



WEBINAR ON ANALYSIS OF RECENT AMENDMENTS IN GST LAW

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Organized by

Chamber of Tax Consultants

Recent amendments in GST Law

Only significant amendments considered

- NB –
1. Unless otherwise stated all amendments operate from 1.2.2019
 2. The views expressed in this presentation –
 - a. May not be in line with the Revenue's view
 - b. Are as on 16.2.2019 (!) are subject to a review or different view taken by the author with elapse of time!

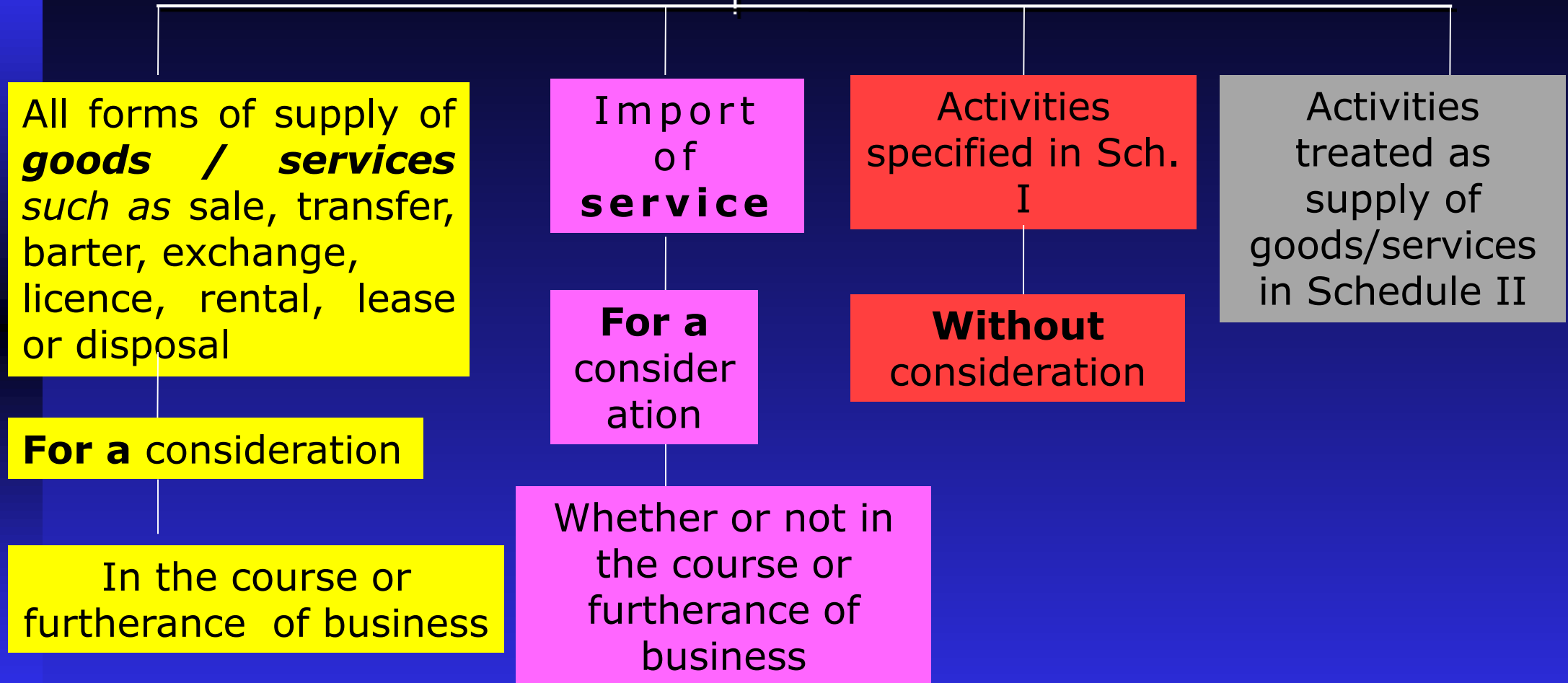


GST → FMCG product

GST Regime

Supply [s.7(1)]

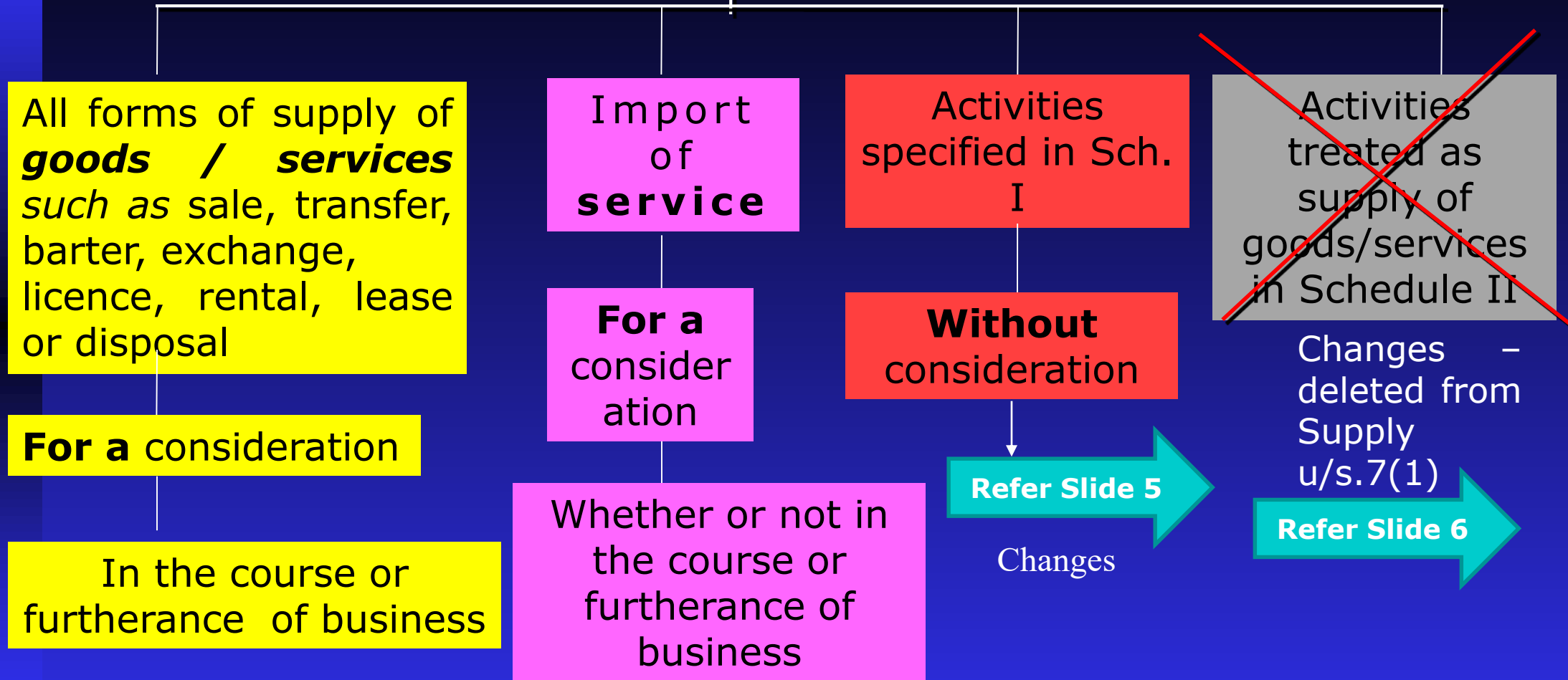
Includes



GST Regime

Supply [s.7(1)]

Includes



Section 7(1A) inserted - Activities/transactions if constitute a supply u/s. 7(1) they will be treated as supply of goods or services as provided to in Sch. II

MATTERS TO BE TREATED AS SUPPLY WITHOUT CONSIDERATION

1. Permanent transfer / disposal of business assets where ITC availed on such assets. e.g.
– sale of CG / input covered;
2. Supply between related persons or distinct person in course / furtherance of business
3. Supply of *goods* between principal and agent -
4. Importation of services by *Taxable* person from related person or any of his establishment outside India in the course or furtherance of business.

Change – The word taxable deleted – w.e.f. 1.2.19

Rationale – Importation of services by entities not registered under GST (say only making exempted supplies) but are otherwise engaged in business activities is taxed when received from establishment outside India.

Implication: Individuals importing services from related person may be liable to pay GST.

Important change in definition of Supply u/s. 7 w.e.f. 1.7.2017 [Retrospective]

“Section 7 (1) - For the purposes of this Act, the expression “supply” includes--

- (a) all forms of supply of goods or services or both such as sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business
- (b) import of services for a consideration whether or not in the course or furtherance of business; and
- (c) the activities specified in Schedule I, made or agreed to be made without a consideration;
- ~~(d) the activities to be treated as supply of goods or supply of services as referred to in Schedule II. [Clause (d) deleted]~~

Sub-section added

(1A) Where certain activities or transactions constitute a supply in accordance with the provisions of sub-section (1), they shall be treated either as supply of goods or supply of service as referred to in Schedule II”



Slide 53

Rationale

"Classification of certain specified activities or transactions (which qualify as a supply under the CGST Act) either as supply of goods or supply of services is supposed to be done in Schedule II. However, it is observed that clause (d) being part of the subsection defining the term 'supply' leads to a situation where an activity listed in Schedule II would be deemed to be a supply even if it does not constitute a supply as per clauses (a), (b) and (c) of sub-section (1). Hence, it is proposed to insert a new sub-section (1A) in section 7 and omit clause (d) of sub-section (1)."

Implication




Now Scope of Schedule II not of **deeming** a transaction to be supply but only to describe that if an act/transaction constitutes a supply whether it is a supply of goods or services.




Slide 54



Impact of Amendment on Schedule II transactions

Sr. No	Activities/ Transactions	Pre- GST Scenario Nature of Transaction	GST Scenario Nature of Supply	Impact of Amendment
1	Transfer			
(a)	Any transfer of the title in goods	Sale of goods - VAT	Goods	Nil
(b)	Any transfer of right in goods or of undivided share in goods without the transfer of title thereof		Service	Nil
(c)	Any transfer of title in goods under an agreement which stipulates that property in goods shall pass at a future date upon payment of full consideration as agreed	Sale of goods - VAT	Goods	Nil

Impact of Amendment on Schedule II transactions

Sr. No	Activities/ Transactions	Pre- GST Scenario Nature of Transaction	GST Scenario Nature of Supply	Impact of Amendment
2	Land and Building			
(a)	Any lease, tenancy, easement, license to occupy land	<i>Declared service of</i>	<i>Deemed Service</i>	<i>In absence of deeming provisions</i>
(b)	Any lease or letting out of the building including a commercial, industrial or residential complex of business or commerce, either wholly or partly	<i>Renting of Immovable property</i> 		 
3	Treatment or Process Any treatment or process which is applied to another person's goods	Provision of Service - ST	Service	Nil



ISSUE

renting of immovable property, construction of complex service

- *Prior to negative list regime of taxation of services* : there was a deeming provision to treat same as service;
- *Post negative list*: they were declared to be a service - Objective as given in CBEC Education guide –

'The above activities when carried out by a person for another for consideration would amount to provision of service. Most of these services are presently also being taxed except in so far as Sl. no. 5¹ is concerned. It is clarified that they are amply covered by the definition of service but have been declared with a view to remove any ambiguity for the purpose of uniform application of law all over the country.'

- *Post exclusion of Schedule II from scope of supply*: no deeming provision to treat the same as service.

1 Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation, or to do an act.

Is a deeming provision still necessary to treat it as a supply?

Whether all the transactions are already covered as supply

- Is it a Supply u/s.7(1)(a),(b),(c) ?
- Service means anything other than goods as per GST law ?

It should have the character of service – Reliance on *Hariprasad Shivshankar Shukla vs. A. D. Divelkar* AIR 1957 SC 121 wherein the SC held that ordinary accepted version of the expression defined should be considered and not verbatim definition – relied on in *Zee Telefilms Ltd. vs. CCE* (2006) 4 STR 349 (Tri.- Mumbai)

"find what is the ordinary accepted version of the expression defined, thereafter find whether the said ordinary accepted version fits in with every requirement of definition clause. Then, the definition is not to be taken to as destroying the essential meaning of the term defined. A definition merely employs apt and readily intelligible words."

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Impact of Amendment on Schedule II transactions

Sr. No	Activities/ Transactions	Pre- GST Scenario Nature of Transaction	GST Scenario Nature of Supply	Impact of Amendment
4	Transfer of business assets			
(a)	Transfer/disposal of goods forming part of business assets			
	<ul style="list-style-type: none"> • With consideration 	Sale of goods - VAT	Goods	Nil
	<ul style="list-style-type: none"> • Without consideration 	Not liable to VAT	Goods	(a) If ITC availed – Supply of goods – Refer Schedule I (b) If no ITC availed – No supply e.g. gift of motor car to unrelated party




Impact of Amendment on Schedule II transactions

Sr. No	Activities/ Transactions	Pre- GST Scenario Nature of Transactions	GST Scenario Nature of Supply	Impact of Amendment
(b)	Application of goods to <ul style="list-style-type: none"> - Private/ Personal use - Used for non business purpose - Make available to another person for non – business use 			
	<ul style="list-style-type: none"> • With consideration 	Provision of Service - ST	Service	Nil
	<ul style="list-style-type: none"> • Without consideration 	No ST	Service	No supply except if given to related persons – Refer Schedule I – but ITC may have to be reversed

Impact of Amendment on Schedule II transactions

Sr. No	Activities/ Transactions	Pre- GST Scenario Nature of Transactions	GST Scenario Nature of Supply	Impact of Amendment
(c)	Ceasing to be a taxable person then goods forming part of business	VAT LAW 	Deemed supply of goods in the course of business immediately before cessation	<i>Whether supply u/s. 7 in absence of deeming provisions</i> 
	unless: i. If goods transferred as part of transfer of business as going concern	Service (but exempt) 	Service (but exempt) 	Nil
	ii. If goods retained but personal representative carries business	VAT LAW 	No supply of goods	Nil




Impact of Amendment on Schedule II transactions

Sr. No	Activities/ Transactions	Pre- GST Scenario Nature of Transaction	GST Scenario Nature of Supply	Impact of Amendment
5	Supply of Services			
(a)	Renting of immovable property	<i>Declared service of Renting of Immovable property</i> 	<i>Deemed Service</i>	<i>Whether supply u/s. 7 in absence of deeming provisions</i> 
(b)	Construction services –			
	i) Construction simplicitor	Entire contract is service – But, material portion - Deemed Sale – VAT; Services portion – ST	Service (Entire portion)	Nil
	ii) Sale of under construction flats / units	Entire contract is declared service [s. 66E(b)] – But, material portion - Deemed Sale – VAT; Services portion – ST	Deemed Service	<i>Whether supply u/s. 7 in absence of deeming provisions</i> 

Impact of Amendment on Schedule II transactions

Sr. No	Activities/ Transactions	Pre- GST Scenario Nature of Transaction	GST Scenario Nature of Supply	Impact of Amendment
(c)	Temporary transfer or permitting the use or enjoyment of any intellectual property right	Provision of Service - ST	Service	Nil
(d)	Development, design, programming, customization, adaption, upgradation, enhancement, implementation of information technology software	Provision of Service - ST	Service	Nil

Impact of Amendment on Schedule II transactions



Sr. No	Activities/ Transactions	Pre- GST Scenario Nature of Transactions	GST Scenario Nature of Supply	Impact of Amendment
(e)	Agreeing to the obligation to refrain from an act, or to tolerate an act or a situation or to do an act	Deemed Service 	Deemed Service 	
(f)	Transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration	Deemed sale of goods	Provision of Service	Nil

NB – Consideration includes the monetary value of forbearance to act


Impact of Amendment on Schedule II transactions


Sr. No	Activities/ Transactions	Pre- GST Scenario Nature of Transactions	GST Scenario Nature of Transactions	Impact of Amendment
6	Composite Supply			
(a)	Works contract of immovable property (Composite supply)	Goods position - deemed sale of goods; Service portion - Provision of Service - ST	Service	Nil
(b)	Restaurant/ catering supply (Composite supply)	Goods portion – deemed sale of goods; Service portion - Provision of Service - ST	Service	Nil

Impact of Amendment on Schedule II transactions

Sr. No	Activities/ Transactions	Pre- GST Scenario Nature of Transactions	GST Scenario Nature of Supply	Impact of Amendment
7	Supply of goods by unincorporated association or body of persons to members for consideration	Deemed sale under art. 366(29A)(e) – VAT applicable. But matter pending before larger Bench of SC in the case <i>State of WB vs. Calcutta Club Ltd</i> [HC held even after 46 th amendment 'consideration' required to fall u/art. 366(29A)(e) and in case of mutuality there is no consideration	Deemed supply of goods	<p><i>Whether supply u/s. 7 in absence of deeming provision</i></p> <p></p> <p><i>Recourse to Article 366(29A)(e)</i></p> <p></p>

Supply of **SERVICES** by unincorporated association / body of persons to its members - *not specified in Schedule II*

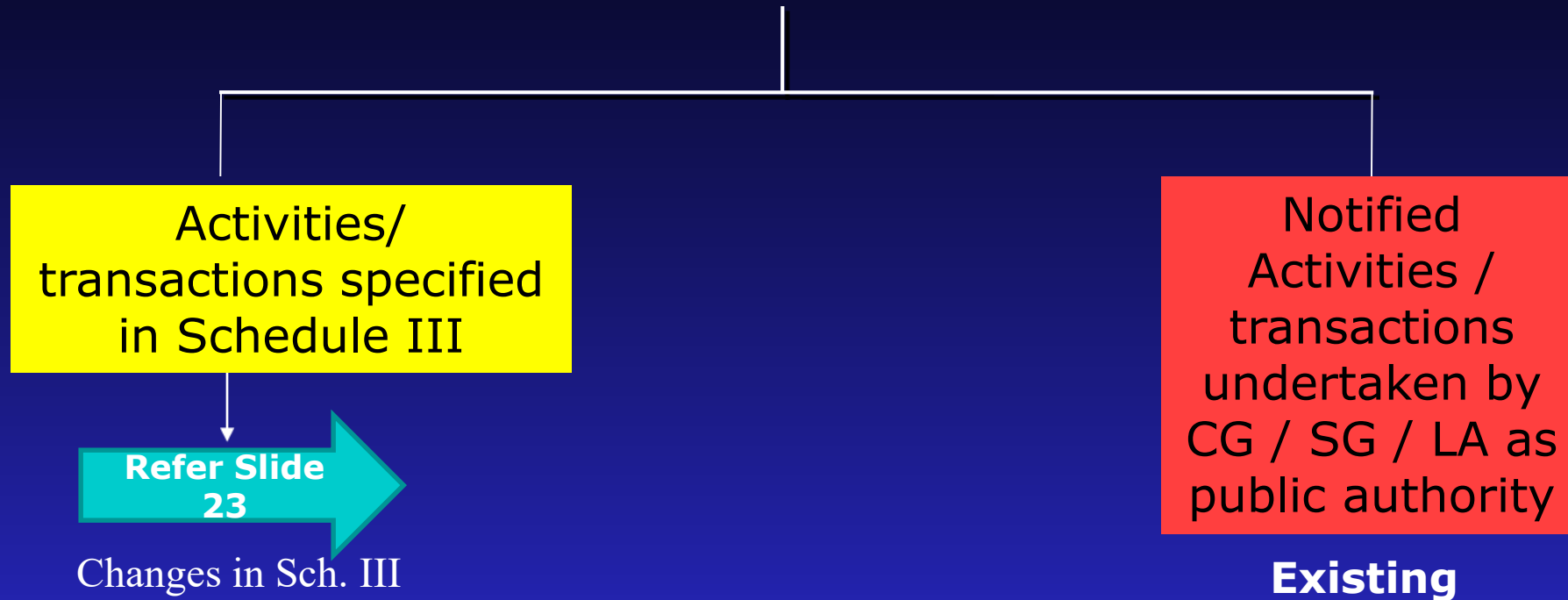
Pre- GST Scenario Nature of Transactions – whether provision of service 
Tribunals and High Courts are in favour of the concept of mutuality but matter is pending before the Supreme Court. It maybe noted there is no specific constitutional backing as for goods under Art. 366(29A)(e)

GST Scenario Nature of transactions – Whether supply of service 
Argument of mutuality may still survive even though 'business' definition [s.2(17)] includes
"(e) provision by a club, association, society, or any such body(for a subscription or any other consideration) of the facilities or benefits to its members"

GST Regime

Supply [s.7]

Excludes



Existing

Government empowered to notify transactions to be treated as supply of goods or supply of services

SCHEDULE-III

Activities or Transactions treated neither as a supply of goods nor as supply of services


Existing entries

- Services by an Employee to Employer in course of / relation to employment
- Services by any Court / Tribunal established under any law for the time being in force
- Functions / duties performed by certain specified persons- MPs, MLAs etc.
- Services of funeral, burial, crematorium or mortuary including transportation of the deceased
- Sale of land, sale of building where entire consideration received after obtaining completion certificate or after its first occupation whichever is earlier
- Actionable claims, other than lottery, betting and gambling

Schedule III - New Entries w.e.f. 1.02.2019

- 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 (**Out & Out Transaction**).
- Supply of warehoused goods to any person before clearance for home consumption (**bond to bond sales**) [*Warehoused goods to have 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 Seas sales**).

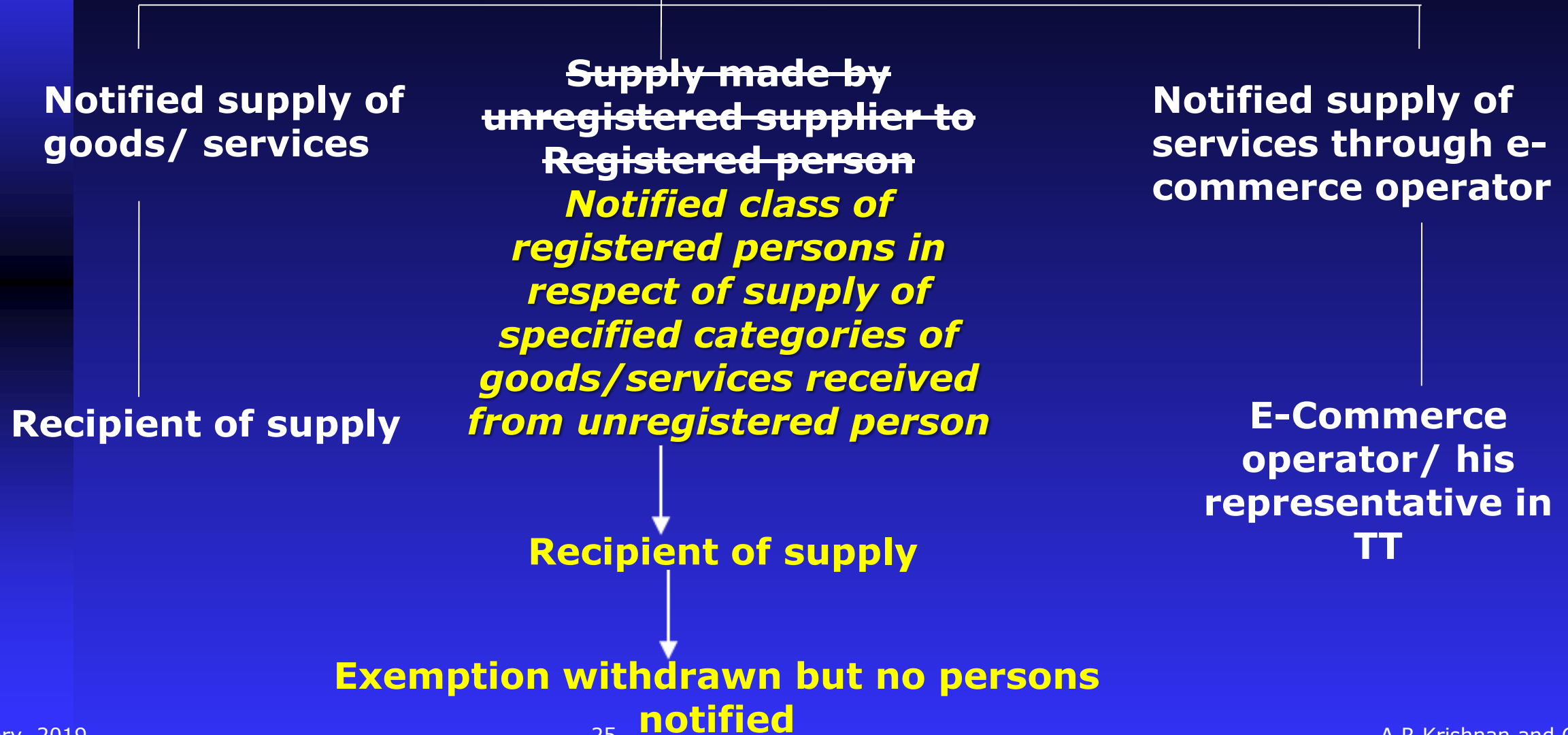
Since above transactions are treated neither as supply of goods nor as supply of services no tax liability arises on these transactions.

Amendments also made in ITC s.17 w.e.f. 1.2.2019 so as to not treat the above as an exempt supply so that ITC attributable to such supply is fully admissible – But what about ITC where only business is above 

IMPLICATION PRIOR TO 1.2.2019  

REVERSE CHARGE MECHANISM

Liability to pay tax on Person other than supplier of goods/ services




One of the conditions for Claiming ITC [sec 16]

Person availing ITC – the goods / services should be received by him ?

Changes

Deeming provision introduced for receipt of goods and services

<i>Nature of supply</i>	<i>Deemed Recipient</i>
<u>Pre-amended</u> Supply of goods by a supplier to recipient or any other person on direction of registered person	Registered person
<u>New</u> Services provided to any person on the direction of and on account of registered person	Registered person [Prior to 1.2.2019]  <i>Ex Abundanti Cautela</i>

ITC – BLOCKED CREDIT – CHANGES

Pre-amendment

Input Tax Credit not available on:

- Motor Vehicle and other conveyance (vessel, aircrafts, vehicle) except when used for
 - Making further taxable supplies of such motor vehicle and other conveyances;
 - Transportation of passengers;
 - Transportation of goods;
 - Imparting training on driving/flying and navigating of such motor vehicle /conveyance

Amended

Input Tax Credit not available on:

- Motor vehicles for transportation of persons having approved seating capacity upto 13 persons (including driver) except when used for –
 - a. Further supply of such motor vehicles;
 - b. Transportation of passenger;
 - c. Imparting training on driving such motor vehicle.
- vessels and aircrafts except when used for –
 - a. Further supply of such vessels and aircrafts;
 - b. Transportation of passenger;
 - c. Imparting training on navigating such vessel and flying such aircraft;
 - d. Transportation of goods.
- **Services of general insurance, servicing, repairs and maintenance in so far as they relate to motor vehicles, vessels and aircrafts as specified above.**

INFERENCE –

Motor vehicle other than for transportation of persons – fully admissible. Motor vehicle for transportation of persons having approved seating capacity of more than 13 persons – fully admissible.

RATIONALE as given in the proposed amendments for public comments–

“The amendment is sought to make it clear that ITC would now be available in respect of dumpers, work-trucks, fork-lift trucks and other special purpose motor vehicles. After the amendment is carried out, ITC would be denied only in respect of motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons (including the driver), vessels and aircraft when these are used for personal purposes.”



Pre- Amendment

Input Tax Credit not available on:

- Food and beverages, outdoor catering, beauty treatment, health service, cosmetic and plastic surgery except when used by Registered Person for making outward supply:
 - of same category of goods and services.
 - as an element of taxable composite / mixed supply.
- Rent-a-cab, life insurance and health insurance except where the same is –
 - notified by govt. as being obligatory under any law to be provided by employer to employee.
 - used by Registered Person for
 - (i)making outward taxable supply of same category of goods/services.
 - (ii)as an element of taxable composite / mixed supply
- Membership of club, health and fitness centre and leave travel concession

Amended

Input Tax Credit not available on:

- Food and beverages, outdoor catering, beauty treatment, health service, cosmetic and plastic surgery, life insurance and health insurance
- *leasing, renting or hiring of motor vehicles, vessels/aircraft (except when used for specified purposes as mentioned before).*

Credit on above available when used by Registered Person for making outward taxable supply:

- of same category of goods and services; or
- as an element of taxable composite / mixed supply.
- Membership of club, health and fitness centre.
- Travel benefits extended to employees such as leave travel concession

In all the above cases input tax credit is allowed *where it is obligatory under any law to be provided by employer to employee.*

Amendments relating to Registration provisions

Pre-amended -

- Hitherto under CGST law in one state only one registration. Another separate registration only if separate business vertical [s. 25(2)].

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Changes -

- Definition of Business Vertical deleted and also corresponding registration for Business vertical substituted with – Persons having multiple POB in a state can obtain separate registration for each POB subject to conditions.
- But supply from one registration to another registration liable.


Consequences / Issues -

- Status of existing registration under Business vertical ?
- Each place of business to get registered or only some to get separately registered ?

Wordings of the change

*"Provided that a person having multiple places of business in a State or Union Territory **may** be granted a separate registration for each such place of business"*

Amendments relating to Registration provisions

- SEZ Unit / Developer mandatorily required to obtain separate registration distinct from POB located outside SEZ.
- Enabling provision - Registration to be suspended from commencement of procedure of cancellation till completion of cancellation – compliance burden eased out.
- Provision to log on and file return, pay taxes etc 
- File final return u/s 45 within 3 months of the date of cancellation or date of order of cancellation, which is later

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Business Vertical [sec.2(18)]

- Business vertical means a distinguishable component of an enterprise supplying goods or services, the risks and returns of which are different from those of the other business verticals.
- Distinguishable factors include
 - the nature of the goods/services,
 - nature of the production process,
 - type of customers for the goods/services,
 - methods used to distribute the goods/services,
 - nature of regulatory environment etc.

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Amendments in provisions relating to Tax Invoice, Cr./Dr. Notes

- Where in respect of **a tax invoice** issued for supply of goods/services/both –
 - taxable value/tax charged is exceeding taxable value/tax payable on the supply;
 - goods are returned;
 - goods/service supplied are found to be deficientSupplier to issue **a credit note**.
- Where in respect of **a tax invoice**, the taxable value/tax charged is less than taxable value/tax payable, the supplier to issue **a debit note**.

Changes:

- Supplier can issue **one or more credit notes/debit notes against tax invoices issued for supplies made in a financial year**.

Supplier relieved from the burden of issuing as many number of credit / debit notes as is equivalent to the invoices issued

But

Linking of invoices and credit/debit notes in return not yet dispensed ?

Amendment in payment of tax through utilization of ITC

Pre-amendment :

	Utilization matrix		
Credit in	IT	CT	ST
ITC(IT)	1 st	2 nd	3 rd
ITC(CT)	2 nd	1 st	Not allowed
ITC(ST)	2 nd	Not allowed	1 st

Amendments :

- ITC(ST) to be used for payment of IT liability only if balance of ITC (CT) is Zero
- ITC(CT) & ITC (ST) to be used for payment of any tax liability only if balance of ITC (IT) is Zero
- Government on recommendation of council empowered to prescribe order and manner of utilization of ITC.
- **PURPOSE** - To first exhaust ITC(IT) so that full settlement of ITC(IT) is minimized – For taxpayer may not be suitable – IT more fungible.



ISSUE

- Applicable for February, 2019 return and onwards
- Applicable for January, 2019 return to be filed in February
- All pending returns filed after 1.2.2019



Amendment in Refund Provisions

Pre-amended provisions for refund of ITC

- (i) Unutilized ITC due to inverted duty rate structure;
 - (ii) ITC on inputs/input services used in providing zero rated supply.
- The above is not subject to unjust enrichment
 - Zero rated supply = Exports + SEZ

Changes

- Refund of tax on output services or on inputs will be subject to unjust enrichment except in case of export. [the word zero rated supply substituted by exports]
- Thus supplies to SEZ refunds will be subject to unjust enrichment.


RATIONALE: “the principle of unjust enrichment will apply in case of refund claim arising out of supplies of goods or services made to SEZ developer/unit.”



Transitional arrangement for Input Tax [Section 140]

- Carry forward of Cenvat Credit availed / pending availment under existing laws. (Section 140(1))
- Availment of credit on inputs / SFG / FG held in stock by certain specified persons
- Cenvat credit availment on *Spillover transactions*

Changes in Amendment Act

- **Section 140(1)** : Carry forward of Cenvat Credit of (eligible duties)
- **Intention**: to restrict carry forward of tax /duties to defined “eligible duties”
- But the term ‘eligible duties’ not defined for purpose of Section 140(1) though defined for purpose of Section 140(3) & 140(4) – the definition does not include cenvat credit of service tax
- ‘Eligible duties & taxes’ defined for the purpose of Section 140(5) - definition includes cenvat credit of service tax.
- Thus issue u/s 140(1) is whether taxes such as “service tax” credit can be carried forward. 

Board Circular 87/06/2019-GST dated 2.1.2019

3.1 The CENVAT credit of service tax paid under section 66B of the Finance Act, 1994 was available as transitional credit under section 140(1) of the CGST Act and that legal position has not changed due to amendment of section 140(1) on account of following reasons:

- i) The amendment in provisions of section 140(1) and the explanations to section 140 need to be read harmoniously such that neither any provision of the amendment becomes otiose nor does the legislative intent of the amendment get defeated.
- ii) The intention behind the amendment of section 140(1) to include the expression "eligible duties" has been indicated in the "Rationale/ Remarks" column (at Sl. No. 37) of the draft proposals for amending the GST law which was uploaded in the public domain for comments. It is clear that the transition of credit of taxes paid under section 66B of the Finance Act, 1994 was never intended to be disallowed under section 140(1) and therefore no such remark was present in the document.
- iii) Under tax statutes, the word "duties" is used interchangeably with the word "taxes" and in the present context, the two words should not be read in a disharmonious manner.

Rationale

"Explanation 3: For removal of doubts it is proposed to clarify that the expression "eligible duties and taxes" excludes any cess which has not been specified in Explanation 1 or Explanation 2 above and any cess which is collected as additional duty of customs under sub-section(1) of Section 3 of the Customs Tariff Act, 1975

Conclusion

Thus balance of any cess such as Krishi Kalyan Cess (KKC), Education cess, Secondary Higher Education cess, Cess collected as additional duty under Customs Tariff Act, 1975 cannot be carried forward to the Electronic credit ledger under the GST law.

COMPOSITION LEVY

- Upper Limit for composition levy enhanced from 1 Cr to 1.5 Cr.
- 'Amount in lieu of tax' to be calculated at prescribed rate not greater than

Category of RP	% of turnover	
	CT	ST
Manufacturer	0.5	0.5
Restaurants/ Catering	2.5	2.5
Other Suppliers	0.5	0.5

Conditions of eligibility to opt for composition levy

- *RP may supply services (other than catering / restaurant services) of value not exceeding 10% of the T.O. in State in preceding F.Y. or Rs. 5 lacs whichever is higher*
- Not to be engaged in supply of services except as mentioned above
- Not to be engaged in making non-taxable supply
- Not to be engaged in inter-state outward supply of goods
- Not to be engaged in supply of goods through e-commerce operator
- Not to be engaged in manufacturing of notified goods
- Not eligible unless all Registered Person having same PAN opt for payment for composition levy

- Option to lapse on the day aggregate T.O. exceeds specified limit
- Not to collect tax from recipient nor entitled for ITC
- If not eligible for composition levy but yet claimed tax to be recovered from such person plus penalty
- RP who has availed ITC in normal course opts for composition levy – ITC of goods held in stock to be reversed and balance credit in Electronic Cr. ledger to lapse
- RP ceases to pay composition levy – entitled to ITC of inputs contained in stock/SFG/FG on day preceding the date supply becomes taxable & also entitled to ITC on CG computed in prescribed manner

Aggregate turnover =

Value of
taxable supplies
(+) exempt supplies
(+) export supplies
(+) *Inter-State supplies*
on all India basis *qua* each PAN

excludes

CT/ST/UT/IT/Cesses & inward supplies where tax payable under RCM

Goods Transportation services [S.12(8) of IGST Act, 2017]

	Supply of	Pre-amended POS	Amended POS	
			Destination of goods in India	Destination of goods outside India
Goods transportation service (including by mail / courier) provided to				
✓ Registered person (B2B)		Location of such person	Location of such person	destination of goods
✓ Unregistered person (B2C)		Location where goods are handed over for transportation	Location where goods are handed over for transportation	destination of goods

MAJOR CHANGE

Rationale/Objective :

To provide a level playing field to domestic transportation companies and promote exports of goods place of supply is made outside India

Intention : no GST would be chargeable

But

s.7 of IGST Act, 2017 – Inter state Supply.

(5) Supply of goods or services or both,–

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

Thus interstate supply – IGST Applicable

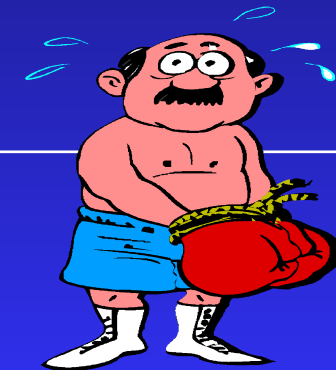
Not export since does not comply with two conditions of exports as defined in Section 2(6) of IGST Act

1. Recipient not located outside India
2. Money not received in convertible foreign exchange

Exemption given in Notification No. 12/2017- CT(Rate) dated 28.6.2017

Sl. No.	Chapter, Section, Heading, Group or Service Code (Tariff)	Description of Services	Rate (per cent)	Condition
19B	Heading 9965	Services by way of transportation of goods by a vessel from customs station of clearance in India to a place outside India	Nil	Nothing contained in this serial number shall apply after the 30th day of September, 2019

BUT
Exemption expiring on 30.9.2019



Value of supply not to be included in the aggregate value of exempted supply for the purpose of reversal of ITC u/r. 42 & 43 – No time cap specified

Required - the definition of "export of service" U/s. 2(6) be amended to provide that in such cases, the transaction would still qualify as export of service even if the location of recipient is in India and money is also not received in convertible foreign exchange but in Indian Rupees.

PROBLEM ARISES DUE TO BIG DIFFERENCE IN S. 12 / S. 13 OF IGST ACT AS AGAINST THE ERSTWHILE POP RULES IN THE SERVICE TAX REGIME

Amendment in S. 13(3) of IGST Act

Pre-amended Provisions

SP supplies services in respect of goods made *physically available* by SR in order to provide the service e.g. Repairs, Storage and cargo handling – POS → where work performed

Exceptions:

- ◆ Remote access - Location of goods at the time of supply of service
- ◆ Goods temporarily imported into India for *repair* and re-exported subject to the condition that goods not put to use in India (except for such repair)

Amended Provisions

Goods temporarily imported into India for *repairs/treatment/process* and re-exported subject to the condition that goods not put to use in India (except for such repairs/treatment/process)

Implication : Value addition of goods imported and thereafter exported will not be taxed

Earlier under POP Rules in service tax regime prior to 1.10.2014

Goods imported into India for repairs/ re-conditioning/ re-engineering and exported thereafter were not subjected to tax

MISCELLANEOUS AMENDMENTS

- Section 35(5) – Every Registered person whose T.O. > 2 crores to get his books of accounts audited.

Amendment - Proviso : No requirement to get books of accounts audited if Registered Person is a department of Central / State Government and the books are audited by CAG.

- Section 2(102) "services" means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

Amendment - Explanation: for the removal of doubts, it is hereby clarified that the expression "services" includes facilitating or arranging transactions in securities.

Amendments made in Act by Removal of difficulty order 2/2018-CT dated 31.12.2018.

- Proviso to S.16(4)
 - Time limit for claiming ITC on invoices in respect of supply of goods / services made during F.Y. 2017-18 extended from return for September 2018 to return for March 2019 (in effect 20.4.2019);
 - Vendor to have uploaded the details of such supply in GSTR1 till March 2019 returns (in effect 10.4.2019).

- Second Proviso inserted to section 37(3)
 - Time limit for Rectification of errors and omissions in respect of outward supply details furnished in GSTR 1 extended from returns for September, 2018 to returns for March, 2019.

WEBINAR ON ANALYSIS OF RECENT AMENDMENTS IN GST LAW



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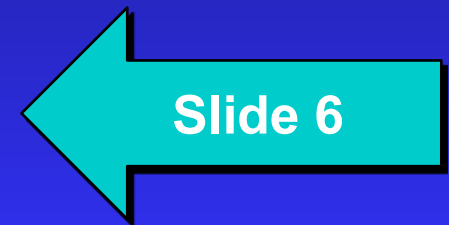


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Chamber of Tax Consultants

Supply definition under IGST Act

- Section 2(21) – “supply” shall have the same meaning as assigned to it in section 7 of the Central Goods and Services Tax Act.



SCHEDULE II

Transactions which are in the nature of supply and classification as goods/ services is also clear

Schedule II only deals with their classification as supply of goods / services

Transactions which are in nature of supply but classification as goods/ services is not clear

Schedule II classifies the same to be a supply of goods / supply of services

Transactions / Activities which may not be in the nature of supply

Schedule II treats (deems - ?) the same to be a supply and also classifies it as supply of goods / service

Slide 8

Definition of person u/s. 2(84) of CGST Act

(84) “person” includes —

- (a) an individual;
- (b) a Hindu Undivided Family;
- (c) a company;
- (d) a firm;
- (e) a Limited Liability Partnership;
- (f) an association of persons or a body of individuals, whether incorporated or not, in India or outside India;
- (g) any corporation established by or under any Central Act, State Act or Provincial Act or a Government company as defined in clause (45) of section 2 of the Companies Act, 2013 (18 of 2013);
- (h) any body corporate incorporated by or under the laws of a country outside India;
- (i) a co-operative society registered under any law relating to co-operative societies;
- (j) a local authority;
- (k) Central Government or a State Government;
- (l) society as defined under the Societies Registration Act, 1860 (21 of 1860);
- (m) trust; and
- (n) every artificial juridical person, not falling within any of the above;



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