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TWO DAY NATIONAL CONFERENCE ON GST

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Agenda

Cross-border transactions and place of supply rules- Especially for IT(software), consultancy, and intermediary services

Current issues in Show Cause Notice & Departmental Audits; Recent High Court and Supreme Court decisions in GST

Goods and Services Tax Appellate Tribunal (Procedure) Rules, 2025

CROSS-BORDER TRANSACTIONS AND PLACE OF SUPPLY RULES

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Introduction

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Cross border?

Oxford dictionary

"passing, occurring, or performed across a border between two countries"

Common parlance

"Import and Export"

Introduction

Cross-border transactions in services refers to the supply of services wherein either:

- The supplier is located in one country, and the recipient is located in another, or
- The services are used or consumed outside the country where the supplier is located (which under GST has become place of supply).

Importance of Place of Supply in cross-border transactions

- Classifying supply as *intra-State*, *inter-State*, *export*, or *import*
- Determining whether tax is to be levied and the person liable to pay such tax (Forward Charge or RCM)
- Eligibility for zero-rated supply benefits under Section 16 of the IGST Act
- Deciding whether the supply attracts GST, or qualifies as export and consequently is eligible for a refund.

Under the Indian GST regime, such transactions are governed under the Integrated Goods and Services Tax Act, 2017 (IGST Act), particularly under:

- **Section 7 –** Inter state supply
- **Section 13** – Place of supply where either the supplier or the recipient is located outside India.
- **Section 2(6)** – Defines *"export of services"*
- **Section 2(11)** – Defines *"import of services"*
- ***Section 2(13)*** – Defines *"Intermediary"*
- ***Section 2(17)***- Defines "*OIDAR services"*

Inter-State Supply

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7. (*1*) Subject to the provisions of Section 10, supply of goods, where the location of the supplier and the place of supply are in--

- (*a*) two different States;
- (*b*) two different Union territories; or
- (*c*) a State and a Union territory,
- shall be treated as a supply of goods in the course of inter-State trade or commerce.

(*2*) 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.

(*3*) Subject to the provisions of Section 12, supply of services, where the location of the supplier and the place of supply are in--

- (*a*) two different States;
- (*b*) two different Union territories; or
- (*c*) a State and a Union territory,
- shall be treated as a supply of services in the course of inter-State trade or commerce.

(*4*) 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.

(*5*) 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.

Import of Services

- **Section 2(11) "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;

A service is treated as an import when it is supplied by a person located outside India to a recipient in India, and the place of supply is also determined to be in India. Such services are treated as inter-State supplies under Section 7(4) of the IGST Act and attract IGST under reverse charge mechanism (RCM), where the recipient is liable to pay tax.

Can there be import of services between the Distinct Establishments?

Explanation 1 to Section 8 of the IGST Act, 2017 - "*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*
- *(iii) an establishment in a State or Union territory and any other establishment being a business vertical registered within that State or Union territory, then such establishments shall be treated as establishments of distinct persons.*"

Under GST, an establishment in India and its other establishment abroad are considered as distinct persons as per Explanation 1 to Section 8 of the IGST Act. The services between such establishments of distinct persons are not supplies between 2 entities and hence whether there is a liability on the Indian entity to pay tax under RCM, when the vice-versa is not construed to be an export transaction?

Impact of Circular No. 210/4/2024-GST dated 26.06.2024- "Zero Value Circular" ?

Export of Services

- **Section 2(6) "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;

Export of services refers to a supply where the service provider is in India, the recipient is located abroad, and the place of supply lies outside India. The payment for such supply must be received in convertible foreign exchange or INR as permitted. Additionally, the supplier and recipient must not be merely establishments of the distinct person.

Only when all five conditions are satisfied, the service qualifies as “export” and becomes zero-rated under Section 16 of the IGST Act.

- Whether the location of the signing the contract should only be the GSTN raising the export invoice, even if services are provided from a different State?
- Whether amounts received in a Common Bank account can be construed as payment received by the branches?

Location of Supplier and recipient of Services

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location of the Supplier of services

"(15) "location of the supplier of services" means,-

- *(a) where a supply is made from a place of business for which the 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 (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;"*

location of the recipient of services

- *" (14) "location of the recipient of services" means,-*
- *(a) where a supply is received at a place of business for which the 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 (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;"*

The location of the supplier of services/recipient of services is primarily the registered place of business from where the service is supplied/received. If the service is provided/received at a fixed establishment other than the registered office, such fixed establishment is considered the location. In case multiple establishments are involved, the one most directly concerned with the supply is relevant for determining the location. Where none of these apply, the usual place of residence of the supplier/recipient is deemed to be the location.

Place of supply of services – Section 13 of the IGST Act 2017

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*"**Section 13. Place of supply of services where location of supplier or location of recipient is outside India.***
(1) The provisions of this section shall apply to determine the place of supply of services where the location of the supplier of services or the location of the recipient of services is outside India.
Section 13(2) The place of supply of services, except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services:
Provided that where the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services."

Section 13(2) of the IGST Act, 2017 lays down the default rule for determining the place of supply of services in cases where either the supplier or the recipient is located outside India. According to this provision, the place of supply of services shall be the location of the recipient of services.

This provision is the baseline for determining the taxability in cross border transactions and applies unless the service falls under the specific cases enumerated in sub-sections (3) to (13) of Section 13. Hence, Section 13(2) ensures that services are taxed based on the destination principle, aligning with the fundamental character of GST as a destination-based consumption tax.

Place of supply of services – Section 13 of the IGST Act 2017

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Section	Service	Place of supply
Section 13(3)(a)	Services provided in respect of goods that are required to be made physically available by recipient to the supplier in order to provide the service	Location where the services are actually performed
Section 13(3)(b)	Place of supply of services provided to an individual either as recipient of service or person acting on behalf of the recipient of service requiring physical presence of the receiver or person acting on behalf of the recipient	Location where the services are actually performed
Section 13(4)	Directly in relation to immovable property including services supplied by experts, supply of accommodation by a hotel, inn, etc.	location at which immovable property is located or intended to be located
Section 13(5)	Admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition, or similar events and services ancillary to such event	Place where the event is actually held
Section 13(8)	a. Services supplied by banking company or a FI or NBFI to account holders b. Intermediary services c. Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month	Location of the supplier of services
Section 13(9)	Transportation of goods other than by way of mail or courier	Place of destination of goods
Section 13(10)	Passenger transportation service	Place where the passenger embarks on a conveyance for a continuous journey
Section 13(11)	Services on board a conveyance during the course of passenger transportation including services consumed wholly or substantially on board	First scheduled point of departure of that conveyance for the journey
Section 13(12)	Online information and data access and retrieval services	Location of the recipient of services

Section 13(3) – Services requiring the physical presence of goods

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"Section 13 (3) The place of supply of the following services shall be the location where the services are actually performed, namely:-
(a) Services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services, or to a person acting on behalf of the supplier of services in order to provide the services:
Provided that when such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services:
Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or for any other treatment or process and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or process;"

(b) services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient, which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services."

Education Guide, 2012

- Education Guide on Service Tax dated 20th June 2012, provided clarification on the Rule 4(a) of the Place of Provision of Services Rules, 2012 which deals with the services provided in respect of goods that were physically made available by the recipient to the service provider. It has been clarified that the said rule is applicable only for the services like repair, maintenance, calibration, or testing which requires physical presence of the goods and the place of provision for such services would be the location where the service was actually performed.
- However, the Guide also clarified that services which do not involve physical interaction with goods—such as software debugging, remote IT support, or data recovery—would not fall within the scope of Rule 4(a). Instead, such electronically performed services, even if related to the goods, would be covered under the default rule (Rule 3), where the place of provision is deemed to be the location of the service recipient.

Possible Scenarios – IT

Place of Supply in India or Outside India??

On-site hardware repairs	• A foreign client sends defective servers or hardware to India for physical repair..
Installation of enterprise systems on imported devices	• Where imported machines (like routers or data terminals) are sent to India for configuration and the services are physically rendered in India.

Goods made available for providing IT services – applicability of Section 13(3)(a)

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In case of the supply of development of software by an Indian entity, the prototype chips are made available for testing and validation by the foreign entity. The steps involved in the same are as follows:

Foreign entity provides the product requirement specifications → Indian entity develops the software as per the requirements in various stages → The software is uploaded on the website of the foundries for chip manufacture → Foundries manufacture prototype silicon chip and send it to foreign entity → Foreign entity will in turn make these prototypes available to Indian entity for testing and validation → Indian entity undertakes testing and validation using the chip to confirm if all the features developed by them are working properly or not. → If the features developed are working properly, a test report is sent out to the foreign entity → If the features developed are not working, the Indian entity will debug the software design developed by them.

Where an Assessee develops software and also undertakes testing and validation, on the goods provided by the recipient of the service, will the place of supply be in India?

Goods made available for providing Pharma services – applicability of Section 13(3)(a)

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Amendment to Section 13(3)(a)

Earlier Proviso-

- "Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs and are exported after repairs without being put to any other use in India, than that which is required for such repairs;"

Amendment Proviso-

- Provided further that nothing contained in this clause shall apply in the case of services supplied in respect of goods which are temporarily imported into India for repairs or **for any other treatment or process** and are exported after such repairs or treatment or process without being put to any use in India, other than that which is required for such repairs or treatment or nprocess;.

Impact-

- Scope of any other treatment being wide, would cover all forms of testing of drug by Pharma Companies.

GST Council View

Since these are samples are not freely transferable, they are not goods (SC decision in Vikas Sales Corporation) and hence, not covered under Section 13(3)(a)

On application of the concept of composite supply, the place of supply of the services must be basis the principal supply which in the present case is design and development of software which does not require the presence of the sample prototype goods and hence the place of supply is to be reckoned as per Section 13(2) of the IGST Act i.e., located outside India.

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Circular 118/37/2019-GST dated 11.10.2019

The circular provides clarification on the determination of place of supply in case of supply of software/design services by a supplier located in taxable territory to a service recipient located in non-taxable territory by using the sample hardware kits provided by the service recipient.

The Circular addresses the scenario where the foreign recipient sends sample prototype hardware or test kits to the Indian supplier for validating the software or chip design developed. The key clarification is that such hardware-based testing is ancillary in nature, and the principal service remains supply of software/design. Hence, the supply should be treated as a composite supply, with the principal supply determining the place of supply.

It is therefore clarified that where such composite services are supplied by an Indian provider to a recipient located outside India, and the testing on hardware is merely supportive aimed at improving the quality of the software/design developed, the place of supply shall be the location of the recipient in terms of Section 13(2) of the IGST Act, 2017. The testing activity does not attract Section 13(3)(a) (which applies to services requiring goods to be made physically available) independently, as it is not a standalone service.

Circular No. 118/37/2019-GST, dated 11.10.2019

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- The CBIC, through this Circular, clarified the GST implications where a service provider in India undertakes testing services for a foreign client using physical goods or prototypes provided by such client. It was confirmed that even when goods are made physically available by the recipient outside India to the service provider in India, the services shall still be treated as export of services, provided all the conditions under Section 2(6) of the IGST Act, 2017 are satisfied.

- The mere availability of physical goods does not alter the nature of the transaction from that of an export. This clarification is particularly relevant for sectors such as IT hardware and pharmaceuticals, where product testing and R&D are performed using samples or prototype materials.

- The Circular also affirms that if such goods are not meant for commercial sale or use in India, and the service is rendered for a consideration and consumed outside India, the transaction qualifies as export. Thus, this ensures exporters are not denied legitimate refund benefits and provides certainty in determining place of supply under Section 13(3)(a) of the IGST Act.

Circular No. 209/1/2018-S.T., Dated 04.05.2018

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- The CBEC, in the above circular clarified the applicability of the Place of Provision of Services Rules, 2012 (POPS Rules) to services related to the development and maintenance of software. It was acknowledged that software, being intangible, does not have a unique physical existence and may exist on multiple servers simultaneously. The actual location of such servers can be the file servers, web servers, proxy servers, remote servers, or virtualized servers is often not known to the service provider, nor is such knowledge necessary for the performance of the service. Typically, the service provider is granted limited access to the software by the recipient through electronic protocols, while full control over the software (its usage, timing, and purpose) remains with the recipient.

- Applying the POPS Rules, particularly with reference to the definition of "declared service" under Section 66E(d) of the Finance Act, 1994, the CBEC concluded that:

1. in cases involving development, design, or programming of information technology software, the place of provision shall be the location of the service recipient; and
2. in cases involving testing, debugging, customisation, upgradation, enhancement, or implementation of software, the place of provision likewise remains the location of the recipient.

Section 13(4) – Place of Supply for Immovable Property Related Services

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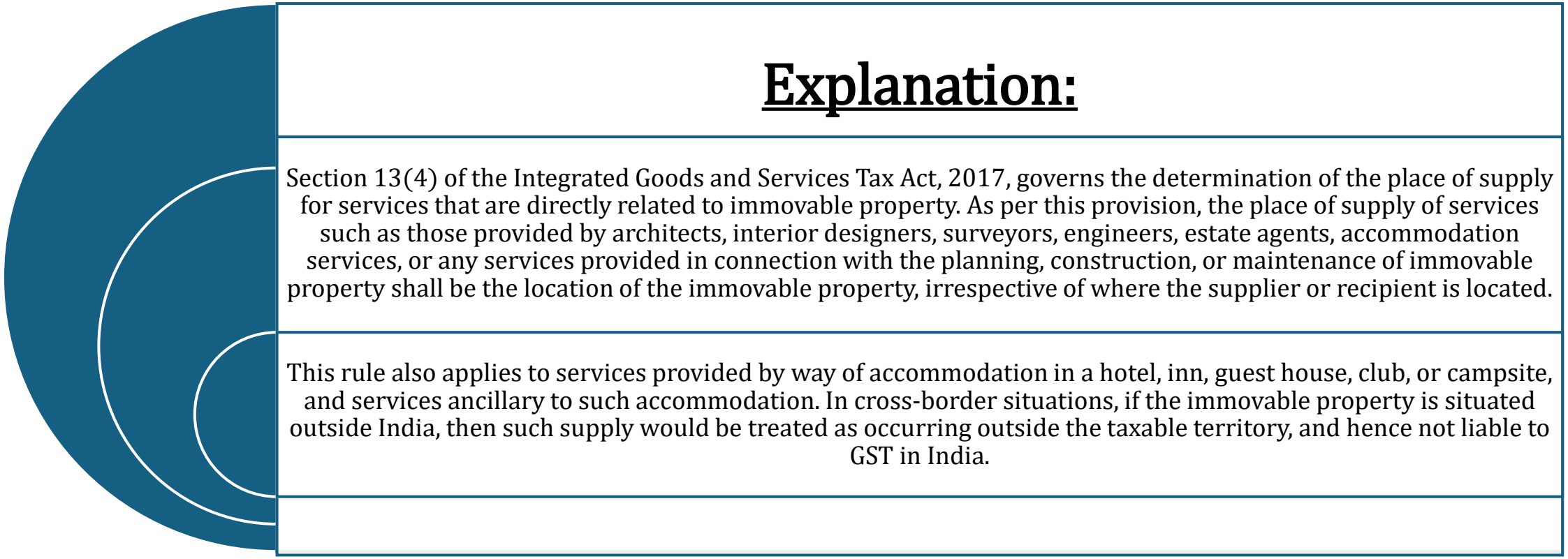
"*Section 13 (4) The place of supply of services supplied directly in relation to an immovable property, including services supplied in this regard by experts and estate agents, supply of accommodation by a hotel, inn, guest house, club or campsite, by whatever name called, grant of rights to use immovable property, services for carrying out or co-ordination of construction work, including that of architects or interior decorators, shall be the place where the immovable property is located or intended to be located.*"



Section 13(4) – Place of Supply for Immovable Property Related Services

Sri Avantika Contractors (I) Ltd. Versus Appellate Authority For Advance Ruling (GST) (2024) 23 Centax 239 (Telangana)	In a case involving cross-border works contract services, the Government of India entered into an MoU with the Government of Maldives for constructing a Police Academy, to be funded by the Indian government. The execution was assigned to National Buildings Construction Corporation Ltd. (NBCCL), which further subcontracted the project to the petitioner. Both NBCCL and the petitioner established fixed establishments in Maldives to execute and supervise the project, including site offices and personnel deployment. Although the registered offices of both parties were located in India, and the contracts and payments were executed in Indian Rupees within India, the construction activity was entirely carried out in the Maldives.
	The Hon'ble Court held that the operations of both entities in Maldives constituted "fixed establishments" under Section 2(7) of the IGST Act. The Court observed that the re-registered entity in Maldives is considered to have a distinct legal presence. Further, the place of supply, being related to immovable property, was the location of the property itself i.e., Maldives as per Section 13(4) of the IGST Act 2017. Under Section 13 and the proviso to Section 12(3) of the IGST Act, when the property is situated outside India, the place of supply is the location of the recipient, which in this case was NBCCL's fixed establishment in the Maldives. Consequently, as both the location of the supplier and the recipient were outside India, and the supply occurred outside the Indian territory, no tax liability could arise under Section 9 of the CGST Act or Section 5 of the IGST Act.

Section 13(5) – Services Relating to Events and Performance Appraisals

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"Section 13(5) - The place of supply of services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation, shall be the place where the event is actually held."

Explanation:

Section 13(5) of the Integrated Goods and Services Tax Act, 2017 governs the place of supply in cases where services pertain to organization of events, such as cultural, artistic, sporting, scientific, educational, or entertainment events, including services ancillary to such events. It also covers services provided in relation to assigning sponsorships to such events and organizing performance appraisals.

When either the supplier or recipient is located outside India, the place of supply is deemed to be the actual location where the event is held. If the event is held outside India, then the place of supply is outside India and the transaction may qualify as export of services, subject to fulfilment of conditions under Section 2(6) of the IGST Act. This provision ensures that the tax follows the destination principle by taxing the service at the place where it is actually consumed or performed.

Section 13(8) – Special Provisions for Place of Supply of Certain Services

"*Section 13(8) The place of supply of the following services shall be the location of the supplier of services, namely:-*
(a) services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders;
(b) intermediary services;
(c) services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month."

Explanation:

Section 13(8) of the IGST Act, 2017 provides that the place of supply shall be the location of the supplier in respect of three specified categories of services, as provided in the provision. This includes (a) Banking services to the account holder (b) Short-term hiring or rental of vehicles.

This provision is an exception to the general rule of destination-based taxation under GST, as it deems the place of supply to be in India even when the recipient is located outside India, thereby treating such services as intra-State supplies and subjecting them to CGST and SGST.

Services supplied by Banking Company: Services linked to or requiring opening and operation of bank account such as lending and deposits; transfer of money including telegraphic transfer, mail transfer, electronic transfer etc. Further, the services such as financial leasing services, merchant banking services and securities and purchase and sale of foreign currency including money exchanging.

Intermediary Services

History of Intermediary Services

- Introduced in the year 2012 – Negative List based taxation.
- Purpose was to determine the “Place of Provision of Service”.
- Intermediary facilitating the supplier of services were covered.
- Scope expanded from October 2014 to cover intermediary facilitating sale of goods.
- Legacy carried forward to GST Law.

Section 2(13) of “Intermediary” means IGST Act, 2017: 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;

Intermediary Services

Clarification under Education Guide (2012)

- As per Para 5.9.6 of the CBEC Education Guide dated 20th June 2012, an intermediary is defined as a person who arranges or facilitates the supply of goods or services between two parties without material alteration or further processing. The intermediary essentially engages in two supplies simultaneously: one being the facilitation between the principal and the third party, and the second being the provision of service (typically on commission) to the principal. Crucially, a person who provides the main supply on their own account does not fall within the ambit of "intermediary."
- The intermediary cannot alter the nature and the value of the services. Additionally, the The value of an intermediary's service is invariably identifiable from the main supply of service that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission".

The Education Guide also clarifies that travel agents, tour operators, commission agents (for services), and recovery agents are classic examples. On the other hand, service providers like call centers or BPOs who render services directly to customers, even if acting on behalf of a client, are not considered intermediaries if they provide the main service on their own account.

Dissection of Definition

"intermediary" means a broker, an agent or any other person, by whatever name called

but does not include a person who supplies such goods or services or both or securities on his own account

who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons

- Agency Relationship
- Facilitation or Arrangement of Supply
- On its own account

Where the Indian entity provides support services for the foreign entity basis the directions of the foreign entity, will the Indian entity qualify as 'intermediary'?

Place of Supply for Intermediary Services

Under the IGST Act, 2017, Section 13(8)(b) specifically provides that in the case of intermediary services, the place of supply shall be the location of the supplier, even when the service recipient is located outside India. This provision is a notable exception to the general rule under Section 13(2), which otherwise provides that the place of supply shall be the location of the recipient when either the supplier or recipient is outside India.

Consequently, even if an Indian intermediary is providing services to a foreign client, the place of supply remains within India, and such supply does not qualify as an export of service under Section 2(6) of the IGST Act, as one of the essential conditions namely, the place of supply being outside India is not fulfilled.

This statutory position has led to several disputes and industry concerns, especially in sectors like consulting, commission agency, and BPO/KPO where services are provided on behalf of or arranged for foreign principals.

The CBIC clarified this position in Circular No. 159/15/2021-GST, reiterating that intermediary services are excluded from export benefits and are taxable in India despite the foreign recipient.

Key Takeaways from Circular No. 159/15/2021-GST

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- The requirements for intermediary services:
  - Minimum 3 parties
  - Two distinct supplies viz., main supply and ancillary supply
  - Intermediary service provider to have the character of an agent, broker or any other similar person
  - Does not include a person who supplies such goods or services or both or securities on his own account
  - Sub-contracting for a service is not an intermediary service

Place of supply for intermediary services is the location of the supplier as per Section 13(8)(b), even when the recipient is located outside India.

Such supplies do not qualify as "export of services", and hence are not zero-rated under Section 16 of the IGST Act.

The key test for intermediary classification is whether the supplier is merely facilitating another supply between two or more distinct parties.

The Circular includes illustrative examples to help differentiate between intermediary and non-intermediary supplies, such as marketing, commission agency, and support services.

This Circular settles industry doubts and is especially relevant for consultants, agents, brokers, and B2B service providers dealing with foreign clients.

Circular No. 232/26/2024-GST dated 10.09.2024- Clarification on Place of Supply and Taxability of Data Hosting Services under IGST Act

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The CBIC has clarified that data hosting service providers offering services to overseas cloud computing entities are not "intermediaries" under Section 2(13) of the IGST Act, as they operate on a principal-to-principal basis and do not facilitate or arrange supply between the cloud provider and their end users. These data hosting entities independently operate data centres using their own infrastructure, premises, and personnel without interaction with end customers. Therefore, such services are not covered under intermediary provisions, and Section 13(8)(b) does not apply.

Further, since cloud service providers do not make any physical goods "available" to the data hosting entities, the services cannot be categorized under Section 13(3)(a), which deals with services in respect of goods physically made available by the recipient. Even where some hardware is supplied by the cloud provider, the overall service remains independently operated by the host. Thus, place of supply is not determined under Section 13(3)(a). The CBIC also clarified that such services do not directly relate to immovable property under Section 13(4), as the data hosting service is a composite supply involving IT infrastructure and operational management, not directly linked to immovable property.

The Circular clarifies that Place of Supply for Data Hosting has to be determined vide Section 2(13) IGST Act, 2017 and not on basis of Section 13/14 of IGST Act, 2017

Intermediary vs. Principal-to-Principal Service Providers

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Particulars	Intermediary	Principal-to-Principal (P2P) Service Provider
Definition	Defined under Section 2(13) of the IGST Act as a person who arranges or facilitates the supply of goods/services between two or more persons.	Not specifically defined, but refers to persons who supply services on their own account directly to the client.
Number of Parties Involved	Involves three parties: supplier, recipient, and intermediary.	Involves two parties: supplier and recipient (direct contractual relationship).
Role of Service Provider	Acts as a facilitator between the actual supplier and actual recipient.	Acts as the actual supplier of service, responsible for full performance and delivery.
Ownership of Service	Does not own the service being supplied; merely facilitates it.	Owns and supplies the service under contractual obligation.
Type of Consideration	Usually earns commission, brokerage, or facilitation fee.	Earns full service fee or contract value directly from the recipient.
Place of Supply (POS)	As per Section 13(8)(b): Location of supplier (i.e., India, if the intermediary is in India).	As per Section 13(2): Location of recipient (i.e., outside India, if client is abroad).
Export of Services Eligibility	Not eligible – POS is in India; fails export condition under Section 2(6).	Eligible – POS outside India; satisfies all export conditions.

Important Case laws in Intermediary

Amazon Development Centre India Private Limited v. Additional Commissioner of Central Tax, GST Appeals-II, Bangalore & Others, 2025-VIL-409-Kar	The petitioner, engaged in providing IT and ITeS services including customer support to foreign group companies, filed a refund claim for unutilized Input Tax Credit under the IGST Act, 2017. The claim was partially rejected on the ground that the petitioner was acting as an "intermediary" as defined under Section 2(13), and hence the services could not qualify as "export of services" under Section 2(6). The department alleged that the petitioner was merely facilitating customer support services on behalf of its foreign affiliates. The High Court rejected this contention, holding that the petitioner provided the customer support services on its own account, not in a facilitative or agency capacity. The essential elements of intermediary such as the existence of three parties, two distinct supplies, and a subsidiary or facilitating role were absent. The services were rendered on a principal-to-principal basis, and the petitioner had no authority to negotiate or conclude contracts with end customers. Relying also on CBIC Circular No. 159/15/2021-GST, the Court concluded that the petitioner is not an intermediary, and the services qualify as export of services. The refund denial was set aside, and the writ petition was allowed.

Important Case laws in Intermediary

Columbia Sportswear India Sourcing Pvt Ltd Vs Union of India,

2025-VIL-512-KAR

- The petitioner had entered into a Buying Support Services Agreement with a foreign client to identify potential procurement sources and subsequently filed a refund claim for unutilized Input Tax Credit under the IGST regime. The refund was rejected on the ground that the petitioner was acting as an intermediary under Section 2(13) of the IGST Act.
- However, the Court found that the petitioner was providing services on its own account, as an independent contractor, and not facilitating or arranging any supply between the foreign recipient and third parties. The petitioner had no authority to represent or bind the foreign principal, and the service fee was structured on a cost-plus markup basis, unlike commission-based intermediary models.
- Hence, the Court held that the petitioner did not qualify as an intermediary, and the services rendered constituted export of services under Section 2(6) of the IGST Act.

Important Case laws in Intermediary

Athene Technologies India LLP Versus State of Karnataka, (2025) 31 Centax 113 (Kar.)	In a judgment involving the issue of classification of software development services, the Hon'ble High Court examined whether the petitioner, who provided software development services to its overseas group entity under a Master Service Agreement, would qualify as an "intermediary" under Section 2(13) of the IGST Act, or as an exporter of services under Section 2(6). The Petitioner had already been granted IGST refunds treating the services as exports, which were later reversed by the Appellate Authority on grounds that the Petitioner was an intermediary. The High Court, relying on the ratio laid down in Columbia Sportswear India Sourcing (P.) Ltd. v. UOI (2025-VIL-512-KAR), held that the definition of "intermediary" requires the presence of at least three parties and a clear element of arranging or facilitating supply between two others, which was absent in the instant case. The Petitioner rendered services on its own account to its overseas recipient, acting as an independent contractor, with no authority to bind the foreign client. The agreement expressly clarified that no agency or partnership relationship existed. Therefore, the Petitioner could not be classified as an intermediary and was rightly eligible for export benefits under GST law. Accordingly, the impugned appellate order was quashed and the refund granted by the original authority was upheld.

Key Takeaways from Judicial Precedents on Intermediary

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Independent Contractor Model Prevails: In all three cases, Amazon Development Centre, Columbia Sportswear India, and Athene Technologies, the petitioners provided services on their own account, not in a facilitative or agency capacity. The Courts emphasized the absence of an intermediary role where the service provider does not arrange or facilitate supply between two other distinct persons.

Essential Elements of 'Intermediary': The Courts reiterated that to qualify as an intermediary under Section 2(13) of the IGST Act, there must be three parties, two supplies, and a facilitation or arrangement of the main supply. Mere provision of backend support, software development, or sourcing services to a foreign principal without any authority to bind or represent does not meet this threshold.

Principal-to-Principal Supply Qualifies as Export: Where the service provider operates independently, with no role in the negotiation or conclusion of contracts on behalf of the foreign recipient, and is remunerated on a cost-plus basis, the transaction qualifies as export of services under Section 2(6) of the IGST Act, making it eligible for refund of unutilized ITC.

Judicial Consistency and Reliance on CBIC Clarifications: Courts have consistently relied upon CBIC Circular No. 159/15/2021-GST and the principles laid down in earlier rulings (like Columbia Sportswear) to conclude that misclassification of genuine exports as intermediary services is legally untenable.

Section 13(9) of the IGST Act, 2019

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~~Section 13(9) The place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods.~~

- Prior to omission of the said provision, if a service provider located in India was transporting goods to a destination outside India, the place of supply was considered to be the destination of goods (i.e., outside India).
- Accordingly, such a transaction could qualify as an export of services under Section 2(6) of the IGST Act, subject to fulfillment of other conditions.
- The said provision caused differential tax treatment of the export freight charged to Indian exporter by the Indian Shipping line vis a vis Foreign Shipping line. Indian Shipping line were discharging GST by virtue of transaction being covered under Section 12(8) of the IGST Act, whereas the Foreign Shipping line were outside the scope of GST by virtue of Section 13(9) of the IGST Act.
- Further, the services provided by way of mail and courier being a sub-set of transportation services, the place of supply as applicable for the transportation is applicable for services by way of mail or courier.

- After the omission of Section 13(9) by the Finance Act, 2023 (w.e.f. 01.10.2023), the place of supply for services in the nature of transportation of goods, mail or courier is now governed by the default rule under Section 13(2) of the IGST Act. Accordingly, the place of supply is the location of the recipient of services.

Section 13(9) of the Integrated Goods and Services Tax Act, 2017 was omitted by Section 165(a) of the Finance Act, 2023, with effect from 1st October 2023, as notified by Notification No. 28/2023 Integrated Tax, dated 31st July 2023.

Circular 203/15/2023-GST dated 27.10.2023

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Subsequent to the omission of Section 13(9) of the IGST Act, doubts were raised whether the place of supply for the transportation of goods including the mail or courier is governed under Section 13(2) or 13(3)(a) of the IGST Act.

- The circular clarified as follows:
  - *Place of supply of services where location of supplier or location of recipient is outside India is determined as per section 13 of the IGST Act. Sub- section (9) of section 13 of IGST Act provided that where one of the supplier of the services or the recipient of services is located outside India, the place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods. The said sub-section has been omitted vide section 162 of Finance Act, 2023 which will come into effect from 01.10.2023. It is hereby clarified that after the said amendment comes into effect, the place of supply of services of transportation of goods, other than through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined by the default rule under section 13(2) of IGST Act and not as performance based services under sub-section (3) of section 13 of IGST Act. Accordingly, in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services.*
  - *Further, it is also mentioned that the place of supply in case of service of transportation of goods by mail or courier was not covered under the provisions of sub-section (9) of section 13 before the said sub-section was amended/ omitted. Therefore, on the same principles as mentioned above, the place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act i.e. in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services."*

Thus, the place of supply for the services provided by way of transportation including the mail or courier was always governed under Section 13(2) of the IGST Act and there cannot be two provisions governing the place of supply for the same transaction.

Section 13(10) - passenger transportation services

"Section 13(10) - The place of supply in respect of passenger transportation services shall be the place where the passenger embarks on the conveyance for a continuous journey."

Explanation:

Section 13(10) deals with the determination of the place of supply in relation to passenger transportation services in cases where either the supplier or the recipient of the service is located outside India. According to this provision, the place of supply shall be the place where the passenger embarks on the conveyance for a continuous journey. This ensures that the location of actual commencement of travel determines the situs of taxation.

The concept of a "continuous journey", as defined under Section 2(3) of the IGST Act refers to a journey for which a single or more than one ticket is issued at the same time and the journey is not interrupted for any reason other than by necessity. This provision is particularly significant in the context of cross-border travel, as it helps determine the applicability of GST by anchoring the supply to a specific location i.e., the boarding point—thus providing clarity in taxation of international and interstate travel services.

Section 13(11) - Place of Supply for On-board Services During Passenger Transport

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"*Section 13(11): The place of supply of services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board, shall be the first scheduled point of departure of that conveyance for the journey.*"

Explanation:

Section 13(11) of the Integrated Goods and Services Tax Act, 2017 governs the determination of the place of supply for services provided on board a conveyance during the course of passenger transport operations. This includes services such as meals, entertainment, or retail supplies that are wholly or substantially consumed on board during a journey. The section stipulates that the place of supply for such services shall be the first scheduled point of departure of the conveyance for the journey in question.

Whether a pre-booked meal on a connecting Foreign Flight, for example "Singapore to Australia", will be taxable by virtue of it being a part of composite supply?

OIDAR Services

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- OIDAR (Online Information and Database Access or Retrieval) services are defined under Section 2(17) of the IGST Act.
- "*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, excluding the online money gaming as defined in clause (80B) of section 2 of the Central Goods and Services Tax Act, 2017;*"

Section 2(17) of the IGST Act defines OIDAR services as services delivered over the internet or an electronic network, which are automated and require minimal human intervention. The essence of OIDAR lies in its electronic delivery and self-executing nature, distinguishing it from manually rendered digital services.

Examples include cloud storage, e-book downloads, streaming services, and subscription-based software access.

Why OIDAR Requires a Treatment Different From Other Services?

- The nature of OIDAR services are such that it can be provided online from a remote location outside the taxable territory. A similar service provided by an Indian Service Provider, from within the taxable territory, to recipients in India would be taxable.
- Further, such services received by a registered entity in India would also be taxable under reverse charge. The overseas suppliers of such services would have an unfair tax advantage should the services provided by them be left out of the tax net. At the same time, since the service provider is located overseas and may not be having a presence in India, the compliance verification mechanism become difficult. It is in such circumstances, that the government has come out with a simplified scheme of registration for such service providers located outside.

Special Procedure under Section 14 of the IGST Act

- Section 14 of the IGST Act, 2017 prescribes a special procedure for OIDAR services provided by a person located in a non-taxable territory to a non-taxable online recipient in India. As per this section, such a foreign service provider is mandatorily required to obtain registration under GST in India, irrespective of the threshold exemption, and comply with the prescribed provisions. The registration must be obtained through the Simplified Registration Scheme, and a representative may be appointed in India for tax compliance purposes.
- This ensures that tax liability is effectively enforced even in cases where the supplier does not have a physical presence in India. The registration is also required to facilitate the compliance of OIDAR suppliers in terms of tax invoicing, return filing (Form GSTR-5A), and payment of tax in INR. Failure to comply with the registration or tax payment may attract penal provisions under the GST law.

Place of Supply for OIDAR Service

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"Section 13(12) The place of supply of online information and database access or retrieval services shall be the location of the recipient of services."

Explanation:- For the purposes of this sub-section, person receiving such services shall be deemed to be located in the taxable territory, if any two of the following non-contradictory conditions are satisfied, namely:-

- *(a) the location of address presented by the recipient of services through internet is in the taxable territory;*
- *(b) the credit card or debit card or store value card or charge card or smart card or any other card by which the recipient of services settles payment has been issued in the taxable territory;*
- *(c) the billing address of the recipient of services is in the taxable territory;*
- *(d) the internet protocol address of the device used by the recipient of services is in the taxable territory;*
- *(e) the bank of the recipient of services in which the account used for payment is maintained is in the taxable territory;*
- *(f) the country code of the subscriber identity module card used by the recipient of services is of taxable territory;*
- *(g) the location of the fixed land line through which the service is received by the recipient is in the taxable territory."*

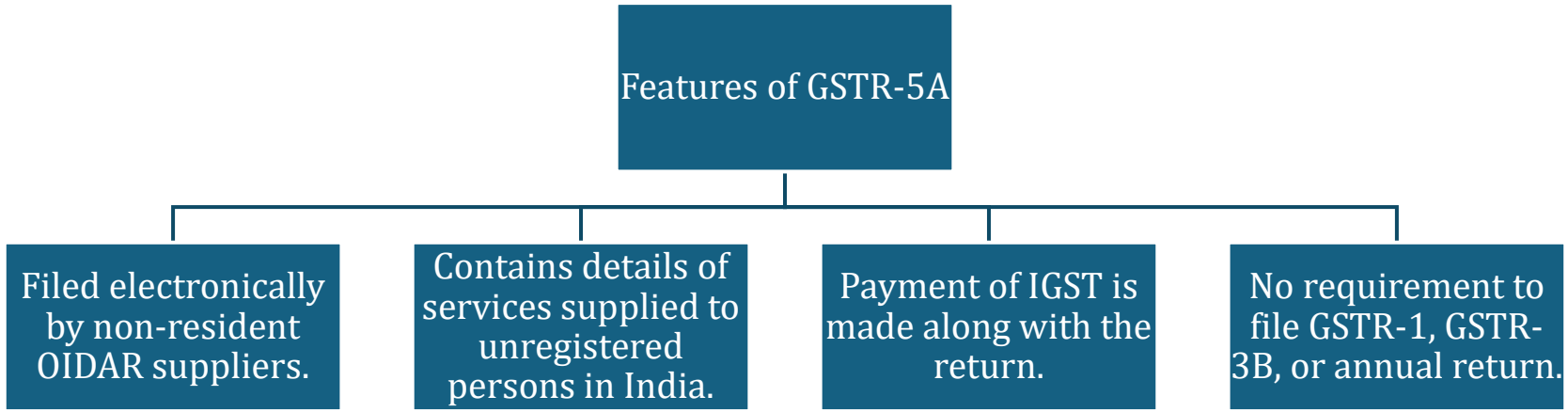
OIDAR services, when supplied in a cross-border context, are governed by Section 13 of the IGST Act, 2017, which applies where either the supplier or recipient is located outside India. Specifically, Section 13(12) provides that the place of supply of OIDAR services shall be the location of the recipient of services, irrespective of the supplier's location. This ensures that even if the supplier is located abroad, such digital services consumed by Indian recipients are taxable in India.
Where the supply is made to a non-taxable online recipient (typically B2C), Section 14 mandates that the foreign OIDAR supplier must register and pay IGST in India, thereby ensuring tax neutrality between domestic and overseas digital service providers.

Whether ownership of data is relevant factor for determining if services qualify as 'OIDAR services' ?

GST Returns Filed by OIDAR Service Providers

- Section 14, IGST Act: Requires non-resident OIDAR service providers supplying to non-taxable online recipients in India to obtain GST registration and pay GST.
- Rule 64 of the CGST Rules, 2017: Governs the return filing and tax payment procedure for such foreign OIDAR suppliers.

Return Type	Form	Frequency	Due Date
Statement of outward supplies	Form GSTR-5A	Monthly	20th of the following month



Input Tax Credit on receipt of OIDAR Services

- Input Tax Credit (ITC) on OIDAR services is available to the recipient in India only when the recipient is a registered person under GST and the service is used in the course or furtherance of business. In such cases, where a registered person in India imports OIDAR services from a supplier located outside India, the recipient is liable to discharge IGST under the reverse charge mechanism (RCM) as per Section 5(3) of the IGST Act, read with Notification No. 10/2017 – IGST (Rate).
- The IGST so paid under RCM can be claimed as eligible ITC under Section 16 of the CGST Act, subject to the usual conditions (i.e., possession of invoice, payment of tax, and filing of returns). However, non-taxable online recipients (B2C) who are not registered under GST cannot claim ITC on OIDAR services, as such recipients are not eligible to avail credit.

Can OIDAR Service provider avail ITC?

- An OIDAR service provider may have ITC on input services such as intermediary services, accommodation etc., wherein the place of supply for services provided outside India is treated to be in India.
- Form GSTR-5A to be filed by an OIDAR service provider does not have an option to avail ITC.
- OIDAR service provider is entitled to credit in terms of Section 16 except Section 16(2)(aa) of the CGST Act (GSTR-2A). The credit is not blocked under Section 17 of the CGST Act.

Definition of Non-Taxable Online Recipient –

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Pre- amendment

- '(16) "non-taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.
- Explanation.—For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,—
- (i) set up by an Act of Parliament or a State Legislature; or
- (ii) established by any Government,
- with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a Panchayat under article 243G or to a municipality under article 243W of the Constitution;'

Post Amendment (2023)

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 clause (vi) of section 24 of the Central Goods and Services Tax Act, 2017 (12 of 2017.)

The Finance Act, 2023 amended the definition of "non-taxable online recipient" under Section 2(16) of the IGST Act, with retrospective effect from 1st July 2017. The earlier definition was limited and caused ambiguity in taxing OIDAR services in B2C scenarios. The amended definition clarifies that a non-taxable online recipient means any unregistered person receiving OIDAR services located in India, including government and local authorities, excluding only registered persons under GST.

This amendment is significant because it broadens the scope of tax liability for foreign OIDAR service providers supplying to Indian customers. It reinforces the tax obligation under Section 14 of the IGST Act and ensures that all unregistered recipients (B2C), including Government entities, are treated as non-taxable online recipients, triggering the requirement for the foreign OIDAR supplier to register and pay IGST in India.

Key Clarifications – Circular No. 242/36/2024-GST (Dated 28.05.2024)

Circular No. 242/36/2024-GST, dated 28.05.2024, clarifies that in the case of supplies made to unregistered recipients, such as OIDAR services, online money gaming, or digital services through electronic platforms, the State name of the recipient must be mandatorily recorded on the tax invoice. As per Section 12(2)(b) of the IGST Act, the place of supply shall be the location of the recipient, if the address is on record. The proviso to Rule 46(f) of the CGST Rules deems the recorded State name as the address on record, thereby making the place of supply the recipient's location even for unregistered persons.

The circular further extends this requirement to all online/digital services, including OTT subscriptions, e-magazines, online messaging, and telecom services. Suppliers must put in place mechanisms to collect the recipient's State before supply, mention it on the tax invoice, and report it in GSTR-1/1A. Failure to comply may lead to penalty under Section 122(3)(e) of the CGST Act for non-issuance of proper tax invoices. This ensures correct place of supply determination, especially in B2C digital transactions under GST.

Summary of Clarifications provided in Circular No. 242/36/2024-GST (Dated 28.05.2024)

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A. Place of Supply – Unregistered Recipients

- Location of recipient → if address is on record
- Location of supplier → if no address is on record (Section 12(2)(b) of IGST Act)

B. Implication of State Name on Invoice

- Proviso to Rule 46(f): Recording of the State name is deemed as "address on record"
- Hence, place of supply = location of recipient under Section 12(2)(b)(i)

Aspect	Clarification
Place of Supply	Based on State name recorded for recipient
Invoice Mandatory Field	Recipient's State name (even if unregistered)
Return Filing	GSTR-1/1A must reflect correct POS
Penalty Exposure	For missing State name – liable u/s 122(3)(e)
Applicability	Applies to all digital services, OIDAR, gaming, app-based platforms, etc.

Mere enabling dissemination of recipients own date does not amount to OIDAR services

Air India Ltd Vs Commissioner of Service Tax, New Delhi 2025-VIL-971-CESTAT-DEL-ST (CESTAT Delhi)	The Appellant, an airline engaged in domestic and international passenger and cargo transport, had entered into agreements with Computer Reservation System (CRS) companies to facilitate global visibility and booking of its tickets through travel agents. These CRS companies provided a technological platform, aggregating real time data on fares, availability, and flight schedules from various airlines. Travel agents accessed this infrastructure to book flights seamlessly, enhancing the airline's outreach and operational efficiency. The Revenue alleged that payments made by the appellant to these foreign CRS entities were liable to service tax under the category of OIDAR services on an RCM basis.
	The CESTAT Delhi held that the CRS companies were not providing any fresh data or information to the appellant, as required under the scope of OIDAR. Instead, they were merely enabling the dissemination of the appellant's own data to travel agents worldwide. The entire database was populated using the airline's information, and the CRS companies acted as technical facilitators, not as data providers. Hence, the transaction was not classifiable as OIDAR and does not attract service tax on RCM basis.

Key Takeaways

Place of Supply is the decisive factor in determining whether a transaction is a domestic supply or qualifies as an export/import of service under GST.

Sections 12 & 13 of the IGST Act, 2017 govern Place of supply rules:

- Section 12 applies when both supplier & recipient are in India.
- Section 13 applies when either party is outside India

Export of Services under Section 2(6) must satisfy all five conditions —including that the PoS must be outside India.

Key Sectors impacted by place of supply rules:

- IT & Software Development
- Consultancy & BPO Services
- Intermediary Services
- OIDAR Services

Practical Issues in Cross-Border Service Transactions – GST Perspective

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- Frequent misclassification of principal-to-principal services as 'intermediary' Place of Supply Disputes under Section 13
- Ambiguity in applying Section 13(2) vs. 13(3)/(4)/(5) for specialized services
- Contractual gaps leading to incorrect place of supply interpretation
- Difficulty in capturing recipient's state for OIDAR/unregistered users (Rule 46(f))
- Refund rejections and delays due to POS-related objections
- Challenge in aligning invoice disclosures with place of supply and export norms
- Lack of standard guidance on cross-border bundled/composite services

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Current issues in Show Cause Notice & Departmental Audits

SHOW CAUSE NOTICES

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Section 73(1)- SCN	Section 74(1)- SCN issued where fraud/suppression is alleged
Where it appears to proper officer that:- • Any tax has **not been paid** or • Any tax has been **Short Paid** or • Any tax has been **erroneously refunded** or • Where any Input Tax credit have **wrongly availed** or • Any Input Tax Credit have **been wrongly utilised.**	
• **For any reason, other than fraud or willful-misstatement or suppression of facts** • The Notice shall be issued at least three months prior to the time limit specified in sub-section(10) of Section 73 for issuance of order (2 Years and 9 Months from date of Annual Return) • Adjudication authority shall pass the order within 3 years from the due date of filing of annual return.	• **By reason of fraud or willful-misstatement or suppression of facts** • The Notice shall be issued at least six months prior to the time limit specified in sub-section(10) of Section 73 for issuance of order (4 Years and 6 Months from date of Annual Return) • Adjudication authority shall pass the order within 5 years from the due date of filing of annual return.

Till 2023-24

Section 168A – Power of Government to extend time limit in special circumstances

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"168A. (1) Notwithstanding anything contained in this Act, the Government may, on the recommendations of the Council, by notification, extend the time limit specified in, or prescribed or notified under, this Act in respect of actions which cannot be completed or complied with due to force majeure.

(2) The power to issue a notification under sub-section (1) shall include the power to give retrospective effect to such notification from a date not earlier than the date of commencement of this Act.

Explanation.- For this section, the expression "force majeure" means a case of war, epidemic, flood, drought, fire, cyclone, earthquake, or any other calamity caused by nature or otherwise affecting the implementation of any of the provisions of this Act."

Under section 168A of the CGST Act, the Government can extend the time limit for various activities as provided under this act on fulfillment of certain conditions:

- On recommendation from the GST Council
- On the occurrence of a "force majeure" incident

The CBIC, using the powers under Section 168A of the CGST Act, issued the following the notifications:

- Notification No. 35/2020-Central Tax dated 03.04.2020
- Notification No. 13/2022-Central Tax dated 05.07.2022
- Notification No.09/2023-Central Tax dated 31.03.2023
- Notification No. 56/2023-Central Tax dated 28.12.2023.

Time Limit for Issuance of SCN under Section 73 extended as per Notification No.9 of 2023 dt. 31.03.2023 & Notification No.56 of 2023 dt. 28.12.2023

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Year	Due Date for Filing of Return	SCN can be issued up to (2 Yrs. & 9 Mon. from Due Date of Annual Return)	Order to be passed within Yrs. from Due Date of Return)	Extended time for passing order under section 73 vide Notification 09/2023 dt. 31.03.2024	Extended time for passing order under section 73 vide Notification 56/2023 dt. 28.12.2023
2017-2018	06/07- Feb-2020	06-Nov-2022	06-Feb-2023	31-Dec-2023	--
2018-2019	30- Sep -2020	29-Jun-2023	29-Sep-2023	31-Mar-2024	30-April-2024
2019-2020	31-Mar-2021	31-Dec-2023	30-Mar-2024	31-June-2024	31-Aug-2024

The extension of the time limit for issuance of SCN vide *Notification No.56/2023 dt. 28.12.2023* was challenged as the same was issued under Section 168A without a recommendation from the GST Council and in absence of a force majeure incident

Notification No.56/2023 is liable to be set aside as the same was issued without recommendation of the GST Council and in absence of a force majeure incident

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M/s Barkataki Print and Media Services and Anr v. Union of India And Ors (2024) 22 Centax 479 (Gau)	The Writ Petition was filed challenging the legality of the Notification No. 9/2023-CT dated 31.03.2023 and Notification No. 56/2023-CT dated 28.12.2023, stating that the government overstepped its powers under Section 168A in the absence of a true force majeure situation and issued the said notifications without the recommendation of the GST Council. They argue that as the notifications are ultra vires to the statute, the corresponding orders passed under Section 73(10) would also be invalid, having been passed beyond the prescribed time limit.
	The Court in the instant matter held that the Notification dated 28.12.2023 is ultra-vires and not legally sustainable as the same has been issued without recommendation from the GST council for the extension of the time limit in terms of Section 73 of the CGST Act, 2017 and since the notification extending the time limit for passing orders was found to be invalid, the orders passed under Section 73(9) during the extended period are also deemed to be without jurisdiction and are quashed.

Subsequent to the judgment, the department filed a review petition against the said judgment on the ground that said notification was ratified by the GST Council vide the meeting held on 22.06.2024. The court, upon consideration of the submissions, observed that the recommendation initiates a process by way of a proposal, whereas ratification is relevant for approvals, and these two terms are distinct and cannot be equated, and therefore dismissed the review petition

Notification Nos. 9/2023 and 56/2023 are valid

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Brunda Infra Pvt. Ltd. & Others vs. Additional Commissioner of Central Tax (2025) 26 Centax 94 (Telangana)	The Hon'ble High Court of Telangana while considering the validity of the above notifications held that the said Notifications are valid and observed that: • The directions issued by the Hon'ble Supreme Court in *suo moto* writ proceedings initially covering the Arbitration Act and other laws were later explicitly extended to "any other laws" prescribing limitation, which includes Section 73 of the CGST Act. • With regard to Circular No. 157/13/2021-GST, dated 20.07.2021, the Hon'ble Court relying on the decision of the Apex Court in CCE vs. Ratan Melting & Wire Industries [(2008) 13 SCC 1], concluded that though the Circulars and instructions issued by the Board are binding on the authorities, when the Supreme Court declares the law on question, the clarifications are not binding on the Court. • The Court affirmed the legislative intent that Section 168A empowers, multiple extensions in special circumstances. It held that ratification by the GST Council even post-issuance is sufficient to satisfy the statutory requirement.
Barhonia Engicon Pvt. Ltd. Versus State of Bihar (2024) 25 Centax 55 (Pat.)	The Hon'ble Patna High Court also upon examination of a similar challenge to Notification No. 56/2023-CT, questioning whether GST Council approval must precede issuance, observed that: • The 52nd and 53rd GST Council meeting have ratified the issuance of Notification 56/2023. • On an application of the Supreme Court *suo moto* extension it was observed that the SC having extended the limitation for the period between 15.03.20220 till 28.02.2022, additional time period was provided.

Notification No.56/2023 is liable to be set aside as the same was issued without recommendation of the GST Council and in absence of a force majeure incident

SHIVADASS & SHIVADASS LAW CHAMBERS

M/s. SEW MEIL AAG JV v. Assistant Commissioner of State Tax and Ors (SLP No. 4240/2025)	The instant SLP was filed by the Appellant challenging Notification No.56/2023-Central Tax dated 28.12.2023 along with the Notification No.9/2023 dated 31.03.2023. The Apex court in the said case have posted the matter for detailed hearing and in the meantime have granted interim relief to the Petitioner's in the said matter.
M/s. Garg Rice Mills and ors. v. State of Punjab and ors. (2025) 28 Centax 419 (P&H.)	The Writ Petition was filed challenging the legality of the Notification No. 13/2022 dated 05.07.2022, Notification No. 9/2023-CT dated 31.03.2023 and Notification No. 56/2023-CT dated 28.12.2023, stating that the government overstepped its powers under Section 168A in the absence of a true force majeure situation and issued the said notifications without the recommendation of the GST Council. They argue that as the notifications are ultra vires to the statute, the corresponding orders passed under Section 73(10) would also be invalid, having been passed beyond the prescribed time limit. The court in the instant case after considering the submission and the arguments made by the parties observed that the issues which are in consideration before this bench has already been raised in a special leave petition pending before the Hon'ble Supreme Court of India and hence the high court refrained from giving any opinion on the same respecting the judicial discipline. However, the court held that the interim relief granted to petitioners therein was extended till the matter is disposed by the Apex court.

SCN issued beyond the period as provided under Section 73(2) of the CGST Act is time-barred

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As per Section 73(10) of the CGST Act, the due date for issuance of the Order for the period 2020-21 would be 28.02.2025, i.e., within three years from the due date of the annual return. As per Section 73(2) of the CGST Act, the SCN is to be issued at least three months before the time limit of issuance of an Order i.e., on or before 28.11.2024.

The term 'month' shall mean month reckoned according to the British calendar.

- As per Halsbury's Law of England, the word 'month' is defined as - *Calendar month running from arbitrary date – when the period prescribed is a calendar month running from any arbitrary date the period expires upon* ***the day in the succeeding month corresponding to the date upon which the period starts****, save that, if the period starts at end of a calendar month which contains more days than the next succeeding month, the period expires at end of that succeeding month.*

There have been multiple cases on the said issue wherein the Department has issued an OIO against an SCN within 3 years from the date of filing the annual return but failed to issue the SCN within 3 months of the expiry of 3 years, making the SCN time-barred.

SCN issued beyond the period as provided under Section 73(2) of the CGST Act is time-barred

SHIVADASS & SHIVADASS LAW CHAMBERS

M/s The Cotton Corporation of India v. Assistant Commissioner (ST) (Audit) (FAC), State of Andhra Pradesh, Union of India, 2025 (2) TMI 362	The petitioner in the instant case received a SCN, dated 30.11.2024, for assessment year 2020-2021, calling upon the petitioner to show cause why an assessment should not be carried out in relation to short payment of tax etc. Notice was issued under Section 73(1) r/w Rule 142 of the APGST Rules. The instant SCN was challenged by the Petitioner on the ground that Section 73(2) of the APGST Act stipulates that the notice under 73(1) which initiates the assessment proceedings, would have to be issued at least three months prior to the time limit specified in sub-section(10) for issuance of the order and instant case the SCN was issued beyond this period.
	The court in the instant case after considering the submissions made by the parties have referred to the Hon'ble Supreme Court judgment in case of State of Himachal Pradesh and Another vs. Himachal Techno Engineers and Another (2010) 12 SCC 210, wherein Supreme Court laid down the principle that, when a period, available for a certain action, is defined in terms of months, it would mean that the corresponding date of the corresponding month would be the cutoff date. Thus, in line with the same, the court held that the time limit set out under Section 73(2) of the CGST Act is mandatory and any violation of that period cannot be condoned, and would render the show cause notice otiose, and accordingly, the writ petition was to be allowed quashing SCN.

Issuance of SCN under Additional Notices Tax of the GST portal

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Another ongoing major issue is uploading of SCN, Order and related documents under the "additional notices and orders" tab within the GST portal. The said act of the department in majority of the cases has deprived the assessee of their right to proper and effective intimation.

This procedural lapse has already been judicially recognised by various High Courts in several judicial pronouncements wherein such defective service was held to be equivalent to no service and the matters were remanded back to the authority for re-adjudication after providing due opportunity of hearing.

Brij Machine Tools vs. Govt of NCT of Delhi	The present Writ Petition was filed by the Petitioner challenging the SCN and the Order passed adjudicating the said SCN. In the said Case, the show cause notice, from which impugned order was passed, was uploaded on additional notices tab on GST portal, therefore, same did not come to knowledge of assessee. Additionally, it was further submitted by the Petitioner that the impugned order was passed without providing opportunity of personal hearing.
(2025) 30 Centax 292 (Del.)	The court in the instant case referred to the Delhi High Court case of *Neelgiri Machinery v. Commissioner Delhi Goods and Service Tax [(2025) 28 Centax 431 (Del..)*, wherein the judgement is passed under similar circumstances wherein an SCN was uploaded in 'additional notices tab' and the said matter was remanded. In line with the same, the impugned order and the SCN was set aside, and the matter was remanded to the adjudicating authority with liberty to assessee to file reply to SCN within 30 days

Issuance of SCN under “Additional Notices” of the GST portal

Sahulhameed Versus Commercial Tax Officer, Tuticorin-II (2025) 26 Centax 367 (Mad.)	In the instant case, the revenue had uploaded only notices/orders in the web portal and not by any other mode as prescribed under Section 169 of the TNGST Act, 2017. The Petitioners in the instant case were not well aware about portal of revenue and due unawareness of information technology, they relied upon practitioners for filing their returns in portal of revenue, but practitioners had uploaded their phone numbers and e-mail IDs for receipt of alerts and that in most of cases, practitioners had not informed assesses. The assessee on the instant ground has filed the writ petition challenging the SCN and the order passed pursuant to the same.
	The court in the instant case held that Section 169 mandates a notice in person or by registered post or to registered e-mail ID alternatively and on a failure or impracticability of adopting any of aforesaid modes, State can, in addition, make a publication of such notices/summons/orders in portal/newspaper through concerned officials; thus, assessment orders uploaded only in GST web portal were to be set aside.

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Recent High Court and Supreme Court decisions in GST

Levy of GST on services provided by a Club/Association to its members is unconstitutional and void

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Indian Medical Association vs. Union of India

2025 (96) G.S.T.L. 532(Ker.)

FACTS

The Instant Writ Petition was filed challenging the constitutional validity of the amendment to the provisions of Section 2(17)(e) and Section 7(1)(aa) read with the Explanation thereto of the CGST Act and the KGST Act introduced by Finance Act, 2021, that introduced deeming provisions making the supply of services by a Club/Association to its members a taxable supply for the purposes of the levy of tax.

JUDGMENT

The High Court held that the terms "supply" and "service" cannot be statutorily expanded beyond their accepted meaning, which requires a transaction between distinct entities. The Court emphasized that a club or association is not distinct from its members, and transactions governed by the principle of mutuality (self-supply/self-service) are excluded from the scope of supply and service.

Consequently, the Court declared specific provisions under the CGST and KGST Acts (Section 2(17)(e) and Section 7(1)(aa)) as unconstitutional and void for being ultra vires Articles 246A, 366(12A), and 265 of the Constitution of India. The Court distinguished between judicial interpretations of statutory terms and constitutional phrases, emphasizing that the latter cannot be expanded beyond their accepted meaning, and held that the legislature cannot levy tax on transactions not recognized by the Constitution.

Pre-deposit payment made vide Electronic Credit Ledger is valid

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Union of India vs. Yasho Industries Ltd.

(2025) 30 Centax 352 (S.C.)

FACTS

The Petitioner in the instant case has filed an Appeal before the appellate authority under Section 107 by making a pre-deposit amounting to Rs. 3.36 using the Electronic Credit Ledger. The department has rejected this and issued a letter informing that the payment via the Electronic Credit Ledger is not a valid mode of payment of pre-deposit, citing non-compliance. The Petitioner challenged the letter issued by the revenue directing the assessee to pay the pre-deposit amount through the Electronic Cash Ledger, wherein the High Court has passed a favorable order against the assessee, which is now challenged filed by the department by way of SLP.

JUDGMENT

The Supreme Court dismissed the SLP filed by the Revenue against an order passed by the Gujarat High Court as the Supreme Court found no reason to interfere with the HC order, as it referred to the Department's own *Circular No. CBIC-20001/2/2022-GST dt. 06.07.2022*, which clarified that payment of pre-deposit under Section 107 of the CGST Act can be made using the Electronic Credit Ledger.

Safari Retreats review petition dismissed

Chief Commissioner of Central Goods and Service Tax vs. Safari Retreats Pvt. Ltd.

(2025) 30 Centax 350 (S.C.)

FACTS

The Orissa High Court in Safari Retreats Pvt. Ltd vs. Chief Commissioner of CGST had held that the clause (d) of Section 17(5) CGST Act, 2017 is constitutionally invalid.

Subsequently, the Supreme Court in an appeal filed against the same observed that clauses (c) and (d) of Section 17(5) and Section 16(4) of the CGST Act is constitutionally valid and the expression "plant or machinery" used in Section 17(5)(d) cannot be given the same meaning as the expression "plant and machinery" defined by the explanation to Section 17. The department filed a review petition against the said case.

JUDGMENT

The Hon'ble Supreme Court dismissed the review petition filed by the Revenue against the judgment dated 03.10.2024 by observing that there is no error apparent on the record. The Supreme Court had decided in favour of the taxpayers by upholding the decision of the Orissa High Court which had observed that the term 'plant or machinery' used in Section 17(5)(d) of the CGST Act cannot be read to mean 'plant and machinery'. Consequently, ITC will be available in respect of buildings, which may be treated as plants under different enactments.

Assessee can avail the refund of the unutilised excess ITC upon discontinuance of their business

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SICPA India Private Limited and Anr. v, Union of India and Ors.

WP(C) No.54 of 2023, Sikkim High Court

FACTS

In the Instant case, the Petitioner filed a Writ Petition challenging the refund rejection order passed by the Department against the Petitioner when the Petitioner claimed the refund of the unutilized Input Tax Credit, lying in the Electronic Credit Ledger amounting to ₹ 4,37,61,402/-, upon discontinuance of their business.

The primary legal question was whether the refund of ITC under Section 49(6) of the CGST Act is restricted to the entities specified under Section 54(3) of the CGST Act or if every registered entity has a right to claim ITC refund upon business discontinuation.

JUDGMENT

The court, after considering the submissions and precedents cited by both parties, observed that although Section 54(3) of the CGST Act does not explicitly address refunds to discontinued or closed businesses. It was held that neither Section 54(3) nor Sections 49(6) and 54 expressly prohibit such refunds.

Additionally, Guided by the fundamental principle that no tax shall be collected or retained without authority of law, the Court ruled that the assessee is entitled to claim refund of the ITC balance even after discontinuing their business.

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Goods and Services Tax Appellate Tribunal (Procedure) Rules, 2025

Constitution of Tribunal Benches

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Rule 7 of GSTAT (Procedure) Rules, 2025

Principal Bench

- President
- Judicial Member
- Technical Member(Center)
- Technical Member (State)

Located in New Delhi

State Bench

- 2 Judicial Member
- Technical Member(Center)
- Technical Member (State)

Located in each State- 31 State Benches- as provided under Notification S.O.5063(E), dated 26.11.2024

The State of Kerala and Lakshadweep will have a fixed bench located at Ernakulam and a Circuit/Sitting bench located at Thiruvananthapuram.

Chapter III- Institution of Appeal

Rule 18: Filing of Appeal: An Appeal to the Tribunal shall be filed online on the GSTAT portal in vide Form GST APL-07.

Single Appeal against multiple orders: The assessee can file a single appeal against an order even if it covers multiple SCN, refund claims, demand, letter, or declarations issued before the same. Filing of Multiple Appeals: If multiple Order-in-Appeals have been passed concerning one order-in-original or an Order-in-Appeal is issued to more than one person, then multiple copies of GST APL-07 have to be filed based on the number of Orders-in-Original or the number of aggrieved persons.

Rule 21: Documents required to accompany the Form of appeal:

- Certified copy of the order appealed against, along with the order of the original authority, along with all the relevant documents, including relied-upon documents;
- Final Acknowledgement from the GSTAT portal on payment of fees for the filing of an appeal;

Rule 29: Interlocutory application: IA for stay, direction, rectification, condonation of delay, early hearing etc., shall be filed as per GSTAT Form-01 along with an affidavit supporting the application.

Rule 36: Filing of reply and other documents by respondents: Respondent must file a reply to the appeal, along with supporting documents, within one month of receipt, either personally or through an authorised representative, and must serve a copy of the same to the applicant. The appellant, on receipt of the reply, is required to specifically admit, deny, or rebut the statements made by the respondent and may also include any additional relevant facts.

Rule 37: Filing of Rejoinder: If the respondent includes additional facts during the hearing of the case, the Bench may permit the petitioner to file a rejoinder on the GSTAT portal, with a copy served to the respondent within one month or within a time frame set or extended by the Bench

Chapter-XIV- Electronic filing and processing of appeals

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Rule 115: Electronic filing and processing of appeals:

- Every appeal to be filed before the Tribunal shall be uploaded electronically on the GSTAT portal.
- All appeals shall be scrutinized and processed electronically through the GSTAT portal, and all notices, communications, and summons shall be issued electronically.
- All replies and documents presented before the Appellate Tribunal shall be signed, verified, and uploaded electronically on the GSTAT portal.
- All proceedings before the Tribunal shall be conducted through the GSTAT portal, and all such proceedings shall be recorded on the said portal.
- A summary of the final order passed by the Tribunal, or any bench thereof, in respect of any appeal shall be uploaded in the GSTAT portal.
- All hearings before the Appellate Tribunal may be conducted, either in the physical mode or upon the permission of the President, in the electronic mode.

Chapter V- Hearing of Appeal

Rule 41 & 42: Hearing of appeal and action on appellant's default: The Appellant shall be heard by the Tribunal on a fixed day or any other day to which the hearing may be adjourned to and in case the appellant fails to appear on the day of hearing, the tribunal may in its discretion either dismiss the appeal or decide the matter on merits. The said dismissal order can be set aside later if the appellant can prove that there was sufficient cause for his non-appearance.

Rule 43: Hearing of Appeals ex-parte: In a case wherein the matter is called up for hearing and the appellant appears, but the respondent does not on the scheduled hearing day or any adjourned date, the Tribunal may hear and decide the appeal ex parte.

Rule 44- Continuance of proceedings after death or adjudication as an insolvent of a party to the appeal: If the appellant or respondent dies or is declared insolvent, or a company is wound up, the appeal shall abate unless a legal representative, successor, executor, or liquidator files an application to continue the proceedings within 60 days of the occurrence of the event. The Appellate Tribunal may permit a delayed application if sufficient cause is shown.

Chapter XIII: Disposal Of Cases And Pronouncement of Orders

Rule 99: Disposal of Cases:	Upon receiving an appeal, the Tribunal may pass appropriate orders after giving the parties a reasonable opportunity to be heard; however, it may summarily dismiss an appeal, upon recording the reasons, if it finds no sufficient grounds to proceed.
Rule 103: Pronouncement of Order:	The Tribunal, after hearing both parties, shall pronounce an order either at once or as soon as thereafter but not later than 30 days from the final hearing, excluding holidays and vacations; Every order passed by the Tribunal shall be in writing and shall be signed and dated by the president or members of the bench who have heard the case; A certified copy of every order passed by the tribunal shall be given to the parties.
Rule 104: Pronouncement of order by any one member of the Bench:	Any clerical mistakes, errors, accidental slips or omissions in an order passed by an Appellate Tribunal can be rectified by the Tribunal on its own motion or on application being filed for the same under GSTAT Form-01 to be filed within a period of 1 month from the date of issuance of the final order.
Rule 108: Rectification of Order:	Any member of the bench may pronounce the order for and on behalf of the bench and when such order is pronounced the court officer shall make a note in the order sheet, that the order of the Bench consisting of President or Members was pronounced in open court on behalf of the Bench.

Chapter-IX- Appearance of the Authorized representative

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Rule 72: Appearance of authorized representative:

- A legal practitioner or authorized representative is entitled to appear before the tribunal upon filing of vakalathnama or Memorandum of Appearance or letter of authorization, which shall include the information as specified in GSTAT Form-04.

Rule 73: Consent for engaging or change of authorized representative:

- A legal practitioner or authorized representative seeking to file a Vakalatnama, Memorandum of Appearance, or letter of authorization in an ongoing case before the Appellate Tribunal, where another representative is already on record, may do so only with the written consent of the existing representative. If such consent is denied, the new representative must obtain permission of the Tribunal by applying for revocation of the existing authorization, which will be considered after the application has been duly served on the representative currently on record.

SCHEDULE OF FEES			
Sl. No.	**Relevant Section/Rules**	**Nature of application/petition**	**Fees**
1	Rule 67 of GSTAT(Procedure) Rules, 2025	Application for Inspection of Records	Rs. 5000
2	Rule 119(2) of GSTAT(Procedure) Rules, 2025	Interlocutory Applications	Rs.5000
3	Rule 110(5) of CGST/SGST/UTGST Rules, 2017	Appeals to GSTAT	As per Rule
4	Application under any other provisions specifically not mentioned herein above		Rs.5000
5	Fees for obtaining certified true copy of final order passed to parties other than the concerned parties under Rule		Rs. 5 per page

Appointment of President & GSTAT Website

- On 05th May 2025, Justice (Retd.) Sanjaya Kumar Mishra took the oath as the 1st President of the GST Appellate Tribunal (GSTAT) from Union Minister for Finance and Corporate Affairs, Nirmala Sitharaman, thus marking the beginning of the operationalization of the GSTAT, a crucial body for resolving GST-related disputes.
- The official website for the GSTAT was made live at GST Appellate Tribunal (gstat.gov.in) by the Government of India, but the website is yet to be operational

Powers and Functions of GSTAT

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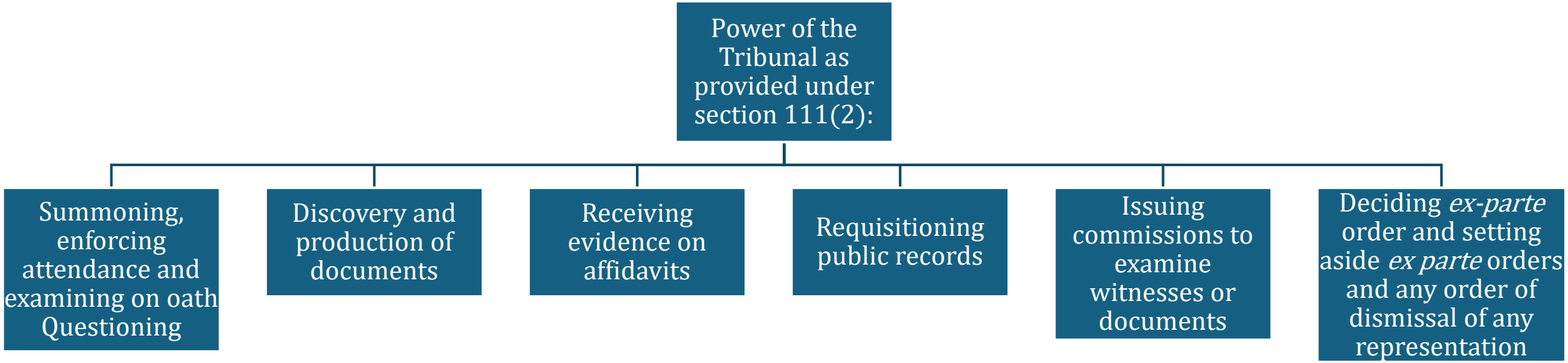
- In the exercise of powers conferred under section 111 of the CGST Act, 2017, the Goods and Services Tax Appellate Tribunal (Procedure) Rules, 2025, regulating the procedure and functioning of the GSTAT were introduced vide Notification No. G.S.R. 256(E) dated 24.04.2025 and subsequently amended vide corrigendum dated 18.06.2025.
- Section 111(2) Section 111(2) of the GST provides for the functions of Appellate Tribunal and it provides that to discharge its functions under this Act, tribunal have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit:



Case Law: Unconstitutional Composition of GST Appellate Tribunal

Revenue Bar Association v. Union of India 2019 (30) G.S.T.L. 584 (Mad.)	The present Writ was filed challenging the constitutional validity of Sections 109 and 110 of the Central Goods and Services Tax (CGST) Act, 2017, and the Tamil Nadu Goods and Services Tax (TNGST) Act, 2017. The petition specifically contests Section 110(1)(b) for excluding advocates with over 10 years of experience from being eligible for appointment as Judicial Members of the Tribunal, alleging a violation of Article 14 of the Constitution of India. Additionally, the petition challenges the eligibility of Indian Legal Service members for appointment to the Appellate Tribunal and questions the Tribunal's composition under Sections 109(3) and 109(9), which allows two Technical Members to potentially overrule the single Judicial Member.
	The Court held that while the constitutional validity of Section 110(1)(b) of the CGST Act cannot be struck down for excluding advocates from eligibility for appointment as Judicial Members of the Appellate Tribunal, it recommends that Parliament reconsider this issue, given that advocates are eligible for similar positions in other tribunals.
	The Court expressed concerns about the Appellate Tribunal's composition, which allows two Technical Members to potentially dominate the single Judicial Member, undermining the separation of judiciary from the executive as per Article 50 of the Constitution of India, and raising apprehensions of bias in disputes between assessees and the government. The Court noted that the dominance of technical members and its constitutional validity need to be examined in light of Supreme Court judgments on judicial independence and the establishment of tribunals.

Case Law: Unconstitutional Composition of GST Appellate Tribunal

SHIVADASS & SHIVADASS LAW CHAMBERS

- Post the said judgment, the government vide the Finance Act, 2023, dated 31.03.2023, amended Section 110 of the CGST Act, 2017 to include the following amendment:
  - The National Benches, Regional Benches, State Benches, and Area Benches of the GSTAT have been reorganized as Principal Benches and State Benches.
  - The strength of the judicial Members (including the president) has been increased from 1 (one) to 2 (two) so that the number of Technical Members is not more than the judicial members.
  - A member of the Indian Legal Service holding a post not less than Additional Secretary for 3 (three) years is no longer eligible to be appointed as a Judicial member.
- Subsequently, CGST (Second Amendment) Act, 2023, dated 28.12.2023 also made amendments to enable an Advocate with 10 years substantial experience in litigation under indirect tax laws in the Appellate Tribunal, Central Excise and Service Tax Tribunal, State VAT Tribunals, by whatever name called, High Court or Supreme Court will be eligible to be appointed as judicial member.

Madras Bar Association Versus Union Of India & Anr. Writ Petition(Civil) No(s).1018/2021-Supreme Court	The Madras Bar Association filed the writ petition challenging the constitutional validity of the constitution of Goods and Service Tax Appellate Tribunal (GSTAT) and the qualification of tribunal members, amended Sections 109 and 110 of the Central Goods and Services Tax (CGST) Act. The Petitioner submits that the recent amendments to sections 109 and 110 of the CGST Act, 2017, violate the principles of judicial independence and fair adjudication, raising concerns over the appointment process and the qualifications prescribed for tribunal members. The instant Petition is currently pending before the Supreme Court of India.

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Thank You!!