



Areas of Interplay

- Each taxing statute should have a **Taxable Event**
- **Customs Duty** the taxable event is **imported / Exported of Goods** into India and
- For GST the taxable event is Intra State / Inter State **supply of Goods / Services**
- There seems to be apparently **no contradiction** between the two taxing statutes and the two seem to **operate in their own domain**
- A Closer scrutiny reveals that not everything is as perfect as it looks and there are emerging areas of conflict between the two

Customs vs GST – Fault Lines

- RCM on Ocean Freight
- Inclusion of Value of Technical Services in the Value of Imported Goods
 - Matsuhita Television and Audio (I) Ltd
 - J K Corporation Ltd Case
- Goods reimported after repair [Notfn 45/2017]
- The curious case of Import of Software
- Import of Designs / Drawings
- Import of Goods on Lease [Notfn 50/2017]

Ocean Freight - Imports

Notification No. 8/2017 - Integrated Tax (Rate) SI No 9(ii): “Transport of goods in a vessel including services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.”

The tax rate has been specified at 5% (Deemed Value of 10% of CIF)

Ocean Freight - Imports

Notification No. 10/2017 - Integrated Tax (Rate):

For “Services supplied by a person located in non- taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.”, **the Importer, located in the taxable territory has been specified as the Recipient liable to pay tax**

Latest Dev: Mohit Minerals HC (Guj)
Chambal Fertiliser (Raj) - Stay

5

Mohit Minerals 2020 33 GSTL (Guj.)

Integrated Goods and Services Tax (IGST) - Levy of - Supply/delivery of goods at Indian port on CIF basis - Foreign exporter having obligation to transport goods, contract with shipping line for that purpose and pay for it - **HELD** : Importer neither availed transportation services nor liable to pay for it, and hence, they were not “recipient” of service as per Section 2(93) of Central Goods and Services Tax Act, 2017, either directly or indirectly - There was no inter-State or intra-State supply, and entire transaction took place outside India - Notification No. 8/2017-I.T. (Rate) and Entry 10 of Notification No. 10/2017-I.T. (Rate) were unconstitutional and ultra vires Integrated Goods and Services Tax Act, 2017 as they made importer liable for tax on service of transportation of goods upto Indian Customs Station provided by and received by persons in non-taxable territory outside India.

Latest Dev: Mohit Minerals HC (Guj)
Chambal Fertiliser (Raj) - Stay

6

IT / ITeS Sector – Tax Environment Post GST

Schedule II – Para 5

...

- (c) Temporary transfer or permitting the use or enjoyment of any intellectual property right;

- (d) Development, design, programming, Customisation, adaptation, Upgradation, enhancement, implementation of information technology software;

IT / ITeS Sector – Tax Environment GST Tariff Schedule

Transaction	SAC / HSN	Rate	In case of Intra Supply	If Inter Supply	ITC Eligible?	FCM / RCM
Temporary / permanent transfer / permitting the use or enjoyment of (IP) right of IT software	997331	18%	CGST – 9% SGST – 9%	IGST – 18%	Yes	Forward Charge
IT design and development services	998314 / 13	18%	CGST – 9% SGST – 9%	IGST – 18%	Yes	Forward Charge
Information Technology software	8523 80 20	18%	CGST – 9% SGST – 9%	IGST – 18%	Yes	Forward Charge
Computer / Hardware	8471 / 8528	18%	CGST – 9% SGST – 9%	IGST – 18%	Yes	Forward Charge
Docs of Title conveying right to use IT software	4907 00 30	12%	CGST – 6% SGST – 6%	IGST – 12%	Yes	Forward Charge

Notification 50/2017 - Cus

Entry 557B—All goods, vessels, ships [other than motor vehicles imported under a transaction covered by item 1 (b) or 5 (f) of Schedule II of the CGGST Act, 2017] (from 14.11.2017) –

The importer, by the execution of bond, in such form and for such sum as may be specified by the Commissioner of Customs, binds himself –

(a) to pay Integrated tax leviable under section 51 of the IGST Act, 2017 on supply of service covered by item 1 (b) or 5 (f) of Schedule II of the Central Goods and Services Tax Act, 2017

(b) Not to sell or part with the goods, without the prior permission of the Commissioner of Customs of the port of importation

(c) to re-export the goods within 3 months from the expiry of the period for which they were supplied under a transaction covered by item 1 (b) or 5 (f) of Schedule II of the Central Goods and Services Tax Act, 2017 out of India

(d) to pay on demand an amount equal to the integrated tax payable on the said goods but for the exemption under this notification in the event of violation of any of the above conditions



Thank You!

MSARAVANA PRABHU
ACMA, FCA

+ 91 94453 81071

MSARAVANAPRABHU@OUTLOOK.COM