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GST on Online Services: Interpreting Place of Supply in the Digital Economy

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ABSTRACT

India's transition to a destination-based Goods and Services Tax created a single framework meant to capture supplies consumed in India irrespective of the medium of delivery, yet the exponential growth of online and app-based services has exposed recurring difficulty in fixing the place of supply when either the supplier or the recipient, or both, operate through digital infrastructure that is not easily mapped to territory. The statutory scheme hinges on the twin provisions of "Section 12" and "Section 13" of the "Integrated Goods and Services Tax Act, 2017" (IGST Act), which separate domestic supplies from cross-border supplies, while "Section 13(12)" carves out Online Information and Database Access or Retrieval services (OIDAR) for a recipient-location rule, backed by an explanation that treats a person as located in India when two objective digital indicators point to India. This study proceeds doctrinally, reading the IGST Act in concert with CBIC circulars, 2023 amendments, and administrative practice to test whether these rules fully serve a destination goal in an economy where software-as-a-service, streaming, AdTech, online gaming, digital training, cloud storage, and platform-mediated services form an expanding share of value. The analysis notes that OIDAR is meant to be taxed in the consumer's jurisdiction, yet intermediaries arranging cross-border supplies are often pulled back to India through "Section 13(8)(b)", causing tension with the definition of "export of services" in "Section 2(6)" and with refund mechanics for zero-rated supplies. The study's scope covers B2B and B2C digital transactions, including supplies routed through app stores and payment aggregators, and its findings point toward the need for sharper statutory language on electronically supplied services, better guidance on mixed or hybrid services, and closer alignment of the intermediary rule with the economic destination of consumption. The policy significance lies in securing tax revenue without impeding Indian digital exporters or pushing non-resident suppliers to withdraw from the Indian market.¹

Keywords: GST; IGST Act; OIDAR; Section 13(12); Section 13(8)(b); intermediary; GSTR-5A; online money gaming; destination principle; OECD guidelines; EU OSS; DPDP Act 2023.

Introduction

India's GST structure was framed to replace fragmented indirect taxes with a system in which tax follows consumption, so that revenue accrues to the jurisdiction where goods or services are finally used. For goods this alignment is comparatively clear, but for services transmitted through the internet the place of supply can be masked by remote servers, roaming devices, VPNs, and multi-party contracting structures. "Section 12" of the IGST Act assigns place of supply for services when both parties are in India, while "Section 13" covers cases involving a foreign element, making recipient location the default yet overlaying it with specific rules for performance-based services, passenger transport, and OIDAR. Digital service providers, particularly non-resident platforms, frequently interact with Indian consumers without physical presence, which is why OIDAR was pulled out and made subject to a recipient-based rule intended to secure tax in India on electronically supplied content, software, or data that is essentially automated. The rapid progress of streaming, SaaS, AdTech, and app-based services in the post-2017 period has only intensified the need for a stable interpretive approach that reinforces GST's destination bias without creating double taxation.²

A further source of complexity comes from digital markets where the contracting entity and the end user are not the same. A multinational may contract globally for cloud or advertising services, yet the actual use of those services may be by employees or customers located in India. Equally, a foreign education platform may sell automated lessons to individual learners or to government departments, and receipt of the service is entirely online.³ Each of these patterns raises a question whether the Indian leg of consumption is strong enough to trigger tax in India under "Section 13", and whether the person paying should be the overseas supplier through simplified registration, or the Indian recipient through reverse charge. The expansion of OIDAR through 2023 amendments, especially the enlarged concept of "non-taxable online recipient", shows that policymakers view digital consumption in India as

¹ Marcel Weidmann, "The New EU VAT Rules on the Place of Supply of B2C E-Services: Practical Consequences", 24 *EC Tax Review* 86 (2015).

² IGST Section 12: Place of Supply of Services Where Location of Supplier and Recipient Is in India, *available at*: <https://cleartax.in/v/gst/gst-acts/igst-section-12-place-of-supply-of-services-where-location-of-supplier-and-recipient-is-in-india> (last visited on October 31, 2025).

³ Organisation for Economic Co-operation and Development, *International VAT/GST Guidelines* 184 (OECD Publishing, Paris, 1st edn., 2017).

revenue that should not escape, even when government or non-business recipients obtain the service. A steady increase in compliance measures, such as Rule 64 return requirements and compulsory registration for offshore gaming platforms, reflects this revenue-protective stance.⁴

Cross-border online supplies also create enforcement challenges when the same transaction may be characterised as OIDAR by one tax authority and as general business support by another. The Indian law accepts a bright-line rule for OIDAR, yet it preserves the “intermediary” concept in “Section 2(13)” and in “Section 13(8)(b)” for persons who arrange or facilitate a supply between two others. This head of service is placed at the supplier’s location, producing tax in India even when the foreign recipient pays in foreign currency. That approach was adopted to discourage routing of commission services through low-tax jurisdictions and to prevent leakage where the recipient is abroad. Still, for digital services this rule sometimes defeats the export character of genuine cross-border supplies and cuts against the promise of zero rating. A careful reading of the statutory framework and the circulars shows that several conflicts are created not by the main GST design but by the need to fit intermediary services and automated digital services into one consistent story.⁵

Research Questions

The research questions for the study are as follows:-⁶

1. To test the coherence of the OIDAR recipient-based rule in “Section 13(12)” with the destination principle when digital services are supplied from outside India to persons in India?
2. To examine whether the present reading of “intermediary” in “Section 2(13)” and “Section 13(8)(b)” preserves exports of digital support services or draws them back into the Indian tax net?

Problem Statement

Digital commerce compresses distance and relies on automated delivery, which makes it difficult to apply traditional place of supply tests that assume either physical performance or an identifiable recipient address. The Indian GST law responds through a special OIDAR rule and through an intermediary deeming rule, yet overlap between the two persists, especially when a platform offers both automated digital content and facilitation of third-party supplies. Ambiguity over classification can lead to competing claims between suppliers and recipients on who should discharge IGST, and it can also jeopardise export benefits because “Section 2(6)” requires the place of supply to be outside India. This study isolates those ambiguities and traces them to the statutory text rather than to taxpayer conduct.⁷

Objectives of the Study

The objectives of the study are as follows:-⁸

1. To map doctrinal patterns in statutory provisions, circulars, and rulings dealing with the place of supply of online services, especially under “Section 13(12)” and “Section 13(8)(b)”.
2. To propose calibrated clarifications, including possible amendments or fresh circular illustrations, that preserve revenue while supporting exports of digital services.

Research Methodology

The research employs a doctrinal method, reading the IGST Act, 2017 alongside linked amendments carried by the “Finance Act, 2023”, CBIC Circular No. 159/15/2021-GST on the scope of intermediary, the administrative guidance on OIDAR returns, and selected Advance Ruling and Appellate Authority for Advance Ruling orders that interpret online supplies. Comparative references are drawn from public material on the EU’s VAT rules for electronically supplied services and the OECD’s International VAT/GST Guidelines because both systems adopt a recipient-location test for digital services. Sectoral sampling covers OTT streaming, business SaaS, programmatic advertising, app store commissions, e-learning, and online gaming, since each presents recurring classification concerns.⁹

Statutory Framework

⁴ Naina Bhardwaj, “India’s OIDAR Taxation Shift: Key Changes Effective October 1, 2023”, *available at*: <https://www.india-briefing.com/news/indias-oidar-taxation-shift-key-changes-effective-october-1-2023-29757.html/> (last visited on October 30, 2025).

⁵ Circular No. 159/15/2021-GST: Clarification on Doubts Related to Scope of Intermediary, *available at*: https://icmai.in/upload/Taxation/Top_Stories/ITN/CIR_159.pdf (last visited on October 29, 2025).

⁶ A. P. Kumar, “For a Mess of Potage: The GST’s Promise of Increased Revenue and the Cost to Federalism”, 28 *National Law School of India Review* 145 (2016).

⁷ V. S. Datey, *GST Ready Reckoner* 120 (Taxmann, New Delhi, 1st edn., 2025).

⁸ Rahul Rajoria, “A Comprehensive Analysis of Goods and Service Tax (GST) in India”, 12 *Journal of Research in Business and Management* 111 (2024).

⁹ Institute of Chartered Accountants of India, *Suggestions on GST 138* (ICAI, New Delhi, 1st edn., 2018).

The statutory framework of India's GST for online services rests on the premise that each service must first be classified within the IGST Act's place of supply provisions, and only then can liability, registration, and refund outcomes be tested. "Section 12" deals with supplies where the supplier and the recipient are both in India and sets out a simple rule for supplies to registered persons, by which the place of supply is the recipient's location on record, while supplies to unregistered persons follow the address on record failing which the supplier's location is taken. "Section 13" comes into play when either party is outside India, and its default rule in sub-section (2) again stresses the recipient's location, confirming a destination orientation. The distinct treatment of OIDAR in "Section 13(12)" shows that the legislature recognised automated online content as particularly vulnerable to tax leakage, which explains the deeming explanation based on two non-contradictory pieces of evidence such as billing address, IP address, credit card details, or SIM country code. The 2023 set of amendments expanded the group of persons who count as "non-taxable online recipients" and introduced "Section 14A" for offshore online money gaming, revealing a broader regulatory interest in digital services that are consumed in India even when supplied by foreign entities. These connected provisions supply the legal grammar through which online supplies must be narrated.¹⁰

Service type	Recipient type	POS	Who pays	Registration route
Streaming or OTT subscription from foreign platform	Individual in India, unregistered	Location of recipient in India	Foreign supplier	Simplified OIDAR registration under "Section 14" read with Rule 64
Business productivity SaaS from non-resident	Registered person in India	Location of recipient in India	Indian recipient under reverse charge	Recipient's existing GST registration
Online advertising from foreign platform	Indian company	Location of recipient in India	Indian recipient under reverse charge	Recipient's existing GST registration
Automated e-learning course from overseas provider (post 1 Oct 2023)	Government department or unregistered person in India	Location of recipient in India	Foreign supplier	Simplified OIDAR registration
Online money gaming hosted offshore	Player in India	Location of recipient in India	Offshore supplier or Indian representative	Registration mandated by "Section 14A"

Table 1: Examples of online services and GST liability path under OIDAR

Section 12 IGST Act

"Section 12 of the IGST Act, 2017" operates as the principal rulebook for services supplied within India and it adopts a recipient-centric approach. Supplies to registered persons are located at the recipient's registered place of business because such persons are traceable and can claim input tax credit. Supplies to unregistered persons are in the State where service is actually consumed, which for online services often coincides with the address on the supplier's records. The section then sets out a series of exceptions for services directly linked to immovable property, admission to events, transportation of passengers or goods, banking, insurance, and advertising to government. For online services of a general nature, where no special rule intervenes, the default clause in "Section 12(2)" will place the supply at the customer's location, which keeps domestic online services within the consuming State. This structure shows that for purely domestic e-learning, domestic streaming from Indian platforms, or domestic digital consulting, there is little ambiguity provided both parties are in India.¹¹

Section 13 IGST Act

"Section 13 of the IGST Act, 2017" is the critical tool for cross-border online services because it applies whenever either the supplier or the recipient is located outside India. The general rule in "Section 13(2)" fixes the place of supply at the recipient's location, but a sweep of specific rules from "Section 13(3)" to "Section 13(13)" modifies this when services relate to goods physically made available, immovable property, events, transportation, on-board services, or OIDAR. Digital services not qualifying as OIDAR still follow "Section 13(2)", which means that if the recipient is outside India and all other conditions in "Section 2(6)" are met, the supply counts as export. The difficulty arises when the supplier in India is performing marketing, support, or platform services for a foreign client but is held to be an intermediary under "Section 13(8)(b)", in which case the place of supply reverts to India and the exporter loses zero-rated status. For automated online services there is seldom a need to rely on sub-section (8) because sub-section (12) gives a direct rule, yet in hybrid supplies one needs to read both provisions together.¹²

Section 13(12) OIDAR Rule

¹⁰ Niki Shah, "GST and Its Effect on the Federal Nature of the Indian Constitution", 3 *Journal of Legal Studies and Research* 102 (2017).

¹¹ Institute of Chartered Accountants of India, *Place of Supply of Goods or Services or Both (BGM Chapter V)* 164 (ICAI, New Delhi, 1st edn., 2018).

¹² Bhogavalli Mallikarjuna Gupta, "OIDAR Services in GST", 65 *Tax Bulletin (The Institute of Cost Accountants of India)* 3 (2020).

“Section 13(12)” declares that the place of supply of OIDAR services is the location of the recipient of services, regardless of where the supplier is established. The explanation to this sub-section lays down a test under which the recipient is treated as located in the taxable territory if any two of several independent indicators point to India, such as the billing address, the IP address of the device, the credit or debit card issued in India, the bank account in India, the SIM country code, or the fixed landline in India. This multi-factor test recognises that in the digital economy a single datum like IP address may be unreliable, yet two converging indicators provide a fair degree of certainty for tax purposes. The rule is aimed squarely at B2C digital consumption, where the recipient has no GST registration and reverse charge cannot be enforced. It also confirms the policy choice that automated online services, delivered without substantial human intervention, should always be taxed where consumed.¹³

Section 2 Key Definitions

The interpretive task is aided by several definitions in “Section 2” of the IGST Act. “Section 2(13)” defines “intermediary” as a broker, agent, or any other person who arranges or facilitates the supply of goods or services between two or more persons but does not supply such goods or services on his own account. “Section 2(14)” defines “location of the recipient of services” in a cascading manner, covering registered and unregistered persons and permanent establishments. “Section 2(6)” defines “export of services” through five conditions, one of which is that the place of supply must be outside India. Digital service providers often satisfy the first, second, fourth, and fifth conditions of “Section 2(6)” yet fall short on the third when “Section 13(8)(b)” treats them as intermediaries. This demonstrates that the very definition of export is subservient to the place of supply rules, and a change in classification can convert what is economically an export into an intra-State supply liable to CGST and SGST.¹⁴

OIDAR and Finance Act 2023 Changes

The “Finance Act, 2023” made important changes that took effect from 1 October 2023, mainly to broaden the reach of OIDAR taxation. The definition of “non-taxable online recipient” in “Section 2(16)” was reworked so that any unregistered person located in India, even when using the service for non-business, government, educational, or personal purposes, would be treated as a recipient for whom the foreign supplier must pay tax in India. Prior to this change, some OIDAR supplies to government or to persons using services for purposes other than commerce were outside GST, which created scope for avoidance and for competitive distortion between resident and non-resident suppliers. At the same time, a new “Section 14A” was inserted to deal with online money gaming supplied by non-residents, making such suppliers liable to IGST through a single registration, or requiring their Indian representative to pay if the supplier fails to register. These amendments show a deliberate movement from a narrow concept of automated, low-human-intervention services to a wider sweep that covers essentially all online services consumed in India, including those with some human participation like live courses or tech support.¹⁵

CBIC Circulars

CBIC Circular No. 159/15/2021-GST dated 20 September 2021 is the central administrative document on intermediary services and it is particularly relevant for digital businesses. The circular clarifies that an intermediary relationship requires at least three parties, two distinct supplies, and a character of arranging or facilitating the main supply without changing its nature. It also clarifies that a person who supplies services on a principal-to-principal basis cannot be treated as an intermediary. This guidance is important for online platforms providing back-end support, marketing, or customer acquisition for foreign clients because, if their activities amount to principal supply of marketing or BPO services, “Section 13(8)(b)” will not apply and the place of supply can move outside India under “Section 13(2)”. The circular gives illustrations that can be extrapolated to app stores, online travel portals, and AdTech networks, and these illustrations are regularly cited in rulings and departmental clarifications.¹⁶

Oidar in Practice

In practical terms, OIDAR covers services whose delivery is completely dependent on information technology, is essentially automated, and cannot be provided without the internet. Typical examples are downloads or streaming of movies, music, or games, cloud-based office software, SaaS platforms offering CRM or accounting functions, automated digital advertising, web-hosting, online data storage, and online gaming in which the game server is located abroad. Each of these supplies, when received in India by an unregistered person, triggers IGST in India under the recipient-location rule of “Section 13(12)”, and the foreign supplier must either register under the simplified scheme or pay through a representative in India. When the Indian recipient is registered, reverse charge is the norm. The expansion of the OIDAR concept in 2023 also brings within this framework certain services that earlier fell outside because human intervention was present, such as live interactive sessions supported by automated content delivery. The key is to map each online service to the correct statutory pathway so that tax, credit, and reporting follow the same logic.¹⁷

B2C OIDAR from Non-Resident Suppliers

Where a non-resident supplies OIDAR services directly to individuals, unregistered entities, or government bodies in India, the place of supply is always in India under “Section 13(12)”. The supplier must obtain a single registration under “Section 14” of the IGST Act and pay IGST, filing returns under

¹³ European Commission, *Explanatory Notes on Place of Supply Rules for Telecommunications, Broadcasting and Electronic Services* 96 (Publications Office of the European Union, Brussels, 1st edn., 2014).

¹⁴ E. J. Naujoks, “Presumptions on the Place of Supply for Digital B2C Services in the EU”, 2020 *Lund University Student Papers* 7 (2020).

¹⁵ OECD, *Mechanisms for the Effective Collection of VAT/GST Where the Supplier Is Not Located in the Jurisdiction of Taxation* 74 (OECD Publishing, Paris, 1st edn., 2017).

¹⁶ European Commission, “The Basic EU VAT Rules for Electronically Supplied Services for Micro-Businesses”, 2015 *EC Tax Information Note* 5 (2015).

¹⁷ Online Information Database Access and Retrieval Services, available at: <https://www.mygstrefund.com/blog/online-Information-database-access-and-retrieval-services/> (last visited on October 27, 2025).

Rule 64 through the online portal. After 1 October 2023, the widening of “non-taxable online recipient” removed earlier relief for certain recipients, so streaming platforms, e-learning providers, and foreign SaaS operators that serve Indian individuals cannot ignore GST. In effect, India has moved toward the global norm where B2C electronically supplied services are taxed at the consumer’s residence, and where the overseas supplier carries the primary compliance burden. This promotes fairness between domestic and foreign digital suppliers competing for the same Indian audience.¹⁸

B2B OIDAR to Registered Indian Recipients

Where the recipient of an OIDAR service is a person registered under GST in India, the law pivots to a reverse charge model. The non-resident supplier need not register, because the Indian recipient is traceable, credit-seeking, and already in the tax net. “Section 5(3) of the IGST Act” read with the reverse charge notifications and “Section 13(2)” means that the Indian recipient treats the import of service as liable to IGST and can usually claim input tax credit, subject to restrictions such as for personal consumption or blocked credits. This model is common for Indian companies buying online advertising, cloud infrastructure, or enterprise software from global platforms, and for Indian media agencies purchasing foreign ad inventory. The place of supply remains India because the recipient is located in India, which keeps the transaction within the GST chain.¹⁹

Evidence of Recipient Location

To operationalise the recipient-based rule, tax authorities rely on the two non-contradictory evidence test in the explanation to “Section 13(12)”. Providers must collect and retain at least two of the listed identifiers, such as billing address in India, credit card issued in India, bank account in India, IP address in India, or SIM country code of India. When two such indicators converge, the recipient is deemed to be in India even if the person accesses the service while travelling abroad or using a foreign IP through masking software. This evidentiary rule is pragmatic because it does not ask platforms to prove actual consumption location, which could be prohibitively complex, yet it gives recipients little scope to deny tax on the plea of temporary presence outside India. The rule also fits well with automated onboarding processes used by digital platforms.²⁰

Post 1 Oct 2023 Compliance Updates

The amendments notified with effect from 1 October 2023 brought several compliance updates. First, foreign OIDAR providers can no longer exclude supplies to government, local authorities, or unregistered persons on the ground that the services are for non-business use, because the definition in “Section 2(16)” now covers any person located in the taxable territory who receives OIDAR services for purposes other than commerce, industry, or profession. Second, the return mechanism in Rule 64 has been expanded to recognise the newer categories of recipients and to require reporting of online money gaming under “Section 14A”. Third, Indian intermediaries or representatives of foreign suppliers must be prepared to register and pay where the offshore supplier fails to comply. These changes signal a shift from selective to comprehensive coverage of cross-border digital supplies into India, thereby easing administration.²¹

The Intermediary Question

The most persistent doctrinal tension in the GST law on online services arises from the interaction of the intermediary rule in “Section 13(8)(b)” with the export definition in “Section 2(6)” and with the destination philosophy of GST. When a supplier in India arranges or facilitates the supply of goods or services between two other parties, and when that main supply is between a foreign seller and an Indian buyer or between two foreign parties, “Section 13(8)(b)” fixes the place of supply at the supplier’s location in India. This means that even if the foreign recipient pays in convertible foreign exchange, and even if the main supply is entirely consumed outside India, the Indian intermediary cannot claim the supply as export, since the place of supply condition in “Section 2(6)(c)” fails. For traditional commission agents this outcome makes sense, but for digital businesses that provide a continuum of services ranging from marketing, lead generation, platform hosting, customer support, and even content moderation, the line between principal supply and intermediary supply is thin. The result is repeated litigation and departmental scrutiny, as seen in the divergent High Court views on the constitutionality of “Section 13(8)(b)”.²²

What Is an Intermediary

The statutory text and CBIC Circular No. 159/15/2021-GST make it clear that an intermediary must connect at least two other persons, that there must be two identifiable supplies, and that the intermediary’s role must be supportive or ancillary to the main supply. If the person supplies services on his own account, such as full-scope digital marketing, content creation, or platform access, he cannot be called an intermediary. The circular stresses that activities between only two parties are outside the concept, that sub-contracting of services is not intermediary, and that an intermediary cannot change the nature, value, or legal responsibility of the main supply. In digital arrangements the tri-partite structure often appears where an Indian company helps a foreign platform locate Indian users or advertisers, or where it negotiates and collects payment on behalf of a foreign supplier. In such cases the law presumes that the service is consumed in India because the arranger is in India, even though the economic benefit may accrue to the foreign client.²³

¹⁸ David Bunn, “Digital Taxation Around the World”, 2020 *Tax Foundation Policy Brief* 14 (2020).

¹⁹ Institute of Chartered Accountants of India, *Section B: Goods and Services Tax (Intermediate Study Material)* 206 (ICAI, New Delhi, 1st edn., 2025).

²⁰ Place of Supply for OIDAR, available at: <https://cleartax.in/s/place-of-supply-for-oidar> (last visited on October 26, 2025).

²¹ Bimal Jain, “Effective GST Changes w.e.f. October 01, 2023”, available at: <https://www.taxmi.com/article/detailed?id=11923> (last visited on October 25, 2025).

²² Dinesh Agrawal, Pratyushprava Saha, “Third Judge of Bombay High Court Pronounces Verdict on Powers of State to Levy GST on Intermediary Services to Foreign Customers”, available at: <https://www.khaitanco.com/thought-leaderships/Third-judge-of-Bombay-High-Court-pronounces-verdict-on-powers-of-State-to-levy-GST-on-Intermediary-Services-to-foreign-customers> (last visited on October 24, 2025).

²³ Sumit Dutt Majumder, “GST and E-Commerce”, 28 *National Law School of India Review* 173 (2016).

Intermediary vs Principal Supplier in Digital Context

Distinguishing an intermediary from a principal supplier in the digital context requires attention to the substance of the agreement and to the value-creation pattern. Where an Indian service provider designs campaigns, manages data, creates content, or operates a software platform on a principal-to-principal basis, even if the output benefits a foreign client's customers in India, the service should fall under "Section 13(2)" and the place of supply should be where the foreign client is located. Only where the Indian provider merely introduces customers, routes orders, or performs matching between buyers and sellers without owning the process does "Section 13(8)(b)" become relevant. CBIC's illustrations show that call centres, back-office processors, and cloud service operators are not intermediaries because they supply directly to their foreign principals. This distinction is vital for SaaS resellers, app store operators, and AdTech publishers, who often collect payments from Indian users but contract as principals with the foreign platform; misclassification can turn what should be a zero-rated export into an ineligible intra-State supply.²⁴

Constitutional and Structural Debate

The constitutional debate has focused on whether Parliament can, through "Section 13(8)(b)" read with "Section 8(2)", deem a supply to occur in India and subject it to CGST and SGST even though the recipient is outside India and the payment is in foreign exchange. A division of the Bombay High Court had delivered conflicting views, following which a third judge upheld the provision on the reasoning that it is only a rule for determining place of supply within the IGST framework and does not seek to tax a transaction taking place entirely outside India, but the judgment also recognised that dual levy through CGST and SGST should not arise when the main transaction is cross-border, a position echoed in professional commentary. The Gujarat High Court earlier upheld the validity of the provision, taking the view that Parliament may design place of supply rules that favour tax collection from domestic intermediaries. For digital services this debate reveals a structural tension: the State wishes to protect revenue from Indian-based facilitators, while businesses expect destination-based treatment when the foreign principal consumes the service abroad. A measured legislative adjustment that narrows "Section 13(8)(b)" to classic brokerage and agency, or that expressly excludes platform and marketing services supplied on a principal basis, would bring this part of GST closer to the treatment of OIDAR and restore symmetry between export rules and consumption-based taxation.²⁵

Landmark Cases and Recent Rulings

The judicial conversation on GST treatment of cross border online and back office services has travelled through a sequence of decisions that tested the reach of "Section 13(8)(b) of the Integrated Goods and Services Tax Act, 2017", the meaning of "intermediary" in "Section 2(13) of the IGST Act, 2017", and the link between export status in "Section 2(6) of the IGST Act, 2017" and zero rating in "Section 16 of the IGST Act, 2017". Courts and advance ruling authorities have been required to decide whether an Indian service provider that deals with an overseas affiliate, platform owner, university pool, or foreign customer base is supplying on its own account or only arranging and facilitating. The sequence begins with "*Material Recycling Association of India v. Union of India*"²⁶, which treated the impugned provision as constitutionally valid, continues with "*Dharmendra M Jani v. Union of India*"²⁷ which preserved validity while reading down domestic levy consequences, and steadily moves toward transaction-oriented tests in "*Genpact India Pvt Ltd v. Union of India*"²⁸, and administrative characterisation in "*Vservglobal Pvt Ltd*"²⁹. The later high court rulings in "*Infodesk India Pvt Ltd v. Union of India*"³⁰, and "*IDP Education India Pvt Ltd v. Union of India*"³¹, mark a shift toward export friendly analysis where the service provider performs substantive work for an overseas recipient without triangulation of consideration or contractual obligations inside India. This cluster of rulings sits against the text of "Circular No. 159/15/2021-GST dated 20.09.2021" which confirms that subcontracted supplies on principal-to-principal basis do not make the supplier an intermediary, and which is now treated as a key interpretive aid by courts while applying "Section 13(8)(b)".³²

Material Recycling Association of India v. Union of India

In the case of "*Material Recycling Association of India v. Union of India*"³³, the petitioner association representing scrap recycling exporters challenged the validity of "Section 13(8)(b) of the IGST Act, 2017" read with "Section 8(2) of the IGST Act, 2017" on the ground that members located in India were providing intermediary services to foreign buyers and, since the recipient was outside India and consideration was in convertible foreign exchange, such services should qualify as export under "Section 2(6) of the IGST Act, 2017". The argument invoked "Article 286" and "Article 245" of the Constitution to say that Parliament could not fasten tax on a service that, in substance, occurred outside India. The association pleaded that routing commission through India could not alter the situs of consumption, that the law produced double taxation where the importing country also imposed VAT, and that the deeming fiction in "Section 13(8)(b)" lacked nexus with the territorial principle. The Gujarat High Court framed the issue around legislative competence and the nature of a destination-based goods and services tax, observed that Parliament under "Article 246A" retained full power to design supplies for GST in intra State-Inter State contexts, and treated the place of supply rules in "Sections 10 to 14 of the IGST Act, 2017" as integral parts of the charging mechanism. The court read the expression intermediary alongside the definition in "Section 2(13) of the IGST Act, 2017" and found

²⁴ CBIC Clarifications on Scope of "Intermediary" Services Under GST, available at: <https://www.indiafilings.com/learn/cbic-clarifications-on-scope-of-intermediary-services-under-gst/> (last visited on October 23, 2025).

²⁵ Shankar Poddar, "GST Reforms and Intergovernmental Considerations in India", 2009 *Department of Economic Affairs Working Paper* 21 (2009).

²⁶ 2020 40 G.S.T.L. 289 (Guj).

²⁷ Writ Petition No. 2031 of 2018.

²⁸ CWP 6048 2021, 11 November 2022.

²⁹ AAAR Maharashtra, MAH/AAAR/SS-RJ/22/2018-19.

³⁰ 2025 26 Centax 241 (Guj).

³¹ Bombay High Court, 2025.

³² *Material Recycling Association of India v. Union of India* on 24 July, 2020, available at: <https://indiankanoon.org/doc/67207050/> (last visited on November 1, 2025).

³³ *Supra* note 26.

control over downstream services. On that footing, the High Court ruled that the petitioner was not an intermediary and that the place of supply had to be determined under “Section 13(2) of the IGST Act, 2017”, leading to an offshore location and export status. Refund was consequently ordered.⁴⁰

The judgment became significant because it explicitly referred to “Circular No. 159/15/2021-GST” and treated the circular as binding guidance that sub-contracting and back-to-back contracts for supply to the foreign parent do not convert the supplier into an intermediary. The court said that intermediary requires three distinct parties and a triangular flow of consideration, which was missing in this case. It also recorded that denying refund in such fact settings would erode the policy objective of exporting services without tax, a key feature of the GST structure. Several online service providers and SaaS support centres located in India have since relied on this ruling to argue that where they develop, maintain, or respond to user queries on behalf of an overseas platform but receive payment only from that platform, they cannot be said to be arranging or facilitating supplies to Indian users, and their services should continue to be treated as exports governed by “Section 13(2)”. The ruling therefore marks a clear doctrinal distinction between Material Recycling, where the taxpayer accepted the role of an intermediary, and contemporary IT-BPO models that are closed within two party principals to principal arrangements.⁴¹

Vservglobal Pvt Ltd, AAAR Maharashtra

In the case of “*Vservglobal Pvt Ltd*”⁴², the applicant provided a mixed bag of services to foreign clients that included back-office administration, accounting, purchase order coordination, and interaction with customers for execution of import export contracts. The Advance Ruling Authority in Maharashtra found that although several tasks were routine in nature, the dominant character of the supply was to connect the foreign client with its customers and other counterparties in India and abroad. When the matter went to the Appellate Authority for Advance Ruling, the AAAR upheld the initial view and characterised the arrangement as a composite supply in which the principal supply was intermediary service. The AAAR relied on the inclusive text of “Section 2(13) of the IGST Act, 2017” and pointed out that the applicant was not merely processing data or performing tasks allocated by the foreign principal but was actively coordinating with buyers, sellers, freight forwarders, inspection agencies, and customs brokers to ensure that the foreign principal’s transaction was completed. This amounted to arranging and facilitating supplies between two or more persons, and therefore the specific place of supply rule in “Section 13(8)(b)” applied, making India the place of supply. Export benefit was denied.⁴³

This ruling signalled to the market that where an Indian online or back-office unit is entrusted with customer interface functions, even if part of a larger BPO mandate, adjudicating bodies may segregate those functions and treat them as intermediary supplies, thereby disqualifying zero rating. For digital economy participants, the Vservglobal reasoning warns that chat support, complaint resolution, order booking, or marketplace onboarding services that bring together the overseas platform and the Indian end user will be vulnerable to intermediary classification. The decision has been cited by departments while issuing notices to online education platforms which counsel Indian students on behalf of foreign universities, by AdTech support centres that onboard Indian advertisers on to global advertising platforms, and by gaming platforms that process Indian player queries on behalf of offshore operators. It stands as the clearest administrative affirmation of the legislative intent sitting in “Section 13(8)(b)”, though later High Court decisions have mellowed its impact by insisting on strict three-party tests and on examination of who is contractually liable for the main supply.⁴⁴

Infodesk India Pvt Ltd v. Union of India

In the case of “*Infodesk India Pvt Ltd v. Union of India*”⁴⁵, the Gujarat High Court dealt with a wholly owned Indian subsidiary which was providing research, analytics, and knowledge support services to its foreign parent under a bi partite contract. The department had denied refund of unutilised input tax credit on the ground that the Indian subsidiary was acting as an intermediary between the parent and the parent’s customers. The court examined the service contract in detail and noted that the Indian subsidiary was independently delivering reports, dashboards, and data analysis to the foreign parent, raising invoices only on the parent, and receiving payment in foreign currency. There was no privity with the parent’s customers, and the parent remained entirely responsible for onward supply. Relying on the logic in the Bombay and Punjab and Haryana cases, the court held that mere status as a subsidiary and the fact that the ultimate service was used by customers abroad would not make the Indian unit an intermediary. It was a direct exporter of services and the place of supply had to be determined under “Section 13(2) of the IGST Act, 2017”, which yielded an offshore location and therefore zero rating. The court directed the department to process the refund under “Section 54 of the CGST Act, 2017” and release the amount with interest.⁴⁶

The judgment is particularly important for digital and SaaS enterprises running captive centres in India that produce code, content, or customer analytics exclusively for the parent or group entities. The Gujarat High Court signalled that the ratio of “*Material Recycling Association of India v. Union of India*”⁴⁷, cannot be stretched to every case where an Indian entity’s work is eventually consumed by third parties. The court also cited the central clarifications on

⁴⁰ Genpact: Not an Intermediary, Thus, Eligible for Refund, *available at*: <https://taxguru.in/goods-and-service-tax/genpact-intermediary-eligible-refund.html> (last visited on October 28, 2025).

⁴¹ CBIC Issues Clarifications to Remove Ambiguity on Scope of Intermediary Services, Establishment of Distinct Persons and Certain Other Issues on GST Law, *available at*: https://www.pwc.in/assets/pdfs/news-alert/tax-insights/2021/pwc_tax_insights_22_september_2021_cbic_issues_clarifications_to_remove_ambiguity_on_scope_of_intermediary.pdf (last visited on October 27, 2025).

⁴² *Supra* note 29.

⁴³ Vservglobal Pvt. Ltd., *available at*: <https://gstcouncil.gov.in/vservglobal-pvt-ltd> (last visited on October 26, 2025).

⁴⁴ GT Tax Alert: Maharashtra AAAR on Supply of Back Office Services to Overseas Client as Intermediary Services, *available at*: <https://gtw3.granthornton.in/assets/T/GTTaxAlert-Mah-AAAR-supply-backoffice-services-overseas-client-intermediary-services.pdf> (last visited on October 25, 2025).

⁴⁵ *Supra* note 30.

⁴⁶ Vivek Boray, “Indian Subsidiaries Gain Clarity on ITC Refunds With Gujarat HC Judgment”, *available at*: <https://ksandk.com/tax/indian-subsidiaries-clarity-its-refunds-gujarat-hc/> (last visited on October 24, 2025).

⁴⁷ *Supra* note 26.

intermediary issued in September 2021 to underline that subcontracting and back-to-back arrangements are outside the scope of intermediary, and that what matters is the existence of a third party to whom the Indian entity causes supply. By directing refund, the court reaffirmed that denial of export benefits on a mechanical reading of “Section 13(8)(b)” would breach GST’s neutrality for exports. The decision has since been referenced in departmental training material dealing with refund adjudication for captive service centres.⁴⁸

IDP Education India Pvt Ltd v. Union of India

In the case of “*IDP Education India Pvt Ltd v. Union of India*”⁴⁹, the petitioner was an Indian arm of an Australian education services company. It promoted international education programmes in India, counselled students, processed applications, and provided after admission handholding. The tax authorities denied IGST refund on export of services for March 2019 to March 2021 on the premise that the Indian entity was facilitating supply of education services by foreign universities to Indian students and therefore was an intermediary caught by “Section 13(8)(b) of the IGST Act, 2017”. The Bombay High Court inspected the bi partite agreement between the Indian company and its Australian parent and noted that the Indian company rendered services only to the parent for a fixed consideration and that it did not receive any fee or commission from universities or students. The students did not contract with the Indian company for educational services, and the foreign universities did not authorise the Indian company to conclude contracts. On that foundation the court declared that the petitioner did not arrange or facilitate a supply between two other persons and that the 2021 CBIC circular squarely supported this view. The refund denial was set aside and the matter was remanded to the department for verification of documents and sanction of refund with interest.⁵⁰

The ruling carries a strong doctrinal message for online education, edtech counselling, and test preparation entities that operate in India on behalf of foreign universities or course aggregators. It clarifies that where the Indian service provider’s sole counterparty is the foreign principal and where the provider does not create any contractual privity or collect any fee from Indian students, intermediary status cannot be alleged. This aligns with the export permissive thread seen in Infodesk and the BPO jurisprudence. It also compels tax officers to read “Section 13(8)(b)” in harmony with “Section 2(6)” so that supplies which satisfy all five export conditions are not pushed into domestic tax merely because they fall in the education domain. Since online education businesses often collect and process personal data of students, the court’s direction indirectly supports the need for such entities to maintain records and consent flows as required under “Sections 4 to 7 of the Digital Personal Data Protection Act, 2023 (Act 22 of 2023)”, especially when they rely on location data to prove export status.⁵¹

Model	Typical classification	Key POS rule	Compliance actor
Streaming and on demand media	OIDAR service	“Section 14 of the IGST Act, 2017” - recipient location test	Overseas platform or Indian representative
App stores and marketplaces for digital goods	Intermediary or OIDAR depending on contract	“Section 13(8)(b)” for intermediary, “Section 14” for OIDAR	App store operator, sometimes merchant of record
SaaS and cloud delivered from outside India	Online service - often not intermediary	“Section 13(2)” or “Section 14” based on automation level	Non-resident supplier filing “GSTR 5A”
AdTech and marketing support centres	High intermediary exposure	“Section 13(8)(b)” read with CBIC Circular 159/2021	Indian service centre
Online education counselling for foreign universities	Export of services on principal-to-principal basis	“Section 13(2)” place of recipient outside India	Indian affiliate of foreign university

Table 2: Digital business models and place of supply outcomes⁵²

Sector Focus in the Digital Economy

The place of supply issue becomes concrete once specific digital business models are mapped against the statutory rules. Digital commerce in India uses platform centric and app centric structures where the supplier, the intermediary, the payment collector, and the recipient are frequently located in different tax jurisdictions. For GST purposes this creates tension between the general rule in “Section 13(2) of the IGST Act, 2017” which favours the location of the recipient, the special rule in “Section 13(8)(b)” which pulls intermediary services back into India, and the special regime for OIDAR in “Section 14 of the IGST Act, 2017” which focuses on the location of the non-taxable online recipient. The sectoral review below shows that many disputes that reached the courts in 2020-2025 could have been avoided if contractual documentation had clearly identified who supplies to whom, who bears pricing

⁴⁸ Circular No. 159/15/2021-GST: Clarification on Doubts Related to Scope of Intermediary, available at: <https://cbic-gst.gov.in/pdf/Circular-No-159-14-2021-GST.pdf> (last visited on October 23, 2025).

⁴⁹ *Supra* note 31.

⁵⁰ IGST Refund for Intermediary: High Court Allows Export Service Refund, available at: <https://www.taxmann.com/post/blog/igst-refund-intermediary-hc-allows-export-service-refund> (last visited on November 1, 2025).

⁵¹ Draft Rules Under the Digital Personal Data Protection Act, 2023 (June 2024), available at: <https://www.meity.gov.in/static/uploads/2024/06/2bf1f0e9f04e6fb4f8fef35e82c42aa5.pdf> (last visited on October 31, 2025).

⁵² KPMG, “Taxation of the Digitalized Economy—Global Indirect Tax Developments”, 2025 *KPMG Insights* 92 (2025).

and warranty risks, and who collects identity and location data in line with the DPDP framework. Relationships between Indian subsidiaries and foreign principals should therefore be drafted to show that work is on own account, as recognised in the Gujarat and Bombay decisions summarised above.⁵³

Streaming, App Stores, E Books and Media

Streaming platforms, e book vendors, gaming marketplaces, and app stores usually provide services in an automated manner with minimal human intervention, which brings them within the definition of OIDAR in the GST law. Once an Indian consumer or device is identified, "Section 14 of the IGST Act, 2017" read with the OIDAR rules makes the place of supply the location of that consumer and fixes liability on the non-resident supplier or, if absent, on an appointed representative. For business recipients, reverse charge under "Section 5(3) of the IGST Act, 2017" applies. The practical hurdle lies in identifying the recipient location from IP address, billing address, SIM card country, or payment instrument, and retaining this data without breaching "Section 9" and "Section 15" requirements under the DPDP Act, 2023. Platform operators that also engage in curation, brand marketing, or customer query resolution for third party sellers may walk into intermediary territory, especially when they collect a commission and appear to arrange the sale between the overseas publisher or developer and the Indian buyer, which courts have treated as sufficient to trigger "Section 13(8)(b)".

SAAS and Cloud

Software as a Service, platform as a service, and cloud infrastructure supplied from overseas to Indian business users often operate on log in credentials, subscription billing, and online upgrades. When the supply is fully automated and requires minimal human interference, it fits OIDAR and is taxed in India based on user location. Non-resident suppliers must obtain simplified registration and file "GSTR 5A" each month, as required by the GST portal instructions and CBIC guidance. Where the SaaS product is customised and human support is significant, the supply moves out of OIDAR and "Section 13(2)" becomes relevant, placing the service at the location of the recipient and, in B2B scenarios, shifting tax to reverse charge. Evidence of recipient location must be preserved for five to eight years, and such evidence itself is personal data that must be processed under "Sections 7 and 8 of the DPDP Act, 2023". Contractual statements that the supplier acts on its own account and not as an arranger for third party tools can prevent any slide into "Section 13(8)(b)" exposure.⁵⁴

AdTech and Marketing Support

Digital marketing, influencer onboarding, ad operations, and campaign optimisation frequently involve matching advertisers with publishers or with social media audiences. When an Indian entity undertakes these tasks for an overseas platform and does so by negotiating rates, approving creatives, allocating inventory, or resolving disputes between the advertiser and the platform, it begins to arrange or facilitate the main supply. Circular 159/2021 gives a clear test that if the Indian entity supplies on its own account, there is no intermediary; if it connects two other persons, there is. Many AdTech support centres in India provide analytical dashboards, bid strategy inputs, and fraud detection that are consumed exclusively by the foreign platform, in which case they should fall under "Section 13(2)". Where the centre also onboards Indian advertisers or intervenes in payment settlement, tax officers may classify the activity under "Section 13(8)(b)" following the logic in Vservglobal. For market participants, drafting of work orders, recipient identification clauses, and limitation of authority to bind the foreign platform becomes decisive for GST place of supply outcomes.⁵⁵

Online Education and Edtech

Online education entities operate through mixed models. Purely automated courses, assessments, and digital libraries that run without intervention are OIDAR and are taxed in India when consumed in India. Live virtual classes, mentoring, or sessions where the teacher interacts with the student are treated as performance-based services and may follow the general rule in "Section 13(2)" or the specific rule for admission to educational events. Edtech intermediaries that recruit Indian students for foreign universities have faced the sharpest disputes, as seen in the Bombay ruling in IDP Education. Where the Indian entity's contract is only with the foreign university or aggregator and it performs counselling, admission form checking, and visa documentation for that single counterparty, courts have declined to treat it as an intermediary. If the entity starts collecting fees from students, enters tripartite agreements, or negotiates discounts between student and university, the Vservglobal principle may revive and the place of supply may revert to India. Data collected from students for eligibility assessment and location determination must align with the DPDP Act rule that personal data may be processed only for a lawful purpose and may be retained only for a limited duration.⁵⁶

Online Gaming and Money Gaming

The IGST law was amended to insert "Section 14A of the IGST Act, 2017" to deal with offshore suppliers of online money gaming targeting Indian players. That provision requires such suppliers to obtain a single registration under the simplified scheme and to pay IGST on supplies made to persons in the taxable territory, even when all infrastructure and servers are outside India. If the supplier fails, any person in India representing it becomes liable to register and pay tax. This rule responds to the practical difficulty of tracing player location and to revenue concerns arising from rapid growth of real money gaming. For non-money online games, the older OIDAR rule in "Section 14" continues. When an Indian entity provides customer support, payment processing, or player verification on behalf of an offshore gaming operator, questions arise whether it is an intermediary. Circular 159/2021 suggests that

⁵³ GST Flyer: Chapter 42, available at: https://www.gstcouncil.gov.in/sites/default/files/e-version-gst-flyers/51_GST_Flyer_Chapter42.pdf (last visited on October 30, 2025).

⁵⁴ GSTR-5A (by OIDAR) FAQ, available at: https://tutorial.gst.gov.in/userguide/returns/GSTR-5A_faq.htm?rhlterm=3b&rhsearch=3B (last visited on October 29, 2025).

⁵⁵ Rita de la Feria, "Addressing VAT Fraud in Developing Countries: The Tax Policy-Administration Symbiosis", 47 *Intertax* 950 (2019).

⁵⁶ IDP Education India Pvt Ltd. v. Union of India & Ors. (Bombay High Court), available at: <https://gstpress.com/caselaw/cmc62ihwh021jc1fkzcuppo4w/services-rendered-under-a-bi-partite-agreement-do-not-qualify-as-intermediary-services> (last visited on October 28, 2025).

if the Indian entity only performs back-office tasks on own account, it is not an intermediary. Where it onboards Indian players or mediates disputes between the player and the foreign operator, it may be treated as arranging a supply and pulled into “Section 13(8)(b)”.⁵⁷

Compliance and Enforcement

GST enforcement for online services is now grounded in documentary controls. Authorities focus on whether non-resident suppliers have obtained registration, whether monthly “GSTR 5A” has been filed, whether place of supply evidence is consistent across invoices, payment gateways, and KYC records, and whether refund claims match contract terms. Since many of these data points are personal data or commercially sensitive data, controllers must process them in line with the DPDP Act, 2023 and show that consent or legitimate use exists for retention and cross border transfer. Refund adjudication has also been influenced by new Delhi High Court rulings such as “*Matrix Cellular (International) Services Pvt Ltd v. Principal Commissioner State Tax Delhi & Anr.*”⁵⁸, where the court insisted that departmental officers follow statutory timelines and not use procedural deficiencies to retain amounts that are otherwise refundable. Internet based service exporters need to construct compliance packs that bring together agreements, invoices, payment advice, IP records, and consent artefacts so that adjudicating officers do not doubt the location of the recipient or the absence of intermediary features.⁵⁹

Registration and Returns

Registration rules for non-resident OIDAR suppliers are designed to collect tax where consumption occurs, without requiring full regular registration. “Section 14 of the IGST Act, 2017” mandates such suppliers to register and pay tax, and “Rule 64 of the CGST Rules, 2017” prescribes “Form GSTR 5A” for monthly reporting. CBIC’s online guides detail the steps for filing and stress that returns must be filed even when there is no business in a month. Where the supplier has no physical presence in India, a person in India must be appointed to discharge tax and compliance obligations. The same regime now extends, by virtue of “Section 14A”, to overseas suppliers of online money gaming. Digital enterprises that straddle SaaS, advertising, and media supply models should evaluate whether some supplies are OIDAR and require separate GSTR 5A reporting, while their domestic supplies go into regular GSTR 1 and 3B. Registrations should be mirrored in the ERP and invoicing engines so that place of supply is consistent with what is declared.⁶⁰

Evidence of Recipient Location

The OIDAR regime expects suppliers to collect at least two non-conflicting pieces of evidence of recipient location such as billing address, IP address, bank or card location, mobile country code, or fixed line location. These have to be stored and produced during audit. Where the supply is B2B, possession of GSTIN from the recipient is strong evidence, but officers may still ask for IP or usage logs if refund is claimed on export footing. Because IP addresses and device identifiers are personal data, their retention must follow “Section 9 of the DPDP Act, 2023” which deals with data minimisation, and access to them must be logged. Entities should also avoid deploying analytics scripts that transfer this data to jurisdictions without an adequate protection assessment, since the DPDP Act now requires notice and consent for cross border transfers. Consistency between contractual declaration of recipient location and technical evidence is a key audit focus.⁶¹

Refunds and Litigation Pathways

Exporters of online services frequently meet refund disputes on two fronts - characterisation as intermediary, and procedural objections related to LUT, invoice sequence, or physical filing. Recent orders of the Delhi High Court, particularly “*Matrix Cellular (International) Services Pvt Ltd v. Principal Commissioner State Tax Delhi & Anr.*”⁶², have directed the department to release refund with interest where officers failed to adhere to statutory timelines, and have warned against fragmented adjudication that sends the assessed from one officer to another. The court grounded its decision in “Rule 90 and Rule 93 of the CGST Rules, 2017” and in the principle that the State cannot retain amounts beyond 60 days without statutory interest. Online service providers can rely on such directions to seek mandamus when departmental inaction persists after successful adjudication on the intermediary issue. Refund files should also enclose copies of contracts to prove principal to principal supply, invoices raised on foreign recipient, FIRC/BRC evidence, and, where relevant, CBIC Circular 159/2021 printouts to show that the department’s own interpretation excludes subcontractors from the intermediary net.⁶³

CBIC Clarifications and Industry Guidance

CBIC’s “Circular No. 159/15/2021-GST” has become the touchstone for determining intermediary risk. It lists scenarios where the supplier acts on own account, such as when it supplies to wholesalers or group entities under a cost-plus arrangement, and clarifies that such suppliers are not intermediaries even if the ultimate supply goes to different customers. It also clarifies that arranging transportation or logistics as part of the main supply does not automatically make the supplier an intermediary. This circular now interacts with the 2023-2025 case law to produce a more stable compliance environment. Industry associations in SaaS, edtech, OTT, and gaming have adopted this framework in model contracts, by inserting clauses that deny authority to bind, that recognise the Indian entity as independent contractor, and that state that all consideration flows from the foreign principal. Such contract language will persuade adjudicators that “Section 13(8)(b)” should not be triggered.⁶⁴

⁵⁷ Section 14A (IGST Act), available at: <https://www.cgst.com/uploads/document/1753091915-section-14a.pdf> (last visited on October 27, 2025).

⁵⁸ W.P.(C) 5088/2024, decision dated 20 May 2025.

⁵⁹ Institute of Chartered Accountants of India, *Place of Supply of Service under GST (Seminar Notes)* 156 (ICAI, Nagpur Branch, Nagpur, 1st edn., 2017).

⁶⁰ Diego Cebreiro-Gómez, “Digital Services Tax: Country Practice and Technical Challenges”, 2021 *World Bank Policy Note* 12 (2021).

⁶¹ OECD/World Bank/ADB, *VAT Digital Toolkit for Asia-Pacific—Highlights and Key Recommendations* 37 (OECD Publishing, Paris, 1st edn., 2022).

⁶² *Supra* note 58.

⁶³ Prashant Kumar, Amit Bhati, “Overview of GST and Its Impact on Indian Stock Market: An Event Study”, 2022 *NIPFP Working Paper* 9 (2022).

⁶⁴ Ashima Bansal, *Overview of GST* 92 (GST Council Secretariat, New Delhi, 1st edn., 2023).

Aspect	India	European Union	Singapore	Australia
B2C digital services	Recipient location under Section 14 and simplified registration/GSTR 5A	Customer location with OSS/IOSS filing ⁶⁵	Remote services taxed on OVR recipient in Singapore ⁶⁶	Inbound intangible consumer supplies taxed where consumer belongs ⁶⁷
B2B digital services	Place of recipient under Section 13(2); reverse charge	General B2B rule - customer location	B2B reverse charge for imported services	Reverse charge for Australian businesses
Platform obligations	OIDAR and online money gaming platforms treated as suppliers under "Section 14" and "Section 14A"	Electronic interfaces may be deemed suppliers under EU e commerce package	Electronic marketplaces may be regarded as suppliers under OVR	Electronic distribution platforms often treated as suppliers
Non-resident registration	Mandatory for OIDAR and online money gaming	OSS or IOSS registration in one Member State	OVR registration for remote services	GST registration for non-residents above AUD 75,000

Table 3: Comparison of place of supply and compliance**Comparative Perspective**

A comparative view shows that India's resort to a special place of supply rule for intermediary services is more aggressive than the approach in many VAT jurisdictions. Most jurisdictions influenced by the OECD International VAT GST Guidelines give primacy to the destination principle and only create exceptions for services that are difficult to assign to a consumer state. India created "Section 13(8)(b)" to protect its tax base from recharacterization of commission and agency services as exports, a concern that arose from service tax era disputes. At the same time India has adopted global best practice in taxing B2C digital services by requiring non-resident suppliers to register and pay tax based on customer location, which is consistent with the OECD's suggestion that the jurisdiction of consumption should collect tax on remotely supplied services. The presence of India specific disputation around intermediary shows the friction between constitutional federalism, export promotion under "Section 16 of the IGST Act, 2017", and administrative fear of revenue loss.⁶⁸

OECD Destination Principle

The OECD guidelines state that VAT and GST on cross border services and intangibles should be levied in the jurisdiction where the customer is located or where the service is effectively used. For B2B supplies this is achieved through a simple place of supply rule backed by reverse charge. For B2C supplies the guidelines recommend that the supplier identify the customer's jurisdiction and register there, or use an intermediary collection mechanism. India's rules for OIDAR and the emerging rules for online money gaming match these prescriptions. The divergence lies in India's insistence that intermediary services, even when consumed abroad, stay taxable in India, a departure from the principle that exports should be free of tax with refund of input tax. That departure is the root of the litigation traced in section 1.6.⁶⁹

EU Digital Services and Oss

The European Union taxes B2C digital services at the place where the consumer belongs and has created the One Stop Shop system to let both EU and non-EU suppliers file a single return in one Member State, which then distributes VAT to the other Member States. This system was expanded in 2021 and continues to operate in 2025 to cover a wide range of electronic services, marketplaces, and distance sales. India's GSTR 5A regime resembles the OSS concept in spirit but applies only to non-resident OIDAR suppliers and does not yet allow a single pan Indian filing for all cross-border supplies. Where India stands apart is in its use of "Section 13(8)(b)" which continues to tax domestic intermediaries even when they enable cross border supplies, while the EU usually taxes the underlying supply and not the intermediary. Comparative experience from Singapore and Australia that now tax remote services and digital goods through OVR and inbound intangible consumer supply rules suggests that India's direction on recipient-based taxation is correct, and that over time the circle may close with a narrower application of intermediary rules in the digital economy.⁷⁰

⁶⁵ VAT One Stop Shop (OSS), available at: https://vat-one-stop-shop.ec.europa.eu/index_en (last visited on October 26, 2025).

⁶⁶ Purchasing Remote Services From Overseas Service Providers, available at: <https://www.iras.gov.sg/taxes/goods-services-tax-%28gst%29/consumers/purchasing-remote-services-from-overseas-service-providers> (last visited on October 25, 2025).

⁶⁷ GST on Imported Services and Digital Products, available at: <https://www.ato.gov.au/businesses-and-organisations/international-tax-for-business/gst-for-non-resident-businesses/gst-on-imported-services-and-digital-products> (last visited on October 24, 2025).

⁶⁸ International VAT/GST Guidelines, available at: https://www.oecd.org/content/dam/oecd/en/publications/reports/2017/04/international-vat-gst-guidelines_g1g75db4/9789264271401-en.pdf (last visited on October 23, 2025).

⁶⁹ Katherine Russo, "The Superiority of VAT to Turnover Tax as an Indirect Tax on Digital Services", 2019 NTA Working Paper 18 (2019).

⁷⁰ European Commission, *Explanatory Notes on the EU VAT Changes to the Place of Supply for TBE Services* 58 (Publications Office of the European Union, Brussels, 1st edn., 2014).

Conclusion

India's digital-era GST design has two pillars that generally work: a default recipient-location rule for cross-border services and a special OIDAR regime that squarely taxes B2C electronic consumption in India, operationalized through simplified registration and GSTR-5A. The 1 October 2023 amendments significantly widened coverage by streamlining the "non-taxable online recipient" definition and updating Rule 64 so offshore suppliers can report both B2C and specified B2B flows consistently. In practice, this has reduced leakage for streaming, SaaS, web-hosting, cloud storage, and other automated content/services, while preserving reverse charge for Indian GST-registered importers of services. The evidentiary "two non-contradictory indicators" test (billing/IP/SIM/card/bank/landline) provides administrable certainty without demanding proof of the user's physical presence at the moment of consumption. Overall, the OIDAR track aligns with international best practice that taxes remote B2C digital supplies where the consumer belongs, and it mirrors the OECD's destination principle and the EU's consumer-location/OSS approach. Where friction remains is less in B2C digital consumption and more in mixed B2B models and platform arrangements that combine automated delivery with human support or marketplace functions.⁷¹

The persistent doctrinal tension is Section 13(8)(b) (intermediary). Courts have upheld Parliament's competence to fix a special place-of-supply rule for intermediaries, but they have also insisted that the label applies only where a supplier truly "arranges or facilitates" a supply between two others and does not act on its own account. In parallel with CBIC Circular 159/2021, High Courts have repeatedly protected principal-to-principal exports (e.g., back-office/BPO, analytics, platform operations) from being recast as intermediary, thereby restoring offshore place of supply, zero-rating, and refunds. Recent export-friendly rulings (e.g., Genpact (P&H 2022), InfoDesk (Guj 2025), and IDP Education (Bom 2025)) narrow the intermediary net for digital and edtech support where there is no tripartite privity or authority to bind. Bombay's Dharmendra M. Jani (2023) sustained validity but constrained domestic dual-levy consequences, and Gujarat's Material Recycling (2020) confirmed legislative competence—together mapping a constitutionally permissible but carefully policed exception. Read with OECD guidance favouring destination and neutral treatment of exports, the direction of travel is clear: keep consumer-facing OIDAR within India's net, but cabin intermediary to classic brokerage/agency. Doing so would minimize double taxation risk, reduce refund litigation, and better align India's digital GST with global models while safeguarding revenue.⁷²

Suggestions

In light of the analysis on interpreting place of supply for digital services in India, the following targeted measures are proposed:⁷³

1. Narrow the statutory scope of "intermediary." Amend Section 13(8)(b) to confine it to classic brokerage/agency with authority to negotiate or conclude contracts, and exclude principal-to-principal managed services (marketing ops, ad-ops, analytics, content moderation, cloud back-office). Define "arranges or facilitates" with an explicit three-party/privity test and a negative list (sub-contracting, back-to-back services, captive centres). Provide illustrations modelled on CBIC Circular 159/2021 to ensure nationwide consistency.⁷⁴
2. Codify safe harbors for bi-partite digital contracts. Where invoices, consideration, and liability run solely between Indian supplier and foreign recipient, treat place of supply under Section 13(2), absent authority to bind or tri-party consideration flow. Require contract clauses denying authority to act for end users and clarifying the supplier acts "on own account." Issue an officer checklist (counterparty, consideration trail, user touchpoints) to avoid mechanical "intermediary" allegations.⁷⁵
3. Publish a consolidated OIDAR explainer with hybrid service tests. Clarify when SaaS plus human support stays OIDAR (ancillary support under a fixed SLA) versus when the human element predominates (non-OIDAR under Section 13(2)). Include examples for streaming with live tutoring, AdTech with managed services, and cloud with migration/custom builds. Tie each example to the two-evidence rule for recipient location and resultant compliance (GSTR-5A vs reverse charge).⁷⁶
4. Standardize the "two indicators" evidence pack. Prescribe acceptable data artifacts, hash-retention, and reconciliation across billing, payment, IP/SIM, and device records, with a single-page audit template. Permit platform-level evidence sampling for micro-transactions below a notified threshold. Align retention and purpose-limitation with the DPDP Act (lawful purpose, notice/consent where needed, and bounded retention).⁷⁷
5. Clarify liability split in app-store and marketplace models. Provide tests for when the platform is a deemed supplier (merchant-of-record, price control, warranty) versus a pure facilitator. Map each outcome to the correct place-of-supply rule (OIDAR, Section 13(2), or intermediary), with invoice, TCS/TDS, and refund implications. Include examples for e-books, in-app purchases, and third-party subscriptions.⁷⁸
6. Make Rule 64/GSTR-5A a single window for offshore digital suppliers. Ensure all offshore OIDAR and online-money-gaming suppliers can

⁷¹ Sudipta Bhattacharjee, Rahul Dhanuka, "Key Changes in GST Law Effective from 1 October 2023", available at: https://www.khaitanco.com/thought-leaderships/Key_changes_in_GST_law_effective_from_1_October_2023 (last visited on November 1, 2025).

⁷² Institute of Chartered Accountants of India, *Section B: Goods and Services Tax (Intermediate Study Material)* 244 (ICAI, New Delhi, 1st edn., 2025).

⁷³ IGST Bill (Hindi), available at: <https://cbic-gst.gov.in/hindi/IGST-bill-e.html> (last visited on November 1, 2025).

⁷⁴ *Supra* note 2.

⁷⁵ *Supra* note 4.

⁷⁶ Bhogavalli Mallikarjuna Gupta, "OIDAR Services in GST", available at: https://icmai.in/TaxationPortal/upload/IDT/Article_GST/160_1803_21.pdf (last visited on October 31, 2025).

⁷⁷ *Supra* note 5.

⁷⁸ B. S. Seethapathi Rao, "Place of Supply of Services: Section 13(1) to 13(13) | IGST Act, 2017", available at: <https://taxguru.in/goods-and-service-tax/place-supply-services-section-131-1313-igst-act-2017.html> (last visited on October 28, 2025).

disclose both B2C and relevant B2B transactions in one return with clear tagging. Auto-share 5A data with Indian recipients to pre-fill reverse charge credits and reduce mismatch notices. Publish SLA-based refund/adjustment workflows for supplier overpayments.⁷⁹

7. Issue a refund SOP for digital exports. Mandate officers to apply court guidance on interest and timelines; compute interest from 60 days after the original refund application where delay persists through appeals. Require a “principal-to-principal” screen before raising intermediary objections, citing circular illustrations and recent rulings. Introduce a red-flag/green-flag matrix to reduce repetitive SCNs for settled fact patterns.⁸⁰
8. Create sector-specific annexures. Publish annexures for OTT/streaming, SaaS/cloud, AdTech, edtech, and gaming with contract archetypes, sample invoices, and location-evidence matrices. For each sector, provide do/don’t lists showing how to avoid intermediary exposure while preserving destination-based outcomes. Update annexures annually with AAR/HC developments to keep pace with business models.⁸¹
9. Strengthen cross-border alignment with OECD/EU practice. Publicly restate India’s commitment to consumer-location taxation for B2C digital services and reverse-charge for B2B, referencing OECD Guidelines and the EU OSS paradigm. Use that benchmark to justify a tighter reading of intermediary in digital contexts that mimic exports. Consider a consultation paper on migrating to a broader single-return OSS-style reporting for non-resident e-service suppliers.⁸²
10. Launch a “Digital POS Rulings Compendium.” Compile binding rulings and key judgments on OIDAR/intermediary into an online, searchable repository with headnotes and contract checklists. Add a fast-track clarification route for recurring questions (e.g., in-app tutoring, hybrid SaaS). Require officers to cite the compendium entry used when issuing notices to ensure predictability and reduce litigation.⁸³

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⁷⁹ Rule 64. Form and Manner of Submission of Return by Persons Providing Online Information and Data Base Access or Retrieval Services and by Persons Supplying Online Money Gaming from a Place Outside India to a Person in India, *available at*: https://taxinformation.cbic.gov.in/content/html/tax_repository/gst/rules/cgst_rules/active/chapter8/rule64_v1.00.html (last visited on October 30, 2025).

⁸⁰ Matrix Cellular (International) Services Pvt Ltd. v. Principal Commissioner State Tax Delhi & Anr., *available at*: https://delhihighcourt.nic.in/app/showFileJudgment/PMS20052025CW50882024_161910.pdf (last visited on October 29, 2025).

⁸¹ *Supra* note 17.

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