



Issues in Logistics Sector

At CTC, Study Group

Chairman: A. R. Krishnan

Group Leader: Yash Parmar



Relevant Definitions, Provisions & Notifications

Relevant Definitions...

S. 2(5)- Agent

'Agent' means a person including a factor, broker, commission agent, arhatia, del credere agent, an auctioneer or any other mercantile agent, by whatever name called, who carries on the business of supply or receipt of goods or services or both on behalf of another

S. 2(88)- Principal

Principal means a person on whose behalf an agent carries on the business of supply or receipt of goods or services or both

S. 2(30)- Composite Supply

'Composite Supply' means a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

Relevant Definitions...

S. 2(74)- Mixed Supply

Mixed Supply means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply

Illustration: A supply of a package consisting of canned foods, sweets, chocolates, cakes, dry fruits, aerated drinks and fruit juices when supplied for a single price is a mixed supply. Each of these items can be supplied separately and is not dependent on any other. It shall not be a mixed supply if these items are supplied separately

S. 2(90)- Principal Supply

Principal Supply means the supply of goods or services which constitutes the predominant element of a composite supply and to which any other supply forming part of that composite supply is ancillary.

Relevant Definitions...

S. 2(31)- Consideration

Consideration in relation to the supply of goods or services or both includes-

(a) Any payment made or to be made, whether in money or otherwise, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government

(b) The monetary value of any act or forbearance, in respect of, in response to, or for the inducement of, the supply of goods or services or both, whether by the recipient or by any other person but shall not include any subsidy given by the Central Government or a State Government

Provided that a deposit given in respect of the supply of goods or services or both shall not be considered as payment made for such supply unless the supplier applies such deposit as consideration for the said supply.

Relevant Definitions...

S. 2(47)- Exempt Supply

Exempt supply means supply of any goods or services or both which attracts nil rate of tax or which may be wholly exempt from tax under section 11, or under section 6 of the Integrated Goods and Services Tax Act, and includes non-taxable supply

S. 2(78)- Non-taxable Supply

Non-taxable supply means a supply of goods or services or both which is not leviable to tax under this Act or under the Integrated Goods and Service Tax Act

S. 2(76)- Motor Vehicle

Motor Vehicle shall have the meaning as assigned to it in clause (28) of section 2 of the Motor Vehicles Act, 1988

Relevant Definitions...

S. 2(28) of Motor Vehicles Act, 1988- Motor Vehicle

“motor vehicle” or “vehicle” means any mechanically propelled vehicle adapted for use upon roads whether the power of propulsion is transmitted thereto from an external or internal source and includes a chassis to which a body has not been attached and a trailer; but does not include a vehicle running upon fixed rails or a vehicle of a special type adapted for use only in a factory or in any other enclosed premises or a vehicle having less than four wheels fitted with engine capacity of not exceeding ⁴[twenty-five cubic centimetres]

S. 2(79)- Non-taxable territory

Non-taxable territory means the territory which is outside the taxable territory

S. 2(108)- Taxable territory

Taxable territory means the territory to which the provisions of this Act apply

Relevant Definitions...

S. 2(70)- Location of recipient of service

"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;*

Relevant Definitions...

S. 2(71)- Location of supplier of service

"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 provisions of the supply; and

(d) in absence of such places, the location of the usual place of residence of the supplier;

Notification 12/2017- Central Tax (R)- Clause (ze)- Goods Transport Agency

"goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called;

Applicable GST Rates- GTA

Noti 11/2017- CT(R) as amended by Noti 20/2017- CT(R)

Description of Service	Rate	Condition
Services of goods transport agency (GTA) in relation to transportation of goods (including used household goods for personal use). Explanation.- "goods transport agency" means any person who provides service in relation to transport of goods by road and issues consignment note, by whatever name called.	5%	Provided that credit of input tax charged on goods and services used in supplying the service has not been taken [Please refer to Explanation no. (iv)]
	12%	Provided that the goods transport agency opting to pay central tax @ 6% under this entry shall, thenceforth, be liable to pay central tax @ 6% on all the services of GTA supplied by it."
Supporting services in transport	18%	-

Applicable Exemptions- GTA

Noti 12/2017- CT(R) dated 28.06.2017:

21. Services provided by a goods transport agency, by way of transport in a goods carriage of-

(a) agricultural produce;

(b) goods, where consideration charged for the transportation of goods on a consignment transported in a single carriage does not exceed one thousand five hundred rupees;

(c) goods, where consideration charged for transportation of all such goods for a single consignee does not exceed rupees seven hundred and fifty;

(d) milk, salt and food grain including flour, pulses and rice;

(e) organic manure;

(f) newspaper or magazines registered with the Registrar of Newspapers;

(g) relief materials meant for victims of natural or man-made disasters, calamities, accidents or mishap; or

(h) defence or military equipment's.

22. Services by way of giving on hire –

(b) to a goods transport agency, a means of transportation of goods

Reverse Charge Mechanism- GTA

Noti 13/2017- CT(R) as amended by Noti 22/2017- CT(R):

If the recipients (located in the taxable territory) belong to the following category:

- (a) Any factory registered under or governed by the Factories Act, 1948(63 of 1948); or
- (b) any society registered under the Societies Registration Act, 1860 (21 of 1860) or under any other law for the time being in force in any part of India; or
- (c) any co-operative society established by or under any law; or
- (d) any person registered under the Central Goods and Services Tax Act or the Integrated Goods and Services Tax Act or the State Goods and Services Tax Act or the Union Territory Goods and Services Tax Act; or
- (e) any body corporate established, by or under any law; or
- (f) any partnership firm whether registered or not under any law including association of persons; or
- (g) any casual taxable person.

Thus in cases where services of GTA are availed by the above categories of persons in the taxable territory the GTA supplier has the option to pay tax (and avail ITC) @12% (6% CGST + 6% SGST) and if the GTA does not avail this option, the liability to pay GST will fall on the recipients. In all other cases where the recipients do not fall in the categories mentioned above, the liability will be on the supplier of GTA services.

Applicable Rates/Exemptions- Air/Sea Transport

Nature of Freight Income	Customer Type	Taxability	Legal Provisions	Tax Rate	Remarks
Export Air	Indian	Exempt*	IGST S. 12(8)	-	Upto 30.09.20
Export Air	Foreign	Export**	IGST S. 13(9)	-	-
Import Air	Indian	Exempt#		-	-
Import Air	Foreign	Exempt#		-	-
Export Sea	Indian	Exempt^	IGST S. 12(8)	-	Upto 30.09.20
Export Sea	Foreign	Export**	IGST S. 13(9)	-	-
Import Sea	Indian	Taxable	IGST S. 12(8)	5%	-
Import Sea	Foreign	Taxable (in the hands of Importer)		Special Rule	Noti. 10/2017-IGST (R)

* Noti. 2/2018- CT(R)- Entry 19A

** If all the conditions of Export are satisfied

Noti. 12/2017- CT(R)- Entry 19

^ Noti. 2/2018- CT(R)- Entry 19B

Applicable Rates/Exemptions- Air/Sea Transport

Land Charges- Clearing and Handling Fees (Other than freight)

Location of Customer	Registered under GST	Activity Performance	Taxability	Legal Provision
In India	Yes	In India	Taxable	IGST S. 12(2)
In India	No	In India	Taxable	IGST S. 12(2)
Outside India	No	In India	Taxable	IGST S. 13(3)
Outside India	No	Outside India	Not Taxable	IGST S. 13(3)

Provisions- Value of Supply

S. 15(2) The value of supply shall include,-

(a)

(b) Any amount that the supplier is liable to pay in relation to such supply but which has been incurred by the recipient of the supply and not included in the price actually paid or payable for the goods or services or both

(c) Incidental expenses, including commission and packaging, charged by the supplier to the recipient of a supply and any amount charged for anything done by the supplier in respect of the supply of goods or services or both at the time of, or before delivery of goods or supply of services

(d)

Input Tax Credit

Explanation 1 to Rule 43 of CGST Rules, 2017-

For the purposes of rule 42 and this rule it is hereby clarified that the aggregate value of exempt supplies shall exclude:-

- (a)
- (b)
- (c) The value of supply of services by way of transportation of goods by a vessel from the customs station of clearance in India to a place outside India

Place of Supply- IGST Act, 2017

Section	Provision
12(2)	<p>The place of supply of services, except the services specified in sub-sections (3) to (14)-</p> <ul style="list-style-type: none">(a) Made to a registered person shall be the location of such person(b) Made to any person other than a registered person shall be,-<ul style="list-style-type: none">(i) The location of the recipient where the address on record exists; and(ii) The location of supplier of service in other cases
12(8)	<p>The place of supply of services by way of transportation of goods, including by mail or courier to,-</p> <ul style="list-style-type: none">(a) A registered person, shall be location of such person(b) A person other than a registered person, shall be the location at which such goods are handed over for their transportation <p>Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods</p>
13(2)	<p>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:</p> <p>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</p>

Place of Supply- IGST Act, 2017

Section	Provision
13(3)	<p>The place of supply of the following services shall be the location where the services are actually performed, namely:-</p> <p>(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...</p>
13(9)	<p>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</p>



Issues impacting the sector

Issue 1: Composite Vs. Individual Supply

An Indian Importer has imported goods from USA and the break-up of amounts charged by the freight forwarder are as under:

Air Freight- Rs. 10,000/-

Handling Charges- Rs. 2,000/-

Agency Charges- Rs. 1,000/-

Discuss GST implications if a single fee is recovered for the entire transportation or separate charges are recovered as mentioned above.

Noti. 12/2017- CT(R)- Entry 19 - Exemption

Services by way of transportation of goods by an aircraft from a place outside India upto the customs station of clearance in India.

Issue 2: Courier Service

A GST registered company in Mumbai has handed over a package to Green Dart, courier agency based in Mumbai on 01.02.2020 to be delivered at London, UK.

Discuss GST implications with respect to Place of Supply and Input Tax Credit in the hands of the company in Mumbai.

Issue 3: Steamer Agent / Freight Forwarders Service

M/s. A, a Steamer Agent / Freight forwarders supplies following services to an exporter located in Mumbai for export of his cargo / goods and charges towards –

- Ocean freight – Sea Transport from Mumbai to Dubai
- Terminal handling charges – Mumbai Port Terminal Handling Charges
- Transportation - Local transport form shipper's factory to Mumbai Port
- Documentation charges – Administration charges of Mumbai office
- Terminal handling charges – Dubai Port
- Local Transportation – Dubai Port to Importer's factory at Dubai
- Documentation charges – Dubai Port office

Examine the GST implication

Issue 4: Reimbursement

A Custom House Agent has recovered the following charges from an importer in India besides the Agency charges. The amounts are recovered on actual cost basis.

1. Customs Duty
2. Container Detention Charges
3. Container Freight Station Charges
4. Insurance Charges
5. Stamp Duty
6. Transportation Charges
7. Bill of Lading Document Charges
8. Survey Charges

Discuss taxability of above charges basis Value of Supply provisions.

Issue 5: Advance Vs. Deposit

Express Services, a Freight Forwarder cum Custom House Agent receives an amount of Rs. 5,00,000/- from an Indian importer. Express Services is appointed to regularly handle the clearance of imported goods from Customs and also to handle transportation of goods from foreign port to the importer's premises. At the time of receipt of Rs. 5,00,000/-, the break-up of freight component, handling charges, reimbursements, security deposit, etc is not determinable.

Discuss GST implications w.r.t. Time of Supply

Issue 6: Rule 42 Reversal

Bapu Logistics Ltd. (Bapu) is a freight forwarder for air and sea import consignments. Bapu is not charging GST for air transportation activity as it is exempt under Entry No. 19 in Notification No. 12/2017-CT(Rate). BPL also gives its' own vessel on Charter Hire for off-shore activities (within 12 nautical miles). The tax rate adopted by Bapu as per Notification No. 11/2017-CT(Rate) is as under:

HSN	Description of services	Output tax rate	Conditions for claim of input tax credit
9965	Transport of goods in a vessel	5%	Input tax charged on goods (other than on ships, vessels including bulk carriers and tankers) used in supplying the service has not been taken
9973	Time charter of vessels for transport of goods	5%	Input tax charged on goods (other than on ships, vessels including bulk carriers and tankers) has not been taken

Issue 6: Rule 42 Reversal (Contd...)

4. Explanation- For the purposes of this notification-

(iv) Wherever a rate has been prescribed in this notification subject to the condition that credit of input tax charged on goods or services used in supplying the service has not been taken, it shall mean that,-

(a) credit of input tax charged on goods or services used exclusively in supplying such service has not been taken; and

(b) credit of input tax charged on goods or services used partly for supplying such service and partly for effecting other supplies eligible for input tax credits, is reversed as if supply of such service is an exempt supply and attracts provisions of sub-section (2) of section 17 of the Central Goods and Services Tax Act, 2017 and the rules made thereunder.

Issue 6: Rule 42 Reversal (Contd...)

Based on the following data, calculate amount of eligible ITC considering impact of Rule 42. Refer Explanation (iv) in clause 4 to Notification No. 11/2017-CT(Rate).

Particulars for input tax credit	Amount	Remarks
Input/ input services exclusively used for other than business	20,000	T1
Inputs/ input services which are directly attributable to air freight activity	400,000	T2
Input services which are directly attributable to sea freight activity	600,000	T4
Input services which are directly attributable to charter hire activity	200,000	T4
Input/ input services ineligible under Section 17(5)	40,000	T3
Purchase of vessel used for providing charter hire services	340,000	T4
Inputs which are not directly attributable to any services	160,000	??
Input services which are not directly attributable to any services	240,000	???
Total Input Tax credit on inputs and input services	2,000,000	

Turnover details	Amount
Air freight services	4,000,000
Sea freight services	6,000,000
Charter hire services	2,000,000
Other taxable services	3,000,000
Total Turnover	15,000,000

Issue 6: Rule 42 Reversal (Contd...)

$$\begin{aligned} \text{Common credit (C2)} &= 2,000,000 - (20,000 + 400,000 + 40,000 + 600,000 + 200,000 + 340,000) \\ &= 400,000 \end{aligned}$$

Common credit relating to exempt supply

Exempt value for common inputs

Particulars	Amount
Air freight services	4,000,000
Sea freight services	6,000,000
Charter hire services	2,000,000
Total	12,000,000

$$\begin{aligned} \frac{\text{Exempt value}}{\text{Total Turnover}} &= \frac{12,000,000}{15,000,000} \times 160,000 \\ &= 128,000 \end{aligned}$$

Exempt value for common input services

Air freight services - 4,000,000

$$\begin{aligned} \frac{\text{Exempt value}}{\text{Total Turnover}} &= \frac{400,000}{15,000,000} \times 240,000 \\ &= 64,000 \end{aligned}$$

Issue 7: Multi-Modal Transportation

Mr. A who is located in USA has hired a transporter for transportation of goods from New Delhi to Chennai. The transporter has used road and rail as the medium for transportation of goods. He has raised two separate invoices for his transportation service by road and rail.

Discuss the implication considering special rate entry for multi-modal transportation service.

Issue 8: Goods Transport Agency

A Goods Transport Agency has approached you for advisory on following questions:

1. He has GST registration in 10 states. Can he opt for 5% without ITC option in 5 states and 12% with ITC option in other states?
2. Can he switch the options in the middle of the year? And how many times in a year can he switch between the options?

Issue 9: Out & Out Sea Freight

ABC Ltd. has appointed Sea King Shipping Line to transport their shipment from China to USA. ABC Ltd. as well as Sea King Shipping Line are registered in India for GST purposes.

Discuss GST implications with respect to Taxability, Place of Supply and Input Tax Credit in the hands of ABC Ltd with special regard to –

- a) Ocean Freight – China to USA
- b) THC at ports at China and USA
- c) Local transportation at USA and China

Issue 10: Agricultural Produce

A trader has hired Goods Transport Agency for transportation of whole yellow peas which are imported from outside India. The transporter is under dilemma whether this will classify as agricultural produce and can GST exemption be claimed on the transportation of whole yellow peas? Please advise.

“Agricultural Produce” as defined in 2(d) of Noti. 12/2017- CT(R)

“agricultural produce” means any produce out of cultivation of plants and rearing of all life forms of animals, except the rearing of horses, for food, fibre, fuel, raw material or other similar products, on which either no further processing is done or such processing is done as is usually done by a cultivator or producer which does not alter its essential characteristics but makes it marketable for primary market;



Thank You

CA. Yash Parmar

Gabhawalla & Co.

Mobile: +91- 9167615445

Email: yash@sbgco.in