

GST – Concept and Issues in Supply, Business, Taxable Person and Valuation

by
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May 21, 2018
at
Nashik Branch of WIRC of ICAI



Agenda

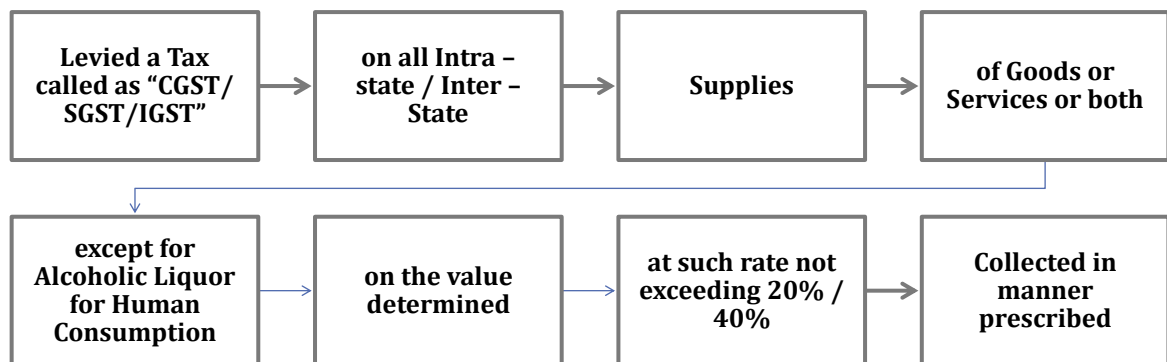
- Concept and intrinsic Issues under GST
 - Supply
 - Business
 - Taxable Person
- Valuation Provisions



Taxable Event under GST Law

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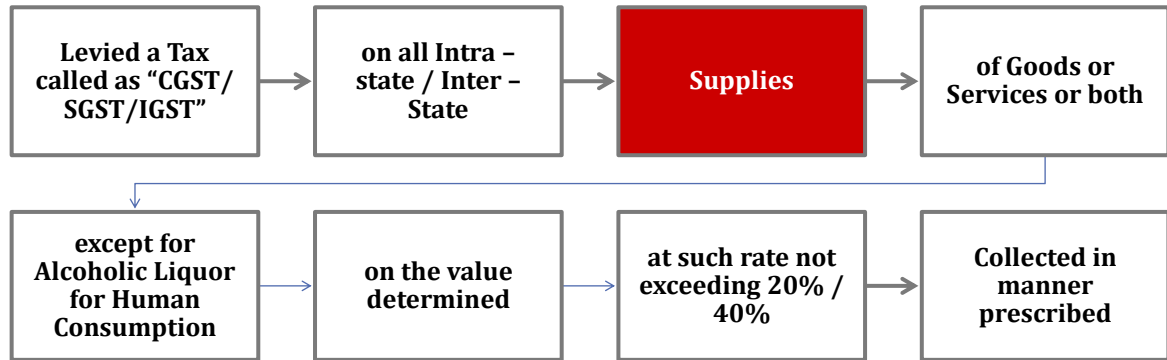
Dissection of Charge... CGST/SGST & IGST Act



Tax becomes payable only when liability to pay tax arises and liability to pay tax arises by the happening of the "Taxable Event" - Kalwa Devadallain Vs UOI (1963) 49 ITR 165 (SC)

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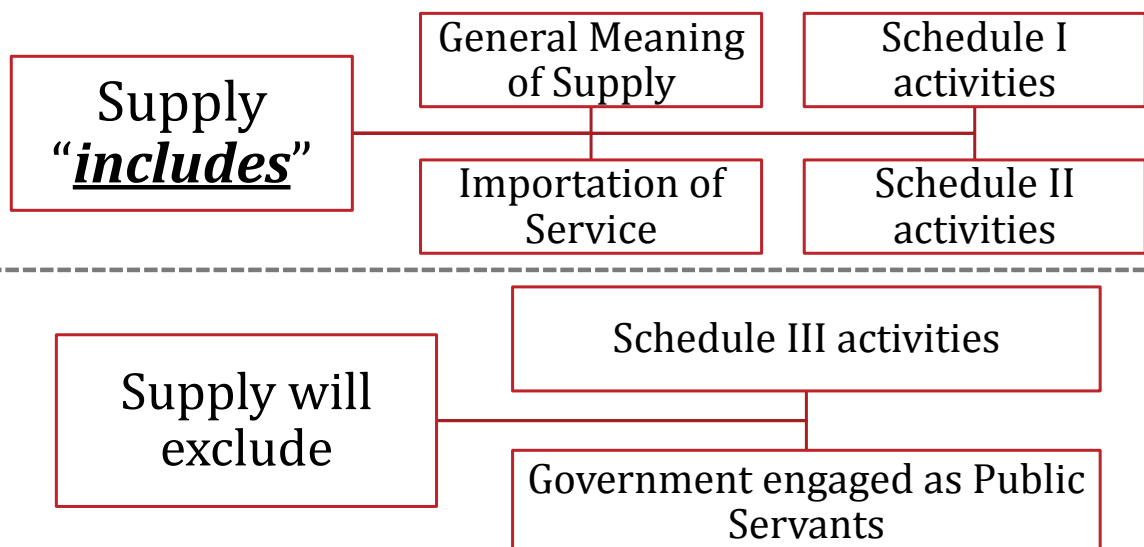
Dissection of Charge... CGST/SGST & IGST Act



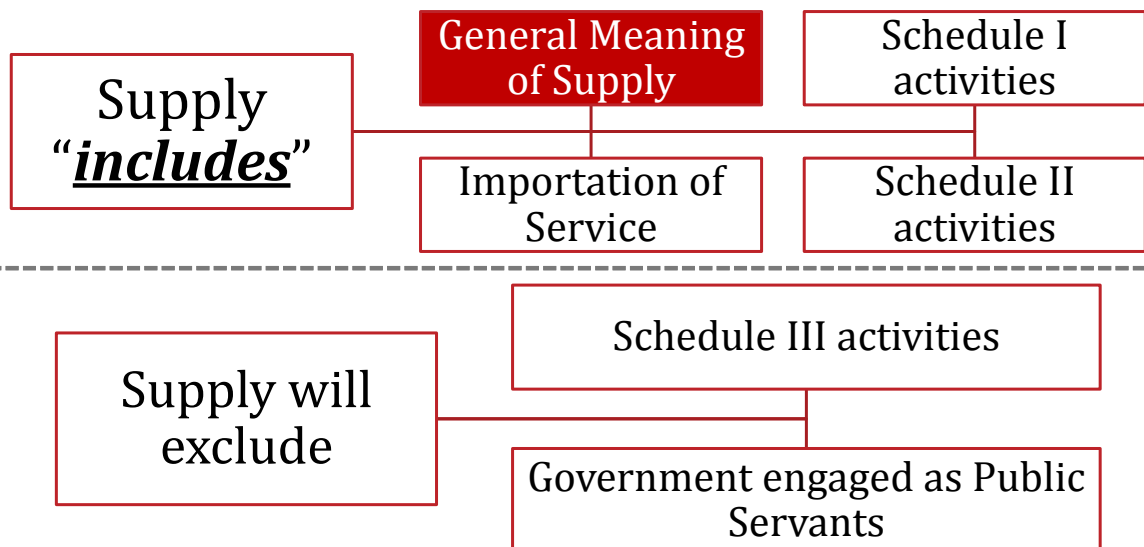
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Definition of Supply - Section 7 of CGST Act, 2017



Definition of Supply – Section 7 of CGST Act, 2017



Meaning of Supply...

All forms of Supply of Goods/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
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Term Supply - Undefined

- The word “Supply” is not defined under the GST Acts, one may have to infer to general meaning of the term Supply
- Supply is that which is or can be supplied, available aggregate of things needed or demanded – Law Lexicon (P Ramanatha Aiyar)
- Thus Supply is very wide word. Some posers:
 - Gifting of Shirt to a friend?
 - Handing over of Goods to Transporter?
 - Supplies not legally recognised by law?

Such as.....

Terms	Meaning
Sale	Transfer of something (and title to it) in return for money (or other thing of value) on terms agreed upon between buyer and seller
Transfer	The movement from one person or entity to another
Barter	The exchange of goods or services without the use of money
Exchange	To exchange is defined as to give something and receive something in turn
License	Official permission to do something or a document, plate or tag showing proof of permission
Rental	A stated return or payment for the temporary possession or use of a house, land, or other property, made, usually at fixed intervals, by the tenant or user to the owner
Lease	a contract by which one party (landlord, or lessor) gives to another (tenant, or lessee) the use and possession of lands, buildings, property, etc. for a specified time and for fixed payments
Disposal	Disposal is defined as getting rid of or giving away

For a consideration

“Consideration” includes

- Payments made or amounts payable
- Monetary as well as non-monetary consideration included
- Third Party payments are also covered
- the monetary value of any act or forbearance, whether or not voluntary,
- Should be pertaining to inducement of supply or in response to a supply
- Subsidy shall not be included
- Deposit, **whether refundable or not**, given in respect of the supply of goods and/or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply;

Business – the law as defined

Terms	Meaning
any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;	Profit Motive made irrelevant.
any activity or transaction in connection with or incidental or ancillary to (a) above;	Sale of Scrap, Sale of used car, sale of old machinery or furniture
any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;	Business Normally implies something done on regular basis. However, this clause covers even singular activity as business
supply or acquisition of goods including capital assets and services in connection with commencement or closure of business;	This will enable flow of input tax credit

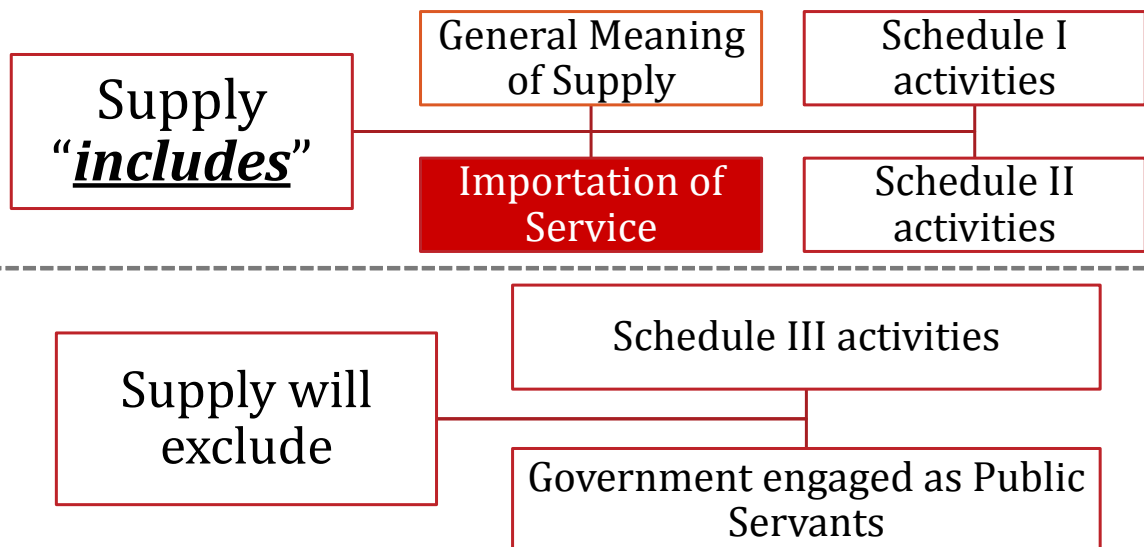
Business – the law as defined

Terms	Meaning
provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members, as the case may be;	Concept of Mutuality diluted and definition to includes facilities provided to Members.
admission, for a consideration, of persons to any premises; and	Renting of Immovable Property covered
services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;	Services provided by Independent Directors
Services provided by a race club by way of totalisator or a licence to book maker in such club	Betting is also included

Business – the law as defined

Terms	Meaning
Any activity or transaction undertaken by Central Government, a State Government or any Local authority in which they are engaged as public authorities	<p>All services of Government also considered as Business.</p> <p>Only notified activities of Government shall not be considered as Supply of Goods or Services in terms of exclusion from Section 7 of CGST Act, 2017</p> <p>Activities like Dispensing Justice, maintaining armed forces, conducting audit by C&AG, elections to Parliament or State Legislature are sovereign activities and not liable for GST</p>

Definition of Supply – Section 7 of CGST Act, 2017



Importation of Service

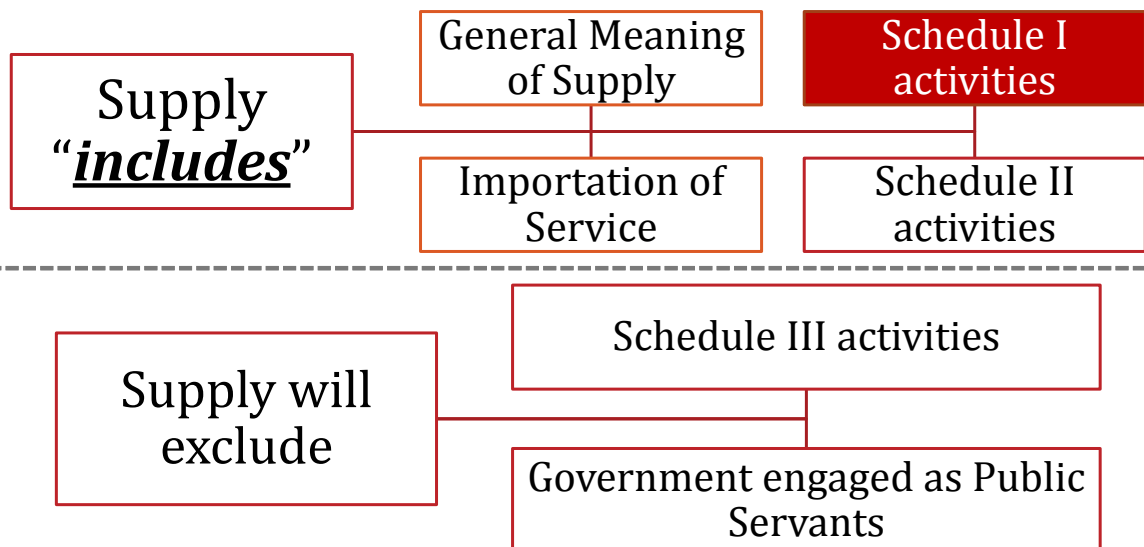
Import of services

- for a consideration
- Furtherance of Business not relevant – Personal use shall also be taxable

“Import of services” means the supply of any service, where –

- the supplier of service is located outside India;
- the recipient of service is located in India; and
- the place of supply of service is in India;

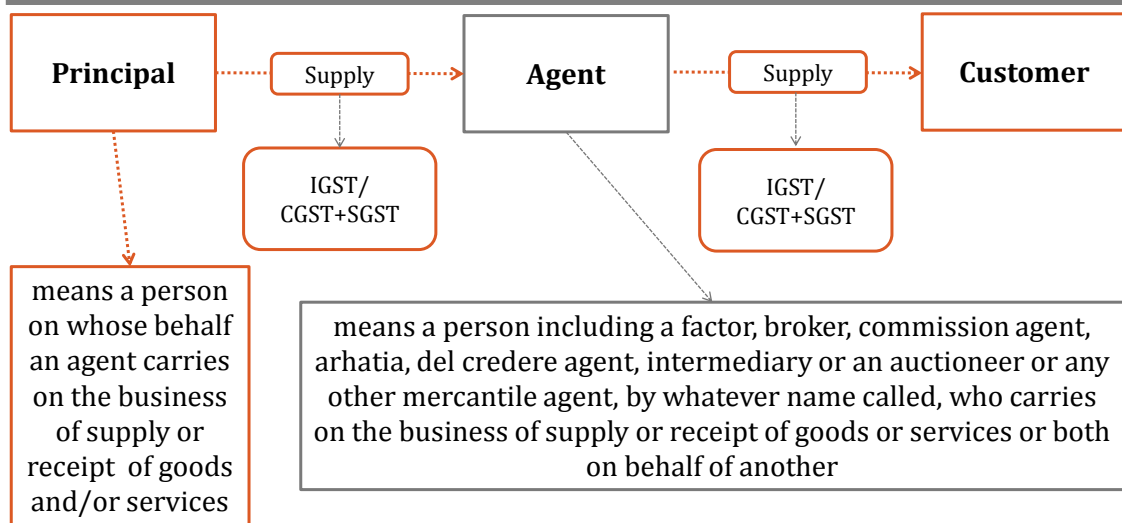
Definition of Supply – Section 7 of CGST Act, 2017



Schedule I of CGST Act – Deemed Supply w/o Consideration

- Permanent transfer/disposal of business assets where ITC is availed
- Supply of goods and / or services between related persons or between distinct persons as specified in section 25, when made in course of furtherance of business
 - Gifts by Employer to Employee to the tune of Rs. 50,000/- excluded
- Principal Agent Transactions
- Import of Service between related persons

Principal – Agent



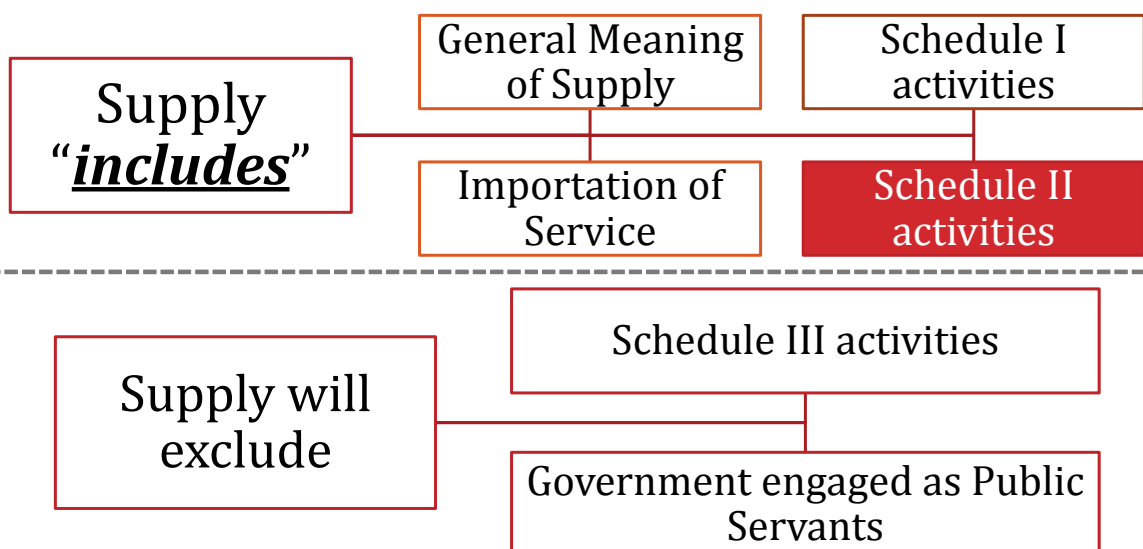
Contradictory proposition.. Principal Liable

Definition	Definition	Indication of Liability
2 (82) - output tax	in relation to a taxable person, means the CGST/SGST chargeable under this Act on taxable supply of goods and/or services made by him or by his agent and excludes tax payable by him on reverse charge basis;	Principal
2 (85) - place of business (c) A place where a taxable person is engaged in business through an agent, by whatever name called	Principal
2 (91) - supplier	in relation to any goods and/or services shall mean the person supplying the said goods and/or services and shall include an agent acting as such on behalf of such supplier in relation to the goods and/or services supplied	Principal

Contradictory proposition...Agent Liable

Definition	Definition	Indication of Liability
2 (20) - casual taxable person	means a person who occasionally undertakes transactions involving supply of goods and/or services in the course or furtherance of business whether as principal, agent.....	Agent
2 (70) - non resident taxable person	means a taxable person who occasionally undertakes transactions involving supply of goods and/or services whether as principal or agent	Agent

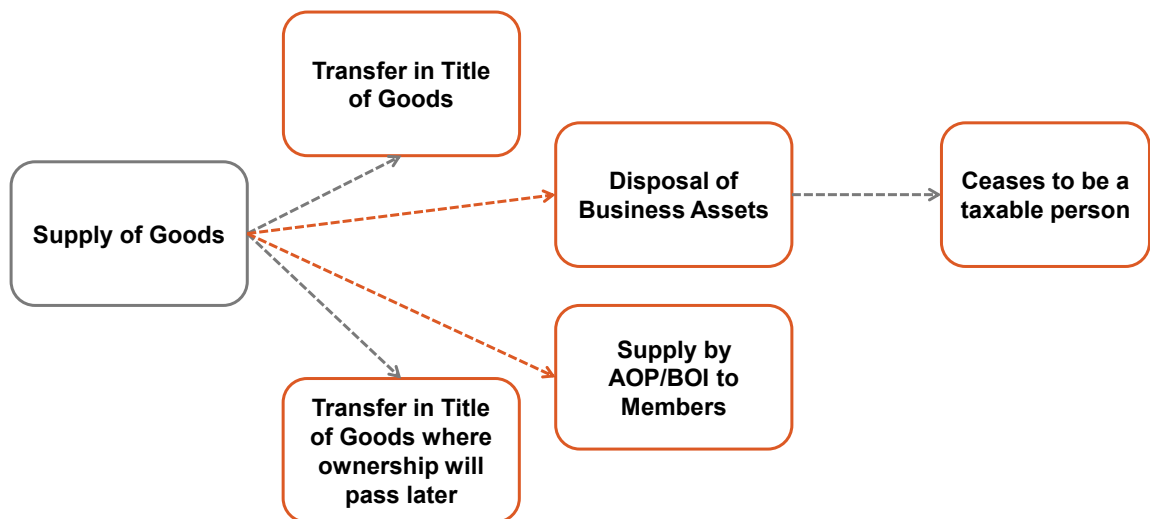
Definition of Supply - Section 7 of CGST Act, 2017

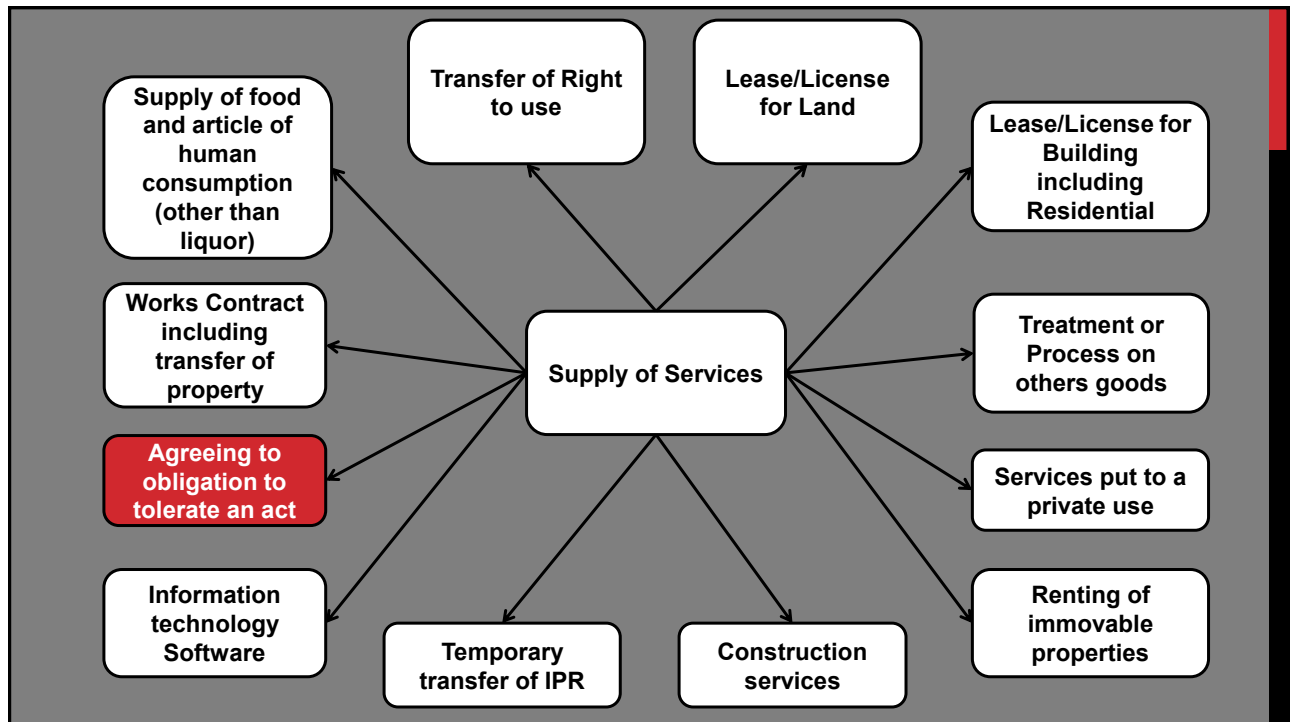


Goods Vs Services

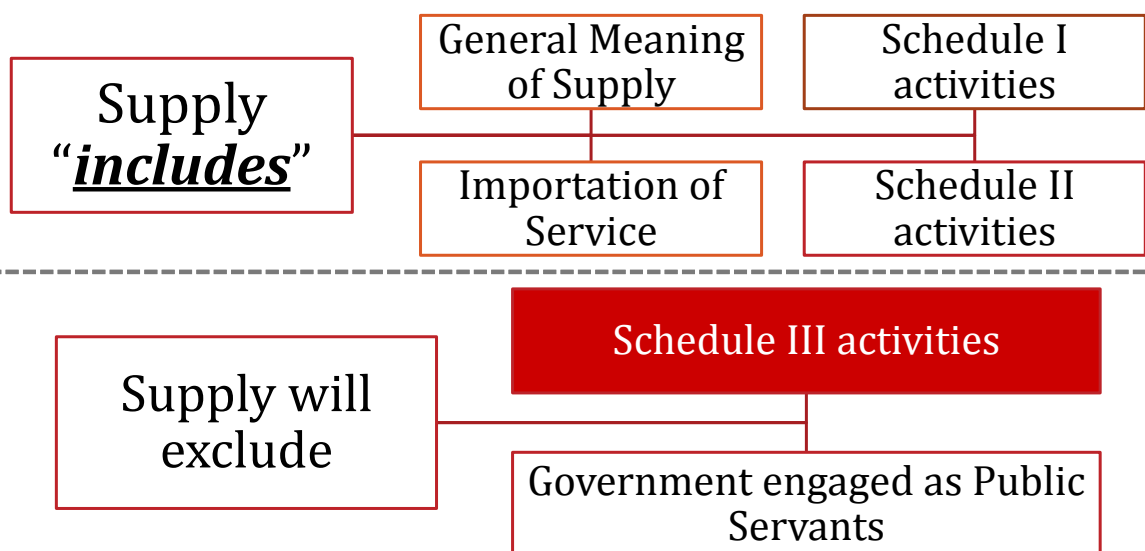
Goods	Services
means every kind of movable property other than money and securities	means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged

Supply of Goods





Definition of Supply – Section 7 of CGST Act, 2017



Activities not to be treated as Supply

- Services by an employee to an employer in the course of or in relation to employment
- Services by Court or Tribunal
- Service by Member of Parliament/Members of State Legislature
- Services of funeral, burial, crematorium etc.
- **Sale of Land, Sale of Building** except for under-construction units
- Actionable claims other than lottery, betting or gambling

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Different Types of Supplies Works Contract, Composite and Mixed Supplies

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State of Madras Vs Gannon Dunkerley

- Works Contract was essentially a contract of service and no sales tax could be levied on goods transferred in the course of execution of works contract.
- The court held that the expression “sale of goods” used in entry 54 of the State list of the Seventh Schedule does not cover the cases where the goods are not sold as chattel.
- It was held that there is no sale of material as such and the property in them does not pass as such.

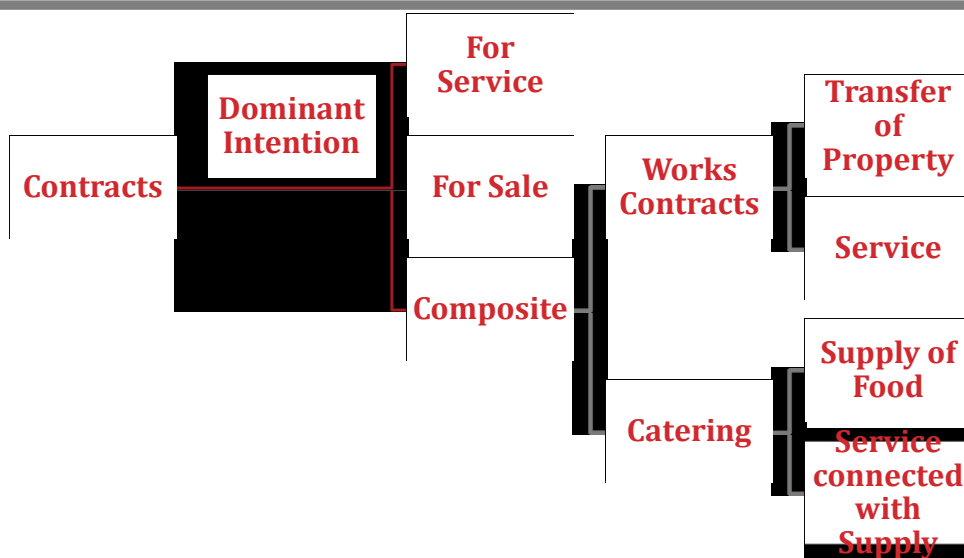
46th Constitutional Amendment

- Article 366(29A) – Permitted the States to levy tax on sale of goods involved in execution of all works contract.
- States have been given power to separate the contract between work and the labour and services.
- Thereafter the States made amendments in the respective State Tax Laws to levy tax on such sales either by making separate legislation or by amending the existing sales tax laws.

Works Contract in Service Tax Law

- Service Tax was introduced as a positive list based taxation scheme w.e.f. 1994.
- Services in the nature of construction contracts were made taxable from 2005. Thereafter installation contracts, maintenance contracts were also made taxable from 2006.
- Works Contract Services were introduced into the tax net w.e.f. 01.06.2007 – Supreme Court in the case of Larsen & Toubro has confirmed taxability only from 01.06.2007.

Respecting the Boundaries...



Definition – Works Contract

2(119) of CGST Act, 2017

“works contract” means a 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

Concept of Mixed Supply Vs Composite Supply

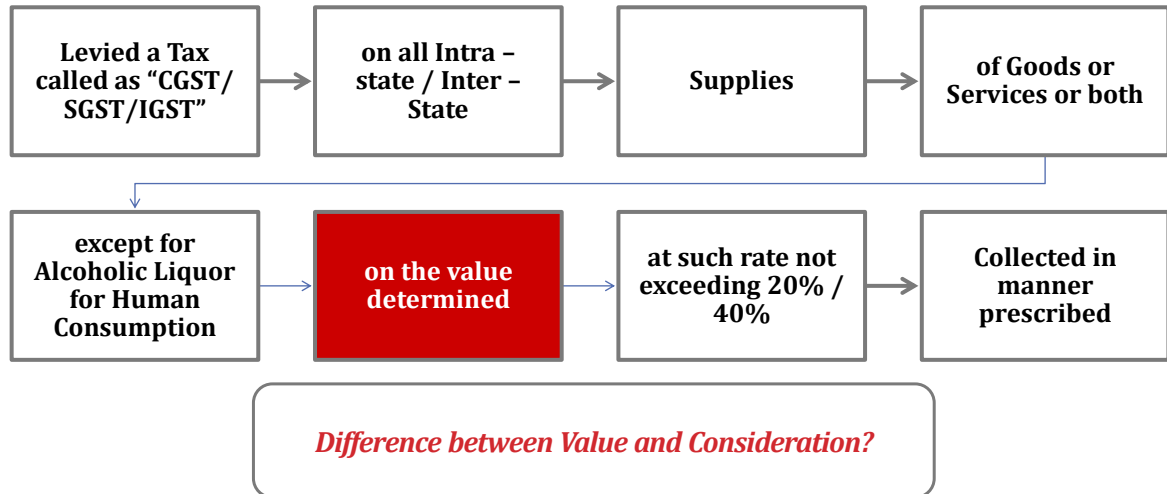
Composite Supply	Mixed Supply
“composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply	“mixed supply” means 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.
Illustration.— Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply;	Illustration.— A 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. It shall not be a mixed supply if these items are supplied separately

Certain examples of Composite supply

- GTA provides services of transportation along with loading/unloading, temporary storage
- Supply of customization software and training
- Educational institutions provide education along with hostel, mess and other facilities.
- Builder/Developer charges Development Charges, Preferential location charges

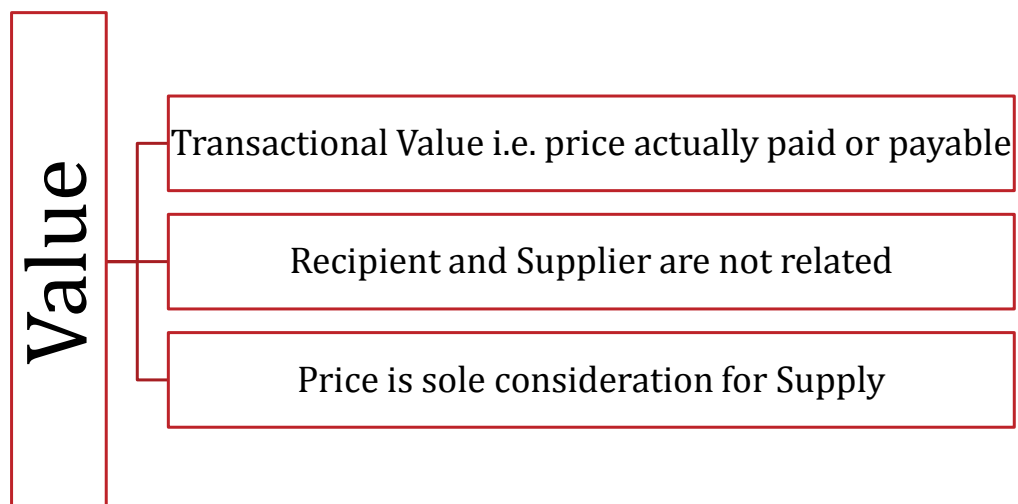
Valuation of Supply

Dissection of Charge... CGST/SGST & IGST Act



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Transaction Value of Supply



Related Persons

Persons shall be deemed to be “related persons” if —

- such persons are **officers or directors** of one another’s businesses;
- such persons are legally recognised **partners** in business;
- such persons are **employer and employee**;
- any person **directly or indirectly owns**, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
- one of them **directly or indirectly controls** the other;
- both of them are directly or indirectly **controlled by a third person**;
- together they directly or indirectly **control a third person**; or;
- they are **members of the same family**;
- persons who are associated in the business of one another in that one is the **sole agent or sole distributor or sole concessionaire**, howsoever described, of the other, shall be deemed to be related

Inclusions into the Value of Supply

Inclusion

any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, the State Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier

any **amount that the supplier is liable to pay** in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both

Inclusions into the Value of Supply

Inclusion

incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services;

interest or late fee or penalty for delayed payment of any consideration for any supply

subsidies directly linked to the price excluding subsidies provided by the Central Government and State Governments

Exclusions to the Value of Supply

Exclusion

any discount allowed before or at the time of supply provided such discount is allowed in the course of normal trade practice and has been duly recorded in the invoice

After Sale discount – provided it is known at the time of supply

Rule 27 - Value in case where consideration is not wholly in money

- **Open market value of such supply;**
- **If the open market value is not available, amount in money as is equivalent**
- **Supply of goods or services or both of like kind and quality;**
- **Rule 30 or rule 31 in that order.**

“Open market value” of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made

“supply of goods or services or both of like kind and quality” means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both

Rule 28 - Value in case where consideration in case of Related Party other than Agent

- **Open market value of such supply;**
- **Supply of goods or services or both of like kind and quality;**
- **Rule 30 or rule 31 in that order.**
- ***If recipient is entitled for full credit then invoice value deemed to be open market value***

“Open market value” of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made

“supply of goods or services or both of like kind and quality” means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both

Rule 29 - Value in case where consideration in case of transaction with Agent

- **Open market value of such supply; or**
- **Option to take 90% of value charged by recipient to his non related customer.**
- **Rule 30 or rule 31 in that order.**
- ***This can apply to related party as well if intended for resale***

“Open market value” of a supply of goods or services or both means the full value in money, excluding the integrated tax, central tax, State tax, Union territory tax and the cess payable by a person in a transaction, where the supplier and the recipient of the supply are not related and the price is the sole consideration, to obtain such supply at the same time when the supply being valued is made

“supply of goods or services or both of like kind and quality” means any other supply of goods or services or both made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and the reputation of the goods or services or both first mentioned, is the same as, or closely or substantially resembles, that supply of goods or services or both

Rule 30 and Rule 31

RULE 30. Value of supply of goods or services or both based on cost. — Where the value of a supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be **one hundred and ten percent of the cost** of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services

RULE 31. Residual method for determination of value of supply of goods or services or both. — Where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using **reasonable means consistent with the principles and the general provisions** of section 15 and the provisions of this Chapter :

Provided that in the case of **supply of services**, the supplier may opt for this rule, ignoring rule 30

Special Rules - Lottery, Betting, Gambling (Rule 31A)

Type of Transaction	Value of Supply	Reference
lottery authorised by State Governments	100/128 of the face value of ticket or of the price as notified, whichever is higher	“lottery authorised by State Governments” means a lottery which is authorised to be sold in State(s) other than the organising State also

Money Changing - Rule 32

<ul style="list-style-type: none"> ▪ Difference between the transaction rate and RBI reference rate ▪ If RBI reference rate is not known, then 1% of the INR value ▪ If conversion between 2 different currencies, then 1% of lower of two currencies converted in Indian Rupees 	Description	Value	
	Alternate Tax Amounts (Per Transaction)		
	- Upto Rs. 1,00,000	1% (Min of Rs. 250)	
	- Between Rs. 1,00,000 and Rs. 10,00,000	Rs. 1,000 + 1% of excess over 1,00,000	
	- Above Rs. 10,00,000	Rs. 5,500 + 0.1% of excess over 10,00,000 (Max of Rs. 60,000)	

Air Travel Agent and Life Insurance – Rule 32

- 5% of Basic Fare, in case of Domestic bookings
- 10% of Basic Fare, in case of International bookings

Explanation. — For the purposes of this sub-rule, the expression “basic fare” means that part of the air fare on which commission is normally paid to the air travel agent by the airlines

- Gross Premium charged to Policy Holder less amount allocated towards Investment/Savings (it should be intimated to policy holder)
- in case of single premium annuity policies other than (a), ten per cent. of single premium charged from the policy holder
- 25% of premium in First year, 12.5% in subsequent years
- Above options not available if the entire premium is towards the risk cover – Full Value

Second Hand Dealer and Voucher – Rule 32

- Dealer of Second Goods where no ITC has not been claimed
- Value shall be the difference between the sale price and the purchase price, where such value is NIL, it should be ignored
- The value of a token, or a voucher, or a coupon, or a stamp (other than postage stamp) which is redeemable against a supply of goods or services or both shall be equal to the money value of the goods or services or both redeemable against such token, voucher, coupon, or stamp.

Concept of Pure Agent – Rule 33

Obligation of Supplier	Obligation of Recipient
Act as a Pure agent and make payment to third party after authorization by third party	He should be liable to pay such amount
Payment made to third party should be separately indicated in the Invoice	
The supplies should be in addition to supplies provided by him	
Enters into agreement to act as pure agent	
Does not hold title to goods or services so procured	He should receives and uses the goods / services
Receives only actual amount incurred	

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Rate of Exchange and Value Inclusive of Tax (Rule 34 & 35)

- The rate of exchange for determination of value of taxable goods shall be the applicable rate of exchange as notified by the Board under section 14 of the Customs Act, 1962
- The rate of exchange for determination of value of taxable services shall be the applicable rate of exchange determined as per the generally accepted accounting principles
- Where the value of supply is inclusive of integrated tax or, as the case may be, central tax, State tax, Union territory tax, the tax amount shall be determined by reverse working as under:

$$\text{Tax Amount} = \text{Value Inclusive} * \text{Rate of GST} / (100 - \text{Rate of GST})$$

*Thank
you*



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