

## Eye Share: A Paradox on Composite Supply v/s Mixed Supply Under GST

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Under the GST regime, taxability of particular goods or services depends on whether the supply amounts to 'supply' as defined under CGST Act, 2017. The scenario becomes complex when, in a transaction, an element of one or more supply of goods or services exists leading to a question whether the supply is 'composite' one or a 'mixed' supply.

**Mr. Badrinath N R** and **Mr. Siddeshwar Yelamali (Partners, Singhvi Dev & Unni LLP)** deep dive into the concept of composite and mixed supply as envisaged under the GST law. Referring to SC decisions in **Sabarmati Reti Udyog Sahakari Mandali Ltd. [(1976) 3 SCC 592]** and **Kone Elevator India Pvt. Ltd. [TS-142-SC-2014-VAT]**, authors express the possibility of a supplier entering into different contracts for supply of goods & services separately without any need to merge such contracts and treat them as 'composite supply'.

### Article

#### 1. Background:



In Central Goods and Services Tax Act, 2017 (for brevity, 'GST Law' / 'CGST Act, 2017'), to levy tax on goods or services or both, one needs to ensure that goods or services or both supplied constitutes a 'supply' as defined under Section 7 of the GST law. Upon analyzing whether the goods or services or both supplied constitutes a supply, one has to ascertain whether such supply is leviable to tax, for instance – alcoholic liquor for human consumption<sup>[1]</sup> is not leviable to tax under GST and supply of petroleum crude, high speed diesel, motor spirit, natural gas and aviation turbine fuel<sup>[2]</sup> will be liable to tax under GST law on such date as will be notified the Central Government.

Often supply of goods or services will involve an element of one or more supply of goods or services therein. For instance, supplier of laptop supplies backpack, supplier of equipment will provide installation and commissioning service, supplier may supply combination of two or three goods (skimmed milk powder, cosmetic pack and deodorant). In such a situation one needs to determine essentially what rate of tax is to be applied on such supplies. In this context, the composite supply vis-a-vis mixed supply come into play.

#### 2. Composite supply v/s mixed supply

**a.** Composite supply<sup>[3]</sup> is defined to mean 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.

To constitute a composite supply, it requires that the two or more **taxable supplies** should

be naturally bundled and supplied in conjunction with each other. What are naturally bundled and supplied in conjunction is a matter of fact which needs to be analysed on case to case basis.

Further, one may note that in order to constitute a composite supply, there should be two or more taxable supplies. Therefore, if two or more supplies have a combination of **taxable and exempt supply, then it will not fall within the meaning of composite supply.**

One more aspect which one can decipher here is, can parties to a contract have separate contracts say one for supply of goods and another for installation of service and then apply the applicable rate of tax each of the supplies. In this context the following judgements under the erstwhile law would be apt.

Commissioner of Sales Tax v. Sabarmati Reti Udyog Sahakari Mandali Ltd. [1976] 3 SCC 592 wherein the Hon'ble Apex Court held as follows 'It is well-settled that whether a particular transaction is a contract of sale or a works contract depends upon the true construction of all the terms and conditions of the document, when there is one. The question will depend upon the intention of the parties executing the contract.'

i. Basis the above judgement, the Hon'ble Apex Court in the case of Kone Elevator India Pvt. Ltd. 2014 (5) TMI 265 - SUPREME COURT held as follows 'We may hasten to add that this position is stated in respect of a composite contract which requires the contractor to install a lift in a building. It is necessary to state here that if there are two contracts, namely, purchase of the components of the lift from a dealer, it would be a contract for sale and similarly, if separate contract is entered into for installation, that would be a contract for labour and service'.

ii. Taking cue from the above judgements, the authors' view is that a supplier can enter into different contracts for supply of goods and services separately and that there can be no imposition to merge to contracts and say it would tantamount to composite supply if there are elements of composite supply in a two or more different supplies.

In the case of IAC Electricals Pvt. Ltd. - TS-206-AAR-2018-NT where there were two separate contracts – one for supply of materials (Overhead Power Transmission Line Hardware and Accessories) at ex-factory price and the other for supply of allied services like transportation, insurance, loading/unloading etc. for delivery of materials at the contractee's site, the Hon'ble West Bengal AAR held as follows:

“that services of transportation, in-transit insurance and loading / unloading in relation to separate contract for supply of materials at ex-factory price, shall be liable to GST at rate applicable to supply of goods; Notes that supply of goods under First Contract cannot be executed independent of Second Contract providing for transportation for the former does not include the provision and cost of transportation and delivery; Moreover, the two contracts are linked by a cross fall breach clause that specifies that breach of one contract will be deemed to be a breach of other contract, and thereby turn them into a single source responsibility contract; Resultantly, **observes that the two promises – supply of goods and their transportation to**

***contractee's site – are not separately enforceable, the supplies of goods and services are naturally bundled; Accordingly, states, "...supplies as that of applicant's should be construed as specifically mentioned under the GST Act as Composite Supply with supply of goods as the principal supply and services like transportation, in-transit insurance etc. ancillary or incidental to the principal supply..."***

From the above AAR, one can assess the way tax office would be viewing a supply constituting more than one supply to be a composite supply even where two separate contracts were entered into. This is just a tip of the ice berg and there will be many more issues regarding composite supply v/s mixed supply which will come up in the coming days as the GST law is yet in its nascent stage.

Further, the following explanation in terms of Section 15(5) of the GST law which was inserted vide Notification No. 24/2018-Central Tax (Rate) dated 31.12.2018 in the context of renewable energy devices & parts for their manufacture in Sl. No. 234 of Notification No. 1/2017 dated 28.06.2017 is worth noting.

**'If the goods** specified in this entry are supplied, by a supplier, ***along with supplies of other goods and services***, one of which being a taxable service specified in the entry at S. No. 38 of the Table mentioned in the notification No. 11/2017-Central Tax (Rate), dated 28th June, 2017 [G.S.R. 690(E)], the ***value of supply of goods*** for the purposes of this entry shall be deemed as ***seventy per cent.*** of the gross consideration charged for all such supplies, and the ***remaining thirty per cent. of the gross consideration charged shall be deemed as value of the said taxable service.***'

The said entry was possibly introduced due to different and varying interpretations being adopted by the Advance Ruling Authorities and the industry in the context of solar power contracts. It may be noted that the said explanation is applicable only to the notified renewable energy devices & parts for their manufacture mentioned in Sl. No. 234 of Notification No. 1/2017 dated 28.06.2017 involving supply of said goods and construction or engineering or installation or other technical services.

Rate of tax<sup>[4]</sup> in case of composite supply is the rate applicable to the principal supply. Therefore, if a supply tantamount to composite supply, then one needs to determine what is principal supply and charge tax as applicable to principal supply.

**B. Mixed supply<sup>[5]</sup>** 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.

Under mixed supply, the supply of two or more individual supplies of goods or services should be for ***a single price***. Such condition is not prescribed in the meaning of composite supply. Further, two or more individual supplies in a mixed supply can be mix of taxable and exempt supply.

Rate of tax<sup>[6]</sup> in case of mixed supply is the rate applicable to the supply which attracts highest rate of tax. Therefore, if a supply tantamount to mixed supply, then one needs to determine the

supply which attracts highest rate and charge tax as applicable to all the supplies in mixed supplies.

In the context of mixed supply, let's take a situation wherein yearly maintenance package for car is entered into by the car dealers with the car owners. In terms of the package, the car dealer provides for a yearly comprehensive servicing package for providing service and also replacement of certain parts as listed in the package for a **single price** for four services in a year. In such a situation can it be said that it is a mixed supply of goods and services and the highest rate applicable to the supply be applied. One way to look at it is, that it is a mixed supply of goods and services and the rate of spare parts, generally in case of automobile it is 28%, should be applied being the highest rate for the full package. On the other hand, one may view that it is a composite supply of goods and services and that service being the main / principal element (i.e. in the course of providing service, spares / parts if required are replaced), it is a composite supply of service and the rate applicable to relevant service should be applied. Without prejudice to the above, in our view, it would be a composite supply.

Thus, while analyzing whether a supply is composite supply or mixed supply, it is suggested that the direct reliance to an Advance Ruling should be avoided since Advance Rulings are specific to each case and only an inference may be taken from it.

In conclusion, to determine whether a supply is composite supply or mixed supply, terms of a contract (wherever available), business practices and market conditions should be analysed carefully to arrive at a conclusion.

*This article is written with a view to incite the thoughts of a reader who could have different views of interpretation. Disparity in views, would only result in better understanding of the underlying principles of law and lead to a healthy debate or discussion.*

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[1] Section 9(1) of the CGST Act, 2017

[2] Section 9(2) of the CGST Act, 2017

[3] Section 2(30) of the CGST Act, 2017

[4] Section 8(a) of the CGST Act, 2017

[5] Section 2(74) of the CGST Act, 2017

[6] Section 8(b) of the CGST Act, 2017