CHAPTER 14

IMPORT AND EXPORT UNDER GST



The section numbers referred to in the Chapter pertain to IGST Act, unless otherwise specified. Examples/illustrations/Questions and Answers given in the Chapter are based on the position of GST law existing as on 30.04.2026.

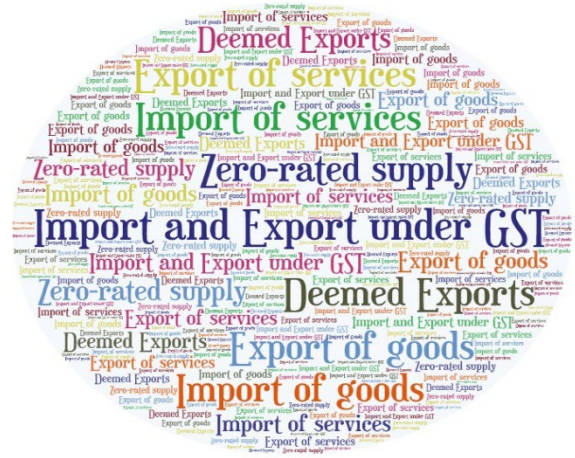
LEARNING OUTCOMES

After studying this Chapter, you will be able to –

- determine if a given transaction is an import of goods or services
- comprehend and analyse the taxability of import of goods and import of services and appreciate the difference in the mechanism of levy and collection of tax between the two
- explain and analyse the provisions relating to registration of importer of goods and services and availing of credit in case of import of goods and services
- determine if a given transaction is an export of goods or services
- comprehend and analyse the concept of zero rating and the mechanism by which it works under the GST law
- comprehend and analyse the taxability of exports and deemed exports
- explain and analyse the provisions relating to merchant exports
- apply the above concepts in problem solving

© The Institute of Chartered Accountants of India

1. INTRODUCTION



India is well integrated into the web of international business transactions. There is inward as well as outward flow of goods and services between India and other countries.

GST, being a business tax, impacts import and export too. Provisions in the GST laws seek to (i) provide level playing field to domestic suppliers *vis a vis* international suppliers in case of import and (ii) make export more competitive.

The various provisions of GST law as applicable on import and export supplies are discussed in this Chapter in detail. First, the provisions relating to import of goods and services have been discussed followed by discussion on provisions relating to export of goods and services.

The relevant statutory provisions have been extracted first followed by the analysis thereof.



© The Institute of Chartered Accountants of India

2. RELEVANT DEFINITIONS

- **Customs frontiers of India** means the limits of a customs area as defined in section 2 of the Customs Act, 1962 [Section 2(4)].
- **Customs area** means the area of a customs station or a warehouse and includes any area in which imported goods or export goods are ordinarily kept before clearance by Customs Authorities [Section 2(11) of the Customs Act, 1962].
- **Customs station** means any customs port, customs airport, international courier terminal, foreign post office or land customs station [Section 2(13) of the Customs Act, 1962].
- **Deemed exports** means such supplies of goods as may be notified under section 147 [Section 2(39) of the CGST Act].
- **Export of goods** with its grammatical variations and cognate expressions, means taking goods out of India to a place outside India [Section 2(5)].
- **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;
  - (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)].
- **Fixed establishment** means a place other than the place of business which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs [Section 2(7)].
- **Import of goods** with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India [Section 2(10)].

© The Institute of Chartered Accountants of India

- **Import of services** means the supply of any service, where –

  (i) the supplier of service is located outside India;

  (ii) the recipient of service is located in India; and

  (iii) the place of supply of service is in India [Section 2(11)].

- **India** means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the air space above its territory and territorial waters [Section 2(56) of the CGST Act].

- **Input tax** in relation to a registered person, means the central tax, State tax, integrated tax or Union territory tax charged on any supply of goods or services or both made to him and includes—

  (a) the integrated goods and services tax charged on import of goods;

  (b) the tax payable under the provisions of sub-sections (3) and (4) of section 9;

  (c) the tax payable under the provisions of sub-sections (3) and (4) of section 5 of the IGST Act;

  (d) the tax payable under the provisions of sub-sections (3) and (4) of section 9 of the respective State Goods and Services Tax Act; or

  (e) the tax payable under the provisions of sub-sections (3) and (4) of section 7 of the Union Territory Goods and Services Tax Act,

  but does not include the tax paid under the composition levy [Section 2(62) of the CGST 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 [Section 2(13)].

© The Institute of Chartered Accountants of India

❖ **Non-taxable online recipient** means any unregistered person receiving online information and database access or retrieval services located in taxable territory.

Explanation—For the purposes of this clause, the expression **"unregistered person"** includes a person registered solely in terms of section 24(vi) of the CGST Act, 2017 [Section 2(16)].

❖ **Location of the recipient of services** means:

(a) where a supply is received at a place of business for which registration has been obtained, the location of such place of business;

(b) where a supply is received at a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;

(c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and

(d) in absence of such places, the location of the usual place of residence of the recipient [Section 2(14)].

❖ **Location of the supplier of services** means:

(a) where a supply is made from a place of business for which registration has been obtained, the location of such place of business;

(b) where a supply is made from a place other than the place of business for which registration has been obtained, that is to say, a fixed establishment elsewhere, the location of such fixed establishment;

(c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provision of the supply; and

(d) in absence of such places, the location of the usual place of residence of the supplier [Section 2(15)].

© The Institute of Chartered Accountants of India

❖ **Online information and database access or retrieval services** means services whose delivery is mediated by information technology over the internet or an electronic network and the nature of which renders their supply impossible to ensure in the absence of information technology and includes electronic services such as,–



(i) advertising on the internet;

(ii) providing cloud services;

(iii) provision of e-books, movie, music, software and other intangibles through telecommunication networks or internet;

(iv) providing data or information, retrievable or otherwise, to any person in electronic form through a computer network;

(v) online supplies of digital content (movies, television shows, music and the like);

(vi) digital data storage; and

(vii) online gaming [Section 2(17)].

❖ **Place of business** includes-

(a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or

(b) a place where a taxable person maintains his books of account; or

(c) a place where a taxable person is engaged in business through an agent, by whatever name called [Section 2(85) of the 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;

© The Institute of Chartered Accountants of India

- 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,

and any reference to a person to whom a supply is made shall be construed as a reference to the recipient of the supply and shall include an agent acting as such on behalf of the recipient in relation to the goods or services or both supplied [Section 2(93) of the CGST Act].

❖ **Supplier** in relation to any goods or services or both, shall mean the person supplying the said goods or services or both and shall include an agent acting as such on behalf of such supplier in relation to the goods or services or both supplied [Section 2(105) of the CGST Act].

3. IMPORTS UNDER GST

Under the GST regime, Article 269A constitutionally mandates that supply of goods and/or services in the course of import into the territory of India shall be deemed to be supply of goods and/or services in the course of inter-State trade or commerce.



So, import of goods or services is treated as inter-State supplies and is subject to IGST. Supply of goods and/or services to a Special Economic Zone (SEZ) unit/developer is also treated as an inter-State supply and thus, is subject to levy of IGST.

In case of goods, the importer of goods pays IGST and in case of services, the importer of services pays IGST on reverse charge basis. However, in respect of import of online information and database access or retrieval (OIDAR) services by unregistered, non-taxable recipients, the supplier located outside India is

© The Institute of Chartered Accountants of India

responsible for payment of IGST. Either the supplier of OIDAR services has to take registration or has to appoint a person in India for payment of taxes.

Importer Exporter Code (IEC): PAN of an entity is to be used as IEC. If importer is registered under GST, he is required to declare only GSTIN as PAN is part of GSTIN[1].

A. IMPORT OF GOODS

	**STATUTORY PROVISIONS**
Section	***Particulars***
Levy of IGST on imported goods	
Section 5(1) of the IGST Act	*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, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*
Proviso to section 5(1) of the IGST Act	*Provided that the integrated tax on goods other than the goods as may be notified by the Government on the recommendations of the Council 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.*

[1] *DGFT's Trade Notice No. 09 dated 12.06.2017*

© The Institute of Chartered Accountants of India

Inter-State supply	
Section 7(2) of the IGST Act	*Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of inter-State trade or commerce.*
Place of supply	
Section 11 of the IGST Act	*Place of supply of goods imported into, or exported from India* *[Refer Chapter 3: Place of Supply in Module 1 of this Study Material for discussion on these provisions]*
Levy of customs duty	
Section 12 of the Customs Act, 1962	*(1) Except as otherwise provided in this Act, or any other law for the time being in force, duties of customs shall be levied at such rates as may be specified under the Customs Tariff Act, 1975, or any other law for the time being in force, on goods imported into, or exported from, India.* *(2) The provisions of sub-section (1) shall apply in respect of all goods belonging to Government as they apply in respect of goods not belonging to Government.*
Provisions for collection of IGST on imported goods and warehoused goods sold from a customs warehouse as also for determination of their value under section 3 of the Customs Tariff Act, 1975	
Section 3(7) of the Customs Tariff Act, 1975	*Any article which is imported into India shall, in addition, be liable to integrated tax at such rate, not exceeding forty per cent. as is leviable under section 5 of the Integrated Goods and Services Tax Act, 2017 on a like article on its supply in India, on the value of the imported article as determined under sub-section (8) or sub-section (8A), as the case may be.*

© The Institute of Chartered Accountants of India

Section 3(8) of the Customs Tariff Act, 1975	*For the purposes of calculating the integrated tax under sub-section (7) on any imported article where such tax is leviable at any percentage of its value, the value of the imported article shall, notwithstanding anything contained in section 14 of the Customs Act, 1962, be the aggregate of-* *(a) the value of the imported article determined under sub-section (1) of section 14 of the Customs Act, 1962 or the tariff value of such article fixed under sub-section (2) of that section, as the case may be; and* *(b) any duty of customs chargeable on that article under section 12 of the Customs Act, 1962, and any sum chargeable on that article under any law for the time being in force as an addition to, and in the same manner as, a duty of customs, but does not include the tax referred to in sub-section (7) or the cess referred to in sub-section (9).*
Section 3(8A) of the Customs Tariff Act, 1975	*Where the goods deposited in a warehouse under the provisions of the Customs Act, 1962 are sold to any person before clearance for home consumption or export under the said Act, the value of such goods for the purpose of calculating the integrated tax under sub-section (7) shall be,-* *(a) where the whole of the goods are sold, the value determined under sub-section (8) or the transaction value of such goods, whichever is higher; or* *(b) where any part of the goods is sold, the proportionate value of such goods as determined under sub-section (8) or the transaction value of such goods, whichever is higher:* *Provided that where the whole of the warehoused goods or any part thereof are sold more than once before such clearance for home consumption or export, the transaction value of the last such transaction shall be the transaction value for the purposes of clause (a) or clause (b):*

© The Institute of Chartered Accountants of India

	Provided further that in respect of warehoused goods which remain unsold, the value or the proportionate value, as the case may be, of such goods shall be determined in accordance with the provisions of sub-section (8). *Explanation.- For the purposes of this sub-section, the expression "transaction value", in relation to warehoused goods, means the amount paid or payable as consideration for the sale of such goods.*
Section 3(11) of the Customs Tariff Act, 1975	*The duty or tax or cess, as the case may be, chargeable under this section shall be in addition to any other duty or tax or cess, as the case may be, imposed under this Act or under any other law for the time being in force.*
Section 14A of the IGST Act	***Special provision for specified actionable claims supplied by a person located outside taxable territory.***
(1)	*A supplier of online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017, not located in the taxable territory, shall in respect of the supply of online money gaming by him to a person in the taxable territory, be liable to pay integrated tax on such supply.*
(2)	*For the purposes of complying with provisions of sub-section (1), the supplier of online money gaming shall obtain a single registration under the Simplified Registration Scheme referred to in sub-section (2) of section 14 of this Act:* *Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay the integrated tax on behalf of the supplier:* *Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he shall appoint a person in the taxable*

© The Institute of Chartered Accountants of India

	territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.
(3)	*In case of failure to comply with provisions of sub-section (1) or sub-section (2) by the supplier of the online money gaming or a person appointed by such supplier or both, notwithstanding anything contained in section 69A of the Information Technology Act, 2000, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier shall be liable to be blocked for access by the public in such manner as specified in the said Act.]*



ANALYSIS

(i) IGST on imported goods in addition to duty of customs [Section 7(2) read with section 5]

Import of goods means bringing goods in India [*See definition under the heading 'Relevant Definitions'*] from a place outside India [Section 2(10)]. Supply of goods imported into the territory of India till they cross the customs frontiers of India is deemed to be an inter-State supply.

IGST on goods imported into India is levied and collected in accordance with the provisions of section 3 of the Customs Tariff Act, 1975 [Proviso to section 5(1)]. Thus, though goods imported into India are leviable to IGST under the IGST Act, machinery of the customs law is used to levy and collect the same.

However, in case of intangible goods, it may not be possible to levy and collect IGST on imports in said manner, as the goods may not be physically crossing customs frontiers. Resultantly, the Government is empowered to notify certain goods for whom proviso to section 5(1) may not be applicable for levy and collection of IGST and in whose case, IGST shall be levied and collected in the manner specified in section 5(1) only. Supply of online money

© The Institute of Chartered Accountants of India

gaming has been notified for the said purpose[2]. This implies that import of specified actionable claim of online money gaming will be taxed under IGST as import of goods without applicability of customs duty.

The place of supply of goods, imported into India is the location of the importer [Section 11]. Thus, if an importer say is located in Rajasthan, the State tax component of the IGST accrues to the State of Rajasthan.

IGST on imported goods is levied in addition to other customs duties levied on the imported goods but the same is not customs duty. In addition, GST Compensation Cess, may also be leviable on import of certain luxury and de-merit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017.



Accordingly, goods imported into India are, in addition to the applicable customs duties, liable to IGST at such rate as is leviable under the IGST Act on a like article on its supply in India.

The bill of entry filed for import of goods now looks like this, with columns for customs duty, additional duty, and IGST:

[2] *vide Notification No. 03/2023 IT dated 29.09.2023*

© The Institute of Chartered Accountants of India

Bill of Entry For Home Consumption *[Refer Bill of Entry Regulations 1976]* Licence No.

Port Code	S = Sea A= Air L = Land	Prior Entry Stamp	Import Dept. S. No. and Date	Customs House Agent Code	Importer Code(IEC/ GSTIN/PAN etc as applicable)	Importer's Name and Address

Vessel's Name	Rotation No. Date	Line Number	Port of Shipment	Country of Origin and Code	Country of Consignment (if different) and Code	Bill of Lading Date

PACKAGES GOODS			QUANTITY				CUSTOMS DUTY				ADDITIONAL DUTY					IGST							
No. and Description	Marks and Numbers	Serial No.	Unit Code	Weight/ Volume /Number etc.	Description ---------- - R.I.T.C. No (Give details of each class separately)	Customs Tariff heading ---------- - Exemption Notification No. and year	Nature of duty code	Assessable Value under Section 14 Customs Act, 1962 (Rs.)	RATE Basic --------- Auxiliary (Rs.)	AMOUNT Basic ---- Auxiliary (Rs.)	C.E.T. Heading ---- Exemption Notification No. and year	Value under Section 3 Customs Tariff Act, 1975 (Rs.)	Rate	SAD	Total Additional Duty	GST Code	IGST Rate	Exemption Notification for claiming exemption from IGST	IGST amount (Rs.)	GST Compensation Cess Rate	Exemption Notification for claiming exemption from GST Compensation Cess	GST Compensation Cess Amount	TOTAL UTY
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)	(17)	(18)	(19)	(20)	(21)	(22)	(23)	(24)

Gross Weight TOTAL NUMER OF PACKAGES (IN WORDS).....
..... Import Clerk

TOTAL AMOUNT OF DUTY (IN WORDS)
RUPEES..... TOTAL.....
(By pin-point typewriter)

(ii) Point when IGST is levied on imported goods [Proviso to section 5(1)]

IGST on goods imported into India is levied and collected at the point when duties of customs are levied on the said goods under the Customs Act, 1962. Customs duty is leviable when importation of goods gets complete, i.e. when the goods become part of the mass of goods within the country; the taxable event being reached at the time when the goods reach the customs barriers and bill of entry for home consumption is filed. Thus, the point of levy and collection of IGST is the point when the bill of entry for home consumption is filed.

(iii) Taxable value of imported goods for levying IGST [Section 3(8) of the Customs Tariff Act, 1975]

The value of the goods for the purpose of levying IGST is the assessable value of the imported goods determined under section 14 of the Customs Act, 1962 plus customs duty levied under that Act and any other sum chargeable on

© The Institute of Chartered Accountants of India

the said goods under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess (wherever applicable).

Wherever the goods are also leviable to GST Compensation Cess, the same is collected on the value taken for levying IGST. In other words, IGST paid shall not be added to the value for the purpose of calculating GST Compensation Cess. In cases where imported goods are liable to Anti-Dumping Duty or Safeguard Duty, value for calculation of IGST as well as GST Compensation Cess also includes Anti-Dumping Duty and Safeguard duty *[Guidance Note for Importers and Exporters issued by DGFT after introduction of GST]*.

Value for levying IGST on imported goods	**=**	**Value determined under section 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess**

[For examples/illustrations showing calculation of IGST chargeable on imported goods, Chapters 2 & 4 of Module 4 on Customs Laws may be referred to.]

(iv) Applicability of IGST on goods supplied while being deposited in a customs bonded warehouse [Section 3(8A) of the Customs Tariff Act, 1975]

The Customs Act, 1962 permits goods that have entered India to be deposited in a bonded warehouse on filing 'into-bond' bill of entry, without payment of duty. The importer is at liberty to transfer the ownership of such goods to another person while the goods remain deposited in the warehouse.

The "transfer/sale of goods while being deposited in a customs bonded warehouse" is a common trade practice whereby the importer files an into-bond bill of entry and stores the goods in a customs bonded warehouse and thereafter, supplies such goods to another person who then files an ex-bond bill of entry for clearing the said goods from the customs bonded warehouse for home consumption.

© The Institute of Chartered Accountants of India

However, supply of warehoused goods to any person before clearance for home consumption is neither a supply of goods nor a supply of services in terms of paragraph 8(a) of Schedule III to the CGST Act. Here, warehoused goods have the same meaning as assigned to it in the Customs Act, 1962.

Further, value of such activities or transactions as may be prescribed in respect of in-bond sales as specified in Schedule III is included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43 of CGST Rules [Explanation to section 17(3) of the CGST Act].

GST is not leviable when goods deposited in customs bonded warehouse are sold before clearance; the same is leviable when ex-bond bill of entry is filed for clearing such warehoused goods for home consumption.

It is to be noted that the basic customs duty paid on the warehoused goods at the stage of ex-bonding is calculated on the value determined under section 14 of the Customs Act, 1962 at the time of filing of the into-bond bill of entry.

However, value of imported goods for levying IGST in case of supply of warehoused goods is determined as under:

Value for levying IGST in case of supply of warehoused goods	**=**	**(a)**	**Transaction value (Sale value)**
			OR
		(b)	**Value determined at the time of filing into-bond bill of entry under section 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess**
			WHICHEVER IS HIGHER

If goods are sold more than once while being deposited in the warehouse, the last transaction value is taken as the transaction value for the purpose of determining the value for levying IGST in the manner given above.

© The Institute of Chartered Accountants of India

If only a part of the goods are sold, the two values that are to be compared are – (i) transaction value of the goods sold and (ii) proportionate value (of the goods sold) determined at the time of filing into-bond bill of entry under section 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess.

The remaining goods (which are not sold) are assessed on the value determined under section 14 of the Customs Act plus basic customs duty and any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess.



(v) Taxability of High Sea Sale

'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the high sea sale of the goods, the customs declarations, i.e. bill of entry etc. is filed by the person who buys the goods from the original importer during the said sale.

However, supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption (high sea sale) is neither treated as supply of goods nor supply of services in terms of paragraph 8(b) of Schedule III to the CGST Act.

GST is not leviable on high sea sales. IGST is leviable only when the goods are cleared from customs for home consumption.

© The Institute of Chartered Accountants of India

Further, value of such high sea sales is not included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43 of CGST Rules [Explanation to section 17(3) of the CGST Act].

As per section 14 of the Customs Act, 1962, the value for the purpose of charging customs duty on imported goods is the value at the time of importation, i.e. at the time of filing of the bill of entry.

Further, IGST on imported goods is also levied at the time of filing of bill of entry. Therefore, in case of high sea sales, the assessable value of imported goods for levying customs duty and IGST is determined on the basis of the price paid by the last high sea sales buyer who files the bill of entry for home consumption.

Circular No. 33/2017 Cus dated 01.08.2017 has clarified that the importer (last buyer in the chain) would be required to furnish the entire chain of documents, such as original invoice, high seas sales contract, details of service charges/commission paid etc. to establish a link between the first contracted price of the goods and the last transaction.

(vi) Third country shipments

Third country shipments or triangular trade is a common practice in international trade whereby goods move from one country to another without touching India; only invoicing is done by the registered person in India.

For example, 'A', a registered person in India, receives an order to supply goods to 'B' in USA. 'A', finds a supplier 'C' in Singapore and asks him to supply goods to 'B' in USA. Two invoices are raised here; one by 'A', the registered person in India, on 'B' in USA and the other by 'C' in Singapore on 'A' in India. The point to be noted here is that goods do not touch Indian shores; they are shipped by 'C' from Singapore to 'B' in USA.

Paragraph 7 of the Schedule III to CGST Act provides that supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India (third country shipments) is treated neither as a supply of goods nor a supply of services. Thus, there is

© The Institute of Chartered Accountants of India

no GST liability on such sales. Further, value of such third country shipments is not included in the value of exempt supply for the purpose of reversal of ITC under rules 42 and 43 of CGST Rules [Explanation to section 17(3) of the CGST Act].

(vii) Taxability of goods imported by SEZ

Goods imported by a unit or a developer in the Special Economic Zone (SEZ) for authorised operations are exempted from the whole of IGST leviable under section 3(7) of the Customs Tariff Act, 1975 vide *Notification No. 64/2017 Cus dated 05.07.2017*.

(viii) Taxability of goods imported by EOU

Goods imported by Export Oriented Undertaking (EOU) are leviable to customs duty. Import of goods by 100% EOU's are governed by *Notification No. 52/2003 Cus* as amended. EOUs are allowed duty free import of goods (exempt from Customs duties, IGST & GST Compensation Cess) under the said notifications. However, exemption from IGST will be subject to fulfilment of specified conditions.

(ix) Import as baggage

Passenger baggage is exempted from IGST, GST Compensation Cess and social welfare surcharge. The basic customs duty at the rate of 35% is leviable on the value which is in excess of the duty-free allowances provided under the Baggage Rules, 2026.

(x) Taxability of supply of online money gaming by a person located outside the taxable territory to a person in India [Section 14A]

- Online money gaming, being a 'specified actionable claim' [section 2(102A)], is excluded from the scope of paragraph 6 of Schedule III, which considers actionable claims, other than specified actionable claims, as neither a supply of goods nor a supply of services. Accordingly, online money gaming is treated as a supply under section 7 and is taxable under GST.

© The Institute of Chartered Accountants of India

- Where a person located in India receives online money gaming from a **person located outside India**, the supplier is liable to pay IGST on such supply.
- For this purpose, said supplier will take a single registration under a Simplified Registration Scheme[3]. Further, they need to furnish return in Form GSTR-5A by 20th day of the month succeeding the calendar month/part thereof[4].
- If the overseas supplier has a representative in India for any purpose, such person (representative in India) shall get registered and pay IGST on behalf of the supplier.
- In case the overseas supplier neither has a physical presence nor has any representative for any purpose in India, it may appoint a person in India for the purpose of paying IGST.
- In case of failure to comply with the above provisions by the supplier, any information generated, transmitted, received or hosted in any computer resource used for supply of online money gaming by such supplier will be blocked for access by the public.



[3] Said Simplified Registration Scheme has been provided in rule 14 of the CGST Rules, 2017. Rule 14 of the CGST Rules has been discussed in detail in Chapter 8 – Registration in Module 2 of this Study Material.

[4] Detailed provisions are contained in rule 64 of the CGST Rules which has been discussed in detail in Chapter 13 – Returns in Module 2 of this Study Material.

© The Institute of Chartered Accountants of India

B. IMPORT OF SERVICES



STATUTORY PROVISIONS

Activities to be treated as supply even if made without consideration	
Paragraph (4) of Schedule I to the CGST Act	*Import of services by a person from a related person or from any of his other establishments outside India, in the course or furtherance of business.*
Levy of IGST on importation of services	
Section 5(1) of the IGST Act	*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, on the value determined under section 15 of the Central Goods and Services Tax Act and at such rates, not exceeding forty per cent., as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person.*
Reverse charge	
Section 5(3) of the IGST Act	*The Government may, on the recommendations of the Council, by notification, specify categories of supply of goods or services or both, the tax on which shall be paid on reverse charge basis by the recipient of such goods or services or both and all the provisions of this Act shall apply to such recipient as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.*

© The Institute of Chartered Accountants of India

Services provided through electronic commerce operator (ECO)	
Section 5(5) of the IGST Act	*The Government may, on the recommendations of the Council, by notification, specify categories of services, the tax on inter-State supplies of which shall be paid by the electronic commerce operator if such services are supplied through it, and all the provisions of this Act shall apply to such electronic commerce operator as if he is the supplier liable for paying the tax in relation to the supply of such services:* *Provided that where an electronic commerce operator does not have a physical presence in the taxable territory, any person representing such electronic commerce operator for any purpose in the taxable territory shall be liable to pay tax:* *Provided further that where an electronic commerce operator does not have a physical presence in the taxable territory and also does not have a representative in the said territory, such electronic commerce operator shall appoint a person in the taxable territory for the purpose of paying tax and such person shall be liable to pay tax.*
Inter-State supply	
Section 7(4) of the IGST Act	*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.*
Supplies in territorial waters	
Section 9 of the IGST Act	*Notwithstanding anything contained in this Act,––* *(a) where the location of the supplier is in the territorial waters, the location of such supplier; or* *(b) where the place of supply is in the territorial waters, the place of supply,* *shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.*

© The Institute of Chartered Accountants of India

Place of supply	
Section 13 of the IGST Act	*Place of supply of services where location of supplier or location of recipient is outside India.* *[Refer Chapter 3: Place of Supply in Module 1 for discussion on these provisions]*
Special provision for payment of tax by a supplier of online information and database access or retrieval (OIDAR) services	
Section 14(1) of the IGST Act	*On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services:* *Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:—* *(a) the invoice or customer's bill or receipt issued or made available by such intermediary taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;* *(b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge which is that the intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;*

© The Institute of Chartered Accountants of India

	(c) the intermediary involved in the supply does not authorise delivery; and *(d) the general terms and conditions of the supply are not set by the intermediary involved in the supply but by the supplier of services.*
Section 14(2) of the IGST Act	*The supplier of online information and database access or retrieval services referred to in sub-section (1) shall, for payment of integrated tax, take a single registration under the Simplified Registration Scheme to be notified by the Government:* *Provided that any person located in the taxable territory representing such supplier for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:* *Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he may appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.*



ANALYSIS

(i) Taxability of import of service [Section 7 of the CGST Act read with para 4 of Schedule I to the CGST Act]

To be taxable, the transaction of import of service needs to be a "supply". While the main definition of "supply" under section 7 of the CGST Act covers supply of goods or services for a consideration in the course or furtherance of business, clause (b) thereof includes services imported for a consideration even if the import is not in the course or furtherance of business. Supply under the IGST Act has been defined to mean the same as the supply under section 7 of the CGST Act.

Significance of consideration and business test in taxability of importation of services

As per section 7(1)(b) of the CGST Act, import of services for consideration whether or not in the course or furtherance of business, is considered as a

© The Institute of Chartered Accountants of India

supply. Thus, in general, import of services without consideration is not considered as supply. However, business test is not required to be fulfilled for treating import of service, made for a consideration, as supply.

Furthermore, in view of the provisions contained in Schedule I to the CGST Act, the import of services by a person from a related person or from his establishment located outside India, in the course or furtherance of business is treated as supply even if it is made without any consideration.

A conjoint reading of aforesaid provisions with the provisions of section 14 *(discussed in the subsequent paras of this Chapter)*, import of free services from Google and Facebook by all of us, without any consideration, is not considered as supply. Import (downloading) of a song for consideration for personal use would be a supply of service, even though the same is not in the course or furtherance of business. Import of some services by an Indian branch from their parent company outside India, in the course or furtherance of business, even if without consideration, will be a supply.

Thus, import of services can be considered as supply based on whether there is consideration or not and whether the service is supplied in the course or furtherance of business. The same has been explained in the table below:

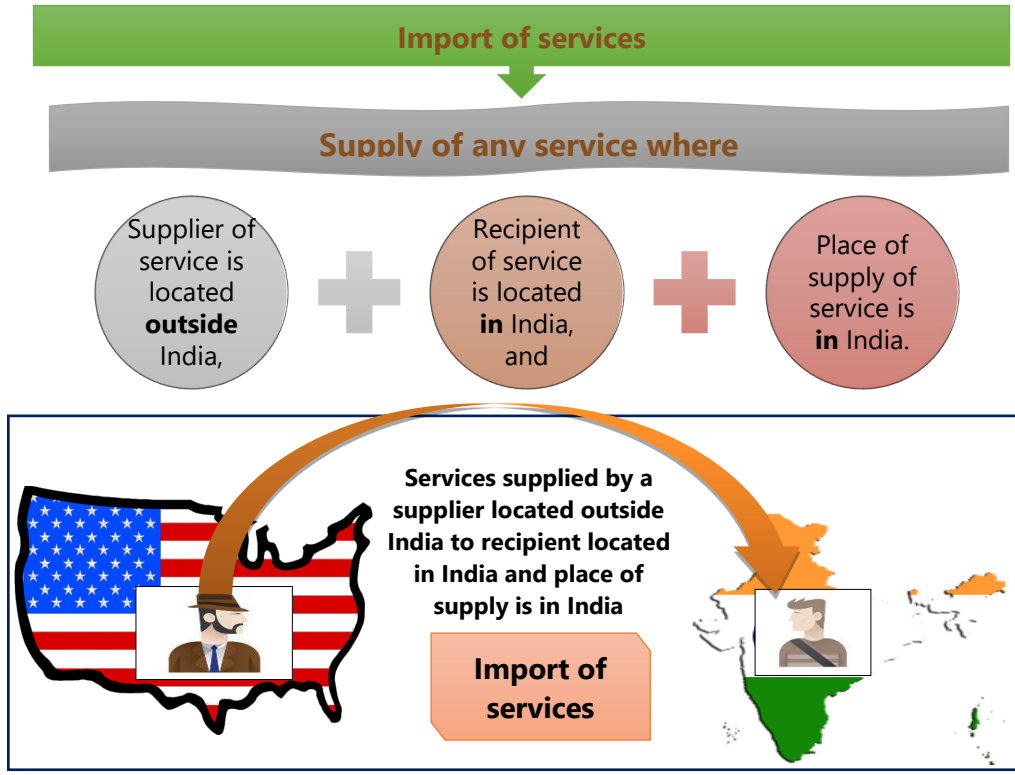
Nature of Service	Consideration	Business Test
Import of services	Necessarily Required	Not required
Import of services by a person from a related person or from his establishment outside India	Not required	Necessarily Required

Import of service into the territory of India is treated as inter-State supply in terms of section 7(4) and thus, is liable to IGST under section 5.

(ii) Meaning of import of service [Section 2(11)]

IGST Act defines import of services as supply of any service where the supplier is located outside India, the recipient is located in India, and the place of supply of service is in India.

© The Institute of Chartered Accountants of India



The concept discussed above has been explained by way of following examples:

Location of Supplier	Location of Recipient	Place of Supply	Whether qualifies as import of services?
 London	 Delhi	Delhi	Yes
 London	 Paris	Paris	No
 Delhi	 Paris	Delhi	No

© The Institute of Chartered Accountants of India

Thus, only where the location of supplier is outside India but the location of recipient and the place of supply is in India, the transaction shall qualify as import of services.

'India' is the sum of the territory of its States and also includes its territorial waters and Exclusive Economic Zone. This is an extended definition of 'India' over and above the area denoted by the expression in Article 1 of the Constitution and is enabled by the rights of nations under the United Nations Convention on the Law of the Seas. The definition enables taxation of services received from outside India into the area that is outside India as per the definition in the Constitution but within the 200 nautical miles limit of the Exclusive Economic Zone [Section 2(56) of the CGST Act].

The place of supply is to be determined in terms of section 13 of the IGST Act. Section 13 provides for determination of place of supply in cases wherein the location of the supplier of services or the recipient of services is outside India. If the place of supply of service is in the territorial waters, the place of supply is deemed to be in the coastal State/Union Territory where the nearest point of the appropriate baseline is located [Section 9]. Thus, the State tax component of the IGST accrues to such coastal State.

In addition to the place of supply being in India and the provider of service being located outside India, the location of the recipient of service must be in India for the transaction to qualify as import of service. This means that the service should be received at the recipient's place of business or fixed establishment in India. In the absence of such a place, the usual place of residence of the recipient is taken to be his location[5].

(iii) Person liable to pay tax on importation of service

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

[5] *Provisions relating to place of supply, location of supplier of service, location of recipient of service, fixed establishment, place of business etc. have been discussed in detail in Chapter 3 – Place of Supply in Module 1 of this Study Material.*

© The Institute of Chartered Accountants of India

- In case of services supplied by a person located outside India by way of transportation of goods by a vessel from a place outside India upto the custom station of clearance in India, IGST is to be paid by the importer located in India. In other words, in case of foreign shipping lines providing inbound transportation of goods (from a place outside India upto the customs station of clearance in India), IGST is to be paid by the importer *[Section 5(3) of the IGST Act read with Entry 10 of Notification No. 10/2017 IGST (R) dated 28.06.2017]*[6].

  However, Supreme Court in case of *Union of India vs. Mohit Minerals Pvt. Ltd. 2022 (61) G.S.T.L. 257* has held that since the Indian importer is liable to pay IGST on the 'composite supply', comprising of supply of goods and supply of services of transportation, insurance, etc. in a CIF contract, a separate levy on the Indian importer for the 'supply of services' by the shipping line would be in violation of section 8 of the CGST Act, 2017 and would amount to double taxation. Hence, there cannot be a separate levy of IGST on the component of ocean freight paid by the foreign exporter to the foreign shipping line in the CIF contract.

- In case of importation of OIDAR services by a non-taxable online recipient, supplier of OIDAR services is liable to pay IGST *[Discussed in detail in subsequent paragraphs]*.

- In case of importation of notified services through ECO, ECO is liable to pay IGST *[Discussed in detail in subsequent paragraphs]*.

(iv) Exemptions related to import of service

Exemptions from IGST in context of cross border transactions relating to services are discussed in Chapter 4: Exemptions from GST in Module 1 of this Study Material. The relevant exemptions may be referred to from that Chapter.

(v) Importation of OIDAR services [Section 14]

Online Information Database Access and Retrieval services (OIDAR) is a category of services provided through the medium of internet and received by the recipient online; such services cannot be rendered in the absence of information technology *[See definition]*.

---

[6] *With effect from 01.10.2023, Entry 10 of Notification No. 10/2017 has been omitted vide Notification No. 13/2023 IT (R) dated 26.09.2023, consequent to SC judgment in case of Mohit Minerals.*

© The Institute of Chartered Accountants of India



(1) Download of an e-book online for a payment would amount to receipt of OIDAR services by the consumer.

❑ Taxability of OIDAR services imported by business entity and non-taxable online recipient

Importation of OIDAR services by a business entity

For any supply to be taxable under GST, the place of supply in respect of the subject supply should be in India. In case, both the supplier of OIDAR service and the recipient of such service are in India, the place of supply would be the location of the recipient of service, i.e. it would be governed by the default provision of place of supply and would be liable to GST under forward charge.

However, OIDAR services can also be provided online even from a remote location outside the taxable territory. In such cases also - where the supplier of OIDAR service is located outside India and the recipient is located in India - the place of supply[7] would be India and the transaction would be amenable to tax under reverse charge if the recipient is a business entity (excluding Government, Governmental authority or Local authority). Thus, in such cases the recipient located in India, will be liable to pay IGST under reverse charge and undertake necessary compliances.

Importation of OIDAR services by non-taxable online recipient

Now what happens if the supplier is located outside India and the recipient in India is an individual consumer! In such cases also, the place of supply would be India and the transaction would be amenable to levy of GST, but the problem would be, how such tax would be collected. It would be impractical to ask the individual in India to register and undertake the necessary compliances under GST for a one-off purchase on the internet. However, if a similar service is provided by an Indian service provider, from within the taxable territory, to individual consumer in India, the same would be taxable under forward charge. Therefore, overseas suppliers of such services would have an unfair tax advantage should the services provided by them be left out of the tax net.

---

[7] *Provisions relating to place of supply for OIDAR services under section 14 of the IGST Act have been discussed in detail in Chapter 3: Place of Supply in Module 1 of this Study Material.*

© The Institute of Chartered Accountants of India

For such cases, the IGST Act provides that on supply of OIDAR services by any person from a location outside India to an unregistered recipient in India [i.e. to a non-taxable online recipient *(See definition)*], the supplier who is outside India is liable to pay IGST on the supply.

Provision or facilitation of OIDAR services by intermediary located outside India: Now if an intermediary *(See definition)* located outside India arranges or facilitates supply of such service to a non-taxable online recipient in India, the intermediary would be treated as the supplier of the said service who must get registered in India and pay IGST on the supply.

However, if the intermediary has nothing to do with the payment or authorising the delivery of the service or setting of the terms and conditions of the supply, and if his invoice clearly identifies the service and its supplier, the responsibility for registration remains with the supplier.

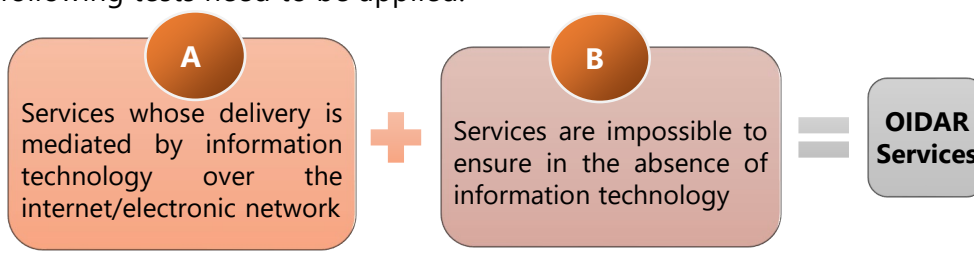
Provisions enabling supplier of OIDAR services located outside India to comply with the responsibilities entrusted under GST laws: The supplier (or intermediary) of OIDAR services shall, for payment of IGST, take a single registration under the Simplified Registration Scheme.

If the overseas supplier has a representative in India for any purpose, such person (representative in India) shall get registered and pay IGST on behalf of the supplier.

In case the overseas supplier neither has a physical presence nor has any representative for any purpose in India, it may appoint a person in India for the purpose of paying IGST.

❑ Examples of what could be or could not be OIDAR services

In order to determine whether a particular service is an OIDAR service, the following tests need to be applied:



© The Institute of Chartered Accountants of India

Thus, a service qualifies as OIDAR services if above two conditions have been satisfied. The inclusive part of the definition is only indicative and not exhaustive.

Service	Whether condition 'A' is fulfilled?	Whether condition 'B' is fulfilled?	Whether it is OIDAR service or not?
PDF document automatically emailed by provider' s system	YES	YES	YES
PDF document automatically downloaded from site	YES	YES	YES
Stock photographs available for automatic download	YES	YES	YES
Online course consisting of pre-recorded videos and downloadable PDFs	YES	YES	YES

Indicative List of OIDAR Services

Website supply, web-hosting, distance maintenance of programmes and equipment

- Website hosting and webpage hosting
- Automated, online and distance maintenance of programmes
- Remote systems administration
- Online data warehousing where specific data is stored and retrieved electronically
- Online supply of on-demand disc space

© The Institute of Chartered Accountants of India

Supply of software and updating thereof

- Accessing or downloading software (including procurement/ accountancy programmes and anti-virus software) plus updates
- Software to block banner adverts, otherwise known as Banner blockers
- Download drivers, such as software that interfaces computers with peripheral equipment (such as printers)
- Online automated installation of filters on websites
- Online automated installation of firewalls

Supply of images, text and information and making available of databases

- Accessing or downloading desktop themes
- Accessing or downloading photographic or pictorial images or screensavers
- The digitised content of books and other electronic publications
- Subscription to online newspapers and journals
- Weblogs and website statistics
- Online news, traffic information and weather reports
- Online information generated automatically by software from specific data input by the customer, such as legal and financial data, (in particular, data such as continually updated stock market data, in real time)
- The provision of advertising space including banner ads on a website/web page
- Use of search engines and internet directories

Supply of music, films and games, including games of chance and gambling games, and of political, cultural, artistic, sporting, scientific and entertainment broadcasts and events

- Accessing or downloading of music on to computers and mobile phones

© The Institute of Chartered Accountants of India

- Accessing or downloading of jingles, excerpts, ringtones, or other sounds
- Accessing or downloading of films
- Downloading of games on to computers and mobile phones
- Accessing automated online games which are dependent on the internet or other similar electronic networks, where players are geographically remote from one another.

(vi) Services provided through ECO located outside India [Section 5(5)]

An ECO is required to pay IGST on notified services if these are supplied through its portal[8].

If the ECO does not have a physical presence in India but there is a person in India representing such overseas supplier in India for any purpose, such person (representative in India) is liable to pay IGST. However, if the ECO does not have a physical presence in India and does not have a representative here either, it is required to appoint a person in India for the purpose of paying tax on such notified services.

C. REGISTRATION AND ITC IN CASE OF IMPORT OF GOODS AND SERVICES

- **Registration**

Registration for importer of goods

Reverse charge provisions do not cover importers of goods. Importers are also not listed among the categories of persons in section 24 of the CGST Act for whom registration is compulsory. It may be noted here that it is mandatory for the importers who are registered under GST to quote GSTIN in the bill of entry for the purpose of payment of IGST on import of goods as also for availing ITC of such IGST.

Registration in case of import of exempted goods

In terms of section 23 of the CGST Act, persons engaged exclusively in the supply of goods (import and export) that is either not liable to tax

[8] *Provisions relating to Electronic Commerce Operator are discussed in detail in Chapter 12: Electronic Commerce Transactions in Module 2 of this Study Material.*

© The Institute of Chartered Accountants of India

or is wholly exempt from tax under the CGST or IGST Acts are not required to obtain registration. In such cases, PAN (which is authorized as IEC by DGFT) of the importer and exporter would suffice *[Instruction No. 10/2017 Cus dated 06.07.2017]*.

Registration for importer of services

Section 24(iii) of the CGST Act mandates compulsory registration for persons, without any benefit of the threshold limit for registration, who are required to pay tax under reverse charge. Accordingly, importer of services who are required to pay IGST under reverse charge have to obtain compulsory registration under GST law so as to be able to pay tax on imported services under reverse charge.

Thus, recipient of imported services other than non-taxable online recipient must register compulsorily.

❑ Input Tax Credit

ITC of IGST paid on imported goods

The definition of "input tax" in relation to a registered person means *inter alia* integrated tax and includes IGST charged on import of goods [Section 2(62) of the CGST Act (*See definition)*]. Thus, ITC of IGST paid at the time of import is available to the importer subject to the conditions and restrictions provided under sections 16 and 17 of the CGST Act for availing such credit. Such ITC can be utilized by the registered person for payment of taxes on his outward supplies. GST Compensation Cess paid on import of goods is also available as ITC.

IGST and GST Compensation Cess paid at the time of import of goods thus, in essence, are a pass through to this extent. The ITC of GST Compensation Cess, however, can only be used for payment of GST Compensation Cess. Furthermore, ITC of basic customs duty and social welfare surcharge paid on the imported goods is not available.

ITC of IGST paid on importation of services

The definition of "input tax" in relation to a registered person means *inter alia* integrated tax and includes tax payable under reverse charge under sub-sections (3) and (4) of section 5 of the IGST Act [Section 2(62)

© The Institute of Chartered Accountants of India

of the CGST Act (*See definition)*]. Therefore, IGST paid on importation of services is available as ITC at par with IGST paid on any other supply subject to conditions and restrictions prescribed under sections 16 and 17 of the CGST Act for availing such credit.

4. EXPORTS

One of the fundamental principle to make exports competitive in the international market is that taxes should not be exported. Hence, export to destinations outside India as well as supplies to SEZ have been 'zero-rated', i.e. the goods or services exported are relieved of GST levied upon them either at the input stage or at the final product stage by way of refund of taxes paid. Thus, it can be seen that supply to SEZ unit/developer is treated at par with physical exports.

Supplies made for export through merchant exporters are taxed at 0.1% with ITC benefit. Supplies of goods from Domestic Tariff Area (DTA) to EOU/ Electronic Hardware Technology Park (EHTP) Unit/ Software Technology Park (STP) Unit/ Bio-Technology Parks (BTP) Unit are considered as 'deemed exports' and are allowed some of the benefits that actual export enjoy.

	STATUTORY PROVISIONS
	Inter-State supply
Section 7(5) of the 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;* *(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or* *(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,* *shall be treated to be a supply of goods or services or both in the course of inter-State trade or commerce.*

© The Institute of Chartered Accountants of India

Establishments of distinct persons	
Explanation 1 to section 8 of the IGST Act	*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.*
Explanation 2 to section 8 of the IGST Act	*A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.*
Place of supply	
Section 11 of the IGST Act	*Place of supply of goods imported into, or exported from India* *[Refer Chapter 3: Place of Supply in Module 1 for discussion on these provisions]*
Section 13 of the IGST Act	*Place of supply of services where location of supplier or location of recipient is outside India* *[Refer Chapter 3: Place of Supply in Module 1 for discussion on these provisions]*
Zero Rated Supply	
Section 16 of the IGST Act	*(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; or* *(b) supply of goods or services or both for authorised operations to a Special Economic Zone developer or a Special Economic Zone unit.* *(2) Subject to the provisions of sub-section (5) of section 17 of the Central Goods and Services Tax Act, credit of input tax may*

© The Institute of Chartered Accountants of India

	be availed for making zero-rated supplies, notwithstanding that such supply may be an exempt supply. *(3) A registered person making zero rated supply shall be eligible to claim refund of unutilised input tax credit on supply of goods or services or both, without payment of integrated tax, under bond or Letter of Undertaking, in accordance with the provisions of section 54 of the CGST Act or the rules made thereunder, subject to such conditions, safeguards and procedure as may be prescribed.* *Provided that the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest under section 50 of CGST Act within 30 days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed.* *(4) The Government may, on the recommendation of the Council, and subject to such conditions, safeguards and procedures, by notification, specify––* *(i) a class of persons who may make zero rated supply on payment of integrated tax and claim refund of the tax so paid in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder;* *(ii) a class of goods or services or both, on zero rated supply of which, the supplier may pay integrated tax and claim the refund of tax so paid, in accordance with the provisions of section 54 of the Central Goods and Services Tax Act or the rules made thereunder.* *(5) Notwithstanding anything contained in sub-sections (3) and (4), no refund of unutilised input tax credit on account of zero rated supply of goods or of integrated tax paid on account of zero rated supply of goods shall be allowed where such zero rated supply of goods are subjected to export duty.*

© The Institute of Chartered Accountants of India

Deemed Exports	
Section 147 of the CGST Act	*The Government may, on the recommendations of the Council, notify certain supplies of goods as deemed exports, where goods supplied do not leave India, and payment for such supplies is received either in Indian rupees or in convertible foreign exchange, if such goods are manufactured in India.*



ANALYSIS

A supply of goods and/or services whose place of supply is outside India and is made by a supplier in India is treated as inter-State supply under the IGST Act. Further, supply of goods and/or services to a SEZ unit/developer or supply of goods and/or services by a SEZ unit/developer are also treated as inter-State supply under the IGST Act [Section 7(5)]. The place of supply of goods and services in cross border transactions is determined in accordance with the provisions of sections 11 and 13 respectively.

Inter-State supplies of goods and/or services are liable to IGST in terms of section 5. Hence, on a strict interpretation of section 5, IGST is payable on such supplies where the supplier is located in India and the place of supply is outside India. However, at the same time it can be argued that since IGST Act extends to whole of India, IGST cannot be levied on a supply whose place of supply is outside India. Also, fundamentally GST is a consumption tax and thus, tax cannot be levied if goods and/or services are consumed outside India.

An inter-State supply under section 7(5)(a) cannot automatically be construed as export of goods and/or services; only when the conditions stipulated in the definitions of export of goods and export of services are fulfilled, will such inter-State supplies be considered as exports and, in turn, be zero rated.

A. ZERO RATED SUPPLY [SECTION 16]

(i) What is Zero Rating?

By zero rating it is meant that the entire value chain of the supply is exempt from tax. This means that in case of zero rating, not only is the outward exempt from payment of tax but there is also no bar on taking/availing credit of taxes paid on the input side for making/providing the outward supply.

© The Institute of Chartered Accountants of India

Under GST Law, exports and supplies to SEZ units/developers are zero rated. Supply to SEZ units/developers for authorised operations is zero-rated in the same manner as is applicable for the physical exports.

(ii) What is the need of zero rating?

As per section 2(47) of the CGST Act, a supply is said to be exempt, when it attracts nil rate of duty or is specifically exempted by a notification or kept out of the purview of tax (i.e. a non-GST supply). But if a goods or service is exempted from payment of tax, it cannot be said that it is zero rated. The reason is not hard to find. The inputs and input services which go into the making of the goods or provision of service have already suffered tax and only the final product is exempted. Moreover, when the output is exempted, tax laws do not allow availment/utilisation of credit on the inputs and input services used for supply of the exempted output. Thus, in a true sense the entire supply is not zero rated. Though the output suffers no tax, the inputs and input services have suffered tax and since availment of tax credit on input side is not permitted, it becomes a cost for the supplier. The concept of zero rating of supplies aims to correct this anomaly

(iii) How does zero rating work?

As already seen, the concept of zero rating of outward supplies requires the outward supplies as well as the inputs or input services used in supplying the outward supplies to be free of GST. This is done by employing the following means:

a) The outward supplies which are zero rated can be made without payment of integrated tax, under bond or Letter of Undertaking or notwithstanding that such zero-rated supplies are exempted, they may be supplied without payment of tax;

b) The refund of unutilized credit input tax credit on supply of goods or services or both used in supplying the zero rated supply is allowed;

Thus, a registered person making zero rated supply may supply goods and/or services under bond or Letter of Undertaking (LUT) without payment of IGST and claim refund of unutilized ITC. Further, notified class of persons may make zero-rated supply or notified class of goods or services may be exported, on payment of IGST and refund of such tax paid on goods and/or

© The Institute of Chartered Accountants of India

services supplied may be claimed. *The goods/services/suppliers that have been so notified have been given by way of Annexure to this Chapter. Same is not relevant for the examination, but has been given only for the purpose of information of the students.*

Circular No. 01/ 2017 CC dated 26.07.2017 has clarified that the provisions of section 16 relating to zero rated supply will apply to GST Compensation Cess also. Hence, (i) exporters can claim refund of GST Compensation Cess paid on goods exported by him in case of notified class of persons making zero-rated supply or export of notified class of goods or services, or (ii) GST Compensation Cess will not be charged on goods exported under bond/LUT and he will be eligible for refund of ITC of GST Compensation Cess relating to goods exported.

Refer Chapter 15: Refunds in this Module for detailed discussion on provisions relating to refunds associated with zero rated supplies.

(iv) How do zero rated and exempt supplies differ?

The difference between zero rated supplies and exempted supplies is tabulated as below:

Exempted Supplies	Zero rated supplies
Exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply.	Zero-rated supply means (i) export of goods and/or services or (ii) supply of goods and/or services for authorised operations to SEZ unit/SEZ developer.
No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed	No tax on the outward supplies; Input supplies also to be tax free (by way of refund of ITC)
Credit of input tax needs to be reversed, if taken. No ITC on the exempted supplies.	Credit of input tax may be availed for making zero-rated supplies, even if such supply is an exempt supply. ITC allowed on zero rated supplies.

© The Institute of Chartered Accountants of India

Value of exempt supplies, for apportionment of ITC, shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.	Value of zero rated supplies shall be added along with the taxable supplies for apportionment of ITC.
Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under the CGST or IGST Act shall not be liable to registration.	A person exclusively making zero rated supplies needs to register as refund of unutilized ITC or IGST paid shall have to be claimed.
A registered person supplying exempted goods and/or services shall issue, instead of a tax invoice, a bill of supply.	Normal tax invoice shall be issued.

B. EXPORT OF GOODS/SERVICES

Taxability of Export

Export of goods or services are treated as inter-State supply and zero rated. This means that even if there is full exemption for the supply, ITC is still available to the exporter. The exporter can export under Bond/LUT without payment of IGST and claim refund of ITC. The notified class of persons may make zero-rated supply or notified class of goods or services may be exported, on payment of IGST and refund of such tax paid on goods and/or services supplied may be claimed. The objective is to make Indian exports competitive in the international market.



© The Institute of Chartered Accountants of India

It may be noted that since exports are inter-State supplies, the tax associated with them will always be IGST.



(i) Physical exports [Section 2(5)]

Export of goods requires taking the goods from India to a place outside India. India is defined as extending to the limits of its maritime zone, which is 200 nautical miles from the coastal baseline. This is far beyond the normal definition of India, which only includes its territorial waters, which in turn extend 12 miles from the baseline. Given the extended meaning of India, export would require that the goods must travel beyond 200 miles from the baseline in order to qualify as having been exported.

Sending/ taking goods out of India for exhibition or on consignment basis for export promotion: *Circular No. 108/27/2019 GST dated 18.07.2019* has clarified that the activity of sending/ taking goods out of India for exhibition or on consignment basis for export promotion, except when such activity satisfy the tests laid down in Schedule I of the CGST Act, does not constitute supply as the said activity does not fall within the scope of section 7 of the CGST Act as there is no consideration at that point in time. Since such activity is not a 'supply', the same cannot be considered as "zero rated supply" as per the provisions contained in section 16 of the IGST Act.

Thus, activity of sending/ taking specified goods out of India is not a zero-rated supply. That being the case, execution of a bond or LUT, as required under section 16 of the IGST Act, is not required.

(ii) Deemed exports

Deemed exports refers to supplies of goods manufactured in India **(and not services)** which are notified as deemed exports under section 147 of the CGST Act. Such supplies do not leave India and the payment for the same is received either in Indian rupees or in convertible foreign exchange.

Following categories of supply of goods have been notified as deemed exports by the Government vide *Notification No. 48/2017 CT dated 18.10.2017:*

© The Institute of Chartered Accountants of India

(a) Supply of goods by a registered person against Advance Authorisation (AA)

If exports have already been made after availing ITC on inputs used in manufacture of such exports, the goods so supplied should be used in manufacture and supply of taxable goods (other than nil rated or fully exempted goods) and a certificate to this effect from a Chartered Accountant should be submitted to the jurisdictional Commissioner of GST or any other officer authorised by him within 6 months of such supply.

(b) Supply of capital goods by a registered person against Export Promotion Capital Goods Authorisation (EPCG)

(c) Supply of goods by a registered person to Export Oriented Unit (EOU)

(d) Supply of gold by a bank or Public sector Undertaking specified in *Notification No. 50/2017 Cus dated 30.06.2017* (as amended) against AA

"AA" means an authorisation issued by the Director General of Foreign Trade under Chapter 4 of the Foreign Trade Policy 2023 for import or domestic procurement of inputs for physical exports.

"EPCG" means an authorisation issued by the Director General of Foreign Trade under Chapter 5 of the Foreign Trade Policy 2023 for import of capital goods for physical exports.

"EOU" means an EOU or Electronic Hardware Technology Park Unit or Software Technology Park Unit or Bio-Technology Park Unit approved in accordance with the provisions of Chapter 6 of the Foreign Trade Policy, 2023.

The above have been discussed in detail in Chapter 8: Foreign Trade Policy in Module 4 of this Study Material.

Taxability of deemed exports

Deemed exports are not zero rated supplies by default, unlike the regular exports. Hence, all supplies notified as supply for deemed export are subject to levy of taxes, i.e. such supplies can be made on payment of tax and cannot be supplied under a Bond/LUT. However, the refund of tax paid on the supply regarded as deemed export is admissible to either the supplier or the

© The Institute of Chartered Accountants of India

recipient. Thus, the application for refund has to be filed by the supplier or the recipient (subject to certain conditions) of deemed export supplies, as the case may be. *[Refer Chapter 15: Refunds in this Module for detailed discussion on these provisions]*.

(iii) Merchant exports

There is no specific provision in GST law for export through third parties, commonly known as merchant exports. However, a low rate of GST of 0.1% on supplies for export through third parties has been provided by way of exemption notifications. *[This is expressed as 0.1% IGST on inter-State supplies or 0.05% CGST plus 0.05% SGST on intra-State supplies]*.

Circular No. 125/44/2019 GST dated 18.11.2019 has clarified that the exporter receiving goods at concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) will be eligible to take credit of the concessional tax so paid by him. The supplier who supplies goods at the concessional rate will be eligible for refund of ITC on account of inverted tax structure as per the provisions of section 54(3)(ii) of the CGST Act[9]. Further, a merchant exporter can:

- export under LUT/bond without payment of IGST and claim refund of unutilized ITC, or
- export on payment of IGST and claim refund of that IGST[10].

Circular No. 08/08/2017 dated 04.10.2017 has clarified that there is no provision for issuance of CT-1 Form - which enables merchant exporters to purchase goods from a manufacturer without payment of tax - under the GST regime. The transaction between a manufacturer and a merchant exporter is in the nature of supply and the same would be subject to GST.

---

[9] *Provisions relating to refund of unutilized ITC on account of inverted duty structure have been discussed in detail in Chapter 15: Refunds in this Module of the Study Material.*

[10] *Earlier, merchant exporter could export the goods only under LUT / bond and could not export on payment of IGST by virtue of restriction given in rule 96(10). However, Notification No. 20/2024 CT dated 08.10.2024 omitted sub-rule (10) of rule 96. Thus, a merchant exporter can export under LUT/bond without payment of IGST and claim refund of unutilized ITC, or export on payment of IGST and claim refund of that IGST.*

© The Institute of Chartered Accountants of India

Manufacturer exporter means a person who exports goods manufactured by him or intends to export such goods. Merchant exporter means a person engaged in trading activity and exporting or intending to export goods [As defined under Foreign Trade Policy 2023].

A registered supplier can supply goods to a merchant exporter at low rate of GST (0.1%) prescribed under *Notification Nos. 41/2017 IT(R) and 40/2017 CT(R) both dated 23.10.2017* if following conditions (specified in the said notifications) are fulfilled-

(a) the registered supplier (manufacturer) shall supply the goods to the registered recipient (merchant exporter) on a tax invoice;

(b) the registered recipient shall export the said goods within a period of 90 days from the date of issue of a tax invoice by the registered supplier;

(c) the registered recipient shall indicate the GSTIN of the registered supplier and the tax invoice number issued by the registered supplier in respect of the said goods in the shipping bill or bill of export;

(d) the registered recipient shall be registered with an Export Promotion Council;

(e) the registered recipient shall place an order on registered supplier for procuring goods at concessional rate and a copy of the same shall also be provided to the jurisdictional tax officer of the registered supplier;

(f) the registered recipient shall move the said goods from place of registered supplier –

i. directly to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported; or

ii. directly to a registered warehouse from where the said goods shall be moved to the Port, Inland Container Depot, Airport or Land Customs Station from where the said goods are to be exported;

Registered principal place of business or registered additional place of business are deemed to be a registered warehouse [*Circular No. 42/2017 Cus dated 07.11.2017*].

© The Institute of Chartered Accountants of India

(g) if the registered recipient intends to aggregate supplies from multiple registered suppliers and then export, the goods from each registered supplier shall move to a registered warehouse and after aggregation, the registered recipient shall move goods to the Port, Inland Container Deport, Airport or Land Customs Station from where they shall be exported;

(h) in case of situation referred to in condition (g), the registered recipient shall endorse receipt of goods on the tax invoice and also obtain acknowledgement of receipt of goods in the registered warehouse from the warehouse operator and the endorsed tax invoice and the acknowledgment of the warehouse operator shall be provided to the registered supplier as well as to the jurisdictional tax officer of such supplier; and

(i) after goods have been exported, the registered recipient shall provide copy of shipping bill or bill of export containing details of GSTIN and tax invoice of the registered supplier along with proof of export general manifest or export report having been filed, to the registered supplier as well as jurisdictional tax officer of such supplier.

Merchant exporters may exclude commercially sensitive information while providing copies of shipping bills to registered suppliers *[Circular No. 42/2017 Cus dated 07.11.2017]*.

Export of Services [Section 2(6)]

Supply of service qualifies to be an 'export of service' if it fulfills the following conditions:

(a) the service is supplied from India to a recipient located outside India,

(b) the place of supply of the service is outside India,

(c) the consideration for the service is received in freely convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India, and

(d) the transaction is between separate entities, i.e. not merely between two establishments of an entity

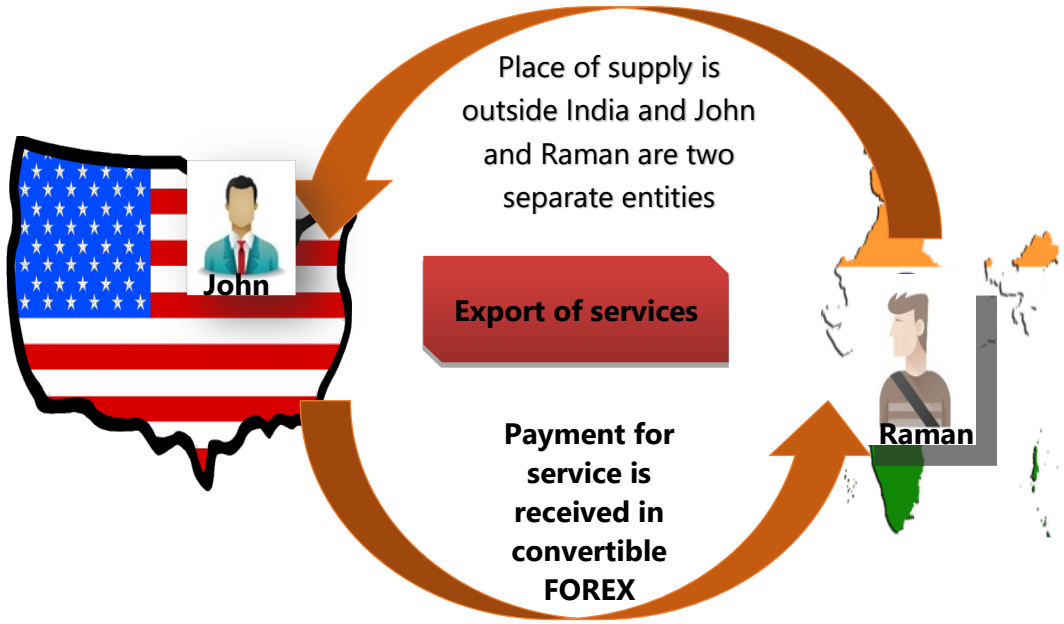
© The Institute of Chartered Accountants of India

Branch and Head Office of one taxable person are not treated as two separate entities for this purpose. In other words, provision of outbound services *inter se* Head Office and Branch is not construed as export of service. However, *Notification No. 9/2017 IT(R) dated 28.06.2017* exempts the services provided by an Indian establishment to its foreign establishment from IGST if the place of supply is outside India – *For details, refer Chapter 4: Exemptions from GST in Module 1 of this Study Material.*

Apparently, subsidiary and holding companies may not be treated as mere establishments of one entity since these are two separate legal persons (with different PAN). Thus, seemingly, provision of outbound services *inter se* subsidiary company and holding company can be construed as export of service if all other condition of export of services are fulfilled. Under service tax law, similar view was taken by the Gujarat High Court in the case of *Linde Engineering India Private Limited Other vs. Union of India [R/Special Civil Application No. 12626 of 2018 dated 16.01.2020]*. Service tax law had identical provisions on this aspect.

As in case of export of goods, in case of export of services also, India extends to the limits of its maritime zone, which is 200 nautical miles from the coastal baseline.

For example, Raman of Delhi has supplied services to John of USA.



In the given example, supplier of service – Raman – is located in India, recipient of service – John – is located outside India and the place of supply of service is USA.

© The Institute of Chartered Accountants of India

Payment for services provided by Raman has been received in convertible FOREX and Raman and John are not merely establishments of a distinct person as per explanation to section 8 of IGST Act. Since all the requisite conditions have been satisfied, such services qualify as export of services.

In this regard, following circulars have been issued:

(A) Sub-contracting of services by an exporter of services to another person located outside India - *Circular No. 78/52/2018 GST dated 31.12.2018*

If an exporter of services outsources a portion of the services contract to another person located outside India, there may be instances where the full consideration for the outsourced services is not received by the exporter in India. The tax treatment of the said portion of the contract at the hands of the exporter has been explained as under:

Where an exporter of services located in India is supplying certain services to a recipient located outside India, either wholly or partly through any other supplier of services located outside India, the following two supplies are taking place: -

(a) Supply of services from the exporter of services located in India to the recipient of services located outside India for the full contact value;

(b) Import of services by the exporter of services located in India from the supplier of services located outside India with respect to the outsourced portion of the contract.

Thus, the total value of services as agreed to in the contract between the exporter of services located in India and the recipient of services located outside India will be considered as export of services if all the conditions laid down in section 2(6) read with section 13(2) are satisfied.

The supplier of services located in India would be liable to pay IGST on reverse charge basis on the import of services on that portion of services which has been provided by the supplier located outside India to the recipient of services located outside India. Furthermore, the said supplier of services located in India would be eligible for taking ITC of the IGST so paid.

Thus, even if the full consideration for the services as per the contract value is not received in convertible foreign exchange in India due to the fact that

© The Institute of Chartered Accountants of India

the recipient of services located outside India has directly paid to the supplier of services located outside India (for the outsourced part of services), that portion of the consideration shall also be treated as receipt of consideration for export of services in terms of section 2(6)(iv) of the IGST Act, provided the:

(a) IGST has been paid by the supplier located in India for import of services on that portion of the services which has been directly provided by the supplier located outside India; and

(b) RBI by general instruction or by specific approval has allowed that part of the consideration for such exports can be retained outside India.



(2) ABC Ltd. India has received an order for supply of services amounting to $ 500,000/- to a US based client. ABC Ltd. India is unable to supply the entire services from India and asks XYZ Ltd. Mexico (who is not merely an establishment of a distinct person viz. ABC Ltd. India, in accordance with the Explanation 1 in section 8 of the IGST Act) to supply a part of the services (say 40% of the total contract value). ABC Ltd. India shall be the exporter of services for the entire value if the invoice for the entire amount is raised by ABC Ltd. India. The services provided by XYZ Ltd. Mexico to the US based client shall be import of services by ABC Ltd. India and it would be liable to pay IGST on the same under reverse charge and also be eligible to take ITC of the IGST so paid.

Further, if the provisions contained in section 2(6) of the IGST Act are not fulfilled with respect to the realization of convertible foreign exchange, say only 60% of the consideration is received in India and the remaining amount is directly paid by the US based client to XYZ Ltd. Mexico, even in such a scenario, 100% of the total contract value shall be taken as consideration for the export of services by ABC Ltd. India provided IGST on import of services has been paid on the part of services provided by XYZ Ltd Mexico directly to the US based client and RBI (by general instruction or by specific approval) has allowed that a part of the consideration for such exports can be retained outside India. In other words, in such cases, the export benefit will be available for the total realization of convertible foreign exchange by ABC Ltd. India and XYZ Ltd. Mexico.

© The Institute of Chartered Accountants of India

(B) Supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India qualifies as 'export of services' - Circular No. 161/17/2021 GST dated 20.09.2021

Generally, services are provided by a subsidiary/ sister concern/ group concern, etc. of a foreign company in India, which is incorporated under the laws in India, to the foreign company incorporated under laws of a country outside India.

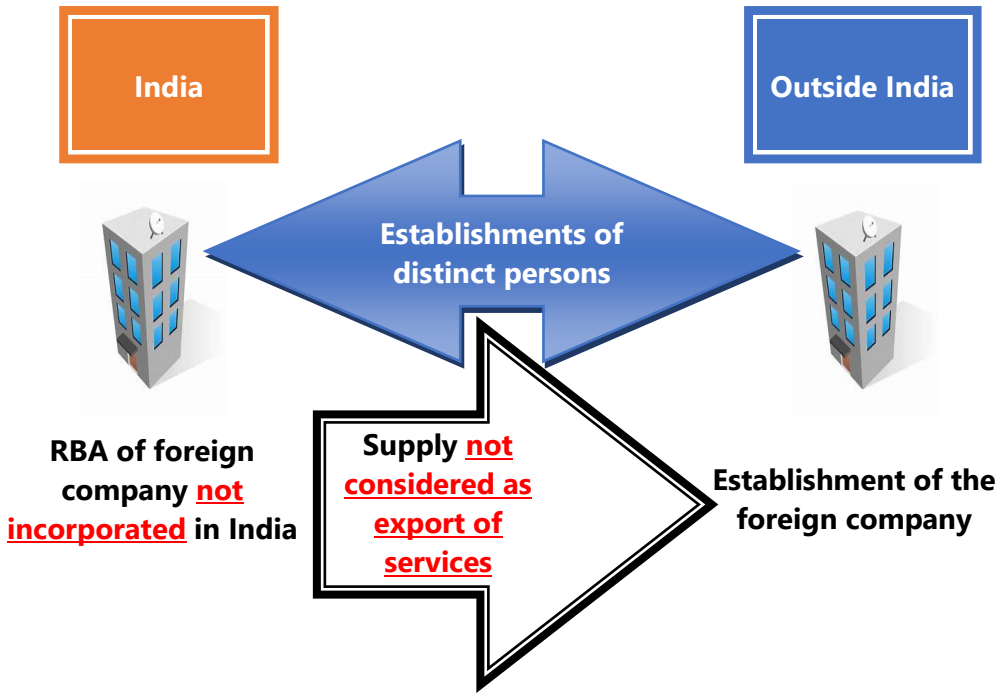
Definition of "export of services" (discussed herein), places a condition that the services provided by one establishment of a person to another establishment of the same person, considered as establishments of distinct persons as per Explanation 1 of section 8 of the IGST Act, cannot be treated as export. Thus, any supply of services by an establishment of a foreign company in India to any other establishment of the said foreign company outside India will not be covered under definition of export of services.

Further, perusal of the Explanation 2 to section 8 of the IGST Act suggests that if a foreign company is conducting business in India through a branch or an agency or a representational office (hereinafter referred to as RBA), then the said RBA of the foreign company, located in India, shall be treated as establishment of the said foreign company in India.

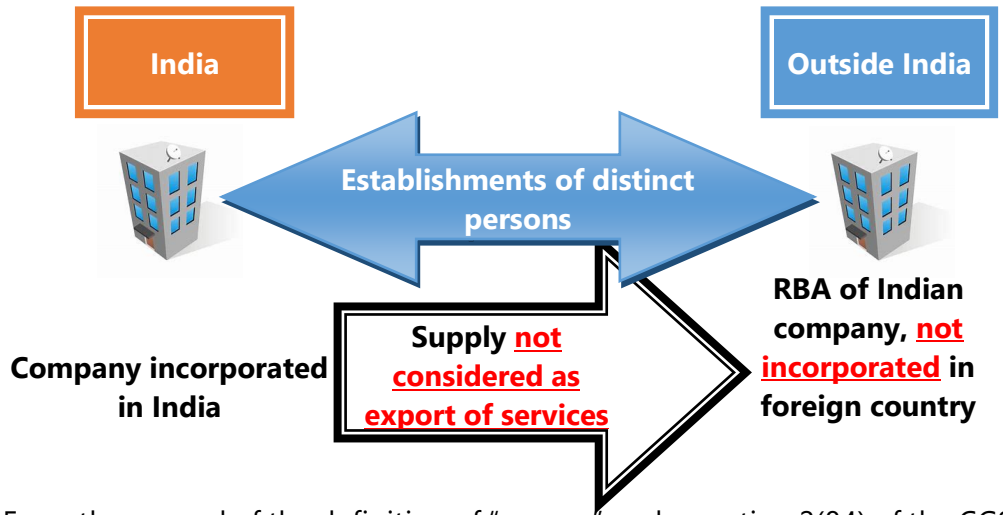
Similarly, if any company incorporated in India, is operating through a RBA in any country outside India, then that RBA shall be treated as the establishment of the said company in the said country.

In view of the above, it can be stated that supply of services made by a RBA of a foreign company, not incorporated in India, to any establishment of the said foreign company outside India, shall be treated as supply between establishments of distinct persons and shall not be considered as "export of services" in view of condition (v) of section 2(6) of IGST Act.

© The Institute of Chartered Accountants of India



Similarly, any supply of service by a company incorporated in India to its RBA, located in any other country and not incorporated under the laws of the said country, shall also be considered as supply between establishments of distinct persons and cannot be treated as export of services.



From the perusal of the definition of "person" under section 2(84) of the CGST Act and the definitions of "company" and "foreign company" under section 2

© The Institute of Chartered Accountants of India

of the Companies Act, 2013[11], it is observed that **a company incorporated in India and a foreign company incorporated outside India, are separate "person" under the provisions of CGST Act and accordingly, are separate legal entities.**

Thus, a subsidiary/ sister concern/ group concern of any foreign company which is incorporated in India, then the said company incorporated in India will be considered as a separate "person" under the provisions of CGST Act and accordingly, would be considered as a separate legal entity than the foreign company.

In view of the above, it is clarified that a company incorporated in India and a body corporate incorporated by or under the laws of a country outside India, which is also referred to as foreign company under the Companies Act, are separate persons under the CGST Act, and thus are separate legal entities. Accordingly, these two separate persons would not be considered as "merely

---

[11] ***Section 2(84) of the CGST Act*** *provides that* ***"person"*** *includes-*

(a) .....
(b) .....
(c) a company;
(d) .....
(e) .....
(f) .....
(g) .....
(h) any body corporate incorporated by or under the laws of a country outside India;
(i) .....
(j) .....
(k) Central Government or a State Government;
(l) .....
(m) .....
(n) .....

Definitions of company and foreign company as provided under section 2 of Companies Act 2013 are as under:

Company *means a company incorporated under this Act or under any previous company law.*

Foreign company *means any company or body corporate incorporated outside India which—*

(a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
(b) conducts any business activity in India in any other manner.

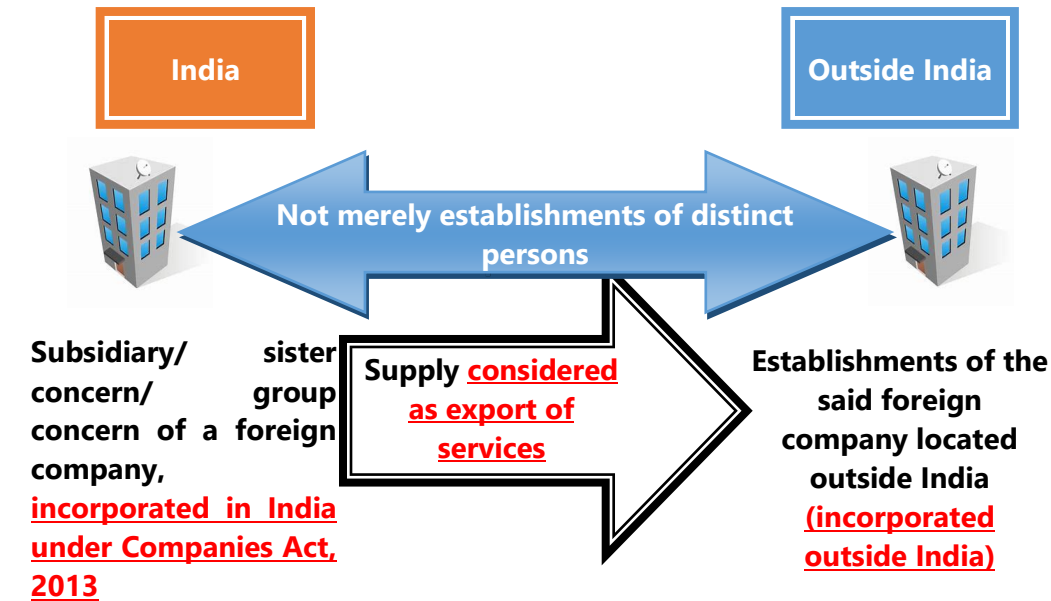
© The Institute of Chartered Accountants of India

establishments of a distinct person in accordance with Explanation 1 in section 8".

Therefore, supply of services by a subsidiary/ sister concern/ group concern, etc. of a foreign company, which is incorporated in India under the Companies Act, 2013 (and thus qualifies as a 'company' in India as per Companies Act), to the establishments of the said foreign company located outside India (incorporated outside India), would not be barred by the condition (v) of section 2(6) for being considered as export of services, as it would not be treated as supply between merely establishments of distinct persons under Explanation 1 of section 8.

Similarly, the supply from a company incorporated in India to its related establishments outside India, which are incorporated under the laws outside India, would not be treated as supply to merely establishments of distinct person under Explanation 1 of section 8.

Such supplies, therefore, would qualify as 'export of services', subject to fulfilment of other conditions as provided under section 2(6).



© The Institute of Chartered Accountants of India

Common provisions/aspects for export of goods and services

(i) Supplies to a SEZ unit or SEZ developer

Supply to a SEZ unit/developer is zero-rated but all the supplies are not zero-rated. The supplies to a SEZ unit/developer shall be zero rated and the supplier shall be eligible for refund of unutilized ITC or tax paid as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorised operations.

An endorsement to this effect shall have to be issued by the specified officer of the Zone. Therefore, subject to the provisions of section 17(5) of the CGST Act, if event management services, hotel, accommodation services, consumables etc. are received by a SEZ unit/developer 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.

Services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ developer/SEZ unit – whether to be treated as an inter-State supply or an intra-State supply

As per section 7(5)(b) of the IGST Act, the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply in the course of inter-State trade or commerce.

However, as per section 12(3) 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 *[Please refer Chapter 3 – Place of Supply in Module 1 of this Study Material for detailed discussion of said provisions]*. Thus, in such cases, if the location of the supplier and the place of supply is in the same State/ Union territory, it would be treated as an intra-State supply.

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.

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.

© The Institute of Chartered Accountants of India

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 *[Circular No. 48/22/2018 GST dated 14.06.2018]*.

(ii) Transactions with EOUs

Zero rating is not applicable to supplies to EOUs and there is no special dispensation for them under GST regime. Therefore, supplies to EOUs are taxable like any other taxable supplies. EOUs, to the extent of exports, are eligible for zero rating like any other exporter *[Circular No. 8/8/2017 GST dated 04.10.2017 as amended]*.

However, supplies to EOUs are treated as deemed exports and refund of tax paid on deemed exports is admissible either to the supplier or the recipient.

(iii) Procedure for export under bond/LUT without payment of tax

Procedure for merchant exports

Refer point (iii) under heading "Export of goods" discussed earlier in this chapter.

Procedure for direct exports [Rule 96A of the CGST Rules]

(a) Exporter has to execute the bond or LUT prior to export, binding himself to pay the tax due along with interest @ 18% within: -

Export of goods	Export of services
15 days after the expiry of 3 months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India.	15 days after the expiry of 1 year, or the period as allowed under FEMA[12] including any extension of such period as permitted by the RBI, whichever is later, from the date of issue of the invoice for export or such further period as may be allowed by the Commissioner, **if the payment of such services is not received by the exporter in convertible foreign exchange or in Indian rupees, wherever permitted by the RBI.**

[12] *Foreign Exchange Management Act, 1999*

© The Institute of Chartered Accountants of India

These provisions are also applicable in respect of zero-rated supply of goods and/or services to a SEZ unit/developer without payment of IGST.

Proviso to section 16(3) provides that the registered person making zero rated supply of goods, without payment of tax shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under section 16(3) along with the applicable interest under section 50 of the CGST Act within 30 days after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 (FEMA) for receipt of foreign exchange remittances, in such manner as may be prescribed. Rule 96B prescribing the manner in relation to this, lays down that proceeds of export of goods need to be realized within the period allowed under FEMA for receipt of foreign exchange remittances. Non/partial realization of such proceeds may result in recovery of any refund paid to the taxpayer with interest under section 50 of the CGST Act. *[Provisions of rule 96B have been discussed in detail in Chapter 15 - Refunds in this Module of the Study Material.]*

(b) Failure to export goods and pay the tax due along with interest within the period specified in (a) above results in withdrawal of the facility of export without payment of IGST and recovery of the said amount under section 79 of the CGST Act. The facility, however, can be restored on payment of the said amount *[Notification No. 37/2017 CT dated 04.10.2017]*.

(c) All registered persons are eligible to furnish a LUT in place of a bond except those who have been prosecuted for cases involving an amount exceeding ₹ 250 lakh *[Notification No. 37/2017 CT dated 04.10.2017]*.

(d) The details of the export invoices should be submitted in GSTR-1. These details [as amended in Form GSTR-1A if any] shall be electronically transmitted to the system designated by Customs and a confirmation that the goods covered by the said invoices have been exported out of India shall be electronically transmitted to the common portal from the said system.

Clarification on furnishing of bond/LUT

Circular No. 08/08/2017 GST dated 04.10.2017 as amended vide *Circular No. 40/14/2018 GST dated 06.04.2018* & *Circular No. 88/07/2019 GST dated*

© The Institute of Chartered Accountants of India

01.02.2019 has clarified the following with regard to furnishing of bond/LUT for export without payment of tax:

(a) **Validity of LUT:** The LUT shall be valid for the whole financial year in which it is tendered. However, in case the goods are not exported within the time specified in sub-rule (1) of rule 96A of the CGST Rules (as given in the table above) and the registered person fails to pay the amount mentioned in the said sub-rule, the facility of export under LUT will be deemed to have been withdrawn. If the amount mentioned in the said sub-rule is paid subsequently, the facility of export under LUT shall be restored. As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable IGST or under bond with bank guarantee.

(b) **Form for bond/LUT:** The registered person (exporter) shall fill the relevant form on the common portal. An LUT shall be deemed to be accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online.

(c) **Documents for LUT:** No document needs to be physically submitted to the jurisdictional office for acceptance of LUT.

(d) **Acceptance of LUT/bond:** A LUT shall be deemed to have been accepted as soon as an acknowledgement for the same, bearing the Application Reference Number (ARN), is generated online. If it is discovered that an exporter whose LUT has been so accepted, was ineligible to furnish a LUT in place of bond, then the exporter's LUT will be liable for rejection. In case of rejection, the LUT shall be deemed to have been rejected *ab initio*.

(e) **Bank guarantee:** Since the facility of export under LUT has been extended to all registered persons, bond will be required to be furnished by those persons who have been prosecuted for cases involving an amount exceeding ₹ 250 lakh. A bond, in all cases, shall be accompanied by a bank guarantee of 15% of the bond amount.

(f) **Clarification regarding running bond:** The exporters shall furnish a running bond where the bond amount would cover the amount of self-assessed estimated tax liability on the export. The exporter shall ensure that the outstanding integrated tax liability on exports is within the

© The Institute of Chartered Accountants of India

bond amount. In case the bond amount is insufficient to cover the said liability in yet to be completed exports, the exporter shall furnish a fresh bond to cover such liability. The onus of maintaining the debit / credit entries of integrated tax in the running bond will lie with the exporter. The record of such entries shall be furnished to the Central tax officer as and when required.

(g) Sealing by officers: Till mandatory self-sealing is operationalized, sealing of containers, wherever required to be carried out under the supervision of the officer, shall be done under the supervision of the central excise officer having jurisdiction over the place of business where the sealing is required to be done. A copy of the sealing report would be forwarded to the Deputy/Assistant Commissioner having jurisdiction over the principal place of business.

(h) Realization of export proceeds in Indian Rupee: *RBI Master Circular No. 14/2015-16 dated 1st July, 2015* (updated as on 5th November, 2015) states that "there is no restriction on invoicing of export contracts in Indian Rupees in terms of the Rules, Regulations, Notifications and Directions framed under the Foreign Exchange Management Act, 1999.

Further, in terms of Para 2.52 of the Foreign Trade Policy (2023), all export contracts and invoices shall be denominated either in freely convertible currency or Indian rupees, but export proceeds shall be realized in freely convertible currency. However, export proceeds against specific exports may also be realized in rupees, provided it is through a freely convertible Vostro account of a non-resident bank situated in any country other than a member country of Asian Clearing Union (ACU) or Nepal or Bhutan".

Further, section 2(6) of the IGST Act, 2017 allows realization of export proceeds of services in INR, wherever allowed by the RBI.

Accordingly, it is clarified that the acceptance of LUT for supplies of goods or services to countries outside India or SEZ developer or SEZ unit will be permissible irrespective of whether the payments are made in Indian currency or convertible foreign exchange as long as they are in accordance with the applicable RBI guidelines.

© The Institute of Chartered Accountants of India

(i) **Jurisdictional officer:** In exercise of the powers conferred by sub-section (3) of section 5 of the CGST Act, it is hereby stated that the LUT/Bond shall be accepted by the jurisdictional Deputy/Assistant Commissioner having jurisdiction over the principal place of business of the exporter. The exporter is at liberty to furnish the LUT/bond before either the Central Tax Authority or the State Tax Authority till the administrative mechanism for assigning of taxpayers to the respective authority is implemented.

(iv) Export to Nepal and Bhutan

Export of goods: Export of goods to Nepal or Bhutan falls within the definition of 'export of goods' under the IGST Act as goods are taken from India to a place outside India. India has rupee trade with Nepal and Bhutan. The RBI regulations allow receipt of payment in Indian rupees in case of exports to Nepal and Bhutan.



In case of export of goods under GST law, receipt of export proceeds in convertible foreign exchange is not a pre-requisite. [However, non-realization of export proceeds within the time prescribed under FEMA may result in recovery of any refund paid to the taxpayer.] Hence, export of goods to Nepal and Bhutan will be treated as zero rated and consequently will also qualify for all the benefits available to zero rated supplies under the GST regime.

Export of services: In case of export of services, wherever permitted by the Reserve Bank of India, receipt of payment in Indian rupees is allowed in terms of section 2(6). As stated earlier, the RBI regulations allow receipt of payment in Indian rupees in case of exports to Nepal and Bhutan. Consequently, supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees is considered as export of services subject to fulfillment of other conditions.



© The Institute of Chartered Accountants of India

Therefore, exports of both goods and services to Nepal and Bhutan are treated as 'normal exports', i.e. goods and services can be exported to Nepal and Bhutan under LUT.

Clarification regarding admissibility of export remittances received in Special Rupee Vostro account, as permitted by RBI, for the purpose of consideration of supply of services to qualify as export of services

As discussed earlier, one of the conditions mentioned in sub-clause (iv) of section 2(6) of the IGST Act in the definition of export of services (Refer definition of export of services) is that 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.



In this regard, it is clarified that when the Indian exporters, undertaking export of services, are **paid the export proceeds in Indian rupees from the Special Rupee Vostro Accounts** of correspondent bank(s) of the partner trading country, opened by Authorised Dealer (AD) banks, the same shall be considered to be fulfilling the conditions of sub-clause (iv) of section 2(6) of the IGST Act, 2017, subject to the conditions/ restrictions mentioned in Foreign Trade Policy, 2023 & extant RBI Circulars[13] and without prejudice to the permissions / approvals, if any, required under any other law .

[Circular No. 202/14/2023 GST dated 27.10.2023]

---

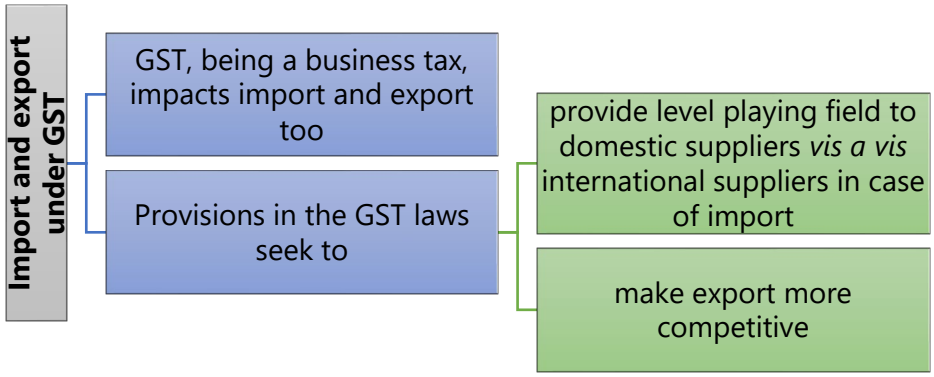
[13] *Settlement of trade transactions in INR (Indian Rupees), as per Foreign Trade Policy, 2023 & extant RBI Circulars, shall take place through the Special Rupee Vostro Accounts opened by AD banks in India, as under:*

(a) Indian importers undertaking imports through this mechanism shall make payment in INR which shall be credited into the Special Vostro account of the correspondent bank of the partner country, against the invoices for the supply of goods or services from the overseas seller /supplier.

(b) Indian exporters, undertaking exports of goods and services through this mechanism, shall be paid the export proceeds in INR from the balances in the designated Special Vostro account of the correspondent bank of the partner country.

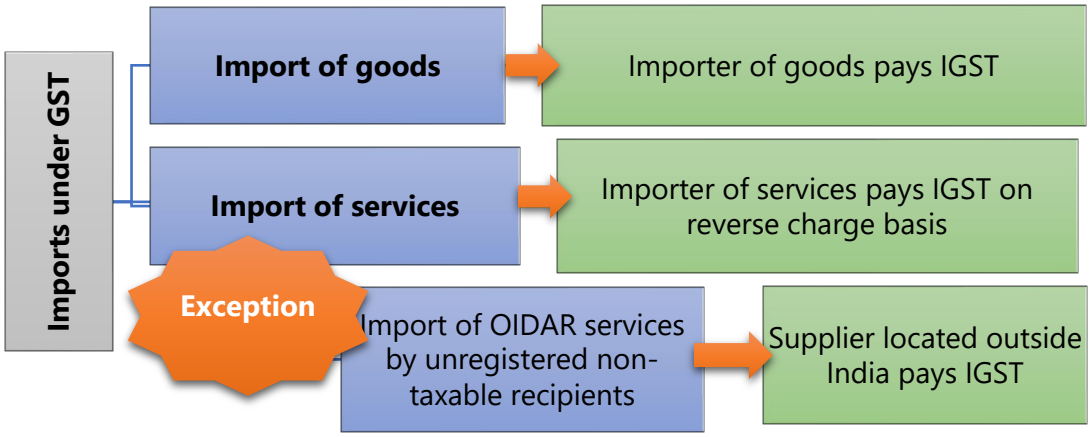
© The Institute of Chartered Accountants of India

LET US RECAPITULATE



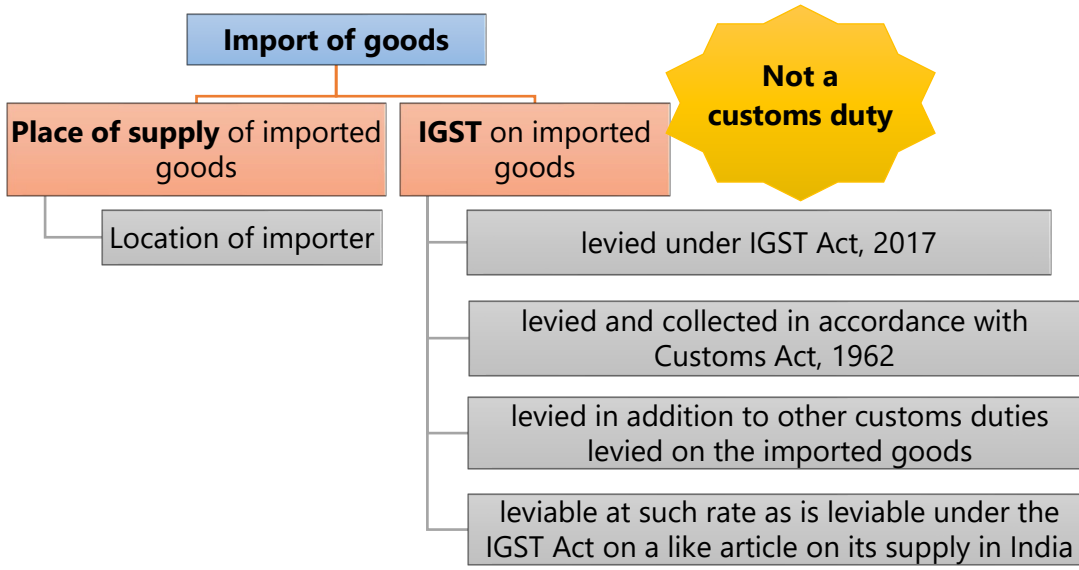
1. IMPORTS UNDER GST

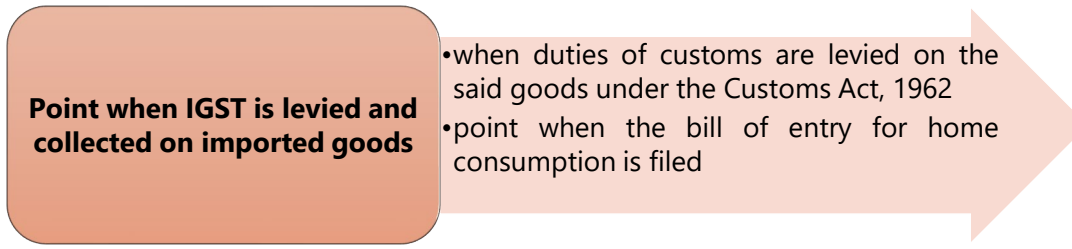


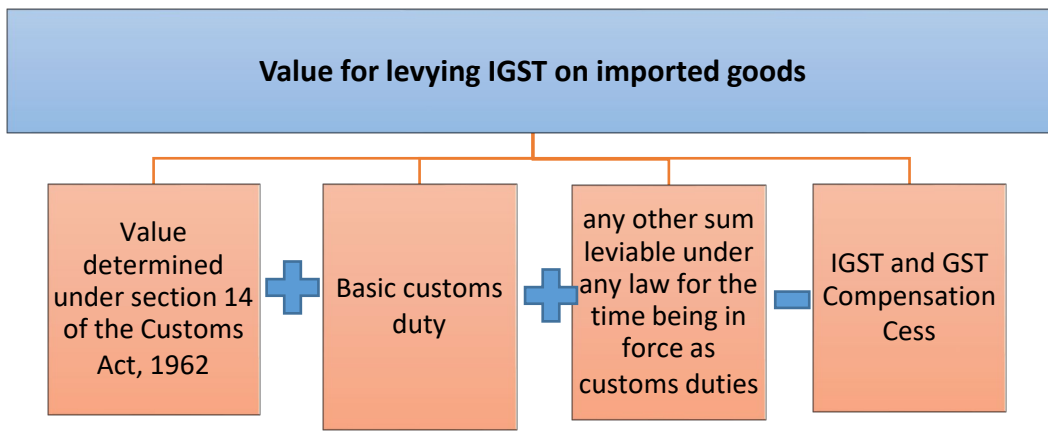


© The Institute of Chartered Accountants of India

A. IMPORT OF GOODS

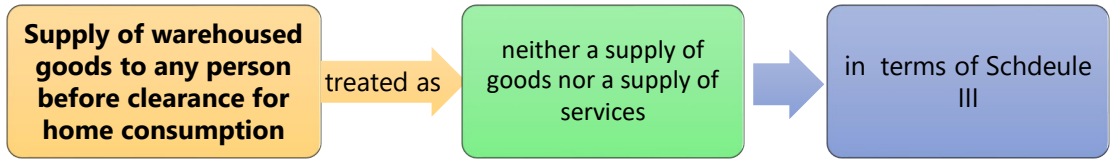


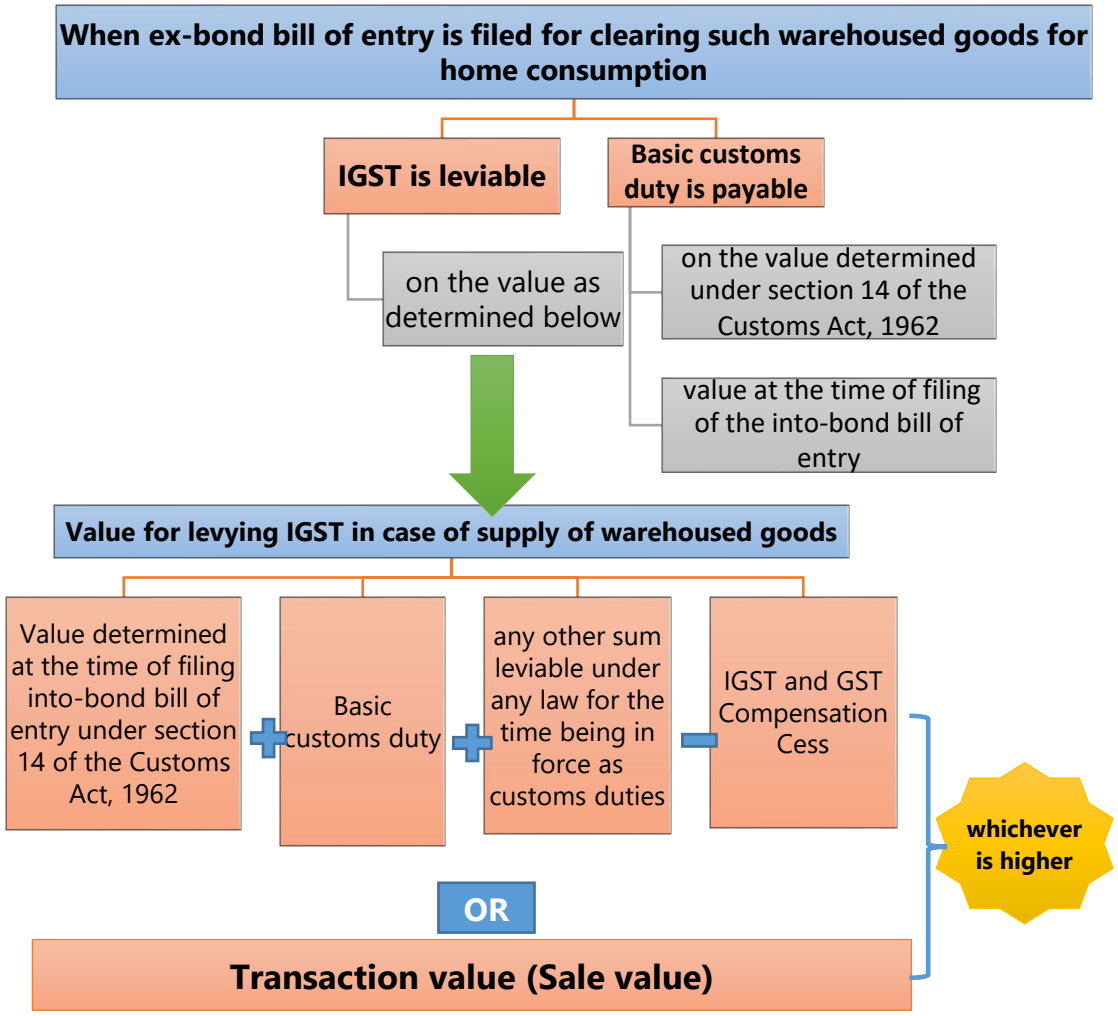




© The Institute of Chartered Accountants of India

Taxability of goods supplied while being deposited in a customs bonded warehouse

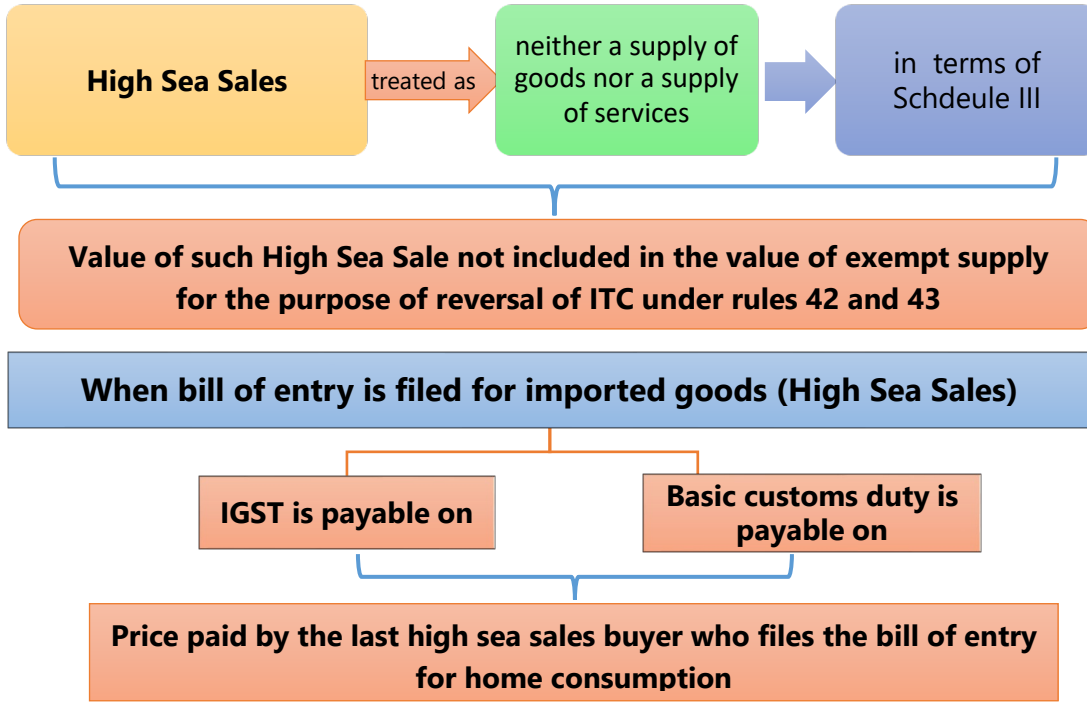




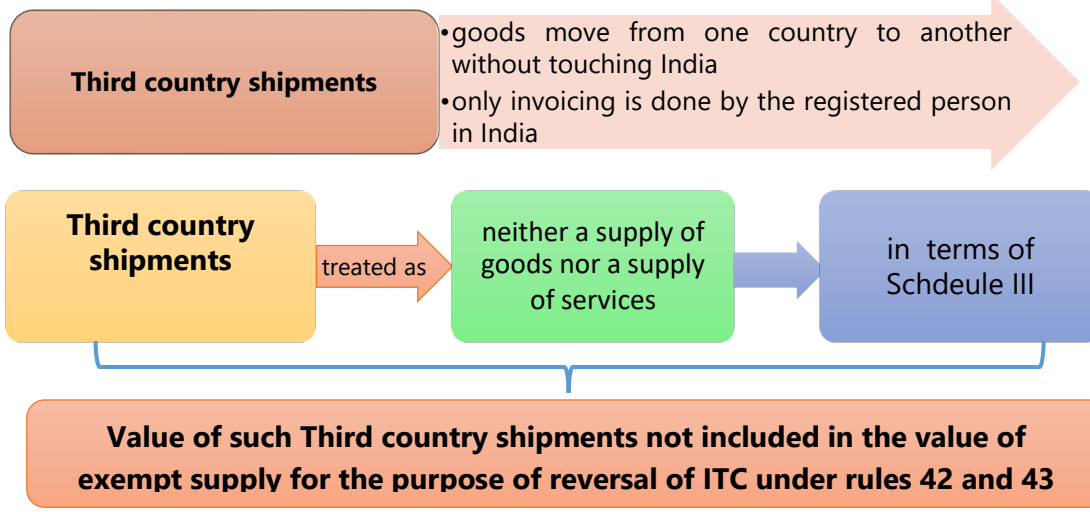
© The Institute of Chartered Accountants of India

Taxability of High Sea Sales

'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance.

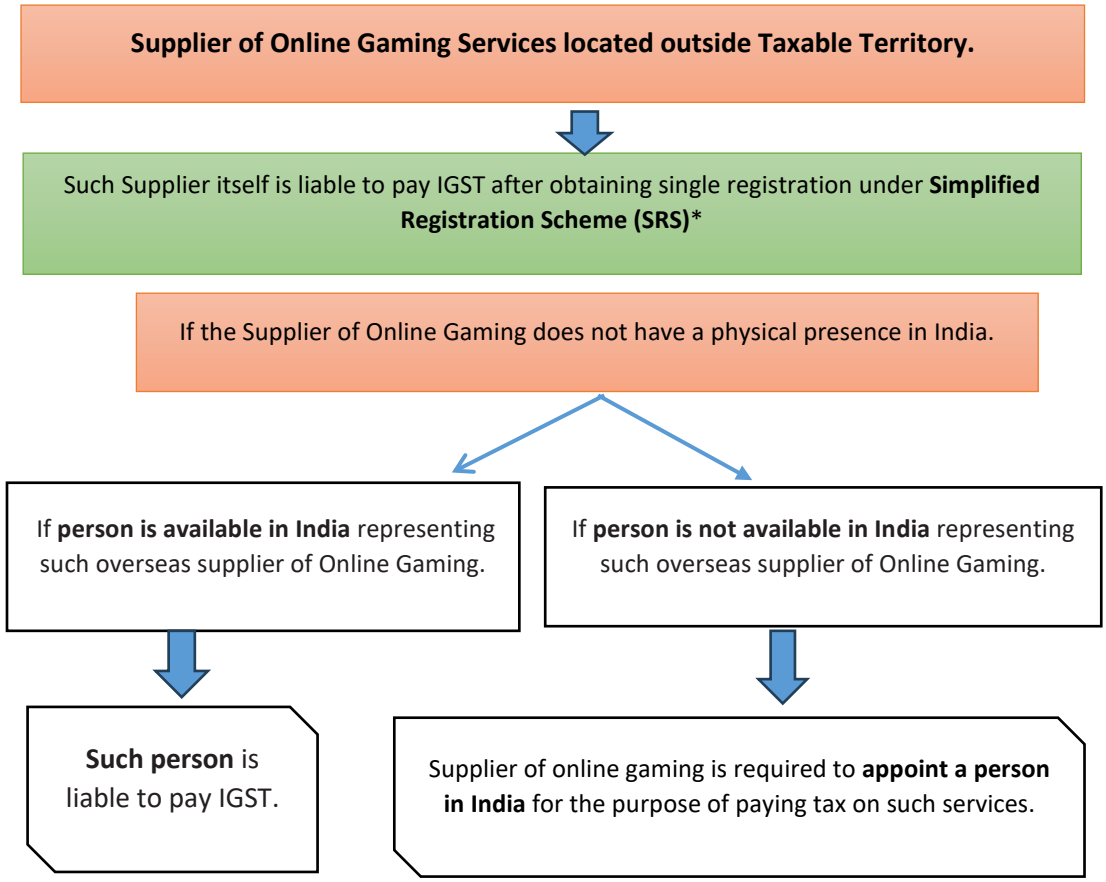


Taxability of Third country shipments/ Triangular Trade



© The Institute of Chartered Accountants of India

Taxability of supply of online money gaming by a person located outside the taxable territory to a person in India [Section 14A]



NOTE: *In case of failure to comply with the above provisions by the supplier of the online money gaming or a person appointed by such supplier or both, any information generated, transmitted, received or hosted in any computer resource used for such supply shall be liable to be blocked for access by the public.*

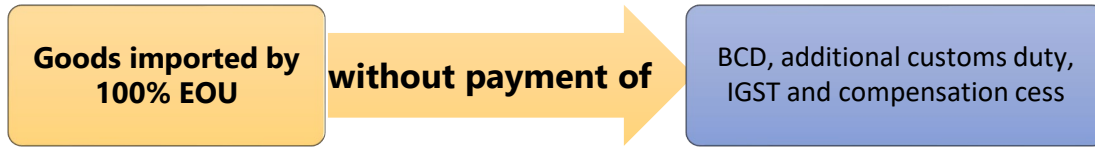
** It is Simplified Registration Scheme, as referred to in section 14(2) of IGST Act 2017.*

© The Institute of Chartered Accountants of India

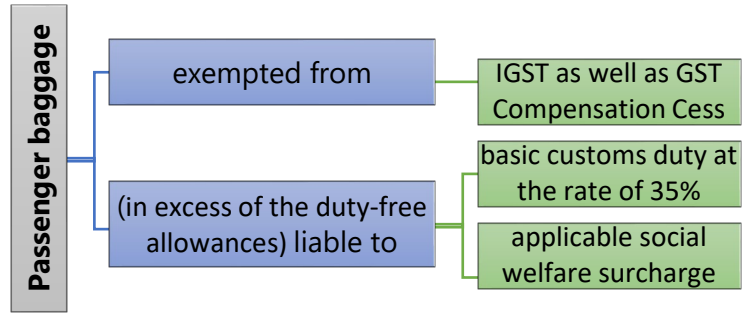
Taxability of goods imported by SEZ



Taxability of goods imported by EOU

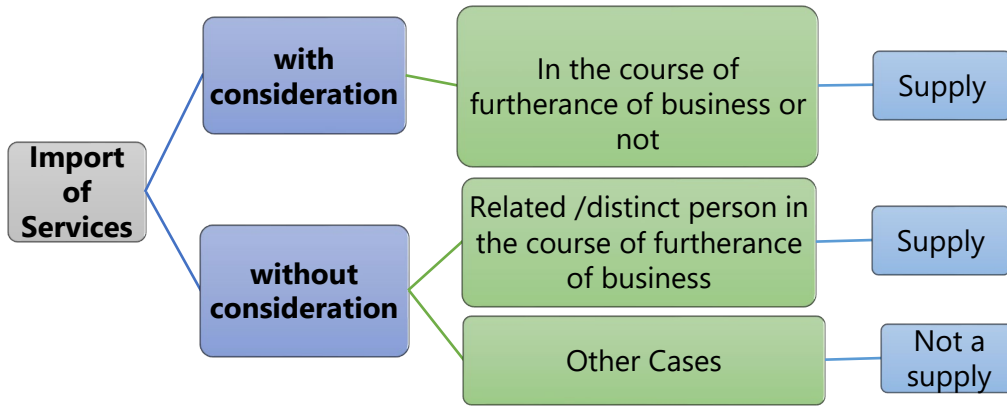


Import as Baggage



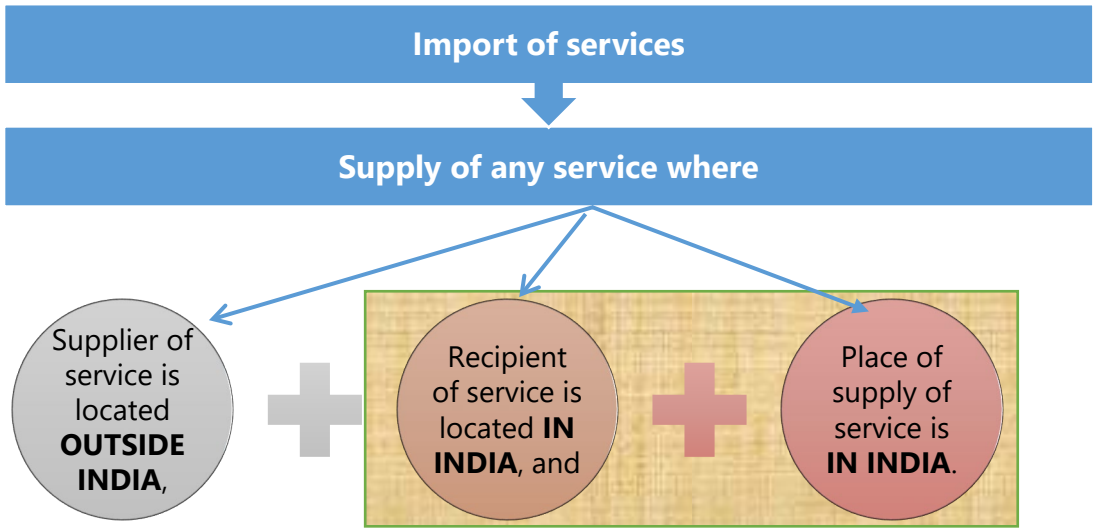
B. IMPORT OF SERVICES

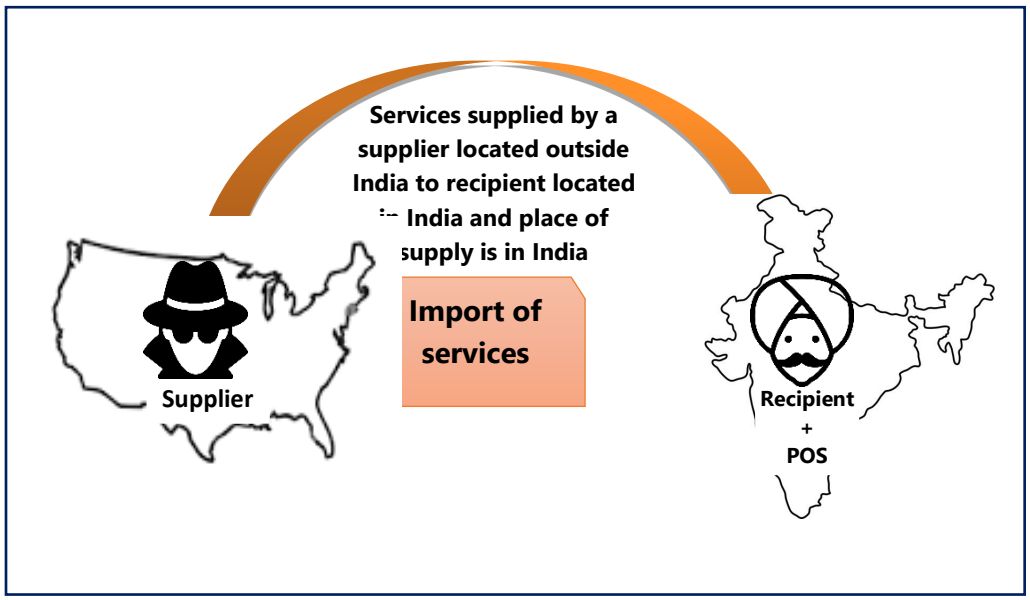
(i) Taxability of import of service



© The Institute of Chartered Accountants of India

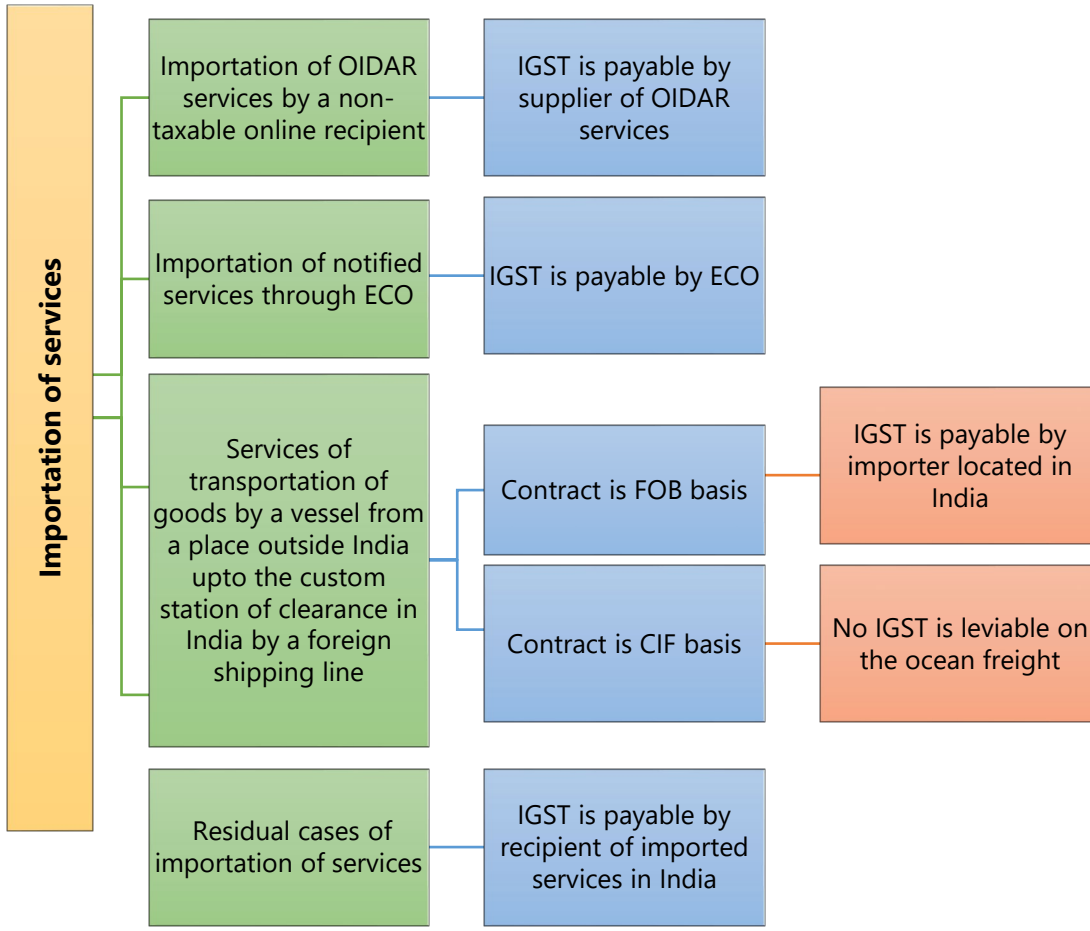
(ii) Meaning of import of service





© The Institute of Chartered Accountants of India

(iii) Person liable to pay tax on importation of service



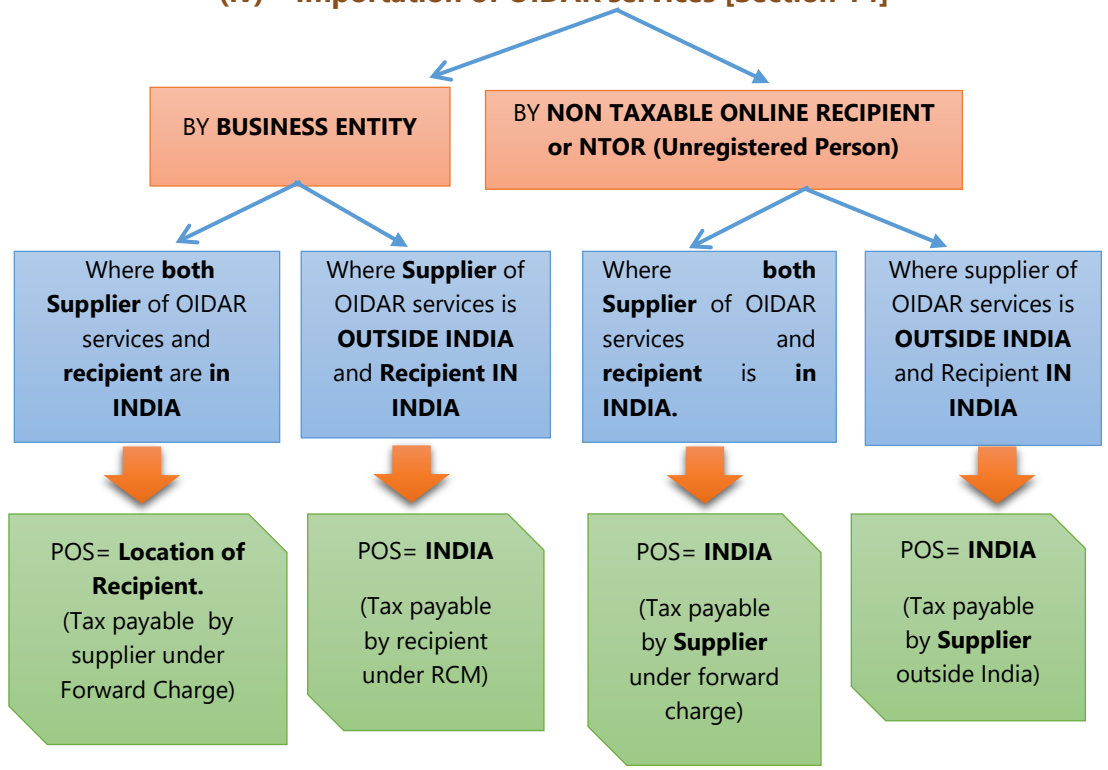
UOI v. Mohit Minerals Pvt. Ltd.

Gist of this case: There cannot be a separate levy of IGST on the component of ocean freight paid by the foreign exporter to the foreign shipping line in the CIF contract, since it would be treated as composite supply.

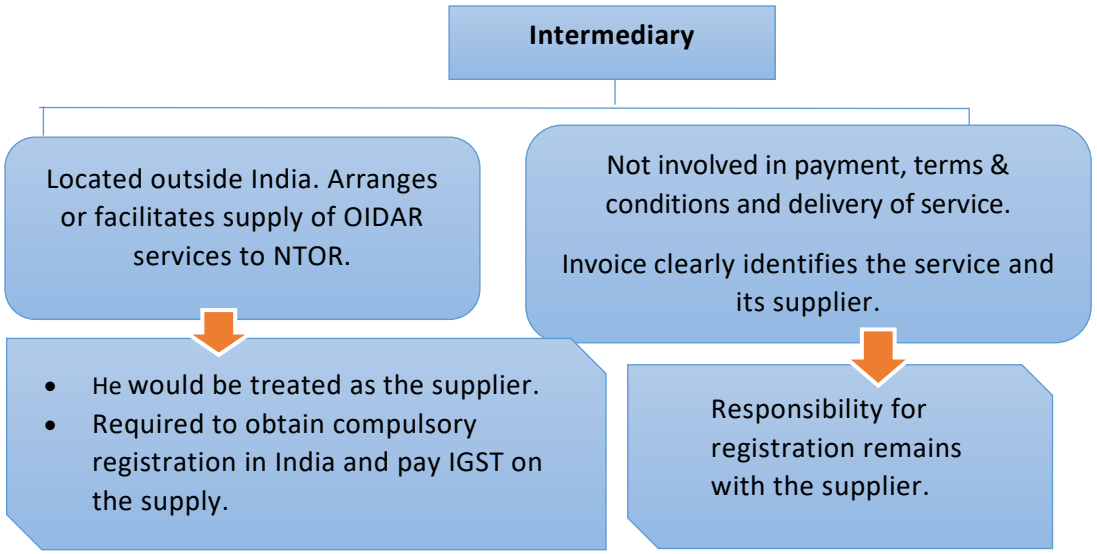


© The Institute of Chartered Accountants of India

(iv) Importation of OIDAR services [Section 14]

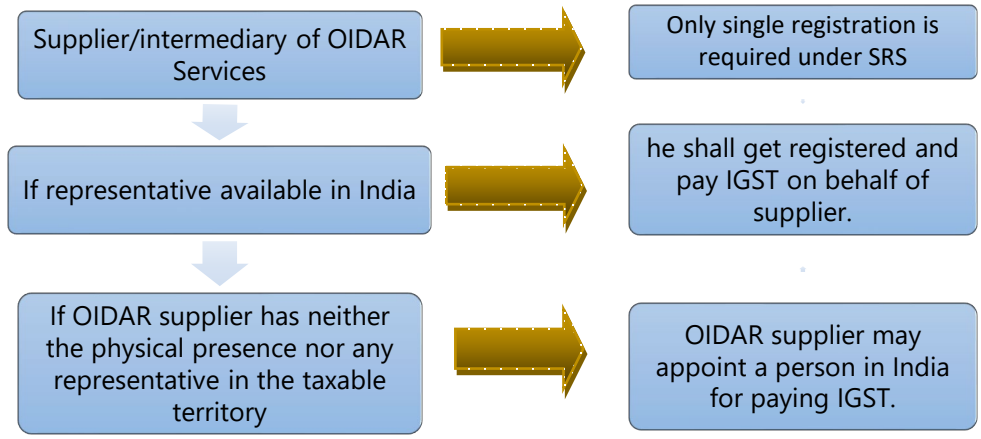


Provision or facilitation of OIDAR services by intermediary located outside India

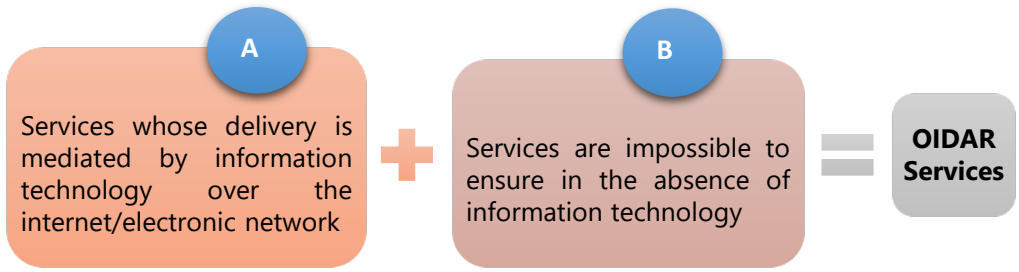


© The Institute of Chartered Accountants of India

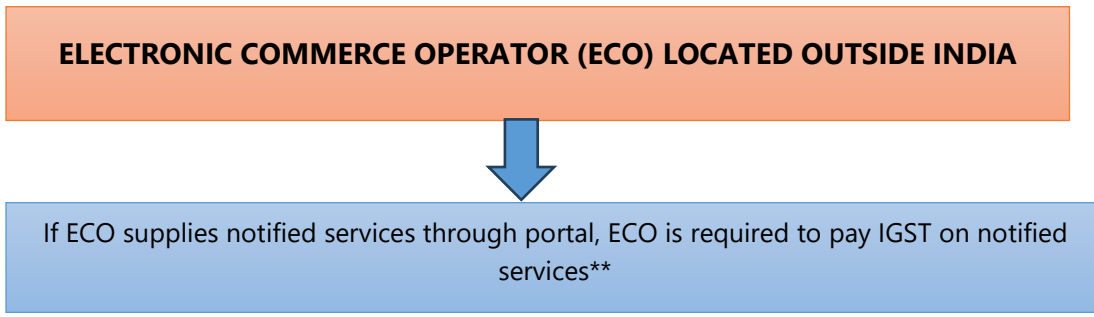
Provisions enabling supplier of OIDAR services located outside India to comply with the responsibilities entrusted under GST laws



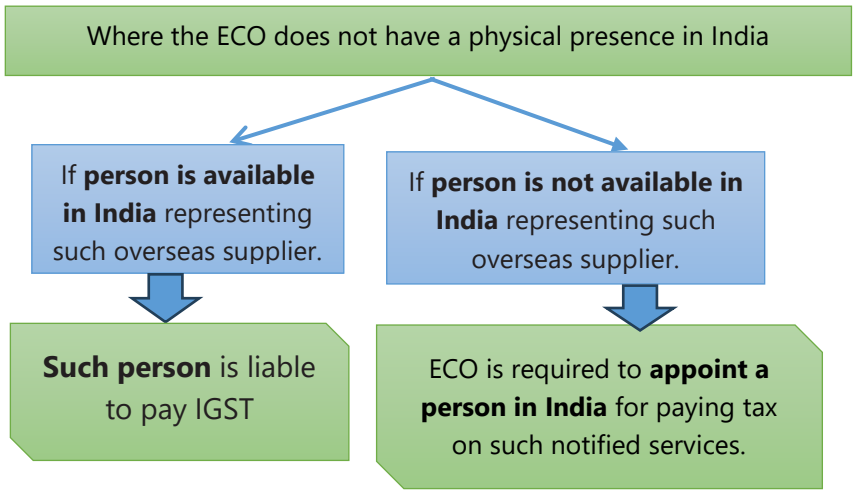
MEANING OF OIDAR SERVICES



(v) Services provided through ECO located outside India

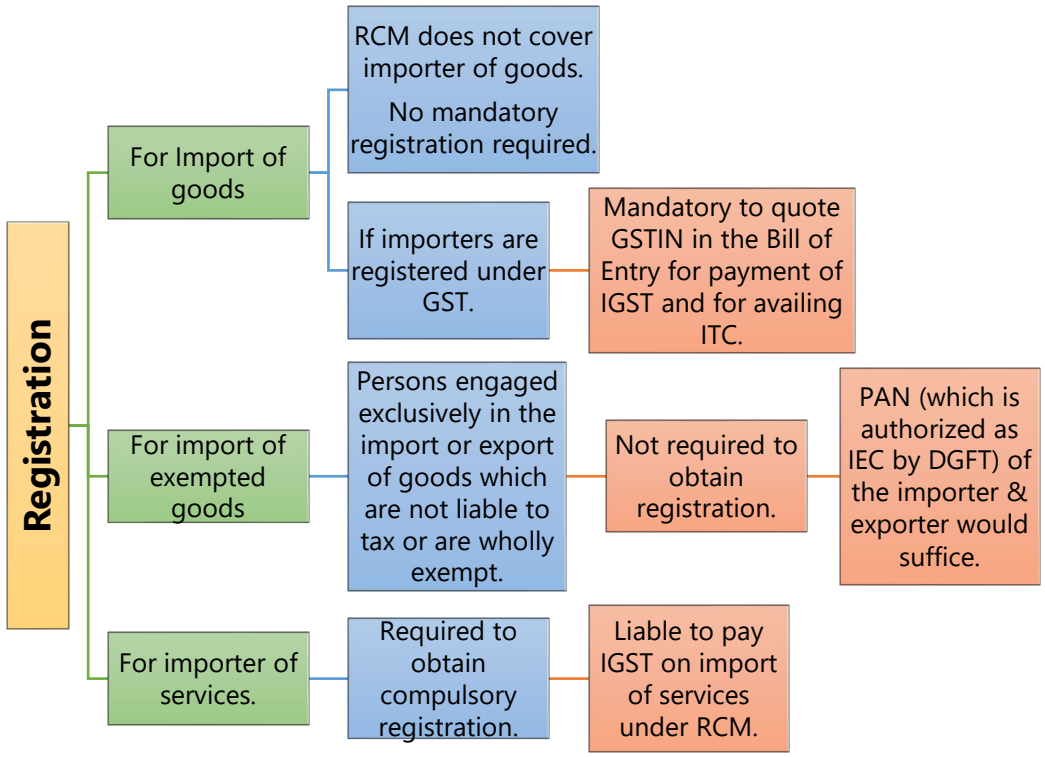


© The Institute of Chartered Accountants of India



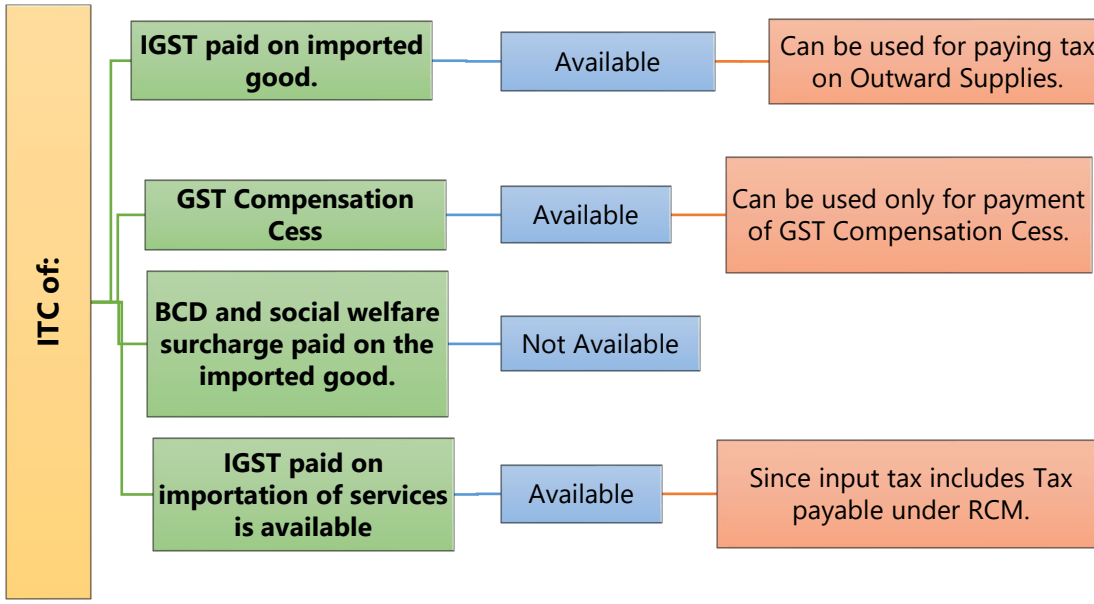
***Services notified under section 9(5) of the CGST Act, 2017/ Section 5(5) of the IGST Act, 2017.*

Registration and ITC in case of import of goods and services

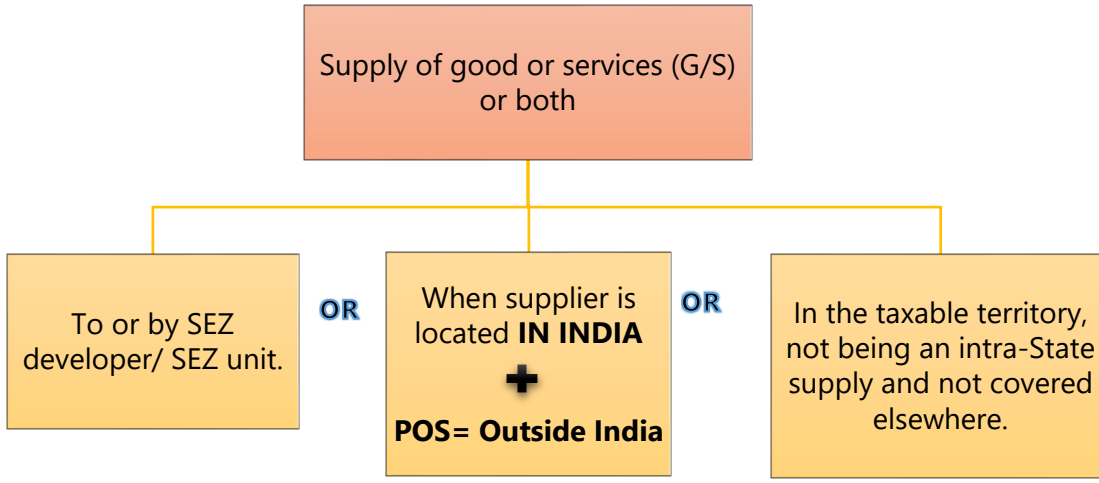


© The Institute of Chartered Accountants of India

Input Tax Credit (ITC) in case of import of goods and services

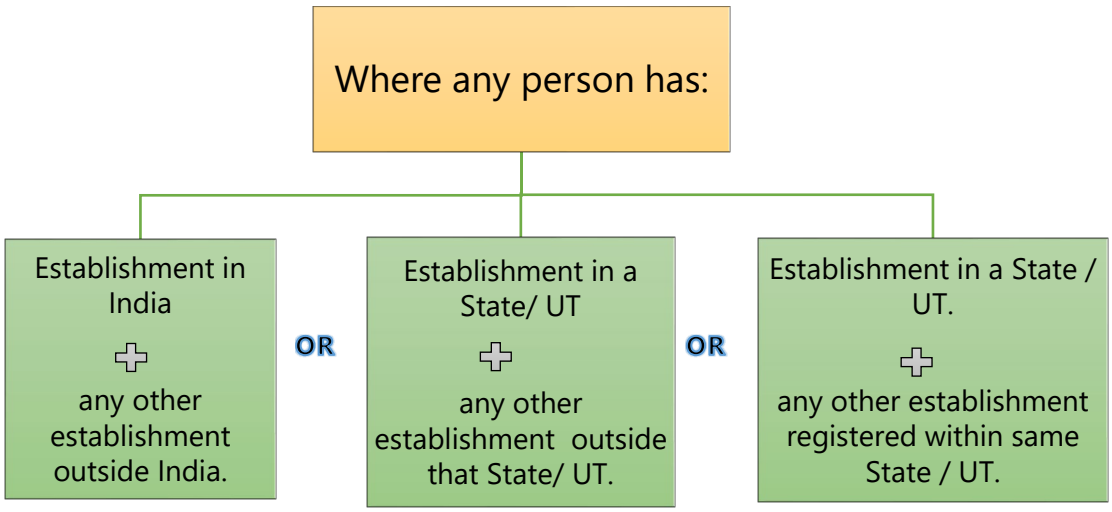


Inter State Supply [Section 7(5) of IGST Act]



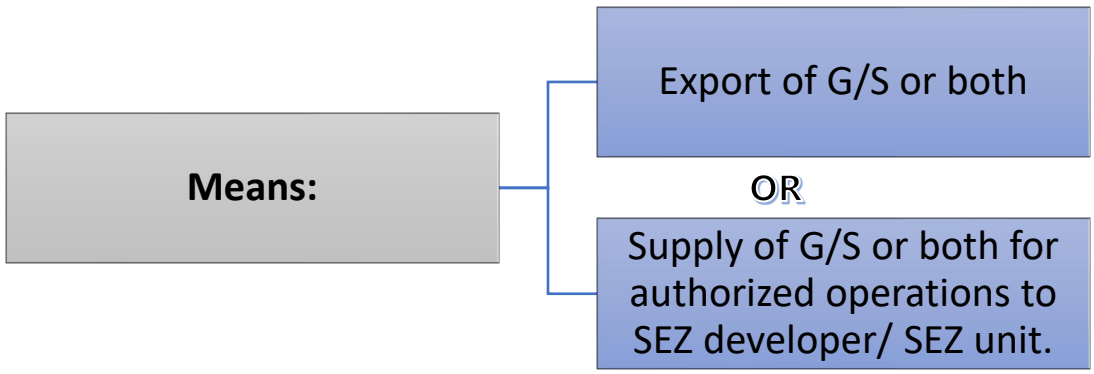
© The Institute of Chartered Accountants of India

Establishments of Distinct Person

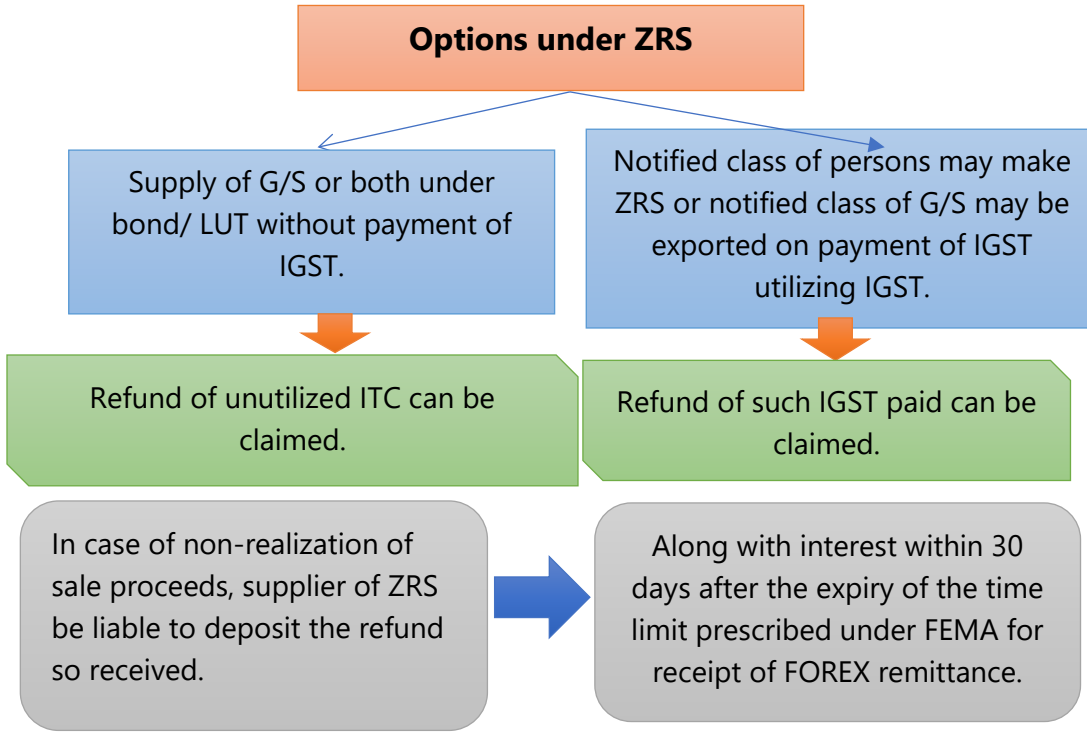


Note: A person carrying on a business through a branch or an agency or a representational office in any territory shall be treated as having an establishment in that territory.

ZERO RATED SUPPLY (ZRS)



© The Institute of Chartered Accountants of India



Difference between Exempted Supplies and Zero Rated Supply

Exempted Supplies	Zero rated supplies
Exempt supply means supply of any goods and/or services which attracts nil rate of tax or which may be wholly exempt from tax and includes non-taxable supply.	Zero-rated supply means (i) export of goods and/or services or (ii) supply of goods and/or services for authorised operations to SEZ unit/SEZ developer.
No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed	No tax on the outward supplies; IS also to be tax free (by way of refund of ITC)
Credit of input tax needs to be	Credit of input tax may be availed for making ZRS, even if such supply is an

© The Institute of Chartered Accountants of India

reversed, if taken. No ITC on the exempted supplies.	exempt supply. ITC allowed on ZRS.
Value of exempt supplies, for apportionment of ITC, shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building.	Value of ZRS shall be added along with the taxable supplies for apportionment of ITC.
Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under the CGST or IGST Act shall not be liable to registration.	A person exclusively making ZRS needs to register as refund of unutilized ITC or IGST paid shall have to be claimed.
A registered person supplying exempted goods and/or services shall issue, instead of a tax invoice, a bill of supply.	Normal tax invoice shall be issued.

EXPORT OF GOODS & SERVICES

Taxability of Export

- Treated as inter-State supply and zero rated.
- ITC is still available to the exporter even if there is full exemption for the supply.
- Tax associated with exports is always IGST.

© The Institute of Chartered Accountants of India

Export of Goods

Physical Exports → Taking the goods from India to a place outside India.



Deemed Exports → **Goods (not services) supplied are manufactured in India** → **Supplies do not leave India.** → **Such supplies are notified as deemed exports.** → **Payment for supplier is received either in INR/ convertible FOREX.**

Categories of supply of goods notified as deemed exports

Supply of goods by a registered person against Advance Authorisation (AA)
Supply of Capital Goods (CG) by a registered person against Export Promotion Capital Goods (EPCG) authorisation.
Supply of goods by a registered person to EOU.
Supply of gold by specified bank or PSU against AA.

Taxability of deemed exports

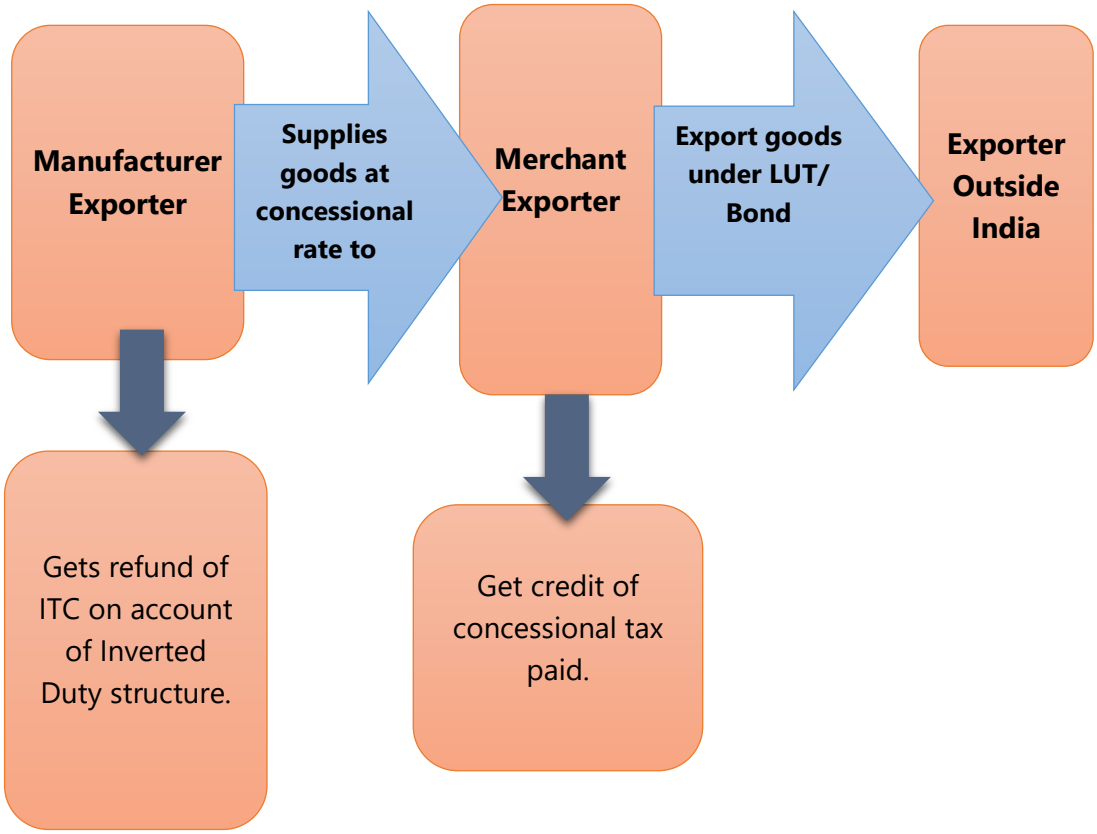
Such supplies are subject to levy of taxes. → Such supplies can be made on payment of tax and cannot be supplied under a bond/LUT. → Refund of tax paid on supply, regarded as deemed export admissible to either the supplier or recipient.

© The Institute of Chartered Accountants of India

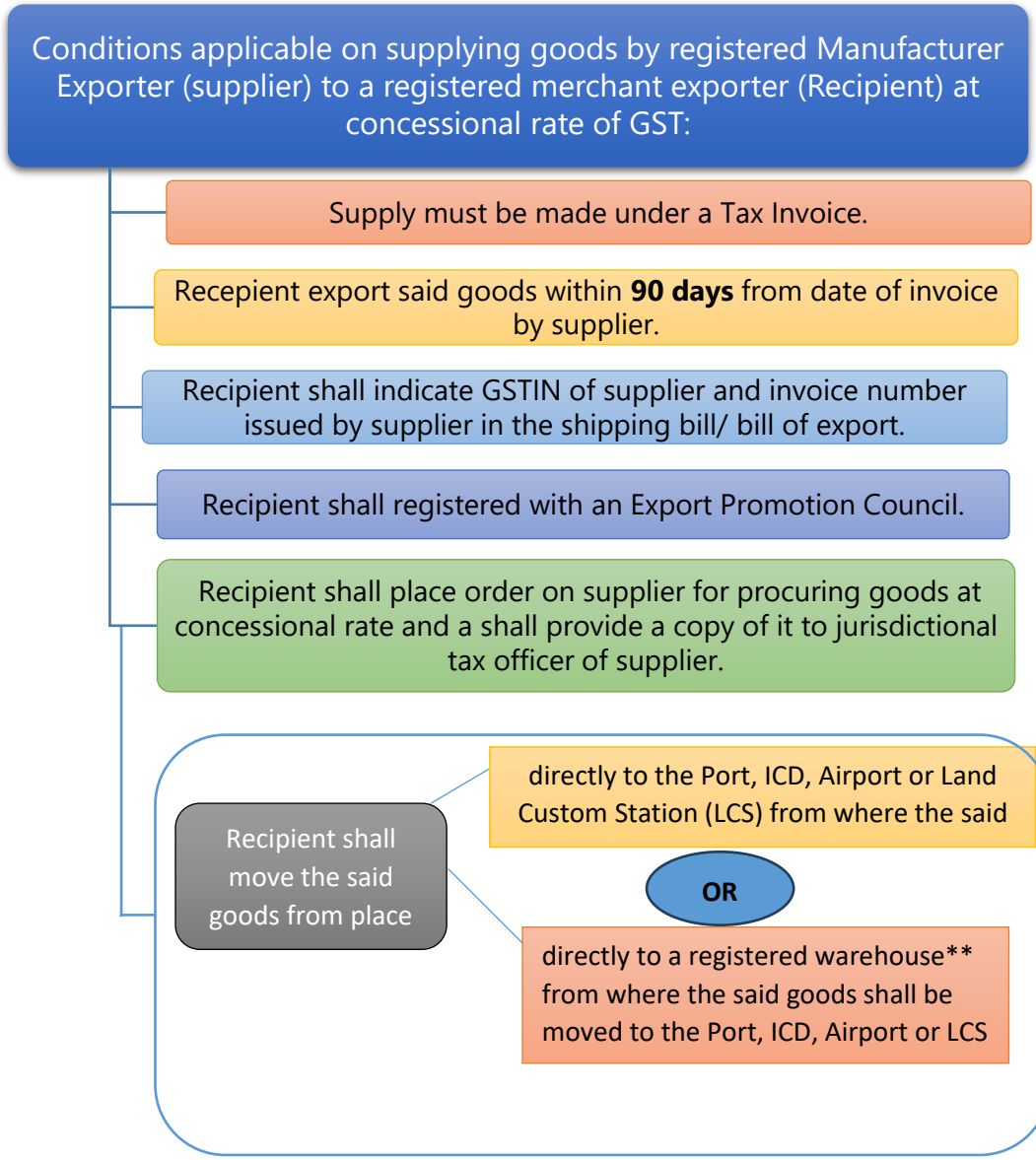
Merchant Exporter

Merchant Exports

Where a person who manufactures the goods (Manufacturer Exporter) export these goods through Merchant Exporter who buys goods from manufacturer at concessional rate (CGST 0.05% and SGST 0.05%) subject to the specified conditions and exports them outside India.



© The Institute of Chartered Accountants of India



** *Registered principal place of business or registered additional place of business are deemed to be a registered warehouse.*

© The Institute of Chartered Accountants of India

Export of Services [Section 2(6)]

Conditions to be satisfied to qualify as Export of Services.

- Supplier- in India; Recipient- Outside India
- POS = Outside India
- Transaction is between separate entities not between establishments of entities.
- Consideration in convertible FOREX / INR.

Common provisions/aspects for export of goods and services

(i) Supplies to SEZ unit/ developer.

- Supply to a SEZ unit/ developer is zero rated.
  - Refund of Unutilized ITC or refund of IGST paid is available.
- **Condition** - Such supplies are received for authorized operations by SEZ unit/ developer.
  - An endorsement from specified officer of zone is required to be issued.

(ii) Transactions with EOUs

- Supplies **to** EOUs
  - Zero rating not applicable.
  - Taxable like any other taxable supplies.
  - treated as deemed exports and refund of tax paid on deemed exports is admissible either to the supplier or the recipient.
- Exports **of** EOUs
  - eligible for zero rating.

© The Institute of Chartered Accountants of India

(iii) Procedure for direct exports [Rule 96A of the CGST Rules]

Exporter has to execute bond or LUT before export, and pay tax with 18% Interest within:

(i) Export of Goods: 15 days after end of 3 months (or further period as allowed by commissoner) from date of invoice issued, if goods ot exported outside India; or

(ii) Export of Services: 15 days after end of 1 year (or further period as allowed by commissoner) from date of invoice issued if the payment is not received by exporter in convertible FOREX or INR.

Note: If registered person is making ZRS without payment of tax, then in case of non-realisation of sale proceeds, he would be be liable to deposit the refund so received under section 16(3) along with interest within 30 days after the expiry of time limit prescribed under FEMA for receipt of FOREX remittances.

Failure to export and paying tax with interest leads to withdrawal of facility of export without payment of IGST and recovery of the said amount under section 79 of the CGST Act.

This facility can be restored after the payment of said amount.

Registered persons are eligible to furnish a LUT in place of a bond. (Except those who have been prosecuted for cases involving an amount> ₹ 250 Lakh)

The details of the export invoices should be submitted in GSTR-1.

© The Institute of Chartered Accountants of India

(iv) Export to Nepal and Bhutan

Export of goods:

- Such Exports fall within the definition of 'export of goods' under the IGST Act.
- RBI allow receipt of payment in INR in case of such exports.
- India has rupee trade with Nepal and Bhutan.
- Treated as zero rated and qualify for all the benefits available to ZRS.
- Non-realization of export proceeds within the time prescribed under FEMA may result in recovery of any refund.

Export of services:

- RBI allows receipt of payment in INR in case of exports of services to Nepal and Bhutan in case of supply of services and such supply in Nepal or Bhutan, against payment in INR is considered as export of services subject to fulfillment of other conditions.

© The Institute of Chartered Accountants of India



TEST YOUR KNOWLEDGE

1. *Explain how imports are taxed under GST.*
2. *Describe how exports are taxed under GST.*
3. *Is it necessary to execute a bond for effecting zero rated supplies? Elucidate.*
4. *A Ltd. enters into an agreement for sale of goods with B Ltd., a company based in UAE. B Ltd. requires the goods to be delivered by A Ltd. to C Ltd., a company based in Karnataka.*

   Whether the transaction will qualify as export of goods under GST? Analyze the scenario and offer your comments.
5. *A Ltd. is making zero rated supplies which are also specifically exempt from GST. The company has paid input tax of ₹2,00,000 on inputs and input services which have been used exclusively in effecting such zero rated supplies.*

   Examine if A Ltd. can avail ITC of input tax of ₹2,00,000 paid on inputs and input services used exclusively in effecting such zero-rated supplies.
6. *Whether services of short-term accommodation, conferencing, banqueting etc. provided to a SEZ unit/developer by a supplier located in the same State as that of the SEZ unit/developer should be treated as an inter-State supply under section 7(5)(b) or an intra-State supply in terms of section 8(2) read with section 12(3)(c)? Examine.*
7. *Mr. Amar Kant, a Chartered Accountant, being a partner in GST registered firm online gaming software supplied electronicallyfor his son from a company located in USA. He makes the payment for the same from his personal bank account.*

   Examine whether the transaction will be liable to GST. If yes, in whose hands the tax liability will arise?
8. *'Separate LUT is to be furnished for every export supply.'*

   With reference to the provisions of the GST law, examine the veracity or otherwise of the statement.

© The Institute of Chartered Accountants of India

9. *AXT Ltd. entered into a high sea sale transaction with BYU Ltd. for certain goods. AXT Ltd. is of the view that GST on such sale transaction is payable at the time of such sale and basic customs duty is payable at the time of filing the bill of entry for import of goods.*

Examine whether the view taken by AXT Ltd. is correct.



ANSWERS

1. All imports are deemed as inter-State supplies for the purposes of levy of GST (IGST). The incidence of tax follows the destination principle and the tax revenue accrues to the State where the imported goods and services are consumed. IGST paid on import of goods and services is available as ITC for set off against the output tax liability. IGST on import of goods is levied under the IGST Act but the machinery of the customs law is used to levy and collect the same.

2. Exports of goods and services are zero rated. The exporter can export under bond/LUT without payment of IGST and claim refund of ITC. In case of notified class of persons or notified goods or services, he may pay IGST at the time of export and claim refund thereof.

3. No. The facility to export under LUT has been extended to all zero rated suppliers (barring a few exceptions such as those who have been prosecuted for an offence involving tax of ₹ 2.5 crore) vide *Notification No. 37/2017 CT dated 4.10.2017*. The other conditions for executing LUT have been specified in *Circular No. 8/8/2017 GST dated 4.10.2017 as amended*.

4. As per the definition of export of goods provided under section 2(5), export of goods means taking goods out of India to a place outside India.

Since in the given case, the goods remain in India, i.e. with C Ltd. located in Karnataka, the transaction between A Ltd. and B Ltd. cannot be treated as export of goods under GST.

© The Institute of Chartered Accountants of India

5. As per section 16(2), ITC may be availed for making zero rated supplies, notwithstanding that such supplies are exempt supplies. However, the same is subject to provisions u/s 17(5) of the CGST Act, i.e. blocked credit.

Hence, A Ltd. can take credit of ₹ 2,00,000 even if the outward zero rated supply is exempt from GST. However, the credit would not be available in respect of the inputs and input services, the credit on which is blocked under section 17(5) of the CGST Act.

6. *Circular No. 48/22/2018 GST* has clarified on this issue as under:

As per section 7(5)(b), the supply of goods and/or services to a SEZ unit/developer is treated as a supply of goods and/or services in the course of inter-State trade or commerce. Whereas, as per section 12(3)(c), 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 are in the same State/ Union territory, it would be treated as an intra-State supply.

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. In the instant case, section 7(5)(b) is a specific provision relating to supplies of goods and/or services made to a SEZ unit/developer, which states that such supplies shall be treated as inter-State supplies.

Further, proviso to section 8(2) also lays down that intra-State supply of services do not include supply of services to a SEZ unit/developer. It is, therefore, clarified that services of short-term accommodation, conferencing, banqueting etc., provided to a SEZ unit/developer shall be treated as an inter-State supply.

7. The supply of gaming software is in the nature of OIDAR service in terms of section 2(17).

The transaction is for personal consumption of Mr. Amar Kant and the payment has also been made from the personal bank account of Mr. Amar Kant and not from the bank account of his GST registered firm. Therefore,

© The Institute of Chartered Accountants of India

being an unregistered person receiving OIDAR service in taxable territory, Mr. Amar Kant is a non-taxable online recipient in terms of section 2(16).

Services received from a provider of service located in a non- taxable territory by an individual in relation to any purpose other than commerce, industry or any other business or profession is exempt from IGST. However, such exemption is not available in case of OIDAR services *[Notification No. 9/2017 IT (R) dated 28.06.2017]*.

Therefore, being an OIDAR service provided by a supplier located outside India and received by a non-taxable online recipient, the same is liable to GST.

Tax on service supplied by any person located in a non-taxable territory to any person other than non-taxable online recipient is payable by the recipient of such service under reverse charge. Therefore, tax on OIDAR services provided by the company located in USA to Mr. Amar Kant, a non-taxable online recipient, will be payable by such company under forward charge.

8. No, the statement is not correct.

The LUT remains valid for the whole financial year and there is no need to furnish separate LUT for each export supply.

However, in case goods are not exported within the time limit specified in rule 96A(1) of the CGST Rules and the registered person fails to pay the amount mentioned in the said sub rule, the facility of export under LUT will be deemed to have been withdrawn. However, if the amount mentioned in the said sub-rule is paid subsequently, the facility of export under LUT shall be restored. As a result, exports, during the period from when the facility to export under LUT is withdrawn till the time the same is restored, shall be either on payment of the applicable IGST or under bond with bank guarantee.

Rule 96A(1) provides *inter alia* that an exporter of goods has to execute the bond or LUT prior to export, binding himself to pay the tax due along with interest @ 18% within 15 days after the expiry of 3 months, or such further period as may be allowed by the Commissioner, from the date of issue of the invoice for export, if the goods are not exported out of India.

© The Institute of Chartered Accountants of India

9. AXT Ltd.'s view is partially correct.

Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption (high sea sale) is neither treated as supply of goods nor supply of services in terms of paragraph 8(b) of Schedule III to the CGST Act.

Thus, GST is not leviable on high sea sales. Therefore, AXT Ltd.'s view that GST is payable on a high-sea sale transaction at the time of sale, is not correct.

As per section 14 of the Customs Act, 1962, the value for the purpose of charging customs duty on imported goods is the value at the time of importation, i.e. at the time of filing of the bill of entry. Further, IGST on imported goods is also levied at the time of filing of bill of entry. Therefore, in case of high sea sales, the assessable value of imported goods for levying customs duty and IGST is determined on the basis of the price paid by the last high sea sales buyer who files the bill of entry for home consumption.

Therefore, AXT Ltd.'s view that basic customs duty is payable at the time of filing the bill of entry for import of goods is correct.

© The Institute of Chartered Accountants of India

ANNEXURE

Class of persons who may make zero-rated supply or notified class of goods or services which may be exported on payment of IGST and claim refund thereof notified

As discussed in the chapter, as per section 16(3), a registered person making zero rated supply may supply goods and/or services under bond or Letter of Undertaking (LUT) without payment of IGST and claim refund of unutilized ITC.

Further, notified class of persons may make zero-rated supply or notified class of goods or services may be exported, on payment of IGST and refund of such tax paid on goods and/or services supplied may be claimed.

In pursuance of the same, following goods/services/suppliers have been notified:

(i) all goods or services (except the goods specified in note below) as the class of goods or services which may be exported on payment of IGST and on which the supplier of such goods/services may claim the refund of tax so paid; and

(ii) all suppliers to a Developer or a unit in SEZ undertaking authorised operations as the class of persons who may make supply of goods or services (except the goods specified in note below) to such Developer or a unit in SEZ for authorised operations on payment of IGST and on which the said suppliers may claim the refund of tax so paid.

[Notification No. 01/2023 IT dated 31.07.2023 as amended by Notification No. 05/2023 IT dated 26.10.2023]

Chapter / Heading/ Sub-heading/ Tariff item	Description of Goods
2106 90 20	Pan-masala
2401	Unmanufactured tobacco (without lime tube) – bearing a brand name
2401	Unmanufactured tobacco (with lime tube) – bearing a brand name
2401 30 00	Tobacco refuse, bearing a brand name

© The Institute of Chartered Accountants of India

2403 11 10	'Hookah' or 'gudaku' tobacco bearing a brand name
2403 11 10	Tobacco used for smoking 'hookah' or 'chilam' commonly known as 'hookah' tobacco or 'gudaku' not bearing a brand name
2403 11 90	Other water pipe smoking tobacco not bearing a brand name.
2403 19 10	Smoking mixtures for pipes and cigarettes
2403 19 90	Other smoking tobacco bearing a brand name
2403 19 90	Other smoking tobacco not bearing a brand name
2403 91 00	"Homogenised" or "reconstituted" tobacco, bearing a brand name
2403 99 10	Chewing tobacco (without lime tube)
2403 99 10	Chewing tobacco (with lime tube)
2403 99 10	Filter khaini
2403 99 20	Preparations containing chewing tobacco
2403 99 30	Jarda scented tobacco
2403 99 40	Snuff
2403 99 50	Preparations containing snuff
2403 99 60	Tobacco extracts and essence bearing a brand name
2403 99 60	Tobacco extracts and essence not bearing a brand Name
2403 99 70	Cut tobacco
2403 99 90	Pan masala containing tobacco 'Gutkha'

© The Institute of Chartered Accountants of India

2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', bearing a brand name
2403 99 90	All goods, other than pan masala containing tobacco 'gutkha', not bearing a brand name
3301 24 00, 3301 25 10, 3301 25 20, 3301 25 30, 3301 25 40, 3301 25 90	Following essential oils other than those of citrus fruit namely: ***a)*** Of peppermint (Mentha piperita); ***b)*** Of other mints : Spearmint oil (ex-mentha spicata), Water mint-oil (ex- mentha aquatic), Horsemint oil (ex-mentha sylvestries), Bergament oil (ex- mentha citrate), Mentha arvensis

Note - The list of notified goods given below is only for the sake of knowledge. Students are not expected to memorise the same for examination purpose.

© The Institute of Chartered Accountants of India

© The Institute of Chartered Accountants of India