

Supply under GST

All Last Day Questions – Sept 25 / Dec 25 / Jan 26

Super Revision Series -

<https://www.youtube.com/playlist?list=PLpJVh7Fa6YKb0ZYpfyLallggsTTzJN5Am>

Question 1

The temple of ancestral deity of Mr. Chaman and his family is located in Kolkata. The temple is run by a charitable organisation registered under section 12AA of the Income Tax Act, 1961. The family has got unshakeable faith in their ancestral deity. Mr. Chaman is a big entrepreneur having flourishing business of tiles in Delhi. Upon the birth of their first child, he donated Rs 10 lakh to the said temple for construction of a sitting hall in the temple. On the main door of the sitting hall, a name plate was placed stating "Donated by Mr. Chaman upon birth of his first child". You are required to examine the levability of GST on the donation received from Mr. Chaman?

Answer

When the name of the donor is displayed in the religious institution premises, by placing a name plate or similar such acknowledgement, which can be said to be an expression of gratitude and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation). There is no obligation (quid pro quo) on part of recipient of the donation or gift to do anything (supply a service). Therefore, there is no GST liability on such consideration. In the given case, there is no reference or mention of any business activity of the donor which otherwise would have got advertised. Thus, since the gift or donation is made to a charitable organization, the payment has the character of gift or donation and the purpose is philanthropic (i.e., it leads to no commercial gain) and not advertisement, hence GST is not leviable business, such services have not been received from a related person.



Question 2

PTL Pvt. Ltd. is a retail store of merchandise located in 25 States/UTs in the country. For the purpose of clearance of stock of merchandise and to attract consumers, PTL Pvt. Ltd. launched scheme of "Buy One Get One Free" for the same type of merchandise, for instance, one shirt to be given free with purchase of one shirt. Determine how the taxability of the goods supplied under "Buy One Get One Free" scheme is determined.

Answer

As per section 7(1)(a), the goods or services which are supplied free of cost (without any consideration) are not treated as "supply" except in case of activities mentioned in Schedule I. Under "Buy One Get One Free" scheme, it may appear at first glance that in case of offers like "Buy One, Get One Free", one item is being "supplied free of cost" without any consideration. However, it is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.

Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be determined accordingly

Question 3

Sahab Sales, an air-conditioner dealer in Janakpuri, Delhi, needs 4 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 the said activity amounts to supply under section 7 of the CGST Act, 2017. Further, a Janakpuri resident, Aakash, approached Sahab Sales. He sold an air conditioner to Sahab Sales for Rs 5,000. Aakash had bought the said air-conditioner six months before, for his residence. Does sale of the air conditioner by Aakash to Sahab Sales amount to supply under section 7 of the CGST Act, 2017?



Answer

Provisions of law

Section 7(1)(a) stipulates that in order to qualify as supply, following three conditions should be satisfied: –

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

Further, Sec 7(1)(c) 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 as supply even if made without consideration.

Taxability in given cases

Transfer of by Sahab AC Sales	Since ITC has been availed by Sahab Sales on air conditioners, their permanent transfer by Sahab Sales from its stock for personal use at its residence, though without consideration, would amount to supply under Schedule I
Sale of AC Aakash to Sahab Sales by	Sale of air-conditioner by Aakash 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

Question 4

Mrs. Pragati received legal advice for her personal problems & paid 1,000 pound as a legal fee to Miss Unnati of U.K. (London). Explain whether the above activity of import of service would amount to supply u/s 7 of the CGST Act, 2017?

If in above case both of them are real sisters & no consideration is paid then will it change your answer? Further in the above case if both of them are real sisters & Mrs. Pragati receives legal advice for her business & she doesn't pay any consideration then what will be your answer?



Answer

Relevant Provisions of law

Sec 7(1)(b) provides that 'Supply' shall include import of services for a consideration even if it is not in the course or furtherance of business.

Sec 7(1)(c) Schedule I provides that import of services by a taxable person from a related person located outside India, without consideration is treated as supply if it is provided in the course or furtherance of business. The term 'related person' includes brother, sister or parents of an individual only when they are wholly or mainly dependent on that individual

Taxability in different cases

Case	Taxability
Import from Miss. Unnati for personal purposes for 1000 pounds	Since consideration is involved in this case, it shall be treated as 'supply' u/s 7(1)(b) even if it is not in the course and furtherance of business and it is not from related person
Import without consideration from real sister for personal purposes	It is assumed that Ms. Unnati is wholly or mainly dependent on Mrs. Pragati and hence she will be treated as 'related person'. However, since services are used for personal purposes and not for business purposes, Schedule I cannot be applied. Hence, it shall not amount to 'supply'
Import without consideration sister purposes for real business	Assuming Ms. Unnati is wholly or mainly dependent on Mrs. Pragati, she would be treated as related person. Further, since legal services are being used for business purpose of Mrs. Pragati, it would amount to supply under Schedule I even if there is no consideration involved.



Question 5

Dumdum Electronics has sold the following electronic items to Akbar Retail Store.

- (i) Refrigerator (500 litres) taxable @ 18%**
- (ii) Stabilizer for refrigerator taxable @ 12%**
- (iii) LED television (42 inches) taxable @ 12%**
- (iv) Split air conditioner (2 Tons) taxable @ 28%**
- (v) Stabilizer for air conditioner taxable @12%**

Dumdum Electronics has issued a single invoice, indicating price of each of the above items separately in the same.

Akbar Retail Store has given a single cheque of ₹ 1,00,000/- for all the items as a composite discounted price. State the type of supply and the tax rate applicable in this case.

Answer

In the given case, the items supplied by Dumdum Electronics are not naturally bundled in the ordinary course of business. Therefore, such supply is not a composite supply. Further, although Akbar Retail Store has paid a composite discounted price for these goods, Dumdum Electronics has not charged a single price for the said supply. Therefore, said supply is also not a mixed supply.

Supply of these goods is, therefore, supply of individual items which are taxable at the respective rates applicable to them.



Question 6

Gagan Engineering Pvt. Ltd., registered in Haryana, is engaged in providing maintenance and repair services for heavy steel machinery. For carrying out the repair work, Gagan Engineering Pvt. Ltd. sends its container trucks equipped with items like repair equipments, consumables, tools, parts etc. from Haryana workshop to its own repairing centres (registered under GST law) located in other States across India where the clients' machinery are being brought and are being repaired.

Discuss the levability of GST on the inter-State movement of trucks from the workshop of Gagan Engineering Pvt. Ltd. in Haryana to its own repairing centres located in other States across India.

Answer

As per section 25(4)38, a person who has obtained more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as 'distinct persons'.

Schedule I to the CGST Act specifies situations where activities are to be treated as supply even if made without consideration. Supply of goods and/or services between 'distinct persons' as specified in section 25, when made in the course or furtherance of business is one such activity included in Schedule I under para 2.

However, as per CBIC circular, the inter-State movement of various modes of conveyance including, inter alia, trucks, carrying goods or passengers or both or for repairs and maintenance, between 'distinct persons' as specified in section 25(4), not involving further supply of such conveyance, may be treated 'neither as a supply of goods nor supply of service' and therefore, will not be leviable to IGST. Applicable CGST/SGST/IGST, however, shall be leviable on repairs and maintenance done for such conveyance [Circular No. 1/1/2017 IGST dated 07.07.2017].



Thus, in the given case, inter-State movement of trucks from the workshop of Gagan Engineering Pvt. Ltd. located in Haryana to its repair centres located in other States is 'neither a supply of goods nor supply of service'.

