Circular No. 230/24/2024-GST

F. No. CBIC-20001/6/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
***

New Delhi, dated the 10th September, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All),
The Principal Directors General/ Directors General (All).

Madam/Sir,

Subject: Clarification in respect of advertising services provided to foreign clients–reg.

References have been received from the trade and industry requesting for clarification regarding advertising services being provided by Indian advertising companies/agencies to foreign entities, as some of the field formations are considering the place of supply of the said services as within India, thereby denying the export benefits to such advertising companies.

1.2 In view of the difficulties being faced by the trade and industry and to ensure uniformity in the implementation of the provisions of the law across field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the issues in succeeding paragraphs.

2. Issue in Brief

2.1 A foreign company or firm hires an advertising company/agency in India for advertisement of its goods or services and may enter into a comprehensive agreement with the advertising company/agency encompassing all the issues related to advertising services ranging from media planning, investment planning for the same, creating and designing content, strategizing for maximum customer reach, the identification of media owners, dealing with media owners, procuring media space, etc. for displaying/broadcasting/printing of advertisement including monitoring of the progress of the same. In such a case, the advertising agency provides a one stop solution to the client who outsources the entire activity to the agency.

2.2 In this scenario, media owners raise invoice to the advertising agency for inventory costs, which are then paid by the advertising agency. Subsequently, the advertising agency raises invoice to the foreign client for the rendered advertising services and receives the payments in foreign exchange from the foreign client. In this regard, clarification has been sought as to:

a. Whether the advertising company can be considered as an "intermediary" between the foreign client and the media owners in terms of section 2(13) of Integrated Goods and Services Tax Act, 2017 (herein after referred to as the "IGST Act"), thereby resulting in determination of place of supply under section 13(8)(b) of the IGST Act?
b. Whether the representative of foreign client in India or the target audience of the advertisement in India can be considered as the recipient of the services being supplied by the advertising company under section 2(93) of CGST Act?
c. Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per section 13(3)of the IGST Act?

3. CLARIFICATION:

3.1 Issue 1 -Whether the advertising company can be considered as an "intermediary" between the foreign client and the media owners as per section 2(13) of IGST Act?

3.1.1 As per section 2(13) of IGST Act, read with Circular no. 159/15/2021-GST dated 20.09.2021, a broker, agent or any other person who arranges or facilitates the main supply of goods or services or both or securities and has not involved himself in the main supply on his own account is considered as intermediary.

3.1.2 In the instant scenario, it is observed that the foreign clients enter into a comprehensive agreement with advertising companies/agencies in India and outsource the entire activity of advertising services to the advertising companies/agencies. Further, these advertising companies/agencies enter into an agreement with the media owners in India for implementing the said media plan and procurement of media space for airing or releasing or printing advertisement.

3.1.3 The advertising agency, in this case, enters into two agreements:

i. With the client located outside India for providing a one stop solution starting from designing the advertisement to its display in the media as agreed to with the client. The advertising company raises invoice to its foreign client for the above advertising services and the payments of the same is received from the foreign client in foreign exchange.
ii. With the media company to procure media space for display of the advertisement and to monitor campaign progress based on data shared by the

media company. The media company bills the advertising agency and the payment for same is made by the advertising agency to the media company.

3.1.4 Thus, the agreement, in the instant case, is in the nature of two distinct principal-to-principal supplies and no agreement of supply of services exists between the Media company and the foreign client. The advertising company is not acting as an agent but has been contracted by the client to procure and provide certain services. The advertising agency is providing the services to the client on its own account.

3.1.5 In view of above, it is clarified that in the present scenario, the advertising company is involved in the main supply of advertising services, including resale of media space, to the foreign client on principal-to-principal basis as detailed above and does not fulfil the criteria of "intermediary" under section 2(13) of the IGST Act. Thus, the same cannot be considered as "intermediary" in such a scenario and accordingly, the place of supply in the instant matter cannot be linked with the location of supplier of services in terms of section 13(8)(b) of the IGST Act.

3.2 Issue-2 Whether the representative of foreign client in India or the target audience of the advertisement in India can be considered as the "*recipient*" of the services being supplied by the advertising company under section 2(93) of CGST Act?

3.2.1 As per Section 2(93)(a) of the CGST Act, the "recipient" of the services means the person who is **liable to pay consideration** where a consideration is payable for the supply of goods or services or both.

3.2.2 In the instant scenario, the foreign client is liable to pay the consideration to advertising company for the supply of advertising and not the consumers or the target audience that watches the advertisement in India. Further, in this case, even if a representative of the said foreign client based in India, including a subsidiary or related person of the said foreign client, is interacting with the advertising company on behalf of the said foreign client, the said representative based in India cannot be considered as a recipient of the service, if the agreement is between the foreign client and the advertising company, the invoice is being issued for the said service by the advertising company to the foreign client and the payment for the said service is received by the advertising company directly from the said foreign client. Further, the target audience of the advertisements may be based in India but such target audience cannot be considered as recipient of the said advertising services being supplied by the advertising company as per the definition of the recipient under section 2(93) of CGST Act.

3.2.3 Therefore, in view of above, it is clarified that the recipient of the advertising services provided by the advertising company in such cases is the foreign client and not the Indian representative of the foreign client based in India or the target audience of the advertisements, as per section 2(93) of the CGST Act, 2017.

3.3 Issue-3Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per section 13(3)of the IGST Act?

3.3.1 The place of supply of performance based services is provided in sub-section (3) of section 13 of IGST Act. The provisions of clause (a) of the said sub-section pertain to the services supplied in respect of goods which are required to be made physically available by the recipient of services to the supplier of services. However, in the instant matter, there does not appear to be any such involvement of goods which are required to be physically available with supplier of advertising services. Therefore, the said provisions of clause (a) of the said sub-section cannot be made applicable for determination of place of supply of advertising services.

3.3.2 Further, clause of (b) of sub-section (3) of section 13(3)(b) of IGST Act provides that the place of supply shall be the location where the services are actually performed in case, where,

a. services are supplied to an individual,

b. represented either as the recipient of services or a person acting on behalf of the recipient, and

c. which requires the physical presence of the recipient or the person acting on his behalf, with the supplier for the supply of services

3.2.3 In the present scenario, the supply of advertising services does not require physical presence of the recipient (foreign client or representative or a person acting on his behalf) with the advertising company for availing the said advertising services. Thus, the said supply of advertising services cannot be considered as being covered under section 13(3)(b) of the IGST Act for being considered as the services actually performed in India in terms of the said section.

3.3.3 Accordingly, it is clarified that the place of supply of advertising services in such cases can neither be determined as per the provision of section 13(3)(a) nor as per the provisions of section 13(3)(b) of IGST Act.

4. Further, it is observed that in the present scenario, the place of supply of the above-mentioned advertising services does not appear to be covered under any other provisions of sub-sections (3) to (13) of Section 13 of the IGST Act. Therefore, in view of foregoing discussion, it appears that the place of supply of the said advertising service being supplied by the advertising company to the foreign clients can only be determined as per the default provision, i.e. sub-section (2) of section 13 of IGST Act, i.e. the place of location of the recipient of the services. Since the recipient of the advertising services in such scenario is the foreign client, who is located outside India, the place of supply of the said services appears to be the location of the said foreign client i.e. outside India as per Section 13(2) of IGST Act,

and the said service can be considered to be export of services, subject to the fulfilment of conditions mentioned in section 2(6) of IGST Act.

5. However, there may be cases where the advertising company located in India merely acts as an agent of the foreign client in engaging with the media owner for providing media space to the foreign client. In such cases, the agreement/ contract for providing the media space and broadcast of the advertisement is directly between media owner and the foreign client. The media owner directly invoices the foreign client for providing the media space and broadcast of the advertisement and the foreign client remits the payment for the said services directly to the media owner. In such instances, the services of providing media space and broadcasting the advertisement are directly provided by the media owner to the foreign client. In such cases, the advertising company is merely facilitating the provision of the said services of providing media space and broadcasting the advertisement between the foreign client and the media owner and does not provide the said services on its own account. The advertising company invoices the foreign client for the facilitation services provided by it.

5.1 Consequently, in such cases, the advertising company is an "intermediary" in accordance with Section 2(13) of the CGST Act, 2017, as elucidated in Circular No. 159/15/2021-GST dated 20.09.2021, in respect of the said services of facilitating the foreign client and accordingly, the place of supply in respect of the said services provided by the advertising company to the foreign client is determinable as per section 13(8)(b)of IGST Act, i.e. the location of the supplier, i.e. the location of the advertising company.

6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Circular No. 231/25/2024-GST

F. No. CBIC-20001/6/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
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New Delhi, dated the 10th September, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal Commissioners/ Commissioners of Central Tax (All)
The Principal Directors General/ Directors General (All)

Madam/Sir,

Subject: Clarification on availability of input tax credit in respect of demo vehicles-reg.

The demo vehicles are the vehicles which the authorised dealers for sale of motor vehicles are required to maintain at their sales outlet as per dealership norms and are used for providing trial run and for demonstrating features of the vehicle to the potential buyers. These vehicles are purchased by the authorised dealers from the vehicle manufacturers against tax invoices and are typically reflected as capital assets in books of account of the authorized dealers. As per dealership norms, these vehicles may be required to be held by the authorized dealers as demo vehicle for certain mandatory period and may, thereafter, be sold by the dealer at a written down value and applicable tax is payable at that point of time.

2. Reference has been received to issue clarification regarding availability of input tax credit in respect of demo vehicles on the following issues:

i. **Availability of input tax credit on demo vehicles, which are motor vehicles for transportation of passengers having approved seating capacity of not more than 13 persons (including the driver), in terms of clause(a) of section 17(5) of Central Goods & Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act").**
ii. **Availability of input tax credit on demo vehicles in cases where such vehicles are capitalized in the books of account by the authorized dealers.**

3. In order to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the CGST Act, hereby clarifies the above issues as below.

4. <u>Availability of input tax credit on demo vehicles, which are motor vehicles for transportation of passengers having approved seating capacity of not more than 13 persons (including the driver), in terms of clause(a) of section 17(5) of CGST Act.</u>

4.1 Clause (a) of Section 17(5) of CGST Act provides that input tax credit shall not be available in respect of motor vehicles for transportation of persons having approved seating capacity of not more than 13 persons(including the driver), **except when they are used for making following taxable supplies,** namely:

A. **further supply of such motor vehicles**; or
B. transportation of passengers; or
C. imparting training on driving such motor vehicles.

4.2 The intention of law, as it appears from the use of expression **'when they are used for making the following taxable supplies'** in clause (a) of section 17(5) of CGST Act, is to exclude certain cases (based on the nature of outward taxable supplies being made using the said motor vehicle) from the restriction on availment of input tax credit in respect of the specified motor vehicles i.e. motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver). The taxable supplies, permitted for the purpose of being excluded from the blockage of input tax credit as per provisions of clause (a) of section 17(5) of CGST Act, being further supply of such motor vehicles, transportation of passengers and imparting training on driving such motor vehicles.

4.3 As demo vehicles are used by authorized dealers to provide trial run and to demonstrate features of the vehicle to potential buyers, it is quite apparent that demo vehicles cannot be said to be used by the authorized dealer for providing taxable supply of transportation of passengers or imparting training on driving such motor vehicles. Therefore, demo vehicles are not covered in the exclusions specified in sub-clauses (B) and (C) of clause (a) of section 17(5) of CGST Act. Accordingly, it is to be seen whether or not the Demo vehicles in question can be said to be used for making "further supply of such motor vehicles", as specified in the sub-clause (A) of the clause (a) of section 17(5) of CGST Act.

4.4 Regarding the provision for blockage of input tax credit in respect of motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver), the usage of the words **"such motor vehicles" instead of "said motor vehicle", in sub-clause (A) of the clause (a) of section 17(5) of CGST Act,** implies that the intention of the lawmakers was not only to exclude from the blockage of input tax credit, the motor vehicle which is itself further supplied, but also to exclude from the blockage of input tax credit, the motor vehicle which is being used for the purpose of further supply of similar type of motor vehicles. As demo vehicles are used by authorized dealers to provide trial run and to demonstrate features of the vehicle to potential buyers, it helps the potential buyers to make a decision to purchase a particular kind of motor vehicle. Therefore, as demo vehicles promote sale of similar type of motor vehicles, they can be considered to be used by the dealer for making 'further supply of such motor vehicles'. **Accordingly, input tax credit in respect of demo vehicles is not blocked under clause (a)**

of section 17(5) of CGST Act, as it is excluded from such blockage in terms of sub-clause (A) of the said clause.

4.5 There may be some cases where motor vehicles for transportation of persons having approved seating capacity of not more than thirteen persons (including the driver) are used by an authorized dealer for purposes other than for making further supply of such motor vehicles, say for transportation of its staff employees/ management etc. In such cases, the same cannot be said to be used for making 'further supply of such motor vehicles' and therefore, input tax credit in respect of such motor vehicles would not be excluded from blockage in terms of sub-clause (A) of clause (a) of section 17(5) of CGST Act.

4.6 Further, there may be cases where the authorized dealer merely acts as an agent or service provider to the vehicle manufacturer for providing marketing service, including providing facility of vehicle test drive to the potential customers of the vehicle on behalf of the manufacturer and is not directly involved in purchase and sale of the vehicles. In such cases, the sale invoice for the vehicle is directly issued by the vehicle manufacturer to the customer. For providing facility of vehicle test drive to the potential customers of the vehicle, the dealer purchases demo vehicle from the vehicle manufacturer. The dealer may sell the said demo vehicle to a customer after a specified time or kilometres as per agreement with the vehicle manufacturer on payment of applicable GST. In such a case, the authorized dealer is merely providing marketing and/or facilitation services to the vehicle manufacturer and is not making the supply of motor vehicles on his own account. Therefore, the said demo vehicle cannot be said to be used by the dealer for making further supply of such motor vehicles. Accordingly, in such cases, input tax credit in respect of such demo vehicle would not be excluded from blockage in terms of sub-clause (A) of clause (a) of section 17(5) of CGST Act and therefore, input tax credit on the same would not be available to the said dealer.

5. <u>Availability of input tax credit on demo vehicles in cases where such vehicles are capitalized in the books of account by the authorized dealers.</u>

5.1 As per provisions of section 16(1) of CGST Act, every registered taxpayer is entitled to take input tax credit charged on any supply of goods and services made to him, where such goods or services are used in the course or furtherance of business of such person, subject to such conditions and restrictions as may be prescribed and in the manner which is specified.

5.2 Further, "goods" has been defined in **section 2(52) of CGST Act**, as,

> ***"goods"*** *means every kind of movable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.*

5.3 Also, **section 2(19) of CGST Act** defines "capital goods" as,

*"**capital goods**" means goods, the value of which is capitalized in the books of account of the person claiming the input tax credit and which are used or intended to be used in the course or furtherance of business.*

5.4 As mentioned in paras above, as the demo vehicles are used by the authorized dealers to promote further sale of motor vehicles of the similar type and therefore, such vehicles appear to be used in the course or furtherance of business of the authorized dealers. Where such vehicles are capitalized in the books of accounts by the authorized dealer, the said vehicle falls in the definition of "capital goods" under section 2(19) of CGST Act. As per provision of section 16(1) of CGST Act, subject to such conditions and restrictions as may be prescribed, a recipient of goods is entitled to take input tax credit in respect of tax charged on the inward supply of any goods, which as per definition of "goods" under section 2(52) of CGST Act, includes even capital goods. Further, section 2(19) of CGST Act also recognizes that capital goods are used or intended to be used in the course or furtherance of business. **Accordingly, availability of input tax credit on demo vehicles is not affected by way of capitalization of such vehicles in the books of account of the authorized dealers, subject to other provisions of the Act.**

5.5 However, it is to be mentioned that in case of capitalization of demo vehicles, availability of input tax credit would be subject to provisions of section 16(3) of CGST Act, which provides that where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed. It is further mentioned that in case demo vehicle, which is capitalized, is subsequently sold by the authorized dealer, the authorized dealer shall have to pay an amount or tax as per provisions of section 18(6) of CGST Act read with rule 44(6) of the Central Goods and Service Tax Rules, 2017.

6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Circular No. 232/26/2024-GST

F. No. CBIC-20001/6/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
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New Delhi, dated the 10th September, 2024

To,

The Principal Chief Commissioners/ Chief Commissioners/
Principal Commissioners/ Commissioners of Central Tax (All),
The Principal Directors General/ Directors General (All).

Madam/Sir,

Subject: Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India-reg.

Representations have been received from the trade and industry seeking clarification on the place of supply in case of data hosting services provided by service providers located in India to cloud computing service providers located outside India.

2. **Issue**

2.1 It has been represented that some field formations are of the view that the place of supply of data hosting services provided by the service providers located in India to cloud computing service providers located outside India is the location of data hosting service provider in India and therefore, the benefit of export of services is not available on such supply of data hosting services.

2.2 Thus, clarification has been sought in respect of the following issues-

(i) Whether data hosting service provider qualifies as 'Intermediary' between the cloud computing service provider and their end customers/users/subscribers as per Section 2(13) of the Integrated Goods and Services Tax Act, 2017 (herein after referred to as the "IGST Act") and whether the services provided by data hosting service provider to cloud computing service

providers are covered as intermediary services and whether the place of supply of the same is to be determined as per section 13(8)(b) of IGST Act.
(ii) Whether the data hosting services are provided in relation to goods "made available" by recipient of services to service provider for supply of such services and whether the place of supply of the same is to be determined as per section 13(3)(a) of the IGST Act.
(iii) Whether the data hosting services are provided directly in relation to "immovable property" and whether the place of supply of the same is to be determined as per section 13(4) of the IGST Act.

3. **Clarification**

3.1 **Whether data hosting service provider qualifies as 'Intermediary' between the cloud computing service provider and their end customers/users/subscribers as per Section 2(13) of the IGST Act and whether the services provided by data hosting service provider to cloud computing service providers are covered as intermediary services and whether the place of supply of the same is to be determined as per section 13(8)(b) of IGST Act.**

3.1.1 As per section 2(13) of the IGST Act, read with Circular no. 159/15/2021-GST dated 20.09.2021, a broker, agent or any other person who arranges or facilitates the main supply of goods or services or both or securities and has not involved himself in the main supply on his own account is considered as 'intermediary'. Persons who supply goods or services, or both on their own account are not covered in the definition of "intermediary".

3.1.2 The cloud computing service providers generally enter into contract with data hosting service providers to use their data centres for hosting cloud computing services. Data hosting service provider either owns premises for data centre or operates data centre on leased premises, procures infrastructure and human resource, handles operations like infrastructure monitoring, IT management and equipment maintenance, etc. to provide the said supply of data hosting services to the cloud computing service providers. The data hosting service provider generally handles all aspects of data centre like rent, software and hardware infrastructure, power, net connectivity, security, human resource, etc. Importantly, the data hosting service providers do not deal with end users/consumers of cloud computing services and may not even know about the end users.

3.1.3 It is observed that data hosting service provider provides data hosting services to the cloud computing service provider on a web platform through computing and networking equipment for the purpose of collecting, storing, processing, distributing, or allowing access to large amounts of data. The cloud computing service provider provides cloud-based applications and software services to various end users/customers/subscribers for data storage, analytics, artificial intelligence, machine learning, processing, database analysis and deployment services, etc.. The end users/customers/subscribers access cloud computing services seamlessly over the internet through technology hosted on data centers. There appears to be no contact between data

hosting service provider and the end users/ consumers/ subscribers of the overseas cloud computing service provider. Thus, it is observed that the data hosting service provider provides data hosting services to the cloud computing service provider on principal-to-principal basis on his own account and is not acting as a broker or agent for facilitating supply of service between cloud computing service providers and their end users/consumers.

3.1.4 Accordingly, it is clarified that in such a scenario, the services provided by data hosting service provider to its overseas cloud computing service providers cannot be considered as intermediary services and hence, the place of supply of the same cannot be determined as per section 13(8)(b) of IGST Act.

3.2 Whether the data hosting services are provided in relation to goods "made available" by recipient of services to service provider for supply of such services and whether the place of supply of the same is to be determined as per section 13(3)(a) of the IGST Act, 2017.

3.2.1 Section 13(3)(a) of the IGST Act provides that in cases where the services are supplied in respect of goods which are made physically available by the recipient of services to service provider, the place of supply will be location of service provider.

3.2.2 In the instant scenario, it is observed that the data hosting service provider, as an independent entity, is providing seamless data hosting services to the overseas cloud computing service providers, through the premises, hardware and personnel at the data centre which not only comprises of hardware but also other essential infrastructure (without which the hardware infrastructure cannot be utilized) like ventilation and cooling system, uninterrupted power supply, software, network connectivity, security protocols, etc. which are owned by the data hosting service providers and are independently handled, operated, monitored and maintained by them. These data hosting service providers are charging their clients (cloud computing service providers), the charges for the services being provided by them to these clients as consideration depending on the specific terms and conditions as per agreements between them. From the above, it is observed that throughout the provision of the said services, the data hosting service provider owns premises for data center or operates data center on leased premises, independently handles, monitors and maintains the premises, hardware and software infrastructure, personnel and in such scenario, the overseas cloud computing service providers cannot be considered to own the said infrastructure and make the same physically available to the data hosting service provider for supply of the said services

3.2.3 In view of above, it is clarified that data hosting services provided by data hosting service provider to the saidcloud computing service providers cannot be considered in relation to the goods "made available" by the said cloud computing service providers to the data hosting service

provider in India and hence, the place of supply of the same cannot be determined under section 13(3)(a) of the IGST Act.

3.2.4 There may be some cases where some of the hardware required for data hosting service is provided by the recipient of the service, i.e., the cloud computing service provider to the data hosting service provider. Even in these cases, data hosting service provider handles all aspects of data centre, like arranging for the premises, making available software and other hardware infrastructure, power, net connectivity, security, human resource, maintenance etc., for providing data hosting services to the cloud computing service provider. Accordingly, in such cases, though the data hosting services is being provided by the data hosting service provider *inter-alia* using the hardware made available by the cloud computing service provider, it cannot be said that data hosting service are being provided in relation to the said goods made available by the cloud computing service provider to them. Accordingly, even in these cases, place of supply cannot be determined under section 13(3)(a) of the IGST Act..

3.3 **Whether the data hosting services are provided directly in relation to "immovable property" and whether the place of supply of the same is to be determined as per section 13(4) of the IGST Act.**

3.3.1 Section 13(4) of the IGST Act provides for the place of supply where services supplied are directly in relation to immovable property.

3.3.2 In the present scenario, it is observed that the data hosting service providers either use owned or leased premises for keeping IT infrastructure and other hardware required for providing data hosting services. They also procure hardware, uninterrupted power supplies, backup generators, ventilation and cooling equipment, network connectivity, fire suppression systems, security, human resource, etc.; handle operations like server monitoring, IT management and equipment maintenance, including repairs and replacements of the same, for providing data hosting services to their clients.

3.3.3 Thus, it is observed that data hosting services are not passive supply of a service directly in respect of immovable property but are regarding supply of a comprehensive service related to data hosting which involves the supply of various services by the data hosting service provider like operating data centre, ensuring uninterrupted power supplies, backup generators, network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for cloud computing service provider to provide cloud computing services to the end users/customer/subscribers.

3.3.4 Accordingly, it is clarified that in such a scenario, the data hosting services cannot be considered as the services provided directly in relation to immovable property or physical

premises and hence, the place of supply of such services cannot be determined under section 13(4) of IGST Act.

4. Further, the place of supply for the data hosting services provided by data hosting service provider located in India to overseas cloud computing service providers does not appear to fit into any of the specific provisions outlined in sections 13(3) to 13(13) of the IGST Act. Therefore, the place of supply in such cases needs to be determined according to the default provision under section 13(2) of the IGST Act, i.e. the location of the recipient of the services. Where the cloud computing service provider receiving the data hosting services are located outside India, the place of supply will be considered to be outside India according to section 13(2) of the IGST Act.

5. Accordingly, supply of data hosting services being provided by a data hosting service provider located in India to an overseas cloud computing entity can be considered as export of services, subject to the fulfilment of the other conditions mentioned in section 2(6) of IGST Act.

6. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

7. Difficulty, if any, in the implementation of this Circular may be brought to the notice of the Board. Hindi version will follow.

(Sanjay Mangal)
Principal Commissioner (GST)

Circular No. 233/27/2024-GST

F. No. CBIC-20001/6/2024-GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing
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New Delhi, dated the 10th September, 2024

To,

The Principal Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners of Central Tax and Central Tax (Audit) (All)
The Principal Directors General / Directors General (All)

Madam/Sir,

Subject: Clarification regarding regularization of refund of IGST availed in contravention of rule 96(10) of CGST Rules, 2017, in cases where the exporters had imported certain inputs without payment of integrated taxes and compensation cess - regarding.

Sub-rule (10) of rule 96 of Central Goods and Services Tax Rules, 2017 (hereinafter referred to as "CGST Rules") provides for a bar on availment of the refund of integrated tax (IGST) paid on export of goods or services, if benefits of certain concessional/exemption notifications, as specified in the said sub-rule, have been availed on inputs/raw materials imported or procured domestically. In this regard, references have been received from the field formations and trade/ industry wherein clarification has been sought on whether refund of integrated tax paid on exports of goods by a registered person can be regularized in a case where the registered person had initially imported inputs without payment of integrated tax and compensation cess, by availing the benefits under Notification No. 78/2017-Customs dated 13.10.2017 or Notification No. 79/2017-Customs dated 13.10.2017, but subsequently, at a later date, the said person has either paid the IGST and compensation cess, along with interest, on such imported inputs or is now willing to pay such IGST and compensation cess, along with interest.

2. The issue has been examined and in order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Board, in exercise of its powers conferred by section 168 (1) of the Central Goods and Services Tax Act, 2017 (hereinafter referred to as "CGST Act"), hereby clarifies the following:

2.1 Vide Notification No. 16/2020-CT dated 23.03.2020, an Explanation was inserted in sub-rule (10) of rule 96 of CGST Rules retrospectively with effect from 23.10.2017, which reads as follows:

> ***"Explanation. - For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed exemption of only Basic Customs Duty (BCD) under the said notifications."***

2.2 A bare perusal of the said Explanation, which was inserted with retrospective effect, reveals that in cases where the benefits of these exemption notifications have not been availed in respect of IGST and compensation cess, it shall be deemed that benefit of the said notifications has not been availed for the purpose of sub-rule (10) of rule 96 of CGST Rules. Therefore, extension of logic given in the said Explanation may lead to a view that in cases where inputs were initially imported without payment of integrated tax and compensation cess but subsequently, IGST and compensation cess on such imported inputs is paid at a later date, along with interest, then in such cases, it can be considered that the benefits of notifications mentioned in clause (b) of sub-rule (10) of rule 96 of CGST Rules have not been availed for the purpose of said sub-rule. Accordingly, refund of IGST claimed on exports made with payment of Integrated tax in such cases may not be considered to be in contravention of provisions of sub-rule (10) of rule 96 of CGST Rules.

2.3. In view of the above, it is clarified that where the inputs were initially imported without payment of integrated tax and compensation cess by availing benefits under Notification No. 78/2017-Customs dated 13.10.2017 or Notification No. 79/2017-Customs dated 13.10.2017, but subsequently, IGST and compensation cess on such imported inputs are paid at a later date, along with interest, and the Bill of Entry in respect of the import of the said inputs is got reassessed through the jurisdictional Customs authorities to this effect, then the IGST, paid on exports of goods, refunded to the said exporter shall not be considered to be in contravention of provisions of sub-rule (10) of rule 96 of CGST Rules.

3. It is requested that suitable trade notices may be issued to publicize the contents of this Circular.

4. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Board. Hindi version would follow.

(Sanjay Mangal)
Principal Commissioner (GST)