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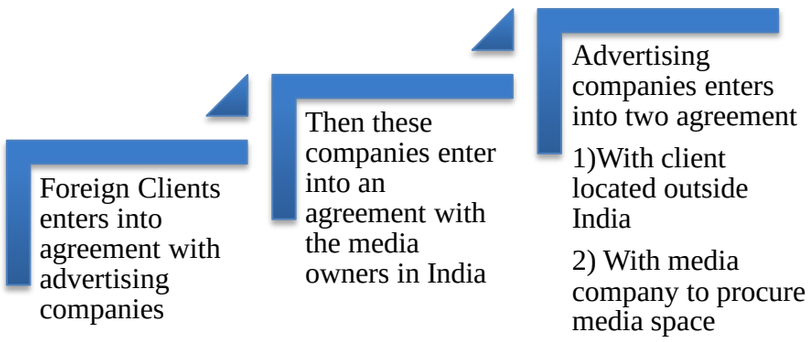
❖ A gist of Circulars dated. 11.09.2024 issued on for clarification of various GST related issues.

Sr. No.	Circular dated. 11.09.24	Subject
1	230/24/2024-GST	**Clarification in respect of advertising services provided to foreign clients.** • 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 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 the present scenario, 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 and 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

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.

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, as per section 2(93) of the CGST Act, 2017.

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?

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.

Where 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. In such cases, the advertising company is an "intermediary" in accordance with Section 2(13) of the CGST Act, 2017

The above clarification has far reaching effects, since as to what constitutes “intermediary” as well as certain services cannot be considered to be “performance based service” to qualify for exports, is clarified vide this. The clarity on this concept will assist even other nature of transactions, and not limited to advertisement service alone. We have always been of this view, which stands vindicated vide the above clarification now.

2	231/25/2024-GST	**Clarification on availability of input tax credit in respect of demo vehicles.** i. Availability of input tax credit on demo vehicles, which are motor vehicles for transportation of passengers having approved seating capacity of not more than 13 persons (including the driver), in terms of clause(a) of section 17(5) of Central Goods & Services Tax Act, 2017 (hereinafter referred to as the 'CGST Act"). **As demo vehicles are used by authorized dealers to provide trial run and to demonstrate features of the vehicle to potential buyers, it helps the potential buyers to make a decision to purchase a particular kind of motor vehicle. Therefore, as demo vehicles promote sale of similar type of motor vehicles, they can be considered to be used by the dealer for making 'further supply of such motor vehicles'. Accordingly, input tax credit in respect of demo vehicles is not blocked under clause (a) of section 17(5) of CGST Act, as it is excluded from such blockage in terms of sub-clause (A) of the said clause.** **Where the authorized dealer merely acts as an agent or service provider to the vehicle manufacturer for providing marketing service, including providing facility of vehicle test drive to the potential customers of the vehicle on behalf of the manufacturer and is not directly involved in purchase and sale of the vehicles. in such cases, input tax credit in respect of such demo vehicle would not be excluded from blockage in terms of sub-clause (A) of clause (a) of section 17(5) of CGST Act and therefore, input tax credit on the same would not be available to the said dealer.** ii. Availability of input tax credit on demo vehicles in cases where such vehicles are capitalized in the books of account by the authorized dealers. **Availability of input tax credit on demo vehicles is not affected by way of capitalization of such vehicles in the books of account of the authorized dealers, subject to other provisions of the Act.5** **Input tax credit would be subject to provisions of section 16(3) of CGST Act, which provides that where the registered person has claimed depreciation on the tax component of the cost of capital goods and plant and machinery under the Income-tax Act, 1961, the input tax credit on the said tax component shall not be allowed.** **Demo vehicle, which is capitalized, is subsequently sold by the authorized dealer, the authorized dealer shall have to pay an amount or tax as per provisions of section 18(6) of CGST Act read with rule 44(6) of the Central Goods and Service Tax Rules, 2017**

3	232/26/2024-GST	**Clarification on place of supply of data hosting services provided by service providers located in India to cloud computing service providers located outside India.** 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 providersare 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. **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. Thus 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** 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 owns premises for data center or operates data center on leased premises, independently handles, monitors and maintains the premises, hardware and software infrastructure, personnel and in such scenario, 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.** **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 servicePage 4 of 5provider in India and hence, the place of supply of the same cannot be determined under section 13(3)(a) of the IGST Act** **Even if data hosting services is provided 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..** 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 **Page 5 of 5premises and hence, the place of supply of such services cannot be determined under section 13(4) of 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.** The above clarification will assist in determining what is intermediary / performance based service on goods made available by client as well as immovable property based service, qua place of supply, and hopefully avoid potential litigation on this issue, mainly due to adverse view expressed by revenue authorities on this subject.
4	233/27/2024-GST	**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.** **It is 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 dated 13.10.2017 or Notification No. 79/2017-Customs dated 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.** **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.** While this was always the view existing, based on retrospective amendment to Rule 96(10 of CGST Rules, 2017 as well as Hon'ble Gujarat High Court observations, however, the present clarification has put an end to confusion in the field formation on this issue. The only adverse aspect of this clarification is that the IGST is directed to be paid "with interest" to escape the mischief of Rule 96(10), while as per catena of decisions including that of Hon'ble Mumbai High Court, interest and penalty are not payable on any late/non-payment of IGST at all, based on law as it stands today.