

## **PLACE OF SUPPLY - GST**



### **GST – PLACE OF SUPPLY – DOMESTIC SECTION -12 of IGST ACT**

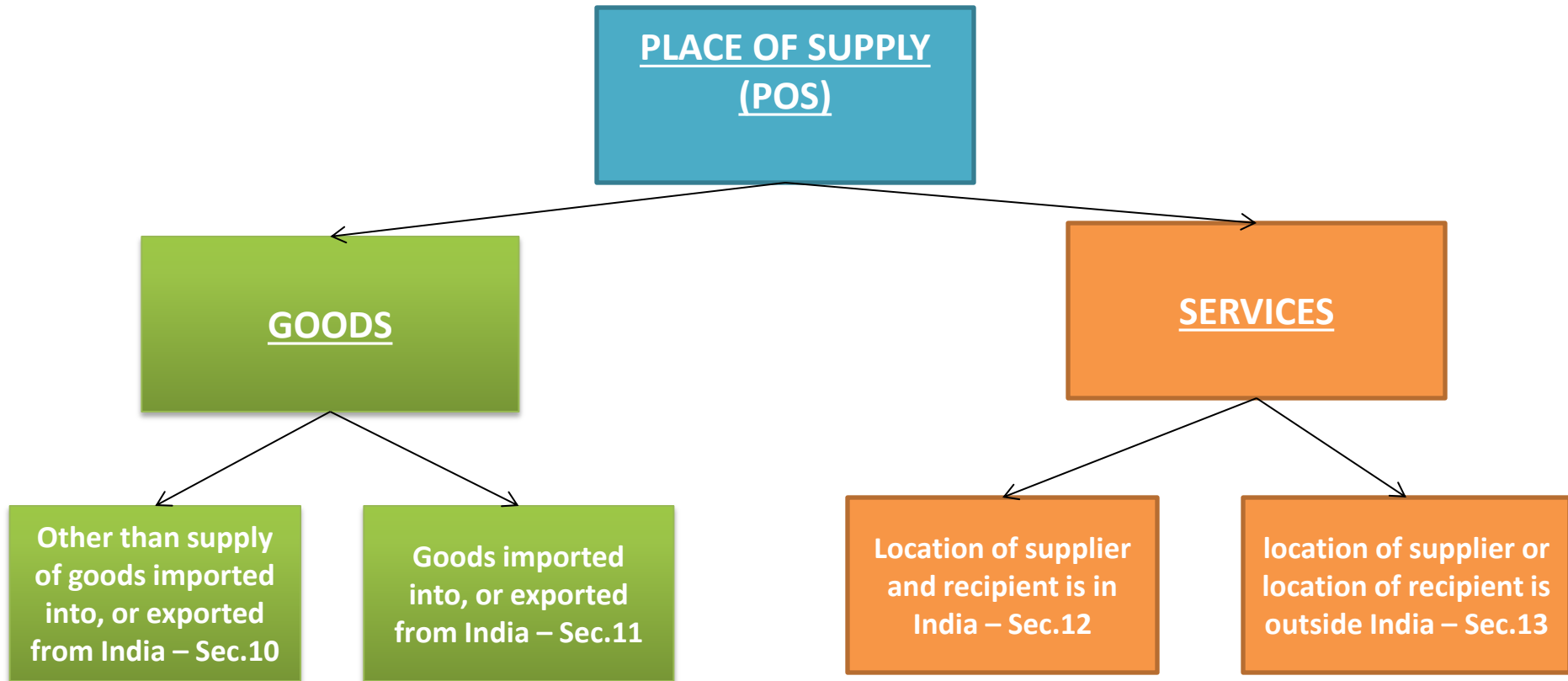
**CA RAMANDEEP SINGH BHATIA**

Let us understand the GST

# INTRODUCTION & RELEVANCE OF PLACE OF SUPPLY (POS)

- ❑ Legal Term - meaning assigned to them in the law.
- ❑ Tax to be charged -. Inter State Supply & Intra State Supply .  
(Location of Supplier & place of Supply – Same State or different state)
- ❑ Input Tax Credit (ITC) -. Determines the recipient would be able to claim ITC or not ? (Registration – place of supply –ITC)
- ❑ RCM –Import of Service -. To determine the liability on receipt of services from outside the India –(Receipt located in India , Supplier outside India & Place of Supply in India- RCM)
- ❑ Zero rated Supply -. Export of Goods & Service.
- ❑ Destination based consumption Tax - Revenue flow to the State Government.

# PLACE OF SUPPLY (POS)



## ❑ WHAT IS SERVICE ?

(102) “services” means **anything other than goods**, money and securities but includes activities relating to the use of money or its conversion by cash or by any other mode, from one form, currency or denomination, to another form, currency or denomination for which a separate consideration is charged;

**[Explanation.** — For the removal of doubts, it is hereby clarified that the expression “services” includes facilitating or arranging transactions in securities;]

12. Place of supply of services where location of supplier and recipient is in India

(1) The provisions of this section shall apply to determine the place of supply of services where the location of supplier of services and the location of the recipient of services is in **India**.

## “LOCATION OF THE RECIPIENT OF SERVICES” — SECTION 2(14) IGST ACT

|                                                                                                                                                                                                                                   |                                                                                                                                                                                                         |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) where a supply is received at a place of business for which the <b>registration has been obtained</b> , the location of such place of business;                                                                               | (b) where a supply is received at a place other than the place of business for which registration has been obtained (a <b>fixed establishment</b> elsewhere), the location of such fixed establishment; |
| (c) where a supply is received at <b>more than one establishment</b> , whether the place of business or fixed establishment, the location of the establishment <b>most directly concerned</b> with the receipt of the supply; and | (d) in <b>absence of such places</b> , the location of the <b>usual place of residence</b> of the recipient;                                                                                            |

**2(7)** “**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;

## “LOCATION OF THE SUPPLIER OF SERVICES”— SECTION 2(15) IGST ACT

|                                                                                                                                                                                                                           |                                                                                                                                                                                                               |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (a) where a supply is made from a place of business for which the <b>registration has been obtained</b> , the location of such place of business;                                                                         | (b) where a supply is made from a place <b>other than</b> the place of business for which registration has been obtained (a fixed establishment elsewhere), the location of <b>such fixed establishment</b> ; |
| (c) where a supply is made from more than one establishment, whether the place of business or fixed establishment, the location of the establishment <b>most directly concerned</b> with the provision of the supply; and | (d) in absence of such places, the location of the <b>usual place of residence</b> of the supplier;                                                                                                           |

**2(7)** “**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;

# DEFINATION OF “INDIA” 2(56) –CGST ACT

“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;

A continental shelf is a portion of a Continent that is submerged under an area of relatively shallow water known as a shelf sea.

Exclusive economic zone - an area of coastal water and seabed within a certain distance of a country's coastline, to which the country claims exclusive rights for fishing, drilling, and other economic activities.

Maritime zones are areas of ocean or sea which are or will be subject to national or international authority. They are delimited as parts of the seabed, water column and sea surface, the subdivision being on the grounds of political jurisdiction relating to the use and ownership of marine resources.





## The place of supply of services,—

a) directly in relation to an immovable property, **including** services provided by

architects,  
interior decorators,  
surveyors,  
engineers and  
other related experts or

estate agents,

any service provided by way of grant of rights to use immovable property or for carrying out or co-ordination of construction work; or



## Will be Location of Immovable Property

## IMMOVABLE PROPERTY -12(3)



Engineering Consultant  
Head office - Mumbai



Client Head office -  
Amritsar –Punjab



Setting up  
Plant in  
Odisha

### The place of supply of services,—

b) by way of lodging accommodation by a hotel, inn, guest house, home stay, club or campsite, by whatever name called, and

including a **house boat** or **any other vessel**; or

### Will be Location of Immovable Property

#### GST on house boats used for cruises/day trips with Meals as part of Packages.

Chapter 99 — Heading — 9964 pertains to passenger transport services and 996415 pertains to local water transport services of passengers by ferries, cruises and the like. 18% applicable with ITC available.

**EVM Motors & Vehicles India Pvt. Ltd. (GST AAR Kerala)**

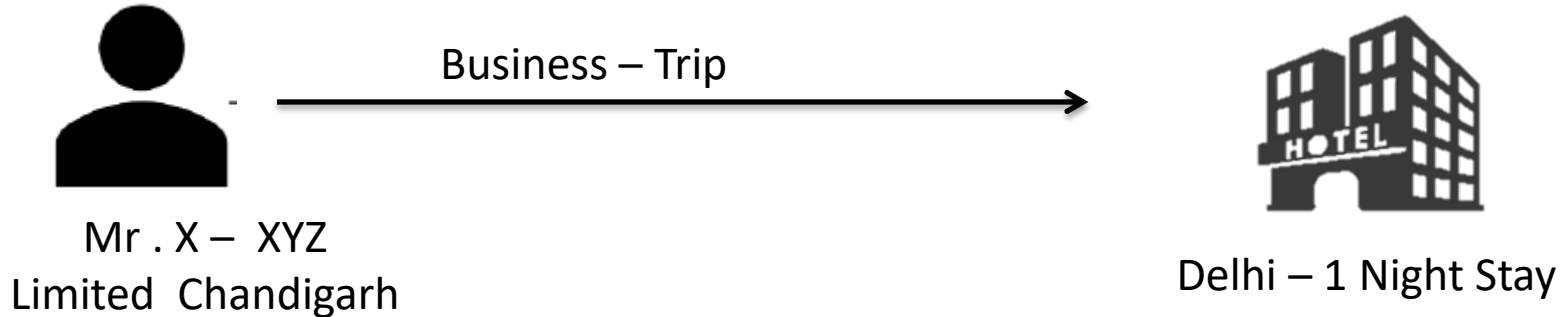
## IMMOVABLE PROPERTY -12(3)

### The place of supply of services,—

c) by way of **accommodation in any immovable property**

for organising any marriage or reception or matters related thereto, official, social, cultural, religious or business function

**including services provided in relation to such function at such property; or**



❑ Is IGST Tax will ever be levied for such transaction of Hotels ?

Circular No. 48/ 22/ 2018-GST, dated 14.06.2018 in the context of services of short-term accommodation, conferencing, banqueting etc. provided to a Special Economic Zone (SEZ) developer or a SEZ unit has clarified that such service shall be treated as inter-State supply.

As per section 7(5)(b) IGST Act, the supply of goods or services or both to a SEZ developer or a SEZ unit shall be treated to be a supply of goods or services or both in the course of inter-State trade. **12(3)(C ) is general provision and specific provision 7(5)(b) will override the general.**

d) any services **ancillary to the services** referred to in clauses (a), (b) and (c),

## ❑ RULE 4 OF IGST RULES

| SR. | Where immovable property or boat or vessel is located in more than one State or and <u>in the absence of any contract or agreement</u> , the value shall be determined in the following manner | Proportion to                                                 |
|-----|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
| A.  | lodging accommodation by a hotel, inn, guest house, club or campsite, and services ancillary to such services,                                                                                 | <b>Number of nights</b> stayed in such property;              |
| B.  | Organising any marriage or reception etc., and in cases of supply of accommodation by a hotel, inn, guest house, club or campsite                                                              | <b>Area of the immovable</b> property lying in each State/ UT |
| C.  | Lodging accommodation by a house boat or any other vessel and services ancillary to such services,<br>(Declaration made to the effect by the <b>service provider</b> )                         | <b>Time spent</b> by the boat or vessel.                      |

4) The place of supply of restaurant and catering services,

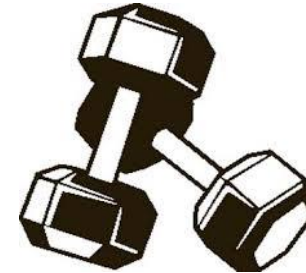
Personal grooming,  
Fitness,  
Beauty treatment,  
Health service  
including cosmetic and plastic surgery

shall be the location where the services are **actually performed**.

*What if the services is provided online through APP or Zoom platform ?*



Amir Khan -Mumbai



Joins  
Gym  
Session-  
Delhi

## Training and Performance Appraisal to -12(5)

(5) The place of supply of services in relation to training and performance appraisal to,—

- a) a registered person, shall be the location of such person;
- a) a person other than a registered person, shall be the location where the services are actually performed.



Recipient here being the ‘person liable to pay the consideration’ is not to be misconstrued to be the ‘trainee’ or ‘person appraised’.

E.g.: In case of a corporate training organized by a training institute in Mumbai for a registered corporate client in Bangalore, the consideration is paid by the corporate through the individual participants who would be required **to pay a certain delegate fee.**

A **performance appraisal**, is a method by which the job performance of an employee is documented and evaluated. Performance appraisals are a part of career development and consist of regular reviews of employee performance within organizations. (wikipedia.org)



## ADMISSION TO EVENT -12(5)

(6) The place of supply of services provided by way of admission to a

cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto,

shall be the place where the event is actually held or where the park or such other place is located.



Corporate office  
Bangalore



Award Show  
Mumbai

(7) The place of supply of services provided by way of,—

Organisation of a cultural, artistic, sporting, scientific, educational or entertainment event including supply of services in relation to a **conference, fair, exhibition, celebration** or similar events; or

Services ancillary or assigning of **sponsorship** to such events

**B2B-** To a **registered person**, shall be the location of such person;

**B2C-** To a person other than a registered person, shall be the place where the **event is actually held** and if the event is held outside India, the place of supply shall be the location of the recipient.

- a) PQR Limited (registered –New Delhi) gave contract to “Lets Fun” an event manager company (Mumbai) to organize a business conference at GOA for its dealers and business associates. Determine the POS ?
  
- b) Mr Parvinder Singh (New Delhi) gave contract to “Lets Fun” an event manager company (Mumbai) to organize a destination wedding of his son at
  - i) GOA.
  - ii) Vancouver, Canada     Determine the POS ?
  
- c) XYZ limited (registered –New Delhi) company pays Rs. 50 Lakh as sponsorship for cultural event to be held at Ladhak to “Lets Fun” an event manager company (Mumbai) .

# ORGANISING EVENT -12(7) - MORE THAN ONE STATE/ UT

**Rule 5 of IGST Rules** provides that where services of organizing the event are supplied to unregistered person and the event is held in India in more than one State/ UT, the value of service in such State/ UT shall be determined by application of **generally accepted accounting principles** in absence of no specific clause in the agreement or contract.

## ☐ Comparison of some of the provision of POS and Planning ?

|              | <b>ORGANISING<br/>EVENT -12(7)</b> |    | <b>IMMOVEABLE<br/>PROPERTY 12(3)</b> |    | <b>ADMISSION TO<br/>EVENT 12(6)</b> |
|--------------|------------------------------------|----|--------------------------------------|----|-------------------------------------|
| POS –<br>B2B | Location<br>Receiver               | of | Location<br>Immovable property       | of | Place of Event                      |

## TRANSPORTATION OF GOODS -12(8)

Transportation of goods,  
including by **mail or courier**



Registered person,  
Shall be the location of such  
person;

Other than a registered person,  
shall be the location at which such  
**goods are handed over** for their  
transportation:

**\*Provided** *that where the transportation of goods is to a place outside India, the place of supply shall be the place of destination of such goods.*

***Tax (Amendment) Act, 2018, w.e.f. 1-2-2019***

## ❑ Case Study -



- ❑ Bijli Power Limited is having the thermal power plant located in the state of Chhattisgarh. Company has taken services of “Goods Transport Agency” where the lorry receipt is having address of “Raipur” Chhattisgarh, however the vehicle provided is registered in Gujrat and transportation of material is from Chhattisgarh to Orissa. Determine the POS.
  
- ❑ Z ltd – New Delhi has taken service of transportation of Goods from Y ltd – New Delhi for transporting a consignment from Kolkata to Dhakka, Bangladesh by Road. Determine the POS.

# PASSENGER TRANSPORTATION -12(9)

(9) The place of supply of passenger transportation service to,—

|     |                                                                                                                                     |
|-----|-------------------------------------------------------------------------------------------------------------------------------------|
| (a) | a registered person, shall be the location of such person;                                                                          |
| (b) | a person other than a registered person, shall be the place where the passenger embarks on the conveyance for a continuous journey: |

**Provided** that where the right to passage is given for future use and the point of embarkation **is not known at the time of issue of right to passage**, the place of supply of such service shall be determined in accordance with the **provisions of sub-section (2)**.

*Explanation.*—For the purposes of this sub-section, the **return journey shall be treated as a separate journey**, even if the right to passage for onward and return journey is issued at the same time.



## SERVICE ON BOARD -12(10)

(10) The place of supply of services on board

a conveyance,  
including a vessel, an aircraft, a train or  
a motor vehicle,



shall be the location of the **first scheduled point of departure** of that conveyance for the journey.

Mr X- (New Delhi) boarded a flight M2112 from Kolkata for travelling to Chandigarh and after spending half an hour, Mr X order a “Veg Meal” from the menu.

Flight M2112 started from Delhi earlier the same day , halted at Kolkata and it will return to the Chandigarh in evening. Determine the POS.



(11) The place of supply of telecommunication services including data transfer, broadcasting, cable and direct to home television services to any person shall,—



## ☐ Devise Installed for the provision of Services:

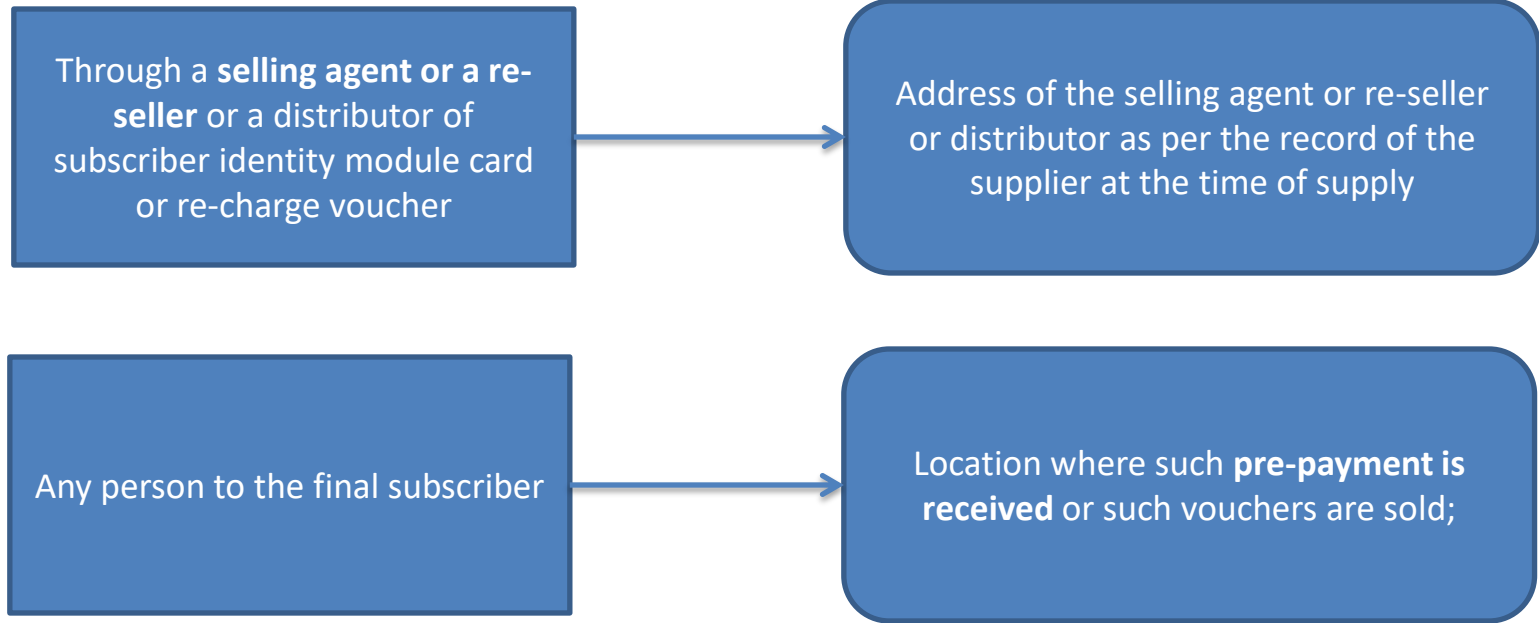
- a) In case of services by way of **fixed** telecommunication line, leased circuits, internet leased circuit, cable or dish antenna, be the **location** where the telecommunication line, leased circuit or cable connection or dish antenna is **installed for receipt of services**;



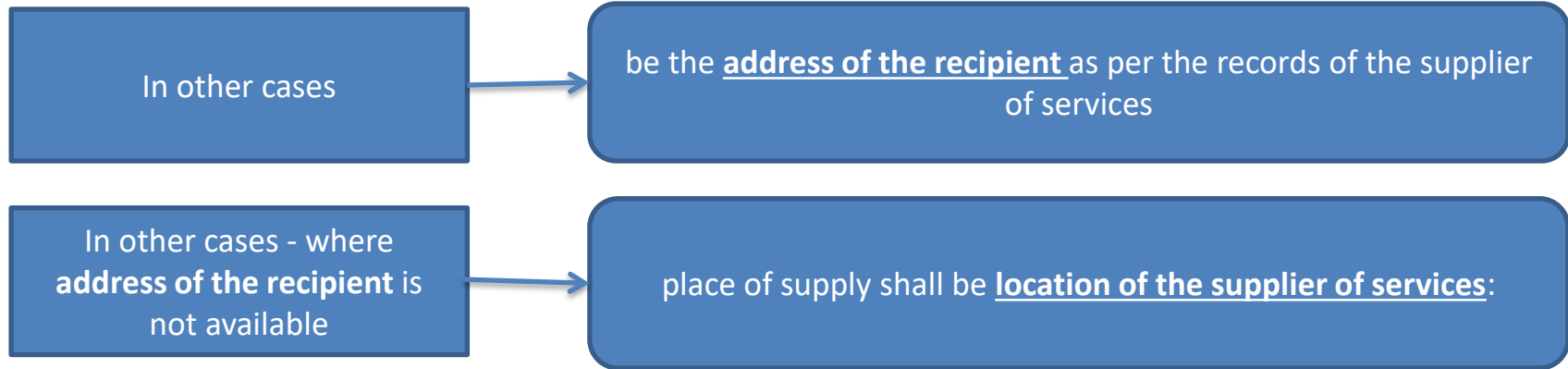
## ☐ Portable Connection :

- b) In case of **mobile** connection for telecommunication and internet services provided on **post-paid basis**, be the location of **billing address of the recipient** of services on the record of the supplier of services;

c) in cases where **mobile connection** for telecommunication, internet service and direct to home television services are provided on **pre-payment** basis through a voucher or any other means,—



c) in cases where **mobile connection** for telecommunication, internet service and direct to home television services are provided on **pre-payment** basis through a voucher or any other means,—



**Proviso - Pre-paid service** is availed or the recharge is made through internet banking or other electronic mode of payment - location of the recipient of services on record of supplier of services.

## ❑ General Proviso –

**Provided** that where the address of the recipient as per the records of the supplier of services is not available, the place of supply shall be location of the supplier of services.

## ❑ Multiple State – leased circuit

- In proportion to the value for services separately collected or determined in terms of the contract or agreement.
- In absence of contract or agreement (Rule 6 of IGST Rules) - in proportion to the number of points lying in the State/ UT.
- How to count no of points – Start , end & Intermediate all will be counted.

(12) The place of supply of

banking and other financial services,  
including stock broking services



to any person shall be the location of the recipient of services on the records of the supplier of services:

**Provided** that if the location of recipient of services is not on the records of the supplier, the place of supply shall be the location of the supplier of services.

- Service is to be examined and not the service provider.
- Foreign currency transaction specially handled by specialized branch located in other state office.

(13) The place of supply of insurance services shall,—

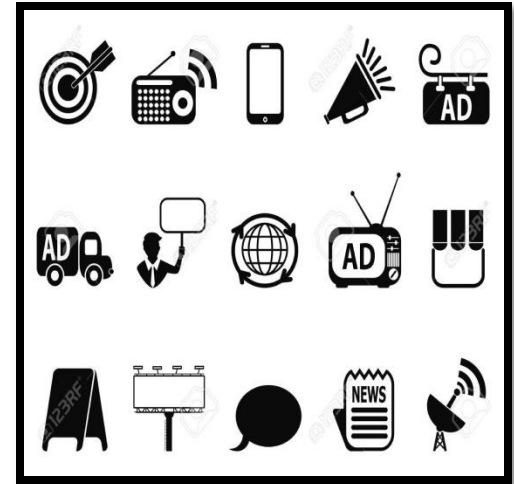
|     |                                                                                                                                      |
|-----|--------------------------------------------------------------------------------------------------------------------------------------|
| (a) | to a registered person, be the location of such person;                                                                              |
| (b) | to a person other than a registered person, be the location of the recipient of services on the records of the supplier of services. |



(14) The place of supply of advertisement services to the

Central Government,  
a State Government,  
a statutory body or  
a local authority meant for the States or Union territories

identified in the contract or agreement shall be taken



as being in **each of such States or Union territories** and the value of such supplies specific to **each State or Union territory** shall be in proportion to the **amount attributable to services provided by way of dissemination** in the respective States or Union territories as may be **determined in terms of the contract or agreement** entered into in this regard or, in the absence of such contract or agreement, on such other basis as may be prescribed.

### ❑ Rule 3 of IGST Rules, 2017, as follows-

1. **Advertisements in newspapers and publications:** The amount payable for publishing in all the editions of a newspaper published in a State/ UT shall be the value of advertisement service attributable to such dissemination in each such State/ UT.
2. **Printed material like pamphlets, leaflets, diaries, t-shirts and the like:** Amount payable for the distribution of specified number of such printed material in a State/ UT shall be the value of service attributable to such dissemination in each such State/ UT.
3. **Advertisement on hoardings (other than those on trains):** The amount payable for the hoardings located in a State/ UT shall be the value of service attributable to such dissemination in each such State/ UT.



❑ Rule 3 of IGST Rules, 2017, as follows-

4. **Advertisements on trains:** Value of advertisement service attributable to each State/ UT shall be calculated in proportion to the length of the railway track in each State/ UT for that train.
5. **Advertisements on the back of utility bills:** Value of advertisement service attributable to each State/ UT shall be the amount payable for the advertisement on the bills pertaining to consumers having billing addresses in such State/ UT.
6. **Advertisements on railway tickets:** Value of advertisement service attributable to each State/ UT shall be calculated in proportion to the number of railway stations in such State/ UT.

❑ Rule 3 of IGST Rules, 2017, as follows-

7. **Advertisements on radio stations:** Value of advertisement services attributable to each State/ UT shall be the amount payable towards the broadcast made in a State/ UT.

8. **Advertisements on television channels:** Value of advertisement services attributable to each State/ UT in a month shall be calculated proportionately on the basis of number of channel viewership figures published by Broadcast Audience Research Council for the last week of the immediately preceding quarter.

Where the channel viewership figures relate to a region comprising of more than one State/ UT, viewership figures for a State/ UT shall be calculated by applying the ratio of populations in those States/ UTs as per the last census.

❑ Rule 3 of IGST Rules, 2017, as follows-

9. **Advertisements in cinema halls:** Amount payable to cinema halls in a State/ UT, shall be the value of advertisement services attributable to each State/ UT.

10. **Advertisements over the internet:** Value of advertisement services attributable to each State/ UT in a month shall be calculated proportionately on the basis of number of internet subscriber figures published by TRAI for the last quarter of the immediately preceding financial year. Where the internet subscriber figures relate to a region comprising of more than one State/ UT, subscriber figures for a State/ UT shall be calculated by applying the ratio of populations in those States/ UTs as per the last census.

11. **Advertisements through SMS:** Value of advertisement services attributable to each State/UT in a month shall be calculated proportionately on the basis of

❑ Rule 3 of IGST Rules, 2017, as follows-

11. **Advertisements through SMS:** number of telecom subscriber figures published by TRAI for the immediately preceding quarter. Where the telecom subscriber figures relate to a telecom circle comprising of more than one State/ UT, subscriber figures for a State/ UT shall be calculated by applying the ratio of populations in those States/ UTs as per the last census.

# ALL OTHER NOT COVERED IN 12(3) to 12(14) – GENERAL PROVISION 12(2)

## GENERAL PROVISION

Made to a registered person



Location of such person

Made to any person other than a registered person

where the address on record exists



Location of such person

where the address on record does not exist



location of the **supplier** of services

## CONCLUSION

- ❑ Careful analysis of the nature of services is needful , Interpretation differences.
- ❑ POS –different State – Registration in that State
- ❑ Input tax credit – issue when POS is different from state of recipient
- ❑ Careful exercise – to determine the POS – lead to demands may be relief in interest .



# THANK YOU

**CA RAMANDEEP SINGH BHATIA**