



The Institute of Chartered Accountants of India

GST & Indirect Taxes Committee

GOODS & SERVICES TAX UPDATE-237

Clarification in respect of advertising services provided to foreign clients

A foreign company or firm hires an advertising company/agency in India for advertisement of its goods or services and may enter into a comprehensive agreement with the advertising company/agency encompassing all the issues related to advertising services ranging from media planning, investment planning for the same, creating and designing content, strategizing for maximum customer reach, the identification of media owners, dealing with media owners, procuring media space, etc. for displaying/broadcasting/printing of advertisement including monitoring of the progress of the same. In such a case, the advertising agency provides a one stop solution to the client who outsources the entire activity to the agency.

In this scenario, media owners raise invoice to the advertising agency for inventory costs, which are then paid by the advertising agency. Subsequently, the advertising agency raises invoice to the foreign client for the rendered advertising services and receives the payments in foreign exchange from the foreign client.

Issue 1- Whether the advertising company can be considered as an “intermediary” between the foreign client and the media owners as per section 2(13) of IGST Act?

The advertising agency, in this case, enters into two agreements-

- i) With the client located outside India for providing a one stop solution starting from designing the advertisement to its display in media as agreed to with the client. The advertising agency raises invoices to its foreign client for the above advertising services and the payments of the same is received from the foreign client in foreign exchange.
- ii) With the media company to procure media space for display of the advertisement and to monitor campaign progress based on data shared by media company. The media company bills the advertising agency and the payment for same is made by the advertising agency to the media company.

Thus, the agreement is in nature of two distinct principal-to-principal supplies and no agreement of supply of services exists between the media company and the foreign client. The advertising company is not acting as an agent but has been contracted by the client to procure and provide certain services. The advertising agency is providing the services to the client on its

own account.

In view of above, it is clarified that the advertising company is involved in the main supply of advertising services, including resale of media space, to the foreign client on principal-to-principal basis as detailed above and does not fulfil the criteria of “intermediary” under section 2(13) of the IGST Act. Thus, the same cannot be considered as “intermediary” in such a scenario. Accordingly, the place of supply in the instant matter cannot be linked with the location of supplier of services in terms of section 13(8)(b) of the IGST Act.

Issue 2- Whether the representative of foreign client in India or the target audience of the advertisement in India can be considered as the “recipient” of the services being supplied by the advertising company under section 2(93) of CGST Act?

As per section 2(93)(a) of the CGST Act, the “recipient” of the services means the person who is liable to pay consideration where a consideration is payable for the supply of goods or services or both.

In this case, the foreign client is liable to pay the consideration to advertising company for the supply of advertising and not the consumers or the target audience that watches the advertisement in India. In this case, even if a representative of the said foreign client based in India, including a subsidiary or related person of the said foreign client, is interacting with the advertising company on behalf of the said foreign client, the said representative based in India cannot be considered as a recipient of the service, if the agreement is between the foreign client and the advertising company, the invoice is being issued for the said service by the advertising company to the foreign client and the payment for the said service is received by the advertising company directly from the said foreign client.

Therefore, in view of above, it is clarified that the recipient of the advertising services provided by the advertising company in such cases is the foreign client and not the Indian representative of the foreign client based in India or the target audience of the advertisements.

Issue 3- Whether the advertising services provided by the advertising companies to foreign clients can be considered as performance-based services as per section 13(3) of the IGST Act?

In the instant matter, there does not appear to be any such involvement of goods which are required to be physically available with supplier of advertising services. Therefore, the provisions of section 13(3)(a) cannot be made applicable for determination of place of supply of advertising services.

In the present scenario, the supply of advertising services does not require physical presence of the recipient (foreign client or representative or a person acting on his behalf) with the advertising company for availing the said advertising services. Thus, the said supply of advertising services cannot be considered as being covered under section 13(3)(b) of the IGST Act for being considered as the services actually performed in India in terms of the said section.

Place of supply as per section 13(2) of IGST Act: The place of supply of the said advertising service being supplied by the advertising company to the foreign clients can only be determined as per the default provision, i.e., section 13(2) of IGST Act, i.e., the location of the recipient of the services. Since the recipient of the advertising services in such scenario is the foreign client, who is located outside India, the place of supply of the said services appears to be the location of the said foreign client i.e., outside India as per section 13(2) of IGST Act, and the said service can be considered to be export of services, subject to the fulfilment of conditions mentioned in section 2(6) of IGST Act.

Place of supply as per section 13(8)(b) of IGST Act: There may be cases where the agreement/ contract for providing the media space and broadcast of the advertisement is directly between media owner and the foreign client. The media owner directly invoices the foreign client for providing the media space and broadcast of the advertisement and the foreign client remits the payment for the said services directly to the media owner. In such instances, the services of providing media space and broadcasting the advertisement are directly provided by the media owner to the foreign client. The advertising company is merely facilitating the provision of the said services of providing media space and broadcasting the advertisement between the foreign client and the media owner and does not provide the said services on its own account. The advertising company invoices the foreign client for the facilitation services provided by it.

Consequently, in such cases, the advertising company is an "intermediary" in accordance with Section 2(13) of the CGST Act, 2017, as elucidated in *Circular No. 159/15/2021-GST dt. 20.09.2021*, in respect of the said services of facilitating the foreign client and accordingly, the place of supply in respect of the said services provided by the advertising company to the foreign client is determinable as per section 13(8)(b) of IGST Act, i.e. the location of the supplier, i.e. the location of the advertising company.

[Circular No. 230/24/2024-GST dt. 10.09.2024](#)

*Vice – Chairman
GST & Indirect Taxes Committee*

*Chairman
GST & Indirect Taxes Committee*

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The Institute of Chartered Accountants of India, ICAI Bhawan, A-29, Sector 62, Noida (U.P.)-201301