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Advisors LLP

TAXIENT INSIGHTS

Week 3 & 4 of March 2026

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1. ENACTEMENT OF THE FINANCE ACT, 2026

1.1. Deletion of Section 13(8)(b) of the IGST Act in respect of 'Intermediary Services'

The Finance Act, 2026 ('FA 2026') received Presidential assent on March 30, 2026 and is published in the Official Gazette on March 31, 2026. Pursuant to the FA 2026, Section 13(8)(b) has been deleted. Consequently, intermediary services are now governed by the general rule under Section 13(2), i.e., the place of supply shall be the location of the recipient of services.

Taxient Comments: While the amendment is a welcome relief, businesses must note that its application is strictly prospective. However, it has given birth to a critical transitional question that businesses must grapple with immediately: **What is the tax treatment of intermediary services that were 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 taxable event under GST is the supply of goods or services or both under Section 9(1) of the CGST Act and Section 5(1) of the IGST Act. At the moment of supply, the law in force at that time governs: (a) whether a levy arises, (b) what the nature of that supply is, and (c) whether it qualifies as export or import. Accordingly, the following positions apply for supplies straddling the amendment date:

- Indian intermediaries who rendered services to foreign recipients before March 30, 2026 cannot treat such supplies as export of services, even if the invoice is raised or payment is received after March 30, 2026. GST at applicable rates remains payable on such supplies under the law in force at the time the service was actually rendered.

- Indian recipients of intermediary services from foreign entities need not discharge RCM liability in respect of services actually received before March 30, 2026, even if payment is made after that date. Under the old law, the place of supply was outside India, and consequently no levy arose at the time of supply. There is no liability that the amendment can retroactively create.

2. HIGH COURT RULINGS

2.1. Clerical errors in GSTR-1 are not admitted liabilities

The Petitioner approached the High Court challenging an order recovering tax based on a mismatch between its GSTR-1 (showing 18% tax) and GSTR-3B (showing 12% tax). The Petitioner argued the 18% rate was a bona fide clerical error and that the actual tax charged was 12%. Furthermore, the Petitioner challenged the denial of ITC for FY 2018-19, which had been rejected because the return was filed in March 2021, beyond the original due date of September 2019.

The High Court set aside the order and noted that the Revenue failed to follow Rule 88C of the CGST Rules, which requires an intimation and an opportunity for the taxpayer to explain mismatches before recovery. The Court emphasized that the Revenue can only recover tax at the rate imposed by statute and if the actual tax charged was 12%, a reporting error in GSTR-1 cannot justify an 18% recovery. Regarding the ITC, the Court held that the denial was no longer sustainable due to the retrospective insertion of Section 16(5) by the Finance (No. 2) Act, 2024.

[M/s ITI Ltd v. UOI & Ors., 2026-VIL-293-GAU]

Taxient Comments: The Court's decision regarding GSTR-1 mismatches provides a vital safeguard against the mechanical application of Section 75(12). By mandating adherence to Rule 88C, the ruling ensures that 'self-assessed tax' is not misinterpreted as 'any number typed into a GSTR-1 form.' It establishes that taxpayers have a right to correct human errors, and that software limitations or reporting mistakes do not override the fundamental principle that the State can only collect the tax that is legally due under the statute. This provides significant protection for businesses that occasionally suffer from clerical slips.

2.2. Whether DTA to SEZ supplies are deemed exports?

The Revenue filed a review petition challenging the judgment of the Delhi High Court which had earlier allowed the appeal filed by the Appellant. Earlier, the Court allowed EPCG benefits on supplies made from DTA to SEZ unit. The dispute centered around denial of export benefits on the ground that the Appellant failed to furnish Bills of Export ('BOE') as proof of discharge of export obligation. The Revenue contended that such supplies qualify as 'exports' and not 'deemed exports', thereby mandating BOE, whereas the Appellant argued that supplies to SEZ units constitute 'deemed exports' under the Foreign Trade Policy, 2004-09 ('FTP'), for which invoices and Bank Realization Certificates (BRCs) are sufficient.

The High Court dismissed the review petition, reaffirming that supplies from DTA to SEZ qualify as 'deemed exports' under Para 8.1 of the FTP, as the goods do not leave the country. The Court also clarified that Para 8.2 is not exhaustive but merely illustrative. The Court also relied on **DGFT Policy Circular 4/2024** dated **June 3, 2024**, which relaxed the requirement of BOE for similar transactions, and judicial precedents such as **Larsen & Turbo Ltd v. UOI, 2017-VIL-507-**

BOM-CU, and **Phoenix Industries Ltd. v. UOI, 2024-VIL-870-BOM-CU**, to hold that export benefits cannot be denied where substantive evidence of supply and realization exists. Accordingly, it was held that invoices along with BRCs are sufficient proof of discharge of export obligation, and denial of EPCG benefits solely for non-submission of BOE is not sustainable.

[Holoflex Ltd. & Anr v. UOI., 2026-VIL-288-DEL-CU]

Taxient Comments: The reasoning adopted by the Court in treating supplies to SEZ as 'deemed exports' under Para 8.1 appears debatable. Para 8.1 defines deemed exports as transactions where goods do not leave the country and payment is received in Indian rupees or foreign exchange. If this test is applied in isolation, even ordinary domestic supplies would qualify as deemed exports, which clearly leads to an absurd outcome. The intent of the policy framework cannot be stretched to such an extent, and therefore, reliance solely on Para 8.1 without harmonizing it with the scheme of Para 8.2 raises interpretational concerns.

Further, the reliance on DGFT Policy Circular 4/2024 and decisions such as Larsen & Toubro and Phoenix Industries may not be entirely apt in the EPCG context. These relaxations and precedents are in the context of Advance Authorization, where supplies to SEZ have been expressly recognized for fulfillment of export obligation. In contrast, no such explicit inclusion exists under the EPCG scheme, and therefore, extending the same rationale may not be legally sound.

3. TRIBUNAL RULINGS

3.1. Addition of notional value of freight and insurance cost to the assessable value

The Appellant challenged a demand for IGST on imports from Bhutan, where the Revenue had added 20% of the FOB value as freight and 1.125% as insurance to the assessable value in terms of Rule 10(2) of the Customs Valuation (Determination of Price of imported Goods) Rules, 2007 ('Customs Valuation Rules'). The Appellant contended that it did not incur any freight charges transportation of the goods between the Bhutanese export point and the Indian import point at Jaigaon. Similarly, no insurance premium is paid or payable in respect of such transit. Therefore, the FOB value and the CIF value of the imported goods are one and the same, and the freight and insurance components are NIL. The Revenue maintained that under the Customs Valuation Rules, these elements must be added if not specifically ascertainable in the invoice.

The CESTAT upheld the Revenue's position on the merits. It noted that the Appellant's invoice terms stated the goods were dispatched at 'Buyer's Risk' and responsibility ceased upon leaving the factory in Bhutan. This implied that transportation costs to the border were not included in the price, justifying the standard loading under Rule 10(2). However, the Tribunal allowed the appeal on the grounds of limitation. It found that since the Appellant had transparently declared the FOB value and 'NIL' freight in its Bill of Entry, there was no suppression of facts or willful misstatement. Furthermore, as the entire exercise was revenue neutral (the Appellant would have been entitled to credit for any IGST paid), no intention to evade duty could be established.

[M/s Rimjhim Ispat Ltd v. CC, 2026-VIL-540-CESTAT-KOL-CU]

Taxient Comments: While the Tribunal has emphasized lack of documentary evidence, the more fundamental question is whether the law even permits addition of notional costs in the first place. Section 14 of the Customs Act, 1962, read with the Customs Valuation Rules, is grounded in transaction value i.e. the price actually paid or payable. It provides no basis for adding costs that were never incurred but merely assumed. This is settled by the **CESTAT Mumbai (Larger Bench) in Jet Airways (India) Ltd. v. CC, 2021 (377) ELT 83**, wherein it was held that the notional addition under the proviso applies only when an actual cost exists but cannot be ascertained, not where cost is non-existent. Therefore, the notional addition under Rule 10(2) should only be invoked where costs are genuinely 'not ascertainable'. Where no freight or insurance cost is incurred at all, the cost is not unascertainable, it should be NIL.

The Tribunal's approach in the instant case effectively shifts the burden on the taxpayer to prove a negative fact i.e., to produce documentation for a cost that never existed. This approach fails to account for the ground realities of present-day international trade. In the current global scenario, insurance premiums for cargo have reached historically high levels, driven by severe geopolitical disruptions including active conflicts around the Strait of Hormuz shipping corridor threats, and broader instability across key maritime trade routes. As a direct consequence, many importers are either consciously choosing not to insure shipments on account of commercially

prohibitive premium costs, or are simply unable to obtain insurance coverage altogether, as underwriters refuse to cover high-risk routes and cargo categories. In such circumstances, the absence of an insurance cost is not an omission or a concealment, it is a business reality. Mechanically applying notional addition on FOB value in such cases without first examining whether any cost was actually incurred, risks introducing artificial inflation of the assessable value and are wholly contrary to the principles of transaction value-based customs valuation. Such an approach warrants serious judicial reconsideration, particularly in the backdrop of evolving global trade realities.

4. ADVANCE RULINGS

4.1. Collection of 'corpus funds' by RWAs is a taxable supply

The Applicant approached the Authority for Advance Ruling ('AAR') to determine the taxability of a 'corpus fund' collected from its members for future capital expenditures like building repairs and replacements. The Applicant contended that these collections should be treated as deposits rather than consideration for a current supply and therefore should not be subject to GST at the time of collection. Additionally, they sought answer if exemption provided under Entry No. 77 of Notification No. 12/2017-Central Tax (Rate) is applicable for this or not.

The AAR held that the collection of a corpus fund constitutes a 'supply' under Section 7(1)(aa) of the CGST Act, as the association and its members are deemed distinct persons engaged in an activity for consideration. The Authority rejected the 'deposit' argument, ruling that these payments are non-refundable advances for clearly identified future services (membership organization services), making GST payable at the time of receipt under Section 13(2)(a). Most significantly, the AAR ruled that the ₹7,500 exemption is not applicable to corpus funds. It reasoned that corpus funds are distinct in nature and purpose from regular monthly maintenance charges; while the latter covers recurring operational expenses, the former is earmarked for capital improvements, and therefore the two cannot be clubbed for the purpose of claiming the exemption.

[Apartment Owners Association, 2026-VIL-63-AAR]

Taxient Comments: Notably, the **State of West Bengal v. Calcutta Club Ltd., 2019 (10) TMI 160 – Supreme Court (LB),** has clearly upheld the principle of mutuality, holding that transactions between an association and its members do not constitute a supply. Even under GST, despite the insertion of Section 7(1)(aa) to overcome this position, the Kerala High Court in its judgment in **Indian Medical Association v. UOI, 2025 (4) TMI 872**, has held Section 7(1)(aa) itself to be unconstitutional, observing that such deeming fiction cannot override constitutional principles in the absence of a constitutional amendment and without any corresponding change in the definition of 'service'. Accordingly, transactions rooted in mutuality continue to fall outside the scope of 'supply', rendering the taxation of corpus funds legally debatable at its core.

Even if Section 7(1)(aa) is assumed to be valid, a payment qualifies as 'consideration' only when it is linked to a clearly identifiable supply. In the case of corpus funds, the amount is collected for uncertain future contingencies and not against any definite supply. Hence, in the absence of a direct nexus, such collections should not qualify as consideration and fall outside GST

Moreover, even if the transaction is assumed to qualify as a supply, the denial of exemption under Entry 77 on the basis of an artificial distinction between routine and capital expenses is untenable. The entry simply provides a threshold exemption of ₹7,500 per member per month for contributions towards common use in a housing society, without drawing any distinction

between the nature of expenses. In the absence of such classification in the notification, carving out corpus funds from its scope appears legally unsustainable.

4.2. Digital platforms facilitating transportation qualify as E-Commerce Operators

The Applicant operated a digital platform connecting vehicle owners/drivers (transporters) with customers requiring transportation of goods and earned commission on each booking facilitated through its app/portal. The Applicant sought a ruling on whether it qualifies as an 'E-Commerce Operator' ('ECO') or a 'Goods Transport Agency' ('GTA'), and the consequent GST implications including liability to collect TCS.

The AAR held that the Applicant qualifies as an ECO under Section 2(45) of the CGST Act, as it owns and manages a digital platform facilitating the supply of transportation services. It was further held that the Applicant does not qualify as a GTA since it is not involved in actual transportation, does not issue consignment notes, and does not undertake ancillary transport-related activities. Accordingly, the Applicant is liable to pay GST on the commission income earned by it. It is further held that the Applicant is required to comply with Section 52 of the CGST Act, 2017, and collect TCS on the net value of all taxable supplies facilitated through its platform irrespective of whether the consideration for such supplies has been collected by the Applicant itself or paid directly by the recipient to the transporter. The contention of the Applicant seeking benefit of 'pure agent' status under Rule 33 of the CGST Rules, 2017 is also rejected.

[A V Cargo Migrators LLP, 2026-VIL-69-AAR]

Taxient Comments: From September 22, 2025 onwards, services of local delivery provided through / by an ECO have been expressly excluded from the definition of GTA, and simultaneously, such services have also been carved out from the exemption under Sl. No. 18 of the Service Exemption Notification relating to transportation of goods by road. Further, such services, when provided by unregistered persons, have been notified under Section 9(5), thereby making the ECO a deemed supplier. In this evolving legislative backdrop, classification disputes between ECO and GTA lose much of their relevance for such transactions.

Further, the AAR's finding that TCS under Section 52 is payable irrespective of whether consideration is collected by the ECO or paid directly to the transporter is legally untenable. A plain reading of Section 52 of the CGST Act, 2017 makes it abundantly clear that the TCS obligation is triggered only where the consideration for the taxable supply is collectible by the ECO. Where the consideration flows directly from the recipient to the supplier/transporter, bypassing the ECO entirely, the condition precedent for applicability of Section 52 is not satisfied, and no TCS liability can be fastened on the ECO in such cases.

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