



Composite Supply a Simple understanding...

(PART- I)

The power to levy tax is drawn from the Constitution of India. With the 101th Constitutional Amendment GST came into force in India on 1st July 2017. With the introduction of GST taxes like Central Excise, Service Tax, State, VAT, and certain State specific taxes were subsumed into GST. The basis for the charge of tax in any taxing statute is the taxable event i.e. the occurrence of the event which triggers the levy of tax.

A taxable event is any transaction or occurrence of a particular thing that results in a tax consequence. Before levying any tax, taxable event needs to be ascertained. It is the foundation stone of any taxation system. It determines the point at which tax would be levied.

Under the earlier indirect tax regime, the framework of the taxable event in various statutes was prone to the ambiguity of interpretations of laws resulting in litigation for decades. The controversies were largely related to issues like whether a particular process amounted to manufacture or not, whether the sale was pre-determined sale, whether a particular transaction was a sale of goods or the rendering of services etc. The GST laws resolved all these issues by laying down one comprehensive taxable event i.e. "Supply" - Supply of goods or services or both. Various taxable events such as manufacture, sale, rendering of service, purchase, entry into a territory of State, etc., have been done away with in favor of just one event i.e. "Supply".

GST Law, by levying tax on the 'supply' of goods or services or both, departs from the historically understood concepts of 'taxable event' under the State VAT Laws, Excise Laws, and Service Tax Law i.e. sale, manufacture, and service, respectively. In the GST regime, the entire value of the supply of goods and /or services is taxed in an integrated manner, unlike the earlier indirect taxes, which were charged independently either on the manufacture or sale of goods or on the provisions of services.

SUPPLY [SECTION 7 OF THE CGST ACT]

As per Section 7 (1), supply includes

- a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business
- b) importation of services, for a consideration whether or not in the course or furtherance of business, and
- c) Section 7 (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 of the act.

Section 7 (2)- Notwithstanding anything contained in sub-section (1),

- a) activities or transactions specified in Schedule III;
- b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council shall be treated neither as a supply of goods nor a supply of services.

Section 7 (3) - Subject to sub-sections (1), (1A) & (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.

In a synopsis, the meaning and scope of supply as per terms of section 7 can be understood in terms of the following:

1. Supply is an inclusive definition
2. Supply should be of goods or services. Supply of anything other than goods or services like money, securities, etc. does not attract GST.
3. Supply should be made for consideration
4. Supply should be made or agreed to be made.
5. Supply should be made in the course or furtherance of business.

However, there are a few exceptions to points 3 & 5 (i.e. the requirement of supply being made for consideration and in the course or furtherance of business) in the GST law. Few exceptions have been carved out where a transaction is deemed to be a supply even without consideration (contained in Schedule I). Similarly, the condition of supply to be made in the course or furtherance of business has been relaxed in case of import of services (Import of services for a consideration, whether or not in the course or furtherance of business, is treated as supply).

Further, there are also cases where a transaction is kept out of the scope of supply despite the existence of the above parameters, i.e. there is a list of activities which are treated neither as supply of goods nor as supply of services. In other words, they are outside the scope of GST, and such transactions are given in Schedule III of the CGST Act 2017.

GST law has classified certain activities/transactions either as a supply of goods or as a supply of services. The Government is also empowered to notify transactions that are to be treated as a supply of goods and not as a supply of services or as a supply of services and not as a supply of goods.

Types of Supply under GST

GST is payable on individual goods or services or both at the notified rates. The application of rates poses no problem if the supply is of individual goods or services which is clearly identifiable and such goods or services are subject to a particular rate of tax.

However, in certain cases, supplies are not such simple and clearly identifiable supplies. Some of the supplies are a combination of goods or combination of services or combination of goods and services both and each individual component of such supplies may attract a different rate of tax.

In such a case, the rate of tax to be levied on such supplies may be a challenge. It is for this reason that the GST Law identifies composite supplies and mixed supplies and provides certainty in respect of tax treatment under GST for such supplies.

There are 2 types of supply Mixed Supply and Composite Supply.

Statutory Provision (Section 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 that attracts the highest rate of tax.

Explanation:

Composite Supply: means a supply made by a taxable person to a recipient and

- Comprises two or more taxable supplies of goods or services or both,
- or any combination thereof
- Are naturally bundled and supplied in conjunction with each other in the ordinary course of business.
- one of which is a principal supply [Section 2(90)]

This means that in a composite supply, goods or services or both are bundled owing to natural necessities. The elements in a composite supply are dependent on the 'principal supply'.



In respect of composite supplies, the need to determine the supply as a composite supply will arise to determine the appropriate classification. It will be necessary to determine whether a particular supply is naturally bundled in the ordinary course of business and what constitutes principal supply in such composite supplies

Principal Supply - Section 2(90) - means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

If various elements of a bundled service are naturally bundled in the ordinary course of business, it shall be treated as the provision of a single service that gives such bundle its essential character.

Illustration – 1: 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 a principal supply.

Illustration – 2: A hotel provides a 4-D/3-N package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as a service of providing hotel accommodation.

Illustration – 3: When a consumer buys a television set and gets a mandatory warranty and a maintenance contract with the TV, this supply is a composite supply. In this case, the supply of TV is the principal supply, and warranty & maintenance services are ancillary

How to determine the tax liability on composite supplies?

A composite supply comprising of two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply. Accordingly, the entire value of composite supply [i.e. main supply + ancillary supply(ies)] shall be classified under the category of main supply and shall be taxed at the GST rate applicable to the main supply.

Mixed Supply

Mixed Supply means -

- two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person
- for a single price where such supply does not constitute a composite supply
- The individual supplies are independent of each other and are not naturally bundled

How to determine if a particular supply is a mixed supply? In order to identify if a particular supply is a mixed supply, the first requisite is to rule out that the supply is a composite supply. A supply can be a mixed supply only if not a composite one. As a corollary, it can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business, then it would be a mixed supply. Once the possibility of the transaction as a composite supply is ruled out, and a single consideration is charged for the entire supply of different components, it would be a mixed supply, classified in terms of the supply of the goods or services attracting the highest rate of tax.

How to determine the tax liability on mixed supplies?

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

Example

Mondal Enterprise supplies 10,000 kits (at Rs. 70 each) amounting to Rs.7,00,000 to New Collection General Store. New Collection is supplying a pre-configured kit consists of 1 face wash, 1 face tissue packet, and 1 nail paint. It is a mixed supply and is treated as a supply of that particular supply that attracts the highest tax rate. Assuming that the rate of tax applicable on face wash is 18%, on face tissue packet is 28%, and on nail paint is 12%, in the given case, the highest tax rate [i.e face tissue packet] @ 28% will be charged on the entire value of Rs 7,00,000.

Case Study.

Mr Abdul is in the business of construction and promotion of residential apartments in and around Kolkata and one such project being developed by him is named “EDEN

CITY MAHESTALLA". In the said township project, there are number of completed towers as well as under construction towers for which prospective buyers approach Mr Abdul for booking of apartments therein. The prospective customers are given an option to opt for car parking space along with the apartment being booked by the customers and accordingly the customers who opt for availing the car parking facility, are charged a certain sum towards right to use of car parking space and the same forms part of the total consideration charged by Mr. Abdul towards sale of the apartment by him. Mr Abdul states that in the present scenario, he is treating the services of right to use of car parking space as a composite supply of services along with the sale of under construction apartment service and hence is discharging GST on the said amounts received towards car parking space at the rate of 6% CGST and 6% WBGST on such amounts received as per Notification No. 11/2017- Central Tax (Rate) dated 28.06.2017 as amended from time to time. Mr. Abdul further states that when the said units are sold after receipt of the completion certificate from the competent authority along with the right to use of car parking space, he doesn't charge any GST on the same as is treated as NON-GST supply under the provisions of the Schedule III of the CGST/WBGST Act, 2017. Mr Abdul contends that in the given case, he is giving right to use of the car parking area to the customers who opts for the same and it is not available to any person who doesn't own a property within the complex of Mr. Abdul. Therefore, the right to use of car parking is naturally bundled with the apartment sale. Thus, having regard to the definition of composite supply, Mr. Abdul states that in its case also, the right to use of car parking space is to be treated as a composite supply of sale of apartment and the rate of GST applicable on such sale of apartment shall be applicable on the consideration charged by him from the customers for such right to use of car parking space. He further contends that if the apartment is sold after receipt of the completion certificate by the competent authority, then in such case also, the transaction, being a composite supply of apartment sale shall be treated as a NON-GST supply under Schedule III and no GST shall be applicable on the entire consideration of the apartment as received by him including that of right to use of car parking space. Mr Abdul further cited the decision in the case of M/s. Bengal Peerless Housing Development Company Ltd [AAR] 2019-TIOL-137-AAR-GST wherein it was held as- "Construction service is the dominant element in the bundle of services provided - buyers of the service of constructing dwelling units in such upscale residential complexes expect, apart from the preferential

location of the dwelling unit, the right to use car parking space and enjoyment of common areas and facilities like landscaped gardens, gym, conference hall, club with swimming pool etc. and which are usually bought as a bundle while booking the flat - it is, therefore, reasonable to conclude that such services are naturally bundled and offered in conjunction with one another in the ordinary course of business and the other services are ancillary to the supply of construction service, which is the essential supply – Mr Abdul is, therefore, providing a composite supply, construction being the principal supply - entire value of composite service is to be treated, for the purpose of taxation, as supply of construction service. Further, in case the apartment is sold after receipt of the completion certificate issued by the competent authority, since the transaction would be a sale of building and covered under Schedule III of the CGST/WBGST Act, 2017, no GST would be payable on the consideration charged either for the apartment value or for the right to use of car parking space as collected by the applicant from its customers.

The questions raised were as follows

- (a) Whether the amounts charged by Mr. Abdul for right to use of car/two wheeler vehicle parking space along with the sale of under constructed apartments to its prospective buyers is to be treated as a composite supply of construction of residential apartment services or the same is a distinct supply under section 7 of the CGST/WBGST Act, 2017?
- (b) If the same is not to be treated as a composite supply, then what is the rate of tax applicable on such charges collected by Mr Abdul from its prospective customers?
- (c) If such apartments are sold after receipt of completion certificate from the competent authority, then whether the amounts collected for right to use of car parking space will also be treated as a NON GST supply under Sch III of the CGST/WBGST Act, 2017 and no GST shall be payable on the amounts charged towards such right to use car parking space?
- (d) Whether the taxability would change if such charges for right to use of car parking space is collected after the sale of the apartment has been done i.e. the customer had not opted for the car parking space at the time of purchase of the under constructed



unit, but had sought for the same after the unit was handed over to the customer after receipt of the completion certificate?

Analysis –

Looking over the fact of the case and the scheme of taxation related to the supply involved, Mr Abdul is developing a residential housing project and supplying construction services to the recipients for the possession of dwelling units. In addition to the construction services, he provides services towards right to use of car parking space to the prospective buyers who opt for the same. This facility of car parking, however, is not supplied to any person who doesn't own a property within the said residential project. Mr. Abdul has made this application seeking advance ruling in respect of four questions. However, we find that the most question involved in the instant case is to determine the taxability of services provided by the applicant for right to use of car parking space and for that purpose to determine whether such supply constitutes a composite supply with construction services as the principal supply. Construction services under Heading 9954 specified at items (i), (ia), (ib), (ic) and (id) against serial number 3 of Notification 11/2017-Central Tax (Rate) dated 28.06.2017, as amended vide Notification No. 03/2019-Central Tax (Rate) dated 29.03.2019, attract tax @ 1.5% and @ 7.5%, as the case may be w.e.f. 01.04.2019. Further, construction services under Heading 9954 specified at items (ie) and (if) against the aforesaid serial number attract tax @ 12% and @ 18% respectively. However, in all the above-referred cases of supply of services, valuation is to be made according to provisions of paragraph 2 of the Notification 11/2017-Central Tax (Rate) dated 28.06.2017, as amended, which provides that the value of transfer of land or undivided share of land which is deemed to be the one-third of the total amount charged for such supply has to be deducted from the total amount charged for such supply. In other words, in all such cases, tax shall be levied on two-third of the total amount charged for such supply. In the instant case, Mr Abdul enters into agreement with prospective buyers for sale of residential apartment. Such agreement can be made prior to issuance of completion certificate or post-issuance of the same. We find that the price of the apartment and consideration for right to use of open parking space have been separately mentioned in the allotment letters. The payment schedules for the aforesaid services have also been specified in a separate manner. However, Mr Abdul has charged tax @ 18% on 2/3rd of the apartment value as well as 2/3rd of basic

parking value thereby allowing abatement to the extent of 1/3rd of the consideration being deemed value of land. On the other hand, Mr Abdul issues bill of supply where the sale of apartment and right to use of parking space are made post issuance of completion certificate and the applicant has not charged any tax under the GST Act on such supply. Mr Abdul has contended that the right to use of car parking space is an ancillary supply to the principal supply of construction services for apartment and therefore tax under the GST Act on supply of services towards right to use of car parking space would be levied at the same rate as applicable to the construction services of apartment. Mr Abdul, in support of his contention, has placed his reliance on the ruling pronounced by the West Bengal Authority for Advance Ruling (WBAAR, for short) in the case of M/s. Bengal Peerless Housing Development Company Ltd [AAR] 2019-TIOL-137-AAR-GST wherein it is held that the entire value of composite supply which inter alia includes services for right to use of car parking space, is to be treated for the purpose of taxation, as supply of construction service, taxable under sl. No. 3(i) r/w paragraph 2 of notification 11/2017-Central Tax (Rate). Mr Abdul draws attention to the press release of the 47th GST Council meeting wherein clarification has been brought for GST applicability on preferential location charges in case of lease of plot.

“Accordingly, as per recommendation of the GST Council, it is 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.”

It appears that the clarification as above has been given in respect of location charges or preferential location charges (PLC) collected in addition to the lease premium for long term lease of land. However, here the issue is related to construction of residential project and right to use of car parking space which is different from the subject matter, as clarified in the circular.

Answer:

Question: Whether the amounts charged by the applicant for right to use of car/two wheeler vehicle parking space along with the sale of under constructed apartments to its prospective buyers is to be treated as a composite supply of construction of residential apartment services or the

same is a distinct supply under section 7 of the CGST/WBGST Act, 2017?

Answer:

Supply of services for right to use of car parking space is a separate supply and not to be construed as a composite supply of construction of residential apartment services.

Question:

If the same is not to be treated as a composite supply, then the rate of tax applicable on such charges collected by the applicant from its prospective customers?

Answer:

In the instant case, supply of services for right to use of car parking space would be taxable @ 18%.

Question:

If such apartments are sold after receipt of completion certificate from the competent authority, then whether the amounts collected for right to use of car parking space will also be treated as a NON GST supply under Sch III of the CGST/WBGST Act, 2017 and no GST shall be payable on the

amounts charged towards such right to use car parking space?

Answer:

In such scenario, tax is payable on supply of services for right to use of car parking space.

Question:

Whether the taxability would change if such charges for right to use of car parking space is collected after the sale of the apartment has been done i.e. the customer had not opted for the car parking space at the time of purchase of the under constructed unit, but had sought for the same after the unit was handed over to the customer after receipt of the completion certificate?

Answer:

In such scenario, tax is payable on supply of services for right to use of car parking space.

Case *“Eden Real Estates Private Limited vs WEST BENGAL AUTHORITY FOR ADVANCE RULING GOODS AND SERVICES TAX*

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Part II will continue in next Edition