

Clarification regarding Place of Supply provisions related to IT enabled services Providers

Circular 107 dated 18th July 2019

This circular intends to clarify on issues related to supply of Information technology-enabled services (ITeS) such as call centre , BPO's, KPO's, Back Office Operations and 'Intermediaries' to overseas entities under the GST law and whether they qualify as 'export of services' or not.

This dispute arose due to norms of place of supply prescribed. In case of "intermediary services", the place of supply will be location of service provider. The definition of "Export of service" has one important point that the place of supply should be outside India. But for the "Export of service" the service provider should be in India and service recipient should be outside India. One more condition is that the amount should be received in Foreign currency. But in case of "intermediary services" all other conditions are satisfied but the place of supply is location of service provider i.e. in India. Hence, it could not be termed as export of service and hence GST is payable.

But if the service provided does not fall under the definition of "intermediary services" then the general rule of place of supply will apply and it will be place of service recipient. Hence, it will fall under the ambit of "export of service". Hence, the GST will not be payable.

The circular discuss the definition of "agent/broker" given under Section 2(113) of CGST Act. It has been emphasized that a supplier of service would **not** be treated as intermediary, if the services are provided **on his own account**, despite him qualifying as an agent/ broker as per the definition of Intermediary u/s 2(13) of IGST Act.

If these are not on his account, the service provider will be termed as agent and come under the ambit of “intermediary services”. Consequently, he will not qualify for export of service and GST will be payable.

Further, the Government has examined various scenarios, wherein a supplier of ITeS located in India supplies services for and on behalf of a client located abroad, to clarify its treatment under GST and broken it down in to three scenarios. The definition of “ITeS services” are not defined under GST Act, hence it has been taken from Income Tax Act.

The Government has examined 3 different scenarios →, wherein a supplier of ITeS located in India supplies services for and on behalf of a client located abroad, to clarify its treatment under the GST law.

I Scenario - Clarifies, to the relief of the industry, that the provision of back-end services would **not** come under the ambit of an intermediary if the same are provided on his own account.

This has secured the argument behind back-office services in general do not fall within the ambit of intermediary services. This has been held in recent rulings pronounced by Maharashtra AAR in case of M/s NES Global Specialist Engineering Services Pvt. Ltd.

II Scenario – Clarifies that the Supplier of back-end services who is located in India also arranges / facilitates the supply by the client who is located abroad **to** the customers of his client will fall under the ambit of Intermediary and will be taxed under GST.

Such Services may include support services, during pre-delivery, delivery and post-delivery of supply (such as order placement and delivery and logistical support, obtaining relevant Government clearances, transportation of goods, post-sales support and other services, etc.)

In the recent ruling by the Maharashtra AAAR in the case of Vservglobal Private Ltd , where AAAR held that the services in question (liaising with client's buyers/suppliers with respect to delivery, transportation of goods and settlement of payment) went beyond back-office support services and were in the nature of facilitation of supply of goods between the client of the applicant and the suppliers/customers of the client. Accordingly, the said services were held to be intermediary services.

III Scenario – Clarifies that the supplier of ITeS provides Backend Services on his own account **and also** provides Services of arranging or facilitating the supply of various support services during pre-delivery, delivery and post-delivery of supply for and on behalf of the client located abroad.

Here the Supplier is supplying two different sets of services i.e first is ITeServices and secondly various incidental or support services to his client or to the Customer of his Client.

In this case the question is to be decided whether the supplier will be covered under “Intermediary services” will depend on facts and circumstances of each case and it is to be decided on case –to- case basis.

Hence, this circular has given rise to new round of litigation as the assessee will like to fall under “export of service” but the department will say that he will fall under “intermediary services”.

Visit us at new.capradeepjain.com