

Taxability of personal use of asset by employee under GST

Extracts of relevant sections, schedules are mentioned below:

Section 7

1. 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;
- b) ..
- c) the activities specified in Schedule I, made or agreed to be made without a consideration; and
- d) ..

2. Notwithstanding anything in sub section (1)

- a) activities or transactions specified in Schedule III; or
- b) ...

shall be treated neither as a supply of goods nor a supply of services.

Schedule I (Supply even if without consideration)

- 1. Permanent transfer or disposal of business assets where input tax credit has been availed on such assets
- 2. Supply of goods or services or both 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 II (Activities to be treated as supply of goods or supply of services)

1. Transfer

- a) Any transfer of the title in goods is a supply of goods;
- b) Any transfer of right in goods or of undivided share in goods without the transfer of title thereof, is a supply of services

4. Transfer of business assets

b) where, 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 is a supply of services, shall be considered to be services.

Schedule III (Shall not be treated as supply of goods or services or both)

1. Services by an employee to the employer in the course of or in relation to his employment

Section 16: Every registered person shall be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business....

Section 15(5): Employer and employee are considered to be related persons.

Section 17

1. Where the goods or services or both are used by the registered person partly for the purpose of any business and partly for other purposes, the amount of credit shall be restricted to so much of the input tax as is attributable to the purposes of his business.

Issue: As per the terms of the employment contract, Instead of paying cash to employee, employer provides refrigerator which is used by employee for personal purposes and this forms part of CTC. The bill shall be in the name of employer. The reason for the arrangement is to save tax of employee by giving a refrigerator (billed in employer name) instead of cash. Discuss taxability and allowability of credits under [GST](#)?

Observations:

Can the facts be said to be resulting into a taxable supply under the Act?

Supply (Employment) from employee to employer: By reading schedule III, it is clear that the services rendered by employee to employer were in the course of employment. Therefore cannot be a taxable supply.

Supply (Refrigerator) from employer to employee: As per section 7, supply is inclusive definition. It includes transfers also. Schedule II only excludes services by employee to employer and not vice versa. Therefore, the same can be said to a supply under the act.

The movement of supply from employer to employee cannot be said to be Gift. Gift has not been defined under the act. Gift in common parlance is understood to be something paid voluntarily without anything in return. Since in this case, it was part of CTC, it cannot be said to a gift.

To be covered under the meaning of supply under schedule II, goods transferred “must have been held or used for the purposes of the business” by the employer. This does not seem to be in the present case.

For a transaction to be considered under barter/exchange (covered within the meaning of supply), there must be supply from both sides, which is absent in the present case.

Therefore, the transaction (employer to employee) can be said to be a supply by way of section 7(Transfer case).

Whether non transfer of title will not be taxable under the Act?

As per schedule II, para 1, clause (b), where there is transfer of right in goods without transfer of title, it shall be considered to be services.

Transfer of right includes transfer of possession also. Therefore, transfer of rights in goods without transferring title shall be taxed as service.

Can the facts be said to be resulting into a blocked input tax credit?

In this case, inputs beings goods (refrigerator) were purchased in the course of business as envisaged in section 16.

Further, various courts have held that to deny credit on the basis that the same was used for personal purpose(other purpose), the said personal/other purpose should be of the owner himself. Where employee uses the same for his personal use, it was said to business expediency and in the course of business.

Therefore, there seems to be no disallowability of credit under section 17(2) on the basis of other purpose. Therefore, credit shall be allowed (section 16).

Continues Issue: If the employee exits from company before it is depreciated in the books whether the transfer of title of asset shall be considered to a supply?

Transfer of title from Employer to Employee.

As mentioned, the same falls within the definition of supply.

Further, the same shall be taxable as goods as per schedule II, para 1, clause (a) which states transfer of title in goods shall be considered to be goods. Therefore, the same shall be taxable as goods.

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