



सत्यमेव जयते

Imports in **GST** Regime

(Goods & Services Tax)

Introduction

Under the GST regime, Article 269A constitutionally mandates that supply of goods, or of services, or both in the course of import into the territory of India shall be deemed to be supply of goods, or of services, or both in the course of inter-State trade or commerce. So import of goods or services will be treated as deemed inter-State supplies and would be subject to Integrated tax. While IGST on import of services would be leviable under the IGST Act, the levy of the IGST on import of goods would be levied under the Customs Act, 1962 read with the Custom Tariff Act, 1975. The importer of services will have to pay tax on reverse charge basis. However, in respect of import of online information and database access or retrieval services (OIDAR) by unregistered, non-taxable recipients, the supplier located outside India shall be responsible for payment of taxes (IGST). Either the supplier will have to take registration or will have to appoint a person in India for payment of taxes.

Supply of goods or services or both to a Special Economic Zone developer or a unit shall be treated as inter-State supply and shall be subject to levy of integrated tax.



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Importer Exporter Code (IEC): As per DGFT's Trade Notice No. 09 dated 12.06.2017, the PAN of an entity would be used as the Import Export code (IEC). Wherever an applicant applies for IEC, the PAN of the applicant will be authorized as an IEC. The importer would only be required to declare only GSTIN (where registered under GST).

Import of Goods

The import of goods has been defined in the IGST Act, 2017 as bringing goods into India from a place outside India. All imports shall be deemed as inter-State supplies and accordingly Integrated tax shall be levied in addition to the applicable Custom duties. The IGST Act, 2017 provides that the integrated tax on goods imported into India shall be levied and collected in accordance with the provisions 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 the Customs Act, 1962. The integrated tax on goods shall be in addition to the applicable Basic Customs Duty (BCD) which is levied as per the Customs Tariff Act. In addition, GST compensation cess, may also be leviable on certain luxury and demerit goods under the Goods and Services Tax (Compensation to States) Cess Act, 2017.

The Customs Tariff Act, 1975 has accordingly been amended to provide for levy of integrated tax and the compensation cess on imported goods. Accordingly, any goods which are imported into India shall, in addition to the Basic Customs duty, be liable to integrated tax at such rate as is leviable under the IGST Act, 2017 on a like article on its supply in India. Further, the value of the goods for the purpose of levying Integrated tax shall be assessable value plus Customs Duty levied under the Act, and any other duty chargeable on the said goods under any law for the time being in force as an addition to, and in the same manner as, a duty of customs.

The value of the imported article for the purpose of levying cess shall be assessable value plus Basic Customs Duty levied under the Act, and any sum chargeable on that goods under any law for the time being in force as an addition to, and in the same manner as, a duty of customs. The integrated tax paid shall not be added to the value for the purpose of calculating cess.

Let's take an example:

Suppose the assessable value of an article imported into India is Rs. 100/-. Basic Customs Duty is 10% ad-valorem. Education Cess is 3%; Integrated tax rate is 18% and Compensation Cess is 15%

The taxes will be calculated as under:

Particulars	Duty
(A) Assessable Value	Rs. 100/-
(B) Basic Customs Duty@10%	Rs.10/-
(C) Education Cess @3%	Rs.0.30
(D) Value for Integrated Tax	Rs.110.30
(E) Integrated Tax @18%	Rs.19.85
(F) Value for Compensation Cess	Rs.110.30
(G) Compensation Cess @ 15%	Rs. 16.55
(H) Total Duty (B+C +E+G)	Rs.46.70

Wherever the goods are also leviable to cess under the Goods and Services Tax (Compensation to States) Cess Act, 2017, the same will be collected on the value taken for levying integrated tax. Thus, in the above example, in case, cess is leviable, the same would be levied on Rs. 110.30/-.

In cases where imported goods are liable to Anti-Dumping Duty or Safeguard Duty, value for calculation of IGST as well as Compensation Cess shall also include Anti-Dumping Duty amount and Safeguard duty amount.

Import as Baggage:

Passenger Baggage are exempted from IGST as well as compensation cess. The basic customs duty at the rate of 35% and the applicable education cess shall be leviable on the value which is in excess of the duty free allowances provided under the Baggage Rules, 2016.

Tax Treatment of Goods imported into India and deposited in a warehouse and sold while in warehouse before clearance from Customs (Circular No. 46/2017 dated 24th November, 2017):

The Customs Act, 1962 provides for removal of goods from a customs station to a warehouse without payment of duty. The said Act has been amended to include 'warehouse' in the definition of "customs area" in order to ensure that an importer would not be required to pay the Integrated tax at the time of removal of goods from a customs station to a warehouse.

However, the transaction of sale / transfer etc. of the warehoused goods between the importer and any other person may be at a price higher than the assessable value of such goods. Such a transaction squarely falls within the definition of "supply" and shall be taxable under the IGST Act, 2017. It may be noted that as per sub-section (2) of section 7 of the IGST Act, any supply of imported goods which takes place before they cross the customs frontiers of India, shall be treated as an inter-State supply. Thus, such a transaction of sale/

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transfer will be subject to IGST under the IGST Act, 2017. The value of such supply shall be determined in terms of section 15 of the CGST Act, 2017 read with section 20 of the IGST Act, 2017 and the rules made thereunder, without prejudice to the fact that customs duty (which includes BCD and applicable IGST payable under the Customs Tariff Act) will be levied and collected at the ex-bond stage.

Leviability of Integrated Tax on High Seas Sales Transactions (Circular No. 33/2017-Customs dated 1st August, 2017):

'High Sea Sales' is a common trade practice whereby the original importer sells the goods to a third person before the goods are entered for customs clearance. After the High sea sale of the goods, the Customs declarations i.e. Bill of Entry etc. is filed by the person who buys the goods from the original importer during the said sale. IGST on high sea sale (s) transactions of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. when the import declarations are filed before the Customs authorities for the customs clearance purposes for the first time. Further, value addition accruing in each such high sea sale shall form part of the value on which IGST is collected at the time of clearance.

Import of goods by 100% EOU's and SEZs:

Import of goods by 100% EOU's would be governed by Notification no. 52/2003-Customs as amended by Notification no. 78/2017-Customs dated 13.10.2017. EOUs are allowed duty free import of goods (exempt from Customs duties, IGST & Compensation Cess) under the said notifications. However, exemption from IGST is only available till 31.03.2018.

Goods imported by a unit or a developer in the Special Economic Zone for authorised operations are exempted from the whole of integrated tax under section 3 (7) of the Customs Tariff Act, 1975 vide Notification No. 64/2017-Customs dated 05.07.2017.

Input tax credit of integrated tax:

The definition of "input tax" in relation to a registered person also includes the integrated tax and compensation cess charged on import of goods. Thus, input tax credit of the integrated tax and the compensation cess, if any, paid at the time of import shall be available to the importer and the same can be utilized by him as Input Tax credit for payment of taxes on his outward supplies. The integrated tax and compensation cess paid at the time of import shall in essence be a pass through to that extent. The input tax credit of compensation cess, however, can only be used for payment of compensation cess. Furthermore, the Basic Customs Duty (BCD) and education cess, shall, not be available as input tax credit.

HSN (Harmonised System of Nomenclature) code would be used for the purpose of classification of goods under the GST regime.

As per section 11 of the IGST Act, 2017 the place of supply of goods, imported into India shall be the location of the importer. Thus, if an importer say is located in Rajasthan, the state tax component of the integrated tax shall accrue to the State of Rajasthan.

Import of services

Import of services has specifically been defined under IGST Act, 2017 and refers to supply of any service where the supplier is located outside India, the recipient is located in India and the place of supply of service is in India.

As per the provisions contained in Section 7(1) (b) of the CGST Act, 2017, import of services for a consideration whether or not in the course or furtherance of business shall be considered as a supply. Thus, in general, import of services without consideration shall not be considered as supply. However, business test is not required to be fulfilled for import of service to be considered as supply.

Furthermore, in view of the provisions contained in Schedule I of the CGST Act, 2017, the import of services by a taxable person from a related person or from a distinct person as defined in Section 25 of the CGST Act, 2017, in the course or furtherance of business shall be treated as supply even if it is made without any consideration.

In view of the provisions contained in Section 14 of the IGST Act, 2017, import of free services from Google and Facebook by individuals without any consideration are not considered as supply. Import (Downloading) of a song for consideration for personal use would be a service, even though the same are not in the course or furtherance of business. Import of some services by an Indian branch from their parent company, in the course or furtherance of business, even if without consideration will be a supply.

Thus, import of services can be considered as supply based on whether there is consideration or not and whether the service is supplied in the course or furtherance of business. The same has been explained in the table below:

Nature of Service	Consideration	Business Test
Import of services	Necessarily Required	Not required
Import of services by a taxable person from a related person or from a distinct person	Not required	Necessarily Required

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As per the provisions contained in Section 21 of the IGST Act, 2017, all import of services made on or after the appointed day i.e 1st July, 2017 will be liable to integrated tax regardless of whether the transactions for such import of services had been initiated before the appointed day. However, if the tax on such import of services had been paid in full under the existing law, no tax shall be payable on such import under the IGST Act. In case the tax on such import of services had been paid in part under the existing law, the balance amount of tax shall be payable on such import under the IGST Act, 2017. For instance, suppose a supply of service for Rs. One crore was initiated prior to the introduction of GST, a payment of Rs. 20 lacs has already been made to the supplier and service tax has also been paid on the same, the integrated tax shall have to be paid on the balance Rs. 80 lacs.

Section 13 of the IGST Act, 2017 provides for determination of place of supply in cases wherein the location of the supplier of services or the recipient of services is outside India. Thus, this section provides the place of supply in relation to international or cross-border supply of services. Place of supply of a service shall determine as to whether a service can be termed as import or export of service. The specific provisions relating to place of supply for international supply of services are as below:

S. No.	Situation	Place of Supply
1	Default Rule other than specific situations mentioned below	Location of the recipient of services; If not available, location of the supplier of services.
2	Services supplied in respect of goods which are required to be made physically available	Location where the services are actually performed
	Services which require the physical presence of the recipient or the person acting on his behalf with the supplier of services	
2.1	Services are provided on goods but from a remote location by way of electronic means	Location where goods are situated at the time of supply of services
2.2	Above provisions is not applicable in respect of goods which are temporarily imported into India for repairs and are exported after repairs	

S. No.	Situation	Place of Supply
3	Services supplied directly in relation to an immovable property	Place where the immovable property is located or intended to be located
4	Admission to, or organisation of an event	Place where the event is actually held
4.1	Above Services provided in more than one country including India	India
4.2	Above Services provided in more than one state	Proportionate Basis
5	Services supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders	Location of the supplier of services
5.1	Intermediary services	
5.2	Services consisting of hiring of means of transport, including yachts but excluding aircrafts and vessels, up to a period of one month	
6	Transportation of goods, other than by way of mail or courier	Place of destination of such goods
7	Passenger transportation services	Place where the passenger embarks on the conveyance for a continuous journey
8	Services provided on board a conveyance	First scheduled point of departure of that conveyance for the journey
9	Online information and database access or retrieval (OIDAR) services	Location of the recipient of services

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