

Place of Supply and Classification of Goods & Services- Womens wing of JB Nagar CPE SC 06.05.2017

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Matters to be covered

- ❖ What is GST
- ❖ Meaning of Supply
- ❖ Classification of Goods & Services
- ❖ Place of Supply



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What is Goods and Service Tax – GST

Goods and Services Tax is a **comprehensive Indirect tax**, levies on manufacture, sale and consumption of goods and services at a **national level**.



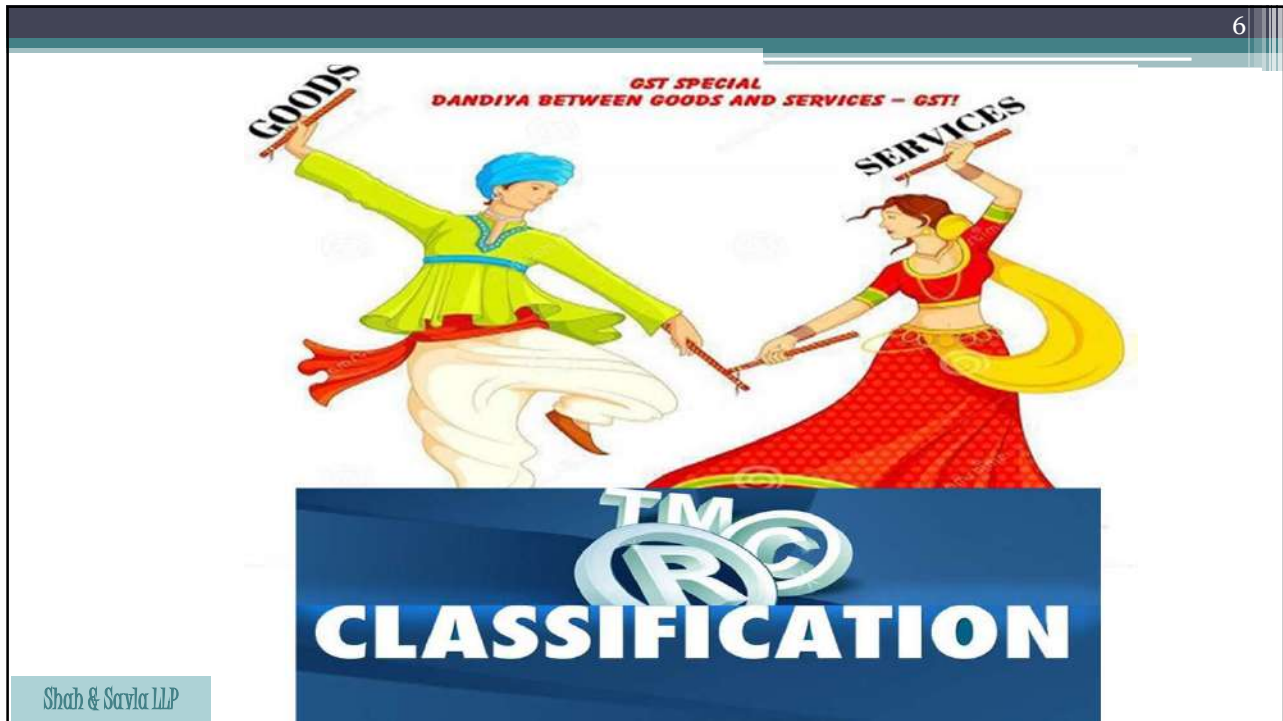
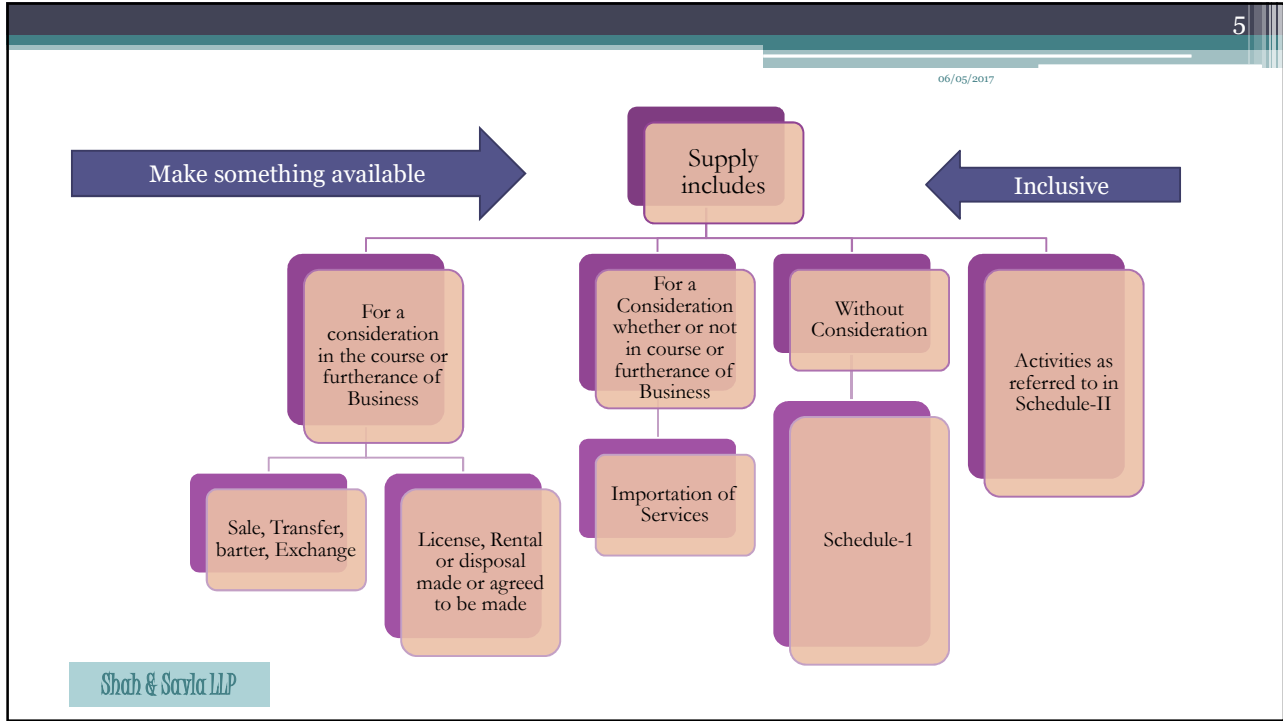
Through a **tax credit mechanism**, this tax is collected on value-added goods and services at each stage of sale or purchase or service **in the supply chain**.

What is Goods and Service Tax – GST

The system allows the **set-off of GST paid** on the procurement of goods and services against the GST which is payable on the supply of goods or services.


However, the **end consumer bears** this tax as he is the last person in the supply chain.






Definitions

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- ❖ “goods” means every kind of **movable property** other than **money and securities** but **includes actionable claim** , growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply. [S. 2(52)]
- ❖ “services” means anything other than goods, money and securities but includes activity 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**. [S. 2(102)]

Definition of Actionable Claims

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- ❖ “**actionable claim**” shall have the meaning assigned to it in section 3 of the Transfer of Property Act, 1882 (4 of 1882);
- ❖ "**actionable claim**" means a claim to any debt, **other than** a debt secured –
 - (i) by mortgage of immovable property; or
 - (ii) by hypothecation or pledge of movable property; or 
 - (iii) to any beneficial interest in movable property

not in the possession, either actual or constructive, of the claimant, which the civil courts recognize as affording grounds for relief, whether such debt or beneficial interest be existent, accruing, conditional or contingent. [S. 3 of TOPA]

Supplies to be treated as Goods – Sch. II

- ❖ Transfer of **title in goods**;
- ❖ Transfer of title in goods – **property in goods will pass at a future date** – upon payment of full consideration;
- ❖ **Dispose of assets** of business either by (i) himself; or (ii) person appointed to recover debts; or (iii) Cease to be taxable person;
- ❖ Supply of goods by any **un-incorporated association or body of persons** to a member thereof for a consideration.

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Supplies to be treated as Services – Sch. II

Services

- Lease/License for Land
- Lease/License for building including residential
- Treatment or process on other goods
- Renting of Immovable property
- Construction Services including under-construction
- Temporary transfer of IPR
- Information Technology Software Services
- Agreeing to Obligation or to tolerate an Act
- Works Contract Service
- Transfer of right to use
- Supply of food for human consumption

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Need to Determine.....

Place for Supply Under **GST**



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Interplay between Intra state GST and Interstate GST

- ❖ Amended Constitution
- ❖ 286. (1) No law of a State shall impose, or authorise the imposition of, a tax on [the supply of goods or of services or both, where such supply takes place]—
 - (a) outside the State; or
 - (b) in the course of the import of the 2 [goods or services or both] into, or export of the 2 [goods or services or both] out of, the territory of India
- ❖ 246A (2) Parliament has exclusive power to make laws with respect to goods and services tax where the supply of goods, or of services, or both takes place in the course of inter-State trade or commerce.

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Interplay between Intra state GST and Interstate GST

- ❖ Accordingly tax under GST would be imposed in the following manner:
Intrastate Supplies: Centre shall impose CGST and respective SGST
Interstate Supplies: Centre shall impose IGST

- ❖ It thus becomes imperative to define Interstate Supplies and Intra state supplies.
Chapter IV of IGST Act provides for determination of nature of supply governed by section 7 for Interstate Supplies and Section 8 for Intrastate supplies.

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Important Definitions

- ❖ (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;

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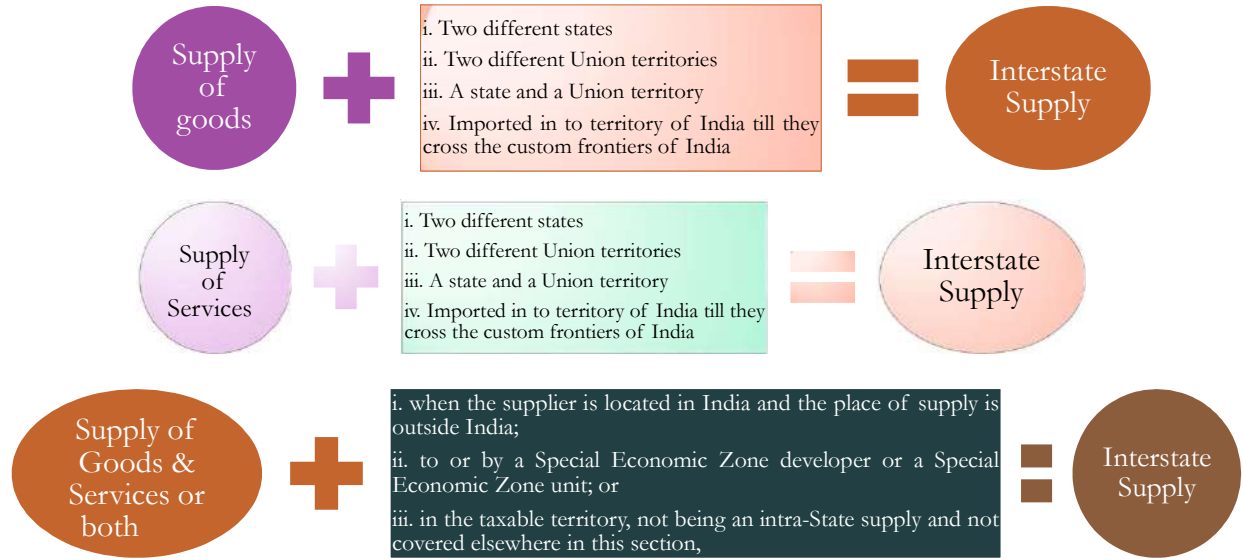
Important Definitions

- ❖ (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;

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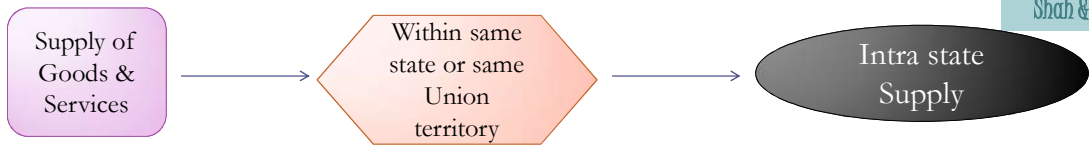
Section 7 of IGST Act 2017

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Section 8 of IGST Act 2017

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Exceptions to Goods for Intrastate supply even if supplied within same state or UT	Exceptions to Services for Intrastate supply even if supplied within same state or UT
Supply of Goods to SEZ Developer or SEZ Unit	Supply of Services to SEZ Developer or SEZ Unit
Goods imported in to territory of India till they cross the custom frontiers	Expln 1 Any two registrations of the same person will be treated as distinct persons
Supply made to a Non resident Tourist for a stay less than 6 months	Expln 2 Branches, agency, representational office of same person all are distinct persons

Notwithstanding anything contained in this Act,—
 (a) where the location of the supplier is in the territorial waters, the location of such supplier; or
 (b) where the place of supply is in the territorial waters, the place of supply, shall, for the purposes of this Act, be deemed to be in the coastal State or Union territory where the nearest point of the appropriate baseline is located.

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PLACE OF SUPPLY





**Place of supply
of Goods
in GST**

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Description	Place of Supply	Example	Place of Supply
Supply involves movement of goods by anybody (supplier, recipient, transporter)	Location of goods at the time when the movement of goods terminates for delivery.	Ultratech cements sends cement bags from Chennai to Andhra Pradesh by truck	Andhra Pradesh
Goods are delivered on the direction of the third person.	Principal place of business of the third person.	Ultratech sends cement bags to L & T in Chennai on the instruction of EIL whose principal place of business is Telangana	Telangana
Goods does not involve movement of goods	Location of such goods at the time of delivery to the recipient.	Ultratech Chennai sells cement bags to L & T Hyderabad at Chennai.	Chennai
Goods are required to be assembled or installed at site	Place of such installation or assembly	L & T Chennai assembled its machinery for ABB Telangana at New Delhi	New Delhi
Goods are supplied at board a conveyance Ex: Vessel, aircraft, train, motor vehicle etc.	Location at which goods are taken on board.	Hoping Flight from Delhi to Tirupathi landed in Chennai and replenished itself with food articles at Chennai to be provided to passengers on board to	Chennai.

Place of supply for Imports or exports

Description	Place of Supply	Example	Place of Supply
Goods imported into India	Location of the importer	L & T imports Machinery from Denmark to New Delhi	New Delhi
Goods exported from India	Location of the importer	L & T exports buses to Denmark from New Delhi	Denmark

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Section 12 determines the place of supply of services where the location of the supplier of service and location of recipient of service is in India.

Description	Place of Supply	Example	Place of Supply
Services provided for or by an Immovable property. Any services ancillary to the services in relation to any services on an Immovable property	Location of the immovable property	a. Architect service by a person in New Delhi to a person in Tamil Nadu to construct a house in Gujarat b. Hotel Service in Gujarat to a person from New Delhi c. Marriage Hall in Gujarat to a person from New Delhi Any services in relation to the marriage hall example : musical system in the marriage hall, food services	Gujarat.
Immovable property. Boat, vessel located outside India	Location of the recipient	a. Architect service by a person in New Delhi to a person in Tamil Nadu to construct a house in USA b. Architect service by a person in New Delhi to a person in USA to construct a house in Denmark	a. Tamil Nadu b. USA
Restaurant, catering, personal grooming, fitness, beauty treatment health services	Location where the services are performed	Catering services by a person in New Delhi to a person in Tamil Nadu at Gujarat	Gujarat

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Description	Place of Supply	Example	Place of Supply
Admission to a cultural, artistic, sporting, scientific, educational, amusement park etc and any services in ancillary	Location where the event is being held	Live Concert by a person from Pakistan at Gujarat	Gujarat
Services on board a conveyance eg Ship, Aircraft, Train etc	Location of first schedule point of departure of the conveyance	Hoping Flight from Delhi to Tirupathi landed in Chennai and then to Tirupathi.	Delhi
Supply of advertisement services to the CG/SG/Statutory Body/Local Authority etc meant for identifiable states	Location of each of such states specific to each state in proportion to the amount attributable as per contract	Times of India has given some services to CG on Swach Bharat Abiyan and the agreement states charges are Rs 1 Lakh per page in each state.	All the places where the services are rendered in proposition
Banking & Financial Services including Stock broking	Whether location of recipient is available in bank records Yes → Such Location No → Location of supplier of services	1. ICICI gives services to L & T which as New Delhi as its address on ICICI records 2. ICICI Chennai issues DD for a person from Delhi who does not have account and collects DD Charges	1. New Delhi 2. Chennai

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Description	Place of Supply	Example	Place of Supply
Place of Supply of Insurance	Whether service recipient is registered Yes → Recipient location No → Recipient location as per supplier records	1. Max Life secures L & T office at its principal place of Business at Chennai 2. Max Life at Chennai secures an unregistered person who address as per Max Life is in Delhi	1. Chennai 2. Delhi
Supply of Telecommunications including data transfer, broadcasting, cable, DTH etc	<ul style="list-style-type: none"> • Fixed Lines including DTH: Installed place of the device. • Post Paid : Billing address of recipient as per supplier • Prepaid including DTH (voucher): <ul style="list-style-type: none"> ◆ Through Selling Agent, Reseller, Distributor of SIM Card or Recharge Voucher Address of the above as per supplier records ◆ Any other person Location where the prepayment is received. ◆ Any other case for prepaid Availability of address of the recipient as per supplier records Yes: Address of recipient No: Location of supplier of service	1. BSNL Land line to Sanjeev at Hyderabad 2. BSNL Postpaid to Sanjeev residing at Chennai but address as Hyderabad as per BSNL records 3. Sanjeev is a BSNL prepaid Reseller sells in Chennai but the address in BSNL records is HYD 4. Sanjeev a resident of Delhi buys BSNL prepaid voucher at Chennai	1. Hyderabad 2. Hyderabad 3. Hyderabad 4. Chennai

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Description	Place of Supply	Example	Place of Supply
Transportation of goods	Whether service recipient is registered Yes → Recipient location No → Location where goods are handed over	1. DTDC Chennai provides courier services to BSNL (whose principal place of business is at Mumbai) at Chennai (Fixed establishment at Chennai) 2. DTDC Chennai provides courier services to Sanjeev an unregistered person for transporting goods from Chennai to Mumbai.	1.Chennai 2. Chennai
Passenger Transportation	Whether service recipient is registered Yes → Recipient location No → Location where passenger embark the journey *Return journey to be treated as separate journey.	1. VRS Travels Chennai provides bus tickets to Sanjeev a registered person for commuting from Chennai to Mumbai. (Sanjeev's principal place of business is Mumbai without any fixed establishment anywhere but usual place of residence is Mumbai) 2. VRS Travels Chennai provides bus tickets to Sanjeev an unregistered person for commuting from Chennai to Mumbai.	1. Mumbai 2. Chennai
Services relating to training and performance appraisal	Whether service recipient is registered Yes → Recipient location No → Location where Services are performed	1. XYZ Trainers provides training to BSNL (whose principal place of business is at Mumbai) at Chennai (Fixed establishment at Chennai) 2. XYZ Trainers provides training to Sanjeev of Chennai an unregistered person at Mumbai.	1. Chennai 2. Mumbai

Description	Place of Supply	Example	Place of Supply
Services by way of organization of an event and services ancillary to the same or assigning of sponsorship of any of the above events.	Whether service recipient is registered Yes → Recipient location No → Location where Event is held.	1. XYZ organizes a cultural event for BSNL (whose principal place of business is at Mumbai) at Chennai (Fixed establishment at Chennai) 2. XYZ organizes a cultural event for Sanjeev of Chennai an unregistered person at Mumbai.	1. Chennai 2. Mumbai
Services by way of organization of an event and services ancillary to the same or assigning of sponsorship of any of the above events outside India	Location of the recipient	Organization of an event at Singapore for L & T Chennai	Chennai
Any other case	Whether recipient is registered Yes → Recipient location No → Whether service recipient location is available with provider. Yes → Recipient location No → Supplier location		

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Section 13
Determines the place of supply of services where the location of the supplier of service or location of recipient of service is outside India.

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Description	Place of Supply	Example	Place of Supply
Services provided for or by an Immovable property. Any services ancillary to the services in relation to any services on an Immovable property	Location of the immovable property	a. Architect service by a person in New Delhi to a person in Tamil Nadu to construct a house in USA b. Hotel Service in USA to a person from New Delhi c. Marriage Hall in USA Any services in relation to the marriage hall example : musical system in the marriage hall, food services	USA.
Services in relation to goods or individuals where physical availability of goods or individual are required with the supplier of services	Location where the services are actually performed.*except when the goods are temporarily imported into India for repairs and exported without using the same in India	a. L & T sends machinery to USA for repairs b. Sanjeev goes to USA for Cosmetic surgery c. L & T repairs a machinery of AlbarkInc USA by bringing the same to India and again exporting the same without using in India.	a. USA b. USA c. USA
Services are provided from a remote location through electronic means	Location where the goods are situated at the time of supply of services	L & T Infotech Chennai repairs a Laptop in Germany sitting in Mumbai.	Germany
Where any service in respect to the above three are supplied at more than one location, including a location in the taxable territory, its place of business shall be the location in the taxable territory where the greatest proportion of the service is provided.			

Description	Place of Supply	Example	Place of Supply
Admission to a cultural, artistic, sporting, scientific, educational, amusement park etc and any services in ancillary	Location where the event is being held	Live Concert by a person from Chennai at USA	USA
Services of a Banking company, Financial Institution, NBFC to Account holders and intermediary Services, Hiring of means of transport other than vessels (except yachts) or Aircraft upto one month	Location of supplier of service	a. HSBC USA providing services to L & T India b. Renting of Yacht at USA for one month by L & T India	USA
Services on board a conveyance eg Ship, Aircraft, Train etc	Location of first schedule point of departure of the conveyance	Hoping Flight from USA to Germany landed in Chennai and then to Germany.	USA
Transportation of goods other than mail or courier	Place of destination of goods	Bludart USA provides crude transportation from Dubai ArmancoInc to BPCL India	India

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Description	Place of Supply	Example	Place of Supply
Passenger Transportation	Passenger embarks on Conveyance	a. Hoping Flight from USA to Germany landed in Chennai and then to Germany. b. Hoping Flight from India to Germany landed in USA and then to Germany.	a. USA b. India
OIDAR Services	Location of recipient of service	Amazon Inc USA provides advertisement services in its sites of USA for Mahindra & Mahindra Vehicles India	India
Any other case	Whether location of recipient of service is available Yes : Such location No : Location of supplier		

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Online information and database access or retrieval services

❖ (17) “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 essentially automated and involving minimal human intervention and 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;

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Online information and database access or retrieval services

- ❖ 14. (1) On supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a non-taxable online recipient, the supplier of services located in a non-taxable territory shall be the person liable for paying integrated tax on such supply of services



- ❖ Provided that in the case of supply of online information and database access or retrieval services by any person located in a non-taxable territory and received by a nontaxable online recipient, an intermediary located in the non-taxable territory, who arranges or facilitates the supply of such services, shall be deemed to be the recipient of such services from the supplier of services in non-taxable territory and supplying such services to the non-taxable online recipient except when such intermediary satisfies the following conditions, namely:—

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Online information and database access or retrieval services

- ❖ (13) “intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;



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Online information and database access or retrieval services

- ❖ (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 municipality under article 243W of the Constitution;

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Online information and database access or retrieval services

- ✓ (a) the **invoice or customer’s bill or receipt issued or made available by such intermediary** taking part in the supply clearly identifies the service in question and its supplier in non-taxable territory;
- ✓ (b) the intermediary involved in the supply does not authorise the charge to the customer or take part in its charge which is that the **intermediary neither collects or processes payment** in any manner nor is responsible for the payment between the non-taxable online recipient and the supplier of such services;
- ✓ (c) the intermediary involved in the supply **does not authorise delivery**; and
- ✓ (d) **the general terms and conditions of the supply** are not set by the intermediary involved in the supply but by the supplier of services.

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Online information and database access or retrieval services

- ✓ (2) The supplier of online information and database access or retrieval services referred to in subsection (1) shall, for payment of integrated tax, **take a single registration under the Simplified Registration Scheme to be notified by the Government:**
- ✓ Provided that **any person located in the taxable territory representing such supplier** for any purpose in the taxable territory shall get registered and pay integrated tax on behalf of the supplier:
- ✓ Provided further that if such supplier does not have a physical presence or does not have a representative for any purpose in the taxable territory, he **may** appoint a person in the taxable territory for the purpose of paying integrated tax and such person shall be liable for payment of such tax.

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**It takes patience
to listen...
it takes skill
to pretend
you're listening.**

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