

**SUPPLY  
COMPOSITE SUPPLY  
MIXED SUPPLY  
IN GST**

**K. VAITHEESWARAN  
ADVOCATE  
CHENNAI**

# CONCEPT OF SUPPLY



# CGST – SUPPLY – SECTION 7

- 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
  - **Import of service for a consideration and whether or not in the course or furtherance of business**
  - **Activities specified in Schedule-I – made or agreed to be made *without a consideration***
  - **Activities or transactions by a person other than an individual to its members or constituents or vice versa for cash, deferred payment or other valuable consideration.**

# CGST – SUPPLY

- *Made or agreed to be made indicates that advances would attract GST*
  - *No GST on advance for goods while GST is applicable for advances for services*
- *In respect of import of service, nexus to business is not required for GST applicability*
- *Activities in Schedule – I treated as supply even if made without consideration*

# SUPPLY

- None of the terms used in supply defined
- 101<sup>st</sup> Constitutional Amendment did not delete Article 366(29A)
  - 46<sup>th</sup> Amendment
  - 6 categories
  - Amendment for the purpose of Entry 54, State List and Entry 92A, Union List
- What is a transfer?
- Barter treated as supply but not defined

# SCENARIO – 1

- Accident
- Insurance compensation as per policy
  - Is there a supply?
  - Is compensation consideration?
  - Does the asset exist post the transaction?
  - Transfer presumes the existence of the asset and the transferee to whom it is transferred. The Court observed that when an asset is destroyed there is no question of transferring it to others – ***Vania Silk Mills (1991) 191 ITR 647 (SC)***
  - There must be supply for consideration and consideration for supply.



# SCENARIO - 2

- Old jewellery given by a customer to a jeweller.
- Old jewellery to be melted and converted into new jewellery.
- Supply?
  - It is not in the course of furtherance of business.



# SCENARIO – 3

- Food and beverages to passengers
- Vendors permitted to advertise in lieu of payment
  - New concept of bartering involving goods and services.
  - Are both taxable?





# SCENARIO - 4

- M/s. XYZ Ltd. provides breakfast and lunch at subsidized rates (10% of the costs) to its employees. Is there a supply?
  - Can it be said that it is a supply in the course of business?
  - Can it be said that the provision of food is a perquisite and part of employee contract?



*Frankly, I've seen better menus on  
my computer Accounts Package*

# SCENARIO - 5

- Notice pay
  - Supply?
  - Consideration?
  - Schedule – II?



# SUPPLY

- New Section 7(1A) w.e.f. 01.07.2017
- Where certain activities or transactions constitute a supply in accordance with provisions of sub-section (1), ***they shall be treated either as supply of goods or supply of services as referred to in Schedule II***
- **Whether Section 7(1A) has diluted the scope of supply?**
  - Section 7(1) deals with supply
  - Such supplies could now be supply of goods or supply of services
  - **Schedule-II has become a classification mechanism**
  - **There is no deemed supply**

# SUPPLY

- Schedule-II is now linked with Section 7(1A) of the CGST Act which provides that *where certain activities or transactions constitute a supply in accordance with the provisions of subsection (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule-II.*
  - Whether all these transactions can be considered as a supply under Section 7(1)?
  - Whether the transaction should have the character of service?
  - Mere mention in Schedule II may not be enough unless the transaction fits within the ambit of supply in Section 7(1)

# SUPPLY

- Doctrine of mutuality
- Calcutta Club – Supreme Court
- Section 7(1)(aa) – with retrospective effect from 01.07.2017
  - *The activities or transaction by a person other than an individual, to its members or constituents or vice versa for cash, deferred payment or other valuable consideration.*
  - *Explanation.. For the purpose of this clause, it is hereby clarify that notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any court, tribunal or authority, the person and its members or its constituents shall be deemed to the two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such persons to another.*
- Has the amendment nullified the decision?
- Concept of consideration?

# SCHEDULE-I - ACTIVITIES TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

- Permanent transfer / disposal of business assets where ITC has been availed on such assets
- **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 gifts not exceeding Rs. 50,000 in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both*
- Supply of goods by principal to agent where the agent undertakes to supply such goods on behalf of principal
- Supply of goods by agent to principal where the agent undertakes to receive such goods on behalf of the principal
- 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-III

- **Neither supply of goods nor supply of services**
- Few examples:
  - Employee – employer
  - Court or Tribunal
  - Sale of land and subject to Para 5(b), Schedule II, Sale of building
  - Actionable claims other than lottery, betting and gambling
  - Supply of goods from a place in the non- taxable territory to another place in the non- taxable territory
  - Supply of warehoused goods before clearance for home consumption
  - Transfer of title to goods before clearance for home consumption.

# **CONCEPT OF COMPOSITE SUPPLY & MIXED SUPPLY**





# COMPOSITE SUPPLY

- Section 2(30) of the CGST Act.
- Composite supply 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*
- In the case of composite supply comprising of two or more supply, one of which is a **principal supply** shall be treated as supply of such principal supply
- Principal supply means the supply of goods or services which constitutes the **predominant element** of the composite supply and to which any other supply forming part of the composite supply is **ancillary**

# MIXED SUPPLY

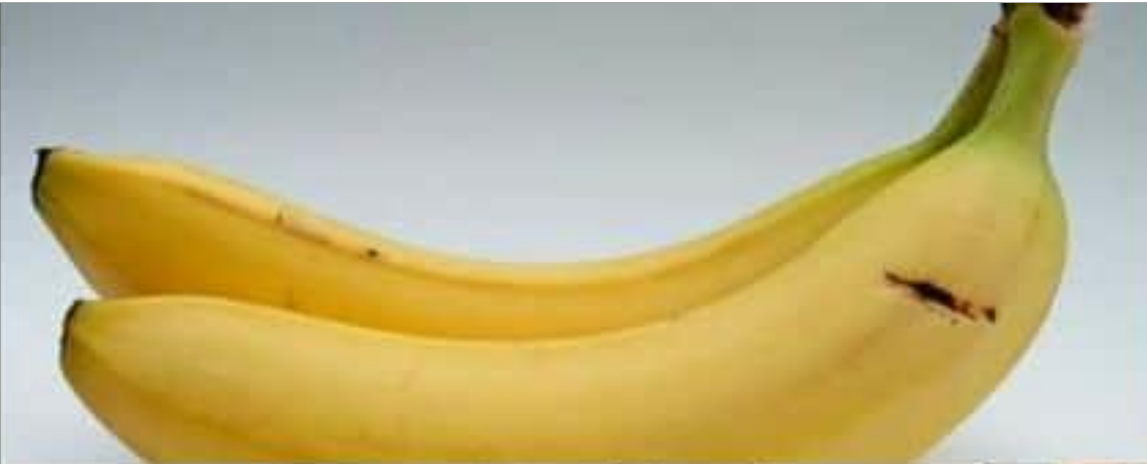
- Section 2(74) of the CGST Act.
- Mixed supply means
  - Two or more individual supplies of goods or services or any combination thereof
  - *Made in conjunction with each other by a taxable person*
  - *For a single price*
  - Where such supply does not constitute a composite supply
- **A mixed supply shall be treated as a supply of that particular supply which attracts the highest rate of tax.**

# COMPOSITE SUPPLY

- Supply of goods
  - In a packed condition
  - In a lorry
  - Duly insured
- Supply of goods / packing / transport / insurance
- Naturally bundled
- Principal supply is that of goods
- *Rate applicable to goods would apply to the composite supply in terms of Section 8(1).*



# HOTELS / ROOM SERVICE



Sales Resident  
1 FRUIT PLATTER 375.00  
996332

Food Rs.375.00  
CGST 9% Rs.33.75  
UTGST 9% Rs.33.75  
Total Due Rs.442.50

UAT: 04590034923  
PAN: AABDL2529P  
GSTIN: 24AADD123005435

# HOTELS / ROOM SERVICE

GST RATES FOR HOTEL ACCOMODATION	
Where the value of supply of a unit of accommodation is less than or equal to Rs.7,500/-.	12%
Value of supply of a unit of accommodation of above Rs.7,500/-.	18%

GST RATES FOR RESTAURANTS / EATING JOINTS / CANTEEN / HOTELS / ETC.	
Supply of food and beverages (considered as a service)	5% without ITC
Where the restaurant is part of a hotel having a declared tariff exceeding Rs.7,500/- per day	18%

# HOTELS / ROOM SERVICE

- The bananas will have to come from the kitchen
- The bananas will have to be hygienically cut; plated; and would be covered by transparent plastic being a star hotel.
- Bananas will be billed as room service and would be part of the overall bill.
- If room service is considered as incidental to accommodation and the room rent is in excess of Rs.7,500/-; then the rate of tax for the bananas would be 18%.
- If supply of bananas is considered as a restaurant service and the bananas are coming from the restaurant which is housed in the same building, the rate is 18%.
- Banana being a fruit is also exempt from GST.

# UK VAT – AIRLINES

- ***British Airways PLC Vs. C&E (QB)***
  - UK Airline charged a single fare and meals were served
  - Under the UK VAT law at the relevant point of time passenger flights were not liable to VAT whereas meals were liable
  - UK Court of Appeal held that there is a single composite supply of an air flight and the provision of meal was merely an incidental element of VAT free supplies

# GST – AIR TRANSPORT - PASSENGERS

GST RATES FOR TRANSPORT OF PASSENGERS BY AIR	
Economy class (without ITC on goods)	5%
Embarking from or terminating in regional connectivity scheme airport (without ITC on goods)	5%
Air transport from and to airports in North East	Exempt
Transport of passengers by air in <i>other than economy class</i>	12%

PLACE OF SUPPLY PROVISIONS – SECTION 12 OF IGST ACT	
<i>Restaurant and catering services</i>	Place of actual performance
<i>Supply of services on board a conveyance including a vessel, aircraft, train or motor vehicle</i>	Location of the first scheduled point of departure of that conveyance.



# GST – AIR TRANSPORT - PASSENGERS

- ***Possible challenges in Indian context***
  - Food is separately sold by the airline in the flight
  - Food can also be purchased while booking the ticket
  - Certain seats qualify for free food
  - Place of supply issues
- Is there a sale of food and beverages as goods?
- Is there a supply of food and beverages as part of transportation of passengers by air service?
- The catering company would charge applicable GST at the point of loading of the food / beverages at the airport.
- Tax invoice

# EU VAT - RENTALS

- ***Field Fisher Waterhouse LLP Vs. Commissioners for HMRC (ECJ)***
  - Solicitor firm obtained building on lease wherein rentals comprised of three parts namely (a) use of building; (b) cost of insurance; (c) charges for supply of water, heating, repair of building, cleaning of common parts and security of building.
  - Article 137(1)(d) provided for exemption from VAT on transaction of leasing of immovable property.
  - ECJ held that
    - A transaction which comprises of a single supply from economic point of view should not be artificially split .
    - **Leasing and supplies linked to leasing may constitute a single supply**

# GST - RENTALS

## GST RATES FOR RENTING OF IMMOVABLE PROPERTY

Renting of a residential dwelling for use as a residence (other than to a registered person)	Exempt
Other rentals	18%

## GST RATES FOR WATER, ETC.

<i>Water (other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralised water and water sold in sealed container)</i>	Exempt
Electricity <i>*tax on electricity not subsumed in GST.</i>	Exempt*
Maintenance Charges in excess of Rs.7,500/- per month	18%

# RENTALS

## ■ Indian context

- Commercial rentals taxable while residential is exempt except when the tenant is a registered person.
- Water and electricity are exempt
- Actual reimbursements do not form part of value under Rule 33
- Residential Welfare Association levies GST on maintenance charges where it exceeds Rs.7,500/- per month.

## ■ Possible positions

- Doctrine of Mutuality and decision of the Supreme Court in ***Calcutta Club***.
- *Scope of retrospective amendment to definition of 'supply' by Finance Act, 2021.*
- Water and electricity could qualify as reimbursement
- When independently exempt can they be taxed based on incidental principle in the context of commercial rentals?
- What cannot be directly taxed cannot be indirectly taxed.

# HEALTH CARE

- Healthcare services
- Supply of medicines, implants, consumables during health care services
- Food to in-patients
- Food to visitors



# HEALTH CARE SERVICES

- *“Health care services” means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.*
- *“Clinical establishment” means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognized system of medicines in India, or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases.*

# HEALTH CARE SERVICES

## GST

Health care services by a clinical establishment, authorised medical practitioners or paramedics	Exempt
Services provided by way of transportation of a patient in an ambulance other than those specified above	Exempt
Hair transplant or cosmetic or plastic surgery <b>except</b> when undertaken to restore or reconstruct anatomy or functions of body functions affected due to congenital defects, developmental abnormalities, injury or trauma.	18%

# HEALTH CARE SERVICES – CHANGES EFFECTIVE 18.07.2022

## GST

Services provided by a clinical establishment by way of providing room <b>other than</b> Intensive Care Unit (ICU) / Critical Care Unit (CCU) / Intensive Cardiac Care Unit (ICCU) / Neo Natal Intensive Care Unit (NICU) having room charges exceeding Rs. 5,000 per day to a person receiving healthcare.	5% without ITC
Services provided by cord blood banks by way of preservation of stem cells	12%
services provided by operators of the <u>common bio-medical waste treatment facility</u> to a clinical establishment by way of treatment or disposal of biomedical waste or the processes incidental	18%



# HEALTH CARE SERVICES

- Defeats the concept of composite supply
- No one stays in hospital for holiday or recreation
- Room stay is part and parcel of the recovery process post surgery /procedure
- Non-availability of ITC does not serve any purpose
- Impact on patients



# HEALTH CARE SERVICES

- Board Circular
  - Food supplied to in-patients as advised by doctor / nutritionist is of composite supply of health care and exempt
  - Food supplied to patients (not admitted) or their attendants or visitors are taxable
- Food provided to doctors and employees
- **Medicines and implants**
  - In the course of treatment
- Pre-GST
  - Whether implants / stents fitted into the body is transfer of property in goods and taxable as works contract?
  - Observations of the Supreme Court in **BSNL**
  - Division Bench decisions of the Jharkhand High Court; Allahabad High Court; P&H High Court; Full Bench decision of the Kerala High Court
  - Matter pending in Division Bench of the Madras High Court.

# GIFT HAMPER

- Dry fruits
- Fruits
- Chocolates@ 18%



# RENEWABLE ENERGY

- Works Contract?
- Composite Supply?
- Mixed Supply?
- 70-30 formula through notification



# RENEWABLE ENERGY

GST RATES	
Renewable energy devices and parts for their manufacture falling under Chapter 84, 85 or 94	5%
Erection, commissioning, installation services	18%
Works contract services* <i>*contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modifications, repair, maintenance, renovations, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.</i>	18%

# RENEWABLE ENERGY

- An explanation has been added to Entry No.234, Notification No.1/2017
  - Bio-gas plant; Solar power based devices; Solar power generating system; Wind mills; Wind Operated Electricity Generator; Waste to energy plants / devices; Ocean waves / tidal waves energy devices / plants.
  - If goods are supplied with other goods and services, the value of goods would be taken as 70% and the value of services would be taken as 30% of the gross consideration charged.
  - 70% of the value would attract 5% GST
  - 30% of the value would attract 18% GST
  - All these changes implemented through rate of tax Notifications
  - *Provisions of composite supply and mixed supply completely ignored to arrive a commercial solution.*

# UPS AND BATTERY

- Supply of UPS along with Battery
- Single price
- Mixed Supply or Composite Supply ?
- Batteries taxed at 28%
- UPS taxed at 18%
- Can there be separate supplies?
  - Board vide Circular dated 06.10.2021 has clarified that even if UPS and battery are sold in the same invoice, their prices are separately known and they are two separately identifiable items. Thus this constitute supply of two distinctly identifiable items on one invoice. UPS would attract 18% while battery would attract 28%.





# EDUCATION





# EDUCATION

- ***College of Estate Management Vs. Customs and Excise***
  - College exempted as it provides education
  - College was sending printed materials to students
  - College contended that printed materials are taxable and hence eligible for input tax credit
  - House of Lords held that college provides a single education service and the supply of course materials cannot be split to treat a portion as supply of service.

# EDUCATION

## GST RATES

Services provided by an educational institution to its students, faculty and staff;	Exempt
Supply of online educational journals or periodicals to an educational institution.	Exempt

## GST RATES

Printed books, including Braille books	Exempt
Newspapers, journals and periodicals, whether or not illustrated or containing advertising material	Exempt

# EDUCATION

- ***Indian context***
  - Colleges & Schools – Exempt
  - Definition of educational institution is critical
  - Non-recognized courses; diploma programmes could be taxable
  - Printed study materials and books
  - School uniforms
  - Other classes
  - Extra curricular activities
- ***Covid related developments***
  - Virtual classes
  - Campus or institution classes may become irrelevant

# EU VAT

- In the case of ***Card Protection Plan Ltd. Vs. CCE***, the European Court of Justice held that  
*"A supply which constitutes a single service from an economic point of view should not be artificially split. There was a single supply in particular in cases where one or more elements are to be regarded as constituting the principal service whilst one or more elements are to be regarded by contrast as ancillary service which share the same treatment of the principal service. A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself but a means of better enjoying the principal service supplied."*

# EU VAT

- The Tribunal in the context of EU VAT in the case of ***Equitable Life Insurance Society*** held that  
*To identify a composite transaction in a way that deprives its major part of the exemption otherwise applicable under law is to distort the functioning of the VAT system. Just as a single service should not be split in a way which distorts the system, so also separate services should not be artificially aggregated*

# DECISIONS IN THE CONTEXT OF COMPOSITE SUPPLY IN GST

- ***Union of India Vs. Mohit Minerals Pvt. Ltd. (2022) 61 GSTL 257 (SC)***
  - CIF / CFR transactions
  - Foreign supplier engages foreign shipping line for transport of goods to India.
  - Indian importer made liable to pay IGST under reverse charge mechanism on such transportation services.
  - The impugned levy imposed on the 'service' aspect of the transaction is in violation of the principle of 'composite supply' enshrined under Section 2(30) read with Section 8 of the CGST Act. Since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of Section 8 of the CGST Act.

# DECISIONS IN THE CONTEXT OF COMPOSITE SUPPLY IN GST

- ***Torrent Power Ltd. Vs. Union of India (2020) 34 GSTL 385 (Guj.)***
  - Principal supply of transmission and distribution of electricity cannot be done without electric line, electric plant and electric meter.
  - Principal and related/ancillary services go hand in hand and one cannot be provided independent of other.
  - These services are composite supply.
  - Tax liability is determined by treating such composite same as supply of principal supply of transmission and distribution of electricity.
  - If principal supply of transmission and distribution of electricity is exempt, tax liability of related services is determined accordingly.
- Appeal pending in Supreme Court.

# WAY FORWARD

- A number of AAR rulings on the subject
- AAR comprises of sitting officers from the Department and the ruling is binding only on the applicant and the Revenue having jurisdiction over the applicant
- AAAR similarly structured
- Writs filed against decisions of AAAR
- GST Appellate Tribunal yet to be constituted
- Virtual and digital world would throw up even more interesting and challenging issues.



**THANK YOU**

[vaithilegal@gmail.com](mailto:vaithilegal@gmail.com)