

Treading the GST Path – XV

Intermediaries

(G Natarajan, Advocate, Swamy Associates)

1.0 The provisions for determination of place of supply of services is contained in Section 6 of the model IGST Act. These provisions are by and large based on the current Place of Provision of Service Rules, 2012 (PPS Rules), under Service Tax law, though there are some significant variations. Let us see the provisions relating to “intermediary” services, under both the legislation, in this article.

2.0 As per the existing PPS rules, an intermediary is defined as,

“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.

2.1 It may be observed that commission agents, who promote the sale of products of other persons or provision of services by other persons would be covered in the definition of “intermediary”. As per Rule 9 of the PPS Rules, the place of provision of services by intermediaries would be the location of the service provider. It may be observed from Section 6 of the IGST Act that there are no special provisions prescribed for such intermediary services and hence only the provisions of sub sections (2) and (3) of Section 6 would apply. The said sub sections are reproduced below.

(2) The place of supply of services, except the services specified in sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15), made to a registered person shall be the location of such person.

(3) The place of supply of services, except the services specified in sub-sections (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14) and (15), made to any person other than a registered person shall be

(i) the location of the recipient where the address on record exists, and

(ii) the location of the supplier of services in other cases.

As per Section 2 (3) of the CGST Act, “address on record” means the address of the recipient as available in the records of the supplier and this definition is applicable under IGST Act also.

Let us see the liability of such intermediaries under existing service tax law and under GST law.

S.No.	Situation	PPS Rules	Sec. 6 of IGST Act
1	A foreign entity is promoting the products of an Indian entity, in foreign territory.	No Service tax is payable by the service recipient as the PPS, i.e. the location of the service provider is outside India	As per sub section (2), if the Indian entity is registered under GST, the place of supply of services would be the location of the Indian entity and hence GST is payable. Even if the Indian entity is not registered under GST, if its address on record exists, the place of supply of service would be the location of the service recipient.
2	An Indian entity promoting the products of a foreign entity, in India	Service tax is payable by the Indian Entity as PPS is the location of the service provider, i.e. within India	Since the foreign entity would not be registered under GST, sub section (3) would apply. If the address on record of the service recipient exists, the place of supply of service would be the location of the service recipient, i.e. outside India and hence no GST is payable. If the address on record is not available, then only the place of supply of service would be the location of the service provider, i.e. within India and hence GST is payable.

			Further, when the place of supply of service thus falls outside India, the said service would also qualify as export of service, as defined under section 2 (44) of the CGST Act, if all the conditions prescribed therein are satisfied.
--	--	--	---

It may be observed from the above that the tax liability of such intermediaries goes for a toss under GST law.

If we see the evolution of levy of service tax on such intermediary services (which would fall under "business auxiliary service" in the pre 01.07.2012 era, it would be very interesting.

S.No.1	Details	Upto 30.06.2012	01.07.2012 to 30.09.2014	01.10.2014 to till introduction of GST	Post GST
1	Foreign entity promoting Indian entity's goods in foreign territory	Service tax is payable, as per Rule 3 (iii) of the Taxation of Services (Provided from outside India and received in India) Rules, 2006.	During this period, persons promoting supply of "goods" are not covered in the definition of "intermediary" and only those who promote the provision of service were covered. Hence as per Rule 3 of PPS rules, 2012 Service tax is payable, as PPS would be the location of the service recipient.	From this date the definition of "intermediary" covered those promoting the supply of goods also. As per Rule 9 of PPS Rules, Service tax is not payable.	GST is payable.

2	Foreign entity promoting services provided by an Indian entity in foreign territory	Service tax is payable, as per Rule 3 (iii) of the Taxation of Services (Provided from outside India and received in India) Rules, 2006	The foreign entity would be covered in the definition of "intermediary" as per PPS rules and as per Rule 9 of PPS Rules, Service tax is not payable.		GST is payable.
3	Indian entity promoting a foreign entity's goods in India	Service tax is not payable as per Rule 3 (1) (iii) of Export of Service Rules, 2005	Service tax is not payable as per Rule 3 of PPS Rules.	Service tax is payable as per Rule 9 of PPS Rules.	GST is not payable.
4	Indian entity promoting a foreign entity's services in India	Service tax is not payable as per Rule 3 (1) (iii) of Export of Service Rules, 2005	Service tax is payable as per Rule 9 of PPS Rules.		GST is not payable.

(Published in www.taxindiaonline.com on 19.11.2016)