CHAPTER -3

CHARGE OF GST

INTRODUCTION

- ✓ We already know, the taxable event under GST is **SUPPLY**. **CGST and SGST/UTGST** are levied on all **intra-State supplies** of goods and/or services while **IGST** is levied on all **inter-State supplies** of goods and/ or services.
- ✓ **Intra-State Supply:-** Where the location of the supplier and the place of supply of goods or services are in the same State/Union territory, it is treated as **intra-State supply** of goods or services respectively.

  <u>Exclusion:-</u> a) Supply of goods/services to or by SEZ Unit or SEZ Developer discussed in Inter state supplies topic.

  b) Goods imported in India: Excluded from the definition of intra-State supplies.

  c) Supply of goods made to a tourist

  Tourist is a person not normally resident in India, who enters India for a stay of not more than 6 months

  Example- A tourist from USA visits India and purchases a shawl in Delhi. In this case, even though the place of supply and location of supplier are in the same State, it will be treated as inter-State transaction and will be eligible to IGST.

- ✓ **Inter-State Supply:-** Where the location of the supplier and the place of supply of goods or services are in (i) two different States or (ii) two different Union Territories or (iii) a State and a Union territory, it is treated as **inter-State supply** of goods or services respectively.

Example

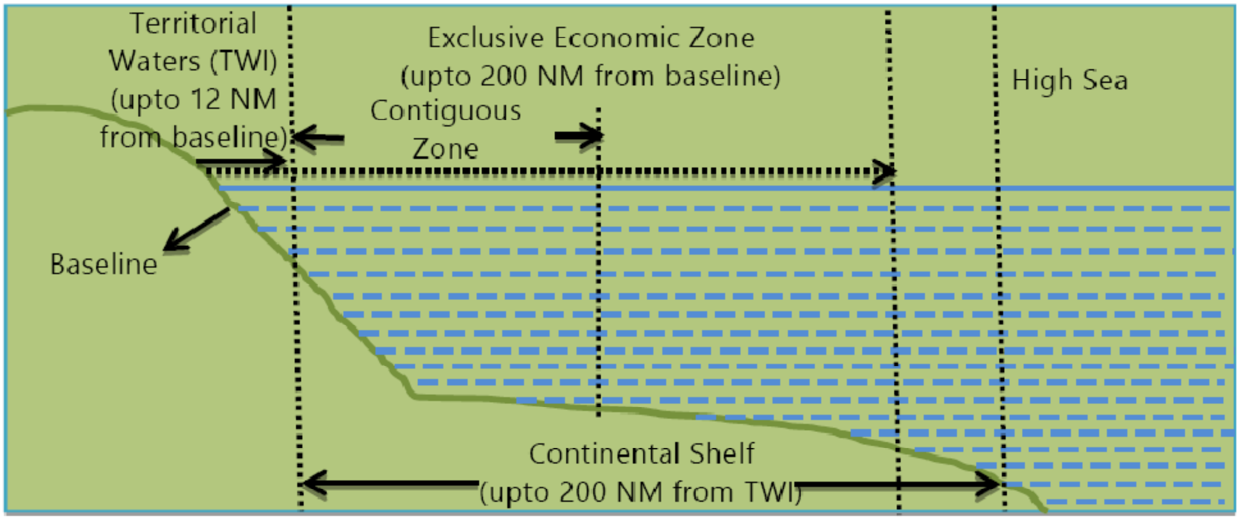
Location of Supplier	Place of supply	Intra or Inter-State
Faridabad	Gurgaon	Intra(CGST+SGST)
Chandigarh (U.T)	Chandigarh (U.T)	Intra(CGST+UTGST)
Faridabad	New Delhi	Inter(IGST)
Chandigarh (U.T)	Faridabad	Inter(IGST)
Chandigarh (One U.T)	Daman and Diu(AnotherU.T)	Inter(IGST)

IMPORTANT DEFINITIONS

(i) Central Goods and Services Tax Act, 2017 extends to the whole of India* [Section 1 of the CGST Act].

Point to be noted:-

1. It is pertinent to note that the CGST Act applies to the State of Jammu and Kashmir also.
2. **India** means
   - o territory of India as referred to in article 1 of the Constitution
   - o its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976
   - o the air space above its territory and territorial waters



(ii) State GST law of the respective State/Union Territory with State Legislature [Delhi and Puducherry]** extends to whole of that State/Union Territory.

Point to be Noted:- ***State:*** *includes a Union territory with Legislature [Section 2(103) of the CGST Act].*
(iii) Union Territory Goods and Services Tax Act, 2017 extends to the Union territories** of the Andaman and Nicobar Islands, Lakshadweep, Dadra and Nagar Haveli, Daman and Diu, Chandigarh and other territory, i.e.the Union Territories without State Legislature [Section 1 of the UTGST Act].
*****Union territory***: means the territory of—
(a) the Andaman and Nicobar Islands;
(b) Lakshadweep;
(c) Dadra and Nagar Haveli;
(d) Daman and Diu;
(e) Chandigarh; and
(f) other territory.
Explanation—For the purposes of this Act, each of the territories specified in sub-clauses (a) to (f) shall be considered to be a separate Union territory [Section 2(114) of CGST Act].

(iv) Integrated Goods and Services Tax Act, 2017 extends to the whole of India. The term 'India' has already been defined in preceding paras. IGST is levied on the inter-State supply of goods or services or both.
(v) **'Electronic commerce operator'** means any person who owns, operates or manages digital or electronic facility or platform for electronic commerce - section 2(45) of CGST Act.

LEVY & COLLECTION OF CGST [SECTION 9 OF THE CGST ACT and SECTION 5 OF THE IGST ACT]

Section 9 (1) of CGST Act, 2017	***Section 5 (1) of IGST Act, 2017***

Subject to the provisions of sub-section (2), ➢ there shall be levied a tax called the **CGST** ➢ **on all intra-State supplies** ➢ of goods or services or both ➢ **except** on the supply of **alcoholic liquor for human consumption**, ➢ on the value determined under section 15, and ➢ at such rates, **not exceeding twenty per cent.**, [Rate notified are 0%, 0.125%, 1.5%, 2.5%, 6%, 9%,14%] ➢ as may be notified by the Government, on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by taxable person	Subject to the provisions of sub-section (2), ➢ there shall be levied a tax called the **IGST** ➢ **on all inter-State supplies** ➢ of goods or services or both; ➢ **except** on the supply of **alcoholic liquor for human consumption**, ➢ on the value determined under section 15 of the CGST Act and ➢ at such rates, **not exceeding forty per cent.**, [IGST rate = CGST rate + SGST rate (more or less)] ➢ as may be notified by the Government on the recommendations of the Council and collected in such manner as may be prescribed and shall be paid by the taxable person: **Provided that** the IGST on goods imported into India shall be **levied and collected** in accordance with the provisions of **section 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 section 12 of the Customs Act, 1962.
Note:- Alcoholic liquor for human consumption is outside the scope of GST; hence it would continue to fall under the ambit of State excise laws.	
Tax on petroleum etc.[***Section 9*** (2) of the CGST Act/ Section 5 (2) of IGST Act]	However, CGST/IGST on supply of the following items has not been levied immediately. It shall be levied with effect from such date as may be notified by the Government on the recommendations of the Council: ➢ petroleum crude ➢ high speed diesel ➢ motor spirit (commonly known as petrol) ➢ natural gas and ➢ aviation turbine fuel
Reverse charge on notified services [Sec. 9(3) of CGST Act and Sec. 5(3) of IGST Act]	Government may on the recommendation of the Council, by notification, specify categories of supply of goods or services or both on which **CGST/ IGST** will be paid by the recipient of goods or services or both under "*Reverse Charge Mechanism*". All the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to the supply of such goods or services or both. **Meaning of Reverse Charge** "Reverse charge" means the liability to pay tax by the person receiving goods and/or services instead of the supplier of such goods and/or services
Reverse Charge on Supply received from unregistered Person [Sec. 9(4) of CGST	**CGST/ IGST** on supply of taxable goods and/or services made by an "*unregistered supplier*" to a registered person will be paid by the recipient on Reverse Charge basis.

<table>
<tr>
<td>Act and Sec. 5(4) of IGST Act]</td>
<td>All the provisions of this Act shall apply to such person as if he is the person liable for paying the tax in relation to the supply of such goods or services or both.

Reverse charge provisions under Sec. 9(4) of CGST Act would not be applicable if the aggregate value of Intra-State supply of goods or services or both received by a registered person from any or all the unregistered suppliers does not exceeds ` 5,000 in a day (Vide Notification No. 8/2017 Dt. 28.06.2017). The said exemption shall be applicable only in case of Intra-State Supply but not for Inter-State Supply.
This provision suspended till 31.03.2018.

Example 1: Karan Batra (Registered under GST) gets his website redesigned from Rajan based in New Delhi (unregistered person based) on 15th July 2017 for Rs. 4,000. He does not get any other service/good from any other unregistered supplier on 15th July 2017. In such a case, the provisions of Reverse Charge would not be applicable as the aggregate value of such supplies for unregistered dealers is less than Rs. 4000 in a single day.
Example 2: Karan Batra gets his website redesigned from Rajan based in New Delhi (an unregistered person under GST) on 15th July for Rs. 4000. He also hires Sahil, a digital marketer based in New Delhi (Unregistered under GST) for promotion of his website on 15th July for Rs. 3000. In such a case, the provisions of Reverse Charge would be applicable as the aggregate value of such supplies is Rs. 7000 which is more than Rs. 5,000 in a day.</td>
</tr>
<tr>
<td colspan="2">Comment :- Old indirect tax regime, RCM is extended only to services, but under GST it extends to both goods and/or services.</td>
</tr>
<tr>
<td>Services through an e-commerce operator [Sec. 9(5) of CGST Act and Sec. 5(5) of IGST Act]</td>
<td>On recommendation of the Council, the Government may notify specific categories of <u>services</u> the tax on supplies of which shall be paid by electronic commerce operator (commonly known as services provided by aggregators) as if such services are supplied through it.

<table>
<tr><th>Location of ECO</th><th>Liability to pay tax</th></tr>
<tr><td>If the ECO is located in taxable territory</td><td>Person liable to pay tax is the ECO</td></tr>
<tr><td>If the ECO does not have physical presence in the taxable territory</td><td>Person liable to pay tax is the person representing the ECO</td></tr>
<tr><td>If the ECO has neither the physical presence nor any representative in the taxable territory</td><td>Person liable to pay tax is the person appointed by the ECO for the purpose of paying the tax</td></tr>
</table>

Comment:- It is important to note that, in such supplies, the e-commerce operator is neither the actual supplier of service/s nor does he actually receive the services. The actual supplier of</td>
</tr>
</table>

	services is a third party who provides such service to the customer through e-commerce operator. Instead of levying tax on such actual supplier, the law has imposed levy on e-commerce operator. Therefore, this would be an exception to the imposition of tax as specified in above para. It is important to note that this exception is carved out only in respect of supply of services through an e-commerce operator and will not be applicable / relevant to supply of any goods through an e-commerce operator.

Appendix-1

Reverse Charge on Goods under Section 9(3)

The Goods on which GST shall be levied under Reverse Charge have been announced vide Notification No. 04/2017 dated 28th June 2017 and these have been mentioned below for ready reference.

S. No	Description of Supply of Goods	Supplier of Goods	Recipient of Supply
1	Cashew nuts, not shelled or peeled	Agriculturist	Any registered person Recipient of goods is liable to pay GST.
2	Bidi wrapper leaves (tendu)	Agriculturist	Any registered person Recipient of goods is liable to pay GST.
3	Tobacco leaves	Agriculturist	Any registered person Recipient of goods is liable to pay GST.
4	Supply of lottery	State Government, Union Territory or any local authority	Lottery distributor or selling agent Distributor or selling agent is liable to pay GST.
5	Silk yarn	Any person who manufactures silk yarn from raw silk or silk worm cocoons for supply of silk yarn	Any registered person Recipient of goods is liable to pay GST.
6	Used vehicles, seized and confiscated goods, old and used goods, waste and scrap. Notification No. 36 /2017-Central Tax (Rate) Dated 13.10.2017 Notification No. 37/2017-Integrated Tax (Rate) Dated 13.10.2017	Central Government, State Government, Union territory or a local authority.	Any registered person. Recipient of goods is liable to pay GST

S. No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
3	Services supplied **by an arbitral tribunal** to a business entity	An arbitral tribunal	Any business entity located in the taxable territory	Recipient
4	Services provided by way of **sponsorship** to any body corporate or partnership firm	Any person	Any body corporate or partnership firm located in the taxable territory.	Recipient
5	**Services supplied by the Central Government**, State Government, Union territory or local authority to a business entity excluding: - (1) **Renting** of immovable property, and (2) Services specified below: - (i) Services by the **Department of Posts** by way of speed post, express parcel post, life insurance, and agency services provided to a person other than Central Government, State Government or Union territory or local authority; (ii) services in relation to an aircraft or a vessel, inside or outside the precincts of a **port or an airport**; (iii) **transport** of goods or passengers.	Central Gov-ernment, State Gov-ernment, Union territory or local authority	Any business entity located in the taxable territory.	Recipient
6	Services supplied **by a director** of a company or a body corporate to the said company or the body corporate	A director of a company or a body corporate	The company or a body corporate located in the taxable territory	Recipient
7	Services **supplied by an insurance agent** to any person carrying on insurance business	An insurance agent	Any person carrying on insurance business, located in the taxable territory	Recipient
8	Services supplied **by a recovery agent** to a banking company or a financial institution or a non-banking financial company.	A recovery agent	A banking company or a financial institution or a non- banking financial company, located in the taxable territory	Recipient

9	Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a **copyright** covered under section 13(1)(a) of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like	Author or music composer, photographer, artist, or the like	Publisher, music company, producer or the like, located in the taxable territory	Recipient
10	Supply of services by the members of Overseeing Committee of Reserve Bank of India	Member of Overseeing Committee constituted by the Reserve Bank of India	Reserve Bank of India	Recipient

Appendix -2

Reverse Charge on Services under Section 9(3)

w.e.f. 1st July 2017: As per Notification No. 13/2017 Central Tax (Rate) Dt. 28th June 2017 and Notification No. 10/2017- Integrated Tax (Rate) Dt. 28th June 2017 the following 9 services (are identical under CGST & IGST) on which GST shall be levied under Reverse Charge have been notified.

S. No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
1	**GTA** Services	Goods Transport Agency (GTA)	a) Any factory registered under or governed by the Factories Act, 1948; or b) any society registered under the Societies Registration Act, 1860 or under any other law for the time being in force in any part of India; or c) any cooperative society established by or under any law; or d) any person registered under the CGST Act or the IGST Act or the SGST Act or the UTGST Act; or e) any body corporate established, by or under any law; or f) any partnership firm whether registered or not under any law including association of persons; or g) any casual taxable person; located in the Taxable	Recipient

			territory.	
2	Legal Services by **advocate**	An individual advocate, including a senior advocate or a firm of advocates	Any business entity located in the taxable territory	Recipient

Notification No. 10/2017- Integrated Tax (Rate) Dt. 28th June 2017, the following 2 services under IGST on which GST shall be levied under Reverse Charge have been notified:

S.No	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
1	Any service supplied **by any person who is located in a non-taxable territory** to any person other than non-taxable online recipient. Non-taxable online recipient means: As per Section 2(16) of the Integrated Goods and Services Tax (IGST) Act, 2017, • 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.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.	Recipient
2	**Services supplied by 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**	A person located in nontaxable territory	Importer, as defined in clause (26) of section 2 of the Customs Act, 1962(52 of 1962), located in the taxable territory.	Importer

Appendix-3

Sec. 9(5) of CGST/Sec. 5(5) if IGST:Govt. will decide who is liable to pay GST under Reverse Charge.
Notification No. 17/2017-Central Tax (Rate) Dt. 28th June 2017 and Notification No. 14/2017-Integrated Tax (Rate) Dt. 28th June 2017 the following 2 services (are identical under CGST & IGST) on which GST shall be levied under Reverse Charge have been notified:

Sr. No.	Description of supply of service	Supplier of service	Recipient of service	Person liable to pay GST
1	services by way of transportation of passengers by a radio-taxi, motor**cab**, maxicab and motor cycle;	Driver	Any person. However, the tax on intra-State or inter-State supplies shall be paid by the Electronic Commerce Operator (ECO).	ECO
2	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 clause (v) of section 20 of the Integrated Goods and Services Tax Act, 2017 read with sub-section (1) of section 22 of the said Central Goods and Services Tax Act.	Unregistered person Supplying services through Electronic Commerce Operator (ECO).	Any person. However, the tax on intra-State or inter-State supplies shall be paid by the Electronic Commerce Operator (ECO).	ECO
3	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 sub-section (1) of section 22 of the said Central Goods and Services Tax Act.".	Unregistered person Supplying services through Electronic Commerce Operator (ECO).	Any person. However, the tax on intra-State or inter-State supplies shall be paid by the Electronic Commerce Operator (ECO).	ECO