



Composite

VS

Mixed Supply

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Introduction

- Supply one of base ignition point for chargeability of GST
- Supply may of goods or services or both – Classification of supply is relevant – so as to enable the application of relevant provisions of the act enacted distinctly w.r.t goods or services
- Some supplies are classified as goods or services in Schedule II
- When there exist the combination of goods or services or both, GST law coins them either **mixed or composite supply – has been taken from the concept of bundled services under service tax regime**

Topic for Discussion

- ***Composite Supply***
- ***Mixed Supply***
- ***How to distinguish between composite and mixed supply***
- ***Different Scenarios***



COMPOSITE SUPPLY

Composite Supply – U/S 2 (30)

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;*

Composite Supply – U/S 2 (30)

Composite supply means a supply made by a taxable person to a recipient - Exhaustive definition

- a supply means **single supply** comprising of two or more supplies – Composite supply will be constituted as single supply - Supply of Air Conditioner
- Taxable Person means a person who is registered or liable to be registered under section 22 or section 24; - **Section 2(107)**
- Recipient – means (a) where consideration is payable for the supply of goods or services, the person who is liable to pay consideration

Composite Supply – U/S 2 (30)

Consisting of two or more taxable supplies of goods or services or both or any combination thereof;

- Two or more taxable supplies – *Taxable Supplies* means a supply of goods or services or both which is leviable to tax under this Act; - Section 2(108)

Does it mean that if one of supply is exempted one, then the same shall not be covered under Composite Supply?



NO

Composite Supply – U/S 2 (30)

- Exempted Supply - **“exempt supply”** means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply – **Section 2(47)**
- Taxable supplies includes exempted supplies. **Thus, a combination of exempt and taxable supply - would be considered as composite supplies – provided you satisfy other conditions .**
- **Circular No 32/06/2018- Central Tax dated 12.02.2018** - *“Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable.”* Relying on this an advance ruling has also been sought in the case of **CMC VELLORE ASSOCIATION 2020 (32) G.S.T.L. 601 (A.A.R. - GST - T.N.) dated 25.11.2019** which ruled as under:

“Medicines, drugs, stents, consumables and implants used in the course of providing healthcare services to in-patients admitted to the hospital for diagnosis, or medical treatment or procedures is a composite supply of In-Patient Healthcare Service.”

Composite Supply – U/S 2 (30)

Which are naturally bundled , and supplied in conjunction with one another in the ordinary course of business;

- ✓ **Naturally Bundled in the ordinary course of business** - Another important factor is that supplies must be naturally bundled. For studying the same we may refer to **Education Guide issued by CBEC (now CBIC) in the year 2012 as under**

Whether services are naturally bundled in the ordinary course of business would depend on upon the normal or frequent practices followed in the area of business to which goods or services relate

Factors determining whether goods or services are naturally bundled in the ordinary course of business

- ✓ Perception of the consumer or recipient – Large number of service receivers expect such bundle or package
- ✓ Majority of suppliers in a particular area of business provide similar bundle of services
- ✓ The nature of various goods or services - If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service.
- ✓ Elements are normally advertised as a single package
- ✓ Different elements aren't available separately
- ✓ Different elements are integral to one overall supply

“No straight jacket formula can be laid down to determine whether two or more supplies are naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.”

Composite Supply – U/S 2 (30)

Which are naturally bundled , and supplied in conjunction with one another in the ordinary course of business;

- ✓ Supplied **in conjunction** with one another in the ordinary course of business- “In conjunction” means “ together” - thus, in order to be a composite supply, two or more supplies should be naturally bundled and should also be provided together with one another;
- ✓ **For example; Bed and Breakfast, Inpatient Services, Restaurant Services etc.**

Composite Supply – U/S 2 (30)

One of which is a Principal supply

- ✓ *Principal Supply* - means the 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; - Section 2(90)
- ✓ **Pre dominant Element** - This calls for **dominant nature test** - In **Bharat Sanchar Nigam Ltd. v. Union of India [2006]** wherein the Hon'ble Supreme Court observed: “The test for composite contracts remains to be – did the parties have in mind or intend separate rights arising out of the sale of goods. The test for deciding whether a contract falls into one category or the other is as to what is “the substance of the contract”.

Composite Supply – U/S 2 (30)

- ✓ Supplies other than principal supply forming part of that composite supply is ancillary to such principal supply
- ✓ **Ancillary** - **means “incidental”** - other services must be incidental or ancillary to the main supply or principal supply
- ✓ **For example :** Computer training under Information and Communication Technology (‘ICT’) School Project - Composite Supply of services and hardware – As regards the nature of supply, aforesaid project, which is implemented by various States under BOOT model, envisage computer training along with supply of requisite hardware/computers - Thus supply of hardware is an inherent part of training project which makes entire supply as naturally bundled single package supply –it is clear from project that basic idea is to impart computer training with modern technology, with supply of hardware only as corollary/incidental to said training - Accordingly principal supply in this composite supply is that of service of training and not of goods -
IN RE : IL & FS EDUCATION AND TECHNOLOGY SERVICES LTD. 2019 (22) G.S.T.L. 569 (App. A.A.R. - GST)

Composite Supply

- ✓ **Whether it should involve a separate consideration or single consideration?**
- ❑ The definition of composite supply does not constitute consideration as a factor for determining whether it is a composite supply or not
- ❑ Even if both the supplies constituting composite supply are supplied for a separate consideration, the same shall be covered under definition of composite supply
- Supply contract; erection contract; and operation and maintenance contract entered for establishment of Solar PV Power Project - **Activities carried out by applicant under all 3 contracts can be treated as composite supply in terms of Section 2(30) of Central Goods and Services Tax Act, 2017**, there being both supply of goods and services which are naturally bundled as a package - **McNALLY BHARAT ENGINEERING COMPANY LIMITED 2020 (32) G.S.T.L. 296 (A.A.R. - GST - A.P.) dated 27.05.2019**

Composite Supply

- ❑ *Essential condition is that the services must be naturally bundled and supplied in conjunction with one another in the ordinary course of business - Mere fact that number of tasks entrusted to supplier through single document not to categorise it as 'composite supply'*

- **IN RE : INFOBASE SERVICES PVT. LTD. 2020 (32) G.S.T.L. 570 (A.A.R. - GST - W.B.) dated 24.12.2019**
 - *Supply to Club of printing service (SAC 9939 12) and intermediary service for selling space for advertisement on behalf of Club (SAC 9983 62) and charging a single price for bundle as project cost for printing - Two services not naturally bundled or supplied in conjunction with each other in the ordinary course of business - Supply not composite supply*

Composite Supply – Taxability – Section 8

8. The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:-

- (a) **a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply; and**
- ✓ Taxability shall be determined according to the taxability of principal supply - be it goods or services - be it exempted or taxable
 - ✓ Harmonious interpretation - Section 8 read with definition of composite supply

Composite Supply – Schedule II

The following composite supplies shall be treated as a supply of services, namely:-

- ✓ (a) **works contract** as defined in clause (119) of section 2 ;

“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.” – Definition restricted to immovable property.

Any such composite supply undertaken on goods say for example a fabrication or paint job done in automotive body shop though will not fall within the definition of term works contract per se under GST. - Whether such contracts would continue to remain composite supplies ?

YES

Composite Supply – Schedule II

For Example - Re-treading of Tyres – Retreading of tyres involves supply of rubber as well as services – Circular No 34/08/2018 dated 01.03.2018

Composite Supply - pre-dominant element is the process of re-treading which is a supply of service. Rubber used for re-treading is an ancillary supply. Which part of a composite supply is the principal supply, must be determined keeping in view the nature of the supply involved. Value may be one of the guiding factors in this determination, but not the sole factor. **The primary question that should be asked is what is the essential nature of the composite supply and which element of the supply imparts that essential nature to the composite supply. – Supply of services**

Supply of retreaded tyres, where the old tyres belong to the supplier of re-treaded tyres, is a supply of goods

Composite Supply – Schedule II

The following composite supplies shall be treated as a supply of services, namely:-

- ✓ *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. – **Restaurant Services or Outdoor Catering Services***

Composite Supply – U/S 2 (30) -Examples

- ✓ *A travel ticket from Mumbai to Delhi may include service of food being served on board, free insurance, use of airport lounge. In this case, transport of passenger, constitutes the pre-dominant element of the composite supply, and is treated as the principal supply and all other supplies are ancillary. Services like entertainment, massage, catering etc. on board while transport given to passengers is a bundle offered by majority of passage transporters most commonly in airline transport.*
- ✓ *Renting of fully furnished residential dwelling - providing right to use furniture shall be ancillary to main supply of renting of immovable property - it is to be treated as composite supply*
- ✓ *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.*



MIXED SUPPLY

Mixed Supply – U/S 2 (74)

“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**;
-
- ❑ Primary requisite is to rule out that the supply is a composite supply -- **if the transaction consists of supplies not naturally bundled in the ordinary course of business for a single price, then it would be a Mixed 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.**

Mixed Supply – Taxability – Section 8

8. *The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:-*

(a)

(b) **a mixed supply** comprising two or more supplies shall be treated as a supply of that **particular supply which attracts the highest rate of tax.**

Mixed Supply – Examples

- ✓ A house is given on rent one floor of which is to be **used as residence** and the other for **housing a printing press**. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Therefore, if a single rent deed is executed it will be treated as a service comprising entirely of such service which attracts highest liability of service tax. In this case renting for use as residence is exempted service while renting for non-residence use is chargeable to tax. Since the latter category attracts highest liability of service tax amongst the two services bundled together, the entire gamut of supplies would be treated as renting of commercial property.
- ✓ Supply of Intermediary services along with support services provided to foreign clients for a single consideration



Composite VS Mixed Supply

How to distinguish between Composite and Mixed Supply?

Description	Composite Supply	Mixed Supply
Naturally Bundled	Supplies should be naturally bundled	Supplies should not be naturally bundled
Principal Supply	One of the Goods or services supplied is clearly the main part of the supply , i.e. the Principal Supply.	None of the supplies made under Mixed Supply is Principal Supply
Individually available supplies	Ancillary services are not supplied individually	Supply of goods or services constituting mixed supply can be supplied separately

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DIFFERENT SCENARIOS

Composite Vs Mixed Supply - Printing Contracts

Circular No 11/11/2017 – GST dated 20.10.2017

To be clarified - whether the supply of books, pamphlets, brochures, envelopes printed with logos, design, name or other contents supplied by recipient would constitute Supply of goods or services?

Clarified :

- ✓ In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper, etc., printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods.

Composite Vs Mixed Supply - Printing Contracts

Circular No 11/11/2017 – GST dated 20.10.2017

Clarified :

- ✓ In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service falling under heading 9989 of the scheme of classification of services.
- ✓ **Various Rulings have been decided relying on the above stated circular -**
MACRO MEDIA DIGITAL IMAGING PVT. LTD. 2020 (32) G.S.T.L. 657 (App. A.A.R. - GST - W.B.) dated 17.12.2019 – in this case, while indeed base material, i.e., PVC sheet, ink and other physical inputs are owned by appellant, content of advertisement that is printed on base material is owned by recipient only and appellant has no right of its usage - **Accordingly it is a supply of service and not supply of goods**

Composite Vs Mixed Supply – Supply & Distribution of Electricity

Electricity transmission or distribution utility is only exempted as per entry number 25 of notification No. 12/2017- CT (R) dated 28.06.2017 – Whether various post connection or pre connection charges such as Connection Fee, Meter testing and installation fees Tariff Change Fees, etc recd shall be constituted as composite supply ??

Circular No 34/08/2018 – GST dated 01.03.2018 – It was clarified that application fee for releasing connection of electricity; Rental Charges against metering equipment; Testing fee for meters/ transformers, capacitors etc.; Labour charges from customers for shifting of meters or shifting of service lines; etc. recd shall be taxable. Exemption is only available to Transmission and Distribution of Electricity and above stated services shall not form integral part of such services.

Composite Vs Mixed Supply – Supply & Distribution of Electricity

- ✓ In the Judgment rendered by the Honorable High Court of Gujarat in the case of **M/s Torrent Power Limited of, Gujarat High Court vide Special Civil Application NO. 5343 of 2018 dated 05-04-2018 = 2018 (5) TMI 1391 - GUJARAT HIGH COURT** stated that the Government clarification dated 7.12.2010 provided that “Supply of electricity meters for hire to the consumers being an essential activity having direct and close nexus with transmission and distribution of electricity, the same is covered by the exemption for transmission and distribution of electricity, extended under the relevant notifications. Clarification with respect to incidental charges cannot be changed by the Government under the GST regime.
- ✓ Further, the department has filed special leave petition **vide Diary No(s). 24733/2019 dated 09-08-2019 = 2019 (8) TMI 779 - SC ORDER in the Honourable Supreme Court against the order passed by Honourable High court of Karnataka in the case of M/s Torrent Power Limited**

Composite Vs Mixed Supply – Supply & Distribution of Electricity

- ✓ Various Authorities have deferred the decisions pending the decision in the Hon'ble Supreme Court with respect to the said cases – In the case of IN RE: **M/S. CHAMUNDESHWARI ELECTRICITY SUPPLY CORPORATION LIMITED 2020 (4) TMI 869 - AUTHORITY FOR ADVANCE RULINGS, KARNATAKA** dated **23.04.2020** – wherein Hon'ble authority has ruled that ruling in this regard cannot be given as the matter is subjudice.
- ✓ However, various authorities, relying on the Circular dated 01.03.2018 has also ruled that charges for testing or shifting of meters, or various pre connection or post connection services along with tariff charges shall not covered under composite supply and charges other than tariff charges shall be leviable to **ST. SOUTHERN POWER DISTRIBUTION COMPANY OF AP LTD. 2020 (32) G.S.T.L. 664 (A.A.R. - GST - A.P.) DATED 08.07.2019.**
- ✓ In my opinion – it would depend on the nature of the charges received – if such charges depends on the request of the customers like shifting of meters or disconnection charges or re connection charges which are not provided to everyone - not naturally bundled in the ordinary course of business – electricity being continuous supply – not supplied in conjunction with the main supply, then the same shall be taxable – Open for Discussion

Composite Vs Mixed Supply - Education Services

CBEC Flyer NO 40 dated 10.01.2018

- ✓ Boarding schools provide service of education coupled with other services like providing dwelling units for residence and food - **Composite Supply**
- ✓ where a course in a college leads to dual qualification only one of which is recognized by law. Provision of dual qualifications is in the nature of two separate services as the curriculum and **fees for each of such qualifications are prescribed separately**. Service in respect of each qualification would, therefore, be assessed separately - **Not a composite supply**
- ✓ If an artificial bundle of service is created by clubbing two courses together under single package, only one of which leads to a qualification recognized by law - **a mixed supply**

Composite Vs Mixed Supply - Boarding & Lodging Services

IN RE : SARJ EDUCATIONAL CENTRE 2019 (27) G.S.T.L. 131 (App. A.A.R. - GST) dated 25.06.2019 - Boarding and lodging of students with allied services - Whether composite or mixed supply

Appellant is engaged in supplying food, laundry service, housekeeping service, etc. to students but in uniform manner - These services are not naturally bundled with boarding and lodging service - All these components are independent of each other and can be supplied separately - It is also evident from the submission of the Appellant that they also provide lodging service without providing food and Day Boarders do not avail laundry services. - Accordingly, these services are not composite supply but mixed supply, taxable at highest applicable rate

Composite Vs Mixed Supply - UPS with Battery

**IN RE : SWITCHING AVO ELECTRO POWER LIMITED 2018 (15) G.S.T.L. 636
(App. A.A.R. - GST) dated 25.07.2018**

UPS with Battery - whether mixed supply or composite supply - UPS supplied with external storage battery is a mixed supply as the strength of the battery, make of a battery or number of batteries is not unique to UPS but it varies as per power requirement of the customer and the storage battery has multiple uses and can be put to different uses. **Actual functionality rather than the contract was considered for deciding the issue.**

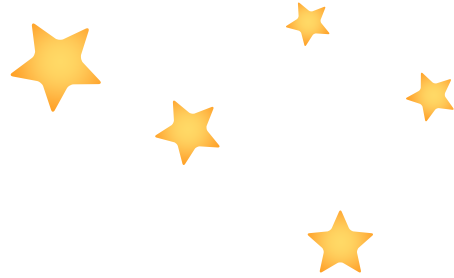
However, if the UPS are being sold with inbuilt batteries, then the same shall be considered as composite supply

Composite Vs Mixed Supply - Supply of Electricity & water along with renting

IN RE : E-SQUARE LEISURE PVT. LTD. 2019 (23) G.S.T.L. 514 (A.A.R. - GST) dated 29.12.2018

Renting of Theatre - Applicant has also installed the DG sets for generation of electricity in case of power failure. The water required is also provided through RO system. All these goes to show that these supplies are on their own account and is for effective enjoyment of activities related to the Theatre

renting of immovable property would be the main supply and provision of other utilities such as electricity, and water supply, fuel, etc., would be in the nature of ancillary supply which help in better enjoyment of the main supply that is Theatre. Principal supply or main supply basically signifies the supply of goods or services that is formed as a substantial constituent of a composite supply and any other supply being ancillary. We must accept as a matter of fact all provision of services as envisaged by the contract are interdependent and if one or more is removed the nature of supply would be affected. – Not even covered as Pure Agent - Held all the charges would be exigible to GST as the main supply



Thanks