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Introduction of Key Concepts under GST

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Concept of 'Composite Supply' & 'Mixed Supply'



Concept of 'Composite Supply' & 'Mixed Supply'

- ❖ Term '**composite supply**' has been defined under Section 2(30) as –

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



Defined under Section 2(90) as –

*““principal supply” 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,”*

- ❖ Section 2(74) of the CGST Act defines the term '**mixed supply**' as –

“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”

- ❖ **Australia** – No definition has been provided under the Australian GST
 - **Meaning to the terms ‘composite supply’ and ‘mixed supply’ have been ascribed by the GST Ruling 2001/8**
 - **Mixed supply** – *A supply containing separately identifiable parts where one or more of the parts is taxable and one or more of the parts is non-taxable. None of these parts is integral, ancillary or incidental in relation to the whole supply*
 - **Composite supply** – *A supply of one dominant part that has other parts that are not treated as having a separate identity as they are integral, ancillary or incidental to the dominant part of the supply*

- ❖ **Canada** – Treatment of composite supplies is provided under **Section 138 of Canadian Excise Act, 1985:**

“a particular property or service is supplied together with any other property or service for a single consideration, and it may reasonably be regarded that the provision of the other property or service is incidental to the provision of the particular property or service, the other property or service shall be deemed to form part of the particular property or service so supplied”

Illustrations of 'Composite Supply' & 'Mixed Supply'

❖ Illustrations of 'composite supply' and 'mixed supply' under the CGST Act –

➤ Composite supply –

- Goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.
- **Works contract** – has been specifically categorized as a 'composite supply' as per Clause 6(a) of Schedule II of the CGST Act
- **Serving food and drinks (other than alcoholic drinks) for a consideration**

➤ Mixed supply –

- A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other.

Illustrations of 'Composite Supply' & 'Mixed Supply'

Packaged deals (with one price) –

Composite supply	Mixed supply
250 ml of sunscreen bottle with 10 ml of moisturizer	Coffee plunger and coffee jar at a discounted rate
Works contract	Promotional pack – tea along with cup and saucer
Picnic box	Hampers
Breakfast along with accommodation	Health cover and gym membership
Sale of tyres along with fitting and balancing	Sale of shops along with residential property

Difference in 'Composite Supply' & 'Mixed Supply'

Composite supply	Mixed supply
One component determines the essential character of the transaction	Components separately recognizable
<p>All supplies are integral, ancillary and incidental to the dominant supply</p> <ul style="list-style-type: none"> ▪ Incidental supplies are for – <ul style="list-style-type: none"> ➤ Better enjoyment of the dominant thing supplied ➤ Contributes to the proper performance of the contract to supply the dominant part ➤ Represents a marginal portion of the total value ➤ Cannot be identified independently 	<ul style="list-style-type: none"> ▪ Each component is equally dominant ▪ Each supply is separate and independent and has independent existence ▪ One supply cannot determine the essential character of the transaction
Social and economic reality to be seen	There is no social or economic reason for it to be bundled together
The activity with significant emphasis is the main activity	Independence of each activity – highest rate applicable on any of the bundled activities to apply on the whole bundle

- ❖ **Gifts and promotional items for single price – whether ‘composite’ or ‘mixed’?**
 - Whether ‘Gift’ = ‘Free supply’?
 - ‘Buy one, get one free’ scenarios
 - Bundling free satchets of one item with other items

- ❖ Phrases ‘naturally bundled’ and ‘in the ordinary course of business’ occurring in the definition of ‘composite supply’ – **not defined under the CGST Act**
- ❖ **Whether the interpretation of ‘naturally bundled’ will be inferred from the contractual terms & conditions between the parties or will it be governed by some ‘general norms’/guidelines?**
 - No guidelines or norms have been specified under the CGST Act
 - **‘Works contract’ has been specifically categorized as ‘composite supply’**

Does it imply that the supplies have to be inextricably linked with each other so as to qualify as ‘composite supply’

OR

Does it imply that the supplies, which are contractually agreed by the parties to be made together, would be eligible to qualify as ‘composite supply’
 - CGST Act does not provide any clarity in this regard
- ❖ Reference may be made to the E-flyers prepared by the Central Board of Indirect Taxes and Customs (“CBIC”) – *discussed on subsequent slides*

E - flyers on 'Composite Supply' & 'Mixed Supply'

- ❖ **CBIC states** – services whether bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. This can be ascertained from several indicators some of which are listed below –
 - Perception of the consumer or the service receiver.
 - Majority of service providers in a particular area of business provide similar bundle of services.
 - Nature of the services.
 - There is a single price.
 - The elements are normally advertised as a package.
 - The different elements are not available separately.
 - The different elements are integral to one overall supply.
- ❖ **If an assessee is able to prove the existence of all the above indicators – then, the probability of qualifying the supply as a 'composite supply' may be higher**

- ❖ **Contract(s) for undertaking construction of building, etc. would necessarily qualify as a 'works contract', and hence, a 'composite supply', as per Section 2(119) read with Clause 6(a) of Schedule II of the CGST Act**
 - **Can companies continue the practice of splitting EPC/construction contracts under the GST regime?**

- ❖ **Whether the purchase of multiple items from a grocery store, for which a single price is quoted and a single invoice is generated – would qualify as a 'mixed supply'?**

- ❖ **Deadlock in case of categorization –**
 - **In case a particular supply involves both supply of goods and supply of services, then, how would such supplies be categorized? – E.g. Car repairing services**

OR

- **Do the suppliers have a choice of segregating the supply and treating each supply separately**

- ❖ **Case study relating to the setting-up of a ‘Solar Power Generating System’ (“SPGS”) –**
 - Concessional rate of 5% leviable on the supply of SPGS
 - Typically 3 activities are involved in the setting-up of SPGS
 - Supply of material
 - Civil Works
 - Erection and Commissioning
 - **If one single contract is executed – will be treated as ‘works contract’ – ‘composite supply’**
 - **If separate contracts are executed – whether it would be categorized as ‘mixed supply’ or ‘composite supply’?**
 - Further, concessional rate of 5% may not be available
 - **In case supply of materials and erection & commissioning are clubbed together to avail the concessional rate – whether it would qualify as a ‘composite supply’ or ‘mixed supply’?**
 - **Civil works independently would be treated as ‘works contract’ – ‘composite supply’**

Case law interpreting 'Composite Supply' & 'Mixed Supply'

- ❖ **Advance Ruling in the case of *Switching AVO Electro Power Ltd* – Whether the supply of inverter and batteries together qualify as a ‘composite supply’ or a ‘mixed supply’?**
 - **The Authority referred to Note 3 of Section XVI of the Custom Tariff Act, 1975** – which defines composite machines as *‘two or more machines fitted together to form a whole’*
 - The Authority stated that a customer can buy the inverter from the applicant and buy the batteries from other vendors – thus, the supply of inverter is not solely dependent on the supply of batteries
 - Further, the Authority stated that goods are naturally bundled if the contract is indivisible – like a ‘works contract’ – wherein the construction of civil structure involves supply of cement, steel, etc.
 - Consequently, it observed that if a combination of goods supplied for a single price do not qualify as a ‘composite supply’ – then such a supply is to be treated as a ‘mixed supply’.
 - **Consequently, the supply of inverter and batteries was categorized as ‘mixed supply’ and taxed accordingly – Doubtful tenability as highly restricted interpretation of ‘composite supply’ adopted**

Jurisprudence under the erstwhile law - 'Bundled Services'

- ❖ **Section 66F(3) of the Finance Act, 1994 envisaged the concept of 'bundled services' that if services are –**
 - 'Naturally bundled' – provision of the single service which gives bundle its essential character
 - Not 'naturally bundled' – provision of the single service which results in highest liability of tax
- ❖ **Godaddy India Web Services Pvt. Ltd. [2016 (46) STR 806 (AAR)] – Various services being provided by the Applicant (like marketing, branding, offline marketing, oversight of quality of third party customer care centre, etc.) were held to be 'naturally bundled' being a single service of the category 'business support service'.**
 - Authority merely relied upon the guidelines laid down in **Paragraph 9.2.4 of Education Guide dated 20.06.2012**. The indicators stipulated in the Education Guide are identical to the ones encapsulated in the GST E-flyer (*discussed earlier*)
- ❖ **Thus, it can be presumed that fulfillment of the guidelines stipulated under the GST E-flyer may result in categorization of the supply as a 'composite supply' in the *Switching AVO Electro Power Ltd* case.**



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Valuation



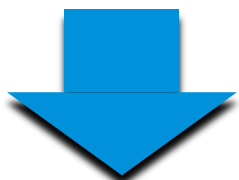
Valuation of supply of goods and services

Particulars	Relevant GST provision
Scope	<ul style="list-style-type: none">• Value to be the 'Transaction value' where supplier and recipient are not related parties and price is the sole consideration• Value of supply shall include<ul style="list-style-type: none">- Incidental expenses charged by supplier to recipient,- Interest, late fee or penalty for delayed payment- Subsidies directly linked to prices except when provided by the Government• Where supply is between related persons or price is not the sole consideration, value to be determined on basis of<ul style="list-style-type: none">➤ Open market value➤ Value of like kind and quality of goods or services➤ Cost plus method➤ Residual method<p><i>Provided where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services</i></p>
Exclusion	Discounts?

Valuation of supply of goods and services

Pre-sale Discount

Where a discount is given before or at the time of supply and the same has been recorded in the invoice issued



Discount to be excluded from value of supply

Post-sale Discount

- Such discount is established in terms of an agreement into at or before time of such supply
- Discount specifically linked to relevant invoices
- ITC attributable to discount has been reversed



Discount to be excluded from value of supply

- ❖ Scenario 1: If NOT in the nature of deposits – Example: mobilization advances adjustable against subsequent invoice payments
 - ✓ **GST is payable** on such advances – point of taxation being the date on which such advance payment is received by the supplier
 - ✓ Supplier shall be **required to issue a ‘receipt voucher’** at the time of receipt of advance towards supply of goods or services.
 - ✓ The details of the advances shall be required to be shown in the GSTN Return and shall be adjusted at the time of the actual supply of Goods and Services (if in different months)
 - ✓ In case the advance has to be refunded due to non-supply of goods or services and no tax invoice is issued, **refund voucher** to be issued by the supplier
 - ✓ In case there is a difference in the value of advance and the final invoice value, differential GST would be payable / refundable to the supplier at the time of issuance of the final invoice

- ❖ Scenario 2: If in the nature of deposits – Example: Security deposit provided by the contractor to the Developer
 - ✓ **Section 2(31) defines the term ‘consideration’** – A deposit does not qualify as ‘consideration’ until and unless the said amount is utilized against a supply
 - ✓ The ‘security deposit’ made by the contractor is not adjustable towards a supply
 - ✓ The said deposit will be adjusted only on the occurrence of a contingent event



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Place of Supply



Setting the context: Concept of 'place of supply'

- ❖ **Concept of place of provision under the earlier laws**
 - Service tax incorporates – Place of Provision of Services Rules, 2012
 - Excise law – place of clearance of goods
 - In case of VAT, movement of goods broadly determines the tax to be charged – if goods moved from one State to another State then CST, else VAT
 - **The taxes on goods were origin based** – revenue mostly remained with the origin State

- ❖ **Under the GST regime – taxes are supposed go to the destination State**
 - However, there may be a difference in the '*State of the Recipient*' and the destination State
 - This is where the Place of Supply provisions become relevant – to decide which State will get the Revenue
 - Under the GST regime, CGST and SGST is payable on the 'intra-state supply' and IGST is payable on 'inter-state supply'
 - **Whether a supply is 'intra-state' or 'inter-state' is predicated on 'location of the supplier' and the 'place of supply'**

Place of supply of goods/services (Sections 10 to 14 of the IGST Act) - Bird's eye view



Place of supply of goods

- Place where the movement of goods terminate for delivery to recipient
- Location of goods at the time of delivery (if no movement is involved)
- Place of supply in a 'Bill to Ship to' model
- Imported into India – location of importer'



Place of supply of services

Both parties in India

- Location of service recipient if registered
- If unregistered:
 - Address on record; else
 - Location of supplier

One party outside India

- Location of service recipient; or
- Location of supplier of service if location of recipient is not available

*** Exceptions for immovable property related services or other physical performance linked services**

- ❖ **Section 10** – for domestic transactions, the **GST law broadly visualises the following 5 situations** and tries to fit all domestic transactions in those situations –

1. Simple transaction involving movement

“(a) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient”

2. A complex transaction involving movement

“(b) where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person”

3. When goods do not move

“(c) where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient”

❖ **Section 10 – provides for the place of supply of goods in the following situations –**

4. When components of goods move

“(d) where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly”

5. When goods and consumers, both move

“(e) where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board”

If there are situations which would not fit into the above 5 situations, separate rules could be prescribed to determine Place of Supply [Section 10(2) of IGST Act]

Ambiguity *vis a vis* ex-works/ex-factory supply

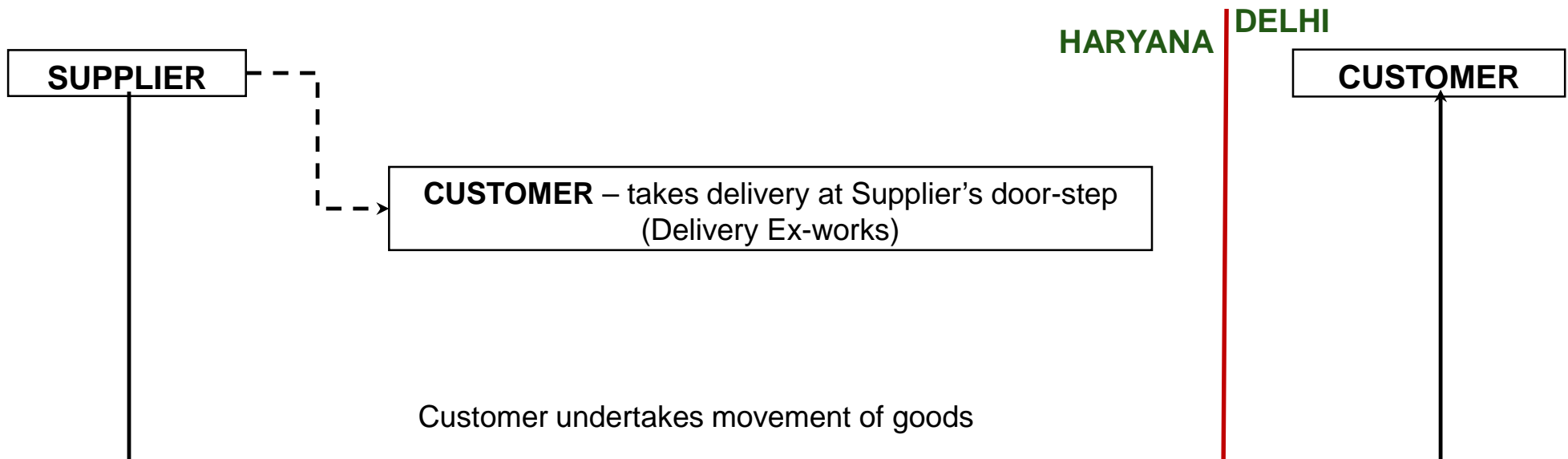
Ex-works supplies to be governed by Scenario 1 (“Where the supply involves movement of goods....” **or Scenario 3** (“Where the supply does not involve movement of goods....”)?

Concept of ‘**supply** (involves **movement**)’ – broader than the concept of ‘**sale** (occasions) **the movement**’ provided under the Central Sales Tax Act, 1956?

Synonyms of “involves” – *includes, encompasses*

The inter-State movement must be **as a result** of a covenant, express or implied in the contract of sale or in an incident of the contract

Conclusion: If movement of goods envisaged by parties, then Scenario 1; otherwise Scenario 3 should apply



Ambiguity when Scenario 1 applies [Section 10(1)(a) of the IGST Act]

Section 10(1)(a) of the IGST Act

(a) Where the **supply involves movement of goods**, whether by the supplier or the recipient or by any other person, the place of supply of goods shall be the **location of the goods at the time at which the movement of goods terminates** for delivery to the recipient.

INTERPRETATION - I

Where supply involves movement – PoS is where movement of goods **terminates for delivery to the recipient**

- In case of ex-works- the movement terminates at the location of the supplier and contractually delivery is taken by the recipient at the location of the supplier
- PoS – location of supplier (i.e., Haryana – thus, SGST+CGST)

(a) Where the **supply involves movement of goods**, whether by the supplier or the **recipient** or by any other person, the **place of supply** of goods shall be the **location** of the goods at the time **at which the movement of goods terminates for delivery to the recipient**.

INTERPRETATION - II

Movement of goods by the recipient – PoS shall be the location of goods where the movement terminates for delivery

- **In case of ex-works – supply involves movement which is undertaken by recipient**
- **PoS – location of recipient where movement of goods terminates for delivery (i.e., Delhi – thus, IGST)**
- **As delivery already completed at the supplier's premise – the second/physical delivery is a re-delivery**

Ambiguity when Scenario 1 applies [Section 10(1)(a) of the IGST Act]

Section 10(1)(a) of the IGST Act

Issues in Interpretation - I

- As both the 'Supplier' and the 'Place of Supply' are located in the same State, the supply of goods by the Supplier to the Customer will be treated as an intra-state supply and taxed with **SGST+CGST**
- **Can the Customer take ITC of the SGST paid in Haryana and utilize the same in payment of SGST in Delhi?**

Issues in Interpretation - II

Issues with respect to valuation – **Section 15(2)(c) provides –**

“incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services”

- **If 'delivery' is read to mean physical/re-delivery for this provision also, then whether transport expenses would be added to the transaction value of the supplier?**
- **If delivery is completed at factory gate, then such expenses would not be added**

Place of supply of services – Definition of ‘Location of supplier/ recipient’

“Location of the supplier of services”

- | | |
|---|--|
| <ul style="list-style-type: none">• Supply from registered ‘place of business’ or from other registered fixed establishment ‘• In absence of such places | <ul style="list-style-type: none">• Location of such place or establishment• Usual place of residence |
|---|--|

“Location of the recipient of services”

- | | |
|---|--|
| <ul style="list-style-type: none">• Supply is received at a registered ‘place of business’ or at other registered ‘fixed establishment’• In absence of such places | <ul style="list-style-type: none">• Location of such place or establishment• Usual place of residence |
|---|--|

“Recipient”

If consideration is payable	If consideration is not payable
Person liable to pay consideration	Person to whom goods/services are delivered or made available or rendered

- ❖ Whether a supply is ‘Inter-state’ or ‘Intra-state’ – predicated on **location of supplier** and **place of supply**
- ❖ Where **location of supplier** and **place of supply** are in (i) 2 different States; (ii) 2 different UTs; (iii) a State and a UT = **Inter-State supply, liable to IGST**

Place of supply of Services - Location of supplier and recipient is India (specific transactions)

Sl. No.	Events	Section	Place of Supply
1	<p>Services in relation to immovable property:-</p> <ul style="list-style-type: none"> • Services provided by architects, interior decorator, other experts, etc. or grant of right to use or for carrying out or coordination of construction work. • Lodging by a hotel, inn, etc. including a house boat or vessel • Accommodation in immovable property for organizing functions • Any ancillary services to the above 	12 (3)	<ul style="list-style-type: none"> • Location of immovable property or boat or vessel. • Location of recipient of services if location of immovable property or boat or vessel is outside India • Each respective state where the immovable property or boat or vessel is located
2	Restaurant & Catering, personal grooming, fitness, etc.	12 (4)	Locations where services are actually performed
3	Training and performance appraisal services	12 (5)	<ul style="list-style-type: none"> • Location of registered person • Locations where services are performed, if unregistered person

Place of supply of Services - Location of supplier and recipient is India

Sl. No.	Events	Section	Place of Supply
4	Services provided by way of admission to a cultural, artistic, scientific, etc event or any ancillary services	12 (6)	<ul style="list-style-type: none">Place where event is actually held or where the park or such other place is located
5	Services provided by way of organization of a cultural, artistic, sporting, scientific event or service in relation to conference, fair, exhibition, etc.	12 (7)	<ul style="list-style-type: none">Location of registered personLocations where event is held, if unregistered person. If event is held outside India, then the location of recipientEach respective state where event is held
6	Services by way of transportation of goods	12 (8)	<ul style="list-style-type: none">Location of registered personLocations where goods are handed over for transportation, if unregistered person

Place of supply of Services - Location of supplier and recipient is India

Sl. No.	Events	Section	Place of Supply
7	Passenger transportation services	12 (9)	<ul style="list-style-type: none"> Location of registered person Locations where passenger embarks on conveyance for a continuous journey, if unregistered person.
8	Services provided on board a conveyance	12 (10)	First schedule point of departure of that conveyance for the journey
9	<u>Telecommunication services including data transfer, broadcasting, cable and DTH service:</u>	12(11)	<ul style="list-style-type: none"> Location of registered person Locations where goods are handed over for transportation, if unregistered person
	1. In case of fixed line/ circuit/ cable/ antenna		Location of installed fixed line/ circuit/ cable/ antenna for receipt of services
	2. Mobile connection: <ul style="list-style-type: none"> a. Post-paid basis b. Pre-paid basis 		<ul style="list-style-type: none"> a. Location of Service receiver on record of Service provider b. Location where pre-payment is received

Place of supply of Services – Location of supplier and recipient is India

Sl. No.	Events	Section	Place of Supply
10	Supply of banking and other financial services	12(12)	Location of recipient of services
11	Supply of insurance services	12(13)	Locations of registered person
12	Supply of advertisement services to Government for different states identified in the contract	12(14)	Each of the states

Place of supply of Services - Location of supplier or recipient is outside India

Sl. No.	Events	Section	Place of Supply
1	General rule	13 (2)	<ul style="list-style-type: none">• Location of recipient of services• Location of supplier of services when location of recipient is not available
2	<ul style="list-style-type: none">• Supply of services for goods which must be made physically available to the recipient• Services supplied to an individual recipient which require the physical presence of recipient	13(3)	<ul style="list-style-type: none">• Location where services are physically performed
3	Services provided in relation to immovable property including services supplied by experts and estate agents, supply of accommodation, grant of right to use or for carrying out or coordination of construction work including architects or interior decorators.	13 (4)	<ul style="list-style-type: none">• Location of immovable property

Place of supply of Services – Location of supplier or recipient is outside India

Sl. No.	Events	Section	Place of Supply
4	Services provided by way of admission to or organization of a cultural, artistic, sporting, scientific event or service in relation to conference, fair ,exhibition, etc.	13 (2)	Place where event is actually held
5	Services supplied by a banking company or financial institution or an NBFC to account holders Intermediary services Services of hiring means of transport	13 (8)	Location of supplier of service
6	Services of goods transportation, except mail or courier	13 (9)	Place of destination of such goods
7	Passenger transportation services	13 (10)	Locations where passenger embarks on conveyance for a continuous journey,
8	Services provided on board a conveyance	13 (11)	First schedule point of departure of that conveyance for the journey

Place of supply of Services – Location of supplier or recipient is outside India

Sl. No.	Events	Section	Place of Supply
9	Online information and database access or retrieval services	13 (12)	Location of recipient of services

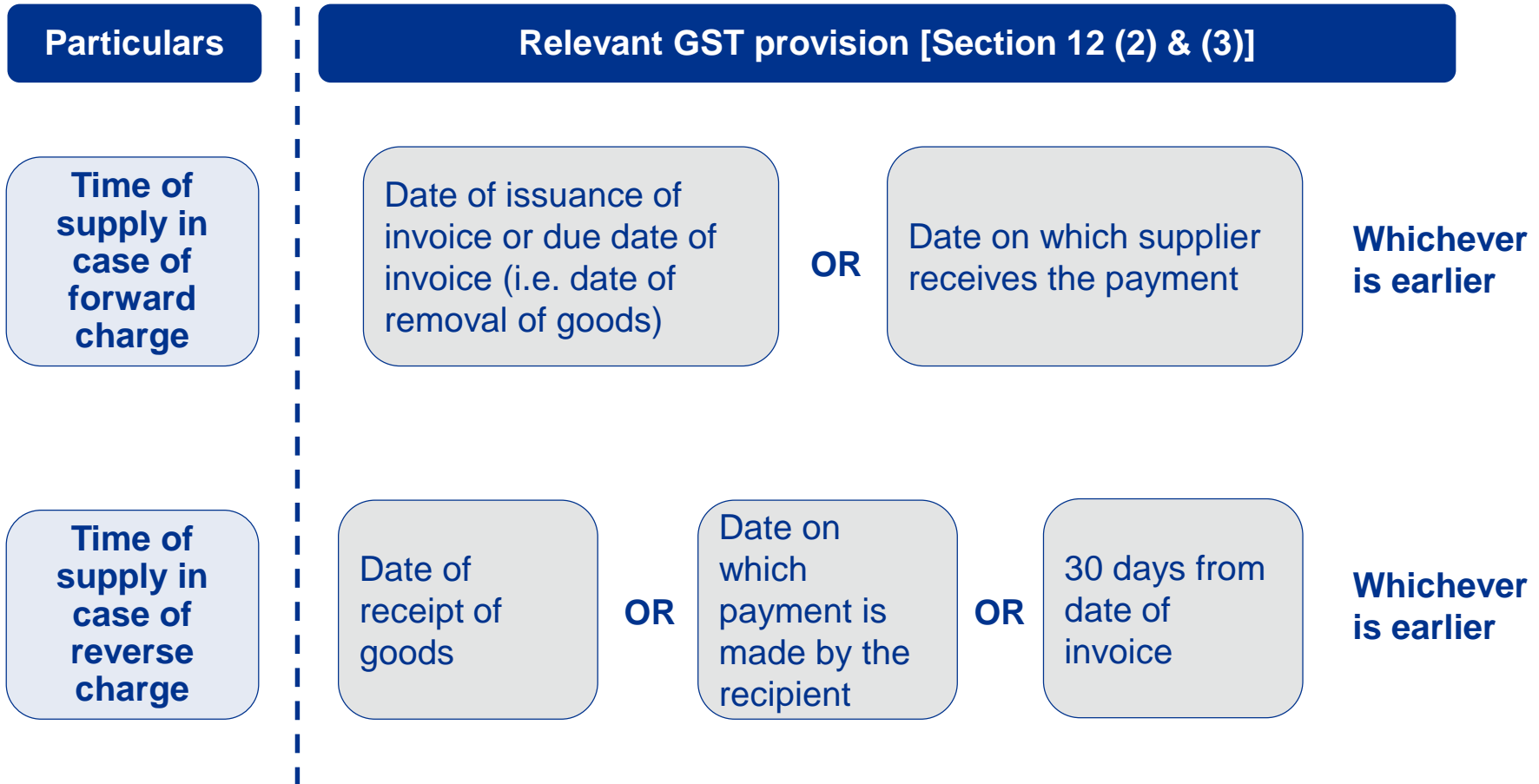


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Time of supply



Time of supply of goods



Liability to pay GST would arise on the date of receipt of advance payment

Time of supply of services

Particulars	Relevant GST provision [Section 13 (2) & (3)]	
Forward charge*	<i>Where invoice is issued within prescribed period</i>	
	Date of invoice	OR Date of receipt of payment
	<i>Where invoice is not issued within prescribed period</i>	
	Date of provision of service	OR Date of receipt of payment
Reverse charge*	Date on which payment is made by the recipient	OR 60 days from date of invoice
Supply by <u>associated enterprises</u>	Date of entry in books of recipient	OR Date of payment

*Where time of supply can not be determined under corresponding clauses, time of supply would be date entry in books of recipient



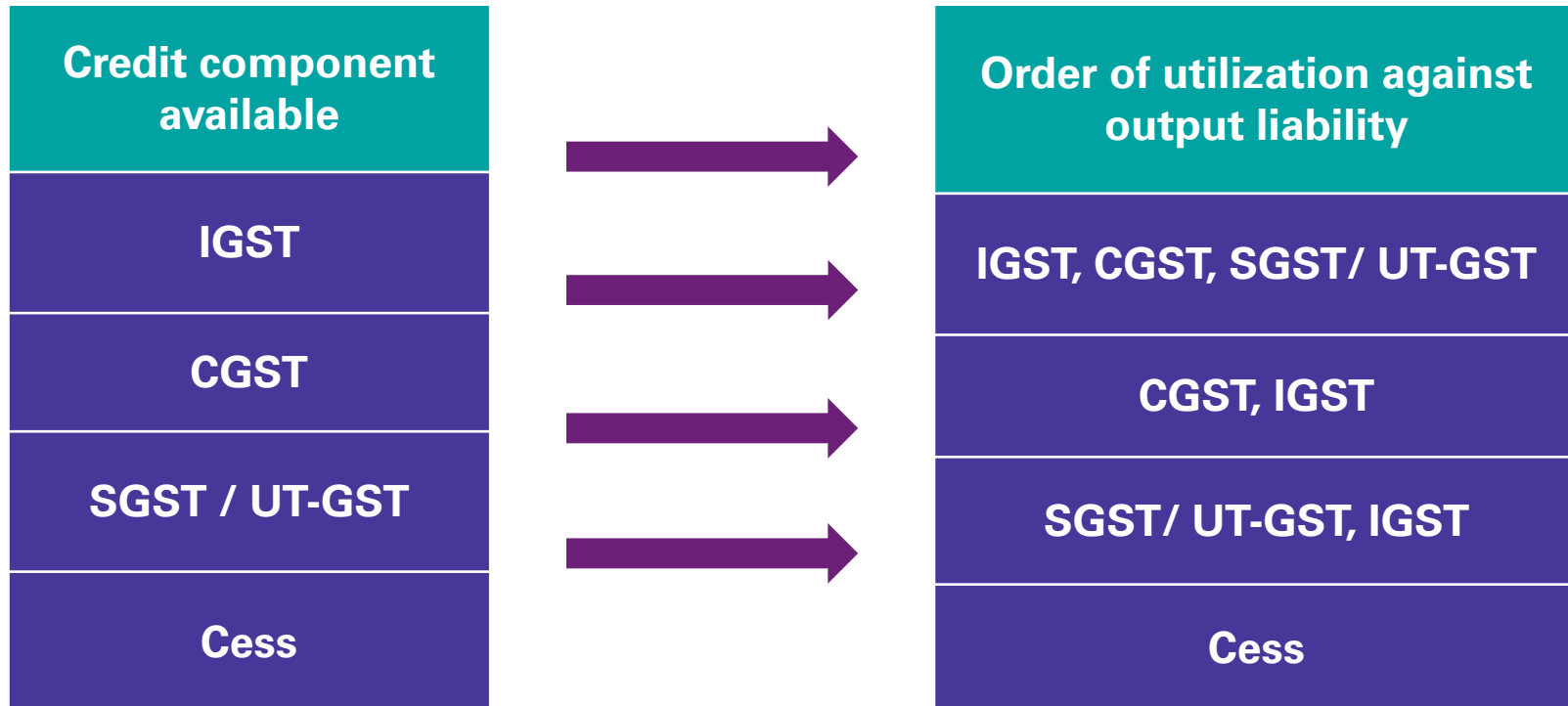
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Input Tax Credit



GST credit and order of Credit Utilization

Section 16 (1) of the CGST Act: *Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business and the said amount shall be credited to the electronic credit ledger of such person.*



Cross utilization of State GST credits not permitted

- ❖ **Whether the credit of SGST of one State can be utilized against the payment of SGST of another State?**
 - **Section 49(5) of the CGST Act – deals with payment of tax**

*“(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of– ...
(c)the **State tax** shall first be utilized towards payment of **State tax** and the amount remaining, if any, may be utilized towards payment of integrated tax;
....”*
 - **Term ‘State Tax’ has been defined under the CGST Act and the respective SGST Acts**

*“CGST Act –
(104) “State tax” means the tax levied under any State Goods and Services Tax Act;”*

*“Maharashtra GST –
(104) “State tax” means the tax levied under this Act;”*
 - **Thus, on conjoint reading of Section 49(5) and Section 2(104) it can be stated that credit of a State GST can only be utilized for payment of that State GST or IGST**

Cross utilization of Central GST credit – permitted?

❖ **Whether the credit of CGST paid in a State can be utilized against the payment of CGST levied by another State?**

➤ **Section 49(5) of the CGST Act – deals with payment of tax**

“(5) The amount of input tax credit available in the electronic credit ledger of the registered person on account of–

*(b) the **central tax shall first be utilised towards payment of central tax** and the amount remaining, if any, may be utilised towards the payment of integrated tax;”*

➤ **Term ‘Central Tax’ has been defined under the CGST Act**

“CGST Act –

(21) “central tax” means the central goods and services tax levied under section 9;”

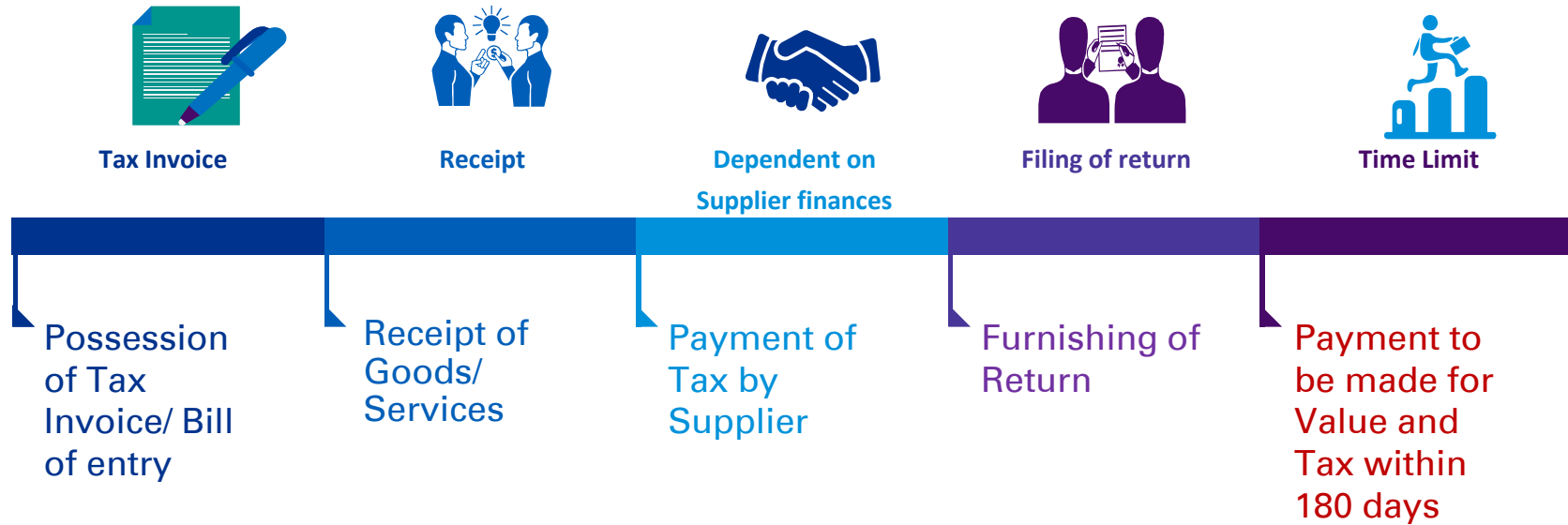
➤ **Basis the above, it appears that credit of Central GST can be utilized for payment of Central GST (irrespective of the State where it is paid) or IGST**

Cross utilization of Central GST credit – permitted?

- ❖ **However, CBEC clarified in its Twitter FAQs as under –**
 - “41. Can one State CGST be used to pay another state CGST?*
 - Reply: The CGST and SGST Credit for a State can be utilized for payment of their respective CGST/SGST liabilities **within that State for the same GSTIN only.**”***

- ❖ **Thus, as per the clarification, CGST paid in one State cannot be utilized for the payment of CGST levied in another State**
 - **It can be argued that the clarification is in contravention to the legal provision stipulated under the CGST Act**

Conditions for eligibility of Input Tax Credit



Additional condition - Capital Goods

No Depreciation Claimed

- Need to ensure payment along with taxes has been disbursed to the vendors within 180 days
- Need to identify list of key vendors and ensure taxes have been paid by them to appropriate Government
- Identify list of probable defaulters (vendors) in terms of registration, invoice, payment, etc.

Restriction on availment of input tax credit

Goods or services used for non business purposes or used for personal consumption

Goods or services used for exempt supplies

Motor vehicles and other conveyance (except when used for transportation of goods, making further taxable supplies of such vehicles, making taxable supply of transportation of passengers or imparting driving training)

Goods or services received for construction of an immovable property and works contract service when supplied for construction of an immovable property (other than plant and machinery)

Goods or services on which tax has been paid under composition tax scheme Goods

lost, stolen, destroyed, written off or disposed of by way of gift or free samples

Specific goods or services such as food, outdoor catering, health services, membership of clubs, rent- a-cab, travel benefits extended to employees on vacation, life and health insurance etc.
However, credit of the services which are obligatory for an employer to provide to its employee under any law would be eligible

Restrictions on availment of Input Tax Credit: Works Contract

Restriction on availment of credit when supplies result in construction of immovable property

Section 17(5)(c) and (d) of the CGST Act

(c) works contract services when supplied for construction of immovable property, other than plant and machinery except where it is an input service for further supply of works contract service;

apparatus, equipment and machinery fixed to earth by foundation or structural support that are used for making outward supply and includes such foundation and structural supports but excludes

- (i) land, building or any other civil structures.....*
- (ii) telecommunication towers; and*
- (iii) pipelines laid outside the factory premises”*



Whether storage tanks will qualify as ‘plant and machinery’?

Works contract defined u/s 2(119) to mean a contract for building, **construction**, fabrication, completion, fabrication, etc. of any immovable property, wherein transfer of property in goods (whether as goods or in some other form) is involved.

As per Explanation, “**construction**” includes re-construction, renovation, additions or alterations or repairs, **to the extent of capitalisation**, to the said immovable property

Input Tax Credit on 'telecommunication tower' and 'pipelines' not available

- ❖ Entire telecom towers industry has been litigating on availment of CENVAT credit on towers and shelters in the erstwhile service tax regime
- ❖ Under GST, Section 17(5) provides for restriction of input tax credit. The explanation appended under Section 17 **excludes telecommunication towers and pipelines laid outside the factory premises from the definition of 'plant and machinery'** thereby denying the input tax credit.
- ❖ However, **if factually it can be proved that telecom tower/pipelines are not 'immovable property', assesseees may be able to come out of the exclusion provided under Section 17**
- ❖ Also, **'Pipelines laid outside the factory premises'** under explanation to Section 17 **should not include pipelines used for providing the output service of transport of liquids/gases by a person engaged in the business of transport of gases/liquids.**
 - **Pipelines laid outside the factory premises'** ought to be interpreted by applying the **'Mischief Rule of Statutory Interpretation'** - intended to restrict credit in a scenario where factories use long distance pipelines to draw water/raw materials from sources away from factory.



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