

Prefix to the word “Supply” and its relevance!

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GST, the most talked about concept of the day poses such questions, answers to which are difficult to get. This is equally true for the concept of SUPPLY under the GST regime. As the concept of supply is the backbone of the entire scheme of the GST mechanism, the confusion on this concept makes each and every stake holder nervous.

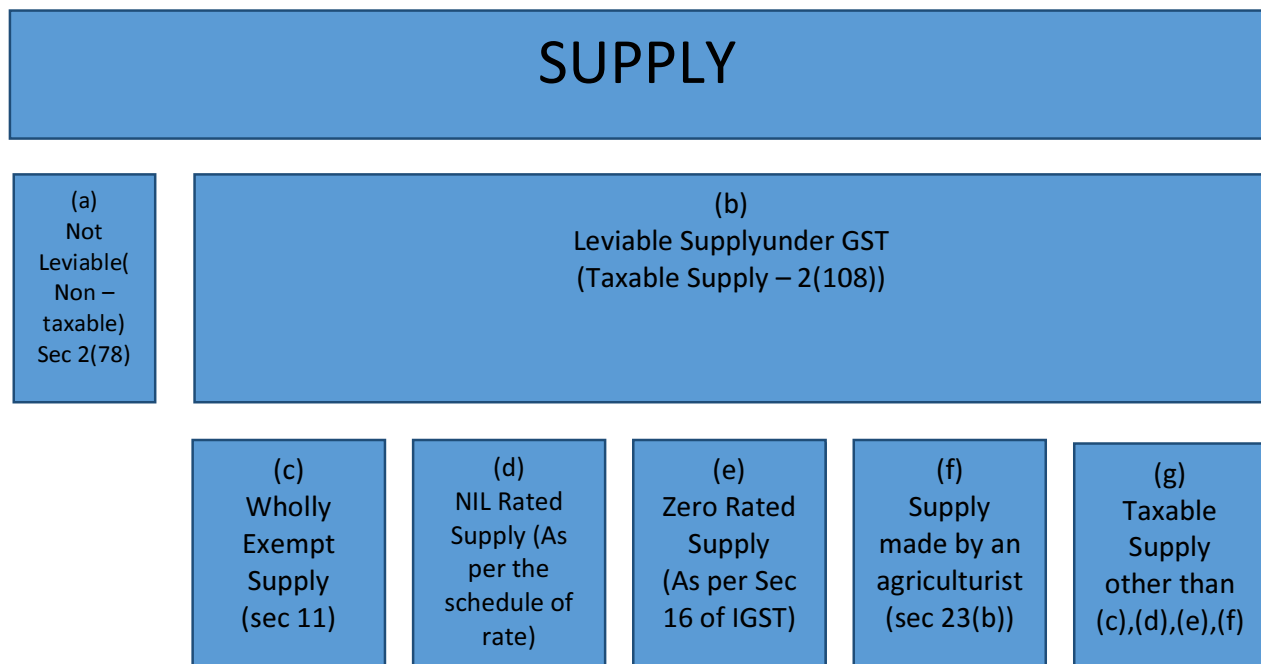
If we read the different Acts and Rules (under the GST regime) that are available, we shall find that a number of prefixes have been assigned to the word “supply” and it is this multiplicity that is the main cause for confusion.

Here, an attempt is being made to initiate a discussion as to the manner in which each of the concept associated with the supply may be understood and how each such concept may be related to various liabilities and rights under the act. It may please be noted that the idea of this article is primarily to initiate a discussion which may lead to a collective decision as to the intention of the legislature and its implication on the taxpayers and professionals.

Under the GST regime, Supply can be classified in various categories. However, this classification is not directly provided at any single place in the law. We are categorizing it for the sake of our understanding. The Question is, why are we required to make such a classification? Because at various places in the law the treatment of “something” is to be done is based on the classification of the supply. This point may be illustrated in a better way if we consider the following questions;

- 1) For Which supply, I need to OR need not take registration?
- 2) For Which supply, I can claim ITC and for which outward supply I need to reverse the ITC?
- 3) For Which Supply, I can opt for composition?
- 4) For Which Supply, I need to take registration irrespective of the threshold limit benefit?

Let’s take a look at chart and its definitions first of all.



Definitions:

(a) Non-taxable Supply - 2(78) “non-taxable supply” means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act

(b) Taxable Supply - 2(108) “taxable supply” means a supply of goods or services or both which is leviable to tax under this Act

(c) Wholly Exempt Supply – Sec 11 – Exemption by notification wholly or partly.

(d) Nil Rated Supply – Supply falling under Nil Category under Schedule of Rate.

(e) Zero Rated Supply - defined under IGST - 2(23) “zero-rated supply” shall have the meaning assigned to it in section 16;

Sec 16 IGST

(1) “Zero rated supply” means any of the following supplies of goods or services or both, namely:—

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(a) Export of goods or services or both; or

(b) Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.

(3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely:—

(a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilised input tax credit; or

(b) he may supply goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied,

in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

(f) Supply Made by an agriculturist as per Sec 23 (b)

(g) Taxable Supply other than c,d,e,f

Exempt Supply - 2(47)- “exempt supply” means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply;

Means, as per our chart, **Exempt Supply is combination of (a),(c),(d)**

[“Wholly Exempt Supply” and “Exempt Supply” are different terms]

Having understood the different concepts of supply, let us try and deal with the first two questions that we posed to ourselves. The first question relates to the liability to get registered and the second relates to the availability of Input Tax Credit. The remaining two questions (composition and registration irrespective of threshold) are not taken up in this article due to space constraints.

1) Registration:

Sections 22 to 30 deal with registration. We are touching only those portion of the registration which have something in to understand in relation to classification of supply. The general rule is if Turnover exceeds **20Lacs of taxable supply** then one need to take registration.

However, exception to this is sec. 23 person not liable to take registration is

- a) Person engaged **exclusively** in the supply of good and/or services that are **not liable to tax OR wholly exempt**
- b) An agriculturist

So, in a nut-shell,

- If supply not leviable under the act [sec 9(1) &(2)] – Not required to registered as the same is not taxable supply. – **(a) in chart**
- If person is not exclusively supplying goods/services which are **not liable to TaxOR Supply is wholly exempt** - Not required to registered – **(c) and (d) in chart**
- If person is an agriculturist, he is not required to take registration to the extent he is supplying goods out of cultivation of land – **(f) in chart**

2) Input Tax Credit:

Section 17 (1),(2),(3) deals with restricting ITC for exempted Supply. 17(1) is not allowing any ITC if the use of the goods or services is not for business. 17(2) and (3) is allowing credit only to taxable supply including zero rated supply and restricting to Exempted Supply.

Exempted supply is defined under sec 2(47) and for the purpose of restriction credit, it also includes Turnover of RCM, Transaction in securities, Sale of land (except where land value is included in taxable supply as per Schedule II para 5 sub clause (b)).

So, in a nut-shell,

- **ITC available** for taxable supply as per **(g)** in the chart and **zero rated supply (e)** in the chart
- ITC is not available for exempted supply **(a),(c),(d) in the chart** and also not available for - **Turnover of RCM, Transaction in securities, Sale of land (except where land value is included in taxable supply as per Schedule II para 5 sub clause (b)).**
- If the taxable person is engaged in taxable and exempted supply then **ITC need to be reversed** as per **rule 7** of ITC rule.