

# Chapter 1

## Preliminary

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### 1. Short title, extent and commencement

### 2. Definitions

#### Statutory Provision

#### 1. Short title, extent and commencement

- (1) *This Act may be called the Central Goods and Services Tax Act, 2017.*
- (2) *It extends to the whole of India except the State of Jammu and Kashmir.*
- (3) *It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:*

*Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.*

1. *The Central Goods and Services Tax Act, 2017 has been implemented in the State of Jammu and Kashmir from 8th July, 2017 through Constitution (Application to Jammu and Kashmir) Amendment Order, 2017, the Central Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017 and the Integrated Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017.*
2. *Certain provisions were came into force on 22.6.17 and remaining provisions on 1.7.17 as notified by the Central Government and hence appointed day for the CGST Act, IGST, UTGST Acts, SGST Acts was 1<sup>st</sup> July, 2017. However, the appointed day for the State of Jammu and Kashmir was 8<sup>th</sup> July, 2017.*

#### Title:

All Acts enacted by the Parliament since the introduction of the Indian Short Titles Act, 1897 carry a long and a short title. The *long title*, set out at the head of a statute, gives a fairly full description of the general purpose of the Act and broadly covers the scope of the Act.

The *short title*, serves simply as an ease of reference and is considered a statutory nickname to obviate the necessity of referring to the Act under its full and descriptive title. Its object is identification, and not description, of the purpose of the Act.

#### Extent:

Part I of the Constitution of India states: "India, that is Bharat, shall be a Union of States". It provides that territory of India shall comprise the States and the Union Territories specified in the First Schedule of the Constitution of India. The First Schedule provides for twenty-nine (29) States and seven (7) Union Territories.

Part VI of the Constitution of India provides that for every State, there shall be a Legislature, while Part VIII provides that every Union Territory shall be administered by the President through an 'Administrator' appointed by him. However, the Union Territories of Delhi and Puducherry have been provided with Legislatures with powers and functions as required for their administration.

India is a summation of three categories of territories namely – (i) States (29); (ii) Union Territories with Legislature (2); and (iii) Union Territories without Legislature (5).

The State of Jammu and Kashmir enjoys a special status in the Indian Constitution in terms of Article 370 of the Indian Constitution. The Parliament has power to make laws only on Defence, External Affairs and Communication related matters of Jammu and Kashmir. As regards the laws related on any other matter, subsequent ratification by the Government of Jammu and Kashmir is necessary to make it applicable to that State.

Therefore, the State of Jammu & Kashmir were required to pass special laws to be able to implement the Goods and Services Tax Acts. Accordingly, the assembly of J&K passed the GST bill in the first week of July. Subsequently, Honourable President of India had promulgated two ordinances, namely, the CGST (Extension to Jammu and Kashmir) Ordinance, 2017 and the IGST (Extension to Jammu and Kashmir) Ordinance, 2017 making the CGST/ IGST applicable to the State of Jammu and Kashmir, w.e.f. 8<sup>th</sup> July, 2017. Once the laws are passed by the State of Jammu & Kashmir, the Union Government would have to amend the Central Goods and Services Act, 2017 to delete the phrase that such provisions do not apply to the State of Jammu & Kashmir. After the promulgation of ordinance, the India has adopted GST across the country.

#### **Other Relevant Articles of Constitution**

The readers who wish to have a deeper understanding of GST may examine the articles of the Constitution which are relevant to GST. Brief of each is provided hereunder:

Articles 245(2): Law not invalid on ground that it has extra territorial jurisdiction. Important for Place of supply – Section 11,13 of Integrated Goods and service tax act 2017,

Article 246: Sets out that Parliament has exclusive powers to tax activities in List I; State legislature has exclusive powers to tax activities in List II; and both have concurrent powers to activities in List II.

Article 246A(1): Amendment provides notwithstanding Article 246 and subject to article 254(2),Parliament and State legislature have power to impose tax on goods and services. Within the State.

Article 246(2): Further only parliament has powers to tax interstate activities.

Article 249: Parliament has overriding power in GST.

Article 250: Parliament has overriding power in case of emergency

Article 254: Inconsistency in law- Parliament has powers to supersede.

Articles 268: Stamp duties are in Union list- collected by State.

Article 269: Imports deemed to be interstate activity. Interstate taxes collected apportioned as per GST Council recommendation.

Article 269(5): Parliament to have exclusive jurisdiction to determine inter-State character of any supply. Intelligible provisions need to be framed in this regard and not by any delegate but by Parliament itself.

Article 270: Distribution of taxes on stamp duties, consignment sales, surcharge or cess, central GST and IGST used for paying CGST. This is as decided by the Finance Commission.

Article 279: GST Council composition: Chairman- Union Finance minister; Vice Chairman- 1 chosen from among the State; Union Minister of State; and 1 Minister of Finance or other Minister of State for each State.

Article 279A: GST on 5 petroleum products, tobacco and immovable property deferred to date to be specified by GST council.

Article 286: States cannot tax import or export or supply outside the State.

Article 366 (12A): Goods and service tax means any tax on supply of goods or services or both except alcoholic liquor.

Article 366 ( 26A): Services means anything other than goods.

#### **Relevant Entries in Lists:**

Entry 52: List II - Entry Tax ( Now Omitted). Some legal experts have a view that States will have inherent powers as the basic structure of the Constitution cannot be changed.

Entry 54: List II - Only 5 petroleum Products and alcoholic liquor for human consumption other than interstate trade.

Entry 55: List II – Advertisement ( Omitted)

Entry 62: List II- Entertainment and amusement to local bodies- restricted

Entry 84: List I - Only 5 petroleum products and tobacco products continue.

#### **Commencement:**

The CGST Act came into operation on 01.07.2017, the date appointed by the Central Government. However, certain provisions i.e. Sections 1,2,3,4,5,10,22,23,24,25,26,27,28,29, 30, 139, 146,164 were made effective from 22.6.2017 mainly in relation to the provisions of registration and migration.

#### **Statutory Interpretations and Legal Maxims:**

The GST Acts like other recent laws in India is not simple and may need to be read considering the general principles of interpretation and may also need to follow legal maxims laid down over centuries. Some principles and legal maxims have been set out below:

- (a) When reading the law the plain language is to be given effect. Meanings contrary to plain language are not permissible.

- (b) Apparent omission in law cannot be made good or rectified by Courts. Necessarily to be amended by making representation. (*Casus Omissus*)
- (c) Purposive interpretation preferable to advance the remedy and not the mischief. (*Heydon's Rule*)
- (d) Notifications issued to further public welfare the law should be reasonable, just, sensible and fair. Normally not to cause hardship, inconvenience, injustice and avoid friction in system.
- (e) Law which is vaguely worded the entire provision can be read as a whole harmoniously.
- (f) The Act prevails over the rule.
- (g) Illustrations cannot modify the law.
- (h) Explanation cannot expand the scope of the provision.
- (i) Terms which are together need to be of same genere (*ejusdem generis*) or gathered by the company they keep (*noscitur a sociis*)
- (j) Multiple non obstante clauses, the last provision would be prevail.
- (k) In case of doubt the later provision prevails.
- (l) Vested rights not to be affected retrospectively.
- (m) Parliament can make law retrospectively to cure defects.
- (n) Levy provisions to favour tax payer if not clear.
- (o) Exemption provisions to favour revenue.
- (p) No presence of guilt needed for penalty unless specified specifically.

The above are some indicative principles. [Detailed article/ video on [tdtc@icai.org](mailto:tdtc@icai.org) may be referred for more on legal maxims and constitution]

## 2. Definitions

In this Act, unless the context otherwise requires-

(1) "actionable claim" shall have the same meaning as assigned to it in section 3 of the Transfer of Property Act, 1882;

One may refer to section 130 of Transfer of Property Act, 1882 regarding the manner of 'transferring' actionable claims. Transfer of actionable claim can be with consideration or without consideration as per the Transfer of Property Act, 1882.

Actionable claim represents beneficial interest in movable property that is not in possession. It is an entitlement to a debt and the holder of the actionable claim enjoys the right to demand "action" against any person. Acknowledgement of liability by a creditor to honor a claim, when made, does not constitute actionable claim in the hands of such creditor.

Examples could be: A claim to any debt other than mortgage- factoring of debtors ; Any beneficial interest in movable property not in ones possession. Readers may get more from the European Unions VAT decision.

The following aspects need to be noted:

- Assignment of actionable claim without permanently supplanting the holder of the claim would not be supply.
- Under the GST regime, actionable claim relating to lottery, betting and gambling alone will be regarded as 'goods' since the definition of goods includes actionable claim.

*(2) "address of delivery" means the address of the recipient of goods or services or both indicated on the tax invoice issued by a registered person for delivery of such goods or services or both;*

"Address of delivery" is relevant to in the context of determining Place of Supply of goods (other than imports/ exports). Care must be taken to differentiate between 'delivery' and 'location' of the addressee being the recipient.

It is understood that the address of delivery would be a crucial pointer towards the location of goods at the time of delivery to the recipient. The place of supply of goods or services or both (other than imports/ exports) would primarily be the location of the goods or services or both at the time of delivery to the recipient.

*(3) "address on record" means the address of the recipient as available in the records of the supplier;*

'Address on record' is relevant to determine Place of Supply in case of supplies made by a registered person to an un-registered person in relation to services. In such cases, where the Place of Supply has not been specifically provided for under the law, the address on record available in the records of the supplier would be regarded the Place of Supply.

*(4) "adjudicating authority" means any authority, appointed or authorised to pass any order or decision under this Act, but does not include the –**Central Board of Indirect Taxes and Customs**<sup>1</sup>, the Revisional Authority, the Authority for Advance Ruling, the Appellate Authority for Advance Ruling, **the Appellate Authority, the Appellate Tribunal and the Authority referred to in sub-section (2) of section 171**<sup>2</sup>;*

The following authorities are not permitted to pass an order/ decision under the GST laws:

- (a) The Central Board of Indirect Taxes and Customs
- (b) Revisional Authority
- (c) Authority for Advance Ruling

<sup>1</sup> Substituted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f 01.02.2019

<sup>2</sup> Substituted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f 01.02.2019

- (d) Appellate Authority for Advance Ruling
- (e) Appellate Authority
- (f) Appellate Tribunal

Under the Act, the Revisional Authority, Appellate Authority and the Appellate Tribunal are empowered to pass/ issue order as they think fit, after affording the parties a reasonable opportunity of being heard. However, such powers are limited to cases where an order has been passed by an authority of a lower rank, before it becomes a subject matter of revision/ appeal.

*(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;*

This definition appears to illustrate the principle of agency defined in Section 182 of the Indian Contract Act, 1872. Agency is a relationship that can be formed validly even without consideration in terms of Section 185 of the Indian Contract Act, 1872. Agent can work purely on commission basis. Even e-commerce companies like Flipkart, Amazon and Uber may be covered in some fact situations. But the relevance of being an agent is more pronounced while examining whether a transaction between a principal and agent is itself a supply under para 3, schedule I. Very often, the word agent or agency is used without necessarily implying that the transaction is one of agency as understood under Indian Contract Act such as, recruitment agency, travel agency etc. Care must be taken to identify whether the parties intended to constitute an agency as understood in law and nothing less.

*(6) "aggregate turnover" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;*

The phrase "aggregate turnover" is widely used under the GST laws. Aggregate Turnover is an all-encompassing term covering all the supplies effected by a person having the same PAN. It specifically excludes:

- Inward supplies effected by a person which are liable to tax under reverse charge mechanism; and
- Various taxes under the GST law, Compensation cess.

The different kinds of supplies covered are:

- (a) Taxable supplies;
- (b) Exempt Supplies:
  - supplies that have a 'NIL' rate of tax;

- supplies that are wholly exempted from SGST, UTGST, CGST, IGST or Cess; and
  - supplies that are not taxable under the Act (alcoholic liquor for human consumption and articles listed in section 9(2) and in schedule III);
- (c) Export of goods or services or both, including zero-rated supplies. The following aspects among others need to be noted:
- Aggregate turnover is relevant to a person to determine:
    - Threshold limit to opt for composition scheme: Rs. 75 Lakhs in a financial year;
    - Threshold limit to obtain registration under the Act: 20 Lakhs (or 10 Lakhs in case of supplies effected from Special Category States, as explained in our analysis on Section 22) in a financial year.
  - Inter-State supplies between units of a person with the same PAN will also form part of aggregate turnover.
  - For an agent, the supplies made by him on behalf of all his principals would have to be considered while analysing the threshold limits.
  - For a job-worker, the following supplies effected on completion of job work would not be included in his 'aggregate turnover' when working under Section 143:
    - Goods returned to the principal
    - Goods sent to another job worker on the instruction of the principal
    - Goods directly supplied from the job worker's premises (by the principal): It would be included in the 'aggregate turnover' of the principal.

*(7) "agriculturist" means an individual or a Hindu Undivided Family who undertakes cultivation of land—*

*(a) by own labour, or*

*(b) by the labour of family, or*

*(c) by servants on wages payable in cash or kind or by hired labour under personal supervision or the personal supervision of any member of the family;*

An individual or HUF undertaking cultivation of land, whether own or not, would be regarded as an agriculturist. The cultivation should be undertaken by own labour/ family labour/ servants on wages or hired labour.

It may be noted that the scope of the definition is restricted to an Individual or a Hindu Undivided Family. Any other "person" as defined in section 2(84), carrying on the activity of agriculture will not be considered as an Agriculturist and hence will not be exempted from registration provisions as provided in section 23 (1)(b), of the Act.

Agriculturist providing taxable supplies need to confirm that the aggregate turnover is not exceeded when taking a decision not to register. Everyone who owns agricultural property will not *ipso facto* be eligible for exemption from registration because other taxable supplies may necessitate registration.

*(8) "Appellate Authority" means an authority appointed or authorised to hear appeals as referred to in section 107;*

It refers to an authority before whom a person aggrieved by a decision/ order under the CGST/ SGST/ UTGST Act may appeal. An order passed by the Appellate Authority would be final and binding on all the parties. If a person is further aggrieved by the order passed by the Appellate Authority, he may prefer an appeal before the Appellate Tribunal or Courts.

*(9) "Appellate Tribunal" means the Goods and Services Tax Appellate Tribunal constituted under section 109;*

It refers to an authority before whom a person aggrieved by a decision/ order under the CGST/ SGST/ UTGST Act passed by the Appellate Authority/ Revision Authority may appeal. An order passed by the Appellate Tribunal would be final and binding on all the parties. If a person is further aggrieved by the order passed by the Appellate Tribunal, he may prefer an appeal before the High Court.

*(10) "appointed day" means the date on which the provisions of this Act shall come into force;*

Most of the provisions of the CGST Act are implemented with effect from 1<sup>st</sup> July 2017 with powers vested to notify different dates for effective date of commencement of different provisions of the Act.

Registration provisions were before appointed date enable easy transition.

*(11) "assessment" means determination of tax liability under this Act and includes self-assessment, re-assessment, provisional assessment, summary assessment and best judgment assessment;*

The types of assessment covered under the Act are:

- (a) Self-assessment (Section 59)
- (b) Provisional assessment (Section 60)
- (c) Summary assessment (Section 62) including best judgement assessment

The CGST Act also provides for determination of tax liability by:

- (a) Scrutiny of returns filed by registered persons (Section 61)
- (b) Assessment of non-filers of returns (Section 62)
- (c) Assessment of un-registered persons (Section 63)



It may, however, be noted that there is no provision permitting a Proper Officer to re-assess the tax liability of taxable person. As such, reference to such re-assessment in the definition may have to be suitably read down. As per section 59, GST follows self-assessment approach. As such, returns filed will be admitted as assessed. Tax administration is free to scrutinize returns (section 61) or conduct inspection (section 67) and issue notice (section 73-74) but there is no provision for conducting assessment except where taxable person seeks provisional assessment (section 60) in specified circumstances. Authority to pass orders in case of non-filers (section 62) or in case of unregistered persons (section 63) or in certain special cases (section 64) does not dilute the 'self-assessment' approach in GST.

*(12) "associated enterprises" shall have the same meaning as assigned to it in section 92A of the Income-tax Act, 1961;*

'Associated enterprise' is referred to only in the context of time of supply of services where the supplier is an associated enterprise (located outside India) of the recipient ( reverse charge attracted under sec 9(3)).

- In such cases, the time of supply will be the date of entry in the books of account of the recipient of supply or the date of payment, whichever is earlier.
- This in turn means that provisional entries made at the time of closure of books of account for a year (on accrual basis) may trigger GST liability in the hands of the recipient, under section 7(1)(b).

It may be noted that in addition to associated enterprise, the Act also defines 'related person', the reference to which is made in the context of deemed supply (Schedule I) and valuation.

*(13) "audit" means the examination of records, returns and other documents maintained or furnished by the registered person under this Act or the rules made thereunder or under any other law for the time being in force to verify the correctness of turnover declared, taxes paid, refund claimed and input tax credit availed, and to assess his compliance with the provisions of this Act or the rules made thereunder;*

The definition of 'audit' under the Act is a wide term covering the examination of records, returns and documents maintained/ furnished under this Act or Rules and under any other law in force. Any document, record maintained by a registered person under any law can thus be called upon and audited. It becomes critical for the person to maintain true documents/ records to ensure correctness and smooth conduct of audit.

However it may be important to note that this is neither an investigation nor a revenue leakage exercise and may lead to claim of benefits as well as short payment of taxes being identified.

*(14) "authorised bank" shall mean a bank or a branch of a bank authorised by the Government to collect the tax or any other amount payable under this Act;*

The date of credit to the account of the Government (i.e., the Central Government in respect of CGST, IGST, UTGST and CESS or the relevant State Government in respect of SGST) in the authorized bank will be considered as the date of deposit in electronic cash ledger.

(15) *“authorised representative” means the representative as referred to in section 116;*

An authorized representative is a person authorized on one's behalf to appear before an Officer of the Act, Appellate Authority or Appellate Tribunal in connection to proceedings under the Act. Any of the following persons can act as authorized representatives:

- (a) His relative/ regular employee;
- (b) Practicing advocate who is not debarred;
- (c) Practicing Chartered Accountant, Cost Accountant or Company Secretary who is not debarred;
- (d) Retired Officer of the Commercial Tax Department of any State/ Union Territory not below the post of Group-B Gazetted Officer of 2 years' service;
- (e) GST practitioner

The following persons cannot act as authorized representatives:

- (a) Who is dismissed/ removed from Government service;
- (b) Who is convicted of an offence under any law dealing with imposition of taxes;
- (c) Who is guilty of misconduct by the prescribed authority;
- (d) Who is adjudged as an insolvent.

(16) *“Board” means the Central Board of Excise and Customs constituted under the Central Boards of Revenue Act, 1963*

(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 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 totalizator of a license to book maker or activities of a licensed book maker in such club;** and <sup>3</sup>
- (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;*

Excise / Service tax laws do not define the term 'business'. However, it is defined under the CST Act / State VAT laws. The definition in the GST law is a modified version of the definition under CST / VAT laws, in as much as the scope is substantially expanded to include among others wager, profession and vocation. This definition is very wide and covers all the transactions that were subjected to various taxes that are being subsumed in the GST Laws.

This definition assumes significance as the proposed levy is on supplies undertaken in the course or furtherance of business. The definition may be understood in two parts, namely:

- (a) **General activity** - trade, commerce, etc., including incidental activities whether or not there is volume, frequency, continuity or regularity of such transactions. Principle of *ejusdem generis* provides that similar activity would be determined by the previous enumerated ones. Please consider that charitable activity would be includible in the definition of business depends on whether the 'source' of income is charitable or 'application' of income is charitable. If business-like sources are used to raise funds, such institutions may be liable to GST although these funds are not distributed to promoters but expended for purposes of the beneficiaries.
- (b) **Specific activity** – acquisition of goods including capital goods, supply by association/ club, admission of persons to a premises and services by a race club.

The following aspects need to be noted:

- 'Wager' is also included in the definition of business to impose GST on betting transactions;
- Educational services would be covered under profession or business however the sale of uniforms, mess facilities could be covered;
- Charitable or religious activities are not specifically covered however fund raising activities like letting out of hoardings, sale of books could be considered as business;
- Clause (e) may pose some difficulty as associations and its members enjoy immunity from taxation on transactions amongst themselves by the 'principle of mutuality'. However, this expression inclusion in the definition appears to override the said principle for the limited purposes of GST. In other words, contribution by members to their association is not taxable under Income-tax Act (where the said principle prevails) but will be taxable under GST;

<sup>3</sup> Substituted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019

- Clause (g) may require understanding of employment as differentiated from profession. For instance, if a CA in practice provides services as Independent Director, the service provided by him may be treated as 'business' and not 'employment'.
- Clause (i) is also very important as 'any' activity or transaction by Government is included in the definition of business this will have far-reaching implications as the responsibility to pay tax in respect of services by Government is covered under reverse charge mechanism. Due to the expansive words used here, there is no room to differentiate payments made to any Government department on the ground that it is not 'business' activity.

~~(18) "business vertical" means a distinguishable component of an enterprise that is engaged in the supply of individual goods or services or a group of related goods or services which is subject to risks and returns that are different from those of the other business verticals.~~

~~Explanation For the purposes of this clause, factors that should be considered in determining whether goods or services are related include—~~

- ~~(a) the nature of the goods or services;~~
- ~~(b) the nature of the production processes;~~
- ~~(c) the type or class of customers for the goods or services;~~
- ~~(d) the methods used to distribute the goods or supply of services; and~~
- ~~(e) the nature of regulatory environment (wherever applicable), including banking, insurance, or public utilities;<sup>4</sup>~~

~~A person having multiple business verticals in a State/ Union Territory is permitted to obtain separate registrations for each such business vertical. Therefore, the person will have an option to avail a single registration (covering all business verticals in a State or Union Territory) or separate registration for each business vertical in a State or Union Territory.~~

~~The following aspects need to be noted:~~

- ~~The component must be a **distinguishable component** of the person, which is capable of being transferred or to function without affecting any other business of that person. A component cannot become a 'business vertical' merely based on geographical differentiation;~~
- ~~The supplies made by one business vertical unit should be:
 
  - ~~(a) individual goods or services or a group of related goods or services; and~~
  - ~~(b) subject to risks and returns different from those of the other business verticals;~~~~
- ~~The risk and returns of supplies forming part of a business vertical should be same;~~

<sup>4</sup> Omitted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f 01.02.2019

- ~~Interestingly, graphical separation by itself cannot be a criterion to segregate the business into distinct business verticals;~~
- ~~Supplies between business verticals are deemed to be taxable supplies;~~
- ~~Lastly, the option to avail composition scheme is PAN based and hence, a person has to opt for composition scheme for all the business verticals across India. He cannot opt for the scheme only in a particular business vertical;~~

Note: This concept has been diluted now with any number of registration available within a State. The need for it to be a business vertical has been done away with. by the Central Goods and Service Tax (Amendment) Act, 2018, with effect from 1 February, 2019.

*(19) "capital goods" means goods, the value of which is capitalised in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business;*

An attempt has been made to align the meaning of capital goods to the generally accepted standards of accounting of what is considered as revenue and what as capital

Goods will be regarded as capital goods if the following conditions are satisfied:

- (a) The value of such goods is capitalised in the books of account of the person claiming input tax credit;
- (b) Such goods are used or intended to be used in the course or furtherance of business.

The following aspects need to be noted:

- (a) Assuming that the value of capital goods was not capitalised in the books of account, the person purchasing the capital goods would still be eligible to claim input tax credit on such capital goods since the definition of 'input tax' applies to goods as a whole (including capital goods).
- (b) Capital goods lying at the job-workers premises would also be considered as 'capital goods' in the hands of the purchaser as long as the said capital goods are capitalized in his books of account.

Capitalized value of capital goods may include services as an incidental component of a composite supply. Expression 'capital goods' is the identity of what is capitalized although it may come into existence along with services. There is no basis to carve out service value embedded in the capitalized value if they are capital goods. In case of turnkey works contract (necessarily an immovable property) it would be deemed to be a service. Please note that CWIP may involve credits which are available immediately on their receipt (of the goods and their invoice). Therefore, one may not have to defer availment of credit until actual capitalization in the books in view of the time restriction for availment of credit being reckoned from 'date of invoice'. GST law does not introduce these fine distinctions between 'yet to be' capitalized goods and 'already' capitalized goods. Any delay in capitalization can prove costly

due to the time limit for availment of credit. This maybe true for long term contracts of setting up plants. Further, the expression 'capital goods' gives rise to some questions about 'capitalized services'. Here it may help to note that 'input services' is not restricted to services that are revenue in nature. Capitalized services do not fail to satisfy the definition of input services. Care must be taken while claiming credit in respect of capitalized services in case of use commonly for making taxable and exempt outward supplies.

*(20) "casual taxable person" means a person who occasionally undertakes transactions involving supply of goods or services or both in the course or furtherance of business, whether as principal, agent or in any other capacity, in a State or a Union territory where he has no fixed place of business;*

A person would be regarded as a casual taxable person if he undertakes supply of goods or services or both:

- (a) Occasionally, and not on a regular basis;
- (b) In the course or furtherance of a 'business' that exists;
- (c) Either as principal or agent or in any other capacity;
- (d) In a State/ Union Territory where he has no fixed place of business.

A trader, businessman, service provider, etc. in one State undertaking occasional transactions like supplies made in trade fairs in another State would be treated as a 'casual taxable person' in that other State and will have to obtain registration in that capacity and pay tax. E.g., A jeweller carrying on a business in Mumbai, who conducts an exhibition-cum-sale in Delhi where he has no fixed place of business, would be treated as a 'casual taxable person' in Delhi. Question that comes up for consideration is whether a person who does not undertake business activity (assume this test is satisfied), would such a person be a CTP in home-State when business-like transactions are occasionally undertaken? This is not an easy question but proceeding on the basis that 'business' test is conducted and found that activity is not a business, then there is no question of registration and compliance as CTP. The next question is, in case business transactions are regularly undertaken but below threshold limit, would such a person be a CTP and if so, in the home-State or another State or both? The answer would be that due to threshold benefit, person would not be TP or CTP in home-State. And due to business activities in another State, CTP would be triggered in the other State subject due to fiction under section 24 leading to requirement of registration being attracted in home-State due to inter-State supplies. This leads us to a view that in order to be CTP in any State, person must already be in business in home-State, even if within threshold limit for registration, which may go away due to inter-State supplies being involved between the two branches.

The following aspects need to be noted:

- The threshold limits for registration would not apply and he would be required to obtain registration irrespective of his turnover;

- He is required to apply for registration at least 5 days prior to commencement of business;
- The registration would be valid for 90 days or such period as specified in the application, whichever is shorter;
- An advance deposit of the estimated tax liability is required to be made along with the application for registration. Although the wordings are 'estimated tax liability', it is clarified vide 71/45/2018-GST dated 26 October, 2018 that deposit must be made of estimated 'net' tax liability after reducing estimate of available input tax credit.

*(21) "Central tax" means the central goods and services tax levied under section 9;*

Tax levied under this Act is referred to as "Central tax" as opposed to "CGST" as used in the model GST laws. It refers to the tax charged under this Act on intra-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption). The rate of tax is capped at 20% and thereafter, the rates for goods and services will be notified by the Central Government based on the recommendation of the Council.

*(22) "cess" shall have the same meaning as assigned to it in the Goods and Services Tax (Compensation to States) Act;*

It refers to the 'cess' levied on certain supplies (inter-State or intra-State) as notified, for the purposes of providing compensation to the States for loss of revenue arising on account of implementation of GST, for a period of five years (or extended period, as may be prescribed).

*(23) "chartered accountant" means a chartered accountant as defined in clause (b) of sub-section (1) of section 2 of the Chartered Accountants Act, 1949;*

*(24) "Commissioner" means the Commissioner of central tax and includes the Principal Commissioner of central tax appointed under section 3 and the Commissioner of integrated tax appointed under the Integrated Goods and Services Tax Act;*

*(25) "Commissioner in the Board" means the Commissioner referred to in section 168;*

It refers to the Commissioner or Joint Secretary posted in the Central Board of Excise and Customs. Such a Commissioner or Joint Secretary is empowered to exercise the function of the Commissioner with the approval of the Board.

*(26) "common portal" means the common goods and services tax electronic portal referred to in section 146;*

The Common Goods and Service Tax Electronic Portal ("GST portal") is a common electronic portal set up by the Goods and Service Tax Network (GSTN) that facilitates among others registration, payment of tax, filing of returns, computation and settlement of IGST, electronic way-bill and other functions under the Act.

*(27) "common working days" in respect of a State or Union territory shall mean such days in succession which are not declared as gazetted holidays by the Central Government or the concerned State or Union territory Government;*

Common working days refer to such days *in succession* which are not a declared holiday for the Centre as well as State/ Union Territory.

The relevance of working days primarily arises in relation to registration provisions. Every person obtaining a registration under the Act is required to make an online application in the GST portal. The application for registration, along with the accompanying documents will be examined by the Proper Officer and if found in order, the registration will be granted within 3 working days. If the proper officer fails to take any action within 3 working days, the application is deemed approved.

Since the reference to 'common workings days' has been replaced by 'working days', it remains to be seen whether the applicant will be granted a deemed registration after 3 working days in case of inaction by the Proper Officer even if the third day was a holiday for a State.

(28) "company secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980;

(29) "competent authority" means such authority as may be notified by the Government;

In terms of Explanation to entry 5(b) of the Schedule II to the Act, "Competent Authority" in relation to construction of a complex, building, civil structure covers:

- (a) Authority authorised to issue completion certificate (local municipal authorities like BDA/ BBMP in Bangalore, PMC in Pune)
- (b) Architect
- (c) Chartered Engineer
- (d) Licensed Surveyor

(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 thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

*Illustration*– Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is a principal supply.

A supply will be regarded as a 'composite supply' if the following elements are present:

- (a) The supply should consist of two or more taxable supplies.;
- (b) The supplies may be of goods or services or both;
- (c) The supplies should be naturally bundled.;
- (d) They should be supplied in conjunction (event, time or contract) with each other in the ordinary course of business.;
- (e) One of the supplies being a principal supply (Principal supply means the predominant



supply of goods or services of a composite supply and to which any other supply is ancillary).

The following aspects need to be noted:

- Please consider that reference to two or more 'taxable supplies' found in the definition appears as two or not 'supplies' in section 8(a). As section 8 guides the determination of tax liability based on that supply which enjoys the higher rate of tax, the definition must be read to main harmony with section 8.
- The way the supplies are bundled must be examined. Determining natural bundling must be done with caution such that two supplies occurring simultaneously ought not to be presented as naturally bundled. And any artificial bundling must be sought out with equal care as they could fall within mixed supply and not composite supply.
- Mere conjoint supply of two or more goods or services does not constitute composite supply. Habitually supplied together by one firm in the industry may not be adequate to make the two supplies conjoint. Test is less about what one (or few) firms do but what is accepted in trade / expected by customers to be presently conjointly
- The two (or more) supplies must appear natural when bundled and presented to the recipient.
- The ancillary supply becomes necessary only because of the acceptance of the predominant supply. Such predominance is neither guided by the predominant component in the total price of the supply nor guided by the predominant material involved. The test of predominance must be gathered from the 'predominant object' for which the recipient approached the supplier;
- The method of billing, assignment of separate prices etc. may not be relevant. In other words, whether separate prices are charged for each of the components of supply or a single consolidated price charged, the identity of each of the components of supply must be unmistakably distinct in the arrangement;
- The tax treatment of a composite supply would be as applicable to the principal supply.

Illustrations of composite supply are as follows:

- (a) Accommodation with breakfast;
- (b) Cocktail drink being a mixture of alcohol with a non-alcoholic pre-mixed;
- (c) Supply of laptop and carry case of same company;
- (d) Supply of equipment and installation of the same;
- (e) Supply of repair services on computer along with requisite parts- Comprehensive AMC;
- (f) Supply of health care services along with medicaments.

It may be noted that Buffet with alcohol for a couple on new year eve for a single price would not be composite supply as only taxable supplies are covered.;

Not all supplies which are given together are composite supply merely because there are more than one taxable supplies simultaneously supplied. Unrelated, unconnected and independent taxable supplies that are supplied simultaneously for individual prices where each of them are intended to be the predominant object for which the recipient approached the supplier and may, to contrast with composite supply, be referred as non-composite supply. This is other than the mixed supply examined further.

(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, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government;

(b) the 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 but shall not include any subsidy given by the Central Government or a State Government:

*Provided that a deposit given in respect of the 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 for the said supply;*

The following aspects need to be noted:

- It refers to the payment received by the supplier in relation to the supply, whether from the recipient or any other person. Therefore, a third party to a contract can also contribute towards consideration;
- Consideration, therefore, is not the amount that the recipient pays but the amount that the supplier collects whether from the recipient or any third party. This would be particularly relevant in dealing with complex arrangements in digital economy and new-age business. It is permissible that ‘stranger’ (to the contract) may contribute towards consideration;
- Consideration can be in the form of **money or otherwise**. ‘Otherwise’ may refer to consideration that is not ‘money’ as defined in section 2(75). E.g.: Under a JDA model, the flats handed by the developer to the landowner would be considered as ‘consideration’ for the development rights given to the developer by the landowner;
- Clause (b) appears to cast the net so wide as to leave nothing to escape its grasp, almost nothing Reference may be had to the discussion under section 15 on valuation for the far-reaching implications of the expansive language used in this clause. Sufficient to state here that every act or abstinence that is a motivation to induce a person is already consideration and there is no requirement for it to be in monetary form. The hindi expression for consideration is “Pratiphal” and inspiring in meaning.
- Unmotivated unilateral actions or gratuitous acts would not be consideration. Transactions that involve negative consideration or abstinence from doing anything are all examples of consideration due to the language in this clause. Consideration can

therefore be – increase in cash or other assets, increase in debt or other liabilities or abstinence/ tolerance of any act;

- Deposits, as such, are not liable to tax. However, where such deposits have been applied as consideration for the supply it would tantamount to making of advances and in such cases, will be liable to tax. Merely altering the nomenclature of the payment as 'deposit' would not change the nature of the receipt. However, trade practices and the terms, used play an important role in identifying whether an amount is a 'deposit' or an 'advance' or any payment as consideration for the supply;
- Deposits would be considered to be considered when the "supplier applies the deposit 'as' consideration". Had the proviso used the words "supplier applies the deposit 'towards' consideration", the meaning may have been limited to cases where consideration due is appropriated out of the amount held in deposit. But the usage of 'as' seems to enjoy intrinsic value in the 'eyes' of supplier in accepting the deposit. Comparative examination of transactions with / without deposit could throw some light on the 'effect' that the deposit has in the 'eyes' of supplier;
- The suppliers may have to place the deposits in a separate bank account in case of refundable deposits, to comply with this provision. However, whether the amount is refundable or not is not a criterion to determine whether such amount is a 'deposit';
- This is an inclusive definition.

*(32) "continuous supply of goods" means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis and includes supply of such goods as the Government may, subject to such conditions, as it may, by notification, specify;*

In the definition "provided" may be read as supplied.

It refers to supply of goods continuously or on recurrent basis under a contract, with periodic payment obligations.

The following aspects need to be noted:

- It should be a contract for supply on a recurrent basis and cannot be a one-time supply contract. Mere case of regular or repeated supply with deferment of billing will not make it a continuous supply. Something more is required for the supply to be 'continuously or on recurrent basis' that renders time of supply indeterminate. Eg. supply of water cans every day for use in office, but billing specified to be fortnightly may not be a case of continuous supply as there is nothing more to be done after delivering water cans except to issue invoice. Once the water cans are supplied for the day, there is no justification to delay the billing by fifteen days unless there is something more that is required to be done, either by supplier or by recipient, to establish its completion. In such cases, the terms of contract are permitted to guide the determination of time of supply;

- The contract should be a case of periodic billing and periodic payments - viz., the billing and receipts thereto should be on a periodic basis (e.g.: every fortnight; every Monday etc.) and not one-time. Further, the contract should specify this periodicity/ frequency of billing/ payment;
- The mode of supply would not be relevant - viz., such supply may be through a wire, cable, pipeline or other conduit or any other mode;
- The Government is empowered to notify certain supplies as continuous supply of goods.

Examples of continuous supply of goods are:

- (a) Open purchase orders with daily delivery schedule (Just In Time- JIT) subject to acceptance tests only at the time of issue-for-production and understanding of fortnightly billing;
- (b) VMI (vendor managed inventory) where the agreed periodicity for billing is, say, monthly/ fortnightly etc.;
- (c) Supply of gases through pipeline where burn rate or heat generation are matters of contingency necessitating a deferred billing schedule.

*(33) "continuous supply of services" means a supply of services which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, for a period exceeding three months with periodic payment obligations and includes supply of such services as the Government may, subject to such conditions, as it may, by notification, specify;*

It refers to supply of services continuously or on recurrent basis under a contract for a period exceeding 3 months, with periodic payment obligations.

The determination of stage of completion of services is an abstract one, unless specifically defined by contract, unlike in the case of goods where the volume of goods supplied can be easily tracked/ identified. Hence, a contract for supply of service spanning over a definite period has been treated as a continuous supply, so that the tax dues are collected periodically.

The law categorically provides for time limit to issue invoices as under:

- (a) where due date of payment is ascertainable: On or before the due date of payment;
- (b) where the due date of payment is not ascertainable: Before or at the time of receipt of payment;
- (c) where the payment is linked to the completion of an event (milestones): On or before the date of completion of that event.

The following aspects need to be noted:

- It should be a contract for supply on a recurrent basis and cannot be a one-time supply contract. Similar to goods, supply of services where there exists some facts that render

time of supply indeterminate. For eg. Construction services where work completion is subject to remeasurement and certification by Architect and hence time of supply on actual events like pouring concrete or laying tiles is not sufficient to establish completion of supply ;

- The period of contract of supply should be more than 3 months - viz., services should be supplied on a recurring basis for at least 3 months;
- The contract should be a case of periodic billing and periodic payments - viz., the billing and receipts thereto should be on a periodic basis (say for e.g.: every fortnight; every Monday etc.) and not one-time. Further, the contract should specify this periodicity/frequency of billing/ payment;
- The Government is empowered to notify certain supplies as continuous supply of goods.

Examples of continuous supply of services:

- (a) Annual maintenance contracts because it comprises of supply of assurance of regular upkeep, supply of parts for repairs and supply of labour for such repairs. However, where invoice is issued at the start of this contract period, time of supply get determined based on the billing and does not get deferred based on the mile-stones in the contract;
- (b) Licensing of software or brand names;
- (c) Renting of immovable property except month-to-month lease/rent; and
- (d) Software as a service ( SAAS) with monthly billing based on usage.

Annual asset insurance contract will NOT be a case of continuous supply of services as the sole supply here is 'assurance' which is supplied at the start of this contract. Payment of compensation in the event of any claim-incident would not be another supply (actually not possible as insurance company pays compensation and does not collect compensation) but merely a continuing obligation attendant to the original supply of assurance.

It may be noted that at times the accounting standard on revenue recognition may be a variance with the time of supply.

(34) "conveyance" includes a vessel, an aircraft and a vehicle;

It can be understood as a medium of transportation.

(35) "cost accountant" means a cost accountant as defined in ~~clause (c)~~ clause (b)<sup>5</sup> of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959;

(36) "Council" means the Goods and Services Tax Council established under article 279A of the Constitution;

<sup>5</sup> Substituted vide The Central Goods and Services Amendment Act, 2018 w.e.f. 01.02.2019

GST Council is an authority constituted under the Constitution of India and will be the governing body responsible for the administration of the GST across India. The administrative powers will be vested with this authority for taxing goods and services.

The Council will consist of the Union Finance Minister (as Chairman), the Union Minister of State in charge of Revenue or Finance, and the Minister in charge of Finance or Taxation, or any other nominated by each State government, thereby ensuring a proper blend of the Central and State ministry.

The GST Council will be the body responsible for the following (primarily):

- (a) Administration of the GST laws
- (b) Specify the taxes to be levied and collected by the Centre, States and Union Territories under the GST regime
- (c) Specify the goods or services or both that will be subjected/ exempted under the GST regime
- (d) Specify the GST rates
- (e) Specify the threshold limits for registrations and payment of taxes
- (f) Apportionment of IGST between Centre and States/ Union Territories
- (g) Approval of compensation to be paid to the States (for loss on account of implementation of GST)
- (h) Levy of any special rate or rates of tax for a specified period, to raise additional resources during any natural calamity or disaster.
- (i) Resolution of disputes arising out of its recommendations
- (j) Imposition of additional taxes in times of calamities and disasters

*(37) "credit note" means a document issued by a registered person under sub-section (1) of section 34;*

A credit note can be issued by a supplier only in the following circumstances:

- (a) The taxable value shown in the invoice exceeds the taxable value of the supply;
- (b) The tax charged in the invoice exceeds the tax payable on the supply;
- (c) The goods supplied are returned by the recipient;
- (d) The goods/ services are found to be deficient.

The following aspects need to be noted:

- Where there is no change in the taxable value/ tax amount, a credit note must not be issued unlike normal existing business practices;
- A credit note has to be issued by the supplier only and no other person is permitted;
- A credit note issued by a recipient, say for accounting purposes, is not a relevant

document for GST purposes; In business at times the supplier may only issue a financial credit note i.e. only for the basic value without including the GST component. Such financial credit notes are recognized in circular 72/46/2018-GST dated 26 October, 2018 where it is stated that such credit noted 'need not' be uploaded on the portal. As such, the GST paid on the original supply will be not be available to be adjusted;

- Once a credit note is issued, the details of the credit note should be declared by the supplier in the return of the month of the issue of credit note. However, if not declared in that month, it can be declared in any return prior to September of the year following the year in which the original tax invoice was issued (or filing of annual return, whichever is earlier);
- The supplier would not be permitted to claim reduction in the output tax liability if the incidence of tax and interest has been passed on to any person, or if the recipient fails to declare the details of the credit note in his returns;
- The issuance of credit note would not be relevant if the recipient treats the return of goods as an outward supply and raises a tax invoice in this regard;
- Credit note that is issued in any other circumstance (not permitted by section 34) would not be permissible and make itself indicate a cross-supply in the opposite direction (requiring an invoice under section 31). Care should be taken while examining any practice of issuing financial or accounting credit note that is not in accordance with section 34. Also note that as per table 5J in GSGTR 9C, such credit notes (not permitted by section 34) are to be separately reflected in the reconciliation and output tax must be shown to be paid on the original supply value.

*(38) "debit note" means a document issued by a registered person under sub-section (3) of section 34;*

A debit note should be issued by a supplier in the following circumstances:

- (a) The taxable value shown in the invoice is lesser than the taxable value of the supply; or
- (b) The tax charged in the invoice is less than the tax payable on the supply.

The following aspects need to be noted:

- Where there is no change in the taxable value/ tax amount, a debit note must not be issued;
- A debit note has to be issued by the supplier. A debit note issued by a recipient, say for accounting purposes, is not a relevant document for GST purposes;
- The details of the debit note have to be declared by the supplier in the return of the month of the issue of debit note;
- Debit note includes a supplementary invoice.

*(39) "deemed exports" means such supplies of goods as may be notified under section 147;*

Deemed exports are those supplies of goods that are notified as 'deemed exports' where:

- (a) The goods supplied do not leave India;
- (b) Payment for such supplies is received in Indian Rupees/ Convertible Foreign Exchange; and
- (c) Such goods are manufactured in India.

The definition of 'deemed exports' under this Act is in line with the definition of 'Deemed Exports' under Chapter 07.01 of the Foreign Trade Policy 2015-20. 'Deemed Export' under the FTP 2015-20 covers supply of goods to EOU/STP/EHTP/BTP, supply of goods under advance authorisation etc. and hence provides for refund, drawback and advance authorisation to the supplier of goods. On the other hand, the relevance of 'deemed export' under the GST laws is limited to the grant of refund of taxes on supply of goods as 'deemed export'.

Therefore, a provision has been made under the Act to notify certain transactions as 'deemed export' to avoid situations where the persons might claim refund of taxes on 'deemed export' defined in the FTP 2015-20. While deemed exports may be notified under section 147, the nature of benefit available in respect of deemed exports requires a provision in the Act conferring such entitlement. Section 54 would be the machinery provision for disposal of refund applications. And deemed exports will not come within section 54(3).

*(40) "designated authority" means such authority as may be notified by the Board;*

Currently, the term does not find a reference in the Act and will be notified by the Board from time to time.

*(41) "document" includes written or printed record of any sort and electronic record as defined in clause (t) of section 2 of the Information Technology Act, 2000;*

An electronic record, in terms of Section 2(t) of the Information Technology Act, 2000 means data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche. A document includes both manual and electronic forms of records. This is an important provision that can play a significant role going forward bringing various electronic communications within the scope of admissible documentary proof of the underlying transaction. Digitally signed documents are also admissible but using words such as 'the season electronically generated document and does not require signature' do not enjoy the status of being a admissible document.

*(42) "drawback" in relation to any goods manufactured in India and exported, means the rebate of duty, tax or cess chargeable on any imported inputs or on any domestic inputs or input services used in the manufacture of such goods;*

This is relevant to understand the contours of refund under the GST laws. Refund of unutilized input tax credit is allowed in case of zero-rated supplies (including exports) and inverted tax



rate structure. The law provides that refund of unutilized input tax credit will not be allowed if the supplier has availed drawback of such tax.

*(43) "electronic cash ledger" means the electronic cash ledger referred to in sub-section (1) of section 49;*

Electronic cash ledger means a cash ledger maintained in electronic form by each registered person. The amount deposited through various modes of payment (viz., internet banking, debit/ credit cards, NEFT/ RTGS or by any other mode), shall be credited to the electronic cash ledger. The amount available in this ledger can be used for the payment of:

- (a) Tax
- (b) Interest
- (c) Penalty
- (d) Fees or
- (e) Any other amount payable.

*(44) "electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network;*

Physical stores/ outlets that supply goods or services or both with the help of a digital network which is facilitated by a third party will fall within the scope of this definition. Electronic commerce is not to be understood as the activity of the operator of the digital network alone. Some experts believe that there is a certain amount of ambiguity as to whether a platform run by a person to supply own goods or services would also be covered in this definition.

Digital or electronic network does not always mean website on mobile app. A telephone network or a call centre using the fancy/easy number can also constitute digital or electronic network.

*(45) "electronic commerce operator" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;*

It includes every person who, directly or indirectly, owns, operates or manages a digital/ electronic facility or platform for supply of goods or services or both. There is a certain ambiguity as to whether persons engaged in supply of such goods or services on their own behalf would also be covered in this definition.

While an aggregator (Ola, Swiggy, etc.) only connects the customer with the supplier/ service provider, an e-commerce operator (Flipkart) facilitates the entire process of the supply of goods/ provision of service. Under the GST law, even aggregators would be covered under the definition of 'electronic commerce operator'. Where such operators fall within the operation of 'agent' under schedule I, then the fiction under section 7(1)(c) would prevail and operate. Care must be taken to identify which activities of the enterprise falls within section 9(5) or section 52 and which ones under the said fiction of schedule I.

Setting up a website by a supplier for 'own use' also comes within the scope of this definition however the compliances that are triggered by being such an electronic commerce operator under section 52 cannot be attracted unless there are three distinct persons – customer, supplier and electronic commerce operator. A supplier creating an online channel for sale of product in addition to his off-line retail chain of stores is included in the definition of electronic commerce operator. The implications of being an electronic commerce operator will apply in such cases only if the distinct person who owns or manages the electronic or digital network and the distinct person who stores and distributes the product are independent of each other. Also, every internet-linked transaction would not be ecommerce as the website may merely be an information portal without concluding any specific transaction of supply.

It may be noted that the threshold limits for registration would not apply and he would be required to obtain registration irrespective of his turnover;

*(46) "electronic credit ledger" means the electronic credit ledger referred to in sub-section (2) of section 49;*

Electronic credit ledger means the input tax credit register required to be maintained in an electronic form by each registered person. As a process, based on details of outward supplies filed by the suppliers, the electronic credit ledger of the recipient of goods/ services would be auto populated in the GSTN under the categories matched, un-matched and provisional. The tax payer claiming input credits should review the same and accept the relevant ones for claiming input credit.

The electronic credit ledger will be debited with the amount of tax liability so adjusted against the input tax credit lying in the ledger, and will stand reduced to the extent of the claim of refund of unutilised input tax credit, if any.

The amount of CGST credit available in this ledger can be used only towards discharging the liability on account of output tax under CGST/ IGST/ UTGST law only. Similarly, the amount of credit of other GST taxes can be used only towards discharging the liability of taxes under the GST laws, and not towards payment of interest, penalty or other sums due.

It is relevant to note that since 'output tax' excludes tax payable under reverse charge basis, some experts are of the view that the tax payable under reverse charge basis must be discharged by cash only and credit cannot be utilized for discharging such a liability.

*(47) "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;*

The meaning of exempt supply is like the meaning assigned to it under the UTGST law with the exception that supplies that are partly exempted from tax under this Act will not be considered as 'exempt supply'. On the contrary, partially exempted supplies would be considered as 'exempt supplies' under the UTGST Act.

Exempt supplies comprise the following 3 types of supplies:

- (a) Supplies taxable at a 'NIL' rate of tax;
- (b) Supplies that are wholly exempted from CGST or IGST, by way of a notification. Please note that supplies liable to concessional rate of tax u/n 11/2017-CT(R) wherein explanation 4(iv)(b) states that such supplies are to be treated 'as if' exempt supplies but only for purposes of credit reversal under section 17(2) of CGST Act. Therefore, care must be taken to include only those supplies that are wholly exempt from tax and not partly exempt as discussed *ibid*; Non-taxable supplies as defined under Section 2(78) – supplies that are not taxable under the Act (viz. alcoholic liquor for human consumption).

The activities covered under Schedule III which are neither a supply of goods nor a supply of services would not be included in exempt supply. Examples- Services provided by employees to employer, sale of land or completed building, etc.

Note: The definition of exempt supply for the purpose of reversal of input tax credit is different. Refer to explanations under section 17(3), rule 42 and after rule 45. The following aspects need to be noted:

- Zero-rated supplies such as exports would not be treated as supplies taxable at 'NIL' rate of tax;
- Input tax credit attributable to exempt supplies will not be available for utilisation/ set-off.
- Also, please note that 'sale of business as going concern' is treated as a supply of services (even though it involves goods like inventory or assets). This is an exempt supply under sl.no.2 to 12/2017-CT(R) but para 4(c) to schedule II eclipses this specific transaction from being treated as one or other form of supply. With the credit being permitted to be transferred by 18(3), it appears that this is one example of a supply, although expressly exempt, would 'not' require reversal of credit under 17(2).

(48) "existing law" means any law, notification, order, rule or regulation relating to levy and collection of duty or tax on goods or services or both passed or made before the commencement of this Act by Parliament or any Authority or person having the power to make such law, notification, order, rule or regulation;

This covers all the erstwhile Central and State laws (along with the relevant notifications, orders, and regulations), relating to levy of tax on goods or services like Service Tax law, Central Excise law, State VAT laws, etc. Therefore, laws that do not levy tax or duty on goods or services, such as the Indian Stamp Act, 1899, would not be covered here.

(49) "family" means, —

- (i) the spouse and children of the person, and
- (ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person;

The relevance of the term 'family' is to:

- Understand whether two persons are related persons under the Act and the consequential valuation provisions applicable in case of related persons;
- Examine whether a person is an agriculturalist as defined under Section 2(7) of the Act.

*(50) "fixed establishment" means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs;*

The following three elements are critical to determine whether a place is a 'fixed establishment':

- (a) Having a sufficient degree of permanence;
- (b) Having a structure of human and technical resources; and
- (c) Other than a registered place of business.

The following aspects need to be noted:

- A fixed establishment refers to a place of business which is not registered;
- But one where the person undertakes supply of services or receives and uses services for own needs in such place;
- Not every temporary or interim location of a project site or transit-warehouse will become a fixed establishment of the taxable person. Such project site or warehouse will not automatically become FE. Factors such as premises in occupation, staff locally employed for sufficient duration, administrative establishment to make nearly independent decisions to 'supply and receive' services and limited or specific extent of involvement from registered place of business are all relevant to make such determination;
- Temporary presence of staff in a place by way of a short visit to a place or so does not make that place a fixed establishment. Even extended duration of site camp may not meet the requirements to constitute FE by itself;
- E.g.: A service provider in the business of renting of immovable property services has his registered office at Bangalore (place of business) and the property for rent along with an office is located in Chennai (place of supply). In this case, the registered office will be the principal place of business but the property in Chennai will NOT be regarded as a fixed establishment of the service provider as the degree of permanence required in representing the interests of the supplier does not exist in Chennai.
- E.g.: A contract is for supply and installation of equipment where the duration of installation work at the site is (say) 15 days at Indore and the fabrication of equipment undertaken at the factory at Jaipur. After the fabrication is completed, the material is

transported to the site along with installation team. For the limited duration that the installation team will be present at the site (Indore), surely the supplier will not put in place all the resources – technical and human – so as to create at the site an establishment with sufficient degree of permanence ‘to supply’ or ‘to receive’ services. In this case also, the factory will be the principal place of business (Jaipur) but the site (Indore) will NOT be regarded as a fixed establishment of the supplier.

- E.g.: A project undertaken for construction of a highway (expansion, strengthening and resurfacing of two-lane carriageway into four-lane carriageway) is expected to be undertaken over a three-year duration in Gandhidham. As such, the supplier cannot practically manage to undertake the activities that the project site (entire length of the alignment) remotely from the registered office in Delhi. Although all decisions are authorized by the central team in Delhi, these decisions are effectively delegated to be carried out by its competent team located at the site with all necessary resources – technical and human – so as to create at the site an establishment with sufficient degree of permanence ‘to supply’ or ‘to receive’ services. In this case, the site (Gandhidham) would be a fixed establishment of the supplier.

*(51) “Fund” means the Consumer Welfare Fund established under section 57;*

This refers to the Consumer Welfare Fund constituted by the Government where the unutilized input tax credits of a person will be credited if an application to that effect has been made. The amount will be credited to the Fund only upon an order being passed by the Proper Officer after being satisfied that the amount claimed as refund is refundable.

*(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;*

The following aspects need to be noted:

- Although various courts have held that the term ‘goods’ includes actionable claim under the VAT laws, as trade practice, actionable claims were kept outside the taxation net under the earlier laws. Now, the GST law seeks to change this understanding by including actionable claim in the definition of goods. Thus, under GST laws, actionable claims would be goods;
- The words ‘but includes’ is an exception to the “exclusion” of money and securities. In other words, if the actionable claim represents property that is money or securities, it can be held that such forms of actionable claims continue to be excluded;
- Actionable claim, other than lottery, betting and gambling will not be treated as supply of goods or services by virtue of Schedule III (Activities or transactions which shall be treated neither as a supply of goods nor a supply of services);
- Intangibles like MEIS/SEIS scrips, copyright and carbon credit would continue to be covered under ‘goods’.

(53) *“Government” means the Central Government;*

(54) *“Goods and Services Tax (Compensation to States) Act” means the Goods and Services Tax (Compensation to States) Act, 2017;*

The Goods and Services Tax (Compensation to States) Act (for brevity “Compensation Act”) provides for compensation to the States for the loss of revenue arising due to implementation of GST for a period of 5 years from the said date of implementation. The cess paid on the supply of goods or services will be available as credit for utilization towards payment of said cess on outward supply of goods and services on which such cess is leviable.

(55) *“goods and services tax practitioner” means any person who has been approved under section 48 to act as such practitioner;*

A goods and service tax practitioner (GST practitioner) is a person who can undertake the following activities on behalf of a registered person (if so authorized):

- (a) Furnish details of outward and inward supplies;
- (b) Furnish monthly, quarterly, annual or final return;
- (c) Make deposits in the Electronic Credit Ledger;
- (d) File a claim for refund;
- (e) File an application for amendment/ cancellation of registration.

The following aspects need to be noted:

- A person desirous of being enrolled as a GST Practitioner should make an application in Form GST PCT-1 and satisfy the conditions required;
- The GST practitioner is required to affix his digital signature on the statements prepared by him/ electronically verify using his credentials;
- The responsibility of correctness of the details furnished will lie on the registered person only.

(56) *“India” means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters;*

The definition of India extends not only to the landmass, but also to the territorial waters and the air space above the Indian territory and territorial waters. Hence, all the supplies made in such areas will be treated as supplies made in India. Unlike earlier laws, GST redraws the map of India as commonly understood to a map that extends beyond the land mass well into the sea all the way to the end of the maritime zone (200 nautical miles from baseline on the shore at high-tide) going down under the sea bed and sub soil under such waters and up in the air up to the air space (sovereign air space) above. Sovereign air space is based on the

jurisdiction of a nation's laws and there are 11 nations that have such laws. India is in the process of putting together its own air space legislation. Beyond the maritime zone or above sovereign air space is called 'high seas' in maritime law.

E.g.: Musical performance by an artist on board a ship sailing from Chennai to Vishakhapatnam, food supplied on an aircraft flying from Delhi to Trivandrum.

(57) *"Integrated Goods and Services Tax Act" means the Integrated Goods and Services Tax Act, 2017;*

It refers to the Act which provides for principles to determine what is an inter-State or intra-State supply, and levy of tax on inter-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption).

(58) *"integrated tax" means the integrated goods and services tax levied under the Integrated Goods and Services Tax Act;*

Tax levied under the IGST Act is referred to as "Integrated tax". It refers to the tax charged under the IGST Act on inter-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption). The rate of tax is capped at 40% and will be notified by the Central Government based on the recommendation of the Council.

(59) *"input" means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business;*

The term "input" refers to goods as defined under the GST law, and excludes capital goods. Unlike the definitions given to the term "capital goods" in the erstwhile laws such as Central Excise, VAT, etc., the term is given a very simple meaning in the GST law.

It is sufficient for any goods which are used or intended for use in the course or furtherance of business to be capitalised in the books of account, for them to be treated as capital goods under GST. Accordingly, if a person who is engaged in the sale of laptops capitalises one laptop in his books of account, and such laptop is for business-use, (say for invoicing purposes), that laptop shall be treated as capital goods under GST law as well.

The second condition for goods to be treated as inputs, is that they must be used or intended to be used by the person who has inwards (say by way of purchase, exchange, etc.) those goods '*in the course or furtherance of business*'. This phrase encompasses a wide range of functions within the business.

- The term "business" as defined under the GST law includes any activity or transaction which may be connected, or incidental or ancillary to the trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity.
- There is neither a requirement of continuity nor frequency of such activities or transactions for them to be regarded as 'business'.
- The law poses no restriction that the goods must be used on the shop floor, or that they must be supplied as such/ as part of other goods/ services. It would be sufficient if the goods are used in the course of business, or for furthering the business.

- The term 'course of business' is one that can be stretched beyond the boundaries consolidating activities that have direct nexus to outward supply. What is usually done in the ordinary routine of a business by its management is said to be done in the "course of business". Moreover, the term "ordinary" is missing before "course" in the phrase.
- From the above, it can be inferred that the purchase/ inward supply of goods need not be a regular activity, and may even be a one-time procurement. This is further clarified with the other phrase "furtherance of business", which has not been of use in the indirect taxes thus far.
- "Furtherance of business" is a new term, and an entirely new concept, that has been introduced in GST.

Additionally, there is no other condition attached to the term "input", especially in relation to the outward supply. Consequently, a person engaged in supplying services would also be entitled to treat the goods inwarded as "inputs", where the conditions of not being capital goods, and the usage in the course or furtherance of business, Thus, laptops procured by a supplier of pure services which are meant for use of the employees for business making reports, will be eligible to be treated as "inputs" for such a person, and consequently, the taxes paid on such goods will be available as credit to the service provider, on meeting other conditions mandated for claiming credit.

Further, the law provides a flexibility for this purpose by inserting the words "or intended to be used" before "in the course...". By this, the law secures the meaning of the term "input" even for cases where goods have been purchased but, are yet to be used in the business. Thus, the conditions of *ready-to-use* and *put-to-use* would not be relevant for considering goods as "inputs", unless the condition takes route through rules/ other sections. However, no such conditions appear even for claiming input tax credit.

*(60) "input service" means any service used or intended to be used by a supplier in the course or furtherance of business;*

Any services that is used or intended to be used by a supplier of goods or services, or both, in the course or furtherance of business would be treated as "input service".

The meaning of the term "service" under the GST law is very vast to include everything that is not goods, barring securities, and monies that do not amount to activity relating to the use of money or conversion of money. Therefore, anything received by a person who is a supplier, which is not goods, and is neither securities nor money as such, would be treated as 'input service', so long as it is used or meant to be used in the course or furtherance of business.

Unlike the erstwhile law, there is no requirement for it to have direct nexus with the outward supply. In other words, the service received may not be directly linked to the outward supply of the supplier receiving the service, and the outward supply may be goods or services. Regardless of the outward supply, the service received would qualify as "input service" to him, when the same is used in the course or furtherance of business. Therefore, a retailer who



receives housekeeping services of the business premises will be eligible to treat the services as 'input services' given that such services are received in due course of business.

Further, while the erstwhile law required that the services must be received only up to the place of removal for them to qualify as "input services", there is no such condition attached to the term under GST, where such services are received in the course or furtherance of business. This means that goods transportation services availed by the supplier, would qualify as input services to him, even if the transportation is up to the place of delivery to the recipient, say the factory of the recipient, although the transportation does not add value to the goods itself, but adds value to the supply made by him.

Contrasting with the definition of capital goods (capitalized in books) and inputs (not capitalized in books or revenue expense), input service does not appear to be restricted to revenue expenditure only, but may also be capitalized in books,

*(61) "Input Service Distributor" means an office of the supplier of goods or services or both which receives tax invoices issued under section 31 towards the receipt of input services and issues a prescribed document for the purposes of distributing the credit of central tax, State tax, integrated tax or Union territory tax paid on the said services to a supplier of taxable goods or services or both having the same Permanent Account Number as that of the said office;*

The concept of input service distributor exists even in the earlier service tax law. This has been borrowed into GST, entitling a person who is registered as an Input Service Distributor (ISD) to distribute the credit in respect of input services (and not inputs) received in its name. Given that services are intangible, it is not practicable to trace every service to the ultimate recipient of the service, as is distinguishable in case of goods, justifying the need for a distributor to services.

The definition appears to indicate that the ISD-office cannot simultaneously be a place of business from where taxable supplies are made. In other words, if there is a place of business of a taxable person, that office cannot also be an office that 'receives tax invoices and issues document to distribute credit). Although some experts do not find any apparent objection for cohabitation of POB and ISD. But, in view of the inter-branch supply of management and supervisory services by an office that has such capabilities, treating such an office as ISD would be misapplication of the facility of ISD to distribute credit.

Generally, the head office of the person, or the corporate office, by whatever name called, would be the location to which the services would be billed. However, there is no implication by law that an ISD must be the head office. It may be ensured that the office registered as ISD does not itself undertake any activity in the nature of outward supply, not receive inward supplies of its own or not attract RCM liability. Therefore, a single company may choose to have multiple regional offices based on its business requirements.

To distribute the credit of input services, the ISD would be required to follow the manner prescribed by the rules, including:

- Issue of an ISD invoice to each recipient of credit on every distribution.
- Recipients of credit to are those taxable persons to whom it is attributable (whether or not they are registered), being persons having the same PAN (as issued under the Income Tax Law) as that of the ISD.
- The credit of integrated tax should be distributed as integrated tax irrespective of the location of the ISD, and so also:
  - Where the ISD is located in a State other than that of the recipient of credit, the aggregate of Central tax, State tax and Union territory tax, as integrated tax.
  - Where the ISD is located in the same State as that of the recipient, the Central tax and State tax (or Union territory tax) should be distributed as the Central tax and State tax (or Union territory tax), respectively.
- Each type of tax must be distributed through a separate ISD invoice. However, there is no requirement to issue ISD invoices at an invoice-level (received from the supplier of the service).

Note: The liability to cross charge for services provided between distinct persons ( branches/ HO etc.) is independent from the function of the ISD.

*(62) "input tax" in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—*

- (a) the integrated goods and services tax charged on import of goods;*
- (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;*
- (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the Integrated Goods and Services Tax Act;*
- (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or*
- (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,*

*but does not include the tax paid under the composition levy;*

From the opening of the definition, it can be understood that input tax can arise only in respect of registered persons, and the tax is only available on supplies **made to him**. Therefore, no tax paid on outward supplies can ever qualify as input tax to the person making the supply (who may or may not be registered), and shall only be treated as 'input tax' by the person receiving the supplies.

The law also makes it amply clear that input tax is linked to a specific registration, and cannot be loosely associated with various GST registrations of the single legal person.

Further, for 'input tax', the law makes no distinction between Central tax, State tax, Union territory tax and integrated tax.

The law specifically provides certain inclusions and an exclusion to clarify the scope of the term:

- The specific inclusions are of two types, i.e., the integrated tax applicable on import of goods (in lieu of the previously applicable CVD and SAD), and the taxes payable on reverse charge basis on account of supplies being those supplies that are notified in this regard, or on account of being inward supplies from unregistered persons. From the language used, it must be understood that these inclusions are not limited to those that have been discharged, on the premise that the law used the words "charged" or "taxable" and not "paid".
- While it is clear that composition suppliers will not be entitled to collect taxes, from this definition, it can be inferred that the amounts paid by composition in lieu of tax, cannot, in turn, be treated as input tax either for the composition supplier or for the recipient of the supplies.

Further, the GST Compensation law reserves right to levy cess on certain supplies. However, this cannot be treated as input tax for the purposes of GST. Although the GST Compensation law provides that the provisions of input tax would apply *mutatis mutandis* to cess, it categorically specifies that the input credit of cess can only be utilised for discharging the liability on such cess.

(63) "input tax credit" means the credit of input tax;

For a tax to qualify as "input tax credit", it must first be "input tax". The law creates a separate terminology for this purpose as all input tax would not qualify as credit. Credit of input tax would be available subject to specific conditions and restrictions, and to specific persons being registered persons.

(64) "intra-State supply of goods" shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;

The principles for determining a supply as an intra-State supply are provided in the IGST law in terms of the exclusive power of Parliament under article 269A(5) of our Constitution.. Drawing reference to the relevant Section, every supply of goods, where the location of the supplier of the goods and the place of supply as determined under Section 10 of the Act, are in the same State (or same Union Territory), would be an intra-State supply of such goods. Accordingly, an import or export of goods can never be an intra-State supply.

Every taxable supply that is an intra-State supply shall be liable to both Central tax and the respective State tax (or Union territory tax), unless otherwise exempted.

The 'place of supply' referred to in this regard is a legal terminology and should not be understood for the colloquial usage, if any. Section 10 of the IGST Act provides situation-specific conditions for determining the 'place of supply'.

*(65) "intra-State supply of services" shall have the same meaning as assigned to it in section 8 of the Integrated Goods and Services Tax Act;*

As in case of goods, where the location of the supplier of the service and the place of supply as determined under Section 12 of the IGST Act, are in the same State (or same Union Territory), the supply would be an intra-State supply of such services. Import of goods under a cross-border lease arrangement attracts levy of customs duty (for the physical article brought into India) and also attracts levy of GST (for the treatment of lease as a supply of service under para 1(b) or 5(f) of schedule II). Please look for specific exemption under Customs law in case of cross-border lease arrangement to deal with the overlap of levy under both these legislations. Eg. Sl.no.547A to NN 50/2017-Cus. dated 30 June, 2017 by NN 65/2017-Cus. dated 8 July, 2017 or 72/2017-Cus. dated 16 August, 2017, etc.

Every taxable supply of service that is an intra-State supply shall be liable to both central tax and the respective State tax (or Union territory tax), unless otherwise exempted. The 'place of supply' should be determined in accordance with Section 12 or Section 13, as the case may be, of the IGST Act that provides situation-specific conditions for determining the 'place of supply'.

*Note: Section 13 of the IGST Act specifies the conditions for determining place of supply in cases where either the location of the supplier or the location of the recipient (or both) are located outside India.*

*(66) "invoice" or "tax invoice" means the tax invoice referred to in section 31;*

On a plain reading of the law, it appears that the terms "invoice" and "tax invoice" have been used inter-changeably to refer to that document that is prescribed by law, as a document that shall be issued by the registered person on making taxable supplies. The tax invoice should contain all the prescribed details such as the description of the goods, quantity, value and tax charged on the supply. The possibility of denial of credit due to prescribed details not being available even if not important is real unless law provided for condonation which was there in earlier laws.

- In respect of goods: A tax invoice can be issued at or before the time of removal of the goods for making the supply, where the supply involves movement of the goods (either by the supplier or by the recipient, or any other person).
  - However, where the supply to the recipient does not involve movement of the goods, the tax invoice would be due at the time of delivery or making the goods available to the recipient. It is not necessary that every supply requires movement of goods on the basis that all goods are movable in nature.
  - The time of removal would matter only in cases where the removal of goods and the movement of goods is by virtue of the supply.
  - Consider the case of sale on approval basis. Goods would be removed at a certain time, and may be delivered to the location of the recipient. However, it is

not known at the time of removal, whether the transaction results in a supply. Therefore, the time of confirmation by the recipient that he wishes to retain the goods would be the due date for issuing the tax invoice.

- The Government is also empowered to notify certain categories of supplies in respect of which it can prescribe a separate time limit for issuance of tax invoice.
- In respect of services: A tax invoice for supplying services should be issued within 30 days from the date of supply of the taxable service.
  - However, the Government is empowered to notify certain categories of services wherein any other document relating to the supply would be treated as the tax invoice, or for which no tax invoice is required to be issued at all.

The provisions of Section 31 of the CGST Act also provide for invoices or other documents such as bill of supply, payment voucher, receipt voucher, etc. in for specific situations.

*(67) "inward supply" in relation to a person, shall mean receipt of goods or services or both whether by purchase, acquisition or any other means with or without consideration;*

Inward supplies may be of goods or of services, or of both. The key in this definition is to note that 'inward supply' is not necessarily a supply and has a larger scope by covering 'receipt' of goods or services.

It may be questioned as to whether an inward supply is not particular to a registration, or whether an inward supply can be associated with any of the registered persons having the same pan, on the premise that it is in relation to "a person". However, that would not be the intent of the law; it is to enable correlation with a person, whether or not he is a taxable person. In other words, reference to inward supply may be in relation to any person, whether he is registered, or unregistered taxable person, or person not liable to tax.

*(68) "job work" means any treatment or process undertaken by a person on goods belonging to another registered person and the expression "job worker" shall be construed accordingly;*

To start with, the expression "job work" refers to a "treatment" or "process", which is undertaken by one person, who may or may not be registered, to another registered person.

While treatment and processing are commonly understood as services, there is no implication that job work is purely services, or that goods would not be used for such treatment or processing. However, Schedule II of the CGST Act which specifies activities to be treated as supply of goods or supply of services, *inter alia* provides that any treatment or process which is applied to another person's goods is a supply of services. Such a deeming fiction in respect of job work is given effect to, based on the primary objective of any job work, which is to provide a service.

The following aspects need to be noted:

- Capital goods may be sent for job work, or for the purpose of carrying out the treatment or process.

- A job worker is free to effect inward supplies on his own account for carrying out the job work. The law does not require that goods applied for the treatment or process must also be sent by the registered person on whose goods the job work is undertaken.
- As regards the job worker *per se*, the law makes no insistence that such person must be a registered person.
- The law requires that the treatment or process undertaken by the job worker must be on goods belonging to “another” registered person.
  - From the usage of the term “another” before “registered person”, it is clear that the law intends to segregate the units being different persons, or different registrations.
  - The reference to the principal is made by using “another registered person” and not “another person”.
  - It may be safely be understood that, if one unit of a company supplies goods for further processing to another unit of the same company, having a different registration from that of the supplying unit, the unit undertaking the processing activity can be treated as a job worker.
- If the Principal is an unregistered person, then the job worker is not a job worker. Classification of the work undertaken may need to be examined whether it is manufacture or not to attract the appropriate rate of tax applicable to the goods so manufactured and not rate of tax applicable to services of job-work;
- Job work should not be interchanged with repair activity as both appear to involve ‘treatment or process’ on goods belonging to another. Job work brings into existence a functionality that was not in existence whereas repair restores functionality that was already in in existence before the article became faulty (and needed repairs).
- is important to note that the job worker is not an Agent of the Principal and the relationship *inter se* are that of Principal to Principal.

(69) “local authority” means—

- (a) a “Panchayat” as defined in clause (d) of article 243 of the Constitution;
- (b) a “Municipality” as defined in clause (e) of article 243P of the Constitution;
- (c) a Municipal Committee, a Zilla Parishad, a District Board, and any other authority legally entitled to, or entrusted by the Central Government or any State Government with the control or management of a municipal or local fund;
- (d) a Cantonment Board as defined in section 3 of the Cantonments Act, 2006;
- (e) a Regional Council or a District Council constituted under the Sixth Schedule to the Constitution;

- (f) a Development Board constituted under article 371 **and article 371J**<sup>6</sup> of the Constitution; or
- (g) a Regional Council constituted under article 371A of the Constitution;

A 'local authority' is also a 'person' for the GST law. A local authority would enjoy the same treatment as is received by a 'Government' such as in the case of supplies that shall be treated as neither a supply of goods nor a supply of services, requirement to deduct tax at source on supplies made to it, etc.

Understanding Government, Government Agency, Government Entity and Local Authority assumes significance consider TDS obligations under section 51 (on payments by such entities) and RCM obligations (on recipient of services from such entities). Some considerations may be to examine schedule XI and XII of our Constitution about functions of sovereign. Another could be to examine if employees of such entities are employees of the President of India or Governor of the State. Yet another could be to examine if, in the event of liquidation of such entity, whether the liquidation estate will vest with the Union or State and be transferrable to the Consolidated Fund of India or State. These and such other facts may need to be examined understanding to decide whether the entity or board or corporation would be a Government functionary.

- (70) "location of the recipient of services" means, —
- (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the recipient;

Given that services are not tangible, the determination of the location of the recipient of service could result in complications. The 'location of the recipient of services' is essential to determine whether the supply is an inter-State or an intra-State supply, as such location is the residuary clause for determining the place of supply of services.

Broadly, the meaning given to the phrase "location of the recipient of services" is oriented towards determining the place of supply of the services. The most relatable location of the recipient can be determined in the following order – if the place of supply of the service happens to be:

- (a) a 'place of business' which is a registered place of business, such place;

<sup>6</sup> Inserted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019

- (b) a 'place' which is a fixed establishment (i.e., a place of business not registered, but having a sufficient degree of permanence involving human and technical resources), such fixed establishment;
- (c) at multiple 'places' which may include places of business or fixed establishments, that one place to which the supply is most directly attributable;
- (d) a place that cannot be identified from the above three clause, the usual location of the recipient (address where the person is legally registered/ constituted in case of recipients other than individuals).

(71) "location of the supplier of services" means, —

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the supplier;

The determination of the location of the supplier of services is equally complicated, as is in case of the recipient. The 'location of the supplier of services' is principally essential to determine whether the supply is an inter-State or an intra-State supply (i.e., where location of supplier and place of supply are in the same State or Union Territory, the supply would be an intra-State supply, and will be an inter-State supply in any other case).

Location of supplier 'of goods' is not defined in the CGST Act and does not seem to be a drafting oversight but a deliberate omission. Please refer to discussion in this regard in the context of section 7 and section 10 of IGST Act.

(72) "manufacture" means processing of raw material or inputs in any manner that results in emergence of a new product having a distinct name, character and use and the term "manufacturer" shall be construed accordingly;

The meaning of the term "manufacture" comes with a great deal of significance in the erstwhile indirect tax regime, given that chargeability excise duty relies solely on whether an activity results in manufacture. However, in the GST regime, the taxable event is a "supply" and tax is leviable whether or not the supply followed 'manufacture' of goods. Hence, the term loses its significance in the GST regime. However, a definition has been provided as references to this term are inadvertently essential even in the GST law, listed below:

- Composition levy: The composition tax rate in case of manufacturers is different as compared to that of suppliers not being manufacturers (expected cap rate of 2% as



against 1%, respectively, being the aggregate of central and State tax/ Union Territory tax). Further, manufacturers of certain notified goods would not be eligible to exercise the option to avail the benefit of composition scheme. Such a restriction is however, not placed on other classes of persons, say traders of the same notified goods.

- Concept of deemed exports: One of the pre-conditions for any such supply to qualify as deemed export is that the goods in question must be manufactured in India. Therefore, even where the goods are of the nature that are notified by the Government as goods that qualify as “deemed exports” on meeting certain conditions, if such goods are not manufactured in India (or, any processing performed on any imported goods does not result in manufacture), they cannot enjoy the benefit of the deeming fiction.
- Maintenance of accounts: A manufacturer shall be required to maintain a record of production/ manufacture of goods, in addition to recording the details of inward and outward supplies.

*(73) “market value” shall mean the full amount which a recipient of a supply is required to pay in order to obtain the goods or services or both of like kind and quality at or about the same time and at the same commercial level where the recipient and the supplier are not related;*

This term finds reference only in the provisions in relation confiscation of goods or conveyance arising on account of contravention of the provisions of the law (say supplies made by a taxable person who has failed to obtain registration, etc.). The law provides that the owner of the goods will be given an option to pay a fine, not exceeding the market value of the goods in question, to safeguard his goods or conveyance from being confiscated.

Goods or services of like kind and quality means *any other* goods or services (“comparables”) made under similar circumstances that, in respect of the characteristics, quality, quantity, functional components, materials, and reputation of the goods or services in question, is the same as, or closely or substantially resembles, that of the comparable.

The meaning of the term ‘related’, must be understood from the definition provided in respect of ‘related persons’ under Section 15.

This definition should not be confused with Open market value as this definition appears to be restricted to cases where there is confiscation where the value is from the recipients perspective.

*(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.*

*Illustration: – A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately;*

When two (or more) goods, or two or more services (need not be taxable), or a combination of goods and services, that each have individual identity and can be supplied separately, are deliberately supplied for a single consolidated price, the supply would be treated as a mixed supply.

Most importantly, such a supply should not qualify as a composite supply, for it to be treated as a mixed supply, i.e., in case of a mixed supply:

- The two or more supplies are not naturally bundled and supplied conjointly in the ordinary course of business. In other words, unnaturally supplied inseparably and for a single price is a hallmark of mixed supply;
- The principal supply cannot be identified – more than one of the supplies form the “predominant element” of the supply. In other words, individually present but inseparably presented for supply would also yield tax being applied as mixed supply;

Where the conjoint supply is neither a composite supply, nor supplied for a single price, the two or more supplies would be treated as individual supplies or non-composite supply, and not as a ‘mixed supply’.

Illustrations for consideration:

- (a) Supply of toothpaste, brush, plastic container for the two: The three goods can be said to be naturally bundled and supplied in the ordinary course of business. While the plastic container is ancillary to the supply, both toothbrush and toothpaste could be the predominant elements of the supply. In a composite supply, there can be only one principal supply and therefore, this supply would be a mixed supply.
- (b) Supply of laptop and printer: Although a printer is used for the purpose of printing, the commands for which can be given through the laptop, the two goods are not naturally bundled and supplied conjointly in the ordinary course of business. Therefore, this supply is a mixed supply.
- (c) Supply of repair service for an accident vehicle for a single consolidated price.
- (d) Supply of combo-meal with aerated beverage or even alcoholic beverage.
- (e) Supply of lectures in a coaching centre and monthly excursions such as trekking, etc.: The two services are not naturally bundled in the ordinary course of business. Therefore, this supply is a mixed supply as it is for a single price.

The tax rates applicable in case of mixed supply would be the rate of tax attributable to that one supply (goods, or services) which suffers the highest rate of tax from amongst the supplies forming part of the mixed supply. Therefore, a mechanism for separating the supplies could be examined, in case of mixed supplies where tax rates are differing.

It is important to ensure there is a single price is assigned in respect of the various supplies that are involved. And the supplies so involved are unnaturally bundled together for such single price. If the price were not one single amount but the visible aggregation of individual

prices then, even if supplied together, each of them may be regarded as an individual non-composite supply.

*(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 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;*

The meaning attributed to this term in the GST law is a polished adoption of the definition provided under the Service Tax law. Additionally, money as defined in the GST law includes any foreign currency as well. The significance of this term is that it is out of the scope of taxation under GST. Money would neither be goods nor services under the GST law. However, there is no exemption given to activities relating to the use of money or its conversion. So also, sale of money, say a coin collection set of 100 coins, would be chargeable to tax, as such coins are held for their numismatic value.

It is also interesting to note that this term is no longer relevant for understanding whether a transaction is for consideration, as the meaning assigned to the term 'consideration' under the GST law may be in money or in another form.

The words "...or any other instrument recognised by the Reserve Bank of India..." demands a mention of the Payments and Settlement Systems Act, 2007 which allows RBI to authorize the development and distribution of a system of settlement of payments in the form of prepaid instruments (PPIs) that are not Indian legal tender but are yet used as a consideration to settle an obligation. Such PPIs are often confused with voucher (defined in section 2(119) below). This form of interchangeable usage would be an error. Since the PPI is included in the definition of money it cannot also be included in the definition of voucher. PPIs are not vouchers but money. Tax treatment applicable on the receipt of money must be applied even when receipt is through PPI's.

*(76) "motor vehicle" shall have the same meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988;*

Replace with Section 2(28) of the Motor Vehicles Act, 1988 reads as under:

*"motor vehicle" or "vehicle" means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding twenty-five cubic centimetres.*

From this, it can be understood that all vehicles such as cars, trucks, buses, tempo-travellers, etc. that are meant for usage on roads will be covered within the meaning of 'motor vehicles'. The implication of this definition is that input tax credit is not available in respect of inward

supply of motor vehicles, unless they are used for specific purposes (being transportation of goods, or for making taxable supplies of further supply of such vehicles, or supplying passenger transportation services or for imparting training in relation to such vehicles). The denial of rent a cab (less than 12 persons) credit means that there is a need to examine the applicability of permits and its harmonious understanding with the Motor Vehicles Act.

When motor vehicle has been defined by reference to another Act, all interpretation that is allowed under that Act would equally apply under GST. Motor vehicles such as its excavators, wheel loaders, back hoe, road rollers, etc. will also come within the same restrictions applicable to motor vehicles under GST law. Merely because these articles are used more in the nature of plant and machinery and less in the form of motor vehicles is of no avail.

*(77) “non-resident taxable person” means any person who occasionally undertakes transactions involving supply of goods or services or both, whether as principal or agent or in any other capacity, but who has no fixed place of business or residence in India;*

The meaning of the term ‘non-resident taxable person’ covers all person who undertake transactions involving supply of goods or services or both, whether or not such supplies are taxable, so long as such person neither has a fixed place of business nor residence in India.

Every such person who intends to affect any taxable supplies under the GST law, should compulsorily obtain registration under the GST law before commencing business, irrespective of the turnover during the year. The application for registration shall be made at least 5 days prior to the commencement of business.

However, a person who does not undertake transactions involving any supplies “occasionally”, he would not be treated as a non-resident taxable person. The law does not define the frequency implied by the expression “occasionally”. Therefore, where there is a reasonable frequency of occurrence of supplies in India, it must be construed as transactions occurring occasionally.

Due to applicability of higher rate of withholding under Income-tax Act on remittances made from India, non-residents who have no active business presence in India are also found to have secured PAN numbers. And for this purpose has designated a representative with an address being either admitted premises of operations or simply for correspondence. Care must be taken to determine whether such designated representative and address would ‘fixed place of business’ (and not to be equated with fixed establishment).

*(78) “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;*

A transaction must be a ‘supply’ as defined under the GST law, to qualify as a non-taxable supply under the GST law.

The following aspects need to be noted:

- Stock transfers to unit within the State for which no separate registration is obtained, which does not qualify as a ‘supply’ as defined under Section 7 of the CGST Act, cannot

be said to be a non-taxable supply.

- Transactions specified in Schedule III which are treated as neither a supply of goods nor a supply of services, would also qualify as non-taxable supplies.
- Receipts that satisfy exclusion from valuation as 'pure agent' (rule 33) would also be no supply and not to be treated as non-taxable supply.
- Supplies that enjoy the benefit of being wholly exempted from taxes, nil-rated supplies and zero-rated supplies are also not covered under the umbrella of 'non-taxable supplies' given that the goods or services are in fact liable to tax, and such tax is exempted by virtue of an exemption notification, or the tax rate is nil.
- Only those supplies that are excluded from the scope of taxation under GST are covered by this definition – i.e., alcoholic liquor for human consumption, articles listed in section 9(2) or in schedule III.

*(79) "non-taxable territory" means the territory which is outside the taxable territory;*

A taxable territory means the territory to which the provisions of the GST law applies. Accordingly, in case of CGST law, the taxable territory would cover all locations covered under the extent of the law – i.e., whole of India.

- Accordingly, locations outside India would be considered as non-taxable territory, being the territory outside the taxable territory.
- Similarly, for the State GST law, non-taxable territory would cover all those locations where the provisions of the particular State GST law would not apply. For instance, for the purpose of the State GST law of Maharashtra, all other States and Union Territories of India, and locations outside India, would be non-taxable territory.

In this regard, it would be relevant to understand the geographical extent covered within the meaning of the term 'India' – refer analysis of Section 2(56).

Supply taking place in a 'non-taxable territory' would be outside the jurisdiction for imposing any GST. High sea sales (first supply) are not liable to GST because goods that involve movement are located outside the taxable territory even though the recipient may be inside. Another example is Merchanting Trade (eg. Buy from China and Ship to Germany, directly by an Indian entity). GST is a tax on supply and not a tax on supplier. Supply that does not occur within taxable territory would be a non-taxable supply in the returns of this Indian entity.

*(80) "notification" means a notification published in the Official Gazette and the expressions "notify" and "notified" shall be construed accordingly;*

The Central Government and the State Governments are empowered to issue notifications to give effect to certain provisions such as goods and services that would be liable to tax on reverse charge basis, supplies that are exempted from tax, supply of goods that shall be treated as supply of services, etc. For a notification to be valid under GST, it must be published in the Official Gazette of India, as published by the Government of India's

Department of Publication, Ministry of Urban Development.

Every notification published in the Official Gazette will come into force from the date of such publication, unless another date is specified for this purpose, in the notification.

*(81) "other territory" includes territories other than those comprising in a State and those referred to in sub-clauses (a) to (e) of clause (114);*

By definition, the expression 'other territory' is inclusive of all territories that do not form part of any State (including the two Union Territories with Legislature being Delhi and Puducherry), and excludes the Union Territories (i.e., the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, and Chandigarh).

All territories that fall into the ambit of 'other territory' as defined above would also form part of the meaning of the term 'Union territory' as defined under Section 2(114), to leave no territory that is claimed by any of the States or Union Territories, outside the scope of taxation under GST, so long as such territory is in India. Although there is no specific explanation that the extent of the term should be limited to the territory of India, we should not consider locations outside India to also fall into the scope of 'other territory' defined above, as it would defeat the purpose of law.

*(82) "output tax" in relation to a taxable person, means the tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;*

The output tax chargeable on intra-State taxable supply of goods or services can be summarised as under:

Type of Supply	Output tax	Reference
Supplies within a State (or UT with Legislature)	CGST + Specific SGST (intra-State supply)	Section 8(1) and 8(2) of the IGST Act
Supplies within a UT without Legislature	CGST + UTGST (intra-State supply)	Section 8(1) and 8(2) of the IGST Act

The following aspects need to be noted:

- While input tax is in relation to a registered person, output tax is in relation to a taxable person. Evidently, the law excludes persons who are not registered under the law from being associated with any input tax. However, where there is a liability due to the Government, the law paves the way to cover those persons who are liable to tax, but who have failed to obtain registration.
- The amount covered under this term is the amount of tax that is 'chargeable', and not the amount that is 'charged'. Therefore, in case a person wrongly charges tax, or charges an excess rate of tax, as compared to the applicable tax rate, such excess

would not qualify as output tax.

- Some experts are of the view that taxes payable by recipient of supply, on account of making inward supplies of such categories of supply as are notified for the purpose of reverse chargeability of tax, or making inward supplies from unregistered persons, would also be out of the scope of 'output tax'.
- The implication of the exclusions mentioned above is that the input tax credit cannot be utilised for making payment of any amount that does not qualify as output tax. Discharge of liability in such cases has to be by way of cash payments (i.e., through the electronic cash ledger, on depositing money by means of cash, cheque, etc.).
- The law makes a specific inclusion in respect of supplies made by an agent on behalf of the supplier, to treat the tax paid on such supplies as output tax in the hands of the supplier.
- 'Tax under this Act' referred in section 76 appears to be output tax, based on this definition. Accordingly, any person collecting output tax will be liable to deposit it to the Government. Collecting output tax (or tax under this Act) higher than the prescribed, such person will be liable to deposit the entire amount collected with the Government. However, in case outward supplies are exempted (goods are exempted or recipient is given some exemption), supplier is free to collect 'input tax credit reversed' on account of this exemption on the outward supply. Such amounts collected NOT being in the nature of 'tax under this Act' or 'output tax', do not appear to be affected by section 76. Unison Metals Ltd. v. CCE-Ahd-I (2006) 204 ELT 323 (LB-Tri.) which considered similar provision of section 11D under Central Excise Act.

*(83) "outward supply" in relation to a taxable person, means supply of goods or services or both, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal or any other mode, made or agreed to be made by such person in the course or furtherance of business;*

For any transaction or activity to qualify as an outward supply, it must first be a 'supply' in terms of the GST law, unlike inward supplies, which could merely be receipts, not amounting to supply. Further, an outward supply is closely associated with a 'taxable person' being, a unit of a person that has, or is required to have, a separate registration.

The phrase 'outward supply' can be applied to a supply only when such supply is made in the course or furtherance of business. Say, for instance, business assets are put to personal use. In such a case, even if the transaction is deemed to be a supply (made without consideration), it cannot be treated as an 'outward supply', since the application of the business asset for personal use was neither in the course nor furtherance of business.

The following aspects need to be noted:

- Supplies not qualifying as outward supplies would also be included for the purpose of computing the 'aggregate turnover';
- In case of a composition supplier, where he engages with a recipient outside the State,

and if the transaction does not result in an 'outward supply', (say, sending goods for job work outside the State), the conditions imposed on him as a composition supplier would not be violated (i.e., making inter-State outward supplies);

- Details of supplies on which tax is payable, but which do not amount to 'outward supplies' would also have to be declared in the return for outward supplies (GSTR-1);
- By treating goods or services "agreed" to be supplied as 'outward supply', the law authorises imposition of GST on advance payments;
- Reimbursement against goods or services purchased by employees of a taxable person would not be in furtherance of business of such employees to attract any tax.

<p>(84) "person" includes—</p> <p>(a) an individual;</p> <p>(b) a Hindu Undivided Family;</p> <p>(c) a company;</p> <p>(d) a firm;</p> <p>(e) a Limited Liability Partnership;</p> <p>(f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;</p> <p>(g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013;</p> <p>(h) any body corporate incorporated by or under the laws of a country outside India;</p> <p>(i) a co-operative society registered under any law relating to co-operative societies;</p> <p>(j) a local authority;</p> <p>(k) Central Government or a State Government;</p> <p>(l) society as defined under the Societies Registration Act, 1860;</p> <p>(m) trust; and</p> <p>(n) every artificial juridical person, not falling within any of the above;</p>
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This definition is to be read along with the fiction in Section 2(107) where a 'taxable person' is understood to be sub-units of a person such that transactions between two taxable persons is also a taxable supply. Every 'person' is understood to have a separate identity, under the GST law.

For instance, a trust set up by a company will be treated as a separate person from the



company, or a limited liability partnership holding all the shares of a company will be treated as a separate person from the company.

It is common to see entities who contribute assets and have a basket of different interests which are in the nature of partnerships. The sharing of risks could indicate such associates or joint venture. On the other hand one sided contract of revenue sharing maybe considered different. Please note that it has been held in the case of CIT v. RM Chidambaram Pillai (1977) 106 ITR 292 (SC) that 'firm' is a collective noun of the partners and not a legal person. Therefore, a contract with a firm is legally, multiple-simultaneous-identical contracts with each partner. Again in CIT, Bihar v. Ramniklal Kothari (1969) 74 ITR 57 (SC), it has been held that business of the firm is the business of the partner. Therefore, from GST perspective, there is no supply between the partners and their firm or vice versa and the flow of remuneration (in all the various forms that is permitted by Income-tax law) would not be taxable in the absence of any supply *inter se*.

(85) "place of business" includes—

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- (b) a place where a taxable person maintains his books of account; or
- (c) a place where a taxable person is engaged in business through an agent, by whatever name called;

The inclusive nature of the definition indicates that the places or locations listed in the definition are illustrative and not exhaustive. From the three clauses of such illustrative locations, each clause makes a reference to 'taxable person'. Therefore, place of business should be understood as a term that is specific to each taxable person, having (or requiring) distinct registrations. Say, in the case of a company having operations across 10 cities in two States, the set of cities being the places of business for one State would be mutually exclusive from that of the other.

Place of business therefore is not only any place where business is ordinarily carried on but it would also be a place where goods are located and kept ready for supply. Ex-works supplies, to a registered person from another State, without the goods immediately being transported out to that State, would also come within the definition of place of business. Therefore, there is no need to be concerned that location of supplier of goods is not defined in the law because unlike services, there is sufficient trail available in transactions involving supply of goods.

Below are other implications in relation to place of business:

- Registration of such places as additional place of business – although there is no explicit requirement under law to declare all places of business as additional places of business. This would facilitate transportation of goods between places of business, or from the job worker's premises to any of the places of business, which can be

supported with the delivery challan, the details of which would form part of Form Waybill;

- Maintenance of separate accounts in relation to each place of business such as details of production or manufacture of goods, inward and outward supply, stock records of goods, input tax credit availed, output tax payable and paid;
- Departmental audit can be carried out in respect of registered persons at any of its places of business; this apart, authorised officers can demand access to any such places to inspect books, documents, computers, etc.;
- Place of Business is not the same as Place of Supply. And registration is required at the POB and not at POS. Eg. Renting service is business which is 'ordinarily carried out' from the POB of the Landlord and not from the POS where the Property is situated. Installation activity is carried out at the project site which is not POB of the Supplier and the site may or may not be its POS. Construction activity carried out at the site could be the LOS (location of supplier of service) because it satisfies the definition of FE (fixed establishment) but both these would not POB of the contractor.

*(86) "place of supply" means the place of supply as referred to in Chapter V of the Integrated Goods and Services Tax Act;*

Chapter V of the IGST Act provides for determination of the 'place of supply' in respect of any supply of goods or supply of services. This expression has the utmost significance in determining the nature of tax payable on a supply. Simply put, a supply shall be intra-State (liable to CGST, SGST) where the location of the supplier and place of supply as determined under the said Chapter are in the same State (or Union Territory), and neither the supplier nor the recipient are SEZ units/ developers. In any other case, the supply would be treated as an inter-State supply, liable to IGST.

There is no provision in the law that declares that GST is a 'destination based tax'. Place of supply is therefore the destination of supply attracting tax under this law. Place of supply is not left out as a question of fact that each supplier has to determine but is a question of law that is left to only be discovered by an application of the law.

Chapter V deals with determination of 'place of supply' under the following brackets:

- (a) Goods, other than supply of goods imported into, or exported from India.
- (b) Goods imported into, or exported from India.
- (c) Services where location of supplier and recipient is in India.
- (d) Services where location of supplier or location of recipient is outside India.
- (e) Online information and database access or retrieval services (OIADARS) provided by a person located in a non-taxable territory to a non-taxable online recipient (i.e., Government, governmental or local authorities, individuals, other persons receiving such services for purpose other than commerce, industry, business, profession, but

located in taxable territory).

*(87) “prescribed” means prescribed by rules made under this Act on the recommendations of the Council;*

The law empowers the Government to issue rules to facilitate the implementation of the provisions of the Act, or to carry out the objects of the law. Whenever the term ‘prescribed’ is used in the Act, one must draw reference to the relevant rules that may be issued in respect thereof.

*(88) “principal” means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both;*

The law uses the term ‘principal’ in the context of two relationships – one in case of the principal and job worker, and the other in case of principal and agent. However, in the provisions relating to job work, the term has a separate meaning, the reference of which is separately provided for. Therefore, one must understand the meaning of the term ‘principal’ wherever else the term finds a mention, as a reference to the principal-agent relationship.

Agent of the principal is one who carries on the business of supply or receipt of goods or services or both on behalf of another person, being the principal. The agent functions as an extended arm of the principal and therefore, supplies (inward and outward) effected by an agent on behalf of the principal will be treated as supplies effected by the principal. Reference may be had to circular 57/31/2018-GST where illustrations have been provided as to when a supply via agent would be a supply by agent and when it would remain a supply by principal.

*(89) “principal place of business” means the place of business specified as the principal place of business in the certificate of registration;*

The principal place of business could be any of the places of business of a person, which is located in the same State in which the registration is intended to be obtained. Generally, this location would be the head office or the corporate office or the billing address of the person, or the address registered under a statute such as the Companies Act, or as specified in the partnership deed. Once a location is chosen, it would be used for correspondence by the GST officers, and should therefore be mentioned on the certificate of registration. For multi locational tax payers they would have 1 principal place per State.

The law requires that the books of account shall be maintained at the principal place of business, or may be maintained electronically, on fulfilling the conditions prescribed by the rules.

*(90) “principal supply” means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;*

The concept of ‘a principal supply’ emerges only for determining whether a supply is a

composite supply or not, and where it is a composite supply, the rate of tax applicable to the composite supply.

Principal supply recognises two or more supplies, and arranges them in a two-step hierarchy – a single predominant supply and the ancillary supply(ies).

- (a) Supply of laptop and a carry case – In this case, the case only adds value to the supply of laptop and therefore, the case would be ancillary while the laptop comprises the predominant element of the supply. Even where the brand of the case is not the same as that of the laptop, and the supplier can establish that the case is naturally bundled with the laptop in the ordinary course of his business, the supply can be treated as a composite supply.
- (b) Supply of equipment and installation/ commissioning of the same – While the recipient actually purchases the equipment, making the equipment the principal supply, the installation makes the equipment usable by the recipient. Even if there is a separate charge for the installation of the equipment, since the service is naturally bundled and provided in the ordinary course of business, the supply would be a composite supply.
- (c) Supply of repair services of laptop with parts – As such, it is the skill and expertise of the supplier that makes the laptop function as desired. Whether replacement is necessary or a mere resetting of the existing parts restores the functionality of the laptop is not known to the customer. Where the object of the contract is unknown to the customer, that object cannot be the purpose of the contract. The only object that is known to the customer is the ‘repair service’ which makes it the predominant object of supply. This would be the position even if the cost of the parts replaced is higher than the cost of service. *However, this theory can apply only where such a replacement is done in the ordinary course of the business of repairing laptops, and such a replacement is naturally bundled with the repair service.*

*(91) “proper officer” in relation to any function to be performed under this Act, means the Commissioner or the officer of the central tax who is assigned that function by the Commissioner in the Board;*

The Government would appoint persons to act as officers of specified classes. However, all such officers would not be ‘proper officers’ under the GST law. It may be understood that the term ‘proper officer’ is to a case or a category of cases. Therefore, a Commissioner having jurisdiction in respect of a taxable person, may authorise certain officers of the GST law to act as proper officer in respect of such taxable person.

Further, the officers appointed under the SGST and UTGST laws are authorised to be the proper officers for the purposes of the CGST law.

*(92) “quarter” shall mean a period comprising three consecutive calendar months, ending on the last day of March, June, September and December of a calendar year;*

In terms of the definition provided above, we can understand that the following would be the

four quarters for the purposes of GST:

- (a) January, February and March;
- (b) April, May and June;
- (c) July, August and September; and
- (d) October, November and December.

For any reason, whatsoever, the term 'quarter' cannot be associated with three consecutive months other than those mentioned above. For instance, a composition supplier is required to furnish returns on a quarterly basis – this does not entitle him to furnish a return for the periods June, July and August, even if he obtained registration only on 29<sup>th</sup> June.

(93) "recipient" of supply of goods or services or both, means—

- (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
- (b) where no consideration is payable for the supply of 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
- (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied;

In transactions involving more than 2 persons, it could result in an ambiguity as to who should be treated as the 'recipient' for filing the return of inward supplies, paying tax on reverse charge basis, determining whether the relationship with the supplier will impact valuation, etc. In this regard, the definition specified the following:

- Where consideration payable: The recipient of supply and place of supply do not affect one another where a consideration is payable for the supply. Irrespective of the place of supply, the person who is liable for payment of consideration would be the recipient. This would hold good even in the case where the supply is made to person on the instruction of another – i.e., even if the goods are received by a person, if the person on whose instruction the goods are delivered is the person liable to pay consideration, such person giving the instruction would be the recipient.
- Where no consideration payable:
  - Goods: The actual receiver of the goods would be the recipient. Say, for instance, a supplier keeps a counter in the premises of another company for issuing free samples to the employees of the company. The recipients would be the employees, and not the company permitting the use of its premises.
  - Services: The actual receiver of the services would be the recipient.

- The definition of 'consideration' in Section 2(31) clearly provides that the consideration can be from the recipient or by any other person. However, the law provides that the person paying the consideration shall be treated as the 'recipient'. It appears that the term 'recipient' referred to in Section 2(31) should be read as 'receiver of the supply', and not 'recipient' as defined above.
- In case an agent is appointed by the principal, such agent may also be treated as the recipient of the goods or services or both.

*(94) "registered person" means a person who is registered under section 25 but does not include a person having a Unique Identity Number;*

The law makes several references to this term. The most significant implication of this reference is that it is confined to a registration of a person, who may have (or is required to have) more than one registration.

Every person/ unit of a person requiring registration, i.e., every taxable person, will be treated as a registered person the moment registration is granted to it, excluding cases where a Unique Identity Number (UIN) is granted.

A specialised agency of the United Nations Organisation or any Multilateral Financial Institution and Organisation notified under the United Nations (Privileges and Immunities) Act, 1947, Consulate or Embassy of foreign countries and any other persons who are notified by the Commissioner shall be granted a UIN for certain purposes – such as for refund of taxes on the notified supplies of goods or services or both received by them.

*(95) "regulations" means the regulations made by the Board under this Act on the recommendations of the Council;*

The Central Board of Indirect Tax and Customs\* constituted under the Central Boards of Revenue Act, 1963 (Board) is empowered to make regulations consistent with the Act and the rules made under the Act, to carry out the provisions of the Act.

Every regulation made by the Board under the Act would be laid after it is made or issued, before each House of Parliament, while it is in session, at the earliest. Where both Houses agree in making any modification, or that the regulation should not be made, the regulation shall have effect only in such modified form or be of no effect from such date (i.e., no retrospective effect of the modifications/ rejection by the Houses of the Parliament).

*(96) "removal" in relation to goods, means—*

- despatch of the goods for delivery by the supplier thereof or by any other person acting on behalf of such supplier; or*
- collection of the goods by the recipient thereof or by any other person acting on behalf of such recipient;*

The term "removal" is relevant in the case of supply of goods. Under the Central Excise Rules, 2002, the term 'removal' also included the act of issue of the goods for captive consumption.

However, under the GST law, there must be a supplier, and a recipient who is distinct person. Therefore, removal of goods used within the factory would not constitute an outward supply (while input tax credit restriction implications could arise).

Under the GST law, the significance of this term arises for raising invoice, which in turn, is an element essential to determine the time of supply. The law clearly specifies that the removal need not be effected by the supplier himself, but could also be a result of collection of the goods by the recipient or a person acting on his behalf job worker, agent. Further, this term would be relevant only to the extent of supplies requiring movement of goods.

Please take note that in GST 'removal', 'movement' and 'delivery' have been used and each have their independent meanings and are not to be understood to be synonyms. General understanding of these terms and their differences are that Removal is handing over or collecting of goods to be taken away or carried away, by supplier or recipient, even without commencement of actual transportation of the goods to the destination. Movement is the physical transportation by the person taking the responsibility of transportation which may be supplier, recipient or other carrier. Delivery is a legal concept of completion of appropriation in favour of recipient so as to complete supplier's obligations in respect of the supply. Removal is a decisive first step towards commencement of supply. Delivery is the decisive last step towards completion of supply. Movement is all the observable activity occurring in between.

*(97) "return" means any return prescribed or otherwise required to be furnished by or under this Act or the rules made thereunder;*

The term 'return' is used in this law, as under other taxation laws, to refer to a document by which details of transactions are furnished to the relevant tax department. This term is also used under the GST law, to refer to returning-back goods after they have been delivered to customers (commonly known as purchase returns, sale returns). However, term does not refer to any 'one' specific document that is filed. It includes 'any' document titled 'return' which may be prescribed or required to be furnished by CGST Act or CGST Rules. Reference may be had to section 61 and 62 to understand which 'returns' attract those provisions and then compare with what may be understood as 'return' in each context.

*(98) "reverse charge" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under sub-section (3) or sub-section (4) of section 9, or under sub-section (3) or sub-section (4) of section 5 of the Integrated Goods and Services Tax Act;*

The scheme of payment of tax under reverse charge mechanism would prevail under the GST Law, as is existent in specific cases of services, and in case purchases from unregistered dealers under the VAT law. However, in the GST law, the scope of reverse charge is expanded to include:

- (a) Goods (in addition to services) that may be notified, even if the supplier is registered;
- (b) Services (in addition to goods), for taxation on reverse charge basis where the supplier

is unregistered and supplied to specified classes of recipients who are registered.

The following aspects need to be noted:

- The scheme of partial reverse charge of joint charge, previously prevailing under the Service tax laws does not continue in GST;
- Persons required to pay tax under reverse charge are required to obtain registration under the GST whether or not they make any outward supplies, and without having regard to the threshold limits for registration – in case of notified goods and services;
- Composition suppliers being recipients of supplies on which tax is payable on reverse charge basis, will have to remit tax at the applicable rates, and not the concessional composition tax rates;
- The recipient paying tax on reverse charge basis, should issue a 'payment voucher' at the time of making payment to the supplier;
- The recipient paying tax on reverse charge basis on account of effecting inward supplies from unregistered persons, should issue an invoice in respect of the goods or services inwarded, at the time of receipt of such goods or services.

*(99) "Revisional Authority" means an authority appointed or authorised for revision of decision or orders as referred to in section 108;*

The Revisional Authority is empowered to pass an order to enhance or modify or annul a decision/ order under CGST/ SGST/ UTGST Acts as is passed by an officer sub-ordinate to him, where he finds it to be prejudicial to the interest of revenue if it is erroneous, illegal, improper or has not considered material facts (whether or not available at the time of the original decision/ order). However, such powers are not available to him in case of non-appealable orders. Refer to section 108 and the discussion ensuing to understand the overstretched authority of an administrative authority being permitted to interfere with an order of the First Appellate Authority which is, for all practical purposes, a judicial function being discharged.

*(100) "Schedule" means a Schedule appended to this Act;*

The following three schedules are provided under the CGST Act to describe the extent/ limitation of the meaning of the term 'supply':

- (a) **Schedule I:** Activities to be treated as supply even if made without consideration
- Permanent transfer or disposal of business on which input tax credit is availed. Please note that the condition of 'on which input tax credit is availed' whether it applies only to disposal of business assets or also to the previous expression of permanent transfer is interesting to analyse due to the disjunctive 'or' present separating to the two transaction. Also, when credit is reversed on business assets disposed (under section 17(5)(h)) then those transactions of disposal of business assets will not come within the fiction of sch I. But, permanent transfer (not being the same as disposal) of anything



attracts the fiction of sch I.

- supplies between related persons or persons having the same PAN. Please note that the transaction must be a supply except for the their relationship requiring a re-examination (between related persons) or when transaction is missing an ingredient of two-persons to the transaction (distinct persons by fiction in section 25)
  - supply of goods by a principal to his agent and vice versa. Please note that the transaction must already be a 'supply' and sch I only furnishes a remarkably different treatment by this fiction.
  - import of services for business purpose, by a taxable person from a related person.
- (b) **Schedule II:** Activities or Transactions (as per CGST Amendment Act) to be treated as supply of goods or supply of services

*1. Transfer*

- (a) *any transfer of the title in goods is a supply of goods.* Please refer to the difference between 'transfer' and 'sale' in the discussion under section 7 and recognize that all cases where title 'gets' transferred, it is required to be treated by the fiction in sch II as a supply of goods and not as services. Please also note that transfer is not the same as extinguishment or consumption. Extinguished is when goods are consumed in the course of performance of a contract and this, not being transfer, may be open to treatment as supply of services. For eg. Job-work involving consumption of catalyst or welding rods, etc;
- (b) *any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services.* Although goods are involved in such a transaction and their movement requires use of e-way bill, transaction will continue to be treated as supply of services and not as supply of goods;
- (c) *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, is a supply of goods.* Here, title may pass after all instalments are paid like hire purchase, but the treatment required due to sch II is that it will be supply of goods and not services. Please differentiate 1(b) and 1(c). There is enough guidance in ICAI material on AS/IndAS to make this differentiation by examining the contract terms of each of these arrangements.

*2. Land and Building*

- (a) *any lease, tenancy, easement, licence to occupy land is a supply of services.* Please note that these four expressions are not synonyms but need careful study based on the definition and authorities under Transfer of Property Act, Easement Act and Limitation Act which are all laws enacted in 1882 and Indian Contract Act which was enacted in 1972. So there is much to be discussed but better

understood by reference to any good material under each of these laws to be able to correctly identify the nature of the transaction for GST purposes. For eg. If a CA owned rubber trees and gave a contract for extraction of latex, would it be a contract for services of extraction benefits arising from land or contract for sale of goods (latex);

- (b) *any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly, is a supply of services.* Use of words like 'letting out' requires identification of the presence of underlying arrangement

### 3. Treatment or process

*Any treatment or process which is applied to another person's goods is a supply of services.* Please note that reference to expression 'treatment or process' is deliberate use of words and covers larger area than 'manufacture'. In other words, even if the said treatment or process does not amount to manufacture, that is, emergence of a new and distinct commodity, it would remain an activity that will be treated as supply of services. And this would apply even when the person carrying out the treatment or process adds or incorporates goods of his own to the output brought out from the treatment or process.

### 4. Transfer of business assets

- (a) *where goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration, such transfer or disposal is a supply of goods by the person.* This clause deals with assets that exit the business without being retained for continued use in any transferred business will be treated as a supply of goods. Assets that remain and be used in the continued business appear, by implication, to be not liable to tax. And when there is mere disuse of assets that are transferred or disposed will be taxable even in the absence of any transfer-of-business event;
- (b) *where, by or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods is a supply of services.* This treatment may please be examined in along with paragraph 1 of sch I. Special care is needed when there is 'change of use' of assets that were once entered into business at the time of their receipt;
- (c) *where any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him 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, unless— (i) the business is transferred as a going concern to another person; or (ii) the business is carried on by a personal representative who is deemed to be a taxable person.* Please note that this clause does not provide the 'treatment' (as supply of goods or supply of services) but merely declares that deregistration will occasion a supply by fiction in sch II. Also, reference may be had to sections 2(17)(d), 18(6) and 25(5) of CGST Act. Please also note that 'assets of a business' must be understood not merely as capital goods or inputs in stock but all assets in the business – tangible and intangible – that will be treated as supply of goods in all these cases when the transfer occurs in any arrangement for 'transfer of business'. Transfer of business is evidenced not by itemized sale but sale as going concern. It is to be recognized that transfer of business may be by way of demerger, slump sale or other recognized modes under other substantive laws including.

#### 5. Supply of services

- (a) *renting of immovable property.* Please note that 'renting' is an expression that is popular but not explicit either as lease or license as understood under Transfer of Property Act. Care is needed to identify the nature of arrangements involving immovable property. Also please note that immovable property includes land, building and intangible interests in such land or building as well as benefits arising from land and building;
- (b) *construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.* Please note that this clause is explicit, even if overlapping with other paras in this sch II. But the remarkable aspect here is that incomplete building is expressly taxable even though Courts have held that construction for self ought not to be taxed in the absence of a contract to sell (or supply in GST);
- (c) *temporary transfer or permitting the use or enjoyment of any intellectual property right.* It may be noted that permanent transfers are excluded as IP are also goods. IP may form part of an overall arrangement and suitable treatment may be given in such comprehensive arrangements based on the principle of composite or mixed supply;
- (d) *development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software.* Software is goods (4907 or 8523) but where supply involves software services that are not goods (like shrink wrapped software), only those transactions are treated as supply of services;

- (e) *agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.* Please note that supply is not only a 'positive' transaction but also 'negative' transaction or 'inaction'. For this reason, CGST Amendment Act has even edited the title of sch II; and
- (f) *transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.* Refer also para 1(b) to identify consistency in treatment whether goods are leased or licensed.

#### 6. Composite supply

- (a) works contract as defined in clause (119) of section 2; and
- (b) *supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.* Please note that this fiction requires goods in packed condition when including in the supply as described in this para will continue to be treated as supply of services. As service is not a verb but a noun, once the supply comes within the mischief of this para, then it will always be treated as a supply of services. There is no occasion to search for goods within this supply and vivisect them contrary to the fiction in this para.

#### 7. Supply of Goods

*Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.* Please note that supply of goods 'to' members will be treated as supply of goods. Reference may be had to the section 2(17)(e) above.

- (c) **Schedule III:** Activities or transactions which shall be treated neither as a supply of goods nor a supply of services

Services by employee to employer in the course/ relation to employment, Services of funeral, burial, crematorium or mortuary, sale of land, sale of completed buildings, actionable claims (other than lottery, betting and gambling), services by any court or Tribunal, the functions performed by the Members of Parliament, etc., supply of goods without entering India or without crossing customs boundaries of India "Supply of warehoused goods to any person before clearance for home consumption; Supply of goods by the consignee to any other person, 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"

(101) "securities" shall have the same meaning as assigned to it in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956;

Section 2(h) of the Securities Contracts (Regulation) Act, 1956 provides an inclusive definition to the term "securities", listing the following—

- (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;*
  - (iia) *such other instruments as may be declared by the Central Government to be securities; and*
  - (iib) *rights or interest in securities.*

Securities has a very expansive definition and must be differentiated from financial contractual arrangement. Please consider examples of commodity futures, interest swaps, etc. Securities are neither treated as goods nor as services, by way of a specific exclusion in the respective definitions. For this reason, 'securities' would not be included in the meaning of 'non-taxable supplies' which are in turn included within the meaning of 'exempt supplies'. Therefore, for the limited purpose of restricting input tax credits, the meaning of exempt supplies would include 'securities', and therefore, input tax credit attributable to transactions in securities would be liable for reversal.

*(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.–For the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities<sup>7</sup>***

Express exclusion of goods implies its inclusion within the definition of services. Therefore, understanding the exact scope and boundaries of the definition of goods is required to recognize all those transactions or activities that would fall under the meaning of 'services', on being left out of the definition of 'goods'. Transactions in money (other than its conversion) are excluded both from the definition of goods and from the definition of services. 'Anything' includes everything and leaves nothing – services includes goods and for this reason 'other than goods' appears in the definition. But for such exclusion it would have been included. And services includes immovable property as well. Transactions involving immovable property to

<sup>7</sup> Inserted vide The Central Goods and Services Tax Amendment Act, 2018 w.e.f. 01.02.2019

the extent excluded by paragraph 5, schedule III only. All other transactions involving immovable property comes squarely within the scope of expression 'services'.

Services is therefore not a verb but a noun. As such, there is no need to search for the activity performed in a transaction involving services but sufficient to note that it is not goods then it will be services. If this manner of drafting the definition that allows tax to be imposed on transactions of tolerating an act or abstaining from an act as found in paragraph 5(e), schedule II.

The following aspects need to be noted:

- The word "anything" appears to convey something very vast like "everything", i.e., services means everything that is not goods, and is not specifically excluded (such as money, securities, transactions specified in Schedule III, etc.)
- Schedule II of the CGST Act lists down matters which shall be regarded as a supply of goods, or supply of services.
- The GST law empowers the Government to require treatment of supply of notified goods as supply of services, and *vice versa*.

*(103) "State" includes a Union territory with Legislature;*

Each State derives its respective meaning provided in the First Schedule in the Constitution of India. There are 29 States and 7 Union Territories in India. Of the 7 Union Territories, Delhi and Puducherry have Legislatures of their own. Therefore, for the GST law, by the expression 'State', Delhi and Puducherry, though Union Territories, will be included.

The Legislative Assemblies of Delhi and Puducherry would pass State GST Acts for intra-State levies, while the remaining 5 Union Territories will be governed commonly under the UTGST Act.

*(104) "State tax" means the tax levied under any State Goods and Services Tax Act;*

Tax levied under the State GST laws is referred to as "State tax". State tax is that component of GST that levied on intra-State supplies by the State Governments (of the Legislatures of Delhi and Puducherry), under the respective State-specific GST laws.

*(105) "supplier" in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;*

The reference to whom the meaning of the term 'supplier' is fitted is 'person', as against 'taxable person' or 'registered person'. This is because the law does not keep persons who are not liable to tax under GST, outside the scope of this term. For instance, in case of purchases from unregistered persons, who are not liable for registration, would also be treated as suppliers, while the recipient of the supply is liable to pay tax on reverse charge basis if such recipient is registered.

Agents supplying on behalf of the supplier are also included within the meaning of 'supplier'. This is to ensure that invoices raised by the agent on behalf of the supplier for effecting sales on his behalf qualify as valid invoices, as if they were issued by the supplier himself.

*(106) "tax period" means the period for which the return is required to be furnished;*

Given that the term 'return' is not limited to any particular return, the term tax period can also vary for each return prescribed under the law. A 'tax period' would ordinarily be the calendar months (or quarters ending on the last dates of March, June, September and December in case of composition suppliers). However, it can also include a period of one financial year, for the annual return.

*(107) "taxable person" means a person who is registered or liable to be registered under section 22 or section 24;*

Every 'supplier' shall be liable to be registered under the GST law in the State (or Union territory) from where he makes any taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds the specified limit (Rs. 20 Lacs or Rs. 10 Lacs – refer Section 22 for details).

The following persons (amongst others) are also compulsorily required to obtain registration, whether or not their turnover exceeds the threshold limit:

- Non-resident taxable persons, casual taxable persons making any taxable supply
- Persons making any inter-State taxable supply;
- Recipients of supplies of goods or services that are notified for tax on reverse charge basis;
- Persons such as agents who make taxable supplies on behalf of other taxable persons;
- Electronic commerce operator and persons effecting supplies through them;
- Person supplying OIADAR services from a place outside India to an unregistered person in India.

*(108) "taxable supply" means a supply of goods or services or both which is leviable to tax under this Act;*

For a transaction to qualify as a taxable supply, the following components are compulsory:

- The transaction must involve either goods or services, or both of them;
- Such goods or services should not be specified under Schedule III (neither a supply of goods nor a supply of services);
- The transaction should fall within the meaning of 'supply' in terms of Section 7 of the CGST Act;
- The supply should be leviable to GST – i.e., it should not be covered within the meaning of 'non-taxable supply' as defined under Section 2(78) – i.e., alcoholic liquor for human

consumption. This implies that supplies enjoying a full exemption from tax by way of an exemption notification would also be treated as taxable supplies.

Please note the expression 'taxable supply' must be distinguished from 'taxable goods or services'. Please see its usage in section 51 versus section 52. When expression used is 'taxable supply', then even when exempt, it would come within the said definition. But not so, when the expression used is 'taxable goods or services'. Care must be taken not to view these seemingly similar expressions as synonymous.

*(109) "taxable territory" means the territory to which the provisions of this Act apply;*

The scope of taxable territory extends to the whole of India. As such, high sea sales and merchanting trade transactions (eg. buy from China and directly ship to Germany) are transactions of a certain 'taxable person' but occurring outside taxable territory. As the words of section 7(5)(a) are 'supplier located in India' and not 'location of supplier is in India', such transactions occurring beyond the taxable territory of India would also be inter-State supplies but non-taxable as the levy is not attracted. Any taxable person would fit the expression 'supplier located in India' meaning the 'person who supplies' and not the Consignor (in China). Care may be taken to note this subtle difference in the words in section 7 of IGST Act

*(110) "telecommunication service" means service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electromagnetic means;*

The scope of the term 'telecommunication service' is so vast that it covers services starting from the landline facility for making calls, text messages, voice messages, communication through media such as WhatsApp, Skype, etc., to services provided by Gmail, yahoo, etc.

*(111) "the State Goods and Services Tax Act" means the respective State Goods and Services Tax Act, 2017;*

The SGST Act means that SGST Act of the relevant State (or Delhi or Puducherry), as the case may be, which provides for levy and collection of tax on all intra-State supplies of goods or services or both (except alcoholic liquor for human consumption), i.e., the supply of goods or services or both where the location of the supplier and the place of supply as determined under Chapter V of the IGST Act are located within the same State. Upon passing of the GST law in each of the "States", there would be 31 SGST Acts in India.

*(112) "turnover in State" or "turnover in Union territory" means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis) and exempt supplies made within a State or Union territory by a taxable person, exports of goods or services or both and inter-State supplies of goods or services or both made from the State or Union territory by the said taxable person but excludes central tax, State tax, Union territory tax, integrated tax and cess;*



The expression 'turnover in State' (or UT,) is a replica of the expression 'aggregate turnover', but for the fact that 'turnover in State' is restricted to the turnover of a taxable person, as opposed to aggregate turnover which is PAN-based (i.e., all taxable persons having the same PAN, across States). The following references are made in to the phrase in the Act:

- Payment of tax under composition scheme: The tax rate will be applicable on the 'turnover in State' particular to a taxable person, which should be paid by him in the State in which he has obtained registration;
- Distribution of input tax credit by an ISD: In case of the distribution of credit that is attributable to two or more units of the person, the credit shall be distributed amongst such units on a pro rata basis (i.e., ratio of their respective 'turnover in State' to the aggregate of the 'turnover in State' of all such units).

(113) "usual place of residence" means—

- (a) in case of an individual, the place where he ordinarily resides;
- (b) in other cases, the place where the person is incorporated or otherwise legally constituted;

The expression 'usual place of residence' comes of use to determine the location of supplier/ recipient of services where no other location is relatable to the supply/ receipt of service.

(114) "Union territory" means the territory of—

- (a) the Andaman and Nicobar Islands;
- (b) Lakshadweep;
- (c) Dadra and Nagar Haveli;
- (d) Daman and Diu;
- (e) Chandigarh; and
- (f) other territory.

*Explanation.* —For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory;

All the Union Territories and "other territory" (as defined in Section 2(81) supra) in India will be governed under the UTGST Act, except Delhi and Puducherry. Given that the said two UTs have a Legislature, they will be regarded as 'States' for the purpose of GST, and will be governed by their respective SGST laws, instead of the UTGST law.

(115) "Union territory tax" means the Union territory goods and services tax levied under the Union Territory Goods and Services Tax Act;

It refers to the tax charged under the UTGST Act on intra-State supply of goods or services or both (i.e., supplies effected within a Union Territory not having a Legislature), in addition to the

tax levied under the CGST law. The rate of UT tax is capped at 20%, and will be notified by the Central Government based on the recommendation of the Council.

*(116) "Union Territory Goods and Services Tax Act" means the Union Territory Goods and Services Tax Act, 2017;*

The UTGST Act provides for levy and collection of tax on all intra-State supplies of goods or services or both (except alcoholic liquor for human consumption), i.e., the supply of goods or services or both where the location of the supplier and the place of supply as determined under Chapter V of the IGST Act are located within the same UT.

*(117) "valid return" means a return furnished under sub-section (1) of section 39 on which self-assessed tax has been paid in full;*

The term 'valid return' is attributable only to the monthly return in Form GSTR-3, to be filed by every registered person (except a composition supplier, non-resident taxable person, ISD, person liable to deduct tax at source and person liable to collect tax at source). The return will be treated as a valid return only where the tax liability determined in the return is fully remitted.

The following aspects need to be noted:

- The law mandates that the liability determined in the returns of previous months must be discharged prior to discharging the liability determined in the returns of current month;
- Input tax credit will become available to the recipient only if the return furnished by the supplier is a 'valid return'.

*(118) "voucher" means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument;*

'Voucher', for the purposes of GST, necessarily means that instrument which should be accepted as consideration (wholly or partly) for a supply. Therefore, a voucher is an asset for the recipient, and without a recipient, a 'voucher' would lose its meaning. Therefore, in a case of a supplier issuing a voucher to a recipient of goods, on his making a purchase from the supplier, the voucher is not being viewed as an additional outcome of the supply made to the recipient. Rather, it is an instrument that can be used in place of money (or other consideration) which can be used on effecting yet another inward supply. E.g. coupons, tokens, promo-codes, etc.

However, where the supply can be identifiable at the time of issue of voucher, the tax should be remitted for the month in which the voucher is issued, as if it were an advance received for a supply to be made at a future date.

Reference maybe had to the discussion in the context of money under section 2(75) about Payments and Settlement Systems Act, 2007 where RBI is authorized to issue pre-paid instruments (PPIs) apart from Indian legal tender to be used to settle obligations to pay consideration. All vouchers are not money if they are not so recognized by RBI. And if the vouchers are recognized by RBI then they will take the character of money. Reference may be had to the discussion in the context of time of supply under section 12(4)/13(4) for a detailed discussion on the types of vouchers and implications in GST.

*(119) "works contract" means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract;*

The expression 'works contract' is limited to contracts to do with immoveable property, unlike the erstwhile understanding of the phrase which also extends to moveable property. A contract will amount to a 'works contract' only where the resultant which is immovable property. Transactions resulting in movable property, however, would be treated as a 'composite supply' of goods or services depending on the principal supply (refer analysis of Section 8).

The 14 adjectives used in the definition of works contract are neither exhaustive nor limiting the scope of works contract. Conspicuous by their absence are adjectives like manufacture, assembly, printing and so on. As stated earlier the presence of certain objectives of the absence of certain others limit the scope of what works contract is under GST. If the resultant is bringing into existence of immovable property, then the supply is a works contract. Obviously, pre-existing immovable property being involved in a transaction will be saved to the extent of paragraph 5, schedule III.

For GST law, works contract as defined above will be treated as a supply of service, thereby bringing debate to a close on the methodology of segregating the works contract between goods and services. Due to treatment as a supply of services, transactions such as sales returns, cancellation, non-approval of work done, carrying forward of work-in-progress, etc. are faced with restrictions in GST as no provision appears to be made to accommodate such transactions which are akin to goods even when works contracts are treated as supply of services.

*(120) words and expressions used and not defined in this Act but defined in the Integrated Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;*

Certain words and expressions like exports, import, etc. defined in the IGST/ UTGST/ Compensation laws as are used under the CGST law will have the same meaning as assigned in such laws.

*(121) any reference in this Act to a law which is not in force in the State of Jammu and Kashmir, shall, in relation to that State be construed as a reference to the corresponding law, if any, in force in that State.*

From the extent-clause provided in Section 1 of the CGST Act, the CGST Act is now applicable in the State of Jammu and Kashmir. Wherever a reference to another law is drawn in the CGST Act, (say reference to the Service tax laws), for the State of Jammu and Kashmir, such a reference should be understood as a reference to the corresponding operational law in the State (i.e., the Jammu and Kashmir General Sales Tax Act, 1962).

### **Extract of the CGST Rules, 2017**

#### **2. Definitions**

In these rules, unless the context otherwise requires,-

- (a) "Act" means the Central Goods and Services Tax Act, 2017 (12 of 2017);
- (b) "FORM" means a Form appended to these rules;
- (c) "Section" means a section of the Act;
- (d) "Special Economic Zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005);
- (e) Words and expressions used herein but not defined and defined in the Act shall have the meanings respectively assigned to them in the Act.