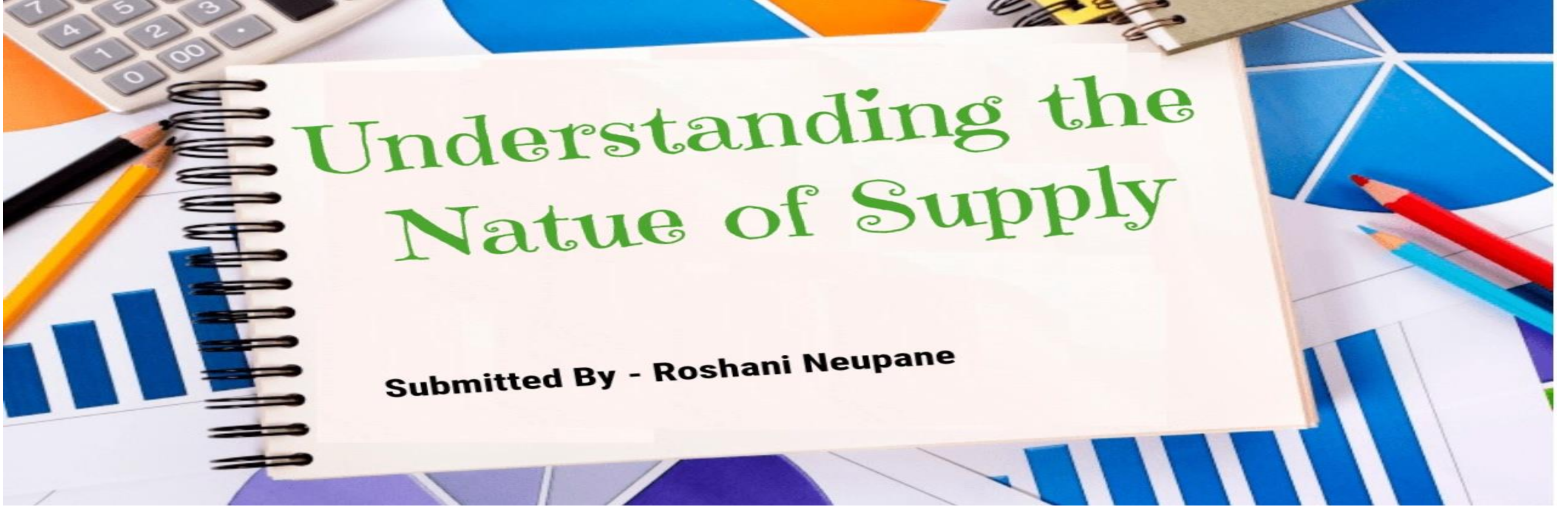

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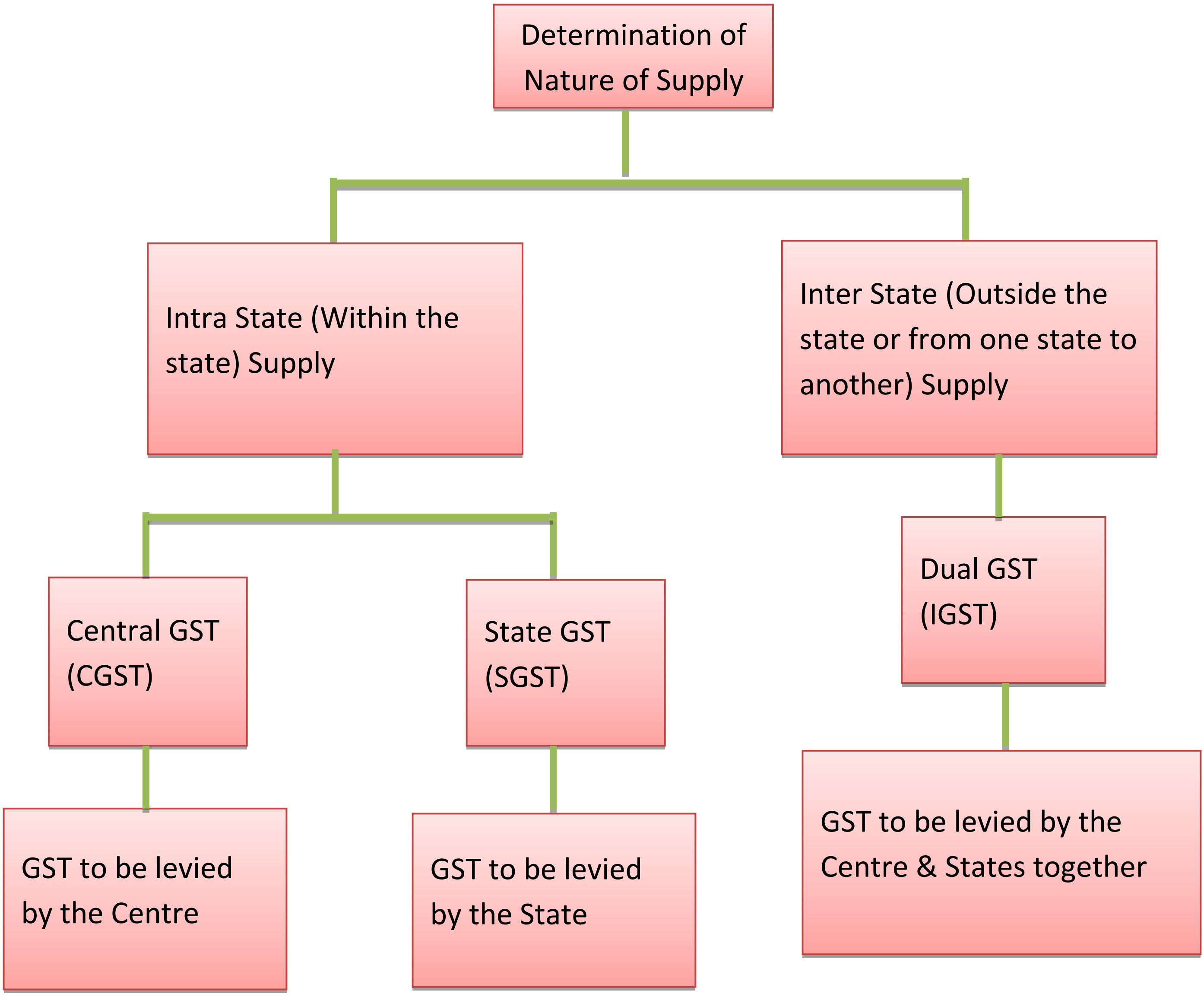


CONTENTS

Analysis of The Nature of Supply

1. How GST relates with the Nature of Supply?

Goods and Services Tax commonly known as GST is an indirect tax which is levied on manufacture, sale and consumption of goods and services. GST is a destination based tax or consumption tax which means that it is levied at the place where goods and services are consumed rather than the place where they get manufactured or from where they are supplied.

The nature of supply means to determine whether a supply is inter-State or intra-State. It helps us to levy the tax that needs to paid be it IGST or CGST+SGST.

2. Why is it important to determine the Nature of Supply?

Following are the reasons due to which the determination of Nature of Supply is of huge importance:

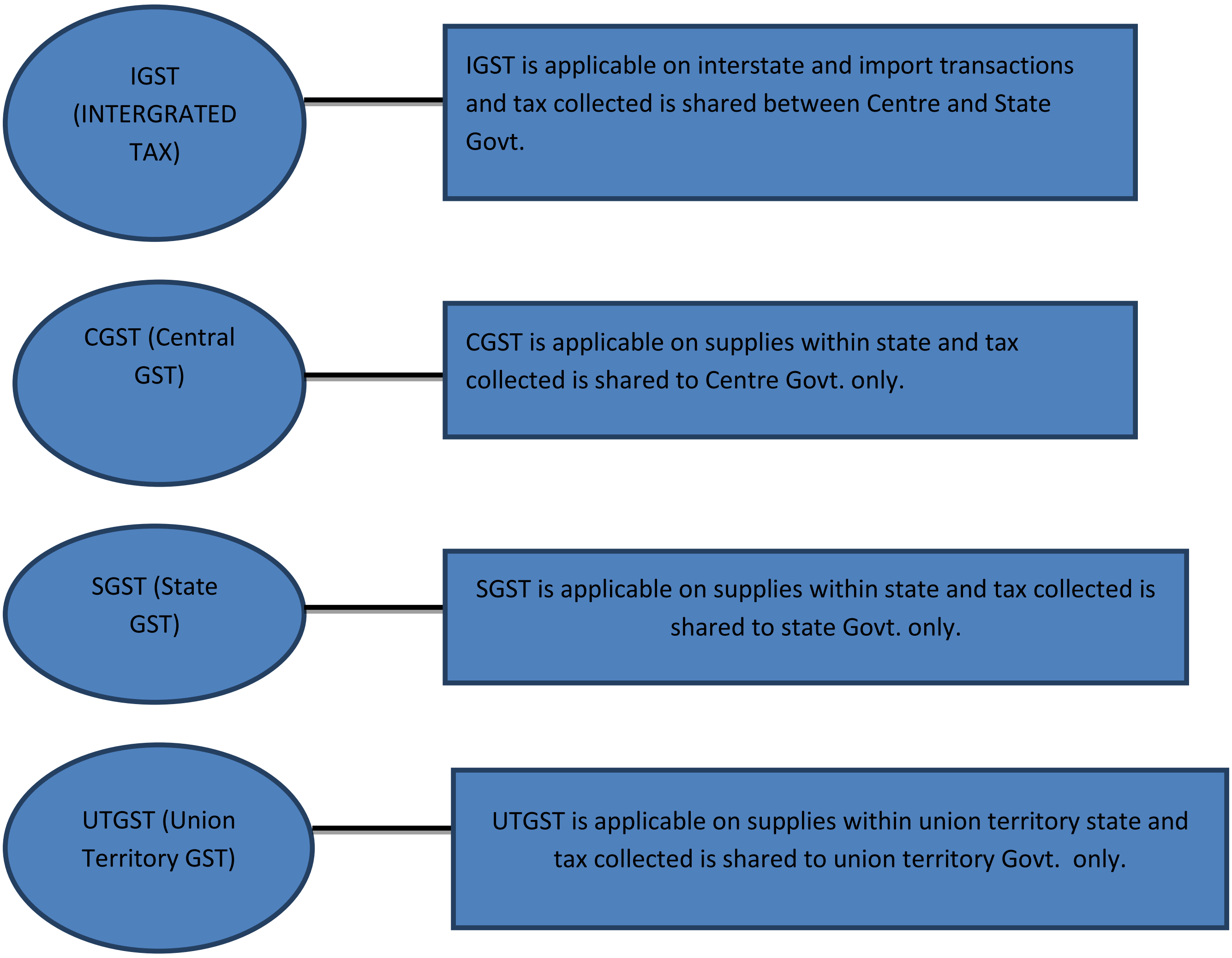
a. Wrong classification of supply between interstate (i.e. between two different states) or intra state and vice versa may lead to distress for the taxpayer as per Sec 19 of IGST ACT 2017 and section 77 of CGST Act.
b. If taxes have been paid due to wrong classification then the taxpayer have to pay the correct tax again & seeking refund for wrong tax. It will have huge impact on working capital.
c. Also, correct determination of nature of supply will help us in knowing the incidence of tax, as if place of supply is determined as a place outside India then tax will not have to be paid on that transaction.

It is very difficult for taxpayers to identify the category transactions of (i.e. Inter or Intra state). So, for knowing the correct transaction the taxpayer must have to understand the concept of nature of supply which helps to determine which type of GST is to be paid, whether IGST, CGST or SGST and how the dealers have to account for Input Tax Credit on inward supplies and outward supplies.

NOTE:-

- **Intra-state:- Transactions are occurring within the state.**
- **Inter-state:- Transactions are occurring from one state to another.**

Nature of Supply helps in determining the components of taxes which can be understood with the below diagram:-



3. How the nature of supply is determined?

In Integrated Goods and Services Tax (IGST) Act, 2017 Chapter IV deals with the determination of nature of supply, under which there are three sections. First section i.e. Section 7 which determines the Inter State Supply. Likewise, Section 8 determines Intra State Supply and finally, Section 9 deals with supply in territorial waters.

4. How supply is determined as Inter State Supply under Section 7 of IGST Act?

Section 7 under Chapter IV of Integrated Goods and Services Tax (IGST) Act, 2017 determines whether the supply of goods or services is to be treated as inter-state trade or commerce.

Statutory Provisions of Section 7 of IGST ACT explained below:-

Subject to the provisions of section 10, supply of goods, where the location of the

1) Supplier and the place of supply are in—

(a) two different States;

Let's take an example for understanding:-

- Mr Vijay from Delhi supplies 10 TV sets to Mr Sanjay in Haryana. In this transaction, it will be Inter-State transactions the location of supplier and the place of supply are in two different states. Hence, IGST will be charged.

(b) two different Union territories; or

- Mr Vanish supplies laptop from Daman & Diu to Miss Avanti in Chandigarh. We can see that here transactions held in two different union territories so this transaction will be Inter-State transaction. Hence, IGST will be charged.

(c) a State and a Union territory,

- Mr Ravi supplies goods from Goa to Miss Roshani in Daman and Diu. In this case transactions held in one state to another union territory so this transaction will be Inter-State transaction. Hence, IGST will be charged.

shall be treated as a supply of goods in the course of inter-State trade or commerce.

(2) Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or Commerce.

(3) Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in––

(a) Two different States;

- Mr A from Gujarat provides consultancy services to Mr B in Mumbai. In this transaction, it will be Inter-State transaction as the location of supplier and the place of supply are in two different states. Hence, IGST will be charged.

(b) Two different Union territories; or

- Mr Anorak provides ACCA classes from Lakshadweep to Mr Basu in Chandigarh. In this transaction, it will be Inter-State transaction as the location of supplier and the place of supply are in two different union territories. Hence, IGST will be charged.

(c) a State and a Union territory,

- Mr Ram provides CA classes from UP to Mr Rotan in Daman and Diu. In this transaction, it will be Inter-State transaction as the location of supplier and the place of supply are in a state and union territory. Hence, IGST will be charged.

shall be treated as a supply of services in the course of inter-State trade or commerce

(4) Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.

- Ms Malvika imports Software Services from London for her i.e. in India. As per section 7 of IGST Act, if any transactions held of import then it attract IGST tax liability and also in this case Ms Malvika doing transactions of import.

(5) Supply of goods or services or both, —

(a) When the supplier is located in India and the place of supply is outside India;

- Mr Ajay from Delhi exports Ayurvedic medicines to Mr Tom in U.K.As per section 7 of IGST Act, if any transactions held of export then it attract IGST tax liability and also in this case Mr Ajay doing transactions of export.

(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or

- Taxable person (non-SEZ) located in Dwarka Delhi supplying goods to a SEZ unit located in Laxminagar Delhi is a supply in the course of inter-State trade or commerce. Even though both are located in Delhi itself, still due to this clause it will be treated as IGST transaction.
- SEZ unit in Mumbai supplying services to another SEZ unit in Mumbai is a supply in the course of inter-State trade or commerce.
- Export of goods by a SEZ unit to a customer in Italy is a supply in the course of inter-State trade or commerce.

(c) In the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course.

Explanation to sub clause (c) please note this clause is a residuary clause, be which if a transaction cannot be covered. Elsewhere, it will be covered automatically as IGST transaction.

Note to Section 7: - Location of Supplier/Recipient – As per Section 2(71) of CGST Act, "location of supplier "means:

1) The registered place of business from where the supply is being made.
   Example: - X ltd. Delhi a registered company provides services to Y ltd, Mumbai a registered company.
   In this above case, the Location of Supplier is registered place of business i.e. Delhi and Location of Recipient is registered place of business i.e. Mumbai.

2) The place i.e. fixed establishment other than a place of business (mentioned in point 1) from where the supply is being made.

For Example:-A service provider in the business of renting of immovable property services has his registered office at Bangalore and the property for rent along with an office is located in Chennai. In this case, the registered office will be the principal place of business and the property in Chennai along with the office will be regarded as a fixed establishment of the service provider.

3) Where the supply is being made from more than one establishment, whether the place of business or fixed establishment, the location of establishment most directly concerned with the provision of supply.

For Example: -'Ram Pvt Ltd' a telecom operator provides mobile services to a subscriber populating (i.e. residing) in Jharkhand. Jharkhand is part of Chhattisgarh-Jharkhand Telecom Circle and 'Ram Pvt Ltd' circle headquarters are in Raipur, capital of Chhattisgarh.

'Ram Pvt Ltd' also has an office in the State of Jharkhand. The towers and equipment from where services are provided are also located in Chhattisgarh. In this case the location of service provider shall be the State of Jharkhand as the 'Ram Pvt Ltd" has a fixed establishment in Jharkhand from where the services are being provided.

4) In case of absence of above places, the location of the supplier will be the resident place of supplier.

5. How supply is determined as Intra-state supply under Section 8 of IGST Act?

The location of the supplier & the place of supply of goods or services are in the same state or union territory then it is considered as an Intra-State supply.

Statutory Provisions of Section 8 of IGST ACT explained below:-

Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:

1) Provided that the following supply of goods shall not be treated as intra-State supply, namely:

(i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;

(ii) goods imported into the territory of India till they cross the customs frontiers of India; or

(iii) supplies made to a tourist referred to in section 15.

***Note to clause 1):- These transactions are already covered by Question Number 4 via Section 7; hence they can't be come here*.**

(2) Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:

Let's understand by an example:-

- Mr Ram provides tuition classes from Dwarka, Delhi to Mr Hari in Laxminagar, Delhi. In this transaction, it will be Intra-State transaction as the location of supplier and the place of supply are in same state. Since, CGST & SGST will be charged.
- Mr Sanjeev provides IELTS classes from Pune to Mr Rajeev in Pune itself. In this case, transaction occurring within a state. Since, CGST & SGST will be levied.

Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

6) How supply is determined in case of supplies in territorial waters under Section 9?

If the location of the supplier or the place of supply is in territorial waters then it should be considered as supply in territorial waters.

Statutory Provisions of Section 8 of IGST ACT explained below:-

Notwithstanding anything contained in this Act,—

(a) where the location of the supplier is in the territorial waters, the location of such supplier; or

(b) where the place of supply is in the territorial waters, the place of supply,

shall be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline located.

- **For example**, Repair services are provided by a company in Delhi on ship moored off (moved off) the coast i.e. an area of land that is next to the sea of Kochi for a shipping company from U.K, the place of supply of the repairs services will not be the waters but Kochi itself.

- **Indian Oil has on offshore (seaward) on the field off coast (seaboard) of Mumbai. Supplies from such oil field would be deemed to be supplies from the state of Maharashtra.**
  In this case, section 9 will be applicable i.e. IGST will applied.

In view of the above article, we can say that determination of nature of supply play a crucial role in the correct payment of tax i.e. IGST/CGST/SGST.

Also it determines the manner of utilisation of input tax credit. So before embarking on any tax planning exercise we should specifically determine the nature of supply issue.

<u>DISCLAIMER</u>: Please note, above contents are for informatory purpose only based on our understanding. Please don't use it for forming any opinion. Please consult with your consultant for any specific doubt/query.

Thank You!