

Decoding of 'Place of Supply of Goods' under GST

- CA Venkat Prasad P
& CA Lakshman K

Conceptually GST is destination/consumption based tax i.e. person consuming the service/goods shall bear the burden of such tax and that revenue shall go to the corresponding state but no provision express this concept/ philosophy. However same was inherent and more adequately embodied in the provisions of 'Place of supply (POS)'.

Be that as it may, GST is a two tier structure where CGST and SGST shall be levied on all intra-state supplies (within the state) and IGST shall be levied on all inter-state supplies (between/outside the state). If the **location of the supplier** and **the place of supply** are in the same state then the transaction shall be considered as intra-state supply. If one among them is in different state it shall be considered as inter-state supply. Therefore, POS plays a pivotal role in identifying whether CGST & SGST or IGST will be levied on any transaction.

Section 10 of the Integrated Goods and Service Tax Act, 2017 exclusively deals with the Place of Supply of Goods supplied (other than imports/exports). The said section is designed in various parts covering different scenarios.

In this article, an attempt has been made to decode the said section and to understand its coverage.

Quoted:

"(1) where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient;

Unquoted:

- This clause is applicable only if '**supply involves movement of goods**' however there is no criteria was laid down to consider when a supply can be considered as '*supply involves movement of goods*' in which case, general understanding is inevitable.
- Such movement of goods may be undertaken by
 - ✓ Supplier
 - ✓ Recipient or
 - ✓ Any other person
- The term 'any other person' mainly refers to transporter or agent of the supplier or recipient.
- Owing to use of the phraseology '*supply involves movement of goods*', Movement of goods shall be during the course of supply or such movement is included/involved in the gamut of 'supply'. In other words, movement is required to conclude/complete the supply.
- The effect of this is practically has huge implications especially in case of **Ex-works/Ex-factory** sales, the same is discussed herein below:
 - In case of Ex-works/factory sale, Manufacturers or traders completes the sale of goods at the factory gate/shop of such manufacture/trader (now

termed as supplier under GST) and from that gate, it is buyer who will get the ownership over the goods and all further costs and risks are assumed by the buyer. Thus it can be said that sale being form of supply is getting concluded/completed at the factory gate of the supplier and movement of goods is commencing after that supply i.e. post supply. In this background, view expressed was that Section 10(1)(a) of IGST Act, *ibid* does not attract for ex-works transactions. Going by that analogy, Section 10(1)(c) of IGST Act, 2017 shall be applied which says that the place where the goods are made available shall be taken as place of supply thereby making the supplier factory gate/shop becoming the place of supply in all cases of Ex-works sale. As a result in all cases of Ex-works, suppliers end up paying CGST + SGST. The adverse effect is that buyer from outside state will not be able to get the credit of CGST + SGST charged by supplier thereby GST becoming cost to him breaking down the GST philosophy of seamless credit and non-cascading effect. Here it is worth noting that the answer given by the government in the 'twitter' account is different but such answer comes with caveat that those are not legal binding on the department/government.

- If the supplier is fully aware that the goods handed over at the factory gate are destined for a buyer in another state, would IGST apply? Authors views that it would require a lot of documentary support to show that the seller was fully aware that the goods are destined for delivery to the buyer in another state. This is more complicated when transportation is arranged by the buyer, it would be very difficult to prove this beyond doubt as supplier does not have any documents to show the destiny of the goods. Therefore, in this case, a contract or a purchase order that specifically mentions the place of delivery of the goods, irrespective of the person arranging for transportation or bearing risk, would be essential to prove the intent of the buyer and supplier.
- The best possible way out seems to be make the contract stating that the supplier will arrange the transportation and takes the responsibility of goods are delivered to the buyer's premises, then it can be said that the supply involves the movement of goods as the delivery is also essential to complete/conclude the supply and until such delivery happens, supply is incomplete. In this case, the seller shall arrange transportation may or may not recover the transportation charges from the buyer. If the buyer gets the delivery in another state, the supply would attract IGST. If the delivery is in the same state as the buyer, CGST+SGST would apply. Thereby buyer is able to take credit in all cases. Here one has to

remember is that taking delivery responsibility is one aspect and taking transit risk is altogether different aspect.

- Moving forward with further discussion on clause (a), POS is the **location of goods** at the **time** at which the movement of goods **terminates for delivery to the recipient**.
- **Location of goods** shall be ascertained by observing the journey of goods from supplier and terminating with recipient.
- It is not mere termination of goods movement but such movement shall be terminated for delivery to the recipient which infers that temporary terminations (like change of vehicle, vehicle breakdowns) are to be ignored.
- The debatable point here is that when one can say that movement is terminated for 'delivery'. The more complication arises when the buyer arranges for the transportation of goods and asks the seller to hand over these goods to the transporter.
- In this scenario the main issue arises is whether handing over the goods to the transporter appointed by the buyer amount to giving delivery to the buyer?
- GST law does not expressly address this issue but there seems to be some indication with the use of the words '*movement may be by the supplier or recipient or any other person*' in which case delivery to the transporter (treating it as movement termination for delivery) will clash with the aspect of movement by the transporter (still there is movement of goods).
- In order to avoid that clash, it shall be construed that delivery to the transporter shall not be treated as delivery to the buyer/recipient and only the point of delivery to the buyer/recipient shall be taken but practical difficulty arises for the supplier in proving the termination point as he may not be having documents relating to the transportation.
- The other plausible view is that movement by '*any other person*' refers to the scenario of transporter being appointed by the supplier and settled legal theories of law should not force the impossibilities and law shall be read making it as workable then unworkable supports this view. Going by this analogy, it can be said that delivery to the transporter appointed by the buyer/recipient amounts to the delivery to the recipient and point of handing over to such transporter shall be treated as place of supply. If such place falls within the same state of supplier location (which often obvious) then CGST + SGST shall be charged. Further provisions of Sale of Goods Act, 1930 (section 33) being pari materia statute (i.e. dealing with the same or similar subject matter) also supports this view.

Quoted:

(b) where the goods are delivered by the supplier to a recipient or any other person on the direction of a third person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to the goods or otherwise, it shall be deemed that the said third person has received the goods and the place of supply of such goods shall be the principal place of business of such person;

Unquoted:

- This sub-section has provided deeming provisions with respect to **receipt of goods** and **place of supply** in certain type of transactions. This clause covers bill-to-ship-to transactions, sale in transit where three persons are involved in a transactions
 - ✓ First person say 'A' is the supplier of goods;
 - ✓ Second person say 'B' is who actually receives the goods from supplier;
 - ✓ Third person say 'C' is the person who makes the order for supply of goods but directs the delivery to second Person (B) – can be better understood as 'intermediary';
- Here it involves two transactions
 - ✓ First leg of transaction is between A and C
 - ✓ Second leg of transaction is between C and B
- In this type of transactions, initially C places order to A and directs him to deliver the goods to B. On such direction, A delivers the goods to B by acting as an agent to C. The departure from normal transaction here is that purchase order for supply will be made by one person and actual delivery will be made to different person and in that chain 3 parties are involved to complete the transaction.
- In this transactional matrix more specifically in the first leg of transaction between A & C, this clause deems that C received the goods from A (though C did not receive and actually received by 'B') and provides that place of supply is the principal place of business of C instead of destination/consumption place. As a result irrespective of where the goods are moving the actual supplier of goods i.e. A shall charge CGST + SGST if the C principle place of business and his location are in same state otherwise IGST. This deeming fiction is departure from the 'CST' Act, 1956 in case of transit sales or bills to & ship to.
- As far as second leg of transaction is considered, this deeming fiction has no relevance thereby POS shall be determined applying the other clauses.
- The rationale behind this deeming fiction is to bring the third person 'C' in the tax net and also ensure the credit flow among the both the leg of transactions.
- The above can be explained with simple example wherein A, supplier of goods is in Andhra Pradesh received purchase order from 'C' in Telangana wherein C directed that goods shall be delivered to 'B' in Andhra Pradesh. Here in absence of this deeming fiction, A should have charged CGST + SGST to 'C' in first leg of transaction and 'C' should have charged 'IGST' in second leg of transaction but unable to avail the GST charged by his vendor thereby breaking the seamless credit. To avoid this, deeming fiction was created thereby in first leg of transaction A shall charge IGST to 'C' (since both are in different states) and 'C' will charge 'IGST' to 'B' in second leg of transaction and able to avail the credit of GST charged by 'A' thereby ensuring the seamless credit.

- The above position is the ideal legal position however on plain reading of the clause there are unintended anomalies *inter alia*
 - The clause says that actual supplier delivered the goods to recipient on the direction of third person. Here the normal understanding is that 'recipient' refers to goods 'recipient' but the issue arises if one applies the definition of 'recipient' given under Section 2(93) of CGST Act, 2017 which gives the meaning that person who pays the consideration will be the recipient whereas in case of aforesaid transactional matrix, actual recipient of goods will not make payment to the supplier but to the third person. As a result, both 'recipient' and 'third person' will be the same person which is not the language and context which this clause dealt with. This anomaly can be avoided on careful application of course appreciation of beginning words of section 2 of CGST Act, 2017 which says that '*unless context otherwise requires*' the definitions given therein are to be applied. As the context of this clause requires the 'recipient' to understand in different manner, the statutory definition of 'recipient' u/s. 2(93), *ibid* shall not be resorted to. Further the legal theory of harmonious construction will supports this.
 - Plain understanding of the clause gives a sense that whenever 3 parties are involved then this clause shall be applied but this may not holds good in all the cases. For instance in case Head office/corporate office and factory are located in different states and both are registered for GST then any purchase order received by head office from the customer but the factory making the actual supply to the customers does not fit here. Because direction shall be from third person whereas head office and factory are one & same. One may say that as head office and factory are having separate registrations hence head office will be treated as 'third person' but in view of the authors that may not hold good since clause uses the word 'third person' and not referring to deeming fiction created making head office & factory as distinct persons u/s. 25 of CGST Act, 2017 which was referred wherever required under GST laws.

Quoted:

(c) where the supply does not involve movement of goods, whether by the supplier or the recipient, the place of supply shall be the location of such goods at the time of the delivery to the recipient;

Unquoted:

- Supply does not involve movement of goods means there should not be any movement of goods for the purpose of such supply.
- Here one has to remember is that this clause does not do away with the fundamental requirement of goods that it shall be 'movable' but only makes the departure that goods will not move in the gamut of supply albeit it has movability.
- This clause covers OTC (Over-the-Counter) sales. In case of OTC transactions, supply will get concluded at the counter without any

movement of goods therefore the place of supply shall be the location of goods at the time of delivery to the recipient.

- Supplier is not bothered about where the recipient is carrying the goods. For example, person from Pune come to Hyderabad and buys some medicines in the shop located in Hyderabad and carries the same to Pune. Though the goods are moving from Hyderabad (Telangana state) to Pune (Maharashtra), the same is irrelevant and shop location will become the place of supply and accordingly CGST + SGST shall be charged. This is because the supply concludes before movement starts and movement starts after the supply. Same position will apply to the cases of Ex-works sales as discussed supra.

Quoted:

(d) where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly;

Unquoted:

- This clause is relevant when the goods are supplied either in assembled/installed form (computer parts cleared but assembled at the customers place) or goods are supplied along with installation/assembly (furniture along with installation in the site).
- Firstly it shall be remember that applying the theory of 'composite supply', it becomes the single supply of goods (including installation work which otherwise separately will be treated 'service').
- In such scenario, supply from the place of their origin to the site 'for' assembly or installation is subsumed within this provision and merged with the supply to the recipient by virtue of such assembly or installation. This provision appoints the place of supply based on the final act of assembly or installation. There is no requirement to vivisect the entire composite supply of goods that is a supply-cum-installation into a supply + installation.
- In case such supply cum installation is relating to the immovable property, then it becomes the 'works contract' thereby this clause does not apply as GST law deemed 'works contract' as service and accordingly POS as applicable the service (immovable property related services) shall be applied.

Quoted:

(e) where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board.

Unquoted:

- This clause specifies the POS w.r.t goods supplied on board a conveyance.
- Conveyance was defined in Section 2 (34) of CGST Act, 2017 which is an inclusive definition and includes a vessel, an aircraft, a train or a motor vehicle.
- It is very difficult to determine place of consumption of goods supplied on board a conveyance as the conveyance will keep on moving and goods may be supplied at different parts of journey which may happen in more than

one state. For example, train coming from Mumbai to Hyderabad, food may be supplied somewhere in between which may not fall either in originated state (Maharashtra) or destined state (Telangana). To avoid this, this clause provides that place wherein such goods are taken on board shall be taken as POS and accordingly applicable GST shall be charged.

- However the practical challenge still remain unanswered is in case of goods sold remain in the first journey but which are sold in another journey either return or to different journey altogether. For instance, goods taken on board at Hyderabad in a aircraft moving Hyderabad to Pune, some portion was remain sold in the first leg of journey from Hyderabad to Pune but were sold while coming to Hyderabad. The issue arises here whether goods sold in return journey Hyderabad shall be taken as POS (as the same are takne on board) or Pune (in return journey it amounts to goods being taken on board at Pune). The latter case seems to be logical and reasonable but it lacks clarity over this.

Quoted:

(2) Where the place of supply of goods cannot be determined, the place of supply shall be determined in such manner as may be prescribed.

Unquoted:

- This is the residuary clause to determine place of supply in case if POS is not ascertainable from the above referred sub-section.
- In such circumstances POS shall be determined in such manner as may be prescribed.
- However till now, nothing is prescribed under this clause.

It is said that in matters relating to taxes, questions rarely change, but the answers do. This is more appropriate for GST law as it is at very nascent stage and it has to evolve.

(For any feedback/queries mail to venkataprasad@hiregange.com, laxman@hiregange.com)