

Clarification on place of provision of service for service provided by freight forwarders on transportation of goods from India

The issue has arisen with regards to the Place of Provision of Service Rules (herein after referred to as POPS) i.e. which rule has to be considered for the freight forwarders on transportation of goods from India. In terms of Rule 10 of POPS, the place of provision of service of transportation of goods by air/sea other than mail courier is the destination of goods, thus POPS of freight forwarders engaged in the transportation of goods to outside is coming outside taxable territory hence not liable for service tax.

Whereas as per Rule 9 of POPS, it is provided that POPS of intermediary services shall the location of service provider and service tax will be liable on such services. Therefore, doubt has arisen as to whether the freight forwarders service is in the nature of intermediary service to be considered under rule 9 of POPS.

In order to clarify the legal position on this transaction, it is hereby explained that freight forwarders merely engage in the two types of agreements with the customer as follows:

- i. Freight forwarders deals as an agent of the airline/ carrier/ocean liner, one who acts as sort of booking agent with no responsibility of actual transportation;
- ii. Freight forwarders may also acts as a principle that is providing the service of transportation of goods. In such as case the freight forwarders are negotiating the terms of freight with airline or ocean liner as well with the exporter.

In case of (i) above, freight forwarders does not bear any kind of liability with respect to the transportation of goods and any legal proceedings with regards to the transportation of goods shall be made against airlines or ocean lines by exporter. Hence, such kind of freight forwarders are to be treated as intermediary and POPS of services provided by them will be in India as location of provider of service is in India. In other words Rule 9 of POPS will apply in the present context.

In case of (ii) above, freight forwarders it plays the role of principle. They themselves negotiate the terms of freight with airline/ocean lines as well as the actual rate with the exporter. Further, invoice is raised by freight forwarders to exporter. Thus, these kind of freight forwarders does not fall under the intermediary service hence such transaction shall not be liable for payment of service tax.

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