

THE INTEGRATED GOODS AND SERVICES 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 were:

- (i) The levy was non-vatable i.e., the credit of CST was not available as a set-off in the hands of the purchaser.
- (ii) CST directly got 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 were 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 services 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 per cent);
- (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 Services 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 1

Preliminary

1. **Short title, extent and commencement**
2. **Definitions**

STATUTORY PROVISIONS

1. **Short title, extent and commencement**
 - (1) *This Act may be called the Integrated Goods and Services Tax Act, 2017.*
 - (2) *It shall extend to the whole of India*
 - (3) *It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:*

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.

1. *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.*
2. *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.*
3. *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.*

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

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-eight (28) States and eight (8) 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 (28); (ii) Union Territories with Legislature (3); 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 dt. 28.06.2017* was issued to make other provisions of the IGST Act applicable w.e.f. 1st July. Effectively, all operational 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 per cent. 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* specified 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 tax 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;

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 involve 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) sections 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.
- 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 is really true, then students of this new law need to learn the “two routes” for 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 alone is 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 ¹[or in Indian rupees wherever permitted by the Reserve Bank of India]; 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;

With respect to the conditions specified in section 2(6)(v), *Circular No.161/17/2021-GST dt. 20th September 2021* has clarified that "a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under Companies Act, are separate persons under CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "merely establishments of a distinct person in accordance with Explanation 1 in section 8". Supplies between such companies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under sub-section (6) of section 2 of IGST Act.

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

Relevant Provisions of the Statute

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(15)	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 the definition of export of goods. It is for this reason that there is need to 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 should be 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 the 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:

<i>Situation</i>	<i>Location of one establishment</i>	<i>Location of the other establishment</i>
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.

Amendment made by IGST (Amendment) Act, 2018- Effective from 01.02.2019

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" were inserted. This amendment was 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;

Relevant Provisions of the Statute

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, before the Tamil Nadu Advance Ruling Authority in the case of *M/s Takko Holding GMBH (2018-TIOL-216-AAR-GST)* the key issue 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 the Applicant was neither a ‘related person’ nor ‘distinct person’ but was acting only as an extension of the German Office. The authorities also noted that the Applicant was 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, consider what would be the treatment of Head Office in one country and its Permanent Establishment (Article 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. Also refer to the definition in *para 2(zfa) in Notification No. 12/2017-CT(R) dated 28 Jun 2017*. There, 90 per cent control is prescribed by way of relaxation to the extent of 10 per cent .

Government Entity would not only vest plenary control and authority with the Government but also its entire ‘liquidation estate’ (as understood in 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 different. 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;

Relevant Provisions of the Statute

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;

Relevant Provisions of the Statute

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. Refer entry 10(a) to Notification No. 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 per cent . 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, the phrase 'or any other person' is appended with 'by whatever name called' such that meaning of who 'this person' 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 the 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 [2016-TIOL-08-ARA-ST]* has been differentiated in AAR and *Toshniwal Brothers* and this appears to lay down the correct position of law, at least, for the 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, —
- where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
 - 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;
 - 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
 - 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:

- Services received at a place of business where registration is obtained – Location of such place of business;
- 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;
- Services received at more than one establishment – Location of the establishment most directly concerned with the receipt of the supply;
- 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 section 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 ²[a Panchayat under article 243G or] a municipality under article 243W of the Constitution;

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 per cent 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;

² 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;*

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)	Sections 7(1) and 7(3) of the IGST Act
Import of goods or services	Sections 7(2) and 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/which 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 has been excluded after Jammu and Kashmir Reorganization Act, 2019 with effect from 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

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| <p>3. Appointment of officers</p> <p>4. Authorisation of officers of State tax or Union territory tax as proper officer in certain circumstances</p> |
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STATUTORY PROVISIONS

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| <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> |
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Relevant Provisions of the Statute

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

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. Note that the power of 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

- 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) ³*[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.]*

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

(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

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 per cent . The provisions of this section are comparable to the provisions 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 expressions 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 laws 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 the 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.

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 No. 44/2016-Cus. dated 29th Jul, 2016* has delicensed warehouse facility of EOUs which has also been clarified in detail vide *Circular No. 35/2016-Cus. dated 29 Jul, 2016*;
- *Notification No. 15/2017-Integrated Tax (Rate) dated 30th Jun 17* issued granting exemption from IGST on import of goods by a SEZ and this exemption was immediately rescinded vide *Notification No. 18/2017- Integrated Tax (Rate) dated 5th 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 No. 35/2017-Cus dated 1st 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 supplies 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 the 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 No. 03/01/2018-GST dated 25th May 2018* (superseded Circular No. 46/2017-Cus dated 24th 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 the 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. Thus, 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 an overlap, one makes way for another. 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 No. 50/2017-Cus. dated 30th 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 whom: 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. 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 Schedule 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 section 99 of Finance Act 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 No. 113/32/2019-GST dated 11 Oct 2019).

Rate and value of tax: The rate of tax notified separately, but shall not exceed 40 per cent, 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 have been issued to notify the goods and services respectively where tax has to be paid by the 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 the 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 a 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. Vide *Notification No. 17/2021-IT (R) dt. 18.11.2021*, *Notification No. 14/2017-IT (R) dt. 28.06.2017* has been amended to the effect that services by way of transportation of passengers by an omnibus or any other motor vehicle have also been included therein.
- (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 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.
- (iv) A new clause has been inserted in *Notification No. 14/2017-IT (R) dt. 28.06.2017* to include supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises, within the list of services, the tax on which is payable by the electronic commerce operator. Here, "specified premises" would mean premises providing hotel accommodation service having declared tariff of any unit of accommodation above Rs. 7,500 per unit per day or equivalent.

In cases 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 duty was 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, for instance, while stock transfers were liable to Central Excise duty (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 were 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 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 in Chapter 3 relating to Levy and Collection of taxes under the Central Goods and Services Tax may also be referred.

5.4 Related provisions of the Statute

<i>Statute</i>	<i>Section</i>	<i>Description</i>
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 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 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. Section 5(4) of the IGST Act, 2017 as amended by the IGST (Amendment) Act, 2018 specifies that 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) are payable.

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 the 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.

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 the recommendation from the GST 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.

The 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.

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 be exempt under SGST Act
	Deemed to be 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 0.1per cent , 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 in Chapter 3 relating to Levy and Collection of taxes under the Central Goods and Services 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:

<i>Statute</i>	<i>Section</i>	<i>Description</i>
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

<i>Statute</i>	<i>Section / Rule</i>	<i>Description</i>
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 are 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

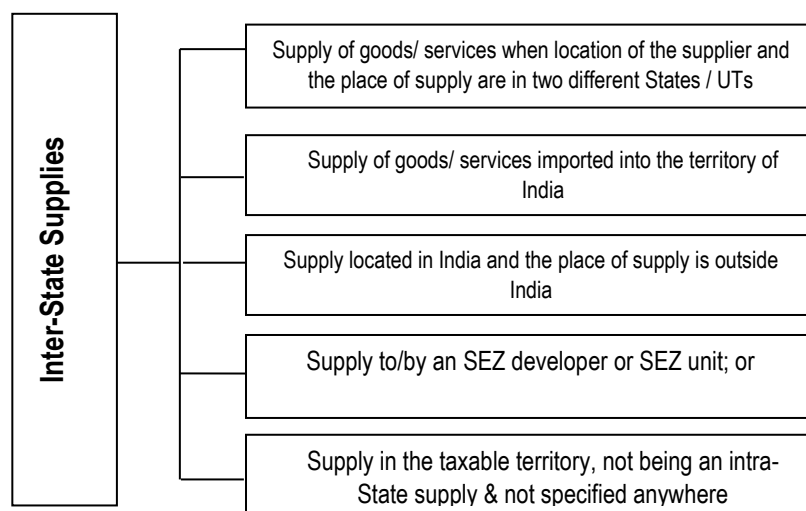
7.1 Introduction

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 of 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 sections 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. The place where the goods are actually present cannot be taken.

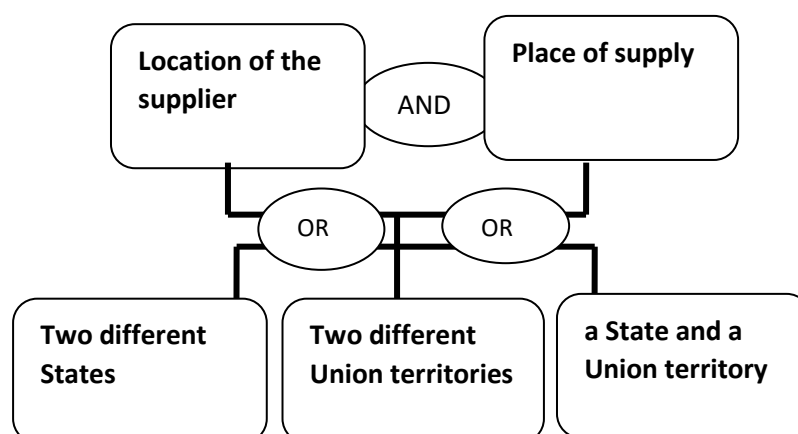
E.g., A person in West Bengal is instructing his supplier in Delhi to supply the goods directly to his customer in Maharashtra while the goods are in transit. For the second leg of the transaction i.e., the supply between the person in West Bengal and the one in Maharashtra, the location of goods may 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.

- (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. 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 the goods are supplied

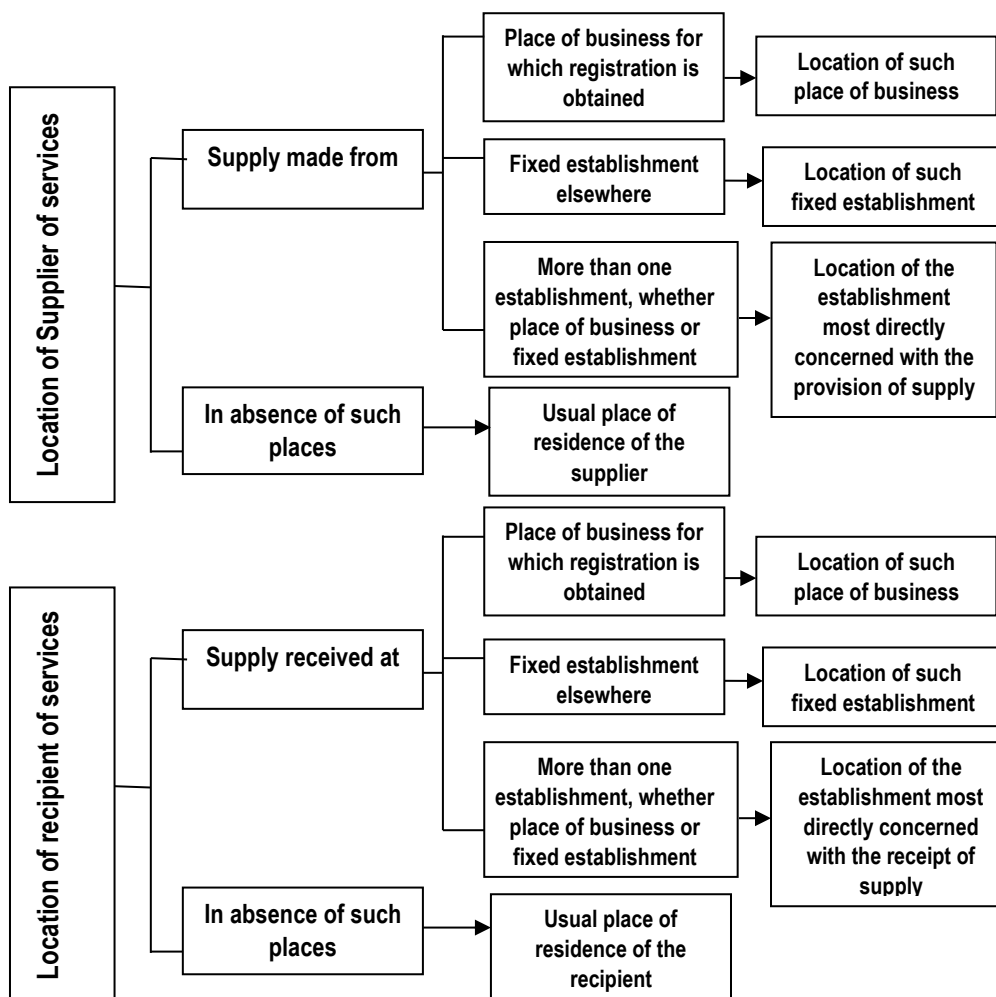
by the Nasik company to a company in Pune; this supply continues to be in the course of inter-State trade or commerce. Even though the supplier is in Nasik and the recipient is in Pune, since the goods have not yet crossed the customs frontiers of India at the time of supply, this supply comes within 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 the 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 the recipient of Pune is high sea sale transaction and is not subject to levy of IGST. When the 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.

Where the location of supplier of services and the place of supply of services are in two different States or UTs or either, such a 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 page. 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.

Special category of inter-State supplies

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. 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

Section 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

(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, the implication of this provision is also that supply by SEZ's *inter se* from 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~~ 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.

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

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 transactions 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 casual 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 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 para 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 inter-State supplies, 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.

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 which may be referred. Supply involving goods imported into India has also been discussed and the same may be referred. For examples, regarding supplies to tourists, 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 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. Refer to the 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 sections 25(4) and 25(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;

Section 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;*

- establishment in a State or UT and any other establishment (registered separately) in the same State or UT.

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'.

Under 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

<i>Location of Supplier</i>	<i>Place of Supply</i>	<i>Whether inter-State/ intra-State</i>
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 the 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.

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

<i>Statute</i>	<i>Section / Rule</i>	<i>Description</i>
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 as the '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. Note that the statute uses the expression 'deemed to be' which would supply an artificial meaning. Also, this provision does not seek to violate the 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 sections 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 to 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 duty was on ‘manufacture of goods’, VAT/ CST was on ‘sale of goods’ and service tax was on ‘provision of service’. Unlike different incidences, under the GST law, it is ‘supply’ which would be the taxable event. Under the erstwhile law, for instance while stock transfers are liable to central excise duty (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 were made without any consideration (monetary/ otherwise).

Under the erstwhile laws, there were 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 been continued under 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 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 5

Place of Supply of Goods or Services or Both

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| <p>10. Place of supply of goods other than supply of goods imported into, or exported from India</p> <p>11. Place of supply of goods imported into, or exported from India</p> <p>12. Place of supply of services where location of supplier and recipient is in India</p> <p>13. Place of supply of services where location of supplier or location of recipient is outside India</p> <p>14. Special provision for payment of tax by a supplier of online information and database access or retrieval services</p> |
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STATUTORY PROVISIONS

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| <p>10. Place of supply of goods, other than supply of goods imported into, or exported from India</p> <p>(1) <i>The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under, —</i></p> <p>(a) <i>where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;</i></p> <p>(b) <i>where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;</i></p> <p>(c) <i>where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;</i></p> <p>(d) <i>where the goods are assembled, or installed at site, the place of supply shall be the place of such installation or assembly;</i></p> <p>(e) <i>where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.</i></p> |
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(2) *Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed.*

Related Provisions of the Statute

<i>Statute</i>	<i>Section / Rule</i>	<i>Description</i>
CGST	Section 2(56)	Definition of India
CGST	Section 2(93)	Definition of Recipient
CGST	Section 9	Levy and collection of tax
IGST	Section 2(5)	Definition of export of goods
IGST	Section 2(10)	Definition of import of goods
IGST	Section 5	Levy and collection of tax
IGST	Section 7	Meaning of inter-State supplies
IGST	Section 8	Meaning of intra-State supplies
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

10.1 Introduction

Place of supply is important to determine the kind of tax that is to be charged. When the location of supplier and the place of supply are in two different States, then it will be an inter-State supply and IGST would be chargeable. And when they are in the same State, then it will be an intra-State supply and CGST/ SGST would be chargeable. 'Place of supply' is not a phrase of common understanding, it is a legal term and as in the cases of all legal terms, their common understanding must not be applied but the meaning assigned to them in the law must be followed. Place of supply, similar to time of supply, is that which the legislature has appointed.

Place of supply determines the State or Union Territory to which the SGST portion of the revenue accrues.

The importance of place of supply (POS) is underlined based on the questions as under:

1. Whether one has to charge IGST or CGST+SGST/UTGST?
2. Whether the recipient of goods or services would be able to claim ITC?
3. Whether there is any liability on services received from outside India (import of services)?
4. Whether the supply is export of services and zero rated?
5. Which State would be receiving the revenue from tax charged on any taxable supply?

GST is understood as a 'destination-based consumption tax' but there is no provision that declares this fact. This missing declaration is more than adequately supplied by the principle being embodied in the provisions of 'place of supply'. It is here that we find that the destination principle of GST is captured in most of the cases. However, in certain cases, they have deviated from the destination-based principles by declaring place of supply as 'a state other than the destination state'.

10.2 Analysis

(a) *Place of Supply – Supplies within India*

Place of supply of goods, where the supplier and the recipient are both located within India, will be determined in accordance with section 10 of the IGST Act. The phrase 'location of supplier of goods' has not been defined in the IGST Act and this is deliberate due to the reason that location of the supplier of goods can be easily tracked, whereas location of the supplier of services has been defined under section 2(15) of the IGST Act. Two very important phrases are relevant here, namely:

- Location of supplier – the word 'location' in this phrase refers to the site or premises (geographical point) where the supplier is situated with the goods in his control ready to be supplied or in other words, it is the physical point where the goods are situated under the control of the person wherever incorporated or registered, ready to be supplied. The concept of the location of supplier and its exceptions have been discussed in 'Chapter 4 – Determination of Nature of supply'.
- Place of supply of goods – this is a legal phrase which the section decides to be the site or premises (geographical point) as its 'place of supply'.

Place of supply in each case is discussed below:

- (a) ***Where 'supply involves movement'***: The place of supply will be the place where the goods are located at the time at which the movement terminates for delivery to the recipient.
- ✓ The location of the goods is a question of fact to be ascertained by observing the journey that the goods supplied make from their origin from supplier and terminating with recipient.
 - ✓ This movement, however, can be by the supplier or by the recipient after having disclosed the destination of their movement or journey.
 - ✓ Movement 'terminates for delivery' requires a brief understanding about the manner of completing the delivery. It is easy to determine in a contract for supply where it records this 'choice' of the recipient regarding the mode and time of delivery. The supplier is always duty-bound to deliver in exactly the same way 'manner and timing' which the recipient dictates. In fact, the supplier continues to be obligated until delivery is completed in the way it is stated by the recipient. In other words, delivery is not complete if there is any deviation in either the manner or the timing as

compared to that dictated by the recipient. When the delivery is to the satisfaction of the recipient, then the supplier is released from his obligation. Therefore, the additional question of fact to be determined is the mode and time of delivery dictated by the recipient and whether the same has been complied with to the satisfaction of the recipient.

Illustrations:

Section 10(1) (a): Supply involves movement of goods

<i>Particulars</i>	<i>Supplier's factory from where goods are removed</i>	<i>Termination of movement for delivery</i>	<i>Place of supply</i>	<i>Tax Payable</i>
Movement of goods by the supplier (goods dispatched by supplier)	Orissa	Assam	Assam	IGST payable from Orissa*
<i>Section 10(1)(a) read with section 2(96)(a) of CGST Act</i>	Orissa	Orissa	Orissa	CGST/ SGST payable from Orissa*
Movement of goods by the recipient (goods collected by recipient)	Kerala	Goa	Goa	IGST payable from Kerala*
<i>Section 10(1)(a) read with section 2(96)(b) of CGST Act</i>	Kerala	Kerala	Kerala	CGST/ SGST payable from Kerala*

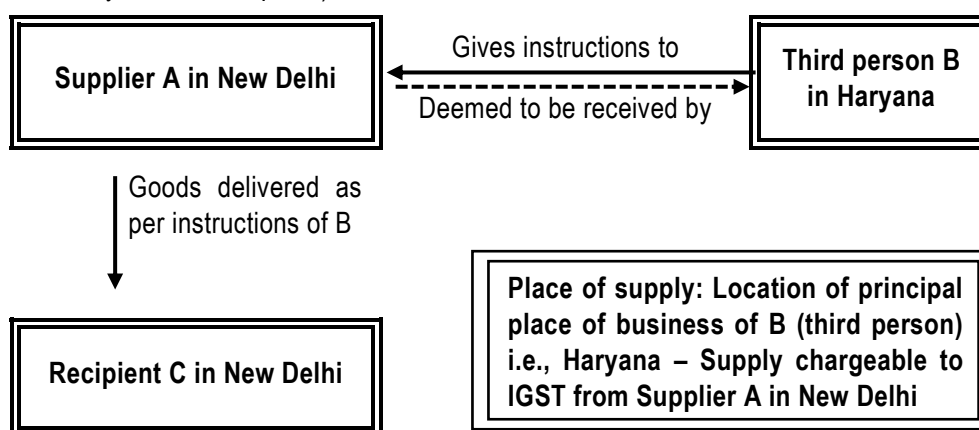
* Readers shall refer the decision of the Hon'ble Supreme Court in the case of *Indian Oil Corporation vs UOI & others* (1981) 1 SCR673. The Hon'ble Supreme Court decided in a case when one State in India (Uttar Pradesh) levied State sales tax and another State (Bihar) levied central sales tax on the same transaction of sale. Hence, the tax payable in the above column may differ based on circumstances, movement of goods, delivery etc. and hence the above answer shall not be taken as final.

(b) **Where goods are delivered by the supplier to the recipient but at the instruction of a third person:** Here, the place of supply will be the principal place of business of such third person and not of the actual recipient.

- ✓ It is important to identify the two supplies involved – by supplier to third person and by third person to the recipient. This provision deals only with the first limb of supply, that is, supply by supplier to third person .
- ✓ The question that arises is – the locus or authority of the third person to issue instructions to the supplier regarding its delivery. Even though the definition in section

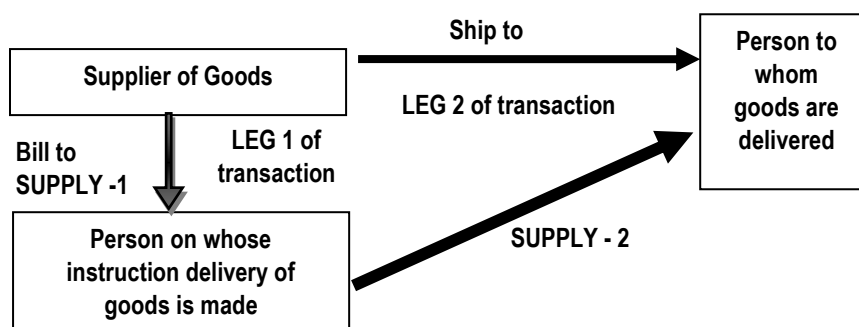
2(93) refers to the recipient as the ‘payer of the consideration’, in this provision, recipient is the one who actually collects the goods. And the third person is the one who enjoys privity with the supplier to be able to direct him to deliver the goods. This is a case of constructive delivery to the third person and therefore, the third person turns out to be the recipient in this case.

Now, the place of supply will not be dependent on whether the movement of goods is from one State to another (if the supplier and recipient are in two different States) but as declared by the section to be dependent on the principal place of business of such third person (i.e., the person providing instructions to the supplier where the delivery should take place).



Illustrations:

Section 10(1)(b): Supply involves movement of goods, and delivered to a person on the instruction of a third person



Leg 1: Supply from the supplier of goods (Seeta) to the person to whom the goods are delivered (Ram) on the instruction of a third person (Lakshman) – *Place of supply shall be the principal place of business of the person on whose instruction goods are delivered to the receiver of goods, being the principal place of business of Lakshman* [Section 10(1)(b)].

Case	Location of Supplier - Seeta	Place of delivery of goods - Office of Ram	Principal place of business of Lakshman who instructed delivery to Ram	Place of supply for Seeta	Type of tax payable by Seeta
1	Ahmedabad	Ahmedabad	Amritsar	Amritsar	IGST at Gujarat
2	Ahmedabad	Amritsar	Amritsar	Amritsar	IGST at Gujarat
3	Ahmedabad	Bangalore	Bangalore	Bangalore	IGST at Gujarat
4	Ahmedabad	Chandigarh	Ahmedabad	Ahmedabad	CGST + Gujarat GST at Gujarat

Leg 2: Deemed supply of goods by the person on whose instruction (Lakshman) the goods were delivered by the original supplier (Seeta) to the receiver of goods (Ram) – *Place of supply shall be the location of the goods at the time of delivery to the recipient* [Section 10(1)(a)].

Case	Location of Supplier – Seeta	Principal place of business of Lakshman who instructed delivery to Ram	Place of delivery of goods - Office of Ram	Place of supply for Lakshman	Type of tax payable by Lakshman
1	Ahmedabad	Amritsar	Ahmedabad	Ahmedabad	IGST at Punjab
2	Ahmedabad	Amritsar	Amritsar	Amritsar	CGST + Punjab GST at Punjab
3	Ahmedabad	Bangalore	Bangalore	Bangalore	CGST + Karnataka GST at Karnataka
4	Ahmedabad	Ahmedabad	Chandigarh	Chandigarh	IGST at Gujarat

(c) **Where the supply does not involve movement of goods:** Here, the place of supply will be the location of the goods at the time of its delivery to the recipient.

- ✓ It is not a case where there is difficulty in movement of the goods, but a case where the supply contemplates that the goods ought not to move and when their delivery to the recipient will stand concluded.
- ✓ For example, a generator that is bolted to the concrete floor in the basement of a

building purchased by the tenant and being left behind at the time of terminating the tenancy, the supply of the generator by the tenant to the landlord for an agreed price is a case of 'supply that does not involve movement of the goods'. In such cases, the place of supply will be where the generator stands bolted to the concrete floor and without requiring any movement. The landlord (recipient) confirms satisfactory completion of delivery.

Another example would be a case where the job worker develops a mould for the production of goods for the principal and retains the mould in his place itself for production of goods. The mould developed by the job worker is sold to the principal but the same is retained by the job worker without causing the movement of mould from job worker's premises to the principal's premises. In this case, the place of supply would be job worker's premises.

- ✓ This provision comes into operation only when its applicability is established based on the facts involved in the supply, that is, they do not involve movement.

Illustrations:

Section 10(1) (c): Supply does not involve movement of goods

<i>Particulars</i>	<i>Location of supplier</i>	<i>Location of recipient</i>	<i>Location of goods at the time of delivery</i>	<i>Place of supply</i>	<i>Tax Payable</i>
Sale of pre-installed DG Set	Delhi	Bhopal	Bhopal	Bhopal	IGST payable at Delhi
Manufacture of moulds by job-worker (supplier), sold to the Principal, but retained in job worker's premises	Tamil Nadu	Kerala	Tamil Nadu	Tamil Nadu	CGST + Tamil Nadu GST payable at Tamil Nadu

- (d) **Where the goods are assembled or installed at site:** The place of supply will be the location of such installation or assembly.
- ✓ It is important to note that assembly or installation as referred to in this clause is not a 'works contract', which has been classified by law as a supply of services (in Paragraph 6(a) of Schedule II to the CGST Act, 2017) –note that the concept of works contract would arise only in respect of services, for which the place of supply is determined under section 12 and section 13 of the IGST Act, 2017.
 - ✓ The supply addressed in this provision refers to only a supply of goods, being a composite supply of goods along with some services, or a mixed supply treated as a supply of goods in terms of sections 2(30), 2(74) and 8 of the CGST Act. In other

words, supply from the place of their origin to the site 'for' assembly or installation is subsumed within this provision and merged with the supply to the recipient by virtue of such assembly or installation.

- ✓ This provision appoints the place of supply based on the final act of assembly or installation. There is no requirement to vivisect the entire composite supply of goods (not being works contracts) that is a supply-cum-installation into a supply-plus-installation. If such vivisection were to be done, then in every instance of supply-cum-installation, the supplier will become a 'casual taxable person' in the State where the assembly or installation is required. In other words, when the goods are located in a State (under the control of the supplier which is not registered in that State) and then makes an outward supply directly from where the goods are located, that location becomes the 'place of business' (being the place of storage of goods) of the supplier, making him a casual taxable person in that State. Since, such vivisection is not required to be done, the condition of casual taxable person would not get attracted. It would remain a composite supply of goods from the location of the supplier.

Illustrations:

Section 10(1) (d): Supply of goods assembled/ installed at site

<i>Particulars</i>	<i>Location of supplier</i>	<i>Registered office of recipient</i>	<i>Installation/ Assembly Site</i>	<i>Place of supply</i>	<i>Tax Payable</i>
Installation of weigh bridge	Delhi	Bhopal	Bhopal	Bhopal	IGST payable from Delhi
Servers supplied and installed at an office	Karnataka	Goa	Karnataka	Karnataka	CGST + Karnataka GST payable from Karnataka
Supply of work-stations	Gujarat	Gujarat	Kerala	Kerala	IGST payable from Gujarat

- (e) **Where goods are supplied on-board a conveyance:** The place of supply will be the location at which the goods are taken on-board.
- ✓ Such transactions also cover two supplies – first being the supply of goods 'to' the operator of the conveyance, and second being the supply of such goods as goods or as services, 'by' the operator to the passenger (or any other person), during the journey 'in' the conveyance.
 - ✓ The place of supply covered under this clause is in respect of the second limb, and particularly for the supply of goods by the operator of the conveyance during its journey to the passengers. The supply of goods being food or beverages on board a

conveyance would be outside the scope of this clause, given that such supply is treated as a composite supply of services in terms of Paragraph 6(b) of Schedule II to the CGST Act, 2017. *Notification No. 13/ 2018-Central Tax (Rate), dated 26-July-2018* states that supply of food in train/ station platform would be taxable @5% *pari materia* with restaurant services. However, clarity is awaited as to whether the place of supply of such services supplied by IRCTC is to be considered as restaurant services [section 10(4)] or goods supplied on board [section 10(1) (e)]. However, supply of goods like sale of merchandise etc. would be covered under this clause.

- ✓ The term 'conveyance' includes vessel, aircraft, train or motor vehicle as defined under section 2(34) of the CGST Act.
- ✓ The place of supply in respect of first limb of supply will continue to be determined by other provisions of this Chapter and only the second limb of supply 'on-board the conveyance', being a supply of goods, will be determined by this clause.

Illustrations:

Section 10(1) (e): Goods supplied on board a conveyance

Particulars	Location of supplier	Loading of goods	Passenger boards at	Place of supply	Tax Payable
Supply of merchandise on a flight	Punjab	Punjab	Delhi	Punjab	CGST + Punjab GST payable from Punjab
Sale of power bank during the journey	Pune	Goa	Hyderabad	Goa	IGST payable from Maharashtra
Sale of sun-glasses on a ship	Bangalore	Chennai	Cochin	Chennai	IGST payable from Karnataka

- (f) **Residuary provision:** Where none of the foregoing provisions are applicable to determine the place of supply in case of a supply of goods, the Central Government may prescribe rules regarding the manner of its determination. Before taking recourse to this residuary provision, it must be demonstrated that the supply is one which cannot be covered by any of the clauses (a) to (e) of section 10(1).

10.3 Issues and concerns

Consider a case of delivery ex-factory. In such a case, a question may arise as to whether the supply involves movement of goods. However, considering that clause (a) specifies that the movement may be by the supplier or the recipient or any other person, it can be inferred that

even a supply with an ex-factory delivery would be considered to be a supply involving movement of goods. The law does not provide the meaning of the phrase “terminates for delivery”. Delivery may be physical, constructive, implied or in any other form. A plain reading of this clause suggests that the delivery is completed ex-factory, and accordingly, ex-factory supplies would always be intra-State supplies (unless the supplier or recipient is an SEZ).

However, on making thorough study of the law, i.e., section 10(1)(a); section 2(2) which defines “address of delivery” as the address of the recipient of goods or services or both indicated on the tax invoice issued by a registered person for delivery of such goods or services or both; section 2(3) defines “address on record” as the address of the recipient as available in the records of the supplier; section 2(93) defines “recipient” of supply of goods or services or both; and section 2(96) defines “removal” in relation to goods, suggest that in case of ex-factory sale or counter-sale, the delivery of goods done by the supplier or taken by the recipient would terminate at the registered place or address on record mentioned in the tax invoice. As such, it can be inferred that if the delivery of goods is taken ex-factory or on counter sale by the recipient such supply would be chargeable to tax based on the address mentioned in the tax invoice.

An alternative view is possible – it may be noted that the delivery for the purpose of the contract law and delivery indicated by this clause may be different. For the purpose of the GST law, a supply is effected on removal of goods for delivery, whereas for contract law, the supply may be understood (in terms of an agreement) to be completed only on acceptance of such goods by the recipient. Similarly, while the risks and rewards pertaining to the goods being supplied may pass at the factory gate, the movement for delivery of such goods may stand terminated only at the premises of the recipient, considering that the movement is undertaken by the recipient for delivery at his own premises. The phrase ‘Where the movement terminates for delivery to the recipient’ should be read very strictly and it only refers to the destination at which the movement finally terminates.

Over-the-counter sales are also confused with supply not involving movement. Whether the movement is over long distances or short distance from one end of the counter-top to other end, since the enjoyment of the goods supplied is on ‘as is where is’, this is also a supply that involve movement. Such sales will come within section 10(1)(a) and be subject to CGST-SGST unless they are effected under section 10(1)(b) when, they will be eligible to levy of IGST where customers from outside the State come and make OTC purchases.

STATUTORY PROVISIONS

11. Place of supply of goods imported into, or exported from India

The place of supply of goods, —

- (a) *imported into India shall be the location of the importer;*
- (b) *exported from India shall be the location outside India.*

Related Provisions of the Statute:

<i>Statute</i>	<i>Section / Rule</i>	<i>Description</i>
CGST	Section 2(56)	Definition of India
IGST	Section 2(5)	Definition of export of goods
IGST	Section 2(10)	Definition of import of goods
IGST	Section 5	Levy and collection of tax
IGST	Section 7	Meaning of inter-State supplies
IGST	Section 10	Place of supply of goods other than 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 16	Zero-rated supplies

11.1 Analysis***Place of Supply – Supplies outside India***

Place of supply of goods where the goods are imported into or exported from India will be determined in accordance with section 11 of the IGST Act. Export of goods is defined in section 2(5) of the IGST Act and import of goods is defined in section 2(10) of the IGST Act. With these definitions, which are with reference to the movement of goods and not the location of the supplier or recipient, in this case, the place of supply will be:

Section 2(5) “export of goods” with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.

Section 2(10) “import of goods” with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

- (a) In the case of import of goods, the location of the importer and
- (b) In the case of export of goods, the location outside India where the goods are exported.

While payment in convertible foreign exchange is for services including transactions involving goods treated as services, the same is not a criterion for determining whether a supply of goods is an export of goods or import of goods. Transactions of merchanting trade – where the goods are procured from one country and are directly dispatched without their entering into India, will not be a supply in the ‘taxable territory’ of India. Such transactions will be included for a financial effect in the books of accounts, without invoking the levy provisions under the GST laws. Another form of international supply commonly known as high sea sales (known as ‘HSS’) is also a transaction that transpires outside the taxable territory and accordingly, does not attract the incidence of GST. Re-import of export goods will however, be liable to GST. It is interesting to note that ‘location of supplier or recipient’ are not relevant in this section.

'HSS' of imported goods is a term used to denote a transaction whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. Since all transactions entered within the territory of India for sale and purchase of goods is taxable under GST, there were doubts on the levy of GST on 'HSS', more so, when such 'HSS' were categorised as inter-State supplies. Accordingly, the Government clarified the position of levy of GST on 'HSS' vide *Circular No. 33/ 2017-Cus dated 01.08.2017* – that IGST on 'HSS' 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. In other words, the buyer of 'HSS' shall be disposing with IGST on such imports and as part of Customs. Further, value addition accruing in each such 'HSS' shall form part of the value on which IGST is collected at the time of clearance i.e., buyer shall pay IGST on the final purchase value as per last high sea transaction envisaging all margins earned by all persons who made 'HSS' of such goods.

The law makers prudently redressed such provision in law and suitably brought in an amendment through insertions in Clause 7 and 8 in Schedule III to consider such activities to be neither supply of goods nor supply of services.

The following Circulars are relevant to note:

Circular No. 46/ 2017-Cus, dated 24.11.2017 regarding in-bond sales makes it explicitly clear that IGST is not applicable until bill of entry for home consumption is filed.

Circular No. 3/ 1/ 2018-IGST, dated 25.05.2018 regarding applicability of integrated goods and services tax (integrated tax) on goods supplied while being deposited in a customs bonded warehouse – wherein it is clarified that integrated tax shall be levied and collected at the time of final clearance of the warehoused goods for home consumption i.e., at the time of filing the ex-bond bill of entry and the value addition accruing at each stage of supply shall form part of the value on which the integrated tax would be payable at the time of clearance of the warehoused goods for home consumption.

CGST (Amendment) Act, 2018 dated 29.08.2018 (effective from 01.02.2019) Schedule III to CGST Act, 2017 to insert following entries, namely-

- Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India;
- Supply of warehoused goods to any person before clearance for home consumption;
- Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption.

Therefore, these transactions will neither be treated as supply of goods nor supply of services.

Note that imports will be liable to IGST in addition to basic customs duty and exports will be zero-rated with benefit of refund of attributable input tax credit, or refund of tax paid on such exports. Refer The Taxation Laws (Amendment) Act, 2017 for the necessary amendments made to Customs Tariff Act, 1975 and Central Excise Act, 1944 to enable imposition of

BCD+IGST on import of goods liable to tax. Refer detailed discussion under section 5 of IGST Act on these implications.

Illustrations: Place of supply of goods imported into, or exported from India

Section 11(a): Import of goods

Case	Location of supplier	Location of goods before supply	Goods supplied to	Location of recipient	Place of supply
1	Thailand	Thailand	Assam	Assam	Assam
2	China	China	Kashmir	Haryana	Haryana
3	Sri Lanka	Sri Lanka	Kerala	Kerala	Kerala
4	Karnataka	Iran	Dubai	Karnataka	Not an import since the goods is not brought into India.

Section 11(b): Export of goods

Case	Location of supplier	Location of goods	Goods supplied to	Location of recipient	Place of supply
1	Assam	Assam	Thailand	Assam	Thailand
2	Tamil Nadu	Kashmir	China	Texas	China
3	Sri Lanka	Kerala	Sri Lanka	Sri Lanka	Sri Lanka
4	Maharashtra	Dubai	Iran	Iran	Not an export since the goods is not moving from India.

Another aspect to be carefully considered here is 'bill to-ship to' arrangements involving cross-border trade. It is not important as the supply is 'billed to' a person outside India but the supply is 'shipped to' a person outside India. In fact, it is not at all relevant where the billing is done 'to' for the transaction to come within the operation of section 11. Reference may be made to the discussion under section 16 regarding 'supply by way of export' which qualifies for zero-rated benefit. It is sufficient to mention here that in the export – goods shipped to a place outside India – would qualify as an export eligible for zero rated benefit for the second leg of transaction. Exports, therefore, are always determined based on their 'ship to' location being a place outside India. Similarly, import of goods also are determined based on the 'ship to' location being the place within India with a journey or originating outside India. However, with the *proviso* to section 5(1) imposing GST - not under the IGST Act but under the Customs Tariff Act, as soon as the goods supplied qualify as import of goods under section 11, they attract the incidence of additional customs duty equivalent to IGST. It is important to note the similarity in the definition of import of goods and export of goods and the dissimilarity in the treatment of GST in these cases.

STATUTORY PROVISIONS**12. Place of supply of services where location of supplier and recipient is in India**

(1) *The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in India.*

(2) *The place of supply of services, except the services specified in sub-sections (3) to (14)-*

(a) *made to a registered person shall be the location of such person;*

(b) *made to any person other than a registered person shall be, —*

(i) *the location of the recipient where the address on record exists; and*

(ii) *the location of the supplier of services in other cases.*

(3) *The place of supply of services, —*

(a) *directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or*

(b) *by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel; or*

(c) *by way of accommodation in any immovable property for organizing any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or*

(d) *any services ancillary to the services referred to in clauses (a), (b) and (c),*

shall be the location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located:

Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient.

Explanation. —Where the immovable property or boat or vessel is located in more than one State or Union territory, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

- (4) *The place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed.*
- (5) *The place of supply of services in relation to training and performance appraisal to, —*
- (a) *a registered person, shall be the location of such person;*
 - (b) *a person other than a registered person, shall be the location where the services are actually performed.*
- (6) *The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.*
- (7) *The place of supply of services provided by way of, —*
- (a) *organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; or*
 - (b) *services ancillary to organization of any of the events or services referred to in clause (a), or assigning of sponsorship to such events, —*
 - (i) *to a registered person, shall be the location of such person;*
 - (ii) *to a person other than a registered person, shall be the place where the event is actually held and if the event is held outside India, the place of supply shall be the location of the recipient.*
- Explanation.—Where the event is held in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.*
- (8) *The place of supply of services by way of transportation of goods, including by mail or courier to, —*
- (a) *a registered person, shall be the location of such person;*
 - (b) *a person other than a registered person, shall be the location at which such goods are handed over for their transportation.*
- ⁵*[Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods]*

⁵ Inserted vide *The Integrated Goods and Services Tax (Amendment) Act, 2018* w.e.f. 01.02.2019

- (9) *The place of supply of passenger transportation service to, —*
- (a) *a registered person, shall be the location of such person;*
 - (b) *a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey:*

Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of sub-section (2).

Explanation.—For the purposes of this sub-section, the return journey shall be treated as a separate journey, even if the right to passage for onward and return journey is issued at the same time.

- (10) *The place of supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.*
- (11) *The place of supply of tele-communication services including data transfer, broadcasting, cable and direct to home television services to any person shall, —*
- (a) *in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;*
 - (b) *in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on the record of the supplier of services;*
 - (c) *in cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means, —*
 - (i) *through a selling agent or a re-seller or a distributor of subscriber identity module card or re-charge voucher, be the address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply; or*
 - (ii) *by any person to the final subscriber, be the location where such pre-payment is received or such vouchers are sold;*
 - (d) *in other cases, be the address of the recipient as per the records of the supplier of services and where such address is not available, the place of supply shall be location of the supplier of services:*

Provided that where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services:

Provided further that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on the record of the supplier of services shall be the place of supply of such services.

Explanation.—Where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of services relating to such circuit, the place of supply of such services shall be taken as being in each of the respective States or Union territories in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

- (12) *The place of supply of banking and other financial services, including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:*

Provided that if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.

- (13) *The place of supply of insurance services shall, —*
- (a) *to a registered person, be the location of such person;*
 - (b) *to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.*
- (14) *The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement shall be taken as being in each of such States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the amount attributable to services provided by way of dissemination in the respective States or Union territories as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.*

Extract of the IGST Rules, 2017

3. *The proportion of value attributable to different States or Union territories, in the case of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority, under sub-section (14) of section 12 of the Integrated Goods and Services Tax Act, 2017, in the absence of any contract between the supplier of service and recipient of services, shall be determined in the following manner namely:—*

- (a) *In the case of newspapers and publications, the amount payable for publishing an advertisement in all the editions of a newspaper or publication, which are published in*

a State or Union territory, as the case may be, is the value of advertisement service attributable to the dissemination in such State or Union territory.

Illustration: ABC is a government agency which deals with the all the advertisement and publicity of the Government. It has various wings dealing with various types of publicity. In furtherance thereof, it issues release orders to various agencies and entities. These agencies and entities thereafter provide the service and then issue invoices to ABC indicating the amount to be paid by them. ABC issues a release order to a newspaper for an advertisement on 'Beti bachao beti padhao', to be published in the newspaper DEF (whose head office is in Delhi) for the editions of Delhi, Pune, Mumbai, Lucknow and Jaipur. The release order will have details of the newspaper like the periodicity, language, size of the advertisement and the amount to be paid to such a newspaper. The place of supply of this service shall be in the Union territory of Delhi, and the States of Maharashtra, Uttar Pradesh and Rajasthan. The amounts payable to the Pune and Mumbai editions would constitute the proportion of value for the State of Maharashtra which is attributable to the dissemination in Maharashtra. Likewise the amount payable to the Delhi, Lucknow and Jaipur editions would constitute the proportion of value attributable to the dissemination in the Union territory of Delhi and States of Uttar Pradesh and Rajasthan respectively. DEF should issue separate State wise and Union territory wise invoices based on the editions.

- (b) in the case of printed material like pamphlets, leaflets, diaries, calendars, T shirts etc, the amount payable for the distribution of a specific number of such material in a particular State or Union territory is the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.

Illustration: As a part of the campaign 'Swachh Bharat', ABC has engaged a company GH for printing of one lakh pamphlets (at a total cost of one lakh rupees) to be distributed in the States of Haryana, Uttar Pradesh and Rajasthan. In such a case, ABC should ascertain the breakup of the pamphlets to be distributed in each of the three States i.e., Haryana, Uttar Pradesh and Rajasthan, from the Ministry or department concerned at the time of giving the print order. Let us assume that this breakup is twenty thousand, fifty thousand and thirty thousand respectively. This breakup should be indicated in the print order. The place of supply of this service is in Haryana, Uttar Pradesh and Rajasthan. The ratio of this breakup i.e., 2:5:3 will form the basis of value attributable to the dissemination in each of the three States. Separate invoices will have to be issued State wise by GH to ABC indicating the value pertaining to that State i.e., twenty thousand rupees-Haryana, fifty thousand rupees-Uttar Pradesh and thirty thousand rupees-Rajasthan.

- (c) (i) in the case of hoardings other than those on trains, the amount payable for the hoardings located in each State or Union territory, as the case may be, is the value of advertisement service attributable to the dissemination in each such State or Union territory, as the case may be.

Illustration: ABC as part of the campaign 'Saakshar Bharat' has engaged a firm IJ for putting up hoardings near the Airports in the four metros i.e., Delhi, Mumbai, Chennai and Kolkata. The release order issued by ABC to IJ will have the city wise, location wise breakup of the amount payable for such hoardings. The place of supply of this service is in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal. In such a case, the amount actually paid to IJ for the hoardings in each of the four metros will constitute the value attributable to the dissemination in the Union territory of Delhi and the States of Maharashtra, Tamil Nadu and West Bengal respectively. Separate invoices will have to be issued State wise and Union territory wise by IJ to ABC indicating the value pertaining to that State or Union territory.

(ii) in the case of advertisements placed on trains, the breakup, calculated on the basis of the ratio of the length of the railway track in each State for that train, of the amount payable for such advertisements is the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.

Illustration: ABC places an order on KL for advertisements to be placed on a train with regard to the "Janani Suraksha Yojana". The length of a track in a State will vary from train to train. Thus, for advertisements to be placed on the Hazrat Nizamuddin Vasco Da Gama Goa Express which runs through Delhi, Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa, KL may ascertain the total length of the track from Hazrat Nizamuddin to Vasco Da Gama as well as the length of the track in each of these States and Union territory from the website www.indianrail.gov.in. The place of supply of this service is in the Union territory of Delhi and States of Haryana, Uttar Pradesh, Madhya Pradesh, Maharashtra, Karnataka and Goa. The value of the supply in each of these States and Union territory attributable to the dissemination in these States will be in the ratio of the length of the track in each of these States and Union territory. If this ratio works out to say 0.5:0.5: 2:2 :3:3:1 , and the amount to be paid to KL is one lakh twenty thousand rupees, then KL will have to calculate the State wise and Union territory wise breakup of the value of the service, which will be in the ratio of the length of the track in each State and Union territory. In the given example the State wise and Union territory wise breakup works out to Delhi (five thousand rupees), Haryana (five thousand rupees), Uttar Pradesh (twenty thousand rupees), Madhya Pradesh (twenty thousand rupees), Maharashtra (thirty thousand rupees), Karnataka (thirty thousand rupees) and Goa (ten thousand rupees). Separate invoices will have to be issued State wise and Union territory wise by KL to ABC indicating the value pertaining to that State or Union territory.

- (d) (i) *in the case of advertisements on the back of utility bills of oil and gas companies etc., the amount payable for the advertisements on bills pertaining to consumers having billing addresses in such States or Union territory as the case may be, is the value of advertisement service attributable to dissemination in such State or Union territory.*

(ii) in the case of advertisements on railway tickets, the breakup, calculated on the basis of the ratio of the number of Railway Stations in each State or Union territory, when applied to the amount payable for such advertisements, shall constitute the value of advertisement service attributable to the dissemination in such State or Union territory, as the case may be.

Illustration: ABC has issued a release order to MN for display of advertisements relating to the "Ujjwala" scheme on the railway tickets that are sold from all the Stations in the States of Madhya Pradesh and Chattisgarh. The place of supply of this service is in Madhya Pradesh and Chattisgarh. The value of advertisement service attributable to these two States will be in the ratio of the number of railway stations in each State as ascertained from the Railways or from the website www.indianrail.gov.in. Let us assume that this ratio is 713:251 and the total bill is rupees nine thousand six hundred and forty. The breakup of the amount between Madhya Pradesh and Chattisgarh in this ratio of 713:251 works out to seven thousand one hundred and thirty rupees and two thousand five hundred and ten rupees respectively. Separate invoices will have to be issued State wise by MN to ABC indicating the value pertaining to that State.

(e) in the case of advertisements over radio stations the amount payable to such radio station, which by virtue of its name is part of a State or Union territory, as the case may be, is the value of advertisement service attributable to dissemination in such State or Union territory, as the case may be.

Illustration: For an advertisement on 'Pradhan Mantri Ujjwala Yojana', to be broadcasted on a FM radio station OP, for the radio stations of OP Kolkata, OP Bhubaneswar, OP Patna, OP Ranchi and OP Delhi, the release order issued by ABC will show the breakup of the amount which is to be paid to each of these radio stations. The place of supply of this service is in West Bengal, Odisha, Bihar, Jharkhand and Delhi. The place of supply of OP Delhi is in Delhi even though the studio may be physically located in another State. Separate invoices will have to be issued State wise and Union territory wise by MN to ABC based on the value pertaining to each State or Union territory.

(f) in the case of advertisement on television channels, the amount attributable to the value of advertisement service disseminated in a State shall be calculated on the basis of the viewership of such channel in such State, which in turn, shall be calculated in the following manner, namely:—

(i) the channel viewership figures for that channel for a State or Union territory shall be taken from the figures published in this regard by the Broadcast Audience Research Council;

(ii) the figures published for the last week of a given quarter shall be used for calculating viewership for the succeeding quarter and at the beginning, the figures for the quarter 1st July, 2017 to 30th September, 2017 shall be used for the succeeding quarter 1st October, 2017 to 31st December, 2017;

- (iii) where such channel viewership figures relate to a region comprising of more than one State or Union territory, the viewership figures for a State or Union territory of that region, shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest Census, to such viewership figures;
- (iv) the ratio of the viewership figures for each State or Union territory as so calculated, when applied to the amount payable for that service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

Illustration: ABC issues a release order with QR channel for telecasting an advertisement relating to the “Pradhan Mantri Kaushal Vikas Yojana” in the month of November, 2017. In the first phase, this will be telecasted in the Union territory of Delhi, States of Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. The place of supply of this service is in Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand. In order to calculate the value of supply attributable to Delhi, Uttar Pradesh, Uttarakhand, Bihar and Jharkhand, QR has to proceed as under—

- I. QR will ascertain the viewership figures for their channel in the last week of September, 2017 from the Broadcast Audience Research Council. Let us assume it is one lakh for Delhi and two lakhs for the region comprising of Uttar Pradesh and Uttarakhand and one lakh for the region comprising of Bihar and Jharkhand;
- II. since the Broadcast Audience Research Council clubs Uttar Pradesh and Uttarakhand into one region and Bihar and Jharkhand into another region, QR will ascertain the population figures for Uttar Pradesh, Uttarakhand, Bihar and Jharkhand from the latest census;
- III. by applying the ratio of the populations of Uttar Pradesh and Uttarakhand, as so ascertained, to the Broadcast Audience Research Council viewership figures for their channel for this region, the viewership figures for Uttar Pradesh and Uttarakhand and consequently the ratio of these viewership figures can be calculated. Let us assume that the ratio of the populations of Uttar Pradesh and Uttarakhand works out to 9: 1. When this ratio is applied to the viewership figures of two lakhs for this region, the viewership figures for Uttar Pradesh and Uttarakhand work out to one lakh eighty thousand and twenty thousand respectively;
- IV. in a similar manner the breakup of the viewership figures for Bihar and Jharkhand can be calculated. Let us assume that the ratio of populations is 4:1 and when this is applied to the viewership figure of one lakh for this region, the viewership figure for Bihar and Jharkhand works out to eighty thousand and twenty thousand respectively;
- V. the viewership figure for each State works out to Delhi (one lakh), Uttar Pradesh (one lakh eighty thousand), Uttarakhand (twenty thousand), Bihar (eighty thousand)

and Jharkhand (twenty thousand). The ratio is thus 10:18:2:8:2 or 5:9:1:4:1 (simplification).

VI. this ratio has to be applied when indicating the breakup of the amount pertaining to each State. Thus, if the total amount payable to QR by ABC is twenty lakh rupees, the State wise breakup is five lakh rupees (Delhi), nine lakh rupees (Uttar Pradesh) one lakh rupees (Uttarakhand), four lakh rupees (Bihar) and one lakh rupees (Jharkhand). Separate invoices will have to be issued State wise and Union territory wise by QR to ABC indicating the value pertaining to that State or Union territory.

- (g) in the case of advertisements at cinema halls the amount payable to a cinema hall or screens in a multiplex, in a State or Union territory, as the case may be, is the value of advertisement service attributable to dissemination in such State or Union territory, as the case may be.

Illustration: ABC commissions ST for an advertisement on 'Pradhan Mantri Awas Yojana' to be displayed in the cinema halls in Chennai and Hyderabad. The place of supply of this service is in the States of Tamil Nadu and Telangana. The amount actually paid to the cinema hall or screens in a multiplex, in Tamil Nadu and Telangana as the case may be, is the value of advertisement service in Tamil Nadu and Telangana respectively. Separate invoices will have to be issued State wise and Union territory wise by ST to ABC indicating the value pertaining to that State.

- (h) in the case of advertisements over internet, the service shall be deemed to have been provided all over India and the amount attributable to the value of advertisement service disseminated in a State or Union territory shall be calculated on the basis of the internet subscribers in such State or Union territory, which in turn, shall be calculated in the following manner, namely: —

- (i) the internet subscriber figures for a State shall be taken from the figures published in this regard by the Telecom Regulatory Authority of India;
- (ii) the figures published for the last quarter of a given financial year shall be used for calculating the number of internet subscribers for the succeeding financial year and at the beginning, the figures for the last quarter of financial year 2016-2017 shall be used for the succeeding financial year 2017-2018;
- (iii) where such internet subscriber figures relate to a region comprising of more than one State or Union territory, the subscriber figures for a State or Union territory of that region, shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest census, to such subscriber figures;
- (iv) the ratio of the subscriber figures for each State or Union territory as so calculated, when applied to the amount payable for this service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

Illustration: ABC issues a release order to WX for a campaign over internet regarding linking Aadhaar with one's bank account and mobile number. WX runs this campaign

over certain websites. In order to ascertain the State wise breakup of the value of this service which is to be reflected in the invoice issued by WX to ABC, WX has to first refer to the Telecom Regulatory Authority of India figures for quarter ending March, 2017, as indicated on their website www.trai.gov.in. These figures show the service area wise internet subscribers. There are twenty two service areas. Some relate to individual States some to two or more States and some to part of one State and another complete State. Some of these areas are metropolitan areas. In order to calculate the State wise breakup, first the State wise breakup of the number of internet subscribers is arrived at. (In case figures of internet subscribers of one or more States are clubbed, the subscribers in each State is to be arrived at by applying the ratio of the respective populations of these States as per the latest census.). Once the actual number of subscribers for each State has been determined, the second step for WX involves calculating the State wise ratio of internet subscribers. Let us assume that this works out to 8: 1 : 2... and so on for Andhra Pradesh, Arunachal Pradesh, Assam..... and so on. The third step for WX will be to apply these ratios to the total amount payable to WX so as to arrive at the value attributable to each State. Separate invoices will have to be issued State wise and Union territory wise by WX to ABC indicating the value pertaining to that State or Union territory.

- (i) in the case of advertisements through short messaging service the amount attributable to the value of advertisement service disseminated in a State or Union territory shall be calculated on the basis of the telecommunication (herein after referred to as telecom) subscribers in such State or Union territory, which in turn, shall be calculated in the following manner, namely:-
- (a) the number of telecom subscribers in a telecom circle shall be ascertained from the figures published by the Telecom Regulatory Authority of India on its website www.trai.gov.in;
 - (b) the figures published for a given quarter, shall be used for calculating subscribers for the succeeding quarter and at the beginning, the figures for the quarter 1st July, 2017 to 30th September, 2017 shall be used for the succeeding quarter 1st October, 2017 to 31st December, 2017;
 - (c) where such figures relate to a telecom circle comprising of more than one State, or Union territory, the subscriber figures for that State or Union territory shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest census, to such subscriber figures.

Illustration-1: In the case of the telecom circle of Assam, the amount attributed to the telecom circle of Assam is the value of advertisement service in Assam.

Illustration-2: The telecom circle of North East covers the States of Arunachal Pradesh, Meghalaya, Mizoram, Nagaland, Manipur and Tripura. The ratio of populations of each of these States in the latest census will have to be determined and this ratio applied to the total number of subscribers for this telecom circle so

as to arrive at the State wise figures of telecom subscribers. Separate invoices will have to be issued State wise by the service provider to ABC indicating the value pertaining to that State.

Illustration-3: ABC commissions UV to send short messaging service to voters asking them to exercise their franchise in elections to be held in Maharashtra and Goa. The place of supply of this service is in Maharashtra and Goa. The telecom circle of Maharashtra consists of the area of the State of Maharashtra (excluding the areas covered by Mumbai which forms another circle) and the State of Goa. When calculating the number of subscribers pertaining to Maharashtra and Goa, UV has to—

- I. obtain the subscriber figures for Maharashtra circle and Mumbai circle and add them to obtain a combined figure of subscribers;
- II. obtain the figures of the population of Maharashtra and Goa from the latest census and derive the ratio of these two populations;
- III. this ratio will then have to be applied to the combined figure of subscribers so as to arrive at the separate figures of subscribers pertaining to Maharashtra and Goa;
- IV. the ratio of these subscribers when applied to the amount payable for the short messaging service in Maharashtra circle and Mumbai circle, will give breakup of the amount pertaining to Maharashtra and Goa. Separate invoices will have to be issued State wise by UV to ABC indicating the value pertaining to that State.

Illustration-4: The telecom circle of Andhra Pradesh consists of the areas of the States of Andhra Pradesh, Telangana and Yanam, an area of the Union territory of Puducherry. The subscribers attributable to Telangana and Yanam will have to be excluded when calculating the subscribers pertaining to Andhra Pradesh.

- (d) the ratio of the subscriber figures for each State or Union territory as so calculated, when applied to the amount payable for that service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

4. The supply of services attributable to different States or Union territories, under sub section (3) of section 12 of the Integrated Goods and Services Tax Act, 2017 (hereinafter in these rules referred to as the said Act), in the case of-

- (a) services directly in relation to immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or
- (b) lodging accommodation by a hotel, inn, guest house, homestay, club or campsite, by whatever name called, and including a houseboat or any other vessel; or

- (c) accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such function at such property; or
- (d) any services ancillary to the services referred to in clauses (a), (b) and (c), where such immovable property or boat or vessel is located in more than one State or Union territory, shall be taken as being in each of the respective States or Union territories, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case may be, shall be determined in the following manner namely:-
- (i) in case of services provided by way of lodging accommodation by a hotel, inn, guest house, club or campsite, by whatever name called (except cases where such property is a single property located in two or more contiguous States or Union territories or both) and services ancillary to such services, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of nights stayed in such property;
- (ii) in case of all other services in relation to immovable property including services by way of accommodation in any immovable property for organising any marriage or reception etc., and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called where such property is a single property located in two or more contiguous States or Union territories or both, and services ancillary to such services, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the area of the immovable property lying in each State or Union territory;
- (iii) in case of services provided by way of lodging accommodation by a house boat or any other vessel and services ancillary to such services, the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the time spent by the boat or vessel in each such State or Union territory, which shall be determined on the basis of a declaration made to the effect by the service provider.

Illustration 1: A hotel chain X charges a consolidated sum of Rs.30,000/- for stay in its two establishments in Delhi and Agra, where the stay in Delhi is for 2 nights and the stay in Agra is for 1 night. The place of supply in this case is both in the Union territory of Delhi and in the State of Uttar Pradesh and the service shall be deemed to have been provided in the Union territory of Delhi and in the State of Uttar Pradesh in the ratio 2:1 respectively. The value of services provided will thus be apportioned as Rs.20,000/- in the Union territory of Delhi and Rs.10,000/- in the State of Uttar Pradesh.

Illustration 2: There is a piece of land of area 20,000 square feet which is partly in State S1 say 12,000 square feet and partly in State S2, say 8000 square feet. Site preparation work has been entrusted to T. The ratio of land in the two states works out to 12:8 or 3:2 (simplified).

The place of supply is in both S1 and S2. The service shall be deemed to have been provided in the ratio of 12:8 or 3:2 (simplified) in the States S1 and S2 respectively. The value of the service shall be accordingly apportioned between the States.

Illustration 3: *A company C provides the service of 24 hours accommodation in a houseboat, which is situated both in Kerala and Karnataka inasmuch as the guests board the house boat in Kerala and stay there for 22 hours but it also moves into Karnataka for 2 hours (as declared by the service provider). The place of supply of this service is in the States of Kerala and Karnataka. The service shall be deemed to have been provided in the ratio of 22:2 or 11:1 (simplified) in the states of Kerala and Karnataka, respectively. The value of the service shall be accordingly apportioned between the States.*

5. *The supply of services attributable to different States or Union territories, under sub-section (7) of section 12 of the said Act, in the case of-*

- (a) *services provided by way of organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, including supply of services in relation to a conference, fair exhibition, celebration or similar events; or*
- (b) *services ancillary to the organisation of any such events or assigning of sponsorship to such events,*

where the services are supplied to a person other than a registered person, the event is held in India in more than one State or Union territory and a consolidated amount is charged for supply of such services, shall be taken as being in each of the respective States or Union territories, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case may be, shall be determined by application of the generally accepted accounting principles.

Illustration: An event management company E has to organise some promotional events in States S1 and S2 for a recipient R. 3 events are to be organised in S1 and 2 in S2. They charge a consolidated amount of Rs.10,00,000 from R. The place of supply of this service is in both the States S1 and S2. Say the proportion arrived at by the application of generally accepted accounting principles is 3:2. The service shall be deemed to have been provided in the ratio 3:2 in S1 and S2 respectively. The value of services provided will thus be apportioned as Rs. 6,00,000/- in S1 and Rs. 4,00,000/- in S2.

6. *The supply of services attributable to different States or Union territories, under sub section (11) of section 12 of the said Act, in the case of supply of services relating to a leased circuit where the leased circuit is installed in more than one State or Union territory and a consolidated amount is charged for supply of such services, shall be taken as being in each of the respective States or Union territories, and in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined in the following manner, namely:-*

- (a) *The number of points in a circuit shall be determined in the following manner:*

- (i) *in the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points;*
- (ii) *any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point;*
- (b) *the supply of services shall be treated as made in each of the respective States or Union territories, in proportion to the number of points lying in the State or Union territory.*

Illustration 1: A company T installs a leased circuit between the Delhi and Mumbai offices of a company C. The starting point of this circuit is in Delhi and the end point of the circuit is in Mumbai. Hence one point of this circuit is in Delhi and another in Maharashtra. The place of supply of this service is in the Union territory of Delhi and the State of Maharashtra. The service shall be deemed to have been provided in the ratio of 1:1 in the Union territory of Delhi and the State of Maharashtra, respectively.

Illustration 2: A company T installs a leased circuit between the Chennai, Bengaluru and Mysuru offices of a company C. The starting point of this circuit is in Chennai and the end point of the circuit is in Mysuru. The circuit also connects Bengaluru. Hence one point of this circuit is in Tamil Nadu and two points in Karnataka. The place of supply of this service is in the States of Tamil Nadu and Karnataka. The service shall be deemed to have been provided in the ratio of 1:2 in the States of Tamil Nadu and Karnataka, respectively.

Illustration 3: A company T installs a leased circuit between the Kolkata, Patna and Guwahati offices of a company C. There are 3 points in this circuit in Kolkata, Patna and Guwahati. One point each of this circuit is, therefore, in West Bengal, Bihar and Assam. The place of supply of this service is in the States of West Bengal, Bihar and Assam. The service shall be deemed to have been provided in the ratio of 1:1:1 in the States of West Bengal, Bihar and Assam, respectively.

Related Provisions of the Statute

Statute	Section / Rule	Description
CGST	Section 2(2)	Definition of address on record
CGST	Section 2(34)	Definition of conveyance
CGST	Section 2(56)	Definition of India
CGST	Section 2(93)	Definition of recipient
CGST	Section 9	Levy and collection of tax
IGST	Section 2(3)	Definition of continuous journey
IGST	Section 2(6)	Definition of export of services
IGST	Section 2(11)	Definition of import of services
IGST	Section 2(13)	Definition of intermediary

IGST	Section 2(14)	Definition of location of the recipient of services
IGST	Section 2(15)	Definition of location of the supplier of services
IGST	Section 5	Levy and collection of tax
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 goods imported into, or exported from India
IGST	Section 11	Place of supply of goods imported into, or exported from India
IGST	Section 13	Place of supply of services where location of supplier or location of recipient is outside India
IGST	Section 14	Special provision for payment of tax by a supplier of OIDAR services

12.1 Important Definitions

(a) *Location of recipient of services:*

Section 2(14) of the IGST Act, 2017 defines “location of the recipient of services” as:

- (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.

(b) *Location of the supplier of services:*

Section 2(15) of the IGST Act, 2017 defines “location of the supplier of services” as:

- (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

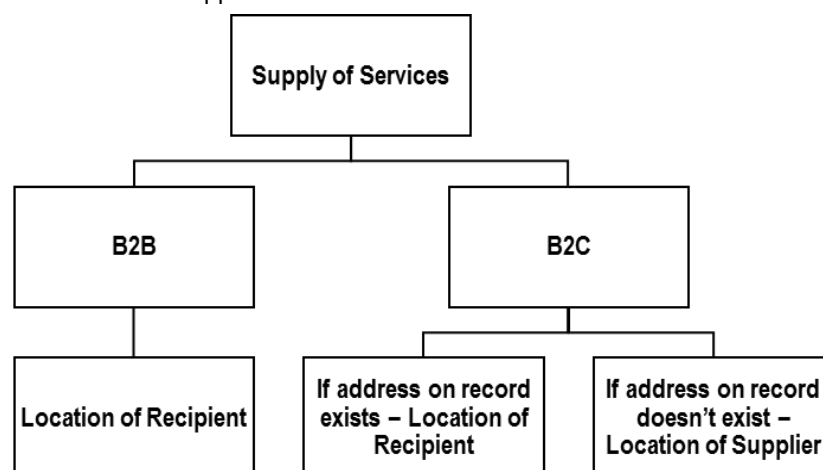
- (d) in absence of such places, the location of the usual place of residence of the supplier;

12.2 Analysis

Place of Supply – Supplies within India

Place of supply (known as POS) of services where both the supplier and recipient are located within India will be determined in accordance with section 12 of the IGST Act.

- (i) The general provision to determine the place of supply in respect of supply of services will be as follows:
- Services supplied to a recipient who is registered, the POS will be the location of such person;
 - Services supplied to a recipient who is not registered, the POS will be the address on record of such person and where such address is not available, it will be the location of the supplier.



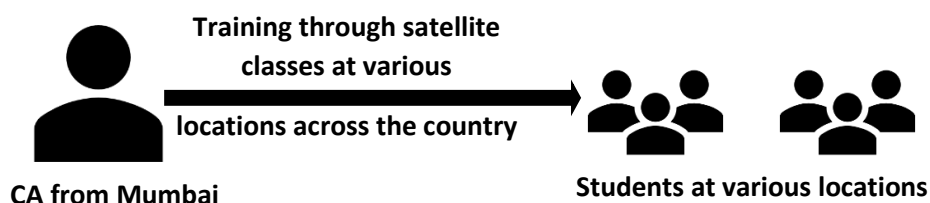
There could be a scenario where multiple POS in the same invoice to a particular customer because of supply of distinct goods and goods, or services and services, or goods and services may get covered. In such a case, the supplier has to issue separate invoices where each invoice will have only one POS. This method is also supported by the fact that Form GSTR-1 (details of outward supply) does not allow one to key in two different POS for the same invoice.

It is crucial to note that under the erstwhile service tax regime, the scheme of centralised registration was available, by virtue of which, the location of the recipient was always construed to be the registered address in the statutory records. However, under the GST law, a separate registration is required to be obtained in every State/ UT from where a

- (c) services of training and performance appraisal supplied to a registered person, the POS will be the location of the recipient. When the recipient is not registered, the place of supply will be the location where services are actually rendered.

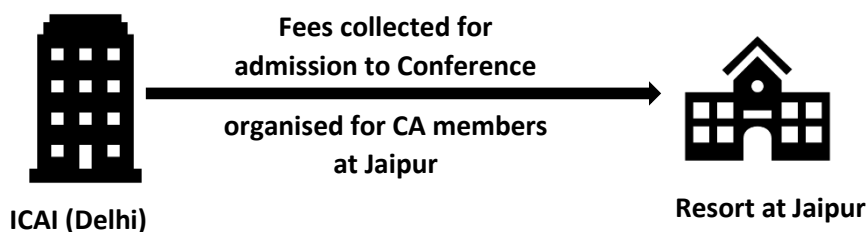
Recipient here being the 'person liable to pay the consideration' is not to be misconstrued to be the 'trainee' or 'person appraised'. E.g.: In case of a corporate training organized by a training institute in Mumbai for a registered corporate client in Bangalore, the consideration is paid by the corporate through the individual participants who would be required to pay a certain delegate fee. Hence, the POS has to be determined on the basis of location of the recipient being the corporate entity and not based on the place where the services are actually performed.

Had the services been provided to unregistered individual participants, the place of supply would have been Mumbai i.e., where the services are actually performed.



POS would be Mumbai as that is the place where service is performed

- (d) Services of admission to a venue, the POS will be the location of the venue. The event that is organized may be cultural, artistic, sporting, scientific, education, entertainment or an amusement park including ancillary services. Services referred to here are only 'admission' and not for organizing the event at the venue. Therefore, event management services would not be covered here but in clause (e) below.



POS would be Jaipur as that is the place where event is actually held.

- (e) services of organizing an event including ancillary services supplied to a registered person, the POS will be the location of the recipient. When the recipient is not registered, the place of supply will be the location of the venue itself.

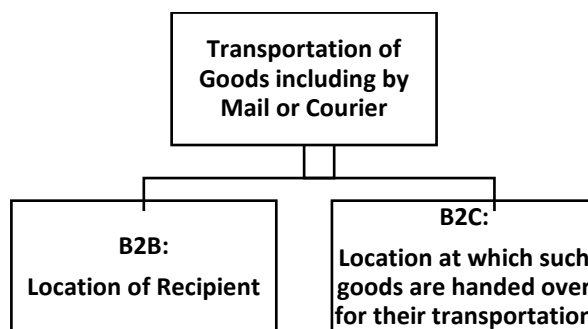
The event that is organized may be cultural, artistic, sporting, scientific, education or entertainment. Services referred to here are 'by way of' organizing the event at the venue. Where the event is organized in a ground or field being an immovable property, the

service of securing the location has, as its place of supply, determined by the foregoing provision but the rest of the services of organizing the event will fall within this provision.

Rule 5 of IGST Rules provides that where services of organizing the event are supplied to unregistered person and the event is held in India in more than one State/ UT, the value of service in such State/ UT shall be determined by application of generally accepted accounting principles.

On a comparison of this provision with the previous provision, the striking difference is that in case of B2B transaction for admission to an event, the POS would be the location of the event whereas services of organizing the event is based on the location of the recipient in case of B2B supplies (i.e., where the recipient is a registered person).

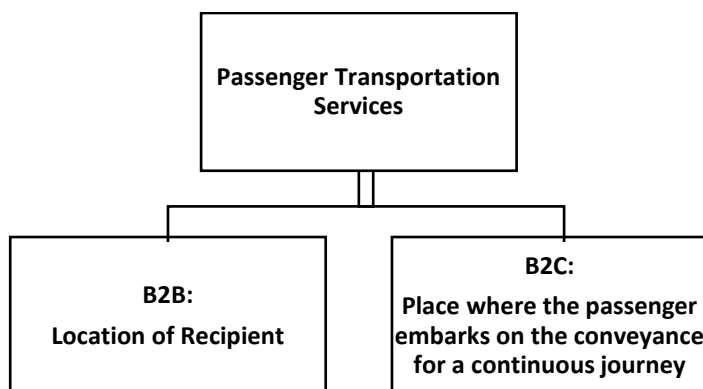
- (f) Services of transportation of goods supplied to a registered person will be the location of the recipient being a registered person. When the recipient is not registered, the place of supply will be the location where goods are handed over for such transportation. Transportation of goods may be by any mode including mail or courier.



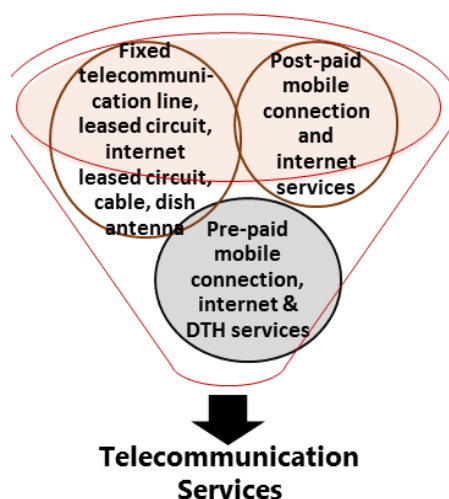
However, vide IGST (Amendment) Act, 2018, dated 29-Aug-2018 (yet to be notified), a proviso was inserted to provide that where the transportation of goods is to a place outside India, the place of supply will be the place of destination of goods. It is to be noted that this is not to be regarded as 'export of services' because the other conditions provided as per the said definition are not satisfied (recipient is within India). This amendment may emerge as a significant area of litigation in situations where the input tax credit is availed by the recipient even though the place of supply is outside India. Recipients who have chosen not to avail such input tax credit may be looking at an increasing cost of GST on their input services of such transportation.

- (g) Services of transportation of passenger, the POS will be the location of the registered recipient (including where an employee of a registered person travels for business). When the recipient is not a registered person, the place of supply will be the location of embarkation. Note that a return journey is regarded as a separate journey (even in case of bookings of round-trips).

Where the point of embarkation is unknown (in cases where the right to passage is given for future use) then the place of supply will be determined under the general clause (i.e., section 12(2) of the IGST Act). This is particularly relevant in case of travel passes enabling multi point travel at the option of the user,



- (h) Services supplied on-board a conveyance, the POS will be the first scheduled point of departure of such conveyance. Irrespective of whether the supplies are B2B or B2C, the POS is determined based on the first scheduled point of departure. Note that by this logic, it is possible that the place of supply is determined to be a place in the route through which it passed/ crossed even before the passenger availing the service embarks the conveyance. The registered recipient receiving any services on board through its employees/ directors would lose the ITC on the said transaction in case the location of the registered recipient and the first schedule point of departure are in two different States.
- (i) Telecommunication services are provided in various forms and the place of supply will depend on the mode of providing the services. Where the services involve an in situ device installed to enable the service, the place of supply will be the location where such device is installed. This device may be a dish antenna, telephone line, etc. Where the services involve portable device, the place of supply will be the billing address if the same is on post-paid basis. Where it is on pre-paid basis, the place of supply will be the location of any intermediary who facilitates the supply or location where payment is received. Where none of the situations provide an appropriate location, then the place of supply will be the address-on-record of the recipient. If address is not available, then the location of supplier will be the place of supply.



Rule 6 of IGST Rules provides that where the leased circuit is installed in more than one State/ UT and a consolidated amount is charged for supply of such services, the value of services in each such State/ UT shall be determined in proportion to the number of points lying in the State/ UT. The number of points in a circuit shall be determined in the following manner:

- (i) in the case of a circuit between two points or places, the starting point or place of the circuit and the end point or place of the circuit will invariably constitute two points;
 - (ii) any intermediate point or place in the circuit will also constitute a point provided that the benefit of the leased circuit is also available at that intermediate point.
- (j) banking and financial services including stock broking services, the POS will be the location of the address-on-record of the recipient. And if address is not available, then the location of supplier will be the place of supply. The services referred in this provision are not services 'by' a banking or financial institution but services 'of' banking and financial services. As such, the service is to be examined and not the service provider. Classification of services to identify the applicability of this provision is an important exercise that is to be undertaken.
- (k) For insurance services supplied to a registered person, the POS will be the location of the recipient. When the recipient is not registered, the place of supply will be the address of location of the recipient of service on record of the supplier of services. In no case, the address of the recipient would not be present on record with the recipient.
- (l) In respect of Advertisement services involving 'dissemination' of the material supplied to the Government or a statutory body, the POS will be the location of such dissemination. Where it is identifiable to a specific State, then that would be the place of supply and where it is disseminated over a number of States, then a rule of proportion or any other reasonable basis is to be applied.

The proportion of value of advertisement services provided to Government, statutory body or local authority shall be determined in the manner laid down in rule 3 of IGST Rules, 2017, as follows-

1. *Advertisements in newspapers and publications:* The amount payable for publishing in all the editions of a newspaper published in a State/ UT shall be the value of advertisement service attributable to such dissemination in each such State/ UT.
2. *Printed material like pamphlets, leaflets, diaries, t-shirts and the like:* Amount payable for the distribution of specified number of such printed material in a State/ UT shall be the value of service attributable to such dissemination in each such State/ UT.
3. *Advertisement on hoardings (other than those on trains):* The amount payable for the hoardings located in a State/ UT shall be the value of service attributable to such dissemination in each such State/ UT.
4. *Advertisements on trains:* Value of advertisement service attributable to each State/ UT shall be calculated in proportion to the length of the railway track in each State/ UT for that train.
5. *Advertisements on the back of utility bills:* Value of advertisement service attributable to each State/ UT shall be the amount payable for the advertisement on the bills pertaining to consumers having billing addresses in such State/ UT.
6. *Advertisements on railway tickets:* Value of advertisement service attributable to each State/ UT shall be calculated in proportion to the number of railway stations in such State/ UT.
7. *Advertisements on radio stations:* Value of advertisement services attributable to each State/ UT shall be the amount payable towards the broadcast made in a State/ UT.
8. *Advertisements on television channels:* Value of advertisement services attributable to each State/ UT in a month shall be calculated proportionately on the basis of number of channel viewership figures published by Broadcast Audience Research Council for the last week of the immediately preceding quarter. Where the channel viewership figures relate to a region comprising of more than one State/ UT, viewership figures for a State/ UT shall be calculated by applying the ratio of populations in those States/ UTs as per the last census.
9. *Advertisements in cinema halls:* Amount payable to cinema halls in a State/ UT, shall be the value of advertisement services attributable to each State/ UT.
10. *Advertisements over the internet:* Value of advertisement services attributable to each State/ UT in a month shall be calculated proportionately on the basis of a number of internet subscriber figures published by TRAI for the last quarter of the immediately preceding financial year. Where the internet subscriber figures relate

to a region comprising of more than one State/ UT, subscriber figures for a State/ UT shall be calculated by applying the ratio of populations in those States/ UTs as per the last census.

11. *Advertisements through SMS*: Value of advertisement services attributable to each State/UT in a month shall be calculated proportionately on the basis of number of telecom subscriber figures published by TRAI for the immediately preceding quarter. Where the telecom subscriber figures relate to a telecom circle comprising of more than one State/ UT, the subscriber figures for a State/ UT shall be calculated by applying the ratio of population in those States/ UTs as per the last census.
- (m) Considering that place of supply has been so specifically covered in the various provisions discussed above, it is to be borne and recollected that identifying the place of supply is for purposes of determining whether it is an inter-State supply or an intra-State supply. After much resistance to let go of the experience from erstwhile tax laws, it would dawn upon each of us to eschew seeking registration in every State where their services constitute a place of supply, but rather rely upon this section to open the doors to choose to effect inter-State supplies from one (or few) State only instead of multi-State registration that may be necessitated under erstwhile tax laws. Another important aspect especially when a recipient is a registered person which comes out on analysis of section 12 is that wherever the POS is based on location of the recipient, the ITC is intact and wherever the POS is not based on location of the recipient but based on some other criterion as discussed above, then there is high probability of losing out on ITC in the hands of a registered person. Eg., Immovable property related services, admission to an event, services on board an aircraft etc.

STATUTORY PROVISIONS

13. Place of supply of services where location of supplier or location of recipient is outside India

- (1) *The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.*
- (2) *The place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:*
- Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services.*
- (3) *The place of supply of the following services shall be the location where the services are actually performed, namely: —*

- (a) *services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:*
- Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:*
- ⁶[Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process.]*
- (b) *services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.*
- (4) *The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.*
- (5) *The place of supply of services supplied by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organization, shall be the place where the event is actually held.*
- (6) *Where any services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location, including a location in the taxable territory, its place of supply shall be the location in the taxable territory.*
- (7) *Where the services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory, the place of supply of such services shall be taken as being in each of the respective States or Union territories and the value of such supplies specific to each State or Union territory shall be in proportion to the value for services separately collected or determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.*

⁶ Substituted vide *The Integrated Goods and Services Tax (Amendment) Act, 2018* w.e.f. 01.02.2019

- (8) *The place of supply of the following services shall be the location of the supplier of services, namely: —*
- (a) *services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;*
 - (b) *intermediary services;*
 - (c) *services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month.*
- Explanation. —For the purposes of this sub-section, the expression, —*
- (a) *“account” means an account bearing interest to the depositor, and includes a non-resident external account and a non-resident ordinary account;*
 - (b) *“banking company” shall have the same meaning as assigned to it under clause (a) of section 45A of the Reserve Bank of India Act, 1934 (2 of 1934);*
 - (c) *“financial institution” shall have the same meaning as assigned to it in clause (c) of section 45-I of the Reserve Bank of India Act, 1934 (2 of 1934);*
 - (d) *“non-banking financial company” means, —*
 - (i) *a financial institution which is a company;*
 - (ii) *a non-banking institution which is a company and which has as its principal business the receiving of deposits, under any scheme or arrangement or in any other manner, or lending in any manner; or*
 - (iii) *such other non-banking institution or class of such institutions, as the Reserve Bank of India may, with the previous approval of the Central Government and by notification in the Official Gazette, specify.*
- (9) *The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.*
- (10) *The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey.*
- (11) *The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.*
- (12) *The place of supply of online information and database access or retrieval services shall be the location of the recipient of services.*
- Explanation.—For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely: —*
- (a) *the location of address presented by the recipient of services through internet is in the taxable territory;*
 - (b) *the credit card or debit card or store value card or charge card or smart card or*

any other card by which the recipient of services settles payment has been issued in the taxable territory;

- (c) the billing address of the recipient of services is in the taxable territory;
- (d) the internet protocol address of the device used by the recipient of services is in the taxable territory;
- (e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;
- (f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;
- (g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory.

(13) In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.

Extract of the IGST Rules, 2017

7. The supply of services attributable to different States or Union territories, under sub-section (7) of section 13 of the said Act, in the case of services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services, or in the case of services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, where the location of the supplier of services or the location of the recipient of services is outside India, and where such services are supplied in more than one State or Union territory, shall be taken as being in each of the respective States or Union territories, and the proportion of value attributable to each such State and Union Territory in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union Territory, as the case maybe, shall be determined in the following manner, namely:-

- (i) in the case of services supplied on the same goods, by equally dividing the value of the service in each of the States and Union territories where the service is performed;
- (ii) in the case of services supplied on different goods, by taking the ratio of the invoice value of goods in each of the States and Union Territories, on which service is performed, as the ratio of the value of the service performed in each State or Union territory;
- (iii) in the case of services supplied to individuals, by applying the generally accepted accounting principles.

Illustration-1: A company C which is located in Kolkata is providing the services of testing of a dredging machine and the testing service on the machine is carried out in Orissa and Andhra Pradesh. The place of supply is in Orissa and Andhra Pradesh and the value of the service in Orissa and Andhra Pradesh will be ascertained by dividing the value of the service equally between these two States.

Illustration-2: A company C which is located in Delhi is providing the service of servicing of two cars belonging to Mr. X. One car is of manufacturer J and is located in Delhi and is serviced by its Delhi workshop. The other car is of manufacturer A and is located in Gurugram and is serviced by its Gurugram workshop. The value of service attributable to the Union Territory of Delhi and the State of Haryana respectively shall be calculated by applying the ratio of the invoice value of car J and the invoice value of car A, to the total value of the service.

Illustration-3: A makeup artist M has to provide make up services to an actor A. A is shooting some scenes in Mumbai and some scenes in Goa. M provides the makeup services in Mumbai and Goa. The services are provided in Maharashtra and Goa and the value of the service in Maharashtra and Goa will be ascertained by applying the generally accepted accounting principles.

8. The proportion of value attributable to different States or Union territories, under sub-section (7) of section 13 of the said Act, in the case of supply of services directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, where the location of the supplier of services or the location of the recipient of services is outside India, and where such services are supplied in more than one State or Union territory, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by applying the provisions of rule 4, mutatis mutandis.

9. The proportion of value attributable to different States or Union territories, under sub-section (7) of section 13 of the said Act, in the case of supply of services by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, where the location of the supplier of services or the location of the recipient of services is outside India, and where such services are provided in more than one State or Union territory, in the absence of any contract or agreement between the supplier of service and recipient of services for separately collecting or determining the value of the services in each such State or Union territory, as the case maybe, shall be determined by applying the provisions of rule 5, mutatis mutandis.

Related Provisions of the Statute:

<i>Statute</i>	<i>Section / Rule</i>	<i>Description</i>
CGST	Section 2(2)	Definition of address on record
CGST	Section 2(34)	Definition of conveyance
CGST	Section 2(56)	Definition of India
CGST	Section 2(93)	Definition of Recipient
CGST	Section 9	Levy and collection of tax
IGST	Section 2(3)	Definition of continuous journey
IGST	Section 2(6)	Definition of export of services
IGST	Section 2(11)	Definition of import of services
IGST	Section 2(13)	Definition of Intermediary
IGST	Section 2(14)	Definition of Location of the recipient of services
IGST	Section 2(15)	Definition of Location of the supplier of services
IGST	Section 2(17)	Definition of OIDAR services
IGST	Section 5	Levy and collection of tax
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 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 location of recipient is in India
IGST	Section 14	Special provision for payment of tax by a supplier of OIDAR services

13.1 Analysis

Place of supply of services where either the supplier or recipient is located outside India will be determined in accordance with section 13 of the IGST Act. In other words, this provision applies for the determination of export of services as well as for import of services.

International supplies involving services are not verifiable similar to goods. GST, in certain cases, treats supplies involving goods as 'supply of services'. In such cases too, this provision will apply for determination of their export and import. Given the definition of export of services and import of services and on comparing them to goods, it will be evident that there is really no comparison. Matters such as location of supplier, location of recipient, currency of compensation, etc., assume importance in relation to services including goods that are treated as supply of services. In this background, we may analyze place of supply of services where either one – supplier or recipient – is located outside India.

Then the place of supply determined by application of this provision may be carried into the definition to determine whether the international supply meets the requirements to be regarded as 'export of services' or 'import of services'. This may be somewhat unnatural but that is the correct approach because location of recipient outside India and payment in foreign currency are tests that the GST law does not appreciate. In this time and age of forex surplus, when there are two enterprises and both are located within India, transacting in foreign currency is not impermissible.

Place of supply of international supplies of services is as follows:

- (i) The general provision for determining the place of supply (POS) is that the POS will be the location of the recipient of the services; whereas, it will be the location of the supplier of services if the location of the recipient cannot be known without employing any extraordinary means. 'Recipient' is defined as the 'person liable to pay consideration' in section 2(93) of the CGST Act.
- (ii) It is important to note that this section only determines the POS. Merely because the POS is determined under this clause, the supply cannot be regarded as an export of service or an import of service.

Section 2(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; and*
- (v) *the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8;*

Section 2(11) "import of service" 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;*

(iii) Specific provisions regarding place of supply that will apply in priority over the general provision will be as follows:

- (a) POS of services that are 'in respect of' goods made available 'by' recipient 'to' supplier or persons representing supplier for performance of those services will be the location where the services are actually performed. It is worthwhile to note here that the goods must be made available only by the recipient and not his representative but whereas person to whom it is made available could be supplier or his representative. It is also noteworthy that the services to which this provision is to apply are not expressly listed here but left to the application of 'made available for performance' test to determine its applicability. For services that are supplied by remotely accessing the goods, the place of supply will be the location of the goods.

However, the said provisions will not apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process. This amendment was made vide *IGST (Amendment) Act, 2018, dated 29-Aug-2018* (effective 01.02.2019)

In cases, where services are supplied at multiple locations, including a location in the taxable territory, POS will be the location in the taxable territory. Further, rule of proportion is to be applied in case the services are carried out in different States.

Rule 7 of IGST Rules provides that the value of services in each such State/ UT shall be determined in the following manner, namely:

- (i) in the case of services supplied on the same goods, by equally dividing the value of the service in each of the States and Union Territories where the service is performed;
- (ii) in the case of services supplied on different goods, by taking the ratio of the invoice value of goods in each of the States and Union Territories, on which service is performed, as the ratio of the value of the service performed in each State or Union Territory;
- (iii) in the case of services supplied to individuals, by applying the generally accepted accounting principles.
- (b) Similar to the provisions of section 12(3), the POS in case of services 'directly in relation to' immovable property will be the location of such property. The expression 'in relation to' encompasses a wide range of services that have a proximate nexus with the immovable property. Such property may be a hotel, inn, guest house, homestay, club or campsite excluding houseboat. The end-use will not alter the applicability of this provision but the proximity of the property vis-à-vis

the services. In cases where services are supplied at multiple locations, including a location in the taxable territory, POS will be the location in the taxable territory. The rule of proportion is to be applied in case the services are carried out in different States. Rule 8 of IGST Rules provides that the value of services in each such State/ UT shall be determined by applying the provisions of rule 4 of IGST Rules, *mutatis mutandis*.

Services required in construction activity which are received before being assigned to any particular site will not be determined by this provision but by the general provision. For example, lease of construction equipment sent to a central warehouse before being deployed to any specific site.

- (c) In respect of services of admission to a venue, the POS will be the location of the venue. The event that is organized may be cultural, artistic, sporting, scientific, education or entertainment or a celebration, conference, fair, exhibition or similar events including ancillary services. Services referred to here are admission or organizing the event at the venue. In cases where services are supplied at multiple locations, including a location in the taxable territory, POS will be the location in the taxable territory. Further, rule of proportion is to be applied in case the services are carried out in different States. Rule 9 of IGST Rules provides that the value of services in each such State/ UT shall be determined by applying the provisions of rule 5 of IGST Rules, *mutatis mutandis*.
- (d) Services in the following three cases deviates from the 'destination' principle and appoints the POS to be the location of the supplier:
- Services by a banking company or a financial institution or NBFC – reference to services 'by' indicate that this specific provision will encompass all activities by such a service provider performed in their capacity as such.
 - Intermediary services – defined in section 2(13) provide for a broad set of activities. It is important to examine whether the role of an intermediary is limited in any manner to marketing (proliferation of information to potential customers), pre-sale (submitting quotations) and post-sale (assisting in delivery, installation and after-sales support).

Intermediary services have been defined to mean 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;

If any outbound services fall within the definition of intermediary, the place of supply being the location of supplier, CGST / SGST is required to be charged. In case of any inbound services from outside India, the supply would not be taxable at all in India if it falls within intermediary. In this regard

Circular No.159/15/2021 dt. 20th September 2021 clarified the scope of intermediary services. Further, in the case of *Dharmendra M Jani Bombay (HC)*, the final decision of Chief Justice is awaited after both the Honourable Judges of the Bench expressed contradictory views.

- Hiring of transport for a period upto one month – all services attendant to securing such limited duration. This excludes aircraft and vessel other than yacht.
- (e) POS of services of transportation of goods will be the destination of the goods, as opposed to the location where they are handed over for transportation as in case of supplies to unregistered persons in section 12(8). Transportation of goods may be by any mode, but not mail or courier. Eg., A transporter registered in Kolkata may provide transportation service in respect of goods owned by a person in Nepal for delivery to another person in Assam. In such a case, although the service is supplied to a person located outside India, the supply will be a taxable supply and will not be considered to be an export of service.
- (f) POS of services of transportation of passenger will be the location where the passenger embarks on the conveyance for a continuous journey.
- (g) POS of services supplied on-board a conveyance, will be the first scheduled point of departure. Services are to be supplied during the journey and substantially consumed on-board. Any deviation from this condition will result in it getting classified under the general rule.
- (h) POS of services of OIDAR (online information and database access or retrieval) services will be location of recipient. Refer the detailed discussion under section 14 on OIDAR services. Further, such recipient will be deemed to be situated in a taxable territory if any two of the following conditions are fulfilled:
 - Address of recipient is in taxable territory;
 - Card of recipient that is used to pay for the services is issued in taxable territory;
 - Billing address is in taxable territory;
 - Internet protocol address in taxable territory;
 - Bank account of recipient used to make payment is in the taxable territory;
 - Country code of SIM card used by recipient is of taxable territory;
 - Fixed land line used by recipient is in taxable territory.
- (iv) Where there is any occasion for double taxation or non-taxation, the Central Government is empowered to notify the place of supply with respect to service of any specific description, wherein the place of supply will be the place of effective use and enjoyment of a service.

- (v) Remarkably, Circular 113 issued to specify POS in respect of ESDM services where these services are clarified not to be location-based services. And this circular only provides interpretation that should always be applicable to save the incidence of tax;

	<i>Notf No.</i>	<i>Service</i>	<i>Place of Supply</i>
1	04/2019- Integrated Tax	Supply of research and development services related to pharmaceutical sector by a person located in taxable territory to a person located in the non-taxable territory	The place of supply of services shall be the location of the recipient of services subject to fulfillment of certain conditions
2	02/2020- Integrated Tax	Supply of maintenance, repair or overhaul service in respect of aircrafts, aircraft engines and other aircraft components or parts supplied to a person for use in the course or furtherance of business.	The place of supply of services shall be the location of the recipient of service.
3	03/2021- Integrated Tax	Supply of maintenance, repair or overhaul service in respect of ships and other vessels, their engines and other components or parts supplied to a person for use in the course or furtherance of business	The place of supply of services shall be the location of the recipient of service

- (vi) Even more remarkable is that Government has issued a notification under section 13(13) to specify POS in respect of clinical trials. Experts are apprehensive that this notification *will not* have retrospective effect and any exports reported in respect of clinical trials may be questioned now. A summary of the notifications is tabulated as under:

STATUTORY PROVISIONS

14. Special provision for payment of tax by a supplier of online information and database access and retrieval services

- (1) *On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services:*

Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:—

- (a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;*
 - (b) the intermediary involved in the supply does not authorize the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;*
 - (c) the intermediary involved in the supply does not authorize delivery; and*
 - (d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.*
- (2) The supplier of online information and database access or retrieval services referred to in sub-section (1) shall, for payment of integrated tax, take a single registration under the simplified registration scheme to be notified by the Government:*

Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:

Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

Related Provisions of the Statute

<i>Statute</i>	<i>Section / Rule</i>	<i>Description</i>
CGST	Section 2(79)	Definition of non-taxable territory
CGST	Section 2(93)	Definition of Recipient
IGST	Section 2(13)	Definition of Intermediary
IGST	Section 2(15)	Definition of location of the supplier of services
IGST	Section 2(16)	Definition of Non-Taxable Online Recipient
IGST	Section 2(17)	Definition of OIDAR services
IGST	Section 5	Levy and collection of tax

IGST	Section 7	Meaning of inter-State supplies
IGST	Section 8	Meaning of intra-State supplies
IGST	Section 13	Place of supply of services where location of supplier or location of recipient is outside India
CGST	Rule 64	Form and manner of submission of return by persons providing OIDAR services

14.1 Introduction

This is a new transaction that is brought within the tax net only from 1st December 2016 under service tax. The experience was more than encouraging as the amount of tax that has been collected from OIDAR is in a class of its own as regards taxable person and place of supply. Everything discussed until now must be given a go-bye to understand OIDAR more clearly.

14.2 Analysis

Online Information and database access or retrieval (OIDAR) is defined in a specific manner and may be simplified as follows:

2-step definition	Services (and not goods) supplied
	Delivered over continuous internet connectivity
2-step clarification	Involves minimal human intervention
	Impossible to ensure in absence of information technology

Six illustrations in the definition and some explanation about inclusions and exclusions:

<i>Illustration</i>	<i>Includes</i>	<i>Excludes</i>
Online advertising E.g. Google ad	<ul style="list-style-type: none"> Banner ads, pop-up ads, sponsored ads, etc. 	<ul style="list-style-type: none"> Preparation of content for online display like production, distribution and services of intermediaries Advertisement in newspaper, on posters and on television
Cloud services E.g., Amazon Web services	<ul style="list-style-type: none"> Webhosting Data warehousing 	<ul style="list-style-type: none"> Software license issued by delivery of key number to remotely download via FTP
E-books, movies, music, software and other intangibles E.g., Gaana.com and Netflix	<ul style="list-style-type: none"> Access to content permitted only 'online' even if stored in cache on user-end device but not allowing 	<ul style="list-style-type: none"> Downloadable e-books, movies, music, etc. which are available for offline viewing without any

	(official) permanent download	<p>mandatory e-check of the user credentials</p> <ul style="list-style-type: none"> • Content provided through dedicated user-end device for use of content • Supply of physical books, newsletter, newspaper or journals • Booking services or tickets to entertainment events, hotel accommodation or car hire • Educational or professional courses, where the content is delivered by a teacher over the internet or electronic network
Online data or information E.g. LinkedIn, Taxindiaonline.com	<ul style="list-style-type: none"> • Paid websites that provide information • Free sites with valuable information – if not treated as ‘supply’, ITC will not be available but if treated as ‘supply, output tax will apply on like-kind-and-quality or cost-plus basis 	<ul style="list-style-type: none"> • Net banking where banking information is accessed online but merely incidental to offline banking transactions • Electronic commerce • Non-commerce and information portals • C2C portals
Online supply of digital content E.g. Setmax online, YouTube	<ul style="list-style-type: none"> • TV programs and movies supplied over the internet like monitored by issuing user login / password 	<ul style="list-style-type: none"> • Auditors report sent to client via email. It is merely a form in which the offline services are communicated. Services of auditor is not the email of report issued but the opinion expressed about the financial position of the auditee • Online order processing in respect of offline supply of goods

		<ul style="list-style-type: none"> Services of lawyers and financial consultants who advise clients through email
Data storage E.g. Amazon cloud	<ul style="list-style-type: none"> Webservers – shared or dedicated, with/ without support, etc. 	<ul style="list-style-type: none"> Lease of server with redundancy
Online gaming E.g. Zapak.com	<ul style="list-style-type: none"> Live-gaming Collaborative gaming 	<ul style="list-style-type: none"> Computer/ mobile games to be used after downloading to user-end device

Thus, every transaction done over the internet is not e-commerce, everything delivered online is not OIDAR. The acid-test is to see 'always on' status of internet connectivity for the continuous supply of the underlying service. Mere use of internet for delivery of services that can otherwise be provided offline through some media like CD, pen-drive, etc. all though less-securely will not be OIDAR. The use of file-transfer-protocol (FTP) for delivery of software or music or games is only to ensure integrity in the delivery of these high-volume files and the use of internet for FTP does not become OIDAR.

The following table depicts the ingredients prescribed in this section:

Supplier	Supplier of services in non-taxable territory		
Recipient	B2C (non-taxable online recipient – NTOR)	Intermediary@ (deemed to be recipient and re-supplying to NTOR)	B2B# (all others)
Tax Payer	Overseas supplier	Intermediary	Recipient
Tax Payment	Forward charge (through representative)	Forward charge (through Intermediary)	Reverse charge (by B2B recipient)

@ issues invoice, authorizes charge for services, responsible to collect payment, authorizes delivery and controls terms and conditions of supply. Else, not an intermediary liable to pay

B2B may be registered taxable person for any output supply

Note: 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.

For the purposes of the definition of 'non-taxable online recipient, "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 Government,

with 90 per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under Article 243W of the Constitution.

14.3 Comparative Review

In the erstwhile service tax regime, a similar provision was inserted with effect from 01.12.2016.

14.4 Issues and concerns

1. The place of supply provisions, in certain cases, is determined to be a place outside the State in which the registered person has obtained registration – such as POS in case of services in relation to immovable property, admission to an event (including educational events), services on board a conveyance (say letting out a laptop on hire during the journey), banking services (where a single bank account is used for various GST registrations across States). In all such cases, the registered person is restricted from availing input tax credits even where the services have been availed in the course or furtherance of business.
2. Section 13(12) provides a deeming fiction whereby the location of the recipient of the OIDAR services is appointed to be in the taxable territory if any two of seven conditions are satisfied. For instance, say the debit card through which payment is made has been issued in Delhi [Condition in clause (b)], and the IP address is in Bangalore [Condition in clause (f)], there is no mechanism in place to appoint a single place of supply for the transaction. This could lead to issue regarding the apportionment of tax revenue between States.
3. A supply of OIDAR services by a supplier located in a non-taxable territory to a non-taxable online recipient in India is specifically excluded from a supply on which the recipient is required to discharge taxes on RCM basis. Accordingly, non-taxable online recipients are not required to obtain registration. The recipients being non-taxable persons, may not be in possession of any documents including the invoices issued by the suppliers, since they are not mandated under any law to keep/ maintain such documents. This would make it extremely difficult for the revenue authorities to identify suppliers of OIDAR services located in a non-taxable territory, and even where identified, to track such suppliers.

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. Note that the 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 [for authorised operations]⁷ 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.~~

A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed.

Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of the Central Goods and Services Tax Act within thirty days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.

⁷ Amended vide Finance Act, 2021 to be notified later.

- (4) *The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify–*
- (i) *a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid*
 - (ii) *a class of goods or services which may be exported on payment of integrated tax and the supplier of such goods or services may claim the refund of tax so paid.”⁸*

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

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 zero per cent but the recipient to whom the supply is made is entitled to pay zero per cent 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 ‘zero per cent’ 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

⁸ Amended vide *Finance Act, 2021* to be notified later.

supplies always – by itself does not mean that non-SEZ sales by SEZ unit will be liable to IGST in all cases. Table below shows supplies involving suppliers in the zone that is covered by the provisions of section 7(5) and proviso to section 8(1):

<i>Supply 'by'</i>	<i>Supply 'to'</i>
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 locations within the political boundaries of a State are irrelevant

The intention of the Government not to burden exports with tax, could be achieved either by not charging 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 contained in section 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; 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-sections (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 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 the above definition of 'India'. As the CGST and IGST Acts extend to the whole of India, it could be said to be applicable to SEZ unit also thereby making SEZ unit as falling within the definition of taxable territory. If this view is taken, it may 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 	<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

	<ul style="list-style-type: none"> • 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"> • 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 	<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 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/-)

	being maximum amount related to the outward export supply by filing refund claim in Form GST RFD-01	
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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 • 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) 	<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 of Rs.270/- (say, 18%) on the export (assume sufficient balance in credit ledger from all other inputs, input service and capital goods) • 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 	<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/-

	<ul style="list-style-type: none"> • 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"> • PQR to debit electronic credit ledger with IGST 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)
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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)
ABC-SEZ in Indore supplies goods manufactured in the zone to PQR-SEZ in Mumbai (for use in authorized operations) Supply by ABC-SEZ to PQR-SEZ is inter-State supply (whether in the same State/ UT or in different States/ UTs)	<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 	<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

	<ul style="list-style-type: none"> There is no refund to be claimed either by ABC-SEZ or PQR-SEZ as no IGST has been paid in this chain 	<p>other conditions prescribed</p> <ul style="list-style-type: none"> 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 the 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 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"> 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 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>	<ul style="list-style-type: none"> ABC-SEZ to supply goods to PQR IGST to be collected by ABC-SEZ to PQR 	<ul style="list-style-type: none"> Nothing to discuss in this option

<p>Note: All supplies 'by' SEZ are treated as inter-State supplies</p>	<ul style="list-style-type: none"> • 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 	
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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 claimed. All supplies to SEZ developer or unit alone are treated as 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 detect.. 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 '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

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

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

A. Furnishing of Letter of undertaking:

- i. *Notification No. 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 No.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.40/14/2018 GST 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 No. 37/11/2018 – GST dated 15.03.2018* wherein it is clarified that substantial benefits of zero rated 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 a 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 (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.

- iii. Condition to comply:
 - a. In case of goods: Goods 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
- iv. 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. Four copies of the Shipping bill needs to be issued (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 the 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 the 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 Customs portal would be inter-linked in which Customs portal would electronically confirm to GST portal about the movement of goods outside India.
 - iv. Upon 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. Withholding 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 the 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 set out in para 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 with 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.

- 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 on "Whether rebate-sanctioning authority may re-determine the amount of rebate in certain cases — Instructions regarding" dated 3.2.2000 also highlights this fact. The C.B.E. & C. has then clarified in *Circular No. 510/06/2000-Cx, dated 3-2-2000* 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 was there under 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:

<i>Statute</i>	<i>Section / Sub-Section</i>	<i>Description</i>	<i>Remark</i>
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

- 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.

⁹[(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.

⁹ Inserted vide *The Central Goods and Services (Amendment) Act, 2018* w.e.f. 01.02.2019

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 taxpayer 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

<i>Inter-State Supply (to)</i>	<i>IGST Paid (on)</i>	<i>Quantum of IGST</i>	<i>Transfer (to)</i>
Unregistered recipient	IGST paid on inter-State supplies IGST paid on import of goods or services	Equivalent Central tax applicable on the said intra-State supplies	Union
Composition taxable person			
Registered taxable person not eligible to input tax credit		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 the rule-of-proportion – total supplies of that State/UT compared to total inter-State supplies during the financial year.

Note the following further aspects:

- The 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.

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.*

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. The remedy lies in refund.

19.2 Analysis

The 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'. Then

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

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.

¹⁰[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.]

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;

¹⁰ Inserted vide *The Integrated Goods and Services Tax (Amendment) Act, 2018* w.e.f. 01.02.2019

- 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 payments 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 appeals to the Appellate Authority
 - ii. Rs. 100 crores in case of appeals to the Appellate Tribunal

20.3. Comparative Review

<i>Under IGST Act</i>	<i>Corresponding Section under erstwhile Central Sales Tax Act, 1956</i>	<i>Comparison</i>
Section 20- 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 at source?

Ans. The notified percentage of tax to be deducted by the deductor from the payment made or credit to the supplier is 2 per cent (IGST).

In case of tax collection at source the operator should collect 1 per cent tax (IGST) on the net value of taxable supplies (as notified).

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 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

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

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 rule 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

<i>Under IGST Act</i>	<i>Corresponding Section under erstwhile Central Sales Tax Act, 1956</i>
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 the recommendation of which 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 notifications by the Government.
- (b) Such rule, regulation and notification, which is 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 under 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 ¹¹[five] 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 5 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 are covered.

¹¹ Substituted vide the *Finance Act, 2020* w.e.f. date to be notified

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 5 years from the date IGST Act was made effective.

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