

Goods & Service Tax

Exemption - Strict BUT NOT Strictly against Assessee

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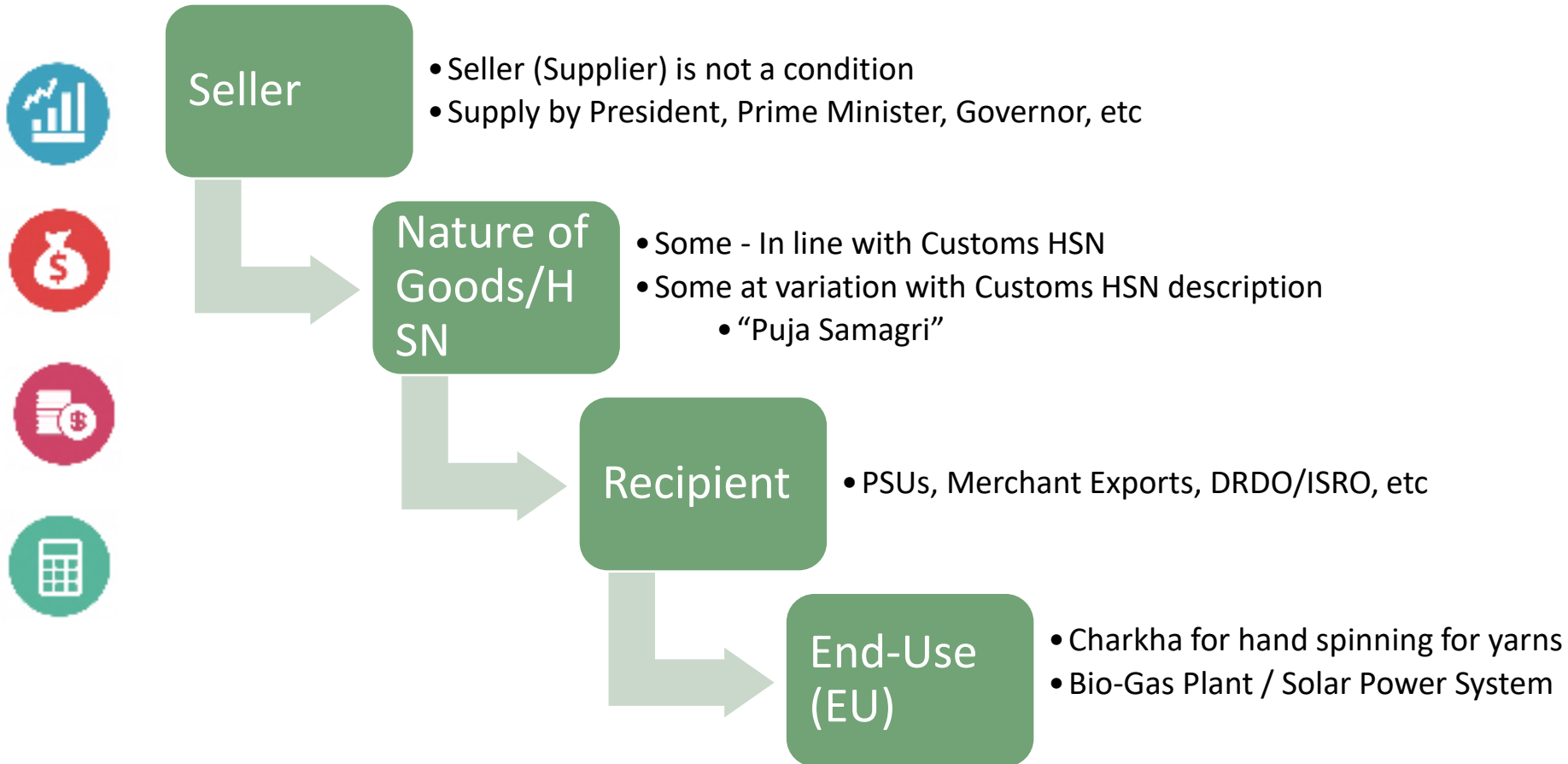
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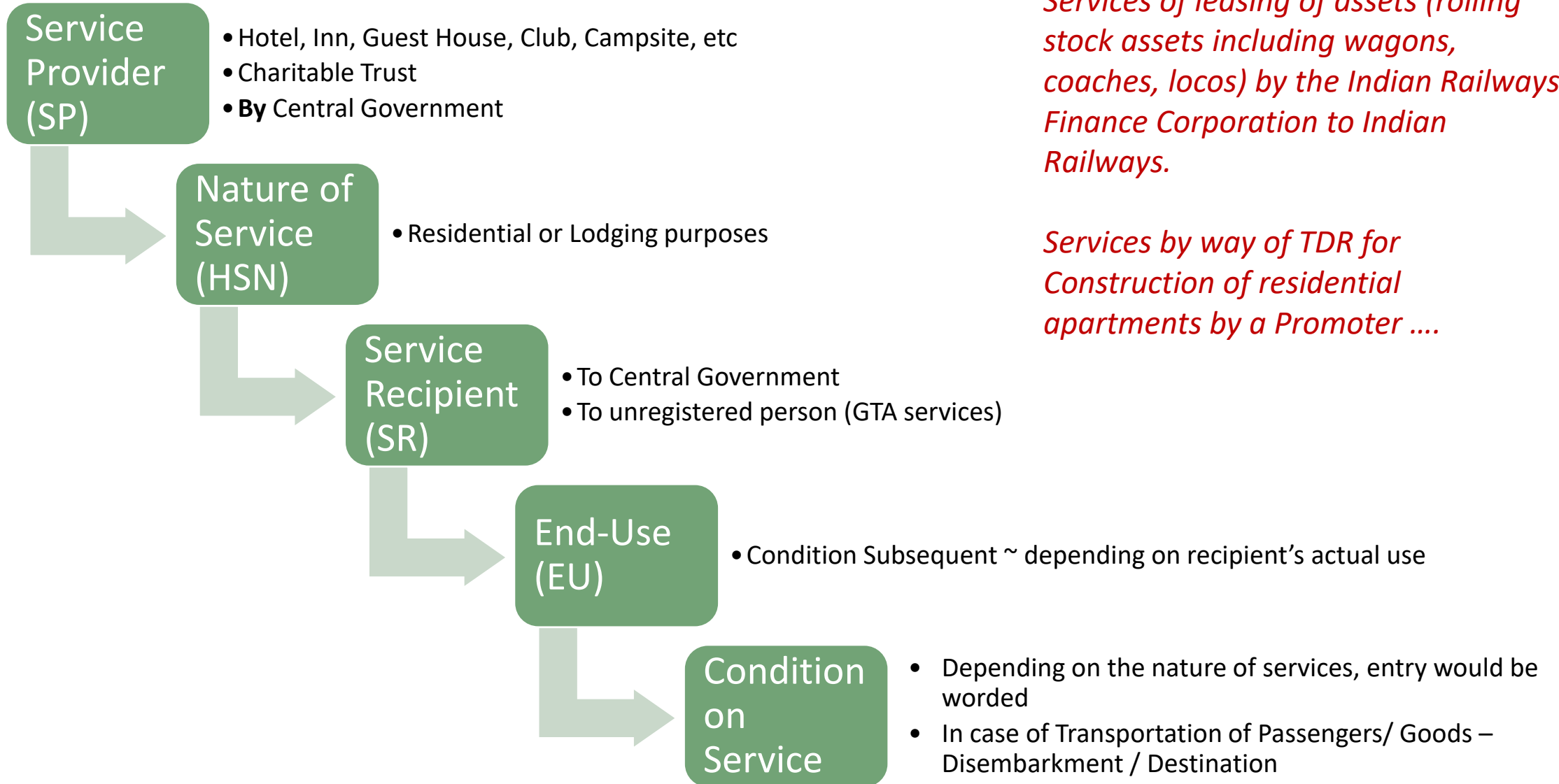
"India's system of indirect taxation at the Central and State level is a serious obstacle to the formation of a single common market in which business source anywhere, manufacturer anywhere and sell anywhere. Its complexity is baffling and its incidence is highly capricious and indeterminate. The system's multiple tax-on-tax effects cascade throughout the production-distribution chain with harmful economic consequences. These effects are compounded by the lack of coordination between the various forms of indirect taxation (sales tax, excise duties, import duties) and between the levels of government (Centre v. State, State v. State) as well as the uneven enforcement of the respective tax administration."

Mr Sijbren Cnossen
Global GST Expert

Types of Exemption - Goods



Types of Exemption - Services



Example

➤ Services provided -

➤ (a) by an educational institution to its students, faculty and staff;



➤ (aa) by an educational institution by way of conduct of entrance examination against consideration in the form of entrance fee;]



➤ (b) to an educational institution, by way of,-

➤ (i) transportation of students, faculty and staff;

➤ (ii) catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;

➤ (iii) security or cleaning or house-keeping services performed in such educational institution;

➤ (iv) services relating to admission to, or conduct of examination by, such institution;

➤ (v) supply of online educational journals or periodicals:



Courts on Exemptions (Excise/ ST)



Citation	Wordings	Assessee's interpretation	Conclusion
Dilip Kumar & Company	Animal feed including compound livestock feed	Animal feed (includes animal fee supplement)	Ineligible – Strict interpretation
Hemraj - Gordhandas - Constitutional Bench 2 ELT : Job Work	Cotton fabrics produced by any co-operative society	No condition that Co-op should produce <u>itself</u>	Eligible – Clear wordings
	Cotton fabrics produced on power-looms owned by any co-operative society or owned by or allotted to the members of the society	No condition that Co-op should produce <u>itself</u>	Eligible – Clear wordings
Parle Exports	Food Preparations or Food Products	Non-alcoholic beverage base	Ineligible - Language & Context
Novopan India	<u>Unveneered</u> particle boards	Melamine impregnation but no veneer on particle board	Smooth finish not typical of Unveneered board & common parlance

Courts on Exemptions (Excise/ ST)



Citation	Wordings	Assessee's interpretation	Conclusion
Bombay Chemical	Insecticides, Pesticides, Weedicides and Fungicides	Disinfectant fluids are insecticides	Eligible – technical literature give a broad meaning
Liberty Oil Mills - "Vegetable product" means any vegetable oil or fat	Vegetable product as is made from indigenous Rice bran oil	Entire mixture (til + rice bran) is exempted but revenue claims only content of rice bran oil	Ambiguity in favour of revenue (Novopan)
Sarabhai M Chemicals – Sorbitol Solution	Bulk drugs 'normally' used for diagnosis, treatment, etc and used 'as such' or as ingredient in formulation	Supply to soap, cigarette manufacturers is only 3.7% and as long as normal use – eligible	Ineligible – Certification from Drug Control for normal use but actual use also necessary as per wording – Strict
Ginni Filaments – EOU	Use in manufacture	Furniture are used in connection with manufacture	Ineligible – Strict reading
Hari Chand Shri Gopal (5 judge)	Exemption subject to Chapter X procedure	Doctrine of substantial compliance & intended use	Two stage interpretation

Dilip Kumar & Company – 5 Judge Bench

- Charging & Penal provisions – Strict interpretation and ambiguity in favour of tax payer
- Difference between literal interpretation and strict interpretation – former may involve later but later may not involve former
 - Strict interpretation does not encompass such literalism that it would lead to absurdity
 - If literal interpretation is one end of the spectrum with no intendment, strict interpretation can be implied to involve some form of intendment
- Strict interpretation involves plain meaning test but contextual and purposive interpretation cannot be applied or resort to supporting material in Statute
- Nothing should be read into not should anything be implied other than essential inferences
- We do not find any strong reason to differ from Parle Exports (SC) and Wood Papers (SC) – 2 Judge – we concur with position as also approved in Hari Chand Shri Gopal
- In case of “ambiguity” in a charging provisions, the benefit must necessarily go in favour of subject/assessee, but the same is not true for an exemption notification wherein the benefit of “ambiguity” must be strictly interpreted in favour of the Revenue/State



Mother Superior Adoration Convent

- Whether hostels, etc attached to educational/ charitable institutions are for 'educational' or 'charitable purposes' are eligible for exemption from property taxes
- Dilip Kumar does not refer to the line of authority which made a distinction between exemption provisions generally and exemption provisions which have a beneficial purpose
- Beneficial purpose of exemption should be given full effect to – identify the purpose or object of exemption and the interpretation should be for the advancement of the object



Case Study 1 – Going Concern

Entry 2 - Services by way of transfer of a going concern, as a whole or an independent part thereof



- Kangaal Ltd has been liquidated by a IBC process and in the process of liquidation, XYZ Ltd has sold a non-operative manufacturing plant to Malamaal Ltd for a lumpsum consideration of Rs. 1 crore (net of liabilities). Kangaal Ltd is proposing charging GST @ 18% on the gross asset value of 40 crore on account of non-satisfaction of Entry 2 of the Exemption notification. Malamaal plans to revive the manufacturing plant after an additional investment of 50 crore (restrict discussion only on interpretation of exemption entry).



- Malfisher Ltd has transferred one of its business undertaking for an 'aggregate' consideration of 10 crores by fixing the value of individual assets (which includes the land of Rs. 5 Crores) without transfer of the liabilities. Malfisher Ltd states that identification of value for each asset amounts to an individual supply and hence this exemption entry is not applicable (discuss section 7 r/w Schedule II and exemption entry).



- Kam-dard Ltd has transferred its pharma manufacturing division (without transfer of the IPRs) to Bahut-dard Ltd. Bahut-Dard Ltd is 'dependent' on the IPRs for manufacturing the pharma products and pays a license fee to Kam-dard Ltd for use of these license for manufacturing. Whether the going concern condition can be said to be transferred as a 'whole' or an 'independent' part thereof

[\(Link\)](#)

Case Study 2 – Residential dwelling

Entry 12 - Services by way of renting of residential dwelling for use as residence

Entry 14 - Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having “value of supply” of a unit of accommodation below or equal to one thousand rupees per day or equivalent

Expln (zxe) “single residential unit” means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;



- For Mr A (being a foreign national), Company X has taken a residential villa on rent for Rs. 2,50,000/- per month. The rent for this is being paid by the Company directly to the landlord & Mr A uses for WFH purposes ([Link](#)) & ([Link](#))



- For Mr B (being a frequent traveller), Company X booked a serviced apartment in Delhi on yearly basis for Rs. 5,00,000/- per month which would be used by Mr B during the stay in Delhi – Mr B has used the serviced apartment for 240 days in the year.



- For Mr C, Company X has told C to select an accommodation within a budget of Rs. 1,50,000/- per month and has agreed reimburse the rental costs within the budget based on actuals. The rent agreement is between C, Company X and the landlord. Landlord raises an invoice on C with ‘c/o Company X’.



- For Mr D, Company X has taken a guest house on lease and permitted it for exclusive use of Mr D during his visit to the city – usually stays 150 days in the year

Case Study 3 – Residential dwelling

Entry 12 - Services by way of renting of residential dwelling for use as residence

Entry 14 - Services by a hotel, inn, guest house, club or campsite, by whatever name called, for residential or lodging purposes, having “value of supply” of a unit of accommodation below or equal to one thousand rupees per day or equivalent

Expln (zpe) “single residential unit” means a self-contained residential unit which is designed for use, wholly or principally, for residential purposes for one family;

Sl No	Particulars	Property A – Owned	Property B – Leased
1	Monthly Plan where student receive accommodation of a room with basic amenities and breakfast	20,000/- per month	15,000/- per month (dedicated at 2 nd & 3 rd Floor)
2	Daily Plan where individual takes the room on daily rental basis	1100/- per day (incl. food)	950/- per day (excl. food) (dedicated 4 th Floor)



- Whether PG/hostel is a ‘residential dwelling’ and / or used as a ‘residence’?
 - Under monthly plan Oxo Ltd cannot avail the benefit ?
 - Under daily plan - food is include due to which the limit crosses Rs. 1000/-?
- Oxo Ltd is pressuring the landlord of Property B that 2nd and 3rd Floor of the property is being used for non-commercial purpose and hence the landlord should not charge any tax for these floors. The landlord stated that though the rent is agreed on floor basis, since it is part of one agreement such an arrangement is not possible for partial part of property. Moreover, since the property is leased out to a Company the benefit of Entry 12 is not applicable

([Link](#))

Case Study 4 – Health Care Services



Health care services by a clinical establishment, an authorised medical practitioner or para-medics



(s) “clinical establishment” means a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called, that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity....., or a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;



*(zg) “health care services” means any service by way of diagnosis or treatment or care for **illness**, injury, deformity, abnormality or pregnancy in any **recognised system of medicines** in India and includes services by way of transportation of the patient to and from a clinical establishment, but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma*



Case Study 4 – Health Care Services

Health care services by a clinical establishment, an authorised medical practitioner or para-medics

Health Shield Ltd is running and operating a hospital in Mumbai. Dr Cardio who runs the cardiology department gave a proposal to Health Shield Ltd which was accepted. Under the arrangement, Dr Cardio would be made in-charge of the entire Cardiology department for which he would be given an entire floor with all the equipments required therein. Dr Cardio will appoint his own staff of nurses, doctors (either on employment/ visit basis) and manage the operations. The physical infrastructure and maintenance would be under the charge of Health Shield Ltd. Dr Cardio gave two proposals for revenue sharing of this:

Proposal A: Billing would be made directly to the patient by Dr Cardio and Dr Cardio would pay 50% of the final billing to Health Shield Ltd towards the infrastructure, admin staff, referral of patient, etc.

Proposal B: Billing would be made by Health Shield directly to the patient. Dr Cardio would then bill 50% of the billed amount towards treatment of the patients under his department.



Case Study 5 – Health Care Services

Health care services by a clinical establishment, an authorised medical practitioner or para-medics

Old age charitable Trust has set-up a para-medics division. The said wing has sourced individuals who can assist old-age families in their day to day activities as follows:

- Prepare food and maintain the house and assist in daily livelihood
- Arrange for diagnostic testing (on home collection basis) as per doctor prescriptions and provide reports
- Arrange for supply/ rental of medical equipments (such as Oxygen support/ Beds, etc)
- Old age has identified an area as a COVID care centre where doctors and nurses of Trust care hospital would attend to the patients. Old age would charge Rs. 21,000/ day for the treatment, food, doctor consultation fee and miscellaneous oxygen/ medication

Old Age charitable Trust has a doubt whether any of these three are eligible for exemption under this entry either as a ‘health care service’ and/or as ‘clinical establishments’.

Whether Old age being registered as a clinical establishment under State laws have an impact in the above interpretation ([Link](#))

Would Trust Care have to charge GST on Old Age trust for only providing the Doctors/ nurses as Manpower Agency?



Case Study 6 – Government Contract

Entry 3 - Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.



Entry 3A - Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.



- Company X has won a tender from Municipal corporation of installing, operating and maintenance of LED street lights under BOT basis.
- Under the contract, Company X would be paid on a monthly basis as the formula which works on the principal of energy savings. If there is no energy saving Company X will not earn anything and if there is energy savings, company X will earn 90% of the energy saved.
- Ownership of street lights would be with Company X for the entire tenure of contract and if there is any outage or defect, Company is expected to replace at its own cost. After the tenure of the contract (if it is not renewed), the street lights would stand vested in favour of the Municipal Corporation free of cost.
- According to Company X it is not charging any amount for the street lights and the investment in street lights is less than 25% of the expected revenue from this contract over 10 years.

Case Study 7 – Government Services

Entry 4 - Services by Governmental authority by way of any activity in relation to any function entrusted to a municipality under article 243 W of the Constitution.

Entry 5 - Services by a Governmental Authority by way of any activity in relation to any function entrusted to a Panchayat under article 243G of the Constitution.



(zf) “Governmental Authority” means an authority or a board or any other body, -

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government,



with 90per cent. or more participation by way of equity or control, to carry out any function entrusted to a Municipality under article 243W of the Constitution or to a Panchayat under article 243G of the Constitution.



- Land Registration fees
- Fee for Conversion of land use (agricultural to residential)
- Building Plan sanction fee by Municipal Corporation
- Ministry of Corporate Affairs – Filing Fee
- Ministry of Corporate Affairs – Fee for Public viewing of documents
- Liquor license fee



Statutory Functions



➤ **No Service Provider/ Service Recipient relationship during discharge of Statutory Function**

- Karnataka Industries Areas Development Board 2020 (40) G.S.T.L. 33 (Tri. - Bang.)
- Kerala State Insurance Department - 2016 (43) S.T.R. 173 (Ker.)
- Electrical Inspectorate v. CST 2008 (9) S.T.R. 494 (Tri. - Bang.)



➤ **Fee & Tax levy**

- **Shirur Math Case** - the Government does some positive work for the benefit of persons and the money is taken as the return for the work done or services rendered. If the money thus paid is set apart and appropriated specifically for the performance of such work and is not merged in the public revenues for the benefit of the general public, it could be counted as fees and not a tax



➤ **Not involved in business, trade or commerce**

- **Bureau of Indian Standards v/s DGIT (E) 358 ITR 78 (Del)** - Taking license fee for granting marks / certification cannot be said to be done for the purpose of profit – any profit / revenue earned is purely incidental Not involved in carrying on any activity in the nature of trade, commerce or business
- **ICAI v. DGIT (Exemptions) [2013 358 ITR 91 (Delhi)]** - Where dominant objective of assessee-institute was to regulate profession of Chartered Accountancy in India, and conducting extensive educational program, conducting coaching classes and campus placements, for fees, could not be held as business, but only as in aid of its objects



Registration Act, 1908



- The State Government shall prepare a table of fees payable.—
 - (a) for the registration of documents;
 - (b) for searching the registers;
 - (c) for making or granting copies of registers, entries or documents, before, on or after registration;



- **Purpose of registration** — *The real purpose of registration is to secure that every person dealing with the property, where such document requires registration, may rely with confidence upon statements contained in the register as a full and complete account of all transactions by which title may be affected, Lachhman Dass v. Ram Lal, (1989) 3 SCC 99.*



- **Effect of Registration.**— *Registration ensures safety and transparency. It avoids fraud and forgery. Registration ensures that every person dealing with immovable property can rely with confidence on statements contained in registers maintained under the Act, Suraj Lamp & Industries (P) Ltd. v. State of Haryana, (2009) 7 SCC 363 : (2009) 3 SCC (Civ) 126.*



Sovereign Functions

➤ **Balmer Lawrie & Co. Ltd. v. Partha Sarathi Sen Roy, (2013) 8 SCC 345 :**

- *Thus, considering the wide ramifications, sovereign functions should be restricted to those functions, which are primarily **inalienable**, and which can be performed by the State alone. Such functions may include **legislative functions**, the **administration of law**, eminent domain, maintenance of law and order, internal and external security, grant of pardon, etc. Therefore, mere dealing in a subject by the State, or the monopoly of the State in a particular field, would not render an enterprise sovereign in nature.*



Charitable Activities

- Services by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of charitable activities.
- *Services by an old age home run by Central Government, State Government or by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) to its residents (aged 60 years or more) against consideration upto twenty-five thousand rupees per month per member, provided that the consideration charged is inclusive of charges for boarding, lodging and maintenance.*
- *Services by way of training or coaching in recreational activities relating to-*
 - (a) arts or culture, or
 - (b) sports by charitable entities registered under section 12AA of the Income-tax Act.
- *Services by a person by way of-*
 - (a) conduct of any religious ceremony;
 - (b) renting of precincts of a religious place meant for general public, owned or managed by an entity registered as a charitable or religious trust under section 12AA of the Income-tax Act ...:
 - *Provided that nothing contained in entry (b) of this exemption shall apply to,-*
 - (i) renting of rooms where charges are one thousand rupees or more per day;
 - (ii) renting of premises, community halls, kalyanmandapam or open area, and the like where charges are ten thousand rupees or more per day;
 - (iii) renting of shops or other spaces for business or commerce where charges are ten thousand



Clinical Establishment Registration & Regulation Act

Health care services by a clinical establishment, an authorised medical practitioner or para-medics

(c) "clinical establishment" means--

(i) a hospital, maternity home, nursing home, dispensary, clinic, sanatorium or an institution by whatever name called that offers services, facilities requiring diagnosis, treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicine established and **administered or maintained by any person or body of persons**, whether incorporated or not; or

(ii) a place established as an independent entity or part of an establishment referred to in sub-clause (i), **in connection** with the diagnosis or treatment of diseases where pathological, bacteriological, genetic, radiological, chemical, biological investigations or other diagnostic or investigative services with the aid of laboratory or other medical equipment, are usually carried on, **established and administered or maintained by any person or body of persons**, whether incorporated or not,

and shall include a clinical establishment owned, controlled or managed by--

(a) the Government or a department of the Government;

(b) a trust, whether public or private;

(c) a corporation (including a society) registered under a Central, Provincial or State Act, whether or not owned by the Government;

(d) a local authority; and

(e) a single doctor,

but does not include the clinical establishments owned, controlled or managed by the Armed Forces



Going Concern

Going Concern

23. The financial statements are normally prepared on the assumption that an enterprise is a going concern and will continue in operation for the foreseeable future. Hence, it is assumed that the enterprise has neither the intention nor the need to liquidate or curtail materially the scale of its operations; if such an intention or need exists, the financial statements may have to be prepared on a different basis and, if so, the basis used is disclosed.



Questions

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