

Understanding the GST Model Law - Meaning of “Supply” - Part 2

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This is the second in the series of proposed articles on the GST Model law. The purpose is mainly to create awareness and enable one to look at the unintended impact as maybe applicable for each sector/ person. It could also aid in representation needed for amendment of the Model GST Law to make it tax payer friendly and meet the objective of clarity, certainty and transparency.

Background

Under present indirect tax laws, the taxable event attracting the levy varies under central excise law, service tax law, and VAT laws.

Central excise is levied by Central Government production/ manufacture of goods in India, and the taxable event is the ‘**manufacture**’ of the excisable goods. Excise duty is levied on the manufacture of excisable goods and collected at time of removal from the factory. The idea of collection at the stage of removal is devised for the sake of convenience. It is not as if the levy is at the stage of removal; it is only the collection that is done at the stage of removal[1]. The “supply” coverage be much wider than removal.

Service tax is levied on services provided by one person for another for a consideration. Value Added Tax /sales tax is a tax on transfer of property in goods (sale of goods). Supply would be much wider than provision and need not be for a consideration. Supply between same entity are liable to GST.

Under Central Sales Tax and local VAT law the levy is on transfer of property in goods for a consideration which is normally a “sale”. Supply would be much wider coverage. Stock transfer therefore would also be liable for GST.

Under proposed GST law, there are no separate events triggering the levy such as manufacture of excisable goods/provision of service / sale of goods-local /interstate basis. The levy of Central Goods and Service tax Act (CGST) or State Goods and Service tax Act (SGST) would get attracted on all **supplies** of goods and/or services at specified rate.

In this background, the paper writers have briefly examined the scope of supply under GST law as set out in Section 3 of GST Act.

What is meaning and scope of supply?

The term supply is defined to include*[2]:

- **all forms of supply of goods and/or services:** such as sale, transfer, **barter**, exchange, license, rental, lease or disposal, for consideration by a person in course of or furtherance of business

- **Importation of service**, whether or not for a consideration, and whether **or not** in the course or furtherance of business, and

- **Supply specified in Schedule I**, made or agreed to be made without consideration, viz.
 - Permanent transfer/disposal of business assets
 - Temporary application of business assets to a private or non-business use
 - Services put to a private or non-business use
 - Assets retained after deregistration
 - Supply of goods and/ or services by a taxable person to another taxable or non-taxable person in the course or furtherance of business. [here taxable person would include different registered premises of the same entity]
 - supply of goods by a registered taxable person to a job-worker working under section 43A shall not to be treated as supply of goods

- **Matters specified in Schedule II** shall be applicable for determining 'Matters to be treated as a supply of goods or services'. The matters are enumerated below:
 - Any transfer of the title in goods – Treated as supply of **goods**
 - Any transfer of goods or of right in goods or of undivided share in goods without the transfer of title thereof – treated as supply of **service**
 - Any transfer of title in goods under an agreement which stipulates that property in goods will pass at a future date upon payment of full consideration as agreed - treated as supply of **goods**
 - Any lease, tenancy, easement, licence to occupy land – treated as supply of **service**
 - Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly - treated as supply of **service**

- Any treatment or process which is being applied to another person's goods – treated as supply of **service**.
- Transfer or disposal of goods forming part of business assets by or under the directions of the person carrying on the business whether or not for a consideration – treated as supply of **goods**
- Goods held or used for the purposes of the business are put to any private use or used / made available other than business purpose, whether or not for a consideration - treated as supply of **service**
- Goods, which are business assets of a taxable person, are sold by any other person so to recover any debt owed - treated as **supply of goods in the course / furtherance of business**
- Any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him unless the business is transferred as a going concern to another person or the business is carried on by a personal representative who is deemed to be a taxable person. - treated as **supply of goods in the course / furtherance of business**
- Renting of immovable property - treated as 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 entire consideration has been received after issuance of completion certificate or before its first occupation, whichever is earlier - treated as supply of **service**
- Temporary transfer or permitting the use or enjoyment of any intellectual property right - treated as supply of **service**
- Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software - treated as 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 - treated as supply of **service**
- Works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract - treated as 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 - treated as supply of **service**

- 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 - treated as supply of **service**
- Any supply of goods by any unincorporated association or body of persons to a member for cash, deferred payment or other valuable consideration - treated as supply of **goods**.

- **Transaction between principal and agent:** Where a person, acting as an agent, for an agreed commission or brokerage, either supplies or receives any goods and/or services on behalf of any principal, the transaction between such principal and agent shall be deemed to be a supply. GST needs to be charged.
- **Transactions to be specified as supply of goods /services:** The Central or a State Government may, upon recommendation of the Council, specify by notification, the transactions that are to be treated as—
 - a supply of goods and not as a supply of services; or
 - a supply of services and not as a supply of goods; or
 - neither a supply of goods nor a supply of services.
- **Aggregator concept:** The 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 branded service by the said aggregator.

The definition of supply given above would be applicable under IGST Act as well.

We further briefly explain each limb as under:

All forms of supply of goods/ services for consideration: To cover all types/ descriptions of supply of goods and or services **such as** sale, transfer, barter, exchange, license, rental, lease made or agreed to be made for payment of money or other consideration in course of trade, commerce, manufacture, profession, vocation, similar activity. This is illustrative and could cover other supplies which are not specifically enumerated hereunder. The personal transaction not related to business would not be covered in normal course.

- ***Importation of service in course of business:*** Presently taxable service provided by any person from a country outside India and received by any person in India is liable to service tax

in hands of the recipient of service under reverse charge. Personal imports were exempted in the FA 1994. Under GST law, import of service done without consideration /payment is specifically included in scope of supply. Also transactions of personal nature beyond certain limits are also liable.

- **Supply given in Schedule I:** *Covers specified list of supplies which are not made for a consideration enumerated above.*
- **Schedule II supplies:** *Activities on which there was dispute/long standing litigation were deemed to be services by including them under Sec 66(E) of the Finance Act as declared Services. These have been enumerate above. Clarity appears to have been given that works contract, right to use goods [such as software], supply of food or drink to be treated as service. This maybe important for determining the place of supply as the rules are different for goods and services.*
- **Where a person, acting as an agent, supplies/ receives any goods /services for an agreed commission or brokerage on behalf of any principal:** *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 is deemed to be a supply between principal and agent.*
- **The supply of any branded service by an aggregator:** *At present the branded services provided under brand name of an aggregator are subject to service tax in hands of aggregator under the Service Tax law. Under GST, supply definition is wide enough to include the supply of branded services provided by an aggregator.*

Recommendations

1. Definition of taxable person to include branches of same entity.
2. Reverse charge not to be applicable for personal expenses at all to avoid non compliance by lakhs.
3. To bring petroleum products under 'all forms of supply' and tax under GST and enable credit on same and avoid cascading
4. Cover in "supply" alcohol for human consumption to ensure credit chain is not broken

5. The list of supplies which are neither supply of goods nor service to specifically cover all kinds of transactions resulting in transfer of title in immoveable property.
6. Not to deem the transaction of supply or receipt of goods and/or services done in capacity of agent on behalf of principal, as supply between principal and agent. This could lead to practical difficulties as the supply or receipt goods and/or services is in reality a transaction being done by principal to end recipient of such goods and/or services.

Conclusion

In the article paperwriters have examined basic concept of supply under GST law with objective to understand considering the old laws and attempted to analyse the same.*[3]

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[1] *Vazir Sultan Tobacco Co. Ltd.* - 1996 (83) E.L.T. 3 (S.C.)

[2] Include is used to enlarge- *Ramala Shakari Chinni Mills Ltd Vs CCE* – 2016 (334) ELT 3(SC)

[3] The model law could be referred for further details. Further 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.