

Amendment Notes for May 24

Supply Under GST

(1) Actionable claims

(i) Actionable claims are considered as goods as per GST Definition of Goods

But Earlier Actionable claims were covered under Schedule-III (Negative list) other than betting, gambling, Lottery

Now Casino, Horse racing and online money gaming is also excluded from Schedule-III, Hence taxable as Supply of Goods

* Online money gaming :- Online gaming in which player pay or deposit money including virtual digital Asset
→ outcome can be based on skill or chance or both
→ it can be legal or illegal

* Supplier includes ECO as well if provided such supply through him and all the provisions of this act shall also be applicable on such ECO

(ii) Time of Supply for Supply of goods as actionable claim

Time of Supply

for Normal Goods	Actionable claim
• Date of Issue of Invoice or	• Date of Issue of Invoice or

- Due date of Issue of Invoice as per Sec-31
or
- ~~Date of Receipt of Payment~~
Whichever is earlier

- Due date of Issue of Invoice as per Sec-31
or
- Date of Receipt of Payment
Whichever is earlier

In Short Tax shall be levied on advance as well for supply of goods as actionable claims

(iii) Value of Supply for actionable claims

There is already rule 31A is in place to determine Vos in case of lottery, Betting, gambling and horse racing

Now rule 31B/31C Inserted for determining Vos in case of Casino and online money gaming

• Value of Supply in Case online gaming

= Total Amount Paid or Payable or deposited with Supplier

• Value of Supply in Case of Casino

= total Amount paid or Payable for purchase of coins, tokens, chips etc.

Note:

- Any amount refunded / returned shall not be deductible from Value of Supply
- Any amount won again used to play further shall not be considered amount paid / deposited

(iv) Import of Supply of online money gaming

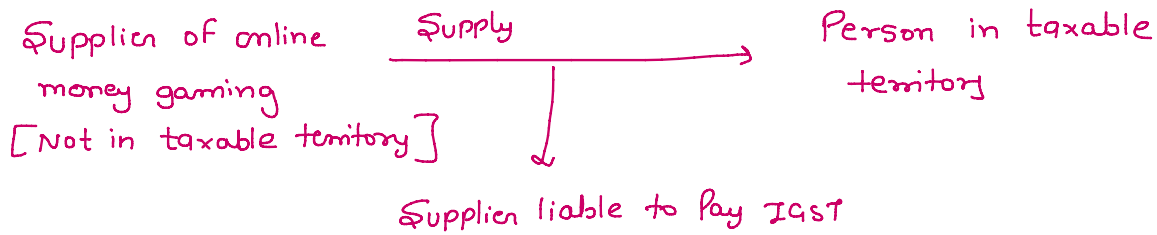
Normally custom Provision provides applicability and collection of GST on Import of Goods but

although Supply of online money gaming is supply of goods

but GST machinery shall be used to apply and collect GST on Import of Such Supply

(V) Any Supplier providing online money gaming from outside india shall obtain compulsory Registration in india & Pay tax

(vi) Insertion of Sec- 14A



Such Online gaming Service Provider shall obtain Single Registration in india

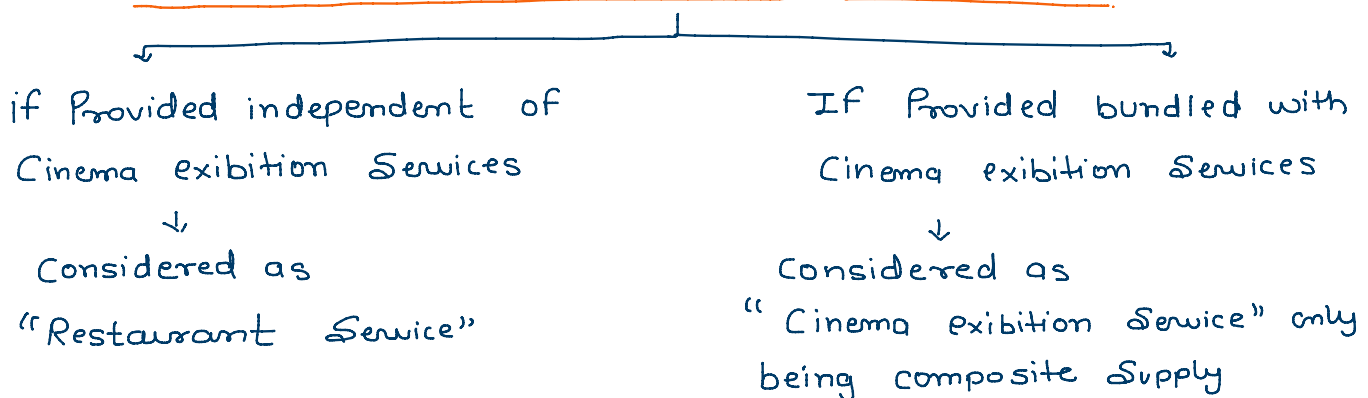
↓

Any Person representing supplier shall get Registered and pay GST on behalf of such Supplier

↓

No physical Presence or Representative in india, appoint a person non compliance may lead to Services may be blocked for access by Public

(2) Supply of food and beverage in Cinemas



Charge Under GST

1. Reverse charge Mechanism - Services

(i) Normally any Service provided by Director to Company / Body Corporate on which TDS u/s 192 not deducted, taxable under RCM

↓

But it is clarified that RCM will be applicable only on Services provided by Director in the capacity of Director not in the Personal capacity.

(ii) Services provided by CG / SG / LA to Any Business entity

Except

- Services by Postal Dept. and Ministry of Railways [Indian Railways]
- Transport of Goods & Passenger
- Service to aircraft / vessel - Inside / outside port

} FCM
Applicable

(iii) Service of Renting immovable Property by CG / SG / LA (except Ministry of Railways) to any Registered Person - RCM Applicable

~~(iv) Services by Person located in non taxable territory~~

~~to
Importer~~

~~by~~

~~Transport of Goods by Vessel~~

~~↓~~

~~from place outside india to custom station in india~~

Removed from RCM

2. Reverse charge Mechanism - Goods

Below mentioned list of Goods are taxable under RCM & now Relevant for exam purpose as well

(A) Following goods Supplied by Agriculturist

To Any Registered Person

- Cashew nuts not shelled / Peeled

- Bidi Wrapper leaves (Tendu)
- Tobacco leaves
- Raw cotton

(B) Following goods Supplied by Any Unregistered Person
To Any Registered Person

- Oils other than Citrus fruits
 - > of Peppermint (Mentha Piperita)
 - > of other mints i.e.
 - Spearmint oil (ex-mentha Spicata)
 - Watermint oil (ex-mentha aquatic)
 - Horsemint oil (ex-mentha Sylvestris)
 - Bergamot oil (ex-mentha citrate)
 - Mentha arvensis

(C) Supply of Silk yarn by Manufactures of Silk yarn from
raw silk / silk worm / cocoons To Any Registered Person

(D) Supply of Lottery by SG / UT / LA
To Lottery Agent | Distributor

(E) Supply of used vehicle | seized | confiscated goods, old
or used goods, waste and scrap
By CG / SG / UT / LA (excluding Indian Railways)
To Any Registered Person

(F) Supply of Priority Sector Lending Certificate (PSLC)
By Any Registered Person
To Any Registered Person

3. Electronic Commerce Operator [Eco]

(i) Passanger transportation through Omnibus

Earlier Passanger transportation through Omnibus too was covered in the Passanger transportation service notified U/s 9(5)

↓

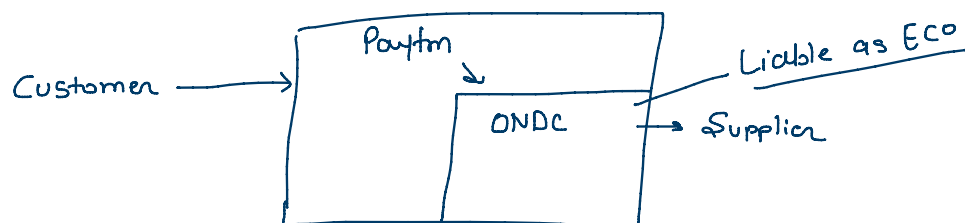
Now for Passanger transportation through Omnibus Seprate entry has been provided as below

"ECO shall be liable to pay tax on Passanger transport service through Omnibus except if Supplier is a company"

(ii) Clarification on issue if Multiple ECOs Involved in a transaction

⇒ if Multiple ECOs are involved in a supply then the ECO who finally release payment to the Supplier shall be liable

i.e.



4. Composition Scheme

Earlier Composition supplier was not Permitted to make any supply of goods / Services through ECO

↓

Now Supply of Goods is Permitted by Composition through ECO Provided

→ No inter-state supply shall be made through ECO

→ TCS collected by ECO on such supplies

→ Such supplies are reported in GSTR-8 by ECO

Value of Supply

New Rule has been inserted for determining Value of Supply of Service by way of providing Personal or Corporate guarantee b/w related Person

(i) Personal guarantee by Director to Bank / FZ on behalf of his Company without any consideration

↓
Both are related Person hence value as per rule 28

↓
However RBI Doesn't Permit to charge any consideration for providing guarantee by director to his company Hence

Open market value = 0 & so value of Supply = 0

(ii) Corporate guarantee by any Person to Bank / FZ on behalf of related Person even without consideration

i.e., Holding co. to its Subsidiary company

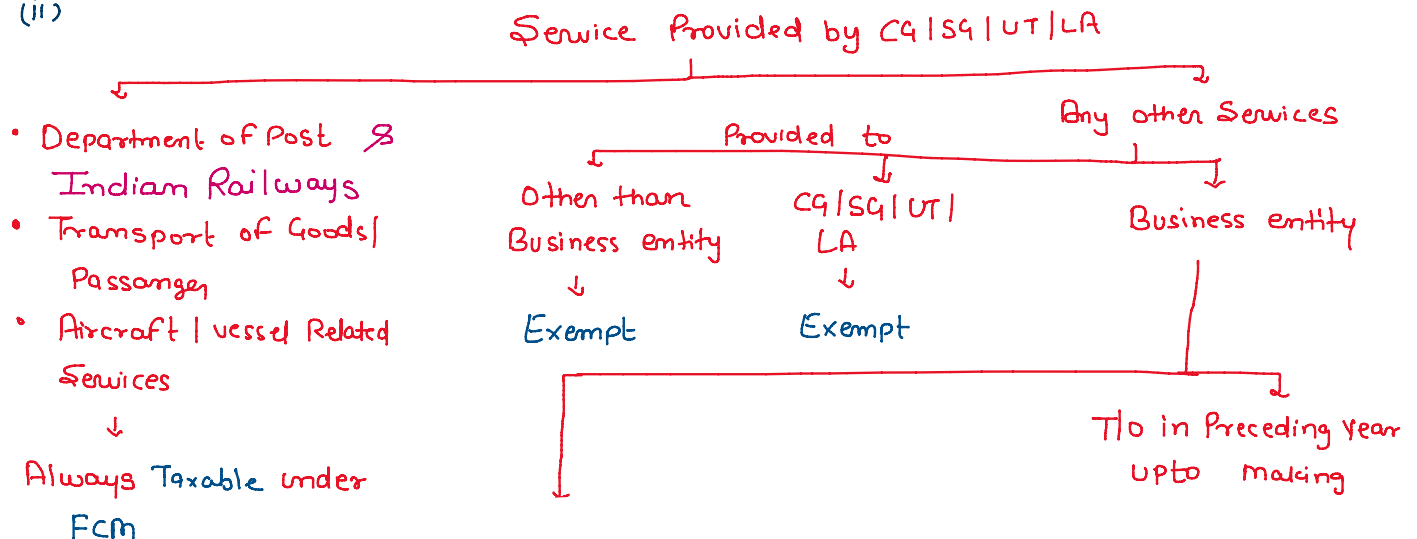
Value of Supply :- 1% of amount of guarantee } whichever is higher
or
Actual consideration

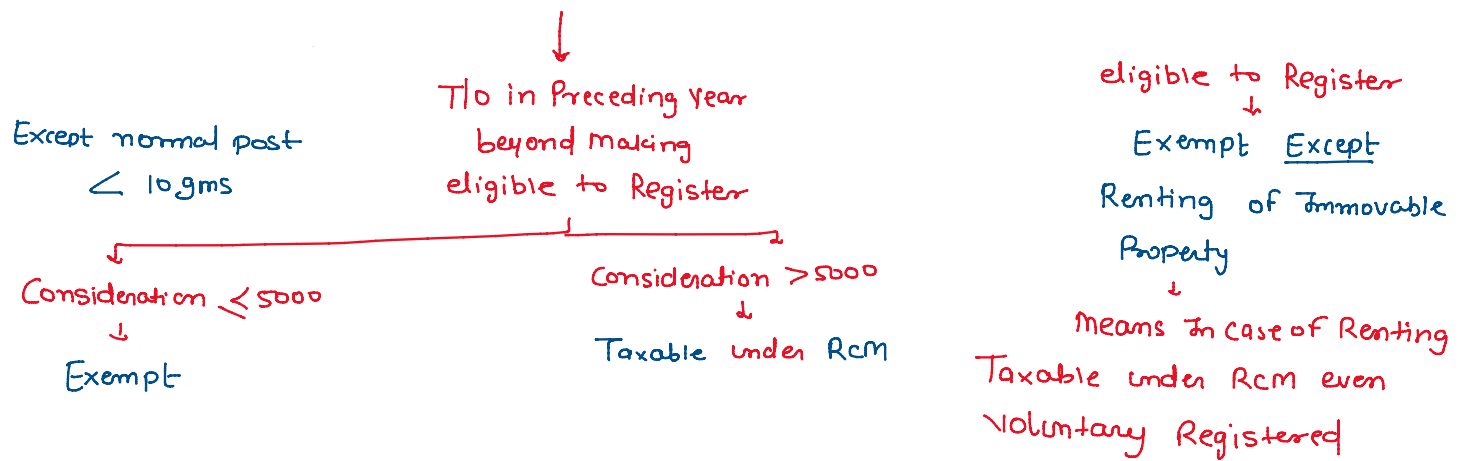
Exemption under GST

(i) Earlier Satellite launch Service provided by ISRO, Arianix, New Space was Exempt

↓
Now Satellite launch Service has been made exempt for All

(ii)





(iii) following Exemptions Removed

→ Services received by RBI from outside India in relation to management of foreign exchange reserve

(iv) following Exemptions Added

(A) Services Received from Service Provider located in Non taxable territory

By-

- (a) CGISGILAIUT / Government Authority or Individual unregistered
- (b) Entity Registered under 12AA/12AB
- (c) By way of online educational journal by educational institute providing degree as part of curriculum
- (d) Person located in non taxable territory

Exception

- OIDAR Services by Person (a) & (b) [Means taxable]
- ~~transport of Goods by vessel~~
~~from place outside India to custom clearance in India~~

(B) Services to Govt. authority by way of

- water supply
- Public Health
- Sanitation Conservancy
- Solid waste management
- Slum improvement & upgradation

Import & Export - GST

- (i) Non taxable online Recipient :- Unregistered person receiving O2OAR & services in taxable territory
* Unregistered person include the person who took registration only for TDS u/s 51
- (ii) Receipt of amount in INR through Vostro A/c, considered as fulfilling condition of payment in foreign exchange for export

Input tax Credit

- (i) Blocked credit u/s 17(5)
Goods & services received to be used for CSR Activities
↓
ITC Blocked
- (ii) Definition of Exempt Supply (E) & total turnover (F) for Rule 42 and 43

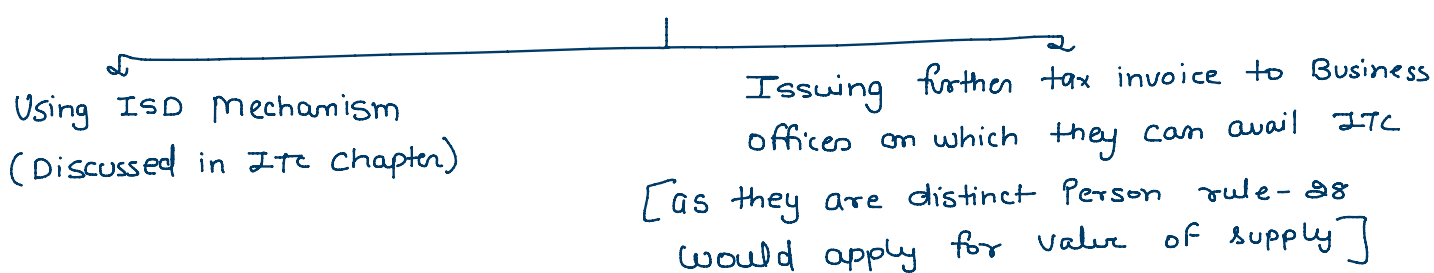
Add. Include in exempt (E) as well as total (F) turnover

- Sale of goods in custom bonded warehouse [Schedule-III "Negative list"]

Value shall be taken VOS of goods from DFS at arrival terminal of international airport to incoming passenger

- (iii) Distribution of ITC to business offices by Head office

Sometimes Head office avail some services which pertains to H.O. as well as various business offices but invoice received centralised at H.O., so ITC of the same can be passed on to business



Hence following Points to be noted

- if full ITC available to Recipient
 - Any Value mentioned in Invoice shall be taken as Vos
 - Even if invoice has not been raised, it will be deemed that Vos was nil
- Even if full ITC not available to the Recipient
 - Salary of employees of H.O. need not to be taken into calculating taxable value of supply

Registration

(i) Sec-23 - Person not liable to Register

Following Entry shall be added

Person Supplying goods through ECO who is liable to collect TCS having T10 upto limit for registration u/s 22 on following conditions

- shall not make any inter state supply of goods
- shall not make supply of goods through ECO in > 1 State/UT
- shall required to have PAN no.
- Before making supply through Eco declare PAN & Address in State/UT where supply is to be made
- obtain enrollment no. based on PAN

So Inshort Registration Requirement if Supply made through ECO

- Services notified u/s 9(5) - Benefit of T10 limit available
- Other Services-TCS by Eco - Benefit of T10 limit available
- Goods- TCS by Eco - Benefit of T10 limit available
Subjected to above conditions

(ii) Details to be provided in Part-B Includes Bank A/c Details

↓
However bank A/c details can be Provided before expiry of

- 30 days from grant of Registration
 - or
 - filing GSTR-1 or details in IFF
- } Whichever is earlier

However

- TDS Deductor
 - TCS Collector
 - Dept. Driven Registration
- } Required to Provide bank Details at the time of filing Application

(iii) Application for Revocation of Cancellation

Apply within 90 days from order of Cancellation

[Can be extended further 180 days by Commissioner]

TDS, TCS & Payment of tax

- (i) Interest @ 18% for utilisation of wrongly availed ITC (Case-2)
- ↓
- @ 18%

From - Day next to Date of Utilisation of wrongly availed ITC

To - Date of Reversal or Date of Payment on

* Excess ITC utilised would be [ITC wrongly Availed (-) ITC Balance in credit ledger]

→ Classification

→ for levying interest for excess utilisation of ITC of IGST

Excess utilisation :-

IGST ITC wrongly availed (-)

ITC Balance in credit ledger of IGST, CGST, SGST

Reason :-

CGST / SGST / IGST, all can be used to pay IGST liability

Tax invoice, Debit & Credit note

(i) Threshold limit for E-Invoicing - 5 crore

(ii) Govt Department / establishment / Agency / Local authority / PSU Registered solely for TDS purpose

↓

Still liable for E-Invoicing

(iii) Invoice issued by ECO, OZDAR Supplier, Online money gaming Service Provider

↓
Mandatory to mention State name (deemed as address of Recipient)

Returns under GST

(i) GSTR-SA

Earlier consist of only Services provided by OZDAR to Unregistered Person in India

↓
Now it shall consist of Services provided by OZDAR & online money gaming Provider

To Registered as well as unregistered Person in India

(ii) Maximum time limits to file returns

Not allowed to file GSTR-1, GSTR-3B, Annual return, TCS statement after expiry of 3 years from due date

Assessment and Audit

In Case of Best judgement Assessment order passed for non filers

- if Valid return furnished within 60 days - order withdrawn
[further extendable by 60 days on payment of additional fees]

Demand and Recovery

if Provisional attachment made, it shall cease to have effect on

- 1 year from date of Provisional attachment order
 - Order of Commissioner for release
- } — whichever is earlier

Offences and Penalties

(i) Newly Inserted Penalty u/s 122(1B) for ECO

if any electronic commerce operator (Eco)

- allow supply by an unregistered person (unless such person allowed to make supply through Eco)
- allow inter state supply by person ineligible (composition)
- fails to furnish correct info. in statement furnished

↓

Penalty :- 10000 ₹
 or
 Amount of tax involved } Higher
 [at Regular tax rate]

(ii) Section-132 Punishment for Certain offences

Any person who committ, cause to committ, retain benefit of 8 offences

Offences Related to Invoice

- (i) Supplies goods & services without invoice / on false invoice
- (ii) Issue Invoice without supply

Offence Related to Payment of tax

- (iii) collect tax not paid to government within 3 month from due date
- (iv) Takes / Utilize ITC without actual Receipt of Goods / services
- (v) fraudlently obtain refund

Offence Related to Records & Information

- (vi) falsification of records / Accounts / Information to evade tax

Offence Related to transport of Goods

- (vii) Supply / transport / store goods liable to Confiscate
- (viii) Dispose / tamper with goods detained / Seized / attached

or attempts to committ, abet commission of above offences

shall be punishable

<u>Scenario</u>	<u>Amount involved</u>	<u>Punishment & fine</u>
if tax Evaded / ITC wrongly taken / Refund taken erroneously	> 5 crore	6m - 5 year & fine
	> 2cr ≤ 5 crore	6m - 3 years & fine
Issuance of invoice without supply leading to wrong availment / Utilisation of ITC / Refund	> 1cr ≤ 2 crore	6m - 1 year & fine
Repeat offence	An Amount	6m - 5 year & fine

(iii) Compounding of offences

Any offence can be compounded before / after institution of Prosecution on payment of compounding fees except..

- offences u/s 132 Had been allowed to compound earlier
- Accused of committing offences by issue of invoices without supply, leading to wrong availment / utilisation of ITC / Refund
- Convicted of offence by Court

Compounding fees

Minimum :: 25% of tax

Maximum :: 100% of tax

Nature of offence	Amount of tax / ZTC involved	
	> 5 Crore	> 2 Cr ≤ 5 Cr
(a) offence mentioned in point (i), (ii), (iv), (v) of Sec-132	Minimum = 50% of tax Maximum = 75% of tax	Minimum = 40% of tax Maximum = 60% of tax
(b) offence mentioned in point (vi), (vii), (viii) of Sec-132	25% of tax	25% of tax
(c) attempts to commit or abet the offence mentioned in point (i), (ii) to (viii) of Sec-132	25% of tax	25% of tax
As, if anyone commit, attempts to commit or abet the offence mentioned in point (i) of Sec-132 i.e. "Issue of invoice without Supply" can not be condoned, no amount prescribed for the same.		

Note: if offence committed falls under more than 1 category specified above, Higher one would apply

Appeal & Revision

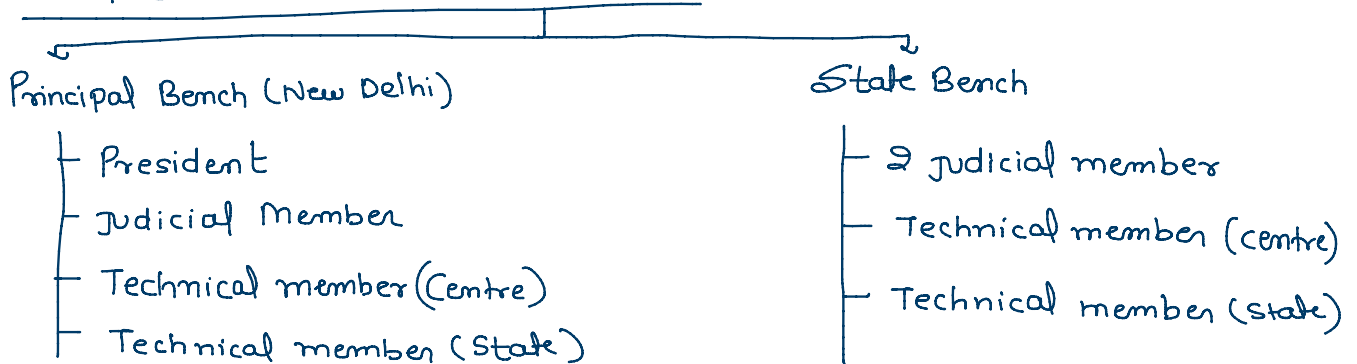
Earlier

State / Area bench of GSTAT
National / Regional bench of GSTAT

Now

State Bench
Principal Bench

• Composition of Appellate tribunal



- Normally matters heard by 1 judicial member + 1 Technical member
But if amount involved upto 50 lac & not question of law matter can be heard by single member

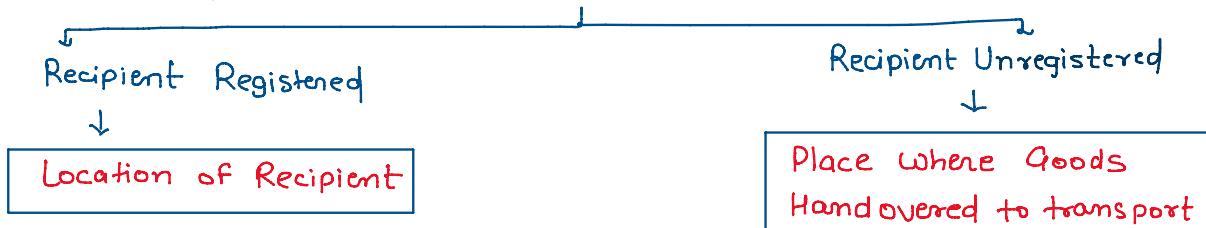
Place of Supply (IGST)

(i) Sec-10 :- Place of Supply of Goods other than Import / Export

	Scenario	Location
(i)	Supply involve movement	Where movement of Goods Terminates / End
(ii)	Supply not involve movement	Where Goods made available / Place of Delivery
(iii)	Notwithstanding point (i) & (ii) Supply of goods to person other than Registered Person	Location as per address recorded on invoice if not - Location of Supplier
(iv)	Assembly / Installation involved	Place of Assembly / Installation
(v)	Goods Supplied on board of Conveyance	Place where Goods Taken Onboard

(ii) Section-12 - Specific Case

(vi) Transportation of Goods including mail & Courier



Now POS being destination of goods has been removed even delivery address is outside india

(iii) Section-13 - Specific Case

Earlier POS for transport of goods was destination but now Specific Case has been removed so general rule applicable

↓

Transport of Goods Service - POS - Location of Recipient
 ↓ if N.A.
 Location of Supplier

(iv) Clarification related to Advertisement Industry

