

GOODS AND SERVICES TAX – GOODS-DETERMINATION OF INTRA STATE OR INTERSTATE SUPPLY

Authors



*Ashu Dalmia, Partner
Ashu Dalmia &
Associates
FCA, DISA, CISA
ICAI Certified-FAFD
ICAI-Certified Arbitrator*



*Shafaly Girdharwal,
Partner
Ashu Dalmia &
Associates*

The Goods and Services Tax (GST) biggest reform in India's Indirect Tax Structure since Indian economy began to open up in 1991 and most significant revamp of the tax system post Independence in 1947. This in fact will turn into biggest business reform and will impact way of doing business in India.

ADA has taken an initiative towards GST and started a Knowledge sharing on Model GST Law. Purpose is to discuss most of the important provisions under Model GST Law.

In this direction our first presentation on overview of GST is available on following link:

GST OVERVIEW

Second presentation covering about chargeability of CGST, SGST and IGST. The same is available on following link:

GST CHARGEABILITY

Classification of Supply plays important role to characterize the supply as Intra state or interstate supply. On the basis of classification as Intra state or interstate supply CGST and SGST or IGST can be levied. Location of Supplier and Place of supply determine the classification of supply. There are different provisions for Goods and Services to determine the location of Supplier and Place of Supply. **Following article 3rd in series deals with provisions governing location of supplier and place of Supply of Goods.**

Our next article i.e. 4th in series will cover provisions governing location of supplier and place of Supply for Services.



Ashu Dalmia & Associates
Chartered Accountants

PLACE OF SUPPLY OF GOODS/SERVICES

GST regime provides for taxation on the basis of intra-state or inter-state supply of Goods and Services. In the case of intra-state supply, CGST/SGST is levied and in case of inter-state supply, IGST is levied. It is of paramount importance to correctly classify the supply either intra-state or inter-state at the time of transaction. In case of wrong classification i.e. Intra-state sale as inter-state sale and vice-versa, sec. 53 of the CGST Act and sec. 30 of the IGST Act provides for hardship to the taxpayers. For reference both of the above sections has been reproduced below:

*As per Section 53 of the CGST Act 2016, A taxable person who has paid CGST/SGST (in SGST Act) on a transaction **considered** by him to be an **intra-state supply**, but which is subsequently held to be an **inter-state supply**, shall, upon **payment of IGST**, be allowed to take the amount of CGST /SGST (in SGST Act) so paid as refund subject to the provisions of section 38 of the CGST Act, 2016 and subject to such other conditions as may be prescribed.*

*As per Section 30 of the IGST Act 2016, A taxable person who has paid IGST on a transaction **considered** by him to be an **interstate supply**, but which is subsequently held to be an **intra-state supply**, shall, upon **payment of CGST and SGST** in the appropriate State, be allowed to take the amount of IGST so paid as refund subject to the provisions of section 38 of the CGST Act, 2016 and such other conditions as may be prescribed.*

To classify supply as intra state or inter-state two components are important:

- 1) Location of supplier
- 2) Place of supply

In case location of supplier and place of supply are in same state, supply will be intra state. In case location of supplier and place of supply are in different states the supply will be inter-state. (Reference: section 3 and 3A of the IGST Act.)

| Sl. No. | Location of supplier | Place of supply | Intra state/Inter state | Tax Applicable |
|---------|----------------------|-----------------|-------------------------|----------------|
| 1 | State 'A' | State 'A' | Intra state supply | CGST and SGST |
| 2 | State 'A' | State 'B' | Interstate supply | IGST |

There are different provisions to determine location of supplier and place of supply for supply of Goods and for supply of services.

This discussion covers provisions related to location of supplier and place of supply for Goods.

SUPPLY OF GOODS

LOCATION OF SUPPLIER

Location of supplier for supply of Goods has not been defined in IGST Act or CGST Act. As per BGM of ICAI:

“Based on the review of all other provisions, the word location refers to the sight or premises (geographical point) where the supplier is situated with the Goods in his control and ready to be supplied. Although these two terms may refer to different physical places but the legal requirements of every taxable person to pay tax in respect of every taxable supply and persons liable for registration the location of Goods becomes the location of supplier for the purpose of section 5(2)”

PLACE OF SUPPLY

Section 5 of the IGST Act provides for provision to determine the place of Supply of Goods. This section contains six subsections, Section 5(2) to 5(5) cover different scenario for supply of Goods. Section 5(1) talks about applicability of section 5 to determine the place of supply of Goods and section 5(6) is residual section giving power to parliament as per recommendation of council for situations not covered in section 5(2) to 5(5).

• **SUPPLY INVOLVES MOVEMENT OF GOODS [Sec 5(2)]**

“Supply involves the movement of Goods” means terms of supply require movement of Goods in order to complete supply. Where supply involves movement of Goods whether by the supplier or the recipient or by any other person the place of supply of goods shall be the location of the Goods at the time at which the movement of Goods terminates for delivery to the recipient.

The situation can be better understood with following example:

| SI No. | Location of Supplier | Location of Buyer | Termination of Movement of Delivery | Place of Supply |
|--------|----------------------|-------------------|-------------------------------------|-----------------|
| 1 | State 'A' | Not relevant | State 'B' | State 'B' |
| 2 | State 'A' | Not relevant | State 'A' | State 'A' |
| 3 | State 'B' | Not relevant | State 'A' | State 'A' |

• **GOODS DELIVERED ON DIRECTION OF THIRD PERSON (Transfer of Documents) [Sec 5(2A)]**

When three parties are involved in transaction for supply of Goods, section 5(2A) provides for determination of place of supply.

e.g. there is a supplier, a buyer who is not the recipient of Goods (to be referred as third person) and recipient of goods. In this situation the recipient of Goods (not being a buyer) receives the Goods on the direction of the third person (Buyer or his agent). In this situation as per section 5(2A), principal place of business of the buyer determines the "Place of Supply". This section is applied in following two situations;

- If the documents of title to the goods are transferred **before** the movement of Goods to any person; or
- If the documents of title to the goods are transferred **during** the movement of Goods to any person.

As per section 2(78) of the CGST Act 2016 "**principal place of business**" "means the place of business specified as the principal place of business in the certificate of registration where the taxable person keeps and maintains the accounts and records as specified under section 42"

The situation can be better understood with following example:

| SI No. | Location of Supplier | Location of Buyer (Third Party) | Place of Delivery of Goods | Place of Supply |
|--------|----------------------|---------------------------------|----------------------------|-----------------|
| 1 | State 'A' | State 'B' | State 'C' | State 'B' |
| 2 | State 'A' | State 'B' | State 'A' | State 'B' |
| 3 | State 'A' | State 'B' | State 'B' | State 'B' |
| 4 | State 'A' | State 'A' | State 'C' | State 'A' |

• **NO MOVEMENT OF GOODS [Sec 5(3)]**

Where the supply doesn't 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 delivery of Goods to the recipient.

e.g. when mobile phones are purchased in a showroom, the supply is completed in the showroom itself by delivery to customer.

The situation can be better understood with following example:

| SI No. | Location of Supplier | Location of Buyer | Location of Goods | Place of Supply |
|--------|----------------------|-------------------|-------------------|-----------------|
| 1 | State 'A' | State 'B' | State 'C' | State 'C' |
| 2 | State 'B' | State 'A' | State 'D' | State 'D' |

• **ASSEMBLING OR INSTALLATION OF GOODS[Sec 5(4)]**

Where the Goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

The situation can be better understood with following example:

| SI No. | Location of Supplier | Location of Buyer | Site of Assembly or installation | Place of Supply |
|--------|----------------------|-------------------|----------------------------------|-----------------|
| 1 | State 'A' | State 'B' | State 'C' | State 'C' |
| 2 | State 'A' | State 'A' | State 'C' | State 'C' |
| 3 | State 'A' | State 'A' | State 'A' | State 'A' |
| 4 | State 'A' | State 'C' | State 'C' | State 'C' |
| 5 | State 'A' | State 'C' | State 'A' | State 'A' |

• **SUPPLY OF GOODS ON BOARD A CONVEYANCE[Sec 5(5)]**

Place of supply of Goods will be place of loading if the Goods are meant for consumption 'on board' a conveyance.

The situation can be better understood with following example.

| SI No. | Location of Supplier | Location of Buyer | Journey (Goods loaded at starting state) | Place of Supply |
|--------|----------------------|-------------------|--|-----------------|
| 1 | State 'A' | Not Relevant | State 'A' to State 'B' | State 'A' |
| 2 | State 'B' | Not Relevant | State 'B' to State 'A' | State 'B' |

ASHU DALMIA

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