

Chapter 5 Place of Supply

Section 10(1)(a) – POS where supply involves movement of goods

Q1. In case of a domestic supply, what is the place of supply where goods are removed?

Answer:

As per section 10(1)(a), the place of supply of goods is the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

Section 10(1)(b) – POS in case of Bill to Ship to model

Q2. What will be the place of supply if the goods are delivered by the supplier to a person on the direction of a third person?

Answer:

As per section 10(1)(b), it would be deemed that the third person has received the goods and the place of supply of such goods will be the principal place of business of such person.

Q3. Priyank Sales of Pune, Maharashtra enters into an agreement to sell goods to Bisht Enterprises of Bareilly, Uttar Pradesh. While the goods were being packed in Pune godown of Priyank Sales, Bisht got an order from Sahil Pvt. Ltd. of Shimoga, Karnataka for the said goods. Bisht Enterprises agreed to supply the said goods to Sahil Pvt. Ltd. and asked Priyank Sales to deliver the goods to Sahil Pvt. Ltd. at Shimoga. You are required to determine the place of supply(ies) in the above situation. (RTP Nov'19, RTP Nov'18 Similar)

Answer:

The supply between Priyank Sales (Pune) and Bisht Enterprises (Bareilly) is a bill to ship to supply where the goods are delivered by the supplier [Priyank Sales] to a recipient [Sahil Pvt. Ltd. (Shimoga)] or any other person on the direction of a third person [Bisht Enterprises].

The place of supply in case of domestic bill to ship to supply of goods is determined in terms of section 10(1)(b). As per section 10(1)(b), where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person.

Thus, in the given case, it is deemed that the Bisht Enterprises has received the goods and the place of supply of such goods is the principal place of business of Bisht Enterprises. Accordingly, the place of supply between Priyank Sales (Pune) and Bisht Enterprises (Bareilly) will be Bareilly, Uttar Pradesh. This situation involves another supply between Bisht Enterprises (Bareilly) and Sahil Pvt. Ltd. (Shimoga). The place of supply in this case will be determined in terms of section 10(1)(a).

Section 10(1)(a) stipulates that where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

Thus, the place of supply in second case is the location of the goods at the time when the movement of goods terminates for delivery to the recipient (Sahil Pvt. Ltd.), i.e., Shimoga, Karnataka.

Q4. Asha Enterprises, supplier of sewing machines, is located in Kota (Rajasthan) and registered for purpose of GST in the said State. It receives an order from Deep Traders, located in Jalandhar (Punjab) and registered for the purpose of GST in the said State. The order is for the supply of 100 sewing machines with an instruction to ship the sewing machines to Jyoti Sons, located in

Patiala (Punjab) and registered in the said State for purpose of GST. Jyoti Sons is a customer of Deep Traders. Sewing machines are being shipped in a lorry by Asha Enterprises.

Briefly explain the following:

- (a) the place of supply;
- (b) the nature of supply: - whether inter-State or intra-State and
- (c) whether CGST/SGST or IGST would be applicable in this case.

(MTP-I May'22, MTP-II Dec'21, May'19 Old)

Answer:

The supply between Asha Enterprises (Kota, Rajasthan) and Deep Traders (Jalandhar, Punjab) is a bill to ship to supply where the goods are delivered by the supplier [Asha Enterprises] to a recipient [Jyoti Sons (Patiala, Punjab)] on the direction of a third person [Deep Traders].

In case of such supply, it is deemed that the said third person has received the goods and the place of supply of such goods is the principal place of business of such person [Section 10(1)(b)]. Thus, the place of supply between Asha Enterprises (Rajasthan) and Deep Traders (Punjab) will be Jalandhar, Punjab. Since the location of supplier and the place of supply are in two different States, the supply is an inter-State supply in terms of section 7, liable to IGST.

This situation involves another supply between Deep Traders (Jalandhar, Punjab) and Jyoti Sons (Patiala, Punjab). In this case, since the supply involves movement of goods, place of supply will be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient, i.e., Patiala, Punjab [Section 10(1)(a)].

Since the location of supplier and the place of supply are in the same State, the supply is an intra-State supply in terms of section 8, liable to CGST and SGST.

Section 10(1)(e) – POS where goods supplied on board a conveyance

Q5. What is the place of supply where the goods or services are supplied on board a conveyance, such as a vessel, an aircraft, a train or a motor vehicle?

Answer:

As per section 10(1)(e), in respect of goods, the place of supply is the location at which such goods are taken on board. However, in respect of services, the place of supply is the location of the first scheduled point of departure of that conveyance for the journey in terms of sections 12(10) and 13(11).

Section 12(3) – POS related to immovable property

Q6. The place of supply in relation to immovable property is the location of immovable property. Suppose a road is constructed from Delhi to Mumbai covering multiple states. What will be the place of supply of construction services? (MTP Nov'19)

Answer:

Where the immovable property is located in more than one State, the supply of service is treated as made in each of the States in proportion to the value for services separately collected or determined, in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf [Explanation to section 12(3) for domestic supplies].

In the absence of a contract or agreement between the supplier and recipient of services in this regard, the proportionate value of services supplied in different States/Union territories (where the immovable property is located) is computed on the basis of the area of the immovable property lying in each State/Union territories [Rule 4 of the IGST Rules].

Section 12(7) – POS in case of cultural or artistic events

Q7. What would be the place of supply of services provided by an event management company for organizing a sporting event for a Sports Federation which is held in multiple States?

Answer:

In case of an event, if the recipient of service is registered, the place of supply of services for organizing the event is the location of such person. However, if the recipient is not registered, the place of supply is the place where event is held.

Since the event is being held in multiple states and a consolidated amount is charged for such services, the place of supply will be deemed to be in each state in proportion to the value for services determined in terms of the contract or agreement entered into in this regard [Explanation to section 12(7)].

In the absence of a contract or agreement between the supplier and recipient of services, the proportionate value of services made in each State (where the event is held) will be computed in accordance with rule 5 of the IGST Rules by the application of generally accepted accounting principles.

Q8. Damani Industries has recruited Super Events Pvt. Ltd., an event management company of Gujarat, for organizing the grand party for the launch of its new product at Bangalore. Damani Industries is registered in Mumbai. Determine the place of supply of the services provided by Super Events Pvt. Ltd. to Damani Industries.

Will your answer be different if the product launch party is organised at Dubai? (RTP Nov'18)

Answer:

Section 12(7)(a)(i) stipulates that when service by way of organization of an event is provided to a registered person, place of supply is the location of recipient.

Since, in the given case, the product launch party at Bangalore is organized for Damani Industries (registered in Mumbai), place of supply is the location of Damani Industries, i.e., Mumbai, Maharashtra. In case the product launch party is organised at Dubai, the answer will remain the same, i.e., the place of supply is the location of recipient (Damani Industries)– Mumbai, Maharashtra.

Q9. Mr. Murthy, an unregistered person and a resident of Pune, Maharashtra hires the services of Sun Ltd. an event management company registered in Delhi, for organising the new product launch in Bengaluru, Karnataka.

- (i) **Determine the place of supply of services provided by Sun Ltd.**
- (ii) **What would be your answer if the product launch takes place in Bangkok?**
- (iii) **What would be your answer if Mr. Murthy is a registered person and product launch takes place in –**
 - (a) **Bengaluru**
 - (b) **Bangkok? (MTP-I Dec'21, MTP-I Jul'21, May'18)**

Answer:

- (i) As per section 12(7)(a)(ii), when service by way of organization of an event is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient. Since, in the given case, the service recipient [Mr. Murthy] is unregistered and event is held in India, place of supply is the location where the event is actually held, i.e., Bengaluru, Karnataka. The location of the supplier and the location of the recipient is irrelevant in this case.
- (ii) However, if product launch takes place outside India [Bangkok], the place of supply will be the location of recipient, i.e., Pune, Maharashtra.
- (iii) When service by way of organization of an event is provided to a registered person, place of supply is the location of recipient vide section 12(7)(a)(i).

Therefore, if Mr. Murthy is a registered person, then in both the cases, i.e., either when product launch

takes place in Bengaluru or Bangkok, the place of supply will be the location of recipient, i.e., Pune, Maharashtra.

Q10. Determine the place of supply for the following independent cases:

- (i) **Grand Gala Events, an event management company at Kolkata, organises two award functions for Narayan Jewellers of Chennai (Registered in Chennai, Tamil Nadu) at New Delhi and at Singapore.**
- (ii) **Perfect Planners (Bengaluru, Karnataka) is hired by Dr. Kelvin (unregistered person based in Kochi, Kerala) to plan and organise his son's wedding at Mumbai, Maharashtra.**

Will your answer be different if the wedding is to take place in Malaysia?

(Nov'22 Similar, May'18 Old)

Answer:

- (i) When service by way of organization of an event is provided to a registered person, place of supply is the location of recipient in terms of section 12(7)(a)(i). Since, in the given case, the award functions at New Delhi and Singapore are organized for Narayan Jewellers (registered in Chennai), place of supply in both the cases is the location of Narayan Jewellers, i.e., Chennai, Tamil Nadu.
- (ii) As per section 12(7)(a)(ii), when service by way of organization of an event is provided to an unregistered person, the place of supply is the location where the event is actually held and if the event is held outside India, the place of supply is the location of recipient.
Since, in the given case, the service recipient [Dr. Kelvin] is unregistered and event is held in India, place of supply is the location where the event is actually held, i.e., Mumbai, Maharashtra.
However, if the wedding is to take place outside India [Malaysia], the place of supply is the location of recipient, i.e., Kochi, Kerala.

Section 12(8) – POS by way of transportation of goods by mail/courier

Q11. What is the place of supply of services by way of transportation of goods, including mail or courier when both the supplier and the recipient of the services are located in India?

Answer:

If the recipient is registered, the location of such person is the place of supply. However, if the recipient is not registered, the place of supply is the place where the goods are handed over for transportation. Further, if the goods are transported outside India, the destination of such goods is the place of supply [Section 12(8)].

Section 12(9) – POS of passenger transportation service

Q12. What will be the place of supply of passenger transportation service, if a person travels from Mumbai to Delhi and back to Mumbai?

Answer:

If the person is registered, the place of supply will be the location of recipient. If the person is not registered, the place of supply for the forward journey from Mumbai to Delhi will be Mumbai, the place where he embarks [Section 12(9)]. However, for the return journey, the place of supply will be Delhi as the return journey has to be treated as a separate journey [Explanation to section 12(9)].

Section 12(11) – POS of telecommunication service

Q13. What is the place of supply for mobile connection? Can it be the location of supplier?

Answer:

The location of supplier of mobile services cannot be the place of supply as the mobile companies are providing services in multiple states and many of these services are inter-state. The consumption principle

will be broken if the location of supplier is taken as place of supply and all the revenue may go to a few states where the suppliers are located.

The place of supply for mobile connection would depend on whether the connection is on postpaid or prepaid basis. In case of postpaid connections, the place of supply is the location of billing address of the recipient of service.

In case of pre-paid connections, the place of supply is the place where payment for such connection is received or such pre-paid vouchers are sold.

However, if the recharge is done through internet/e-payment, the location of recipient of service on record will be taken as the place of supply.

Section 12(12) – POS of banking & other financial services

Q14. A person from Mumbai goes to Kullu-Manali and takes some services from ICICI Bank in Manali. What is the place of supply?

Answer:

If the service is not linked to the account of person, place of supply will be Kullu, i.e., the location of the supplier of services. However, if the service is linked to the account of the person, the place of supply will be Mumbai, the location of recipient on the records of the supplier.

Section 12(13) – POS of insurance services

Q15. An unregistered person from Gurugram travels by Air India flight from Mumbai to Delhi and gets his travel insurance done in Mumbai. What is the place of supply of insurance services?

Answer:

When insurance service is provided to an unregistered person, the location of the recipient of services on the records of the supplier of insurance services is the place of supply. So Gurugram is the place of supply [Section 12(13)].

Section 12(14) – POS of advertisement services to government

Q16. ‘PQ’, a statutory body, deals with the all the advertisement and publicity of the Government. It has issued a release order to ‘Moon Plus’ channel (registered in State ‘A’) for telecasting an advertisement relating to one of the schemes of the Government in the month of September 20XX. The advertisement will be telecasted in the States of ‘A’, ‘B’, ‘C’, ‘D’ and ‘E’. The total value of the service contract entered into between ‘Moon Plus’ and ‘PQ’ is ₹ 10,00,000 (exclusive of GST). You are required to determine the place of supply of the services in the instant case as also the value of supply attributable to the States of ‘A’, ‘B’, ‘C’, ‘D’ and ‘E’.

Further, compute the GST liability [CGST & SGST or IGST, as the case may be] of ‘Moon Plus’ as also advise it as to whether it should issue one invoice for the entire contract value or separate State-wise invoices.

The other relevant information is given hereunder:

TABLE I

States	Viewership figures of ‘Moon Plus’ channel in the last week of June 20XX as provided by the Broadcast Audience Research Council (BARC)
A	50,000
B+C	1,00,000
D+E	50,000

TABLE II

States	Population as per latest census (in crores)
A	50
B	180
C	20
D	100
E	25

The applicable rate of tax is as under:

CGST - 9% SGST- 9% IGST- 18% (RTP May'20)

Answer:

As per section 12(14) of the IGST Act, 2017, the place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for the States or Union territories identified in the contract or agreement is taken as being in each of such States or Union territories (where the advertisement is broadcasted/ run /played/disseminated).

Therefore, in the given case, the place of supply of advertisement service is in the States of 'A', 'B', 'C', 'D' and 'E'. The value of the supply of such advertisement services specific to each State/Union territory is in proportion to the amount attributable to the services provided by way of dissemination in the respective States/Union territories determined in terms of the contract or agreement entered into in this regard.

In the absence of such a contract or agreement between the supplier and recipient of services, the proportionate value of advertisement services attributable to different States/Union territories (where the advertisement is broadcasted/run/played/disseminated) is computed in accordance with rule 3 of the IGST Rules, 2017.

As per rule 3(f) of the IGST Rules, 2017, in the case of advertisement on television channels, the amount attributable to the value of advertisement service disseminated in a State shall be calculated on the basis of the viewership of such channel in such State, which in turn, shall be calculated in the following manner, namely: -

- the channel viewership figures for that channel for a State or Union territory shall be taken from the figures published in this regard by the Broadcast Audience Research Council;
- the figures published for the last week of a given quarter shall be used for calculating viewership for the succeeding quarter;
- where such channel viewership figures relate to a region comprising of more than one State or Union territory, the viewership figures for a State or Union territory of that region, shall be calculated by applying the ratio of the populations of that State or Union territory, as determined in the latest Census, to such viewership figures;
- the ratio of the viewership figures for each State or Union territory as so calculated, when applied to the amount payable for that service, shall represent the portion of the value attributable to the dissemination in that State or Union territory.

Therefore, value of supply attributable to 'A', 'B', 'C', 'D' and 'E', will be computed as under:

States	Viewership figures of 'Moon Plus' channel as provided by the Broadcast Audience Research Council in the last week of June 20XX	Viewership ratio of 'Moon Plus' channel in the States 'A', ('B' + 'C') and ('D' + 'E')	Proportionate value of advertisement services for States A', ('B' + 'C') and ('D' + 'E')
A	50,000	1	₹ 10,00,000*0.25 = ₹ 2,50,000

B+C	1,00,000	2	₹ 10,00,000*0.50 = ₹ 5,00,000
D+E	50,000	1	₹ 10,00,000*0.25 = ₹ 2,50,000

States	Population as per latest census (in crores)	Population ratio in the States 'B' & 'C' and 'D' & 'E'	Proportionate value of Advertisement services in the States 'A', 'B', 'C', 'D' & 'E'
A	50		₹ 2,50,000
B	180	B:C= 180:20 = 9:1	₹ 5,00,000 x 9/10 = ₹ 4,50,000
C	20		₹ 5,00,000 x 1/10 = ₹ 50,000
D	100	D: E = 100:25= 4:1	₹ 2,50,000 x 4/5 = ₹ 2,00,000
E	25		₹ 2,50,000 x 1/5 = ₹ 50,000

Since, there are five different places of supply in the given case, 'Moon Plus' channel will have to issue five separate invoices for each of the States namely, 'A', 'B', 'C', 'D' & 'E' indicating the value pertaining to that State.

The GST liability of 'Moon Plus' channel will therefore, be worked out as under:

Computation of GST liability of 'Moon Plus'

States	Proportionate value of Advertisement services (₹)	CGST @ 9% (₹)	SGST @ 9% (₹)	IGST @ 18% (₹)
A	2,50,000	22,500	22,500	
B	4,50,000			81,000
C	50,000			9,000
D	2,00,000			36,000
E	50,000			9,000

Only in case of supply of services in State 'A', the location of supplier (State 'A') and the place of supply are in the same State, hence the same is an intra-State supply in terms of section 8(1) of the IGST Act, 2017 and is thus, liable to CGST and SGST.

In all the remaining cases of supply of services, the location of the supplier (State 'A') and the places of supply (States 'B', 'C', 'D' & 'E') are in two different States, hence the same are inter-State supplies liable to IGST [Section 7(1)(a) of the IGST Act, 2017 read with section 5(1) of that Act].

Section 12 Combined Questions

Q17. Musicera Pvt. Ltd. owned by Nitish Daani - a famous classical singer wishes to organise a 'Nitish Daani Music Concert' in Gurugram (Haryana). Musicera Pvt. Ltd. (registered in Ludhiana, Punjab) enters into a contract with an event management company, Supriya (P) Ltd. (registered in Delhi) for organising the said music concert at an agreed consideration of ₹ 10,00,000.

Supriya (P) Ltd. books the lawns of Hotel Dumdum, Gurugram (registered in Haryana) for holding the music concert, for a lump sum consideration of ₹ 4,00,000. Musicera Pvt. Ltd. fixes the entry fee to the music concert at ₹ 5,000. 400 tickets for 'Nitish Daani Music Concert' are sold.

You are required to determine the CGST and SGST or IGST liability, as the case may be, in respect of the supply(ies) involved in the given scenario. Will your answer be different if the price per ticket is fixed at ₹ 450?

Note: Rate of CGST and SGST is 9% each and IGST is 18%. All the amounts given above are exclusive of taxes, wherever applicable. (MTP-I Nov'22 Similar, RTP May'19)

Answer:

In the given situation, three supplies are involved:

- (i) Services provided by Musicera Pvt. Ltd. to audiences by way of admission to music concert.
- (ii) Services provided by Supriya (P) Ltd. to Musicera Pvt. Ltd. by way of organising the music concert.
- (iii) Services provided by Hotel Dumdum to Supriya (P) Ltd. by way of accommodation in the Hotel lawns for organising the music concert.

The CGST and SGST or IGST liability in respect of each of the above supplies is determined as under:

- (i) As per the provisions of section 12(6), the place of supply of services provided by way of admission to, inter alia, a cultural event shall be the place where the event is actually held. Therefore, the place of supply of services supplied by Musicera Pvt. Ltd. (Ludhiana, Punjab) to audiences by way of admission to the music concert is the location of the Hotel Dumdum, i.e., Gurugram, Haryana. Since the location of the supplier (Ludhiana, Punjab) and the place of supply (Gurugram, Haryana) are in different States, IGST will be leviable. Therefore, IGST leviable will be computed as follows: Consideration for supply (400 tickets @ ₹ 5,000 per ticket) = ₹ 20,00,000 IGST @ 18% on value of supply = ₹ 20,00,000 x 18% = ₹ 3,60,000.
- (ii) Section 12(7)(a)(i) stipulates that the place of supply of services provided by way of organization of, inter alia, a cultural event to a registered person is the location of such person. Therefore, the place of supply of services supplied by Supriya (P) Ltd. (Delhi) to Musicera Pvt. Ltd. (Ludhiana, Punjab) by way of organising the music concert is the location of the recipient, i.e., Ludhiana (Punjab). Since the location of the supplier (Delhi) and the place of supply (Ludhiana, Punjab) are in different States, IGST will be leviable.

Therefore, IGST leviable will be computed as follows:

Consideration for supply = ₹ 10,00,000

IGST @ 18% on value of supply = ₹ 10,00,000 x 18% = ₹ 1,80,000

- (iii) As per the provisions of section 12(3)(c) of the IGST Act, 2017, the place of supply of services, by way of accommodation in any immovable property for organizing, inter alia, any cultural function shall be the location at which the immovable property is located. Therefore, the place of supply of services supplied by Hotel Dumdum (Gurugram, Haryana) to Supriya (P) Ltd. (Delhi) by way of accommodation in hotel lawns for organising the music concert shall be the location of the Hotel Dumdum, i.e., Gurugram, Haryana.

Since the location of the supplier (Gurugram, Haryana) and the place of supply (Gurugram, Haryana) are in the same State, CGST and SGST will be leviable.

Therefore, CGST and SGST leviable will be computed as follows:

Consideration for supply = ₹ 4,00,000

CGST @ 9% on value of supply = ₹ 4,00,000 x 9% = ₹ 36,000

SGST @ 9% on value of supply = ₹ 4,00,000 x 9% = ₹ 36,000

If the price for the entry ticket is fixed at ₹ 450, answer will change in respect of supply of service provided by way of admission to music concert, as mentioned in point (i) above.

There will be no IGST liability if the consideration for the ticket is ₹ 450 as the inter-State services by way of right to admission to, inter alia, musical performance are exempt from IGST vide Notification No. 9/2017 IT (R) dated 28.06.2017, if the consideration for right to admission to the event is not more than ₹ 500 per person. However, there will be no change in the answer in respect of supplies mentioned in point (ii) and (iii) above.

Q18. Dobriyal Technocrats Ltd., registered in Gurgaon, Haryana, is engaged in manufacturing heavy steel machinery. It enters into an agreement with Mindsharp Associates, registered in Delhi, for imparting motivational training to the top management of Dobriyal Technocrats Ltd. in a 5-day residential motivational training programme at an agreed consideration of ₹ 20,00,000.

Mindsharp Associates books the conference hall along with the rooms of Hotel Chumchum, Neemrana (registered in Rajasthan) for the training programme, for a lump sum consideration of ₹ 12,00,000.

You are required to determine the place of supply in respect of the supply(ies) involved in the given scenario. (RTP Nov'21)

Answer:

In the given situation, two supplies are involved:

- (i) Services provided by Mindsharp Associates to Dobriyal Technocrats Ltd. by way of providing motivational training to its top management.
- (ii) Services provided by Hotel Chumchum to Mindsharp Associates by way of accommodation in said hotel for organizing the training programme.

The place of supply in respect of each of the above supplies is determined as under:

- (i) As per the provisions of section 12(5)(a) of the IGST Act, 2017, the place of supply of services provided in relation to training and performance appraisal to a registered person, shall be the location of such person.

Therefore, the place of supply of services supplied by Mindsharp Associates to the registered recipient - Dobriyal Technocrats Ltd. by way of providing motivational training to its top management is the location of Dobriyal Technocrats Ltd., i.e., Gurgaon, Haryana.

- (ii) As per the provisions of section 12(3)(c) of the IGST Act, 2017, the place of supply of services, by way of accommodation in any immovable property for organizing, inter alia, any official/business function including services provided in relation to such function at such property, shall be the location at which the immovable property is located.

Therefore, the place of supply of services supplied by Hotel Chumchum to Mindsharp Associates by way of accommodation of conference hall along with the rooms of Hotel Chumchum for the training programme shall be the location of the Hotel Chumchum i.e., Neemrana, Rajasthan.

Section 13(2) – POS General Rule

Q19. RST Inc., a corn chips manufacturing company based in USA, intends to launch its products in India. However, the company wishes to know the taste and sensibilities of Indians before launching its products in India. For this purpose, RST Inc. has approached ABC Consultants, Mumbai (Maharashtra) to carry out a survey in India to enable it to make changes, if any, in its products to suit Indian taste.

The survey is to be solely based on the oral replies of the surveyees; they will not be provided any sample by RST Inc. to taste. ABC Consultants will be paid in convertible foreign exchange for the assignment.

With reference to the provisions of GST law, determine the place of supply of the service. Also, explain whether the said supply will amount to export of service?

(MTP-II Nov'22, MTP-II Jul'21, MTP May'20, RTP May'18)

Answer:

As per section 13(2), in case where the location of the supplier of services or the location of the

recipient of services is outside India, the place of supply of services except the services specified in sub-sections (3) to (13) shall be the location of the recipient of services. Sub-sections (3) to (13) provide the mechanism to determine the place of supply in certain specific situations.

The given case does not fall under any of such specific situations and thus, the place of supply in this case will be determined under sub-section (2) of section 13. Thus, the place of supply of services in this case is the location of recipient of services, i.e., USA.

As per section 2(6), export of services means the supply of any service when, –

- a) the supplier of service is located in India;
- b) the recipient of service is located outside India;
- c) the place of supply of service is outside India;
- d) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- e) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Since all the above five conditions are fulfilled in the given case, the same will be considered as an export of service.

Q20. XY Ltd. (registered in Rajasthan) received legal services from an attorney in UK (unrelated person) in relation to registration of a trademark in UK. A consideration of £ 8,000 was paid by the company to the attorney in UK. Determine the place of supply for the service and suggest if XY Ltd. is required to pay tax under reverse charge on this transaction.

Answer:

In the given case, the service provider is outside India, and the service recipient is in India. Thus, the place of supply will be determined on the basis of the provisions of section 13. Since the given service does not get covered under any of the specific provisions of section 13, the place of supply thereof will be governed by the general rule, i.e., place of supply of services will be the location of the recipient of service, which in this case is Rajasthan (India).

Further, the given case is import of service in terms of section 2(11) as the supplier of service is located outside India, the recipient of service is located in India and the place of supply of service is in India. Since the services are imported for a consideration from an unrelated person, the same tantamount to supply in terms of section 7(1)(b) of CGST Act and are liable to GST.

As per reverse charge Notification No. 10/2017 IT(R) dated 28.06.2017, if a service is supplied by a person located in a non-taxable territory to a person located in the taxable territory, other than non-taxable online recipient, the tax is payable by the recipient of service under reverse charge.

Therefore, XY Ltd. will pay GST under reverse charge on £ 8000 paid by it to the attorney in UK.

Section 13(3) – POS of performance based services

Q21. M/s Joinder Drills of Australia exports rough rock cutting diamonds to M/s Ankit Enterprises of India, a registered supplier in the State of Haryana. M/s Ankit Enterprises is expected to process them into tools and export the same to the supplier in Australia. The process does not involve any sophisticated process other than cutting, polishing and finishing. M/s Ankit Enterprises requests M/s Joinder Drills for use of such tools for his business in India for 3 months, which is agreed to by the supplier. It then exports it to the Australian supplier, invoicing it for ₹ 12,00,000 for processing it into the required tool.

M/s Ankit Enterprises is of the assumption that it is an export transaction and therefore, it is entitled to treat it as a zero-rated supply and decides that no tax is payable under LUT although

the rate applicable to such services for domestic supplies is CGST - 9%, SGST - 9% and IGST - 18%.

State the provisions relating to the above supply of service and explain whether the stand taken by M/s Ankit Enterprises is correct and also determine the tax, if applicable, as the goods are now moving out of Haryana. (Nov'20)

Answer:

One of the conditions for a supply of service to qualify as export of service is that the place of supply of said service must be outside India.

The place of supply of services supplied in respect of the goods which are temporarily imported into India for any other treatment/process and are exported after such treatment/process without being put to any use in India, other than that which is required for such treatment/process, is the location of recipient of such service [Second proviso to section 13(3)(a) of the IGST Act, 2017].

In view of the above, in the given case, the place of supply of the services provided by M/s Ankit Enterprises is the place where the services are actually performed, i.e., in India as the tools to be exported have been used in India for 3 months before their export. Resultantly, the supply of services by M/s Ankit Enterprises do not qualify as export of service.

Since the recipient is outside India, the place of supply is governed by section 13 and hence, the supply is not an intra-State supply in terms of section 8(2) of the IGST Act, 2017. [In case where the place of supply (determined under section 13 of the IGST Act, 2017) and the location of supplier are in the same State, CBIC FAQs on 'Banking, Insurance and Stock Brokers Sector' have taken a view that such supplies will be treated as intra-State supply.]

Therefore, since the place of supply is in India and the supply is not an intra-State supply, the same is an inter-State supply [in terms of section 7(5)(c) of the IGST Act, 2017] of services and not of goods. Thus, the same is liable to IGST of ₹ 1,83,051 (₹ 12,00,000/118 x 18). [It has been assumed that the amount of ₹ 12,00,000 is inclusive of IGST.]

Section 13(8)–POS of Banking, Financial & Intermediary services & hiring of means of transport

Q22. ABC Pvt. Ltd., New Delhi, provides support services to foreign customers in relation to procuring goods from India. The company identifies the prospective vendor, reviews product quality and pricing and then shares the vendor details with the foreign customer.

The foreign customer then directly places purchase order on the Indian vendor for purchase of the specified goods. ABC Pvt. Ltd. charges its foreign customer cost plus 10% mark up for services provided by it.

The company has charged US \$ 1,00,000 (exclusive of GST) to its foreign customer for the services provided by it. With reference to the provisions of GST law, examine whether the said supply will amount to export of service? (RTP May'18, MTP-II May'23)

Answer:

Section 2(13) defines “intermediary” to mean a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

In this case, since ABC Pvt. Ltd. is arranging or facilitating supply of goods between the foreign customer and the Indian vendor, the said services can be classified as intermediary services. If the location of the supplier of services or the location of the recipient of service is outside India, the place of supply is determined in terms of section 13. Since, in the given case, the recipient of supply is located outside India, the provisions of supply of intermediary services will be determined in terms of section 13.

As per section 13(8)(b), the place of supply in case of intermediary services is the location of the supplier, i.e., the location of ABC Pvt. Ltd. which is New Delhi.

As per section 2(6) of the IGST Act, 2017, export of services means the supply of any service when, –

- (a) the supplier of service is located in India;
- (b) the recipient of service is located outside India;
- (c) the place of supply of service is outside India;
- (d) the payment for such service has been received by the supplier of service in convertible foreign exchange or in Indian rupees wherever permitted by the Reserve Bank of India; and
- (e) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.

Since, in the given case, place of supply is in India, this transaction does not tantamount to export of service.

Q23. XYZ Ltd. has obtained a loan from a foreign bank. The company does not have an account with the foreign bank from whom it has taken the loan. Whether RCM liability under GST laws should be discharged in this regard for import of services received in relation to the loan? Provide relevant legal provisions in support of your answer. (Jul'21)

Answer:

Yes. RCM liability needs to be discharged on such services.

The place of supply of services supplied by a banking company in case where either supplier or recipient is located outside India is location of supplier provided said services are supplied to an account holder, otherwise the place of supply is the location of the recipient.

Accordingly, in the given case, the place of supply is the location of recipient – XYZ Ltd., i.e., India.

Since the supplier is outside India and recipient and place of supply are in India, said service qualifies as import of services which in turn, is considered as inter-State supply.

Q24. Alpha is a manufacturer and supplier of a machine in India. Gamma of USA helps Alpha in selling the machine by identifying client in USA, viz., Beta who wants to purchase this machine and helps in finalizing the contract of supply of machine by Alpha to Beta. Gamma charges Alpha for his services of locating Beta and helping in finalizing the sale of machine between Alpha and Beta, for which Gamma invoices Alpha and is paid by Alpha for the same. Determine the place of supply of the services provided by Gamma to Alpha. (RTP May'23)

Answer:

As per section 13(8)(b) of the IGST Act, 2017, the place of supply of the intermediary services shall be the location of the supplier of services. 'Intermediary' has been defined in of section 2(13) of the IGST Act, as a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.

Further, the concept of intermediary services has been clarified vide Circular No. 159/15/2021 GST dated 21.09.2021 as follows:

- (i) **Minimum of three parties and two distinct supplies:** There must be minimum of three parties, two principals transacting in the supply of goods or services or securities (the main supply) and one intermediary arranging or facilitating (the ancillary supply) the said main supply.

- (ii) **Intermediary service provider to have the character of an agent, broker or any other similar person:** Intermediary only arranges or facilitates the main supply and does not himself provide the main supply. Thus, the role of intermediary is only supportive.
- (iii) **Does not include a person who supplies such goods or services or both or securities on his own account:** It implies that in cases wherein the person supplies the main supply, either fully or partly, on principal-to-principal basis, the said supply cannot be covered under the scope of “intermediary”.
- (iv) **Sub-contracting for a service is not an intermediary service:** Sub-contractor provides the main supply, either fully or a part thereof, and does not merely arrange or facilitate the main supply between the principal supplier and his customers, and therefore, clearly is not an intermediary.

In the backdrop of the above discussion, while Alpha and Beta are the two principals involved in the main supply of the machinery, Gamma, is facilitating the supply of machine between Alpha and Beta. In this arrangement, Gamma is providing the ancillary supply of arranging or facilitating the ‘main supply’ of machine between Alpha and Beta and therefore, Gamma is an intermediary and is providing intermediary service to Alpha.

Resultantly, in terms of section 13(8)(b) of the IGST Act, 2017, the place of supply of the intermediary services provided by Gamma shall be the location of the supplier of services, viz. outside India (USA).

Other Combined Questions

Q25. Mr. Mahendra Goyal, an interior decorator provides professional services to Mr. Harish Jain in relation to two of his immovable properties.

Determine the place of supply in the transactions below as per provisions of GST law in the following independent situations. (MTP-II May’22, May’18)

Case	Location of Mr. Mahendra Goyal	Location of Mr. Harish Jain	Property situated at
I	Delhi	Maharashtra	New York
II	Delhi	New York	Paris (France)

Answer:

Case I

As per section 12(3), where both the service provider and the service recipient are located in India, the place of supply of services directly in relation to an immovable property, including services provided by interior decorators is the location of the immovable property.

However, if the immovable property is located outside India, the place of supply is the location of the recipient. Since in the given case, both the service provider (Mr. Mahendra Goyal) and the service recipient (Mr. Harish Jain) are located in India and the immovable property is located outside India (New York), the place of supply will be the location of recipient, i.e., Maharashtra.

Case II

As per section 13(4), where either the service provider or the service recipient is located outside India, the place of supply of services directly in relation to an immovable property including services of interior decorators is the location of the immovable property.

Since in the given case, service provider (Mr. Mahendra Goyal) is located in India and service recipient (Mr. Harish Jain) is located outside India (New York), the place of supply will be the location of immovable property, i.e., Paris (France).

Q26. Mr. Z, a supplier registered in Hyderabad (Telangana), procures goods from China and directly supplies the same to a customer in US. With reference to the provisions of GST law, examine whether the said activity of supply of goods by Mr. Z to customer in US is taxable under GST. If yes, determine the place of supply of the same. (RTP Nov'19, RTP May'18)

Answer:

Schedule III to the CGST Act specifies transactions/ activities which shall be neither treated as supply of goods nor supply of services. A new activity has been added in the said Schedule III vide the CGST (Amendment) Act, 2018 namely, supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. Thus, it seeks to exclude from the tax net such transactions which involve movement of goods, caused by a registered person, from one non-taxable territory to another non-taxable territory.

Q27. Determine place of supply along with reasons in the following cases: (Jan'21, MTP-I May'23 Similar)

- (i) **Mr. X, an architect (Kolkata), provides interior decorator services to Mr. Y of New York (USA) in relation to his immovable property located in New Delhi.**
- (ii) **Mr. A (a Chartered Accountant registered in Kolkata) supplies services to his client in Bhubaneswar (registered in Bhubaneswar, Odisha).**
- (iii) **ABC Ltd. of Patna imported certain goods from XYZ Inc. of USA. The goods were imported through vessel and delivery of goods was taken at Kolkata, where after the movement terminates and the goods are stored.**
- (iv) **Mr. X, registered in Guwahati, has availed land-line services from BSNL. The telephone is installed in residential premises in Kolkata and the billing address is office of Mr. X in Guwahati.**
- (v) **Mr. X, residing in Chennai, is travelling with an Indian Airline aircraft and is provided with movie-on-demand service for ₹ 100 as on-board entertainment during Delhi-Chennai leg of a Bangkok-Delhi-Chennai flight.**
- (vi) **Mr. X of Kolkata purchased online tickets for Aquatica water park in Mumbai.**
- (vii) **Mr. Z, an unregistered person of Kolkata, sends a courier from New Delhi to his friend in Chennai, Tamil Nadu while he was on trip to New Delhi.**
- (viii) **Mr. X, a registered person in Ranchi, Jharkhand, buys shares from a broker in Patna on NSE, Mumbai. Determine the place of supply of brokerage service.**
- (ix) **XYZ Ltd., New Delhi entered into contract with an Indian airline for the supply of biscuit packets for further supply by airline to the passengers in Kolkata-Guwahati route. The biscuits were loaded on board in Lucknow.**

Answer:

- (i) **New Delhi.** In a case where location of the supplier or location of recipient of services outside India, the place of supply of services supplied directly in relation to an immovable property including that of interior decorators is the place where the immovable property is located.
- (ii) **Bhubaneswar, Odisha.** The place of supply of services, except the specified services made to a registered person, is the location of such person.
- (iii) **Patna.** The place of supply of goods imported into India is the location of the importer.

- (iv) **Kolkata.** The place of supply of services by way of fixed telecommunication line is the location where the telecommunication line is installed for receipt of services.
- (v) **Bangkok.** The place of supply of services on board an aircraft is the location of the first scheduled point of departure of that aircraft or flight for the journey.
- (vi) **Mumbai.** The place of supply of services provided by way of admission to an amusement park is the place where the park is located.
- (vii) **New Delhi.** The place of supply of services by way of transportation of goods by courier to a person other than a registered person is the location at which such goods are handed over for their transportation.
- (viii) **Ranchi, (Jharkhand).** The place of supply of stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services.
- (ix) Where the supply involves movement of goods, the place of supply of such goods is the location of the goods at the time at which the movement of goods terminates for delivery to the recipient. Therefore, the place of supply of biscuit packets sold by XYZ Ltd. to Indian Airlines is **Lucknow.**

Further, where the goods are supplied on board an aircraft, the place of supply shall be the location at which such goods are taken on board. Thus, the place of supply of biscuit packets sold by Indian Airlines to the passengers in Kolkata-Guwahati route is **Lucknow.**

Q28. Determine the place of supply in the following independent cases:

- (i) **Mr. Sahukaar (New Delhi) boards the New Delhi-Kota train at New Delhi. Mr. Sahukaar sells the goods taken on board by him (at New Delhi), in the train, at Jaipur during the journey.**
- (ii) **Vidhyut Pvt. Ltd. imports electric food processors from China for its Kitchen Store in Noida, Uttar Pradesh. Vidhyut Pvt. Ltd. is registered in Uttar Pradesh.**
- (iii) **Mr. Aatmaram, a manager in a Bank, is transferred from Bareilly, Uttar Pradesh to Bhopal, Madhya Pradesh. Mr. Aatmaram's family is stationed in Kanpur, Uttar Pradesh. He hires Gokul Carriers of Lucknow, Uttar Pradesh (registered in Uttar Pradesh), to transport his household goods from Kanpur to Bhopal.**
- (iv) **Bholunath, a resident of New Delhi, opens his saving account in New Delhi branch of Best Bank after undergoing the KYC process. He goes to Amritsar for some official work and withdraws money from Best Bank's ATM in Amritsar thereby crossing his limit of free ATM withdrawals.**
- (v) **Mr. Chakmak, an architect (New Delhi), enters into a contract with Mr. Zeeshaan of New York to provide professional services in respect of immovable properties of Mr. Zeeshaan located in Pune and New York. (RTP May'22, RTP May'21)**

Answer

- (i) Section 10(1)(e) of the IGST Act, 2017 lays down that place of supply of goods supplied on board a conveyance like aircraft, train, vessel, or a motor vehicle, is the location where such goods have been taken on board. Thus, in the given case, the place of supply of the goods sold by Mr. Sahukaar is the location at which the goods are taken on board, i.e., New Delhi and not Jaipur where they have been sold.
- (ii) As per section 11(a) of the IGST Act 2017, if the goods have been imported in India, the place of supply of goods is the place where the importer is located. Thus, in the present case, the place

of supply of the goods imported by Vidhyut Pvt. Ltd. is Noida, Uttar Pradesh.

- (iii) As per section 12(8) of the IGST Act, 2017, the place of supply of services by way of transportation of goods, including by mail or courier provided to an unregistered person, is the location at which such goods are handed over for their transportation.

Since in the given case, the recipient – Aatmaram – is an unregistered person, the place of supply is the location where goods are handed to Gokul Carriers over for their transportation, i.e., Kanpur.

- (iv) As per section 12(12) of the IGST Act, 2017, the place of supply of banking and other financial services, including stock broking services to any person is the location of the recipient of services in the records of the supplier of services. Thus, in the given case, the place of supply is the location of the recipient of services in the records of the supplier bank, i.e., New Delhi.
- (v) As per section 13(4) read with section 13(6) of the IGST Act, 2017, where services supplied directly in relation to an immovable property are supplied at more than one location, including a location in the taxable territory, the place of supply is the location in the taxable territory. Since in the given case, the immovable properties are located in more than one location including a location in the taxable territory, the place of supply of architect service is the location in the taxable territory, i.e., Pune.

Q29. Answer the following questions in the light of the place of supply provisions contained in the IGST Act, 2017:

- (1) **Quickdeal Enterprises (Ahmednagar, Gujarat) opens a new branch office at Hissar, Haryana. It purchases a building for office from Ruhani Builders (Hissar) along with pre-installed office furniture and fixtures. Determine place of supply of the pre-installed office furniture and fixtures.**
- (2) **Supra Events, an event management company at New Delhi, organizes an award function for Chirag Diamond Merchants of Varanasi (registered in U.P.), at Mumbai. Determine place of supply of the service supplied by Supra Events. Will your answer be different, if the award function is organised at Mauritius instead of Mumbai?**

Answer:

- Section 10(1)(c) of the IGST Act stipulates that if the supply does not involve movement of goods, the place of supply is the location of goods at the time of delivery to the recipient. Since there is no movement of office furniture and fixtures in the given case, the place of supply of such goods is their location at the time of delivery to the recipient (Quickdeal Enterprises) i.e., Hissar, Haryana.
- Section 12(7) of the IGST Act stipulates that the place of supply of services provided by way of organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a conference, fair, exhibition, celebration or similar events is the location of recipient in a case where such service is provided to a registered person. In the given case, since the recipient (Chirag Diamond Merchants) is a registered person, the place of supply is the location of the recipient, i.e., Varanasi, U.P.
Further, the place of supply will not change even if the award function is organised at Mauritius instead of Mumbai as the location of recipient remains unchanged. Thus, in that case also, the place of supply is the location of the recipient, i.e., Varanasi, U.P.

Q30. Determine the place of supply in respect of the following independent instances under the provisions of IGST Act, 2017:

- (i) Miss Poorva, an interior design consultant, having office at Chennai (Tamil Nadu), provided professional services to Mr. Nihil who resides in Dubai, for his two immovable properties under single contract, one property is outside India at Singapore and another at Surat (Gujarat).
- (ii) United Traders, having a registered place of business at Bengaluru (Karnataka), imported instruments used in COVID treatment from London (UK) through Vizag (Andhra Pradesh) Port.

Note: Your answer should also include relevant provisions of law. (Dec'21)

Answer:

- (i) In a case where location of supplier or recipient of service is outside India, the place of supply of services of interior decorators provided directly in relation to an immovable property is the location of immovable property. Further, where such services are supplied at more than one location, including a location in the taxable territory, the place of supply of said services is the location of immovable property in the taxable territory.

In view of the above provisions, place of supply of Miss. Poorva's (interior design consultant located in India) services provided to Mr. Nihil (recipient located outside India in Dubai) in respect of immovable properties, located in Surat (Gujarat) and in Singapore, is the location in taxable territory, i.e., Surat (Gujarat).

- (ii) The place of supply of goods imported into India is the location of the importer. Thus, in the given case, place of supply of instruments imported by United Traders is Bengaluru (Karnataka).