

GST by Sudhir Halakhandi



GST SUPPLY- SOME UNIQUE TERMS OF SUPPLY UNDER GST LAW

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PREFACE OF THE STUDY

Whenever we study for Supply in GST we came two major terms – Intra State supply of goods and services and Interstate supply of goods and services. The understanding of these two terms is necessary for determination of the nature of tax under the Goods and Service tax regime but there are some lesser read but equally important terms of supplies are there in the Goods and Service tax literature and we are trying to study these terms along with their importance in this Indirect tax system called GST- Sudhir Halakhandi

Let us first list these unique terms of the Supply imbibed in the GST literature:-

S.NO.	SECTION	TERM OF SUPPLY
1.	Section 2(47)	Exempt Supply
4.	Section 2(78)	Non Taxable Supply
2.	Section 2(23) of IGST r.w. Sec.16 of the Same Act.	Zero Rated Supply
3.	Section 2(108)	Taxable Supply
5.	Section 2(30)	Composite Supply
6.	Section 2(74)	Mixed Supply

1. EXEMPT SUPPLY

The term exempt supply is a very important term in GST regime besides the fact that No tax is payable on supply of these Goods and Services and No ITC is available on the exempt services and Goods. The basic fact is that the exempt supplies are included in the term Aggregate turnover and aggregate turnover is the base of threshold limit for registration under section 22 and further these dealers are required to get their accounts audit under section 35(5) after crossing the certain limit of turnover even though almost all the supplies made by them are Exempt barring a very small amount of Taxable supply. Return filing date is also related to the Aggregate turnover hence the term exempt supply has so many effects on the procedural part of the GST.

The definition of Exempt supply is also very interesting and “**Non taxable**” and “Nil” rated supplies are also included in the definition of Exempt supply and this fact has made this term more wider here. Let us see the definition of Exempt supply in the Goods and Service tax Law:-

Exempt Supply

Section 2(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;

Exempt supply includes the following:-

S.NO.	TERMS INCLUDED IN EXEMPT SUPPLY
1.	Supply which attracts NIL rate of Tax.
2.	Supply exempt under section 11 CGST
3.	Supply exempt under section 6 of IGST
4.	Non Taxable supply

There are following two Notifications under CGST and IGST Acts for declaring the supply of goods and services exempt:-

Notification No.	Description
2/2017 –Central Tax (Rate) dated 28/06/2017	Exempt Goods
12/2017 –Central Tax (Rate) dated 28/06/2017	Exempt Services

The goods notification No. 2/2017 (Rate) is very simple and it gives a list of goods exempt from the GST but in services exemption Notification No.12/2017 (Rate) it is written that the tax is exempt which is applicable over the tax mentioned in column No.3 and in that column a word NIL has been put and it means that tax over the rate NIL is exempt and that in turn means whole tax is exempt on these services. Simply the lawmakers should have made a list of exempt supply like goods but see complications are beauty of GST and this beauty is the main concern for the GST experts and Taxpayers. Besides this lot of definitions are also given in the Notification

No.12/2017 to clear the exact Services which are covered by this Exemption notification.

2.NIL RATED GOODS AND SERVICES

What is NIL rated supply? NIL rated supply means the Goods and Services which have been inserted in a tariff notification but tax rate has been declared as NIL. See there are two notifications for tax rates which are being mentioned here:-

Notification No.	Description
1/2017--Central Tax (Rate) dated 28/06/2017	Tax rate on Goods
11/2017--Central Tax (Rate) dated 28/06/2017	Tax rate on Services

In Goods Notification there is no NIL rated supply but in Services Notification there are three NIL rated supplies. The reason behind the same is unknown because instead of giving them NIL rated in the rate notification these services may be categorised as exempt through exemption notification instead of creating one more category of exempt supply as NIL rated.

The NIL rated services mentioned in Notification No 11/2017 are as under:-

Entry No.	Description of the Service
16(i)	Services by the Central Government, State Government, Union Territory or Local Authority or Governmental authority or entity by way of Lease of Land .
16(ii)	Supply of Land or undivided share of Land by way of Lease or sub-lease where supply is part of composite supply of construction of Flats, etc for some specified real estate transaction with specific conditions.- Please see Entry No.16(ii).
24	Support service of Agricultural, Forestry, fishing, Animal Husbandry.

2. NON TAXABLE SUPPLY

Non taxable supply is also part of Exempt supply and the definition of the Non Taxable supply is given in Section 2(78) of the CGST Act .

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;

Some of the goods are there on which Government is not eligible to impose Goods and service tax and these are following goods:-

S.NO.	DESCRIPTION OF GOODS	REASON
1.	Petroleum Products	As per section 9(1) the GST on petroleum products will be imposed from the date which is decided by the GST council .
2.	Liquor for Human consumption	As per Section 9(2) this product is excluded from the purview of GST.

GST on Petroleum is excluded from the GST as per the choice of the Government/s and it is left on the GST council to decide the date from which these products will bring into the scope of GST. Central and States are part of GST council and Centre has veto power in the GST council hence it is in their hands to decide the date.

The petroleum products which are out of the purview of GST are as under:-

S.NO.	DESCRIPTIION
1.	Petroleum Crude
2.	High Speed Diesel
3.	Motor Spirit (Commonly Known as Petrol)
4.	Natural Gas
5.	Aviation Turbine Fuel

The constitution of the GST council is as such that states have 2/3rd voting power and centre has 1/3rd voting power and for getting a decision cleared from the GST council 3/4th Majority is required and if all the states decide

that they want petroleum products to be taken in the purview of GST , it is not possible for them without support of the centre.

Which Tax is applicable on Petroleum Products:-

It is a general question. If GST is not applicable on Petroleum products then which Indirect tax is applicable? The central is imposing Central Excise and States are imposing VAT and these two are major part of State and centre revenue.

But with respect to the Liquor for human consumption, the story is somewhat difference since constitution has not given power to the government to tax this commodity at all. Centre is having central Excise on this product and States have VAT on this product.

Let us see what is Goods and service tax as per Article 366(12A) of the Constitution of India :-

Goods and Service Tax means a tax on supply of goods or service or both , except taxes on supply of alcoholic liquor for human consumption .

Hence constitution of India has not given power to our Governments to tax the alcoholic for human consumption but Section 9(1) has also mentioned the same thing that alcoholic liquor for human consumption is out of the purview of Goods and Service tax.

The taxation of liquor has different variations across the country and state like Gujarat has banned it so there is no revenue. Some states have huge revenue collection in the form of Licence fees and VAT on Liquor and centre has its own tax in the form of Central Excise.

THE EFFECTS OF WIDE DEFINITION OF EXEMPT

Now with reference to this widen definition of the Exempt supply here hence to see its effect it is relevant to see here the definition of Aggregate turnover:-

Section 2(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;

Since exempt supply is included in the definition of Aggregate turnover and it includes the non taxable supply also hence it will also be included in the turnover limit for the following purposes:-

Section	Particulars
Section 22	Liability of Registration
Section 35	GST Audit
Return Filing Dates	The due dates of filing of Returns

Further it also affects the timing and duration of filing of returns because it is also based on the aggregate turnover of the dealer.

NON TAXABLE SUPPLY- WHY ADDED TO EXEMPT SUPPLY

Non taxable supply means supply of Petroleum products and Liquor for human consumption are out of the preview of GST then why they are included in the definition of Exempt supply and further making part of

Aggregate turnover and Turnover and give the affected dealer more compliance burden.

The Non taxable supply may be added for other purpose but it should not be added to enhance the unnecessary compliance burden on the dealers. When GST has nothing to do with Non Taxable goods then it should be excluded from the definition of Exempt supply.

3. ZERO RATED SUPPLY

Zero rated supply is another interesting term in GST and it includes in it the Export and Sez supply. Let us see the exact definition of Zero rated supply.

ZERO RATED SUPPLY IN IGST ACT

Zero Rated supply shall have the same meaning as given to it in section 16- Section 2(23) ISGT

ZERO RATED SUPPLY IN SETIN 16 OF IGST ACT.

Section 16(1):- Zero Rated supply means any of the following supplies of Goods and Services or both, namely :-

- (a). Export of Goods or service or both or
- (b). Supply of Goods or services or both to a SEZ Developer or SEZ Unit.

Zero rated supply is Export and SEZ supply and in case of zero supply the tax rate is NIL but the supplier can claim the eligible ITC. If exempt supply is also exported or supplied to SEZ units then also it is called Zero rated supply and ITC on inputs is also available- Section 16(2).

What is Export of Goods and Services?

Export of Goods and Services is included in the Zero rated supply and Let us have a brief look at Export of Service and Export of Goods:-

Export of Goods: - Section 2(5) of the IGST Act.

“Export of Goods” with its grammatical variations and cognate expressions means taking goods out of India to a Place outside India.

Export of Service- Section 2(6) of the IGST Act.

“Export of Service” means the supply of any service when –

- (i). The supplier of service is located in India;
- (ii).The recipient of service is Located outside India;
- (iii).The Place of Service is outside India;
- (iv). The payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian Rupee wherever permitted by the Reserve Bank of India;
- (v). The supplier of service and the recipient of service are not merely establishment of a distinct person in accordance with Explanation 1 in Section 8.

4. TAXABLE SUPPLY

Taxable supply” means a supply of goods or services or both which is leviable to tax under this Act.

Taxable supply means the supply on which tax can be imposed by the Government hence the supply declared as **exempted** or **NIL** tax is also a taxable supply. Only Petroleum Products and the alcohol for human consumption is Non Taxable Supply.

All the supplies except Petroleum products and Liquor for human consumption are taxable supplies.

Let us consider the exact meaning of Taxable supply under the GST Law:-

S.NO	Conations
1.	The Transaction must involve either goods and services or both.
2.	Such Goods or Services should not be part of the schedule of neither supply of goods or supply of service as per schedule III .
5.	The Transaction must fall within the meaning of supply as per the provisions of the GST Laws.
6.	It should not be a Nan GST supply- It should not be of petroleum product or Liquor for human consumption.

The supplies which are made exempt supply by the Government are also covered in the Taxable supply.

We will see the importance of this description of Taxable supply while dealing with one more important term of supply Composite supply .

5. COMPOSITE SUPPLY

Composite supply is a very interesting term and important also. Let us see the concept with the help of definition and taxability of the same.

Section 2(30) “composite supply” means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination 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;

The composite supply following are must:-

S.NO.	Condition
1.	Made by a taxable person.
2.	Consisting of Two or more Taxable supplies of Goods and Services or Both or any combination thereof.
3.	They must be naturally bundled.
4.	They must be supplied in conjunction with each other in the normal course of business.
5.	One of which is Principal Supply.

Let us try to understand with the help of an Example which itself is given in the Section which has defined the Composite 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.

Here see the definition of Principal Supply:-

PRINCIPAL SUPPLY

In composite supply one of the main characteristic is that the one of the supply from the bundle must be the principal supply and it is not so then the supply having all the other characteristic will be classified as Mixed supply which we will discuss later in this study.

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- Section 2(90)

The principal supply is “goods” say edible oil and now the other supply which are naturally bundled with this principal supply are Packing Material, Transport of Goods and Insurance of the Goods. Now you can imagine in this transaction the supply of Packing Material, Transportation and Insurance if the supply of goods is not there. Hence the supply of Goods is principal supply and other supplies are naturally bundled with it.

If the supply is composite supply satisfying all the requirements mentioned above then the whole supply shall be treated as **principal supply** and it will attract the **rate of tax** applicable to **Principal Supply**.

So please note that if a supply is composite supply then the whole supply will attract the rate of tax which is applicable to principal supply. This is given in Section 8(a) of the CGST Act :-

Section 8:- The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—
 (a).composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply.

Let us try to understand this concept of Rate as under:-

3 commodities are supplied in a Composite supply C-1, C-2 and C-3 and principal supply is C-1. The rate of tax for C-1 is 5%, C-2 is 28% and C-3 is 12% then whole supply will attract the rate of 5% which is applicable of Principal supply.

Here Note that if the each constituent of the composite supply is separately billed then separate rate of tax on each commodity will be applied.

OTHER EXAMPLES OF COMPOSITE SUPPLY

S.NO.	Example	Principal Supply
1.	Supply of Machinery with its	Machinery

	Installation Service.	
2.	Hotel accommodation booking with breakfast and dinner.	Hotel Accommodation
3.	Booking of a Resort for conference with facility of Hall, accommodation, Lunch, dinner and Breakfast of the Delegates.	Convention Service
4.	Sale of Laptop bag with the Laptop	Laptop

6. MIXED SUPPLY

Section 2

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

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;

The constituents of the mixed supply are as under:-

S.NO.	Conditions
1.	Supply of 2 or more individual supplies goods and services or any combination thereof made in conjunction of each other.
2	Made in conjunction of each other.
3	By a Taxable person,
4.	For a single price.
2.	Such supply is not a composite supply.

Two or more supplies having individual identity, not dependent of each other, are supplied on a single price is called mixed supply. Let us try to understand it with the help of an Example which is also given with the definition of the Mixed 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.

If a supply is a mixed supply then it will attract the highest rate of Tax which is attributable to any constituents of the mixed supply.

Tax rate on Mixed Supply

Section 8:- The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:—

(b) Mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

Let us try to understand this concept with the help of an Example:-

3 commodities are supplies in a Mixed supply C-1, C-2 and C-3 and the rate of tax for C-1 is 5%, C-2 is 28% and C-3 is 12% then whole supply will attract the highest rate of 28%.

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