



Analysis of Non-taxable Supply, Non-GST Supply, Exempted Supply, Nil-Rated Supply and Zero-Rated Supply under GST



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To understand the meaning of Non-GST supply/ Non-taxable supply/ Exempted Supply/ Nil rated-supply and Zero-rated supply does not seem very difficult at first. However, to classify a transaction in any of the above mentioned categories is not so simple. One of the reason is that not all the terms, such as Non- GST Supply and Nil-Rated Supply are defined in the Central Goods and Services Tax Act 2017 ('CGST Act') and therefore it is left upon the dealer to decide which of the activities or transactions would fall under such categories.

These synonymic connotations remind us of the Hindi film "Angoor". The film based on Shakespeare's "Comedy of Errors" is about two pairs of identical twins separated at birth and how their lives go haywire when they meet in adulthood. The first pair of twins are both named as Ashok and the second pair of twins are both named as Bahadur. All the four characters are innocent and destiny plays the main role in bringing all characters to one place. Let's see what will be the destiny of these synonymic connotations in the GST regime.

Even though these terms are not well-defined, the reporting of these supplies have to be made in GSTR-1, GSTR-3B and also in the Annual Return (GSTR-9). For example in GSTR-9 under point no. 5, details have to be given about the following:

1. Zero rated supply (Export) without payment of tax

2. Supply to SEZs without payment of tax
3. Supplies on which tax is to be paid by the recipient on reverse charge basis
4. Exempted supply
5. Nil Rated supply
6. Non-GST supply (including No Supply)

Since taxpayers were not able to easily classify between Exempted, Nil rated and Non-GST Supply, CBIC issued "Notification no. 56/2019 dated 14 November 2019" wherein it was mentioned that if taxpayers find it difficult to classify supplies between Exempted, Nil rated and Non-GST Supply, then they have the option to report the whole amount under "exempted" category in GSTR-9.

Other than the aforementioned issues, other areas in which a person faces difficulties in classifying such supplies are:

1. Calculation of 'aggregate turnover' in compliance with the CGST Act
2. Calculation of exempted supplies for the purposes of reversal of Input Tax Credit (ITC) in compliance with Rule 42 and Rule 43 of the CGST Rules

Let's analyse each of the synonymic connotations "Non-Taxable Supply", "No supply", "Nil Rated Supply", "Exempt Supply" and "Zero Rated Supply" individually, then look at some issues later.

1. Non-taxable supply i.e. Non GST supply

1.1 Non-taxable Supply has been defined under section 2(78) of CGST Act, 2017 as follows:

“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 & Services Tax Act.”

1.2 For an activity/transaction to be considered as a Non-Taxable supply, the same should first be considered as a “Supply” under the GST Act. The term “Supply” has been defined under Section 7 of the CGST Act and the same has been defined in such a manner that transaction in almost all goods or service qualifies under the definition of supply.

1.3 Once it is ascertained that a particular activity or transaction falls under the definition of Supply then one needs to check whether GST can be levied on the same. GST is levied on all supplies as per Section 9 of the CGST Act. Thus if an activity or transaction is covered under the definition of Supply and GST is leviable under Section 9, then the supply would be considered as a Taxable Supply. Therefore those supplies which are covered under the definition of supply but no levy of tax has been created as per Section 9 of the CGST Act, would be considered as Non-Taxable Supply.

1.4 The following are the goods, the supply of which is excluded from levy of GST as per Section 9 of CGST Act and therefore are considered as Non-Taxable Supplies:

1. Alcoholic liquor for human consumption
2. Petroleum crude
3. High speed diesel
4. Motor spirit (petrol)

5. Natural gas

6. Aviation turbine fuel

It may be noted that the above goods are still liable to State Excise and VAT and are also referred to as Non-GST Supplies.

Non-taxable supplies are also included in the broader definition of Exempt Supplies. Thus Non-taxable supplies can be considered as a subset of Exempt supplies. However, while applying the respective connotations in the respective sections or rules, the exact connotation should be applied.

2. No Supply

2.1 Subsection (2) of Section 7 of the CGST Act states that notwithstanding anything contained in sub-section 1, the specified activities or transactions shall be treated neither as supply of goods or supply of services. Such activities can be termed as ‘No supply’ though the said term is not specifically defined under the CGST Act.

2.2 The following activities or transactions, which are exceptions to the definition of supply, should be included in ‘No Supply’ category:

1. Activities specified in Schedule III of the CGST Act (Kindly refer Appendix 1 for the list)
2. Activities or transactions undertaken by the Central Government, State Government or any local authority in which they are engaged as public authorities as may be notified by the Government on the recommendations of the Council (Kindly refer Appendix II for Notifn. 14/2017 CT-R dtd.28-06-2017)

2.3 Besides the above transactions, “money and securities” are the items which are considered as neither good nor

services as per the definitions of 'goods' and 'services' provided under Section 2(52) and Section 2(102) of CGST Act respectively. The definition of supply under Section 7 of CGST Act along with the definitions of exempt supply, non-taxable supply and zero rated supply given under the CGST Act contains the phrase "supply of goods or services or both". Thus the transactions in money and securities are also not considered as supply and therefore can be categorized as No supplies.

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.
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 India.
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.

Appendix 1 : Schedule III of the CGST Act:

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.
2. Services by any court or Tribunal established under any law for the time being in force.
3. (a) The functions performed by the Members of Parliament, Members of State Legislature, Members of Panchayats, Members of Municipalities and Members of other local authorities;
(b) The duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that capacity; or
(c) 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.
4. Services of funeral, burial, crematorium or mortuary including transportation of the deceased.

Appendix II : Notifn. 14/2017 CT-R dtd.28-06-2017

In exercise of the powers conferred by sub-section (2) of section 7 of the Central Goods and Services Tax Act, 2017 (12 of 2017), the Central Government, on the recommendations of the Council hereby notifies that the following activities or transactions undertaken by the Central Government or State Government 1[or Union territory] or any local authority in which they are engaged as public authority, shall be treated neither as a supply of goods nor a supply of service, namely:—

“Services by way of any activity in relation to a function entrusted to a Panchayat under article 243G of the Constitution or to a Municipality under article 243W of the Constitution

3. **Nil-rated Supply**
 - 3.1 Nil-rated supply has not been defined under the Act. However the same is generally understood that supply of those goods or services which attract a “Nil” rate of tax are referred to as Nil-rated

Supply. Currently CBIC has issued list of services on which “Nil Rate” is chargeable in Notification no. 12/2017 CT-R dated 28 June, 2017. Hence the Services with Nil rate of tax can be categorised as Nil rated supplies. Nil rated supplies are also included in the broader definition of Exempt Supplies. Thus Nil rated supplies can be considered as a subset of Exempt supplies.

4 Exempt Supply

4.1 Exempt Supply has been defined as per Section 2(47) of the CGST Act as “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”

4.2 The following are covered under the definition of exempt supply and can be considered as subsets of Exempt Supply :

- a. Supply which is leviable to tax under the Act but attracts Nil rate of tax. (i.e. Nil Rated Supplies – as explained in point no. 3 above)
- b. Supplies wholly exempted from tax via Notifications issued under section 11 of CGST Act. (Kindly refer Appendix 3 for list of Notifications for wholly exempted supplies)
- c. Supplies wholly exempted from tax via Notifications issued under section 6 of Integrated Goods and Services Tax Act, 2017 (‘IGST Act’)
- d. Non-taxable supply (as per Section 2(78) of the CGST Act- Explained in point no. 1 above)

4.3 As per section 11 of the CGST Act, the Government may, by notification, exempt

generally, either absolutely or subject to such conditions as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

4.4 It should be noted that the definition of exempt supply u/s 2(47) of the CGST Act covers only the supplies which are wholly exempt from tax u/s 11 of the CGST Act. Thus partially exempted supplies u/s 11 should not be included while identifying the exempt supplies.

Appendix III - List of Notifications issued u/s 11 of the CGST Act for supplies wholly exempted from tax

- Notification No. 2/2017-Central Tax (Rate), dated 28-6-2017 for notified CGST exempt goods.
- Notification No. 7/2017-Central Tax (Rate), dated 28-6-2017 for exemption from CGST to supplies by CSD to Unit Run Canteens and supplies by CSD/Unit Run Canteens to authorised customers.
- Notification No. 12/2017-Central Tax (Rate), dated 28-6-2017 for CGST exempt services.
- Notification No. 26/2017-Central Tax (Rate), dated 21-9-2017 for exemption to intra-State supply of heavy water and nuclear fuels falling in Chapter 28 by Department of Atomic Energy to the Nuclear Power Corporation of India Ltd.
- Notification No. 26/2018-Central Tax (Rate), dated 31-12-2018 [Exemption to intra-State supply of gold falling under Heading No. 7108 when supplied by Nominated Agency under the scheme for “Export Against Supply by Nominated Agency” as referred to in para 4.41 of Foreign Trade Policy].

5 Zero-Rated Supply

- 5.1 In general parlance “Zero” and “Nil” are understood to be the same and are used interchangeably. This is the reason why many consider “Zero-Rated Supply” and “Nil-Rated Supply” to mean the same thing. However, under the GST law, the terms have separate meanings and therefore cannot be understood to mean the same thing.
- 5.2 Section 2(23) of the IGST Act defines Zero-Rated Supply as “shall have the meaning assigned to it in section 16”
- 5.3 As per Section 16 of IGST Act, Zero-Rated Supply “means any of the following supplies of goods or services or both, namely:-
1. Export of goods or services or both
 2. Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit”
- 5.4 Therefore supplies made by a person as an export (either goods or services) or supply to an SEZ developer or unit qualifies for Zero-Rated Supplies.

Now that we have examined all the terms, let’s discuss the issues that taxpayers face when classifying the Supplies.

6 Calculation of Aggregate Turnover in relation to exempt supplies.

- 6.1 The term Turnover as is understood generally, is different from the term “Aggregate Turnover” defined under the GST law. As per section 2(6) of the CGST Act “aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and

inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess

- 6.2 The calculation of Aggregate Turnover is a criteria for applicability of many of the provisions of the GST law, like Registration, Filing of Returns, Audit, etc. Therefore it is important to calculate Aggregate Turnover accurately as applicability of many of the provisions of the GST law would be affected based on the amount of Aggregate Turnover calculated.
- 6.3 It is important to note that the term ‘Aggregate Turnover’ includes the term ‘exempt supplies’ and hence would include the subsets of exempt supplies- as explained in point 4 above.
- 6.4 Section 15 of the CGST Act read with Rules 27 to 31 determine the value of supply which needs to be considered for calculating aggregate turnover. Rule 32 prescribes the valuation of certain specific type of transactions such as the value of supply of services in relation to the purchase or sale of foreign currency, the value of the supply of services in relation to booking of tickets for travel by air provided by an air travel agent, the value of the supply of services where a taxable supply is provided by a person dealing in buying and selling of second hand goods, value of redeemable vouchers/coupons etc. These Rules are generally applicable in the case of taxable supplies and hence not discussed in detail in this article. But it should be noted that these Rules have to be considered while calculating the aggregate turnover by replacing the transaction value with the specific prescribed value.
- 6.5 Rule 33 of the CGST Rules provides that the expenditure or costs incurred by a

supplier as a pure agent of the recipient of supply shall be excluded from the value of supply, if all the prescribed conditions are fulfilled. It should be noted that value of amount received towards such costs/ expenditure incurred as a pure agent are entirely to be excluded from the value of supply. But the value of amount received towards such costs/ expenditure is neither an 'exempted supply' nor a 'nil supply' nor 'no supply'. The valuation rules only exclude the value received towards

such costs/ expenditures and hence these amounts received as a pure agent will not be included while calculating Aggregate turnover. Similarly no reporting is required in the GST returns for such amounts received as a pure agent.

6.6 The following table will help us to better comprehend what is to be included while calculating **Aggregate Turnover** of a person and what is not to be included

Particulars	Included/Not Included
Outward supplies on which GST is charged by Supplier	Included
Outward Supplies on which GST is paid by Recipient on Reverse Charge	Included
Inward Supplies on which tax is payable on Reverse Charge	Not included
Nil-Rated Supplies	Included
Zero-Rated Supplies	Included
Exempted Supplies	Included
Non-Taxable Supplies	Included
No Supply details	Not Included
CGST/SGST/UTGST/IGST/Cess charged by a person on outward supplies	Not Included
Amount received towards costs/ expenditure incurred as a pure agent	Not Included

6.7 The recent Karnataka Advance Ruling (KAR-ADRG-30/2020 Dtd. 05-05-2020) in the case of Anil Kumar Agrawal has analysed the various revenues/income which should be considered for 'aggregate turnover' for registration. The principles enunciated in the above paras gets support from this AAR which can have a persuasive value.

7.2 As per section 17(2) of the CGST Act, where the goods or services or both are used by the registered person partly for effecting taxable supplies including zero-rated supplies and partly for effecting exempt supplies, the amount of credit shall be restricted to so much of the input tax as is attributable to the said taxable supplies including zero-rated supplies.

7 Calculation of "Exempted supply" for the purpose of reversal of ITC

7.1 Exempted Supply as defined in Section 2(47) of the CGST Act is not same as Exempted Supply on which ITC is to be reversed as per Section 17 of the CGST Act read with Rule 42 and Rule 43 of the CGST Rules.

7.3 The value of exempt supply under section 17(2) includes supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.

7.4 It has been clarified by way of explanation to section 17(3) that the expression “value of exempt supply” for the purposes of section 17(2) shall not include the value of activities or transactions specified in Schedule III (no supply), except those specified in paragraph 5 of the said Schedule (sale of land/building).

7.5 The following table would help us to understand what is to be included and what is not to be included in **calculation of exempted supply** for the purpose of reversal of ITC

Particulars	Included/Not Included
Exempt supplies as per Section 2(47) (Refer Note below)	Included
Nil-Rated Goods	Included
Non-taxable Goods	Included
Outward Supplies on which GST is paid by Recipient on Reverse Charge	Included
Sale of land	Included
Sale of building (subject to clause (b) of paragraph 5 of Schedule II)	Included
Transactions in securities	Included
No Supplies	Not Included
Activities or transactions specified in Schedule III (except paragraph 5 of the said Schedule)	Not Included
Zero-Rated Supplies	Not Included
Interest or discount earned by way of accepting deposits, extending loans or advances except in of a banking company or financial institution.	Not Included
Services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India	Not Included

Note

Explanation to Rules 42 and 43 states that aggregate value of exempt supplies for the purposes of the aforementioned rules shall exclude the following:

1. Services by way of accepting deposits, extending loans or advances in so far as the consideration is represented by way of interest or discount, except in case of a banking company or a financial institution including a non-banking financial company, engaged in supplying services by way of accepting deposits, extending loans or advances; and

2. Services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India

8 Summary

- 8.1 The following table provides a summary of the classification of “Non-Taxable Supply”, “No Supply”, “Nil Rated Supply”, “Exempt Supply” and “ Zero Rated Supply” . The table is not an exhaustive list of all the possible types of transactions, but is only an illustrative list of some of the transactions.

Analysis of Non-taxable Supply, Non-GST Supply, Exempted Supply, Nil-Rated Supply and Zero-Rated Supply under GST

Sr. No.	Nature of Supply	Classification	Reference	Reason
1	Schedule III activities/transactions	No supply	Section 7(2)	Excluded from scope of Supply in Section 7
2	Activities or transactions undertaken by the Central Government, State Government or any local authority in which they are engaged as public authorities as may be notified by the Government on the recommendations of the Council	No supply	Section 7(2)	Excluded from scope of Supply in Section 7
3	Alcoholic liquor for human consumption, Petroleum crude, High speed diesel, Motor spirit (petrol), Natural gas, Aviation turbine fuel	Non-Taxable Supply	Section 2(78), 9(1)	Excluded from levy of tax under Section 9
4	Services mentioned in Notification No. 12/2017 Central Tax (Rate) (as amended)	Nil-Rated Supply	Section 2(47), 11	Specified as Exempted u/s 11(1) in excess of the Nil rate specified vide Notifin. 12/2017-CT-R.
5	Goods mentioned in Notification No. 02/2017 Central Tax (Rate) (as amended)	Exempt Supply	Section 2(47),11	Exempted from whole of tax u/s 11(1) vide Notifin. 02/2017-CT-R
6	Export of goods or services or both	Zer0-Rated Supply	Section 2(23) read with Section 16 of the IGST Act	-
7	Supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit	Zer0-Rated Supply	Section 2(23) read with Section 16 of the IGST Act	-
8	Transaction in money and Securities	No supply	Section 2(52) and 2(102)	Excluded from definition of Goods as well as Service
9	Receipt of dividend from a company or Mutual Fund	No supply	-	It is considered a transaction in money and therefore is not a supply under GST
10	Amount received towards costs/ expenditure incurred as a pure agent	Neither Exempt/Nil/ No Supply	Rule 33	Excluded from the Value of Supply
11	Interest on Deposits	Exempt Supply but Excluded from the aggregate value of supplies for ITC Reversal (except for Banking Co.)	Section 2(47), 11	Specified as Exempted u/s 11(1) in excess of the Nil rate specified vide Notifin. 12/2017-CT-R.

Hope the above summary will serve as a useful reference chart for classifying the synonymic connotations. Due care should be taken while classifying the aforementioned transactions since incorrect classification may lead to unwarranted liabilities and litigations. Let's ensure that the classification of these synonymic connotations in the GST regime does not turn out to be 'tragedy of errors'.

