

Supply in GST Law



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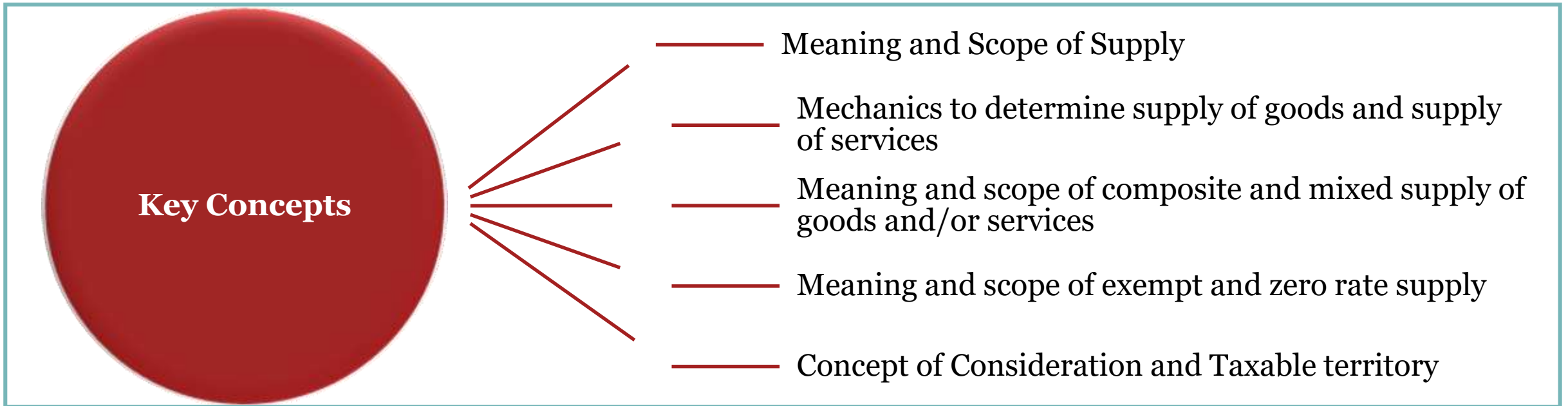
Supply

- Scope and key Issues**

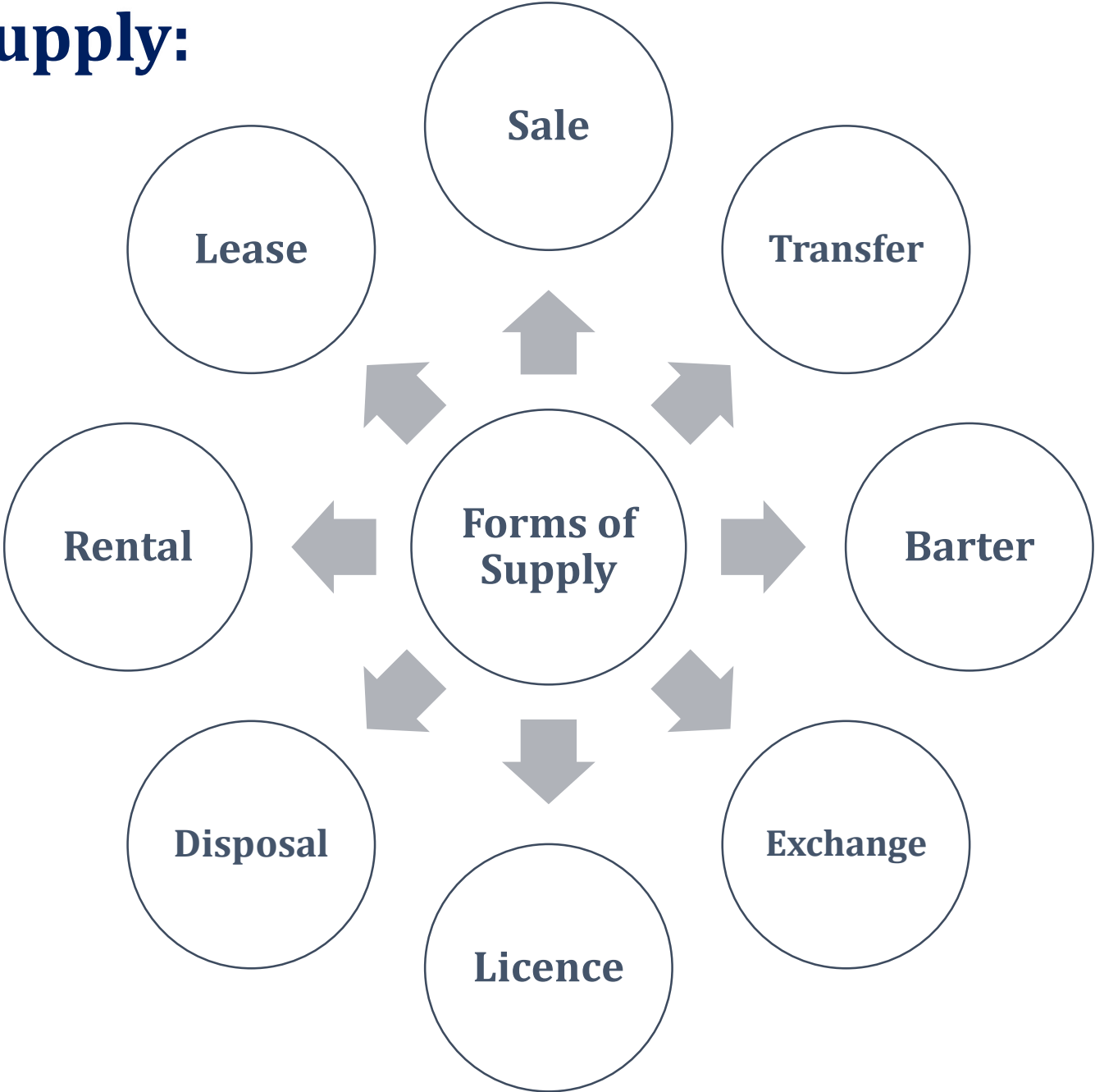
Legal framework:

- GST to apply on

- supply of all goods and services
- in the taxable territory other than
- exempt and zero rated supply
- but including composite and mixed supply of goods and/or services



Concept of Supply:



Sale

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

Transfer is a -

- 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 necessary;

Barter

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

- 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

- 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;

Licence

- 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

- 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

Disposal

- 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.
- 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.

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	✓	✓	✓	✓	✓	✓	✓	x	✓	NA
Transfer	✓	✓	x	✓	✓	✓	✓	x	✓	✓
Barter	✓	x	✓	✓	✓	✓	✓	✓	✓	x
Exchange	✓	x	✓	✓	✓	✓	✓	x	x	✓
License	✓	✓/x	✓	✓	x	x	✓	✓	✓	✓
Rental	✓	✓/x	✓	✓	✓	x	✓	x	✓	x
Lease	✓	✓/x	✓	✓	✓	x	✓	x	✓/x	✓
Disposal	✓	✓	✓	x/✓	✓	✓	x	x/✓	✓	x

Supply – Sec 7

* **Section 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;]

Supply – Sec 7

* Section 7. Scope of supply.-

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

Supply – Sec 7

* Section 7. Scope of supply.-

(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

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 ¹[person] from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Schedule II

ACTIVITIES ¹ [OR 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.**

Schedule II

ACTIVITIES ¹ [OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

2. Land and Building

(a) any lease, tenancy, easement, licence to occupy land is a **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**.

Schedule II

ACTIVITIES ¹ [OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

(3) Treatment or process

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

Schedule II

ACTIVITIES ¹ [OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR 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, ² [****] 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, ² [****] the usage or making available of such goods is a supply of services;

Schedule II

ACTIVITIES ¹ [OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

(4) Transfer of business assets

(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.

Schedule II

ACTIVITIES ¹ [OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

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

Schedule II

ACTIVITIES ¹ [OR TRANSACTIONS] TO BE TREATED AS SUPPLY OF GOODS OR SUPPLY OF SERVICES

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.

Schedule III

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.

Schedule III

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

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.

Schedule III

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

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

Schedule III

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

7. ¹[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.]

Schedule III

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

9. Activity of apportionment of co-insurance premium by the lead insurer to the co-insurer for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in coinsurance agreements, subject to the condition that the lead insurer pays the central tax, the State tax, the Union territory tax and the integrated tax on the entire amount of premium paid by the insured.

Clause 9 and 10 inserted wef 01-11-2024

Schedule III

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

10. Services by insurer to the reinsurer for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer, subject to the condition that the central tax, the State tax, the Union territory tax and the integrated tax is paid by the reinsurer on the gross reinsurance premium payable by the insurer to the reinsurer, inclusive of the said ceding commission or the reinsurance commission.

Clause 9 and 10 inserted wef 01-11-2024

Inward Supply and Outward Supply

Various types of supplies under GST Laws

Inward Supply – Sec 2(67)

“Inward supply” in relation to a person, shall mean ***receipt*** of goods or services or both whether by ***purchase, acquisition or any other means*** with or without consideration;

Outward Supply – Sec 2(83)

“Outward supply” in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business;

Taxable Supply, Exempt Supply, Non Taxable Supply

Taxable Supply – Sec 2(108)

“Taxable supply” means a supply of goods or services or both which is leviable to tax under this Act;

Exempt Supply – Sec 2(47)

“Exempt supply” means supply of any goods or services or both which attracts *nil rate of tax* or which may be *wholly exempt from tax* under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes *non-taxable supply*;

Non Taxable Supply – Sec 2(78)

“Non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

Composite Supply, Mixed Supply, Exempt Supply and Continuous Supply

Tax liability on composite and mixed supplies– Section 8 of CGST Act

Section 8 – Tax Liability on Composite or Mixed Supply	
A supply consisting of 2 or more supplies	Treated as Supply of
Composite supply of 2 or more supplies and one of which is a principal supply	Principal Supply
Mixed supply of 2 or more supplies	That particular supply which attracts highest rate of tax

Tax liability on composite and mixed supplies– Section 8 of CGST Act

Composite Supply [Sec 2(30)]:

means a supply made by a taxable person to a recipient consisting of **two or more taxable supplies** of goods or services or both, or any combination thereof, which are ***naturally bundled and supplied in conjunction*** with each other in the ordinary course of business, one of which is a principal supply.

Illustration: 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

Principal Supply [Sec 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

A Hotel provides a 4-D / 3-N package with the facility of breakfast. This is natural bundling of services in the ordinary course of business and thus is a composite supply. The service of hotel accommodation gives the bundle the essential character and therefore the rate of tax applicable on providing hotel accommodation would be applicable on the entire supply.

Tax liability on composite and mixed supplies– Section 8 of CGST Act

Composite Supply:

If the ancillary supply were offered on a stand-alone basis, the same would not be accepted by the recipient. Even separate prices were assigned to each of the supplies involved, the one that is ancillary would not become predominant. The end use test could be important for determination of composite supply.

Eg: Supply of equipment and installation / commissioning of the same. In this case principal / predominant supply is supply of equipment and the ancillary supply is its installation. Here the customer has just the amount of understanding about the equipment to contract for its supply and measures its satisfactory performance based on commissioning tests.

Tax liability on composite and mixed supplies– Section 8 of CGST Act

Mixed Supply [Sec 2(74)]:

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.

Illustration : A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks 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

- The way the supplies are naturally bundled must be examined. Merely by conjointly , supplying two or more goods or services does not constitute composite supply.

Eg: Supply of laptop and carry case - In this case the customer did not purchase the laptop to get the carry case. In fact, a carry case with the same brand as the laptop is normally not available for independent purchase. Here the predominant supply is laptop and ancillary supply is carry case. In case of carry bag is capable of being used to carry several brands of laptops this would be case of mixed supply (Sec 2(74)).

Test for ascertaining composite supply or and mixed supply:

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) 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

While, the above tests could be guiding principles in determining as to whether a supply is composite or mixed supply the end user test could be adopted as one of the criteria; Every supply will have to be independently analysed.

Continuous Supply of Goods – Sec 2(32)

“continuous supply of goods” means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;

□ *Examples* of continuous supply of goods are:

- Open purchase orders with an understanding of fortnightly billing;
- Supply of gases through pipeline with a weekly billing schedule;
- Supply of say, 5 litre water cans on an as and when required basis with a frequency of monthly billing under a contract.

Continuous Supply of Services – Sec 2(33)

“continuous supply of services” means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a ***period exceeding three months*** with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;

❑ Examples of continuous supply of services:

- Annual maintenance contracts;
- Licensing of software or brand names;
- Renting of immovable property; and
- Software as a service (SAAS) with monthly billing based on usage.

Zero Rated Supplies (IGST Act)

Zero Rated Supply – Sec 2(23) – IGST Act, 2017

"zero-rated supply" shall have the meaning assigned to it in section 16;

Zero Rated Supply – Sec 16 – IGST Act, 2017

16. (1) "Zero rated supply" means any of the following supplies of goods or services or both, namely:—

(a) export of goods or services or both; or

(b) supply of goods or services or both ***[for authorised operations]*** to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

Zero Rated Supply – Sec 16 – IGST Act, 2017

[(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed:

Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the FEMA, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

Zero Rated Supply – Sec 16 – IGST Act, 2017

(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify—

(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid [in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder];

(ii) a class of goods or services 30d[or both, on zero rated supply of which, the supplier may pay integrated tax and claim the refund of tax so paid, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder].]

Zero Rated Supply – Sec 16 – IGST Act, 2017

[(5) Notwithstanding anything contained in sub-sections (3) and (4), no refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed **where such zero rated supply of goods are subjected to export duty.**]

Recap on Supply:

- Supply comprises:
 - Included supplies
 - Implied supplies (Sch. I)
 - Excluded supplies (Sch. III)
- Chargeability to tax:
 - Forward charge on supplier
 - Reverse charge
- Supply characterization:
 - Composite supply or
 - Mixed supply

- Cases to consider:
 - *Purpose* of supply – business or not
 - Same *forms of supply* apply to services
 - Supply by casual taxable person
 - ISD or inter-branch service transfer
 - Intra-State stock transfer
 - Free samples and warranty are supplies *for consideration*
 - Material supplied for job-work
 - Sch II not exhaustive but specific
 - No supply, no tax but ***no credit too***

What if? Incorrect Tax type is paid

Type of sale	Applicable tax	Actually Paid	Rectification	Interest/ Penalty
Intra-state	CGST & SGST	IGST	Pay CGST & SGST Refund IGST	No
Inter-state	IGST	CGST & SGST	Pay IGST Refund CGST & SGST	No

In terms of **Section 19(1) of IGST Act and Section 77(2) of CGST Act**, where a registered person who has paid IGST on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply or vice versa, would be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed

Judicial Update – High Court

Axis Bank Limited Vs Union of India (Andhra Pradesh High Court)

The Petitioner Bank paid IGST (Inter-state supply) from the State of Andhra Pradesh due to a mapping system error. It, subsequently, paid CGST and Telangana State GST. It paid tax twice. The refund claim was rejected by the department for erroneously paid IGST. The claim was rejected on the ground of the time bar (beyond 2 years from the date of payment of IGST) in terms of section 54 of the CGST Act. The part claim was rejected on the grounds that Petitioner did not provide supporting documents. There is no GST tribunal, hence, the Petitioner approached the High Court.

The High court set aside the rejection and remanded the matter back to the original authority. The High court referred to a circular dated 25.09.2021 issued clarifying that insertion of rule (1A) to Rule 89 provides a time limit of 2 years. The said two-year time limit would apply from the date of introduction of the said rule and not from the date of payment of GST. The High overruled objection of the Revenue against remand of the matter.

Thank you

Thanks for your Patience and Time

