

## Ch 1: Supply (CGST)

Supply = A Taxable Event! A Taxable event is any transaction or occurrence that results in a **tax consequence**.

## Section 7: Meaning and Scope of Supply

7(1) What's all included in "supply"? For the purposes of this Act, the expression - "supply" **includes**-



- (a) all forms of supply of **goods or services** or both **such as** sale, transfer, barter, exchange, licence, rental, lease or disposal → made or agreed to be made for a **consideration** by a person in the course or furtherance of **business**;
- Exception: Sch 1  
Exception: 7(1)(b)

- (aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, → *Condition of Consideration* → for cash, deferred payment or other valuable consideration.

↓  
Aren't they  
same persons?

Explanation: Notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, **the person and its members or constituents** shall be deemed to be **two separate** persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;

**Background of Section 7(1)(aa):** in effect, it overrules the judgment of the SC in **State of West Bengal v. Calcutta Club Limited** wherein it was held that the transactions between a Club and its members cannot be taxed owing to the **doctrine of mutuality**, i.e., a person cannot make a profit from himself.

**Latest Update:** In **Indian Medical Association, Kerala vs Union Of India**, the Kerala HC held section 7(1)(aa) as unconstitutional. It upheld the doctrine of mutuality.

- (b) import of services for a consideration **whether or not** in the course or furtherance of business;
- (c) the activities specified in Schedule I, made or agreed to be made **without a consideration**;

7(1A) Supply of Goods or Services? Sch II will tell us!

7(2) Neither Supply of Goods, nor Services: Notwithstanding anything contained in sub-section (1),-

- (a) activities or transactions specified in **Schedule III**; or
- (b) such activities or transactions undertaken by the CG, a SG or any local authority in which they are engaged as public authorities, as may be **notified** by the Government on the recommendations of the Council,

shall be treated neither as a supply of goods nor a supply of services.



### -Analysis: Existence of Consideration in Specific Cases-

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

GST **not** leviable where 3 conditions satisfied

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

#### Case 2: Art works sent by artists to galleries for exhibition



Majnu Bhai



Exhibited for Supply

→ Gallery

- ⇒ This is not a "supply" as **no consideration** flows from the gallery to the artist.
- ⇒ If the art work is sold in the exhibition, then it would constitute "supply".
- ⇒ Delivery Challan will be required [Ch 9]

#### Case 3: No supply of service by the insured to the insurance company in lieu of 'No Claim Bonus' offered



Sharma Ji: Insured

Premium paid; but no claim lodged during the year



Next Year: No Claim Bonus in form of "Premium Reduction"

Can it be considered as consideration for the supply provided by the insured to the insurance company, for agreeing to the obligation to **refrain** from the act of lodging insurance claim during the previous year(s)?

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

← **No; and Hence, it's not a supply!**  
Why?

#### Case 4: Salvage/Wreck Value earmarked in claim assessment of damage caused to Motor Vehicle

Claim by Insured

→ where the general insurance companies, as per the pre-decided terms of the insurance contract



deduct the value of salvage/wreckage of the motor vehicle as deductibles from the claim amount paid to the insured,

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

do not deduct value of salvage/wreckage of the motor vehicle and pay the full amount of insurance claim,

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

## ✓ Warranty Replacement of Goods or its Parts and/Repair Services during Warranty Period

In warranty, goods /services are replaced to the customers **without** separate consideration!

Scenario 1: Original Equipment Manufacturer Offering it

- ✓ No consideration = No GST.
- ✓ Practically, the value of original supply includes the likely cost of such replacement.
- ✓ If additional consideration charged: GST Applicable
- ✓ ITC Reversal by Mfr? No, as in reality, it's not an "exempt" supply!

Scenario 2: Distributor Provides on Behalf of Mfr.

### ① Issue 1: Distributor - Customer

- ✓ No Consideration = No GST
- ✓ If additional consideration charged = GST Applicable

### ② Issue 2: Distributor - Manufacturer: 4 Situations Possible

Distributor replaces the goods using his own stock or by purchasing from a third party; and charges the manufacturer by issuing Tax Invoice ↓ GST Payable   No ITC Reversal by Distributor	Distributor replaces the goods out of supply already received by him from the Mfr. and Mfr. issues a credit note w.r.t replaced goods subject to sec. 34(2) ↓ GST adjustment by Mfr. if Distributor reverses ITC
Distributor raises a requisition to the Mfr. who then provides the said goods to the Distributor who in turn provides to the customer; no separate consideration ↓ No GST   No ITC Reversal by Mfr. wrt replaced goods	Distributor replaces the goods out of his stock and then raises requisition to the Mfr. Mfr. provides goods through delivery challan, without any separate consideration ↓ No GST on replenishment   No ITC Reversal by Mfr.

- ③ Issue 3: Distributor provides repair services in addition to replacement or otherwise, to customer without consideration but charges the Mfr. by way of Tax Invoice or Debit Note

It's a Supply by D to Mfr. = GST Applicable || Mfr. can claim ITC, subject to conditions

Scenario 3: Extended Warranty

When is this extended warranty availed by the Customer?

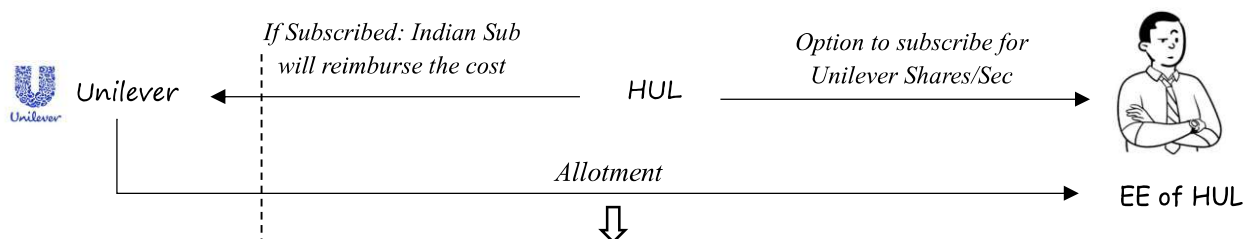
At the time of Original Supply

Any time after Original Supply

- Composite Supply
- Principal Supply = Supply of Goods
- If Supplier of Extended Warranty diff. from the Supplier of Goods = Tax Separately
- Shall be treated as supply of services distinct from the original supply; GST shall be applicable

**Preferential Location Charges: Sale or Transfer of Residential/Commercial Properties**

- ✓ Allowing choice of location = integral part of supply of construction services.
- ✓ Therefore, PLC is part of consideration charged for supply of construction services before issuance of completion certificate.
- ✓ Treatment = PLC paid forms part of **composite supply** where supply of construction services is the main service and PLC is naturally bundled with it and are eligible for same tax treatment as the **main supply of construction service**.

**ESOP/ESPP/RSU provided by a Company to its EE through Overseas Holding Company**

**GST on Shares Allotment:** GST is **not leviable** on the compensation paid to the employee by the employer as the purchase or sale of securities/shares, in itself, is neither a supply of goods nor a supply of services.

Moreover, the ESOP/ESPP/RSU is a part of remuneration of the employee by the employer as per terms of employment and is covered under Para 1 of Schedule III of the CGST Act.



Reimbursement on cost basis by Indian Subsidiary = Import of Services? **No! No GST.**

What if some mark up is charged/additional fee is charged from the Domestic Subsidiary? Then it shall be considered as "consideration" for supply of services of arranging the transaction of shares.

⇒ **GST shall be payable on RCM basis** by the domestic subsidiary company as its import of services!

**Taxability of Cost Petroleum**

**PSC: Production Sharing Contract**

Government  
(Licensor)

License to explore petroleum crude/natural gas: In exchange of Profit Petroleum

Oil Exploration and  
Production Contractor  
(Licensee)

Example

Oil Discovered and Sale Proceeds	10
Less: Contract Cost (Expenses incurred in exploration, development, production and payment of royalty) [Cost Petroleum]	2
Net: Profit Petroleum	8

## Taxability Aspects of Profit Petroleum and Cost Petroleum

- The Government's share of profit petroleum (some portion of Rs 8) is the **consideration** paid by the contractor to the CG for the services of grant of license/lease to explore/mine petroleum crude and/natural gas; but is **exempt** from GST [covered in Ch 4: Exemptions].
- The cost petroleum is **not a consideration** received by the contractor for the services provided to Government and thus **not taxable per se**. The reason for the same is that the contractors carry exploration and production of petroleum for themselves and not as a service to Government.



## Financial Transactions: Taxability of Various Instruments

- Money and Securities are not goods or services; hence outside the scope of GST!
- Money would include transactions in CP (Commercial Paper) and CD (Certificate of Deposit), as they are in the nature of promissory notes.
- The term "securities" shall have the same meaning as assigned to it u/s 2(h) of the SCRA Act. [sec. 2(101)]

## Derivative

- ⇒ Meaning: Derivatives are financial contracts/instruments that derive their value from something else, like an underlying asset.
- ⇒ Are they securities? **Yes**- as per section 2(h)(ia) of the SCRA. Hence, not liable to GST.

## 2 Common Forms of Derivatives: Future and Forward- GST Implication

No Delivery; Net Settlement

It would be considered a security and hence **NO GST!** ❌

Actual Delivery; No Settlement

It would be considered a normal supply of goods- **liable to GST**.

## Secured Debt



Sale, purchase, acquisition or assignment of a secured debt is not a transaction in money. It is in nature of DERIVATIVE; hence = Security- **NO GST!** ❌

## Transactions in Instruments



Such as interest rate swaps, and foreign exchange swaps would be excluded from the definition of 'supply' since such instruments are derivatives, being securities, based on contracts of difference- **NO GST!** ❌

**Note:** GST would be levied for service charges for various transactions in money for example: making demand drafts, documentation fees, forwards contracts charges since they are consideration for service.



## SLS: Securities Lending Scheme

