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Legislative Silence on Transition and Legal Certainty in the 2026 Indian GST Intermediary Services Amendment

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Title Page

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Abstract

India's Finance Act 2026 omitted section 13(8)(b) of the Integrated Goods and Services Tax Act 2017 with effect from 30 March 2026, ending a decade of litigation over whether intermediary services supplied to foreign clients are exports. The amendment says nothing about disputes already pending, and this paper uses that silence as a case study in how legislatures should manage legal transitions. Its doctrinal argument is that the effect of an omission on pending proceedings is currently determined by a combination of factors: the form of the omitted provision, the nature of the proceeding (an accrued liability or a refund claim), section 6 of the General Clauses Act 1897, and any contrary intention. The Supreme Court has held that omitting a rule takes pending proceedings with it (Rayala, Kolhapur and, in August 2026, Goodluck India on rule 96(10) of the CGST Rules), whereas the line beginning with Fibre Boards treats the omission of a provision from an Act as a repeal to which section 6 applies. The paper does not claim that this distinction mechanically decides every dispute under section 13(8)(b), or that the amendment is unconstitutional. It argues that the combination leaves the transitional position uncertain, that the uncertainty flows from legislative silence rather than a considered choice, and that this is a cost to legal certainty and the rule of law. It keeps apart three questions, namely a constitutional challenge to the amendment, the interpretive question and the normative critique of drafting, and uses Article 14 case law on fiscal cutoff dates only as a lens for the third. It treats the law and economics literature on legal transitions as the source of a hypothesis, not a demonstrated efficiency result; analyses the reverse charge liability the amendment creates as a tax incidence problem that bites mainly where input tax credit is restricted; and draws limited design comparisons with EU VAT and Singapore GST. It proposes a model transitional provision covering the operation date, pending proceedings, finalised assessments, refunds, limitation and optional settlement, and explains what an administrative circular can and cannot achieve.

Keywords: GST; Intermediaries; Transitions; Incidence; Retrospectivity

1. Introduction

India's indirect tax regime underwent its most significant reform in 2017. Arguably more consequential changes, however, are taking place in 2025–2026. At its 56th meeting, held in

September 2025, the GST Council decided to replace the existing four-rate structure with two principal rates of 5 per cent and 18 per cent and an additional 40 per cent rate for luxury and demerit goods. Industry commentary attributes the introduction of 'GST 2.0' to a wish to raise consumption and improve compliance across sectors including agriculture and financial services, and treats it as a welfare-improving measure that widens input tax credit utilisation and so the competitiveness of the services sector.

One change among many has drawn particular attention within India's export-oriented services industry. The Finance Act 2026 omitted section 13(8)(b) of the IGST Act, with effect from 30 March 2026. That section, introduced in 2017, had fixed the place of supply of 'intermediary services' at the supplier's location rather than the recipient's. The effect was to treat transactions by Indian intermediaries, including IT services suppliers, ITeS companies and Global Capability Centres (GCCs) providing support to foreign principals, as domestic rather than export transactions, denying them zero-rating and refunds even where the client was foreign and payment was received in convertible foreign exchange. A decade of litigation and blocked working capital followed.

Practitioner reaction to the omission has been largely favourable, framing it as a measure that renders Indian intermediary services 'cost-competitive globally'.[1] Review of the available literature (overwhelmingly client alerts and trade commentary, reflecting the near-total absence of academic treatment) shows that commentary has been largely descriptive. Two structural questions remain unaddressed. The first is transitional: the amendment supplies no saving clause for pending disputes, show-cause notices and refund claims under the old regime. The second concerns distributive inversion: moving the place-of-supply rule to the recipient's location creates a new reverse-charge obligation for Indian recipients of intermediary services that did not exist before.

One piece of academic writing anticipates part of this agenda, and the distinction between its argument and this paper's is worth stating at the outset. Writing before the 2026 amendment, Santhosh argued that section 13(8)(b) was itself unconstitutional, as 'the object of GST was to bring destination-based tax on consumption and the said provision does the exact opposite', and urged either its outright omission or a deeming provision locating the place of supply at

[1]See, eg, SAG Infotech, 'Big News: Finance Act 2026 Removes GST Intermediary Clause' (SAG Infotech, 2 April 2026) <https://blog.saginfotech.com/big-news-finance-act-2026-removes-gst-intermediary-clause> accessed 16 September 2026.

the foreign recipient's address.[2] Parliament has now done, substantively, what Santhosh recommended: section 13(8)(b) is gone. The present paper's claim begins where Santhosh's leaves off. It is not concerned with whether the now-repealed provision was constitutionally defective, but with whether its repeal was transitionally complete, and it identifies a second problem, the reverse-charge inversion, that only arises once the provision is actually repealed and so could not have been Santhosh's subject.

The paper's central claim is about legislative silence and the rule of law, and it is made through a doctrinal case study. When a provision is omitted and the omitting law says nothing about pending proceedings, Indian law does not supply one clear answer. The Supreme Court has held that omitting a rule takes pending proceedings with it unless they are saved (*Rayala*, *Kolhapur* and, in August 2026, *Goodluck India* on rule 96(10) of the CGST Rules), whereas a later line beginning with *Fibre Boards* treats the omission of a provision from an Act as a repeal, so that section 6 of the General Clauses Act 1897 preserves accrued rights, liabilities and pending proceedings unless a different intention appears. The form of the omitted provision is therefore an important part of the analysis, but not an automatic answer: the nature of the proceeding (whether it enforces an accrued liability or seeks a refund by removing a restriction), the contrary-intention proviso and the character of the benefit all matter. Because Parliament left these questions to be settled by the interaction of such factors, similarly placed exporters face an unpredictable transitional position, and a short, express transitional provision would serve legal certainty better. The paper keeps three questions apart: whether the amendment is open to constitutional challenge, how it should be interpreted as the law stands, and how it ought to have been drafted. Only the last is its principal concern.

Both issues are examined below through doctrinal legal analysis, supplemented by the law-and-economics literature on legal transitions, and tested in Section 4 against the body of Article 14 jurisprudence on fiscal classification in India. The reverse-charge inversion is analysed in Section 5 through the economic concept of tax incidence. The paper uses the EU VAT Directive and Singapore's GST Act as comparative cases. Section 2 sets out the background to the intermediary dispute, from the pre-GST Service Tax regime to the contested provisions in *Dharmendra M Jani v Union of India*. Section 3 analyses the Finance Act 2026 amendment.

[2] V Santhosh, 'Tax on Intermediary Services to Foreign Recipients: A Deviance from Destination Based Taxation' (2022) 28 Supremo Amicus 497, drawing on the level-playing-field reasoning in Reliance Energy Ltd v Maharashtra State Road Development Corporation Ltd (2007) 8 SCC 1 and on the 139th Report of the Parliamentary Standing Committee on Commerce (December 2017).

Section 4 examines the transition question, beginning with the effect of an omission on pending proceedings and then turning to constitutional doctrine and the economics of legal transitions. Section 5 examines the reverse-charge inversion as a tax-incidence problem for the IT/ITeS and GCC sectors. Section 6 considers the comparative responses of the EU and Singapore. Section 7 sets out a model transitional provision, further measures and lessons for transitional design beyond India, and Section 8 concludes.

1.1 Methodology and Scope

This paper uses doctrinal legal research as its primary method, applied to a single case study: the omission of section 13(8)(b) and its transitional silence. It analyses the text of the legislation (the IGST Act 2017 as amended by the Finance Act 2026), judicial precedent and the constitutional doctrine of fiscal classification, supplemented by the law-and-economics literature on legal transitions and, in Section 5, the concept of tax incidence.

Four methodological choices need explanation. First, case selection. The authorities in Section 4.1 are the Supreme Court decisions that address in terms whether the omission of a provision is a repeal for the purposes of section 6 of the General Clauses Act (*Rayala*, *Kolhapur*, *Fibre Boards* and *Shree Bhagwati*), together with the most recent application of the question to the GST regime (*Goodluck India*) and High Court decisions on section 174 of the CGST Act. The Article 14 authorities in Sections 4.3 and 4.4 are those through which the Supreme Court has treated fiscal cutoff dates, supplemented by secondary scholarship; they are not an exhaustive survey. Second, reconciliation of conflicting principles. Where authorities conflict, as *Rayala* and *Fibre Boards* do on whether omission is repeal, the paper states the competing readings and the weight each carries (a larger bench binds a smaller one, but a later bench's characterisation of a remark as obiter has not been tested before a bench of equal strength) and does not choose between them where the authorities do not. Third, the hierarchy of sources. Statutes, judgments and orders are the basis for what the law is and what a court decided. Practitioner commentary and news reports are used only to identify the emerging controversy, to record what officials and professionals have said, and to show how the amendment is being read; they are never relied on to establish what a court or tribunal decided, and where a decision has been consulted only through a secondary report a footnote says so. Fourth, comparators. The EU and Singapore are chosen because both tax cross-border services on a destination basis and have a general rule for B2B supplies, which makes them useful design contrasts; the comparison is of statutory design and does not survey how those regimes have operated in

litigation. No primary data on refund or reverse-charge revenue was collected, since no aggregated government figures covering the post-amendment period had been published at the time of writing; Section 7 recommends such disclosure as a direction for future empirical work.

2. Genesis of the Intermediary Problem

The concept of 'intermediary services' predates GST in Indian indirect tax law. Under the pre-GST Service Tax regime, rule 9(c) of the Place of Provision of Services Rules 2012 fixed the place of provision of services rendered by an intermediary at the intermediary's own location rather than the recipient's. That rule passed almost unchanged into section 2(13) of the IGST Act 2017, which defines an intermediary, in substance, as a broker, agent or other person who arranges or facilitates the supply of goods, services or securities between two or more persons but does not supply them on his own account.

Section 13(8)(b) of the IGST Act then fixed the place of supply for cross-border intermediary services at the intermediary's location. This created difficulties for India's outsourcing and IT-enabled services industries. Where a domestic IT-enabled services company arranged a transaction between an overseas principal and that principal's customers (the common pattern in BPO/KPO and GCC services), the supply was treated as occurring in India. Despite a foreign client and payment in convertible foreign exchange, the supply could not qualify as an export of services under section 2(6) and so could not be zero-rated; GST became payable by the exporter, the opposite of how export of services is ordinarily treated.

The constitutionality of section 13(8)(b), and of the corresponding section 8(2), was challenged by a company providing marketing and promotional services to an overseas principal for consideration in convertible foreign exchange. The Bombay High Court's Division Bench split on 9 June 2021: Bhuyan J found the provisions ultra vires the IGST Act and unconstitutional under article 14, while Ahuja J took the opposite view. A third judge, Shukre J, was called in to resolve the disagreement and upheld the provisions' validity, but confined their operation to the IGST Act, holding that the Central GST Act and the Maharashtra GST Act did not apply to the transaction in question. The Division Bench subsequently declined to incorporate that limitation into the final binding ruling, leaving the question of the other Acts' applicability unresolved even though the litigation itself concluded in 2025.[3]

[3]Dharmendra M Jani v Union of India WP No 2031 of 2018 (Bombay HC, 9 June 2021); Dharmendra M Jani v Union of India [2023] 149 taxmann.com 317 (Bombay HC); see also ELP Law, 'Bombay High Court (3rd

The decade-long litigation over the validity of the deeming fiction in section 13(8)(b) produced serious compliance and cash-flow problems for Indian service exporters, who had to answer tax authority notices and contest rejected GST refund claims founded on the disputed fiction. Because Shukre J's opinion concerned only the IGST Act, it remained unclear how the Bombay High Court's decision applied to the Central GST Act and, particularly, the Maharashtra GST Act, for taxpayers outside that High Court's jurisdiction. Only legislation could resolve the point definitively, which is presumably why the Finance Act 2026 amendment mattered so much to India's services exporters.

3. The Finance Act 2026 Amendment: A Textual Analysis

At its 56th meeting, the GST Council recommended amending the place-of-supply rule for intermediary services by deleting the fiction in section 13(8)(b) in favour of the default rule locating the place of supply at the recipient's location. The Finance Act 2026 enacted this by deleting paragraph (b) of section 13, with effect from 30 March 2026. Explaining the change on its announcement, CBIC Chairman Vivek Chaturvedi said that deleting the clause meant 'the place of supply will follow the default rule under Section 13(2)', adding that Indian brokers and agents serving foreign clients, such as foreign portfolio investors, would now qualify as exporters and stop paying 18 per cent GST.[4] Services supplied by an Indian enterprise to an overseas principal on an intermediary basis are now taxed on the same footing as other cross-border services supplied from India to foreign recipients, in accordance with the five cumulative conditions in the definition of 'export of services' under section 2(6): the supplier is situated in India; the recipient is situated outside India; the place of supply is outside India; payment is received in convertible foreign exchange; and the supplier and recipient are not establishments of a distinct person.

The primary beneficiaries are IT/ITeS, BPO, KPO, consulting and logistics service providers operating as intermediaries, together with the growing number of GCCs providing facilitation services to foreign parent companies. The amendment treats these services as exports in substance, releasing blocked refund claims and removing the tax cost that had made Indian intermediary service providers less competitive than providers in jurisdictions without a

Judge) Has Upheld the Constitutional Validity of Section 13(8)(b) of the IGST Act: Dharmendra M Jani & Ors v Union of India' (ELP Law, 5 February 2024).

[4]Timsy Jaipuria, 'Budget 2026: SEZ Dispensation Modalities Being Finalised, Says CBIC Chairman Vivek Chaturvedi' (CNBC-TV18, 2 February 2026).

corresponding deeming fiction. Not every IT/ITeS or GCC arrangement is intermediation, however. Section 2(13) excludes a person who supplies on his own account, so whether an arrangement benefits from the amendment, or is exposed to the consequences discussed in Section 5, depends on how it is characterised and cannot be assumed across the sector.

Two textual features limit the benefit. First, although paragraph (b) of section 13 has been deleted, the definition of 'intermediary' in section 2(13) survives unchanged. Since the classification disputes in *Dharmendra M Jani* turned on the fact-specific question of whether a given arrangement was intermediation or a principal-to-principal supply, this definitional uncertainty persists after the amendment, for instance, over whether a GCC's coordination function amounts to intermediation or a principal-to-principal supply, even though the tax consequences of being classified as intermediation have been substantially softened.

Second, the amendment makes no provision for its own transitional effect. Practitioner commentary flags the point directly: one notes that the amendment 'provides for unlocking of previously blocked refund claims for past periods', but warns this 'is subject to litigation risk as “no saving clause” [is] prescribed'.[5] Another observes that 'the treatment of pending disputes will be the proof of good intentions', warning that a purely prospective application would leave 'a massive backlog of litigation and applications for refunds' to be resolved case by case.[6] The amendment's text does not address its transitional effect, and commentary gives the point only passing attention. This omission is the subject of Section 4.

4. The Retrospectivity/Prospectivity Problem

4.1 Omission, Repeal and Pending Proceedings: When the Instrument Decides the Outcome

It is a foundational precept of Indian tax law, as it is of common law generally, that a statute operates prospectively unless a contrary intention is clearly shown. In *J.P. Jani, ITO v Induprasad Devshanker Bhatt*, the Supreme Court held that a provision of the Income Tax Act 1961 could not be read as empowering an assessing officer to reopen an assessment beyond the time limit fixed by the repealed Income Tax Act 1922 absent a clear intention to that effect.[7] That principle bears directly on disputes, assessments and refund claims of intermediary service

[5]A2Z Taxcorp LLP, 'A New Era for Place of Supply of Intermediary Services: Exports vs Imports of Services w.e.f. March 30, 2026' (A2Z Taxcorp, 14 April 2026).
[6]BW Legal World, 'The “Intermediary” Conundrum: A Final Resolution?' (BW Legal World, 4 February 2026).
[7]J.P. Jani, ITO v Induprasad Devshanker Bhatt AIR 1969 SC 778.

exporters falling due on or after 30 March 2026. But a prior question determines how it applies: what does an omission do to proceedings already pending when the omitting law is silent?

Section 6 of the General Clauses Act 1897 preserves rights, liabilities and pending proceedings on the repeal of a Central Act unless a different intention appears. Whether an omission counts as a repeal for this purpose has received two incompatible answers, and the answer has turned on the kind of instrument omitted. For omitted rules, pending proceedings lapse unless saved. In *Rayala Corporation (P) Ltd v Director of Enforcement*, a five-judge bench held that section 6 did not save a prosecution under a rule omitted by notification, reasoning among other things that section 6 applies to the repeal of a Central Act or Regulation and not of a rule. In *Kolhapur Canesugar Works Ltd v Union of India*, a Constitution Bench held that section 6 does not apply to the omission of a rule, so that proceedings pending under rules deleted without a savings clause lapsed.[8] That line was applied to GST this year. In *Goodluck India Ltd v Union of India*, the Supreme Court held that the omission of rule 96(10) of the CGST Rules, made without a saving or sunset clause, applied to pending proceedings for refund of integrated tax on exports. It treated *Kolhapur* as applying squarely, regarded the GST Council's recommendation that the omission be prospective as merely advisory, and reasoned that the omission could not have been intended to keep alive the complications of pending proceedings.[9] The Bombay High Court had reached the same result in *Hikal Ltd v Union of India*, rejecting the argument that section 174 of the CGST Act saved the pending proceedings.[10]

For a provision omitted from an Act, the Supreme Court has taken the opposite view. In *Fibre Boards (P) Ltd v CIT Bangalore*, a two-judge bench held the statement in *Rayala* that omission is not repeal to be obiter, since *Rayala* had already decided that section 6 does not apply to rules. The bench observed that section 6A treats a repeal by express omission as a repeal, that even implied repeal falls within section 6, and that a reference to a larger bench would have

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[8]Rayala Corporation (P) Ltd v Director of Enforcement (1969) 2 SCC 412 (SC, 23 July 1969); Kolhapur Canesugar Works Ltd v Union of India (2000) 2 SCC 536 (SC, 1 February 2000). The holding in Kolhapur is stated as summarised in the report's headnote and as applied in Goodluck India.

[9]Goodluck India Ltd v Union of India SLP(C) No 24550 of 2025 (SC, 6 August 2026) 2026 INSC 821, paras 3–7. The Court's order is a short, non-reportable disposal. It dismissed the petitioners' challenge to the vires of the rule as infructuous and declined to interfere with the High Court's judgment.

[10]Hikal Ltd v Union of India WP No 78 of 2025 (Bombay HC) 2025:BHC-AS:37892-DB, reported at 2025 (9) TMI 806. See also, as reported in 'Omission of Rule 96(10) of CGST Rules 2017 without a Saving Clause: Ease of Doing Business or Legislative Oversight?' (The Chartered Accountant Journal, ICAI) <https://cajournal.icai.org/article-details/omission-of-rule-96-10-of-cgst-rules-2017-without-a-saving-clause-ease-of-doing-business-or-legislative-oversight> accessed 14 October 2026, Glen Industries (P) Ltd v Deputy Director, Directorate General of GST Intelligence 2025 (4) TMI 492 (Calcutta HC, 26 March 2025) and Addwrap Packaging (P) Ltd v Union of India (Gujarat HC, 13 June 2025).

been appropriate but was unnecessary because the appeal could be decided under section 24, the provision on re-enactment.[11] In *Shree Bhagwati Steel Rolling Mills v Commissioner of Central Excise*, the same bench followed *Fibre Boards*, holding that an omission amounts to a repeal, reasoning in part that section 3(19) defines 'enactment' to include a provision in an Act, so that section 6 reaches the deletion of a single provision, and declining to refer the question to a larger bench.[12] The section 6 reasoning in these two decisions has not been tested before a bench of equal strength to *Rayala* and *Kolhapur*.

Read together, these authorities do not yield a single mechanical answer, but they show how much can turn on the instrument. Section 13(8)(b) is a provision of an Act, omitted by an Act of Parliament (section 157 of the Finance Act 2026, as reported).[13] If *Fibre Boards* and *Shree Bhagwati* govern, the omission is a repeal for the purposes of section 6, which preserves accrued rights and liabilities and pending proceedings unless a different intention appears. Rule 96(10), by contrast, was omitted by notification, and in *Goodluck India* the Supreme Court applied *Kolhapur* to let the omission operate on pending refund proceedings. It follows that exporters whose refund claims were blocked by an omitted rule and exporters affected by an omitted statutory provision may, absent any transitional provision, be treated differently, partly because of the form of the instrument. Three cautions apply. First, the two situations are not identical: *Goodluck India* concerned a restriction on refund claims removed in the taxpayer's favour, whereas proceedings under section 13(8)(b) include demands and show-cause notices said to enforce tax accrued under the old fiction, and section 6, which speaks of accrued liabilities, may apply differently to a revenue demand than to a refund claim. Second, *Goodluck India* is a short order which, so far as the version available to the authors shows, does not discuss the *Fibre Boards* line. Third, the preservation or lapse of a proceeding, the prospectivity of an amendment and the survival of an accrued liability are distinct propositions and should not be run together. The paper's claim is accordingly limited: the transitional effect of the 2026 omission depends on a combination of the form of the omitted provision, the nature of the

[11] Fibre Boards (P) Ltd v CIT Bangalore (2015) 10 SCC 333, [2015] 376 ITR 596 (SC, 11 August 2015), paras 19–31 and 35.

[12] Shree Bhagwati Steel Rolling Mills v Commissioner of Central Excise Civil Appeal No 4280 of 2007 (SC, 24 November 2015).

[13] Finance Act 2026 (Act No 4 of 2026), s 157, as reported in 'Intermediary Services under GST: Retrospective Impact of K.C. Overseas & Finance Act 2026?' (TaxGuru) <https://taxguru.in/goods-and-service-tax/intermediary-services-gst-retrospective-impact-k-c-overseas-finance-act-2026.html> accessed 14 October 2026.

proceeding and the search for contrary intention, none of which Parliament addressed, and that is the legal-certainty problem the rest of the paper examines.

Preservation under section 6 is not absolute, since it yields where a different intention appears, and taxpayers may argue that such an intention is shown here. The CBIC Chairman's explanation of the amendment, quoted in Section 3, and officials' stated aim of resolving some ₹3,300 crore of pending litigation, noted in Section 4.6, point toward an intention to end disputes rather than preserve them. The reasoning in *Goodluck India*, which inferred from the purpose of omitting rule 96(10) that pending complications were not meant to survive, suggests that the Supreme Court will read purpose into legislative silence. Against that, the Court there was dealing with a rule, where the default already favoured lapse, and a ministerial or Council statement is not itself the enactment. A taxpayer might also say that a beneficial omission is clarificatory or curative and so applies to pending matters. The Supreme Court's approach in *CIT v Vatika Township (P) Ltd* points the other way: legislation is not read as retrospective unless that is clearly intended or follows by necessary implication, and the Court there declined to treat an amendment as clarificatory where Parliament had not adopted a proposal for retrospective effect and the administration had described the change as prospective.[14] On the better reading, section 6 would on its terms preserve proceedings pending under the old provision unless a different intention is found, but the position is open to argument in both directions and may differ between a pending refund claim and a pending demand. The paper's claim is accordingly not that the law is unknowable, nor that existing law already entitles taxpayers to relief, but that it is unsettled in a way that produces uneven and litigation-heavy outcomes, and that a short transitional provision would be a better instrument than leaving the matter to the interaction of these factors and to case-by-case litigation. Policy desirability and legal entitlement are different things: the case made here is about what Parliament should enact, not a claim about what the courts must already hold.

4.2 Legislative Competence to Enact Retrospective Tax Measures

The Constitution imposes no general prohibition on retrospective taxation. In *Rai Ramkrishna v State of Bihar*, the Supreme Court held that a taxing statute within the legislature's competence does not become incompetent merely because it operates retrospectively, since the competence to legislate carries with it the competence to enact ancillary provisions, including

[14]CIT v Vatika Township (P) Ltd [2014] 49 taxmann.com 249 (SC).

validating provisions for taxes already charged but not yet collected.[15] In *Chhotabhai Jethabhai Patel & Co v Union of India*, the Court upheld a retrospective excise duty on unmanufactured tobacco imposed by section 7(2) of the Finance Act 1951, which took effect from 1 March 1951, shortly after the Finance Bill was introduced on 28 February 1951 and about two months before its enactment on 28 April 1951, finding no express constitutional inhibition on retrospective taxation outside Part III of the Constitution.[16] Parliament, then, could have, and arguably should have, expressly stated whether the omission of section 13(8)(b) operated retrospectively or prospectively. It did not.

4.3 The Countervailing Doctrine: Judicial Deference to Fiscal Cutoff Dates

Before any claim of unconstitutionality can be sustained, however, a substantial body of contrary precedent must be addressed. Indian courts have repeatedly held that fiscal legislation attracts far greater latitude in classification than legislation touching civil liberties. In *R.K. Garg v Union of India*, the Supreme Court held that 'laws relating to economic activities should be viewed with greater latitude than laws touching civil rights', requiring courts to extend greater deference to legislative discretion in economic regulation, since 'exact wisdom and nice adaption of remedy are not always possible'.[17]

That deference extends in particular to date-based classifications. In *Union of India v Parameswaran Match Works*, the Court upheld a cutoff date distinguishing existing manufacturers from future manufacturers for a concessional excise duty, holding that 'a classification can be founded on a particular date and yet be reasonable', and that 'the choice of a date as a basis for classification cannot always be dubbed as arbitrary even if no particular reason is forthcoming for the choice unless it is shown to be capricious or whimsical in the circumstances'.[18] More directly relevant still is *Union of India v Nitdip Textile Processors (P) Ltd*, in which the Court considered a challenge to section 87(m)(ii)(b) of the Finance (No. 2) Act 1998, which confined the Kar Vivad Samadhan Scheme (a tax dispute resolution scheme) to cases where the demand or show-cause notice issued on or before 31 March 1998. Taxpayers who received notices later challenged the cutoff as arbitrary, and the Gujarat High Court partly agreed. The Supreme Court reversed, applying the settled two-limb test, under which a classification must rest on an intelligible differentia bearing a rational nexus to the legislative

[15]Rai Ramkrishna v State of Bihar AIR 1963 SC 1667.
[16]Chhotabhai Jethabhai Patel & Co v Union of India AIR 1962 SC 1006.
[17]R.K. Garg v Union of India AIR 1981 SC 2138.
[18]Union of India v Parameswaran Match Works (1975) 1 SCC 305.

objective, and found the cutoff satisfied that test because it bore a rational nexus to the Scheme's objective of expeditious tax recovery; incidental hardship to some taxpayers did not render the classification arbitrary.[19]

The structural parallel with the omission of section 13(8)(b) is plain: a date determines which regime applies to a taxpayer's dispute, and taxpayers on the wrong side of it suffer accordingly. *Nitdip* and *Parameswaran* suggest that such a cutoff, without more, need not violate article 14 unless no comparable rational nexus exists for the 30 March 2026 date, a question taken up in Section 4.4.

4.4 Reconciling the Doctrines: A Synthesised Test for Fiscal Cutoff Dates

This deferential line of authority has limits, and the Court's own qualification of it deserves attention. In *D.S. Nakara v Union of India*, the Court found an unconstitutional cutoff dividing pensioners into two classes for a revised pension calculation, holding that a date-based classification is justified only where a rational connection exists between the cutoff and the scheme's object; absent that connection, for a continuous class of persons otherwise similarly situated, an arbitrarily chosen date violates article 14.[20] The distinction between *Nitdip* and *Parameswaran* on one side and *Nakara* on the other turns on whether the legislature can identify a purpose for the chosen date: in *Nitdip* it was administrative finality in winding up a voluntary dispute-resolution scheme, and in *Parameswaran* it was protecting existing small manufacturers from further subdivision of production.

The same enquiry recurs, in slightly different language, in two further sources. Writing on the same body of cases, Chaturvedi records that the Supreme Court in *D.G. Gouse v State of Kerala* tested a fiscal cutoff by asking whether, against the measure's legislative history, the chosen date was 'wide of the reasonable mark'.[21] Separately, reviewing the same line of authority, Narayan and Singh argue that rational nexus should be reformulated 'as demanding a constitutional standard of rationality', which, following Khaitan, means asking whether the objective behind a classification is both genuine and legitimate, so as to expose the rule's 'real impact' rather than accept an asserted purpose at face value.[22] A further, more exacting

[19]Union of India v Nitdip Textile Processors (P) Ltd (2012) 1 SCC 226.

[20]D.S. Nakara v Union of India (1983) 1 SCC 305.

[21]D.G. Gouse & Co (Agents) (P) Ltd v State of Kerala (1980) 2 SCC 410, as discussed in KN Chaturvedi, 'Legislative Retrospectivity and Rule of Law' (2013) 34 Statute Law Review 207.

[22]Gautam Narayan and Asmita Singh, 'Not a Numbers Game: A Constitutional Argument to Increase Coverage under the NFSA' (2020) 13 NUJS Law Review 93.

formulation is available by analogy from outside the fiscal context: Ahmed has proposed supplementing the classification enquiry with a distinct test of manifest arbitrariness and anti-subordination, asking not only whether a measure is rationally connected to a stated purpose but whether it operates to subordinate an affected class.[23]

Nitdip, *Parameswaran*, *Nakara* and *D.G. Gouse* are not, on inspection, four separate tests but four applications of one underlying enquiry, which this paper draws together into a single working heuristic. A fiscal cutoff date survives article 14 scrutiny where (a) it can be tied to an articulated purpose connected to the measure's objective, of the kind present in *Nitdip* and *Parameswaran* and absent in *Nakara*; (b) the class it divides is severable rather than continuous, so that persons on either side of the date are not, for the scheme's purposes, otherwise identically situated; and (c) the purpose relied on is, in Narayan and Singh's terms, genuine and legitimate rather than merely asserted after the fact. Where a cutoff fails any one limb, it is, in Chaturvedi's phrase, 'wide of the reasonable mark'.

Applying that test, as a lens, to the omission of section 13(8)(b): the date of 30 March 2026 has not been identified, in the legislative material or CBIC guidance available to the authors, as serving any purpose beyond bringing the amendment into force, unlike the dates in *Nitdip* and *Parameswaran*, each tied to an articulated scheme objective. The second limb is more favourable to the legislature, since exporters' disputes differ by transaction, contract and tax period and are not, as in *Nakara*, a single continuous class distinguishable only by date. On this lens the first limb is in doubt and the second is satisfied. The paper does not predict that a constitutional challenge to the commencement date would succeed; commencement dates ordinarily fix the temporal reach of a new law and are rarely treated as classifications at all. The point of the exercise is the normative one that a legislature able to state its purpose for a transitional choice is better placed, in terms of legal certainty, than one that leaves courts to infer it, and that an express transitional provision of the kind described in Section 7.1 would remove the question.

The Article 14 material must be used with care, and three distinct questions should be kept apart. The first is whether the amendment itself, in particular its commencement date, is open to constitutional challenge. A commencement date ordinarily fixes when a new law begins to

[23]F Ahmed, 'Arbitrariness, Subordination and Unequal Citizenship' (2020) 4 Indian Law Review 121. Ahmed's test was developed to challenge the Citizenship (Amendment) Act 2019 rather than a fiscal cutoff, and its extension to tax classification here is this paper's own, not Ahmed's.

operate and is not self-evidently a classification between taxpayers of the kind Article 14 scrutinises; no class is excluded from a benefit in the way pensioners were in *Nakara*. The second is an interpretive question: what effect the omission has, as the law stands, on pending proceedings, which is governed by section 6 of the General Clauses Act, the authorities in Section 4.1 and any contrary intention. The third is a normative question about legislative drafting: whether Parliament should have stated the transitional effect. The Article 14 case law is used here only for the third question, as a source of criteria for assessing a transitional choice, and not as an argument that the amendment is unconstitutional.

Nor does it follow from the instrument contrast in Section 4.1 that exporters affected by an omitted rule and exporters affected by an omitted statutory provision are similarly situated in the Article 14 sense. Different consequences may flow from the operation of general interpretive legislation, applied according to its terms, rather than from a discriminatory fiscal classification, and courts have not generally treated the application of section 6 as classification. The contrast is offered to illustrate the unpredictability of the position, not to establish a denial of equal protection.

The significance of leaving this uncertainty unaddressed is illustrated, though not paralleled in substance, by the *Vodafone* affair, since *Vodafone* concerned the retrospective imposition of new liability rather than retrospective relief. After the Supreme Court's 2012 decision in *Vodafone International Holdings BV v Union of India* in the taxpayer's favour on indirect-transfer taxation, Parliament's retrospective legislative override triggered years of international arbitration and investor-confidence concerns, until the Taxation Laws (Amendment) Act 2021 closed the door to new claims concerning transfers predating 28 May 2012 and offered an interest-free refund scheme to taxpayers withdrawing ongoing litigation.[24] The lesson worth drawing is procedural rather than substantive: once Parliament recognised that a bright-line, date-based cutoff was needed to resolve uncertainty, it legislated the point explicitly rather than leaving taxpayers and courts to infer an answer. The omission of section 13(8)(b) has not yet received the same treatment.

4.5 A Judicial Template for Transitional Relief

India's higher judiciary has used comparable pragmatic devices elsewhere. In its 2024 ruling on state taxation powers over mineral rights, the Supreme Court invoked its power under article

[24]Vodafone International Holdings BV v Union of India (2012) 6 SCC 613; Taxation Laws (Amendment) Act 2021 (India).

142 to fix the scope of the retrospective operation of its own decision, so that tax collection began only from the date the relevant proviso was inserted into the statute, avoiding the adverse consequences for the mining industry that full retrospective effect would otherwise have produced.[25] Although that case concerns judicial rather than legislative retrospectivity, it shows that a date-based cutoff paired with a mechanism for resolving pre-cutoff disputes is available to Parliament through ordinary legislative power, without any need to invoke article 142. What an administrative circular can add is discussed in Section 7.2.

4.6 The Absence of a Saving Clause: Legal Consequences and Professional Reaction

Turning to the Finance Act 2026 omission in light of the foregoing, the absence of an express transitional provision leaves residual ambiguity about the deeming fiction's future scope. If section 6 of the General Clauses Act applies, as the reasoning in Fibre Boards and Shree Bhagwati discussed in Section 4.1 would suggest, pending proceedings under the old provision are preserved. If a court instead treats the omission like the omitted rule in Kolhapur and Goodluck India, or finds a different intention, taxpayers with disputes pending as of 30 March 2026 may argue that the deeming fiction no longer supports proceedings still open on that date. Reading the omission instead as a purely prospective change, consistent with the presumption in *J.P. Jani* and the tolerance for fiscal cutoffs shown in *Nitdip*, would confine its effect to disputes and transactions occurring wholly on or after 30 March 2026. Absent CBIC clarification, which appeared still to be pending at the time of writing, similarly situated exporters will obtain materially different outcomes depending on the forum and the reading it adopts, an ambiguity existing doctrine does not necessarily forbid but that good tax administration ought to avoid.

Practitioner commentary has already divided along the same line. One commentary, applying section 6 and relying on *Shree Bhagwati*, concludes that the omission is prospective and that pending proceedings continue as if the provision had not been omitted.[26] Another, applying the reasoning in *Hikal*, argues that in the absence of a saving clause pending show-cause notices

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[25] See Supreme Court Observer, 'States' Power to Tax to Apply Retrospectively' (Supreme Court Observer, 26 August 2024).

[26] 'Intermediary Services under GST: Retrospective Impact of K.C. Overseas & Finance Act 2026?' (TaxGuru) <https://taxguru.in/goods-and-service-tax/intermediary-services-gst-retrospective-impact-k-c-overseas-finance-act-2026.html> accessed 14 October 2026.

and appeals may have lost their statutory anchor, subject to matters that are past and closed.[27] That two commentaries reach opposite conclusions from the same silence is itself evidence of the ambiguity this paper describes.

The size of the dispute backlog shows what is at stake. Unnamed officials cited by *The Hindu BusinessLine* said the omission was meant to resolve roughly ₹3,300 crore of pending litigation, and tax consultants cited by *Moneycontrol* put the figure at closer to ₹4,000 crore.[28] If the amendment is read as prospective only, or if section 6 preserves pending proceedings, that backlog is not cleared by the amendment itself and is left to be resolved dispute by dispute under the old provision; if instead pending proceedings fall away, the backlog is cleared, but at the cost of defeating demands that the revenue may regard as accrued. No court or tribunal decision known to the authors has yet decided which reading applies to section 13(8)(b). The GST Appellate Tribunal's decision in *Dow Chemical International*, decided on 4 June 2026, might be thought to bear on the point, but it does not decide it. It concerned the classification of procurement services supplied by a foreign group entity to an Indian recipient for January to June 2022, and held that they were not intermediary services under section 2(13).[29] The Tribunal noted the 2026 omission and decided the periods before it under the law then in force, but it did not consider whether the omission affects proceedings pending on 30 March 2026. It is cited in this paper only as an illustration of the classification question under section 2(13), which survives the amendment, and which is relevant to the reverse-charge discussion in Section 5.

The same gap is now being felt by industry directly. Nasscom has asked the GST Council, which met on 8 October 2026, to clarify the treatment of head office and branch office exports, noting through its representative Ashish Aggarwal that the 2026 omission had removed a long-standing source of disputes while some questions remained open.[30] Nasscom's request

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[27]Rakesh Jain, 'Intermediary Amendment in Budget 2026: When Silence of the Law Speaks' (TaxTMI, 14 March 2026) <https://www.taxtmi.com/article/detailed?id=16018> accessed 14 October 2026.

[28]Shishir Sinha, 'GST Liability on Intermediary Services Shifts to Recipient from Supplier' (The Hindu BusinessLine, 31 March 2026); 'The Finance Act 2026 Could Unlock Rs 4,000 Crore in Litigated GST Refunds for Indian Intermediaries' (Moneycontrol, 1 April 2026). These are press figures attributed to officials and consultants. The authors have not seen an official estimate and treat the figures as indicative only.

[29]Dow Chemical International Pvt Ltd v Commissioner of State Tax APL/2/PB/2026 to APL/7/PB/2026 (GSTAT Principal Bench, 4 June 2026), paras 6(b) and 16, consulted in the Tribunal's order. The decision notes the 2026 omission and applies the law in force for the periods in dispute; it does not consider the effect of the omission on proceedings pending on 30 March 2026.

[30]Press Trust of India, 'GST Council Meet: Nasscom Seeks Clarity over Treatment of Overseas-Branch Exports' (6 October 2026).

concerned head office and branch office treatment rather than pending disputes as such, so it does not directly confirm the saving-clause gap; it does show that industry is still seeking clarification from the Council some seven months after the amendment took effect.

4.7 A Law-and-Economics Perspective on Transitional Relief

The doctrinal case for a saving clause can be supplemented by the law-and-economics literature on legal transitions, which asks when relief from a legal change is efficient rather than merely fair. The field begins with Graetz, who argued that grandfathering and transition relief in tax reform are generally neither efficient nor required by fairness, since reliance on an existing rule does not by itself justify shielding a taxpayer from its change.[31] Kaplow's subsequent, and now foundational, treatment reframes every legal transition, whether legislative, judicial or administrative, as an occasion on which gains and losses fall on those who relied on the prior rule, the central policy question being whether and how to relieve that reliance loss.[32] Kaplow's own answer is that government-provided transition relief is not necessarily efficient, since reliance losses can often be insured against through ordinary market transactions; a change of rule does not, on this view, automatically call for relief. Kaplow nonetheless accepts that relief is in fact widely provided for tax reform specifically, which leaves room for relief to be efficient in particular circumstances even on his own framework.

Kaplow's framework did not go unanswered. Shachar, replying directly, argued that Graetz's analysis was too general and under-attentive to how transition rules affect liabilities as well as assets, proposing instead that relief be assessed case by case according to which party is better placed to bear the risk of change.[33] Levmore went further, defending retroactive taxation on public-choice grounds: the prospect of retroactive change can discourage the strategic, reform-anticipating behaviour that a purely prospective regime invites, and so improve incentives overall.[34] Logue, across a series of papers, took the debate in a different direction, arguing that the central risk is not retroactivity as such but *opportunistic* retroactivity, and that a government able credibly to precommit to providing transition relief for certain categories of tax incentive

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[31] Michael J Graetz, 'Legal Transitions: The Case of Retroactivity in Income Tax Revision' (1977) 126 University of Pennsylvania Law Review 47.

[32] Louis Kaplow, 'An Economic Analysis of Legal Transitions' (1986) 99 Harvard Law Review 509; Louis Kaplow, 'Transition Policy: A Conceptual Framework' (2003) 13 Journal of Contemporary Legal Issues 161.

[33] Avishai Shachar, 'From Income to Consumption Tax: Criteria for Rules of Transition' (1984) 97 Harvard Law Review 1581.

[34] Saul Levmore, 'The Case for Retroactive Taxation' (1993) 22 Journal of Legal Studies 265.

can capture real efficiency gains that an unconstrained government cannot.[35] Shavell, writing later, supplied a further reason for caution about unrelieved change: once people have complied with an existing rule, a change to it is worth less to society than a purely forward-looking analysis would suggest, because adjustment is costly and the benefit of change only adds to gains already realised through past compliance, a reasoning that, Shavell notes, lends renewed support to the traditional reliance-based case for grandfathering in appropriate cases.[36] Hines, examining the question empirically, found that tax reforms frequently do grandfather existing arrangements in practice, and later argued that transition relief should be assessed by the same efficiency principles that justify the reform itself, rather than treated as a concession separate from it.[37]

The omission of section 13(8)(b) can be read as sitting closer to the case for relief within this literature than to the case against it, but that claim is a hypothesis, not a demonstrated result. Kaplow's framework treats relief as efficient chiefly where reliance interests are concrete and well-defined and the cost of providing relief is low. The first condition is plausibly present: exporters priced contracts, structured arrangements and in some cases litigated for years on the footing of a known classification rule. The second cannot be asserted on the evidence available. No fiscal estimate of the value of contested refunds and demands has been published, the press figures of ₹3,300 to ₹4,000 crore noted in Section 4.6 are indicative only, and the revenue cost of an express provision would depend on its content, since relief for pending refunds costs revenue while preserving pending demands does not. Administrative cost is likewise unmeasured. Logue's precommitment logic suggests that a government that credibly commits to resolve pending disputes on a known basis removes a taxpayer incentive to litigate strategically in the hope of a more favourable later interpretation, though how far litigation behaviour would change is an empirical question this paper does not answer. The dependence of outcomes on the form of the omitted provision and the nature of the proceeding, described in Section 4.1, compounds the problem from a precommitment perspective, since a taxpayer

[35]Kyle D Logue, 'Tax Transitions, Opportunistic Retroactivity, and the Benefits of Government Precommitment' (1996) 94 Michigan Law Review 1129; Kyle D Logue, 'If Taxpayers Can't Be Fooled, Maybe Congress Can: A Public Choice Perspective on the Tax Transition Debate' (2000) 67 University of Chicago Law Review 1507; Kyle D Logue, 'Legal Transitions, Rational Expectations, and Legal Progress' (2003) 13 Journal of Contemporary Legal Issues 211.

[36]Steven Shavell, 'On Optimal Legal Change, Past Behavior, and Grandfathering' (2008) 37 Journal of Legal Studies 37.

[37]James R Hines Jr, 'On the Timeliness of Tax Reform' (2004) 88 Journal of Public Economics 1043; James R Hines Jr, 'Reflections of the Holland Medal Recipient: Perils of Tax Reform' (2018) 71 National Tax Journal 357.

cannot readily predict how silence will be read. Shavell's reasoning adds that taxpayers who have already complied with, and litigated under, the old rule have a claim to stability that a bare forward-looking efficiency calculation would understate. These arguments support a hypothesis: that an express transitional provision is likely to reduce the total costs of uncertainty at an acceptable fiscal cost. Testing it would require the data on refund and demand values, litigation volumes and administrative costs that Section 7 recommends be disclosed. The absence of a transitional provision is therefore best described as a probable inefficiency and a cost to legal certainty, not a demonstrated one, and it is not, without more, a breach of any legal duty.

5. The Reverse-Charge Consequence: A Tax Incidence Problem

The second consequence of omitting section 13(8)(b) concerns the reverse charge mechanism (RCM), and is best understood through the economics of tax incidence, which distinguishes statutory incidence (the person on whom a tax formally falls) from economic incidence (the person who actually bears its burden). Before the amendment, because the place of supply of intermediary services was fixed at the supplier's location, IGST did not apply to an Indian taxpayer receiving intermediary services from a foreign intermediary: the place of supply lay outside India and outside the reach of Indian GST.

The move to a recipient-location rule under section 13(2) changes this. Where a foreign provider supplies intermediary services for consumption by an Indian entity (including an Indian GCC engaging an overseas facilitation agent), India becomes the place of supply, and liability shifts to the Indian recipient under RCM, since the foreign supplier generally lacks Indian registration and cannot discharge output tax itself. Statutory incidence thus falls on the Indian recipient by operation of law. Ordinarily, incidence theory predicts that the economic burden of a tax depends on the relative elasticities of supply and demand and may be shared between the parties through price. Here, the statute fixes the liability on the recipient at the outset, and a foreign supplier outside India's taxing jurisdiction has no legal reason to absorb part of it; any sharing would have to come from renegotiated contract prices rather than from the tax mechanism itself.

Whether the recipient ultimately bears the burden, however, depends on credit. A recipient that makes taxable supplies can generally claim input tax credit for tax paid under RCM, subject to the conditions and restrictions in the GST legislation, so that its net economic burden is mainly

a financing and compliance cost: tax is paid in cash when the liability arises, while the credit is realised later. The cost is a final burden only for recipients whose credit is unavailable or restricted, such as those making exempt supplies or caught by blocked-credit rules. The incidence problem is therefore concentrated rather than general, and the extent to which GCCs fall within it depends on their individual supply profiles. That qualification matters for the strength of any reform proposal, and Section 7 is framed accordingly.

Practitioners have described the consequence as 'a double-edged sword': Indian exporters gain from the resolution of the export-classification issue, while 'Indian entities receiving intermediary services from foreign suppliers' face 'a new liability under [RCM] for import of services that was not present earlier'.[38] The reform thus relocates a cost: for credit-eligible recipients mainly a cash-flow and compliance cost, and for credit-restricted recipients a genuinely new tax on a transaction that was previously untaxed.

The compliance dimension is material for the sub-sector the reform is meant to benefit. India's GCC ecosystem, reportedly comprising over two thousand centres generating tens of billions of dollars in annual revenue, is increasingly structured around facilitation arrangements in both directions: as a service supplier to an offshore parent, and as a recipient of coordination services from suppliers in third countries.[39] As these arrangements grow more sophisticated, the cash-flow and compliance cost of RCM on inbound facilitation services may grow with them unless specifically addressed.

Two limits on this analysis should be stated. First, the paper offers no quantified estimate of the transactions affected, the extent of credit restriction or the financing cost of paying reverse-charge tax in cash before credit is realised. None is available in the sources reviewed, and the discussion is a conceptual account of where the burden is likely to fall, not a measurement of it. Second, the reverse charge applies only where the foreign supplier's services are in fact intermediary services, and section 2(13) excludes persons who supply on their own account. Arrangements with foreign group procurement or coordination hubs are litigated on exactly

[38]Business Today Online, 'Budget 2026-27 Changes the Tax Landscape for Intermediary Services' (10 February 2026), citing commentary from Anjali Jain (KPMG).

[39]See Business of GCC, 'GCC Market Size & Revenue 2026: Global Capability Center Data' (Business of GCC, 2026); A Palit, 'India's GCCs Drive Service Exports Ahead of Manufacturing' (ISAS Brief, Institute of South Asian Studies, National University of Singapore, 23 December 2024). Published estimates of GCC and IT/ITeS export revenue vary across sources, and no official figure for the post-amendment period had been released at the time of writing; the recommendation in Section 7 that CBIC publish RCM and refund data periodically is intended, in part, to close this gap.

this classification question, as *Dow Chemical International* illustrates.[40] The exposure of any Indian recipient therefore depends on the characterisation of its particular arrangements and cannot be inferred from the sector to which it belongs.

6. Comparative Perspective: EU VAT and Singapore GST

This section is a limited design comparison. Its purpose is to ask how two other systems frame the place-of-supply rule for B2B services, and whether that framing avoids the particular device, a deeming fiction fixing intermediary supplies at the supplier's location, that generated India's dispute. It does not survey how either system has operated in litigation, and it does not claim that either has been free of classification disputes or transition difficulties. Such a claim would require a study of the case law of the Court of Justice of the European Union and national courts, and of Singapore court decisions and IRAS practice, that is beyond the scope of this paper.

6.1 The European Union

Under article 44 of Council Directive 2006/112/EC, the default B2B rule fixes the place of supply of services between taxable persons at the customer's location, not the supplier's.[41] For intermediary supplies specifically, the underlying-transaction-location principle in article 46 applies only to B2C intermediary supplies; B2B intermediary services remain subject to the default B2B rule in article 44. The EU system further distinguishes a disclosed agent from an undisclosed agent or commissionaire: for the former, the agency itself is deemed to constitute a location-specific supply, while for the latter, article 28 treats the agent as personally receiving and supplying the underlying goods or services, generating two notional supplies (a deeming rule of its own, though not one that fixes the place of supply at the intermediary's location). Article 196 then generalises the reverse charge for cross-border B2B services.

This basic agent/commissionaire distinction has itself been further refined in recent scholarship. Van Abswoude, van Doesum and van Kesteren set out a four-category hierarchy among EU VAT intermediaries (resellers, commissionaires, platforms and agents) and a fallback category for cases falling outside all four, proposing a fixed order in which an arrangement should be tested against each category in turn to determine which place-of-supply

[40] See the discussion of Dow Chemical International Pvt Ltd v Commissioner of State Tax in Section 4.6.

[41] Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax [2006] OJ L347/1, art 44.

rule applies.[42] The relevant point for present purposes is structural rather than substantive: however many categories the EU draws, each is tested directly against the transaction's characteristics, rather than depending, as India's 'intermediary' definition in section 2(13) still does, on an open-ended 'arranges or facilitates' enquiry layered on top of a separate domestic deeming fiction. The EU has classification disputes of its own, notably over whether an arrangement is agency or commissionaire and so which supply is made. The contrast drawn here is only that those disputes concern which of a bounded set of categories applies, whereas India's concerned whether a deeming fiction applied at all and then what consequence followed.

Whether the drafters of the Directive designed article 44 with this problem in mind is not something the sources reviewed here establish, and the paper does not claim it. The narrower observation is that a B2B default rule located at the customer, with no supplier-location carve-out for intermediaries, does not present the particular question that arose in India.

6.2 Singapore

Singapore's GST Act takes a different but comparably principled approach, relying on the substantive benefit of a supply rather than the location of the contracting parties. Under section 21(3) of the GST Act, a supply of services to an overseas person can be zero-rated as an 'international service', but the Inland Revenue Authority of Singapore applies a belonging-and-direct-benefit test, asking who actually consumes the economic benefit of the service rather than who is the contracting counterparty.[43] This is most visible in guidance on consultancy and facilitation services, where the benefit of a service flows to a Singapore subsidiary of an overseas contracting party rather than to the overseas head office, and the zero-rating follows the benefit rather than the contract.

Singapore's test is built into the zero-rating rule itself rather than layered on a deeming fiction. The paper's account of section 21(3) is deliberately general: the zero-rating of international services is subject to detailed conditions and exceptions that it does not examine.

Taken together, the comparison suggests that the EU and Singapore frame the B2B rule around the customer or the benefit of the supply, and so do not present the particular question of a supplier-location deeming fiction for intermediaries. It does not show that either system has

[42]K van Abswoude, A van Doesum and H van Kesteren, 'The Hierarchy Between Intermediaries in EU VAT' (2025) 34 EC Tax Review 140.
[43]Singapore Goods and Services Tax Act 1993, s 21(3); Inland Revenue Authority of Singapore, 'Providing International Services' (IRAS, 2026).

avoided classification disputes, exceptions or transition difficulties, and the paper draws no conclusion that India's difficulties are attributable to design alone. The more limited lesson is that the 2026 reform moves India toward a design the other systems share, and that when a rule is changed the transitional position deserves attention of its own.

7. Recommendations

The measures below are intended to give effect to the argument of Section 4 without requiring Parliament to resolve the unsettled interpretive and constitutional questions it identifies. Section 7.1 sets out a model transitional provision, Section 7.2 explains the limits of administrative clarification, Section 7.3 addresses three further measures, and Section 7.4 draws wider lessons.

7.1 A Model Transitional Provision

The central recommendation is that Parliament state what the omission does. The paper's objectives must be reconciled here. A conventional saving clause that simply preserves pending proceedings would perpetuate some of the very disputes the amendment was said to end, while a clause that extinguishes them would defeat demands the revenue regards as accrued. The provision must therefore choose, and it should choose openly. A model with six elements is offered for discussion. It is a drafting model, not a prediction of what Parliament would choose, and its fiscal cost has not been estimated.

Operation date. State that the omission applies to supplies made on or after 30 March 2026, and say expressly whether supplies made before that date remain governed by the former place-of-supply rule. *Pending proceedings.* Specify whether show-cause notices, adjudications and appeals pending on 30 March 2026 continue under the former provision or are to be disposed of as if the omitted paragraph had not been in force. The two choices have different fiscal consequences, and the provision should make the choice rather than leave it to section 6 of the General Clauses Act. *Finalised assessments.* State that assessments, orders and appeals that attained finality before the operation date are not reopened by the omission, which protects certainty and revenue alike. *Refund entitlements.* State whether refund claims pending on the operation date, and refund claims for earlier periods not yet filed, are to be processed on the footing that the supply is an export, and on what conditions. *Limitation.* Provide a fixed window within which claims affected by the change may be filed or amended, with time spent in litigation under the former rule excluded, so that taxpayers are not defeated by the two-year

limit in section 54 of the CGST Act for periods during which the former rule applied. *Optional settlement.* Offer, in the manner of the Taxation Laws (Amendment) Act 2021, a voluntary route by which a taxpayer withdraws litigation in return for a defined outcome, so that each side gives up something and neither is forced to accept the other's reading.

7.2 What a Circular Can and Cannot Do

A circular issued by CBIC under section 168 of the CGST Act can guide officers on how the department will treat pending matters, for example by instructing them not to pursue demands whose sole basis was the omitted paragraph, or by prescribing how refund claims are to be processed. It cannot override the statute, extinguish a liability that has accrued under the Act, change the effect of section 6 of the General Clauses Act as a court would apply it, or bind courts or taxpayers. Anything that would alter the legal position of taxpayers, such as extending limitation, creating a settlement scheme or reopening finalised orders, requires legislation. A circular is therefore an interim administrative measure and a supplement to the model provision, not a substitute for it.

7.3 Further Measures

First, Parliament should revisit the definition of 'intermediary' in section 2(13) and adopt a clearer statutory test, drawing on the EU's disclosed and undisclosed agency distinction, van Abswoude, van Doesum and van Kesteren's four-category hierarchy, or Singapore's benefit test, based on which party bears commercial risk vis-à-vis the principal, so as to forestall disputes of the kind seen in *Dharmendra M Jani* now that the place-of-supply consequence has been relaxed. Santhosh's alternative proposal (a deeming provision locating the place of supply at the foreign recipient's address) remains a workable fallback, though the move to the section 13(2) default rule has already achieved much of what it sought.

Second, the paper does not recommend relief for a sector as such. If relief from the reverse-charge consequence is warranted, it should be tied to an objectively demonstrable condition, namely that the recipient cannot claim input tax credit on the tax paid under reverse charge, for example because it makes exempt supplies or is subject to blocked-credit rules. A GCC or IT/ITeS recipient that can recover the credit bears a timing and compliance cost, and a case for relief for it would need a quantified estimate of the financing cost, which is not available. The measure the evidence supports is therefore narrower: a data-based review of whether recipients with restricted credit are in practice bearing a new, final tax on inbound facilitation services

and, if so, relief tied to that restriction (credit or exemption) rather than to the recipient's industry.

Third, CBIC should commit to periodic public disclosure of refund claims, pending demands and reverse-charge revenue attributable to the section 13(8)(b) omission, allowing researchers and policymakers to test empirically, rather than infer from practitioner commentary and press estimates, whether the reform is achieving its stated competitiveness objective and what an express transitional provision would cost.

7.4 Lessons for Transitional Design Beyond India

Although the analysis above addresses a single Indian amendment, the underlying problem is not India-specific, and the paper's broader contribution lies here. Any jurisdiction redesigning a place-of-supply or nexus rule for cross-border services faces the same two questions: how to treat disputes and transactions straddling the amendment date, and whether a change to the tax base on one side of a transaction creates a new incidence point on the other. Legislative silence on these questions is not neutral. It hands the decision to general interpretive rules, such as section 6 of the General Clauses Act, and to courts, which apply those rules to different instruments and different kinds of proceeding with results the legislature never considered. That is a cost to the rule of law, because persons cannot readily foresee the legal consequences of a change and similar cases may be resolved differently. The Kaplow-derived hypothesis set out in Section 4.7, that transitional relief is more likely to be efficient where reliance interests are clearly delineated and the cost of relief is low, is a useful starting point for other VAT and sales-tax base changes, digital-services nexus redefinitions and regulatory reclassifications, but each needs its own evidence on cost. A related lesson concerns form. Where default rules attach different transitional consequences to an omission depending on whether it is made in an Act or in rules, as the authorities discussed in Section 4.1 suggest they may in India, a uniform default in the General Clauses Act, or a drafting rule that every omission state its transitional effect, would improve predictability. The general lesson for legislative drafting is that a transition deserves as much drafting care as the substantive rule it implements; where it does not receive it, the interpretive rules will supply an answer, and not necessarily the one the legislature would have chosen.

8. Conclusion

The omission of section 13(8)(b) of the IGST Act, effective 30 March 2026, is a welcome development. For close to a decade the provision, read alongside the *Dharmendra M Jani* litigation, left Indian intermediary-service exporters unable to zero-rate supplies to foreign clients, with GST charged and refunds blocked on transactions that the destination principle would treat as exports. Whether any particular transaction also bore tax in the recipient's jurisdiction depends on that jurisdiction's own charging provisions, a matter outside the scope of this paper.

This paper has argued that the amendment is transitionally incomplete, and that the incompleteness is best understood as a failure of legislative design with consequences for legal certainty and the rule of law, not as a constitutional defect. Without a saving clause, the effect of the omission on pending disputes depends on a combination of factors: the form of the omitted provision, since omitted rules take pending proceedings with them, as *Kolhapur* and *Goodluck India* show, while the *Fibre Boards* line treats a provision omitted from an Act as a repeal to which section 6 of the General Clauses Act applies; the nature of the proceeding, whether a demand or a refund claim; and any contrary intention. Parliament addressed none of these, and no authority known to the authors has yet resolved the position for section 13(8)(b). The paper has distinguished this interpretive question from a constitutional challenge to the amendment, which it does not advance, and has used the Article 14 case law on fiscal cutoff dates, through a three-limb heuristic, only as a lens for assessing a transitional choice. The law-and-economics literature from Graetz and Kaplow to Shavell and Hines suggests the hypothesis that an express transitional provision would reduce the costs of uncertainty at an acceptable cost, but the evidence needed to test it, including the value of contested refunds and demands, has not been published. The paper therefore does not claim that existing law requires relief. Its claim is that Parliament should state its intention, and it offers a model provision for doing so (Section 7.1), together with an account of what administrative clarification can and cannot do.

On reverse charge, viewed as a tax-incidence question, the amendment creates a liability for Indian recipients of services that are intermediary services supplied from abroad, which did not exist before. Its economic burden depends largely on whether the recipient can claim input tax credit: for most recipients it is a cash-flow and compliance cost, and for recipients with restricted credit it may be a final cost. The paper has not quantified the effect, and it recommends data collection and relief tied to demonstrated credit restriction, not to a sector.

The comparison with the EU and Singapore is limited to statutory design: both frame the B2B rule around the customer or the benefit of the supply, and so do not present the supplier-location deeming question that arose in India. It does not show that those systems are free of classification disputes or transition difficulties. India's 2026 amendment moves toward a similar design, and, as Section 7.4 argues, the broader lesson is that transitional design deserves as much legislative attention as substantive design whenever a tax reform redraws the boundaries of a jurisdiction's tax base.

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