

F. No. 137/26/2016-Service Tax-Part-V
Government of India
Ministry of Finance
Department of Revenue
Central Board of Indirect Taxes and Customs
Service Tax Wing

New Delhi, the 4th May, 2018

To

All Principal Chief Commissioners / Chief Commissioners of Central Excise and GST
All Principal Directors General/Directors General/ Chief Commissioner AR CESTAT
All Principal Commissioners/Commissioners of Central Excise and GST/AR CESTAT
All Principal Additional Directors General/ Additional Directors General

Madam/Sir

Subject: Applicability of the Place of Provision of Services Rules, 2012 (POPS) to development of software and services on software

I am directed to draw your attention to the above subject and to explain the manner in which the place of provision has to be determined in case of development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software.

2. Software being intangible, does not have a unique existence and can exist on different servers at the same point in time. The version being customised, adapted, upgraded etc. will only be a copy of the original. Servers themselves are of different types, ranging from file servers (which make files available to workstations on a network), web servers (computer systems that host websites), remote servers (allow users to gain access to files and print services on the Local Area Network from a remote location), proxy servers (an intermediary server between a client application and another server), dedicated servers (single computer in a network reserved for serving the needs of the network) etc. There is also what is called "virtualisation of servers" which refers to the masking of server resources, including the number and identity of individual physical servers, processors and operating systems, from server users. The server administrator uses a software application to divide one physical server into multiple isolated virtual environments. The exact location of the server is neither always known to the service provider nor is its knowledge essential for providing the service. Limited access to the software for a limited period through electronic protocols is given to the service provider by the recipient of service to enable the former to provide the service. Only the recipient of service has control over who accesses the software, when it can be accessed, for how long and for what purpose.

3.0 Applying the definition of “declared services” in section 66E(d) of the Finance Act, 1994, and the provisions of POPS, to the specific cases of services of development, design, programming, customisation, adaptation, upgradation, enhancement, implementation of information technology software, the conclusions which can be drawn are as follows:

3.1 in the case of services where data, instructions etc. are provided so as to develop software, i.e. development, design and programming of information technology software, the place of provision of service is the location of the recipient of the service.

3.2 in the case of services on software involving testing, debugging, modification etc. i.e. customisation, adaptation, upgradation, enhancement, implementation of information technology software, the place of provision of service is the location of the recipient of the service.

4. Therefore, in both the above cases, the place of provision of service is the location of the recipient of the service.

Yours faithfully


(Dr. Kunjhun)

Deputy Commissioner & Officer on Special Duty

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