2017

Supply of Goods and Service in GST law

CA. Sanjeev Singhal
Sanjeev Kavish and Associates, Chartered Accountants
1/10/2017

Supply of Goods and Services in GST Law

Supply is wider term used in GST law as the GST is based on Supply only. Now the question arises what is supply. Supply is transfer of goods and services on which GST will be imposed. Supply has been mainly defined in Section 3 of GST law subject to Schedule-I to IV. Therefore to understand supply of goods and services it is more important to under stand the schedule I to IV also whether particular supply is goods or service and there are situations supply shall not constitute as supply and out of the ambit of GST.

Supply has been defined in Section 2[95] as follows;

“Supply” shall have the meaning as assigned to it in section 3.

Scope of Supply [Section 3]

1. Supply includes

A] all forms of supply and /or services such as

- ✓ Sale
- ✓ Transfer
- ✓ Barter
- ✓ Exchange
- ✓ License
- ✓ Rental
- ✓ Lease or disposal

Made or agreed to be made for consideration by person in the course or furtherance of business.

B] importation of services for consideration whether or not in the course of business or furtherance of business.

C] supply specified in schedule –I without consideration.

2. Schedule –II will apply for matter whether supply shall be treated as goods or service.

3. despite anything contained in point -1 , activities or transaction mentioned in the schedule-III and IV shall not be treated as supply of goods or services.

4. Composite and mixed supply

- ✓ Composite supply having two or more supplies, one of which is principal supply shall be treated as supply of principal supply.
- ✓ Mixed supply having two or more supplies shall be treated as supply of that particular supply which will attract the highest rate of tax.

Following shall be treated as supply even though it is without consideration- [Schedule-I]

1. Permanent transfer of business assets on which ITC has been availed
2. supply between related and distinct person as per section 10 in the course or furtherance of business
3. supply of goods from principal to agent on behalf of the principal or from agent to principal where agent receive the goods on behalf of principal .
4. importation of service by taxable person from related person or his establishment outside India in the course or furtherance of business.

Supply shall be treated as supply of Goods or Services [Schedule-II]

1. Transfer

    ✓ Transfer of title in goods is supply of goods
    ✓ Transfer of goods or right in goods or of undivided share in goods with out the transfer of title is supply of service
    ✓ Transfer of title in goods under agreement that the property will pass at future date on payment of full consideration shall be supply of goods

2. Land and Building

    ✓ Lease , tenancy, easement, license to occupy land is supply of services
    ✓ Lease, letting out of building whether industrial, commercial or residential complex for business or commerce is supply of services.

3. Treatment of Process

    ✓ Any treatment or process of other person goods is supply of services.

4. Transfer of Business Assets

    ✓ Goods forming part of business assets transferred and assets will no longer form part of those assets, with or without consideration, such transfer is supply of goods.
    ✓ Goods held for business has been used for private or otherwise or given to any person for use with or without consideration shall be treated as services.
    ✓ Where any goods forming part of the assets of business supplied in the course of or furtherance of his business shall be treated as supply of goods except the following;

        - Business is transferred as going concern to another person.
        - Business is carried by representative who is deemed as taxable person.

5. Following shall be treated as supply of services

    ✓ Renting of immovable property
    ✓ Construction of complex, building , civil structure or part thereof , including building complex or building intended for sale except where the entire consideration is received after issuance of completion certificate from the competent authority or before its occupation which ever is earlier.

- Competent authority means Government or any authority authorized to issue completion certificate namely architect registered under Architect Act , Chartered Engineer registered with Institute of Engineers, License Surveyor of the local body of city or town.
- Construction include here addition, alteration, replacement, remodeling of any existing civil structure

✓ Temporary transfer or permitting the use of or enjoyment of any intellectual property right.

✓ Development, design, programming, customization, adoption, upgradation, enhancement, implementation of information technology software.

✓ Refrain from act, tolerate an act or situation or to do an act.

✓ Work contract including transfer of property in goods involve in the execution of work contract.

✓ Transfer of right to use any goods for any purpose for specified period or not, for cash, deferred payment or other valuable consideration.

✓ Supply by way of or as part of service or in 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 of services is for cash, deferred payment or other valuable consideration.

6. Following shall be treated as supply of Goods

✓ Supply of goods by unincorporated association or body of person to member for cash, deferred payment or other valuable consideration.

Activities or transaction which shall treated neither as supply of goods nor supply of services [Schedule –III]

1. Service by employee to employer

2. Service by court to tribunal

3. Service performed by MLA, MP, Member of Panchayats, Municipality, and local authority.

4. A person who hold any post in pursuance of constitution in the capacity.

5. Duties performed by person as chairperson or member or director in body established by Central or State Government or local authority.

6. Service by foreign diplomatic mission located in India.

7. Service of funeral, burial, crematorium or mortuary including transportation of the deceased.

Activities or transaction undertaken by Central Government , State Government or any Local Authority which shall be treated as neither supply of goods nor supply of services………… **[Schedule –IV]**

1. Services provided by Government or Local authority to another Govt. or Local Authority excluding the following.

    - ✓ Service by department of post by way of speed post, express parcel post, life insurance and agency services.
    - ✓ Service in relation to aircraft or vessel
    - ✓ Transport of goods or passenger

2. Service provided by Govt. or Local authority to individual for discharge of its statutory power or function

    - ✓ Issuance of passport , Visa, driving license, birth certificate or death certificate
    - ✓ Assignment of right to use natural resources to individual farmer for the purpose of agriculture

3. Services provided by Government or Local authority or Govt. Authority by way of

    - ✓ Activity related to function provided to Municipality
    - ✓ Activity related to function provided to Panchayat
    - ✓ Health care and education

4. Service provided by Govt. towards

    - ✓ Diplomatic or consular activities
    - ✓ Citizen, naturalization or aliens
    - ✓ Admission into, immigration and expulsion from India
    - ✓ Currency, coinage, legal tender, foreign exchange
    - ✓ Trade and foreign countries , import and export across custom frontiers, interstate trade and commerce
    - ✓ Maintenance of public order

5. Service provided by Govt. or Local Authority for discharging any liability on for tax imposed by such Govt. or authority

6. Service provided by Govt. or Local Authority by way of

    - ✓ Fines and liquidated damage payable to Govt. or Local authority for non performance of any contract
    - ✓ Assignment of right to use the natural resources where such right to use assigned before 1.4.2016

    Provided that exemption shall applicable to service tax payable on one time charges upfront or in installment for assignment of right to use such resources.

7. Service by Govt. on deputing officer after office hour or on holidays for inspection and container stuffing or such other duties for import and export of cargo on payment of Merchant Overtime Charges.

8. Service provided by Govt. or Local Authority by way of

- ✓ Registration under any law
- ✓ Testing , calibration, safety check or certificate for protection or safety of worker , consumer or public at large, required under any law

Disclaimer :

The contents of this article are solely for information and knowledge and does not constitute any professional advice or recommendation. Author does not accept any liability for any loss or damage of any kind arising out of this information set out in the article and any action taken based thereon.

About the Author:

Author is practicing chartered accountant in Gurgaon and having specialization in Service Tax and Haryana VAT. He can be reached at sanjeev.singhal@skaca.in WWW. skaca.in