Page 2371 - 2375 **DOI:** *https://doi.org/10.63108/IJLMH.12727*

INTERNATIONAL JOURNAL OF LAW MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 9 | Issue 4

2026

Permanent Transfer of IPR in Cinematographic Films

NAINA ABICHANDANI*

ABSTRACT

Schedule II of the Central Goods and Services Tax Act, 2017 treats only a temporary transfer of intellectual property as a service, leaving a permanent transfer to be dealt with as goods, yet parallel entries in the goods and services rate notifications have described permanent transfers both ways, and the GST Council, in fixing a uniform rate, left the classification question undecided. The cost falls on film producers, who are taxed on advances received long before delivery and lose the relief a supply of goods would attract, locking up substantial working capital across the production cycle. This paper argues that an outright assignment of copyright in a cinematograph film is a sale of goods.

Keywords: *GST, intellectual property rights, cinematograph films, permanent transfer, supply of goods, Schedule II, copyright assignment, time of supply*

I. INTRODUCTION

A production house sells the entire copyright in a film, in perpetuity and worldwide, without any reservation. The price is paid in full at the outset and the producer keeps no residual interest, not even a right of reversion after a term of years. By any commercial understanding this is a sale. Yet when the tax notice arrives it may classify the transaction as a "service," taxing it the way it would tax a subscription to streaming software. The producer is left arguing a question that ought to have a settled answer: once the producer has given away everything, what is left to be serviced?

II. THE STATUTORY SCHEME

Section 2(52) of the Central Goods and Services Tax Act, 2017 defines goods as every kind of movable property other than money and securities.[1] The definition says nothing about tangibility, and intellectual property, being movable property, sits within it. Schedule II, which settles when a transaction is a supply of goods and when it is a supply of services, then draws its line for intellectual property by reference to duration. Paragraph 1(a) treats any transfer of the title in goods as a supply of goods, and paragraph 5(c) treats a temporary transfer, or a

* Author is a Student at D.M. Harish School of Law, HSNC University, Mumbai, Maharashtra, India.

[1] The Central Goods and Services Tax Act, No. 12 of 2017, § 2(52) (India) [hereinafter CGST Act].

permission to use or enjoy any intellectual property right, as a supply of services.[2] The schedule nowhere describes a permanent transfer as a service, and that silence is the point: what paragraph 5(c) leaves out falls back on paragraph 1(a).

The goods rate schedule has said the same thing throughout, although the entries have moved. Until 1 October 2021 a permanent transfer of intellectual property other than information technology software was rated at 12 per cent under Serial No. 243 of Schedule II to Notification No. 1/2017-Central Tax (Rate), software sitting separately at Serial No. 452P of Schedule III. From that date Serial No. 243 was dropped and the confinement of Serial No. 452P to software was removed, so that a permanent transfer of intellectual property of any kind is rated in the goods schedule at 18 per cent.[3]

So the test has to do with duration. Paragraph 5(c) is concerned with permissions that are bounded, whether by time or by the use permitted, which is why a licence for a season, for a term or for a stated purpose falls on the services side. Where the right has been given up forever there is no permission to speak of, and the paragraph has nothing to bite on.

Most transactions in intellectual property do sit comfortably on the services side of this line, which is why films look anomalous. A franchisee takes a trademark licence for a renewable term. A patent is licensed within a stated field of use. Software is sold on subscription, and a music label clears a track to a streaming platform for a window. The owner in each case remains the owner, and the licensee, having borrowed the right, must give it back when the term runs out. It is the prospect of that reversion which makes the supply a service.

An assignment in perpetuity is a very different arrangement. The producer's interest in the film is extinguished when the assignment takes effect and stays extinguished for the whole term of copyright, while the acquirer holds the work to the exclusion of everyone, the producer included. The Copyright Act, 1957 draws the same line, distinguishing an assignment, which may be made for the whole term of copyright, from a licence, and deeming an assignment which is silent as to duration to run for five years only.[4] To call such a transaction a service, one would have to identify some continuing obligation on the producer's part, and on these facts there is none.

---

[2] CGST Act § 7, sched. II ¶¶ 1(a), 5(c).

[3] MINISTRY OF FIN., DEP'T OF REVENUE, Notification No. 1/2017-Central Tax (Rate), sched. III, S. No. 452P (June 28, 2017) (India), as amended by Notification No. 13/2021-Central Tax (Rate) (Oct. 27, 2021) (India). The amending notification omitted S. No. 243 of Schedule II and omitted the words "in respect of Information Technology software" from S. No. 452P, with effect from Oct. 1, 2021. S. No. 452P had itself been inserted with effect from Nov. 15, 2017.

[4] The Copyright Act, No. 14 of 1957, §§ 18-19 (India) (assignment); *id.* § 30 (licences). An assignment which does not state the period of assignment is deemed to be for five years from the date of assignment. *Id.* § 19(5).

III. Where the confusion comes from

The difficulty arises from Notification No. 11/2017-Central Tax (Rate), Serial No. 17, which under heading 9973 described the "temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right" as a service.[5] Read on its own terms, the entry sweeps permanent transfers into the services category, in direct conflict with Schedule II. Since 1 October 2021 it has reached every kind of intellectual property, so that one and the same transaction is described in the goods schedule and in the services schedule alike. The classification scheme annexed to the notification points the other way, placing film rights under sub-heading 997332, which is framed throughout in terms of licensing.[6]

It is submitted that the wide reading cannot be right in any event. A notification is delegated legislation, issued to prescribe rates and procedural detail within the limits of the parent statute, and it cannot rewrite the classification scheme the statute itself lays down. Schedule II has already settled whether a transaction of this kind is goods or services, and Serial No. 17 cannot unsettle it. The better view is that the entry was drafted to achieve parity of rate, and it should be read on that footing.

The history of the rate bears that out. The GST Council at its 23rd meeting on 10 November 2017 recommended 12 per cent for a permanent transfer of intellectual property other than information technology software and 18 per cent for software.[7] A Council satisfied that permanent transfers were services would presumably have said so. Instead it fixed the rate and left the classification question where it found it, so that the answer would stop affecting revenue. The rationalisation of 1 October 2021 completed that exercise, closing the gap in rate and leaving the gap in principle exactly where it was. For everything else which turns on classification, including reverse charge and the time of supply, the question remains live.

IV. Films and software

A further argument, heard more often from auditors than from the department, equates films with software on the footing that both are created through a development process and should be taxed alike. The sectoral guidance on information technology issued by the Central Board of

[5] Ministry of Fin., Dep't of Revenue, Notification No. 11/2017-Central Tax (Rate), sl. no. 17, heading 9973 (June 28, 2017) (India). Item (i), which covered intellectual property in respect of goods other than information technology software at 6 per cent central tax, was omitted and item (ii) was substituted by Notification No. 6/2021-Central Tax (Rate) (Sept. 30, 2021) (India) with effect from Oct. 1, 2021, so that the entry reads "Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right" at 9 per cent central tax.

[6] Scheme of Classification of Services, annex. to Notification No. 11/2017-Central Tax (Rate), sub-heading 997332 (India).

[7] Press Release, Ministry of Fin., Recommendations of the 23rd Meeting of the Goods and Services Tax Council (Nov. 10, 2017) (India).

Excise and Customs gives this argument a foothold, since it treats the development, design, customisation and enhancement of information technology software, together with the temporary licensing of intellectual property, as services, while treating pre-developed, off-the-shelf software supplied in a medium or unlocked by an encryption key as goods under heading 8523.[8]

There are several difficulties with this. Guidance of that kind is issued for educational purposes and cannot create a legal obligation or displace the Act and the Rules. The reading also depends on running together two provisions which the legislature kept separate, since paragraph 5(c) on temporary transfers of intellectual property and paragraph 5(d) on the development of information technology software are distinct categories and are not joined by the word "and" into a single composite service.[9] The off-the-shelf test tells against the analogy in any case. Off-the-shelf software is bought by an unlimited number of end users, each taking a copy, whereas film rights are acquired from the producer in perpetuity by a single acquirer, to the exclusion of everybody else.

The two are in any event different kinds of thing. Software is a set of instructions which causes a machine to perform a task. A cinematograph film is a visual and audio recording, a finished creative work which is made to be watched. Had Parliament intended them to be treated alike, Schedule II would have said so.

The test laid down by the Supreme Court in *Bharat Sanchar Nigam Ltd. v. Union of India* is useful here, although it was framed under Article 366(29A)(d) of the Constitution rather than for the goods and services tax.[10] Five attributes must be present: goods available for delivery; a *consensus ad idem* as to their identity; a legal right in the transferee to use them; exclusion of the transferor for the period of the transfer; and an inability in the owner to transfer the same right to anyone else during it. Apply that to a completed film assigned for the whole term of copyright. The film exists as an identifiable work on the date of the assignment, both sides know which work is being conveyed, and the producer has a clear title to convey. What the acquirer takes is exclusive, and the producer, having assigned it, has nothing left to sell to a second buyer. Each of the five conditions is met.

[8] CENT. BD. OF EXCISE & CUSTOMS, *Frequently Asked Questions: Information Technology and Information Technology Enabled Services* (GST Sectoral Series, 2017) (India).
[9] CGST Act sched. II ¶¶ 5(c), 5(d).
[10] *Bharat Sanchar Nigam Ltd. v. Union of India*, (2006) 3 S.C.C. 1 (India).

V. THE PRACTICAL FALLOUT

Under Notification No. 10/2017-Integrated Tax (Rate), reverse charge attaches to a service supplied by a person located in a non-taxable territory to a person in the taxable territory.[11] If a permanent transfer of intellectual property rights is a supply of goods, that entry has nothing to fasten on. Treating a perpetual acquisition of film rights as a service, on the strength of departmental guidance or a loosely worded rate notification, imposes a liability on a transaction which the statutory scheme classifies as a sale.

The position on timing is more expensive still. Film rights change hands for large sums, and the money usually moves long before the film does, in tranches paid across the production. On the goods footing none of those receipts is taxed when it comes in, because Notification No. 66/2017-Central Tax did away with tax on advances received for a supply of goods, and nothing falls due until the invoice issues, the time of supply under Section 12(2)(a) being the date of the invoice or the last date on which it was required to be issued.[12] Treat the very same payment as consideration for a service and it becomes taxable the day it reaches the producer's account. On sums of this order that difference locks up a significant part of the producer's working capital for the length of the production cycle, on a supply which, on the scheme of the Act, is a supply of goods. The producer is caught between the two positions, assessed on one timing and pursued on the other, and bears the cost of a disagreement it had no part in creating.

VI. CONCLUSION

A temporary licence is a service and a permanent transfer is a sale of goods. Schedule II says as much, and neither a rate notification nor departmental guidance can change it. A distributor's limited-term theatrical licence and a broadcaster's time-bound streaming right remain services under paragraph 5(c), and properly so, since the right comes back at the end of the term. But where a producer parts with the copyright in a film absolutely, keeping nothing back, there is no continuing supply left to tax, and the transaction ought to be taxed for what it is, which is a sale of goods.

*****

[11] MINISTRY OF FIN., DEP'T OF REVENUE, Notification No. 10/2017-Integrated Tax (Rate), sl. no. 1 (June 28, 2017) (India).

[12] CGST Act § 12(2)(a); MINISTRY OF FIN., DEP'T OF REVENUE, Notification No. 66/2017-Central Tax (Nov. 15, 2017) (India).

