WHETHER GST IS PAYABLE ON IPR

VOL-III

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RECEPIENT OF "SERVICE" DEFINED

The term 'recipient' is not defined in the IGST Act. However, sub-section (24) of Section 2 of the IGST Act states that the words and expression not defined in the IGST Act but defined in other Acts, shall have the same meaning as assigned to them in the said Acts.

2: The Sub-section (93) of Section 2 of the CGST Act defines the term 'recipient' as under:

> (93) 'recipient' of supply of goods or services or both, means
> (a) where a consideration is payable for the supply of goods or services or both, the person who is liable to pay that consideration;
> (b) where no consideration is payable for the supply of goods, the person to whom the goods are delivered or made available, or to whom possession or use of the goods is given or made available; and
> (c) where no consideration is payable for the supply of a service, the person to whom the service is rendered.

3: In view of the above, there is no doubt that Indian Company is a recipient of service.

POSITION IN PRE-GST REGIME

4: In pre-GST regime, the import of IPR Service was also subject to payment of Service Tax. In support of which, reference is made to a judgment of Division Bench of Delhi High Court in the case of Mccann Erickson (India) Ltd. Vs. CST (19.09.2019 – DELHI HC) : MANU/DE/3963/2019 wherein it has been observed as under:

> Section 66A of the Finance Act, 1994 makes the recipient of any service, specified in Section 65(105) of the Finance Act, 1994 - which would cover all "taxable services" - received by a person located in India, from a service provider located outside India, liable to pay Service Tax thereon as if he had

himself provided the service in India. This, in taxing parlance, is known as payment on "reverse charge basis".

POST GST REGIME

5: In Re: Udayan Cinema Pvt. Ltd. (26.02.2019 - Authority For Advance Rulings West Bengal : MANU/AR/0050/2019 has observed as under:-

The service being supplied is not, therefore, classifiable as the one specified in sub-sections (3) to (13) of section 13 of the IGST Act, 2017. The transaction between CDIVF and the Applicant is, therefore, import of service and constitutes an inter-State supply within the meaning of section 7(4) of the IGST Act, 2017.

6: In terms of **Notification no.10/2017-IT(R) dated 28.06.2017**, one of the notified category on which GST is payable under RCM is "any service supplied by any person who is located in a non-taxable territory to any person other than non-taxable online recipient". IGST liability under RCM in case of Import of service has to be paid in Cash/Bank. GST ITC to the extent of IGST paid can be availed and utilized in the same month subject to ITC eligibility.

Whether RCM will be payable on import of Services by SEZ.

7: For answering the above query, it would be necessary to understand the implications of provisions of SEZ Act and Section 26 of this Act, is reproduced below:

Section 26(1): Subject to the provisions of sub-section (2), every developer and entrepreneur shall be entitle to the following exemptions, drawbacks and concessions namely:-

(a): exemption from any duty of Customs, under the Customs Act, 1962, or the Customs Tariff Act, 1975 or any other law for the time being in force, on goods imported into, services provided in, in Special Economic Zone or a Unit, to carry on the authorized operations by the developer or entrepreneur.

(b)…….

8: The Ministry of Finance has issued a Exemption Notification No.18/2017 Integrated Tax (Rate) dated 5.7.2017 which exempt services imported by a unit or a developer in the Special Economic Zone for authorized operations, from the

whole of the integrated tax leviable thereon. In other words, if SEZ Unit or a SEZ Developer imports any service, GST is not payable by SEZ Unit or Developer.

9: In the pre-GST regime, the import of services were also exempt from the levy of Service Tax. The CESTAT in the case of Societe Generale Global Solutions Centre Pvt. Ltd. Vs. Commissioner. (31.01.2020 - CESTAT - Bangalore) : MANU/CB/0031/2020, has observed as under:-

> I find that the appellant is a SEZ unit and as per Section 26 read with Rule 31 of SEZ Rules, 2006 along with Section 51 of SEZ Act, the SEZ Act has overriding impact over other laws and other SEZ units are exempt from payment of service tax for any service which is used for authorized operations.

10: The Hon'ble Tribunal has held that by virtue of provisions of Section 26 read with Section 51 of SEZ Act, no levy of duty or tax shall be payable, inter-alia, on the import of services. The CESTAT in the case of M/s. Intas Pharma Limited vs. Comm.: MANU/CS/0128/2013, while dealing with the exemption as provided under Section 26 of SEZ Act, has observed as under:-

> The immunity to service tax provided under Section 7 or 26 of the 2005 Act cannot be eclipsed by the procedural prescriptions of Notification Nos. 9/2009 or 15/2009. These notifications are calibrated to enable recipients of taxable services which are exempt from the liability to tax under the provisions of the 2005 Act, to claim refund of the service tax, wherever whether assessed and collected by Revenue or remitted by the service provider inadvertently

11: Further Section 51 of the SEZ Act has a overriding effect on other laws. The Section 51 is reproduced below:-

> The provisions of this Act, shall have effect notwithstanding anything in consistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law, other than this Act.

12: The Hon'ble CESTAT in the case of Lanco Solar Pvt. Limited vs. Comm. of Customs,- 26.02.2020 - MANU/CE/0072/2020 Tri, has observed as under:-

> I hold that the ab initio exemption provided under the SEZ provisions, having over riding effect on the Service Tax provision. Under such position of law, a notification under service tax cannot restrict or provide a time limit

for grant of refund to the SEZ unit and developer. Accordingly, impugned orders are set aside and appeals are allowed.

13: In view of the elaborate discussions, there is absolutely no doubt that no GST is payable on import of services by SEZ Unit or SEZ Developer.

Whether GST is payable on RCM at the rate is 12% or 18% as per SAC 9973.

14:. Under Section 9 CGST Act, the rate of GST may be notified by the Government. Notification 11/2017 – Central Tax (Rate) dated 28.06.2017 deals with the supply of services. In terms of the Table in the Notification, under Heading 9973, the 'Temporary or Permanent Transfer" or permitting the use or enjoyment of Intellectual Property (IP) right in respect of goods other than Information and Technology software' is taxed at 6% whereas, 'Temporary or permanent transfer or permitting the use or enjoyment of Intellectual Property (IP) right in respect of Information and Technology software' is taxed at 9%.

15: In the present case, there is no doubt that there is no assignment but rather "License has been given". Therefore, GST shall be payable at the rate of 12%.

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