

## Case studies on Supply, Composite Supply, Mixed Supply, Exemptions and Place of Supply

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1. '*Confused Ltd.*', located in Maharashtra, is a printing company which supplies printed leaflets as per the specifications of its clients. Earlier in the central excise regime it was registered as a manufacturer. The clients give a Purchase Order for printing and supply of a particular quantity of leaflets and the content, design and the art work which the leaflets must contain is also provided by the client in soft copy. The client also specifies the quality of paper on which the leaflet is required to be printed. '*Confused Ltd.*' purchases the paper, ink and materials required for the purpose of executing the clients' job. The content, design and art work is modified to suit the leaflet size and '*Confused Ltd.*' prints it using its machines and equipments. The printed leaflet can only be used by the client who has ordered it and any excess material printed would have to be returned to the client or be destroyed. '*Confused Ltd.*' has also entered into a non-disclosure agreement that it would keep the content, artwork and design confidential. '*Confused Ltd.*' has got an order for printing leaflets from the client's Head office in Gujarat but it has to deliver the printed leaflets to the clients' branches in Gujarat, Karnataka, Goa and Maharashtra. Invoice for the entire job is raised by *Confused Ltd.* on Gujarat Head office. Examine the GST implications.

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**Hints:** Tariff entries relevant -

- (i) Entry 201 of Schedule I of Notification No.1/2017 – CT (R.) dated 28.06.2017 which enlists goods that would attract CGST @ 2.5%.

Sl. No.	Chapter/Heading/Sub-Heading/ Tariff item	Description of goods
201	4901	Brochures, leaflets and similar printed matter, whether or not in single sheets.

- (ii) Entry 27(i) of Notification No. 11/2017-CT (R.) dated 28.06.2017 which enlists services which attract CGST @ 6% -

Sl. No.	Chapter/Heading/Sub-Heading/ Tariff item	Description of Service
27	<b>Heading 9989</b>	(i) Services by way of printing of all goods falling under Chapter 48 or 49 including newspapers, books (including Braille books), journals and periodicals, which attract CGST @ 6 per cent or 2.5 per cent or Nil, where only content is supplied by the publisher and the physical inputs including paper used for printing belong to the printer.

2. *M/s. Frustrated* intends to transfer its business carried on at Daman as a going concern by way of ‘slump sale’ to *M/s. Enthusiastic*. The terms of the Business Transfer agreement *inter alia* include non-compete restrictions whereby *M/s. Frustrated* covenants that for a period of two years from the agreement date, it shall not engage in similar business in India. *M/s. Frustrated* has received an advise that sale of business as a going concern is a service which has been exempted from GST under sl. no. 2 of Notification no. 12/2017 – CT (Rate) dated 28.6.2017. But *M/s. Frustrated* has apprehensions as to whether by agreeing to the non-compete clause would *M/s. Frustrated* be making a separate deemed supply of services distinct from the services by way of transfer of a going concern falling under para 5(e) of Schedule II to CGST Act viz., ‘agreeing to the obligation to refrain from an act or to tolerate an act or a situation or to do an act’ and whether the value of such supply needs to be culled out from the consideration for slump sale of business and accordingly be subjected to GST?

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3. ‘Tony Ltd.’ is an Indian Music company registered for GST in India and owns the copyrights in various Indian music published by it. ‘OnlineMusic.com B.V. (Netherlands)’ [“OMN”] owns a website and a

mobile application which streams music for its users either for a free download or a subscription charge. ‘OMN’ has entered into an Agreement with ‘Tony’ for streaming their copyrighted Indian music on its website and mobile application. The podcasts of these Indian Music would be restricted to the Indian Territory i.e. the footfalls would be in India. Under the agreement, ‘Tony’ would licence to ‘OMN’ its entire repertoire of copyrights owned by it for the limited purpose of exploiting it through its website and mobile applications and in consideration ‘OMN’ has agreed to pay ‘Tony’, a fixed licence fee plus a percentage of its advertisement revenue and subscription revenue. The payment would be made in convertible foreign exchange by ‘OMN’. ‘Online Music India Pvt. Ltd.’ [“OMI”], is an Indian counterpart of ‘OMN’ which has been engaged by ‘OMN’ to act as its single point of interaction in India for ‘Tony’ and also for monitoring the latest songs released by ‘Tony’ and uploading the same on the servers which hosts the website and mobile application’s content. ‘OMN’ is of the view that services rendered by ‘Tony’ to it would be a ‘zero-rated supply’. However, Mr. Cautious, the GST consultant of ‘Tony’ has advised it to charge GST on these supplies since –

- (a) the footfalls of the licences granted by ‘Tony’ would be in India; and
- (b) ‘Tony’ would be making all interactions with ‘OMI’ who may be considered as the recipient of its services.

‘Tony’ also does not see *eye to eye* with the advice of its consultant Mr. Cautious since it is not music for its ‘ear’ and hence, it seeks your advice. Please advise ‘Tony’.

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4. *Strict Ltd.* has a contract with its employees (by way of an appointment letter) for hiring their services in consideration for which the company pays a ‘salary’. Under its contract with its employees, either party to the contract (i.e. the employer or the employee) can terminate the contract by giving a prior notice say, 1 month. However, if either party to the contract terminates the contract of employment by giving a shorter notice period the consequences are generally as under:

- (a) If *Strict Ltd.* terminates the contract of employment at a shorter notice period or without notice, it would pay salary for the notice period not served to the employee after which the contract would come to an end.
- (b) Similarly, if the employee terminates the contract of employment at a shorter period, salary equal to the notice period not served is recovered from the employee. After the ‘notice pay recovery’ is made, the contract of employment comes to an end.

The department [who is more strict than *Strict Ltd.*] seeks to recover service tax on ‘notice pay recovery’ made by *Strict Ltd.* from its employees on the ground that it is a consideration received by *Strict Ltd.* from its employees on the ground that it is a consideration received by *Strict Ltd.*

for ‘tolerating an act’ of the employee which qualifies as a supply of service under Entry 5(e) of Schedule II to CGST Act viz., ‘agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act’. Please advise *Strict Ltd.*

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5. Creative Interface (“Creative”) is an advertising agency engaged in providing advertisement services by way of conceptualizing, designing and preparing of advertisement content which is subsequently published by the client in media. It has its Head Office (“HO”) located in Mumbai and branches spread across the country. The role played by the HO as well as that of the branches is given in table below :-

<b>Sl. no.</b>	<b>Particulars</b>	<b>Role played</b>
1.	HO	Entering into contracts with potential advertisers, Developing the ad-content as per requirement of client
2.	Branches	Executing the jobs given by the H.O. – their work also involves interfacing with the advertisers as well as the service provider

Creative is raising all its bills on the clients only from the HO since it is HO who contracts with the client. The branches raise GST invoices on the HO for the services rendered by it to HO.

(i) In view of the recent controversy *created* pursuant to the Government's Press Release dated 15.11.2019 [**Exhibit A**], Creative is anxious to know whether pursuant to such a *creative* press release, its HO needs to raise a GST invoice on the branches for the various expenditures incurred by it. Some of such expenses are common viz., audit service, legal service, point-to-point lease line between HO and branch, centralized servers, software application license costs, staff costs of HO. However, some expenses pertain to a particular branch. Branch salary is also paid by HO.

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(ii) Is there any other issue to be considered?

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(iii) Would your answer change if the branches enter into contract with the advertisers / clients?

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6. Toll Ltd. is a toll contractor engaged in collecting toll under agreements entered into with NHAI / MSRDC. It has been awarded two contracts for 'Toll Collection Rights' ("TCR"), the details of which are as summarized below -

<b>Sl. No.</b>	<b>Toll contract awarded by</b>	<b>Toll Ltd.'s Obligation</b>	<b>Period for which TCR awarded</b>
1.	NHAI	Payment of lumpsum bid price of Rs. 120 crores determined upfront but payable in monthly instalments	1 year
2.	MSRDC	Upfront payment of Rs. 500 Crores and undertaking construction of toll plazas, maintenance of the toll plazas and the roads.	5 years

In both the scenarios, Toll Ltd. collects and retains the toll. The GST authorities have sought to demand GST on the 'excess of the toll collected over and above the amount of bid price' paid by Toll Ltd. to NHAI / MSRDC on the premise that such excess represents the consideration received for its services and that Toll Ltd. would not be eligible for



exemption under Sl. No. 23 of Notification No. 12/2017 - CT (Rate) dated 28.06.2017 - '*Service by way of access to a road or a bridge on payment of toll charges*', since it is only NHAI / MSRDC which gives access to the road and is covered under the said exemption.

Toll Ltd. solicits your advice, as the Revenue's above contention would have a *heavy toll* on its financial position.

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7. '*New Soft India*' ("*NSI*") is a company incorporated and registered in India. *NSI* has opened a branch in Dubai – '*NSD*' with over 300 employees. *NSD* has entered into a contract with clients located in South Africa for providing software development services. *NSD* raises the invoice on the South African clients and receives money in foreign currency either in its account in Dubai or the company's bank account in Mumbai. *NSI* in few cases provides certain base software (off-the-shelf) by way of downloads to *NSD* for which *NSD* pays *NSI* or adjusts against its HO - Branch accounts. *NSD* avails services from overseas commission agents to source customers and also from software engineers based abroad to provide installation and implementation services. The bills of agents and engineers are paid by *NSD*. *NSI* remits to *NSD* amounts for defraying its expenses like salary and other expenses of *NSD* or adjusts the H.O.- Branch accounts

against payments due by *NSD* to *NSI*. The revenues and expenses of *NSD* are consolidated in *NSI*'s annual accounts. What are the GST implications?

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8. Mr. Harassed, a GST consultant, is totally harassed with several queries of his clients with regard to the interpretation of the word 'intermediary' in the context of export of services. He has, after looking at documentation of various clients which *inter alia* deals with provision of different types of services to overseas clients, listed down certain situations as given below. On one hand, the department wants to treat each and every service as 'intermediary' viz. as '*arranging*' or '*facilitating*' supply of goods or services or both, while on the other hand, the client wants to treat the services as coming under support services supplied on a Principal-to-Principal basis. He has approached you for a gunshot solution with some sort of '*Formula 44*' to advise him which ones will be intermediary and which ones will not be. The scenarios are set out below.

<b>Sl. no.</b>	<b>Nature of services</b>	<b>List of activities</b>
1.	Sales and promotion services	Procurement of orders
2.	Sales promotion	Procurement of orders as well as dealing with fulfilment of orders i.e. interacting

		with the client and the client's purchasers upto delivery, invoicing and collection.
3.	Sales promotion	Not involved in procurement of orders but only in fulfilment of orders.
4.	Back office support	Payroll, invoicing, collection, accounting
5.	Call centre	Attending to customer complaints and queries on behalf of its clients and passing on the complaints and queries to the clients.
6.	Collecting and analyzing information	Market analysis, submission of reports and general advice on markets.

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