

CHAPTER III

LEVY AND COLLECTION OF TAX

Commentary :

Under the old regime, taxable events for various taxes were different. For example for excise, the taxable event was manufacture or production of goods in India, for service, the taxable event was provision of service and under VAT/CST it was sale of goods. To replace such multiplicity, GST has brought a single and unified taxable event which is supply, i.e., tax would be payable on the supply of goods or services.

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;
 - (b) import 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; and
 - (d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

Commentary :

The term, "supply" has been inclusively defined in the Act. The meaning and scope of supply under GST can be understood in terms of following six parameters, which can be adopted to characterize a transaction as supply:

1. Supply of goods or services. Supply of anything other than goods or services does not attract GST
2. Supply should be made for a consideration
3. Supply should be made in the course or furtherance of business
4. Supply should be made by a taxable person
5. Supply should be a taxable supply

The term "goods" and "services" have been defined in section 2(52) and 2(102) of the CGST Act. The term "consideration" is defined in section 2(31) of the CGST Act.

The phrase 'agreed to be made' signifies that tax is not only payable on supply, that has already been made, but would also be payable in respect to a supply that has been agreed to be made. Hence, even advances received prior to supply is taxable even if the same is in

connection to a supply agreed to be made.

- (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 sub-sections (1) 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.

8. TAX LIABILITY ON COMPOSITE AND MIXED SUPPLIES

The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and
- (b) a mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

Commentary :

The term "composite supply" and "mixed supply" have been defined in section 2(30) and 2(74) of the CGST Act.

Example of composite supply:-

You are booking an airline ticket which includes meal. It is a bundle of supplies. It is a composite supply where the products cannot be sold separately. You cannot buy just the airline meal and not the airline ticket. The transportation of passenger is, therefore, the principal supply.

Rate of tax applicable to the principal supply will be charged to the whole composite bundle. Therefore, rate of GST applicable to transportation of passengers by air will be charged on the airline ticket.

Example of mixed supply

Many FMCG Companies offer buckets with detergent purchased. This is a mixed supply as it does not satisfy the 2nd condition, i.e., it can be sold separately. You can buy either just a bucket or just detergent. The highest rate of GST will then apply. Assuming that plastic buckets have the higher rate, this rate will apply on the whole mixed bundle.

9. LEVY AND COLLECTION

- (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.
- (2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.

Commentary :

CGST along with SGST / UTGST is leviable on intra-State supplies. The maximum rate at which Government can levy CGST is 20%. However currently, the highest rate at which it has been levied is 14% (as decided in the 14th GST council meeting).

Alcoholic liquor for human consumption is outside the ambit of GST. Further petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel is also kept outside GST for the time being, but can be brought under its regime from such date as may be notified.

- (3) The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the

provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

- (4) The central tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.
- (5) The Government may, on the recommendations of the Council, by notification, specify categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also he does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.

Commentary :

GST is normally payable by the supplier of goods or services. However when the same is payable by the recipient of goods/services, it is called reverse charge. The term "reverse charge" is defined under section 2 (98) of CGST Act.

The supplies in respect of which tax is payable on reverse charge basis are specified in sub-section (4) and (5) of section 9 of CGST Act. Further the government can also notify such categories under sub-section (3) of section 9 of CGST Act.

10. COMPOSITION LEVY

Commentary :

The composition levy is an alternative method of levy of tax designed for small taxpayers. The objective of composition scheme is to bring simplicity and to reduce the compliance cost for the small taxpayers. Moreover, it is optional and the eligible person opting to pay tax under this scheme can pay tax at a prescribed percentage of his turnover every quarter, instead of paying tax at normal rate.

However to qualify for this scheme, he has to fulfill the mandatory conditions prescribed under the law, one of which is the limit of annual turnover.

- (1) Notwithstanding anything to the contrary contained in this Act but subject to the provisions of sub-sections (3) and (4) of section 9, a registered person, whose

aggregate turnover in the preceding financial year did not exceed fifty lakh rupees, may opt to pay, in lieu of the tax payable by him, an amount calculated at such rate as may be prescribed, but not exceeding,—

- (a) one per cent. of the turnover in State or turnover in Union territory in case of a manufacturer,
- (b) two and a half per cent. of the turnover in State or turnover in Union territory in case of persons engaged in making supplies referred to in clause (b) of paragraph 6 of Schedule II, and
- (c) half per cent. of the turnover in State or turnover in Union territory in case of other suppliers,

subject to such conditions and restrictions as may be prescribed:

Provided that the Government may, by notification, increase the said limit of fifty lakh rupees to such higher amount, not exceeding one crore rupees, as may be recommended by the Council.

- (2) The registered person shall be eligible to opt under sub-section (1), if:—
 - (a) he is not engaged in the supply of services other than supplies referred to in clause (b) of paragraph 6 of Schedule II;
 - (b) he is not engaged in making any supply of goods which are not leviable to tax under this Act;
 - (c) he is not engaged in making any inter-State outward supplies of goods;
 - (d) he is not engaged in making any supply of goods through an electronic commerce operator who is required to collect tax at source under section 52; and
 - (e) he is not a manufacturer of such goods as may be notified by the Government on the recommendations of the Council:

Provided that where more than one registered persons are having the same Permanent Account Number (issued under the Income-tax Act, 1961), the registered person shall not be eligible to opt for the scheme under sub-section (1) unless all such registered persons opt to pay tax under that sub-section.

- (3) The option availed of by a registered person under sub-section (1) shall lapse with effect from the day on which his aggregate turnover during a financial year exceeds the limit specified under sub-section (1).
- (4) A taxable person to whom the provisions of sub-section (1) apply shall not collect any tax from the recipient on supplies made by him nor shall he be entitled to any credit of input tax.
- (5) If the proper officer has reasons to believe that a taxable person has paid tax under sub-section (1) despite not being eligible, such person shall, in addition to any tax that may be payable by him under any other provisions of this Act, be liable to a penalty and

the provisions of section 73 or section 74 shall, mutatis mutandis, apply for determination of tax and penalty.

Commentary :

The Composition scheme is not available to supplier of services except restaurant service.

Taxable person whose all supplies of goods and services are within the state only are eligible.

Taxable person who opts for this scheme will not be allowed to charge GST in their invoice. They will issue a bill of supply instead of Tax invoice. They are also not entitled to take input tax credit.

The scheme lapses on the day his aggregate turnover exceeds the specified aggregate turnover limit.

A registered taxable person having same PAN and multiple registrations in different states have to opt for the composition scheme for all states.

11. POWER TO GRANT EXEMPTION FROM TAX

- (1) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.
- (2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.
- (3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation.—For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

Commentary :

An exemption may be conditional or absolute. When exemption has been granted absolutely, i.e. it is not subjected to any condition or the happening of any event, it is mandatory.

SCHEDULE I

[See section 7]

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

SCHEDULE II

[See section 7]

ACTIVITIES 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.

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.

3. Treatment or process

Any treatment or process which is applied to another person's goods is a 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, whether or not for a consideration, 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, whether or not for a consideration, the usage or making available of such goods is a supply of services;
- (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.

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.

Explanation: For the purposes of this clause—

- (1) the expression "competent authority" means the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:—
 - (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or
 - (ii) a chartered engineer registered with the Institution of Engineers (India); or
 - (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;
- (2) the expression "construction" includes additions, alterations, replacements or remodelling of any existing civil structure;
- (c) temporary transfer or permitting the use or enjoyment of any intellectual property right;
- (d) development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
- (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and
- (f) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.

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.

7. Supply of Goods

The following shall be treated as supply of goods, namely:—

Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

SCHEDULE III

[See section 7]

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.
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.
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.

Explanation.—For the purposes of paragraph 2, the term "court" includes District Court, High Court and Supreme Court.

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