GOODS AND SERVICE TAX - SUPPLY & TIME OF SUPPLY

K.S.NAVEEN KUMAR, ADVOCATE, BENGALURU

SESSION PLAN

- PRELUDE
- SUPPLY – NEW TAXABLE EVENT
- TIME OF SUPPLY – POINT OF TAXATION
- RELEVANT PROVISIONS AND ISSUES/CONCERNS

INTRODUCTION

- Paradigm Shift in Indirect Tax Regime
- GST in force in many countries
- One Nation – One Market – One Tax
- Many existing taxes to be subsumed
- Taxable Event is "Supply"
- Certain activities either deemed to be supply of service or goods
- Certain activities neither supply of goods nor services
- Constitution (101st) Amendment

INTRODUCTION….

- Date of introduction of GST??
- Destination based consumption tax
- CGST/SGST/UTST/IGST
- Inter-branch supplies taxable?
- Seamless Credit System
- IT driven law
- Huge compliance burden

IMPLICATIONS:

- Many existing taxes would be subsumed.
- For the first time both the Centre and States would have powers to tax services.
- Even stock transfers and services provided to branches outside the State would attract tax.
- Peak rate of tax could be 28% on luxury goods, tobacco products, pan masala etc.
- There would be two standard rates viz., 12% and 18%.
- Lower rate could be 5%.

ADVANTAGES OF GST:

- Common market would contribute 1-2% to GDP.
- Cascading effect of taxes would reduce to a great extent as seamless credit system would be set in motion.
- Exports would be more competitive.
- Tax collections would improve due to widening of tax base.
- Over a period of time inflation would be checked.
- Corruption would be curtailed to a great extent.

SUPPLY

- Supply of goods.
- Supply of Services.
- Supply of both goods and services.

INTER-STATE & INTRA-STATE SUPPLY

- Inter-State supply of goods or services or both would attract IGST.
- Intra-State supplies would attract CGST and SGST.
- Intra-State supplies in union territories would attract UTGST.

MEANING OF SUPPLY

- Webster's New World Dictionary
- To give, furnish, provide, to meet the needs or requirements, to make up for deficiency, to serve as substitute etc.

SUPPLY – SEC.7 OF CGST ACT

- It includes:
  - All forms of supply of goods or services or both, which are made or agreed to be made by a person for a consideration in the course or furtherance of business. Examples of such supply would be barter, exchange, sale, licence, transfer, lease, rental or disposal.
  - Import of services for a consideration for business purpose or otherwise.
  - Supplies without consideration as per Schedule I of the CGST Bill.
  - Activities, which are treated as either supply of goods or services – as per Schedule II of the CGST Bill.
  - Notified transactions to be treated as supply of goods and not as services and vice versa.

SCHEDULE III

- Activities or transactions mentioned in Schedule III and notified public activities/transactions of Government (Centre or State) or local authority, would be **neither supply of goods or services**.

ACTIVITIES DEEMED TO BE SUPPLY OF GOODS OR SERVICES – SCHEDULE II:

- There are certain activities, which are either treated as goods or services to avoid any confusion regarding classification.
- These activities are listed in Schedule II.
- Thus a particular activity which in normal course would be either considered as supply of goods may be treated as services in terms of schedule II.
- Similarly an activity which in normal course is considered as supply of services may be treated as supply of goods as per Schedule II.

SUPPLIES DEEMED TO BE EITHER GOODS OR SERVICES

- In order to avoid classification disputes, Schedule II provides for instances of supplies, which may be either considered as supply of goods or services. That apart it also treats certain activities as either supply of goods or services to avoid confusion in classification for determining the rates, valuation, exemption status etc.
- In terms of Schedule II, certain activities are either treated as supply of goods or services. For convenience of reference, they are segregated and explained with illustrations.

DEEMED SUPPLY OF GOODS

- Any transfer of the title in goods. A sale transaction would fit into this clause.
- Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed. Eg: Agreement to Sell.
- Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal. Eg: (a) Office furniture given to security staff for personal use free of cost by the Partner of an engineering firm. (b) Laptops given to employees at a concessional rate by a company pursuant to board resolution.

DEEMED SUPPLY OF GOODS …

- Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person. Eg: Closure of business by a CHA.
- Exceptions are as under:
- Where the business is transferred as a going concern to another person.
- The business is carried on by a personal representative who is deemed to be a taxable person. Eg: Successor in business.

DEEMED SUPPLY OF GOODS

- Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

- The concept of mutuality does not apply due to Constitutional amendment in the year 1982 leading to introduction of Article 366(29A).

DEEMED SUPPLY OF SERVICE

- Any transfer of right in goods or of undivided share in goods without the transfer of title thereof. Eg: Transfer of possession of goods.
- Any lease, tenancy, easement, licence to occupy land. Eg. Lease of land for parking purpose.
- Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly. Eg. Renting of office space.
- Any treatment or process which is applied to another person's goods. Eg. Job work activity.

DEEMED SUPPLY OF SERVICE…

- Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods.
- Eg. Office car allowed to be used by CFO for personal purpose as per terms and conditions of employment. However, if CFO uses the office car for personal purpose without the knowledge of the management, then this clause would not apply. This is because of the usage of the words "by or under the direction of a person carrying on a business".

DEEMED SUPPLY OF SERVICE…

- Renting of immovable property.
- Eg: This is similar to the entry in declared service provision in section 66E of the Finance Act, 1994 (Service Tax law). In the ST regime there have been disputes as to whether renting per se can be treated as service. The matter is now subjudice before the Supreme Court.

DEEMED SUPPLY OF SERVICE…

- Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier. This entry is also similar to the present entry in ST law in declared services.
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- The expression "competent authority" in this context would mean the Government or any authority authorised to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority it can be procured from a registered architect/consulting engineer or licensed surveyor. The word "construction" would also cover additions, alterations, replacements or remodelling of any existing civil structure.

DEEMED SUPPLY OF SERVICE..

- Temporary transfer or permitting the use or enjoyment of any intellectual property right. Eg: (a) Licence issued by Microsoft or Tally to a company. (b) Permitting usage of trade mark or brand name by a foreign company to Indian company for ten years.
- Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software. This is also similar to the present entry in declared service under ST law.

DEEMED SUPPLY OF SERVICE…

- Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act. This clause has posed serious difficulties in the context of ST law and would continue to be a litigation prone area in GST regime also.
- Eg: (a) Notice period not served by employee and recovery made. (b) Receipt of damages for breach of contract.

DEEMED SUPPLY OF SERVICE…

- Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.
- Eg. Transfer of right to use machine by one company to another.

ACTIVITIES TO BE NOTIFIED – TREATED AS GOODS AND NOT SERVICES AND VICE VERSA:

- This is in addition to goods or services listed as per Schedule III.
- Government empowered upon recommendation by GST Council to notify certain supplies as supply of goods or services ignoring the common perception.

ACTIVITIES/TRANSACTIONS – NEITHER SUPPLY OF GOODS NOR SERVICES:

- Supply is wide enough to capture all forms of supply.
- Certain activities excluded - Schedule III from the purview of supply and they shall be neither treated as supply of goods nor services.
- Notified activities/ transactions involving public authorities, the Government upon recommendation of GST Council, is empowered to declare that they are neither supply of goods or services.

SUPPLIES – NEITHER GOODS NOR SERVICES

- Certain supplies are neither treated as supply of goods nor services. In normal course, such supplies would be treated as a taxable supply. However by providing for exceptions the legislature makes it clear not to tax such supplies. An attempt is made to list out those supplies for the benefit of the readers.
- Section 7(2) overrides sub-section (1) thereof and lists out certain activities or transactions referred to in Schedule III and Government activities/functions as notified by GST Council, which are neither supply of goods or services. But for this exception these activities or transactions would have been treated as taxable supplies as the expression 'supply' is wide enough to capture it.

SUPPLIES – NEITHER GOODS NOR SERVICES

- **Schedule III:**
- Schedule III to CGST Act provides for a list of activities/transactions, which are neither supply of goods nor services:
- **1.** Services by an employee to the employer in the course of or in relation to his employment. This is similar to the exception provided for in the definition of 'service' in section 65B(44) of the Finance Act, 1994 (ST law). Any service provided by employee is thus not a supply of service. However, services provided by the employer to an employee would be treated as a taxable supply.
- **2.** Services by any Court or Tribunal established under any law for the time being in force. This entry is also similar to the exception provided for in the definition of 'service' in section 65B(44) of the Finance Act, 1994 (ST law). The term "Court" in this context would include District Court, High Court and Supreme Court.

SUPPLIES – NEITHER GOODS NOR SERVICES

- 3. The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities. This entry is also similar to the exception provided for in the definition of 'service' in section 65B(44) of the Finance Act, 1994 (ST law).
- 4. The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity. Eg: Chief Election Commissioner, Comptroller and Auditor General. There is a similar exception in the definition of 'service' in the current ST regime.
- 5. The 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. Eg: Chairperson or Member of Industrial Area Development Board.
- **6.** Services of funeral, burial, crematorium or mortuary including transportation of the deceased. This activity is currently exempted under the ST regime.

SUPPLIES – NEITHER GOODS NOR SERVICES

- **7.** Sale of land. This is a State subject and hence excluded as it is not yet subsumed in GST.
- 8. Sale of building. Exception to this entry is construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.
- **9.** Actionable claims, other than lottery, betting and gambling. The term 'actionable claim' has the meaning assigned to it in section 3 of the Transfer of Property Act, 1882 and has a wide connotation. Further the definition of 'goods' in section 2(52) of the CGST Act includes actionable claim also. However, only the actionable claims w.r.t. lottery, betting and gambling would be a taxable supply.

SUPPLIES – NEITHER GOODS NOR SERVICES

- **Notified services:**
- Exceptions to be notified based on recommendation of GST Council.
- The activities/transactions- public service would be considered by the GST Council, which are performed by the Central Government, State Government or local authority.
- ST regime - issues and disputes
- Reverse charge basis.
- There is no clarity in the ST regime as to what constitutes taxable government service.
- GST Council to play a vital role.

SUPPLIES WITHOUT CONSIDERATION:

- **a. Permanent transfer of business assets or disposal of business assets**. Input tax credit should have been availed on such assets.
- **b. Supply of goods or services or both between related persons** (like employer and employee, partners in business etc) **or between distinct persons** (person holding registration in different States and establishments, branches in different States), when made in the course or furtherance of business.
  - Gifts to employee by an employer not exceeding fifty thousand rupees in value in a financial year shall not be treated as supply of goods or services or both.

SUPPLY WITHOUT CONSIDERATION

- **c.** Supply of goods—
- (*a*) **by a principal to his agent** where the agent undertakes to supply such goods on behalf of the principal; or
- (*b*) **by an agent to his principal** where the agent undertakes to receive such goods on behalf of the principal.
- Note: Persons like C&F Agent, consignment agent would be covered.
- **d. 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.
- Explanation to section 15 deems certain persons as related persons.

COMPOSITE AND MIXED SUPPLY:

- There may be instances where goods and services are supplied together or in combination.
- Such supplies are either deliberate or occur naturally as per trade practice.
- Distinction is created by law to ensure that appropriate rate of tax is charged.

COMPOSITE SUPPLY

- Meaning:
- The CGST Act - section 2(*30*):
- "composite supply" to mean 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.

COMPOSITE SUPPLY

- The supply should consist of two or more taxable supplies of goods or services or both, or a combination.
- The taxable supplies made should be naturally bundled (usual practice or expectation).
- It should be in conjunction with each other in the ordinary course of business.
- One of the supplies should be a principal supply.

PRINCIPAL SUPPLY

- Sec. 2(90) of the CGST Act:
- 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.
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- Illustration:
- If the goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance would be a composite supply and supply of goods would be considered as the principal supply.
- Whatever rate of tax is applicable on principal supply would be made applicable to the other supplies.

OTHER IMPLICATION OF COMPOSITE SUPPLY:

- Schedule II-clause (6), - following composite supplies treated as supply of services:
- (*a*) **works contract** for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, 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.
- (*b*) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration. Eg: Supply by restaurant of food/non-alcoholic drinks and service.

MIXED SUPPLY

- Meaning:
- section 2(74) CGST Act
- It would cover 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.

MIXED SUPPLY CONDITIONS

- It would cover two or more individual supplies of goods or services, or its combination.
- Such supplies should be made in conjunction with each other.
- Unlike a composite supply it is not naturally bundled or presented in ordinary course of business.
- It should be supplied for a single price.
- Such supply should not qualify as a composite supply.

MIXED SUPPLY - ILLUSTRATION

- 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 and it shall not be a mixed supply in case these items are supplied separately.
- If the aerated drinks attract a higher tax rate, then the same rate would be applied on the entire package.

TIME OF SUPPLY

- Chapter IV
- Sections 12 to 14

TIME OF SUPPLY OF GOODS

- **12. Time of supply of goods.**
- (*1*) The liability to pay tax on goods shall arise at the time of supply, as determined in accordance with the provisions of this section.
- (2) The time of supply of goods shall be the **earlier of the following dates**, namely:—
- (*a*) the date of issue of invoice by the supplier or the last date on which he is required, under sub-section (*1*) of section 31, to issue the invoice with respect to the supply; or
- (*b*) the date on which the supplier receives the payment with respect to the supply:
- Provided that where the supplier of taxable goods receives an amount upto one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice in respect of such excess amount.

TIME OF SUPPLY OF GOODS…

- *Explanation* 1.—For the purposes of clauses (*a*) and (*b*), "supply" shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment.
- *Explanation* 2.—For the purposes of clause (*b*), "the date on which the supplier receives the payment" shall be the date on which the payment is entered in his books of account or the date on which the payment is credited to his bank account, whichever is earlier.

TIME OF SUPPLY OF GOODS..

- (3) In case of supplies in respect of which tax is paid or liable to be paid on **reverse charge basis**, the time of supply shall be the **earliest of the following dates**, namely:—
- (*a*) the date of the receipt of goods; or
- (*b*) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (*c*) the date immediately following thirty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:
- Provided that where it is not possible to determine the time of supply under clause (*a*) or clause (*b*) or clause (*c*), the time of supply shall be the date of entry in the books of account of the recipient of supply.

TIME OF SUPPLY OF GOODS…

- (*4*) In case of **supply of vouchers** by a supplier, the time of supply shall be—
- (*a*) the date of issue of voucher, if the supply is identifiable at that point; or
- (*b*) the date of redemption of voucher, in all other cases.

TIME OF SUPPLY OF GOODS…..

- (*5*) Where it is **not possible to determine** the time of supply under the provisions of sub-section (*2*) or sub-section (*3*) or sub-section (*4*), the time of supply shall—
- (*a*) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
- (*b*) in any other case, be the date on which the tax is paid.
- (6) The time of supply to the extent it relates to an addition in the value of supply by way of **interest, late fee or penalty for delayed payment** of any consideration shall be the date on which the supplier receives such addition in value.

TIME OF SUPPLY OF SERVICE

- Section 13:
- Earliest of the following dates:
- (*a*) the date of issue of invoice by the supplier, if the invoice is issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- (*b*) the date of provision of service, if the invoice is not issued within the period prescribed under sub-section (2) of section 31 or the date of receipt of payment, whichever is earlier; or
- (*c*) the date on which the recipient shows the receipt of services in his books of account, in a case where the provisions of clause (*a*) or clause (*b*) do not apply:
- Proviso - Where the supplier of taxable service receives an amount upto Rs.1,000 in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

TIME OF SUPPLY OF SERVICE…

- *Explanation*.—For the purposes of clauses (*a*) and (*b*)—
- (*i*) the supply shall be deemed to have been made to the extent it is covered by the invoice or, as the case may be, the payment;
- (*ii*) "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

TIME OF SUPPLY OF SERVICE…

- Reverse charge basis - time of supply - earlier of the following dates, namely:—
- (*a*) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
- (*b*) the date immediately following sixty days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier:
- Provided that where it is not possible to determine the time of supply under clause (*a*) or clause (*b*), the time of supply shall be the date of entry in the books of account of the recipient of supply:
- Provided further that in case of supply by **associated enterprises,** where the supplier of service is located outside India, the time of supply shall be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.

TIME OF SUPPLY OF SERVICE…

- (*4*) In case of **supply of vouchers by a supplier**, the time of supply shall be—
- (*a*) the date of issue of voucher, if the supply is identifiable at that point; or
- (*b*) the date of redemption of voucher, in all other cases.

TIME OF SUPPLY OF SERVICE…

- (*5*) Where it is **not possible to determine** the time of supply under the provisions of sub-section (2) or sub-section (3) or sub-section (*4*), the time of supply shall—
- (*a*) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
- (*b*) in any other case, be the date on which the tax is paid.
- (6) The time of supply to the extent it relates to an addition in the value of supply by way of **interest, late fee or penalty for delayed payment** of any consideration shall be the date on which the supplier receives such addition in value.

TIME OF SUPPLY OF SERVICE…

- Section 14 - **Change in rate of tax in respect of supply of goods or services.**
- Notwithstanding anything contained in section 12 or section 13, the time of supply, where there is a change in the rate of tax in respect of goods or services or both, shall be determined in the following manner, namely:—
- (*a*) in case the goods or services or both have been **supplied before the change in rate of tax**,—
- (*i*) where the invoice for the same has been issued and the payment is also received after the change in rate of tax, the time of supply shall be the date of receipt of payment or the date of issue of invoice, whichever is earlier; or
- (*ii*) where the invoice has been issued prior to the change in rate of tax but payment is received after the change in rate of tax, the time of supply shall be the date of issue of invoice; or
- (*iii*) where the payment has been received before the change in rate of tax, but the invoice for the same is issued after the change in rate of tax, the time of supply shall be the date of receipt of payment;

TIME OF SUPPLY OF SERVICE….

- (*b*) in case the goods or services or both have been **supplied after the change in rate of tax**,—
- (*i*) where the payment is received after the change in rate of tax but the invoice has been issued prior to the change in rate of tax, the time of supply shall be the date of receipt of payment; or
- (*ii*) where the invoice has been issued and payment is received before the change in rate of tax, the time of supply shall be the date of receipt of payment or date of issue of invoice, whichever is earlier; or
- (*iii*) where the invoice has been issued after the change in rate of tax but the payment is received before the change in rate of tax, the time of supply shall be the date of issue of invoice:
- Provided that the date of receipt of payment shall be the date of credit in the bank account if such credit in the bank account is after four working days from the date of change in the rate of tax.
- *Explanation*.—For the purposes of this section, "the date of receipt of payment" shall be the date on which the payment is entered in the books of account of the supplier or the date on which the payment is credited to his bank account, whichever is earlier.

Queries??

THANKS FOR YOUR GENEROUS AND UNCONDITIONAL LISTENING

K.S.NAVEEN KUMAR
ADVOCATE, Bangalore
+91 - 9880102294
ksnkadv@yahoo.com

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