

Understanding GST Model Law - Definition of Levy & Supply - Part 13

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This is a part of the series of articles to understand the model law. The understanding of the definitions of terms being important is being discussed in the earlier one and the next few.

Background

The introduction of GST law has been fast tracked with the introduction of formats of invoices, registration and returns. The advancement of Budget to 1st week of February and winter session to 16th November in past few days confirms that. It is now clear that GST law would in all probability be introduced wef April 1st 2017.

In this backdrop the basic concepts of levy and supply under GST are being analysed. The paper writer has examined the issues in light of past experience.

Levy and Collection of Central/State Goods and Services Tax

Section 7 of Model GST law sets out CGST / SGST shall be levied on all intra-state supplies of goods and / or services at the rate specified in the Schedule ... to this Act (exemption & rates expected to be in place by 20th Oct) and collected in such manner as may be prescribed. CGST / SGST shall be paid by every taxable person in accordance with the provisions of the Act. Similar provisions to tax interstate supplies of goods and/or services is set out under the Integrated GST (IGST).

Comments:

In absence of charging section, the levy of tax fails. It is not sufficient that there is charge of GST tax, the tax has to be levied on a subject matter of levy, namely on supplies of goods and/or services.

At present, service tax is charged on taxable services under section 66B of FA, 1994.

Central excise duty levy is attracted vide section 3 of CE Act on the manufacture of excisable goods in India. But collection postponed for convenience to time of removal of goods.

VAT is charged on the sale of goods within state and CST on interstate sale of goods.

What is meaning and scope of supply?

- The definition of "supply" would have to be understood as against manufacture/sale of goods or provision of service. On going through the definition of supply it includes:
- **All forms of supply of goods and/or services:** This is very wide and covers not only sale but also transfer, barter, exchange, license, rental, lease or disposal, for consideration, in course of or furtherance of business. The barter namely, exchange of goods[say latest mobile phone] for goods[say computer] or goods[say i-phone-7] for services[say vastu consultancy] or services for services or services for goods, when done as economic activity[ie business] is also covered.
- **Importation of service**, whether or not for a consideration, and whether **or not** in the course or furtherance of business
- **Supply specified in Schedule I**, made or agreed to be made without consideration, viz.

- a) Permanent transfer/disposal of business assets-Where the business assets such as CNC machines are sold, GST liability would arise.
- b) Temporary application of business assets to a private or non-business use- When mobile phone of business used for personal use of employee to invite relatives for daughter's wedding.
- c) Services put to a private or non-business use-When the services of architect firm are used for designing of house of employee.
- d) Assets retained after deregistration-When CNC machines used in business for cutting are taken over after deregistration.
- e) 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]-Stock transfer could be an example.
- f) supply of goods by a registered taxable person to a job-worker working under section 43A shall not be treated as supply of goods- GST would be payable by registered taxable person on job worked goods. Similar to provision under present law.

Comment: Above transactions at (a) to (e) would be taxed when provided on free basis-no payment in exchange.

- **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:
 - Transfer of the title in goods – Treated as supply of **goods-example sale of phone.**
 - 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- example transfer of computer to be used by a customer, without transfer of ownership.**
 - Transfer of title in goods under an agreement that property in goods will pass at a future date upon payment of full consideration as agreed - treated as supply of **goods-example: Transfer of computer to customer after paying all 10 installments in June 2018.**
 - Lease, tenancy, easement, licence to occupy land – treated as supply of **service-example lease of land.**
 - 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-example renting of building.**
 - Treatment or process which is being applied to another person's goods – treated as supply of **service. Example: repair of computers of customer.**
 - 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-example: Disposal of machines used in diesel engine manufacturing factory as directed by person who is doing such business. There may or may not be consideration for such disposal 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. Example: Mobile used for business put to private use of employee to make personal calls, whether free or for consideration.**

- Goods, which are business assets of a taxable person, are sold by any other person so to recover any debt owed by taxable person - treated as **supply of goods by taxable person in the course / furtherance of business. Example: Sale of machines of a business to recover debt owed to bank.**
- Any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him are deemed to be supplied before he ceases to be taxable person, 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 Example: Machines forming asset of business of one company sold on piece meal basis to another company.**
- Renting of immovable property - treated as supply of **service Example: Renting of shop premises.**
- 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. Example: Where payment received towards construction and sale of flat by builder before completion.**
- Temporary transfer or permitting the use or enjoyment of any intellectual property right - treated as supply of **service. Example: temporary transfer of right to use IPR- say to knowhow.**
- Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of information technology software - treated as supply of **service. Example: Software development 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. Example: Amount paid as non compete fee to former director by company.**
- 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. Example: Construction of building involving material plus labour.**
- 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. Example: Right to use equipment for 1 year against payment of Rs. 1 lakh.**
- 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. Example: Supply of food by restaurant.**
- 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. Example: Sale of t-shirts to members of unincorporated club**

- **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.
Comments: Clarity is required whether supply or receipt of goods and/or services on behalf of principal is deemed to be supply in hands of agent.
- **Transactions to be specified as supply of goods /services:** The Central or a State Government may, upon recommendation of the Council, come out with notification specifying the transactions 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.**Paper writer comments:** The list is expected to be given shortly.

The negative list would be very important to determine which transactions of supply would be out of the GST tax net.

It could cover transfer of title to immovable property liable to stamp duty.

- **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.
Paper writer comments: The above concept is presently there in service tax law, where the provision of taxable services under brand name of aggregators such as transport/hotel rooms/cab aggregators is liable to service tax in hands of aggregator. Uber/ Ola are examples.

Landmark decisions on levy and supply:

1. In Wallace Flour Mills Co Ltd 1989 (44) ELT 598 (SC) held that collection of duty at the time of removal does not mean that the taxable event is removal.
2. In Hyderabad Race Club [1996 (88) ELT 633 (SC)] held totaliser System installed in the race club being embedded in earth is not 'goods', hence not liable to duty.
3. In Association of Leasing & Financial Service Companies Vs UOI 2010 (20) S.T.R. 417 (S.C.) held that rendition of service is the taxable event for Service tax under Section 66 of Finance Act, 1994.
4. In Schott Wilson Glass P Ltd (2009 (14) STR 146 (Guj) held taxable event is providing of taxable service as defined in Section 65(105). Raising of invoice and/or making payment later cannot be considered as taxable event.

Conclusion

In the article paperwriters have examined basic concept of levy and supply under GST law.

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