

BASIC CONCEPTS AND IMPORTANT DEFINITIONS UNDER GST

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PRE vs POST GST

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- The concept of **supply to self** did not exist in pre-GST regime - Service provided by **one person to another** was taxable under Ch V of FA, 1994.
- GST is a **destination-based consumption tax** unlike pre-GST regime which was origination based. GST accrues to the state in which supplies are consumed.
- Under GST, supply of goods or services must be in the course or furtherance of '**business**'.
- Deemed supply - Schedule I supplies of goods or services or both **even without consideration** are leviable to GST.

Distinct Persons

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- **Distinct persons - 25(4)** A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, **in respect of each such registration**, be treated as distinct persons for the purposes of this Act.
- **(5)** Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as **establishments of distinct persons** for the purposes of this Act.
- **Schedule I - Para 2.** Supply of goods or services or both **without consideration** between related persons or **between distinct persons** as specified in section 25, when made in the course or furtherance of business

Business

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- **2(17) “business”** includes-- (a) any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit;
- (b) any activity or transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) any activity or transaction in the nature of sub-clause (a), whether or not there is volume, frequency, continuity or regularity of such transaction;
- (d) supply or acquisition of goods including capital goods and services in connection with commencement or closure of business;
- (e) 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;

Business

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- 2(17) “business” includes--
- (f) admission, for a consideration, of persons to any premises;
- (g) 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;
- (h) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club; and
- (i) any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities;

Consideration

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- 2(31) “consideration” in relation to the supply of goods or services or both includes--
 - (a) any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;
 - (b) the monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:

Cross charge – Legal Prospective

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- **Different units of a same entity** functioning in different States are treated as “distinct persons” under the GST law and supply of goods or services or both between such “distinct persons”, even if made without consideration are treated as supply, as per Schedule I of the CGST Act. **This deeming fiction was created, so that the Input Tax Credit chain is maintained in tact. Explain How - ?**
- **This purpose would have been well achieved if only supply of goods without consideration alone are considered as deemed supply, but knowingly or unknowingly, supply of services without consideration are also deemed to be supplies, which has led to challenging difficulties to the trade.**
- Major cause for future litigation

Input Service Distributor

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- **2 (61) “Input Service Distributor”** means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of **distributing** the credit of central tax, state tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both **having the same Permanent Account Number** as that of the said office;
- Applicable to supplier of services only.
- Applicable to such supplier of services having more than one registration under the same PAN.

ISD vs Cross Charge

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- **Distinction between ISD & cross-charge**
- In ISD mechanism, **only ITC on input services** which are attributable to other distinct entities are distributable : No element of service, but mere distribution.
- In a cross-charge mechanism, expenses incurred by a distinct person for the purpose of carrying out activities the outcome of which benefits other distinct persons is required to be cross charged as there is an element of service.

Conclusion

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- The manner of **distribution of ITC through ISD is very much rigid**, as ISD is required to **distribute the ITC in the same month** or that, **credit note of ITC should be given in the same proportion in which original ITC was distributed.**
- An ISD is required to file the return on **13th of the next month**, hence he will be required to undertake the reconciliation of ITC in respect of inward supplies between 11th to 13th.
- **Unless, ISD files its return, other units will not be able to get the ITC.** These complexities contained in the Act, make the concept of ISD prone to implementation challenges.

Conclusions

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- **CAN ISD REGISTRATION BE AVOIDED** - ISD is applicable only in respect of input services. Services identifiable to units should be billed to such unit/s directly by supplier of service, in such case ISD will be required to distribute only common credits like audit fees of Statutory Audit. Cost of compliance need to be compared with amount of tax credit on common services or possibility of taking credit at HO/regional office level as the case may be or charging certain amounts on monthly/quarterly basis be entering into an agreement with distinct person.
- **No consequences except for loss of credit.**

Assessment Vs Adjudication

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- **2(11) “assessment”** means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment;
- **2(4) “adjudicating authority”** means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the Central Board of Indirect Taxes and Customs, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, the National Appellate Authority for Advance Ruling, the Appellate Authority, the Appellate Tribunal and the Authority referred to in subsection (2) of section 171;

Assessment Vs Adjudication

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- Adjudication process is lengthy as compared to Assessments.
- Gives a lot of time to the Assessee to manage its affairs.
- Assessment has been brought under GST from VAT to fasten recovery proceedings.
- No. of assessee are much more whereas no. of department officials is limited.
- Principal of Natural Justice has been followed in Assessment provisions.
- Demand and Recovery provisions u/s 73 & 74 have also been taken care of.
- All the orders passed under assessment provisions are appealable before Appellate authorities and higher forums.

Appellate Authority

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- Section 2(8):- means an authority appointed or authorised to hear appeals as referred to in section 107.
- Two Appellate Authority under GST- Commissioner (Appeals) & Joint Commissioner (Appeals)

Rule 109A:

- If the adjudication order is passed by Additional Commissioner or Joint Commissioner, appeal against that order shall lie before Commissioner (Appeals).
- If adjudication order is passed by the Deputy or Assistant Commissioner or Superintendent, appeal against that order shall lie before Joint Commissioner (Appeals).

Appellate Tribunal

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- Section 2(9):- means the Goods and Services Tax Appellate Tribunal constituted under section 109.

Section 109:

- Types of GSTAT:
 - National Tribunal having Regional Benches.
 - State Tribunal having Area Benches.
- Regional Benches will hear the cases where one of the issue is related to place of supply.
- State Benches will hear the appeals involving matters other than determination of place of supply.

Reverse Charge

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- Section 2(98): means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or subsection (4) of section 5 of the IGST Act.

Concept of Revenue Neutrality:

- Commissioner of Central Excise, Pune Vs Coca-Cola India Pvt. Ltd. , 2007-TIOL-245-SC-CX
 - 6. *It is stated by the learned counsel for the assessee that the excise duty paid and the Modvat credit availed under Notification No. 5/94-C.E.(N.T.), dt. 1-3-1994 were identical and therefore consequences of payment of excise duty after availing Modvat credit was revenue neutral.*
 - 7. *In view of the stand taken by the assessee in the counter-affidavit and the statement made by the learned counsel for the assessee, the appeals are dismissed leaving the question of law open. However, there shall be no order as to costs.*
- Star Industries Vs Commissioner of Customs, (Imports), Raigad- 2015(324)ELT656(SC).

Reverse Charge

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What If supplier has paid the tax?

- If the supplier has paid the tax inadvertently, then recipient is not liable to pay tax.
- Since, the Government has received the tax, there is no revenue loss.
- Tax cannot be levied twice on the same transaction.
- **Lilason Breveries Ltd. vs CCE, BHOPAL [2009 (9) TMI 275 - CESTAT, NEW DELHI]**
- Extended period cannot be invoked.
- Penalties cannot be levied.

Loaning vs Barter vs Exchange

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- **Barter** means exchange of (goods or services) for other goods or services without using money.
- **Exchange** means an act of giving one thing and receiving another (especially of the same kind) in return. Exchange may or may not involve money.
- Barter and Exchange both are specifically covered under the scope of '**Supply**'.
- **Loan arrangements** involving provision of goods on loan basis for a temporary period without any consideration and repayment of such loan by way of return of goods after a certain period, can be distinguished from 'Barter' and 'Exchange'.

Composite Supply vs Mixed Supply

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- (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;
- **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.
- (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;
- **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.*
- (90) “**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;

Composite Supply vs Mixed Supply

The CBEC laid down the parameters on which the services can be adjudged as the composite supplies:

- **The perception of the consumer or the service receiver** - If large number of service receivers of such bundle of services reasonably expect such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.
- **Majority of service providers in a particular area of business provide similar bundle of services.** For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.
- **The nature of the various services in a bundle** of services will also help in determining whether the services are bundled in the ordinary course of business. 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. For example, service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

Aggregate Turnover

- (6) “**aggregate turnover**” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;
- (47) “**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
- (78) “**non-taxable supply**” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;

Goods vs Services

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- (52) “goods” means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;
- (102) “services” 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;

