

ITRAA



INDEPENDENT TAX RESEARCH AND ANALYSIS ASSOCIATION

Presents...

A Handbook on GST Impact 10 different Sectors

by

Youth Empowerment Committee
of ITRAA

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A COMPLETE GUIDE TO BELOW SECTORS

- **E-Commerce**
- **FMCG**
- **Gems & Jewellery**
- **GTA**
- **Health Care**
- **Import and Export**
- **IT Sector**
- **Textile**
- **Works Contract**
- **Hospitality & Tourism**

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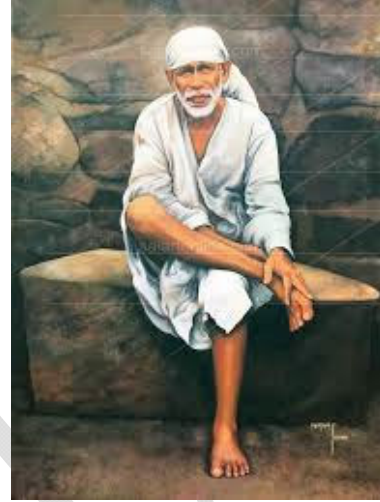
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With the blessings of GOD



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Foreword

Goods & Services Tax (GST) was introduced in India on 1st July, 2017 paving the way towards the goal of One Nation, One Tax, One Market. GST is a destination-based consumption tax providing the right of taxation to the State in which goods or services are ultimately consumed by the final consumer. It promotes the concept of common market with common tax rates and procedures, including the removal of various economic barriers, and eventually improves the ease of doing business in the country.

That's precisely where this book comes in. It's a collection of analysis, yes—but analysis designed to build understanding. Anyone can toss together a random collection of lessons. But lessons that take writers deep inside their own writing and help them understand how revision works are rare. That's what makes this carefully selected collection so special; it pays homage to the true nature of revision by giving young writers the skills and guidance they need to see their work with new eyes.

We congratulate and salute to the ITRAA YEC Team for their efforts in bringing out this publication for the dissemination of knowledge amongst its readers.

We pray all good health to all the members along with their nears and dears of ITRAA YEC team. It is the support of ITRAA mentor panel that we decide our vision for raising the professional flag high.

We trust and hope that with the constant and unflinching endeavour of all fellow professionals, this simple tool of communication will grow into an effective and valuable knowledge base and shall help to achieve greater results.

CA. Navya Malhotra
President, ITRAA

CA. Kusum Gandhi
Vice President, ITRAA

Date:01.07.2021

Place: New Delhi

FOREWARD

As we all know Goods & Services Tax (GST) introduced in India on 1st July, 2017 with a goal “One Nation, One Tax, One Market”. It was introduced to promote common market with common tax rates and procedures. Being a nation with distinct cultures, distinct weather, distinct industries and distinct sectors it was a difficult task to implement one tax for a whole nation. However, the Government of India had implemented the same and is also successfully operating it.

It was introduced with the objective to mitigate the cascading effect of taxes by allowing seamless credit across goods and services, facilitate free flow of goods and services across India and boosting tax revenue from better compliance and widening the tax base. A remarkable feature of GST implementation is that all the States in India came together with the Centre to form a unique federal body called GST Council, which is entrusted with the objective of recommending policies and procedural matters in the formation and implementation of GST legislation.

Further a collection of analysis on different industries on one click is all we need today to understand the law in a precise manner. It’s a collection of analysis—An analysis designed to build understanding which is relevant to Industry needs. Therefore, in this direction, ITRAA Youth Committee has taken an initiative to prepare a **Handbook on Sector wise GST Impact**.

Our young writers have proved the saying “If there’s a will, there’s a way” with their hard work and talent. Each one of us have this talent hidden within us, the only thing we need is a ray of light to know it and bring the best out of it. That’s what makes this Handbook so special. This Handbook on Sector wise GST Impact is comprehensive containing an analysis of the entire provisions under the law including notifications, circulars or orders issued by the Government from time to time along with Flowcharts, Diagrams, Illustrations etc. to make the reading interesting and understanding easier We congratulate and salute to the ITRAA Team for their efforts in bringing out this publication for the dissemination of knowledge amongst its readers.

We sincerely thank CA Vikash Banka from Kolkata and CA Aanchal Kapoor from Amritsar for their mentorship and all expert knowledge provided to the young writers. We place on record the services and unstinted support provided by both of them in reviewing the publication.

We record here the dedicated and devoted work done by CA Navya Malhotra, President ITRAA and CA Kusum Gandhi, Vice President ITRAA to make it a successful journey & sharing their intellectual expertise

We pray all good health to all the members along with their nears and dears of ITRAA team. It is the support of ITRAA mentor panel that we decide our vision. We trust and hope that with the constant and unflinching endeavor of all fellow professionals, this simple tool of communication will grow into an effective and valuable knowledge base and shall help to achieve greater results.

We trust this Handbook will be of practical use to all the members of the Institute and other stakeholders. We also welcome suggestions at info.itraa@gmail.com and request you to visit our website <https://itraa.co.in/> and provide valuable inputs in our journey to make GST truly a good and simple tax.

CA. Shiva Goyal
Chairman, ITRAA Youth Committee

CA. Pranshu Pasrija
Vice Chairman, ITRAA Youth Committee

Place: New Delhi
Date: 1st July, 2021

PREFACE

India joined about 150 countries by implementing the destination-based consumption tax, Goods & Services Tax with effect from July 1, 2017. The objective of such implementation was to create the Common National Market for Goods & Services, by simplified tax regime and one nation one tax. In the last 3 years of its introduction the law has undergone numerous changes and kept pace with changes in economy. The pandemic COVID-19 also forced the Government to announce relaxation in various provisions of the law.

ITRAA being an Independent Tax Association is helping Businesses at GST implementation stage in ensuring that GST shall be a Good and Simple Tax. Further, through the members in the GST wing of ITRAA has been continuously undertaking several initiatives towards dissemination of knowledge and awareness through technical publications, newsletters, E-learning and organizing various programmes, Certificate courses, webcasts etc.

The HandBook on different sectors to facilitate members and other stakeholders in understanding various provisions under GST law.

This Material is basically an analysis on the GST law including Acts, rules, recent notifications, circulars or orders issued by the Government from time to time along with few FAQ's, MCQ's, Flowcharts, Diagrams and Illustrations etc. to make the reading and understanding easier and also to assist in resolving issues that the stakeholders may face while dealing with GST.

We sincerely thank CA Navya Malhotra, Founder, ITRAA and CA. Kusum Gandhi, Co-Founder, ITRAA for their encouragement to the initiatives of the Youth Empowerment Wing. We would like to acknowledge the efforts of the members of the GST Research Committee for their timely contribution and support. **Special thanks to the tireless efforts of CA. Vikas Banka, CA. Aanchal Kapoor in this Handbook who have put their rock breaking efforts and unstinted support.**

Without the mentorship of CA Shiva Goyal and CA Pranshu Pasrija, the handbook would have not reached the final shape.

We request the user of this Handbook to enhance their intellect and while doing so bring to our notice any error or mistake that may have crept in during the writing process. We welcome your suggestions for further improvements and look forward to your email on our I'd info.itraa@gmail.com and we also request you to visit our website www.ITRAA.co.in and give us your valuable feedback.

E-Commerce Under GST



Marvel of E-Commerce

“Uber, the world’s largest taxi company, owns no vehicles.

Facebook, the world’s most popular media owner, creates no content.

Alibaba, the most valuable retailer, has no inventory.

And Airbnb, the world’s largest accommodation provider, owns no real estate.”

{By Tom Goodwin (Sr. VP, Strategy and Innovation, Havas Media)}

Foreword

The introduction of Goods & Services Tax (GST) in India is one of the most significant indirect tax reforms since Independence. The reform that took more than a decade of mutual co-operation, continuous discussion and intense debate between Central and State Governments about implementation methodology, was finally implemented with effect from 1st July 2017, subsuming almost all indirect taxes at the Central and State levels. As the journey of GST implementation progressed in India, the authorities have been quick to address the various challenges faced by the Industry and public concerns by issuing a series of notifications, clarifications, press releases and FAQs, to resolve a wide range of concerns.

This tax reform is a turning point for the economy and would benefit all stakeholder i.e. Government, Businessman and consumers. GST would boost the economy by reducing cost of goods & services and making them globally competitive. Moreover, phenomenal increase in e-commerce transaction and the statutory provisions provided under the GST regime makes it imperative for the professionals to be abreast with latest developments in this area.

We congratulate and salute to the ITRAA Team for their efforts in bringing out this publication for the dissemination of knowledge amongst its readers. I am sure this publication would further facilitate our members in practice as well as in industry to acquire specialised knowledge relating to the E-Commerce Transactions.

A special thanks to “**CA Anchal Kapoor Ji**” for her continued support and enlightening the authors in guiding and completing this book.

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CA Bhanu Sai is an Associate member of the Institute of Chartered Accountants of India. He is graduated from Acharya Nagarjuna University. He may be contacted at +91-9885733416 for any further suggestion and improvements in this edition.

Introduction

Currently, all business required E-commerce portal because of rapidly increasing online transactions but taxation of E-Commerce Sector has been a complex issue since the advent of the Industry. The Industry has ushered in the last few years and has taken everyone by surprise through its growth and volume. India's e-commerce market is estimated to have crossed Rs. 6,16,500 crores in March 2020 as per the study conducted by Economic times. The report further claim that India is expected to generate \$150 billion online retail revenue by the year 2030. The uprising of Electronic Commerce in India has also resulted in conception of online marketplaces. A Marketplace is an e-commerce platform owned by the Ecommerce Operator such as Flipkart, Snapdeal and Amazon. Some of the features of a marketplace model are:

- Marketplace enables third-party sellers to register and sell online on their platform.
- Marketplace charges a subscription fees/ commission on sale value from listed sellers.
- Third-party sellers under this model gain access to a larger customer base, registered with marketplace.
- Customer on the other hand gain access to multiple sellers and competitive prices for desired products.
- Items purchased on such marketplaces are either shipped by Merchant/Third-party seller directly or through the fulfillment center managed by Marketplace Operator.

Government has also allowed Foreign Direct Investments under such model to promote e-commerce marketplace business model in India.

Marketplaces has provided retailers with additional channel of sales and reach which was unimaginable for an offline seller. Major marketplaces claim to have lacs of sellers affiliated with their platform with millions of SKUs. While the number of sellers and their business have increased significantly, GST has specifically taken up marketplaces and has come out with rules & regulations specific to this segment.

Government is also supporting this type of business and introduced new provisions through GST Laws. There are many type of E-commerce and many types of transctions. E-commerce transactions look a bit complicated because two transactions happening at the same time, one is between supplier and customer and other is between ECO and supplier. Both the transactions are different transactions and subject to GST in its own nature but where

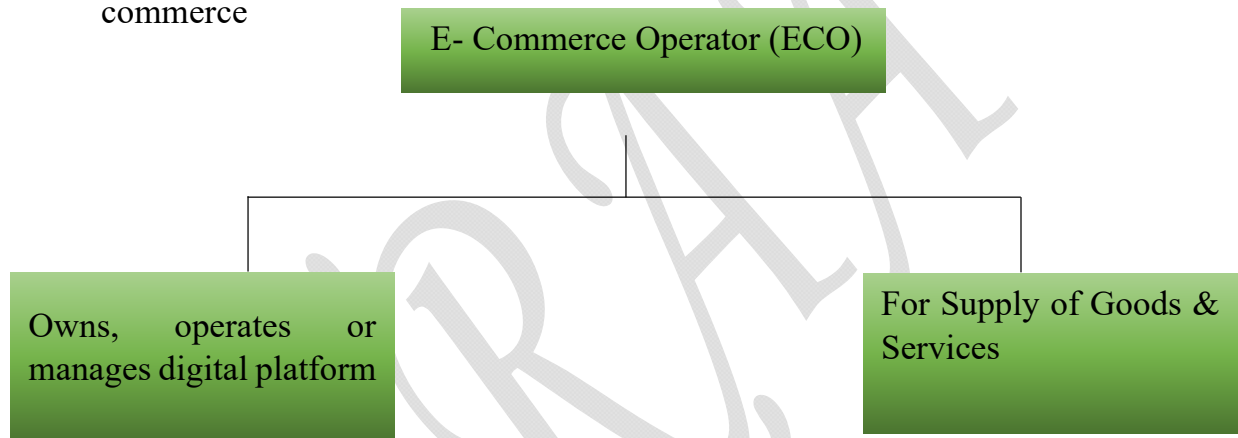
goods/service provided by portal itself then this will not be covered under E-commerce portal.

Important Definitions

✓ **Section 2. Definitions In this Act as follows –**

(44) “electronic commerce” means the supply of goods or services or both, including digital products over digital or electronic network;

(45) “electronic commerce operator” means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce



E-Commerce business can be divided into two parts on the basis of nature of transaction, one is as per the stakeholder of such transaction (Business Model) and another as per the nature of activity embed to such transaction (operating Model).

(i) Business Model: Business is an activity which is undertaken by two or more parties. The party either may be end user or may be industrial user.

✓ Business Model

<i>Types</i>	<i>Meaning</i>	<i>Examples</i>
<i>B-to-B (Business to Business)</i>	<i>All e-commerce transactions between the companies</i>	<i>Indiamart.com, Alibaba</i>
<i>B-to-C (Business to Consumer)</i>	<i>Variety of goods and services are offered in this model by companies to consumers.</i>	<i>Flipkart, Zomato, Urban clap</i>
<i>C-to-C (Consumer to Consumer)</i>	<i>Individual consumers may sell variety of products to other consumers.</i>	<i>OLX, Quikr</i>
<i>C-to-B (Consumer to Business)</i>	<i>Individuals make their services and products available to the companies</i>	<i>Freelancer.in</i>

(ii) Operating Model: In this model, we can bifurcate on the basis of operations.

✓ Operating Model

<i>Types</i>	<i>Meaning</i>	<i>Examples</i>	<i>Whether covered under E-Commerce Operator</i>
<i>Inventory Model</i>	<i>In this model, inventory of goods and service is owned by e-commerce entity and is sold to customer directly. Here e-commerce operator is the seller and it issues invoice to the customer in its own name.</i>	<i>Bizongo, Yepme, BigBasket</i>	<i>No</i>
<i>Marketplace Model</i>	<i>E-commerce operator makes available his portal to the different supplier. Customers place order on the portal</i>	<i>Amazon, Flipkart, Zomato</i>	<i>Yes</i>

	<i>and makes payment. Order diverted to supplier by Portal and Supplier made supply to customer. Invoices raised by supplier to customer.</i>		
Aggregator Model	<i>E-commerce operator collects information of different suppliers of services. The suppliers are made partners for providing services. The services are provided under the brand of E-commerce operator.</i>	<i>OLA, Uber</i>	<i>Yes</i>

Type of E-Commerce

- ✓ **Section 9(5) of CGST Act** -The Government may, on the recommendations of the Council, by **NOTIFICATION**, specify **categories of services** the tax on **intra-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 he 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.

- ✓ **Section 5(5) of IGST Act** - 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.

➤ **Notified Services U/s 9(5)**

<i>Sr. No.</i>	<i>Nature of Service</i>	<i>Supplier of service</i>	<i>Person liable to pay GST</i>	<i>Notification No.</i>
1.	<i>Transportation of passengers by radio taxi, motor cab and motor cycle</i>	<i>Any person</i>	<i>Electronic Commerce operator</i>	<i>17/2017 –CT (Rate) & 14/2017 – IT(Rate) dt. 28/6/2017</i>
2.	<i>Providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes**</i>	<i>Any Person</i>	<i>Electronic Commerce operator</i>	<i>17/2017 –CT (Rate) & 14/2017 – IT(Rate) dt. 28/6/2017</i>
3.	<i>Services by way of house-keeping, such as plumbing, carpentering etc**</i>	<i>Any Person</i>	<i>Electronic Commerce Operator</i>	<i>23/2017-CT (Rate) & 23/2017-IT (Rate) dt. 22/8/2017</i>

Persons who supply goods or services or both, other than supplies specified u/s 9(5), through such electronic commerce operator who is required to collect tax at source under section 52 has to compulsorily register as per provisions of section 24(ix). However, the **persons making supplies of services, other than supplies specified under subsection (5) of section 9 is allowed to take benefit of threshold limit vide **Notification No. 65/2017 – Central Tax dt 15/11/2017**.

OIDAR Services

- ✓ **Section 2(17) of IGST Act, 2017** provides, “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,—
- advertising on the internet;
 - providing cloud services;
 - provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;
 - providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

E - Commerce Operator (ECO)

Carries on as facilitator between the supplier and the recipient

Deemed Supplier of Services
u/s 9(5)

Other ECO liable for TCS u/s
52

Ex.:- Uber, OYO, Urban Clap

Ex.:- Amazon, Flipkart, Zomato

- online supplies of digital content (movies, television shows, music and the like);
- digital data storage; and
- online gaming

✓ **Examples: Hotstar, Amazon prime etc.**

✓ Services not covered under OIDAR Services: -

- Technical, financial, legal opinions communicated through e-mails.
- Ticket booking, hotel booking services provided through internet.
- Professional courses conducted through internet.
- Offline physical repair services of computers.

✓ Examples:

<i>Service</i>	<i>Whether service given through IT over Internet?</i>	<i>Whether automated and impossible to provide in absence of IT?</i>	<i>Whether OIDAR Service?</i>
<i>PDF document e-mailed by provider</i>	Yes	No	No
<i>PDF document automatically mailed by providers system</i>	Yes	Yes	Yes
<i>PDF document automatically downloaded from site</i>	Yes	Yes	Yes
<i>Photographs available for automatic download</i>	Yes	Yes	Yes
<i>Online course provided through lectures and downloading material</i>	Yes	Yes	Yes
<i>Same above + live tutor</i>	Yes	No	No
<i>Individual prepared reports, photographs sent in digital form</i>	Yes	No	No

Difference between OIDAR Services and E-commerce operator

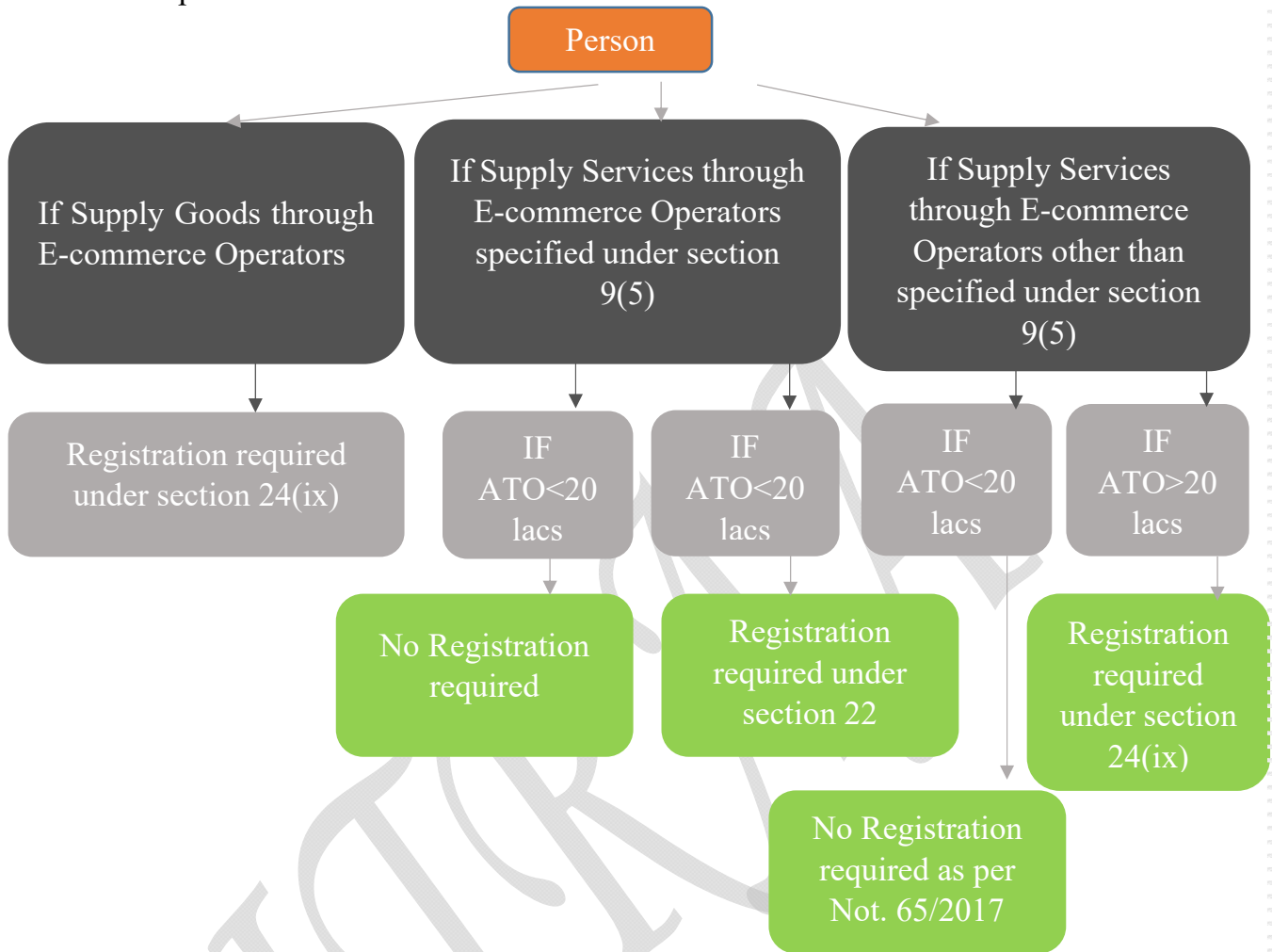
- ✓ Electronic commerce operator provides platform for others to sell and buy goods whereas OIDAR itself provides services with least human intervention.
- ✓ Electronic commerce operator involves buying and selling of goods and services whereas OIDAR deals only in services.

Registration for E-Commerce

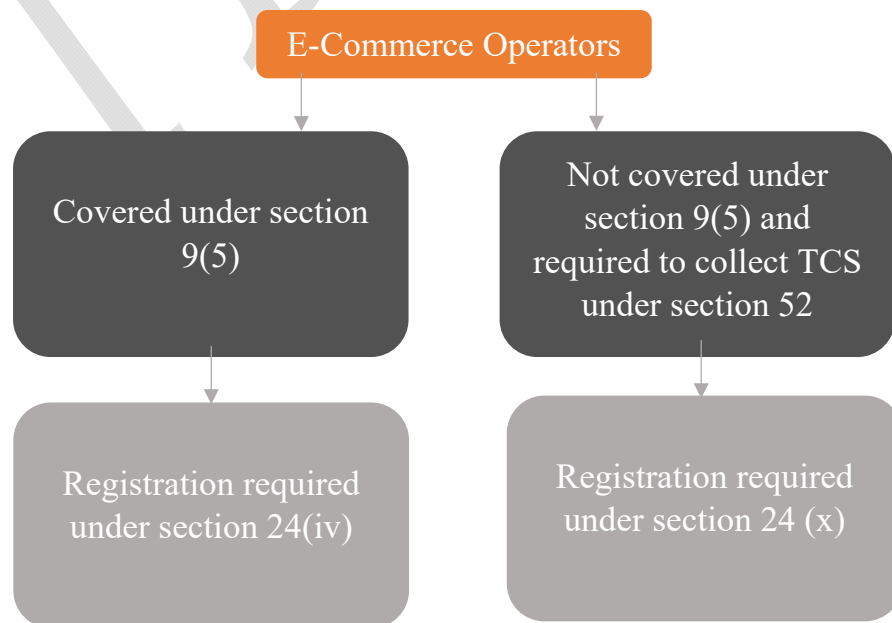
- ✓ Section 22(1) of the CGST Act, provides for registration to supplier of services or goods & services having **aggregate turnover exceeding Rs. 20 lacs**. Hence every supplier having turnover more than Rs. 20 lacs is required to register.
- ✓ **Section 24 (Compulsory registration) of CGST Act,2017 requires as Flows –**
 - (iv) person who are required to pay tax under sub-section (5) of section 9;
 - (ix) persons who supply goods or services or both, other than supplies specified under sub-section (5) of section 9, through such electronic commerce operator who is required to collect tax at source under section 52.
 - (x) every electronic commerce operator who is required to collect tax at source under section 52.
 - (xi) every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person.

- ✓ Thus, E-Commerce operators are required to register under GST irrespective their turnover limit.
- ✓ **Notification 65/2017- Central Tax dt. 15/11/2017** provides that a person supplying services, other than supplier of services under section 9(5) of the CGST Act, 2017, through an e-commerce portal are exempted from obtaining compulsory registration provided their aggregate turnover does not exceed INR 20 lacs.
- ✓ TCS Registration **has to be obtained in every state where the supplier is situated** however, ECO does not require a place of business or establishment in every state where the supplier is situated. The e-commerce operator may declare the Head office at its place of business for obtaining registration in that State/UT where it does not have physical presence.

- ✓ Registration requirement in case of person supplied through e-commerce operator: -



- ✓ Registration requirement in case of e-commerce operator: -



- ✓ Scenarios for registration for a supplier who supply through E- Commerce Operator:

<i>Supply</i>	<i>Turnover</i>	<i>GST paid by</i>	<i>Registration required</i>
<i>1. Supply of Goods</i>	<i>10 lakhs</i>	<i>Supplier</i>	<i>Yes</i>
<i>2. Supply of Goods & Service</i>	<i>10 lakhs</i>	<i>Supplier</i>	<i>Yes</i>
<i>3. Supply of service of transportation of passengers by radio taxi, motor cab (specified under section 9(5))</i>	<i>10 lakhs</i>	<i>ECO</i>	<i>No</i>
<i>4. Supply of service of transportation of passengers by radio taxi, motor cab (specified under section 9(5))</i>	<i>25 lakhs</i>	<i>ECO</i>	<i>No</i>
<i>5. Supply of service specified under section 9(5) except transportation of passengers by radio taxi, motor cab</i>	<i>10 lakhs</i>	<i>ECO</i>	<i>No</i>
<i>6. Supply of service specified under section 9(5) except transportation of passengers by radio taxi, motor cab</i>	<i>25 lakhs</i>	<i>Supplier</i>	<i>Yes</i>
<i>7. Supply of service except service specified under section 9(5)</i>	<i>10 lakhs</i>	<i>NA</i>	<i>No</i>
<i>8. Supply of service except service specified under section 9(5)</i>	<i>25 lakhs</i>	<i>Supplier</i>	<i>Yes</i>

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✓ Scenarios for registration for E- Commerce Operator:

<i>Supply</i>	<i>Turnover of ECO</i>	<i>Registration required for ECO</i>
1. Unregistered Supplier provides service specified under section 9(5) through ECO.	10 lakhs	Yes
2. Unregistered Supplier provides service specified under section 9(5) through ECO.	10 lakhs	Yes
- Registered Supplier provides service specified under section 9(5) through ECO.	8 lakhs	
3. Unregistered Supplier provides service except specified under section 9(5) through ECO.	10 lakhs	No
4. Unregistered Supplier provides service except specified under section 9(5) through ECO.	25 lakhs	Yes
5. Registered Supplier provides service except specified under section 9(5) through ECO.	10 lakhs	Yes
6. Unregistered Supplier provides service except specified under section 9(5) through ECO.	10 lakhs	Yes
- Registered Supplier provides service specified under section 9(5) through ECO.	8 lakhs	
7. Registered Supplier provides goods through ECO.	10 lakhs	Yes

E-Invoicing

- ✓ E-commerce operators are allowed to generate IRN on behalf of a supplier. However, it is important that the e-commerce platform should mandatorily be registered as e-commerce operator under GST.
- ✓ The transactions made through e-commerce platform are normal supplies made by suppliers and hence in order to know whether e-invoicing is required for these or not supplier's turnover is important.
- ✓ The overall principle of generating an IRN still remains the same i.e for B2C transactions IRN generation is not applicable.
- ✓ A supplier who is selling the goods needs to have a turnover which is over 50 crore. Then the supplier can generate an e-invoice or the e-commerce platform can generate it on his/her behalf.

Example: If Mr X purchased goods from a company say Bajaj via the e-commerce platform Amazon. Here, Amazon sends MR. X an invoice. Invoice number generation (IRN) and the e-invoicing process is between Bajaj and Amazon. (Amazon provides suppliers with some interface for their invoice management)

Either way, Bajaj or Amazon can create IRN. Both of them can be onboarded on any e-invoicing software. Amazon's GSTIN will have to be used as value for E-commerce GSTIN field and in this transaction, Bajaj's GSTIN will be used in supplier GSTIN.

- ✓ E-commerce operator issuing invoices to the suppliers who are using their market place.

For Example: In the above case, let's consider the e-commerce operator is again Amazon. Now, the turnover of Amazon (overall operations) needs to be checked. For such transactions, the role of Amazon again is of the supplier i.e. providing services. Thus here too if turnover is more than 50 crores then Amazon will have to generate IRN for such invoices also.

- ✓ Scope of Access to IRNs generated by e-Commerce operator and Supplier:

<i>Accessible to</i>	<i>E-Commerce Operator</i>	<i>Supplier</i>
<i>IRNs generated by e-Commerce operator</i>	<i>Yes</i>	<i>Yes</i>
<i>IRNs generated by Supplier</i>	<i>No</i>	<i>Yes</i>
<i>IRNs cancelled by e-Commerce operator</i>	<i>Yes</i>	<i>Yes</i>
<i>IRNs cancelled by Supplier</i>	<i>No</i>	<i>Yes</i>
<i>Generation of EWB for IRN generated by e- Com. Operator</i>	<i>Yes</i>	<i>Yes</i>
<i>Generation of EWB for IRN generated by Supplier</i>	<i>Yes</i>	<i>Yes</i>

- ✓ If any supply provided to consumer and where payment has been made before issuance the invoice then cross reference of the payment received either through electronic mode or through cash or combination thereof is made on the invoice, then the invoice would be deemed to have complied with the requirement of Dynamic QR Code.
- ✓ If any supply provided to consumer and where payment is made after generation/issuance the invoice, the supplier shall provide Dynamic QR Code on the invoice.

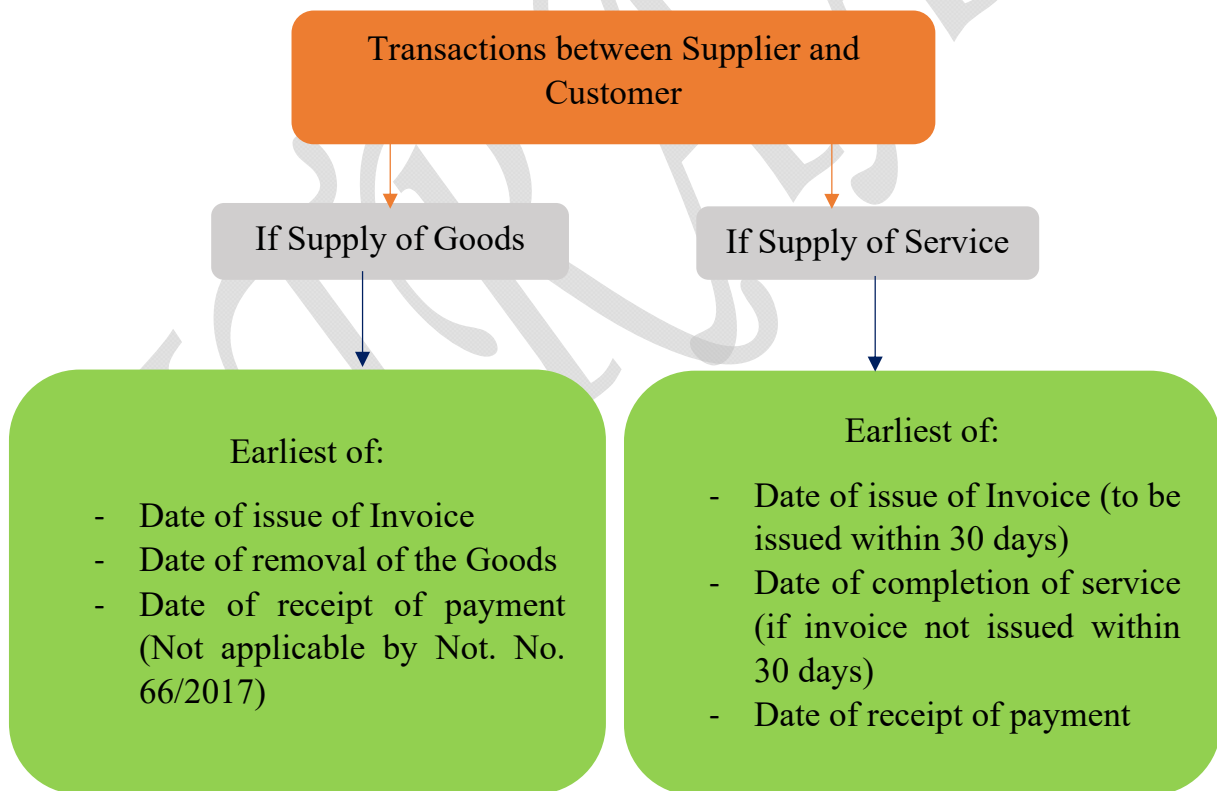
Time of Supply

- ✓ As per section 12(2), the time of **supply of goods** shall be the earlier of the following dates, namely: -
 - The **date of issue of invoice** by the supplier or the last date on which he is required, under section 31, to issue the invoice with respect to the supply; or
 - The date on which the supplier **receives the payment** (the date when payment entered in books or payment credited in bank account whichever is earlier) with respect to the supply:
 - As per **Notification no. 66/2017 CT dated: 15/11/2017**, the govt. has removed the condition of date of payment while determining the time of supply and now only the time of issuance of invoice is considered for payment of taxes in case of goods.
- ✓ As per section 13(2) of the CGST Act, 2017, the time of **supply of service** shall be the earliest of the following dates: -
 - The **date of issue of invoice** by the supplier, if the invoice is issued within the period prescribed under section 31 or **the receipt of payment** (the date when payment entered in books or payment credited in bank account whichever is earlier), whichever is earlier; or
 - The date of provision of service, if the invoice not issued within the period not prescribed under section 31 or the date of receipt of payment, whichever is earlier; or
 - The date on which the recipient shows the receipt of services in his books of account, in a case where the provision of clause (a) or clause (b) do not apply:
- ✓ Provided that where the supplier of taxable service/Goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess amount shall, at the option of the said supplier, be the date of issue of invoice relating to such excess amount.

- ✓ Section 31(1) of the CGST Act, 2017 prescribed that a registered person supplying taxable goods shall, before or at the time of,-
 - removal of goods for supply to the recipient, where the supply involves movement of goods; or
 - delivery of goods or making available thereof to the recipient, in any other case,

issue a tax invoice showing the description, quantity and value of goods, the tax charged thereon and such other particulars as may be prescribed.

- ✓ Section 31(2) of CGST Act,2017 says that a registered person supplying taxable services shall, before or after the provision of service but within a prescribed period (30 days from the date of completion of service), issue a tax invoice, showing the description, value, tax charged thereon and such other particulars as may be prescribed:



- ✓ Transaction between ECO and supplier: - TCS is to be collected once supply has been made through the e-commerce operator and where the business model is that the consideration is to be collected by the ecommerce operator irrespective of the actual collection of the consideration. For example, if the supply has taken place through the ecommerce operator on 30th March 2021 but the consideration for the

same has been collected in the month of April, 2021 then TCS for such supply has to be collected and reported in the statement for the month of March, 2021.

Place of Supply

- ✓ Transactions performed under e-commerce operator involve 3 parties: -
 - E-Commerce operator
 - Supplier/Seller
 - Customer/Buyer
- ✓ Place of supply for **goods** in case other than international supplies (Sec. 10 of IGST Act, 2017): -
 - In case of supply of goods which involves movement, place of supply shall be the location of goods where movement of goods terminates for delivery to the recipient. (Sec. 10(1)(a))

For Example: If customer situated at Rajasthan and ordered goods through ECO where supplier situated at Haryana. In such case, the movement terminates at the place of customer i.e. Rajasthan then the place of supply shall be Rajasthan and liable for IGST.

- ✓ Place of supply for goods where goods supplied from India to outside India then the place of supply shall be the location outside India. (Sec. 11 of IGST Act, 2017)

For Example: If any supplier received an order from a person situated outside India through E-Commerce operator. In such case, the movement terminates at the place of customer i.e. outside India then the place of supply shall be outside India.

- ✓ Place of supply for service where location of supplier and location of service recipient is in India (Section 12 of IGST Act, 2017): -
 - In general case, the place of supply of service (Sec. 12(2)) –
 - (a) If made to registered person, shall be the location of such person.

(b) If made to unregistered person , shall be the location of the recipient where the address on record exists and the location of the supplier of service in other cases.

- If service related to immovable property (accommodation by Hotel) then place of supply shall be the location at which the immovable property located or intended to be located. (Sec. 12(3))

For Example: If any customer lived at Rajasthan booked a room in a hotel situated at Gujarat through an ECO (ex. OYO, Make my trip etc.) then the place of supply shall be Gujarat and hotel charged SGST/CGST on invoice

- If service related to restaurant and catering services personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery then the place of supply shall be the location where the services are actually performed. (Sec. 12(4))

For Example: If any customer booked a hairdresser through ECO (ex. Urban Clap) for service provided at the location of recipient then the place of supply shall be location of recipient.

- In case of service by way of transportation of goods provided to registered person then place of supply shall be the location of such person and provided to unregistered person then the place of supply shall be the location at which such goods are handed over for their transportation. (Sec. 12 (8))
- In case of service related to passenger transport provided to registered person then place of supply shall be the location of such person and if provided to unregistered person then the place of supply shall be the place where the passenger embarks on the conveyance for a continuous journey. (Sec. 12(9))
- As per section 12(11), place of supply for e-commerce operator for recharge of talk time of the Telecom Operator / recharge of DTH / in relation to convenience fee charged from the customers on booking of air tickets, rail supplied through its online platform shall be the address on record of the customer with the supplier of services.

TCS provision u/s 52

- ✓ Tax Collected at Source (TCS) under GST means the tax collected by an e-commerce operator from the consideration received by it on behalf of the supplier of goods, or services who makes supplies through the operator's online platform. TCS will be charged as a percentage on the net taxable supplies. The provision of TCS under GST is dealt under Section 52 of the CGST Act.

- ✓ **Who is liable to collect TCS under GST?**

Certain operators who own, operate and manage e-commerce platforms are liable to collect TCS. TCS applies only if the operators collect the consideration from the customers on behalf of vendors or suppliers. In other words, when the e-commerce operators pay the consideration collected to the vendors, they have to deduct an amount as TCS and pay the net amount. Here are few exceptions to the TCS provisions for the services provided by an e-commerce platform specified in section 9(5):

- Hotel accommodation/clubs (unregistered suppliers)
- Transportation of passengers – radio taxi, motor cab or motorcycle
- Housekeeping services like plumbing, carpentry etc. (unregistered suppliers)

For example – M/s. XYZ stores (a proprietorship) is selling garments through Flipkart. Flipkart, being an e-commerce operator, before it makes the payment of consideration collected on behalf of XYZ, will be liable to deduct TCS.

- ✓ **Rate of TCS: -**

As per Notification No. 52/2018 - Central Tax and 02/2018 - Integrated Tax both dated 20.09.2018, TCS is to be collected and remitted at the rate of: 1.00% IGST, in case of inter-state supply by supplier, and 0.50% CGST and 0.50% SGST or 0.50% UTGST, as the case may be, in case of intra-state supply by supplier.

The rate at which TCS shall be collected a flat rate and is independent of the GST rate applicable on the supplies being made.

- ✓ **Time of Supply for Tax collection: -**

Liability for collection of tax at source on a supply would accrue in the month in which the tax invoice is issued by the supplier for such supply irrespective of whether or not consideration is collected in the same month when the supply is undertaken.

Example: If the supply is undertaken in the month of May 2021, for which the consideration is paid by the customer to ECO in the month of June 2021. The liability to pay TCS arises in the month of May 2021.

✓ **Value/Consideration on which TCS needs to be paid: -**

As per the provisions of Section 52(1) of the CGST Act, 2017 along with the explanation thereto, the amount of tax to be collected and payable would be calculated on the net value of taxable supplies (invoices minus credit notes), supplier-wise, i.e., net value of taxable supplies would be computed for each supplier separately, as specified below:

Net value of taxable supplies

=Aggregate value of taxable supplies made by the supplier during the month (invoices) - Aggregate value of taxable supplies returned to the said supplier during the said month (credit notes)

If for any supplier, during a tax period, the aggregate value of taxable supplies returned exceeds the aggregate value of taxable supplies made, resulting in a negative net value of taxable supplies, then such excess/negative amount shall be ignored and no tax would be collected at source. Further, such negative amount shall not be allowed to be carried forward for adjustment in future tax periods. Thus, the amount of TCS to be collected and paid shall be calculated at the flat rate of 1.00% of the net value of taxable supplies, not on the total GST amount applicable on such supplies, as specified below:

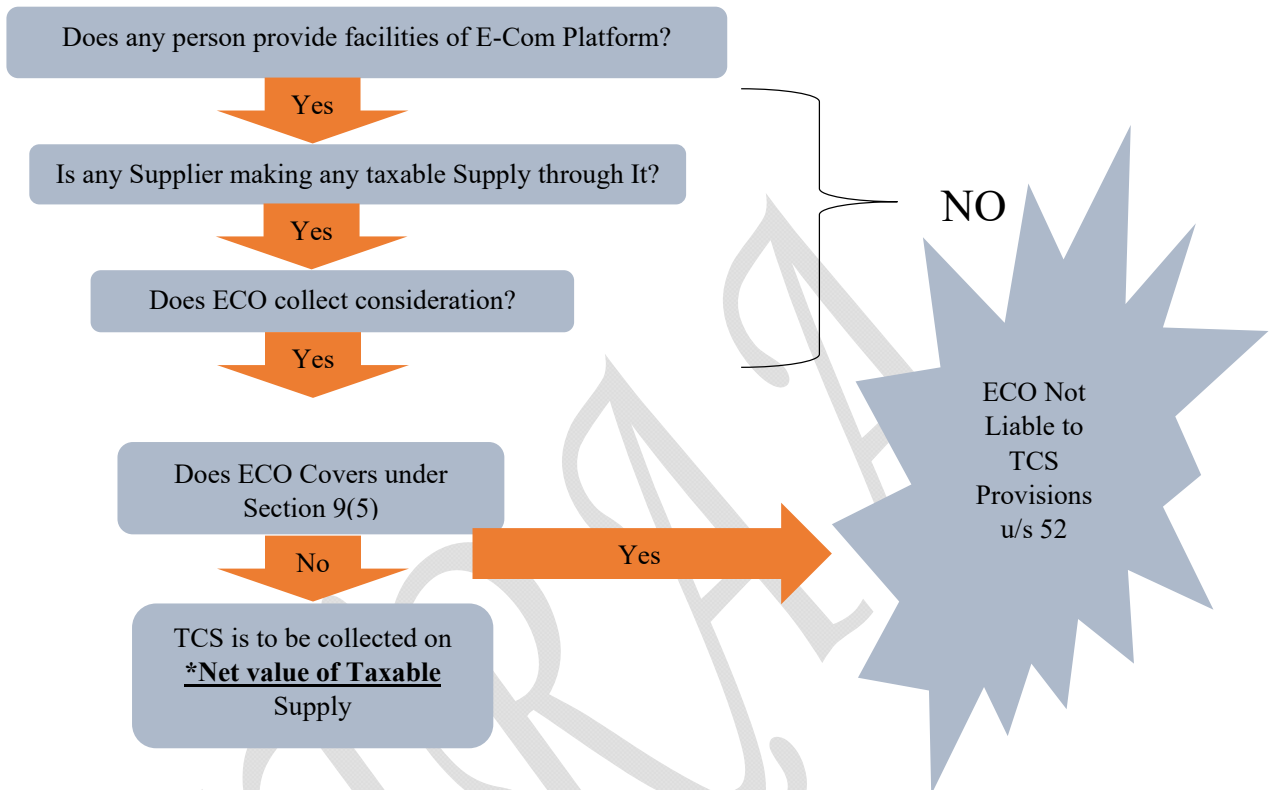
TCS Amount = 1.00% * Net Value of Taxable Supplies

✓ **Exemption from TCS: -**

TCS would not be applicable on the following transactions-

- Supply of exempted goods or services or both, including supply which attracts nil rate of tax and non-taxable supply,
- Transactions which shall be treated neither as a supply of goods nor a supply of services, as specified by Schedule III,
- Supply where the consideration is to be collected by the supplier from the recipient directly,
- Supply made by the ECO on its own account,

- Import of goods and Import of services, or
- Supplies where recipient is required to pay tax on reverse charge basis.



Here collection of consideration by an ECO is mandatory, in case if such consideration is not collected by ECO, then the TCS provision is not applicable.

✓ **Consequences of non-compliance with TCS: -**

In case an ECO –

- fails to collect to tax at source, or
- collects an amount which is less than the amount required to be collected, or
- where he fails to pay to the government the amount collected as tax,

then ECO shall be liable to penalty under section 122(1)(vi) of the Act of ₹ 10,000 or the amount of TCS involved, whichever is higher. Further, the ECO shall also be liable to pay interest for the delay in payment of tax to be collected at source.

✓ **For Example: -**

The details of parties involved in the illustrations has been provided below
Z Ltd – ECO

A Ltd – Registered supplier located in Delhi making supplies through Z Ltd

B Ltd – Customer located in Haryana receiving supplies from A Ltd through Z Ltd

C Ltd – Customer located in Delhi receiving supplies from A Ltd through Z Ltd

D Ltd – Registered supplier located in Delhi making supplies through Z Ltd

E Ltd – Customer located in Haryana receiving supplies from A Ltd through Z Ltd

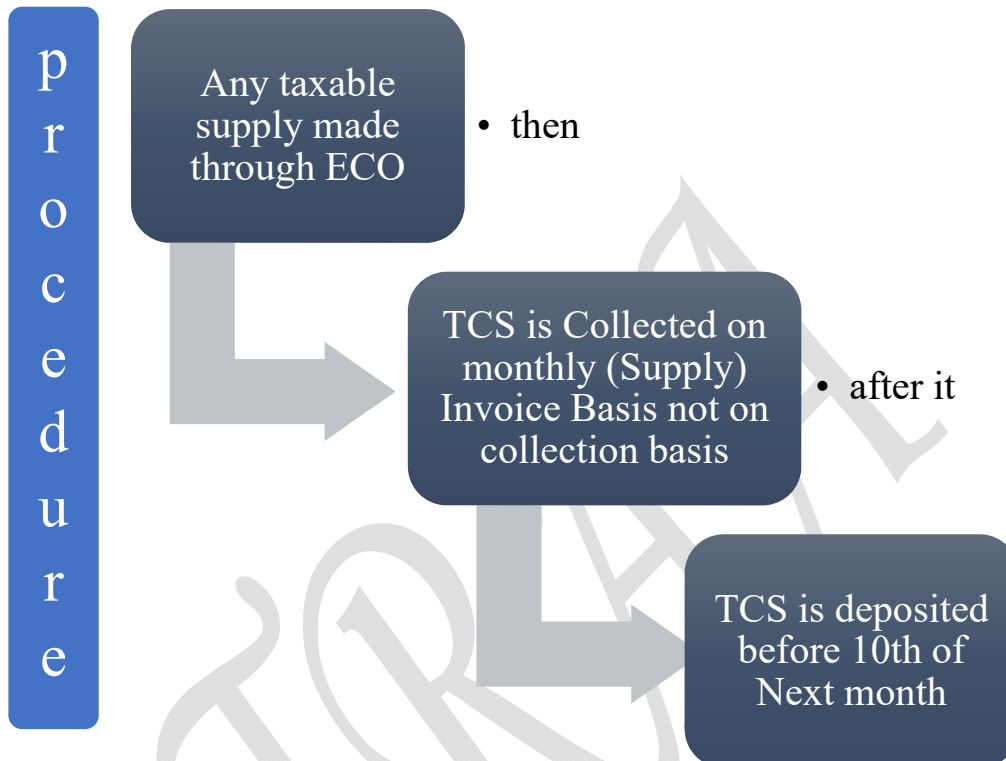
Below is an illustration containing the details of supplies undertaken by A Ltd, a seller located in Delhi, to its customers through Z Ltd, an ECO, in the month of July 2020.

<i>Date</i>	<i>Transaction</i>	<i>Details</i>	<i>Total Amount (in Rs)</i>
1st July, 2020	<i>Sale of goods by A Ltd, to B Ltd, Haryana</i>	1,25,000 + 18% IGST	1,47,500
6th July, 2020	<i>Sale of goods by A Ltd, to C Ltd, Delhi</i>	2,00,000 + 6% CGST + 6% SGST	2,24,000
11th July, 2020	<i>Return of goods sold on 1st July, 2020 by B Ltd to A Ltd</i>	25,000 + 18% IGST	29,500
16th July, 2020	<i>Return of goods sold on 6th July, 2020 by C Ltd to A Ltd</i>	50,000 + 6% CGST + 6% SGST	56,000
1st August, 2020	<i>Payment by C Ltd to Z Ltd</i>	2,24,000 - 56,000	1,68,000
1st August 10th - August, 2020	<i>Collection and deposit of TCS applicable on net supplies made by Z Ltd during the month of July, 2020 Payments received from B and C would not affect TCS liabilities</i>	IGST – (1,25,000 - 25,000) * 1.00% = 1,000 CGST - (2,00,000 - 50,000) * 0.50% = 750 SGST - (2,00,000 - 50,000) * 0.50% = 750	2,500

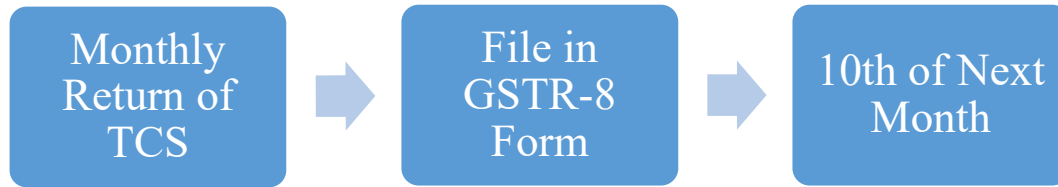
Following are the details of supplies undertaken by A Ltd, through Z Ltd, an ECO in the month of August 2020:

<i>Date</i>	<i>Transaction</i>	<i>Details</i>	<i>Total Amount (in Rs)</i>
1st August, 2020	<i>Return of goods sold in July by B Ltd, Haryana to A Ltd, Delhi</i>	<i>1,00,000 + 18% IGST</i>	<i>1,18,000</i>
6th August, 2020	<i>Sale of goods by A Ltd, Delhi to B Ltd, Haryana</i>	<i>50,000 + 18% IGST</i>	<i>59,000</i>
26th August, 2020	<i>Sale of goods by D Ltd, Delhi to E Ltd, Haryana with payment</i>	<i>2,50,000 + 28%</i>	<i>3,20,000</i>
1st September – 10th September, 2020	<ul style="list-style-type: none"> • <i>No TCS to be collected and paid by Z Ltd for supplies made by A Ltd, as net value of taxable supplies made by A Ltd during the month of August, 2020 is negative.</i> • <i>For supplies made by D Ltd, Z Ltd is liable to collect tax at source and no adjustment of negative value of supplies made by A Ltd can be made against supplies made by D Ltd.</i> • <i>Negative net value of taxable supplies made by A Ltd shall be ignored and details of supplies made by D Ltd and the TCS payable</i> 	<i>No TCS to be collected and paid</i>	<i>1st September – 10th September, 2020</i>

	<i>thereon shall be reported by Z Ltd in FORM GSTR-08 for the month of August, 2020.</i>		
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- Amount of tax collected at source by an ECO, during a month, has to be paid by such ECO to the Government within 10 days after the end of relevant month.
- The payment of TCS liability can be made through utilization of amount deposited in electronic cash ledger only, i.e. TCS liability cannot be remitted by utilization of the input tax credit.
- Amount of TCS payable would have to be deposited by the ECO in its electronic cash ledger. Thereafter, the amount deposited in electronic cash ledger would be utilized for payment of TCS liability while filing Statement in FORM GSTR-08.



- In case an ECO deposits the amount of TCS under the wrong tax head or under the wrong minor head, interest, fee, etc., then Section 49 of the CGST Act, 2017 read with Rule 87(13) of the CGST Rules, 2017, the ECO can transfer such amount wrongly deposited to the correct head in the electronic cash ledger, by filing the form in FORM PMT-09.
- In case of excess deposit in the electronic cash ledger, resulting in unutilized balance in the electronic cash ledger, then the ECO can either carry forward the balance to next month or claim refund (clarified vide para 56 of Circular No.125/44/2019-GST dated November 18, 2019) of such excess balance in the monthly statement in FORM GSTR-08, after payment of the applicable TCS liability of the said month.
- ✓ TCS Registration has to be obtained in every state where the supplier is situated however, ECO does not require a place of business or establishment in every state where the supplier is situated. The e-commerce operator may declare the Head office at its place of business for obtaining registration in that State/UT where it does not have physical presence.

Question 1: What is Electronic Commerce?

Answer: Electronic Commerce has been defined in Sec. 2(44) of the CGST Act, 2017 to mean the supply of goods or services or both, including digital products over digital or electronic network.

Question 2: Who is an e-commerce operator?

Answer: Electronic Commerce Operator has been defined in Sec. 2(45) of the CGST Act, 2017 to mean any person who owns, operates or manages digital or electronic facility or platform for electronic commerce.

Question 3: Is it mandatory for e-commerce operator to obtain registration?

Answer: Yes. As per Section 24(x) of the CGST Act, 2017 the benefit of threshold exemption is not available to e-commerce operators and they are liable to be registered irrespective of the value of supply made by them.

Question 4: Whether a person supplying goods or services through e-commerce operator would be entitled to threshold exemption?

Answer: No. Section 24(ix) of the CGST Act, 2017 lays down that the threshold exemption is not available to such persons and they would be liable to be registered irrespective of the value of supply made by them. This requirement is, however, applicable only if the supply is made through such electronic commerce operator who is required to collect tax at source under section 52 of the CGST Act, 2017. However, where the e-commerce operators are liable to pay tax on behalf of the suppliers under a notification issued under section 9 (5) of the CGST Act, 2017, the suppliers of such services are entitled for threshold exemption.

Question 5: Will an e-commerce operator be liable to pay tax in respect of supply of goods or services made through it, instead of actual supplier?

Answer: Yes, but only in case of services notified under Sec. 9(5) of the CGST Act, 2017. In such cases tax shall be paid by the electronic commerce operator if such services are supplied through it and all the provisions of the Act shall apply to such electronic commerce operator as if he is the supplier liable to pay tax in relation to the supply of such services. A similar provision for inter-State supply is provided for in Sec. 5(5) of the IGST Act, 2017. (Refer to Notification No.

17/2017- Central Tax (Rate) and 14/2017- Integrated Tax (Rate) dated 28.06.2017).

Question 6: Will threshold exemption be available to electronic commerce operators liable to pay tax on notified services?

Answer: No. Threshold exemption is not available to e-commerce operators who are required to pay tax on notified services supplied through them.

Question 7: What is Tax Collection at Source (TCS)?

Answer: The e-commerce operator is required to collect an amount at the rate of one percent (0.5% CGST + 0.5% SGST) of the net value of taxable supplies made through it, where the consideration with respect to such supplies is to be collected by such operator. The amount so collected is called as Tax Collection at Source (TCS). (Refer to Section 52(1) of the CGST Act, 2017).

Question 8: It is very common that customers of e-commerce companies return goods. How these returns are going to be adjusted?

Answer: An e-commerce company is required to collect tax only on the net value of taxable supplies. In other words, the value of supplies which are returned are adjusted in the aggregate value of taxable supplies. (Refer to Explanation to Sec. 52(1) of the CGST Act, 2017).

Question 9: What is meant by “net value of taxable supplies”?

Answer: The “net value of taxable supplies” means the aggregate value of taxable supplies of goods or services or both, other than the services on which entire tax is payable by the e-commerce operator, made during any month by all registered persons through such operator reduced by the aggregate value of taxable supplies returned to the suppliers during the said month. (Refer to Explanation to Section 52(1) of the CGST Act, 2017).

Question 10: Is every e-commerce operator required to collect tax on behalf of actual supplier?

Answer: Yes, every e-commerce operator (other than an operator required to pay tax under section 9(5) of the CGST Act, 2017) is required to collect tax where consideration with respect to a taxable supply is collected by such e-commerce operator. (Refer to Section 52(1) of the CGST Act, 2017).

Question 11: What time should the e-commerce operator make such collection?

Answer: The e-commerce operator should make the collection during the month in which the consideration amount is collected from the recipient.

Question 12: What is the time within which such TCS is to be remitted by the e-commerce operator to Government?

Answer: The amount collected by the operator is to be paid to the government within 10 days after the end of the month in which amount was so collected. (Refer to Section 52(3) of the CGST Act, 2017).

Question 13: How can actual suppliers claim credit of this TCS?

Answer: The amount of TCS paid by the operator to the government will be reflected in the GSTR-2 of the actual registered supplier (on whose account such collection has been made) on the basis of the statement filed by the operator. The same can be used at the time of discharge of tax liability in respect of the supplies made by the actual supplier. (Refer to Section 52(7) of the CGST Act, 2017).

Question 14: Is the e-commerce operator required to submit any statement? What are the details that are required to be submitted in the statement?

Answer: Yes, every operator is required to furnish a statement, electronically, containing the details of outward supplies of goods or services effected through it, including the supplies of goods or services returned through it, and the amount collected by it as TCS during a month within ten days after the end of such month. The statement will be filed in FORM GSTR-8. The operator is also required to file an annual statement by 31st day of December following the end of the financial year in which the tax was collected. (Refer to Section 52(4) and Section 52(5) of the CGST Act, 2017).

Question 15: What is the concept of matching in e-commerce provisions and how it is going to work?

Answer: The details of supplies furnished by every operator in his statement for the month will be matched with the corresponding details of outward supplies furnished by the concerned supplier in his valid return for the same month or any preceding month. Where the details of outward supplies declared by the operator in his statement do not match with the corresponding details declared by the supplier, the discrepancy shall be communicated to both persons. (Refer to Section 52(8) and Section 52(9) of the CGST Act, 2017).

Question 16: What will happen if the details remain mismatched?

Answer: The amount in respect of which any discrepancy is communicated and which is not rectified by the supplier in his valid return or the operator in his statement for the month in which discrepancy is communicated shall be added to the output liability of the said supplier in his return for the month succeeding the month in which the discrepancy is communicated. The concerned supplier in whose output tax liability any amount has been added, shall be liable to pay the tax payable in respect of such supply along with interest on the amount so added from the date such tax was due till the date of its payment. (Refer to Section 52(10) and Section 52(11) of the CGST Act, 2017).

Question 17: Are there any powers given to tax officials under the GST Act to seek information on supply/stock details from e-commerce operators?

Answer: Yes. Any officer not below the rank of Deputy Commissioner may issue a notice to the electronic commerce operator to furnish such details within a period of 15 working days from the date of service of such notice. (Refer to Section 52(12), (13) and (14) of the CGST Act, 2017).

Question 18: The sellers supplying goods through e-Commerce operators (ECO) may have common places of business, especially if their goods are stored in a shared facility operated by the ECO. This will result in the same additional place of business being registered by multiple suppliers. Is this allowed?

Answer: Yes, this is allowed. Any registered person can declare a premises as a place of business if he has requisite documents for use of the premises as his place of business (like ownership document, agreement with the owner etc.) and there is no restriction about use of a premises by multiple persons. The registered person shall have to comply with the requirements of maintaining records as per section 35 of the CGST Act, 2017 and Rules 56 to 58 of the CGST Rules, 2017.

Question 19: Do travel agents providing services through digital or electronic platform qualify as ECOs? Will they be required to collect tax at source as per the provisions of Section 52 of the GST Act?

Answer: Online travel agents providing services through digital or electronic platform will fall under the category of ECOs liable to deduct TCS under Section 52 of the CGST Act, 2017.

Question 20: There are transactions in which two or more ECOs are involved. In such cases who would deduct the TCS?

Answer: In such cases, each transaction needs to be treated separately and examined according to the provisions of Section 52 of the CGST Act, 2017. The TCS will be deducted accordingly.

Question 21: There are cases in which the ECO does not provide invoicing solution to the seller. In such cases, invoice is generated by the seller and received by the buyer without ECO getting to know about it. The payment flows through the ECO. In such cases, on what value is TCS to be collected? Can TCS be collected on the entire value of the transaction?

Answer: Section 52(1) of the CGST Act, 2017 mandates that TCS is to be collected on the net taxable value of such supplies in respect of which the ECO collects the consideration. The amount collected should be duly reported in GSTR-8 and remitted to the Government. Any such amount collected will be available to the concerned supplier as credit in his electronic cash ledger.

Question 22: GST requires a dealer to maintain a consecutive serial number for invoices. If we are supplying from multiple locations, do we need to centrally maintain the invoice numbers serially?

Answer: Section 46 of the CGST Rules, 2017 provides that invoice may have “a consecutive serial number not exceeding sixteen characters, in one or multiple series, containing alphabets or numerals or special characters hyphen or dash and slash symbolised as “-” and “/” respectively, and any combination thereof, unique for a financial year”. Therefore, a supplier can have multiple series for the same year, so long as the same series is not used across financial years. Therefore, you may have a different invoice series for each location having consecutive serial numbers running across that series.

Question 23: There are sellers who are selling exempted or zero-tax goods like books through ECOs. Will marketplaces be required to collect TCS on such supplies?

Answer: As per Section 52(1) of the CGST Act, 2017 TCS is to be collected on “the net value of taxable supplies” made through an ECO. When the supply itself is not taxable, the question of TCS does not arise.

Question 24: I am a supplier selling my own products through a web site hosted by me. Do I fall under the definition of an “electronic commerce operator”? Am I required to collect TCS on such supplies?

Answer: As per the definitions in Section 2 (44) and 2(45) of the CGST Act, 2017, you will come under the definition of an “electronic commerce operator”. However, according to Section 52 of the Act *ibid*, TCS is required to be collected

on the net value of taxable supplies made through it by other suppliers where the consideration is to be collected by the ECO. In cases where someone is selling their own products through a website, there is no requirement to collect tax at source as per the provisions of this Section. These transactions will be liable to GST at the prevailing rates.

Question 25: We purchase goods from different vendors and are selling them on our website under our own billing. Is TCS required to be collected on such supplies?

Answer: No. According to Section 52 of the CGST Act, 2017, TCS is required to be collected on the net value of taxable supplies made through it by other suppliers where the consideration is to be collected by the ECO. In this case, there are two transactions - where you purchase the goods from the vendors, and where you sell it through your website. For the first transaction, GST is leviable, and will need to be paid to your vendor, on which credit is available for you. The second transaction is a supply on your own account, and not by other suppliers and there is no requirement to collect tax at source. The transaction will attract GST at the prevailing rates.

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ITRAA

IMPACT OF GST ON FMCG



**INDEPENDENT TAX RESEARCH
AND ANALYSIS ASSOCIATION**

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Preface

The implementation of GST in the initial days would pose certain challenges. Implementation of the GST has undoubtedly been one of the biggest events in the highly fragmented FMCG and retail industry. It has made companies re-examine their supply chain networks to optimize their number of warehouses, locations and linkages. Accordingly in order to facilitate the seamless transition from the old tax law to GST regime, the impact of the GST on FMCG industry alongwith the relevant provision has been discussed in this Book. This is a complete guide for the rising issues and solutions in incorporating GST with FMCG sector as well as covering the practical aspects & current scenario of the industry.

We sincerely thank to the ITRAA mentor panel for their efforts in bringing out this publication for the dissemination of knowledge amongst its readers. We express our gratitude for the untiring effort of CA Navya Malhotra for reviewing this publication.

We trust this publication would further facilitate our members in practice as well as industry to acquire specialised knowledge retaining to the FMCG Industry

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Introduction- FMCG Sector in India

India is a country with a large population and is rapidly embracing consumerism or consumer culture where tastes and preferences are changing every day. This large consumer base coupled with the dynamic changes in tastes and preferences presents opportunities as well as challenges for the fast moving consumer goods industry (hereinafter abbreviated as “FMCG industry”). Also, in recent times, online shopping and the real estate developments in India such as the construction of shopping malls and hypermarkets, are opening up new distribution channels and expanding consumer reach for FMCG companies. FMCG has been one of the engines of growth in India and is poised to become the fourth largest sector in the Indian economy. Also, the FMCG industry is one of the most regulated industry and there are various regulations and food safety and product safety standards that are applicable to it.

There are three main segments in the sector

- ✓ **Food and beverages** which accounts for 19 per cent of the sector,
- ✓ **healthcare** which accounts for 31 per cent and
- ✓ **household and personal care** which accounts for the remaining 50 per cent.

The sector is likely to see a significant impact once the Goods and Services Tax (GST) is implemented as the companies set up warehouses across the states in a bid to have a more tax efficient system.

The Common features of this industry are:-

- Multi State business module,
- Fixed MRP,
- Involves large scale wholesale and retail Channel,
- Multi Modules of Marketing,
- Domestic as well as Foreign Procurements etc.
- Government Control on production, finance and prices,
- Challenges of E commerce etc.



**It is important to note that the alcoholic liquor for human consumption have been kept outside the purview of the Goods and Services Tax laws and so do not form part of the analysis of this note. Even the restaurants and eateries and outdoor catering have not been included in this analysis as there are very specific rules enacted for this segment which is not part of the scope of this study. We have not discussed the general provisions of GST to focus on important aspects of GST which has major impact on FMCG industry.

The GST implementation - Teething issues and current state of play

- ✚ One of the biggest challenges in the GST implementation was the technology infrastructure and experience of compliance given that since Day zero; there were bugs, the portal had a slow response rate and performance related issues. The Government constituted a committee to address the issues and it is working on improving the tax payer experience and various steps at simplification of process are being introduced.
- ✚ The **implementation of the E-way bill** also brought with it operational as well as technology challenges for which the Government took additional time to get the framework up and running. The portal was revamped and was introduced in February 2018 and is completely functional since April 2018 on a pan India basis. The automation of E-waybill system is a welcome relief from the previous practice of manual checking of way bill information on check posts in different States which led to different interpretations and maintenance of different types of documentation/ records based on State VAT law provisions.
- ✚ **Multiple tax rates** (5%, 12%, 18% and 28%) is another aspect which complicates the taxation system and leads to unwarranted classification disputes which has plagued the FMCG sector. The GST law also prescribes for a levy of compensation cess on some specific goods. Further, the applicable rate also depends upon value-based classification (footwear, apparel etc), Specification based classification and based on status of buyers. The Government has indicated that it will continue to work on rationalization of rates and try to move towards a simplified tax rate structure.
- ✚ Further, even after Four years of GST go-live, there is **deferment of implementation of various provisions and continuous changes** which leads to an atmosphere of ambiguity for existing businesses as well as those looking to set up new ventures. One of the focus areas for India Inc is the matching concept, wherein a buyer is required to reconcile its tax payments with the tax collections, deposited and reported by the supplier on the Government portal. Any incorrect or unmatched transaction would lead to denial of credit to the buyer.



- ✚ As a part of the monthly compliance, given the recent announcements, it has become mandatory for all taxpayers to perform a **reconciliation of input tax as per purchase register with the input tax as auto populated in Form GSTR - 2A**. As per the amendments to the CGST Rules, the maximum credit to be availed in Form GSTR - 3B by registered taxpayer shall be restricted to 105% of the credit by their suppliers and appearing in Form GSTR - 2A. The balance credit can be availed as and when the invoice level details are reflected on the GSTN portal. This also implies that now reconciliation needs to be done on invoice level which may be an arduous task for the FMCG industry. The major issue that is to be faced by the FMCG industry is a need for tracking and maintaining records for the invoices and need for continuous and effective follow-up with the suppliers.
- ✚ **GSTR-3B** was introduced as a stopgap arrangement but later it was inducted as a return in the Law books. But under this return type, there is **no modification or amendment facility available** and in case the changes are to be made then there is a lengthy one month period time for the amendment making it interest liability issue. It is worthy to note that the credit note/debit note or B2C sales made cannot be modified again in the GSTR 1 making it a serious task while filing.
- ✚ **E-invoicing system** is already implemented for the assessee having the turnover more than Rs 50 Crore. The new requirements of e-invoicing are designed to ensure interoperability of GST related documentation across several platforms. FMCG companies are now required to prepare an e-invoice for each and every supply and this imposes procedural burden on them. E-invoicing requirements and affixing of QR codes on B2C invoices is a requirement that is in addition to the E-way bill requirements.
- ✚ It was assured that 90 per cent of the **refunds of GST** would happen in seven days at the time of GST implementation. But on the longer term, it did not happen. The recent unearthing of fake invoices and fraudulent practices to corner input tax credit may only lead to more scrutiny and more delays. This results in human interfaces, which may lead to the involvement of corruption.
- ✚ An important aspect of the implementation of a new law is to have a **quick and robust dispute prevention and restitution mechanism**. Acknowledging the need for suitable clarifications, the Authority for Advance Ruling (AAR) has been set up in multiple jurisdictions across India. The AAR has been fairly proactive in disposing off advance ruling applications, especially in Karnataka, Maharashtra, Kerala and Gujarat. However, given that the AAR has been constituted at a State level, there is a possibility of contrary rulings by two different AARs. This indicates a need for a central management team. Further, the appellate process for challenging such advance rulings is not completely robust as yet. These factors are placing the efficacy of the advance ruling mechanism in doubt in the minds of the tax paying community.

- ✚ Transition from one regime to another is always a difficult process and it was no different in the present case. The Government did allow for **transition of all input tax credits in the books of accounts to the new regime**, subject to fulfillment of prescribed conditions. This step taken by the Government was appreciated by the industry. However, the nuances for interpreting the conditionals of availing such credit were not appropriately addressed. Moreover, due to revenue collection challenges in the initial months, the Government also issued numerous notices disputing eligibility of transitional credit, thereby imposing more rigorous documentation/ compliance requirements on players already reeling under transition challenges. Further, in some cases, there was a technology challenge i.e. eligible transitional credit did not reflect on the GST portal or dealers were unable to file the prescribed forms online.
- ✚ **Implementation of the anti-profiteering provisions** is one of the key areas of debate within the industry players. While the regulations seek to prevent entities from making profits on account of GST, an overarching anti-profiteering provision under the GST law without clear guidance or explicit rules has led to considerable ambiguity, primarily on account of the following:
- Lack of clarity on the granularity of anti-profiteering analyses i.e. at aggregate company level, product category or SKU level, impact qua price controlled products
 - Can the Indian tax payers resort to mechanism followed by tax payers in other jurisdictions with similar anti-profiteering provisions (such as Australia/Malaysia?). Will the tax authorities accept the same?
 - Whether transition costs incurred by the Company on account of GST implementation may be absorbed while computing a revised anti-profiteering compliance price.
 - On which date such price reductions were/ are to be made effective. It is not clear as to exactly how the revised price computations were carried out by the companies and factors differ basis the nature of the product and business.
- ✚ **Implementation of the GST has undoubtedly been one of the biggest events in the highly fragmented FMCG and retail industry. It has made companies re-examine their supply chain networks to optimize their number of warehouses, locations and linkages.** The typical value chain is highlighted below for ready reference: -

Mixed Supply & Composite Supply under GST

This is a new concept introduced in GST which will cover supplies made together whether the supplies are related or not. Supplies of two or more goods or services can be either 'composite supply' or 'mixed supply'. The concept of composite supply in GST regime is similar to the concept of naturally bundled services under Service Tax Law. However, the concept of mixed supply is entirely new.

✚ What is a supply under GST?

- ✓ The expression "supply" simply means all forms of supply of goods/ services. It is made for a consideration during the course of business and includes the following:
 - ❖ Sale
 - ❖ License
 - ❖ Import of services for a consideration (if even it is not in the course or furtherance of business)
 - ❖ Certain activities specified in Schedule I of GST Act will also be treated as supply.
 - ❖ Transfer
 - ❖ Rental
 - ❖ Barter
 - ❖ Lease
 - ❖ Exchange
 - ❖ Disposal

✚ Why is the concept of mixed supply & composite supply important?

- The Goods and Services Tax Law defines the rate of tax to be applied on different commodities. Specific rates for goods and services have been defined by the GST Council. GST Rate for each type of goods and services have been defined in the GST Law. So if you are supplying a particular good or a service, rates are easy to identify.

However, in certain cases, supply of a good and service may be interlinked or may be done together even though not interlinked.

For example a vendor may provide installation services along with the sale of cameras or an AC is supplied along with AC installation services.

The GST Act defines how such supply must be rated. Under such cases, the concept of supply helps in determining the rate to be applicable on the product or services supplies. Hence, it is important that the supply can be characterized under a mixed or composite supply which helps in ascertaining the rate of tax applicable on such supplies. Therefore, the concept of composite supply and mixed supply becomes important.



✚ What is Composite supply under GST?

- As per Sec 2(30), Composite Supply means a supply made by a taxable person to a recipient
 - Consisting of two or more taxable supplies of goods or services or both, or any combination thereof,
 - which are naturally bundled
 - and supplied in conjunction with each other
 - in the ordinary course of business, one of which is a principal supply.

✚ What is Principal Supply?

- As per Section 2(90) of CGST Act means supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

✚ Meaning of bundled supply & how to determine its nature ?

- A bundled supply is a combination of goods and/or services. This concept was mainly found in service where a bundled service meant a combination of two or more services. The following points will help in ascertaining the nature of goods or services as bundled supply:-
 - If buyers mostly expect such services to be provided as a package, then the package will be treated as naturally bundled. Such as hotels and food.
 - If the providers provide the products or services as a package such package will be considered as a bundled supply. For example, air transport and food on board is a bundle offered by most airlines.
 - Nature can also prescribe whether they are bundled or not. Such as hotels and laundry services.
 - Whether the products or services are available individually or not.
 - There is a single price for the package even if the customers opt for less – The components are normally advertised as a package – The different components are not available separately

✚ What is the meaning of Naturally Bundled supply?

- The term “naturally bundled” is not defined in the CGST Act. However two supplies shall be considered naturally bundled if one is a principal supply and other supply which is ancillary make the principal supply more effective, more convenient, more comfortable, more useful and more enjoyable. E.g. food by railway on board to passengers make the journey of passengers more comfortable and enjoyable

✚ Tax Rate on Composite Supply:

- As per Sec -8 of the Act, A composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as composite supply of such principal supply. In simple words, The tax rate of the principal product or service will apply on the entire supply.

Example: Transportation of packed goods along with insurance. The supply of goods, packing materials, transport and insurance is a composite supply as without supply of goods, there cannot be any insurance or transport services. Thus, the supply of goods is the principal supply. Therefore GST will not be applicable on goods, insurance, transportation, packaging material and packaging individually rather, GST on goods will be applied. If the second condition is not fulfilled it becomes a mixed supply.

✚ What is Time of Supply in case of Composite Supply?

- If principal supply is a service then the time of supply will be decided according to the rules applicable to supply of services and if the principal supply is goods then the rules applicable to supply of goods shall apply.

✚ What is Mixed supply under GST?

- As per Sec - 2(74), Mixed supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

✚ What is the Tax Rate on Mixed Supply?

- As per Sec -8 of the Act, Mixed supply comprising two or more supplies shall be treated as supply of that particular supply which attracts the highest rate of tax.

For example- A Diwali gift box consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drink and fruit juices supplied for a single price is a mixed supply because all the goods can also be sold separately instead of a bundle. Since aerated drinks have the highest GST rate of 28%, aerated drinks will be treated as principal supply and 28% will apply on the entire gift box. If the person would have brought the products individually instead of a gift box then the rates of GST would have been applied individually and it would not have been a mixed supply.

Note: A supply shall be termed as mixed supply only if it does not satisfy the criteria of a composite supply.

✚ Time of supply in case of mixed supplies

- Deciding whether time of supply of goods or services shall apply, depends upon whether the highest rate of tax is applicable to goods or services. If highest rate is applicable to goods, then time of supply rules applicable to goods shall apply and if highest rate is applicable to services, then time of supply rules applicable to services shall apply.

❖ Some special cases to be considered:

- 1) **Works Contract services** - A works contract consists both supply of service and transfer of goods. For example, construction of a new building where services of labourers, architects, etc. is supplied along with transfer of goods like bricks, sand, cement etc.
Though it is a composite supply but GST Act clearly clarifies works contract as a supply of service with specific tax rates.
- 2) **Restaurant services** - Food is prepared and served at the same time and hence it is also an example of composite supply. However, to avoid the confusion under earlier tax law, GST Act clearly clarifies restaurants as a supply of service with specific tax rates.

Policy of Sales Promotion and Discounts

While all business have to offer different types of marketing schemes and offers, in the FMCG and retail the industry is structured in a way that the manufacturers/ importers offer a variety of pre and post-sale discounts and incentives, free samples etc. to dealers/ distributors. Sales promotion includes several communications activities that attempt to provide added value or incentives to consumers, wholesalers, retailers, or other organizational customers to stimulate immediate sales. Examples of devices used in sales promotion include coupons/cashbacks, free samples, Gift item, point-of-purchase (POP) displays, contests, volume based rebates, and other innovative tools.

In the current economic environment, whilst it is important for the sales team to be aware and continually introduce newer and innovative sales promotional activities – it is equally important for the finance/tax team to be prepared with the effective tax strategy for the different methods so adopted by the organisation.

There are diverse range of schemes offered by FMCG and retail players to its distribution network, and due to the ecosystem these keep evolving. Various categories of such transactions are as follows:

- Post sale discounts such as price discount, purchase based schemes, category growth, trade discount, turnover target discounts
- Special discounts such as festival price discount, liquidation support and other seasonal rebates
- Merchandiser support, visibility allowance and security deposits received from exclusive outlets
- Corporate or bulk buy discounts
- Other allowances such as loading/ unloading allowance, freight allowance and event support

Tax treatment of different types of schemes

Certain specific provisions which need to be kept in mind before the assessment:

Section 7: CGST Act – “the expression “supply” includes

- all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;....
-
- the activities specified in Schedule I, made or agreed to be made without a consideration;”

Section 15: CGST Act - “The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.”

Section 16: CGST Act - “Every registered person shall, subject to such conditions and restrictions as may be prescribed and in the manner specified in section 49, be entitled to take credit of input tax charged on any supply of goods or services or both to him which are used or intended to be used in the course or furtherance of his business..”

The below note also considers the following GST Clarifications:

1. **Circular No. 92/11/2019-GST dated 7 March 2019** and
2. **Circular No. 105/24/2019-GST dated 28 June 2019** issued by Central Board of Indirect Taxes and Customs (GST Policy Wing)

❖ **Free samples given to potential customers/ Gifts to dealers/ distributors -**

Company distributes its products as a part of marketing initiatives, etc. as free samples or gifts to dealers/ distributors for reaching targets such as gold coins etc.

GST Analysis:

The above transaction does not fit within the definition of supply, since there is no consideration involve herein. Additionally, this transaction does not fall within the list included in Schedule I to the CGST Act. Since there is no supply involved, there is no question of GST applicability herein.

ITC (from buyer perspective)

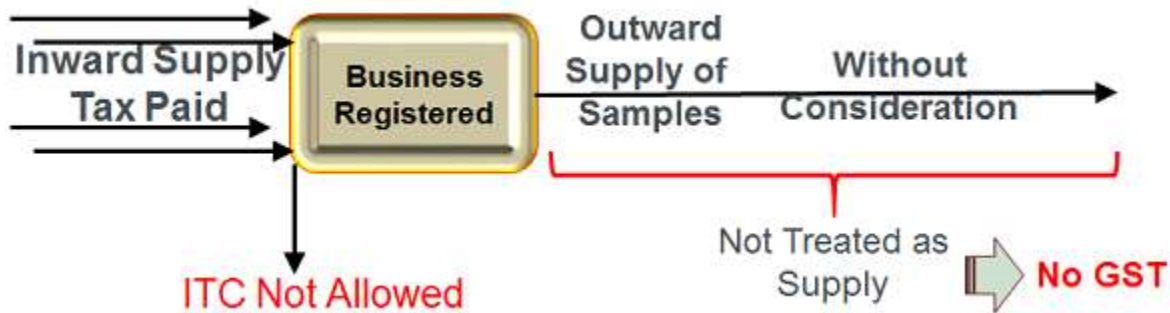
Not applicable since no tax has been charged in this transaction in the first place.

ITC on the input/input service/ and capital goods (from supplier perspective):

As per Section 17(5)(g), input tax credit shall not available for goods supplied as free samples. While currently, credit reversal is required, industry is representing that credit reversal should not be required as distribution of the said goods as free samples is required for promotion of the sale of these goods and are thus used in course and furtherance of business.

Further, while generating e-way bill for the same, industry should seek clarification regarding the taxable value to be reported on the e-way bill for such FOC supplies. Procedure/ mechanism for computation of credit reversal on account of goods distributed as free samples, used for personal use etc. is not clear in the law. Further, no

specific provision is there in the CGST Act for requirement to reverse credit in case of free of cost services (such as free trips to customers on achieving certain targets, etc.).



❖ Free Gifts offered with purchase:

Examples: Free cup set offered to customer on buying above a specific threshold (say - Rs 1,500/- or Rs 5,000/-)

GST Analysis on the free gifts so offered:

The above transaction does not fit within the definition of supply within the meaning of Section 7 of the CGST Act, since there is no consideration involved herein. Additionally, this transaction does not fall within the list included in Schedule I to the CGST Act. Since there is no supply involved, there is no question of GST applicability herein.

Any ITC available to the buyer:

Not applicable since no tax has been charged in this transaction in the first place.

ITC on the input/input service/ and capital goods (from supplier perspective):

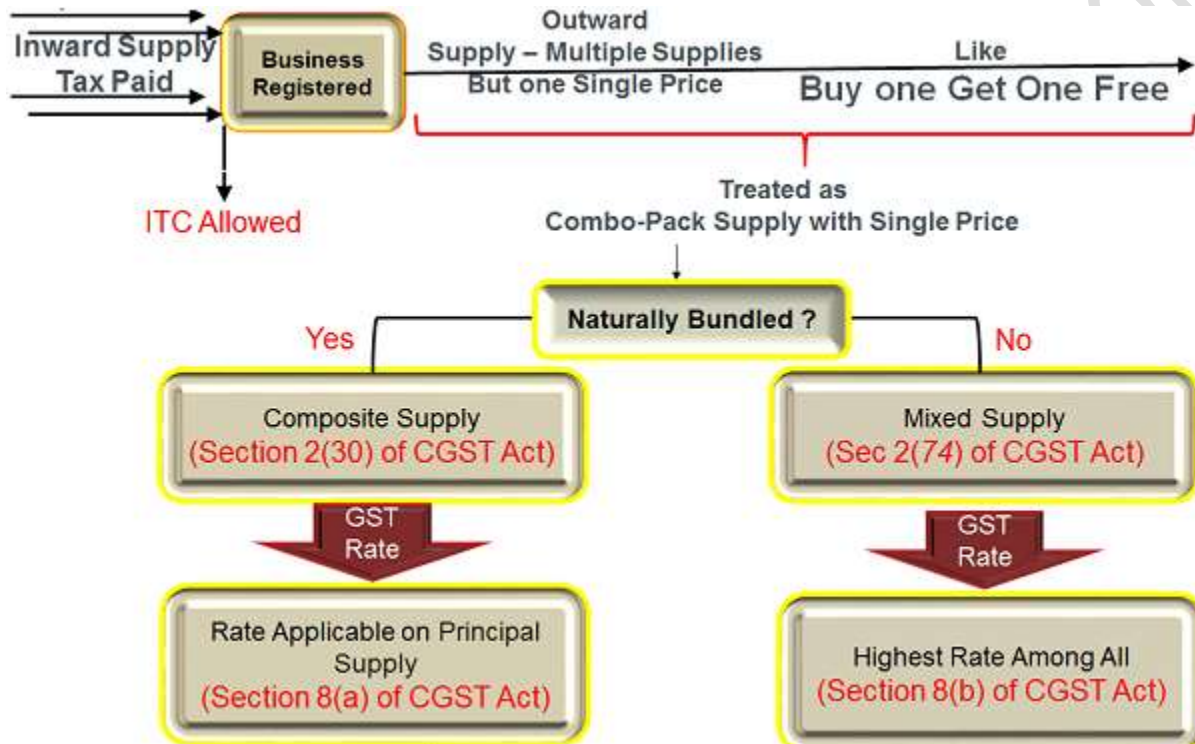
ITC shall be available to the supplier on the purchase cost of the free gifts so offered, since these costs are in nature of marketing spends and "has been used in the course or furtherance to his business".

❖ Additional free units offered:

- ✚ Company issues promotional schemes and provides off take discounts to stockist/ retailer wherein on buying some specified quantity of a product, the distributors will get additional quantity of that product free of cost (e.g., buy 10 items with additional 2 items free). Further, the chargeable as well as free supplies are mentioned on the face of the same invoice (e.g. it is mentioned 10 units chargeable and 2 units free).
- ✚ "Buy One, Get One free" "Buy two soaps and get one shampoo sachet free" offered by seller of various FMCG products - tooth brush, soaps, biscuits, etc - Colgate, ITC Sunfeast, HUL - Lux, etc

GST Analysis:

The GST Circular No. 92/11/2019 dated 7 March 2019 clearly explains that the additional units so offered are “not an individual supply of free goods but a case of two or more individual supplies where a single price is being charged for the entire supply. It can at best be treated as supplying two goods for the price of one.” Hence, the above would constitute “supply” under the act, and the taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply.



ITC (from buyer perspective)

Fully available based on the GST rate so applied (as explained in composite and mixed supply).

ITC on the input/input service/ and capital goods (from supplier perspective):

Basis the above, the issue under consideration is whether input tax credit is required to be reversed on the goods supplied based on commercial terms without consideration under the said transaction. One view on this issue is that the free goods supplied are not in the nature of ‘gifts’ but are akin to a quantity discount and thus, no input credit reversal should be required for the same and also such input/input service/ and capital goods are used in relation to supply of goods or services or both as part of such offers.

❖ Volume Discounts offered:

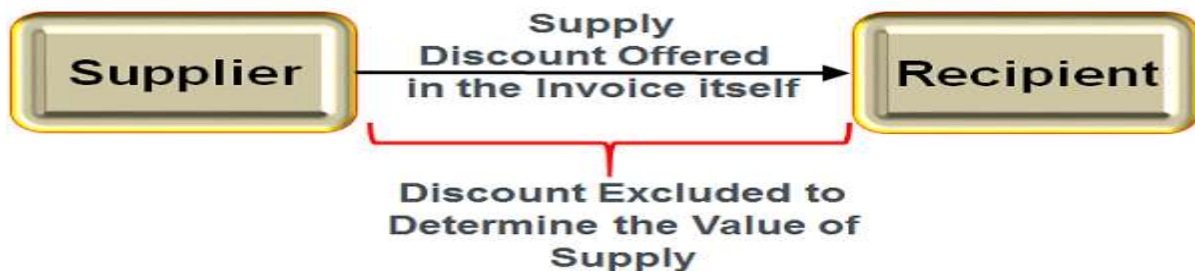
Examples: “Buy More, Save More” or “Get additional discount of 1% if you purchase 10000 pieces in a year, get additional discount of 2% if you purchase 15000 pieces in a year”

Staggered discount schemes offered by FMCG/Newspaper Companies to their wholesale/retail customers. - ABP Private Limited (on volumes of circulation distributed by the agents), Colgate, ITC Sunfeast, HUL - Lux, etc

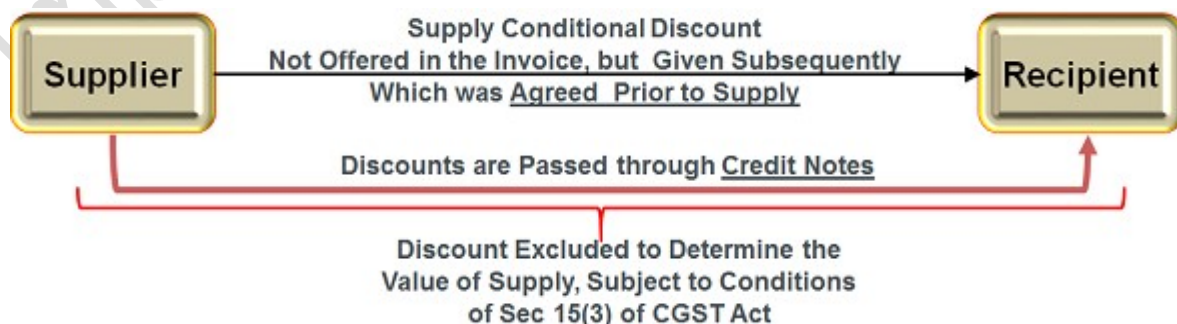
GST Analysis:

The GST Circular No. 92/11/2019 dated 7 March 2019 mentions that discounts offered by the suppliers to customers shall be excluded to determine the value of supply provided they satisfy the below parameters:

- 1) if such discount has been duly recorded in the invoice issued in respect of such supply;



- 2) if such discounts have been offered after the supply has been effected (not reflected in the invoice so issued), then it has to be additionally established that –
 - ✓ such discount was provided in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices;
 - and**
 - ✓ input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.



ITC (from buyer perspective)

ITC is available to the extent mentioned in the invoice so issued by the supplier. Additionally, in case the discounts have been offered after supply has been effected - then the buyer needs to reverse the ITC as is attributable to the discount so offered by the supplier.

ITC on the input/input service/ and capital goods (from supplier perspective):

Fully available

Note - A registered person can issue a consolidated credit note/ debit note in respect of multiple invoices issued in a financial year

❖ Post-Sales Discounts (with additional obligations)

Examples: FMCG Companies providing additional discounts to retailers/wholesale dealers if they undertake specific brand promotion activities, special sales drive, etc

GST Analysis:

Under such scenario, the discount so offered by the supplier is consideration paid (indirectly) by the supplier to the dealer/retailer to undertake such brand promotion activities, and hence this transaction is separate from the original sales (supply) made by the supplier to the dealers/retailers and is to be treated accordingly. The dealer/retailer would be required to issue GST invoice and charge applicable GST to the original supplier.

ITC (from buyer perspective)

Herein, the original supplier will be entitled to claim ITC of the GST - so charged by the retailer/dealer.

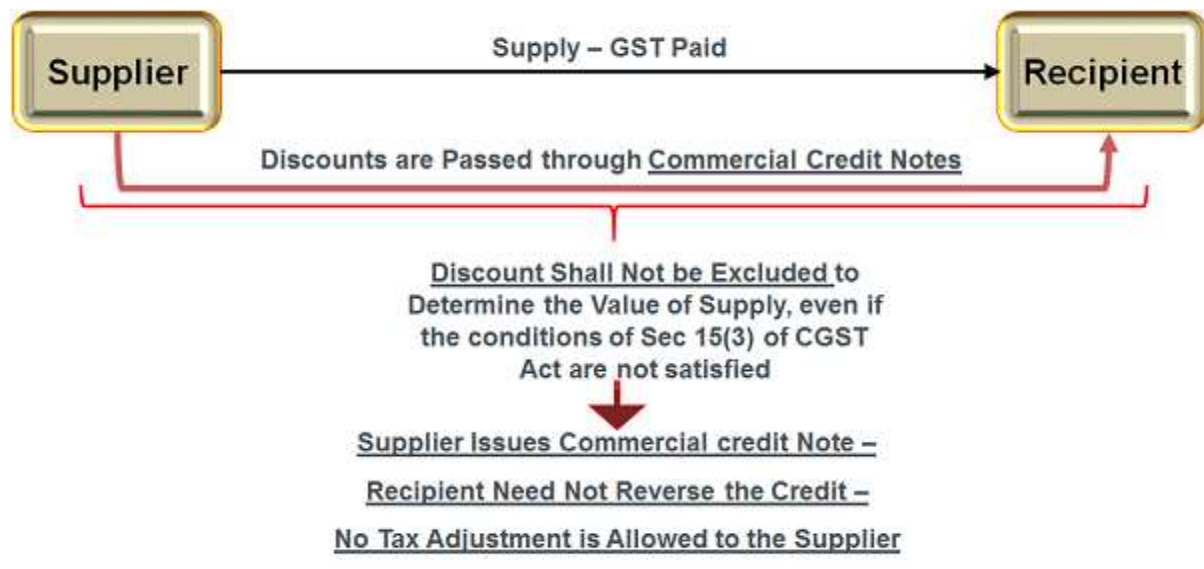
❖ Credit Note - Other reductions in the sales price offered by the Supplier

These are the discounts which are not known at the time of supply or are offered after the supply is already over.

Example - M/s ABC Ltd supplies the goods to Mr. XYZ Ltd at Rs. 1000/- per carton but afterwards M/s ABC Ltd re values it at Rs. 950/-per carton and issue a credit note of Rs. 50/- per carton to M/s XYZ Ltd.

GST Analysis:

In such cases, the supplier will not be allowed to reduce original GST liability.



ITC (from buyer perspective)

The dealer will not be required to reverse ITC attributable to the tax already paid on such post-sale discount received by him through issuance of financial / commercial credit notes by the supplier of goods – as long as the dealer pays the value of the supply as reduced after adjusting the amount of post-sale discount (Credit Notes) plus the amount of original tax charged by the supplier.

Conclusion:

The businesses needs to continue tracking the explanatory circulars issued by the Central Board of Indirect taxes and Customs – and make necessary adjustments (if required) in their GST set up accordingly to ensure optimum compliance and avoid possible future litigations.

❖ Certain basic rules are evident from the above analysis –

- ✓ The dealers/buyers/retailers can claim GST credit only to the extent paid by the original supplier and evident in the GST invoice so issued by them.
- ✓ The post sales discount offered needs to be assessed by the respective suppliers in light of the above explanation and suitable GST strategy needs to be aligned therewith.
- ✓ In case the organisation is supplying bundled goods/services as part of its business, a suitable assessment needs to be made and conclusions arrived as to whether the supply is a composite or a mixed supply. Additionally the Information Technology system also needs to be geared and aligned to ensure the necessary compliances.
- ✓ It would be suggested for the FMCG companies to get their GST methods/set up independently assessed and reviewed by an external GST specialists.

- ✓ The regulators will also be requested to come out with industry wise Model Accepted Practises in order to ensure consistency and uniformity in GST compliance.

❖ OTHER RELEVANT POINTS RELATED TO SALES PROMOTION SCHEME

✚ Combo packs -

There are various marketing campaigns operative in this sector to increase customer engagement and combo packs (combinations of different types of products) is a regular phenomenon.

For combo packs where **price breakup** is also **shown** on the invoice, an issue may arise as to whether the same **can be treated as mixed supply** (and therefore taxable at highest rate applicable to the individual items) **or individual supply** (taxable at tax rates applicable to respective individual products). **Given the statutory norm**, mere **mention of the price breakup** on the invoice may **not always change the characterization** of a mixed supply to an individual supply. However, there is no clarification on the practical constituents of qualifying as a mixed supply and the issue needs to ideally be analyzed based on facts of each situation.

✚ Loyalty points redemption

Various retailers run different kinds of loyalty schemes where customers accumulate points and subsequently, on purchase of goods, can make full or part payment through the accumulated points.

At present, there is some lack of clarity on the treatment of these points. While some treat it as a discount, some choose to pay GST on the entire value of the goods (including the equivalent of points).

The question is whether GST should be paid on the amount after reducing the sum attributable to loyalty points, as it is essentially in the nature of quantity or off-take discount offered to frequent customers (provided the other prescribed conditions are met). Further, given the extensive supply chain in this industry, the loyalty point redemption transaction through the supply chain also needs to be evaluated to ensure appropriate tax treatment at each leg of the transaction.

Vouchers

The payment modes are constantly evolving and new ways of making payments are being added. In this industry some of the most commonly used payment modes are pre-paid cash cards/ gift cards, meals / goods vouchers and gift vouchers. The holder of such cards/ vouchers are generally entitled to a discount or equivalent monetary value for purchase of goods/ services. 'Voucher', for the purposes of GST, necessarily means that instrument which should be accepted as consideration (wholly or partly) for a supply. Therefore, a voucher is an asset for the recipient, and without a recipient, a 'voucher' would lose its meaning.

Definition of Voucher

As per Section 2(118) "voucher" means an instrument where there is an obligation to accept it as consideration or part consideration for a supply of goods or services or both and where the goods or services or both to be supplied or the identities of their potential suppliers are either indicated on the instrument itself or in related documentation, including the terms and conditions of use of such instrument

Time of Supply of Voucher

As per sec 12(4), there is a specific time of supply in case of vouchers i.e. in case of supply of vouchers by a supplier, the time of supply shall be –

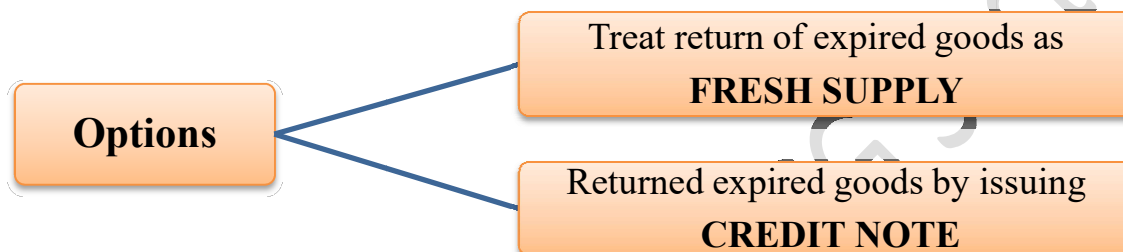
- (a) the date of issue of voucher, if the supply is identifiable at that point; or
- (b) the date of redemption of voucher, in all other cases.

Further, the rate of tax for vouchers is the rate applicable to goods or services they are issued in respect of or that applicable at the time of redemption. Given the specific provisions relating to vouchers, while the general view is that GST is to be paid at the time of redemption of voucher in case of purchases by customers, it is imperative to evaluate each type of transaction to ensure that the appropriate point of taxation is adopted.

Goods Return including of Expiry Goods

Return of goods is inevitable in any trade and industry. There was various confusions prevailing within the industry with regard to the treatment of the expired goods under GST and to overcome the said confusion, the Central Board of Indirect Tax and Customs, vide circular no. CBEC/20/16/04/2017-GST dated 26th October 2018, has laid down the procedure which can be followed in case of return of expired goods.

The Goods and Services Tax (GST) has proposed two options to the wholesaler and the retailer:



❖ Option 1 - Treating Return of Expired Goods as Fresh Supply

Scenarios	Registered Person	Composition Dealer	Unregistered Person
Document Issued	Invoice and Charge Tax (bill of supply for exempt goods)	Bill of Supply	Any commercial document without charging tax
Value	As shown in invoice, or based on which goods were supplied previously	As shown in invoice, or based on which goods were supplied previously	As shown in invoice, or based on which goods were supplied previously
Will ITC be available?	Yes, wholesaler or manufacturer can avail ITC on the levied tax (if other conditions of CGST Act Section 16 are fulfilled)	No ITC	No ITC because of no tax charged

What about the GST implication on the part of Manufacture/ wholesaler for expired goods returned by wholesaler/ retailer and treated as fresh supply?

- When the manufacturer receives the expired goods, he needs to destroy the expired goods.

- As the return of goods is being treated as fresh supply, this return would be purchase for manufacturer/wholesaler.
- The manufacturer is required to reverse the ITC which was availed at the time of the receipt of the expired goods u/s 17(5)(h) of the CGST Act.
- It is important to note that the ITC which needs to be reversed is the one availed at the time of return of time expired goods, however, the ITC availed at the time of manufacture of time expired goods is not to be reversed.

❖ Option 2 - Return by Issuing Credit Note

The provisions of section 34 (1) of the Central Goods and Service Tax Act, 2017, allows the manufacturer/wholesaler, who has supplied to the goods to wholesaler/retailer, to issue a credit note in relation to the expired goods returned by the wholesaler/retailer. The following steps may take place while returning expired medicines by issuing credit note:

Step 1- The manufacturer or wholesaler may issue a credit note to the wholesaler or retailer returning expired goods

Step 2- The wholesaler or retailer may return the expired goods along with a delivery challan.

Step 3- The manufacture would destroy the expired goods and also reverse the ITC "Attributable" to the manufacture of such goods.

Other points to keep in mind, if option 2 mentioned above is selected.

* As per Sec 34(2) of CGST Act, 2017, Credit note should be issued within the month of September following the end of the financial year in which the supply was made or a credit note issued within the date of furnishing of the relevant annual return, whichever earlier

❖ Now Question arises, if credit note is not issued with in the time period prescribed

If issued with in time limit specified	If issued after the time specified lapses
Tax Liability is allowed to be adjusted by the manufacturer/wholesaler (Provided that the person who is returning the expired goods has not availed the ITC or If ITC has been availed by him then is reversed the same against the goods being returned)	<ul style="list-style-type: none"> • Credit note can still be issued by the supplier • But the liability cannot be adjusted by the supplier • Also if credit note is issued after lapses of specified time, there is no requirement to declare such credit note on common portal of GST by the supplier.

Sales returns, customer refunds and other miscellaneous transactions

Excess Collection of Money from Customers

In case of excess collection of money from customers on account of rounding off difference, the issue is as to whether GST to be paid on additional amount recovered. There is no specific relaxation in GST law as regards non-payment of GST on excess amount or net amount collected from customer due to rounding-off difference.

Sales return from a different state

In case of inter-State supply, where goods are returned by customer in a State different from where the goods were issued (say from Delhi), whether credit note (and subsequent tax adjustment) can be claimed by the State which originally invoiced the good (in the absence of receipt back of goods to such State).

Sales return in case of closure of branch/warehouse in a state

Similarly, where the customer returns goods in different State due to closure of the office/ warehouse of the State from where the invoice was issued (say in Delhi) , whether there would be credit blockage in the State of Delhi on account of making a non-taxable supply from Delhi (in so much so that Delhi would not make any taxable supply of goods in future once returned by the dealer since the goods would be lying at different State).

Refund provided to customers

In certain cases, if the customer is unhappy with the product or in case of an expired/ faulty product, refund is provided to the customers. The issue to be considered is whether the same may be construed as a separate supply liable to GST. In this case, a position is possible that there is no underlying supply of goods in the course of furtherance of business by the customer is such a scenario and thus, this should not qualify as a separate supply.

Compliance requirements for credit note/debit notes

Given the quantum of low value high volume of transactions, the requirement for raising one credit note/ debit note per invoice was creating a compliance and administrative nightmare for the industry. Given the same, in order to simplify the compliances, an amendment to the law is issued allowing for issuance of a consolidated debit note/ credit note covering multiple invoices.

Fixation of MRP and Impact of Change in Rate of Tax

The Legal Metrology Act provides for uniform Maximum Retail Price of goods to be printed on each goods packed for sale. It is to be stated inclusive of all taxes. GST has subsumed most of all other taxes applicable up to the retail sale and provides for uniform rate of tax all over India at each stages of sale. It is now very easy to ascertain incidence of tax burden on goods up to the retail sale to be included in retail price. But change in rate of tax in between has impact on MRP already fixed.

The intention of the Government is that each reduction in rate of tax must pass on to the retail customer or consumer of goods. The industry is required to see that the benefit of reduced tax burden passes to the customer.

The Government of India through Ministry of Consumer Affairs is very prompt and issues immediate advisories to reduce the MRP on stock of goods as well as printed packing materials by way of fixing of additional sticker or stamping or online printing subject to condition that earlier label or sticker showing MRP must be visible but in case of increase in rate of tax no such benefit or concession to increase the price. The manufacturer or importer as the case may be needs to reimburse the retailer or the retailer may have to bear the burden of increased rate of tax. The valuation rule do not allow the deduction for reimbursement of increased rate of tax given to the recipient post sale.



Anti-profiteering regulations as per section 171 of the CGST Act, 2017 also warrant the attention of the reader. Section 171 of CGST Act, 2017, provides that any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices. It is also believed that being a consumer facing industry, the FMCG sector is more vulnerable to risks that may arise due to profiteering. The entire value chain therefore has the responsibility of passing on the benefits of reduction in prices to their customer and ensure that they comply with the anti-profiteering guidelines.



Provisions of Anti-Profiteering Mechanism under GST Laws

The GST Council announced the anti-profiteering rules on 18th June 2016. Anti-profiteering rules are needed as lessons learnt from other countries show that there has been inflation and prices have increased after GST implementation. For example, Singapore saw a hike in inflation when it introduced GST in 1994. It makes it more important for Indian administrators to keep tabs on prices after the implementation of GST.

India is doing what many countries did: initiate anti-profiteering measures at the retail level to protect consumers from price swindling. Clause 171 has been inserted in the GST Act which provides that it is mandatory to pass on the benefit due to the reduction in the rate of tax or from input tax credit to the consumer by way of commensurate reduction in prices.

The Crux of the anti-profiteering rules is-

- If there is reduction in rate of tax on the supply of goods or services or
- Benefit of input tax credit is now available under GST, then a registered person must pass on the benefit by reduction in prices

DETAILED ANALYSIS

General obligations - Section 171 of the CGST Act, 2017 prescribes Anti-profiteering measure. The relevant portion of Goods and Services Tax Act, 2017 is reproduced as under:

“Sec - 171. Anti-profiteering Measure : -

(1) Any reduction in rate of tax on any supply of goods or services or the benefit of input tax credit shall be passed on to the recipient by way of commensurate reduction in prices.

(2) The Central Government may, on recommendation of the Council, by notification, constitute an Authority, or empower an existing Authority constituted under any law for the time being in force, to examine whether input tax credits availed by any registered person or the reduction in the tax rate have actually resulted in a commensurate reduction in the price of the said goods or services or both supplied by him.

(3) The Authority referred to in sub-section (2) shall exercise such powers and discharge such functions as may be prescribed.”

(3A) Where the Authority referred to in sub-section 2, after holding examination as required under the said sub-section comes to the conclusion that any registered

person has profiteered under sub-section (1), such person shall be liable to pay penalty equivalent to 10% of the amount so profiteered.

Provided that no penalty shall be leviable if the profiteered amount is deposited within thirty days of the date of passing of the order by the Authority

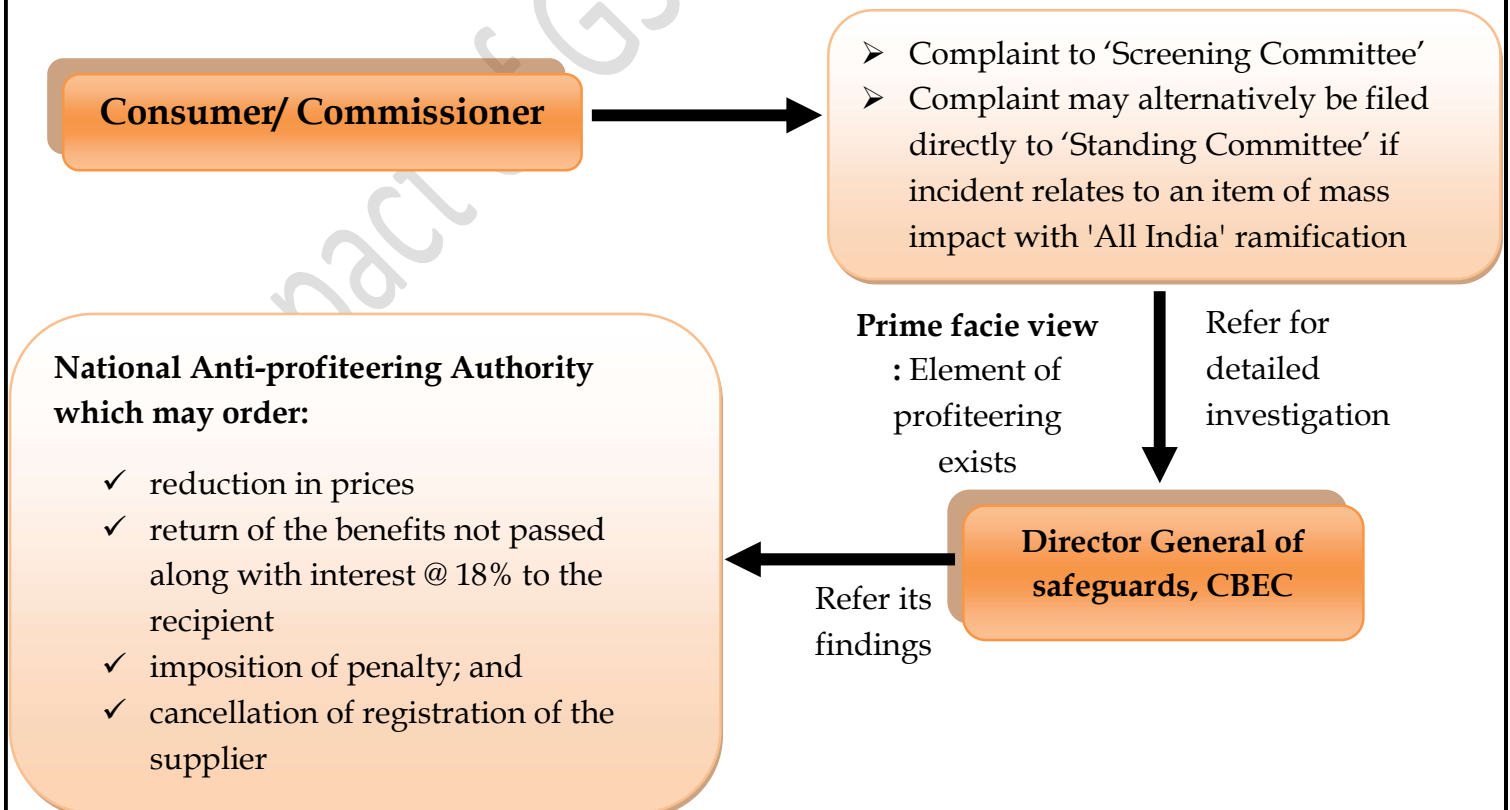
Specific obligation: If tax credits claimed on transition stock (deemed credit under 40/60% scheme), same should be passed on to customers.

The relevant provisions contained under proviso to Section 140 (3) of Central GST Act read as under

Provided that where a registered person, other than a manufacturer or a supplier of services, is not in possession of an invoice or any other documents evidencing payment of duty in respect of inputs, then, such registered person shall, subject to such conditions, limitations and safeguards as may be prescribed, including that the said taxable person shall pass on the benefit of such credit by way of reduced prices to the recipient, be allowed to take credit at such rate and in such manner as may be prescribed.”

COMPLIANCES

For administration of compliance with the anti-profiteering provisions, a framework of bodies has been constituted. A National Anti-Profiteering Authority and State level screening committees have been appointed to review complaints of anti-profiteering, with the Director General of Safeguards being made responsible for detailed investigation of cases. A broad framework and timetable for the investigation process has also been set out (see diagram given on next page)



**Most
Interesting
Questions**

How Suppliers should ensure compliance with anti-profiteering regulations and how anti-profiteering should be enacted?



In our view, following are the key steps that businesses must follow and suggested guidelines that would help in establishing compliances with anti-profiteering:

1. **Maintenance of cost records:** It is important to maintain cost records and ensure that all costs are factored in when determining the costs of the products. It may also be advisable to consult industry peers on the manner in which they account for and record costs.
2. **Segregation of costs:** It is also advisable to bifurcate costs into product specific and general overheads. This will facilitate in deriving costs product or SKU wise if so desired by the anti-profiteering authorities.
3. **Impact Assessment of pre-GST and post-GST pricing:** Based on costs determined, analysis should be done of the costs and the applicable indirect tax rates in both the pre-GST and the post-GST regime and then the positive benefits arising either due to rate reductions in the GST regime or additional input tax credit available in GST regime should be quantified. In both the Pre- GST and GST regime, the Harmonised System of Nomenclature was in place. Thus, rate comparison on HSN basis should not be an arduous task. But in FMCG Industry, where there are a massive number of SKUs, assessing the classification as per HSN and the applicable rates may be an arduous task.
4. **Ascertaining the mechanism of transmitting gains due to GST implementation:** There are various mechanisms in which the gains from GST can be transmitted to downstream value chain participants. These include quantity discounts, promotional schemes, striking down of MRPs etc. As far as anti-profiteering is concerned, it is still not clear whether the same is to be adopted at a product level, at customer level or to the business entity as a whole. There have been various case laws enacted but each business needs to assess compliance with anti-profiteering in its own context

GST on Warranty and AMC

Warranty and AMC are part of sale of certain FMCG. Under earlier law, warranty as well as AMC were subject to both service tax and vat but now it is taxable under the GST law. Post sale warranty is taxable as supply of service and Pre sale warranty will be consider as composite supply and taxable at the rate of goods. This differential treatment for rate of GST on pre and post sale warranty and AMC needs to be taken care while fixing the price of goods and period of warranty and AMC.

- **What Are The Different Types Of Warranties Made Available To The Customers and what are the GST implications?**

Replacement Warranty

✚ Meaning

- ✚ A replacement warranty is an assurance provided by the supplier at the time of supply to replace the product post-supply in a specified time.
- ✚ Further, no separate charge is recovered from the customer at the point of supply, as such costs are generally included in the product's price.

✚ GST Impact

- ✓ Tax on the same would have been paid at the time of principal supply of goods, as such costs are included in the price of principal goods sold.
- ✓ As consideration is missing in such transactions, it does not fall under the purview of 'Supply'.
- ✓ Such transaction may be viewed as consideration received for supply of principal goods and goods under warranty and can be treated as composite supply.

✚ Input Tax Credit

- ✓ **Input tax credit** on input and input services used to provide warranty services **is available** to the supplier.
- ✓ The price of warranty services is inbuilt in the supply price of the product; therefore, such warranty services have suffered output tax.
- ✓ Thus, you are eligible to claim an input tax credit against such services.
- ✓ The Government has clarified the same.

Repair Warranty

✚ Meaning

In such a case, the supplier undertakes to repair the defects found in the product. He may or may not charge additional consideration/ payment

✚ GST Impact

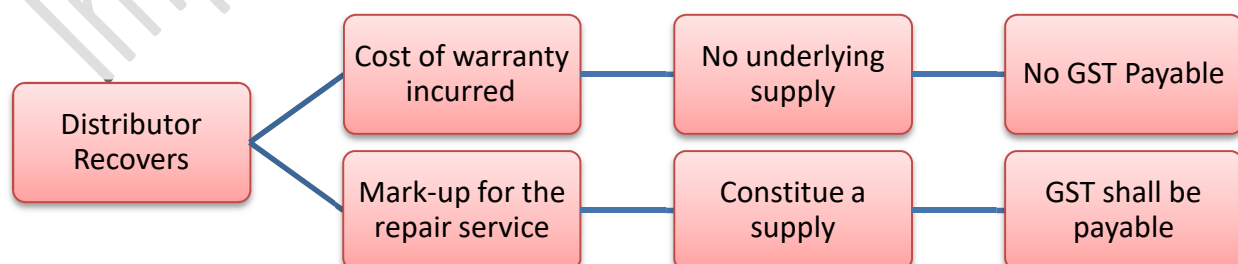
➤ Where the repair is undertaken by the supplier

- ✓ The supplier of goods provides repair services for any defects found in the products after the supply of goods. If separate consideration is not charged, then the same may not be treated as a separate supply.
- ✓ The consideration for the same has been inbuilt in the price of principal goods supplied. In such case, the price is charged by the supplier for the principal goods supplied and repair services, though the repair services are provided in the future course of action.
- ✓ The same may be treated as a composite supply of goods and services as per the principles discussed above, which altogether get taxed at the initial point of supply.

➤ Where the repair is undertaken by the distributor -

- ✓ In such a case, the distributor supplies the goods to the ultimate consumer with a warranty repair service.
- ✓ No separate recovery is made, as the price for such services is included in the price of goods supplied.

But what will be the GST impact if distributor recovers the cost or charges of warranty from supplier of goods?



✚ If Repair is undertaken by third party

- ✓ Sometimes supplier sells the good to the ultimate customer and hires a third-party vendor to perform the warranty repair service.
- ✓ The third-party vendor performs the repair service and bills the original supplier of goods for the service.
- ✓ The third-party vendor supplies repair service to the original supplier of goods in connection with the goods supplied by the original supplier.
- ✓ In this case, there is an underlying supply between the original supplier and the third-party vendor, **thereby attracting the levy of goods and service tax.**



Extended Warranty

✚ Meaning

- ✓ An extended warranty is a prolonged warranty offered to consumers in addition to the standard warranty.
- ✓ It is usually an extension of the period of the manufacturer's warranty provided at the time of supply of goods for consideration.

✚ GST Impact

- ✓ When consideration is charged at the time of extending the warranty period by the original supplier, the same shall be treated as supply, thereby attracting the levy of goods and service tax.
- ✓ However, consequent to such extension, any supply of goods or service is made under warranty free of cost; then the same shall not be treated as a separate supply. This is because consideration has been included in the price paid at the point of extension of warranties.

Area based exemptions/ Benefits under State Industrial policy

In Pre-GST regime, industry used to enjoy fiscal benefits in the North Eastern region, Himachal Pradesh, Uttarakhand and J&K in the form of excise duty exemptions/refunds. Now under GST, those refund benefits have been withdrawn and are proposed to be compensated/refunded as budgetary support.

In pursuance of the decision of Government of India to provide budgetary support to the existing manufacturing units operating in the state of Jammu and Kashmir, Uttarakhand, Himachal Pradesh and North East state including Sikkim, Ministry of Commerce and Industry introduced the scheme vide Notification dated 05.10.2017 provided therein a detailed procedure for claiming the budgetary support by such eligible units.

The eligibility of the unit shall be on the basis of application filed for budgetary support under this scheme with reference to:

- a) Central Excise registration number, for the premises of the eligible manufacturing unit, as it existed prior to migration to GST; or
- b) GST registration for the premises as a place of business, where manufacturing activity under exemption **notification no. 49/2003-CE dated 10.06.2003** and **50/2003-CE dated 10.06.2003** were being carried prior to 01.07.2017 and the unit was not registered under Central Excise.

The aforesaid scheme is applicable in respect of **specified goods** manufactured by the unit enjoying exemption vide **Notification nos. 56/2002-CE dated 14.11.2002, 57/2002-CE dated 14.11.2002** and **01/2010-CE dated 06.02.2010, Notification nos. 49/2003-CE dated 10.6.2003** and **50/2003-CE dated 10.6.2003, Notification no 20/2007-CE dated 25.04.2007**, as amended from time to time.

The “**specified goods**” means the goods which were being manufactured and cleared by the eligible unit by availing the excise duty exemption, from:

- a) The premises under Central Excise with a registration number, as it existed prior to migration to GST; or
- b) The manufacturing premises registered in GST as a place of business from where the said goods under exemption **notification no. 49/2003-CE dated 10.06.2003** and **50/2003-CE dated 10.06.2003** were being cleared

The aforesaid scheme is applicable to the “**residual period**” and the residual period, in the notification dated 05.10.2017 of the Ministry of Commerce and Industry has been defined as below:-

'Residual period' means the remaining period out of the total period not exceeding ten years, from the date of commencement of commercial production, as specified under the relevant notification listed in paragraph 2(sic- of the notification of the Ministry of Commerce & Industry), during which the eligible unit would have been eligible to avail exemption for the specified goods. The documentary evidence regarding date of commercial production shall be substituted in terms of Para 5.7(sic- of the notification of the Ministry of Commerce & Industry) .

The scheme shall be limited to the tax which accrues to the Central Government under **Central Goods and Service Act, 2017** and **Integrated Goods and Services Act, 2017**, after devolution of the Central tax or the Integrated tax to the States, in terms of Article 270 of the Constitution.

The amount of budgetary support under the scheme for specified goods manufactured by the eligible unit shall be sum total of -

- a) 58% of the Central tax paid through debit in the cash ledger account maintained by the unit in terms of sub-section (1) of section 49 the Central Goods and Services Act, 2017 after utilization of the Input tax credit of the Central Tax and Integrated Tax.
- b) 29% of the integrated tax paid through debit in the cash ledger account maintained by the unit in terms of section 20 of the Integrated Goods and Services Act, 2017 after utilization of the Input tax credit Tax of the Central Tax and Integrated Tax.

Provided where inputs are procured from a registered person operating under the Composition Scheme under Section 10 of the Central Goods and Services Act, 2017 the amount i.e. sum total of (i) & (ii) above shall be reduced by the same percentage as is the percentage value of inputs procured under Composition scheme out of total value of inputs procured.

The current proposal restricts refunds to the extent of prescribed percentage of CGST / IGST payout in cash (i.e. after adjusting all input credits) for units in the fiscal benefit zones for area based exemptions whereas percentage of SGST benefit for State Industrial policy. This may result in substantial reduction of GST refunds as compared to the present benefits granted and may make certain units unviable. Further, it is to be highlighted that the proposed refund model seems to restrict the eligibility of refund to only actual manufacturers, thereby not addressing concerns related to principal manufacturers who operates through business models such as third party manufacturer (3Ps) and job working arrangements, mainly in Himachal & Uttarakhand. Thus, the quantum impact of such change in the benefit schemes should be carefully evaluated to enable that the principle of promissory estoppel is not deviated from. Also, if the flow of benefits stand altered (eg. Benefit earned per year in absolute terms remains constant), the question whether this be factored as a cost increase for anti-profiteering purposes needs to be debated.

Impact on other operational aspects

There are many pressing issues arising out of GST implementation that have still not been clarified or settled by GST authorities. The implementation of GST has thrown various operational challenges for the FMCG sector. The following are the top three issues or areas that are of significance to the FMCG industries due to enactment of the GST regime.

Block Credit of ITC on Samples, Loss of Goods etc.

Section 17(5)(h) does not allow ITC on :- goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. In Pharma industry ITC on physician sample may attract disallowance of ITC. In other industry also ITC on goods supplied as free sample also gets disallowed. This provision may not apply to marketing and sales promotion schemes like one plus one free etc. In that case, price of goods supplied is charged at a price of unit declared in the scheme nonetheless there is a sale of all unit of goods supplied and not given by free.

Rate rationalization

The biggest challenge since the GST implementation for the FMCG and retail sector has been the effective rate of tax. While GST was expected to simplify taxation and bring uniformity, the different tax rate slabs and higher rates for consumer durables led to an increase in the cost of some items of mass consumption. Given the same, the GST council has been working on rationalization of rates and introduced rate reductions from time to time. Businesses continuously need to analyze the impact of the rate rationalization, especially from an anti-profiteering perspective.

Classification related issues (medicaments vs. cosmetics) -

The classification of certain cosmetics such as skin care preparations which also have medicinal properties and contain recognized medical ingredients has been historically subject to litigation since medicaments or ayurvedic items are taxed at a lower rate, whereas cosmetics are typically taxed at a higher rate.

The test for determining whether a preparation can be classified as a medicament or not depends upon whether it is meant primarily for use in treatment of skin disorders or diseases and whether the ingredients therein have known or recognised therapeutic value or not.

While there is an advance ruling on this issue that discusses some of the jurisprudence under the previous regime, and sets out some principles on how preparations can be classified as medicaments, a clarification in this regard with more concrete parameters could go a long way in ensuring consistent treatment and minimal disputes. However,

there is difficulty in providing absolute guidance as the products are themselves unique in nature.

Input Service Distributor vs. Cross Charge

Under GST, supplies between State registrations of an entity are subject to tax, even if the same is without consideration. In view of this, companies are required to undertake analysis of activities undertaken by Head office for its branches and vice versa; identify the value of such services and discharge tax liability thereon or distribute it in by obtaining an Input Service Distributor registration. The said exercise involves huge effort and time. Further, it leads to complexities and additional GST compliances.

Impact on Supply Chain

FMCG sector typically has long supply chains with several value chain participants and generally follow a multichannel strategy for distribution. Generally, all FMCG participants are now selling goods through physical as well as online channels. In the past, the structure of supply chain was highly influenced by area based exemptions, taxes on entry of goods and also on Central State Tax, which was applicable on interstate movement of goods and generally became a cost as setoff of Central Sales Tax was not available against State VATs and also against Excise Duty. Uniform taxes and elimination of Central Sales Tax (CST) for interstate movement of goods under GST era hold significance from supply chain perspective.

Reduction of cost for Distributor/Traders

Further, in the past era, service tax generally was a cost for distributors or persons dealing in traded goods as they were required to do reversal of service tax in so far as the turnover comprises of traded goods. Now, with set-off of tax paid on input services available against the output taxes on all supplies, whether of goods or of services, many FMCG participants may look at outsourcing certain services to achieve specialization and focus on core productive tasks.

Reduction in Logistics and Distribution Cost

In FMCG sector, substantial savings can be generated by companies in logistics and distribution costs as GST will eliminate the need for multiple sales depots. Earlier, during the pre-GST regime, the distribution cost on the FMCG sector was charged at 2 to 7 percent, which has now been reduced to only 1.5 percent after the GST implementation. The companies are experiencing huge impact as there are changes seen such as cost reduction due to the payment of tax, smooth supply chain management,

CST removal and claiming ITC under the GST regime. This result will lead to cheaper consumer goods.

Selection of Appropriate Marketing Policies

Earlier due to CST applicable on inter State sale, there was a tax burden to the extent of CST which is removed. Further, the levy of excise and service tax not eligible for ITC resulted in to increase in cost of goods. This is done away with in GST. The GST is being payable on each stage of supply coupled with ITC on corresponding inward supply smoothly passes burden of GST to consumer.

Based on complexity of earlier tax laws, various options of marketing policies were evaluated and best policy was opted. In GST tax is payable on each and every supply including inter State branch transfer and consignment transfer eligible for ITC. The trade and industry has more freedom and flexibility for selection of marketing policy.

The options for marketing are as under;-

- i) Multi State Branch,
- ii) Sole selling agencies,
- iii) Sales through Subsidiary Marketing Company,
- iv) Direct retail trade,
- v) On line Sales
- vi) Sales through Franchisee etc.

Each option has pros and cons to be evaluated by management. Besides finance and other logistic issues, the valuation rule providing for open market value or 90% of selling price by branch creates certain problems in selecting marketing through multi State branch or Sole selling agencies. Further the cross charging levy also creates problems that needs to be taken care.

Insurance on Stock

The stock of goods was generally valued at excluding vat but including excise and other taxes which were not subject to ITC. In GST now there is no component of any other taxes except custom duty. Therefore the value of stock of goods may be less than earlier. While taking or renewing policy of insurance this aspect needs to be considered. Further, in Maharashtra the ITC credit for vat was allowed even the goods were lost or destroyed. Therefore while settling the claim, the insurance company was valuing loss of goods at cost less vat credit. In GST, the ITC on corresponding receipt of goods is to be reversed therefore while lodging the claim for the loss, the goods should be valued at cost plus reversal of ITC, if any.

Warehouse

Warehouse FMCG companies had to set up warehouses that covered every state and facilitate the sale of goods to distributors locally. These warehouses were set up usually in the states where the effective tax was low. With the implementation of GST in the country, now the FMCG companies can set up their warehouses wherever they want without any difficulty

E-way Bill Requirement for every movement

In GST, there is requirement to generate an E-way Bill for every movement of goods where the consignment value exceeds Rs. 50,000, whether for sale or for job work or exhibition. The requirement of E-way Bill is mandatory. In the FMCG industry where there are several movements in a day and different scenarios such as bill to/ ship to transactions, customer delivery, movements for exports etc. there is a need for understanding the need E-way bill requirements and ensuring compliance with all the necessary documentation.

Tax Rates on FMCG Products before GST

Before the implementation of GST in India, most of the FMCG products were taxed at rates ranging from 22 to 24 percent. Here are some examples. The tax on detergents was 23% while sanitary napkins used to be taxed at the rate of 10-11%. Skincare products including shampoo were taxable at 24-25% standard rate. Some daily use FMCG products like butter, ghee and cheese were taxed at comparatively lower rates of 3 to 5 percent. As we can see, the average tax rate on FMCG products before GST was not more than 24-25%. Let's see how it changed after GST

GST Rates on FMCG Industry

The goods and services tax (GST) was introduced with Five standard tax rates - 0%, 5%, 12%, 18%, and 28%. Under the new tax regime, the average tax on FMCG products is in the range of 18 to 20 percent, which is clearly lower than the previous tax system. However, if you see the GST impact on individual products, the tax rates of some commodities have increased while decreased for many others. Here are some examples. The tax on detergents is 28% which is higher than before. The tax on toothpaste, hair oil, and soaps is reduced from previous 22-24% to 18% under GST. Some basic use commodities such as milk, eggs, paneer, wheat, rice, curd, fresh vegetable, etc., are kept free of tax.

As there are various products that form part of the FMCG kitty, it would not be possible for us to cover all products but given below are the different rate brackets and the products that fall within that rate:

Rate	Product Types Falling in Rate Bracket
Nil	Hulled cereal grains like barley, wheat, oat, rye, etc., Certain milk products such as lassi, curd, butter milk; cereals (other than those put up in unit container and bearing a registered brand name), salt, puja samagri, Vegetables preserved using various techniques including brine and other preservatives that are unsuitable for immediate human consumption., fresh almonds, sanitary napkins, Kajal [other than kajal pencil sticks], handloom, newspaper are few of the exempt products.
5%	sugar, oil, spices, coffee, coal, fertilizers, tea, ayurvedic medicines, agarbatti, sliced dry mango, cashew nuts, sweets, handmade carpets, unbranded namkeen, Ultra High Temperature Milk, Certain frozen vegetables, Rsuk, Sabudana, Footwear under Rs. 1,000/-, Apparels under Rs. 1,000/-, Dried makhana, Cereals put up in unit container and bearing a registered brand name, Sweetmeats, Chalk (other than tailor's chalk), Pumice Stone, Certain fertilizers falling under HSN 2809, 3102, 3103, 3104, 3105, handmade safety matches, erasers etc
12%	Preparations of vegetables, fruits, nuts or other parts of plants, including pickle, murabba, chutney, jam, jelly, Ketchups, sauces and mustard sauce but excluding curry paste, mayonnaise and salad dressings, mixed condiments and mixed dressings, Cheese, Fruit Juices, Ghee, Cakes, Namkeen and bhujia items put up in unit container and bearing registered brand name, soya milk drinks, Beverages containing milk, greaseproof paper, notebooks, calendars, umbrellas and sun umbrellas, geometry boxes, cell phones, sewing machine, jewelry box, Pouches, Purses and Handbags etc
18%	Certain sugar based confectionary items, cornflakes and prepared foods obtained from cereal flakes, hair oil, certain toiletries (such as toilet paper, toilet kits, disinfectants, soap, toothpaste etc.), glassware used for kitchen, LPG Stoves, scissors, shaving products (razors, razor blades, shavers and shaving cream), Preparations for oral of dental hygiene, Preparations containing Cocoa under HSN 1806, 2105 etc. Kajal pencil sticks, hair oil, safety glass, pasta, pastries, ice-cream, mineral water, hair shampoo, Soups oil powder, water heaters, washing machine, detergent, scent sprays, leather clothing, cookers, oil powder, cutlery, binoculars, artificial flowers, wristwatches, suitcase, briefcase, furniture, stationery items, mattress monitors, television screen
28%	All goods [including aerated waters], containing added sugar or other sweetening matter or flavored. Caffeinated beverages are taxable at 28% w.e.f 01st October, cigarettes, durable consumer products, Waffles plus wafers which are coated with chocolate

Conclusion

Thus, to summarize, implementation of GST has a mixed impact on FMCG Industry. While removal of cascading effect under GST as compared to pre-GST regime is beneficial to all the FMCG companies, changes in GST rates is very fruitful for some companies and thus have responded by increasing product volume and lowering prices but others may have lost with higher taxes and thus need to compensate by increasing prices. This is why there is an ongoing attempt on the part of the GST authorities to rationalize the tax rates. Further, another benefit accrues from reducing distribution cost for various companies and adopted re-distribution strategy. It will take some more time to reflect results because it involves multiple stakeholders and change in traditional approach. However in the long run, it would definitely reduce costs and improve operational efficiency of FMCG companies, and ultimately, consumer would be benefited



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IMPACT OF GST ON GEMS & JEWELLERY INDUSTRY

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IMPACT OF GST ON GEMS & JEWELLERY INDUSTRY

Introduction

India's Gems and Jewellery sector contributes approximately about 7.0 per cent to India's GDP and provides employment to more than 4.5 million people. It is one of the largest sectors globally, contributing 29 per cent to the global jewellery consumption. The sector is globally recognised for the craftsmanship and variety that it offers. Over the last three decades, this industry has undergone transformation, driven by industry initiatives, supported by some Government policies. The gems and jewellery sector plays an important role in Indian economy. GST on gold industry has been pegged at a 3% rate. Due to GST, there will be no distinction between manufacturing and trading, no separate books, will be required to maintain.

Old V/s New Tax regime

In the GST regime prices of Jewellery are higher as compared to old indirect tax scenario. We can understand the impact on price as under:

Particulars	Without Making Charges		With Making Charges	
	Before GST	After GST	Before GST	After GST
A. Gold Price	1000.00	1000.00	1000.00	1000.00
B. Excise @1%	10.00	–	10.00	–
A+B	1010.00	1000.00	1010.00	1000.00
C. VAT @1%	10.10	–	10.10	–
A+B+C	1020.10	1000.00	1020.10	1000.00
D. GST @3%	–	30.00	–	30.00
A+B+C+D	1020.10	1030.00	1020.10	1030.00
E. Making Charges (10% of Gold Price)	–	–	100.00	100.00
F. GST on Making Charges @3%	–	–	–	3.00
G. Total Price of Jewellery	1020.10	1030.00	1120.10	1133.00
H. Total Taxes Paid (B+C+D+F)	20.10	30.00	20.10	33.00
Total Increase in price due to increase of Tax Burden	9.90		12.90	
Total Increase in % of Tax Burden	0.99		1.17	

GST Regime

GST on Gems and Jewellery in various forms can be discussed at length. GST subsumed VAT, service tax, excise duty and several other indirect taxes charged on domestic transactions. Tax on the making charges on gold jewellery was introduced under GST. On the other hand, basic customs duty continues to be collected on the import of gold from other countries and the levy of IGST.

1. Definitions

- ❖ **Job Work [section 2(68)]** means any treatment or process undertaken by a person on goods belonging to another registered person and the expression “job worker” shall be construed accordingly.
- ❖ **Composite Supply [section 2(30)]** means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

2. GST Applicability

Nature of Business	Aggregate Turnover	Compulsory Registration
Trader & Manufacturer	Exceeds Rs. 40 Lakhs	✓
	Exceeds Rs. 20/10* Lakhs	✓
	Below Rs. 40/20/10* Lakhs	✗
Service Provider (Job Worker [#])	Exceeds Rs. 20/10 Lakhs	✓
	Exceeds Rs. 10* Lakhs	✓
	Below Rs. 20/10* Lakhs	✗

*Special Category States

– if aggregate turnover exceeds 20 lakhs: Arunachal Pradesh, Meghalaya, Sikkim, Uttarakhand, Puducherry, Telangana.

– if aggregate turnover exceeds 10 lakhs: Manipur, Mizoram, Nagaland, Tripura.

*Telangana State opted for status quo i.e., turnover limit is 20 & 10 Lakhs.

[#]Job worker to take compulsory registration

- a. Where there is Inter-State transaction of goods sending back to Principal
- b. When sending goods to another Job Worker or Makes further supply (Otherwise principal has to make Job worker’s place as additional place of business)

3. GST Rate and HSN / SAC Codes

S. No.	Particulars	HSN / SAC Code	GST Rate
1.	Rough and un-worked diamonds, precious and semi precious stones	7102,7103,7104	0.25%
2.	All types of Precious and semi-precious stones	7102,7103,7104	3% on Polished Diamond upto 17.03.2018 0.25% w.e.f. 18.03.2018
3.	Pearls, Gold, Silver, Articles of Jewellery of gold, silver, etc.	7106, 7108, 7113, 7118	3%
4.	Supply of job work services in relation to diamonds.	9988	5%

5.	Repairing charges and other Professional, Technical and Business Services.	998399	18%
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4. Job Work

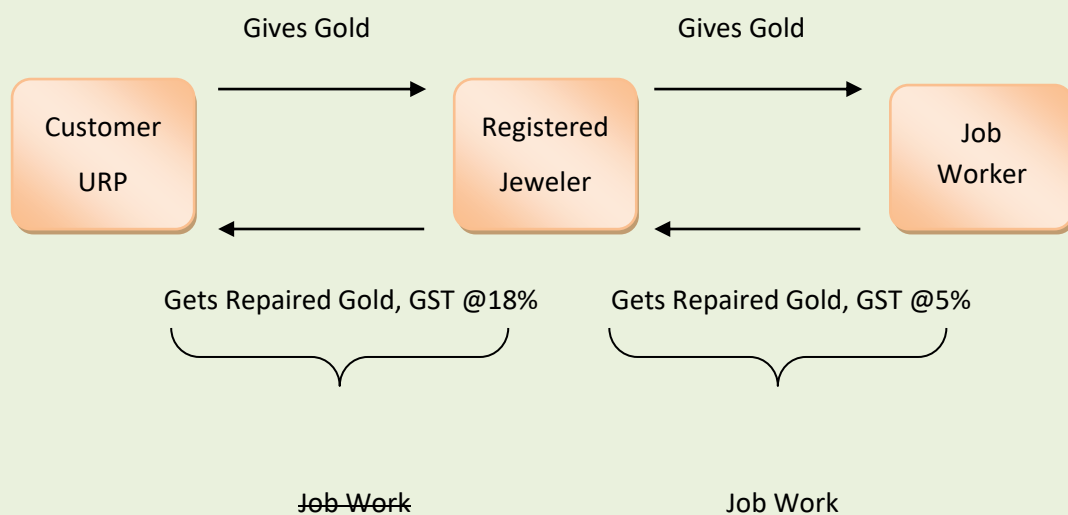
Jewellers get the jewellery manufactured from Karigars (Job Workers) which attract tax rate of 5%. The registered Job worker shall charge GST of 5% and collect it from the jeweller on whose goods the job work has been done. Thus, any Karigar who performs any job on the goods of the registered supplier shall be treated as Job Work under GST leviable to tax at the rate of 5%.

It is pertinent to note that many jewellers though indulge in the repairing of the old and worn-out jewellery but this may not be considered as job work as the goods are of unregistered consumers and would be termed as labour work charged to GST at 18%.

Note:

- ✓ It is necessary to prepare delivery challan by Jeweller while issuing goods to “Karigar”, else goods will get confiscated.
- ✓ It is necessary to prepare delivery challan by “Karigar” while issuing goods to “Another Karigar”, else goods will get confiscated.
- ✓ Where alloy is mixed by the Karigar (Job Worker) in jewellery, the invoice raised by the job worker to registered jeweller would charge GST @5% on total value of supply.

5. Making Charges V/S Job Work



Note: It has been clarified vide C.B.E.&C. Press Release No. 78/2017, dated 13.7.2017 that sale of old gold jewellery by an individual who is unregistered to a jeweller will not constitute supply as the same cannot be said to be in the course of furtherance of business of the individual.

6. Reverse Charge Mechanism

Press release on 13/07/2017 provided that even though the sale of old gold by an individual is for a consideration, it cannot be said to be in the course or furtherance of his business (as selling old gold jewellery is not the business of the said individual), and hence does not qualify to be a supply per se. Accordingly the sale of old jewellery by an individual to a jeweller will not attract the provisions of section 9(4) and jeweller will not be liable to pay tax under reverse charge mechanism on such purchases.

However, if an unregistered supplier of gold ornaments sells it to registered supplier, the tax under RCM will apply but such GST on RCM has been deferred till any further notification.

Also in addition, in case where Job worker is unregistered, the principal shall pay GST on RCM basis and credit shall be available to him, but such GST on RCM has been deferred till any further notification.

7. E-way Bill

It is to be noted that E way bill has become mandatory for interstate and intrastate movement of goods however as per annexure to Rule 138 (14) following goods are exempted from generation of E way bill which includes:

- Natural or cultured pearls and precious or semi-precious stones; precious metals and metals clad with precious metal.
- Jewellery, goldsmiths' and silversmiths' wares and other articles.

Hence, E way bill is exempted for Gems and Jewellery.

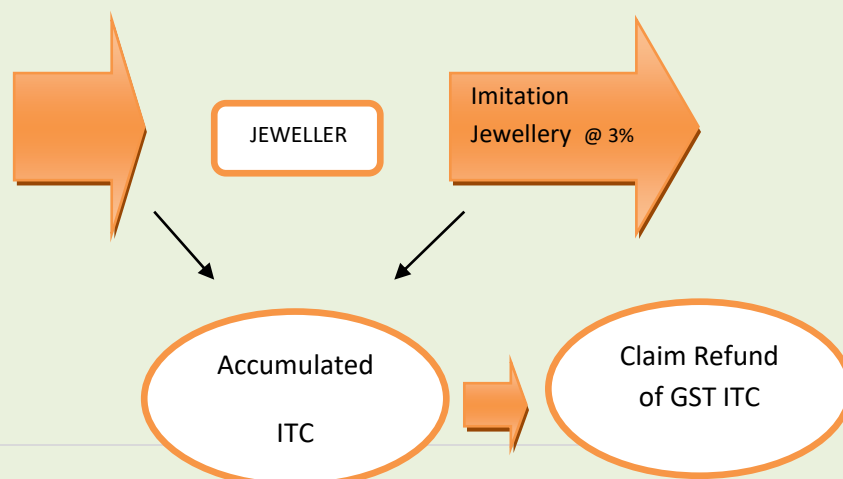
8. Input Tax Credit & Refund

Seamless Input tax credit is the backbone of Goods and Service Tax. A jeweller is also eligible to claim ITC of all inputs, capital goods, packing material etc. except those barred by Sec. 17(5).

In case of imitation jewellery which is taxable @ 3% whereas the inputs & raw material like Copper etc. are taxable at 18%, the manufacturer is eligible to claim Refund of accumulated credit as it amounts to Refund of inverted tax structure u/s 54 of CGST Act.

Inputs

Copper, Alloy,
Packing Material
Other inputs & Capital Goods
Service Charges by Job Worker
GST @ 5%, 12%, 18%



9. Dealers of Second Hand Jewellery

Businessman dealing in second hand goods and invoicing his supplies as “second hand goods”, the valuation of supply of second hand gold jewellery which are purchased from individuals who are not registered under GST and there is no change in the form and nature of such goods, can be made as prescribed under **sub-rule (5) of rule 32 of the CGST Rules**.

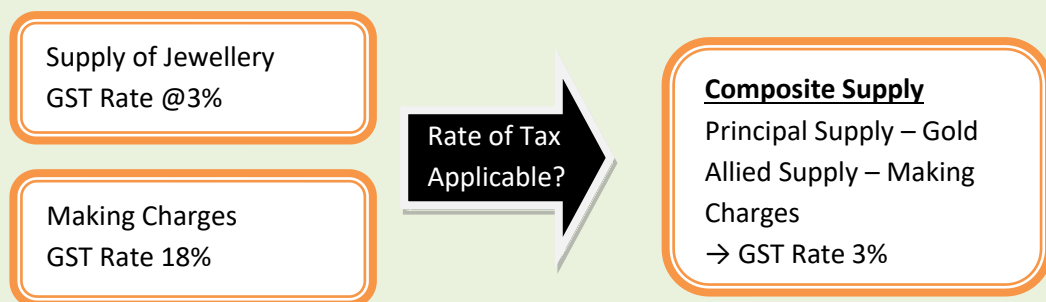
Example: Purchase Cost – Rs 100000, Selling price – Rs 150000

GST to be paid = Value of Supply X GST Rate on Jewellery

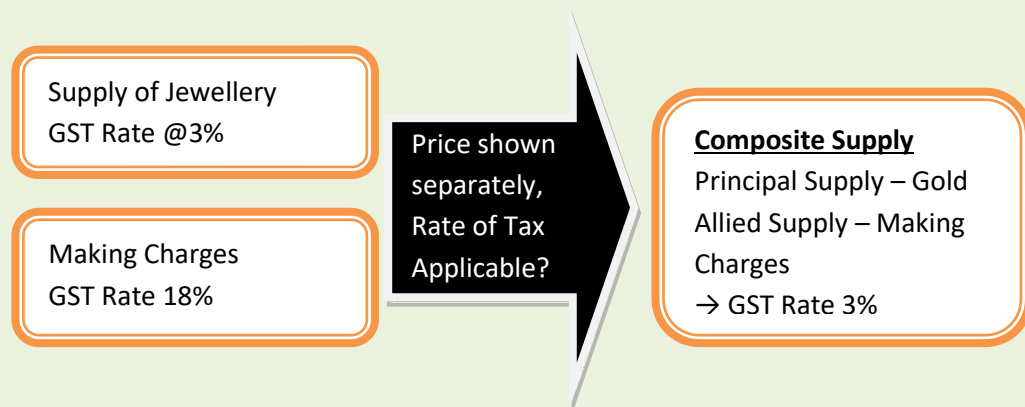
= (1,50,000-1,00,000) X 3% = Rs. 1,500.

10. Sales Transactions

I. Total Sale Price inclusive of Making Charges



II. Making Charges shown separately in invoice

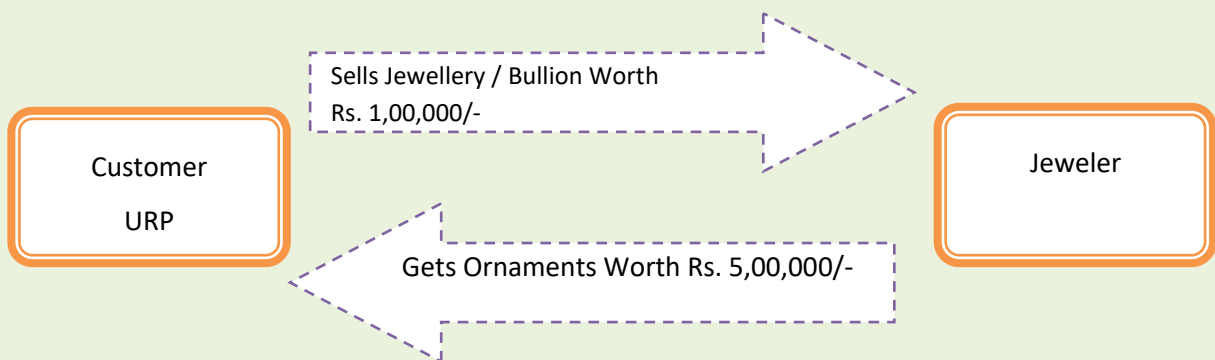


In case supplier is selling finished jewellery and he want to show break up of price, the same can be provided on the invoice or as an enclosure thereto.

III. Diamond Studded Jewellery

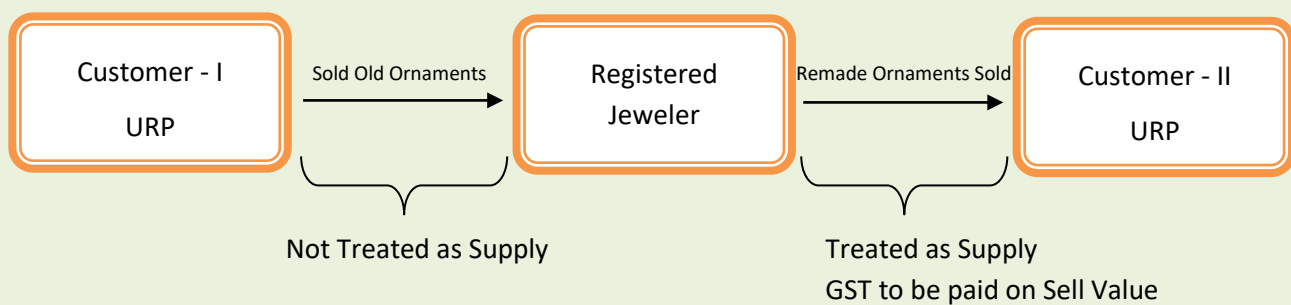


11. Exchange Jewellery / Bullion into new Ornaments



GST 3% on Total Value of ornaments: Gold + Making Charges
i.e., on Rs. 5,00,000/-

12. Old Jewellery remade and sold to Other Customer



13.Packing Charges, Freight and Hallmarking charges etc.

Value of supply as per section 15(c) **includes** incidental expenses, including commission and packing, charged by the supplier to the recipient of a supply, and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services.

Accordingly, the said charges recovered from the customer shall be included in the transaction value, the supply would be a composite supply, where the principal supply would be the supply of goods and GST shall be charged on total value at the rate applicable on the principal supply.

14.Goods sent/taken on approval basis or for Exhibitions

In case of intra state supply of goods: The movement of the goods can be done by issuing delivery challan.

In case of inter state supply of goods: There is no need for the supplier to register as casual taxable person (CTP). Goods can be taken on delivery challan.

CBIC has issued circular no. 10/10/2017-GST, dated 18-10-2017, Clarification on issues wherein the goods are moved within the State or from the State of registration to another State for supply on approval basis.

In such cases if jewellery etc. is approved by the buyer, then the supplier issues a tax invoice only at the time of supply. Since the suppliers are not able to ascertain their actual supplies beforehand and while ascertainment of tax liability in advance is a mandatory requirement for registration as a casual taxable person, the supplier is not able to register as a casual taxable person and also It is seen that clause (c) of sub-rule (1) of rule 55 of the Central Goods and Services Tax Rules, 2017 (hereafter referred as “the said Rules”) provides that the supplier shall issue a delivery challan for the initial transportation of goods where such transportation is for reasons other than by way of supply. Further, sub-rule (3) of the said rule also provides that the said delivery challan shall be declared as specified in rule 138 of the said Rules. It is also seen that sub-rule (4) of rule 55 of the said Rules provides that “Where the goods being transported are for the purpose of supply to the recipient but the tax invoice could not be issued at the time of removal of goods for the purpose of supply, the supplier shall issue a tax invoice after delivery of goods”.

Therefore, **goods which are taken for supply on approval basis** can be moved from the place of business of the registered supplier to another place within the same State or to a place outside the State on a **delivery challan along with the e-way bill** wherever applicable and the invoice may be issued at the time of delivery of goods. For this purpose, the person carrying the goods for such supply can carry the invoice book with him so that he can issue the invoice once the supply is fructified.

15. Goods taken outside India for participating in Exhibitions



Several goods are taken out of India on consignment basis for exhibitions or other export promotion events. These goods are sold only when approved by the prospective customers abroad. The unsold goods are then brought back to India. This is a widespread practice in various sectors, including the gems and jewellery industry. Exporters of these items were facing problems due to the lack of clarity on the procedure to be followed under GST at the time of taking these goods out of India and at the time of their subsequent sale or return to India. Taking cognizance of these problems and in order to help exporters, the Central Board of Indirect Taxes and Customs (CBIC) has now issued a comprehensive clarification in this regard vide **Circular No. 108/27/2019-GST dated 18.07.2019**.

The key points clarified in the Circular are the following:

- a) The activity of taking goods out of India on consignment basis for exhibition **would not in itself constitute a supply** under GST since there is no consideration received at this time.
- b) The movement of these goods out of India shall be **accompanied by a delivery challan** issued in accordance with the provisions contained in rule 55 of the CGST Rules.
- c) Since taking such goods out of India is not a supply, it necessarily follows that it is also **not a zero-rated supply**. Therefore, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.
- d) The goods taken out of India in this manner are required to be either sold or brought back within a **period of six months** from the date of removal.
- e) The **supply would be deemed** to have taken place if the goods are neither sold abroad nor brought back within the period of six months. In this case, the sender shall **issue a tax invoice on the date of expiry of six months** from the date of removal, in respect of the quantity of goods which have neither been sold nor brought back. The benefit of zero-rating, including refund, shall not be available in respect of such supplies.
- f) If the specified **goods are sold** abroad, fully or partially, within the period of six months, the supply shall be held to have been affected, in respect of the quantity so sold, on the date of such sale. In this case, the sender **shall issue a tax invoice** in respect of such quantity of goods which has been sold. These supplies shall become **zero-rated supplies** at the time of issuance of invoice. However, refund in relation to such supplies shall be available only as refund of unutilized ITC and not as refund of IGST.
- g) **No tax invoice** is required to be issued in respect of goods which are brought back to India within the period of six months

16. Export of Jewellery



Export of jewellery also are zero rated like other exports, and input tax credit on purchases can be claimed as duty drawback. Procedures for claiming the duty drawback has been simplified with the introduction of GST. There are two options for an exporter to claim the refund of tax paid on purchases.

(1) the exporter can exempt himself from the payment of IGST if he is supplying goods or services, based on letter of undertaking or on the basis of a bond after following all the conditions connected with the bond or LUT.

(2) A shipping bill filed for the purpose of export is considered as an application for refund of input tax credit. But for both the options, export manifest has to be compulsorily filed by the person supposed to do it.

17. Tax treatment of sales promotion schemes

Free gifts on purchase of jewellery: It is a common practice to provide gifts to customers for sales promotion, the goods or services or both which are supplied free of cost shall not be treated as supply under GST, further section 17(5)(h) of the said Act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Free gifts given on purchase of jewellery can also be treated as composite supply or mixed supply, as the case maybe and ITC can be claimed on such gifts.

Freebies issued along with jewellery articles: The freebies issued can either be treated as composite supply or mixed supply depending on the perception of the consumer or service receiver. There are many indicative factors based on which it can be decided whether it is composite or mixed supply like whether majority of service providers in particular area of business similar bundle of service, customer pays single price for bundle, no matter how much of the package they actually use, elements are normally advertised as package, etc.

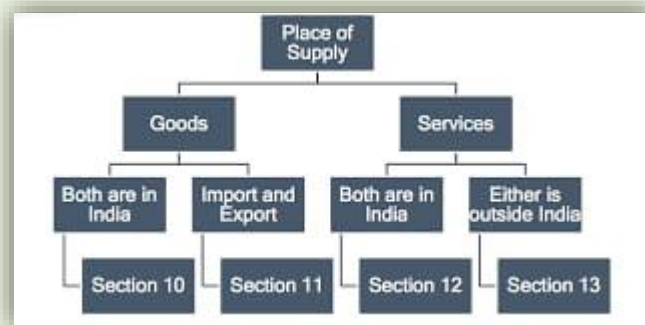
Tax liability on composite or mixed supplies can be determined in the following manner:

- a) A composite supply comprising two or more supplies, one of which is a principal supply, shall be treated as supply of such principal supply.

- b) A mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

Lucky draw: lucky draw scheme is run by many jewellers, in which each member contributes specified sum of money every month, lucky draw take place at fixed intervals, a name is selected from the registered members and that person wins Gold on that day. This Gold can be taken by the member in any kind of jewellery be it, ring, bangles, set etc
 Lucky draw is a game of chance and schedule III identifies 'lottery, betting and gambling' as the only taxable supplies. As such, lucky draw is not taxable but the prize (if not in money) will be liable to tax as there is consideration though not in monetary form.
 (ICAI FAQ PUBLICATION 06-09-2017: Exemptions on Supply of Goods – FAQ NO. 31)

18.Place of supply



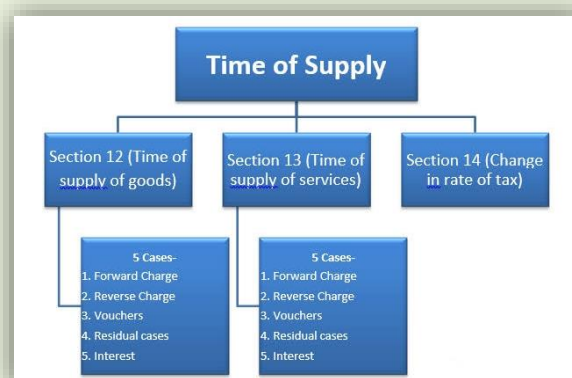
Place of supply provisions determine the tax to be levied i.e., which tax is to be levied will depend on whether a particular transaction is an Inter-state supply or Intra-state supply. These provisions apply to gems & jewellery industry as well.

Section 10 of the CGST Act deals with Place of supply of goods within India and Section 11 of the CGST Act deals with Place of supply of goods imported into, or exported from India.

Place of supply in case of unpolished diamonds temporarily imported to India:

In case of cutting and polishing activity on unpolished diamonds which are temporarily imported into India and are not put to use in India, as per the Circular No. 103/22/2019 GST dated 28.06.2019, the place of supply would be determined as per the provisions contained in section 13(2).

19.Time of Supply



The time of supply fixes the point when the liability to charge GST arises. It also indicates when a supply is deemed to have been made.

In case of gems and jewellery industry, the tax becomes due when the jeweller receives payment or supplies the jewellery whichever is earlier.

Some jewellers run Gold Deposit scheme wherein the investor makes monthly payment of a fixed amount for 11 months and the jeweller contributes the 12th month instalment and supplies jewellery to the tune of the total collection. In these circumstances the jewellery is supplied after the end of 12th month however the GST is payable on the receipt of every instalment.

20. ITC 04

When principal (Jeweller) sends inputs or capital goods for job work, he is required to file ITC-04, it will act as a timely intimation to the department of goods sent for job work.

Due date per quarter: 25th of subsequent month of the said quarter.

Note – For the job worker there is no need to file ITC-04.

Following are the contents of the form:

Table 4: Details of inputs or capital goods sent for job work

GSTIN / State in case of unregistered job worker	Challan no.	Challan date	Description of goods	UQC	Quantity	Tax able value	Type of goods (in puts/capital goods)	Rate of tax (%)			
								CGST	SGST	IGST	Cess
1	2	3	4	5	6	7	8	9			

Table 5: Detail of inputs/capital goods received back from job worker / goods sent out to another job worker or supplied from job worker

GSTIN / State of job worker if unregistered	Challan no. issued by the job worker ##	Challan date issued by job worker ###	Description of goods	UQC	Quantity	Original challan no. issued by principal	Original challan date issued by job worker	Nature of job work issued by job worker	**Losses & Wastes	
									UQC	QTY
1	2	3	4	5	6	7	8	9	10	

In case of inputs/capital goods supplied directly from the job worker premises read as – 'Invoice no. in case supplied from job worker premises issued by principal'. (Table 5C)

In case of inputs/capital goods supplied sent out to another job worker – (Table 5B)

In case of goods supplied directly from the job worker premises read as – 'Invoice date in case supplied from job worker premises issued by principal'.

** Loss & wastes are included in the format of CGST Rules, although the same does not reflect in the GST portal. Hopefully, this anomaly is rectified at the earliest.

21. GST Compliances

I. GST Return Filing

Annual Turnover in the Previous FY	Return Filer	GST Return	Due Date
Upto 5 Crore	Quarterly (QRMP Scheme) (Optional)	GSTR – 1	13 th of subsequent month of the said quarter
	Quarterly (QRMP Scheme) (Optional)	GSTR – 3B	22 nd */24 th ** of subsequent month of the said quarter
More than 5 Crore OR Upto 5 Crore but Opted for Monthly	Monthly	GSTR – 1	11 th of succeeding month
	Monthly	GSTR – 3B	20 th of succeeding month
-	Quarterly	CMP -08	18 th of subsequent month of the said quarter
-	Quarterly	ITC – 04	25 th of subsequent month of the said quarter
More than 2 Crore	Yearly	GSTR – 9	31 st December
More than 5 Crore	Yearly	GSTR – 9	31 st December
-	Yearly	GSTR – 4	30 th April

*Chhattisgarh, Madhya Pradesh, Gujarat, Maharashtra, Karnataka, Goa, Kerala, Tamil Nadu, Telangana, Andhra Pradesh, the Union Territories of Daman and Diu and Dadra and Nagar Haveli, Puducherry, Andaman and Nicobar Islands and Lakshadweep.

**Himachal Pradesh, Punjab, Uttarakhand, Haryana, Rajasthan, Uttar Pradesh, Bihar, Sikkim, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Tripura, Meghalaya, Assam, West Bengal, Jharkhand, Odisha, the Union Territories of Jammu and Kashmir, Ladakh, Chandigarh and Delhi.

II. Late Fees

Annual Turnover in the Previous FY	GST Return	Late Fee	Maximum Late Fee
Upto 1.5 Crore	GSTR – 1	Rs.50 per day (Rs. 25/- each for CGST & SGST)	Rs.2000 per return (Rs. 1000/- each for CGST & SGST)
	GSTR – 3B	Rs.50 per day (Rs. 25/- each for CGST & SGST)	Rs.2000 per return (Rs. 1000/- each for CGST & SGST)
More than 1.5 Crore Upto 5 Crore	GSTR – 1	Rs.50 per day (Rs. 25/- each for CGST & SGST)	Rs.5000 per return (Rs. 2500/- each for CGST & SGST)
	GSTR – 3B	Rs.50 per day (Rs. 25/- each for CGST & SGST)	Rs.5000 per return (Rs. 2500/- each for CGST & SGST)
More than 1.5 Crore Upto 5 Crore	GSTR – 1	Rs.50 per day (Rs. 25/- each for CGST & SGST)	Rs.10,000 per return (Rs. 5000/- each for CGST & SGST)

-	GSTR – 3B	Rs.50 per day (Rs. 25/- each for CGST & SGST)	Rs.10,000 per return (Rs. 5000/- each for CGST & SGST)
-	GSTR – 3B (NIL)	Rs.20 per day (Rs. 10/- each for CGST & SGST)	Rs.500 per return (Rs. 250/- each for CGST & SGST)

III. Interest Liability

Annual Turnover in the Previous FY	GST Return	Due Date of Depositing Challan	Rate of Interest Per Annum
GSTR 3B For Monthly Filing	Monthly	20 th of succeeding month	18%*
GSTR 3B For Quarterly Filing (QRMP Scheme)	For First 2 Months (PMT – 06)	25 th of subsequent month of the said quarter	18%*
	Last Month of Quarter	22 nd */24 th ** of subsequent month of the said quarter	18%*
CMP – 08 (Composition)	Quarterly	18 th of subsequent month of the said quarter	18%*
Excess ITC Claimed or excess reduction in Output Tax			24%

*Interest is charged on net cash liability.

22. Case Studies

I. What will be the treatment of hallmarking charges recovered from customer?

Hallmarking charges recovered from the customer shall be included in the transaction value. Further, the supply would be composite supply, where the principal supply would be the supply of jewellery.

II. Whether advances received against supply of goods would attract GST?

Notification No. 66/2017, dt. 15.11.2017, the requirement to pay GST on advance receipt against the supply of goods has been removed. So, the GST has to be paid at time of supply of goods.

However, GST has to be paid on advance receipt of services i.e., for Job work / Labour work.

III. What will be the treatment of Freight and packing charges recovered from customer?

As per section 15 of CGST Act 2017, the value of supply of goods shall include all incidental expenses and any amount charges for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of service.

Accordingly, the side charges recovered from the customer shall be included in the transaction value. Further, the supply would be a composite supply, where the

principal supply would be the supply of the goods and GST shall be charged on total value at the rate applicable on the principal supply, if charged separately (i.e over and above the principal supply of goods), the said charges are to be mentioned in the invoice.

IV. In case of repair suppose some gold is added by the jeweller while repairing and single bill is prepared for repair charge and gold, then at what rate of GST will be applicable 3% or 5%?

Ideally separate billing should be done to avoid confusion.

Where single invoice is prepared and has breakup of supply, GST will be charged @3% for Gold and @5% for repair value or labour charges.

Where single invoice is prepared and it does not have breakup of supplies, then this would be considered as mixed supply and GST should be paid at the higher rate of two supplies i.e., 5%.

V. Is GST Paid in Import of Gold?

Yes, IGST is Paid at the rate of 3%.

VI. GST Treatment on Promotional material given to distributors/retailers?

Such material is provided free of cost and is and hence no tax is payable on such transaction and in such a case credit availed by the company would need to be reversed in accordance with section 17(5) of CGST Act, 2017.

VII. If a customer wants to exchange any jewellery after making a purchase, What will the procedure?

A credit note for the earlier purchases would need to be affected and a fresh invoice for new sale is required to be issued.

VIII. How can input tax credit of CGST and SGST charged by a hotel be claimed in case the recipient is not registered in the State?

Input tax credit can only be claimed if the recipient in that state. In case the recipient qualifies as a casual taxable person, he can obtain registration and claim such input tax credit. Alternatively, the recipient may obtain an ISD registration in such to claim and distribute such input tax credit. However, where the aforesaid scenarios are not workable, the recipient would be charged IGST by such agent.

IX. Whether packing material or complimentary bags, which are distributed to customer need to be billed in the invoice, if so, at what value, If not does than whether it needs to be listed with zero value in the invoice or can be omitted?

X. Since the value at which the packing material is sold will be usually zero price, whether input credit will be available on GST charged by the supplier?

XI. What kind of inventory records the dealer has to maintain for packing material?

- There is no requirement to show the complimentary packing material in the invoice.
- No input tax credit will be available if such bag is sold at zero price.

- The dealer will have to maintain the same inventory details as for other goods-the bags can be shown under supply as a gift.

However, such packing materials are treated as part of the transaction included in the price, than no need to Reverse input Tax Credit.

XII. Whether sale of inherited gold by one jeweller to another jeweller is liable to GST?

Section 7 of the CGST Act which defines 'supply' includes all forms of supply of goods and services. The fact of inheritance of gold would not make any difference with respect to taxability of any goods (gold). Hence, the sale of gold by a jeweller to another jeweller would be liable to GST.

XIII. Whether jewellery made on an order received from customer who also provides old gold ornaments, is a mixed supply or composite supply?

It is neither a composite supply nor a mixed supply, because in both the cases, two or more supplies must be involved. As far as supplier is concerned, only one supply is involved i.e., supply of jewellery. In case of exchange of old gold by the customer, it is not a supply by the supplier. However, taxable value must be calculated according to the provisions of Rule 27 of the CGST Rules, since section 15 is not applicable in this case. Tax must be discharged at open market value (OMV) of jewellery being supplied.

XIV. A goldsmith does labour jobs @ 5%. He gets pure gold from jewellers for labour work to manufacture gold jewellery studded with stones. Gold smith mixes alloy (Taxable @ 3%) and some precious stones from his side. (a) Whether the value of supply should include alloy and cost of stones? (b) What is the applicable GST rate on job work services provided by the goldsmith?

(a) The job worker is undertaking two types of supplies –

(I) Supply of diamonds and alloys which will be used in the pure gold jewellery - The job-worker purchases precious stones and uses it in the manufacture of jewellery for the principal. There is a transfer in title to goods (precious stones) from the job worker to the principal and this shall be taxable at the rate applicable to the precious stones. The job worker shall issue a tax invoice, if registered with place of supply as the location of the job-worker premises itself as the goods have not left the premises of the job-worker.

(II) Supply of services of job-work of converting the pure gold into jewellery – Next, the precious stones are used to make jewellery along with the pure gold received from the principal. Job-work is any treatment or process undertaken by a person on goods belonging to another registered person. The process undertaken on the pure gold will be treated as a supply of service and liable to tax at the rate of 5% under SAC 9988. The job worker shall raise a tax invoice for the job work services provided, if registered in GST.

(III) Delivery of the processed goods – The job worker shall issue a delivery challan for the supply of the processed gold (i.e.) jewellery to the principal.

(b) The principal undertakes the following transactions-

(I) Supply of pure gold to the job worker for further processing– A delivery challan will be issued by the principal as goods are sent for reasons other than supply.

(II) Purchase of precious stones and alloys from the job worker – The principal will issue a delivery challan for the precious stones purchased from the job worker and used by the job-worker himself. The job worker shall issue a tax invoice, if registered as explained above.

(III) Services of job-work on the pure gold– The job-worker shall raise a tax invoice, if registered. The supply of alloy and precious stones will not form part of the value of job work services provided by the job-worker as it is an independent supply undertaken by the job-worker. The supply of the precious stones will be treated as supply of goods and the supply of job-work services as a supply of service. The concept of composite supply will also not be attracted as the predominant element of the supply cannot be ascertained as the value of the precious stones may be more than the value of the job-work services itself. The GST rate applicable for the job-work services will be 5% under SAC 9988 (i)(c) as the job-work is in relation to the gold which is covered under Chapter 71 of the Customs Tariff Act, 1975.

XV. Mr. A, a customer and an unregistered person under GST who does not have any business related to jewellery purchased jewellery worth ` 2,00,000 from a jeweller and also gave him jewellery worth ` 80,000/-. State whether GST is payable on ` 2,00,000 or ` 80,000/-?

-Value of taxable supply has been defined in section 15(1) of the CGST Act thus: “The value of a supply of goods or services or both shall be the transaction value, which is the price actually paid or payable for the said supply of goods or services or both where the supplier and the recipient of the supply are not related and the price is the sole consideration for the supply.”

-Where price is not the sole consideration, one may refer to rule 27 of the CGST Rules, under which the value of supply of goods or services where the consideration is not wholly in money shall, -

(a) be the open market value of such supply;

(b) if the open market value is not available under clause (a), be the sum total of consideration in money and any such further amount in money as is equivalent to the consideration not in money, if such amount is known at the time of supply;

(c) if the value of supply is not determinable under clause (a) or clause (b), be the value of supply of goods or services or both of like kind and quality;

(d) if the value is not determinable under clause (a) or clause (b) or clause (c), be the sum total of consideration in money and such further amount in money that is equivalent to consideration not in money as determined by the application of rule 30 or rule 31 in that order.

- There are two separate transactions taking place in the instant case the first being the jewellery purchased by the customer worth ` 2,00,000 and the second being jewellery


worth ` 80,000 given by customer to the jeweller. In this case, on the first transaction for purchase of jewellery, GST shall be payable on the entire amount of ` 2,00,000/- (i.e. combination of the monetary and non-monetary consideration) and in the second transaction, if the supply by the customer is not in the course or furtherance of the business of the customer then no GST will be payable on ` 80,000.

XVI. A, a jeweller is a registered person under GST, who attends a Jewellery exhibition in Dubai by paying a fee. Is it covered under RCM?


As per the provisions of section 13(5) of the IGST Act, the place of supply shall be the location where the exhibition is being held i.e., Dubai. Therefore, as per section 7(1) (b) of the CGST Act, the said transaction shall be outside the scope of supply, as the place of supply is outside India. Consequently, reverse charge shall not be applicable on the same.

23.Documentation

I. Job Work Challan Format

Delivery Challan / Job work challan											
		<input type="checkbox"/> Original for Consignee <input type="checkbox"/> Duplicate for Transporter <input type="checkbox"/> Triplicate for Consignor									
		Company Name Address 1 Mail ID Website									
GSTIN: Serial no. of Challan: _____ (1)						Mode of Transport : Veh.No : Date Place OF Supply: _____ (2)					
Details of Consignee (Delivered to) Name: Address : _____ } (3) State Code : GSTIN/Unique ID:											
S.No	Description of Goods	HSN Code	QTY	UQC	Taxable value	CGST		SGST		IGST	
						Rate	Amount	Rate	Amount	Rate	Amount
				(4)	0.00		0.00		0.00		0.00
Total					0.00		0.00		0.00		0.00
Challan Total (In Words)						Challan Total (Figures)					
						0.00					
						For Company Name					
						Authorised Signatory					

II. Tax Invoice Format

GSTIN#: SUJ2345678912		Tax Invoice			Original/Receipt				
		KIRPA JEWELLERS Your Company Address, Kolhapur, Maharashtra, India. Phone No: 9876543210 Email Id: company123@gmail.com			St. Code: 27				
Customer Name: Arvind Kumar 123, MG Road, Near Airport Road Viman Nagar Nalgonda, Telangana Mobile: 9876543210				Date: Aug 27, 2020 Invoice No: 25 Payment Mode: CASH		St Code: 36			
Notes :									
Sr.No.	Item Name & Description	Qty.	HSN	Gross Wt. (gm)	Net Wt. (gm)	Purity/ Specs.	Rate	Labour	Total Amount
1	Gold Chain,	1.000		6.230	6.230	22K	5,100.00	150.0 GM	33,688.72
				CGST % : 1.5	Total CGST Amt.:	490.61	Total Amt. Before Tax:		32,707.50
				SGST % : 1.5	Total SGST Amt.:	490.61	Additional Discount:		0.00
				Total GST Tax:		981.22	Total Amt. After Tax:		33,688.00
Amount In Word : Rupees Thirty Three Thousands Six Hundred Eighty Nine Only									
Customer Signature					For KIRPA JEWELLERS				
Thank You ! Visit Again.									

24. Hallmarking

Hallmarking is the accurate determination and official recording of the proportionate content of precious metal in the jewellery/artefacts or bullion/coins. Hallmarking Scheme is currently voluntary. However, Quality control order for mandatory hallmarking of gold jewellery/artefacts has been issued on 15 Jan 2020 by the Govt. of India. Mandatory hallmarking of gold jewellery/artefacts shall come into force with effect from 01 June 2021.

The Indian Standard on Gold Hallmarking IS 1417:2016 specifies three grades for hallmarking of gold jewellery/ artefacts which are 14 Carat, 18 Carat and 22 Carat and Indian standard on silver hallmarking IS 2112: 2014 specifies six grades of silver alloys viz 990,970,925,900,835,800 used in the manufacture of jewellery/artefacts of silver.

The list of registered jewellers and BIS recognised A&H centres is available on the BIS website www.bis.gov.in.

For hallmarking of jewellery, a jeweller who wants to sell hallmarked jewellery has to obtain a registration from BIS. The registration of jeweller's process has been made online (www.manakonline.in). The jeweller fills the application form online, uploads the requisite documents, pays the fees online and the registration is granted instantly and can be downloaded by the jeweller. The same procedure is applicable for renewal of registration.

Along with filled up application form, following self-certified copies of following documents are to be submitted with requisite fee to the Branch office of BIS having jurisdiction of the area where the jeweller is located:

- Proof of establishment of the firm or company
- Proof of the address of the premises

- Proof of identity of the signatory
- Map indicating location of the premises from the nearest landmark
- Proof in regard to annual turnover

25. Conclusion

With GST in place, the gems and jewellery sector in India would be able to have competitive prices while promoting the organized sector more and discarding the units which are not tax compliant in the long run. Simplified process of claiming input tax credit and the provision of input tax credit even on service has made the entire process transparent and error free. Interactions with the dealers gave me an understanding that In spite of all the positives, there remains certain confusions on GST procedures which has to resolve at the earliest to support the gems and jewellery sector.

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IMPACT OF GST ON GOODS
TRANSPORT AGENCY

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Foreword

France was the first country to implement GST in the year 1954. Since then, more than 140 countries has adopted the GST with some countries having Dual-GST (e.g. Brazil, Canada etc. model. India has chosen the Canadian model of dual GST).

The introduction of Goods & Services Tax (GST) in India is one of the most significant indirect tax reforms since Independence. The reform that took more than a decade of mutual co-operation, continuous discussion and intense debate between Central and State Governments about implementation methodology, was finally implemented with effect from 1st July 2017, subsuming almost all indirect taxes at the Central and State levels. As the journey of GST implementation progressed in India, the authorities have been quick to address the various challenges faced by the Industry and public concerns by issuing a series of notifications, clarifications, press releases and FAQs, to resolve a wide range of concerns.

I pray all good health to all the members of ITRAA team. It is the support of ITRAA mentor panel that we decide our vision. Also trust and hope that with the constant and unflinching endeavor of all fellow professionals, this simple tool of communication will grow into an effective and valuable knowledge base and shall help to achieve greater results.

I congratulate and salute to the ITRAA Team for their efforts in bringing out this publication for the dissemination of knowledge amongst its readers.

I am sure this publication would further facilitate our members in practice as well as in industry to acquire specialized knowledge relating to the GTA transactions

A special thanks to **“CA. Vikash Kumar Banka Ji”** for his continued support and enlightening the authors in guiding and completing this book.

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About the Author



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Highlights of Article

All Transport services by road are exempt from GST except services from GTA and Courier agency.

Anyone who provides consignment note for goods delivery will be treated as GTA.

Mere Bill is not a consignment note.

5% GST rate is applicable for transportation service by GTA on RCM basis means GST is payable by recipient. (NO ITC to transporter).

12% GST rate on forward charge basis (ITC is available to transporter).

Services provided by GTA to unregistered person is exempt except if he adopts to pay GST on forward charge basis.

Services provided by GTA for agriculture product is exempt.

If consideration charged for single consignment is less than 1500 RS. than service from GTA is exempt.

If multiple consignment carried by transporter and consideration for single consignee not exceeds 750 RS. than service from GTA is exempt.

Background of levying tax on the services of Goods Transport Agency

The levy of Service Tax on Road Transportation Service has always been a contentious issue. The Finance Act, 1997 had levied Service Tax on Goods Transport Operators w.e.f. 16-11-1997 which was subsequently withdrawn after nation-wide strike. Thereafter by the Finance (No. 2) Act, 2004 Service Tax was imposed on Transport of Goods by Road service rendered by a goods transport agency with effect from 10-09-2004. However, the levy was deferred until further notice again in view of transporters' strike. The Government thereafter constituted a Committee to deal with the issue and after taking into account the recommendations of the Committee, Notification Nos. 32 to 35/2004 – ST all dated 03-12-2004 were issued, levying tax on Transport of Goods by Road with effect from 01-01-2005.

The legal position prevailing under Service Tax is being continued under the GST regime. The services of transportation of goods by road (except services of GTA) continue to be exempt even under the GST regime. In so far as the services of GTA is concerned, if the services (of Goods Transportation) are provided (by the GTA) to specified classes of persons, the tax liability falls on such recipients under the reverse charge mechanism. The following discussion will clarify the position.



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Transportation of goods by road are done by transporter or courier agency. Here, we are discussing transporter. Transporter can be of two types:

- a. Goods Transport Agency (GTA) - like VRL Logistic or TCI XPS
- b. Transport (i.e. Vehicle) Owners

The real difference between GTA and Transport Owners, GTA are not fleet owners. They provide service of transportation by using the fleet of others.

Why we are trying to differentiate GTA & Transport Owners?

Because of the following exemption - 'Notification 12-2017 dated 28 June 2017 Paragraph 1 Serial No. 18 - Service by way of transportation of goods by road except the services of Goods Transport Agency and courier agency.'

However, law has mischief by defining the GTA as 'Notification 12-2017 dated 28 June 2017 Paragraph 2 Clause (ze) - any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called', because consignment note is even issued by transport owners.

As per Rule of Interpretation of Tax Statutes given by Hon'ble Courts, whenever law has mischief, to suppress such mischief one can refer the speech of mover given on the floor of Parliament.

Finance Minister Shri P. Chidambaram, in his Budget Speech on 8-7-2004 (Para 149) has stated as follows:

149. 58 services have been brought under the net so far. I propose to add some more this year. These are business exhibition services; airport services; services provided by transport booking agents; transport of goods by air; survey and exploration services; opinion poll services; intellectual property services other than copy right; brokers of forward contracts; pandal and shamiana contractors; outdoor caterers; independent TV/radio programme producers; construction services in respect of commercial or industrial constructions; and life insurance services to the extent of the risk premium. **I may clarify that there is no intention to levy service tax on truck owners or truck operators.** Nor, as was clarified by my

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predecessor, is there any intention to levy service tax on the savings part of the premium collected by an insurer.

It is clear from the above speech, the tax was imposed only on goods transport agency and not on transport owners. The same view has been upheld by the Tribunal in C.C.E. & C. GUNTUR VERSUS KANAKA DURGA AGRO OIL PRODUCTS PVT. LTD. [2009 (15) S.T.R. 399 (Tri. - Bang.)] where-in the Tribunal held that Transport booking agents alone contended as covered under Goods Transport Agency service and Service tax paid for engaging services of individual truck operators liable to be refunded.

The definition and taxability of transportation of goods in GST are identical to as it was in 2005 (Positive Regime of Taxation in Service Tax) and 2012 (Negative Regime of Taxation in Service Tax). Also, the current Finance Minister Mr. Arun Jaitley while deciding the rate and exemption on services on 19 May 2017 at the GST Council Meeting have said that they are following grandfather approach in deciding taxability of services in GST regime.

By going through the definition of GTA, it can be seen that issuance of a consignment note is the sinequa-non for a supplier of service to be considered as a Goods Transport Agency. If such a consignment note is not issued by the transporter, the service provider will not come within the ambit of goods transport agency. If a consignment note is issued, it indicates that the lien on the goods has been transferred (to the transporter) and the transporter becomes responsible for the goods till its safe delivery to the consignee. Thus, it is only the services of such GTA, who assumes agency functions, that is being brought into the GST net. Individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA. As a corollary, the services provided by such individual transporters who do not issue a consignment note will be covered by the entry at S.no.18 of Notification No.12/2017-Central Tax (Rate), which is exempt from GST.

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Who is a GTA – Goods Transport Agency?

As per Section 65B (26) of the Finance Act, 1994; “Goods Transport Agency means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called”. Therefore, in the Service Tax regime, issuance of Consignment Note (C/N) was integral and mandatory requirement before any road transporter could be brought within the ambit of GTA.

Courier Agency –

"Courier agency" means any person engaged in the door-to door transportation of time-sensitive documents, goods or articles utilizing the services of a person, either directly or indirectly, to carry or accompany such documents, goods or articles.

Transportation of Goods by Road

In terms of Notification no. 12/2017-Central Tax (Rate) dated 28.06.2017 (sr.no.18), the following services are exempt from GST Services by way of transportation of goods (Heading 9965):

- (a) by road except the services of:
 - (i) a goods transportation agency;
 - (ii) a courier agency;

- (b) by inland waterways.

Thus, it is to be seen that mere transportation of goods by road, unless it is a service rendered by a goods transportation agency, is exempt from GST.

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Position under GST

Under GST laws, the definition of Goods Transport Agency is provided in clause (ze) of notification no.12/2017-Central Tax (Rate) dated 28.06.2017. (ze) “goods transport agency” means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called; Thus, it can be seen that issuance of a consignment note is the sine-qua-non for a supplier of service to be considered as a Goods Transport Agency. If such a consignment note is not issued by the transporter, the service provider will not come within the ambit of goods transport agency. If a consignment note is issued, it indicates that the lien on the goods has been transferred (to the transporter) and the transporter becomes responsible for the goods till its safe delivery to the consignee.

It is only the services of such GTA, who assumes agency functions, that is being brought into the GST net. Individual truck/tempo operators who do not issue any consignment note are not covered within the meaning of the term GTA. As a corollary, the services provided by such individual transporters who do not issue a consignment note will be covered by the entry at s.no.18 of notification no.12/2017-Central Tax (Rate), which is exempt from GST.

What is a consignment note?

Consignment Note is neither defined in the Act nor in the notification no.12/2017-Central Tax (Rate). Guidance can be taken from the meaning ascribed to the term under the Explanation to Rule 4B of Service Tax Rules, 1994. In terms of the said rule, consignment note means a document, issued by a goods transport agency against the receipt of goods for the purpose of transport of goods by road in a goods carriage, which is serially numbered, and contains the name of the consignor and consignee, registration number of the goods carriage in which the goods are transported, details of the goods transported, details of the place of origin and destination, person liable for paying service tax whether consignor, consignee or the goods transport agency.

Mere bill is not consignment note -

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In **Nandganj Sihori Sugar Co. v. CCE (2014) 46 GST 570**, it was held that consignment note issued by GTA represents its liability to –

- (a) transport consignment handed over to it to destination
- (b) undertake delivery of same to consignee and
- (c) temporarily store till delivery.

Mere bill issued for transportation of goods cannot be treated as a Consignment Note.

Consignment Note Should Contain the following:

- It Should be serially numbered.
- It Should contain the name of the consignor and consignee.
- Registration No of the Goods carriage in which goods are transported.
- Details of the Goods sent.
- Place of origin and place of Destination.
- Person Liable to pay GST.

Service provided by person who does not issue or not liable to issue consignment note is not taxable

If driver of goods carriage is self-employed either by taking vehicle on rent from other or as owner of one or two vehicles, he does not issue any consignment note. He has direct contract with consignor/consignee. He himself receives freight from consignor/consignee. He would not be liable to GST. Only GTA which issues a consignment note is liable to GST tax.

As discussed on Page no. 3 above Truck owners are not covered under GST and Following Documents are to be collected from them:

A. Blue Book

B. PAN CARD

C. Declaration under Section 44AE of Income tax act states that small business engaged in the business of plying, hiring or leasing goods carriages having not more than ten goods carriage vehicles, can adopt the Presumptive taxation scheme for ascertaining the taxable income for a particular financial year.

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Rate of GST on Multimodal Transport Services

- The GST Council in its 21st meeting had recommended GST rate of 12% with full ITC under forward charge for composite supply of multimodal transportation.
- Towards this end notification no.13/2018-Central Tax dated 26.07.2018 issued.
- Multimodal Transport of goods charged to tax @ 6% under CGST. Total 12%
- Entry no.9(vi) substituted as under:
- “(vi) Multimodal transportation of goods charged @ 6%
- Explanation. -
- (a) **“multimodal transportation”** means carriage of goods, by at least two different modes of transport from the place of acceptance of goods to the place of delivery of goods by a multimodal transporter;
- (b) **“mode of transport”** means carriage of goods by road, air, rail, inland waterways or sea;
- (c) **“multimodal transporter”** means a person who, -
- (A) enters into a contract under which he undertakes to perform multimodal transportation against freight; and
- (B) acts as principal, and not as an agent either of the consignor, or consignee or of the carrier participating in the multimodal transportation and who assumes responsibility for the performance of the said contract.

Is a GTA liable to register?

There was a lot of confusions whether a GTA has to register under GST. As per Notification No. 5/2017- Central Tax dated 19/06/2017, a person who is engaged in making only supplies of taxable goods/services on which reverse charge applies is exempted from obtaining registration under GST.

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Thus, a GTA does not have to register under GST if he is exclusively transporting goods where the total tax is required to be paid by the recipient under reverse charge basis (even if the turnover exceeds 20 lakhs).

Is Composition Scheme available for Transportation?

As per Section 10(2) of CGST Act, 2017, 'The composition scheme in case of the service provider is available only in case of Restaurant or catering service'. Therefore, the composition is not available for goods transport agency.

What Accounts & Records needs to maintained by GTA?

As per Section 35(2), every transporter, irrespective of whether he is a registered person or not, shall maintain records of the consigner, consignee and other relevant details of the goods in such manner as may be prescribed. If a Transporter is not registered, then he shall submit the details regarding his business electronically on the common portal in FORM GST ENR-01 and upon validation of the details furnished, a unique enrolment number shall be generated and communicated to the said person. Any person engaged in the business of transporting goods shall maintain records of goods transported, delivered and goods stored in transit by him along with the GSTIN of the registered consigner and consignee for each of his branches.

Detention, Seizure and Release of Goods and Conveyances in Transit

As per Section 129(1) of CGST Act, 2017 "Notwithstanding anything contained in this Act, where any person transports any goods or stores any goods while they are in transit in contravention of the provisions of this Act or the rules made there under, all such goods and conveyance used as a means of transport for carrying the said goods and documents relating to such goods and conveyance shall be liable to detention or seizure and after detention or seizure, shall be released on payment of applicable tax and penalty.

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Scenarios for Registration for a Goods Transport Agency

Service	Turnover	GST paid by
Case 1		
Transporting goods of registered dealer or any of the 7 mentioned below	9lakhs	Registered Dealer/ recipient of service under RCM
Transporting goods of URD (Unregistered Dealer)	3lakhs	GTA (liable to pay)
Total turnover	12lakhs	Aggregate Turnover is below 20 lakhs threshold. GTA is not required to register
Case 2		
Transporting goods of registered dealer or any of the 7 mentioned below	19lakhs	Registered Dealer/ recipient of service under RCM
Transporting goods of URD	3lakhs	GTA (liable to pay)
Total turnover	22lakhs	Aggregate Turnover exceeds 20 lakhs threshold. GTA will have to register as it is supplying to URD
Case 3		
Transporting goods of registered dealer or any of the 7 mentioned below	25lakhs	Registered Dealer/ recipient of service under RCM
Transporting goods of URD	0lakhs	-----
Total turnover	25lakhs	Aggregate Turnover exceeds 20 lakhs threshold. GTA is still not required to register as per Notification No. 5/2017

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Charge of GST on services provided by GTA

In terms of notification no. 11/2017-Central Tax (Rate) dated 28.06.2017 as amended by notification no. 20/2017- Central tax (Rate) dated 22.08.2017, sr.no. 9 and sr. no. 11,

(i) Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use) (Heading 9965 & 9967 respectively) attracts GST @2.5% or 6% CGST. Identical rate would be applicable for SGST also, taking the effective rate to 5% or 12%. However, the rate of 5% is subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken. The Explanation to the notification further clarifies that it shall mean that, -

(a) credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and

(b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of subsection (2) of section 17 of the Central Goods and Services Tax Act, 2017 and the rules made there under.

GST @ 6% CGST (12% cumulative) is subject to the condition that the goods transport agency opting to pay central tax @ 6% under this entry shall, thenceforth, be liable to pay central tax @ 6% on all the services of GTA supplied by it. Further, there is no restriction on the GTA from taking ITC if this option is availed. Thus, where the GTA is not eligible to take ITC for the supplies effected by it and the liability under GST is discharged under reverse charge basis, the recipient of GTA service discharging the tax liability is entitled to take Input Tax Credit (ITC) of the amount of tax paid under reverse charge, provided it is used in the course or furtherance of business at his end. Further the recipient would be eligible for ITC of the GST paid by GTA on forward charge basis. Notification no. 11/2017-Central Tax (Rate), sr.no.11, (ii) also provides that supporting services in transport other than those mentioned in (i) (Heading 9967) would attract GST @9% CGST. Identical rate

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would be applicable for SGST also, taking the effective rate to 18%. Similar rate has been prescribed for services falling under heading 9965 in terms of notification no. 11/2017-Central Tax (Rate), sr.no. 9 (v).

Note: Once the transporter chooses to charge tax @ 12%, he is not allowed to charge tax @ 5% for future supplies.

Person Liable to Pay GST on GTA services

The liability to pay GST devolves on the recipients for supply of services by a goods transport agency (GTA) who has not paid central tax at the rate of 6%, in respect of transportation of goods by road (in terms of notification no. 13/2017-Central Tax (Rate) dated 28.06.2017 (sr.no.1) as amended by notification no. 22/2017-Central Tax (Rate) dated 22.08.2017, if the recipients (located in the taxable territory) belong to the following category:

- (a) Any factory registered under or governed by the Factories Act, 1948(63 of 1948);
or
- (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or
- (c) any co-operative society established by or under any law; or
- (d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or
- (e) any body corporate established, by or under any law; or
- (f) any partnership firm whether registered or not under any law including association of persons; or
- (g) any casual taxable person.

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Thus in cases where services of GTA are availed by the above categories of persons in the taxable territory the GTA supplier has the option to pay tax (and avail ITC) @12% (6% CGST + 6% SGST); and if the GTA does not avail this option, the liability to pay GST will fall on the recipients. In all other cases where the recipients do not fall in the categories mentioned above, the liability will be on the supplier of GTA services

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Various Scenarios to Determine Who is Liable to pay GST in case of a GTA

Service Provider	Supplier/ Consignor	Receiver of goods/ Consignee	Person paying Freight	Person liable to pay GST
GTA	A company (Whether or not registered under GST)	Partnership Firm (Whether or not registered under GST)	Company	Company
GTA	Partnership Firm (Whether or not registered under GST)	Registered Dealer X	X	X
GTA	Partnership Firm (Whether or not registered under GST)	Registered Dealer X	Firm	Firm
GTA	A Co-Op Society Ltd (Whether or not registered under GST)	Registered Dealer X	X	X
GTA	A Co-Op Society Ltd (Whether or not registered under GST)	Registered Dealer X	A Co-Op Society Ltd	A Co-Op Society Ltd
GTA	Company A Ltd. (Whether or not registered under GST)	Company B Ltd. (Whether or not registered under GST)	B Ltd	B Ltd
GTA	URD A	Registered Dealer X	A	X
GTA	URD A	Registered Dealer X	X	X
GTA	URD A	URD F	F	Exempted**

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Rate of GST on GTA?

Service by a GTA	GST rate
Carrying- <ul style="list-style-type: none"> • agricultural produce • milk, salt and food grain including flour, pulses and rice • organic manure • newspaper or magazines registered with the Registrar of Newspapers • relief materials meant for victims of natural or man-made disasters • defence or military equipment 	0%
Carrying- goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage is less than Rs. 1,500	0%
Carrying- goods, where consideration charged for transportation of all such goods for a single consignee does not exceed Rs. 750	0%
Any other goods	5% No ITC OR 12% with ITC
Used household goods for personal use	0% **
Transporting goods of unregistered persons	Yet to be notified**
Transporting goods of unregistered casual taxable persons	Yet to be notified**
Transporting goods (GST paid by GTA)*	5% No ITC or 12% with ITC
Transporting goods of 7 specified recipients*	if GTA Charges 12%, GTA must deposit tax and ITC can be availed Otherwise if GTA Charges 5%, RCM applies and recipient must deposit tax and ITC cannot be availed
Hiring out vehicle to a GTA	0%

*As per Notification No. 20/2017-Central Tax (Rate) 22nd August, 2017 ** On 31st Dec 2018, The Government cancelled Notification No. 32/2017- Central Tax (Rate) dated 13th October, 2017, thereby making purchase from unregistered dealers taxable. However, list of registered persons or transactions is yet to be notified.

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How to determine Place of Supply for a GTA

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.

Examples for determining place of supply

Rajesh is a registered dealer in Bangalore. He hires a GTA to deliver goods to Mumbai. Place of supply will be Bangalore. Anita is unregistered dealer in Gujarat who hires a GTA to deliver goods to Rajasthan. Place of supply will be Gujarat where Anita hands over the goods to the transporter. Vikas is registered in both Mumbai and Bangalore. He hires a transporter (based in Mumbai) to deliver from Bangalore to Delhi. CGST & SGST will be applicable. If the transporter is based in Chennai, then IGST will be applicable.

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Invoicing for GTA

Any GST compliant invoice of a GTA must have following details-

- ❖ Name of the consignor and the consignee.
- ❖ Registration number of goods carriage in which the goods are transported.
- ❖ Details of goods transported.
- ❖ Gross weight of the consignment.
- ❖ Details of place of origin and destination.
- ❖ GSTIN of the person liable for paying tax whether as consigner, consignee or goods transport agency.
- ❖ Name, address and GSTIN (if applicable) of the GTA.
- ❖ Tax invoice number (it must be generated consecutively and each tax invoice will have a unique number for that financial year).
- ❖ Date of issue.
- ❖ Description of service.
- ❖ Taxable value of supply.
- ❖ Applicable rate of GST (Rates of CGST, SGST, IGST, UTGST and cess clearly mentioned).
- ❖ Amount of tax (With breakup of amounts of CGST, SGST, IGST, UTGST and cess).
- ❖ Whether GST is payable on reverse charge basis.
- ❖ Signature of the supplier.

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GTA services specifically exempt

In terms of notification no.12/2017-Central Tax (Rate) dated 28.06.2017 (sr.no.21), the following services provided by a GTA (Heading 9965 or 9967) is exempt from payment of tax:

Services provided by a goods transport agency, by way of transport in a goods carriage of:

- (a) agricultural produce;
- (b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;
- (c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred and fifty;
- (d) milk, salt and food grain including flour, pulses and rice;
- (e) organic manure;
- (f) newspaper or magazines registered with the Registrar of Newspapers;
- (g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap;
- (h) defence or military equipments.

Exemption to supply of services to transit cargo to Nepal and Bhutan

Supply of services associated with transit cargo to Nepal and Bhutan (landlocked countries) has been exempted. - Notification No. 12/2017-CT (Rate) and No. 9/2017-IT (Rate) both dated 28-6-2017 as amended on 29-9-2017.

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Exemption to service of giving vehicles on hire to GTA

Similarly, the following services received by the GTA (Heading 9966 or 9973) is also exempt in terms of notification no.12/2017- Central Tax (Rate) dated 28.06.2017 (sr.no.22)

Services by way of giving on hire:

(b) to a goods transport agency, a means of transportation of goods.

Thus, if the GTA hires a means of transportation of goods, no GST is payable on such transactions.

GST on outward freight charged in tax invoice in case of FOR contracts

In case of FOR basis contracts, the supplier arranges transport. In that case, he pays GST under reverse charge on outward freight. He then charges outward freight in the tax invoice. In such case, the outward freight charged is part of value of goods and GST is payable on value including outward freight. The rate is same as applicable to goods, as this is a composite supply as per section 2(30) of CGST Act. It is not correct to charge freight separately and charge GST @ 5% [2.5% plus 2.5%] as the service of supplier of goods is not Goods Transport Agency Service at all.

Significance of the term 'in relation to' in the definition of GTA

The use of the phrase 'in relation to' has extended the scope of the definition of GTA. It includes not only the actual transportation of goods, but any intermediate/ancillary service provided in relation to such transportation, like loading/unloading, packing/ unpacking, trans-shipment, temporary warehousing, etc. If these services are not provided as independent activities but are the means for successful provision of GTA Service, then they are also covered under GTA.

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FAQs on GTA

Qs. Amar hired a GTA to transport his goods. The consideration charged was Rs. 1,200. Will Amar pay GST?

Ans. Ajay will not pay GST under RCM as the consideration for transportation of goods on a consignment transported in a single carriage is less than Rs. 1,500.

Qs. Vinod hired a GTA to transport goods. The GTA was asked to come 2 days as Vinod would receive the goods in batches. The entire consideration was Rs. 600. Will Vinod pay GST?

Ans. Vinod will not pay GST because the consideration charged for transportation of all such goods for a single consignee does not exceed Rs. 750.

Qs. Mr. Ajay, a working professional, is moving houses and hires XYZ GTA to transport his household items. XYZ demands Ajay to pay GST under RCM as moving charges are Rs. 6,000. Ajay is confused.

Ans. Ajay is unregistered and if XYZ GTA is also unregistered under GST then, GST is not applicable. If XYZ is registered, then it will pay GST of 5%. RCM will not apply on Ajay.

Qs. Anand, a garments shop owner in Kolkata, hires a truck to deliver goods from wholesaler to his (Anand's) shop. Anand's turnover is less than 20 lakhs and he has not registered under GST. The GTA demands that Anand should pay tax under RCM. Anand argues that since he is not registered, he does not have to pay any GST.

Ans. Only the persons above (Notification No. 13/2017- Central Tax (Rate) dated 28th June, 2017) are required to pay GST under RCM. Unregistered dealers (Anand) purchasing goods/services from unregistered GTA do not have to pay GST under reverse charge mechanism. If the URD hires from a registered GTA, then the registered GTA is liable to pay GST. So, Anand is not liable to pay GST under RCM.

Qs. Anand now purchases garments from Assam and pays for a truck to deliver the goods to his shop in Kolkata. The GTA says that Anand has to register for GST

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as he is making an inter-state purchase as only registered dealers can have inter-state trade.

Ans. An unregistered person can make inter-state purchases. For making inter-state sales, he will have to be compulsorily registered. Since, Anand is an unregistered dealer and the GTA is also unregistered then the concept of RCM does not arise.

Qs. The GTA is registered at Assam and its branch is collecting cash in Kolkata on his behalf. Recipient of service Anand is in Kolkata. If Anand was registered, would he have charged IGST or SGST/CGST under RCM?

Ans. If the original transporter in Assam bills Anand, then IGST should be charged. If he bills the branch then SGST/CGST will apply.

Qs. Anand has received a one-time contract to sell garments to a dealer in Mumbai. Anand hires a truck to send the goods.

Ans. Since, Anand is not registered under GST, he cannot make any inter-state sale. To make an inter-state sale, he must register as a casual taxable person. Then when he hires a truck to send the garments, automatically he is liable to pay GST under RCM.

Qs. Anand is sick of all this and decides to voluntarily register. He hires a truck again to transfer goods from the wholesaler to his shop. GTA asks him to pay GST on RCM as he is registered. But Anand's view is that his turnover is still below 20 lakhs.

Ans. The threshold of turnover does not matter if a person is voluntarily registered. All provisions of GST Act will apply to a registered person. Anand is liable to pay GST under RCM.

Qs. Anand's turnover has increased to 45 lakhs. He wants to shift to composition scheme as he sells mainly to end consumers. But he is worried as his GTA has told him they would not deliver his goods if he is registered under composition scheme as the GTA become liable for GST.

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Ans. This is a myth. Even composition dealers are liable to pay GST under RCM. Anand will pay GST on RCM if he hires a GTA whether he is registered as a composition dealer or as a normal dealer.

FAQ: TRANSPORT & LOGISTICS

Question 1: I am a single truck owner-operator and I ply my truck mostly between States, carrying the goods booked for my truck by an agent; aggregate value of service which I provided exceeded twenty lakh rupees during last year. Am I supposed to take registration?

Answer: You are not liable to registration, as services provided by way of transportation of goods by road are exempt. Notification number 12/2017-Central Tax (Rate), dated 28th June, 2017 refers.

Question 2: I own a single truck and I rent it to a major player, who provides GTA service; should I take a registration? Does my monthly rental/lease income attract GST?

Answer: Registration is not required since services by way of giving on hire, a means of transportation of goods to a GTA are exempt from tax vide entry no. 22 of Notification number 12/2017-Central Tax (Rate) dated 28th June, 2017.

Question 3: In my truck, I only carry fruits and vegetables, in relation to whose transportation service GST is exempt; should I take registration?

Answer: Services by way of transportation of goods by road other than by a GTA or a courier agency are exempt from tax under entry no. 18 of notification No. 12/2017-Central Tax (Rate) dated the 28th June, 2017 and thus you are not liable for registration.

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Question 4: I am a truck supplier/broker. My job is to get orders for truck owners. I quote the rate for transportation to GTA on behalf of truck owners and I get a small amount as commission out of the truck hire fixed with the GTA. This brokerage is paid by the truck owners. As the services provided by way of transportation of goods by road are exempt from tax, am I liable to registration?

Answer: You are liable to registration if the aggregate amount of commission received by you in a financial year exceeds Rs. 20 lakhs (Rs. 10 lakhs in special category States except J & K).

Question 5: As a transporter, am I required to maintain any records of my services of transportation?

Answer: Yes, in terms of section 35(2) of the CGST Act, 2017 you are required to maintain records of the consigner, consignee and other relevant details of the goods. Further, in terms of rule 56 of the CGST Rules, 2017 you are required to maintain records of goods transported, delivered and goods stored in transit by you along with the GSTIN of the registered consigner and consignee for each of your branches.

Question 6: Are intermediary and ancillary services, such as, loading/unloading, packing/unpacking, transshipment and temporary warehousing, provided in relation to transportation of goods by road to be treated as part of the GTA service, being a composite supply, or these services are to be treated as separate supplies.

Answer: The GTA provides service to a person in relation to transportation of goods by road in a goods carriage, which is a composite service. The composite service may include various intermediary and ancillary services, such as, loading/unloading, packing/unpacking, transshipment and temporary warehousing, which are provided in the course of transport of goods by road. These services are not provided as independent services but as ancillary to the principal service, namely, transportation of goods by road. The invoice issued by the GTA for providing the said service includes the value of intermediary and ancillary services. In view of this, if any intermediary and ancillary service is provided in relation to transportation of goods by road, and charges, if any, for such services are included

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in the invoice issued by the GTA, such service would form part of the GTA service and would not be treated as a separate supply. In fact, any service provided along with the GTA service that is part of the composite service of GTA shall be taxed along with GTA service and not as separate supplies. However, if such incidental services are provided as separate services and charged separately, whether in the same invoice or separate invoices, they shall be treated as separate supplies.

Question 7: As per Notification number 05/2017-Central Tax dated 19th June, 2017, the persons who are only engaged in making supplies of taxable goods or services or both, the total tax on which is liable to be paid on reverse charge basis by the recipient of such goods or services or both under sub-section (3) of section 9 of the CGST Act, 2017 are exempted from obtaining registration under the said Act. Please clarify whether a GTA providing service in relation to transportation of goods by road under reverse charge mechanism (RCM) can avail of the benefit of this exemption.

Answer: Yes, a GTA providing service in relation to transportation of goods by road under RCM can avail of the benefit of this exemption.

Question 8: Can a GTA obtain registration for one vertical (Rail, Cargo, Renting, Warehousing etc.) for which tax needs to be paid while not obtaining registration for another vertical (GTA under RCM) on which there is no tax liability.

Answer: No, because the business entity is not engaged exclusively in the supply of services liable to tax under reverse charge mechanism.

Question 9: In transport industry, old vehicles, old tyres, scrap material etc, on which no input tax credit (ITC) has been taken, are disposed of after completion of their useful life. As a truck owner disposing of these goods, am I required to pay GST considering that no ITC has been taken at the time of their initial purchases? Would levy of tax in such cases not amount to double taxation, as tax has already been paid at the time of initial purchases?

Answer: Under section 7 of the CGST Act, 2017 supply includes all forms of supply of goods such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or

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furtherance of business. Sale or disposal of old vehicles, old tyres and scrap material for a consideration would therefore attract GST regardless of whether ITC has been availed or not.

Question 10: Please clarify whether input tax credit is available to the recipient of service, when the GST paid by him is at a concessional rate of 5% under RCM.

Answer: Yes, input tax credit is available in such cases.

Question 11: When a GTA hires a truck (with driver) from another GST registered entity for the purpose of providing goods transport service to a registered recipient, whether tax credit is available to the GTA on the GST paid by him to the owner of the truck registered under GST.

Answer: Services by way of giving on hire to a GTA, a means of transportation of goods are exempt from GST under Notification number 12/2017-Central Tax (Rate) dated 28th June 2017. When the tax is not payable, the question of taking any tax credit does not arise.

Question 12: In terms of section 12(9) of the IGST Act, 2017 the place of supply of passenger transportation service to a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey. In section 2 (3) of the IGST Act, 2017, the term “continuous journey” has been defined to mean 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. Do all stopovers cause a break in continuous journey? Does the definition of “continuous journey” include instances whereby the stopover is for any period of time?

Answer: The term “stopover” has been explained in section 2(3) of the IGST Act, 2017 to mean 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. However, all stopovers do not cause a break in continuous journey. Thus a travel on Delhi-London-New York on a single ticket with a halt at

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London will be covered by the definition of continuous journey. However, the return journey of New York-London-Delhi will be treated as a separate journey and will be outside the scope of a continuous journey.

Question 13: How GST is to be charged on a multi-leg international journey, say Delhi-Dubai-Boston-Dubai-Delhi? Is GST chargeable for the entire journey and discharged at Delhi, or the GST is to be charged for Delhi-Dubai sector alone and discharged at Delhi, or GST is to be charged up to the farthest point of return, i.e. Delhi-Dubai-Boston at Delhi?

Answer: In this case if a single ticket or invoice has been issued for the Delhi-Dubai-Boston then it is a continuous journey even if there is a stopover at Dubai and the tax (CGST + SGST) would be charged at Delhi. The return journey of Boston-Dubai-Delhi would not be a continuous journey. The return journey not being a continuous journey and its place of supply being outside India, the said journey, would be liable to tax if the location of the supplier is in India.

Question 14: Is the electronic ticket receipt acceptable as a tax invoice for the purpose of GST? Is there any requirement for the Airlines to issue a proper tax invoice?

Answer: Yes, the electronic ticket in the global standard format (and without further modifications) is acceptable as a tax compliant invoice for GST purposes, regardless of the value of the transaction. Rule 54 (4) of the CGST Rules, 2017 refers. However, for B2B supplies, a tax invoice may be provided to enable the registered business customer to claim input tax credits.

Question 15: Is there any requirement for electronic ticket receipts issued to be signed or digitally signed for GST purposes?

Answer: No. In terms of Rule 54 (4) of the CGST Rules, 2017 in the case of passenger transportation service, a tax invoice shall include ticket in any form, whether or not serially numbered, and whether or not containing the address of the recipient of service but containing other information as mentioned under Rule 46 of the Rules ibid. As the electronic tickets issued by the Airlines are in the global standard

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format, such electronic ticket receipts are not required to be signed or digitally signed.

Question 16: Whether the Airlines are required to issue invoice to the customers transaction-wise, (i.e. Airway Bill-wise, Ticket Journey-wise) or a consolidated invoice, capturing the details of all individual invoices for a particular entity, can be issued on a monthly or fortnightly basis?

Answer: A single invoice incorporating the details of all the supplies for a particular entity can be issued subject to provisions of section 31 of the CGST Act, 2017. In such a case the ticket issued by the Airlines would not take the character of an invoice.

Question 17: Would GST be applicable on air travel undertaken on or after 1 st July 2017 on tickets issued prior to 1st July 2017 on which service tax was collected and discharged.

Answer: As service tax has already been collected and discharged by the Airlines on tickets issued prior to 1st July, 2017, there shall be no GST on such tickets even though the travel date is on or after 1 st July 2017.

Question 18: Does the GST treatment on fees for ancillary services in relation to air transport follow that of the underlying air transport service?

Answer: Yes, ancillary services are part of the service of transporting a passenger by air and do not constitute a separate supply of service. In this respect, ancillary services include services that are incidental to the transport of passengers by air (e.g., excess baggage charges, date change charges, un-accompanied minor fees, preferred seat charges, cancellation fees etc.). Consequently, ancillary services shall be treated within the same category of service as „transport of passengers by air“ and shall attract the same rate of GST as applicable to the transport of passengers by air. Question 19: Will Airlines be entitled to input tax credits under the GST transitional rules if the liability to pay service tax arises, due to resolution of litigation or disputes, after implementation of GST? Answer: Yes, Section 142 6 (a) of the CGST Act, 2017 provides that every proceeding of appeal, review or reference relating to a claim for CENVAT credit initiated whether before, on or after

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the appointed day under the existing law shall be disposed of in accordance with the provisions of the existing law, and any amount of credit found to be admissible to the claimant shall be refunded to him in cash, notwithstanding anything to the contrary contained under the provisions of the existing law other than the provisions of section 11B (2) of the Central Excise Act, 1944. Note: Reference to CGST Act, 2017 / CGST Rules, 2017 includes reference to SGST Act, 2017 / SGST Rules, 2017 and UTGST Act, 2017 / UTGST Rules, 2017 also.

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Conclusion

The above discussion shows that not all transport of goods by road is by a GTA. To qualify as services of GTA, the GTA should be necessarily issuing a consignment note. Only services provided by a GTA are taxable under GST. Services of transportation of goods by a person other than GTA are exempt. Moreover, in cases where the service of GTA is availed by the specified categories of persons in the taxable territory, the recipients who avail such services are the ones liable to pay GST and not the supplier of services unless the GTA opts for collecting and paying taxes @ 12% (6% CGST + 6% SGST). In all other cases where GTA service is availed by persons other than those specified, the GTA service supplier is the person liable to pay GST. The GTA service supplier is not entitled to take ITC on input services availed by him if tax is being charged @ 5% (2.5% CGST + 2.5% SGST). In case the GTA service supplier hires any means of transport to provide his output service, no GST is payable on such inputs. In a nutshell, the GST law continues the provisions prevailing under the Service Tax regime. The law recognizes that pure transportation of goods services are mostly provided by persons in the unorganized sector and hence has specifically excluded such operators from the tax net. In respect of those who provide agency services in transport, the liability is cast on the recipients in most of the cases or unless option to pay under forward charge has been exercised by the GTA.



Impact of GST on Health Care Services

| **CA Hemakshi Arora** |

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Impact of GST on Health Care Services

Foreword

France was the first country to implement GST in the year 1954. Since then, more than 140 countries has adopted the GST with some countries having Dual-GST (e.g. Brazil, Canada etc. model. India has chosen the Canadian model of dual GST).

Way back, the idea of adopting GST in India was first suggested by the Atal Bihari Vajpayee Government in 2000. But GST was introduced on 1st July, 2017 with a punch line **“One nation one tax”** to unite indirect taxes under one umbrella and facilitate Indian businesses to be globally competitive. The Indian GST case is structured for efficient tax collection, reduction in corruption, easy inter-state movement of goods etc. GST since its implementation till date has come up with many amendments, Notifications, Circulars etc. but now on completing its fourth year, it is in a much better state facing all the obstacles. So, therefore we decided to guide people of various sectors of its provisions relevant to them.

We congratulate and salute to the ITRAA Team for their efforts in bringing out this publication for the dissemination of knowledge amongst its readers.

We pray all good health to all the members along with their near and dears of ITRAA team. It is the support of ITRAA mentor panel

that we decide our vision. We trust and hope that with the constant and unflinching endeavour of all fellow professionals, this simple tool of communication will grow into an effective and valuable knowledge base and shall help to achieve greater results.

*A special thanks to “**CA. Vikash Kumar Banka Ji**” for his continued support and enlightening the authors in guiding and completing this book.*

Impact of GST on Health Care Services

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Impact of GST on Health Care Services

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Impact of GST on Health Care Services

Introduction

In the times of pandemic, the whole world has realized the importance of doctors, hospitals and other health care services in the country. Even countries having the sufficient medical resources per capita like Italy, America has also gone tough time.

On the outset of COVID-19, the whole world was fighting pandemic consequence of which complete lockdown was imposed in the several countries. At that time, many countries government has faced acute shortage of revenue due to income cycle disturbance of various persons. Goods and Service Tax (GST), is also one of such an important element of the Indian Economy and Government's revenue that it is indispensable from anyone's life. Every transaction happening around us has some

direct or indirect impact of it irrespective of our acknowledgement as to that.

The two important elements i.e. health care services and GST are either directly or indirectly indispensable in nation building. Through this write up, we will understand the impact of GST on health care services in a very simplified manner that would help you to gain something about the combined effect of both.

If we consider the Generic meaning of health care services then it would mean services for the caring of the health of someone's. But with this pace of development and expertise around us, can we restrict our knowledge to just only those services? No. In this era, in-depth knowledge and clarity of the topic in the market on any aspect of the same is the foremost need.

Often few people have a perception in their mind that health care services is being fully exempt as they were in the regime of service tax for decades. Even Income Tax Act, 1961 has also provided medical relief as one of instance for charitable purpose. But let's make us clarity in the mind that what was working in earlier regimes and what is working in other laws is not the scenario in GST. GST, being a separate law, discusses things in its own manner written in the law and while moving further, we will gain the understanding of this.

DO YOU KNOW...?

In 2019, United States has highest total health expenditure per capital in PPP international U.S. dollars non inflation-adjusted of \$11072 followed by Singapore of \$7732

Impact of GST on Health Care Services

Humans and animals have lived side by side for many years. Animals enrich our lives and help us understand the natural world around us. But humans have the power and intelligence to make influential decisions... does this make them more important? When our health care expenditure is necessary then so do of animals also. Proceeding ahead, the impact of GST on veterinary services will be discussed along with all the other aspects.

Health Care services has an ample divisions through which working can be done. This article would be dividing the impact of GST on health care services in following divisions:

1. Clinical Establishments
2. Medical Colleges
3. Medicinal Shops
4. Diagnosis Centres
5. Surgeries
6. Unrecognised system of Medicines

The provisions of CGST Act, 2017 and SGST Act, 2017 are in pari materia and have the same provisions in like manner and differ from each other only in case of a few specific provisions. Therefore, unless a mention is specifically made to such dissimilar provisions, a reference to the CGST Act would also mean reference to the corresponding similar provisions in the State GST Act.

Entry contained in **Notification No. 12/2017- Central Tax (Rate)**

Health Care Services

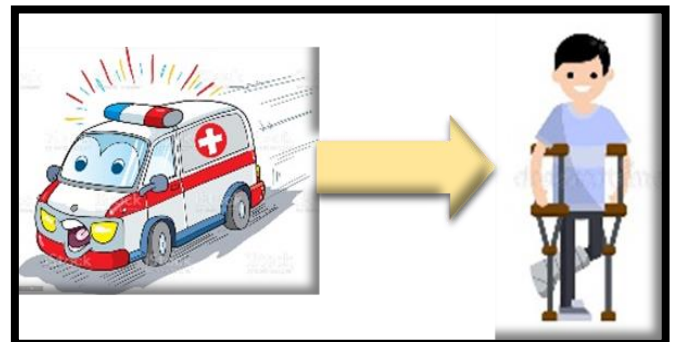
The Government of India has come up with a **Notification No. 12/2017- Central Tax (Rate) dated June 28, 2017** whereby the various services which are being exempt from collection of tax has been prescribed. The below mentioned entries are relevant for health care services:

Entry No. 74#

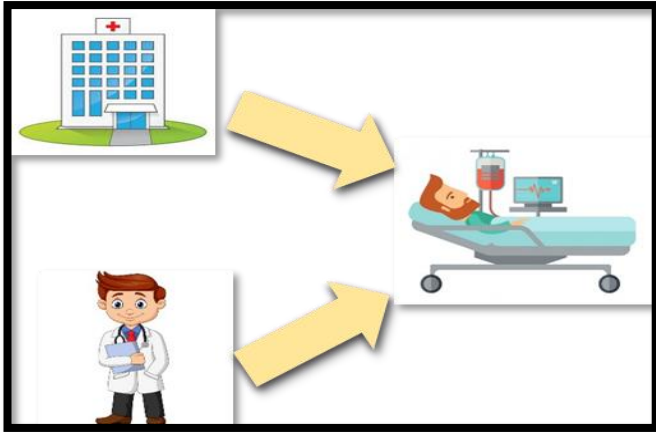
Services by way of-

(a) **Health care services¹ by a clinical establishment², an authorised medical practitioner³ or para-medics⁴;**

(b) **services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.**



Impact of GST on Health Care Services



The Entry makes us clear that if any HEALTH CARE SERVICES provided BY clinical establishment, an authorised medical practitioner or para-medics are exempt. However, the services being provided to them are not exempt, unless specifically provided by way of any other exemption in this behalf.

In order to understand the above mentioned exemption first we should be clear about are Health Care Services, clinical establishment, an authorised medical practitioner or para-medics? If we are clear as to the meaning of the above terms half of our job ends up here and only then we will be able to understand the relevance of GST on health care industry. Para 2 of the aforesaid Notification has provided the meaning of the various terms as used in the said notification and it states as under:

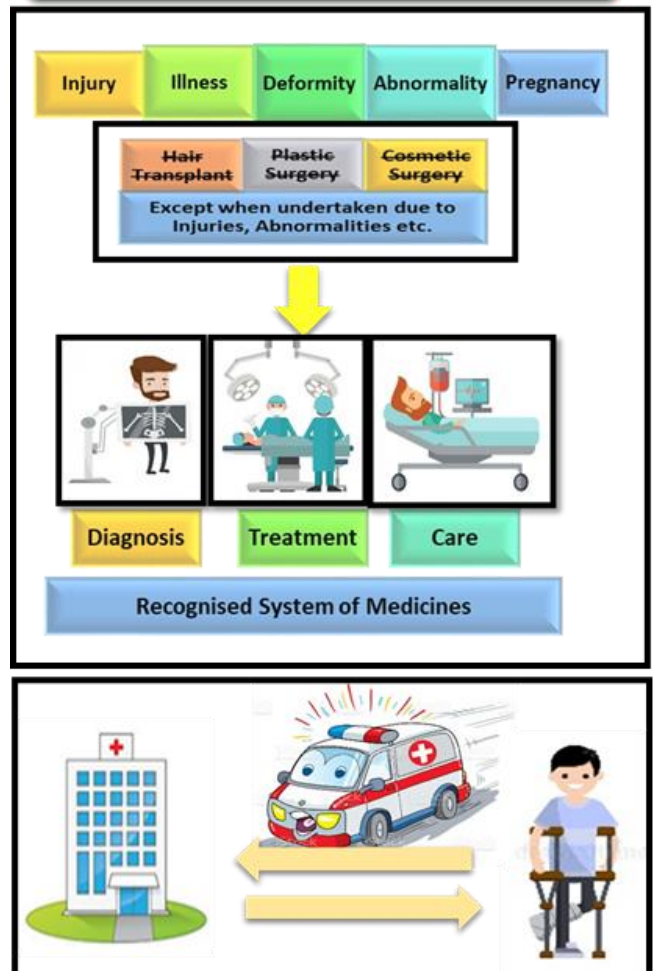
¹ 2(zg) **Health care services** means

- any service by way of **diagnosis or treatment or care** for illness, injury, deformity, abnormality or pregnancy **in**

any recognised system of medicines in India⁵ and

- includes services by way of transportation of the patient to and from a clinical establishment,
- but does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma;

Health Care Services



²(s) “**clinical establishment**” means

Impact of GST on Health Care Services

- a hospital, nursing home, clinic, sanatorium or any other institution by, whatever name called,
- that offers services or facilities requiring diagnosis or treatment or care for illness, injury, deformity, abnormality or pregnancy **in any recognised system of medicines in India**⁵, or
- a place established as an independent entity or a part of an establishment to carry out diagnostic or investigative services of diseases;

It gives us an understanding that whether the diagnostic centre is running as an independent entity or is a part of the clinical establishment, both will be covered in the definition of Clinical Establishment.

^{3(k)} “**authorised medical practitioner**” means

- a medical practitioner **registered with any of the councils of the recognised system** of medicines established or recognised **by law in India** and
- **includes** a medical professional having the requisite qualification **to practice in any recognised system of medicines in India as per any law** for the time being in force;

From above definition of authorised medical practitioner, we have the following points for consideration: **Councils of the recognised system** of medicines established or recognised **by law in India** will include the

medical practitioners who are the members of council of India. Then what about the medical practitioners are the members of council of abroad? They would be included in the wordings “**practice in any recognised system of medicines in India as per any law**”

⁴ **Para-medics** has not been defined in the exemption notification and GST Act. However, Paramedic can be defined as a person who works in a healthcare field in an auxiliary capacity to a physician. They are specially trained medical technicians certified to provide a wide range of emergency medical services. [<https://www.paramedicalcouncil.org/>]

In other words, we can say that the Paramedics includes

- Nursing staff,
- Technicians,
- Lab assistants etc.

⁵ **Recognised system of medicines in India:** In terms of the Clause (h) of section 2 of the Clinical Establishments Act, 2010, the following systems of medicines are recognized systems of medicines:

- Allopathy
- Yoga
- Naturopathy
- Ayurveda
- Homeopathy
- Siddha

Impact of GST on Health Care Services

- Unani
- Any other system of medicine that may be recognized by central government

The following are unrecognised system of medicines namely:

- Reiki
- Acupuncture
- Gems and Stones therapy
- Colour Therapy etc.

Now let us understand the impact of the entire health care services in line of the divisions as mentioned above:

Clinical Establishments

In Laymen's language, Clinical Establishment would include:

- Hospitals
- Nursing homes
- Clinics
- Laboratories
- Any such institutions

The definition as given by the law has been mentioned above. Now let us understand the impact of GST on them. The concept is being explained with the help of following illustration:

Clinic

Mr. A got high fever and he went to Doctor's clinic for the prescription and check-up. Doctor Dr.D prescribed him few medicines for the time being and advised him to get the COVID -19 test done from a laboratory.

Mr. A bought the medicines from the chemist shop in the Dr.D's Clinic and paid ₹815 out of which ₹500 was for prescription and ₹315 for medicines.

Supply of Goods or Services

The consultancy charges by Dr.D of ₹500 qualifies for the health care services and the same shall be exempt from GST. Whosoever, on sale of medicines of ₹300, GST of ₹15 is charged.

The reason behind not fully exempt is that this doesn't qualify for the composite supplies under clause (30) of Section 2 of CGST Act, 2017 since they are not naturally bundled and supplied together in ordinary course of business. Moreover, if single price is charged by Dr.D then the same will be treated as mixed supply under clause (74) of section 2 of CGST Act, 2017 and would attract the tax on exempted health care services as well.

Impact of GST on Health Care Services



Input Tax Credit

Dr. D is providing two kinds of supply- Exempt and Taxable Supplies. Input Tax credit in respect of Inputs/ Capital Goods/ Services used

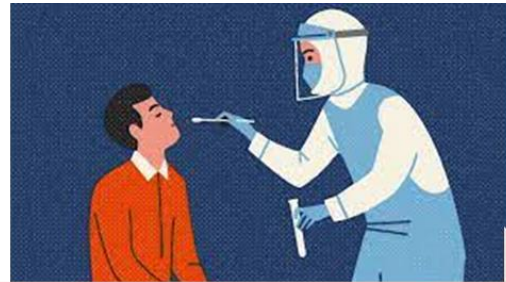
- Exclusively for exempt supplies: ITC cannot be claimed as per the provisions of section 17 of CGST Act, 2017. [Ex. Doctor's letterhead printing, Machinery]
- Exclusively for taxable supplies: ITC can be claimed in respect of them. [Ex. Medicines]
- Common Use: ITC has to be apportioned as per the provisions of Rule 42 of CGST Rules, 2017 in respect of inputs or input services and Rule 43 of CGST Rules, 2017 in respect of capital goods.

Diagnosis centre

While going home Mr. A went to laboratory "Lab LMN" where he got his **COVID-19 test**

done. There, he paid amount of ₹1200 and no GST was charged from him.

The reason is that services of Lab LMN qualifies for the health care services as diagnosis of illness. So, the same has been exempt under GST Act, 2017. Therefore, no GST shall be payable by the Lab LMN.



Laboratory Services

Health Care Services

EXEMPT

Input Tax Credit: Since laboratories are providing only exempt supply, therefore, the same shall not be eligible to claim any ITC on inputs or input services or capital goods. [Ex. Chemicals, testing machines, testing materials etc.]

Hospital

After 2 days, Mr. A got his report and tested positive of COVID-19. Few days later, Mr. A was facing breathing problems. So, he decided to get admitted to "Hospital DEF". He decided to go via ambulance of hospital and his wife Mrs. A went through car to the hospital with him.

Impact of GST on Health Care Services

Ambulance Services

The Ambulance services provided by hospital to patients to and from Hospitals are covered in Health Care Services which are being exempt and therefore no GST was charged by Hospital DEF.

Mrs. A got all the formalities complete and Mr. A got admitted. Mrs. A also took a room in the hospital available for attendants. She went to the hospital's canteen to have some food. There, she bought the food and paid an amount of ₹354. After Mr. A got admitted, he was served with food. Along with staff of doctors and paramedics care, Mr. A was provided with separate room, food, medicines, injections and oxygen when required for 5 days until he got recovered. At the time of Discharge, the bill of ₹150,000 was paid by them for Mr. A and ₹60,000 for Mrs. A.

Now, the question which arose in our mind is that on which supplies should GST be charged by Hospital DEF?

Supplies to Patients

Hospital DEF is providing various supplies to Mr. A as mentioned above. The thing which should be considered is that Mr. A went to hospital for health care services and all the other supplies are ancillary for making such supply. Therefore, it qualifies for composite supply as per the definition provided under

clause (30) of section 2 of CGST Act, 2017. Hence, all the supplies made to Mr. A will qualify for supply of health care services and are exempt. No GST shall be charged on the amount of ₹150,000.

Supplies to Non-Patients

Supplies made to Non-Patients including visitors by the hospital will be taxable and the same shall not qualify for exemption in the health care services. Therefore, the amount paid for Mrs. A stay in the hospital and food there shall be taxable under GST Act.

Services other than Health Care

Let us assume that Hospital DEF has rented an area in the hospital to a person for the chemist shop and charging a rent of ₹150,000 per month. The renting of immovable services provided by Hospital DEF will not be exempted and the same will be chargeable to tax.

Therefore, the supply of services other than health care services such as renting of shops, auditoriums in the premises of the clinical establishments, display of advertisements etc. will be subject to GST

Sale of Medicine

In case hospital is having own pharmacy instead of outsourced pharmacy and such pharmacy supply medicines other than in-house patients then such supply will be subject to levy of GST.

Impact of GST on Health Care Services

Cafeteria in the Hospital

If hospital is running a cafeteria instead of outsourcing then the supply will qualify as supply of services under sub-para (b) of Para 6 of Schedule-II to CGST Act, 2017 and such supply of services to persons other than in-patients shall be liable for GST. However, the same supply to in-patients will fall the part of Health care services (composite supply) and same will be exempt due to exemption given to principal supply.

Diagnosis Centre in the hospital

The hospital is also running the diagnosis centre and providing there various tests. The diagnosis services provided qualify as health care services and the same shall be exempt from GST.

Exempt

- Medicines to in-patients
- Food Supplies to Patients
- Room Rent of Patients
- Diagnosis Services
- Retention Money by Hospitals
- Ambulance Services to Patients

Taxable

- Sale of Medicines
- Food Supplies to Attendants or Visitors
- Rental Income from Hospital Premises
- Room Rent of persons other than patients

Surgeries

Entry No. 74 clearly states that *Health care Services means*
But does not include hair transplant or cosmetic or plastic surgery, except when undertaken to restore or to reconstruct anatomy or functions of body affected due to

congenital defects, developmental abnormalities, injury or trauma.

Hair Transplant, Cosmetic and plastic Surgery

Hair Transplant

A surgical procedure that involves moving skin on the scalp that still contains hair follicles to a bald or balding part of the scalp, so that hair will grow there.
[\[https://www.collinsdictionary.com/\]](https://www.collinsdictionary.com/)

Plastic Surgery

- A medical operation to bring a damaged area of skin, and sometimes bone, back to its usual appearance, or to improve a person's appearance.
[\[https://dictionary.cambridge.org/\]](https://dictionary.cambridge.org/)

- Medical operations to repair injury to a person's skin, or to improve a person's appearance
[\[https://www.oxfordlearnersdictionaries.com/\]](https://www.oxfordlearnersdictionaries.com/)

- Plastic surgery is a surgical specialty involving the restoration, reconstruction, or alteration of the human body.

It can be divided into two main categories:

Reconstructive surgery

Reconstructive surgery includes craniofacial surgery, hand surgery, microsurgery, and the treatment of burns.

Impact of GST on Health Care Services

While reconstructive surgery aims to reconstruct a part of the body or improve its functioning, cosmetic (or aesthetic) surgery aims at improving the appearance of it.

[<https://en.wikipedia.org/wiki/>]

Cosmetic Surgery:

Any medical operation that is intended to improve a person's appearance rather than their health.

[<https://dictionary.cambridge.org/>].



Congenital defects, developmental abnormalities, injury or trauma

The words '*congenital defects, developmental abnormalities, injury or trauma*' are not defined in the said Notification. Hence, we have to resort to the dictionary meaning of the same.

Congenital defects

- A physical defect present in a baby at birth that can involve many different parts of the body, including the

¹ Autism is a developmental disorder that can cause someone to have difficulty in communicating with and responding to other people.

brain, heart, lungs, liver, bones, and intestinal tract. Examples include heart defects, cleft lip and palate, spina bifida, limb defects, and Down syndrome
[<https://www.medicinenet.com/>]

- A congenital disease or medical condition is one that a person has had from birth, but is not inherited.

[<https://www.collinsdictionary.com/>].

Developmental abnormalities:

any condition, such as autism¹ or dyslexia², that appears in childhood and is characterized by delay in the development of one or more psychological functions, such as language skill.

[<https://www.collinsdictionary.com/>].

Injury:

Physical harm or damage to someone's body caused by an accident or an attack
[<https://dictionary.cambridge.org/>]

Trauma:

- A very severe shock or very upsetting experience, which may cause psychological damage

[<https://www.collinsdictionary.com/>].

- *Trauma* is the Greek word for "wound". Although the Greeks used the term only for

² If someone suffers from dyslexia, they have difficulty with reading because of a slight disorder of their brain.

Impact of GST on Health Care Services

physical injuries, nowadays *trauma* is just as likely to refer to emotional wounds. We now know that a *traumatic* event can leave psychological symptoms long after any physical injuries have healed. The psychological reaction to emotional trauma now has an established name: *post-traumatic stress disorder*, or PTSD. It usually occurs after an extremely stressful event, such as wartime combat, a natural disaster, or sexual or physical abuse; its symptoms include depression, anxiety, flashbacks, and recurring nightmares. [<https://www.merriam-webster.com/>]

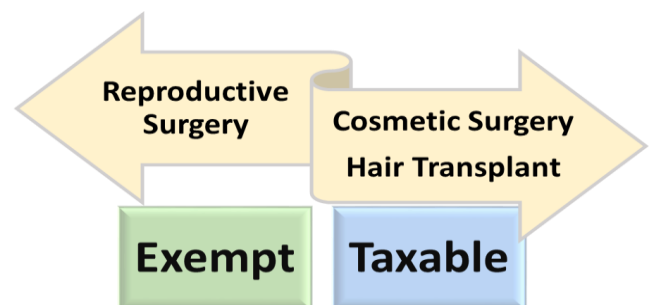
- Some examples of such surgery are: Impacted wisdom teeth, Corrective jaw surgery, Cleft lip/Palate surgery, dental implants etc.
- Thus, a maxillofacial surgeon performs both reconstructive surgery and cosmetic surgery.

Treatment of Surgeries

Reproductive surgery as defined above aims to reconstruct a part of the body or improve its functioning. Such services as per clause shall be exempt only if they have been provided to restore or to reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma.

Cosmetic (or aesthetic) surgery or Hair Transplant as defined above aims at

improving the appearance of a person and as such does not *restore or reconstruct anatomy or functions of body affected due to congenital defects, developmental abnormalities, injury or trauma*. Therefore, such services do not fall within the meaning of health care services. The same shall be **chargeable to tax** under GST.



Input Tax Credit

The hospitals provide various supplies which mostly qualifies for exempt services and ITC in respect of those inputs, input services or capital goods supplies shall not be available as per section 17(2),(3) of CGST Act, 2017. However, if there is a taxable supply, then ITC in respect of those inputs, input services or capital goods shall be available. The remaining ITC of inputs, input services or capital goods which are put to common use shall be apportioned as per the provisions of Rule 42 of CGST Rules, 2017 in respect of inputs or input services and Rule 43 of CGST Rules, 2017 in respect of capital goods.

Impact of GST on Health Care Services

Ex. Hospitals buy COVID-19 vaccination and GST has been charged on them by the supplier. However, vaccination falls under the category of health care supplies (because vaccination requires special monitoring by qualified Medical Practitioners and vaccination cannot be given by the person other than authorised by the Government i.e. by the Medical Practitioners) so they are exempt and hospital won't be charging any GST on its supply by it. So do, hospital cannot take ITC since it is exclusively used for exempt supplies.



Ex. Hospital buys Oxygen Cylinders and they are providing oxygen to in-patients and distributing it to other hospitals as well. Supply of Oxygen to in-patients falls under the category of health care supplies, which are exempt. Therefore, ITC on those cylinders cannot be claimed. However, Supply of oxygen cylinders to other hospitals fall under the category of sale of goods and GST shall be charged by the hospital on its supply to other hospitals. Hence, ITC on its account can be claimed.



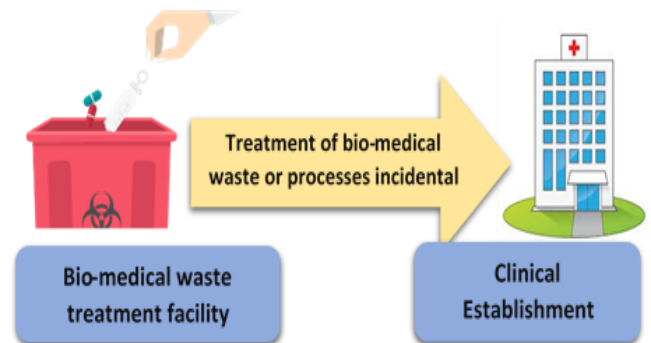
Bio-Medical Waste Treatment

Entry No. 75 of **Notification No. 12/2017-Central Tax (Rate)**

Services provided by operators of the common bio-medical waste treatment facility to a clinical establishment by way of treatment or disposal of bio-medical waste or the processes incidental thereto.

Bio- Medical Waste is any kind of waste containing infectious material.

Ex. Infusion kits, discarded blood, unwanted microbiological culture, identifiable body parts, used bandages, dressings etc.



Services of Authorised Medical Practitioners

The most crucial services are of Medical Practitioners [Doctors] which are obtained by



the hospitals. Doctors can either be associated as employed or otherwise. If they are associated as

employees, they will be having employer-

Impact of GST on Health Care Services

employee relationship and their services will be out of scope of supply. However, if they are otherwise associated with hospital then there will be no employer-employee relationship among them but their services will qualify for exemption under Entry No. 74 of the aforesaid Notification as health care services.

Medical Colleges

Apart from the normal working of the hospitals, Medical Colleges provides education to the students like colleges. Their working will involve additional things. The impact of the additional activities undertaken by them shall be discussed as we proceed ahead.

Educational Institutions has been defined in clause (y) of Para 2 of Notification No. 12/2017-Central Tax (Rate) which states as under

“Educational Institution” means an institution providing services by way of,-

- (i) Pre-school education and education up to higher secondary school or equivalent;
- (ii) **Education as a part of a curriculum for obtaining a**

qualification recognised by any law for the time being in force;

- (iii) Education as a part of an approved vocational education course;

Since medical colleges are providing the qualification recognised by any law, therefore, they are qualified as educational institutions for the activities of education to students. In this regard, the notification has elucidated the below the exemption.

Entry No. 66[#]

Services provided –

- (a) **By an educational institution to its students, faculty and staff;**
 - (aa) By an educational institutions by way of conduct of entrance examination against consideration in the form of Entrance Fee.
 - (b) To an educational institution, by way of,-
 - (i) Transportation of students, faculty and staff;
 - (ii) Catering, including any mid-day meals scheme sponsored by the Central Government, State Government or Union territory;
 - (iii) Security or cleaning or housekeeping services performed in such educational institution;
 - (iv) services relating to admission to, or conduct of examination by, such institution;

[#] Entry contained in Notification No. 12/2017- Central Tax (Rate)

Impact of GST on Health Care Services

(v) *Supply of Online Educational Journals or Periodicals.*

Provided that nothing contained in sub-items (i), (ii), (iii) of entry (b) shall apply to an educational institution other than an institution providing services by way of pre-school education and education up to higher secondary school or equivalent

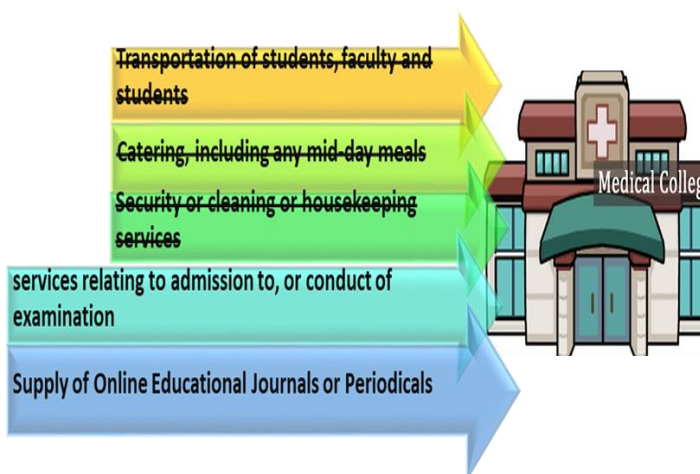
Provided further that nothing contained in sub-item (v) of entry (b) shall apply to an institution providing services by way of,-

- (i) *Pre-school education and education up to higher secondary school or equivalent or*
- (ii) *Education as a part of an approved vocational education course.*

Any Activity by medical colleges by way to education to students shall be exempt. However, services provided to Medical Colleges by way of supply of online educational journals or periodicals and conduct of entrance examination is exempt.

Entrance Examination

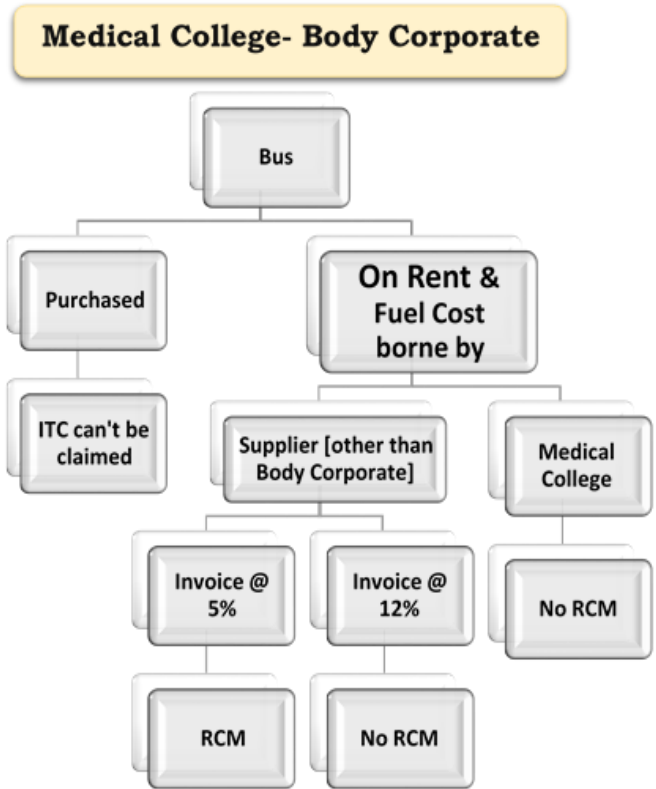
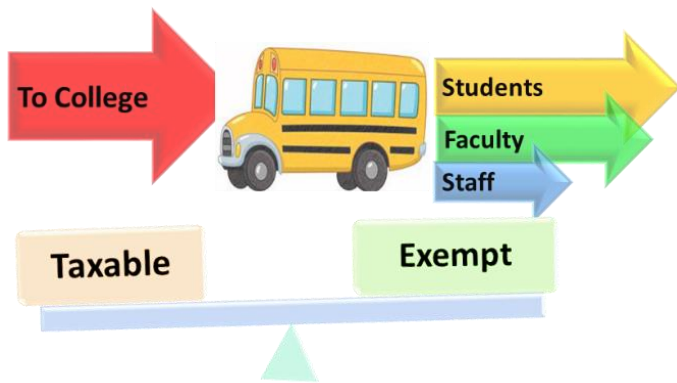
Every year, Entrance examinations are being conducted by the different Medical Colleges for the admission of various prospective students to the college. In this regard, the exemption has been provided that conduct of entrance examination by educational institutions shall be exempt from GST. Moreover, the services provided to educational institutions by way of conducting of entrance examination shall also be exempt. Hence, No GST shall be charged by Medical Colleges and no GST shall be charged from them in respect of services relating to conduct of entrance examination.



Transportation Services

The point which should be noted that the services of Security and transportation provided to Medical Colleges are not exempt.

Impact of GST on Health Care Services



Notification No. 13/2017- Central Tax (Rate) read with Notification No. 22/2019- Central Tax (Rate) read with Notification No. 29/2019- Central Tax (Rate) states that on the following supply of service, tax shall be payable on reverse charge basis.

*“Services provided by way of **renting of any motor vehicle** designed to carry passengers where the **cost of fuel is included in the consideration charged from the service recipient,***

Provided to a body corporate located in the taxable territory,

***By Any person, other than a body corporate** who supplies the service to a body corporate and does not issue an invoice charging central tax at the rate of 6 per cent. to the service recipient”.*

The impact of the above mentioned entry will be clear from the diagram:

The word BODY CORPORATE has been defined in Explanation (b) **Notification No. 13/2017- Central Tax (Rate)**, which states that

“Body Corporate” has the same meaning as assigned to it in clause (11) of section 2 of the Companies Act, 2013.

Notification No. 13/2017- Central Tax (Rate) read with **Notification No. 22/2017- Central Tax (Rate)** clarifies in Explanation (e) that

“(e) A “Limited Liability Partnership” formed and registered under the provisions of the Limited Liability Partnership Act, 2008 (6 of 2009) shall also be considered as a partnership firm or a firm.”

Impact of GST on Health Care Services

The term Body Corporate as being defined under clause (11) of Companies Act, 2013 is as follows:

"Body corporate" or "corporation" includes a company incorporated outside India, but does not include—

(i) a co-operative society registered under any law relating to co-operative societies; and

(ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;

Body Corporate for the purpose of RCM can be said to include the all the body corporates other than LLPs, Co-operative Society and as notified by Central Govt.

Thus, from the above discussion, it can be concluded that RCM shall be applicable on Medical College if:

1. Supplier is a person other than Body corporate
2. Medical College is a body corporate
3. GST is being charged by the supplier @5% on the invoice.

Security Services

Notification No. 13/2017- Central Tax (Rate) read with **Notification No. 29/2018- Central Tax (Rate)** states that the tax on following service shall be paid under the reverse charge mechanism.

“Security services (services provided by way of supply of security personnel)

Provided to a registered person, located in the taxable territory.

BY any person other than a body corporate”

Provided that nothing contained in this entry shall apply to, -

(i)

(a) A Department or Establishment of the Central Government or State Government or Union territory; or

(b) Local authority; or

(c) Governmental agencies;

Which has taken registration under the Central Goods and Services Tax Act, 2017 (12 of 2017) only for the purpose of deducting tax under section 51 of the said Act and not for making a taxable supply of goods or services; or

(ii) A registered person paying tax under section 10 of the said Act

Thus, RCM shall be applicable if the following conditions are satisfied:

1. Security Services by way of supply of security personnel are being provided.
2. Services are supplied by a person other than Body Corporate.



Impact of GST on Health Care Services

3. Services are supplied to Registered Person other than composite supplier and TDS deductor.

By way of rehabilitation, therapy or counselling and such other activity as covered by the said Act

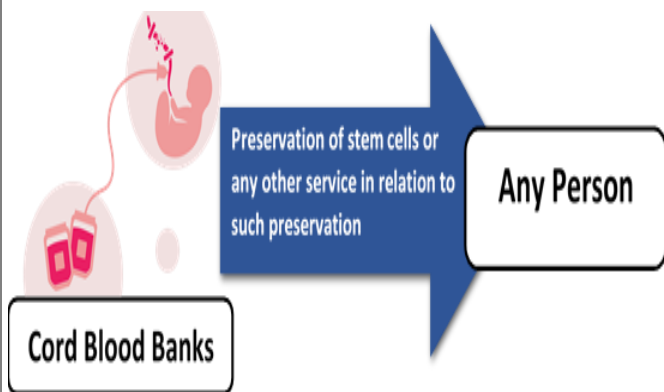
At

- *Medical establishments,*
- *Educational institutions,*
- *Rehabilitation centres established by central government, state government or union territory or*
- *An entity registered under section 12AA of the income tax act, 1961 (43 of 1961)*

Cord Blood Banks

Entry No. 73 of **Notification No. 12/2017-Central Tax (Rate)**

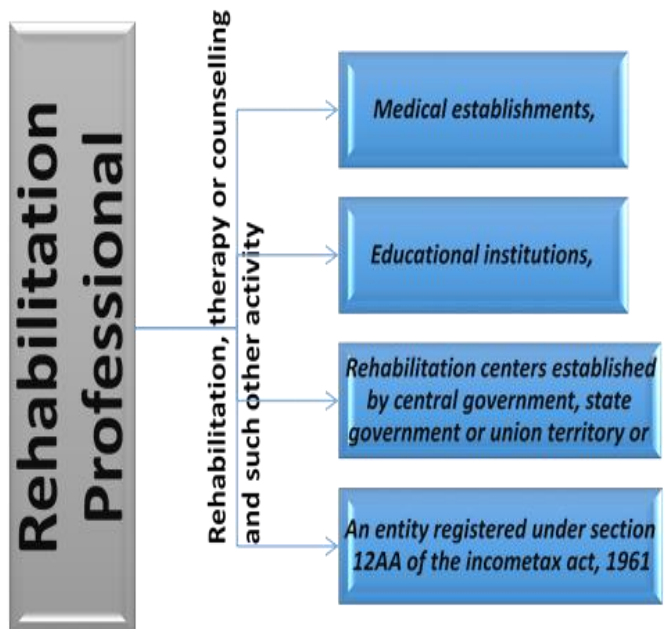
Services provided by the cord blood banks by way of preservation of stem cells or any other service in relation to such preservation.



Rehabilitation Professionals

Entry No. 74A of **Notification No. 12/2017-Central Tax (Rate)** read with **Notification No. 28/2018- Central Tax (Rate)** states as under:

Services provided by rehabilitation professionals recognised under the Rehabilitation Council of India Act, 1992 (34 of 1992)



Veterinary Services

Every Human Being have diverse behaviour and it can't be predicted that who will react in which manner. If there are people in the world who are cruel to the animals and birds then on the other hand, there are people who treat them with more love than they do to humans. The same love has been shown by the GST law towards them. If we read again

Impact of GST on Health Care Services

the definition of health care services, then it is nowhere written that the same is applicable to humans and not to the animals and birds. However, the specific exemption is also being provided in this regard which is stated in **Notification No. 12/2017- Central Tax (Rate)** in Entry No. 46 of the said notification which provides that:

“Services by a veterinary clinic in relation to health care of animals or birds”

Therefore, the same questions as they were there in the Clinical Establishments as above will be there and treatment thereof shall also be same.

Charitable Activities

We are practicing Income Tax since years and it has been in the knowledge of everyone that what charitable activities are in the income tax act. But the same is not true in GST Law. There is a huge difference. As per income tax law, charitable activities means activities for the medical relief. But as per GST law, Charitable Activities has been defined in **clause (r) of Para 2 of Notification No. 12/2017- Central Tax (Rate)** which states as under:

“Charitable activities” means activities relating to –

- (i) **Public health** by way of -
 - (A) **Care or Counselling** of

- (I) *terminally ill persons or persons with severe physical or mental disability;*

- (II) *Persons afflicted with HIV or AIDS;*

- (III) **Persons addicted** to a dependence-forming substance such as narcotics drugs or alcohol; or

- (B) **Public awareness of** preventive health, family planning or prevention of HIV infection;

- (ii) *Advancement of religion, spirituality or yoga;*

- (iii) *Advancement of educational programmes or skill development relating to,-*

- (A) *Abandoned, orphaned or homeless children;*

- (B) *Physically or mentally abused and traumatized persons;*

- (C) *Prisoners; or*

- (D) *Persons over the age of 65 years residing in a rural area;*

- (iv) *Preservation of environment including watershed, forests and wildlife*

The following exemption has been provided in Entry No. 1 of **Notification No. 12/2017- Central Tax (Rate)**

“Services by an entity registered under section 12AA of the Income-tax Act, 1961 (43 of 1961) by way of charitable activities.”

Therefore two things needs to be considered while claiming the benefits of this exemption:

Impact of GST on Health Care Services

1. Entity should be registered u/s 12AA of Income Tax Act, 1961
2. Entity should be engaged in the charitable activities as defined in the said notification.

All the entities which are registered u/s 12AA shall not be eligible for exemption under this entry unless it qualifies the above criteria. However, considering the scope of health care then care and counselling activities to the few mentioned persons are exempt. In addition to it, Public awareness of preventive health, family planning or prevention of HIV infection.

Medicinal Shops

If the medical shop is run by the Clinical Establishments then sale of medicines to in-patients shall be treated as supply of health care services and the same shall be exempt. Supply of medicines to any person other than patients shall be chargeable to tax.

Medical Shop is run by a person other than by Clinical Establishments, whether in the Clinical Establishment or otherwise, then sale of medicines shall be taxable.

There is a practice among few people that they went to a chemist shop and tell him about their illness and get the medicine from him. In such a case the chemist is also providing him treatment for the illness. But whether the same will qualify for health care services? The answer is No. this is so because the chemist shops are neither clinical establishments nor they are medical practitioners who qualify for the given exemption. Therefore, the same will be treated as supply of goods and not the services.

Impact on Unrecognised system of Medicines

As the notification issued in respect of exemption specifically provides that the health care services in respect of recognised system of medicines are exempt. Then what

Charitable Activities

Activities relating to public health by way of

Care and Counselling

terminally ill person(s) with severe physical or mental disability

Persons afflicted with HIV or AIDS

Persons addicted to a narcotics drugs or alcohol etc.

Public awareness

preventive health

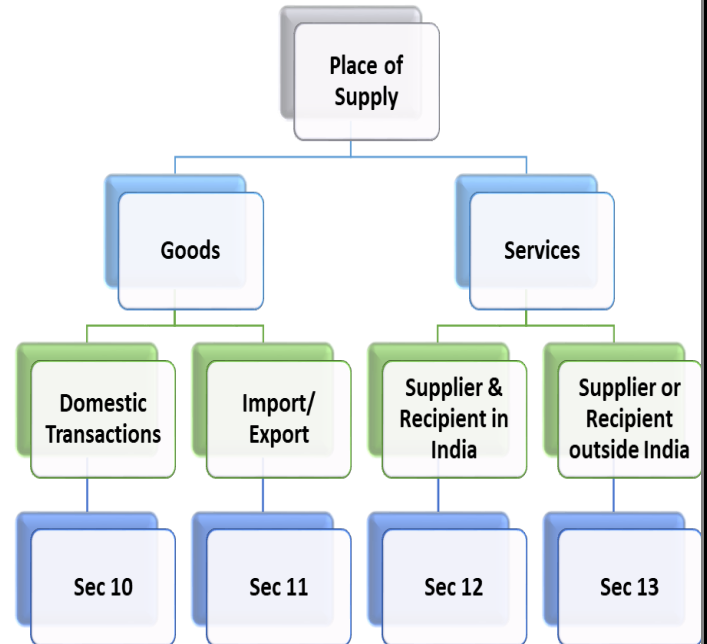
family planning

prevention of HIV infection

Impact of GST on Health Care Services

about the services which are not exempt? The answer is that they would be chargeable to tax and all the provisions of the law in respect of Registration, Invoicing, Input tax credit, time of supply etc. shall be applicable.

IGST Act, 2017. The relevant provisions applicable are given below:



Sec 10 of IGST Act, 2017

Place of supply of goods other than supply of goods imported into, or exported from India.—

- (1) *The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,—*
- (a) *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;*

Unrecognised Medicines System



Place of Supply

Before going to place of supply, let us conclude the types of taxable supplies which are there with this from all the previous discussions:

1. Sale of Medicines
2. Health Care Services to Patients including surgeries
3. Rental Services to Visitors
4. Supply of food and beverages to Visitors
5. Health Services in unrecognised system of medicines

The provisions applicable for the place of supply are given in Section 10,11,12,13 of

Impact of GST on Health Care Services

Sec 12 of IGST Act, 2017

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,—
- (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; 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
- (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.

- (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.**

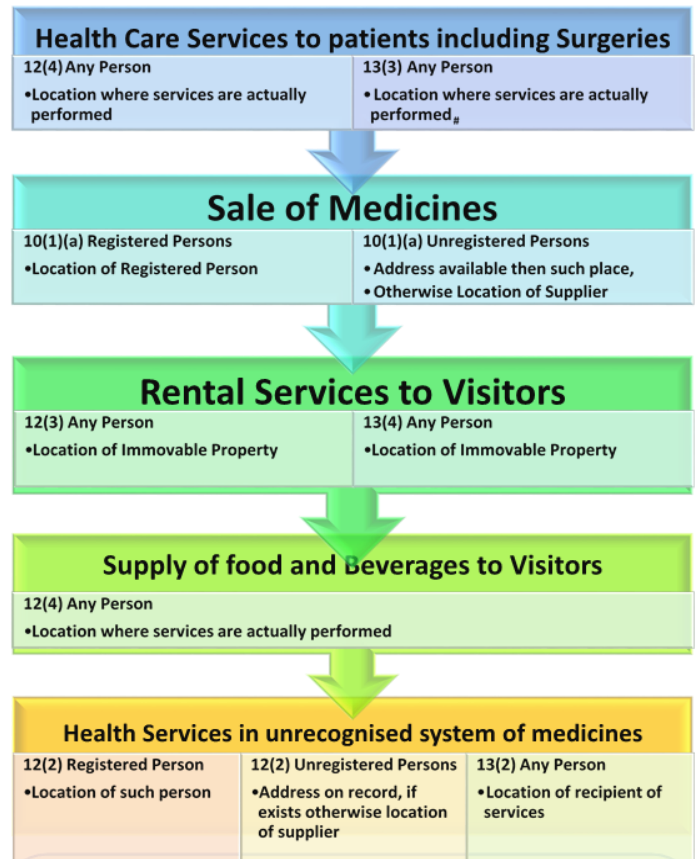
Sec 13 of IGST Act, 2017

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.

Impact of GST on Health Care Services

- (3) The place of supply of the following services shall be the location where the **services are actually performed**, namely:—
- (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.
- (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.



#Section 13(6): Where services are 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.
Section 13(7): Where the services are supplied in **more than one State or UT**, the place of supply of such services shall be taken as being in each of the respective State or UT and the value for services separately collected or determined in in terms of the contract or agreement entered into this regard.
 Value of services where services are provided I more than one State/ UT, in the absence of contract or agreement. As per Rule 7 of the IGST Rules, 2017, has been notified vide Notification No.04/2018-IT dated.31st December, 2018 which are [By applying the generally accepted accounting principles]

Have you thought?

Cosmetic Surgeon registered in Punjab went to attend the seminar in Delhi organised by AIIMS and stayed in Delhi for a night.

Admission to event and Rent of Room has POS of Delhi and location of supplier is also Delhi. Therefore CGST+SGST of Delhi is charged.

The credit is eligible in terms of Sec 17. But how will doctor claims the credit for this?

Impact of GST on Health Care Services

Registration

Section 22(1) of CGST Act, 2017 states that if the aggregate turnover of a person exceeds ₹20Lacs in a financial year then he shall be liable to be registered in the state or Union territory **from where he is making taxable supplies.**

Sec 23 of CGST Act, 2017 states that if a person is engaged in wholly exempt goods or services then such person shall not be liable to register under the GST.

Aggregate Turnover has been defined under clause (6) of Section 2 of CGST Act, 2017 which states that:

“Aggregate turnover” means the aggregate value of all taxable supplies (excluding the value of inward supplies on which tax is payable by a person on reverse charge basis), exempt supplies, exports of goods or services or both and inter-State supplies of persons having the same Permanent Account Number, to be computed on all India basis but excludes central tax, State tax, Union territory tax, integrated tax and cess;

This concept can be better understood with the help of illustrations:

Ex. 1

Hospital DEF is located in Delhi and has following supplies during the year:

Health Care Services= Rs.5cr

Supply of Medicines to visitors= Rs.10Lac

It will be liable to be registered since

Aggregate turnover = Rs.5.10cr

Ex. 2

Hospital DEF is located in Delhi and Mumbai and has following supplies during the year:

Delhi:

Health Care Services= Rs.5cr

Supply of Medicines to visitors= Rs.10Lac

Maharashtra:

Health Care Services=Rs.7cr

In this case, Hospital DEF shall be liable to be registered in Delhi only.

Aggregate turnover=Rs.12.1cr. However, the Maharashtra unit is not engaged in supply of any taxable supplies in the state, hence, not liable to be registered.

Ex.3

Hospital DEF is located in Delhi and has following supplies during the year:

Health Care Services: Rs.5cr

Therefore, Hospital DEF shall not be liable to be registered even though the aggregate turnover exceeds the prescribed limit since it is not engaged in making of any taxable supplies in the state or union territory in line with registration exemption given under section 23 of CGST Act, 2017.

Ex.4

Hospital DEF is located in Kolkata and providing the following supplies:

Impact of GST on Health Care Services

Health Care Services to in-patients=Rs.20cr

Renting Services=Rs.12Lac

Although taxable turnover is Rs.12Lacs but Hospital DEF has aggregate turnover of Rs.20.12cr, which is beyond the exemption limit of Rs.20lacs. Hence, it is liable for registration.

Rate of Tax

SAC Code	Description	Rate
99931	999311 Inpatient services	18% but exempted via notification 12/2017
	999312 Medical and dental services	
	999313 Childbirth and related services	
	999314 Nursing and Physiotherapeutic services	
	999315 Ambulance services	
	999316 Medical Laboratory and Diagnostic-imaging services	
	99317 Blood, sperm and organ bank services	
999319 Other human health service including Homeopathy, Unani, Ayurveda, Naturopathy, acupuncture and the like		
99932	999321 Residential health-care services other than by hospitals.	18%
	999322 Residential care services for the elderly and person with disabilities.	
99933	999331 Residential care services for children suffering from mental retardation, mental health illnesses or substance abuse	Nil
	999332 Other social services with accommodation for children	Nil
	999333 Residential care services for adults suffering from mental retardation, mental health illnesses or substance abuse	Nil
	999334 Other social services with accommodation for adults	18%
99934	999341 Vocational rehabilitation services	NIL
	999349 Other social services without accommodation for the elderly and disabled n.e.c	Nil

Impact of GST on Health Care Services

Relevant Circulars

Circular No. 32/06/2018

Is GST leviable in following cases?

Hiring of Health Care Persons

(1) Hospitals hire senior doctors/ consultants/ technicians independently, without any contract of such persons with the patient; and pay them consultancy charges, without there being any employer-employee relationship. Will such consultancy charges be exempt from GST? Will revenue take a stand that they are providing services to hospitals and not to patients and hence must pay GST?

Services provided by senior doctors/ consultants/ technicians hired by the hospitals, whether employees or not, are healthcare services which are exempt

Retention money

(2) Hospitals charge the patients, say, Rs.10000/- and pay to the consultants/ technicians only Rs. 7500/- and keep the balance for providing ancillary services which include nursing care, infrastructure facilities, paramedic care, emergency services, checking of temperature, weight, blood pressure etc. Will GST be applicable on such money retained by the hospitals?

Healthcare services have been defined to mean any service by way of diagnosis or

treatment or care for illness, injury, deformity, abnormality or pregnancy in any recognised system of medicines in India[para 2(zg) of notification No. 12/2017- CT(Rate)]. Therefore, hospitals also provide healthcare services. The entire amount charged by them from the patients including the retention money and the fee/payments made to the doctors etc., is towards the healthcare services provided by the hospitals to the patients and is exempt.

Food supplied to the patients

(3) Health care services provided by the clinical establishments will include food supplied to the patients; but such food may be prepared by the canteens run by the hospitals or may be outsourced by the Hospitals from outdoor caterers. When outsourced, there should be no ambiguity that the suppliers shall charge tax as applicable and hospital will get no ITC. If hospitals have their own canteens and prepare their own food; then no ITC will be available on inputs including capital goods and in turn if they supply food to the doctors and their staff; such supplies, even when not charged, may be subjected to GST

Food supplied to the in-patients as advised by the doctor/nutritionists is a part of composite supply of healthcare and not separately taxable. Other supplies of food by a hospital to patients (not admitted) or their attendants or visitors are taxable.

Impact of GST on Health Care Services

Circular No. 51/25/2018

Applicability of GST on ambulance services provided to Government

Applicability of GST on ambulance services provided to Government by private service providers under the National Health Mission (NHM) — Reg.

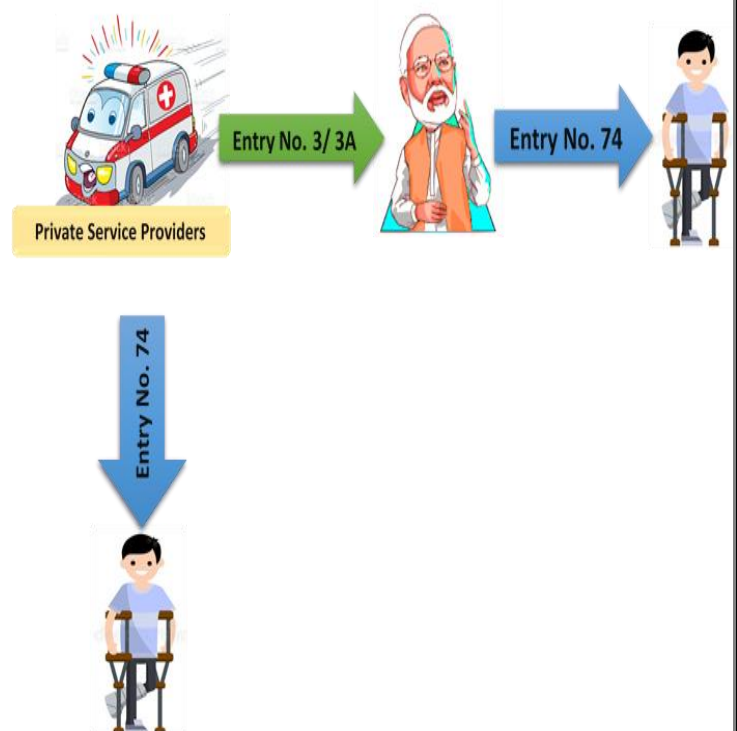
Functions of 'Health and sanitation' is entrusted to Panchayats under Article 243G of the Constitution of India read with Eleventh Schedule. The function of 'Public health' is entrusted to Municipalities under Article 243W of the Constitution read with the Twelfth Schedule to the Constitution. Thus ambulance services are an activity in relation to the functions entrusted to Panchayats and Municipalities under Articles 243G and 243 W of the Constitution.

In view of the above, it is clarified that the clarification contained in the Circular No. 210/2/2018- Service Tax dated 30th May 2018 with regard to the services provided by Government and PSPs by way of transportation of patients in an ambulance is applicable for the purpose of GST also, as the said services are specifically exempt under Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 vide Si. No. 74.

As regards the service provided by PSPs to the State Governments by way of transportation of patients on behalf of the State Governments against consideration in the form of fee or

otherwise charged from the State Government, it is clarified that the same would be exempt under-

- a. No. 3 of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 if it is a pure service and not a composite supply involving the supply of any goods, and*
- b. No. 3A of Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017 if it is a composite supply of goods and services in which the value of supply of goods constitutes not more than 25 percent of the value of the said composite supply.*



Sl. No. 74:

Services by way of-

- (a) Health care services by a clinical establishment, an authorized medical practitioner or para-medics;*

Impact of GST on Health Care Services

(b) services provided by way of transportation of a patient in an ambulance, other than those specified in (a) above.

Sl. No. 3:

Pure services (excluding works contract service or other composite supplies involving supply of any goods) provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

Sl. No. 3A:

Composite supply of goods and services in which the value of supply of goods constitutes not more than 25 per cent. of the value of the said composite supply provided to the Central Government, State Government or Union territory or local authority or a Governmental authority or a Government Entity by way of any activity in relation to any function entrusted to a Panchayat under Article 243G of the Constitution or in relation to any function entrusted to a Municipality under article 243W of the Constitution.

Circular No. 92/11/2019

Free samples and gifts- Supply

1. It is a common practice among certain sections of trade and industry, such as, pharmaceutical companies which often provide drug samples to their stockists, dealers, medical practitioners, etc. without charging any consideration.

As per sub-clause (a) of sub-section (1) of section 7 of the said Act, the expression "supply" includes all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Therefore, the goods or services or both which are supplied free of cost (without any consideration) shall not be treated as „supply" under GST (except in case of activities mentioned in Schedule I of the said Act). Accordingly, it is clarified that samples which are supplied free of cost, without any consideration, do not qualify as "supply" under GST, except where the activity falls within the ambit of Schedule I of the said Act.

ITC on Goods Lost, stolen, destroyed or disposed off

Clause (h) of sub-section (5) of section 17 of the said Act provides that ITC shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples.

Impact of GST on Health Care Services

Thus, it is clarified that input tax credit shall not be available to the supplier on the inputs, input services and capital goods to the extent they are used in relation to the gifts or free samples distributed without any consideration. However, where the activity of distribution of gifts or free samples falls within the scope of „supply“ on account of the provisions contained in Schedule I of the said Act, the supplier would be eligible to avail of the ITC

Circular No. 72/46/2018

The procedure in respect of return of time expired drugs or medicines

The drugs or medicines (hereinafter referred to as “goods”) are sold by the manufacturer to the wholesaler and by the wholesaler to the retailer on the basis of an invoice/bill of supply as case may be. Such goods have a defined life term which is normally referred to as the date of expiry. Such goods which have crossed their date of expiry are colloquially referred to as time expired goods and are returned back to the manufacturer, on account of expiry, through the supply chain.

It is clarified that the retailer/ wholesaler can follow either of the below mentioned procedures for the return of the time expired goods:

(A) Return of time expired goods to be treated as fresh supply:

Registered person (other than a composition taxpayer)

In case the person returning the time expired goods is a registered person (other than a composition taxpayer), he may, at his option, return the said goods by treating it as a fresh supply and thereby issuing an invoice for the same (hereinafter referred to as the, “return supply”). The value of the said goods as shown in the invoice on the basis of which the goods were supplied earlier may be taken as the value of such return supply. The wholesaler or manufacturer, as the case may be, who is the recipient of such return supply, shall be eligible to avail Input Tax Credit (hereinafter referred to as “ITC”) of the tax levied on the said return supply subject to the fulfilment of the conditions specified in Section 16 of the CGST Act.

Composition taxpayer

In case the person returning the time expired goods is a composition taxpayer, he may return the said goods by issuing a bill of supply and pay tax at the rate applicable to a composition taxpayer. In this scenario there will not be any availability of ITC to the recipient of return supply.

Unregistered person

In case the person returning the time expired goods is an unregistered person, he may

Impact of GST on Health Care Services

return the said goods by issuing any commercial document without charging any tax on the same.

(B) Return of time expired goods by issuing Credit Note:

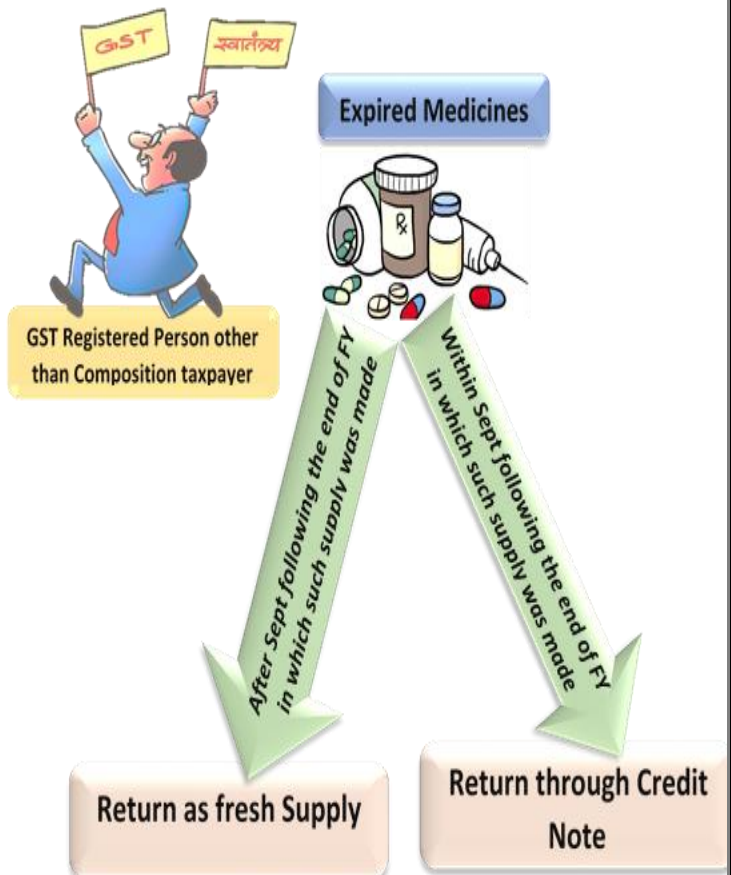
As per sub-section (1) of Section 34 of the CGST Act the supplier can issue a credit note where the goods are returned back by the recipient. Thus, the manufacturer or the wholesaler who has supplied the goods to the wholesaler or retailer, as the case may be, has the option to issue a credit note in relation to the time expired goods returned by the wholesaler or retailer, as the case may be. In such a scenario, the retailer or wholesaler may return the time expired goods by issuing a delivery challan. It may be noted that there is **no time limit for the issuance of a credit note in the law except with regard to the adjustment of the tax liability** in case of the credit notes issued prior to the month of September following the end of the financial year and those issued after it.

Adjustment of tax liability

It may further be noted that if the credit note is issued within the time limit specified in sub-section (2) of section 34 of the CGST Act, the **tax liability may be adjusted by the supplier, subject to the condition that the person returning the time expired goods has either not availed the ITC or if availed has reversed the ITC** so availed against the goods being returned

Time Limit lapsed u/s 34(2) of CGST Act

However, if the time limit specified in sub-section (2) of section 34 of the CGST Act has lapsed, **a credit note may still be issued by the supplier for such return of goods but the tax liability cannot be adjusted by him** in his hands. It may further be noted that in case time expired goods are returned beyond the time period specified in the sub-section (2) of section 34 of the CGST Act and a credit note is issued consequently, there is **no requirement to declare such credit note on the common portal by the supplier** (i.e. by the person who has issued the credit note) as tax liability cannot be adjusted in this case.

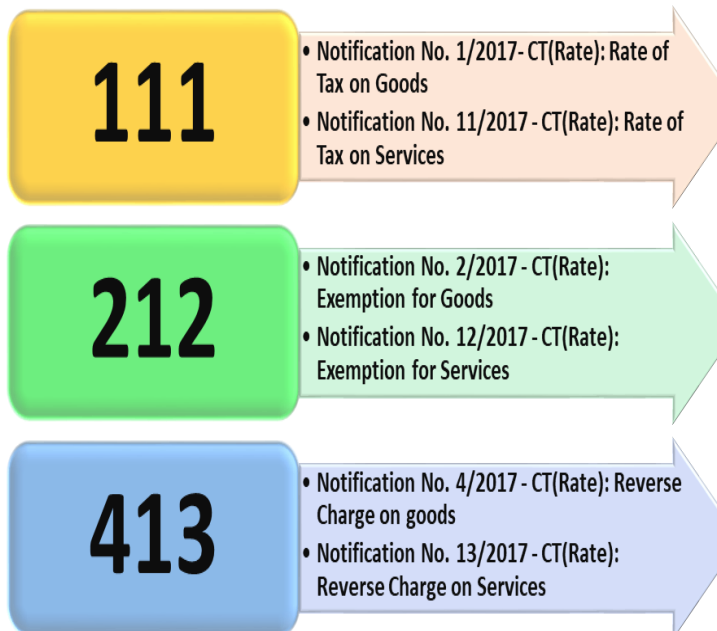


Impact of GST on Health Care Services

Summary

The first thing which comes to our mind when it's the question of GST on health care services is Exempt. However, through the above discussion, we tried to explain that the same might not be true always. It's very important to know the taxability of various supplies to avoid the huge penalties and other consequences which can be the result of one neglect act on our part.

The challenge which is currently faced by many people is that there are various notifications issued in the GST that they fail to understand which one is relevant to them. To ease that, one formula can be applied which is given as follows:



One should keep in mind while determining the impact of GST in the following manner

which would make it simplified to know its applicability:

1. LEVY

- Supply = Taxable Event (SchI & III)
- Goods/Services/Both = Taxable Object
- Place of Supply + Nature of Levy
- Exemption

2. ASSESSMENT

- Who is liable to Pay = FCM, RCM, Special
- Time of supply = When you become liable to pay
- Classification = At what rate you pay (Rate Schedule)
- Valuation = On what value you pay

3. COMPLIANCE

- ITC = Credit on what, when and how much
- Records = Invoice, Debit Note, Credit Note, Delivery Challan
- Payment/Returns = Periodical/Annual

ITRAA



INDEPENDENT TAX RESEARCH AND ANALYSIS ASSOCIATION

**A COMPLETE GUIDE
TO
DETAILED ANALYSIS
OF
GST IMPLICATIONS AND INTRICACIES
ON
Import and Export Sector
(Includes Custom and FTP)**



About the Author



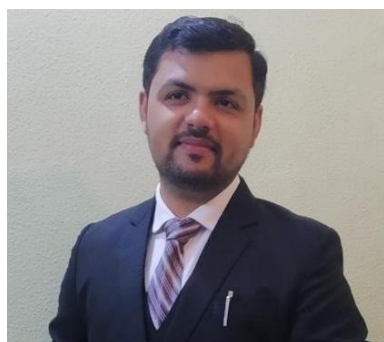
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Foreword

France was the first country to implement GST in the year 1954. Since then, more than 140 countries have adopted the GST with some countries having Dual-GST (e.g., Brazil, Canada etc. model. India has chosen the Canadian model of dual GST). But GST was introduced on 1st July, 2017 with a punch line **“One nation one tax”** to unite indirect taxes under one umbrella and facilitate Indian businesses to be globally competitive.

The Indian GST case is structured for efficient tax collection, reduction in corruption, easy inter-state movement of goods etc. GST since its implementation till date has come up with many amendments, Notifications, Circulars etc. but now on completing its fourth year, it is in a much better state facing all the obstacles. So, therefore we decided to guide people of various sectors of its provisions relevant to them.

Exports have been a highlight of the Indian economy not only for generating additional revenue for domestic manufacturers, but also for the fact that foreign exchange adds indispensable fuel to Indian economic growth. Recognizing these benefits, the Goods and Services Tax (GST)

We congratulate and salute to the ITRAA Team for their efforts in bringing out this publication for the dissemination of knowledge amongst its readers. We pray all good health to all the members along with their near and dears of ITRAA team. It is the support of ITRAA mentor panel that we decide our vision. We trust and hope that with the constant and unflinching endeavour of all fellow professionals, this simple tool of communication will grow into an effective and valuable knowledge base and shall help to achieve greater results.

*A special thanks to “**CA. ANCHAL KAPOOR**” for her continued support and enlightening the authors in guiding and completing this book.*

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Part -1

Introduction & Overview



INDIA - one of the fastest developing economies of the world. The main factor that helps the economy to perform well and have good economic condition is its trade activities, which an economy practices to be the best. So, it is very important to have a better international trade and best domestic trade in an economy.

Transaction	No. of Commodities	No. of Countries	Major Items
Export	7,500	190	Petroleum products, Pearls, Precious stones, Gold and other precious metal jewellery, Iron and steel, Organic Chemicals, Cotton and Accessories, Motor vehicle/Cars, Electric Machinery and Equipment, pharmaceuticals, agriculture products etc.
Import	6,000	140	Heavy Machinery, mineral fuels, oils and waxes and bituminous substances, pearls, precious and semi-precious stones and jewellery, nuclear reactors, boilers, organic chemicals etc.

In 2020, India's ten largest trading partners were the United States, China, UAE, Saudi Arabia, Switzerland, Germany, Hong Kong, Indonesia, South Korea, and Malaysia.

So, it is highly required to make trade easy in the international market.

Thus, Goods and Service Tax (GST) is introduced on July 1, 2017.

France was the first country to implement the GST in 1954; since then, an estimated 160 countries have adopted this tax system in some form or another. Some of the countries with a GST include Canada, Vietnam, Australia, Singapore, United Kingdom, Monaco, Spain, Italy, Nigeria, Brazil, South Korea, and India.

India established a dual GST structure in 2017, which was the biggest reform in the country's tax structure in decades. The main objective of incorporating the GST was to eliminate tax on tax, or Double Taxation, which cascades from the manufacturing level to the consumption level.

GST is likely to change the way of doing business in India and would have significant impact on international trade of goods through the change in customs duty computation and change in terms of the foreign trade policy. It is expected that various exemptions under Customs law/ FTP may be rationalized after introduction of GST.



The GST tax system has:

- reduced the burden of various Indirect taxes which are effecting the export and Import of the country and ;
- made single tax system which helps in building the Indian economy at even fast pace.

After the implementation of GST in Indian economy there is a drastic improvement in the level of the trade. The import and export has become easy and affordable as there is reduction of taxes imposed at all the levels of import and exports.

Part -2

Impact of GST on Import

Important Definitions

Import of goods:

As per *section 2(10) of IGST Act, 2017* Import of goods with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India.

Import of service

As per *section 2(11) of IGST Act, 2017*, the supply of any service will be treated as 'Import of service' under the following circumstances-

- If the service **supplier is located outside India**
- If the service **recipient is in India**
- If the supply of **service place is in India**

Customs frontiers of India means the limits of a customs area as defined in section 2 of the Customs Act, 1962 [Section 2(4)].

Customs area means the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities [Section 2(11) of the Customs Act, 1962].

Customs station means any customs port, customs airport, international courier terminal, foreign post office or land customs station [Section 2(13) of the Customs Act, 1962].

Location of the recipient of services means:

- (a) where a supply is received at a place of business for which 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, that is to say, 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 [Section 2(14)].

Nature of Supply

As per *section 7 of the IGST Act*, the Supply of goods or services imported into the territory of India is **deemed as the inter-state supply** of goods or services and shall be subjected to the levy of IGST along with Basic Customs Duty (BCD) and the other surcharges.



Place of Supply

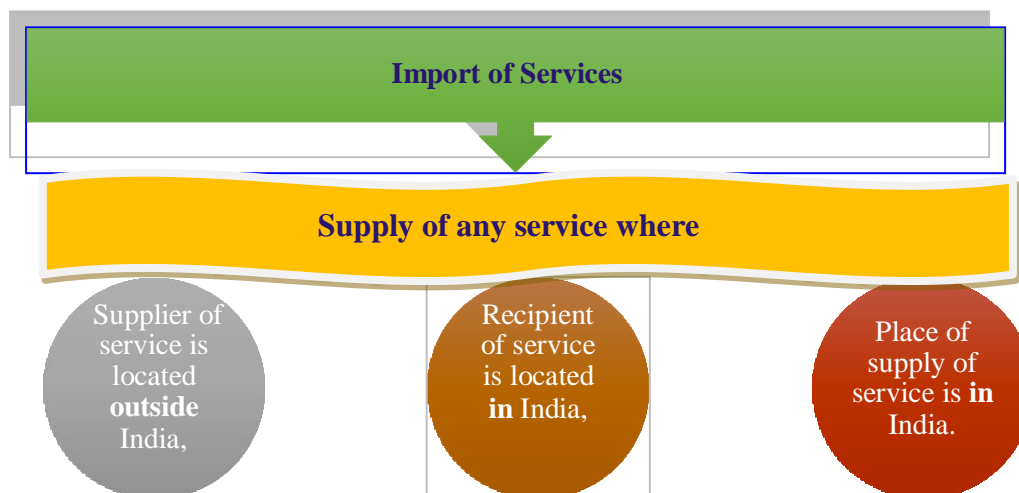
Place of supply of a service shall determine as to whether a service can be termed as import or export of service. GST is destination based tax i.e., consumption tax, which means tax will be levied where goods and services are consumed.

For Import of Goods

As per *section 11 of IGST Act, 2017*, Place of supply of any goods imported into India is the location of the importer and IGST will be applicable on it.

For Import of Services

Place of supply for import of service is the location of the recipient of service. However, if the location is not available then the place of supply shall be the location of the service provider.



Also note that:

Reverse charge will be applicable on import of service i.e., the liability of GST payment will be on the recipient of Service.

As per *Schedule I of CGST Act, 2017*, Import of services is treated as Supply even if made without consideration, when a taxable person import service from a related person or from any of his other establishments outside India, in the course or furtherance of business.

Section 7 of CGST Act, 2017 read with Schedule I, Import of services can be considered as supply based on whether there is **consideration** or

not and whether the service is supplied in the course or *furtherance of business*. The same has been explained in the table below:

Nature of Service	Consideration	Furtherance of Business
Import of services	Necessarily Required	Not required
Import of services by a taxable person from a related person or from a distinct person	Not required	Necessarily Required

Example:

- Import of free services from Facebook by individuals without any consideration are not considered as supply.
- Downloading of a video for consideration for personal use would be a service, even though the same are not in the course or furtherance of business.
- Import of some services by an Indian branch from their parent company, in the course or furtherance of business treated s supply, even if without consideration.

The concept discussed above has been explained by way of following examples

Location of Supplier	Location of Recipient	Place of Supply	Whether qualifies as import of services?
USA	India	India	Yes
Australia	South Africa	South Africa	NO
India	Russia	India	NO
France	India	France	NO

Levy and Collection of Taxes

Section 5 IGST Act, 2017 provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions 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 the Customs Act, 1962.

- a. ***IGST is liveable on the value of imported goods*** and for calculating integrated tax on any imported article, the value of such imported goods would be the aggregate of the value of imported article determined under sub-section (1) of Section 14 of the Customs Act, 1962 or the tariff value fixed under sub-section (2) of the that section; and any duty of Customs chargeable on that article under Section 12 of the Customs Act, 1962 and any sum chargeable on that article under any law for the time being in force as an addition to, or as duty of Customs but does not include to the tax referred in the sub section (7) (IGST) and sub-section (9) (Compensation Cess).
- b. The ***value of the imported article*** for the purpose of levying GST Compensation cess shall be, ***assessable value plus basic Customs Duty levied under the Act***, and any sum chargeable on the goods under any law for the time being in force, as an addition to, and in the same manner as, a duty of customs. These would include education cess or higher education cess as well as anti-dumping and safe guard duties. The inclusion of anti-dumping duties and safeguard duty in the value for levy of IGST and Compensation Cess is an important change. These were not hitherto included in the value for the levy of additional duty of customs (CVD) or Special Additional Duty (SAD). The IGST paid shall not be added to the value for the purpose of calculating Compensation Cess.
- c. Although BCD, Education Cesses and IGST would be applicable in majority of cases, however, ***for some products CVD, SAD or GST Compensation cess may also be applicable.***

The manufacturer, service provider and trader of goods who imports goods or services shall be eligible to take input credit of IGST paid on import of goods or services as mentioned in the import documents against his output liability.

However, the credit of BCD will not be available under GST law as well.

Taxable value of imported goods for levying IGST [Section 3(8) of the Customs Tariff Act, 1975]

The value of the goods for the purpose of levying IGST is the assessable value of the imported goods determined under section 14 of the Customs Act, 1962 plus, customs duty levied under that Act and any other sum chargeable on the said goods under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess (wherever applicable).

Wherever the goods are also leviable to GST Compensation Cess, the same is collected on the value taken for levying IGST. In other words, IGST paid shall not be added to the value for the purpose of calculating GST Compensation Cess.

In cases where imported goods are liable to Anti-Dumping Duty or Safeguard Duty, value for calculation of IGST as well as GST Compensation Cess also includes Anti-Dumping Duty and Safeguard duty [Guidance Note for Importers and Exporters issued by DGFT after introduction of GST].

Value for Levying IGST on imported goods	=	Value determined under section 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess
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Let us understand it with below example:

ABC Ltd. imported goods worth of Rs. 10,000. 10% of basic customs duty is chargeable on the imported goods along with 5% IGST, and then imported goods are sold at Rs. 30,000 plus applicable 5% as IGST.

The cost of imported goods is:

Imported Value "a"	10,000
BCD @ 10% "b"	1,000
Taxable Value "c" (a+b)	11,000
Input IGST @ 5% "d" (c*5%)	550
Net Imported Value "e" (c+d)	11,550

When these imported goods are sold intra states for Rs. 30,000 along with IGST @ 5% on the sale. Then:

Taxable Value "f"	30,000
Output IGST @ 5% "g" (f*5%)	1,500
Invoice Value "h" (f+g)	31,500

Now, IGST paid on Import can be **set-off while payment of IGST** on intra state sale which is:

Output IGST (g)	1,500
Input IGST (d)	550
Additional amount – To be paid (g-d)	950

Note: The goods are also leviable to cess under the GST (Compensation to States) Cess Act, 2017, the same will be collected on the value taken for levying integrated tax. The input tax credit of compensation cess, however, can only be used for payment of compensation cess.

Note- GST is not leviable when goods deposited in customs bonded warehouse are sold before clearance; the same is leviable when ex-bond bill of entry is filed for clearing such warehoused goods for home consumption.

Value for levying IGST in case of supply of warehoused goods = (a) Transaction value (Sale value) OR (b) Value determined at the time of filing into-bond bill of entry under section 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess

WHICHEVER IS HIGHER

Import Procedure:

The procedure for import trade differs from country to country depending upon the import policy, statutory requirements and customs policies of different countries.

The procedure involves ensuring licensing and compliance on the arrival of goods, arranging for transport and warehousing after the unloading of goods, and getting customs clearance as well as paying taxes before the release of good:



Changes in Import Procedures Due to GST

1. Importer Exporter code (IEC)

In GST regime, GSTIN would be used for credit flow of IGST paid on import of goods. Therefore, GSTIN would be the key identifier. DGFT in its Trade Notice No. 09, dated 12-6-2017 has stated that PAN would be the Import Export code (IEC). However, while PAN is identifier at the entity level, GSTIN would be used as identifier at the transaction level for every import and export. Further, in scenarios where GSTIN is not applicable, PAN would be accepted as IEC.

It is advised that all importers need to quote GSTIN in their Bills of Entry in addition to IEC. In due course of time IEC would be replaced by PAN/GSTIN.

2. Filling of Bill of Entry

To capture additional details in the Bill of entry such as rate and amount, GST Compensation cess and amount, the electronic as well as manual of Bill of entry including Courier Bill of entry are being

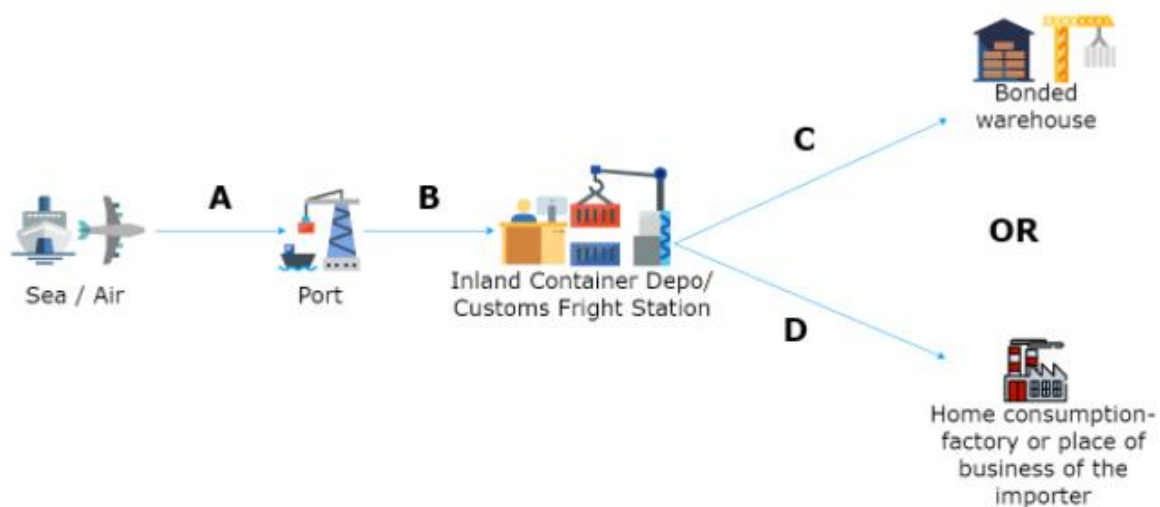
amended. For the benefit of the trade, have been hosted on the departmental website, Further, suitable shall be issued to amend the relevant regulations.

IGST and Custom Duty

IGST rates have been notified through Notification No. 1/2017, dated 28-6-2017. IGST rate on any product can be ascertained by selecting the correct serial number as per description of goods and tariff headings in the relevant schedules of the notification. Importers are advised to familiarize themselves with IGST and GST compensation cess rates, schedule and sections which are available on CBEC website. The Customs duty calculator would be made available on CBEC and ICEGATE website. There are seven rates prescribed for IGST - Nil, 0.25%, 3%, 5%, 18% and 28% the actual rate applicable to an item would depend on its classification and would be specified notified under Section 5 of the Act, 2017.

Custom Duties at the time of import

In the GST regime, IGST and GST Compensation cess will be vied on imports by virtue of sub-sections (7) and (9) of Section 3 of the Customs Tariff Act, 1975. Barring a few commodities such as pan masala, certain petroleum products which attract levy of CVD, majority of imports would attract levy of IGST. Further, a few products such as aerated waters, tobacco motor vehicles, etc., would also attract levy of GST Compensation Cess, over and above IGST.



ITC of Duty paid on imports.

As read earlier that in GST regime, input tax credit of the integrated tax (IGST) and GST Compensation Cess shall be available to the importer and later to the recipients in the supply chain, however the credit of Basic Customs Duty (BCD) would not be available.

In order to avail ITC of IGST and GST Compensation Cess, an importer has to mandatorily declare GST Registration Number (GSTIN) in the Bill of Entry.

Input tax credit shall be availed by a registered person only if all the applicable particulars as prescribed in the Invoice Rules are contained in the said document, and the relevant information, as contained in the said document, is furnished in FORM GSTR-2 by such person.

Customs EDI system would be interconnected with GSTIN for validation of ITC. Further, Bill of Entry data in non-EDI locations would be digitized and used for validation of input tax credit provided by GSTIN.

Import as Baggage:

The term baggage means luggage of the passengers and it refers to all dutiable goods. imported by a passenger or a member of a crew in his baggage as per section 2 (3) of Customs.



Passenger Baggage are exempted from IGST as well as compensation cess. However, basic customs duty at the rate of 35% and education cess shall be liveable on the value which is in excess of the duty free allowances provided under the Baggage Rules, 2016.

Project Import:

Project Import means import of plant & machinery and any other things, which are required to establish a new project for manufacturing or producing or processing any approved things in India or substantially expending existing project established in India.

For items imported under project import scheme (i.e., CTH 98011) unique heading under the Central Excise Tariff, for the purposes of levy of CVD does not exist.

Therefore, under the Central Excise Tariff, each item is getting classified in a heading as per its description and duty is paid on merit. In the GST regime, for the purpose of levying IGST all the imports under the project import scheme will be classified under Heading 9801 and duty shall be levied @ 18%.



Import under Export Promotion Schemes and duty payment through EXIM

Foreign Trade Policy (FTP) and other schemes provide promotional measures to boost India's exports with the objective to offset infrastructural inefficiencies and associated costs involved to provide exporters a level playing field.

Under the GST regime, Customs duties will be exempted on imports made under export promotion schemes namely EPCG, DEEC (Advance License).

IGST and Compensation Cess will have to be paid on such imports.

The EXIM scripts under the export incentive schemes of Chapter 3 of FTP (for example MEIS and SEIS) can be utilised only for payment of Customs duties or additional duties of Customs, on items not covered by GST, at the time of import. The scripts cannot be utilized for payment of Integrated Tax and Compensation Cess. Similarly, scripts cannot be used for payment of CGST, SGST or IGST for domestic procurements

“Some Important Circulars”

Tax Treatment of Goods imported into India and deposited in a warehouse and sold while in warehouse before clearance from Customs (Circular No. 46/2017 dated 24th November, 2017):

The Customs Act, 1962 provides for removal of goods from a customs station to a warehouse without payment of duty. The said Act has been amended to include ‘warehouse’ in the definition of “customs area” in order to ensure that an importer would not be required to pay the Integrated tax at the time of removal of goods from a customs station to a warehouse.

However, the transaction of sale / transfer etc. of the warehoused goods between the importer and any other person may be at a price higher than the assessable value of such goods. Such a transaction squarely falls within the definition of “supply” and shall be taxable under the IGST Act, 2017. It may be noted that as per sub-section (2) of section 7 of the IGST Act, any

supply of imported goods which takes place before they cross the customs frontiers of India, shall be treated as an inter-State supply. Thus, such a transaction of sale/ transfer will be subject to IGST under the IGST Act, 2017. The value of such supply shall be determined in terms of section 15 of the CGST Act, 2017 read with section 20 of the IGST Act, 2017 and the rules made there under, without prejudice to the fact that customs duty (which includes BCD and applicable IGST payable under the Customs Tariff Act) will be levied and collected at the ex-bond stage.

Liveability of Integrated Tax on High Seas Sales Transactions (Circular No. 33/2017-Customs dated 1st August, 2017):

'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the High sea sale of the goods, the Customs declarations i.e. Bill of Entry etc. is filed by the person who buys the goods from the original importer during the said sale. IGST on high sea sale 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.

Note- GST is not leviable on high sea sales. IGST is leviable only when the goods are cleared from customs for home consumption.

Taxability of goods imported by SEZ

Goods imported by a unit or a developer in the Special Economic Zone (SEZ) for authorised operations are **exempted from the whole of IGST** leviable under section 3(7) of the Customs Tariff Act.

Taxability of goods imported by EOU

Goods imported by **Export Oriented Undertaking (EOU) attract liability to customs duty**. Import of goods by 100% EOU's are governed by Notification No. 52/2003 as amended. EOUs are allowed duty free import of goods (exempt from Customs duties, IGST & GST Compensation Cess) under the said notifications. However, exemption from IGST will be available only till 31.03.2021.

Refund of IGST 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 to him as per laid down procedure in this regard. Tourist here 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.

Ocean Freight

Ocean freight is divided into two types based on destination of goods/Cargo namely:

1. Ocean freight in respect to *Imports of goods*.
2. Ocean freight in respect to *Exports of goods*.

As per entry number **19B of Notification No 21/2019 of CGST Act, 2017**, “Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India” **exempt from GST**.

Nothing contained in this serial number shall apply after the 30th day of September, 2020.

In normal cases GST liability to be *discharged on forward basis* and as per **Notification No 8/2017 IGST (Rate)** the rate of GST is 5%.

The value of ocean freight would be deemed as 10% of the CIF Value, when the freight amount not known.

In accordance with *Serial Number 10 of Notification no. 10/2017 – IGST Act, 2017*, “With respect to services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India”, the liability to discharge ***GST under reverse charge would be on the importer***, located in the taxable territory.

S. No	Type	Service Receiver	Liner/Agent	Taxability
1	Ocean freight – Export of goods	In India	In India	Specific <u>exemption</u> up to Sep 2020. Now taxable.
2	Ocean freight –	In India	Outside	Specific <u>exemption</u> up

	Export of goods		India	to Sep 2020. Now taxable.
3	Ocean freight – Export of goods	Outside India	In India	<i>Export of service</i> / if all the conditions not satisfied, then service specific exemption
4	Ocean freight – Export of goods	Outside India	Outside India	<i>Not in the scope of GST</i>
5	Ocean freight – Import of goods	In India	In India	<u>GST liability charged @ 5% under forward charge</u>
6	Ocean freight – Import of goods	In India	Outside India	<u>RCM liability</u> to be discharged on freight paid by the service receiver
7	Ocean freight – Import	Outside India	In India	<u>GST liability charged @ 5% under forward charge</u>
8	Ocean freight – Import	Outside India	Outside India	GST liability to be discharged by the importer under <u>RCM – by considering 10% of CIF value as ocean freight</u>

Temporary Import

Temporary import allows goods to be brought into a country for a brief period of time like its repair and later on export out from the country.

Notification No. 27/2002- Customs dated 1st March, 2002 and to provide exemption to temporary import of goods from Customs duty leviable under First Schedule to the Customs Tariff Act, 1975 and from the whole of the integrated tax leviable under sub-section (7) of section 3 of the Customs Tariff Act, 1975 subject to specified conditions.

Description of goods

Machinery, equipment or tools, falling under Chapters 84, 85, 90 or any other Chapter of the First Schedule to the Customs Tariff Act, 1975 (51 of 1975).

Limitations and conditions

1. the goods have been taken on lease by the importer for use after import;
2. the importer makes a declaration at the time of import that the goods are being imported temporarily for execution of a contract;
3. the import of such machinery, equipment or tools is covered under item (b) of clause 1 or item (f) of clause 5 of Schedule II of the Central Goods and Services Act, 2017;
4. the said goods are re-exported within three months of the date of such import or within such extended period not exceeding 18 months from the date of said import, as the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, may allow;
5. where the Assistant Commissioner of Customs or the Deputy Commissioner of Customs, as the case may be, grants extension of the aforesaid period for re-export, the importer shall pay the difference between the duty payable under the relevant clause in column (3) and the duty already paid at the time of their import;
6. The importer executes a bond, with a bank guarantee, undertaking-
 - a. to pay integrated tax leviable under sub-section (1) of section 5 of the Integrated Goods and Services Act, 2017 on supply of service covered by items 1(b) or 5(f) of Schedule II of the Central Goods and Services Act, 2017;
 - b. to re-export the said goods within three months of the date of import or within the aforesaid extended period;
 - c. to produce the goods before the Assistant Commissioner of Customs or the Deputy Commissioner of Customs for identification before re-export;
 - d. to pay the balance of customs duty, along with interest, at the rate fixed by notification issued under section 28AA of the Customs Act, 1962, for the period starting from the date of import of the said goods and ending with the date on which the duty is paid in full, if the re-export does not take place within the stipulated period; and
 - (e) to pay on demand an amount equal to the integrated tax along with applicable interest payable on the said goods but for the exemption under this notification in the event of violation of any of the above conditions.

Extent of exemption

In the case of-

1. Goods which are re-exported within three months of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of five per cent.;

2. Goods which are re-exported after three months, but within six months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of fifteen per cent.;
3. Goods which are re-exported after six months, but within nine months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of twenty-five per cent.;
4. Goods which are re-exported after nine months, but within twelve months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of thirty per cent.;
5. Goods which are re-exported after twelve months, but within fifteen months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of thirty-five per cent.;
6. Goods which are re-exported after fifteen months, but within eighteen months, of the date of import, so much of the duty of customs as is in excess of the amount calculated at the rate of forty per cent., of the aggregate of the duties of customs, which would be leviable under the Customs Act, 1962 read with any notification for the time being in force in respect of the duty so chargeable.

GST impact on FTP

1. Importer/exporter registered with GSTN, importer/exporter would need to declare only 'GSTIN at the time of import and export of goods and the importers who are not registered under GST would use their PAN for imports.
2. CGST will not be debited in duty credit scrips such as Merchandise Exports from India scheme (MEIS) and Service Exports from India Scheme (SEIS). MEIS and SEIS scrip would be used only' for payment of Basic Duty
3. 100% EOU will not get ab initio exemption of IGST for imports, in GST regime, EOUs will have to pay IGST on imports. Refund of Input Tax Credit (ITC) can be taken after exports as per ITC Refund Rules.
4. Only SEZs have been exempted from payment of IGST on import.

Only basic customs duty will be exempted on imports made under Advance Authorisation. IGST have to be paid on imports. IGST paid on import will be refunded on after making exports.

Part -3

Impact of GST on Export

Important Definitions

Export of Goods

As per **section 2(5) of IGST Act, 2017**, Export of goods, with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India.

Export of service

As per **section 2(6) of IGST Act, 2017**, Supply of any service will be treated as 'Export of service' under the following circumstances-

- If the service *supplier is located outside India*
- If the service *recipient is in India*
- If the supply of *service place is in India*
- If the *payment for such services is received by the service supplier in convertible foreign exchange*
- If both the *supplier and recipient of service are not merely establishments of a distinct person* in accordance with Explanation 1 in section 8.

Fixed establishment means a place other than the place of business which is characterized 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 [Section 2(7)].

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

Location of the supplier of services means:

- (a) where a supply is made from a place of business for which 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, that is to say, 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 [Section 2(15)].

Type of Exporters

Exports of goods and services, means sending of goods and services produced in India to another country. There are two types of Exporters:

1. **Merchant Exporter** – One who buys goods from another manufacturer and exports.
2. **Manufacturer Exporter** – One who manufactures goods and then exports.

Export directly affects economic stability in the country. Government of India promotes exports in our country in various ways.

Nature of Supply

As per **Section 7(5) IGST Act, 2017** Export is treated as Inter-state supply under GST and IGST is charge on export.

As per GST laws, GST is **not levied** on export of any kind of goods or service. The export of goods or service is considered as a **zero-rated supply**.

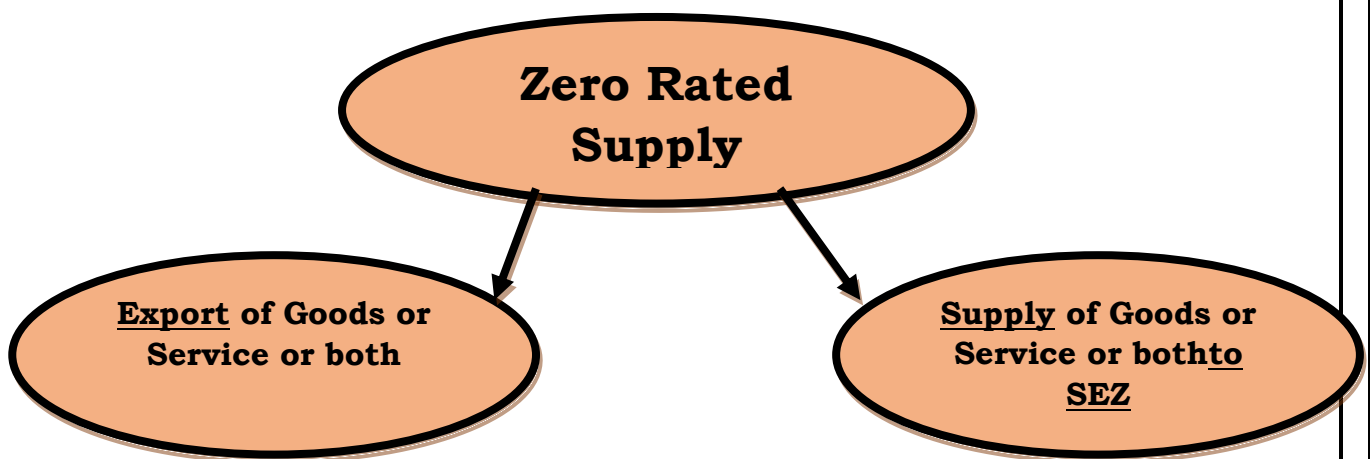


What is Zero Rating?

By zero rating it is meant that the entire value chain of the supply is exempt from tax. This means that in case of zero rating, not only is the outward exempt from payment of tax but there is also no bar on taking/availing credit of taxes paid on the input side for making/providing the outward supply.

Under GST Law, exports and supplies to SEZ units/developers are zero rated. Supply to SEZ units/developers is zero-rated in the same manner as is applicable for the physical exports

As per **section 16 of IGST Act, 2017**, “zero rated supply” means any of the following supplies of goods or services or both



Zero-rated supply does not mean that the goods and services have a tariff rate of ‘0%’ but the recipient to whom the supply is made is entitled to pay ‘0%’ GST to the supplier.

What is the need of zero rating?

As per section 2(47) of the CGST Act, a supply is said to be exempt, when it attracts nil rate of duty or is specifically exempted by a notification or kept out of the purview of tax (i.e. a non-GST supply). But if a goods or service is exempted from payment of tax, it cannot be said that it is zero rated. The reason is not hard to find. The inputs and input services which go into the making of the goods or provision of service have already suffered tax and only the final product is exempted. Moreover, when the

output is exempted, tax laws do not allow availment/utilisation of credit on the inputs and inputservices used for supply of the exempted output. Thus, in a true sense the entire supply is not zero rated. Though the output suffers no tax, the inputs and input services have suffered tax and since availment of tax credit on input side is not permitted, it becomes a cost for the supplier. The concept of zero rating of supplies aims to correct this anomaly

In other words, as per section 17(2) of the **CGST Act**, input tax credit will not be available in respect of supplies that have a '0%' rate of tax. However, this disqualification does not apply to zero-rated supplies covered by this section.

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.

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 supplyalternatively, the exporter may claim a refund of such taxes as per section 54 of CGST or Rules made there under

As per **circular No. 1/1/2017-Compensation Cess dated 26-7-2017**, Exporters can claim **refund of GST Compensation Cess** & Compensation Cess will not be charged on goods exported under bond or LUT.

As per **circular No. 45/19/2018-GST dated 30-5-2018**, If GST compensation Cess is payable on inputs but not on output supply of goods exported, refund of ITC of GST Compensation Cess can be claimed.

The difference between zero rated supplies and exempted supplies is tabulated as below: -

Exempted Supplies	Zero rated supplies
Exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply.	Zero-rated supply means (i) Export of goods and/or services or (ii) supply of goods and/or services to SEZ unit /SEZ developer.

<p>No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed</p>	<p>No tax on the outward supplies; Input supplies also to be tax free (by way of refund of ITC)</p>
<p>Credit of input tax needs to be reversed, if taken.</p> <p>No ITC on the exempted supplies.</p>	<p>Credit of input tax may be availed for making zero-rated supplies, even if such supply is an exempt supply.</p> <p>ITC allowed on zero rated supplies.</p>
<p>Value of exempt supplies, for apportionment of ITC, shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.</p>	<p>Value of zero rated supplies shall be added along with the taxable supplies for apportionment of ITC.</p>
<p>Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under the CGST or IGST Act shall not be liable to registration.</p>	<p>A person exclusively making zero rated supplies needs to register as refund of unutilized ITC or IGST paid shall have to be claimed.</p>
<p>A registered person supplying exempted goods and/or services shall issue, instead of a tax invoice, a bill of supply.</p>	<p>Normal tax invoice shall be issued.</p>

Part - 4

Export of Goods or Service or both

Place of Supply

Place of supply of a service shall determine as to *whether a service can be termed as import or export of service.*

For Export of Goods

As per **section 11 of IGST Act, 2017**, Place of supply of any goods exported from India shall be the **location outside India.**

For Export of Service

Place of supply for export of service is the **location of the recipient of service.** However *if the location is not available then the place of supply shall be the location of the service provider.*

Important Note:

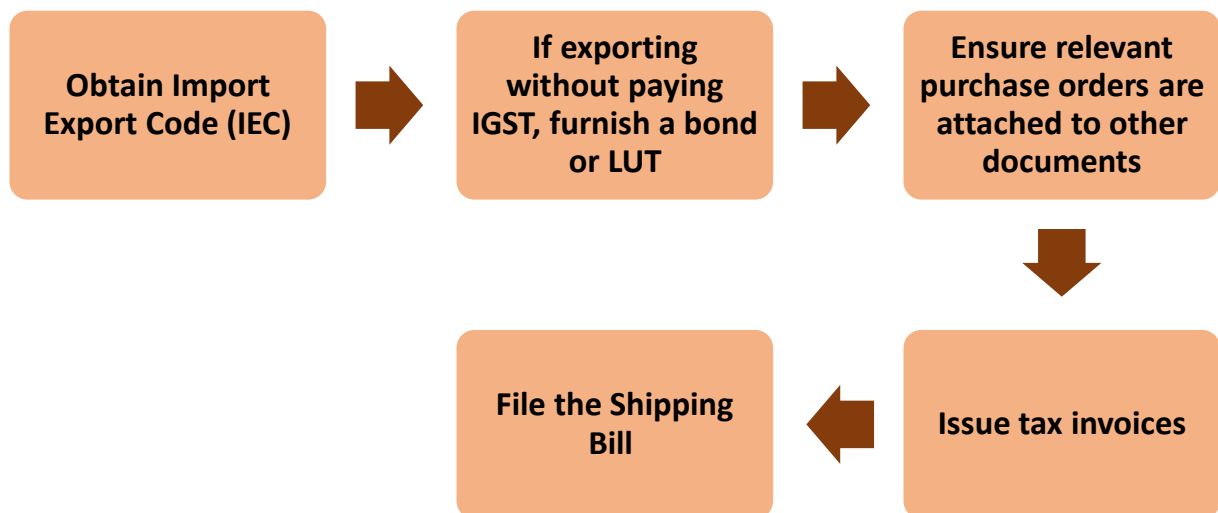
*Supply of services having **place of supply** in Nepal or Bhutan, against payment in Indian Rupees is exempted even if the payment is received in Indian Currency looking at the business practices and trends.*

Export Procedure:

In order to export goods or services and properly claim this benefit, businesses have a couple of options:

- They may furnish a bond or Letter of Undertaking (LUT) without paying IGST fees.
- They may include payment for IGST and later claim a refund for the same

In addition, exporters are required to follow certain procedures and maintain certain documents depending on which method they choose from above and whether the product exported is a good or service.



Details in Tax Invoices:

- a. Endorsement describing whether the supply is for export **with** or **without** payment of integrated tax.
- b. Name, address, and GSTIN of the supplier.
- c. Invoice number and date.
- d. Name and address of the recipient, including delivery address and destination country
- e. Harmonized System of Nomenclature (HSN) Code of goods, along with the relevant description.
- f. Quantity of the goods and the number of units.
- g. The total value of the goods, with the breakdown of the value into the price per unit.
- h. Signature of the authorized signatory of the supplier.

Important Note:

Include the same details listed on the tax invoice in Shipping bill.

The shipping bill can also act as a refund claim provided that:

- i. The person carrying the export good files an export manifest; and
- ii. Applicant has filed forms GSTR-3 or GSTR-3B appropriately.

Refund of GST

To build an economy timely refund mechanism is essential in tax administration, as it facilitates trade through release of blocked funds for working capital, expansion and modernization of existing business.

Under the GST regime there is a standardised form for making any claim for refunds. The claim and sanctioning procedure is now online and time bound which is a marked departure from the existing time consuming and cumbersome procedure.

As per **Section 54 of the CGST Rules, 2017** read with Rule 89 or Rule 96, as the case may be, of the CGST Rules, 2017 a registered person may claim refund of unutilised input tax credit at the end of any tax period. A tax period is the period for which return is required to be furnished. Thus, a taxpayer can claim refund of unutilised ITC on monthly basis.



As per **Section 16(3) of the IGST Act, 2017**, a registered person making zero rated supply is eligible to claim refund under either of the following options, namely: –

Option 1 - Export made without payment of tax:

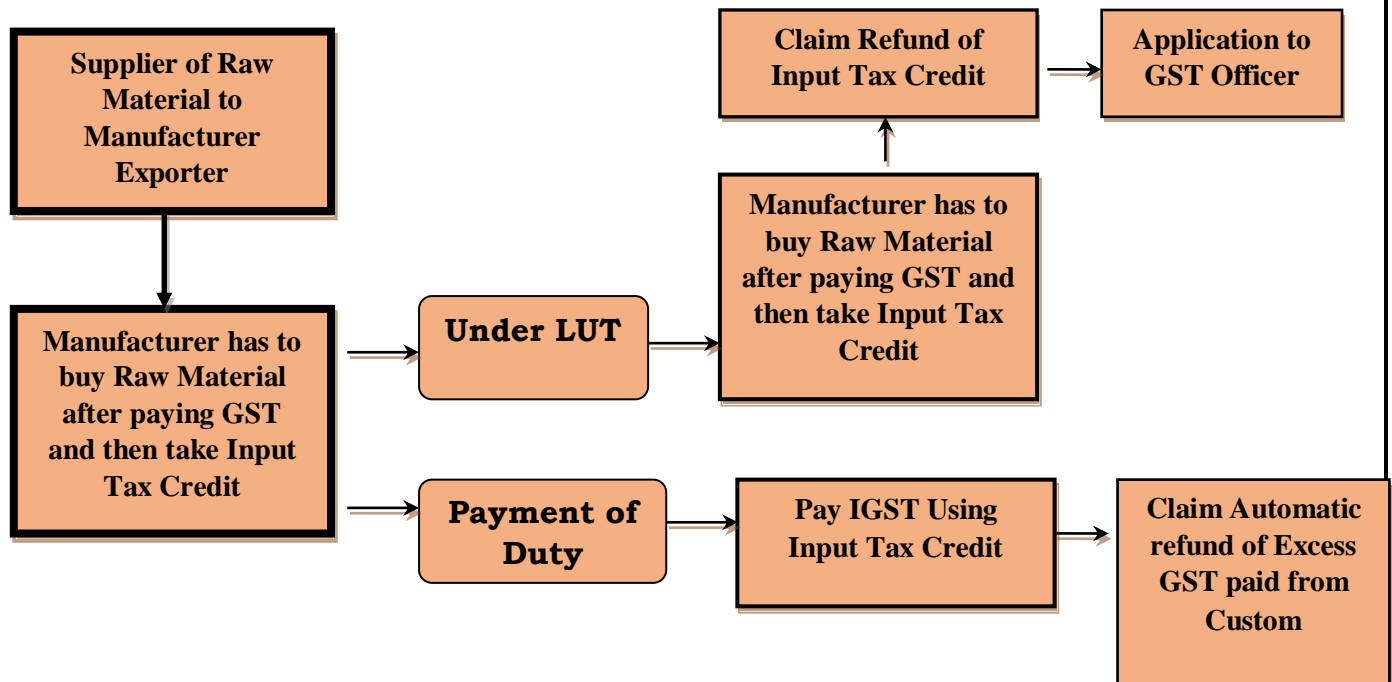
As per Section 16(3)(a) of IGST Act, 2017 Supply of goods or services or both under **bond or Letter of Undertaking (LUT)**, subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim **refund of unutilised input tax credit**.

Option 2 - Export made with payment of tax:

As per Section 16(3)(b) of IGST Act, 2017 Supply of goods or services or both, subject to such conditions, safeguards and procedure as may be prescribed, on **payment of integrated tax** and claim **refund of such tax paid** on goods or services or both supplied.

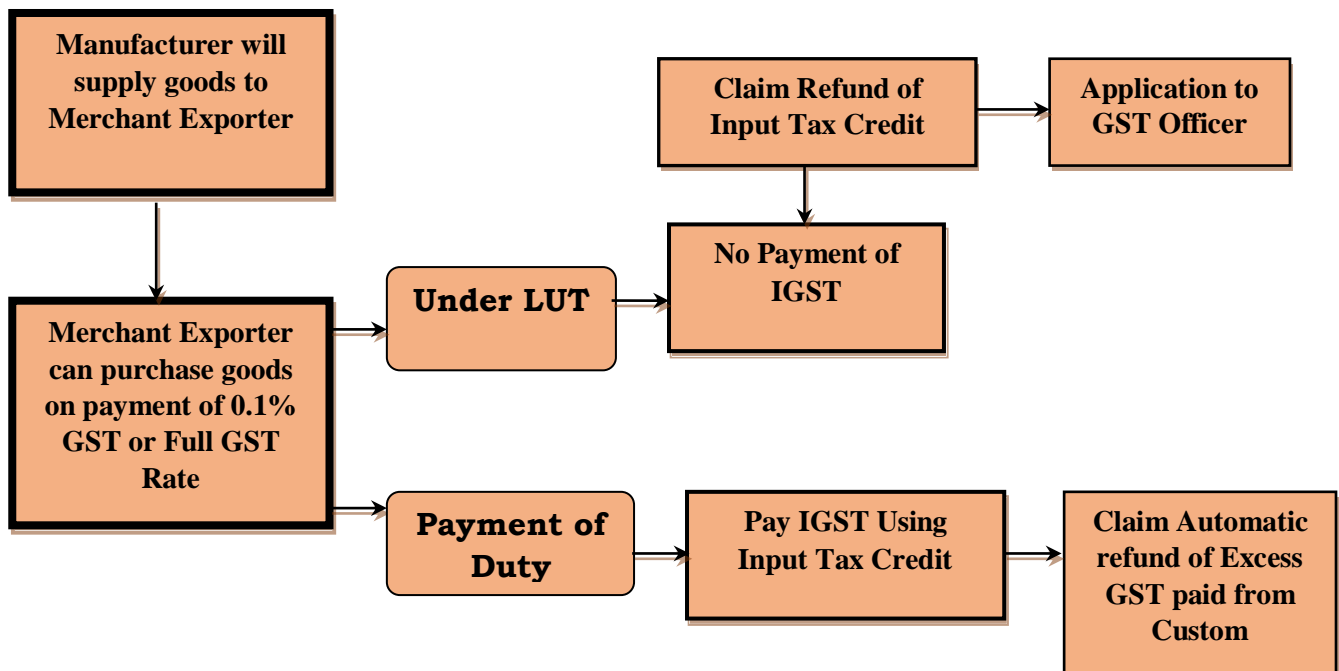
Earlier exporters have to pay tax on purchase of Raw Materials or Finished Goods and also at the time of export. So, to remove the burden of double tax, government came up with Letter of Undertaking LUT/Bond for Exports under GST.

Tax Mechanism for Manufacturer Exporter under GST:



In above diagram, it can be seen that manufacturer Exporter has to compulsorily buy Raw materials on payment of GST. Since GST is payable on every supply, Exporter also has to pay IGST at the time of Export for which there are two options here, one is to clear goods or services under LUT without payment of IGST and other is to Clear Goods on Payment of IGST and then Claim Refund.

Tax Mechanism for Merchant Exporter under GST:



In above diagram, it can be seen that Merchant Exporter can buy finished goods on 0.1% GST or full actual rate of GST. Since GST is payable on every supply, Exporter also has to pay IGST at the time of Export, for which there are two options here, one is to export under Bond / LUT without payment of IGST and other is to Clear Goods on Payment of IGST and then Claim Refund.

Important Note:

If Merchant Exporter buys Finished Goods at 0.1% GST, then it is compulsory to Export under LUT. Therefore there is no Tax Burden for Merchant Exporter since it buys goods at nominal GST rate and Exports under LUT without payment of GST. This came as a huge relief to Traders. However it should also be noted that Merchant Exporter can also buy Goods at Full GST Rate instead of 0.1%

Inverted duty structure:

Where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies (other than nil rated or fully exempt supplies), except supplies of goods or services or both as may be notified by the Government on the recommendations of the Council. This would include even those cases where supply has been made to merchant

exporters under Notification no. 40/2017- Central Tax (Rate) dated 23.10.2017 or notification No. 41/2017-Integrated Tax (Rate) dated 23.10.2017 or both.

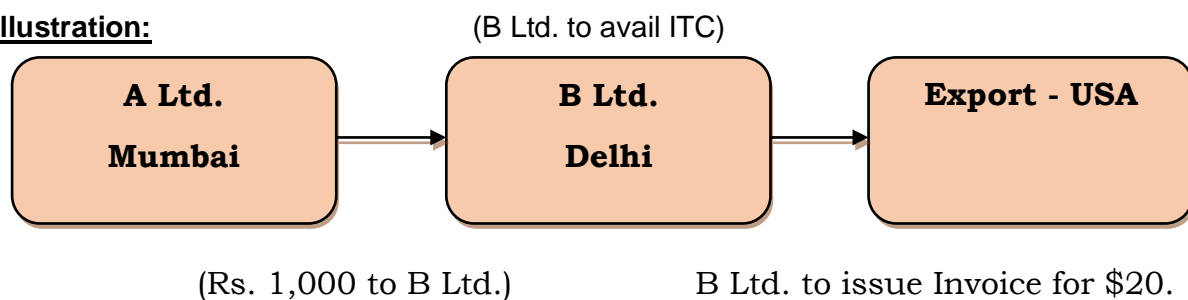
In such cases also, refund can be applied under Section 54 of the CGST Act, 2017 read with Rule 89 of the CGST Rules, 2017

It should be noted that no refund of unutilised input tax credit is allowed in cases where the **goods exported out of India are subjected to export duty.**

Further, no refund of input tax credit is allowed, if the supplier of goods or services or both **avails of drawback** in respect of central tax or claims refund of the integrated tax paid on such supplies.

How Exporter can claim refund under “Option 1” LUT Method?

Illustration:



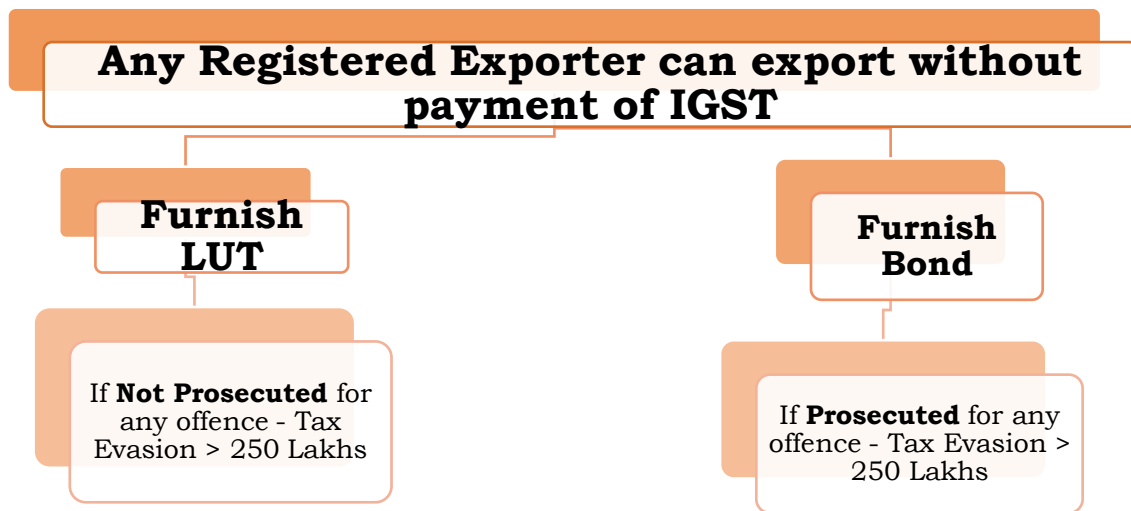
- B Ltd. to ensure no IGST is charged in the \$ invoice.
- B Ltd. to bring Proof of export and satisfy all other prescribed conditions.
- B Ltd. to claim refund of Input tax credit (ITC) of Rs. 1,000/- being maximum amount related to the outward export supply.
- Such refund to be claimed by filling Form GST RFD – 01.

What is Letter of undertaking (LUT) and Bond?

The exporter may supply goods or services or both under bond or Letter of Undertaking without paying IGST subject to such conditions, safeguards and procedure as may be prescribed, without payment of integrated tax and claim refund of unutilized tax credit.

To ensure the government that, we being an exporter will comply with all the laws, rules and regulations for export, we need to furnish an

undertaking which is known as LUT/Bond. Form GST RFD-11 is the prescribed format in which LUT or Bond is filled along with other relevant documents.



Who can avail the facility of LUT?

According to ***Notification No. 37/2017 dated 4th October, 2017***, any Registered Exporter can apply for Letter of Undertaking. **Now there is no need to give any Bank Guarantee for LUT/Bond. Irrespective of past Turnover any registered Exporter is eligible for Letter of Undertaking.**

However, any person who has been prosecuted for tax evasion of Rs. 2.5 crore or more is not eligible to furnish LUT. These LUTs are valid for one financial year. Initially when GST was implemented, either LUT or bond could be furnished. But according to the latest notification, Bank Guarantee is not required, so Bonds are no more valid and only LUTs can be furnished by exporters.

As per rule 96A of CGST Rules, as amended w.e.f. 1-2-2019 any registered person availing the option to supply goods or services for export without payment of integrated tax shall furnish an **online application** called Letter of Undertaking, prior to export, in **FORM GST RFD-11** to the jurisdictional Commissioner, binding himself to pay the tax due along with the interest:

- a. within a period of 15 days after the expiry of 3 months from the date of issue of the invoice for export, **if** the goods are not exported out of India; or
- b. 15 days after the expiry of 1 year, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for

export, if the payment of such services is not received by the exporter in convertible foreign.

On failure to export, LUT would be withdrawn and amount of GST would be recovered under recovery proceedings.

How it works?

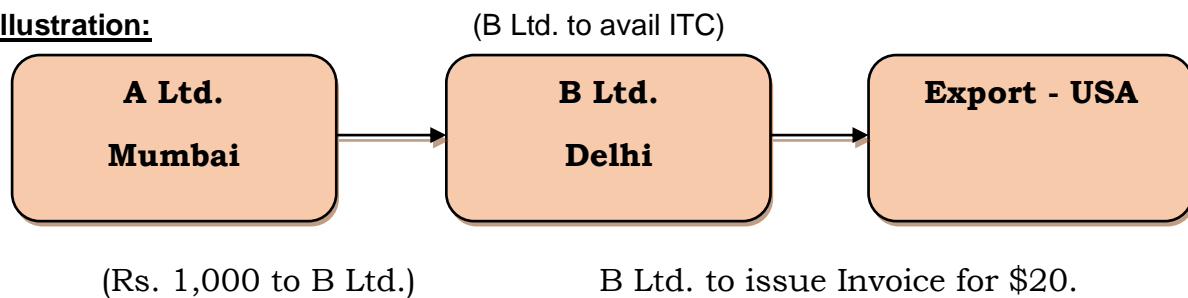
- The *details of the export invoices contained in FORM GSTR-1 furnished on the common portal shall be electronically transmitted* to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said.
- All exporters registered under GST can *export goods or services without payment of IGST, on execution of LUT*, except those who have been prosecuted for offence under any law where tax evade exceeds Rs 250 lakhs. The LUT is valid for whole financial year.
- LUT/bond is to be *submitted to concerned Central/State tax authority having jurisdiction* over the taxable person will be accepted by Deputy/Assistant Commissioner within three working days.
- If the LUT/bond is not accepted within three working days, it will be deemed to have been accepted.
- *Running bond is required to maintained.* The bond amount should cover amount of self assessed estimated tax liability on export. If bond amount is not sufficient, fresh bond should be executed.
- LUT can be *on letter head of exporter* with signature and seal of authorised person.
- If the exporter fails to comply with the conditions of the LUT he may be asked to furnish a bond.
- The Bond/LUT shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the bond/LUT before Central Tax Authority or State Tax Authority. However, if in a State, the Commissioner of State Tax so directs, by

general instruction, to exporter, the Bond/LUT in all cases be accepted by Central tax officer till such time the said administrative mechanism is implemented. Bond or LUT should be accepted in maximum three working days.

- As per **circular No. 40/14/2018-GST, dated 6-4-2018**, The LUT shall be deemed to have been accepted as soon as an acknowledgement reference number (ARN) is generated online. Any physical document is not required to be submitted. If it is later found that the exporter was not eligible to submit LUT, the LUT shall be deemed to have been rejected *ab initio*.
- As per **circular No. 37/11/2018-GST dated 15-3-2018**, Declaration about non-prosecution is already filed with LUT. Hence, further Self-Declaration about non-prosecution is not required with every refund claim.
- As per **circular No. 37/11/2018-GST, dated 15-3-2018**, Refund of input tax credit will be permissible even if export is made after three months. It is not necessary to pay IGST and claim refund of IGST. Extension of three months period can be given by jurisdictional Commissioner on *ex post facto* basis keeping in view the facts and circumstances of each case. This principle applies in case of export of service also.

How Exporter can claim refund under Option -2 Refund of IGST?

Illustration:



- IGST is to be charged on Tax Invoice issued in INR meant for the purpose of IGST.
- B Ltd. debit Electronic Credit ledger with IGST applicable of Rs. 180/- on export.
- B Ltd. to bring proof of export and satisfy all other prescribed conditions.
- Refund of Rs. 180/- to be allowed on automatic processing of shipping bill by custom once GSTR- and EGM is filled (Rule 96 of CGST).

Refund of integrated tax paid on goods or services exported out of India. – Rule 96 CGST Rules.

The shipping bill filed by an exporter of goods shall be deemed to be an application for refund of integrated tax paid on the goods exported out of India and such application shall be deemed to have been filed only when:-

- a. the person in charge of the conveyance carrying the export goods duly files an export manifest or an export report covering the number and the date of shipping bills or bills of export; and
- b. The applicant has furnished a valid return in FORM GSTR-3 or FORM GSTR-3B, as the case may be;

The details of the relevant export invoices in respect of export of goods 48 contained in FORM GSTR-1 shall be transmitted electronically by the common portal to the system designated by the Customs and the said system shall electronically transmit to the common portal, a confirmation that the goods covered by the said invoices have been exported out of India.

Relevant date for filing refund of IGST/ITC on export of goods and services.

Goods:

1. If the goods are exported by sea or air, the date on which the ship or the aircraft in which such goods are located, leaves India;

OR

2. If the goods are exported by land, the date on which such goods pass the frontier;

OR

3. If the goods are exported by post, the date of dispatch of goods by the Post Office to a place outside India,

Services:

1. Receipt of payment in convertible foreign exchange, where the supply of services been completed prior to the receipt of such movement:

OR

2. If the goods are exported by land, the date on which such goods pass the frontier;

OR

3. If the goods are exported by post, the date of dispatch of goods by the Post Office to a place outside India

Valuation of Refund:

As per section 54, of CGST Act, 2017, the application filed for refund of unutilized ITC on account of zero-rated supplies (with payment of tax or without payment of tax under Bond/LUT) has to be accompanied by documentary evidence as may be prescribed to establish that a refunds due to the applicant; and such documentary or other evidence (including the documents referred to in section 33 of the CGST Act, 2017) as the applicant may furnish to establish that the amount of tax and interest, if any, paid on such tax or any other amount paid in relation to which such refund is claimed was collected from, or paid by, him and the incidence of such tax and interest had not been passed on to any other person.

In case refund is claimed, on account of Zero rated supply of services & Goods, the refund of input tax Credit is granted as per the following **formula**: (Rule 89(4))

Refund Amount = (Turnover of zero-rated supply of goods + Turnover of zero-rated supply of services) x Net ITC ÷ Adjusted Total Turnover

Further, it has been provided under section 54(4) of the CGST Act, 2017, that where the amount claimed as **refund is less than two lakh rupees**, it shall not be necessary for the applicant to furnish any documentary and other evidences but **he may file a declaration**, based on the documentary or other evidences available with him, certifying that the incidence of such tax and interest had not been passed on to any other person.

For amount in **excess of two lakh rupees a Certificate issued by a chartered accountant or a cost accountant** to the effect that the incidence of tax, interest or any other amount claimed as refund has not been passed on to any other person, shall be given.

Option of Provisional Refund:

It has also been provided under *section 54(6) of the CGST Act, 2017*, that in cases where the claim for refund on account of zero-rated supply of goods or services or both made by registered persons, other than such category of registered persons as may be notified by the Government on the recommendations of the Council, *refund on a provisional basis, 90% of the total amount so claimed, excluding the amount of input tax credit provisionally accepted; and the final order shall be issued within sixty days from the date of receipt of application complete in all respects.*

Rule 91 of CGST Rules, 2017 provide that the provisional refund is to be granted within 7 days from the date of acknowledgement of the refund claim. An order for provisional refund is to be issued in Form GST RFD 04 along with payment advice in the name of the claimant in Form GST RFD 05. The amount will be electronically credited to the claimant's bank account.

Exception:

The rules also prescribe the provisional refund will not be granted to if the person claiming refund has, during any period of five years immediately preceding the tax period to which the claim for refund relates, been prosecuted for any offence under the Act or under an earlier law where the amount of tax evaded exceeds two hundred and fifty lakh rupees (Rs. 250 Lakh);

Consumer Welfare Fund:

It may also be noted that by default, the refund is to be credited to the Consumer Welfare Fund, except in the cases below:-

- a. Refund of tax paid on zero-rated supplies of goods or services or both or on inputs or input services used in making such zero-rated supplies;
- b. Refund of unutilised input tax credit under section 54(3) of the CGST Act, 2017;
- c. Refund of tax paid on a supply which is not provided, either wholly or partially, and for which invoice has not been issued, or where a refund voucher has been issued;
- d. Refund of tax in pursuance of section 77;

- e. The tax and interest, if any, or any other amount paid by the applicant, if he had not passed on the incidence of such tax and interest to any other person; or
- f. The tax or interest borne by such other class of applicants as the Government may, on the recommendations of the Council, by notification, specify.

Where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant by an amount equal to the refund so claimed as per Rule 89(3) of CGST Rules, 2017.

Timelines for Refund:

Time lines have been set for processing of refund claims is 60 days and if claims not settled within 60 days then interest @ 6% will be paid. Moreover, 90% of the claim would be paid within 7 days of acknowledgement of claim on provisional basis.

Claims are to be filed with minimum documentation and the refund amount will be credited directly to the claimant's bank account. The process is online and hassle free and with minimum interface with tax authorities.

Also, interest will be paid for any delay in sanctioning of Refund beyond the mandated period of 60 days (as per Rule 94 of CGST Rules, 2017). The refund and/or interest sanctioned, if any, will be directly credited to the bank account of the applicant.

Documents Required for claiming Refund on Exports:

List of documents required for claiming refund are:

1. Copy of filled on-line refund application
2. Copy of Filled returns evidencing payment of duty (GSTR 1 & GSTR 3B).
3. Copy of Invoices along with summary.
4. CA Certificate / self-declaration describing that the burden of paying tax has not been passed.
5. Any other document as required by the department.

Change in Export Procedures due to GST

Electronic as well as manual Shipping Bill formats including Courier Shipping Bill have been amended to include GSTIN and IGST related information so as to ensure that the export benefits like refund of IGST paid as well as accumulated input tax credit can be processed seamlessly.

1. Export under factory stuffing procedures.

In the context of GST, taking into account the obligation of filing GSTR-1 and GSTR-2 by exporters who are registered under GST, Board intends to simplified the procedure relating to factory stuffing hitherto carried out under the supervision of Central Excise officers.



2. Exports - Supply of Goods by Railways for Export Purposes

Noticing that some of the Production Units are having export orders, for which supplies may be done through an intermediary Company namely, RITES, etc., the Railways Board in consultation with the Ministry of Finance, has clarified that Tax Invoices for the above transactions will have to be issued by Indian Railways and these invoices are required to be uploaded in the GST manual utility portal. Accordingly, CRIS has been advised to introduce the validations in the GST manual utility portal — Railways Board, GST Circular No. 10/2019, dated 16-4-2019.

3. Export Promotion - Goods taken out of India for exhibition or on consignment basis.

Observing that as a widespread practice in various sectors, including the gems and jewellery industry, several goods taken out of India on consignment basis for exhibitions or other export promotion events are sold only when approved by the prospective customers abroad and the unsold goods are then brought back to India, the C.B.I. & C., in order to help exporters, has issued comprehensive clarifications vide Circular No. 108/27/2019-GST, dated 18-7-2019 [2019 (26) G.S.T.L. C64].



Note-serving that as a widespread practice in various sectors, including the gems and jewellery industry, several goods taken out of India on consignment basis for exhibitions or other export promotion events are sold only when approved by the prospective customers abroad and the unsold goods are then brought back to India, the C.B.I. & C., in order to help exporters, has issued comprehensive clarifications vide Circular No. 108/27/2019-GST, dated 18-7-2019, 2019 (26) G.S.T.L. C641 as follows:

- a. The activity of taking goods out of India on consignment basis for exhibition would not in itself constitute a supply under GST since there is no consideration received at this time.
- b. The movement of these goods out of India shall be accompanied by a delivery challan.
- c. Furthermore, movement of these goods are also not a zero-rated supply, therefore, execution of a bond or LUT is not required.
- d. The goods taken out of India in this manner are required to be either sold or brought back within a period of six months from the date of removal.
- e. The supply would be deemed to have taken place if the goods are neither sold abroad nor brought back within the period of six months and tax invoice would be required to be issued by the sender benefit of zero-rating, including refund, shall not be available.
- f. If the specified goods are sold abroad within the period of six months the sender shall issue a tax invoice and these supplies shall become zero-rated supplies. However, refund in relation to such supplies shall be available only as refund of unutilized ITC and not as re No tax invoice is required to be issued in respect of goods which are brought back to India within the period of six months.

Facility of furnishing Letter of Undertaking extended to more exporters

Taking note of the difficulties in furnishing bond with requisite bank guarantee and to facilitate exports under GST, the C.B.E. & C. has decided that the facility of furnishing Letter of Undertaking, in place of a bond, for exporting goods or services or both shall be allowed to exporters and no bank guarantee will be required. C.B.E. & C. Press Release No. 104/2017, dated 29-9-2017.

Clarification on Compensation Cess and zero-rated exports

The C.B.E. & C. has clarified those provisions of Section 16 of the IGST Act, 2017, relating to zero rated supply will apply, mutatis mutandis for the purpose of Compensation Cess (wherever applicable). Accordingly, Exporter will be eligible for refund of Compensation Cess paid on goods exported by

him and no Compensation Cess will be charged on goods exported by an exporter under bond and he will be eligible for refund of input tax credit of Compensation Cess relating to goods exported. — C.B.E. & C. Circular No. 1/1/2017-C.C., dated 26-7-2017.

Export to Nepal and Bhutan

Export of goods: Export of goods to Nepal or Bhutan falls within the definition of 'export of goods' under the IGST Act as goods are taken from India to a place outside India. India has rupee trade with Nepal and Bhutan. The RBI regulations allow receipt of payment in Indian rupees in case of exports to Nepal and Bhutan. In case of export of goods under GST law, receipt of export proceeds in convertible foreign exchange is not a pre-requisite. [However, non-realization of export proceeds within the time prescribed under FEMA may result in recovery of any refund paid to the taxpayer.] Hence, export of goods to Nepal and Bhutan will be treated as zero rated and consequently will also qualify for all the benefits available to zero rated supplies under the GST regime.

Export of services: In case of export of services, wherever permitted by the Reserve Bank of India, receipt of payment in Indian rupees is allowed in terms of section 2(6). As stated earlier, the RBI regulations allow receipt of payment in Indian rupees in case of exports to Nepal and Bhutan. Consequently, supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees is considered as export of services subject to fulfillment of other conditions.

Therefore, exports of both goods and services to Nepal and Bhutan are treated as 'normal exports', i.e. goods and services can be exported to Nepal and Bhutan under LUT.

Part - 5

Supply of Goods or Service or both to SEZ

What is Special Economic Zone (SEZ) ?

A special economic zone (SEZ) is a *geographical region that has economic laws that are more liberal than a country's domestic economic laws*. The category 'SEZ' covers a broad range of more specific zone types, including Free Trade Zones (FTZ), Export processing zones (EPZ), Free Zones (FZ), Industrial Estates (IE), Free ports, Urban Enterprise Zones and others.

Usually the *goal of a structure is to increase foreign direct investment* by foreign investors, typically an international business or a Multi National Corporation.

As per **Section 2(19) of the IGST Act, 2017** Special Economic Zone derive their meaning from The Special Economic Act, 2005. The SEZ Act, 2005 contains special provision regarding procurement of goods and services without payment of taxes, in line with the same, *GST law provides for refund of taxes paid by the supplier supplying goods or services to a developer or Unit holder of SEZ.*

Various incentives offered to SEZ units include duty-free import and duty-free domestic procurement of goods for development, operation and maintenance of SEZ units.

Supply to SEZ

Under IGST law, exports and supply made to SEZ unit or developer have been ***termed as Zero-Rated supply.***

These are supplies which if taxable, have to be made Zero-Rated by refunding IGST paid on or even if exempted, GST involved in the input/input services used therein is required to be re-funded.

Accordingly, ***supply of goods and/or services to a SEZ unit or a SEZ developer from a supplier located outside SEZ area i.e., Domestic Tariff Area (DTA) shall be considered as a zero-rated supply***

Therefore, supply of goods and/or services to the SEZ units or Developers would be considered as zero-rated supply but on other hand, **supply of goods and/or services by the SEZ units or Developers from SEZ to DTA would be covered under the normal course of supply**. Accordingly, such unit or developer will have to pay GST at the prescribed rate.

Situation	Nature of Supply
SEZ to DTA	Normal Supply
DTA to SEZ	Zero Rated Supply

Incentives offered to SEZ units include duty-free import and duty-free domestic procurement of goods for development, operation and maintenance of SEZ units. SEZ units are also exempted from Central Sales Tax (CST), service tax and State sales tax.

Comparison between existing indirect tax laws and the model GST are as follows:

Taxes	Special Economic Zone (SEZ)	
	Old Regime	GST Regime
Custom Duty	Exempt	Payable but subsequently refundable. Further, Basic Custom Duty – Upfront exemption may not continue
Excise Duty		
Service Tax		
CST/ VAT	Upfront exemption / refund	

Registration

As per second proviso to section 25(1) of CGST Act, inserted vide CGST (Amendment) Act, 2018 w.e.f. 1-2-2019, A person having a unit in a Special Economic Zone or being a Special Economic Zone developer shall have to apply for a separate registration, as distinct from his place of business located outside the Special Economic Zone in the same State or Union territory.

As for example, if a company has 4 unit in SEZ locations and rest 3 units in Domestic Tariff Area (DTA), the company needs to go for total 5 registrations (4 for SEZ and 1 for DTA) under the provision of the GST law

Nature of Supply

Supply of goods and/ or services to or by a SEZ units, shall be considered as supply of goods and/or services in the course of **inter-State** trade or commerce.

Accordingly, on supply of goods and/or services to or by a SEZ units shall attract ***IGST at the prescribed rate but not exceeding twenty eight percent.*** Procurement by SEZ units from DTA is treated as exports from DTA to SEZ.

Time of Supply of Goods and/or Services

IGST shall be payable at the *earliest* of the following dates, namely:

- (i) *the date of issue of invoice* by the supplier or the last date on which he is required to issue the invoice with respect to the supply, or
- (ii) the *date on which the supplier receives the payment* with respect to the supply.

Levy and collection of Tax

DTA unit can supply goods to SEZ unit or SEZ Developer on payment of GST under section 16(3)(b) of IGST Act or without payment of tax under section 16(3)(a) of IGST Act,

In turn, the refund in respect of all zero rated supplies is governed by Section 54 of the CGST Act along with refund in other cases.

So, now there are two options available with supplier to SEZ

- 1) Supply with payment of IGST**
- 2) Supply under a Bond or Letter of Undertaking**

1. SUPPLY WITH PAYMENT OF IGST

Under this option ***person making supply to SEZ will charge IGST*** at applicable rate as may be applicable for supplies of Goods or Services made to SEZ or SEZ Developer. *Invoice will be Export Invoice in Indian Currency with a declaration that 'SUPPLY MEANT FOR SEZ DEVELOPER/UNIT WITH PAYMENT OF INTEGRATED TAX'.* This option will be beneficial for faster processing of Refund.

Refund in case of Supply of Goods or service to SEZ

In respect of **supplies of goods** to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the supplier of goods after such goods have been admitted in full in the Special Economic Zone for authorized operations, as endorsed by the specified officer of the Zone.

In respect of **supplies of services** to a Special Economic Zone unit or a Special Economic Zone developer, the application for refund shall be filed by the supplier of services along with such evidence regarding receipt of services for authorized operations as endorsed by the specified officer of the Zone – third proviso (b) to Rule 89(1) of CGST and SGST Rules, 2017.

2- SUPPLY UNDER A BOND OR LETTER OF UNDERTAKING (LUT)

Under this option there will be **no tax payment on the Supply** to SEZ and Invoice shall carry a declaration “SUPPLY MEANT FOR SEZ/ SEZ DEVELOPER UNDER BOND/LUT WITHOUT PAYMENT OF IGST”.

This option is best option where supplier is able to utilize Input Credit against other domestic supply. Under this option supplier can supply goods or services by executing a Bond or LUT hence Supplier is not required to pay IGST and claim subsequent refund. The Bond or LUT once given, will be valid for the period of 12 months, and should be furnished for each year in duplicate. Along with bond, a Bank Guarantee (Maximum 15% of bond amount) is to be furnished as a security under the Bond. However, no B.G. is required to be furnished along with LUT, however if there is breach in condition of LUT, there may be consequences to furnish Bank Guarantee.

As per **notification No.16/2017 –Central Tax**, the CBEC has specified the conditions and safeguards for the registered person who intends to give Letter of Undertaking,

As per above notification the following registered person shall be eligible for submission of Letter of Undertaking in place of bond:

- a. a status holder as specified in paragraph 5 of the **Foreign Trade Policy 2015- 2020**; or
- b. who has received the due foreign inward remittances amounting to a minimum of 10% of the export turnover, which should not be less

than 1 crore rupees, in the preceding financial year, and he has not been prosecuted for any offence under the **Central Goods and Services Tax Act, 2017** (12 of 2017) or under any of the existing laws in case where the amount of tax evaded exceeds Rs. 250lakh.

Refund of ITC

It has been clarified by the Government vide *Circular no. 18/18/2017-GST dated 16.11.2017*, that the notification having been issued under clause (ii) of the proviso to sub-section (3) of Section 54 of the CGST Act, 2017, *restriction on refund of unutilised input tax credit of GST paid on inputs will not be applicable to zero rated supplies, that is*

- a. Export of goods or services or both; or
- b. Supply of goods or services or both to a Special Economic Zone Developer of special Economic Zone Unit.

Accordingly, it has been clarified that subject to provisions of Section 54(10) of the CGST Act, 2017, a manufacturer will be eligible for refund of unutilised input tax credit of GST paid on inputs (other than input tax credit of GST paid on capital goods) in respect of goods manufactured and exported by him.

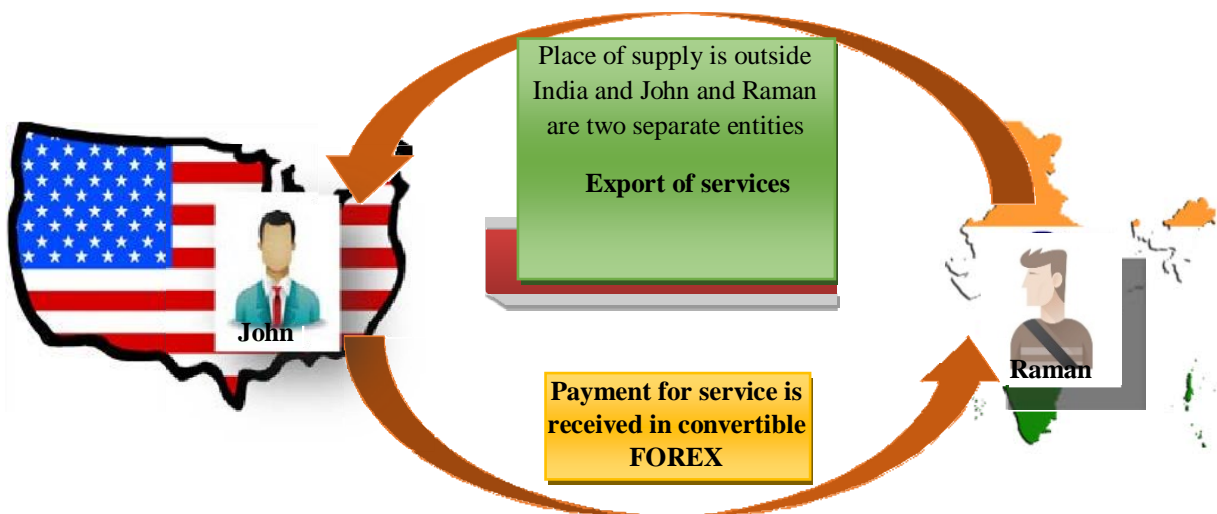
Further, Rule 89(2) (h) of CGST Rules, 2017 stipulate that refund claim on account of accumulated ITC (where such accumulation is on account of inverted duty structure) has to be accompanied by a statement containing the number 323 and date of invoices received and issued during a tax period.

Rule 89(3) of CGST Rules, 2017 also provide that where the application relates to refund of input tax credit, the electronic credit ledger shall be debited by the applicant in an amount equal to the refund so claimed.

Part - 6

Deemed Export

“Deemed Exports” refers to supplies of goods manufactured in India (and not services) which are notified as deemed exports under Section 147 of the CGST/SGST Act, 2017. The supplies do not leave India. The payment for such supplies is received either in Indian rupees or in convertible foreign exchange.



Features

- Deemed exports are not zero rated supplies by default.
- supplies notified as supply for deemed export will be subject to levy of taxes i.e., Tax need to pay on it.
- Cannot be supplied under a Bond/LUT like normal export.
- Refund of tax paid on the supply regarded as Deemed export is admissible to either the supplier or the recipient.
- The application for refund has to be filed by the supplier or recipient (subject to certain conditions) of deemed export supplies, as the case may be.

Supply notified as Deemed Export

In exercise of powers conferred under Section 147 of the CGST Act, the Central Government has issued **Notification no. 48/2017-Central Tax** dated

18.10.2017 wherein the following categories of supply of goods has been declared as Deemed Exports: -

1. Supply of goods by a registered person against Advance Authorisation*.
2. Supply of capital goods by registered person against Export Promotion Capital Goods Authorisation**.
3. Supply of goods by a registered person to Export Oriented Unit (EOU).
4. Supply of gold by a bank or Public Sector Undertaking specified in the notification No. 50/2017-Customs, dated the 30th June, 2017 (as amended) against Advance Authorisation.

*Advance Authorisation - An authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2015-20 for import or domestic procurement of inputs on pre-import basis for physical exports.

** Export Promotion Capital Goods Authorisation - An authorisation issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2015-20 for import of capital goods for physical exports.

Furthermore, ***Rule 89 of the CGST Rules, 2017 has been amended vide Notification No. 47/2017-C.T., dated 18-10-2017 to allow either the recipient or supplier of such supplies to claim refund of tax paid thereon.***

Refund of GST in case of Deemed Export

Rule 89 of the CGST Rules, 2017 as amended vide Notification No. 47/2017-Central Tax dated 18.10.2017 allows either the recipient or supplier of such supplies to claim refund of tax paid thereon.

- a. The recipient unit shall give prior intimation in a prescribed proforma in "Form-A" bearing a running serial number containing the goods to be procured, as pre-approved by the Development Commissioner and the details of the supplier before such deemed export supplies are made.

The said intimation shall be given to –

- (i) the registered supplier;
- (ii) the jurisdictional GST officer in charge of such registered supplier; and
- (iii) its jurisdictional GST officers.

- b. The registered supplier thereafter will supply goods under tax invoice to the recipient unit.
- c. On receipt of such supplies, the unit shall endorse the tax invoice and send a copy of the endorsed tax invoice to all the persons to whom intimation for goods procurement was send earlier.
- d. The endorsed tax invoice will be considered as proof of deemed export supplies by the registered person to unit.
- e. The recipient unit shall maintain records of such deemed export supplies in digital form, based upon data elements contained in “Form-B”. The software for maintenance of digital records shall incorporate the feature of audit trail. While the data elements contained in the Form-B are mandatory, the recipient units will be free to add or continue with any additional data fields, as per their commercial requirements.

All recipient units are required to enter data accurately and immediately upon the goods being received in, utilized by or removed from the said unit.

Note:

The digital records should be kept updated, accurate, complete and available at the said unit at all times for verification by the proper officer, whenever required.

Part - 7

FAQs

Sr. No.	Questions	Answers
1	After implementation of GST, will EOU scheme continue or not?	GST has no special dispensation for EOUs. As to whether they exist for any other purpose may be seen from the FTP
2	I was unregistered in Excise before and now in 18% slab? Can I take credit of stock if I don't have invoices?	Deemed credit will be available to you for stock as duty paying documents are not available, subject to provisions of Section 140(3) of the CGST Act, 2017 read with Rule of CGST Rules, 2017.
3	I was not required to register earlier, as I was availing SSI Exemption in Excise and did not register; how do I now take credit of stock lying with me?	Credit may be availed on the basis of document evidencing payment of duty on inputs as per Section 140(3) of the CGST Act, 2017 read with Rule 117(4) of CGST Rules, 2017.
4	As textile traders or manufacturers, with input stock without payment of Excise duty but GST being charged on final sale, will we get credit on such stock?	Credit on stock which was unconditionally exempt from Excise duty or was NIL rated shall not be available. Please see Rule 117(4) of the CCST Rules, 2017.
5	Can a spice manufacturer take ITC of Central Excise paid on packing material lying in stock as on 30th June, 2017?	If he has duty paying documents, then he will get full credit of Central Excise duty paid on stock held by him.
6	I made booking for hotel for a	If the invoice has been raised

	trip in October, for which Invoice has already been raised. Would I need to pay GST if payment will be done on 21st July?	and payment made before the 1st July, 2017 then GST will not be applicable.
7	If rent was received in advance before the appointed day and person was not liable to Service Tax then does RCM liability arise?	The liability of RCM under GST will arise only after 1st July, 2017.
8	Is there any format for invoice under GST? If yes, please provide the link of the same.	No, there is no particular format. Rule 46 of the CGST Rules, 2017 prescribes the particulars that a tax invoice should contain.
9	Whether from 1st July sequence of invoice no. will change? Or can we follow the same sequence?	Same sequence can be followed provided conditions laid down in Section 31 of the CGST Act, 2017 read with Rule 46 of CGST Rules, 2017 are met
10	Whether every registered person who intends to export requires fresh Bond/ I UA even if the same was issued on or before and is still live i.e., not one year old?	Circular No, 4/4/2017. Dated, 7-07-2017 clarifies this old LUI / Bond is valid till 31-7-2017, after which fresh LUI / bond in the new format is required to be submitted.
11	Some assessee had multiple central excise re registrations under the earlier regime	Circular No. 4/4/2017-GST, 7-7-2017 this. Old LUT/bond is valid till 31-7-2017, after which fresh LUI / bond in the new format is required to be submitted.



THE GST SAGA & IT INDUSTRY

A handbook on GST - IT Industry

'The GST Saga & IT Industry' focuses on particularities of GST and presents a brief snapshot of the GST Implications on the IT industry covering a few rising issues and possible solutions along with practical aspects & current scenario of IT Industry.

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Foreword

World's largest democracy - **India embraced GST- Goods and Service Tax on 1 July 2017** to rationalize the indirect taxes consolidating more than 12 taxes. Promoting **one nation one tax**, GST was introduced by repealing much tangled tax regime existing previously to reduce the various ill effects like *cascading effect, double taxation of certain transaction as goods and service, no proper flow of credit in CENVAT after manufacturing stage, non-integration of VAT and service tax, non- inclusion of several local levies in State VAT* and most importantly *complicated compliances*.

On the 4th anniversary of GST, we aim at doing a reality check for the stakeholders. This book discusses the benefits and nuances of the GST law, what was aimed for and how far did we come after launch of GST in Information Technology Sector. This is a complete guide for the rising issues and solutions in incorporating GST with Information Technology sector as well as covering the practical aspects & current scenario of IT Industry.

We congratulate and salute to the ITRAA Team for their efforts in bringing out this publication for the dissemination of knowledge amongst its readers.

We pray all good health to all the members along with their nears and dears of ITRAA team. It is the support of ITRAA mentor panel that we decide our vision. Also trust and hope that with the constant and unflinching endeavor of all fellow professionals, this simple tool of communication will grow into an effective and valuable knowledge base and shall help to achieve greater results.

A special thanks to "CA. Vikas Banka Ji" for his continued support and enlightening the authors in guiding and completing this book.

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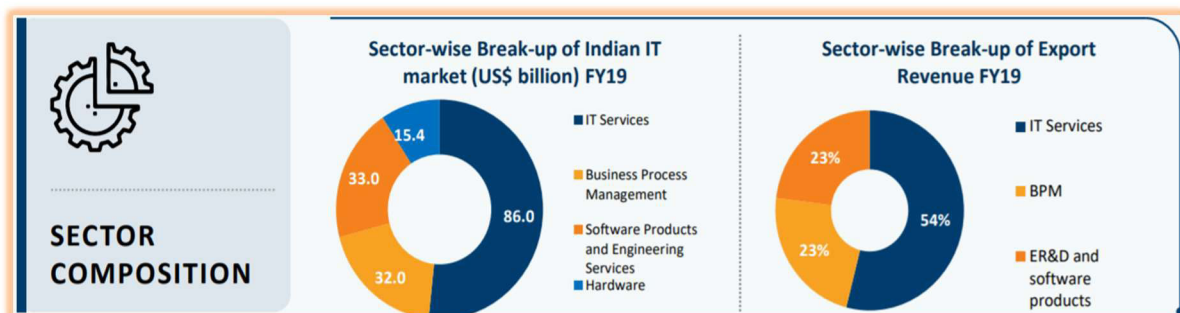
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1.Introduction - Information Technology & Indian Economy

Change is the essence of life, but there is no guide as to speed the of change. Change’s speed has been accelerated worldwide especially in last 5 years. **India - world’s sixth largest economy**, once said to be agriculture-based economy has paved its way to a digital economy. The country’s infrastructure is taking the front seat in economy to pace up its growth. Information technology has played a major role in development of Indian economy.

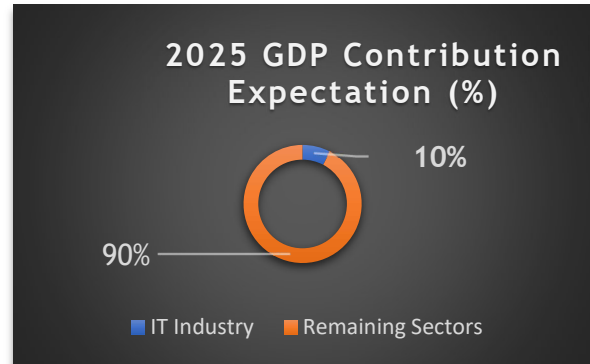
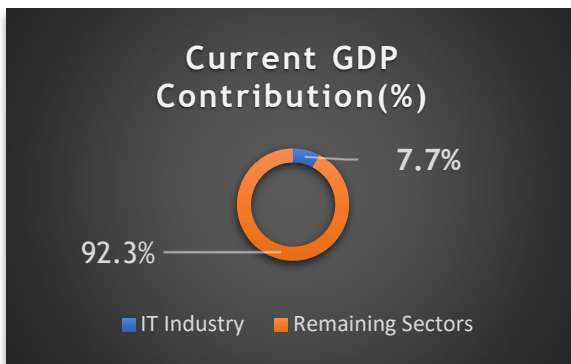
Indian economy stands at ₹ 195.86 lakh crore (\$ 2.71 trillion). Information Technology in India is an industry consisting of two major components: IT services and Business process outsourcing (BPO). **The sector has increased its contribution to India's GDP from 1.2% in 1998 to 7.7% in 2017.** According to NASSCOM, the sector aggregated revenues of US\$180 billion in 2019, with export revenue standing at US\$99 billion and domestic revenue at US\$48 billion, growing by over 13%. As of 2020, India's IT workforce accounts for 4.36 million employees. The United States accounts for two-thirds of India's IT services exports. According to Gartner estimates, IT spending in India is estimated to reach US \$ 93 billion by end of 2021.

The IT & BPM industry’s revenue is estimated at US\$ 194 billion in FY21, an increase of 2.3% YoY. The domestic revenue of the IT industry is estimated at US\$ 45 billion and export revenue is estimated at US\$ 150 billion in FY21. **Indian software product industry is expected to reach US\$ 100 billion by 2025.** Indian companies are focusing to invest internationally to expand global footprint and enhance their global delivery centers. In line with this, in February 2021, Tata Consultancy Services announced to recruit 1,500 technology employees across the UK over the next year. The development would build capabilities for TCS to deliver efficiently to the UK customers.



The data annotation market in India stood at US \$ 250 million in FY20, of which the US market contributed 60% to the overall value. The market is expected to reach US \$ 7 billion by 2030 due to accelerated domestic demand for AI. In Union Budget 2021, the allocation for IT and telecom sector stood at ₹ 53,108 crores (US \$ 7.31 billion). Ministry of Home Affairs and the National Critical information Infrastructure Protection Centre are working on new national strategy to strengthen the country's cyber security.

The Indian IT software and service industry has emerged as one of the fastest growing sectors in the Indian economy, with a growth rate accelerating year on year. **India's IT industry contributed around 7.7% to the country's GDP and is expected to contribute 10% to India's GDP by 2025.**



India is a preferred destination for IT and BPM (*Business Process Management*) in the world, it continues to be a leader in global sourcing industry with 52% market share (as of FY 2020) in service exports from the country. Such big chunk of share of India in worldwide IT creates a great opportunity for Indian government to jack up the revenues.

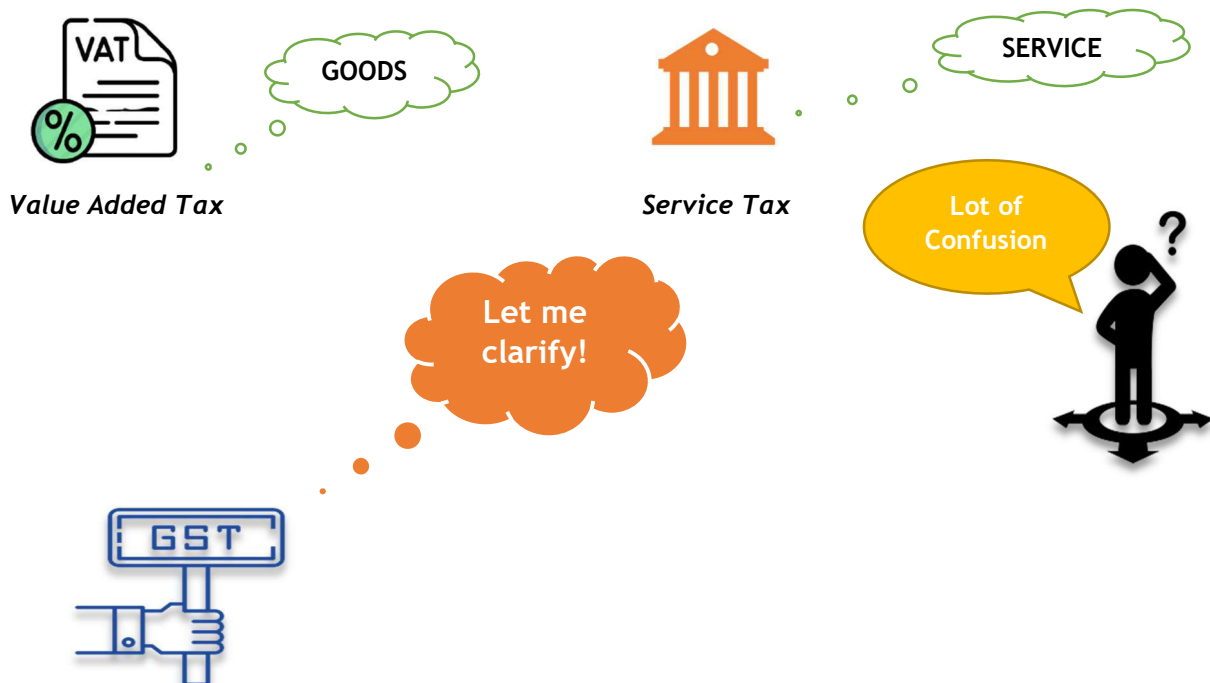
2.IT Sector - Goods or Service

Various kinds of products services available in the IT sector:

- a. Hardware products
- b. Software products - pre-packaged products and customized products
- c. Business Process Outsourcing and Knowledge Process Outsourcing Service
- d. Online Information Database Access and Retrieval Service

Hardware products qualifies to be Goods as per definition in GST act as these are movable property. In pre- GST regime also, it was taken to be goods as it is movable (capable of being moved from one place to another) and marketable (capable of being sold in the market). Thus, the Hardware is status quo in terms of the treatment.

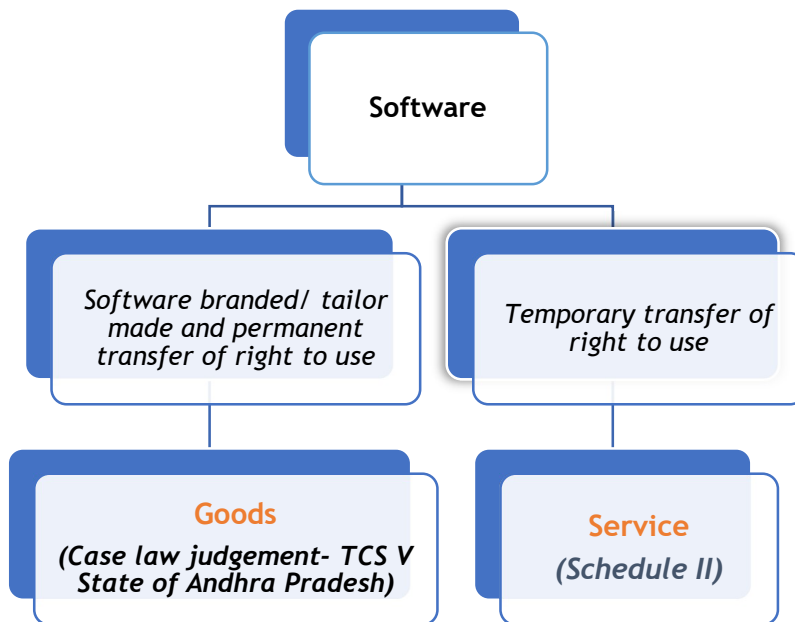
Software- There are 2 types of software products being offered, pre-packaged software and customized software. In pre-GST regime, the software was considered as both goods and service (sometimes goods and sometimes services as decided by various case laws time to time). There are many case laws considering the software as goods while others as services. There was no clear picture for taxability of software. Thus, both VAT and Service tax applies to it, leading to double taxation. In GST, situation has been cleared by law. The software is considered as goods or service as per Schedule II.



Though the CGST Act defines *the development of software as ‘service’, software in physical form (branded as well as tailor-made), ‘Information Technology Software’ is ‘goods’* in Customs Tariff Act under heading 8523 80 20. The HSN classification is ‘Any Chapter’- Sr. No. 452P of Schedule III of Notification No.1/2017-CT (Rate) and 1/2017-IT (Rate) both dated 28-6-2017 inserted w.e.f. 15-11-2017.

This has been clarified in various judgements like Tata Consultancy Services V State of Andhra Pradesh, it has been held that canned software (off the shelf) which is sold in tangible packaging like, CDs, DVDs, USB Drivers, whether branded or tailor made, will be classified as goods. Even though the copyright of the development of program remains with the developer company, the copies of software shall be considered as goods.

Temporary transfer of IPR of software is service as per S. No. 5(2)(d) of Schedule II. The GST rate is 18% (9% CGST and 9% SGST/UTGST) or 18% IGST. Temporary or permanent transfer or permitting use or enjoyment of Intellectual Property Right (IPR) in respect of software falls under service group 997331.



Thus, GST has benefitted the stakeholders as it has cleared the position as to software is goods or service.

3. Supply

In case of transfer of Hardware/ Software/ BPO-KPO Service/ OIDAR service/ ERP implementation service is considered as supply, if it falls under the definition u/s 7 read with Schedule I and II of CGST Act, 2017.

However, it must be noted that, software in physical form is considered to be goods and is also classified under HSN of goods. As per Schedule II, the development of software is taken to be service. Thus, the Section 7, clearly states the transfer/ sale of software or service of development of software, with- without (as per Schedule II) consideration as supply.



4.Nature of supply - Inter/ Intra state



The Goods and Service Tax has 2 components in it State tax and Central tax. It becomes important to understand *which state does this revenue belongs* to, this is decided by the nature of transaction. The nature of supply is dealt under section 7-13 of IGST Act 2017. The aim of determining the nature of supply is

to acknowledge income for different states. It is this part of GST law which states that GST is destination-based tax, where the revenue for supply is accorded to the state where the goods are services are destined.

In case where location of supplier and place of supply are in 2 different states, in a state and in UT, in 2 different UT then such supplies are considered as Interstate supplies. In such cases, the State and Central GST both are levied. The state GST is the one which is decided as per section 10 or 11 of CGST Act, 2017 in case of goods and section 12 or 13 of CGST Act, 2017 in case of services. While where location of supplier and place of supply are in same state/ UT, in such case the supply is in nature of Intra state supplies. IGST is levied on intra state supplies. This IGST again, has state and central government component.

Determining place of supply for goods in case other than international supplies

[Section 10 of IGST Act, 2017]:

Section 10 (1) (a) In case of supply of goods which involve movement, place of supply shall be location of goods where movement of goods terminates.

Section 10 (1) (b) Where software is supplied as a part of **Bill to- ship to model**, place of supply shall be **principal place of office of third party** on whose direction goods are shipped to the recipient.

Section 10 (1) (c) Where goods do not involve movement, place of supply shall be location of goods at the time of delivery.

Section 10 (1) (d)

Section 10 (1) (e)

Provisions relating to international supply of service are contained in Section 11

In case of import of software (in form of goods), location of supply shall be location of importer. For exports, location outside India shall be place of supply.

Determining place of supply for services in case other than international supplies [Section 12 of IGST Act 2017]:

There are various provisions in relation to supply of service on case-to-case basis dealing with various sector.

Section 12 (1)

Section 12 (2) Place of supply shall be location of recipient, if the recipient is registered under GST or recipient's address on records exist. Otherwise, it shall be considered as location of supplier.

.....

Section 12 (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

Provisions relating to international supply of service are contained in Section 13

Section 13 (1)

Section 13 (2) In case of import or export of service, location of supply shall be location of recipient if known in ordinary course of business, else it shall be location of supplier.

.....

Section 13 (12) The place of supply of service shall be the location of recipient of service. For the purpose 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, they are

- (a) The location of address presented by the recipient of service via internet is in 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 service settles payment has been issued in the taxable territory,
- (c) The bill address of recipient of service is in the taxable territory,
- (d) The internet protocol address of the device used by the recipient of service is in the taxable territory,
- (e) The bank of recipient of service in which the account used for payment is maintained is in the taxable territory,
- (f) The country code of the subscriber identity module i.e., SIM Card, used by the recipient of service is of taxable territory,
- (g) The location of the fixed land line through which the service is received by the recipient is in taxable territory.

Import and Export of Goods:

As per the GST law, import has been defined as bringing of goods into India from a place outside India. Export is taking goods from India to any place outside India. Thus, in case of import and export, nature of supply shall be interstate supply where IGST be levied in addition to the custom duties levied in accordance



It is imperative to note that *IGST is levied and collected at the point when duties of custom are levied on the said goods* under customs act. Custom duty is levied when importation is complete, when goods become part of mass of goods in the country, i.e., at the time of filing bill of entry. ***Thus, IGST is levied and collected at the time of filing bill of entry.***

Taxable value is another concern for levy of GST on imported goods. The taxable for levying IGST shall be *assessable value of imported goods determined under section 14* of Customs Act 1962 plus custom duty levied under the act and any other sum chargeable on the said goods under any law for time being in force as custom duty excluding IGST and GST compensation Cess.

Where goods are imported & deposited with custom bonded warehouse on filing into bond bill of entry, without payment of custom duty; Importer is at liberty to transfer the ownership of goods to other person while goods remain deposited in warehouse.

However, supply of goods before clearance for home consumption is neither supply of goods nor service as per section 8(a) of Schedule III of CGST Act and the value of such in-bond sales is not included in value of exempt supply for purpose of reversal of ITC under Rule 42 and 43.

Value of imported goods in case of supply of warehoused goods is determined as under:

Value for = (a) Transaction value

IGST or

(b) Value determined at the time of filing into bond bill of entry under section 14 of customs act + Basic custom duty + any other law from time being in force excluding GST and Compensation Cess.

Whichever is higher.

High Sea Sales and Third country shipments = Non- GST Supplies

'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the high sea sale of the goods, the customs declarations, i.e., bill of entry etc. is filed by the person who buys the goods from the original importer during the said sale. However, 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 (high sea sale) is **neither treated as supply of goods nor supply of services in terms of paragraph 8(b) of Schedule III to the CGST Act, thus it is non-GST supply.**

Further, value of such high sea sales is not included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43 of CGST Rules [Explanation to section 17(3) of the CGST Act]. As per section 14 of the Customs Act, 1962, the value for the purpose of charging customs duty on imported goods is the value at the time of importation, i.e., at the time of filing of the bill of entry. Further, IGST on imported goods is also levied at the time of filing of bill of entry on assessable value and custom duty.

Therefore, in case of high sea sales, the assessable value of imported goods for levying customs duty and IGST is determined on the basis of the price paid by the last high sea sales buyer who files the bill of entry for home consumption. **Circular No. 33/2017 Cus dated 01.08.2017** has clarified that 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.

Third country shipments or triangular trade is another common practice in international trade whereby goods move from one country to another without touching India; only invoicing is done by the registered person in India. Paragraph 7 of the Schedule III to CGST Act provides that 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 (third country shipments) is treated neither as a supply of goods nor a supply of services. Thus, there is no GST liability on such sales.

Further, value of such third country shipments is not included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43 of CGST Rules [Explanation to section 17(3) of the CGST Act].

Goods imported by a unit or a developer in the Special Economic Zone (SEZ) for authorised operations are exempted from the whole of IGST leviable under section 3(7) of the Customs Tariff Act, 1975 vide **Notification No. 64/2017 Cus dated 05.07.2017.**

Goods imported by Export Oriented Undertaking (EOU) attract liability to customs duty. Import of goods by 100% EOU's are governed by **Notification No. 52/2003 Cus** as amended. EOUs are allowed duty free import of goods (exempt from Customs duties, IGST & GST Compensation Cess) under the said notifications. However, exemption from IGST will be available only till 31.03.2021.

For transaction of import of service to be taxable, it needs to be a “supply”. While the main definition of “supply” under section 7 of the CGST Act covers supply of goods or services for a consideration in the course or furtherance of business, clause (b) thereof includes services imported for a consideration even if the import is not in the course or furtherance of business. Supply under the IGST Act has been defined to mean the same as the supply under section 7 of the CGST Act.

As per section 7(1)(b) of the CGST Act, import of services for a consideration whether or not in the course or furtherance of business, is considered as a supply. Thus, in general, import of services without consideration is not considered as supply. However, business test is not required to be fulfilled for treating import of service, made for a consideration, as supply.

Furthermore, in view of the provisions contained in Schedule I to the CGST Act, the import of services by a person from a related person or from his establishment located outside India, in the course or furtherance of business is treated as **supply** even if it is **made without any consideration**.

Combined reading of aforesaid provisions with the provisions of section 14, import of free services from Google and Facebook by all of us, without any consideration, is not considered as supply. Import (downloading) of a song for consideration for personal use would be a supply of service, even though the same is not in the course or furtherance of business.

Import of some services by an Indian branch from their parent company outside India, in the course or furtherance of business, even if without consideration, will be a **supply**. IGST Act defines import of services as supply of any service where the supplier is located outside India, the recipient is located in India, and the place of supply of service is in India.

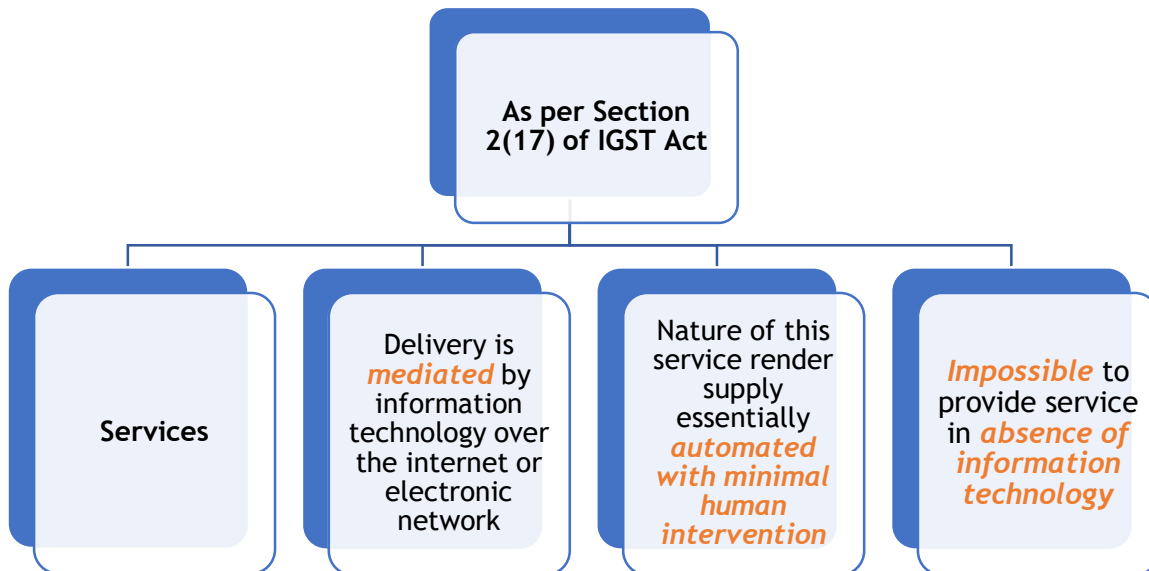
In case of importation of service, the recipient of imported service who is located in India (other than non-taxable online recipient of OIDAR service) is the person who has to pay **IGST on the service under reverse charge** [Section 5(3) of the IGST Act read with serial number (1) of Notification No. 10/2017 IGST (R) dated 28.06.2017].

In case of importation of notified services through ECO, ECO is liable to pay IGST.

However, in the case of Mohit Minerals (P) Ltd. v. UOI, the Hon'ble High Court held that no IGST is leviable on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods through vessel from a place outside India up to the customs station of clearance in India. Entry number 9(ii) of Notification No. 8/2017 IT(R) and Entry number 10 of Notification No. 10/2017 IT(R) have been thus declared as ultra vires the IGST Act, due to lack of legislative competence and accordingly held to be unconstitutional. It may be noted that in the instant case, the contract of import of goods was on CIF basis, i.e., the contract for transportation was entered into by the seller (foreign exporter), and not the buyer (importer). Thus, the importer was not the recipient of the service of transportation of the goods.

5.OIDAR Service

Online Information Database Access and Retrieval services (OIDAR) is a category of services provided through the medium of internet and received by the recipient online without having any physical interface with the supplier of such services.



For any supply to be taxable under GST, the place of supply in respect of the subject supply should be in India. In case, **both the supplier of OIDAR service and the recipient** of such service are in India, the place of supply would be the location of the recipient of service, i.e., it would be governed by the default place of supply rules and would be liable to GST under forward charge.

However, OIDAR services can also be provided online even from a remote location outside the taxable territory. In such cases also - where the supplier of OIDAR service is located outside India and the recipient is located in India - the place of supply would be India and the transaction would be amenable to tax under reverse charge if the recipient is a business entity (excluding Government, Governmental authority or Local authority). Thus, in such cases the recipient located in India, will be liable to pay IGST under reverse charge and undertake necessary compliances.

Now what if the supplier is located outside India and the recipient in India is an **individual consumer!** In such cases also, the place of supply would be India and the transaction would be amenable to levy of GST, but the *problem would be, how such tax would be collected*. It would be impractical to ask the individual in India to register and undertake the necessary compliances under GST for a one-off purchase on the internet. However, if a similar service is provided by an Indian service provider, from within the taxable territory, to individual consumer in India, the same would be taxable under forward charge.

Therefore, overseas suppliers of such services would have an unfair tax advantage should the services provided by them be left out of the tax net. For such cases the IGST Act provides that on **supply of OIDAR services** by any person **from a location outside India to an unregistered recipient in India** for purposes unrelated to business or Governmental authority or local authority [i.e., profession, or to a government, to a non-taxable online recipient (See definition)], the **supplier who is outside India is liable to pay IGST** on the supply.

In case of importation of OIDAR services by a *non-taxable online recipient*, supplier of OIDAR services is liable to pay IGST. Now if an intermediary located outside India arranges or facilitates supply of such service to a non-taxable online recipient in India, the *intermediary* would be treated as the **supplier** of the said service who must **get registered in India** and **pay IGST** on the supply.

However, if the intermediary has no role to play in payment or authorizing services of delivery or determining terms of supply, and if his invoice clearly identifies the service and its supplier, the responsibility for registration remains with the supplier.

Indicative List of OIDAR Services

a. Website supply, web-hosting, distance maintenance of programmes and equipment

- ① Website hosting and webpage hosting
- ① Automated, online and distance maintenance of programmes
- ① Remote systems administration
- ① Online data warehousing where specific data is stored and retrieved electronically
- ① Online supply of on-demand disc space

b. Supply of software and updating thereof

- ① Accessing or downloading software (including procurement/ accountancy programmes and anti-virus software) plus updates
- ① Software to block banner adverts, otherwise known as Banner blockers
- ① Download drivers, such as software that interfaces computers with peripheral equipment (such as printers)
- ① Online automated installation of filters on websites
- ① Online automated installation of firewalls

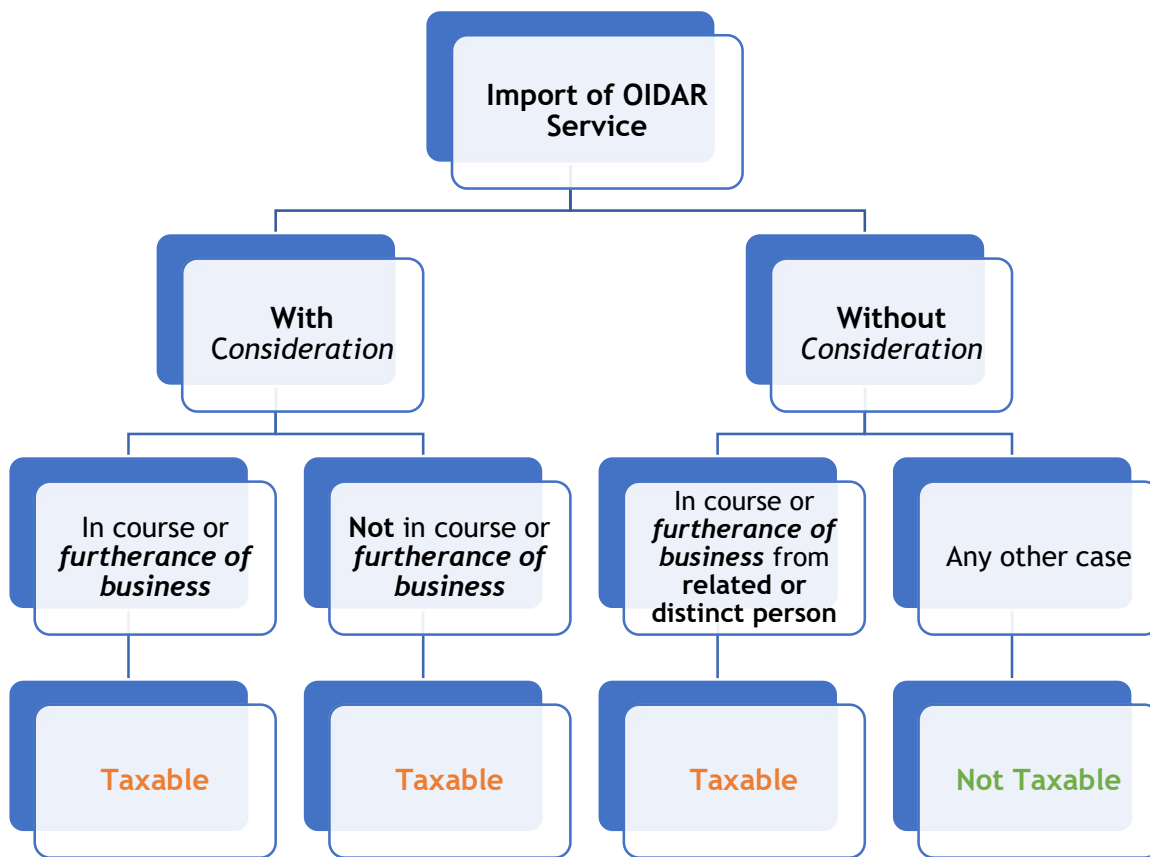
c. Supply of images, text and information and making available of databases

- ① Accessing or downloading desktop themes
- ① Accessing or downloading photographic or pictorial screensavers
- ① The digitized content of books and other electronic publications
- ① Subscription to online newspapers and journals
- ① Weblogs and website statistics
- ① Online news, traffic information and weather reports
- ① Online information generated automatically by software from specific data input by the customer, such as legal and financial data, (in particular, data such as continually updated stock market data, in real time)
- ① The provision of advertising space including banner ads on a website/web page
- ① Use of search engines and internet directories

d. Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events

- ① Accessing or downloading of music on to computers and mobile phones
- ① Accessing or downloading of jingles, excerpts, ringtones, or other sounds

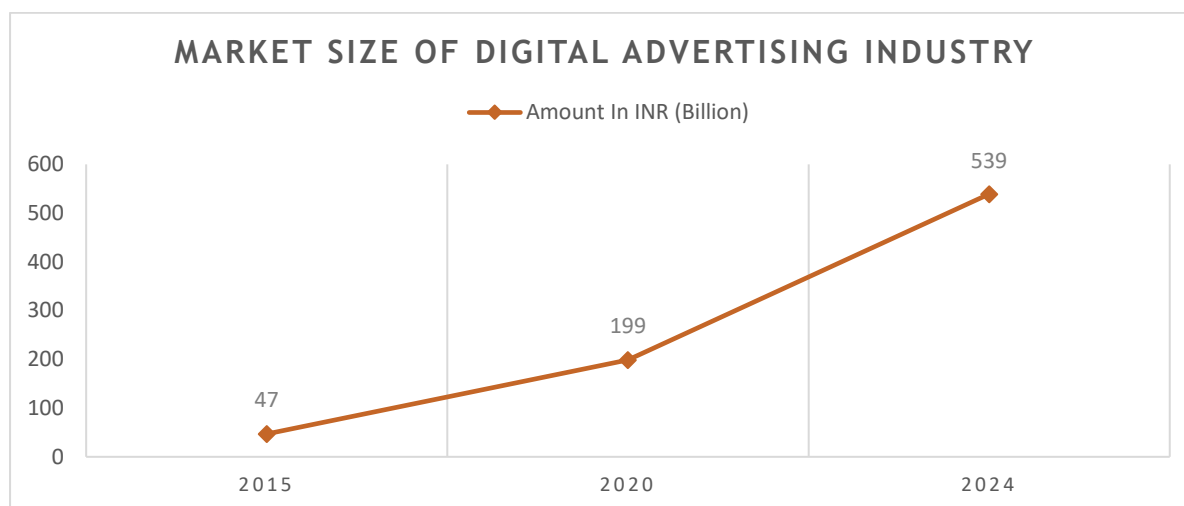
- ① Accessing or downloading of films □ Downloading of games on to computers and mobile phones
- ① Accessing automated online games which are dependent on the internet or other similar electronic networks, where players are geographically remote from one another



Initially, when the Internet was induced, it appeared to be an astounding technology that allow affiliation of academicians and IT personnel who later on opened up wider avenues developing World Wide Web, email, texting, social media and apps in such a way they are being employed today. The Internet of Things (IoT) developments are now not limited to personal interactions only, it had been rapidly evolved and transformed itself into Industrial Internet of Things (IIoT).

Online Advertising

The Digital India Initiative of Prime Minister Sh. Narendra Modi, penetration of smartphones at affordable prices and reduced data tariffs have boosted the online advertisement sector. The Digital Advertising Industry across India had a market size of around **199 billion Indian Rupees in the Financial Year 2020**, up from just **47 billion Indian Rupees in the Financial Year 2015** and is projected to **grow upto 539 billion rupees by Financial Year 2024**, indicating a big growth in the Industry Segment.

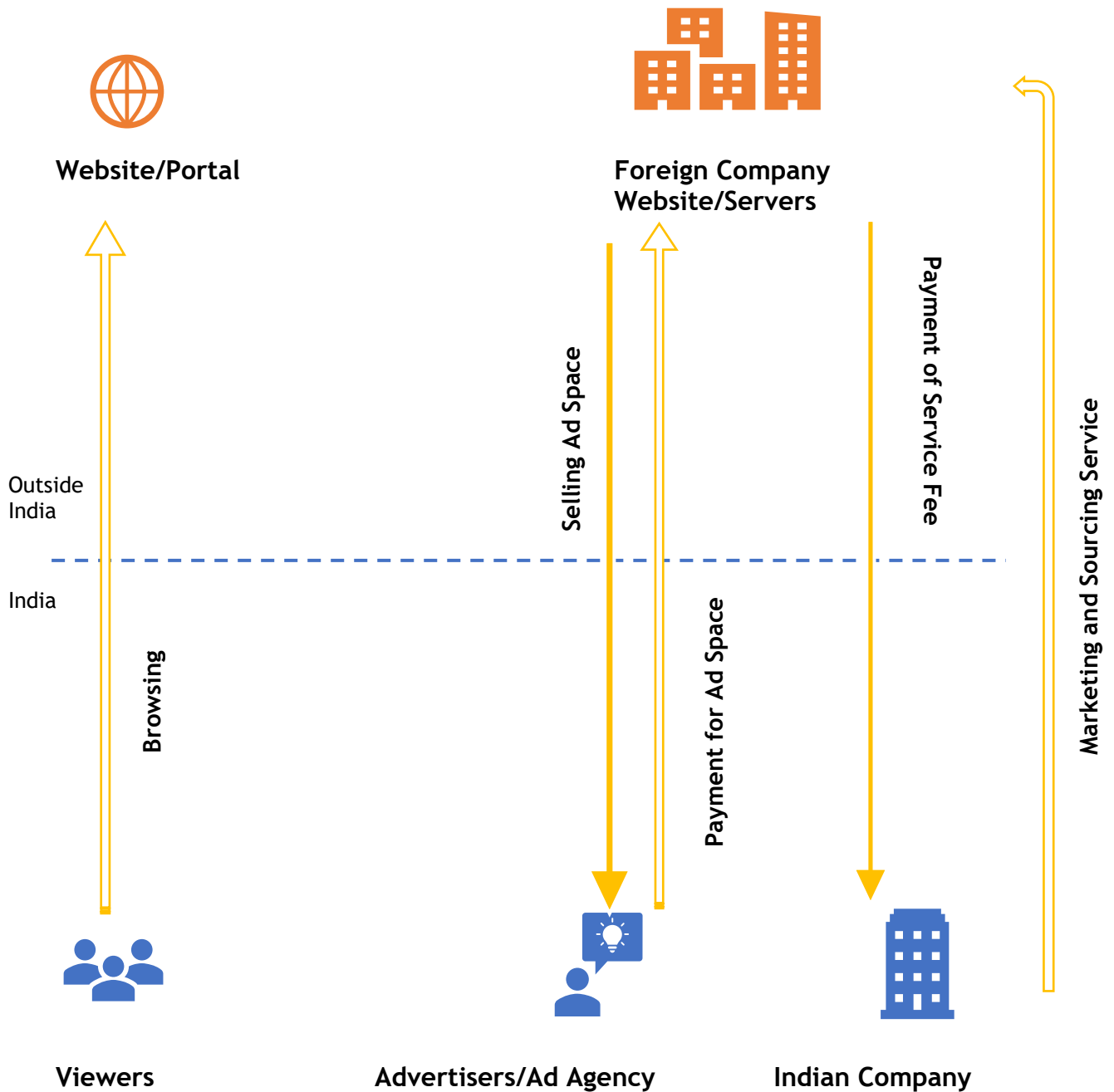


Post the Covid -19 crisis, many new opportunities in digital advertising have emerged across various new platforms such as OTT, social media, and Online Gaming, etc and there has been an upswing in the demand for digital services across the various sectors with the rapidly changing consumption habits of consumers & business users. Also, with the multi-fold increase in awareness, access and monetisation opportunities, many businesses are expected to focus more on digital advertising rather than the traditional methods. Since people are forced to work remotely, business entities have to stimulate their pace for digitalisation, catalysed by cloud automation, artificial intelligence, etc.

Gone were the days when people were reluctant to grow, but now in today's world we see collaborations, take over & amalgamations on almost daily basis. The intersection of Information technology with every business sector be it media, banking and finance, telecommunications, insurance, is exhilarative today.

The genesis of Voice based search technology has elevated consumption of Video and vernacular content that will lead to increased digital engagements w.r.t. new ad formats such as location- based & targeted ads based on user behaviour data analysis.

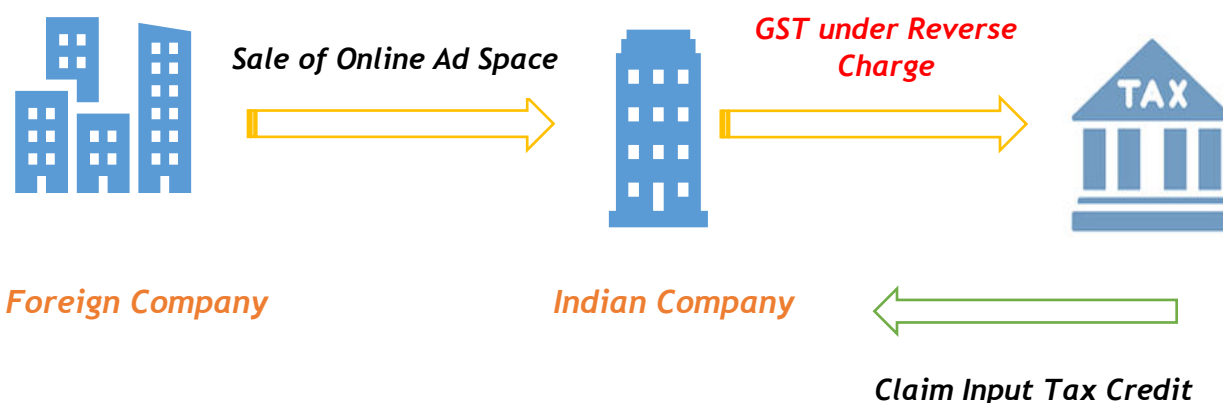
The online advertisement players (both international as well as domestic players) have been following heterogeneous business models in India like distribution of Ad space through Indian Subsidiaries, Selling of Advertisement Space directly to Indian customers, licensing of platforms to Indian Subsidiaries which sell ad space in India, etc.



GST Implications

In Case of Foreign Co.

Where the Foreign Company is involved in dealing with selling of Ad Space to Customers in India and the supplier of service is located outside India while the recipient is located in India subject to the place of supply provisions, it is considered as Import of Services in India. And, the Indian Company is liable to pay **GST under Reverse Charge Mechanism** and can **avail the credit of taxes paid**, subject to Input Tax limitations.



Under GST Law, the service of rendering Ad space qualifies as Online Information and Database Access or Retrieval (OIDAR) Services. In such instances, the transaction attracts GST under Reverse Charge, where the services are rendered to the business entity. However, if the services are rendered to an unregistered customer, then Foreign Company shall discharge GST obligations by undertaking GST Registration.

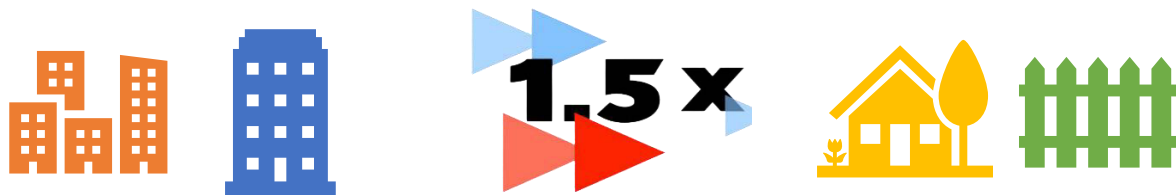
In Case of Indian Co.

Where the services are provided by an Indian entity to a customer outside India, then it shall be treated as export of services subject to certain conditions. In instances, where the services are rendered by an Indian company to foreign company, it is important to understand the place where services are supplied. Although, the place of supply depends on case-to-case basis, the universal provision of place of supply is the location of Service Recipient.

In case, where the services are provided by an Indian Company to Foreign Company qualifies as an export of services, then it can be done with payment of GST and ITC can be utilized for paying the same and excess of it can be taken by filing Refund application or it can also be done without payment of taxes, (by filing Letter of Undertaking with the GST Department) and Input Tax Credit related to exports can be claimed as refund by Indian Company.

Over The Top (OTT)

The new ‘At Home’ environment has led to a remarkable rise in over-the-top viewership including paid subscriptions, as compared to the pre-covid period. SVoD (Subscription Video on Demand) has recorded a **55 - 60% year-on-growth** in India in 2020 as per the Boston Consulting Group (BCG) Report and the consumer survey shows 50% + new users likely to stick post- covid.



Metro/ Tier 1 Regions

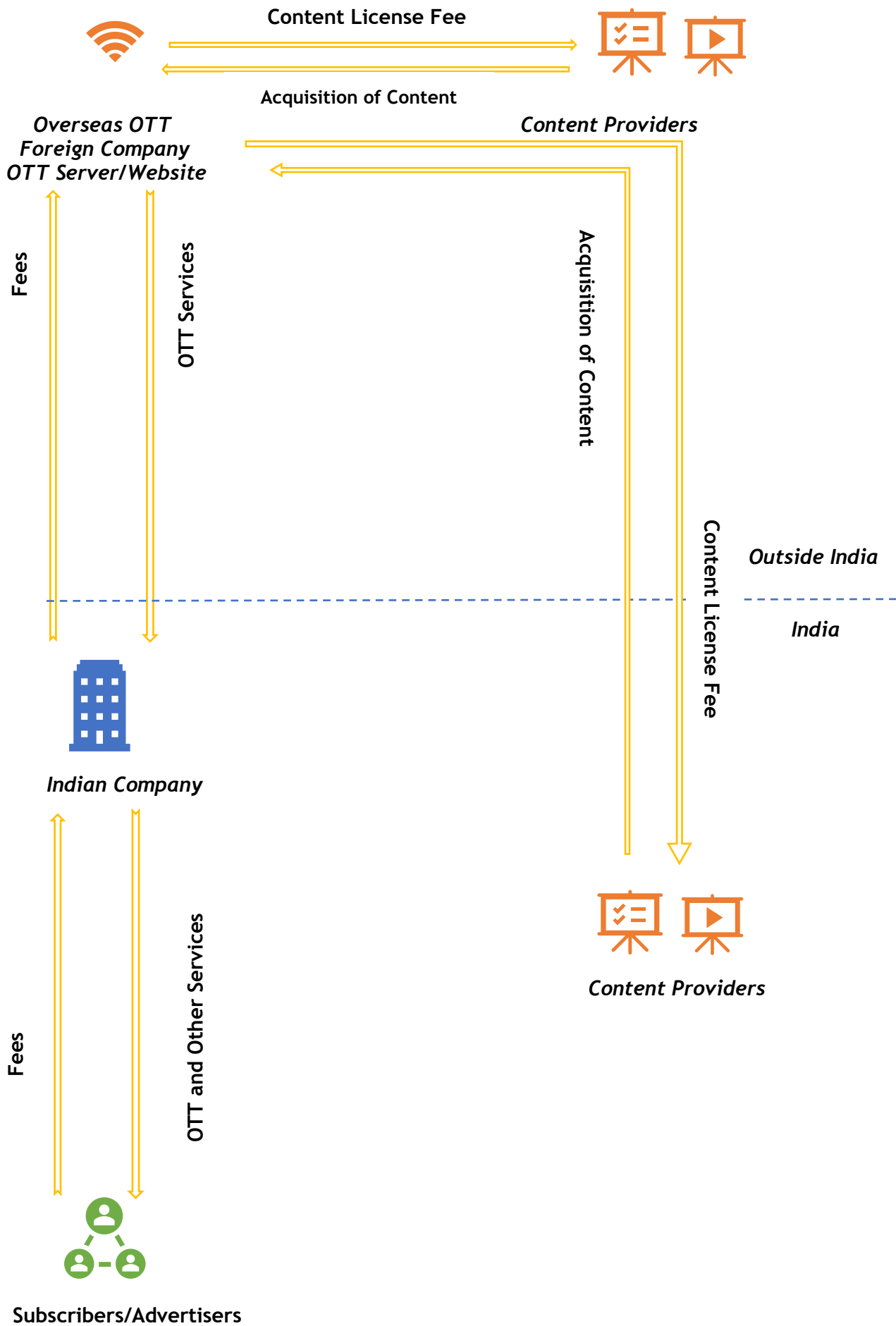
Tier 2/3/4 Regions

The report also states that the growth rate of new users in Tier 2/3/4 regions was 1.5x that of the growth rate in Metro & Tier 1 during Covid.

In last few years, India has seen an escalated consumption of personal entertainment content on OTT Platforms. Various distinctive factors such as affordable data, smartphone prices and increased use of Smart TVs have amplified use of OTT services. The market now considers OTT as a core technology to deliver content and with the rise of OTT and exposure to international content, the local viewers expect such quality content leading to local players to upgrade their Value battle by creating relevant & quality content at competitive Indian prices.

OTT players (International and Domestic Players) have been following assorted business models in India like providing OTT services directly to Indian Customers, sub- licensing OTT platforms to an Indian Subsidiary, distribution of OTT services through an Indian Subsidiary, etc. OTT players also have different revenue strategies like advertisement revenue, subscription revenue, or a combination of both.

With an estimate of **45 % growth**, India is likely to emerge as the **second biggest OTT market** after US (United States) to reach a value of **₹ 138 billion by the end of 2023**. As per Federation of Indian Chambers of Commerce & Industry report, it projects 30-35 million OTT Subscribers by the end of 2021, making OTT platforms the main streamline media distribution channel.



Revenue Model of OTTs & their GST Implications

Distributor Model

The Overseas OTT Foreign Company (hereinafter termed as Foreign Company) owns and/or operates an OTT Platform including the content hosted on a server outside India and the foreign company appoints an Indian Subsidiary/group company/third party (hereinafter termed as Indian Company) to distribute OTT Subscriptions and/or advertisements for the Indian market.

Additionally, the Indian Company partners with telecom service providers and play stores who assist Indian Company in referring subscribers for a fee. These partners collect subscription fees from the subscribers and remit them to Indian Company after retaining their commission or revenue share/fees. The Indian Company also gets into arrangements with the partners in India to address any latency related issues.

The Foreign Company acquire license from content providers located outside India and in India on perpetual basis. In few cases, Indian Company also provides local/regional content sourcing/moderation services while the content rights are directly acquired by Foreign Company.

Direct Model

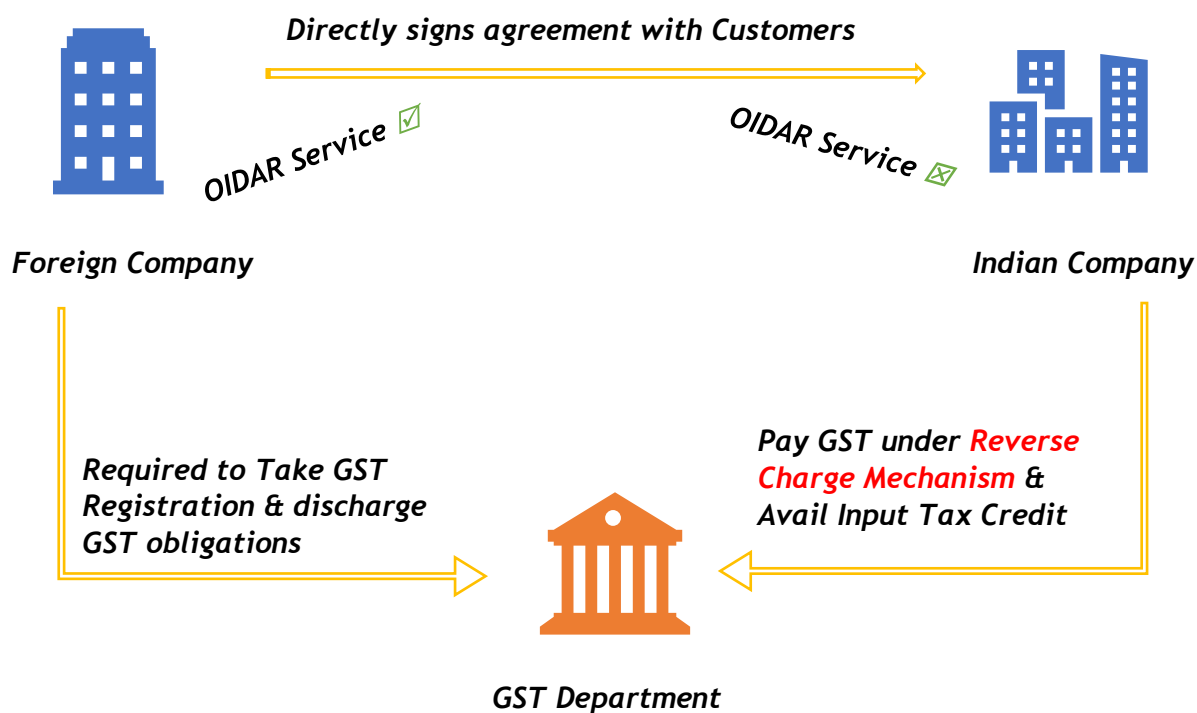
Under this model, the Foreign Company directly sell subscriptions/advertisements straightaway to Indian customers. It may have its own Indian Subsidiary/group company that delivers marketing support services, content sourcing/moderation services, collection agent services, etc.

GST Implications

In the case of Foreign Company

Subscription Revenue/ Advertisement Revenue

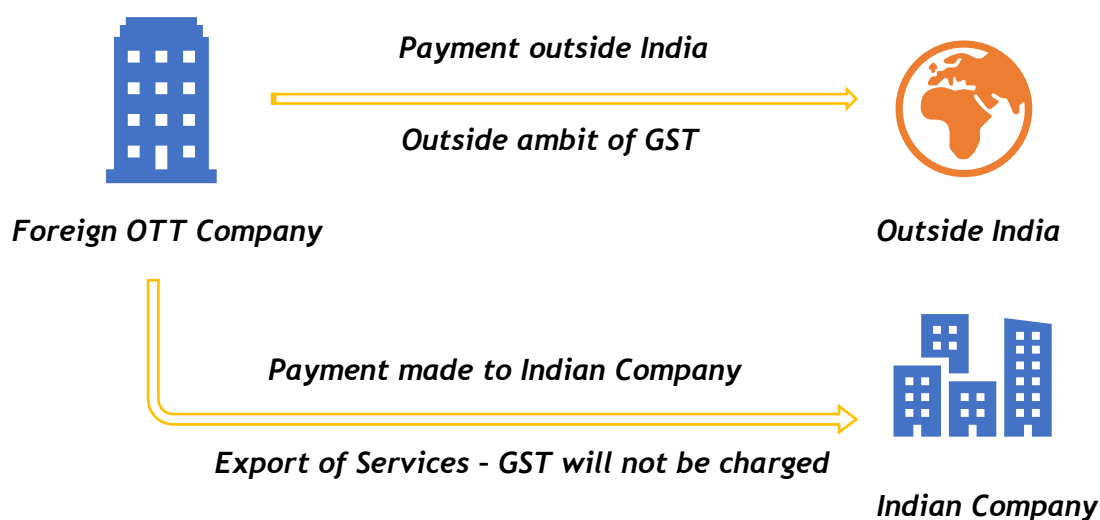
In case the Indian customer straightaway signs an agreement with Foreign Company and pays subscription fee, it is required to assess whether the services provided by Foreign Company to be recognized as OIDAR Services. In case, it is considered as OIDAR Service, the Foreign Company is required to take registration in India and fulfil the GST obligations. In the distributor model or in case services are not recognized as OIDAR, GST may liable to be paid by Indian Company/partners under the Reverse Charge Mechanism, and Input Tax Credit Claim can be taken off, subject to ITC restrictions.



Likewise, in the case of recipient of advertisement revenue from Advertisers/ Indian Company, the applicability of OIDAR provisions needs to be determined depending on nature of Advertisement activity.

Payments to Content providers, Play Stores, Payment gateway service providers, etc.

In this case, the payments could be made to Service Providers in India/outside India by Foreign Company and in case payment is made outside India for services rendered outside India, the same could be considered as outside the ambit of GST and may not be chargeable to GST. However, if service received from Indian Company, it needs to be determined whether it can qualify as export of services, subject to fulfilment of export conditions. If yes, then GST will not be charged on export of services.

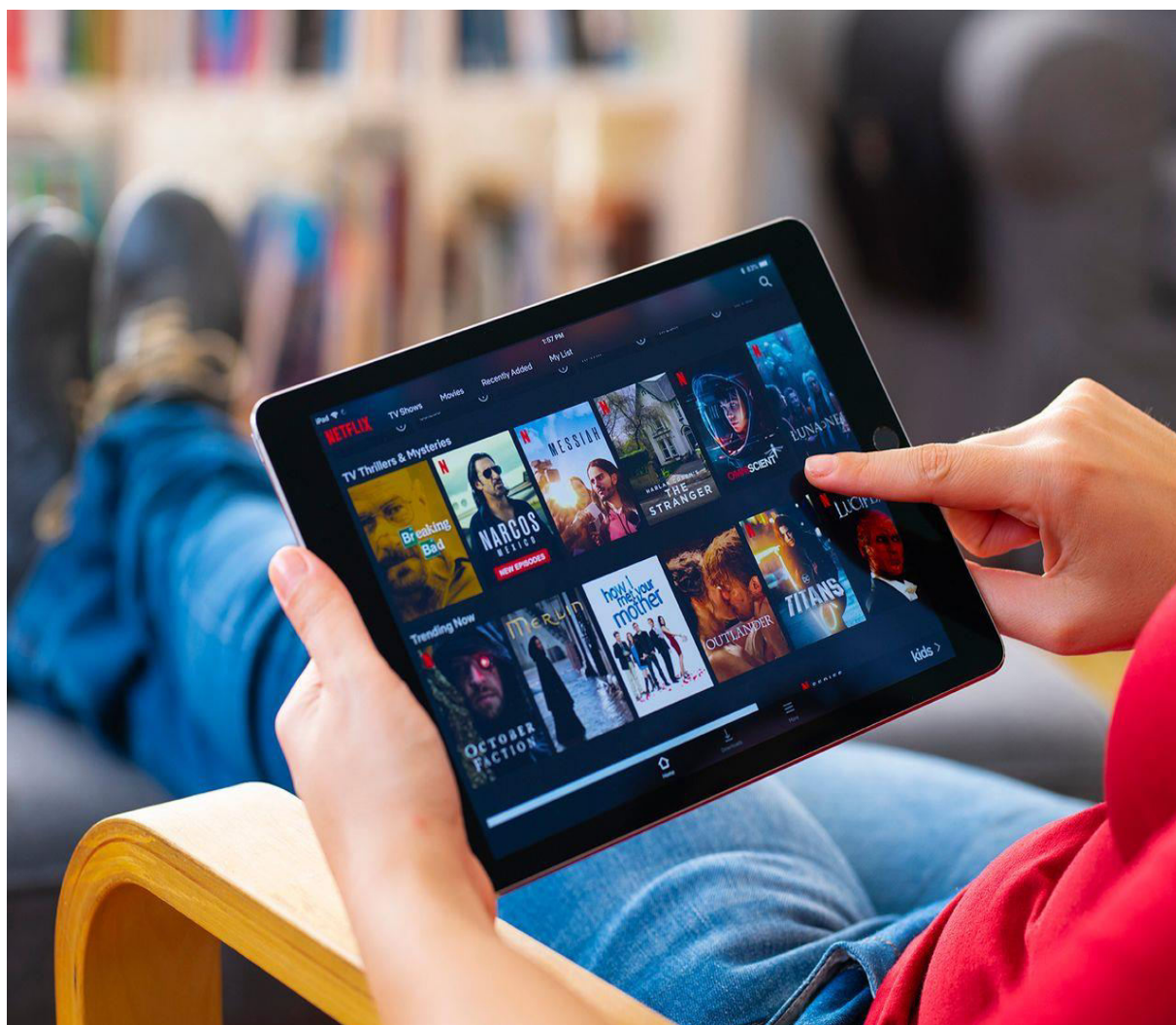


In the case of Indian Company

Fees earned by Indian Company from Subscribers in India

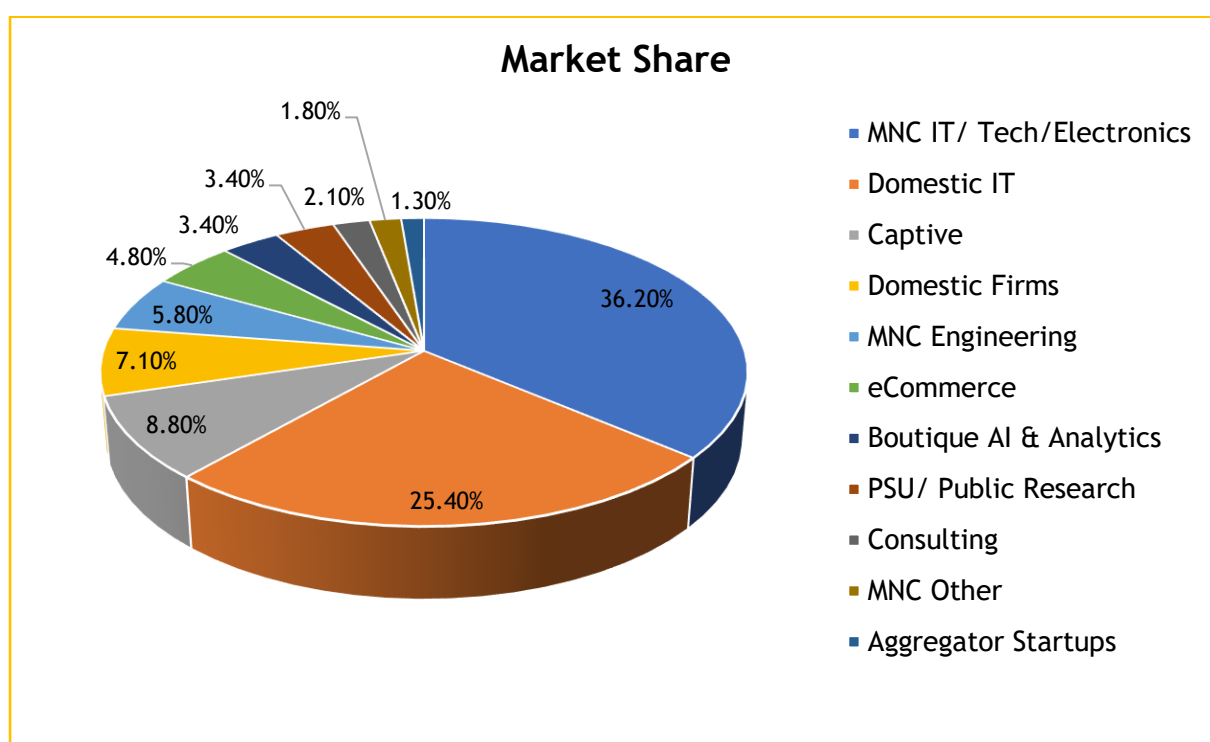
In case, Indian Company earns fee from subscribers in India, the service will be liable for GST. However, if Indian company delivers marketing and other local support services to Foreign Company, the GST applicability w.r.t. Intermediary provisions need to be evaluated. Therefore, it needs to be determined whether the services delivered by Indian company are in nature of marketing support or in the nature of facilitating the overseas entity to provide subscriptions in India. In the erstwhile case, it can be termed as export of service and GST shall not be chargeable on it, however in the latter case, the services may be chargeable to GST.

However, if services rendered by an Indian Company to/from Foreign Company, then the Valuation Provisions as per GST Law, in case of related party applies.

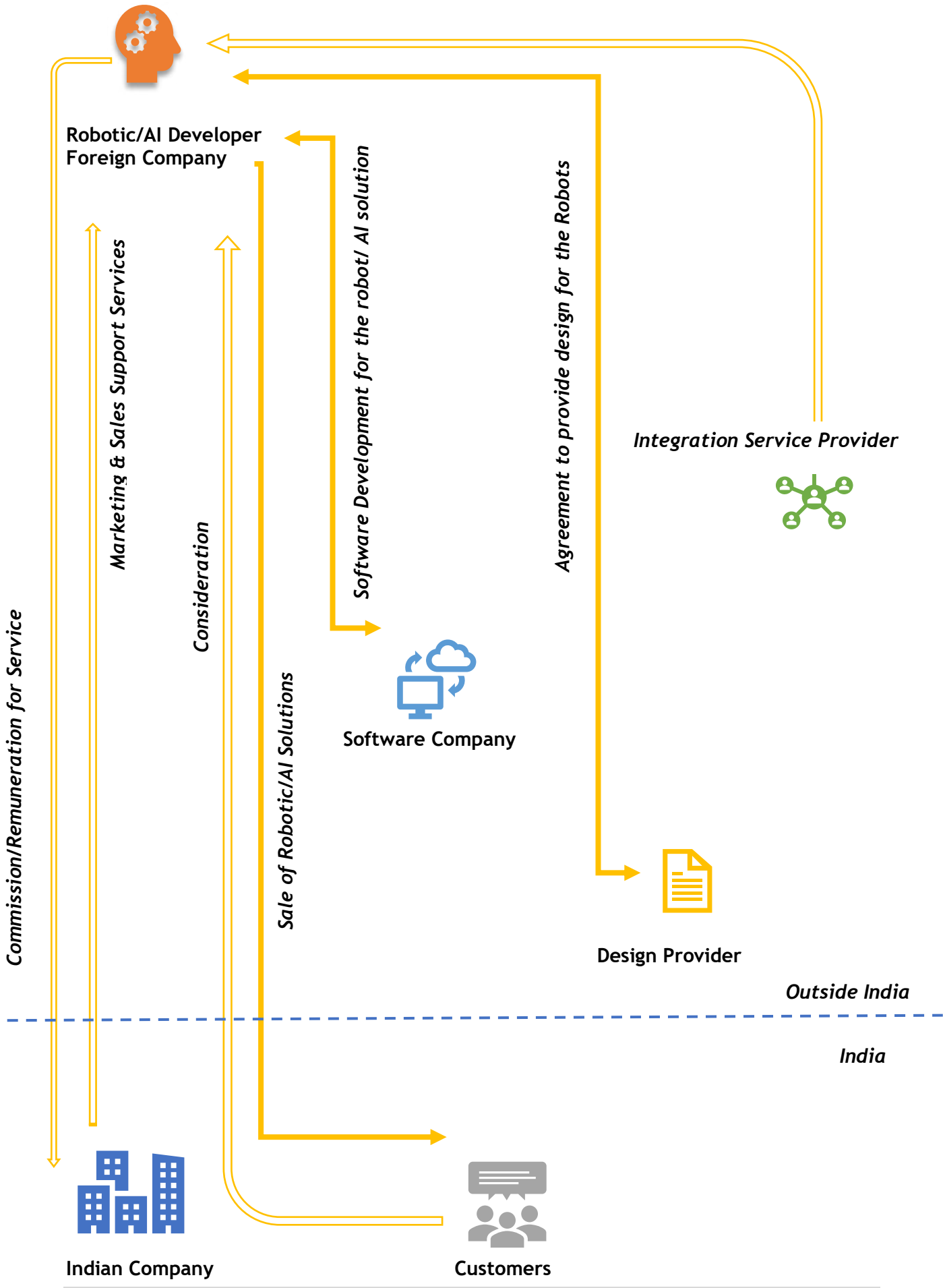


Robotics & Artificial Intelligence

Today, robots and AI is steadily passing into everyday business use and finds usage beyond manufacturing in areas like e-commerce, logistics, retail and healthcare. There is a significant overlap between robotics and artificial intelligence (AI). Robotics refers to that division of technology that encompasses design, construction, operation & the application of Robots, as well as computer systems for their controls, sensory feedback, and information processing. The inception of Business Process Automation (BPA) has given birth to a new concept named as robot process automation (RPA), an ultramodern form of BPA technology in which software is used to automate high- volume, repeatable tasks that were earlier done by humans. Artificial Intelligence is in a broader sense, a blanket expression which includes deep learning, robotics, machine learning, speech recognition and cognitive computing.



The Indian Artificial Intelligence market is valued at **\$ 6.4 Billion** as in July- Aug 2020. The AI market share and size in relation to the type of companies is the highest across the broad **MNC IT/ Technology/ Electronic category**, that consists of High-End Software and hardware Technology, IT Services, semi- conductor, and electronic firms. **The collective market share is 36.2%**. The market size by Industries or Sectors is the highest across the IT Services sector, followed by the Technology sector (including Software and Hardware firms), with a market share of 41.1% and 23.3% respectively. Around 91,000 Artificial Intelligence personnel are working across enterprises in India with a median salary of ₹ 14.7 Lakhs.



Direct Model

A robotic/AI Developer (hereinafter referred to as Foreign Company) is engaged in the development of Robots and AI solutions in-house which are custom tailored for the customers in India/outside India. The Foreign company may also have a separate consensus with an overseas software company/robot designer/assembling & integration service provider. The Foreign Company can also enter into an arrangement straightaway with Indian customers for delivering robotic devices or AI software integration in their application or product.

The Indian Subsidiary of the robotic/AI developer may also deliver marketing & sales support services to the Foreign Company. The Foreign company may raise separate invoices for sale of robots or customers can directly pay the consideration to the foreign company in the case of AI solutions and the Indian company may charge remuneration/fee for its services.

Distributor Model

The Foreign company can appoint its wholly owned subsidiary (hereinafter referred to as Indian company) as a reseller/distributor for supply of Robots or AI Solutions in India. The Indian company will get in arrangements with the customers in India to sell robotic devices or for AI software integration in their application or product. The Indian company will in this case, pay purchase price to the foreign company and can earn a reseller margin (as per agreed terms or mutual terms). The Indian company will also deliver technical product services, as well as repair & maintenance service and will account its books for extra service charge.

GST Implications

In the case of Foreign Company

The Foreign company (AI Developer) needs to assess whether if the services would be in nature of OIDAR or IT/IT enabled services (ITeS). The provision of service with respect to licensing of AI software to unregistered customer can be referred as OIDAR service and in this case, it needs to obtain GST Registration in India and discharge GST obligations. However, in case the service is supplied to registered business entity in India, then the recipient of services is liable to pay **GST under Reverse Charge Mechanism** and can later on claim Input Tax Credit subject to ITC restrictions.

In other words, if the services are recognized as IT/ITeS, then the registered business entity in India are required to pay GST under Reverse Charge Mechanism and there arises no accountability on part of foreign company to undertake any GST related compliances.

IT / ITeS - OIDAR Service



Unregistered Entity in India - Follow "A"



Registered Entity in India - Follow "B"



Foreign Company

Indian Company

A

Required to Take GST Registration & discharge GST obligations



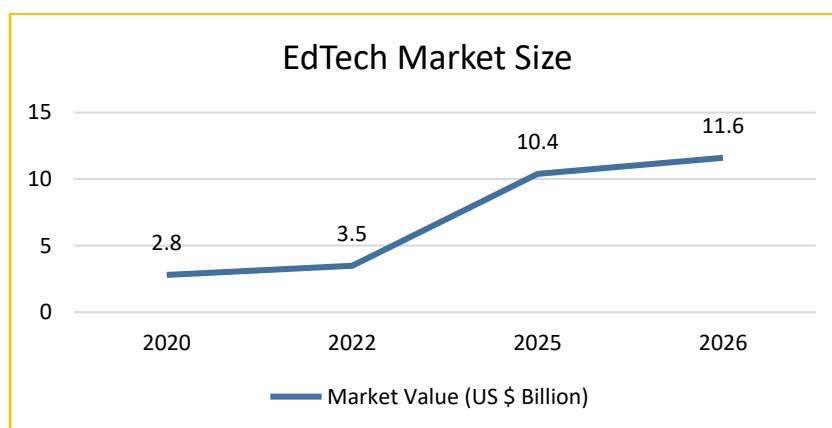
GST Department

Pay GST under Reverse Charge Mechanism & Avail Input Tax Credit

B

Online Education

Even before Covid-19, online education is witnessing high growth and adoption, be it language application, virtual tutoring, video conferencing tool, online learning software, there has been a substantial boom in usage since covid-19. The pandemic has shown us how useful and essential online learning tools really are; when the world stopped. Online education harnessing education technology (EdTech) has experienced a large-scale adoption as the Covid-19 pandemic has affected campus- based programmes/courses temporarily. As India is having world’s largest population of about 500 million in the age bracket of 5- 24 years, it provides a leading opportunity to the online education sector. The country has become the second largest market for E-learning after United States of America and the EdTech market is expected to achieve US \$ 10.4 billion by the end of 2025 and \$ 11.6 million by 2026, from \$ 2.8 billion in 2020.



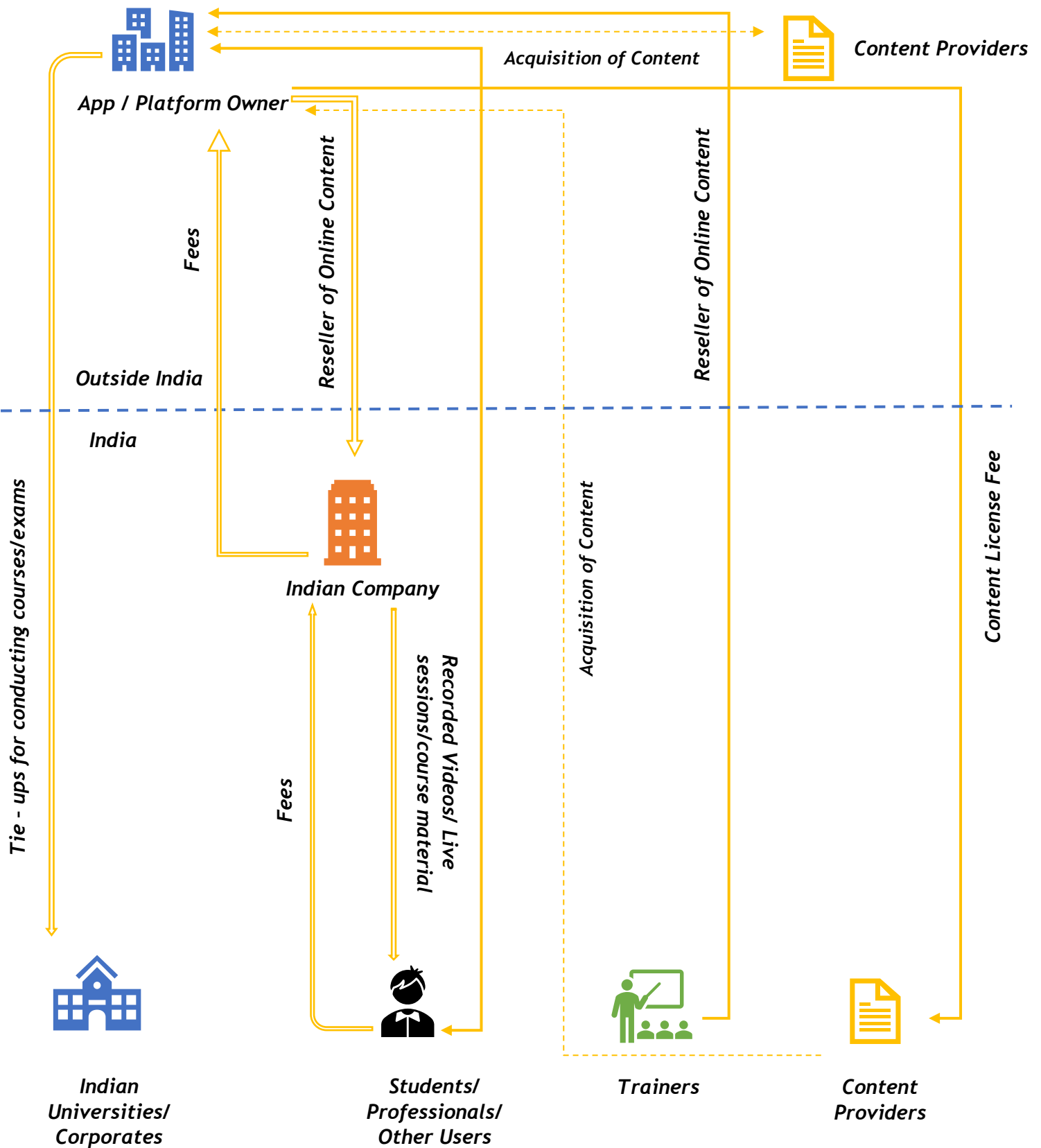
The National Education Policy (NEP) 2020 anticipates to revolutionize the Indian Education sector post implementation. Apart from Indian EdTech start-ups, a number of foreign EdTech companies are also infusing funds in India to explore EdTech’s prospect in the country. The travel restrictions due to Covid pandemic have led to foreign universities delivering live as well as recorded classroom sessions. The various components of this sector are tech-based solutions, tutoring, vocational training, courses & online education.

EdTech players (international as well as domestic) have been opting different business models in India like provision of service directly to Indian customers, sub-licensing EdTech platforms to Indian subsidiaries or distribution of EdTech services through Indian subsidiaries.



2020 - \$ 2.22 billion
2019 - \$ 553 million





Revenue Model of EdTech Start-ups & their GST Implications

Distributor Model

Overseas EdTech company (*hereinafter referred to as Foreign Company*) operates a platform or runs an app hosted on a server located outside India. It also acquires content or hires professional or knowledge trainers/ content providers to run the online content in their app/platform.

Foreign company can also appoint an Indian subsidiary/group company/third party (*hereinafter referred to as Indian company*) to distribute subscriptions and/or advertisements for the Indian market.

Additionally, the foreign company/ Indian company has business arrangements/ collaborations with educational institutes or local universities (*partners*) for content sharing, faculty management, etc. In certain instances, these partners may collect subscription fee from the subscribers and then remit the amount to Indian company subsequently after deduction of their share of revenue/fee or commission.

The Foreign company obtains license from content providers located outside India and in India on continuing basis and in few cases, Indian company also provides local content sourcing while the content rights are procured straightaway by foreign company. The user data and content may be safeguarded on the server outside India.

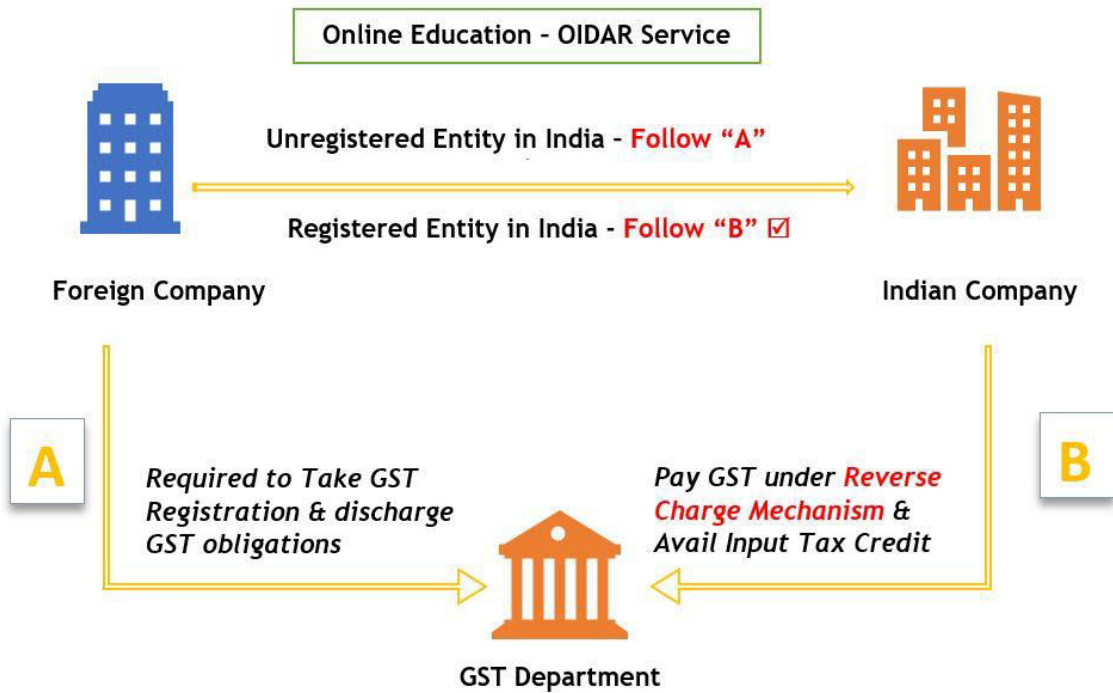
Direct Model

Under the direct model, foreign company will sell subscription/advertisements directly to Indian customers. It can also have its Indian subsidiary/group company that delivers marketing services, collection agent services, etc.

GST Implications

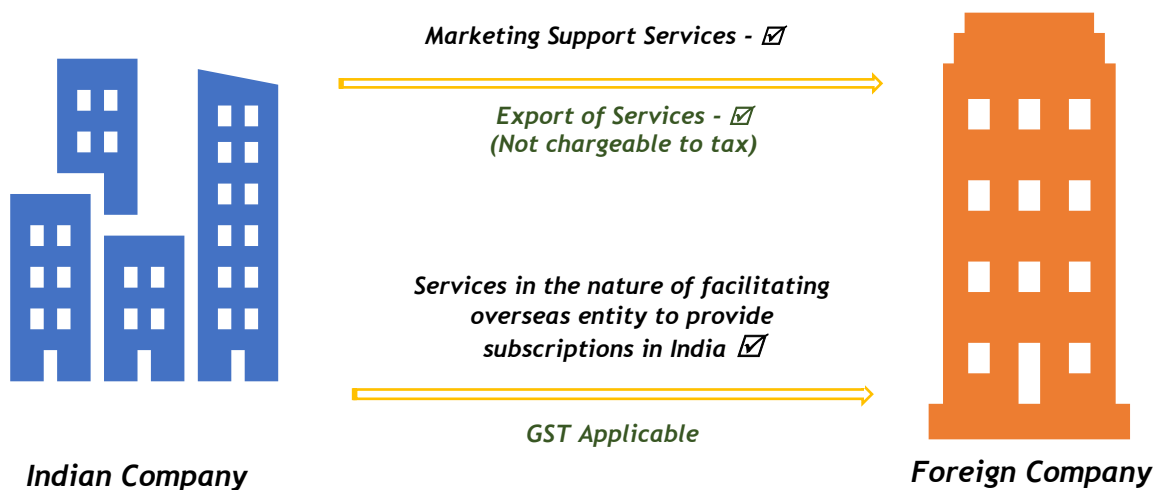
For Foreign Company

Since in generality a number of users would be individuals and this online content viewing service qualifies the criteria to be termed as OIDAR service, then foreign company would be under obligation to undertake GST Registration in India and pay GST in the case of direct model. However, in the case of a distributor model when the services or subscriptions are directly sold through B2B model or in other words, to a business entity, the Indian counterpart needs to pay GST under Reverse Charge mechanism and this GST paid shall be entitled to be eligible for claiming Input Tax Credit subject to ITC restrictions.



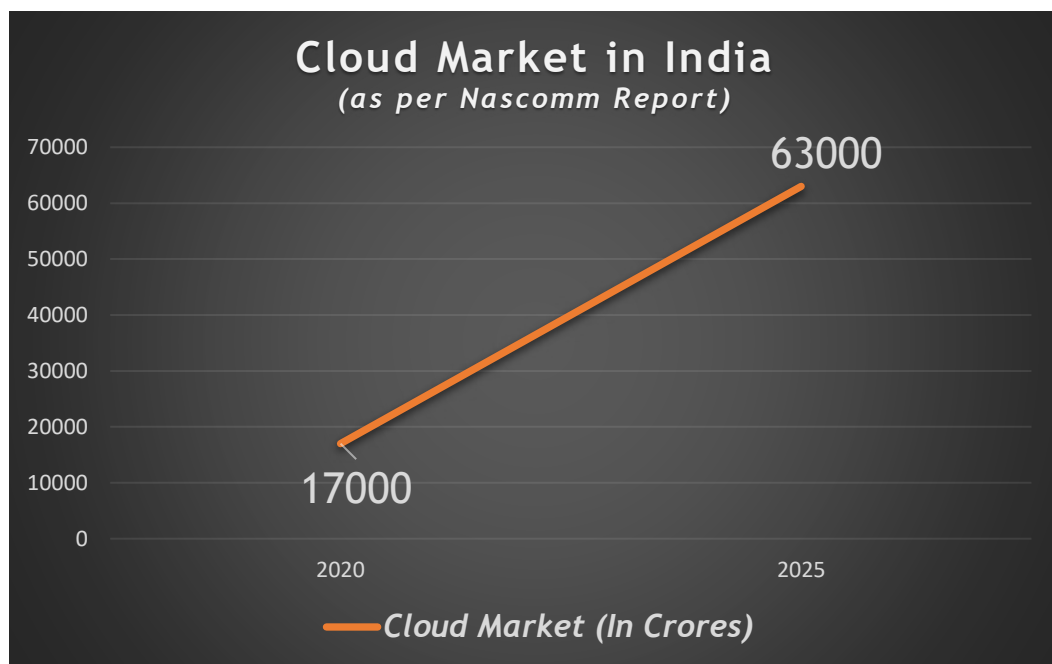
For Indian Company

In case, the Indian company earns fee from subscribers/users in India, the said services shall be liable to GST. However, if the Indian company facilitates marketing & other local support services to foreign company, then it needs to be evaluated by looking into the Intermediary provision. Hence, it needs to be ascertained whether the services provided by Indian company are merely in the nature of marketing support or in the nature of facilitating the overseas entity to provide subscriptions in India. If the services are as mentioned in former case, then it would be considered as "Export of Services" and shall not be chargeable to tax, however in the latter case, the services may be subject to GST.



Cloud

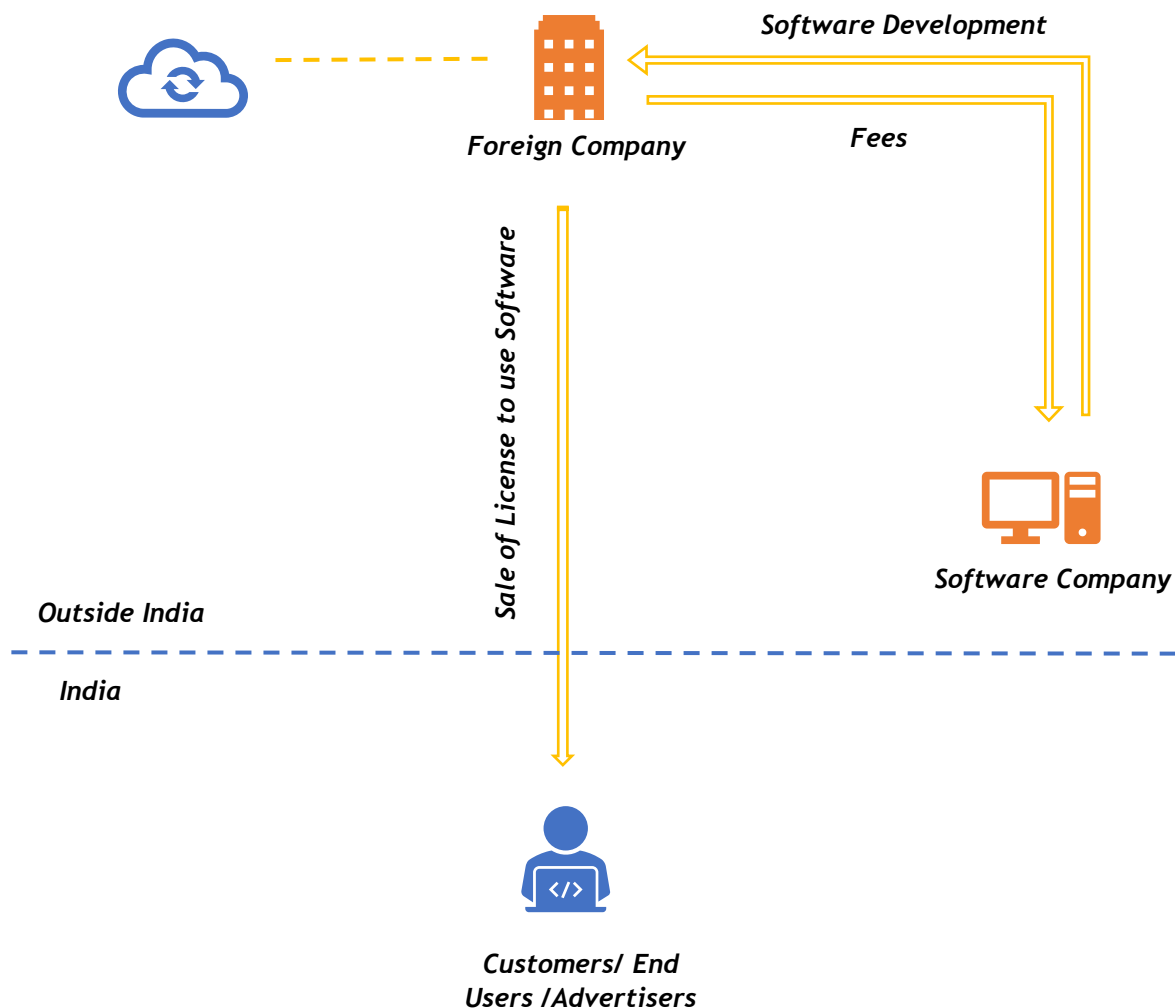
The Covid-19 impact has phenomenally and vigorously accelerated the adoption of Cloud today. The agility, swiftness, cost-effectiveness and the scalability of cloud are the major factors leading to the adoption of cloud by the enterprises. With the utmost focus now on e-governance & digitalisation, the cloud services are being adopted by the public sector also. The growth is primarily triggered by deliberated government support, positive investment climate, a vibrant ecosystem of technology vendors, and robust interest among the digital enterprise.



Cloud has been a substantive instigator for significant shifts in business models, talent priorities and IT Expenditure from capital expenditure to operating expenditure in today's business scenario. The cloud infrastructure pertains to the back-end components (services, network devices, ethernet switches, and storage) that supports cloud computing service. India's cloud infrastructure network is maturing that is intensified by multinational players like Amazon Web Services, IBM, etc. and domestic players like Tata Consultancy, WIPRO. Companies are now amplifying their target market by infusing investment in setting up new data centres & upgrading their existing data centres in India.

The international as well as domestic players have been observing assorted operational models in India- including the provision of cloud services directly to Indian customers and distribution of cloud services through Indian subsidiaries.

Conventional Operating Model includes Infrastructure as a Service (IaaS), where users can take on rent IT infrastructure such as data centres to deploy & run applications or store data ; Software as a Service (SaaS), wherein users need not to install or maintain software applications on their computers and Platform as a Service (PaaS), which facilitates companies to develop applications by using programming languages & tools.



Revenue Model and its GST Implications

The Foreign entity (hereinafter referred to as Foreign Company) can engage in the business of providing Software as a Service (SaaS) over the cloud infrastructure that is hosted on servers outside India. The Foreign company may enter into an independent arrangement with the overseas software company to procure custom-tailored software to meet specific customer requirements.

The Foreign company can also enter into arrangement with Indian customers for providing SaaS through cloud. The Foreign company may raise invoice for providing SaaS annually to its clients & the clients can pay straightaway to the foreign company. The Foreign company can

also set up an Indian company/ sign up with third party or send in its own employees to provide on-site support, technical services, consultancy services, etc.

GST Implication

The development of software and transmission of right to use software may be considered as service under GST. Since the service provider is located outside India while the recipient is in India, the service recipient may be liable to pay ***GST under Reverse Charge Mechanism***.

6.Zero rated Supplies

By zero rating it is meant that the entire value chain of the supply is exempt from tax. This means that in case of zero rating, not only is the outward exempt from payment of tax but there is also no bar on taking/availing credit of taxes paid on the input side for making/providing the outward supply.



Under GST Law, exports and supplies to SEZ units/developers are zero rated. Supply to SEZ units/developers is zero-rated in the same manner as is applicable for the physical exports.

As per section 2(47) of the CGST Act, a supply is said to be exempt, when it attracts **nil rate** of duty or is **specifically exempted** by a notification or kept out of the purview of tax (i.e., a non-GST supply). But if a goods or service is exempted from payment of tax, it cannot be said that it is zero rated. The reason is not hard to find. The inputs and input services which go into the making of the goods or provision of service have already suffered tax and only the final product is exempted. Moreover, when the output is exempted, tax laws do not allow availment/utilisation of credit on the inputs and input services used for supply of the exempted output.

Thus, in a true sense the entire supply is not zero rated. Though the output suffers no tax, the inputs and input services have suffered tax and since availment of tax credit on input side is not permitted, it becomes a cost for the supplier. The concept of zero rating of supplies aims to correct this anomaly.

The concept of zero rating of outward supplies requires the outward supplies as well as the inputs or input services used in supplying the outward supplies to be free of GST.

This is done by employing the following means:

- a) The taxes paid on the outward supplies which are zero rated are refunded;
- b) The credit of inputs/ input services used in supplying the zero-rated supply is allowed;
- c) Wherever the supplies (which are zero rated) are exempted, or the supplies are made

without payment of tax, the taxes paid on the inputs or input services, i.e., the unutilized ITC is refunded. Thus, even if a zero-rated supply is exempt, the credit of input tax may be availed.

A registered person making zero-rated supply can claim refund under either of the following options, namely: --

- a) he may supply goods and/or services under bond or Letter of Undertaking (LUT) without payment of IGST and claim refund of unutilized ITC; or
- b) he may supply goods and/or services on payment of IGST and claim refund of such tax paid on goods and/or services supplied.

Circular No. 01/ 2017 CC dated 26.07.2017 has clarified that the provisions of section 16 relating to zero rated supply will apply to GST Compensation Cess also. Hence, (i) **exporters** can **claim refund of GST Compensation Cess** paid on goods exported by him, or (ii) GST Compensation Cess **will not be charged on goods exported under bond or LUT** and he will be eligible for refund of ITC of GST Compensation Cess relating to goods exported.

Export of goods requires taking the goods from India to a place outside India. India is defined as extending to the limits of its maritime zone, which is 200 nautical miles from the coastal baseline. **Circular No. 108/27/2019 GST dated 18.07.2019** has clarified that **the activity of sending/ taking goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfies the tests laid down in Schedule I of the CGST Act**, does not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is **no consideration** at that point in time. Since such activity is not a 'supply', the same cannot be considered as "zero rated supply" as per the provisions contained in section 16 of the IGST Act.

Thus, activity of sending/ taking specified goods out of India is not a zero-rated supply. That being the case, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.

Deemed exports refers to supplies of goods manufactured in India (and not services) which are notified as deemed exports under section 147 of the CGST Act. Such supplies do not leave India and the payment for the same is received either in Indian rupees or in convertible foreign exchange.

Following categories of supply of goods have been notified as deemed exports by the Government vide Notification No. 48/2017 CT dated 18.10.2017:

(a) **Supply of goods by a registered person against Advance Authorization (AA)**

If exports have already been made after availing ITC on inputs used in manufacture of such exports, the goods so supplied should be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a Chartered Accountant should be submitted to the jurisdictional Commissioner of GST or any other officer authorised by him within 6 months of such supply.

(b) Supply of **capital goods** by a registered person ***against*** Export Promotion Capital Goods Authorization (***EPCG***)

(c) Supply of goods by a registered person to ***Export Oriented Unit (EOU)***

(d) **Supply of gold** by a bank or Public Sector Undertaking specified in **Notification No. 50/2017 Cus dated 30.06.2017** (as amended) against AA

Deemed exports are not zero-rated supplies by default, unlike the regular exports. Hence, ***all supplies notified as supply for deemed export are subject to levy of taxes, i.e., such supplies can be made on payment of tax and cannot be supplied under a Bond/LUT.***

However, the refund of tax paid on the supply regarded as deemed export is admissible to either the supplier or the recipient. Thus, the application for refund has to be filed by the supplier or the recipient (subject to certain conditions) of deemed export supplies, as the case may be.

Export through third parties: There is no specific provision in GST law for export through third parties, commonly known as merchant exports. However, ***a low rate of GST of 0.1% on supplies for export through third parties has been provided by way of exemption notifications.*** [This is expressed as 0.1% IGST on inter-State supplies or 0.05% CGST plus 0.05% SGST on intra-State supplies].

Circular No. 125/44/2019 GST dated 18.11.2019 has clarified that the exporter receiving goods at concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) will be eligible to take credit of the concessional tax so paid by him. The supplier who supplies goods at the concessional rate will be eligible for refund of ITC on account of inverted tax structure as per the provisions of section 54(3)(ii) of the CGST Act.

However, it may be noted that the exporter of such goods can export the goods only under LUT / bond and cannot export on payment of IGST.

Circular No. 08/08/2017 dated 04.10.2017 has clarified that there is no provision for issuance of CT-1 Form - which enables merchant exporters to purchase goods from a manufacturer without payment of tax - under the GST regime. The transaction between a manufacturer and a merchant exporter is in the nature of supply and the same would be subject to GST.

Supply to a SEZ unit/developer is zero-rated but all the supplies are not zero rated. **Circular No. 48/22/2018 GST dated 14.06.2018** has clarified that the supplies to a SEZ unit/developer shall be zero rated and the supplier shall be **eligible for refund of unutilized ITC or tax paid** as the case may only if such supplies have been received by the SEZ developer or SEZ unit for authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone.

Therefore, subject to the provisions of section 17(5) of the CGST Act, if event management services, accommodation consumables etc. are received services, hotel, by a SEZ unit/developer for authorized operations, as endorsed by the specified officer of the Zone, the benefit of zero-rated supply shall be available in such cases to the supplier.

GST Ruling on BPOs

A supply is entitled to be said as an export, if the place of such supply as provided under section 13 of the IGST Act should be outside India. Section 13(8) of the IGST Act provides that the place of supply in case of the intermediary services is the location of the supplier of the service.

As per 2 (13) of IGST Act, 2017, “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.

In a recent ruling, the Maharashtra Authority for Advance Ruling (“AAR”), in the case of **Vserv Global (P.) Ltd., In re [2018] 99 taxmann.com 253 (AAR - Maharashtra)**, held that where a portion of the services in a package of services provided by the applicant also include facilitation of supply of goods or services or both between overseas client and customers of overseas client, the supply falls under the definition of 'intermediary' as contained under section 2(13) of the Integrated Goods & Service Tax, 2017 (“IGST Act”). Accordingly, the place of provision of such supply would be India and such supplies may not qualify as exports.

7. Composition scheme

Composition scheme provisions are contained in **Section 10 of CGST Act**. As per the act, composition scheme is available taxpayer whose turnover is below Rs 1.5 crore. In case of North-Eastern states and Himachal Pradesh, the limit is now Rs 75 lakh. As per the CGST (Amendment) Act, 2018, a composition dealer can also supply services to an extent of ten percent of turnover, or Rs.5 lakhs, whichever is higher. This amendment will be applicable from the 1st of Feb, 2019. Further, GST Council in its 32nd meeting proposed an increase to this limit for service providers on 10th Jan 2019. Turnover of all businesses registered with the same PAN should be taken into consideration to calculate turnover. There is no specific provision for IT sector in Composition scheme.

The following conditions must be satisfied in order to opt for composition scheme:

- **No Input Tax Credit** can be claimed by a dealer opting for composition scheme
- The dealer cannot supply goods not taxable under GST such as alcohol.
- The taxpayer has to pay **tax at normal rates** for transactions under the **Reverse Charge Mechanism**
 - If a taxable person has different segments of businesses (such as textile, electronic accessories, groceries, etc.) under the same PAN, they must register all such businesses under the **scheme collectively or opt out** of the scheme.
 - The taxpayer has to mention the words ‘**composition taxable person**’ on every *notice or signboard displayed prominently* at their place of business.
 - The taxpayer has to mention the words ‘composition taxable person’ on *every bill of supply* issued by him.
 - As per the CGST (Amendment) Act, 2018, **a manufacturer or trader can now also supply services to an extent of ten percent of turnover, or Rs.5 lakhs, whichever is higher.** This amendment will be applicable from the 1st of Feb, 2019.

To opt for composition scheme, a taxpayer has to file **GST CMP-02** with the government. This can be done online by logging into the GST Portal. This intimation should be given at the beginning of every Financial Year by a dealer wanting to opt for Composition Scheme. Here is a step by step Guide to File CMP-02 on GST Portal.

8. Who needs to be registered under GST?

The provisions for registration under GST law are contained in Section 22 to 24, procedural guide for registration is listed under section 25 to 30.

All the businesses supplying goods whose turnover exceeds Rs 40 lakh in a financial year are required to register as a normal taxable person. However, the threshold limit is Rs 10 lakh if you have a business in north-eastern states, J&K, Himachal Pradesh and Uttarakhand. The turnover limit is Rs 20 lakh, and in case of special category States, Rs 10 lakh, for the service providers.



Also, here is the list of certain businesses for which GST registration is mandatory irrespective of their turnover:

- Casual Taxable person/ Non Resident Taxable person
- Supplier of goods through an e-commerce portal
- Input Service Distributor
- Inter state supplies of goods and services
- TDS/ TCS Deductor
- Agents
- Online data access or retrieval service provider
- Liable to pay Tax under the reverse charge mechanism

9. Time of supply

The provisions in relation to time of supply are contained in Section 12-14 of CGST Act 2017. Section 12 dealing with time of supply for goods and 13 with services. The time of supply provision is imperative to **determine the point of time at which tax liability arise.**

In case of **goods (Hardware)**, time of supply in case of normal charge mechanism shall be Invoice date or due date to issue invoice u/s 31(1). While in case of **reverse charge mechanism**, time of supply shall be **earliest of date of receipt of goods, date of payment** (earlier of date of entry in books of accounts and Debit in bank account), date immediately following 30 days of date of issue of invoice. If time of supply cannot be determined, then date of entry in books of account of recipient is considered as time of supply.



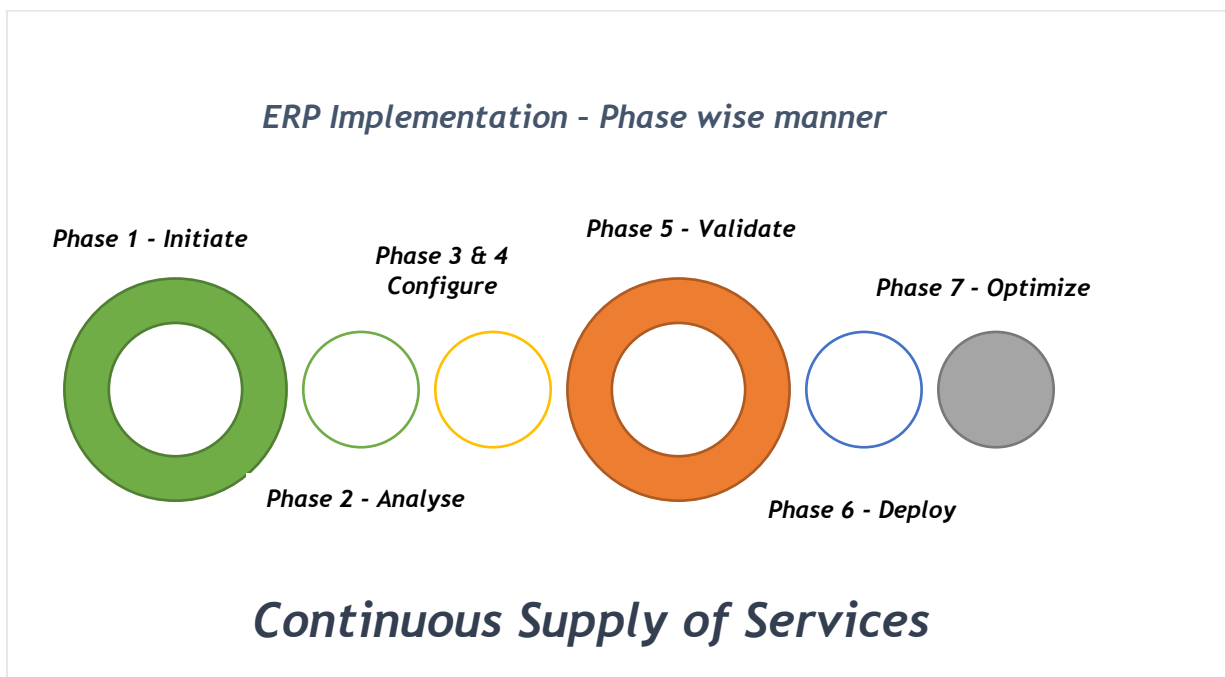
In case of service, (BPO-KPO/ Temporary transfer of right to use/ ERP implementation/ OIDAR service) in case of normal charge mechanism, time of supply be **earlier of date of invoice** (if invoice issued within time limits of Section 31(2), otherwise date of completion of supply), **date of receipt of payment** (earlier of date of entry in books of accounts and Credit in bank account). If not determinable, time of supply shall be date of entry in books of recipient.

It must be noted that excess payment received upto ₹1000 shall be ignored for this purpose. In case of **reverse charge mechanism**, time of supply shall be **earlier of date of payment** (earlier of date of entry in books of accounts and Debit in bank account), **date immediately following 60 days from the date of invoice.** If not determinable, time of supply shall be date of entry in books of recipient. Important point to be noted here is that in case of import of service from associated enterprise, time of supply shall be earlier of date of entry in books of accounts and date of payment.

Further, heed should be paid to ERP Implementation which is done in stages. These forms **continuous supply of service**, where invoice is raised as per Section 31(5) of CGST Act 2017, date of issuing invoice shall be:

- (a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;
- (b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;
- (c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

As time of supply provisions are dependent on invoicing. Thus, time of supply be determined accordingly in case of ERP implementation.



10. Value of supply

The value of supply for a transaction is the *price or consideration paid or payable* for the supply of goods or services/both, where the supplier and recipient of the supply are not related and the *price is the sole consideration* that includes extra charges like shipping and handling, incidental expenses, commission and packaging, interest or late fee or penalty for delayed payment of any consideration, etc. but does not include GST. The rules and provisions related to Value of Supply are governed by Section 15 of CGST Act, 2017.

The CBIC has also clarified various doubts related to treatment of secondary or post-sales discount under GST vide Circular no. 105/24/2019 -GST dated 28.06.2019. The Valuation Rules are prescribed under the Chapter IV of the central Goods & Service Tax Rules, 2017 which have taken into account, the cases where the consideration is not wholly in money or the case where supply is made between distinct or related persons through or other than through an agent.

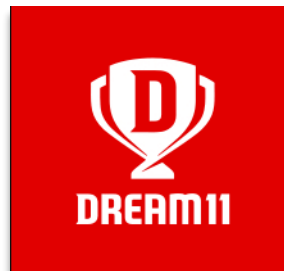
In the case of **Gurdeep Singh Sachar Vs. Union of India (Bombay High Court)**, the petitioner contended that GST evasion is done by **Dream 11 Fantasy Private Limited** (the famous fantasy platform based in India - allows users to play fantasy cricket, hockey, football, kabaddi & basketball) by wrongfully classifying itself under entry 998439 and paying only 18% rather than paying 28%, hence violating the provisions of the GST Act, 2017. The court held that Dream 11 was not wrong in classifying itself under entry 998439 (that covers online games intended to be played on the internet with a subscription fee or pay-per-play fee) and there cannot be tax evasion since it is not gambling and only gambling was excluded from the above entry, hence Dream 11 was taxed correctly at 18% as per the GST Act.

Taxation in case of Fantasy Sports Platform

Since, it has been ruled by Bombay High Court as well as Punjab & Haryana High Court as well as Rajasthan High Court in different matters, that the fantasy sports are a skill-based game which requires user's skill, knowledge, judgement & attention, it is not classified as lottery/betting/gambling and the activities of Dream 11 or other fantasy platforms are actionable claim falling under Entry 6 of the Schedule III under Section 7(2) of CGST Act. Therefore, this activity or transaction pertaining to such actionable claim can neither be considered as supply of goods nor supply of services, and is thus clearly exempted from levy of any GST.

And, the actionable claim referred to in Rule 31A is limited to only activities or transactions in the form of chance to win in “lottery” or “betting” or “gambling” or “horse racing in a race club”. Thus, Rule 31A which is restricted only to such four supplies of actionable claim, has no application in this case.

The activity of Dream 11 is classified under entry 998439 that evidently covers host of online games which are intended to be played on the Internet and involve payment by subscription, membership fee, pay-per-play or pay- per view.



However, as far as valuation is concerned, the tax shall be levied on the *platform fee* charged by these fantasy platforms (let us say 20%), as the remaining 80% received from the users is pooled into an escrow account & shall be distributed among the winning players as prize money after the conclusion of the game. Since the remaining 80% is distributed and is in the form of money, it is specifically excluded from the definition of goods as well as service, hence no GST is levied on the same.

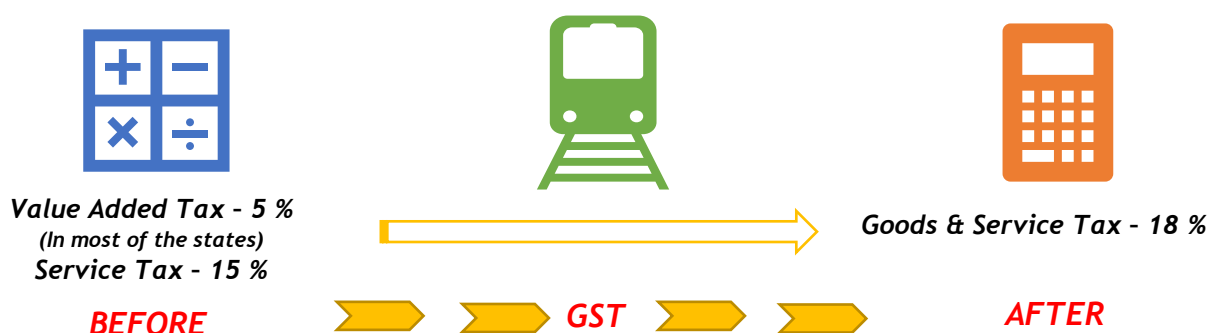
11. Impact of GST on IT Sector

As anticipated before the launch of Goods and Service Tax alias GST, it affected more or less every business industry in the country. This also includes the prominent Information Technology (IT) sector of India that is headstream of the various IT revolutions & developments. The Indian economy and the nurturing IT industry is quite conscious about the upcoming changes due to GST Implementation. Though the **National Association of Software and Services Companies** (NASSCOM) President R. Chandrashekhara mentioned that upcoming GST regime can create a difficult scenario for the industry as with GST, there are lot many complex invoicing and billing coming ahead which can further strangle the taxation of IT industry making a tough growth.

The prior VAT/service tax regime in India was over-complicated due to multifold taxes, innumerable compliance hassles, and tax cascading. GST on IT sector will attract 18% on software services provided by software companies. For purely software services, the cost of such services will increase under GST. Under the GST regime, it will result in a simpler tax regime, especially for the IT sector.

Tax Rates under Excise/VAT/Service Tax

Under the old tax regime, both VAT and Service Tax were levied on the sale of packaged software. **VAT rate was around 5% in most states and service tax rate was 15%**. Excise duty was also applicable in the case of manufacturing of IT products.



Example: If a software comes on a CD, DVD or hard disk, then there are 3 taxes that apply to it i.e., Excise duty for manufacturing of product, VAT for sale and Service tax for providing service as software can be downloadable for multiple times. All such complications and double taxation will be removed under GST.

Business & Books of Accounts

All businesses, whether they belong to large or smaller industries, are in a hush-rush today to get their accounting systems and ERPs in sync with GST, burdening them with increase in infrastructure costs and changes in business systems. Many of the large companies have assembled their teams consisting of their own technical experts, finance experts, and an expert from their GST software vendor to get in line with it.



Input Tax Credit Availment

Although, there has been exhibit intensified impact on infrastructure & overhead costs for businesses, there is good news too in the form of ITC. Traders selling goods (paying output VAT) previously, could not claim service tax paid on AMC's for their computers and software. Under GST, this ITC is available. For example, Ajay sells fruit-based drinks worth ₹1,00,000. He also has to pay an AMC of ₹10,000 per month on the computers used in his office.

Example Depicting Impact of GST on IT Sector

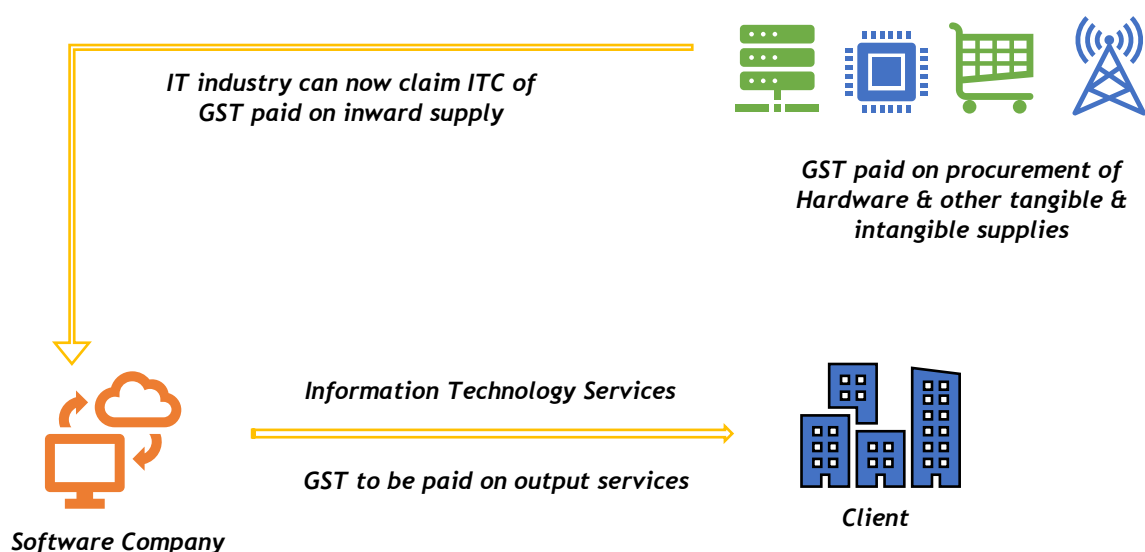
Particulars	Pre- GST	Post - GST
Sale of Fruit Juice & Drinks	1,00,000	1,00,000
VAT@ 14.5 %	14,500	
GST@12 %		12,000
AMC Contract	10,000	10,000
<u>Input Tax on AMC</u>		
Service tax @ 15 %	1,500	
GST @ 18%		1,800
Total tax Outflow	16,000	10,200

**Incremental
Tax Outflow
Savings - ₹
5,800**

IT Business Sector

The IT Service providers dealing in redesigning of business software can now easily adjust input taxes paid on purchase of goods as well as services against their output service.

For example, in the GST regime, they can adjust GST paid on office supplies against the service provided by them. Also, IT companies maintaining servers incur huge capital expenditure on buying the hardware and also revenue expenditure on repair and maintenance. Now the tax paid on hardware can be adjusted against the tax paid on services and small parts of repairs.



Taxability of Installing New ERP

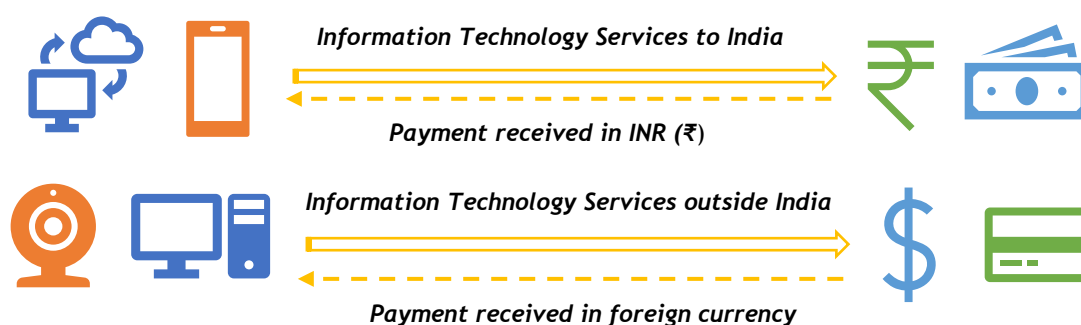
One of the most cumbersome issue was to bring a revolutionize change in the IT systems which require co-ordination between tax experts and technology teams. In many cases, some of the ERP software that were provided by the IT majors have to be redesigned and updated with the new GST rules. Companies are primarily bringing advancement to their enterprise resource planning (ERP) and accounting software to harmonize the complexities of GST. Either they need to elevate their existing software to the new version or use specific GST software like CompuGST, ClearTax, OctaGST, Gen GST, Optotax, etc. The business houses need to install their accounting systems and ERP in batches or phase -wise manner.

For example, ERP implementation is done in batches. It is a long-term contract which spreads over years. ERP professionals understand the requirements of the business, design the software accordingly, train the company employees and regularly maintain and update the software. Payment for this contract will be spread over the years and service tax was also charged accordingly. Under GST, this will be a continuous/periodic supply and will be taxed accordingly.

Export of Services

Export of IT Services is an exceptional route for earning foreign exchange for our country, with India being the biggest exporter of IT services. Exports are zero-rated and input taxes paid will be allowed as a refund. The principal rule for place of supply (export of service) is the location of the service recipient, if the address of the recipient is available. So, exporters must ensure that the address of service recipient can be presented before the authorities on request.

The typical IT/ ITES services which come under the default rule will be software development, BPO operations, software consultancy, etc. Apart from these, this rule will also apply to other services like software support/ maintenance and intermediary services as there are no exceptions under GST.



How GST Implementation impacted the IT sector?

Tax Rate

The existing service tax rate on IT services is 15%. However, the recommended revenue neutral rate was at 15-15.5% and the standard rate in GST is 18%. Therefore, the cost of IT services has elevated upto a few extents, particularly for end users who ultimately bears the tax burden of whole supply chain. Under former tax structure, the sale of packaged software was entitled to both VAT (approximately 5%) and service tax (15%). The VAT on sales was directed to the state government whereas the service tax on service follows the central government.

There are also few instances, where along with the VAT and service tax, excise duty is also applied due to lack of clarity from the government. *However, with the implementation of GST is implemented, the average tax rate of around 25- 35% has come down to 18%.*

Cascading Effect of Taxes

The cascading effect of taxes is fittingly addressed under the GST regime; however, its presence is still there upto some extent. Traders registered under GST, are eligible to avail the credit of services such as in the case of AMC (Annual Maintenance Service) contracts.

In the earlier times, IT service providers were not in a situation to claim credits of taxes paid for quality including the assessment or deal charge spent on setting the IT infrastructure. Also, the services charged by an IT service provider to a client who is a broker / consultancy, etc. is an expense incurred for the IT service provider. Under GST, both the IT service providers and their clients will be eligible to claim full credit of GST.

Business Process Change

As we all know GST is a destination-based tax, and the tax is collected by the state where the goods or services will be consumed. Most IT companies in the pre- GST regime were registered only with the Central Service Tax authorities and generally, all billing and accounting tasks are carried out from a central location.

Under the GST regime, service providers are required to obtain registration for all the states that they are catering to, i.e., all states that they have customers in. This is to be done so that the SGST (State Goods and Service Tax) component of IGST (Integrated Goods and Services Tax) is rendered for respective states. IT service providers will therefore have to bifurcate their services and bill their customers based on location of consumption.

e-Commerce Sphere

For e-Commerce traders, the GST is expected to increase administrative costs. Also, since e-commerce platforms have thousands of sellers on their platforms, it significantly increases compliance burden.

Small sellers are facing cash-flow issues and the tax collection at source (TCS) guideline under GST had increased the administration and documentation workload for e-Commerce firms.



Major Changes in Tax Rates of IT Products & Services After GST

Following are the few major changes have been reported in the tax rates of the IT products and services: -

- ⑥ The software services will be charged at 18% under GST as compared to 15% service tax of the previous system. The tax rate on software CD 's (and other electronic packaged software) will also be 18% under GST.



GST on Compact Disk & electronic packaged software is now 18%.



- ⑥ The IT companies are arranging the hardware and software to make their systems in sync with GST. This has led to significant increase in the infrastructure cost and affect the business capability, especially for small businesses and start-ups.
- ⑥ One of the positive impacts of GST is in the form of Input Tax Credits (ITC) availment which is now available to IT traders selling goods and services.
- ⑥ Another *major historic change is for the ERP & accounting service providers* who now have to upgrade their existing ERP systems according to GST or create a completely new GST software like Gen GST, ClearTax, CompuGST, etc. leading to a steep rise in the cost of their cost of operation.
- ⑥ In the pre- GST regime, for IT industry, there was a single point of taxation, i.e., the Service Tax, and also one point of registration. However, in the GST regime, *there are now 111 points of taxation*. So, now the companies will have to deal with the States as well as the Centre separately, which is likely to increase the compliance cost.
- ⑥ Under the former system, the implementation of ERP used to be a long-term contract which were spread over the years, and the service tax was charged accordingly. Under GST, the *supply of ERP will be continuous or periodic*, and the tax will be levied accordingly.
- ⑥ GST also brings a great positive thing for the accounting software developer companies in India. A lot of companies have already launched their dedicated GST software to help businesses and CAs get compliant with the new tax system.
- ⑥ GST fittingly *eradicates the cascading effects of taxes* on all the supplies of IT goods and services. Thus, the consumers will now have to pay only the actual tax amount. This will not only decrease the cost but also will improve the investment capability of the IT companies of the country.

- ⊖ *Export of various IT related services*, such as software development, consultancy and BPO services will be *zero-rated under GST* and companies will be allowed to claim credits on the input tax paid.
- ⊖ The tax rate for freelancers selling various IT services has been increased to 18% from the earlier 15% service tax. *Bloggers with annual earning of less than 20 lakh need not register for GST and/or pay tax.*
- ⊖ Under GST, all *the e-commerce sellers are required to register and pay taxes*, irrespective of their annual turnover. E-commerce companies are also not eligible to get the benefits of the GST composition scheme. The online marketplaces will have to collect TCS from their sellers and pay it to the government; the ITC will be available on such TCS paid.

Multi-point taxation

There are a number of taxation points counting up to 111 which must be accessed while in the process of GST filing as the reason being of multiple registrations ranging from 37 jurisdictions—29 states, seven union territories, and the Centre. In the words of Chandrashekhar, Under the GST regime, there are three tax points: central GST, inter-state GST, and state GST. Multiplying three GSTs with 37 jurisdictions takes the total number of points of taxation to 111. It makes the IT companies register and file compliance reports at a staggering 111 points to clear all the way through filing the GST.

Place of Supply

Earlier the taxation of the IT service providers was carried out only from one location, the head office of the company. Under GST, however, a place of supply provision has been introduced, which brings the need of various billing and invoice in the case of single contract services where the delivery is happening from multiple offices of the same activity. For that, the IT companies will have to register in those states as well where their customer and clients reside.

GST Rate on IT services/products

The tax rates of the IT services and goods have experienced a little hike after the implementation of GST. However, the cascading of taxes and multiple tax system has been completely removed. *So, instead of a service tax + VAT +excise duty on the purchase of IT software services, consumers will now only to pay a single GST tax which will be more or less the same in amount.*

E-commerce marketplace, which is a very big part of the Indian IT industry, is also facing major changes in the new GST tax regime. The GST provision requires online marketplaces to deduct tax collection at source ' , i.e., tax from the sellers, and deposit the same to the government. So, each of the sellers will have to register and file returns online if they wish to claim the credits on TCS paid. This affects their investment and cash flow capability.

This is likely to hamper the industry growth thus making the situation worse and can also create a situation in which the seller could even draw their hands from such online platforms to sell their commodities, but that is highly unlikely.

Although GST has introduced an increased tax rate of 18% for most of IT services and an immediate increase in the cost of implementation, it will definitely have a positive impact in the long-term. Factors like availability of ITC, no GST on exports, and removal of tax cascading will definitely bring the cost down and increase the overall benefits of the IT sector in the country.

Conclusion

Any plan and policy initiated by government has both pros and cons, same in the case of GST. GST is at the initial stage in India. It's not the right time to judge the system in India. But History has proved by giving success stories of various countries that have benefited from moving to a GST regime. GST would surely have a positive impact on manufacturers, distributors and consumers because the cascading effect is reduced. This will not only reduce the final price on the goods but also increase the competitiveness of the industry along with profits and create a common market.

GST would create uniformity of taxes and also reduce tax burden. This in turn would increase revenues of the state and the union at the country level. GST would not only bring about an efficient and a transparent system but also help in removing economic distortions. This will also reduce the paper work and will move the economy towards digitalization.

Although the GST rate for services has increased to 18%, IT industry will definitely benefit from GST. Other factors like availability of ITC will bring down the operating costs and thus, it will increase the overall profitability of the IT sector. In nutshell, the implementation of GST in India has started out playing a vital role in the growth of India and it will definitely iron out wrinkles of previous indirect tax system.

12. Frequently Asked Questions (FAQs)

Question 1: Whether software is regarded as goods or services in GST?

Answer: In terms of Schedule II of the CGST Act 2017, development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software and temporary transfer or permitting the use or enjoyment of any intellectual property right are treated as services.

But, if a pre-developed or pre-designed software is supplied in any medium/storage (commonly bought off-the-shelf) or made available through the use of encryption keys, the same is treated as a supply of goods classifiable under heading 8523.

Question 2: What are the implications of recognising the development, design, programming, customisation, adaptation, upgradation, enhancement, and implementation of information technology software as a service?

Answer: The primary implication is that the place of supply rules applicable to services would apply in determining taxability of the supply of software services. The same would be applicable in situations of supply of services involving a temporary transfer or permitting the use or enjoyment of any intellectual property right. The other implication is that the supplier of software services would not be eligible for the composition scheme.

Question 3: 'A' is a dealer in Computers and Computer parts having turnover of Rs. 8 lakhs in a year; does 'A' have to register under GST?

Answer: Every supplier located in a State or Union territory, whose “aggregate turnover” in a financial year exceeds twenty lakh rupees (now 40 Lakhs), is liable to be registered under GST. This limit of turnover for a special category State is ten lakh rupees. 'A', whose aggregate turnover is only Rs. 8 lakhs in a year, is therefore not liable to registration.

Question 4: What is the rate of tax on IT services?

Answer: The rate of GST on IT services is 18%.

Question 5: Whether exports of software services attract GST?

Answer: Exports and supplies to SEZ units and SEZ developers are zero-rated in GST. Zero-rating effectively means that no tax is payable on exports but the exporter/supplier is entitled to the input tax credit on inputs/input services used in relation to exports. The exporters have two options for zero rating, which are as follows:

- (1) To pay integrated tax on supplies meant to be exported and get refund of tax so paid after the supply is exported.
- (2) To make export supplies under a bond or letter of undertaking and claim refund of taxes suffered on inputs and input services in relation to such exports.

Question 6: *How do I determine whether IT services provided by me constitute export of service?*

Answer: The supply of any service is considered an export of service, where the following conditions are met:

- (1) the supplier of service is located in India;
- (2) the recipient of service is located outside India;
- (3) the place of supply of service is outside India;
- (4) the payment for such service has been received by the supplier of service in convertible foreign exchange; and
- (5) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of section 8 of the IGST Act, 2017.

Question 7: *How do I determine the place of supply of IT/ITES services?*

Answer: Place of supply of IT/ITES services is the location of the recipient in terms of section 12 and 13 of the IGST Act, 2017. However, if the recipient is not registered and his address is not available on the records of the supplier, the place of supply would be the location of the supplier.

Question 8: *How to determine the location of the recipient?*

Answer: Location of the recipient of service is defined in section 2(14) of the IGST Act. A recipient of services is treated as located outside India if his place of business where he receives services is outside India or, if he does not have a place of business, his usual place of residence is outside India.

Question 10: *Would I be liable to pay GST on reverse charge even if the foreign supplier of software from whom I buy for use in my firm registered under GST was to accept the payment in Indian Rupees?*

Answer: Yes, you would be liable to pay GST. A supply is treated as an import of service if the following conditions are satisfied:

- (1) the supplier of service is located outside India;
- (2) the recipient of service is located in India; and
- (3) the place of supply of service is in India.

The place of such supply would be taken to be the location where the firm is registered (in GST) and the supplies would attract integrated tax (IGST). The factum of which currency was used to pay the consideration is immaterial.

Question 10: I am an Indian Company who makes software and sells it outside the country. I have hired a firm (not a related party) 'C' located abroad to facilitate the supply of software in Europe and the USA; would I be liable to pay GST on the payments that I make to this entity abroad?

Answer: No. In this case, 'C' is covered by the definition of 'intermediary' [section 2(13) of the IGST Act, 2017]. The place of supply of such intermediary service is location of the supplier in terms of section 13(8) of the IGST Act, 2017. As 'C' is located outside India, GST is not payable in this case.

Question 11: What factors determine the location of 'C' (in question 12) as being outside India?

Answer: In terms of section 2 (15) of the IGST Act, 2017, the location of a service provider is to be determined by applying the following steps sequentially:

- (1) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (2) 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;
- (3) 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
- (4) in absence of such places, the location of the usual place of residence of the supplier.

The location of 'C' is to be determined by applying the criterion from (2), or (3), or as the case may be, (4).

Question 12: I am an agent in India of a foreign IT/ITES provider (principal located outside India). For agency services, I bill the principal in convertible foreign exchange. Whether GST liability arises in this case?

Answer: You are an intermediary and the place of supply of the service provided by you to the principal is in India irrespective of the mode of payment. Hence, GST is payable on the services provided by you as an intermediary to the principal.

Question 13: I have more than one SEZ unit in different States; do I need to take separate registrations? Also, I have two SEZ units in one State. Can I take a single registration?

Answer:

(1) Yes. Under GST, every entity shall take GST registration in each State from which it makes taxable supplies. However, a single registration can be taken for all your SEZ units within a State, whether located in one SEZ or more than one SEZ.

(2) A person having unit(s) in a Special Economic Zone as well as outside the SEZ in a State shall make a separate application for registration for SEZ unit(s) as a business vertical distinct from his other units located outside the Special Economic Zone in that State.

Question 14: I have a unit in the DTA and another in the SEZ; can I take a common registration?

Answer: No. A person having unit(s) in a Special Economic Zone as well as outside the SEZ in a State, shall make a separate application for registration for SEZ unit(s) as a business vertical distinct from his other units located outside the Special Economic Zone in that State.

Question 15: If I supply a laptop bag along with the laptop to my customer, what would be the rate of tax leviable?

Answer: If the laptop bag is supplied along with the laptop in the ordinary course of business, the principal supply is that of the laptop and the bag is an ancillary. Therefore, it is a composite supply and the rate of tax would that as applicable to the laptop.

Question 16: I am obtaining online database access services from a company abroad over the net, would I have to pay tax on reverse charge?

Answer: The recipient, if registered, has to pay the applicable IGST on reverse charge basis. If the recipient is not registered, the matter is treated as an online information and database access or retrieval service (OIDAR) and the OIDAR service provider is liable to take registration and pay tax.

Question 17: When would it be construed that I have made a supply of services involving temporary transfer or permitting the use or enjoyment of any intellectual property right?

Answer: Generally, the **End User Licence Agreement (EULA)** is the legal contract between a software application author or publisher and the user of that application governing the usage. The agreement is renewable and/or could be amended from time to time. To find out as to whether there is an element of supply involved when software is delivered to its customer, the terms and conditions of EULA are material.

The contract for supply therefore assumes significance in this test to decide whether or not there has been *‘temporary transfer or permitting the use or enjoyment of any intellectual property right’*.

Question 18: *What special provisions are attracted in GST with regard to associated enterprises?*

Answer: An enterprise which participates, either directly or indirectly, through one or more intermediaries, in the management, or control or capital of the other enterprise is an associated enterprise. In the context of GST, associated enterprise is particularly relevant in the case of supply of services, where the supplier is located outside India. In such cases, the time of supply will be the earlier of date of entry in the books of account of the recipient of supply or the date of payment - thus, within ‘associated enterprises’, the levy under GST is attracted once such book entries are made even if no actual payment takes place or no invoice is issued.

Question 19: *What would be the tax liability on replacement of parts (no consideration is charged from a customer) under a warranty and whether the supplier is required to reverse the input tax credit?*

Answer: As parts are provided to the customer without a consideration under warranty, no GST is chargeable on such replacement. The value of supply made earlier includes the charges to be incurred during the warranty period. Therefore, the supplier who has undertaken the warranty replacement is not required to reverse the input tax credit on the parts/components replaced.

Question 20: *An Original Equipment Manufacturer (OEM) has an obligation to provide repair services to their customers in the warranty period. This activity is outsourced by OEM to ‘D’, who bills the OEM for the services he provides to the customer. What is the tax liability of ‘D’?*

Answer: ‘D’ is providing service to the OEM. GST is payable on the value of any supplies made by ‘D’ to OEM i.e., in respect of bills raised by ‘D’ on the OEM.

Question 21: How will the defective parts be sent to the mother warehouse/repairing centre for repair by the downstream repairing centres? What is the tax liability?

Answer: The defective parts shall be sent for repair on a delivery challan accompanied by such e-way bill as may be prescribed. GST shall be chargeable on the repair amount, including the cost of parts, charged by the repairing centre.

Question 22: What is the tax liability in a scenario where supplies are made from multiple locations (in different States) of the supplier to the recipient under a single contract?

Answer: Delivering services from various locations and integrated pricing for the contract as a whole is the norm in IT/ITES industry. Normally the contract or agreement with the recipient is entered into by one of the branches (let us say “Main Branch”). Therefore, in such cases of service delivery from multiple locations of the supplier to the recipient, the supply could be visualized as consisting of two distinct supplies. First supply- the different branches of the supplier located across different States are making the supply to the main branch which entered into a contract or an agreement with the recipient for the supply of such service. Second supply- main branch is making a supply to the customer. GST is to be levied accordingly. In such a scenario, the main branch would get input tax credit of GST paid by the other branches on supplies made by them to the main branch.

Question 23: In the scenario envisaged in previous question, the main branch is said to be entitled to ITC of the GST paid by the other branches. Thus, it is a revenue neutral situation. What are the valuation guidelines for such services?

Answer: The second proviso to rule 28 of the CGST Rules, 2017 provides that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods and services.

Question 24: Can payment of IGST on reverse charge basis on import of goods/services be done through book entry or ITC?

Answer: No. GST payable on reverse charge basis is to be discharged through cash only. Rule 85(4) of the CGST Rules, 2017 refers.

Question 25: Is the requirement of transferring of credit through ISD mechanism mandatory?

Answer: The ISD provision under the CGST Act, 2017 is not mandatory. It only provides the manner of distribution of ITC wherever the business entity wishes to distribute the ITC as an Input Service Distributor.

Question 26: What is the format for invoices to be issued in the case of reverse charge payment of GST?

Answer: No separate format for any type of invoicing including self-invoicing has been prescribed. The contents of the invoice have been prescribed in Rule 46 of the CGST Rules, 2017.

Question 28: I am a software provider, registered at Mumbai. I supply software to my clients in Bangalore - would I be required to take a registration in Karnataka?

Answer: No. The supplies would be treated as inter -State supplies and IGST is chargeable on the same.

A quick guide

GST IN TEXTILE SECTOR



IRONING & PAC

BY: CA BHARTI KARNANI &
CA ANKITA SHARMA

PREFACE

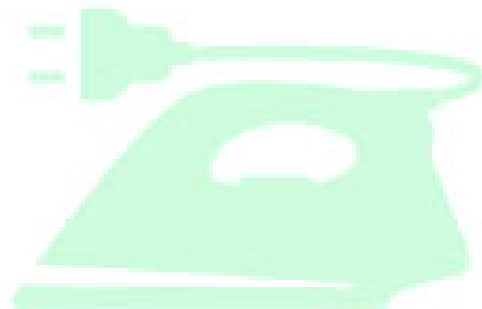
GST is a huge reform for indirect taxation in India, the likes of which the country has not seen post-Independence. The implementation of the Goods and Services Tax (GST) in India was a historical move, as it marked a significant indirect tax reform in the country. The amalgamation of a large number of taxes (levied at a central and state level) into a single tax is expected to have big advantages.

One of the most important benefits of the move is the mitigation of double taxation or the elimination of the cascading effect of taxation. The initiative is now paving the way for a common national market.

This book will help you understand the applicability and impact of GST provisions with respect to the Textile Industry. The comprehensive and practical knowledge of the two authors would help in the implementation of the provisions in an easy manner. This is a complete guide for the rising issues and solutions in incorporating GST with Textile sector as well as covering the practical aspects & current scenario of the Industry.

We would like to thank and extend our sincere appreciation for support and guidance to all the team members of "ITRAA team".

A special thanks to "CA. Vikash Banka" for his continuous support and his expert advice who has given his perspectives and helped in analyzing the factors involved in this sector.



CA BHARTI KARNANI
CA ANKITA SHARMA
(AUTHORS)

IRONING & PACKING

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CA Bharti Karnani enrolled as a member of The Institute of Chartered Accountant in Nov 2020(2nd cycle). She likes writing and has written various articles for "Taxguru" web portal and is active on LinkedIn as well.

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"JOURNEY OF A CA"

The journey begins with the gleaming eyes to conquer the world,
To do something extra-ordinary and stand out of the herd!!

People warned her, before taking this tough decision
Told her to rethink, as it is a game of full precision.

She was determined to prove herself to the world,
With the wings full of energy, she started flying towards the wind

CPT/IPCC was full of memories and got a great starting,
Devoid of the glimpse of college life, still it was all flowery!

A lot of people got along the way to the destination,
Some kept walking and some left even before the station.

It was all starry and sparkling until the article-ship began,
The "Drum of war" got playing as things started turning insane!

Early morning to late night classes and got a lot of office pressure,
Despite all, getting to learn new things was also a real pleasure.

Staying away from family & eating PG food was not less than a punishment,
But a single call from mummy took away all the fatigue and felt ready for any
adjustments.

During CA finals, some seniors became juniors and vice-versa,
Saw a lot of dreams shattering in between 39 & 59 be it audit or ISCA.

In finals, the vicious circle of may & nov. was hard to escape,
Some friends gave upon her and at one time she also got the feeling of disgrace.

The ICAI has turned her into the "nerve of steel" and she became tough to tear
apart,
It was her self-belief that kept her stand apart.

She knew that she is going to make it happen sooner or later,
and battled through all those family& marriage pressure and remain the fighter.

Then, the big day came and all the efforts and sacrifices felt worthy,
She got the prefix to her name for which she was a long thirsty.

A lot of people's #courage & #sacrifices remains unsung and unfound,
But believe me, every #CA has been through their own battleground.

-CA Bharti Karnani

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1. Brief intro to textile sector
2. Process flow of textile industry
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4. Various rates of tax in textile industry
5. Registration under GST
6. RCM under GST
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8. Job work
9. Refund
10. Filling of GST returns and other compliance
11. E-Way bill.

IRONING & PACKING

1. Brief introduction to Textile sector:-

The **textile industry in India** traditionally, after agriculture, is the only industry that has generated huge employment for both skilled and unskilled labour.

The textile industry continues to be the second-largest employment generating sector in India. It offers direct **employment to over 35 million** in the country.

The grant to the textiles and clothing sector in **Union Budget 2021-22** is Rs 3,614.64 crore, about 10% higher than the revised Budget amount of Rs. 3,300 crore in 2020-21. The Budget also puts emphasis on infrastructure development and research & capacity building as the grant for these sectors has been increased by about 43.7% and 77.5%, respectively, compared to last year.

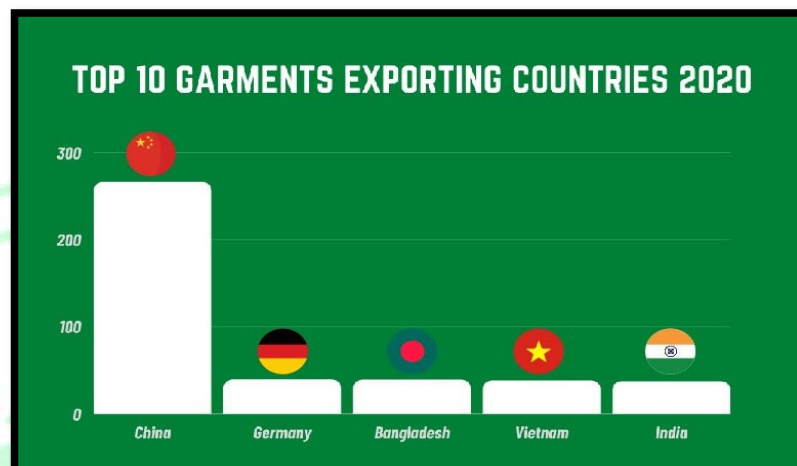


CITI chairman Rajkumar said:-

“The Production Linked Incentive (PLI) scheme for man-made fibres and technical textiles with a total outlay of Rs10,683 crore will help the textile industry become globally competitive, attract large investments and boost employment generation. Moreover, to achieve the target of \$350 billion from the current size of \$167 billion, our manufacturing sector has to grow in double digits on a sustained basis. Our manufacturing companies need to become an integral part of global supply chains, possess core competence and cutting-edge technology,”

As per **union budget 2021**, at least seven textile parks will be developed over the next Abhiyan to help create empl opportunities.

So, we can clearly see that government is keen in promoting textile industry in India which is a very good news for the industry. So, bigger the textile industry gets the more compliance and advisory the sector attracts so, studying the impact of textile industry in GST becomes important.



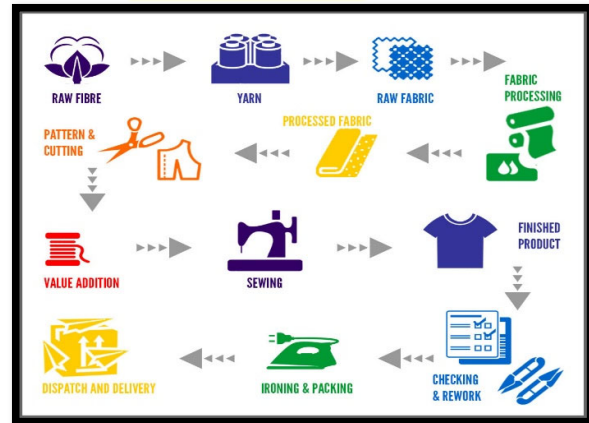
“Garment Exporting Countries in Year 2020”

IRONING & PACKING

2. Process Flow of textile Industry

Based on the fibre and processing, there are 9 major segments in the textile sector in India which are listed below:

- 'Khadi' and handlooms
- Cotton textiles(including raw cotton, ginning, yarn, etc)
- Woollen textiles
- Silk Textiles
- Art silk & synthetic fibre textiles
- Jute, hemp & mesta textiles
- Carpets
- Ready Made garments(Apparels)
- Textile Handicrafts & Miscellaneous Textile products



While Cotton, Silk, Jute and Wool are natural fibres extensively used in textiles, major filament yarns manufactured (man-made) in India are viscose, polyester, nylon and polypropylene. Viscose is used to make viscose filament used in dresses, linings, shirts, shorts, coats and other outer wear. Polyester is used in making apparel and home furnishing besides other industrial uses. Polypropylene is a major polymer used in non-woven. Most of it used in diapers or sanitary products where it is treated to absorb water. Nylon is widely used in the manufacture of carpets apart from being used as industrial yarn.

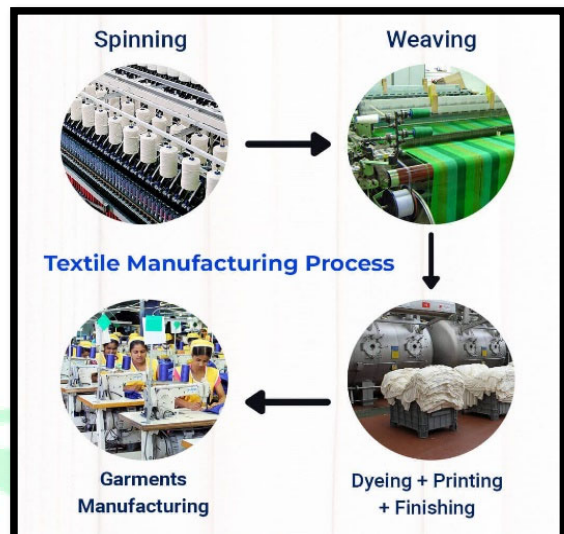
Textile manufacturing process is beginning towards the production of any garment or Textile Products. The aspirations for quality garment and apparel gave rise to development of textile fibres and textile production units. Textile manufacturing is an extensive and immense industry having a complex procedure. It undergoes range of stages as converting fibre into yarn, yarn into fabric and so on ending up with concluding product.

Major segments in level of processing in Textile sector:-

- Spinning(Yarn Manufacturing)
- Weaving(Fabric Manufacturing)
- Knitting and wet processing(Dyeing + Printing +Finishing)
- Garment manufacturing(Cutting + Sewing)

Indian Spinning Sector is highly advanced and competent globally in terms of price, quality and standards. It has the second largest installed spindle capacity as well as rotor capacity in the world. Indian Weaving Industry has been one providing mass employment.

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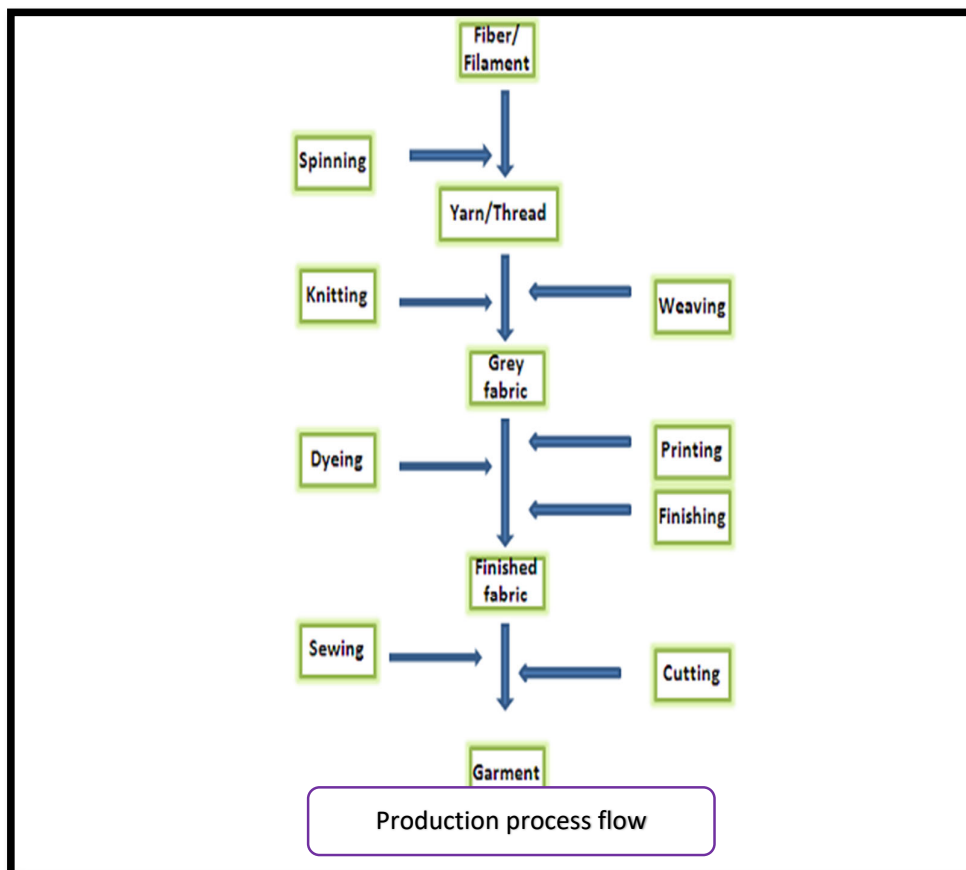
The Goods and Services Tax (GST) was first implemented in France. And India's GST is based on Canadian Model.

Production process flow

Textile mills employ a multi-step process for taking raw materials and turning them into usable products. Production process flows as following:-

1. Fibre whether natural or synthetic, are arranged in various ways to create a desired texture appearance, strength or durability
2. The first step in the textile process is spinning. This step transforms fibres into yarn. The major components of spinning process include
 - **Carding** – remove impurities from fibre
 - **Combing** – straightens the yarn
 - **Drawing** – creates evenness in the yarn
 - **Roving** – inserts twists into the yarn to hold the fibres together
3. Yarn is transformed through fabric production techniques such as weaving and knitting. Weaving is a practice of interlacing yarns called a warp, which runs parallel, and weft, which runs perpendicular, to build a rigid fabric. Knitting is a process of using long needles to interlink or knot a series of loops made by one continuous level. Each loop or knot connects to another one, and when enough loops have been made, the result is a flat piece of material called a textile. Most textiles are made either through knitting or a process of called weaving.
4. Pre treatment processes are carried out on the fabrics to prepare them to accept dyes and necessary chemicals
5. Dyeing and printing using pigments and prints are performed on the textiles
6. Finishing treatments are added to the fabric to create special technical properties or a desired aesthetic appeal.

Textiles are given needed additional properties such as buttons or zippers before being finalised for sale and distribution.



IRONING & PACKING

3. Pre GST and post GST textile industry

Before GST regime there were multiple taxes that were imposed on the textile sectors including:-

- Central Excise Duty
- Value Added Tax (VAT)
- Central Sales Tax (CST)
- Entry Tax
- Customs Duty

Problems that the industry was facing:-

- Break in input tax credit chain
- Small Business Compliance Cost
- Job work under Central Excise
- Person affixing the brand name was liable to pay excise tax even he was a job worker
- Differential treatment of Job Work under CENVAT and State VAT



Before the implementation of GST 2017, Cotton fabric traders staged nationwide token strikes, protesting the decision to bring the item under the goods and services tax (GST) net. Majorly, the reason for the protest was that a **5% rate** has been levied under GST but around a million small and medium size units were paying **no duty under the old tax regime**.

Then finance minister **Arun Jaitley** Clarified “**zero GST on fabrics will break the input tax credit chain and then the garments/made-ups manufacturers will not be able to get the credit of tax on previous stages**” and he also said that, “**Zero GST on fabrics will result in zero rating of imported fabrics, while domestic fabrics will continue to bear the burden of input taxes**”

Post GST implementation, there are various advantages and shortcomings that the industry is facing some of the points to be considered are:-

❖ Organised and unorganised sector:-

- A great portion of traders in the textile industry is not registered with GST due to which a barrier is created in the flow of Input Tax Credit.
- The primary chunk of this industry belongs to unorganised sector including small and medium scale mills, handlooms, and handicrafts etc.
- The unorganised textile trade has been impacted negatively.

❖ Production Cost:-

- GST reduced inout cost of the garment industry by subsuming complicated taxes such as OCTROI, entry tax, luxury tax etc. into a uniform tax system.
- Earlier, excise duty and VAT were applicable to the yarn and branded garments. This added to the cost of the final product.
- But now with the GST, uniformity and simplified taxes, the input cost has reduced, thus lowering the manufacturing cost of textile products.

FUN FACT

The first state which implemented the GST was **Assam**.

Amitabh Bachchan has been made the brand ambassador of GST.

❖ Compliance part:-

- With the introduction of GST, various indirect taxes which were earlier levied (such as Central Excise, Value Added Tax/ Central Sales Tax, Octroi, Entry tax) have been subsumed
- This has led to substantial reduction in compliances to be undertaken by the manufacturer.
- Under GST, such person is required to deal and comply with only GST law

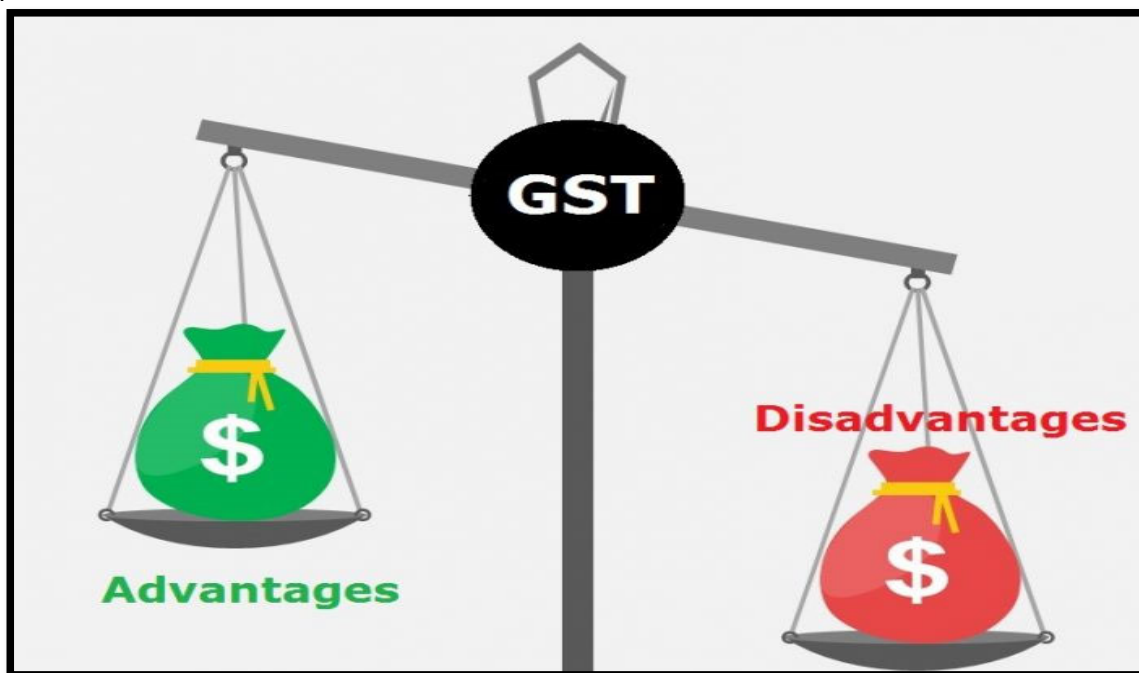
❖ Input Tax credit under GST:-

- In the pre-GST era, textile industry mainly operated under duty exemption mode so, the benefit of CENVAT credit was not available to manufacturer availing duty exemption which got baked in the cost of the product.
- Earlier, Many persons operated at a small scale and were either unregistered persons or took registration under composition scheme which again disrupted the flow of credit and lead to cascading effect.
- Under GST, Government has withdrawn the optional exemption route and imposed GST on textile industry (supply of fabric attracts GST@5%, cotton fibre and yarn attracts GST@5%, Synthetic yarn and Man-made fibre attracts GST@18%).
- Registered players in the market, can enable the flow of credit to the end consumer and lead to reduction in prices of the manufactured product.
- So, this way there will not be any cascading effect and a free flow of credit to every person registered in the supply chain.

❖ Import of Capital Goods:-

- Earlier the credit was not allowed on the procurement of the latest machines through imports. The excise paid on imports increased the price of procurement.
- Under GST the taxes paid on such imports can be claimed.

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4. Various rates of tax in textile sector:-

Pre GST:-

Taxation structure for textiles Pre-Gst era was primarily divided into Central Excise Duty and VAT, CST, Service Tax on Job Work and local body taxes which was levied and collected by states like Entry Tax with the overall incidence of such taxes varying across different states. This resulted in a fragmented input tax credit chain, leading to embedded taxes and cost escalations. The tax structure on textiles consisted of following levies

1. **Central Excise Duty:** - Excise Duty on all goods falling under Chapter 61,62 and 63 bearing a brand name (primarily Branded Ready Made Garments) having a Retail Sales Price of Rs1000 and above was 2% (without Cenvat) and 12.5% (with Cenvat), with the tariff value of 60% of Retail Sales Price to account for value addition after manufacture. Optional Central Excise Duty route has been available in case of cotton, MMF and Spun yarn at the yarn, fabric and garment stage, wherein duty was payable if the manufacturer opted to avail Cenvat, else the trader/manufacturer has the option of clearing goods without payment of Central Excise Duty though no Cenvat credit of inputs, input services and capital goods was allowed.
2. **Service Tax:** - Textile sector availed various input services for manufacturing its finished goods. The service tax so paid on such input services was not available for set off since this sector was largely under duty exemption. Hence such service tax paid on input services became a cost.
3. **VAT/Central Sales Tax:** - Most of states in India has exempted textiles and fabrics from levy of VAT/Central Sales tax. Garments including textiles were being subject to lower rate of Vat/Central Sales tax in most of the states. It was in the range of 5% - 6%. For small tax payers, the option of paying taxes at concessional rates was also provided under the composition scheme in many states.
4. **Entry Tax:** - Textiles such as cotton, woollen or silk or artificial silks were liable to entry tax in some states which added to purchase cost.



Post GST: -

The GST rate structure for the textile industry takes into account the past effective incidence of tax and tries to eliminate the inefficiencies of the Pre-GST structure, while protecting the end-customers from an abnormal hikes in prices. The **GST** council has fitted over 1300 goods and 500 services under four tax slabs of 5%, 12%, 18% and 28% under **GST**. The current

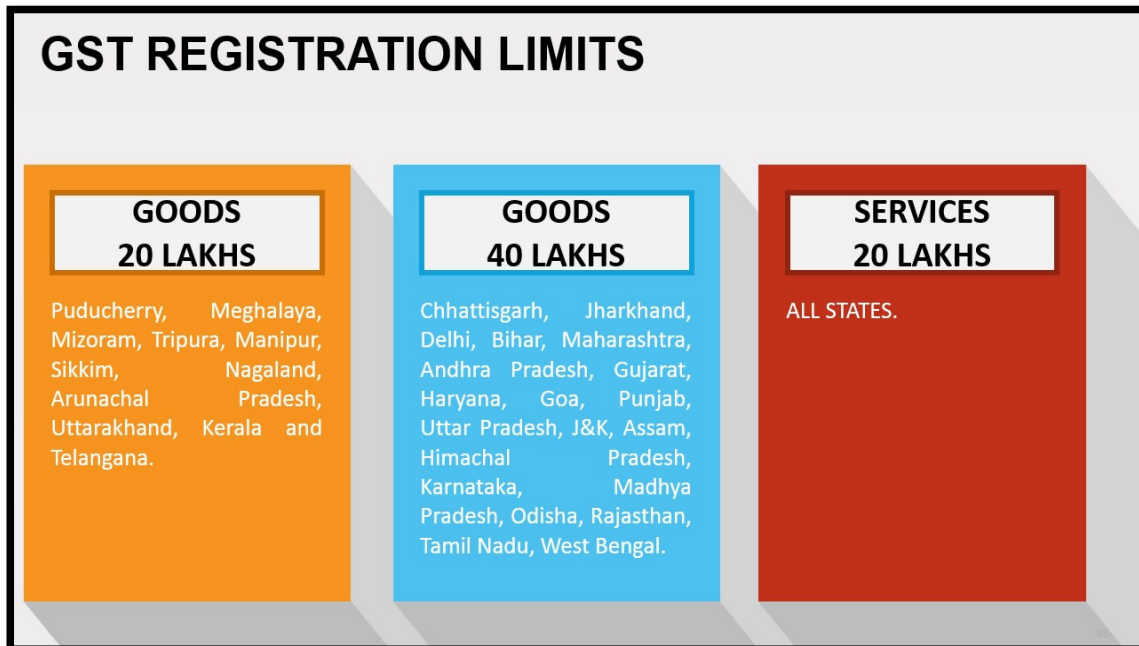
rate of GST for the textile industry has been indicated below:-

Post-GST Regime: Tax Structure Applicable for the Textile Sector	
Fibre	Cotton and other natural fibre - 5% Man-made fibre - 18%. Jute and silk fibre – Exempt
Yarn	All yarn (except man-made) - 5% Man-made yarn - 18%
Fabric	All fabrics - 5%
Readymade apparels	5% (for sales value not exceeding Rs 1,000) 12% (for sales value exceeding Rs 1,000)

5. Registration under GST:-

As per section 22(1) of CGST Act 2017 Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees:

Provided that where such person makes taxable supplies of goods or services or both from any of the special category States, he shall be liable to be registered if his aggregate turnover in a financial year exceeds ten lakh rupees.



Few points to be considered:-

- Under GST Law, a supplier is required to obtain State-wise registration. There is no concept of a centralized registration under GST like the erstwhile service tax regime.
- A supplier has to obtain registration in every State/UT from where a taxable supply provided his aggregate turnover exceeds a specified threshold limit. Thus it is not required to obtain registration from a State/ UT from where he makes a non taxable supply.
- Since registration in GST is PAN based, once a supplier is liable to register, he has to obtain registration in each of the States/UTs in which he operates under the same PAN.
- Assessee is normally required to obtain single registration in a State/UT but he has multiple places of business in a State/UT he has a option either to get single registration or separate registration for each place of business in each State/UT.

Further, Notification No 10/2019 CT dated 07.03.2019 exempts any person who is engaged in exclusive supply of goods and whose aggregate turnover in a financial year does not exceed Rs 40lakh from registration requirement.

FUN FACT

GST has been implemented by the *101st Constitution Amendment Act, 2016.*

The President of India approved GST bill on 8th September 2016.

Compulsory registration:-

As per section 24(1) of CGST Act 2017 : Person liable to get compulsory registration

- Person making inter-state Taxable supply
- CTP making Taxable Supply
- Person who is required to pay tax under RCM
- NRTP making Taxable Supply
- Every ECO who is required to collect tax at source under section 52
- Person who is required to pay tax u/s 9(5)
- Person who is required to Deduct tax u/s 51, whether or not separately registered under the act
- persons who make taxable supply of goods or services or both on behalf of other taxable persons whether as an agent or otherwise
- Input Service Distributor whether or not separately registered under this Act
- every person supplying online information and database access or retrieval services from a place outside India to a person in India, other than a registered person
- persons who supply goods or services or both, other than supplies specified under subsection 5 of section 9 through such electronic commerce operator who is required to collect tax at source under section 52

Registration requirement in inter and intra supply:-**For Inter State Supply:**

The business pattern of the textile industry is such that the goods are supplied from the factory premises/job premises to the sales offices or depots situated in other states. As a result of GST, such registered persons having different establishments in different states (if under same PAN no.) were made liable to avail separate registration in each and every state. This increased the compliance cost and also increased the number of returns to be filed by a single person despite of having inter unit transactions.

For Intra-State supply:

The current system and provisions of CGST Act and rules provides for single registration in a state. As a result suppliers having more than one unit in a state has to consolidate data for each unit every month for the purpose of filing returns.

Major Issue on Registration under GST for textile industry:-

- **Issue:**

Textile Trader or Manufacturer has to take mandatory registration under GST if he is availing services covered under the provisions of Section 9(3) of the CGST Act (refer sec. 24(1)(iii)) So here threshold limit of turnover (20 Lakhs & 10 Lakhs) will be not considered for taking registration. This hampers the small traders who don't cross the threshold limit and still they have to take registration. This increases the compliance cost heavily for such small traders and also results in inflation of their product's prices.

- **Issue:**

Textile Industries is majorly having smaller business units and SME's. Sec. 24(1)(i) mandates assessee having inter-state transactions to mandatorily avail registration. These small traders/manufacturer take part in exhibitions in other states to sell his finished goods and also regularly makes taxable supplies of such items in other States. Due to mandatory registration provision as per section 24 of CGST act, these small traders/manufacturer have to take registration under GST act.

Persons not liable for registration:-

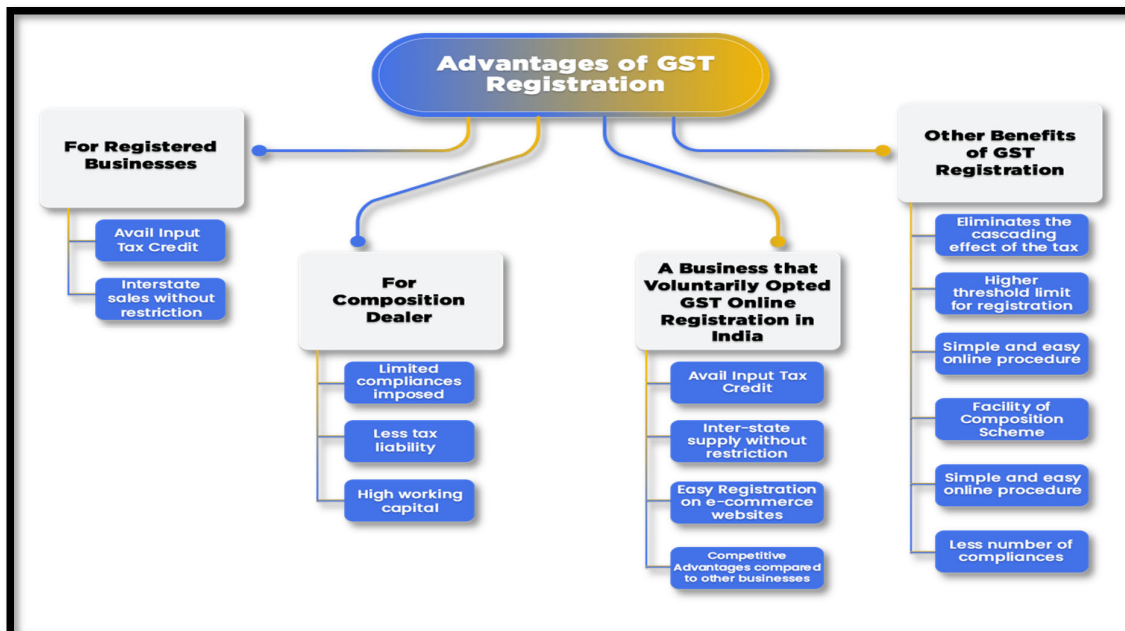
As per section 23 of CGST Act 2017, certain assesses are not required for compulsory registration including,

- any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the IGST Act
- an agriculturist
- Specific Categories of persons notified by the government exempted from obtaining registration



Few notifications by government:-

- ✚ **Notification No 05/2017 (CT)** – Exempts Persons only engaged in making supplies of taxable goods and services on which tax has to be paid under Reverse Charge basis u/s 9(3) from Registration
- ✚ **Notification No 07/2017 (IT) dated 14.09.2017** – Job workers making inter-state supply of services to a registered person are exempted from registration if their turnover is below 20 lakhs (10 lakhs for Special states).
- ✚ **Notification No 08/2017 (IT) dated 14.09.2017 & Notification No 03/2018 dated 22.10.2018** – Exempts Person & Casual Taxable Person making Inter State supplies of notified handicraft goods up to 20lakh (10lakh for Special States) from Registration. And handicraft goods include Textile (Handloom products, handmade shawls, stoles and scarves, textile hand printing, zari thread, carpet, rugs and durries, textile hand embroidery)
- ✚ **Condition:** - Aggregate value of such supplies to be computed on all India basis does not exceed an amount of 20lakhs (10lakh for Special States) in a FY. Such person has obtained a PAN and have generated e-way bill.
- ✚ **Notification No 10/2017 (IT) dated 13.10.2017** - Exempts persons making Inter State supply of Taxable Services having turnover below 20lakh (10lakh for Special states) from Registration



6. Reverse Charge Mechanism Under GST

Section 2(98) of the CGST Act, 2017 has defined the term "Reverse Charge" and the same is reproduced as follows:

"Reverse charge" means the liability to pay tax by the recipient of supply of goods or services or both instead of the supplier of such goods or services or both under:-

- ✓ Sec. 9(3) and 9(4) of CGST act. ,
- ✓ Sec. 5(3) and 5(4) of IGST act.

As per Sec. 9(3)/5(3) of the abovementioned acts,

"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.

Some of the notified services by government are:-

- Goods Transport Agency (GTA) Services,
- Advocates Services,
- Director Services, etc.

Section 9(4)/ 5(4) of the Act, 2017 provides the provisions of reverse charge and the same is reproduced as follows:

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

As per the above provision, if supply of Goods & Services is taken from Unregistered Person then the recipient of such Goods and Services has to pay the tax on Reverse Charge Basis.

Point to be kept in mind:-

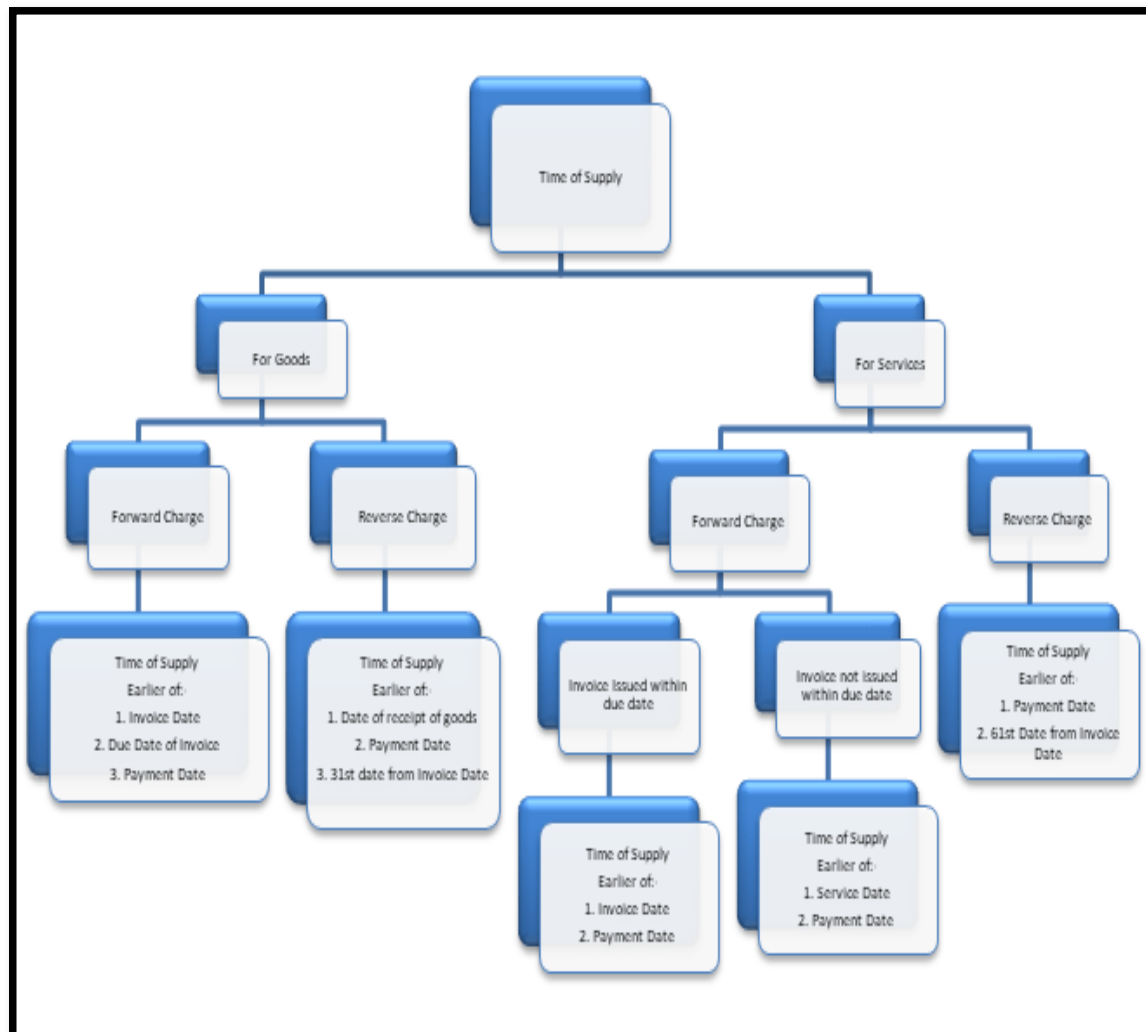
- Notification No. 07/2019-Central Tax (Rate) – Seeks to notify certain services to be taxed under RCM under section 9(4) of CGST Act as recommended by Goods and Services Tax Council for real estate sector.
- As of now, govt. has **not notified any RCM applicability for textile sector**.
- If govt. notifies any services for textile sector u/s 9(4) then, the RCM mechanism will directly hamper the textile industries.
- Since purchase of inputs (Ex. Raw Cotton from Farmers, Yarn purchased from Unregistered traders/ dealer etc.) and input services (Ex. Job worker services, Rent, Transport services) are majorly procured from unregistered dealers, it will attract reverse charge.
- The GST Act requires the tax under RCM to be deposited in cash and thus directly affecting the working capital of the entity.
- Simultaneously this tax paid is allowed as credit but it only raises question on viability of the law.

7. Time & Value of Supply

Time of supply:-

Under the CGST act Sections 12, 13 & 14 deals with the provisions related to TOS

Time of supply (TOS) is very important concept of GST as it helps you identify the time at which liability to pay tax to the Government arises. **Value of supply** is important because GST is calculated on the value of the sale. If the value is calculated incorrectly, then the amount of GST charged is also incorrect



The most prominent issue faced by the industry due to provisions contained in section 12 of the CGST Act was that due to tax on advance receipts of payments by manufacturer/trader. The provision is reproduced here for ready reference:

Time of supply in case of goods as per Section 12(2) has been stated to be **earlier of the following dates:-**

- Date of issue of **invoice** or the last date on which he is required to issue the invoice with respect to the supply
- Date on which supplier **receives the payment** with respect to the supply.

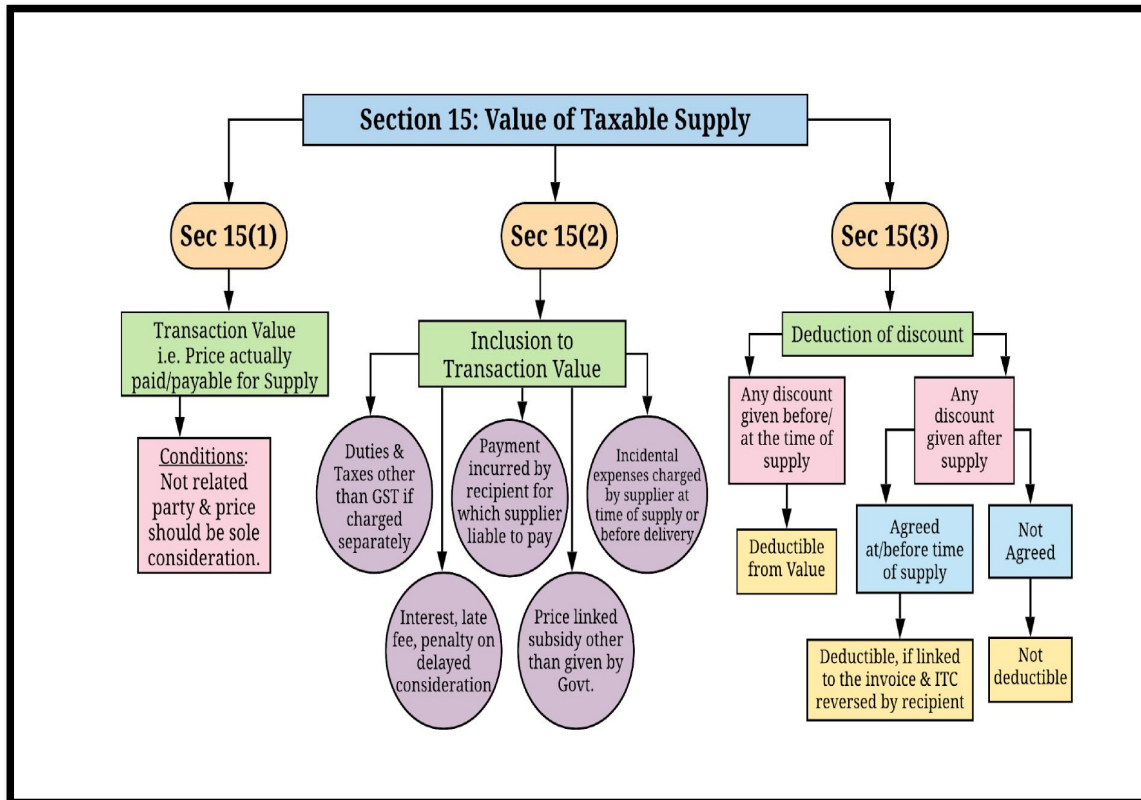
The introduction of the date of payment as the time of supply under GST was a completely new concept for supplier of goods.

The **textile industry** is basically a credit based industry and **working capital requirement** are met out by payments received in arrears for supplies made during prior periods. In such adverse conditions, introduction of this section cause **severe adversaries** to this already cash deprived industry. Liability to pay taxes on advance would only result in more liquidity issues for the industry.

Notification No 66/2017 CT dated 15.11.2017 By this notification the Government has removed the condition of date of payment while determining the time of supply and now only the time of issuance of invoice is considered for payment of taxes in case of goods.

Value of supply:-

Section 15 of CGST act,2017 governs the provisions related to Value of supply.



The major problem faced by the textile sector under this section is in relation to interest on delayed payments.

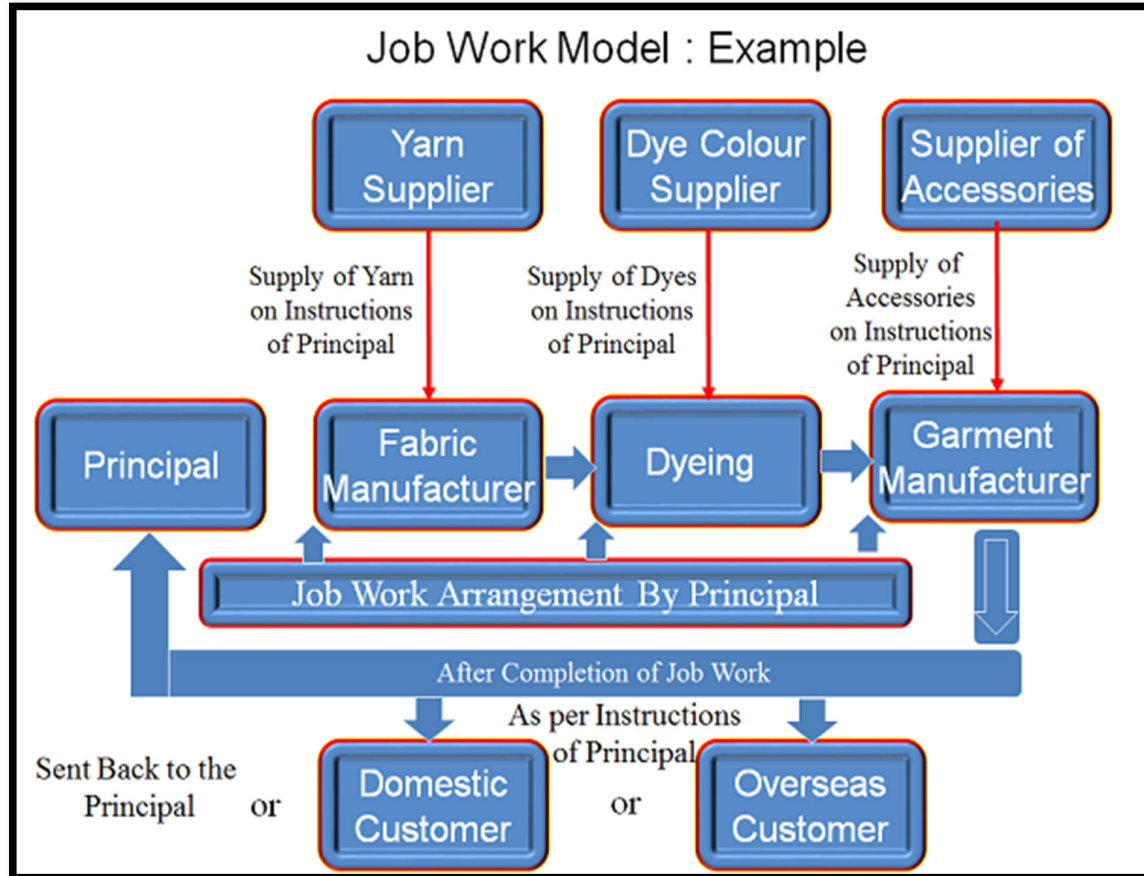
As mentioned earlier textile sector works primarily on credit based sale pattern and it is a prevalent practice in industry to charge interest on late payments made by buyers. In the earlier tax regimes, there was no such provision for charging of tax on such delayed payment's interest but under GST, the scene has changed. Now such interest or late fee received is also chargeable to tax. But the real problem arises when this section is read in conjunction with section 12(6). It reads as follows:

The time of supply to the extent it relates to an addition in the value of supply by way of interest, late fee or penalty for delayed payment of any consideration shall be the date on which the supplier receives such addition in value.

According to above mentioned sections, the tax on such receipt of interest has to be paid at the time of receipt of such amount. The practical problem in this case arises because no buyer would like to pay GST on interest component. As a result the seller has to assume the receipt inclusive of GST and pay it out of his own pocket.

8. Job Work:-

In Textile Industries Job Work process is the backbone activity of the industries as textile material is processed/transformed from raw cloth to finished product or semi-finished product by the process of Job work. The process of Job Work may be Printing, Embroidery, Stretching, Designing and many other allied activities which is done by various Small Scale SMEs/Units and individual Job Worker.



The term Job work has been defined in the CGST Act 2017. "Job work" means undertaking **any treatment or process** by a **person on goods belonging to another registered person** and the expression "job worker" shall be construed accordingly - section 2(68) of CGST Act.

The definition of job work contains 3 important phrases, namely:-

1. Treatment or Process:-

The term treatment or process is very subjective. There is no mention here that whether the result of the treatment or process must be manufacture and the emergence of a distinct new product. This implies that whether or not the treatment or process results in manufacture, the treatment or process will always be treated as a supply of services the classification will continue to be HSN 9988.

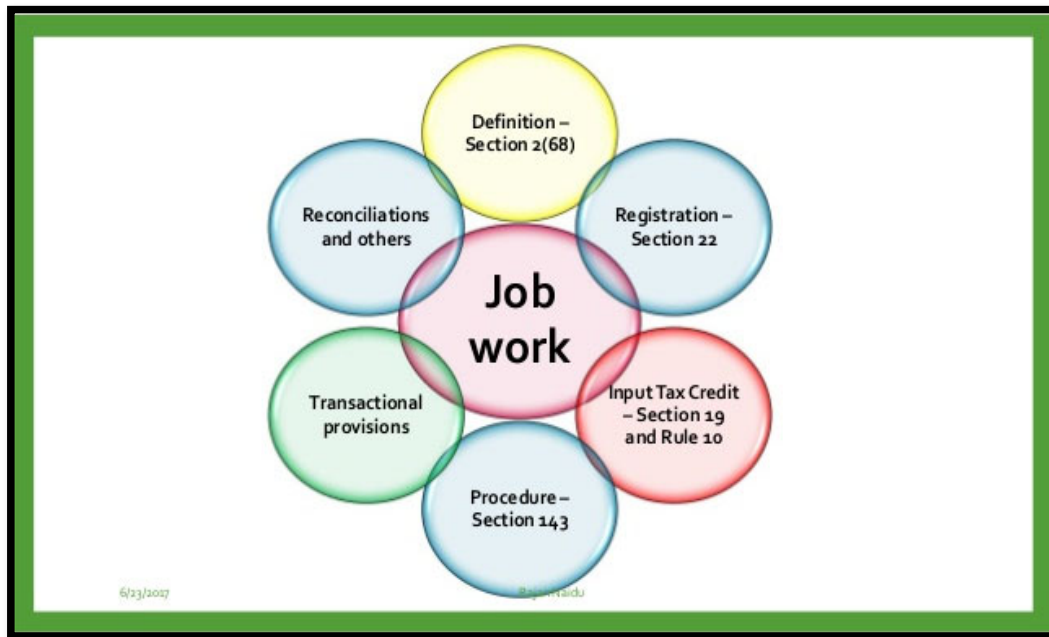
2. Goods belonging to another person:-

Whether 100% of the goods required for the treatment or process must necessarily be provided by the principal manufacturer?? What if non-essential or ancillary goods alone are provided by the principal manufacturer and attempt to operate under the job work model??

As per Circular No 38/12/2018:- It was clarified job work is expected to work on the goods sent by the principal and whether the activity is covered within the scope of job work or not would have to be determined on the basis of facts and circumstances of each case. Further it is clarified that the job worker, in addition to the goods received from the principal, can use his own goods for providing the services of job work.

3. Such person being a registered person

This is very interesting that unless the principal is himself registered, the entire transaction will fail to be job work. In other words, job work will be job work only if the principal is registered and if the principal is unregistered then, it will not be treated as job work and it will be covered under clause 3 of Schedule II which states that any treatment or process which is applied to another person's goods is a supply of service.



Rate of GST in case of Job Worker Service:-

Issue:

Initially in GST regime a Registered Job worker providing services of Job work to any principal had to charge GST @ 18%. This higher rate of tax on textile industry is creating harsh impact on various small SME's and Job workers as the output tax rate on textile sector is just 5%. As a result, huge amounts of credit balances are accumulated with the principal restricting the cash flows of the entity.

To overcome this, the Government, on the recommendations of the Council reduced the rate of tax on Job Work services

Notification No 20/2017 (CT) dated 22.08.2017: Lays down Gst rate on job work for textile & textile products to be 5%

Notification No 46/2017 (CT) dated 14.11.2017: Lays down GST rate on job work of "Handicrafts Goods" to be reduced to 5%

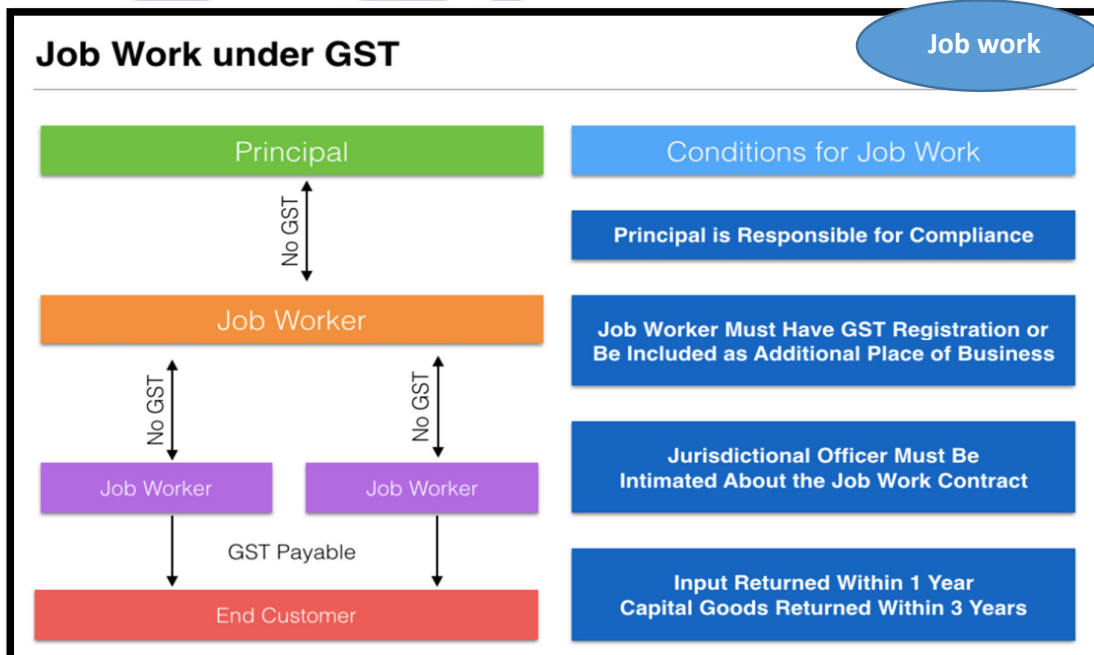
Before introduction of GST, under service tax regime, the intermediate process related to job work of textile products was specifically exempted in the mega exemption notification. Post introduction of GST, the exemption for textile related job work was withdrawn. Thus now the job workers have to follow all the provisions of GST.

Registration under GST for Job Worker and Principal:-

Issue:

As we have earlier discussed and as per provision of section 24 of CGST Act 2017 if a person supplies any goods/services interstate then he has to take mandatory registration under GST Act. The same applies to job worker too. Although the Government vide Notification no. 7/2017- Integrated Tax dated 14th September 2017 exempted job workers from obtaining registration under GST even if they are making inter-State taxable supply of services. However, this exemption from registration will not apply if they exceed the threshold limit for registration under Section 22(1) or they had opted for registration voluntarily.

As per Sec 143 of CGST Act, A registered person (Principal) is allowed to send inputs/capital goods without payment of tax to a job worker and from there to another job worker and after completion of job work bring back such goods without payment of tax or remove the processed goods from the job work premises for supply to customer



Responsibility for accountability of Inputs/ Capital Goods:-

- Principal is responsible for accountability of Input/capital goods under Section 143(2) of the CGST Act.
- The Principal issues the challan (as specified in rule 10 of invoices rules under GST) to the job-worker for the inputs or capital goods.
- He maintains the accounts of input and capital goods.
- The supply of goods, after completion of job-work, by a registered job worker **shall be treated as the supply of goods by the principal** referred to in section 143, and the value of such goods shall not be included in the aggregate turnover of the registered job worker - **Explanation (i) to section 22 of CGST Act.**
- **Thus, in case** of job work, value of material will be included in aggregate turnover of principal for considering exemption available to small persons (having turnover of 20/10 lakhs) and not in turnover of job worker.

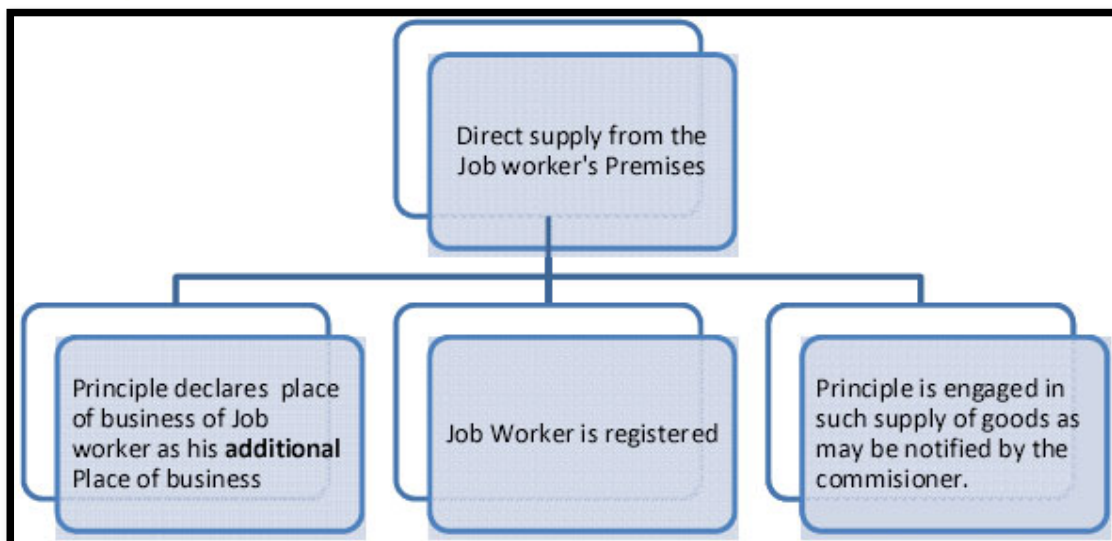
Supply of goods from the premises of Job work:-

After job work, the finished goods (inputs after job work or capital goods) **can be sent directly from place of job worker**, instead of bringing them back to place of business of 'principal'. If such supply is in India, GST is payable. Such goods can also be exported directly from place of job worker, either on payment of GST or without payment of GST - section 143(1)(b) CGST Act.

The goods shall not be permitted to be supplied from the place of business of a job worker in terms of clause (b) unless the "principal" declares the place of business of the job-worker as his additional place of business

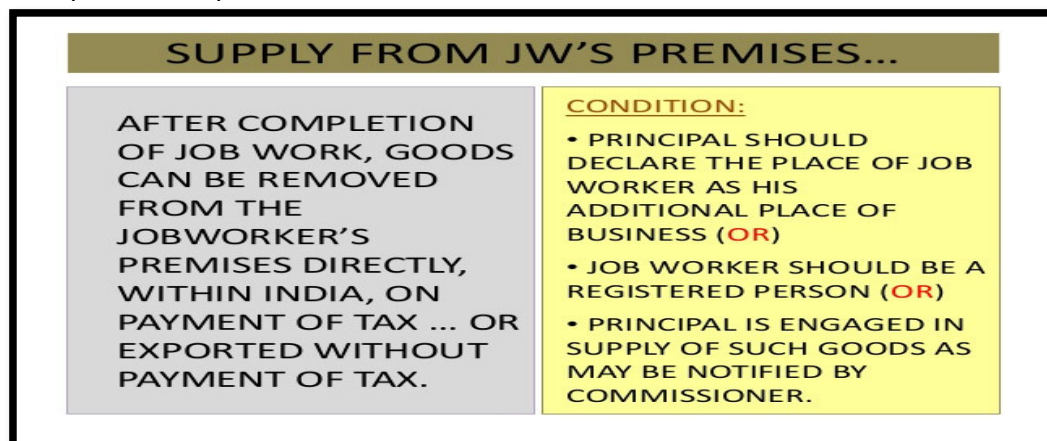
except in a case –

1. where the job worker is registered under section 25 of CGST Act; or (ii)
2. where the "principal" is engaged in the supply of such goods as may be notified by the Commissioner in this behalf - proviso to section 143(1) of CGST Act.



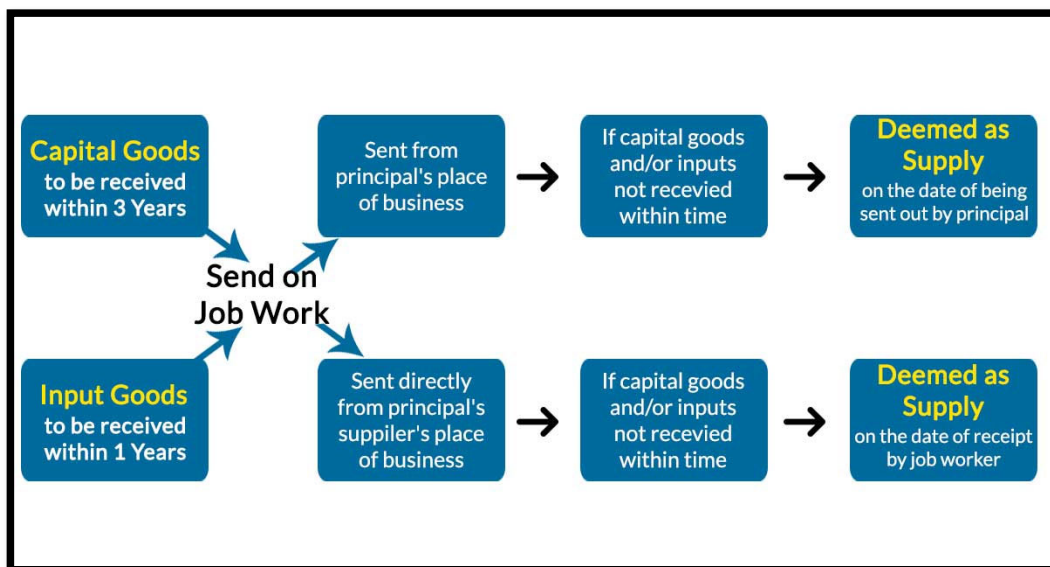
Few Points:-

- If job worker is registered under GST, then the 'principal' is not required to declare the place of job worker as additional place of business.
- Thus this additional liability has been conferred upon the principle to add the unregistered job worker in his registration if any goods are supplied directly from his premises.
- In case where there are numerous such unregistered job workers, then adding all these names in registration required frequent amendments in registration certificate which is not plausible in practical scenarios.



Inputs/Capital Goods sent to Job Worker not received back:-

- If inputs or capital goods are not received back by 'principal' within one/three years. **GST shall be payable as if the inputs/capital goods were supplied by the principal to job worker on the day when the inputs/capital goods were sent out** sections 143(3) and 143(4) of CGST Act.
- If inputs or capital goods are directly sent to place of job worker, the period of **one/three years will be counted from date of receipt of inputs/capital goods by the job worker** - proviso to sections 19(3) and proviso to 19(6) of CGST Act.
- The meaning of 'on the day when the inputs/capital goods were sent out' can mean that (a) **GST rate as applicable on the day when they are sent out will be relevant** (b) **Interest for one/three years will be payable.**



Procedure to be followed in respect of goods sent to the Job work:-

- The inputs or capital goods shall be sent to the job worker under the cover of a challan issued by the principal, including where the inputs or capital goods are sent directly to job- worker - Rule 45(1) of CGST and SGST Rules, 2017.
- The challan issued by the principal to the job worker shall contain the details specified in Rule 55 of CGST Rules - Rule 45(2) of CGST and SGST Rules, 2017.
- This rule has been amended vide notification No. 14/2018-Central tax dated 23.03.2018 to provide that a job worker may endorse the challan issued by the principal
- Further, as per the provisions contained in rule 138 of the CGST Rules, an e-way bill is required to be generated by every registered person who causes movement of goods of consignment value exceeding **fifty thousand rupees** even in cases where such movement is for reasons other than for supply (e.g. in case of movement for job work).
- Further, the third proviso to rule 138(1) of the CGST Rules provides that the e-way bill shall be generated either by the principal or by the registered job worker irrespective of the value of the consignment, where goods are sent by a principal located in one State/Union territory to a job worker located in any other State/ Union territory.
- It may also be noted that as per Explanation 1 to rule 138(3) of the CGST Rules, where the goods are supplied by an unregistered supplier to a registered recipient, the movement shall be said to be caused by such recipient if the recipient is known at the time of commencement of the movement of goods.



Quarterly return of material sent for job work –

The details of challans in respect of goods dispatched to a job worker or received from a job worker during a quarter shall be included in form GST ITC-04 furnished for the quarter - Rule 45(3) of CGST and SGST Rules, 2017. This has been further explained in compliance part.

Certain issues and their clarification:-

Issue:

Doubts have been raised about the documents required to be issued for sending the goods

- (i) By the principal to the job worker,
- (ii) From one job worker to another job worker; and
- (iii) From the job worker back to the principal

Clarifications given:-



As per Circular No 38/12/2018:-

Where goods are sent by principal to only one job worker:

- The principal shall prepare in triplicate, the challan in terms of rules 45 and 55 of the CGST Rules, for sending the goods to a job worker.
- Two copies of the challan may be sent to the job worker along with the goods. The job worker should send one copy of the said challan along with the goods, while returning them to the principal.
- The FORM GST ITC-04 will serve as the intimation as envisaged under section 143 of the CGST Act, 2017

Where goods are sent from one job worker to another job worker:

- In such cases, the goods may move under the cover of a challan issued either by the principal or the job worker.
- In the alternative, the challan issued by the principal may be endorsed by the job worker sending the goods to another job worker, indicating therein the quantity and description of goods being sent.
- The same process may be repeated for subsequent movement of the goods to other job workers.

Where the goods are returned to the principal by the job worker:

- The job worker should send one copy of the challan received by him from the principal while returning the goods to the principal after carrying out the job work

9. Refund:-

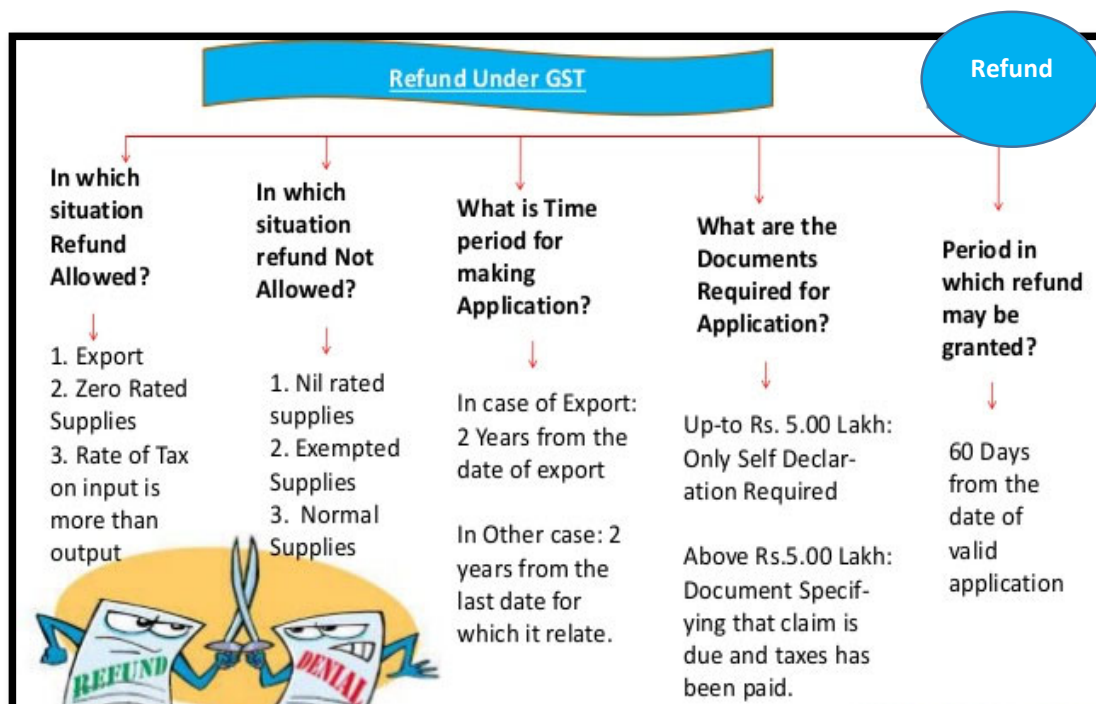
U/s Section 54 of CGST Act, Any person claiming refund of any tax and interest, if any, paid on such tax or any other amount paid by him, may make an application **before the expiry of two years from the relevant date** in such form and manner as may be prescribed:

Provided that a registered person, claiming refund of any balance in the electronic cash ledger in accordance with the provisions of sub-section (6) of section 49, may claim such refund in the return furnished under section 39 in such manner as may be prescribed.

With effect from 26.09.2019, the applications for the following types of refunds shall be filed in **FORM GST RFD 01** on the common portal and the same shall be processed electronically.

TYPES OF REFUNDS:

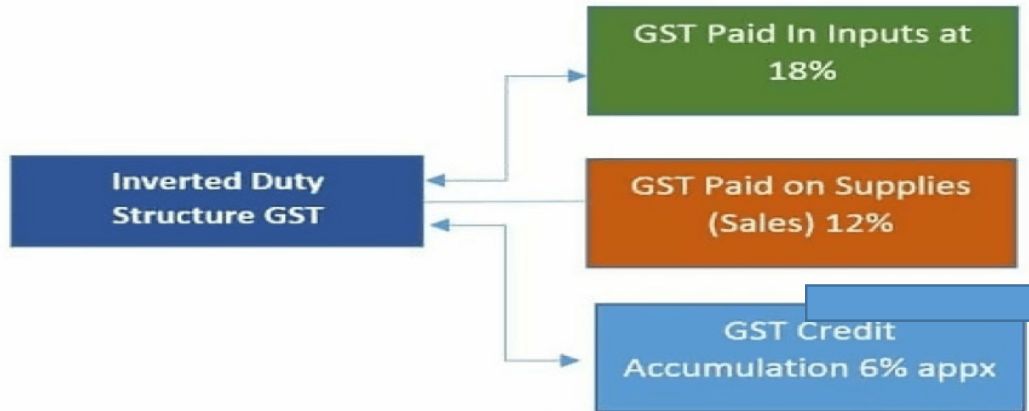
- Refund of unutilized input tax credit (ITC) on account of exports without payment of tax;
- Refund of tax paid on export of services with payment of tax;
- Refund of unutilized ITC on account of supplies made to SEZ Unit/SEZ Developer without payment of tax
- Refund of tax paid on supplies made to SEZ Unit/SEZ Developer with payment of tax;
- Refund of unutilized ITC on account of accumulation due to inverted tax structure;
- Refund to supplier of tax paid on deemed export supplies;
- Refund to recipient of tax paid on deemed export supplies;
- Refund of excess balance in the electronic cash ledger;
- Refund of excess payment of tax;
- Refund of tax paid on intra-State supply which is subsequently held to be inter-State supply and vice versa;
- Refund on account of assessment/provisional assessment/appeal/any other order;
- Refund on account of "any other" ground or reason



REFUND UNDER INVERTED DUTY STRUCTURE:-

Section 54(3) of the CGST Act provides that refund of any unutilized ITC may be claimed where the credit has accumulated on account of rate of tax on inputs being higher than the rate of tax on output supplies.

Inverted tax structure simply refers to a condition where the tax rate on inputs used is higher than the tax rate on the outputs for sale.



Formula for Maximum amount of refund:-

$$\text{Maximum Refund Amount} = \left[\frac{\text{Turnover of Inverted Rate Supply} \times \text{Net ITC}}{\text{Adjusted Total Turnover}} \right] - \text{Tax Payable on Inverted Rated supply of Goods and Services}$$

T/o of inverted rated supply of goods:-

Means supply made during the relevant period without payment of tax under bond or letter of credit.

Net ITC:-

Mean input tax credit availed on inputs during the relevant period other than the input tax credit availed for which refund is claimed under sub-rules (4A) or (4B) or both

Adjusted Total T/o:-

“Adjusted Total turnover” means the turnover in a State or a Union territory, as defined under sub-section (112) of section 2, excluding the value of exempt supplies other than zero-rated supplies and the turnover of supplies in respect of which refund is claimed under sub-rules (4A) or (4B) or both, if any, during the relevant period.

Tax payable on such inverted rated supply of goods:-

The tax amount payable on such inverted rated supply of goods under the same head i.e. IGST, CGST, SGST.

Let us try to understand it with an Illustration with its solution:-

Illustration:

Supply of Fabric Bags (Output) Value: Rs.1,400

GST on the above: $1400 \times 5\% = \text{Rs.}70$

Supply of Woven fabric of Silk: Value Rs.1,500

GST on the above: $\text{Rs.}1,500 \times 5\% = \text{Rs.}75$

The purchase value of Silk yarn: $\text{Rs.}1,000 \times 5\%$

GST on the above: $\text{Rs.}1,000 \times 5\% = 50$

Purchase Value of Non woven fabric Rs.1,000

GST on the above: $\text{Rs.}1,000 \times 12\% = \text{Rs.}120.$

Turnover of inverted rated supply which in this case is Rs.1,400.

Maximum Refund = $\{(1400 \times 120) / 1400\} - 70 = \text{Rs.}50$

In textile sector The manufacturing of woven fabrics (taxable @ 5%) requires input of manmade yarn (taxable at 12%), which accumulated high amount of ITC for manufacturers.

Wide Notification no. 5/2017-Central tax (Rate) dated 28.06.2017, items were notified on which refund of accumulated input tax credit on account of inverted duty structure was not allowed.

The list included the following items pertaining to textiles industry:

S. No.	Tariff item, heading, sub-heading or Chapter	Description of Goods
(1)	(2)	(3)
1.	5007	Woven fabrics of silk or of silk waste
2.	5111 to 5113	Woven fabrics of wool or of animal hair
3.	5208 to 5212	Woven fabrics of cotton
4.	5309 to 5311	Woven fabrics of other vegetable textile fibres, paper yarn
5.	5407, 5408	Woven fabrics of manmade textile materials
6.	5512 to 5516	Woven fabrics of manmade staple fibres
7.	60	Knitted or crocheted fabrics [All goods]

Later on demand of the industry, wide **Notification No. 20/2018-Central Tax (Rate) dated 26.7.2018**, the refund of accumulated ITC on fabric on account of inverted tax structure was allowed with effect from 01.08.2018, by amending notification no. 5/2017-Central tax (Rate) dated 28.06.2017.

Further, **notification 20/2018-Central Tax (Rate) dated 26.7.2018** provided that accumulated ITC, lying unutilized for the past period i.e. up to July 2018 shall lapse after the payment of GST for the month of July 2018. This created a huge dilemma for manufacturers.

However, It was later clarified wide **Circular No. 56/30/2018-GST dated 24.08.2018** that the manner of calculation as provided in rule 89(5) of CGST Rules, 2017 would mutatis mutandis apply for the calculation of lapse of accumulated ITC, lying unutilized for the past period i.e. from July 2017 to July 2018 as provided in **notification no. 20/2018-Central Tax (Rate) dated 26.7.2018**. (para 10 of circular ibid). In short, the eligible refund, as per formula under rule 89(5), for period July 2017 to July 2018 was required to be lapsed.

Important Judgements in respect of accumulated ITC:-

VKC Footsteps India Pvt Ltd vs. UOI- Gujarat HC Judgment .

Earlier to this judgement department was disallowing refund of ITC on input services in case of Inverted Duty Structure.

Decisions made in the Judgement:

The Judgement passed by Gujarat High Court in the case of VKC Footsteps India Pvt Ltd vs. Union of India & Others dated 24.07.2020 is a welcome judgement in favour of suppliers having inverted duty structure. This Judgement has categorically stated that-

“The Explanation (a) to Rule 89(5) which denies the refund of “unutilised input tax” paid on “input services” as part of “input tax credit” accumulated on account of inverted duty structure is ultra vires the provision of Section 54(3) of the CGST Act,2017.”

Analysis and important observation made by the judges:-

1. Conjoint reading of the provisions of Act and Rules, it appears that by prescribing the formula in **Sub-rule 5 of Rule 89** of the CGGST Rules,2017 to exclude refund of tax paid on “input service” as part of the refund of unutilised input tax credit is contrary to the provisions of **Sub-section 3 of Section 54** of the CGST Act,2017 which provides for claim of refund of “any unutilised input tax credit”.
2. The word “Input tax credit” is defined in Section 2(63) means the credit of input tax. The word “input tax” is defined in Section 2(62), whereas the word “input” is defined in Section 2(59) means any goods other than capital goods and “input service” as per Section 2(60) means any service used or intended to be used by a supplier. Whereas “input tax” as defined in section 2(62) means the tax charged on any supply of goods or services or both made to any registered person. Thus “input” and “input service” are both part of the “input tax” and “input tax credit”.
4. Therefore, as per provision of sub-section 3 of Section 54 of the CGST Act,2017, the legislature has provided that registered person may claim refund of “any unutilised input tax”, therefore, by way of Rule 89(5)of the CGST Rules,2017, **such claim of the refund cannot be restricted only to “input” excluding the “input services” from the purview of “Input tax credit”**. Moreover, clause (ii) of proviso to Sub-section 3 of Section 54 also refers to both supply of goods or services and not only supply of goods as per amended Rule 89(5) of the CGST, Rules 2017.
4. In view of the above analysis of the provisions of the Act and Rules keeping in mind scheme and object of the CGST Act, the intent of the Government by framing the Rule

restricting the statutory provision cannot be the intent of law as interpreted in the Circular No.79/53/2018- GST dated 31.12.2018 to deny the registered person refund of tax paid on "input services" as part of refund of unutilised input tax credit.

Tvl. Transtonnelstroy Afcons Joint venture Judgement

A ruling contrary to above judgement has been passed by the Madras high Court wherein it has been held that 54(3)(ii) does not infringe Article 14 and thus refund of only inputs is available under inverted duty structure ("IDV") (section 54(3)(ii)).

This judgement is in contrast to the judgement of Gujarat high court in case of VKC Footsteps.

Analysis and important observation made by the judges:-

1. Section 54(3)(ii) does not infringe Article 14.
2. Refund is a **statutory right** and the extension of the benefit of refund only to the unutilised credit that accumulates on account of the rate of tax on input goods being higher than the rate of tax on output supplies by excluding unutilised input tax credit that accumulated on account of input services is a valid classification and a valid exercise of legislative power.
3. Therefore, there is no necessity to adopt the interpretive device of reading down so as to save the constitutionality of Section 54(3)(ii).
4. Section 54(3)(ii) curtails a **refund claim to the unutilised credit that accumulates only on account of the rate of tax** on input goods being higher than the rate of tax on output supplies.
5. **Rule 89(5) is not ultra vires to section 54(3)(ii)**. As a corollary, Rule 89(5) of the CGST Rules, as amended, is in conformity with Section 54(3)(ii). (contrary to VKC Footsteps Judgement)

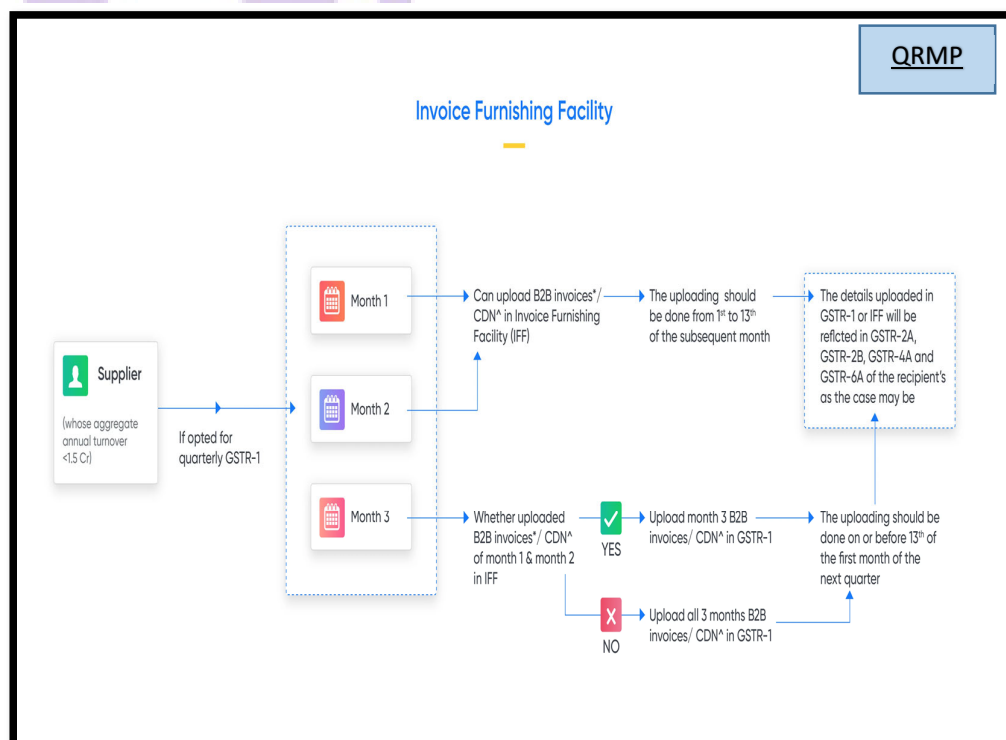
This judgment is in a contradictory to VKC footsteps. However, both are different in the sense that in current **Madras high court judgement has analyzed section 54(3), 54(3)(ii) and Rule 89(5)** while **Gujarat high court has analyzed the amended Rule 89(5) with reference to section 54(3) only and not 54(3)(ii)** in detail. In VKC Footsteps, focus of court was on output supplies in 54(3)(ii) and not preceding part of proviso. Thus, this analysis was bound to happen.

This Judgment has opened a long battle for Refund of ITC in case of inverted duty structure and has put taxpayers in an unfavourable situation. Thus, **GST council should come out** with amendment to retrospective effect else revenue will use such judgments as a measure to deny refund of ITC availed but still not utilized or else this issue will be settled by **supreme court** in future.

10. Filing Of GST Returns and other Compliances

❖ Opting of QRMP Scheme and GSTR-1/ GSTR 3B returns:-

- The Central Board of Indirect Taxes & Customs (CBIC) introduced Quarterly Return Filing and Monthly Payment of Taxes (QRMP) scheme under Goods and Services Tax (GST) to help small taxpayers whose turnover is less than Rs.5 crores.
- The QRMP scheme allows the taxpayers to file GSTR-3B on a quarterly basis and pay tax every month.
- The quarterly GSTR-3B filing option will be available from 1st January 2021 onwards. It is clarified that this scheme is optional and can be availed based on GSTIN.
- The taxpayers who opted for the QRMP scheme can use the Invoice Furnishing Facility (IFF) which allows quarterly GSTR-1 filers to upload their invoices every month.

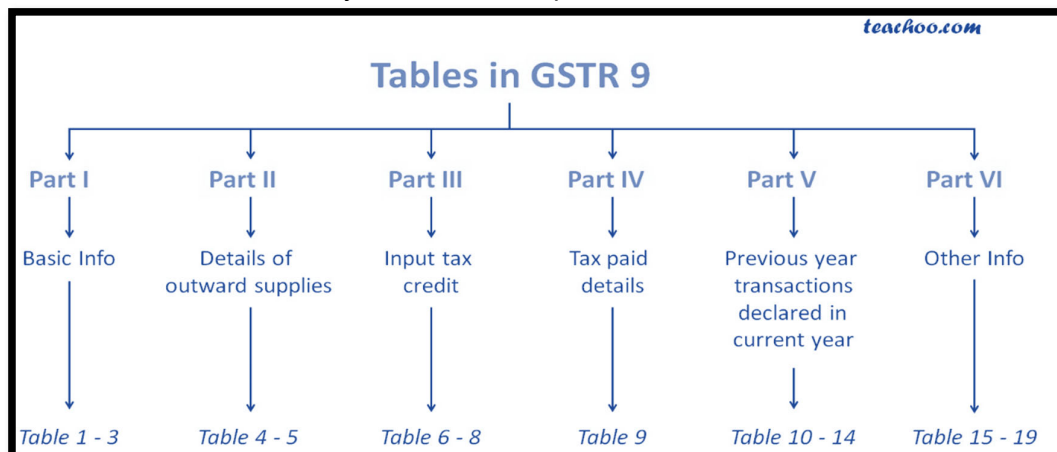


- The IFF can be utilised only for the first two months of a quarter.
- The invoices relating to the last month of a quarter are to be uploaded in the GSTR-1 return only.
- The taxpayer has to follow the correct procedure to opt for the quarterly GSTR-3B.
- However, the GSTN case of registered persons falling in the categories specified in the table below, who have furnished their GSTR-3B return for October 2020 by 30th November 2020, it shall be deemed that they have opted for monthly or quarterly filing as detailed below-

S No.	Class of Registered Persons	Deemed Option
1	Registered individuals with an aggregate turnover of up to Rs.1.5 crore, who have furnished Form GSTR-1 quarterly in the current financial year	Quarterly GSTR-3B
2	Registered persons with an aggregate turnover of up to Rs.1.5 crore, who have furnished Form GSTR-1 monthly in the current financial year	Monthly GSTR-3B
3	Registered persons having an aggregate turnover exceeding Rs.1.5 crore and up to Rs.5 crore in the preceding financial year	Quarterly GSTR-3B

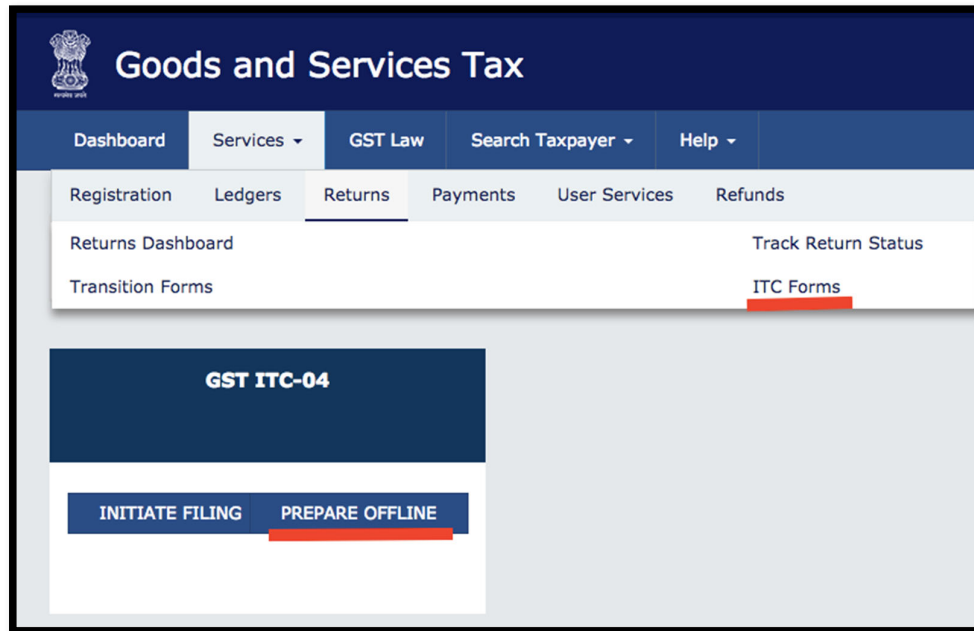
❖ Annual return filing GSTR-9

- GSTR 9 is the annual return that is to be filed yearly by the taxpayers registered under GST.
- GSTR 9 is to be filed yearly by the taxpayers registered under GST (with several exceptions). It consists of details regarding the outward and the inward supplies made during the relevant financial year.
- GSTR 9 consists of details regarding the outward and the inward supplies made or received during the relevant financial year under CGST, SGST, and IGST. It is a consolidation of all the monthly/quarterly returns filed in that year.
- GSTR 9 can be broadly divided into six parts.



❖ Filing of ITC-04 returns

- In textile sector principal sends goods to job worker for processing.
- GST ITC-04 is a Form that contains details of the inputs or capital goods sent to and received back from such a job worker.
- Such a Form needs to be filed by the registered manufacturers/Principal sending inputs or capital goods on job work every quarter.
- Further, the Principal sends inputs or capital goods to a job worker by issuing a Challan to the job worker in respect of such inputs or capital goods.



- ITC-04 is a quarterly form. It must be furnished on or before the 25th day of the month succeeding the quarter. For example, for Oct-Dec quarter, the due date is 25th Jan.

❖ Details to be furnished in ITC-04

There are 2 parts:-

- Goods sent to job worker
- Goods received back from job worker.

❖ Rule 86B compliance

- Rule 86B provides restrictions on the use of Input Tax Credit to discharge the output liability
- This rule applies to registered persons with a taxable value of supply in a month more than Rs.50 lakh. The limit has to be examined every month before filing each return.
- The applicable registered persons cannot on ITC over 99% of output tax liability. In other words, more than 99% of the output tax liability cannot be released by using the input tax credit.
- Rule 86B limits the use of ITC accessible in the electronic credit ledger for releasing the output tax liability.
- This rule has a disregarding impact on all the other CGST rules.

Salient features of new Rule 86B

- #Rule 86B has an overriding impact on any other rule.
- #Rule 86B casts a restriction on the use of ITC while discharging output liability.
- #Applicable on registered persons having the value of taxable supply.
- #Cumulative discharge of tax liability of more than 1% during the financial year.

Rule 86B

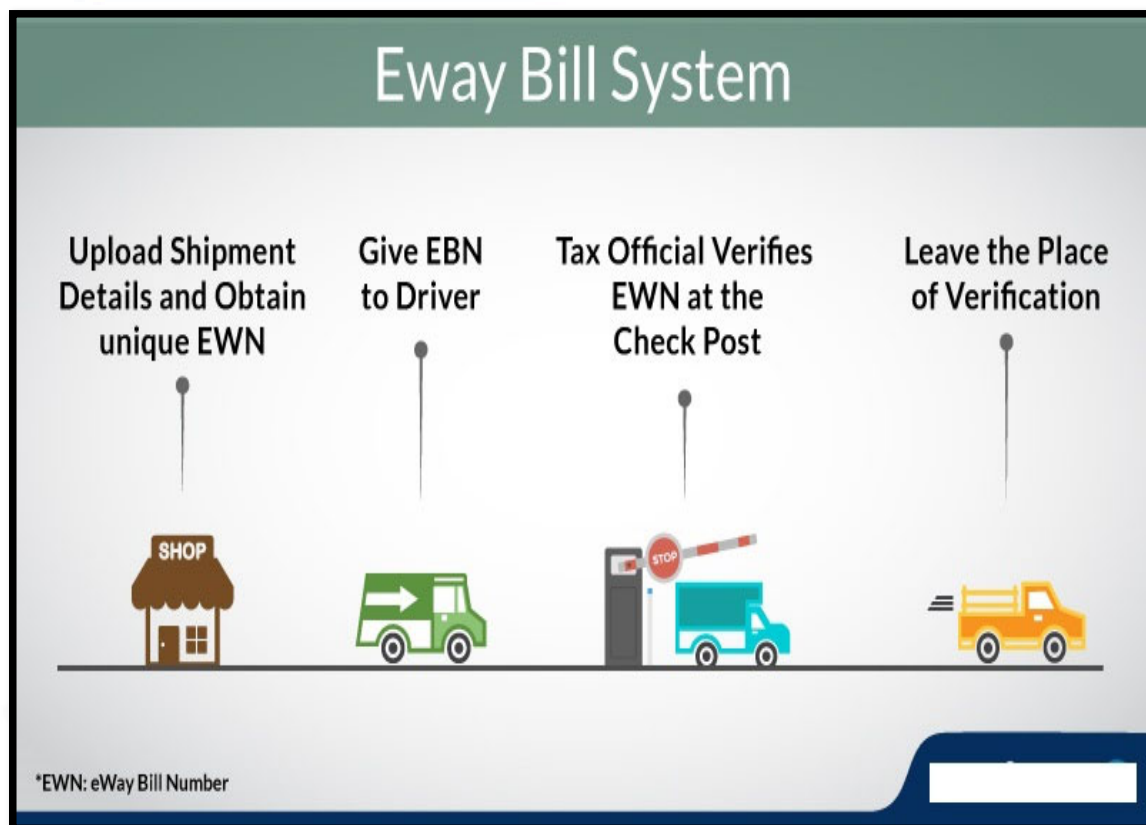
11. E-way Bill

E-way bill is a document used for the movement of goods whether inter- state or intra-state, whether such movement is in nature of supply or not. Before the commencement of movement of goods of consignment value exceeding the amount of Rs 50,000 every registered supplier (or the registered recipient if the supplier is unregistered) has to e-file the details of goods of such goods in the PART A of the FORM GST INS-01. Such movement may be:

- In relation to supply (like goods delivery to customer, goods sent as samples, replacement under free warranty etc.)
- For reasons other than supply (like personal & non-business consumption, Job Work etc.)
- Due to inward supply of goods received from unregistered person. (Reverse charge due to purchase from unregistered person.)

Where goods are transported by registered person (as consigner) or are transported by recipient (as consignee) using own or hired vehicles, e-way bill is to be generated in FORM GST INS-01 electronically after furnishing information in PART B of the form by such person transporting goods (either the registered supplier or the recipient).

Here “Consignment Value” means value determined as per section 15 of the CGST Act as mentioned on the invoice, bill of supply or delivery challan as the case may be including the applicable tax thereon. However, such consignment value shall exclude the value of exempted supply, where the invoice is issued in respect of both exempt and taxable supply of goods.



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Some issues and their solutions:-

Issue:

Mr. A trader of textile based in Rajasthan send some goods to process from job worker Mr. B (Job Worker) his consignment value is less than Rs 50,000. The place of Mr. B is Gujrat. Does E way bill to be generated since the consignment value is less than Rs. 50,000?

Solution:

Proviso 3rd to Rule 138 (1) of CGST Rules 2017 provides that where goods are sent by principal located in one state to job worker located in another state, e-way bill shall be generated either by the principal or the job worker, if registered, irrespective of the value of the consignment. Hence Mr. A has to generate E way bill since the movement of goods is inter-state.

Practical Difficulty:

Normally, in Textile industry the goods move from one job worker to another job worker. Goods move to one job worker for bleaching and then it send to another job worker for dyeing and thereafter to another job worker for printing and so on for finishing, washing, felt and packing. In each case, the principal has to generate e-way bill for each onward movement. Thus, it will make the procedure very cumbersome. The difficulty is immense if the principal is situated in another state.

So for job work of Inter-State nature, E way bill has to be generated even if the value of consignment is less than 50,000.

Issue:

Mr. A trader of textile based in Rajasthan send some goods to process from job worker Mr. B (Job Worker) his consignment value is more than Rs 50,000. The place of Mr. B is Rajasthan itself. Does E way bill to be generated since the consignment value is more than Rs. 50,000?

Normally, in Textile industry the goods move from one job worker to another job worker. If the value exceeds 50,000 then principal has to generate E Way Bill. This is very typical task for principal whose goods or services processed at multiple locations in same state and goods transferred to multiple job workers.

Solution:

A welcome step has been taken by Rajasthan Governments vide notification dated 06th August 2018 to reduce the compliance burden on taxpayer by exempting the requirement to generate the E way Bill if the goods are transported for the distance upto 50 KM within the state of Rajasthan for any value for the purpose of Job Work are being sent from one job-worker to another job worker or are being return to the principal after such job work and where such transportation is not for final delivery of the finished goods.

Issue:

Whether e-way bill is required for all the goods that are being transported

Solution:

The e-way bill is required to transport all the goods except exempted under the notifications or rules. Movement of handicraft goods or goods for job-work purposes under specified circumstances also requires e-way bill even if the value of consignment is less than fifty thousand rupees.

Some of the latest announcements relating to e-way bill:-

Dated 09.06.2021 Any e-way bills generated on or before 24th March 2020 (whose validity has expired on or after 20th day of March 2020) is extended till 30th June 2020.

Dated 22.12.2020 The CBIC increased the distance per day in case of goods transported through vehicles, other than the over-dimensional cargo, for determining the validity as follows:-

- (a) It is one day – For a distance of up to 200 km as against earlier 100 km
- (b) An additional day is taken- For every additional 200 km or part thereof, as against previously notified additional 100 km or part thereof

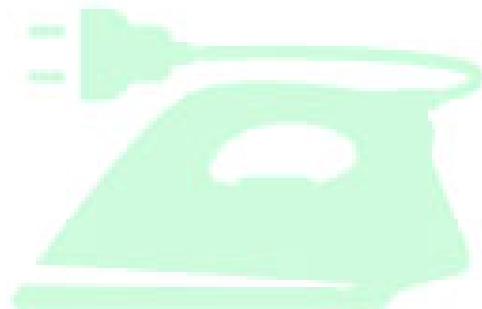
Dated 16.11.2020 According to Rule 138E (a) and (b) of the CGST Rules, 2017, the e-way bill generation facility of a taxpayer will be restricted, if the taxpayer fails to file their Form GSTR-3B returns or statement in Form GST CMP-08, for tax periods of two or more.

On 1st December 2020, the system will check the status of returns filed in Form GSTR-3B or the statements filed in Form GST CMP-08, for the class of taxpayers to whom it applies, and restrict the generation of e-way bill in case of:

- Non-filing of two or more returns in Form GSTR-3B for the months up to October 2020; and
- Non-filing of two or more statements in Form GST CMP-08 for the quarters up to July to September 2020. The blocking will take place periodically from 1st December 2020 onwards. To continue generating e-way bill on the e-way bill portal, taxpayers are advised to file their pending GSTR-3B returns/GST CMP-08 statements immediately.

But later on by notification no 94/2020 dated 22.12.2020, blocking of the e-way bill where a taxpayer fails to file GSTR-3B, the provision has been amended to replace two or more months with two or more tax periods. The same has been changed to include the quarterly return filers.

Thank you for stopping by 😊



IRONING & PACKING

GST Impact on Work Contracts



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What is a works contract?

Works contract is essentially a contract of service which may also involve supply of goods in the execution of the contract. It is basically a composite supply of both services and goods, with the service element being dominant in the contract between parties.

In a general sense, a contract of works, may relate to both immovable and immovable property. E.g., if a sub-contractor, undertakes a sub-contract for the building work, it would be a works contract in relation to immovable property. Similarly, if a composite supply in relation to movable property such as fabrication/painting/annual maintenance contracts etc. is undertaken, the same would come within the ambit of the broad definition of a works contract.

Note: - Pure Labour Contract is not a work contract.

Classic Example: -

Public Works Department (PWD), a government department, gives tender of works contract to construct a building (immovable) on a government land for Rs.10,00,000/- plus cost. The builder provides goods like bricks, cement, iron bar and service of engineers, architects, skilled labors etc.

If the above contract is for movable property it will fall under composite supply.

Works Contract - the position in VAT & Service Tax

A works contract has elements of both provision of services and sale of goods, and was therefore taxable under both laws.

VAT

In the case of Gannon Dunkerly, the Hon'ble Apex Court had held that in case of a works contract, the dominant intention of the contract is the execution of works, which is a service and there is no element of sale of goods (as per Sale of Goods Act). The contract being one indivisible contract, it cannot be broken up to levy VAT on sale of goods involved in the execution of works contract. This decision led the Government to amend the Constitution of India and insert Article 366(29A) (b) which enabled the State Governments to levy tax (VAT) on transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

Service Tax

Works contract has been defined in **section 65B of the Finance Act, 1994** as a contract wherein transfer of property in goods involved in the execution of such contract is leviable to tax as sale of goods and such contract is for the purpose of carrying out construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, alteration of any moveable or immovable property or for carrying out any other similar activity or a part thereof in relation to such property.

By virtue of **Section 66E of Finance Act, 1994**, the service portion involved in the execution of works contract was a declared service. Hence Service Tax could be levied only on the service element of the works contract. The principles of segregation of the value of goods were provided in Rule 2A of the Service Tax (Determination of Value) Rules, 2006.

Position under GST

Under GST laws, the definition of “Works Contract” has been restricted to any work undertaken for an “Immovable Property” unlike the existing VAT and Service Tax provisions where works contracts for movable properties were also considered.

The Works Contracts has been defined in **Section 2(119) of the CGST Act, 2017** as

“works contract” means a contract for building, construction, fabrication, completion, erection, installation, fitting out, improvement, modification, repair, maintenance, renovation, alteration or commissioning of any immovable property wherein transfer of property in goods (whether as goods or in some other form) is involved in the execution of such contract.”

Thus, from the above it can be seen that the term works contract has been restricted to contract for building construction, fabrication etc of any immovable property only. Any such composite supply undertaken on goods say for example a fabrication or paint job done in automotive body shop will not fall within the definition of term works contract per se under GST. Such contracts would continue to remain composite supplies, but will not be treated as a Works Contract for the purposes of GST.

As per **Para 6 (a) of Schedule II to the CGST Act, 2017**, works contracts as defined in **section 2(119) of the CGST Act, 2017** shall be treated as a supply of services. Thus, there is a clear demarcation of a works contract as a supply of service under GST.

As per **section 17(5) (c) of the CGST Act, 2017**, input tax credit shall not be available in respect of the works contract services when supplied for construction of an immovable property (other than plant and machinery) except where it is an input service for further supply of works contract service.

Thus, ITC for works contract can be availed only by one who is in the same line of business and is using such services received for further supply of works contract service. For example a building developer may engage services of a sub-contractor for certain portion of the whole work. The sub-contractor will charge GST in the tax invoice raised on the main contractor. The main contractor will be entitled to take ITC on the tax invoice raised by his subcontractor

as his output is works contract service. However if the main contractor provides works contract service (other than for plant and machinery) to a company say in the IT business, the ITC of GST paid on the invoice raised by the works contractor will not be available to the IT Company.

Plant and Machinery in certain cases when affixed permanently to the earth would constitute immovable property. When a works contract is for the construction of plant and machinery, the ITC of the tax paid to the works contractor would be available to the recipient, whatever is the business of the recipient. This is because works contract in respect of plant and machinery comes within the exclusion clause of the negative list and ITC would be available when used in the course or furtherance of business.

Construction on Own Account [Not a works Contract]

Construction of a complex, building, civil structure or a part thereof, including a complex or building intended for sale to a buyer before issuance of completion certificate, will be considered as a supply of service. [Point no 5(b) of Schedule II]

However, It will be treated as a supply of goods if the entire sales consideration is received after issuance of completion certificate by the competent authority or after its first occupation, whichever is earlier.

Example:

DLF builds a cyber-city in Delhi. These complexes are sold to individual buyers before the issue of completion certificates. This sale transaction will be considered as a supply of service.

Works Contract for Movable Property

GST law has defined work contract for immovable property only.

Just like immovable property, work contract for a movable property is also a composite supply.

However, it is not a supply of service.

Example:

Mr. Mishra contracted a carpenter to make a chair, Table and a whole set of movable furniture. In this case, the carpenter will supply goods like wood, nail, and color and labor services too.

The final product will be movable property. Therefore it will be considered as a composite supply rather than a works contract.

Difference between works contract and composite supply

Ground for Difference	Works Contract	Composite Supply
Nature of Supply	Supply of Service	Depends on the principal supply. In the above example, the carpenter's principal supply is his service. Therefore, the whole transaction will be considered as service.
GST Rates	Specific GST rates are prescribed	GST rate will depend on principle supply. GST rate of principle supply apply to whole transaction value.
Input Tax Credit (ITC) to the recipient of Supply	Not available (Apart from specific Situation discussed later)	Available

Maintenance of records

As per **Rule 56 (14) of the CGST Rules, 2017**, every registered person executing works contract shall keep separate accounts for works contract showing -

- (a) the names and addresses of the persons on whose behalf the works contract is executed;
- (b) description, value and quantity (wherever applicable) of goods or services received for the execution of works contract;
- (c) description, value and quantity (wherever applicable) of goods or services utilized in the execution of works contract;
- (d) the details of payment received in respect of each works contract; and
- (e) the names and addresses of suppliers from whom he received goods or services.

Rate of GST

The rate of GST for Works Contract service has been prescribed in

- **Notification No. 11/2017-Central Tax (Rate) dated 28.06.2017**
(As amended by Notification No. 20/2017-Central Tax (Rate) dated 22.08.2017)
- **Notification no.24/2017-Central Tax (Rate) dated 21.09.2017**

Thus, rates are tabulated below:-

S.No.	Activity	Rate
1.	Construction of a ✓ complex, ✓ building, ✓ civil structure ✓ or a part thereof, intended for sale to a buyer, wholly or partly, except where the entire consideration has been received after issuance of completion certificate, where required, by the competent authority or after its first occupation, whichever is earlier.	9% CGST Plus 9% SGST or 18% IGST
2.	Composite supply of works contract as defined in clause 119 of section 2 of Central Goods and Services Tax Act, 2017	9% CGST Plus 9% SGST or 18% IGST

3.	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied to the Government, a local authority or a Governmental authority by way of</p> <ul style="list-style-type: none"> ➤ construction, ➤ erection, ➤ commissioning, ➤ installation, ➤ completion, ➤ fitting out, ➤ repair, maintenance, ➤ renovation, ➤ or alteration of, - <p>(a) a historical monument, archaeological site or remains of national importance, archaeological excavation, or antiquity specified under the Ancient Monuments and Archaeological Sites and Remains Act, 1958 (24 of 1958);</p> <p>(b) canal, dam or other irrigation works;</p> <p>(c) pipeline, conduit or plant for</p> <ul style="list-style-type: none"> (i) water supply (ii) water treatment, or (iii) sewerage treatment or disposal 	<p>9% CGST Plus 9% SGST</p> <p>or</p> <p>18% IGST</p>
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4.	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of,-</p> <p>(a) a road, bridge, tunnel, or terminal for road transportation for use by general public;</p> <p>(b) a civil structure or any other original works pertaining to a scheme under Jawaharlal Nehru National Urban Renewal Mission or Rajiv Awaas Yojana;</p> <p>(c) a civil structure or any other original works pertaining to the “In-situ rehabilitation of existing slum dwellers using land as a resource through private participation” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana, only for existing slum dwellers;</p> <p>(d) a civil structure or any other original works</p>	<p>6% CGST Plus 6% SGST</p> <p>or</p> <p>12% IGST</p>
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	<p>pertaining to the “Beneficiary led individual house construction / enhancement” under the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;</p> <p>(e) a pollution control or effluent treatment plant, except located as a part of a factory;</p> <p>or</p> <p>(f) a structure meant for funeral, burial or cremation of deceased</p>	
5.	<p>Composite supply of works contract as defined in clause (119) of section 2 of the Central Goods and Services Tax Act, 2017, supplied by way of construction, erection, commissioning, or installation of original works pertaining to,-</p> <p>(a) railways, excluding monorail and metro;</p> <p>(b) a single residential unit otherwise than as a part of a residential complex;</p> <p>(c) low-cost houses up to a carpet area of 60 square metres per house in a housing project approved by competent authority empowered under the ‘Scheme of Affordable Housing in Partnership’ framed by the Ministry of Housing and Urban Poverty Alleviation, Government of India;</p>	<p>6% CGST Plus 6% SGST</p> <p>or</p> <p>12% IGST</p>

(d) low cost houses up to a carpet area of 60 square metres per house in a housing project approved by the competent authority under-

(1) the “Affordable Housing in Partnership” component of the Housing for All (Urban) Mission/Pradhan Mantri Awas Yojana;
(2) any housing scheme of a State Government;

(e) post-harvest storage infrastructure for agricultural produce including a cold storage for such purposes; or

(f) mechanised food grain handling system, machinery or equipment for units processing agricultural produce as food stuff excluding alcoholic beverages Services provided to the Central Government, State Government, Union Territory, a local authority or a governmental authority by way of construction, erection, commissioning, installation, completion, fitting out, repair, maintenance, renovation, or alteration of - (a) a civil structure or any other original works meant predominantly for use other than

	<p>for commerce, industry, or any other business or profession; (b) a structure meant predominantly for use as (i) an educational, (ii) a clinical, or(iii) an art or cultural establishment; or (c) a residential complex predominantly meant for self-use or the use of their employees or other persons specified in paragraph 3 of the Schedule III of the Central Goods and Services Tax Act, 2017.</p>	
6.	Construction services other than above	<p>9% CGST Plus 9% SGST</p> <p>or</p> <p>18% IGST</p>

Valuation of Work Contracts

Valuation of a works contract service is dependent upon whether the contract includes transfer of property in land as a part of the works contract.

In case of supply of service, involving transfer of property in land or undivided share of land, as the case may be, the value of supply of service and goods portion in such supply shall be equivalent to the **total amount** charged for such supply less the value of land or undivided share of land, as the case may be, and the value of land or undivided share of land, as the case may be, in such supply shall be deemed to be one third of the total amount charged for such supply.

Explanation. - For the above purpose, “**total amount**” means the sum total of, -

- (a) consideration charged for aforesaid service; and
- (b) amount charged for transfer of land or undivided share of land, as the case may be.

Place of Supply in respect of Works Contract

Works Contract under GST would necessarily involve immovable property. In view of the same the place of supply would be governed by Section 12(3) of the IGST Act, 2017, where both the supplier and recipient are located in India. The place of supply would be where the immovable property is located.

In case the immovable property is located outside India, and the supplier as well as recipient both are located in India, the place of supply would be the location of recipient as per proviso to Section 12(3) of the IGST Act, 2017.

As per Section 13(4) of the IGST Act, 2017, in cases where either the Supplier or the Recipient are located outside India, the place of supply shall be the place where the immovable property is located or intended to be located.

Works Contract- Input Tax Credit (ITC)

Chapter V of CGST Rules, 2017 talks about Input Tax credit mechanism. One of the biggest advantages expected from the implementation of GST Act is that it would remove cascading effect by facilitating seamless flow of credit. GST Act aims at removing the restrictions placed in the present Cenvat credit rules on availment of credit which lead to break in the credit chain and consequent cascading effect which further leads to increase in cost of goods and services. Under GST, seamless tax credit flow has been ensured by providing for the availment of ITC to the purchasing dealer in respect of the GST paid by the supplying dealer.

ITC has been defined as credit of IGST/CGST/SGST charged on any supply of goods and or a service used or intended to be used in the course or furtherance of business and includes the tax payable under reverse charge. Registered taxable person shall be eligible to avail ITC credited to the e-credit ledger subject to condition prescribed without restrictions of availment.

Section 17 (5) (c) of CGST Act 2017:

Input Tax Credit shall not be available in respect of the following,

“works contract services when supplied for construction of an immovable property (other than Plant and Machinery) except where it is an input service for further supply of Works contract service”

However, The restriction does not apply to plant and machinery and also in case the input services are further used for supply of Works Contract service under GST (Contractor can avail the ITC in respect of services availed from the sub-contractor).

FAQ's (Frequently asked Questions)

- What is the procedure for invoicing in case of services provided to Government Organizations?

There is no separate procedure for invoicing in case of services provided to Government Organizations, invoice needs to be issued in accordance with *section 31 of CGST Act, 2017* only.

- What is the time of supply in this nature of services?

Time of supply of services is earliest of:

- Date of issue of invoice.
- Date of receipt of advance/ payment.
- Date of provision of services (if invoice is not issued within 30 days of service)

Example:

Mr. X provides services worth Rs 10000 to Mr. Y on 1st January. The invoice was issued on 20th January and the payment for the same was received on 1st February.

In the present case, we need to 1st check if the invoice was issued within the prescribed time. The prescribed time is 30 days from the date of supply i.e. 31st January. The invoice was issued on 20th January. This means that the invoice was issued within a prescribed time limit.

The time of supply will be earliest of -

- Date of issue of invoice = 20th January
- Date of payment = 1st February

This means that the time of supply of services will be 20th January. In case the invoice is issued after 31st January then time of supply will be 1st January.

➤ **What is the place of supply in this nature of services?**

Generally, the place of supply of services is the location of the service recipient.

If such service is provided directly in relation to an immovable property i.e., any services provided by architect, engineer etc. then place of supply will be the place where the immovable property is located or intended to be located.

➤ **What is the concept of TDS under GST and what are the important things that we should know about TDS like how to claim, till when we can claim it as a credit etc.?**

Tax Deducted at Source (TDS) is one of the ways to collect tax based on certain percentages on the amount payable by the receiver on goods/services. The collected tax is a revenue for the government.

Who can deduct TDS under GST as per section 51 of CGST Act, 2017? (Care must be taken in case of supplies made to undermentioned entities)

- ✓ A department or
- ✓ an establishment of the Central Government or State Government; or Local authority; or
- ✓ Governmental agencies; or
- ✓ Such persons or category of persons as may be notified by the Government.

As per the Notification dated 13th September 2018, the following entities also need to deduct TDS-

- ✓ An authority or a board or any other body which has been set up by Parliament or a State Legislature or by a government, with 51% equity (control) owned by the government.
- ✓ A society established by the Central or any State Government or a Local Authority and the society is registered under the Societies Registration Act, 1860.
- ✓ Public sector undertakings.

Rate of TDS under GST

TDS is to be deducted at the rate of 2 percent (i.e. 1% CGST/SGST each or 2% IGST) on payments made to the supplier of taxable goods and/or services, where the total value of such supply, under an individual contract, exceeds two lakh fifty thousand rupees. As stated above, there will an automatic reflection in the electronic ledger of the deductee (supplier) once the deductor files his/her returns. The deductee can claim credit in his electronic cash ledger of this tax deducted and use it for payments of other taxes.

One can claim the TDS credit by accepting the credit reflected in the TDS credit received tab from User services in GSTIN portal.

➤ **What is the SAC (Service Accounting Code) Code for Work Contract under GST?**

SAC Code is a numeric code (like HSN Code for classifying Goods) and is used to classify different services under GST regime. It has to be mentioned necessarily in the GST Invoices and GST Returns.

First of all it must be clarified that, According to GST Council HSN code is applicable only to products while Work Contracts fall under the ambit of 'Services' and the code for services is known as SAC (Service Accounting Code) which is a six digit number.

And, since the GST rate for works contract is 18%, thus the SAC code for Work Contracts is 9954.

However, the GST rate for works contract related to construction or building of a unit intended for the purpose of sale is 12%.

SAC 9954 (work contracts) deals with construction services and there are various sub-classifications under this heading and when that particular code (from sub-classified terms) is added to it, this becomes six digit SAC Code.



*Just as the Sun extracts water from the Rivers
and gives back as rain, so does a ruler extract taxes
from the subjects and gives it back as prosperity*

Kalidasa, Poet and Scholar

**INDEPENDENT TAX RESEARCH AND ANALYSIS
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GST IMPACT ON TOURISM & HOSPITALITY SECTOR

INTRODUCTION:

In this article the we are going to discuss about the GST impact on TOURISM & HOSPITALITY Sector which is one of the most emerging key drivers of growth among the service sector in India. Considering the rich cultural and historical heritage, variety in ecology, terrains and places of natural beauty, tourism has a significant potential in India. It is also a potentially large employment generator besides being a significant source of foreign exchange for the country. With introduction of GST from 01.07.2017 and being the biggest ever Indirect Tax reform on Independent India, we have come up with this article, analysing the impact of the GST implementation on this industry along with the issues being faced and its possible solutions. So, we have tried to cover up broadly following business segments:

1. Hotel/Lodging and Outdoor Catering
2. Restaurant
3. Tours and travel

BACKGROUND AND ITS CURRENT SCENARIO:

Hospitality and Tourism experts had said that implementation of the GST will benefit these sectors by lowering the costs for the consumers and facilitating seamless movement of Input tax credit. It was further predicted that, GST being consolidation of the taxes, will lead to greater transparency in the costs being charged to the consumers. But whether the government has proved the predictions to be right or wrong becomes the moot question.

Currently, due to the widespread of Corona Virus (COVID 19) pandemic, in its dual waves, the Hospitality and Tourism has been one of the majorly impacted sectors due to the travel restrictions imposed by the various governments in the country. It is high time that this industry is not hit with GST non-compliances notices so as to reduce its

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costs. Since, the nature of business is as such (B2C) that any future demands by GST department would become their costs.

OBJECTIVE:

1. Drive the businesses towards Compliance.
2. No Input tax credit of the businesses are lost.
3. No Interest/Penalty liability to the businesses.
4. Manage businesses with Minimum Litigation.

SEGMENT WISE ANALYSIS:

A. HOTEL INDUSTRY:



1. Important Definitions: Here we discuss about some important definition which are important at the outset so as to analyse the GST law & Notifications issued therein from time to time:

1.1. **“Hotel accommodation”** means supply, by way of accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes including the supply of time

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share usage rights by way of accommodation. (*Notification No. 20/2019-CT(R) dtd. 30.09.2019*)

1.2. "Specified premises" means premises providing „hotel accommodation“ services having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.". (*Notification No. 20/2019-CT(R) dtd. 30.09.2019*)

1.3. "Electronic commerce" means the supply of goods or services or both, including digital products over digital or electronic network;

1.4. "Electronic commerce operator" means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce;

2. **Understanding the GST Rates:** The GST rates on the provision of accommodation in Hotel are as follows:

2.1. From 01.07.2017 till 30.09.2019:

S. No.	Room Rent	GST Rate
1.	Rs. 0 to Rs 1,000 per day	Exempt (<i>Notification No. 12/2017 dtd. 28.06.2017</i>)
2.	Rs. 1001 to Rs. 2499/- per day	12% with Full ITC
3.	Rs. 2500 to Rs. 4999/- per day	18% with Full ITC
	Rs. 5000/- and above per day	28% with Full ITC

2.2. From 01.10.2019 till date:

S. No.	Room Rent	GST Rate
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1.	Rs. 0 to Rs 1,000 per day	Exempt (<i>Notification No. 12/2017 dtd. 28.06.2017</i>)
2.	Rs. 1001 to Rs. 7500/- per day	12% with Full ITC
3.	Rs. 7501/-and above per day	18% with Full ITC

Final Rate structure

Recommendations offer Big Push to Hospitality Sector

Transaction Value per unit per day	New GST Rate
₹ 1000 or less	NIL
₹ 1001 to ₹ 7500	12%
₹ 7501 and more	18%



GST on outdoor catering services other than in premises having daily tariff of ₹ 7501 reduced to 5% without ITC from 18% with ITC

2.3. The Service Accounting Code which applicable on these services falls under ***Heading 9963 - Accommodation, Food and Beverage services.***

2.4. The rates in Para 1.1. shall be applicable on the basis of declared tariff till 26.07.2018. However, with effect from 27.07.2018 the words “declared tariff” were substituted with words “Value of supply” vide ***Notification No. 13/2018-CT(R) dtd. 26.07.2018.*** Hence from 27.07.2018 the GST Rate on the hotel room tariff shall be determined on the basis of value of supply i.e. the actual value charged in the invoice. To understand the GST rates before amendment dtd. 27.07.2018, the term Declared tariff has been defined in the Notification No. 11/2017 dtd. 28.06.2017 which is produced as under:

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“declared tariff” includes charges for all amenities provided in the unit of accommodation (given on rent for stay) like furniture, air conditioner, refrigerators or any other amenities, but without excluding any discount offered on the published charges for such unit.”

2.5. GST rates on the provision of Outdoor Catering services is as follows:

Chapter/ Section/ Heading	Description of Service	GST Rate (IGST)	ITC
Heading 9963 (Accommodation, food and beverage services)	(iv) Supply of “outdoor catering”, at premises other than “specified premises” provided by any person other than- (a) suppliers providing “hotel accommodation” at “specified premises”, or (b) suppliers located in “specified premises”	5.00	Not Available
	(v) Composite supply of “outdoor catering” together with renting of premises (including hotel, convention center, club, pandal, shamiana or any other place, specially arranged for organising a function) at	5.00	Not Available

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	premises other than “specified premises” provided by any person other than- (a) suppliers providing “hotel accommodation” at “specified premises”, or (b) suppliers located in “specified premises”		
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3. Time of supply: In accordance with Sec. 13 of the CGST Act, 2017, time of supply in case of services shall be earliest of the following:

If Invoice is generated in time period prescribed under Sec. 31(2) of CGST Act, 2017 then earlier of the following:

- i. Date of issue of Invoice; or
- ii. Date on which payment is entered into books; or
- iii. Date on which payment is credited into bank account of the supplier.

If Invoice is NOT generated in time period prescribed under Sec. 31(2) of CGST Act, 2017 then earlier of the following:

- i. Date of provision of service; or
- ii. Date on which payment is entered into books; or
- iii. Date on which payment is credited into bank account of the supplier.

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4. Place of Supply:



In accordance with Sec. 12 (3) of the IGST Act, 2017, place of supply in case of Hotel room rental services provided in India shall be location at which such immovable property or boat or vessel is located or intended to be located. The relevant provision of the Act is reproduced as under:

“(c) by way of 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)-----
shall be location at which the immovable property or boat or vessel, as the case may be, is located or intended to be located.”*

In view of the above it is amply clear that the place of supply in case of hotel industry shall be location of the immovable property. This provision leads to an anomaly that most of the services which will be provided by the Hotels will be Intra State supplies hence will be liable to the CGST and SGST. Therefore, in case of B2B transactions the recipients of service belonging to the same state will only be able to take the ITC of such input services.

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With respect to ancillary services provided which are not relating to immovable property, IGST could be leviable where the transaction is an Inter-State supply. Here we would bring to your notice the provisions laid down under Sec. 7(5) of IGST Act, 2017 which are as follows:

“(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.**”*

Hence, the GSTIN registered recipients in SEZ can plan to book their hotel rooms in their SEZ GSTINs as the Hotels would have to charge IGST. Further, ***Circular No. 48/22/2018-GST, dated 14.06.2018***, clarified that services of short-term accommodation, provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply. Thus, as evident from the above provisions, in case of supply of hotel or restaurant services to a SEZ unit shall be charged with IGST and not CGST and SGST. This gives us a food for thought how businesses can plan their hotel bookings for their business purposes. The relevant extract from the above said Circular is reproduced as under:

S. No.	Issue	Clarification
1.	Whether services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ)	1.1. As per section 7(5) (b) of the Integrated Goods and Services Tax Act, 2017 (IGST Act in short), the supply of goods or services or

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<p>developer or a SEZ unit should be treated as an interState supply (under section 7(5)(b) of the IGST Act, 2017) or an intra-State supply (under section 12(3)(c) of the IGST Act, 2017)?</p>	<p>both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c) of the IGST Act, the place of supply of services by way of accommodation in any immovable property for organising any functions shall be the location at which the immovable property is located. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.</p> <p>1.2. It is an established principle of interpretation of statutes that in case of an apparent conflict between two provisions, the specific provision shall prevail over the general provision.</p> <p>1.3. In the instant case, section 7(5)(b) of the IGST Act is a specific provision relating to supplies of goods or services or both made to a SEZ developer or a SEZ unit,</p>
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		<p>which states that such supplies shall be treated as inter-State supplies.</p> <p>1.4. It is therefore, clarified that services of short-term accommodation, conferencing, banqueting etc., provided to a SEZ developer or a SEZ unit shall be treated as an inter-State supply.</p>
<p>2.</p>	<p>Whether the benefit of zero rated supply can be allowed to all procurements by a SEZ developer or a SEZ unit such as event management services, hotel and accommodation services, consumables etc?</p>	<p>2.1. As per section 16(1) of the IGST Act, “zero rated supplies” means supplies of goods or services or both to a SEZ developer or a SEZ unit. Whereas, section 16(3) of the IGST Act provides for refund to a registered person making zero rated supplies under bond/LUT or on payment of integrated tax, subject to such conditions, safeguards and procedure as may be prescribed. Further, as per the second proviso to rule 89(1) of the Central Goods and Services Tax Rules, 2017 (CGST Rules in short), in respect of supplies to a SEZ developer or a SEZ unit, the application for refund shall be filed by the:</p> <p>(a) supplier of goods after such</p>

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		<p>goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone;</p> <p>(b) supplier of services along with such evidences regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone.</p> <p>2.2. A conjoint reading of the above legal provisions reveals that the supplies to a SEZ developer or a SEZ unit shall be zero rated and the supplier shall be eligible for refund of unutilized input tax credit or integrated tax paid, as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone.</p> <p>2.3. Therefore, subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ developer or a</p>
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		SEZ unit for authorised operations, as endorsed by the specified officer of the Zone, the benefit of zero rated supply shall be available in such cases to the supplier.
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5. Invoicing:



The billing procedure to be adopted by the Hotels including when services supplied through the E Commerce platforms is explained herewith with the help of an example:

S. No.	Particulars	Amount (Rs.)
1	Room Tariff Charges	5,000.00
2	Discount 30% of 1	1,500.00
3	Net Bill Value (1-2)	3,500.00
4	GST @ 12% on room tariff (12% of 3)	420.00

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5	Total Payable by Customer (3+4)	3,920.00
6	Service Fee of E-Commerce Operator (10 of 3)	350.00
7	GST @ 18% on Service Fee [18% of 6]	63.00
8	Total Bill of E-Commerce Operator (6+7)	413.00
9	Net Payable to Hotel by E-Commerce Operator (5-8)	3,507.00

6. Issues faced commonly and its possible solutions:



We hereby discuss some of the issues being faced by the Hotel businesses in the GST regime and its possible solutions:

6.1. Maintenance of the records of Advances received from the customers and its reconciliations at the year-end even at the time of discharging the taxes of a tax period. To solve this issue the business needs to install a certain mechanism in place which can easily track and reconcile such balances. This mechanism can be manual internal control system or Information Technology based solution which will help the reconcile the balances and discharged the accurate tax liabilities to the government exchequer.

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6.2.Reversal of credit under Rule 42 and 43 of the CGST Rules, 2017 if following services are being provided by any Hotel charging room rent @ Rs. 7500/- per day or more w.e.f. 01.10.2018:

- i. Restaurant services, banquet services, outdoor catering services by a hotel where the declared tariff of a unit of accommodation do not exceed Rs. 7,500/- per day or equivalent.
- ii. Liquor sales
- iii. Services by way of accommodation where the value of supply for a unit is below or equal to Rs. 1,000/- per day or equivalent etc.

Other services being provided by the Hotels which are chargeable to 5% GST without ITC are also to be treated as exempted services and hence proportionate credit is to be reversed. Therefore, to make the work this tedious task of reversal easier separate books of accounts should be prepared for the taxable and exempted or deemed exempt services.

6.3.Many of the service providers till date are under an impression that the ITC of repairs and maintenance with respect to immovable property cannot be availed. However, it is amply clear that the ITC of the repairs and maintenance of buildings can be availed when such expenditure is debited to the Revenue account.

6.4.Further, the ITC can be availed on the furniture, Chillers, DG sets, HVAC, passenger lift, decorative items and interiors which are not in the nature of immovable property.

6.5.Due to the nature of the Hotel businesses, the major expenditure is incurred in relation to the immovable property and more often than not these expenses are to be capitalised as per the Generally Accepted

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Accounting Principles. Further, if not capitalised can also lead to unnecessary litigations on the Income Tax raising the costs for the businesses. This ITC on Works contract services OR on goods or services in relation to Construction are being denied u/s 17(5)(d) of the CGST Act, 2017 even though these expenses are in course of furtherance of business. In regard to this issue various writ petitions have been filed, wherein it is recommended that ITC should be allowed in cases where the same is intended for provision of taxable output services. Hon'ble Orissa HC have allowed this credit in the case of **Safari Retreats Private Limited**. However, department has challenged this judgment with the Hon'ble Apex court and now it will be interesting to note the views of the Apex Court on this very important subject. Therefore, in case of hotels under construction the GST on the Constructions materials and services related to the immovable property can be considered subject to litigation, peace of mind of the assessee and cost benefit analysis of the case.

6.6. The free accommodation facilities were provided to the patients and healthcare workers by the Hotels during this pandemic situation on the directions of the Governments. Few hotels did it as CSR expenditure. In our opinion as there was no consideration involved, the said transaction would not be classified as Supply under Schedule-I and hence no liability of GST arises.

6.7. It is normal in the industry to provide a few complimentary services or few services as a bundle. So, to decide the GST rate we have to reach to the conclusion whether two or more services which are being provided falls under the category of Composite or Mixed supply. For services to qualify as Composite services they should be naturally bundled. So much care should be taken when the principal supply would be of lower rate and the ancillary services would be of higher rate. Wrong

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classification of mixed supply as composite supply would lead to differential tax demand in future.

6.8. The Hotels providing rooms through E Commerce Operators such as: GOIBIBO, Makemytrip etc.; will also have to keep track of the ITC that they receive due to their TCS collection. Therefore, they have to accept and reject the invoices every month on the GST common portal.

6.9. Recovery by the Hotels for damages to the property like: Kettle, carpets, statues, sceneries etc. from its customers. All such charges may be chargeable to GST which is still a debated issue that whether the GST rate of that damaged article will be charged or will it classify as service of tolerating an Act. In our view these damages will classify as service of tolerating an act and 18 percent GST will be chargeable.

6.10. In regard to the service charges collected by the Hotels/restaurants, in the our opinion if these charges are to be paid mandatorily by the customers and pre-decided at the entry point of the customer, then as per the principle laid down by *Hon'ble Bombay High Court in the matter of Sun-N-Sand Hotel Private Ltd. vs The State Of Maharashtra on 2 December, 1968*, it would be very difficult to fight out and to not include these charges of the bill in the transaction value u/s 15 of the CGST Act, 2017 for the services received by the assessee for ordering any food. Therefore, service charges in such case would be treated as part of transaction value and thus tax would be leviable thereon. However, if the decision for payment of service charge is left at the choice of the assessee after completion of service of hotel/restaurant to customer and is subject to the consent of customer thus voluntary in nature; service charges cannot be considered as part of the transaction value for the purpose of levy of tax. How to prove it is a matter to which is to be taken care of.

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B. RESTAURANT SERVICES:



1. **Important Definitions:** Here we discuss about some important definition which are important at the outset so as to analyse the GST law & Notifications issued therein from time to time:

1.1. **“Restaurant service”** means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, provided by a restaurant, eating joint including mess, canteen, whether for consumption on or away from the premises where such food or any other article for human consumption or drink is supplied. *(Notification No. 20/2019-CT(R) dtd. 30.09.2019)*

1.2. **“Specified premises”** means premises providing „hotel accommodation“ services having declared tariff of any unit of accommodation above seven thousand five hundred rupees per unit per day or equivalent.”. *(Notification No. 20/2019-CT(R) dtd. 30.09.2019)*

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1.3. “**Outdoor catering**” means supply, by way of or as part of any service, of goods, being food or any other article for human consumption or any drink, at Exhibition Halls, Events, Conferences, Marriage Halls and other outdoor or indoor functions that are event based and occasional in nature. (*Notification No. 20/2019-CT(R) dtd. 30.09.2019*)

2. **Understanding the GST Rates:** The GST rates on the provision of Restaurant services are as follows:

2.1. From 01.07.2017 till 14.11.2017:

S. No.	Description	GST Rate
1.	Restaurants not having facility of air-conditioning or central heating at any time during the year and not having licence to serve liquor	12% with ITC
2.	Restaurants having facility of air-conditioning or central heating at any time during the year (whether serving liquor or not)	18% with Full ITC
3.	Restaurants serving liquor	18% with Full ITC
4.	Other than above	18% with Full ITC

2.2. The above rates were amended vide Notification No. 46/2017 dtd. 14.11.2017 effective from 15.11.2017:

S. No.	Description	GST Rate
1.	All Restaurants including mess or canteen, serving liquor or not, air-conditioned or not, located in the premises of Hotels, Inns, guests	5% without ITC

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	house, clubs, campsites or other commercial places meant for residential or lodging purposes having value of supply less than Rs. 7,500/-	
2.	Food parcels or takeaways	5% without ITC
3.	Restaurants in hotel premises having room tariff of Rs 7,500/- and above per unit per day (even for a single room)	18% with Full ITC
4.	Outdoor catering	18% with Full ITC

2.3. The above rates were further amended vide Notification No. 20/2019 dtd. 30.09.2019 effective from 01.10.2019:

S. No.	Description	GST Rate
1	Restaurant services, Outdoor catering services other than in premises having daily tariff of unit of accommodation of Rs 7,501/-	5% GST without ITC
2	Food and beverages services in premises with daily tariff of unit of accommodation is Rs 7,501/- and above	18% with ITC
3	Indian Railways Catering and Tourism Corporation Ltd. or their licensees/ Indian Railways	5% GST without ITC

2.4. So, the Final rate structure for restaurant which comes out is as under:

S. No.	Description	GST Rate
1	Restaurant services, Outdoor catering services <i>other than in premises</i> having daily tariff of unit of accommodation of Rs 7,501/- or above	5% GST without ITC
2	Food and beverages services <i>in premises with</i> daily tariff of unit of accommodation is Rs 7,501/- and above	18% with ITC

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3	Indian Railways Catering and Tourism Corporation Ltd. or their licensees/ Indian Railways	5% GST without ITC
4.	Food parcels or takeaways	5% GST without ITC

2.5. The service Accounting Code which applicable on these services falls under ***Heading 9963 - Accommodation, Food and Beverage services.***

3. **Time of supply:** In accordance with Sec. 13 of the CGST Act, 2017, time of supply in case of services shall be earliest of the following:

If Invoice is generated in time period prescribed under Sec. 31(2) of CGST Act, 2017 then earlier of the following:

- i. Date of issue of Invoice; or
- ii. Date on which payment is entered into books; or
- iii. Date on which payment is credited into bank account of the supplier.

If Invoice is NOT generated in time period prescribed under Sec. 31(2) of CGST Act, 2017 then earlier of the following:

- i. Date of provision of service; or
- ii. Date on which payment is entered into books; or
- iii. Date on which payment is credited into bank account of the supplier.

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4. Place of Supply:



In accordance with Sec. 12 (4) of the IGST Act, 2017, place of supply in case of Restaurant and catering services provided in India shall be location at which the services were actually performed. The relevant provision of the Act is reproduced as under:

*“(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.**”*

In view of the above it becomes amply clear that place of supply shall be the place at which such services are actually rendered. This provision could also have led to same anomaly as discussed in case of Hotel room rent services that most of the services which will be provided by the Restaurants will be Intra State supplies hence will be liable to the CGST and SGST. But the Sec. 17(5) (b) blocks the credit in relation to food and beverages and outdoor catering services. Hence, we feel the above anomaly is settled with respect to the restaurant services under the GST law.

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5. Invoicing:



5.1. The billing procedure to be adopted by the Hotels including when services supplied through the E Commerce platforms is explained herewith with the help of an example:

S. No.	Particulars	Amount (Rs.)
1	Restaurant bill value	200.00
2	Restaurant Discount 10%	20.00
3	Net Bill Value (1-2)	180.00
4	GST @ 5% on food bill (3*5%)	9.00
5	Total Payable by Customer (3+4)	189.00
6	Service Fee of E-Commerce Operator (<i>assuming</i>)	10.00
7	GST @ 18% on Service Fee (SAC 996813) [6*18%]	1.80
8	Total Bill of E-Commerce Operator (6+7)	11.80
9	Net Payable to Restaurant by E-Commerce Operator (5-8)	177.20

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5.2. Due to the nature of restaurant business, any restaurant business registered in GST may provide services to the customers having value of supply less than Rs. 200/-. In such cases said registered taxpayers may issue a **consolidated tax invoice** for such services at the close of such day if the recipient is not a registered person; and the recipient does not require such invoice.

6. **Option for Composition Scheme:** The government since 01.07.2017 i.e. the date when GST Law came into force have provided the restaurant businesses the option for composition scheme with a GST Rate of 5 percent subject to certain conditions laid down under Sec. 10 of the CGST Act, 2017. Hence, we would like to discuss the benefits and limitations faced by the Restaurant sectors:

6.1. **Benefits:** If the taxpayer is engaged in the rendering restaurant services and gets its registration under composition scheme, he/she could get following benefits:

- ❖ Easy compliances as no detailed accounts and records are to be maintained.
- ❖ Simpler returns as compared to the Regular scheme.
- ❖ Simple GST Rate structure.
- ❖ Quarterly payment of tax in CMP-08
- ❖ Beneficial for the small standalone restaurants as their ITC have already been blocked by issuing various Notifications as discussed in Para. 2 above.

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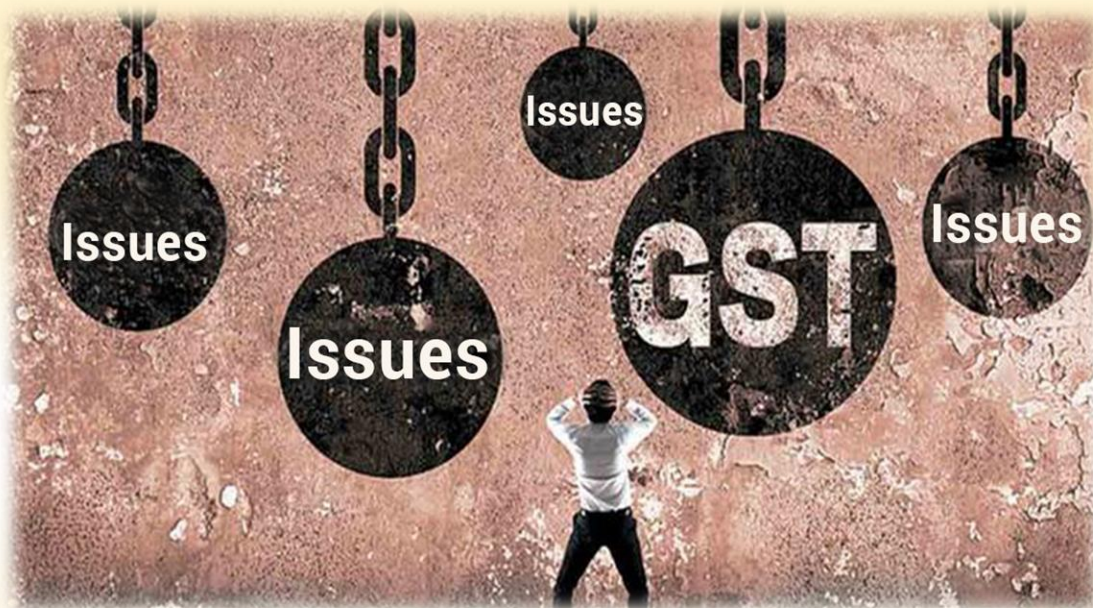
6.2.Limitations: If the taxpayer is engaged in the rendering restaurant services and gets its registration under composition scheme, he/she will have to face following shortcomings:

- ❖ Businesses with Aggregate turnover 1.5 crores or 75 Lakhs, as the case may be, in preceding Financial Year are only eligible to avail the benefit of the composition scheme.
- ❖ Restaurants serving alcoholic liquor of any form cannot opt for the composition scheme.
- ❖ Restaurants having a place of business in different states cannot opt for composition scheme.
- ❖ Restaurant supplying services through e-commerce operators like Zomato, Swiggy etc. cannot opt for composition scheme.
- ❖ Seasonal restaurants intending to obtain registration under composition scheme as Casual Taxable Person status are not eligible.
- ❖ A Restaurant manufacturing any of the goods such as- Ice cream and other edible ice, whether or not containing cocoa, Pan masala, Tobacco and manufactured tobacco substitutes cannot opt for composition scheme.
- ❖ They can neither collect GST from their customers nor can they issue a taxable Tax invoice under GST, they have to issue a Bill of Supply mentioning “Composition Taxable Person, not eligible to collect tax on supplies” on the same. Hence, the GST payment has to be made out of pocket.

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- ❖ Composition Dealers cannot take ITC on Inward supplies.
- ❖ Composition Dealers cannot supply items exempted from GST.
- ❖ Composition Dealers cannot make Inter-state supplies. However, they can receive Inter-state supplies.

7. Issues faced commonly and its possible solutions:



We hereby discuss some of the issues being faced by the Restaurant and Outdoor Catering businesses in the GST regime and its possible solutions:

7.1. As similar to the Hotel business, the Restaurant businesses also incur major of its expenditure in relation to the immovable property and more often than not these expenses are to be capitalised as per the Generally Accepted Accounting Principles. Further, if not capitalised can also lead to unnecessary litigations on the Income Tax raising the costs for the businesses. This ITC on Works contract services OR on goods or services in relation to Construction are being denied u/s 17(5)(d) of the CGST Act, 2017 even though these expenses are in course of furtherance of

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business. In regard to this issue various writ petitions have been filed, wherein it is recommended that ITC should be allowed in cases where the same is intended for provision of taxable output services. Hon'ble Orissa HC have allowed this credit in the case of **Safari Retreats Private Limited**. However, department has challenged this judgment with the Hon'ble Apex court and now it will be interesting to note the views of the Apex Court on this very important subject.

7.2.As the Alcohol for human consumption in a NON-TAXABLE supply, the restaurants or bars serving the liquor, will have to face the problem of charging State Vat/CST/Excise on the value of such liquor separately, at the time of raising the Tax invoice for such restaurant services. Further, the ITC on the common credits u/r 42 & 43 has to be reversed as the NON-TAXABLE supplies has been specifically covered under the definition of the Exempt Supply. Therefore, it is recommended to issue a separate invoice/bill for liquor being sold so that the business is able to account and comply with above provisions easily.

7.3.There are certain international brands having their food outlet chains in India as well. Now, for using their name the International companies charge royalty from their outlet owners in India. For this branding services the royalty charged will classify under "Import of services" and hence will be covered under Reverse Charge.

7.4.Many restaurants import goods on CIF basis for use in their restaurants. Hence, they have to pay tax on reverse charge the ocean freight portion for such imports. However, these restaurants can examine the and take the benefit of the decision by Hon'ble Gujarat HC in the case of Mohit Minerals Private Limited wherein it was held that no GST will be charged on the ocean freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by

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a vessel from a place outside India up to the customs station of clearance in India and the levy and collection of tax of such ocean freight under the impugned Notifications i.e. Notification No.8 of 2017 - Integrated Tax (Rate) dated 28.06.2017 and the Entry 10 of the Notification No.10 of 2017 - Integrated Tax (Rate) dated 28.06.2017 is not permissible in law. This judgment in case of Mohit Minerals has been further challenged in the Hon'ble Apex Court. Hope this matter attains finality after the decision by the apex court. Further, in the case of ***MCPI Private Ltd. & Anr. Vs. Union of India & Ors., Hon'ble Kolkata high Court*** also allowed the refund to the petitioner of IGST paid on Ocean Freight and passed the judgement in line with Mohit Minerals Private limited as under:

"The submission was that challenge in this writ petition is covered by judgment dated 23rd January, 2020 made by a Division Bench of High Court of Gujarat, in, inter alia, R/Special Civil Application 726 of 2018 [(Mohit Minerals Pvt. Ltd. vs. Union of India & 1 other(s)] wherein view taken was that no tax is leviable under Integrated Goods and Services Tax Act, 2007, on ocean freight, for services provided by a person, located in a non-taxable territory, by way of transportation of goods on a vessel from a place outside India upto Customs station of clearance in India. Notification impugned in this writ petition has been declared unconstitutional by the judgment. A point of law stands decided by a Division Bench of High Court of Gujarat. The challenge appears to be covered thereby. This writ petition is accordingly allowed as so covered."

Also, in the matter of ***GOKUL AGRO RESOURCES LTD. Versus UNION OF INDIA*** the Hon'ble Gujrat High court even allow to grant the refund of IGST paid on Ocean Freight in line with the judgement of ***"Mohit minerals Pvt. Ltd."*** supra. The pronouncement in para 6 of the said judgement is as under:

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“We may only say that since the Notification has been struck down as ultra vires, as a consequence of the same, the writ applicant seeks refund of the amount paid towards the IGST. However, for this purpose, the writ applicant will have to prefer an appropriate application addressed to the competent authority. If any such application is preferred for the refund of the amount, the authority concerned shall immediately look into the same and pass an appropriate order in accordance with law keeping in mind the decision of this Court rendered in the case of Mohit Minerals (supra). The competent authority shall not raise any technical issue with regard to the claim for refund of the IGST amount. Let this exercise be undertaken within a period of four weeks from the date of receipt of the writ of this order.”

- 7.5. There is no liability under reverse charge on the licence fees paid to the State government. If already paid refund can be applied for the same.
- 7.6. The restaurants supplying their foods through E Commerce Operators such as: Zomato, Swiggy, Uber Eats etc. have to obtain GST registration only after they cross the threshold limit of Rs. 10/20 Lakhs as prescribed u/s 22. of the CGST Act, 2017 further subject to Notification No. 65/2017-CT dtd. 15.11.2017.
- 7.7. The restaurants supplying their foods through E Commerce Operators such as: Zomato, Swiggy, Uber Eats etc. will also have to keep track of the ITC that they receive due to their TCS collection. Therefore, they have to accept and reject the invoices every month on the GST common portal.
- 7.8. Operating Canteens are specifically covered under the services of the restaurant hence their services are taxable at par with the services provided by the restaurants. But Canteen services provided by the

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Schools/colleges are specifically exempted vide Notification No. 12/2017-CT(R) dtd. 28.06.2017. With regard to the same it was clarified by CBIC that Exemption is for all the educational institutions if they prepare their own food and provide it to the students, faculty and staff and NO ITC for Inward supplies of these canteens.

7.9. However, if any contractor providing canteen services to the schools/colleges providing education from Pre-school to Higher senior secondary school is also covered under the Exemption Notification No. 12/2017 dtd. 28.06.2017. In all other cases the canteen services are taxable at par with restaurant services.

7.10. Many businesses are in dilemma that whether to take ITC or not if they are receiving outsourced Canteen services for its employees from some contractor. So, to clarify the same in the our opinion the ITC will definitely be available if it has entered into a contract so as to fulfil its statutory obligation under any act (Eg. Factories Act) or under a contractual arrangement entered into with employee at the time of his/her recruitment. In any other case the ITC can only be availed analysing the cost-benefit of future litigations.

7.11. Whether the food parcels or takeaways be classified as a service and a rate of 5 percent with restriction of the ITC can be applicable. We are afraid to accept this view as there exist hardly any service and is only the sale of food. Our view is affirmed by a recent decision by Hon'ble Madras HC in case of *M/s RSM Foods Pvt. Ltd. and others Vs Joint Commissioner CGST, Chennai & Ors.* where it has been held that in the case of take-away or food parcels, the attributes (of services) are conspicuous by their absence. Therefore, the service tax will not be applicable on takeaways orders in restaurants and hotels.

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C. TOUR AND TRAVEL INDUSTRY:



1. Important Definition: Here we discuss about some important definition which are important at the outset so as to analyse the impact of the GST law & Notifications issued therein from time to time on the this segment:

1.1. **“agent”** means a person, including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another; *(Sec. 2(5) of CGST Act, 2017)*

1.2. **“tour operator”** means any person engaged in the business of planning, scheduling, organizing, arranging tours (which may include arrangements for accommodation, sightseeing or other

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similar services) by any mode of transport, and includes any person engaged in the business of operating tours. *(Notification No. 11/2017 CT (R) dtd. 28.06.2017)*

- 1.3. **“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. *(Sec. 2(13) of IGST Act, 2017)*
- 1.4. **“pure agent”** means a person who-
- (a) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
 - (b) neither intends to hold nor holds any title to the goods or services or both so procured or supplied as pure agent of the recipient of supply;
 - (c) does not use for his own interest such goods or services so procured; and
 - (d) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account. *(Explanation to Rule 33 of CGST Rule, 2017)*
- 1.5. The term “Travel Agent” is not defined under GST. However, it was defined under Service Tax regime which would definitely be relevant in GST regime as well. The definition is as under:
- “travel agent** means any person engaged in providing any service connected with booking of passage for travel, but does not include air travel agent and rail travel agent”

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- 1.6. To understand the definition of the definition of ***“Travel Agent”*** it is pertinent to discuss the definitions of ***“Rail Travel agent”*** and ***“Air Travel Agent”*** which are as under:

“Rail Travel Agent” means any person engaged in providing any service connected with booking of travel by rail.

“Air Travel Agent” means any person engaged in providing any service connected with the booking of passage for travel by air.

2. **Understanding further some of terms discussed in Point 1 above:** Here we analyse further the some of the complex terms in form of definitions as discussed in Point 1 above:

2.1. **What are the essentials for being classified as a Tour Operator?**

2.1.1. The basic essential is that a Tour Operator must organize tours. The word ‘Tour’ is not defined under GST law. If we refer to the Service tax regime, the word ‘Tour’ was defined as ***“A journey from one place to another irrespective of the distance between such places.”***

2.1.2. A Tour Operator is therefore a person who renders any services of:

- Planning a tour,
- Scheduling a tour
- Organizing a tour, or,
- Arranging a tour.

2.1.3. In addition to the above, the services of a Tour Operator may include allied services such as hotel booking, booking of transportation such as car or coach, sightseeing services, entry to monuments, museums and shows, etc.

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2.1.4. The tour operator does the entire booking of tours and the total fees charged shall include his margin. Hence, he becomes a tour operator service provider and the entire service value is leviable under GST.

2.2. What are the essentials for being classified as a Pure Agent?

2.2.1. To become a pure agent, one has to fulfil the following conditions:

- i. He enters into a contractual agreement with the recipient of supply to incur his expenditure or cost in the course of supply of goods or services or both;
- ii. He neither intends to hold nor holds any title to the goods or services as a pure agent;
- iii. He does not use such goods or services so procured for his own interest; and
- iv. In addition to the supply provided by him on his own account, he is entitled to receive only the actual amount incurred by him (***no further margin on goods or services procured for the recipient***).

2.2.2. The Example of a Pure Agent is as follows:

X and his family (total four members) went for trip to Goa. They took the service of the travel agent to whom the family laid down facilities they want to receive on their trip to Goa for Rs 4,000. One of those facilities demanded was of massage, as soon as they reach Calangute Beach at 11:00 am in the morning of 16.06.2021. The massage services slot of 11:00 am to 11:30 am dtd. 16.06.2021, was duly booked for Rs. 10,000/- by the agent in the name of those four members of the family. At the time of raising the bill the travel agent also recovers Rs.10,000/- (**by separately indicating in his invoice**) along with his service charges of Rs. 4,000/-. **The travel**

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agent had acted merely as a pure agent in the payment of those booking charges for the massage.

2.3. Here we discuss some of the pertinent differences between Tour Operator and a Travel Agent:

Tour Operator	Travel Agent
Defined under GST law	Not specifically defined under GST law, covered under broader category of intermediary. (only 'Air Travel Agent' is defined)
Plans, Schedules, Organizes or arranges Tours	Books passage for transportation of passengers
Has considerable leeway in deciding the itinerary of the client. The Tour Operator designs the package for the passenger based on his knowledge and experience. To that extent, a Tour Operator is a skill that is gained through experience or through organized learning such as tourism courses.	A Travel Agent is largely an executor of instructions given by the passenger.
A Tour Operator acts as an advisor to the passenger and guides the passenger on many aspects such as local festivals and customs, timings of visit to monuments or museums, suitable accommodation, suitable places for food and drink, etc.	A Travel Agent does not provide such services, but merely books tickets on instruction of the passenger.

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3. Understanding the GST Rates: To understand the GST rates one needs to first understand the type of transactions that takes place in the industry. The same has been discussed in the table below:

S. No.	Type of Service Provider	Type of Transaction	GST Rates	Conditions attached herewith:
3.1.	Travel Agent (including Air Travel agent) choosing Commission Model	Service Charges charged to the customer	18%	On service Charges. With ITC
		Commission from Airlines	18%	On commission charged. With ITC.
3.2.	Air Travel Agent choosing “Basic Fare” Model as per Rule 32 of CGST Rules, 2017*	For Domestic Booking (18% of 5 % of basic fare)	0.9%	With ITC
		For International Booking (18% of 10 % of basic fare)	1.8%	With ITC
3.3.	Tour Operator	Principal to Principal basis	5%	Without ITC. However, the ITC of input service is available in the same line of business.

* ***“basic fare”*** means that part of the air fare on which commission is normally paid to the air travel agent by the airlines.

Points to be noted:

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- ❖ The Air Travel Agent can choose Option 3.1 or 3.2 from above table even on transaction-to-transaction basis.
- ❖ To avail a Composite rate of 5% as mentioned in Point No. 3.3 of the above Table, Tour operator has to fulfill following conditions:
 - The bill issued for the supply of this service indicates that it is inclusive of charges of accommodation and transportation required for such tour and
 - the amount charged in the bill is the gross amount charged for such a tour.

4. Place of Supply:



The Place of Supply is the most technical and important aspect of this industry. So, here we will discuss the Place of the supply in case of Travel agents and tour operators:

4.1. **In case of Supply of services by Travel agent on Commission basis - Domestic:** The place of supply shall be *(Sec 12(2) of IGST Act, 2017)*:

(a) **the location of such person** – If provided to a registered person

(b) **location of the recipient** – If made to any person other than and the address on record exists.

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(c) **the location of the supplier** - in other cases.

4.2. **In case of Supply of services by Travel agent on Principal basis (means he/she is issuing the tickets himself/herself) - Domestic:**

The place of supply shall be *(Sec 12(9) of IGST Act, 2017)*:

(a) **Location of such person** - In case of a registered person

(b) **Place where the passenger embarks on the conveyance for a continuous journey** - In case of a Unregistered person

(c) Where the right to passage is for future use and the point of embarkation is not known at the time of issue of right passage, the POS **shall be determined as per section 12 (2) of IGST Act.**

4.3. **In case of Supply of services by Travel agent on Principal basis (means he/she is issuing the tickets himself/herself) - International (LOROS* or LOSOS** is outside India (Sec.13(10) of IGST Act, 2017):**

(a) **Place where the passenger embarks on the conveyance for a continuous journey** - In case of a ANY person

4.4. **In case of Supply of services by Travel agent on Commission basis- International (LOROS* or LOSOS** is outside India (Sec.13(2) of IGST Act, 2017):**

(a) **the location of recipient**- If Location of recipient is known

(b) **the location of Supplier of services** - If Location of recipient is not known.

*LOROS - Location of Recipient of Service

**LOSOS- Location of the Supplier of Service

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4.5. **In case of Supply of services by Tour Operator Domestic: The place of supply shall be (Sec 12(2) of IGST Act, 2017) Sec 12(2) of IGST Act, 2017:**

(a) **the location of such person** – If provided to a registered person

(b) **location of the recipient** – If made to any person other than and the address on record exists.

(c) **the location of the supplier** - in other cases.

4.6. **In case of Supply of services by Tour Operator - International (LOROS* or LOSOS** is outside India (Sec.13(2) of IGST Act, 2017):**

(a) **the location of recipient**– If Location of recipient is known

(b) **the location of Supplier of services** – If Location of recipient is not known.

*LOROS – Location of Recipient of Service

**LOSOS- Location of the Supplier of Service

5. **Value of Supply:** Here we discuss how to determine the Value of Supply u/s 15 of CGST Act, 2017. Keeping in view the nature of service provided the determination of the Value of supply shall be as under:

5.1. **For a Pure Agent:**

5.1.1. The transaction value will be determined in accordance with Sec. 15 of CGST Act, 2017. The transaction value shall be the value of the supply of services if the supplier and recipient are

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unrelated and the price is the sole consideration. Hence, the Value of supply shall include all the incidental expenses, Non-govt. subsidies, taxes other than CGST/SGST/UTGST/IGST, consideration paid by the recipient to the third party on behalf of the supplier and any interest or late fees for delayed payment. After excluding Cash discounts before or at the time of supply OR any Post supply discounts after fulfilling the conditions that-

i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices;

AND

ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

5.1.2. However, in case of pure agent the expenditure or costs incurred by a supplier as a pure agent of the recipient of the supply shall be **EXCLUDED** from the total value of supply if all the following conditions are satisfied:

- a. He makes the payment to the third party on the authorization of such recipient.
- b. Such payment made by the pure agent has been separately indicated in his invoice as reimbursement.
- c. The supplies procured by the pure agent from third parties are in addition to the services he supplies on his own account.

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5.1.3. Meaning thereby, the reimbursement of expenses does not form part of the value of the supply of services by a pure agent. To obtain the status of the Pure agent the supplier has to comply with the conditions stated as above.

5.2. For a Tour operator:

5.2.1. The transaction value will be determined in accordance with Sec. 15 of CGST Act, 2017. The transaction value shall be the value of the supply of services if the supplier and recipient are unrelated and the price is the sole consideration. Hence, the Value of supply shall include all the incidental expenses, Non-govt. subsidies, taxes other than CGST/SGST/UTGST/IGST, consideration paid by the recipient to the third party on behalf of the supplier and any interest or late fees for delayed payment. After excluding Cash discounts before or at the time of supply OR any Post supply discounts after fulfilling the conditions that-

i) such discount is established in terms of an agreement entered into at or before the time of such supply and specifically linked to relevant invoices;

AND

ii) input tax credit as is attributable to the discount on the basis of document issued by the supplier has been reversed by the recipient of the supply.

5.2.2. To avail the composite rate of 5% the tour operator has to issue the bill for the supply of service indicating that it is inclusive of charges of accommodation and transportation required for

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such tour and the amount charged in the bill is the gross amount charged for such a tour.

6. Issues faced commonly and its possible solutions:



We hereby discuss some of the issues being faced by the Tourism sector businesses in the GST regime and its possible solutions:

6.1. Services provided by a tour operator outside India for an Indian/foreigner in relation to outbound tour packages being offered to a person based in India, the location of supply will be the location of the service receiver. However, for outbound tour package offered to a foreigner for visiting another foreign country, there is no GST charged on the commission received in convertible foreign currency as it would be treated as Export of services if it falls under the definition given under Sec. 2(6) of IGST Act, 2017, which is reproduced as under:

*“(6) —export of services means the supply of any service when,—
(i) the supplier of service is located in India;*

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(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange [or in Indian rupees wherever permitted by the Reserve Bank of India]; 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;”

- 6.2. GST is not charged on any govt fees or consular charges paid for the particular services such as Provision of Visa, Passport, etc. by an Agent or Company on behalf of the customer.
- 6.3. Place of supply in case of services provided by the agent in relation to booking the hotel in case of **domestic hotel**, the location of the hotel shall be the place of supply. Further, in case of **international hotel** booking, the place of supply shall be the location of the service (booking) provider (agent/company). So it is pertinent to note that the service provider cannot treat it as Export of service because the Place of Supply is not outside India.
- 6.4. If Rent-a-Cab services provided by the tour operator to its customers, then the tour operator will have to pay 5% GST under Reverse charge on the services obtained in relation to the renting of any motor vehicle vide Notification No. 29/2019-CT(R).
- 6.5. Travel Agent also earning Segment Payouts/commission/incentives from software service providers for using their software for making booking in Airlines reservations systems would be liable to GST.

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- 6.6. Travel Agents issuing Mediclaim policies and travel insurance for clients through various insurance service providers and gets commission on cut and pay basis or at the end of the month (for overseas policies). This commission will also be liable to GST.
- 6.7. All cancellation fees are subject to GST at 5% Credit note is allowed to be issued for cancellation of air ticket or tour package and GST must be adjusted accordingly. Any amendment charges are subject to GST at 5% for inbound/outbound tour package and domestic air tickets. Amendment charges for outbound tour package and international air ticket are subject to GST at 5%. Arranging for visa and visa fees; (the service or administrative fees imposed) is subject to GST at 18%.
- 6.8. Travel agents are not compulsorily liable to take GST registration u/s 24. This has been clarified by the CBIC vide its Circular No. 57/31/2018-GST dtd. 04.09.2018 that compulsory registration is applicable to only those agents who stock and sell goods on behalf of the Principal. Hence, they are liable to take registration only when their aggregate turnover exceeds 20/10 lakhs as the case may be as per Sec. 22 of CGST Act, 2017.

CONCLUSION:

The growth of the Tourism & hospitality sectors in India has drawn the attention of people all across the globe. GST came up with a flash of hope for the Hotel and Tourism Industry but instead of providing uniformity of tax rates, seamless flow of credit, lowering the costs of end user, ease of doing business it has worsen the situation for these sectors. High incidence of taxes may make India less competitive when it comes to tourism as international tourists may skip the destination. The government should appreciate that countries like Myanmar, Thailand, Singapore,

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Indonesia and others levy taxes ranging from 5 to 10 per cent. India cannot afford to have this kind of complex and high GST rate structure. However, on a positive note we would like to conclude that in progressing towards the new framework GST have caused extra expenses to the businesses in these sectors. However, it is expected that the governments will have to take considerable steps on recommendations of GST Council, so as to enable this GST regime to become a valuable regime.

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