


**WELCOME**  
to the Session on  
**IGST, Place of Supply in GST**  
28<sup>th</sup> November 2021

Presentation by :

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## New insertions to constitutionalize GST:- [wef 16.9.16]

- Article 246A-

(1) both parliament and state legislatures shall have **concurrent** powers to make laws with respect to goods and services Tax (GST) imposed by the Union or by such State.

(2) Parliament has **exclusive** power to make laws with respect to Goods and Services Tax, where the supply of goods and/or services takes place in the course of inter-state trade or commerce.

- Article 269A- In case of the inter-state trade, the tax will be levied and collected by the Government of India and **shared** between the Union and States as per recommendation of the GST Council.

# The IGST Act, 2017

Ss.	
1	Title, Scope, Commencement
2	<p>Definitions:</p> <ul style="list-style-type: none"> <li>• Export of goods – taking goods out of india to a place outside India.</li> <li>• Export of services – Supplier in India, POS+Recipient outside India, Foreign currency, not just his branch abroad. <a href="#">[Cir 161/17/2021 dt 20.09.21 clarified ‘mere establishment of a distinct person u/s. 2(6)(v) i.e. A ‘company’ can export services to overseas ‘company’, but not to overseas ‘branch / agency / Representational office]</a></li> <li>• Import of goods – Bringing goods into India from a place outside India.</li> <li>• Import of services- Supplier outside India, POS+Recipient in India.</li> <li>• India – Territorial waters, continental shelf, EEZ + Seabed, subsoil, air space over Territorial waters + installation/structure/vessel in Continental shelf &amp; EEZ.</li> <li>• Location of Recipient – Regd POB, a fixed establishment elsewhere, In case of multiple Fixed establishments – the most directly concerned, In absence of all these- rerecipient’s usual place of residence.</li> <li>• Location of supplier – similar</li> </ul>
3	<ul style="list-style-type: none"> <li>• Board may appoint officers for IGST.</li> </ul>
4	<ul style="list-style-type: none"> <li>• Central Govt can authorise (on conditions) state officers to be proper officer under IGST Act.</li> </ul>

Ss .	
5	<ul style="list-style-type: none"><li>• Levy/collection- IGST, Rate cap 40%, Transaction value u/S15 of CGST Act, shall be paid by the taxable person.</li><li>• IGST on import- levied / collected u/S.3 of CTA, 1975, on value u/S.12 of Customs Act, 1962.</li><li>• RCM B2B- govt can specify categories where recipient will pay GST.</li><li>• RCM C2B- Registered recipient will pay IGST on supply received from non-registered supplier.</li><li>• ECO- Govt notified ECOs will pay IGST on supplies made through it. If not physically presnet in India, its representative will pay. If not there any, ECO will appoint one.</li></ul>
6	<p>Exemption- General by notification, Ad-hoc by special order; Retro-explanation within one year. Supplier will not collect tax if supply exempted absolutely.</p>

Ss.	
7	<p>Inter-State Supply of Goods- (subject to POS rules u/S.10)</p> <ul style="list-style-type: none"> <li>-Location of the supplier and the POS are in different States/UTs.</li> <li>-supply of goods imported into Indian territory till they cross Customs Frontier.</li> </ul> <p>Inter-State Supply of Services- (subject to POS rules u/s.12)</p> <ul style="list-style-type: none"> <li>-where LOS &amp; POS in different States / UTs.</li> <li>-Import of service</li> </ul> <p>Inter-State Supply of Goods and/or Services-</p> <ul style="list-style-type: none"> <li>-when supplier in India and place of supply abroad (ie physical export)</li> <li>-supply to or by SEZ unit/developer</li> <li>-supply in other non-intra territory.</li> </ul>
8	<p>Intra-State Supply of Goods- (subject to POS rules u/S.10)</p> <ul style="list-style-type: none"> <li>-Location of the supplier and the POS are in the same States/UTs.</li> <li>- 3 exceptions :- SEZ, High sea (ie supply of imported goods till dock point) &amp; out-bound tourist.</li> </ul> <p>Intra-State Supply of Services- (subject to POS rules u/s.12)</p> <ul style="list-style-type: none"> <li>-Location of the supplier and the POS are in the same States/UTs.</li> <li>-Exception: To or by SEZ</li> <li>-Treated as distinct persons :- out-India or out-State own establishment (ie branch / Agency/representational office) &amp; Within State separately registered same PAN POBs</li> </ul>
9	<p>Supplies originating or terminating in territorial waters – If supplier’s location or place of supply is in territorial waters, then supply will be deemed to have taken place in the nearest coastal State.</p>

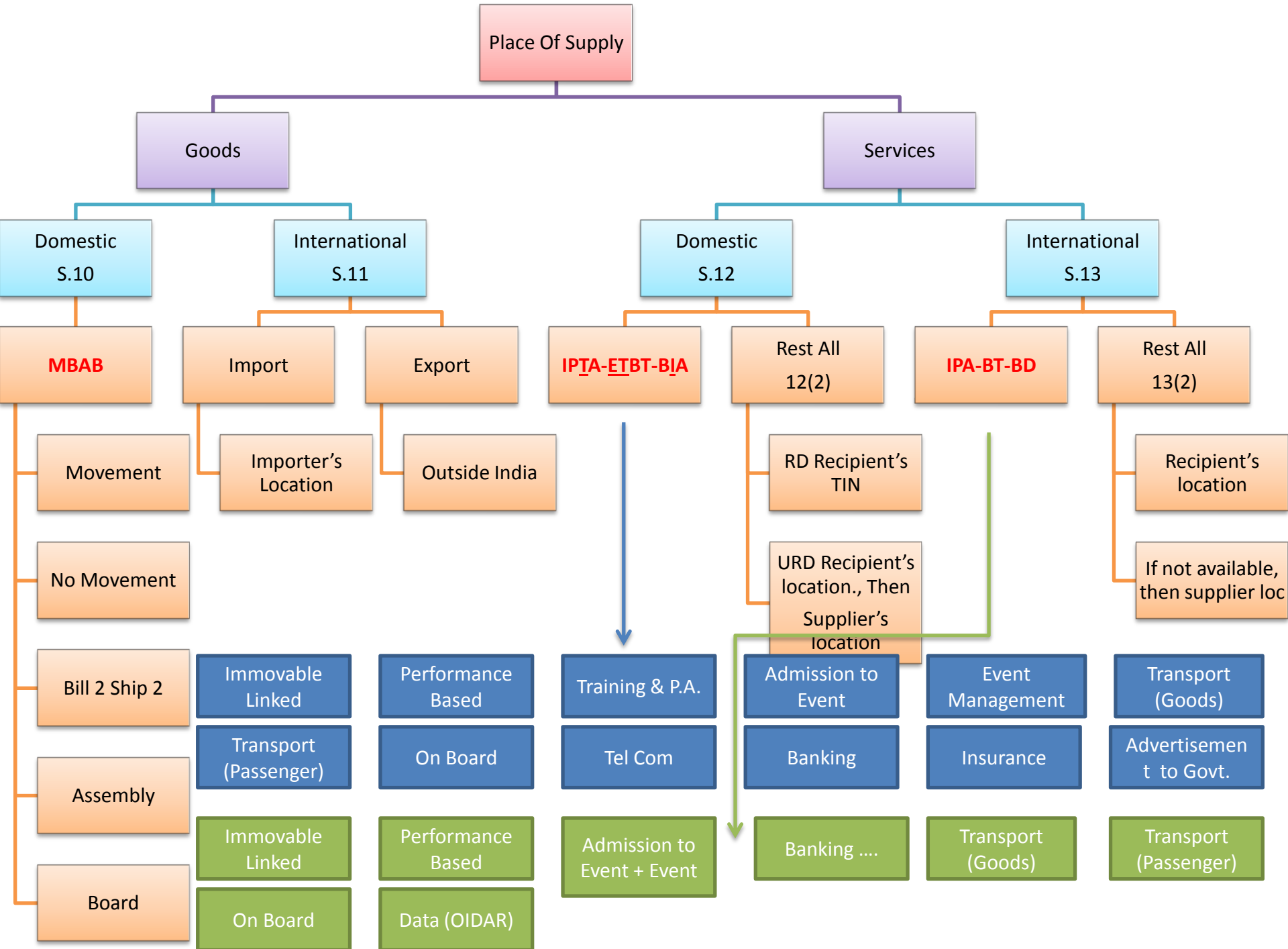
Ss.	
10	POS for Domestic supply of Goods
11	POS for International Supply of Goods
12	POS for Domestic Supply of Services
13	POS for International Supply of Services
14	Special provision for payment by out india OIDAR supplier to non-registered online recipient in India
15	Refund of IGST to Out-bound tourists (subject to conditions and safeguards) -Tourist – who is not residing in India. Does not stay above 6 moths.
16	<p>Zero rated Supplies :- Export and to SEZ</p> <p>-Subject to negative list u/s17(5) CGST Act, ITC may be availed for making zero rated supply. (even though it is an exempt supply other than non-taxable supply)</p> <p>-RP exporting G/S will have two routes for claiming refund :</p> <p>(a) Export under bond/UT without paying IGST; and claim refund of unutilised ITC.</p> <p>(b) Export on payment of IGST (by utilizing ITC) and claim refund of this IGST paid.</p> <p>-If DTA unit supplies to SEZ on payment of IGST, then SEZ unit can avail credit of this IGST.</p>

Ss.	
17	<p>Tax apportionment &amp; Fund Settlement-</p> <ul style="list-style-type: none"> <li>• When IGST credit chain breaks (in case of last consumer, composition dealer, not eligible, lapse due to delay, import by composition dealer)</li> <li>• When separate POS not determinable – then to each state to whom the TP has made supplies during the year ( in value proportion)</li> <li>• When TP who made supply is not determinable – then to all states.</li> <li>• Similar treatment to Interest and penalty.</li> <li>• In case of subsequent refund – apportioned amount shall be reduced.</li> </ul>
18	<p>Amt transfer for IGST Credit used</p> <ul style="list-style-type: none"> <li>• IGST credit used to pay CGST – transfer from IGST fund to CGST fund.</li> <li>• IGST credit used to pay SGST – transfer from IGST fund to destination state.</li> </ul>
19	<p>No interest on incorrect tax paid corrected later Separate refund procedure i/r/o incorrectly paid tax</p>
20	<ul style="list-style-type: none"> <li>-Enlisted twenty four provisions of CGST Act will also apply on IGST Act.</li> <li>-TDS rate will be 2% for IGST</li> <li>-TCS rate will be up to 2%</li> <li>-Value of supply will include other taxes if separately charged.</li> <li>-Penalty under IGST will be sum total of penalty under GST &amp; SGST/UTGST Act.</li> </ul>



21	<p>Transitional Provisions</p> <p>Import initiated before AD, but completed on / after AD-</p> <ul style="list-style-type: none"> <li>- IGST payable</li> <li>- But not when full liability discharged before AD</li> </ul> <p>-If part duty is paid under existing law, then remaining duty will be paid under IGST law.</p> <p>-Transaction will be taken to have initiated pre-AD if either invoice or payment is before AD.</p>
22	<ul style="list-style-type: none"> <li>-Govt can make rules;</li> <li>-rule making power includes power to give retrospective effect.</li> </ul> <p>Rules may also provide for penalty for contravention.</p>
23	<p>Power to make regulations consistent with the Act.</p>
24	<p>Every rule, regulation, notification shall be laid before each house of Parliament for 30 days.</p> <p>-whatever already done will be saved.</p>
25	<p>Govt may issue general / special order to remove difficulty arising in giving effect to the Act.</p> <p>-Every such order shall be laid before each house of Parliament.</p>

## Place of Supply Provisions



# PLACE OF SUPPLY

S.10 – Goods – Domestic

S.11- Goods - International

S.12- Services - Domestic

S.13- Services – International

S.14- OIDAR services – Special Provision

Sr.	Goods (domestic) (MBAB)	Place of Supply (Section 10 )
1	<p>Where supply involves movement of goods [s.10(1)(a)] (by supplier, recipient or third person)</p> <ul style="list-style-type: none"> <li>➤ What is 'involves'. In VAT, it was 'occasions'.</li> <li>➤ Should 'movement' be within supply contract?</li> <li>➤ Onus to prove 'movement'?</li> <li>➤ Whether condition of continued movement or just knowledge is sufficient?</li> <li>➤ Whether that condition should be express or implied or incidental?</li> </ul>	<p>Location at which movement of goods terminates for delivery to the recipient. Case law 1. AAR kar in DEPUTY CONSERVATOR OF FORESTS, BANGALORE 2. Kerala HC in LALITHA MURALEEDHARAN Versus RANGE FOREST OFFICER, IDUKKI (3.9.19)</p>
2	<p>Where supply does not involve movement of goods [s.10(1)(c)] (e.g. OTC sale, As is where is sale, sale &amp; lease back, tooling, Financial leasing.)</p>	<p>Location of the goods at the time of delivery to the recipient.</p>
3	<p>Where goods are delivered to the recipient on direction of a third person (Bill to Ship to, Transit sale) [s.10(1)(b)]</p>	<p>Principal place of business of third person (ie Bill to destination)</p>
4	<p>Where the goods are assembled or installed at site [s.10(1)(d)]</p>	<p>Place of such installation or assembly</p>
5	<p>Where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train, or a motor vehicle [s.10(1)(e)]</p>	<p><b>Location at which such goods are taken on board.</b></p>
6	<p>If not determinable by S.10(1)(a to e)</p>	<p><b>in the manner as may be prescribed.</b></p>

Sold at depot in State-1, taken to State-2:  
Intra-state as per AAR Karnataka [s.10(1)(a) Vs.10(1)(c)]

**Case Law:-** IN RE : DEPUTY CONSERVATOR OF FORESTS, BANGALORE Advance Ruling No. KAR ADRG 20/2019, dated 26-8-2019. 2019 (29) G.S.T.L. 252 (A.A.R. - GST)

- Intra-State supply - Depot being point of sale and destination of sale - After purchase and payment transfer of property takes place and after completion of such transfer, buyer free to transport it to any place within or outside Karnataka - Transaction, an intra-State supply independent of where goods are taken by recipient after supply is completed - Section 8(1) of Integrated Goods and Services Tax Act,

**Fact:-** Karnataka Forest Department disposes by e-auction and e-tender cum auction methods, timbers of various species both, harvested from forests/ plantations as well as confiscated being involved in forest offences. These are disposed through various depots in the State, including Jarakbande Sandal Godown, Bengaluru. The purchaser from Kerala represented that the insistence of the forest department on payment of SGST and CGST is wrong. Their contention is that since the material sold/ purchased is being taken to and consumed outside the State of Karnataka, they should be paying 18% IGST under the IGST Act, 2017.

**Ruling: CGST + SGST payable. S.10(1)(a) is attracted when the movement is within the supply contract.**

**Main points of Findings for the Ruling:-**

- If the movement of goods is involved within the supply contract then it, then clause (a) is attracted
- in this case, irrespective of recipient being registered outside State of Karnataka, the learned AAR has held that the depot delivery transaction is intra-state transaction.
- In the pertinent case, it is seen that the goods are delivered to the buyer and the supply transaction is completed. The contract is over the moment the invoice is raised and the payment is made
- The supply gets completed the moment the goods are delivered to the purchaser and the purchaser applies and obtains permit from the Forest department later to transport the goods to his place or any place, on which the Forest department has no control or conditions
- There can be situation that inspite of delivery to buyer at depot, the buyer undertakes inter state movement to his place in other state in the continuation of the said purchase. In such circumstances the movement will continue and it will terminate in other state, making the supply an inter state supply. But if no such express or implied condition of inter state movement is available in contract it will be intra state supply.
- if the disclosure of destination is part of the supply contract and the contract makes it mandatory to issue transport permit to the place of such destination, then the place of supply would be the place of termination of movement of such goods
- The delivery of the goods happens when the possession of goods is handed over to the supplier and the movement of goods is not a precondition for supply, they both being independent events. There is no breach of contract of supply, if the purchaser, being from outside the state does not actually take the goods to his place outside the state.

## Sale in one state for movement to other state: Inter-state as per Kerala HC [s.10(1)(a) Vs.10(1)(c)]

**Case Law:-** Kerala HC on 3.9.2019 in *Lalitha Muraleedharan vs. Range Forest Officer, Marayoor Range, Marayoor, Idukki District and others (71 GSTR 236)(Ker)*.

- In the aforesaid case, the issue was about the nature of supply of forest products when the delivery to recipient is at depot. The Petitioner was recipient and SEZ unit. It was insisting for exempted sales being sales to SEZ is a zero rated sales. The Forest Department which is the supplier in that case was objecting that since the goods are delivered at depot itself, it is intra-state sale and hence cannot be covered under Zero Rated supply. The Hon'ble Kerala High Court after examining the facts held in favour of Petitioner.
- The basic principle behind provisions relating to place of supply is that GST is destination based tax. Therefore, tax is finally payable where goods and services are consumed. It is admitted that the supply of goods is to an SEZ Unit.



- SEZ - Supply to SEZ - Deemed export - Zero-rated supply - Exporter of sandalwood products in Tamil Nadu purchasing sandalwood in e-auction from Forest Department in Kerala - GST being destination based tax, therefore, tax finally payable where goods and services are consumed –
- Petitioner upon completion of other sale conditions although receives the sandalwood logs at Marayoor Forest Department depot, Kerala, acknowledgment of goods there not results in termination of movement of goods but results in further movement of goods at the hands of recipient to SEZ - Accordingly, actual place of supply by plain interpretation of Section 10(1) of Integrated Goods and Services Tax Act, 2017 within SEZ in Madras, State of Tamil Nadu, but not in State of Kerala - Subject supply comes as inter-State movement of goods to SEZ outside the State of Kerala and subject transaction **to be treated as a 'Zero-rated supply' in terms of Section 16(1)(b)** *ibid* and at par with physical export - IGST not payable.

## Delivery of vehicle in State A to the customer resident in State B:- No EWB required as it was an intra state sale of car

Case Law: Kerala HC in “Kun Motor Co. Private Limited v. The Assistant State Tax Officer”

- The Kerala High Court in the case of “*Kun Motor Co. Private Limited v. The Assistant State Tax Officer*” on 6th December, 2018 dealt with the question of requirement to upload **E-way Bill** with respect to the transport of a car purchased in Puthuchery, by a person normally residing in Thiruvananthapuram. In this case, the person resident of Thiruvananthapuram bought his car from Puthuchery and requested the car dealer to transport his car to Thiruvananthapuram, the question before the Court was whether there was a need to upload E-way Bill by the car dealer or should this be considered as a movement by customer himself. It was held by the Court that it cannot be considered as movement of car by dealer as Court observed as follows :-
  - “Though a temporary registration it has to be noticed that there is absolutely no enabling provision, though also no prohibition, in getting a permanent registration of the vehicle by yet another person. We also have to notice that even if such a provision existed, a second sale of the W.A. No. 1803/2018 motor vehicle is not taxable within the State, unless there is a premium on the original sale price as seen from Notification No. 8/2018-C.T. (Rate). Hence on these two grounds, of an intra-State sale having occasioned and the transport being of used personal effects, we find that the detention was illegal.”
- The Court observed this to be a case of **intra-State sale of car**.

## Delivery of vehicle in State A to the customer resident in State B

[The same issue was relevant even under Central Sales Tax Act, 1956. eg SC in TELCO]

*Case Law: “State of Bihar v. Tata Engineering & Locomotive Co. Ltd. - (1971) 27 STC 127 (SC)”*

- The assessee, having its registered office in Bombay and its factory in Bihar, was carrying on the business of manufacturing and selling trucks, bus chassis and spare parts to their appointed dealers and others. Agreements were entered into between the assessee and the appointed dealers, under which, each dealer was assigned a territory in which alone the dealer could sell. The dealers had to place the indents, pay the price of goods to be purchased and obtain delivery orders from the Bombay office. In pursuance of the delivery orders the trucks etc. were delivered in Bihar to be taken to the territories assigned to them for sale there. If the dealers failed to abide by the term requiring them to move the goods outside the State of Bihar they would have committed breach of their contracts.
- **The Supreme Court decided that** where under the contract of sale, the buyer is required to remove the goods from the State in which he purchased those goods to another State and when the goods are so moved, the sale in question must be considered as a sale in the course of **inter-State** trade and commerce.

[Thus, the criterion should be “Whether there is a compulsion for customer to take the car so purchased to another State or not?”]

# “Supply involves movement” in GST Vs “Sale occasions movement” in CST

Case Law:- Kerala State Small Industries Development and Employment Corporation Ltd Vs State of T.N. [(1999) 113 STC 169, 176-77 (Mad)]

- Only a transaction of sale connected with the movement of goods can be regarded as an inter-state sale.
- The movement and the sale must have a reasonable direct link. Such movement **can be stipulated in the contracts** of sale specifically or it **may be contemplated by the parties as an implied term of the contract**.
- Even if the movement of the goods is not specified in the contract, and even if it cannot be regarded as an implied term, **if such movement is incidental to the contract, then in such case also** such transaction would be an inter-state sale.
- The relationship between the movement and the sale should be that of **effect and cause**.
- The sale should have occasioned the movement, or the movement should have been incidental to sale.

[Thus, movement and the sale should be connected but it need not essentially be part of the contract of sale. Movement may be implied or incidental to the contract of sale which is dependent on the facts of a particular case and also the intention of the parties.]

## Bill to Ship to [s.10(1)(b)]

**Case Law:-** In re Sanjog Steels Private Limited - [2019 \(21\) G.S.T.L. 258](#) (A.A.R. - GST), the Authority held that Section 10(1)(b) of the Act nowhere limits the transaction to only three parties/persons. The said section only contemplates about role of 'third party' and declaration of 'principal place of business'. In the instant case there are four parties, viz., brand name owner (principal), manufacturer using brand name, first buyer of principal and ultimate customer. In view of the aforesaid legal position, the AAR held that manufacturer is eligible to dispatch goods to ultimate customer or buyer or principal.

- The Applicant Sanjog Steel purchases trademark of Rathi Steel (on royalty on which GST is paid), manufactures steel bars with the brand name and sales to Rathi itself. Rathi after adding his margin sales to Goyal Enterprises. Goyal sells to independent customers. The goods i.e. steel bars are directly dispatched from Sujog Steel to ultimate customer and E-Way Bill is prepared on a “Bill to Ship to” model as per the provisions of Section 10(1)(b) of the IGST Act, 2017.
- Sujog Steel is an associate company of Goyal Enterprises.

**Questions 1:-** Whether Sujog Steel can dispatch to end customer by invoicing as bill to Rathi, and ship to end customer as per S.10(1)(b) IGST?

**Answer:-** Yes.

- AAR observed that the cycle of supply of goods from the applicant to the final customer, involves four persons, i.e. Sujog, Rathi, Goyal and end Customer. AAR opined that Section 10(1)(b) of IGST Act, 2017 does nowhere limit the transaction to only three parties/persons. The said section only contemplates about role of ‘third party’ and declaration of ‘principal place of business’.
- Therefore, the supply from M/s. SSPL to M/s. X on a “Bill to Ship to” mode as per provisions of Section 10(1)(b) of IGST Act, 2017 is permissible.
- Press Note of Ministry of Finance on “Issues regarding Bill to Ship to for e-way bill under CGST Rules, 2017” dated 23-4-2018 clearly emphasizes that only a single e-way bill is to be issued either from the supplier of goods or by third party.

**Questions 2:-** Whether S.15 CGST r/w Rule 28 (particularly the 2<sup>nd</sup> proviso) will apply for transaction between Sujog and Rathi, and thereafter between Rathi and Goyal, as all are B2B and credit is available all across?

**Answer:-** Yes.

**Questions 2:-** Whether value between Goyal and end customer will be as per Section 15?

**Answer:-** Yes

## Inefficiency of POS provisions

**POS provisions are silent on  
ORDER OF APPLYING THE DIFFERENT  
RULES**





**Mumbai Purchaser ordered Mumbai supplier to deliver machine at Delhi**  
[s.10(1)(a) Vs 10(1)(b) i.e involving movement Vs Bill2Ship2]

If we go by rule of 'where supply involves movement' u/s. 10(1)(a), POS will be Delhi, where movement terminates for delivery; and accordingly, it will be IGST billing.

However, if we go by Bill2Ship2 principle u/s 10(1)(b), POS will be Mumbai; and it will be C+S billing.

**Delhi HO orders Mumbai supplier to install machinery at its distinct person in Mumbai**  
**[s.10(1)(b) Vs 10(1)(d) i.e Bill2Ship2 Vs Installation]**

➤ **ORDER OF APPLYING THE DIFFERENT RULES ?- not given**

10(1) of the IGST Act, 2017 provides for five different rules for the determination of the place of supply. The issue may arise in situations wherein the transaction in question fall into two or more rules. E.g.

Delhi GSTIN places order with Mumbai supplier to install machinery at its company at same PAN entity at Mumbai (distinct person). If we go by bill2ship2 principle u/s. 10(1)(b), POS will be bill to location i.e. Delhi; and it will be an IGST billing. However, if we go by assembly/installation principle u/s 10(1)(d), POS will be installation point i.e. Mumbai; and it will be C+S billing; leading to loss of credit to Delhi purchaser.

To ensure that the ITC is not lost, the Delhi HO may opt to get the invoicing at Mumbai itself.

Sr.No.	Goods (International)	Place of Supply (Section 11 )
1	Import of Goods	Recipient Location
2	Export of Goods	Out side India [zero rated]

## [S.12 & 13] POS i/r/o services (within country & cross country)

**Default Rule** - (for all services other than specified services):-

- For within Country service supply [S.12(2)]
  - Recipient's TIN location (if registered)
  - His address on supplier's record (if not registered)
  - Supplier's location (if address not available)
- For Cross Country service supply [S.13(2)]
  - Recipient's location
  - Supplier's location (if not available)

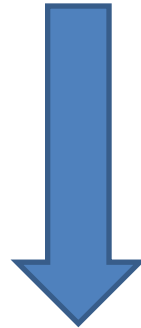
**Special Rules**- (for selected specified services):-

- Within Country 12 services [S.12(3 to 14)] **IPTA-ETBT-BIA**
- Cross country 8 services [S.13 (3 to 13)] **IPA-BT-BO**



See Comparative Tables on the next slides

Next Five Slides with Consolidated contents



SEC.	DESCRIPTION	POS S.12(DOMESTIC)	S.13 (Cross Border)
12(3)/ 13(4)	<b>I.P. related</b> (also boat, vessel) a) Directly in relation to ... (expert services) b) Lodging, accommodation by ..... c) Accommodation in the IP for functions d) Ancillary to above <b>[expert, agent, renter, hotelier]</b>	<b>•Property location</b> (If IP in India) <b>•Recipient location</b> (If IP abroad) <b>[proviso]</b> <b>•Each State</b> in value proportion (if IP in multiple States) <b>[Expl]</b> . <b>[Eg Designing Ambani's villa in Delhi/Singapore. YOYO rooms to Airlines for its crew]</b>	<b>•Property location</b> <b>[Circular 103/19 dt 28.6.19:- cargo handling and related services will not be IP related, and so, default rule will apply]</b> <b>[Cir 48/18 dt.... Short term accommodation, conferencing, banqueting to SEZ is inter-state]</b>
12(4)/- -  -- /13(3)	<b>Performance based</b> 1) restaurant, catering 2) Grooming, beauty, fitness 3) Health services (+ plastic surgery) ----- - i/r/o goods physically made available (eg repair) - To an individual where physical presence of recipient or person acting on his behalf is required	<b>Where services actually performed</b> <b>[Note- 'Repair' not covered. ]</b> <b>X Ltd, Bangalore repairs Air India's plane at Kathmandu.</b> <b>POS ?]</b> .....	..... <b>Where actually performed</b> <b>•If remotely done: – goods location.</b> <b>[Software Ltd, Bangalore takes online AMC from USA for its Mumbai server. POS is mumbai]</b> <b>➤ But default rule i.e. recipient location for--</b> <b>•imported for repair/<u>wef 1.2.19 any process, treatment.</u></b> <b>•Cargo handling at port</b> <b>•Pharma R&amp;D for foreign client Wef 1.10.19 vide n/n 4/19ITR dt 30.09.19</b> <b>➤ International tooling for use in India ? C+S or I ?</b>
12(5)	<b>Training and Performance Appraisal</b>	B2B – Recipient's location B2C – where actually performed	<b>Default rule i.e. Recipient's location</b>

12(6)/13(5)	<p><b>Admission</b> to event/ park and ancillary  [Book my ticket Ltd, Bangalore books IPL Matches tickets]</p> <p><b>Event organization</b> service &amp; ancillary or assigning sponsorship to such event  [eg Cars Ltd, Bangalore engages Event Ltd, Mumbai for car launch event at all metro cities. POS is Bangalore if Car Ltd is regd, otherwise POS is at each metro]</p>	<p><b>Event/Park location</b></p> <ul style="list-style-type: none"> <li>•B2B – <b>Recipient's location</b></li> <li>•B2C – <b>where event held</b> (If held abroad, then <b>recipient's location</b>. if held in multi-States on lump sum charge, then <b>Each State</b>.</li> </ul>	<p><b>Event location</b>  [1.USA college does seminar at Delhi for prospective students. POS is Delhi.  2.If Company X in India pays for conference to be attended by its CEO held in London, the place of supply of service will be London.]</p>
12(8)/13(9) + 13(2)	<p><b>Transport of goods</b> including mail/courier (for cross-country excluding mail/courier)  [eg Cars Ltd, Bangalore engages Express Transport, Chennai to transport cars from Silvasa warehouse to Delhi. If Cars Ltd is RD, POS is Bangalore. If it is URD, POS is silvasa]</p>	<ul style="list-style-type: none"> <li>•B2B- <b>Recipient's location</b></li> <li>•B2C- <b>Where goods handed over for transportation</b></li> </ul> <ul style="list-style-type: none"> <li>• if transported out of India, then – Destination of goods</li> </ul>	<p><b>Destination of goods</b>  [If sent by mail/courier- then <b>residual 13(2)</b>]  [Japan Ltd engages Indian liner ships to carry indian exporter's goods to Japan. POS is Japan]</p>
12(9) 12(2)/13(10)	<p><b>Transport of Passenger</b>  [eg Mumbai Ltd purchases air ticket from Chennai Airlines for journey from Delhi to New York. If Mumbai Ltd is RD, then POS is Mumbai; and if URD, then Delhi]</p>	<ul style="list-style-type: none"> <li>•B2B- Recipient's TIN</li> <li>•B2C- where <b>embarks</b> for continuous journey</li> <li>•If passes are given for future use then <b>default rule</b> of 12(2). [Thus, first find regn, then embarkation, and then customer's address]</li> </ul>	<p>Where passenger <b>embarks</b> for continuous journey  (i.e. whether single or multiple ticket issued at same time &amp; no stop over is there)</p>

12(10)/ 13(11)	<b>On board</b> conveyance [eg Palace on wheel running from Jaipur to Kaynakumari provides on board entertainment service. POS is Jaipur for onward journey, and Kanyakumari for return journey]	First scheduled point of <b>departure</b>	Same [Air India departing from Mumbai to Paris providing food to its passengers, the place of supply will be Mumbai (first scheduled point of departure). For return journey, the place of supply shall be Paris.]
12(11)/--	<b>Telecom services</b> <ul style="list-style-type: none"> <li>- Fixed line</li> <li>- Leased circuit</li> <li>- Dish antenna</li> </ul> [Bangalore resident purchases Dish antenna from Tata Sky, Mumbai. Bangalore is POS] <ul style="list-style-type: none"> <li>- Post paid</li> <li>- Pre paid by voucher</li> <li>- Other cases [eg online recharge]</li> </ul>	-Where <b>installed</b> for receiving the service - <b>Each State</b> (if taken on multi-States on lump sum charges)  - <b>Billing address</b>  1) <b>Selling agent's location</b> 2) Where voucher sold - <b>Recipient's location</b> (on record of provider) -supplier's location (if address not available)	Residual 13(2)



12(12,13)/	<ul style="list-style-type: none"> <li>- <b>Banking</b>, financial services, stock broking <u>to any person</u></li> <li>- <b>Insurance</b></li> </ul> <p>.....</p>	<ul style="list-style-type: none"> <li>- <b>Recipient address</b> on supplier's record (if not there- then supplier's location)</li> <li>- TIN of RD &amp; PIN of URD</li> </ul> <p>.....</p>	<p>.....</p> <p>....</p>
/13(8)	<ul style="list-style-type: none"> <li>- <b>Banking</b>/Financial/NBFC <u>to account holders</u></li> <li>- <b>Intermediary</b> (broker, commission agent )</li> <li>- <b>Hiring transport</b> (upto 1 month)</li> </ul>	<p>.....</p> <p>.</p>	<ul style="list-style-type: none"> <li>- <b>Supplier's Location</b></li> </ul> <p>[If XY Bank in USA charges loan processing charges to AB Co. located in India, the place of supply of service will be USA]</p> <p>[Note- strictly saying, it applies only to Indian banks, as foreign banks are not banking company as per definition.</p> <p>[Cir107/19 Dt 18.7.19 gives test of intermediary. Withdrawn by Cir 127/19 dt 4.12.19]</p> <p>Cir159/15/121 Dt 20.09.21 clarifies doubt on scope of intermediary service]</p>

12(14)	<b>Advertisement to Govt-</b>	<b>Each state</b>	Residual 13(2)
13(12)	<b>OIDAR</b>	<b>Recipient's location</b> [deemed to be located in India if 2 out of 7 specified conditions satisfied]	Residual
<b>Residual services</b> not covered above		- Residual 12(2)(a), 12(2)(b)	- 13(2)

# 1. Immovable Property Related services

SEC.	DESCRIPTION	POS S.12 (DOMESTIC)	S.13 (Cross Border)
12(3)/ 13(4)	<b>I.P. related</b> (also boat, vessel) a) Directly in relation to ... (expert services) b) Lodging, accommodation by ..... c) Accommodation in the IP for functions d) Ancillary to above [expert, agent, renter, hotelier]	<b>•Property location</b> (If IP in India) <b>•Recipient location</b> (If IP abroad) [proviso] <b>•Each State</b> in value proportion (if IP in multiple States) [Expl]. [Eg Designing Ambani's villa in Delhi/Singapore. YOYO rooms to Airlines for its crew]	<b>•Property location</b> <u>[Circular 103/19 dt</u> <b>28.6.19:-</b> cargo handling and related services will not be IP related, and so, default rule will apply] [Cir 48/18 dt.... Short term accommodation, conferencing, banqueting to SEZ is inter-state]

## S.12(3) Vs 13(4): Scope of Immovable Property related services:

12(3)- POS for domestic supply= (i) Property's location (if it is located in India) & (ii) Recipient's location (if the IP/boat-vessel is located or intended to be located outside India)

13(4)- POS for international supply= **Property's location** [even if IP located abroad, as **unlike 12(3), s.13(4) does not contain proviso & explanation**]

### **(a) Directly related to Immovable Property:**

1. Surveyor
2. Architect
3. Engineer
4. Construction co-ordinator
5. Interior decorator
6. Other related experts
7. Estate agent
8. Granting right to use

## (b) Lodging Accommodation by:

1. Hotel
2. Inn
3. Guest house
4. Home stay
5. Campsite
6. House boat
7. Other vessel
8. Any other name

### (c) Accommodation in Immov. Prop. For organizing:

1. Matrimonial- marriage, reception, related event.
2. Functions as:
  - i. Official
  - ii. Social
  - iii. Cultural
  - iv. Religious
  - v. Business
3. Services related to such functions at such property

### (d) Any ancillary service to a, b, c above.

**Example:-** Mr. Ambani from Mumbai is constructing a villa at Delhi. He engages an Architect of Bangalore. POS for architect's services will be Delhi. However, if that villa is being constructed at Switzerland, then Mr Ambani's location i.e. Mumbai will be the POS.

**Accommodation service to SEZ:-** Services of Short term accommodation, conferencing, banqueting etc given to SEZ is inter-state supply, as the specific provision of S.7(5)(b) will prevail over the general POS provision of S.12(3)(c). [Cir 48/22/2018- GST dt 14.6.18]

## Company registered in State-1 hosts conference in State-2

- The company may either procure the services such as lodging, catering, photography, etc. directly from the concerned vendors such as hotel or photographers or it may engage an event manager and procure the services from the said event manager.
- The choice of the mode of procuring the supplies will have an impact on the determination of the place of supply and consequent claim of ITC.
- Sec. 12(3) of the IGST Act, 2017 deals with supply directly in relation to immovable property, lodging accommodation in hotel & any ancillary service.
- Sec. 12(4) deals with the supply of restaurant & catering service.
- Sec. 12(7) deals with the supply of service by way of organising an event in relation to a conference.
- Sec. 12(2) which is a default rule deals with all supplies not specifically covered from Sec. 12(3) to Sec. 12(14).
- Individual procurement of services by the business entity in question may therefore entail the application of Sec. 12(3) and 12(4) leading to C+S billing and resultantly a credit loss to the company in some other state.
- Whereas, the procurement from the event organizer may entail the application of Sec. 12(7), as per which, the POS will be the location of the registered recipient. Hence ITC of IGST paid will be available to the company in other state.



## Circular no. 103/22/2019-GST – GST dated 28th June, 2019

### Clarification regarding determination of place of supply in certain cases

1. Various services being provided by the **port authorities to its clients in relation to cargo handling**. Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons etc. **Such services are ancillary to or related to cargo handling services and are not related to immovable property**. Accordingly, the place of supply of such services will be determined as per the provisions contained in sub-section (2) of Section 12 or sub-section (2) of Section 13 of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.
2. Services on unpolished diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to any use in India In case of cutting and **polishing activity on unpolished diamonds which are temporarily imported into India** are not put to any use in India, the place of supply would be determined as per the provisions contained in sub-section (2) of Section 13 of the IGST Act.

2. Performance Based services

3. Training and performance appraisal Services

<p>12(4)/ --  -- /13(3)</p>	<p><b>Performance based</b></p> <p>1) restaurant, catering 2) Grooming, beauty, fitness 3) Health services (+ plastic surgery)</p> <p>-----</p> <p>-----</p> <ul style="list-style-type: none"> <li>- i/r/o goods physically made available (eg repair)</li> <li>- To an individual where physical presence of recipient or person acting on his behalf is required</li> </ul>	<p><b>Where services actually performed</b></p> <p>[Note- 'Repair' not covered. ] X Ltd, Bangalore repairs Air India's plane at Kathmandu. POS ?]</p> <p>.....</p> <p>.....</p>	<p>.....</p> <p><b>Where actually performed</b></p> <ul style="list-style-type: none"> <li>•If remotely done: – goods location. [Software Ltd, Bangalore takes online AMC from USA for its Mumbai server. POS is mumbai]</li> <li>➤ But default rule i.e. recipient location for--</li> <li>•imported for repair/<u>wef</u> 1.2.19 any process, treatment.</li> <li>•Cargo handling at port</li> <li>•Pharma R&amp;D for foreign client Wef 1.10.19 vide n/n 4/19ITR dt 30.09.19</li> <li>➤ International tooling for use in India ? Covered ? C+S or I ?</li> <li>➤ AAR, AP in Synthetic Industries (2018)- De-cafeinated tea for foreign principal.</li> </ul>
<p>12(5)</p>	<p><b>Training and Performance Appraisal</b></p>	<p>B2B – Recipient's location B2C – where actually performed</p>	<p><b>Default rule</b> i.e. Recipient's location</p>

**Performance based services on person :- 13(3)(b) – supplied to an individual, represented either as the recipient of service or a person acting on behalf of the recipient.**

**[note:- S.12 has an exhaustive list, which does not cover few of these services]**

- They require physical presence of individual receiver for their supply
  - They are rendered in person and in the receiver's physical presence
  - Generally rendered at supplier's premises (a,b,d,e,f,g below).
  - But sometimes at customer's place (catering etc)
  - & occasionally while the recipient is on the move (personal security, beauty treatment on board a conveyance)
- a) Cosmetic or plastic surgery
  - b) Beauty treatment service
  - c) Personal security service
  - d) Health and fitness service
  - e) Photographic service (to individual)
  - f) Internet café service
  - g) Classroom teaching

Performance based services supplied to an individual, represented as a person acting on behalf of the recipient.

Example: A modelling agency contracts with a beauty parlour for beauty treatment of say, 20 models. Here modelling agency is the recipient of the service, but the service is rendered to the models, who are receiving the beauty treatment service on behalf of the modelling agency.

POS:- regardless of the registered location of the modelling agency, the place of supply will be the location where beauty treatment is performed on the models.

## ➤ All the five conditions of S.2(6) must satisfy simultaneously

- Facts:- Segoma India was a subsidiary of Segoma Israel which was a subsidiary of R2NET. R2NET lists the diamonds of customers only if the diamonds are 3D-photographed by SEGOMA India. R2Net has appointed Segoma Israel for photography service. In turn, Segoma Israel has made agreement with Segoma India to do photography service.
- AAR Maharashtra held that the present case satisfies conditions at (i) and (ii) of Section 2(6) but not the conditions (iii) and (v) thereof. The photography is performed on diamonds physically made available by the recipient of services to the provider of services, and this is actually performed in India. So the POS is in India.
- AAAR on appeal observed:
  - *As per S. 13(3) the place of supply of the following services shall be the location where the services are actually performed, namely :-*

*Services supplied in respect of goods which are required to be **made physically available by the recipient** of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services;....*
- Since the goods are physically made available by the Diamond dealers/Traders who are not recipient of service, it does not satisfy condition as mentioned in Sec. 13(3)(a). the recipient as per Sec. 2(93) means -
- (a) Where a consideration is payable for the supply of goods or services or both, the person who is liable to pay the consideration; (b) ..... (c) .....
- From the above it should be contested that **Place of Provision is Outside India** and would not be taxable under the GST Act and should be considered place of service provided outside India.
- Also, the Learned AAR has ignored the fact that there is no commission on sales, or pre- or post-sales services are provided by the applicant (Segoma India), to Segoma Israel. *Hence provision of Section 13(3)(a) of the IGST Act is not applicable to Segoma India.*

- Case Law: Repair & Maintenance service provided by Indian branch to Indian client of foreign HO:
  - Whether the Indian branch is FE? [AAR said-Yes. AAAR said-No]
  - Domestic transaction [s.12(2)(a) default rule i.e. recipient location] or cross border [s.13(3)(a) i.e. performance location]?
  - Client to pay u/RCM, or Branch to pay u/FCM?
- Whether or not the non-resident applicant (Kartex, Russia), having a branch in India, is liable to pay GST on the MARC rendered to an Indian Company. Conversely, whether or not the recipient (BCCL) is liable to pay GST under RCM in terms of Notification No.10/2017--IT (Rate) dt.28-.06.-2017.
- Whether the branch of the foreign company in India, which would execute MARC for 17 years, would constitute 'fixed establishment' for the purpose of payment of GST?
- **AAAR-West Bengal [Iz Kartex, [2020] 121 taxmann.com 313] held that the MARC provided by a Branch of a foreign Company attracts RCM in the hands of the Indian service recipient and not forward charge in the hands of the foreign branch. Overruling the decision of the AAR (IZ-Kartex named after P.G Korobkov Ltd. [2020] 117 taxmann.com 418 (AAR--WEST BENGAL)), the Appellate authority held that the Indian branch does not constitute 'fixed establishment' as envisaged U/s 2(7) of the IGST Act, as Kartex did not have "suitable structure in terms of human and technical resources to supply services".**

**POS of online training/coaching service:**  
[Default rule to apply, as no actual physical meeting takes place]

For B2B: it will be recipient's regd POB location

For B2C: ?

When the service provider and recipient are located in India (Section 12 of IGST Act)

The place of supply of services provided in relation to: –

- training and performance appraisal
- admission to cultural, educational or entertainment event
- organisation of cultural, educational or entertainment event

1. to a registered person shall be the location of such registered person;

2. to a person other than registered person shall be the location where the services are actually performed/the event is actually held or such park or such other place is located.

When the location of service provider or location of recipient of services are outside India (Section 13 of IGST Act)

The place of supply of services supplied by way of admission to or organisation of cultural, educational or entertainment event and services ancillary to such admission or organization shall be the place where the event is actually held.



- In the case of online/virtual coaching classes, since actual physical meeting of parties does not take place while performance, the **POS cannot actually be determined as per the performance based rule.**
- Therefore, S.12 (5, 6, 7) and S. 13(5) of the IGST Act, 2017 cannot be applied to determine the place of supply as there is no physical location where the event is actually held.
- Hence, the **POS will be determined by the default rule** under the general provision of section 12(2) of the IGST Act, 2017 where the location of supplier of services and the location of the recipient of services is in India and by the general provision of section 13(2) of the IGST, 2017 where the location of the supplier of services or the location of the recipient of services is outside India.

➤ **The Default Rule:-**

S.12(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.”*

S13(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.”*

- Therefore, when both provider and recipient (students) are in India the place of supply shall be the location of the recipient (Student) if the address of the student is known to the training/coaching service provider.

If the address is not known, the place of supply shall be the location of training/coaching service provider.

- Similarly, when training/coaching service provider is located in India and such service is provided to an **unregistered person (Student) located outside India**, as per section 13(2) of the IGST Act 2017, the place of supply of such service shall be the location of the recipient (Student).

If the address of the student is known to the training/coaching service provider. If the address is not known, the place of supply shall be the location of training/coaching service provider.

➤ Changes by IGST (Amdt.) Act, 2018 dt 30.8.18 wef 1.2.19 vide Notification 01/19 IT dt 29.1.19 [POS for repair/job work shifted from 'performance based rule' to 'default rule']

In S.13(3)(a)- the Second proviso was substituted with a new one, saying that,

Temporary import for repair / job work:- 'actual performance location' rule will not apply. That means POS, as per default rule will be 'recipient location', which will be outside India, and therefore, no GST. [job work included now in addition to repair]

➤ *Changes by Notification No. 04/2019-Integrated Tax dt 30.9.19* [POS for R&D service shifted from 'performance based rule' to 'default rule']

- The place of supply for supply for research and development services related to pharmaceutical sector shall be the place of effective use and enjoyment of a service, i.e., recipient of services.
- The place of supply of services shall be the location of the recipient of services subject to fulfilment of the conditions that they are provided as per a contract between the service provider located in taxable territory, **service recipient located in non-taxable territory**, 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 the supplier of service and the recipient of service are **not merely establishments of a distinct person**.

3. Admission to event Services

4. Event organization Services

<p>12(6)/13(5) )</p> <p>12(7)/13(5) )</p>	<p><b>Admission</b> to event/ park and ancillary  [Book my ticket Ltd, Bangalore books IPL Matches tickets]</p> <p><b>Event organization</b> service &amp; ancillary or assigning sponsorship to such event  [eg Cars Ltd, Bangalore engages Event Ltd, Mumbai for car launch event at all metro cities. POS is Bangalore if Car Ltd is regd, otherwise POS is at each metro]</p>	<p><b>Event/Park location</b></p> <ul style="list-style-type: none"> <li>•B2B – Recipient's location</li> <li>•B2C – where event held (If held abroad, then recipient's location. if held in multi-States on lump sum charge, then Each State.</li> </ul>	<p><b>Event location</b></p> <p>[1.USA college does seminar at Delhi for prospective students. POS is Delhi.  2.If Company X in India pays for conference to be attended by its CEO held in London, the place of supply of service will London.]</p>
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### S.13(5):Services by way of admission to, or organization of events

**Coverage:-** events such as conventions, conferences, exhibitions, fairs, seminars, workshops, weddings, sports and cultural events

**Exaple 1:-** A management school located in USA intends to organize a road show in Mumbai and New Delhi for prospective students. Any service provided by an event manager, or the right to entry (participation fee for prospective students) will be taxable in India, as the POS will be 'where the event held'. [However hybrid rule is there if both supplier and recipient are in India]

**Example 2:-** An Indian fashion designing firm hosts a show at Toronto, Canada. The firm receives services of a Canadian event organizer. The place of supply will be the location of the event i.e. Canada which is outside taxable territory. Accordingly the event organisation service including the admission service to this event will not be subjected to GST.

5. Transport of Goods services

6. Transport of Passenger Services



<p>12(8)/13(9)+ 13(2)</p>	<p><b>Transport of goods</b> including mail/courier (for cross-country excluding mail/courier)  [eg Cars Ltd, Bangalore engages Express Transport, Chennai to transport cars from Silvasa warehouse to Delhi. If Cars Ltd is RD, POS is Bangalore. If it is URD, POS is silvasa]</p>	<ul style="list-style-type: none"> <li>•B2B- <b>Recipient's location</b></li> <li>•B2C- <b>Where goods handed over for transportation</b></li> <li>• if transported out of India, then – Destination of goods</li> </ul>	<p><b>Destination of goods</b>  [If sent by mail/courier- then <b>residual</b> 13(2)]  [Japan Ltd engages Indian liner ships to carry indian exporter's goods to Japan. POS is Japan]</p>
<p>12(9) 12(2)/13(10)</p>	<p><b>Transport of Passenger</b>  [eg Mumbai Ltd purchases air ticket from Chennai Airlines for journey from Delhi to New York. If Mumbai Ltd is RD, then POS is Mumbai; and if URD, then Delhi]</p>	<ul style="list-style-type: none"> <li>•B2B- Recipient's TIN</li> <li>•B2C- where <b>embarks</b> for continuous journey</li> <li>•If passes are given for future use then <b>default rule</b> of 12(2). [Thus, first find regn, then embarkation, and then customer's address]</li> </ul>	<p>Where passenger <b>embarks</b> for continuous journey (i.e. whether single or multiple ticket issued at same time &amp; no stop over is there)</p>

- Changes by IGST (Amdt.) Act, 2018 dt 30.8.18 wef 1.2.19 vide Notification 01/19 IT dt 29.1.19 [POS for outbound freight service shifted to NTT]

### In S.12(8)- Goods transport service including by mail/courier:-

A proviso was inserted saying that where the transportation of goods is to a place outside India, the POS shall be the place of destination of goods.

- 
- Prior to the amendment, Section 12(8) of the IGST Act read as under:

*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.*

- The amendment has inserted the following proviso:

*Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.*

**Example:** Suppose, the registered person ('XYZ') in India has to export certain goods to China. The contract to transport goods by road ('GTA service') has been entered with the goods transport agency ('supplier') located in India. In light of the amended provision, the place of supply of service provided by the supplier shall be the destination of goods i.e. China. The place of supply shall neither be the location of XYZ nor the location of the supplier in India.

### Taxability in the above example:

- In the above illustration, the place of supply of service is outside India and supplier is located in India, it shall be treated to be a supply in the course of inter-state trade or commerce [Section 7(5)(a) of IGST Act].
- Here, attention is drawn to Section 2(22) of IGST Act which defines the term 'taxable territory' to mean the territory to which the provisions of this Act apply. As per Section 1 of the IGST Act, the provisions of the IGST Act shall apply to the whole of India.
- In the above illustration, the place of supply of service is outside India, a doubt as to whether it should be leviable to IGST at all arises since it can be argued that supply has occurred outside the taxable territory.
- Further, it is worthwhile to understand whether the service supplied by the supplier, in the above illustration, can qualify to be an export of service. Since the recipient is located in India.
- In the proposal, the rationale of the above amendment was stated as:

*“In order to provide a level playing field to the domestic transportation companies and promote export of goods, it is proposed that the transportation of goods from a place in India to a place outside India by a transporter located in India would not be chargeable to GST, as place of supply will be outside India. This is a taxpayer-friendly amendment”.*

- the government intended to promote export of goods by not charging tax on transportation of goods service where destination of goods is outside India. Further, the government also intended to put domestic transporters at par with the foreign transporters who are providing same nature of services without payment of tax.
- Based on the above discussion, it appears that the above intention does not get fulfilled since tax may require to be discharged on said nature of services.
- Further, IGST, if payable on the above illustrated transaction, may be said to have not belong to any particular state or union territory. Thus, another doubt on availability of input tax credit in the hands of recipient can also arise.

## POS for Logistic Industry

# GST on ocean freight on Import - a controversy:

Gujarat High Court in the case of Mohit Minerals Pvt Ltd v. UOI

- Case 1: When goods are imported into India under FOB pricing terms:
  - 1.1) In above case, GST is payable. But the question is by whom? If shipping line is located in India then such shipping line will pay GST@ 5% of freight amount under forward charge, but it cannot claim ITC on goods except for ships, vessel etc.
  - 1.2) In above case if shipping line is located outside India then importer has to pay GST under RCM.
- Case 2: When goods are imported into India under CIF pricing terms:
  - In above case, as per N. No 8 /2017 & 10/2017 – IT(Rate) dt 28/06/2017, importer is liable to pay GST under RCM @ 5% on the freight amount or on 10% of the CIF Value of goods when freight amount is not available with importer. However, the Gujarat High Court in the case of Mohit Minerals Pvt Ltd v. UOI, struck down the levy of GST under RCM on Ocean Freight transaction and this decision forms the bedrock.

**Decision:** The High Court held that since the importer is neither supplier nor the recipient of ocean transportation services provided by shipping lines outside India, they are not liable to pay IGST on such transactions.

➤ The writ petitions of the assessee were allowed on the following independent propositions:

- Under Section 9(3) of the CGST Act, only a recipient of a service can be vested with the liability to discharge GST. The term 'recipient' has to be interpreted literally. In case of CIF Contracts, importers of goods into India cannot be said to be recipients of ocean freight services. The shipping services have been availed by the exporter (seller outside India) and so the importer does not have any role in the play.

- The transaction of ocean freight service by foreign shipping line is neither an inter- State nor intra-State supply as per IGST Act.

- Ocean freight has already suffered IGST as a part of the value of goods imported. Dual levy of IGST cannot be imposed treating it as a supply of service. Double taxation, through delegated legislation, where statute does not provide, is not permissible.

➤ A similar judgement from the Calcutta High Court was given in case of M/s. Adani Wilmar Limited Vs Union of India & Ors [W. P. 13330 (W) of 2019]

## GST on ocean freight on Export:

Indian exporter engaging Indian shipping line for transporting goods to foreign customer [Indian shipping line will pay 5% till 25.01.2018 & will enjoy exemption till 30.09.2022: Sr. No. 19A, 19B of [Notification No. 12/2017 – CT \(Rate\) as amended by n/n 06/2021-CTR dt 30.09.21 wef 1.10.21. \]](#)

- Pay GST on domestic procurement of freight service for export of goods:- In case of CIF contracts entered into by Indian exporter, the outward ocean freight is paid by Indian exporter to Indian shipping company. In that case, the place of supply of service is the location of recipient of service (i.e. Indian exporter), as per section 12(8)(a) of IGST Act. In that case, the shipping company in India was liable to pay tax @ 5% up to 25-1-2018.
- **Note:-** even though POS in such cases was shifted to NTT (destination of goods) by inserting proviso to S.12(8) wef 1.2.2019, this did not conform to export of service because of payment not being in foreign currency, and recipient not being abroad. Therefore, exemption was needed.
- Now, Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India are exempt from tax from 25-1-2018 to 30-9-2021 vide Sr. No. 20B of [Notification No. 9/2017 – IGST \(Rate\)](#).
- No GST on Import of freight for export of goods:- If Indian exporter engaging foreign shipping line for transporting goods to foreign customer:- In that case, inspite of his procuring freight service from foreign shipping line, the Indian exporter of goods, will not pay GST under RCM because the POS for service of transportation of goods u/s. 13(9) IGST will fall at the destination of goods. (IGST under RCM as import of services is attracted only if the place of supply is in India in addition to other conditions).

# GST on Air Transport service of Goods:

- The GST rate for air transport service of goods is 18%.
- **Air Freight on Import:** Wide entry no. 19 in Notification 12/2017 of Central Tax (Rate) Services by way of transportation of goods by an aircraft from a place outside India up to the customs station of clearance in India is exempt.
- **Air Freight on Export:** In case of CIF contracts entered into by Indian exporter, the outward air freight is paid by Indian exporter to Indian airline company. In that case, the place of supply of service is the location of recipient of service (i.e. Indian exporter), as per section 12(8)(a) of IGST Act. In that case, the Indian airline company in India was liable to pay tax @ 18% up to 25-1-2018.

Now, Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India are exempt from tax from 25-1-2018 to 30-9-2021.



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- Air Freight on Export: In case of CIF contracts entered into by Indian exporter, the outward air freight is paid by Indian exporter to Indian airline company. In that case, the place of supply of service is the location of recipient of service (i.e. Indian exporter), as per section 12(8)(a) of IGST Act. In that case, the Indian airline company in India was liable to pay tax @ 18% up to 25-1-2018. Now, Services by way of transportation of goods by an aircraft from customs station of clearance in India to a place outside India are exempt from tax from 25-1-2018 to 30-9-2021.

## E. GST on transportation of petroleum products through pipeline:

The GST rate for transport of natural gas, petroleum crude, motor spirit (commonly known as petrol), high speed diesel or aviation turbine fuel through pipeline is 5% provided credit of input tax charged on goods and services used in supplying the service has not been taken. [N.No 11/2017- CT(R ) ] OR If input tax credit is availed, GST rate will be 12%. [N.No 11/2017- CT(R ) ]

## Services of Transportation of Goods [S.13(9)]

- **Outward Ocean Freight:-**
  - (a) Location of service recipient is abroad – No GST, as export of service (payment is bound to be in FC or RBI permitted INR)
  - (b) When supplier and recipient are in India – GST payable.[changed wef 1.2.19; proviso added to S.12(8) saying that If goods transported to abroad, then POS is abroad and hence no GST]
- Transshipment of goods at Indian Customs Station for further transport to out of India – No GST
- **Inward Ocean Freight:-** Importer will pay GST on Reverse charge
- Satellite launch services
  - (a) by Indian company to foreign customer – No GST
  - (b) By Indian Company to Indian Customer – GST payable [but not after 1.2.19 due to proviso to S.12(8)]

## 7. Supply of service on board a conveyance

<p>12(10)/ 13(11)</p>	<p><b>On board</b> conveyance [eg Palace on wheel running from Jaipur to Kaynakumari provides on board entertainment service. POS is Jaipur for onward journey, and Kanyakumari for return journey]</p>	<p>First scheduled point of <b>departure</b></p>	<p>Same [Air India departing from Mumbai to Paris providing food to its passengers, the place of supply will be Mumbai (first scheduled point of departure). For return journey, the place of supply shall be Paris.]</p>
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## Services on Board a conveyance [S.13(11)]

Coverage:- [only if separately charged for]

- Services provided on any mode viz aircraft, vessel, rail, roadways bus etc (boat?)
- Movie / music / video / software games on demand
- Beauty treatment

### Example:-

- (a) A video game or movie-on-demand is provided as on-board entertainment during the Kolkata-Delhi leg of a Bangkok-Kolkata-Delhi flight. POS will be Bangkok. Thus, No GST.
- (b) However, if the said service is provided on Delhi-Kolkata-Bangkok flight, the POS will be Delhi, and GST will be payable.

## 8. Telecommunication Services

12(11)/--	<p><b>Telecom services</b></p> <ul style="list-style-type: none"> <li>- Fixed line</li> <li>- Leased circuit</li> <li>- Dish antenna</li> </ul> <p>[Bangalore resident purchases Dish antenna from Tata Sky, Mumbai. Bangalore is POS]</p> <ul style="list-style-type: none"> <li>- Post paid</li> <li>- Pre paid by voucher</li> <li>- Other cases [eg online recharge]</li> </ul>	<ul style="list-style-type: none"> <li>-Where <b>installed</b> for receiving the service</li> <li>-<b>Each State</b> (if taken on multi-States on lump sum charges)</li> <li>-<b>Billing address</b></li> <li>1) <b>Selling agent's location</b></li> <li>2) Where voucher sold</li> <li>-<b>Recipient's location</b> (on record of provider)</li> <li>-supplier's location (if address not available)</li> </ul>	Residual 13(2)
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- 9. Banking and other Financial Services
- 10. Intermediary Services
- 11. Short term transport hiring



<p>12(12,13)/</p>	<ul style="list-style-type: none"> <li>- <b>Banking</b>, financial services, stock broking <u>to any person</u></li> <li>- <b>Insurance</b></li> </ul> <p>.....</p>	<p>-<b>Recipient address</b> on supplier's record (if not there- then supplier's location)</p> <p>- TIN of RD &amp; PIN of URD</p> <p>.....</p>	<p>.....</p> <p>....</p> <p>- <b>Supplier's Location</b> [If XY Bank in USA charges loan processing charges to AB Co. located in India, the place of supply of service will be USA] [Note- strictly saying, it applies only to Indian banks, as foreign banks are not banking company as per definition. [Cir107/19 Dt 18.7.19 gives test of intermediary. Withdrawn by Cir 127/19 dt 4.12.19]</p>
<p>/13(8)</p>	<ul style="list-style-type: none"> <li>- <b>Banking/Financial/NBFC to <u>account holders</u></b></li> <li>- <b>Intermediary</b> (broker, commission agent )</li> <li>- <b>Hiring transport</b> (upto 1 month)</li> </ul>		<p>Cir159/15/121 Dt 20.09.21 clarifies doubt on scope of intermediary service]</p>

## Services supplied by Banking co., FI, NBFC to account holders [S.13(8)(a)]

### Coverage:-

- applies only to Indian banks, Financial institutions, Non-banking Finance Companies, as the terms are defined as per their definition in Reserve Bank of India Act, 1934.
- Thus, a **foreign bank serving from outside India can not be a 'banking company' for GST purpose**. Hence, the general rule (default rule) of POS i.e. 'recipient's location' will apply.
- 'holder of an account' means an account bearing interest to the depositor.
- Services covered may be lending, deposits, safe deposit, locker, transfer of money etc.
- Services not covered - [then as per default rule 'recipient's location will be POS']
  - financial leasing services including equipment leasing and hire-purchase
  - Merchant banking services
  - Securities and Foreign exchange broking, FC sale purchase.
  - Asset management, portfolio management, all forms of fund management, pension fund management, custodial, depository and trust services
  - Advisory and other auxiliary financial services
  - Banker to an issue service

Export of Service Vs Intermediary

S.2(6) Vs. S.13(8)(b)

## Services by intermediary [S.13(8)(b)]

- As per S.2(13)- Intermediary means a broker, an agent or any other person (by whatever name called) who arranges/facilitates between two persons the supply of goods and/or services, or of securities (without material alteration or further processing), but does not include a person who supplies such G/S on his own account [i.e. not P to P]
- An intermediary is involved with two supplies at a time-
  - Supply between the principal and the third party; and
  - Supply of his own service (agency service) to his principal, for which he usually gets a fee or commission.
- He can not alter the nature or value of the service. On authorization, he may negotiate, but the discount that he obtains must pass on to the principal. **Example:-**
  - (i) Travel Agent (any mode of travel)
  - (ii) Tour operator
  - (iii) Stock broker
  - (iv) Commission Agent
  - (v) Recovery agent
  - (vi) Freight forwarder (only when not acting on his won account)

Note- Call centre service & Marketing consultancy are P to P and not intermediary.

[Circular 107/26/2019-GST; Dt 18 July 2019 clarified the test of intermediary; but withdrawn later. Earlier an AAR ruling had said that BPOs/call centres are intermediary]

## ➤ Circular No. 127/46/2019 – GST dated 4-12-2019

Has withdrawn earlier Circular 107/26/2019-GST dated 18-7-2019

**Information Technology enabled Services (ITeS) and back end services are not intermediary services**

- CBI&C, *vide* circular No. 107/26/2019-GST dated 18-7-2019, had clarified issues relating to ITeS services. This circular has been withdrawn *ab initio* vide CBI&C Circular No. 127/46/2019 – GST dated 4-12-2019 stating that there were some apprehensions about the circular.
- what was stated in the circular was correct in respect of ITeS services.
- However, the circular had stated that back end services would be 'intermediary services'. Hence, place of supply is India and hence GST will be payable even if the service is supplied to recipient out of India. This had created lot of confusion and many show cause notices were issued. These instructions would be valid only if physical activity on goods is carried out in India as it will be a performance based service under section 13(3)(a) of IGST Act and place of supply would be India. Otherwise, this should not fall under intermediary service
- It is good that the circular has been withdrawn.
- It would have been better if the circular was modified, instead of scrapping the whole circular.

## **Circular 107/26/2019-GST; Dt 18 July 2019** [test of intermediary]

**Subject:** **BPO, Call Centre, Intermediary services** (ITeS services) by Indian supplier to foreign clients.

- Own account G/S, Security supplier is not intermediary. Therefore, even 'agent, broker, any other person' are not covered under 'Intermediary' where they supply on their own account i.e. on P2P basis. **A non-intermediary can avail the benefit of 'export of services'.**
- **Situation 1-** If Indian supplier supplies backend services, even if on behalf of foreign client, but does so on his own account, then he is not an intermediary.
- **Situation 2:-** But if he i.e. 'A' facilitate the supply by foreign client B to B's customer C by way of backend support services like pre-delivery (order placement), delivery (logistic support or obtaining relevant govt clearances) or post-delivery (maintenance etc), then 'A' is intermediary, because all his services are merely for arranging or facilitating G/S supply between two or more persons.
- **Situation 3:-** If he ('A') supplies backend services on his own account along with arranging / facilitating the supply of support services during pre-delivery, delivery and post-delivery of supply for and on behalf of foreign client, then in this case he is supplying two sets of services to his foreign client B or to B's customer C:-

(a) ITeS Services (i.e. IT enabled services) &

(b) Various support services

Here his 'intermediary status or otherwise' will be decided on case to case basis keeping in view as to which set of services is the principal / main supply.

## ➤ Whether intermediary services amount to export of services?

- **Case Law 1:-** In *Re : Vishakhhar Prashant Bhave* - 2018 (18) G.S.T.L. 494 (A.A.R. - GST) the question for which advance ruling was sought is as to whether the **commission received by the applicant in convertible foreign exchange for rendering services as an intermediary** between an exporter abroad receiving such services and an Indian importer of an equipment is an 'export of service' falling under Section 2(6) of IGST Act and outside the purview of Section 13(8)(b) attracting zero-rated tax under Section 16(1)(a) of IGST Act. The AAR held that since the **place of supply of services in this case is in taxable territory**, the said intermediary services cannot be treated as export of services under the provisions of GST laws.
- **Case Law 2:-** In *Re : Global Reach Education Services Private Limited* - 2018 (15) G.S.T.L 618 (App. A.A.R. - GST), the appellant **promotes the courses of the University, finds suitable prospective students to undertake the courses, and, in accordance with University procedures and requirements, recruits and assists in the recruitment of suitable students** and hence the Appellate Authority held that the appellant is **to be considered as an intermediary** in terms of Section 2(13) of the IGST Act and the services of the appellant are not 'export of services' under the IGST Act.

### ➤ Case Law 3:- Back office support to foreign entity is intermediary service ?

- In *Re : Vservglobal Private Limited* - 2018 (19) G.S.T.L. 173 (A.A.R. - GST)
- the applicant is to provide **back office support services**, pay roll processing, to maintain records of employee to overseas companies i.e., clients and after finalization of purchase/sale between the client and its customer.
- The applicant contended that the above said services to be qualified as 'zero-rated supply'.
- The **AAR held that the applicant is clearly covered and falls in the definition of an intermediary**. To qualify a transaction of supply of services as export of services the transaction has to satisfy all five ingredients of the definition of export of services. The AAR found that in this case the condition no. (iii) is not satisfied. The AAR held that the services proposed to be rendered by the applicant do not qualify as 'export of services' as defined under Section 2(6) of the IGST Act.



➤ *AAR declined to entertain intermediary issue for want of jurisdiction:-*

1. *In Re : Take Off Academy - 2018 (18) G.S.T.L. 63 (A.A.R. - GST).*
  - Qn:- Whether activity of **conducting examination on behalf of a foreign university** with consideration received from abroad would be export of services or not.
  - Held that:- the export of services would depend upon determination of place of supply. Since AAR is not having statutory mandate to decide issues relating to place of supply, application cannot be taken up for lack of jurisdiction.
2. *In Re : Lambda Therapeutic Research Limited - 2018 (18) G.S.T.L. 87 (A.A.R. - GST).*
  - Qn:- Whether activity provided to foreign clients towards **scientific testing and technical analysis services on pharmaceutical products** which are supplied by an entity situated outside India would be treated as 'export of service' under the IGST Act.
  - Held:- that the entire issue intrinsically related to determination of place of supply of service by assessee. The jurisdiction of AAR does not extend to questions on determination of place of supply.

3. In Re : Toshniwal Brothers (SR) Private Limited - 2018 (18) G.S.T.L. 129 (A.A.R. - GST)
- Qn:- Whether the **promotion and marketing of goods of overseas customers in India** would amount to export of services.
  - Held:- The issue is to be decided on the basis of place of supply applicable to each transaction. The AAR is not competent to decide on issue of determination of place of supply and therefore the advance ruling in this case could not be given.

Note:- The AAR is not having jurisdiction to decide any question outside the purview of Section 97(2). But in *Re : Segoma Imaging Technologies India Private Limited* case, the issue has been extensively discussed it.

❑ In Service tax regime, export was when “services provided from India and used outside India”

➤ **ARCELOR MITTAL PROJECTS INDIA PVT. LTD. Versus COMM. OF S.T., MUMBAI-II**

[Interim Order No. I/48/2019-WZB, dated 4-7-2019 in Appeal No. ST/88483/2014]

Business Auxiliary Service - Export of Services - Services rendered to foreign entity located outside India for development of its business in India - Divergence of opinion on issue of whether services to qualify as Export of Service in terms of phrase “services provided from India and used outside India” used in Rule 3(2)(a) of Export of Services Rules, 2005 - View proposed to be taken contrary to views expressed by Coordinate Benches of Tribunal in Blue Star Ltd. [2008 (11) S.T.R. 23 (Tribunal)], ABS India Ltd. [2009 (13) S.T.R. 65 (Tribunal)] and Mapal India Pvt. Ltd. [2011 (22) S.T.R. 454 (Tribunal)] - Hence judicial propriety demands that matter be referred to Hon’ble President for constituting Larger Bench to resolve said issue - Section 35F of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994.

- We are very clear that *in the present case the services received by the AMSI, France from the appellant, were for development of their business in India and hence were used/consumed by them in India*. The concept of residency outside for the purpose of taxation has been given a go by the Apex Court in this decision. **Hence the foremost condition that needs to be satisfied by the appellant for claiming the services to be export of service is vis-a-vis the usage/consumption of service by the service recipient. If the consumption of service is in relation to the activities of foreign entity/resident located outside but for his business in India, then the appellant will not be entitled to the benefit of export of service as the service is not exported as provided for by the Export of Service Rules, 2005 as they existed at material time.**

- Referred to Larger Bench

## Services of short term hiring of means of transport [S.13(8)(c)]

- “other than aircraft and vessels” means that hiring of vessels or aircrafts, irrespective of whether short term or long term, will be governed by default rule i.e. ‘Recipient’s location’. Short term Hiring of yatch will continue to be covered under this rule i.e. ‘Supplier’s location’.

12. Advertisement services to Government

13. OIDAR Services

12(14)	<b>Advertisement to Govt-</b>	<b>Each state</b>	Residual 13(2)
13(12)	<b>OIDAR</b>	<b>Recipient's location</b> [deemed to be located in India if 2 out of 7 specified conditions satisfied]	Residual
<b>Residual services</b> not covered above		- Residual 12(2)(a), 12(2)(b)	- 13(2)
S.13(13):-In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the <b>power to notify any description of services or circumstances</b> in which the place of supply shall be the place of <b>effective use and enjoyment</b> of a service.		This S.13(13) of IGST Act enables government to appoint POS on the basis of effective use and enjoyment. Under this power <b>N/N 4/2019 IT dt 30.09.19 was issued to fix POS at foreign recipient location in case of pharma R&amp;D</b> by Indian companies.	

## Consequences of wrong classification of POS

Considering the GST provisions, it is very important to have an accurate determination of place of supply for below reasons:

- Wrong classification of supply between interstate or intra-state and vice-versa may lead to hardship to the taxpayer as per section 19 of IGST Act and section 70 of CGST Act.
- The taxpayer will have to pay the correct tax along with interest for delay on the basis of revised/correct classification.
- Also, correct determination of place of supply will help us in knowing the incidence of tax.
- Where wrong taxes have been paid on the basis of the wrong classification, refund will have to be claimed by the taxpayer.



## Selected Circulars on POS

S.n.	Circular No. & Dt	Zist
1	48/22/2018 Dt 14.6.18	Services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit
2	103/22/2019 Dt 28.6.19	(i) Services provided by Ports (ii) Services rendered on goods temporarily imported in India
3	118/37/2019 Dt 11.10.19	Determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry
4	90/09/2019-GST Dt 18.02.2019	Compliance of rule 46(n) of the <b>CGST Rules, 2017</b> while issuing invoices in case of inter-State supply. <b>[Penalty if POS not mentioned on inv]</b>
5	108/27/2019-GST dated 18 th July, 2019	Clarification in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion
6	159/15/2021-GST dated 20.09.2021	Clarification of doubts regarding scope of intermediary services.
7	161/17/2021-GST 20.09.2021	Clarified the term 'mere establishment of distinct persons' for S.2(6)(v) IGST.

## Detailing with the Circulars

## Circular no. 103/22/2019-GST – GST dated 28th June, 2019

### Clarification regarding determination of place of supply in certain cases

1. Various services being provided by the **port authorities to its clients in relation to cargo handling**. Some of such services are in respect of arrival of wagons at port, haulage of wagons inside port area up-to place of unloading, siding of wagons inside the port, unloading of wagons etc. **Such services are ancillary to or related to cargo handling services and are not related to immovable property**. Accordingly, the place of supply of such services will be determined as per the provisions contained in sub-section (2) of Section 12 or sub-section (2) of Section 13 of the IGST Act, as the case may be, depending upon the terms of the contract between the supplier and recipient of such services.
2. Services on unpolished diamonds such as cutting and polishing activity which have been temporarily imported into India and are not put to any use in India In case of cutting and **polishing activity on unpolished diamonds which are temporarily imported into India** are not put to any use in India, the place of supply would be determined as per the provisions contained in sub-section (2) of Section 13 of the IGST Act.

➤ Circular 118/37/2019-GST dt 11.10

- clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware/test kits is a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act. Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.

**Circular 90/09/2019-GST; Dated: February 18, 2019 [Penalty if POS not mentioned on inv]**

**Subject:** Compliance of rule 46(n) of the **CGST Rules, 2017** while issuing invoices in case of inter-State supply-Reg.

- It has been brought to the notice of the Board that a number of registered persons (especially in the **banking, insurance and telecom sectors, etc.**) **are not mentioning the place of supply along with the name of the State** in case of a supply made in the course of inter-State trade or commerce in contravention of rule 46(n) of the CGST Rules which mandates that the said details must be mentioned in a tax invoice. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017, hereby issues the following instructions.
- After introduction of GST, which is a destination-based consumption tax, it is essential to ensure that the tax paid by a registered person accrues to the State in which the consumption of goods or services or both takes place. In case of inter-State supply of goods or services or both, this is ensured by capturing the details of the place of supply along with the name of the State in the tax invoice.
- It is therefore, instructed that all registered persons making supply of goods or services or both in the course of inter-State trade or commerce shall **specify the place of supply along with the name of the State in the tax invoice**. The provisions of sections 10 and 12 of the Integrated Goods and Services Tax Act, 2017 may be referred to in order to determine the place of supply in case of supply of goods and services respectively. Contravention of any of the provisions of the Act or the rules made there under attracts **penal action under the provisions of sections 122 or 125** of the CGST Act.

**Circular No. 48/22/2018-GST, dated 14-06-2018,:**

**Issue 1.** Whether services of short-term accommodation, conferencing, banqueting, etc., provided to a Special Economic Zone (SEZ) developer or a SEZ unit should be treated as an inter-State 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?

**Clarification :**

- 1.1 As per Section 7(5)(b) of the Integrated Goods and Services Act, 2017 (IGST Act in short), the supply of goods or services or 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 inter-State supply.
- 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.
- 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, which states that such supplies shall be treated as inter-State supplies.
- 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."**

**“Issue 2 :** 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.?

**Clarification :**

- 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 :
  - (a) supplier of goods after such goods have been admitted in full in the SEZ for authorised operations, as endorsed by the specified officer of the Zone;
  - (b) supplier of services along with such evidences regarding receipt of services for authorised operations as endorsed by the specified officer of the Zone.
- 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.
- 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 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.”**



# Circular 108/27/2019-GST; Dt 18 July 2019

**Subject:** Sending goods for Exhibition abroad.

- No supply at the time of taking out of India, since consideration is not there. Therefore, no zero-rating. Also no refund of IGST. No need for LUT.
- When sold in exhibition within 6 months, it becomes supply on the date of such sale; but that happens after the export (i.e. event of taking goods out of India).
- A tax invoice will be issued on the date of such sale at exhibition of on 181<sup>st</sup> day. These supplies **shall become zero-rated at the time of issuance of invoice**. No tax invoice will be issued for goods received back to India within 6 month.
- **However, refund in relation to such supplies shall be available only as refund of unutilized ITC, and not as refund of IGST**

Circular No. 108/27/2019-GST dated 18 th July, 2019

Clarification in respect of goods sent/taken out of India for exhibition or on consignment basis for export promotion

Also, Customs Circular No. 21/2019- Customs dated 24 th July, 2019 clarified that there is no requirement of filing any LUT/bond in case of goods sent / taken out of India for exhibition or on consignment basis for export promotion. 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, 2017. Therefore, no integrated tax was required to be paid for specified goods at the time of taking these out of India, the activity being not a supply, hence the said condition requiring payment of integrated tax at the time of re-import of specified goods in such cases is not applicable. Even in cases where exports have been made for participation in exhibition or on consignment basis, but, such goods exported are returned after participation in exhibition or returned by such consignees without approval or acceptance, the basic requirement of 'supply' cannot be said to be met and such reimport of goods will be exempted from so much of the duty of customs leviable thereon, provided re-import happens before six months from the date of delivery challan.

# **Circular No. 159/15/2021-GST** dated 20.09.2021

**Subject:** Clarification of doubts regarding scope of intermediary services.

- 3 Parties:- 2 Principals + 1 Intermediary
- 2 Supplies:- Main supply between the two principals, and one intermediate service.
- Intermediary is of character of agent, broker etc.
- Intermediary will not supply Goods and/or services or securities on his own account.
- Sub-contracting for a service is not an intermediary service [para 3.5]
- Facts of each case and the terms of contract will be determinative factors.

**Note:-** Definition of Intermediary in Service Tax and GST era is almost same except inclusion of 'security' in GST era definition.

**Circular No.** 161/17/2021-GST 20.09.2021

**Subject:** Clarified the term 'mere establishment of distinct persons' for S.2(6)(v) IGST.

- In respect of S.2(6)(v) in connection with export of service, out India own establishment is considered as establishment of distinct person as per explanation 1 of Section 8 IGST Act. Supply to such own establishment is not considered as 'export of service'.
- Branch / Agency / Representational office in India of some foreign company shall be treated as establishment of the said foreign company in India.
- A company incorporated in India and a foreign company incorporated outside India are separate 'person', and accordingly, separate legal entity. Accordingly, these two separate legal persons would not be considered as "mere establishments of a distinct person in accordance with explanation1 in Section 8, and hence benefit of export of service would be available provided other conditions are fulfilled.

## Selected Case Laws on POS

## ➤ **ARCELOR MITTAL PROJECTS INDIA PVT. LTD. Versus COMM. OF S.T., MUMBAI-II**

[Interim Order No. I/48/2019-WZB, dated 4-7-2019 in Appeal No. ST/88483/2014]

Business Auxiliary Service - Export of Services - Services rendered to foreign entity located outside India for development of its business in India - Divergence of opinion on issue of whether services to qualify as Export of Service **in terms of phrase “services provided from India and used outside India” used in Rule 3(2)(a) of Export of Services Rules, 2005** - View proposed to be taken contrary to views expressed by Coordinate Benches of Tribunal in Blue Star Ltd. [2008 (11) S.T.R. 23 (Tribunal)], ABS India Ltd. [2009 (13) S.T.R. 65 (Tribunal)] and Mapal India Pvt. Ltd. [2011 (22) S.T.R. 454 (Tribunal)] - Hence **judicial propriety demands that matter be referred to Hon’ble President for constituting Larger Bench to resolve said issue** - Section 35F of Central Excise Act, 1944 as applicable to Service Tax vide Section 83 of Finance Act, 1994. - *We are very clear that in the present case the services received by the AMSI, France from the appellant, were for development of their business in India and hence were used/consumed by them in India. The concept of residency outside for the purpose of taxation has been given a go by the Apex Court in this decision. Hence the foremost condition that needs to be satisfied by the appellant for claiming the services to be export of service is vis-a-vis the usage/consumption of service by the service recipient. If the consumption of service is in relation to the activities of foreign entity/resident located outside but for his business in India, then the appellant will not be entitled to the benefit of export of service as the service is not exported as provided for by the Export of Service Rules, 2005 as they existed at material time.*

- **Referred to Larger Bench**

➤ AAR Karnataka in RE : VOLVO-EICHER COMMERCIAL VEHICLES LTD.

Advance Ruling No. KAR ADRG 32/2019, dated 12-9-2019

- Warranty services for imported cars - Composite supply - Re-imburement of warranty charges by car manufacturer located abroad - Export of services - Applicant distributing/selling in India cars supplied by supplier located abroad and providing free warranty services to customers of such cars either directly or through dealers for any defects by either repairing or replacing defective parts - **Applicant claiming that since cost of said service reimbursed by manufacturer abroad, warranty service amounts export of services/zero-rates supply - HELD :** Clearly sale price these cars inclusive of standard warrantee services - Thus, supply of car and subsequent supply of services is naturally bundled composite supply effected by applicant to customer in India - Said **customer is approaching applicant only for receiving services and has no concern with manufacturer abroad for execution of warranty services - Thus, said service is supplied in India only and not abroad - Reimbursement of warranty charges is consideration received for providing this service - There is no bar under GST law for receiving consideration from another person** other than person to whom services have been supplied - In view of above, entire transaction is a composite supply of goods and services with goods as principal supply and taxable accordingly - **Further, having been performed in India for customer in India, said services not amounting to export of services/zero-rated supply.**
- Ruling in favour of department

## ➤ AAAR Mumbai in RE : MAANSMARINE CARGO INTERNATIONAL LLP

- Order No. GST-ARA-04/2019-20/B-97-Mumbai, dated 23-8-2019 in Application No. 4
- Management fee - Taxability - Applicant arranging or facilitating business of its foreign client by liaising with customers for purpose of commercial relationships between service recipient and vessel owners, shippers, consignees, various port agents - **Activities undertaken by applicant on behalf of foreign client and it fulfills criteria of Agent - Applicant is an intermediary** in subject transaction - Place of provision of service in subject case to be location of supplier of services, i.e., applicant - Since place of supply is in taxable territory, applicant liable to discharge GST on such services provided by it.
- Valuation (GST) - Reimbursement of expenses - Salaries of employees, rent of office expenses, other office expenses, travel and hotel stay expenses of employees reimbursed by foreign client on actual basis - Applicant making payments to vendors for supply received by them and not making payment to third party for services rendered by such third party to recipient of supply under a contract for supply - Recipient of supply not liable to make payment to third parties and therefore it can be said that applicant is not making payments on behalf of recipient of supply - Applicant not acting as pure agent - Reimbursement received by applicant pertains to establishment costs which would be incurred by it for running office in India - In any normal business such expenses are borne by supplier of service and naturally included in value to be received from recipient of their services - That such costs termed as reimbursements recovered in addition to management fees from clients are nothing but additional consideration charged for the supply - Valuation of supply to include all costs, including employee cost provided by one distinct entity to the other distinct entities - GST applicable on reimbursement of expenses - Section 15 of Central Goods and Services Tax Act, 2017.
- Departmental clarification - Circulars issued by Central Board of Direct Taxes not applicable to GST matters.



## ➤ Toshiwal Brothers P. Ltd in Re (AAAR-KARNATAKA) Feb 19

Service of promotion and marketing of the products of the overseas client is in nature of facilitating supply of products of overseas client, hence, constitutes an 'intermediary service' defined under section 2(13) of IGST Act. Thus, it automatically flows that the place of supply of such service will be in terms of section 13(8) of the IGST Act.

- The facts of GoDaddy case were distinguished in this case.

- As to whether the two supplies i.e. “Promotion & Marketing” and ‘After-Sale services’ form a composite supply, it was observed that-

The Term ‘Naturally Bundled’ is not defined, But the concept is the same as it was in Service Tax, where it was generally understood to refer to those transactions involving an element of provision of service and an element of transfer of title in goods in which various elements are so inextricably linked that they essentially form one composite transaction. In the present case, since after sales services (installation, operational support etc) is not given in all cases. This itself show that such after-sale support activities are not naturally bundled (even if covered in a single contract and are rendered in a composite manner with marketing and promotion services). The price for such after-sale support services is clearly identifiable and has been so stated in the contract itself.

- Third issue- “whether it is export?- refrained from answering on the ground of lack of jurisdiction, as the issue intrinsically entail determination of POS.

Note- In **GoDaddy India Web Services (P) Ltd case** of 2016 (in Service Tax regime), the AAR held that-

**Pure marketing and promotion service is not intermediary service.** In this case GoDaddy India provided a gamut of services to its client GoDaddy, US and provided support services to assist GoDaddy US to develop its brand in India. The issue there was whether the various support services provided by GoDaddy India are naturally bundled as a single service being 'Business Support Service'. The contention of the Revenue was that it is not naturally bundled, and is more appropriately covered under intermediary services. The AAR had ruled so, only considering that the GoDaddy India will not secure orders from indian customers, or will not arrange or facilitate any provision of service by any third party service provider to GoDaddy US. In such consideration only, the authority held that applicant is providing support services in relation to marketing, branding, offline marketing etc on principal to principal basis to Godaddy US, which are a bundle of services naturally bundled in the ordinary course of business, and accordingly is a single service being business support service; that the business support service is the main service provided to GoDaddy US on their own account, and hence is not an intermediary service.

## **Recruitment services rendered by an intermediary to students of foreign universities are not 'export of services'**

*[Global Reach Education Services (P.) Ltd., In re - [2018] 92 taxmann.com 211 (AAR-West Bengal)]*

- The assessee provided recruitment services to the students seeking admission in foreign universities and the consideration for such services was received in convertible foreign exchange from such foreign universities. It filed an application for advance ruling to decide if such services should be treated as an export of service. The applicant contended that as per Section 13(2) the place of such supply should be deemed to be outside India as location of service recipient is outside India.
- The Authority for Advance Ruling (AAR) held that such services would be provided only as a representative of the University and not as an independent service provider. Being an intermediary service provider, the place of supply shall be determined as per section 13(8)(b) of the IGST Act and not under section 13(2) of the IGST Act. Therefore, the place of supply shall be the location of service provider. As the condition for export of service was not satisfied, the assessee's service to the foreign universities would not qualify as 'Export of Services'. Hence, such service would be taxable under the GST Act.
- *As per Section 2(13) of IGST Act, '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*

## Back office support services to overseas companies treated as Intermediary Services: AAR

[*V. Serv Global (P.) Ltd.*, In re[2018] 99 taxmann.com 253 (AAR - Maharashtra)]

- The applicant is engaged in back office administrative and accounting support services, pay-roll processing and maintenance of employee records to overseas clients. It filed an application for advance ruling to determine whether it would constitute an 'export of service'?
- The authority observed that the applicant would arrange/facilitate supply of goods or services or both between overseas client and customers of overseas client, therefore, applicant would be clearly covered and would fall in 'intermediary' definition as contained under Section 2(13) of IGST Act, 2017. Therefore, the place of supply in case of services provided by applicant being intermediary would be the location of supplier of services. Hence, services proposed to be rendered by the applicant would not qualify as 'export of services' and, thus, would not to be treated as 'zero-rated supplies'.

**AAR-WEST BENGAL dt 21.12.18 in “Swapna Printing Works (P.) Ltd., *In re*”**

**CGST: Where applicant, being in the business of printing books and binding them, has received a specific order from a popular foreign customer, namely, Gideons International, for **printing and binding Bibles** and printed copies of the Bible are required to be delivered to the recipient's branch in India, the Applicant's activity is a supply of service classifiable under SAC 9989, but **said supply is not the export of service, as the recipient of the service is located in India**. Since the above service is supplied to the recipient located in India and the consideration is apparently received in INR, the Applicant is liable to pay GST under the appropriate Act on such supplies**

## **No GST on salary remitted by HO to liaison office set-up in India for routine operations: AAR**

*[Habufa Meubelen B.V., In re - [2018] 95 taxmann.com 120 (AAR- Rajasthan)]*

- The assessee is the liaison office of a company incorporated at Netherlands. It doesn't undertake any activity of trading, commercial or industrial in nature, except activities required for normal functioning of office. The salaries of the employees are remitted by HO to liaison office. The HO also reimburses other expenses incurred by liaison office for its operation.
- The assessee filed an application for Advance Ruling on the issue 'whether reimbursement of expenses and salary is liable to GST and whether it is required to get registered under the GST?
- The Authority for Advance Ruling held that the liaison office in India does not render any consultancy or other services directly or indirectly. Therefore, the reimbursement of expenses and salary paid by head office to liaison office is not liable to GST. Further, as no taxable supplies are made by the liaison office, they are not required to get registered under GST.

- Respondent **AK India**, a subsidiary of **AK Japan** provides **sales promotion and marketing support services** to **AK group**. It has entered into a services agreement with **AK Japan** wherein it provides to its holding company following services, **corporate accounting, corporate finance, corporate personnel and labour relations, corporate research and development, quality assurance and corporate intellectual property etc.** It is observed that respondent is undertaking a gamut of activities which are in nature of accounting services having SAC 9982 and other professional, technical and business services having SAC 9983, which are specified under section 8 of chapter 99 having description Business and Production services
- **Since all these activities undertaken by respondent could have been performed separately and independently** with each other, fact that respondent is raising a singly consolidated invoice in accordance with service agreement makes these supplies stipulated under this agreement as **mixed supply** in terms of provision of section 2(74).

## ➤ Services of line producer used in shooting of a feature film outside India are supply of services, liable to IGST

March 16, 2019[2019] 103 taxmann.com 219 (AAR - WEST BENGAL)50 Views

- GST : Line producer to be engaged for shooting of a feature film in Brazil was supplying motion picture production service, classifiable under SAC 999612
- The applicant intended to produce a feature film, a portion of which was planned to be shot at locations outside India. For this purpose, he was in the process of appointing one, CDIVF as a line producer in Brazil.
- The contract was for the 'production services'. According to the contract, CDIVF would facilitate the provisioning of the production services. The applicant would reimburse CDIVF the cost of procuring these services, based on the bills raised by the service providers, bearing the name of the feature film. CDIVF would hire the local actors in Brazil and would provide insurance coverage for the crew originating and residing in Brazil. This apart, CDIVF would also hold insurance to cover all accidents and injuries during the production of the feature film in Brazil.



- The applicant sought a ruling on question that whether it was liable to pay IGST on the reverse charge on the payments to be made to CDIVF and, if so, what should be the rate depending upon the classification of the service of a line producer. He also wanted to know whether the reimbursements made on an actual cost basis would also be subject to IGST.

### The Ruling:-

- The line producer to be engaged for the shooting of a feature film in Brazil is supplying **motion picture production service**, classifiable under SAC 999612.
- The **applicant is liable to pay IGST** on the payments made to the above line producer in terms of Sl No. 1 of Notification No. 10/2017 – IGST (Rate) dated 28/06/2017 at 18 per cent rate specified under Sl No. 34(vi) of Notification No. 08/2017 – IT (Rate) dated 28/06/2017, as amended from time to time.
- **No deduction is available** in terms of the contract with the line producer appended to the application from the value of the supply of motion picture production service **even if payment is made on an actual cost basis. However, if the applicant modifies the contract so that the line producer acts as pure agent for certain services** in addition to the main supply of motion picture production service, the related transactions will be import of services from the actual suppliers, and the amount paid on actual cost basis for procuring those services will be subjected to IGST at the applicable IGST rate on such services.

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