

Composite and Mixed Supplies under GST¹



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GST Law में Composite Supply तथा Mixed Supply का Concept, Finance Act 1994 (Service tax) से लिया गया है। Finance Act 1994 की धारा 66F में “Bundled Services” का प्रावधान था जिसमें “Bundled Services” को परिभाषित करने के साथ-साथ यह भी स्पष्ट किया गया था कि Taxation purpose से उन 'Bundled Services' को कर देयता के उद्देश्य से कौन सी Single Service मानते हुए treat किया जायेगा।

कुछ परिवर्तनों के साथ इसे GST Law में लाया गया। चूंकि GST Law में Services के साथ Goods की आपूर्ति भी की जाती है अतः 'Bundled Services' के बजाय “Bundled Supplies” की अवधारणा लायी गई। इसमें “Composite Supply” तथा “Mixed Supply” को अलग-अलग परिभाषित करते हुए कर की दर के निर्धारण की व्यवस्था की गयी है।

इस अध्याय में हम पढ़ेंगे कि 'Composite Supply' तथा 'Mixed Supply' क्या है और इन पर किस दर से कर आरोपणीय हैं?

GST Act की धारा 2(30) में Composite Supply को निम्न प्रकार परिभाषित किया गया है:-

(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.

अर्थात् जब किसी 'Taxable person' द्वारा किसी प्राप्तकर्ता को दो या दो से अधिक taxable supplies की (माल की, सेवा की अथवा दोनों की) या उनके Combination की, जो Naturally bundled हो तथा जिनकी व्यापार के सामान्य क्रम में एक साथ जोड़कर आपूर्ति की जाती है जिनमें एक Principal Supply है तो इसे Composite Supply कहा जायेगा।

Taxable person, taxable supply तथा Principal Supply को GST Act की धारा 2 में निम्न प्रकार परिभाषित किया गया है :-

(107) "**Taxable person**" means a person who is registered or liable to be registered under section 22 or section 24.

(108) "**Taxable supply**" means a supply of goods or services or both which is leviable to tax under this Act.

¹. Editor's Note : Views expressed in this Article are personal views of the Author and Editors does not necessarily have the same opinion as of the author of this Article. Readers of this Article can send their comments through E-mail on address ntnalerts@gmail.com.

(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.

अर्थात् जब दो या दो से अधिक taxable supplies को जो Naturally Bundled हो तो उन्हें एक Supply माना जायेगा और यह Supply वह होगी जो उस Combination की Principal Supply है।

परिभाषा में Composite Supply का उदाहरण भी साथ में दिया गया है।

चूंकि 'Bundled' शब्द को GST Act में परिभाषित नहीं किया गया है अतः इसका वही अर्थ लिया जायेगा जो इसका शब्दिक अर्थ है जो निम्न प्रकार है:—

'Bundle' means a collection of things or a quantity of material, tied or wrapped together; tie-up or roll up a number of things together as through into a parcel.'

Naturally Bundled Supply के कुछ उदाहरण इस प्रकार हैं:—

(1) किसी होटल में 4 दिन/3 रात का पैकेज जिसमें Break fast की सुविधा सम्मिलित है यह Composite Supply है और इसकी Principal Supply 'Hotel accommodation' है इसलिए इस Composite Supply को Hotel accommodation की single supply माना जायेगा।

(2) कुछ Airlines यात्रियों को भोजन भी उपलब्ध कराती हैं इस Composite Supply की Principal Supply "Transportation of passengers by air" मानते हुए Single supply treat किया जायेगा।

(3) 'Commercial property' की Renting में कभी-कभी Security, Clearing तथा Air conditioning की सेवाएं भी सम्मिलित होती हैं। अतः Naturally Bundled होने के नाते इन्हें Single Supply "Renting of commercial property" treat किया जायेगा।

'Mixed Supply' को धारा 2(74) में निम्न प्रकार परिभाषित किया गया है:—

(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;

तात्पर्य किसी taxable person द्वारा "two or more individual supplies" (माल की अथवा सेवा की) या उनके Combination को जो एक दूसरे के conjunction से बनाया गया हो, किसी एकल कीमत (Single price) के लिए आपूर्ति किया जा रहा हो और यह 'Composite Supply' न हो, तो Mixed Supply कही जायेगी।

यहां 'two or more' के साथ taxable supplies का उल्लेख नहीं है अर्थात् Mixed Supplies में exempt supply भी सम्मिलित हो सकती है।

परिभाषा में दिये गये उदाहरण के अतिरिक्त अन्य उदाहरण इस प्रकार हैं:—

(1) यदि Residential एवं Commercial purposes के लिए बिल्डिंग किराये पर दी जा रही है। उसकी प्रथम दो मंजिलों पर डाक्टर द्वारा क्लीनिक खोला जायेगा तथा तीसरी मंजिल निवास के लिए प्रयोग की जायेगी। यह सेवाएं Naturally Bundled नहीं है। अतः यदि एक एग्रीमेंट के तहत इन सेवाओं की आपूर्ति की जाती है तो यह Mixed Supply की श्रेणी में आयेगी।

(2) Mosquitoes repellent मशीन की mat के साथ आपूर्ति।

(3) दूधपेस्ट के साथ दूधब्रश की आपूर्ति।

यह तय हो जाने के बाद कि आपूर्ति 'mixed' है अथवा 'Composite' इस आपूर्ति पर कर की दर क्या होगी? इसका उल्लेख GST Act की धारा 8 में निम्न प्रकार किया गया है:-

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.

तात्पर्य Composite Supply की स्थिति में वह दर लागू होगी जो Principal Supply पर कर की दर है तथा Mixed Supply के मामले में, उस particular supply जिस पर कर की दर सबसे अधिक है के अनुसार, कर देयता होगी।

अलग प्रकाशित अध्याय 'Taxable and Non taxable Supplies' में यह उल्लेख किया गया था कि कुछ परिभाषाओं में संशोधन की आवश्यकता है।

मेरा निजी मत है कि इसी प्रकार Composite Supply की परिभाषा में भी प्रयुक्त 'Taxable Supplies' से 'Taxable' शब्द हटाया जाना चाहिए क्योंकि धारा 8(a) में इस शब्द का प्रयोग नहीं हुआ है।

इस शब्द के रहते कोई भी 'exempt supply' 'composite supply' का हिस्सा नहीं बन सकती। जैसा कि उस अध्याय में उल्लेख किया गया था कि 'Health care services' के साथ बीमार को भोजन की सप्लाई पर कर देयता के सम्बन्ध में विवाद सम्भव हैं।

CBIC ने परिपत्र सं. 32/06/2018—GST दिनांक 12.02.18 जारी किया है जो निम्न प्रकार है:-

Subject : Clarifications regarding GST in respect of certain services

S. No.	Issue	Clarification
5.	(3) Food supplied to the patients:	Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals

from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST.

यहाँ परिपत्र के प्रस्तर 5(3) के अनुसार एक कर मुक्त सप्लाई (exempt supply) एवं एक कर योग्य आपूर्ति (Taxable supply) को जोड़कर Composite supply मान लिया गया है जबकि परिभाषा के अनुसार यहां “Two or more taxable supplies” नहीं है।

कभी-कभी डाक्टर (विशेषतया होम्योपैथी व आर्युवेद के डाक्टर) prescription के साथ-साथ दवाइयां भी देते हैं। बच्चों के डाक्टर Vaccine injection के साथ अपनी फीस भी वसूलते हैं। चोट लगने पर डाक्टर पट्टी व दवाई की फीस भी सम्मिलित रूप से लेता है ऐसी स्थिति में 'Composite supply' की परिभाषा के चलते यह आपूर्ति Composite supply नहीं होगी।

तो क्या यहां food supply taxable होनी चाहिए या डाक्टर अपनी सेवाओं के साथ-साथ जो माल (goods) की आपूर्ति करता है उस पर कर आरोपित किया जाना न्यायोचित होगा? इसके लिए कुछ न्यायिक निर्णयों पर द्रष्टिपात करते हैं।

'Sri Damma Pedda Yellapa vs State of A.P. (1960) 11 STC 691 के वाद में माननीय उच्च न्यायालय आंध्रप्रदेश द्वारा यह निर्णय लिया गया था कि जो डाक्टर अपनी फीस के अतिरिक्त मरीज को दवायें भी उपलब्ध कराता है वह dealer नहीं है अर्थात् उनकी दवाई की आपूर्ति पर कर आरोपणीय नहीं है।

International Hospital Pvt. Ltd. vs State of U.P. (2014) (2) TMI 765 (All) के वाद में माननीय इलाहाबाद उच्च न्यायालय ने 'implantation of a stent or valve' को बिक्री नहीं माना।

Fortes Health care Ltd. vs State of Punjab (2015) 2 NTN 1014 (P&H) के वाद में माननीय पंजाब एवं हरियाणा उच्च न्यायालय ने निम्न मत स्थापित किया:-

“The dominant purpose of a Hospital is to provide medical treatment and if during a medical procedure it is required to provide medicine, stents, implants etc. it cannot be, by a deeming fiction, considered as 'Sale.’”

परन्तु GST के अन्तर्गत इन दवाइयों की आपूर्ति को Health Care Services के साथ Composite Supply मानकर कर मुक्त किया जाना मेरे मतानुसार संभव नहीं है। Hospital में मरीजों को Accommodation उपलब्ध कराने के सम्बन्ध में भी यही विवाद है

उक्त से स्पष्ट है कि GST Law में भी retrospective effect से Composite supply की परिभाषा में संशोधन किया जाना चाहिए।

Mixed supply के सम्बन्ध में यह स्पष्ट किया जाना आवश्यक है कि यदि किसी educational institution द्वारा दो कोर्स चलाए जा रहे हैं प्रथम Qualification recognised by law of India तथा दूसरा recognised by foreign law. ऐसी स्थिति में प्रथम आपूर्ति करमुक्त तथा दूसरी आपूर्ति कर योग्य है। लेकिन यदि institution द्वारा इसे

Artificially bundled कर आपूर्ति की जा रही है तो यह Mixed supply होगी और इसकी सम्पूर्ण राशि पर कर आरोपणीय होगा।

GST Act की धारा 7 के Schedule II का प्रस्तर 6 निम्न प्रकार हैं:-

6. Composite supply

The following composite supplies shall be treated as a supply of services, namely:-

- (a) works contract as defined in clause (119) of section 2; and
- (b) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (other than alcoholic liquor for human consumption), where such supply or service is for cash, deferred payment or other valuable consideration.

ये Composite Supply, Services की Supply घोषित की गई हैं भले ही इस सप्लाय में 'Principal Supply' Goods की हो।

कोई Supply Composite है अथवा नहीं अर्थात् वह in the ordinary course of Business 'Naturally Bundled' है अथवा नहीं इसके लिए कोई Straight jacket formula नहीं है। हर मामले को individually examine करना होगा परन्तु फिर भी कुछ संकेतन (indicators) नीचे दिये गये हैं :-

- (1) आपूर्ति प्राप्तकर्ता का ग्रहण बोध (Perception)- यदि बड़ी मात्रा में आपूर्ति प्राप्तकर्ता इस प्रकार की आपूर्तियों के बंडल को as a package प्राप्त करने को reasonably expect करते हों।
- (2) यदि किसी particular area में इस प्रकार की आपूर्तियों को अधिकांश आपूर्तिकर्ता bundle के रूप में ही आपूर्ति करते हों। जैसे-Airlines द्वारा यात्रा के किराये के साथ-साथ भोजन की आपूर्ति।
- (3) यदि incidental or ancillary Supplies, main supply के 'better enjoyment' में मदद करती हों। जैसे होटल में ठहरने के साथ-साथ breakfast प्रदान करना तथा Laundry Services उपलब्ध कराना आदि।
- (4) यदि elements की आपूर्ति का विज्ञापन As a package किया गया है अथवा different elements, separately उपलब्ध नहीं है।
- (5) यदि आपूर्ति के लिए different elements अविभाज्य (integral) है इनमें से किसी element को पृथक करते ही Supply की Nature प्रभावित होती हो।

CCE v/s MD &RW Jeffs (1995) STC 759 में माननीय उच्च न्यायालय द्वारा VAT Purpose के लिए Multiple Supply तथा Composite Supply के लिए निम्न सिद्धांत दोहराये:-

- (1) Firstly, it is a question of law as applied to the facts is whether a supply is multiple or composite.
- (2) Secondly, the question must be answered by the application of common sense to the substance and reality of the matter.
- (3) Thirdly, in certain cases it may be difficult on a practical level to apportion the consideration between the various elements in a supply and this may indicate that this is rather a composite supply.

'Pure Agent' द्वारा प्रदत्त सेवाएं तथा Composite Supply में अंतर है। 'Naturally Bundled Services' में Principal Service के अलावा Sub-services की आपूर्ति उसके Part के Ancillary के रूप में होती है जबकि Pure Agent द्वारा जो expenses किये जाते हैं वह Services का Part नहीं होते।

यहां यह भी उल्लेखनीय है कि यदि दो कर योग्य आपूर्तियों के साथ कर मुक्त आपूर्ति की जाती है यदि यह Composite Supply की परिभाषा से आच्छादित होती है तो 'Principal Supply' पर कर की दर के अनुसार समस्त Consideration कर योग्य होगा। करमुक्त आपूर्ति की राशि को कम नहीं किया जायेगा।

IGST Act की धारा 20 (ii) इस प्रकार है:-

“Subject to the provisions of the Act and the rules made thereunder, the provisions of Central Goods and Service Tax Act relating to “Composite Supply and Mixed Supply” shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under the Act.”

तात्पर्य IGST Act के लिए भी composite supply तथा mixed supply के प्रावधान SGST Act तथा CGST Act की भांति लागू होंगे।

अब CBIC द्वारा इस प्रकार की supplies के बारे में जारी clarifications तथा F.A.Qs पर दृष्टि डालेंगे।

Composite Supply के सम्बन्ध में CBIC द्वारा जारी Circular No. 11/11/2017-GST दिनांक 20.10.2017 निम्न प्रकार है:-

Subject: Clarification on taxability of printing contracts

Requests have been received to clarify whether supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc., printed with design, logo, name, address or other contents supplied by the recipient of such supplies, would constitute supply of goods falling under Chapter 48 or 49 of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975) or supply of services falling under heading 9989 of the scheme of classification of services annexed to notification No. 11/2017-CT(R).

2. In the above context, it is clarified that supply of books, pamphlets, brochures, envelopes, annual reports, leaflets, cartons, boxes etc. printed with logo, design, name, address or other contents supplied by the recipient of such printed goods, are composite supplies and the question, whether such supplies constitute supply of goods or services would be determined on the basis of what constitutes the principal supply.

3. Principal supply has been defined in Section 2(90) of the Central Goods and Services Tax Act as 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.

4. In the case of printing of books, pamphlets, brochures, annual reports, and the like, where only content is supplied by the publisher or the person who owns the usage rights to the intangible inputs while the physical inputs including paper used for printing belong to the printer, supply of printing [of the content supplied by the recipient of supply] is the principal supply and therefore such supplies would constitute supply of service falling under heading 9989 of the scheme of classification of services.

5. In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapter 48 or 49, printed with design, logo etc. supplied by the recipient of goods but made using physical inputs including paper belonging to the printer, predominant supply is that of goods and the supply of printing of the content [supplied by the recipient of supply] is ancillary to the principal supply of goods and therefore such supplies would constitute supply of goods falling under respective headings of Chapter 48 or 49 of the Customs Tariff.

इसी प्रकार Circular No. 34/8/2018-GST, dated 01.03.2018 भी जारी किया गया है जो निम्न प्रकार है:-

Subject : Clarifications regarding GST in respect of certain services

S.No.	Issue	Clarification
1.	Whether activity of bus body building, is a supply of goods or services?	In the case of bus body building there is supply of goods and services. Thus, classification of this composite supply, as goods or service would depend on which supply is the principal supply which may be determined on the basis of facts and circumstances of each case.
2.	Whether retreading of tyres is a supply of goods	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. 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%).

Transport and Logistic से सम्बन्धित FAQ's का प्रश्न 6 एवं प्रश्न 18 तथा उनके उत्तर निम्न प्रकार हैं :-

Question 6: Are intermediary and ancillary services, such as, loading/unloading, packing/unpacking, transshipment and temporary warehousing, provided in relation to transportation of goods by road to be treated as part of the GTA service, being a composite supply, or these services are to be treated as separate supplies.

Answer: The GTA provides service to a person in relation to transportation of goods by road in a goods carriage, which is a composite service. The composite service may include various intermediary and ancillary services, such as,

loading/unloading, packing/unpacking, transshipment and temporary warehousing, which are provided in the course of transport of goods by road. These services are not provided as independent services but as ancillary to the principal service, namely, transportation of goods by road. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services.

In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included in the invoice issued by the GTA, such service would form part of the GTA service and would not be treated as a separate supply. In fact, any service provided along with the GTA service that is part of the composite service of GTA shall be taxed along with GTA service and not as separate supplies.

However, if such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies.

Question 18: Does the GST treatment on fees for ancillary services in relation to air transport follow that of the underlying air transport service?

Answer: Yes, ancillary services are part of the service of transporting a passenger by air and do not constitute a separate supply of service. In this respect, ancillary services include services that are incidental to the transport of passengers by air (e.g., excess baggage charges, date change charges, unaccompanied minor fees, preferred seat charges, cancellation fees etc.).

Consequently, ancillary services shall be treated within the same category of service as 'transport of passengers by air' and shall attract the same rate of GST as applicable to the transport of passengers by air.

31.03.2017 को प्रकाशित FAQs के Chapter 2 का Q.6 एवं उसका उत्तर इस प्रकार हैं—

Question 6: What are composite supply and mixed supply? How are these two different from each other?

Ans. Composite supply is a supply consisting of two or more taxable supplies of goods or services or both or any combination thereof, which are bundled in natural course and are supplied in conjunction with each other in the ordinary course of business and where one of which is a principal supply. For example, when a consumer buys a television set and he also gets warranty and a maintenance contract with the TV, this supply is a composite supply. In this example, supply of TV is the principal supply, warranty and maintenance service are ancillary.

Mixed supply is combination of more than one individual supplies of goods or services or any combination thereof made in conjunction with each other for a single price, which can ordinarily be supplied separately. For example, a shopkeeper selling storage water bottles along with refrigerator. Bottles and the refrigerator can easily be priced and sold separately.

और अंत में

Jubilant Life Sciences Ltd. v/s C.C.E. Noida 2013 (29) STR 529 (Tri-Del) में माननीय अधिकरण द्वारा निम्न मत व्यक्त किया है :-

“A contract including various services need not be considered as a whole and classified considering it as a single service when the service rendered under

the contract are distinct in nature and the contract lays down the services as distinct services with separate remuneration fixed for the services.”

इस अध्याय में की गई चर्चा से यह निष्कर्ष तो निकलता ही है कि Composite Supply की परिभाषा में 'taxable' शब्द अधिक जुड़ा प्रतीत होता है। इसे संशोधित कर हटा दिया जाना उचित होगा।

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