



THE INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA

Two Days National Conference on GST
on August 30 and 31, 2024

Organised by : GST & Indirect Taxes Committee

Hosted by : SIRC of ICAI

TOPIC: Export, Import & Place of Supply

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Future Litigation Sphere

LEVY – Supply, Business

Classification

Place of Supply

Valuation

Composite Vs Mixed Vs Individual Supplies

Import → RCM

Export → Zero Rated



Agenda



- **Issues w.r.t. Customs Provisions**
- **Intricacies in Place of Supply Provisions**
- **Interplay**

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Introduction to Customs Law



Historical Background



The term ‘customs’ derives its colour and essence from the term ‘custom’, which means a habitual practice



Historical Background

Kautiliya's Arthashastra also refers to shulka (Customs Duty) consisting of import duty and export duty to be collected at the city gates

- The Customs Act, 1962 replaced erstwhile Acts.
- Customs Tariff Act, 1985 replaced Indian Tariff Act, 1934

- The Custom Duty in its present form dates back to 1786,
- Sea Customs Act was passed by Government in 1878,
- Indian Tariff Act was passed in 1894,
- Air Customs having been covered under the India Aircrafts Act of 1911,
- Land Customs Act was passed in 1924

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Issues w.r.t. Customs Charging Sec 12



Charging Section – Sec 12

The charge of customs duty is considered to be **on the goods** imported into or exported out of India.

- **India [Section 2(27)]**:-“India” includes the territorial waters of India.
- **Territorial waters** of India extend to 12 nautical miles into sea from the appropriate base line

Issue: In case of Imports, the taxable event may get deferred. Books of Accounts may Report Import in January but Customs & IGST may be paid in May or in case of warehouse goods even later requiring Reconciliation.

→ **import** with its grammatical variations and cognate expressions, means bringing into India from a place outside India [Sec 2(23) of CA & 2(10) of IGST Act]

Imported Goods: [Garden Silk Mills v. UOI 1999 (113) E.L.T. 358 (S.C.)]
- taxable event being reached at the time **when the goods reach the customs barriers and bill of entry for home consumption is filed.**



Export Vs Zero Rated

export with its grammatical variations and cognate expressions, means taking out of India to a place outside India [Sec 2(18) of CA & 2(5) of IGST Act]

Sec 16 (IGST). Zero rated supply.

(1) “zero rated supply” means any of the following supplies of goods or services or both, namely :-

(a) export of goods or services or both

[Sec 7(5) IGST Act]

Supply of goods or services or both, -

(a) when the supplier is located in India and the place of supply is outside India;

Issue :-

Specified Actionable claims includes ‘Online Money Gaming’ (w.e.f. 1st Oct 2023). In effect these are regarded as goods under GST law

Case Scenario:

An Indian Online Gaming Company organises a Fantasy sporting event on its gaming platform. A foreign player places a bet of Rs. 1,000.

- Whether the transaction would qualify as export of goods ?
- Will it be a Zero Rated supply ?
- Will it be an Interstate/Intra state Supply & as per which provision – sec 10 or sec 11 of IGST?

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Interplay of GST & Customs



Challenges in GST



**Import of Goods
Vs
Import of Services**

Levy of IGST on Imports

Import of Goods

❖ Nature of Supply : Supply of goods imported into the territory of India, ..., shall be treated to be a supply of **goods in the course of inter-State trade or commerce**. Section 7(2) of the IGST Act

❖ Charging Sec : Proviso to sec 5(1) of IGST Act
Provided that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 on the **value** as determined under the said Act **at the point** when duties of customs are levied on the said goods **under section 12 of the Customs Act, 1962**.

Import of Services

❖ Nature of Supply : Supply of services imported into the territory of India shall be treated to be a supply of **services in the course of inter-State trade or commerce**. Section 7(4) of the IGST Act

❖ Charging Sec : Sec 5(1) read with sec 5(3) of IGST Act -
In case of importation of service, the **recipient of imported service** who is located in India (other than non-taxable online recipient of OIDAR service) **is the person who has to pay IGST** on the service under reverse charge [serial number (1) of Notification No. 10/2017 IGST (R) dated 28.06.2017]



Issues in Time of Supply w.r.t. Imports

- **Import of Goods:- Sec 15 of Customs Act, 1962** :- the **rate of duty and tariff valuation** would be that applicable on
 - **the date of Bill of Entry &**
 - **the date of entry inwards/arrival,**
 - **whichever is later**

- **Import of Services** – TOS shall be as per sec 13(3) of the CGST Act, 2017 as earliest of
 - **Date of payment as entered in the books of account of the recipient or the date on which the payment is debited from his bank account, whichever is earlier, or**
 - **61st day from the date of issue of invoice by the supplier**

Issue :- *During Financial Year 2019-20 the Registered Person Imported a Consignment. IGST paid on the same was missed to be reported and claimed in GSTR 3B. In the same year there in an import of Service & no IGST is paid under RCM. In 2024-25 during Audit the mistakes are identified. Assessee approaches You regarding eligibility of ITC on both the transaction. What will be your Advice ?*

Reference: *Circular No. 211/05/2024 – GST, dated 26 June 2024 – Sec 16 (4) applicability for RCM on supplies received from Unregistered Suppliers*



Challenges in GST



**Export of Goods
&
Export of Services**

- **“export of goods”** with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India; **{Section 2(5) of IGST Act, 2017}**

“export of services” means the supply of any service when,—

- (i) the supplier of service is located in India;
- (ii) the recipient of service is located outside India;
- (iii) the place of supply of service is outside India; **{Section 13 of IGST Act, 2017}**
- (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- (v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with *Explanation 1* in section 8; **{Section 2(6) of IGST Act, 2017}**

Explanation 1 to Section 8: .—For the purposes of this Act, where a person has,—

(i) **an establishment in India and any other establishment outside India;**

(ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or

(iii) an establishment in a State or Union territory and any other establishment registered within that State or Union territory,

then such establishments shall be treated as establishments of distinct persons.

Case Scenario:

SSM (P) Ltd. opens a branch office in Singapore. In respect of an assignment in Singapore, the Singapore branch utilises the back end operations of the Indian Parent company. The Indian company raises an Invoice on the foreign branch for these business support services provided. Further during the year the Indian company transferred certain assets to the Singapore branch. Will these transactions be

- *Classified as Exports & hence eligible for Zero Rating?*
- *Will your answer be different if the Singapore Entity is a subsidiary company registered in Singapore?*
- *Reference: Circular No. 161/17/2021-GST 20th September 2021*



Intricacies of Place Of Supply

The Destination Principle

Place of supply in GST Regime



Issue 1: Bill to ship to with Distinct Person

Case Scenario:

M/s Alladin & Co is having a registered place in Gujarat & another in Tamil Nadu. The Tamil Nadu unit places an order on Jasmin Co. in Maharashtra & directs that the Goods be delivered to its other entity which is registered in Gujrat. What would be the POS for Jasmin Co.?

Reference :

SECTION 10 (IGST) . Place of supply of goods other than supply of goods imported into, or exported from India. — (1) The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under, -

(b) where the goods are delivered by the supplier to a recipient or any other person **on the direction of a third person**, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;

Issue : Whether Distinct Person is covered in Sec 10(1)(b)

Issue 2: Bill to ship to More than 3 parties

Case Scenario:

M/s Ram, having registered place in UP, places an order on Laxman, having registered place in MP, who further places order on Bharata, having registered place in Punjab. Bharata placed order for the same goods on Shatrughana from Maharashtra. Goods moved from Maharashtra directly to UP. POS would be determined under which provision of sec 10 of IGST?

Reference :

Issue : Whether more than 3 Persons' transaction are covered in Sec 10(1)(b) Bill to Ship to ?

Issue 3: Bill to ship to + Installation Commissioning

Case Scenario:

Messi from Pune Maharashtra is dealer in Air Conditioners. He is approached by Ronaldo of Chiplun, Maharashtra to install 20 Acs at his Client's office in Coimbatore, Tamil Nadu. What would be POS for Messi & Ronaldo?

Reference:

Sec 10(1) (d) where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly;

Issue 1 :-

Mr. Sunak from U.K. has a property in Bangalore. Mr Omaba from US wishes to visit India for a stay of 3 months. He hires the property of Mr. Sunak for USD 1,500 per month. What is the taxability of the service?

- Is it a non taxable supply
- Is it a taxable supply

SECTION 1 (IGST). Short title, extent and commencement. — (1) This Act may be called the Integrated Goods and Services Tax Act, 2017.

(2) It shall **extend to the whole of India**

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint

SECTION 5 (IGST). Levy and collection.

(1) Subject to the provisions of sub-section (2), there shall be levied a tax called the integrated goods and services tax **on all inter-State supplies of goods or services or both**, except on the supply of alcoholic liquor for human consumption

SECTION 7 (IGST). Inter-State supply. — (1) Subject to the provisions of section 10, supply of goods
(2) Supply of goods imported into the territory of India
(3) Subject to the provisions of section 12, supply of services,
(4) Supply of services imported into the territory of India
(5) **Supply of goods or services** or both, -
(c) **in the taxable territory**, not being an intra-State supply and not covered elsewhere in this section, shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.

Article 246A. Special provision with respect to goods and services tax.—

(1) Notwithstanding anything contained in articles 246 and 254, Parliament, and, subject to clause (2), the Legislature of every State, have power to make laws with respect to goods and services tax 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, or of services, or both takes place in the course of inter-State trade or commerce.

Article 245. Extent of laws made by Parliament and by the Legislatures of States

(1).....

(2) *No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.*

Interplay of POS vis a vis Other Provisions of GST



1. POS vis a vis Registration

Case Scenario:

A Company dealing in multiple product lines has place of business in multiple states. In respect of Karnataka it has not taken any registration since there is no outward taxable supply from this state. It has its central office in Ahmedabad registered under GST. A GTA is appointed for transport of certain capital assets to its location in Karnataka from Ahmedabad. What would be POS if

- If GTA is hired by Ahmedabad Office
- If GTA is hired by Karnataka Office

Reference:

Sec 12 (8)(IGST) : - 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.

Sec 2(94) of CGST Act :- "registered person" means a person who is registered under section 25

Section 25 (5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.



2. POS vis a vis Composite supply

Case Scenario :

Mr Annamalai employed in Kerala. He comes to Showroom in Coimbatore and books a Four Wheeler Car for Rs. 25 Lakh in August 2024. The dealer offers him an extended warranty for 5 years for a nominal Rs.25,000. He agrees for the same & makes payment for the entire amount including warranty charges. Regarding the issue of delivering the car to the place of residence in Kerala, the dealer proposes an additional charge of Rs.10,000. Mr Annamalai decides to drive himself.

However on date of delivery on 5th September Mr Annamalai requests the dealer to arrange for the transportation & agrees to pay the additional transportation charges of Rs. 10,000.

What would be the POS of

- Motor Car
- Additional Warranty as per the original case & if the additional warranty is also agreed on 5th September.
- Transport Charges

Section 8. Tax liability on composite and mixed supplies.-

The **tax liability on a composite** or a mixed supply shall be determined in the following manner, namely:-

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

Reference : *Circular No. 216/10/2024-GST*



3. POS vis a vis Exemption

Notification No. 12/2017- Central Tax (Rate)

Entry 74 :

Services by way of-

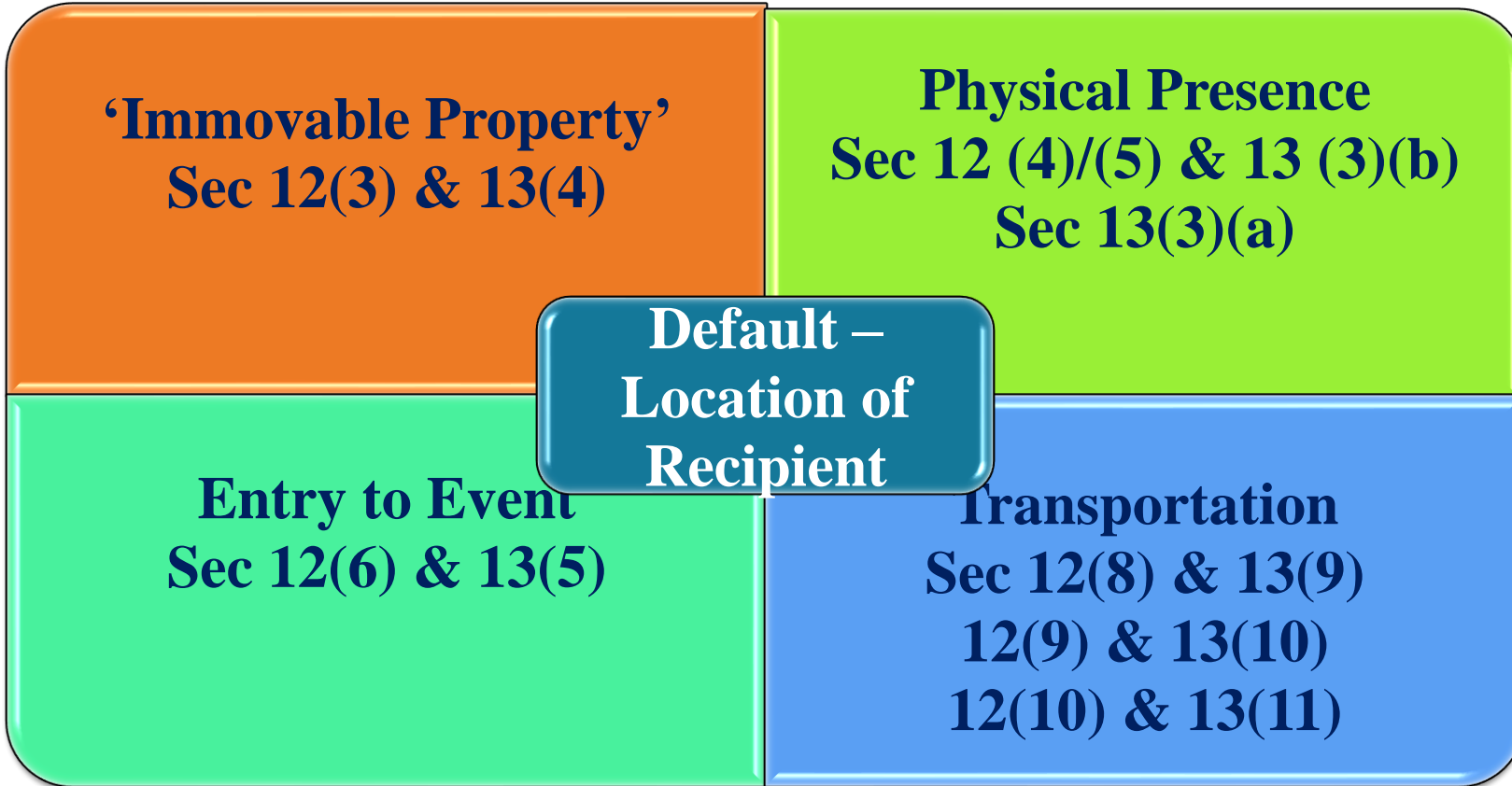
(a) health care services by a clinical establishment, an authorised medical practitioner or para-medics;

Provided that nothing in this entry shall apply to the services provided by a clinical establishment by way of **providing room** [other than Intensive Care Unit (ICU)/Critical Care Unit (CCU)/Intensive Cardiac Care Unit (ICCU)/Neo natal Intensive Care Unit (NICU)] **having room charges exceeding Rs. 5000 per day** to a person receiving health care services.

Issue:

What would be the POS for such Room charges ?

Whether Sec 12 (2) – General Rule or 12 (3) – POS in relation to Immovable Property



Issues

- ✓ Immovable Property –
 - ✓ Directly in relation to ????????
 - ✓ Warehousing ????????????
 - ✓ Exhibition Stall ??????????

Issues

- ✓ 12(6) does not covers uses the words celebration, conference, fair, exhibition or similar events as used in 13(5)

Issues

- ✓ Amendments
- ✓ LOS

Issues

- ✓ Sec 12 (5) - Physical Training Vs Online Training
- ✓ Sec 13 (3)(a) - Goods have to be Physically Present – Goods given on Rent to Foreign Exhibitor by supplier in India whereas the provision requires goods to be made available by the recipient to the supplier



5. POS vis a vis Classification vis a vis Cross charge

Case Scenario:

A Company registered in Bangalore wishes to organise its Induction cum Training Programme in a Resort in Goa. When the company approaches the property it gets to know that the POS for Hotel Accommodation & allied activities would be the place of such property i.e. Goa in terms of Sec 12(3) of the IGST Act. This would mean that the company would not be eligible for Input Tax Credit as it is not holding any registration in Goa. The Company has been suggested the following

- Hire an Event management Firm from Goa and route the transaction through the same it would change the POS to Sec 12(7) ?
- Take a registration in Goa & avail the input in the said registration & then Cross Charge the services as Business auxiliary Services to the registered person in Bangalore?
- Should a registration be taken as ISD considering the amendments in Finance Act, 2024 ?



6. POS vis a vis Sch I

SCHEDULE I : ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

Para (2) Supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business:

Case Scenario:

A software Company is having another vertical of trading in Computer Systems & peripherals. The company has its registered place in BKC Mumbai for the Software services vertical. The Trading business is registered as a distinct person in Bangalore. The Mumbai Vertical directs the Bangalore vertical to deliver systems to the employees of the Software vertical located in Hyderabad under Work From Home Model. What would be the POS if Bangalore Vertical

- Raises Invoice to Mumbai & charges consideration
- Provides the systems without Consideration
- What would be the answers to both scenarios if the Mumbai vertical also contracts for Periodical Maintenance ?

Reference: Sec 2 (93) of CGST Act : "recipient" of supply of goods or services or both, means-

- where a consideration is payable for the supply of goods or services or both, **the person who is liable to pay that consideration;****
- where no consideration is payable for the supply of goods, **the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available;** and**
- where no consideration is payable for the supply of a service, **the person to whom the service is rendered****



गौरवशाली था भूत,
भविष्य भी महान है
आप केवल इतना कीजिये
सम्भालिये जो वर्तमान है

Thank You

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