



Cinema Industry - GST Perspective



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Preamble

With the advent of novel distribution mechanism of video and audio contents, the reach out by the content owner to the final viewer has been at a level never experienced before. Innumerable video streaming applications which are available both free and on paid subscription has made the access to the movie, video and music content far easier. As this industry is now affecting the masses, it is pertinent that one should understand the impact of GST on them.

The indirect tax structure ever since the inception of GST has also undergone a sea change for this industry. There can be various facets of transactions which may occur within the cinema industry for which the implication under the GST law should be analysed. This article purports to understand the legal nature of these kind of transactions along with the analysis of their taxability under the GST law.

Relevant provisions and cases

As per Entry 17 to Notification no. 11/2017-Central tax (rate) dated 28th June 2017 which prescribes the rate of services, the following has been given:

HSN Code	Description	Rate
Heading 9973	Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information Technology software	6%

As per Entry 243 to Notification no. 1/2017-Central tax (rate) dated 28th June 2017 which mentions the rate of goods, the following has been prescribed:

HSN Code	Description	Rate
Any Chapter	Permanent transfer of Intellectual Property (IP) right in respect of goods other than Information Technology software	6%

As per entry no. 5(c) of the Schedule II of the CGST Act 2017, the following will be considered as supply of services:

“temporary transfer or permitting the use or enjoyment of any intellectual property right”

Sale of Copyright - In *Bharat Sanchar Nigam Ltd. v. UOI* (2006) 3 SCC 1 = 152 Taxman 135 = 3 STT 245 = 145 STC 91 = 282 ITR 273 = AIR 2006 SC 1383 = 3 VST 95 = 2 STR 161 (SC 3 member bench), it was also observed that incorporeal right of copyright could be regarded as 'goods'. In *CIT v. Sun TV Ltd.* (2007) 161 Taxman 351 (Del HC DB), it has been held that right to telecast TV program in foreign countries is 'sale of goods'.

As per Entry 9 to Notification no. 13/2017-Central tax (rate) dated 28th June 2017 which prescribes about the reverse charge mechanism, the following has been stated:

Category of supply of service	Supplier of Service	Recipient of Service
Supply of services by an author, music composer, photographer, artist or the like by way of transfer or permitting the use or enjoyment of a copyright covered under clause (a) of sub-section (1) of section 13	Author or music composer, photographer, artist, or the like	Publisher, music company, producer or the like, located in the taxable territory

of the Copyright Act, 1957 relating to original literary, dramatic, musical or artistic works to a publisher, music company, producer or the like		
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As per Section 13(1) of the Copyright Act 1957, which talks about the works in which copyright subsists:

“13(1). Subject to the provisions of this section and the other provisions of this Act, copyright shall subsist throughout India in the following classes of works, that is to say—

(a) original literary, dramatic, musical and artistic works;

(b) cinematograph films; and

(c) sound recording”

Analysis of the provisions

The following inferences can be drawn from the provisions discussed above:

- a. Copyright can be considered as goods based on the judgements quoted above. Thereby, intellectual property rights in respect of goods as stated in the rate of services notification will be said to include copyrights as well. Hence, the rate prescribed for such permanent or temporary transfer or permitting the use or enjoyment of copyrights will be considered as 12%.
- b. Permanent transfer of intellectual property right is surprisingly classified by the Government within both the rate of goods and services notifications. It had been held by various courts in the erstwhile tax laws that this is to be considered as sale of goods liable to VAT. With only temporary transfer getting covered within Schedule II, classification of permanent transfer has been left hanging in

the balance. To complicate the situation, HSN code of goods in respect of this description has not been mentioned. Whereas HSN code for services has been specifically mentioned as 9973. Thankfully, the rate prescribed for both goods and services have been kept at 6% CGST itself.

- c. Transfer or permitting the use or enjoyment of a copyright will be covered under Reverse charge mechanism to the extent of original literary, dramatic, musical and artistic works only. This is because only works covered under Section 13(1)(a) are stated in the Reverse charge notification.

For the copyright transfer or use or enjoyment which belong to the works of cinematograph films and sound recording, taxability will arise under forward charge mechanism itself as they are covered within 13(1)(b) and 13(1)(c) respectively.

Nature of services within the film industry

a) Transfer of copyrights by the film producer to the distributor/sub-distributor/exhibitor

The producer transfers the copyright for further distribution or for exhibition in the cinema hall in respect of the film. The film along with the accompanying soundtrack can be used by the distributor or the exhibitor as the case may be upon payment of royalty. As already stated above, such transfer will be taxed at the rate of 12% under the HSN Heading 9973. This falls within Section 13(1)(b) of the Copyright Act 1957 which is not covered by the reverse charge notification. So, tax will be paid on forward charge basis by the producer.

b) Other rights transferred by the film producer

In modern world of the film industry, there are various rights which a producer possesses. These rights can include theatrical rights, satellite rights, music rights, radio rights, DVD rights, media streaming app rights, airborne rights (aviation related rights) etc. They can be transferred to distinct entities who then possess the respective copyrights in respect of the movie. Against this, royalty is paid by the respective entity

to the film producer. Even this will be taxable at the rate of 12% under the HSN code 9973 in the hands of the producer on forward charge basis.

c) Services provided between the distributor and the exhibitor

Various models of distribution of funds between the distributor and the exhibitor are prevalent:

- i. Movie exhibited by exhibitor on own account – Here, the distributor transfers the copyrights received from the producer to the exhibitor. The income from sale of tickets in such cases is on the account of the exhibitor. Since, this is a transfer of right by the distributor to the exhibitor, it will be classified under HSN code 9973 on which the tax rate will be 12% on forward charge.
- ii. Movie exhibited by exhibitor on behalf of distributor – Here, the copyright of the movie remains with the distributor. The income from the sale of movie tickets also belongs to the distributor and not the theatre owner. GST will be applicable at the rate of 18% on forward charge and the services will then be classifiable as renting of immovable property or business support services.
- iii. Revenue sharing agreement between exhibitor and distributor – This agreement requires the sharing of common risk and profit between the two. The revenue from the sale of tickets are divided between the exhibitor and distributor. It results in the formation of a joint venture (whether or not as a separate legal entity). However for the purpose of GST, the constituents of the joint venture (exhibitor and distributor) will be considered as distinct from the Joint venture itself. Transaction between the distributor and the new entity will be classified as transfer of copy right service. Further, the exhibitor will be considered as providing renting of immovable property services/business support services to the new entity. The new entity will be

paying GST on sale of cinema hall tickets using the ITC of the renting and transfer of copyright services.

d) Lyricist/Singer/Music Composer to Music producer

The recording of song by the singer or the transfer of recorded song to the music company is in the nature of original literary/musical work falling within Section 13(1)(a) of the Copyright Act, 1957. This squarely falls within the reverse charge notification cited above. Hence, on these services, the tax will be paid on reverse charge by the music producer.

Similarly, the transfer of the copyrights of the words in a song by the lyricist and the music by a music composer will be falling under reverse charge mechanism wherein tax will be paid by the music producer at the rate of 12%.

e) Music Producer to the Film Producer/Distributor

The music producer who acquires the right of the song from the combination of the music composer /lyricist /singer can transfer it to the film producer (as part of a film) or a distributor (for distribution) as a permanent transfer of copyright services. This does not relate to original literary /dramatic /musical /artistic work as the same is only acquired from a lyricist /signer / music composer. Acquired work cannot be considered as original. In fact, it will be considered as falling within 13(1)(c) of the Copyright Act 1957 which does not fall within the reverse charge notification. So, the tax will be paid by the music producer on forward charge basis at the rate of 12%.

f) Services by artists/photographer/writer to film producer – Since the services of artists/writer/photographer are considered as falling within original literary /dramatic /musical /artistic work within the terms of Copyrights Act 1957 and is covered within the reverse charge notification, the same will be taxable under reverse charge at the rate of 12%.

Conclusion

In the above article, the major transactions which are carried out within the film industry has been covered. The exemption on payment of taxes in the erstwhile regime have mostly been withdrawn under GST. In the GST regime, the major burden for the charge of taxes have been placed on the producer with seamless flow of input tax credit.



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