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Certificate Course International Trade

Today's Content - GST on Imports

GST on Imports – Legal Framework & Definitions

- **Constitutional Basis:** Under Article 269A of the Constitution, any supply of goods or services in the course of import into India is deemed an inter-state supply and taxable under IGST. Thus, all imports are subject to Integrated GST (IGST) in addition to customs duties.
- **Key Definitions:** The IGST Act, 2017 explicitly defines **"import of goods"** as bringing goods into India from outside and **"import of services"** as a supply of service where the supplier is outside India, the recipient is in India, and the place of supply is in India. these definitions align with customs and trade law.
- **Relevant Laws:** IGST on imports is levied per the Customs Act, 1962 and Customs Tariff Act, 1975. Specifically, section 5(1) of the IGST Act (read with the Customs Tariff Act) mandates that IGST on imported goods is collected as per customs value rules. Importers must quote their GSTIN (GST registration) in the Customs Bill of Entry which now substitutes the old IEC for tax credit purposes.

Taxability: Import of Goods vs. Import of Services

- **Import of Goods:** Goods imported into India are deemed inter-state supplies On import, **IGST is chargeable** on the sum of the customs assessable value plus any customs duties (Basic Customs Duty and others). IGST is collected by the customs authorities at clearance time. This IGST is in addition to Basic Customs Duty (BCD), Compensation Cess (if applicable) and other levies. The effective IGST rate is the rate notified for similar goods in domestic supply. For example, if a good has IGST rate 18%, and its assessable value is ₹100 with BCD 10% and Social Welfare Surcharge (SWS) 3% of BCD, the IGST is computed on (100 + 10 + 0.30) = ₹110.30. In practice:

- **Customs Clearance:** The importer submits a Bill of Entry (GSTIN recorded) which captures value, BCD, SWS, IGST rate, and IGST amount. The bill of entry effectively serves as the tax invoice for the imported goods (no separate self-invoice is needed)

- **Baggage & Exemptions:** Personal baggage (within free allowances) is exempt from IGST; only customs duties apply (e.g. 35% BCD on value beyond allowance) Imports under export-incentive schemes (EPCG, advance licences) often have customs duty exemption, but **IGST and cess must still be paid** on such imports

- **High-Seas Sale:** In a "high-seas sale" (goods sold at sea before customs entry), IGST is paid only once at the time of first customs clearance, and all mark-ups from the high-seas sale(s) are included in the IGST tax base.

- **Import of Services:** Imported services are **deemed inter-state supplies** Unlike goods, there is no customs bill – instead, the **Reverse Charge Mechanism (RCM)** applies. The recipient (Indian importer) must self-assess and pay IGST on the imported service. In effect, the foreign supplier issues a normal invoice, but the Indian recipient issues a *payment voucher* and pays IGST in cash on the value of the service as per Section 5(4) of the IGST Act. For example, professional or IT services from a foreign vendor are taxed under RCM. Exceptionally, for OIDAR (online information/data services) supplied to unregistered or non-taxable persons in India, the foreign supplier must register in India and pay IGST themselves. Under RCM, the importer must pay by cash (no use of ITC/credit at the time of payment)

Computing IGST on Imported Goods

1. **Determine Customs Value:** Ascertain the assessable value of the imported goods under Customs Act (usually CIF or transaction value)
2. **Add Customs Duties:** Calculate Basic Customs Duty (BCD) at the applicable ad valorem rate. Compute Social Welfare Surcharge (SWS) at 10% (now typically 3%) of the BCD. Include any other applicable duties (e.g. Anti-Dumping, Safeguard) to the value.
3. **Compute IGST Tax Base:** IGST is levied on the sum of the assessable value and all duties (BCD + SWS + any other customs duties), as per Customs Tariff Act§3. (By law, IGST and cess themselves are *not* added in this base for calculating each other.) For example, if value = ₹100, BCD = 10%, SWS = 3% of BCD = 0.30, then IGST base = 100 + 10 + 0.30 = ₹110.30.

4. **Apply IGST Rate:** Multiply the base by the IGST rate on the goods (e.g. 18%). In the example, IGST = 18% of 110.30 = ₹19.85. Separately, if compensation cess applies on the goods (e.g. on sin goods), it is charged on the same base (110.30) at the cess rate (e.g. 15% = ₹16.55). The importer pays BCD + SWS + IGST + Cess at customs (cash only).

5. **Example Summary:** Referencing an official illustration:
   - Assessable Value: ₹100
   - BCD (10%): ₹10
   - SWS (3% of BCD): ₹0.30
   - **Value for IGST:** ₹110.30
   - IGST @18%: ₹19.85
   - Value for Cess: ₹110.30
   - Cess @15%: ₹16.55
   - **Total Duty Paid:** ₹46.70

Figure: Illustrative import scenario. Goods arrive at port, and Customs calculates the duty and IGST basis (assessable value + duties). The importer submits a GSTIN-validated Bill of Entry, and pays IGST along with customs duties in cash (no ITC usage at payment). Once paid, the IGST amount can be claimed as credit.

Reverse Charge on Imported Services

- **Mechanism:** All imports of services by a person in India are taxed under *reverse charge*. That means the importer (recipient) pays IGST on the invoice value of the imported service. The supplier (foreign) does not collect tax. The Indian recipient must issue a payment voucher (per GST Rules) for the amount of IGST and deposit it along with returns For example, if a foreign consultant invoices ₹1,00,000 for services and IGST rate is 18%, the importer pays ₹18,000 IGST (in cash).
- **OIDAR Exception:** If the imported service is an *Online Information and Database Access/Retrieval* (OIDAR) service supplied to an unregistered (non-taxable) person, then the foreign supplier must register and pay IGST on the supply. Otherwise (if the recipient is a registered business), the normal RCM rule applies.
- **Cash Payment:** GST on imported services under RCM must be paid in cash (the importer cannot adjust it by existing credits when paying at customs or in later returns).

Input Tax Credit (ITC) on Imports

- **Full Credit for IGST:** An importer can take full ITC of the IGST paid on imports of goods or services. This IGST credit appears in the importer's GSTR-2A/2B (auto-populated via ICEGATE data) and is claimed in Form GSTR-3B. In effect, paying IGST in cash at import (due to Customs rules) later converts into a tax credit for the importer's GST liabilities.
- **Usage of Credit:** The IGST credit from imports can be used to pay any GST liability in the order IGST → CGST → SGST. Remaining tax must be paid in cash. Note that **IGST on imports must still be paid in cash at the time of clearance**; the cash payment is then converted into credit in the returns.
- **Conditions:** The usual ITC rules apply – the importer must use the goods/services in business, have valid documents (Bill of Entry for goods, payment voucher for services), and claim within the time limit (generally by filing the annual return). Since no separate invoice is needed for goods, the Bill of Entry itself serves as input documentation.

Special Cases

- **High-Seas Sales:** If goods are sold "on the high seas" (i.e. after shipment but before customs entry), all such sales are treated as one import event. IGST is levied only once when the goods first clear customs, and the value includes all mark-ups from successive high-seas transactions. In other words, the first import bill of entry reflects the cumulative value.
- **Merchanting Trade:** In merchanting, an Indian trader buys goods from a foreign supplier and sells them to another foreign buyer *without the goods ever entering India*. RBI guidelines require that goods in merchanting **do not enter the Domestic Tariff Area**. Since no import into India occurs, these goods are not subject to IGST at all. (By contrast, high-seas sales eventually result in import and IGST.) Only service elements of a merchanting transaction (e.g. commission) would attract GST under regular rules.
- **OIDAR Services:** As noted, imported OIDAR to an unregistered person makes the foreign supplier liable for IGST. When the recipient is registered, the rules mirror other services (i.e. recipient pays under RCM).
- **Warehoused Goods:** (For completeness) If imported goods are immediately put into a customs-bonded warehouse, IGST is deferred until final clearance for home consumption. The value for IGST on warehoused goods is the higher of the import-time value or transaction value. Supplies of warehoused goods to other buyers (before clearance) are outside GST until clearance.
- **Special Economic Zones (SEZs) and EOUs:** Imports by SEZ units/developers are IGST-exempt (zero-rated) since supplies to SEZ are treated as exports; hence no IGST on imports into SEZ. 100% EOUs also get duty-free import; IGST on their inputs (if any) can be taken as credit and used for any output tax or claimed as refund.

Compliance and Reporting

- **GST Registration:** Any person importing goods or services must be registered under GST. The PAN-based IEC has been effectively replaced by GSTIN: importers quote their GSTIN on all import documents. During the transition, provisional GSTINs sufficed.
- **Bill of Entry and GSTIN:** Customs Bills of Entry have been amended to include fields for GSTIN, IGST rate, IGST amount and Compensation Cess. Importers need only submit the GSTIN; separate GST declaration is not needed, as GSTIN is treated as the identifier for tax credits. The Bill of Entry itself is treated as the tax invoice (for goods) or payment record (services).
- **Returns:** IGST on imports must be reported in the regular GST returns. In Form GSTR-3B, imported goods and services are shown in Table 3.1 (taxable outward/RCM supplies) and the resulting IGST is declared in Table 3.2 (tax liability). The IGST paid appears in the ITC section (Table 4A). Data from customs is automatically fed into GSTR-2A/2B, easing reconciliation. Any IGST credit is claimed in the same return period. Importers also file annual return (GSTR-9/9C) including import details. Non-filers of return by due date cannot carry IGST credit beyond the annual return deadline.
- **Payment:** IGST on imported goods must be paid in cash to Customs (no payment by credit ledger entry). For imported services (RCM), payment voucher and cash payment are made during return filing. Late payment of IGST at customs attracts interest and penalties.
- **Documentation:** Importers should retain Bills of Entry, import invoices, and payment vouchers (for services) as proof of tax paid. These documents support the ITC claims and are necessary for any audits or refunds.

<u>Inverted Duty Structure under GST</u>

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. The condition may not be prevalent for all industries.

Inverted tax structure in the pre-GST regime

In the pre-GST regime, a situation of an inverted duty structure arose in cases where import duty on raw materials that were used in the production of finished goods was higher than the import duty on finished goods itself.

An example which shows a case of Inverted Duty Structure:

Duty on the import of tyres (Finished Good) = 10%

Duty on the imports of natural rubber (Raw Material) = 20%

Other Examples:

Products		Import duty on	
Finished Goods	Raw Materials	Finished Goods	Raw Materials
Solar Modules	Components for Solar Modules	Nil	5-10%
Seaweed	Agar	10%	30%
Dehydrated culture media	Microorganism	10%	30%
Electrical Transformer	Steel Tubes	7.50%	10%
Railway locomotives	Components	5%	18-28%

Inverted tax structure under the GST regime

The term 'Inverted Tax Structure' refers to a situation where the rate of tax on inputs purchased (i.e.GST rate paid on inputs received) is more than the rate of tax on outward supplies (i.e. GST rate payable on sales).

Products		GST on	
Finished Goods (Output)	Raw Materials (Input)	Finished Goods	Raw Materials

Fabric Bag	Non-Woven Fabric	5%	12%

Refund in case of inverted tax structure under GST

A registered person may claim a refund of unutilised Input Tax Credit (ITC). The ITC on account of inverted tax structure can be claimed at the end of any tax period where the credit has accumulated on account of the rate of tax on inputs being higher than the rate of tax on output supplies. A tax period is a period for which a return is required to be furnished.

Exceptions where the refund of the unutilised input tax credit cannot be claimed, are as follows:

- Output supplies are nil rated or fully exempt supplies except for supplies of goods or services or both as may be notified by the Government on the recommendations of the GST Council.
- If the goods exported out of India are subject to export duty.
- If supplier claims refund of output tax paid under IGST Act.
- If the supplier avails duty drawback or refund of IGST on such supplies.

Formula for maximum refund under inverted tax structure

Maximum refund amount = (Turnover of inverted rated supply of goods and services X Net input tax credit /Adjusted total turnover) – Tax payable on such inverted rated supply of goods and services

Illustration:
Supply of Fabric Bags (Output) Value: Rs.1,400
GST on the above: 1400×5%= Rs.70

Supply of Woven fabric of Silk: Value Rs.1,500
GST on the above: Rs.1,500×5%=Rs.75

The purchase value of Silk yarn: Rs.1,000×5%

GST on the above: Rs.1,000×5%=50

Purchase Value of Non woven fabric Rs.1,000

GST on the above: Rs.1,000×12%=Rs.120.

Turnover of inverted rated supply which in this case is Rs.1,400.

Maximum Refund = {(1400×120)/1400}-70 = Rs.50

Various terms used in the computation of maximum refund amount

a. Turnover of inverted rated supply of goods

The value of inverted supply of goods or services made during the relevant period without payment of tax under bond or letter of undertaking. In the above example, turnover of inverted rated supply of goods = Rs.1,400

b. Net input tax credit

Net ITC shall 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. In the above example, it is 50+120-50=Rs. 120

c. Adjusted total turnover

"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.

In the above example, it is 1500+1400-1500 = Rs. 1400

Turnover in a state or a union territory, as defined under sub-section (112) of section 2: "Turnover in State" or "Turnover in Union Territory" means the aggregate value of:

- All taxable supplies (excluding the value of inward RCM supplies)
- Exempt supplies made within a state or union territory by a taxable person

- Exports of goods or services or both
- Inter-state supplies of goods or services or both made from the state or union territory


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