

02 SUPPLY UNDER GST

CA CS CMA – Inter / Executive



Definitions

Goods



- Every 'Movable Property' other than 'Money & Securities'
- includes 'Actionable Claim', growing crops, grass & things attached to or forming part of the land which are agreed to be severed before supply or under contract of supply

Services

- means anything other than goods, money & securities but includes
- Activities w.r.t. use of money or Conversion of Money by cash or by any other mode,
- Conversion of Money from one form/currency to another form / currency / denomination
- for which a separate consideration is charged



Actionable claim

- means a claim to any debt
- other than a secured debt by mortgage of immovable property or hypothecation or pledge of movable property; or
- to any beneficial interest in movable property not in (actual/constructive) possession of claimant, which civil courts recognise as affording grounds for relief
- Examples – lottery, gambling, betting, debentures, BOE etc



Taxable person

RP or Person liable to register

1. Even URP – liable to register = Taxable person
2. Not liable to register but taken voluntary registration = Taxable Person

- a. any trade, commerce, manufacture, profession, vocation, adventure, wager or any other similar activity (whether or not it is for a pecuniary benefit);
- b. any activity or transaction in connection with or incidental or ancillary to (a) above
- c. any activity or transaction in the nature of (a) above, whether or not there is volume, frequency, continuity or regularity of such transaction;
- d. supply or acquisition of goods including capital assets & services in connection with commencement or closure of business;
- e. provision by a club, association, society, or any such body (for a subscription or any other consideration) of the facilities or benefits to its members;
- f. admission of persons to any premises for a consideration;
- g. services supplied by a person as the holder of an office which has been accepted by him in the course or furtherance of his trade, profession or vocation;
- h. activities of a race club including by way of totalisator or a license to book maker or activities of a licensed book maker in such club [AMD]
- i. any activity or transaction undertaken by the CG, a SG or any LA in which they are engaged as public authorities.

Family

- the spouse and children of the person – Whether dependent or not
- the parents, grand-parents, brothers and sisters of the person - if they are wholly or mainly dependent on the said person



Taxable Event

1. Supply of GOODS OR SERVICES OR BOTH
2. Definition of 'Supply' is inclusive
3. Parameters of scope of supply
 - Supply of **goods or services**. Supply of anything other than goods or services does not attract GST.
 - Supply should be made for a **consideration**.
 - Supply should be made **in the course or furtherance of business**.
 - Supply should be made by a **taxable person**.
 - Supply should be a **taxable supply**.
 - Supply should be made **within the taxable territory**



Meaning of supply – Section 7(1)(a)



Includes 1. Sale 2. Transfer 3. Barter 4. Exchange 5. License, Rental, Lease 6. Disposal	The activities or transactions, by a person, other than an individual, to its members or constituents or vice-versa, for cash, deferred payment or other valuable consideration Example If any club supplies food to its members free of cost – NO GST If any club supplies food to its members WITH consideration – GST
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What is the meaning of furtherance of business?

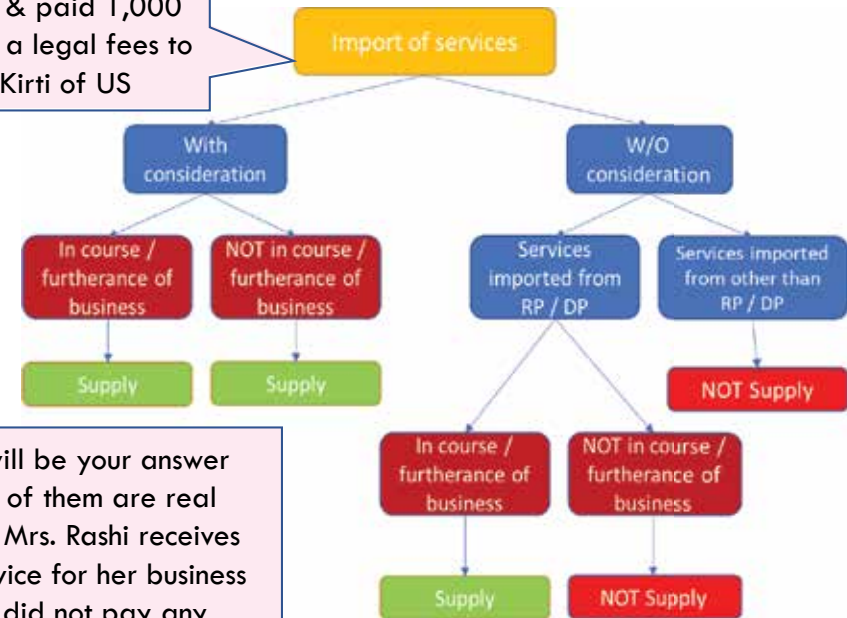
1. GST is a tax on **only commercial transactions**
2. Thus, supply by individual in his personal capacity - No GST unless it falls in business

Example – Amit Mahajan purchases a mobile phone for his personal use and after two years sells it to a mobile dealer. Such sale of a mobile by Amit would not be considered as supply under GST because the supply is made by Amit is not in the course or furtherance of business



Import of services

Mrs. Rashi received legal advice for personal problems & paid 1,000 pounds as a legal fees to Miss. Kirti of US



What will be your answer if both of them are real sisters & Mrs. Rashi receives legal advice for her business & she did not pay any consideration?

Activities w/o consideration – Deemed supply [Sec 7(1)(c) + Sch 1]

1. Permanent Transfer/Disposal of Business Assets on which ITC is availed Conditions –

- There must be disposal / transfer of business assets
- Such disposal / transfer must be permanent
- ITC must have been availed on such business assets

Permanent transfer/disposal of following business assets will not be deemed as supply:

- Business assets on which ITC is blocked/not available under GST
- Business assets though eligible for ITC, but ITC has not been availed by such Registered Person

2. Supply between Related or Distinct Persons (if made in course or furtherance of business)

Such persons are officers/directors of one another's business

Such persons are legally recognised partners

Such persons are employer & employee

A third person controls/ owns/ holds (directly/ indirectly) $\geq 25\%$ voting stock/shares of both of them

One of them controls (directly/indirectly) the other

A third person controls (directly/indirectly) both of them

Such persons together control (directly/indirectly) a third person

Such persons are members of the same family

One of them is the sole agent/sole distributor/sole concessionaire of the other

Distinct person (Section 25)

- **More than 1 registration** - A person who has obtained/is required to obtain more than 1 registration, whether in 1 State/UT or more than 1 State/UT shall be treated as distinct persons, i.r.o each such registration



- **1 office in 1 state and 2nd in another state** - A person who has obtained or is required to obtain registration in a State/UT i.r.o an establishment, has an establishment in another State/UT, then such establishments shall be treated as establishments of distinct persons

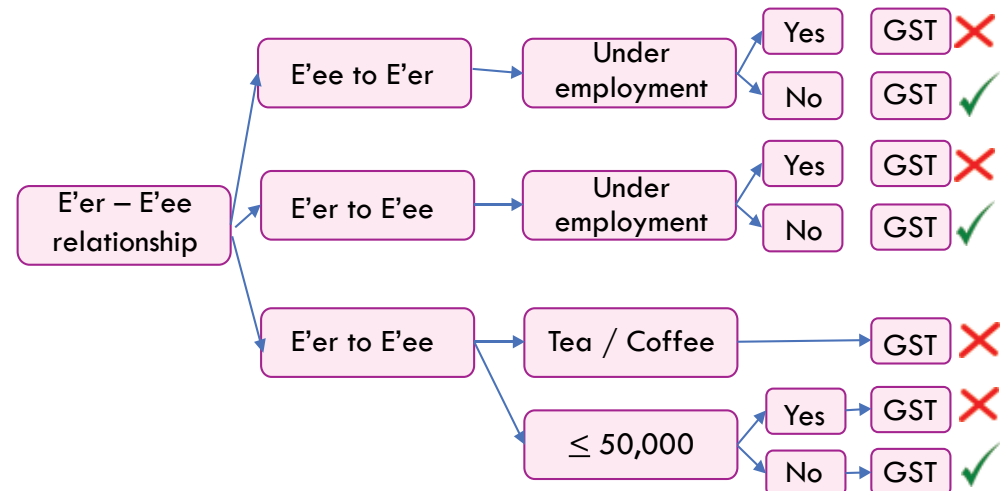


- **Stock transfers / branch transfers**

If the transfers are undertaken between 2 offices which are registered – Distinct persons



- **Transfer between two units with SAME REGISTRATION – NOT** considered as Distinct Persons



3. Supply of **Goods (Not Service)** by Principal to his Agent or Vice Versa
Deciding factor - Whether invoice for further supply of goods on behalf of principal is being issued by the agent or not

Invoice for further supply is issued by	Provision of goods from P to A
Agent to customer <u>in his own name</u>	would fall within scope of Para 3 & thus would be treated as supply
Agent to customer <u>in name of principal</u>	would not fall within scope of Para 3 & thus would not be treated as supply

Clarification – Del-credere Agent (DCA)

- DCA is an agent who guarantees payment to principal supplier.
- In order to guarantee timely payment to supplier, DCA can resort to various methods including extending short-term transaction-based loans to buyer or paying supplier himself & recovering amount from buyer with some interest at a later date.
- This loan is to be repaid by buyer along with interest to DCA @ mutually agreed rate b/w DCA & buyer
- Whether 'DCA' falls under the ambit of 'Agent' under Para 3 of Schedule I?

Invoice for supply of goods is issued by	Position of DCA
Supplier to customer (either himself or through DCA)	DCA does not fall under ambit of agent & thus would not be treated as supply.
DCA to customer in his own name	DCA would fall under ambit of agent thus would be treated as supply.

Whether Temporary short-term transaction-based loan extended by DCA to buyer, for which interest is charged by DCA, is to be included in value of goods supplied by supplier (principal)?

Particulars	Case 1 – DCA is not an agent	Case 2 – DCA is an agent
Invoice issues by	Supplier to Buyer	DCA to buyer
Transactions involved	<ul style="list-style-type: none"> • Supply of goods from supplier (principal) to buyer; • Supply of agency services from DCA to supplier or both; • Supply of extension of loan services by DCA to buyer. 	<ul style="list-style-type: none"> • Supply of goods by supplier(principal) to DCA. • Supply of goods by DCA to buyer • Supply of agency services by DCA to supplier or buyer or both • Loan services by DCA to buyer
Clarification	<ul style="list-style-type: none"> • Short-term Loan provided by DCA to buyer is a supply of service by DCA to buyer on principal to principal basis & is an independent supply. • Thus, Interest charged by DCA would not form part of the value of supply of goods supplied (to the buyer) by the supplier. 	<ul style="list-style-type: none"> • Activity of extension of credit by DCA to buyer would not be considered as a separate supply as it is in context of supply of goods made by DCA to buyer. • Value of Interest for such credit would be included in value of supply of goods by DCA to buyer

Free samples – NO SUPPLY
ITC NOT available on
Inputs / InS / CG

Buy 1 – Get 1 Free
Treat it – supply of 2 goods.
Taxability would be dependent upon composite / mixed supply

 **Activities to be considered as Supply of Goods / Services [Sec 7(1A) + Sch II]**

Activity	Type	Supply
Transfer	Any Transfer of Title in goods (Sale)	Goods
	Right to use goods without transfer of title in goods (Renting)	Services
	Any transfer of title in goods under an agreement which stipulates that property shall pass at future date upon payment of full consideration as agreed. (Sale or return basis/HP basis)	Goods
Land and Building	Lease, tenancy, easement, licence to occupy Land	Services
	Lease/letting out of building including a commercial, industrial, residential complex (wholly/partly) for business	Services
Treatment/ Process	Applied to another person's goods (Job Work)	Services
	Temporary Transfer of Business Asset (for pvt use/other than business use) (with or without consideration)	Services
	Business Asset transferred by a person who ceases to be taxable person shall be deemed to be supplied by him, in the course/furtherance of his business, immediately before he ceases to be a taxable person. Example: Arun, a trader, is winding up his business. Any goods left in stock shall be deemed to be supplied by him Exception: (i) Business is transferred as going concern [Exempt] (ii) Business carried on by personal representative	Goods

Activity	Type	Supply
Renting of Immovable Property	<ul style="list-style-type: none"> - Renting of a commercial complex - Renting of precincts of a religious place. - Renting of property to an educational institution. - Permitting use of immovable property for placing vending/dispensing machines. 	Services
Construction of	Complex, Building, Civil structure Except where entire consideration has been received after issuance of completion certificate or after its first occupation, whichever is earlier.	Services
Intellectual Property Right	Temporary transfer or permitting use or enjoyment of any IPR (say patent)	Services
IT Software	Development, designing, programming, customisation, adaptation, upgradation, enhancement, implementation of IT software	Services
Agreeing to	Obligation to refrain from an act, or to tolerate an act or situation, or to do an act. Non-compete agreement. - GST. Late delivery charges recovered from supplier for non-fulfillment of contract within stipulated time - GST Notice pay recovered from employee for leaving the job before agreed period of notice for leaving a job	Services
Right to use	Transfer of right to use any goods for any purpose	Services
Composite supply	(a) Works Contract (b) Restaurant & Catering	Services

Negative List - [Sec 7(2) + Sch III] (Neither goods nor services & thus NO GST)

1. Services provided by Employee to Employer in course of or in relation to his employment
 - i. Service by Casual Workers (daily basis) who are employed by employer – Assume that it is covered under employment - **NO GST**
 - ii. **Casual workers are employed by a contractor**, like a building contractor or a security services agency, who deploys them for execution of a contract- or for provision of security services to a client, respectively are services in course of employment - **NO GST**
 - iii. Compensation for Premature Termination – In the course of employment – **GST Applicable**
 - iv. Non-compete Fees - **GST Applicable**
 - v. Services provided on contract basis – **P2P – GST Applicable**
2. Services by any **Court or Tribunal** established under any law for the time being in force
3. Functions performed by **MPs, MLAs**, etc, - the duties performed by a person who holds any post in pursuance of the provisions of the Constitution in that capacity; - the duties performed by specified persons in a body established by the CG, SG or LA, not deemed as an employee
4. Services of **funeral**, burial, crematorium or mortuary including transportation of deceased



5. Sale of Land; & [subject to para 5(b) of Schedule II] Sale of building
 - Sale of Land – NO GST
 - Sale Building –
 - **Post construction** - If part / entire consideration is received before the following date – **GST Applicable Earlier of**
 - First occupation; or
 - Issuance of completion certificate
 - **Under Construction** – GST Applicable
6. Actionable claims, other than lottery, betting & gambling – Note - All other actionable claims are outside the ambit of definition of supply (Right to recover insurance money, claim for arrears of rent)



Clarifications – Neither Goods nor Services

1. Grant of **alcoholic liquor** license by the state governments
 1. grant of alcoholic liquor license by SG – NO GST
 2. Other license to BE - GST Applicable
2. **Inter-State movement** of various modes of conveyance b/w distinct person Trains, Buses, trucks, tankers, trailers, vessels, containers, aircrafts for:
 - a. **carrying** goods or passengers or both; or
 - b. **Repairs & Maintenance**
(Unless the movement is for further supply of goods – i.e. sale of trucks / buses etc)
GST is applicable on the Repairs and Maintenance service
3. Inter-State movement of **Rigs, Tools & Spares, & all goods** on wheels – Same as point 2



Display of names or placing of name plates of the donor in the premises of charitable organisations receiving donation or gifts from individual donors

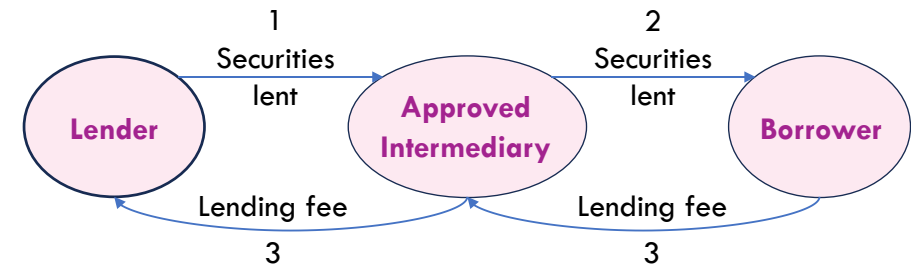
- Individual donors provide financial help or any other support in the form of donation or gift to institutions such as religious institutions, charitable organizations, schools, hospitals, orphanages, old age homes etc.
- The recipient institutions place a name plate or similar such acknowledgement in their premises to **express the gratitude**.
- When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an **expression of gratitude** and **public recognition** of donor's act of philanthropy
- It is **not aimed at giving publicity** to the donor in such manner that it would be an advertising or promotion of his business,
- Then it can be said that there is **no supply of service** for a consideration (in the form of donation).
- There is **no obligation** (quid pro quo) on part of recipient of the donation or gift **to do anything** (supply a service).
- Therefore, there is **NO GST liability** on such consideration.



Art works sent by artists to galleries for exhibition is not a supply as no consideration flows from the gallery to the artists

- If sold further – SUPPLY
- If not sold further – NOT A SUPPLY

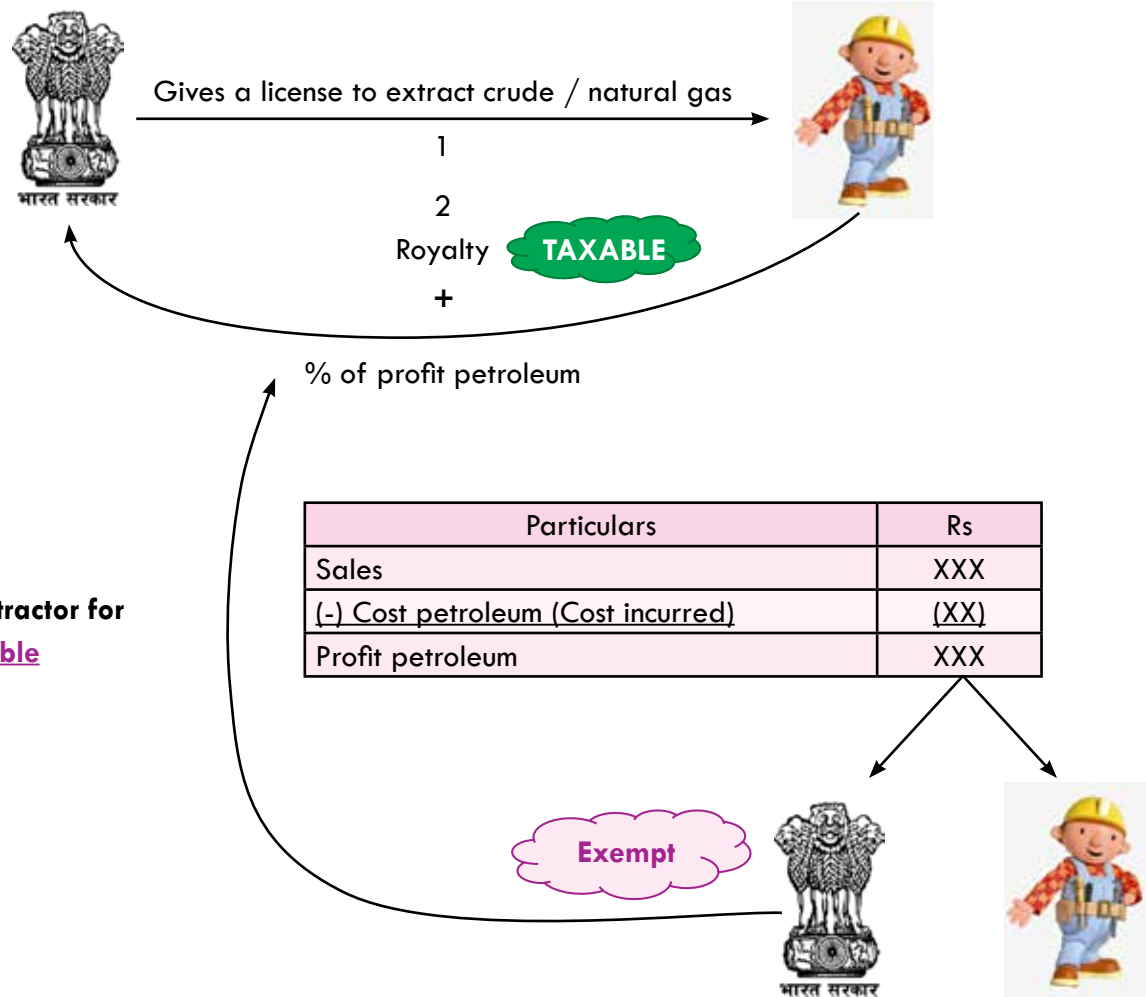
Lending and borrowing of money / Investment in money	Not a Supply
Money would also include transactions in Commercial Paper ('CP') and Certificate of Deposit ('CD')	Not a Supply
Transaction in derivatives (treated as security)	Not a supply
Forward contract (with actual delivery) (treated as security)	Not a supply
Forward contract (without actual delivery – settlement of contract took place)	SUPPLY of goods
Secured debt	Not a Supply
Any service charges / fees w.r.t. to derivatives / forward / future contracts	SUPPLY



- Lending fee – **GST APPLICABLE**
- Brokerage / Fees charged by Intermediary – **GST APPLICABLE**

Taxability of COST PETROLEUM

When an oil exploration & production contractor gets a license/lease to explore/mine the petroleum crude and/or natural gas from the Government - it enters into a Production Sharing Contract (PSC) with the Government



Notes

The cost petroleum is not a consideration received by the contractor for the services provided to Government and thus **not taxable**



Composite supply

It comprises

- Two or more taxable supplies of G/&S or any combination thereof
- **Naturally bundled** & supplied in conjunction with each other in ordinary course of business
- one of which is a principal supply

Tax Treatment - treated as a supply of such principal supply

GST Rate - Rate applicable to Principal supply will be levied on whole supply

What is Principal Supply - Supply of G/&S which constitutes predominant element of a composite supply & to which other supply forming part of that composite supply is ancillary



Mixed supply



Composite supply

It comprises

- two or more individual supplies of G/&S 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

Individual supplies are independent of each other & are not naturally bundled

Tax Treatment - treated as supply of that particular supply that attracts **Highest Rate of Tax**

Important concept

There can be a case where an activity/transaction involves more than one supply of goods or services or both, but neither they are composite supplies nor can be categorised as mixed supplies, that is, all supplies carry independent significance.

In such a case, if separate consideration is indicated against each supply, each such supply shall be charged at the respective rate applicable to that particular supply.

Circulars regarding principal supply

Printing of books, pamphlet	Supply of Services – Paper is ancillary supply
Printed envelop, cartons	Supply of goods – Printing is ancillary supply
Re-treading of tyres	Supply of service. Rubber is ancillary supply
Supply of re-treaded tyres	Supply of Goods

**Taxability of tenancy rights**

Activity of transfer of tenancy right against consideration [tenancy premium] -covered under supply of service liable to GST

**Taxability of servicing of car**

- Case facts to be checked first
- Value to be shown separately in the invoice
- Tax on goods – Respective rate for goods
- Tax on services – Respective rate for services

**Taxability of Sale of Land after levelling, laying down of drainage lines, etc.**

- Land may be sold either as it is or after some development such as levelling, laying down of drainage lines, water lines, electricity lines, etc.
- Such developed land is also sale of land – NO GST
- Services of development – GST

**Taxability of joint venture**

- Amount raised by the operating member as CAPITAL CONTRIBUTION – **NOT A SUPPLY**
- Amount charged for providing service by the Operating member – **Considered as Supply**

Example - There are 4 members in the JV including the operating member and each one contributes Rs 100 as part of their share. A total amount of Rs 400 is collected. The operating member thereafter uses its own machine and performs exploration and production activities on behalf of the JV.

**GST on liquidated damages, Compensation and Penalty arising out of breach of contract or other provisions of law****Agreeing to the obligation
refrain from an act**

- Non compete agreement
- Additional floor not built by the builder against the compensation by the neighbours which want to protect its sunlight

**Agreeing to the obligation
tolerate an act or a situation**

A shopkeeper allowing a hawker to operate from the common pavement in front of his shop against a monthly payment by the hawker

**Agreeing to the obligation
to do an act**

An Industrial unit agrees to install equipment for zero emission/discharge residential complex against a consideration paid by such RWA, even though the emission/discharge from the industrial unit was within permissible limits and there was no legal obligation upon the individual unit to do so

Nature	Explanation	Taxability
Liquidated damages	Liquidated damages are compensation payable for breach of contract to the aggrieved party. Where an amount is paid only to compensate for injury, loss or damage suffered by aggrieved party, then such payments are merely flow of money and are not a consideration for any supply	NOT TAXABLE Such payment do not constitute consideration for a supply and are not taxable
Cheque dishonor	The supplier wants payment to be received on time & there is never an implied or express offer/willingness of supplier.	NOT TAXABLE Cheque dishonor fine is not a consideration and not taxable.
Penalty imposed for violation of laws	Traffic violations, pollution norms or other laws	NOT TAXABLE Not a consideration for any supply received
Forfeiture of salary or payment of bond amt in event of employee leaving employment before minimum agreed period	it is incorporated in employment contract to discourage non-serious employees & also employee does not get anything in return from employer against payment of such amount	NOT TAXABLE
Late payment fees or Surcharge	Naturally bundled with the main supply. Since, it is ancillary to and naturally bundled with the principal supply such as of electricity, water, telecommunication, cooking gas, insurance etc., it should be assessed at the same rate as the principal supply.	TAXABLE SAME RATE OF PRINCIPAL
Fixed Capacity charges for Power	The minimum fixed charge is payable even if '0' units of electricity is consumed	TAXABLE