

Service Under GST -An analysis

1. GST is applicable on supply of goods or service or both. Article 366(12) of the Constitution defines “goods” to include all materials, commodities and articles. The Constitution (101 Amendment) Act, 2016 inserted in clause 366(26A) the definition of “services” to mean anything other than goods.
2. Section 2(102) of the Central Goods & Service Tax Act, 2017 (‘CGST Act’) defines “services” means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.
3. For the sake of better understanding, the above definition is vivisected as under;
services means ‘**anything**’ other than
 - goods,
 - money and
 - securities,but includes
 - activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.
4. When it is said ‘anything’ other than goods is service, it is important to know what is the meaning of ‘anything’? Whether anything means everything? If so everything other than goods is service and accordingly liable for GST unless it is exempted.
If it so, can we say, the followings are service?
 - a. Mr. X robs Mr. Y. Whether Mr. Y received the service of Mr. X?
 - b. Wife beats her husband. Can we say husband received service from his wife?
 - c. Mr. A encroaches the vacant plot of Mr. B. Is Mr. A providing service to B?
 - d. Mr. P bangs his car to Mr. Q and pays him compensation. Is Mr Q is providing service to Mr. P?
5. Like this there are numerous activities/transaction between two persons in day to day life. Whether all these can be termed as service? Schedule III to

the CGST Act states certain activities/transactions are neither supply of goods nor supply of service. These activities/transactions are excluded on account of economic and social criteria and in the interest of the general public. One of the important exclusions is sale of land and sale of completed building. From this it may be construed that any transactions in relation to immovable properties other than sale of land and sale of completed buildings are service! May not be true in every cases.

6. To understand the meaning of service better, the definitions of service given in taxation laws of other countries may be looked into.
 - a. Article 24 of the European VAT directive states a supply of service is any transaction which does not constitute a supply of goods. However, the VAT Acts of the member countries of the European Union have defined the service in more inclusive manner.
 - b. Sweden Value Added Tax - The term “services” includes anything that may be provided within a commercial business operation, which does not constitute goods.
 - c. UK VAT Act - anything which is not a supply of goods but is done for a consideration (including, if so done, the granting, assignment or surrender of any right) is a supply of services.
 - d. France General Tax Code - Transactions other than those defined in II, in particular the assignment or the grant of intangible personal property, the obligation to undertake not to do or to tolerate an act or a situation, the operations of way, the works real estate and the fulfilment of the fiduciary's obligations, shall be considered as services rendered.
 - e. Germany VAT - Article 3(9) of the UStG states that the supply of services is any commercial activity other than the supply of goods. To be taxable, those transactions must be for consideration either in cash or in kind. Activities not for consideration do not constitute a supply of services and are not taxable.

- f. Netherland VAT Act - Services refer to all activities, other than the supply of goods, conducted in the course of trade.
 - g. European Commission - It should be borne in mind that, according to the case-law of the Court, the concept of 'services' within the meaning of Article 50 EC implies that they are ordinarily provided for remuneration and that the remuneration constitutes consideration for the service in question and is agreed upon between the provider and the recipient of the service (see Case 263/86 Humbel and Edel [1988] ECR 5365, paragraph 17; Case C-109/92 Wirth [1993] ECR I-6447, paragraph 15; and Case C-355/00 Freskot [2003] ECR I-5263, paragraphs 54 and 55).
7. From the above, it may be said, under the provisions of EU VAT laws, services are one which are ordinarily provided for consideration.
 8. It is important to look into the meaning of service from GST perspective. To understand what is service, it is more important to understand the term 'anything'.
 9. The general meaning of 'anything' - used to refer to a thing, no matter what. Some judicial interpretation of the term 'any' are as under;
 - a. Any is not limited to one [Gariner v. Colyer (1864) 10 LT 715, per Cockburn CJ].
 - b. Any is a word which ordinarily excludes limitation or qualification and which should be given as wide a construction as possible. 'Any goods' therefore includes all goods except where this wide construction is limited by the subject matter and context of a particular statute. [Victorian Chamber of manufacturers v. Commonwealth (of Australia) (1943) 67 CLR 335, 346 per Williams J.]
 - c. The word 'any' in the context can mean 'all' but also mean 'some' (1952) 2 All ER. 548 (Barron v. Littman).
 - d. The word has a diversity of meanings and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute depends upon the context and the subject-matter of the statute. Sahyadri SSK Ltd V. CCE, Pune 2003(153) ELT 18 (S.C.).
 10. Recently the Hon. Apex Court, in the case of Govt of Delhi V. UOI, while deciding on the executive powers of the Lt. Governor of Delhi, analysed the

meaning of 'any' and 'anything'. The relevant paras are reproduced herein below;

“224.....It has been highlighted in the earlier part of this judgment that while interpreting a constitutional provision and construing the meaning of specific word(s) occurring in a constitutional provision, the Court must read the same in the context in which the word(s) occurs by referring to the annexing words of the said provision and also bearing in mind the concepts that we have adverted to. As regards the importance of context while deciphering the true meaning and importation of a term, Austin has made the following observations:

“When I see the word "any" in a statute, I immediately know it's unlikely to mean "anything" in the universe. Any" will have a limitation on it, depending on the context. When my wife says, "there isn't any butter." I understand that she's talking about what is in our refrigerator, not worldwide. We look at context over and over, in life and in law.”

225. In this context, the observations made in the case of *Small v. United States* are relevant to be noted:"

The question before us is whether the statutory reference "convicted in any court" includes a conviction entered in a foreign court. The word "any" considered alone cannot answer this question. In ordinary life, a speaker who says, "I'll see any film," may or may not mean to include films shown in another city. In law a legislature that uses the statutory phrase "any person" may or may not mean to include "persons" outside "the jurisdiction of the state."

227. At home, it has also been acknowledged that the word 'any' can have different meanings depending on the context in which it has been used and the Courts must not mechanically interpret it to mean 'everything'. In *Shri Balaganesan Metals v. M.N. Shanmugham Chetty and others*⁸⁷, this Court has observed:"

The word "any" has the following meaning:

Some; one out of many; an indefinite number. One indiscriminately of whatever kind or quantity.”

Word "any" has a diversity of meaning and may be employed to indicate "all" or "every" as well as "some" or "one" and its meaning in a given statute.”

It is often synonymous with "either", "every" or "all".Its generality may be restricted by context; (Black'sLaw Dictionary; Fifth Edition)."

233. It has to be clearly understood that though ‘any’ may not mean ‘every’, yet how it should be understood is extremely significant.....”

11. From the above, it is clear that ‘anything’ cannot be ‘everything’ always. ‘Anything’ needs to be understood depending upon the context where it is being used. While interpreting any statute taking the contextual meaning is very important.
12. Even the opening sentence of Article 366 also states meanings assigned therein is subject to the context otherwise requires. The relevant portion of the Article is reproduced herein below;

“Article 366. Definitions- In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say—”

Similarly, the opening sentence of definition Section 2 of the CGST Act also states unless the context otherwise requires.
13. In view of the above discussion, one may fairly conclude that though the definition of service states ‘anything’ other than goods, for the purpose of GST legislation, the contextual meaning of the term ‘anything’ is to be taken.
14. The meaning of service is to be decided from the recipient point of view and not supplier’s point of view. The intent or willingness of the recipient to receive the service is important. If something is forced upon the recipient, the same may not be a service. In this regard, it is pertinent to refer to observation of CESTAT Mumbai on service tax issue in the case of Cricket Club of India Ltd. Vs. CST Mumbai [2015 (40) S. T. R. 973 (Tri-Mumbai), Appeal pending before Hon. Supreme Court]. The relevant paras are reproduced herein below;

10. Chapter V of Finance Act, 1994 is intended to tax services. The relevant charging section, therefore, cannot and should not be read beyond the transaction that is intended to be taxed. Plainly expressed, only services can be taxed. Habituated to tax on tangible goods, the concept of tax on services may not be easily appreciated for the very reason of its intangibility. The form of the transaction not being apparent until its benefit is perceived in the hands of the recipient and signified by readiness to recompense the provider, the tendency to seize upon the tangibility of the flow of compensation to presume the existence of a service becomes irresistible. And that is when the tax determination exceeds legislative intent.

11. Owing to its inherent intangibility, a service transaction becomes recognizable only if a benefit accrues to a recipient and that explains the use of the phrase “provided or agreed to be provided” to determine taxability. It is taxable only if and when any, or a particular, service is rendered to a recipient. Consideration is, undoubtedly, an essential ingredient of all economic transactions and it is certainly consideration that forms the basis for computation of service tax. However, existence of consideration cannot be presumed in every money flow. Without an identified recipient who compensates the identified provider with appropriate consideration, a service cannot be held to have been provided. In a taxation scheme that specifies the particular targets of taxation, tax liability will arise when a provider conforming to the relevant description in the charging section performs an activity that conforms to the relevant description in the charging section on the request, and for the benefit, of a recipient conforming to the relevant description in the charging section. Service, its taxability and the provision of the taxable service to a recipient, in that order, are necessary pre-requisites to ascertaining the quantum of consideration on which *ad valorem* tax will be levied. This fundamental will not alter in the scheme of the negative list too; a service that is clearly identifiable has to be provided or agreed to be provided before it can be taxed. The factual matrix of the existence of a monetary flow combined with convergence of two entities for such flow cannot be moulded by

tax authorities into a taxable event without identifying the specific activity that links the provider to the recipient.

12. For that very reason, mere capacity to deliver a service cannot be equated with providing or agreeing to provide a service; such service has to reach the recipient in exchange for the consideration or the consideration is made over in exchange for a schedule of delivery of the service. In a combined human activity, contribution of, or agreement to contribute, funds cannot, therefore, be construed as consideration to be taxed under Finance Act, 1994 unless attributable to an activity or performance or promise thereof on the part of an identified provider to an identified recipient. Unless the existence of provision of a service can be established, the question of taxing an attendant monetary transaction will not arise. Contributions for the discharge of liabilities or for meeting common expenses of a group of persons aggregating for identified common objectives will not meet the criteria of taxation under Finance Act, 1994 in the absence of identifiable service that benefits an identified individual or individuals who make the contribution in return for the benefit so derived.”

15. Therefore, to tax a service, the activity is to be seen from the recipient's perspective, what benefit is accrued to him for which he is paying the consideration.
16. To be taxable under GST law, the service must be supplied in the course or furtherance of the business and for a consideration (except for specified transactions). In this context only, the term service is to be understood.
17. In one of the cases of New Zealand, it was held that the amount received by a law society from a solicitor as costs under an order of a Disciplinary Tribunal was held not be for a supply of service by the law society to the solicitor. [Case S65 (1996) 17 NZTC 7408].

Conclusion:

Any transaction/activity to consider as service, it is important to understand from the recipient point of view. If the recipient intends to receive the same, then only it could be a service. If something is thrown upon him or forced

upon him against his wish or without choice for him, the same may not amount to service received by him.

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