



# SUPPLY UNDER GST

(Part 2)

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# SECTION 7 : MEANING AND SCOPE OF SUPPLY

Sub Section	Clause	Particulars
		Supply includes
1	(a)	All forms of supply of goods or services or both such as <ul style="list-style-type: none"><li>• Sale</li><li>• Transfer</li><li>• Barter, Exchange</li><li>• Licence, rental, lease or</li><li>• Disposal</li></ul> Made or agreed to be made for a consideration by a person in the course or furtherance of business.
	(aa)	The activities or transactions by a person, other than an individual, to its members or constituent or vice versa for cash, deferred payment/other valuable consideration.

Sub Section	Clause	Particulars
1	(b)	Importation of services for a consideration whether or not in the course or furtherance of business.
	(c)	The activities specified in Schedule I made or agreed to be made without a consideration.
1A		Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated 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, 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 supply of goods nor a supply of services.
3		Subject to sub-section (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.

# ANALYSIS OF SECTION 7 (1a)

S. No.	Transaction	Type	Nature of Supply
1	Transfer	Title in goods	Supply of Goods
		Right in goods/undivided share in goods without transfer of goods	Supply of Services
		Title in goods under an agreement which stipulates that property shall pass at a future date. <b>Example:</b> An agreement to sell ascertained goods at a future date.	Supply of Goods
2	Land and Building	Lease, tenancy, easement, licence to occupy land	Supply of Services
		Lease or letting out of building wholly or partly <b>Example:</b> Lease rentals collected shall be taxable as supply of services under GST	Supply of Services

S. No.	Transaction	Type	Nature of Supply
3	Treatment or process	Applied to other person's goods <b>Example:</b> 'Job Work' performed by a job worker like dyeing of fabrics in various colours.	Supply of Services
4	Transfer of Business Assets	Goods forming part of business assets are transferred or disposed off by/under directions of person carrying on the business.	Supply of Goods
		Goods held/used for business are put to private use or are made available to any person for use for any purpose other than business, by/under directions of person carrying on the business. <b>Example:</b> A director using car provided by the company for personal travels.	Supply of Services
		Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him, in the course or furtherance of his business, immediately before he ceases to be taxable person. <b>Example:</b> A trader is winding up his business. Any goods left in stock shall be deemed to be supplied by him and GST shall be payable.	Supply of Goods

S. No.	Transaction	Type	Nature of Supply
5	Renting of immovable property	Other than Land and Building which has already been covered under para 2 like telecommunication towers etc	Supply of Services
	Construction of complex, building, civil structure etc	<b>Except</b> where the entire consideration has been received after issuance of certificate by the competent authority or after its first occupation, whichever is earlier	Supply of Services
	Temporary transfer or permitting use or enjoyment of any IPR	IPR (Intellectual property right) IPR means patents, trademarks, copy rights etc.	Supply of Services
	Software	Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of IT software	Supply of Services
	Refrain/Tolerance	Agreeing to obligation <ul style="list-style-type: none"> <li>• to refrain from an act, or</li> <li>• to tolerate an act or situation or</li> <li>• to do an act</li> </ul> <b>Refrain:</b> stop oneself from doing something <b>Tolerate:</b> allow the occurrence	Supply of Services

S. No.	Type	Nature of Supply
6	<p>Following composite supplies:-</p> <ul style="list-style-type: none"> <li>• Works contract services like AMC;</li> <li>• Restaurant or Catering services</li> </ul> <p>(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).</p>	Supply of Services
7	<p>Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration</p> <p><b>Example:</b> A local club supplies snacks etc to its members during its monthly meeting for a nominal payment.</p>	Supply of Goods



**CIRCULARS**

# Taxability of 'tenancy rights' under GST - Pagadi system

## Issue:

Whether Transfer of tenancy rights to a new tenant against consideration would attract GST although stamp duty & registration charges have been levied on such transfer?

## Clarification:

- The activity of transfer of 'tenancy rights' is covered under the scope of supply and taxable.
- However, grant of tenancy rights in a residential dwelling for use as residence against tenancy premium or periodic rent or both to unregistered person is exempt.
- Merely because a transaction or a 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 of goods and services and from payment of GST.

# Taxability on Priority Sector Lending Certificates (PSLCs)

PSLCs are in the nature of goods. PSLC are not securities. PSLC are akin to freely tradeable duty scrips, Renewable Energy Certificates, REP license or replenishment license, which earlier attracted VAT.

In GST, there is no exemption available to trading in PSLCs. Thus, PSLCs are taxable as goods. GST payable on the certificates would be available as ITC to the bank buying the certificates.

Further, nature of supply of PSLC between banks is supply of goods in the course of inter-State trade or commerce. Accordingly, IGST shall be payable on the supply of PSLC.

# PARA 5(e) of Schedule II

- Agreeing to refrain from an act, tolerating an act or situation, or doing an act, have been examined under para 5(e) of Schedule II of the CGST Act.
- **Agreeing to refrain from an act** includes non-compete agreements, builders refraining from extra construction for compensation, or industrial units pausing operations for a neighboring school's benefit.
- **Agreeing to tolerate an act** or situation covers cases like a shopkeeper allowing a hawker to operate nearby or an RWA accepting payment for tolerating loudspeakers.
- **Agreeing to do an act** involves scenarios like an industrial unit installing zero-emission equipment at the request and cost of a neighboring RWA, even without a legal requirement.
- The description “agreeing to the obligation to refrain from an act or to tolerate an act or a situation, or to do an act” was intended to cover services such as described above. However, over the years doubts have persisted regarding various transactions being classified under the said description.

## Above three activities must comply with the following conditions:

- There must be an expressed or implied agreement or contract must exist
- Consideration must flow in return to this contract/agreement

# Taxability on Liquidated damages

- Liquidated damages are payments for ensuring contract performance, not for tolerating breaches.
- They compensate for loss due to contract breach but are not a remedy or desired outcome of the contract.
- Such damages are not considered a supply and are not taxable, as they merely compensate the aggrieved party without involving an agreement to refrain from or tolerate an act.

## Examples of such cases are:

- (1) damages resulting from damage to property, negligence, piracy, unauthorized use of trade name, copyright,
- (2) penalty stipulated in a contract for delayed construction of houses,

# Taxability on Liquidated damages

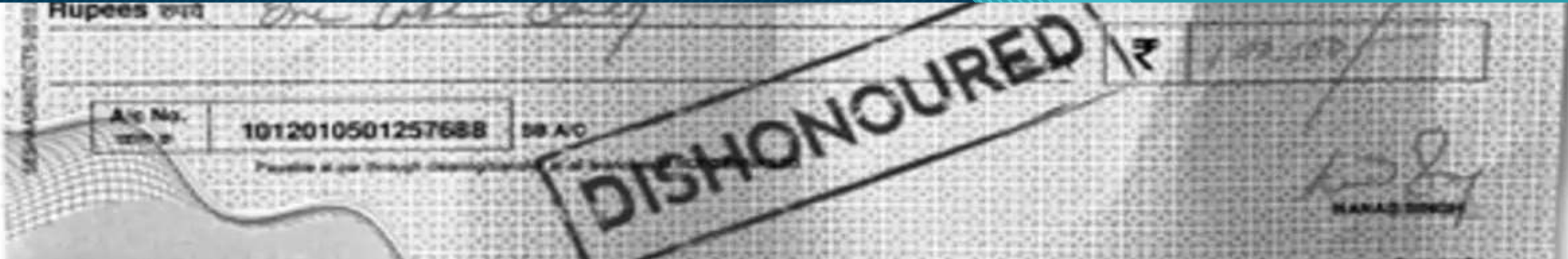
On the contrary, consider the following examples:

1. A contract may provide that payment by the recipient of goods or services shall be made before a certain date and failure to make payment by the due date shall attract late fee or penalty.
2. A contract for package tour may stipulate forfeiture of security deposit in the event of cancellation of tour by the customer.
3. A contract for lease of movable or immovable property may stipulate that the lessee shall not terminate the lease before a certain period and if he does so he will have to pay certain amount as early termination fee or penalty.

The above payments, even though they may be referred to as fine or penalty, are actually payments that amount to consideration for supply, and are subject to GST, in cases where such supply is taxable.

Since these supplies are ancillary to the principal supply for which the contract is signed, they shall be eligible to be assessed as the principal supply. Naturally, such payments will not be taxable if the principal supply is exempt.

# Tax implications on Cheque dishonour fine/ penalty



- The supplier wants payment to be received on time & does not want cheque to be dishonoured.
- Fines or penalties for dishonoured cheques are imposed to penalize and deter such acts, not to tolerate them.
- Therefore, cheque dishonour fines or penalties are not considered payment for any service and are not taxable.

# Tax implications on Penalty imposed for violation of laws



- Penalties for violations such as traffic, pollution, or mining laws are not considered payment for any supply and are not taxable.
- These fines deter violations, not tolerate them, and there is no agreement allowing violations in exchange for fines.
- Consequently, fines imposed by the government or local authorities for breaking laws, bye-laws, rules, or regulations are not subject to tax.

# Forfeiture of salary or payment of bond amount in the event of the employee leaving the employment before the minimum agree

Quit Your Job Before the Bond Period?

- Forfeiture of salary or bond recovery for premature quitting is to discourage non-serious candidates from employment.
- These amounts are penalties, not consideration for tolerating premature quitting.
- The employee receives nothing in return for these payments.
- Thus, these amounts are not taxable as consideration for tolerating an act or situation

# GST IMPLICATIONS

## Late payment surcharge or fee

- Accepting late payments with interest/late fees is a service naturally bundled with the main supply (e.g., electricity, water, telecom).
- This facility is common and provided by most service providers worldwide.
- Even if considered as tolerating late payment, it is ancillary to the principal supply and should be assessed as such.
- It should be taxed at the same rate as the main supply (e.g., electricity, water, telecom, gas).
- However, this does not apply to cheque dishonour fines, which were discussed earlier.

## Fixed charges for power

- Electricity prices include a minimum fixed charge and a variable per unit charge.
- Minimum fixed charges remain constant regardless of electricity consumption.
- These charges are not for tolerating under-consumption; both fixed and variable charges are for the sale of electricity.
- Electricity is exempt from GST, so these charges are not taxable

# GST IMPLICATIONS

## Forfeiture of earnest money

- Forfeiture of earnest money in property sales or government bids is simply a flow of money, with no return benefit to the buyer or bidder.
- These forfeitures are penalties to compensate for losses and discourage non-serious buyers or bidders, not for tolerating contract breaches.
- Such payments are not considered as consideration for any supply and are not taxable

## Cancellation charges

- Cancellation fees are commonly charged by service providers (e.g., hotels, travel, transportation) for the costs involved in making and canceling arrangements.
- These fees are part of a composite supply of services that includes booking, transportation facilities, and basic necessities.
- Allowing cancellations with fees is naturally bundled with the principal supply of services and should be assessed as such.
- GST on cancellation charges is assessed at the same rate as the main service, such as air or rail transport.



**Thank You**