

# ***ISSUE IN PLACE OF SUPPLY OF GOODS & SERVICES WITH RELEVANT ADVANCE RULING***

ORGANISED JOINTLY BY:  
GSTPM, AIFTP(WZ), BCAS, CTC, MCTC  
& WIRC OF ICAI

**PRESENTED BY**



27th February, 2019

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## **COVERAGE**

- **PLACE OF SUPPLY OF SERVICE & ISSUES RELATED TO IT**



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## Place of supply

- Section 2(86) of CGST Act .... “ Place of Supply” means place of supply as referred in Chapter V of IGST Act
- Section 2(64) of CGST Act.... “Intra State supply of Goods” shall have meaning as assigned to in section 8 of IGST Act
- Section 2(65) of CGST Act.... “Intra State supply of Service” shall have meaning as assigned to in section 8 of IGST Act”

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## Section 7 (1) & (2) - IGST - Supply of Goods in course of Inter State trade or commerce

- Subject to the provisions of section 10, supply of goods, where the **location of the supplier** and **the place of supply** are in—
  - a) two different States;
  - b) two different Union territories; or
  - c) a State and a Union territory,shall be treated as a supply of goods in the course of **inter-State** trade or commerce.
- Supply of goods imported into the territory of India, till they cross the customs frontiers of India, shall be treated to be a supply of goods in the course of **inter-State** trade or commerce. (E.g.: High Sea Sales)

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### **Section 7 (3) & (4).... IGST - Supply of Service in course of Inter State trade or commerce**

- Subject to the provisions of section 12, supply of Service, where the **location of the supplier** and **the place of supply** are in—
  - a) two different States;
  - b) two different Union territories; or
  - c) a State and a Union territory,shall be treated as a supply of service in the course of **inter-State** trade or commerce.
- Supply of services imported into the territory of India shall be treated to be a supply of services in the course of **inter-State** trade or commerce.

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### **Section 7 (5) IGST - Supply of goods or service or both in course of inter-state trade or commerce**

- Supply of goods or services or both,—
  - a) when the supplier is located in India and the place of supply is outside India;
  - b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or
  - c) **in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,**shall be treated to be a supply of goods or services or both in the course of **inter-State** trade or commerce.

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**Section 8(1) - Supply of goods in course of intra-state trade or commerce**

- Subject to the provisions of section 10, supply of goods where the **location of the supplier and the place of supply of goods** are in the same State or same Union territory shall be treated as intra-State supply
- Provided following shall not be treated as intra-State supply,
  - (i) supply of goods to or by a Special Economic Zone developer or a Special Economic Zone unit;
  - (ii) goods imported into the territory of India till they cross the customs frontiers of India; or
  - (iii) supplies made to a **tourist**

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**Section 8(1) - Supply of goods in course of intra-state trade or commerce**

- Section 15 of IGST - “Tourist” means a person not normally resident in India, who enters India for a stay of not more than six months for legitimate non-immigrant purposes.
- Foreign Tourist leaving India & carrying goods on his way back, which were purchased in India will be eligible for refund of IGST so paid.... Section 15 of IGST
- **SUPPLIER TO IDENTIFY WHETHER THE PERSON IS AN OUTBOUND TOURIST ??????**

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### Section 8(2) - Supply of Service in course of intra-state trade or commerce

- Subject to the provisions of section 12, supply of services where **the location of the supplier and the place of supply of services are in the same State or same Union territory** shall be treated as “intra-State supply”
- Provided that the intra-State supply of services shall not include supply of services to or by a developer of SEZ or a SEZ unit.

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### Section 9 – Supplies in Territorial Waters

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

**E.G.: POS in Bombay High will be treated as supply in State of Maharashtra.**

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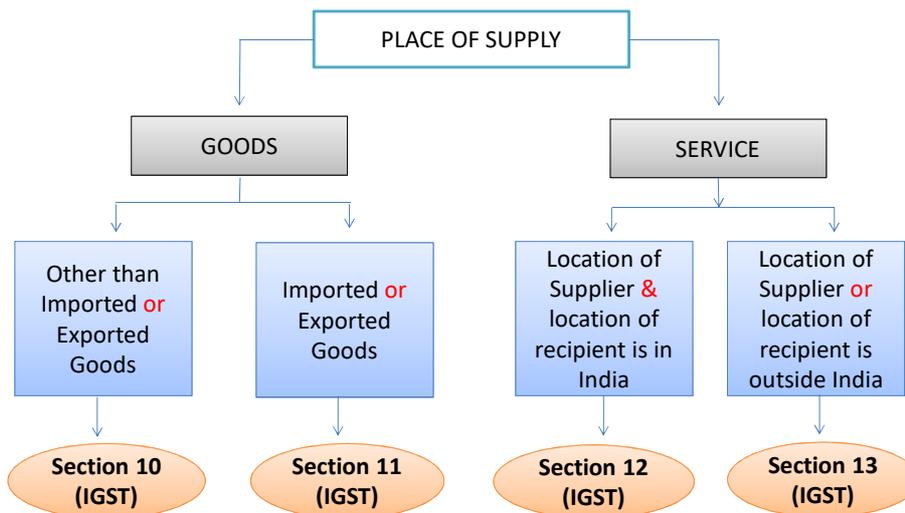
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# PLACE OF SUPPLY

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## PLACE OF SUPPLY



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## POS of goods, other than Imported or exported goods

- “POS” is location of goods at the time at which the movement of goods terminates for delivery to the recipient where supply involves movement of goods.  
**[10(1)(a)]**

### ISSUE 1:

- KALPESH LTD. of Rajkot places order to ANKIT LTD. of Mumbai for supply of goods on ex-factory basis. The transporter for delivery is arranged & paid by KALPESH LTD. Determine POS? Whether SGST+CGST to be levied or IGST on above transaction?

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### ISSUE 1

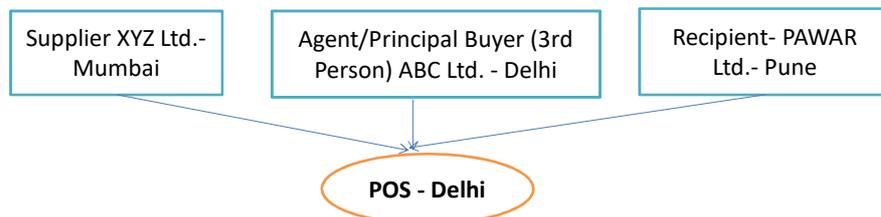
- This transaction is covered by section 10(1) (a) of IGST
- The above sections uses the term “ movement of goods, whether by supplier or the recipient or any other person”
- Here the intention of law is to levy IGST, since movement for delivery terminates in other state.
- The onus is upon the supplier to prove that movement has terminated in other state.
- Advisable to have following documents as evidence :
  - LR & DC stating Supplier as consignor
  - E-way Bill
  - Declaration from customer that he is carrying the goods to Rajkot.
- **INTER STATE SUPPLY.....IGST**

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### POS of goods, other than Imported or exported goods

- Delivery of goods by supplier to recipient/any other person on direction of third person, **before or during movement of goods**, POS is **principal place of business of such third person**. **[10(1)(b)]**
- **ISSUE 2:** ABC Ltd. of Delhi places order to XYZ Ltd. of Mumbai for supply of goods. The delivery to be given by supplier to Pawar Ltd. of Pune. Determine POS? Whether SGST+CGST to be levied or IGST on above transaction?



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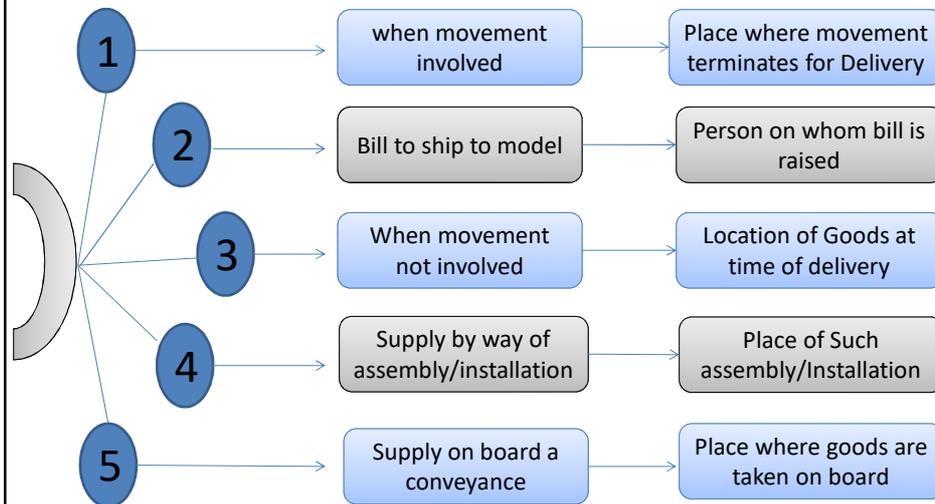
### POS of goods, other than Imported or exported goods

- POS is location of goods at the time of delivery to the recipient where supply does not involve movement of goods **[10(1)(c)]**.....**E.g. Retail counter**
- Where goods are assembled/installed at site, POS is place of such installation/assemble **[10(1)(d)]**.  
**E.g. - Assembly of plant, installation of Tower etc.**
- In case of goods supplied on board a conveyance, POS is location at which such **goods are taken on board**. **[10(1)(e)]**
- POS cannot be determined from above, CG shall prescribe the manner **[10(2)]**

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## Place of Supply of Goods (Domestic)



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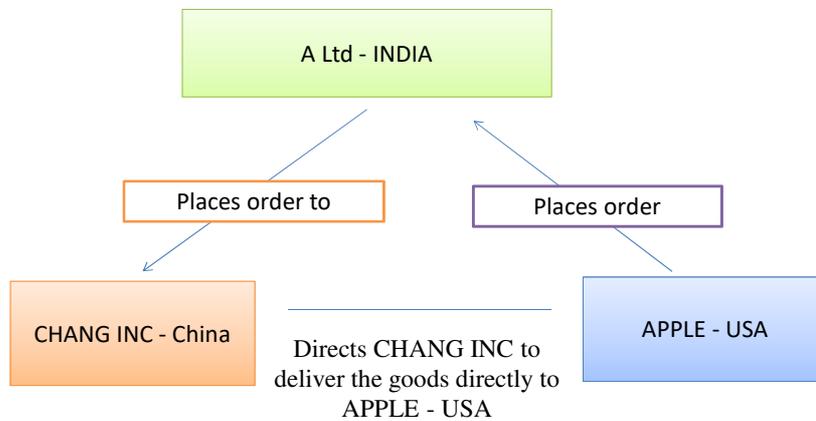
## Place of supply of Imported or Exported Goods.. Sec 11

- Goods imported into India – POS shall be location of Importer
- Goods Exported from India – POS shall be location outside India

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## Issue - 3



Whether the said purchase and Sale would be liable to GST?

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### Place of supply of Imported or Exported Goods

- Section 5(1) of IGST levies tax on all **inter-state** supplies of goods or services or both
- Section 10(1)(a) of IGST, where the supply involves movement of goods, the Place of Supply of Goods is the location of goods at the time when movement of goods terminates for delivery to the recipient.
- Section 7 (5) (a) of IGST, when supplier located in India and POS is outside India, such supply is treated as supply in the course of inter-state trade or commerce.
- Conjoint reading.....In above transaction, since supplier located in India and POS is outside India, it is "inter-state supply".

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### Place of supply of Imported or Exported Goods

- Section 16(1) of IGST covers “export of goods” within the meaning of “zero rated supply”.
- Section 2(5) of IGST defines “export of goods” means **taking goods out of India to a place outside India.**
- **“Taking goods out of India”** ??????????
- Goods must be physically present in India since one can take goods out of India only when the goods were first bought/were already present in India.
- Transaction not qualify as “export of goods”. Hence not “zero rated supply”. IGST leviable by virtue of Section 5(1) read with Section 7(5)(a) of IGST

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### Place of supply of Imported or Exported Goods

- Supply transaction is outside the territorial waters, hence outside the territorial jurisdiction of IGST ?????.... The Act extends to whole of India.
- Article 245(2) of Constitution.... no law made by Parliament shall be invalid on the ground that it will have extra-territorial operation
- Hon’ble SC.... **Fatma Bibi Ahmed Patel Vs State of Gujarat (2008) 6 SCC 789**...Parliament indisputably may enact a legislation having extra territorial application but the same must be applied subject to fulfillment of the requirements contained therein.
- Hon’ble SC.... **GVK Industries Ltd. Vs ITO (2011) 4 SCC 36**.... the Parliament is competent to enact laws in relation to extraterritorial aspects or causes if such aspects/causes are expected to have, some impact on, or effect in, or consequences for: (a) the territory of India, or any part of India; or (b) the interests of, welfare of, wellbeing of, or security of inhabitants of India.

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## Place of supply of Imported or Exported Goods

- Section 5(1) of IGST, Tax is levied on goods **imported into** India at the point when duties of customs are levied on goods U/s.12 of the Customs Act,1962.
- Section 2(10) of IGST defines “import of goods” means **bringing goods into India** from a place outside India.

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## Place of supply of Imported or Exported Goods

- In the instant case, since the goods are never brought to Indian territory, the purchase transaction is not liable to IGST.
- Vide, CGST (Amendment) Act, 2018, Schedule III to section 7 is amended **w.e.f. 1<sup>st</sup> February,2019** where by Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India will be treated neither as supply of goods nor supply of service.
- **Amendment Retrospective???**

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## **Advance Ruling – M/s Synthite Industries Ltd**

- Advance Ruling in case of M/s Synthite Industries Ltd stated that out & out exports will not liable to IGST

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## **Issue 4 – Conference Related Service**

- CTC – Mumbai organised GST conference at Goa. They booked conference hall of ITC-Goa. They availed following services
  - Lodging boarding of Participants
  - Catering service
  - Laptop, Sound & Photography services during conference.
  - Pick Up & Drop facility of participants

What is POS if one lumpsum consideration is charged by ITC -Goa

- Will your answer be different if separate consideration is charged for each of supply
- Will your answer be different if CTC avails all the above services from event manager KST Ltd located in Goa

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## Issue – 4 cont...

CTC  
Mumbai

Organizes conference & books  
conference Hall of ITC -Goa



Goa

They availed Service from ITC-Goa



Catering Service



Sound Service



Pick up & drop



Stay

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## Issue 4...Cont..

Section	Particulars
12(3)	Supply directly in relation to Immovable property, Lodging accommodation in hotel & any ancillary service
12(4)	Supply of Restaurant & Catering service
12(6)	Supply of service by way of admission to education event
12(7)	Supply of service by way of organising an educational event

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## POS of Immovable property related services..12(3)

### POS - LOCATION OF IMMOVABLE PROPERTY/BOAT/ VESSEL

Services directly in relation to immovable property, including services provided by

- Architects
- Interior Decorators
- Surveyors
- Engineers & other related Expert
- Estate Agents
- Grant of right to use Immovable Property
- Carrying out or co-ordination of Construction Work

Lodging accommodation by a hotel, inn, guest house, homestay, club or campsite, including houseboat or any other vessel..?

Accommodation in immovable property for organizing marriage or reception or related matters, official, social, cultural, religious or business function including their related services

Ancillary services to above services

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## Place of supply of performance based services

- POS is place of actual performance for following services [12(4)]
  - Restaurant (?????) & catering services;
  - Personal grooming
  - Fitness
  - Beauty treatment
  - Health service including cosmetic and plastic surgery



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### Place of supply of services of admission to events.. Section 12(6)

- POS for services by way of admission, including ancillary services to :
  - a cultural, artistic, sporting, scientific, educational, or entertainment event; or
  - amusement park; or
  - any other placeis where the **event is actually held** or where **such park or other place is located**.



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### Place of supply of services event related services...Section 12(7)

Organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events

**Services ancillary** to organization of any of the above events or services, or assigning of sponsorship of any of the above events

Supplied to a **registered person**

Supplied to a **unregistered person**

**Location of such person**

**Place where event is actually held**

**If Event held **outside India**, Place of Supply shall be location of the recipient**

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## Issue 4..contd

- Section 12(7) will not be applicable since, ITC Goa is not organising the conference.
- Section 12(6) will not be applicable since, ITC Goa is not supplying service by way of admission to an event.
- This is composite supply as per section 2(30) & naturally bundled
- Section 12(4) will not be applicable since this is not standalone catering services, whether separately charged or no.

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## Issue 4..contd

- Section 12(3) is most appropriate in the Instant case.
- POS – GOA
- ITC-Goa will charge CGST & SGST
- If Entire supply is received by CTC from Event manager KST Ltd it will more appropriately be covered either under 12(7) or 12(2) ....POS is location of recipient....IGST will be charged

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### Issue – 5

- N Ltd. is having warehouse in Bhiwandi-Maharashtra. They render services of warehousing of goods to A LTD. of Rajkot for storage of goods. Discuss POS?
- Warehouse is immovable property
- Is it service in relation to immovable property?
- Covered under 12(2) or 12(3)?????

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### Issue – 5

- N Ltd is providing the warehousing service to A Ltd for storage of goods.
- Existing Service Tax Regime.....Renting of Immovable Property Vs Storage & Warehousing Service
- **ST Regime...Reliance can be placed to Para 5.5.2 of Education Guide....**Criteria to determine if a service is “directly in relation to” immovable property.... *There must be more than a mere indirect or incidental connection between a service provided in relation to an immovable property, and the underlying immovable property.*
- N Ltd has not granted “right to use immovable property”.
- Therefore, the transaction will not fall under Section 12(3) but more appropriately fall under section 12(2) i.e. general Rule

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## Issue - 6

- Champion Real Estate Co. of Delhi having land in Mumbai. Considering the slow down in the construction industry they have decided not to develop the said Land & dispose of the same to other developer on outright basis. They were worried about implication of GST & Income Tax on this transaction for which they sought advise from Tax Consultant M/s Ravi of Mumbai
- What is the POS for Mr. Ravi for supply of services to Champion Real Estate Co.

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## ISSUE 6



Land in MUMBAI

Avails services of  
Tax Consultant



Mr. Ravi - Mumbai

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## ISSUE 6

- **Section 12(3).....POS directly in relation to immovable property including services from experts..**
- **Consultancy for taxation of immovable property..... whether directly in relation to immovable property?**
- **Existing Service Tax Regime....Para 5.5.5 of Educational Guide...Services of Tax Return preparer in calculating tax liability for income from property is not directly related to property hence not covered.**
- **Para 5.5.2 of EG.....** *A legal firm's general opinion with respect to the capital gains tax liability arising from the sale of a commercial property in India is basically advice on taxation legislation in general even though it relates to the subject of an immovable property. This will not be treated as a service in respect of the immovable property.*
- **Section 12(2)....Transaction appropriately covered under general rule**

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## ISSUE 7

- NALINI YASMIN of Mumbai has rendered beauty treatment service to star cast of MOTION PICTURES PVT LTD. located MUMBAI at their shooting location at OOTY.
- Discuss POS?
- SP & SR both located at Mumbai-Maharashtra
- Place of Performance is POS...Section 12(4)...Beauty Treatment Service
- POS is Tamilnadu..... IGST

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### ISSUE - 8

- M/s R.J.LUTHIA & ASSOCIATES located & registered in Mumbai, organized GST seminar in SILVER PALACE, SRILANKA
- The fees for GST seminar is Rs. 1,00,000/- per pax. 200 participants enrolled ( i.e. 100 from Gujarat & 100 from Mumbai).
- All the participants are CA & having GST registration in their state.
- Discuss POS of Service By R J Luthia & Associates?
- POS of service to registered person....location of such person
- POS of service to unregistered person.....place where event held
- POS of services for event held outside india.....location of recipient
- Since event is organized outside India....POS location recipient (Section 7(b)(ii))

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### Place of supply of goods transport service...Section 12(8)

Services by way of Transportation of goods including mail or courier

Supplied to a **registered person**

**Location of such person**

Supplied to a **unregistered person**

**Location at which such goods are handed over for their transportation**

Amendment w.e.f. 1<sup>st</sup> Feb, 2019

**Provided that where the transportation of goods is to a place outside India, the POS shall be the place of destination of such goods.**

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## Issue 9

- A Ltd an Indian Exporter avails the service of Jaideep Shipping Line (an Indian shipping line) for transportation of goods from India to US?
- What will be the POS for Jaideep Shipping Line?
- What if A Ltd instead of availing service from Jaideep Shipping lines, avails the services of Maersk Shipping Lines (USA)?
- What will be POS for Maersk Shipping line?

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### EXAMPLE – TRANSPORTATION OF GOODS BY VESSEL

A Ltd – Mumbai (Indian Exporter)

Avails service of Transportation of goods by Vessel for export to USA

Jaideep Shipping Mumbai – Indian Shipping Company

- POS – Mumbai till 31<sup>st</sup> Jan, 2019
- POS – USA after 1<sup>st</sup> Feb, 2019

Jaideep shipping will pay tax @ 5% (2.5% CGST + SGST) till 24<sup>th</sup> Jan, 18

No GST In view notification no. 2/2018-IG (R) dated 25<sup>th</sup> January, 2018.....exemption granted till 30<sup>th</sup> Sept, 2019

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## EXAMPLE – TRANSPORTATION OF GOODS BY VESSEL

A Ltd – Mumbai (Indian Exporter)

Avails service of Transportation of goods by Vessel for export to USA

Maersk Shipping lines – USA  
located in non taxable territory.

POS as per section 13(9) is outside India...**No RCM applicable since not an "Import of Service"**...Section 2(11) of IGST Act...POS must be in India for "Import of Service"

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## Place of supply of services on board a conveyance



Food Served on Delhi – Kolkata Leg to passenger boarded on flight from Delhi

**POS shall be Mumbai**

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### **Place of supply of services - International (section 13)**

- Section 13 – Applies only where location of supplier of service or location of recipient of service is outside India
- POS of services (other than specified services) shall be **location of recipient of service.**
- In case the location of the recipient of service is not available in ordinary course of business, POS shall be **location of Supplier of service.**

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### **ISSUE - 10**

- Suzuki Ltd of Japan has sent the goods to Maruti Ltd of India for carrying out manufacturing process in India & return back the final product to Suzuki of Japan.
- What is POS of consideration charged by Maruti for this Job work

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## Place of supply of performance based services -13(3)

Nature of Services	Place of Supply	Types of Services
Performance based service	Place of performance	<ul style="list-style-type: none"> <li>Services provided in respect of goods that are required to be made physically available: e.g. Repair, Reconditioning or any other work on goods, Job work process, courier service, cargo handling service</li> <li>When provided from a remote location by way of electronic means, the place of provision shall be <u>where goods are situated</u> at the time of supply of service E.g. : Updating of Software, Patch work etc</li> <li><b>Shall not apply</b> in case service provided for goods that are temporarily imported into India for <u>“repairs” or any other treatment or process (w.e.f 1<sup>st</sup> Feb, 2019)</u>, for re export without being use in India, other than that <u>which is required for such repairs or treatment or process.</u></li> </ul>

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### ISSUE -10

- POS – India....till 31<sup>st</sup> Jan, 2019 – Since no repairs involved...Performance Based service
- POS – Japan....since Job work is included in Treatment or process.
- After 1<sup>st</sup> Feb, 2019 it will be considered as export of service subject to fulfilment section 2(6).

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### ISSUE - 11

- “X” (India) Ltd located in Mumbai provides a ‘technical testing of goods’ to an overseas firm ABC (England) for a consolidated price of Rs 1 lac
- Testing is carried out in Maharashtra (20%), Kerala (25%), and an international location ,Colombo (55%).
- Discuss POS & on what amount GST will be leviable

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### ISSUE - 12

- This performance based service & it is provided in more than 1 location, section 13(6) will be applicable
- Under PPSR it was provided that “the greatest proportion of service is provide” .....Under POS-GST such words missing
- If the contract is split in 3 transaction, then no tax on testing services performed at Colombo
- It is advisable to have separate contract for transaction of testing to be carried out in each state

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## **ISSUE -13**

- Kotak Securities Ltd located in Mumbai provided services of Portfolio management to various clients.
- They have obtained GST registration only in state of Maharashtra. They have clients located in Maharashtra, Gujarat & Dubai.
- They charge Annual maintenance fees & performance fees to their client for the PMS services.
- The client located in Dubai is of Indian origin & also maintain NRE account in India.

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## **ISSUE - 13**

- For the purpose of Management of portfolio they make payment towards corpus fund from their NRE account to Kotak securities in Mumbai in Indian Currency. However, their correspondence/permanent address is that of Dubai.
- Kotak securities limited seek your advice whether GST is leviable on fees charged to the Dubai clients?

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## Analysis -13

- The services of Portfolio Management supplied by KOTAK is not “ Intermediary Services” hence not covered under Section 13(8).
- POS would be determined based on section 13(2) of the IGST Act,2017 **which is the location of recipient of service.**
- Since payment is not in convertible foreign exchange is does not tantamount to be export of service ( i.e. zero rated service).
- As per Section 7 (5) (a) of IGST, such supplies of services shall be “ interstate supply of services”. Hence KOTAK should charge IGST on such transaction. .
- As per Section 16(1)(a) of the IGST Act,2017, “zero rated supply” means export of goods or services or both

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## Analysis - 13

As per Section 2(6) of the IGST Act,2017, “export of service” means the supply of any service when, -

- The supplier of service is located in India
  - The recipient of service is located outside India
  - The place of supply of service is located outside India
  - **The payment for such service has been received by the supplier of service in convertible foreign exchange or in INR wherever permitted by RBI;** and
  - The supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in Section 8.
- Since payment is not in convertible foreign exchange it does not tantamount to be export of service ( i.e. zero rated service).
  - As per Section 7 (5) (a) of IGST, such supplies of services shall be “ interstate supply of services”. Hence Kotak Securities should charge IGST on such transaction.

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## ISSUE - 14

- ABC Ltd of Mumbai providing following services to XYZ Ltd of London for launching their FMCG product in India
  - Market Research with data analysis about Taste, preference of customer, purchasing power etc.
  - MIS reporting periodically
  - Collection of payment from customer of behalf of XYZ Ltd
  - Management consultancy services
  
- What is POS?
  
- Whether “Arranges or facilitates”
  
- Facilitates....Dictionary meaning....Make (an Action or Process) easy or easier

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## POS – Section 13(9)

Transport by vessel Service Provider	Customer/ Service recipient	Type of Service	POS
Located in Mumbai	Located in USA	Transporting goods from New York to Mumbai	Mumbai. IGST Payable – Section 7(5)(c)
Located in Mumbai	Located in USA	Transporting goods from Mumbai to New York	New York. • Export of Service • Exempted under notification 9/2017-IG (R)
Located in USA	Located in India	Transporting goods from New York to Mumbai	Mumbai. IGST Payable under RCM – Section 7(5)(c)
Located in USA	Located in India	Transporting goods from Mumbai to New York	New York Non Taxable

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WITH KNOWLEDGE..... WE KNOW THE WORDS,  
BUT WITH EXPERIENCE..... WE KNOW THE MEANING



**CA. RAJIV LUTHIA**

**R. J. LUTHIA & ASSOCIATES**  
CHARTERED ACCOUNTANTS

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Off. LBS Marg, Mulund (West), Mumbai-400 080.  
Tel : 2564 1553/2569 4989 Mobile : 9821143524  
Email: [rajiv@rjl.co.in](mailto:rajiv@rjl.co.in)

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