



HEADLINESeated as Fiduciaries

COLUMNS | CST & VAT / GST | TOP STORIES

Circular dated 08.06.2018 on Servicing of Cars may open a Pandoras box under Goods and Services Tax Laws

June 25, 2018 1:28 pm | By : Vivek Sharma



The levy of **Goods and Services Tax ('GST')** is on supplies of goods or services or both. Intra-state supplies are levied **Central Goods and Services Tax ('CGST')** and State Goods and Services Tax ('SGST')/ Union Territory Goods and Services Tax ('UGST') whereas inter-state supplies are subject matter of **Integrated Goods and Services Tax ('IGST')**. As is well known, the erstwhile Indirect tax enactments treated goods and services separately under different laws resulting in distortion of the Credit mechanism. Further, transactions where there was interlinkage of goods and services, often came with complications of the levy itself, valuation issues, classification issues and so on.

One would have thought with the advent of GST laws which encompasses both goods and services within its domain, classification/ rate of tax issues would curtail. The law itself provides for treatment of transactions which involve supply of multiple goods/ services and defines them as 'composite supply' or 'mixed supply'. The relevant definitions are quite clear:

The Central Goods and Services Tax Act, 2017

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

...

Section 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 drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately

....

Section 2 (90) "principal supply" means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary;

Section 8 of the Central Goods and Services Tax Act, 2017 ('CGST Act') also prescribes the manner of determination of the tax liability on such supplies:

En RECENT 'l...



No Input Tax Credit for purchase of September 5,



Registration of CA Firms Now a One-Day September 5,



CBIC clarifies Refund related Issues [Read September 5,

Kerala Floods: Customs Officers from Chennai donates Rs.27 Lakhs [Read Letter]

--	--	--	--	--	--

5,

can

5,

Section 8. Tax liability on composite and mixed supplies. – The tax liability on a composite or a mixed supply shall be determined in the following manner, namely:-

(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; and

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

As is seen, section 8 of CGST Act reads as ‘shall’ and is therefore required to be strictly complied with. There is, thus, no further option given in law while determining tax liability of ‘composite supply’ or ‘mixed supply’.

In so far as ‘composite supply’ is concerned, an assessee is required to determine the ‘principal supply’ of the transaction or the essence of the transaction and apply this rate of tax on the entire transaction. Whereas, in case of ‘mixed supply’ (an unnatural bundle), colour is required to be taken from the highest rate of tax of the goods/ service which forms part of the ‘mixed supply’ and the entire transaction is required to be taxed at this highest rate of tax.

--	--	--	--	--	--

In other words, the ‘essentiality test’ should be the determining factor while applying the rate of tax on ‘composite supply’. Therefore, one is expected to interpret the contract where the supply involves multiple taxable goods or taxable services or both, determine the essence of the contract and then apply the rate of tax on the basis of the taxable good or taxable service which gives the essential character to the contract. The law does not appear to permit an



Govt to Hike Penalty for Companies not
September 5,

2018

VIDEOS CORNER

VIEW MORE



All you want to know about Fat Tax



All you want to know about Goods and Service Tax (GST) Bill

UPDATES

VIEW MORE



artificial splitting of the contract by simply showing separate value of taxable goods / services and then apply the individual rates of such taxable goods / taxable services. This may lead to distortion of the GST system.

The Supreme Court in the case of **All India Federation of Tax Practitioners vs UOI 2007 (7) SCC 527** while dealing with Service tax laws, succinctly stated:

....

6. At this stage, we may refer to the concept of "Value Added Tax" (VAT), which is a general tax that applies, in principle, to all commercial activities involving production of goods and provision of services. VAT is a consumption tax as it is borne by the consumer....

....

11. At this stage, we may state that the above discussion shows that what was the economic concept, namely, that there is no distinction between consumption of goods and consumption of services is translated into a legal principle of taxation by the aforesaid Finance Acts of 1994 and 1998.

This resonance of the economic concept also stands noted in European Jurisprudence where it is well settled that a supply which comprises a single supply from an economic point of view should not be artificially split so as to distort the functioning of the VAT system.



Get Wi-Fi Router @ Zero Cost with Great Speed. Book Now

Ad Airtel V-Fiber, The most Reliable Network with Instant support. Book Now!

Airtel Broadband

Book Now

Consequent to the above, a supply which is composite in nature and comprises of both taxable goods/ taxable services should not be permitted to be split for the purposes of application of rate of tax. The 'essentiality test' / principal nature of supply needs to be determined and a single rate of tax applied accordingly. In cases of, unnatural bundle such as 'mixed supply', the highest rate of tax is to be the determining factor.

The Ministry of Finance – Tax Research Unit itself applied the above rationale in its **Circular No. 34/8/2018-GST dated 01.03.2018** (F. No. 354/17/2018-TRU) wherein it was clarified:

May 17, 2018

ICAI conducts Residential Programmes for Men and Women Chartered Accountants



ICAI Appointed as Vice-Chair of Asian-September 22,

2017



Govt to set up National Financial July 24, 2017



Job Opening in Investment Advisory June 11, 2017

<i>Sr. No.</i>	<i>Issue</i>	<i>Clarification</i>
1.
2	<i>Whether retreading of tyres is a supply of goods or services?</i>	<p><i>In retreading of tyres, which is a composite supply, the pre-dominant element is the process of retreading which is a supply of service. Rubber used for retreading is an ancillary supply. Which part of a composite supply is the principal supply, must be determined keeping in view the nature of the supply involved. Value may be one of the guiding factors in this determination, but not the sole factor. The primary question that should be asked is what is the essential nature of the composite supply and which element of the supply imparts that essential nature to the composite supply.</i></p> <p><i>Supply of retreaded tyres, where the old tyres belong to the supplier of retreaded tyres, is a supply of goods (retreaded tyres under heading 4012 of the Customs Tariff attracting GST @ 28%)</i></p>

During the Service tax regime, the Ministry of Finance – Central Board of Excise & Customs vide **Circular No. 96/7/2007-ST dated 23.08.2007** on the issue of authorized service station/ spare parts clarified as follows:

<i>Reference Code</i>	<i>Issue</i>	<i>Clarification</i>
...
<i>036.03/23-8-07</i>	<p><i>Whether spare parts sold by a service station during the servicing of vehicles is liable to payment of service tax?</i></p> <p><i>Whether exemption can be claimed on the cost of consumables that get consumed during the course of providing service?</i></p>	<p><i>Service tax is not leviable on a transaction treated as sale of goods and subjected to levy of sales tax/VAT. Whether a given transaction between the service station and the customer is a sale or not, is to be determined taking into account the real nature and material facts of the transaction. Payment of VAT/sales tax on a transaction indicates that the said transaction is treated as sale of goods.</i></p> <p><i>Any goods used in the course of providing service are to be treated as inputs used for providing the</i></p>

service and accordingly, cost of such inputs form integral part of the value of the taxable service.

Where spare parts are used by a service station for servicing of vehicles, service tax should be levied on the entire bill, including the value of the spare parts, raised by the service provider, namely, service stations. However, the service provider is entitled to take input credit of excise duty paid on such parts or any goods used in providing the service wherein value of such goods has been included in the bill. The service provider is also entitled to take input credit of service tax paid on any taxable services used as input services for servicing of vehicles.

During the Service tax enactment, there were several decisions which held that value of spare parts was not to be included in 'authorised service station' service. This was primarily due to competency of legislation as Service tax laws did not extend to goods. Such decisions may not have relevance with the change in law to GST, as now, goods as well as services fall within the competence of GST laws.

However, Ministry of Finance – Central Board of Indirect Taxes and Customs in a recent **Circular No. 47/21/2018-GST 08.06.2018 (F. No. CBEC-20/16/03/2017-GST)** when dealing with servicing of cars has clarified as follows:

<i>Sr. No.</i>	<i>Issue</i>	<i>Clarification</i>
1.
2.	<i>How is servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, to be treated under GST?</i>	<p><i>2.1 The taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case.</i></p> <p><i>2.2 Where a supply involves supply of both goods and services and the</i></p>

value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.

There appears to be certain level of dichotomy in the view of the Board from time to time. With the advent of GST laws, one would have expected that principal nature of supply would have been the determining factor in the illustration at hand and a single rate of tax been made applicable. The Circular dated 08.06.2018 does covenant that taxability of supply would be determined looking at facts and circumstances of each case. However, given the issue at hand, Sr. No. 2 of Circular dated 08.06.2018 certainly has the potential to open a pandoras box for all concerned under GST laws and may have wide ramifications when dealing with issues concerning applicability of rate of tax with reference to transactions which involve usage of both goods and services.



Vivek Sharma is a Partner, Economic Laws Practice. He can be contacted at viveksharma@elp-in.com. The views expressed herein are the personal views of the author and do not express the view of the Firm.

Topics:

- CARS
- CENTRAL GOODS AND SERVICES TAX ACT 2017
- CGST
- GOODS AND SERVICES TAX
- GST
- IGST
- PANDORAS BOX
- SERVICING OF CARS

RELATED STORIES



No Input Tax Credit for purchase of Motor Vehicles used for Cash Management Business



CBIC clarifies Refund related Issues [Read Circular]



Govt to Hike Penalty for Companies not passing GST Benefit to Consumers

and supplied post



E-way Bill Validity need not be Extended while storing Goods in Godown of Transporter: CBIC



Govt Extends Due Date for filing GST Returns [Read Notification]



Breaking: Govt waives Late Fee on certain GST Returns [Read Notification]

1 Comment

Sort by **Oldest**



Add a comment...



Bharat Sharma

good analysis undertaken.
very educative for everybody

Like · Reply · 6w

Facebook Comments Plugin

About Taxscan

TaxScan Media is an online news portal for reporting all news, articles, judgments, Circulars, orders and notifications relating to Taxation Laws in India. We use the tagline 'Simplifying Tax Laws'. Our mission is to Simplify the Tax Laws and make aware the people to their tax rights and duties and participate nation building.

[Privacy Policy](#) | [Contact](#)

[INTERVIEWS](#)

[COLUMNS](#)

[VIDEOS CORNER](#)

[INCOME TAX](#)

[CST & VAT / GST](#)

[SERVICE TAX](#)

[EXCISE & CUSTOMS](#)

[INTERNATIONAL](#)

[TAXATION](#)

[DOMESTIC TAXATION](#)

[FINANCE ACT / BUDGET](#)

[Q & A CORNER](#)

