

# **COMPOSITE AND MIXED SUPPLY IN GST**

**K. VAITHEESWARAN  
ADVOCATE  
CHENNAI**

# BACKGROUND

- Goods and services are treated differently in the context of rates; place of supply provisions.
- Multiple rates for goods through Notification No.1/2017-CTR
- Multiple rates for services through Notification No.11/2017-CTR
- Exemption for goods through Notification No.2/2017-CTR
- Exemption for services through Notification No.12/2017-CTR
- Certain transactions are neither supply of goods nor supply of services
- Exports are zero rated
- Possibility of combinations
- Need for specific provisions

# COMPOSITE SUPPLY

- Section 2(30) of the CGST Act.
- 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*
- In the case of composite supply comprising of two or more supply, one of which is a **principal supply** shall be treated as supply of such principal supply
- Principal supply means the supply of goods or services which constitutes the **predominant element** of the composite supply and to which any other supply forming part of the composite supply is **ancillary**

# MIXED SUPPLY

- Section 2(74) of the CGST Act.
- 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
- **A mixed supply shall be treated as a supply of that particular supply which attracts the highest rate of tax.**



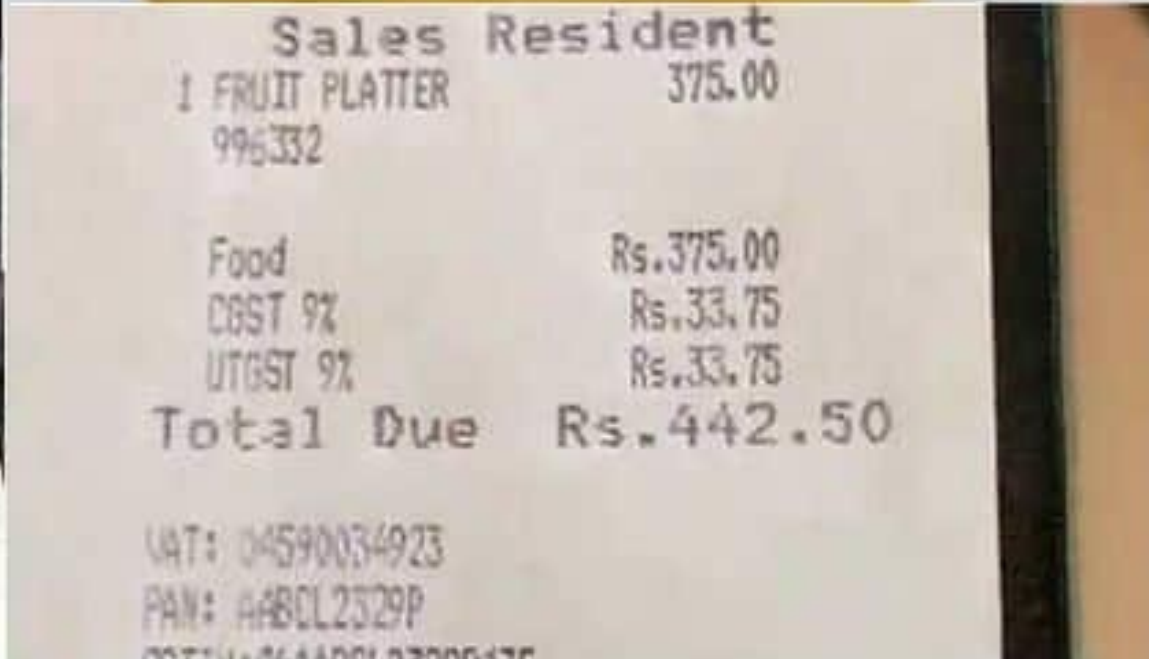
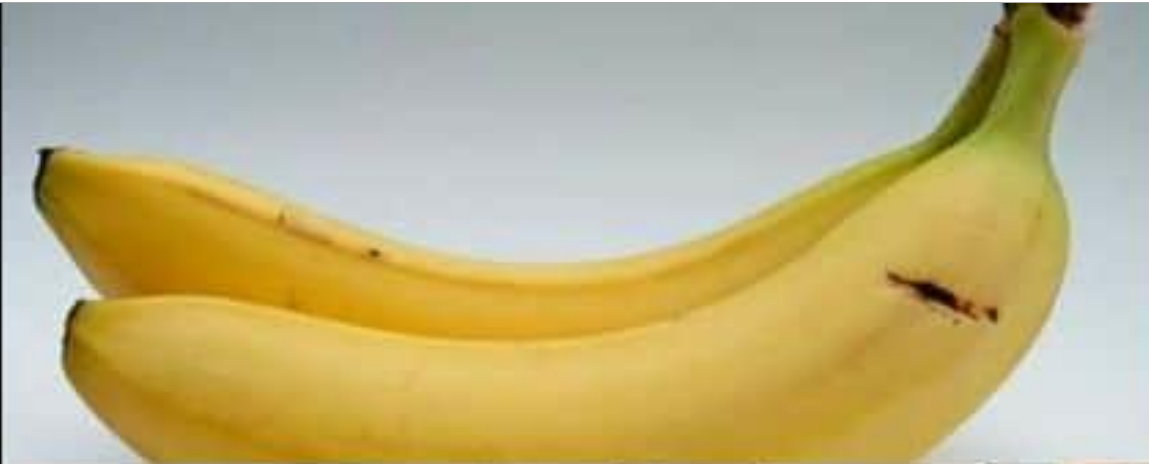
# COMPOSITE SUPPLY

- Supply of goods
  - In a packed condition
  - In a lorry
  - Duly insured
- Supply of goods / packing / transport / insurance
- Naturally bundled
- Principal supply is that of goods
- *Rate applicable to goods would apply to the composite supply in terms of Section 8(1).*

# PRE-GST LAWS – FREIGHT

- Excise duty payable on removal of goods and on transaction value.
- Freight from factory to customer location did not form part of value.
- Freight from factory to say depot formed part of value.
- MRP based taxation provided for abatement of a certain percentage from the MRP.
- Consignor or consignee were liable to pay service tax on goods transport agency services under reverse charge mechanism.
- Service of transportation of goods by road was not subject to service tax.
- Freight did not form part of sale price for VAT or CST unless the transaction was on FOR basis.

# HOTELS / ROOM SERVICE



# HOTELS / ROOM SERVICE

GST RATES FOR HOTEL ACCOMODATION	
Where the value of supply of a unit of accommodation is less than or equal to Rs.1000/-.	Nil
Where the value of supply of a unit of accommodation is above Rs.1000 but less than or equal to Rs.7,500/-.	12%
Value of supply of a unit of accommodation of above Rs.7,500/-.	18%

GST RATES FOR RESTAURANTS / EATING JOINTS / CANTEEN / HOTELS / ETC.	
Supply of food and beverages (considered as a service)	5% without ITC
Where the restaurant is part of a hotel having a declared tariff exceeding Rs.7,500/- per day	18%

# HOTELS / ROOM SERVICE

- The bananas will have to come from the kitchen
- The bananas will have to be hygienically cut; plated; and would be covered by transparent plastic being a star hotel.
- Bananas will be billed as room service and would be part of the overall bill.
- If room service is considered as incidental to accommodation and the room rent is in excess of Rs.7,500/-; then the rate of tax for the bananas would be 18%.
- If supply of bananas is considered as a restaurant service and the bananas are coming from the restaurant which is housed in the same building, the rate is 18%.
- Banana being a fruit is also exempt from GST.

# PRE-GST LAWS

- Sale of food and beverages by a hotel or a restaurant was considered as a sale under Article 366(29A) and liable to VAT.
- Service tax was imposed by the Union on restaurant service and the levy was struck down by the Kerala High Court in the case of ***Union of India Vs. Kerala Bar Hotels Association (2014) 36 STR 1205*** and upheld by the Bombay High Court in the case of ***Indian Hotels and Restaurant Association (2014) 34 STR 522***.
- The Uttarakhand High Court in the case of ***Valley Hotel and Resorts Vs. CCT (2014) 35 STR 28*** has held that since service tax is being discharged on 40% of the value, VAT is not payable on 40%.
- The Chhattisgarh High Court in the case of ***Hotel East Part Vs. Union of India (2014) 35 STR 433*** has held that the provisions of service tax in the context of hotels and restaurants are valid. The Court has also held that when service tax is discharged on 40% or 60% of the value, then VAT is not payable on the said amount.
- Hotel accommodation attracted luxury tax which has been subsumed in GST.

# UK VAT – AIRLINES

- ***British Airways PLC Vs. C&E (QB)***

- UK Airline charged a single fare and meals were served
- Under the UK VAT law at the relevant point of time passenger flights were not liable to VAT whereas meals were liable
- UK Court of Appeal held that there is a single composite supply of an air flight and the provision of meal was merely an incidental element of VAT free supplies

# GST – AIR TRANSPORT - PASSENGERS

## GST RATES FOR TRANSPORT OF PASSENGERS BY AIR

Economy class (without ITC on goods)	5%
Embarking from or terminating in regional connectivity scheme airport (without ITC on goods)	5%
Air transport from and to airports in North East	Exempt
Transport of passengers by air in <i>other than economy class</i>	12%

## PLACE OF SUPPLY PROVISIONS – SECTION 12 OF IGST ACT

<i>Restaurant and catering services</i>	Place of actual performance
<i>Supply of services on board a conveyance including a vessel, aircraft, train or motor vehicle</i>	Location of the first scheduled point of departure of that conveyance.

# GST – AIR TRANSPORT - PASSENGERS

- ***Possible challenges in Indian context***
  - Food is separately sold by the airline in the flight
  - Food can also be purchased while booking the ticket
  - Certain seats qualify for free food
  - Place of supply issues
- Is there a sale of food and beverages as goods?
- Is there a supply of food and beverages as part of transportation of passengers by air service?
- The catering company would charge applicable GST at the point of loading of the food / beverages at the airport.
- Tax invoice

# EU VAT - RENTALS

- ***Field Fisher Waterhouse LLP Vs. Commissioners for HMRC (ECJ)***
  - Solicitor firm obtained building on lease wherein rentals comprised of three parts namely (a) use of building; (b) cost of insurance; (c) charges for supply of water, heating, repair of building, cleaning of common parts and security of building.
  - Article 137(1)(d) provided for exemption from VAT on transaction of leasing of immovable property.
  - ECJ held that
    - A transaction which comprises of a single supply from economic point of view should not be artificially split .
    - **Leasing and supplies linked to leasing may constitute a single supply**

# GST - RENTALS

## GST RATES FOR RENTING OF IMMOVABLE PROPERTY

Renting of a residential dwelling for use as a residence	Exempt
Other rentals	18%

## GST RATES FOR WATER, ETC.

<i>Water (other than aerated, mineral, purified, distilled, medicinal, ionic, battery, de-mineralised water and water sold in sealed container)</i>	Exempt
Electricity <i>*tax on electricity not subsumed in GST.</i>	Exempt*
Maintenance Charges in excess of Rs.7,500/- per month	18%

# RENTALS

- **Indian context**
  - Commercial rentals taxable while residential is exempt
  - Water and electricity are exempt
  - Actual reimbursements do not form part of value under Rule 33
  - Residential Welfare Association levies GST on maintenance charges where it exceeds Rs.7,500/- per month.
- **Possible positions**
  - Doctrine of Mutuality and decision of the Supreme Court in ***Calcutta Club*** can be applied and association may not be liable.
  - Water and electricity could qualify as reimbursement
  - When independently exempt can they be taxed based on incidental principle in the context of commercial rentals?
  - What cannot be directly taxed cannot be indirectly taxed.

# HEALTH CARE

- Healthcare services
- Supply of medicines, implants, consumables during health care services
- Food to in-patients
- Food to visitors



# HEALTH CARE SERVICES

GST	
Health care services by a clinical establishment, authorised medical practioners or paramedics	Exempt
Services provided by way of transportation of a patient in an ambulance other than those specified above	Exempt
Hair transplant or cosmetic or plastic surgery <b>except</b> when undertaken to restore or reconstruct anatomy or functions of body functions affected due to congenital defects, developmental abnormalities, injury or trauma.	18%
Services provided by cord blood banks by way of preservation of stem cells	Exempt

# HEALTH CARE SERVICES

- Board Circular
  - Food supplied to in-patients as advised by doctor / nutritionist is of composite supply of health care and exempt
  - Food supplied to patients (not admitted) or their attendants or visitors are taxable
- Food provided to doctors and employees
- **Medicines and implants**
  - In the course of treatment
- Pre-GST
  - Whether implants / stents fitted into the body is transfer of property in goods and taxable as works contract?
  - Observations of the Supreme Court in **BSNL**
  - Division Bench decisions of the Jharkhand High Court; Allahabad High Court; P&H High Court; Full Bench decision of the Kerala High Court
  - Matter pending in Division Bench of the Madras High Court.

# GIFT HAMPER

- Dry fruits
- Fruits
- Chocolates@ 18%



# RENEWABLE ENERGY

- Works Contract?
- Composite Supply?
- Mixed Supply?
- 70-30 formula  
through notification



# RENEWABLE ENERGY

## GST RATES

Renewable energy devices and parts for their manufacture falling under Chapter 84, 85 or 94	5%
Erection, commissioning, installation services	18%
Works contract services* <i>*contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modifications, repair, maintenance, renovations, 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.</i>	18%

# RENEWABLE ENERGY

- An explanation has been added to Entry No.234, Notification No.1/2017
  - Bio-gas plant; Solar power based devices; Solar power generating system; Wind mills; Wind Operated Electricity Generator; Waste to energy plants / devices; Ocean waves / tidal waves energy devices / plants.
  - If goods are supplied with other goods and services, the value of goods would be taken as 70% and the value of services would be taken as 30% of the gross consideration charged.
  - 70% of the value would attract 5% GST
  - 30% of the value would attract 18% GST
  - All these changes implemented through rate of tax Notifications
  - *Provisions of composite supply and mixed supply completely ignored to arrive a commercial solution.*

# UPS AND BATTERY

- Supply of UPS along with Battery
- Single price
- Mixed Supply or Composite Supply ?
- Batteries taxed at 28%
- UPS taxed at 18%
- Can there be separate supplies?



# EDUCATION



# EDUCATION

- ***College of Estate Management Vs. Customs and Excise***
  - College exempted as it provides education
  - College was sending printed materials to students
  - College contended that printed materials are taxable and hence eligible for input tax credit
  - House of Lords held that college provides a single education service and the supply of course materials cannot be split to treat a portion as supply of service.

# EDUCATION

## GST RATES

Services provided by <b>an educational institution to its students, faculty and staff;</b>	Exempt
Supply of online educational journals or periodicals to an educational institution.	Exempt

## GST RATES

Printed books, including Braille books	Exempt
Newspapers, journals and periodicals, whether or not illustrated or containing advertising material	Exempt

# EDUCATION

- ***Indian context***
  - Colleges & Schools – Exempt
  - Definition of educational institution is critical
  - Non-recognized courses; diploma programmes could be taxable
  - Printed study materials and books
  - School uniforms
  - Other classes
  - Extra curricular activities
- ***Covid related developments***
  - Virtual classes
  - Campus or institution classes may become irrelevant

# EU VAT

- In the case of ***Card Protection Plan Ltd. Vs. CCE***, the European Court of Justice held that  
“A supply which constitutes a single service from an economic point of view should not be artificially split. There was a single supply in particular in cases where one or more elements are to be regarded as constituting the principal service whilst one or more elements are to be regarded by contrast as ancillary service which share the same treatment of the principal service. **A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself but a means of better enjoying the principal service supplied.**”

# EU VAT

- The Tribunal in the context of EU VAT in the case of ***Equitable Life Insurance Society*** held that  
*To identify a composite transaction in a way that deprives its major part of the exemption otherwise applicable under law is to distort the functioning of the VAT system. Just as a single service should not be split in a way which distorts the system, so also separate services should not be artificially aggregated*

# DECISIONS IN THE CONTEXT OF COMPOSITE SUPPLY IN GST

- ***Abbott Healthcare Pvt. Ltd. Vs. CCT (2020) 74 GSTR 37 (Ker.)***
  - When diagnostic instruments are placed at the hospital without consideration under an agreement for use for a specified period by the petitioner and the distributor supplies reagents, calibrators, disposables, etc. at agreed prices on payment of GST, there are two supplies made by two different taxable persons.
  - The Court referred to the decision in *Telwest Communication PLC Vs. Customs & Excise Commissioners (2005) Simon Tax Cases 481 (CA)* to hold that the concept of composite supply would not be attracted in cases where there was more than one supplier.
  - The supplies were not considered as naturally bundled and supplied in conjunction with each other in the ordinary course of business.

# DECISIONS IN THE CONTEXT OF COMPOSITE SUPPLY IN GST

- ***Torrent Power Ltd. Vs. Union of India (2020) 34 GSTL 385 (Guj.)***
  - Principal supply of transmission and distribution of electricity cannot be done without electric line, electric plant and electric meter.
  - Principal and related/ancillary services go hand in hand and one cannot be provided independent of other.
  - These services are composite supply.
  - Tax liability is determined by treating such composite same as supply of principal supply of transmission and distribution of electricity.
  - If principal supply of transmission and distribution of electricity is exempt, tax liability of related services is determined accordingly.
- Appeal pending in Supreme Court.

# WAY FORWARD

- A number of AAR rulings on the subject
- AAR comprises of sitting officers from the Department and the ruling is binding only on the applicant and the Revenue having jurisdiction over the applicant
- AAAR similarly structured
- Writs filed against decisions of AAAR
- GST Appellate Tribunal yet to be constituted
- Virtual and digital world would throw up even more interesting issues

**THANK YOU**