

SUPPLY UNDER GST – ADDITIONAL TOPICS

➤ TAXABILITY OF ART WORKS SENT BY ARTISTS TO GALLERIES FOR EXHIBITION:

- Artists give their art works to galleries where it is exhibited for supply. However, no consideration flows from the gallery to the artist when the art works are sent to the gallery for exhibition and therefore, the same is not a supply.
- It is **only when a buyer selects a particular art work displayed at the gallery, that the actual supply takes place and applicable GST would be payable at the time of such supply.**

➤ PARA 3 OF SCHEDULE I -SUPPLY OF GOODS BETWEEN PRINCIPAL & AGENT:

- Section 7(1)(c) of CGST Act read along with Schedule I of CGST Act lists down four cases where existence of consideration is not a pre-requisite for an activity to qualify as supply.
- Para 3 of Schedule I provides that supply of goods by a principal to his agent, without consideration, where the agent undertakes to supply such goods on behalf of the principal is considered as supply. Similarly, supply of goods by an agent to his principal, without consideration, where the agent undertakes to receive such goods on behalf of the principal is also considered as supply.
- In order to determine whether a particular principal-agent relationship falls within the ambit of Para 3 of Schedule I, the deciding factor is whether the invoice for the further supply of goods on behalf of the principal is being issued by the agent or not.
- In other words, **the crucial point is whether or not the agent has the authority to pass or receive the title of the goods on behalf of the principal.**
 - ❑ **Where the invoice for further supply is being issued by the agent in his name then, any provision of goods from the principal to the agent would fall within the ambit of Para 3 of Schedule I and thus would be regarded as 'supply'.**
 - ❑ **Where the invoice is issued by the agent to the customer in the name of the principal, such agent does not fall within the ambit of Para 3 of Schedule I and thus the transaction would not be regarded as 'supply'.**
- Similarly, where the goods being procured by the agent on behalf of the principal are invoiced in the name of the agent, then further provision of the said goods by the agent to the principal would be covered by Para 3 of Schedule I.
- The above clarification can be understood with the help of following examples:

Example: Mr A appoints Mr B to procure certain goods from the market. Mr B identifies various suppliers who can provide the goods as desired by Mr A, and asks the supplier (Mr C) to send the goods and issue the invoice directly to Mr A. In this scenario, Mr B is only acting as the procurement agent, and has in no way involved himself in the supply or receipt of the goods. Hence, in accordance with the provisions of this Act, Mr B is not an agent of Mr A for supply of goods in terms of Para 3 of Schedule I.

Example: M/s XYZ, a banking company, appoints Mr B (auctioneer) to auction certain goods. The auctioneer arranges for the auction and identifies the potential bidders. The highest bid is accepted and the goods are sold to the highest bidder by M/s XYZ. The invoice for the supply of the goods is issued by M/s XYZ to the successful bidder. In this scenario, the auctioneer is merely providing the auctioneering services with no role played in the supply of the goods. Even in this scenario, Mr B is not an agent of M/s XYZ for the supply of goods in terms of Para 3 of Schedule I.

Example: Mr A, an artist, appoints M/s B (auctioneer) to auction his painting. M/s B arranges for the auction and identifies the potential bidders. The highest bid is accepted and the painting is sold to the highest bidder. The invoice for the supply of the painting is issued by M/s B on the behalf of Mr A but in his own name and the painting is delivered to the successful bidder. In this scenario, M/s B is not merely providing auctioneering services, but is also supplying the painting on behalf of Mr A to the bidder, and has the authority to transfer the title of the painting on behalf of Mr A. This scenario is covered under Para 3 of Schedule I.

➤ TAXABILITY OF 'TENANCY RIGHTS'/PAGADI UNDER GST:

- In Pagadi system, the tenant acquires tenancy rights in the property against payment of tenancy premium (pagadi). The landlord may be owner of the property, but the possession of the same lies with the tenant. The tenant pays periodic rent to the landlord as long as he occupies the property. The tenant also usually has the option to sell the tenancy right of the said property and in such a case has to share a percentage of the proceeds with the owner of land, as laid down in their tenancy agreement. Alternatively, the landlord pays to tenant the prevailing tenancy premium to get the property vacated. Such properties in Maharashtra are governed by Maharashtra Rent Control Act, 1999.
- **Pagadi system, ie transfer of tenancy rights against tenancy premium, is prevalent in some states. The activity of transfer of tenancy right against consideration (ie, tenancy premium) is squarely covered under supply of service liable to GST. It is a form of lease or renting of property and such activity has been specifically declared to be a service as per Schedule II of CGST Act.**
- Although stamp duty and registration charges have been levied on such transfer of tenancy rights, it shall be still subject to GST since merely because a transaction/supply involves execution of documents which may require registration and payment of registration fee and stamp duty, it would not preclude them from the 'scope of supply' and from payment of GST.
- To sum up, transfer of tenancy rights to a new tenant against consideration in the form of tenancy premium is taxable. Further, services provided by outgoing tenant by way of surrendering the tenancy rights against consideration in the form of a portion of tenancy premium is liable to GST.

➤ Section 7(2)(b) - ACTIVITIES/TRANSACTIONS TO BE NEITHER TREATED AS SUPPLY OF GOODS NOR AS SUPPLY OF SERVICES:

CBIC has clarified that following activities/transactions shall be treated neither as supply of goods nor as supply of services:

- **Inter-State Movement Of Various Modes Of Conveyance:**

Inter-state movement of various modes of conveyance (such as trains, buses, trucks, tankers, trailers, vessels, containers, aircrafts, etc) carrying goods or passengers or both or for repairs and maintenance, shall be treated 'neither as a supply of goods nor a supply of services' and therefore not be leviable to IGST.

However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance.

- **Inter-State Movement Of Rigs, Tools And Spares, And All Goods On Wheels (Like Cranes):**

Inter-state movement of rigs, tools and spares, and all goods on wheels (except in cases where movement of such goods is for further supply of the same goods), such inter-state movement shall be treated 'neither as a supply of goods or supply of service,' and consequently, no IGST would be applicable on such movements.