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कार्यालय-कमिश्नर, वाणिज्य कर,
उत्तर प्रदेश

(जी०एस०टी० अनुभाग)

लखनऊ::दिनांक 24, अक्टूबर, 2019

समस्त जोनल एडीशनल कमिश्नर ग्रेड-1,
एडीशनल कमिश्नर ग्रेड-2(वि०अनु०शा०),
ज्वाइन्ट कमिश्नर (कार्यपालक/वि०अनु०शा०),
वाणिज्य कर, उत्तर प्रदेश।

विषय:- सूचना प्रौद्योगिकी सक्षम सेवाओं (ITeS सेवाओं) की आपूर्ति से संबन्धित शंकाओं पर स्पष्टीकरण ।

भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, सेन्ट्रल बोर्ड इन्डायरेक्ट टैक्सेस एण्ड कस्टम द्वारा सूचना प्रौद्योगिकी सक्षम सेवाओं (ITeS सेवाओं) की आपूर्ति से संबन्धित शंकाओं के सम्बन्ध में स्पष्टीकरण विषयक परिपत्र संख्या 110/29/2019-जी०एस०टी० दिनांक 01.10.2019 जारी किया गया है।

उक्त परिपत्र की छायाप्रति इस पत्र के साथ संलग्न कर इस अनुरोध के साथ प्रेषित है कि अपने अधीनस्थ अधिकारियों को अवगत कराते हुए अनुपालन कराना सुनिश्चित करें।

यह पत्र कमिश्नर, वाणिज्य कर, उत्तर प्रदेश के अनुमोदनोपरान्त जारी किया जा रहा है।

संलग्नक:-उपरोक्तानुसार।

भवदीय,

(अजीत कुमार शुक्ला)
एडीशनल कमिश्नर (विधि)
वाणिज्य कर, मुख्यालय ।

F.No. CBEC – 20/06/03/2019 – GST
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
GST Policy Wing

New Delhi, the 1st October, 2019

To

The Pr. Chief Commissioners / Chief Commissioners / Principal Commissioners / Commissioners
of Central Tax (All)

The Principal Director Generals / Director Generals (All)

Madam / Sir,

Subject: Clarification on doubts related to supply of Information Technology enabled Services (ITeS services) –reg.

Circular No. 107/26/2019-GST dated 18.07.2019 was issued clarifying various aspects of supply of Information Technology enabled Services (ITeS services).

2. Various representations have since been received citing ambiguity caused in interpretation on account of 3 scenarios mentioned in the said circular. In view of prescription in Scenario 1 and Scenario 2, specific clarification has been sought on issues related to supply of Information Technology enabled Services (hereinafter referred to as “ITeS services”) such as call centre, business process outsourcing services, etc. and “Intermediaries” to overseas entities under GST law and whether they qualify to be “export of services” or otherwise.

3. The matter has been examined. 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”), in supersession of Circular No. 107/26/2019-GST dated 18.07.2019, hereby clarifies the issues in succeeding paragraphs.

4. ‘Intermediary’ has been defined in the sub-section (13) of section 2 of the Integrated Goods and Service Tax Act, 2017 (hereinafter referred to as “IGST” Act) as under –

“Intermediary means a broker, an agent or any other person, by whatever name called, who arranges or facilitates the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account.”

4.1 The definition of intermediary inter alia provides specific exclusion of a person who supplies such goods or services or both or securities on his own account. It is noteworthy that the supplies involving intermediary services would involve two supplies in the same transaction i.e. a principal supply of goods and services and a supply of intermediary service facilitating the principal supply provided either to the supplier or the recipient.

4.2 Information Technology enabled Services (ITeS services), though not defined under the GST law, have been defined under the sub-rule (e) of rule 10 TA of the Income-tax Rules, 1962 which pertains to Safe Harbour Rules for International Transactions. It defines ITeS services as-

"information technology enabled services" means the following business process outsourcing services provided mainly with the assistance or use of information technology, namely:—

- (i) *back office operations;*
- (ii) *call centres or contact centre services;*
- (iii) *data processing and data mining;*
- (iv) *insurance claim processing;*
- (v) *legal databases;*
- (vi) *creation and maintenance of medical transcription excluding medical advice;*
- (vii) *translation services;*
- (viii) *payroll;*
- (ix) *remote maintenance;*
- (x) *revenue accounting;*
- (xi) *support centres;*
- (xii) *website services;*
- (xiii) *data search integration and analysis;*
- (xiv) *remote education excluding education content development; or*
- (xv) *clinical database management services excluding clinical trials,*

but does not include any research and development services whether or not in the nature of contract research and development services"

5. Generally, an "intermediary" is a person who arranges or facilitates a supply of goods, or a provision of service, or both, between two persons, without material alteration or further processing. In order to ascertain whether a supply made by a registered person falls under the ambit of "intermediary services", following salient features need to be kept in consideration -

- I. **Number of parties and supplies:** Intermediary service involves minimum three parties and the service provider providing intermediary service is typically involved with two supplies at any one time (i) the supply between the principal and the third party; and (ii) the supply by intermediary of his own service (agency service) to his principal, for which a fee or commission is usually charged..
- II. **Nature and value:** An intermediary cannot alter the nature or value of the services or goods, the supply of which he facilitates on behalf of his principal, although the principal may authorize the intermediary to negotiate a different price. Also, the principal must know the exact value at which the services or goods are supplied on his behalf, and any discounts that the intermediary obtains must be passed back to the principal.
- III. **Separation of value:** The value of an intermediary's service is invariably identifiable from the main supply of service or goods that he is arranging. It can be based on an agreed percentage of the sale or purchase price. Generally, the amount charged by an agent from his principal is referred to as "commission".
- IV. **Identity and title:** The service provided by the intermediary on behalf of the principal is clearly identifiable.

6.1 Normally, it is expected that the intermediary or agent would have documentary evidence authorizing him to act on behalf of the provider of the 'main service'.

Illustration:

There may be various scenarios when a supplier of ITeS services located in India supplies services to or on behalf of his client located abroad. Some of the scenarios are discussed below:

Case I -

'X' operates a call centre on his own account, from where he is providing call centre service to his client 'Y' by dealing with the customers of the client on the client's behalf. In this case, though 'X' is dealing with the customers of his client on the client's behalf, the supply of call centre service by 'X' is to 'Y' and is on his own account on principal to principal basis. Therefore, as per definition of sub-section (13) of section 2 of Integrated Goods and Service Tax Act, 2017, X cannot be considered an intermediary in this case.

Case II-

'A', who is located out of India, uses service of 'B', located in India, to procure purchase orders for his ITeS service. 'B' contacts potential customers for ITeS service of 'A', markets and promotes the services of 'A', provides quotations, negotiates the price as well as the terms and conditions of the supply on behalf of 'A' and assists in finalizing or closing the deal/ contract/ agreement/ order with 'C'. 'B' receives consideration from 'A' in form of fee/ commission/ brokerage which may be a percentage of the value of the principal supply made by 'A' to 'C', or based on some other agreed terms. In such a case, principal supply is between 'A' and 'C', while 'B' is merely arranging or facilitating the supply of services between 'A' and 'C', and such principal supply of services is not on his own account. Accordingly, in this case, 'B' acts as an intermediary as per definition of sub-section (13) of section 2 of Integrated Goods and Service Tax Act, 2017.

Case III-

'P', who is located outside India, wants insurance claims processing service (an ITeS service) for his company and for this purpose, he utilizes the service of 'Q', located in India, for arranging insurance claims processing service. 'Q' contacts 'R', who is in business of providing insurance claims processing service, and arranges supply of insurance claims processing service by 'R' to 'P'. 'Q' charges 'P' a commission or service charge of 1% of the value of insurance claims processing service provided by 'R' to 'P'. In such a case, 'Q' acts as an intermediary.

Case IV:

'A', who is located outside India, requires software technical support services to be provided to his clients in India or abroad, which include activities like trouble shooting, bug fixing, software upgrades etc. He outsources some of this work to 'B', located in India, who deals with the clients of 'A' for providing such technical support on behalf of 'A'. In this case also, the service of technical support has been provided by B to A on his own account on principal to principal basis and therefore, 'B' cannot be considered as an intermediary in respect of the said service.

6.2 It is possible that a person may be intermediary for one supply while for other supply, he may not be intermediary, as it will depend upon the nature of the particular supply.

7. Further, it is also clarified that supplier of ITeS services who is not an intermediary in terms of sub-section (13) of section 2 of the IGST Act, can avail benefits of export of services, subject to satisfaction of the criteria mentioned in sub-section (6) of section 2 of the IGST Act, 2017 and subject

to other provisions of IGST Act, 2017. Provisions of sub-section (6) of section 2 of the IGST Act, 2017 read as under –

“export of services means the supply of any service when, —

(i) the supplier of service is located in India;

(ii) the recipient of service is located outside India;

(iii) the place of supply of service is outside India;

(iv) the payment for such service has been received by the supplier of service in convertible foreign exchange; and

(v) the supplier of service and the recipient of service are not merely establishments of a distinct person in accordance with Explanation 1 in section 8.”

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

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

(Yogendra Garg)
Principal Commissioner (GST)