

INTRODUCTION TO GST

PLACE OF SUPPLY AND TIME OF SUPPLY-PART 2

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Lecture 10

IGST ACT, 2017

Sec-10(2)/8-43

Where place of supply can not be determined under Section 1 of IGST Act, 2017?

In cases where place of supply can not be determined, it shall be determined as per rule prescribed.

However, no such rules have been prescribed so far.

It says where place of supply cannot be determined under section 1 of IGST Act. If in any case it is difficult for anyone to determine place of supply, law says it shall be determined as per rules prescribed. And, who will prescribe the rules? The government means GST council will prescribe the rules and as of now, no rules have been prescribed so far. So, if there is any case where it is difficult to determine the place of supply, we have to follow rules. There are no rule as of now, though we are in seventh year of GST.

In case of import of goods, where location of recipient is in India, which place is place of supply?

In case of import of goods, place of importer is place of supply. So, IGST shall be charged on value derived after payment of Custom duties.

In other words, value for such good shall be inclusive of custom duties and IGST shall be paid by the importer under RCM and he will claim ITC for said amount of IGST paid.

Moving further friends. In case of import of goods, when we are importing goods to India, and it says where location of recipient is India, which place is place of supply. How will we determine it in case of imported goods. So, law says, in case of imported goods, place of importer is place of supply. As I told you that GST is destination-based consumption tax, so, where goods have been consumed, revenue should go to that place, that state.

So, in imported goods, after custom clearance, consumer or the buyer will take these goods to its own premises and consume there. So, consumer will consume at a place where he has his factory. So, that state will get the revenue because when goods are imported after custom duty, whatever amount is arrived, customer is supposed to pay IGST because in case of imported goods, it is treated that it is an IGST transaction. So, IGST will be paid. And that IGST will be shifted to the state where consumer takes the goods and finally consume the goods. So, in other words, value of such goods shall be inclusive of custom duties and IGST shall be paid by the importer under RCM (reverse charge mechanism) and he will claim ITC also.

So, consumer is paying tax because though he is a recipient, but since it is an import, so outside India GST is not applicable. This law is not applicable to outsider, means the person who has supplied goods to India. So, definitely the responsibility to payment of tax of IGST will be on importer. So, importer will pay under reverse charge mechanism and also avail the benefit of taxes.

In case of services, how place of supply shall be determine if supplier of service and recipient of service both are in India?

In case of Services, general law is that :

If Supplier is registered person and supplies services to a registered person (recipient) in India but located in different state, place of that registered person (recipient) shall be POS. **IGST shall be charged.**

-If recipient is unregistered person and his address is available on records, his location will be POS and IGST shall be charged.

-But if his address is not available on records, than location of supplier shall be the place of supply and IGST may not be applicable.

There are exceptions to above as described in following slides from Sr No 11 to S No 26.

Friends, like goods in services also, there are lot of confusions, there are lot of transactions which we have to understand. Otherwise, we will not be able to practice GST. So, section 12 of IGST Act talks about services and it says, "In case of services, how place of supply shall be determined if supplier of service and the recipient of service both are in India?"

Means it is not a case of import-export of services. It is a case where supplier is also in India, recipient is also in India, both are in India, may be in different states, may be transaction is subject to IGST, but place of supply has to be defined in case of services also as we have done in the case of goods. So simple rule is where services are consumed, revenue should go to that particular state. Where recipient has received and consumed the services that is the fundamental rule of the GST. So, law says, "In case of services general rule is, (that I have explained you) if supplier is a registered person and supplies services to registered person (B2B transaction) in India, but located in different state, place of that registered person (means recipient) shall be the place of supply." Very simple.

We do it this way only for all transactions where recipient is/consumption is, the revenue should go to that place only, that state only. So, IGST shall be charged if both are in different states. If they are in the same state, then intra-state transaction is there, CGST, IGST shall be charged. It says if recipient is unregistered person, he does not have GST number and his address is available on official record with the supplier, then his location shall be his place of supply and he shall be charged with IGST as in case of an inter-state transaction. In simple terms, if his address is available and he is in other state, so IGST will be applicable and it will be inter-state

transaction and revenue will go to that particular state where recipient is available i.e. that unregistered person is available.

But if his address is not available on record with the supplier, then what? Then location of supplier shall be the place of supply. Means if a person in Delhi is supplying some goods to Rajasthan to an unregistered person but the person in Rajasthan does not have any official address in the record of supplier then it will be treated as counter sale and CGST, SGST shall be applicable while IGST will not be applicable. So, we have to understand it very clearly, very carefully. If in that particular transaction, data is available or not, address is available or not, unregistered person has given his proper address or not. So, in case of mobile recharges, prepaid recharges, it happens like this thing; sometimes in counter sale, it happens like many times.

So, we have to watch and study each and every transaction carefully and accordingly it has to be mapped with the respective provisions of GST and then we should pay GST otherwise it will create problem for us. And law further says, in case of services general law of GST is that place of supply of such transaction is where the recipient is placed. So, if it is a B2B transaction, place of supply shall be the place of recipient. And if recipient is in other state, IGST shall be applicable. It is an inter-state transaction.

But law also says that this general law of GST has some exceptions. Means items or transactions listed in below given or following slides are not covered by this general rule. They are different from the basic rule of GST that is consumption-based tax or destination-based tax. Though they are in line with basic spirit of the law, but situations are different because though it is a B2B transaction, but recipient is not in the area or in a place where consumption has taken place. So, let us see what are these transactions where consumption has taken place in a place other than the place of recipient.

In case of immovable property how the place of supply is determined?

In case of immovable property, place of supply of:

- Architect, Interior decorator, Surveyor, Engineers, Valuers Estate agents, Rights to use,
- Any other such service in relation to that immovable property,

shall be the location where such property is located.

But if such property is located out side India, place of supply shall be the location of recipient.

For example:

If one of the office building of ABC Ltd., Mumbai, is in Chandigarh and ABC Ltd hired a architect and Interior decorators from Mumbai to renovate and design said building at Chandigarh in next three months.

-In said case it will be a inter-state supply of services and IGST shall be charged.

So, friends, first case is in case of immovable property, dealt under section 12 sub-section 3, IGST Act. It is applicable in case of immovable property, building, mall or any immovable property which is attached to earth. Place of supply for "architects, interior decorators, surveyor, engineers, valuers, estate agents, rights to use". All these services are in connection with immovable property. Architect gives services for immovable property. Interior decorator gives services for interior decoration in a property. Surveyors give services related to some insurance claims in relation to immovable property. Engineers give, civil engineer or other engineers give services in relation to immovable property. Valuers for bankers, if you have, you want to avail some loan, valuers come for property valuation. Estate agents come for sale and purchase of immovable property. Rights to use; sometimes you give property on rent to the companies or to other officers or to anybody else for rent purposes. So, GST says if such services are being rendered which are related with immovable property, then place of supply shall be the location of such property.

Means where the property is located that is the place of supply of that particular transaction. What does it mean? So, let us understand this with this example. It says one of the office buildings of ABC Limited Mumbai is in Chandigarh. Means this company is having one building in Chandigarh. And ABC Limited hired an architect and interior decorator from Mumbai itself, where they are located. ABC Limited is in Mumbai. They are having one building in Chandigarh. They hired architect and decorator. from Mumbai itself to renovate and redesign the building. So, if I go by general rule of the GST, supplier is interior decorator

or architect and recipient is ABC limited in Mumbai itself, both are located or situated in Maharashtra, so it is intra-state sale and CGST-SGST shall be applicable. But it's not like that.

So, in this particular transaction, GST says the place of supply is where the building is located. So, consumption of services is the place where building is located. So, in this case, services are provided for a building which is located in Chandigarh and the owner of this building is located in Maharashtra and supplier of services is also in Maharashtra. So, they will raise IGST bill because it is inter-state sale because the service given for that particular building is located in Chandigarh. So, friends in case of IGST, in case of place of services, we have to be very careful to see what liability comes, how to deal with such type of situations. So, these are listed transactions in law. So, need not to worry.

So, to a general provision, general law, general rule of GST, there are exception, that you have to keep in mind. Rest of the transactions are as per the general rules only. So, in case of immovable property, if there is any service, accordingly tax will be levied. So, read transaction carefully and then decide what to do and refer relevant provisions also. So, you must have in your mind that if the transaction is related with property, especially immovable property, then place of supply shall be the place where property is situated.

IGST ACT, 2017	Sec-(12)(3b)/12-43
In case of Hotel, Inn, Guest House Home stay, club or camp site, boat house, vessel and like accommodation, how the place of supply shall be determine?	<p>In case of Hotel, Inn, Guest House Home stay, club or camp site, boat house, vessel and like accommodation :</p> <p>The place of supply shall be the location of such Hotel, Inn, Guest House Home stay, club or camp site, boat house, vessel or where such accommodation is located.</p> <p><i>But if such property is located out side India, place of supply shall be the location of recipient</i></p> <p>For Example: If employee of ABC Ltd., Mumbai has gone for official tour to Srinagar and stayed at Boat House/Hotel , supplier of service or such Boat house/Hotel owner shall charge CGST/SGST and not IGST to ABC Ltd.,</p>

Similarly, friends, in case of hotel, inn, guest houses, home-stay, clubs, boathouses, vessels or like accommodations. So, these services are also related with immobile property. Means you are visiting somewhere, if you are staying in hotel, you are visiting some place, you are staying in guest house, you have taken the services of guest house, you have taken the services of hotel,

you have taken a food in hotel, etc. then place of supply will be the location of that property/ place of that hotel. So, it is exception to the general rule and it says in case of hotel, guest house, homestay, club, camp-site, boat, vessel and like accommodations, the place of supply shall be the location of such hotel. So, whenever you are availing such services, make yourself confident, ensure the place of supply shall be the location of the hotel and accordingly tax will be charged. And it further says, but if such property is located outside India, place of supply shall be location of the recipient. Now situation is different.

If property is outside India, then recipient's location is important. But if property is in India, the location of property is important. So, let us take example in this case to make it clearer. If employee of a company ABC in Mumbai has gone for official tour to Srinagar. He has gone for official tour to Srinagar. An employee of a Bombay based company, stayed at boathouse or hotel, supplier or service or such boathouse owner shall charge CGST, SGST and not IGST. Because supplier of service, that means hotel owner or the boathouse owner, they are in Srinagar and service is provided at boathouse or hotel to a person who is also in Srinagar. They have nothing to do with Bombay office of the company. Because property is located in Srinagar. So, everything related to property will be served in Srinagar only. So, location of and place of supply is Srinagar. So, CGST, SGST shall be charged and not IGST. See the consumption pattern. The services are consumed/ availed in the state of Srinagar, J&K. So, destination is J&K. So, revenue should be of J&K. Services are consumed in J&K, not in Mumbai. Though recipient is in Mumbai.

IGST ACT, 2017

Sec-(12)(3c)/13-43

In case of destination marriages, conferences, workshops or any event is conducted/organized in any Hotel or in auditorium, how place of supply shall be decided?

In case of destination marriages functions, conferences, official, cultural, religious or business functions, workshops or any event related there to is conducted/organized in any Hotel or in auditorium, the POS shall be the location of such immovable property i.e. Hotel, Auditorium where such event is conducted or organized.

But if such property is located out side India, place of supply shall be the location of recipient .

For example:

If ABC Ltd, Chandigarh conducted its dealer conference at Udaipur Palace at Udaipur than POS shall be the Rajasthan and said Palace shall charge CGST/SGST in its invoice not IGST.

-But if such conference is conducted at Singapore, place of supply shall be Chandigarh and IGST shall be paid under RCM

Further, friends, in case if we are going for conferences, we are going for marriages, destination marriages, conducting fairs, workshops we are organizing for our employees or otherwise. What should be the place of supply? In case of destination marriages, conferences, cultural programs, religious, business functions, workshops, any event related thereto are conducted in any hotel or auditorium, the place of supply shall be the location of such property. Where the property is located, supply is there. Tax will be charged accordingly.

Again, it says, if outside India, then Place of supply is location of recipient. So, if you are an employee going to Dubai for business purposes and you arrange one travel agent in Mumbai for your Mumbai office and he is arranging all these hotels booking and everything, so, service provider and service recipient both are in India. So, CGST-SGST shall be charged. So, in this case friends, ABC Chandigarh conducting its dealers conference at Udaipur in Rajasthan, place of supply shall be Rajasthan and the hotel will charge CGST, SGST to Chandigarh party, not IGST because service is given in a hotel which is located in Rajasthan. But if such conference is conducted at Singapore, place of supply shall be Chandigarh because recipient is in Chandigarh and here property is outside India and this rule will be applicable. In that case IGST shall be charged. So, these are some cases which are exception to our general rule of B2B transaction and where the place of supply is as per the location of the recipient.

There are some business transactions related to immovable property, related to some hotels, related to some exhibitions, related to some conferences, destination marriages, where place of supply shall be the location where the actual consumption has taken place.

IGST ACT, 2017

Sec-(12)(4)/14-43

In case of restaurants and catering services, how the POS shall be determined?

In case of restaurants and catering services place of supply shall be the place where actually service is rendered or performed.

For Example: If Mr. A from ABC Ltd, Mumbai visited Chandigarh to meet company's GST consultant and had lunch in Hotel Taj Chandigarh with GST consultant and ask Hotel Taj to raise bill in favor of ABC Ltd . Hotel Taj shall raise bill with CGST/SGST as service is performed at Chandigarh.

In case of restaurants and catering services: So, general rule says B2B transaction where recipient is there, place of supply will be decided accordingly. But here what it says? It says in

case of restaurant and catering services, place of supply shall be place where actual service is rendered, where actual service is given.

Tax will be charged accordingly because it is a destination-based tax, consumption-based tax. So, in consumption-based tax revenue should go to the state where consumption has taken place. So, in this example Mr. A from ABC Mumbai visited Chandigarh to meet company's GST consultant. Mr. A is employee of a company who has visited Chandigarh to meet their consultant in Chandigarh and had a lunch at Hotel Taj in Chandigarh. So, restaurant services have been taken at Chandigarh in Hotel Taj. Though the consumer is from Mumbai, service provider is Hotel Taj in Chandigarh. So, when he asked Hotel Taj to raise bill in favour of ABC Limited, Hotel Taj raised bill with GST that is CGST-SGST not IGST because services are given in Chandigarh. Consumption is taken place in Chandigarh, food is taken in Chandigarh, whereby, revenue should go to Chandigarh. So, place of supply plays that much of role otherwise it will defeat the purpose, defeat the spirit of law.

IGST ACT, 2017

Sec-12(4)/15-43

In case of personal grooming, fitness, beauty treatment, health services including cosmetic and plastic surgery how the POS shall be determined?

In case of **personal grooming, fitness, beauty treatment, health services including cosmetic and plastic surgery** place of supply shall be the place where the service is rendered or performed.

Similarly, friends, in case of services related with personal grooming, fitness, beauty treatment, health services treatment, including cosmetics, plastic surgery, etc. These are medical services. Though medical services are exempted from GST, but there are certain medical services like cosmetic surgery and all, they are not exempted from GST and are subject to GST. So, here again where the actual treatment took place, is a place of service. So, in all these cases place of supply shall be place where services are rendered or actually performed or consumed. So, anyone from Bombay went to Calcutta for his treatment from a particular clinic of particular hospital, services are given in West Bengal. If any amount is charged, it will be subject to GST and CGST and SGST will be charged, not IGST because these services are rendered and consumed in West Bengal only. So, we have to understand the transaction in which fashion it has happened and have to map it with the provisions of GST law and only then we will decide

whether IGST is applicable or CGST-SGST is applicable. Keep one thing in mind; just check where the consumption has taken place and if in transaction there is some foreign link means recipient is outside India or the property is outside India then also again refer the specific section and then go further. Because in import and export business, we have different rules for different transactions.

IGST ACT, 2017	Sec-12(5)/16-43
In case of training and performance appraisal, how POS shall be determined?	In case of training and performance appraisal: If services are provided to registered person, than place of the recipient, Otherwise where the services are actually performed shall be the POS.

Similarly, friends, in case of training and performance appraisal services, if we have sent some employees to some training institute for their training purposes, then consumption means service taken as training by the company will be the place where training is taken and accordingly GST will be charged. So, the training institute which has given training to our employees will charge CGST-SGST not IGST. So, it says ‘...to a registered person, than place of a recipient’. So, here again rule comes differently. So, we have to track each and every transaction. In case of training, place of supply shall be the, if it is B2B transaction, then the recipient.

And otherwise, it is place of supply where it is actually performed.

IGST ACT, 2017	Sec-12(6)/17-43
In case of entry fee charged to events like cultural programs, sports events, exhibitions, science fair, education events, entertainment events etc. how POS shall be determined?	In case of entry fee charged to cultural programs, sports events, exhibitions, science fair, education events, entertainment events the POS shall be the location where such events are organized.

Entry fee charged for cultural program, sports event, exhibitions, science fair, education, entertainment event, concerts. So, the place of supply shall be the location where such events are organized. So, I may have gone to Dharamshala to watch cricket match in Dharamshala because event is in Himachal. So, if there is any tax on ticket for watching the match, it will be CGST, SGST, not an IGST, though I am from Chandigarh and I am having GST number. But the place of supply shall be the Dharamshala, Himachal Pradesh and CGST will be charged.