Place of Provision of Service Rules 2012: Explained

Introduction:

In 2012, there was a major rehaul in the 18 years old Service Tax regime in India. The pivotal change was shifting to the negative regime. The Finance Act 2012 ushered major changes in the Indirect tax regime.

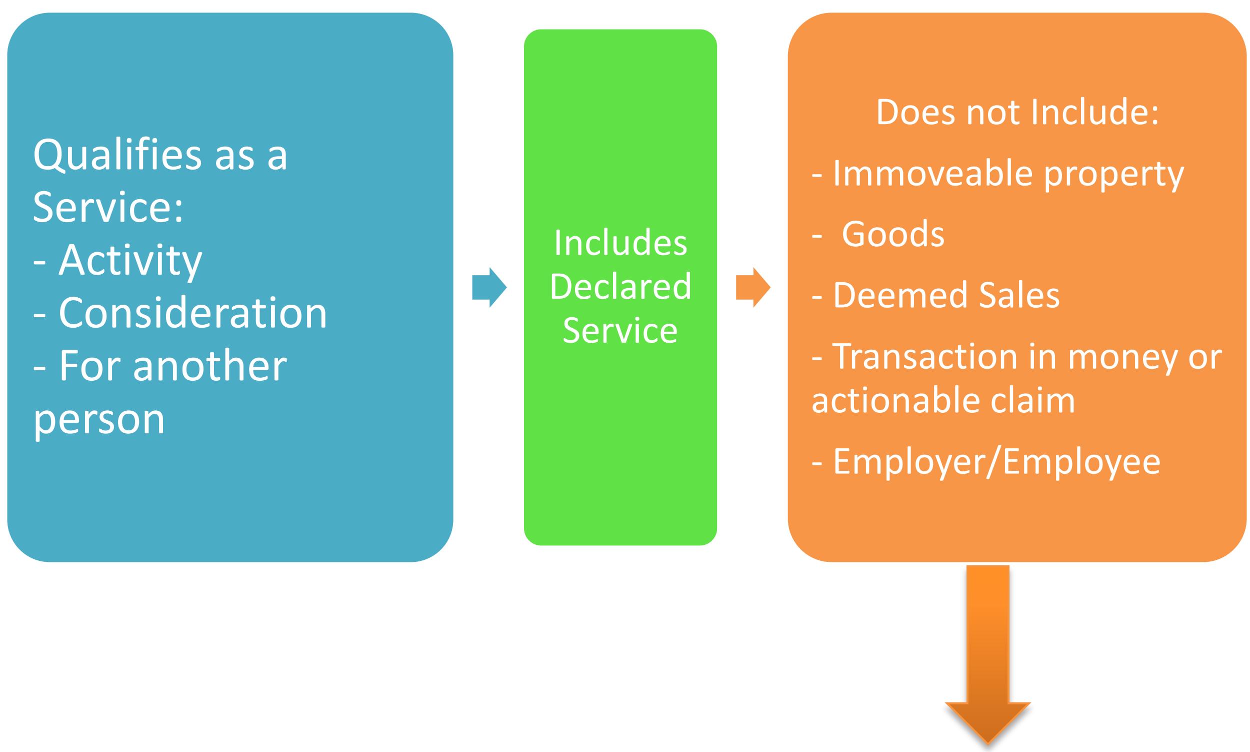
Place of Provision of Service Rules was amongst the most prominent alterations. It has changed the taxation of cross border transactions and those involving State of Jammu and Kashmir.

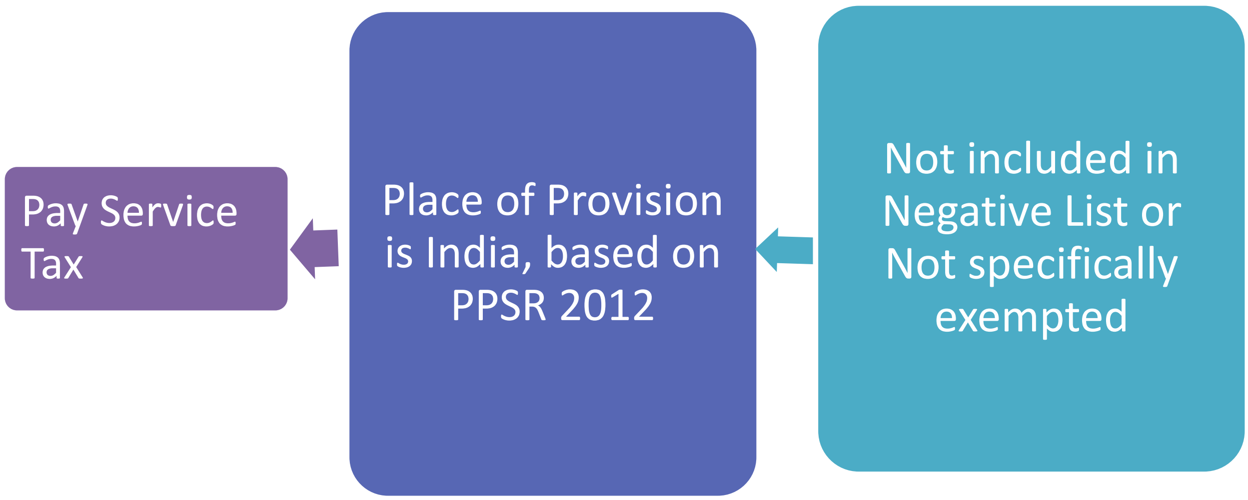
Earlier, the concept of defining the place of provision was limited to defining import or export of services.

Implementing the Negative list almost reduced the pages of law by 40% with 290 definitions reduced to 54 and number of exemptions from 88 to 10.

Necessity of PPSR 2012

Under the new regime of taxation, the liability could be determined in charging section as:





So, an important condition of Taxability would be the condition that the Place of Provision falls within the taxable territory.

Section 66C of the Finance Act, 2012, read with section 94 (hhh) ofChapter V of the Finance Act, 1994. Under Section 66B, a service is taxable only when, interalia, it is "provided (or agreed to be provided) in the taxable territory". Thus, the taxability of a service will be determined based on the "place of its provision".

The 'Place of Provision of Services Rules, 2012' will replace the 'Export of Services, Rules, 2005' and 'Taxation of Services (Provided from outside India and received in India) Rules, 2006.

What is the relevance of these Rules?

PPSR become very relevant in the case of cross border transactions. It becomes imperative to also apply for persons dealing with Jammu and Kashmir.

In case of a business which has pan-India presence, PPSR would be of use to determine which location should discharge the liability.

Additionally service providers operating within India from multiple locations, without having centralized registration will find them useful in determining the precise taxable jurisdiction applicable to their operations. The rules will be equally relevant for determining services that are wholly consumed within a SEZ, to avail the outright exemption.

Basic Philosophy behind PPSR:

Indirect taxation is universally linked with consumption. Following the same tenet, exports are not taxed as consumption is elsewhere. Imports are subject to indirect tax as import is within the jurisdiction.

However determination is not that easy. Modern transactions involve multiple territories and different persons. For instance, a person in Bangalore can buy a ticket from Dubai to Delhi. The jurisdiction also needs to be determined for services provided electronically.

Thus comes the necessity to lay down reliable provisions to determine the taxability of services. Certain level of harmonization with international practices should be ensured to avoid double taxation and double non-taxation.

Definition of Taxable Territory

Finance Act applies to whole of India except Jammu and Kashmir.

India is defined in sub-section 27 of section 65 B, as follows:

"India" means—

(a) the territory of the Union of India as referred to in clauses (2) and (3) of article 1 of the Constitution;
(b) its territorial waters, continental shelf, exclusive economic zone or any other maritime zone as defined in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976;
(c) the sea-bed and the subsoil underlying the territorial waters;
(d) the air space above its territory and territorial waters; and
(e) the installations structures and vessels located in the continental shelf of India and the exclusive economic zone of India, for the purposes of prospecting or extraction or production of mineral oil and natural gas and supply thereof;

How to determine the location of Service Receiver/Provider?

Service Provider/Receiver are registered Single Premises
- Place of Registration

Not Covered by above clause
- Location of Business Establishment

Services Provided/Received at another place
- Place of such Establishment

Services connected to more than one location
- Establishment directly connected with the provision/use of the service

Absence of such places
- Usual Place of residence of service receiver/provider

Business Establishment:

Fixed Place of Establishment:

Service Receiver: the person who is legally entitled to receive a service and, therefore, obliged to make payment, is the receiver of a service, whether or not he actually makes the payment or someone else makes the payment on his behalf.

A chauffeur making payment on behalf of the owner, the owner is the service receiver.

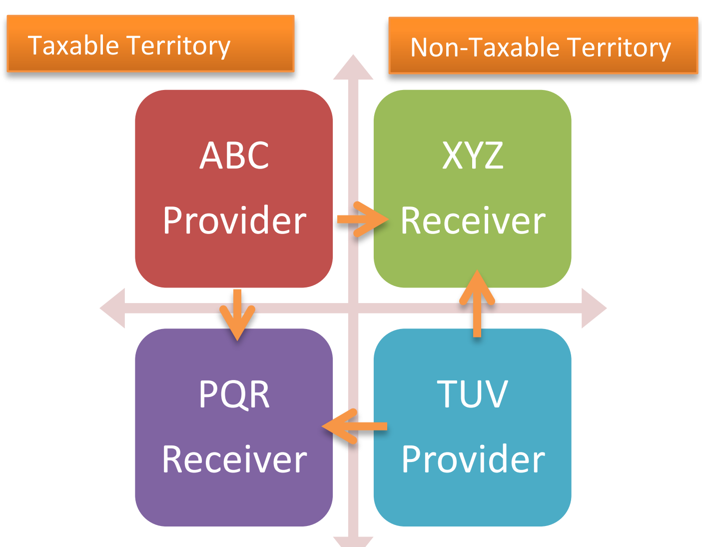
Rule 3 Location of the Receiver:

This is the default rule when any of the subsequent rules are not applicable. Rule 14 determines the order of application of rules, states that Rule 3 is applicable when a service is not covered in exception in one of the later rules.

Illustrating this by an example, Let us assume 4 companies which provide services amongst themselves.

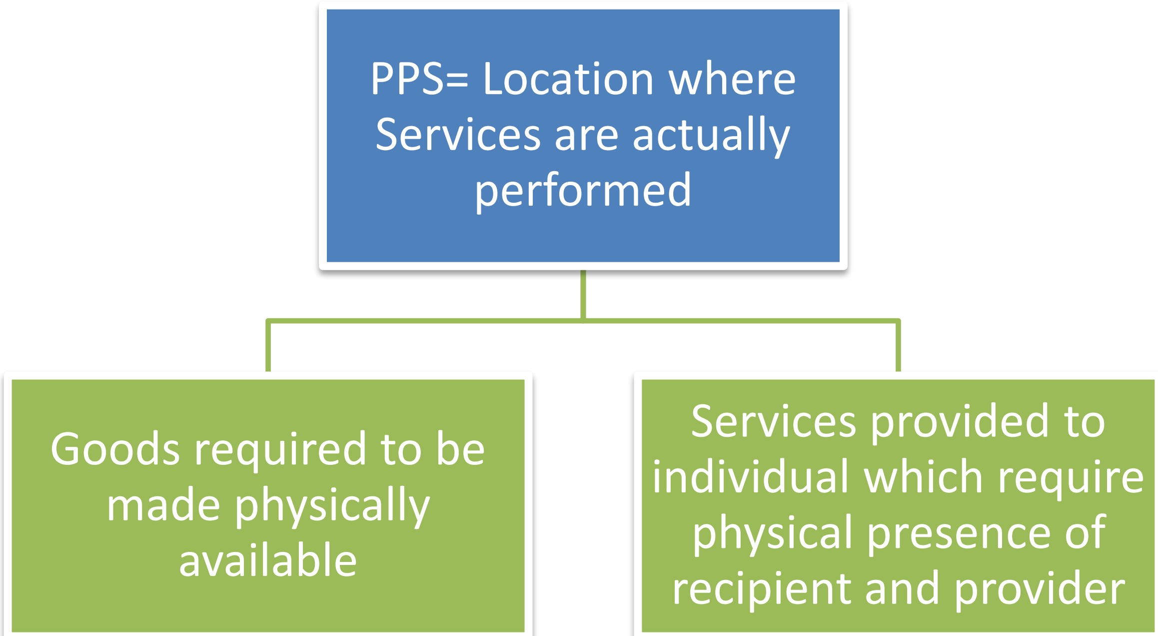
The following are the services which arise:

ABC to PQR	Both Situated in Taxable Territory. ABC is liable to pay Service Tax
ABC to XYZ	Since the destination of Services is in Non-taxable. It is a case of export of services and Service tax is not payable.
TUV to XYZ	Services provided to PQR (located in taxable territory) by an overseas provider TUV (located in non-taxable territory), the service would be taxable, since the recipient is located in the taxable territory. Using reverse charge, The tax liability would be discharged by the receiver.
TUV to XYZ	It is not within the ambit of service tax as both the service receiver and service provider are not within taxable territory.

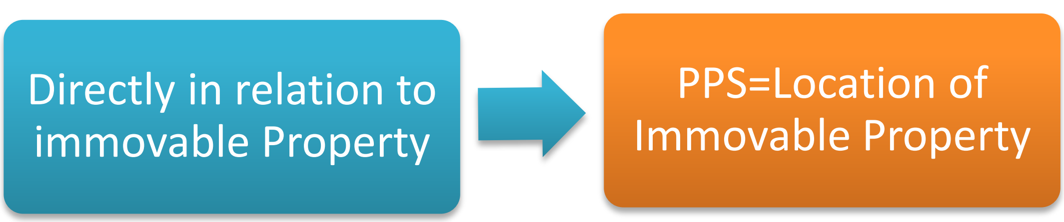


Rule 4 Performance Based Services:

"In respect of goods that are made physically available, by the receiver to the service provider"



Rule 5 Location of Immoveable Property:



Any service directly in relation to an immovable property, then the PPS would be Location of such immovable property.

For example an architect in India provides services for construction of a building in New York, USA. Since the building is located outside India, PPS falls in New York, outside India.

More than an indirect or mere coincidence/ relation should exist to fall under this rule. For example determination of capital gains tax liability for a property by a clerk, is taxation advice and not directly related to an immovable property.

Services of an agent by arranging finance for a purchase of a property are not covered under this rule.

Rule 6 Services in relation to Events

Services provided by way of admission to, or organization of a cultural, artistic, sporting, scientific, educational, entertainment event, or a celebration, conference, fair, exhibition, or any other similar event.

For Services ancillary to the admission of the event, the place of provision would be the place of the event.

For example, a college in USA wants to organize a road show in India to attract more students. If the college procures the services of event manager, the point of taxation would be in India.

Provision of sound engineering services for a music performance would amount to ancillary service and PPS would be the place of music performance.

Rule 7 Part performance of Service at different locations:

When service is provided in multiple locations it will be treated as being provided at the place in taxable territory where maximum proportion is provided.

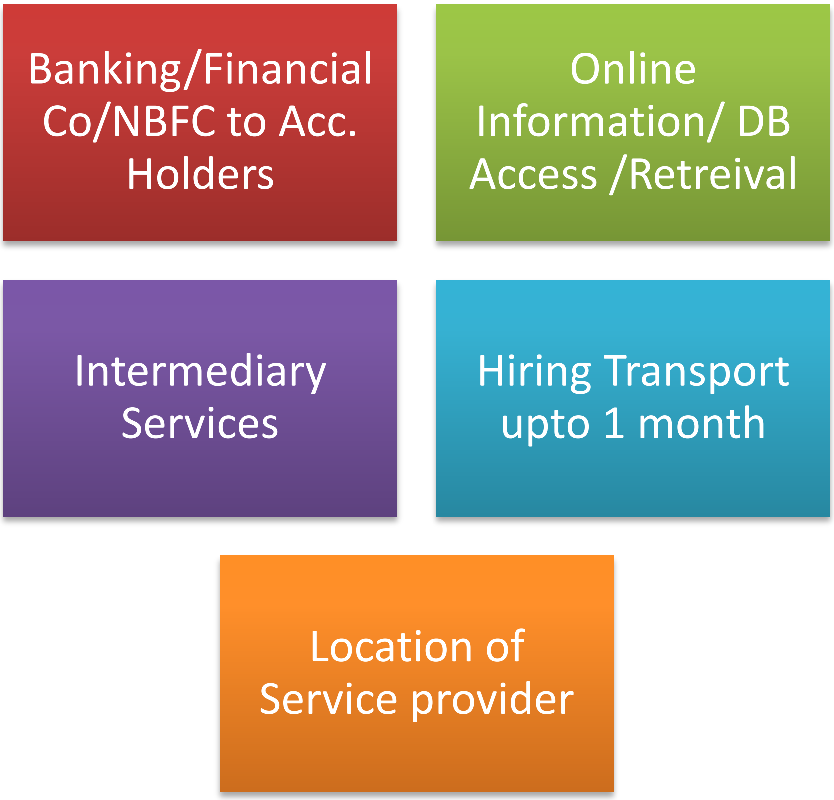
However this rule does not involve insignificant portion of service rendered like billing, issue of invoice. Collection of receivables, purchase order processing which does not amount to service actually performed.

Rule 8 When both Service provider and receiver are located in Taxable Territory:

Notwithstanding the earlier rules, this rule deems that place of provision falls in taxable territory. Due to Rules 4 to 6, the place of provision of a service can fall outside taxable territory. However, this rule deems the location of service receiver would be the Place of provision.

Using an illustration, let us assume that Pipav Defence's ship needs repairs in the waters of Malaysia. Shipping Corporation of India deputes its engineers to repair the ship in Malaysia. Based upon Rule 4, the PPS would be location of goods in Malaysia. However, due to Rule 8, since both the companies are situated in Taxable territory, PPS would be location of Pipav Defence.

Rule 9 Specified Services: Location of Service Receiver



Services provided to an account holder during the normal course of business by a banking company/NBFC/Finance Company will be deemed provided at place of service provider. These services could normally include services by way of operation of bank accounts like lending, safe deposit lockers, money transfer.

The services like financial leasing services, merchant banking services, investment advisory services which are not normally provided in normal course of business will not be covered under Rule 9. It will be governed by Rule 3.

Online information and access services include web based access or download of digital content primarily over internet or other network.

Sale/purchase of goods over internet, Repair of hardware/software over internet, telecommunication services over internet etc are not includable in online information, database retrieval services.

Intermediary has been defined in Rule 2 as any person like agent/broker who arranges or facilitates a provision of a main service but does not include a person who provides the service on his main account. An intermediary arranges or facilitates to arrange for the provision of service or supply of goods.(FA 2014)

Let us assume the case of a freight forwarder Mr.X for an export shipment to Singapore. It also involves transport of the goods from internally from Trichy to Chennai. They shall be shipped from Chennai to Singapore.

If the freight forwarder can act on:

a. Principal to Principal Basis: X procures the service from a transporter and charges a consolidated amount. Since the destination of goods and consequently PPS is outside taxable territory, it will not attract Service tax.
b. Intermediary: X with proper authorization procures the services and claims commission on the services. For the intermediary services provided by X, the PPS would be his location (service provider)

For outsourced units like call centers, which deal with the clients of the customer, but actually provide the services on their own account, cannot be classified as intermediaries.

Hiring a means of transport for a period less than one month excluding

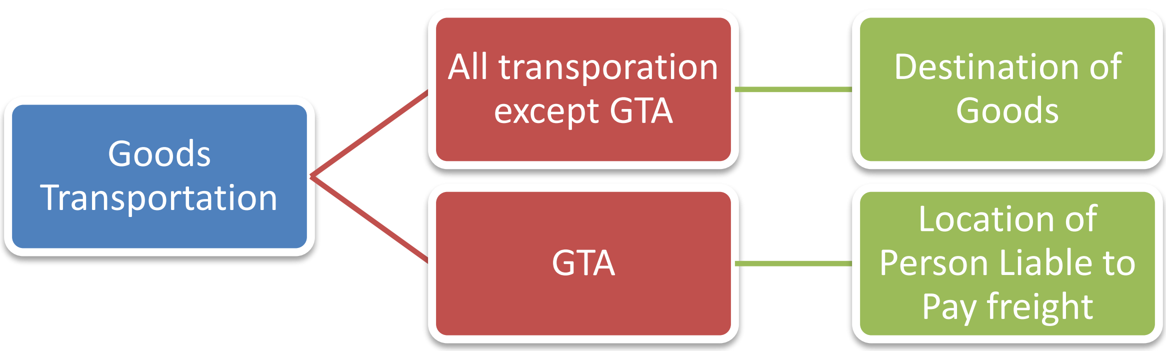
a. Aircrafts
b. Vessels excluding yachts

includes the services of taking on hire/lease without a transfer of right to use.

Hiring aircrafts and other vessels irrespective of period will be covered by Rule 3. Hiring of yachts upto 1 month shall be covered in Rule 9 and above one month shall be covered in Rule 3.

However race cars, containers designed to carry goods, dredgers are not treated as means of transport for apparent reasons.

Rule 10 Goods Transportation Services:



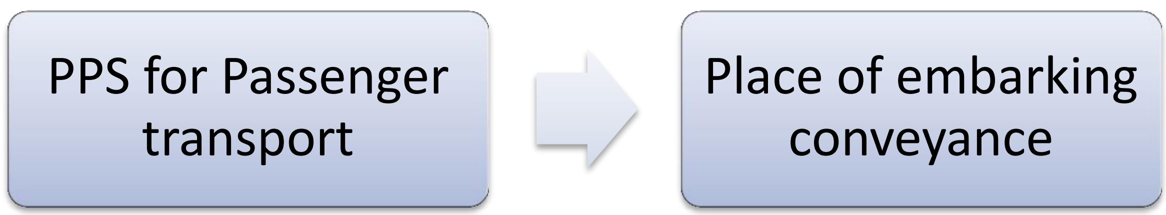
Place of provision of a service of transportation of goods is the place of destination of goods, except in the case of services provided by a Goods Transportation Agency for transportation of goods by road, in which case the place of provision is the location of the person liable to pay tax (as per Rule 2(1)(d) of Service Tax Rules, 1994)

Assume this scenario. XYZ a GTA, located in Delhi, transports a consignment of cars from Maruthi factory in Haryana to registered dealer in Punjab. The dealer in Punjab is liable to pay freight. As per the proviso to Rule 10, for GTA the PPS would be Punjab.

If the consignment was destined to PQR dealer in Sri Nagar (J&K) and freight was also payable by PQR. As per Rule 2(1) (d), when the person liable to pay freight is located in non-taxable territory, the service provider would be liable. So here PPS would be location of XYZ i.e. Delhi.

Rule 11 Passenger Transport Services

PPS would be the place where passenger embarks for a continuous journey.

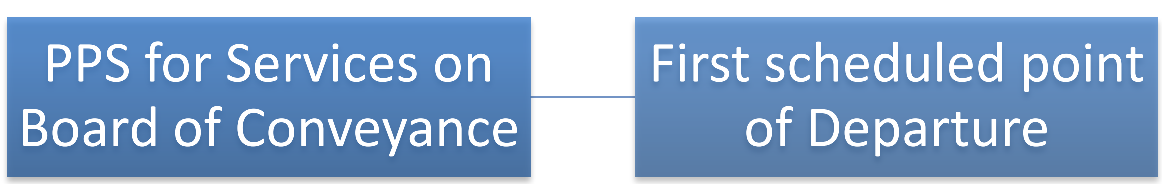


Continuous journey is defined in Rule 2 as:

i. a single ticket has been issued for the entire journey; or
ii. more than one ticket or invoice has been issued for the journey, by one service provider, or by an agent on behalf of more than one service providers, at the same time, and there is no scheduled stopover in the journey

All stopovers do not break a continuous journey. Stopovers for which a separate ticket is issued will result in break of a continuous journey. For example, ticket issued from Chennai-Delhi-Paris-Delhi on single ticket with halt in Delhi one side or both sides still result in a continuous journey. Travel from Delhi-New York-Delhi on separate tickets would count as a stopover.

Rule 12 Services provided on Board of Conveyance:



Any services specifically provided on Board only against specific charge and not as a part of fare would fall under Rule 12. Few services could include: Video, Games on demand, beauty treatment.

Rule 13 Order of application of Rules:

Rule 13 declares that "Latter the better" principle. For example, let us say a architect situated in Delhi provides planning and modeling services to an Indian restaurant company based out of Bangalore to set up its branch in Abu Dhabi. Rule 5 would apply since it is a immoveable property and since it is located outside India, PPS would be Abu Dhabi. But, Rule 8 applies in the case when both Service provider and service receiver are located in India, but PPS falls outside India; then the PPS would be the location of the Service receiver. Rule 8 would apply and PPS shall be Bangalore.

However, it should be noted that Rule 13 cannot override 66F which lays down that specific description should be preferred over general description. For example, A Real estate agent is covered both under Rule 5 (in relation to a immoveable property) and also under Rule 9 (as an intermediary of goods/services). Rule 13 should not be applied to conclude that Rule 9 shall be used to arrive at PPS. Since real estate agent is a specific description should be governed by Rule 5.

Conclusion

PPS is a crucial link in the system of levy of service tax. It is imperative for every service provider/receiver to identify their services and determine the place of provision. Understanding PPS unambiguously and applying it to the business situations is the crux of decision making in Indirect tax arena.