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National Award: Distinguished GST Trainer, 2018

For being involved with Training of Professional Students, Professionals, Corporates & GST Officials.

Conducted: **500+** Sessions &

100+ webinars on GST Across India

Awarded 'Tejas Puraskar 2020' – Jury Award

Background

- ▶ Mr. Vishal is a Partner with S.S.Mutha & Company in the Tax & Assurance Practice with special focus on indirect taxes since 2003
- ▶ He is a Post Graduate in Commerce from Pune University and a member of the Institute of Chartered Accountants of India.
- ▶ He has been empanelled as a **GST trainer by ICAI** for undertaking GST related trainings.
- ▶ He is a regular speaker with Industry Forums on budget, regulatory, GST related Issues.

Skills

- ▶ Mr. Vishal is an experienced resource on matters relating to Excise, Service Tax, State VAT/CST and Goods and Service Tax(GST)
- ▶ Mr. Vishal has significant experience in providing advisory service to clients for combination of various indirect taxes as well as on providing review and compliance support.
- ▶ **Faculty (For GST Officer) at NACIN**
- ▶ He is also an eminent speaker in various forums such as **SRTEPC, SIMA, SISPA, GSTPAM, Texprocil, MACCIA, CREDAI, WMPA**, Maharashtra Sales Tax Practitioners, Institute of Chartered Accountants of India etc.

Professional experience

- ▶ Mr. Vishal has been involved in various **GST, Excise, Sales Tax, Service Tax related advisory and compliance work.**
- ▶ He has advised clients on **transaction structuring** to avail the concessions/benefits on imports, incentives on exports, minimise outflow of GST, Excise, Sales Tax and Service Tax
- ▶ Mr. Vishal has also **handled legal disputes/ representations** for various clients before various GST Commissionerate. He is also involved in due-diligence exercises and Indirect tax Health check assignment
- ▶ He has **advised** various developers and **clients in setting up of SEZs**, and has provided advisory services in SEZ related regulations.
- ▶ He is also involved in imparting trainings for its clients covering all their supply chains to make them aware about the changes brought by the GST legislations and its subsequent impact on the business
- ▶ **Functional Expertise** include:
 - **GST and its impact;**
 - Central Excise – **Classification, Valuation;**
 - Service Tax – Applicability, Valuation/Sales tax advisory

Professional achievement

- ▶ He has **completed Chartered Accountancy Course** at an early age of 21
- ▶ He is also engaged in **tutoring various professional students**; till date 2000 students have been qualified in professional courses out of **which 63 Students have secured All India Rank**
- ▶ Served as Member of Indirect Tax Committee of WIRC, ICAI

Professional Acumen

- ▶ He has developed **GST Audit Manual** for Professionals and GST Officers
- ▶ He is expertised in **Business Process Reengineering** to develop models for aligning GST, Income Tax & IND AS compliances.
- ▶ He is involved in **Transaction Restructuring** for different sensitive sectors
- ▶ Contributes Articles to Leading Newspapers, Online Taxation Websites, Chamber's/Association's Journals.
- ▶ **Personal Attributes**
 - ▶ Represented School & College in Cricket & Football
 - ▶ Completed YOGA Level II
 - ▶ Participating in Dramatics & Stage Performances
 - ▶ Won Awards in Elocution Competitions & Debates



Import, Export &
Refund under
GST

Nagpur Branch of
WIRC,ICAI

Date: 29th May 2021

Deliberation by :

FCA Vishal.G.Poddar

Tri Dev of Taxation

- Brahma - Parliament - Law Maker
- Vishnu - Consultants / Department Officials - Implementing
- Mahesh - Judiciary - Interpretiting/Amending laws

Agenda for Discussion

Levy of IGST on Imports

GST implication on Exports

Special Issues wrt Place of Supply

Special Issues wrt Import & Export

GST on Imports

- Levy
- Special Issues

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Definition of Import

- ❖ **Import of goods** with its grammatical variations and cognate expressions, means **bringing goods into India** from a place outside India [Section 2(10)].

- ❖ **Import of services** means the **supply** of any service, where –
 - (i) the **supplier** of service **is located outside India**;
 - (ii) the **recipient** of service **is located in India**; and
 - (iii) the **place of supply** of service **is in India** [Section 2(11)].
- ❖ **India** means the **territory of India** as referred to in article 1 of the Constitution, its **territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone** as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976, and the **air space above its territory and territorial waters** [Section 2(56) of the CGST Act].

Levy of IGST on Imports

Import of Goods

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

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

Import of Services

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

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

Levy of IGST on Imports

Import of Goods

- ❖ GST Compensation Cess, may also be leviable on import of certain luxury and de-merit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017.

- ❖ Value for calculating IGST on Import of Goods :
Value determined under section 14 of the Customs Act, 1962 + Basic customs duty + any other sum leviable under any law for the time being in force as customs duties excluding IGST and GST Compensation Cess

Import of Services

- ❖ GST Compensation Cess only on leasing services applicable.

- ❖ Value for calculating IGST on Import of Services
Value determined under section 15 of the CGST Act (vide sec 20 of the IGST Act)

Levy of IGST on Imports

Import of Goods

- ❖ Registration :
 - ❖ Reverse charge provisions do not cover importers of goods.
 - ❖ However, all importers are required to quote GSTIN in the bill of entry for payment of IGST.
 - ❖ In case of import of goods not liable to tax or wholly exempt, PAN (which is authorized as IEC by DGFT) of the importer and exporter would suffice
-
- ❖ Input Tax Credit: “input tax” in relation to a registered person means inter alia integrated tax and includes IGST charged on import of goods [Section 2(62) of the CGST Act

Import of Services

- ❖ Registration : Section 24(iii) of the CGST Act mandates **compulsory registration** for persons, without any benefit of the threshold limit for registration, who are required to pay tax under reverse charge.
-
- ❖ Input Tax Credit: “input tax” in relationincludes tax payable under reverse charge under sub-sections (3) and (4) of section 5 of the IGST Act [Section 2(62) of the CGST Act

Special Cases wrt Import of Goods

- ❖ Supply of **warehoused goods** to any person before clearance for home consumption is **neither a supply of goods nor a supply of services** in terms of paragraph 8(a) of Schedule III to the CGST Act. Here, warehoused goods have the same meaning as assigned to it in the Customs Act, 1962.
- ❖ Supply of goods by the consignee to any other person, by endorsement of documents of title to the goods, after the goods have been dispatched from the port of origin located outside India but before clearance for home consumption (**high sea sale**) is **neither treated as supply of goods nor supply of services** in terms of paragraph 8(b) of Schedule III to the CGST Act
- ❖ Paragraph 7 of the Schedule III to CGST Act provides that supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India (**third country shipments**) is treated **neither as a supply of goods nor a supply of services**. Thus, there is no GST liability on such sales.

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

Special Cases wrt Import of Goods

- ❖ Taxability of goods imported by SEZ: Goods imported by a unit or a developer in the Special Economic Zone (SEZ) **for authorised operations are exempted** from the whole of IGST leviable under section 3(7) of the Customs Tariff Act, 1975 vide Notification No. 64/2017 Cus dated 05.07.2017.
- ❖ Taxability of goods imported by EOU : Goods imported by Export Oriented Undertaking (EOU) attract liability to customs duty. Import of goods by 100% EOUs are governed by Notification No. 52/2003 Cus as amended by Notification No. 09/2019 Cus dated 25.03.2019 further amended by Notification No. 19/2021 Cus dated 30.03.2021. **EOUs are allowed duty free import of goods** (exempt from Customs duties, IGST & GST Compensation Cess) under the said notifications. However, exemption from IGST will be available only till 31.03.2022.
- ❖ Import as baggage: Passenger **baggage is exempted from IGST as well as GST Compensation Cess**. The basic customs duty at the rate of 35% and the applicable social welfare surcharge is leviable on the value which is in excess of the duty free allowances provided under the Baggage Rules, 2016.



GST on Exports

- Levy
- Special Issues

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Definition of Export

❖ **Export of goods** with its grammatical variations and cognate expressions, means **taking goods out of India to a place outside India** [Section 2(5)].

❖ **Export of services** means the **supply of any service** when,-

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

Special Cases wrt Export of Goods

- ❖ **Deemed exports** means such supplies of goods **(not services)** as may be **notified** under section 147 [Section 2(39) of the CGST Act]
- ❖ Following categories of supply of goods have been **notified as deemed exports** by the **Government** vide Notification No. 48/2017 CT dated 18.10.2017:

 - (a) Supply of goods by a registered person against **Advance Authorisation (AA)** subject to certain conditions.
 - (b) Supply of capital goods by a registered person against **Export Promotion Capital Goods Authorisation (EPCG)**
 - (c) Supply of goods by a registered person to an **Export Oriented Unit (EOU)** and includes:
 - i) Electronic Hardware Technology Park Unit (EHTP) or
 - ii) Software Technology Park Unit (STP) or
 - iii) Bio-Technology Park Unit (BTP).
 - (d) Supply of gold by a bank or Public sector Undertaking specified in Notification No. 50/2017 Cus dated 30.06.2017 (as amended) against AA

Special Cases wrt Export of Goods

- ❖ **Taxability of deemed exports:**
- ❖ Deemed exports are **not zero rated supplies**
- ❖ Hence, all such supplies can be made on payment of tax and **cannot be supplied under a Bond/LUT.**
- ❖ However, the **refund of tax paid** on the supply regarded as deemed export is admissible to **either the supplier or the recipient.**
- ❖ Thus, the application for refund has to be filed by the supplier or the recipient (subject to certain conditions) of deemed export supplies, as the case may be.

Special Cases wrt Export of Goods

❖ Merchant exports

- ❖ There is no specific provision in GST law for export through third parties, commonly known as merchant exports.
- ❖ However, a low rate of GST of 0.1% on supplies for export through third parties has been provided by way of exemption notifications.
- ❖ Circular No. 37/11/2018 GST dated 15.03.2018 has clarified that the exporter receiving goods at concessional rate of tax @ 0.1% (0.05% CGST + 0.05% SGST & 0.1% IGST) will be eligible to take credit of the concessional tax so paid by him.
- ❖ The supplier who supplies goods at the concessional rate will be eligible for refund of ITC on account of inverted tax structure as per the provisions of section 54(3)(ii) of the CGST Act.
- ❖ However, it may be noted that the exporter of such goods can export the goods only under LUT / bond and cannot export on payment of IGST.

Nature of Supply for Exports

❖ Supply of goods or services or both,-

- when the supplier is located in India and the place of supply is outside India;
- **to or by** a Special Economic Zone developer or a Special Economic Zone unit; or
- 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.** [Section 7(5) of the IGST Act]

- ## ❖ “Zero rated supply” means any of the following supplies of goods or services or both, namely :-
- (a) export of goods or services or both; or
 - (b) supply of goods or services or both to a Special Economic Zone developer or a Special Economic Zone unit.

Zero Rated Supply

❖ Zero Rating Methodology:

❖ The outward supplies as well as the inputs or input services used in supplying the outward supplies are free of GST.

- a) The taxes paid on the outward supplies which are zero rated are refunded;
- b) The credit of inputs/ input services used in supplying the zero rated supply is allowed;
- c) Wherever the supplies (which are zero rated) are exempted, or the supplies are made without payment of tax, the taxes paid on the inputs or input services, i.e. the unutilised ITC is refunded. Thus, **even if a zero rated supply is exempt, the credit of input tax may be availed.**

Zero Rated Supply

❖ Refund Mechanism

❖ A registered person making zero rated supply can claim refund under either of the following options, namely: --

a) he may supply goods and/or services under bond or Letter of Undertaking (LUT)

without payment of IGST and claim refund of unutilised ITC **[Rule 89]**; or

b) he may supply goods and/or services on payment of IGST and claim refund of such tax paid on goods and/or services supplied **[Rule 96]**.

❖ Circular No. 01/ 2017 CC dated 26.07.2017 has clarified that the provisions of section 16 relating to zero rated supply will apply to GST Compensation Cess also.

Hence,

(i) exporters can claim refund of GST Compensation Cess paid on goods exported by him, or

(ii) GST Compensation Cess will not be charged on goods exported under bond or LUT and he will be eligible for refund of ITC of GST Compensation Cess relating to goods exported.

Issues wrt Place of Supply

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POS of Goods in International Transactions

Sec 11 – IGST Act

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Place of Supply(POS) of GOODS imported into India or Exported from India (Sec 11 – IGST)

Import of
Goods

- location of the importer

Export of
Goods

- location outside India



POS of Services in International Transactions

Sec 13 – IGST Act

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Application of POS Rules

Domestic Transactions

- LOS & LOR both in India
- Apply Sec 12 for POS

International Transactions

- LOS & LOR One in India
Other outside India
- Apply Sec 13 for POS

- First decide on Sec 12 or 13 then proceed with the Rules
- Where Service is rendered or property is situated or Event is held are not material in deciding whether to apply Rules of Sec 12 or 13

General POS Rules

Domestic Transactions

- Registered Recipient

POS = LOR

- UnRegistered Recipient
- Address Known: **POS = LOR**
- Address UnKnown: **POS = LOS**

International Transactions

POS = LOR

- Where however the location of the recipient of services is not available in the ordinary course of business,

POS = LOS

Immovable Property - POS Rules

Domestic Transactions

- Property in India
POS = Property Location
- Property outside India
POS = LOR

International Transactions

- Property in India/outside India
POS = Property Location
- Property located in multiple country including India
POS = India

- If property located in Multiple states – Value proportionated for each state

13(3) : Service on Goods made physically available

- 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:

POS = Location where the services are actually performed:

Exceptions to Sec 13(3)

- 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
- nothing contained in this clause shall apply 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; then **ref 13(2)**

13(3) : Services to Individual

If 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.

POS = location where the services are actually performed

- Eg. Doctor coming to India doing a personal consultation / Treatment – **POS INDIA**

13(5) : Event based

Similar to 12(6&7)

- The place of supply of services supplied by way of
- admission to, or organization 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.
- **POS = Place where event is actually held**

13(8) : Banking and others ~12(12)

- 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.

The place of supply of the following services shall be the location of the supplier of services, namely:— **(POS = LOS)**

Transportations Services

- **13 (9) POS= Destination of Goods**

- 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.

- **13 (10) POS = Where Passenger Embarks**

- 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.

- **13 (11) POS = First Scheduled Point**

- 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.

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Thank You

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