

Treading the GST Path – VII

Place of supply of Services

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1.0 CGST and SGST is leviable on intra state supply of goods and/or services (Sec. 7 of the CGST / SGST Act) and IGST is leviable on all inter-state supplies of goods / services (Sec.4 of the IGST Act). Section 3 of the IGST Act defines supplies of goods and/or services in the course of inter State trade or commerce and Section 3 A of the IGST Act defines supplies of goods and/or services in the course of intra State trade or commerce.

1.1 As per section 2 (2) of the IGST Act, words and expressions not defined in this Act shall have the meaning assigned to them in the CGST Act. But there is no provision in the CGST / SGST Act, to the effect that the words and expressions not defined in these Acts, but defined in IGST Act, shall have the meaning assigned to them in the IGST Act. In the absence of such provision, how to find out what is "intra-State supply" for the purpose of levy of CGST / SGST?

1.2 Section 2 (44) of the CGST / SGST Act defines "export of service" and one of the condition thereunder is that the place of supply of service is outside India. In the absence of any guidelines in the Act to determine such place of supply or in the absence of any provision for applying the place of supply as defined under the IGST Act for the purposes of CGST / SGST Acts, how to determine the place of supply for the purposes of CGST / SGST Acts?

1.3 It is observed that under the Rule making power contained in Section 132 of the CGST / SGST Act, rules can be made, inter alia, for place of supply of goods or services. Instead of having a separate Place of Supply Rules for CGST / SGST purposes, why not the provisions of the IGST Act in this regard be made available to CGST / SGST?

2.0 Be that as it may, let us compare the present provisions of the Place of Provision of Service Rules, 2012 under service tax, to the provisions of Section 6 of the IGST Act, dealing with place of supply of services, so that the similarities and significant variations between both the provisions could be noted.

Place of Provision of Service (PPS) Rules, 2012		Place of Supply of Service (PSS) - Section 6 of the IGST Act	
Rule	Provision	Sub section	Provision
3	This residuary rule will apply when no other rules apply. PPS would be the location of the service recipient	(2)	Except in circumstances specified in sub sections (4) to (15), if the service recipient is a registered person, the PSS would be the location of the service recipient.
		(3)	Except in circumstances specified in sub sections (4) to (15), if the service recipient is a non registered person, the PSS would be (i) the location of the service recipient if his address on record exists. (ii) the location of the service provider in other cases.
4	Services which require physical presence of the goods / persons for provision of service – performance based services – PPS would be the place where the services are actually performed	(5)	PSS of restaurant and catering services, personal grooming, fitness, beauty treatment, health services including cosmetic and plastic surgery would be the location where the services are performed
		(6)	Training and performance appraisal services provided (i) to registered person – PSS would be the location of the service recipient. (ii) to non registered person – PSS would be the place where the services are actually performed.
5	Services relating to immovable property – PPS would be the place where the immovable property is situated	(4)	Specified services relating to immovable property – PSS would be the place where the immovable property is located.
6	Services relating to admission to events – PPS would be the place where the event is held	(7)	Services relating to admission to events - PSS would be the place where the event is held.
	No similar provision available	(8)	Services relating to

			<p>organising events,</p> <p>(i) If provided to a registered person, PSS would be the location of the service recipient.</p> <p>(ii) If provided to a non registered person PSS would be the place where the event is held</p>
7	Specified services provided in more than one location – PSS would be the place where the greatest proportion of service is provided		No similar provision available.
8	If both the service provider and service recipient are located in taxable territory – PSS would be the location of the service recipient		No similar provision available.
9 (a)	Services provided by banking company, financial institution & NBFCs to account holders – PSS would be the location of the service provider	(13)	For banking and other financial services – PSS would be the location of the service recipient. If the service is not linked to the account of the recipient of service – PSS would be the location of the service provider
9 (b)	Online information and database access or retrieval services – PSS would be the location of the service provider		No similar provision available.
9 (c)	“Intermediary services – PSS would be the location of the service provider		No similar provision available.
9 (d)	Services by way of hiring of certain means of transport, upto one month – PSS would be the location of the service provider		No similar provision available
10	Goods transportation services, except GTA service – PSS would be the place of destination of goods. In case of GTA services – PSS would be the location of the person liable for payment of service tax.	(9)	<p>Services by way of transportation of goods, including by mail or courier</p> <p>(i) to a registered person – PSS would be the location of the service recipient.</p> <p>(ii) to a non registered person – PSS would be the place where the goods are</p>

			handed over for transportation.
11	Passenger transportation services – PPS would be the place where the passenger embarks on the journey	(10)	Passenger transportation service, (i) to a registered person – PSS would be the location of the service recipient. (ii) to a non registered person – PSS would be the place where the passenger embarks on the journey.
12	Services provided on board a conveyance – PPS would be the first scheduled point of departure.	(11)	Services provided on board a conveyance – PSS would be the first scheduled point of departure.
13	In order to prevent double taxation or non-taxation of the provision of a service, or for the uniform application of rules, the Central Government shall have the power to notify any description of service or circumstances in which the place of provision shall be the place of effective use and enjoyment of a service.		No similar provision available.
14	Order of application of Rules – Later rule shall prevail		No similar provision available.
	No similar provision available.	(12)	Telecommunication services (i) For fixed line services – PSS would be the place where the equipments are installed. (ii) For mobile based services – PSS would be the billing address of the service recipient. (iii) Prepaid mobile services – PSS would be the place where the pre payment is received. (iv) For online recharge for prepaid services – PSS would be the location of the service recipient
	No similar provision available	(14)	Insurance services provided to (i) a registered person – PSS would be the location of the service recipient.

			(ii) a non registered person – location of the service recipient as per the records of the service provider
	No similar provision available	(15)	Advertisement Services to Central Govt / State Govt, etc. – PSS would be determined on proportionate basis.

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