

Chapter A1

Concepts and Framework of GST

1.1 Basic Concepts of the GST

In India, GST model comprises “Dual GST”, wherein both Central GST and State GST components are levied on the same base. All goods and services, barring a few exceptions, have been brought into the GST base. Importantly, there is no distinction between goods and services with common legislations applicable to both.

Since India is a federal country where both the Centre and the States have separate powers to levy and collect taxes through appropriate legislations; and accordingly, both the levels of Government have distinct responsibilities to perform.

The power to levy tax is drawn from the Indian Constitution, which has been amended through the Constitution (101st Amendment) Act, 2016 assented by the President of India on 08 September 2016. Since, GST required different kinds of taxation powers than the ones already provided for prior to GST implementation, certain Constitutional Amendments were necessitated in this context.

Concurrent powers have been conferred upon the Parliament and the State Legislatures, through Article 246A of the Constitution of India, to make laws governing GST.

Every State has legislated its own GST law, such as, *Delhi GST Act*, *UP GST Act*, *MP GST Act*, *Gujarat GST Act*, and so on, in addition to the *CGST Act* by the Central Government. Parliament has also legislated UT GST Act for the purpose of levying GST, equivalent to State GST component, on intra-State transactions, in addition to CGST, within UT without legislatures (e.g., Chandigarh). IGST (Integrated GST) is levied on inter-State supplies of goods and services through IGST Act by the Central Government.

Goods and Services Tax (GST) in India, is a form of a Value-Added Tax (VAT). The overarching purpose of GST was to impose a broad-based tax on Consumption. It is a destination-based consumption tax.

In general, the GST is imposed at every stage of the economic process and a deduction of taxes on purchases is allowed by all but the final consumer. The mechanism of input tax credit (ITC, in short) through the supply chain, except by the final consumer, ensures the neutrality of the tax, whatever the nature of the product, the structure of the distribution chain, and the means used for its delivery.

GST has facilitated seamless credit across the entire supply chain and across all States under a common tax base. There is a clear mechanism in place that allows for a credit of the tax levied on transactions between businesses. The system is based on tax collection in a staged process, with successive businesses entitled to deduct input tax on “capital goods”, “inputs” or “input services” unless restricted by the GST Act and account for a tax on “outward supplies”. As a result of the staged payment system, GST thereby “flows through the businesses” to tax supplies made to final consumers.

Following the destination principle, in GST, exports are not subject to tax with a refund of input taxes (that is “zero-rated”) being made available, but imports are taxed (through the Integrated Goods and Services Tax -IGST) on the same basis and at the same rates as domestic supplies.

In the erstwhile regime of Sales Tax and Excise Duty, sale of goods was taxable either at the first point of sale or at the last point while keeping intermediate stages without charging any tax on the basis of statutory declaration forms. Thus, tax was charged only when goods were finally sold to the consumer. Hence, as such, need for refund of tax never arose except in appellate and enforcement matters.

However, under the GST, tax is charged at every stage of the supply chain, but where tax paid on purchases is higher than tax payable on sales, then due to accumulation of tax, need for refund of tax arises. These cases of refunds are mainly due to reasons of export of goods and services, supplies to the SEZ units and developers and inverted duty.

Since the whole mechanism of assessments, notices, summons, show cause notices under the GST law, in most of the cases, surrounds the supply of goods and/or services, input tax credit, cancellation of registration, refund, e-way bill, etc., it is imperative for us briefly to appreciate the concepts and mechanism of supply and its time and value; input tax credit, etc.

This will help us to understand substantial and procedural provisions of assessment and show cause notices under the GST law in a more structured manner which would help in drafting and pleading appeals. These are discussed in the following Paras.

1.2 Legislative Framework

- (1) The Constitution (101st Amendment) Act, 2016 has conferred concurrent taxing powers on the Union as well as the States (including Union territory with Legislature) to make laws for levying GST on every transaction of supply of goods or services or both.
- (2) Parliament has exclusive powers to make laws with respect to GST where supply of goods and/or services takes place in the course of inter-State trade or commerce.
- (3) In accordance with Art. 279A of the Constitution of India, the President constituted the Goods and Services Tax Council (GST Council, in short) on 15 Sept. 2016 with the following members:
 - (a) The Union Finance Minister ... Chairperson
 - (b) The Union Minister of State in charge of Revenue or Finance ... Member
 - (c) The Minister in charge of Finance or Taxation or any other Minister nominated by each State Government ... Members
- (4) The GST Council makes recommendations to the Union and the States on, inter-alia, following matters -
 - (i) the taxes, cesses and surcharges levied by the Centre, the States and the local bodies which may be subsumed under GST;
 - (ii) the goods and services that may be subjected to or exempted from GST;
 - (iii) the date on which the GST shall be levied on petroleum crude, high speed diesel, motor sprit (commonly known as petrol), natural gas and aviation turbine fuel;
 - (iv) model GST laws, principles of levy, apportionment of IGST and the principles that govern the place of supply;
 - (v) the threshold limit of turnover below which the goods and services may be exempted from GST;
 - (vi) the rates including floor rates with bands of GST.
- (5) **Statement of objects & reasons of the Constitutional Amendments**
 - (i) The Constitutional Amendment has conferred concurrent taxing powers on the Union as well as the States (including Union territory with Legislature) to make laws for levying GST on every transaction of supply of goods or services or both.

- (ii) GST has replaced a number of indirect taxes levied by the Union and the State Governments and is intended to remove cascading effect of taxes and provide for a common national market for goods and services.
- (iii) The Central and State GST are levied on all transactions involving supply of goods & services, except those which are kept out of the purview of the GST.
- (iv) GST has subsumed various Central indirect taxes and levies, such as, Central Excise Duty, Additional Excise Duties, Excise Duty levied under the Medicinal and Toilet Preparations (Excise Duties) Act, Service Tax, Additional Customs Duty (CVD), Special Additional Duty of Customs (SAD), and Central Surcharges & Cesses relating to supply of goods and services.
- (v) It has also subsumed State VAT/Sales Tax, Entertainment Tax (other than the tax levied by the local bodies), Central Sales Tax (levied by the Centre and collected by the States), Octroi and Entry tax, Purchase Tax, Luxury tax, Taxes on Lottery, Betting and Gambling; and State cesses and surcharges in so far as they relate to supply of goods and services.
- (vi) Concept of 'declared goods of special importance' in the Constitution has been dispensed with.
- (vii) It has levied Integrated GST on inter-State transactions of goods and services (IGST) as against Central Sales Tax (CST) on inter-State transaction of goods in the pre-GST regime.
- (viii) Concurrent powers have been conferred upon Parliament and the State Legislatures to make laws governing GST.
- (ix) GST has brought in its scope all goods and services, except alcoholic liquor for human consumption ¹[and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption], for levy of GST. In case of petroleum and petroleum products, it has been provided that these goods shall not be subject to GST till a date notified by the Government on the recommendation of the GST Council.
- (x) Compensation shall be given to the States for loss of revenue arising on account of implementation of GST for a period which may extend to 5 years from the GST implementation, i.e. 01 July 2017.

¹ *Ins. w.e.f. 01.11.2024 (vide N. No. 17/2024-CT, dated 27.09.2024) by the Finance (No. 2) Act, 2024 (15 of 2024) (s.114) dated 16.08.2024.*

- (xi) GST Council has been empowered to examine issues relating to goods and services tax and make recommendations to the Union and the States on parameters like rates of tax, exemption list and threshold limits along with modification in the structure of GST.
- (xii) GST Council shall function under the Chairmanship of the Union Finance Minister and will have Union Minister of State in charge of Revenue or Finance as member, along with the Minister in-charge of Finance or Taxation or any other Minister nominated by each State Government.
- (xiii) Every decision of the Goods and Services Tax Council shall be taken at a meeting, by a majority of not less than 3/4th of the weighted votes of the members present and voting, in accordance with the following principles, namely:—
 - (a) the vote of the Central Government shall have a weightage of 1/3rd of the total votes cast, and
 - (b) the votes of all the State Governments taken together shall have a weightage of 2/3rd of the total votes cast,
 in that meeting.
- (xiv) Clause 19 of the Amendment Act makes transitional provisions to take care of any inconsistency which may arise with respect to any law relating to tax on goods or services or on both in force in any State on commencement of provisions of the Constitution as amended by this Act within a period of one year.

(6) **Name of legislation and controlling authority:**

Name of the legislation	To be administered by	Scope of taxation
Central GST Act	Central Government	Every supply of goods and/or services within the state/UT, i.e. Intra-state supplies
State GST Act, e.g., Delhi GST Act, U. P. GST Act, Haryana GST Act, Kerala GST Act, and so on	Respective State Government	
UT GST Act	Central Government	
IGST Act	Central Government	Inter-state supplies

- (7) There has been uniformity in various SGST/UTGST Acts and the CGST Act.

(8) Distribution of IGST and CGST

- **Distribution of IGST amongst the States [Article 269A (1)]**

GST on supplies in the course of inter-State trade or commerce (IGST) is apportioned between the Union and States in the manner as may be provided by Parliament by law on the recommendations of the GST Council.

Sec 17 and 18 of the IGST Act have laid down the manner of distribution of IGST amongst the centre and the states.

- **Distribution of CGST amongst the States [Article 270 (1A)]**

GST levied and collected by Government of India (other than IGST) is distributed between Union and States in the manner provided in Article 270(2). As per the said Article, amount levied and collected shall be distributed at a percentage prescribed by the President after considering the recommendations of the Finance Commission.

1.3 Meaning and Scope of the term “Supply”

(1) In GST, the taxable event is the event of a “Supply”. GST is levied in the form of a Central Goods and Services Tax (CGST) and a State or Union Territory Goods and Services Tax (SGST or UTGST) on all intra-State supplies of goods or services or both, and Integrated Goods and Services Tax (IGST) on all inter-State supplies of goods or services or both except on the supply of alcoholic liquor for human consumption, for which the earlier system of levies under Excise and VAT continues ¹[and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption].

(2) **Meaning of the terms “Goods” and “Services”**

As per sec 2(52) of the GST Act, the term “**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.

As per sec 2(102) of the GST Act, the term “**services**” means anything other than goods, money and securities but includes activities relating to the use of

¹ *Ins. w.e.f. 01.11.2024 (vide N. No. 17/2024-CT, dated 27.09.2024) by the Finance (No. 2) Act, 2024 (15 of 2024) (s.114) dated 16.08.2024.*

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. It has been clarified that the expression “services” includes facilitating or arranging transactions in securities.

- (3) In accordance with sec 7 of the GST Act, which deals with the “Scope of Supply”, the term “supply” includes 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.

Thus, the general tests for a transaction to be reckoned as a supply or not, are as under: -

- (i) It should be for a consideration; and
- (ii) It should be in the course or furtherance of business.

However, the Business Test mentioned above does not apply to the situation of import of services for a consideration. Any “import of services” thus become liable to tax whether or not made in the course or furtherance of business.

Besides, there is a set of activities specified in **Schedule I** to the GST Act, made or agreed to be made without any consideration, will be construed as a ‘supply’.

- (4) **Schedule II** to the GST Act contains list of certain activities or transactions which are to be treated either as supply of goods or supply of services. For instance, any transfer of title in goods would be a supply of goods, whereas any transfer of right in goods without transfer of title would be considered as services.
- (5) Further, activities or transactions specified in **Schedule III** to the GST Act; or such activities or transactions undertaken by the Central / State Government or any local authority in which they are engaged as public authorities, as may be notified by the Government on the recommendations of the Council, are treated neither as supply of goods nor as supply of services.
- (6) **Inter-State supply vs. Local Supply and Place of Supply**

(Section 7 to 13 of the IGST Act)

- IGST Act formulates the principles when a supply of goods or services or both shall be treated as inter-state supply or intra-state (local) supply.
- Generally, subject to other provisions in respect of place of supply, where “location of the supplier” and “place of supply” are in different

States/UT, it is an inter-state supply; and if within the same state or UT, it is an intra-state or local supply.

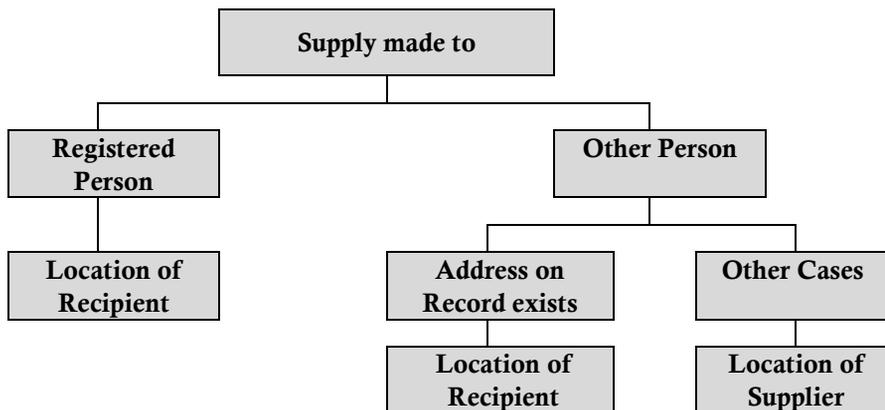
- Local supply shall be subject to ‘CGST + SGST’; whereas inter-state supply shall be subject to IGST.
- **Framework of Place of Supply provisions:**

Place of supply of goods	Place of supply of services
Section 10: Goods other than supply of goods imported into, or exported from India	Section 12: Services where location of supplier of service and the location of the recipient of service are in India
Section 11: Goods imported into, or exported from India	Section 13: Services where location of the supplier or the location of the recipient are outside India

Place of supply in case of goods, in general, in B2B Transactions

Where supply involves movement of goods, whether between two parties, or in case of “bill to ship to” transactions, the place of supply would generally be the billing address of the recipient, irrespective of shipping address in the different State, except where supply between two persons terminates in a State other than the State where place of business of the recipient is located. Thus, if supplier is located at Delhi, and the billing address is also in Delhi, the supplier will charge (CGST + SGST); and if the billing address is, say, in Haryana, the supplier will charge IGST.

Place of supply in case of services, in general, in B2B Transactions



However, the major exceptions are supply of immovable property (such as, construction, renting, hotels, etc.) and right to admission (such as, cinema halls, IPL/ cricket matches, etc.) where place of supply would be at the place where immovable property is located or where the event is held, as the case may be.

Thus, in the cases of hotels and admission to events, since the location of supplier, property and the place of supply coincide, the supplier would only charge 'CGST + SGST', even if the recipient is located outside the state or even if the recipient comes from outside the State for receiving the service.

1.4 Concept of distinct persons

Sec 25 of the GST Act, inter-alia, reads, as under,

- “(4) A person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act.*
- (5) Where a person who has obtained or is required to obtain registration in a State or Union territory in respect of an establishment, has an establishment in another State or Union territory, then such establishments shall be treated as establishments of distinct persons for the purposes of this Act.”*

As per Explanation 1 in Sec 8 of the IGST Act, for the purposes of the IGST Act, where a person has,—

- (i) an establishment in India and any other establishment outside India;*
- (ii) an establishment in a State or Union territory and any other establishment outside that State or Union territory; or*
- (iii) an establishment in a State or Union territory and any other establishment¹ [***] registered within that State or Union territory,*
- then such establishments shall be treated as establishments of distinct persons.*

To illustrate, if goods are transferred by a company from its registered branch in Delhi to its another registered branch in Kolkata, the transfer would be deemed as supply, and be subject to IGST in accordance with sec 15 of the GST Act, generally at transaction value.

¹ *Omtd.* w.e.f. 01.02.2019 (vide N. No. 1/2019-IT, dated 29.01.2019) the words “being a business vertical” by IGST (Amendment) Act, 2018, vide Ministry of Law and Justice Notification dated 29.08.2018.

Similarly, M/s ABC, a Software firm, is registered in Delhi as well as Haryana. Establishments in Delhi and Haryana of ABC shall be treated as establishments of distinct persons. *Suppose*, Delhi office receives an order for developing of software, which is partly developed by Haryana office, it will be considered as supply of services from Haryana office to Delhi office.

Suppose, Delhi office procures certain goods or services and uses the same in further supply. However, invoice of the said goods or services is received in the name of Haryana Office. Since Delhi office and Haryana office are distinct persons, Haryana office cannot avail ITC on the said invoice since it has not received goods/services.

However, in accordance with second proviso to rule 28(1) of the GST Rules, where the recipient is eligible for full ITC, then the value declared in the invoice shall be deemed to be the open market value of goods or services. In other words, in such cases, invoice value shall be accepted.

1.5 Taxable event and charging provisions

[Sec 9 of the GST Act and 5 of the IGST Act]

- (1) CGST and SGST has been levied on all **intra-State** supplies of goods or services or both, except on the supply of alcoholic liquor for human consumption ¹[and un-denatured extra neutral alcohol or rectified spirit used for manufacture of alcoholic liquor, for human consumption] and specified petroleum products.
- (2) IGST has been levied on all **inter-State** supplies of goods or services or both, except supply of goods specified in Para (1) above.
- (3) **GST on reverse charge basis**
 - The Government has, on the recommendations of the Council, specified categories of supply of goods or services or both under sec 9(3) of the GST Act and 5(3) of the IGST Act; the CGST/ SGST/ IGST on which shall be paid on reverse charge basis by the recipient of such goods or services or both subject to availability of exemptions available, if any.
 - Requirement of payments of GST on reverse charge basis under sec 9(4) of the GST Act and 5(4) of the IGST Act on receipt of supply of goods and/or services from unregistered persons had been deferred from 13 Oct. 2017 till 31 Jan. 2019 through various notifications.

¹ *Ins.* w.e.f. 01.11.2024 (vide N. No. 17/2024-CT, dated 27.09.2024) by the Finance (No. 2) Act, 2024 (15 of 2024) (s.114) dated 16.08.2024.

With effect from 01 Feb. 2019, vide GST Amendment Act, 2018, Sec 9(4) of the GST Act and 5(4) of the IGST Act have been substituted to empower the Government, on the recommendations of the Council, by notification, to specify a class of registered persons who shall, in respect of supply of specified categories of goods or services or both received from an unregistered supplier, pay the tax on reverse charge basis as the recipient of such supply of goods or services or both.

In exercise of these powers, the Government has notified the “Promoters” engaged in complex construction, as class of person, who are liable to pay GST on reverse charge basis on receipt of supplies, i.e. inputs, input services and capital goods, from unregistered persons under sec 9(4) of the GST Act and 5(4) of the IGST Act w.e.f. 01 April 2019 in the specified circumstances.

(4) **Specified e-commerce operators – Deemed suppliers**

The Government has been empowered to, on the recommendations of the Council, by notification, specify categories of services, the tax on supplies of which shall be paid by the electronic commerce (e-commerce, in short) operator, if such services are supplied through it, as if he is the supplier liable for paying the tax in relation to the supply of such services. [Sec 9(5) of the GST Act and 5(5) of the IGST Act]

These provisions are similar to provisions applicable under the erstwhile Service Tax where the aggregators, such as, Uber, Ola, etc., were, instead of the individual service provider, deemed as suppliers of service.

In exercise of the powers, the Government has notified following services under sec 9(5) of the GST Act vide notification no. 17/2017-CT(R) dated 28 June 2017, as amended from time to time:

(i)	Services by way of transportation of passengers by a radio-taxi, motorcab, maxicab, motor cycle and omnibus or any other motor vehicle
(ii)	Services by way of providing accommodation in hotels, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes, except where the person supplying such service through electronic commerce operator is liable for registration under sec 22(1) of the GST Act
(iii)	Services by way of house-keeping, such as plumbing, carpentering etc., except where the person supplying such service through electronic commerce operator is liable for registration under sec 22(1) of the GST Act.

(iv)	Supply of restaurant service other than the services supplied by restaurant, eating joints etc. located at specified premises.
(v)	Services by way of local delivery except where the person supplying such services through electronic commerce operator is liable for registration under sec 22(1) of the GST Act. [w.e.f. 22.09.2025]

(5) **Levy of compensation cess**

- The Goods and Services Tax (Compensation to States) Act, 2017 (**Compensation Cess Act, in short**), provides for payment of compensation to the States for loss of revenue arising on account of implementation of the goods and services tax for a period of 5 years from the date of implementation of GST.
- Compensation cess has been levied on inter-state and intra-state supply of specified goods or services or both at the rates stated in Schedule to the Act, which mainly comprises pan masala, tobacco and its products, coal, specified motor cars and aerated waters.
- Compensation cess is continued beyond 5 years from the date of implementation of GST, i.e. 01 July 2022 despite stoppage of compensation to the States by the Centre.
- Finally, compensation cess on all the specified products, except tobacco and tobacco products, was abolished effective from 22 Sept. 2025; and on tobacco and tobacco products, effective from 01 Feb. 2026. This burden of cess has now been merged in the main GST rates, wholly or partially.

1.6 Rates of GST

- (1) As per Art. 279A of the Constitution of India, the GST Council shall make recommendations to the Union and the States on -
- (a) goods and services that may be subjected to, or exempted from GST;
 - (b) rates including floor rates with bands of GST;
 - (c) any special rate or rates for a specified period, to raise additional resources during any natural calamity or disaster.
- (2) **Maximum rates of GST**

GST shall be levied at such rates, as may be notified by the Government on the recommendations of the Council. However, the maximum rates would be as under: -

- CGST – 20%
- SGST – 20%
- IGST – 40%

(3) **GST Rates effective from 22 Sept. 2025**

In relation to levy of tax on supply of goods, there are 7 tier rate-structures: - Exempted, uncut diamonds, bullions/ jewellery, Lower, Standard and Luxury (0, 0.25, 1.5, 3, 5, 18, 40).

In relation to taxation of services, there is 4 tier rate-structures: - 0, 5, 18, 28.

(4) **HSN (Harmonized System of Nomenclature) codes** as used in Customs Tariff Act, 1975, have been used for classifying the goods and HSN Code for Services (Chapter 99) for services under the GST regime.

(5) **Import of goods and services** has been treated as inter-state supplies and would be subject to IGST, in addition to the applicable customs duties (BCD) on goods. This IGST would be levied in lieu of CVD and SAD; and shall be available as input tax credit for further transactions.

IGST on import of goods in India has been levied and collected in accordance with the provisions of sec 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 sec 12 of the Customs Act, 1962.

1.7 Exemptions and exempt supplies

[Sec 11 of the GST Act and sec 6 of the IGST Act]

(1) **By way of Notification**

Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, by notification, exempt generally, **either absolutely or subject to such conditions** as may be specified therein, goods or services or both of any specified description from the whole or any part of the tax leviable thereon with effect from such date as may be specified in such notification.

(2) **By way of special order in exceptional cases**

Where the Government is satisfied that it is necessary in the public interest so to do, it may, on the recommendations of the Council, **by special order** in each case, under circumstances of **an exceptional nature** to be stated in such order, exempt from payment of tax any goods/services on which tax is leviable.

(3) Explanation to notification or special order already issued

The Government may, if it considers necessary or expedient so to do for the purpose of clarifying the scope or applicability of any notification of exemption or special order issued, insert an *Explanation* in such notification or order, as the case may be, by notification at any time **within one year** of issue of the notification/order. Every such *Explanation* shall have effect as if it had always been the part of the first such notification or order, as the case may be.

1.8 Time and Value of supply**1.8.1 Time of Supply**

- (1) As per sec 12(2), in case of *supply of goods (other than taxable on reverse charge)*, time of supply (i.e. taxable event) shall generally be earliest of the following:
- (a) Date of issuance of invoice by the supplier; (or) last date on which the supplier is required to issue the invoice in terms of sec 31;
 - (b) Date of receipt of payment by the supplier (earliest of date of entry in the books of accounts or credit date in the bank account).

However, relaxation has been given under sec 12(2) and 14 of the GST Act to the registered persons, other than composition taxpayers, to pay tax in respect of outward supply of goods at the time of issuance of invoice (and not at the time of receipt of advance). Provisions may be summarised as under: -

S. No.	Nature of persons	Time of supply
15 Nov. 2017 onward [N. No. 66/2017 – CT, dated 15 Nov. 2017]		
1	All registered persons, in respect of outwards supply of goods, <i>except</i> those who opted for the composition levy under sec 10 of the Act	Time of supply shall be earliest of following dates: (a) Date of issuance of invoice by the supplier; (b) Last date on which the supplier is required to issue the invoice in terms of sec 31.
2	Registered persons, in respect of outwards supply of goods, opted for the composition levy under sec 10 of the Act	Time of supply shall be earliest of following dates: (a) Date of issuance of invoice by the supplier; (b) Last date on which the supplier is required to issue the invoice in terms of sec 31 (c) Date of receipt of payment by the supplier (earliest of date of entry in the books of accounts or credit date in the bank account).

- (2) In case of *supply of services (other than taxable on reverse charge)*, time of supply (i.e. taxable event) shall be:
- (a) If the invoice under sec 31 is issued –
 - (i) **Within time:** Earliest of date of issuance of invoice OR Date of receipt of payment/ advance by supplier (earliest of date of entry in accounts books or credit date in bank);
 - (ii) **Not within time:** Earliest of date of provision of service OR Date of receipt of payment/ advance by supplier (earliest of date of entry in accounts books or credit date in bank);
 - (b) Other cases: date on which the recipient shows the receipt of services in his books of account.
- (3) In case of *supply of goods on reverse charge basis*, time of supply shall be earliest of the following dates:
- (a) the date of the receipt of goods; or
 - (b) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
 - (c) the date immediately following **30 days** from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.
- Where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.
- (4) In case of *supply of services on reverse charge basis*, time of supply shall be earliest of the following dates:
- (a) the date of payment as entered in the books of account of the recipient or the date on which the payment is debited in his bank account, whichever is earlier; or
 - (b) the date immediately following **60 days** from the date of issue of invoice or any other document, by whatever name called, in lieu thereof ¹[by the supplier, in cases where invoice is required to be issued by the supplier; or]

¹ Subs. w.e.f. 01.11.2024 (vide Notification No. 17/2024-CT, dt. 27.09.2024) by the Finance (No. 2) Act, 2024 (15 of 2024) (s.117) dt. 16.08.2024, for the words “by the supplier:”.

¹[(c) the date of issue of invoice by the recipient, in cases where invoice is to be issued by the recipient.]

Where it is not possible to determine the time of supply under clause (a) or clause (b) or clause (c), the time of supply shall be the date of entry in the books of account of the recipient of supply

- (5) **Circular No. 211/05/2024-GST dated 26 June 2024** also clarifies that in case of supplies received from the unregistered supplier, ITC could be claimed in the F.Y. when RCM is paid based upon self-invoice issued under sec 31(3)(f) of the GST Act. However, the recipient shall be liable for interest and penalty for the delay, if any.

1.8.2 Value of supply

(Section 15 of the GST Act)

- (1) Value of supply is, generally, the transaction value, i.e., the price actually paid or payable for the said supply of goods and/or services, where -
- supplier and recipient are not related, and
 - the price is the sole consideration for the supply.
- (2) Value of supply includes the amount which has been incurred by the receiver, reimbursements, free of charge supplies, royalties/license fees as condition of sale, incidental expenses, subsidies linked to price (other than by the Central government and the State government), late fee, interest, penalty for late payment, post supply discount subject to conditions and all taxes other than GST levies.
- (3) Discount given after supply is permitted to be excluded, if it is linked to the invoice in terms of an agreement entered into at or before the time of such supply; and also, ITC credit for the same has been reversed by the recipient.
- (4) The value of the supply of goods or services or both between distinct persons (branch with the same PAN) or related persons, other than where the supply is made through an agent, shall,-
- (a) be the open market value of such supply;
 - (b) if open market value is not available, it shall be the value of supply of goods or services of like kind and quality;

¹ *Ins. w.e.f. 01.11.2024 (vide Notification No. 17/2024-CT, dt. 27.09.2024) by the Finance (No. 2) Act, 2024 (15 of 2024) (s.117) dt. 16.08.2024.*

- (c) if value is not determinable under clause (a) or (b), it shall be the value as determined in accordance with the GST Rules.

However, where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be the open market value of goods or services. In other words, in such cases, invoice value shall be accepted.

- (5) In accordance with sec 15(5) of the GST Act, the value of notified supplies, on the recommendations of the Council, shall be determined in such manner as may be prescribed. In exercise of these powers, following rules have been prescribed:

S. No.	Rule	Value of supply..... Activities
1	31A	Lottery, betting, gambling and horse racing
2	31B	Online gaming including online money gaming
3	31C	Actionable claims in case of casino
4	31D	Value of supply of goods on basis of retail sale price
5	32(2)	Purchase or sale of foreign currency, including money changing
6	32(3)	Booking of tickets for travel by air provided by an air travel agent
7	32(4)	Life insurance business
8	32(5)	Person dealing in buying and selling of second hand goods
9	32(6)	Value of a token, or a voucher, or a coupon, or a stamp
10	32A	In cases where Kerala Flood Cess is applicable
11	33	In case of pure agent

1.9 Zero Rated Supplies

- (1) By zero rating it is meant that the entire value chain of the supply is exempt from tax. This means that in case of zero rating, not only is the output exempt from payment of tax, there is no bar on taking/availing credit of taxes paid on the input side for making/providing the output supply. Such an approach, in true sense, makes the goods or services zero rated.

(2) As per sec 2(23) of the IGST Act, zero-rated supply shall have the meaning assigned to it under sec 16 of the IGST Act.

As per sec 16 of the IGST Act, “zero rated supply” means any of the following taxable supply of goods and/or services, namely:

- (a) export of goods and/or services; or
- (b) supply of goods and/or services to a SEZ developer or an SEZ unit for authorised operations (Inserted w.e.f. 01 Oct. 2023).

(3) **Difference between Exempt Supply and Zero-Rated Supply:**

[Vide Flyer on Zero-rated issued by CBIC]

S.N.	Exempt Supply	Zero-Rated Supply
1	“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 sec 11 of GST Act or under sec 6 of the IGST Act, and includes non-taxable supply	“Zero-rated supply” shall have the meaning assigned to it under sec 16 of the IGST Act
2	No tax on the outward exempted supplies, however, the input supplies used for making exempt supplies to be taxed in the hands of supplier	No tax on the outward supplies; Input supplies also to be tax free by way of issuance of refund
3	Credit of input tax needs to be reversed, if taken; No ITC on the exempted supplies	Credit of input tax may be availed for making zero-rated supplies, even if such supply is an exempt supply; ITC allowed on zero-rated supplies
4	Value of exempt supplies, for apportionment of ITC, shall include supplies on which the recipient is liable to pay tax on reverse charge basis, transactions in securities, sale of land and, subject to clause (b) of paragraph 5 of Schedule II, sale of building, etc., as specified in sec 17 of the GST Act	Value of zero rated supplies shall be added along with the taxable supplies for apportionment of ITC.
5	Any person engaged exclusively in the business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under the CGST or IGST Act, shall not be liable to registration	A person exclusively making zero rated supplies will have to register and refunds of unutilised ITC or integrated tax paid shall have to be claimed

S.N.	Exempt Supply	Zero-Rated Supply
6	A registered person supplying exempted goods or services or both shall issue, instead of a tax invoice, a bill of supply	Normal tax invoice shall be issued

1.10 Export of goods and services

1.10.1 Export of goods

- (1) As per sec 2(5) of the IGST Act “Export of Goods” means taking goods out of India to a place outside India. Identical definition of “export” exists in the Customs Act vide sec 2(18) of that Act.
- (2) Supply of goods to the foreign going vessels, if such stores are warehoused goods and supplied before clearance for home consumption, shall be treated neither as a supply of goods nor services in terms of paragraph 8(a) of Schedule III under sec 7(2)(a) of the GST Act.
- (3) Supply of goods by the duty free shops at the departure terminal of the airport have been considered as export of goods.
- (4) As per the proviso to sec 16(3) of the IGST Act, inserted w.e.f. 01.10.2023 vide N. No. 27/2023-CT, dated 31.07.2023, the registered person making zero rated supply of goods shall, in case of non-realisation of sale proceeds, be liable to deposit the refund so received under this sub-section along with the applicable interest within **30 days** after the expiry of the time limit prescribed under the Foreign Exchange Management Act, 1999 for receipt of foreign exchange remittances, in such manner as may be prescribed. Earlier, these provisions were covered under rule 96B of the GST Rules.

1.10.2 Export of services

- (1) As per sec 2(6) of the IGST Act, the supply of any service shall be treated as “Export of Services” when -
 - (a) the supplier of service is located in India;
 - (b) the recipient of service is located outside India;
 - (c) the place of supply of service is outside India;

- (d) payment for such service has been received by the supplier in convertible foreign exchange ¹[or in Indian rupees wherever permitted by the Reserve Bank of India]; and
- (e) the supplier of service and recipient of service are not merely establishments of a distinct person in accordance with explanation 1 of sec 8.
- (2) As per explanation 1 of sec 8 of the IGST Act, where a person has,—
- (i) an establishment in India and any other establishment outside India;
- (ii) an establishment in a State or UT and any other establishment outside that State or UT; or
- (iii) an establishment in a State or UT and any other establishment ²[***] registered within that State or UT,
- then such establishments shall be treated as establishments of distinct persons.
- (3) As per clause (e) of sec 2(6), if the supplier of service and recipient of service are merely establishments of a distinct person, it would not be considered as export. *For example*, if some service is provided by Indian branch to USA branch, it would not be considered as export. Further, since service is provided to overseas branch, being a distinct person, it would be an inter-State supply.

However, the following notification exempts such supplies:

N. No. 15/2018-IT(R), dated 26 July 2018 w.e.f. 27 July 2018: Entry no. 10F has been inserted to grant exemption in such cases, as under:

Services supplied by an establishment of a person in India to any establishment of that person outside India, which are treated as establishments of distinct persons in accordance with Explanation 1 in sec 8 of the IGST Act.

Condition: Provided the place of supply of the service is outside India in accordance with sec 13 of IGST Act.

1.10.3 Supplies in territorial waters

(Sec 9 of the IGST Act)

Notwithstanding anything contained in the IGST Act,—

- (a) where the location of the supplier is in the territorial waters, the location of such supplier; or

¹ *Ins. vide* IGST (Amendment) Act, 2018 w.e.f. 01.02.2019.

² *Omd. vide* IGST (Amendment) Act, 2018 w.e.f. 01.02.2019; before it was read as “being a business vertical”.

- (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.

1.11 Supply to SEZ Units and Developers

1.11.1 Special Economic Zone

As per sec 2(19) of the IGST Act, “Special Economic Zone” shall have the same meaning as assigned to it in clause (za) of sec 2 of the Special Economic Zones Act, 2005.

Whereas as per sec 2(za) of the Special Economic Zones Act, 2005, “Special Economic Zone” means each Special Economic Zone notified under the proviso to sec 3(4) and sec 4(1) (including Free Trade and Warehousing Zone) and includes an existing Special Economic Zone.

1.11.2 Special Economic Zone Developer

As per sec 2(20) of the IGST Act, “Special Economic Zone developer” shall have the same meaning as assigned to it in sec 2(g) of the Special Economic Zones Act, 2005 and includes -

- (i) an Authority as defined in clause 2(d), and
- (ii) a Co-Developer as defined in sec 2(f) of the said Act.

1.11.3 Supplies to the SEZ Units and Developer

- (1) As per sec 16 of the IGST Act, supply of goods and/or services to a SEZ developer or an SEZ unit *for authorised operations (inserted w.e.f. 01 Oct. 2023)* has been considered as zero rated supply”
- (2) Further, supply of goods and/or services to or by a SEZ developer or an SEZ unit, shall be deemed to be a supply of goods and/or services in the course of inter-state trade or commerce.
- (3) A conjoint reading of the sec 16(1) and 16(3) of the IGST Act and Rule 89(1) of the GST Rules reveals that the supplies to a SEZ developer or a SEZ unit shall be zero rated and the supplier shall be eligible for refund of unutilized ITC or integrated tax paid, as the case may be, only if such supplies have been received by the SEZ developer or SEZ unit for authorized operations. An endorsement to this effect shall have to be issued by the specified officer of the Zone.