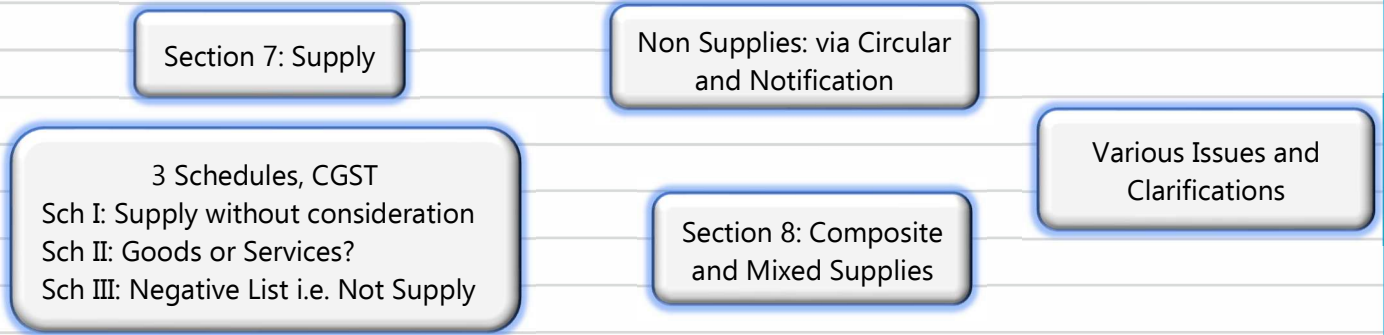




What are we going to cover?



Applicable Definitions

- **2(52) goods** means 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

Example: We go and buy clothes from Westside. We buy "goods".
- **2(1) actionable claim** same meaning as u/s 3 of the Transfer of Property Act, 1882

"actionable claim" means a claim to

 - any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or
 - to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant,

⇒ which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent;

Example: Insurance Claim; Betting; Gambling; Lottery
- **2(75) money** means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by the RBI

 - when used as a consideration to settle an obligation or
 - exchange with Indian legal tender of another denomination
 - but **shall not include** any currency that is held for its numismatic value
- **2(101) securities** - same meaning as assigned u/s 2(h) of Securities Contracts (Regulation) Act, 1956 [covered later]



Not Giving "Goods"





- **2(102) services** means anything **other than** goods, money and securities
 - but includes activities 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

Explanation: services include facilitating or arranging transactions in securities;

- ✎ Example: I am supplying you "service" of teaching IDT "Like Never Before" :)
- ✎ Example: Zerodha charges in form of commission are "services" under GST

- **2(17) 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) activities of a race club including by way of totalisator or a license to book maker or activities of a licensed 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; [eg. Bus transport service]

Examples

- ➡ Rishabh bought a car for his personal use and after a year, sold it to Car Dekho: *Not a business*
- ➡ Mrs. Khurana sold her old bangles to Nahal Jewels, Karol Bagh: *Not a business*

View in above both examples is on the basis of Departmental FAQs/Press Release. There is another school of thought that this is business as the definition includes term "... whether or not there is volume, frequency, continuity or regularity of such transaction."

- ➡ Alman Khan, a famous actor, painted some paintings and sold them. Sale of paintings: *in course or furtherance of business, since business includes vocation.*



- **2(30) composite supply** means a supply made by a taxable person to a recipient
 - consisting of **two or more** taxable supplies of goods or services or both, or any combination,
 - which are **naturally bundled** and
 - supplied in conjunction with each other in the ordinary course of business,
- ⇒ one of which is a principal supply → **predominant element**;

Examples

- ✂ Goods supplied along with transport + insurance: Goods = principal supply
- ✂ Excavators hired out invariably along with operators and operators hired out only with excavator
- ✂ Mandatorily charging transportation cost of products at the time of invoicing

- **2(74) mixed supply** means
 - two or more individual supplies of goods or services, or any combination thereof,
 - made in conjunction with each other by a taxable person for a **single price**
- ⇒ where such supply does not constitute a composite supply.



Example: Diwali hamper with variety of items like drinks, chocolates etc.

Note: Single invoice doesn't mean it's an either composite or a mixed supply.

Example: We get car servicing done which has repairs parts billing as well as labour charges. Both are taxed at respective rates. ✓

Example: I buy LED TV, Washing Machine and a laptop from Croma. A single invoice is issued indicating each item separately. Not a case of composite or mixed supply. Individual GST rates apply. ✓

| SUMMARY | | Amount(₹) |
|---------------------------|--|--|
| Particulars | | |
| Total Parts Amount | | 2901.0 |
| Net Parts Amount | | 2266.4 |
| Total Parts Cess Amount | | 0.0 |
| Total Parts CGST Amount | | 317.3 |
| Total Parts IGST Amount | | 0.0 |
| Total Parts SGST Amount | | 317.3 |
| Total Labor Amount | | 18430.6 |
| Net Labor Amount | | 15619.1 |
| Total Labor Cess Amount | | 0.0 |
| Total Labor CGST Amount | | 1405.7 |
| Total Labor IGST Amount | | 0.0 |
| Total Labor SGST Amount | | 1405.7 |
| Total Amount | | 21331.6 |
| Grand Total (Rounded Off) | | ₹ 21332.00 (+ 0.39) |
| Amount in Words: | | |
| | | Rupees Twenty One Thousand Three Hundred Thirty Two Only |

- **2(31) consideration** in relation to the supply of goods or services or both 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 or both, who's paying? whether by the recipient or by any other person
 - (b) the monetary value of any act or forbearance [e.g. Non-compete], in respect of, in response to, or for the inducement of, the supply of goods or services or both, who's doing or not doing something? whether by the recipient or by any other person
- **but shall not include** any subsidy given by the CG or a SG;

Deposit: a deposit given in respect of supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration.



- **2(49) family** means,-
 - i. the spouse and children of the person, and
 - ii. the parents, grand-parents, brothers and sisters of the person (not spouse)
 - ↳ if they are wholly or mainly dependent on the said person;



✎ Example: Father in Law [sasur Ji] NOT a Family

✎ Example: Ques says "brother has his own factory" or "sister is a well-known consultant" that means they are not dependent on the person, hence they shall not be "family"

- **2(93) recipient** of supply of goods or services or both, means-

where a consideration is payable for the supply of goods or services or both,

→ the person who is **liable** to pay that consideration

where no consideration is payable for the supply

→ Goods: the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and

→ Services: the person to whom the service is rendered

includes: an agent acting as such on behalf of the recipient

Example: Banku purchased my IDT class. While paying on the website, his UPI was not working. He asked his friend Danku to pay for the time being and promised to repay later.

✎ In this case, Recipient of my teaching "service" is **Banku** since he is the person "liable" to pay the consideration.

- **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;**



Sec. 7: Meaning and Scope of Supply

- 7(1): What is "Supply"? For the purposes of this Act - "supply" includes-
 - (a) **all forms** of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal [Parameter 1]
 - made or agreed to be made for a **consideration** by a person [exception: Sch I] [Parameter 2]
 - in the course or furtherance of **business**; [exception: 7(1)(b)] [Parameter 3]
 - (aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration.
- Explanation [Are they not same persons?]: For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;*
- (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;
- 7(1A): Supply of: Goods or Services? Schedule II will tell us.
- 7(2): Negative List i.e. **NOT** a supply

Schedule I | Activities = Supply without Consideration

PARA 1: Permanent transfer or disposal of "business assets" **where ITC has been availed**

To whom it's transferred: Irrelevant | "business assets" term not defined

PARA 2: Supply of goods or services or both between **related persons or between distinct persons** as specified in section 25, when made in the course or furtherance of **business**

Exception: Provided that gifts not exceeding ₹ 50,000 in value in a FY by an employer to an employee shall not be treated as supply of goods or services or both.

Invoice Test

- PARA 3: Supply of **goods** [~~services~~] -
 - by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal; or
 - by an agent to his principal where agent undertakes to receive such goods on behalf of principal



PARA 4: Import of services by a person

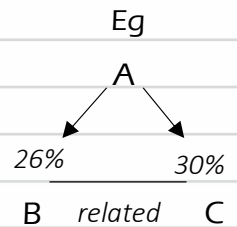
from a related person or from any of his other establishments outside India, in the course or furtherance of business

Let's understand a few terms we used above

Related Persons | Section 15 [Valuation]

Persons (including legal persons) shall be deemed to be "related persons" if-

- such persons are officers or directors of one another's businesses;
- such persons are legally recognised partners in business;
- such persons are employer and employee;
- any person directly or indirectly owns, controls or holds 25% or more of the outstanding voting stock or shares of both of them;
- one of them directly or indirectly controls [eg: deciding role in corporate policy] the other;
- both of them are directly or indirectly controlled by a third person;
- together they directly or indirectly control a third person; or
- they are members of the same family;
- 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



Distinct Persons | Section 25 (Registration Chapter)

- ⇒ 25(4): 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
- ⇒ 25(5): Where a person who has obtained or is required to obtain registration in a State or UT 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.

Examples

- 1) Registered HO in Delhi | Registered BO in Mumbai: Distinct Persons → 25(4)
- 2) Registered Hotel in Delhi | Unregistered liquor shop in Mumbai: Estb of Distinct Persons → 25(5)
- 3) Factory in Lucknow | Showroom in Kanpur - Single Registration in UP: 25(4) ✗ 25(5) ✗



Para 3 Analysis: Invoice Test



Question: Invoice for further supply issued in whose name?

- If Principal's Name: Invoice test not passed. Any provision of goods b/w P - A without consideration, would not fall under the ambit of Para 3, Sch I i.e. NOT a supply
- If Agent's Name: Any provision of goods from P to A: would fall under the ambit of Para 3, Sch I.

DCA: Del Credere Agent [Agent with guarantee of payment for the Principal via loan to recipient]

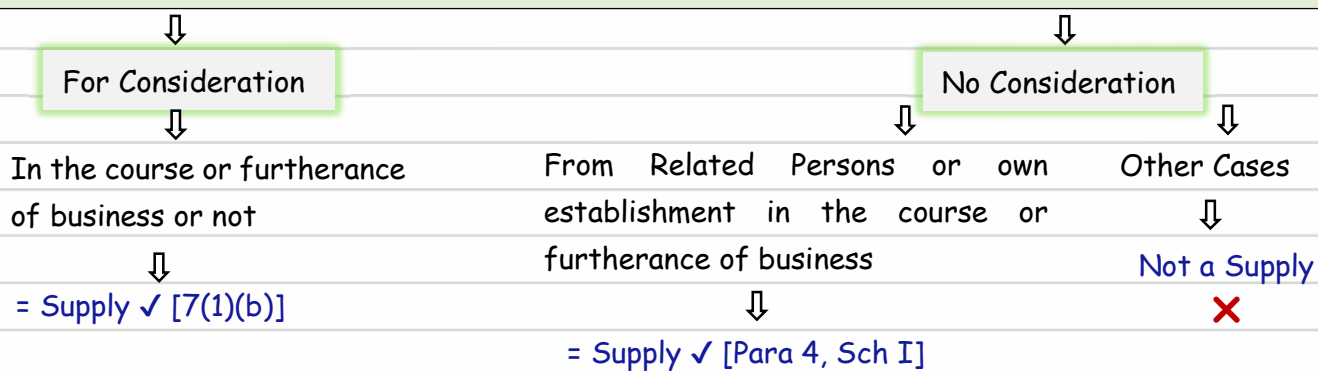
Issue 1: Whether a DCA falls under the ambit of Para 3, Sch I? Apply the same Invoice Test

Issue 2: Treatment of "interest" charged by DCA from the buyer

| | |
|---|--|
| <p>Case 1:</p> <p>DCA not an agent under Para 3, Sch I</p> <p>Invoice Test NOT PASSED</p> | <p>Following activities involved</p> <ol style="list-style-type: none"> 1. Supply of goods by supplier (Principal) to Recipient; 2. Supply of agency services by DCA 3. Supply of loan services by the DCA to the recipient. <ul style="list-style-type: none"> ➤ Loan services by DCA to Buyer is an independent supply on Principal - Principal basis. ➤ Interest would not form part of the value of supply of goods by the Principal to Buyer |
| <p>Case 2:</p> <p>DCA = Agent under Para 3, Sch I</p> <p>Invoice Test PASSED</p> | <p>Following activities involved</p> <ol style="list-style-type: none"> 1. Supply of goods by supplier (principal) to DCA; 2. Further supply by the DCA to the Recipient 3. Supply of agency services by DCA; 4. Supply of loan services by the DCA to the recipient <ul style="list-style-type: none"> ➤ Loan services by DCA to Buyer is NO MORE an independent supply and is subsumed in the supply of goods by the DCA to Buyer. ➤ Interest = included in value of supply by DCA to Buyer [section 15(2)(d). |



Import of Services: 7(1)(b) + Para 4, Schedule I



- Free Samples and Gifts: Not a supply as no consideration involved, unless falls under Sch I.
- Buy One-Get One Free Offer = Supply ✓ [2 goods @ price of one - treat as Composite or Mixed]

Schedule II: Activities/Transactions to be Treated as Goods or Services?

| Para | Activity | Types / Particulars | Nature: G/S? |
|------|-----------------------------|--|--------------|
| 1. | Transfer | Any transfer of title in goods | Goods |
| | | Any transfer of right in goods/ undivided share in goods without transfer of title thereof. [E.g. machine on rent] | Services |
| | | Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed [E.g. hire purchase basis; sale or return basis] | Goods |
| 2. | Land and Building | Any lease, tenancy, easement, licence to occupy land | Services |
| | | Any lease or letting out of building including a commercial, industrial or residential complex for business or commerce, wholly or partly | Services |
| 3. | Treatment & Process | Any treatment or process which is applied to another person's goods [Eg. Job work] | Services |
| 4. | Transfer of Business Assets | Goods forming part of business assets are transferred or disposed of by directions of person carrying on the business so as no longer form part of those assets. | Goods |
| | | Goods held/used for business are put to private use or are made available to any person for use for any | Services |