



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** - as per sec. 2(h) of Securities Contracts (Regulation) Act, 1956 *[analysed 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. ✓

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

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. ✓

- **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 [dependent or not], 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: 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 III]

Schedule I | Activities = Supply without Consideration

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

if no consideration and no ITC: supply | transferred to whom? irrelevant | "business assets"? 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

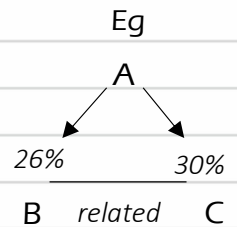
from a related person or from any of his other establishments outside India, in the course or furtherance of business.

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, of the other.



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 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?

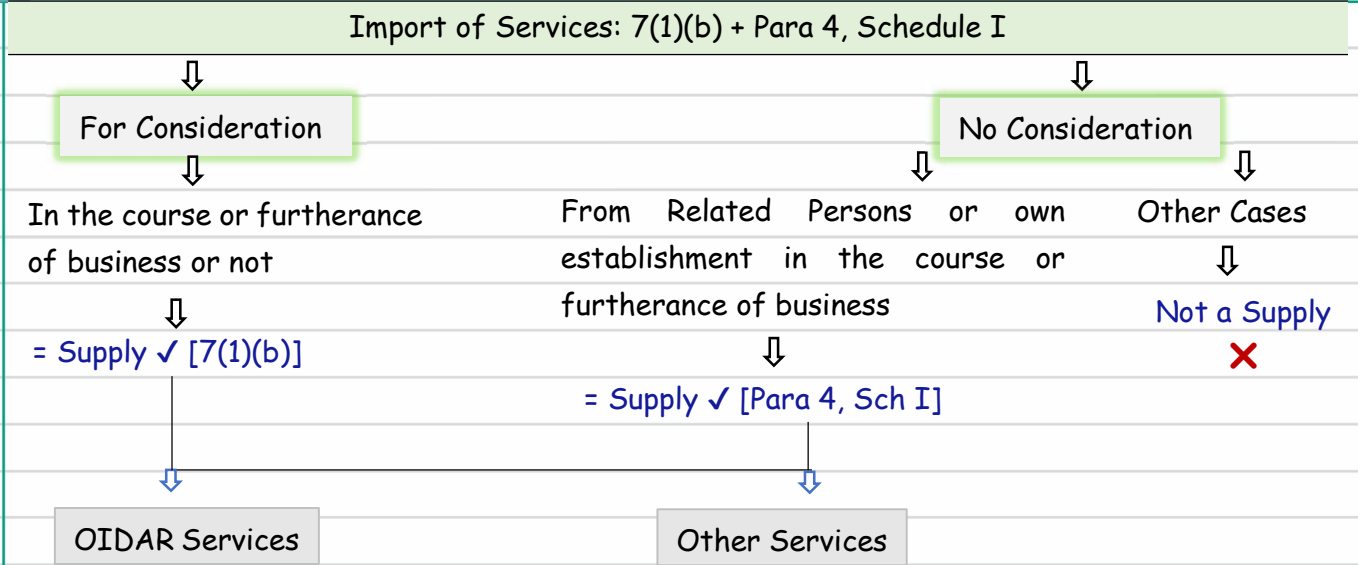
- If Principal's Name: Invoice test not passed. Any provision of goods b/w P - A without consideration, would not fall under the ambit of Para 3, Sch I i.e. NOT a supply
- If Agent's Name: Any provision of goods from P to A: would fall under the ambit of Para 3, Sch I.

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).



Further analysis in link with Sec. 14 IGST – Covered in Ch 3 POS

Link with Ch 4 Exemptions: Ultimately, would be “exempt” if imported by

- CG/SG/UT/LA/GA or an Individual - in relation to any purpose other than commerce, industry or any other business or profession; or*
- an entity registered u/s 12AA/AB of the ITA for purposes of providing charitable activities*

Examples

ASA Associates received legal consultancy services from its HO located in Singapore. Services have been rendered free of cost.

- ✓ *No consideration, hence we will apply Para (4), Sch I*
- ✓ *ASA Associates and HO: Related Persons* ✓
- ✓ *In related to business:* ✓

Hence, it's a Supply

Babbu, a proprietor in Pune, availed architect services from his daughter who is based in US, with respect to his new home in Pune.

- ✓ *No consideration, hence we will apply Para (4), Sch I*
- ✓ *Babbu and his Daughter: Related Persons* ✓
- ✓ *In related to business:* ✗



*Hence, **Not** a Supply*

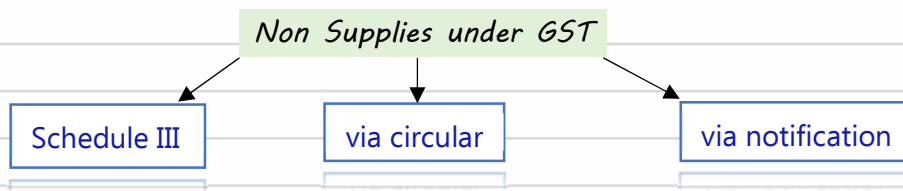
What if it's in relation to his office in Pune? Then, it would be a supply ✓

- **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 purpose other than business, by/ under directions of person carrying on the business.	Services
		Goods forming part of assets of any business carried on by a person who ceases to be a taxable person, shall be deemed to be supplied by him in the course or furtherance of his business, immediately before he ceases to be a taxable person. Exceptions <ul style="list-style-type: none"> Business transferred as going concern to another person <i>[this is exempt from GST]</i> Business carried on by personal representative who is deemed to be a taxable person. 	Goods

<p>5.</p>	<p>a) Renting of Immovable Property b) Construction (includes additions, alterations, replacements) of complex, building, civil structure, etc.</p> <p><i>IMP</i> NOT a "supply" if the entire 100% consideration received after:</p> <ul style="list-style-type: none"> ➤ issuance of completion certificate, where required, by the competent authority or ➤ after its first occupation <p style="text-align: right;">} Earlier</p> <p>c) Temporary transfer or permitting use or enjoyment of any IPR d) Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of IT software e) Agreeing to obligation [i.e. not legal obligation] to</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> refrain from an act, or <input checked="" type="checkbox"/> to tolerate an act or situation, or <input checked="" type="checkbox"/> to do an act. <p>f) Transfer of right to use any goods for any purpose</p>	<p>Services</p>
<p>6.</p>	<p>Following Composite Supplies</p> <ul style="list-style-type: none"> → Works Contract [section 2(119)] → Restaurant Services [except alcoholic for human consumption] 	<p>Services</p>

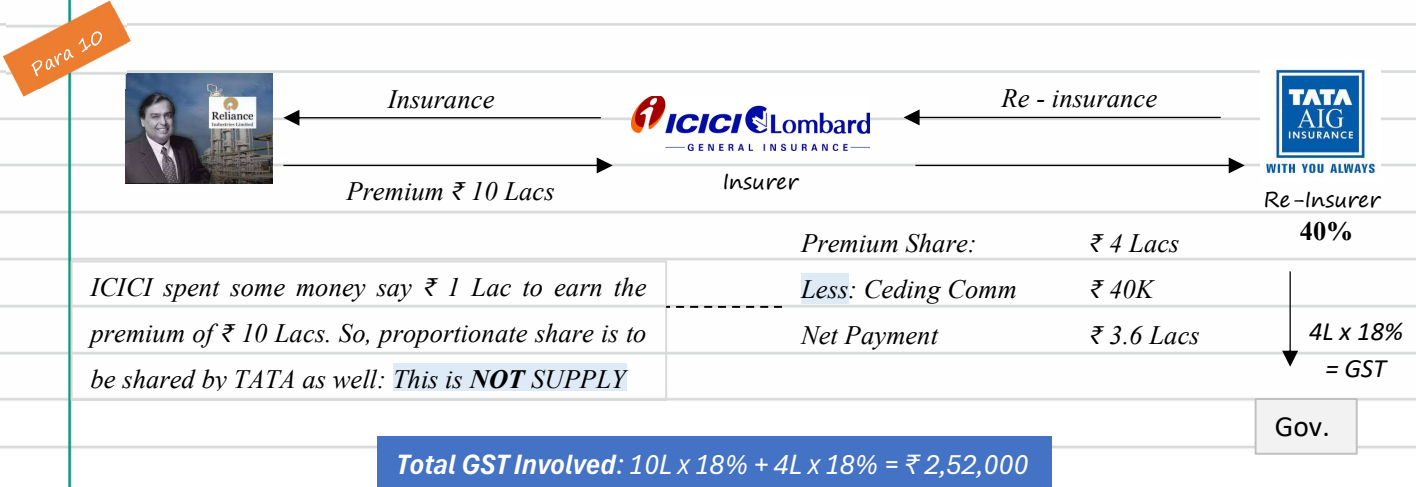
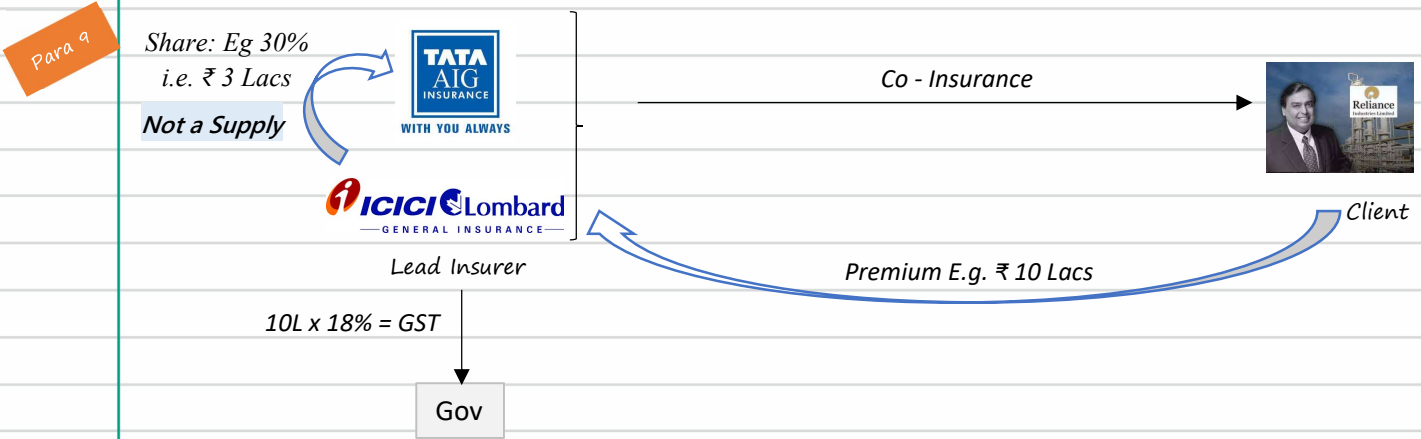


Schedule III: Activities which shall be treated Neither Supply of Goods nor Supply of Services

Para	Particulars
<p>1.</p>	<p>Services by</p> <ul style="list-style-type: none"> → an employee (including casual employees) to the employer → in the course of or in relation to his employment. <p style="text-align: center;"><i>E.g. Any amount paid to a new employee to not join a competitor: Supply ✓</i></p>
<p>2.</p>	<p>Services by any court or Tribunal established under any law for the time being in force.</p> <ul style="list-style-type: none"> ⇒ Court includes District Court, HC, SC ⇒ Consumer Disputes Redressal Commissions are not Tribunals but clothed with the same characteristics of a Tribunal: Hence, fees charged by them - No GST

3.	<p>a) functions by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;</p> <p>b) duties performed by any person who holds any post in pursuance of provisions of the Constitution in that capacity [President, PM, CJI, CAG of India etc.]; or</p> <p>c) the duties performed by</p> <ul style="list-style-type: none"> ✓ any person as a Chairperson or a Member or a Director in a body established by the CG or a SG or LA [Eg: SBI, Central Vigilance Commission] and ✓ who is not deemed as an employee before the commencement of this clause. <p>Yeh Samjho! If any person is working as a chairperson or a member or a director in a body not falling in above clause <u>AND</u> is not an employee: Sch III NA; it is supply ✓</p>
4.	Service of funeral, burial, crematorium or mortuary including transport of deceased.
5.	<p>→ Sale of land and,</p> <p>→ Sale of building: subject to Para 5(b) of Sch II [under construction = Supply ✓]</p> <p style="text-align: center;">Yeh Samjho</p> <ul style="list-style-type: none"> ☑ What if Land is developed (levelling, drainage lines, water lines etc) and then sold? Developed land also covered under this para. Hence, outside the scope of GST. ☑ Just to clarify, GST will be applicable on the developing charges.
6.	<p>Actionable Claims other than Specified actionable claims i.e. HC BLOG</p> <p>→ Horse Racing Casino betting Lottery Online Money Gaming Gambling</p>
7.	<p>Supply of goods from NTT to another NTT without such goods entering into India</p> <p>Example: Mr. A bought goods from China and sold them to a party in USA. The goods were transferred directly from China to USA, without entering into India.</p>
8.	<p>a) In-Bond Sales: Supply of warehoused goods before clearance for home consumption;</p> <p>Note: IGST levy at the time of <u>final clearance</u> of goods for Home Consumption.</p> <p>aa) Supply of goods warehoused in a SEZ or in a Free Trade Warehousing Zone to any person before clearance for exports or to the Domestic Tariff Area</p> <p>b) High Sea Sales: Supply of goods by the consignee to any other person,</p> <ul style="list-style-type: none"> ➤ by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India ➤ but before clearance for home consumption.

9. Co-Insurance:
- Activity of apportionment of co-insurance premium
 - by the lead insurer [named as such in the contract – will underwrite the largest share, negotiate the contract, manage the policy] to the co-insurer
 - for the insurance services jointly supplied by the lead insurer and the co-insurer to the insured in co-insurance agreements,
- ✓ subject to the condition that the lead insurer pays GST on the **entire amount** of premium paid by the insured.
10. Re-Insurance:
- Services by insurer to the reinsurer
 - for which ceding commission or the reinsurance commission is deducted from reinsurance premium paid by the insurer to the reinsurer,
- ✓ subject to the condition that the GST is paid by the reinsurer on the **gross reinsurance premium payable** by the insurer to the reinsurer, **inclusive** of the said ceding commission or the reinsurance commission.



ICICI spent some money say ₹ 1 Lac to earn the premium of ₹ 10 Lacs. So, proportionate share is to be shared by TATA as well: This is **NOT SUPPLY**

Non-Supplies Notified vide Notification

1) Services by way of any activity in relation to a function entrusted

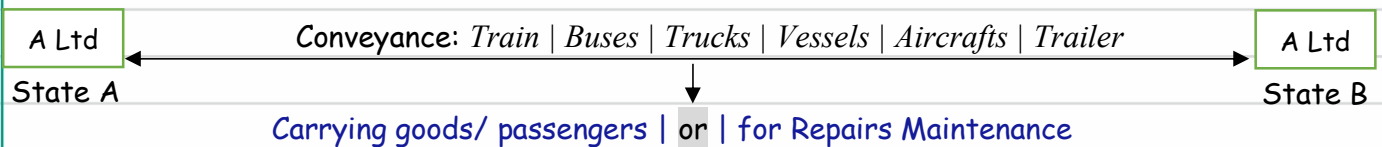
- to a Panchayat under Article 243G of the Constitution
- to a Municipality under Article 243W of the Constitution



2) Grant of Alcoholic Liquor License by the State Government against consideration

Non-Supplies vide Circular

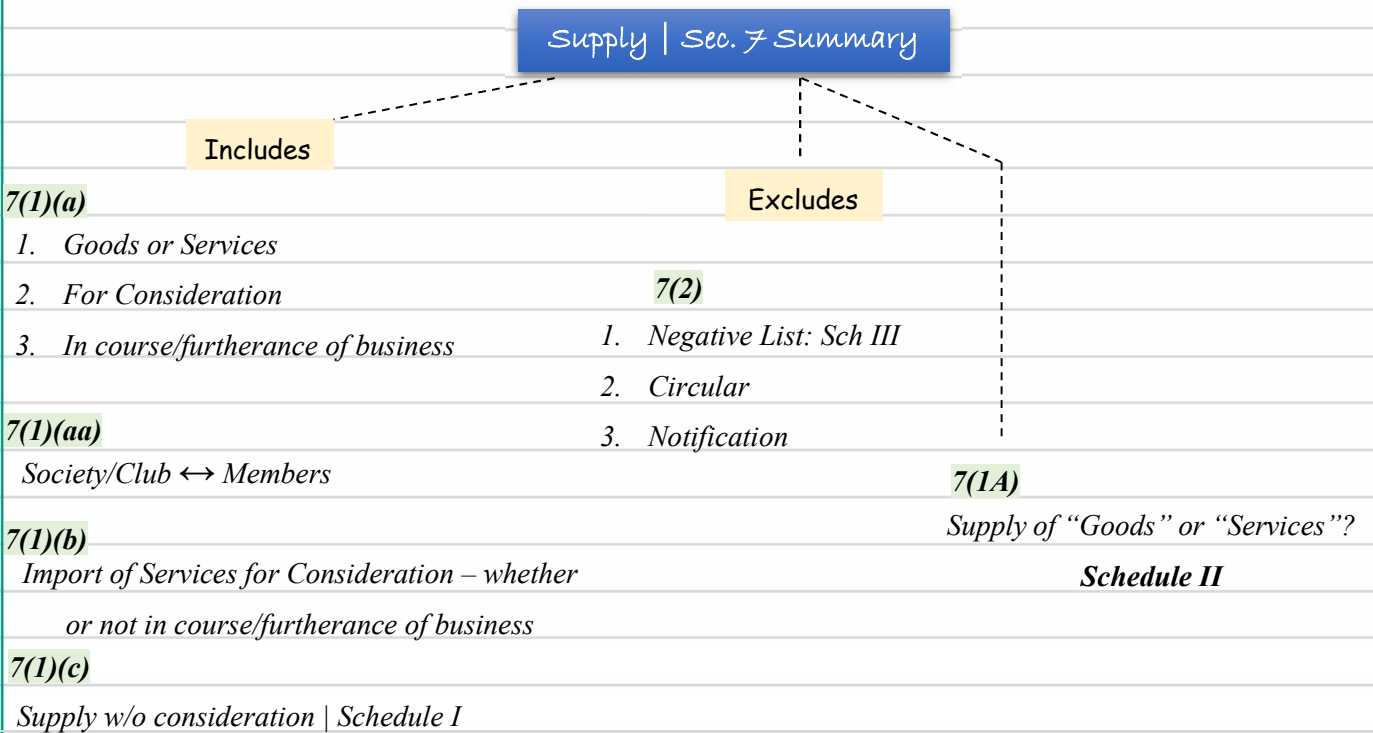
Inter-State movement of various modes of conveyance: Between Distinct Persons



↪ shall be treated 'neither as a supply of goods or supply of service'. Hence, **no IGST**.
 → except in cases where such movement is for further supply of the same conveyance.

⚡ Note: Applicable GST shall be leviable on repairs and maintenance expense

⚡ Above circular shall mutatis mutandis apply to inter-State movement of rigs, tools and spares, and all goods on wheels like cranes.





Sec. 8: Composite and Mixed Supplies

The tax liability shall be determined in the following manner, namely:-

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, → shall be treated as a supply of such principal supply; and
- (b) a mixed supply comprising two or more supplies → shall be treated as a supply of that particular supply which attracts the highest rate of tax

TV [Rate 18%] sold with TV Stand [Rate 5%]: Total consideration to be charged @ 18%

Hamper of Dry Fruits [Rate 18%] + Soft Drinks [Rate 40%] + Chocolates [5%]: Total Consideration charge @ 40%

Various Analysis, Conclusions and Clarifications

Analysis of Consideration

1: Donations received by charitable institutions from individual donors, without quid pro quo

No GST if:

- 1. Gift or donation is made to a charitable organization; and
- 2. Payment has the character of gift or donation; and
- 3. Purpose is philanthropic i.e. no commercial gain involved; no advertisement; no reference of business activity

Example: I donated ₹ 1,00,000 to a trust. They mentioned it under my name i.e. "Siddhesh Valimbe". This is not a consideration. If they mention "CA Siddhesh, IDT Faculty": It's a consideration. ✓

2: Art works sent by artists to galleries for exhibition



Majnu Bhai



Gallery

- This is not a "supply" as no consideration flows from the gallery to the artist.
- If the art work is sold in the exhibition, then it would constitute "supply".

3: No Claim Bonus NCB (Insurance)

Situation: If no claim is lodged during the year, Insurance Co offers NCB in form of "Premium Reduction". Can it be considered = consideration for supply by Insured to Insurance Co. for agreeing to obligation to refrain from lodging insurance claim?

→ **Not a Supply.** The customer/ insured procures insurance policy to indemnify himself from any loss/ injury as per the terms of the policy and is not under any contractual obligation not to claim insurance claim during any period covered under the policy, in lieu of NCB.

4. Salvage/Wreck Value earmarked in claim assessment of damage caused to Motor Vehicle

Situation: In case a claim is made by an insurer for damage of the motor vehicle, while settling said claim, where the general insurance companies, as per the pre-decided terms of the insurance contract



deduct the value of salvage/wreckage of the MV as deductibles from the claim amount paid

- the salvage remains the property of insured
- insurance companies are **not liable** to discharge GST liability on the same.

do not deduct and pay the full amount of claim,

- the salvage becomes the property of the insurance company and
- the company will be **obligated** to discharge GST on supply of salvage to salvage buyer.

Warranty Replacement | Goods, Parts, Services

Warranty: Goods/services provided without consideration

Scenario I: Original Equipment Manufacturer offering it

- No consideration, hence no GST. If additional consideration is charged? GST applicable ✓
- Any ITC reversal requirement by the manufacturer? No, since it's not an Exempt Supply

Scenario II: Distributor is involved, who gives this warranty on behalf of the Manufacturer

Issue 1: Dealing b/w Distributor and Consumer

No consideration, hence no GST. If additional consideration is charged, GST shall be applicable.

Issue 2: Dealing b/w Distributor and Manufacturer - - - 4 possible situations

Situation 1: Distributor replaces the goods using his own stock or by purchasing from a third party; and charges the manufacturer by issuing Tax Invoice:

- ⇒ GST Payable
- ⇒ No ITC Reversal by Distributor



Situation 2: Distributor raises a requisition to the Mfr. who then provides the said goods to the Distributor who in turn provides to the customer; no separate consideration:	No GST; No ITC reversal by Manufacturer w.r.t replaced goods
Situation 3: Distributor replaces the goods out of his stock and then raises requisition to the Manufacturer, who then provides goods through delivery challan, without any separate consideration	No GST on replenishment. No ITC reversal by Manufacturer w.r.t replaced goods
Situation 4: Distributor replaces the goods out of supply already received by him from the Mfr. and Mfr. issues a credit note w.r.t replaced goods subject to sec. 34(2)	GST adjustment by Mfr. if Distributor reverses ITC

Issue 3: Services provided Free of Cost by Distributor; but Charges Manufacturer for it
 → It's a supply by Distributor to Manufacturer. Manufacturer can claim ITC on it.

Scenario III: Extended Warranty

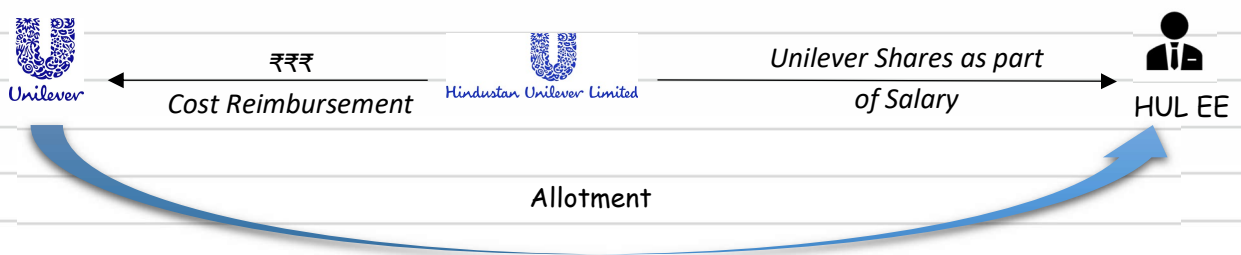
When is this extended warranty availed by the Customer?

- Any time after Original Supply: Treated as supply of services distinct from the original supply; GST shall be applicable ✓
- At the time of Original Supply
 - Composite Supply
 - Principal Supply = Supply of Goods
- ❖ if extended warranty availed from supplier other than supplier of goods? Tax Separately

Preferential Location Charges [Residential/Commercial Properties]

- Allowing choice of location = Integral part of supply of construction services.
- Treatment = Composite Supply; where supply of construction services is the main service and PLC is naturally bundled with it. Apply same tax treatment as the main supply of construction service.

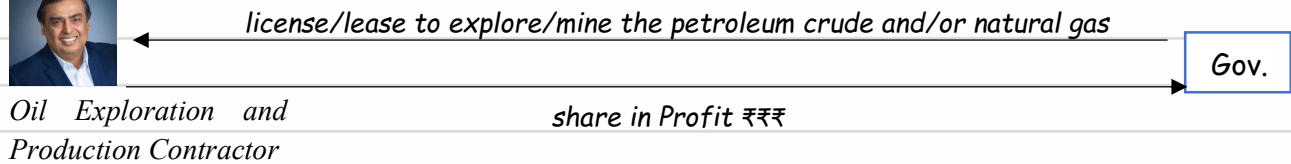
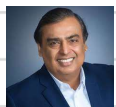
Share Options provided by a Company to its EE through Overseas Holding



- ❑ **GST on Shares Allotment of Shares: Not Under GST due to 2 Reasons**
 - 1) *GST is not leviable on the compensation paid to the employee by the employer as the purchase or sale of securities/shares, in itself, is neither a supply of goods nor a supply of services.*
 - 2) *Moreover, the share options are a part of remuneration of the employee by the employer as per terms of employment and is covered under Para 1 of Schedule III of the CGST Act.*

- ❑ **Reimbursement on "Cost basis" by Indian Subsidiary = Import of Services? No. No GST.**
What if some mark up is charged/additional fee is charged from the Domestic Subsidiary? Then it shall be considered as "consideration" for supply of services of arranging the transaction of shares.
 ⇒ *domestic subsidiary company will pay GST under RCM, as it's then an import of service.*

Cost Petroleum | Profit Petroleum



Situation: As per these Production Sharing Contracts, the contractor is at first entitled to recover the contract cost i.e. expenses incurred in exploration, development, production and payment of royalty involved in the extraction of oil/gas from the total sale proceeds and thereafter, he is expected to share with the Government the profit from his venture [known as profit petroleum].

- ❑ **Cost Petroleum:** *The value of petroleum which the contractor is entitled to for cost recovery.*
 ⇒ *GST Treatment: Not a consideration, and thus not taxable per se, as the contractors carry exploration and production of petroleum for themselves and not as a service to Government.*
- ❑ **Profit Petroleum:** *Total Value of Petroleum - Cost Petroleum [part sharing with government]*
 ⇒ *GST Treatment: It's a consideration for Government against grant of license, but = exempt.*

Financial Transactions: Taxability of Various Instruments

- ☑ **CP (Commercial Paper) and CD (Certificate of Deposit) = Money [nature of promissory notes]**
- ☑ **Derivatives = Securities [as per section 2(h)(ia) of the SCRA]. Hence, not liable to GST. ✗**
 - **Two common forms of Derivatives: Futures and Forwards**
 - GST Depends on manner of settlement*
 - 1) **No Delivery | Net Settlement = Security, and hence no GST**
 - 2) **Actual Delivery | No Settlement = Normal Supply of Goods. Liable to GST ✓**



- ☑ Secured Debt: Sale, purchase, acquisition or assignment of a secured debt is not a transaction in money. It is in nature of DERIVATIVE; hence = Security- **NO GST**
- ☑ Transactions in Instruments: Such as interest rate swaps, and foreign exchange swaps would be excluded from the definition of 'supply' since such instruments are derivatives, being securities, based on contracts of difference- **NO GST**
- ☑ Any other Services Charges/Documentation Fee: **GST** ☑

Securities Lending Scheme



- Securities are neither goods, nor services. Therefore, a transaction in securities which involves disposal of securities is not a supply in GST and hence not taxable.
- Does SLS Involve Disposal of Securities? No; The SLS doesn't treat lending of securities as disposal of securities and therefore is **not excluded** from the definition of services.

Conclusions

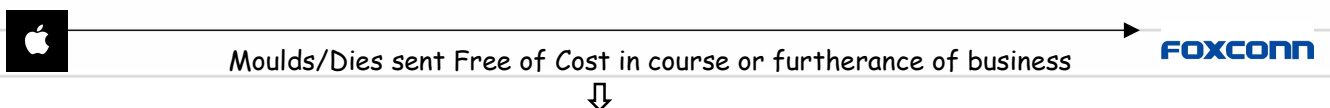
- ✓ Lending Fees charged from borrowers: It is a Consideration and hence taxable under GST
- ✓ Activities of intermediary facilitating borrowing/lending of securities for Commission: **Taxable**
- ✓ Who will pay GST? **Borrower shall pay - RCM applies!**

Cash Calls [JV]

Cash Calls are raised by an operating member of the JV on other members in proportion to their participating interests in the JV to meet the expenditure of the operations.

- A) Money called upon is used to purchase a machine for use in JV: Cash calls will not be subject to GST since the operating member is not carrying out an activity for another for consideration. Here, the money paid = in nature of **capital contribution** and is therefore a transaction in money.
- B) The operating member uses its own machinery: He is providing 'service' within the scope of 'supply' because here operating member is recovering the cost appropriated towards machinery & services from other JV members in their participating interest ratio. **Taxable**

Moulds/Dies by OEM [Original Equipment Mfr] to CM [Component Mfr]



Not a Supply: Since, no consideration and none of Sch I para applies



Perquisites by Employer to Employee

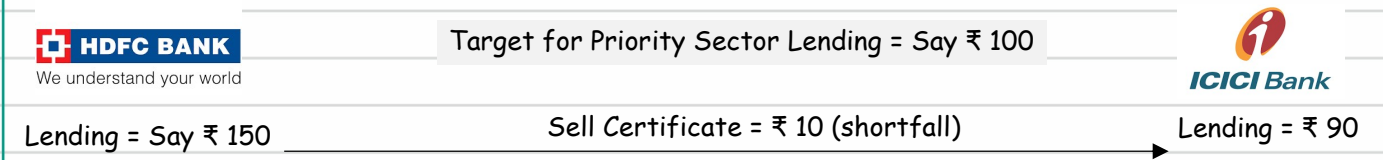
Perquisites by employer to its employees in terms of contractual agreement entered into between the employer and employee are in lieu of services provided by employee to employer in relation to his employment [Sch III] i.e. a contractual agreement.

→ Hence, it shall **not** be subjected to GST.

Tenancy Rights | Pagdi System

<i>What is Tenancy Premium?</i>	<ul style="list-style-type: none"> ➤ Tenant can pay to the Owner to acquire tenancy rights. ➤ Owner can also pay the tenant to get the property vacated.
<i>GST Implication</i>	The activity of transfer of tenancy right against consideration [i.e. tenancy premium] is squarely covered under supply of service [Para 2, Sch II] and is liable to GST .
<i>What if such transfer is subject to stamp duty and registration charges?</i>	<p>Merely because of such charges, it would not preclude them from the scope of "supply"- GST will be levied (even on trf. of rights to new tenant)</p> <p>Wouldn't it be treated as sale of Land & Building which is covered under negative list i.e. Sch III? No.</p>
<i>What if Rent paid by the tenant is falling under exemptions- Entry No. 12 NN 12/2017?</i>	<ul style="list-style-type: none"> ➤ Then tenancy premium paid by the tenant would be exempt. ➤ But tenancy premium paid by the owner to tenant shall continue to be taxable under GST

Priority Sector Lender Certificates



- Nature: PSLCs are in the nature of **goods**; not securities. RBI clarified this as well.
- Taxability: **Taxable**. ITC available as usual for the buyer bank.
- Nature of supply: **Inter-State | IGST | RCM** applicable

Food and Beverage @ Cinema Halls



- ❑ Sold [cinema ticket + food and beverages]: **Composite Supply**. Principal Element = Cinema
- ❑ Food and Beverage supplied independently: **Tax as Restaurant Service**

Shares Held in Subsidiary by Holding Company: Supply of Service?

- Shares = Securities; and Securities are neither goods, nor services; hence outside the scope of GST. This implies that the securities held by the holding company in the subsidiary company are neither goods nor services.
 - It cannot be said that a service is being provided, solely on the basis that there is a specific SAC entry '997171', mentioning; "the services provided by holding companies, i.e. holding securities of (or other equity interests in) companies and enterprises for the purpose of owning a controlling interest.", unless there is a supply of services as per section 7.
- Conclusion: Therefore, the activity of holding of shares of subsidiary company by the holding company per se cannot be treated as a supply of services, and **cannot be taxed under GST.**

Liquidated Damages | Compensation | Penalties

This is linked with Para 5 (e) of Sch II. Examples:

- *Agreeing to the obligation to refrain from an act: Non-compete agreement*
- *Agreeing to the obligation to tolerate an act or a situation: Tolerating loud music in the neighborhood*
- *Agreeing to the obligation to do an act: Treatment of waste generated by a factory on request of a Residential Society nearby*

Two conditions to be complied for being "supply":

1. There must be an expressed or implied **agreement or a contract** i.e. to refrain or tolerate or act. Such a contract cannot be presumed to exist just because there is a flow of money from the other party.
2. Consideration must flow in return to this contract or agreement.

Taxability of Few Items

- A. *Late fee or penalty in case the buyer fails to pay the amount before a certain date*
Forfeiture of amount in case of ticket for passenger transport if the passenger doesn't show up
Termination fee or penalty in case lessee terminates the lease before a certain period
Pre-payment penalty in case loan taken from a bank is pre-paid by the borrower
- The above payments constitute consideration for supply of a facility, namely: acceptance of late payment, early termination of lease, prepayment of loan etc. So, these payments, even if called as "fine or penalty" are actually consideration for supply & hence liable to GST, if supply is taxable.


- B. *Late Payment Fee/Surcharge [Utility Bills such as electricity, water: very common to pay late]*
 - The facility of accepting late payments with interest or late payment fee, fine or penalty is a facility granted by supplier naturally bundled with main supply [it shall be a composite supply].

- C. *Cancellation Charges [hotels, tour and travel, transport etc.]*
 - All the services involved are a part of composite supply. Allowing cancellation is a part of this bundle.

Cases where it's not a consideration

<p>Liquidated Damages (amount payable for breach of contract):</p>	<ul style="list-style-type: none"> → It is argued that performance is the essence of a contract, not its breach. Liquidated damages cannot be said to be a consideration received for tolerating the breach or non-performance of contract; rather they are for not tolerating the breach of contract. → Payment of liquidated damages is stipulated in a contract to ensure performance and to deter non-performance, unsatisfactory performance or delayed performance. <p>Conclusion: Liquidated damages are merely a flow of money from the party who causes breach of the contract to the party who suffers loss or damage due to such breach. Such payments do not constitute consideration for a supply and are not taxable.</p> <p><i>Example: Forfeiture of earnest money by Government if a successful bidder fails to act after winning the bid; or forfeiture of earnest money by seller for breach of contract by buyer.</i></p>
<p>Penal Charges Levied by Banks and NBFCs (earlier penal interest was levied):</p>	<p>They are essentially in nature of charges for breach of terms of loan contract. They are mere 'events' in a contract. They are to deter non-compliance with loan terms. Treatment = like of Liquidated Damages;</p> <p>Hence: No GST on such charges.</p>
<p>Cheque Dishonor Fine/Penalty</p>	<ul style="list-style-type: none"> → There is never an implied or express offer or willingness on part of the supplier that he would tolerate deposit of an invalid, fake or unworthy instrument of payment against consideration in the form of cheque dishonour fine or penalty. Supplier does not want a dishonored cheque. → The fine or penalty that the supplier or a banker imposes is a penalty not for tolerating the act or situation but for not tolerating, penalizing and thereby deterring and discouraging such an act or situation. <p>Conclusion: This is not a consideration for any service and not taxable.</p>



<p>Penalty Imposed for Violation of Laws</p>	<p>→ Laws are not framed for tolerating their violation. They stipulate penalty not for tolerating violation but for not tolerating, penalizing and deterring such violations.</p> <p>→ There is no agreement between the Government and the violator specifying that violation would be allowed or permitted against payment of fine or penalty.</p> <p>→ But is such agreement even possible? There cannot be such an agreement as violation of law is never a lawful object or consideration.</p> <p>Conclusion: Fines and penalty chargeable by Government or a local authority imposed for violation of a statute, bye-laws, rules or regulations are not leviable to tax.</p>
<p>Forfeiture of salary or payment of bond amount if the employee leaving the employment before the minimum agreed period</p> 	<p>→ Purpose: To discourage non-serious candidates.</p> <p>→ The said amounts are recovered by the employer not as a consideration for tolerating the act of such premature quitting of employment but as penalties for dissuading the non-serious employees from taking up employment and to discourage and deter such a situation.</p> <p>→ Further, the employee does not get anything in return from the employer against payment of such amounts.</p> <p>Conclusion: Therefore, such amounts recovered by the employer are not taxable as consideration for the service of agreeing to tolerate an act or a situation.</p>
<p>Fixed Charges for Power</p>	<p>The price charged for electricity by the power generating companies from the State Electricity Boards (SEBs)/DISCOMS or by SEBs/DISCOMS from individual customers has two components, namely,</p> <ul style="list-style-type: none"> • a minimum fixed charge (or capacity charge) and • variable per unit charge. <p>→ The fact that the minimum fixed charges remain the same whether electricity is consumed or not or it is scheduled/consumed below the contracted capacity: does not mean that minimum fixed charge is a charge for tolerating the act of not scheduling or consuming the minimum the contracted or available capacity or a minimum threshold.</p> <p>Conclusion: Both the components of the price are charged for sale of electricity and are thus not taxable as electricity is exempt from GST.</p>

Printing Industry

Firstly, these are **composite** supplies. Now, the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

- ❑ In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the recipient; while the physical inputs including paper used for printing belong to the printer: **Supply of printing = principal supply and therefore such supplies = supply of service.**
- ❑ In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. by the printer using its physical inputs including paper to print the design, logo etc. supplied by the recipient of goods: **Printing of the content- logo etc [supplied by the recipient] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods.**

Food to Patients



- Food to Admitted Patients: **As advised by doctors. Part of composite supply. Principal Supply: Healthcare. Not taxed separately.**
- Food to OPD Patients/Visitors/Attendants: **Taxed Separately**

Retreading of Tyres

Question: Old tyres belong to whom?

- Supplier of Retreated Tyres: **Supply of Goods**
- Customer: **Supply of Services**



Activity of Bus Body Building



- There is a supply of **goods and services**.
- Thus, classification of this composite supply, as goods or service would depend upon **which supply is the principal supply- which shall depend on the basis of facts and circumstances of each case.**

Treatment of Vouchers

"Transactions in Vouchers" = Supply of G or S?



Voucher = Pre Paid instrument and if recognized by RBI: It is **"money"** and money is neither goods, nor services

Other Cases: It is an **"actionable claim"**, but **not** a **"specified actionable claim"**. Hence, due to Sch III, **not a "supply"**.



GST Treatment | when Distributors/Agents involved?

Model 1 | Principal to Principal Basis



This is a pure trading. Agents etc. earn Trading Margin. This is not a supply of goods or services as we discussed above.

Model 2 | Principal Agent Relationship



Agent earns commission. This is a supply of service. GST

Additional Services by Agents etc. like advertising, marketing?

This is a normal supply of service. GST

GST on Breakage

Is this "monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person" i.e. is this consideration?

- Since "consideration" under GST is defined in relation to the supply of goods/services/both; and there is no underlying supply of goods and/or services in case of non-redemption of vouchers by the customer, the amount retained for unredeemed vouchers by the voucher issuer cannot be construed as "consideration".
 - ⇒ Hence: **NOT taxable.**
- There is also no agreement to refrain from redemption.
 - ⇒ Hence, it **cannot** be considered that non-redemption of voucher by the redeemer tantamounts to supply of services.

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"You didn't come this far to only come this far."