

Commission Agents – Beware.
(G. Natarajan, Advocate, Swamy Associates)

One of the important amendment in the Place of Provision of Service Rules, 2012 (PPS) is the change in the definition of the term “intermediary”, with effect from 01.10.2014.

Existing Definition:

“intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the ‘main’ service) between two or more persons, but does not include a person who provides the main service on his account;

New Definition :

“intermediary” means a broker, an agent or any other person, by whatever name called, who arranges or facilitates a provision of a service (hereinafter called the ‘main’ service) **or a supply of goods**, between two or more persons, but does not include a person who provides the main service **or supplies the goods on his account;**

The effect of this amendment is that a commission agent for goods is also covered in the definition of intermediary. So far, only commission agents for services were covered in the definition.

For services provided by “intermediary”, the place of provision of service shall be the location of the service provider, as per Rule 9 of the PPS Rules.

Let us see the practical implication of this amendment.

Situation I.

An Indian Company has appointed a commission agent abroad to promote its exports. Until now, as per Rule 3 of the PPS Rules, the service recipient’s location is the PPS and service tax has to be paid under reverse charge as the service recipient is in India.

After 01.10.2014, the PPS in such case will be the location of the service provider and hence no service tax is payable under reverse charge.

Situation II

An Indian company is working as a commission agent for a foreign company. Until now, as per Rule 3 of the PPS Rules, the service recipients’ location is the PPS and no service tax is being paid. Further, the transaction would also amount to Export of Service as per Rule 6 A of the Service Tax Rules, 1994 and get all benefits associated with it.

After 01.10.2014, the PPS in such case will be India (location of service provider) and service tax shall be payable. Further, the said transaction cannot amount to export of service also.

It is not known whether the second impact discussed above is intentional or incidental.

May be because the commission agent working in India for a foreign principal, though earns little foreign exchange in the form of commission, but causes more huge outflow of foreign exchange in the form of imports and this could have been the reason for this amendment!