

INTERPLAY BETWEEN GST AND SALE OF GOODS ACT 1930

The implementation of Goods and Service Tax (GST) effective from 01/07/2017 is one of the biggest and historic indirect tax reforms in India. Through effective, decisive, and timely measures taken by the GST Council, the Central and all the State Governments, a monthly GST revenue collection of ₹1 lakh Crore plus has become a new normal. GST is constantly and gradually evolving in India from last 5+ years. The implementation of a massive economic reform in a vast country like India is not an easy task. It has resulted in numerous achievements and challenges. One of the challenges is interplay between GST and several other statutory laws. In this article, the author has tried to highlight some of the important features of interplay between GST and Sale of Goods Act 1930.



CMA Yogesh Chatwani
Practicing Cost Accountant,
IP and Registered Valuer (SFA)

1. Important provisions under the Sale of Goods Act 1930:

- 1.1 The Sale of Goods Act is a mercantile law. Mercantile laws **govern and regulate** trade and commerce, and they mainly deal with the rights and obligations of the parties to a Mercantile Agreement. Apart from the Sale of Goods Act of 1930, examples of other Mercantile laws are (a) The Indian Contract Act of 1872; (b) The Partnership Act of 1932; (c) The Limited Liability Partnership Act of 2008; (d) The Companies Act 2013, etc.
- 1.2 The law relating to the Sale of Goods was originally part of the Indian Contract Act of 1872. The Indian Contract Act 1872 was based on the English Common Law, and its provisions characterised simple and elementary rules relating to the sale of goods. Due to the passage of time, it was considered necessary to promulgate a separate enactment relating to the sale of goods to deal with the new regulations and to give effect to the new principles.
- 1.3 Based on these developments, the provisions relating to the sale of goods, which were contained in **Chapter VII (Section 76 to Section 123)** of the Indian Contract Act 1872, were repealed and re-enacted under The Sale of Goods Act 1930. The Act came into force effective from the **1st day of July 1930**. This Act lays down special provisions governing the contract of sale of goods. As per provisions contained in Section 3 of the Sale of Goods Act, the unrepealed provisions of the Indian Contract Act 1872 are also applicable to the sale of goods unless they are **inconsistent with the express provisions** under the Sale of Goods Act 1930. It is worth mentioning here that provisions relating to "Partnership" were also part of the Indian Contract of 1872. Subsequently, these provisions, which were contained in **Chapter XI (Section 239 to Section 266)** of the Indian Contract Act 1872, were



repealed and re-enacted under **The Indian Partnership Act 1932.**

1.4 Section 2 of the Sale of Goods Act provides the meaning of important terms, which have been widely used in the Act. A list of a few important terminologies are as follows:

“Seller” means a person **who sells or agrees to sell goods - Section 2(13);**

“Buyer” means a person **who buys or agrees to buy goods - Section 2(1);**

“goods” means **every kind of moveable property** other than **actionable claims and money;** and **includes stock and shares, growing crops, grass, and things attached to or forming part of the land** which are agreed to be **severed before sale or under the contract of sale - Section 2 (7);**

“future goods” means goods **to be manufactured or produced or acquired by the seller** after the **making of the contract of sale; - Section 2(6);**

“specific goods” means goods **identified and agreed upon** at the time a contract of sale is made; **- Section 2(14);**

1.5 The definition or meaning of “goods”, as provided under the Sale of Goods Act 1930, cites the **“moveable property”**. The meaning of “moveable property” is not provided under the Sale of Goods 1930 Act, the Indian Contract Act 1872 or the Transfer of Property Act 1882. As per Section 2(36) of the General Clauses Act, 1897, the:

“Moveable property” shall mean property of every description, except “immovable property”.

As per Section 3(26) of the General Clauses Act 1897, the:

“Immovable property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything

attached to the earth.”

1.6 This clear distinction between the “movable property” and the “immovable property” is useful while interpreting the provisions contained in GST Act. Additionally, as the taxable event under GST Act is related to “supply,” it is meaningful to get familiarize with the term “title to goods.” As per Section 2(4) of the Sale of Goods Act 1930, the:

“document of title to goods” includes a bill of lading, dock warrant, warehouse keeper’s certificate, wharfingers’ certificate, railway receipt, multimodal transport document, warrant or order for the delivery of goods and any other document used in the ordinary course of business **as proof of the possession or control of goods, or authorising or purporting to authorise,** either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;”

2. Interplay between the GST and the Sale of Goods Act 1930 (SG Act):

2.1 GST is a comprehensive, multi-stage, destination-based tax, which is levied on the supply of **“goods”** and **“services.”** The SG Act governs the provisions relating to the sale of goods. Therefore, SG Act cannot be extended to **“services”** contracts covered under the GST law.

2.2 As per Section 2(52) of the CGST Act 2017, the:

“goods” means every kind of **movable property** other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;”

2.3 Apparently, it is evident from the definition of “goods” as provided under Section 2(7) of the SG Act and under Section 2(52) of the CGST Act that the meaning of “goods” is substantially similar under both the said Acts, except:

A. Actionable Claims are not covered under “goods” as per SG Act but covered under “goods” as per CGST Act.



B. The words “**stock and shares**” under SG Act are replaced by “**securities**” under CGST Act.

2.4 The meaning of “Securities” is much wider as compared to “stock and shares.” As per **Section 2(h) of the Securities Contracts (Regulation) Act, 1956**, the “**securities**” include—

(i) *shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;*

(ia) *derivative;*

(ib) *units or any other instrument issued by any collective investment scheme to the investors in such schemes;*

(ic) *security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;*

(id) *units or any other such instrument issued to the investors under any mutual fund scheme;*

(ii) *Government securities;*

(iia) *such other instruments as may be declared by the Central Government to be securities; and*

(iii) *rights or interest in securities;*

Consideration is an essential part of a valid contract. As per Section 5 of SG Act:

“A contract of sale is made by an offer to buy or sell **goods for a price** and the acceptance of such offer. The contract may provide for the immediate delivery of the goods or **immediate payment of the price or both**, or for the delivery or **payment by instalments**, or that the delivery or **payment or both shall be postponed.**”

2.5 The Schedule I appended to CGST Act 2017 provides for the “*Activities to be treated as Supply even if made without*

consideration”. Thus, the essential component of a valid contract, viz. price or consideration, is not recognized under Schedule I appended to CGST Act.

2.6 The provisions under the CGST Act (second proviso under clause (d) of subsection (2) of section 16) seek to negate provisions under SG Act by stipulating payment towards the value of supply along with tax payable thereon within a period of one hundred and eighty days.

2.7 The provisions relating to the delivery of goods to the buyer or bailee under Section 39 of the SG Act (Delivery to carrier or wharfinger) are recognized through provisions under Section 10 of IGST Act – Delivery to a third person under instructions of the buyer.

2.8 The scope and meaning of “Consideration” as provided in Section 2(31) of CGST Act 2017 is much broader than “price” referred to in the SG Act. As per CGST Act, Consideration includes non-monetary considerations, forbearance. CGST Act also recognizes they flow the of consideration from third parties also.

2.9 As per provisions contained in Section 19 of CGST Act – taking input tax credit in respect of inputs and capital goods sent for job work – delay in the return of goods sent to job work is treated as supply though the title of goods remains with the principal. Such deeming provision under GST law is not part of the SG Act.

Conclusion:

The matters of the interplay between the GST Act and SG Act, as per the above coverage, are merely illustrative. There are many other matters, viz. breach of contract, liquidated damages, etc., which provide an opportunity for detailed consideration.

“In this World, nothing is certain except for death and taxes”

Benjamin Franklin

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