# MEANING OF SUPPLY under GST LAW – Is there any activity or thing on the earth which is not covered in GST

Though the GST is a tax on Goods and Services in replacement of various Central and State Taxes but unlike the law being replaced, in GST the incidence of tax is not on Manufacture or removal or sales or works contract or provision of service or entry of goods in a territory etc. instead tax incidence of tax is on Supply of Goods and Services and further don't be surprised that your understanding of the terms Goods, services, consideration and even meaning of the business you have learnt is no more valid now.

You need to forget what you have learnt and understood so far, wash off memory of most of, if not all, legal pronouncements by various Courts in India or in other countries which were often referred as an assistance to define terms used but not defined in various taxing statues. Unless you set your mind to a "*kora Kagaz*" *,* believe me it will not be possible to tune yourself with GST Law.

Though on face of it, it may look that efforts are made to draft the law to take care of the fact that litigations are avoided but it seems to me to be wrong as very interestingly you shall notice that almost all definitions are assigned an inclusive definition thus increasing the scope of the term far beyond the words written; this will, in my opinion shall open the flood gates for litigations.

As mentioned above, since all of us, before we start to read and understand GST, are required to unlearn everything so far learnt to practice Excise Law or VAT/CST law or Service tax law or law of Luxury Tax or entry tax etc.

Even if I said that we should unlearn the previous laws completely but still the basics of a taxing statute continues as it is, that:-

1. the tax is or is not on something which may be an article or a service or a transaction or an activity etc.,
2. the tax becomes chargeable on happening or not happening of an event or tax is not chargeable on happening or not happening of an event,
3. the tax is charged on fulfilment or non-fulfilment of certain condition/s
4. the tax to be levied on value of, in this case, Goods and/or services
5. there is somebody e.g. a person who is charged to tax or made responsible for collection and/or payment

Now, let us understand GST in the light of above that GST is charged on Goods and Services, charged at the time of supply of Goods and Service if supply is for a consideration and also in the course or in furtherance of business by a person.

The inclusive definitions of the terms Goods, Services, Supply, Consideration, Business and person, read in the light of 1. the meaning of the words which are not defined in the GST law, 2. deemed or enhanced meaning of the terms and 3. exceptions provided, covers every activity on the earth within the scope of GST except the natural activities and the activities declared in negative list i.e. Schedules III and IV. You will be astonished to note that activity like birthday gift to your daughter may be a Supply of Goods and/or service and the consideration for the same could be her hug or just her sweet love filled words "thank you daddy" / "thank you Mumma". Let me tell you that not only whatever activity we can think but also whatever we could not imagine may also be covered under the term "Supply of Goods and/or Services for consideration in the course or in furtherance of business" e.g. receiving dividend from the Company is a consideration or activity in course of business or hold securities of Company/ Companies. There are some exception declaring an activity, even without consideration with related person/s or non-related person/s, a Supply of Goods and/or services (sECTION 3 (1) (b), Schedule I and Schedule II) or declaring a Supply of Goods and/or services to be considered neither a Supply of Goods nor a Supply of services (Schedule III & Schedule IV). There are certain Supplies consisting of Goods and services both but GST law by Schedule II provides the same to be considered as Supply of Goods or Supply of Service e.g. Works Contracts are to be treated as Supply of service and not Supply of Goods.

Since, GST is charged on Goods and Services at the time of supply of Goods and Services where supply of Goods and/or Services is for a consideration and also in the course or in furtherance of business by a person, we should first start by understanding the meaning of important terms and words used viz. Goods, Services, Consideration, business, "in course of or furtherance of business", related person etc. before we attempt to understand the scope of Supply.

## A. Meaning of the terms "Goods" and "Services"

*Section 2(49) defines "**goods**" to mean 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;*

*And*

*Section 2(92) says **"services"** means anything other than goods;*

*Explanation 1.- Services include transactions in money but does not include money and securities;*
*Explanation 2.- Services does not include transaction in money other than an activity 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.*

- "Goods" covers all movable properties and moveable property may be tangible e.g. car, pen, fan etc. or intangible e.g. software, it could be corporeal or incorporeal e.g. copy-right.
  Just a food for thought – Whether an advice on a piece of paper by a Chartered Account in the matter of GST or a certificate issued for export turnover is to be considered a supply of Goods or a Supply of Services.
- "Services" meaning anything other than goods; in this anything is not indicative of "thing" which are physical and touchable it could be a thought or word of advise or and act, a play or a game or a competition. In this definition "anything" covers everything and leave nothing except the things which are "Goods" as defined u/s. 2 (49) i.e. every kind of movable property and 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; it also excludes money or securities. By adding the two explanation to the definition of the term Service, only the transactions in money 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 are includes in the definition of Services. Though there in no explanation in this regard but transaction in security for some extra consideration shall also be treated, in my opinion, as supply of Goods and/or supply of services.

- Meaning thereby all type of items and things whether they are agriculture produce, current or fixed assets, moveable or immovable assets, landed or not attached to the land, tangible or intangible, corporeal or incorporeal etc. are covered either in the definition of Goods or Services,
- Valid Currency notes and coins whether Indian or foreign are neither covered under "Goods" nor under "Services"
  The activity where a separate consideration is charged for transaction in money for use, or conversion of denominations or exchange of currency of a country to currency of another country or remittance/transfer of money etc. shall be covered under "supply" e.g.
    - An old 100 rupees which is still a legal tender not is sold for Rs. 500,
    - Commission charged for exchange of worn out notes
    - charges for money transfer from one account to another, purchase of DD or Pay order
    - charges for cash withdrawal
    - Charges for conversion of USD to INR or vice versa
- Interest for late payment of money given on loan
- Securities e.g. shares, warrants, debentures, bond, CP etc. and other securities covered under sub-section (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956) are neither covered under "Goods" nor under "Services"
- The definition covers all kind of activities e.g. playing a game or participation in an event, attending a marriage, admiring somebody or something or dating, hugging, social service, attending/ looking after your parents, cooking for husband, sending your wards for education etc.; whether these activities are qualified to be "supply" or not or to be qualified to be in the course or in furtherance of business or not and whether taxable or not to be analysed in subsequent paragraphs.

## B. Meaning of "Consideration"

*2(28) defines the term consideration as "**consideration**" in relation to the supply of goods or services 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, 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, whether or not voluntary, in respect of, in response to, or for the inducement of, the supply of goods or services, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government:*
> *PROVIDED that a deposit, whether refundable or not, given in respect of the supply of goods or services shall not be considered as payment made for the supply unless the supplier applies the deposit as consideration for the supply;*

According to the above the consideration inter alia other forms may be in money or in the form convertible or reducible in money terms [e.g. food for work, utensils in exchange of old clothes, replacement of old & defective item with new item] or even neither in form of money nor reducible in money [e.g. words or thanks, tears, words of sorrow, postures, a fight, abuses, hugs, pleasure, an experience etc. Such subsidies e.g. are Fertiliser subsidy and subsidy on Petrol or diesel which are paid/ given to the respective suppliers/manufacturers unlike Subsidy on LPG which is given/paid directly to the recipient of Goods and/or Services.

Though all subsidies given by either Central Govt. or State Govt., not by a local authority, are specifically excluded to be a consideration as per section 2(28) but subsidy given to a supplier of Goods and/or Services by either Central Govt. or State Govt. is includible in value as per section 15 of GST law.

The consideration need not necessary be against a contractual obligation but it could be voluntary e.g. money given to a street performer, money given to a singer in a train, donation to a temple etc., allowing a saint to stay in house is a consideration for the discourse of the saint.

The consideration includes the payment made by a person other than the recipient of Goods and/or Services e.g. coaching to a student is paid by his parents or supplies during a social event paid by a sponsor of the event, insurance claim received on loss of Goods or property, your medical bills paid by your employer or insurance Company

The term "consideration" excludes the from its purview a deposit received whether or not refundable e.g. security deposit received for renting a house, earnest money received against a tender, assurance deposit in form or Bank Guarantee or FD or cash given to a customer. The advance payment against supply of goods or services may be given as deposit with supplier to assure him that the supplies shall be taken by the customer and such deposits shall not be treated a consideration for Supply of Goods and/or Services until the amount is appropriated by the Suppliers towards consideration receivable against Supply of Goods and/or Services.

It is to be noted that the moment supplier of Goods and/or Services applies or appropriates the deposit against the consideration of supply of Goods and/or services, it shall become a consideration for such supply or Goods and/or Services e.g. appropriating amount of rent deposit against unpaid rent, appropriating earnest money against failure to supply etc.

It will be interesting to analyse whether Duty drawback is a subsidy or the Duty credit scrips allowed for export could be treated as subsidy, if it is a Subsidy then it has to be included in value of, u/s. 15, Supply of Goods and/or services as it is received by the supplier of Goods and/or services; even if it is not to be treated as Subsidy it has to be included in value of, u/s. 15, Supply of Goods and/or services as it is a consideration received by the supplier of Goods and/or service from a person other than the recipient of Supply of Goods and/or Services.

Similarly, the cases of duty benefit against EPCG license granted against exports made or advance license issued for duty free import of inputs against assurance of export need to be examined.

## C. Meaning of "Business", "in course of Business" and "in furtherance of Business"

*Section 2 (17) defines the term business as "**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 (a) above;*
*(c) any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;*
*(d) supply or acquisition of goods including capital assets 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, as the case may be;*
*(f) admission, for a consideration, of persons to any premises; and*
*(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) services provided by a race club by way of totalisator or a licence to book maker in such club;*

*Explanation.- Any activity or transaction undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities shall be deemed to be business.*

Accordingly, the "business" includes any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity. I will not waste your time explaining separately each term used in this i.e. the meaning of trade, commerce, manufacture, profession, vocation, adventure or wager. In short, I can tell one thing that since, it is an inclusive definition and these words with the phrase "any similar activities" covers all type of work, actions and activities which is/are carried for money or not for money, regularly or only once or once in a while, carried continuously or not shall be treated as business e.g. an adventurous expedition, protest rally, Dharana, addressing a conference, counseling your child, yourown marriage etc. It also gives an understanding that work even it is illegal or immoral or both shall also be covered within the meaning of "Business"

Few other important points to be noted from the above definition of business:-

- It is not necessary for an activity to qualify as business to be an activity for pecuniary benefit or to say for monetary or money equivalent benefit or for benefit reducible in money term. Non-monetary services, non-profit services, a CSR activity or a Charity shall also be within the meaning of Business e.g. "Kar seva" in Gurdwara, running for a social cause, taking part in a national games event, raising a kid.
- Volume, frequency, continuity or regularity also not necessary for a transaction or activity to be treated as Business
- supply or acquisition of goods including capital assets and services in connection with commencement or closure of business e.g. introduction of capital in partnership or distribution of assets on dissolution of a partnership or conversion of proprietorship to partnership or e.g.ctivities shall also to construed to be a business
- provision of facilities for members by a club or association or society or a group or a kitty etc. whether for subscription or consideration shall be a business (please bear in mind the meaning of consideration already learnt by us which need not be in money or reducible in money)
- Admission for a consideration to any premises e.g. a mall, library or monument or temple or an event or venue of event or your house or business premises shall be a business (please bear in mind the meaning of consideration already learnt by us which need not be in money or reducible in money)

## D. Meaning of "related person"

The term "person" includes an individual, an Artificial person, a legal person or a group consisting of individual/s and/or artificial person/s and/or legal person/s in any form whether incorporated or not (e.g. partnership, LLP, Company, AOP, BOI, Trust, Board, Society, co-operative society, HUF, Corporation, Govt., Govt. body/authority or local body/authority, Commissions, Committee etc.)

For the purpose of understanding meaning of "Supply" it is not necessary to understand meaning of person but is very much necessary to understand the meaning of the term "related person" as some of the activities even without consideration with related persons are to be treated as a supply

Section 2 (84) defines that the person shall be deemed to be a related person only

* if the persons are officers or directors of one another's business, or

*To note that director includes independent director. It is worth analysing a case where Mr. X and Y are officers of a Company "A Ltd." and are also independent directors in another Company "B Ltd."*

* if the persons are partners in the business, or

* if the persons are employer and employee, or
* if the persons directly or indirectly own, hold or control minimum 25% of the voting right of both of them, or
* if the person directly or indirectly controls the another person or is controlled by the another person, or
* if both the persons directly or indirectly control the third person or they are controlled by the third person, or
* if a person is working as a sole, distributor or a sole agent or a sole concessionaire or in similar capacity then also they shall be deemed to be related persons
* if the persons are the member of the same family; the word family is not defined in the GST Law. The ordinary meaning which we use "as consisting of father, mother, sons, daughters, sisters, brothers and all such blood relations and other relations arising from lawful marriages in the family".

## E. Meaning of Supply

Section 2(95) read with section 3 and Schedule I to IV specify

- What is supply of Goods and Services
- What is not supply of Goods and Services
- What are the transactions even without consideration to be treated as supply of Goods and/or services
- What are the transaction even not in course of business or furtherance of business to be treated as supply of Goods and/or services
- What transactions are to be treated as supply of Goods only even if they are capable of being treated as supply of Services or even if they include supply of Service or vice-versa

Meaning of Supply :

section 3 (1) gives an inclusive open ended definition and as per sub clause (a) it includes all forms of supply of goods and/or services such as sale, transfer, barter, exchange, license, rental, lease or disposal; the word disposal and the opening of section 3 (1) that Supply includes has a very wide scope and it includes intentional or nonintentional destruction, evaporation, loss, loss in transit or in storage or during production or process or conversion, theft etc. and it shall also mean, the activities resulting in to transfer whether with or without transfer of ownership, right or permission to enter, represent, use, hold, touch, feel or see with or without giving possession shall be Supply of Goods &/or services. Activities to perform or do anything or abstaining to perform or do something shall also be Supply of Goods &/or services.

Section 3(1) (a) also specifies that to treat a supply as supply, it needs to satisfy both of the following conditions:-

1. That the supply is for a consideration, and
2. That the supply is in the course or furtherance of business

   We have already understood that the consideration is a payment which is not necessarily be in form of money or reducible in money term but it may be anything and in any form in return of a Supply of Goods and/or Services

- Quantity discount received by a recipient (buyer) from supplier is a consideration to the recipient (buyer) for his activity of ordering and taking supply (purchase) of quantity more than stipulated quantity, in this case purchase of quantity more than "x" is a Supply of Service for consideration and in course of business
- Cash discount received by a recipient (buyer) of Goods and/or Services is a consideration certainly for the activity of early payment or payment within the stipulated time by such recipient (buyer), in this making payment within the stipulated time is a Supply of Service for consideration and in course of business

- Subscribing securities for a discount is an activity amounting to supply of service for a consideration and in course of business
- The interest is a consideration received by a person on the money deposited with or loan or advances given to another person. As per above definitions of service, consideration and business the activity of giving deposit, loans or advances whether secured or unsecured are not excluded and therefore the activity will be covered under "supply" and the supply for consideration and in course or furtherance of business

*Note:*

1. *certain supply of Goods and/or services are not to be considered Supply or Goods &/or services are per Annexure III and IV of the GST law even if as per above they are "supply". These are discussed later in this article.*

2. *There are some exceptions and according to which some supplies without consideration shall be treated as a Supply in terms of Schedule I or supply not in course of or in furtherance of business to be considered as supply as per section 3 (2) and as per Schedule. There are supplies for consideration and in course or in furtherance of business not to be considered as supply in terms of Schedule III and Schedule IV. These exceptions are discussed separately in this article.*

## F. Exceptions

*Supply of Goods &/or Services to be considered as Supply whether or not in course or furtherance of business but made or agreed to be made for consideration :-*

- As per section 3 (1) (b) importation of services, for a consideration whether or not in the course or furtherance of business will also be a "Supply", and

  Clause (b) deals with importation of services and according this clause the import of any service shall be treated as supply even if it is not in course of or in furtherance of business but it should be for a consideration; e.g.
  - Service of a foreign law firm taken by a person in India whether he is in business or not
  - Service of an architect or any other professional received by a person from a foreign consultant for interiors of his residence
- *As per Schedule II clause **4 (c ) following Transfer of business assets shall be deemed to be in course/furtherance of business and thus will be a "supply" :***

  *Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—*
  *(i) the business is transferred as a going concern to another person; or*
  *(ii) the business is carried on by a personal representative who is deemed to be a taxable person.*

*Supply of Goods &/or Services without consideration shall be treated a Supply: -*

- As per section 3 (1) (c) a supply specified in Schedule I, made or agreed to be made without a consideration shall be included in "supply".

Clause (c) read with Schedule I specifies certain cases which are to be treated as Supply even if made or agreed to be made without a consideration:-

  - In case of Transfer or disposal of business permanently the transfer of disposal of assets on which input credit was taken shall be treated as supply even if it is without a consideration e.g. transfer of business by inheritance
  - Supply of goods or services between related persons in course of or in furtherance of business e.g. free accommodation or transport or meal to employees by an employer or parents allowing their child to live with them in a house owned by them and such child taking care of the food, medical and other needs of parents
  - Supply of goods or service, in course of or in furtherance of business, between the distinct person as specified in section 10 i.e. between the branches or business of the same person registered in different States or different business verticals of the

same person having distinct registration. It is worth noting that branches or establishments or business verticals of a person in the same State having same registration number shall not be a distinct persons and therefore transaction between/amongst them shall not be Supply of Goods &/or Services; in present Central Excise Act clearance or removal of goods from one factory to another of the same person can take place only on payment of appropriate excise duty whereas under GST law such Supply of Goods and/or service shall not be a supply and therefore not liable to CGST/SGST.

- Supply of goods or services by a principal to the agents or to the person who will in turn supply the goods or services on his behalf
- Supply of goods or services by the agents or to his principal
- Importation of services by a taxable person from a related person or from any of his other
  establishments outside India, in the course or furtherance of business (the importation of services from other or importation of not in furtherance of business from a related person or from any of his establishments outside India shall be a supply as per section 3(1) (b))

*As per Schedule II clause **4. Following Transfer of business assets even without consideration shall be supply of Goods***
*(a) Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.*
*(b) Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services.*

- GST Law, like service tax, also has a negative list of activities and transactions which, though are supplies, are to be treated neither a supply of Goods nor a supply of services. In Schedule III and Schedule IV of GST Law such activities and transactions are listed, which are as under :

  - *Services by an employee to the employer in the course of or in relation to his employment (it is worth noting that the Supply of goods and/or services even without consideration shall be treated as a supply in view of the foregoing definitions and explanations.*
  - *Services by any Court or Tribunal established under any law for the time being in force.*
  - *The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;*
  - *The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity*
  - *The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.*
  - *Services by a foreign diplomatic mission located in India.*
  - *Services of funeral, burial, crematorium or mortuary including transportation of the deceased.*
  - ***FOLLOWING ACTIVITIES OR TRANSACTIONS UNDERTAKEN BY THE CENTRAL GOVERNMENT, A STATE GOVERNMENT OR ANY LOCAL AUTHORITY WHICH SHALL BE TREATED NEITHER AS A SUPPLY OF GOODS NOR A SUPPLY OF SERVICES***
    - *Services provided by a Government or local authority to another Government or local authority excluding the following services:*

*(i) services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services;*
*(ii) services in relation to an aircraft or a vessel , inside or outside the precincts of a port or an aircraft; or*
*(iii) transport of goods or passengers.*

- *Services provided by a Government or local authority to individuals in discharge of its statutory powers or functions such as-*
  *(i) issuance of passport, visa, driving licence, birth certificate or death certificate; and*
  *(ii) assignment of right to use natural resources to an individual farmer for the purpose of agriculture.*
- *Services provided by a Government or local authority or a governmental authority by way of:*
  *(i) any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution;*
  *(ii) any activity in relation to any function entrusted to a Panchayat under article 243 G of the Constitution;*
  *(iii) health care; and*
  *(iv) education.*
- *Services provided by Government towards-*
  *(i) diplomatic or consular activities;*
  *(ii) citizenship, naturalization and aliens;*
  *(iii) admission into , and emigration and expulsion from India;*
  *(iv) currency , coinage and legal tender , foreign exchange;*
  *(v) trade and commerce with foreign countries , import and export across customs frontiers , interstate trade and commerce; or*
  *(vi) maintenance of public order.*
- *Any services provided by a Government or a local authority in the course of discharging any liability on account of any tax levied by such Government or authority.*
- *Services provided by a Government or a local authority by way of -*
  *(i) tolerating non-performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Government or the local authority under such contract; or*
  *(ii) assignment of right to use any natural resource where such right to use was assigned by the Government or the local authority before the 1st April, 2016:*
  *PROVIDED that the exemption shall apply only to service tax payable on one time charge payable, in full upfront or in installments, for assignment of right to use such natural resource:*
- *Services provided by Government by way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import or export of cargo on payment of Merchant Overtime Charges (MOT).*
- *Services provided by Government or a local authority by way of-*
  *(i) registration required under any law for the time being in force; or*
  *(ii) testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force.*

***Definitions:***

*1. Governmental Authority means a board, or an authority or any other body established with 90% or more participation by way of equity or control by Government and set up by an Act of the Parliament or a State Legislature to carry out any function entrusted to a municipality under article 243W or a Panchayat under article 243G of the Constitution.*
*2. Health care services means any service by way of diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India and includes services by way of transportation of the*

*patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.*
*3. Education services means services by way of—*
*i) pre-school education and education up to higher secondary school or equivalent;*
*ii) education as a part of a curriculum for obtaining a qualification recognised by any law for the time being in force; or*
*iii) education as a part of an approved vocational education course.*

There are certain supply of services where transfer of property is an integral part or vice versa for supply of Goods where service in an integral part and they were charged to tax by State as well by Centre. The Section 3 (2) of GST Law read with Schedule II puts an end to all such matters by classifying them either as supply of service or as supply of Goods

As per Section 3 (2) read with Schedule II, in respect of matters mentioned therein, shall apply for determining what is, or is to be treated as a supply of goods or a supply of services. Accordingly:

- Following shall be Supply of Goods:-
  - Any transfer of the title in goods is a supply of goods.
  - 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, is a supply of goods e.g. Hire purchase contracts where assets are transferred at the end of the tenure on payment of hire purchase charges for the agreed duration
  - Where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person e.g. destruction of food articles found not conforming to quality standards or fit for human consumption, destruction of medicine or any item after the date of expiry, destruction of Garments &/or other items manufactured in excess of order quantity or not conforming to the quality as per order of a buyer and as per agreement the items cannot be sold in the market or disposed of otherwise than the destruction. It is worth analysing a case of mutilation of such articles before disposal as scrap with a view that whether the activity of mutilation is an acitivity amounting to Supply or not.
  - Where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless—
    (i) the business is transferred as a going concern to another person; or
    (ii) the business is carried on by a personal representative who is deemed to be a taxable person.
  - supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

- Following shall be Supply of Services
  - Any transfer of goods or of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services e.g. transfer of undivided share in land to the flat owner/s.
  - Any lease, tenancy, easement, licence to occupy land is a supply of services
  - Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.
  - Any treatment or process which is being applied to another person's goods is a supply of services.
  - renting of immovable property
  - Where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of

such goods is a supply of services e.g. allowing partner/s to use any property of the firm for personal purpose, allowing free travel to employees by airlines or free stay/food by a hotel to its employees

- 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 the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or before its first occupation, whichever is earlier (these cases, any way, are covered by the definition of "Services"

  *Explanation*.- For the purposes of this clause-

  (1) the expression "competent authority" means the Government or any authority authorized to issue completion certificate under any law for the time being in force and in case of non-requirement of such certificate from such authority, from any of the following, namely:–

  (i) an architect registered with the Council of Architecture constituted under the Architects Act, 1972; or

  (ii) a chartered engineer registered with the Institution of Engineers (India); or

  (iii) a licensed surveyor of the respective local body of the city or town or village or development or planning authority;

  (2) the expression "construction" includes additions, alterations, replacements or remodeling of any existing civil structure;

- temporary transfer or permitting the use or enjoyment of any intellectual property right;
- development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
- agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;
- works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- 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; and
- 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.

**Conclusion :-**

It is clear from the foregoing that everything or anything which you can touch or not touch, feel or not feel, see or cannot see, sense or beyond sensing, existing or non-existing are either Goods or Services except Money or Securities and any activity with or with relation to them a Supply except for the supplies mentioned in Negative-List i.e. Schedule III and Schedule IV of course the activity has to be not only for a consideration and also that the activity should be in course of business or furtherance of business except some activities mentioned in section 3(1)(b) or section 3 (1) (c) read with Schedule I or some activities mentioned in clause 4 of Schedule II, which shall be treated a Supply even if they are without a consideration and/or not in course or furtherance of business. It is also clear whatever is done in return of an activity is a payment of consideration and we also understood that any type of work or action or non-action or activity, effort, permission shall be termed as business without any exception whether carried on for money or without monetary benefit.

It will certainly not be the intention of the Law makers to tax a kiss of daughter or value of gifts received in marriage of oneself or dividend receipt etc. and therefore, the Law makers have to either amend the definition or scope of the words suitably or should draft the exemption clause or notification very carefully.