

Provision on Place of Supply under GST

Determination of Place of Supply

❖ What is place of supply in GST?

- **GST is a destination based tax**, i.e., the goods/services will be taxed at the place where they are consumed and not at the origin of supply. So, the state where they are consumed will have the right to collect GST. This, in turn, makes the concept of place of supply crucial under GST as all the provisions of GST revolves around it.
- **The objective of POPOS (Provision of place of supply) in domestic transaction is to effectuate free flow of Credit amongst Multiple states, In case credit is not eligible(B2C), State component goes to the consuming state.**

As per Section 7 & Section 8 of IGST Act, subject to the provisions of section 10 and Section 12, supply of Goods/Services where the location of the supplier and the place of supply of goods/services are in the same State or same Union territory shall be treated as intra-State supply. If the location of the supplier and the place of supply are in two different states or UTs, they shall be treated as a supply of goods/services in the course of inter-State trade or commerce.

Provided that the following supply shall always **be treated as Interstate Supply**, namely:—

- (i) supply of Goods/Services to or by a SEZ developer or a SEZ unit;
- (ii) goods imported into the territory of India till they cross the customs frontiers of India; or
- (iii) supplies made to a tourist referred to in section 15.

As per section 7(5)(a) of IGST Act, supply of goods or services or both, when the supplier is located in India and the place of supply is outside India, the supply will be treated as supply in the course of inter-State trade or commerce i.e. Export of Services. It may be noted that if the supply does not fall within the definition of export of services even if place of supply is out of India, it will be inter-state supply and IGST will be payable.

Section 9 talks about supplies made in territorial waters where-

- the location of the supplier is in the territorial waters, the location of such supplier; or
- 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.

Place of supply of goods or services under GST defines whether the transaction will be considered as intra-state or inter-state, and accordingly levy of SGST and CGST or IGST will be determined. It is determined according to **Sections 10, 11, 12 and 13 of the IGST Act.**

	Goods	Supply
Domestic	Section 10	Section 12
International	Section 11	Section 13

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❖ Place of supply of Goods is determined as per Section 10 and Section 11

✓ Section 10: Place of Supply of Goods other than supply of goods imported into or exported from India

- Where movement of goods are involved :-

<u>Section reference</u>	<u>Description</u>	<u>Place of Supply</u>
<u>10(1)(a)</u>	Where supply involves movement of goods whether by <ul style="list-style-type: none"> Supplier or, Recipient or By any other person i.e. transporter, clearing and forwarding agent etc. 	Location of goods at the time at which movement terminates for delivery to the recipient of goods.
<u>10(1)(b)</u>	Where goods are delivered by <ul style="list-style-type: none"> Supplier to a recipient or any other person On the direction of a third person being an agent or otherwise Before or during movement of goods either by way of transfer of documents of title to goods or otherwise. 	It shall be deemed that the said third person (considered as deemed recipient) has received the goods and place of supply of such goods shall be the principal place of business of such person.
<u>10(1)(c)</u>	Where supply of goods <ul style="list-style-type: none"> does not involve movement whether by Supplier or recipient 	Place of supply of such goods shall be the location of such goods at the time of delivery to the recipient.
<u>10(1)(d)</u>	Where goods are <ul style="list-style-type: none"> Assembled or installed at site 	Place of supply of such goods shall be the place of such assembly or installation.
<u>10(1)(e)</u>	Where goods are <ul style="list-style-type: none"> Supplied on board or conveyance including vessel, aircraft, train or motor vehicle. 	Place of supply of such goods shall be the location where the goods are taken on board.
<u>10(2)</u>	Where place of supply cannot be determined as per Section 10(1).	Place of supply of such goods shall be determined as per specified rules. However, there are no such rules prescribed.

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✓ Section 11: Place of Supply of Goods imported into or exported from India

The place of supply of goods :

(a) **imported** into India shall be the location of the **importer**

(b) **exported** from India shall be the location **outside India**.

❖ **Place of supply of Service is determined as per Section 12 and Section 13**

✓ Section 12: Place of Supply of Services in case of transactions within India i.e. where location of supplier and location of recipient is in India.

<u>Section reference</u>	<u>Description</u>	<u>Place of Supply</u>
<u>12(2)</u>	The place of supply of services, except the services specified in sub-sections (3) to (14),—	
	Where supply of service is made a) To a registered person (i.e. B2B transaction)	Location of such person
	b) To an unregistered person (i.e. B2C transaction)	<ul style="list-style-type: none">• Location of the recipient where the address on the record exists, and• In any other case, Location of the supplier of such service.
<u>12(3)</u>	Services : a) directly in relation to immovable property including services provided by architects, interior decorator, Surveyors, Engineers, Other related experts and Estate Agents etc b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and including a house boat or any other vessel. c) Services by way of accommodation in any immovable property for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function including services provided in relation to such	Location at which the immovable property is located or intended to be located. Provided that if the location of the immovable property or boat or vessel is located or intended to be located outside India, the place of supply shall be the location of the recipient. Rule 4 of IGST Rules talks about division of supply of services in mentioned cases on the basis of <i>number of nights stayed in such property/area of the immovable property lying in each State or Union territory/ time spent by the boat or vessel in each such State or Union territory as declared, as the case may be.</i>

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	function at such property, d) Any services ancillary to the services referred to in clauses (a), (b) and (c).	
<u>12(4)</u>	The place of supply of <ul style="list-style-type: none"> • restaurant and catering services • personal grooming, • fitness • beauty treatment, health service including cosmetic and plastic surgery. 	Location where the services are actually performed.
<u>12(5)</u>	Services in relation to training and performance appraisal.	
	a) To a registered person (i.e. B2B transaction)	Location of such person
	b) To an unregistered person (i.e. B2C transaction)	Location where service is actually performed.
<u>12(6)</u>	Supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto.	<ul style="list-style-type: none"> • where the event is actually held • where the park or such other place is located.
<u>12(7)</u>	Services provided by way of a) organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events; (b) services ancillary to organisation of any of the events or services referred to in clause (a), or assigning of sponsorship to such events.	To a registered person :- Location of such person To an unregistered person :- the place where the event is actually held If the event is held outside India :- the place of supply shall be the location of the recipient.
	<i>Supply of services attributable to different States or Union territories (in cases where provided in more than one state/UT) shall be determined in proportion to the value for services or by application of the generally accepted accounting principles [Rule 5 of IGST Rules.]</i>	

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<u>12(8)</u>	Services by way of transportation of goods , including by mail or courier	<p>Place of Supply</p> <ul style="list-style-type: none"> if such services are made to Registered Person then Location of such person or If such services are made to the person other than registered person the location at which such goods are handed over for their transportation. <p>If transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods i.e Exports.</p>
<u>12(9)</u>	Supply of passenger transportation service	<p>Place of Supply</p> <ul style="list-style-type: none"> if such services are made to Registered Person then Location of such person or If such services are made to the person other than registered person the place where the passenger embarks on the conveyance for a continuous journey. <p>Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in accordance with the provisions of sub-section (2).</p>
<u>12(10)</u>	Supply of services on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle.	Location of the first scheduled point of departure of that conveyance for the journey.
<u>12(11)</u>	Supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person.	
	(a) in case of services by way of fixed telecommunication line , leased circuits, internet leased circuit, cable or dish antenna.	Location where such instrument is installed for receipt of services.
	(b) in case of mobile connection for telecommunication and internet services provided on post-paid basis.	<ul style="list-style-type: none"> Location of billing address of the recipient of services on the record Location of the supplier of services if the address is not available

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	(c) mobile connection/ internet services on pre-payment basis through a voucher or any other means.	<ul style="list-style-type: none"> • Address of the selling agent or re-seller or distributor as per the record of the supplier at the time of supply of such vouchers • Location of the supplier of services if the address is not available.
	i) services provided through a selling agent or re-seller or distributor	
	li) services supplied by any person to the final subscriber	<ul style="list-style-type: none"> • Location where such prepayment is received or such vouchers are sold
	(d) In other case	<ul style="list-style-type: none"> • Address of the recipient as per the records of the supplier of services • Location of the supplier of services, where such address is not available
	Pre-paid service/Recharge made through internet banking or other electronic mode of payment	<ul style="list-style-type: none"> • Location of the recipient of services on the record of the supplier of services.
<u>12(12)</u>	Supply of banking and other financial services , including stock broking services to any person.	Location of the recipient of services on the records of the supplier of services. If the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the Service Provider.
<u>12(13)</u>	Supply of insurance services	
	a) To a registered person (i.e. B2B transaction)	Location of such person
	b) To an unregistered person (i.e. B2C transaction)	Location of the recipient of services on the records of the supplier of services.
<u>12(14)</u>	Advertisement services to the Central or State Government, a statutory body or a local authority identified in the contract or agreement.	Each of such States or Union territories where the advertisement is disseminated.

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- ✓ Section 13: Place of Supply of Services in case of transactions outside India i.e. where location of supplier or location of recipient is outside India.

<u>Section reference</u>	<u>Description</u>	<u>Place of Supply</u>
<u>13(2)</u>	Supply of Services except the services as specified in sub-sections (3) to (13) below	<p>Location of the recipient of services</p> <p>If the location of the recipient of services is not available in the ordinary course of business, the place of supply shall be the location of the supplier of services</p>
<u>13(3)(a)</u>	<p>Services supplied in respect of goods which are required to be made physically available by the recipient of service to</p> <ul style="list-style-type: none"> • Supplier of services • Person acting on behalf of supplier of services 	<ul style="list-style-type: none"> • The location where the services are actually performed for such goods. <p>When such services are provided from a remote location by way of electronic means, the place of supply shall be the location where goods are situated at the time of supply of services.</p> <p>This provision shall not apply in the case of services supplied w.r.t goods which are temporarily imported into India for repairs/treatment or process and are exported without being put to any other use in India except for which they were imported for.</p>
<u>13(3)(b)</u>	Services supplied to an individual, represented either as the recipient of services or a person acting on behalf of the recipient , which require the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services.	<p>The location where the services are actually performed.</p> <p>Mr X of Kolkata, a director of XYZ productions have imported beauty services from Dubai. Determine the place of Supply. Answer : As per section 13(3)(b), in the above case, <u>Place of supply shall be Kolkata.</u></p>
<u>13(4)</u>	<p>Supply of services in relation to immovable property. Such as</p> <ul style="list-style-type: none"> • Services by experts, • Services by estate agents, • Accommodation services by hotel, in inn, guest house, club or campsite • Rights to use the property, • Construction Services, • Architects services and Interior Decorators etc. 	Place where the immovable property is located or intended to be located.

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<u>13(5)</u>	Services supplied by way of admission to, or organisation of a cultural, artistic, sporting, scientific, educational or entertainment event, or a celebration, conference, fair, exhibition or similar events, and of services ancillary to such admission or organisation.	Place where the Event is actually held
<u>13(6)</u>	Services referred to in sub-section (3) or sub-section (4) or sub-section (5) is supplied at more than one location , including a location in the taxable territory	Location in the taxable territory.
<u>13(7)</u>	Services referred to in sub-section (3) or sub-section (4) or sub-section (5) are supplied in more than one State or Union territory.	Such services shall be taken as being in each of the respective States or Union territories.
	Shall be determined in the following manner, namely:-[Rule 7 of IGST Rules]	
	(i)	in the case of services supplied on the same goods, by equally dividing the value of the service in each of the States and Union territories where the service is performed;
	(ii)	in the case of services supplied on different goods, by taking the ratio of the invoice value of goods in each of the States and Union territories, on which service is performed, as the ratio of the value of the service performed in each State or Union territory;
	(iii)	in the case of services supplied to individuals, by applying the generally accepted accounting principles.
<u>13(8)</u>	For Following Services – (a) services supplied by a banking company , or a financial institution, or a non-banking financial company, to account holders; (b) intermediary services ; (c) services consisting of hiring of means of transport , including yachts but excluding aircrafts and vessels, up to a period of one month.	Location of the Supplier of Services.
<u>13(9)</u>	Services of transportation of goods , other than by way of mail or courier.	Destination of such goods.

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<u>13(10)</u>	Passenger transportation services.	Place where the passenger embarks on the conveyance for a continuous journey.
<u>13(11)</u>	Services provided on board a conveyance during the course of a passenger transport operation, including services intended to be wholly or substantially consumed while on board	The first scheduled point of departure of that conveyance for the journey.
<u>13(12)</u>	Online information and database access or retrieval services.	Location of the recipient of services
<u>13(13)</u>	In order to prevent double taxation or non-taxation of the supply of a service, or for the uniform application of rules, the Government shall have the power to notify any description of services or circumstances in which the place of supply shall be the place of effective use and enjoyment of a service.	
	<u>Newly Inserted N/N 04/2019 dated 30/09/2019:</u> Supply of research and development service as specified by a person located in taxable territory to a person in non-taxable territory	Location of recipient of service subject to fulfilment of conditions.

Summary of provisions of 'place of supply' within India and in course of imports and exports

<i>Nature of service</i>	<i>Place of supply service in case of transaction within India</i>	<i>Place of supply of service in case of transaction during import or export</i>
Directly related to immovable property, lodging or accommodation for functions	Location of immovable property or boat or vessel. If immovable property or boat or vessel is located outside India, then location of recipient of service shall be place of supply. If in more than one States or UT, then in proportion - section 12(3) of IGST Act	Parallel provision in section 13(4) of IGST Act.
Restaurant and catering services, personal grooming, beauty treatment, health services including cosmetic and plastic surgery	Location where service is provided - section 12(4) of IGST Act.	Place where service is actually performed - section 13(3) of IGST Act
Training and performance	(a) to a registered person, shall be the	Place where service is

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appraisal	location of such person (b) to a person other than a registered person, the location where the services are actually performed - section 12(5) of IGST Act.	actually performed - section 13(3) of IGST Act
Performance based services on goods physically made available to supplier of service to provide the service	Residual provision in section 12(2)	Place where service is actually performed - section 13(3)(a) of IGST Act
Services to individual where physical presence of recipient or person acting on his behalf is required	Residual provision in section 12(2)	Place where service is actually performed - section 13(3)(b) of IGST Act
Admission to a cultural, artistic, sporting, scientific, educational, or entertainment event or amusement park or any other place and services ancillary thereto	The place where the event is actually held or where the park or such other place is located - section 12(6) of IGST Act.	Parallel provision in section 13(5) of IGST Act.
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, or (b) services ancillary to organization of any of the above events or services, or assigning of sponsorship to such events	(i) If the service is provide to a registered person, place of supply shall be the location of such person (ii) if the service is provided to a person other than a registered person. Place of supply shall be place where event is actually held. If the event is held outside India, place of supply shall be the location of service recipient. - section 12(7) of IGST Act.	Place where event is taking place - section 13(5) of IGST Act
Transportation of goods including by mail or courier	to (a) a registered person, shall be the location of such person (b) a person other than a registered person, shall be the location at which such goods are handed	Other than mail or courier - destination of goods - section 13(9) of IGST Act

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	over for their transportation - section 12(8) of IGST Act.	In case of mail or courier - residual section 13(2) of IGST Act
Passenger transportation	to (a) a registered person, shall be the location of such person (b) a person other than a registered person shall be the place where the passenger embarks on the conveyance for a continuous journey. If for future use, then as per residual provision in section 12(2)- section 12(9) of IGST Act.	Where the passenger embarks for continuous journey - section 13(10) of IGST Act
On board a conveyance including vessel, aircraft, train or motor vehicle	location of the first scheduled point of departure of that conveyance for the journey- section 12(10) of IGST Act.	Parallel provision in section 13(11) of IGST Act
Telecommunication Services including data transfer, broadcasting, cable and DTH	In case of fixed lines or leased circuit or dish antenna, where it is located, in case of post paid basis, billing address, in case of pre-payment by voucher, address of selling agent or location where voucher sold. In other cases, address of recipient of service.	Residual provision as per section 13(2) of IGST Act
Banking and other financial services including stock broking services	Location of the recipient of services on the records of the supplier of services - section 12(12) of IGST Act. If the location of the recipient of services is <i>not</i> on the records of the supplier of services, the place of supply shall be location of the supplier of services.	Location of supplier of service in case of (interest bearing) account holder and stock brokers - section 13(8)(a) of IGST Act
Intermediary (broker or commission agent - other than stock broker)	Residuary provision as per section 12(2)	Location of supplier of service- section 13(8)(b) of IGST Act
Insurance Services	(a) to a registered person, be the location of such person (b) to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services - section 12(13) of IGST	Location of immovable property in case of immovable property insurance and residuary section 13(2) of IGST Act in

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	Act.	case of other insurance
Advertisement services to the Central Government, a State Government, a statutory body or a local authority, meant for identifiable States or Union Territories, shall be taken as located in each of such States or Union Territory	Proportionate basis to different States and Union Territories - section 12(14) of IGST Act.	Residuary section 13(2) of IGST Act
Online Information and Database Access or retrieval of service	Residual provision in section 12(2)	Location of recipient of service - section 13(12) of IGST Act
Services not covered in any of above (residual services)	(a) made to a registered person shall be location of service recipient - section 12(2)(a) of IGST Act (b) made to any person <i>other than a registered person</i> shall be (i) the location of the recipient where the address on record exists, and (ii) the location of the supplier of services in other cases - section 12(2)(b) of IGST Act.	Location of recipient of service. If that location not known, then location of supplier of service - section 13(2) of IGST Act

The rules relating to place of supply of services are quite involved and complicated. Broadly, as rule of thumb, in many cases, if the recipient of service is registered, his place will be supply of services. In some cases, even if he is not registered, his address on record can be used to determine place of supply of service.

These provisions are made as GST is a destination based tax. Thus, GST should be normally payable where services are consumed. However, where recipient of service is not registered or even his address is not on record, place of supply can be place of supplier of service.

Of course, this is general statement and provisions vary in respect of each category of services.

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✓ Certain definitions for better understanding of the provisions have been covered as follows :-

- **Goods as per Section 2(52) of CGST Act** means every kind of movable property other than money and securities but includes actionable claims ,growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.
- **Services as per Section 2(102) of CGST Act** means anything other than goods, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged.
- **Intermediary as per Section 2(13) of IGST Act** means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.
- **Principal place of business as per Section 2(89) of CGST Act** means the place of business specified as the principal place of business in the certificate of registration.
- **Export of goods as per Section 2(5) of IGST Act** means taking goods out of India to a place outside India.
- **Export of services as per Section 2(6) of IGST Act** means the supply of any service when—
 - (i) the supplier of service is located in India;
 - (ii) the recipient of service is located outside India;
 - (iii) the place of supply of service is outside India;
 - (iv) the payment for such service has been received by the supplier of service in convertible foreign exchange [*or in Indian rupees wherever permitted by the Reserve Bank of India*];
 - (v) 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.
- **Import of goods as per Section 2(10) of IGST Act** means bringing goods into India from a place outside India.
- **Import of services as per Section 2(11) of IGST Act** means the supply of any service, where— (i) the supplier of service is located outside India; (ii) the recipient of service is located in India; and (iii) the place of supply of service is in India.

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- **Location of recipient of service as per sec 2(70) of CGST Act-**

- (a) where a supply is received at a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is received at a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the receipt of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the recipient;

- **Location of Supplier of service as per sec 2(71) of CGST Act-**

- (a) where a supply is made from a place of business for which the registration has been obtained, the location of such place of business;
- (b) where a supply is made from a place other than the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of such fixed establishment;
- (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment most directly concerned with the provisions of the supply; and
- (d) in absence of such places, the location of the usual place of residence of the supplier;

- **Fixed establishment as per sec 2(50) of CGST Act** means a place (other than the registered place of business) which is characterised by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs;
- **In the case of Genom Biotech (P.) Ltd.vs.Commissioner of Central Excise & Customs, Nashik,2016, the CESTAT has held that the determination of place of supply can be Person Specific in some circumstances too.**

Place of supply in case of ocean freight

As per N.N 8/2017-IGST(Rate) Central Government had notified IGST at the rate of 5 per cent will be leviable on the service of transport of goods in a vessel including the services provided or agreed to be provided by a person located in a non-taxable territory to a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs stations of clearance in India.

As per N.N 10/2017-IGST(Rate) Central Government ,the importer as defined in clause 2(26) of the Customs Act located in the taxable territory would be the recipient of service.

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The Honourable High Court of Gujarat in case of Mohit Minerals (P.) Ltd. [2020] 113 taxmann.com 436 (Gujarat)] held the Importer is importing goods on the CIF basis, i.e. the contract is for supply of goods delivered at the Indian port. Thus, **the transportation of goods in a vessel is the obligation of the foreign exporter.** The foreign exporter enters into contract with the shipping line for availing the services of transportation of goods in a vessel. The obligation to pay consideration is also of the foreign exporter. The Importer is not at all concerned with how the foreign exporter delivers the goods at the Indian port or whether the consideration of the shipping line has been paid by the foreign exporter or not. Even in a case of non-payment of the consideration of the freight by the foreign exporter, the shipping line cannot recover the consideration from Importer. Thus, **the Importer could be said to have neither availed the services of transportation of goods in a vessel nor he is liable to pay the consideration of such service.** Hence, the Importer is not the 'recipient' of the transportation of goods in a vessel service as per section 2(93) of the CGST Act. Making the importer, liable for paying such tax, are ultra vires the provisions of the IGST Act.

The honourable court also held that **the supply of service of transportation of goods by a person in a non-taxable territory to another person in a non-taxable territory from a place outside India upto the customs station of clearance in India is neither inter-state supply nor an intra-state supply.** In such circumstances, no tax can be levied and collected from the Importer.

In the present case, **the location of the supplier, i.e. the shipping line, is outside India.** Thus, Section 7(3) will not apply in the present case. **The import of services means the supply of service where the supplier of service is located outside India, the recipient of services is located in India; and the place of supply of service is in India. In the present case, the location of the recipient of the service, i.e. the foreign exporter, is not in India but outside India.** Thus, the provisions of sub-section (4) of section 7 are also not applicable in the present case.

The Honourable court concluded that on the Ocean Freight for the services provided by a person located in a non-taxable territory by way of transportation of goods by a vessel from a place outside India upto the customs station of clearance in India and the levy and collection of tax of such Ocean Freight is not permissible in law.

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