

GOVERNMENT OF ODISHA
FINANCE DEPARTMENT

Memo. No. FIN-CT1-TAX-0051-2023- 977 dated the 9th January, 2024

To

All Departments of Government
All Heads of Department

*Sub: Co-Location Service Agreement and determination of Place of Supply (PoS)
of Co-Location Service under GST-reg.*

Madam/Sir,

GST Act has been introduced in the entire country to tax supply of Goods or Services or both. Levy of GST on a particular transaction depends on the location of supplier and the recipient of such good/services or both and the place of supply. The location of the "Supplier of services" and "Place of Supply of Services (PoS)" are the determinants for defining a supply as "Intra-State" or "Inter-State". When location of Supplier and Place of Supply are in the same state, then the supply is treated as "Intra-State" and when they are in different states, then the supply will be treated as "Inter-State". Accordingly, either IGST or SGST/CGST is levied.

2. "Co-location" is the service of hosting of IT hardware in a Data Centre. Taking advantage of the infrastructure provided by Commercial Data Centres, the business entities/Organizations avail "Co-Location Services" from such Commercial Data Centers under a "Co-Location Service" Agreement. Registered business entities who avail the "Co-Location Services" primarily seek security of its critical elements for which it avails services of dedicated server, storage and network hardware; operating systems, system software and can opt to interact with the system remotely through a web-based interface relating to hosting and operation of the server in the commercial data centers.

3. In the Scheme of classification of Services notified under the OGST/CGST Act, "Co-location services" is classified under the HS Code-**"998315- Hosting and Information Technology (IT) infrastructure provisioning services"**.

4. "Co-location services" do not appear to be limited to the passive activity of making immovable property available to a customer as the arrangement of the supply of co-location services not only involves providing of a physical space for server/network hardware along with air conditioning, security service, fire protection system and power supply but it also involves the supply of various services related to hosting and Information Technology infrastructure services like network connectivity, backup facility, firewall services, monitoring and surveillance service for ensuring continuous operations of the servers and related hardware etc. which are essential for the recipient business entity/organizations to interact with the system through a web based interface relating to the hosting and operation of the servers. Therefore, supply of "Co-location Services" cannot be considered as the services of supply of renting of immovable property. The place of supply of the co-location services shall be determined by the default place of supply i.e. location of recipient of co-location service.

5. In cases, where the agreement between the supplier and the recipient is restricted to providing physical space on rent along with basic infrastructure, without components of Hosting and Information Technology (IT) Infrastructure Provisioning services and further responsibility of upkeep, running, monitoring and surveillance etc. of the servers, then the said supply of services shall be considered as the supply of the service of renting of immovable property. Accordingly, the place of supply of these services shall be determined by the location where the immovable property is located.

6. It has come to the notice of State Government that some commercial Data Centres located outside the State are supplying "Co-Location Services" to some State Government Departments/Corporations. In this scenario, the recipient of the such Services is located within the State whereas the service providers are located outside the State. The Service providers are interpreting the service agreement of Co-Location services i.e. Hosting and Information Technology (IT) Infrastructure Provisioning Services" wrongly as services of renting of immovable property thereby treating the Place of Supply of such services erroneously as location of the Data Centre instead of the location of the registered

person receiving such services. The Service providers are erroneously charging SGST/CGST instead of IGST. Due to non-levy of IGST in these transactions, the State Government being the recipient State, is losing its share of IGST, whereas the State in which the Data Centers are located are receiving the SGST. GST being a destination-based Taxation System, our State Government is not receiving the tax due in these transactions, due to such erroneous interpretation.

7. In order to obviate the above difficulty and to protect the revenue due to the State, different Government Departments/Corporations availing Co-Location services i.e. "Hosting and Information Technology (IT) Infrastructure Provisioning Services" from the Data Centres located outside the State are advised to devise their service agreement in such a manner that there is no scope of confusion between the "Hosting and Information Technology (IT) Infrastructure Provisioning Services" with "Services of renting of immovable property". The service providers may accordingly be advised to charge IGST in their invoices raised against State Government Departments/Corporations/Business entities.

All subordinate offices under the control of respective Departments of Government may accordingly be instructed to ensure strict compliance of statutory provisions of Odisha Goods and Services Act, 2017 subject to amendments from time to time and modify the existing "Co-Location service" agreements with prospective effect.

Difficulties, if any, in the implementation of this circular may be brought to the notice of Finance Department.

Yours faithfully



Special Secretary to Government