

सेवाओं का आयात (प्रश्नोत्तरी) ¹

Import of services (FAQs)



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- प्र01 सेवाओं के आयात (Import of Services) से क्या तात्पर्य है ?**
- उ0 IGST Act की धारा 2(11) में सेवाओं का आयात (Import of Services) को निम्न प्रकार परिभाषित किया गया है :-
- (11) "Import of services" means the supply of any service, where-
- (i) the supplier of service is located outside India;
- (ii) the recipient of service is located in India; and
- (iii) the place of supply of service is in India;
- प्र02 इस आपूर्ति (Supply) की प्रकृति (Nature) क्या है ?**
- उ0 IGST Act की धारा 7(4) के अनुसार भारत के राज्य क्षेत्र (Territory) में आयातित सेवा की पूर्ति (Supply) को अन्तराज्यीय व्यापार या वाणिज्य के अनुक्रम में (in the course of interstate Trade or Commerce) सेवा की आपूर्ति होना समझा जायेगा, इसलिए इस आपूर्ति पर IGST अदा करने का दायित्व होगा।
- प्र03 इन सम्बन्धियों पर IGST अदा करने का दायित्व किसका होगा ?**
- उ0 सेवाओं के आयात पर सेवाओं के प्राप्तकर्ता (Recipient) का RCM (Reverse Charge Mechanism) आधार पर कर दायित्व होगा। (केवल उस स्थिति को छोड़कर जहाँ सेवाएं Non Taxable Online Recipient द्वारा प्राप्त की जा रही हों।
- प्र04 क्या कोई ऐसी भी स्थिति है जहाँ बिना प्रतिफल (Consideration) अदा किये सेवाओं के आयात को आपूर्ति मान लिया गया है ?**
- उ0 हाँ। CGST/SGST की धारा-7 के शेड्यूल-I के प्रस्तर 4 में इसका उल्लेख है। जहाँ किसी कर योग्य व्यक्ति द्वारा In the course of furtherance of business सेवाओं का आयात भारत के बाहर से सम्बन्धित व्यक्ति (Related person) से या अपने किसी अन्य स्थापन (establishment) से किया जाय तो बिना Consideration के भी इसे सेवाओं की आपूर्ति मान लिया जायेगा।
- प्र05 सम्बन्धित व्यक्ति (Related person) से यहां क्या तात्पर्य है ?**
- उ0 संबंधित व्यक्ति को CGST/SGST Act की धारा-15 के स्पष्टीकरण में स्पष्ट किया गया है, जो निम्न प्रकार है :-

Explanation – For the purposes of this Act.-

¹. **Editor's Note : Views expressed in this Article are personal views of the Author and Editor's does not necessarily have the same opinion as of the author of this Article. Readers of this Article can send their comments through E-mail on address ntnalerts@gmail.com.**

(a) person shall be deemed to be "related persons" if-

- (i) such persons are officers or directors of one another's businesses;
- (ii) such persons are legally recognized partners in business;
- (iii) such persons are employer and employee;
- (iv) any person directly or indirectly owns, controls or holds twenty five percent or more of the outstanding voting stock or shares of both of them;
- (v) one of them directly or indirectly controls the other;
- (vi) both of them are directly or indirectly controlled by a third person;
- (vii) together they directly or indirectly control a third person; or
- (viii) they are members of the same family;

(b) the term "person" also includes legal persons;

(c) persons who are associated in the business of one another in that one is the sole agent or sole distributor or sole concessionaire, howsoever described, of the other, shall be deemed to be related.

प्र06 क्या Establishment को भी परिभाषित किया गया है ?

उ0 हाँ। Fixed establishment को CGST/SGST Act की धारा 2(50) तथा IGST की धारा 2(7) में निम्न प्रकार परिभाषित किया है :-

(50) "fixed establishment" means a place (other than the registered place of business) which is characterized by a sufficient degree of permanence and suitable structure in terms of human and technical resources to supply services, or to receive and use services for its own needs.

प्र07 यदि इस प्रकार के सेवाओं के आयात में Consideration नहीं है तो आपूर्ति की Value का निर्धारण किस प्रकार करेंगे ?

उ0 नियम 28, नियम 30 तथा नियम-31 में इसके निर्धारण का तरीका दिया गया जो निम्न प्रकार है :-

नियम-28

The value of the supply of goods or services or both between distinct persons as specified in sub-section (4) and (5) of section 25 or where the supplier and recipient are related, other than where the supply is made through an agent, shall-

- (a) be the open market value of such supply;
- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;
- (c) if the value is not determinable under clause (a) or (b), be the value as determined by the application of rule 30 or rule 31, in that order;

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety per cent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

Provided further that where the recipient is eligible for full input tax credit, the value declared in the invoice shall be deemed to be open market value of the goods or services.

नियम-30 where the value of supply of goods or services or both is not determinable by any of the preceding rules of this Chapter, the value shall be one hundred and ten per cent of the cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.

नियम-31 where the value of supply of goods or services or both cannot be determined under rules 27 to 30, the same shall be determined using reasonable means consistent with the principles and the general provisions of section 15 and the provisions of the Chapter:

Provided that in the case of supply of services, the supplier may opt for this rule, ignoring rule 30.

प्र08 यदि कोई व्यक्ति ऐसी सेवाओं का आयात करता है जो **In the course or furtherance of business** नहीं है तो क्या उस पर कर दायित्व होगा अथवा नहीं?

उ0 होगा। CGST/SGST Act की धारा 7(1)(b) में इसका उल्लेख किया गया है। बशर्ते यह सम्यक्वहार Consideration के बदले हो।

प्र09 कब माना जायेगा कि सेवाओं का आपूर्तिकर्ता भारत के बाहर स्थित है ?

उ0 IGST की धारा 2(15) के अनुसार निम्न किसी एक स्थिति में सेवाओं का आपूर्तिकर्ता भारत के बाहर स्थित माना जायेगा :-

(a) The place of business from where a supply is made is outside India.

(b) where a supply is made from a place other than the place of business (a fixed establishment elsewhere) and such fixed establishment is located outside India;

(c) where a supply is made more than one establishment, whether the place of business of fixed establishment, and the location of the establishment most directly concerned with the provision of the supply is outside India; and

(d) in absence of such places, the usual place of residence of the supplier is outside India.

प्र10 कब माना जायेगा कि सेवाओं का प्राप्तकर्ता भारत में स्थित है ?

उ0 IGST की धारा-2(14) में स्थितियां स्पष्ट की गई हैं। निम्न किसी एक स्थिति में प्राप्तकर्ता भारत में स्थित माना जायेगा :-

(a) where a supply is received at a place of business in India for which the registration has been obtained.

(b)where a supply is received at a place of other than the place of business for which registration has been obtained i.e. a fixed establishment elsewhere located in India.

(c)where a supply is received at more than one establishment, whether the place of business or fixed establishment, the location of establishment most directly concerned with the receipt of the supply is located in India.

(d)in absence of such place, the usual place of residence of the recipient is located in India.

प्र011 प्रश्न 9 व 10 में Usual place of Residence प्रयुक्त हुआ है क्या इसे भी परिभाषित किया गया है ?

उ0 हाँ। CGST/SGST Act की धारा 2(113) में इसे निम्न प्रकार परिभाषित किया गया है:-

(a)in case of an individual, the place where he ordinarily resides;

(b)in other cases, the place where the person is incorporated or otherwise legally constituted.

प्र012 India से क्या तात्पर्य है ?

उ0 CGST/SGST Act की धारा-2(56) के अनुसार :-

"India" means the territory of India as referred to in article 1 of the Constitution, its territorial waters, seabed and sub-soil underlying such waters, continental shelf, exclusive economic zone or any other maritime zone as referred to in the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976(80 of 1976), and the air space above its territory and territorial waters.

प्र013 कौन-कौन सी आयातित सेवाएं कर मुक्त हैं ?

उ0 IGST Notification 9/2017 integrated Tax(Rate) दिनांक 28.06.2017 (संशोधित विज्ञप्ति 21/2017 दिनांक 22.08.2017, विज्ञप्ति 31/2017 दिनांक 29.09.2017, विज्ञप्ति संख्या 33/2017 दिनांक 13.10.2017 एवं विज्ञप्ति संख्या 42 दिनांक 27.10.2017) के अनुसार निम्न प्रविष्टियां कर मुक्त हैं :-

			Tax	condition
Sl No.10	Chapter 99	Services received from a provider of service located in a non-taxable territory by- (a)the Central Government, State Government Union territory, a local authority, a governmental authority or an individual in relation to any purpose other than commerce, industry or any other business or profession;	Nil	Nil

		<p>(b)an entity registered under section 12AA of the Income-tax Act, 1961(43 of 1961) for the purposes of providing charitable activities; or</p> <p>(c)a person located in a non-taxable territory:</p> <p>Provided that the exemption shall not apply to-</p> <p>(i)online information and database access or retrieval services received by persons specified in entry (a) or entry (b); or</p> <p>(ii) services by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India received by persons specified in the entry.</p>		
10A	chapter 99 (w.e.f. 22/08/2017)	Services provided by and to Federation International de football Association(FIFA) and its subsidiaries directly or indirectly related to any of the events under FIFA U-17 World Cup 2017 to be hosted in India.	Nil	Provided that Director(Sports), Ministry of Youth Affairs and Sports certifies that the services are directly or indirectly related to any of the events under FIFA U-17 World Cup 2017. ",
"10B	Chapter 99 (w.e.f. 29/9/2017)	Supply of services associated with transit cargo to Nepal and Bhutan (land locked countries).	Nil	Nil
"10C	Chapter-99 (w.e.f.13/10/2017)	Supply of services by a Government Entity to Central government, State Government, Union territory, local authority or any person specified by Central	Nil	Nil

		Government, State Government, Union territory or local authority against consideration received from Central Government, state Government, Union territory or local authority, in the form of grants.		
"10D	Chapter-99 (w.e.f. 27/10/2017)	Supply of services having place of supply in Nepal or Bhutan, against payment in Indian Rupees	Nil	Nil
Sl No-42	Heading-9971	Services received by the Reserve Bank of India, from outside India in relation to management of foreign exchange reserves.	Nil	Nil
Sl No.54	Heading-9985	Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India.	Nil	Nil

प्र014 क्या CGST/SGST Act में जारी विज्ञप्ति सं0-13/2017 दिनांक 28.06.2017 एवं IGST Act की विज्ञप्ति संख्या-10/2017 जो क्रमशः धारा-9(3) एवं धारा 5(3) के अन्तर्गत जारी है, में कोई अन्तर है ? यदि हां तो इनका प्रभाव क्या है ?

उ0 हाँ। IGST की विज्ञप्ति संख्या-10/2017 में निम्न तीन प्रविष्टियां CGST/SGST Act की जारी विज्ञप्ति संख्या 13/2017 दिनांक 28.06.2017 के अतिरिक्त हैं जो निम्न प्रकार हैं:-

Sl no.	Category of supply of Services	Supplier of Services	Recipient of Services
1.	Any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient.	Any person located in a non-taxable territory	Any person located in the taxable territory other than non-taxable online recipient.
10	Services supplied by a person located in non-taxable territory by way of transportation of goods by a vessel from a place outside India up to the customs station of clearance in India.	A person located in non-taxable territory	Importer, as defined in clause(26) of section 2 of the Customs Act, 1962(32 of 1962), located in the taxable territory.

Sl. No. "12 (w.e.f. 13/10 /2017)	supply of services by the members of Overseeing Committee to Reserve Bank of India	Members of Overseeing Committee constituted by the Reserve Bank of India	Reserve Bank of India".
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ये तीनों प्रविष्टियां स्पष्ट करती हैं कि इन स्थितियों में सर्विस के उपरोक्तानुसार दर्शाये गये प्राप्तकर्ता पर कर का दायित्व है।

प्र015 Non-taxable online recipient क्या है ?

उ0 IGST Act की धारा 2(16) में इसे परिभाषित किया गया है जो निम्न प्रकार है :-

"non-taxable online recipient" means any Government, local authority, governmental authority, an individual or any other person not registered and receiving online information and database access or retrieval services in relation to any purpose other than commerce, industry or any other business or profession, located in taxable territory.

Explanation.- For the purposes of this clause, the expression "governmental authority" means an authority or a board or any other body,-

(i) set up by an Act of Parliament or a State Legislature; or

(ii) established by any Government with ninety per cent or more participation by way of equity or control, to carry out any function entrusted to a municipality under article 243W of the Constitution;

प्र016 क्या सेवाओं के आयातक पर हमेशा RCM आधार पर कर दायित्व होगा अथवा इसका अपवाद भी है ?

उ0 Online information and database access or retrieval (OIDAR) Services के मामलों में यदि प्रदाता Non-taxable territory में स्थित है और प्राप्तकर्ता Non-taxable on line recipient है तो RCM आधार पर कर देयता नहीं होगी। OIDAR के सम्बन्ध में विस्तार से चर्चा अलग अध्याय में की जायेगी।

प्र017 क्या सेवाओं के आयात के लिये SEZ (special economic zone) की इकाई (Unit) अथवा विकासकर्ता (Developer) को कर मुक्ति प्रदान की गयी है ?

उ0 हाँ। विज्ञप्ति सं0-18/2017 Integrated Tax (Rate) दिनांक 05.07.2017 द्वारा "Authorised Operation" हेतु सेवाओं के आयात को कर मुक्त रखा गया है।

प्र018 नियत दिन (appointed day) या उसके पश्चात आयात की गई सेवाओं पर कर दायित्व कैसे निर्धारित होगा ?

उ0 इसके लिये IGST की धारा-21 में व्यवस्था दी गई है जो निम्न प्रकार है :-

- यदि ऐसी सेवाओं के आयात पर Existing Law (सर्विस टैक्स) के अन्तर्गत पूर्ण कर अदा कर दिया गया है तो GST में कोई कर देय नहीं होगा।
- यदि Existing Law में कुछ भाग कर के रूप में अदा किया जा चुका है तो GST Law के अन्तर्गत शेष कर ही देय होगा।

यहां शर्त यह है कि सम्यवहार नियत दिन से पहले प्रारम्भ किया गया तभी समझा जायेगा यदि ऐसी पूर्ति से संबंधित Invoice या Payment (पूर्णतः या अंशतः) नियत दिन से पहले प्राप्त कर लिया गया है या किया गया है।

यह बात महत्वपूर्ण नहीं है कि ऐसी सेवाओं के आयात का सम्यवहार नियत दिन से पहले ही प्रारम्भ कर दिया गया था।

प्र019 इसका कोई उदाहरण देंगे ?

उ0 भारत का कोई व्यक्ति A अमेरिका में स्थित किसी कम्पनी B से दिनांक 20.06.2017 को 20 लाख रुपये का Consultancy Services के लिए अनुबन्ध करता है और दो लाख रुपये एडवांस अदा कर देता है और इस दो लाख की राशि पर Advance Service Tax जमा कर देता है। सेवाओं की आपूर्ति दिनांक 15.11.2017 को होती है तथा सभी 18 लाख की इनवाइस जारी की जाती है। यहां GST Law के अन्तर्गत केवल 18 लाख पर IGST अदा करना पड़ेगा।

प्र020 क्या अपंजीकृत व्यक्ति द्वारा सेवाओं के आयात पर भारत में जी0एस0टी0 प्राप्त नहीं होगा ?

उ0 नहीं। यदि सेवायें OIDAR Services नहीं हैं।

प्र021 IGST Act में सेवाओं के आयात के लिए 'Place of Supply' सम्बन्धी क्या प्रावधान किये गये हैं ?

उ0 IGST Act 2017 की धारा-13 में उस स्थिति में 'place of supply' का उल्लेख किया गया है, जहाँ सर्विस के प्रदाता अथवा प्राप्तकर्ता में किसी एक की Location भारत के बाहर है। तात्पर्य आयात अथवा निर्यात के संबंध में place of supply का निर्धारण धारा-13 में किया गया है, जो निम्न प्रकार है :-

No.	Situation	Place of supply
1	Default Rule other than specific situations mentioned below{Section13(2)}	Location of the recipient of services; If not available, location of the supplier of services.
2	Services supplied in respect of goods which are required to be made physically available {Section13(3)(a)}	Location where the services are actually performed
	Services which require the physical presence of the recipient or the person acting on his behalf with the supplier of services{Section13(3)(b)}	
2.1	Services are provided on goods but from a remote location by way of electronic means{Section13(3)(a)}	Location where goods are situated at the time of supply of services
2.2	Above provision of section 13(3)(a) is not applicable in respect of goods which are imported into India for repairs and are exported after repairs{Proviso of section13(3)(a)}	
3	Services supplied directly in	Place where the immovable property

	relation to an immovable property{Section13(4)}	is located intended to be located
4	Admission to or organization of an event{Section13(5)}	Place where the event is actually held
4.1	above Services provided in more than one country including India{Section13(6)}	India
4.2	above services provided in more than one state{Section13(7)}	Proportionate Basis
5	Service supplied by a banking company, or a financial institution, or a non-banking financial company, to account holders{Section13(8)(a)}	Location of the supplier of Services
5.1	Intermediary services{Section13(8)(b)}	
5.2	Services consisting of hiring of means of transport, including yachts but excluding air crafts and vessels, up to a period of one month{Section13(8)(c)}	
6	Transportation of goods, other than by way of mail or courier{Section13(a)}	Place of destination of such goods
7	Passenger transportation services {Section13(10)}	Place where the passenger embarks on the conveyance for a continuous journey
8	Services provided on board a conveyance{Section13(11)}	First scheduled point of departure of that conveyance for the journey
9	Online information and database access or retrieval services(OIDAR) {Section13(12)}	Location of the recipient of services

प्र022 पंजीकृत व्यक्ति सेवाओं के आयात के सम्यवहार को कहां दर्शायेगा ?

उ0 GSTR-2 की Table-6 में।

प्र023 क्या इन सेवाओं पर अदा किये गये कर का लाभ I.T.C. के रूप में मिलेगा ?

उ0 हाँ। CGST/SGST की धारा-17(5) के अधीन रहते हुए केवल प्रश्नोत्तर 8 की स्थिति को छोड़कर।
