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वाणिज्य कर
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: इलेक्ट्रॉनिक्स अर्धउद्योग से संबंधित (ईएसडीएम) चालक और डिजाइन विनिर्माण-
डिजाइन / सॉफ्टवेयर सेवाओं के मामले में आपूर्ति के स्थान के निर्धारण के बारे में स्पष्टीकरण।**

भारत सरकार, वित्त मंत्रालय, राजस्व विभाग, सेन्ट्रल बोर्ड इन्डायरेक्ट टैक्सेस एण्ड कस्टम द्वारा इलेक्ट्रॉनिक्स अर्धउद्योग से संबंधित (ईएसडीएम) चालक और डिजाइन विनिर्माण-डिजाइन / सॉफ्टवेयर सेवाओं के मामले में आपूर्ति के स्थान के निर्धारण के बारे में स्पष्टीकरण विषयक परिपत्र संख्या 118/37/2019-जी०एस०टी० दिनांक 11.10.2019 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. 354/136/2019-TRU
Government of India
Ministry of Finance
Department of Revenue
Tax research Unit

Room No. 156, North Block,
New Delhi, the 11th October 2019

To,

The Principal Chief Commissioners/ Chief Commissioners/ Principal
Commissioners/ Commissioner of Central Tax (All) /
The Principal Director Generals/ Director Generals (All)

Madam/Sir,

Subject: Clarification regarding determination of place of supply in case of software/design services related to Electronics Semi-conductor and Design Manufacturing (ESDM) industry – reg.

Various representations have been received from trade and industry seeking clarification on determination of place of supply in case of supply of software/design services by a supplier located in taxable territory to a service recipient located in non-taxable territory by using the sample hardware kits provided by the service recipient.

2. It is stated that a number of companies that are part of the growing Electronics Semi-conductor and Design Manufacturing (ESDM) industry in India are engaged in the process of developing software and designing integrated circuits electronically for customers located overseas. The client/customer electronically provides Indian development and design companies with design requirements and Intellectual Property blocks (“IP blocks”, reusable units of software logic and design layouts that can be combined to form newer designs). Based on these, the Indian company digitally integrates the various IP blocks to develop the software and the silicon or hardware design. These designs are communicated abroad (in industry standard electronic formats) either to the customer or (on behest of the customer) a manufacturing facility for the manufacture of hardware based on such designs.

2.1 In addition, the software developed is also integrated upon or customized to this hardware. On some occasions, samples of such prototype hardware are then provided back to the Indian development and design companies to test and validate the software and design that has been developed to ensure that it is error free.

2.2 The trade has requested clarification on whether provision of hardware prototypes and samples and testing thereon lends these services the character of performance-based services in respect of “goods required to be made physically available by the recipient to the provider”.

3. The provisions relating to determination of place of supply as contained in the Integrated Goods & Services Tax Act, 2017 (hereinafter referred to as "the IGST Act") have been examined. In order to ensure uniformity in the implementation of the provisions of the law, the Board, in exercise of its powers conferred by sub-section (1) of section 168 of the Central Goods & Services Tax Act, 2017 (hereinafter referred to as "the CGST Act") clarifies the same as below.
4. In contracts where service provider is involved in a composite supply of software development and design for integrated circuits electronically, testing of software on sample prototype hardware is often an ancillary supply, whereas, chip design/software development is the principal supply of the service provider. The service provider is not involved in software testing alone as a separate service. The testing of software/design is aimed at improving the quality of software/design and is an ancillary activity. The entire activity needs to be viewed as one supply and accordingly treated for the purposes of taxation. Artificial vivisection of the contract of a composite supply is not provided in law. These cases are fact based and each case should be examined for the nature of supply contracted.
- 4.1 Therefore, it is clarified that the place of supply of software/design by supplier located in taxable territory to service recipient located in non-taxable territory by using sample prototype hardware / test kits in a composite supply, where such testing is an ancillary supply, is the location of the service recipient as per Section 13(2) of the IGST Act. Provisions of Section 13(3)(a) of IGST Act do not apply separately for determining the place of supply for ancillary supply in such cases.
5. Difficulty if any, in the implementation of this circular may be brought to the notice of the Board.

Yours Faithfully,

(Harish Y N)
OSD, TRU-II
Email: harish.yn@gov.in
Tel: 011 2309 5547