

Indirect Tax- taxation Event - Levy : Present Vs GST – 2

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In the first article we discussed briefly on term 'business' and its scope in current tax regime vs proposed GST.

The Goods and Service Tax is a levy on supply. All intra-states supplies attract Central and State GST whereas all the inter states supplies attract IGST. Hence, Supply is at the root of GST. This is our second article in the series wherein we discuss on the term supply and its relevance in current tax structure.

The term 'Supply'

In common parlance supply refers to make something available to someone. The term is very broad in nature. Supply could be with or without consideration. Supply could be occasional or frequent. In other words, movement goods from one to another even once could be treated as supply.

The term supply is a new term in indirect taxation. In the current tax regime, duties and taxes were levied on occurrence of various events like manufacture, provision of service and sale of goods. However GST provides for single taxable event being supply.

Supply is wide enough to cover the various taxable events (11 events) that exist in the current tax regime which gets subsumed in GST. In other words, supply includes and is wider than the sale of goods, movement of goods, manufacture and removal of goods, provision of services, allowing entry, entertaining, providing luxury, betting or gambling and all those activities involving both goods and service in the course or furtherance of business.

Sec 2 (97) read with Sec 3 of the proposed GST Act provides definition of Supply to include:

1. **All forms of supply** of goods and/or services 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.
2. **Importation of service** with or without consideration and whether or not in the course or furtherance of business.
3. **Transactions between a principal & his agent** for an agreed commission or brokerage. Presently agent supplying /receiving goods on behalf of principal are covered under the VAT laws. Under GST it is extended to cover transaction of supply or receipt of goods and /or services on account of principal. This would be deemed to be a supply between principal and agent.

In the above definition various forms of supply such as sale, transfer ... etc are merely illustrative in nature. Intention of the law maker could be to cover much more than what is illustrated in the said clause. However transactions of personal in nature, not

related to business would not be covered in the normal course except the case of imports.

As far as importation of service is concerned, currently they are subject to service tax in the hands of receiver of service where consideration is paid or payable. Only personal importation of goods is liable for customs duties at present. GST has taken an additional step to bring even the imported services without consideration in the tax net. Further, all the services of personal in nature shall attract GST since the importation of service is a supply whether or not in the course or furtherance of business.

In addition to the above, all the activities set out in Schedule I to be treated as supply even without consideration. The matters to be treated as supply without consideration are as follows:

- Permanent transfer of business assets, (Pl provide examples for each of these)
- Permanent disposal of business assets,
- Temporary application of business assets to a private/ non-business use,
- Services put to a private/ non-business use,
- Assets retained after deregistration,
- Supply of goods and / or services by a taxable person to any person in the course or furtherance of business.

Provided that the supply of goods by a registered taxable person to a job-worker shall not be treated as supply of goods subject to compliance of conditions set out in Sec 43A.

Further, supply of any branded service by an aggregator, under a brand name or trade name owned by him shall be deemed to be a supply of the said service by the said aggregator. This is in line with the present law where in, such services are taxable in the hands of aggregator.

As we discussed, the meaning and scope of supply is broad enough to cover most of the commercial and even transactions of personal in nature. Various matters which are not subject to tax in the current tax regime say stock transfers among branches, application of business assets like office cars, laptops for personal use, etc., would be deemed to be a supply and be liable to GST.

Important decisions under Indirect tax laws:

Manufacture:

- *UOI vs Delhi Cloth And General Mills Co. Ltd [1977 (1) ELT J 199 (SC)]*: Manufacture is generally understood to mean bringing into existence a new substance. The transformation should result in a new and different article emerging having distinctive name, character or use.

This would not be relevant under GST as manufacture has nothing to with levy.

- *J.G. Glass Industries Ltd vs CCE [1998 (97) ELT 5 (SC)]*: Printing on glass bottles does not bring about any new commercial commodity and the earlier commodity namely bottles can be used to the same extent as printed bottles.
Change in use was one of the conditions to determine manufacture. In GST change in use may trigger taxable event in case of deemed supplies.
- *CCE vs Steel strips Ltd [1995 (77) ELT 248 (SC)]*: The Onus to establish manufacture is also on the department.
Would the onus to establish supply also on the department? Could be but would not be a big challenge.

Provision of service:

- *Tamil Nadu Kalyana Mandap Assn vs UOI [2004 (167) ELT 3 (SC)]*: Levy of tax on services could not be struck down on the ground that it does not conform to a common understanding of word 'service' so long as it does not transgress any specific restriction contained in the constitution.
This must be relevant as the supply includes supply of services which has very wide coverage. Service is defined to include anything and everything other than goods!
- *Chartered Accountants Association vs UOI [2001 (115) ELT 543 (Gujarat)]*: Tax on services rendered by professional distinct from tax on profession. Hence service tax on profession is constitutionally valid.
Profession Tax being a state subject is one of the indirect tax that is not likely to subsume into GST. Hence professionals would continue to pay PT in addition to GST.
- *Infotech software dealer association Vs UOI [2010 (020) STR 0289 (Mad)]*: To decide imposition of tax, nature of transaction is relevant. Nature of transaction and dominant intention of such transaction relevant when taxing statute considered with reference to legislative powers.
Classification issues wrt goods and services are expected to reduce in GST as the disputed activities are deemed to be supply of goods or services in Schedule II.

Sale of goods:

- *TISCO vs S.R Sarkar [(1960) 11 STC 655 (SC)]*: A transaction of sale is subject to tax on completion of sale. A mere contract of sale is not a sale for the purpose of levy VAT/CST.
In GST, coverage of term supply is very wide compared to sale.
- *State of Madras vs Gannon Dunkerley & Co Ltd. [9 STC 353 AIR 1958 SC]*: In order to constitute a sale, it is necessary that there should be an agreement between the parties for the purpose of transfer of title to goods, which of course presupposed capacity to contract, that it must be supported by monetary consideration, that as a result of a transaction the property must actually pass in the goods.
Merely there is no sale does not mean there is no supply. Even transfers, exchange are considered as supply in GST.

Conclusion:

The taxable event 'supply' is a dependent factor. The discussion on supply is not complete without understanding the matters like deemed supply of goods/ services, time of supply, place of supply and the issues arising therein.

We would try to discuss the above matters as relevant to current tax regime in our upcoming articles. Thank you!

Note: The readers may kindly refer the book on 'Goods and Service Tax – A Primer' by Madhukar Hiregange and K.S.Naveen Kumar published by Walters Kluwer – CCH for better understanding.

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