CENTRAL EXCISE

Rule 21: Remission of duty

(1) When it is **shown to the satisfaction of Proper Officer** that

- Goods have been **LOST** or **DESTROYED**
  - # by **NATURAL CAUSES or**
  - # by **UNAVOIDABLE ACCIDENT**
- Goods are **claimed by the manufacturer**
  - # as **UNFIT of CONSUMPTION**
  - # as **UNFIT for MARKETING**

At any time before removal,

He **MAY REMIT** the duty payable on such goods, ***subject to such conditions as may be imposed*** by him by order in writing.

Time Limit for Passing Remission Order – 3months + 6 months

"**(2)** The authority referred to in sub-rule (1) shall, within a period of **3 months from the date of receipt of an application, decide the remission of duty**:

Provided that the period specified in this sub-rule may, **on sufficient cause** being shown and reasons to be recorded in writing, **be extended by an authority next higher than the authority before whom the application for remission of duty is pending, for a further period not exceeding 6 months."**

- **No need to file Annual Return under Excise & Service for FY 2015-16, which was earlier required to be filed by 30th Nov with the arrival of GST.**

CUSTOMS

IMPORT PROCEDURE

Section 47: Clearance of goods for home consumption

(1) <u>BOE for H/C u/s 46 and ID paid – PO will pass OCO</u>

Where the proper officer is satisfied that

- ***any goods entered for home consumption are not prohibited goods and***
- ***the importer has paid the import duty,***

the **PO may make an Order** Permitting Clearance of the goods for home consumption. *[called **Out of Charge Order – OCO**]*

Provided that *CG may, by notification in the OZ, permit certain class of importers to make deferred payment of said duty or any charges in such manner as may be provided by rules.*

Deferred Payment of Import Duty Rules, 2016

Rule 1: Short title and commencement

Rule 2: Definitions

(c) "eligible importer" means any class of importers notified under proviso to sub section (1) of section 47 of the Act.

<u>N/N 135/2016 –</u>

CBEC permits the following class of importers to make deferred payment of import duty.

- ***Importer certified under Authorised Economic Operator Programme as AEO (Tier two/three).***

Rule 3: Application

These rules shall apply to eligible importer who have been notified under the proviso to Sec 47(1).

Rule 4: Information about intent to avail benefit of notification

(1) An eligible importer who intends to avail the benefit u/s 47(1) of the Act **shall intimate to the Principal Commissioner of Customs or the Commissioner of Customs**, as the case may be, having jurisdiction over the port of clearance, his intention to avail the said benefit.

(2) The **Principal Commissioner of Customs or the Commissioner of Customs**, as the case may be, shall, **upon being satisfied with the eligibility of the importer to pay** the duty under these rules, **allow the eligible importer to pay the duty by due dates** specified in rule 5.

Rule 5: Payment of duty

The eligible importer shall pay the duty by the dates specified hereunder inclusive of the period (excluding holidays) as mentioned in u/s 47(2) of the Act, namely:-

1	for goods corresponding to Bill of Entry returned for payment from **1st day to 15th day of any month**	the duty shall be paid by the **16th day** of that month
2	for goods corresponding to Bill of Entry returned for payment from **16th day till the last day of any month other than March**	the duty shall be paid by the **1st day of the following month**
3	for goods corresponding to Bill of Entry returned for payment from **16th day till the 31th day of March**	the duty shall be paid by the **31st March**

Rule 6: Manner of payment

The eligible importer **shall pay the duty electronically**;

Provided that the AC/DC of Customs, as the case may be, for reasons to be recorded in writing, ***may allow payment of duty by any mode other than electronic payment.***

Rule 7:. Deferred payment not to apply in certain cases

An eligible **importer who fails to pay duty in full by due date more than once in a period of three consecutive months shall not be permitted to make deferred payment**.

Provided that the facility of deferred payment shall not be restored unless the eligible importer has paid the duty in full along with the interest.

Rule 8: Exemption in respect of certain goods

Nothing contained in these rules shall apply to the goods which have not been assessed or not declared by the importer in the entry made under the Act.

Circular 14/2017: SHIPPLING LINE/AGENT being person liable to file IGM, shall only be held liable for fine/penalty for improper filing of IGM

- **The responsibility of amendment in the IGM rests solely with the Shipping Line/Agent, as they file IGM with Customs under section 30 of Customs Act, 1962.**
- It is, therefore, clarified that the **fine/penalty imposed**, if any, upon adjudication in such cases, **shall be payable by the Shipping Line only** or such other person as specified.
- **No fine/penalty is required to be imposed on the consignee or others.** No request for any amendment in the IGM from Custom Broker/Importer will be entertained.

Circular 4/2017: Expansion of 24x7 Customs clearance & Clarification of levy of MOT charges on CFS

Board has amended the Customs Regulations, 1998 to provide that at 24x7 customs ports and airports, no fee i.e. merchant overtime fee (MOT) shall be collected in lieu of the services rendered by the customs officers. **Thus, as on date no MOT charges are required to be collected in respect of the services provided by the customs officers at 24x7 customs ports and airports.**

Reference was received by CBEC seeking clarification as to whether MOT charges are to be collected in respect of stuffing of export goods at CFSs.

(a) The issue has been examined in the Board. It is observed that a designated 24x7 sea port can have a number of CFSs attached to it. While **Board has already exempted MOT charges at 24x7 ports, the reference in essence seeks clarification as to whether MOT exemption can be extended to attached CFSs as well.**

(b) **CFSs are an extension of the Port. In the overall ecosystem of Customs clearance, CFSs have played an important role in faster clearance of EXIM goods. As a result, bulk of regulatory activity other than appraising, has shifted to CFSs.**

(c) **Factory stuffed containers are already covered under 24x7 operations, therefore, MOT charges are not required to be paid in lieu of services (like verification of seals etc) rendered by customs officers at CFSs in respect of such containers.**

(d) **Other than at the manufacturing premises, stuffing can inter-alia also occur at CFSs for export against free shipping bills or otherwise.** In the case of sea ports, free shipping bills are already covered under 24x 7 scheme while the goods exported against a claim to benefit are not. Considering that the customs work carried out in the CFSs is actually an extension of the clearance activity at the port, therefore, logically no MOT charges should be leviable in lieu of services rendered by customs officers within the CFS premises even in the case of export against a claim to benefit.

(e) Accordingly, it has been clarified that no MOT charges would be collected at CFSs attached exclusively to 24x7 ports in lieu of services rendered within the CFS. This will bring the MOT collection norms at par with the air side which cover all shipping bills free or otherwise.

Circular No. 1/2017: Single Window Interface for Facilitation of Trade (SWIFT) extended to Exporters

As part of the "Ease of Doing Business" initiatives, the CBEC has taken up implementation of the Single Window Project to facilitate the Trading Aross Borders in India. The ***'India Customs Single Window'*** *would allow importers and exporters,* ***the facility to lodge their clearance documents online at a single point only.***
Required permissions, if any, from other regulatory agencies would be obtained online without the trader having to approach these agencies*. The Single Window Interface for Trade (SWIFT), would reduce interface with Governmental agencies, dwell time and the cost of doing business. CBEC had already executed major projects to automate Customs clearance processes and provide electronic data interchange (EDI) with all agencies.*

Instruction No. 1/2017: Passing of Order u/s 110

Every seizure under Seizure order

(1) It has been brought to the notice of board that in several cases, goods are being held/seized by field formations only under panchnama and separate order for seizure of goods are not being passed. The honourable HC in a recent order, has held that ***a panchnama is a statement by panchas (witnesses) and cannot be taken to be an order passed by the proper officer under Section 110 of the Customs Act, 1962.***

(2) **Though Section 110 of the Act *ibid* does not specify passing an order for seizure of goods, it says that *where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall not remove, part with, or otherwise deal with the goods except with the previous permission of such officer.***

(3) In view of the above, in all future cases, the following may be adhered to:

- ***Whenever goods are being seized, in addition to panchnama, the proper officer must also pass an appropriate order (seizure memo/order/etc.) clearly mentioning the reasons to believe that the goods are liable for confiscation.***

- ***Where it is not practicable to seize any such goods, the proper officer may serve on the owner of the goods an order that he shall nor remove, part with, or otherwise deal with the goods except with the previous permission of such officer. In such cases, investigations should be fast-tracked to expeditiously decide whether to place the goods under seizure or to release the same to their owner.***

Post Seizure, SCN proposing confiscation shall invariably be issued within time specified u/s 110, else goods to be released.

Further, it has been brought to the notice of the Board that in cases where provisional release of seized goods is allowed u/s 110A of the Act *ibid,* show cause notices are not being issued within the stipulated time period on the ground that the goods have been released to the owner of the goods. The provisions of the Customs Act, 1962 are clear that irrespective of the fact whether goods remain seized or are provisionally released, once goods are seized, the time period (including extended time period) stipulated u/s 110(2) of the Act shall remain applicable and has to be strictly adhered to.

CCR, 2004

Rule 6: Inapplicability of 'interest exclusion provisions' to Banking Company / FI (including NBFC)

"**Value**" for purpose of rules 6(3) and 6(3A) will **not include the value of services by way of extending deposits, loans, or advances where the consideration is represented by way of interest or discount.**

Provided that this clause shall not apply to banking company and a financial institution including a NBFC, engaged in providing services by way of extending deposits, loans or advances.

➔ Thus, in case of banks and financial institutions including NBFC engaged in providing services by way of extending deposits, loans or advances, **value shall include the value of services by way of extending deposits, loans or advances where consideration is represented by way of interest or discount.**

RULE 10: TRANSFER OF CENVAT CREDIT

(1) If a ***manufacturer*** of the final products/ ***provider of output service shifts his factory/business to another site or the factory/business is transferred*** *on account of change in ownership or on account of sale, merger, amalgamation, lease or transfer of the factory to a joint venture with the specific provision for transfer of liabilities of such factory, then*

- ⇨ the **manufacturer shall be allowed to TRANSFER the CENVAT credit lying UNUTILISED** in **his accounts** to such transferred, sold, merged, leased or amalgamated factory.

(2) The transfer of the CENVAT credit under sub-rules (1) and (2) shall be allowed only if

- ⇨ Transfer of factory is or business is made with provision for transfer of liabilities.
- ⇨ the stock of **INPUTS** as such or in process, or the **CAPITAL GOODS** is ***also transferred along with the factory*** or business premises to the new site or ownership and
- ⇨ the **inputs, or capital goods**, on which credit has been availed of are ***duly accounted*** for to the satisfaction of the AC/DC.

(3) If **conditions of Rule 10 are not satisfied** with, then

(a) **unutilized CCR cannot be transferred**

(b) the manufacturer or service provider **shall pay an amount u/r 3(5) or (5A)** on removal of inputs or capital goods as such or after use which shall be eligible as CCR to buyer.

(c) The **balance, if any, remaining shall lapse.**

(4) Subject to the provisions contained in sub-section (3), the transfer of CCR shall be allowed within a period of 3 months from the date of receipt of application by the AC/DC of central excise.

Provided that the period specified in this sub rule, may on sufficient cause being shown and reasons to be recorded in writing, be extended by the Principal CCE/CCE, for a period not exceeding 6 months.

COMMON TOPICS

Sec 35-R: Appeal not to be filed in certain cases (Monetary Limit for filing appeal by department)

In exercise of the powers conferred by Sec 35R of CE Act, 1994 **(made applicable to Service Tax vide Sec 83 of the Finance Act, 1994 and Sec 131 BA of the Customs Act, 1962),**

- **CBEC** fixes the following monetary limits (on the date of application) below which appeal shall not be filed in the Tribunal, High Court and the Supreme Court:

Sl.No	Appellate Forum	Monetary limit
1.	**CESTAT**	**₹ 10,00,000/- or more**
2.	**HIGH COURT**	**₹ ~~15,00,000~~ 20,00,000/- or more**
3.	**SUPREME COURT**	**₹ 25,00,000/- or more**

➔ **No appeal can be filled to CESTAT for an amount below ₹ 10,00,000.**

SERVICE TAX

(1) Rule 2A: Determination of value of services involved in execution of a WORK CONTRACT

Types of Works Contract	% of value of total works contract (taxable)
Original Contract • ***Normally (other than Building Contract)***	**40%**
• ***If value includes value of goods & value of land (Building Contract)***	**30%**
Other Contract **e.g, maintenance or repair of servicing of ANY GOODS; or finishing services such as glazing or plastering or floor and wall tiling or installation of electrical fittings of immovable property.**	**70%**

(2) Aggregator – Liable to pay ST under RCM

"aggregator" means a person,

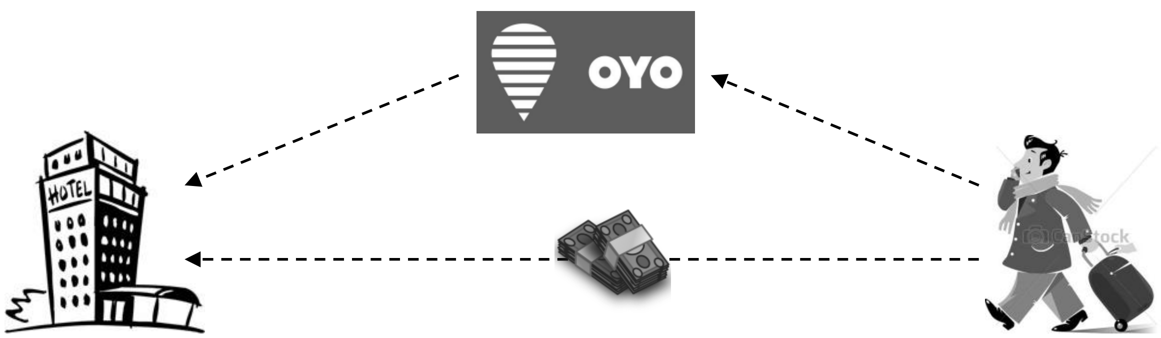
- ➔ who **owns and manages a web based software application**, and by means of the application and a communication device,
- ➔ **enables a potential customer to connect with persons** providing <u>**service of a particular kind**</u> under the **brand name or trade name of the aggregator**;'

Provided that aggregator shall not include such person *who* ***enables a potential customer*** *to connect with persons providing services by* ***way of renting of hotels****, inns, guest houses, clubs, campsites or other commercial places meant for residential or lodging purposes subject to following* ***conditions:***

(a) the ***person providing the aforesaid services of renting has a service tax registration****.*
(b) Whole of the consideration *for such services* ***is received directly by such service provider****.*
(c) No amount which farms part of the consideration of services is received by the aggregator *directly either from applicant or his agent.*

Analysis:

- *Aggregator (Oyo Rooms) shall not be liable to pay ST if customer makes direct payment to Hotels. However if commission is received by it, ST shall be paid.*



(3) MEGA EXEMPTION – 25/2012

Sl. No.	DESCRIPTION OF SERVICE
9	*(a)* *Services provided* ***BY*** *an educational institution to its students, faculty and staff;* *(b)* *Services provided* ***TO*** *an educational institution, by way of,-* *(i)* *transportation of students, faculty and staff;* *(ii)* *catering, including any mid-day meals scheme sponsored by the Government;* *(iii)* *security or cleaning or house-keeping services performed in such educational institution;* *(iv)* *services relating to admission to, or conduct of examination by, such institution.* ***Provided that nothing contained in clause (b) shall apply to an educational institution other than institution providing services of pre-school or education upto higher secondary school or equivalent.*** ***ANALYSIS:*** ➔ *Services provided by way of renting of immovable property to educational institutions is taxable.*
9B	**Services provided by the IIM**, as per the guidelines of the CG, to their students, by way of the following **educational programmes, except Executive Development Programme, -** (a) **2 year full time** ~~**residential**~~ Post Graduate Programmes in Management for the Post Graduate Diploma in Management, to which admissions are made on the basis of Common Admission Test (CAT), conducted by IIM; (b) **Fellow programme** in Management; (c) **5 year integrated programme in Management**.”
23A	**Services provided to government for transport of passenger to and from RCS Airport (Regional Connectivity Scheme)** ***against consideration in the form of Viability Gap Funding.*** **Applicability – Only for 1 year** from the date of commencement of RCS.
26D	**Services of Life insurance business provided to defence personnel (Army/Navy/Airforce) under group insurance scheme of CG.**
29	**Services by** the following persons in respective capacities *(a)* **Agents with respect to accounts in rural branch of bank/insurance co.**
34	**Services received from a provider** of service located **in a non- taxable territory** by - ***(a)*** *Government, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;* ***(b)*** *an entity registered u/s 12AA of the Income tax Act, 1961 for the purposes of*

	providing charitable activities; or *(c)* *a person located in a non-taxable territory;* "**Provided that the exemption shall not apply to – [Amended]** **(i)** OIDARservices received by persons specified in clause (a); or **(ii)** services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India;".
64	***Services by an acquiring bank, to any person in relation to settlement of an amount up to ₹2000 in a single transaction transacted through credit card, debit card, charge card or other payment card service.***

Analysis:

An acquiring bank (also known simply as an acquirer) is a bank or financial institution that processes credit or debit card payments on behalf of a merchant. The acquirer allows merchants to accept credit card payments from the card-issuing banks within an association.

Examples – Visa, MasterCard, Rupay, American Express, etc

(4) ABATEMENT EXEMPTION – 26/2012

S.N	Description of Service	Abatement (%)	Taxable Portion (%)	Eligibility of CCR		
				Input	CG	IS
11	**Services by a tour operator** (inclusive of accommodation, transport etc)	**40%**	**60%**	**NO**	**NO**	**YES**

(5) R&D EXEMPTION – 14/2012 – Omitted

(6) OCEAN FREIGHT – Import of goods

- Service Provider— Foreign Shipping Company
- Service Receiver— Foreign Exporter

Old Provision: It was exempted under entry 34(c) of 25/2012.

New Provision: Exemption with respect to overseas transportation has been withdrawn. Hence the same is now taxable.

With the above service becoming taxable, following issue has risen:

(1) Who shall be liable to pay such ST? – *RCM (Importer)*

(2) What shall be the POT? – *Rule 8B*

(3) How liability shall be computed? – *Composition Scheme*

(4) Whether cenvat credit shall be admissible? – *Yes*

Query 01: Who shall be liable to Pay the ST?

In relation to services provided or agreed to be provided by a person located in non-taxable territory to a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India,

➔ ***the importer as defined in Sec 2(26) of Customs Act, 1962 of such goods shall be the person liable to pay ST.***

Diagram Space:

(Foreign Shipping Line)

Person Liable to Pay:

(Foreign Exporter)

(Indian Importer)

Analysis:

Situation	Person Liable to Pay
Indian Shipping Line providing transport service to Indian Importer	
Foreign Shipping Line providing transport service to Indian Importer	
Foreign Shipping Line providing transport service to Foreign Importer	

Query 02: What would be the PoT?

*Notwithstanding anything contained in these rules, the PoT in respect of **services provided by a person located in non-taxable territory to a person in non-taxable territory** by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India,*

➔ **shall be the date of BILL OF LADING of such goods in the vessel at the port of export.**

However, no service tax is leviable if the bill of lading is of date prior to 22.01.2017.

Query 03: How Liability shall be computed?

Option 01: Normal Scheme – Service Tax = Value * Rate

- **Value – Sec 67** – Gross Amount Charged
- **Rate – 15%** (14%+SBC/KKC)

Benefit of 26/2012 (Abatement – 70%) not available:

- *Benefit of 26/2012 is conditional that CCR of inputs & Capital Goods shall not be available.*
- *However, in case of foreign shipping lines, their services being exports from their home country, are zero-rated in their home country and thus have suffered no taxes. Further the foreign shipping lines do not get registered in India and do not follow the provisions of Cenvat Credit Rules.*

Option 02: Composition Scheme – Service Tax = Value * Composition Rate

Rule 6 (7CA) of STR, 1994:

The person liable for paying service tax for the taxable services provided or agreed to be provided by a person located in non-taxable territory to a person in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India,shall have

➔ ***the option to pay an amount calculated @1.4% of the Cost Insurance Freight (CIF) value of such imported goods.***

Query 04: Whether CCR shall be available?

Definition of Input Service [Rule 2(l)]

Means:

services provided or agreed to be provided ***by a person located in non-taxable territory to a person in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India***

- ***where service tax is paid by the manufacturer or the provider of output service being importer of goods as the person liable for paying service tax for the said taxable services AND the said imported goods are his inputs or capital goods***

Condition for availing CCR on Input Service [Rule 4(7)]

Provided also that in respect of services provided or agreed to be provided by a person located in non-taxable territory to a person in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India

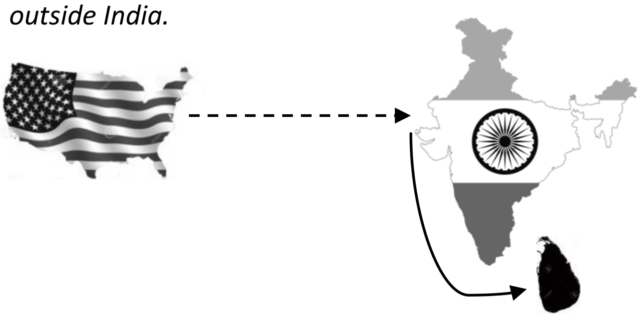
- ***Where service tax is paid by the manufacturer or the provider of output service being importer of goods as the person is liable for paying service tax for the said taxable services***
- ***Credit of ST paid by the person liable for paying ST shall be allowed after service tax is paid.***

CCR Available on the basis of Challan [Rule 9]:

The importer of the goods has been allowed to avail Cenvat credit on the basis of the challan of payment of service tax by the said importer on the services provided by a foreign shipping line to a foreign charterer with respect to goods destined for India.

Ocean freight: Goods destined to foreign country, but transshipped through Indian Customs Station shall not be liable to any ST: CIRCULAR NO 204/2/2017

Applicability of service tax on the services by way of transportation of goods by a vessel from a place outside India to the customs station in India w.r.t. goods intended for transhipment to any country outside India.



- In case of transshipment – No customs duty is payable if the same is mentioned in IGM/IM/IR.
- POPS should be determined by Rule 10

(7) Online Information & Data Access or Retrieval services (OIDAR Service)

Old Provision: Defined in POPS, 2012

New Provision: Defined in Rule 2(1)(ccd) of STR, 1994

"OIDAR 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 via 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, etc.);*
(vi) *digital data storage; and*
(vii) *online gaming;*

Analysis:

Non OIDAR Services:

In general the use of the Internet or other electronic networks by parties to communicate with respect to transactions or to facilitate trading does not, any more than the use of a telephone or fax, mean that a business is providing OIDAR Services.

For example, where parties simply use the internet to convey information in the course of a business transaction (e.g., mail), this does not change the nature of the transaction.

Indicative List of Non OIDAR Service:

(i) *Supplies of goods, where the order and processing is done electronically*
(ii) *Supplies of physical books, newsletters, newspapers or journals*
(iii) *Services of lawyers and financial consultants who advise clients through email*
(iv) *Booking services or tickets to entertainment events, hotel accommodation or car hire*
(v) *Educational or professional courses, where the content is delivered by a teacher over the internet or an electronic network (in other words, using a remote link)*
(vi) *Offline physical repair services of computer equipment*
(vii) *Advertising services in newspapers, on posters and on television*

Examples:

Service	Whether provision of service is mediated by IT over the internet or an electronic network	Whether it is automated and impossible to ensure in the absence of IT	Whether OIDAR Service?
Pdf documented manually emailed by provider	*Yes*	*No*	*No*
Pdf documented automatically emailed by providers system	*Yes*	*Yes*	*Yes*
Pdf documented automatically downloaded from site	*Yes*	*Yes*	*Yes*
Stock photographer available for automatic download	*Yes*	*Yes*	*Yes*
Online course consisting of pre recorded videos & downloadable pdfs	*Yes*	*Yes*	*Yes*
Online course consisting of pre recorded videos & downloadable pdfs plus support from a live tutor	*Yes*	*No*	*No*
Individually commissioned content sent in digital form e.g, photographs, reports, medical results	*Yes*	*No*	*No*

Determination of POPS

Old Provision: Rule 9

New Provision: Rule 3 (all cases)

Meaning: *OIDAR services" means providing data or information, retrievable or otherwise, to any person, in electronic form through a computer network;"*

Rule 3 of POPS, 2012

The *place of provision* of a service shall be the **LOCATION of the recipient of service.**

Provided that

- ***in case* other than OIDAR Service *the location of the service receiver is not available*** in the ordinary course of business, ***the place of provision shall be the location of the provider of service.***

"Telecommunication Service"

Means: *service of any description (including electronic mail, voice mail, data services, audio text services, video text services, radio paging and cellular mobile telephone services) which is made available to users by means of any transmission or reception of signs, signals, writing, images and sounds or intelligence of any nature, by wire, radio, visual or other electro-magnetic means but shall not include broadcasting and OIDARservice*

Taxability of OIDAR Service

Old Provision: Exempt under entry 34 (a)/(b) of 25/2012

New Provision: Exemption has been withdrawn i.e, ST payable

Person liable to pay in case of OIDAR Service to Non assessee online recipient

Old Provision: SP being in Non TT, it was under RCM

New Provision: SP shall be liable to pay, through his representative or appointed persons

REVERSE CHARGE MECHANISM:

(1) In relation to any taxable service **other than OIDAR service,** provided or agreed to be provided **by any person which is located in a non-taxable territory and received by any person located in the taxable territory,**

➔ ***Person liable to pay shall be the recipient of such service;***

(2) **In relation to services provided or agreed to be provided by way of OIDAR services,** by any person located in a non-taxable territory and received by any person in the taxable territory **other than non-assessee online recipient,**

➔ ***Person liable to pay shall be the recipient of such service;***

FORWARD CHARGE MECHANISM:

In relation to services provided or agreed to be provided by way of OIDAR services, by any person located in a non-taxable territory and received by any person in the taxable territory **by non-assessee online recipient,**

➔ ***Person liable to pay shall be the service provider located in NTT.***

Non-assessee online recipient

Means:

- → *Government, a local authority, a governmental authority or*
- → *an individual*

receiving OIDAR services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory;

OIDAR in case of Intermediary

Provided further that in case of *OIDAR services provided or agreed to be provided by any person located in a non-taxable territory and received* ***by non-assessee online recipient****,*

➔ **an intermediary** *located in the non-taxable territory including an electronic platform, a broker, an agent or any other person, by whatever name called, who arranges or facilitates provision of such service but does not provides the main service on his account*

➔ **shall be deemed to be receiving such services** from the service provider in non-taxable territory and providing such services to the non-assessee online recipient

<u>Except when such intermediary satisfies all the following conditions, namely :—</u>

(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, its supplier in non-taxable territory and the service tax registration number of the supplier in taxable territory;*

(b) *The intermediary involved in the supply does not authorise the charge to the customer or take part in its charge i.e. intermediary neither collects or processes payment in any manner nor is responsible for the payment between the non-assessee online recipient and the supplier of such services;*

(c) *The intermediary involved in the supply does not authorise delivery;*

(d) *The general terms and conditions of the supply are not set by the intermediary involved in the supply but by the service provider:*

Provided that OIDAR services *provided or agreed to be provided by any person located in a non-taxable territory and* **received by non-assessee online recipient,**

➔ **any person located in taxable territory representing such service provider for any purpose in the taxable territory shall be the person liable for paying service tax:**

Provided also that in case of **OIDAR services** provided or agreed to be provided by any person located in a non-taxable territory and received by non-assessee online recipient**,**

➔ if the **service provider does not have a physical presence** or **does not have a representative** for any purpose in the taxable territory, the **service provider may appoint a person in the** taxable territory **for the purpose of paying service tax and such person shall be liable for paying ST**

Receiver of OIDAR service = Deemed location in TT,
if any 2 conditions are satisfied

Provided also that in case of **OIDAR services** provided or agreed to be provided by any person located in a non-taxable territory and **received by any person located in the taxable territory**,

➔ **person receiving such services** shall be **deemed to be located in the taxable territory if any 2 of the following non-contradictory conditions are satisfied**, namely :

(a) *The location of address presented by the service recipient via internet is in taxable territory;*

(b) *The credit card or debit card or store value card or charge card or smart card or any other card by which the service recipient settles payment has been issued in the taxable territory;*

(c) *The service recipient's billing address is in the taxable territory;*

(d) *The internet protocol address of the device used by the service recipient is in the taxable territory;*

(e) *The service recipient's bank in which the account used for payment is maintained is in the taxable territory;*

(f) *The country code of the subscriber identity module (SIM) card used by the service recipient is of taxable territory;*

(g) *The location of the service recipient's fixed land line through which the service is received by the person, is in taxable territory:*

Receiver of OIDAR service = Deemed status of Non assessee Online Recipient, if unregistered under ST

Provided also that in case of **OIDAR services** provided or agreed to be provided by any person located in a non-taxable territory and **received by non-assessee online recipient**,

➔ a **person receiving such services shall be deemed to be a non-assessee online recipient, if such person does not have service tax registration under these rules.**

Example: OIDAR Service

SP	SR	POPS	Taxability	Person Liable to Pay
NTT	NTT			
TT	TT			
TT	NTT			
NTT	TT			

<u>Other Related Amendments – OIDAR Service</u>

- Registration Application form – ST 1A
- Grant of Registration – ST 2A
- Return – ST 3C