

THE INTEGRATED GOODS AND SERVICE TAX ACT, 2017

Statement of Objects and Reasons:

Earlier, the States effecting inter-State sale of goods were empowered to collect and retain Central Sales Tax (CST) under the Central Sales Tax Act, 1956.

The difficulties faced in the erstwhile Central Sales Tax system are:

- (i) The levy is non-vatable i.e. the credit of CST is not available as a set-off in the hands of the purchaser.
- (ii) CST directly gets added to the cost of the goods resulting in cascading effect of the taxes on the cost of production of products.
- (iii) Creation of tax arbitrage on account of the rate of CST being different from VAT levied on intra-State sale.
- (iv) Several businesses are not in a position to procure goods in the course of inter-State trade or commerce after concessional rate of tax against the declaration forms.

To usher in the GST regime, levy of a single tax called Integrated Goods and Service Tax is considered necessary on the supply of goods or services or both taking place in the course of inter-State trade/ commerce. The rate of tax is equal to the sum total of Central Tax (CGST) and State Tax (SGST) or Union Territory Tax (UTGST) though there are some cases where more rationalisation is required in terms of parity of net tax incidence. The new legislation, amongst others, broadly:

- (i) Provides for levy of tax on all inter-State supplies of goods or services or both (except alcoholic liquor for human consumption) at a rate recommended by the GST Council (not exceeding 40%);
- (ii) Provides for levy of tax on goods imported into India;
- (iii) Provides for levy of tax on import of services on a reverse charge basis;
- (iv) Empowers the Central Government to grant exemptions on the recommendation of the GST Council;
- (v) Provides for determination of nature of supply (intra-State or inter-State) and place of supply
- (vi) Provides for payment of tax by a supplier of Online Information and Database Access or Retrieval Services (OIDAR)
- (vii) Enables apportionment of tax and settlement of funds on account of transfer of input tax credit between the Central Government, State Government and Union Territory; `
- (viii) Provides for application of certain provisions of the Central Goods and Service Tax Act, 2017 to the extent relevant for the purposes of this Act;
- (ix) Provides for transitional transactions in relation to import of services.

Chapter I

Preliminary

1. Short title, extent and commencement
2. Definitions

Statutory Provisions

<p>1. Short title, extent and commencement</p> <p>(1) <i>This Act may be called the Integrated Goods and Services Tax Act, 2017.</i></p> <p>(2) <i>It shall extend to the whole of India</i></p> <p>(3) <i>It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:</i></p> <p><i>Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.</i></p>
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<p>1. <i>The Central Goods and Services Tax Act, 2017 has been implemented in the State of Jammu and Kashmir from 8th July 2017 through Constitution (Application to Jammu and Kashmir) Amendment Order, 2017, the Central Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017 and the Integrated Goods and Services Tax (Extension to Jammu and Kashmir) Ordinance, 2017.</i></p> <p>2. <i>Certain provisions came into force on 22.6.17 and remaining provisions on 1.7.17 as notified by the Central Government and hence appointed day for the CGST Act, IGST, UTGST Acts, SGST Acts was 1st July 2017. However, the appointed day for the State of Jammu and Kashmir was 8th July 2017.</i></p> <p>3. <i>Words "except the State of Jammu and Kashmir" omitted by the Integrated Goods and Services Tax (Extension to Jammu and Kashmir) Act, 2017, w.e.f. 8-7-2017.</i></p>

Section or Rule (CGST / SGST)	Description
Section 2(56)	Definition of India
Section 2(22)	Definition of Taxable Territory

Relevant circulars, notifications, clarifications, flyers issued by Government:

1. Notification No. 01/2017 – Central Tax dated 19.06.2017 Seeks to appoint 22.06.2017 as the date on which the provisions of Section 1, 2, 3, 14, 20 and 22 are effective.
2. Notification No. 03/2017 – Central Tax dated 28.06.2017 Seeks to appoint 01.07.2017 as the date on which the provisions of Section 4 to 13, 16 to 19, 21, 23 to 25 are effective.

Title

All Acts enacted by the Parliament since the introduction of the Indian Short Titles Act, 1897 carry a long and a short title. The *long title*, set out at the head of a statute, gives a full description of the general purpose of the Act and broadly covers the scope of the Act.

The *short title*, serves simply as a reference and is considered a statutory nickname to obviate the necessity of referring to the Act under its full and descriptive title. Its object is identification, and not description, of the purpose of the Act.

Extent

Part I of the Constitution of India states: "India, that is Bharat, shall be a Union of States". It provides that territory of India shall comprise the States and the Union Territories specified in the First Schedule of the Constitution of India. The First Schedule provides for twenty-nine (29) States and seven (7) Union Territories. Changes introduced by Jammu and Kashmir Reorganization Act, 2019 to take effect from 31 Oct 2019.

Part VI of the Constitution of India provides that for every State, there shall be a Legislature, while Part VIII provides that every Union Territory shall be administered by the President through an 'Administrator' appointed by him. However, the Union Territories of Delhi (Article 239 AA) and Pondicherry (Article 239A) have been provided with Legislatures with powers and functions as required for their administration.

India is a summation of three categories of territories namely – (i) States (29); (ii) Union Territories with Legislature (2); and (iii) Union Territories without Legislature (5).

State of Jammu and Kashmir enjoys a special status in the Indian Constitution in terms of Article 370 of the Indian Constitution until the coming into force Presidential Order entitled "The Constitution (Application to Jammu and Kashmir) Order, 2019" (C.O. 272) dated 5 Aug 2019 and Jammu and Kashmir Reorganization Act, 2019 from 31 Oct 2019.

The assembly of J&K had passed the GST bill in the first week of July. Subsequently, the Honourable President of India promulgated two ordinances, namely, the CGST (Extension to Jammu and Kashmir) Ordinance, 2017 and the IGST (Extension to Jammu and Kashmir) Ordinance, 2017 making the CGST/ IGST applicable to the State of Jammu and Kashmir, w.e.f. 8 July 2017. After the promulgation of ordinance, India has adopted GST in its form across the country.

Commencement

Provisions of the IGST Act related to registration etc. came into operation through Notification No. 1/2017- Integrated Tax dated 19.6.2017. Further, Notification No. 3/2017-Integrated Tax

was issued to make other provisions of the IGST Act applicable w.e.f. 1st July. Effectively, all operation provisions of the IGST Act have become applicable from 1st July 2017.

Similar to extending enforcement of IGST Act, Notification No. 4/ 2017–Integrated Tax dated 28th June, 2017 has been issued to make Integrated Goods and Services Tax Rules, 2017 applicable w.e.f. 22nd June 2017. However, IGST Rules, 2017 have been separately notified along with the Central Goods and Services tax Rules, 2017.

Statutory Provisions

2. Definitions

In this Act, unless the context otherwise requires-

(1) “Central Goods and Services Tax Act” means the Central Goods and Services Tax Act, 2017;

It refers to the Act under which tax is levied on intra-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption).

(2) “central tax” means the tax levied and collected under the Central Goods and Services Tax Act;

Tax levied under the CGST Act is referred to as “Central tax”. It refers to the tax charged under the CGST Act on intra-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption). The rate of tax is capped at 20%. The rates for goods have been notified vide Notification No. 1/2017- Integrated Tax (Rate) dated 28-06-2017 while Notification No. 8/2017- Integrated Tax (Rate) dated 28-06-2017 covers the rates of services notified.

It is relevant to note that the term ‘central tax’ under the IGST Act is defined to include tax levied and collected under the CGST Act whereas the term ‘central tax’ under the CGST Act is defined to mean the central goods and services levied under section 9. Therefore, the phrase ‘central tax’ has a wider connotation under the IGST Act as it includes taxes collected in addition to what is levied under CGST Act.

(3) “continuous journey” means a journey for which a single or more than one ticket or invoice is issued at the same time, either by a single supplier of service or through an agent acting on behalf of more than one supplier of service, and which involves no stopover between any of the legs of the journey for which one or more separate tickets or invoices are issued.

Explanation. —For the purposes of this clause, the term “stopover” means a place where a passenger can disembark either to transfer to another conveyance or break his journey for a certain period in order to resume it at a later point of time;

This is relevant to determine the place of supply of passenger transport services.

Continuous journey refers to a journey where:

(a) A single or more than one ticket or invoice is issued at the same time;

- (b) Service is provided by one service provider or by an agent on behalf of more than one service providers
- (c) Journey does not involve any stopover at any of the legs of the journey for which one or more separate tickets or invoices are issued ("Stopover" means a place where a passenger disembarks from the conveyance).

The following aspects need to be noted:

- All stopovers will not cause a break in the journey. Only those stopovers for which one or more separate tickets are issued will be relevant. A travel involving Bangalore-Dubai-New York-Dubai-Bangalore on a single ticket with a halt at Dubai (onward and return) will be covered by the definition of continuous journey. However, if the passenger disembarks at Dubai or breaks his journey for a certain period in order to resume it at a later point of time, it will not be considered a continuous journey.
- All the above conditions should be cumulatively satisfied to consider the journey as continuous journey.
- A return journey will be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.

(4) "customs frontiers of India" means the limits of a customs area as defined in section 2 of the Customs Act, 1962;

Relevant circulars, notifications, clarifications, flyers issued by Government:

1. Circular No. 33/2017 –Cus. dated 01.08.2017: Leviability of Integrated Goods and Services Tax (IGST) on High Sea Sales of imported goods and point of collection thereof

The customs frontiers of India include the following:

- (a) Customs Port;
- (b) Customs Airport;
- (c) International Courier Terminal;
- (d) Foreign Post Office;
- (e) Land Customs Station;
- (f) Area in which imported goods or goods meant for export are ordinarily kept before clearance by Customs Authorities

The following aspects need to be noted:

- Bonded Warehouses would now be covered under this definition.
- A person importing goods into the territory of India from an overseas exporter would be liable to pay IGST on such supply of goods.

- Where a transfer of documents of title takes place during import, the question of payment of tax by the importer would not arise since the documents of title would be transferred before the goods cross the customs frontier of India. It has been clarified vide *Circular No. 33/2017-Cus dated 1-Aug-17*, that IGST on high sea sale(s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time.
- Supplies made by an importer after the goods have crossed the customs frontier of India would be liable to CGST, SGST or IGST, depending on the facts of each case.

(5) “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India;

Section or Rule	Description
Section 2(52)	Definition of Goods (CGST)
Section 2(56)	Definition of India (CGST)
Section 7	Inter-State supply (IGST)
Section 11	Place of supply of goods imported into or exported from India
Section 16	Zero rated supply

Export of goods will be treated as ‘zero-rated supplies’. Accordingly, while no tax would be payable on such supplies, the exporter will be eligible to claim the corresponding input tax credits. It is relevant to note that the input tax credits would be available to an exporter even if the supplies were exempt supplies so long as the eligibility of the input taxes is established. Interestingly circular 45/19/2018-GST dated 30 May 2018 at para 6.2, makes it clear that export of articles that are otherwise exempt and even non-GST articles would also be eligible to credit and consequent refund or rebate in respect of zero-rated supplies of such articles. Some experts express concerns over allowing zero-rated benefits to non-GST articles such as alcoholic liquor and 5-petro products (left out of GST) as the words “notwithstanding that such supply may be an exempt supply” appearing in section 16(2) of IGST Act cannot be read ‘as if it reads as “notwithstanding that such exports are of exempt goods”’. And they support their argument on the following:

- ‘exempt supply’ is not the same as ‘exempt goods’. A supply may be exempt for any reason but must necessarily involved goods that come within the operation of GST law. Articles that are out of GST law cannot be included in the contemplation of any provision within this law;
- zero-rated benefit is allowed of ‘credit’ and before claiming refund or rebate, the amount must cross the series of hurdles in (i) section 16(1) of CGST Act then (ii) section 17(2) and 17(5) of CGST Act. When these hurdles have blocked credit, it cannot be possible that credit is directly allowed by the words in section 16(2) of IGST Act; and

- Section 16(2) of IGST Act serves section 16(1) of IGST Act. It is not yet another 'credit granting' provision in GST law. If that really true, then students of this new law need to learn the "two routes" to claiming input tax credit.

But these questions may be taken up by our Courts. Until then it is clear from the circular that "all exempt and non-GST articles" will enjoy zero-rated benefits with only one restriction that survives is in section 17(5) of CGST Act that is made applicable to such exports also.

Following further aspects may also be noted:

- Unlike export of services which requires fulfilment of certain conditions for a supply to qualify as 'export of services' like the nature of currency in which payment is required to be made, location of the exporter etc., export of goods doesn't require fulfilment of any such conditions.
- The movement of goods is alone relevant and not the location of the exporter/ importer. This means that even if an order is received from a person outside India for delivery of goods within India, it will NOT be considered as export of goods.
- The exporter may utilize such credits for discharge of other output taxes or alternatively, the exporter may claim a refund of such taxes.
- The exporter will be eligible to claim refund under the following situations:
 - (i) export the goods under a Letter of Undertaking, without payment of IGST and claim refund of unutilized input tax credit; or
 - (ii) export the goods upon payment of IGST and claim refund of such tax paid, without of course, charging this IGST to the customer. That is, to claim rebate, pay-without-charging only then will this refund be available.

(6) "export of services" means the supply of any service when, —

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India;
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange **or in Indian rupees wherever permitted by the Reserve Bank of India**¹; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8;

¹ Inserted vide The Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019

Section or Rule	Description
Section 2(52)	Definition of Goods (CGST)
Section 2(56)	Definition of India (CGST)
Section 2(93)	Definition of Recipient (CGST)
Section 2(102)	Definition of Service (CGST)
Section 2(105)	Definition of Supplier (CGST)
Section 2(14)	Definition of Location of the recipient of services
Section 2(14)	Definition of Location of the supplier of services
Section 2(21)	Definition of Supply
Section 7	Inter-State supply
Section 8	Intra-State supply
Section 10	Place of supply of goods other than supply of goods imported into, or exported from India
Section 12	Place of supply of services where location of supplier and recipient is in India
Section 13	Place of supply of services where location of supplier or location of recipient is outside India
Section 16	Zero rated supply

The concept of export of services is broadly borrowed from the provisions of the erstwhile Service Tax law. But it is remarkably dissimilar to definition of export of goods. It is for this reason the correctly identify whether supply involving goods are treated (by schedule II) as supply of services. If this 'treatment by fiction' is misunderstood that would lead to misapplication of the definition and claiming benefits that are not available or foregoing benefits that could have been availed.

Under the GST regime, export of service will be treated as 'zero-rated supplies'. Accordingly, while no tax would be payable on such supplies, the exporter will be eligible to claim the corresponding input tax credits. It is relevant to note that the input tax credits would be available to an exporter even if supplies were exempt supplies as long as the eligibility of the input taxes as input tax credits is established.

The exporter may utilise such credits for discharge of other output taxes or alternatively, the exporter may claim a refund of such taxes.

The exporter will be eligible to claim refund under the following situations:

- (a) He may export the services under a Letter of Undertaking, without payment of IGST and claim refund of unutilized input tax credit; or
- (b) He may export the services upon payment of IGST and claim refund of such tax paid.

The following aspects need to be noted:

- The requirement under the Service Tax law was that the supplier should be located in the taxable territory i.e. India, excluding Jammu and Kashmir. Under the GST law, the requirement is that the supplier is located in India (which includes Jammu and Kashmir) as GST has been enacted in the State of J&K also.
- Although overseas establishment of a person who is situated in India is treated as a distinct person for purposes of levy of integrated tax, as regards export of services, this overseas establishment must demonstrate substance in its activities to qualify as recipient of the export of the services from India and establish itself as more than just a mere establishment of the person.
- Establishments will be treated as establishment of distinct persons under the following situations:

Situation	Location of one establishment	Location of the other establishment
I	India	Outside India
II	State or Union Territory	Outside that State or Union Territory
III	State or Union Territory	Other Places of Business independently registered in that State or Union Territory

Therefore, where both the establishments are located in a State/ Union Territory under the same GSTIN, the establishments will not be considered as distinct persons.

IGST Amendment Act, 2018²

In clause (6), in sub-clause (iv), after the words "foreign exchange", the words "or in Indian rupees wherever permitted by the Reserve Bank of India" inserted. This amendment is made to consider a service to be exported even if the export proceeds are received in Indian rupees, if the same is permitted by RBI. This has been done mainly to include within export of services, services provided to Nepal and Bhutan wherein payment is received in Indian Currency.

(7) "fixed establishment" means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs;

² Effective from 1.02.2019

Section or Rule	Description
Section 2(85)	Definition of Place of Business (CGST)
Section 2(102)	Definition of Services (CGST)
Section 12	Place of supply of services where location of supplier and recipient is in India
Section 13	Place of supply of services where location of supplier or location of recipient is outside India

Fixed Establishment refers to a place:

- (a) Having a sufficient degree of permanence
- (b) Having a structure of human and technical resources
- (c) Other than the registered place of business

The following aspects need to be noted:

- Not every temporary or interim location of a project site or transit-warehouse will *ipso facto* become a fixed establishment of the taxable person.
- The person should undertake supply of services or should receive and use services for own needs.
- Temporary presence of staff in a place by way of a short visit to a place or so does not also make that place a fixed establishment.
- Liaison Offices meant to undertake liaison activities cannot render services that are commercial in nature, in the garb of rendering liaison services. For e.g.: If a liaison office were to render marketing service to its parent entity outside India, for a customer located in India and the said liaison office staff receive a fee/ commission, then the concept of liaison office stands to test. In such a scenario, the reimbursements received by the liaison office could be subject to tax notwithstanding the fact that the entire transaction can be subjected to valuation as a permanent establishment.

However, TAMILNADU ADVANCE RULING AUTHORITY in case of M/s TAKKO HOLDING GMBH (2018-TIOL-216-AAR-GST) The key issue brought before the AAR was whether reimbursement of expenses and salary paid by overseas counterpart to liaison office qualify as supply and thereby necessitates liaison office to obtain GST registration and discharge GST liability. The AAR denied the necessity of obtaining registration as well as payment of GST. The decision was based on the findings that Applicant is neither a 'related persons' nor 'distinct persons' but is acting only as an extension of the German Office. The authorities also noted that Applicant is only working as an employee of foreign entity and thus cannot be treated as a 'supplier' thereof. Experts explain that AAR would have taken into consideration the inherent limitations imposed under FDI guidelines and relevant Master Directions of RBI that 'liaison office' is NOT permitted to undertake any business-like activities even *qua* its

overseas Head Office. Had the applicant been a Branch Office or Project Office, experts explain, that the ruling would have been completely different. Now, please consider what would be the treatment of Head Office in one country and its Permanent Establishment (art. 5 of the DTAA) in another country. When a PE is admitted for tax purposes and demonstrated that such PE is transacting at arm's length with all its AEs (associated enterprises), the same demands harmonious treatment for GST purposes also.

(8) "Goods and Services Tax (Compensation to States) Act" means the Goods and Services Tax (Compensation to States) Act, 2017;

Section or Rule	Description
Section 2(54)	Definition of Goods and Services Tax (Compensation to States) Act

The Goods and Services Tax (Compensation to States) Act (for brevity "Compensation Act") provides for compensation to the States for the loss of revenue arising on account of implementation of GST for a period of 5 years from the said date of implementation. The cess paid on the supply of goods or services will be available as credit for utilization towards payment of said cess on outward supply of goods and services on which such cess is leviable.

(9) "Government" means the Central Government;

It is interesting to note that this definition seems to have very little to explain but in the context of article 12 of our Constitution, much has been said by Honb'e Supreme Court. Readers may find decisions in *University of Madras v. Shantha Bai* AIR 1954 Mad 67 (SC) contrasted with *Ujjam Bai v. UoI* 1962 AIR 1621 (SC) very interesting to understand the scope 'State' that would help understand 'Government' as the reference is to 'Sovereign' until it was finally settled in the *Ajay Hasia v. Khalid Mujib Sehravardi & Ors* 1981 AIR 487 where the following principles emerged to examine whether the organization is a 'Government Entity', namely:

- (a) Equity share capital is held by the Government;
- (b) Financial assistance comes entirely from the Government;
- (c) Activities undertaken allows monopoly over the domain or sector;
- (d) Deep and pervasive control rests with the Government;
- (e) Functions of the Government are executed through it as the instrumentality; and
- (f) Functions performed by the Government are vested with it.

If the entity enjoys such relationship, then it will be Government Entity. Please also refer to the definition in para 2(zfa) in notification 12/2017-CT(R) dated 28 Jun 2017. There, 90% control is prescribed by way of relaxation to the extent of 10%.

Government Entity would not only vest plenary control and authority with the Government but also its entire 'liquidation estate' (as understood in section of IBC 2016) would belong to

the Consolidated Fund. Further, all employees would be servants of the President of India and their salaries and benefits would be a charge on the Consolidated Fund. Experts advise great caution while examining whether IAAI, University, MCI, BCI, ICAI, ICSI, ICMAI, BCCI, etc are Government or not cannot be answered lightly.

Government Authority and Government Entity are entirely difference. Sovereign functions vested with Boards and Authorities will be sovereign authorities if the functions are listed in XI and XII schedules of the Constitution.

(10) "import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;

Section or Rule	Description
Section 2(52)	Definition of Goods (CGST)
Section 2(56)	Definition of India (CGST)
Section 7	Inter-State supply
Section 8	Intra-State supply
Section 11	Place of supply of goods imported into or exported from India

Import of goods into India would be treated as supply of goods in the course of inter-State trade/ commerce and would be liable to integrated tax under this Act.

The following aspects need to be noted:

- The place of supply of goods in case of imports would be the location of the importer. E.g.: If goods are imported at Mumbai port but the importer is at Delhi, the place of supply shall be Delhi;
- The integrated tax would be levied on the value of goods as determined under the Customs law in addition to the custom duties levied on such imports. In other words, levy of Basic Customs Duty (BCD) will continue and the component of Countervailing Duty (CVD) and Special Additional Duty (SAD) will be replaced by Integrated tax;
- The time at which the customs duties are levied on import of goods would also be the time when integrated tax is levied;
- The importer will be liable to pay integrated tax on a reverse charge basis and the same will have to be discharged by cash only and credit cannot be utilized for discharging such a liability;
- Merchant Trading Transactions i.e. where the supplier of goods will be resident in one foreign country, the buyer of goods will be resident in another foreign country and the merchant will be resident in India, would primarily not come under the ambit of GST since they do not involve entry of goods into India.

In case of multi State registration, GSTIN mentioned on the Bill of entry would discharge the IGST on Reverse charge on import of goods even if the port is situated in separate State

- (11) “import of services” means the supply of any service, where—
- (i) the supplier of service is located outside India;
 - (ii) the recipient of service is located in India; and
 - (iii) the place of supply of service is in India;

Section or Rule	Description
Section 2(56)	Definition of India (CGST)
Section 2(86)	Definition of Place of supply (CGST)
Section 2(93)	Definition of Recipient (CGST)
Section 2(105)	Definition of Supplier (CGST)
Section 2(14)	Definition of Location of the recipient of services (IGST)
Section 2(21)	Definition of Supply (IGST)
Section 7	Inter-State supply (IGST)
Section 16	Zero rated supply

The phrase “import of service” is very broad and covers all such supplies where:

- (a) The supplier is located outside India,
- (b) The recipient is located in India
- (c) Place of supply is in India.

The following aspects need to be noted:

- Supplies, where the supplier and recipient are mere establishments of a person, would also qualify as “import of service”.
- The importer will be liable to pay integrated tax on a reverse charge basis and the same will have to be discharged by cash only and credit cannot be utilized for discharging such a liability;
- Import of service made for a consideration alone would be taxable, whether or not in the course of business. Therefore, import of service for personal consumption for a consideration would qualify as ‘supply’ and would be liable to integrated tax. However, the recipient will not be required to obtain a registration for that purpose. However, import of services from related persons or establishments located outside India without consideration also would be liable to integrated tax as per Schedule I of the CGST Act, 2017;

- The threshold limits for registration would not apply and the importer would be required to obtain registration irrespective of his turnover.
- Import of services is included in the definition of 'supply' in section 7(1)(b) of CGST Act. By this provision personal imports even without being in the course or furtherance of business will also attract levy of GST. Please also refer entry 10(a) to notification 9/2017-Int.(R) dated 28 Jun 2017 where 'other than commerce' is exempted from IGST. However, there is no such exemption in CGST notification 12/2017-CT(R) dated 28 Jun 2017. Hence, import of services which is an intra-State supply under section 13 of IGST Act would NOT be exempt from tax except for the threshold exemption under section 22 of CGST Act. An example of a cross-border transaction would be 'intermediary services' under section 13(8) of IGST Act.

(12) "integrated tax" means the integrated goods and services tax levied under this Act;

Section or Rule	Description
Section 2(52)	Definition of Goods (CGST)
Section 2(102)	Definition of Services (CGST)
Section 7	Inter-State supply

It refers to the tax charged under this Act on inter-State supply of goods or services or both (other than supply of alcoholic liquor for human consumption). The rate of tax is capped at 40%. The rates for goods have been notified vide Notification No. 1/2017- Integrated Tax (Rate) dated 28-06-2017 while Notification No. 8/2017- Integrated Tax (Rate) dated 28-06-2017 covers the rates of services notified.

(13) "intermediary" means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

Section or Rule	Description
Section 13	Place of supply of services where location of supplier or location of recipient is outside India
Section 14	Special provision for payment of tax by a supplier of online information and database access or retrieval services

The following aspects need to be noted:

- Definition of intermediary uses the words 'agent' and thereby imports the entire jurisprudence from Indian Contract Act. Agency is constituted (i) by appointment (ii) by holding out and ratification and (iii) by implication;

- Use of the words 'broker or agent or any other person' bring up this question whether there is a common genus of which each of the specific words is a specie. And by use of the rule of ejusdem generis rule of interpretation may require that 'any other person' be understood as 'broker' or 'agent'. Guidance for interpretation to be applicable is found in the words 'by whatever name called'. So, 'or any other person' is appended with 'by whatever name called' such that meaning of who 'this person' is will be, indifferent to any name that this person is called by. Hence, it appears that ejusdem generis will be applicable here;
- Further, 'who arranges or facilitates the supply' does not circumscribe the scope of agent to anything less than what section 182 of Indian Contract Act furnishes. So, intermediary is one who operates under 'delegated authority' that is 'detached from consequences'. In other words, the role of intermediary must be determined or defeated by the jurisprudence available in section 182 and the rest of the definition here is intended to be a differentiator;
- Differentiation is required between an agent who oversteps scope of agency and actually supplies on 'own account'. Such agents by making supplies, either actually or by fiction in para 3 of schedule I, will be saved from the definition of 'intermediary'. Decision of CESTAT in Go Daddy has been differentiated in AAR and Toshniwal Brothers and this appears to lay down the correct position of law, at least, for purposes of GST;
- Further, mere use of the word 'agent' does not decide the question of 'intermediary'. Agency must be determined from facts of supply and not usage in trade. Refer C.B.E. & C. Press Release No. 92/2017, dated 23-8-2017 wherein it is recognized that 'advertisement agent' may undertake advertisement intermediary supplies as (i) agent and collect only a fee for services which attracts GST on such fee or (ii) reseller where the gross value attracts GST with benefit of credit on cost incurred to the Paper. Experts caution against relying on the 'title' just as the definition itself says 'by whatever name called' and requires attention to the paid to the exact 'role' performed;
- Two supplies are generally involved:
 - Supply between the principal and the third party; and
 - Supply of his own service to his principal – generally for a fee or commission;
- An intermediary cannot alter the nature or value of supply, which he facilitates on behalf of his principal;
- The consideration for an intermediary's supply is separately identifiable from the main supply that he is arranging and is in the nature of fee or commission charged by him;
- The place of supply in relation to intermediary services is the location of the service provider. Care must be taken, in cross-border transactions, NOT to assume they are inter-State supplies in all instances;

(14) “location of the recipient of services” means, —

- (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the recipient;

The phrase ‘location of the recipient of services’ is essential to determine the place of supply of service and can be understood in the following 4 sub-clauses:

- (a) Services received at a place of business where registration is obtained – Location of such place of business;
- (b) Services received at a fixed establishment (i.e., a place of business not registered, but having a sufficient degree of permanence involving human and technical resources) – Location of such fixed establishment;
- (c) Services received at more than one establishment – Location of the establishment most directly concerned with the receipt of the supply;
- (d) Services received at a place other than above – Location of the usual place of residence of the recipient (address where the person is legally registered/ constituted in case of recipients other than individuals).

Note: The definition uses the term “place”, and not the phrase “State or Union Territory”. Therefore, a view may be taken that the location of the recipient of the service could be determined under the residuary clause (i.e., usual place of residence), merely because it is received in a place of business which is neither registered as an additional place of business, nor a fixed establishment, although the place of receipt is in the same State as another place of business which is registered.

E.g.: Event management services received in the Mangalore unit of M/s. ABC Ltd. M/s. ABC Ltd has its registered office in Mumbai (having a GST registration) and has a branch office in Bangalore (having a GST registration). Mangalore unit is neither an additional place of business nor a fixed establishment. In such a case, location of the recipient of service is the Mumbai office, and not the Bangalore office, although Bangalore and Mangalore are located in the same State.

(15) “location of the supplier of services” means, —

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;

- (b) *where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;*
- (c) *where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and*
- (d) *in absence of such places, the location of the usual place of residence of the supplier;*

The phrase 'location of the supplier of services' is essential to determine the place of supply of service and can be understood in the following 4 sub-clauses:

- (a) Services made from a place of business where registration is obtained – Location of such place of business;
- (b) Services made from a fixed establishment (i.e., a place of business not registered, but having a sufficient degree of permanence involving human and technical resources) – Location of such fixed establishment;
- (c) Services made from more than one establishment – Location of the establishment most directly concerned with the receipt of the supply;
- (d) Other than the above – Location of the usual place of residence of the supplier (address where the person is legally registered/ constituted in case of recipients other than individuals).

Note: The definition uses the term "place", and not the phrase "State or Union Territory". Therefore, a view may be taken that the location of the provider of the service could be determined under the residuary clause (i.e., usual place of residence), merely because it is provided from a place of business which is neither registered as an additional place of business, nor a fixed establishment, although the place of provision is in the same State as another place of business which is registered.

Where services are provided from more than one establishment i.e. principal place of business and fixed establishment, the location of the establishment with which the service receiver is directly concerned will be considered for the purpose of determining the location of supply.

Consider if a Chartered Accountant in Kanpur represents Client before the Tribunal in Delhi, location of supplier of services would be Kanpur, UP and not Delhi because location of supplier of services is the place of business. And place of business (as per 2(98) of CGST Act) is the place where business is ordinarily carried on. And place of business is the 'seat of management of operations' and not the 'site of execution of duties'.

- (16) *"non-taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.*

Explanation. —For the purposes of this clause, the expression “governmental authority” means an authority or a board or any other body, —

- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government,

with ninety per cent. or more participation by way of equity or control, to carry out any function entrusted to a **Panchayat under article 243G** or ³a municipality under article 243W of the Constitution;

Relevant circulars, notifications, clarifications, flyers issued by Government:

1. Notification No. 02/2017 dated 19.06.2017 - Seeks to empower the Principal Commissioner of Central Tax, Bengaluru West to grant registration in case of online information and database access or retrieval services provided or agreed to be provided by a person located in non-taxable territory and received by a non-taxable online recipient

The phrase “non-taxable online recipient” covers the following persons:

- (a) The Central Government
- (b) Local Authority
- (c) Governmental Authority i.e. an authority established with 90% or more participation by the Government and set-up to undertake functions entrusted to a municipality under Article 243W of the Constitution like:
 - Preparation of plans for economic development,
 - Urban planning,
 - Fire Services,
 - Water supply, etc.

(17) “online information and database access or retrieval services” means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply essentially automated and involving minimal human intervention and impossible to ensure in the absence of information technology and includes electronic services such as, —

- (i) advertising on the internet;
- (ii) providing cloud services;
- (iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

³ Inserted vide *The Integrated Goods and Services Tax (Amendment) Act, 2018* w.e.f 01.02.2019

- (iv) *providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;*
- (v) *online supplies of digital content (movies, television shows, music and the like);*
- (vi) *digital data storage; and*
- (vii) *online gaming;*

Relevant circulars, notifications, clarifications, flyers issued by Government:

1. Notification No. 02/2017 dated 19.06.2017 - Seeks to empower the Principal Commissioner of Central Tax, Bengaluru West to grant registration in case of online information and database access or retrieval services provided or agreed to be provided by a person located in non-taxable territory and received by a non-taxable online recipient

The definition has very wide coverage of activities/ services delivered in the digital economy and is drafted in line with the provisions under the Service Tax laws to include services like e-downloads of games, movies etc., web-hosting services, online supply of on-demand disc space, distance teaching, etc.

An indicative list of services that would not be covered under Online Information and Database Access or Retrieval (OIDAR) services are:

- Legal services or Financial services advising clients through e-mail
- Educational or professional courses, where the content is delivered by a teacher over the internet or an electronic network (using a remote link)

Following aspects need to be noted:

- Supply of Online Information and Database Access or Retrieval (OIDAR) services by a person located in a non-taxable territory (outside India) to a non-taxable online recipient, would be liable to tax in the hands of the supplier;
- The supplier would be responsible for collection and remittance of integrated tax to the Government of India;
- The supplier can take a single registration under the Simplified Registration Scheme (yet to be notified by the Government);
- Alternatively, a person located in India representing the supplier can obtain registration and pay the tax on behalf of the supplier. If the supplier does not have a representative/ physical presence in India, he can appoint a person who will be liable to pay the integrated tax on such transactions by providing the details of the State of consumption;
- Business-to-Business (B2B) transactions w.r.t. OIDAR will be taxable in the hands of the recipient itself under reverse charge mechanism.

(18) "output tax", in relation to a taxable person, means the integrated tax chargeable under this Act on taxable supply of goods or services or both made by him or by his agent but excludes tax payable by him on reverse charge basis;

The output tax i.e. integrated tax chargeable on inter-State taxable supply of goods or services can be summarised as under:

Type of Supply	Reference
Supplies between 2 States (or UT with Legislature)	Section 7(1) and 7(3) of the IGST Act
Import of goods or services	Section 7(2) and Section 7(4) of the IGST Act
Supplies to/ by a SEZ developer or unit	Section 7 (5) (b) of the IGST Act
Supplies made by a person located in India and where the place of supply is outside India	Section 7 (5) (a) of the IGST Act

Following aspects need to be noted:

- While input tax is in relation to a registered person, output tax is in relation to a taxable person. Evidently, the law excludes persons who are not registered under the law from being associated with any input tax. However, where there is a liability due to the Government, the law paves the way to cover those persons who are liable to tax, but who have failed to obtain registration.
- The amount covered under this term is the amount of tax that is 'chargeable', and not the amount that is 'charged'. Therefore, in case a person wrongly charges tax, or charges an excess rate of tax, as compared to the applicable tax rate, such excess would not qualify as output tax.
 - The taxes payable by recipient of supply, on account of making inward supplies of such categories of supply as are notified for the purpose of reverse chargeability of tax, or making inward supplies from unregistered persons, would be out of the scope of 'output tax'.
- The implication of the exclusions mentioned above is that the input tax credit cannot be utilised for making payment of any amount that does not qualify as output tax. Discharge of liability in such cases has to be by way of cash payments (i.e., through the electronic cash ledger, on depositing money by means of cash, cheque, etc.).
- The law makes a specific inclusion in respect of supplies made by an agent on behalf of the supplier, to treat the tax paid on such supplies as output tax in the hands of the supplier.

(19) "Special Economic Zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005;

It covers two categories of zones as under:

- (a) Zones which are existing as on 10.02.2006 i.e. the date when SEZ Act was made effective.
- (b) Zones which have been notified under section 3(4) and section 4(1) of the SEZ Act, 2005.

Notifications under section 3(4) are issued when the State Government wants to set up a SEZ and the Notifications under section 4(1) are issued when any other person (except State Government) wants to set-up a SEZ. The notifications issued therein specify the SEZ area.

(20) "Special Economic Zone developer" shall have the same meaning as assigned to it in clause (g) of section 2 of the Special Economic Zones Act, 2005 and includes an Authority as defined in clause (d) and a Co-Developer as defined in clause (f) of section 2 of the said Act;

The term "Special Economic Zone developer" covers the following persons:

- (a) Person/ State Government who has been granted a letter of approval by the Central Government
- (b) Special Economic Zone Authority
- (c) Co-developer

Where the State Government/ person wants to set up a SEZ, notifications are required to be issued under section 3(4) and section 4(1) of the SEZ Act, 2005, respectively and after fulfilment of the prescribed conditions and procedures, a letter of approval is granted. Such a person who has been granted a letter of approval is regarded as a developer.

A co-developer is a person who has been granted a letter of approval for providing infrastructure facilities or for carrying out authorized operations in a notified SEZ. The Board of Approval may specify the facility required to be developed by such a co-developer and in such a case, the co-developer will enter into an agreement with the developer for the specified purpose.

Supplies made to SEZ developer/ unit would be regarded as zero-rated supplies.

(21) "supply" shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act;

The concept of 'supply' has been discussed in detail in the analysis of 'Supply'.

(22) “taxable territory” means the territory to which the provisions of this Act apply;

It covers the whole of India including the State of Jammu and Kashmir. However, the state of Jammu and Kashmir have been excluded after Jammu and Kashmir Reorganization Act, 2019 comes into effect on 31 Oct 2019.

(23) “zero-rated supply” shall have the meaning assigned to it in section 16;

The following taxable supplies of goods and/ or services are considered as ‘zero rated supplies’:

- (a) Export of goods or services or both
- (b) Supply of goods or services or both to a SEZ developer or SEZ unit

Input tax credit can be availed for making zero-rated supplies, even though such zero-rated supplies may be an exempt supply.

A taxable person exporting goods or services would be eligible for refund under the following two options:

- Export under bond/ LUT without payment of integrated tax and claim refund of unutilised input tax credit; or
- Export on payment of integrated tax which can be claimed as refund accordingly.

(24) words and expressions used and not defined in this Act but defined in the Central Goods and Services Tax Act, the Union Territory Goods and Services Tax Act and the Goods and Services Tax (Compensation to States) Act shall have the same meaning as assigned to them in those Acts;

Certain words and expressions like person, supplier, recipient, reverse charge, time of supply, value of supply etc. defined in the CGST/ UTGST/ GST (Compensation to States) laws will have the same meaning for the purpose of IGST law.

(25) any reference in this Act to a law which is not in force in the State of Jammu and Kashmir, shall, in relation to that State be construed as a reference to the corresponding law, if any, in force in that State.

Chapter 2

Administration

3. **Appointment of officers**
4. **Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances**

Statutory Provisions

<p>3. Appointment of officers</p> <p><i>The Board may appoint such central tax officers as it thinks fit for exercising the powers under this Act.</i></p>
<p>4. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances</p> <p><i>Without prejudice to the provisions of this Act, the officers appointed under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act are authorised to be the proper officers for the purposes of this Act, subject to such exceptions and conditions as the Government shall, on the recommendations of the Council, by notification, specify.</i></p>

Section or Rule	Description
Section 2(36)	Definition of Council (CGST)
Section 2(80)	Definition of Notification (CGST)
Section 3	Officers under this Act (CGST)
Section 4	Appointment of Officers (CGST)
Section 5	Powers of Officers (CGST)
Section 6	Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances
Section 20	Application of provisions of Central Goods and Services Tax Act

Relevant circulars, notifications, clarifications, flyers issued by Government:

- 1) Notification No. 02/2017 – CGST dated 19.06.2017 - Jurisdiction of Central Tax Officers - CGST officers
- 2) Notification No. 11/2017-Integrated Tax, dated 13.10.2017 - Officers of State Tax or Union Territory Tax - authorisation as proper officer for purposes of sections 54 & 55 of the CGST Act, 2017.

3.1/4.1 Introduction

Although CGST and IGST are both taxes of the Union, it is required that lawful authority be vested in certain persons to discharge duties for purposes of Integrated Tax.

3.2/4.2 Analysis

It is for this reason that the board has been empowered to appoint Central tax officers to discharge duties under the IGST Act. Please note that appointment of officers remains with the government but confirmation of responsibility to act as integrated tax officers is left with the Board.

Suitable enabling provisions have also been made, whereby officers of State / UT Tax can be authorised to discharge functions under the IGST Act. Such a provision is necessary in order to maintain uniformity in administration of notified supplies or notified category of taxable persons which are exclusively left under the CGST Act to be administered by officers of State / UT Tax. It is appreciable that careful consideration has been given to ensure that there is no duplication of administrative power at the same time sufficient flexibility is enabled to ensure smooth and seamless tax compliance experience for trade and industry in GST regime.

Chapter 3

Levy and Collection of Tax

5. Levy and Collection

6. Power to grant exemption from tax

Statutory provisions - Effective from 1st July, 2017 to 31st January, 2019

5. *Levy and Collection*

(1) *Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both; except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:*

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

(2) *The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.*

(3) *The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*

(4) *The integrated tax in respect of the supply of taxable goods or services or both by a supplier, who is not registered, to a registered person shall be paid by such person on reverse charge basis as the recipient and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*

(5) *The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the*

provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:

Provided that 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:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory 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 and such person shall be liable to pay tax

Statutory provisions - Effective from 1st February, 2019 vide The Integrated Goods and Services Tax Amendment Act, 2018

5. Levy and Collection

- (1) *Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax on all inter-State supplies of goods or services or both; except on the supply of alcoholic liquor for human consumption, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person:*

Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the value as determined under the said Act at the point when duties of customs are levied on the said goods under section 12 of the Customs Act, 1962.

- (2) *The integrated tax on the supply of petroleum crude, high speed diesel, motor spirit (commonly known as petrol), natural gas and aviation turbine fuel shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council.*
- (3) *The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*
- (4) *The Government may, on the recommendations of the Council, by notification, specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both, and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to such supply of goods or services or both."*

(5) *The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:*

Provided that 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:

Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory 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 and such person shall be liable to pay tax

Relevant circulars, notifications, clarifications, flyers issued by Government:

- 1) Notification No. 18/2017 -TRU Dated 5th July, 2017 - IGST exemption to SEZs on import of Services by a unit/developer in an SEZ;
- 2) Notification No. 03/2017 – Integrated Tax dated 28.06.2017 - Seeks to bring into force certain sections of the IGST Act, 2017 w.e.f 01.07.2017
- 3) Notification No. 1/2017-Integrated Tax (Rate), dated 28-6-2017 for notified IGST Rate Schedule.
- 4) Notification No. 4/2017, dated 28-6-2017-Integrated Tax (Rate), dated 28-6-2017 for Reverse Charge on certain specified supplies of goods.
- 5) Notification No. 8/2017-Integrated Tax (Rate), dated 28-6-2017 for IGST rate schedule for services.
- 6) Notification No. 10/2017- Integrated Tax (Rate), dated 28-6-2017 for reverse charge on certain specified supplies of services.
- 7) Notification No. 14/2017-Integrated Tax (Rate), dated 28-6-2017 for Notified categories of services the tax on intra-State supplies of which shall be paid by the electronic commerce operator.
- 8) Notification No. 38/2017-Integrated Tax (Rate), dated 13-10-2017 Motor vehicle purchased by lessor prior to 1-7-2017 and supplied on lease before 1-7-2017.
- 9) Notification No. 40/2017-Integrated Tax (Rate), dated 18-10-2017 Notified rate of integrated tax of 5 per cent on inter-State supplies of goods in case of free distribution of food preparations to weaker sections of society under Government programme.
- 10) Notification No. 7/2019-Integrated Tax (Rate), dated 29-3-2019 - Notified categories of persons (Builders) who shall pay tax on reverse charge basis on certain specified supplies of goods or services or both received from unregistered supplier.

- 11) Circular No. 1/1/2017-IGST dated 07.07.2017 - Clarification on Inter-state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance
- 12) Circular No. 10/10/2017-GST, dated 18-10-2017 - clarification on issues wherein goods are moved within State or from another State of registration to another State for supply on approval basis.
- 13) Circular No. 21/21/2017-GST dated 22.11.2017 - Clarification on Inter-state movement of rigs, tools and spares, and all goods on wheels [like cranes]
- 14) Circular No. 22/22/2017-GST dated 21.12.2017 - Clarification on issues regarding treatment of supply by an artist in various States and supply of goods by artists from galleries
- 15) Circular No. 27/01/2018-GST dated 04.01.2018 - Clarifications regarding levy of GST on accommodation services, betting and gambling in casinos, horse racing, admission to cinema, homestays, printing, legal services etc.,
- 16) Circular No. 34/8/2018-GST dated 01.03.2018 - Clarifications regarding GST in respect of certain services
- 17) Circular No. 35/9/2018-GST dated 05.03.2018 - Joint Venture - taxable services provided by the members of the Joint Venture (JV) to the JV and vice versa and inter se between the members of the JV

5.1 Introduction

The Constitution mandates that no tax shall be levied or collected by a taxing Statute except by authority of law. While no one can be taxed by implication, a person can be subject to tax in terms of the charging section only.

This is the charging provision of the IGST Act. It provides that all inter-State supplies would be liable to IGST at rate recommended by the Council and notified subject to a ceiling rate of 40%. The provision of this section is comparable to the provision under section 9 of the CGST Act and section 7 of the UTGST Act.

The levy is on all goods or services or both except alcoholic liquor for human consumption. Further, GST may be levied in supply of petroleum crude, high spirit diesels, motor spirit (petrol), natural gas and aviation turbine fuel with effect from the date notified by the Government on the recommendations of GST Council.

The levy of tax on supply of goods and / or services is in three parts - (i) in the hands of the supplier and (ii) in the hands of the recipient of goods / services under reverse charge mechanism and, (iii) in case of specified services, in the hands of electronic commerce operator.

5.2 Analysis

In terms of section 2(24) of the Act, any words or expression which are used in this Act, but are not defined should be assigned the meaning as given to such words or expressions in the CGST Act, the UTGST Act, and the GST (Compensation to States) Act.

With specific reference to this section, the following words/ expressions would be relevant-

- Supply
- Inter-State supply
- Goods
- Services
- Taxable person

The meaning to the expression 'inter-State supply' can be understood from section 7 of this Act. However, the meaning of 'supply' and 'taxable person' should be borrowed from the CGST Act. Reference may be made to the CGST Act for an in-depth understanding of such expressions and words.

Levy of tax: Every inter-State supply will be liable to tax, if:

- (i) There is a Supply either of goods or services or both, even when a supply involves goods or services or both the law provides that such supply would be classifiable only as goods or services in terms of Schedule II of the Act.
- (ii) The supply is an inter-State supply – viz. ordinarily, the location of the supplier and the place of supply are in different States. (Refer section 7 of the IGST Act to understand the meaning of inter-State supply);
- (iii) The tax shall be payable by a 'taxable person' as explained in section 2(107) read with section 22 and section 24 of the CGST Act.

Imports: *Proviso* to section 5(1) makes a very important exception in respect of "goods imported into India". Import of goods is defined in section 2(10) in a manner identical with the definition under Customs Act in section 2(23). The important exception made under the proviso is the carve out from the levy under section 5 supplies involving import of goods and place such transactions under Customs Act and not under IGST Act. In other words, goods imported into India will be liable to IGST but not under IGST Act instead under section 3(7) of Customs Tariff Act. Vide Taxation Laws (Amendment) Act, 2017 sweeping changes have been brought about in Customs in the wake of introduction of GST. Amongst others, one significant change is that, in addition to basic customs duty levied under section 12 of Customs Act- section 3 of Customs Tariff Act - sub-section 7 levies IGST on import of goods. It merits to mention here is that sub-section 9 levies compensation cess wherever applicable when the said goods are imported into India.

Going back to the proviso to sub-section 1, the expression 'the point at which import duties are leviable' is very significant. Examination of the 'point of levy' under Customs Act reveals that goods brought into India are liable to customs duties at the time specified in section 15. Accordingly, no duties are levied until the bill of entry for home consumption is filed. Imported goods are defined in section 2(25) of Customs Act as:

"imported goods" means any goods brought into India from a place outside India but does not include goods which have been cleared for home consumption"

Goods that have been cleared for home consumption will cease to be imported goods. Goods which have entered India but not yet cleared for home consumption will not attract the levy of customs duty until bill of entry for home consumption is filed.

Customs Act permits goods that have entered India to be deposited in a bonded warehouse on filing 'into-bond' bill of entry without payment of duty. Hence, goods that have entered India will not attract liability to IGST until they reach the point – location or time – when bill of entry for home consumption is ready to be filed. In such cases, IGST is to be levied only when ex-bond bill of entry is filed or until date specified in section 15 is reached.

Further, goods imported by SEZ also do not attract liability to IGST as the goods are 'not yet' liable to be assessed to customs duty. Section 53 of the SEZ Act states that:

53(1). A Special Economic Zone shall, on and from the appointed day, be deemed to be a territory outside the customs territory of India for the purposes of undertaking the authorized operations.

Please note the following aspects:

- Goods deposited in warehouse by filing into-bond bill of entry do not attract liability to any customs duty until the date specified in section 15 is reached or ex-bond bill of entry is filed;
- Goods received by EOU attracts liability to customs duty because notification 44/2016-Cus. dated 29 Jul, 2016 has delicensed warehouse facility of EOUs which has also been clarified in detail vide circular 35/2016-Cus. dated 29 Jul, 2016;
- Notification 15/2017-Integrated Tax (Rate) dated 30 Jun 17 issued granting exemption from IGST on import of goods by a SEZ and this exemption was immediately rescinded vide notification 18/2017- Integrated Tax (Rate) dated 5 Jul 17 as granting such an exemption would have been out of harmony with the concept that goods have 'not yet' reached the 'point' when liability to customs duty is attracted;
- Circular 35/2017-Cus dated 1 Aug, 2017 regarding high-sea sales states that IGST is applicable but deferred until bill of entry for home consumption is filed; Further, supplies made before the goods are cleared for home consumption has been considered as a Schedule III negative list entry as per the CGST Amendment Act, 2018 w.e.f. 1 Feb 2019.

- ORDER No. CT/2275/18-C3 DATED 26th March 2018 passed by the AUTHORITY FOR ADVANCE RULING – KERALA clarifies that no tax is applicable on Merchanting trade applying the principles laid down in the aforesaid Circular No.35/2017-Cus dated 1 Aug 2017. Further, such merchant trade transactions have been covered under Schedule III as per the CGST Amendment Act, 2018.

Merchant Trade transactions are those transactions where the trader in one country A, purchases goods from country B and supply the goods to a second buyer in country C, directly, without goods entering country A. Since, goods never cross the Customs frontier of the country of trader In case country A is India then, GST law cannot apply when supply takes place 'outside taxable territory' even though said person (trader) is located in India. GST is tax on supply and not on supplier. It will form part of revenue (turnover) of person (legal entity) but as a 'no supply' transaction. Experts have indicated that since it is not 'exempt supply', such transactions will NOT attract credit reversal. To this end, explanation inserted to section 17(3) vide CGST Amendment Act, 2018 may be referred.

- Circular 03/01/2018-GST dated 25 May 2018 (superseded circular 46/2017-Cus dated 24 November 2017) stated that in-bond sales WILL NOT be liable to IGST until bill of entry for home consumption is filed. This circular 03 was rescinded from 1 Feb 2019 since amendment to CGST Act by introduction of para 8 in schedule III.

In view of the foregoing, *proviso* to section 5(1) is of paramount importance which makes way for Customs Tariff Act to take over levy of IGST on imported goods leaving IGST under IGST Act inapplicable to imported goods. And once Customs Tariff Act applies, it attracts the levy of IGST (CTA) not before the bill of entry for home consumption is due to be filed in accordance with the provisions of Customs Act. So, there are two kinds of IGST, namely:

- IGST levied under Customs Tariff Act which we call IGST (CTA); and
- IGST levied under IGST Act which we call IGST (GST).

Generally, there is no overlap between the two but when there is overlap, one makes way for another. Please see how this overlap is resolved. Now, it becomes important to clearly identify whether imported goods are 'treated' as supply of services under schedule II. Now, customs law makes way for these goods after being subject to basic customs duty applicable to import of goods under Customs law to be subject to IGST under GST law when the import is by way of 'lease' arrangement (operating or finance lease). Customs notification 50/2017-Cus. dated 30 Jun 2017 has inserted a few entries (see table below) when IGST (CTA) will NOT be levied if the goods are liable to IGST (GST) under para 1(b) or 5(f) of schedule II.

- DTA sales by SEZ will NOT be liable to GST under forward charge as IGST will be paid when DTA-buyer files bill of entry in terms of Rule 48(1) of SEZ Rules.

Supply: Refer discussion under section 7 of the CGST Act for a detailed understanding of the expression 'supply'. Additionally, the comments relating to 'composite supply' and 'mixed supply' will equally apply for supplies taxable under IGST Act.

Tax shall be payable by: The tax shall be payable by a 'taxable person' as defined under section 2(107) read with section 22 and section 24 of the CGST Act. Broadly, a taxable person is one who is registered or who is required to be registered under the GST law. Please refer to the discussion under the CGST Act for a thorough understanding of this concept.

Tax payable: Every inter-State supply falling under section 7 of the IGST Act will attract IGST, if it gets covered by section 5. However, all transactions covered within definition of supply in the course of inter-State trade or commerce within the meaning of section 7 does not mean that it is always subject to levy of IGST unless it falls in section 5 i.e. charging section.

Tax on import of goods: This Act provides that IGST shall be levied on import of goods in terms of section 3 of the Customs Tariff Act, 1975. It implies that on such importation of goods, IGST will be payable in addition to the Basic Customs Duty (BCD). The proviso to section 5(1) of the IGST Act also clarifies that the value and point at which IGST would be payable will be determined in accordance with section 12 of the Customs Act, 1962.

Summary table for levy of IGST of CTA or GST law are provided below:

Description	Import of Goods		Import of Services
Treatment in sch II	As Goods	As Services	
Levy under	Customs Tariff Act	IGST Act	
Overlap exemption	N.A	IGST (CTA) exempt if IGST (GST) paid under para 1(b) or 5(f) of sch II *	N.A

* Refer entries 547A (from 1 Jul 2017 vide s.99 of Finance Bill 2018 and 65/2017-Cus. dt 8 Jul 2017) and 557A (from 13 Oct 2017 vide 77/2017-Cus.) and 557B (from 14 Nov 2017 vide 85/2017-Cus.) to 50/2017-Cus. dated 30 Jun 2017 (also refer para 7 of circular 113/32/2019-GST dated 11 Oct 2019).

Rate and value of tax: The rate of tax notified separately, but shall not exceed 40%, and the value of supplies would be as determined under section 15 of the CGST Act.

Applicability in respect of e-commerce operators: Refer discussion under section 9(5) of the CGST Act for an understanding of the applicability of this provision for e-commerce operators.

Reverse charge mechanism: Normally, the supplier of goods and/ or services will be liable to discharge tax on the supplies effected. However, the Central Government is empowered to

specify categories of supplies in respect of which the recipient of goods and/ or services will be liable to discharge the tax. *Notification No. 4/2017-Integrated Tax (Rate) dated 28-Jun-17 amended vide Notification No. 37/2017-Integrated Tax (Rate) dated 13-Oct-17, 2017, Notification No. 45/2017- Integrated Tax (Rate) dated 14-Nov-17 & 10/2017-Integrated Tax (Rate), dated 28-Jun-17 amended vide Notification No. 34/2017-Integrated Tax (Rate) dated 13-Oct-17* has been issued to notify the goods and services respectively where tax has to be paid by recipient of supply under reverse charge mechanism.

Where the supplier is located in one state and the place of supply is in another state, the recipient is liable to pay IGST showing the correct place of supply. It may be different from the State in which the recipient is registered. Refer detailed discussion on 'place of supply' to identify and report correct State.

Accordingly, all other provisions of this Act and CGST Act, as applicable, will apply to the recipient of such goods and/ or services, as if the recipient is the person liable to pay tax in relation to supply of such goods and/ or services.

After the amendment in Section 5(4) of the IGST Act 2017, the liability of reverse charge on the registered recipient on receiving supplies from unregistered supplier will be applicable only on (a) specified class of registered persons and (b) on specified categories of goods or services or both.

E-commerce: Where any supply of services is effected through e-commerce operator (commonly known as services provided by aggregator), the law provides that the Central / State Government may on recommendation of the Council specify (notify) that the e-commerce operator will be liable to discharge the tax on such supplies. It is important to note that, in such supplies, the e-commerce operator is neither the actual supplier of service/s nor does he actually receive the services. The actual supplier of services is a third party who provides such service to the customer through e-commerce operator. Instead of levying tax on such actual supplier, the law has imposed levy on e-commerce operator. Therefore, this would be an exception to the imposition of tax as specified in para supra. It is important to note that this exception is carved out only in respect of supply of services through an e-commerce operator and will not be applicable / relevant to supply of any goods through an e-commerce operator.

It is important to recognize the following aspects about e-commerce operations:

- Every online transaction is not e-commerce. It could be a portal providing information online to carry out the transaction or it could be a online tracking of an offline transaction or it could be a service using internet;
- Supplier offering 'online channel' to sell goods or services in addition to offline stores also does not qualify as e-commerce;
- It does not necessarily require a 'website' or 'app' (application on mobile phones) to constitute e-commerce, any 'digital network' like a easy dial phone number is enough; and

- Digital wallets are NOT e-commerce. In fact, most e-wallet companies do not have RBI approval but work jointly with Payments Banks or (regular) Banks to provide a e-wallet experience where technology comes from the enterprise and the cash-custody is with the banking license holder (see list on RBIs website and find names many popular e-wallets missing <https://www.rbi.org.in/scripts/publicationsview.aspx?id=12043>)

Utmost care is required to come to conclusion that a given enterprise is an 'e-commerce' enterprise. Notification No. 14/2017-Integrated Tax (Rate) dated 28-Jun-17 amended vide Notification No. 23/2017-Integrated Tax (Rate) dated 22-Aug-17 has been issued to provide that in case of the following categories of services, the tax on inter-State supplies shall be paid by the electronic commerce operator.

- (i) services by way of transportation of passengers by a radio-taxi, motorcab, maxicab and motorcycle;
- (ii) services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under clause (v) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with sub-section (1) of section 22 of the said Central Goods and Services Tax Act.
- (iii) services by way of house-keeping, such as plumbing, carpentering etc, except where the person supplying such service through electronic commerce operator is liable for registration under clause (v) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with sub-section (1) of section 22 of the said Central Goods and Services Tax Act.

In case where the e-commerce operator:

- (a) Does not have a physical presence then the person who represents the e-commerce operator will be liable to pay tax.
- (b) Does not have a physical presence or a representative, then the e-commerce operator is mandatorily required to appoint a person who will be liable to pay tax.

5.3 Comparative review

Under the erstwhile tax laws, Central Excise is on 'manufacture of goods', VAT/ CST is on 'sale of goods' and Service tax is on 'provision of service'. Unlike different incidences under erstwhile law in a GST regime, 'it is supply which is a taxable event'. Further, free supplies would be liable to excise duty, while under the VAT laws, free supplies would require reversal of input tax credit; Unlike different incidences, under the GST law, it is 'supply' which would be the taxable event. Under the erstwhile law, e.g.: while stock transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT/ CST. However, under the GST law, it would be taxable as a 'supply'.

Under the erstwhile laws, there are multiple transactions which apparently qualify as both 'sale of goods' as well as 'provision of services'. E.g. license of software, providing a right to use a brand name, etc. Unlike this situation, GST clarifies as to whether a transaction would qualify as a 'supply of goods' or as 'supply of services'. A transaction would either qualify as goods or as services, under the GST law. Even in respect of composite contracts, it has been clarified under Schedule II, definitions of composite supply and mixed supply in the CGST law.

The payment of VAT by the purchaser (registered dealer) on purchase of goods from an unregistered dealer and the circumstances where the Service Tax is payable under the reverse charge mechanism, in respect of say, import of services, sponsorship services etc., are comparable to the 'reverse charge mechanism' prescribed herein. However, under GST law, the Central Government can notify class of goods which are a subject matter of reverse charge.

The detailed analysis of Chapter 3 – Levy and Collection of taxes under the Central Goods and Service Tax may also be referred.

5.4 Related provisions of the Statute

Statute	Section	Description
IGST	Section 7	Meaning of inter-State supplies
CGST	Section 9	Levy and collection of CGST/ SGST
CGST	Section 7 read with Schedule I, II and III	Definition of 'supply'
CGST	Section 2(107) read with section 22 and section 24	Meaning of 'taxable person'
CGST	Section 2(17)	Definition of 'Business'

5.5 FAQs

Q1. Will sale of business as a whole be liable to tax?

Ans. Yes, clause (d) of section 2(17) of the CGST Act provides that supply or acquisition of goods including capital goods and services in connection with commencement or closure of business is also included in the term "business". Therefore, the goods element in the sale of business, would be regarded as 'supply'. However, it may be noted here that sale of undertaking as a whole wholly or partly on a going concern basis will be regarded as an exempt supply in terms of the exemption notification.

Q2. Is the reverse charge mechanism applicable only to services?

Ans. No, section 5(3) or 5(4) of the IGST Act and section 9(3) or 9(4) of the CGST Act does not limit reverse charge to services, it applies to goods also. Notification No. 04/ 2017-Central Tax (Rate), dated 28-06-2017 as amended from time to time has been issued to provide the cases where tax has to be paid by recipient of supply of goods under

reverse charge mechanism. This includes the Cashew nuts, not shelled or peeled, Bidi wrapper leaves (tendu), Tobacco leaves, Silk yarn, Supply of lottery, used vehicles, seized and confiscated goods, old and used goods, waste and scrap, raw cotton when supplied by specified suppliers.

Q3. What will be the implications in case of purchase of goods from unregistered dealers?

Ans. As per section 5(4) of the IGST Act, 2017 as amended by The IGST Amendment Act, 2018 specified that the tax shall be payable under reverse charge by the specified class of registered persons, in respect of supply of specified categories of goods.

Q4. In respect of exchange, will the transaction be taxable as two different supplies or will it be taxable only in the hands of the main supplier?

Ans. Taxable as two different supplies. Exchange from point of view of each party will need to be examined if it attracts the requirements of levy of tax.

Q5. In respect of exchange or barter, if one supply is intra-State and another is inter-State, how will the taxes be applicable?

Ans. There are two separate supplies and taxes as applicable (as inter-State and/ or intra-State respectively).

Q6. What are examples of 'disposals' as used in supply?

Ans. Sale of old furniture by a garment manufacturer.

Note: Disposal is where the articles are being cleared up and not necessarily as the main object of the business.

Q7. Will a Bank qualify as a taxable person for sale of hypothecated/ pledged goods (auction)?

Ans. Yes, the nature of business as a bank does not affect tax liability. GST is payable if there is any supply of goods or services even by a bank.

Q8. Will an Insurance company be a taxable person for sale of repossessed goods?

Ans. Yes. Although not the principal source of income, sale of repossessed goods is key aspect of insurance business.

Q9. Will a "not for profit entity" be liable to tax on any sales effected by it – e.g.: sale of assets received as donation?

Ans. Yes. NPEs do not distribute profit to promoters but that does not exclude from doing activities that conform to definition of business.

Statutory provisions

6. Power to grant exemption from tax

(1) *Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, 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.

- (2) Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by special order in each case, under circumstances of an exceptional nature to be stated in such order, exempt from payment of tax any goods or services or both on which tax is leviable.
- (3) The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification issued under sub-section (1) or order issued under sub-section (2), insert an Explanation in such notification or order, as the case may be, by notification at any time within one year of issue of the notification under sub-section (1) or order under sub-section (2), and every such Explanation shall have effect as if it had always been the part of the first such notification or order, as the case may be.

Explanation.— For the purposes of this section, where an exemption in respect of any goods or services or both from the whole or part of the tax leviable thereon has been granted absolutely, the registered person supplying such goods or services or both shall not collect the tax, in excess of the effective rate, on such supply of goods or services or both.

Relevant circulars, notifications, clarifications, flyers issued by Government:

- 1) Notification No. 2/2017-Integrated Tax (Rate), dated 28-6-2017 for IGST exempt goods.
- 2) Notification No. 3/2017-Integrated Tax (Rate), dated 28-6-2017 for concessional Integrated Goods and Services Tax rate for supplies of goods to specified petroleum and other explorations and productions under various Schemes.
- 3) Notification No. 7/2017-Integrated Tax (Rate), dated 28-6-2017 for exemption to supply of goods by the CSD to unit run canteens and supplies by CSD/unit run canteens to authorised customers.
- 4) Notification No. 9/2017-Integrated Tax (Rate), dated 28-6-2017 for IGST exempt services.
- 5) Notification No. 18/2017-Integrated Tax (Rate), dated 5-7-2017 for exemption to all services imported by a unit or a developer in the Special Economic Zone.
- 6) Notification No. 26/2017-Integrated Tax (Rate), dated 21-9-2017 - Exemption to Inter-State supply of heavy water and nuclear fuels falling in Chapter 28 by the Department of Atomic Energy to the Nuclear Power Corporation of India Ltd.
- 7) Notification No. 30/2017-Integrated Tax, dated 22-9-2017 Exemption to inter-State supply of skimmed milk powder.

- 8) Notification No. 41/2017-Integrated Tax (Rate), dated 23-10-2017 for exemption to inter-State supply of taxable goods by a registered supplier to a registered recipient for export, from so much of integrated tax leviable thereon under section 5, as is in excess of amount calculated at rate of 0.1 per cent.
- 9) Notification No. 47/2017-Integrated Tax (Rate), dated 14-11-2017 for exemption on supply of goods to certain institutions.
- 10) Notification No. 5/2018-Integrated Tax (Rate), dated 25-1-2018 - Partial exemption to supply of services by way of grant of licenses or lease to explore or mine petroleum crude or natural gas or both.
- 11) Notification No. 6/2018-Integrated Tax (Rate), dated 25-1-2018 - Exemption to integrated tax leviable on supply of services, imported into territory of India, to the extent of aggregate of customs duties on consideration declared under section 14(1) of Customs Act towards royalties and license fees included in transaction value.
- 12) Notification No. 9/2018-Integrated Tax (Rate), dated 25-1-2018 - Exemption from tax on supplies of goods falling under heading No. 8703.
- 13) Notification No. 22/2018-Integrated Tax (Rate), dated 26-7-2018 Exemption to inter-State supplies of Handicraft goods.
- 14) Notification No. 27/2018-Integrated Tax (Rate), dated 31-12-2018 - Exemption to inter-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 paragraph 4.41 of the Foreign Trade Policy.
- 15) Notification No. 11/2019-Integrated Tax (Rate), dated 29-6-2019 Exemption on supply of goods by a retail outlets established in the departure area of an International Airport beyond immigration counters to an outgoing International Tourist.

6.1 Introduction

This provision states that the Central Government may grant exemptions for inter-State supply of certain goods and/ or services. Reference may also be made to section 11 of the CGST Act and section 8 of the UTGST Act for a better understanding.

6.2 Analysis

The Central Government will be empowered to grant exemptions from payment of IGST on inter-State supplies, subject to the following conditions:

- (i) Exemption should be in public interest
- (ii) By way of issue of notification
- (iii) On recommendation from the Council
- (iv) Absolute/ conditional exemption may be for any goods and/ or services
- (v) Exemption by way of special order (and not notification) may be granted by citing the circumstances which are of exceptional nature

With specific reference to the fourth condition indicated above, it is important to note that the exemption would only be in respect of goods and/ or services, and not specifically for classes of persons.

E.g.: An absolute exemption could be granted in respect of supply of fertiliser. A conditional exemption could be supply of fertiliser subject to the condition that no input tax credit has been claimed in respect of inputs and capital goods.

Exemption by way of special order is where the exemption is issued for a specific purpose. E.g. Exemption to imports made for a defence project during the times of emergency.

Mandatory nature of absolute exemptions has been litigated in the past and where tax is paid even though exemption is available, credit becomes admissible. For this reason, absolute exemptions have been made compulsory. As such, credit denial also becomes absolute. No plea of equity or revenue neutrality becomes admissible.

There is generally not much doubt about exemptions – whether absolute or conditional – because the condition associated may be examined at one-time or continuously to be satisfied. Conditional exemptions abate if the associated condition is not complied. Care should be taken not to mistake conditional exemption with absolute exemption having specific applicability.

From the explanation provided after sub-section (2), there is one school of thought wherein it is opined/ understood that in case of conditional exemptions, there is an option available to the taxable person to pay the tax (by which way, there would be no requirement for input tax credit reversals). However, an absolute exemption is required to be followed mandatorily. The other view is that exemptions would never be optional and would be mandatory automatically when the conditions relating to the exemption are satisfied. This provision does not bring in any clarity on this issue.

In terms of sub-section (2), the Government may issue a special order on a case-to-case basis. The circumstances of exceptional nature would also have to be specified in the special order. While this provision is welcome, industry is apprehensive that this could be used without necessary superintendence.

To provide more clarity to the exemption notification or the special order, it is provided that the Government may issue an “Explanation” at any time within a period of one year from the date of issue of notification or special order. The effect of this “Explanation” would be retrospective, viz., from the effective date of the relevant notification or special order.

The law mandates that when the exemption is absolute (i.e., if whole or part of tax leviable is exempt) the registered person cannot collect taxes in excess of the effective rate.

Exemption under section 11 of the CGST/ SGST Act equally applicable

Any exemption notification or special order issued under section 11 of the CGST Law will apply equally for inter-State supplies, viz., any supply of goods or services or both which are exempt under CGST Law will be exempt even under the IGST Law

Effective date of the notification or special order

The effective date of the notification or the special order would be the date which is mentioned in the notification or special order. However, if no date is mentioned therein, it would come into force on the date of its issue by the Central Government for publication in the Official Gazette. It follows that such notification/ order shall be made available on the official website of the department of the Central Government.

Exemption under CGST Act	Deemed to exempt under SGST Act
	Deemed to exempt under UTGST Act
Exemption under IGST Act	No auto-application of exemption to CGST-SGST/UTGST

Exemptions issued under IGST Act:

Following exemptions have been issued under IGST Act:

- Notification No. 07/2017-Integrated Tax (Rate), dated 28-06-2017: Exemption from IGST supplies by CSD to Unit Run Canteens and supplies by CSD/ Unit Run Canteens to authorised customers under section 6(1).
- Notification No. 9/2017-Integrated Tax (Rate) dated 28-Jun-17: Mega exemption list for supply of service amended vide Notification No.21/2017 dated 22- Aug-17, 29/2017 dated 29-Sept-17, 33/2017 dated 13-Oct-17, and 42/2017 dated 27-Oct-17. The exemption notification covers entries where services supplied by supplier of service have been exempted from levy of GST.
- Notification No. 18/2017-Integrated Tax (Rate) dated 5-Jul-17: IGST exemption to SEZs on import of Services by a unit/ developer in a SEZ.
- Notification No. 31/2017- Integrated Tax (Rate) dated 29-Sept-17: Exempting supply of services associated with transit cargo to Nepal and Bhutan.
- Notification No.41/2017 – Integrated Tax (Rate) dated 23-Oct-17: Exempting integrated tax on inter-state supply of taxable goods by a registered supplier to a registered recipient in excess of 0.1%, subject to fulfilment of conditions in the notification. This transaction commonly known as ‘penultimate sale’ / sale against ‘Form H’ under the existing law, was completely exempt from tax on production of Form H.
- Notification No.42/2017 - Integrated Tax (Rate) dated 27-Oct-2017: Exempting supply of service having place of supply in Nepal or Bhutan, against payment in Indian Rupees

The detailed analysis of Chapter 3 – Levy and Collection of taxes under the Central Goods and Service Tax may also be referred.

6.3 Comparative review

The provisions relating to exemption are broadly similar to the exemption provisions under the erstwhile tax regime. There are no significant differences.

6.4 Related provisions of the Statute:

Statute	Section	Description
CGST	Section 11	Exemption from payment of CGST/ SGST
UTGST	Section 8	Power to grant exemption from tax

6.5 FAQs

Q1. Can an exemption be granted for inter-State supplies when such an exemption is not granted for intra-State supplies?

Ans. Yes.

Q2. Can the Central Government issue a special order for exemptions that are only meant for transactions liable to IGST?

Ans. Yes.

Q3. Is the State Government empowered to grant exemption by way of a special order for inter-State supplies?

Ans. No. The State Government is not empowered to grant exemptions on any inter-State supplies.

Chapter 4

Determination of Nature of Supply

7. **Inter-State supply**
8. **Intra-State supply**
9. **Supplies in territorial waters**

Statutory provisions

7. Inter-State Supply

- (1) *Subject to the provisions of section 10, supply of goods, where the location of the supplier and the place of supply are in—
 - (a) two different States;
 - (b) two different Union territories; or
 - (c) a State and a Union territory,shall be treated as a supply of goods in the course of inter-State trade or commerce.*
- (2) *Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.*
- (3) *Subject to the provisions of section 12, supply of services, where the location of the supplier and the place of supply are in—
 - (a) two different States;
 - (b) two different Union territories; or
 - (c) a State and a Union territory,shall be treated as a supply of services in the course of inter-State trade or commerce.*
- (4) *Supply of services imported into the territory of India shall be treated to be a supply of services in the course of inter-State trade or commerce.*
- (5) *Supply of goods or services or both, —
 - (a) when the supplier is located in India and the place of supply is outside India;
 - (b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
 - (c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.*

Related Provisions of the Statute

Statute	Section / Rule	Description
IGST	Section 2(4)	Definition of customs frontier of India
IGST	Section 2(5)	Definition of export of goods
IGST	Section 2(6)	Definition of export of service
IGST	Section 2(10)	Definition of import of goods
IGST	Section 2(11)	Definition of import of service
IGST	Section 2(15)	Definition of location of supplier of service
IGST	Section 2(19)	Definition of Special Economic Zone
IGST	Section 2(20)	Definition of Special Economic Zone developer
CGST	Section 2(56)	Definition of India
CGST	Section 2(103)	Definition of State
CGST	Section 2(114)	Definition of Union Territory
IGST	Section 10	Place of supply of goods other than supply of goods imported into, or exported from India
IGST	Section 12	Place of supply of services where location of supplier and recipient is in India
IGST	Section 15	Refund of IGST paid on supply of goods to tourist leaving India
IGST	Section 5	Levy and collection of tax
CGST	Section 9	Levy and collection of tax
CGST	Section 25	Registration

Relevant circulars, notifications, clarifications, flyers issued by Government:

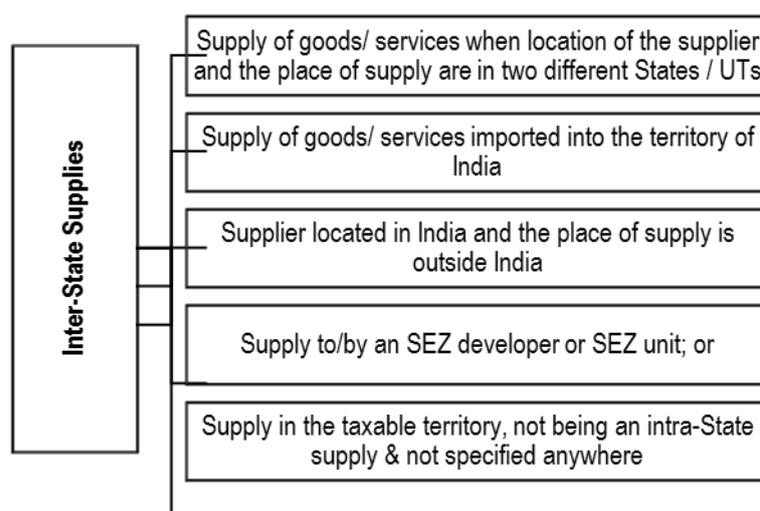
1. Notification Nos. 11/2017-Integrated Tax (Rate), dated 28-6-2017 and 17/2018-Integrated Tax (Rate), dated 26-7-2018 for supplies which shall be treated neither as supply of goods nor supply of services

7.1 Introduction

Having examined levy and the scope and coverage of supply, the next aspect to determine is the nature of supply so as to identify the right kind of tax applicable in a given case. It is important to note that nature of supply is not a question of fact but the result of application of the law to the fact, which provides us the answer. Concluding the answer about the nature of tax is paramount importance not only for the selection of the right kind of tax but also to recognise the departure of GST from the well understood principles under the erstwhile law.

Nature of supply does not refer to 'place of supply'. The next Chapter deals with place of supply but before getting into place of supply it is important to understand the nature of supply. There are very specific principles laid down that need to be identified from the facts in each transaction in order to determine the nature of supply that is involved. This section provides as to when the supplies of goods and/or services shall be treated as Supply in the course of inter-State trade/commerce.

Section 7(1) and 7(2) of IGST Act, primarily covers two kinds of supplies – Supply of **goods** within India and supply of **goods** imported into India respectively and Section 7(3) and 7(4) of IGST Act, covers two kinds of supplies – supply of **services** within India and import of **services** into India respectively. Certain supplies of goods or services are treated as supplies in the course of inter-State trade or commerce as defined in Section 7(5) of the IGST Act.



7.2 Analysis

Inter-State supply of goods

At the outset one may need to bear in mind the treatment extended to the subject matter of supply, that is, whether the supply is of goods or services or both or supply involving goods but treated as supply of services in terms of the fiction specified in Schedule II of CGST Act, 2017. In respect of goods (treated as goods), if the location of the supplier and the place of supply are in two different States or UT or either, then the supply will be in the course of inter-State trade or commerce (amongst others).

We need to pause here and examine the two terms that have been used, namely:

- (a) **Location of supplier** – Unlike in the case of services, location of supplier of goods is a term that is not defined in the law. This is not an oversight of the draftsmen but a deliberate intention of the lawmakers to leave it to the facts of each case to determine the 'location of supplier of goods'. For example, if a company incorporated in Delhi were to place a purchase order on a manufacturer in Maharashtra to produce certain articles

and sell it on ex-works basis with instructions to retain it until further instructions. This would be a case where the manufacturer in Maharashtra would like to charge IGST because the purchase order is from a customer in Delhi. In this supply, the location of supplier is Maharashtra and place of supply is also Maharashtra. Therefore, the manufacturer is required to charge CGST/ SGST because this supply does not involve any movement and due to the instructions (or lapse of time) delivery is complete in Maharashtra itself. Now, if instructions are subsequently issued to dispatch the goods to a warehouse in Madhya Pradesh, the supply by the manufacturer having been completed long before these dispatch instructions are received, there is a new supply emerging from Maharashtra to Madhya Pradesh but the supplier in this instance will be the Company in Delhi and not by the manufacturer-supplier in Maharashtra. One supplier can effect supply only once of the given goods. In this new supply, the location of supplier can either be Delhi – registered place of business – or Maharashtra – the physical point where the goods are situated. The location of the registered place of business (Delhi) cannot guide the decision regarding the nature of supply but will be guided by their location ‘under the control’ of the supplier (Company in Delhi)). The point where goods are situated better represents the location of supplier. The location of supplier is therefore the physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied. This interpretation augurs well with the concept of casual taxable person. The company in Delhi that collects delivery of the goods in Maharashtra and supplies them from Maharashtra to Madhya Pradesh must be regarded as casual taxable person in Maharashtra liable to pay IGST on this supply.

If, however, the delivery by the manufacturer is not completed ex-works but retained to be delivered to Madhya Pradesh at the instruction of the customer in Delhi, then it would be a case of supply from Maharashtra to Delhi and a further supply from Delhi to Madhya Pradesh, regardless of how the goods move. Generally, we can identify the examples where the location of supplier of goods is more accurately determined by the physical point where the goods are located (under the control of the person wherever incorporated or registered), and ready to be supplied.

However, there may be a few exceptions to the rule stated above:

- a) In case of in-transit sales, the principle of the location of supplier as the place where the goods are held in the control of the supplier may not be possible to be determined. In such cases, the place where goods were held before being dispatched should be taken. In this case, the place where the goods are actually present cannot be taken.

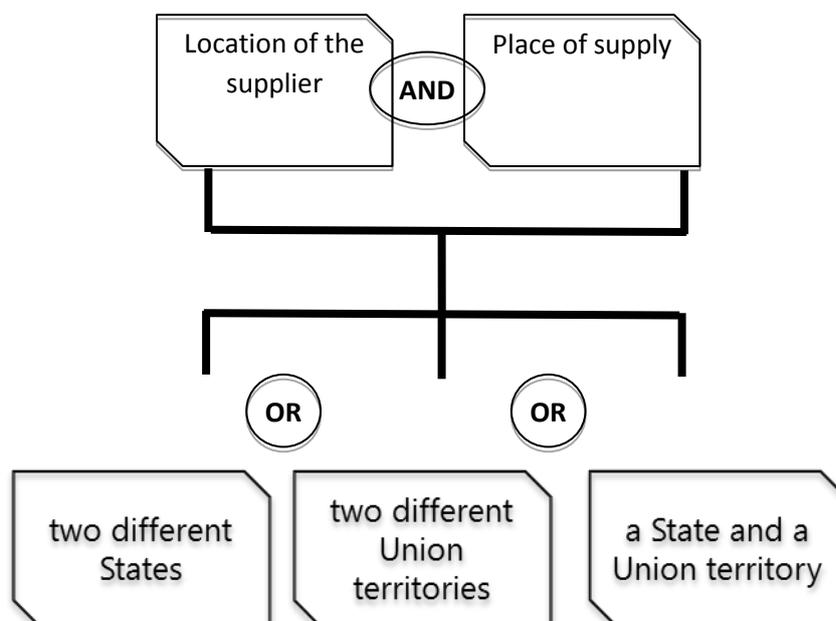
E.g. A person in West Bengal is instructing his supplier in Delhi to supply the goods directly to his customer in Maharashtra while the goods are in transit. For the second leg of the transaction i.e. the supply between the person in West Bengal and the one in Maharashtra, the location of goods may not be determinable. In

such a case, the location of supplier for this leg of the transaction will be considered as West Bengal even though the goods never reach West Bengal.

- b) As per Circular no. 10/10/2017-GST dated 18th October 2017, clarification was given in a case where the suppliers are registered in a state but have to visit other states other than their state of registration and need to carry the goods for approval. In such case, if the goods are approved the invoice is issued at the time of supply. It was clarified that all such supplies, where the supplier carries goods from one State to another and supplies them in a different State, will be inter-state supplies and attract integrated tax in terms of Section 5 of the Integrated Goods and Services Tax Act, 2017. In such case also, the location of supplier is the place where the supplier is registered and not the place where the goods are actually present when they are approved. Even though this is in contradiction with the concept of Casual Taxable person which requires the supplier to register in the state where he is carrying the goods, this clarification was provided for the ease of trade and industry. One may wonder if this can be considered as a reasonable basis for questioning the generic principle of determination of the location of the supplier.
- c) One of the Advance ruling judgements presents a point of view which may have to be considered while taking a decision. In case of Sonkamal Enterprises Private Limited under the Maharashtra Authority for Advance Ruling (2018-TIOL-301-AAR-GST). It was stated that invoice can be raised from Mumbai Head office for imports received at Haldia Port, Kolkata by the company where no separate registration is there in West Bengal if supplies are directly made from the customs bonded warehouse within West Bengal. Here, IGST will be charged from Mumbai to the customer and no separate registration will be required in West Bengal. So, even though the goods are lying in West Bengal when the goods are supplied to the customer, the location of supplier of goods will be that of the registered place of business of the supplier i.e. Mumbai.
- (b) **Place of supply** – It appears to be a phrase that is easily understandable but due to the presence of Chapter V (i.e. place of supply of goods or services or both) in this Act demands that the common sense understanding be disregarded but the meaning ascribed to the phrase ‘place of supply’ from sections 10 to 14 of this Act be applied. ‘Place of supply’ is a phrase of legal significance whose meaning is to be determined by examining the respective sections in Chapter V and brought to bear while determining nature of supply. For example, manufacture in Maharashtra and supply to a company in Delhi on Ex-Works basis, its place of supply has to be the location of completion of delivery. And in respect of the new supply from Maharashtra to Madhya Pradesh, the place of supply is where the movement terminates for delivery – Madhya Pradesh.

It is therefore important to identify the **location of supplier of goods** and not based on a statutory definition but by inquiring into the facts of a transaction of supply and comparing this

with the *place of supply* appointed by the statute in Chapter V. Now, if these two are situated in *different States or UTs or either*, then the nature of supply is declared by section 7 to be in the course of inter-State trade or commerce.



This provision is subject to the provisions of section 10 because any interpretation or application of this section 7 cannot be in derogation of the place of supply dictated by section 10. Section 7 can be correctly interpreted only by identifying the location of supplier of goods based on the physical point where the goods are situated and comparing that with the answer from referring to section 10 regarding place of supply of goods.

With regard to supply of goods that are imported into the territory of India, by legislative override it is declared that if the goods crossed the customs frontiers of India, the supply will always be in the course of inter-State trade or commerce. Reference may be made to the definition of import of goods [section 2(10)] which adverts to the physical movement of goods into India from a place outside India by the active efforts on the part of any person (who may be situated in India or outside India).

The use of the word 'bringing' in section 2(10) excludes naturally and involuntarily occurring phenomena causing the relocation of goods into India from a place outside India. There may be any number of supplies taking place between persons who are incorporated outside India and persons who are incorporated and even registered in India – they will all be transactions of supply in the course of inter-State trade or commerce – till such time the goods cross the customs frontiers of India.

Import of goods

We need to pause here again and examine two kinds of transactions – those that commence outside the territory of India and are concluded also outside territory of India and those that commence outside India but conclude by entering the territory of India. For example, company in Germany supplies goods from Germany to another company in Sri Lanka – this is not a supply in the course of inter-State trade or commerce because it commences and concludes outside the territory of India. It would be so, even if the goods were supplied by the company in Germany from Germany to a customer incorporated in India if the goods are not ‘brought’ into India but sold in high seas to yet another company in Singapore. In order for every supply to come within the operation of sub-section 2 to section 7 it requires that the resultant effect of **the supply must cause the goods to enter the territory of India**. This Act does not enjoy extra-territorial jurisdiction and is limited to imposing tax if the goods are imported into the territory of India. In this regard Customs circular issued by the CBEC and an Advance Ruling by the Kerala Authority for Advance Ruling (AAR) is relevant, which is discussed in detail in Section 11 infra. After the CGST Amendment Act 2019 as effective from 1st February 2019, goods sold before the same is cleared for customs clearance i.e. high sea sales, sale of goods when they are in the bonded warehouses before customs clearance etc. will not be treated as a supply under Schedule III read with Section 7(2) of the CGST Act 2017.

Further, if goods have been brought into India but have not left the customs frontiers of India, that is, the limits of a customs area, any supplies that are taking place after being brought into India until they cross the customs frontiers of India even though the place of entry into India and the place that comprises the customs frontier may be in the same State will continue to be supply in the course of inter-State trade or commerce.

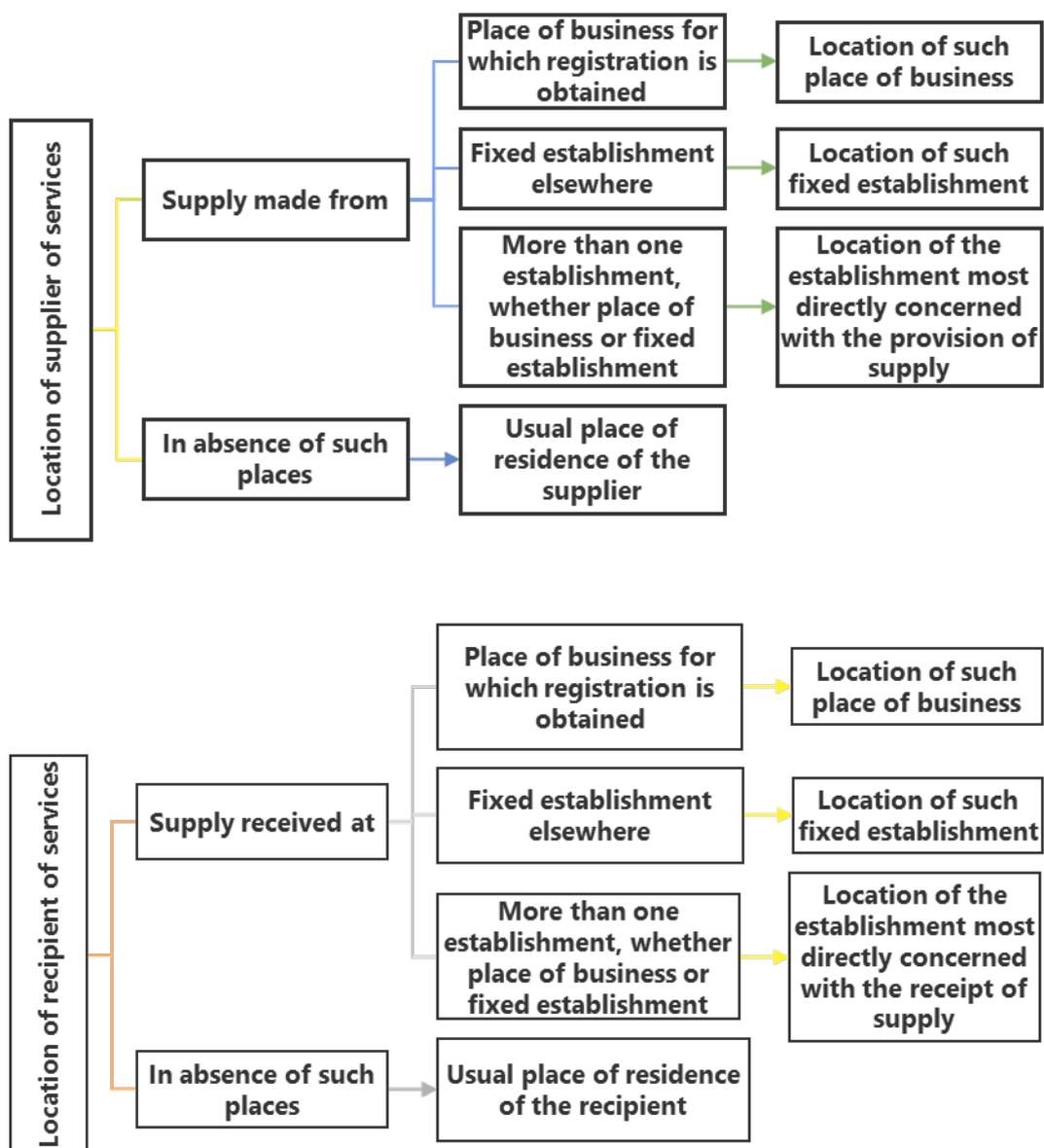
For example, goods have been imported from France by a company incorporated and registered in Nasik which have landed at Mumbai port but during their clearance are supplied by the Nasik company to a company in Pune, this supply continues to be in the course of inter-State trade or commerce. Even though the supplier is in Nasik and the recipient is in Pune, since the goods have not yet crossed the customs frontiers of India at the time of supply. This supply comes within the operation of sub-section 2 of section 7. A test that can be applied to determine whether the supply has been concluded before the goods crossed the customs frontiers of India or not crossed the customs frontiers of India is – who has filed a bill of entry in respect of the goods imported as required under the Customs Act. Transactions taking place before filing of bill of entry are termed as “high sea sale” transactions under common trade practice where the original importer sells the goods to a third person before the goods are entered for customs clearance. This supply is covered within definition of inter-State supply. Provisions of sub-section (12) of section 3 of Customs Tariff Act, 1975 in as much as in respect of imported goods provides that all duties, taxes, cess’ etc. shall be collected at the time of importation i.e. when the import declarations are filed before the customs authorities for the customs clearance purposes. High sea sale transactions, though regarded as supply in the course of inter-State trade or commerce, are not subject to levy of IGST as the supply takes place before filing of Bill of entry and IGST in case of importation of goods can be levied

at the time of filing of Bill of Entry. Hence, IGST on high sea sale(s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance. The importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original Invoice, high-seas-sales-contract, details of service charges/ commission paid etc, to establish a link between the first contracted price of the goods and the last transaction. In the above example, supply by Nasik company to recipient of Pune is high sea sale transaction and is not subject to levy of IGST. When Pune recipient files bill of entry, IGST has to be paid on the assessable value which shall include the margin charged by Nasik supplier also. In fact, after the CGST Amendment Act 2018, all high seas transactions and merchant trading transactions will be covered by Schedule III i.e. activities which are neither supply of goods nor supply of services w.e.f. 01/02/2019

Inter-State supply of services

Continuing with inter-State supply, but in respect of services, it is firstly important to recollect that this provision will apply not only in respect of supply of services but also in respect of transactions involving goods which are treated as supply of services by the fiction in Schedule II of the CGST Act, 2017. The discussion regarding location of supplier of goods and place of supply of goods will be applicable in the context of services but only to a limited extent for the reason that location of supplier of services has been defined in this Act.

The location of supplier of services and the place of supply of services are in two different States or UTs or either, such as supply of services shall be in the course of inter-State trade or commerce. It is interesting to note that inter-State trade is not simply called 'intra-State trade' but is prefixed with 'in the course of'. This prefix is not without reason, because such prefix is missing in relation to intra-State supply. The significance of 'in the course of' is well explained in the decision of State of Bihar Vs Telco Ltd. 27 STC 127 at pg. 148 where the Hon'ble Supreme Court has held that it signifies a series of activities that are all inter-related in an unbroken chain of events so intimately linked to each other that all of them are bound together 'in the course of' such an inter-State trade transaction.



Location of supplier of services is defined to mean 'place of business from where supply is made and duly registered for the purpose'. It also includes other places 'from where' supplies are made being a fixed establishment – a place with sufficient degree of permanence and suitable structure to supply services. And lastly, the usual place of residence of the service provider. It is interesting to note that the location of supplier of services has nothing to do with the business premises 'wherefrom' supply is made.

For example, a company incorporated in Chennai engaged in the business of investment in immovable property and letting them out on rent may have such investments in Chennai and in Hyderabad. By the definition of location of supplier of services being the 'place of business', the company has its place of business where its 'seat of management' is located – Chennai. Accordingly, the location of service provider in relation to the transaction involving renting of immovable property is not where the property let out is situated but the registered office of the company where the management has its seat for decision making. Therefore, in relation to property in Chennai that is let out, it is an intra-State supply because location of supplier of services and place of supply both in Chennai. In respect of its property located in Hyderabad, it is an inter-State supply because the location of supplier of service is in Chennai but the place of supply is Hyderabad. Surely, there is no argument to support the view that in every place where property is located the decision to let out such property is taken in each such location. On the contrary, all decisions are taken where the seat of management is located and therefore, the location of supplier of service remains Chennai wherever the let-out properties may be situated. This view may not be acceptable to all but merits attention.

Special category of inter-State supplies

Fiction in law is no stranger to taxation and GST law indulges in use of fiction without any hesitation. The following categories of supplies of goods or services or both, are treated as being in the course of inter-State trade or commerce:

(a) when the supplier is located in India and the place of supply is outside India

Here, it is extremely important to note that usage of the 'supplier is located' is not to be equated with 'location of supplier'. From the previous discussion, it is learnt that location of supplier of goods is – physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied. But, the deliberate departure in usage of the same set of words is almost misleading. Supplier is located in India does not refer to location of supplier. Instead, it is a simple question of fact as to where the supplier is located. Please note, that the 'supplier' is none other than the '**one who supplies**' and not his agent or representative or any other person. The question that arises is – what is the GST impact in case the supplier is located outside India and the place of supply is outside India? The Act applies to supplies within the taxable territory and when both – supplier as well as place of supply – being located outside India, the Act does not enjoy any jurisdiction to impose tax even if the recipient is located in India. The destination of consumption being decided by the place of supply provisions and not location of the recipient

(b) where the supply is 'to' or 'by' an SEZ developer or unit

Here, it is important to note that supply to SEZ (developer or unit) is treated as inter-State supply. Supply 'by' SEZ (developer or unit) will also be treated as inter-State supply. Further,

2(105) supplier in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied;

the implication of this provision is also that supply by SEZ's *inter se* – one SEZ unit (or developer) to another SEZ unit (or developer) – will also be treated as a supply in the course of inter-State trade or commerce.

Let us take a few examples to illustrate the implications from this provision:

- Taxable person (non-SEZ) located in Jaipur supplying goods to a SEZ unit located in Jodhpur is a supply in the course of inter-State trade or commerce.
- SEZ unit in Kolkata supplying services to another SEZ unit in Kolkata is a supply in the course of inter-State trade or commerce.
- Lease of premises by SEZ developer in Chennai to SEZ unit in that same zone in Chennai will be a supply in the course of inter-State trade or commerce.
- Supply by SEZ unit in Kochi to a non-SEZ in Kochi will be a supply in the course of inter-State trade or commerce.
- Disposal of scrap by a SEZ developer in Mumbai to a scrap dealer in Mumbai (outside the zone) is a supply in the course of inter-State trade or commerce.
- Export of goods by a SEZ unit to a customer in Italy is a supply in the course of inter-State trade or commerce.

(c) Any supply not being an intra-State supply

Here, it is to be considered that any supply that falls outside the scope of intra-State supply will not escape GST, but would be an inter-State supply by virtue of this residual provision in the Act.

Statutory provisions

8. Intra-State Supply

(1) *Subject to the provisions of section 10, supply of goods where the location of the supplier and the place of supply of goods are in the same State or same Union territory shall be treated as intra-State supply:*

Provided that the following supply of goods shall not be treated as intra-State supply, namely: –

- (i) *supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;*
- (ii) *goods imported into the territory of India till they cross the customs frontiers of India; or*
- (iii) *supplies made to a tourist referred to in section 15.*

(2) *Subject to the provisions of section 12, supply of services where the location of the supplier and the place of supply of services are in the same State or same Union territory shall be treated as intra-State supply:*

Provided that the intra-State supply of services shall not include supply of services to or by a Special Economic Zone developer or a Special Economic Zone unit.

Explanation 1 —For the purposes of this Act, where a person has, —

- (i) an establishment in India and any other establishment outside India;*
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or*
- (iii) an establishment in a State or Union territory and any other establishment ~~being a business vertical~~⁴ registered within that State or Union territory,*

then such establishments shall be treated as establishments of distinct persons.

Explanation 2 —A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

8.1 Introduction

With the background discussion on inter-State supplies, it would be appropriate to contrast this understanding with a discussion on intra-State supplies.

8.2 Analysis

Intra-State supply of goods

In relation to goods, Section 8 of the IGST Act provides that where the 'location of the supplier' and the 'place of supply' are in the same State or same UT, such a supply will be treated as an intra-State supply. Reference may be had with respect to the discussion on location of supplier of goods in the context of Section 7 of the IGST Act which may be relied upon for the purpose of this discussion. This provision too, is made subject to the provisions of Section 10, that is, regarding the place of supply, and the conclusion reached by applying the said provisions is required to be read into this Section for the purpose of determination of intra-State in nature. The two factors – 'location of supplier' and 'place of supply' – must at the conclusion of a supply, be in the same State or UT. And when it is so, the supply would be an intra-State supply of goods.

For example, a company having its regular registration in Uttar Pradesh has taken a causal registration in Odisha. It has purchased certain goods in Odisha and supplying the same to the customer also in Odisha under two separate transactions of supply, both of them will be intra-State supplies.

Therefore, it is important to bear in mind that the place of incorporation of the supplier in any transaction relating to goods is not relevant as the location of the supplier which has been explained earlier as – physical point where the goods are situated under the control of the

⁴ Omitted vide *The Integrated Goods And Services Tax (Amendment) Act, 2018 w.e.f 01.02.2019*

distinct person, wherever incorporated or registered, ready to be supplied. Not only this, three cases have been discussed in the above chapter wherein the location of supplier of goods may not be the location of supplier (i.e. in-transit sales, sales on approval or return basis wherein the goods are carried from one state to another and sales from the port directly without bringing the same to the registered place of business of the importer). For discussion on this, the discussion under 7.2 above may be referred.

Further, three exceptions have been carved out in this provision to state that a few supplies are to be treated as inter-state even if the supplier and recipient are in the same state:

- (1) supply 'to' or 'by' a SEZ developer or unit;
- (2) supply involving goods imported into India but not beyond the customs frontiers;
- (3) supply to outbound tourist in terms of Section 15 of the IGST Act.

These three exceptions make it abundantly clear that they have been treated to be an inter-State supply, expressly stated under Section 7. This proviso excludes any opportunity to question the probable intra-State nature of the said supply. As discussed in the various examples, even though the movement of goods may be within the same State, due to the deeming fiction imposed in Section 7 – these supplies are treated as supplies in the course of inter-State trade or commerce – and cannot be disturbed by Section 8. The express exclusion is evidence of a suspect inclusion – with this proviso, there is no question of the intra-State nature of the supplies listed.

Please note that the supplies are not three specific supplies but three classes of supplies. Examples of supply to or by a SEZ developer or unit has already been discussed in detail earlier the same may be referred. Supply involving goods imported into India also been discussed and the same may be referred. For examples, regarding supplied to tourist, kindly refer discussion under Section 15.

Intra-State supply of services

With regard to supply of service, if the twin factors – location of supplier of services' and 'place of supply of services' – are in the same State or UT, then such supply will be treated as intra-State supply. Location of supplier of services has been defined in the Act to mean 'place of business from where supply is made and duly registered for the purpose'. It also includes other places and

2(15) location of supplier of services means –

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and
- (d) in the absence of such places, the location of the usual place of residence of the supplier;

reference may be had to the discussion in respect of inter-State supply of services for the implications of this definition.

To provide some additional illustration, consider audit services being provided by a Chartered Accountant located in Delhi to a company in Delhi. For the purpose of the audit, the Chartered Accountant visits the company's factory located in Noida. Here, although the Chartered Accountant is physically moving to Noida, he is not supplying the audit services from Noida. Here, the transaction will be an intra-State supply from Delhi to Delhi. Please refer to more detailed discussion under Section 12.

Further, here too we find caution exercised in expressly excluding supply of services 'to' or 'by' SEZ developer or unit from the scope of intra-State supply of services. The two explanations provided are significant as the concept of distinct persons in Section 25(4) and (5) of the CGST Act is further clarified in stating that the following will also be distinct persons, namely:

- establishment in India and an establishment outside India;
- establishment in a State or UT and an establishment outside that State or UT;
- establishment in a State or UT and any other establishment (registered separately) in the same State or UT.

Please note that the term 'establishment' may be interpreted as being similar to 'fixed establishment' which is defined in this Act in identical manner with the definition in section 2(50) of CGST Act. It refers to it being 'a place with sufficient degree of permanence and suitable structure to supply services or to receive and use the services'.

Section 2(7) fixed establishment means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services or to receive and use services for its own needs;

Place of supply concept – goods or services

Location of Supplier	Place of Supply	Whether inter-State/ intra-State
Kerala	Bihar	Inter-State (IGST)
Puducherry	Puducherry	Intra-State (CGST + Puducherry GST)
Daman and Diu	Daman and Diu	Intra-State (CGST + UTGST)
Chandigarh	Punjab	Inter-State (IGST)
Chandigarh	Daman and Diu	Inter-State (IGST)
Goa	Goa	Intra-State (CGST + Goa GST)
Karnataka (SEZ)	Karnataka (non-SEZ)	Inter-State (IGST)

8.3 Comparative Review

There is no such proposition in the erstwhile laws as the concept of supply is unique to our tax system and considered as a 'taxable event' for the first time in indirect tax regime. The provisions of Section 7 and 8 have to be read alongside Sections 10 and 12 and whenever a conflict arises between the said provisions, Section 7, or as the case may be, Section 8 has to make way for section 10/ 12, which is signified by usage of the words "subject to the provisions of sections 10/ 12".

However, broadly this can be compared with the provisions of CST Act, 1956 which provides for determining when a sale will be an inter-State sale or when a sale in outside the State.

8.4 Issues and concerns

1. By virtue of Section 7(5) of the IGST Act, all supplies made by or to SEZ units or developers are treated as inter-State supplies. So to say, a small tea vendor (kinara shop) supplying evening beverages to an SEZ unit, or an inward supply of office stationery from a small stationery supplier, by an SEZ unit, will be regarded as inter-State supplies. In this regard, it is important to note that the GST Law mandates registration, regardless of the turnover, where a supplier is engaged in effecting inter-State taxable supplies. Although the inclusion of such transactions was, perhaps, not the intent of the legislature, it is noted that there is no relaxation provided in this regard, in respect of mandatory registration in respect of supply of goods.
2. Evidently, the law provides for the definition of the phrase 'location of the supplier of services' and turns a blind eye to the phrase 'location of the supplier of goods'. Accordingly, the debate arises as to what constitutes the location of the supplier, in respect of goods. Drawing inference from Section 22(1) of the CGST Act, every supplier shall be liable to be registered in the State or UT from where he effects taxable supplies, subject to crossing the aggregate turnover threshold limits. This means that, while a supplier may be registered in one State, and stocks his goods in another State for any reason, shall be required to take a registration in the second State as well, when he effects a supply of such goods from the State. Merely because the supplier has not obtained a registration in the second State does not alter the fact that the supply is in fact, effected from a State other than the State in which he has obtained registration. Therefore, the location of the supplier is regarded as the location of the goods at the time of removal of such goods for supply.
3. The meaning of the term 'fixed establishment' and its usage have not been adequately justified in the Statute. By definition, a fixed establishment is one, other than a registered place of business, and by such definition, it is built to supply services or receive services. However, it is also noted that a supplier is liable to obtain registration from every place (State or UT) from where he effects any taxable supplies, as explained supra. On a combined reading of the two, there is no possibility for one to operate through a fixed establishment in India, for the supply of services, given that a fixed establishment is not a registered place of business. Clarity is awaited in this regard.

Statutory provisions**9. Supplies in Territorial Waters**

Notwithstanding anything contained in this Act, —

- (a) *where the location of the supplier is in the territorial waters, the location of such supplier; or*
- (b) *where the place of supply is in the territorial waters, the place of supply, shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.*

Related Provisions of the Statute

Statute	Section / Rule	Description
IGST	Section 2(5)	Definition of export of goods
IGST	Section 2(6)	Definition of export of service
IGST	Section 2(10)	Definition of import of goods
IGST	Section 2(11)	Definition of import of service
IGST	Section 2(15)	Definition of location of supplier of service
CGST	Section 2(56)	Definition of India
CGST	Section 2(103)	Definition of State
CGST	Section 2(114)	Definition of Union Territory
IGST	Section 7	Meaning of inter-State supplies
IGST	Section 8	Meaning of intra-State supplies
IGST	Section 10	Place of supply of goods other than supply of goods imported into, or exported from India
IGST	Section 11	Place of supply of goods imported into, or exported from India
IGST	Section 12	Place of supply of services where location of supplier and recipient is in India
IGST	Section 13	Place of supply of services where location of supplier or location of recipient is outside India
IGST	Section 5	Levy and collection of tax
CGST	Section 9	Levy and collection of tax
CGST	Section 25	Registration

9.1 Introduction

GST being a destination-based consumption tax (discussed in greater detail in section 10), the supply may at times take place in the territorial waters of India, including cases where a supplier is required to travel into the territorial waters in order to supply goods or services. While the nature of supply in these cases may be inter-State supplies (in terms of Section 7(5)(c) of the IGST Act – residuary clause), by virtue of this Section, the law provides a deeming fiction to reinstate the steps to be applied in Sections 7 and 8 by artificially specifying the location of ‘location of supplier’ and the location of ‘place of supply’. For this reason, clear provisions are laid down as to where on the land mass of India, the actual location will be linked to. Please note, the statute uses the expression ‘deemed to be’ which would supply an artificial meaning. Also, this provision does not seek to violate exclusive jurisdiction of the Union on matters of territorial waters but merely establishes a link to the land mass of India to overcome judicial intervention or assumptions by industry.

9.2 Analysis

The provision identifies two facts that have been discussed at length in the context of section 7 and 8, namely:

- Location of supplier of goods or services or both
- Place of supply of goods or services or both

By applying the provisions of Sections 10 and 12, if it is established that the ‘place of supply’ or ‘the location of the supplier’ is found to be in the territorial waters and not on the land mass, an ambiguity could arise as to where the supplier is required to be registered, or which State the tax on the supply should be apportioned to. To address these situations, the statute lays down, vide this deeming fiction, that such locations – ‘supplier’ or ‘place of supply’ – will be the most proximate State or UT.

For example, consider a case where a ship is moored off the coast of Kochi (Kerala) needs a replacement of a crucial part, and such replacement is carried out along with the supply of the part by a Company located in Karnataka for the shipping company from United Kingdom. In this case, the place of supply of the part, being the location of the ship (as determined in terms of Section 10) will create doubt about the applicability of GST. By virtue of the provisions of Section 9, it is clear that both the location of the supplier and the place of supply will not be the *territorial waters* but would be Kochi itself. With this doubt having been resolved, it would be an inter-State taxable supply effected by the Company in Karnataka *albeit* to the UK Company, while the State tax would be apportioned to the Kerala Government.

The non-obstante clause at the beginning of this Section is important to overcome any alternative interpretations that may be attempted by reading other provisions of the Act.

9.3 Comparative Review

Under the erstwhile tax laws, Central Excise is on ‘manufacture of goods’, VAT/ CST is on

'sale of goods' and Service tax is on 'provision of service'. Unlike different incidences, under the GST law, it is 'supply' which would be the taxable event. Under the erstwhile law, e.g.: while stock transfers are liable to Central Excise (if they are removed from the factory), it would not be liable to VAT/ CST. However, under the GST law, it would be taxable as a 'supply. Further, free supplies would be liable to excise duty, while under the VAT laws, free supplies would require reversal of input tax credit; under the GST law, the treatment would be similar to the erstwhile VAT laws, where the supplies are made without any consideration (monetary/ otherwise).

Under the erstwhile laws, there are multiple transactions which apparently qualified as both 'sale of goods' as well as 'provision of services'. E.g.: license of software, providing a right to use a brand name, etc. Unlike this situation, GST clarifies as to whether a transaction would qualify as a 'supply of goods' or as 'supply of services'. A transaction would either qualify as goods or as services, under the GST law. Even in respect of composite contracts, it has been clarified under the GST law (Schedule II of the Act, concept of composite supply and mixed supply).

The payment of VAT in the hands of the purchaser (registered dealer) on purchase of goods from an unregistered dealer and the circumstances where the Service Tax is payable under the reverse charge mechanism in respect of say, import of services, sponsorship services etc. are comparable to the 'reverse charge mechanism' prescribed herein. However, the concept of partial reverse charge/ joint charge has not continued in the GST regime, viz., every supply will be liable to forward charge/ reverse charge, wholly. Further, the concept of reverse charge only existed in relation to services under Service tax as Central Excise did not provide for payment of duty under reverse charge on goods. However, the VAT laws of most states did provide for payment of tax under reverse charge on goods purchases effected from unregistered dealers in specified circumstances. The GST law, however, permits the supply of both, goods as well as services, to be subjected to reverse charge.

9.4 Issues and concerns

1. While it is clear that the location on the landmass that is most proximate to the location in the territorial waters will be the deemed location of the supplier / place of supply, as the case may be, it may be noted that the GST Law does not prescribe the methodology for determining the distance between the location in the territorial waters and the landmass. Therefore, the basis adopted for determining the nautical distance computed to determine the territorial waters is to be adopted to determine the distance.
2. There could be an exceptional case wherein the location in the territorial waters (being the location of the supplier / place of supply) is equally proximate from two different States / UTs. Such a scenario has not been addressed in this Section and can only be dealt with as and when it is brought to light.

Chapter 6

Refund of Integrated Tax to International Tourist

Statutory provisions

15. Refund of integrated tax paid on supply of goods to tourist leaving India

The integrated tax paid by tourist leaving India on any supply of goods taken out of India by him shall be refunded in such manner and subject to such conditions and safeguards as may be prescribed.

Explanation.—For the purposes of this section, the term “tourist” means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.

15.1 Introduction

Outbound passengers leaving India accompanied by GST-paid goods received during their stay in India would result in India exporting its taxes and this is sought to be overcome.

15.2 Analysis

All outbound passengers carrying goods on which IGST has been paid are entitled to claim refund at the port-of-exit. It is likely that the verification will be simple and refund will be online. It is interesting to note that only ‘integrated tax’ is eligible for this refund. Also, as per proviso to section 8(1), all supplies to such an outbound tourist will always be treated as inter-State supply. The challenge to supplies-to-tourist’s is to identify an outbound tourist and charge IGST instead of CGST/SGST of the State where the goods are delivered. Please note that person seeking such refund must be a ‘tourist’ – who has entered India for genuine non-immigrant purposes. ‘Purpose’ of visit to India is key factor to be examined. Nationality, residency for tax purposes, etc. are irrelevant considerations. The provision of this section has not been made applicable as of now. Detailed inclusions and exclusions can be expected in due course but few illustrations may be considered.

“tourist” means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant

Tourist will exclude:

- Persons resident in India (not limited to Indian passport holders) who are exiting India for any purpose whether for short duration or long duration or uncertain duration.
- Deputation of Indian resident to overseas diplomatic postings.

- Children born in India to foreign nationals during their stay in India.

Tourist will include the following:

- Crew of an international conveyance entering and exiting India within short duration even though not for purposes of tourism in India
- Foreign diplomatic visitors on official duty in India
- Foreign sports persons visiting India for participating in tournaments or training purposes
- Foreign journalist and camera crew visiting India in connection with their profession
- Foreign artists, musicians and actors visiting India to perform in shows or content production

Note: Provisions of this section are yet to be notified by the Government

Chapter 7

Zero Rated Supply

Statutory provisions

16. Zero Rated Supply

- (1) “Zero rated supply” means any of the following supplies of goods or services or both, namely: —
- (a) export of goods or services or both; or
 - (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.
- (2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply.
- (3) A registered person making zero rated supply shall be eligible to claim refund under either of the following options, namely: —
- (a) he may supply goods or services or both under bond or Letter of Undertaking, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized input tax credit; or
 - (b) he may supply goods or services or both, subject to such conditions, safeguards and procedures as may be prescribed, on payment of integrated tax and claim refund of such tax paid on goods or services or both supplied, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.

Related provisions of the Statute

Section or Rule	Description
Section 2(47)	Definition of Exempt Supply (CGST)
Section 54	Refund of tax (CGST)
Section 2(5)	Definition of Export of Goods (IGST)
Section 2(6)	Definition of Export of Services (IGST)
Section 2(19)	Definition of Special Economic Zone (IGST)
Section 2(20)	Definition of Special Economic Zone Developer (IGST)
Section 2(23)	Definition of Zero Rate Supply (IGST)
Section 7	Inter-State supply

Relevant circulars, notifications, clarifications, flyers issued by Government:

- 1) Notification No. 9/2017 – Central Tax dated 28.06.2017 - Seeks to bring into force certain sections of the CGST Act, 2017 w.e.f 01.07.2017
- 2) Notification No. 37 /2017 – Central Tax dated 04.10.2017 - Facility of LUT extended to all exporters / registered persons subject to conditions
- 3) NOTIFICATION No. 48/2017–Central Tax dated 18.10.2017 - Notified supplies, when the supply of goods shall be treated as deemed export under GST e.g. supplies against Advance Authorisation, to EOU, under EPCG scheme etc
- 4) Notification No. 49/2017-Central Tax dated 18.10.2017 - Evidences required to be produced by the supplier of deemed export supplies for claiming refund under rule 89(2)(g) of the CGST rules, 2017
- 5) Notification No. 41/2017--Integrated Tax (Rate) dated 23.10.2017 - IGST at the rate of 0.1% shall be payable on inter-State supply of taxable goods by a registered supplier to a registered recipient for export subject to specified conditions
- 6) C.B.E. & C. Advisory on Customs related matters on introduction of Goods and Services Tax regime dated 20.06.2017
- 7) Circular No. 1/1/2017-Compensation Cess dated 26.07.2017 - Clarification regarding applicability of section 16 of the IGST Act, 2017, relating to zero rated supply for the purpose of Compensation Cess on exports
- 8) Circular No. 2/1/2017-IGST dated 27.09.2017 - Clarification on supply of satellite launch services by ANTRIX Corporation Ltd
- 9) Circular No. 8/8/2017-GST dated 04.10.2017 - Clarification on issues related to furnishing of Bond/Letter of Undertaking for exports
- 10) Circular No. 14/14 /2017 – GST dated 06.11.2017 - Procedure regarding procurement of supplies of goods from DTA by Export Oriented Unit (EOU) / Electronic Hardware Technology Park (EHTP) Unit / Software Technology Park (STP) Unit / Bio-Technology Parks (BTP) Unit under deemed export benefits under section 147 of CGST Act, 2017
- 11) Circular No. 17/17/2017 – GST dated 15.11.2017 - Manual filing and processing of refund claims in respect of zero-rated supplies
- 12) Circular No. 18/18/2017-GST dated 16.11.2017 - Clarification on refund of unutilized input tax credit of GST paid on inputs in respect of exporters of fabrics
- 13) Circular No.24/24/2017-GST dated 21.12.2017 - Manual filing and processing of refund claims on account of inverted duty structure, deemed exports and excess balance in electronic cash ledger
- 14) Circular No. 37/11/2018-GST dated 15.03.2018 - Clarifications on exports related refund issues

- 15) Circular No. 40/14/2018-GST dated 06.04.2018 - Clarification on issues related to furnishing of Bond/Letter of Undertaking for exports
- 16) Circular No. 78/2018-GST, dated 31-12-2018 for clarification on export of services.

16.1 Introduction

Exports have been the area of focus in all policy initiatives of the Government for more than 30 years. Now with the Make in India initiative, exports continue to enjoy this special treatment because exports should not be burdened with domestic taxes. On the other hand, GST demands that the input-output chain not be broken and exemptions have a tendency to break this chain. Zero-rated supply is the method by which the Government has approached to address all these important considerations.

16.2 Analysis

Zero-rated supply does not mean that the goods and services have a tariff rate of '0%' but the recipient to whom the supply is made is entitled to pay '0%' GST to the supplier. In other words, as it has been well discussed in section 17(2) of the CGST Act that input tax credit will not be available in respect of supplies that have a '0%' rate of tax. However, this disqualification does not apply to zero-rated supplies covered by this section. It is interesting to note that section 7(5) (and even proviso to section 8(1)) declares that supplies 'to' or 'by' SEZ developer or unit will be treated as an inter-State supply. So, when two SEZ units or one SEZ developer and another SEZ unit supply goods or services to each other (among themselves within the zone) and the zone being located within the same State or UT, such supplies will always be inter-State supplies. But, it is important to note that this – being treated as inter-State supplies always – by itself does not mean that non-SEZ sales by SEZ unit will be liable to IGST in all cases. Please refer to the table below of supplies involving suppliers in the zone that is covered by the provisions of section 7(5) and proviso to section 8(1):

Supply 'by'	Supply 'to'
SEZ unit	Outside India
SEZ unit	Another SEZ unit
SEZ developer	SEZ unit
Non-SEZ unit	SEZ unit
SEZ unit	Non-SEZ unit
Non-SEZ unit	SEZ developer
SEZ developer	Non-SEZ unit

Note: Physical location within the political boundaries of a State are irrelevant

The intention of government not to burden the export with tax could be achieved either by allowing not to charge tax on the exports of goods/services and claim the refund of input tax credits of taxes paid on inward supplies or by allowing the refund of tax charged on the

exports made. Both these alternatives have been enabled in this section. Zero-rated supplies may be undertaken in either of the following ways:

Taxable person to avail input tax credit used in making outward supply of goods or service or both and make zero-rated supply-	
<ul style="list-style-type: none"> Without any payment of IGST on such outward supply by executing LUT (Letter of Undertaking) or bond (dispensed off vide notification 37/2017-Central tax) 	<ul style="list-style-type: none"> Make payment of IGST on the outward supply by debiting 'electronic credit ledger' but without collecting this tax from the recipient
<ul style="list-style-type: none"> Claim refund of input tax credit used in the outward supply 	<ul style="list-style-type: none"> After completing the outward supply, claim refund of the IGST so debited (unjust enrichment having been duly satisfied)
Subject to fulfilment of all associated conditions and safeguards that may be prescribed in either case	

- Physical exports are well understood due to the vast experience from Customs Act. Physical exports, as discussed under section 11, are not determined or defined by realization of foreign exchange (unlike export of services). SEZ is defined in section 2(20) to have the meaning from 2(g) of SEZ Act, 2005. Supply of goods by SEZ to non-SEZ area is governed by Customs Act in terms of Rule 47 in Chapter V of SEZ Rules, 2006. Accordingly, although the supply is 'treated as inter-State supply of goods' in terms of section 7(5), no tax is to be charged by the SEZ supplier but instead, the non-SEZ recipient is to pay IGST at the time of assessment of the bill of entry filed for such goods in terms of Customs Tariff Act, 1975 duly amended by the Taxation Laws Amendment Act, 2017 wherein section 3 of the Customs Tariff Act, 1975 has been substantially altered to enable imposition of additional customs duties only on goods not subsumed into GST and for the imposition of IGST on goods subsumed into GST by sub-section 7, 8 and 9. However, with respect to supply of services by SEZ to non-SEZ area, though not prohibited, is not expressly dealt with by this Chapter V of SEZ Rules as to the taxes/ duties applicable. To draw the relevant inference, one should observe the definition of India as per section 2(56) of CGST Act. It has been defined to mean territory of India as referred to in Article 1 of the Constitution. SEZ units are also covered within above definition of India. As the CGST and IGST Act extend to whole of India, it could be said to be applicable to SEZ unit also and thereby making SEZ unit as falling within definition of taxable territory. If this view is taken, it may very simply be an inter-State supply of services liable to payment of IGST on forward charge basis by the SEZ unit because there is no reference in IGST to borrow the operation of section 53 from SEZ Act. Reverse charge Notification No. 10/2017- Integrated Tax (Rate) dated 28-Jun-17 covers any services supplied by any person who is located in a non-taxable territory to any person located in the taxable territory under reverse charge mechanism.

SEZ unit may be said to be falling within definition of taxable territory and liable to tax under forward charge.

Accordingly, certain examples have been discussed below:

These provisions of zero-rated supplies are introduced in the statute on the basis of the prevalent Central Excise and Service Tax laws. It is widely believed that introduction of this provision will alleviate the difficulty of a supplier who exempts goods or services or both in terms of export competitiveness. This provision also specifically expresses that taxes are not exported. Care must be exercised that while paying taxes, such taxes are not collected from the recipient of goods or services or both. This would result in unjust enrichment.

The following illustrations may be considered:

Table A – Physical Exports

Zero-rated supply (Physical exports)	Option A (without payment of IGST)	Option B (with payment of IGST)
ABC from Chennai supplies goods required by PQR in Delhi to effect exports to Germany	<ul style="list-style-type: none"> • ABC to charge IGST (Rs.100/-) to PQR • PQR to avail input tax credit • PQR to issue invoice for €15 • PQR to ensure no IGST is charged in the Euro invoice • PQR to bring proof-of-export and satisfy all other conditions prescribed • PQR to claim refund of input tax credit of Rs.100/- being maximum amount related to the outward export supply • Such refund to be claimed by filing Form GST RFD-01 	<ul style="list-style-type: none"> • ABC to charge IGST (Rs.100/-) to PQR • PQR to avail input tax credit • PQR to issue, invoice for €15 • IGST to be charged on tax invoice issued in INR meant only for the purpose of GST. • PQR to debit electronic credit ledger with IGST applicable of Rs.180/- on the export (assume sufficient balance in credit ledger from all other inputs, input service and capital goods) • PQR to bring proof-of-export and satisfy all other conditions prescribed • Refund of Rs. 180/- to be allowed on automatic processing of shipping bill by Customs once GSTR-3

		and EGM is filed (Rule 96 of the CGST Rules to be followed)
XYZ from Delhi supplies services required by PQR in Delhi to effect export of services to USA	<ul style="list-style-type: none"> • XYZ to charge CGST/SGST (Rs.250/-) to PQR • PQR to avail input tax credit • PQR to issue invoice for \$20 • PQR to ensure no IGST is charged in the USD invoice • PQR to bring proof-of-export and satisfy all other conditions prescribed including realisation of consideration in foreign currency • PQR to claim refund of input tax credit of Rs.250 being maximum amount related to the outward export supply by filing refund claim in Form GST RFD-01 	<ul style="list-style-type: none"> • XYZ to charge CGST/SGST (Rs.250/-) to PQR • PQR to avail input tax credit • PQR to issue invoice for \$20 • IGST to be charged on tax invoice issued in INR meant only for the purpose of GST. PQR to debit electronic credit ledger with IGST applicable of Rs. 300/- on the export • PQR to bring proof-of-export and satisfy all other conditions prescribed • PQR to claim refund of IGST paid in respect of export (though actual relatable credit is much higher at Rs.250/-)

Table B – Supply ‘to’ SEZ

Zero-rated supply (supply ‘to’ SEZ)	Option A (without payment of IGST)	Option B (with payment of IGST)
ABC from Hyderabad supplies goods required by PQR in Kolkata for onward supply to XYZ in Kolkata-SEZ (for use in authorized operations)	<ul style="list-style-type: none"> • ABC to charge IGST (Rs.100/-) to PQR • PQR to avail input tax credit • PQR to supply goods to XYZ (SEZ) for Rs.1,500/- • PQR to ensure no IGST is charged in invoice to XYZ 	<ul style="list-style-type: none"> • ABC to charge IGST (Rs.100/-) to PQR • PQR to avail input tax credit • PQR to issue invoice to XYZ (SEZ) for Rs.1,500/- • PQR to debit electronic credit ledger with IGST applicable of Rs.270/-

	<ul style="list-style-type: none"> • PQR to obtain proof-of-admittance from SEZ officer and satisfy all other conditions prescribed • PQR to claim refund of input tax credit of Rs.100 being maximum amount related to the supply to XYZ (SEZ) 	<p>(say, 18%) on the export (assume sufficient balance in credit ledger from all other inputs, input service and capital goods)</p> <ul style="list-style-type: none"> • PQR to obtain proof-of-admittance from SEZ officer and satisfy all other conditions prescribed • PQR to claim refund of Rs.270 debited in electronic credit ledger in respect of supply to XYZ (SEZ) • SEZ unit not to avail the credit of IGST paid by PQR [Rule 89 (2)] of CGST Rules
XYZ from Surat supplies goods required by PQR in Rajkot for onward supply of services to MNO in Ahmedabad-SEZ (for use in authorized operations)	<ul style="list-style-type: none"> • XYZ to charge CGST/SGST (Rs.250/-) to PQR • PQR to avail input tax credit • PQR to supply services to MNO (SEZ) for Rs.2,000/- • PQR to ensure no IGST (even though within same State, it is inter-State supply) is charged in invoice to MNO • PQR to obtain proof-of-receipt-of-service (as specified by SEZ officer) and satisfy all other conditions (proviso to Rule 89 of Refund Rules) • PQR to claim refund of input tax credit of Rs.250/- being maximum amount related to the supply to MNO (SEZ) 	<ul style="list-style-type: none"> • XYZ to charge CGST/SGST (Rs.250/-) to PQR • PQR to avail input tax credit • PQR to issue invoice to MNO (SEZ) for Rs.2,000/- • PQR to debit electronic credit ledger with IGST applicable of Rs.240/- (say, 12%) on the export • PQR to obtain proof-of-receipt-of-service (as specified by SEZ officer) and satisfy all other conditions (proviso to Rule 89 of CGST Rules) • PQR to claim refund of Rs.240/- debited in electronic credit ledger in respect of supply to MNO (SEZ)

Table C – Supply ‘by’ SEZ

Zero-rated supply	Option A	Option B
Supply between two SEZ units:	(without payment of IGST)	(with payment of IGST)
<p>ABC-SEZ in Indore supplies goods manufactured in the zone to PQR-SEZ in Mumbai (for use in authorized operations)</p> <p>Supply by ABC-SEZ to PQR-SEZ is inter-State supply (whether in same State/ UT or in different States/ UTs)</p>	<ul style="list-style-type: none"> • Goods or services received by ABC-SEZ from various suppliers will be as stated in Table B (above) • ABC-SEZ to issue invoice to PQR-SEZ without any IGST • No input tax credit that needs to be availed by PQR-SEZ • ABC-SEZ to obtain proof-of-admittance from SEZ officer with assistance of PQR-SEZ and satisfy all other conditions prescribed • There is no refund to be claimed either by ABC-SEZ or PQR-SEZ as no IGST has been paid in this chain 	<ul style="list-style-type: none"> • Goods or services received by ABC-SEZ from various suppliers will be as stated in Table B (above) • ABC-SEZ to issue invoice to PQR-SEZ. IGST to be charged but not collected from PQR-SEZ. • ABC-SEZ to debit electronic credit ledger with IGST applicable of Rs.240/-. • ABC-SEZ to obtain proof-of-admittance from SEZ officer with assistance of PQR-SEZ and satisfy all other conditions prescribed • ABC-SEZ to claim refund claim of Rs. 240/- and debit it in electronic credit ledger in respect of supply to PQR (SEZ)
<p>XYZ-SEZ developer in Noida provides lease of premises to MNO-SEZ for its authorized operations</p> <p>Note: This applies to all supplies by developer to unit – premises lease, premises maintenance and other value added services</p>	<ul style="list-style-type: none"> • Goods or services received by XYZ-SEZ from various suppliers will be as stated in Table B (above) • XYZ-SEZ to issue invoice to MNO-SEZ without any IGST • No input tax credit that needs to be availed by MNO-SEZ 	<ul style="list-style-type: none"> • Goods or services received by XYZ-SEZ from various suppliers will be as stated in Table B (above) • XYZ-SEZ to issue invoice to MNO-SEZ. IGST to be charged but not collected from MNO-SEZ. • XYZ-SEZ to debit electronic credit ledger

	<ul style="list-style-type: none"> • XYZ-SEZ to obtain proof-of-receipt of service from SEZ officer with assistance of MNO-SEZ and satisfy all other conditions prescribed • There is no refund to be claimed either by XYZ-SEZ or MNO-SEZ as no IGST has been paid in this chain 	<ul style="list-style-type: none"> • with IGST applicable of Rs.400/-. • XYZ-SEZ to obtain proof-of-receipt of service from SEZ officer with assistance of MNO-SEZ and satisfy all other conditions prescribed • ABC-SEZ to claim refund claim of Rs.400/- and debit it in electronic credit ledger in respect of supply to PQR (SEZ)
Supply by SEZ into non-SEZ:		
<p>ABC-SEZ in Gurugram supplies goods to PQR (non-SEZ unit) in Delhi (with necessary non-SEZ supply permission obtained by ABC from SEZ officer)</p> <p>Note: All supplies 'by' SEZ is treated as inter-State supply</p>	<ul style="list-style-type: none"> • ABC-SEZ to supply goods to PQR • IGST to be collected by ABC-SEZ to PQR • ABC to file bill of entry for import of goods from SEZ to non-SEZ • Bill of entry filed by ABC will be assessed for BCD + IGST • PQR can then claim input tax credit of IGST paid on in bill of entry • PQR to utilize IGST credit 	<ul style="list-style-type: none"> • Nothing to discuss in this option

All refunds are subject to the 'due process' prescribed in section 54 of CGST Act read with Chapter X of CGST Rules including verification of unjust enrichment. Care must be taken not to include the refundable amount in the price charged to overseas customer. This may be checked by looking into:

- If the refundable amount is expensed directly or carried forward as a current asset
- If overseas customer is given credit in any subsequent invoice to the extent of refund
- If the reversal of refundable amount from the credit ledger is charged to P&L or not

Also, all invoices to have a declaration as to –

- Export of goods or services on payment of IGST;
- Export of goods or services without payment of IGST;
- Supplies to a SEZ developer or unit on payment of IGST; or
- Supplies to a SEZ developer or unit without payment of IGST.

Further, all supplies to SEZ developer or unit being zero-rated does not mean that the entire company can enjoy this form of *ab initio* exemption. For example, Company incorporated in Delhi may have established a SEZ unit in Jaipur. All goods and services supplied to SEZ in Jaipur will enjoy the *ab initio* exemption but the goods and services supplied to Delhi will be liable to tax. Now, if the incorporated address of the Company were also in Jaipur and inside the zone, the Company must be cautious to differentiate the supplies that are not related to the authorized operations in the zone but related to the other affairs of the Company and instruct the suppliers to charge applicable GST on such non-SEZ supplies. Complete use of this zero-rated exemption will invite recovery action against the SEZ developer or unit. The supplier who supplied as a zero-rated supply is not responsible for this misuse because the SEZ developer or unit would have issued the GSTIN of the zone. Further, in case GST is paid on the non-zone operations of the Company and these costs are included in the export billing, there may be some aspects to be taken care of in case post-export refund of this GST paid is sought to be claimed. Please note that all supplies to SEZ developer or unit alone is treated as an inter-State supply but the supply to the Company relating to non-SEZ activities will continue to be inter-State or intra-State supply as the case may be. With all information available online through GSTN, misuse is not difficult to identify. Care must be taken to diligently use the provisions of zero-rated supply.

With regard to 'bill to-ship to' transactions, it is important to mention that though the supply may be 'billed to' person located outside India (for exports) or inside zone (for SEZ supplies), where the supplies are 'shipped to' must be clearly identified in order to qualify for the benefit under this section. It is not that 'exports' are zero rated but 'supply by way of export' are zero rated. There is a lot of difference between these two expressions. With the difference between these two expressions having been discussed in the context of sections 11, it is sufficient to mention here that 'supply by way of export' is a subset of 'exports'. And in order to claim benefit of zero rating under this section, it is important to examine an 'export' to meet the requirements of 'supply by way of export'. In other words, both the 'bill to' and 'ship to' locations must be to the destination – outside India (for exports) or inside zone (for SEZ supplies) – in order to qualify for zero rating benefit. This principle applies equally to supply of goods as well as supply of services for exports.

The above view is best explained through an illustration. Say, a contractor is awarded civil works by a zone-developer and this contractor buys cement from a trader with instructions to deliver the cement directly at site (zone). Now, the supply of cement by trader is 'ship to: zone'

but 'bill to: contractor'. Question that arises is, can the cement trader claim zero-rating benefit? The answer is no because the 'bill to' and 'ship to' locations must both be in the zone to satisfy the requirements of Section 16 of the IGST Act and Rule 89 of the CGST Rules.

Even if the goods or service which are either exported or supplied to SEZ unit developer are exempted goods or services, input tax credit is still available for making such zero rated supplies. The requirement to reverse ITC in relation to exempted supplies is not warranted if it is zero rated. This can also be inferred from Section 16(2) of the IGST Act 2017 which states that the input tax credit is eligible notwithstanding that such supply is exempted.

16.3 Procedure for zero-rated supply of goods or services:

16.3.1. Export of goods or services without payment of Integrated Tax

Exporter of goods is eligible to export goods or services without payment of IGST by complying with following procedure

(Note: Same procedures have to be followed by SEZ in respect to export of goods without payment of tax.)

A. Furnishing of Letter of undertaking:

- i. Notification 37/2017 dated 4.10.2017 of Central Tax provides for the conditions and safeguards for export of goods or services without payment of IGST which supersedes notification 16/2017 dated 4.7.2017 of Central tax
- ii. Conditions and safeguards for issuing letter of undertaking: all registered persons who intend to supply goods or services for export without payment of integrated tax shall be eligible to furnish a Letter of Undertaking in place of a bond except those who have been prosecuted for any offence under the Central Goods and Services Tax Act, 2017 (12 of 2017) or the Integrated Goods and Services Tax Act, 2017 (13 of 2017) or any of the existing laws in force in a case where the amount of tax evaded exceeds two hundred and fifty lakh rupees;
- iii. As per Circular No.40/14/2018GST dated April 6, 2018, the registered person is required to fill and submit Form GST RFD-11 on the common portal. An LUT is deemed to be accepted as soon as an acknowledgement for the same, bearing Application Reference Number (ARN) is generated online. It is further clarified in the aforesaid Circular that no document needs to be physically submitted to the Jurisdictional office for acceptance of LUT.
- iv. Letter of undertaking would be executed by the working partner, the Managing Director or the Company Secretary or the proprietor or by a person duly authorised by such working partner or Board of Directors of such company or proprietor.
- vi. Existing LUT would be valid for the whole of the financial year in which it is tendered. Therefore, every registered person should apply for fresh LUT at the start of each financial year i.e, 1st of April.

- vii. Where the registered person fails to pay the tax due along with interest, as specified under sub-rule (1) of rule 96A of Central Goods and Services Tax Rules, 2017, within the period mentioned in clause (a) or clause (b) of the said sub-rule, the facility of export without payment of integrated tax will be deemed to have been withdrawn and when the amount mentioned in the said sub-rule is paid, the facility of export without payment of integrated tax shall be restored.
- viii. Where a supplier wishes to effect zero-rated supplies without payment of IGST, the supplier is required to furnish the LUT in Form GST RFD – 11. In terms of Section 16, the LUT should be filed before effecting the zero-rated supplies in order to claim an exemption from payment of taxes. Rule 96A of the CGST / SGST Rules, 2017 provides that LUT should be furnished prior to effecting export of goods / services. It is inferred that if the LUT is not furnished prior to effecting zero rated supplies, the supplier cannot claim exemption on zero rated supplies. In this regard, the Board has issued circular vide No. 37/11/2018 – GST dated 15.03.2018 wherein it is clarified that the substantial benefits of zero rating supplies should not be denied if it is established that the goods or services have been exported in terms of the relevant provisions.

B. Furnishing of RFD-11

- i. Rule 96A of CGST Rules provides that any registered person availing option to export goods or services without payment of IGST has to furnish letter of undertaking prior to commencement of export in Form RFD-11. Format of RFD-11 is provided in CGST Rules 2017.
- ii. Circular 26/2017 of customs dated 01-07-2017 provides that procedure prescribed under Rule 96A needs to be followed for export of goods or services w.e.f. 01-07-2017.
- iv. Condition to comply:
 - a. In case of goods: good to be exported within 3 months from date of issue of invoice
 - b. In case of services: Payment to be received in convertible foreign exchange within 1 year from date of invoice
- v. Bond or LUT has to be furnished along Form GST RFD-11 binding himself that tax along with interest @18% would be liable to paid by him;
 - a. In case of goods: within 15 days after completion of 3 months on failure to export such goods.
 - b. In case of services: within 15 days of completion of 1 year if such payment is not received in accordance with point (iv).

C. Tax Invoice:

- i. Exporters would be required to raise tax invoice with prescribed particulars mentioning "Supply meant for export under bond or Letter of Undertaking without payment of integrated tax".

- ii. No tax needs to be charged on the invoice in this case.
- iii. Tax invoice may be in addition to other export documents provided to customer.

D. Sealing (in case of goods):

Till mandatory self-sealing is operationalized, sealing of containers shall be done under the supervision of the central excise officer having jurisdiction over the place of business where the sealing is required to be done.

E. Shipping Bill (in case of goods):

- i. Shipping Bill format has been revised by customs to capture GST related details.
- ii. Shipping bill to be prepared in Form SB-I.
- iii. In case of export of duty free goods shipping bills has to be prepared in Form SB-II.
- iv. Shipping bill needs to be issued in 4 copies (Original, Drawback purpose, Department purpose and export promotion)

F. Refunds

Refund of taxes in respect of accumulated input tax credit has to be claimed by following procedure prescribed by section 54 of CGST Act read with Chapter X of CGST Rules, 2017.

- Time limit: 2 years from the relevant date
- Method of filing: Form GST RFD-01A in online portal of GST in format provided in CGST Rules 2017. Further, the requisite documents need to be physically submitted with the relevant jurisdictional officer for processing of the claim.
- Provisional refund: 90% of refund claim to be sanctioned within 7 days subject to certain conditions Balance 10% within 60 days on verification of documents by proper officer.
- Details of Bank Realization Certificate (BRC) or Foreign Inward Remittance Certificate (FIRC) needs to be provided along with details of export invoice while filing Form GST RFD-01

16.3.2. Export of goods or services with payment of Integrated Tax

The procedure to be followed under this option is as follows:

(Note: Same procedures have to be followed by SEZ in respect to export of goods with payment of tax.)

A. Commercial Invoice: Exporter can issue 2 sets of invoices to have a smooth flow of transactions with his foreign customers.

- i. Commercial invoice can be issued (along with tax invoice) without showing tax amount.
- ii. Points to keep in mind while following practice of issuing commercial invoice along with tax invoice:
 - Total value of both the invoices should be equal.
 - Every commercial invoice should have a corresponding tax invoice.

B. Tax Invoice:

- i. Exporters would be required to raise tax invoice with prescribed particulars mentioning "Supply meant for export on payment of integrated tax".
- ii. Applicable IGST needs to be disclosed on the invoice in this case.
- iii. Tax invoice would be in addition to other export documents provided to customer.

C. Sealing/ Shipping Bill: same as referred above in 16.3.1.*D. Refunds:*

- a. In case of goods: Rule 96 of CGST Rules provides for the mechanism for refund of tax in case of export of goods with payment of tax.
 - i. Shipping bill filed with custom would be considered as application for refund of integrated tax paid on export of goods.
 - ii. Refund application shall be valid only when:
 - (a) Filing of export manifest/export report by person in charge of the conveyance carrying the export goods.
 - (b) Furnishing of valid return in Form GSTR-3 or Form GSTR-3B, whichever is applicable, by the applicant.
 - iii. GST and custom portal would be inter-linked in which custom portal would electronically confirm to GST portal about the movement of goods outside India.
 - iv. Upon the receipt of the information regarding the furnishing of a valid return FORM GSTR-3B, as the case may be from the common portal, the system designated by the Customs shall process the claim for refund and an amount equal to the integrated tax paid in respect of each shipping bill or bill of export shall be electronically credited to the bank account of the applicant mentioned in his registration particulars and as intimated to the Customs authorities.
 - v. Withheld of refund: Refund can be withheld upon receipt of request from Jurisdictional Commissioner or where customs provisions are violated.
 - vi. The exporter would not be eligible for refund in case of notified goods where refund of integrated tax is provided to Government of Bhutan.
- b. In case of services: Refund of taxes in respect of tax paid has to be claimed by following procedure prescribed by section 54 of CGST Act read with Chapter X of CGST Rules.
 - Time limit: 2 years from the relevant date
 - Method of filing: Form GST RFD-01A on online portal of GST in format provided in CGST Rules 2017. Further, the requisite documents need to be physically submitted with the relevant jurisdictional officer for processing of the claim.

- Provisional refund: 90% of refund claim to be sanctioned within 7 days subject to certain conditions. Balance 10% within 60 days on verification of documents by proper officer.
- Details of Bank Realization Certificate (BRC) or Foreign Inward Remittance Certificate (FIRC) needs to be provided along with details of export invoice while filing Form GST RFD-01.

16.4 Procedure for supplies to SEZ unit/ SEZ developer

Same procedure as referred above in 16.3 can be followed in following cases:

- (a) Supply to SEZ without payment of integrated tax
- (b) Supply to SEZ with payment of integrated tax.

(Note: Same will be followed in cases the above supplies are made by an SEZ unit or SEZ developer)

16.5 Issues and concerns

1. In terms of Section 16 of the IGST Act, 2017 in case of supplies to SEZ developer or SEZ unit / exports in terms of Section 2(5) or 2(6) of the IGST Act, the supplier can either effect supplies on payment of tax, which can subsequently be claimed as a refund. Alternatively, the supplier may effect the supplies without payment of tax under a bond or LUT and is entitled to claim refund of the input tax credit used in effecting such supplies. In this regard, attention is drawn to the fact that the supplier would be disentitled from claiming refund of IGST paid on such supplies effected on payment of IGST (without LUT), if the supplier recovers the amount of tax from the recipients.
2. The time of supply provisions require that tax is remitted on receipt of advances, in respect of supply of services. Consider a case where a supplier of services has received an advance from a recipient located outside India, in respect of services to be exported. In this regard, it is important to understand whether the LUT should be obtained prior to receipt of advance payment for supply of services, or if it would be sufficient for the registered person to obtain the same before effecting the supply. Rule 96A of the CGST / SGST Rules, 2017 specifies that LUT should be furnished prior to export of services. In terms of Rule 96A, the LUT in Form GST RFD – 11 should be furnished to undertake to remit the applicable taxes along interest if the consideration in convertible foreign exchange is not received within one year from the date of issue of invoice. Accordingly, it can be discerned that LUT is not required to be furnished where the consideration in convertible foreign exchange is received in advance. Further, attention is drawn to Circular No. 37/11/2018 – GST dated 15.03.2018 wherein it is clarified that the substantial benefits of zero-rating supplies should not be denied if it is established that the goods or services have been exported in terms of the relevant provisions.
3. Any variation in foreign currency subsequent to the date of time of supply in case of imports and export transaction would not be relevant in the determination of value of

taxable supply under section 15. The age old CBEC Circular with the subject "Whether rebate-sanctioning authority may re-determine the amount of rebate in certain cases — Instructions regarding" dated 3.2.2000 also highlight this fact. The C.B.E. & C. has then clarified in their Circular No. 510/06/2000-Cx, dated 3-2-2000 issued from F. No. 209/29/99-Cx-6 that the rebate sanctioning authority is not required to reassess the value for the export and the value assessed by the range officer on ARE-1 at the time of export has to be accepted. Further, this duty is also not affected by the less realization of export proceeds owing to exchange rate fluctuation and the duty and value has to be on the date, time and place of removal and the exchange rate on that date alone would be applicable. In other words any exchange gain or loss will remain outside the purview of GST law.

16.6 Comparative Review

The concept of zero-rated supplies is there in the VAT laws with credit benefit and refund. As far as Central Excise law is concerned there is a rebate mechanism in place. That apart the accumulated unutilised credit is available as refund to the exporters of services/ goods under rule 5 of the Cenvat Credit Rules, 2004.

16.7 Related Provisions of the Statute:

Statute	Section / Sub-Section	Description	Remark
CGST	17(2)	Apportionment of credit and blocked credits	Restrictions on credit attributable to exempt supplies.
IGST	2(23)	Zero-rated supply	Adopts the provisions of section 16 of IGST Act

Chapter 8

Apportionment of Tax and Settlement of Funds

- 17. Apportionment of tax and settlement of funds
- 18. Transfer of input tax credit
- 19. Tax wrongfully collected and paid to Central Government or State Government

Statutory Provisions- Effective from 1st July, 2017 to 31st January, 2019

17. Apportionment of tax and settlement of funds

- (1) *Out of the integrated tax paid to the Central Government, —*
- (a) *in respect of inter-State supply of goods or services or both to an unregistered of person or to a registered person paying tax under section 10 of the Central Goods and Services Tax Act;*
 - (b) *in respect of inter-State supply of goods or services or both where the registered person is not eligible for input tax credit;*
 - (c) *in respect of inter-State supply of goods or services or both made in a financial year to a registered person, where he does not avail of the input tax credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was made;*
 - (d) *in respect of import of goods or services or both by an unregistered person or by a registered person paying tax under section 10 of the Central Goods and Services Tax Act;*
 - (e) *in respect of import of goods or services or both where the registered person is not eligible for input tax credit;*
 - (f) *in respect of import of goods or services or both made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was received,*
the amount of tax calculated at the rate equivalent to the central tax on similar intra-State supply shall be apportioned to the Central Government.
- (2) *The balance amount of integrated tax remaining in the integrated tax account in respect of the supply for which an apportionment to the Central Government has been done under sub-section (1) shall be apportioned to the, —*

(a) State where such supply takes place; and
 (b) Central Government where such supply takes place in a Union territory:
 Provided that where the place of such supply made by any taxable person cannot be determined separately, the said balance amount shall be apportioned to, —

(a) each of the States; and

(b) Central Government in relation to Union territories,
 in proportion to the total supplies made by such taxable person to each of such States or Union territories, as the case may be, in a financial year:

Provided further that where the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all States and the Central Government in proportion to the amount collected as State tax or, as the case may be, Union territory tax, by the respective State or, as the case may be, by the Central Government during the immediately preceding financial year.

- (3) The provisions of sub-sections (1) and (2) relating to apportionment of integrated tax shall, *mutatis mutandis*, apply to the apportionment of interest, penalty and compounding amount realized in connection with the tax so apportioned.
- (4) Where an amount has been apportioned to the Central Government or a State Government under sub-section (1) or sub-section (2) or sub-section (3), the amount collected as integrated tax shall stand reduced by an amount equal to the amount so apportioned and the Central Government shall transfer to the central tax account or Union territory tax account, an amount equal to the respective amounts apportioned to the Central Government and shall transfer to the State tax account of the respective States an amount equal to the amount apportioned to that State, in such manner and within such time as may be prescribed.
- (5) Any integrated tax apportioned to a State or, as the case may be, to the Central Government on account of a Union territory, if subsequently found to be refundable to any person and refunded to such person, shall be reduced from the amount to be apportioned under this section, to such State, or Central Government on account of such Union territory, in such manner and within such time as may be prescribed.

Statutory Provisions- Effective from 1st February 2019 vide The Central Goods & Services Tax Amendment Act, 2018

17. Apportionment of tax and settlement of funds

- (1) Out of the integrated tax paid to the Central Government, —
- (a) in respect of inter-State supply of goods or services or both to an unregistered person or to a registered person paying tax under section 10 of the Central Goods and Services Tax Act;

- (b) *in respect of inter-State supply of goods or services or both where the registered person is not eligible for input tax credit;*
- (c) *in respect of inter-State supply of goods or services or both made in a financial year to a registered person, where he does not avail of the input tax credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was made;*
- (d) *in respect of import of goods or services or both by an unregistered person or by a registered person paying tax under section 10 of the Central Goods and Services Tax Act;*
- (e) *in respect of import of goods or services or both where the registered person is not eligible for input tax credit;*
- (f) *in respect of import of goods or services or both made in a financial year by a registered person, where he does not avail of the said credit within the specified period and thus remains in the integrated tax account after expiry of the due date for furnishing of annual return for such year in which the supply was received,*

the amount of tax calculated at the rate equivalent to the central tax on similar intra-State supply shall be apportioned to the Central Government.

- (2) *The balance amount of integrated tax remaining in the integrated tax account in respect of the supply for which an apportionment to the Central Government has been done under sub-section (1) shall be apportioned to the, —*

- (a) *State where such supply takes place; and*
- (b) *Central Government where such supply takes place in a Union territory:*

Provided that where the place of such supply made by any taxable person cannot be determined separately, the said balance amount shall be apportioned to, —

- (a) *each of the States; and*
- (b) *Central Government in relation to Union territories,*

in proportion to the total supplies made by such taxable person to each of such States or Union territories, as the case may be, in a financial year:

Provided further that where the taxable person making such supplies is not identifiable, the said balance amount shall be apportioned to all States and the Central Government in proportion to the amount collected as State tax or, as the case may be, Union territory tax, by the respective State or, as the case may be, by the Central Government during the immediately preceding financial year.

- (2A) *The amount not apportioned under sub-section (1) and sub-section (2) may, for the time being, on the recommendations of the Council be apportioned at the rate of fifty percent to the Central Government and fifty percent to the State Governments or the Union*

territories as the case may be, on ad hoc basis and shall be adjusted against the amount apportioned under the said sub-sections

- (3) *The provisions of sub-sections (1) and (2) relating to apportionment of integrated tax shall, mutatis mutandis, apply to the apportionment of interest, penalty and compounding amount realized in connection with the tax so apportioned.*
- (4) *Where an amount has been apportioned to the Central Government or a State Government under sub-section (1) or sub-section (2) or sub-section (3), the amount collected as integrated tax shall stand reduced by an amount equal to the amount so apportioned and the Central Government shall transfer to the central tax account or Union territory tax account, an amount equal to the respective amounts apportioned to the Central Government and shall transfer to the State tax account of the respective States an amount equal to the amount apportioned to that State, in such manner and within such time as may be prescribed.*
- (5) *Any integrated tax apportioned to a State or, as the case may be, to the Central Government on account of a Union territory, if subsequently found to be refundable to any person and refunded to such person, shall be reduced from the amount to be apportioned under this section, to such State, or Central Government on account of such Union territory, in such manner and within such time as may be prescribed.*

Amendment by the Finance (No.2) Act, 2019

After section 17 of the Integrated Goods and Services Tax Act, 2017, the following section shall be inserted, namely:—

“17A. Where any amount has been transferred from the electronic cash ledger under this Act to the electronic cash ledger under the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the Government shall transfer to the State tax account or the Union territory tax account, an amount equal to the amount transferred from the electronic cash ledger, in such manner and within such time, as may be prescribed.”

Relevant circulars, notifications, clarifications, flyers issued by Government:

- 1) Notification No. 3/2017 – Integrated Tax dated 28.06.2017 - Seeks to bring into force certain sections of the IGST Act, 2017 w.e.f 01.07.2017
- 2) Notification No. G.S.R. 964(E), F. No. 31013/16/2017-ST-I-DoR, Dated, 27th July, 2017 - Goods and services Tax Settlement of funds Rules, 2017
- 3) Notification No. G.S.R. 145(E), F. No. 31013/16/2017-ST-I-DoR Dated, 6th February, 2018 - Goods and services Tax Settlement of funds (Amendment) Rules, 2017

17.1 Introduction

GST is a destination based consumption tax – this principle is evident in the place of supply provisions. Therefore, GST is to be paid to the State where the destination or consumption

takes place. And registration of each tax payer in every destination-State is impossible to comply or administer. It is for this reason that IGST is applicable on supplies whose destination is outside the home-State. Therefore, IGST is not actually a tax but an equitable tax revenue transfer mechanism from the State of origin of supply to the State of its destination where revenue rightly belongs. With IGST having been collected as if it were a tax, it now needs to be transferred to the destination-State. This is provided by section 17 and discussed below.

17.2 Analysis

Inter-State (to)	Supply	IGST Paid (on)	Quantum of IGST	Transfer (to)
Unregistered recipient	taxable person	IGST paid on inter-State supplies IGST paid on import of goods or services	Equivalent Central tax applicable on said supplies in intra-State supply	Union
Composition taxable person				
Registered person not eligible to input tax credit	taxable person	IGST paid on inter-State supplies IGST paid on import of goods or services	Balance amount of IGST	State, its respective share of inward supplies@
Registered taxable person eligible to input tax credit but does not avail it within period specified				Union, share of inward supplies to UTs@

@ If this amount cannot be reliably allocated, then rule-of-proportion – total supplies of that State/UT compared to total inter-State supplies during the financial year.

Please note the following further aspects:

- Above formula applies to interest, penalty and compounding amount collected in respect of inter-State supplies
- Any apportioned IGST is found to be refundable, then the same will be recouped from the subsequent transfers
- Time and manner of transfer to States/UTs will be prescribed
- Now that the government is providing an option for transfer of balance from electronic cash ledger under one head to the other, it also requires the physical transfer of funds between the governments also. Where CGST is transferred to SGST by any person in the electronic cash ledger, the State Government should compensate the Central Government for the deficit transferred.

Statutory provisions**18. Transfer of input tax credit**

- (1) On utilization of credit of integrated tax availed under this Act for payment of, —
- (a) central tax in accordance with the provisions of sub-section (5) of section 49 of the Central Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the central tax account in such manner and within such time as may be prescribed;
 - (b) Union territory tax in accordance with the provisions of section 9 of the Union Territory Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and the Central Government shall transfer an amount equal to the amount so reduced from the integrated tax account to the Union territory tax account in such manner and within such time as may be prescribed;
 - (c) State tax in accordance with the provisions of the respective State Goods and Services Tax Act, the amount collected as integrated tax shall stand reduced by an amount equal to the credit so utilized and shall be apportioned to the appropriate State Government and the Central Government shall transfer the amount so apportioned to the account of the appropriate State Government in such manner and within such time as may be prescribed.

Explanation —For the purposes of this Chapter, “appropriate State” in relation to a taxable person, means the State or Union territory where he is registered or is liable to be registered under the provisions of the Central Goods and Services Tax Act.

Relevant circulars, notifications, clarifications, flyers issued by Government:

- 1) Notification No. 3/2017 – Integrated Tax dated 28.06.2017 - Seeks to bring into force certain sections of the IGST Act, 2017 w.e.f 01.07.2017
- 2) Notification No. G.S.R. 964(E), F. No. 31013/16/2017-ST-I-DoR, Dated, 27th July, 2017 - Goods and services Tax Settlement of funds Rules, 2017
- 3) Notification No. G.S.R. 145(E), F. No. 31013/16/2017-ST-I-DoR Dated, 6th February, 2018 - Goods and services Tax Settlement of funds (Amendment) Rules, 2017

18.1 Introduction

After apportionment of IGST paid, it leaves credit of IGST availed to be accounted for on its utilization. This section addresses the apportionment on utilization of IGST credit.

18.2 Analysis

IGST	Appropriation	Allocation (to)
Credit of IGST paid availed	Utilized to pay CGST	Union – Central tax account
	Utilized to pay SGST	State – State tax account@
	Utilized to pay UTGST	Union – UT tax account@

@ of respective State or UT

Statutory provisions**19. Tax wrongfully collected and paid to Central Government or State Government**

- (1) *A registered person who has paid integrated tax on a supply considered by him to be an inter-State supply, but which is subsequently held to be an intra-State supply, shall be granted refund of the amount of integrated tax so paid in such manner and subject to such conditions as may be prescribed.*
- (2) *A registered person who has paid central tax and State tax or Union territory tax, as the case may be, on a transaction considered by him to be an intra-State supply, but which is subsequently held to be an inter-State supply, shall not be required to pay any interest on the amount of integrated tax payable.*

Relevant circulars, notifications, clarifications, flyers issued by Government:

1. Notification No. 3/2017 – Integrated Tax dated 28.06.2017 - Seeks to bring into force certain sections of the IGST Act, 2017 w.e.f 01.07.2017

19.1 Introduction

Payment of tax based on erroneous determination of 'nature of supply' is not permitted to be adjusted because of the above appropriation of payments. Remedy lies in refund.

19.2 Analysis

Taxable person who has paid tax in error is entitled to refund by first restoring the discharge of the correct tax due so that the incorrect tax paid reflects on the Common Portal as 'paid in excess' and:

- IGST paid in error will be refunded subject to conditions prescribed
- IGST payable due to payment of CGST/SGST/UTGST is exempted from payment of interest on IGST due

Provisions of section 54 of CGST Act have not been extended to this refund although the conditions to be prescribed would not be too far from the requirements in section 54.

Chapter 9

Miscellaneous

20. Application of provisions of Central Goods and Services Tax Act
21. Import of services made on or after the appointed day
22. Power to make rules
23. Power to make regulations
24. Laying of rules, regulations and notifications
25. Removal of difficulties

Statutory Provisions- Effective from 1st July, 2017 to 31st January, 2019

20. Application of provisions of Central Goods and Services Tax Act

Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,—

(i) scope of supply; (ii) composite supply and mixed supply; (iii) time and value of supply; (iv) input tax credit; (v) registration; (vi) tax invoice, credit and debit notes; (vii) accounts and records; (viii) returns, other than late fee; (ix) payment of tax; (x) tax deduction at source; (xi) collection of tax at source; (xii) assessment; (xiii) refunds; (xiv) audit; (xv) inspection, search, seizure and arrest; (xvi) demands and recovery; (xvii) liability to pay in certain cases; (xviii) advance ruling; (xix) appeals and revision; (xx) presumption as to documents; (xxi) offences and penalties; (xxii) job work; (xxiii) electronic commerce; (xxiv) transitional provisions; and (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

Provided that in the case of tax deducted at source, the deductor shall deduct tax at the rate of two per cent. from the payment made or credited to the supplier:

Provided further that in the case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies:

Provided also that for the purposes of this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier:

Provided also that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.

Statutory Provisions- Effective from 1st February 2019 vide The Central Goods & Services Tax Amendment Act, 2018

20. Application of provisions of Central Goods and Services Tax Act

Subject to the provisions of this Act and the rules made thereunder, the provisions of Central Goods and Services Tax Act relating to,—

(i) scope of supply; (ii) composite supply and mixed supply; (iii) time and value of supply; (iv) input tax credit; (v) registration; (vi) tax invoice, credit and debit notes; (vii) accounts and records; (viii) returns, other than late fee; (ix) payment of tax; (x) tax deduction at source; (xi) collection of tax at source; (xii) assessment; (xiii) refunds; (xiv) audit; (xv) inspection, search, seizure and arrest; (xvi) demands and recovery; (xvii) liability to pay in certain cases; (xviii) advance ruling; (xix) appeals and revision; (xx) presumption as to documents; (xxi) offences and penalties; (xxii) job work; (xxiii) electronic commerce; (xxiv) transitional provisions; and (xxv) miscellaneous provisions including the provisions relating to the imposition of interest and penalty,

shall, mutatis mutandis, apply, so far as may be, in relation to integrated tax as they apply in relation to central tax as if they are enacted under this Act:

Provided that in the case of tax deducted at source, the deductor shall deduct tax at the rate of two per cent. from the payment made or credited to the supplier:

Provided further that in the case of tax collected at source, the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies:

Provided also that for the purposes of this Act, the value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier:

Provided also that in cases where the penalty is leviable under the Central Goods and Services Tax Act and the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act, the penalty leviable under this Act shall be the sum total of the said penalties.

Provided also that where the appeal is to be filed before Appellate Authority or the Appellate Tribunal, the maximum amount payable shall be fifty crore rupees and one hundred crore rupees respectively.⁷

Relevant circulars, notifications, clarifications, flyers issued by Government:

- 1) Notification No. 5/2017-Integrated Tax, dated 28-6-2017 (Quoting of HSN Code).
- 2) Notification No. 6/2017-Integrated Tax, dated 28-6-2017 and Notification No. 13/Central Tax, dated 28-6-2017 (Interest on delayed payment of tax).
- 3) Notification No. 7/2017-Integrated Tax, dated 14-9-2017 (Notification of job workers engaged in making inter-State supply of services to a registered person as the category of person exempted from obtaining registration).
- 4) Notification No. 3/2018-Integrated Tax, dated 22-10-2018 (Persons exempted from obtaining registration).
- 5) Notification No. 10/2017-Integrated Tax, dated 13-10-2017 (Notifying persons making inter-State supplies of taxable services and having an aggregate turnover, not exceeding twenty lakh rupees in a financial year as the category of persons exempted from obtaining registration).
- 6) Notification No. 2/2018-Integrated Tax, dated 20-9-2019 - Every electronic commerce operator, not being an agent, shall collect an amount calculated at a rate of one per cent of net value of inter-State taxable supplies made through it by other suppliers where consideration with respect to such supplies is to be collected by said operator.
- 7) Notification No. 9/2018-Central Tax, dated 23-1-2018 (Notified Portal).
- 8) Notification No. 5/2017-Integrated Tax (Rate), dated 28-6-2017 for notified supplies of goods in respect of which no refund of unutilised input tax credit shall be allowed where rate of tax on input is higher than rate of tax on output supplies of such goods.
- 9) Notification No. 6/2017-Integrated Tax (Rate), dated 28-6-2017 for refund of 50% of IGST on supplies of goods to Canteen Stores Department (CSD) under Ministry of Defence.
- 10) Notification No. 11/2017-Integrated Tax (Rate), dated 28-6-2017 for supplies which shall not be treated neither as supply of goods nor supply of services.
- 11) Notification No. 12/2017-Integrated Tax (Rate), dated 28-6-2017 for no refund of unutilised input tax credit under section 54(3) of CGST Act in case of supply of services specified in sub-item (b) of item 5 of Schedule II of the CGST Act.
- 12) Notification No. 13/2017-Integrated Tax (Rate), dated 28-6-2017 for notified specialised agencies entitled to claim a refund of taxes paid on the notified supplies of goods or services or both received by them.

⁷ Inserted vide The Integrated Goods and Services Tax (Amendment) Act, 2018 w.e.f. 01.02.2019

- 13) Notification No. 37/2017-Central Tax, dated 4-10-2017 for conditions and safeguards for furnishing a Letter of Undertaking in place of a Bond by a registered person who intends to supply goods or services for export without payment of integrated tax.
- 14) Notification No. 4/2018-Integrated Tax (Rate), dated 25-1-2018 - Builders, time of accrual of tax liability, in case of TDR.
- 15) Notification No. 6/2019-Integrated Tax (Rate), dated 29-3-2019 - Notified classes of registered persons (Builders) in whose case liability to tax shall arise on specified date.
- 16) Notification No. 10/2019-Integrated Tax (Rate), dated 29-6-2019 - Refund in certain cases - Refund of applicable Integrated Tax to retail outlets established in the departure area of International Airport beyond the Immigration Counters making tax free supply of goods to an outgoing International Tourist.

20.1. Introduction

Certain provisions of CGST Act in relation to levy of tax would be applicable to IGST Act also.

20.2. Analysis

The following provisions of CGST Act shall apply to IGST Act:

- scope of supply;
- composite supply and mixed supply;
- time and value of supply;
- input tax credit;
- registration;
- tax invoice, credit and debit notes;
- accounts and records;
- returns, other than late fee;
- payment of tax;
- tax deduction at source;
- collection of tax at source;
- assessment;
- refunds;
- audit;
- inspection, search, seizure and arrest;
- demands and recovery;
- liability to pay in certain cases;
- advance ruling;

- appeals and revision;
- presumption as to documents;
- offences and penalties;
- job work;
- electronic commerce;
- transitional provisions; and
- miscellaneous provisions including the provisions relating to the imposition of interest and penalty.

The following exceptions are provided:

- (a) In case of TDS (tax deducted at source) the deductor shall deduct tax at the rate of two per cent from the payment made or credited to the supplier.
- (b) In case of TCS (tax collected at source), the operator shall collect tax at such rate not exceeding two per cent, as may be notified on the recommendations of the Council, of the net value of taxable supplies.
- (c) The value of a supply shall include any taxes, duties, cesses, fees and charges levied under any law for the time being in force other than this Act, and the Goods and Services Tax (Compensation to States) Act, if charged separately by the supplier.
- (d) In cases where the penalty is leviable under the CGST Act and the SGST Act or the UTGST Act, the penalty leviable under this Act shall be the sum total of the said penalties.
- (e) The maximum amount of pre-deposit in case of filing of appeal has been prescribed as:
 - i. Rs. 50 crores in case of Appellate Authority
 - ii. Rs. 100 crores in case of Appellate Tribunal

20.3. Comparative Review

Under IGST Act	Corresponding Section under erstwhile Central Sales Tax Act, 1956	Comparison
Section 20 providing CGST Act provisions which would be applicable to IGST Act.	Section 9(2) of CST Act which provides that all provisions of General tax law of each State shall apply in respect of CST to dealers registered in that state, except those provided in CST Act and Rules. These include procedural aspects such as returns, assessment, offences, etc.	Section 9(2) of CST Act does not include aspects such as registration, valuation, credit, etc. which are included in Section 20 of IGST

20.4 FAQs

- Q1. What are the provisions under CGST which would be applicable to IGST also?
- Ans. The provisions relating to scope of supply, composite supply and mixed supply, time and value of supply, input tax credit, registration, tax invoice, credit and debit notes, accounts and records, returns, other than late fee, payment of tax, tax deduction at source, collection of tax at source, assessment, refunds, audit, inspection, search, seizure and arrest, demands and recovery, liability to pay in certain cases, advance ruling, appeals and revision, presumption as to documents, offences and penalties, job work, electronic commerce, transitional provisions and miscellaneous provisions including the provisions relating to the imposition of interest and penalty, shall apply, in relation to the Integrated Tax as they apply in relation to tax under the CGST Act, 2017.
- Q2. What is the percentage of tax to be deducted or collected in case of tax deducted at source and tax collected at source?
- Ans. The percentage of tax to be deducted by the deductor from the payment made or credit to the supplier is 2% in case of tax deduction at source.
- In case of tax collection at source the operator should collect 2% tax on the value of net supplies.

Statutory provisions

21. Import of services made on or after the appointed day

Import of services made on or after the appointed day shall be liable to tax under the provisions of this Act regardless of whether the transactions for such import of services had been initiated before the appointed day:

Provided that if the tax on such import of services had been paid in full under the existing law, no tax shall be payable on such import under this Act:

Provided further that if the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under this Act.

Explanation.—For the purposes of this section, a transaction shall be deemed to have been initiated before the appointed day if either the invoice relating to such supply or payment, either in full or in part, has been received or made before the appointed day.

21.1. Introduction

This provision deals with taxability of import of services made after the appointed day.

21.2. Analysis

- (a) It provides that import of services made on or after the appointed day shall be liable to tax under the provisions of IGST Act even if the transactions for such import of services had been initiated before the appointed day.

- (b) However if the tax on such import of services had been paid in full under the pre-GST regime, no tax shall be payable on such import under the IGST Act.
- (c) That apart if the tax on such import of services had been paid in part under the erstwhile law, the balance amount of tax shall be payable on such import under this Act.
- (d) As per the explanation appended to the section a transaction shall be deemed to have been initiated before the appointed day if either the invoice or payment, either in full or in part, has been received or made before the appointed day.

21.3. FAQs

Q1. Whether import of services made after appointed day is liable to tax under this Act?

Ans. Yes. Any import of services made after appointed day is liable to tax under this Act. However, the taxability is subject to the provisos in section 21 of IGST Act.

Q2. What would be the status of import of services, where the tax on the said transaction is paid in full under earlier laws?

Ans. Not liable to tax under this Act. As per the first proviso of section 21 of IGST Act, where the tax on import of services is paid in full under earlier laws, no tax under this Act would be made applicable though such import takes place after the appointed day.

Q3. What would be the status of import of services where the tax on the said transaction is paid in part under earlier laws?

Ans. As per the second proviso to section 21 of IGST Act, where the tax is paid in part for import of services under the earlier laws, only the balance amount of tax would be payable under this Act.

Q4. When would the transaction be deemed to have been initiated before the appointed day?

Ans. Under any of the following circumstances it would be deemed that the transaction is initiated before the appointed day-

(i) Where invoice relating to such supply; or

(ii) Payment, either in full or in part;

has been received or made before the appointed day.

21.4 MCQs

Q1. Where the tax is fully paid under earlier laws, amount of tax payable for import of services made after appointed day is?

(a) No tax payable under this Act

(b) Tax as per this Act, to be paid again

Ans. (a) No tax payable under this Act

Q2. Where the tax is paid in part under earlier laws, amount of tax payable for import of services made after appointed day is?

- (a) No tax payable under this Act
- (b) Balance amount of tax payable on such import of services

Ans. (b) Balance amount of tax payable on such import of services

Statutory provisions

22. Power to make rules

- (1) *The Government may, on the recommendations of the Council, by notification, make rules for carrying out the provisions of this Act.*
- (2) *Without prejudice to the generality of the provisions of sub-section (1), the Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.*
- (3) *The power to make rules conferred by this section shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the date on which the provisions of this Act come into force.*
- (4) *Any rules made under sub-section (1) may provide that a contravention thereof shall be liable to a penalty not exceeding ten thousand rupees.*

22.1. Introduction

- (i) It provides power to the Central Government to make Rules for the purposes of IGST Act upon recommendations by the GST Council.

22.2 Analysis

- (i) Power to make rules by the Central Government is discussed hereunder:
 - The Central Government may make rules for carrying out the purposes of this Act, by notification on the recommendations of the Council.
 - The Government may make rules for all or any of the matters which by this Act are required to be, or may be, prescribed or in respect of which provisions are to be or may be made by rules.
 - The power to make rules shall include the power to give retrospective effect to the rules or any of them from a date not earlier than the appointed day.
 - Any rules made may provide for penalty upto Rs.10,000 for contravention thereof.
 - “Council” would mean the Goods and Services Tax Council established under Article 279A of the Constitution.

22.3 Comparative review

Under IGST Act	Corresponding Section under erstwhile Central Sales Tax Act, 1956
Section 22 of IGST Act which deals with powers of Central Government to make rules	Section 13 authorizes Central Government to make rules. However, specific scenarios for making rules have been specified like manner of application for registration, form of declaration or certificate.

22.4 FAQs

Q1. Who is given the power to make rules under IGST Act?

Ans. The Central Government may, by notification, make rules for carrying out the purposes of this Act on the recommendation of the Council.

22.5 MCQs

Q1. Under section 22, the Central Government has power to make rules on recommendation of whom of the following?

- (a) Ministry of Finance
- (b) GST Council
- (c) CBEC
- (d) None of the above

Ans. (b) GST Council

Statutory provisions**23. Power to make regulations**

The Board may, by notification, make regulations consistent with this Act and the rules made thereunder to carry out the provisions of this Act.

23.1. Introduction

This provision refers to the Board's power to make regulations.

23.2. Analysis

To carry out the provisions of the IGST Act, the Board is empowered to make regulations, which would be notified. Such regulations should not be inconsistent with the provisions of the IGST Act and the Rules made thereunder.

Statutory provisions**24. Laying of rules, regulations and notifications**

Every rule made by the Government, every regulation made by the Board and every notification issued by the Government under this Act, shall be laid, as soon as may be, after

it is made or issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or regulation or in the notification, as the case may be, or both Houses agree that the rule or regulation or the notification should not be made, the rule or regulation or notification, as the case may be, shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

24.1. Introduction

This section lays down the general procedure of laying delegated legislations before the Parliament for a prescribed duration.

24.2. Analysis

- (a) The Act permits making of rules by Government, issuance of regulation by Board and issuance of notification by the Government.
- (b) Such rule, regulation and notification, which is a part of delegated legislation is placed before the Parliament.
- (c) It is laid before the Parliament, as soon as may be after it is made or issued, when the Parliament is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions
- (d) Before the expiry of the session or successive sessions both Houses may make suitable modifications and would have effect in such modified form.
- (e) However, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule or regulation or notification, as the case may be.

24.3. Comparative Review

Similar provisions were there in the erstwhile tax laws as well.

Statutory provisions

25 Removal of Difficulties

- (1) *If any difficulty arises in giving effect to any provision of this Act, the Government may, on the recommendations of the Council, by a general or a special order published in the Official Gazette, make such provisions not inconsistent with the provisions of this Act or the rules or regulations made thereunder, as may be necessary or expedient for the purpose of removing the said difficulty:*

Provided that no such order shall be made after the expiry of a period of three years from the date of commencement of this Act.

(2) *Every order made under this section shall be laid, as soon as may be, after it is made, before each House of Parliament.*

25.1. Introduction

The responsibility to implement the legislatures' will is of the appropriate Government. In doing this, the Act empowers the appropriate Government with the necessary power to remove any difficulty that may arise.

25.2. Analysis

- (i) If the Government identifies that there is a difficulty in implementation of any provision of the GST Legislation, it has powers to issue a general or special order, to carry out anything to remove such difficulty.
- (ii) Such activity of the Government must be consistent with the provisions of the Act and should be necessary or expedient.
- (iii) Maximum time limit for passing such order shall be 3 years from the date of effect of the IGST Act.

25.3. Comparative review

The above provisions were present in all the tax legislations, to ensure that any practical difficulties in implementation can be addressed.

25.4. Related provisions of the Statute:

This is an independent section and would be applicable for implementation of the GST law.

25.5. FAQs

- Q1. Will the powers include the power to notify the effective date for implementation of particular provisions?
- Ans. Yes, all powers regarding implementation of any provision of the GST law is covered.
- Q2. Will the powers include bringing changes in any provision of law?
- Ans. No, the Government has power only to decide on the practical implementation of law. But it cannot amend the Legislation through this section.
- Q3. What is the maximum time limit for exercising the powers under Section 25?
- Ans. The maximum time limit is 3 years from the date of effect of IGST Act.
- Q4. Whether the reasons be mentioned in the order?
- Ans. The order is issued only when there is a necessity or expediency for it. Specific reasons may not be mentioned in the order.

25.6. MCQs

Q1. Whether prior approval of the Parliament is necessary?

(a) Yes

(b) No

Ans. (b) No

Q2. What is the maximum period for exercising this power?

(a) 4 years

(b) 3 years

(c) 2 years

(d) 1 year

Ans. (b) 3 years