

## Goods – An Analysis

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### Introduction:

- 1.1 It is of paramount importance to understand the meaning of goods in any taxing statute related to goods. The meaning of goods is not the same for all the statutes. Many statutes have defined the term 'goods' in different manner. The levy of tax on goods is very old whereas levy of tax on services is very recent. Though the goods have been subjected to tax since ages, even today it is not free from litigation.

### Importance of goods in GST:

- 1.2 Under the GST, goods have been defined under section 2 (52) of the CGST Act, which we will discuss further, to understand the concept of goods more clearly, in comparison to the meaning of services. The service has been defined widely in the GST law to be 'anything other than goods...'. Thus, it shall have impact on classification, rate, time of supply, place of supply, etc. Therefore, the term goods is to be clearly analysed and understood to avoid wrong application of law.
- 1.3 Section 2(52) of the CGST Act defines "goods" 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."
- 1.4 Whereas Section 2(102) of the CGST Act defines "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;

1.5 Since the definition of goods given in other statutes and as driven from the settled judicial pronouncements on movable property provides more clarity on 'goods', the meaning of money, securities and actionable claim are discussed first and then the detailed analysis of goods is being done in this article. Let us have a look on the meaning of terms used in the explanation of the definition of goods.

**Money:**

1.6 Section 2(75) of the CGST Act defines ““money” as 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 Reserve Bank of India 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”.

1.7 Numismatics is the study or collection of currency, including coins, tokens, paper money and related objects. The above definition itself is very exhaustive and gives the clear meaning of money.

**Securities:**

1.8 Section 2(101) of the CGST Act defines ““securities” shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956.”

1.9 As per section 2(h) of the Securities Contracts (Regulation) Act, 1956;

““securities” include —

(i) shares, scrips, stocks, bonds, debentures, debenture stock or other marketable securities of a like nature in or of any incorporated company or other body corporate;

(ia) derivative;

(ib) units or any other instrument issued by any collective investment scheme to the investors in such schemes;

(ic) security receipt as defined in clause (zg) of section 2 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002;

(id) units or any other such instrument issued to the investors under any mutual fund scheme;

(ii) Government securities;

- (ii) such other instruments as may be declared by the Central Government to be securities; and
- (iii) rights or interest in securities.”

1.10 Section 2(zg) of Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 defines ““security receipt” means a receipt or other security, issued by a securitisation company or reconstruction company to any qualified institutional buyer pursuant to a scheme, evidencing the purchase or acquisition by the holder thereof, of an undivided right, title or interest in the financial asset involved in securitisation.”

**Actionable claim:**

1.11 Section 2(1) of the CGST Act defines ““actionable claim” shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882.” As per this section, 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 recognise as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent.

**Other Statutes containing the definition of Goods:**

1.12 The Article 366(12) of the Constitution of India defines the goods as ‘goods include all materials, commodities, and articles’.

1.13 The general interpretation of the term material is inclusive and not limited to raw and processed **material**, components, parts, assemblies, sub-assemblies, fuels, lubricants, coolants, cleaning agents, and small tools and accessories that may be consumed directly or indirectly. Similarly, a commodity is a reasonably interchangeable term of goods or materials, bought and sold freely as an article of commerce. Commodities includes agricultural products, fuels, and metals and are traded in bulk on a commodity exchange or spot market.

1.14 We can understand from reading the above definitions that all movable properties except money and securities are goods. Therefore, it is now essential to know the

meaning of movable property so that the meaning of goods can be interpreted in a more expeditious manner. The term movable property has not been defined in the GST law. Though section 3(36) of the General Clauses Act, 1897 defines ““movable property” shall mean “property of every description, except immovable property”. The property is a or things belonging to someone; or possessions of someone or the owner. To know what is movable property, it is necessary to understand the meaning of immovable property.

- 1.15 Section 3(26) of the General Clauses Act, 1897 defines ““immovable property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.”
- 1.16 Section 2(6) of Registration Act defines “immovable property includes land, buildings, hereditary allowances, rights to ways, lights, ferries, fisheries or any other benefit to arise out of land, and things attached to the earth or permanently fastened to anything which is attached to the earth, but not standing timber, growing crops nor grass.”
- 1.17 Things attached to the earth or permanently fastened to anything which is attached to the earth is immovable property. To attract excise duty, the goods must be movable. Therefore, the case laws on movable goods or immovable property in central excise and VAT would be useful to understand immovable property.
- 1.18 The land, building and other civil structures are immovable properties. Land is the part of the earth's surface that is not covered by water. The benefit to arise out of land is a very restricted element. The interpretations of the Honourable Supreme Court on benefit to arise out of land is as under:
- Lake is an immovable property and therefore the petitioner’s right to enter in that estate, which he does not own and take away fish from the lake is a ‘Profit a Prendre’ and in India it is regarded as a benefit to arise out of the land and hence it is immovable property<sup>1</sup>.

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<sup>1</sup> Anand Behera v State of Orissa (1955) 2 SCR 919

- Felling, cutting and removing bamboos from forest for the manufacture of paper is a benefit to arise out of land and hence it would be an interest in immovable property<sup>2</sup>.
- Right to enter upon land and cut trees is a benefit arising out of land<sup>3</sup>.
- Congregation of buyers and sellers is enough to constitute a bazaar and the right to hold a bazar is an interest in the land<sup>4</sup>.

1.19 The Mumbai High Court, in the case of Chheda Housing Development<sup>5</sup> held FSI/TDR being a benefit arising from the land, consequently must be held to be immovable property and an agreement for use of TDR consequently can be specifically enforced, unless it is established that compensation in money would be an adequate relief.

1.20 In the case of Sumer Corporation<sup>6</sup>, the Mumbai High Court held that under the provisions of VAT law, sale of goods can be for money or any other valuable consideration. Development Rights Certificate (DRC) is the consideration for construction activities done. The DRC by itself has been sold for a price in the market depending upon demand and supply conditions. This is to be understood as a valuable consideration and equivalent to money. So long as the TDR is understood by law to be equivalent to cash compensation and which can be dealt with in the market for a price as it is able to command, then, the tax liability can be clearly computed and by recourse to the machinery provisions contained in the Maharashtra VAT Act.

1.21 If items assembled or erected at site and attached by foundation to earth cannot be dismantled without substantial damage to its components and thus cannot be reassembled, then the items would not be considered as moveable and will, therefore, not be excisable goods<sup>7</sup>.

1.22 Attachment of plant with nuts and bolts intended to provide stability and prevent vibration not covered as attached to earth - Attachment easily detachable from foundation and not permanent<sup>8</sup>.

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<sup>2</sup> State of Orissa v Titagarh Paper Mills Company Limited AIR 1985 SC 1293.

<sup>3</sup> Shantabai v State of Bombay AIR 1958 SC 532.

<sup>4</sup> Bibi Sayeeda v State of Bihar (1996) 9 SCC 516

<sup>5</sup> 2007 3 Mh LJ 402 Chheda Housing Development v Bibijan Shaikh Farid

<sup>6</sup> Writ Petition No. 2119 of 2016, pronounced on 25.04.2017 Sumer Corporation v State of Maharashtra

<sup>7</sup> C.B.E. & C. Circular, dated 15-1-2002

<sup>8</sup> CCE, Ahmedabad v Solid & Correct Engineering Works 2010 (252) E.L.T. 481 (S.C.)

- 1.23 Whether goods embedded in earth or building would be excisable has to be decided on the touchstone of permanency. If the goods or the chattel was movable from one place to another in the same position or liable to be dismantled and re-erected at the latter place, it will be movable property. But if erected permanently without being shifted from place to place, then it would be treated as permanently attached to the earth<sup>9</sup>.
- 1.24 Installation or erection of turbo alternator on the platform specially constructed on the land cannot be treated as a common base. Therefore, such alternator would be immovable property as such<sup>10</sup>.
- 1.25 Just because plant and machinery are fixed in the earth for better functioning, it does not automatically become an immovable property. Embedding it in a concrete base to ensure its wobble free operation does not make it immovable property in the sense a building or a tree is<sup>11</sup>.
- 1.26 In the case of Larson & Toubro Ltd<sup>12</sup>, the Hon. Supreme Court analysed the meaning of goods and held that the definition of “goods” in clause (12) is inclusive. It includes all materials, commodities and articles. The expression, ‘goods’ has a broader meaning than merchandise. Chattels or movables are goods within the meaning of clause (12). Sub-clause (b) of Clause 29A refers to transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract. The expression “in some other form” in the bracket is of utmost significance as by this expression the ordinary understanding of the term ‘goods’ has been enlarged by bringing within its fold goods in a form other than goods. Goods in some other form would thus mean goods which have ceased to be chattels or movables or merchandise and become attached or embedded to earth. In other words, goods which have by incorporation become part of immovable property are deemed as goods.
- 1.27 The above clarifications of the Apex Court are very important in case of works contracts where generally goods once being put to use, becomes immovable property.

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<sup>9</sup> Municipal Corporation of Greater Bombay & Ors. v Indian Oil Corporation Ltd. (1991 Suppl. (2) S.C.C. 18).

<sup>10</sup> Triveni Engineering and Indus. Ltd. v Commissioner 2000 (120) E.L.T. 273 (S.C.)

<sup>11</sup> 1998 (97) E.L.T. 3 (S.C.) Sirpur Paper Mills Ltd V. CCE, Hyderabad.

<sup>12</sup> 2014 (303) E.L.T. 3 (S.C.)

Accordingly, from the suppliers (service provider) point of view, the inputs used in the works contract deemed to be goods though the same is embedded to the earth.

1.28 The Hon. Supreme Court, in the case of Delhi Cloth and General Mills. Co. Ltd.,<sup>13</sup> held as under;

“On the meaning of the word ‘goods’ an interesting passage is quoted in the Words and Phrases, Permanent Edition, Vol. 18 from a judgment of a New York Court thus: -

“The first exposition I have found of the word “goods” is in Bailey’s Large Dictionary of 1732, which defines it simply “merchandise”; and by Johnson, who followed as the next lexicographer it is defined to be movable in a house; personal or immovable estates; wares; freight; merchandise.”

Webster defines the word “goods” thus: -

“goods, noun, plural; (1) movables; household furniture; (2) Personal or movable estate, as horses, cattle, utensils, etc., (3) Wares; merchandise; commodities bought and sold by merchants and traders.”

These definitions make it clear that to become “goods” an article must be something which can ordinarily come to the market to be bought and sold, and that satisfy human wants and provide utility.

1.29 In the case of Ambalal Sarabhai Enterprises<sup>14</sup>, the Hon. Supreme Court held that for articles to be goods, these must be known in the market as such or these must be capable of being sold in the market as goods. It was in the context of excisability.

1.30 ‘Goods’ in Sale of Goods Act, 1930 (Section 2(7)) is defined to mean “every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass and things attached to and forming part of the land which are agreed to be severed before sale or under the contract of sale”

1.31 Anything that is attached to earth is not goods. There was one interesting observation of the Mumbai Tribunal<sup>15</sup> in connection with service tax on repair and maintenance service. In this case, it was held that it is also moot whether a ship or vessel may, with some degree of accuracy, be described as ‘goods.’ During the relevant period, taxability was limited to repair, maintenance or servicing of goods which were restricted to

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<sup>13</sup> 1977 (1) E.L.T. (J 199) (S.C.)

<sup>14</sup> 1989 (41) E.L.T. 214 (S.C.)

<sup>15</sup> 2016 (46) S.T.R. 835 (Tri. – Mumbai), maintained in 2018 (8) GSTL J68 (Supreme Court)

movable property; this itself is defined in the General Clauses Act as all property excluding immovable property which does not, per se, enable resolution of the dilemma of being so described. Land is, undoubtedly, immovable property. Definition of 'goods' in the Sale of Goods Act, 1930 is, however, attracted to certain appendages of land to the extent that they can be separated from land before sale as part of contract of sale. Hence, structures that can be detached from the land are considered to be movable. Logically, the oceans and the seas are equivalences of land and the inextricability of a vessel or ship from the waters should bring them within the ambit of immovable. Ships before launch and for breaking up are goods but vessels or ships that are afloat are not goods except for the time being that they are the subject of a sale agreement. That ships, vessels and motor vehicles need not exclusively be goods is also apparent in Section 2 of Customs Act, 1962; they could also be conveyances. As conveyances, ships/vessels and motor vehicles move easily on water or land but, not being goods that are amenable to severance from land/water, are not distinguishable from immovable property.

- 1.32 'Goods' includes both tangible and intangible movable properties, materials, commodities and articles and also corporeal and incorporeal materials. It is not a term of art and its meaning varies from statute to statute<sup>16</sup>
- 1.33 Storage units, running counters, overhead unit, rear and side unit, wall unit, kitchen unit and items ordinarily immovable or not removable without cannibalizing are not furniture and are not excisable. Items like desks and chairs are furniture and excisable. From this, it may be said that plywood cut to size and fixed using screws and nails to make fixtures are not goods.
- 1.34 Air-conditioning plant is an immovable article whereas Asphalt drum/Hot mix plant is a movable article<sup>17</sup>
- 1.35 Replenishment licences (REP licence) have their own value and could be bought and sold as such. Original licence purchaser was not bound to import goods thereunder, and he could sell them to another and that another to yet another person. They were not chose-in-action, actionable-claim or title deed. They were property freely bought and sold in market. Their content was far more substantial and real than that of lottery ticket,

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<sup>16</sup> 2004 (178) E.L.T. 22 (S.C.) Tata Consultancy Services Ltd V. State of AP

<sup>17</sup> 2011 (267 E.L.T. (345 (S.C.) CCE, Indore V. Globus Stores P. Ltd.

which were goods. Definitions of “goods” and “property” in Sale of Goods Act, 1930 were in material particulars similar to definition of “goods” in Tamil Nadu, Karnataka and Kerala Sales Tax Acts, all of which uniformly say “goods” mean “every kind of movable property” (Sale of Goods Act) and “all kinds of movable property” (Tamil Nadu, Karnataka and Kerala Acts). REP Licence/Exim Scrip were not securities within meaning of Clause (h) of Section 2 of Securities Contracts (Regulation) Act, 1956. Hence, they could not be excluded from definition of “goods” in Tamil Nadu, Kerala and Karnataka Sales Tax Acts as well as Central Sales Tax Act<sup>18</sup>.

- 1.36 Unbranded/Customized software developed and sold by petitioner with or without obligation, for system upgradation, repairs and maintenance or employee training are ‘goods’ within Article 366(12) of Constitution of India read with Section 2(d) of Central Sales Tax Act, 1956 and corresponding to Section 2(j) of Tamil Nadu General Sales Tax Act, 1959<sup>19</sup>.
- 1.37 All tangible movable articles are goods for charge of customs duties under Section 12 read with Section 2(22)(e) of Customs Act, 1962, irrespective of what the articles may be or may contain. It may be that what the importer wanted and paid for was technical advice or information technology, an intangible asset, but the moment the information or advice was put on a media, whether paper or cassettes or diskettes or any other thing, that what is supplied becomes chattel. Drawings, designs, manuals and technical material are goods liable to customs duty.<sup>20</sup>
- 1.38 Section 2(12) of the Maharashtra Value Added Tax Act, 2002 defines “goods” means every kind of movable property not being newspapers, actionable claims, money, stocks, shares, securities or lottery tickets and includes live stocks, growing crop, grass and trees and plants including the produce thereof including property in such goods attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.

**Conclusion:**

- 1.39 From the above, we may conclude that to know what is goods, it is crucial to know what is movable property and what is immovable property, which depends upon the facts

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<sup>18</sup> 2017 (354) E.L.T. 6 (S.C.) Vikas Sales Corporation V. CCT.

<sup>19</sup> 2009 (233) E.L.T. 56 (Mad.) Infosys Technologies Ltd V. CCT, Chennai.

<sup>20</sup> 2001 (128) E.L.T. 21 (S.C.) Associated Cement Companies Ltd C. Cu.

