*) will be taxable separately, in the hands of the e-commerce operator as a supplier of service to the actual supplier.

(b) The actual supplier is no longer liable to pay any tax. This means that the suppliers will not be the person liable to pay tax on such services affected through an e-commerce operator, even if, they have obtained registration. This is clear not only from the exclusion from compulsory registration under section 24(ix) [to such actual suppliers where the e-commerce operator will pay tax under section 9(5)] but also allowed to enjoy exclusion from registration under section 23(1)(a) when entire turnover is taxed under section 9(5) in the hands of e-commerce operator. Also refer *Notification No. 17/2017-Central Tax (Rate), dated 28.06.2017* where exception is made for 'requirement to otherwise register under section 22" to such actual supplies attracting section 9(5).

Readers may refer to decision of Karnataka AAR in the matter of *Opta Cabs (P) Ltd*. as below:

Question raised: Whether the money paid by the customer to the driver of the cab for the services of the trip is liable to GST and whether the applicant company is liable to pay GST on this amount?

e. **Ruling:** The services of transportation of passengers is supplied to the consumers through the applicant and it shall be deemed that the applicant is the supplier liable to pay tax in relation to the supply of such service by the taxi operator - in accordance with the provisions of section 9(5) read with *Notification No. 17/2017-Central Tax (Rate), dated 28.06.2017*, the applicant is liable to pay tax on the amounts billed by him on behalf of the taxi operators for the service provided in the nature of transportation of passengers through it.

f. **Rate of tax:** The rate of tax will be applicable as specified in the *Notification No. 1/2017- Tax (Rate), dated 28.06.2017*, for goods and *Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017*, for services issued in this regard and read with other Rate notifications which may be issued to partially exempt any other goods or services from payment of tax. In order to determine the applicable rate of tax, the following approach is to be adopted:

(i) Identify whether the supply is an intra-State supply;

(ii) Identify whether the supply is a plain supply/ composite supply/ mixed supply and adopt the treatment accordingly;

(iii) Identify HSN/ SAC of the goods or services and applicable rate of tax as per rate notification;

(iv) Identify whether the HSN/ SAC applies to more than one description-line. If yes, analyse which of the description is more specific to the supply in question;

(v) Once classification is ascertained, identify whether such goods or services qualify for any exemption (partially or wholly) from payment of tax.

g. **Taxable value:** The rate of tax so notified will apply on the value of supply as determined under section 15. The transaction value would be accepted subject to inclusions/ exclusions specified in the said section, where the price is the sole consideration for the supply and the supplier and recipient are not related persons. In all other cases, the value of supply will be that value which is determined in terms of the rules (i.e., Chapter IV of the CGST Rules).

h. **Classification of Goods or Services:** In order to apply a particular rate of tax, a taxable person needs to determine the classification of his supply as to whether supply constitutes a supply of goods or services. Once the same is determined, further classification in terms of HSN/ SAC of goods and services has to be made by the taxpayer so as to arrive at the rate of tax at which he is required to pay tax. At the outset, it is important to note that HSN for goods are contained in Chapters from 1 to 98 and SAC for Services are contained in Chapter 99. Since classification of goods is older and is based on knowledge gathered from precedents on HSN classification, we shall discuss the steps for classification of goods. The steps for determination of proper classification is as under:

I. It is important to note that classification of each product supplied has to be made separately, if supply of such product is independent. This shall include all by-products, scraps etc.

II. Identify the description and nature of the goods being supplied. One must confirm that the product is also similarly or more specifically covered in the Customs Tariff and HSN 2017. The Section Notes and Chapter Notes to the applicable Schedule to be read as if it forms an integral part of the Tariff for the purpose of classification.

III. If there is any ambiguity, first reference shall be made to the Rules

for interpretation of the Customs Tariff.

IV. As per the Rules, first step to be applied is to find the trade understanding of the terms used in the Schedule, if the meaning or description of goods is not clear.

V. If the trade understanding is not available, the next step is to refer to the technical or scientific meaning of the term. If the tariff headings have technical or scientific meanings, then that has to be ascertained first before the test of trade understanding.

VI. If none of the above is available, reference may be had to the dictionary meaning or ISI specifications. Evidence may be gathered on end use or predominant use.

VII. In case of the unfinished or incomplete goods, if the unfinished product bears the essential characteristics of the finished product, its classification shall be same as that of finished product.

VIII. If the classification is not ascertained as per above point, one has to look for the nature of product which is more specific.

IX. If the classification is still not determinable, one has to look for the ingredient which gives the article its essential characteristics.

X. It is important to note that in following cases of supply of services, same rate of central tax as applicable on supply of like goods involving transfer of title in goods would be applicable:

Sl. No.	**Chapter, Section or Heading**	**Description of Service**	**Rate (per cent.) of Central Tax**	**Rate (per cent.) of Integrated Tax**
15	**Heading 9971** (Financial and related services)	(ii) Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other	Same rate of central tax as on supply of like goods involving transfer of title in goods	Same rate of Integrated tax as on supply of like goods involving transfer of title in goods

		valuable consideration.		
		(iii) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.	Same rate of Central tax as on supply of like goods involving transfer of title in goods	Same rate of Integrated tax as on supply of like goods involving transfer of title in goods
17	**Heading 9973** (Leasing or rental services, without operator)	(iii) 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.	Same rate of Central tax as on supply of like goods involving transfer of title in goods	Same rate of Integrated tax as on supply of like goods involving transfer of title in goods
		(iv) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.	Same rate of Central tax as on supply of like goods involving transfer of title in goods	Same rate of Integrated tax as on supply of like goods involving transfer of title in goods
		(viii) Leasing or rental services, without operator,	Same rate of Central tax as applicable on supply of like goods	Same rate of Integrated tax as applicable on supply of like goods

		other than (*i*), (*ii*), (*iii*), (*iv*), (*vi*) and (*viia*) above.	involving transfer of title in goods	involving transfer of title in goods

Note: The only exception to the above table is leasing of motor vehicle which was purchased by the Lessor prior to July 1, 2017, leased before July 1, 2017 and no ITC of Central Excise, VAT or any other taxes on such motor vehicle was availed by him. If all these conditions are fulfilled, then the lessor is liable to pay GST only on 65% of the GST applicable on such motor vehicle. – Refer *Notification No. 37/2017-Central Tax (Rate), dated 13.10.2017.*

9.3 Issues and Concerns

1. The activity of import of service is subjected to tax, whether or not such import is in the course or furtherance of business. While the relaxation from obtaining registration is provided to a 'non-taxable online recipient' who imports OIDAR services, relaxation to other persons who import services for personal use flows from exemption in *Entry No. 10(a) to Notification No. 9/2017-Integrated Tax (Rate), dated 28.06.2017.*

2. Although, the word 'business' is clearly defined under section 2(17), the phrase 'in the course or furtherance of business' has not been defined in the Act. The meaning that can be derived from this phrase is so wide that it can include every activity undertaken by a business concern, including activities in the course of employment, since employment is a subset of the activities undertaken in the course of business.

3. A plain reading of the meaning of the terms 'composite supply' and 'mixed supply' suggests that the concept pre-supposes a condition that they are affected by taxable persons. Say, in case of a supply effected by a non-taxable person to a registered person attracting tax under reverse charge, the supply would not be regarded as a composite supply even where all the conditions are satisfied, and cannot be regarded as a mixed supply either, for the same reason. Such an understanding would defeat the very purpose of the legislative intent. Therefore, in case of reverse charge transactions, the supply must be understood to have been made by the registered person who is the recipient of supply, i.e., even supplies effected by unregistered persons may be qualified to be termed 'composite supply' or mixed supply', subject to the normal conditions which would otherwise apply.

4. While the concept of 'mixed supplies' requires that the goods and/ or services supplied in the mixed supply must be supplied for a single price,

there is no such requirement in the case of composite supplies. Therefore, a person effecting a mixed supply of goods would certainly have an option to strategically alter the bundle of supplies so that all the goods/ services included in the mixed supply would not all be subjected to the highest rate of tax applicable on the said supplies.

On the other hand, a supplier who effects a composite supply wishes to charge for the supply of two or more goods or services separately, which otherwise constitute a composite supply, a question may arise as to whether the rate of tax applicable on all the supplies would continue to be the rate applicable to the principal supply. Say, a supplier of air conditioners (taxable @ 28%) who always affects the supply along with the installation service, now chooses to split the cost of the service in order to tax such service portion at the rate of 18%. Such a split-up may be questioned, given that there is no escape from treatment as a composite supply merely because the values are ascertained separately. Generally, transactions that are intentionally broken up with an intent to minimise the impact of tax would be subject to scrutiny/ valuation.

9.4 FAQs

Q1. In respect of exchange of goods, namely gold watch for restaurant services, will the transaction be taxable as two different supplies or will it be taxable only in the hands of the main supplier?

Ans. Yes, the transaction of exchange is specifically included in the scope of "supply" under section 7. Thus, exchange could be taxable both ways. Provided the person exchanging gold watch is in the business of selling watches (A contrary view could also be taken. It depends on the facts of each and every case).

Q2. What are the examples of 'disposals' as used in 'supply'?

Ans. "Disposals" could include donation in kind or supplies in a manner other than sale.

Q3. Will a not-for-profit entity be liable to tax (if registered under GST) on any supplies affected by it – e.g., sale of assets received as donation?

Ans. Yes, it would be liable to tax on value as may be determined under section 15, for the said sale of donated assets.

Q4. Is the levy under reverse charge mechanism applicable only to services?

Ans. No, reverse charge applies to supplies of both goods and services by virtue of *Notification No. 4/2017-Central Tax (Rate), dated 28.06.2017*, and *Notification No. 13/2017-Central Tax (Rate), dated 28.06.2017*, for goods and services respectively.

Q5. What will be the implications in case of purchase of goods from unregistered dealers?

Ans. Section 9(4) of the CGST Act as amended by The CGST (Amendment) Act, 2018, specifies that the tax shall be payable under reverse charge by the specified class of registered persons, in respect of supply of specified categories of goods or services or both.

9.5 MCQs

Q1. As per Section 9, which of the following would attract levy of CGST?

(a) Inter-State supplies, in respect of supplies within the State to SEZ;

(b) Intra-State supplies;

(c) Both of the above;

(d) Either of the above.

Ans. (b) Intra-State supplies

Q2. Which of the following forms of supply are included in Schedule I?

(a) Permanent transfer of business assets on which input tax credit has been claimed

(b) Agency transactions for services

(c) Barter

(d) None of the above

Ans. (a) Permanent transfer of business assets on which input tax credit has been claimed

Q3. Who can notify a transaction to be supply of 'goods' or 'services'?

(a) CBIC

(b) Central Government on the recommendation of GST Council

(c) GST Council

(d) None of the above

Ans. (b) Central Government on the recommendation of GST Council

Statutory Provision

10. Composition levy

(1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose aggregate turnover in the preceding financial

*year did not exceed *fifty lakh rupees, may opt to pay, [45][in lieu of the tax payable by him under sub-section (1) of section 9, an amount calculated at such rate] as may be prescribed, but not exceeding,—*

*(a) **one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,*

(b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and

(c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers,

subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding [46][one crore and fifty lakh rupees], as may be recommended by the Council.

[47] [*Provided further that a person who opts to pay tax under clause (a) or clause (b) or clause (c) may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II), of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher*.]

[48]["*Explanation.– For the purposes of second proviso, the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount shall not be taken into account for determining the value of turnover in a State or Union territory*."]

(2) The registered person shall be eligible to opt under sub-section (1), if:

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[40] Substituted for "in lieu of the tax payable by him, an amount calculated at such rate" vide The Central Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019.

**The limit has been increased to 1.5 crore vide Notification No.-14/ 2019-CT, dt. 07.03.2019*

***Rate reduced from 1% to 0.5% w.e.f. 01.01.2018 vide Notification No.-1/ 2018-CT, dt. 01.01.2018*

[46] Substituted vide The CGST (Amendment) Act, 2018 notified through Notf No. 02/2019-CT dt. 29.01.2019, w.e.f. 01.02.2019. Before substitution, it read as "one crore rupees".

[47] Inserted vide The CGST (Amendment) Act, 2018 notified through Notf No. 02/2019-CT dt. 29.01.2019, w.e.f. 01.02.2019.

[48] Inserted vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020.

**** The words "half per cent. of the turnover of taxable supplies of goods" substituted in place of the words "half per cent, of the turnover" w.e.f. 01.01.2018 vide Notf No.-1/ 2018-CT, dt. 01.01.2018.*

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(a) [49][save as provided in sub-section (1), he is not engaged in the supply of services];

(b) he is not engaged in making any supply of goods [50][or services] which are not leviable to tax under this Act;

(c) he is not engaged in making any inter-State outward supplies of goods [51][or services];

(d) he is not engaged in making any supply of [52][~~goods [or]~~ services] through an electronic commerce operator who is required to collect tax at source under section 52; [53][***]

(e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the [54][Council; and]

(f) [55][he is neither a casual taxable person nor a non-resident taxable person:]

Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

[56][(2A) Notwithstanding anything to the contrary contained in this Act, but subject to the provisions of sub-sections (3) and (4) of section 9, a

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[49] Substituted for "(a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II save as provided in sub-section (1), he is not engaged in the supply of services." vide The CGST (Amendment) Act, 2018 notified through Notification No. 02/2019-CT dt. 29.01.2019, w.e.f. 01.02.2019.

[50] Inserted vide Finance Act, 2020 w.e.f. 01.01.2021 vide Notf No.-92/2020-CT dt. 22.12.2020

[51] Inserted vide Finance Act, 2020 w.e.f. 01.01.2021 vide Notf No.-92/2020-CT dt. 22.12.2020

[52] The words "goods or" omitted by The Finance Act, 2023, notified through Notf No. 28/2023-CT dt. 31.07.2023, w.e.f. 01.10.2023.

[53] The word "and" omitted vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020 vide Notf No.1/2020-CT, dt. 01.01.2020

[54] Substituted for "Council" vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020 vide Notf No. 1/2020-CT, dt. 01.01.2020

[55] Inserted vide The Finance (No.2) Act, 2019 w.e.f. 01.01. 2020 vide Notf No. 1/2020-CT, dt. 01.01.2020

[56] Inserted vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020 vide Notf No. 1/2020-CT, dt. 01.01.2020

registered person, not eligible to opt to pay tax under sub-section (1) and sub-section (2), whose aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him under sub-section (1) of section 9, an amount of tax calculated at such rate as may be prescribed, but not exceeding three per cent. of the turnover in State or turnover in Union territory, if he is not—

(a) *engaged in making any supply of goods or services which are not leviable to tax under this Act*;

(b) *engaged in making any inter-State outward supplies of goods or services*;

(c) *engaged in making any supply of* [57]*~~[goods or]~~ services through an electronic commerce operator who is required to collect tax at source under section 52*;

(d) a manufacturer of such goods or supplier of such services as may be notified by the Government on the recommendations of the Council; and

(e) *a casual taxable person or a non-resident taxable person*:

Provided that where more than one registered person are having the same Permanent Account Number issued under the Income-tax Act, 1961, the registered person shall not be eligible to opt for the scheme under this sub-section unless all such registered persons opt to pay tax under this sub-section.]

(*3*) *The option availed of by a registered person under sub-section (1)* [58]*[or sub-section (2A), as the case may be] shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1)* [59]*[or sub-section (2A, as the case may be)].*

(4) A taxable person to whom the provisions of sub-section (1) [60]*[or sub-section (2A), as the case may be] apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any*

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[57] *The words "goods or" omitted by The Finance Act, 2023 notified through Notf No. 28/2023-CT dt. 31.07.2023, w.e.f. 01.10.2023.*

[58] *Inserted vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020 vide Notf No. 1/2020-CT, dt. 01.01.2020*

[59] *Inserted vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020 vide Notf No. 1/2020-CT, dt. 01.01.2020*

[60] *Inserted vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020 vide Notf No. 1/2020-CT, dt. 01.01.2020*

credit of input tax.

(5) *If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) [61][or sub-section (2A), as the case may be] not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.*

[62][Explanation 1.—For the purposes of computing aggregate turnover of a person for determining his eligibility to pay tax under this section, the expression "aggregate turnover" shall include the value of supplies made by such person from the 1st day of April of a financial year up to the date when he becomes liable for registration under this Act, but shall not include the value of exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.

Explanation 2.—For the purposes of determining the tax payable by a person under this section, the expression "turnover in State or turnover in Union territory" shall not include the value of following supplies, namely:—

(i) supplies from the first day of April of a financial year up to the date when such person becomes liable for registration under this Act; and

(ii) exempt supply of services provided by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount.]

Extract of the CGST Rules, 2017

3. Intimation for composition levy.

(1) *Any person who has been granted registration on a provisional basis under clause (b) of sub-rule (1) of rule 24 and who opts to pay tax under section 10, shall electronically file an intimation in FORM GST CMP-01, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, prior to the appointed day, but not later than thirty days after the said day, or such further period as may be extended by the Commissioner in this behalf:*

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[61] *Inserted vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020 vide Notf No. 1/2020-CT, dt. 01.01.2020*

[62] *Inserted vide The Finance (No.2) Act, 2019 w.e.f. 01.01.2020 vide Notf No. 1/2020-CT, dt. 01.01.2020*

Provided that where the intimation in FORM GST CMP-01 is filed after the appointed day, the registered person shall not collect any tax from the appointed day but shall issue bill of supply for supplies made after the said day.

(2) Any person who applies for registration under sub-rule (1) of rule 8 may give an option to pay tax under section 10 in Part B of FORM GST REG-01, which shall be considered as an intimation to pay tax under the said section.

(3) Any registered person who opts to pay tax under section 10 shall electronically file an intimation in FORM GST CMP-02, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, prior to the commencement of the financial year for which the option to pay tax under the aforesaid section is exercised and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 within a period of sixty days from the commencement of the relevant financial year.

*[63][Provided that any registered person who opts to pay tax under section 10 for the financial year 2020-21 shall electronically file an intimation in **FORM GST CMP-02**, duly signed or verified through electronic verification code, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, on or before 30th day of June, 2020 and shall furnish the statement in **FORM GST ITC-03** in accordance with the provisions of sub-rule (4) of rule 44 upto the 31st day of July, 2020.]*

[64][(3A) Notwithstanding anything contained in sub-rules (1), (2) and (3), a person who has been granted registration on a provisional basis under rule 24 or who has been granted certificate of registration under sub-rule (1) of rule 10 may opt to pay tax under section 10 with effect from the first day of the month immediately succeeding the month in which he files an intimation in FORM GST CMP-02, on the common portal either directly or through a Facilitation Centre notified by the Commissioner, on or before the 31st day of March, 2018, and shall furnish the statement in FORM GST ITC-03 in accordance with the provisions of sub-rule (4) of rule 44 within a period of [65][one hundred and eighty days] from the day on which such person commences to pay tax under section 10:

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63 Inserted vide Notf No. 30/2020 – CT, dt. 03.04.2020 w.e.f. 31.03.2020

64 Substituted vide Notf No.45/2017-CT, dt. 13.10.2017

65 Substituted for the word [ninety days] vide Notf No. 03/2018-CT, dt. 23.01.2018

Provided that the said persons shall not be allowed to furnish the declaration in FORM GST TRAN-1 after the statement in FORM GST ITC-03 has been furnished.]

(4) *Any person who files an intimation under sub-rule (1) to pay tax under section 10 shall furnish the details of stock, including the inward supply of goods received from unregistered persons, held by him on the day preceding the date from which he opts to pay tax under the said section, electronically, in FORM GST CMP-03, on the common portal, either directly or through a Facilitation Centre notified by the Commissioner, within a period of [66][ninety] days from the date on which the option for composition levy is exercised or within such further period as may be extended by the Commissioner in this behalf.*

(5) *Any intimation under sub-rule (1) or sub-rule (3) or [67][sub-rule (3A)] in respect of any place of business in any State or Union territory shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.*

4. Effective date for composition levy.

(1) *The option to pay tax under section 10 shall be effective from the beginning of the financial year, where the intimation is filed under sub-rule (3) of rule 3 and the appointed day where the intimation is filed under sub-rule (1) of the said rule.*

(2) *The intimation under sub-rule (2) of rule 3, shall be considered only after the grant of registration to the applicant and his option to pay tax under section 10 shall be effective from the date fixed under sub-rule (2) or (3) of rule 10.*

***5. Conditions and restrictions for composition levy**.*

(1) *The person exercising the option to pay tax under section 10 shall comply with the following conditions, namely:-*

(a) *he is neither a casual taxable person nor a non-resident taxable person;*

(b) *the goods held in stock by him on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State or from his agent or principal outside the State, where the option is exercised under sub-rule (1) of rule 3;*

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[66] *Substituted for the word [sixty] with effect from 17.08.2017 vide Notf No.-22/2017– CT, dt. 17.08.2017*

[67] *Inserted vide Notf No. 34/2017- CT. dt. 15.09.2017*

(c) *the goods held in stock by him have not been purchased from an unregistered supplier and where purchased, he pays the tax under sub-section (4) of section 9;*

(d) *he shall pay tax under sub-section (3) or sub-section (4) of section 9 on inward supply of goods or services or both;*

(e) *he was not engaged in the manufacture of goods as notified under clause (e) of sub-section (2) of section 10, during the preceding financial year;*

(f) *he shall mention the words —composition taxable person, not eligible to collect tax on supplies at the top of the bill of supply issued by him; and*

(g) *he shall mention the words —composition taxable person on every notice or signboard displayed at a prominent place at his principal place of business and at every additional place or places of business.*

(2) *The registered person paying tax under section 10 may not file a fresh intimation every year and he may continue to pay tax under the said section subject to the provisions of the Act and these rules.*

6. Validity of composition levy

(1) *The option exercised by a registered person to pay tax under section 10 shall remain valid so long as he satisfies all the conditions mentioned in the said section and under these rules.*

(2) *The person referred to in sub-rule (1) shall be liable to pay tax under sub-section (1) of section 9 from the day he ceases to satisfy any of the conditions mentioned in section 10 or the provisions of this Chapter and shall issue tax invoice for every taxable supply made thereafter and he shall also file an intimation for withdrawal from the scheme in FORM GST CMP-04 within seven days of the occurrence of such event.*

(3) *The registered person who intends to withdraw from the composition scheme shall, before the date of such withdrawal, file an application in FORM GST CMP-04, duly signed or verified through electronic verification code, electronically on the common portal.*

(4) *Where the proper officer has reasons to believe that the registered person was not eligible to pay tax under section 10 or has contravened the provisions of the Act or provisions of this Chapter, he may issue a notice to such person in FORM GST CMP-05 to show cause within fifteen days of the receipt of such notice as to why the*

option to pay tax under section 10 shall not be denied.

(5) *Upon receipt of the reply to the show cause notice issued under sub-rule (4) from the registered person in FORM GST CMP-06, the proper officer shall issue an order in FORM GST CMP-07within a period of thirty days of the receipt of such reply, either accepting the reply, or denying the option to pay tax under section 10 from the date of the option or from the date of the event concerning such contravention, as the case may be.*

(6) *Every person who has furnished an intimation under sub-rule (2) or filed an application for withdrawal under sub-rule (3) or a person in respect of whom an order of withdrawal of option has been passed in FORM GST CMP-07 under sub-rule (5), may electronically furnish at the common portal, either directly or through a Facilitation Centre notified by the Commissioner, a statement in FORM GST ITC-01 containing details of the stock of inputs and inputs contained in semi-finished or finished goods held in stock by him on the date on which the option is withdrawn or denied, within a period of thirty days from the date from which the option is withdrawn or from the date of the order passed in FORM GST CMP-07, as the case may be.*

(7) *Any intimation or application for withdrawal under sub-rule (2) or (3) or denial of the option to pay tax under section 10 in accordance with sub-rule (5) in respect of any place of business in any State or Union territory, shall be deemed to be an intimation in respect of all other places of business registered on the same Permanent Account Number.*

7. Rate of tax of the composition levy.

The category of registered persons, eligible for composition levy under section 10 and the provisions of this Chapter, specified in column (2) of the Table below shall pay tax under section 10 at the rate specified in column (3) of the said Table:-

[68]Sl. No.	Section under which composition levy is opted	Category of registered persons	Rate of tax
(1)	(1A)	(2)	(3)
1.	Sub-sections (1) and (2) of section 10	Manufacturers, other than manufacturers of	half per cent. of the turnover in

[68] *Table substituted w.e.f. 01.04.2020 vide Notf No. 50/2020-CT, dt. 24.06.2020*

			such goods as may be notified by the Government	*the State or Union territory*
	2.	*Sub-sections (1) and (2) of section 10*	*Suppliers making supplies referred to in clause (b) of paragraph 6 of Schedule II*	*two and a half per cent. of the turnover in the State or Union territory*
	3.	*Sub-sections (1) and (2) of section 10*	*Any other supplier eligible for composition levy under sub-sections (1) and (2) of section 10*	*half per cent. of the turnover of taxable supplies of goods and services in the State or Union territory*
	4.	*Sub-section (2A) of section 10*	*Registered persons not eligible under the composition levy under sub- sections (1) and (2), but eligible to opt to pay tax under sub-section (2A), of section 10*	*three per cent. of the turnover of ~~taxable~~[69] supplies of goods and services in the State or Union territory.".*

Related provisions of the Statute

Section	Description
Section 2(6)	Definition of 'Aggregate Turnover'
Section 2(78)	Definition of 'Non-taxable supply'
Section 2(102)	Definition of 'Services'
Section 2(112)	Meaning of Turnover in a State
Section 9	Levy and collection
Section 52	Collection of tax at source

[69] *Omitted vide Corrigendum G.S.R. 412(E), dt. 25.06.2020*

10.1 Introduction

This section provides for a registered person to opt for payment of taxes under a scheme of composition, the conditions attached thereto and the persons who are entitled, but not mandated, to make payment of tax under this scheme. The conditions, restrictions, procedures and the documentation in respect of this scheme are contained in Chapter II of the Central Goods and Service Tax Rules, 2017 from Rule 3 to Rule 7 (Composition Rules).

10.2 Analysis

Tax payment under this scheme is an option available to the taxable person. This scheme would be available only to certain eligible persons.

(a) Payment of tax: The composition scheme offers to a registered person, the option to remit taxes on the turnover as against outward supply-wise payment of taxes. In other words, the registered person opting to pay tax under the composition scheme needs only to ascertain the aggregate turnover and compute the tax thereon at a fixed rate, regardless of the actual rate of tax applicable on the said outward supply. The rates of tax prescribed in this regard are as under:

(i) In case of manufacturers (other than manufacturers of notified goods): 1% (0.5% CGST+ 0.5% SGST) of the turnover in the State/UT (Note: The rate applicable has been reduced from 2% to 1% *vide Notification No. 1/2018- Central Tax, dated 01.01.2018);*

(ii) In case of food/ restaurant services: 5% (2.5% CGST+ 2.5% SGST) of the turnover in the State/ UT *(i.e., in case of composite supply of service specified in Entry 6(b) of Schedule II)*;

(iii) In case of other suppliers: 1% (0.5% CGST+ 0.5% SGST) of the turnover in the State/ UT *(such as traders, agents for supply of goods, etc.)*

(b) Eligibility to pay tax under composition scheme: The conditions for eligibility to opt for payment of tax under the composition scheme are as follows:

(i) Registered persons having an 'aggregate turnover' as defined under Section 2(6) of the Act (i.e., aggregate of turnovers across all States under the same PAN) does not exceed the prescribed limit in the preceding financial year will be eligible to opt for payment of tax under the composition scheme. *Please refer to the discussion on aggregate turnover as explained in the definitions Chapter for a better understanding of the expression*.

Threshold For Composition Scheme (Rs. In Lacs)			
States	Period		
	27.06.2017 to 12.10.2017	13.10.2017 to 31.03.2019	1.04.2019 till date
Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Himachal Pradesh	50	75	75
Uttarakhand	75	100	75
Andhra Pradesh, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Jharkhand, Karnataka, Kerala, Maharashtra, Odisha, Punjab, Rajasthan, Tamil Nadu, Telangana, Uttar Pradesh, West Bengal & Jammu and Kashmir	75	100	150

In this regard, the following may be noted:

(1) The aggregate turnover of the registered person should not exceed the said prescribed limit during the financial year in which the scheme has been availed;

(2) The 'aggregate turnover' as computed for a composition taxpayer shall not include any interest income, which is earned by way of supply of services such as extending deposits, etc. where such interest or discount is exempted under the GST Law.

Central Goods and Services Tax (Amendment) Act, 2018

The threshold limit upto which the Government has powers to notify the eligibility limit for Composition levy has been increased to Rs.1.50 crores from existing Rs.1 crore.

It is effective from 1st February, 2019.

(3) Through CGST (Removal of Difficulties) *Order No. 01/2017, dated 13.10.2017,* the following is clarified:-

If a person supplies goods and/or services referred to in clause (b) of paragraph 6 of Schedule II of the said Act and also supplies any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, the said person shall not be ineligible for the composition scheme under section 10 subject to the fulfilment of all other conditions.

(4) The CGST (Removal of Difficulty) *Order No. 01/2019-Central Tax, dated 01.02.2019 suppressing the Order No. 01/2017* has issued the following clarifications:

WHEREAS, sub-section (1) of section 10 of the Central Goods and Services Tax Act, 2017 (12 of 2017) (hereafter in this Order referred to as the said Act) provides that-

(i) a registered person engaged in the supply of services, other than supply of service referred to in clause (b) of paragraph 6 of Schedule II to the said Act, may opt for the scheme under the said sub-section;

(ii) a person who opts for the said scheme may supply services (other than those referred to in clause (b) of paragraph 6 of Schedule II to the said Act), of value not exceeding ten per cent. of turnover in a State or Union territory in the preceding financial year or five lakh rupees, whichever is higher;

AND WHEREAS, clause (a) of sub-section (2) of section 10 of the said Act provides that the registered person shall be eligible to opt under sub-section (1), if, save as otherwise provided in sub-section (1), he is not engaged in the supply of services;

AND WHEREAS, rendering of services as part of the savings and investment practice of business, by way of extending deposits, loans or advances, in so far as the consideration is represented by way of interest or discount, is resulting in their ineligibility for the aforesaid scheme, causing hardships to a lot of small businesses and because of that, certain difficulties have arisen in giving effect to the provisions of section 10;

NOW, THEREFORE, in exercise of the powers conferred by

section 172 of the Central Goods and Services Tax Act, 2017 and in supersession of the *Central Goods and Services Tax (Removal of Difficulties) Order, 2017, No. 01/2017-Central Tax, dated the 13th October, 2017*, published in the Gazette of India, Extraordinary, vide number S.O. 3330 (E), dated the 13th October, 2017, except as respects things done or omitted to be done before such supersession, the Central Government, on recommendations of the Council, hereby makes the following Order, namely:

1. Short title. —This Order may be called the Central Goods and Services Tax (Removal of Difficulties) Order, 2019.
2. For the removal of difficulties, it is hereby clarified that the value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account –
   (i) for determining the eligibility for composition scheme under second proviso to sub-section (1) of section 10;
   (ii) in computing aggregate turnover in order to determine eligibility for composition scheme.

(ii) The scheme cannot be opted for during the middle of a financial year, except in the case where the person obtains registration, and opts for composition scheme at the time of applying for registration under the GST Law:

(1) **Taxable Person obtaining a new registration under GST laws:** Such option can be exercised at the time of obtaining registration under section 22 in Part B of Form GST-REG-1. Such new application may also include cases of migration from the erstwhile laws. In both cases, the option to pay tax under composition scheme shall be effective from the effective date of registration. [Refer Rule 3 of CGST Rules]

(2) **Registered person switches over to composition scheme:** A person is required to file intimation before the commencement of the financial year for which he opts to pay tax under the scheme. In such cases, the provisions of section 18(4) shall stand attracted and the registered person shall be required to file a statement containing details of stock and inward supply of goods received from un-registered persons, held in stock, on the date immediately preceding the date. Please refer to the discussion in section 18 for a better understanding.

(iii) In order to be eligible to opt for the scheme, the registered person must not be in possession of stock of goods which has been purchased from unregistered persons. In any such case, due tax ought to have been paid thereon under section 9(4);

Note: In case of migrated registrations from the erstwhile laws, the GST Law imposes an additional condition that the stock of goods held on the GST appointed day (01.07.2017) does not include any goods which have been procured in the course of inter-State trade or commerce or received from his branch/ his agent/ his principal situated outside the State or imported from a place outside India.

(iv) The registered person would **not** be eligible to effect any:

(1) Supply of [70][~~goods~~ [71][~~or~~] services] **through an e-commerce operator** who is liable to collect tax at source (TCS) – while there is no restriction on goods supplier through a portal owned and operated by the same person;

In this regard, it may be noted that the provision for TCS has been notified to be effective from 01.10.2018.

(2) Supply of **[72]non-taxable goods [or services]** i.e., alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel.

(3) Supply of **services**, other than services specified in Para-6(b) to Schedule II or upto limit as prescribed under second proviso to Section 10(1) i.e., 10% of the of turnover in a State or Union territory in the preceding financial year or Rs. 5 lakhs, whichever is higher. In this regard, it must be noted that the Government has issued an order for the removal of difficulties to clarify that any services provided by a composition taxpayer shall not be taken into account where the consideration for the said service is by way of "interest" which is exempted from tax under the GST Law.

Removal of Difficulty Order

One of the difficulties which was initially faced by such persons was that if he earns any interest income (particularly in a

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[70] *Omitted vide The Finance Act, 2023 dt. 31.03.2023, notified through Notf. No. 28/2023 CT 31.07.2023, w.e.f. 01.10.2023 before it was read as, "goods or".*

[71] *Inserted vide The Finance Act, 2020 w.e.f. 01.01.2021.*

[72] *Inserted vide The Finance Act, 2020 w.e.f. 01.01.2021.*

proprietorship firm) then that would have been deemed to be a supply against service under GST and, therefore, any registered person receiving interest income in course of furtherance of business shall be deemed to be supplying services. Thus, such registered person shall not be eligible for opting composition scheme. To overcome such difficulties an order was passed, The Central Goods and Services Tax *(Removal of Difficulties) Order No. 01/2017-Central Tax, dated 13.10.2017* to clarify as under:

"(i) it is hereby clarified that if a person supplies goods and/ or services referred to in clause (b) of Paragraph 6 of Schedule II of the said Act and also supplies any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, the said person shall not be ineligible for the composition scheme under section 10 subject to the fulfilment of all other conditions specified therein.

(ii) it is further clarified that in computing his aggregate turnover in order to determine his eligibility for composition scheme, value of supply of any exempt services including services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account."

Central Goods and Services Tax (Amendment) Act, 2018

A registered person under Section 10 is allowed to supply services up to a value not exceeding 10% of the turnover in a State or UT in preceding financial year or 5 lakhs, whichever is higher. This has been inserted through a proviso to Section 10.

(4) [73]**Inter-State outward supplies of goods [or services]**, including supplies to SEZ unit/ developer. Please note that this condition implies that the registered person will not be in a position to affect inter-State stock transfers to its own establishments located outside the State. It is also important to note that the condition is not limited to taxable supplies alone and extends to exempt supplies as well.

[73] *Inserted vide The Finance Act, 2020 w.e.f. 01.01.2021*

(v) **Shall not collect tax:** Taxable person opting to pay tax under the composition scheme is prohibited from collecting tax on the outward supplies. Care must be taken when composition taxable persons are involved in supply of MRP-goods. MRP includes output tax and selling at MRP violates this condition. The impact is far more severe as the composition facility gets rejected and full output tax is liable to be paid but input tax credit (otherwise available) would not have been availed within the relevant time permitted.

(vi) **Not entitled to input tax credit:** Taxable person opting to pay tax under the composition scheme will not be eligible to claim any input tax credits.

However, if the taxable person becomes ineligible to remain under composition scheme, the taxable person will become entitled to take input tax in respect of inputs held in stock (as inputs, contained in semi-finished or finished goods) on the day immediately preceding the date from which he becomes liable to pay tax under section 9. (Refer Section 18(1)(c) for the provision. A statement of stock shall be filed in Form GST ITC-01 within 30 days from the date from which the option is withdrawn or the order cancelling the composition option is passed).

(vii) The registered person must **not** be:

(1) A manufacturer of such goods as may be notified by the Government (based on the recommendations of the GST Council), in the year for which he opts for the scheme, or in the preceding financial year (E.g., Ice cream, pan masala, tobacco, aerated water). However, there is no restriction in trading of such goods, i.e., where the person has not manufactured the goods.

(2) A casual taxable person;

(3) A non-resident taxable person;

(viii) All the registrations obtained under a single PAN are also mandated to opt for payment under the composition scheme, i.e., all the registered persons under the PAN will also be mandated to comply with all the conditions mentioned above, including the business verticals having separate registrations within the same State under the same PAN. The scheme would become applicable for all the registrations and it cannot be applied for select verticals only. E.g., Say a company has the following businesses separately registered:

— Sale of mobile devices (Registered in Kerala)

— Franchisee of branded restaurant (Registered in Goa)

The scheme would be applicable for the said 2 units. The company cannot opt for composition scheme for the registration in Kerala and opt to pay taxes under the regular scheme for the registration in Goa.

(ix) The scheme will be applicable to all the outward supplies. The option of the scheme will be qua-person and not qua-class of goods – once opted it will be applicable for all supplies effected by the registered person; it must be noted that a taxable person **cannot** opt for payment of taxes under composition scheme for supply of one class of goods and opt for regular scheme of payment of taxes for supply of other classes of goods or services.

(c) Conditions applicable on a composition supplier: Once a person has opted to pay tax under the composition scheme, the following conditions would stand attracted:

(i) Every notice or signboard in every registered place of business, displayed at a prominent place, shall carry the words “Composition taxable person”;

(ii) Every bill of supply issued by the composition suppliers shall carry the declaration “Composition taxable person, not eligible to collect tax on supplies” on top of the bill;

(iii) RCM on inward supplies: The composition supplier shall be liable to make payment at the rate applicable on the supply in respect of every inward supply liable to tax under the reverse charge mechanism, regardless of the rate of tax that is applicable on him on the outward supplies affected by him. It may be noted that the value of such inward supplies would not be included in the aggregate turnover of the composition taxpayer although the liability is discharged by him on such inward supplies;

(iv) Not entitled to collect tax: The composition taxpayer is prohibited from collecting any GST/ Cess applicable on the outward supplies effected by him. Accordingly, the recipients of supply would also not be eligible to claim any credits where the inward supply is from a composition taxpayer;

(v) Not entitled to claim credit of taxes paid: The composition taxpayer is not entitled to claim credit in respect of taxes paid by him on any of the inward supplies effected by him, including inward supplies on

which he pays tax under reverse charge mechanism.

(vi) A Composition supplier shall not be entitled to issue any tax invoice. However, to effect supplies of goods/ services, the supplier will have to issue "Bill of Supply" without charging any tax amount on it.

However, if the composition *taxpayer switches over to become a regular taxpayer, he will be entitled to take input tax in respect of inputs held in stock (as inputs, contained in semi-finished or finished goods) on the day immediately preceding the date from which he becomes liable to pay tax under section 9 (regular taxpayer). Refer the discussion in Section 18(1)(c) for a better understanding of the provisions.*

(d) Important Note: The option to pay tax under the composition scheme will remain valid so long as the registered persons comply with all of the aforesaid conditions in (b) and (c) above. The composition suppliers will be treated as any other registered supplier with effect from the date on which any of the said conditions cease to be complied with. The composition suppliers would not be entitled to re-enter the scheme until the expiry of the financial year.

(i) The registered person would be required to file an intimation (suo motu) for withdrawal from the scheme within 7 days of the non-compliance;

(ii) The registered person may also file an intimation if he wishes to withdraw from the scheme, before the effective date of withdrawal, and such withdrawal can be applied for anytime during the financial year.

Once granted, the eligibility would be valid unless the permission is cancelled or is withdrawn or the person becomes ineligible for the scheme.

(iii) Cancellation of permission: Where the proper officer has reasons to believe that the taxable person was not eligible to the composition scheme, the proper officer may cancel the permission (in order CMP-7) and demand the following:

(a) Differential tax and interest – viz., tax payable under the other provisions of the Act after deducting the tax paid under composition scheme;

(b) Penalty determined based on the demand provisions under Section 73 or 74.

(e) Comments specific to migration cases (transition from the

erstwhile law to the GST regime): In case of migration of old registration into registration under GST, option to avail composition scheme under GST Laws can be exercised only if the goods held in stock by such taxable person, on the appointed day have not been purchased in the course of inter-State trade or commerce or imported from a place outside India or received from his branch situated outside the State, or from his agent or principal outside the State.

(i) As per rule 3(1) of the CGST Rules, in cases involving migration, there is need to exercise such option for composition in Form GST CMP-01 prior to appointed date or within 30 days after the appointed date. In this case, the option to pay tax under composition scheme shall be effective from the appointed date. This date has further been extended to 16.08.2017. Such person would be required to file stock statement under Rule 3(4) in Form GST CMP-03 within a period of 90 days (extended from 60 days to 90 days by *Notification No. 22/2017- Central Tax, dated 17.08.2017* from the date on which the option for composition levy is exercised or within such further period as may be extended by the Commissioner in this behalf. Such date was extended further till 31.01.2018 vide *Order No. 11/ 2017-GST, dated 21-Dec-2017*).

(ii) A new sub-rule (3A) was inserted by *Notification No. 34/2017- Central Tax, dated 15.09.2017,* which has an overriding effect on provisions of sub-rule (1), (2) and (3). It may be noted that, the purpose of rule (3A) is only to enable the persons to opt for composition scheme in the first year of GST implementation, without making them to wait up to the next financial year. This is on account of the fact that, the threshold limit for the purposes of Composition scheme u/s 10 was enhanced twice i.e., once on 27.06.2017 and then again on 13.10.2017 (*vide Notification No. 45/2017- Central Tax, dated 13.10.2017*) Hence, sub-rule (3A) would only cover cases, where the application is made prior to 31.03.2018. For all applications made during the financial year 2018-19, the matter would be governed by Rule 3(3).

10.3 Issues & Concerns

(1) An amendment of the rate applicable to the supplies effected by composition suppliers was made with effect from 01.01.2018. In this regard, attention is drawn to the rate applicable to traders which reads as follows – "half per cent of the turnover **of taxable supplies of goods** in the State or Union territory". It must be noted that the highlighted expression, more specifically, "**of taxable supplies"** is missing in the rate entries applicable to manufacturers and restaurant service providers.

Therefore, the said 2 classes of persons would be liable to pay tax on the turnover in State, whether or not the supplies are exempted from tax.

10.4 FAQs

Q1. Will a taxable person be eligible to opt for composition scheme only for one out of 3 branches, duly registered?

Ans. No. Composition scheme would become applicable for all the business verticals/ registrations which are separately held by the person with same PAN.

Q2. Can composition scheme be availed if the taxable person has inter-State inward supplies?

Ans. Yes. Composition scheme is applicable subject to the condition that the taxable person does not engage in making inter-State outward supplies (subject to *Notification No. 2/2019-Central Tax (Rate), dated 7.03.2019*), while there is no restriction on making any inter-State inward supplies.

Q3. Can the taxable person under composition scheme claim input tax credit?

Ans. No. Taxable person under composition scheme is not eligible to claim input tax credit.

Q4. Can the customer who buys from a taxable person who is under the composition scheme claim composition tax as input tax credit?

Ans. No. customer who buys goods from taxable person who is under composition scheme is not eligible for composition input tax credit.

Q5. Can composition tax be collected from customers?

Ans. No. The taxable person under composition scheme is restricted from collecting tax.

Q6. What is the threshold for opting to pay tax under the composition scheme?

Ans. The threshold for composition scheme is up to 1.50 crores of aggregate turnover in the preceding financial year and 75 lakhs in case of specific category of States.

Q7. How to compute ‘aggregate turnover’ to determine eligibility for composition scheme?

Ans. The methodology to compute aggregate turnover is given in Section 2(6). However, since composition scheme is applicable only to suppliers making intra-State supplies, ‘aggregate turnover’ means ‘Value of all taxable supplies (excluding the value of inward supplies on which tax is

payable by a person on reverse charge basis), exempt supplies (except interest income as discussed above), exports of goods or services or both or inter-State supplies of a person having the same PAN (i.e., across India) excluding CGST, IGST, SGST, UGST and cess.

Q8. What does a person having the same PAN mean?

Ans. "Person having the same PAN" means all the units across India having the same PAN as is issued under the Income Tax Law.

Q9. What are the consequences, if an ineligible person opts for payment of tax under the Composition scheme?

Ans. As per section 10(5), if the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) or sub-section (2A), as the case may be, despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and the provisions of section 73 or section 74 shall, *mutatis mutandis* , apply for determination of tax and penalty.

Q10. What happens if a taxable person who has opted to pay taxes under the composition scheme crosses the threshold limit of `1.50 crores during the year?

Ans. In such case, from the day the taxable person crosses the threshold, the permission granted earlier is deemed to stand withdrawn, and he shall be liable to pay taxes under the regular scheme i.e., section 9, from such day.

10.6 RELEVANT CASE LAWS

1. Vaishno Associates vs. CCE, Jaipur [(2018) 91 taxmann.com 371 (New Delhi - CESTAT)]

Assessee classified activity carried out by it under category of 'works contract services' - It claimed benefit of Works Contract Composition Scheme - Adjudicating Authority denied benefit of Composition Scheme on plea that assessee had failed to file any intimation or option to department opting for payment of service tax in respect of works contract under Composition Scheme - Whether denial of benefit of Composition Scheme for sole reason for failure to file intimation prior to payment of service tax was justified - Held, no.

2. ABL Infrastructure (P.) Ltd. vs. CCE, Customs & Service Tax 2018 (11) G.S.T.L. 106 (Tri. - Mumbai)

Assessee was engaged in providing works contract service - It opted to

discharge service tax liability under Works Contract (Composition Scheme for Payment of Service Tax) Rules, 2007 - It did not include value of material supplied by service recipient free of cost in gross value of works contract - Whether value of free supply material also be added in gross value of works contract - Held, yes.

SPECIAL SCHEME IN CASE OF INTRA-STATE SUPPLY OF GOODS OR SERVICES OR BOTH WITH TAX RATE OF 6%

The Central Government *vide Notification No. 2/2019-Central Tax (Rate), dated 7.03.2019* has notified Composition scheme in case of **intra-State supply** of goods or services or both, at the rate along with the conditions specified below:

Description of supply	Rate (per cent)	Conditions
First supplies of goods or services or both up to an aggregate turnover of Rs. 50 lakhs made on or after the 1st day of April in any financial year, by a registered person.	3	1. Supplies are made by a registered person, (i) whose aggregate turnover in the preceding financial year was Rs. 50 lakh or below; (ii) who is **not eligible** to pay tax under sub-section (1) of section 10; (iii) who is **not engaged** in making any supply which is **not leviable to tax**; (iv) who is **not engaged** in making any **inter-State** outward supply; (v) who is neither a casual taxable person nor a non-resident taxable person; (vi) who is not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52; and (vii) who is not engaged in making supplies of: (a) Ice cream and other edible ice, whether or not containing cocoa.

		(b) Pan masala (c) Aerated water[74] (d) Tobacco and manufactured tobacco substitutes 2. Where more than one registered persons are having same PAN, central tax on supplies by all such registered persons is paid at the given rate. 3. The registered person **shall not collect any tax** from the recipient nor shall he be entitled to any credit of input tax. 4. The registered person shall issue, instead of tax invoice, a bill of supply. 5. The registered person shall mention the following words at the top of the bill of supply, namely: - 'Taxable person paying tax in terms of *Notification No. 2/2019-Central Tax (Rate), dated 7.03.2019*, not eligible to collect tax on supplies'. 6. Liability to pay central tax at the rate of 3% on all outward supplies **notwithstanding any other notification issued** under section 9 or section 11 of said Act. 7. Liability **to pay central tax on inward supplies** on reverse charge under sub-section (3) or sub-section (4) of section 9 of said Act. Explanation: For the purposes of this notification, the expression "first supplies of goods or services or both" shall, for the purposes of determining eligibility of a person

[74] *Added through Notf No. 18/2019-CT(R) dt. 30.09.2019*

		to pay tax under this notification, include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the said Act but for the purpose of determination of tax payable under this notification shall not include the supplies from the first day of April of a financial year to the date from which he becomes liable for registration under the Act.

Further, *Circular No. 97/16/2019-GST, dated 5.04.2019* has been issued in order to provide Clarification regarding exercise of option to pay tax under *Notification No. 2/2019-Central Tax (Rate), dated 7.03.2019* .

Important Note: It may be noted that while computing aggregate turnover in order to determine eligibility of a registered person to pay central tax at the rate of 3%, value of supply of exempt services by way of extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount, shall not be taken into account.

Analysis:

With effect from 1st April 2019, a new composition scheme has come into force in case of intra-State supply of goods or services or both, at the rate of 6% (3% CGST + 3% SGST) for first supplies of goods or services or both up to an aggregate turnover of Rs. 50 lakhs made on or after the 1st day of April in any financial year by a registered person subject to certain conditions.

This is an optional facility through a rate notification that is 'notwithstanding' any other rate notification issued. Therefore, the notification overrides *Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017*. As it is optional, registered person should carefully consider the conditions before opting for the same. This facility and composition scheme under section 10 operates as mutually exclusive. Thus, traders and manufacturers of goods and restaurant service providers who are eligible for composition (even if not opted) will not enter into this facility.

Eligibility to pay tax under composition scheme (*Notification No. 2/2019-Central Tax (Rate), dated 7.03.2019*):

Supplies are made by a registered person, -

1. whose aggregate turnover in the preceding financial year was Rs. 50 lakh or below;
2. who is not eligible to pay tax under sub-section (1) of section 10;
3. who is not engaged in making any supply which is not leviable to tax;
4. who is not engaged in making any inter-State outward supply;
5. who is neither a casual taxable person nor a non-resident taxable person;
6. who is not engaged in making any supply through an electronic commerce operator who is required to collect tax at source under section 52; and
7. who is not engaged in making supplies of:
   - Ice cream and other edible ice, whether or not containing cocoa.
   - Pan masala
   - Tobacco and manufactured tobacco substitutes
   - [75]Aerated Water

Conditions applicable on a composition supplier: Once a person has opted to pay tax under the composition scheme, the following conditions would stand attracted-

1. Where more than one registered persons are having same PAN, central tax on supplies by all such registered persons is paid at the given rate.
2. The registered person **shall not collect any tax** from the recipient nor shall he be entitled to any credit of input tax.
3. The registered person shall issue, instead of tax invoice, a bill of supply.
4. The registered person shall mention the following words at the top of the bill of supply, namely: -

   'Taxable person paying tax in terms of *Notification No. 2/2019-Central Tax (Rate), dated 7.03.2019*, not eligible to collect tax on supplies'.
5. Liability to pay central tax at the rate of 3% on all outward supplies **notwithstanding any other notification issued** under section 9 or section 11 of said Act.
6. Liability **to pay central tax on inward supplies** on reverse charge under sub-section (3) or sub-section (4) of section 9 of said Act.

Where any registered person who has availed input tax credit, opts to pay tax

[75] *Inserted vide Notf No. 43/2019-CT, dt. 30.09.2019*

under this notification, shall pay an amount, by way of debit in the electronic credit ledger or electronic cash ledger, equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock and on capital goods as if the supply made under this notification attracts the provisions of section 18(4) of the said Act and the rules made thereunder and after payment of such amount, the balance of input tax credit, if any, lying in his electronic credit ledger shall lapse.

Statutory Provision

11. Power to grant exemption from tax

(1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

(2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.

(3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation. —For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

11.1 Introduction

This provision confers powers on the Central Government to exempt either absolutely or conditionally goods or services or both of any specified description from whole or part of the central tax, on the recommendations of

the Council. It also confers power on the Central Government to exempt from payment of tax any goods or services or both, by special order, on recommendation of the Council.

11.2 Analysis

The Central or the State Governments are empowered to grant exemptions from tax, subject to the following conditions:

(i) Exemption should be in public interest;

(ii) By way of issue of notification;

(iii) On recommendation from the Council;

(iv) Absolute/ conditional exemption may be for any goods and/ or services of any specified description. In this regard, it may be noted that the exemption would be in respect of the supply and not specifically for any classes of persons. E.g., an absolute exemption could be granted in respect of supply of water. Whereas, a conditional exemption could be granted for supply of goods to canteen stores department.

(v) Exemption by way of special order (and not notification) may be granted by citing the circumstances which are of exceptional nature.

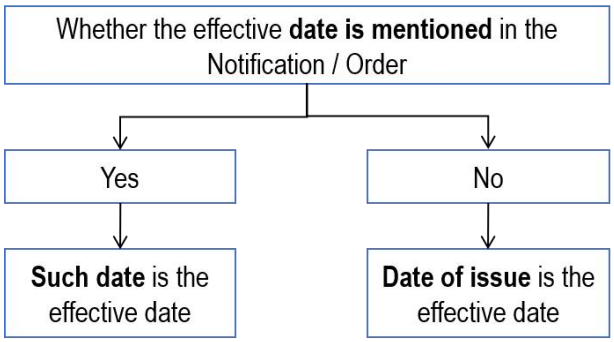
(vi) The GST Law specifies that a registered person supplying the goods and/ or services is not entitled to collect a tax higher than the effective rate, where the supply enjoys an absolute exemption.

Effective date of the notification or special order:

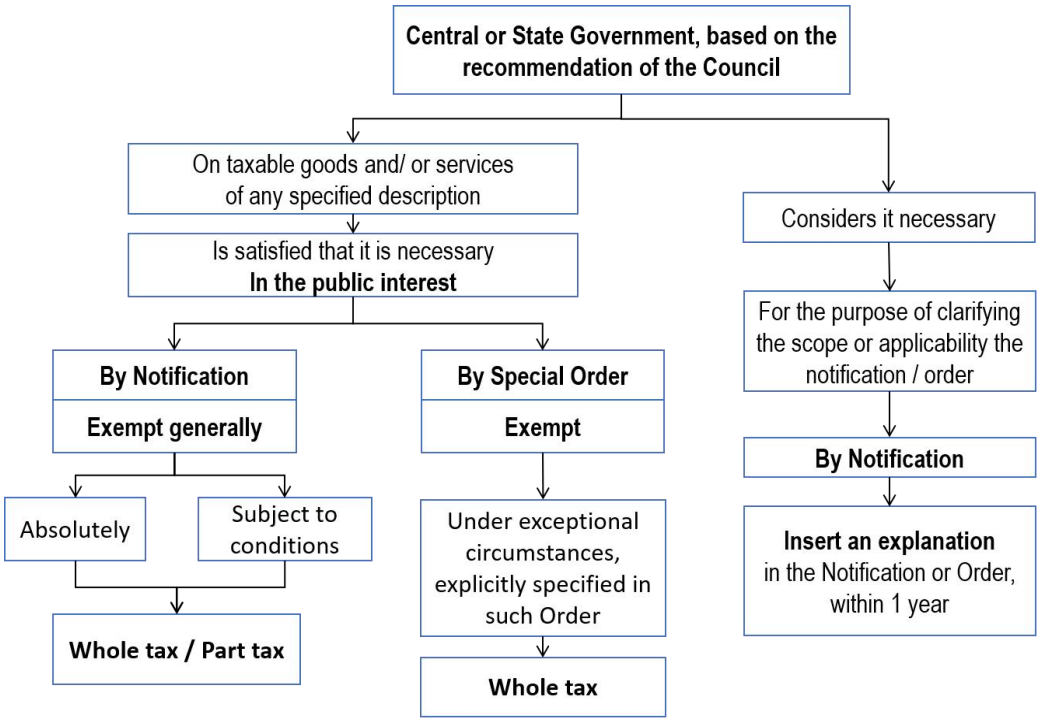
The effective date of the notification or the special order would be date which is so mentioned in the notification or special order. However, if no date is mentioned therein, it would be:

— Date of its issue for publication in the official gazette;

— Date on which it is made available on the official website of the Government Department.



The analysis of above provision in a pictorial form is summarised as follows:



Exemption under one GST Law and the effect on another GST Law:

An exemption issued under the CGST Act will 'automatically' exempt the same supply from the levy of tax under the SGST/ UTGST Act. This is provided under the SGST/ UTGST Act. But the converse is not necessarily applicable, that is, exemption under an SGST/ UTGST Act will not exempt levy of tax under the CGST Act.

Exemption under CGST Act	Deemed to be exempt under SGST Act
	Deemed to be exempt under UTGST Act
	No auto-application of exemption under IGST Act
Exemption under IGST Act	No auto-application of exemption under CGST Act

Clarification on a Notification/ Special Order

The law also provides for the Government to embed a clarification to such notification or special order, by way of an "Explanation", at any time within a period of 1 year from the date of the said notification or special order. Such explanation inserted within the timelines would have a retrospective effect, viz., from the effective date of the relevant notification or special order.

Section 11 – Illustrations

1. Absolute exemption: Exemption to following taxable services from tax leviable thereon:

   - Services by way of renting of residential dwelling for use as residence to an un-registered person.*12/2017-Central Tax (Rate), dated 28.06.2017*
   - Services by a veterinary clinic in relation to health care of animals or birds.

   Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017

2. Conditional Exemption: The Central Government has exempted the tax payable under the CGST/ UTGST/ IGST Acts by any taxable person on supply of "*Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having declared tariff of a unit of accommodation below one thousand rupees per day or equivalent".* However, this exemption stands withdrawn vide Notification No. 4/2022- Central Tax (Rate), dated 13.07.2022.

Notification No.

Glimpse of notifications issued for exemption from payment of tax

Notification No.	Particulars	Comments
02/2017 - Central Tax (Rate) dated 28.06.2017. (As amended from time to time)	Exempted supplies of goods in terms of section 11(1) of the CGST Act E.g., Electricity, Salt, fresh fruits, plastic bangles, passenger baggage etc.	The notification was issued in exercise of powers conferred u/s 11(1). The notification was made applicable w.e.f. 01.07.2017. The said notification has been amended various number of times to include as well as exclude various items from the notification.
03/2017-Central Tax (Rate) dated 28.06.2017 (As amended from time to time)	Goods specified in the List annexed required in connection with various kinds of petroleum operations undertaken are given concessional rate i.e., at the rate of 2.5% under CGST i.e., 5% IGST.	Although petroleum products are outside the purview of GST. But the notification seeks to provide a concessional rate of tax on supplies relating to petroleum operations.
07/2017-Central Tax (Rate) dated 28.06.2017	Exemption to supplies by CSD to Unit Run Canteens and supplies by CSD/ Unit Run Canteens to authorised customers	The notification came into effect w.r.e.f. 1.7.2017.
08/2017-Central Tax (Rate) dated 28.06.2017	Exemption granted from levy of CGST under RCM on supplies received from unregistered persons. (if value of supplies does not exceed ` 5,000 from any or all the suppliers in a day) [Amended vide *Notification No. 38/2017, 10/2018, 12/2018, 22/2018 -Central Tax (Rate)*] However, *Notification No.*	W.e.f. 1st April, 2019, the Central Government *vide Notification No. 7/2019-Central Tax (Rate), dated 29.03.2019*notified 3 categories of goods or services or both, in respect of which registered person shall pay tax on reverse charge basis as recipient of such goods or services or both

Notification No.	Particulars	Comments
	08/2017-Central Tax (Rate) has been rescinded vide *Notification No. 1/2019-Central Tax (Rate) dated 29.1.2019.*	Further, *Notification No. 24/2019- Central Tax (Rate), dated 30.09.2019* has amended *Notification No. 07/2019-Central Tax (Rate) dated 29.03.2019 w.e.f. 30.09.2019*
09/2017-Central Tax (Rate) dated 28.06.2017	Exemption granted to supplies to a TDS deductor by an unregistered supplier	This exemption notification is not available under IGST (Rate).
10/2017 - Central Tax (Rate) dated 28.06.2017	Exemption to Supplies of second-hand goods received by registered person dealing in buying & selling of second hand goods from unregistered person provided the dealer pays central tax on supply of such second-hand goods as per CGST Rules	This exemption notification is not available under IGST (Rate).
12/2017-Central Tax (Rate) dated 28.06.2017. (As amended from time to time)	Exemption to supply specified services under the CGST Act. Almost, all the exemptions which were available earlier under the erstwhile regime.	The notification is exempting various supply of services from GST. The notification has been amended various number of times either to include or exclude various services from the exemption.
26/2017-Central Tax (Rate) dated 21.09.2017	Exemption to supply heavy water and nuclear fuels falling in Chapter 28 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) by the Department of Atomic Energy to the Nuclear Power Corporation	The Exemption notification provided absolute exemption from whole of the tax payable.

Notification No.	Particulars	Comments
	of India Ltd.	
5/2018-Central Tax (Rate) dated 25.01.2018	Exempting the Central Government's share of Profit Petroleum as defined in the contract entered into by Central government in this behalf.	
18/2017-Integrated Tax (Rate) dated 05.07.2017	Exemption from IGST to services imported by a unit/developer in Special Economic Zone (SEZ) for authorised operators	Corresponding Notification would not apply in case of intra-State supplies, given that all supplies by SEZ are inter-State supplies.

Glimpse of important Circulars on exemption from payment of tax:

Circular No.	Particulars
The CBIC *vide Circular No. 149/05/2021-GST, dated 17.06.2021*has clarified that -	*(i) Services provided to an educational institution* (Pre-schools and Schools) by way of serving of food (catering including mid-day meals) are exempt from levy of GST irrespective of its funding from government grants or corporate donations. *(ii) Serving of food to Anganwadi* It shall also be covered by said exemption, whether sponsored by government or through donation from corporates.
The CBIC *vide Circular No. 150/06/2021-GST, dated 17-6-2021*has clarified that -	*Access to a road or bridge* Entries 23 and 23A of *NN-12/ 2017-CT* exempt access to a road or bridge, whether the consideration are in form of toll or annuity. However, the above entries do not cover the services by way of construction of

	road which fall under the heading 9954 even if consideration for such construction is paid by way of instalments (annuities).
The CBIC *vide Circular No. 151/07/2021-GST, dated 17.06.2021*has clarified that -	*(i) Services by way of conduct of examination* GST is exempt on services provided by Central or State Boards (including the boards such as NBE) by way of conduct of examination for the students, including conduct of entrance examination for admission to educational institution. GST is also exempt on input services relating to admission to, or conduct of examination, such as online testing service, result publication, printing of notification for examination, admit card and questions papers etc., when provided to such Boards. GST at the rate of 18% applies to other services provided by such Boards, namely of providing accreditation to an institution or to a professional (accreditation fee or registration fee such as fee for FMGE screening test).
The CBIC *vide Circular No. 152/08/2021-GST, dated 17.06.2021*has clarified that -	*(i) CG/ SG/ Local authority acting as public authorities* The term 'business' as per *entry no. 3(iv) of NN-11/ 2017-CT(R)* shall not include any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities. *(ii) Civil constructions such as ropeway for tourism*

	Civil constructions such as rope way for tourism development is not a structure that is meant predominantly for purposes other than business so it will be covered under *entry no. 3(xii) of Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017* and will attract GST at the rate of 18%
The CBIC *vide Circular No. 153/09/2021-GST, dated 17.06.2021*has clarified that -	*Supply of milling of wheat and fortification thereof* 1) Supply of milling of wheat and fortification thereof by miller, or of paddy into rice is exempt as per *entry no. 3A of NN-12/ 2017-CT(R)*, provided that value of goods supplied in such composite supply (goods used for fortification, packing material etc.) does not exceed 25% of the value of composite supply. 2) If the value of goods in the above-mentioned supply exceeds 25% of the value of composite supply, 5% rate would be applicable, if such composite supply is provided to a registered person, being a job work service (entry No. 26 of *Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017*)
The CBIC *vide Circular No. 154/10/2021-GST, dated 17.06.2021*has clarified that -	*Guaranteeing of loans by CG/ SG* It is re-iterated that guaranteeing of loans by Central or State Government for their undertaking or PSU is specifically exempt as per entry no. 34A of NN-12/ 2017-CT(R)
The CBIC *vide Circular No. 155/11/2021-GST, dated 17.06.2021*has clarified that -	*Parts of sprinkler or drip irrigation system* GST rate on parts of Sprinklers or

	Drip Irrigation System, classifiable under the heading 8424, is 12%, even if supplied separately
The CBIC *vide Circular No. 177/09/2022-TRU, dated 3.08.2022* has *interalia* clarified applicability of exemptions on certain services- Regarding.	1) Service by way of storage or warehousing of cotton in ginned and or baled form was covered under *Entry 24B of Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017* in the category of raw vegetable fibres such as cotton. It may however be noted that this exemption has been withdrawn w.e.f 18.07.2022. 2) It has been clarified that exemption under Sl. No. 9B of the exemption notification shall cover services associated with transit cargo both to and from Nepal and Bhutan. It has been further clarified that movement of empty containers from Nepal and Bhutan, after delivery of goods there, is a service associated with the transit cargo to Nepal and Bhutan and is therefore covered by the exemption. 3) It has been clarified that location charges or preferential location charges (PLC) paid upfront in addition to the lease premium for long term lease of land constitute part of upfront amount charged for long term lease of land and are eligible for the same tax treatment, and thus eligible for exemption under Sl. No. 41 of *Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017*. 4) In respect of query that whether the additional toll fees collected in

	the form of higher toll charges from vehicles not having fastag is exempt from GST. The CBIC clarified that additional fee collected in the form of higher toll charges from vehicles not having Fastag is essentially payment of toll for allowing access to roads or bridges to such vehicles and may be given the same treatment as given to toll charges. Note: Even, *Circular No. 164/20/2021-GST, dated 6.10.2021* has clarified that overloading charges collected at toll plazas in the form of higher toll would get the same treatment as given to toll charges. *5)* Exemption under under Sr. No. 15(b) of *Notification No. 12/2017-Central Tax (Rate), dated 28.06.2017* would apply to passenger transportation services by non-air conditioned contract carriages falling under Heading 9964 where according to explanatory notes, transportation takes place over pre-determined route on a pre-determined schedule. The exemption shall not be applicable where contract carriage is hired for a period of time, during which the contract carriage is at the disposal of the service recipient and the recipient is thus free to decide the manner of usage (route and schedule) subject to conditions of agreement entered into with the service provider.
The CBIC *vide Circular No. 190/02/2023-GST dated 13.01.2023*	All services supplied by Central Government, State Government,

has clarified that -	Union Territory or local authority to any person other than business entities (barring a few specified services such as services of postal department, transportation of goods and passengers etc.) are exempt from GST vide Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017. Therefore, as recommended by the GST Council, it is hereby clarified that accommodation services provided by Air Force Mess and other similar messes, such as, Army mess, Navy mess, Paramilitary and Police forces mess to their personnel or any person other than a business entity are covered by Sl. No. 6 of notification No. 12/2017 – Central Tax (Rate) dated 28.06.2017. Provided the services supplied by such messes qualify to be considered as services supplied by Central Government, State Government, Union Territory or local authority.
The CBIC *vide Circular No. 201/12/2023-GST, dated 01.08.2023* has clarified that -	**Issue:** **1. Whether services supplied by director of a company in his personal capacity such as renting of immovable property to the company or body corporate are subject to Reverse Charge mechanism:** **Clarification:** It is clarification, services supplied by a director of a company or body corporate to the company or body corporate in his private or personal capacity such as services supplied by way of renting of immovable property to the company

	or body corporate are not taxable under RCM. Only those services supplied by director of company or body corporate, which are supplied by him as or in the capacity of director of that company or body corporate shall be taxable under RCM in the hands of the company or body corporate under notification No. 13/2017-CTR (Sl. No. 6) dated 28.06.2017. **2. Whether supply of food or beverages in cinema hall is taxable as restaurant service (Para 4 (xxxii) to Notification No. 11/2017-CT(R) dated 28.06.2017)** **Clarification:** It is hereby clarified that supply of food or beverages in a cinema hall is taxable as 'restaurant service' as long as: a) the food or beverages are supplied by way of or as part of a service, and b) supplied independent of the cinema exhibition service. It is further clarified that where the sale of cinema ticket and supply of food and beverages are clubbed together, and such bundled supply satisfies the test of composite supply, the entire supply will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

CLASSIFICATION

Introduction

Unlike Customs law, GST law does not contain a commodity classification tariff, these are contained within the notification which prescribes the rate of

tax. Classification, therefore, is an exercise that is inevitable to identify the specific entry in any of the 6 schedules for determining the rate of tax on the supply of goods or services. The revenue department could object to the rate adopted or exemption claimed when the error is observed at the time of assessment, investigation or revenue audit. This could lead to multiple demands at all stages of supply and also denial of credit. The customer may object to the classification or the rate. The assessee himself may come to know of the error due to competitors using different rates, paying or not paying, attending some awareness session, reading articles, books. Errors may also come to light at the time of due diligence, internal audit, statutory audit, outsourced consultant changing, etc.

Impact of Errors in GST Classification –

Many taxpayers could suffer loss of business in period of uncertainty till proper classification is arrived at as they may have adopted some rate for their supplies since they could not afford to stop business for want of HSN. After that they may be following the same incorrect classification unless there is any objection.

The cost of errors would include the following:

1. In case of higher tax being charged, taxpayer may have to suffer the loss of orders and cost of re-establishing business with the customers, the loss of credibility with customers. The cost of discounts given to retain the customer due to incorrect rate is inevitable.
2. In the case of goods or services supplied which are nil rated or exempted, the non-availability of credit can be fatal for the business if this claim for exemption is not accurately made by the supplier. In other words, where exemption is availed erroneously, demand for output tax will be made without any facility to allow credit that could have been availed. Similarly, where exemption is omitted to be claimed, there would be a scenario of recovery of input tax credit being ineligible from the start. Demands may be made at multiple stages of the supply chain. This is a major departure from the earlier indirect tax regime.
3. In case of short charge due to incorrect classification or claim of exemption which is not available, would result in non-recoverability of taxes from the customers and cost of interest. In business, breaking the credit chain could make business unviable.
4. Valuation methods prescribed for certain categories of goods and/ or services would be dependent on the classification of such goods and/ or services. Wrong classification would lead to wrong payment of tax.
5. On certain goods and/ or services, GST is to be discharged by the

recipient of supply under reverse charge mechanism. Wrong classification may result in non-payment of tax or unnecessary payment of tax.

6. Denial of benefits under FTP such as duty drawback and incentives being provided for various goods and/ or services at varied rates can be the result of incorrect classification of goods/ services.
7. Non-payment of Compensation Cess, if any, applicable on specified goods and/ or services which may result in penal proceedings over and above the interest liability.
8. Calculating incorrect liability on import of goods/ services or not claiming the ITC (Input Tax Credit) benefit of export on goods/ services exports due to improper classification could also happen. This could happen when the alternative headings available have different import/ export criterion being applicable to them.

In case of Revenue raising the short charge or ineligible exemption issues, in addition to the above costs: the cost of penalty, denial of credit availed, cost of dispute resolution at adjudication, appeal, Court stages also would arise. It would also result in internal manpower resources getting substantially involved to resolve the issue inspite of the fact that a specialist in GST may be outsourced to prepare the reply, appearance etc.

Analysis

(i) Classification of Goods or Services:

In order to apply a particular rate of tax, one needs to determine the classification of the supply as to whether the supply constitutes a supply of goods or services or both. Once the same is determined in terms of sections 7 and 8, a further classification in terms of HSN/ SAC of goods and services has to be made so as to arrive at the rate of tax applicable to the supply. At the outset, it is important to note that HSN for goods are contained in Chapters from 1 to 98 and SAC for Services are contained as Chapter 99 notified as the 'Scheme of Classification of Services' provided as an Annexure to the Notification issued for rate of tax (CGST) applicable to services (i.e., Annexure to *Notification No. 11/ 2017-Central Tax (Rate), dated 28.06.2017*).

The Classification of Goods is older and is based on knowledge gathered from precedents on HSN classification, as an adaptation from that formulated by the World Customs Organisation. The suggested steps for determination of proper classification of goods are as under:

1. The classification of each supply has to be made separately, regardless of the form of supply (such as sale/ transfer/ disposal

including by-products, scraps etc.)

2. Identify the description and nature of the goods being supplied. The Section Notes and Chapter Notes specified in the Customs Tariff would squarely apply to the Tariff Schedules under the GST Law and ought to be read as an integral part of the Tariff for the purpose of classification.

3. The 'Rules of Interpretation' of the First Schedule to the Customs Tariff Act, 1975, will apply for the purpose of classification of goods.

   (a) First step to be applied is to find the trade understanding of the terms used in the Schedule, if the meaning or description of goods is not clear.

   (b) If the trade understanding is not available, the next step is to refer to the technical or scientific meaning of the term. If the tariff headings have technical or scientific meanings, then that has to be ascertained first before the test of trade understanding.

   (c) If none of the above is available reference may be made to the dictionary meaning or ISI specifications. Evidence may be gathered on end use or predominant use.

4. In case of the unfinished or incomplete goods, if the unfinished goods bear the essential characteristics of the finished goods, its classification shall be the same as that of the finished goods.

5. If the classification is not ascertained as per above point, one has to look for the nature of goods which is more specific.

6. If the classification is still not determinable, one has to look for the ingredient which gives the goods its essential characteristics.

(ii) Rate of tax for goods or services

Purpose of Notification	Supply of Goods	Supply of Services
Prescribing the rate of tax	1/2017-Central Tax (Rate) *(As amended from time to time)*	11/2017-Central Tax (Rate) *(As amended from time to time)*
Granting the exemption	2/2017-Central Tax (Rate) *(As amended from time to*	12/2017-Central Tax (Rate) *(As amended from time to*

	time)	*time)*

(iii) Requirement of Classification

It may seem like classification may not be so cumbersome, and tools such as experience, logic and common sense are sufficient to identify the classification, and to interpret the tariff notifications. However, a quick look at some examples would drive home the need to pay close attention to the principles of classification. Let us consider the following examples:

(1) a 'watch made of gold' – an article of gold or a watch, albeit an expensive one?
(2) a confectionary product 'hajmola' – an ayurvedic medicaments or remains confectionary sweets?
(3) surgical gloves – latex products or accessories to healthcare services?
(4) mirror cut-to-size for automobiles – article of glass or accessories to motor vehicles fitted as rear-view mirror?

As can be seen from the few instances mentioned above, classification is not one that is free from doubt. When coupled with differential rates of tax, the scope for misclassification is bound to be reinforced with motivation to either reduce the tax incidence/ or to pay a higher tax to circumvent any possible interest and penalty. Both these motivations can work on either side – industry as well as tax administration.

Approach to Classification

The notifications prescribing the rate of tax in respect of goods as well as services contain explanations as to how the classification must be undertaken. Extracts of some of those explanations are provided below for ease of reference:

(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

Notification No. 1/2017-Central Tax (Rate), dated 28.06.2017

4. Explanation.- For the purposes of this notification,-

(i) Goods include capital goods.

(ii) Reference to "Chapter", "Section" or "Heading", wherever they occur, unless the context otherwise requires, shall mean respectively as "Chapter, "Section" and "Heading" in the annexed

scheme of classification of services (Annexure).

(iii) The rules for the interpretation of the First Schedule to the Customs Tariff Act,1975 (51 of 1975), the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of heading 9988.

Notification No. 11/2017-Central Tax (Rate), dated 28.06.2017

As can be seen from the above, the notification prescribing the rate of tax itself specifies the approach that is to be followed for purposes of classification, namely:

(a) In respect of goods, the notification requires reference to be made to the First Schedule to Customs Tariff Act 1975: A quick look at these would help us to recognize the approach that needs to be followed for classification.

THE CUSTOMS TARIFF ACT, 1975 (51 OF 1975)

An act to consolidate and amend the law relating to customs duties.

Be it enacted by Parliament in the Twenty-sixth Year of the Republic of India as follows:-

1. (1) This Act may be called the Customs Tariff Act, 1975.
   (2) It extends to the whole of India.
   (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.
2. The rates at which duties of customs shall be levied under the Customs Act, 1962, are specified in the First and Second Schedules,

The above table is an adaptation of the Harmonized System of Nomenclature (HSN) established for aiding in uniformity in Customs classification in international trade between member countries of World Customs Organization. It was drafted under the aegis of Customs Cooperation Council Nomenclature, Brussels. It was adopted for Customs purposes by India in 1975 and readapted (with some changes) for Central Excise in 1985 and now for purposes of GST in 2017. Please bear in mind that reference to the original HSN would be of much help in understanding the scope of any entry to understand the full extent of meaning implied in any entry found while reading Customs Tariff Act. Refer https://www.wcoomd.org/ where the HSN is available for purchase

or subscription from World Customs Organization.

(b) In respect of services, the notification requires reference to the Annexure which contains the Scheme of Classification: The Annexure is appended to the CGST rate notification and contains entries under Chapter 99 (although there is no such Chapter for services in the HSN prescribed under the Customs Law). Additionally, Explanatory Notes to such classification were issued to assist in interpretation of various entries in the Annexure to the rate notification.

(iv) In this regard, it may also be noted that the tariff entries in case of certain services refer to the rate of tax applicable to the relevant goods. In the following cases of supply of services, the rate of tax applicable as on a supply of like goods involving transfer of title in goods, would be applicable on the supply of services:

Chapter, Section or Heading	Description of Service
Heading 9971 (Financial and related services)	(ii) 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.
	(iii) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.
Heading 9973 (Leasing or rental services, without operator)	(iii) 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.
	(iv) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof.
	[76](viii) Leasing or rental services, without operator, other than (i), (ii), (iii), (iv), (vi) and (viia) above.

The only exception to the above table is leasing of motor vehicle which

[76] *Substituted vide Notf No. 20/2019-CT(R) dt. 30.09.2019*

was purchased by the lessor prior to July 1, 2017, leased before the GST appointed date (i.e., 01.07.2017) and no credit of central excise, VAT or any other taxes on such motor vehicle had been availed by him. If all these conditions are fulfilled, then the lessor is liable to pay GST only on 65% of the GST applicable on such motor vehicle. – Refer *Notification No. 37/2017-Central Tax (Rate), dated 13.10.2017.*

(v) The Customs Tariff Act – Rules of Interpretation

The rules of interpretation contained in the Customs Tariff Act provide guidance regarding the approach to be followed for reading and interpreting tariff entries. These rules are merely summarized and listed below for convenience, whereas a detailed study of the rules is advised from commentaries and value-added updated tariff publications. Please refer to the Customs Tariff Act,1975 for full set of Rules of Interpretation.

- Rule 1: headings are for reference only and do not have statutory force for classification;
- Rule 2(a): reference to an article in an entry includes that article in CKD-SKD condition;
- Rule 2(b): reference to articles in an entry includes mixtures or combination;
- Rule 3(a): where alternate classification available, specific description to be preferred;
- Rule 3(b): rely on the material that gives essential character to the article;
- Rule 3(c): apply that which appears later in the tariff as later-is-better;
- Rule 4: examine the function performed that is found in other akin goods;
- Rule 5: cases-packaging are to be classified with the primary article;
- Rule 6: when more than one entry is available, compare only if they are at same level.

(vi) Role of 'Manufacture' in Classification

Classification would be well understood by applying the above rules of interpretation. Now, the process that goods are passed through can impact their classification. For example, cutting, slicing and packing pineapple in cans in sugar syrup has primary input of pineapple and the output is canned fruit with extended shelf-life. Now, the input and output are not identical, but it has been held in the case of *"Pio Food Packers"* that this is not a process amounting to manufacture. But would it be possible to regard the input and the output to retain the same

classification. The answer lies in knowing the scope of each entry applicable to classification. Another example, Kraft paper used to make packing boxes may be sold as it is or after laminating them. It has been held in the case of *Laminated Packings (P) Ltd. [1990 (49) E.L.T. 326 (S.C.)]* that this process is manufacture even though the input and output fall within the same classification entry. GST Law has adopted, in section 2(72), the general understanding of manufacture that is very similar to that in Central Excise. The real test from this definition – is the input and output functionally interchangeable or not in the opinion of a knowledgeable end-user – and not based on the classification entry. Change in classification entry from one to the other, that is, classification entry for input is not the same as that of the output, could only arouse suspicion about the possibility of manufacture. Please note that 'manufacture' is included in the definition of 'business' [(in section 2(17)] but it is not included as a 'form of supply' (in section 7(1)(a) or anywhere else). Hence, the nature of the process that inputs are put through may not be manufacture but yet may appear to move the output into a different entry compared to the input. So, would change of classification entry be relevant or degree of change produced in the input due to the process carried out must be considered. With the adoption of HSN based classification from the Custom Tariff Act, it is imperative to carefully consider whether one entry has been split and sub-divided into categories even if they both carry the similar rate of tax. Hence, the key aspects to consider are:

- Identify the scope of an entry for classification of input or output
- Study the nature of process carried out on the inputs
- Examine by the 'test' (above) if result of the process is manufacture
- Now identify the classification applicable to the output

For example, is 'desiccating a coconut' a process of manufacture? If yes, the desiccated coconut ought not to be considered as eligible to the same rate of tax as coconut. Drying grains may not appear to be a process of manufacture but frying them could be manufacture as the grains are no longer 'seed grade' although it resembles the grain.

Manufacture need not be a very elaborate process. It can be a simple process but one that brings about a distinct new product – in the opinion of a knowledgeable end-use – and not just any person with no particular familiarity with the article. Manufacture need not be an irreversible process. It can be reversible yet until reversed it is recognized as a distinct new product, again, in the opinion of those knowledgeable in it. Processes such as assembly may be manufacture in relation to some articles but not in others. So, caution is advised in generalizing these

verbs – assembly, cutting, polishing, etc. – but examining the degree of change produced and the identity secured by the output in the relevant trade as to the functional inter-changeability of the output with the input. If a knowledgeable end-user would accept either input or output albeit with some reservation, then it is unlikely to be manufacture. But, if this knowledgeable end-user would refuse to accept them to be interchangeable, then the process carried out is most likely manufacture. Usage of common description of the input and output does not assure continuity of classification for the two.

(vii) Role of 'Supplier Status' in Classification

This is best explained with an illustration – a restaurant buys aerated beverage on payment of GST at 28% +12% including cess and on resale of this beverage as part of food served as a combo with 'composition status' under section 10 of the CGST Act, the rate of tax on this beverage would be 5%. Therefore, it is important to note that classification can undergo a change depending upon the 'status' of the Supplier. Another illustration could be medicaments which are taxed at 5% would be exempt from tax when they are administered by the hospital to casualty/ emergency admissions and to in-patients even if billed separately in the invoice issued to patient by the hospital.

(viii) Classification for Exemptions

In GST law the exemptions are set out under section 11 of the whole of the tax payable or a part of it. In granting exemptions, it is not necessary that the exemption be made applicable to the entire entry. In other words, exemption notifications are capable of carving out a portion from an entry so as differentially alter the rate of tax applicable to goods or services within that entry. Exemptions can take any of the following forms:

- Supplier may be exempt – here, regardless of the nature of outward supply, exemption shall apply to the supplier. Conditions specified may make such exemption be applicable to the supplier but when the supplies are made to specified recipients.

Sl. No.	***Chapter, Section, Heading, Group or Service Code (Tariff)***	***Description of Services***	***Rate (per cent.)***	***Condition***
1.	*Chapter 99*	*Services by an entity*	*Nil*	*Nil*

		registered under section 12AA [77][or 12AB] of the Income-tax Act, 1961 (43 of 1961) by way of charitable activities.		

- Supplies may be exempt – here, the supplier is not as relevant and all supplies that are notified would enjoy the exemption. Conditions specified may help to determine the supplies that are to be allowed the exemption.

27	*Heading 9971*	*Services by way of —* *(a) extending deposits, loans or advances in so far as the consideration is represented by way of interest or discount (other than interest involved in credit card services);* *(b) inter se sale or purchase of foreign currency amongst banks or authorised dealers of foreign exchange or amongst banks and such dealers.*	*Nil*	*Nil*

(ix) Role of 'Conditions' in Exemptions

It is well understood that conditions in exemption notifications tend to convert the exemption into an option, that is, the exempted/ concessional rate of tax would apply when the conditions are fulfilled and by deviating from the conditions, the full rate of tax would apply. This principle has been tested in the context of section 5A of the Central Excise Act,1944. However, a quick look at the Explanation to Section 11 of the CGST Act (reproduced below) appears to indicate that unless an express option is granted in the exemption notification, the concessional or exempted rate of tax along with attendant conditions must be availed without any discretion to opt out of it.

Explanation.—For the purposes of this section, where an exemption in

[77] *Inserted vide Notf No. 7/2021-CT (R) dt. 30.09.2021 w.e.f. 01.10.2021.*

respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

While there may be alternate views that the above explanation applies only when the exemption is 'granted absolutely' and not in all cases, such a view may find the contradiction where one entry in an exemption notification prescribes a concessional rate of tax that applies its restriction on input tax credit, while another entry in the very same notification prescribes two rates of tax where one of them enjoins restriction on input tax credit.

And the reason for resisting the view that – exemption with the condition is an option – is when the Government felt free to specify two alternate tax consequences in respect of a given entry in one case , there is no justification to make an assumption about the existence of an option even when in the very same notification that Government opted to notify only one tax consequence. Accordingly, it would be a reasonable construction that – exemption is a condition and not an option – and all Court decisions under earlier laws to the contrary are rendered otiose in view of the explanation to section 11.

Illustration below shows a style where exemption would 'not be optional':

Sl. No.	***Chapter, Section, Heading, Group or Service Code (Tariff)***	***Description of Services***	***Rate (per cent)***	***Condition***
8	*Heading 9964 (Passenger transport services)*	*(i) Transport of passengers, with or without accompanied belongings, by rail in first class or air conditioned coach.*	*2.5*	*Provided that credit of input tax charged on goods and services used in supplying the service, is not utilised for paying central tax or integrated tax on the supply of service.*

		(vii) [78][Passenger transport services other than (i), (ii), (iii), (iv), (iva), (v), (vi) and (via) above.	*9*	*-]*

The following illustration is a style of drafting exemption entries that is 'not optional':

8	*Heading 9964 (Passenger transport services)*	*[79][(vi) Transport of passengers by any motor vehicle designed to carry passengers where the cost of fuel is included in the consideration charged from the service recipient.*	*2.5*	*Provided that credit of input tax charged on goods and services used in supplying the service, other than the input tax credit of input service in the same line of business (i.e. service procured from another service provider of transporting passengers in a motor vehicle or renting of a motor vehicle), has not been taken. [Please refer to Explanation No. (iv)]*
			6	*-]*
		(vii)[80][Passenger transport services other than (i), (ii), (iii), (iv), (iva), (v), (vi) and (via) above.	*9*	*-]*

[78] Substituted by Notf No. 3/2022-CT(R), dt. 13.07.2022
[79] Inserted by Notf No. 3/2022- CT(R), dt.13.07.2022 w.e.f. 18.07.2022.
[80] Substituted by Notf No. 3/2022-CT(R) dt. 13.07.2022.

(x) Composite Supply vs. Mixed Supply

Reference can also be made to the discussion on Composite Supply and Mixed Supply which can assist in classification of the supply into goods based on the principal supply in a transaction or that part of the transaction which carries the highest rate.

(xi) CGST (Amendment) Act, 2018

The CGST Act, 2017 has been retrospectively amended from July 1, 2017, to provide that transactions covered under Schedule II are not supplies but if they qualify as supplies then such transactions are to be 'treated' for the purpose of determining the relevant rate notification, HSN Code, Time of Supply, Place of Supply and other consequential implications.

(xii) Classification of Works Contract

Schedule II provides that works contract would be taxed as services and hence, irrespective of the value of goods involved in the contract, works contract would be treated as services. Works Contract has been defined at section 2(119) of the CGST Act to provide that construction, commissioning, fabrication etc. related to immovable property would only be treated as works contract. Thus, any activity related to movable property though understood as works contract under the erstwhile laws would not be treated as works contract under the GST law and will have to be classified based on the concept of composite supply.

(xiii) Conclusion

In light of the foregoing discussion, the following points of learning can be summarized:

(a) transactions involving goods are, in certain cases, required to be treated as supply of services. As such, the fundamental classification to be undertaken is the differentiation between goods and services;

(b) classification of goods and services cannot be made based on logic, experience or common sense. But recourse to rules of interpretation in the First Schedule to the Customs Tariff Act,1975 is mandatory in relation to classification of goods. And reference to the scheme of classification (contained in the annexure) is inevitable in relation to classification of services. There can be no interchange in the use of the relevant classification rules between goods and services;

(c) classification in GST requires a deep appreciation of the technical understanding of words and phrases in each domain and any urge to use the common meaning of such words and phrases must be

actively discouraged. In other words, even if the common meaning of certain words and phrases appears reasonable, it must be understood that Government has deliberately and mindfully used words to give specific interpretation in the relevant trade;

(d) classification is not only required to determine the rate of tax applicable but also examine the availability of exemptions. There is no compulsion for an exemption notification to exempt correctly what is the carve out from an entry a subset of transactions – supplies or suppliers – to attract a different rate of tax;

(e) exemptions are not optional as are the conditions prescribed in respect of such exemption. Violation of the condition contracts consequences and not options. 'Absolutely exempt' does not mean 'wholly exempt' and it does not require to be 'unconditionally exempt' to be 'absolutely exempt'.

Common Errors in Classification

The errors/ deliberate action which could lead to exposure should be avoided to the extent possible. The errors would include many, some of them illustrated below:

(i) Classifying the supply for lower rate of GST without merit- This may be due to competition or due to fact that the buyer is unable to avail the credit.

(ii) Classifying the supply under higher slab to avoid dispute – Though there may not be any demand- customer may have some objection and raise a debit note in future. It may lead to higher working capital.

(iii) Classifying under wrong heading considering applicability of the same rate- This may not have any commercial impact as there is no rate difference. However, when the rate changes there may be a problem.

(iv) Classifying the supplies based on convenience of operation – This may not be advisable as it is bound to lead to disputes for self as well as the customers.

(v) Classifying the supplies incorrectly to claim of exemption – This would also be disastrous as demands if any can cripple the enterprise.

(vi) Classifying the services considering the place of supply to claim as export etc. – This can lead to – (a) demand for GST as supply is liable, (b) denial of credit due to time lapse or if longer period invoked, and (c) demand for excess refund with interest and penalties.

(vii) Similar to above classifying differently to avoid Reverse charge mechanism. – This could also lead to demand.

(viii) Classifying under residuary entry when specific entry or general entry is available.

The proper classification is the foundation to avoid disputes with customers as well as demands from the Revenue. The applicability of rates (which may change from time to time) and exemptions (have been notified and withdrawn) requires the updated knowledge as well as the information of the past changes.

11.3 Issues and Concerns

1. The law provides that tax shall not be collected at a rate higher than the effective rate of tax applicable on a supply enjoying an absolute exemption. In this regard, there is one school of thought wherein it is inferred that this provision is specific to absolute exemptions only, and in case of conditional exemptions, there is an option available to the registered supplier to collect tax from a recipient (Such a methodology, if adopted by suppliers, would imply that the requirement for input tax credit reversals under section 17(2) of the Act would not stand attracted). The other view is that the conditional exemptions are not optional but are mandatory when the conditions relating to the exemption are satisfied.
2. On similar lines, it is to be noted that the restriction imposed by law is upon the "collection" of tax. Therefore, certain registered suppliers may resort to payment of tax without collection thereof, in order to effect only taxable supplies whereby they would not be required to undergo the hassle of reversal of input taxes. However, the issue would arise as regards the documentation. A registered supplier may consider issuing a tax invoice instead of a bill of supply, against a supply that is wholly exempt, and specifying in the tax invoice prominently, that the recipient is not required to pay the tax charged on the invoice on the basis that the supply is exempted under law. However, this practice is frowned upon, as this methodology is not entirely in compliance with the provisions of the law. It is also important to note that the GST Law casts an obligation on the supplier to prove that he has not collected taxes in such situations.

11.4 Relevance of Section 11 in GSTR-9, 9A and 9C

1. Pt. 5D of GSTR-9 requires details comprising of Taxable Value, CGST, SGST, IGST and Cess as applicable, in respect of *"Exempted Outward Supplies".*
2. Pt. 6B of GSTR-9A also requires the value of exempted, nil rated supply comprising of Turnover, Rate of Tax, CGST, SGST, IGST and Cess as applicable, in respect of *"Exempted Outward Supplies"* as declared in

returns filed during the financial year.

3. Pt. 7B of GSTR-9C requires the value of Exempted, Nil Rated, Non-GST supplies, No Supply turnover.

11.5 FAQs

Q1. When exemption from whole of tax leviable on goods and/ or services has been granted unconditionally, can taxable person collect tax?

Ans. No, the taxable person providing goods and/ or services shall not collect the tax on such goods and/ or services in respect of those supplies which are notified for absolute exemptions.

Q2. Under what circumstances can a special order be issued?

Ans. The Government may in public interest, issue a special order on recommendation of GST Council, to exempt from payment of tax, any goods and/ or services on which tax is leviable. The circumstances of exceptional nature would also have to be specified in the special order.

Q3. What shall be the effective date in case of issue of notification?

Ans. The notification shall be effective from the date as mentioned in the notification. However, in case no date is mentioned in the notification the effective date shall be the date of issue of the notification.

11.6 MCQ

Q1. Which of the following can be issued by Central Government/ State Government to exempt goods and/ or services on which tax is leviable in exceptional cases?

(a) Exemption Notification

(b) Special order

(c) Other notifications

(d) None of the above

Ans. (b) Special Order