

02 | Segment

Supply under GST

Topics covered in this Segment

- ▶ Inclusions in Supply
- ▶ Exclusion from supply
- ▶ Important definitions/ points
- ▶ Classification of supply into goods or services
- ▶ Composite supply and mixed supply
- ▶ Summary of important circulars
- ▶ GST on Liquidated damages

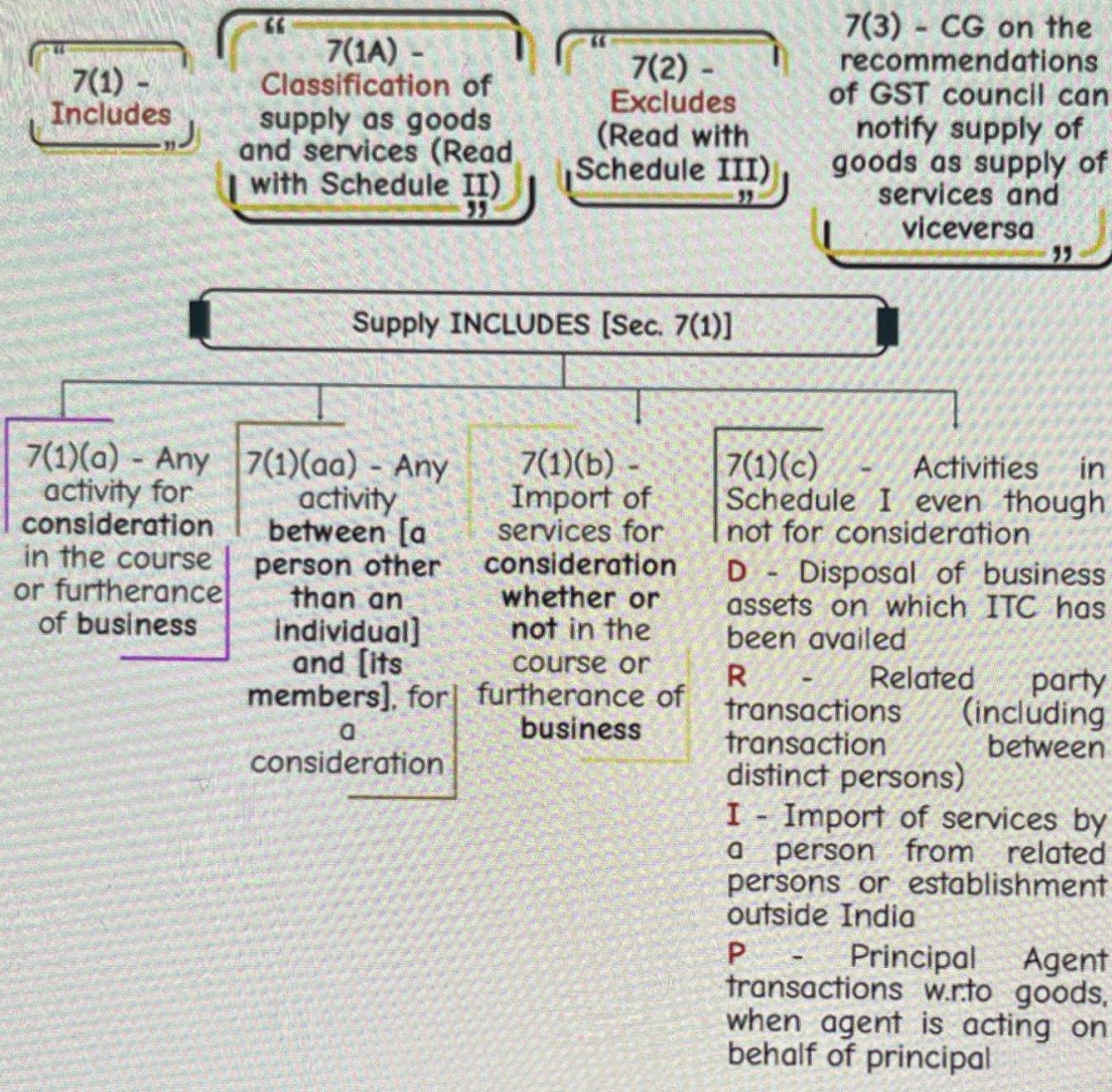


LEVY OF GST = TAXABLE EVENT UNDER GST = SUPPLY OF GOODS OR SERVICES OR BOTH

Supply - Sec. 7 of CGST Act, 2017



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If an activity is not covered in Sec. 7(2) - Exclusions, then Sec. 7(1) should be checked. If such activity is not in Sec. 7(1), then such activity is not a supply

Sec. 2(52) - Goods
Sec. 2(102) - Services
Sec. 2(17) - Business
Sec. 2(31) - Consideration
Sec. 2(84) - Person



KEY
Points

SUMMARY OF SEC. 7(1):

Sec.	Nature of Supply	Consideration	Course or furtherance of business	Point of View	Coverage
7(1)(a)	Any Activity	✓	✓	Supplier	Goods/ Services
7(1)(aa)	Any activity between [person other than individual] and [its members]	✓	✓	Supplier	Goods/ Services
7(1)(b)	Import of services	✓	✓/x	Recipient	Services
7(1)(c) read with Sch. I	D	x	✓/x	Supplier	Goods
	R	x	✓	Supplier	Goods/ Services
	I	x	✓	Recipient	Services
	P	x	✓	Supplier	Goods

SUPPLY EXCLUDES (READ WITH SCHEDULE III) - [SEC. 7(2)]

S	Sovereign functions (i.e., Panchayat/Municipality under Article 243G/243W of constitution)
P	Posts (Govt, Constitutional and Nominated)
A	Actionable Claims other than specified actionable claims (HC BLOG)
L	Legal Fees collected by Court or Tribunal
L	Land Sale (incl. Sale of Building, where entire consideration is received after obtaining completion certificate (or) first occupation whichever is earlier)
E	Employee to Employer in the course of employment
D	Death related (Funeral, Burial, crematorium, mortuary incl. Of Govt. Transportation of deceased etc.,)
S	Sale before import (i.e., High Seas)
L	Liquor licence granted by SG
O	Outside the country movement of goods
W	Warehoused goods under customs sold



SUPPLY EXCLUDES (READ WITH SCHEDULE III) [SEC. 7(2)]

P	Posts (Govt, Constitutional and Nominated)
I	Insurance services jointly supplied (i.e., Co-insurance)
L	Legal Fees collected by Court or Tribunal
L	Land Sale (incl. Sale of immovable property, where entire consideration is received after obtaining completion certificate (or) first occupation whichever is earlier)
A	Actionable Claims other than specified actionable claims (HCBLOG)
R	Re-insurance commission
L	Liquor licence granted by SG
E	Employee to Employer in the course of employment
S	Sovereign functions (i.e., Panchayat/Municipality)
S	Sale before import (i.e. High Seas)
D	Death related (Funeral, Burial, crematorium, mortuary incl. Govt. Transportation of deceased etc.,)
O	Outside the country movement of goods
W	Warehoused goods under customs sold.

\$25

- In case of Co-Insurance services, if lead insurer pays GST on total premium such insurance premium shared with co-insurers, is not a supply
- Reinsurance commission retained by insurer for services provided to re-insurer, is not a supply

\$25



- Gifts by employer to employee not exceeding ₹50,000 p.a per employee is excluded from supply. If value of gift > ₹50,000, entirely it is treated as supply.
- Specified Actionable Claims [HC BLOG] – Horse racing, Casinos, Betting, Lottery, Online money gaming, Gambling.

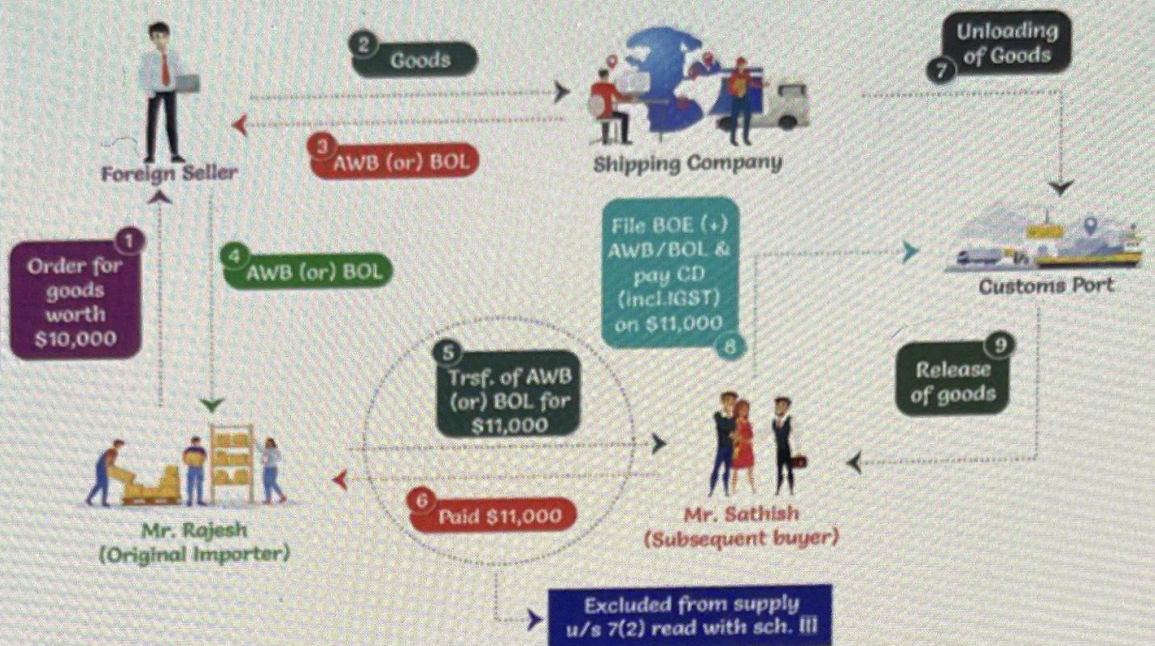
CBIC CIRCULAR RELATED TO SEC. 7(2) OF CGST ACT:



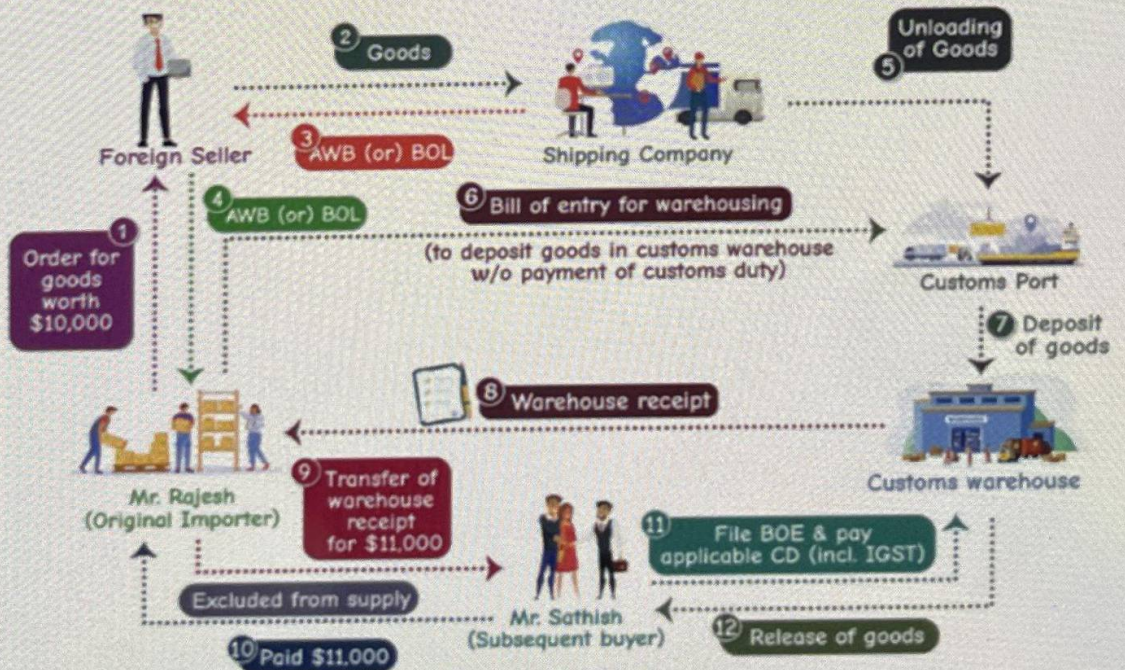
- Sale of land after some development such as levelling, laying down drainage lines, electricity lines etc., is also sale of land and excluded from supply. However, **Services provided for development of land** is not excluded from supply and shall attract GST.
- Perquisites provided by the employer to employee in terms of contractual agreement entered into between them, **will not be subject to GST** when the same are provided in terms of contract



SALE BEFORE IMPORT – EXCLUDED FROM SUPPLY:



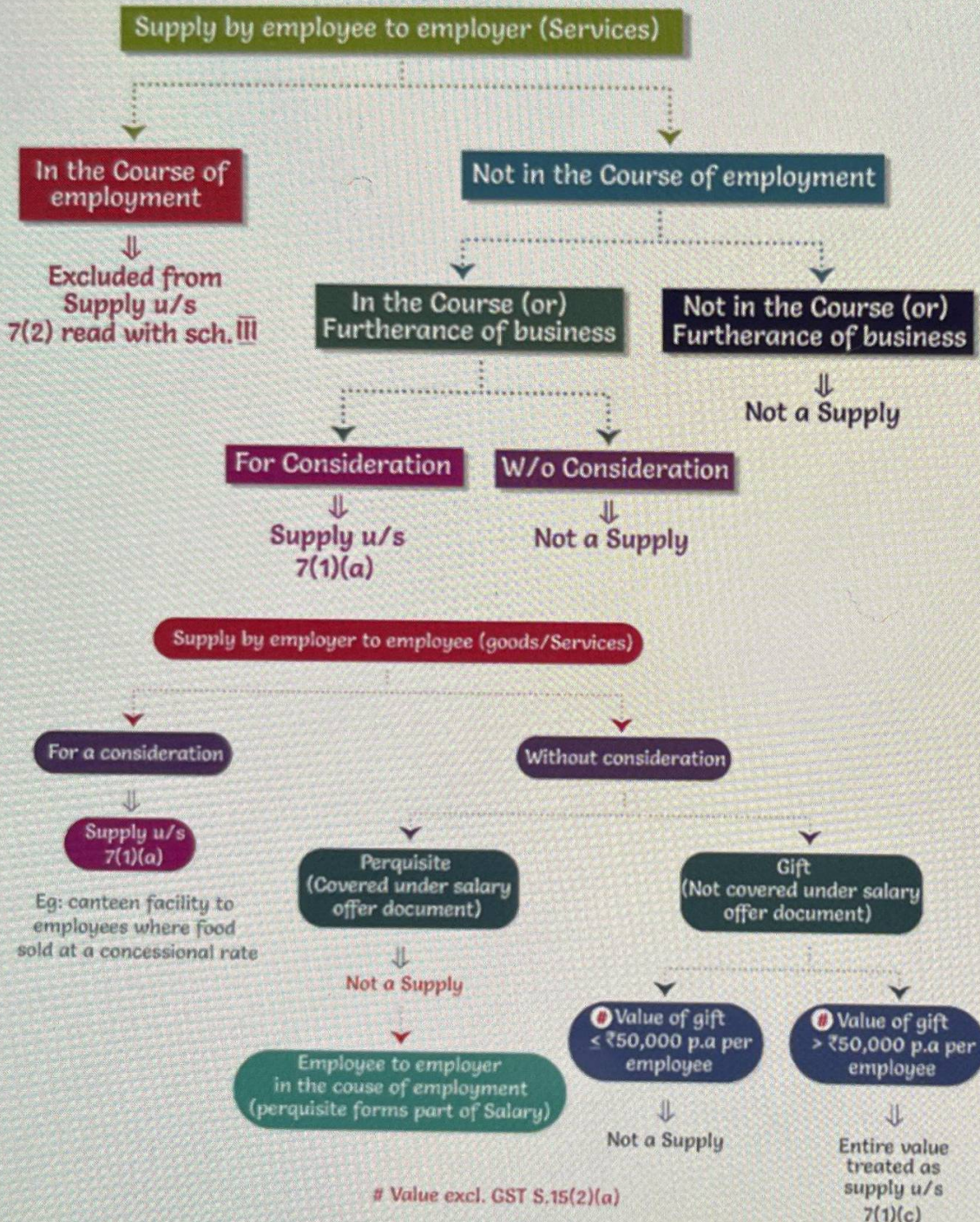
SALE OF WAREHOUSED GOODS UNDER CUSTOMS – EXCLUDED FROM SUPPLY:



GST IMPLICATIONS ON EMPLOYER – EMPLOYEE RELATIONSHIP:



Rewise GST





KEY
Points

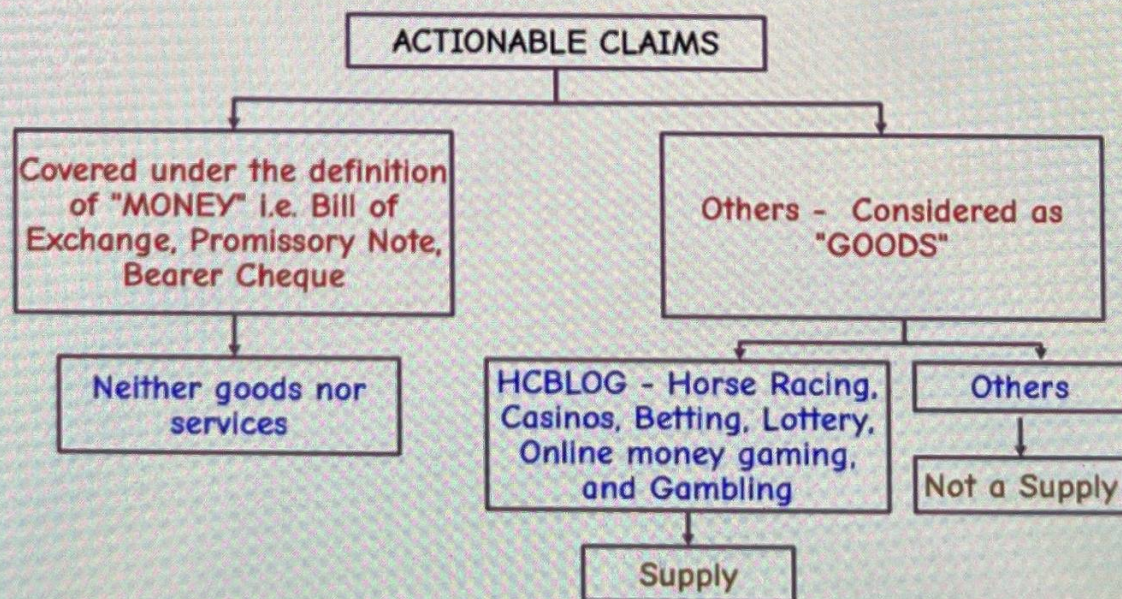
IMPORTANT DEFINITIONS/POINTS:

I. MEANING OF GOODS & SERVICES:

	Section 2(52)	Section 2(102)
	GOODS	SERVICES
MEANS	Any kind of movable property	Anything other than goods
INCLUDES	<ul style="list-style-type: none"> Actionable Claims Growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. 	<ul style="list-style-type: none"> Transaction in money for a separate consideration Facilitating or arranging transaction in securities is included in services
EXCLUDES	<ul style="list-style-type: none"> Money Securities 	<ul style="list-style-type: none"> Money Securities

MONEY = Indian Currency (or) Foreign Currency (or) Instrument recognized by RBI, but does not include Old Currency which is not in Circulation. Therefore, Sale of old coins or sale of cryptocurrency treated as sale of goods and attracts GST.

ACTIONABLE CLAIMS = An instrument which entitles 1) Right to receive a benefit or recover a debt, 2) which is transferable and 3) legally enforceable and 4) holder of such right is entitled to receive benefit or recover debt. (Eg: Bill of Exchange, Lottery, Promissory note, Bearer Cheque etc.,)



IMPORTANT POINTS RELATING TO SPECIFIED ACTIONABLE CLAIMS (HCBLOG):

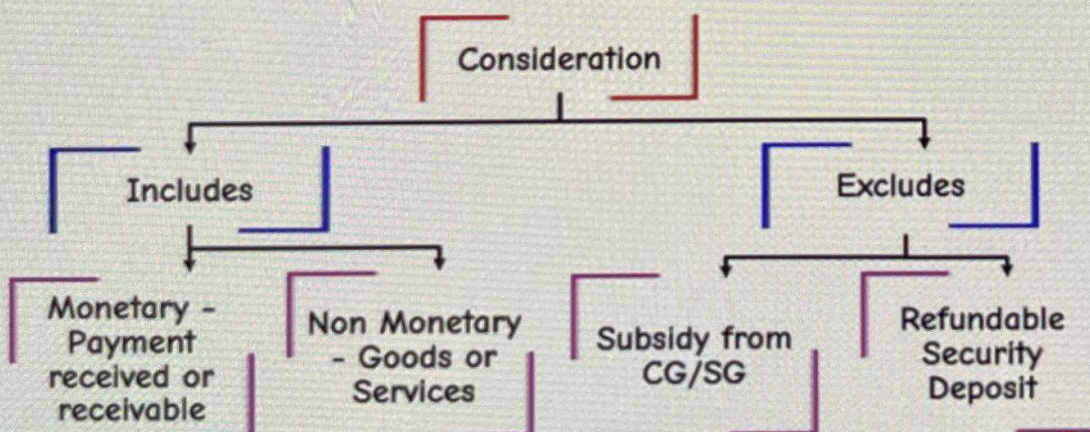
- They are treated as Goods and Chargeable to GST @ 28%.
- "Online Gaming" means offering of a game on the internet or an electronic network and includes online money gaming;
- Only Online Money Gaming is covered under Specified actionable claims but not online gaming".
- Online gaming is treated as OIDAR Services.



- "Online Money Gaming" means online gaming in which players pay or deposit money or money's worth, including virtual digital assets, in the expectation of winning money or money's worth, including virtual digital assets, in any event including game, scheme, competition or any other activity or process, whether or not its outcome or performance is based on skill, chance or both and whether the same is permissible or otherwise under any other law for the time being in force.

*Even though [HCBLOG] treated as Goods, Import of the same is not covered under customs Act, 1962 but chargeable to IGST - Sec. 5 of the IGST Act¹

II. MEANING OF CONSIDERATION – S. 2(31):



- Consideration can be received from recipient or any other person (Presence of Consideration is relevant)
- Consideration should be in **respect of, in response to, or for the inducement** of supply of goods or services
- Activity without consideration (or) Consideration without activity; is not a supply u/s 7(1)(a)

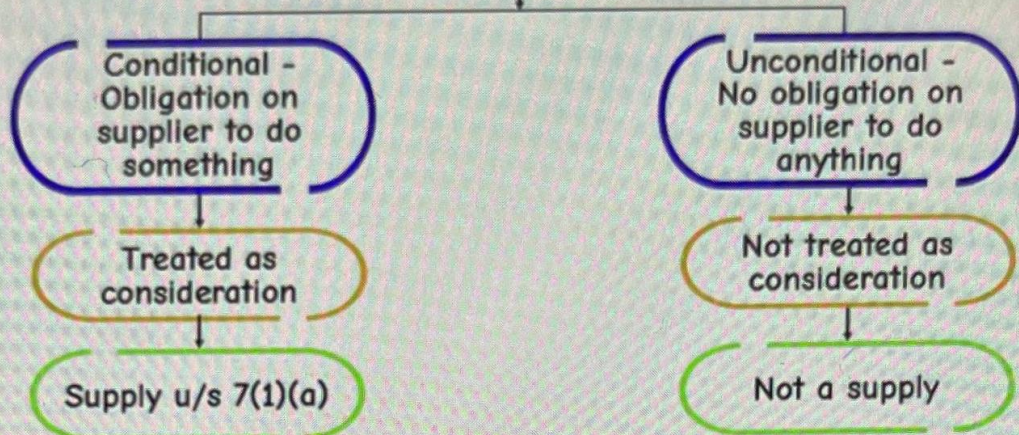
¹ Notification No. 03/2023- IT dt. 29.09.2023





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Points

Donations

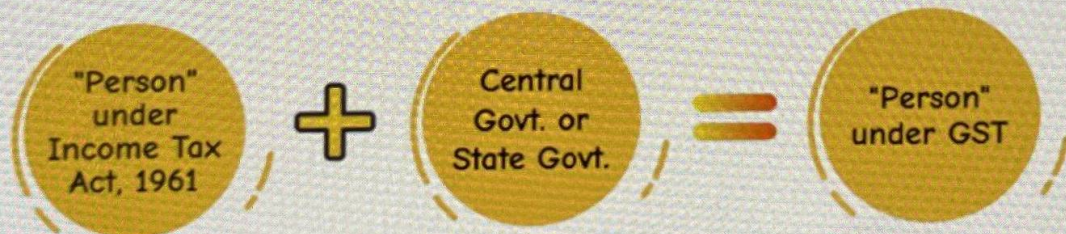


If Donor name displayed anywhere in the premises against donation (Not-obligated):

Display of name does not give business advantage to donor – Not a supply.

Display of name give business advantage to donor – Supply u/s 7(1)(a).

III. MEANING OF PERSON – S.2(84):



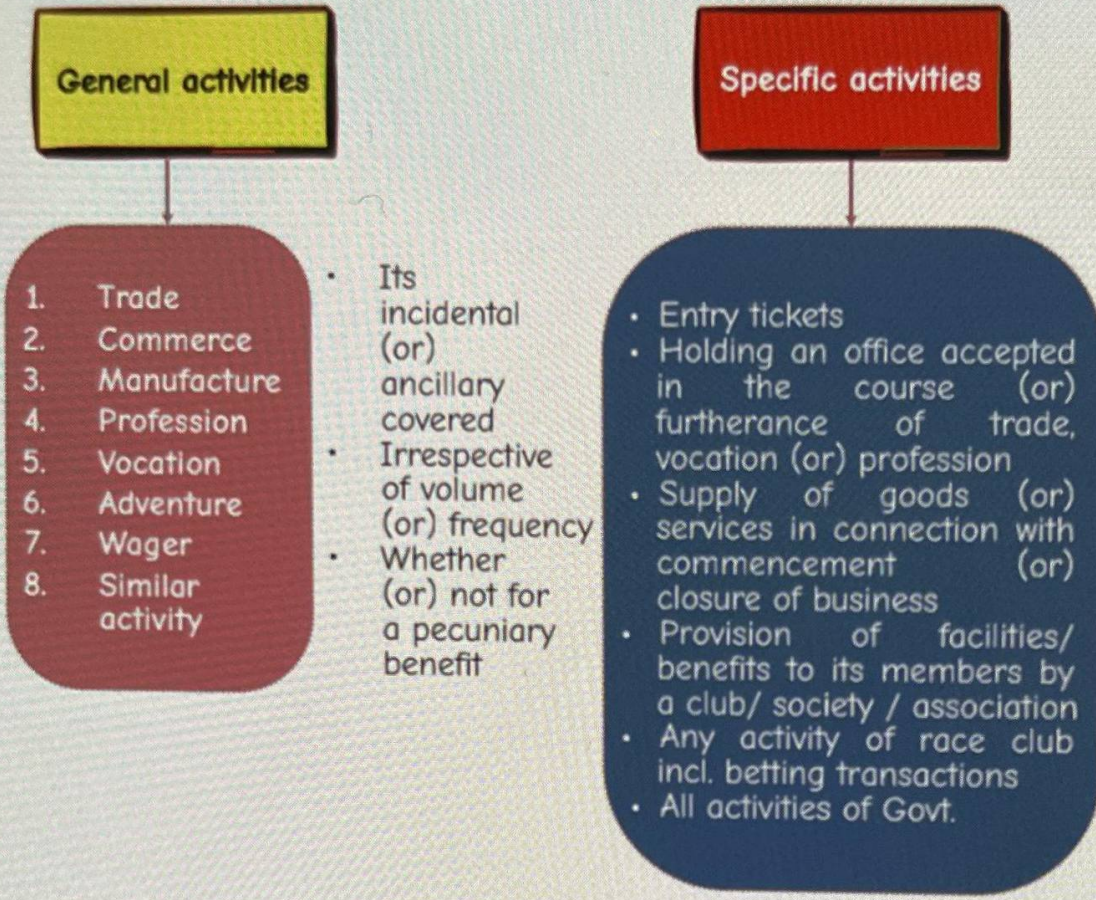
Person under the IT Act, 1961: - An Individual, a HUF, a Company, a Firm, an AOP, Co-Operative Society, Local Authority, Artificial Juridical Person & Other Body Corporates.

Taxable person: - Registered person under GST (or) Person liable to get registered.

IV. MEANING OF BUSINESS – S.2(17):



Revise GST



V. MEANING OF RELATED: [TRANSACTION VALUE U/S 15 NOT APPLICABLE AND VALUE DETERMINED IN TERMS OF RULES]

As per Explanation to Section 15, persons shall be deemed to be related if –

1. **Such persons are officers or directors of one another's businesses;**
- Mr. X is appointed as officer of Mr. Y's business and Mr. Y is appointed as officer of Mr. X's business. Now Mr. X and Mr. Y are related. (Director of a company and such company are also related)
2. **Such persons are legally recognised partners in business;** - Partners in a firm are related. However, partners & such firm are not related.
3. **Such persons are employer and employee¹;**
4. **Any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;** - Mr. A invests $\geq 25\%$ in X Ltd. and $\geq 25\%$ in Y Ltd. Now X Ltd. and Y Ltd. are related.
5. **One of them directly or indirectly controls the other;** - Meaning of control – Investment $> 50\%$, (or) Majority common BOD, (or) Controlling operations.
6. **Both of them are directly or indirectly controlled by a third person;**
- X Ltd. is controlled by A Ltd. and Y Ltd. is also controlled by A Ltd., Now X Ltd. and Y Ltd. are related.

¹ However, services by employee to employer in the course of employment is not treated as supply as per schedule III of CGST Act, 2017.



KEY
Points

7. Together they directly or indirectly control a third person; - X Ltd. invested 28% in A Ltd. and Y Ltd. invested 30% in A Ltd. As both X Ltd. and Y Ltd. together control A Ltd., X Ltd. and Y Ltd. are related.
8. They are members of the same family; (Family MEANS the spouse and children of the person, whether or not dependent and the parents, grandparents, brothers and sisters of the person if they are wholly and mainly dependent on the said person).
9. Sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

S

Sole Selling agent

C

Control

Common shareholder investment $\geq 25\%$

Investment $> 50\%$

Common control by third person

Majority controlling a third person

O

Officers or Directors of One another

P

Partners of a firm

E

Employer and employee



Whether owning a controlling interest in form of shares by holding company in subsidiary company is supply of service?



Activity of holding shares of subsidiary company by holding company cannot be treated as supply of service and cannot be taxed under GST, as shares are neither goods nor services.



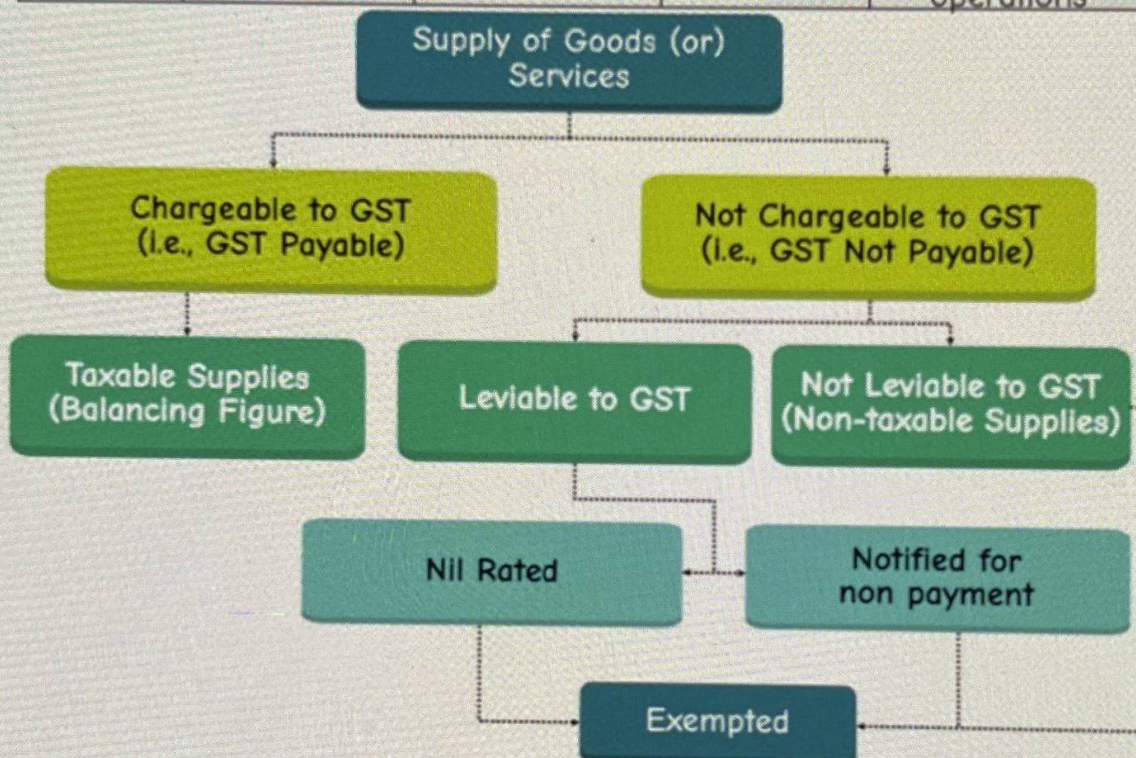
Goods not liable to tax (i.e., Non taxable supplies) - 1) Alcoholic Liquor for Human Consumption Denatured Extra Neutral Alcohol and Rectified spirit used for manufacture of alcohol & 2) Petroleum products - Crude Oil, Petrol, High Speed Diesel, Aviation Turbine Fuel and Natural Gas.

VI. MEANING OF VARIOUS SUPPLIES

	TAXABLE SUPPLY	EXEMPTED SUPPLY	NON-TAXABLE	ZERO RATED SUPPLY
Section	2(108) of CGST ACT, 2017	2(47) of CGST Act, 2017	2(78) of CGST ACT, 2017	16 of IGST ACT, 2017
MEANS	G/S/GS, which is leviable to tax	G/S/GS, Which attracts nil rate of tax (or) Wholly exempt from tax and includes non-taxable supply	G/S/GS, which is not liable to tax	Supply of G/S/GS: • Export • Supply to SEZ unit/ Developer w.r. to authorised operations



Rewise GST



VII. MEANING OF AGGREGATE TURNOVER:

As per Sec. 2(6) of CGST Act, 2017 AGGREGATE TURNOVER **MEANS** aggregate value of

- Taxable supplies
- Exempt supplies¹
- Exports
- Interstate supplies²

of persons having same PAN, to be computed on all India basis.

BUT EXCLUDES

- Inward supplies on which tax is payable by a person on reverse charge
- CGST/SGST/UTGST/IGST/Compensation cess.

¹ Includes Non-taxable supplies or Nil rated supplies

² Includes supplies to SEZ unit/Developer (Even though it is zero rated, it is included in aggregate turnover)



VIII. GST ON SALE OF FLATS/BUILDINGS:

Before obtaining Earlier of CC or FO	After obtaining Earlier of CC or FO	GST	Nature
Money* Received	-	Payable	Works Contract Service
	Money* received	Not payable (i.e., Excluded from supply)	Sale of immovable property
Part Money* received	Remaining Money* received	Payable on entire Money*	Works Contract Service

*Money = Consideration (Monetary/Non-Monetary).

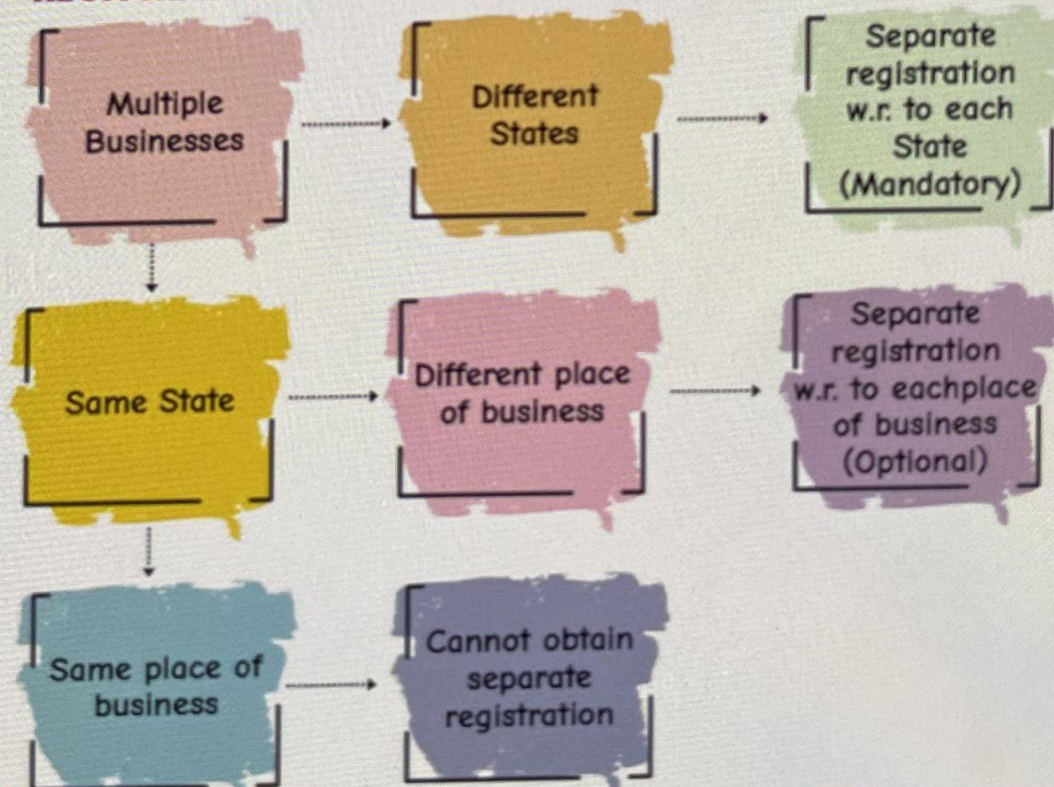
CC = Completion Certificate (Issued by competent authority).

FO = First Occupation = Date on which a flat is occupied by the buyer in the project (It is deemed as completion and remaining flats un-booked excluded from supply).

IX. MEANING OF DISTINCT PERSONS:

- Every registration of a person to their another registration is a DISTINCT PERSON.
- Registered establishment of a person in a State and unregistered establishment of that person in another State.

WHEN A PERSON IS REQUIRED TO OBTAIN MORE THAN ONE REGISTRATION?



Another establishment in another state, whether registered or not registered, treated as distinct person.



KEY
Points

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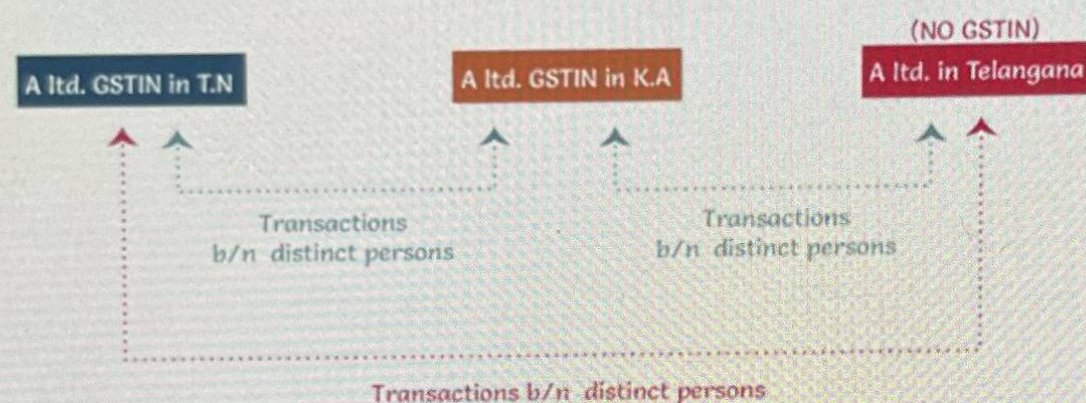
₹20 lakhs

A ltd	T.N	K.A	Telangana
Taxable Supply	₹10 lakhs	₹3 lakhs	
Exempted Supply	₹2 lakhs	₹4 lakhs	₹3 lakhs

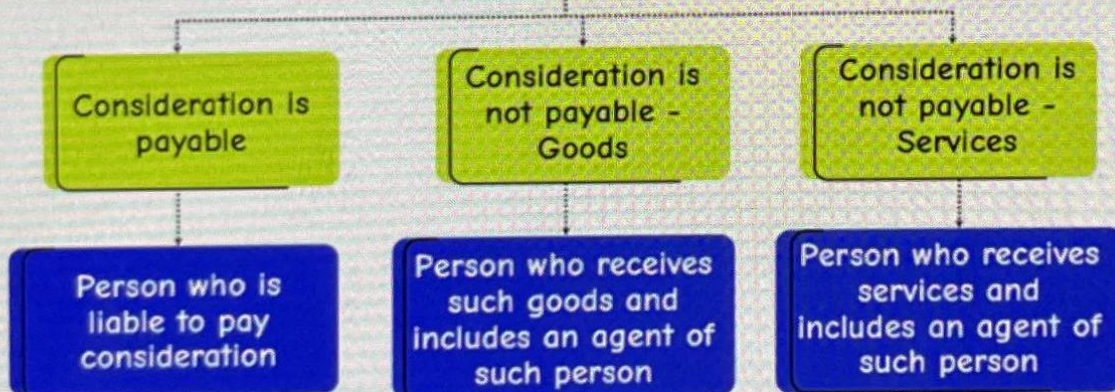
ATO of A ltd = ₹22 lakhs > Threshold limit

A ltd liable to get registered &

Registration should be obtained in T.N & K.A but not in Telangana



Meaning of recipient





CLASSIFICATION OF SUPPLY INTO GOODS OR SERVICES [SEC. 7(1A) READ WITH SCH. II]:

Activity	Supply of Goods	Supply of Services
1. Movable Property	Transfer of title • Present (Eg: Sale) • Future (Eg: Hire Purchase)	Transfer of right to use (Eg: Renting or Leasing)
2. Immovable Property	Transfer of title	• Construction (Eg: Lifts & Escalators) • Transfer of right to use (Eg: Renting of land)
3) Intellectual Property Rights (IPR)	Permanent transfer (Eg: Patent of a technology sold to a company)	Temporary Transfer (Eg: Music director composing music for a movie)
4) Carrying out process on goods belonging to others	Substantial material required for the process is supplied by supplier	Substantial material required for the process is supplied by recipient
5) Supply of goods along with services		
- Notified Supplies		a) Works Contract b) Information Technology Software c) Supply of food
- Other supplies		
Composite Supply	If principal supply is supply of goods, then entire transaction is supply of goods (Eg: AC + Installation)	If principal supply is supply of service, then entire supply is supply of service (Eg: Coaching + Study Materials)
Mixed Supply	If highest rate supply is supply of goods, then entire transaction is supply of goods (Eg: TV + Optional warranty)	If highest rate supply is Supply of service, then entire transaction is supply of service (Eg: Video Lectures + Pen-drive)
6) Any other activity	*	Doing an act (or) Not doing an act (or) Tolerating an act



X. MEANING OF WORKS CONTRACT:

"Works Contract" – A Contract involving transfer of property in goods as well as supply of services, in relation to immovable property against a single consideration.

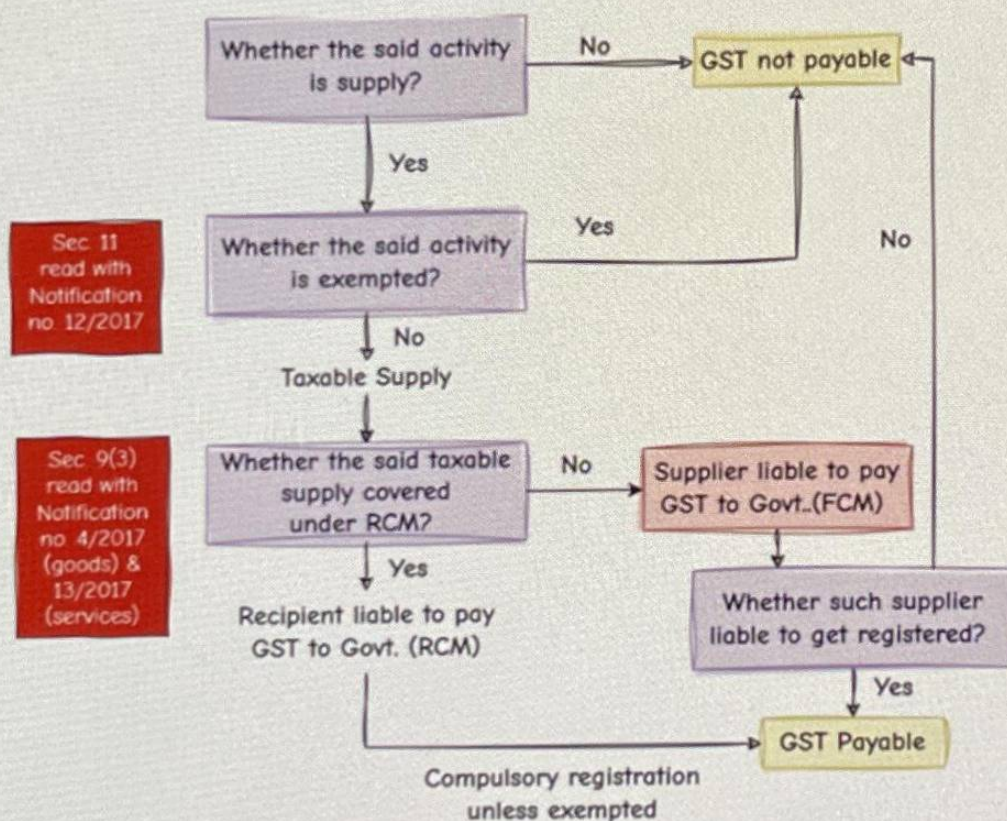
[In earlier Indirect tax regime, the same was classified under both goods and services, and In GST, it is classified completely as service]

XI. MEANING OF JOB WORK:

"Job Work" – Carrying out any process on the goods belonging to other registered person & the words job worker shall be construed accordingly,

- Job-worker (Supplier) may or may not be registered.
- But principal manufacturer (Recipient) should be registered.
- Process carried out may or may not be manufacture.
- Job work is supply of service (Usual rate is 6%, 12%).
- If recipient is unregistered, it is not job work but treated as some other services (Rate will be 18%).

DETERMINING TAXABILITY OF AN ACTIVITY/TRANSACTION



COMPOSITE SUPPLY VS. MIXED SUPPLY [SEC. 8 OF CGST ACT]:



KEY
Points

Composite Supply
- Sec. 2(30)

two or more taxable
supplies of goods or
services or both or any
combination thereof

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 -
Sec. 2(74)

two or more individual
supplies of goods or
services, any
combination thereof,
made in conjunction
with each other

for a single price where
such supply does not
constitute composite
supply

Two or more
supplies in a Single
Transaction?

No

Sec. 8 not
applicable

Yes

All are Taxable?

No

Yes

Naturally bundled
in ordinary course
of business?

No

Yes

Principal supply
identifiable?

No

Yes

Composite Supply
(Price can be
separate (or)
Single) = Rate of
principal supply for
entire transaction

Single
Price?

Yes

Mixed
Supply
= Highest
rate for
entire
transaction

No

Individual
supply =
respective rate
for respective
supply



Note - 1: In case of servicing of cars, test of composite supply **should not be applied**. Parts replaced and labour charges for replacement, are treated as individual supplies, if the amount is shown separately for each.



Note - 2: Food and beverages purchased in a theatre taxable as individual supplies (Taxable at the rate applicable to restaurant) and if the same is purchased along with ticket, then it **may attract composite supply**. In such case, Food and beverages taxable at the rate applicable to entry to cinema hall.

ILLUSTRATION

G		Nature of supply	GST Payable
S	AC - ₹ 30,000 (GST = 12%)	• All supplies are taxable	Rate of principal i.e., AC is 12%
	Installation - ₹ 2,000 (GST = 18%)	• Naturally bundled in ordinary course of business	₹ 32,000 × 12% = ₹ 3,840
	₹ 32,000 + GST ?	• Principal supply can be identified	Supply of Goods
		Composite Supply	

ILLUSTRATION

	Nature of supply	GST Payable
CA Coaching - ₹ 40,000 (GST = 18%)	Not a composite, as one of the supply is exempted & Not a mixed supply, as price is not single	40,000 × 18% = ₹ 7,200
Books - ₹ 10,000 (GST = Nil)	Individual supply	10,000 × 0% = 0
₹ 50,000 + GST ?		Supply of Services

ILLUSTRATION

G		Nature of supply	GST Payable
G	Popcorn - x (GST = 5%)	Not a composite supply, as not naturally bundled.	Highest rate supply is coke = 28%
	Coke - x (GST = 28%)	As there involves single price, it is mixed supply	GST = ₹ 299 × 28% = ₹ 83.72 = ₹ 84
	₹ 299 + GST ?		Supply of Goods



KEY
Points

ILLUSTRATION

	Nature of supply	GST Payable
S Accommodation - x (GST = 18%) S Complimentary food- x (GST= 5%) <u>₹ 1,999 + GST ?</u>	<ul style="list-style-type: none"> All are taxable Naturally bundled Principal supply can be identified Composite Supply	Rate of principal supply i.e. accommodation $= ₹ 1999 \times 18\%$ $= ₹ 359.82$ $= ₹ 360$
		Supply of Services

In illustration above, if price is separate, even then it is composite supply and the rate of principal i.e., 18% is applicable

SUMMARY OF CBIC CIRCULARS W.R. TO SUPPLY



Whether inter-state movement of various modes of conveyance carrying goods or passengers or both, or for repairs and maintenance, between distinct persons as specified in section 25(4) of the CGST Act [except in cases where such movement is for further supply of the same conveyance], is leviable to IGST?

It is clarified that such interstate movement of Trains, buses, trucks, tankers, trailers, vessels, containers, aircrafts

- carrying goods or passengers or both, or
- for repairs and maintenance, shall not constitute supply and not chargeable to GST.



However, applicable CGST/ SGST/ IGST, as the case may be shall be leviable on repairs and maintenance done for such conveyance.

Also, the above circular is extended to interstate movement of rigs, tools and spares, and all goods on wheels (like Cranes) and except in case where movement of such goods is for further supply of the same.

This circular can be applied even in case of Intra state, if there are multiple registrations within the State.



When an agent is termed as "Acting on behalf of principal"?



An agent should:

- Represent principal in all aspects.
- raise invoice in their name (or) accept invoice in their name i.e. in Agent's name.



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



Printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher – Supply of Service.

Printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc., printed with design, logo etc. supplied by the recipient – Supply of goods.



Whether activity of bus body building, is a supply of goods or services?



Determined on the basis of principal supply involved in the transaction. Usually principal supply involves services and this transaction classifiable as supply of service.



Whether rethreading of tyres is a supply of goods or services?



Supply of rethreaded tyres, where the old tyres belongs to the supplier of rethreaded tyres, is a supply of goods.
If the old tyres belongs to recipient, then it is treated as supply of service.



Whether Priority Sector Lending Certificates (PSLCs) are outside the purview of GST and therefore not taxable?



In GST, there is no exemption to trading in PSLCs. Thus, PSLCs are taxable as goods (Always, chargeable to IGST under RCM).



Whether art works sent by artists to galleries for exhibition not being a supply?



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



Whether tenancy rights or pagadi system is chargeable to GST?



- Tenancy premium arises in case of transfer of tenancy rights (or) renouncement of tenancy rights
- Tenancy premium collected by tenant is always Taxable
- However, share of tenancy premium collected by owner of property is taxable, if rent of such property is Taxable.



GST on Directors remuneration



Executive Director or Whole-time director is an employee of the company and TDS deducted u/s 192 of Income Tax Act 1961, not covered under GST.

The part of Director's remuneration which is declared separately other than 'salaries' and subjected to TDS u/s 194J shall be treated as consideration and therefore, taxable under RCM.



Whether insured getting no claim bonus from insurance company is supply of service?



It is not a supply of service and no claim bonus cannot be considered as consideration for any supply provided by insured to insurance company.



Whether interest received by del-credere agent is chargeable to GST?



If del-credere agent is raising invoice in the name of principal:

- Interest collected by del-credere agent is **exempted** under interest on loans/advances/deposits.

If del-credere agent is raising invoice in their name:

- Interest collected by del-credere agent is **taxable** under interest on account of delay in receipt of consideration.



Whether insurance company is liable to pay GST on salvage value/wreck value, while assessing the damage to a motor vehicle?



Salvage remains with insured:

Not a supply & GST not payable.

Salvage become property of insurance company:

Sale of such salvage treated as supply & GST payable

GST ON LIQUIDATED DAMAGES, COMPENSATION AND PENALTY ARISING OUT OF BREACH OF CONTRACT OR OTHER PROVISIONS OF LAW [CIRCULAR NO. 178/10/2022]

Agreement to Refrain, Tolerate, or Do an Act: Under GST, agreeing to refrain from an act, tolerate an act situation, or do act is considered a supply of service.

Conditions for Taxability: To qualify as a taxable supply, certain conditions must be met:

- There must be an expressed or implied agreement or contract.
- Consideration must flow in return for this contract.
- Such an arrangement can be an independent contract or part of another contract.

If the payment is merely event in the course of the performance of an agreement and it does not represent the 'object' as such of the contract then it cannot be considered as consideration & not treated as supply".



(A)	Liquidated Damages	Liquidated damages in contracts are not taxable as they are not considered consideration for tolerating a breach; they are payments to deter non-performance.
(B)	Cheque Dishonor Fine/ Penalty:	These fines or penalties are not considered consideration for any service and are not taxable .
(C)	Penalties for Violation of Laws	Penalties imposed for violation of laws, such as traffic violations or pollution norms, are not taxable .
(D)	Forfeiture of Salary or Bond Amount	Amounts recovered for forfeiture of salary or bond in employment contracts are not taxable as they discourage non-serious employees.
(E)	Late Payment Surcharge or Fee:	Late payment charges, when part of a principal supply, are not taxable ; they are assessed at the same rate as the principal supply.
(F)	Fixed Charges for Power:	Fixed charges for power are not taxable, as they are for the sale of electricity, which is exempt from GST .
(G)	Cancellation Charges:	Charges for cancellation in the case of passenger transportation services are assessed as the principal supply, as they are naturally bundled with it.



! Forfeiture of earnest money in certain cases, such as an immovable property agreement breach or non-serious bidder penalties, is not taxable as it represents a mere flow of money without consideration for another supply.