

# GST

## RECENT ISSUES AND ROLE OF STUDENTS!

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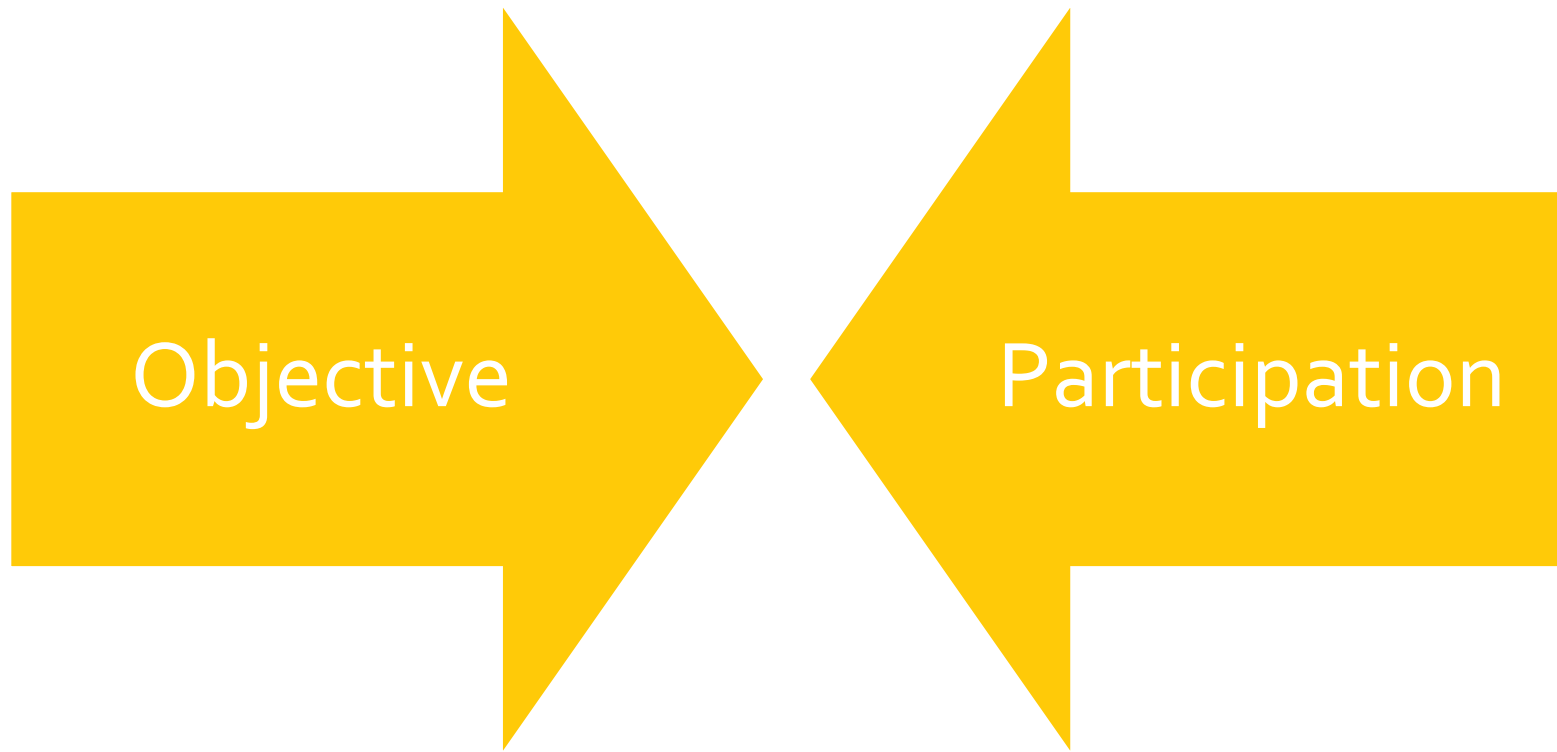
CA PRITAM MAHURE AND ASSOCIATES  
+91 9920644648/

[PRITAM.MAHURE@LAWGICAL.IN](mailto:PRITAM.MAHURE@LAWGICAL.IN)

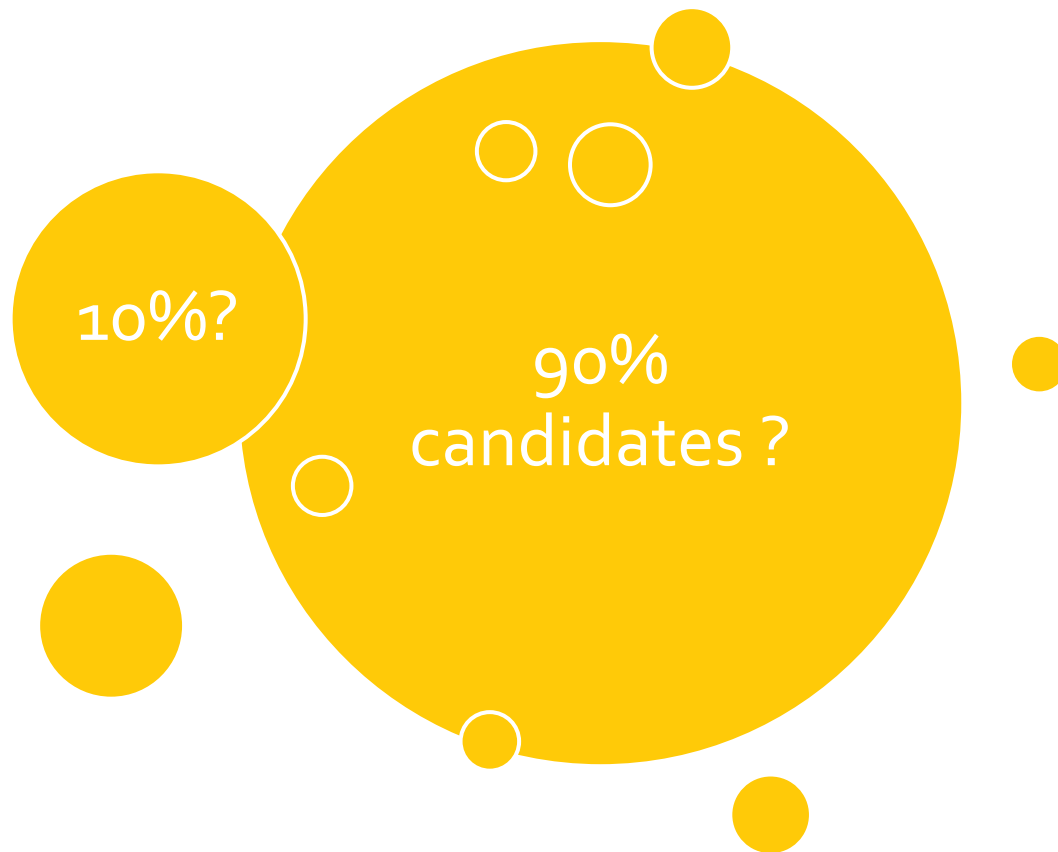
After attending webinars!



# How!



# CA packages?



# Why?

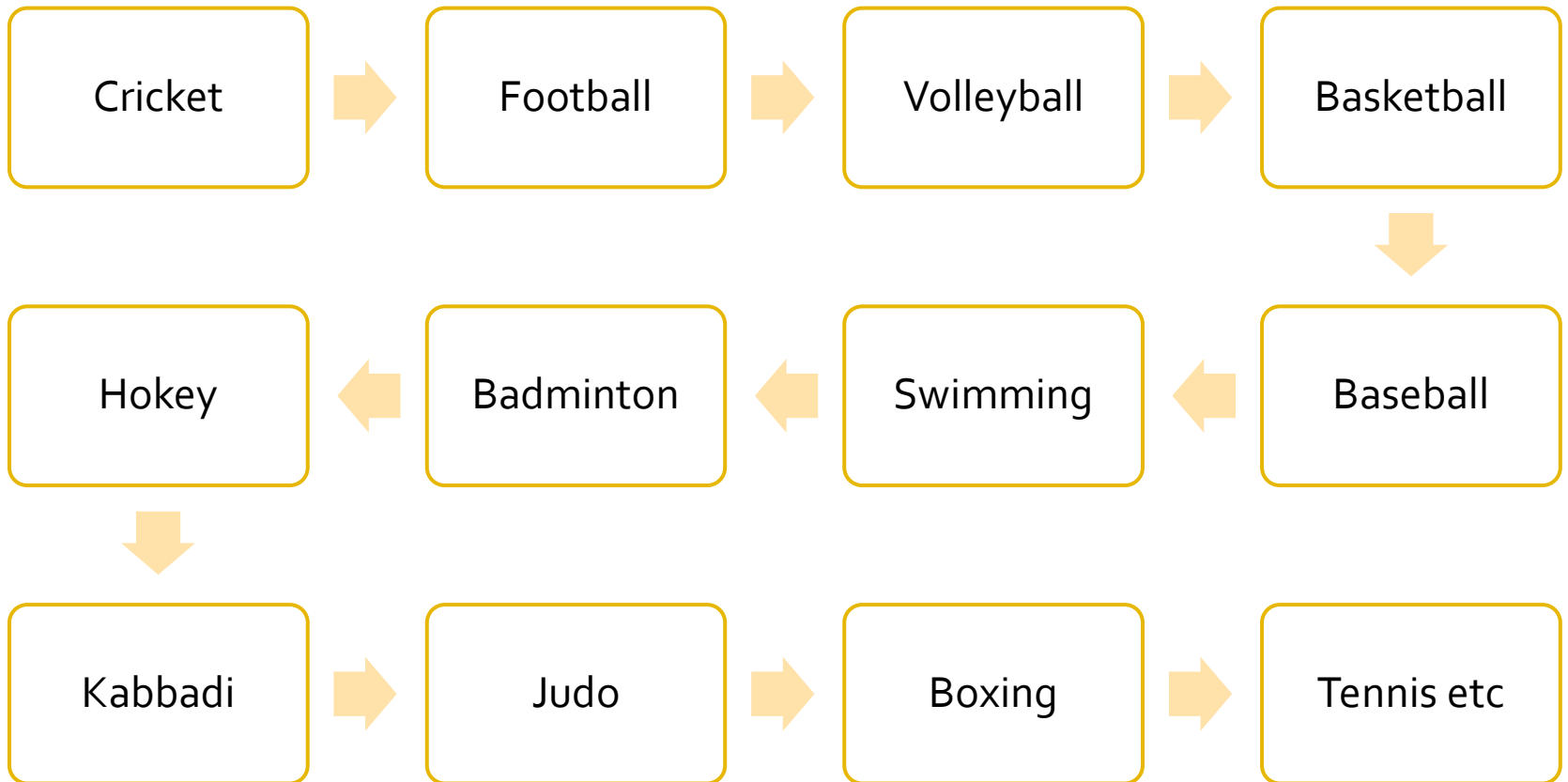


# Who will you choose?

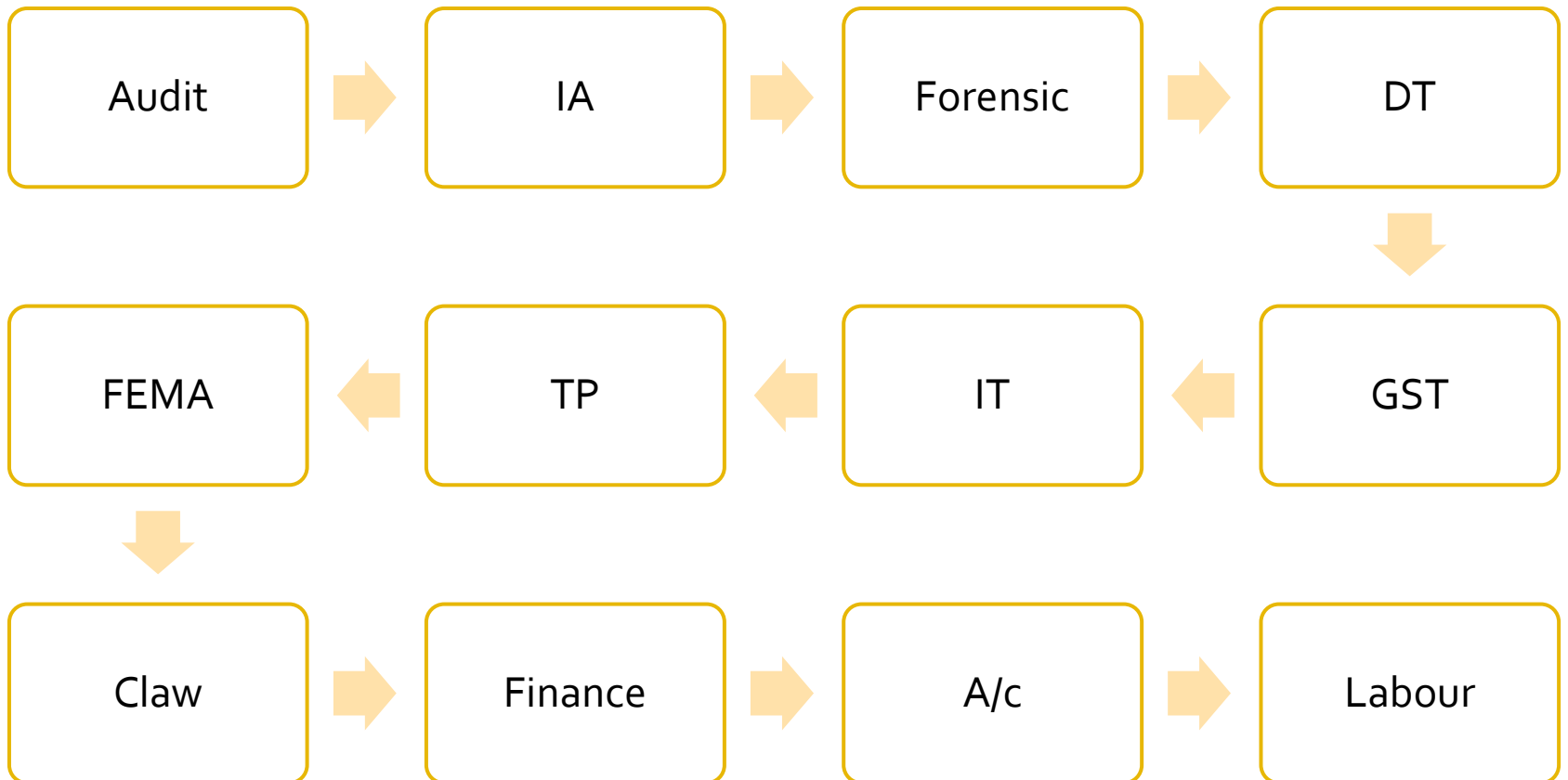


- Physician
- Heart Specialist

# How many fields are there?

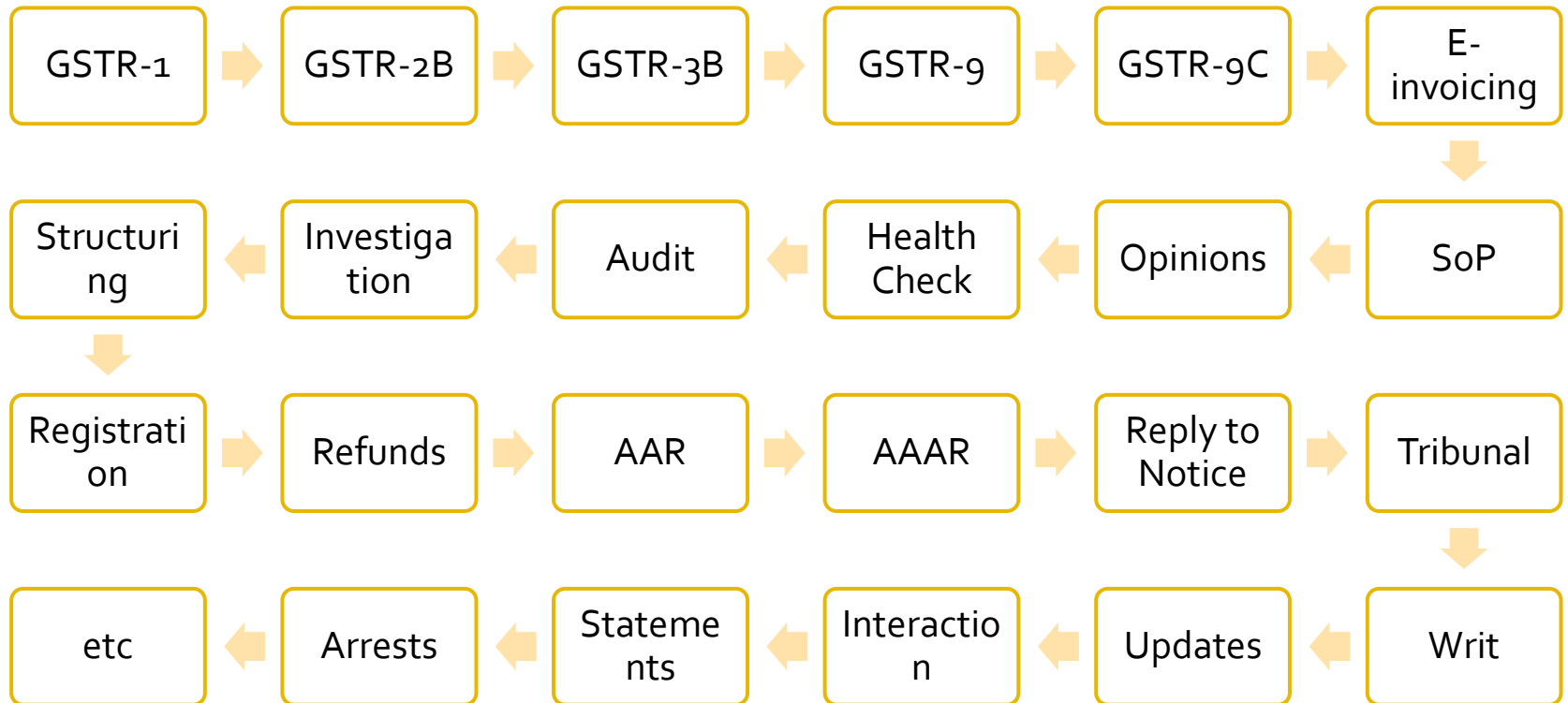


# How many fields are there?

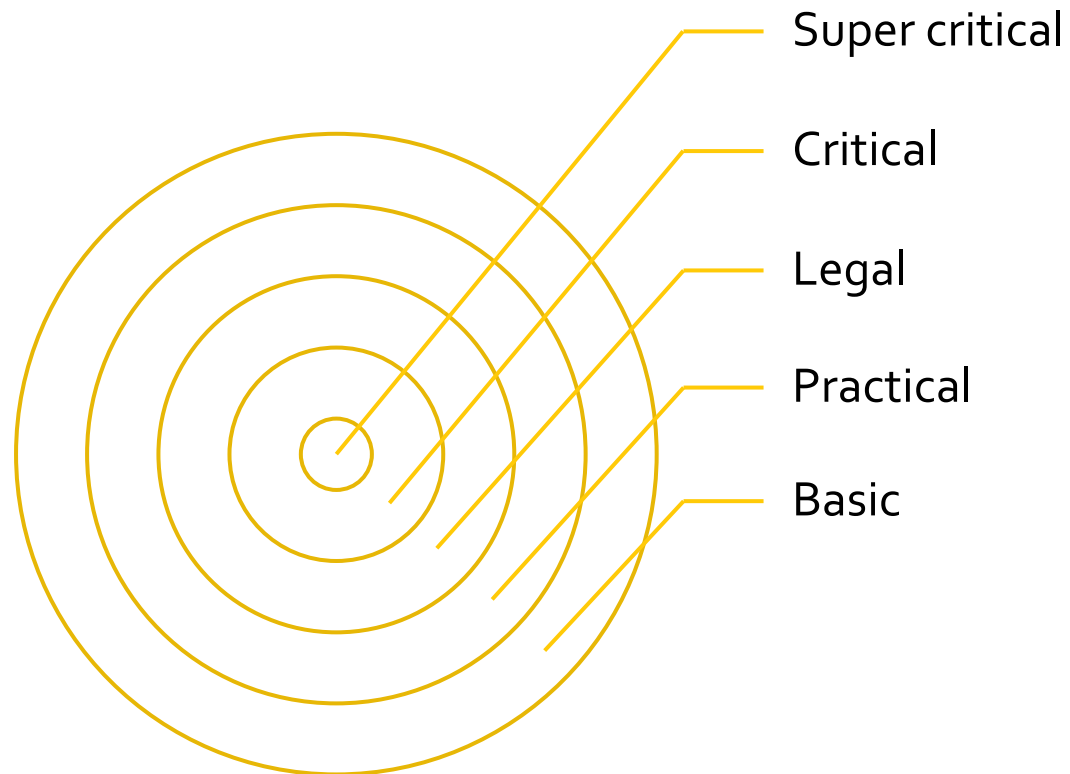




# How many fields are there in one field?



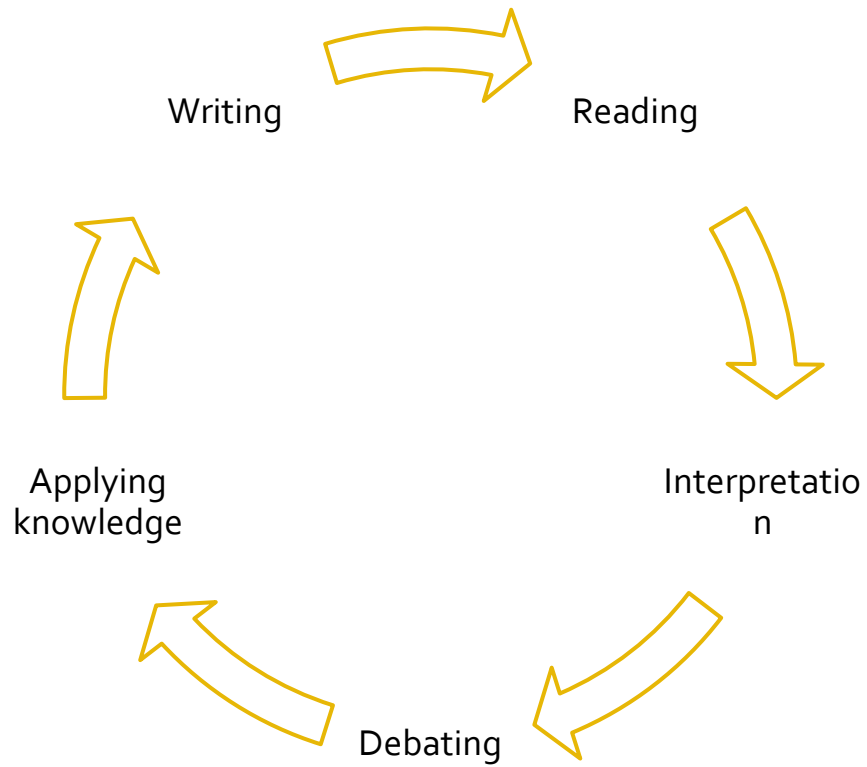
# Is Abhimanyu relevant today?



# Is GST an opportunity?



# Brand!



# Learning opportunities?



# Are you the one?



Humara mann kehta hai ki yeh thode se main khush hone wala nahi hai

# Marks idhar hai!

**THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA**  
**FINAL EXAMINATION MAY 2004**  
 (Under Regulation 31 (2) of the Chartered Accountants Regulations, 1988)  
**STATEMENT OF MARKS**

ROLL NO. 29974 NAME PRITAM AMBADAS MAHURE M.S. NO. 4526171

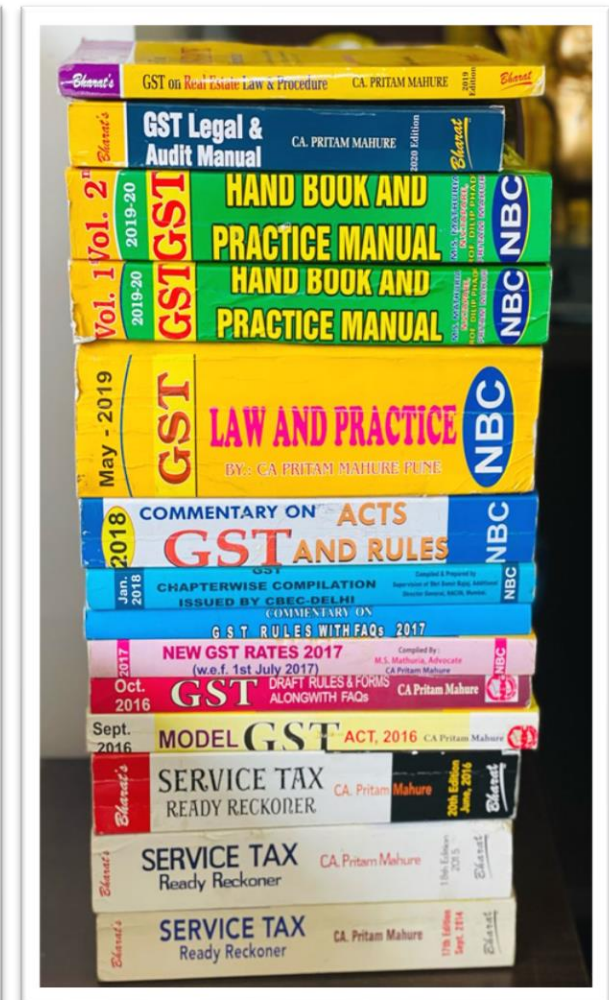
GROUP - I				GROUP - II			
PAPER	MAXIMUM	MINIMUM	MARKS OBTAINED	PAPER	MAXIMUM	MINIMUM	MARKS OBTAINED
Paper 1. Advanced Accounting	100	40	057	Paper 5. Cost Management	100	40	052
Paper 2. Management Accounting & Financial Analysis	100	40	051	Paper 6. Management Information & Control Systems	100	40	043
Paper 3. Advanced Auditing	100	40	044	Paper 7. Direct Taxes	100	40	050
Paper 4. Corporate Laws & Secretarial Practice	100	40	048	Paper 8. Indirect Taxes	100	40	030
<b>TOTAL</b>	<b>400</b>	<b>200</b>	<b>200</b>	<b>TOTAL</b>	<b>400</b>	<b>200</b>	<b>175</b>
<b>RESULT</b>			<b>PASS</b>	<b>RESULT</b>			<b>FAIL</b>

MARKS IN WORDS THREE HUNDRED SEVENTY FIVE

E INDICATES MARKS OBTAINED IN AN EARLIER ATTEMPT.  
 # EXEMPTED IN PAPER(S) IN THE NEXT FOLLOWING THREE EXAMINATIONS-EX

DATED 26/07/2004

JOINT SECRETARY  
(EXAMINATIONS) - C

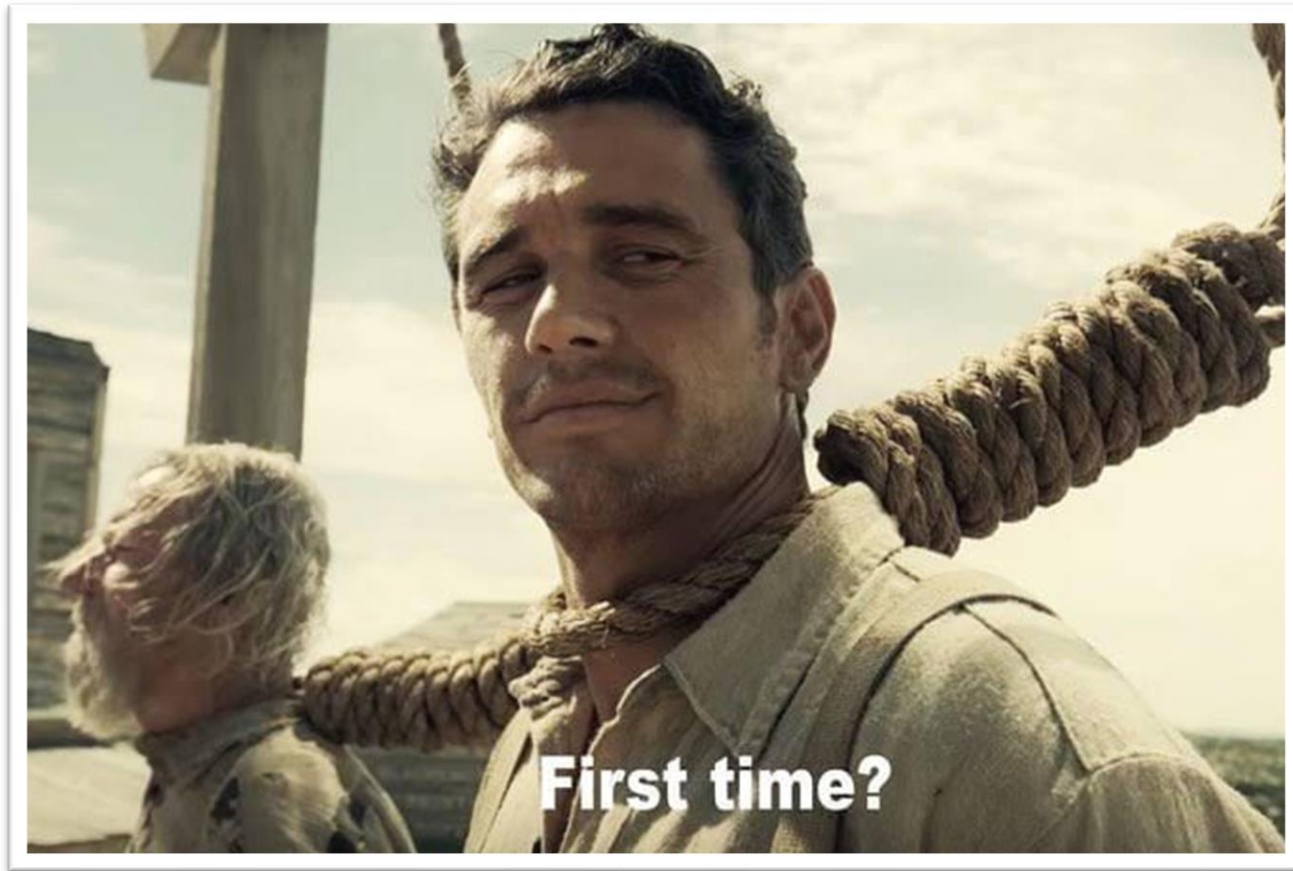


**FIRST THINGS FIRST!**

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# First time?



# Senior!



**ab milta hi nahi hai, pata nahi kahan hai**

# No work is small!



# Perfect firm?

1.

- Invest anger in creative solutions!

2.

- Ask yourself, can you can do it better!

3.

- Share your thoughts with your seniors!

4.

- Ask for feedback!

# Suggestions!



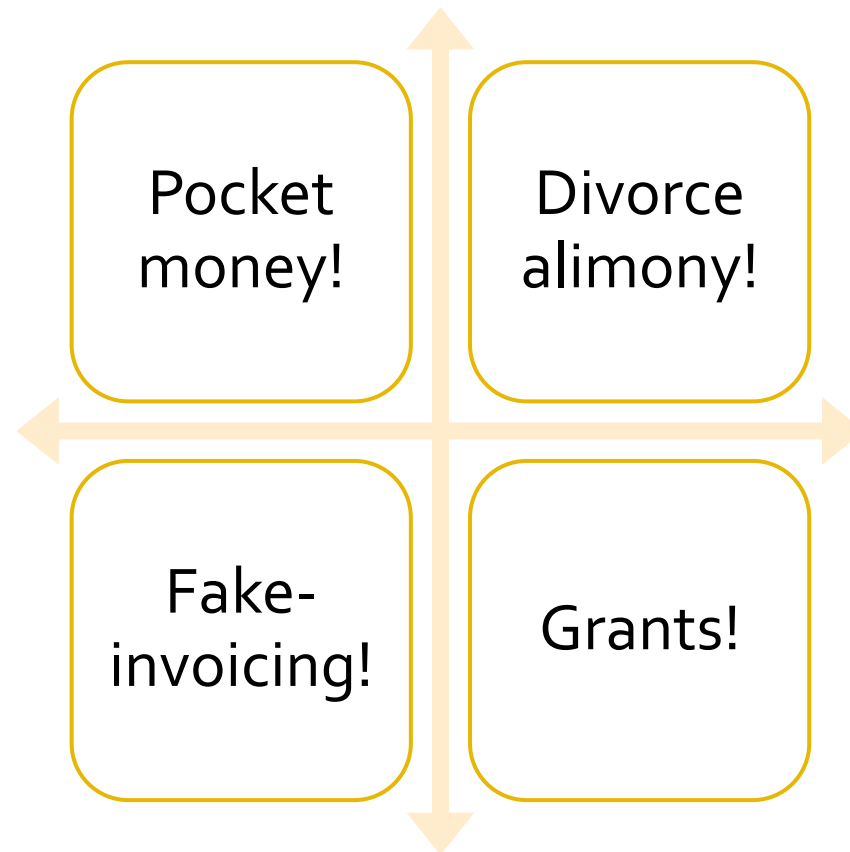
**Bahut Tez Ho Rahe Ho**



**Hamare Yaha Aisa Hi Hota Hai**

**LETS GET STARTED!**

# Supply!



Lets get started!



# Art. 265

- **Article 265. Taxes not to be imposed save by authority of law.**—*No tax shall be levied or collected except by authority of law.*
- Key points
  - *No tax*
  - *Shall be*
  - *Levied or collected*
  - *Except*
  - *By Authority of Law*

# 246A. Special provision with respect to goods and services tax.—

- (1) **Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax imposed by the Union or by such State.**
- (2) **Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.**

***Explanation.***—The provisions of this article, shall, in respect of goods and services tax referred to in clause (5) of article 279A, take effect from the date recommended by the Goods and Services Tax Council.

# Article 366 (12A) 'Goods and services tax'

- 'Goods and Services tax' means any tax on **supply** of goods, or services or both except taxes on the supply of the alcoholic liquor for human consumption
- Key points
  - Supply
    - 70 yrs – Manufacture, sale, service!

## “With respect to” is wide!

- ..., the **scope of Article 246A is significantly wide** as it not only empowers both Parliament and State Legislatures to levy and/or enact GST Act, but it also grants the power to make all laws **'with respect to'** Goods and Service Tax.
- Consequently, this Court is of the prima facie view that the expression 'with respect to' goods and services tax used in Article 246A, being a constitutional provision, must be given its **widest amplitude** and would **include the power to enact criminal law** with regard to goods and services tax.
- This Court is of the prima facie opinion that even if it is assumed that power to make offence in relation to evasion of goods and services tax is not to be found under Article 246A, then, the same can be traced to **Entry 1 of List III**. The term 'Criminal Law' used in the aforesaid entry is significantly wide and includes all criminal laws except the exclusions i.e. Laws made with respect to matters in List-II.
  - **Dhruv Krishan Maggu 2021-TIOL-89-HC-DEL-GST**

## “With respect to” is wide!

- + There is also **no conflict** between the operation of Article 246A and Article 246 as a non-obstante clause has been added to Article 246A to clarify that both Parliament and the State Legislatures have **simultaneous powers** in relation to Goods and Services Tax. Accordingly, this power has to be **liberally construed** empowering the Parliament to make laws with respect to goods and services tax and it **remains unaffected by the distribution of legislative power as provided in Articles 246 & 254.**

- Dhruv Krishan Maggu 2021-TIOL-89-HC-DEL-GST

# 9. Levy and Collection

- (1) Subject to the provisions of sub-section (2), there shall be **levied** a tax called the central goods and services tax on **all intra-State supplies** of goods or services or both, **except on the supply of alcoholic liquor for human consumption**, on the **value** determined under section 15 and at such rates, not exceeding twenty per cent., as may be **notified** by the Government on the recommendations of the Council and **collected** in such manner as may be **prescribed** and shall be **paid** by the **taxable person**.

# One or multiple supplies?

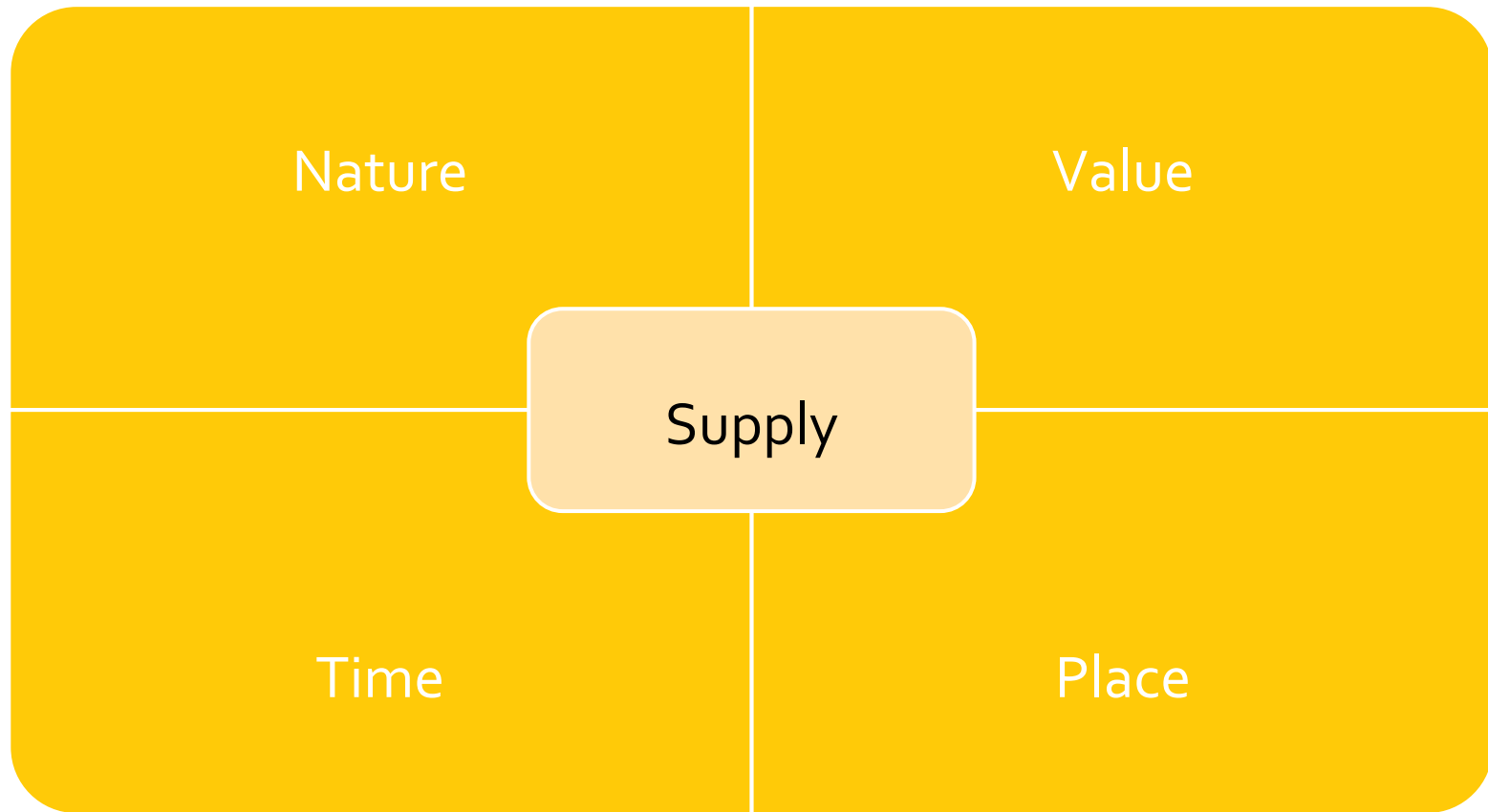


One supply of  
INR 1 Crore!



Ten supplies of  
INR 10 lacs  
each!

# Supply





# PRIZE OR CONSIDERATION!

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# Horse jockey!

## Section 7. Scope of Supply

(1) For the purposes of this Act, the expression “supply” includes —

- (a) all forms of **supply** of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made **for a consideration** by a person **in the course or furtherance of business,**

# Schedule III

Schedule III
<b>Activities or Transactions Which Shall be Treated Neither as a Supply of Goods nor a Supply of Services</b>
...
6. Actionable claims, other than lottery, betting and gambling
...

# VIJAY BABURAO SHIRKE

## [2020 (41) GSTL 571 (AAAR)]

135. Thus, on plain reading of the above provisions, “Supply” as envisaged under Section 7(1)(a) of the CGST Act, 2017, should essentially and invariably have the following ingredients :

- (i) There should be a supply of goods or services or both;
- (ii) It should be for a consideration;
- (iii) It should be in the course or furtherance of business.

# VIJAY BABURAO SHIRKE

## [2020 (41) GSTL 571 (AAAR)]

136. ... However, **we fail to see any element of service** when the applicant's horses win the race and get the prize. ... It is therefore difficult to accept the contention of the applicant and the ruling of the AAR that the horse owners have supplied a service to the club by providing their horses in the race...

137. ... **But not every contract becomes taxable** under the CGST law. Every supply is a contract but not every contract is a supply. ...

138. ... since there is no taxable supply by the applicant-respondent in the present arrangement, there is **no question of availment of ITC** as per the provisions of Section 17(2) of the CGST Act ...

**Lease accruals!**

# Lease accruals!

## Section 7. Scope of Supply

- (1) **For the purposes of this Act**, the expression “supply” includes —
- (a) all forms of **supply** of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made **for a consideration** by a person **in the course or furtherance of business**,

# Lease accruals!

Particulars	As per AS	As per Agreement/ Invoicing	GST payable on?
Year 1	200	100	
Year 2	200	200	
Year 3	200	300	
<b>Total</b>	<b>600</b>	<b>600</b>	-



# **AWARD OR CONSIDERATION!**

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# Lifetime achievement award!

## Section 7. Scope of Supply

(1) For the purposes of this Act, the expression “supply” includes —

- (a) all forms of **supply** of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made **for a consideration** by a person **in the course or furtherance of business,**



# ALIMONY OR CONSIDERATION!

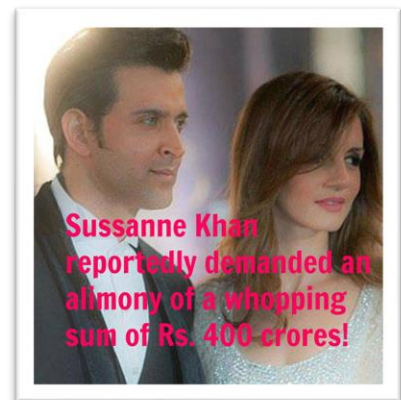
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# Divorce alimony!

## Section 7. Scope of Supply

(1) For the purposes of this Act, the expression “supply” includes —

- (a) all forms of **supply** of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made **for a consideration** by a person **in the course or furtherance of business,**



# ARTIST PERFORMING ON STREET!

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# Artist on performing on a street!

## Section 7. Scope of Supply

(1) For the purposes of this Act, the expression “supply” includes —

- (a) all forms of **supply** of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made **for a consideration** by a person **in the course or furtherance of business,**



# ST Education Guide

- 2.3 ... *There can be many activities without consideration. An **artist performing on a street** does an activity without consideration even though passersby may drop some coins in his bowl kept after feeling either rejoiced or merely out of compassion. They are, however, under **no obligation** to pay any amount for listening to him nor have they engaged him for his services. On the other hand if the same person is **called to perform** on payment of an amount of money then the performance becomes an activity for a consideration*

# DONATION OR ADVERTISING!

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# Grant for Covid-19!

## Section 7. Scope of Supply

(1) For the purposes of this Act, the expression “supply” includes —

- (a) all forms of **supply** of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made **for a consideration** by a person **in the course or furtherance of business**,

# Circular No. 116/35/2019-GST

2. When the name of the donor is displayed in recipient institution premises, in such a manner, which can be said to be an expression of **gratitude** and public recognition of donor's act of philanthropy and is not aimed at giving publicity to the donor in such manner that it would be an advertising or promotion of his business, then it can be said that there is no supply of service for a consideration (in the form of donation)

# Circular No. 116/35/2019-GST

2.1 Some examples of cases where there would be no taxable supply are as follows:-

- (a) “Good wishes from Mr. Rajesh” printed underneath a digital blackboard donated by Mr. Rajesh to a charitable Yoga institution.
- (b) “Donated by Smt. Malati Devi in the memory of her father” written on the door or floor of a room or any part of a temple complex which was constructed from such donation.

2.2. In each of these examples, it may be noticed that there is no reference or mention of any business activity of the donor which otherwise would have got advertised.

**RENT OR DAMAGES!**

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# Commercial rent for illegal occupation!

## Section 7. Scope of Supply

- (1) For the purposes of this Act, the expression “supply” includes —
- (a) all forms of **supply** of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made **for a consideration** by a person **in the course or furtherance of business,**

# Is GST applicable?

Property occupied by a tenant

Property owner alleges that it's an illegal occupation of property and approaches High Court

High Court asks tenant to make payment of certain amount

## Bai Mamubai Trust [2019-TIOL-2158-HC-MUM-GST]

- *"...it cannot be said that the Defendant's occupation pursuant to an Order of the Court is a contract involving a 'supply' for consideration. In the absence of **reciprocal enforceable obligations**, it would not be correct to characterise the Defendant's occupation of the Suit Premises against payment of royalty as a 'supply' for 'consideration' on which GST is payable by the Court Receiver.*
- *77. ... "Business" also includes the admission, for a consideration, of persons to any premises. But as discussed above, no positive act of admission into premises for a consideration can be said to have taken place where the plaintiff's allegation is that of illegal occupation. ...*

## Bai Mamubai Trust [2019-TIOL-2158-HC-MUM-GST]

- 88. *In light of the preceding discussion, Issue No. (iii) i.e. Specifically, in the facts of the present Suit, where the plaintiff alleges that the Defendant is in **illegal occupation** of the Suit Premises: Whether there is any 'supply' of services within the meaning of the CGST Act? Whether payment of royalty for remaining in possession of the Suit Premises, either during the pendency of the Suit, or at the time of passing of the decree, falls within the definition of '**consideration**' for a '**supply**' chargeable to payment of GST under Section 9 of the CGST Act is **answered in the negative.**"*



# Bai Mamubai Trust [2019-TIOL-2158-HC-MUM-GST]

## Key take-aways

The term 'supply' has a specified scope/meaning

Every consideration received cannot be subjected to GST unless it is 'for' supply

Supply requires reciprocity of promises

Unless a transaction fulfills all ingredients of 'supply', GST will not be applicable

# Likely!

- ***"Explanation*** - *For the purposes of this clause, 'supply' includes any supply otherwise in pursuance of a contract and for which a consideration is paid, and such transaction shall be deemed to be a supply."*

# DEPOSITS!

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# Deposits!

## Section 7. Scope of Supply

(1) For the purposes of this Act, the expression “supply” includes —

- (a) all forms of **supply** of goods or services or both such as sale, transfer, **barter**, exchange, license, rental, lease or disposal made or agreed to be made **for a consideration** by a person **in the course or furtherance of business,**

# Deposits!

**Section 2 (31)** “consideration” in relation to the supply of goods or services or both includes ...

**Provided** that a **deposit** given in respect of the supply of goods or services or both shall not be considered as payment made for such supply **unless** the supplier **applies** such deposit as consideration for the said supply;

# NOTICE PAY RECOVERY?

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# Notice Pay!

## Section 7. Scope of Supply

(1) For the purposes of this Act, the expression “supply” includes —

- (a) all forms of **supply** of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made **for a consideration** by a person **in the course or furtherance of business,**

## GE T And D India Ltd [2020-TIOL-183-HC-MAD-ST]

- 11. The query raised relates to a contra situation, one, where amounts have been received by an employee from the employer by reason of **premature termination of contract of employment**, and the taxability thereof. The Board has answered in the negative, pointing out that such amounts would not be related to the rendition of service. Equally, so in my view, the employer cannot be said to have rendered any service per se much less a taxable service and has merely facilitated the exit of the employee upon imposition of a cost upon him for the sudden exit. The definition in clause (e) of Section 66E as extracted above is not attracted to the scenario before me as, in my considered view, the **employer has not 'tolerated' any act of the employee but has permitted a sudden exit** upon being compensated by the employee in this regard.



## GE T And D India Ltd [2020-TIOL-183-HC-MAD-ST]

- 12. Though normally, a contract of employment qua an employer and employee has to be read as a whole, there are situations within a contract that constitute rendition of service such as breach of a stipulation of non-compete. **Notice pay**, in lieu of sudden termination however, **does not give rise to the rendition of service** either by the employer or the employee.

## Schedule II and III

Schedule II	Schedule III
Activities or Transactions to be Treated as Supply of Goods or Supply of Services	Activities or Transactions Which Shall be Treated Neither as a Supply of Goods nor a Supply of Services
<b>5. Supply of services</b> ... (e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act; and	1. Services <b>by</b> an employee to the employer in the course of or in relation to his employment.

Ice-cream?



# Ice-creme

Particulars	Goods	Services
Description	Ice cream and other edible ice, whether or not containing cocoa	(ii) Supply of 'restaurant service' other than at 'specified premises' ...
Not. No.	1/2017-CT	11/2017-CT
Rate	18% (Sr. No. 22 of Sch. III)	5% (Sr. No. 7 of Sch. III)
Heading / SAC	2105 00 00	Heading 9963 (Accommodation, food and Beverage services)

## Schedule II - Activities [or Transactions] To Be Treated As Supply Of Goods Or Supply Of Services

### **6. Composite supply**

*The following **composite supplies** shall be treated as a supply of **services**, namely :—*

*(a) Works contract as defined in clause (119) of section 2;*

*(b) 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.*

# Circular No. 164 /20 /2021-GST

4.2 Ice cream parlors sell **already manufactured** ice-cream and they **do not have a character** of a restaurant. Ice-cream parlors **do not engage in any form of cooking** at any stage, whereas, restaurant service involves the aspect of cooking/**preparing** during the course of providing service. Thus, supply of ice-cream parlor stands on a different footing than restaurant service. Their activity entails supply of ice cream as goods (a manufactured item) and not as a service, even if certain ingredients of service are present.

And this?



## Cloud kitchens!

[Circular 164 dated 6.10.2021]

*Service provided by way of cooking and supply of food, by cloud kitchens/central kitchens are covered under "restaurant service" ... and attract **5% without ITC***





## INFORMATION

Dear Guests.

As per the prevalent GST rules, we are having to charge GST at the rate of 18%. Note momos fall under the **HSN code 2106** (Sale of Momos).

Our Momo production is done centrally in our factory to ensure taste, hygiene & consistency which means there is no cooking carried out at the outlets. Momos are garnished and served piping hot at the outlet. Therefore our sale has to be categorised under the said HSN code.

However, for other delicacies such as Sizzlers, Augratin, Momo Burgers we shall be charging only 5% GST as it does not fall under the category of Supply of Momos. For Beverages, tax rates are included in MRP for the respective soft drinks.

Understanding our guests' value and being a **#CustomerFirst** brand, we have **reduced our menu pricing by 10%** to ensure our guests don't be burdened. **This is not only a first time for us; it's possibly the first time a national brand has reduced its prices;** only to support it's consumers.

We hope to get your continuous support, as an organisation we believe that adhering to tax and GST laws is of utmost priority. We strongly feel the path to progress for us as a nation is not by evasion; instead by adherence.

We are ready to address any further query or concern regarding this; do mail us at [knowmore@wowmomo.com](mailto:knowmore@wowmomo.com)

Jai Hind

Regards  
Team Wow! Momo

Under-construction units?



Two persons!

# Two persons!

## Section 7. Scope of Supply

(1) For the purposes of this Act, the expression “supply” includes —

- (a) all forms of **supply** of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made **for a consideration** by a person **in the course or furtherance of business,**

## Business and Sch. II

Section 2 (17) "Business"	Sch. II Activities or Transactions to be Treated as Supply of Goods or Supply of Services
<p><b>"Business" includes</b></p> <p>...</p> <p>(e) provision by a club, association, society, or any such body (for a subscription or any other consideration) of the <b>facilities</b> or benefits to its members;</p>	<p><b>7. Supply of Goods</b></p> <p>The following shall be treated as supply of goods, namely :—</p> <p>Supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration</p>

'Business'!

# Religious trusts!

- Sale of religious material/ CDs!

**Thank You!**

**CA Pritam Mahure and Associates**

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E-books on GST!

E-books on How to be Future Proof!

Smile please 😊



# Schedule I

## ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

1. Permanent transfer/disposal of business assets where input tax credit has been availed on such assets.
2. **Supply of goods or services between related persons, or between distinct persons as specified in section 25, when made in the course or furtherance of business.**

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

# Schedule I

## 3. **Supply** of goods—

- a. By a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or
- b. By an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.

## 4. **Import of services** by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business

## Schedule II - Activities [or Transactions] To Be Treated As Supply Of Goods Or Supply Of Services

### 6. Composite supply

The following composite supplies shall be treated as a supply of **services**, namely :—

- (a) **Works contract** as defined in clause (119) of section 2;
- (b) 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.

## Schedule II - Activities [or Transactions] To Be Treated As Supply Of Goods Or Supply Of Services

5. Supply of services The following shall be treated as supply of services, namely :—

**(a) Renting** of immovable property;

**(b) 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.

...

**(e) agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act;**

## Schedule III – Activities or Transactions Which Shall be Treated Neither as a Supply of Goods nor a Supply of Services

1. Services by an **employee to the employer** in the course of or **in relation to** his employment.
- ...
4. Services of **funeral**, burial, crematorium or mortuary including transportation of the deceased.
5. Sale of **land** and, subject to clause (b) of paragraph 5 of Schedule II, sale of **building**.
6. **Actionable claims**, other than lottery, betting and gambling.

## Schedule III – Activities or Transactions Which Shall be Treated Neither as a Supply of Goods nor a Supply of Services

7. *Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into the taxable territory.*

8. (a) *Supply of warehoused goods to any person before clearance for home consumption.*

(b) *Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.*

*Explanation.- For the purposes of this clause, the expression “warehoused goods” shall have the meaning as assigned to it in the Customs Act, 1962 (52 of 1962)*