

### UNIT III

Subject Name	Subject Code	Semester	Prepared by
Business Law	18BBA43A	IV	Dr Prabhu R Assistant Professor

#### MEANING OF GOODS SEC. 2 (7)

Goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to, or forming part of the land which are agreed to be severed from the land before sale or under the contract of sale.

Thus, goods include every kind of movable property other than actionable claim or money. Things like goodwill, copyright, trade mark, patents, water, gas, electricity are all goods, and may be the subject-matter of a contract of sale. Although, in general, it is only movables, i.e. things which can be carried from one place to another that form 'goods'; all such things which are part of the land itself, but are agreed to be severed from the land under the contract, are considered as goods. Thus, where trees were sold, to be cut and then taken away by the buyer, it was held that there was a contract for sale of movable property. .

Goods also include shares and stock In this respect, our definition is wider than the one given in the English Sale of Goods Act, 1893 which does not expressly include shares and stock.

The term 'goods' excludes money and actionable claims Money' means legal tender and not the old coins which can be gold and purchased as goods. Money, legal tender, is an essential aspect of every sale because the price of goods has to be expressed jn terms of money and, therefore, 'money itself cannot be the subject of a sale. Foreign currency may, however, be bought, or sold. Actionable claims are things which a person cannot make use of, but which can be claimed by him by means of a legal action, for example, a debt.

### ***Documents of Title to Goods [Sec.2 (4)]***

A document of title to goods may be described as any document used as proof of the possession or control of goods, authorising or ° purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented in Sec. 2 (4) recognises the following as documents of title to goods:

- (i) Bill of lading
- (ii) Dock warrant
- (iii) Warehousekeeper's certificate.
- (iv) Wharfinger's certificate
- (v) Railway receipt
- (vi) Warrant or order for the delivery of goods
- (vii) And any other document used in the ordinary course of business as a document of title.

### **CLASSIFICATION OF GOODS**

Goods may be classified into | 1. Existing goods 2. Future goods and 3. Contingent goods

#### ***Existing goods***

Existing goods are those which are owned or possessed by the seller at the time of the contract (Sec. 6). Instances of sale of goods possessed, but not owned by the sellers are sales by agents and pledges. Existing goods may be either

1. Specific
2. Ascertained
3. Generic or unascertained

#### **1. Specific goods**

Specific goods means goods identified and agreed upon at the time a contract of sale is made [Sec. 2(14)].

#### **2. Ascertained goods**

Ascertained goods though normally used as synonym for specific goods may be intended to include goods which have become ascertained subsequently to the formation of the contract.

### 3. Generic or unascertained goods

Generic or unascertained 'goods are goods indicated by description and not specifically identified

Example: A, who owns an Ambassador car showroom, has 50 cars and agrees to sell any one of them to B. The contract is for unascertained , since which particular car shall become the subject matter of sale is not individualised at the time of the contract of sale.

### ***Future Goods***

'Future goods' means goods to be manufactured or produced or acquired by the seller, after making the contract of sale [Sec. 2 (6)].

Example: An agreement to sell future crops of a particular field implies an agreement to sell future goods.

### ***Contingent goods***

Contingent goods are the goods the acquisition of which by the seller, depends upon a contingency which may or may not happen. Contingent goods are a part of future goods [Sec. 6(2)].

Example: Where A agrees to sell to B a certain painting only if C, its present owner, sells it to him, A. This painting is classified as contingent goods.

## **EFFECT OF DESTRUCTION OF GOODS**

### **Destruction of Goods**

When goods have perished or have deteriorated to an extent that they can not be put to the use they were meant for, they are considered to be destroyed. The causes include: a) physical destruction of good; b) damage of good, for example, perishing of vegetables or spoiling of juices etc; c) loss of goods by theft; and d) acquisition of goods by the government.

## **Effect of Destruction of Goods before contract of sale is made**

In such a situation the contract is void *ab-initio* because the contract is impossible to be performed. **Illustration** : *Seema sold a container to Savita which was on its way from Thailand to India. At the time of the contract the ship had already sunk. The contract of sale is void, even though both Seema and Savita were not aware of it.*

In this context, it is important to consider the following:

- The good must be a specific good.
- When the subject matter has entirely been destroyed, the contract is void. However, where the contract is divisible, the parties will be bound to honour that part of the contract, which can be fulfilled.

### **Case Law :**

Barrow Lane & Ballard Ltd. Vs. Phillips & Co.:

*A agreed to sell to B a parcel of 700 bags of groundnut lying at a particular place. It was discovered later that at the date of the contract, there were only 591 bags in the parcel, 109 bags having been stolen before the contract was made. The court held that the contract was not divisible because the buyer wanted to buy a specific quantity, and to ask him to take less would be compelling him to do what he had not contracted for. The contract is void.*

A. The seller should not have the information of the destruction of the goods.

In such a situation the seller would liable to pay compensation to the buyer, when the buyer is unaware. However, if the buyer has the information regarding the destruction of the goods and he still enters into a contract, the seller would not be held liable for any compensation.

B. The goods must have been destroyed before the contract was entered into.

## **Effect of Destruction of Goods after agreement of Sale**

When an agreement is made for the sale of some specific goods but the goods are destroyed before the final sale, the contract of sale becomes void and both sides are not liable. Here, the following points are important:

1. There must be an agreement to sell and not an actual sale.
2. There must not be any fault of either party, i.e, the buyer or the seller.
3. The goods must be specific goods, and
4. If only the part of goods have been destroyed and contract is indivisible then the whole contract is void. However, in case the contract is divisible then the part of the contract which applies to the goods that are in usable condition can be implemented.

**Illustration 1:** *Chander agreed to sell to Ramesh 100 bags of cement lying in his godown. In fact, that cement had already been destroyed by leakage of water and has been converted into stone. But this fact was not known to the seller (A) In this case, the contract of sale is valid.*

**Illustration 2:** *Arun sold to Manish a specific cargo of goods which was on its way from America to Bombay. The ship conveying the goods had been sunk before the day of the barging. The parties were not aware of this fact. In this case, the contract of sale is void. It will be interesting to know, that the contract will also be void where only a part of the goods are perished which makes the rest of the goods useless for the buyer.*

## **Effect of Destruction of future goods**

When the goods are future goods because they have not been acquired by the seller then the destruction of such goods will result in the contract becoming void. When specific goods perished then Section 8 will apply to the contract.

## **Case Law :**

Howell Vs Coupland:

*C agreed to sell H 200 tonnes of potatoes to be grown on C's land. C cultivated sufficient land to grow more than 200 tonnes of potatoes, but a disease attacked the crop with the result that he got only about 10 tonnes from the land. The court held that the contract could be avoided.*

## **CONDITIONS AND WARRANTIES**

### ***Stipulations as to Time***

Unless a different intention appears from the terms of the contract, stipulations as to the time of payment are not deemed to be the essence of a contract of sale; whether any other stipulation as to time is of the essence of the contract or not depends on the terms of the contract.

### ***Condition and Warranty (Sec. 12)***

- i) A stipulation in a contract of sale with reference to goods which are the subject thereof may be a condition or a warranty.
- ii) A condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated.
- iii) A warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages, but not to a right-to reject the goods and treat the contract as repudiated.
- iv) Whether a stipulation in a contract of sale is a condition or a . Warranty depends in each case on the construction of the contract. A stipulation may be a condition, though, called a warranty in the contract.

### ***Circumstances when a Condition can be Treated as Warranty***

Sec. 13 of the act provides for the situations in which a condition can be treated as a warranty.

These are:

- i) If the buyer waives the condition; or
- ii) If the buyer elects to treat the breach of condition as a breach of warranty; or
- iii) If the buyer accepts the goods or a part thereof in case the contract is not severable (separable), unless there is a term in the contract to that effect; or
- iv) If the condition becomes impossible, or if the performance of condition is otherwise excused.

### **IMPLIED CONDITIONS AND WARRANTIES [SECS. 14-17]**

In a contract of sale of goods, these are the types of implied conditions and warranties:

- i) Warranty as to the title and possession [Sec. 14].
- ii) Condition as to the description (Sec. 15).
- iii) Condition as to the quality or fitness [Sec. 16].
- iv) Condition as to the matching with sample [Sec. 17].

#### ***Implied Warranties as to the Title and Possession (Sec. 14)***

Unless the circumstances, otherwise, show a different intention, following are the implied warranties as to the title and possession in a contract of sale of goods:

- (a) That the seller has a right to sell the goods, or will have a right to sell the goods when the property in goods is transferred.
- (b) Buyer will enjoy peaceful possession.
- (c) Goods shall be free of any charge or encumbrance thereon in favour of any third person, which has not been declared, or known to the buyer at the time of making the contract.

#### ***Implied Conditions as to the Description (Sec. 15)***

If the sale is by description, then there will be the following additional conditions:

- (a) The goods will correspond with the description.
- (b) The goods will correspond with the description and sample, if the sale is by both.

If bulk of the goods correspond to the sample and not the description, it will not be a sufficient compliance to the condition.

### ***Implied Conditions as to Quality or Fitness (Caveat Emptor) [Sec. 16]***

Sec. 16 of the Act contains a very important doctrine, that is, the doctrine of caveat emptor. It literally means 'buyer beware'. Its effect is that there is no implied condition in a contract of sale of goods regarding its quality or fitness for the purpose for which the buyer is buying the goods.

Buyer and seller are free to put up any condition in a contract of sale of goods either expressly or impliedly. But in absence of anything to that effect, the doctrine of caveat emptor will apply, and the buyer has to satisfy himself about the quality or fitness of the goods. It is not the duty of seller to do that.

This doctrine is contained in Sec. 16 of the act in the following words:

'Subject to the provisions of this act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale'.

### ***The exceptions to the Doctrine Of Caveat Emptor***

Sec. 16 provides the following exceptions to the rule of doctrine of caveat emptor, that is to say, in the following circumstances, condition as to the quality or fitness of the goods shall be presumed. In case the buyer expressly or impliedly makes known to the seller:

- i) the particular purpose for which he requires the goods; and
- ii) makes clear that he relies on the seller's judgment for the same; and

iii) the goods are of a description, which it is in the course of the seller's business to supply, there is an implied condition that the goods shall be reasonably fit for such a purpose.

***Implied Condition as to the Mercantile Quality [Sec. 16(2)]***

In case the goods are bought by description, from a seller; and the seller deals in goods of that description; then, there is an implied condition that the goods shall be of that merchandisable quality.

But, in case the buyer has examined the goods, this warranty will not extend to those defects, which such examination would have ordinarily revealed. .

Therefore, in case undergarments are purchased, there is an implied condition that they shall not contain any chemicals which would cause harm to the skin [Grant Vs. Australian Knitting Mills Ltd. (1986) AC 85].

This implied condition does not extend to defects noticed while examining the goods by the buyer.

***Usage of Trade [Sec. 16 (3)]***

An implied warranty or condition as to quality or fitness for a particular purpose may be annexed by the usage of trade. In case there is trade practice regarding fitness for a particular use, it will apply. For example, there is a trade practice that Windows XP professional software will run on a Pentium IV processor, which will make an implied condition for any seller of a computer fitted with Pentium IV processor.

***Sale by Sample [Sec. 17 (1)]***

A contract of sale is a contract for sale by a sample where there is a term in the contract, express / implied, to that effect.. Following are the implied conditions in case of a contract for sale by sample [Sec. 17 (2)].

- (a) That the bulk shall correspond with the sample i in quality:
- (b) That the buyer shall have a reasonable opportunity of comparing the bulk with the sample;
- (c) That the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on reasonable examination of the sample.

### **What is GST?**

GST is a single value-added tax levied on the manufacture, sale, and consumption of goods and services at the national level.

There are three components to GST in India:

- **CGST** – Central Goods and Services Tax, levied on an intra-state sale and collected by the federal government (commonly referred to as “the center” in India).
- **SGST** – State/Union territory Goods and Services Tax, levied on an intra-state sale and collected by the state or union territory government.
- **IGST** – Integrated Goods and Services Tax, levied on interstate sales and collected by the federal government.

The IGST is the aggregate of the CGST and SGST; the SGST is appropriated from the

Indirect Tax Structure under GST		
Indirect Taxes Subsumed under GST		Indirect Taxes Not Subsumed under GST
Central level	State level	
<ul style="list-style-type: none"> <li>• Central Excise Duty</li> <li>• Additional Excise Duty</li> <li>• Service Tax</li> <li>• Additional Customs Duty / Countervailing Duty</li> <li>• Special Additional Duty of Customs</li> </ul>	<ul style="list-style-type: none"> <li>• State Value Added Tax/Sales Tax</li> <li>• Entertainment Tax (other than levied by the local bodies)</li> <li>• Central Sales Tax (levied by the Centre and collected by the States)</li> <li>• Octroi and Entry tax</li> <li>• Purchase tax</li> <li>• Luxury tax</li> <li>• Taxes on lottery, betting, and gambling</li> </ul>	<ul style="list-style-type: none"> <li>• Excise Duty/VAT on Petroleum Products for initial years (in addition to GST at Nil rate)</li> <li>• Excise Duty on Tobacco Products (in addition to GST)</li> <li>• Electricity Duty by state (in addition to GST)</li> <li>• Entertainment Tax levied by local bodies</li> <li>• State excise on Alcoholic Beverages (no GST)</li> </ul>

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state where the supplies are consumed.

## Tax on supply

The GST is applicable on the “supply” of all goods and services unlike the previous system wherein the tax was applicable to the manufacture, sale, or provision of goods and services. The liability to pay CGST or SGST, therefore, arises at the time of supply.

Depending on whether the transaction is ‘inter-state’ or ‘intra-state’ (between states or within a state, respectively), separate GST provisions are applicable to help a business determine the place of supply for goods and services.

## Input tax credit

Input tax credit (ITC) forms the backbone of the GST regime in India.

The GST is essentially a tax on value addition at each stage of the supply chain; every supplier, who is the person supplying the goods and/ or services or an agent acting as such on behalf of

such a supplier, can claim credits (over input taxes paid at each stage of supply chain) in the subsequent stage of value addition.

The end consumer, therefore, bears only the GST charged by the last supplier in the supply chain.

No cross-utilization of the ITC is permitted: the credit of CGST paid on inputs may be used only for paying CGST on the output, while the credit of SGST on inputs may be used only for paying SGST, except in the case of inter-state supply of goods.

### **GST exempted supply**

The exempted supplies are those that do not attract any GST and are specifically exempt from GST through government notification.

However, no ITC can be claimed with respect to inputs or input services used for making exempt supplies. In other words, in case of exempted supply, only output is exempted from tax but tax is levied on the input side.

Some of the GST exempt goods include fish, fresh fruits and vegetables, live animals (except horses), jute fiber raw or processed, printed books, and handloom among others.

### **Zero-rated supply**

Zero rating means that the entire supply chain of a zero rates supply is tax-free. That means, no tax is levied either on the input tax side or on the output side.

Zero-rated supplies include:

- Exports of goods or services or both; or
- Supplies made to customers located in special economic zones (SEZ) or SEZ developers.

ITC is available on zero rates supplies.

### **Nil-rated supply**

Nil-rates supplies are those goods and services that attract zero percent GST. These are listed in schedule 1 under GST rate schedule. Some of the examples are salt, jaggery, and cereals.

No ITC is available on inputs or input services used in providing nil rated supply.

### **Non-GST supply**

It is the supply of goods and services that do not come under the purview of GST. However, other taxes may be applicable.

Currently, only petroleum products and alcohol for human consumption fall under this category.

### **GSTN**

The Goods and Services Tax Network (GSTN) is a not-for-profit, private limited company, promoted by the government with the specific mandate to provide information technology support and the digital services required for implementing the GST. It provided a portal where all GST returns are filed electronically.

## **Invoice matching system**

The GST allows for a seamless flow of ITC across the supply chain. One of the essential features of the GST is to check ITC claims by the taxpayer to prevent any leakages.

For this purpose, an invoice matching system has been developed under GSTN to match the purchase and sale invoices of taxpayers.

Accordingly, every registered taxable person under GST is required to issue a tax invoice, which will be uploaded on the invoice matching

After the sale and purchase invoices of a taxpayer have been matched, the ITC will be conferred.

## **Compliance rating system**

It is a unique form to rate whether a taxable person in India has been compliant. In this system, every taxable person will have a rating based on his/her record of tax compliance.

Once the system is implemented, the score will be updated at periodic intervals and will be placed in the public domain to ensure transparency.

## **Anti-profiteering clause**

Anti-profiteering clause allows businesses to pass on the benefit of a reduced tax rate on goods or services, or both, to the consumers. This is to prevent any rise in the price of commodities following the GST implementation.

## **GST Council**

It is a federal forum that includes federal, state, and union territory governments on its board. The GST Council comprising of the federal Finance Minister as the chairman, the federal Minister of State (Revenue), and the state and union territory finance ministers make recommendations to the federal, state, and union territory governments on issues like tax rates, exemption lists, threshold limits, and all other matters relating to the GST.

Decisions by the GST Council are made based on a three-fourths majority of the votes cast: the federal government casts one-third of the votes, while the state and union territories cast two-thirds of the votes.

Each state and union territory have one vote, irrespective of its size or population.

## **Revised GST rates 2018**

The GST council has divided the tax schedule for goods and services into four tax slabs – 5, 12, 18, and 28 percent.

A detailed list of the GST rates for goods can be found [here](#), and for services [here](#).

Below is the list of goods whose rates have been revised in various council meetings:

## **Goods**

*Nil*

- Hulled cereal grains like barley, wheat, oat, and rye;
- Human hair;
- Sanitary napkins;
- Palmyra jaggery;
- All types of salt; and
- Books for children.

*5 percent*

- Cashew nut and cashew nut in the shell;
- Ice and snow;
- Biogas;
- Insulin;
- Coir mats and floor covering;
- Postage or revenue stamps; and
- Braille appliances, hearing aids and other equipment to compensate for a disability.

*12 percent*

- Glasses for corrective spectacles and flint buttons;
- Fixed speed diesel engines;
- Fly ash blocks;
- Menthol and menthol crystals, peppermint, and its other chemical compounds;
- Preparations of vegetables, fruits, nuts or other parts of plants;
- Ketchup, sauces and mustard sauce;
- All diagnostic kits and reagents;

- Spoons, forks, ladles, skimmers, cake servers, fish knives, tongs;
- Two-way radio used by defense forces;
- Playing cards and other board games.

*18 percent*

- Printers other than multifunction printers;
- Set-top box for TV;
- Computer monitors not exceeding 17 inches;
- Electrical filaments or discharge lamps;
- Plastic tarpaulin;
- Headgear and parts;
- Precast concrete Pipes;
- Salt-glazed stoneware pipes;
- Aluminum foil;
- Rear tractor tyre, tyre tubes, wheel rim, and tractor support front axle;
- Ball bearing, roller bearings, parts & related accessories;
- Electrical transformer;
- Static converters (UPS);
- CCTV and recorder;
- Winding wires, coaxial cables, and an optical fiber;
- Perforating or stapling machines, pencil sharpening machines;
- Baby carriages;
- Instruments for measuring length, for use in the hand; and
- Bamboo furniture.

*28 percent*

GST council meetings have not added any new items to the 28 percent tax bracket.

## **Services**

*5 percent*

- Railways-transportation of goods, passengers;
- Transport by air;
- Tour operator services;
- Goods transported in a vessel from outside India;
- Transport services with air conditioner (AC) contract or radio taxi; and
- Print media ad space.

*12 percent*

- Rail transportation of goods in containers from a third party;
- Business class air travel;
- Restaurants without AC or liquor license;
- Hotels stay with rent more than Rs.1000 and less than Rs.2500 per day;
- Chit fund services by foremen;
- Construction of building for sale purpose; and
- IP rights on a temporary basis.

*18 percent*

- Restaurants with AC and/or liquor license;
- Outdoor catering and party arrangement;
- Hotel stay with rent more than Rs.2500 but less than Rs.5000 per day; and
- Supply of works contract.

*28 percent*

- Entertainment events-amusement parks, and sporting events;
- Race club services;
- Gambling; and
- Restaurant or hotel stay at five-star hotels or above.