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Intrinsic Issues with the Concepts of Supply, Business & Taxable Person

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I

SEGMENT TWO & THREE

The definition of supply & the charging section

Everything downstream — rate, ITC, valuation — is built on Section 7. A defect at the threshold is often the strongest ground in a reply or appeal.

Section 7 - Definition

The three+1 ingredient — Section 7

7. (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, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;

(aa) the activities or transactions, by a person, other than an individual, to its members or constituents or vice versa, for cash, deferred payment or other valuable consideration.

Explanation.—For the purposes of this clause, it is hereby clarified that, notwithstanding anything contained in any other law for the time being in force or any judgment, decree or order of any Court, tribunal or authority, the person and its members or constituents shall be deemed to be two separate persons and the supply of activities or transactions inter se shall be deemed to take place from one such person to another;

(b) import of services for a consideration whether or not in the course or furtherance of business;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration

Section 7 defines the event; Section 9 imposes the levy

The three-ingredient test — Section 7(1)(a)

1. **Goods or services (or both)**

   Sale, transfer, barter, exchange, licence, rental, lease, disposal — an inclusive, illustrative set.

2. **For a consideration**

   S.2(31): money "or otherwise", can be deferred; includes non-monetary value — barter counts.

3. **In the course / furtherance of business**

   S.2(17) — the widest limb; the transaction must connect to business.

S.7(1) — includes

Supply for consideration, import of services, Schedule I (without consideration).

S.7(1A) — classifies

Once a supply, Schedule II decides goods vs services.

S.7(2) — excludes

Schedule III activities are treated as neither goods nor services.

S.9 — charges

The taxable event (S.7) is distinct from the charging provision (S.9). Levy attaches only when every limb is satisfied.

The three Schedules

Schedule I

Supply WITHOUT consideration

- Permanent transfer of business assets on which ITC availed
- Supplies between related / distinct persons in course of business
- Principal ↔ agent; import of services from a related person

Schedule II

Goods OR services — classification

- Works contract & construction → service (Entry 6, 5(b))
- Renting of immovable property → service (5(a))
- Agreeing to tolerate an act → service (5(e))

Watch: *It classifies a supply; it does not decide whether something IS a supply.*

Schedule III

NEITHER goods nor services

- Employee → employer services in employment
- Sale of land; sale of completed building
- Actionable claims (other than the taxable specified ones)

CASE · CONSIDERATION & BARTER

Non-monetary consideration is still a supply

CG Tollway Ltd. v. Union of India

In favour of revenue

(2026) 42 Centax 415 (Raj.) · D.B. Civil Writ Petition No. 15048 of 2025 · decided 22-05-2026

FACTS

NHAI granted a DBFOT (“design, build, finance, operate and transfer”)concession for six-laning an NH stretch. Concession fee was Re. 1 per annum plus a large premium (~₹228.6 cr) payable after the 3rd anniversary of COD. The concessionaire sub-contracted construction (EPC) to IRB but retained the right to collect toll. Audit flagged non-payment of GST; demand of ~₹16.36 cr with interest and 10% penalty was confirmed and upheld in appeal.

HELD / RATIO

- Consideration includes money “or otherwise” and may be deferred; the toll right operated as reciprocal consideration — i.e. barter.
- The arrangement is a works-contract service under Schedule II; valuation applies Rule 27 (consideration not wholly in money).
- Toll here is deferred annuity for construction (Heading 9954); exemption for access-to-road by toll (9967) does not apply — exemptions read strictly for revenue (Dilip Kumar; Safari Retreats).
- No double taxation — two distinct contracts, no privity with the sub-contractor. VAT-era L&T ratio inapplicable to GST.

Takeaway: *“We received no money” is not a defence. Test whether a reciprocal right (toll / annuity) is disguised construction consideration — and whether the exemption you rely on is really access-to-road simpliciter.*

You cannot dissect a composite supply to tax one limb

Midas Tankers Pvt. Ltd. v. Union of India

(2026) 42 Centax 273 (Bom.) · W.P. 2554 of 2026 · 02-04-2026

In favour of assessee

FACTS

Shipping line providing vessel services on hire/freight. Imports were on CIF basis; the buyer paid customs duty including on the freight component. Audit treated place of supply of transportation as India and raised IGST under forward charge plus refund disallowance (~₹15.82 cr).

HELD / RATIO

In a CIF import, freight is part of the composite supply of goods between the foreign exporter and the Indian importer (S.2(30) r/w S.8). Customs duty on freight already borne by the buyer — a separate IGST on the shipping line's service component contradicts the composite-supply scheme. Squarely covered by Mohit Minerals; SCN and order quashed, refund with interest directed.

Key Takeaway: *Composite supply is taxed as a bundle — resist attempts to carve out and re-tax a component.*

Union of India v. Mohit Minerals (P.) Ltd.

2022 (61) G.S.T.L. 257 (SC)

In favour of assessee

FACTS

The Revenue sought IGST on ocean-freight service in CIF imports (reverse charge) even though the importer already paid IGST on the composite import of goods.

HELD / RATIO

Taxing the service component of a transaction already taxed as a composite supply of goods violates Section 8 and the scheme of GST. The idea of composite supply is that naturally-bundled elements are taxed together, not dissected. (The Court also held GST Council recommendations are recommendatory, not binding.)

Keytakeway: *The go-to authority whenever a demand splits a single bundled transaction to manufacture a second levy.*

II

SEGMENT FOUR

Legal vs illegal supplies & "negative" supply

GST does not care about legality; and it does not tax every payment. Actionable claims and liquidated damages are where these two ideas meet.

CONCEPTS

Legality is irrelevant · but “tolerating an act” is not automatic supply

Legal vs illegal supply

- GST attaches irrespective of legality — betting, gambling and lottery are taxed as actionable claims (deemed goods, S.2(52)).
- Skill Lotto (SC 2020): actionable claim of lottery is validly within “goods”; the Constitution's inclusive definition permits it.
- Gameskraft (SC 2026): staking money on an uncertain outcome creates a taxable actionable claim — the skill-vs-chance line collapses once money is at stake.
- Practical point: a “this was illegal / not our trade” argument will not defeat the levy.

“Negative” supply — damages & recoveries

- Liquidated damages, notice-pay recovery, cancellation / forfeiture charges — the department leans on “agreeing to tolerate an act” (Sch II, 5(e)).
- Circular 178/10/2022-GST clarifies most such recoveries are NOT supply — they compensate for breach; there is no independent agreement to tolerate.
- Test: is there a reciprocal, bargained-for promise to tolerate, or merely a consequence of default? The latter fails the S.7 ‘consideration for a supply’ test.
- A frequently-won ground — lead with the Circular plus the absence of a distinct supply.

Betting & gambling: face value taxed, skill/chance irrelevant

DGGI v. Gameskraft Technologies (P) Ltd.

Supreme Court · Civil Appeal Nos. 8241–8244 of 2026 · 27-05-2026

In favour of revenue

FACTS

Online money-gaming, fantasy and casino operators faced demands on the full face value of stakes (28%, later 40%). HCs had granted relief / quashed the Gameskraft SCN (~₹21,000 cr) treating rummy as a game of skill.

HELD / RATIO

Staking money on an uncertain outcome gives rise to an actionable claim taxable as betting/gambling; the platform is the supplier, not a mere intermediary; the whole stake is consideration. The skill-vs-chance distinction is irrelevant once money is staked. The 2023 amendments (S.2(102A), Rule 31B) are clarificatory and apply retrospectively; SCNs restored.

Key Takeaway: *Massive retrospective exposure for the sector; the classic legal/illegal-and-skill defences no longer hold.*

Skill Lotto Solutions (P.) Ltd. v. Union of India

2020 (43) G.S.T.L. 289 (SC)

In favour of revenue

FACTS

Challenge to S.2(52) defining “goods” to include actionable claims, and to the levy of GST on lottery, on the ground that the constitutional definition of goods is narrower.

HELD / RATIO

The Constitution's inclusive definition of “goods” (Art. 366(12)) does not restrict Parliament; actionable claims such as lottery can be brought to tax. The levy on the face value of lottery was upheld. Foundational for treating betting, gambling and lottery as taxable actionable claims.

Key Takeaway: *The base authority Gameskraft builds on — note it was distinguished in IMA on the mutuality point.*

III

SEGMENT FIVE

No supply & its impact

If it is not a supply, there is no output tax — but mind the consequences: ITC reversal, blocked credit and mischaracterisation risk.

Two clean exits — and the price of taking them

Where "no supply" lives

- Schedule III — employee-employer services, sale of land / completed building, actionable claims (other than the taxable specified ones).
- "Money" and securities — excluded from goods and services; a pure payment instrument is not a supply.
- Benefits arising out of land — transfer of an interest in immovable property falls outside the concept of service.
- Absence of a second person — mutuality (see IMA) removes the very plurality that "supply" requires.

...but "no supply" has a cost

- No output tax — but ITC on inputs attributable to the non-supply must be reversed (S.17).
- Blocked-credit exposure and possible demand of reversed credit with interest.
- Mischaracterisation risk — substance can convert an apparent "no supply" into a taxable service (Northern Operating Systems: secondment held to be manpower supply).
- Advise on the credit consequence before running "no supply" — the client should not be surprised by a reversal.

Instruments as money · immovable property outside supply

Premier Sales Promotion Pvt. Ltd. v. Union of India

(2023) 3 Centax 64 (Kar.) / 2023 (70) G.S.T.L. 345 · 16-01-2023

In favour of assessee

FACTS

The assessee procured gift / cash-back / e-vouchers (semi-closed PPIs) from issuers and supplied them to clients at face value; the underlying goods/services were not identified at issuance. AAR & AAAR held the vouchers taxable as goods.

HELD / RATIO

Vouchers are mere instruments accepted as consideration; they have no intrinsic value and represent the value of future goods/services. Being instruments, they fall within "money" (S.2(75)), which is excluded from goods and services. Issuance is akin to a pre-deposit, not a supply — tax is not leviable on the vouchers themselves. AAR/AAAR quashed.

Key Takeaway: *Ask whether the thing transferred has intrinsic value or is a payment instrument standing in for money.*

Gujarat Chamber of Commerce & Industry v. UoI

(2025) 26 Centax 150 (Guj.) / 2025 (94) G.S.T.L. 113 · 03-01-2025

In favour of assessee

FACTS

Assignment, for lump-sum consideration, of leasehold rights in a GIDC-allotted plot (99-yr lease) together with the building. The department demanded 18% GST treating the assignment as a supply of service.

HELD / RATIO

Absolute assignment of leasehold rights + building is a transfer of benefits arising out of immovable property — a "bundle of rights" that is immovable property itself. It is covered by Schedule III (sale of land / building) and falls outside S.7(1)(a); not a service. Distinguish GIDC's grant of lease (a service, but exempt) and its transfer-permission fee (taxable).

Key Takeaway: *Distinguish absolute assignment (immovable property, no GST) from renting / sub-lease (a taxable service).*

IV

SEGMENT SIX

Valuation, business & the taxable person

Two frontiers where demands are still won and lost: what the value must include (S.15), and whether there is a second person at all (mutuality).

CASE · VALUATION

Contract cannot re-draw the statutory value — Section 15(2)(b)

Shree Jeet Transport v. Union of India

In favour of department

(2023) 12 Centax 67 (Chhattisgarh) / 2023 (79) G.S.T.L. 172 · W.P.T. 117 of 2022 · 17-10-2023

FACTS

A Goods Transport Agency proposed a contract under which the service recipient would supply diesel free of cost (FOC) in the trucks, keeping fuel outside the GTA's scope. On advance ruling, the AAR held the FOC diesel includible in value; the AAAR split (CGST member: includible; SGST member: not), so no ruling issued under S.101(3). The GTA challenged this in a writ.

HELD / RATIO

- S.15(2)(b): value includes any amount the supplier is liable to pay in relation to the supply but which the recipient bears.
- Fuel is integral to a GTA's service — running the vehicle is the GTA's own liability; it cannot be carved out.
- Parties cannot, by agreement, override statutory valuation; FOC diesel is added to value. Service-tax cases (Bhayana Builders / Intercontinental) distinguished.

Key Takeaway: *Re-allocating an essential cost input to the recipient does not defeat S.15(2)(b). Scrutinise FOC / free-issue arrangements for essential inputs — they are a recurring valuation trap.*

Is a second person required? Club-to-member supply

Indian Medical Association v. Union of India

(2025) 29 Centax 232 (Ker.) / 2025 (96) G.S.T.L. 532 · 11-04-2025

In favour of assessee

FACTS

DGGI raised demands on IMA's mutual member schemes after the Finance Act, 2021 inserted S.2(17)(e) and S.7(1)(aa) + Explanation (deeming a club and its members two persons), retrospective from 01-07-2017.

HELD / RATIO

“Supply” and “service” need a plurality of persons; Article 246A uses “supply” without an artificial meaning. Parliament widened “supply” but did NOT deem the activity a “service”; mutuality survives (Calcutta Club). A constitutional concept cannot be expanded by statute — S.2(17)(e), S.7(1)(aa) & Explanation held ultra vires Art. 246A r/w 366(12A) & 265; retrospectivity also struck down.

Key Takeaway: *A powerful (Kerala HC) ground for clubs/associations — likely headed to the SC; deploy with that caveat.*

State of West Bengal v. Calcutta Club Ltd.

2019 (29) G.S.T.L. 545 (SC) · the foundation for mutuality

In favour of assessee

FACTS

Whether a members' club — incorporated or not — supplies goods/services to its members for sales-tax and service-tax purposes, given the doctrine of mutuality.

HELD / RATIO

The principle of mutuality survives even after the 46th Amendment and extends to incorporated clubs; there is no separate supplier and recipient where a club serves its own members, so there is no taxable “service” between them. The doctrine that a person cannot supply to himself remains intact.

Key Takeaway: *The bedrock IMA relies on — note the amendment tried, and (per IMA) failed, to legislate around it.*

The threshold-defence sequence — run it in every reply

1	**No supply**	Schedule III / money / immovable property / mutuality. Knock out the taxable event itself.
2	**Not in course or furtherance of business/ no consideration**	S.2(17) — the transaction has no business nexus.
3	**Not a taxable person**	S.2(107) r/w S.22–24 — no liability or requirement to register.
4	**Wrong classification**	Goods vs services; composite vs mixed; wrong Schedule II entry.
5	**Valuation**	S.15 — what must (and must not) be included; FOC inputs; discounts.

THANK YOU

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