



## The Institute of Chartered Accountants of India GST & Indirect Taxes Committee

### GOODS & SERVICES TAX UPDATE-239

#### 1. Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India

**Issue 1 - Whether data hosting service provider qualifies as ‘Intermediary’ between the cloud computing service provider and their end customers/users/subscribers as per section 2(13) of the IGST Act and whether the services provided by data hosting service provider to cloud computing service providers are covered as intermediary services and whether the place of supply of the same is to be determined as per section 13(8)(b) of IGST Act.**

The cloud computing service providers generally enter into contract with data hosting service providers to use their data centres for hosting cloud computing services. Data hosting service provider either owns premises for data centre or operates data centre on leased premises, procures infrastructure and human resource, handles operations like infrastructure monitoring, IT management and equipment maintenance, etc. to provide the said supply of data hosting services to the cloud computing service providers. Importantly, the data hosting service providers do not deal with end users/consumers of cloud computing services and may not even know about the end users.

There appears to be no contact between data hosting service provider and the end users/consumers/ subscribers of the overseas cloud computing service provider. The data hosting service provider provides data hosting services to the cloud computing service provider on principal-to-principal basis on his own account and is not acting as a broker or agent for facilitating supply of service between cloud computing service providers and their end users/consumers.

It is clarified that in such a scenario, the services provided by data hosting service provider to its overseas cloud computing service providers **cannot be considered as intermediary services** and hence, the place of supply of the same cannot be determined as per section 13(8)(b) of IGST Act.

**Issue 2 - Whether the data hosting services are provided in relation to goods “made available” by recipient of services to service provider for supply of such services and whether the place of supply of the same is to be determined as per section 13(3)(a) of the**

## **IGST Act, 2017.**

Data hosting service provider, as an independent entity, is providing seamless data hosting services to the overseas cloud computing service providers, through the premises, hardware and personnel at the data centre which not only comprises of **hardware but also other essential infrastructure (without which the hardware infrastructure cannot be utilized) like ventilation and cooling system, uninterrupted power supply, software, network connectivity, security protocols, etc. which are owned by the data hosting service providers** and are independently handled, operated, monitored and maintained by them. These data hosting service providers are charging their clients (cloud computing service providers), the charges for the services being provided by them to these clients as consideration depending on the specific terms and conditions as per agreements between them. From the above, it is observed that the overseas cloud computing service providers cannot be considered to own the said infrastructure and make the same physically available to the data hosting service provider for supply of the said services.

In view of above, it is clarified that data hosting services provided by data hosting service provider to the said cloud computing service providers cannot be considered in relation to the goods “made available” by the said cloud computing service providers to the data hosting service provider in India and **hence, the place of supply of the same cannot be determined under section 13(3)(a) of the IGST Act.**

In some cases, some of the **hardware required for data hosting service is provided by the recipient of the service, i.e., the cloud computing service** provider to the data hosting service provider. Even in these cases, data hosting service provider handles all aspects of data centre, like arranging for the premises, making available software and other hardware infrastructure, power, net connectivity, security, human resource, maintenance etc., for providing data hosting services to the cloud computing service provider. Accordingly, in such cases, though the data hosting services is being provided by the data hosting service provider *inter-alia* using the hardware made available by the cloud computing service provider, it cannot be said that data hosting service are being provided in relation to the said goods made available by the cloud computing service provider to them. Accordingly, even in these cases, place of supply cannot be determined under section 13(3)(a) of the IGST Act.

**Issue 3- Whether the data hosting services are provided directly in relation to “immovable property” and whether the place of supply of the same is to be determined as per section 13(4) of the IGST Act.**

Data hosting services are not passive supply of a service directly in respect of immovable property but are regarding supply of a comprehensive service related to data hosting which involves the supply of various services by the data hosting service provider like operating data centre, ensuring uninterrupted power supplies, backup generators, 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 cloud computing service provider to provide cloud computing services to the end

users/customer/subscribers.

It is clarified that in such a scenario, the data hosting services cannot be considered as the services provided directly in relation to immovable property or physical premises and hence, the place of supply of such services cannot be determined under section 13(4) of IGST Act.

Further, the place of supply for the data hosting services provided by data hosting service provider located in India to overseas cloud computing service providers does not appear to fit into any of the specific provisions outlined in sections 13(3) to 13(13) of the IGST Act. Therefore, **the place of supply in such cases needs to be determined according to the default provision under section 13(2) of the IGST Act**, i.e. the location of the recipient of the services. Where the cloud computing service provider receiving the data hosting services are located outside India, the place of supply shall be outside India according to section 13(2) of the IGST Act.

Accordingly, supply of data hosting services being provided by a data hosting service provider located in India to an overseas cloud computing entity **can be considered as export of services**, subject to the fulfilment of the other conditions mentioned in section 2(6) of IGST Act.

#### **[Circular No. 232/26/2024-GST dt. 10.09.2024](#)**

### **2. Clarification regarding regularization of refund of IGST availed in contravention of rule 96(10) of CGST Rules, 2017, in cases where the exporters had imported certain inputs without payment of integrated taxes and compensation cess**

Sub-rule (10) of rule 96 of CGST Rules, 2017 provides for a bar on availment of the refund of integrated tax (IGST) paid on export of goods or services, if benefits of certain concessional/exemption notifications, as specified in the said sub-rule, have been availed on inputs/raw materials imported or procured domestically.

**Issue - Whether refund of integrated tax paid on exports of goods by a registered person can be regularized in a case where the registered person had initially imported inputs without payment of integrated tax and compensation cess, by availing the benefits under Notification No. 78/2017-Customs dt. 13.10.2017 or Notification No. 79/2017-Customs dt. 13.10.2017, but subsequently, at a later date, the said person has either paid the IGST and compensation cess, along with interest, on such imported inputs or is now willing to pay such IGST and compensation cess, along with interest?**

Vide *Notification No. 16/2020-CT dt. 23.03.2020*, an Explanation was inserted in sub-rule (10) of rule 96 of CGST Rules retrospectively with effect from 23.10.2017, which reads as follows:

*“Explanation. - For the purpose of this sub-rule, the benefit of the notifications mentioned therein shall not be considered to have been availed only where the registered person has paid Integrated Goods and Services Tax and Compensation Cess on inputs and has availed*

*exemption of only Basic Customs Duty (BCD) under the said notifications.”*

Extension of logic given in the said Explanation may lead to a view that in cases where inputs were initially imported without payment of integrated tax and compensation cess but subsequently, IGST and compensation cess on such imported inputs is paid at a later date, along with interest, then in such cases, it can be considered that the benefits of notifications mentioned in clause (b) of sub-rule (10) of rule 96 of CGST Rules have not been availed for the purpose of said sub-rule. Accordingly, refund of IGST claimed on exports made with payment of Integrated tax in such cases may not be considered to be in contravention of provisions of sub-rule (10) of rule 96 of CGST Rules.

In view of the above, it has been clarified that where the inputs were initially imported without payment of integrated tax and compensation cess by availing benefits under *Notification No. 78/2017-Customs dt. 13.10.2017* or *Notification No. 79/2017-Customs dt. 13.10.2017*, but subsequently, IGST and compensation cess on such imported inputs are paid at a later date, along with interest, and the Bill of Entry in respect of the import of the said inputs is got reassessed through the jurisdictional Customs authorities to this effect, then the IGST, paid on exports of goods, refunded to the said exporter shall not be considered to be in contravention of provisions of sub-rule (10) of rule 96 of CGST Rules.

**[Circular No. 233/27/2024-GST dt. 10.09.2024](#)**

***Vice – Chairman  
GST & Indirect Taxes Committee***

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