



## INTERPLAY BETWEEN SECTION 7(5)(C) AND SECTION 13(8)(B) OF IGST ACT, 2017 IN THE MATTER OF INTERMEDIARY SERVICES

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### Fact of the Case:

**M**/s. ABC India (P) Ltd, hereinafter referred to as ABC, in the city of Kolkata is carrying on liaison in relation to price negotiation including display of sample, vetting of the purchase order etc. between an Indian purchasers named M/s XYX (P) Ltd, a Kolkata based company, and foreign company in the country of Germany

Indian company M/s XYX (P) Ltd. has directly imported materials from the foreign company. All the invoices including shipping bills are in the name of Indian purchaser. Bill of Entry (BoE) has been filed by M/s XYX (P) Ltd and applicable customs duty including IGST has been paid on the imported goods. The goods are directly dispatched from the port in the Country of Germany to the place of business of the Indian purchaser in Kolkata. Subsequently, after confirmation of the purchase order and followed by delivery of goods by the foreign company, ABC has issued invoice to foreign company in Euro for the liaison charges/ commission.

*Note: The above names are arbitrary only for easy of understanding.*

### Queries on the above transactions:

- (i) Whether the above transaction of claiming the liaison charges/ commission by raising invoice in foreign currency by ABC is an export of services?
- (ii) If the answer is negative, then whether this will be intra-State supply or Inter-State supply of services?
- (iii) HSN Code and Rate of GST applicable on this transaction.

### ***Analysis of query no. (i)***

The activity of ABC is purely a supply of service against the consideration in the form of commission charges from foreign company. Whether the instance service is export of service or not will be clarified from the analysis of the definition of export of service as given in section 2(6) of IGST Act. Now, we refer the definition of export of services in the context of IGST Act, 2017. Definition of export of services is as follows:

### **Section 2(6) - 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 supplier of service in convertible foreign exchange or in Indian rupees whenever permitted by the Reserve Bank of India; and**
- (v) the supplier and the recipient of service are not merely establishment of a distinct person in accordance with *Explanation 1* in section 8.**

The above definition of export of services is exhaustive one and there are five parts in the definition itself. The definition starts with “when” and followed by each clause ending with a “semi-colon”. It shows a close connection with each other. The last two clauses are connected with “and” to make it

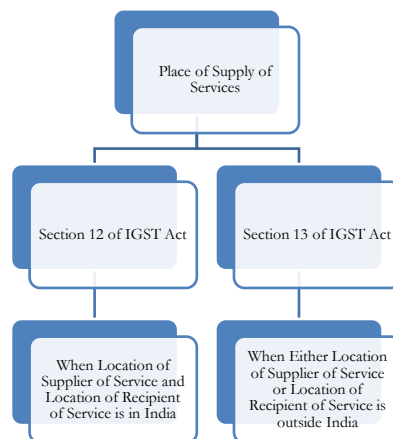
clear that all the conditions are to be fulfilled simultaneously and then it will be defined as export of services.

In the given case the following conditions are complied with:

- a. supplier is located in India – i.e. Kolkata;
- b. recipient of service is located outside India – i.e. Germany;
- c. place of supply of service is outside India – *detailed analysis is given below*;
- d. payment has been received in foreign currency- i.e. Euro;
- e. supplier and recipient are not establishment of distinct person.

One of the key conditions is the place of supply of service which is being analyzed below.

Place of supply in relation to service is covered under section 12 and 13 of IGST Act, 2017.



Section 12 is applicable when both the location of supplier of service and location recipient of service is in India. Section 13 will be applicable when either of the location of supplier of service or location of recipient of service is outside India. So, in the given situation section 13 is applicable as the location of recipient is outside India.

### Nature of Service:

The service provided by ABC is in the nature of an arrangement or facility between Indian company and foreign company for selling and buying of goods. ABC is not selling any goods in his own account to Indian company rather he is only facilitating the transaction between these two persons. ABC is raising invoices against that arrangement to foreign company in convertible foreign currency. So, it is an intermediary service by ABC. As of date no specific definition of intermediary service is provided in GST Law. However, we may take the definition of intermediary from IGST Act.

The definition reads as follows:

***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.*

From the above definition we may say that the intermediary is a person by whatever name called who only arranges or facilitates the supply between two or more persons. If such person supplies goods or services or both on his own account then it will not be an intermediary.

In our instance case the person ABC India (P) Ltd facilitates the arrangement of sale and purchase between Indian company and foreign company. ABC is not raising any invoice for supply of the particular goods that are required by Indian company. ABC is an intermediary between these two persons located in and outside India. The specific definition of intermediary service is not given but we

may correlate the service provide by M/s ABC in the capacity of an intermediary. In an indirect way the service provided by ABC may be recalled as intermediary services.

### **Place of supply of services:**

As per provision of section 13(8)(b) of IGST Act the place of supply of service on an intermediary service is the location of the supplier of service. The location of supplier is Kolkata.

One of the ingredients of definition of export of service has not been fulfilled in the context of place of supply of service is not outside India and hence it is not an export of service. Now it is clear that GST is applicable in the instance transaction.

### ***Analysis of query no. (ii)***

#### **Definition of Intra-State Supply:**

Definition of Intra-State supply has two limbs. One is relating to goods and covered under section 8(1) and the second one is relating to service and covered under section 8(2). In the given case we are concerned with section 8(2) only. Subsection 2 of section 8 starts with the wording "subject to the provisions of section 12". Section 8(2) is correlated and interlinked with section 12 of IGST Act. Section 12 of IGST Act is applicable only when the location of supplier and location of recipient of services are in India. Section 8(2) depends upon section 12 by way of linking the provision of section 8(2) with section 12. Section 12 is applicable only when both the supplier of services and recipient of services is in India. In case the supplier or the recipient of services is outside India then section 12 is not applicable at all. By virtue of interlinking the section 8(2) with section 12 the section 8(2) is also not applicable in the given case for determining whether the transaction is Intra-State. In our case section 13 of IGST Act is applicable.

From the provision of 8(2) it is clear that the instance transaction is not an Intra-State supply and it is an Inter-State supply as per the residuary provision covered under section 7(5)(c). Now, we will analysis the provision of section 7(5)(c).

#### **Section 7(5)(c) of IGST Act:**

*Supply of goods or services or both –*

*(a) .....*

*(b) .....*

*(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.*

The transaction of intermediary service is provided in the taxable territory, i.e. India and it is not an intra-State supply of services and not covered in any other section. So the transaction is inter-State supply of service and liable to pay IGST.

### ***Analysis of query no. (iii)***

From the annexure to scheme of classification of services it has been observed that the tax rate for this service would be 18% under SAC code 9997.

In this connection, we may refer the order of the Authority of Advance Ruling, Maharashtra, in the matter of Mrs. Vishakhar Prashant Bhawe of Micro Instruments wherein the Hon'ble Authority of Advance Ruling held that the instance transaction is an inter-State supply and liable to GST. Although the order of the advance ruling is binding on the applicant and its jurisdictional authority but we may refer the order for detailed elaboration.