

GOVERNMENT OF WEST BENGAL
DIRECTORATE OF COMMERCIAL TAXES
14, BELIAGHATA ROAD, KOLKATA-700015

TRADE CIRCULAR No. 18/2023
(Corresponding Central Circular No. 203/15/2023-GST)

DATED: 17.11.2023

Subject: Clarification regarding determination of place of supply in various cases.

Representations have been received from the trade and field formations seeking clarification on certain issues with respect to determination of place of supply in case of –

- i. supply of service of transportation of goods, including through mail and courier;
- ii. supply of services in respect of advertising sector; and
- iii. supply of the “co-location services”.

2. In order to clarify the issue and to ensure uniformity in the implementation of the provisions of law across the field formations, the Commissioner, in exercise of his powers conferred by section 168 of the West Bengal Goods and Services Tax Act, 2017 (hereinafter referred to as “WBGST Act”), hereby clarifies the issues as under:

S.No.	Issue	Clarification
A. Place of supply in case of supply of service of transportation of goods, including through mail and courier		
1.	Sub-section (9) of section 13 of Integrated Goods and Services Tax Act, 2017 (hereinafter referred to as “IGST Act”) has been omitted vide section 162 of Finance Act, 2023 which will come into effect from 01.10.2023. After the said amendment, doubts have been raised as to whether the place of supply in case of service of transportation of goods, including through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India,	1.1 Place of supply of services where location of supplier or location of recipient is outside India is determined as per section 13 of the IGST Act. Sub-section (9) of section 13 of IGST Act provided that where one of the supplier of the services or the recipient of services is located outside India, the place of supply of services of transportation of goods, other than by way of mail or courier, shall be the place of destination of such goods. The said sub-section has been omitted vide section 162 of Finance Act,

	<p>will be determined as per sub-section (2) of section 13 of IGST Act or will be determined as per sub-section (3) of section 13 of IGST Act.</p>	<p>2023 which will come into effect from 01.10.2023. It is hereby clarified that after the said amendment comes into effect, the place of supply of services of transportation of goods, other than through mail and courier, in cases where location of supplier of services or location of recipient of services is outside India, will be determined by the default rule under section 13(2) of IGST Act and not as performance based services under sub-section (3) of section 13 of IGST Act. Accordingly, in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place of supply shall be the location of supplier of services.</p> <p>1.2 Further, it is also mentioned that the place of supply in case of service of transportation of goods by mail or courier was not covered under the provisions of sub-section (9) of section 13 before the said sub-section was amended/ omitted. Therefore, on the same principles as mentioned above, the place of supply in case of service of transportation of goods by mail or courier will continue to be determined by the default rule under section 13(2) of IGST Act i.e. in cases where location of recipient of services is available, the place of supply of such services shall be the location of recipient of services and in cases where location of recipient of services is not available in the ordinary course of business, the place</p>
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		of supply shall be the location of supplier of services.
B. Place of supply in case of supply of services in respect of advertising sector		
2.	<p>Advertising companies are often involved in procuring space on hoardings/ bill boards erected and mounted on buildings/land, in different States, from various suppliers (“vendors”) for providing advertisement services to its corporate clients. There may be variety of arrangements between the advertising company and its vendors as below:</p> <p>(i) There may be a case wherein there is supply (sale) of space or supply (sale) of rights to use the space on the hoarding/ structure (immovable property) belonging to vendor to the client/advertising company for display of their advertisement on the said hoarding/ structure. What will be the place of supply of services provided by the vendor to the advertising company in such case?</p> <p>(ii) There may be another case where the advertising company wants to display its advertisement on hoardings/ bill boards at a specific location availing the services of a vendor. The responsibility of arranging the hoardings/ bill boards lies with the vendor who may himself own such structure or may be taking it on rent or rights to use basis from another person. The vendor is responsible for display of the advertisement of the advertisement company at the said location. During this entire time of display of the</p>	<p>2.1 It is clarified that the place of supply in the case supply of services in respect of advertising sector, in the cases referred in (i) and (ii), shall be determined as below:</p> <p>2.2 Place of supply in Case (i): The hoarding/structure erected on the land should be considered as immovable structure or fixture as it has been embedded in earth. Further, place of supply of any service provided by way of supply (sale) of space on an immovable property or grant of rights to use an immovable property shall be governed by the provisions of section 12(3)(a) of IGST Act. As per section 12(3)(a) of IGST Act, the place of supply of services directly in relation to an immovable property, including services provided by architects, interior decorators, surveyors, engineers and other related experts or estate agents, any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work shall be the location at which the immovable property is located. Therefore, the place of supply of service provided by way of supply of sale of space on hoarding/ structure for advertising or for grant of rights to use the hoarding/ structure for advertising in this case would be the location where such hoarding/ structure is located.</p> <p>2.3 Place of supply in Case (ii): In this</p>

	<p>advertisement, the vendor is in possession of the hoarding/structure at the said location on which advertisement is displayed and the advertising company is not occupying the space or the structure.</p> <p>In this case, what will be the place of supply of such services provided by the vendor to the advertising company?</p>	<p>case, as the service is being provided by the vendor to the advertising company and there is no supply (sale) of space/ supply (sale) of rights to use the space on hoarding/structure (immovable property) by the vendor to the advertising company for display of their advertisement on the said display board/structure, the said service does not amount to sale of advertising space or supply by way of grant of rights to use immovable property. Accordingly, the place of supply of the same shall not be covered under section 12(3)(a) of IGST Act. Vendor is in fact providing advertisement services by providing visibility to an advertising company's advertisement for a specific period of time on his structure possessed/taken on rent by him at the specified location. Therefore, such services provided by the Vendor to advertising company are purely in the nature of advertisement services in respect of which Place of Supply shall be determined in terms of Section 12(2) of IGST Act.</p>
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C. Place of supply in case of supply of the “co-location services”

3.	<p>Co-location is a data center facility in which a business/company can rent space for its own servers and other computing hardware along with various other bundled services related to Hosting and information technology (IT) infrastructure.</p> <p>A business/company who avails the co-location services primarily seek security and upkeep of its server/s, storage and network hardware; operating systems, system software and may require to interact with the system through a web-</p>	<p>3.1 It is clarified that the Co-location services are in the nature of “Hosting and information technology (IT) infrastructure provisioning services” (S.No. 3 of Explanatory notes of SAC-998315). Such services do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of co-location services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire</p>
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<p>based interface for the hosting of its websites or other applications and operation of the servers.</p> <p>In this respect, various doubts have been raised as to</p> <ol style="list-style-type: none"> i. whether supply of co-location services are renting of immovable property service (as it involves renting of space for keeping/storing company's hardware/servers) and hence the place of supply of such services is to be determined in terms of provision of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located; or ii. whether the place of supply of such services is to be determined by the default place of supply provision under sub-section (2) of section 12 of the IGST Act as the supply of service is Hosting and Information Technology (IT) Infrastructure Provisioning services involving providing services of hosting the servers and related hardware, security of the said hardware, air conditioning, uninterrupted power supply, fire protection system, network connectivity, backup facility, firewall services, 24 hrs. monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. 	<p>protection system and power supply but it also involves the supply of various services by the supplier related to hosting and information technology infrastructure services like network connectivity, backup facility, firewall services, and monitoring and surveillance service for ensuring continuous operations of the servers and related hardware, etc. which are essential for the recipient business/company to interact with the system through a web based interface relating to the hosting and operation of the servers.</p> <p>3.2 In such cases, supply of co-location services cannot be considered as the services of supply of renting of immovable property. Therefore, the place of supply of the co-location services shall not be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act but the same shall be determined by the default place of supply provision under sub-section (2) of Section 12 of the IGST Act i.e. location of recipient of co-location service.</p> <p>3.3 However, in cases where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and the further responsibility of upkeep, running, monitoring and surveillance, etc. of the servers and related hardware is of recipient of services only, then the said supply of services shall be considered as</p>
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		the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the provisions of clause (a) of sub-section (3) of Section 12 of the IGST Act which is the location where the immovable property is located.
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3. Difficulty, if any, in implementation of the above instructions may please be brought to the notice of the Commissioner.

(Khalid Aizaz Anwar)
Commissioner, State Tax,
West Bengal

Memo. No.- 227 /CT/PRO
3C/PRO/2023

Date: 21.11.2023

Copy forwarded to the Special Commissioner, State tax /ISD for information and for uploading it on the official website of the Directorate for information of all concerned.

(Nabanita Pal)
Special Commissioner,
State Tax & PRO