Intermediary Services: Resolving the Transitional Conundrum & Export and Import of Services Perspective

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The enactment of the Finance Act, 2026, effective March 30, 2026, brings a long-awaited legislative closure to one of the most litigated provisions in the GST and erstwhile service tax regime i.e. the special place of supply rule for intermediary services under Section 13(8)(b) of the IGST Act, 2017. With its deletion, the place of supply for intermediary services reverts to the default rule under Section 13(2) i.e. location of the recipient, thereby enabling Indian intermediaries to qualify for zero-rating as export of services when serving overseas recipients.

The relief is widely celebrated, and rightly so. However, as is often the case with landmark legislative changes, the amendment does not merely resolve disputes, it simultaneously seeds new ones. The critical question that emerges is: **What is the tax treatment of intermediary services actually supplied before March 30, 2026, but whose invoice or payment falls after that date?**

This question arises in two distinct contexts: the **export of services** angle (Indian intermediary serving a foreign recipient) and the **import of services** angle (foreign intermediary serving an Indian recipient). The resolution of both requires a return to first principles of indirect tax law, specifically, the foundational distinction between *levy* and *collection*.

The Levy vs. Collection Distinction: Judicial Foundation

The distinction between the stage at which a tax **levy** is attracted and the stage at which it is **collected** is one of the most well-settled principles of Indian indirect tax jurisprudence. Its application to the present transitional issue is both direct and decisive.

In ***Collector v. Vazir Sultan Tobacco Co. Ltd. [1996 (83) E.L.T. 3 (S.C.)]***, the Supreme Court held that the levy of excise duty is attracted at the stage of manufacture, while collection at the time of removal is merely a matter of administrative convenience. The underlying principle that the taxable event determines the existence and character of the levy.

In ***Association of Leasing & Financial Service Companies v. Union of India [2010 (20) S.T.R. 417 (S.C.)]***, the Supreme Court held that service tax is a tax on the **activity of rendition of service**. The tax attaches to the service at the moment it is rendered, subsequent events such as invoicing or payment are mechanics of collection, not determinants of the levy itself.

In ***Vistar Construction (P) Ltd. v. Union of India*** **[2013 (31) S.T.R. 129 (Del.)]**, the Delhi High Court held that **taxability** and **rate of tax** must be determined by the **date of actual rendition of service**, not the date of consideration receipt. This was specifically because key service tax provisions like Rule 5B, Section 67A, and Rule 4(a)(i) of Point of Taxation Rules were **not in force** during the relevant period.
Rule 5B, introduced later, changed this landscape by linking **service tax rates** to the **point of taxation** (deemed time of service provision), operationalized through Point of Taxation Rules. This explicitly tied rate determination to a deemed supply time rather than actual rendition.

No equivalent exists under GST. Section 13 (time of supply) only determines *when* to pay a pre-existing liability not *whether* it exists or its character. Thus, *Vistar Construction*'s principle taxability governed by law at actual rendition date, absent deeming provisions applies with **greater force** under GST than under contemporaneous service tax law.

Finally, in ***Principal Commissioner v. S.R. Traders [(2023) 9 Centax 408 (S.C.)]***, the Supreme Court affirmed that the Point of Taxation Rules govern the **timing of payment**, but do not **determine taxability** itself. A ruling directly transposable to the role of time of supply provisions under the GST framework.

Time of Supply: A Machinery Provision, not a Charging Provision

Section 13 of the CGST Act prescribes the point in time at which tax on services becomes payable. It answers the question of **when** to discharge a liability, not **whether** a liability exists. This is the essence of a machinery provision.

The Supreme Court's consistent position, reinforced in *S.R. Traders* (supra), is that machinery provisions presuppose the existence of a charge. They operate downstream of the levy-determination exercise. Reading time of supply provisions as a basis for determining the **nature or existence** of a levy would invert the statutory architecture. It would allow a machinery provision to create what the charging section and the taxable event test did not, an outcome that is textually, structurally, and constitutionally impermissible.

Accordingly, the correct sequence of analysis is as follows:

1. **Was there a supply?** - To be examined under Section 7 of CGST Act. If yes, proceed further.

2. **What is the nature of supply (i.e., whether inter-State or intra-State) and accordingly if there is a levy?** - This is a crucial step, as it determines whether tax is leviable under:

   - Section 9(1) of CGST Act, or
   - Section 5(1) of IGST Act.

   For this purpose, it is necessary to determine:

   - Location of supplier, and
   - Place of supply (as per Section 12 and Section 13 of IGST Act).

3. **Once the levy is established, when does the liability to pay tax arise? -** This is determined in accordance with the provisions relating to time of supply, i.e.:

   - Section 12 of CGST Act, and
   - Section 13 of CGST Act.

Time of supply is Step 3, not Step 2. It cannot be used to revisit or re-characterize what was already determined at Steps 1–2.

Angle 1: Export of Services [Indian Intermediary]

Consider an Indian entity acting as an intermediary for a foreign principal. The actual service is rendered in February 2026. The invoice is raised in April 2026.

Under the old law (applicable at the time of supply for February 2026):

1. **Was there a supply? -** Service rendered for consideration = Qualify as a Supply

2. **What is the nature of supply (i.e., whether inter-State or intra-State) and accordingly if there is a levy?**

- Location of recipient = Outside India = POS under Section 13 (not Section 12) = Cannot be an intra-state supply under Section 8(2).
- POS = Location of Supplier = India [Section 13(8)(b)]
- Nature of supply = Inter-state supply [Section 7(5)(c)]
- Inter-state supply = Levy [Section 5(1)]
- POS in India = Not an export of service = Section 16 (Zero-rated supply) not applicable.

Does the post-March 30 amendment change this?

No. The levy arose, and its character was determined in January 2026 under the law then in force. The April 2026 invoice date merely crystallizes *when* the existing liability must be paid under Section 13 of CGST Act. Time of supply cannot retroactively transform what was a fully taxable domestic supply into a zero-rated export. To hold otherwise would mean that an amendment to a substantive provision (place of supply) retroactively alters the nature of a supply already completed. A result that requires express statutory language, which is absent.

Note: Sectio 14 of the CGST Act deal with the situation where there is a change in rate of tax and hence not applicable in the present case.

Angle 2: Import of Services [Foreign Intermediary]

Now consider a foreign entity acting as an intermediary for an Indian principal. The actual service is rendered in February 2026. Payment is made in May 2026.

This scenario presents an even more compelling case against retrospective RCM liability because under the old law, **no levy was ever attracted in the first place**.

Under the old law (applicable at the time of supply of February 2026):

1. **Was there a supply? -** Service rendered for consideration = Qualify as a Supply

2. **What is the nature of supply (i.e., whether inter-State or intra-State) and accordingly if there is a levy?**

- Location of supplier = Outside India = Cannot be an intra-state supply under Section 8(2).
- POS = Location of Supplier = Outside India [Section 13(8)(b)]
- POS = Outside India = Does not qualify as import of service [Section 2(11)]
- Nature of supply = Not an import of service = Not an inter-state supply under Section 7(4); POS = Not in India = Not an inter-state supply under Section 7(5)(c) as well
- Neither intra-state supply nor inter-state supply = No levy [Section 5(1) of the IGST Act or Section 9(1) of the CGST Act]
- No RCM liability existed on the Indian recipient

Does the post-March 30 amendment trigger RCM on the May 2026 payment?

No, and the logic here is foundationally stronger than the export angle. In the export scenario, a levy did exist (albeit not zero-rated). In the import scenario, **the levy itself was non-existent** at the time of supply. The Indian recipient had no tax liability whatsoever in respect of this service on the date it was received.

Time of supply under Section 13 of the CGST Act presupposes the existence of a liability. It merely pinpoints when that liability must be paid. Where no liability arose at the time of the taxable event, the time of supply provision simply has nothing to operate upon. A post-amendment change in the place of supply rules cannot be applied retrospectively to create a liability for a period when no such liability existed, as that would amount to the imposition of a new charge without express legislative sanction.

The Complete Transitional Matrix

Scenario	Date of Actual Supply	Invoice / Payment Date	POS Rule Applicable	Tax Outcome
Indian intermediary (export angle)	Before March 30, 2026	Before March 30, 2026	Old Sec 13(8)(b) → POS = India	Taxable (NOT export)
Indian intermediary (export angle)	**Before March 30, 2026**	**After March 30, 2026**	**Still old Sec 13(8)(b)**	**Taxable (NOT export)**
Indian intermediary (export angle)	After March 30, 2026	After March 30, 2026	New Sec 13(2) → POS = Recipient's location	Zero-rated export (if all other conditions met)
Foreign intermediary (import angle)	Before March 30, 2026	Before March 30, 2026	Old Sec 13(8)(b) → POS = Outside India	No levy (no RCM)
Foreign intermediary (import angle)	**Before March 30, 2026**	**After March 30, 2026**	**Still old Sec 13(8)(b) → levy never arose**	**No RCM. (No liability to discharge)**
Foreign intermediary (import angle)	After March 30, 2026	After March 30, 2026	New Sec 13(2) → POS = India	RCM liability on Indian recipient

Conclusion

The deletion of Section 13(8)(b) of the IGST Act is a landmark reform. Yet its true value will only be realized if the transition is navigated with legal precision. The governing principle is clear: **the existence and character of a tax levy is determined at the time of the taxable event i.e. the actual rendition of service.** Time of supply is a machinery provision for payment timing, not a determinant of levy. Reverse charge is a collection mechanism, not a source of charge. And a prospective amendment cannot, without express retrospective language, reach back to alter the nature of supplies already completed.

Businesses must urgently document the actual date of service performance for all intermediary contracts straddling March 30, 2026, ensure invoices reflect the period of service clearly, and build their legal position around the time-tested principle: *levy first, machinery provisions later*.

Until a CBIC circular provides clarity, the law as it stood at the time of supply remains the governing standard and that law neither gave Indian intermediaries export status nor imposed RCM on Indian recipients of foreign intermediary services for transactions completed before March 30, 2026.