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Intermediary Services under Goods and Services Tax Act - A concept still in Controversies



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In the GST regime, intermediary services by Indian suppliers to foreign principals are taxed to GST. In common parlance, any person who enables the supply of goods/services between two persons, is considered as intermediary. There has been a lot of confusion regarding tax implications on the pre-sales and post-sales services vs intermediary services done by Indian suppliers to foreign customers. The importance of an intermediary is significant in the international business market to build business relations with customers in a particular geographical area.

The concept of 'intermediary' was borrowed in GST from the Service Tax Regime. The definition of 'intermediary' in the Service Tax law as given in Rule 2(f) of Place of Provision of Services Rules, 2012 issued vide notification No. 28/2012-ST, dated 20-6-2012.

Who is an intermediary?

In the terms of section [2\(13\)](#) of IGST Act, "intermediary" means a broker, an agent or any other person, by whatever name called, who **arranges or facilitates** the supply of goods or services or both, or securities, between two or more persons, but does not include a person who supplies such goods or services or both or securities on his own account;

In short, "intermediary" essentially involves 3 or more persons

- (1) Supplier of service/goods,
- (2) Principal on whose behalf service is rendered/goods supplied and
- (3) Persons who actually receives the service/goods (i.e., customers of the principal).

However, where a person is providing services or supplies goods on his own account to his customers, it cannot be termed as an intermediary in accordance with section 2(13) of IGST Act.

The words "arranges or facilitates" the supply of goods or services or both, between two or more persons, is

the crux of the definition of intermediary. The Central Board of Indirect Taxes and Customs has clarified on scope of intermediary services via its Circular no. 159/15/2021-GST published on 20.09.2021. The circular has provided for some pre requisites for scope of intermediary services,

1. **Minimum of Three Parties-** Intermediary does not carry out the main supply himself but arranges or facilitates the main supply of goods and services between two or more persons. The arrangement requires a minimum of three parties, two of them transacting in the main supply of goods and services and one arranging or facilitating the main supply. An activity between only two parties can, therefore, NOT be considered as an intermediary service.
2. **Two distinct supplies-** There are two set of supplies-
 - a. **Main supply**, of goods or services, between two principals, which can be a supply of goods or services or securities;
 - b. **Ancillary supply**, is the service of facilitating or arranging the main supply of goods or services between the two principals. This supply is identifiable and distinguished from the main supply and is supply of intermediary service.
3. **Intermediary service provider to have the character of an agent, broker or any other similar person-** The Act itself defines intermediary as a broker, agent or any other person facilitating or arranging the services. The word 'means' in the definition is not inclusive and does not expand the definition to include any other person. The phrase "arranges or facilitates" indicates that intermediary services are only supportive services.
4. **Does not include a person who supplies such goods and services or both or securities on his own account-** The definition of intermediary services specifically excludes a person who supplies such goods or services, or both or securities on his own account. The person supplying services, fully or partly, on principal-to-principal basis, cannot be covered under the scope of "intermediary".
5. **Sub-contracting for a service is not an intermediary service-** The main supplier of goods or services or both can outsource the main service, fully or partly, to sub-contractor. Such sub-contractors are carrying out the main supply of goods or services and provides the main service on his own account to the buyer on behalf of main supplier. Such services are not intermediary and part of main supply only.
6. **When location of either of supplier or recipient of intermediary services is outside India**, specific provision of Section 13 of the Act, relating to provision of place of supply of intermediary service, shall be invoked.

Place of supply of service in case of intermediary services [Section 13(8)(b) of IGST Act]-

The taxability of any service is determined on the basis of the 'Place of Supply' of the said service. Specified service will be taxed as inter-state or intra-state depends on the place of supply of said service.

Provisions of section 13(8)(b) of the IGST Act specifically defines the place of supply of intermediary services. As per the said provision, the location of the service provider will be the place of supply in case of intermediary services.

Intermediary services vis-à-vis export of services-

The term 'export of services' is defined under section 2(6) of the IGST Act, 2017. Accordingly, 'export of services' means supplies of services that qualifies all the following conditions-

1. The service provider should be located in India;
2. Service receiver should be located outside India;
3. Place of supply of service should be outside India;
4. The payment for the service is received in convertible foreign exchange; and
5. Service provider and service receiver is not merely establishments of distinct persons. (Circular No. 161/17/2021-GST)

Thus, the following can be concluded, when the provisions of export of services are co-related with the provisions of the place of supply in case of intermediary services-

- ◆ For qualifying as export of services, the place of supply of service should be outside India.
- ◆ As seen above, in terms of section 13(8)(b) of the IGST Act, the place of supply of service in the case of intermediary service is the location of a service provider. Thus, the service provider being located in India will obviously result in the place of supply of service being in India.
- ◆ Resultantly, when the place of supply is in India, the same will not qualify as export of services.
- ◆ Thus, even when the intermediary service satisfies all the other conditions of export of services. The same will not qualify as export of services and similarly will not have the benefits of export of services, since it doesn't satisfy the condition of the place of supply being outside India.

Thus, the contradictory conclusion to above is that even when the recipient of service is located outside India, the intermediary service will be treated as services performed in India because the place of supply will be the location of the service provider i.e. India. Accordingly, such intermediary services provided to service receiver located outside India will be taxable under GST.

Exemption under Entry 12AA

Provides exemption for the Services provided by an intermediary when location of both supplier and recipient of goods is outside the taxable territory provided - 20/2019- IT (R) dt. 30.09.2019

Conditions: Following documents shall be maintained for a minimum duration of 5 years:

- a. Copy of Bill of Lading
- b. Copy of executed contract between Supplier/Seller and Receiver/Buyer of goods
- c. Copy of commission debit note raised by an intermediary service provider in taxable territory from service recipient located in non- taxable territory
- d. Copy of certificate of origin issued by service recipient located in non- taxable territory
- e. Declaration letter from an intermediary service provider in taxable territory on company letter head confirming that commission debit note raised relates to contract when both supplier and receiver of goods are outside the taxable territory

The said exemption is effective from 01st October 2019 and it is a conditional exemption under GST. The exemption is applicable only for intermediary services when facilitating/arranging goods and not services.

Judicial rulings in the matter-

In the case of *Vserv Global (P.) Ltd., In re* [\[2018\] 99 taxmann.com 253](#), the Maharashtra Authority for Advance Ruling has held that back office support services provided to overseas clients are intermediary

services as the applicant is only arranging or facilitating the main supply and not providing goods and services to clients buyer's or client's suppliers on its own account. Thus, these services are taxable in India.

In a similar case of *GoDaddy India Web Services(P.) Ltd.*, In re [\[2016\] 67 taxmann.com 324 /54 GST 681](#), the Delhi Authority for Advance Ruling held that the support services provided to the parent company (Go Daddy US) are not intermediary services. Applicant here was engaged for advising marketing situation prevalent in India, advising marketing staff of Go Daddy US regarding events, advertisement displays, supervision of third party customer care services, seminars etc.

In both the cases, the nature of services provided were different. In the first case, the scope included arranging or liaising of support services but in the second case the applicant only provided support services relating to marketing like brand promotion etc. Under the current GST regime, the agreements between parties have paramount importance with respect to payment of taxes. It is now essential for industry members, providing services to their parent companies or overseas clients on principal-to-principal basis, to ensure that the agreements or contracts entered clearly describe the nature and scope of service from their perspective.

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