

Western India Regional Council

- Event** : 2nd Course on GST
- Date & Day** : 29th September, 2016 (Thursday)
- Subject** : Charging provisions of CGST/SGST/ IGST, Levy, meaning and scope of Supply
- Venue** : ICAI Tower, Near Standard Chartered Bank,
Bandra Kurla Complex, Mumbai- 400051
- Presented by** : CA Naresh Sheth

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Preamble

- GST law is in draft form yet to prescribe important provisions and hence presentation needs to be revisited on enactment of GST law
- **Legal provisions relating to Charging provisions for levy of tax and scope of supply etc.:**
 - Section 7 of CGST/SGST Act
 - Section 4 of IGST Act
 - Section 2(92) r.w. section 3 of CGST/ SGST Act
 - Section 2(f) of IGST Act
 - Schedule I, II and IV of the Act
- **Purpose of this presentation is to apprise participants of:**
 - Chargeability under GST Act
 - Scope of supply
 - Its impact on trade and business
 - Professional and legal challenges


} Charging provisions-
CGST/ SGST/ IGST

} Supply

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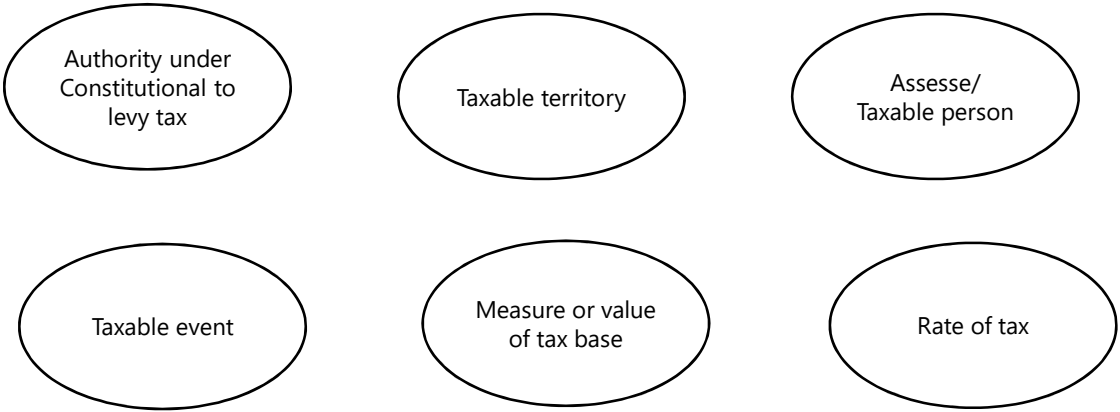
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Basics

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Pre-requisites for levy of tax/ duty



- Authority under Constitutional to levy tax
- Taxable territory
- Assesse/ Taxable person
- Taxable event
- Measure or value of tax base
- Rate of tax

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Presence of pre-requisites in GST regime

Pre-requisites	Reference in the GST law
Constitutional power to levy tax	<ul style="list-style-type: none"> Article 246 A empowers- Centre and State to levy and collect GST
Taxable territory	<ul style="list-style-type: none"> Territory to which the provisions of this Act apply [Section 2(98) of CGST/SGST Act] IGST Act applies to whole of India CGST Act applies to whole of India SGST Act applies to States
Assessee/ Taxable person	<ul style="list-style-type: none"> Taxable person as defined u/s 9 of CGST/ SGST Act
Taxable event	<ul style="list-style-type: none"> Supply of goods/ Services u/s 7 of CGST/ SGST Act and Section 4 of IGST Act

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Presence of pre-requisites in GST regime

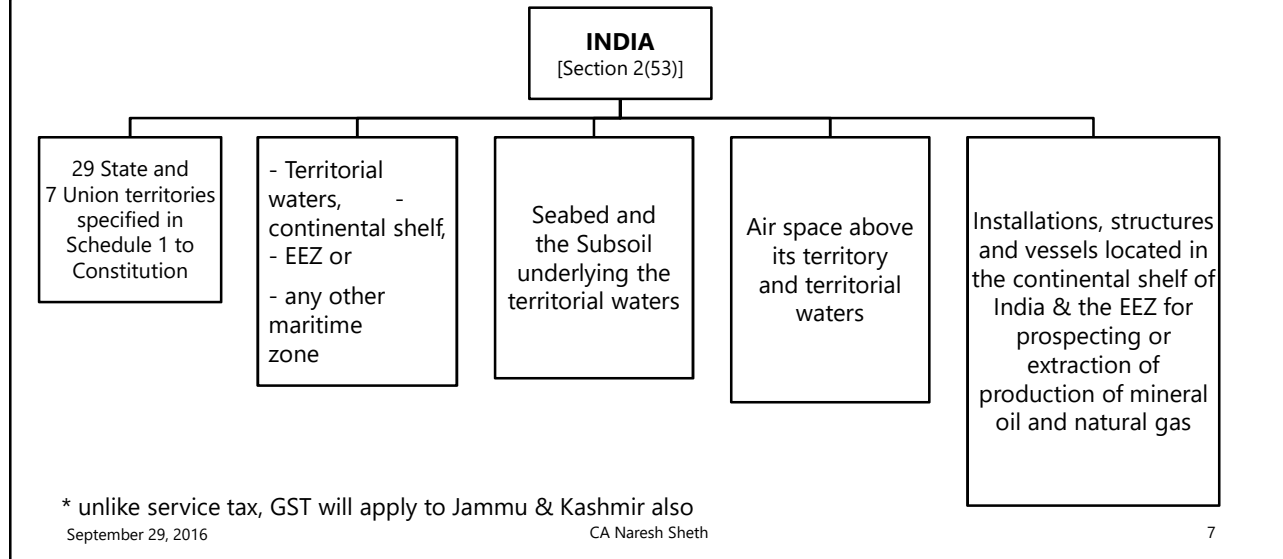
Pre-requisites	Reference in the GST law
Measure or value of tax base	<ul style="list-style-type: none"> Section 15 r.w. GST Valuation (Determination of the Value of supply of goods and services) Rules, 2016
Rate of tax	<ul style="list-style-type: none"> Section 7 of CGST/ SGST Act and Section 4 of IGST Act r.w. Schedules (to be prescribed)

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Territorial Jurisdiction



Taxable event in existing vs. GST regime

Tax	Taxable Event in Existing laws	Taxable Event in GST Regime
Service Tax	Provision of Service	Supply of goods/services
Excise Duty	Manufacture of excisable goods	
VAT/Sales Tax	Transfer of title in goods within state	
CST	Transfer of title in goods outside state	
Purchase Tax	Purchase of specified goods	
CVD	On import in lieu of excise duty	
SAD	On import in lieu of VAT	
Entry Tax/ LBT	Entry of specified goods in the State for sale, use or consumption	
Entertainment tax	Provision of entertainment	8

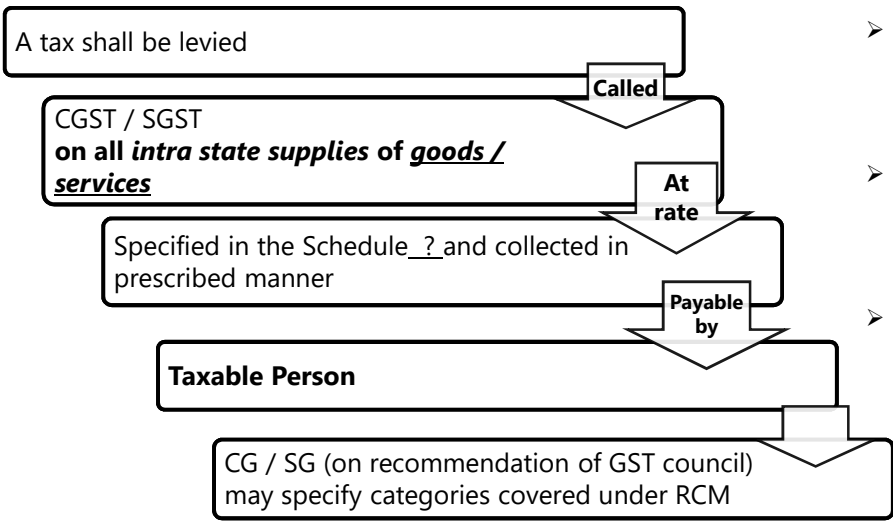
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GST - Charging Provisions

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Charging Provision - Section 7 of CGST/SGST Act



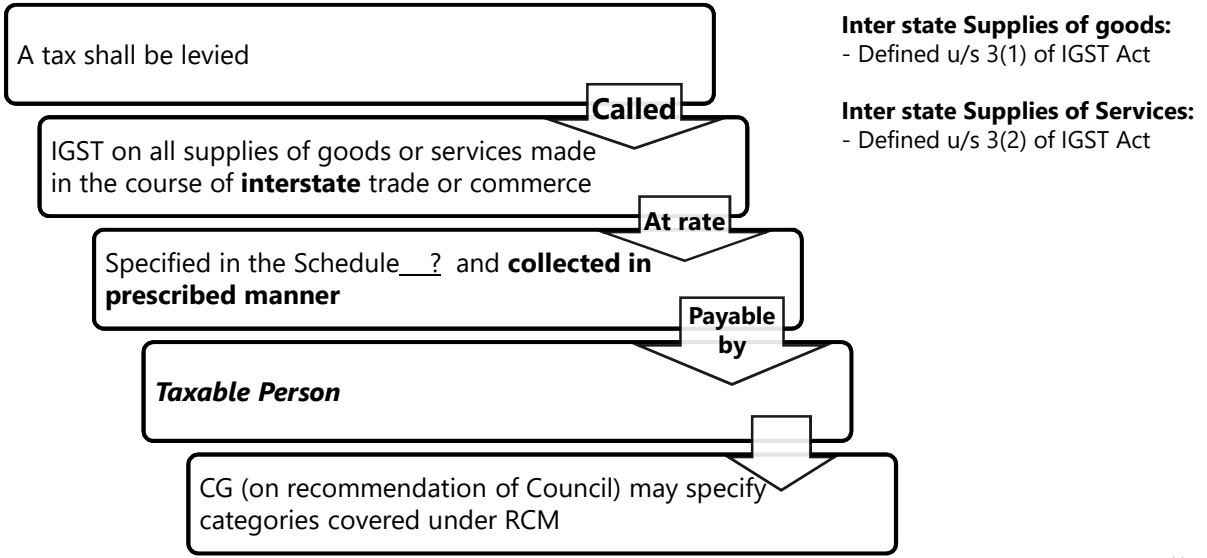
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graph TD
    A[A tax shall be levied] -- Called --> B[CGST / SGST on all intra state supplies of goods / services]
    B -- At rate --> C[Specified in the Schedule_? and collected in prescribed manner]
    C -- Payable by --> D[Taxable Person]
    D --> E[CG / SG (on recommendation of GST council) may specify categories covered under RCM]
    
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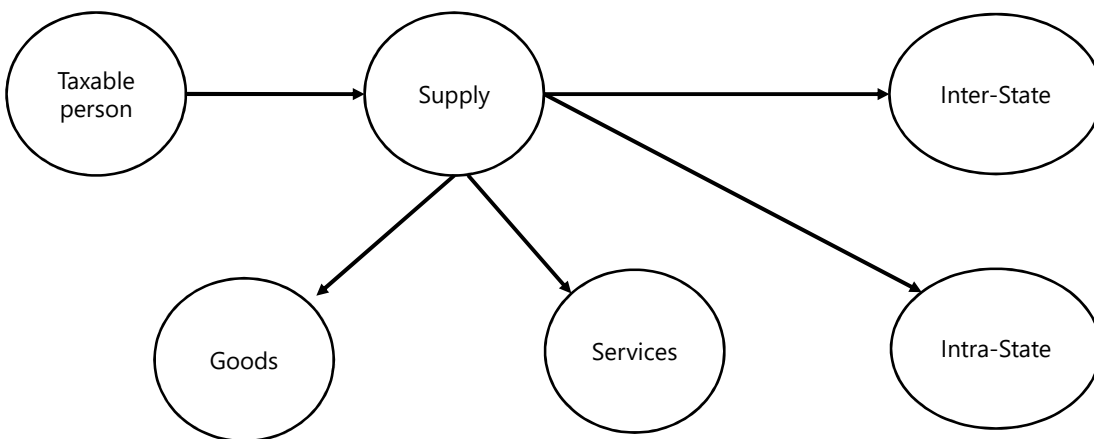
- **CGST u/s 2(22):**
Tax levied under the Central Goods and services tax Act, 2016
- **SGST u/s 2(89):**
Tax levied under the State Goods and services tax Act, 2016
- **Supply u/s 2(92):**
"supply" shall have the same meaning as assigned to it in **Section 3**

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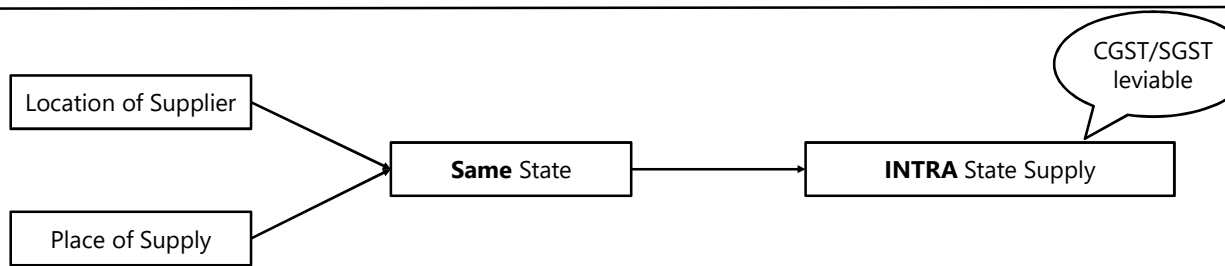
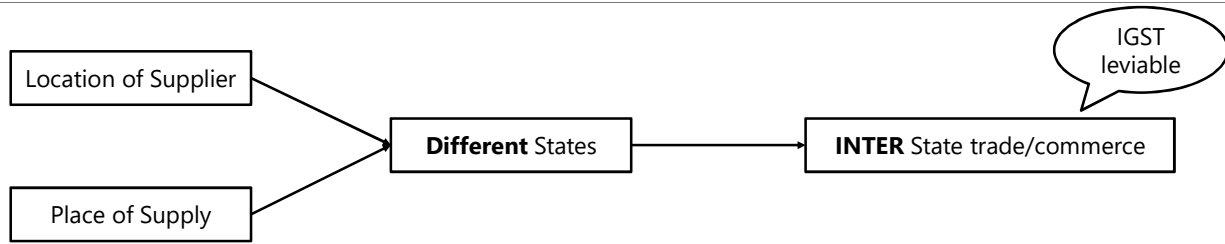
Charging Provision - Section 4 of IGST Act



Trigger points for GST levy



'Interstate' – Section 3(1) and 3(2)
'Intrastate' – Section 3A(1) and 3A(2)



Taxable person
u/s 9

Person [Section 2(74)]

➤ "Person" includes—

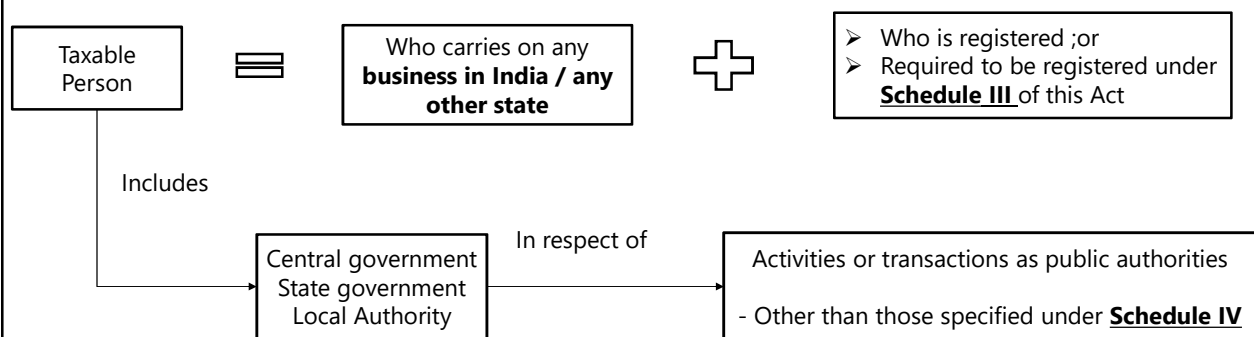
- an individual;
- a Hindu undivided family;
- a company;
- a firm;
- a Limited Liability Partnership;
- an AOP or a BOI, whether incorporated or not, in India or outside India;
- any corporation established by or under any Central, State or Provincial Act or a Government company;
- any body corporate incorporated by or under the laws of a country outside India;
- a co-operative society registered under any law relating to cooperative societies;
- a local authority;
- government;
- society as defined under the Societies Registration Act, 1860 (21 of 1860);
- trust; and
- every artificial juridical person, not falling within any of the preceding sub-clauses

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Taxable Person u/s 9 – Means and Includes



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Schedule IV – government and local authority not to be regarded as taxable person for specified activities

➤ **Services by Government / Local Authority to another Government / Local Authority excluding:**

- Express parcel post, speed posts, life insurance or agency services
- In relation to an aircraft / vessel
- Transport of goods or passengers

➤ **Services by Government / Local Authority to individuals in discharge of its statutory function or powers for:**

- Issuance of passport, visa, driving license, birth certificate or death certificate
- Assignment of right to use natural resources to an individual farmer for the purpose of agriculture

➤ **Services provided by a Government or local authority or a governmental authority by way of:**

- Any activity in relation to any function entrusted to a municipality under Article 243 W of the Constitution
- Any activity in relation to any function entrusted to a Panchayat under Article 243 G of the Constitution
- Health care; and
- education

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Schedule IV – government and local authority not to be regarded as taxable person for specified activities

➤ **Services by Government towards:**

- Diplomatic or consular activities
- Citizenship, naturalization and aliens
- Admission into, and emigration and expulsion from India
- Currency, coinage and legal tender, foreign exchange
- Trade and commerce with foreign countries, import and export across customs frontier, interstate trade and commerce; or
- Maintenance of public order

➤ **Services provided by Government/ local authority in the course of discharging any liability on account of any tax levied by such Government or authority**

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Schedule IV– government and local authority not to be regarded as taxable person for specified activities

➤ **Services by Government / Local Authority by way of:**

- Tolerating non performance of a contract for which consideration in the form of fines or liquidated damages is payable to the Govt./LA under such contract
- Assignment of right to use any natural resource where such right to use was assigned by the Government / Local Authority before 1st April, 2016

Explanation: Periodic payment required to be made not exempt

➤ **By way of deputing officers after office hours or on holidays for inspection or container stuffing or such other duties in relation to import or export of cargo on payment of Merchant Overtime Charges**

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Schedule IV– government and local authority not to be regarded as taxable person for specified activities

➤ **Services by Government / Local Authority by way of:**

- Registration required under any law for the time being in force
- Testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force

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Taxable Person u/s 9 – Excludes

- Person whose **aggregate turnover does not exceed** *Rs.20 lakhs (Rs.10 lakh for business in any NE States including Sikkim)
- **Agriculturist**
- **Services by employee to employer:**
 - In the course of; or
 - In relation to his employment, or
 - By any other legal ties creating the relationship of employer and employee as regards:
 - Working conditions,
 - Remunerations, and
 - Employers liability
 - Supply of goods by employee to employer – taxable supply
 - Supply of goods/ services by employer to employee – taxable supply

* As decided by the GST Council as against original limit of Rs.10 lakhs/Rs.5 lakhs prescribed in MGL

Taxable Person u/s 9 – Excludes

- **Person engaged exclusively in supply of goods/services not liable to tax**
- Person liable to **pay tax under RCM**, receiving services of value not exceeding ____ rupees in a year for personal use, other than for use in the course of furtherance of his business

Aggregate Turnover [Sec. 2(6)]

Means

Aggregate value of:

- All taxable supplies
- Non taxable supplies
- Exempt supplies
- Export of goods and / or services

Considering turnover of person:

- Having same PAN; and
- On all India basis

Excludes

Taxes paid under:

- CGST Act
- SGST Act
- IGST Act

Value of supplies on which tax is payable under reverse charge basis

- Not all taxes, cesses levies (other than GST) are excluded:
 - Entertainment tax
 - Octroi
 - Cesses like NMMC, LBT, etc

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Agriculturist [Section 2(8)] & Agriculture [Section 2(7)]

Agriculturist means [Sec. 2(8)]:

- A person
- **Cultivates land Personally**
- For the purpose of **agriculture**

To cultivate personally means [Sec. 2(103)]:

To carry on agricultural operations on one's own account by:

- one's own labour
- labour of one's family
- Servants (Wages / salary payable in cash or kind not in crop share); or
- hired labour under own or family supervision
- In case of HUF – any member of family

Agriculture [Sec. 2(7)]:

Includes:

- Floriculture
- Horticulture
- Sericulture
- Raising of crops
- Grass or garden produce
- Grazing

Excludes:

- Dairy farming
- Poultry farming
- Stock breeding
- Mere cutting of wood or grass
- Gathering of fruit
- Raising of man made forest
- Rearing of seedlings or plants

- Whether following is agriculture?
 - Pisciculture
 - Forestry
- Whether agriculturist is all together excluded from GST levy? i.e. supplies other than agricultural supplies are excluded from levy

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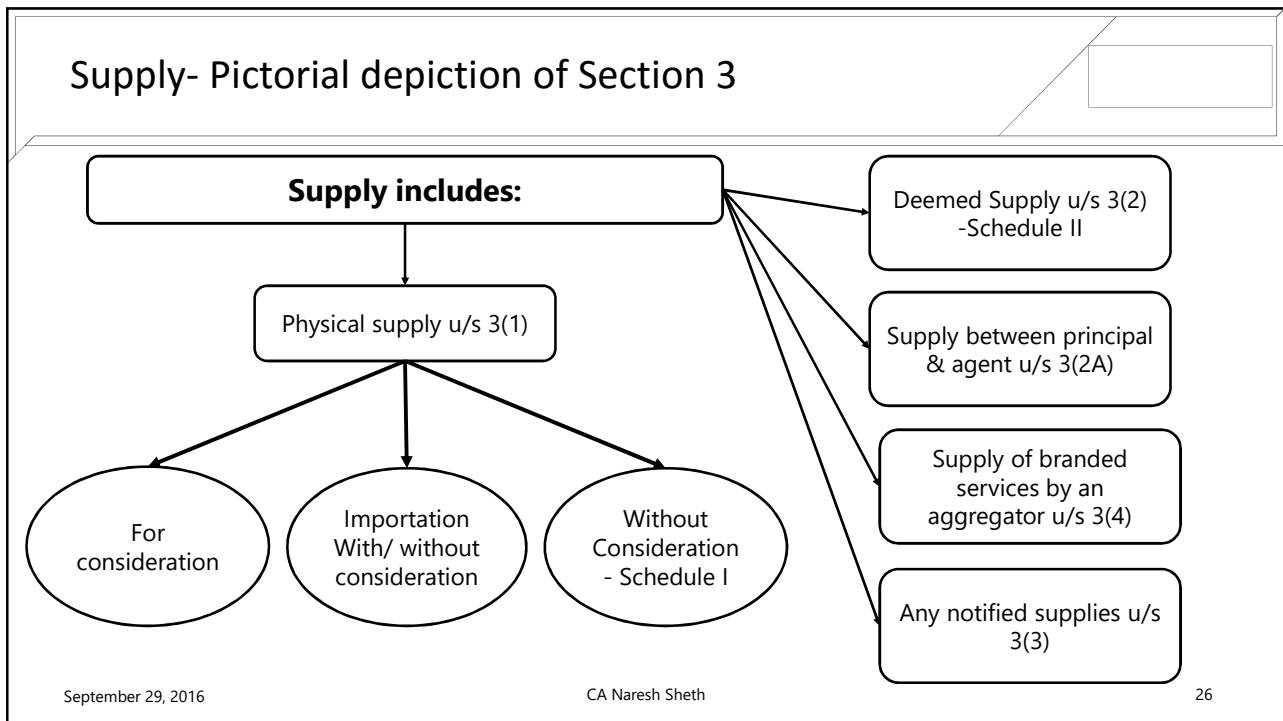
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Supply- Broad concept

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Definition of Supply

- Section 2(92) of CGST/SGST Act and Section 2(f) of IGST Act provides that:
 - “Supply” shall have the meaning assigned to in Section 3 of CGST/SGST Act
- Section 3 defines “Supply” to Include.....
- Definition of “Supply” is inclusive definition and hence one has to understand normal meaning of Supply
- Apart from what is provided in the section 3, the transactions covered under the general meaning of supply can also be covered
- **Dictionary meanings of “Supply”:**
 - “Make(something needed or wanted) available to someone; provide”- Oxford Dictionary
 - “To provide materials, goods and services- an act of providing something” – Cambridge Dictionary
 - “To make (something) available to be used : to provide someone or something with : To make available”- Merriam- Webster Dictionary

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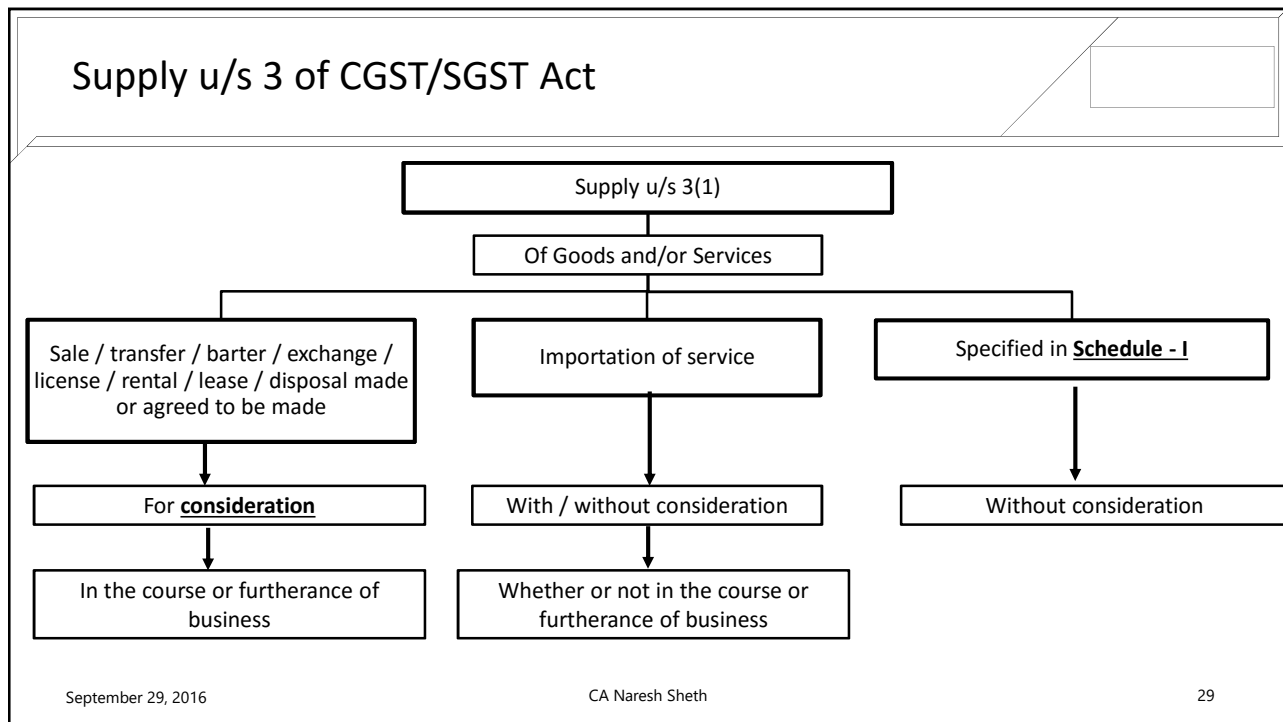
Relevant extracts of definition of “Supply” under foreign laws

- **Australia GST Act u/s 9 and 10 defines “Supply” to mean:**
 - 1) **A supply is any form of supply whatsoever**
 - 2) Without limiting subsection (1), supply includes any of these.....
- **United Kingdom u/s 5(2) of VAT Act, 1994:**
 - Subject to any provisions made by that Schedule and to Treasury orders under sub-sections (3) to (6) below-
 - a) **“supply” in this Act includes all forms of supply,**
- **Malaysian GST Act u/s 4 defines “Supply” to mean:**
 - **All forms of supply**, including supply of imported services, done for a consideration and anything which is not a supply of goods but is done for a consideration is a supply of services
- **Canadian GST Act defines “Supply to mean:**
 - Subject to sections 133 and 134, **the provisions of property or a service in any manner**, including sale, transfer, barter, exchange, license, rental, lease, gift or disposition

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Supply u/s 3 of CGST/SGST Act

Section	Analysis
3(2)	Schedule - II shall apply for determining certain matters that has to be treated as supply of goods or supply of service
3(2A)	Transaction between principal and agent shall be deemed to be supply where person acting as an agent (for agreed commission or brokerage) receives or supplies any goods / service on behalf of principal
3(3)	Central / State Government (On recommendation of GST council) has power to notify transaction to be treated as: <ul style="list-style-type: none"> • As supply of goods and not as a supply of service • As supply of services and not as a supply of goods • Neither a supply of goods nor a supply of services <div style="text-align: right; margin-top: 10px;">} Subject to Section 3(2)</div>
3(4)	Supply of any branded service by an aggregator under his brand name or trade name deemed to be supply of service by an aggregator

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Supply u/s 3(1)

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Supply u/s 3 of CGST/SGST Act

Supply u/s 3(1)

Of Goods and/or Services

Sale / transfer / barter / exchange / license / rental / lease / disposal made or agreed to be made

↓

For **consideration**

↓

In the course or furtherance of business

Importation of service

↓

With / without consideration

↓

Whether or not in the course or furtherance of business

Specified in **Schedule - I**

↓

Without consideration

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Definition of Goods

GST [Under section 2(48)]	Constitution [Under Article 366(12)]
<p>Goods means:</p> <ul style="list-style-type: none"> • Every kind of movable property • Other than: <ul style="list-style-type: none"> - Actionable claim [Sec. 2(1)] - Money [Sec. 2(68)] • But includes <ul style="list-style-type: none"> - Securities; - Growing crops, grass and things attached to or forming part of land which are agreed to be severed before supply or under the contract of supply <p>Explanation: Movable property shall not include any intangible property</p>	<p>Goods includes:</p> <ul style="list-style-type: none"> • All materials • Commodities; and • Articles

In addition to above, Schedule II deems certain supply to be that of goods

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Definition of Goods

- Difference in definition of goods as per Model GST Act and Constitution – Can it create some issue ?
- Whether sale and purchase of shares, securities, mutual fund units, etc. will be liable to GST?
- Whether shares in De-mat form is tangible or intangible:
 - If tangible – is it goods?
 - If intangible – is it service?
- Whether attributes of “goods” laid down by Supreme Court in BSNL case are still relevant?

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Definition of Service

GST [Under section 2(88)]	Constitution Amendment Bill
<p>Service means anything other than goods</p> <p>Explanation:</p> <p>Services include:</p> <ul style="list-style-type: none"> • Intangible property; and • Actionable claim <p>But does not include money</p>	<p>Article 366(26A) defines term 'service' to mean anything other than goods</p>

In addition to above, Schedule II deems certain supply to be that of services

Definition of Service

- **Actionable claim is a service:**
 - Factoring of debts is a service
 - Dealing in lottery is a service
 - What about winning of lottery?
- **Intangible property is service:**
 - Whether distinction between temporary transfer and permanent transfer is no longer relevant?
 - Whether permanent transfer of package software, brand, trade mark, copyright, patent, theatrical rights, non theatrical rights etc. will be supply of 'service' under GST ?
 - Clause 5 (c) of Schedule II includes temporary transfer of Intangible property as supply of 'service'?
- Whether immovable property (which is not goods) is now service?

Consideration u/s 2(28) of CGST/SGST Act

Consideration includes:

- Any payment made / to be made in money or otherwise
- The monetary value of any act or forbearance, **whether or not voluntary**
- Deposit (refundable or not) to be treated as consideration only when adjusted against supply

In respect of /
in response to or
for the inducement of the
supply of goods and/or
services
whether by the said person
or by any other person

Issues under deliberation:

- What is the meaning of term 'otherwise'? Does it include consideration in kind?
- Whether mere book entry would amount to payment made ?
- Q5 on page 20 of FAQ's :

Q 5: In respect of exchange of goods, namely gold watch for restaurant services will be taxable as two different supplies or will it be taxable only in the hands of main supplier?

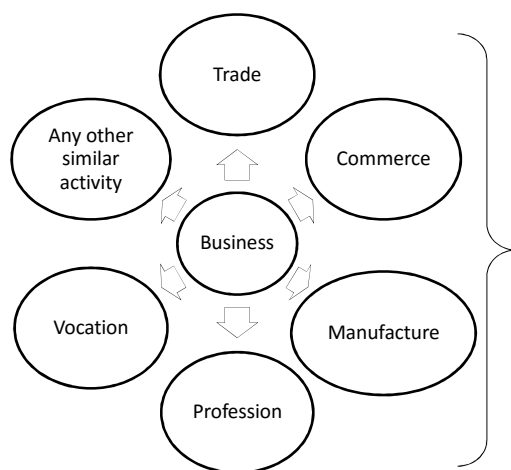
Ans.: No. In the above case the transaction of supply of watch from customer to the restaurant will not be an independent supply as the same is not in the course of business. It is a consideration for a supply made by the restaurant to him. The same will be taxable supply by the restaurant

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Business u/s 2(17) of CGST/SGST Act



- Whether or not such activities are for pecuniary benefit
- **Includes incidental or ancillary activities apart from these activities**
- **Irrespective of volume, frequency, continuity or regularity of such activities**
- Supply / acquisition of:
 - goods (Including capital assets); and
 - services

For commencement or closure of business
- Provision of facilities / benefits to its members by:
 - Club
 - Association
 - Society
 - Or any such body

For subscription / other consideration
- Admission of person(s) to any premises for consideration
- Services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade commerce or vocation

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Supply in the course or furtherance of Business- as per FAQ

➤ **Person making a supply in the personal capacity is not considered as a supply:**

- Taxable person is defined u/s 9 as a person who carries on any business at any place in India
- Q 10 on Page 48 of FAQ:

An individual buys a car for personal use and after a year sells it to a car dealer. Will the transaction be a supply in terms of MGL?

Ans.: No, because supply is not made by the individual in the course or furtherance of business. Further, no input tax credit was admissible on such car at the time of its acquisition as it was meant for non-business use

Supply in the course or furtherance of Business- as per FAQ

➤ **Q 9 on page 47 of FAQ's provides the meaning of "supply made in the course or furtherance of business":**

- "No definition or test as to whether the activity is in the course or furtherance has been specified under the MGL.
- Following business test is normally applied to arrive at a conclusion whether a supply has been made in the course or furtherance of business:
 1. Is the activity, a serious undertaking earnestly pursued?
 2. Is the activity pursued with reasonable or recognisable continuity?
 3. Is the activity conducted in a regular manner based on sound and recognized business principles?
 4. Is the activity predominantly concerned with the making of taxable supply for consideration/ profit motive?

The test endures that occasional supplies, even if made for a consideration, will not be subjected to GST"

➤ This perhaps contradicts with main definition of "Business"

Money, Actionable claim, Intangible Property, Tangible Property

- **Money** means [Section 2(68)]:

Indian legal tender	Foreign currency	Cheque	Promissory note
Bill of exchange	Letter of credit	Draft	Pay order
Traveller cheque	Money order	Postal or electronic remittance	Any other similar institute

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

- **Actionable claim** [Section 2(1)] shall have the same meaning assigned to it in section 3 of Transfer of Property Act, 1882
- **Tangible property** [section 2(93)] means any property that can be touched or felt
- **Intangible property** [section 2(59)] means any property other than intangible property

Import of goods

- Term "Import of goods" is defined u/s 2(51) of CGST/SGST Act to mean bringing into India from a place outside India
- Supply of goods in the course of import into the territory of India shall be deemed to be a supply of goods in the course of inter-state trade or commerce [Explanation 1 to definition of IGST u/s 2(c) of IGST Act]
- Basic Customs Duty will continue to be leviable on CIF value declared as per Customs Valuation Rules
- IGST will be payable on import of goods
- IGST will be payable by recipient of goods under Reverse Charge

Import of service

- Section 2(52) of CGST/ SGST Act provides that a supply will be considered as an **“Import of service”** if:
 - a) The supplier is located outside India,
 - b) The recipient is located in India,
 - c) The place of supply of service is in India, and
 - d) The supplier of service and recipient of service are not merely establishments of distinct persons
- Supply of services in the course of import into the territory of India shall be deemed to be a supply of services in the course of inter-state trade or commerce [Explanation 1 to definition of IGST u/s 2(c) of IGST Act]
- IGST will also be payable on import of services
- IGST will be payable by recipient of services under Reverse Charge
- Minimum threshold will be prescribed in case of import of service for personal use

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Supplies without consideration under Schedule I

- **Permanent transfer / disposal of business assets**
 - Assets transferred on succession of business,
 - conversion of entity (firm to LLP, company to LLP, firm to company, LLP to company),
 - Amalgamation or merger,
 - Disposal of computer to charitable organization
 - Proprietor/ partners transferring goods for personal use
 - Can tax be levied even when no ITC was claimed in respect of such assets?
- **Temporary application of business assets to a private or non business use**
 - Incidental usage of cars, telephones, office infrastructure (business assets) by promoters, directors, etc.
 - Assets and Infrastructure of parent company used by associate/ sister concerns
 - What about ITC credit? Is it a double whammy?

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Supplies without consideration under Schedule I

➤ **Services put to a private or non business use :**

- A chartered accountant filing his own returns or returns of his family members
- Rent a cab operator using vehicle for his family
- Hotelier giving accommodation to personal guests
- Restaurant owner offering tea, snacks, lunch etc. to its employees
- Restaurant owner offering tea, snacks, lunch etc. to its guests
- Outdoor caterer/ event manager doing food mela for its prospective customers
- What about ITC credit? Is it a double whammy?

➤ **Assets retained after deregistration:**

- Business assets retained by partners / proprietor on closure of business, retirement, dissolution, etc
- Business assets retained in the business after deregistration (on account of turnover below threshold)
- Business assets continued to be used for business on re-registration (what about ITC eligibility)

Supplies without consideration under Schedule I

➤ **Supply of goods and / or services by a taxable person to another taxable or non taxable person in the course of furtherance of business (Free Supplies)**

- Branch / Depot transfer
- Services provided by Head Office/ corporate office to its Branch offices or regional offices
- Goods sent to Job workers (other than job work u/s 43A of the Act)
- Articles distributed in sales promotion schemes/ business gifts
- Free samples distributed– physician samples in pharma industry
- Articles supplied under schemes such as "buy one get one", etc.
- Accessories supplied free or at concessional rate along with machine
- Gifts given to clients, business associates on social occasions such as marriage, Diwali, etc.
- Donation in kind to charitable trust or NGO's under CSR


Supplies without consideration under Schedule I

- Goods/facilities provided to employees in the form of:
 - Uniforms, kits and attire
 - Free pick up or drop
 - Canteen services
 - Annual picnics and get-togethers
 - Gifts in kind on social occasions such as marriage, birthdays, Diwali, etc.



Deemed Supplies of
goods/ Services
- Schedule II

Schedule II – Matters to be treated as supply of 'goods' or 'services'

Transaction	Nature of Supply	Clause
Transfer of title in goods	Goods	1(1)
Transfer of: <ul style="list-style-type: none"> • Goods; or • rights in goods; or • undivided share in goods <div style="display: inline-block; vertical-align: middle; margin-left: 20px;">  Without transfer of title </div>	Service	1(2)
Transfer of title in goods at future date upon payment of full consideration	Goods	1(3)
Lease, tenancy, easement, license to occupy land	Service	2(1)
Lease or letting out of building or part thereof including commercial, industrial or residential complex for business or commerce	Service	2(2)
Treatment or processing of other's goods (job work)	Service	3

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Schedule II – Matters to be treated as supply of 'goods' or 'services'

Transaction	Nature of Supply	Clause
Transfer of business assets: <ul style="list-style-type: none"> • Transfer / disposal of business asset (with or without consideration) • Put to private use or for any purpose other than business (With or without consideration) • Sale of business asset so as to recover any debt owed by a taxable person • When a person ceases to be a taxable person except when: <ul style="list-style-type: none"> ▪ Business transferred as going concern ▪ Business carried on by a personal representative (deemed to be a taxable person) 	Goods	4
Renting of immovable property	Service	5(a)
Sale of under construction flats / units	Service	5(b)
Temporary transfer or permitting use or enjoyment of IPR	Service	5(c)
Development, design, programming, customization etc. of IT Software	Service	5(d)

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Schedule II – Matters to be treated as supply of 'goods' or 'services'

Transaction	Nature of Supply	Clause
Agreeing to the obligation to: <ul style="list-style-type: none"> • Refrain from an act; or • Tolerate an act or situation; or • Do an act 	Service	5(e)
Works Contract	Service	5(f)
Transfer of right to use any goods	Service	5(g)
Supply of food as a part of service (Outdoor catering and restaurant sale)	Service	5(h)
Supply of goods by an unincorporated association to its members	Goods	6(a)

➤ **Relevance of bifurcating above transactions as goods or services:**

- Place of supply
- Point of supply
- Rates

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Supply between
Principal and Agent

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Agent [Section 2(5)]

- **Agent means a person who carries on** business of:
 - supply or receipt of goods and or services on behalf of another (Whether disclosed or not);
 - And includes:
 - Factor
 - Broker
 - Commission agent
 - Arhatia
 - Del credere agent
 - Intermediary
 - Auctioneer
 - Any other mercantile agent by whatever name called

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Agent handling goods/ services- Taxability

- Consignment Agent and C&F agents usually handles the goods of principal
- Principal and such agents are two different taxable persons
- Section 3(2A) of CGST/ SGST Act provides that :

*“where a person acting as an agent who, for an agreed commission or brokerage, **either supplies or receives any goods or services on behalf of any principal**, the transaction between such principal and agent shall be deemed to be a supply”*
- Supply by principal to Consignment agent and/or other such agents (whether inter-state or intra-state) will be a taxable supply liable to GST
- Even agents supplies or receives any services on behalf of Principal are regarded as independent supply u/s 3(2A) of CGST/ SGST Act
- Does this alter taxability position of following service agencies?
 - CHA receiving various services on behalf of importer or exporter
 - CFA receiving various services on behalf of Principal

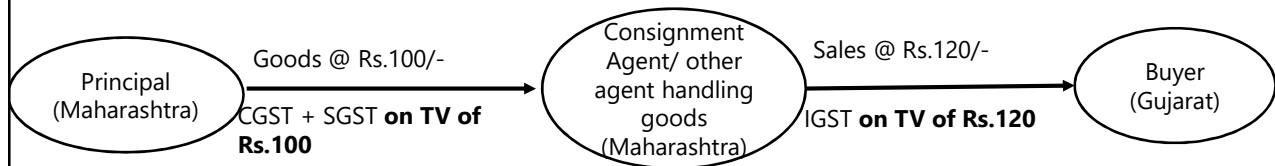
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Agent handling goods- Taxability

➤ Example: Base price is Rs.100/- , Agent's Commission is Rs. 20/- and the sales price is Rs.120/-



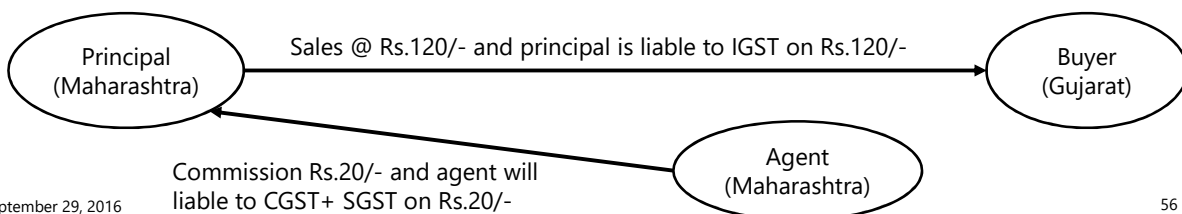
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Agent not physically handling the goods - Taxability

- Section 3(2A) of CGST/ SGST Act provides that :
*"where a person acting as an agent who, for an agreed commission or brokerage, **either supplies or receives any goods or services on behalf of any principal**, the transaction between such principal and agent shall be deemed to be a supply"*
- It appears that above provision deems only transaction between principal and agent as supply only when the agent is in physical possession of goods
- Where agent does not physically supply/ receives any goods, such transaction may not be a deemed supply
- GST implication and Valuation thereof would be as under:



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Supply by an aggregator

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Aggregator

- **Supply of any branded service by an 'aggregator'**, as defined in section 43B, under a brand name or trade name owned by him shall be **deemed to be a supply** of the said service by the said aggregator [Section 3(1)(4)]
- Aggregator who supplies services under his brand name or trade name is required to be registered under CGST/SGST Act irrespective of threshold [Clause 5 of Schedule III]
- The classic case is that of Ola, Uber etc. where:
 - Ola/ Uber, as aggregator, will be discharging service tax liability on cab services provided by cab operators
 - Cab operators will not be required to register themselves and discharge GST

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Supply – Summary of concepts & some issues

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Supply- Some important concepts

- **Concept of a supply is broader than a sale :**
 - Transfer of title in goods is required for Sales
 - Supply doesn't require transfer of title in goods
- **Presence of two persons for "taxable supply":**
 - Pre-requisite for VAT and Service tax
 - Not pre-requisite for Excise
 - Will not be a pre-requisite for GST
 - Even self-supplies may be a taxable supply in GST
- **Presence of Consideration for "taxable supply":**
 - Pre-requisite for VAT and Service tax
 - Not pre-requisite for Excise
 - Will not be a pre-requisite for GST

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Whether following are supply as defined u/s 3?

- Investments and redemption/maturity of investments in course of business
- Long term lease of land/ building
- Insurance claim received against loss of business assets
- Sale of business as a going concern
- Lease / renting of residential house
- Services provided by co-operative housing societies to its members
- Statutory functions carried out by various government departments
- Activities carried out by charitable trust and NGOs
- Personal assets or articles sold through OLX, Quikr, etc
- Partner working for the firm for remuneration
- Personal assets brought to firm/LLP/Company as capital
- Loyalty/ discount vouchers
- Lost, stolen and destroyed goods

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Composition,
Exemption &
Remission

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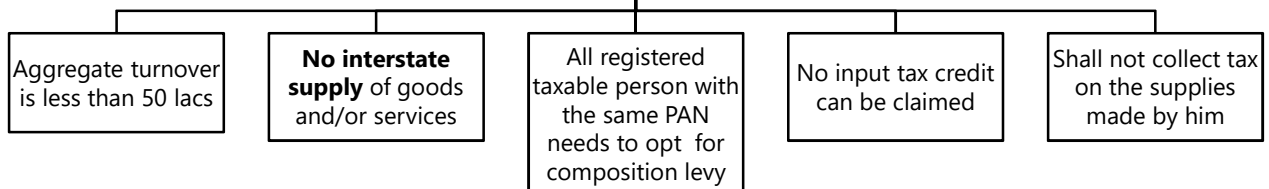
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Composition Levy u/s 8 of CGST/SGST Act

- GST council to recommend the composition levy
- Rate to be prescribed but same should not be less than 1% of turnover
- Proper CGST/SGST officer may permit supplier to avail benefit of composition levy

Conditions for availing composition levy



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Composition Scheme

- Option can be exercised only at beginning of the year
- Service tax authorities may cancel the service tax registration of the person opting for composition scheme if returns are not filed for three consecutive period [Section 21(2)]
- Composition dealer shall instead of a tax invoice issue a bill of supply containing particulars as may be prescribed [Section 23]
- A composition dealer has to file a return in form GSTR-4 on 18th of next month following the end of quarter [section 27]
- A registered taxable person who ceases to pay tax under composition scheme will be entitled to Credit of input tax in respect of input held in stock and Inputs contained in Semi Finished or Finished Goods on the day immediately preceding the date from which he becomes liable to pay tax [Section 16(3)]
- News report- GST Council decided not to allow Composition Scheme to Manufacturers and Service providers

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Exemptions

Section	Explanation
10(1)	Power to grant exemption by way of notification: The Central or a State Government in the public interest may grant exemption by a Notification
10(2)	Power to grant exemption by way of Special Order: The Central or a State Government in the public interest may grant exemption by a Special Order
10(3)	Power to grant exemption by Inserting an explanation: The Central or a State Government can Insert an Explanation for Clarifying Scope/applicability of any Notification issued u/s10(1) or order issued u/s 10(2)

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Remission of tax u/s 11 of CGST/ SGST Act

Central or a State Government can frame Rules for remission of tax on Supplies found deficient in quantity due to natural causes

- Q 18 and Q20 on page 22 of FAQ:
- that "remission of tax/ duty means relieving the tax payer from the obligation to pay tax on goods when they are lost or destroyed due to any natural causes. Remission is subject to conditions stipulated under the law and Rules made thereunder"
 - Remission of tax will apply only when tax is payable as per law i.e. taxable event should have happened and tax is required to be paid as per law.
 - Under GST law, levy is applicable upon supply of goods. Where goods are lost or destroyed before supply, taxable event does not occur in order to pay tax. Accordingly remission of tax does not arise

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Taxability of specific transactions

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Supplies to/from Union territories with legislation

- India is defined u/s 2(53) of the Act to include Union territories with legislations
- Article 366(26B) of the 101st Amendment Act defines 'State' to include includes the U.T with legislations
- **'Appropriate State'** is defined u/s 2(a) of IGST Act to include Union territories with legislatures
- Union territories with legislation are:
 - Delhi
 - Puducherry
- Delhi and Puducherry will be considered as 'States' for the purpose of GST
- **Leviability of tax:**

Supplies between	Type of supply	Applicable tax
Union territories (with legislatures)	Intra-State Supply	CGST + SGST
Two union territories with legislatures	Inter-State supply	IGST

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Supplies to/ from Union territories without legislation

- India is defined u/s 2(53) of the Act to include Union territories without legislations
- **Term 'State' is not defined in GST Act**
- **Union territories without legislation are:**
 - Andaman and Nicobar Islands
 - Lakshadweep
 - Dadra and Nagar Haveli
 - Daman and Diu
 - Chandigarh
- For the purpose of levability of GST, above U.T are not States under Article 366(26B) of the Constitution
- **GST levy (u/s 7 of CGST/ SGST Act and Section 4 of IGST Act) triggers in case of:**
 - Intra-state supplies
 - Inter-state supplies
- GST triggers only when there is Supply to and from States
- Does it mean that levy fails in case of supplies to/from such Union territories??

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Offshore supply transactions

- **Current scenario:**
 - Bombay High does not form part of any State of Union of India. Movement of Goods to Bombay High does not constitute inter-state sale:
 - Larsen & Toubro (Guj. HC) [2011 45 VST 361 (Guj)]
 - Bombay High is not a foreign destination and is within EEZ of India. Therefore, supplies made therein are not considered as 'exports'
 - Commissioner, Sales tax, Mumbai v. Pure Helium India Pvt. Ltd. [(2012) 49 VST 14 (Bom.)]
 - Narang International (Bom HC) [2004 135 STC 289 Bom]
 - Central Excise and Service tax are levied
 - No VAT is levied in such extended territorial waters

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Offshore supply transactions

➤ Post GST scenario:

- India is defined under Section 2(53) of the Act to include territorial waters, continental shelf, exclusive economic zone or any other maritime zone
- Whether supplies to Bombay High would be considered as Inter-State or Intra-State supplies?
- Whether activities carried out in Bombay High will be leviable to tax as Intra-State supplies?
- Which State will receive the proportionate tax amount?

Branch/ Stock Transfer- Taxability

- Schedule 1 prescribes matters to be treated as supply without consideration
- Clause 5 of Schedule 1 provides :
 - Supply of goods and/or services **by a taxable person to another taxable or non-taxable person** in the course or furtherance of business
- Whether transfer of goods/ services between HO and branch is a transaction between two taxable persons?
- Person as defined u/s 2(74) does not include Branch as a separate person
- In case of import of service u/s 2(52), through a legal fiction, establishment of a same person outside India has been specifically considered as separate person
- Two school of thoughts:
 - HO and Branch are not two separate persons and hence Branch transfer is not taxable
 - HO and Branch having separate registrations are two different taxable persons and hence Branch transfers are taxable

Branch/ Stock Transfer- Taxability

- Intra state stock transfer between HO and Branch:
 - single registration in a state and hence HO and Branch are not two taxable persons
 - Therefore not taxable
- Legislative intent appears to treat HO and Branch as separate persons and hence Inter-state transaction between HO and Branch may be regarded as a taxable supply liable to IGST
- FAQ at Q7 on page 46 - Inter-state self-supplies such as stock transfers will be taxable even if there is no consideration
- Branch transfer is covered U/R 3(5)(a) of Valuation Rules which provides for adoption of **the transaction value** ('TV') for supply from one place of business to another place of the same business
- In case of branch transfers, legal title of the goods is never transferred:
 - The transfer of goods without the transfer of title is a supply of service (Schedule 1(2))

Goods sent on approval- Taxability

- Section 12(6) of CGST/ SGST Act provides that if the goods (being sent on approval or sale or similar terms) are removed before it is known that supply has taken place, the time of supply shall be:
 - At the time when it becomes known that the supply has taken place; or
 - 6 months from the date of removal
- } Whichever is earlier
- It is a taxable supply only at **time of supply** as determined above
 - Where the goods are sent on approval and:
 - Buyer approves the goods within 6 months:
 - Time of supply of goods : **Date of such approval by the buyer**
 - Value of goods : Transaction Value as determined u/s 15(1) to 15(3) of the CGST/ SGST Act
 - Buyer does not approves the goods within 6 months:
 - Time of supply of goods : date subsequent to the end of 6 months from removal
 - Value of goods: Transaction Value as determined u/s 15(1) to 15(3) of the CGST/ SGST Act

Goods sent on approval- Taxability

- Goods not approved and returned by the buyer after a period of 6 months then:
 - Buyer to again discharge GST on the said supply
- Supplier and buyer will be entitled to ITC of the GST paid by them

Free samples- Taxability

- Classic case is of the physician samples in the pharma industry:
 - Presently excise is leviable on physician samples on MRP basis (pro-rata)
 - VAT not leviable on physician samples
- Will distribution of samples be taxable even if there is no consideration?

Schedule 1(5) covers Supply of goods and / or services by a taxable person to another taxable or non-taxable person in the course or furtherance of business
- No transaction value in case of free samples
- Rule 4 will be applicable to distribution of free samples:
 - Value of supply would be determined on the basis of transaction value of goods/services of ***“like kind and quality”*** supplied at or about the same time to other customers

Free/ concessional supplies to employees

- Supplies to the employees are taxable even if it is without consideration
- Examples of such free supplies to employees:
 - Telecom operator giving free services to the employees
 - Railway/ Airlines giving free tickets to employees
- Examples of concessional supplies to employees:
 - Television manufacturer giving TV at concession rate to its employees
 - Textile mill giving clothes/ fabric at concessional rate to its employees
- Valuation ????

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Job Work

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Job Work and Job worker [section 2(62)]

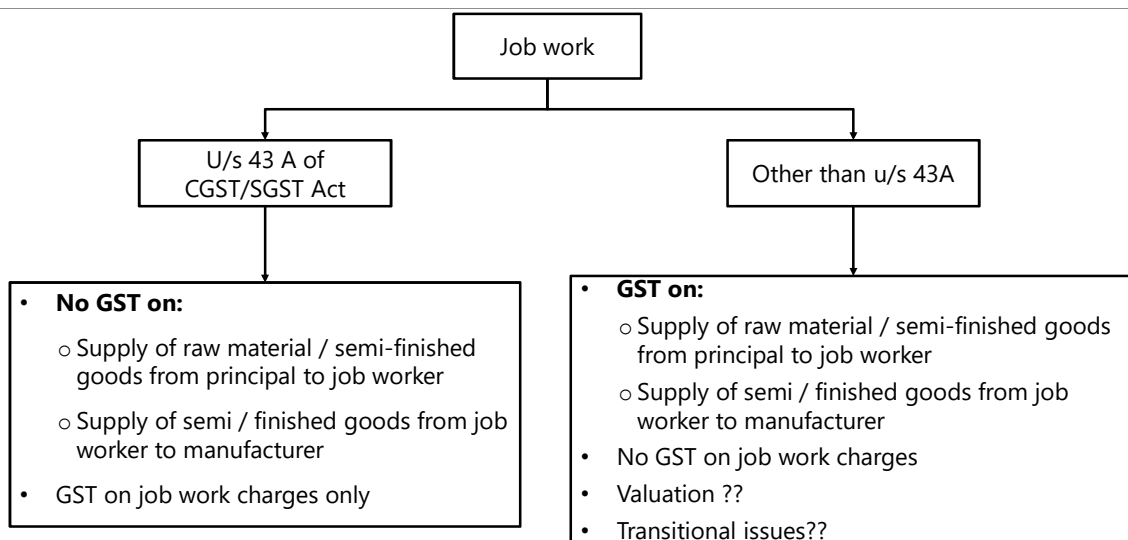
- **“job work” means:**
 - undertaking any treatment or process by a person
 - on goods belonging to another registered taxable person
- Term “job worker” shall be construed accordingly

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Broad Scheme of taxation for Job work



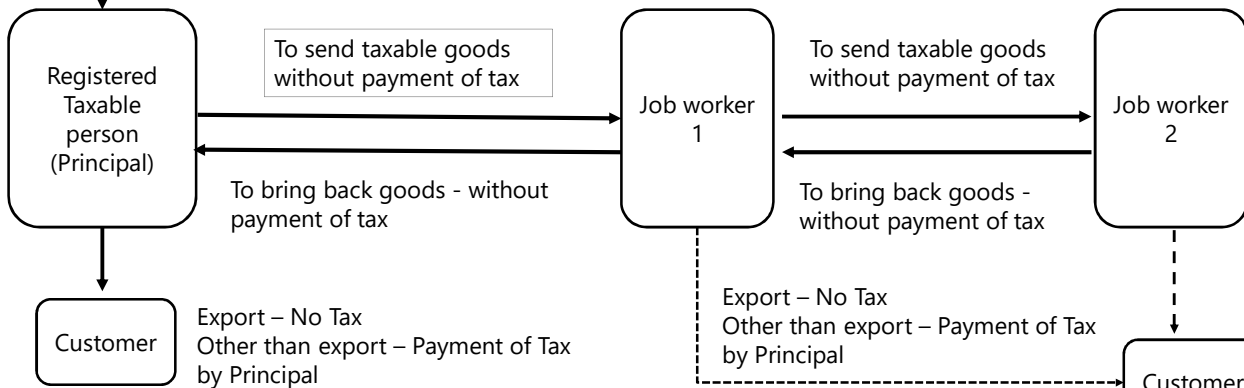
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Job work covered u/s 43A of CGST/SGST Act

Commissioner **may by special order** and **subject to conditions** as may be specified **allow**



- Is sec 43 A order is a general permission (qua-assesse) or consignment specific?

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Job work covered u/s 43A of CGST/SGST Act

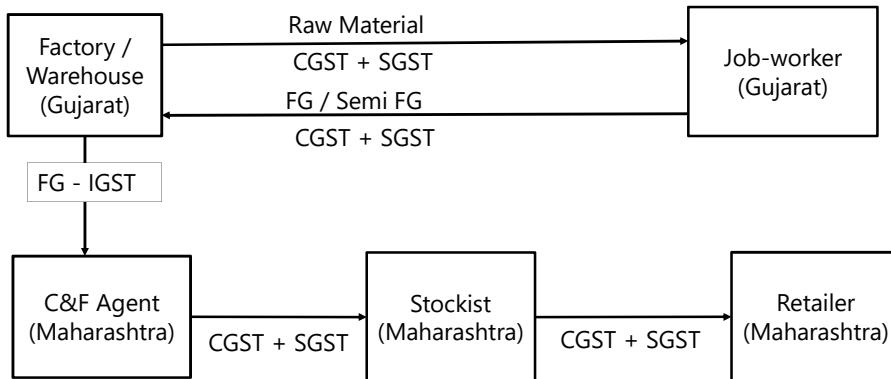
- Supply of goods by a principal to a job-worker u/s 43A not to be treated as supply of goods **[Proviso to Schedule I]**
- Supply of goods (after completion of job work) by registered job-worker **[Explanation 2 to Schedule III]**:
 - Shall be treated as the supply of goods by the "principal" (referred in section 43A); and
 - Value of such goods shall not be included in the aggregate turnover of the registered job worker
- Principal is **responsible** for accountability of goods including payment of tax thereon
- Goods are permitted to be supplied from place of business of job worker provided:
 - Principal declares the place of business of job worker as his '**additional place of business**'

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Supply Chain – Job Work other than u/s 43A



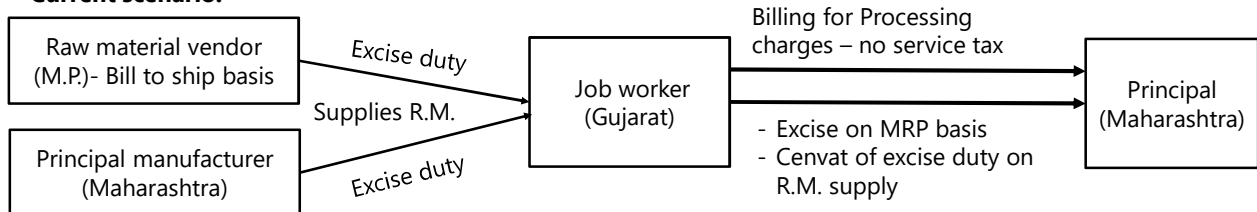
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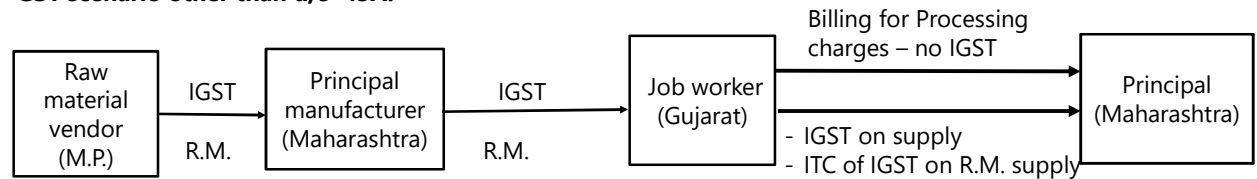
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Supply Chain – Job Work (LL)

Current scenario:



GST scenario other than u/s 43A:



Credit on the basis of bill to ship scenario not yet prescribed in GST model law

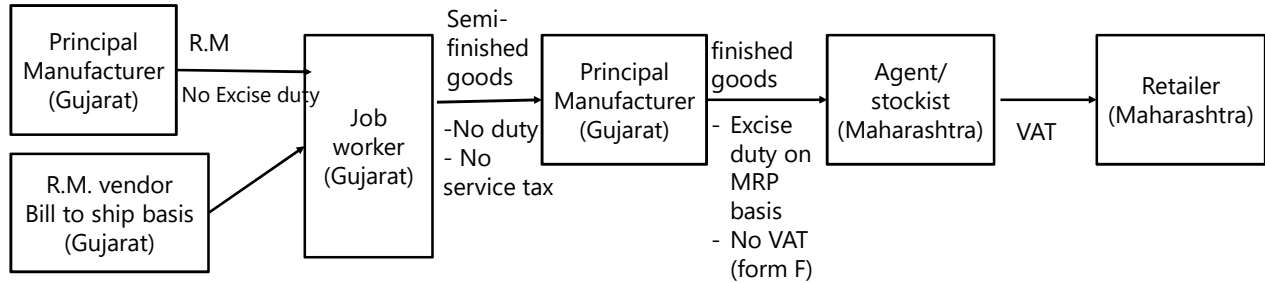
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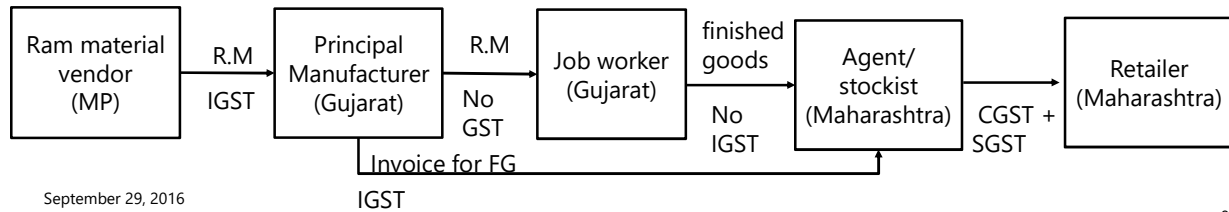
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Supply Chain – Job Work done (LL)

Current scenario (under 214/86-CE):



GST scenario (u/s 43A):



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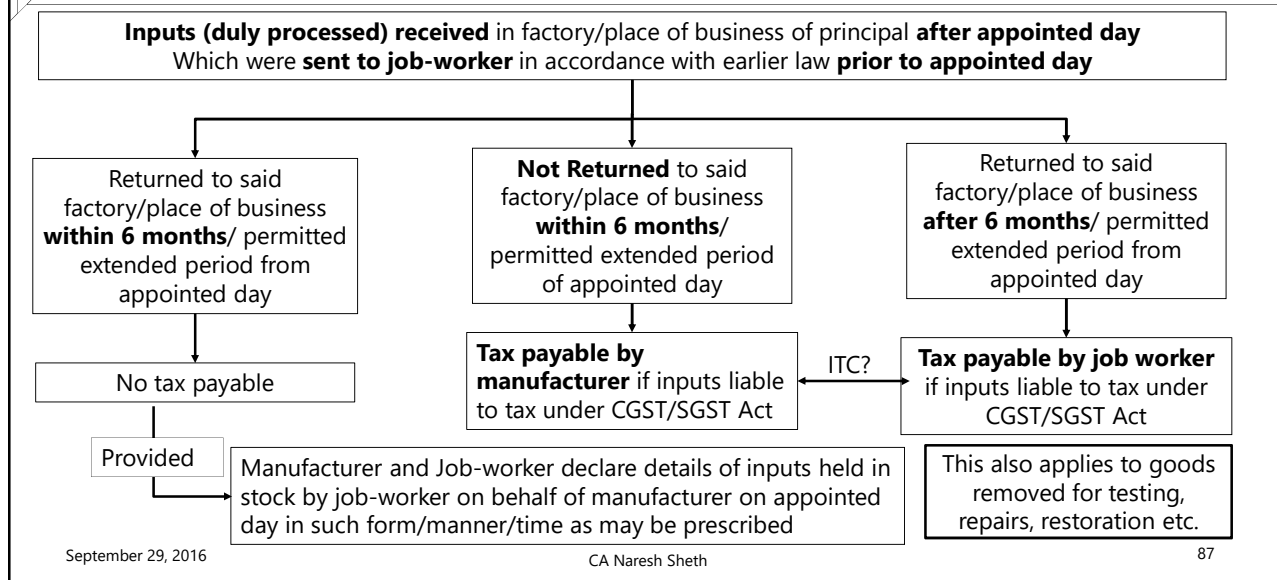
Job Work related transitional provisions

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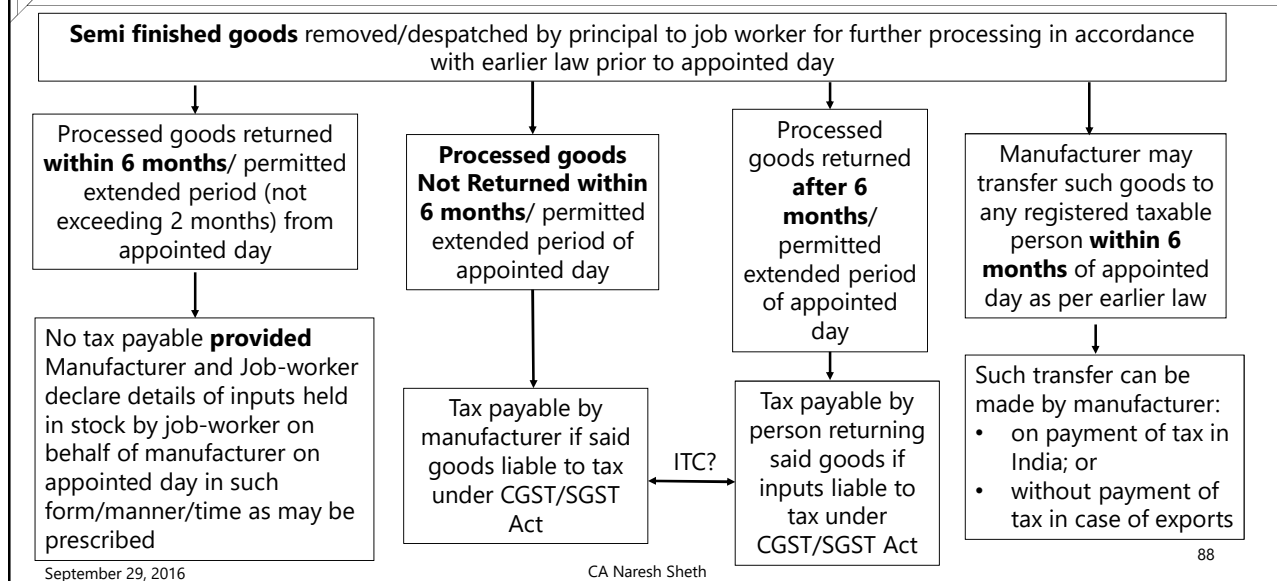
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Transitional Provisions – Inputs sent to job worker and processed goods removed [Section 150]

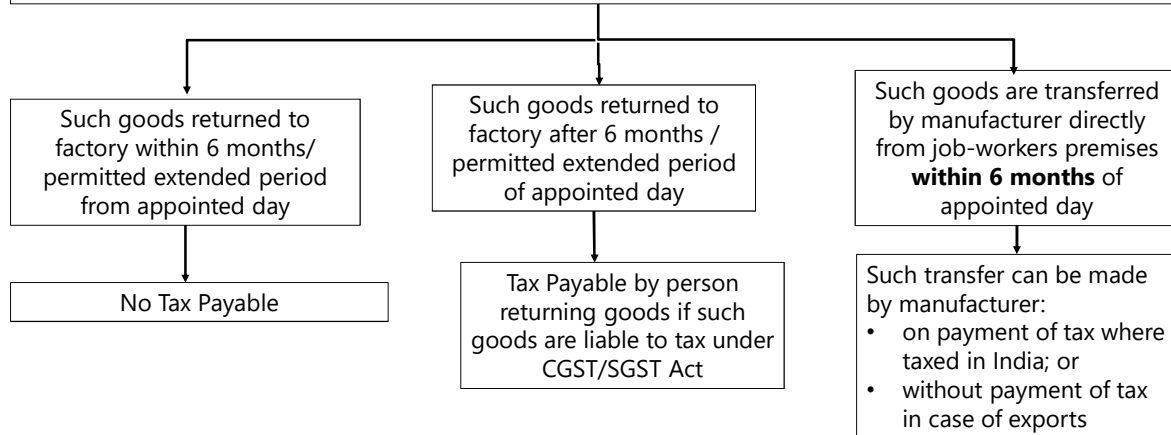


Transitional Provisions – Semi Finished goods sent and processed / finished goods returned [Section 151]



Transitional Provisions – Finished goods [Section 152]

Finished goods removed from factory/place of business for carrying out test or certain processes not amounting to manufacture prior to appointed day and such goods (after test or process) are returned/received on or after appointed day



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Thank you

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