# Publication on Classification under Goods and Services Tax

## Introduction

The term "Classification" is defined as *"systematic arrangement in groups or categories according to established criteria".* Under the given concept, the arrangement of varied items is into mutually exclusive but related classes.

Under the Indirect Tax regimes prevalent across the globe including India, the classification of various items which are subject matter of tax, be it goods or services is an essential and integral part of the whole levy and collection mechanism. It is important both from the taxpayer's perspective and tax collector's perspective to have a definite class or group under which subject matters of tax can be divided. The primary intention of classifying them is to determine whether or not the same would be encumbered by the levy of these taxes and if so, under which category the tax liability would arise.

However, the requirement of classification is not restricted only for understanding the rate of tax on a specific subject matter of tax. Rather various requirements of law which are satisfied through classification are as under:

1. **Leviability of Tax**

   Classification of subject matters of tax into various classes identifies the taxable and non-taxable items for the scope of leviability of tax through a particular legislation.

2. **Goods vs Services**

   After determining that a particular subject matter is leviable to tax or not, classification principles further assist in determining if they are taxable as goods or taxable as services. The differentiation between goods and services not only impacts the rate of tax, but also the time, place and value of tax.

3. **Exemptions**

Government exempts specific categories of items from levy of taxation. Exemption from tax is a policy decision by government which finds its base from the classification of items into specific categories which are driven by various social-economic factors.

4. **Rate of Tax**

The government is assisted by the principles of classification to identify demit and merit rates on various categories of items. Such categorization helps government to ensure that burden of taxation is not regressive for the tax payers but also does not negatively affects the revenue collection for government.

5. **Standardization and avoiding differentiation**

Classification also helps government to collect data about various trade and industries in a systematic and standardized manner. Further it helps to bring on par various similar and like items sold by different industries and sizes of business to ensure uniformity is maintained.

**Classification under Goods and Services Tax**

Across the globe under various GST regimes, classification as a subject is not a complex issue for dwelling upon. The simple reason for same is that across globe, majority economies have two rate GST structure. Under such structure, the two rates are Merit Rates and Demerit Rates. All the items under the ambit of GST are classified under given two rates only. The merit rate is the rate which is closer to 5% tax bracket and demerit rate is the rate which is within the bracket of 16% to 20%. Hence the disputes for classification under GST are less or minimal.

Under Indian environment, the GST is also indigenous. Hence the issues of classification which are not prevalent across world are applicable in India. There are various reasons

which add up to the complexity under classification in India. One of major reasons for same is multiple GST Rate structure. Today, Indian GST has 6 different types of GST Rates as 0%, 0.5%, 5%, 12%, 18% and 8%. Since the industry structures are different and exemptions add up this complex web of multi point rate structure, a situation of arbitrage due to classification arises. Some reasons for such multiple rate structure are:

1. **Principle of Equivalence and size of revenue collection**

   In context of India economy, the size of tax collection from Direct and Indirect Taxes is an important factor for economic prosperity. In developed countries the dependence on tax revenues for governments is only up to 18% to 22% from total revenue collections. Whereas, the benchmark of tax collection dependence in developing countries is between 52% to 54% from total revenue collections. However, in India, dependence on tax collections by governments is significantly high which ranges from 60% to 64% from total revenue collections.

   Since collection from taxes contributes significantly for the government, hence when migration to Goods and Services Tax happened from Central Excise, Service Tax and State VAT regime, there was an anxiety that tax collections should not dip from current levels under GST and ambition of collecting higher tax was obviously pivotal.

   Thus the challenge of collecting steady or higher revenue bounded government to keep the rate of tax at certain levels and it was backed by the Principle of Equivalence. According to said principle, the rate of tax under GST should be within the deviation of upto 3% (either at the higher or at the lower side) from the rate of tax which was applicable cumulatively under Central Excise, Service Tax and State VAT. The rate of taxes under the erstwhile regime was multi fold and chaotic.

Hence due to such principle to maintain the rate of taxes which were under the erstwhile tax regime, the rate of tax under GST has gone multifold which is applicable on different classes of items (be it goods or services) differently.

2. **Political Factors**

The ideal GST structure in India would have been having 3 layered rate structure comprising of merit rate, demerit rate and standard rate (or mid-point rate). The merit rate would have been ideally an exemption rate whereas demerit rate would have been around 20% (which is now 28%) and mid-point rate around 12% to 15%. But since consensus was formed in Parliament for a GST rate not greater than 18%. Hence because of this situation arose that government could not keep items above 18% and if items were pegged to 12% (i.e. mid-point rate) then to offset the revenue deficit the more items were pegged to 28% GST Rate. Due to this reason the rate of 28% had more than 250 items. With increase in political pressure, almost 200 items were taken out of 28% later.

In multiple Tax Rate structure, there is always a certain amount of arbitrage created between the tax payer and the tax collector for classification of items. Example the tussle to classify items between the rates 18% or 28% shall be always on the cards. Since government in India as explained above is heavily dependent on the tax collections as its source of revenue, they will always be tempted to classify items at the rate bracket of 28% and for tax payer the situation will be vice-versa. The 10% gap between the rates opens the flood gates for litigation and lot of interpretation. In fact tax rate gap of 7% between 5% and 12% rates shall also be a significant.

The classification disputes are not new in Indian Taxation system. According to an estimate, currently around 11200 cases are pending before the Hon'ble Apex Court of India which are pure classification issues under erstwhile Central Excise, Service Tax and VAT regime. Hence India has 70 years of History in the disputes over classification of items under tax legislations.

**Applicable Laws useful for Classification under Goods and Services Tax Act**

The scheme of GST in India is legislated through following laws:

- The Central Goods and Services Tax Act 2017
- The State Goods and Services Act 2017
- The Integrated Goods and Services Tax Act 2017
- The Union Territory Goods and Services Tax Act 2017
- The Goods and Services Tax (Compensation to States) Act 2017

Under each law, the charge of tax is on supply which has been defined under Section 7. However the various Governments (Central State or UT) derives power to levy and collect taxes at specified rates under Section 9(1) of the CGST Act 2017, Section 5(1) of the IGST Act 2017 and Section 9(1) of the SGST/UTGST Act 2017.

**Various Steps in classification of Goods or Services under relevant GST Laws**

Since classification and its principles holds importance for taxability and other allied purposes for goods and services it is important to understand that the process flow which should be followed to identify the correct classification, rate of tax and HSN Code for various items. Various provisions of law which are for assistance in this regard are as under:

1. Definition of Goods and Definition of Services
2. Activities listed in Schedule-II
3. Activities listed in Schedule-III
4. Identification of Composite Supplies or Mixed Supplies
5. Identification of HSN Code from the rate notification
6. Applicability of Principles of Interpretation applicable on Customs Tariff Act 1975 now made applicable to Notification No 01/2017-CT (Rate) dated 28.06.2017.
7. Understanding the SAC applicable on services in accordance with Annexure to Notification No 11/2017-CT (Rate) dated 28.06.2017.

**Definition of Goods and Definition of Services**

The tax is on supply of either goods or services. In case supply is neither of goods nor of services then no tax shall be leviable on such supplies. Hence, the first step for classification under GST starts with determining whether any item which is supplied is either goods or services or none.

The term goods and services have been well defined under the Section 2 of the respective laws. According to Section 2(52) of the CGST Act 2017, the term goods is defined as

*(52) "goods" means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;*

The definition is indeed a very wide one and encompasses almost everything having some value in the commercial sense and which has the attributes of goods like possession, transferability, etc. It may be noted that the definition is exhaustive and only those items which would fit into the definition alone would be covered. Of course the definition is contextual in nature and has to be interpreted so as to suit the situation or context.

Further the terms services has been defined under Section 2(102) of the CGST Act 2017 as

*(102) "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;*

The one way of interpreting definition of service is that it encompasses everything which is left in the universe which does not constitute as goods. However said interpretation leads to some vague conclusions. This forces one to believe that immovable property would also constitute as service. However it an understanding amongst the lawmakers and taxpayers that immovable property has been as of now kept outside the purview of GST. Due to lack of clear cut provisions for same in the law, the possibility of classification of immovable property as services arises which is absurd.

Another way of interpreting definition of service is that all such articles which are excluded by definition of goods but have features of movability are treated as services. The way given law has been developed the latter interpretation is more practical and confirms the intention of law makers.

However, in the days to come the disputes shall commence from determination whether an activity is supply of goods or services, especially considering the fact that rules differ for fixation of place of supply, time of supply and valuation under GST for Goods and Services.

**Concept of Schedule-II for classification of activities as Supply of Goods or Supply of Services**

Drawing power from Section 7(1)(d) of the CGST Act 2017, certain activities have been treated as supply of Goods or Supply of Services under Schedule –II appended with the Acts. It is interesting that activities in Schedule-II do not classify any article as goods or services. Rather, it consists of certain activities which can be either treated as supply of goods or supply of services. There can be a situation where, any item might neither be goods nor services but its supply is treated as supply of service by virtue of Schedule-II (Example Transactions in Land and Building). Hence Schedule-II should be read in isolation since it is qua activity but not qua item which is subject matter of tax.

List of various activities which have been treated as Supply of Goods under Schedule-II are as under:

1. Any transfer of title in Goods
2. Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed
3. Goods forming part of the assets of a business are transferred or disposed of by or under the directions of the person carrying on the business so as no longer to form part of those assets, whether or not for a consideration.
4. When any person ceases to be a taxable person, any goods forming part of the assets of any business carried on by him shall be deemed to be supplied by him in the course or furtherance of his business immediately before he ceases to be a taxable person, unless:
    a. the business is transferred as a going concern to another person; or

b. the business is carried on by a personal representative who is deemed to be a taxable

5. Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration.

List of various activities which have been treated as Supply of Services under Schedule-II are as under:

1. Any transfer of right in goods or of undivided share in goods without the transfer of title thereof
2. Any lease, tenancy, easement, licence to occupy land
3. Any lease or letting out of the building including a commercial, industrial or residential complex for business or commerce, either wholly or partly
4. Any treatment or process which is applied to another person's goods
5. By or under the direction of a person carrying on a business, goods held or used for the purposes of the business are put to any private use or are used, or made available to any person for use, for any purpose other than a purpose of the business, whether or not for a consideration, the usage or making available of such goods
6. Renting of immovable property
7. Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.
8. Temporary transfer or permitting the use or enjoyment of any intellectual property right
9. Development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software;
10. Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.
11. Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration.
12. Composite supply of works contract as defined in clause (119) of section 2

13. Composite 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.

On perusal of above list some interesting facts can be observed:

**A. All the activities in relation to Goods which are constituted within the definition of supply cannot be classified as supply of goods always. In some cases, activities in relation to goods can be treated as supply of services also.**

In case of transfer of Right in Goods without transfer of Title of such goods is a supply of service. Whereas, simple transfer of title in goods is treated as supply of goods. For example if a company sells heavy machinery then it shall be treated as supply of goods but if same machinery is given on lease then it shall be treated as supply of service only. Hence the subject matter of tax i.e. machinery does not changes but since the activity undertaken in relation to same changes, hence its classification as supply of goods or supply of service also changes.

**B. Activities in relation to neither goods nor services can be still treated as supply of services.**

In case of lease, tenancy, license to occupy land or renting of immovable property etc, the activities are carried out on immovable property. Immovable property is neither classifiable as goods nor classifiable as services. But given activities in relation to them are classifiable as supply of service. Hence it means that since GST is on activity of supply, few activities on immovable property partakes the character of supply of service leviable to GST even if the subject matter whose supply takes place is neither goods nor services.

**C. Deemed Supply of Goods or Deemed Supply of Services**

Under the given Schedule there are certain activities which do not fall within the ambit of activity as supply. In fact in few cases no activity is undertaken at all. However, with deeming fiction of law, certain transactions have been still characterized as either supply of services or supply of goods. In cases, unlike the example mentioned in point no B above, the subject matter of tax is either goods or services but the activity or no activity is still a supply. For example, when a person carrying goods as business assets, ceases to be a taxable person then the activity of ceasing as taxable person is deemed to be a taxable supply of goods. Hence even change in status of a person from taxable to non-taxable person shall be treated as a taxable supply of goods.

**D. Composite Supply and its treatment**

Schedule-II recognizes two supplies as composite supplies i.e. Works Contract and Supply of Food as part of a service contract. In given supplies, the supply of goods and supply of services are intermingled. Since for levy of tax it is mandatory that a particular supply is either treated as supply of goods or supply of service, hence it is required that such composite supplies are ultimately classified as one single supply of either goods or services. The concept of Composite supply in itself has own set of principles which are useful for classification of such supplies as supply of goods or supply of services, but in case of given two supplies, the Schedule-II through the wisdom of lawmakers defines it as supply of services.

**E. Declared Supplies influenced from erstwhile Service Tax provisions.**

Under the erstwhile provisions of the Chapter V of the Finance Act 1994, under Section 66E, a list of activities were declared as services for the levy of Service Tax on same. The given Schedule-II of the CGST Act 2017 and other respective State GST Acts are based on

the concepts arising from such list and hence many activities which were covered by list of services under Section 66E of the said Act have been treated as supply of service under the GST Acts also.

**Concept of Schedule-III for classification of activities which are neither Supply of Goods nor Supply of Services**

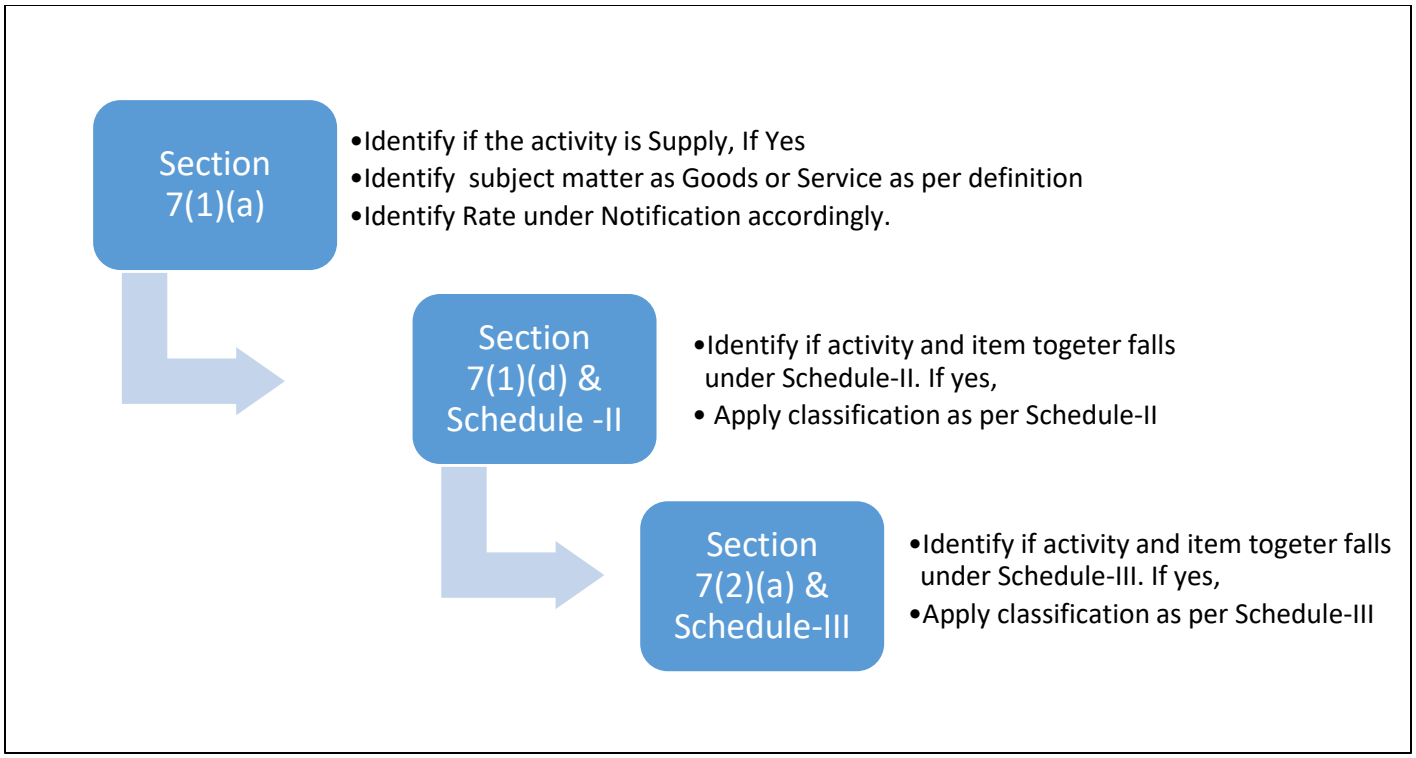
In contrast to Schedule-II, drawing power from Section 7(2)(a) certain activities have been specified under Schedule-III which are neither treated as supply of goods nor as supply of services. Hence given schedule is also qua activity but not qua item. Since GST is leviable on Supply of Goods or Services, even if any of the items as specified in Schedule-III are either goods or services, by deeming fiction, activity undertaken on them under Schedule-III shall constitute as if no supply has taken place at all in terms of the GST Acts.

List of activities which are enumerated under Schedule-III are as under:

1. Services by an employee to the employer in the course of or in relation to his employment.
2. Services by any court or Tribunal established under any law for the time being in force.
3. The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities.
4. The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
5. The duties performed by any person as a Chairperson or a Member or a Director in a body established by the Central Government or a State Government or local authority and who is not deemed as an employee before the commencement of this clause.
6. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.
7. Sale of land and sale of building (completed).
8. Actionable claims, other than lottery, betting and gambling.

Thus on the basis of Section 7, following classification principles evolves for systematic understanding of nature of supply.

**Basic Classification methodology in accordance with Section 7 of the CGST Act 2017**




**Identification of Composite Supplies or Mixed Supplies**

In real world with changing business dynamics, the supplies are also intermingled and entangled. There shall be numerous situations wherein two independent supplies are provided together. Such supply can be of supply of goods or supply of services. Various situations which can arise in real world wherein supplies are provided with each other are

- Supply of two or more goods together (Machine with Packing)
- Supply of two or more services together (Storage and Transportation)
- Supply of goods with supply of services (Wall Painting with Paint)
- Supply of services with supply of goods (Machine with Installation)
- Supply of goods with supply of neither goods nor services (Exchange of Currency with Sale of Currency)
- Supply which constitutes taxable and exempted supplies together (Sale of Bakery item with Vegetables)
- Supply which constitutes taxable and non-GST supplies together (Sale of Lubricant with Petrol)

- Supply which constitutes taxable and transactions specified in Schedule-III (Sale of Furniture with sale of Building)

In all the above cases, it is not apparent as under which category given supplies can be classified. In fact it is also difficult to determine whether these supplies together are supply of goods or supply of services or both. Further once it is not evident that charge is either on supply of goods or supply of service, it shall be impossible to identify the as to what should be rate of tax applicable on given supplies.

In case of **Mathuram Agarwal vs State of Madhya Pradesh (1999) 8 SCC 667 (SC)**, it was held by Hon'ble Supreme Court of India that:

"*The statue should clearly and unambiguously convey the three components of the tax law i.e. the subject of the tax, who is liable to pay the tax and the rate at which the tax is to be paid. If there is any ambiguity regarding any of these ingredients in a taxation statue then there is no tax in law. Then it is for the legislature to do the needful in the matter.* "

Thus it is important for a levy to sustain that the rate of tax on a particular supply is unambiguous. For that it is important to identify the nature of supply and its appropriate classification as goods or service.

The CGST Act 2017, under Section 8, has envisaged given situation and provides a workable solution for classification of such entangled supplies.

The Section 8 of the CGST Act 2017 is read as under:

***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.*

The law provides new terms whose understanding are very critical for the purpose of correct classification of various supplies. Those terms are defined under law as following:

Section 2(30) of the CGST Act 2017, defines composite supply as:

*(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;*

Section 2 (90) of the CGST Act 2017, defines principal supply as:

*(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 2 (74) of the CGST Act 2017, defines mixed supply as:

*(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*

**Composite Supply**

On the basis of definition for any supply to be a composite supply, it should have following ingredients

- A supply consisting of two or more supplies
- Both the supplies should be taxable supplies under GST
- Supply can be either of goods or services or a combination of both
- Both or more supplies should be conjunctive (i.e. together at same time) to each other
- Both or more supplies should be naturally bundled
- It should be in ordinary course of business to bundle two or more supplies
- Out of both or more supplies, one supply should be a principal supply (i.e. predominant)

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

**Taxable Supplies**

For classifying a supply as composite supply, it is a mandatory condition that both the supplies should be a taxable supply. For example in case of Hotel Accommodation services, generally CP (Continental Plan) is offered to customers wherein a single price for Room Stay and morning breakfast is charged. Now assuming that declared tariff of room is more than Rs 1000/-, hence it becomes a supply which is taxable in nature. Since the cost of breakfast is included in the declared tariff, hence now two supplies are provided together by Hotel i.e. Hotel Accommodation Service and Restaurant Services and hence it can be classified as composite supply.

Now assuming that said Hotel also has room categories where the declared tariff of room is less than Rs 1000/- per room night. (The charges for breakfast are already included in the given tariff). In given case, since the room tariff per night is less than Rs 1000/- hence said service is eligible for exemption under GST under notification no 12/2017-CT (Rate) dated 28.06.2017. However in given case, the restaurant services provided are still taxable. To understand of given bundle of two services can be still treated as composite supply, the definition of taxable supply is important to understand.

According to Section 2(108) of the CGST Act 2017, the term taxable supply is defined as

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

Further the term exempt supply is defined under Section 2(47) of the Act as

*(47) "exempt supply" means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply.*

On the basis of above definitions it is evident that taxable supply means a supply which is leviable to GST. However exempt supplies means supplies on which rate of GST is Nil or which are exempt under Section 11 of the Act.

In given example, the Hotel Accommodation Services provided by Hotel is an exempt supply under Section 11 of the Act since notification no 12/2017-CT (Rate) dated 28.06.2017 has been issued under given Section only. However it is pertinent to note that given supply shall still qualify as a supply which is leviable to GST but has been exempted under a specific notification.

Thus on basis of this analogy, it is safe to conclude that the term Taxable Supply includes

- Supplies on which GST is payable
- Supplies which are exempt under Section 11 of the CGST Act
- Supplies which are exempt under Section 6 of the IGST Act
- Supplies which attract NIL rate of Tax.

Hence in given example, since Hotel Accommodation service with breakfast with declared tariff less than Rs 1000/- per room night, has been supplied together and both are taxable supplies (out of which one is exempt supply also) as per definition given under the law, hence together they can be treated as composite supply. Further since in given case, the principal supply shall be that of Hotel Accommodation only hence it shall be treated as supply of Hotel Accommodation Service in terms of Section 8 of the CGST Act 2017. Thus, the whole supply shall be exempted from GST.

However, in cases where Non Taxable supplies (example supply of Alcohol for Human Consumption with Snacks) is made then it cannot be treated as two taxable supplies made together since Non Taxable supply has been defined under Section 2(78) of the CGST Act 2017 as

*(78) "non-taxable supply" means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Services Tax Act;*

Since Non-Taxable Supply inspite being an exempt supply cannot be treated as taxable supply hence whenever it is provided with any taxable supply or exempt supply in normal course of business as a naturally bundled supply it will never be treated as a composite supply.

Thus on basis of given analogy the summary can be drawn as under:

| Supply 1 | Supply 2 | Naturally Bundled | In Normal Course of Business | Composite Supply |
|---|---|---|---|---|
| Taxable | Taxable | Yes | Yes | Yes |
| Taxable | Exempt u/s 11 of the CGST Act 2017 | Yes | Yes | Yes |
| Taxable | Exempt u/s 6 of the IGST Act 2017 | Yes | Yes | Yes |
| Taxable | NIL Rated | Yes | Yes | Yes |
| Taxable | Non Taxable | Yes | Yes | No |

**Naturally Bundled- In ordinary course of Business**

The term Naturally Bundled has not been defined under the GST Acts. However under the erstwhile Service Tax regime the term "Bundled Services" was explained in the Education Guide issued by CBEC in the year 2012 as under -

"'Bundled service' means a bundle of provision of various services wherein an element of provision of one service is combined with an element or elements of provision of any other service or services. An example of 'bundled service' would be air transport services provided by airlines wherein an element of transportation of passenger by air is combined with an element of provision of catering service on board. Each service involves differential treatment as a manner of determination of value of two services for the purpose of charging service tax is different.

Illustrations -

- A hotel provides a 4-D/3-N package with the facility of breakfast. This is a natural bundling of services in the ordinary course of business. The service of hotel accommodation gives the bundle the essential character and would, therefore, be treated as service of providing hotel accommodation.

- A 5 star hotel is booked for a conference of 100 delegates on a lump sum package with the following facilities :

  - Accommodation for the delegates
  - Breakfast for the delegates,
  - Tea and coffee during conference
  - Access to fitness room for the delegates
  - Availability of conference room
  - Business centre.

As is evident a bouquet of services is being provided, many of them chargeable to different effective rates of tax. None of the individual constituents are able to provide the essential character of the service. However, if the service is described as convention service it is able to capture the entire essence of the package. Thus, the service may be judged as convention service. However, it will be fully justifiable for the hotel to charge individually for the services as long as there is no attempt to offload the value of one service on to another service that is chargeable at a concessional rate.

Whether services are bundled in the ordinary course of business would depend upon the normal or frequent practices followed in the area of business to which services relate. Such normal and frequent practices adopted in a business can be ascertained from several indicators some of which are listed below -

1. **The perception of the consumer or the service receiver**. If large number of service receivers of such bundle of services reasonably expects such services to be provided as a package, then such a package could be treated as naturally bundled in the ordinary course of business.

2. **Majority of service providers in a particular area of business provide similar bundle of services.** For example, bundle of catering on board and transport by air is a bundle offered by a majority of airlines.

3. The nature of the various services in a bundle of services will also help in determining whether the services are bundled in the ordinary course of business. **If the nature of services is such that one of the services is the main service and the other services combined with such service are in the nature of incidental or ancillary services which help in better enjoyment of a main service.** For example, service of stay in a hotel is often combined with a service or laundering of 3-4 items of clothing free of cost per day. Such service is an ancillary service to the provision of hotel accommodation and the resultant package would be treated as services naturally bundled in the ordinary course of business.

4. Other illustrative indicators, not determinative but indicative of bundling of services in ordinary course of business are –

    a. There is a **single price or the customer pays the same amount**, no matter how much of the package they actually receive or use.
    b. The elements are **normally advertised as a package.**
    c. The **different elements are not available separately**.
    d. The **different elements are integral to one overall supply** - if one or more is removed, the nature of the supply would be affected.

No straight jacket formula can be laid down to determine whether a service is naturally bundled in the ordinary course of business. Each case has to be individually examined in the backdrop of several factors some of which are outlined above.

The above principles explained in the light of what constitutes a naturally bundled service can be gainfully adopted to determine whether a particular supply constitutes a composite supply under GST and if so what constitutes the principal supply so as to determine the right classification and rate of tax of such composite supply.

**Principal Supply**

According to definition of Principal Supply, it should have following features:

- It should be supply of goods or services which constitutes the predominant element of a composite supply
- Any other supply forming part of that composite supply is ancillary supply.

Thus 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 the essential nature of the composite supply is and which element of the supply imparts that essential nature to the composite supply.

Some of interesting decisions passed by European Court of Justice and various other Courts to explain the concept, scope and limitations of Natural Bundling, Principal Supply and Predominant element of supply are enumerated below:

1. **Card Protection Plan Ltd vs. Commissioners of Customs and Excise [2012] 22 taxmann.com 176 (ECJ)**

   **Two or more acts to be regarded as a single supply if they are so closely linked that they form a single indivisible economic supply**: Where a transaction comprises a bundle of features and acts, then, whether it constitutes one single supply, or, two or more supplies should be determined taking into account the facts and circumstances of the case. There may be a single supply where some element(s) constitute the 'principal' supply, while others are 'ancillary'. Further, if two or more elements or acts supplied by the taxable person to the customer are so closely linked that they form, objectively, a single, indivisible economic supply, which it would be artificial to split, then, all those elements would constitute a 'single supply' for the levy of tax. The fact that a single price is charged for all elements is not conclusive. [Para 18]

2. **Aktiebolaget NN vs. Skatteverket [2012] 22 taxmann.com 175 (ECJ)**

   Definition of - Predominant element determines classification - ***If service is only a better means of enjoying goods sold, then, service incidental to sale of goods - Cost of elements is also relevant, but, cost alone is not decisive*** - Assessee entered into a single contract of supply and installation of telecommunication cable across countries - Property in cable passed to client after cable was installed and tested - Department demanded service tax contending whole of transaction was 'service' - HELD : Supply of Cable and laying thereof are so closely linked that they constitute a single indivisible economic transaction - Predominant element is supply of cable as property in cable is transferred to client without alteration/adaptation to requirement of client and cost of materials is major part of cost - Since supply of goods element is predominant whole contract is a 'sale', not service - Not liable to service tax [Paras 31 to 40] [In favour of assessee]

3. **Levob Verzekeringen BV and OV Bank NV vs Secretary of State for Finance, Netherlands* [2012] 22 taxmann.com 174 (ECJ)**

   Service - Definition of - Under a single contract, basic software supplied, customisation carried out and training provided by same supplier for prices were stipulated separately - Department contended that whole transaction amounted to 'supply of service' liable to service tax - HELD : All such elements were so closely linked that they constituted a single indivisible economic transaction - Separate pricing was not relevant - Predominant element was customisation as only customisation would make the software useful to consumer and price thereof was also higher - Since service element viz., customisation was predominant, whole contract constituted a 'single supply of service' and was liable to service tax [In favour of revenue]

   Specified descriptions of services or Bundled Service principles of Interpretations - Combining various elements into single transaction - If two or more elements are so

closely linked that they form a single indivisible economic supply, which can be split only artificially, all those elements constitute a 'single supply' [In favour of revenue]

Service - Definition of Predominant element determines classification - If predominant element is service, then, whole transaction amounts to 'service' even if element of goods is also involved - ***Predominance is to be determined considering extent, duration, usefulness and cost of various elements, economic essence and intention of parties*** [In favour of revenue]

4. **Volker Ludwig vs. Finanzamt Luckenwalde [2013] 31 taxmann.com 287 (ECJ)**

   Bundled Services - Every service must normally be regarded as distinct and independent - But, a supply which comprises a single service from an economic point of view should not be artificially split - ***Essential features of transaction must be ascertained in order to determine whether there is provision of several distinct principal services or a single service*** **-** There is a single service, if one or more elements are to be regarded as constituting principal service, whilst one or more elements are to be regarded as ancillary services which share tax treatment of principal service - A service must be regarded as ancillary to a principal service if it does not constitute for customers an aim in itself, but a means of better enjoying principal service supplied [Paras 17 & 18] [In favour of revenue]

5. **Leez Priory vs. Commissioners of Customs & Excise [2013] 40 taxmann.com 512 (UKV - DUTIES TRIBUNALS)**

   ***A supply which comprises a single service from an economic point of view should not be artificially split, so as not to distort functioning of tax*** - Essential features of transaction must be ascertained in order to determine whether taxable person is supplying with several distinct principal services or with a single service - Court must determine whether there are two independent supplies, namely an exempt supply and a taxable supply, or whether one of those two supplies is principal supply to which other

is ancillary so that it derives its tax treatment from principal supply - Merely because availment of a service is pre-condition for availment of other services, entire bundle of services cannot be classified as first-mentioned service; just as, an object, requiring a prior license for purchase, cannot, itself, be classified as license itself - Just as fact that a single price is charged is not decisive, if distinct prices are attributed to distinct parts of a transaction that fact also is not decisive [Paras 38 to 43] [In favour of revenue]

6. **RLRE Tellmer Property sro vs. Tax Directorate of Ústí nad Labem* [2012] 23 taxmann.com 244 (ECJ)**

   Assessee, an owner of apartments, rented same and also provided cleaning services of common parts - Assessee charged rent and cleaning charges under separate invoices - Service of renting was exempt under law - Assessee claimed exemption in respect of rent as well as cleaning charges - Department denied exemption in respect of cleaning charges contending cleaning activity was not a part of 'renting' - HELD : Letting of apartment and cleaning services of common parts are separate transactions - ***Cleaning services might be obtained from third party as well, not necessarily it was to be obtained from landlord - Further, cleaning charges were separately invoiced*** - Exemption available to letting was not available for cleaning services and it was liable to service tax [In favour of revenue]

7. The United Kingdom Upper Tribunal in **Hon'ble Society of the Middle Temple v. HMRC [2013] UKUT 0250 (TCC) : [2013] STC 1998** gave key principles for determining whether a particular transaction should be regarded as a composite supply or as several independent supplies. The said principles are summarized as follows:

   a. Every supply must normally be regarded as distinct and independent, although a supply which comprises a single transaction from an economic point of view should not be artificially split.

b. The essential features or characteristic elements of the transaction must be examined in order to determine whether, from the point of view of a typical consumer, the supplies constitute several distinct principal supplies or a single economic supply.

c. There is no absolute rule and all the circumstances must be considered in every transaction.

d. Formally distinct services, which could be supplied separately, must be considered to be a single transaction if they are not independent.

e. There is a composite supply where two or more elements are so closely linked that they form a single, indivisible economic supply which it would be artificial to split.

f. In order for different elements to form a composite economic supply which it would be artificial to split, they must, from the point of view of a typical consumer, be equally inseparable and indispensable.

g. The fact that, in other circumstances, the different elements can be or are supplied separately by a third party is irrelevant.

h. There is also a composite supply where one or more elements are to be regarded as constituting the principal services, while one or more elements are to be regarded as ancillary services which share the tax treatment of the principal element.

i. A service must be regarded as ancillary if it does not constitute for the customer an aim in itself, but is a means of better enjoying the principal service supplied.

j. The ability of the customer to choose whether or not to be supplied with an element is an important factor in determining whether there is a composite supply or several independent supplies, although it is not decisive, and there must be a genuine freedom to choose which reflects the economic reality of the arrangements between the parties.

k. Separate invoicing and pricing, if it reflects the interests of the parties, support the view that the elements are independent supplies, without being decisive.

l. A composite supply consisting of several elements is not automatically similar to the supply of those elements separately and so different tax treatment does not necessarily offend the principle of fiscal neutrality.

**Time of supply in case of Composite supply**

If the composite supply involves supply of services as principal supply, such composite supply would qualify as supply of services and accordingly the provisions relating to time of supply of services would be applicable. Alternatively, if composite supply involves supply of goods as principal supply, such composite supply would qualify as supply of goods and accordingly, the provisions relating to time of supply of goods would be applicable.

**Mixed Supply**

Under GST, a 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.

In order to identify if the particular supply is a Mixed Supply, the first requisite is to rule out that the supply is a composite supply. A supply can be a mixed supply only if it is not a composite supply. As a corollary it can be said that if the transaction consists of supplies not naturally bundled in the ordinary course of business then it would be a Mixed Supply. Once the amenability of the transaction as a composite supply is ruled out, it would be a mixed supply, classified in terms of a supply of goods or services attracting highest rate of tax.

The following illustration given in the Education Guide of CBEC referred to above can be a pointer towards a mixed supply of services :-

"A house is given on rent one floor of which is to be used as residence and the other for housing a printing press. Such renting for two different purposes is not naturally bundled in the ordinary course of business. Therefore, if a single rent deed is executed it will be treated as a service comprising entirely of such service which attracts highest liability of service tax. In this case renting for use as residence is a negative list service while renting for non-residence use is chargeable to tax. Since the latter category attracts highest liability of service tax amongst the two services bundled together, the entire bundle would be treated as renting of commercial property."

**Time of supply in case of mixed supplies**

The mixed supply, if involves supply of a service liable to tax at higher rates than any other constituent supplies, such mixed supply would qualify as supply of services and accordingly the provisions relating to time of supply of services would be applicable. Alternatively, the mixed supply, if involves supply of goods liable to tax at higher rates than any other constituent supplies, such mixed supply would qualify as supply of goods and accordingly the provisions relating to time of supply of services would be applicable.

**Certain clarifications on composite and mixed supply given by CBEC**

The printing industry in India in particular faces a dilemma in determining whether the nature of supply provided is that of goods or services and whether in case certain contracts involve both supply of goods and services, whether the same would constitute a supply of goods or

services or if it would be a composite supply and in case it is, then what would constitute the principal supply. It is to be noted that in case of composite supplies, taxability is determined by the principal supply To address concerns of the printing industry, CBEC has come out with Circular No. 11/11/2017-GST, dated 20-10-2017, where in it is clarified as under :

“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.

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.

In case of supply of printed envelopes, letter cards, printed boxes, tissues, napkins, wall paper etc. falling under Chapters 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 Chapters 48 or 49 of the Customs Tariff.”

**Classification of Goods as per Notification**

The Central Government, on the recommendations of the GST Council, has issued Notifications Number 01/2017-CT (Rate) dated 28.06.2017 prescribing the Rate of Tax (Schedules) for specified goods under CGST/IGST ("Rate Notification"). This Notification is divided into 6 Schedules, which are as follows:

(i) 2.5% (Schedule I);

(ii) 6% (Schedule II);

(iii) 9% (Schedule III);

(iv) 14% (Schedule IV);

(v) 1.5% (Schedule V); and

(vi) 0.125% (Schedule VI)

The Central Government by way of further Notifications amends the Rate Notification to specify any change of rate of duty on any commodity, from time to time.

It is pertinent to note that the Explanation to the Rate Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 states that:

*For the purposes of this Notification:*

*…*

*(iii) "Tariff item", "sub-heading" "heading" and "Chapter" shall mean respectively a tariff item, sub-heading, heading and chapter as specified in the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).*

*(iv) The rules for the interpretation of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975), including the Section and Chapter Notes and the General Explanatory Notes of the First Schedule shall, so far as may be, apply to the interpretation of this notification.*

Therefore, while the Rate Notification under GST provides the rate of tax on goods and services, in order to interpret these Rate Notifications for purposes of levy of GST, one has to read the same along with the First Schedule (including the Section and Chapter Notes and General Explanatory Notes) of the Customs Tariff Act, 1975 ("Tariff").

The broad outlay of the Customs Tariff Act, 1975, its Schedules, Rules of Interpretation, the Harmonised System of Nomenclature vis-à-vis the Tariff and the relevance of erstwhile classification disputes in the new GST regime are enumerated as under:

**HARMONIZED SYSTEM OF NOMENCLATURE ("HSN")**

With the increase in international trade, the World Customs Organization ("WCO") developed a Harmonized System of Nomenclature ("HSN"), in order to facilitate trade flow and analysis of trade statistics. The following are the features of the HSN:

a) Adopted by 137 countries to ensure uniformity in classification of products;

b) Contains about 5,000 commodity groups – each identified by a 6-digit code (it is pertinent to note that both the Tariff in India follows an 8 digit code system for further clarity in trade volumes and a more specific classification of indigenous products);

c) Amended over regular intervals of 4/6 years, taking into consideration the technological advancements in any field – last amendment approved by the WCO in 2009, and brought into force with effect from 1-1-2012;

d) For ensuring uniformity, WCO has published the Explanatory Notes to various headings/ sub- headings;

e) The Customs Tariff in India was aligned to the HSN w.e.f. 28.02.1986 (whereas the Excise tariff was aligned from w.e.f. 1-3-1986).

**CUSTOMS TARIFF ACT, 1975**

Prior to the advent of GST, in order to determine the Customs duty leviable on a particular commodity, one had to refer to the Customs Tariff Act, 1975 ("CTA") for the appropriate classification of the goods. The following are the broad features of the CTA:

| S. No. | Particulars | Customs Tariff Act, 1975 ("CTA") |
|---|---|---|
| 1. | **Chapter linking the main Act with the Tariff Act** | Section 12 of the Customs Act, 1962 states that duties of customs shall be levied at such rates as may be specified under [the Customs Tariff Act, 1975 (51 of 1975)], or any other law for the time being in force, on goods imported into, or exported from, India. |
| 2. | **Number of Schedules** | 2 |
| 3. | **Schedules** | Import Tariff |
| | | Export Tariff (contains 49 items [as of 01.03.2011] only, most of which are exempt) |
| 4. | **Sections** | 21 |
| 5. | **Chapters** | 99 (Chapter 77 is blank, reserved for future use) |
| 6. | **Columns** | 5 (Tariff Item, Description of goods, Unit, Standard Rate of duty and Rate of duty for Preferential Area – e.g. Nepal, Myanmar, etc.) |

**Broad outline of the Tariff**

It is of primary importance to understand the structure of the Tariff, and the nomenclature used for various parts of the same, in order to begin classification of any relevant item, which is as set out below:

a) Section

b) Chapters, and sub-chapters

c) Headings and Sub-Headings

| SECTION | CHAPTER | HEADINGS |
|---|---|---|
| • **SECTION** is a grouping of a number of Chapters which codify a particular class of goods. Each Section is related to a broad class of goods, for instance:<br>• Section I : Live Animals<br>• Section IV – Prepared foodstuffs, beverages<br>• Section XII – Footwear, Headgear, Umbrella, Articles of human hair | • **CHAPTER** and sub-chapters contains a particular class of goods, for instance the Section on Prepared foodstuffs, beverages covers Chapters like<br>• Chapter 16: Preparations of meat, fish, etc.<br>• Chapter 17: Sugar and sugar confectionery<br>• Chapter 18: Cocoa and cocoa preparation | • Each chapter is further divided into various **HEADINGS** and sub-headings depending upon the different type of goods covered within the Chapter, for instance Sugar and Sugar confectionery is further divided into headings like<br>• a) Cane or beet sugar.<br>• b) Other sugars, molasses (refining of sugar)<br>• c) Other sugar confectionery |

**Reading the Tariff**

**Arrangement of Goods under the Tariff:**

It is important to first narrow down the search for the relevant classification by scaling it down to a particular Section or Chapter.

It is interesting to note that the various commodities grouped under the Sections, Chapters, etc are arranged in increasing order of manufacturing process required on the said commodity – for instance, the Tariff begins with natural products, raw materials, goes on to semi- finished goods and concludes with fully manufactured goods.

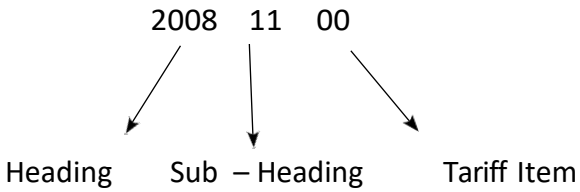
As will be dealt with in detail in a later Section of this paper, reliance is not to be placed solely on the Section or Chapter Titles to classify the product therein.

**Eight-digit classification**

Once the search has been restricted to a Specific Chapter, each Chapter begins with a set of Notes that are to be interpreted along with various headings in the Chapter. Such Notes may contain definitions of terms used in the Chapter and specific inclusions and exclusions in the Chapter.

The next portion in the Chapter would comprise a table setting out the Tariff Item, description of goods, Unit, and Rate of duty applicable thereon.

The Indian Tariff System employs the 8-digit format, which is explained below by way of an example.




The rate of duty in the Tariff is mentioned against the respective Tariff Items.

**Relevance of Dashes**

The dashes at the beginning of the description of a group of items indicate the following:

| **Dashes** | **Meaning** |
|---|---|
| (-) single dash | A Group of goods |
| (- -) Two dashes | Sub - group |
| (- - -) Triple dash or (- - - -) Quadruple dash | Sub – sub classification |

Examples within Chapter 20 would be as follows:

| Tariff Item | Description of Goods | Unit | Rate of Duty (Standard) | Rate of Duty (Preferential) |
|---|---|---|---|---|
| 2008 | Fruit, nuts and other edible parts of plants, otherwise prepared or pre-served, whether or not containing added sugar or other sweetening matter or spirit, not elsewhere specified or included | | | |
| | - *Nuts, groundnuts and other seeds, whether or not mixed together* | | | |
| 2008 11 00 | -- Ground nuts | Kg. | 30% | – |
| 2008 19 | - Other, including mixtures | | | |
| 2008 19 10 | --- Cashew nut, roasted, salted or roasted and salted | g. | 45% | – |
| 2008 19 20 | --- Other roasted nuts and seeds | g. | 30% | – |

| Heading | Sub-heading | Tariff Item | Unit | Rate of duty |
|---|---|---|---|---|

**Other facets of the Tariff**

a. The Third Column of the Tariff – "Unit" – indicated by abbreviations – these are mandatory for use in Customs documents, except when impractical (e.g. oil in kgs).

b. The % sign in Column 4 indicates that duty is charged "ad valorem" on the value of goods.

c. Only sub-headings at the same level (same dashes) are comparable; for instance, in the above example, cashew nuts, roasted and other roasted nuts is comparable, but cashew nuts and ground nuts are not comparable.

**GENERAL RULES OF INTERPRETATION**

The principles governing the appropriate classification of goods under the Tariff, as set out in the 'General Rules for Interpretation of this Schedule' to the Customs Tariff are set out below and expounded, seriatim.

**Rules to be applied sequentially**

Classification is to be first tested on the basis of Rule 1. Only if Rule 1 does not resolve the issue, the other Rules are to be looked at sequentially.

**Rule 1: Classification to be determined per the "Headings"**

Rule 1 states that:

> *The titles of Sections, Chapters and sub-chapters are provided for ease of reference only; for legal purposes, classification shall be determined according to the terms of the headings and any relative Section or Chapter Notes and, provided such headings or Notes do not otherwise require.*

As discussed above, each Section is divided into Chapters. Further, each Chapter within the Sections have Chapter titles.

Per Rule 1, the Section or Chapter Titles cannot be used for classification. Only employing the use of Chapter heading may not provide an accurate picture of what the Chapter

covers. For example: the Heading of Chapter 84 refers to nuclear reactors, machinery, etc. but even a hand pump falls under Chapter 84.

Per Rule 1, one should give primacy to the Headings along with Chapter and Section Notes. The above rule lays down the following propositions:

(a) The titles of sections, chapters and sub-chapters do not have any legal force.

(b) Terms of headings read with the related section and chapter notes are legally relevant for the purpose of classification.

(c) The rules of interpretation need not be resorted to when classification is possible on the basis of description in headings, sub-heading, along with the chapter notes and section notes.

The Section Notes and Chapter Notes are part of the Act itself, and have statutory backing. Thus, no further Rule is required to be looked into, if classification is possible on the basis of the Tariff Entry read with Chapter Notes and Section Notes.

For instance, an assessee was manufacturing Aluminium foil cone containers. The assessee was classifying the same under Customs Tariff Heading (CTH) 76.16 [Other articles of aluminium], whereas Department sought to classify the goods under CTH 48.23 [Other paper, paperboard, cellulose wadding and webs of cellulose fibres; other articles of paper pulp, paper, paper-board]. However, the Tribunal in case of **Monita Containers vs. CCE (2007) 213 ELT 262 (CESTAT)** while classifying the product under CTH 76.16, held:

*When the Note is specific in its excluding the said goods, they cannot be included by mere reference to the title of Chapter 48: "Paper and Paperboard; Articles of Paper Pulp, of Paper or of Paperboard", as was sought to be urged on behalf of the Revenue. Even the contention that the Chapter Note will not apply because Rule 3(b) of the Interpretative Rules, is misconceived, as it has been specifically provided in Rule 1 of the Rules for the interpretation of the First Schedule. Therefore, if there is no specific Chapter Note requiring otherwise, Rule 2 onwards including Rule 3(b) of the Rules for the Interpretation cannot be invoked.*

**Rule 2(a): Classification of incomplete or un-assembled goods**

Rule 2(a) of the Interpretation Rule states:

> *2.(a) Any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as presented, the incomplete or unfinished articles has the essential character of the complete or finished article. It shall also be taken to include a reference to that article complete or finished (or falling to be classified as complete or finished by virtue of this rule), presented unassembled or disassembled.*

As per the above-stated Rule, if an incomplete article has the essential characteristics of the final product, then the Tariff Item covering the said final product would also cover the incomplete product, so presented. Further, the finished article would also include the article presented in an unassembled state.

For example, an assessee was manufacturing crayplas shapeless plastic crayon. The assessee was classifying the same under CETH 9609 00 covers "pencils, crayons, pencil leads, pastels, drawing charcoals, writing or drawing chalks", whereas the Department asserted coverage under sub-heading 3204.19 relating to "pigments and preparation based thereon other than those in unformulated and unstandardized or unprepared form, not ready for use." The Court in case of **Camlin Ltd. vs. CCE 2003 (155) ELT 138 (CEGAT) affirmed in 2005 (180) E.L.T. 307 (S.C.)** while classifying the goods under CETH 9609 00, held:

> *GIR 2(a) also, allows classification of incomplete or unfinished goods having the essential characteristics of complete or finished goods under a heading appropriate to such complete or finished goods. In the instant case, the impugned goods only require to be given the shape of crayons before they can be made into finished crayons and as such, they can be considered as incomplete or unfinished goods.*

In another case of **LML Ltd. vs. CC (1999) 105 ELT 718 (CEGAT) affirmed in 1999 (107) E.L.T. A119 (S.C)**], it was held that a scooter body unit without engine is classifiable as scooter (CETH 8711 90). The Court placed reliance on HSN Explanatory Note for Rule 2(a) which states:

*"An incomplete or unfinished vehicle is classified as the corresponding complete or finished vehicle provided it has the essential character of the latter [see Interpretative Rule 2(a)] as for example:*

*(A) A motor vehicle, not yet fitted with the wheels or tyres and battery.*

*(B) A motor vehicle not equipped with its engine or with its interior fittings.*

*(C) A bicycle without saddle and tyres.*

*This Chapter also covers parts and accessories which are identifiable as being suitable for use solely or principally with the vehicles included therein, subject to the provisions of the Notes to Section XVII (see the General Explanatory Note to the Section).*"

**Determination of "essential characteristics"**

In the case of **Shivaji Works Ltd. CCE 1994 (69) ELT 674 (CEGAT),** it was held that the functional test is the correct test for determining the character of a product, i.e. 'primary function' is 'essential characteristic.' Unless the incomplete product is incapable of functioning like the finished goods, this rule is not applicable.

**Goods in SKD or CKD condition**

Per the second part of Rule 2(a), goods in unassembled condition would be covered along with the finished goods itself.

This is essential when certain goods are to be dismantled prior to despatch, for convenience of transport.

In the case of **CCE vs. Scan Machineries**, **2009 (234) ELT 282 (CESTAT)** the assessee cleared machinery in a phased manner but paid the entire duty at the time of the first clearance of parts, as per trade practice. The clearance was against a single purchase order. It was held that clearance is of a single machine and not parts of machine.

In the case of **Tata Motors vs. CCE (2008) 222 ELT 289 (CESTAT) affirmed in 2016 (337) E.L.T. A99 (S.C.)]**, it was observed that the expression "as presented" should be given the same meaning as "as cleared." Thus, if different parts were cleared from different units at different

points of time, duty cannot be demanded by treating them as motor vehicle chassis in CKD condition.

However, the same principle may not be applicable for an import entitlement which is specifically meted out to "parts" as held in case of **Union of India vs. Tara Chand (1983) 13 ELT 1456 (SC); CC vs. Reliance Industries Ltd. (2000) 115 ELT 15.**

**Rule 2(b): Classification of Mixture or Combinations**

Rule 2(b) states that:

> *(b) Any reference in a heading to a material or substance shall be taken to include a reference to mixtures or combinations of that material or substance with other materials or substances. Any reference to goods of a given material or substance shall be taken to include a reference to goods consisting wholly or partly of such material or substance. The classification of goods consisting of more than one material or substance shall be according to the principles of rule 3.*

In the case of **Dhariwal Industries vs. CCE 2014 (304) ELT 585 (CESTAT) maintained in 2015 (319) E.L.T. A123 (S.C.),** the assessee was manufacturing "Calcutta meetha pan" which was a mixture of various items, primary ingredient being pan leaf. The product contained 70% of dry dates and mixture of spices and sweetener. It was held that classification, per Rule 2(b) and 3(b), ought to be under "Fruits, Nuts and Other Edible parts" under CETH 20.08 and not "pan masala."

**Rule 3(a): Prefer the Specific entry over the general entry**

Rule 3(a) states that:

> *3. When by application of rule 2(b) or for any other reason, goods are, prima facie, classifiable under two or more headings, classification shall be effected as follows:*
>
> *(a) The heading which provides the most specific description shall be preferred to headings providing a more general description. However, when two or more headings each refer to part only of the materials or substances contained in mixed or composite goods or to part only of the items in a set put up for retail sale, those headings are to be regarded as equally specific in relation to those goods, even if one of them gives a more complete or precise description of the goods.*

If after application of Rule 2, the conflict still persists between more than one heading, then one ought to take the aid of Rule 3, which stipulates that the Heading that provides the more specific description shall be preferred over an entry with generic description.

In case of **Jyoti Industries vs. CCE (2000) 115 ELT 559 (CEGAT),** it was held that Kitchen sink is more appropriately covered under "sanitaryware" (i.e. CTH 7324 [Sanitary ware and parts thereof]) which is a specific description than "household articles of iron and steel" (i.e. CTH 7323 [Household articles of iron and steel]) which is a general description.

**Rule 3(b): Essential character test for Mixtures or Composite Goods**

Rule 3(b) states that:

> *(b) Mixtures, composite goods consisting of different materials or made up of different components, and goods put up in sets for retail sale, which cannot be classified by reference to (a), shall be classified as if they consisted of the material or component which gives them their essential character, in so far as this criterion is applicable.*

In cases of mixtures or composite goods, resort is to be had to determining the material/ component of the product which gives it its essential character.

In the case of ***CCE v. Inarco* . (2015) 318 ELT 604 (SC),** it was held that floor tiles containing 13.3% PVC (plastic), 84.9% limestone with plastic as binder is to be classified as 'article of stone, cement' as per the test of 'essential character.

In the case of ***Xerox India Ltd. vs. CC, Bombay***, where the dispute pertained to classification of digital printers, with several functions (fax, copier, etc), reliance was placed on Rule 3(b) to classify the item under CTH 8471 as printer, since printing emerged as the principal function.

In **re Samsung India Electronics P. Ltd. – (2016) 340 ELT 430 (AAR)** – it was held that mobile phone with zoom camera is to be classified as a phone, and not a camera, per its primary function.

Also, per **A V Venkateswaran, Collector of Customs vs. Ramchand Subhraj 1983 (13) ELT 1327 (SC)** – fountain pens with gold nibs, caps, classifiable as fountain pens.

However, it is to be noted that the said rule would not apply if the articles have a separate identity. In case of **CC vs. Siyaram Silk Mills (2009) 235 ELT 241 (CESTAT)** where a shirt and tie were sold together, it was held that the set cannot be classified as shirt, and they would be classified as separate items.

**Rule 3(c): If both are specific – latter the better**

Rule 3(c) states that:

> *(c) When goods cannot be classified by reference to (a) or (b), they shall be classified under the heading which occurs last in numerical order among those which equally merit consideration.*

In case of Mahindra & Mahindra v. CCE – (1999) 109 ELT 739 (CEGAT), it was held that if tariff entries 87.03 and 87.04 are equally applicable, then goods will be classifiable under 87.04, as it occurs later in the Tariff.

**Rule 4: Akin goods**

Rule 4 states that:

> *4. Goods which cannot be classified in accordance with the above rules shall be classified under the heading appropriate to the goods to which they are most akin.*

In the case of ***CCE vs. KWH Heliplastics Ltd.*** **(1998) 97 ELT 385 (SC)**, it was observed that in order to resolve the persisting classification dispute, the relationship of the goods under dispute vis-à-vis the description of the goods under the disputed headings should be ascertained. The relationship with a particular heading depends upon the description, purpose and use of goods. If the relationship is established, goods should be classified where they are akin to the description in the Tariff.

**Rule 5: Classification of packing containers and packing materials**

Rule 5 states that:

> *5. In addition to the foregoing provisions, the following rules shall apply in respect of the goods referred to therein:*
>
> *(a) Camera cases, musical instrument cases, gun cases, drawing instrument cases, necklace 28 cases and similar containers, specially shaped or fitted to contain a specific article or set of articles, suitable for long-term use and presented with the articles for which they are intended, shall be classified with such articles when of a kind normally sold therewith. This rule does not, however, apply to containers which give the whole its essential character;*
>
> *(b) Subject to the provisions of (a) above, packing materials and packing containers presented with the goods therein shall be classified with the goods if they are of a kind normally used for packing such goods. However, this provision does not apply when such packing materials or packing containers are clearly suitable for*

This provision is made to ensure that the packing and the goods are charged at the same rate of duty.

In the case of *Print-o-pack vs. CC*E (2012) 275 ELT 95 (CESTAT), the assessee was placing sugar cone (i.e. ice- cream cone) in an Aluminium foil cone. It was held that the Aluminium foil cone is used only as packing and the entire item would be classified as 'ice-cream cone' only.

**Rule 6: Goods are comparable at the same level only**

Rule 6 states that:

> *6. For legal purposes, the classification of goods in the sub-headings of a heading shall be determined according to the terms of those sub headings and any related sub headings Notes and, mutatis mutandis, to the above rules, on the understanding that only sub headings at the same level are comparable. For the purposes of this rule the relative Section and Chapter Notes also apply, unless the context otherwise requires.*

The sub-headings within the same heading are comparable with each other, but not with sub-headings under any other heading. Accordingly, the heading is to be first determined, and then the sub-heading has to be ascertained.

**CLASSIFICATION OF PARTS PER SECTION/CHAPTER NOTES**

Classification of parts is subject to the notes in the Sections and Chapters. Broadly, parts suitable solely for a particular machine generally fall under the same heading/ sub-heading in which the main item falls.

However, there are certain exceptions to this general rule.

**Parts of General Use**

Parts of general use consist of tube and pipe fittings, ropes, cables, chains, screws, bolts, etc. For example, a bolt used in a vehicle will be classified as "bolt" and not as "motor vehicle part."

**Part of part is part of whole**

In the case of *Needle Roller Bearings vs. CCE* (2000) 124 ELT 577 (CEGAT); Kanwar Sewing Machine, New Delhi v. CC, Bombay 1983 (12) E.L.T. 804 (C.E.G.A.T.), it was held that ball bearings form part of a machine. Hence, a part of a ball bearing is also a part of a machine. In the case of *Nalanda Manufacturing Co. v. CCE (1998) 102 ELT 289 (Tribunal)*, it was similarly held that part of a refill is also a part of a ball point pen.

**CLASSIFICATION PRINCIPLES EVOLVED BY COURTS**

**Trade / Common Parlance Understanding**

It is a cardinal principal of Tariff interpretation that resort must be had to the popular sense" instead of the scientific and technical meaning. "Popular sense" connotes that which people conversant with the subject matter, with which the statute is dealing, would attribute to it.

Basis this principle, it was held in the case of **Muller & Phipps (India) c. CCE (2004) 167 ELT 374 (SC)**, it was held that "Prickly Heat powder" is 'medicament' per common parlance, though for the purpose of Drugs Act and Sales Tax Act, the product has been treated as a drug.

In the case of **CCE v. Connaught Plaza Restaurant P. Ltd (2012) 286 ELT 321 (SC) ,** it was held that, *qua* "Soft-serve", in the absence of a definition of the term "ice cream", it is to be construed per common parlance, even if under provisions of Food Adulteration Act, it may not fall within meaning of ice cream. What matters is the way the consumer perceives the product.

However, it is to be noted that trade parlance is to be examined only if the tariff entry is ambiguous as held in **Nirlon Synthetic Fibres v. UOI (1999) 110 ELT 445 (Bom HC DB)**

**Section/Chapter Notes prevail over Trade Parlance**

The classification under the Customs Tariff is not dependent on trade parlance when the parameters are precisely laid down in the Tariff itself, in the description of the Section Notes, Chapter Notes read with the Interpretative Rules, all of which have statutory force.

**Technical meaning prevails in certain cases**

In the case of **Akbar Badruddin Jiwani v. CC (1990) 47 ELT 161 (SC)** , it was held that if the tariff entry is used in a scientific or technical sense, or when there is conflict between entries in the tariff, common parlance will not prevail.

**End Use based/ Functional test Classification**

It has been held that end use to which a product is put is not determinative of its classification as held in **CCE v. Carrier Aircon Ltd. (2006) 147 STC 421 (SC)**. For example, "axle studs" will be classifiable as "screws" even if these are used on motor vehicles as held in **Kwality Sales Corporation v. CCE (1986) 23 ELT 137 (CEGAT)**

However, the exception to this norm is where classification is per the function of the relevant goods. In such cases, end use is a relevant factor to determine the classification. For example, it was held that plastic pipes and pipe fittings manufactured with the intention of being used as part of irrigation systems should be classified as parts of irrigation system and not as plastic pipes in case of **CCE v. EPC Irrigation (2002) 142 ELT 630 affirmed in 2002 (146) E.L.T. A88**

**Other sources**

a) **Resort to residuary entry**

It is a settled principle that it must be proven by the Department that the goods cannot be brought under a specific tariff item by no conceivable process of reasoning, and only then resort can be had to classifying the goods under a residuary entry as held in **Bharat Forge & Press Industries (P) Ltd. v. CCE 1990 (45) E.L.T. 525 (S.C.).**

**b) Dictionary**

There are contrary views on dependability on dictionaries for the meaning of undefined terms.

- In absence of any definition of any word or expression in statute, it would be permissible to refer to the dictionary meaning of that expression as held in case of **Star Paper Mills v CCE (1989) 43 ELT 178 (SC).**

- Reference to a dictionary is a somewhat elusive guide, as it gives all the different shades of meaning as held in **CCE v. Krishna Carbon Paper Co. (1988) 37 ELT 480 (SC)**

**c) Meaning under other Acts or Standards (e.g. ISI/BIS Standards)**

Such statutes are for quality control and are not relevant for purposes of classification of goods as held in case of **Indian Aluminium Cables Ltd. 1985 (21) ELT 3 (SC).** Similarly, the meaning under Drugs and Cosmetics Act is not to be adopted or resorted to for purpose of classification as held in **Wipro Ltd. v. CCE (2001) 136 ELT 885 (CEGAT)**

**d) Advertisements/ Product Literature**

It has been held in case of **Blue Star Ltd. v. UOI (1980) 6 ELT 280 (Bom.)**; that goods cannot be classified on the basis of the description/ use claimed by manufacturer in advertisements.

**e) Importance of expert opinion and other evidentiary value**

Very often, when there is dispute regarding nature of goods, it will be advisable for the authorities as well as the taxable person to obtain opinion from technical experts or person dealing in the goods to know the true character of the goods. It has been consistently held that expert opinion is to be taken to understand the nature of product but cannot decide the classification of the goods. It has no binding effect, but

only guiding effect on the authorities because ultimately, decision of proper classification of the product is to be decided by the jurisdictional authority. The Delhi Tribunal in case of **Guest Keen William 1987 (29)ELT 68** has observed in para 23 as follows:

23. ……We have also examined Shri Gujral's argument that the opinion of the expert should be considered. He cited the case of 'K. Mohan & Co., Bombay vs. Collector of Customs, Madras' reported in '1984(15) E.L.T. 430', and also cited '1984 E.C.R. 1086' and '1986 (6) E.C.R. 334'. While we agree that expert opinion should be considered, we observe that it is the language of the notification and the facts of the matter whichshould be examined. An expert's opinion has to be given due respect but it cannot be the deciding, or binding factor.

The above judgement has been maintained by the Supreme Court in case of **Guest Keen Williams Ltd. vs. Collector - 1997 (95) E.L.T. A144(S.C)**

It is also held that expert opinion expressed by specialised institution has to be preferred over the opinion of individual experts obtained at the instance of the assessee. These expert opinions are not ignorable particularly if they are given by public authorities. Opinion of any other persons who have knowledge in the field regarding the product shall be given due importance for deciding the classification of the product. The opinion of authorities like Textile Commissioner, Law Ministry, etc. are to be given due importance for classification of the product.

**f) Importance of ISI specification**

In many cases, the product is manufactured as per ISI specification. Sometimes, the taxable person also affixes ISI mark on the product. The ISI specification certifies the quality of the product and not the name or character. View of the ISI shall be looked at some amount of credibility for deciding the classification. It can be used as specialised material in expert opinion, but other tangible consideration should also

weigh while determining the classification. Therefore, description of product in ISI has limited value in determining the classification of goods.

**g) Finance Minister's speech**

In some case, Finance Minister in the Finance Bill may make certain reference while introducing the changes. Speech of the Finance Minister represents the manner in which the authorities have understood the change. Therefore, the speech of the Finance Minister can be helpful in deciding the classification as held by the Hon. Gujarat High Court in the case of **ECHJAY Industries vs. UOI 1988 (34) ELT 42 (Guj)**

**h) Importance of Trade Notice/Circulars, etc.**

Section 168 of GST Act empowers the Board or the Competent Authority of the State wherever it considers necessary for the purpose of uniformity in implementation of the Act to issue such orders, instructions or directions to GST Officers as may deem fit. Similar provisions are contained in section 37B of Central Excise Act. It has been consistently held that trade notices, tariff advices, circulars, press notes etc. issued by the authorities are hardly relevant for the purpose of classification of the product under Central Excise Act as it cannot override the true meaning or interpretation underlined statutory provisions. The classification has to be decided by the authorities based on the description of relevant tariff entry and not on the basis of tariff advice or instructions or circulars etc.

**i) Provision at the relevant time**

Sometime, the tariff description of the entry may be amended over a period of time. While classifying the product, the tariff description of relevant period should only be used for classification. For example, say, goods are supplied in the month of August 2017. Further assume there is amendment in the tariff entry in April 2018. The

classification of the product based on tariff description in August 2017 should only be considered while classification for supplies made in August 2017. Subsequent amendment will not be relevant for the purpose of deciding the classification.

**j) Beneficial classification**

It is a well-established principle that when the goods are classified under two different items or said items or ambiguous sentences leave reasonable doubt about its meaning, then benefit of doubt is given to the manufacturer and the classification should be adopted which is beneficial to the manufacturer. This is based on the principle that when the legislature has not clearly laid down the provisions of law benefit of doubt is given to the manufacturer. The Hon. Bombay High Court in the case of **Garware Nylons Ltd. vs. UOI 1980 (6) ELT 249 (Guj)** has held that the classification beneficial to the assessee should be adopted.

**HSN and Classification**

At the outset, the HSN Explanatory Notes cannot override and dilute the language under the CTA. However, in case of ambiguity, resort to the HSN is permissible provided there is no conflict with the Headings, Chapter Notes or Tariff Notes. **In CCE v. Wood Craft Products Ltd. (1995) 77 ELT 23 (SC),** it was held that as per the Statement of Objects and Reasons of Central Excise Tariff Bill, 1985, the new tariff has been introduced, based on HSN to reduce classification disputes. Thus, in case of doubt, the HSN is a safe guide for ascertaining true meaning of any expression used in the Act, unless there is an express different intention indicated in the Tariff itself.

The HSN Explanatory notes have also been held to have overriding effect over trade parlance in case of **Health India Laboratories v. CCE (2007) 216 ELT 161 (CESTAT) affirmed in 2008 (224) E.L.T. A133 (S.C.)**

At the same time, in case of **New India Industries Ltd. v. CC, Bombay 1994 (73) ELT 723** it

was held that the HSN Explanatory Notes have persuasive value but do not have any statutory authority.

Furthermore, in the case of **Consolidated Coin Co. P. Ltd. v CCE (2013) 287 ELT 221 (CESTAT),** the Court observed that US Customs Rulings may be considered for classification disputes, since both US and India follow the HSN based classification.

**Department to prove classification**

The burden of proof that a product is classifiable under a particular Tariff head is on the Department and must be discharged by proving that it is so understood by the consumers of products in common parlance. It was held in case of **CCE v. Vicco Laboratories (2005) 179 ELT 17 (SC 3 Member Bench).**

**PRACTICAL GUIDE FOR CLASSIFICATION PER GST**

**Step-wise approach**

In terms of the foregoing, below is a step-wise approach for classification of goods under GST:

- **Step 1**: Identify the goods that require classification.
- **Step 2:** In the Tariff Schedule, commodities are arranged in increasing order of manufacturing process - Identify the broad Sections and Chapters, the said commodity would fall under
- **Step 3:** By way of application of General Rules of Interpretation, classify the product per the 8-digit-classification
- **Step 4:** Find the relevant sub-heading, as per Step 3. The GST Rate Schedule (along with amending notifications) has supplied various rates, grouped under 4-digit or 6-digit-classification.Further, a particular Heading may appear in several schedules, for example, CTH 2106 [Food preparations not specified elsewhere]
- **Step 5:** Find the relevant description of heading in GST Rate Schedule and corresponding Rate

**Logical Steps to be followed at the time of classification under Tariff Schedules**

- Whether the Section is not applicable on specific goods?
- If yes, no need to look into any of the chapters within the said Section.
- If the Section is applicable on specific goods
- Whether the Chapter is not applicable on specific goods
- If yes, no need to look into any of the Headings within the said Chapter
- If the Chapter is applicable on specific goods
- Then, within the chapter see the description of the Heading which accommodates given Goods.
- Thereafter find out the sub-heading which covers the given goods.

**Classification of Services as per Notification**

The Central Government, on the recommendations of the GST Council, has issued Notifications Number 11/2017-CT (Rate) dated 28.06.2017 prescribing the Rate of Tax (Schedules) for specified services under CGST/IGST ("Rate Notification").

The Central Government by way of further Notifications amends the Rate Notification to specify any change of rate of tax on any service, from time to time.

It is pertinent to note that the Explanation to the Rate Notification No. 1/2017-Central Tax (Rate) dated 28.06.2017 states that:

*For the purposes of this Notification:*

*(i)….*

*(ii) Reference to "Chapter", "Section" or "Heading", wherever they occur, unless the context otherwise requires, shall mean respectively as "Chapter, "Section" and "Heading" in the annexed scheme of classification of services (Annexure).*

Along with the rate notification a detailed annexure for scheme of classification of services has been given with it. However unlike for goods, no method has been prescribed as to how one has to read the given annexure along with the Rate Notification.

**Reading the Annexure to Notification No 11/2017-CT Rate dated 28.06.2017**

The given annexure is based on a six digit format which is akin to HSN Classification for goods. The Section 5 of Chapter 99 of Annexure is read as under:

| Annexure: Scheme of Classification of Services | | | |
|---|---|---|---|
| **S.No.** | **Chapter, Section, Heading or Group** | **Service Code (Tariff)** | **Service Description** |
| (1) | (2) | (3) | (4) |
| 1 | **Chapter 99** | | **All Services** |
| 2 | **Section 5** | | **Construction Services** |
| 3 | **Heading 9954** | | **Construction services** |
| 4 | **Group 99541** | | **Construction services of buildings** |
| 5 | | 995411 | Construction services of single dwelling or multi dwelling or multi-storied residential buildings |
| 6 | | 995412 | Construction services of other residential buildings such as old age homes, homeless shelters, hostels and the like |
| 7 | | 995413 | Construction services of industrial buildings such as buildings used for production activities (used for assembly line activities), workshops, storage buildings and other similar industrial buildings |
| 8 | | 995414 | Construction services of commercial buildings such as office buildings, exhibition and marriage halls, malls, hotels, restaurants, airports, rail or road terminals, parking garages, petrol and service stations, theatres and other similar buildings |
| 9 | | 995415 | Construction services of other non-residential buildings such as educational institutions, hospitals, clinics including veterinary clinics, religious establishments, courts, prisons, museums and other similar buildings |
| 10 | | 995416 | Construction services of other buildings nowhere else classified |
| 11 | | 995419 | Services involving repair, alterations, additions, replacements, renovation, maintenance or remodeling of the buildings covered above |

**Contents of an Entry**

- Here Chapter is of 2 digits (Chapter 99)
- Section is of 1 digit after Chapter (Section 5)
- Heading is of 1 digit after Section (Heading 9954)
- Tariff Item is of 2 digits after Heading (995411)

**Principles of Classification**

No principles for classification of services have been prescribed under notification for rate or under law for the services. The principles of classification as applicable for Goods cannot be applied on services also.

A cue can be taken from the erstwhile service tax provisions and also from CPC (Central Product Classification) by United Nations Statistical Commission whose list of services is akin to the Annexure to Notification No 11/2017-CT Rate dated 28.06.2017.

According to these, the services should be classified on following principles:

When services are, prima facie, classifiable under two or more categories, classification shall be effected as follows, on the understanding that only categories at the same level (sections, divisions, groups, classes or subclasses) are comparable:

a) The category that provides the most specific description shall be preferred to categories providing a more general description;

b) Composite services consisting of a combination of different services which cannot be classified by reference to (a) shall be classified as if they consisted of the service which gives them their essential character, in so far as this criterion is applicable;

These rules can also be best understood with some illustrations which are given below –

- The facility of mining is provided by government to various business entities. These are services provided by government and are liable for payment of GST under RCM by mine holder. The rate for government services are generally 18%. However under entry no.17 in heading 9973 for leasing, read with annexure there is a specific entry which is read as under

| | | | |
|---|---|---|---|
| 250 | **Group 99733** | | **Licensing services for the right to use intellectual property and similar products** |
| 251 | | 997331 | Licensing services for the right to use computer software and databases |
| 252 | | 997332 | Licensing services for the right to broadcast and show original films, sound recordings, radio and television programme and the like |
| 253 | | 997333 | Licensing services for the right to reproduce original art works |
| 254 | | 997334 | Licensing services for the right to reprint and copy manuscripts, books, journals and periodicals |
| 255 | | 997335 | Licensing services for the right to use research and development products |
| 256 | | 997336 | Licensing services for the right to use trademarks and franchises |
| 257 | | 997337 | Licensing services for the right to use minerals including its exploration and evaluation |
| 258 | | 997338 | Licensing services for right to use other natural resources including telecommunication spectrum |
| 259 | | 997339 | Licensing services for the right to use other intellectual property products and other resources nowhere else classified |

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The rate of GST in case of 997337 is the rate applicable on the goods which are extracted from the mine. Generally rate of such goods under GST is 5%. Hence when a specific entry has been given, the rate of GST for such royalty payment should be 5% instead of 18% as general rate.

However, these rules of classification have not been prescribed under the GST Laws and hence cannot be enforced upon the tax payer by department.