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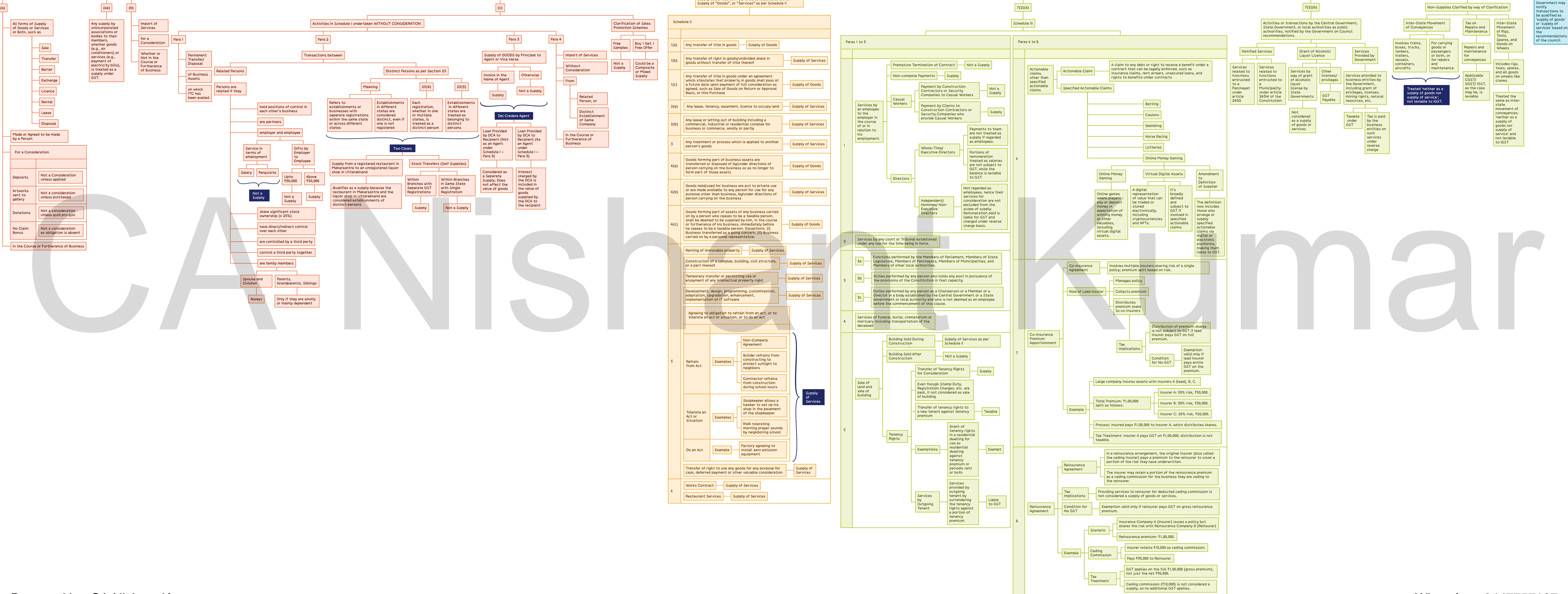
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Supply includes

Supply as per Section 7(1) to be considered as either Supply of "Goods", or "Services" as per Schedule II

Activities Neither Treated as Supply of Goods Nor as Supply of Services

The Central Government may notify transactions to be qualified as 'supply of goods', or 'supply of services' based on the recommendations of the council.



Chapter 2 – Supply Under GST

Analysis of Goods

Category	Inclusion in 'Goods'	Remarks
Movable Property	Yes	Must be capable of being bought and sold; immovable property excluded.
Money	No	Excluded explicitly.
Securities	No	Excluded; transactions in securities on a principal-to-principal basis are outside the ambit of supply.
Actionable Claim	Yes (with exceptions)	Included; however, certain actionable claims like betting, casinos, gambling, horse racing, lotteries, and online money gaming are subject to GST.
Growing Crops	Yes	Included; severability is a crucial element for consideration.
Standing Trees	No	Not considered goods, hence not taxable.
Standing Timber	Yes	Considered goods because they are severed from the land for sale.

Analysis of Services

Aspect	Included in 'Services'	Excluded from 'Services'	Remarks
General Definition	Anything other than goods, money, and securities	N/A	Includes activities related to the use of money or its conversion with a separate consideration.
Common Understanding of Service	Economic activity that is intangible, not stored, does not result in ownership	N/A	Consumed at the point of sale; the benefit may last longer.
Transactions in Money	If a separate fee is charged for conversion or change in form, currency, denomination	Direct exchange or change without a fee	Direct money transactions without a fee are not services; those with a fee are subject to GST.
Bank Interest	Yes	No	Depositing money in a bank is considered a supply of service because the bank pays interest.
Personal Money Transfers	No	Yes	Money given without charging anything (e.g., a father giving money to his children) is not considered a service.
Securities Transactions	Brokerage services	Direct transactions in securities	Transactions in securities are not services, but brokerage services facilitating these transactions are.

Clarification on Taxability of Shares Held in a Subsidiary Company by the Holding Company

- Securities are neither goods nor services (as per CGST Act, Sections 2(52) & 2(102)).
- Holding shares in a subsidiary is not a service unless a separate supply exists (Section 7).
- No GST applies to merely holding subsidiary shares.

Different Types of Supplies Under the GST Law

Type of Supply	Definition	Key Characteristics	Inclusion Criteria	Exclusion Criteria
Taxable Supply	A supply of goods or services or both which is leviable to tax.	Involves goods or services.	Must fall within the definition of 'supply'; Leviable to GST.	Should not be specified under Schedule III.
Non-Taxable Supply	A supply of goods or services or both not leviable to tax under GST or IGST Act.	Includes alcoholic liquor for human consumption.	Must be a 'supply' as defined; Excluded from GST scope.	Supplies covered by exemptions, nil rated, or zero-rated are not non-taxable.
NIL Rated Supply	Goods or services on which GST rate of 0% is applicable.	Includes items like salt, jaggery, cereals.	Listed in schedule 1 under GST rate schedule.	N/A
Exempt Supply	Supply of any goods or services or both which attracts NIL rate of tax or wholly exempt from tax.	Includes non-taxable supply.	Taxable at NIL rate, wholly exempted by notification, includes non-taxable supplies.	Zero-rated supplies not considered as exempt.
Zero-Rated Supply	Export of goods or services or both; or supply to SEZ developer or SEZ unit.	Input tax credit is available for inputs used.	Enables tax-free output without blocking input tax credit.	N/A
Inward Supply	Receipt of goods or services or both by purchase, acquisition, or any other means.	Covers all persons, whether registered or unregistered.	N/A	Does not use the term 'supply'; has a broader scope.
Outward Supply	Supply of goods or services or both made by a taxable person in the course of business.	Must be in the course or furtherance of business.	Must first be a 'supply' as per GST Law.	Receipts not amounting to supply; personal use not included.

Composite Supply and Mixed Supply

Attribute	Composite Supply	Mixed Supply
Definition	A supply comprising two or more taxable supplies that are naturally bundled and supplied in conjunction with each other, with one being a principal supply.	Two or more individual supplies made together for a single price, which do not constitute a composite supply.

Attribute	Composite Supply	Mixed Supply
Principal Supply	Present. The composite supply is treated as a supply of the principal supply.	Not applicable, as the supplies are independent.
Bundling	Supplies are naturally bundled in the ordinary course of business.	Supplies are not naturally bundled.
Determination of Tax Liability	Taxed as a single supply based on the principal supply's GST rate.	Taxed based on the supply that attracts the highest rate of tax among the included supplies.
Indicators of Bundling	Consumer perception favors bundling. Common practice among providers. Presence of a main service and ancillary services. Advertised as a package, not available separately, integral to overall supply.	Determined by the absence of natural bundling and if it's not a composite supply.
Example	Mobile phone sold with a battery; hotel stay with complimentary meals.	A gift basket containing taxable goods of different tax rates sold for a single price.
Taxation Criteria	Entire value classified under the principal supply.	Each supply in the bundle can have independent tax rates, highest rate applied to entire bundle.
Other Considerations	Depends on the natural necessity and customer expectation for bundling.	Applies when supplies carry independent significance and are offered for a single price without being a composite supply.

CBIC Clarifications on Certain Composite Supplies

Issue	Dilemma/Clarification	Principal Supply	Classification
Printing Industry	Difficulty in deciding whether the supply is categorized as goods or services due to contracts involving both.	Depends on the determination of the principal supply.	Composite Supply
Printing of Books, etc.	For printed items like books, pamphlets, brochures, etc., where content is provided by the recipient and physical inputs by the printer, printing service is the principal supply.	Printing service	Supply of Services
Printing of Envelopes, etc.	For items like envelopes, boxes, etc., printed with designs or logos provided by the recipient, the supply of goods (physical inputs) is predominant.	Supply of physical inputs (goods)	Supply of Goods
Food supplied to Patients	Food to in-patients is part of the healthcare service and not separately taxable. Food to non-admitted patients or visitors is taxable.	Healthcare service (for in-patients)	Composite Supply (for in-patients) / Taxable Supply (others)
Bus Body Building	Combination of goods and services, classification depends on the	Specific to the case	Depends on Principal Supply

Issue	Dilemma/Clarification	Principal Supply	Classification
	principal supply, which varies case by case.		
Retreading of Tyres	Retreading is a composite supply with the retreading service as the predominant element. When the old tyres belong to the supplier, it's a supply of goods.	Retreading service/Old tyre supply (contextual)	Supply of Services/ Goods (contextual)
Supply of food/ beverages in cinema halls	Taxable as restaurant service if supplied separately from cinema service.	Independent food/beverage supply	Restaurant Service (GST applicable)
Bundled supply of cinema tickets + food/beverages	If both are sold together as a composite supply, GST applies based on the principal supply.	Cinema exhibition service	GST as per cinema service

Important Questions

Question 1 – September 2024 – 5 Marks

Describe the provisions relating to import of services by a registered person as contained in the section 7(1)(b), 7(1)(c) and Schedule 1 of the CGST Act, 2017.

Solution

As per the provisions of section 7(1)(b), 7(1)(c) and Schedule I of the CGST Act, 2017, import of services for a consideration shall be considered as supply, whether or not in the course or furtherance of business.

Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business shall be treated as supply even if made without consideration.

Question 2 – May 2024 – 5 Marks

Examine the existence of "consideration" for donation received by charitable institutions from individual donors, without quid pro quo an important feature as defined in section 2(31) of the CGST Act, 2017.

Solution

Donations received by the charitable institutions from individual donors are treated as consideration only if there exists, quid pro quo, i.e., there is an obligation on part of recipient of the donation or gift to do anything.

If the name of the donor is displayed in charitable institution's premises as an expression of gratitude and public recognition of his act of philanthropy and is not aimed at advertising or promotion of his business, there is no supply for the payment in the form of donation.

Question 3 – November 2023 – 2 Marks Each

Examine whether the following activities would be treated as supply under GST law?

1. Mr. Sonu from Chandigarh purchased a water cooler from Malhotra Bros. of Hoshiarpur for ₹25,000 to donate it to a temple situated in Hoshiarpur. Mr. Sonu directed Malhotra Bros. to engrave the words on the water cooler - "Donated by Mr. Sonu from Chandigarh" and dispatch the water cooler directly to the temple.
2. Wesco Ltd, a registered person in Ahmedabad (Gujarat) having head office located in Singapore, received management consultancy services free of cost from its head office.

Solution

1. Donations received by the charitable organisations are treated as consideration only if there exists, quid pro quo, i.e., there is an obligation on part of recipient of the donation or gift to do anything (supply a service).
Since the name of the donor, Mr. Sonu is displayed in temple as an expression of gratitude and public recognition of his act of philanthropy and is not aimed at advertising or promotion of his business, hence, donation of water cooler by Mr. Sonu to temple is without quid pro quo and is, thus, not a supply under GST law.
However, supply of water cooler by Malhotra Bros. to Mr. Sonu is supply as it is made for consideration in course or furtherance of business.
2. As per schedule I, in case of import of services by a person from a related person or from his establishments located outside India, without consideration, in the course or furtherance of business shall be treated as "supply".
Hence, services (it has been assumed that services are provided in the course or furtherance of business) received by Wesco Ltd. qualify as supply even though such services have been provided free of cost by the head office.

Question 4 – May 2023 – 5 Marks

List any 5 (Five) activities/transactions specified under Schedule III of the CGST Act, 2017 which shall be neither treated as supply of goods nor as supply of services. Detailed explanation is not required.

Solution

Activities or transactions which shall be treated neither as a supply of goods nor a supply of services are as under:

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. Functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities.
4. Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity.
5. 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.
6. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
7. Sale of land and, subject to paragraph 5(b) of Schedule II, sale of building. (i.e. in case, where entire consideration for sale of building received after issuance of completion certificate or after its first occupation, whichever is earlier).
8. Actionable claims, other than lottery, betting and gambling.

9. Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India (OR) Merchant Trading / High-sea Sales
10. Supply of warehoused goods to any person before clearance for home consumption.
11. Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

Question 5 – May 2022 – 2 Marks Each

Examine whether the following activities would amount to "supply" under GST law?

1. Glory Ltd. is engaged in manufacturing and selling of cosmetic products. Seva Trust, a charitable organisation, approached Glory Ltd. to provide financial assistance for its charitable activities. Glory Ltd. donated a sum of ₹ 2 lakh to Seva Trust with a condition that Seva Trust will place a hoarding at the entrance of the trust premises displaying picture of products sold by Glory Ltd.
2. Mr. Swamy of Chennai is working as a manager with ABC Bank. He consulted M/s. Jacobs and Company of London and took its advice for buying a residential house in Mumbai and paid them consultancy fee of 200 UK Pound for this import of service.

Solution

1. An activity qualifies as supply under GST only if it is for a consideration and is in course/furtherance of business. Donations received by the charitable organizations are treated as consideration only when there's an obligation on part of the recipient of the donation to do anything. Since in the given case, the display of products sold by the donor – Glory Ltd. - in charitable organization's premises aims at advertising/promotion of its business, it is supply for consideration in course/furtherance of business and thus, qualifies as supply under GST law.
2. Supply includes importation of services, for a consideration whether or not in the course/furtherance of business. Thus, in the given case, the import of services by Mr. Swamy amounts to supply although it is not in course/furtherance of business.

Question 6 – July, 2021 – 4 Marks

Explain the composite supply and mixed supply. If a trader launches a package sales for marriage containing double bed, refrigerator, washing machine, wooden wardrobe at a single rate. He is issuing invoice showing value of each goods separately. Whether this is case of mixed supply or composite supply. Explain.

Solution

- Composite supply comprises 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.
- 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.

- Items such as double bed, refrigerator, washing machine and wooden wardrobe are not naturally bundled, and also, the invoice for the supply shows separate values for each item i.e., the package is not supplied for a single price.
- Therefore, supply of such items as a package will neither constitute a composite supply nor a mixed supply.
- Thus, the various items of the package will be treated as being supplied individually.

Note: The question specifies that the various items are supplied at a 'single rate'. The "single rate" expression is construed as single rate of tax in the above answer. Further, the "single rate" may also be construed as single price as given in the below mentioned answer. Items such as double bed, refrigerator, washing machine and wooden wardrobe are not naturally bundled. Therefore, supply of such items as a package will not constitute composite supply. Further, a single price has been charged for the package. Consequently, supply of such items as a package will be treated as mixed supply.

Question 7 – November 2020 – 5 Marks

With reference to provisions of the CGST Act, 2017 discuss in brief, when "Importation of services" is to be considered as supply and when it is not to be considered as supply.

Solution

Importation of services for a consideration whether or not in the course or furtherance of business is to be considered as supply.

Importation of services by a person without consideration is deemed as supply provided the following two conditions are satisfied:

- a. such import is from related person or from his establishments located outside India, and
- b. such import is in the course or furtherance of business.

In case any or both of the above two conditions is/are not satisfied, the import of services without consideration shall not be deemed as supply.

Question 8 – November 2018 – 5 Marks

Explain the meaning of supply as per provisions of Section 7(1) of Central Goods and Service Tax Act, 2017.

Solution

As per section 7(1) of CGST Act, 2017, the term supply includes:

- a. 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;
- b. the 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.

Explanation: For the purposes of this clauses, 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.

- c. import of services for a consideration whether or not in the course or furtherance of business;
- d. the activities specified in Schedule I, made or agreed to be made without a consideration; and
- e. the activities to be treated as supply of goods or supply of services as referred to in Schedule II.

Question 9 – May 2018 – 5 Marks

Explain the meaning of the term "recipient of supply of goods and/or services" under the CGST Act, 2017.

Solution

Recipient of supply of goods or services or both, means:

- a. where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- b. where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
- c. where no consideration is payable for the supply of a service, the person to whom the service is rendered,
and (i) any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply, and (ii) shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied.

Question 10 – MTP May, 2024 – Series I – 6 Marks

Mr. Shubh, director of Star Company Private Limited, provided service to the company for remuneration of ₹ 1,25,000. Briefly answer whether GST is applicable in the below mentioned independent cases? If yes, who is liable to pay GST?

- 1. Mr. Shubh is an independent director of Star Company Private Limited and not an employee of the company.
- 2. Mr. Shubh is an executive director, i.e. an employee of Star Company Private Limited. Out of total remuneration amounting to ₹ 1,25,000, ₹ 60,000 has been declared as salaries in the books of Star Company Private Limited and subjected to TDS under section 192 of the Income-Tax Act (IT Act). However, ₹ 65,000 has been declared separately other than salaries in the Star Company Private Limited's accounts and subjected to TDS under section 194J of the IT Act as professional services.

Solution

- 1. As per Para I of Schedule III of the CGST Act, 2017 services by an employee to the employer in the course of or in relation to his employment are non-supplies, i.e., they are neither supply of goods nor supply of services. Services provided by the independent directors who are not employees of the said company to such company, in lieu of remuneration as the consideration

for the said services, are clearly outside the scope of Schedule III of the CGST Act and are therefore taxable. Further, such remuneration paid to the directors is taxable in hands of the company, on reverse charge basis.

Thus, GST is applicable in this case and Star Company Private Limited is liable to pay GST.

2. The part of director's remuneration which is declared as salaries in the books of a company and subjected to TDS under section 192 of the Income-tax Act (IT Act), is not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

Further, the part of employee director's remuneration which is declared separately other than salaries in the company's accounts and subjected to TDS under section 194J of the IT Act as fees for professional or technical services are treated as consideration for providing services which are outside the scope of Schedule III and is therefore, taxable. The recipient of the said services i.e. the company, is liable to discharge the applicable GST on it on reverse charge basis. In lieu of the above provisions, ₹ 60,000 declared as salaries in the books of Star Company Private Limited and subjected to TDS under section 192 of the Income-Tax Act (IT Act), is not taxable being consideration for services by an employee to the employer in the course of or in relation to his employment in terms of Schedule III of the CGST Act, 2017.

Further, ₹ 65,000 declared separately other than salaries in the Star Company Private Limited's accounts and subjected to TDS under section 194J of the IT Act as professional services is treated as consideration for providing services which is outside the scope of Schedule III of the CGST Act, 2017 and is therefore, taxable. The recipient of the said services i.e. the Star Company Private Limited, is liable to discharge the applicable GST on it on reverse charge basis.

Question 11 – MTP May, 2024 – Series I – 5 Marks

Discuss taxability of shares held in a subsidiary company by holding company?

Solution

It has been clarified vide a circular that securities are considered neither as goods nor as services in terms of definition of goods and the definition of services. Further, securities include 'shares' as per definition of securities.

This implies that the securities held by the holding company in the subsidiary company are neither goods nor services. Further, purchase or sale of shares or securities, in itself is neither a supply of goods nor a supply of services. For a transaction/activity to be treated as supply of services, there must be a supply as defined under section 7 of the CGST Act, 2017. It cannot be said that a service is being provided by the holding company to the subsidiary company, solely on the basis that there is a specific SAC entry in the scheme of classification of services, unless there is a supply of services by the holding company to the subsidiary company in accordance with section 7 of the CGST Act, 2017.

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

Question 12 – RTP May, 2018

Sahab Sales, an air-conditioner dealer in Janakpuri, Delhi needs four air conditioners for his newly constructed house in Safdarjung Enclave. Therefore, he transfers 4 air conditioners (on which ITC has already been availed by it) from its stock, for the said purpose. Examine whether they said activity amounts to supply under section 7 of CGST Act, 2017.

Further, a Janakpuri resident Akash, approached Sahab Sales. He sold an air conditioner to Sahab Sales for ₹ 5,000. Akash had bought the said air conditioner 6 months before for his residence. Does sale of the air conditioner by Akash to Sahab sales amount to supply under section 7 of the CGST Act, 2017?

Solution

Section 7 of the CGST Act, 2017 stipulates that in order to qualify as supply

1. Supply should be of goods or services
2. Supply should be made for a consideration
3. Supply should be made in the course or furtherance of business.

Further, schedule I of the CGST Act, 2017 illustrates the activities to be treated as supply even if made without consideration. One such activity is permanent transfer or disposal of business assets where input tax credit has been availed on such assets, i.e., said activity is to be treated supply even if it is made without consideration.

In view of said provisions, permanent transfer of air conditioners by Sahab Sales from its stock for personal use at its residence, though without consideration, would amount to supply.

However, sale of air conditioner by Akash to Sahab Sales will not qualify as supply under section 7 of the CGST Act, 2017, as although it is made for a consideration, but it is not in the course or furtherance of business.