

SCHEDULE – I TO CGST ACT - SUPPLY WITHOUT CONSIDERATION: CRITICAL VIEW.

BY PRADEEP KUMAR MITTAL

Advocate – Past Central Council Member,
Institute of Company Secretaries of India
E-MAIL: pkmittal171@gmail.com

GST being a new and evolutionary concept comprises of many grey areas which require discussion for its effective implementation. This Article has been attempted to provide readers an insight of Schedule-I of GST Act read with Section 7 and judicial precedents. Schedule I deals with certain activities which are treated as supply even if made without consideration.

Before introducing Schedule-I, Section 7 dealing with Scope of supply, is reproduced hereunder:

SECTION 7

(1) The expression “supply” includes:

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, 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; and
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By reading of above provision, it appears that the legislature had drafted the scope of supply in the widest possible manner. Supply has been drafted as inclusive definition and not as exhaustive one. The section provides that all form of supply made for consideration in course or furtherance of business shall constitute supply and accordingly chargeable to GST. Further, the section provides for certain activities which

are considered as supply even if made without consideration which are enumerated under Schedule I.

(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.

✚ This sub-section provides for certain transactions which shall neither constitute as supply of goods nor as supply of service.

SCHEDULE I

Schedule I provides for four activities which are considered as supply even when made without consideration which are analyzed herein below:

1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets.



✚ In order to attract GST under the above mentioned case, the transfer must be of permanent nature. In other words, temporary transfer such as lease, license shall not qualify as supply under Schedule I and accordingly temporary transfer made without consideration fall outside the preview of GST and thereby not leviable to GST.

✚ It must be noted that services by way of transfer of a going concern, as a whole or an independent part thereof is exempt from GST vide Notification No. 12/2017 CT (Rate) and 9/2017 IT (Rate) both dated 28-06-2017. Further, in **Rajashri Foods Pvt. Ltd. MANU/AR/0060/2018**, it was held that transfer of business as a going concern as a whole or of one of the units is not subject to GST.



TRANSFER MEANING

It is also necessary to examine the meaning of words “Transfer”, since the term is not described under GST Act the same is explained in light of other laws and judicial pronouncements. According to Transfer of Properties Act, 1882, Transfer may be by sale, by lease, by giving gift, by exchange, by will or bequeathment. In **Deep Chand v. M.P.S.T.R. Corpn, AIR 1997 MP 42**, it was held that Transfer must carry with it “from” and “to”. In case either of them is missing, there can be no transfer.

In **Manglore Electric Supply Co. v. C.I.T., AIR 1978 SC 1272**, it was held that the word ‘transfer’ is comprehensive and is regarded generally as comprehending within its scope transfers both of the voluntary and involuntary. There is no reason for limiting the word ‘transfer’ to voluntary acts of transfer so as to exclude compulsory acquisitions.

In **Syed Jalal v. Targopal Ram Reddy AIR 1970 AP 19(52)**, it was held that a permanent alienation is a transfer and a permanent alienation includes the several kinds of transfer, namely, sale, exchange or gift, which under the general laws, e.g. the Transfer of Properties Act would come within the definition of transfer of property.

- DISPOSAL MEANING

“Disposal” means “disposing of, getting rid of, settling, dealing with, bestowal, assignment, sale, control, management, placing, arrangement” [Concise Oxford Dictionary, page 347]

- MEANING OF BUSINESS

Section 2(17) of CGST Act defines ‘business’ in following words:

“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;
- (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) services provided by a race club by way of totalisator or a licence to 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;

- **FAQ'S**

Q. A dealer of air-conditioners permanently transfers an air conditioner from his stock in trade, for personal use at his residence. Will the transaction constitute a supply?

A. Yes. As per Sl. No.1 of Schedule-I, permanent transfer or disposal of business assets where input tax credit has been availed on such assets shall constitute a supply under GST even where no consideration is involved. In our view, if no ITC has been availed previously, then, in that event, it would not amount to supply and not exigible to Tax.

Q. What is treatment of promotional item given free to end consumers by FMCG (Fast Moving Consumer Goods) companies?

A. Tax shall be payable only on the total consideration charged for such supply.

2. Supply of goods or services or both between related persons or between distinct persons as specified under section 25, when made in course or furtherance of business. Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

Para 2 of Schedule I deals with the supplies between related or distinct persons when made in course or furtherance of business. The classic example of this para is that of supply between Head office and Branch office. Under the earlier service tax regime, services provided between head office and branch office were exempt from service tax now GST shall be payable on these transactions. For the proper apprehension of this para, it is necessary to understand the meaning of various terms used therein.

- MEANING OF RELATED PERSON

The expression “related person” has been defined under explanation to Section 15 of CGST Act in the following words:

For the purposes of this Act,—

(a) persons shall be deemed to be “related persons” if—

- (i) such persons are officers or directors of one another’s businesses;
- (ii) such persons are legally recognised partners in business;
- (iii) such persons are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds twenty-five per cent. or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family;

(b) the term “person” also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

- MEANING OF EMPLOYER AND EMPLOYEE

The term employer and employee has not been defined under GST Act and therefore the meaning of the same is derived from judicial pronouncements, mentioned hereinbelow:

In Tapas Paul V. ACIT, Circle-51, Kolkata ITAT KOLKATA MANU/IK/0104/2017 it has been held that the employer is a person who controls and directs a servant or worker under an express or implied contract of employment. The employer accordingly is under obligation to pay him the salary or wages in compensation. Accordingly, an individual who works part-time or full-time under a contract of employment whether oral or written expressed or implied and he is liable to perform the duties as assigned. That person is called as employee. Thus, it can be said that employer is person who issue directions for the work to be performed, Controls or supervises the work and is liable to pay salary to another known as employee who may either be a part-time employee or full-time employee whether under express or implied contract of employment.

- It is also necessary to compare the provision of Para 2 of Schedule I and Para 1 of Schedule III. Schedule III provides for the activities or transactions which shall neither be treated as supply of goods nor as supply of services. Para 1 of Schedule III provides for services by an employee to the employer in the course or in relation to employment on the other hand Para 2 of schedule 1 inter alia provides that services between related persons shall deemed to be supply even if made without consideration and the term related person includes relation of employee and employer. whether services provided by employee to employer shall be considered as supply as per Schedule I or shall not be considered as Supply in terms of Schedule III.

On the combined reading of Schedule I and Schedule III, it can be safely said that Schedule III overrides the provisions of Schedule I by virtue of non-obstantate clause contained in sub-section (2) of Section 7 and thereby the transactions which are excluded from the levy of tax for transactions between employee and employer are:

(a) Gifts by Employer to employee not exceeding Rs 50,000 in a Financial Year.

(b) Supply of services by employee to employer in the course of employment.

Lets me elaborate it with the help of some questions supported by judicial precedents

Q. whether free or subsidized food supplied by employer to employee is liable to GST?

A. In case of canteen services provided by a company to employees wherein food is provided at subsidized rate or free of cost, GST will be applicable in both the cases since what is not covered under supply is services by employee to employer and not by employer to employee. Appellate Authority for Advance Ruling in **Caltech Polymers Pvt. Ltd. 2018 MANU/AI/0017/2018** upheld the decision of Authority for Advance Ruling that recovery of food expenses from the employees for the canteen services provided by company would come under the definition of outward supply as defined under Section-2 (83) of the Act, 2017 and therefore taxable as a supply of services under GST.

However, in my humble opinion canteen services provided is a part of consideration for services provided by employee to employer and hence shall not be regarded as supply in terms of Para 1 of Schedule III. Moreover, Factories Act mandates the employer to provide food to employees and hence, canteen services being a statutory obligation of the employee should not be regarded as supply. Further, under earlier regime of Service Tax, canteen services provided by employer to employee pursuant to Factories Act was put under mega exemption. Therefore, it can be safely viewed that canteen services provided by employer to employee should not be considered as supply.

Q. Whether incentives (eg. House Rent Allowance) paid to employees in course of employment are chargeable to GST?

A. Incentives paid by employer to employee in course of employment are not chargeable to GST in terms of Schedule III since incentives are consideration for services provided by employee to employer in course of employment. Further, CBIC vide Press Release No. 73/2017 dated 10/07/2017 clarified that fringe benefits are in relation to employment and hence outside the preview of GST.

Q. Whether complimentary free tickets are chargeable to GST?

A. In **KPH Dream Cricket P Ltd. MANU/AR/0188/2018**, it has been held that complimentary tickets issued free for cricket matches (IPL) is supply and hence taxable.

This ruling seems debatable since such supply is not to related or distinct person and hence shall not be considered as supply. In my view tax should not apply but ITC on common input service should be reversible on proportionate basis.

Q. Whether gifts by employer to employee are chargeable to GST?

A. In terms of Para 2 of Schedule I only gifts upto Rupees 50,000 per financial year from employer to employee, are exempt from GST however, reversal of Input Tax Credit will be required. Therefore gifts of value more than Rupees 50,000 are chargeable to GST. This view was also clarified by PIB vide Press Release dated 10/07/2017 17:09 IST.

FAQ'S

Q. Whether remuneration to partners by partnership firm is liable to GST?

A. Yes, remuneration payable to partners is exgible to GST in view of the fact that partners are not employees of partnership firm.

Q. What option shall be opted while clearing samples from factory to warehouse location :

a) No GST should be levied but ITC so availed is required to be reversed

b) GST should be levied but GST (ITC) paid on samples cleared should be reversed at receiving warehouse location.

A. Depends upon the location of the factory and warehouse. If both are located in the same State and not registered separately, no GST is to be charged.

Q. Is cross border service, provided by an Indian branch to an offshore branch/head office, zero rated under GST?

A. No. Since in this case, the supplier of service and the recipient of service are merely establishments of a distinct person, the service does not satisfy the definition of export of service as provided in Section 2(6) of the IGST Act. Therefore, such services cannot be zero rated under GST.

• **MEANING OF DISTINCT PERSONS SECTION 25**

The term 'distinct persons' has been defined under Section 25 in the following words

- 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.

- 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.

- RULINGS ON DISTINCT PERSONS

- In **Columbia Asia Hospital Pvt. Ltd. MANU/AI/0029/2018** it has been held that Corporate Office and units are Distinct Persons and accordingly activities performed by employees at corporate office such as accounting, other administrative and IT system maintenance for units located in other states as well i.e. distinct persons as per section 25(4) of CGST Act, 2017 shall be treated as supply as per Entry 2 of Schedule I of CGST Act.
- In **Habufa Meubelen B.V. MANU/AR/0115/2018** it was held that if liaison office in India does not render any consultancy or other services directly or indirectly, with or without any consideration and liaison office does not have significant commitment powers, except those which are required for normal functioning of office on behalf of head office, established in India, is not liable to GST and head office is not required to get itself registered under GST.

- MEANING OF “IN COURSE OR FUTHERANCE OF BUSINESS”

The term “business” has been defined but the phrase “in the course or furtherance of” has not been dealt with in any manner under the GST law. The literal meaning of the said phrase ‘in the course of or furtherance of ‘ is ‘during the act of or in continuation of carrying out such act in future’ Thus, in course or furtherance of business means either of following : Anything done in relation to business, while carrying out business or simply a revenue-generating ordinary activity of that organization / concern. Further, in **Daypack Systems Pvt. Ltd. v. Union of India AIR 1998 SC 782** the word “in relation to” has been held to be equivalent to or synonymous with “concerning

with” or “pertaining to” and as word of comprehensive nature which might have a direct significance as well as indirect significance depending upon context.

Example: Selling scrap generated in process of manufacturing. Anything done to achieve the objectives of continuing to conduct the same business in future.

Example: Activities done as part of CSR by a Company. Hence the phrase also covers any supplies made in connection with the business.

3. Supply of goods-(a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal.(b) by an agent to his principal where agent undertakes to receive such goods on behalf of principal.

- Para 3 provides that supply of goods between principal and agent shall be liable to GST even if made without consideration. As per this entry, the agent will be liable for GST on value of goods or services only if he undertakes to supply any goods or services or both on behalf of any principal. However if agent does not supply goods or services, he is not liable for GST on value of goods or services. He will be liable to GST only on his commission.
- It may be noted that only supply of goods between principal and agent without consideration is chargeable to GST but supply of services between principal and agent without consideration does not attracts GST.

Whereas goods has been defined under Section 2(55) as 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;

- **MEANING OF “AGENT” SECTION 2(5)**

“agent” means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another;

- **MEANING OF “PRINCIPAL” SECTION 2(88)**

“Principal” means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both;

4. Import of services by a person from a related person or from any of his other establishment outside India, in course or furtherance of business.

✚ MEANING OF IMPORT OF SERVICE

Section 2(11) of IGST Act, 2017 defines “import of services” as to mean the supply of any service, where—

- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located in India; and
- (iii) the place of supply of service is in India;

✚ This para provides that import of services without consideration from related person or from establishment of recipient outside India shall be supply when made in course or furtherance of business. “””This Para should be constructed along with clause (b) of sub-section 1 of Section 7, which provides that import of services with consideration shall be supply whether or not made in course or furtherance of business.

✚ Further, it is worth to mentioning that services supplied by establishment of person in India to own establishment out of India is exempt, if place of supply is out of India vide Notification No. 9/2017-IT (Rate) dated 28/06/2017.

✚ Thus, following possible situations falls under the ambit of supply:

- Import of services for personal consumption with consideration.
- Import of service for business with consideration
- Import of service from relative without consideration in course or furtherance of business
- Import of service from relative with consideration in course or furtherance of business.

It would be seen that in pre-GST regime, the supply of service without consideration was not eligible to Service Tax under any circumstances. However, in post GST regime, Schedule-I carves out an exception and in certain situations, as explained in the preceding paras, it would be deemed supply liable to payment of GST.