



Identification and Categorization of Supplies



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CATEGORIZATION OF SUPPLIES

Introduction

With the first financial year under the GST regime having come to a close, the reconciliation of the books with the GST returns has been gaining the attention of the eyes of the businesses. Further, furnishing of the reconciliation statement under Section 35(5) of the CGST Act 2017 certified by a Chartered or Cost Accountant for entities having turnover of more than Rs. 2 crores in the financial year is imperative for any business. In such a situation, classification of the nature of supplies and knowing activities which are not to be considered as supplies altogether for the purpose of reporting is important.

What is a supply or what is not?

The first question to be answered here is what is to be construed as a supply. The answering of this question is particularly important because the definition of aggregate turnover covers those supplies which may be taxable, exempt, non taxable etc. However, those activities which are not supplies in the first place will not be included in the definition of aggregate turnover. Based on this value of aggregate turnover, one may have to determine whether they need to registration under GST. The definition of supply has been given under Section 7 of the CGST Act 2017. The extract of the definition of supply under Section 7(1) of the CGST Act has been given below:

“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;”

From the above, it may be construed that supply will only be in respect of goods and services. If any activity cannot be classified in either goods or services, they cannot be considered as supply altogether. The definition of the goods and services as per Section 2 have been given below:

“(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;

(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;”

The definition of goods covers all kinds of movable property except money and securities. Further, the definition of services purports to take into account anything other than goods. However, services continue to exclude money and securities except activities relating to use of money and its conversion. This means the money and securities should be considered neither as goods nor as services.

Therefore, any activities which are classifiable under money and securities will not fall within the definition of supply altogether. So, dividend received on shares/mutual funds, interest on debentures will not be considered as supply altogether.

Further, Section 7(2) has been enumerated below:

“Notwithstanding anything contained in sub-section (1) —

(a) activities or transactions specified in Schedule III; or

(b) such activities or transactions undertaken by the Central Government, a State Government 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”

From the above, it may be gathered that Section 7(1) is being overridden by Section 7(2). Also, the activities falling within this sub-section will not be construed as either

supply of goods or supply of services. Thereby, the activities specified in Schedule III and certain activities undertaken by the Government or local authorities notified by the Government under Section 7(2) will not be construed as supply.

For instance, sale of land/completed building and the services provided in the course of employment by the employee to the employer falling under Schedule III will not be considered as supply altogether. Also, services provided in relation to function entrusted to Municipality under Article 243W or Panchayat under Article 243G of the Constitution will neither be considered as supply of goods nor supply of services.

Broad categories of supplies

There are two categories of supplies under GST – taxable and non-taxable. They have been defined under Section 2 of the CGST Act 2017 as follows:

“taxable supply” means a supply of goods or services or both which is leviable to tax under this 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;

To check the leviability of GST, one should refer to Section 9 of the CGST Act 2017. The extract of Section 9 has been given below:

“9. (1) Subject to the provisions of sub-section (2), there shall be levied a tax called the central goods and services tax on all intra-State supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 and at such rates, not exceeding twenty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.

(2) The central tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.”

From the above, it can be easily said that GST is to be levied on all goods and services except alcoholic liquor for human consumption. Further, the leviability of GST on supply of petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel will be effective from a date to be notified by the Government. Interpreting the above, any supply involving that of alcoholic liquor for human consumption, petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel will be construed as non-taxable supplies. Non-taxable supplies have alternatively been referred to as Non GST supplies in various forms and returns as well. Apart from these, all other supplies on which tax is leviable will be categorized as taxable supplies.

Exempt supply – An assimilation of two categories?

As per Section 2(47) of the CGST Act:

“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;

From the above, exempt supply can be categorized into three broad heads:

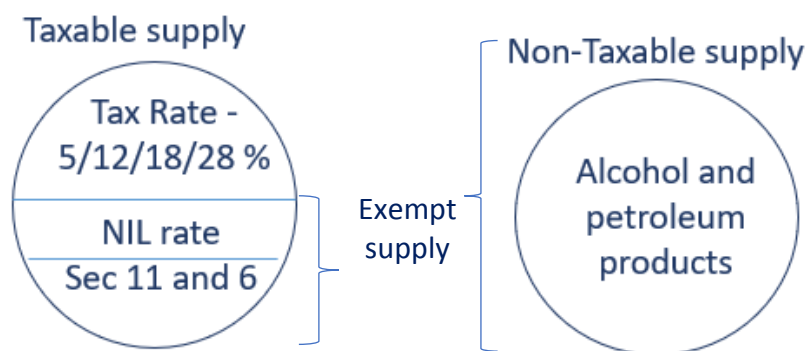
- a) NIL rated supply
- b) Goods or services which are wholly exempt under Section 11 of the CGST Act or Section 6 of the IGST Act
- c) Non-taxable supply

As already discussed above, there are two broad categories of supplies only i.e. taxable and non-taxable. Point (c) stated above i.e. non-taxable supplies constitutes only one part of the comprehensive definition of exempt supply. Point (a) and (b) above are part of the definition of taxable supplies which are specifically exempted. Thereby, it can be safely stated that exempt supply encompasses entire non-taxable supply and a part of taxable supplies.

In respect of Point (b) above, Notification no. 12/2017-Central tax (rate) for services and Notification no. 2/2017-Central Tax (rate) dated 28th June 2017 have been primarily under Section 11 of the CGST Act, 2017. Similar notifications under Section

6 of the IGST Act 2017 have also been issued. These notifications have undergone multiple changes on the recommendations of the GST Council. All the supplies which are falling within these notifications will be considered as exempt supplies.

Further, Notification no. 11/2017-Central Tax (rate) dated 28th June 2017 which contains the rate of all the items under GST also has a few items specified on which the rate has been specified as Nil. For instance, supply of land by way of lease where such supply is a composite supply of construction of flats will be considered as a Nil rated supply. This Nil rated supply will be falling within point (a) and will be part of the definition of exempt supply.



Zero rated supply

Section 16 of the IGST Act 2017 specifically deals with zero rated supply. As per Section 16(1) of the IGST Act 2017, zero rated supply covers the following:

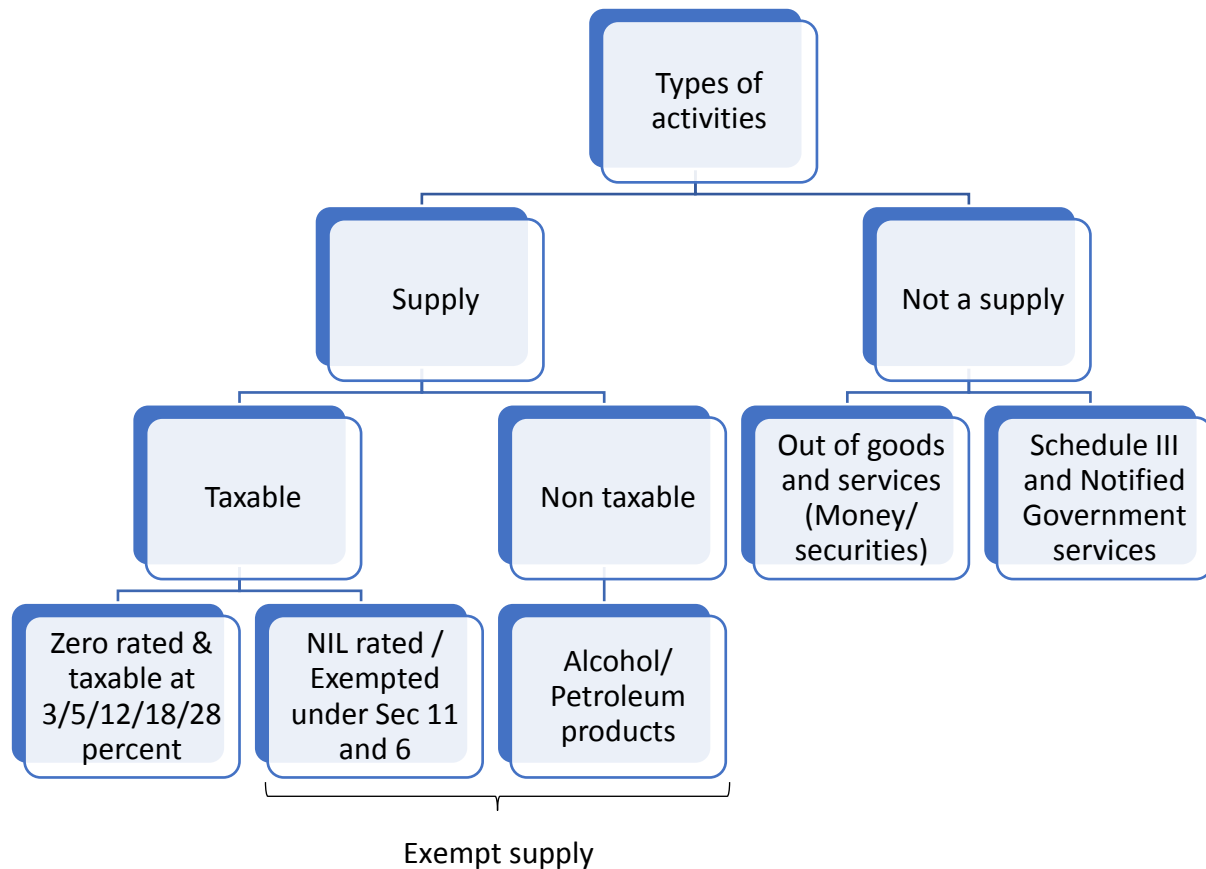
- (a) export of goods or services or both; or
- (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Thereby, only these supplies mentioned above will be considered as zero rated supplies. The primary difference between a zero rated supply and an exempt supply is that the credit of input tax may be availed completely while making zero rated supplies. This is not usually available while making exempt supplies.

Conclusion

It is of utmost necessity that the correct classification between taxable, non taxable, exempt, NIL rated supply and zero rated supply be understood. Even while filing the

GST returns, one needs to report the figures in the correct columns. Without determining each nature of supply, there may be susceptibility of incorrect reporting of such activities. This in turn may expose a taxable person to governmental action particularly at the time of reconciliation between the books of accounts and GST annual return.



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