Taxable Event in Good & Service Tax Law

In a Taxation statute, the first & foremost step is the identification of subject matter which will be subject to tax meaning there by that on which tax shall be levied and collected. This aspect is covered by enacting a charging section in the law, which principally provides, on which particular & identified subject matters the tax is going to be levied. In GST Law, the Charging Section is Section 9 of the CGST Act, 2017 which provides the levy & collection of GST on intra-state supplies and Section 5 of IGST ACT, 2017 provides the levy & collection of GST inter-state supplies.

Section 9 of the Central Goods & Service Tax Act, 2017 as reproduced hereunder provides that:

*9. (1) Subject to the provisions of sub-section (2), **there shall be levied a tax** called the central goods and services tax **on all intra-State supplies of goods or services or both, except** on the **supply of alcoholic liquor for human consumption**, **on the value determined under section 15 and at such rates, not exceeding twenty per cent.**, **as may be notified** by the Government on the **recommendations** of the Council and **collected in such manner** as may be prescribed and shall be **paid by the taxable person**.*

As noted above, the provisions of Section 9(1) of the Act, ibid provides that: -

1. Central Goods & Service Tax shall be levied on all intra-state supplies of goods or services or both;
2. Except the on the Supply of alcoholic liquor for human consumption;
3. On the Value of that Supplies that has to be determined in accordance with the provisions of Section 15 of the Act, ibid;
4. At such rates not exceeding twenty per cent, as may be notified; &
5. That tax shall be paid by the taxable person and collected by the Govt. in the manner as may be prescribed.
6. The Scope of sub-section 1 of Section 9 is limited by the sub-section 2 of the said section itself, which provides that Central GST on the supply of petroleum crude, high speed diesel, motor spirit (i.e. petrol), natural gas and aviation turbine fuel shall be levied w.e.f. such dates as may be notified by the Govt. on the recommendations of the Council.

Thus, we can say that taxable event under the CGST Act is the intra-state supply of goods or services or both. Hence, proper understanding of the term "Supply" is very important in order to properly appreciate the taxable event under GST Law.

The term Supply has been defined under Section 7 of the CGST Act, 2017, which is re-produced as hereunder:

7. (1) For the purposes of this Act, the expression "supply" includes—

(a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration;

(1A) Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of services as referred to in Schedule II.

(2) Notwithstanding anything contained in sub-section (1),—

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.

(3) Subject to the provisions of sub-sections (1) and (2), the Government may, on the recommendations of the Council, specify, by notification, the transactions that are to be treated as—

(a) a supply of goods and not as a supply of services; or

(b) a supply of services and not as a supply of goods.

Thus, if we go through the provisions of Section 7 of the Act, ibid as reproduced above we will note that the said section provides an inclusive definition of the term supply & provides which types of activities shall be treated as supply. Section 7 of the Act, ibid states states that provisioning of goods or services or both in any form such as sale, transfer, barter, exchange, licence, rental, lease or disposal made shall be said to be supply only when both the conditions mentioned below are satisfied;

1. That, supply of goods or services or both in any form as discussed above **<u>should be made or agreed to be made for a consideration by a person</u>**; and
2. That, the supply of said goods or services or both **<u>should be in the course or furtherance of business</u>**.

Thus, only in those cases where the above 2 mentioned conditions are satisfied only then an activity can be regarded as Supply and be the subject matter of tax. It is also important to note here that Section 7 of the Act, ibid also provides for some deeming fiction for the term supply i.e. when an activity shall be deemed to be supply even if any of the above laid conditions are not satisfied, i.e. supply made without consideration (for example activities specified in Schedule I).

The term Consideration has been defined in Section 2(31) of the Act, ibid and again the word consideration has an inclusive definition and includes any payment made or agreed to be made 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 any other person but excludes the subsidy provided by the Central Government or a State Government & deposit received unless that deposit is settled by supplier as consideration for the said supply. Thus, any payment received by supplier or monetary value of act or forbearance accepted by supplier in relation to supply of goods or services or both falls within the contours of term consideration.

The term Business has been defined in Section 2(17) of the Act, ibid in an inclusive manner and provides that in order to term an activity as business that activity should be of the nature of trade or commerce or manufacture or profession or vocation or adventure or wager or any other similar activity, whether or not that activity is for a pecuniary benefit. The term Pecuniary benefit means ***<u>"Monetary benefits. An award or compensation or benefit that is quantifiable in monetary terms."</u>*** (As per Black's Law Dictionary 2nd Ed.)