

Levy and collection of Service Tax from Indian Railways Impact of GST on Railways

Presentation
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TAXATION IN INDIA - POWER TO TAX

- Taxation governed by Schedule VII of Constitution of India
- India has federal structure to levy and collect taxes –
 - the Union Government,
 - the State Governments *including urban/rural local bodies*
- Presently goods are liable to VAT/ Excise / Customs duty while taxable services attract service tax.
- Efforts to bring in a single indirect tax – **GST proposed**

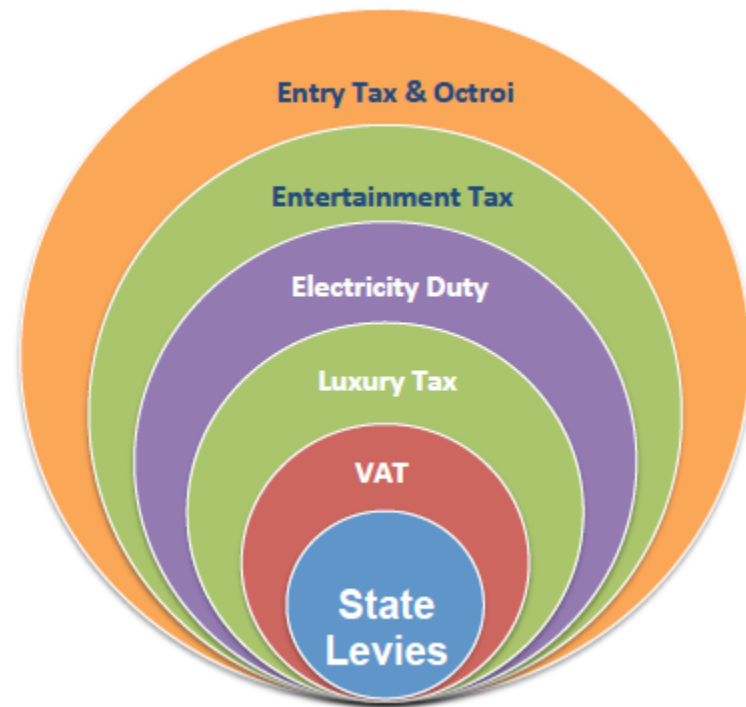
TAXATION POWERS OF UNION

- Income Tax (1961) – Income, except agricultural income
- Excise Duty (1944) – Manufacture of Goods
- Custom Duty (1962) – Import of goods(**Not services**)
- Service Tax(1994) – on rendering of services
- Central Sales Tax(1956) – on inter-state sale of goods (*collected and retained by states*)
- Stamp Duty – on 10 specified instruments
- Specified Cesses – on specified items

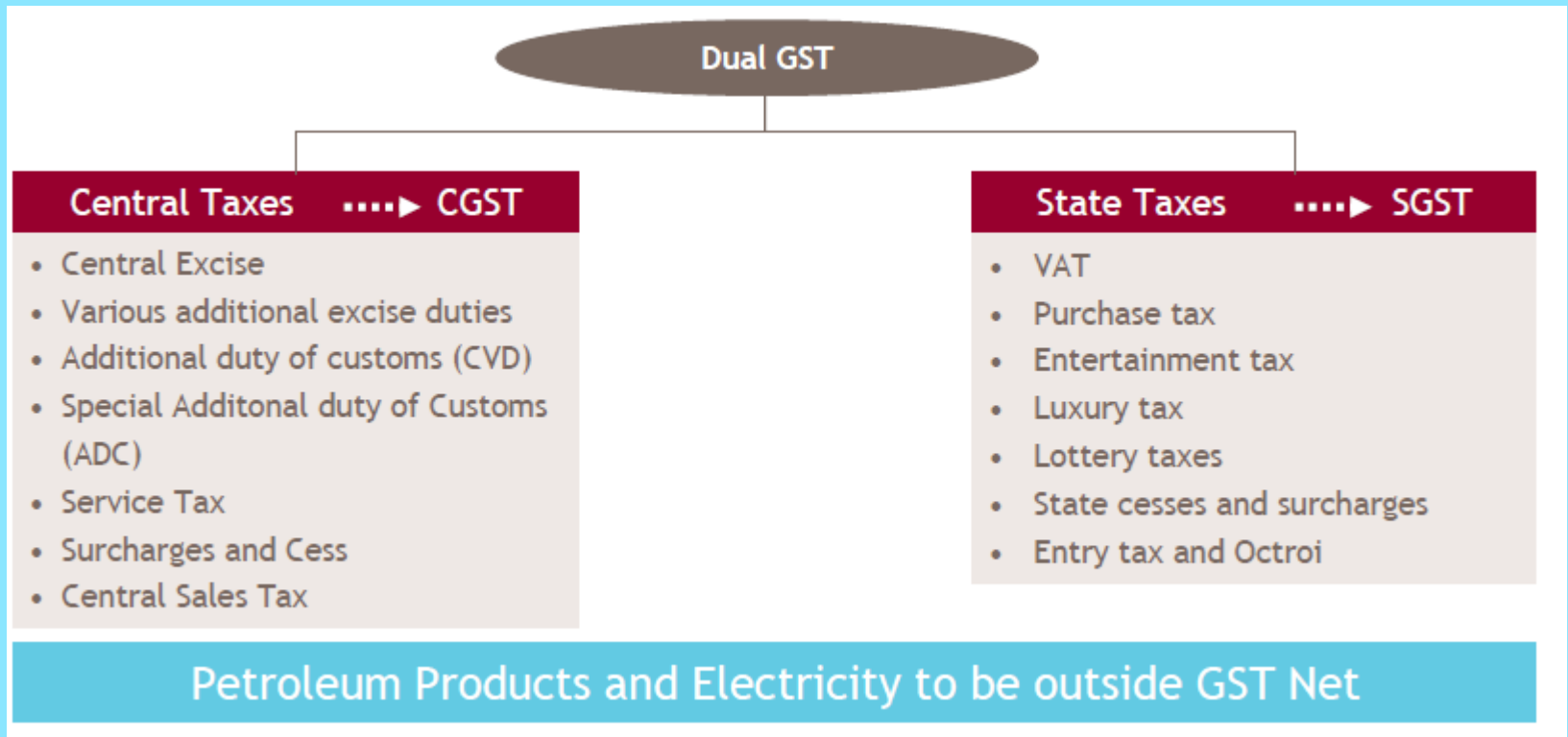
TAXATION POWERS OF STATES

- VAT / Sales Tax - Sale of goods, other than newspapers
- Stamp Duty - Other than 10 specified instruments
- Tax - Agricultural income
- Toll Tax - Utilities
- Specified Cesses - on specified items
- Other Taxes - on
 - –Land and buildings
 - –Entry of goods in local Area (Entry Tax or Octroi)
 - –Consumption or sale of electricity, Vehicles
 - –Luxuries including taxes on entertainment, Betting and gambling, Alcoholic Liquor, Narcotic Drugs and Opium

PRESENT INDIRECT TAX STRUCTURE IN INDIA



INDIRECT TAXES PROPOSED TO BE SUBSUMED IN GST



TAXES WHICH MAY NOT BE SUBSUMED IN GST

Central Taxes/Levies

- Basic Customs Duty
- Excise Duty on Tobacco products
- Export Duty
- Specific Central Cesses (eg, Oil Cess)
- Taxes on petroleum products (**Only five**)
- Stamp Duties

State Taxes/Levies

- Taxes on Liquors
- Toll Tax/ Road Tax
- Environment Tax
- Property Tax
- Tax on Consumption or Sale of Electricity - Not certain
- Stamp Duty - ~~Not certain~~
- ~~Purchase tax on food grains~~
-
- Taxes on motor spirit & high speed diesel

INDIAN RAILWAYS

- **Mainly engaged in providing services of**
 - Transportation of passengers
 - Transportation of goodsthrough out the country.
 - Major importer as well as exporter
 - Manufacturer
 - CFS/ICDs (CONCOR)
- **Major sources of revenue**
 - Freight,
 - Passenger fare,
 - Advertisement and publicity, land lease , exports etc
 - Services(IRCTC; Rail tourism)

STATUS OF INDIAN RAILWAYS

- IR is owned and operated by Government of India through the Ministry of Railways
- Manufactures its rolling stock and heavy engineering components at its own six manufacturing plants (production units)
- Exports rolling stocks to other countries
- Production units are managed directly by the Ministry of Railways
- Railways is divided into seventeen zones, which are further subdivided into sixty eight divisions
- **14 public sector undertakings are under the administrative control of Ministry of Railways (BWEL, CRIS, CONCOR, IRCTC, RITES etc.)**
- Major revenue sources of railways – freight, passenger fares, advertisement and publicity, land & other lease etc.

STATUS OF INDIAN RAILWAYS

- Railways itself not covered under the scope of body corporate being Government
- Production units of Railways are the part / unit of railways and are not independent organizations; not covered under body corporate (CLW /DLW/ Rail Coach Factory)
- Public sector undertakings of Railways covered under definition of body corporate (IRCTC, RITES, CRIS CONCOR etc. being juristic persons)
- All these are independent organizations but under administrative control of Ministry of Railways / Railway Board
- GST to impact Railways , all production units / service providing units .

Existing provisions in the Service tax

Definition of “Service” {Section 65B (44)}

Service defined as:

- Any “Activity”
- Carried out by a person for another
- For consideration (quid pro quo important)
- And includes ‘Declared’ services but excludes “Negative List” services.
- Service Tax would be applicable on any activity done for a consideration other than the specific exclusions

Negative List (Section 66D)

Services provided by Government not liable to Service Tax
except:

- Transport of goods or passengers.
- Any service provided to Business Entity (on reverse charge basis) (Prior to July 2015- it was only “Support Services”)
- Selling of Space for Advertisements in Print Media. (Clause ‘g’) (01.10.2014) (Sale of Space for Advertisement is taxable now)

Declared Services (Section 66E)

- Why- To avoid litigation. Mainly cover 'Deemed Sale' as per Constitution.
- Renting of Immovable Property.
- Construction activity.
- Transfer of goods by hiring, leasing etc without transfer of right to use such goods.
- To agree to refrain from doing an act or to tolerate an act or a situation (Non-Compete fee, Notice pay deducted by company)
- Service portion in Works Contract.
- Service portion in supply of food - Restaurant/Outdoor Catering.

Renting

{65B(41)}

“Renting” means allowing, permitting or granting access, entry, occupation, use or any such facility, wholly or partly, in an immovable property, with or without the transfer of possession or control of the said immovable property and includes letting, leasing, licensing or other similar arrangements in respect of immovable property.

Renting... (2)

- Leasing of land.
- Right of way for laying Telecom cable or F C, Electrical cable.
- Right of way/way leave.
- Vehicle parking.
- ATM Rental.
- Other service like License fee for contract.
- Catering.
- Space for Advertisement.

Exemption

- Services of construction of office building/residential property provided to Government was exempted till 01.04.2015. Now, construction company need to pay Service Tax.(Sr.No.12)
- But, services of construction, installation of Railways or Monorail or Metro is exempted. (Sr.No.14)
- Hotel/Guest House where declared tariff is less than Rs.1000 per day is exempted.
- Transportation of goods by rail for specific goods like Agriculture Produce, Defence Equipments, Relief Materials, Milk, Salt, Fertilizer, Cotton. (Sr.No.20)

Reverse Charge Liability

- Rationale: Administrative reason and Anti -Evasion measure.
- Insurance Agent, Recovery Agent, Mutual Fund Agent, GTA.
- Work Contract, Renting of Vehicle, Manpower Supply, Security Services provided by small entities to Body Corporate in partial reverse charge for use in business. Not applicable to Railway as they are not Body Corporate.
- Services by Government to Business Entity except in case of Renting and Transport of goods or passengers.
- Service received by Railways from person located outside India for business purpose (Sr.No.34)

Goods transported by Railway exempted from Service Tax

- Agriculture Produce like Cotton and other Textiles, Fodder and Husk, Food Grains, Flours and Pulses, Fruits and Vegetables, Groceries, Jute, Oil Cakes and Seeds, Spices, Sugarcane & Baggasse, Milk, Salt, Rice.
- Chemical Fertilizers, Organic Manures.
- Defence or Military Equipment. (Exemption withdrawn on some items in 2013 & 2015)

Levy of Service Tax on Transportation of Passengers

- Passengers travelling on 1st Class and AC coaches.
- 70% Abatement allowed as in freight, with no CENVAT credit.
- Concessional Tickets and PTOs- Service Tax on 30% of total fare actually being paid by the passengers.
- In case of refund of Tickets, Service Tax refund is being permitted.

Few indicative auxiliary services on which Service Tax is leviable

- Wagon Registration fee (WRF)/Over-loading penalty charges.
- Siding Trip Charges/Shunting Charges.
- Parcel Leasing (of SLR/VP/AGE).
- Service Charge received from IRCTC for booking e-tkt/i-tkt/mobile booking.
- Maintenance of sidings.
- Haulage Charges of private/PSU operators (IRCTC/CONCOR)/Empty Haulage charges.
- Demurrage/Wharf age.

Few indicative auxiliary services on which Service Tax is leviable

- Terminal Charges/Private Freight Terminal Charges
- Passenger Halt Contract Charges/Out Agency/CBA/Luggage Charges.
- License fee from Private Entities/Mobile Contractors.
- License fee from catering contractors.
- Land Rent/way leave facilities.
- Leasing of commercial Land.
- Tower leasing charges.

GST, its Salient Features and Impact on Indian Railways

Salient features of GST

- GST - A destination based consumption tax
- One nation- One tax - One market
- Removal of cascade of multiple taxes and
- Seamless availability of Input Tax Credit across the supply chain
- Dual GST with the Centre and States simultaneously levying it on a common tax base.

Salient features.....Contd

- Same tax rate for intra-state / intra-state supplies
- Intra-states CGST and SGST
- Intra-state----- IGST

GST DRAFT LAW-MEANING OF SUPPLY

- **Supply of goods or services shall include :**
 - All forms of supply of goods / services
 - Includes sale, transfer, barter, exchange, license, rental, lease or disposal, and
 - Importation of services
 - Supply specified in Schedule-I even if made without a consideration

Neither supply of goods nor supply of services

- activities or transactions specified in **schedule III**; or(employer to employer , services to court, foreign diplomats.....
- activities or transactions undertaken by the Central Government, a State Government or any local authority in which they are engaged as public authorities as specified in **Schedule IV**,

GST DRAFT LAW-MEANING OF SUPPLY

- **Matters to be treated as supply without consideration (Schedule I)**
 - Permanent transfer/disposal of business assets, where ITC has been availed.
 - Supply of goods or services between related persons, or between distinct persons as specified in section 10, when made in the course or furtherance of business.

GST DRAFT LAW-MEANING OF SUPPLY

- **Matters to be treated as supply without consideration (Schedule I)**
- **Supply of goods—**
 - (a) by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal, or
 - (b) by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal.
- **Importation of services by a taxable person from a related person or from any of his other establishments outside India, in the course or furtherance of business.**

Intra-state and Inter-state Supplies

- Intra-state Supplies-
 - any supply of goods where the location of the supplier and the place of supply are in the same State
- Inter-state Supplies-
 - any supply where the location of the supplier and the place of supply are in different States
- Imports/Exports-
 - Deemed Interstate supplies

Place of supply of goods

Situation

- Where supply involves movement of goods
- Where goods are delivered on directions of third person (transfer of documents)
- Where no movement of goods is involved
- Where goods are assembled / installed at site
- **Where goods are supplied on board a conveyance**

Place of Supply

- Location of goods when movement of goods terminate for delivery to recipient
- Principal place of business of third person who shall be deemed to have received the goods
- Location of goods at the time of delivery to the recipient
- Place of installation or assembly
- **Location at which goods are taken on board.**

Place of supply of goods

- Suppose a train (Rajdhani Express) starts from Mumbai to Delhi
- Goods supplied on Board
 - Place of Supply??
 - Place where such goods are taken on board
- So if goods taken on board at Vadodara, tax would accrue to Gujarat and if taken at Mathura, the tax would go to UP
- Railways will have to align their software accordingly

Services by railways?

- Schedule IV(1)(iii) – Transport of goods or passengers ...specifically excluded from schedule .
 - So treated as supplies
 - Railways liable to register
 - In each state FROM WHERE it supplies goods or services

Place of Supply for services

- Different for B2B and B2C supplies
- B2B supplies- ITC mechanism; pass through transactions
 - Invoice uploading
- B2C supplies- tax to actually accrue to the government
 - Consolidated summary of invoices
- Railways- to capture GSTIN of all business recipients and make suitable amends to its software
 - Huge Task

PLACE OF SUPPLY OF SERVICES (General Rule)

Supply of service to

- Registered person
- Any person, other than registered person

Place of supply

- Location of recipient (i.e. registered person)
- Location of recipient where address on record exists ;
- In other cases, location of supplier

PLACE OF SUPPLY OF SERVICES

- **Location of Service Receiver (Section 2 (64) of GST Act)**
- *Supply is received at registered place of business: - the location of such place of business.*
- *Supply is received at other place (fixed establishment): - the location of such fixed establishment.*
- *Supply is received at more than one establishment: the location most directly concerned with supply;*
- *In absence of such places: - the location of the place of residence of recipient;*

PLACE OF SUPPLY OF SERVICES

- **Location of Supplier of Service (Section 2 (65) of GST Act)**
- *Supply is made from registered place of business: - the location of such place of business.*
- *Supply is made from other place (fixed establishment): - the location of such fixed establishment.*
- *Supply is made from more than one establishment: - the location most directly concerned with supply;*
- *In absence of such places: - the location of the place of residence of supplier;*

PLACE OF SUPPLY OF SERVICES

- *Service in relation to immovable property: the location of such immovable property.*
- *Service by way of lodging accommodation: the location of such property (hotel, house boat, etc.)*
- *Accommodation of immovable property for functions: the location of such immovable property.*
- *Any services ancillary to above services: the location of such property, hotel, houseboat, etc.*

PLACE OF SUPPLY OF SERVICES

- *Restaurant and catering Services & personal grooming, fitness, beauty treatment, and healthcare services the location where the services are actually performed.*
- *Training and performance appraisal*
- To registered person- the location of recipient
- other cases - location where services are performed.
- *Admission to any event, amusement park, other places: the location of place where event is actually held or where such park or place is located*

PLACE OF SUPPLY OF SERVICES

- *Event organizing and ancillary services:*
 - To registered person- the location of recipient
 - other cases - location where event is held.
- ***Transportation of goods including courier:***
 - To registered person- the location of recipient
 - others - where goods are handed for transportation
- ***Transportation of passengers:***
 - To registered person- the location of recipient
 - others - where passenger embarks for transportation

PLACE OF SUPPLY OF SERVICES

- *Services on board a conveyance: The location of first scheduled point of departure.*
- *Telecommunication by Fixed line, leased circuit, antenna, etc: location where fixed line is installed for recipient.*
- *Post-paid Mobile and Internet services: Location of on record Billing Address of recipient*
- *Pre-paid Mobile and Internet services:*
 - Location of receipt of payment or sell of vouchers
 - E Payment - on record location of recipient

Time of Supply

4 2

- **Section 8/5.(CGST/SGST//IGST Act) Levy and Collection of Central/State GST // IGST**
 - (1) There shall be levied a tax called the Central/State Goods and Services Tax (CGST/SGST//IGST) on all intra-State/ Inter-state supplies(~~Not supplier~~) of goods and/or services, on value as determined under S.15 at the rate as notified . . .and **collected in such manner as may be prescribed**
 - Section 12 (1)- The liability to pay CGST / SGST on the goods shall arise at the time of supply.....
 - Also applicable to IGST Act (Section 27 of IGST Act)
- Section 8...12- Continuum

Time of Supply

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- Liability to GST arises only when a supply has been made. The time of supply fixes the point when the liability has to be discharged . It also indicates when a supply is deemed to have been made
- Separate time of supply provisions for goods and services

Time of supply-goods

4 4

- Time of Supply of Goods shall have the meaning assigned to it in Section 12 (Section 2(101) of MGL)
- Time of supply of goods is the earlier of the following:
 - a. the date of **issue** of invoice by the supplier or the last date on which he is required, under section 28, to issue the invoice
 - c. The date on which the supplier **receives** the payment with respect to the supply; or

Provided that where the supplier of taxable goods receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess shall, at the option of the said supplier, be the date of issue of invoice.

[Section 12 (2) of Model GST

Law]

Time of supply- goods(RCM)

- In case of supplies in respect of which tax is paid or liable to be paid on *reverse charge basis*, the time of supply shall be the earliest of the following dates, namely—
 - (a) the date of the receipt of goods, or
 - (b) the date on which the payment is made, or
 - (c) the date immediately following thirty days from the date of invoice issued by the supplier:
 - (d) Provided that where it is not possible to determine the time of supply under clause (a), (b) or (c), the time of supply shall be the date of entry in the books of account of the recipient of supply.

[Section 12 (3) of Model GST Law]

Time of supply- vouchers

4 6

- In case of supply of *vouchers*, by whatever name called, issued by a supplier, the time of supply shall be—
 - the date of issue of voucher, if the supply is identifiable at that point; or
 - the date of redemption of voucher, in all other cases;
 - [Section 12 (4) of Model GST Law]

Time of supply-services

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- (2) The time of supply of services shall be the earlier of the following dates, namely:-
 - the date of issue of invoice by the supplier or the last date on which he is required, under section 28, to issue the invoice with respect to the supply; or
 - the date on which the supplier receives the payment with respect to the supply:
- PROVIDED that where the supplier of taxable service receives an amount up to one thousand rupees in excess of the amount indicated in the tax invoice, the time of supply to the extent of such excess shall, at the option of the said supplier, be the date of issue of invoice.

[Section 13

(2) of Model GST Law]

Supply of services

4 8

- Where it is not possible to determine the time of supply of services in the manner specified in sub-sections (2), (3) or (4), the time of supply shall
 - (a) in a case where a periodical return has to be filed, be the date on which such return is to be filed; or
 - (b) in any other case, be the date on which the CGST/SGST is paid.

VALUATION OF SUPPLY NORMS

(Section 15 read with Schedule IV)

- **Transaction Value:** The value of goods and/or services shall be the transaction value.
- **Transaction value of goods or services of like kind (Comparison Method):** Where value of supply cannot be determined under previous method [i.e. point a], the value shall be determined on the basis of transaction value of goods and/or services of like kind and quality supplied at or about the same time to customers.

VALUATION OF SUPPLY NORMS

(Section 15 read with Schedule IV)

- **Computed Value Method:** Where value cannot be determined under previous method [i.e., point b], it shall be based on computed value which shall include cost of production, manufacture or processing of the goods or, the cost of the provision of services, the charges, if any, for design and brand and amount towards profit and general expenses.
- **Residual Method:** Where the value cannot be determined under the computed value method, the value shall be determined using reasonable means consistent with the principles and general provisions of these Rules.

Change in Rate of goods or services(

section 14

5 1

- 2/3 Principle
- Three events
 - Provision of Service (remains constant)
 - Issue of invoice
 - Receipt of Payment
- If any of two of the events (invoice and provision or provision and payment) happens prior to change, the earlier of the two will be taken as time of supply. Time of supply will be prior to change in rate and old rate will apply.
- If any of two of the events (invoice and provision or provision and payment) happens after the change, the earlier of the two will be taken as time of supply. Time of supply will be after the change in rate and new rate will apply

Valuation in GST

5 2

- Same for Goods and Services; unlike Time of supply or place of supply
- Adopted from Customs Valuation Rules??
 - More in line with Customs (Determination of Value of Export goods) Rules, 2007
- TV – PAPP(price actually paid or payable)

VALUATION OF SUPPLY (Section 15)

- **Transaction Value (Paid or Payable) where supplier & recipient are not related**
- **Transaction Value includes :**
- Amount paid by recipient w.r.t. supply on behalf of supplier
- Value of goods and/or services supplied by recipient for use in connection with supply
- Any taxes, duties, fees and charges levied under any other statute other than CGST Act, SGST Act & IGST Act
- Value of subsidies linked to supply
- Expenses incurred by supplier w.r.t. supplies which are reimbursable
- Any discount or incentive allowed after supply
- **Transaction Value shall not include any discount allowed after or at the time of supply**

Issues concerning Railways

- **Imports**

- All imports/ Exports – deemed Inter-state supplies
- All importers compulsory have to register
- GST on Imports- BCD plus IGST
- ITC of IGST would be available

Issues concerning Railways

- **Preparedness for GST**
 - Training to man-power for GST preparedness
 - Suitable amends in the IT backbone;
 - Capturing of the GSTIN of business customers- separate data for registered and non registered customers
 - Filing of returns along with uploading of invoices
 - Appropriate changes in the software

Issues concerning Railways

- **Preparedness for GST**
 - Strong accounting system to avail seamless credit
 - Data flow system to be in place (could be separate / dedicated IT or MIS Department)
 - Multiple returns to be filed
 - TCS on booking tickets through Yatri Ticket Suvidha Kendra (**YTSK**)
 - TDS on contracts more than ten lacs

Issues concerning Railways

- **Registration**
 - No concept of centralized registration
 - May take separate registration for business verticals.
 - Required to get registration for TDS, TCS, etc.

Issues concerning Railways

- Works contracts...to be treated as services
 - could be taxed on gross value with ITC on goods and services being available.
- Internal supplies under the scope of GST

Issues concerning Railways

- Logistics- appears to be the biggest beneficiary of GST
 - Railways to be benefited accordingly
- Diesel / petrol and Electricity out of GST scope
 - No Input credit on these items

THANKS