

Treading the GST Path – XVI

Supply & Consideration

(G. Natarajan, Advocate, Swamy Associates)

1.0 Happy to note that many of the issues highlighted in this series of articles have been addressed by the Government in the revised model GST law released in public domain last week. Massive changes have been made in the revised model law. In this article the relevance of “consideration” for determining “supply” may be seen.

2.0 As per Sec 3 of the model Act, supply includes all forms of supply of goods and / or services agreed to be made for a consideration in the course or furtherance of business. Importation of services for a consideration whether or not in the course or furtherance of business is also included in the definition of supply. It may be noted that except those transactions which are mentioned in Schedule I, which would become supply even if made without consideration, in all other cases, “consideration” is a must to constitute supply. Schedule I covers the following.

1. Permanent transfer/disposal of business assets where input tax credit has been availed on such assets.

It may be noted that this provision would apply only if input tax credit has been availed on such assets.

2. Supply of goods or services between related persons, or between distinct persons as specified in section 10, when made in the course or furtherance of business.

A same entity, if registered or required to be registered in more than one State such units requiring such registration would be treated as a distinct person under Section 10. For example, a factory in the State of Karnataka and its depot in the State of Maharashtra require separate registration at both places and supply of goods and / or services between them (eg. Stock transfers) even without consideration would attract GST. But stock transfers within the same State between a factory and depot situated in the same State would not constitute supply and hence would not attract GST, as such supplies without consideration, between the same taxable person are not covered under Schedule I. If the same entity is having another business vertical in the same State and such business vertical has opted for separate registration, supply of goods and services to / from such business vertical would also attract GST.

3. Supply of goods— (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

Supplies of goods between principals and agents, even without consideration would constitute supply and attract GST. Hence, clearance of goods to a consignment agent / clearing and forwarding agent, even if such agents are located in the same State would attract GST.

4. 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.

3.0 Apart from the above, no other supplies without consideration would be considered as "supply" so as to attract GST.

4.0 As a consequence, if any free sample or gift is given by one person to another or if a service is provided without consideration, such transactions would not attract GST.

4.1 It may also be noted that as per Section 16 (4) (g) no input tax credit would be available in respect of the goods disposed of by way of gift or free samples. For example if any goods are purchased for the purpose of distributing as gifts / free samples, no input tax credit can be availed for the GST paid on such goods. What will happen if the final products manufactured are given as gifts / free samples? Whether input tax credit in respect of the inputs and input services used in the manufacture of final products, which are distributed as gifts / free samples would be entitled? In as much as section 16 (4) (g) reads as, "input tax credit shall not be available in respect of the goods disposed of by gift / free sample" it appears that if the final products are distributed as gift / free sample, proportionate input tax credit in respect of the inputs and input services consumed in their manufacture would not be entitled.

5.0 As per the provisions of the current Cenvat Credit Rules, the definition of "inputs" covers, "goods used for providing free warranty for final products". Hence, cenvat credit availed inputs, can be used for free replacement purposes during the warranty period, without reversal of any credit. Will this position undergo a change under the model GST law?

5.1 It may be noted that the restriction of credit as per Section 16 (4) (g) would apply only if the goods are disposed of as gift / free sample. Free replacement of parts during warranty period could neither be considered as a "gift" nor as a "free sample". Hence, it is felt that input tax credit would continue to be admissible in respect of the inputs used as free replacement during warranty.

6.0 One of the contentious issue under the excise law was the valuation of physician's samples. If the manufacturer himself distributes some of the medicaments manufactured by him as physician sample, it will not attract GST as it is a supply without consideration. But the manufacturer has to forego proportionate input tax credit. When a contract manufacturing unit, manufacturers physician samples and sell the same to the brand owner, the same would attract the levy of GST.

7.0 In case of promotional activities like "Buy one Get one free", GST would be payable only on the item which is being sold and no GST is payable for the goods being given free. But proportionate input tax credit has to be foregone. In the case of multi-piece packages also, where certain goods are given free of cost along with other goods, the same would be the position.

(Published in www.taxindiaonline.com on 09.12.2016)

