<u>Place of supply of goods and services under GST regime:-</u>

Background:-

In present scenario, service tax is levied on service which is governed by Chapter V of Finance Act, 1994. Service Tax is consumption based tax. It is levied on the services provided in taxable territory. Hence, to determine where the services have been provided or to be provided, Place of Provision of Services Rules, 2012 (hereafter PoPoS Rules, 2012) were introduced.

Place of supply under GST regime:-

Proposed GST can be categorised into CGST i.e Central GST, SGST i.e State GST & IGST i.e Integrated GST. Place of supply will play vital role for determination levy of CGST & SGST or IGST.

In this article provisions related to place of supply are as per Integrated Goods and Services Tax Act, 2016. References of Place of Provision of Services Rules, 2012 are also given for comparative analysis.

CGST/SGST v/s IGST:-

Supply of Goods or Services can be categorised in “Intrastate supply” & “Interstate supply”. Interstate supply includes international transactions. CGST/SGST is to be levied on intrastate transactions while IGST is to be levied on interstate transactions. These two types of supplies is to be determined according to destination of supplies. This can be concluded as follows:

Location of supplier & place of supply in different states, it is “Interstate supply”.

Location of supplier & place of supply in same state, it is “Intrastate supply”.

Thus, place of supply is also essential to determine whether supply is interstate or intrastate supply.

Governing provisions under act:-

- **Section 5 of Integrated Goods and Services Tax Act,2016:**

As contained in section 5(1), this section shall apply to determine place of supply of goods.

Section 5(2): Where the supply involves movement of goods, whether by supplier or the recipient or by any other person, the place of supply of goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

Ex. Supplier (Maharashtra) Recipient (Delhi)

(Movement of goods)

Gujrat

In above example, supplier from Maharashtra supplies goods to recipient at Delhi. Goods are dispatched via Gujrat. Here, place of supply will be Delhi where movement of goods terminates for delivery to the recipient.

Section 5(2A): Where the goods are delivered by the supplier to a recipient or any other person, on direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principle place of business of such person.

Above deeming provision states that irrespective of location of delivery of goods, the place of supply of goods will be the principle place of business of such person.
Ex. There is transaction of supply of goods between two dealers, one in Mumbai and another in Delhi and goods are to be delivered from Mumbai to Delhi. The Mumbai dealer will, therefore, charge I-GST and discharge the same in Mumbai. Now, while the goods are in transit, the Delhi dealer (purchaser) effects sale/supply to a dealer in Gujrat, the place of supply of that transaction could be deemed to be Delhi and Delhi dealer should discharge I-GST on the transaction. If Gujrat dealer also effects sale/supply of the goods in transit to Rajasthan dealer, Gujrat will be deemed to be the place of supply of the goods and Gujrat dealer will pay I-GST in Gujrat.

Section 5(3): Where supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be location of such goods at the time of the delivery to the recipient.

Ex. Location of supplier (Maharashtra) Location of recipient (Gujrat)

(no movement of goods)

Warehouse (Delhi)

In above example, supplier of Maharashtra supplies goods to recipient at Gujrat. However, delivery of goods is to be taken from warehouse at Delhi. In this case, there is no movement of goods & hence place of supply will be Delhi which is location of goods at the time of delivery.

Section 5(4): Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

Ex. Installation of mobile tower.

Section 5(5): Where the goods are supplied on board or conveyance, such as vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

Thus, place of supply in above case is first location at which such goods are taken on board.

Section 5(6): Where the place of supply of goods cannot be determined in terms of sub section (2),(3),(4) & (5), the same shall be determined by law made by parliament in accordance with recommendations of the Council.

Thus there might be addition in the situations to determine place of supply.

- **Section 6 of Integrated Goods and Services Tax Act,2016:**

As contained in section 6(1), this section shall apply to determine the place of supply services.

Section 6(2) & 6(3) states that the place of supply of services except the services specified in sub-section (4),(5),(6),(7),(8),(9),(10),(11),(12),(13),(14) & (15) shall determine as follows:-

Case i :- If services are provided to registered person, place of supply shall be the location of such person.

Case ii :- If services are provided to person other than registered person, place of supply shall be the location of

(a) recipient where the address on record exists &
(b) supplier in any other cases.

Above two rules can be said as default rule which are a bit similar to Rule 3 of PoPoS Rules, 2012.

Place of supply in specified cases:-

Section 6(4): Place of supply of services in relation to immovable property

Place of supply of services in relation to an immovable property & services ancillary to such services shall be location at which the immovable or boat or vessel is located or intended to be located. If such immovable property is located in more than one state, the supply shall be treated in each state in proportion to the value of services or any other reasonable basis.

Similar provision regarding above mentioned services is governed by Rule 5 of PoPoS Rules, 2012.

Section 6(5): Place of supply of services which requires the physical presence of individual and the service provider at the time of performance of services

Place of supply of services where physical presence of individual & service provider is required shall be the location where the services are actually performed.

Above provision is a bit different from rule 4 of PoPoS Rule, 2012. As contained in said rule, place of provision of services in relation to goods that are required to be made physically available shall be the place of actual performance of services. However, under proposed GST specific services viz. Restaurant & catering services, personal grooming, fitness, beauty treatment, health services including cosmetic & plastic surgery are given which requires physical presence of an individual. Hence for service other than specified above will be covered under default section.

Section 6(6): Place of supply of services in relation to training and performance appraisal to
(a) a registered person, shall be the location of such person.
(b) a person other than registered person, shall be the location where the services are actually performed.

Section 6(7): Place of supply of services relating to events

Place of supply of services by way of admission of a cultural, artistic, sporting, scientific, educational or entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.

Section 6(8): Place of supply of services relating to events

Place of supply of services by way of
(a) organization of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of service in relation to a conference, fair, exhibition, celebration or similar events or
(b) services ancillary to organization of any of the above events or services or assigning of sponsorship of any of the above events or services to
(i) a registered person, shall be the location of such person
(ii) a person other than registered person, shall be the place where the event is actually held.

Explanation- Where the event is held in more than one State and a consolidated amount is charged for supply of services relating to such event, the place of supply of such services shall be taken as being in the each of the States in proportion to the value of services so provided in each

State as ascertained from the terms of the contract or agreement entered into in this regard or, in absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

Point to be noted:- Section 6(7) relates to admission in abovementioned events while section 6(8) relates to organization of events.

Place of provision for above services is governed by rule 6 of PoPoS rules in which place of provision shall be the place where the event is actually held.

Section 6(9): Place of supply of transportation of goods services.

The place of supply of services by way of transportation of goods, including by mail or courier to,

(a) a registered person, shall be the location of such person
(b) a person other than registered person, shall be the location at which such goods are handed over for their transportation.

As per rule 10 of PoPoS Rules, 2012, place of provision of such service, other than by way of mail or courier, shall be destination of the goods and in case of goods transport agency place of provision shall be the location of the person liable to pay tax (GTA reverse charge). Mail or courier services are governed by rule 4 which states place of provision of service shall be the location where services are actually performed.

Section 6(10): Place of supply of passenger transportation services

Place of supply of passenger transportation services to
(a) a registered person, shall be the location of such person
(b) a person other than registered person, shall be the place where the passenger embarks on the conveyance for continuous journey.

Provided that where the right to passage is given for future use and the point of embarkation is not known at the time of issue of right to passage, the place of supply of such service shall be determined in the manner specified in sub-sections (2) or (3), as the case may be.
Explanation- For the purposes of this sub-section, the return journey shall be treated as a separate journey even if the right to passage for onward and return journey is issued at the same time.

As per rule 11 of PoPoS Rules, 2012, place of provision of such service shall be the place where passenger embarks on conveyance for a continuous journey. Continuous journey does not involve any stopover at any of the legs of journey. Even though, specific explanation in case of return journey is added in GST.

Section 6(11): Place of supply of services on board a conveyance

The place of supply of services on board a conveyance such as vessel, aircraft, train or motor vehicle, shall be the location of the first scheduled point of departure of that conveyance for the journey.

Rule 12 of PoPoS Rule, 2012 contains similar provision.

Section 6(12): The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall—

(a) in case of services by way of fixed telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the location where the telecommunication line, leased circuit or cable connection or dish antenna is installed for receipt of services;

(b) in case of mobile connection for telecommunication and internet services provided on post-paid basis, be the location of billing address of the recipient of services on record of the supplier of services;

(c) in cases where mobile connection for telecommunication and internet service are provided on pre-payment through a voucher or any other means, be the location where such pre-payment is received or such vouchers are sold:

Provided that if such pre-paid service is availed or the recharge is made through internet banking or other electronic mode of payment, the location of the recipient of services on record of the supplier of services shall be the place of supply of such service.

Section 6(13): The place of supply of banking and other financial services including stock broking services to any person shall be the location of the recipient of services on the records of the supplier of services:

Provided that if the service is not linked to the account of the recipient of services, the place of supply shall be location of the supplier of services.

As per rule 9 of PoPoS Rules, 2012, place of provision of such services provided to account holders shall be the location of the service provider. Hence, services provided to non – account holder is governed by rule 3 which state place of provision shall be place of service receiver.

Section 6(14): The place of supply of insurance services shall:

(a) to a registered person, be the location of such person;

(b) to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services.

Section 6(15): Place of supply of advertisement services

The place of supply of advertisement services to the Central Government, a State Government, a statutory body or a local authority meant for identifiable States, shall be taken as located in each of such States and the value of such supplies specific to each State shall be in proportion to amount attributable to service provided by way of dissemination in the respective States as may be determined in terms of the contract or agreement entered into in this regard or, in the absence of such contract or agreement, on such other reasonable basis as may be prescribed in this behalf.

There are some provisions in present PoPoS Rules but are not covered in proposed GST. Place of supply in such cases shall be as per section 6(2) and 6(3).

Regards,

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