

Time of Supply of Goods - Present Vs GST

(Updated based on revised Model GST law)

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The liability to pay CGST / SGST or IGST on the goods or service shall arise at the time of supply as determined in terms of the Model GST Act. The point of time of supply refers to the point of time when an activity attracts the levy of GST in terms of the provisions of section 12.

In the absence of specific provisions to determine time of supply, there could be lot of ambiguity in determining the exact time of supply as the event of supply could contain many sub events. For example, in case of sale of goods, supply could be understood as transfer of title or transfer of possession and control or time of final settlement etc. The amount of chaos is even more in case of provision of services.

Present Law: In case of excise duty, it is a levy on manufacture and collection is on removal. In State VAT laws, there is legal fiction which provides that sale of goods is completed when ownership of goods is transferred or possession of goods is handed over to the buyer. The other Indirect taxes like Octroi/ entry tax/ local body tax/ amusement park are on the entry into the area/ State/ others.

Under the GST regime, transfer of ownership or possession of goods is not relevant.

The time of supply of goods shall be the earliest of the following dates, namely:

- (a) The date of issue of invoice by supplier or the last date on which such supplier is required to issue invoice in terms of section 28 (Provisions on tax invoice): The supply is deemed to be made to extent it is covered by supplier invoice.
- (b) The date on which the supplier receives the payment- The supply is deemed to be made to extent it is covered by payment.

The date when supplier receives payment is earliest of date on which the payment is entered in his books of accounts or the date on which the payment is credited to his bank account.

Section 28 provides that a registered taxable person supplying goods shall issue a tax invoice before or at the time of removal of goods (where supply involves movement of goods) or delivery of goods or making available to the recipient (in other cases).

Presently neither excise duty nor sales tax is to be paid on advance received for supply of goods. Only in case of service tax, liability arises on receipt of advance for service to be provided. However, in GST, even when advance is received from customer for goods to be supplied, GST liability would arise.

In case of continuous supply of goods, where successive statements of accounts or successive payments are involved invoice shall be issued before or at the time each such

statement issued or each such payment is received. The criteria to determine time of supply would remain same even in case of continuous supply of goods.

“Continuous supply of goods” means a supply of goods which is provided, or agreed to be provided, continuously or on recurrent basis, under a contract, whether or not by means of a wire, cable, pipeline or other conduit, and for which the supplier invoices the recipient on a regular or periodic basis. In addition the Central or a State Government may, on the recommendation of the GST Council, specify, by notification, the supply of goods that shall be treated as continuous supply of goods.

For example, when the continuous supply of goods is made through a conduit/pipes, the billing would be done based on quantity of goods supplied for a particular period. At the end of the billing period, an invoice will be issued for the quantity of goods supplied and then the earlier of date of invoice or the last date of the billing period would be the time of supply unless supplier has received any amount in advance.

In case of supplies in respect of which tax is paid or liable to be paid on reverse charge basis, the time of supply shall be the earliest of the following dates, namely—

- The date of receipt of goods,
- Date on which payment is made,
- The date immediately following thirty days from the date of issue of invoice by the supplier.

When it is not possible to determine the time of supply under any of the above clauses, the time of supply shall be the date of entry in the books of account of recipient.

At present there is no excise duty/VAT payable under reverse charge mechanism. But under GST, notified supply of goods would be liable for payment of GST under RCM. This would be an additional burden to the industries.

If the goods are sent or taken on approval, sale or return or similar terms, the invoice shall be issued before or at the time when it becomes known that the supply has taken place or six months from the date of removal, whichever is earlier. Thus, if the goods are sent on approval basis, the sale has to be completed within 6 months from its removal, otherwise, it shall be deemed to be a supply and levy would attract.

In case of supply of vouchers, the date of issue of the voucher would be the time of supply when such supply is identifiable at that point. In all other cases, the date of redemption of voucher would be the time of supply.

A residual provision has been inserted in Sec. 12 to provide that if the time of supply of goods cannot be determined in terms of the specific provisions discussed earlier, then time of supply would be determined as follows:

- (a). In a case where a periodical return has to be filed, be the date on which such return is to be filed, or
- (b). In any other case, be the date on which the CGST/SGST is paid.

Discussion on revenue recognition principle:

Accounting Standard on revenue recognition (AS-9) provides fair idea on when to recognize the revenue in the books of accounts. Though the revenue recognition is more relevant from accounting and income tax aspects, we could relate the same to time of supply.

AS- 9 provides for recognition of revenue on sale of goods when the seller transfers the property (Significant risk and reward) to the buyer. Even under GST, revenue recognition principle would hold good to certain extent. Though there are multiple events prescribed to determine the time of supply of goods, transfer of property in goods is interlinked such events such as removal of goods, raising of invoice, receipt of payment etc. The understanding of the difference between AS-9 and Time of supply would help the assessee in maintaining reconciliation between books and statutory returns.

Important decisions under Indirect tax laws:

- Wallace Floor Mills Co Ltd Vs UOI [1989 (44) ELT 598 (SC)]: Collection of duty at the time of removal does not mean that the taxable event is removal – *Presently point of levy of excise duty and point of collection of excise duty are different. Under GST point of collection of tax would coincide with point of levy.*
- Bhopal Sugar Industries Ltd Vs D P Dube, STO- AIR 1964 SC 1037: Self consumption of goods by owner of goods is not sale of goods – *The term supply is not exhaustive enough to cover self-consumption of goods in business! Though temporary application of business assets to personal use is deemed to be a supply, captive consumption of goods for further manufacturing is not deemed to be a supply of goods.*
- TISCO vs S.R Sarkar [(1960) 11 STC 655 (SC): A transaction of sale is subject to tax on completion of sale. A mere contract of sale is not a sale for the purpose of levy VAT/CST. *In GST, tax would be levied at the time of supply of goods in terms of Sec 12. Hence, mere contract to supply may not attract GST.*
- Agarwal brothers Vs State of Haryana 1999 AIR SCW 2423(SC) it was held that if the transaction is a deemed sale, sales tax can be levied. There need not be legal transfer of goods. *This would hold good in GST also as the tax could be levied on deemed supply.*

Conclusion

The provisions provided in Section 12 of the Act to determine the time of supply of goods is with the objective of collecting the revenue as early as possible. The practical difficulties in implementing the rules have not thought of. Considering too many events to identify the time of supply not only increases the administrative hurdle for the

assesse but it also creates opportunity for the bureaucrats to harass the assessee for noncompliance.

The provisions of time of supply of services in GST are influenced by present point of taxation rules 2011, which would be discussed in our next article.

We value your feedback which may be send to

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Note: Further the readers may kindly refer the book on Goods and Service Tax – A Primer by Madhukar Hiregange and K.S.Naveen Kumar published by Walters Kluwer – CCH for better understanding.