

**WIRC of ICAI, BKC, Mumbai**

***“Basic concepts of SGST, CGST & IGST; Dual Model;  
Imp relevant Definitions; Concept of Supply;  
Sch. I, II & III of GST Act, RCM, TDS; Composition Levy”***

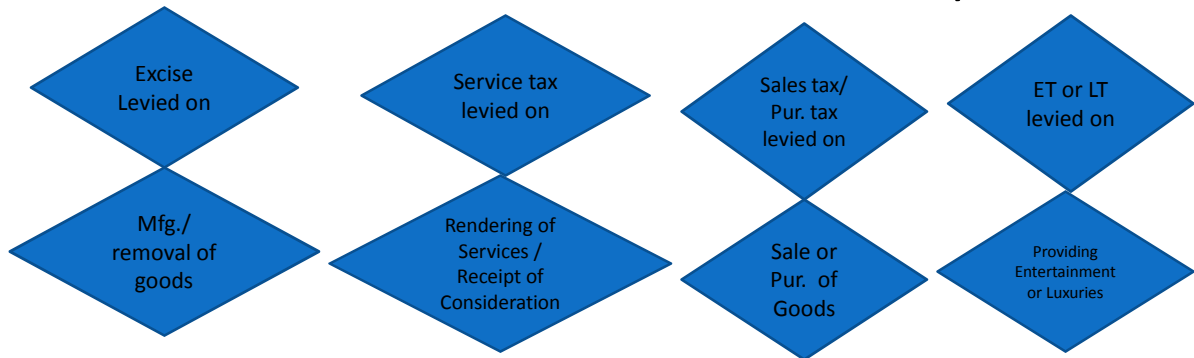
***based on***

**GST Acts assented by President on 12 April 2017  
Mah. SGST Bill passed by Assembly on 22 May 2017  
Draft Rules available**

***by***

**CA Deepak Thakkar, Mumbai  
20 June 2017**

**Taxable event at Present, for IDT levy**



**In GST, Tax levied on  
Supply of Goods / Services based on  
Place & Time of Supply**

### Indirect Tax Levies (IDT)

Present IDT Levy by Central Govt.	Present IDT Levy by State Govt.
1. Central Excise Duty	1. VAT/ Sales Tax/ <b>CST</b> retained by States
2. Addl Excise Duties	2. Purchase Tax/ Luxury Tax/ <b>Entertainment Tax</b>
3. Excise Duty levied under Medicinal & Toiletries Preparation Act	3. Entry Tax/ LBT/Octroi
4. Addl Customs Duty (CVD) & Special Addl Customs duty (SAD)	4. Tax on Lotteries/ Betting/ Gambling
5. Service Tax	5. Tax on Tobacco products/ Advertisements/ Forest produce
6. <b>Surcharges &amp; Cess on above</b>	6. <b>Surcharges &amp; Cess on above</b>

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In GST levied as

**CGST**

**Note: Centre continues levying Duty on Petroleum Products (i.e. Crude, HS Diesel, Petrol (Motor Spirit), Natural Gas & ATF)**

**Note: Petroleum products liable to GST from the date to be notified by GST Council**

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In GST levied as

**SGST**

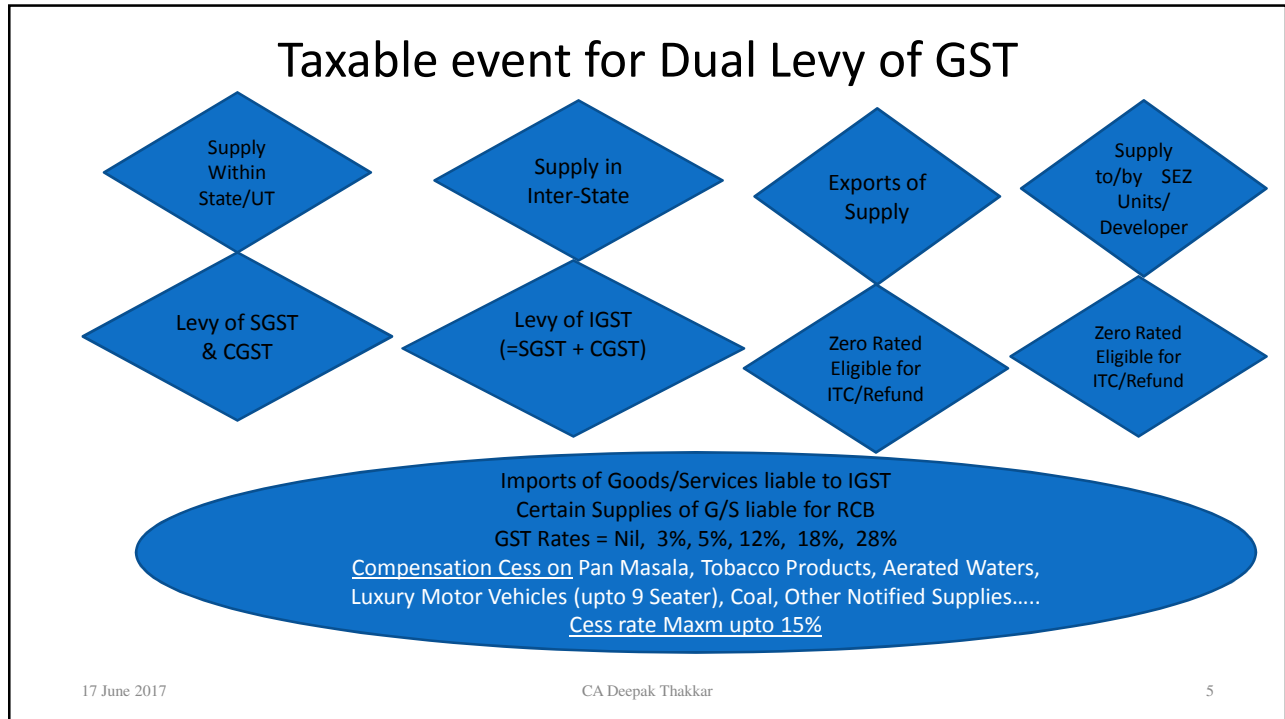
**Note: State continues levying Tax on Petroleum Products & Alcoholic Liquor for human consumption**

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### Levies continued by Centre & States, even after GST Levy

Levies in addition to GST	Levy by Central Govt	Levy by State Govt
<p>Taxes/ Levies/ fees <u>Not-Subsumed</u> <u>(Not-Merged)</u></p>	<ol style="list-style-type: none"> <li>1. Custom Duty</li> <li>2. Direct Taxes (IT/Corp. Tax/etc)</li> <li>3. Securities Transaction Tax</li> <li>4. Excise on Petroleum products</li> <li>5. Other Central Levies</li> </ol>	<ol style="list-style-type: none"> <li>1. Profession Tax</li> <li>2. Stamp Duty</li> <li>3. Property Tax</li> <li>4. Tax on Petroleum products</li> <li>5. Tax on Alcoholic liquor</li> <li>6. <b>Electricity duty</b></li> </ol>

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## Levy & Collection of SGST & CGST u/s Sec. 9 & IGST u/s 5

- (1) **CGST & SGST** levied on all **intra-state supplies (supply within State)** of **goods and / or services...**  
**on the value** as determined u/s 15,  
**at the rates notified by CG/SG but not exceeding 20%** (IGST Maxm @ 40%),
- (2) Reverse Charge Basis (**RCB**) Tax payable by Recipient of goods/services, **for Notified categories**
- (3) **RCB** Tax payable **by Registered Recipient** of taxable goods/services received from **Un-registered Person**
- (4) Tax payable by Electronic Commerce Operator (**ECO**) on **Notified Categories of Services** **supplied intra-state** through it, as if he is the Supplier;  
 Where ECO does not have physical presence in taxable territory, tax payable by its Representative / appointed authorised person  
**'Goods' means?.... 'Services' means?... "Supply' means?.....**

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## Meaning of 'Goods' & 'Services'

- **'goods' [u/s 2(52)] means every kind of movable property including specified Actionable Claims** i.e. Lottery, betting & gambling (Sch III issued u/s 7 of CGST Act)  
**excluding money & securities;**  
**E.g:** Tangible property: Water/ Gases/ Solids / Electricity/ etc;  
 E.g: Intangible property: Patents, TM, Copyrights, Designs, Import Licenses,...etc
- **'services' [u/s 2(102)] means anything other than goods, money & 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."
- **"money" [u/s 2(75)] means the Indian legal tender or any foreign currency, cheque, promissory note, bill of exchange, letter of credit, draft, pay order, traveller cheque, money order, postal or electronic remittance or any other instrument recognised by Reserve Bank of India when used as a consideration to settle an obligation or exchange with Indian legal tender of another denomination but shall not include any currency that is held for its numismatic value (relating to or consisting of coins/medals/etc;**
- **"securities" [u/s 2(101)] shall have the same meaning as assigned to it u/s 2(h) of the Securities Contracts (Regulation) Act, 1956;**
  - **Sale of Land /Building** is neither supply of goods nor supply of services (Sch III issued u/s 7 of CGST Act);
  - **Lease / Renting of Land/Building** is a 'Service'

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## Scope & Meaning of 'Supply' u/s 7 of CGST Act...

**Sec. 7(1)(a): 'Supply' includes....** ('Supply' = provide or furnish)

**all forms of supply** of goods &/or services **such as** sale, transfer, **barter, exchange, license, rental**, lease or disposal made or agreed to be made,  
**for a consideration**  
 by a person **in the course or furtherance of business**

**'Consideration' defn u/s 2(31): includes—** any payment made or to be made, whether in money or otherwise (i.e. in Kind),  
 ....whether by the recipient or by any other person

**but shall not include any subsidy given by the Central/State Government;**

**'Deposit'** shall not be considered consideration unless the supplier applies it as consideration for his supply;

**'Business' defn u/s. 2(17): includes-**

- (a) any trade, commerce, manufacture, **profession, vocation, adventure, wager or any other similar activity, whether or not it is for a pecuniary benefit** (i.e. Charitable purpose);
- (b) any activity/transaction in connection with or incidental or ancillary to sub-clause (a);
- (c) Irrespective of volume, frequency, continuity or regularity of such transaction;....

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...Scope & Meaning of 'Supply' u/s 7 of CGST Act...

**Sec. 7(1)(b): Supply includes Import of services, for a consideration  
whether or not in the course / furtherance of business**

- **“Import of services” defn u/s. 2(11) of IGST Act:** means the supply of any service, where-
  - (i) the Supplier is located outside India;
  - (ii) the Recipient located in India; and
  - (iii) the place of supply of service is in India;
- Free Downloading of software, not a service;
- **Software downloaded for a price, for personal use, may be an import of service;**

**Sec. 7(1)(c) Sch.I: Importation of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business, even if made without consideration**

- **Foreign Branch/Principal rendering services to Indian Branch**

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**Schedule I: Activities treated as Supply even if made without consideration...**

**Sec.7(1)(C): Supply includes the activities specified in Schedule I, made/agreed to be made without consideration:**

1. **Permanent transfer/disposal of business assets where Input Tax Credit (ITC) has been availed** on such assets:  
e.g. Assets gifted/ donated/ discarded free/ transferred free by operation of law
2. **Supply of goods/services between distinct persons**, when made in the course of business.
  - “Distinct Persons” i.e. Persons **having or required to have more than one registration**, in same/different State/UT
  - **Branches in the same State, having Single GSTIN:** If Goods/Service supplied to a branch situated in same state & not having separate Registration, then it is not a taxable supply
  - **Branches in the same State, having Different GSTIN for different Business Verticals** [(Sec.2(19)]: If stocks are transferred from One GSTIN to Another GSTIN in the same state shall be treated as an **Intra-state supply** liable to SGST+CGST;
  - **Branches in Different States, requires different GSTIN:** If stocks are transferred to different State/UT then as an **Inter-state supply**, liable to IGST (=SGST+CGST);

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**Schedule I: Activities treated as Supply even if made without consideration...**

**3. Supply of goods—**

**(a) by a principal to his agent** where the agent undertakes to supply such goods on behalf of principal, or

**(b) by an agent to his principal** where the agent undertakes to receive such goods on behalf of the principal.

- **‘Principal’ Defn Sec. 2(88):** means a person **on whose behalf an agent carries on the business** of supply or receipt of goods &/or services;
- **‘Agent’ Defn. Sec.2(5):** means a person, including a factor, **broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called,** who carries on the business of supply or receipt of goods &/or services on behalf of another;

**Q. Tax liability of Agent & Principal, whether joint & several?** [Yes, U/Sec. 86]

**Impact of GST on Stock Transfers to Agent/Branch having  
Supply Inter-state or Intra-state**

**separate GSTIN;**

• Full ITC for Stock Transfers, so elimination of cascading effect; product will be cost effective; Reduction in prices

• **No declaration Forms, Ease of doing business; Saving of costs, efforts & time of collecting, preserving & producing Forms before Authorities; No future tax liabilities**

• **Examining the need for Branches/Agents;** due to seamless flow of ITC across India; Re-look from business operations perspective; Cutting down costs of Branches/Agents

• Time gap between tax payable & ITC claim; Cash flow impact; Working Capital required more; Interest costs;

• Seasonal business, qua production or sales, funds may be blocked for longer durations.

• **Valuation Issues:** For stock transfers, there is no transaction value; Value shall be determined as per Valuation Rule 2. i. e. (a) Open Market value of Such Supply

• (b) If open market value is not available then, value of like kind and quality of goods/services

• (c) If not possible as per (a) or (b) then, 110% of Cost of Production or any other reasonable means, consistent with the principles and general provisions of Valuation section 15.

**Schedule I: Activities treated as Supply even if made without consideration...**

**4. Supply of goods / services between related persons, when made in the course or furtherance of business:**

- **“Related persons” [Expln u/s 15(5) of CGST Act]:** Persons shall be deemed to be “related persons” if (i) they are **officers or directors of one another's businesses**; (ii) they are legally recognized **partners** in business;

(iii) they are **employer and employee**; Provided that gifts valuing upto Rs. 50,000 in a FY, by an employer to an employee, shall not be treated as supply; **Services by an employee to the employer shall not be treated as supply as per Sch.III u/s. 7(2)(a).**

(iv) any person directly or indirectly owns, controls or **holds 25% or more of the outstanding voting stock or shares or both of them**; (v) one of them directly or indirectly controls the other; (vi) both of them are directly or indirectly controlled by a third person; (vii) together they directly or indirectly control a third person; (viii) **Sole agent or sole distributor or sole concessionaire**

(ix) they are **members of the same family**; **“family” u/s 2(49) means,—**

**(i) the spouse and children of the person, and**

**(ii) the parents, grand-parents, brothers and sisters of the person if they are wholly or mainly dependent on the said person;**

**Schedule II** specifies activities to be treated as Supply of Goods or Supply of Services (Sec. 7(1)(d) ..

• **Following activities are treated as supply of Goods:**

**1(a): any transfer of the title in goods;**

**1(c): any transfer of title in goods at a future date** upon payment of full consideration as agreed;  
i.e. Sale on Hire-Purchase or Sale on Installment basis.

**4(a): Goods/assets of business are transferred/ disposed** of by or under the directions of the person carrying on the business, **whether or not for a consideration**;

E.g: Auction by bank/ financial institutions for consideration OR Disposed off without consideration

**4(c): Where any person ceases to be a taxable person**, any goods forming part of business assets, shall be deemed to be supplied by him in the course/ furtherance of his business immediately before he ceases to be a taxable person, **unless-**

**a) the business is transferred as a Going Concern or**

**b) the business is carried on by a personal representative who is deemed to be a taxable person;**

**Q: Business discontinued; Conversion of Firm into LLP/Company; Merger/Demerger of Companies**

**7. Supply of goods by any unincorporated AOP/BOI, to a member thereof for cash, deferred payment or other valuable consideration.**

**Q. Supply by Incorporated AOP/BOI/Club?....'Person' defn u/s 2(84)(f)**

**Schedule II** specifies activities to be treated as Supply of Services (Sec. 7(1)(d) ..

- **Following activities are treated as supply of Services:**

### 3. Treatment or Process

**5(f):** transfer of the right to **use any goods** for any purpose for any period for consideration (*lease/hire of goods*)

**5(c):** Temporary transfer/permitting the **use** or enjoyment **of any IPR** (Intellectual Property Right)

**2(a):** Lease/ Tenancy/ Easement/ License to occupy land

**2(b):** Lease or letting out of the building including commercial, industrial/residential complex for business or commerce, either wholly or partly

**5(a):** Renting of immovable property (i.e. commercial or residential);

**Q. Whether renting of premises along with plant, machinery, furniture, etc. covered here?**

**4(b):** Business goods/assets put to any private use or used/made available to other person for use/private use, whether or not for a consideration, whether by or under direction of said person.

**6(b):** Service of food & non-alcoholic drinks: **Supply**, by way of or as part of any service or in any other manner whatsoever, **of** goods, being **food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption)**, where such supply or service is for cash, deferred payment or other valuable consideration.

**5(d):** Development, design, programming, customization, adaptation, upgradation, enhancement, implementation of Information Technology Software.

**5(e):** Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.

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**.. Schedule II** specifies activities to be treated as Supply of Services (Sec. 7(1)(d) ..

- **Following activities are treated as supply of Services:**

**5(b):** Construction of a complex, building, civil structure or a part thereof, including complex or building intended for sale to buyer, wholly or partly, **except where the entire consideration has been received after issuance of completion certificate (CC)**, where required, by the competent authority or after its first occupation, whichever is earlier.

**Explanation 1: Competent Authority defined:** Govt/Any Authority authorised to issue CC or Regd. Architect / Regd. Chartered Engineer/ Licensed Surveyor of respective local body where CC requirement is not there

**Explanation 2: 'Construction' includes** additions, alterations, replacements or remodelling of any existing civil structure;

**6(a):** Works Contract as defined u/s 2(119)

- **'WC' Defn u/s 2(119):** means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, 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;

**Draft Law of Nov 2016: Sch II 5(f):** "works contract including transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.....is a service";

**Q. Works Contract relating to movable property? Divisible/Indivisible ?? Composite/Mixed Supply u/s 8 ?**

[Supply of goods/services/both, taxable u/s 9(1); Tax @ what Rate?]; [Gannon Dunkerley (1993) 1 SCC 364];

**Q. Intention of Contract? [BSNL (2006) 3 SCC 1; Para 64 to 67 of L&T vs State of Karnataka (26-9-2013) SC]**

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### Tax Liability on “Composite Supply” or “Mixed Supply” u/s 8 of CGST Act

(a) 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;

**Sec. 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 & transported with insurance, the supply of goods, packing materials, transport & insurance is a composite supply and **supply of goods is the principal supply.**

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

**Sec. 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 drink & fruit juices **when supplied for a single price** is a mixed supply.

**Each of these items can be supplied separately & is not dependent on any other. It shall not be a mixed supply if these items are supplied separately.**

**Note:** **Dominant Intention of contract OR Functionality or Ratio of Cost / Quantity/ Weight of each component of supply, impact the applicability of tax**

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### TDS & Application of provisions of CGST Act. Sec 20 (IGST)...

- **TDS Notification awaited** for which goods / services liable for TDS;
- **TDS Rate:** TDS from the payment made / credited to supplier,  
@ 1% under CGST; 1% under SGST & So 2% under IGST Act
- **TDS on:** Net value of Supply (including any taxes, duties, cesses, fees & charges levied under law, other than GST/Cess under GST Acts, if charged separately by the supplier)

#### **Provisions of CGST Act relating to,—**

*scope of supply/Composite & Mixed supply/Time & Value of supply/ ITC/ Registration/Tax invoice/Credit & debit notes/ accounts & records/ Returns (other than late fee)/ payment of tax/TDS/ TCS/ assessment/ refunds/audit/ inspection, search, seizure and arrest/ demands and recovery/liability to pay in certain cases/ advance ruling/appeals and revision/presumption as to documents/offences and penalties/ job work/electronic commerce/transitional provisions/ miscellaneous provisions including the provisions relating to the imposition of interest and penalty... Shall apply **mutatis mutandis**, under **IGST Act: Penalty leviable under IGST Act shall be the sum total of said penalties** leviable under the CGST Act /SGST Act /UTGST Act.*

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Composition Scheme (CS) : Sec. 10 of CGST/SGST Act....

CG or SG may, **permit a Regd. Taxable Person,**

**subject to such conditions & restrictions** as prescribed,

whose **aggregate turnover in preceding FY did not exceed Rs 50/75 lakhs (Maxm. Rs. 1 Crore),**

**[Sec. 2(6) "aggregate turnover" means the aggregate value of all taxable supplies, exempt supplies, exports of goods/services and inter-State supplies of persons having same PAN to be computed on all India basis, but excludes the value of inward supplies on which tax is payable by a person on RCB, CGST, SGST, UTGST, IGST & CESS]**

**eligible for Composition levy @ prescribed rate not exceeding:**

**1% of Turnover in State/UT in case of a Manufacturer of specified goods,**

**2.5% of Turnover in State/UT in case of Restaurants, etc serving food & non-alcoholic drinks,**

**0.5% of Turnover in State/UT in case of Other Suppliers; (Traders, etc)**

...Composition Scheme (CS) : Sec. 10 of CGST/SGST Act...

- Conditions:** (i) **All RTPs having same PAN** shall opt for composition scheme; **File Intimation** in Form GST CMP-01/02, with Regn Appln or within 30 days or before start of new FY;
- (ii) **CS option availing from 1<sup>st</sup> day of GST levy**; New RTP from GSTIN effective date; or 1<sup>st</sup> day of FY; Not to file fresh intimation every FY;
- (iii) **CS option lapses from** the day, of exceeding prescribed T.O. limit during a FY or breaking any condition; File Intimation for withdrawal from CS in Form GST CMP-04, within 7 days of occurrence of such event;
- (iv) **No tax collection**, Issue Bill & Not Tax Invoice; **In Bill issued, mention** words "Composition Taxable Person not eligible to collect tax on supplies"
- (v) **No ITC claim**; File ITC Statement in Form GST ITC-3, within 60 days;
- (vi) **File Stock Statement** in Form GST CMP-03, within 60 days; No stock of Interstate/Import purchased goods, Not received from Interstate Agent/Principal/Branch;
- (vii) **RCB tax payable on purchases from URP**
- (viii) **On Signboard displayed** at prominent place at all POBs mention "Composition Taxable Person"

...Composition Scheme (CS) : Sec. 10 of CGST/SGST Act

**No Composition Permission to:**

- (a) **Service provider** (Other than Eligible Restaurants, etc as above); **CTP;**  
**NRTP;**
- (b) who supplies **goods which are not leviable to tax** (Alcoholic liquor, Petroleum products, etc)
- (c) who makes **interstate supply of goods**
- (d) Who makes **supply of goods through an ECO** (Electronic Commerce Operator)
- (e) Who is a **manufacturer of such goods as notified**, by Govt. on GST Council's recommendation

For reason to believe, if RTP is not eligible for CS, yet taken, then he is liable to pay normal tax & penalty as provided u/s 66 & 67 of Act

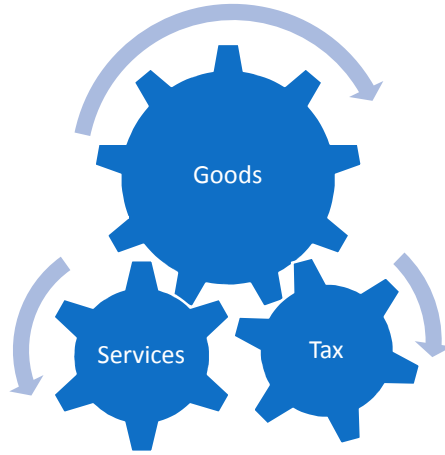
## Tax Collection u/s 32 of CGST/SGST Act

- Prohibition of Un-authorized Tax Collection:

S. 32(1) **Un-regd Person** shall not collect any amount by way of tax in respect of any supply of Goods/services

S. 32(2) **Regd. Person** shall not collect tax except in accordance with the provisions of this Act/Rules

### GST means...



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### GST means...



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**\*Thanks & Best Wishes to All\***

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