

APPLICABILITY OF GST ON GTA SERVICES, WHERE POS IS OUTSIDE INDIA

INTRODUCTION:

1. On 01.02.2019, the amendments made to Goods & Services Tax (GST) laws vide Central Goods and Services Tax (Amendment) Act, 2018 are made effective. One of the amendment relates to determination of place of supply for transportation of goods. Though, it was clarified that the purpose of this amendment is to grant relief to taxpayers, the manner in which the amendment was brought in does not legally assure such relief. In this article, we are going to discuss this issue.

LEGAL POSITION:

Pre-Amendment Position:

2. Section 5 of Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as 'IT Act') provides for levy and collection of Integrated tax (IT) on all the inter-state supplies, that takes place in case of goods or services or both, whether by way of forward charge or reverse charge. Similarly, with respect to intra-state supplies, section 9 of Central Goods and Services Tax Act, 2017 (hereinafter referred to as 'CT Act') read with section 9 of respective State Goods and Services Tax Act, 2017 (hereinafter referred to as 'ST Act') shall provide for payment of Central Tax (CT) and State Tax (ST) for intra-state supply of goods or services or both whether by way of forward charge or reverse charge.
3. To determine whether transaction is an Inter-state or Intra-state supply, one has to look at the definition which is provided in Section 7 and 8 of IT Act respectively. To determine whether a transaction is Inter-State supply or Intra-State Supply, it should be determined based on location of the supplier and the place of supply. Where, the location of the supplier and the place of supply are in two different states or union territories, then the transaction shall be treated as Inter-State Supply in general. If the location of supplier and the place of supply are within the same state or union territory, then the transaction shall be treated as Intra-State supply in general.
4. To know what Place of Supply is (hereinafter referred to as 'POS'), one has to go through the provisions that has been provided in the IT Act. There are separate set of provisions provided for determining the POS in case of goods and services. The POS in case of services have been provided in section 12 (where the location of supplier and recipient are in India) and 13 (where the location of supplier and recipient are outside India) of IT Act.
5. In this article, we are dealing with a situation which is covered under the provisions of Section 12 of IT Act. In other words, it is assumed for the purposes of this article, the location of supplier and POS are in India. This section has specified both the general provision and the specific provisions for determining the POS. The general provision specified under sub-section (2) is applicable only when the specific provisions under sub-sections (3) to (14) are inapplicable.
6. POS of services by way of transportation of goods, including by way of courier or mail has been provided under sub-Section (8) of Section 12 of IT Act. The same are reproduced hereunder for ready reference:

(8) 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 a registered person, shall be the location at which such goods are handed over for their transportation.*

7. Consider a situation where a supplier engaged in provision of transportation services in India has provided goods transport agency services to a recipient in India for transport of goods to a place outside India. In terms of the above sub-section, with respect these transport services, the POS in case of registered recipient shall be the location of such person. Thus, POS for the above services will be the location of recipient of supply, which is in India and accordingly, the applicable GST would be required to be paid by recipient under reverse charge or under forward charge by the supplier, as the case may be, despite of the fact that the goods are transported outside India.

Post-Amendment Position:

8. With effect from 01.02.2019, Section 12 (8) of IT Act has been amended by inserting a proviso which is reproduced hereunder;

“Provided that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods”

9. In view of the insertion of proviso, with effect from 01.02.2019, where goods are meant for transportation to a place outside India, the POS shall be the place of destination of such goods. For example, if the goods are moved from Telangana to Nepal, then the POS by virtue of above proviso is Nepal, which outside India.

10. As the place of supply is outside India even though the supplier is located in India, it is relevant examine the provisions of section 7(5) of the IT Act to determine whether the supply is inter-state or intra-state. The relevant extracts are reproduced hereunder;

7(5) Supply of goods or services or both, —

(a) when the supplier is located in India and the place of supply is outside India;

(b) to or by a Special Economic Zone developer or a Special Economic Zone unit; or

(c) in the taxable territory, not being an intra-State supply and not covered elsewhere in this section,

*shall be treated to be a supply of goods or services or both in the course of **inter-State** trade or commerce.*

11. From the above provisions, it is clear that even though the POS is outside India, since the supplier is located in India, the supply shall be treated as inter-state supply. Under IT Act, with respect to inter-state supplies, the relief from payment of tax is available only when they amount to zero-rated supplies or a specific exemption was given under any notification.

12. Export of goods or services and supplies to SEZ unit/developer will be considered as zero-rated supplies under section 16 of IT Act. Let us consider whether the transport services fall under the meaning of export of services in order to consider them as zero-rated supply warranting to no requirement to pay GST. The term ‘Export of Services’ is defined under section 2(6) of IT Act. Accordingly, it means a supply of service when the following conditions are satisfied.

- a. The supplier of service is located in India
- b. The recipient of service is located outside India

- c. The POS of the service is outside India
 - d. The payment for such service has been received by supplier of service in CFE or Indian rupees wherever permitted by RBI.
 - e. The supplier and recipient of service are not mere establishments of same person i.e. HO and Branch
13. In terms of the above conditions, in order to call a service as export outside India, apart from POS being outside India, the recipient of service should also be located outside India. As the recipient of service (who is located in India), the transport services supplied by transporter (who is also in India) will not be considered as export of service even though the POS is outside India. Accordingly, the same are subject to GST as the same qualify as inter-state supplies under section 5 of IT Act.
14. Further, with respect to transport services undertaken by aircraft and vessel to a place outside India, there is an exemption given under Sl.no 20A and 20B of Notification No. 9/2017-IT (R) dated 28.06.2017 but similar exemption is not available for transport of goods by road.
15. In the explanatory notes given CBIC to explain the reasons for the proposed amendments, with respect to insertion of proviso to section 12(8), it has been explained that the amendment is proposed to provide that the services provided for transport of goods from a place in India to a place outside India would not be chargeable to GST, as POS is outside India.
16. Though the above clarification is extended by CBIC with respect to the above amendment in section 12(8), the exemption for the transport services by road to a place outside India cannot be affected by mere amendment to POS alone. As charging section under section 5 covers inter-state supplies having place of supply outside India, and as the service cannot be considered as export, the said transportation services by road to a place outside India cannot be kept outside GST ambit in the absence of specific exemption like the case of transport services by vessel or aircraft. In the absence of such notifications being brought into force, the transport services provided would be subject to GST as inter-state supplies.

CONCLUSION:

17. In view of the above discussion, though there is an amendment in section 12(8) of IT Act to provide that the POS of transport services is outside India, the said amendment does not change the tax position as the said supplies continue to be an inter-state supplies attracting levy under section 5 of IT Act. As the said services are not exempt, it is required to pay GST on these services. In view of these reason, an appropriate representation is required to be made to GST Council to review the same and make suitable amendments or grant exemptions in the manner similar to transport services by vessel or air to confer the relief that was intended to be achieved.

(For further detailed understanding of the above issue on the aspects location of recipient of supply and input tax credit, kindly refer to our detailed article published in this month's Wiki Journal)