

CIRCULAR NO. 230/24/2024-GST- CLARIFICATION ON PLACE OF SUPPLY FOR ADVERTISING SERVICES PROVIDED TO FOREIGN CLIENTS UNDER IGST ACT

Where advertising company is an Intermediary or not?:

- ⌚ It was clarified that, where advertising company provides a comprehensive services covering conceptualizing, designing the content, broadcasting/displaying the advertisement for mass reach, identifying as well as dealing with media houses for procurement of means of media etc. to a foreign client and where advertisement company and a foreign client are acting on principal to principal basis (where there is no agreement between media house and a foreign client) then services of advertising company shall be outside the purview of 'intermediary' services.
- ⌚ The place of supply in this case would be as per general rule i.e. outside India and hence qualify for export of service since recipient of service who makes the payment i.e. a foreign client is located outside India.
- ⌚ It was further clarified that, where advertisement company merely acts as a facilitator between foreign client and Indian Media House and there is an agreement between media house and a foreign client, then role of advertising company shall fall within the bracket of an 'intermediary' since advertisement services are not provided on its own account and place of supply shall be location of service provider in India.

Performance-Based Service:

- ⌚ Supply of Advertising services do not need the physical presence of recipient i.e. foreign client or his representative in India and hence are not considered as performance-based service. Accordingly, place of supply in such cases shall be location of recipient of service i.e. foreign client which is outside India and hence will qualify as export of service

CIRCULAR NO. 231/25/2024-GST- INPUT TAX CREDIT (ITC) CLARIFICATION FOR DEMO VEHICLES USED BY AUTHORIZED CAR DEALERS UNDER GST FRAMEWORK

ITC on Demo Vehicles

- ☺ Demo vehicles which are purchased by authorized dealers from vehicle manufacturer and are used for trial run and test drive by authorized dealers to promote the sale of similar vehicles fall within the meaning of "further supply of such motor vehicles" and thus ITC for demo vehicles is eligible.

GSC Comment: This clarification puts to rest the confusion surrounding the eligibility of ITC on demo vehicles with specific focus of the meaning "such vehicle" due to divergent Advance Authority Rulings of various states.

- ☺ However, ITC shall be restricted to authorized dealer in the following scenarios:
 - ☺ where demo vehicle is used for different purpose such as transportation of employees/staff, or
 - ☺ where demo vehicles though purchased by authorised dealers for enabling test drive to prospective buyer ,but authorised dealers facilitate the sale of motor vehicles on behalf of vehicle manufacturer and sale invoice is issued by the vehicle manufacturer on a buyer directly or provides marketing service by acting as an agent of manufacturer and may subsequently sell demo vehicle to a buyer
- ☺ ITC for demo vehicle shall be available to authorized dealer even if capitalized in books of account subject to the condition that no depreciation is claimed on tax component under Income Tax Act, as stated under Section 16(3) of CGST Act, 2017.

CIRCULAR NO. 232/26/2024-GST- CLARIFICATION ON DETERMINING PLACE OF SUPPLY FOR DATA HOSTING SERVICES UNDER IGST ACT

- ⊗ Data hosting service provider provides its services to the cloud computing service provider/s on principal-to-principal basis without acting as a broker or agent for facilitating supply of service between cloud computing service providers and their end users/consumers and hence do not fall within the definition of intermediary. A data hosting service provider is not an intermediary because they provide services to cloud computing service providers on their own account and not just facilitate or act as agent between the cloud computing service provider and their end users.

- ⊗ Data hosting service provider provide data hosting services to foreign cloud computing service providers through its premises, infrastructure and human resources Accordingly, it cannot be said that goods are made physically available to them and hence place of supply fall outside the ambit of performance based services. Further, it makes no difference even if hardware is provided by cloud computing software provider to data hosting service providers.

- ⊗ Data hosting services are not per se relating to services of immovable property but supplies relates to data hosting services on a web portal through computing and networking equipment, 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.

- ⌚ Consequently, place of supply for data hosting services provided to cloud computing service receiver shall be location of recipient which is outside India and hence qualify as export subject to fulfillment of other conditions.

- ⌚ In certain cases, cloud computing service receiver provides certain hardware which is required for providing data hosting service to data hosting service provider. Even in such cases, it is clarified that, no data hosting service is being provided in relation to the said goods made available by cloud computing service receiver and place of supply cannot be determined under Section 13(3)(a) [under physical performance] of the IGST Act.

CIRCULAR NO. 233/27/2024-GST - CLARIFICATION ON IGST REFUND ELIGIBILITY FOR EXPORTERS UNDER RULE 96(10) OF THE CGST RULES

- ⌚ Where inputs were initially imported without paying IGST and compensation cess by EOU or availing benefit under Advance Authorization/Export Promotion Capital Goods Scheme and subsequently Bill of Entry got reassessment by Customs authorities and importer has paid IGST on import along with interest, then it is treated that there would be no violation of Rule 96(10) of CGST Rules for export of goods made with payment of tax.

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