

CHAPTER 2 SUPPLY UNDER GST

Gautama Buddha



"We are shaped by our thoughts; we become what we think. When the mind is pure, joy follows like a shadow that never leaves."

CHAPTER OVERVIEW

S. No.	Particulars	Page no.
1.	Chapter III of CGST Act	2.1
2.	Introduction	2.2
3.	Meaning & Scope of Supply [Section 7]	2.2
	➤ Section 7(1)(a)	2.3
	➤ Section 7(1)(aa)	2.12
	➤ Section 7(1)(b)	2.12
	➤ Section 7(1)(c) + Schedule I	2.12
4.	Section 7(1A) [Schedule II]	2.20
5.	Section 7(2) + Schedule III	2.22
6.	Composite & Mixed Supply [Section 8]	2.25
7.	Quick Revision before Exams	2.28

CHAPTER III OF CGST ACT

Section 7
Meaning and Scope of
Supply



Section 8
Taxability of composite and
mixed supplies



INTRODUCTION

Supply is the foundation stone to levy GST on a transaction. It is the taxable event under GST that results in a tax consequence. Under the earlier taxation system, Excise duty was leviable on manufacture/production of excisable goods in India whereas VAT was levied on sale of goods. Further service tax was applicable on services provided by one person to another for some consideration.

There was enormous confusion that existed earlier such as whether a process amounts to manufacture or not, whether the sale was a pre-determined sale or not. Such complexities lead to court cases for decades.

The GST law has resolved such issues by bringing one comprehensive taxable event "SUPPLY". If a transaction can be concluded as supply, GST shall be levied on such transaction.

Q 1: What is the taxable event under GST?

- (a) Sale
- (b) Supply

- (c) Manufacture
- (d) Rendering of services

[Ans: (b)]

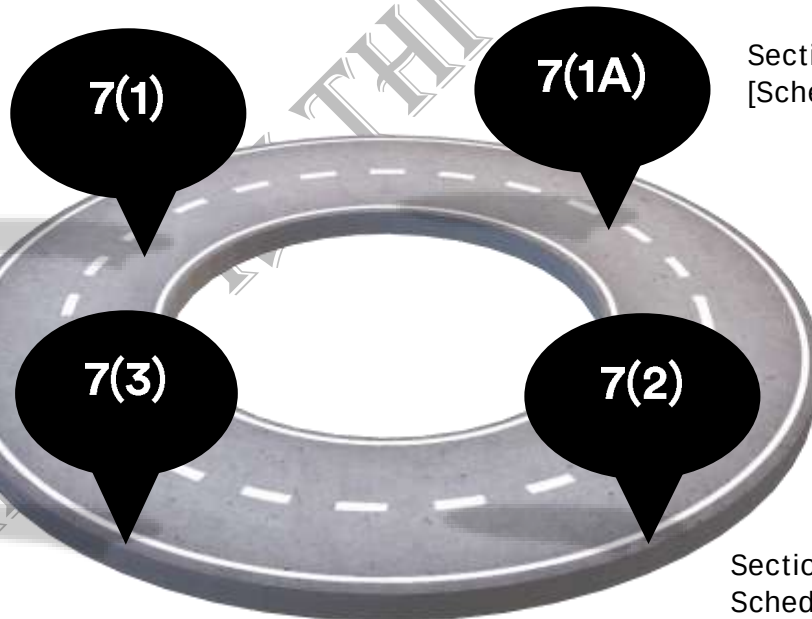


SECTION 7: MEANING AND SCOPE OF SUPPLY

Overview of Section 7:

Section 7(1) consists of:

- ✦ Section 7(1)(a)
- ✦ Section 7(1)(aa)
- ✦ Section 7(1)(b)
- ✦ Section 7(1)(c) + Schedule I



Section 7(1A) +
[Schedule II]

Section 7(3) refers to:
Subject to 7(1) & 7(2), the CG may
on the recommendations of the
Council, specify, by notification, the
transactions to be treated as:

Section 7(2) refers to:
Schedule III [Negative
List]

- a) A supply of goods and not as supply of services; or
- b) A supply of services and not as a supply of goods

Section 7(1)(a)

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

Let us understand the important terms of the above sub-section to make it precisely clear:

.....
: Goods [Section 2(52)]
.....

01

It means every kind of Movable property

02

other than money and securities

03

but includes actionable claim, growing crops, grass and things attached to or forming part of the land

04

which are agreed to be severed before supply or under a contract of supply.

In simple words:

Any article that can be transferred from one place to another is a movable property. However, it shall not include money & securities as they have been specifically excluded.

The scope of goods is *exhaustive* as it includes only movable goods.

.....
: Services [Section 2(102)]
.....

01

It means anything other than goods, money and securities

02

but includes activities relating to the use of money

03

or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination

04

for which a separate consideration is charged.

In simple words:

The definition of services is an *inclusive* one, it will cover every possible thing which is not goods. Therefore, transactions relating to immovable property shall fall under services.

Further money & securities shall always remain outside the scope of GST as it does not fall under both the definitions.

CLARIFICATION: The term “services” to include facilitating or arranging transaction in securities.

Since securities are excluded from the definition of both goods and services, any transaction in securities shall not be leviable to GST. However, services provided by an agent / broker in relation to securities (documentation fees / broking charges / service charges) shall fall under the definition of services and though leviable to GST.

- ☛ In order to attract GST on the aforesaid goods and services, the supply should be a taxable supply. It basically means the supply should not be exempted. *[Goods and services that have been exempted have been discussed in detail under Ch 5: Exemptions from GST]*

Q 2: Which of the following doesn't fall in the definition of goods?

- (a) Money (c) Securities
(b) Immovable properties (d) All of the above

[Ans: (d)]

Q 3: Services have been defined under:

- (a) Section 2(102) (c) Section 2(52)
(b) Section 2(17) (d) Section 2(31)

[Ans: (a)]

CLARIFICATION: Taxability of shares held in a subsidiary company by holding company.

It is clarified that securities are considered neither as supply of goods nor as services in the definition of goods & services. Further securities include shares. This implies shares held by the holding company in the subsidiary company are neither goods nor services.

Therefore, the activity of holding the shares of a subsidiary company by the holding company cannot be treated as supply and cannot be taxed under GST.

CLARIFICATION: Clarification on the taxability of ESOP/ESPP/RSU provided by a company to its employees through its overseas holding company

Facts: Indian companies offer Employee Stock Option Plan (ESOP) / Employee Stock Purchase Plan (ESPP) / Restricted Stock Unit (RSU) options of their foreign holding company to its employees as per the employment contract.

Upon employees exercising these options, the foreign holding company directly allots shares to the employees, and the cost is reimbursed by the Indian subsidiary to the foreign holding company.

Issue: Whether these transactions should be considered as import of financial services and thus be liable for GST under RCM?

Clarification: ESOP / ESPP / RSU is a part of employees remuneration as per their contract and thus, its sale or purchase is not a supply.

Securities/shares are neither goods nor services under the GST law and thus, its sale or purchase is not a supply. Thus, the reimbursement from the Indian subsidiary to the foreign holding company, when done on a cost-to-cost basis, is not subject to GST.

However, if any additional fee, markup, commission, etc is charged by foreign holding company from the domestic subsidiary for such issuance, it will be considered as a supply of services of facilitating the transaction in securities and GST will be levied on the additional amount (being import of services) under reverse charge.

Case Study: ABC Tech Pvt. Ltd., an Indian subsidiary of Global Tech Inc., a US-based company, offers its employees ESOPs as part of their compensation package. When an employee decides to exercise their stock options, Global Tech Inc. directly transfers the shares to the employee. ABC Tech Pvt. Ltd. reimburses Global Tech Inc. for the cost of these shares on a cost-to-cost basis.

Solution: No. ESOP/ESPP/RSU transactions are not considered as supply of goods or services under GST. Securities/shares are neither goods nor services as per the definitions in the GST act.

MODES OF SUPPLY: (This is an inclusive list as the words 'such as' has been used. Consider these modes of supply as examples)

Sale & Transfer	Both terms have not been defined under the CGST Act. It should be logically understood. Any shift of rights on a product against some consideration shall be construed as sale/transfer. <i>E.g.: Mr. Sharma is a watch dealer. He sells a watch worth ₹ 24,000 to Mr. Abhishek. This is a sale transaction.</i>
Barter & Exchange	While barter may deal with a transaction which only includes an exchange of goods/services, exchange may cover a situation where the goods are partly paid for in goods and partly in money. When there is a barter of goods or services, same activity constitutes supply as well as consideration. <i>E.g. of Barter: Mr. Rathie provides coaching services to Mr. Ranjeet of 10,000. In consideration Mr. Ranjeet gave a printer to Mr. Rathie of the same value.</i> <i>E.g. of Exchange: Mr. Sahil exchanged his old bike for ₹ 35,000 with a new bike worth ₹ 80,000 by paying the balance in cash to the bike dealer.</i>
License, Lease & Rental	<u>Licence:</u> Permission granted by competent authority to engage in a business or any activity. <u>Lease:</u> Make a legal agreement by which money is paid in order to use land, a building, a vehicle, or a piece of equipment for an agreed period of time. <u>Rental:</u> An agreement to rent something or the amount of money that you pay to rent something. Under the GST regime, such licenses, leases etc. of goods, with or without transfer of right to use are considered as supply of service as there is no transfer of title in such supplies. <i>E.g.: Renting of car (with or without driver) for consideration shall be supply of service.</i>

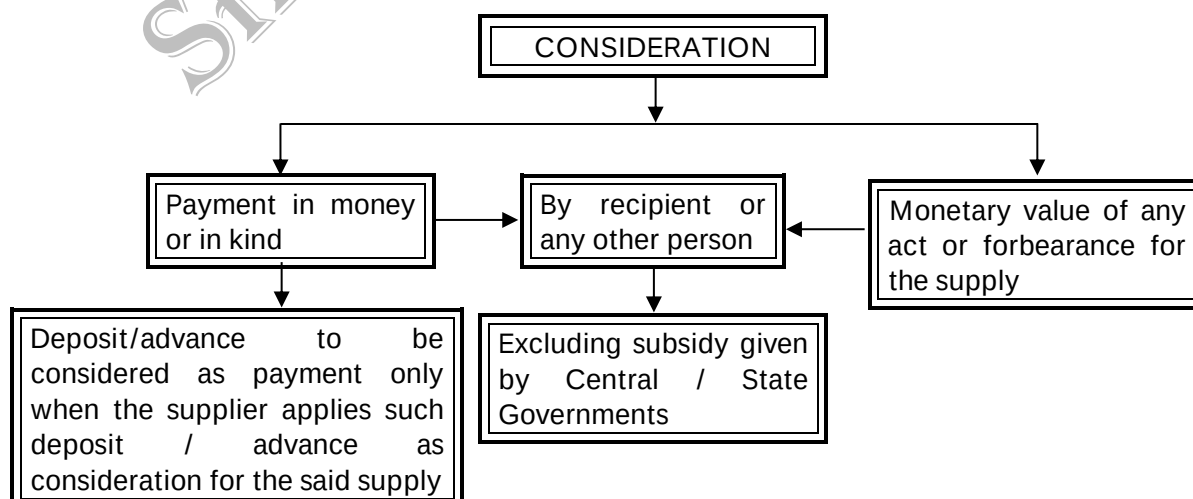
Q 4: Mr. Chandan gave his microwave for ₹ 6,000 and got a new washing machine worth ₹ 32,000 by paying the remaining in cash. Such case is a pure example of:

- (a) Lease (c) Exchange
(b) Barter (d) Transfer

[Ans: (c)]

CONSIDERATION

It covers anything which might be possibly done, given or made in exchange for something else. It can be in money or kind. Further, a consideration need not always flow from the recipient of the supply. It can also be made by a third person. However, any subsidy given by the Central Government or a State Government is not considered as consideration. The following diagram depicts consideration:



CLARIFICATION: Donation received by charitable institutions as an act of philanthropy

Religious institutions, charitable organisations, old age homes etc. receive financial help in the form of donation. In order to express the gratitude, the recipient institutions place a name plate or similar such acknowledgement in their premises.

When the name of the donor is displayed in recipient institution's as an expression of gratitude and is not aimed at giving publicity to the donor in such manner that it would be advertising or promotion of his business, then it can be said that there is no supply of service for a consideration.

However, where the donation is given to publicise/advertise the donor's business, such donation shall become consideration and GST would be levied.

ICAI Example: Smt. Durga Devi donated some money to a temple in the memory of her late father. The Temple Trust constructed a room in the temple complex from such donation and wrote "Donated by Smt. Durga Devi in the memory of her father" on the door of the room. In the example, it may be noticed that there is no reference of any business activity of the donor and therefore such donation is not consideration and consequently no supply.

CLARIFICATION: No claim bonus not to be treated as supply by the insurer to insurance company

As a general practice in the insurance sector, the insurance companies deduct "No Claim Bonus" from the gross insurance premium, when no claim is made by the insured person during the previous insurance period.

It has been clarified that there is no supply provided by the insured to the insurance company in form of refraining from the act of lodging insurance claim during the previous year and NCB can not be considered as a consideration for any supply provided by the insured to the insurance company.

CLARIFICATION: Art works sent by artists to galleries for exhibition

Artists give their work of art to galleries where it is exhibited for supply. However, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply.

It is only when a buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply.

Further the exhibitor charges commission on sale of art work from the artist. This is a service contract and leviable to GST as well.

CLARIFICATION: Clarification on whether GST is payable by insurance company on salvage/wreck value earmarked in the claim assessment of the damage caused to the motor vehicle

Facts: Insurance company insure the vehicles for any damages and in return, charge premium from owner of vehicle. The responsibility of the insurance company is to either repair the damaged vehicle or compensate the insured as per the terms of the insurance policy. What is the GST impact in the following cases?

- (a) Deduction of Salvage Value
- (b) Full insured Declared Value (IDV) Settlement without deducting Salvage Value

Clarification

- (a) **Deduction of Salvage Value:** When the claim is settled after deducting the salvage value, the ownership of salvage remains with the insured. The salvage does not become the property of the insurance co., and the deduction of salvage value from the claim amount is not considered a supply, hence insurance company is not liable to pay GST on the same.
- (b) **Full Insured Declared Value (IDV) Settlement:** If the insurance contract stipulates settlement on full IDV without deducting salvage value/wreckage (as per the contract), the salvage becomes the property of the Insurance Co. after setting the full claim amount. Thus, insurance company is liable to discharge GST on supply of the salvage to the salvage buyer.

Warranty replacement of parts and repair services during warranty period - clarifications on applicability of GST & availability of ITC:

Details of situation	Clarifications on Applicability of GST & Availability of ITC
Original equipment manufacturer offers warranty for the goods supplied by him to the customer and provides replacement of parts and / or repair services to the customer during the warranty period, without separately charging any consideration at the time of replacement/repair services	<u>Applicability of GST:</u> - No GST is chargeable in case of replacement of parts and/or repair services provided to the customer during the warranty period, without separately charging any consideration at the time of such replacement/repair services - However, if any additional consideration is charged by the manufacturer from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration. <u>Availability of ITC</u> The value of original supply of goods (provided along with warranty) by the manufacturer to the customer includes the likely cost of replacement of goods or its parts, as the case may be and/or repair services to be incurred during the warranty period. Therefore, these supplies cannot be considered as exempt supply and accordingly, the manufacturer is not required to reverse the ITC in respect of the said replacement of goods or its parts, as the case may be or on the repair services provided.
Distributor of a company provides replacement of parts and/or repair services to the customer as part of warranty on behalf of the manufacturer	- If no separate consideration is charged by such distributor from the customer, no GST would be payable by the distributor. - However, if any additional consideration is charged by the distributor from the customer, either for replacement of any part or for any service, then GST will be payable on such supply with respect to such additional consideration.
Distributor provides replacement of parts to the customer as part of warranty on behalf of the manufacturer: - Whether any supply is involved between the distributor and the manufacturer? - Whether the distributor would be required to reverse the ITC in respect of such replacement of parts?	<u>Case 1 - Distributor replaces the part(s) to the customer under warranty either by using his stock or by purchasing from a third party and charges the consideration for the part(s) so replaced from the manufacturer, by issuance of a tax invoice, for the said supply made by him to the manufacturer</u> GST would be payable by the distributor on the said supply by him to the manufacturer and the manufacturer would be entitled to avail the input tax credit of the same, subject to the fulfilment of other conditions prescribed under the law. In such cases, no reversal of ITC by the distributor is required in respect of the same. <u>Case 2 - Distributor raises a requisition to the manufacturer for the part(s) to be replaced by him under warranty and the manufacturer</u> <u>Then provides the said part(s) to the distributor for the purpose of such replacement to the customer as part of warranty:</u> If the manufacturer is providing such part(s) to the distributor for replacement to the customer during the warranty period, without separately charging any consideration at the time of such replacement, no GST is payable on such replacement of parts by the manufacturer. Further, no reversal of ITC is required to be made by the manufacturer in respect of the parts so replaced by the distributor under warranty <u>Case 3 - Distributor replaces the part(s) to the customer under warranty out of the supply already received by him from the manufacturer and the manufacturer issues a credit note in respect of the parts so replaced subject to provisions of section 34 of the CGST Act, 2017.</u> The tax liability may be adjusted by the manufacturer, subject to the condition that the said distributor has reversed the ITC availed against the parts so replaced.

	<u>Case 4 - Distributor replaces the goods or its parts to the customer under warranty by using his stock and then raises a requisition to the manufacturer for the goods or its parts. The manufacturer then provides the said goods or its parts to the distributor through a delivery challan, without separately charging any consideration at the time of such replenishment:</u> No GST is payable on such replenishment of goods or its parts. Further, no reversal of ITC is required to be made by the manufacturer in respect of the goods or its parts, so replenished to the distributor.
Distributor provides repair services to the customer without any consideration (as part of warranty) on behalf of the manufacturer but charges the manufacturer for such repair services either by way of issue of tax invoice or a debit note.	<u>Applicability of GST:</u> In such cases, there is a supply of service by the distributor to the manufacturer and hence, GST would be payable on such provision of service by the distributor to the manufacturer. <u>Availability of ITC:</u> In such cases, GST payable on provision of service by the distributor to the manufacturer would be available as ITC to the manufacturer, subject to the fulfilment of other conditions prescribed under the law.
Extended warranty is offered to the customers which can be availed at the time of original supply or just before the expiry of the standard warranty period.	<u>Extended warranty purchased at the time of original supply:</u> - Consideration for extended warranty becomes part of the value of the composite supply, the principal supply being the supply of goods, and GST would be payable accordingly. - However, if the supply of extended warranty is made by a person different from the supplier of the goods, then supply of extended warranty will be treated as a separate supply from the original supply of goods and will be taxable as supply of services. <u>Extended warranty purchased at any time after the original supply:</u> Extended warranty shall be treated as a supply of services distinct from the original supply of goods and the supplier of the said extended warranty shall be liable to discharge GST liability applicable on such supply of services.

Examples for better clarification

S. No.	Particulars	Remarks
1.	Mr. Amar, a furniture dealer has bartered new dining table with old sofa set & table.	Consideration in this case is old sofa set & table (non-monetary). As consideration includes anything in kind, such transaction is a supply.
2.	A badminton player is offered a luxurious car against playing for a club.	As the car is offered in consideration to join a club, such car shall become consideration and therefore such offer is a supply.
3.	XY Ltd. has supplied products to Mr. Anand for ₹ 50,000 (market value – ₹ 85,000). The difference shall be paid by State Govt. as subsidy.	Govt. subsidy is specifically excluded from the definition of consideration. Therefore, consideration shall be only ₹ 50,000. Supply in this case shall be to the extent of consideration (i.e., ₹ 50,000)
4.	BSES, electricity company, receives security deposit (refundable) from subscribers towards connection of electricity metres.	Such refundable security deposit is outside the ambit of consideration as such amount can't be adjusted against any supply made by the electricity company. However, where such amount is adjusted against value of services supplied, then such security deposit shall be treated as consideration.
5.	Bata Shoes paid ₹ 8,00,000 to Adidas for not selling its products in Laxmi Nagar area.	Amount paid in monetary value for not carrying out any activity (i.e., forbearance of an act) shall be construed as

		consideration and therefore such transaction shall be a supply.
6.	Shrey Rathi Classes has enrolled CA-Foundation's result awaited students, into CA-Inter with a mutual understanding that if any student fails, then full fees shall be refunded. Fees is ₹ 8,000.	Such an amount shall be considered as an advance at the time of admission against a supply to be made. Therefore, such advance is consideration for the purpose of supply. However, where the student fails, refund shall be granted and reverse treatment shall be done.
7.	Reliance Industries gave a donation of ₹ 20 lakhs to Mr. Y, a scientist for carrying out research.	Since Reliance Industries is donating money to a scientist against which nothing is to be done by the scientist shall not be considered as consideration and therefore not leviable to GST. However, where the scientist is supposed to submit his research findings, then such amount shall be considered as consideration and leviable to GST.
8.	Natraj Co. (deals in Pens/Pencils & Stationery items) sponsors a seminar, organised by a Business School by providing participants with Pencils, Pens and Registers of the company on which logo of the school is printed. In return, the Business School shall provide area in the hall to Natraj Co. to publicize his products.	This is a case of cross supply (barter). The Business School is getting publicity as consideration other than money against providing space to Natraj Co. for sale of stationery items in hall. Both the transactions involve consideration and therefore GST shall be levied.
9.	Ranbaxy Ltd. provided free samples to medical practitioners as sales promotion activity.	In such case, medical practitioners are not under compulsion to prescribe the medicines of the company from whom they have received free samples/gifts. There is no consideration which flows from the doctor to Ranbaxy Ltd. and therefore such free samples provided do not qualify as supply.
10.	HUL offers one free soap with a bottle of shampoo as a promotional scheme to penetrate in the market.	It is apparent that the free product will only be provided on purchase of shampoo. It is not an individual supply of free product but a case where of two or more individual supplies where a single price is being charged. Since there is consideration, the supply exists. However, taxability depends upon whether the supply is a composite supply or mixed supply. [Section 8] (to be discussed ahead)

Q 5: The State Govt. compulsorily acquired medicines from Dr. Feddy, a pharmaceutical company for ₹ 6,00,000, to be distributed among below poverty line people. Discuss whether the above transaction is supply or not.

Advise: Students should check the pre-conditions of a transaction to make it a supply u/s 7(1)(a) (such as consideration, goods/services, in course or furtherance of business etc.) before answering such type of questions. As medicines are goods, supplied for consideration (₹ 6,00,000) in the course or furtherance of business even if compulsorily acquired satisfies all the pre-requisites to make it a supply. Therefore, such a transaction is supply and GST shall be levied.

PERSON

1

A supply to attract GST should be made by a taxable person

2

Taxable person shall mean a registered person and shall also include a person liable for registration (i.e. a person who has crossed threshold limit of ₹ 40 lakhs / ₹ 20 lakhs / ₹ 10 lakhs).

3

However, the restriction of being a taxable person is only on the supplier whereas the recipient can be either be taxable or non-taxable person.

It is important to note that it is not a necessity that supply should be from one person to another person, even supplies made to self are also taxable.

Q 6: Ms. Roopam started making home made soaps and sells them in her society for nominal consideration. Will such transaction constitute supply?

Advice: It is apparent from the question that Ms. Roopam has started her business recently and it is further logical to assume that she has not crossed the threshold limit (₹ 40 lakhs / ₹ 20 lakhs / ₹ 10 lakhs) and has not taken voluntary registration (as not particularly specified in the question). Therefore, it can be concluded that Ms. Roopam is not a taxable person and therefore GST shall not be levied.

COURSE OR FURTHERANCE OF BUSINESS

GST is essentially a tax on commercial transactions. Hence, only those transactions that are in the course or furtherance of business qualify as supply under GST. Resultantly, any transaction in personal capacity shall be outside the scope of GST.

E.g.: Priyanka sold her old gold bangles and earrings to 'Aditya Raj Jewellers'. Sale of old gold jewellery by an individual to a jeweller will not constitute supply as the same cannot be said to be in the course or furtherance of business of the individual.

BUSINESS [Section 2(17)]

BUSINESS INCLUDES

General Meaning

- Any trade, commerce, manufacture, profession etc. whether or not with the motive of earning profits
- and shall include any activity incidental (connected) / ancillary (supportive) to such trade, commerce etc.
- Further volume of activity, frequency, continuity of business is irrelevant (even occasional transactions shall be considered as business).

Specific inclusions in business:

- Supply or acquisition of goods in connection with commencement or closure of business. E.g.: A transaction of sale of goods or fixed assets after the closure of business shall be considered within the scope of business.
- Facilities provided by club, association, society to its members. E.g.: Clubs / association / society provides benefits in the form of sports facilities, restaurant facility, banquet hall, library etc. for consideration (maintenance charges).
- Admission to any premises for consideration. E.g.: Sale of movie tickets / entry pass for museums / historical monuments.
- Services provided by a person as holder of office. E.g.: A practicing Chartered Accountant provides independent director services to a company.
- Activities of a race club including by way of totalisator or a license to book maker in such club.
- Any activity by Government/local authority as public authorities. E.g.: Sachin Prasad, a famous cricketer auctions its bats and t-shirts and uses the money received in charitable activities. Auction of bats / t-shirts qualifies as supply even though it is a one-time occurrence.

Q 7: Reliance Foundation, is providing food @ ₹ 5 per meal and education to poor children @ ₹ 25 per month as a part of charity. Discuss whether the above transaction is supply or not.

Advice: Any transaction with the motive of welfare of society (i.e. no intention to earn profits) in any case doesn't escape from GST. As the term 'Business' includes any trade, commerce, manufacture, profession etc. whether or not with the motive of earning profits, such transactions, involving nominal charges shall be liable to GST. However, if such food and education services were provided free of cost, then no GST shall be applied.

👉 Students are advised not to write the whole definition of business in a case study. Write only that portion which relates to the case study.

Section 7(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 / other valuable consideration.

Explanation – For the purpose of this clause, it is hereby clarified that, 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, 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.

Let us understand the newly installed clause with the help of an example:

ICAI Example 1: Resident Welfare Association (RWA) of Sanskriti Society supplies air-conditioners to its members at a concessional price.

ICAI Example 2: A resident welfare association collects maintenance charges from its members for services provided.

Here, in both the aforesaid examples, it shall be deemed that the Resident Welfare Association (RWA) and its members are two separate persons and it shall be deemed that the supply has taken place from Resident Welfare Association (RWA) to its members.

Section 7(1)(b)

Supply includes importation of services, for a consideration whether or not in the course or furtherance of business.

This is only exception to the general rule of supply being in the course or furtherance of business. Two points need focus in this point:

01 Such exception applies only to services (not goods)

02 Consideration is still a necessity.

E.g.: Mr. Ashish has been receiving interior designing services for his residential house from Mr. Tony Stark located in London at an agreed consideration for \$ 25,000.

Such importation of services for consideration though not in the course or furtherance of business shall constitute supply u/s 7(1)(b).

E.g.: Mr. Khan purchased furniture from China worth ₹ 12,00,000. Half of the furniture shall be utilised for business and the remaining half for personal purposes.

Such a situation doesn't fall u/s 7(1)(b) as it deals with importation of goods and not services. However, such transactions (whether for business / personal purposes) are considered as inter-state supply and leviable to IGST.

Q 8: Mr. Devu (a student) planning to pursue his higher education in Canada, receives career counselling services from a Canadian Career Launcher Institute for free as he was a merit holder. Discuss the consequence of this transaction.

(a) Considered as supply u/s 7(1)(b)

(c) Neither considered as a supply u/s 7(1)(a) nor 7(1)(b)

(b) Considered as supply u/s 7(1)(a)

(d) None of the above

[Ans: (c)]

Section 7(1)(c)

Supply includes the activities specified in Schedule I, made or agreed to be made without a consideration.

Section 7(1)(c) has diluted the importance of consideration. All cases specified in Schedule I shall be considered as supply even if made without consideration. But it shall be noted that any transaction without consideration and not falling under Schedule I shall never be considered as supply and therefore not leviable to GST.

Case I: Permanent transfer / disposal of business assets on which Input Tax Credit has been claimed:

Any kind of disposal or transfer of business assets without any intension of receiving back the goods made without consideration qualifies as supply. However, it should be noted that ITC must have been availed on such goods.

E.g.: An electronics dealer, transfers permanently a television from his stock to his residential property. Such transaction shall be considered as supply assuming that the dealer has taken ITC on such television.

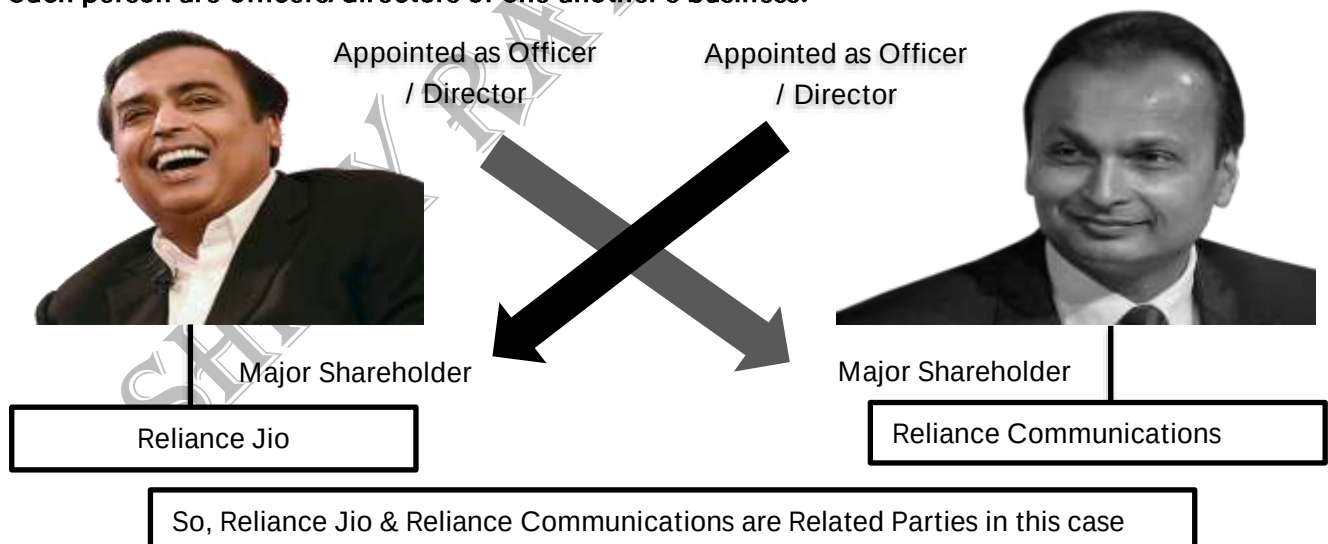
E.g.: Ms. Isha purchased a motor car for business purpose on which ITC isn't allowed by virtue of Section 17(5) [i.e. blocked credit]. After two years, she gifted the car to her friend, Kavya. Such transfer shall not be considered as supply as ITC was not allowed at the time of purchase even though motor car is a business asset.

E.g.: A bag dealer donates 100 school bags to poor children. In this case, transfer of business stock on which ITC has been claimed shall qualify as supply.

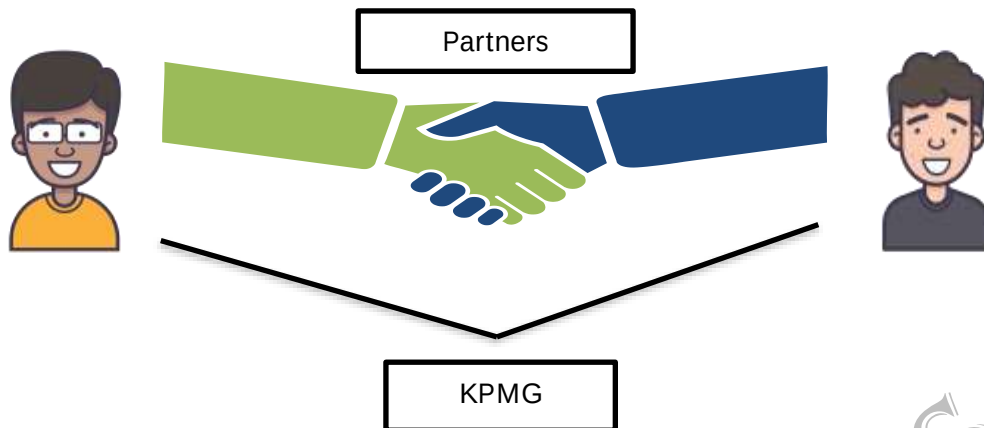
Case II: Supply between related person or distinct person: (made in the course or furtherance of business)

(a) **Related person:** A person who is under influence of another person is called a related person. Few points covered under related person are as under:

i. **Such person are officers/directors of one another's business.**



- ii. Such persons are legally recognised partners



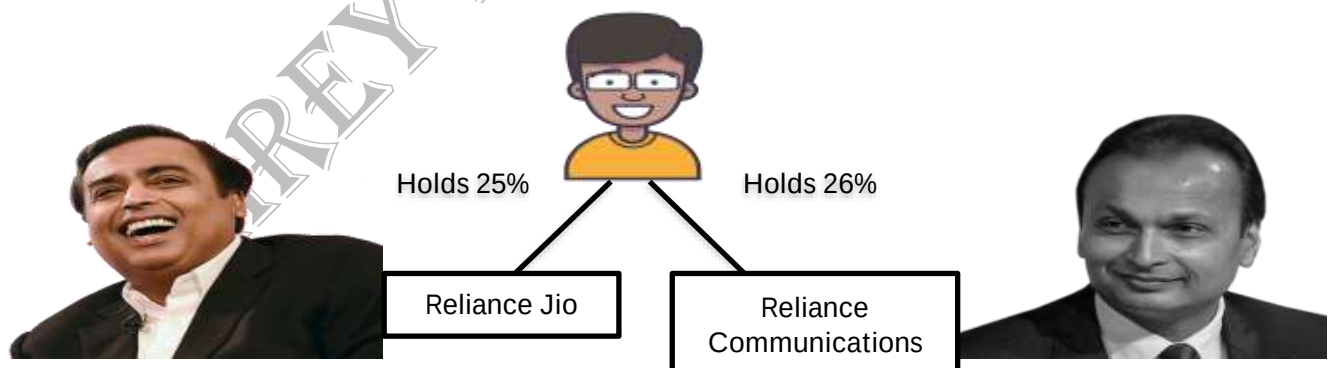
A transaction of supply between Titu & Kiku in the course or furtherance of business shall be treated as supply even if made without consideration.

- iii. Such persons are employer & employee



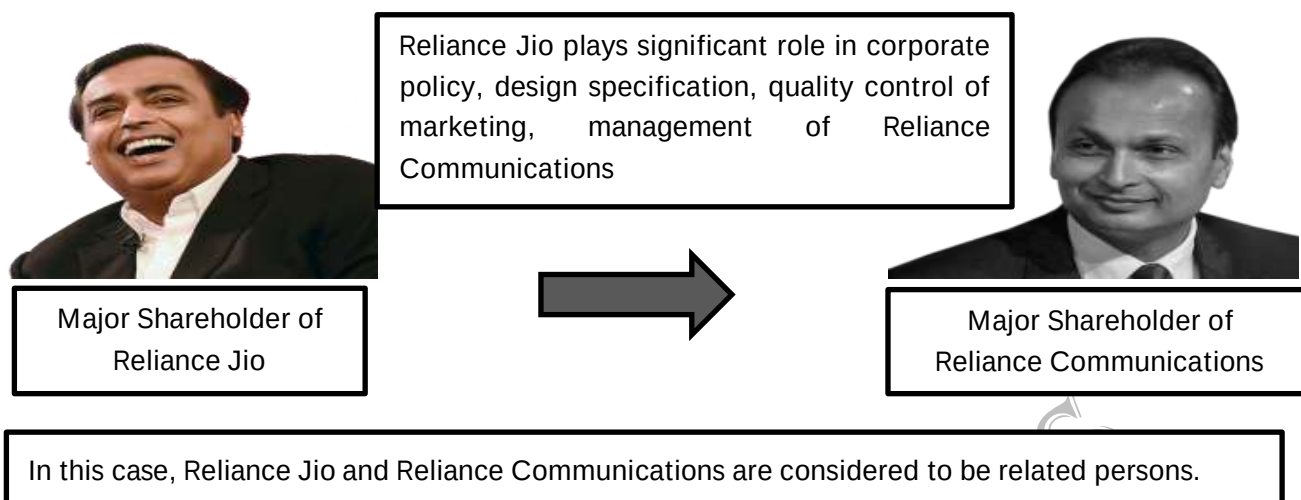
Employer and Employees are considered to be related persons, making all perquisites taxable under GST.

- iv. A person directly/indirectly holds $\geq 25\%$ of voting shares in both the companies

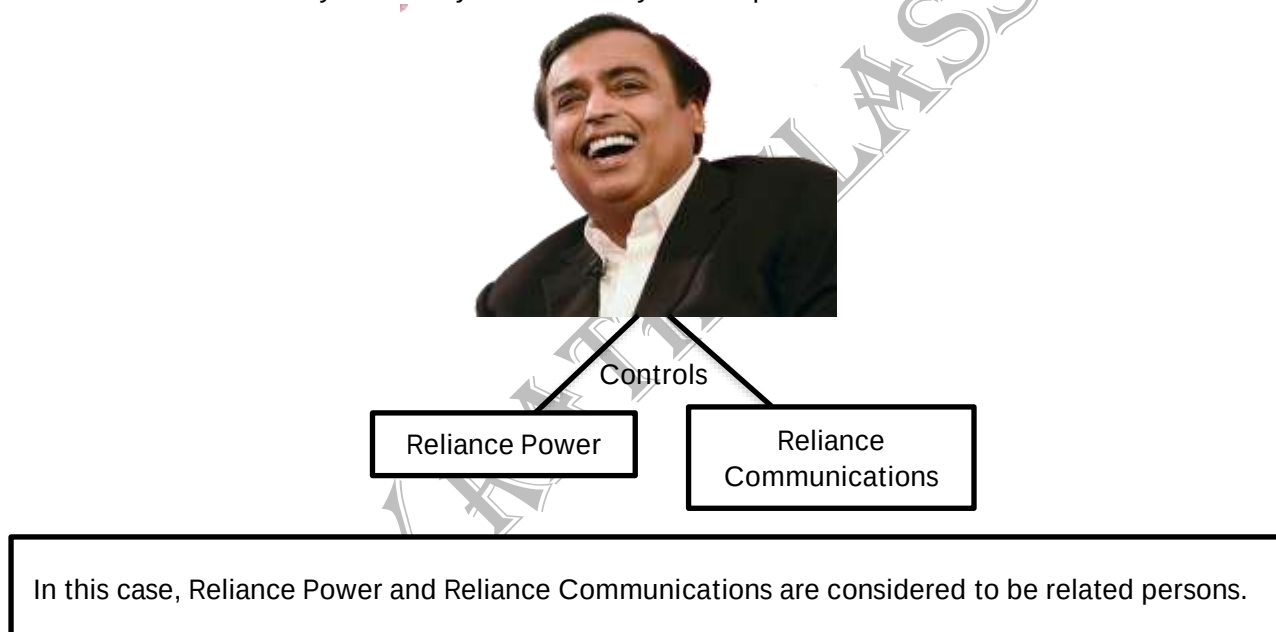


In this case, Reliance Jio and Reliance Communications are considered to be related persons.

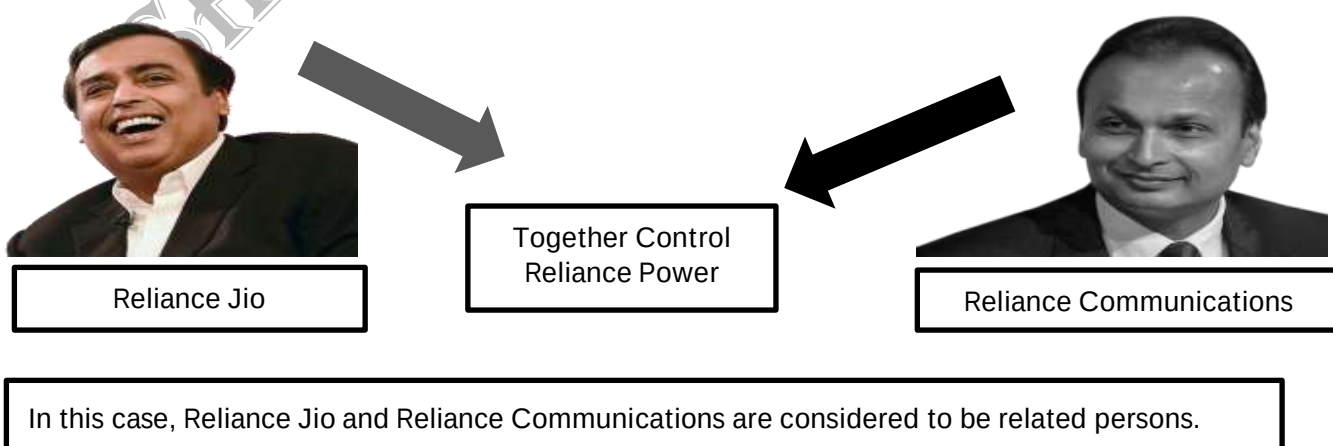
- v. One of them directly/indirectly controls the other



- vi. Both of them are directly/indirectly controlled by a third person



- vii. Together they directly/indirectly control a third person



viii. Such persons are members of the same family

Family: Spouse & children of the assessee + parents, grandparents, brothers & sisters of the assessee who are wholly dependent on the assessee.

Any business transaction between members of family shall be considered as supply even if without consideration.

ix. One of them is the sole agent / sole distributor / sole concessionaire of the other

Reliance Jio purchases micro-chip for the purpose of sim card only from ABC Ltd. As ABC Ltd. is a sole distributor to Reliance Jio, both the parties are related.

- (b) Distinct person [Sec. 25(4)]: A person who has obtained/is required to obtain more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as distinct persons.

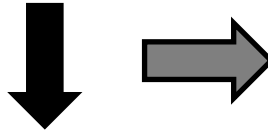
Some examples for better clarification:

S. No.	Particulars	Remarks
1.	H.O. in Mumbai [Maharashtra] (Reg.) sends goods to his branch in Nagpur [Maharashtra] (Reg.)	Mumbai H.O. & Nagpur Branch are distinct person u/s 25(4) as both are registered. Therefore, any stock-transfer between H.O. and branch even if without consideration shall be considered as supply. This is intra-state supply.
2.	H.O. in Bhopal [M.P.] (Reg.) sends goods to his branch in Lucknow [U.P.] (Reg.)	Bhopal H.O. & Lucknow Branch are distinct person u/s 25(4) as both are registered. It doesn't matter whether they are registered in same state or different states. Therefore, any stock-transfer between H.O. and branch even if without consideration shall be considered as supply. This is inter-state supply.
3.	H.O. in Ahmedabad [Guj.] (Reg.) sends goods to his branch in Surat [Guj.] (No separate reg.) [Surat branch shown as additional place of business in registration certificate]	Ahmedabad H.O. & Surat Branch are not distinct person u/s 25(4) as both are not registered. Consequently, any stock-transfer between H.O. and branch shall not be considered as supply and therefore GST shall not be levied.

Deemed distinct person [Sec. 25(5)]: Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons.

Example:

Vijay Mallya Enterprises – A registered supplier owns an AC restaurant (FAVA) in Hyderabad, Telangana.



He opened a liquor shop in Uttarakhand for trading of Kingfisher (Alcoholic liquor) for human consumption.

Supply between these offices, in course of furtherance of business, even without consideration will qualify as supply.

Also, FAVA in Hyderabad and liquor shop in Uttarakhand (though unregistered) shall be treated as establishments of distinct persons.



Since supply of alcoholic liquor for human consumption in Uttarakhand is a non-taxable supply. Hence, they are not required to obtain registration with respect to same in Uttarakhand.

- Supply between an employer and employee (related person): Any transaction in the form of gift by employer to employee exceeding ₹ 50,000 shall be considered as supply. Consequently, any gift upto ₹ 50,000 received aggregately during the year by an employee shall not be deemed as supply.

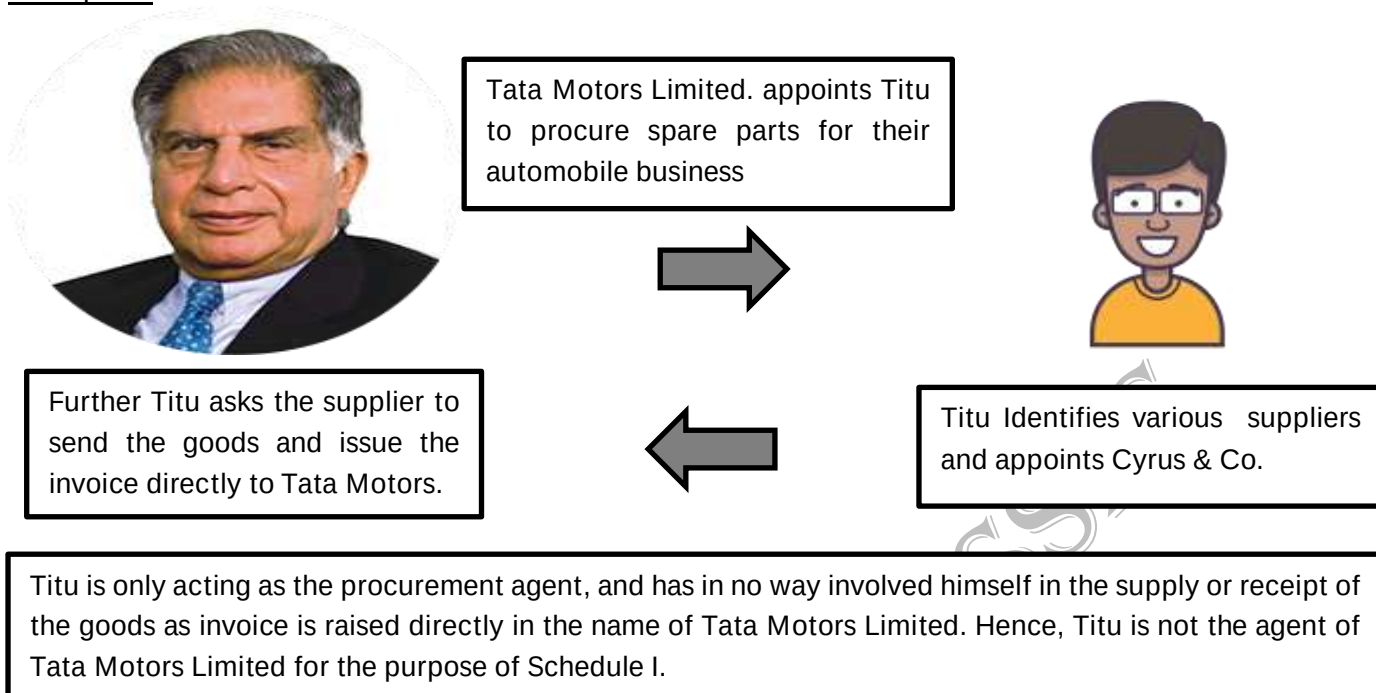
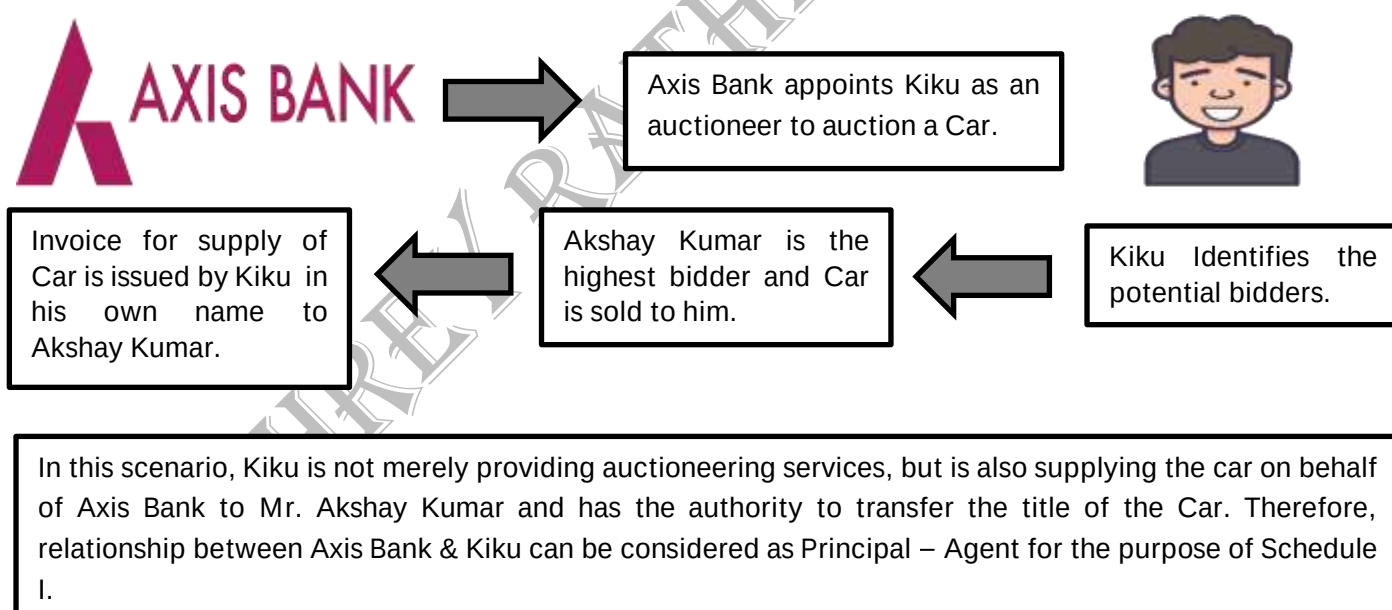
Gift has not been defined. Logically, gift is voluntary in nature and is made occasionally. It cannot be demanded as a matter of right by the employee and the employee cannot move a court of law for obtaining a gift.

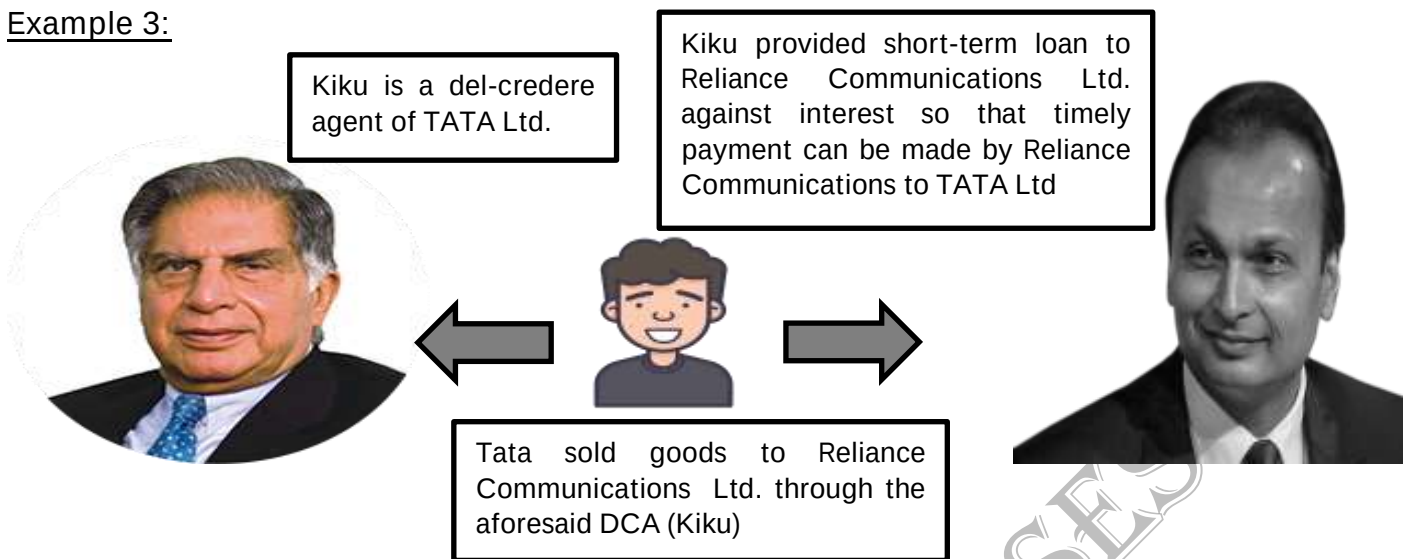
However, payment received for services provided by an employee to the employer in the course of or in relation to his employment are not treated as supply of services [Schedule III of CGST Act (*discussed in subsequent paras*)].

Case III: Supply between Principal and Agent:

Supply of goods (not services) by a principal to his agent or vice versa without consideration shall be considered as supply.

It is important to understand Principal – Agent relationship to fall under this point. Where further supply of goods by agent is invoiced in his name, it can be construed that there is Principal – Agent relationship and this point shall apply.

Examples for better clarification:Example 1:Example 2:

Example 3:

Question: Whether the payment of interest be included in the value of invoice assuming the invoice is issued by TATA Ltd.? Will your answer change if the invoice is issued by the DCA?

Ans: As the invoice is raised by TATA Ltd. in its name and not by the DCA (Kiku), the relationship of Principal – Agent does not exist for the purpose of Schedule I.

Further extension of short-term loan against interest by DCA to Reliance Communications Ltd. is an independent supply and therefore shall not be included in the value of supply.

However, where the invoice is raised by the DCA, the Principal – Agent relationship for the purpose of Schedule I shall prevail and transactions without consideration shall be considered as deemed supply. In this case, there will be 2 supplies:

1. TATA Ltd. to DCA
2. DCA to Reliance Communications Ltd.

Interest on short-term loan no longer retains its character of an independent supply and is subsumed in the supply from DCA to Reliance Communications Ltd. and therefore interest charged shall be included in the value of supply of goods.

Case IV: Importation of services by a person from a related person or any of his establishment outside India in the course or furtherance of business even without consideration shall qualify as supply.

ICAI E.g.: ABC Associates received legal consultancy services from its head office located in Malaysia. The head office has rendered such services free of cost to its branch office. Since ABC Associates and the branch office are related persons, services received by ABC Associates will qualify as supply even though the head office has not charged anything from it.

E.g.: Manish, a practicing Chartered Accountant registered in Jaipur (Raj.), has sought architect services from his daughter located in London (UK), with respect to his newly constructed house in Jaipur. Although services have been received by Manish without consideration from a related person, yet it will not qualify as supply since the same has not been received in course or furtherance of business.

Attention: Importation of services shall be covered either u/s 7(1)(b) [exception to in the course or furtherance of business] or under Schedule I [exception to consideration] to qualify as supply.

However, a transaction which is without consideration and not in the course or furtherance of business shall still remain outside the ambit of supply.

Q 9: Which of the following is not a supply as per Section 7 of the CGST Act?

- (a) Management consultancy services in the course or furtherance of business
- (b) Importation of services for consideration not in the course or furtherance of business
- (c) Inter-state stock transfer between two registered branches without consideration
- (d) Private tuition classes by a student (unregistered) to his juniors for nominal charges

[Ans: (d)]

Q 10: Gift by employer to an employee shall be liable to GST if it exceeds:

- (a) ₹ 1,00,000
- (b) ₹ 50,000
- (c) ₹ 25,000
- (d) ₹ 2,50,000

[Ans: (b)]

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

Schedule II will help in distinguishing between whether the transaction which has become supply by virtue of Section 7(1)(a)/(b)/(c), is a supply of goods or supply of services.

S. No.	Particulars	Example for better understanding	Nature of Supply
1.	<u>Transfer</u> ○ Title in goods ○ Right / undivided share in goods without transfer of title ○ Title in goods under an agreement that property shall pass at a future date	• Rohit sells water bottles to customers. • Ram & Shyam are co-owners of some goods. Ram has allowed Shyam to use his goods for a consideration. • Star Electronics selling microwaves under hire purchase scheme where possession is given on down payment, however title will pass only on the payment of last instalment.	Goods Services Goods
2.	<u>Land & Building</u> ○ Lease, tenancy, easement, licence to occupy land ○ Lease/letting out of building including a commercial / industrial / residential complex for business / commerce wholly or partly.	• Mr. Alok lets out his land to Mr. Lokesh. • Mr. Chander let out his residential property to Dr. Nitish in which he will open a dispensary.	Services Services
3.	<u>Treatment or Process</u> ○ Applied to another's person goods	• ADP Ltd. gives iron gates to Mr. Vineet for powder coating to make the gates look better through a chemical treatment. • Raymonds gives garments to Malhotra Associates for dying of the garments	Service
4.	<u>Transfer of Business Assets</u> ○ Business assets disposed / transferred under the directions of the owner, whether or not for a consideration. ○ Business assets put to private use by owner or made available to any person, whether or not for a consideration.	• An old business laptop (ITC availed) sold to scrap dealer for ₹ 4,000. • AC installed in factory shifted to residential house of the owner.	Goods Services

	- Goods forming part of business assets shall be deemed to be supplied by a person who ceases to be a taxable person. <u>Exceptions:</u> - Business transferred as a going concern - Business carried on by personal representative who is deemed to be a taxable person.	- Goods held by a taxable person at the time of deregistration shall be deemed to be transferred. - Mr. Sharma (Registered person) transferred his business wholly to Mr. Kumar (Registered person).	Goods
5 (a).	Renting of immovable property	Mr. Shivam let out his commercial shop to Mr. Anil for ₹ 50,000 p.m.	Service
5 (b).	Construction of complex / building / civil structure Exception: Where entire consideration has been received after issuance of completion certificate or after its first occupation whichever is earlier.	- DLF Builders has constructed a residential society for agreed consideration of ₹ 2 crores per unit. ₹ 50 lakhs per unit were received before issuance of completion certificate and the balance after completion. - Mr. Vivek purchased a flat from Amrapali Builders for a consideration of ₹ 70 lakhs. The whole amount was paid after the completion of the property. No GST in this case. <i>[This case falls in Schedule III]</i>	Service
<u>Clarification: Applicability of GST on Preferential Location Charge (PLC) collected along with consideration for sale/transfer of residential / commercial properties.</u> - It has been clarified that PLC paid along with consideration for the construction services of residential / commercial / industrial complex forms part of composite supply. - The supply of construction services is main service and PLC is naturally bundled with it. - It is eligible for same tax treatment as the main supply of construction service before issuance of completion certificate.			
5 (c).	Temporary transfer or permitting use of Intellectual Property Rights.	Nestle Company shares their patent with Britannia for consideration on temporary basis.	Service
5 (d).	Development design, programming, adaptation, customization, enhancement etc. of IT software	Busy solutions provide GST software to companies for processing of returns and records.	Service
5 (e).	Agreeing to obligation to refrain from an act, or to tolerate an act or to do an act.	- Sandeep, an architect, has prepared plan of a new hotel for Taj Hotels & has charged ₹ 25,00,000 for such services. Further, Taj Hotels Ltd. paid ₹ 6,00,000 to Sandeep to not share the similar drawings within the industry. Such receipt of ₹ 6,00,000 is also subject to GST. - Bank charges an amount for not maintaining minimum balance in the account. - Security deposit forfeited in the event of cancellation of tour package by the customer.	Service
5 (f).	Transfer of right to use any goods for any purpose	Machinery given on rent	Service
6 (a).	Works contract services in relation to immovable property	Mr. Mahi contracts with Mr. Kohli for reconstruction of his house in which Mr. Kohli shall provide designing services + wooden work.	Service
6 (b).	Supply of goods, being food or any other article for human consumption or any drink.	- Restaurant - Alcoholic liquor for human consumption is outside the ambit of GST. Therefore, alcohol	Service

		served in a restaurant shall be separately charged and appropriate VAT shall be charged.	
7.	Supply of goods by an unincorporated association or body of persons to a member thereof	RWA of Saraswati Society supplies air-conditioners to its members at a concessional price.	Goods

CLARIFICATION FROM CBIC: Pagadi system i.e. transfer of tenancy rights against tenancy premium is a supply of service.

Pagadi System: The tenant acquires tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be the owner of the property, but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also has the option to sell the tenancy rights of the property to a new tenant and in such a case has to share a percentage of the proceeds with the original owner.

➤ **Note:** Grant of tenancy rights in a residential dwelling for use as residence dwelling against tenancy premium or periodic rent or both is exempt from tax. [Detailed discussion in Ch 5: Exemptions from GST]

Q 11: State whether the following supplies would be treated as supply of goods or supply of services as per Schedule II of the CGST Act:

- Renting of movable property.
- Goods forming part of business assets are disposed of under directions of person carrying on business without consideration.
- Transfer of title in goods under an agreement which stipulates that property shall pass at a future date.
- Outsourcing a particular process on a product.

Advice: These are one-mark (for each case) questions (generally). The student is supposed to answer whether the supply is a supply of service or supply of goods straight forwardly without going into detailed reasoning behind the answer.

S. No.	Particulars	Nature of Supply
(a)	Renting of movable property	Service
(b)	Goods forming part of business assets are disposed of under directions of person carrying on business without consideration.	Goods
(c)	Transfer of title in goods under an agreement which stipulates that property shall pass at a future date	Goods
(d)	Outsourcing a particular process on a product	Service

Q 12: Which of the following is not a supply of service?

- Works contract services in relation to immovable property
- Temporary transfer or permitting use of Intellectual Property Rights
- Supply of goods by an unincorporated association or body of persons to a member thereof
- Right / undivided share in goods without transfer of title

[Ans: (c)]

Section 7(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.

Section 7(2) overrides sub-section (1) and states that any transaction mentioned in Schedule III or any activities undertaken by CG/SG/Local Authority as public authorities [i.e., functions performed by Panchayat / Municipality] shall not be considered as supply of goods or services. Consequently, no GST on transactions falling u/s 7(2).

Services by way of grant of alcoholic liquor licence, against consideration in the form of licence fee or application fee or by whatever name called by the State Government in which they are engaged as public authorities, shall neither be treated as a supply of goods nor a supply of services.”

Schedule III [commonly known as Negative List]



1. Services by an employee to the employer in the course of or in relation to his employment.

E.g. 1 (ICAI): Amount received by an employee from the employer on premature termination of contract of employment are treatable as amounts paid in relation to services provided by the employee to the employer in the course of employment.

E.g. 2 (ICAI): Services provided by casual worker to employer who gives wages on daily basis to the worker are services provided by the worker in the course of employment.

➤ However, any services provided outside the ambit of employment for consideration shall be outside the negative list and therefore GST shall be levied on such transactions.

E.g. 3 (ICAI): Services provided on contract basis i.e. principal-to-principal basis are not services provided in the course of employment.

2. Services by any Court (District / High / Supreme) or Tribunal established under any law for the time being in force.



E.g.: Court fees deposited by the claimant in the High Court will not attract GST.

3. Functions performed by MP's, MLA's, etc.

- a) Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities.
- b) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity.
- c) 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.



E.g. 1: Duties performed by President of India, Vice President of India, Prime Minister of India, Chief Justice of India, Speaker of the Lok Sabha, Chief Election Commissioner.

E.g. 2: Telecom Regulatory Authority of India (TRAI) is a body established by CG. Chairman / Director (who are not employees) of these bodies shall fall under the negative list and therefore outside GST.

4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.



E.g. 1: Transportation charges for transportation of a dead person from his home to crematorium shall remain outside the scope of GST.

E.g. 2: Amount paid to a priest for performing the final rites of a deceased person is outside GST.

5. Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building.



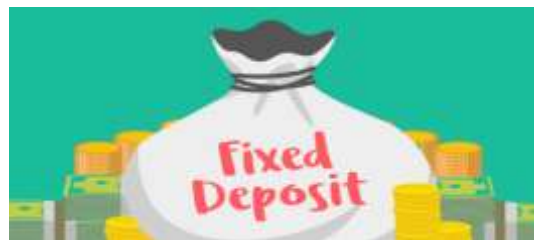
E.g. 1: Mr. Abhimanyu sold his land to Mr. Modi for consideration. This sale is outside the purview of GST.

E.g. 2: Mr. Kabra sold his house after acquiring it from the JP Infratech (Builder) to Mr. Mehta for consideration. Where the building is sold after its first occupation, then it is outside GST.

6. Actionable claims, other than specified actionable claims.

Specified Actionable Claims (considered as supply):

- (i) Betting;
- (ii) Casinos;
- (iii) Gambling
- (iv) Horse Racing;
- (v) Lottery; or
- (vi) Online Money Gaming.



E.g. 1: Mr. Vijay has provided a loan of ₹ 7,00,000 to Mr. Subhash. The loan is unsecured. Mr. Vijay has a right to claim repayment of loan in a civil court. This is an actionable claim which is outside GST.

E.g. 2: Mr. Puneet bought a lottery ticket for ₹ 50,000. This is also an actionable claim however, it has been specifically kept outside the negative list and therefore liable to GST.

CBIC Clarification: Further, following activities to be treated neither as supply of goods nor supply of services.

1. Inter-state movement of conveyances (buses/trucks/trains/vessels/aircrafts) between distinct persons except in cases where such movement is for further supply of the same conveyance. However, applicable GST shall be leviable on repairs and maintenance done for such conveyance.
2. Inter-state movement of rigs, tools and spares and all goods on wheels [like cranes] except in cases where such movement is for further supply of the same conveyance. However, applicable GST shall be leviable on repairs and maintenance done for such conveyance.

Entries 7 & 8 are not covered at intermediate level. They are covered at final level.

9. Activity of apportionment of co-insurance premium by the lead insurer to co-insurers for jointly supplied insurance services, provided the lead insurer pays full GST on the total premium received from the insured.
10. Services by insurer to reinsurer with ceding commission deducted from reinsurance premium, provided the reinsurer pays GST on the gross premium inclusive of such commission.



Q 13: Which of the following is outside the scope of GST and therefore not leviable to GST?

- (a) Services by an employee to the employer in the course of or in relation to his employment.
- (b) Sale of land
- (c) Actionable claims, other than lottery, betting and gambling.
- (d) All of the above

[Ans: (d)]

Clarification regarding transaction in vouchers:

Voucher is an instrument that facilitates purchase of goods and/or services and puts an obligation on the supplier to accept it as consideration / part consideration and assure the voucher holder to claim certain goods / services specified on the voucher.

Prepaid vouchers fall under the definition of money & non-prepaid vouchers are considered as actionable claim. As money is excluded from the definition of both goods and services, no GST shall be levied on transaction in vouchers. Further as actionable claim, other than specified actionable claims falls in Schedule III, it is to be treated as neither supply of goods nor supply of services.

However, supply of underlying goods and/or services, for which vouchers are used as consideration or part consideration shall be taxable under GST unless such goods / services are specifically exempted.

Moreover, trading of vouchers on a principal-to-principal basis is not leviable to GST. However, GST shall be levied on commission charged by agent for selling vouchers on behalf of principal.

Lastly, Unused / Unredeemed vouchers at the end of expiry period would not be leviable to GST since no supply of underlying goods and/or services on account of such unredeemed voucher has taken place.

SECTION 8: COMPOSITE AND MIXED SUPPLIES

Section 8	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 <u>principal</u> supply, shall be treated as a supply of such principal supply; and
(b)	a mixed supply comprising of two or more supplies shall be treated as supply of that particular supply that attracts <u>highest rate of tax</u> .

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

However, in certain cases, some of the supplies are a combination of services or combination of goods and services both and each individual component of such supplies may attract a different rate of tax.

Section 8 came to rescue from such situation where finding the rate of tax for the bundle of supply seems a challenge. In order to determine whether the supplies are 'composite supplies' or 'mixed supplies', one needs to determine whether the supplies are naturally bundled or not naturally bundled in ordinary course of business.

Let us start with understanding the two important terms [i.e., Composite Supply & Mixed Supply] of this section:

1. Composite Supply [Section 2(30)]: It 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, which are naturally bundled and supplied in conjunction with each other, in the ordinary course of business one of which is a principal supply.

Principal Supply [Section 2(90)]: It 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.

- ✚ There is no set formula or pattern to determine whether a service is naturally bundled in the ordinary course of business or not. Each case has to be individually examined in the backdrop of several factors some of which are outlined below:
- Single price is charged for the package
 - The bundle is generally advertised as a package
 - Perception of the consumer that the goods or services or both is generally provided in a package
 - Industry trend is similar
 - The different elements are not available separately

- ✚ Conclusion: Rate of tax in case of a composite supply shall be the rate of principal supply. Such rate shall apply on the whole package.

CBIC Clarification: Supply of food and beverages at the cinema halls.

1. Where the food or beverages are supplied independently of the cinema exhibition service (i.e., the customer decides to buy or not at the cinema hall only) – then such supply shall be taxable as restaurant service.
2. Where the sale of cinema ticket and supply of food and beverages are clubbed together and are provided as a package, then the entire supply will be considered as composite supply and it will attract GST at the rate applicable to service of exhibition of cinema, the principal supply.

Example 1:



Ans: When a consumer buys an air conditioner, he also gets installation & warranty contract with the AC, this supply is a composite supply. In this example, supply of AC is the principal supply, installation & warranty services are ancillary.

Example 2:

Sir, tomorrow I am going to Mumbai for Ganpati Celebrations. I have booked Air India Flight tickets. Price of the ticket include service of food being served on board, free insurance, and the use of airport lounge. Sir, what is Principal, Composite supply in this case?

Ans: In this case, the transport of passenger, constitutes the pre-dominant element of the composite supply and is treated as the principal supply and all other supplies are ancillary.

3. Mixed Supply [Section 2(74)]: It 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 first pre-requisite is to eliminate the possibility of composite supply in order to make the bundle of goods or services or both, a mixed supply. Mixed supply is an unnatural combination. It is a deliberate attempt to provide two or more goods or services or both at a single price.

E.g.: 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.

✚ Conclusion: Rate of tax in case of a mixed supply shall be the highest rate amongst individual items. Such rate shall apply on the whole package.

CBIC Clarification: Servicing of cars involving supply of both goods (spare parts) and services (labour) where the value of goods and services are shown separately, CBIC has clarified that the goods and services would be liable to tax at the rates as applicable to such goods and services separately.

Clarification regarding Retreading of Tyres:

Issue 1: Whether retreading of tyres is a supply of goods or services?

Clarification: Retreading of tyres is a composite supply, in which the pre-dominant element is the process of retreading which is a supply of service. Further, rubber used for retreading is just an ancillary supply. since, in retreading of tyres, pre-dominant element is the supply of service of processing of retreading, therefore, retreading of tyres is a supply of services.

Issue 2: Whether supply of retreaded of tyres is a supply of goods or services?

Clarification: Where owner of the retreaded tyre sells the retreaded tyres, then, it is a supply of goods (i.e. retreaded tyres)

Clarification on activity of bus body building: In the case of bus body building, there is supply of goods as well as services. This is composite supply of goods and services. The principal supply in this case is "Supply of Service".

Clarification regarding Taxability of Printing Contract:

Issue: Whether supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name address or other contents supplied by the recipient of such supplies, would constitute supply of goods or supply of services?

Clarification: In the above context, it is clarified that the above-mentioned supplies are composite supplies.

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.

In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc., printed with design, logo, etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods.

Q 14: Determine whether the following supplies are composite supplies or mixed supplies.

- A hotel provides 5 days – 4 nights package wherein the facility of breakfast & laundry is provided along with the room accommodation.
- A shoe company has offered 20% discount on shoe polish when a customer buys a pair of shoes. The invoice mentions the items separately.
- Ankur sells antique glass pieces. Special packaging + insurance is also done to avoid any loss in transit. A single price is charged for the whole transaction.

Advice: The student should answer these cases depending upon the marks allotted to the question. If it is a one-mark (for each case) question, then just write composite or mixed supply against each case. However, if it is 2-3 marks (for each case) question, then a brief explanation is also required as to why such transaction is a composite or mixed supply.

Answer (assuming 1-mark question)

S. No.	Particulars	Composite / Mixed
(a)	A hotel provides 5 days – 4 nights package wherein the facility of breakfast & laundry is provided along with the room accommodation.	Composite
(b)	A shoe company has offered 20% discount on shoe polish when a customer buys a pair of shoes. The invoice mentions the items separately.	Neither mixed nor composite. It is a supply of individual items.
(c)	Ankur sells antique glass pieces. Special packaging + insurance is also done to avoid any loss in transit. A single price is charged for the whole transaction.	Composite

Q 15: A supply comprising of two or more supplies shall be treated as supply of that particular supply which attracts highest rate of tax.

- Composite
- Mixed
- Either (a) or (b) depending on the assessee
- Either (a) or (b) depending on the concerned officer

[Ans: (b)]

Q 16: Which of the following supplies are naturally bundled?

- Pack of shirt, trouser & a tie
- Rent deed executed for renting of two different floors of a building – one for residential and another for commercial purpose to the same person
- Sale of car with stepney
- None of the above

[Ans: (c)]



QUICK REVISION BEFORE EXAMS

Section	Particulars
7(1)(a)	Supply = Taxable Goods / Services + Consideration + by a registered supplier + course or furtherance of business. ✚ <u>Goods</u>: Every kind of movable asset other than money & securities. ✚ <u>Services</u>: Anything other than goods, money & securities. ○ Amount paid for conversion of currency or brokerage paid to agent for dealing in securities is a supply of service and therefore leviable to GST. ✚ <u>Consideration</u>: Anything in return. It can be in money or kind. Further, it can flow from a third person also. However, any subsidy given by the Central Government or a State Government is not considered as consideration. <u>Few Clarifications</u>: ○ Donations as an act of philanthropy without any intension of receiving back anything is not consideration. But if such donation leads to business promotion, GST shall be levied. ○ No claim bonus not to be treated as supply by the insurer to insurance company. ○ No GST on Art works sent by artists to galleries for exhibition. GST has to be levied at the time of actual supply at the gallery. Further GST also to be levied on commission charged by exhibitor from the artist. ○ No GST is payable by insurance company on salvage value where the claim is settled after deducting the salvage value as the ownership of salvage remains with the insured. However, where the claim settlement on full insured declared value without deducting salvage value, the salvage becomes the property of the Insurance Co. after setting the full claim amount. Thus, insurance company is liable to discharge GST on supply of the salvage. ✚ <u>Course / furtherance of business</u>: It should be a commercial transaction. Any personal transaction is not leviable to GST.
7(1)(aa)	Transactions by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment / other valuable consideration
7(1)(b)	Importation of services for consideration even if not in course or furtherance of business will constitute supply.
7(1)(c) + Sch. I	<u>Transactions deemed supply even without consideration</u>: Case I: Permanent transfer or disposal of business assets on which ITC has been claimed. Case II: Supply between related person or distinct person made in the course or furtherance of business. ✚ <u>Related Person</u>: A person who is under influence of another person is called a related person. ○ Family is related person: Spouse & children of the assessee (whether dependant or not) + parents, grandparents, brothers & sisters of the assessee who are wholly dependent on the assessee. Note: Gift by employer to employee upto ₹ 50,000 is not leviable to GST. ✚ <u>Distinct person</u>: A person who has obtained/is required to obtain more than one registration, whether in one State/Union territory or more than one State/Union territory shall, in respect of each such registration, be treated as distinct persons. Case III: Supply of goods (not services) by a principal to his agent or vice versa without consideration shall be considered as supply. Only when further supply of goods by agent is invoiced in his name, it can be construed that there is Principal – Agent relationship and this point shall apply. Case IV: Importation of services by a person from a related person outside India in the course or furtherance of business.

7(1A) + Sch. II	S. No.	Particulars	Nature of Supply
	1.	<u>Transfer</u> ○ Title in goods ○ Right / undivided share in goods without transfer of title ○ Title in goods under an agreement that property shall pass at a future date	Goods Services Goods
	2.	<u>Land & Building</u> ○ Lease, tenancy, easement, licence to occupy land ○ Lease/letting out of building including a commercial / industrial / residential complex for business/ commerce wholly or partly.	Services Services
	3.	<u>Treatment or Process:</u> Applied to another's person goods	Service
	4.	<u>Transfer of Business Assets</u> ○ Business assets disposed / transferred under the directions of the owner, whether or not for a consideration. ○ Business assets put to private use by owner or made available to any person, whether or not for a consideration. ○ Goods forming part of business assets shall be deemed to be supplied by a person who ceases to be a taxable person. <u>Exceptions:</u> ➤ Business transferred as a going concern ➤ Business carried on by personal representative who is deemed to be a taxable person.	Goods Services Goods
	5 (a).	Renting of immovable property	Service
	5 (b).	Construction of complex / building / civil structure <u>Exception:</u> Where entire consideration has been received after issuance of completion certificate or after its first occupation whichever is earlier. <u>Clarification:</u> PLC paid along with consideration for the construction services of residential / commercial / industrial complex forms part of composite supply, being naturally bundled. Therefore, same tax treatment as the main supply of construction service before issuance of completion certificate shall apply.	Service
	5 (c).	Temporary transfer or permitting use of Intellectual Property Rights.	Service
	5 (d).	Development design, programming, adaptation, customization, enhancement etc. of IT software	Service
	5 (e).	Agreeing to obligation to refrain from an act, or to tolerate an act or to do an act.	Service
	5 (f).	Transfer of right to use any goods for any purpose	Service
	6 (a).	Works contract services in relation to immovable property	Service
	6 (b).	Supply of goods, being food or any other article for human consumption or any drink. (Restaurant)	Service
	7.	Supply of goods by an unincorporated association or body of persons to a member thereof	Goods
7(2) + Sch. III	<u>Negative List</u> 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. 3. Functions performed by MP's, MLA's etc. 4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased. 5. Sale of land and sale of fully constructed building in which completion certificate is issued. 6. Actionable claims, other than specified actionable claims. 9. Activity of apportionment of co-insurance premium by the lead insurer to co-insurers for jointly supplied insurance services, provided the lead insurer pays full GST on the total premium received from the insured. 10. Services by insurer to reinsurer with ceding commission deducted from reinsurance premium, provided the reinsurer pays GST on the gross premium inclusive of such commission.		

	<i>Entries 7 & 8 are not covered at intermediate level. They are covered at final level.</i> <u>Other transactions which are neither considered as supply of goods nor supply of services:</u> - Functions performed by Panchayat / Municipality in which they are engaged as public authorities. - Services by way of grant of alcoholic liquor licence, against consideration in the form of licence fee by the State Government in which they are engaged as public authorities. - Inter-state movement of conveyances (buses/trucks/trains/vessels/aircrafts/cranes) between distinct persons except in cases where such movement is for further supply of the same conveyance. However, applicable GST shall be leviable on repairs and maintenance done for such conveyance. <u>Clarification on transaction in vouchers:</u> Prepaid vouchers fall under the definition of money & non-prepaid vouchers are considered as actionable claim. No GST in both the scenarios. However, supply of underlying goods and/or services, for which vouchers are used as consideration shall be taxable under GST. Further, trading of vouchers on a principal-to-principal basis is not leviable to GST. However, GST shall be levied on commission charged by agent for selling vouchers on behalf of principal. Lastly, unused vouchers at the end of expiry period would not be leviable to GST since no supply of underlying goods and/or services on account of such unredeemed voucher has taken place.
8	<u>Composite & Mixed Supply</u> <u>Composite Supply:</u> A supply comprising of two or more taxable supplies of goods or services or both, which are naturally bundled in the ordinary course of business, one of which is a principal supply. ☒ Rate of tax applicable on a composite supply shall be the rate of principal supply. <u>Mixed Supply:</u> A supply which is not a composite supply. ☒ Rate of tax applicable on a mixed supply shall be the highest rate.
	<u>Clarification on supply of food and beverages at the cinema halls.</u> - Where the food is supplied independently of the cinema exhibition service (i.e., the customer decides to buy or not at the cinema hall only) – then such supply shall be taxable as restaurant service. - Where the sale of cinema ticket and supply of food and beverages are clubbed together and provided as a package, then the entire supply will be considered as composite supply and it will attract GST at the rate applicable to service of exhibition of cinema, the principal supply. <u>Clarification regarding servicing of car:</u> Servicing of cars involving supply of both goods (spare parts) and services (labour) where the value of goods and services are shown separately, would be liable to tax at the rates as applicable to such goods and services separately. <u>Clarification regarding Retreading of Tyres:</u> Retreading of tyres is a composite supply, in which the pre-dominant element is the process of retreading which is a supply of service. Further, rubber used for retreading is just an ancillary supply. Further, where owner of the retreaded tyre sells the retreaded tyres, then, it is a supply of goods (i.e. retreaded tyres). <u>Clarification on activity of bus body building:</u> This is composite supply of goods and services. The principal supply in this case is "Supply of Service". <u>Clarification regarding taxability of printing contracts</u> - Where only content is supplied by the publisher while the physical inputs including paper used for printing belong to the printer, supply of printing is the principal supply and therefore such supplies would constitute supply of service. - In case of supply of printed envelopes, letter cards, tissues, wall paper etc., printed with design, logo, etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods.

NOTES FOR STUDENTS

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SHREY RATHI CLASSES