

GST

Janak Puri Study Circle

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Major Definitions **Concept of Supply** **Levy of Tax**



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MAJOR DEFINITIONS

Section 2(5) Agent

“agent” means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services on behalf of another, whether disclosed or not.

Section 2(6) Aggregate Turnover

“aggregate turnover” means the aggregate value of all taxable and exempt supplies, exports of goods and/ or services and **inter-State supplies** of a person having the same PAN, to be computed on all India basis and excludes taxes, if any, charged under the CGST Act, SGST Act and the IGST Act, as the case may be

Explanation.- Aggregate turnover does not include the value of inward supplies on which tax is **payable by a person** on reverse charge basis under **sub-section (3) of Section 8** and the value of inward supplies.

Sec 2(44) Exempt Supply

“**exempt supply**” means supply of any goods and/or services which are not taxable under this Act and includes such supply of goods and/ or services **which attract nil rate of tax** or which may be exempt from tax under **section 11**

Issues:

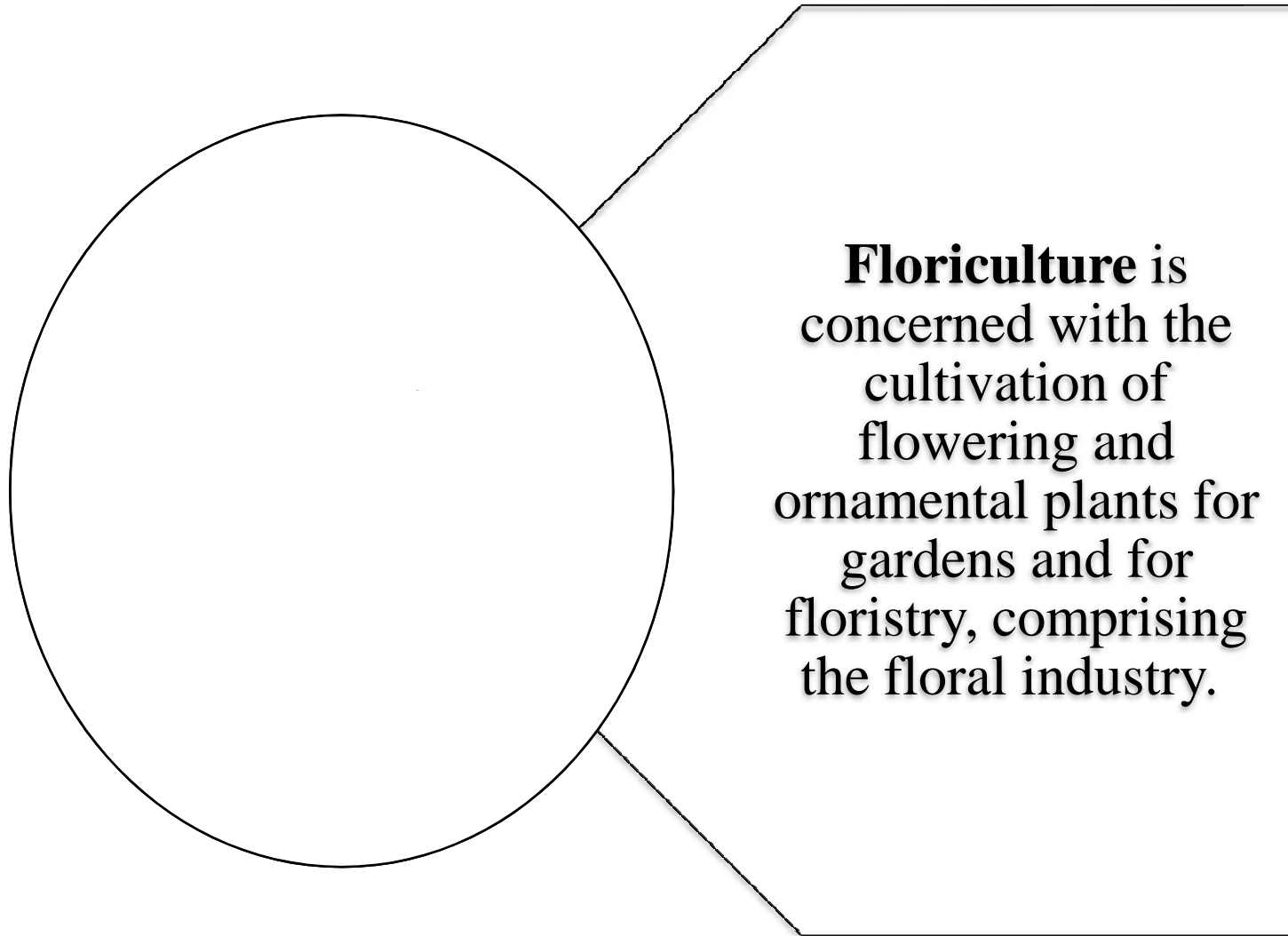
Even goods sent for job work would be an exempt supply and will form part of aggregate turnover

Sec 2(7) Agriculture

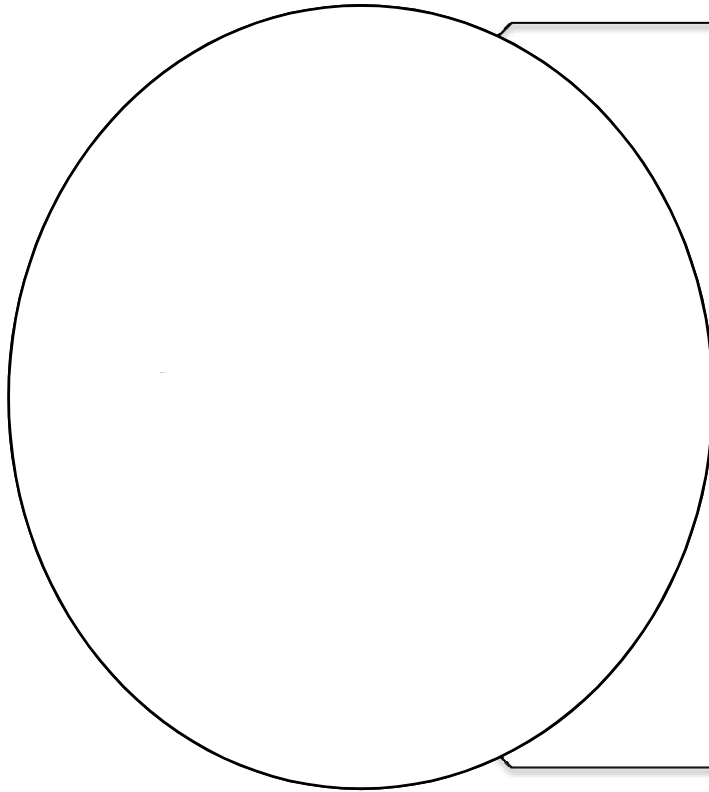
“**agriculture**” with all its grammatical variations and cognate expressions, includes floriculture, horticulture, sericulture, the raising of crops, grass or garden produce and also grazing, but does not include dairy farming, poultry farming, stock breeding, the mere cutting of wood or grass, gathering of fruit, raising of man-made forest or rearing of seedlings or plants;

S.2(8) “**agriculturist**” means a person who cultivates land personally, for the purpose of agriculture;

Sec 2(7) Floriculture - IN

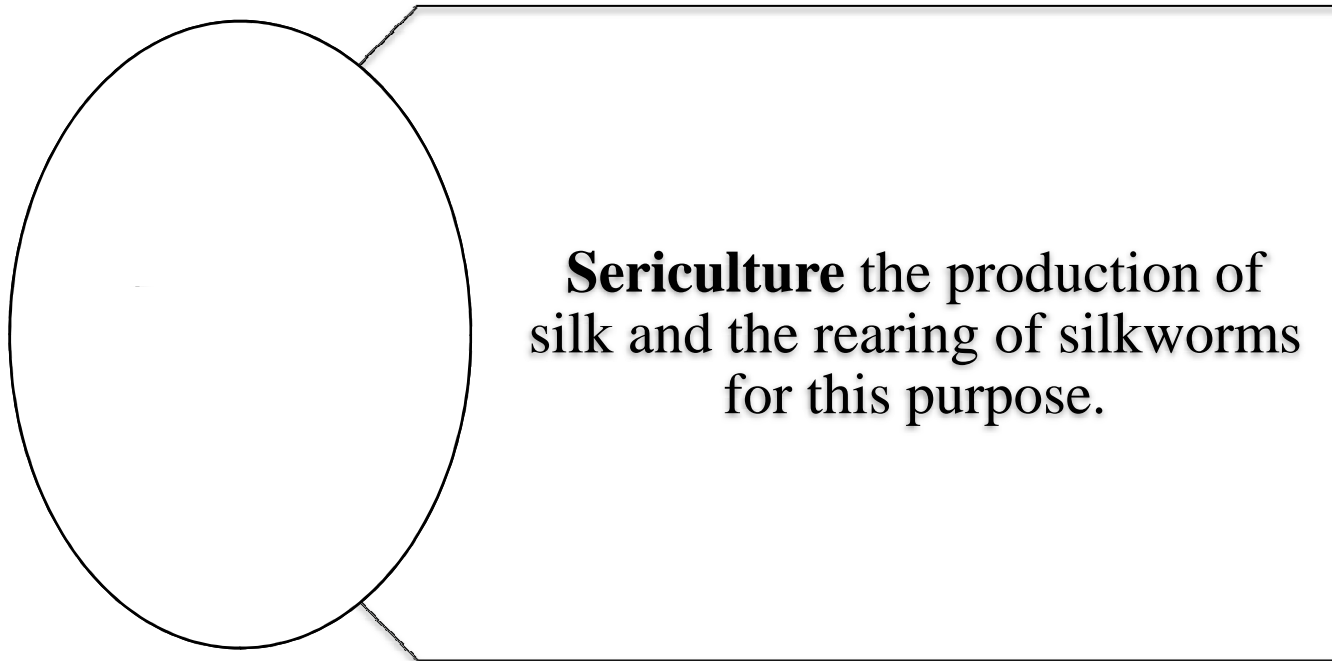


Sec 2(7) Horticulture - IN



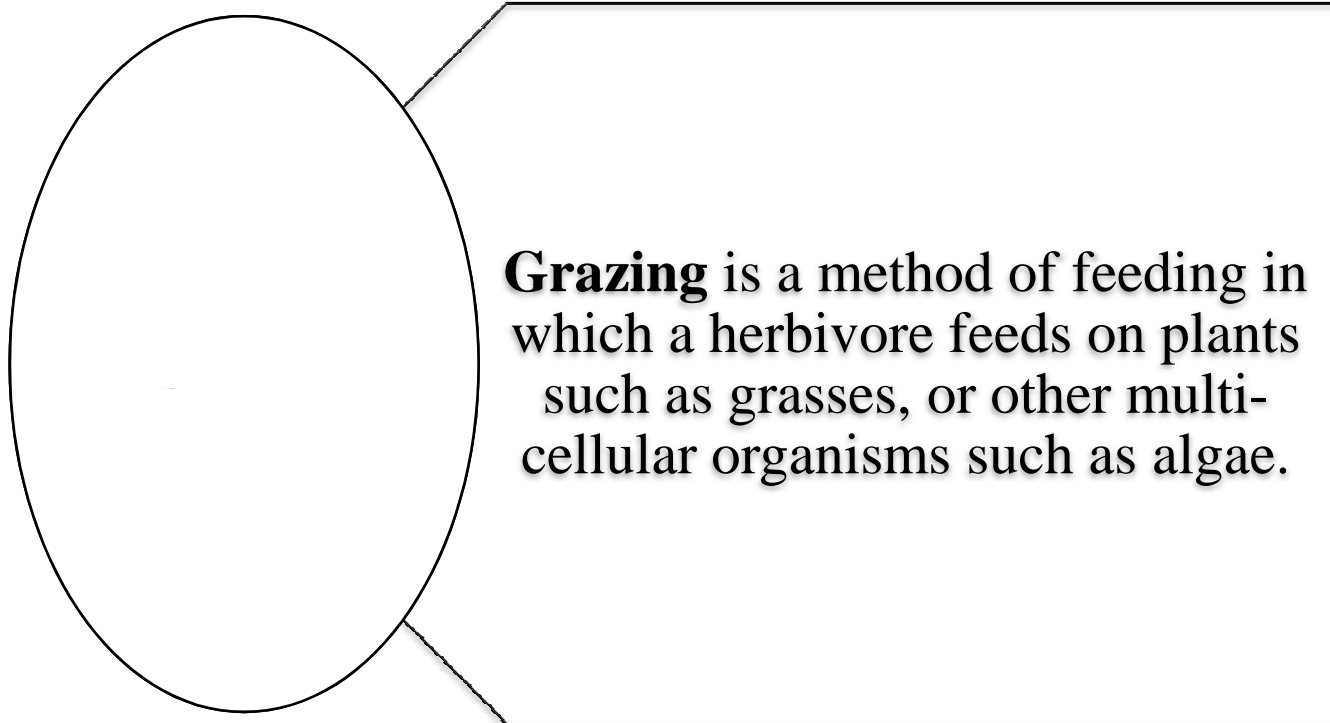
Horticulture is the branch of agriculture that deals with the art, science, technology, and business of growing plants. It includes the cultivation of medicinal plants, fruits, vegetables, and non-food crops such as grass and ornamental trees and plants.

Sec 2(7) Sericulture - IN

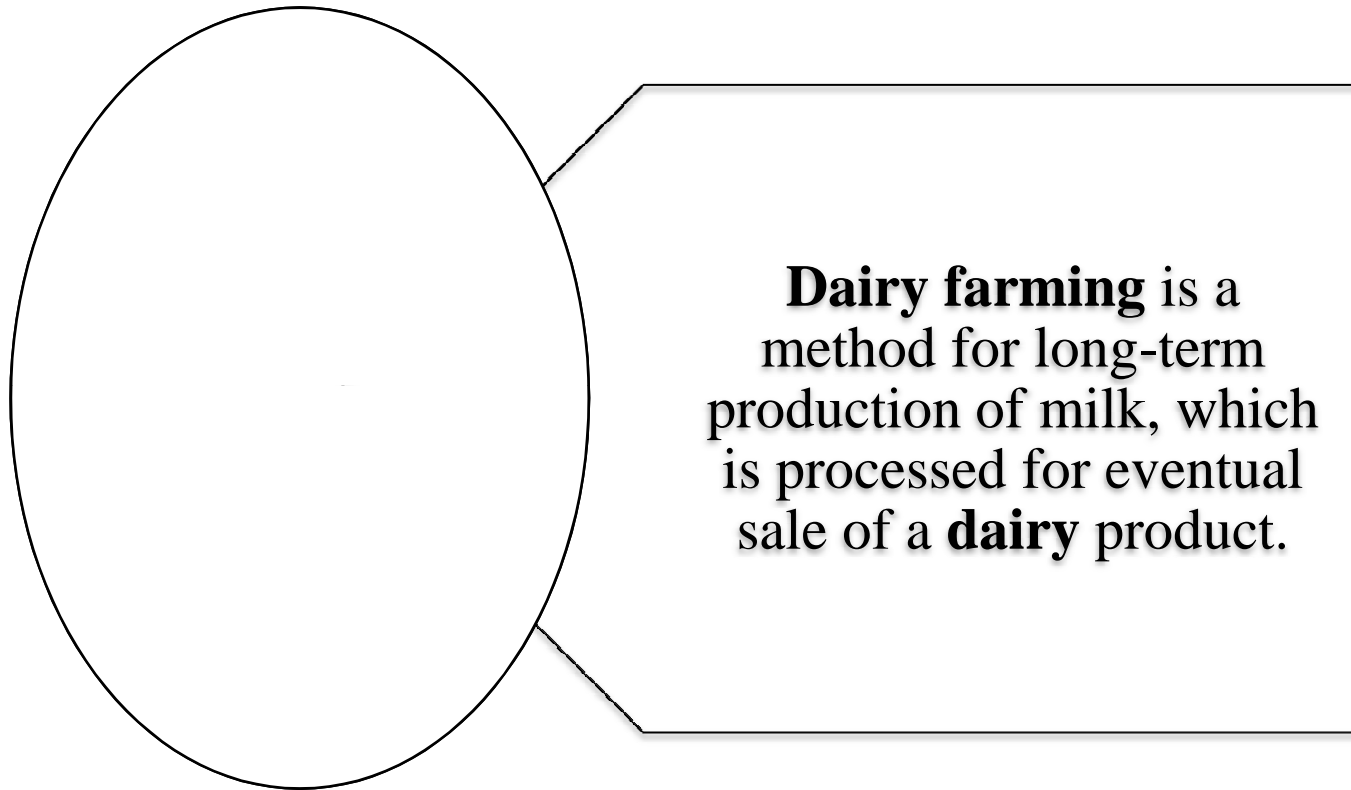


Sericulture the production of silk and the rearing of silkworms for this purpose.

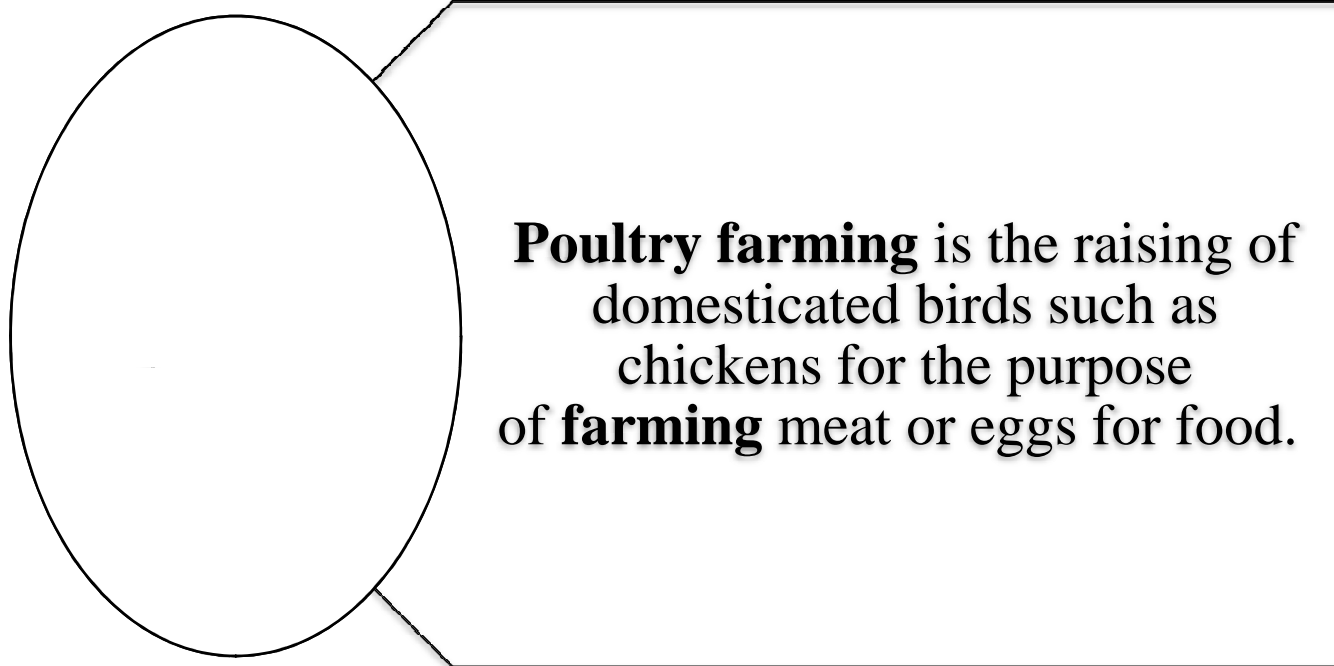
Sec 2(7) Grazing - IN



Sec 2(7) Dairy Farming - OUT

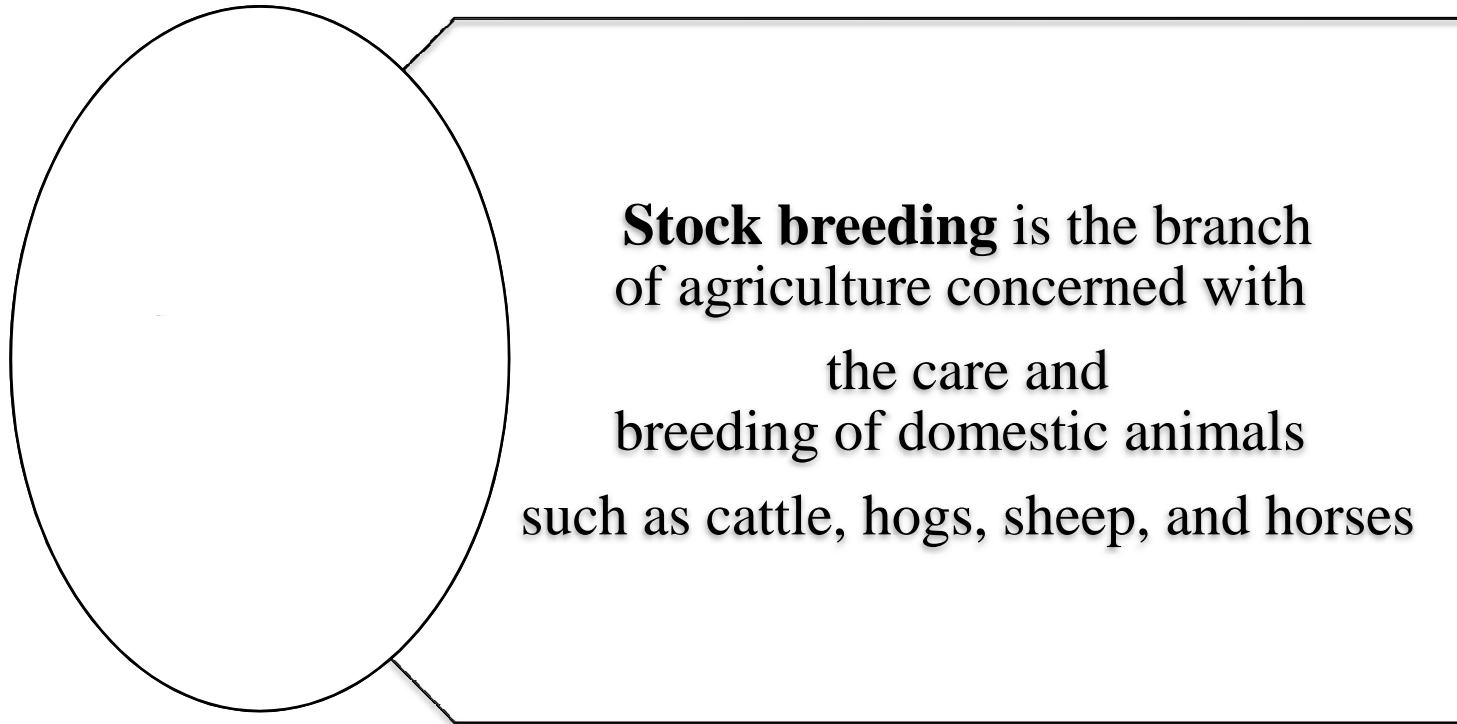


Sec 2(7) Poultry Farming - OUT



Poultry farming is the raising of domesticated birds such as chickens for the purpose of **farming** meat or eggs for food.

Sec 2(7) Stock Breeding - OUT



Sec 2(7) Agriculture

Issues:

1. Section 2(1A) of the Income Tax Act, 1961 – Departure from
2. *CIT vs. Benoy Kumar Sahas Roy* AIR [1957 SC 768] – Departure
3. Rearing of seedlings and plants - Rice and Onion cultivators, nursery planters
4. Gathering of fruits
5. Agricultural land on rent – Out

Section 2(18) Business Vertical

“**business vertical**” means a **distinguishable component** of an enterprise that is engaged in supplying an individual product or service or a group of related products or services and that is subject to risks and returns that are different from those of other business verticals;

Explanation: **Factors** that should be considered in determining whether products or services are related include:

- (a) the nature of the products or services;
- (b) the nature of the production processes;
- (c) the type or class of customers for the products or services;
- (d) the methods used to distribute the products or provide the services; and
- (e) If applicable, the nature of the regulatory environment, for example, banking, insurance, or public utilities.

Section 2(18) Business Vertical

Issues:

1. Word product should be replaced with goods
2. Geographical segmentation is excluded
3. AS -17/ IN AS 108 etc. should be followed

Definition of ‘Operating Segments’ under IND AS 108:

An operating segment is a component of an entity:

- (a) That engages in business activities from which it may earn revenues and incur expenses;
- (b) Whose operating results are regularly reviewed by the entity’s chief operating decision maker to make decisions about resources to be allocated to the segment and assess its performance; and
- (c) For which discrete financial information is available.

Section 2(19) Capital Goods

“capital goods” means goods, the value of which is **capitalised** in the books of accounts of the person claiming the credit and which are used or intended to be used in the course or furtherance of business

Issues:

1. Capital goods expensed off
2. Value/ purchase consideration

Sec 2(27) Composite Supply

“composite supply” means a supply made by a taxable person to a recipient comprising **two or more supplies** of goods or services, or any combination thereof, which are **naturally bundled** and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply;

Illustration : Where goods are packed and transported with insurance, the supply of goods, packing materials, transport and insurance is a composite supply and supply of goods is the principal supply.

Issues:

1. Supply of goods and their installation
2. Supply of good and warranty / extended warranty

Sec 2(46) First Stage Dealer

“first stage dealer” means a dealer, who purchases the goods directly from,-

(i) the manufacturer under the cover of an invoice issued in terms of the provisions of Central Excise Rules, 2002 or from the depot of the said manufacturer, or from premises of the consignment agent of the said manufacturer or from where the goods are sold by or on behalf of the said manufacturer, under cover of an invoice; or

(ii) an importer or from the depot of an importer or from the premises of the consignment agent of the importer, under cover of an invoice;

Sec 2(49) Goods

“goods” means every kind of movable property **other than money and securities but includes actionable claim**, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply;

S.2(1) says that “actionable claim” shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882

Section 3 of the Transfer of Property Act, 1882

"actionable claim" means a claim to any debt, other than a debt secured by mortgage of immovable property or by hypothecation or pledge of movable property, or to any beneficial interest in movable property not in the possession, either actual or constructive, of the claimant, which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent

Sec 2(52) Input

“input” means any goods other than capital goods used or intended to be used by a supplier in the course or furtherance of business

Sec 2(53) Input Service

“input service” means any service used or intended to be used by a supplier in the course or furtherance of business

Sec 2(55) Input Tax

"input tax" in relation to a taxable person, means the IGST, including that on import of goods, CGST and SGST charged on any supply of goods or services to him and includes the tax payable under sub-section (3) of section 8 (reverse charge), **but does not include the tax paid under section 9 (Composition levy)**

Sec 2(66) Mixed Supply

“mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply;

Illustration: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately

Sec 2(78) Principal Supply

“**principal supply**” means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary and does not constitute, for the recipient an aim in itself, but a means for better enjoyment of the principal supply

Sec 2(72) Outward Supply

“**outward supply**” in relation to a person, shall mean supply of goods or services, whether by sale, transfer, barter, exchange, licence, rental, lease or disposal **or any other means** made or agreed to be made by such person in the course or furtherance of business

Sec 2(92) Services

“**services**” means anything other than goods;

Explanation 1.- Services include **transactions in money** but does not include **money and securities**;

Explanation 2.- Services does not include transaction in money other than an activity relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.

Sec 2(107) Turnover in a State

“turnover in a State” means the aggregate value of all taxable, exempt supplies and exports of goods and/ or services made within a State by a taxable person and inter-State supplies of goods and/ or services made from the State by the said taxable person excluding taxes, if any charged under the CGST Act, SGST Act and the IGST Act, as the case may be;

Explanation.- Aggregate turnover does not include the value of inward supplies on which tax is payable by a person on reverse charge basis under sub-section (3) of Section 8 and the value of inward supplies

Sec 2(110) Works Contract

“works contract” means a contract wherein transfer of property in goods is involved in the execution of such contract and includes contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, **alteration or commissioning of any immovable property**

Issues:

1. “Works contract” means a supply of goods and services for the transfer of property in goods (whether as goods or in some other form) involved in execution of works contract in relation to any immovable property”

SECTION 3 (CONCEPT OF SUPPLY)

S.3(1)(a)-Supply includes



S.3(1)(a)-Supply includes

3(1)(a) Supply includes—

All forms of supply of goods and/or services
such as-

(i) sale, (ii) transfer, (iii) barter, (iv) exchange,
(v) license, (vi) rental, (vii) lease or (viii)
disposal

made for a consideration

by a person in the course of business,

S.3(1)(b) - Supply includes

3(1)(b)

- importation of services,
- for a consideration
- whether or not in the course of business,

S.3(1)(c) - Supply includes

3(1)(c) a supply specified in-

- Schedule-I
- made without a consideration

Schedule I
MATTERS TO BE TREATED AS SUPPLY EVEN
IF MADE WITHOUT CONSIDERATION

- 1) Disposal of business assets: where input tax credit-claimed on such assets
- 2) Supply between related persons: in the course of business
- 3) Supply of goods: between principal and agent
- 4) Importation of services: by a taxable person from a related person in the course of business

S.3(2)-Schedule-II

Schedule II-matters to be treated-

as a supply of goods

or

as a supply of services

Schedule II

MATTERS TO BE TREATED AS SUPPLY OF GOODS OR SERVICES

- 1. Transfer:** Right to use and hire purchase transactions: supply of services
- 2. Land and Building:** Lease, tenancy, easement, license-for business : supply of services
- 3. Treatment or process:** Job work : supply of services
- 4. Transfer of business assets:**
 - (a) Disposal of goods with or without consideration:* supply of goods
 - (b) Use of business assets for purposes other than business with or without consideration:* supply of services
 - (c) Closure of business - closing stock:* supply of goods

Schedule II

5. The following shall be treated as “supply of service”

- a) Renting of immovable property
- b) Construction contracts
- c) Temporary transfer of any intellectual property right
- d) Development of information technology software
- e) Agreeing to refrain from an act, or to tolerate an act
- f) Works contract
- g) Transfer of the right to use any goods
- h) Supply by way of food

6. The following shall be treated as “supply of goods”

- a) Supply of goods by any unincorporated association to a member

S.3(3) - Schedules-III & IV

Activities specified in Schedules III and Schedule IV shall be treated neither as a supply of goods nor a supply of services

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
- 2) Services by any Court or Tribunal
- 3) The functions performed by MP's, MLA's, etc.
- 4) Services by a foreign diplomatic mission
- 5) Services of funeral, etc.

Schedule IV
Activities undertaken by the Government
which shall be treated neither as a supply of goods nor a supply of
services

- 1) Services provided by a Government authority to another Government authority excluding the following services:
 - i. services by the Department of Posts by way of speed post, express parcel post, life insurance and agency services;
 - ii. services in relation to an aircraft or a vessel; or
 - iii. transport of goods or passengers.

- 2) Services provided by a Government authority to individuals such as-
 - i. issuance of passport, visa, driving license, birth certificate or death certificate; and
 - ii. assignment of right to use natural resources to an individual farmer for the purpose of agriculture.

Schedule IV

3) Services provided by a Government by way of:

- i. Municipality
- ii. Panchayat
- iii. Health care
- iv. Education

4) Services provided by Government towards-

- i. Diplomatic activities
- ii. Citizenship
- iii. Emigration
- iv. Currency
- v. Trade and commerce
- vi. Public order

Schedule IV

5) Taxation services

6) Services provided by a Government or a local authority by way of –

- i. Fines or liquidity damages payable to Government
- ii. Use of any natural resources assigned before the 1st April, 2016

7) Merchant Overtime Charges

8) Services provided by Government by way of-

- i. registration required under any law
- ii. testing, calibration, safety check or certification relating to protection or safety of workers, consumers or public at large, required under any law for the time being in force.

S.3(4) Supply by notification

The Government may, upon recommendation of the Council, may specify, by notification, the following transactions that are to be treated as-

- (a) A supply of goods and not as a supply of services
- (b) A supply of services and not as a supply of goods
- (c) Neither a supply of goods nor a supply of services

S.3(5) Composite or Mixed Supply

Tax liability on a composite or a mixed supply shall be determined in the following manner:

- (a) a composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as a supply of such principal supply;
- (b) a mixed supply comprising two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax.

CHAPTER-III (LEVY OF, EXEMPTION FROM, TAX)

Levy and collection of tax

S.8(1)

- There shall be levied a tax called the CGST/SGST
- on all intra-State supplies of goods and/or services
- **on the value determined under section 15**
- **at such rates as may be notified,**
- **but not exceeding 14%, on the recommendation of the Council**

Levy and collection of tax

S.8(2)

The tax shall be paid by every taxable person in accordance with the provisions of this Act

S.8(3)

The government may notify categories of supply on which tax is to be paid on reverse charge basis

Levy and collection of tax

S.8(4)

- The Government may specify categories of services the tax on which shall be paid by the electronic commerce operator
- Where an electronic commerce operator does not have a physical presence in the taxable territory:
 - any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax;
 - and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax

Composition Levy

S.9(1)

- The proper officer may, permit registered taxable person, for composition levy-
 - a) aggregate turnover in preceding financial year not exceeding Rs. 50 lacs
 - b) to pay tax @ not less than 2.5% (manufacturer)
 - c) to pay tax @ not less than 1% (others)

Composition Levy

S.9(1)

No such permission shall be granted to a taxable person:

- (a) Who is engaged in the supply of services; or
- (b) Who makes any supply of goods which are not leviable to tax under this Act [exempt supply]; or
- (c) Who makes any inter-State outward supplies of goods; or
- (d) Who makes any supply of goods through an electronic commerce operator who is required to collect tax at source; or
- (e) Who is a manufacturer of such goods; or
- (f) Unless all the registered taxable persons, having the same PAN -adopt composition levy

Composition Levy

S.9(2)

- The permission granted to a registered taxable person shall stand withdrawn from the day on which his aggregate turnover during a financial year exceeds Rs. 50 lacs

S.9(3) The composition tax payer shall not-

- Collect any tax from the recipient of supplies
- Claim any input tax credit

Composition Levy

S.9(4)

- If the proper officer has a reason to believe that a taxable person was not eligible to pay tax under composition levy, such person shall, in addition to any normal tax, shall pay penalty as per the provisions of this Act

S.10 Taxable Person

- (1) Taxable Person means a person who is registered or liable to be registered under Schedule V of this Act.
- (2) A person who has obtained or is required to obtain more than one registration, whether in one State or more than one State, shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.
- (3) An establishment of a person who has obtained or is required to obtain registration in a State, and any of his other establishments in another State shall be treated as establishments of distinct persons for the purposes of this Act.

Schedule V

PERSONS LIABLE TO BE REGISTERED

- 1) Aggregate Turnover Rs. 20 lacs
- 2) Aggregate Turnover Rs. 10 lacs (*some States*)

The following persons shall not be liable to obtain registration:

- a) any person *engaged exclusively in the business of supplying goods and/or services that are not liable to tax or are wholly exempt from tax under this Act*;
- b) *an agriculturist, for the purpose of agriculture.*

Schedule V

- 3) Migration of existing dealers with effect from the appointed day.
- 4) Transfer of business on account of succession
- 5) Transfer of business on account of amalgamation, etc.

Schedule V

- 6) Persons shall be required to be registered-irrespective of threshold-
- i. persons making any inter-State taxable supply;
 - ii. casual taxable persons;
 - iii. persons who are required to pay tax under reverse charge;
 - iv. persons who are required to pay tax as electronic commerce operator;
 - v. non-resident taxable persons;
 - vi. persons who are required to deduct tax at source.
 - vii. persons who are required to collect tax at source;
 - viii. agents;
 - ix. input service distributor;
 - x. persons who are subject to TCS;
 - xi. every electronic commerce operator;
 - xii. every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered taxable person; and
 - xiii. such other person or class of persons as may be notified by the Central Government or a State Government on the recommendation of the Council.

S.11 Power to grant exemption from tax

- If the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendation of the Council
- By notification, exempt generally either absolutely or subject to such conditions as may be specified in the notification, goods and/or services of any specified description from the whole or any part of the tax leviable thereon
- With effect from the date of issue of notification or any date subsequent thereto as may be specified in the said notification

Power to grant exemption from tax

Every notification issued and every order issued under shall-

- (a) unless otherwise provided, come into force on the date of its issue by the Government for publication in the Official Gazette **or from any date subsequent to the date of its issue** as may be specified therein; and
- (b) be made available on the official website of the department of the Government.

Thanking You

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