

**TRANSFER OF CONSTRUCTION MATERIALS, PLANTS, EQUIPMENTS, TOOLS, SPARES, MATERIAL HANDLING EQUIPMENTS FROM ONE SITE TO ANOTHER SITE? – ANY GST IS PAYABLE ?**

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After the promulgation of CGST Act, 2017, various significant and important issues were agitating in the minds of Real Estate Developers and the companies engaged in execution of “Works Contract” in relations to (A) transfer of construction materials such as (a) Cement (b) Steel (c) Marble (d) Tiles (e) Floorings (f) Wooden Doors, Windows, Floors, False Ceiling (g) Electrical & Electronics Items (h) Sanitary Items (i) Air-conditioning items (j) Finishing, Furnishing, Items required for completion (k) Paints, Polish, Distemper, Finishing materials (l) other materials, articles, goods required for Construction, Completion, Renovations, Additions, Alterations, Modification etc.etc. (hereinafter called the said “materials” (B) Material Handling Equipment such as (i) Loaders (ii) Dumpers (iii) Excavators (iv) Road Rollers (v) Paver Finishers (vi) Generators (vii) Welding Machines (viii) Trucks, (ix) Trailers (x) Tankers (xi) Vessels (xii) Buses (C) Spare Parts, Tools, Tackles. etc.

2: It is seldom seen and/or possible that all the materials, as aforesaid, required for one project is fully consumed and utilized for the said project and nothing is left out to be used and utilized for any other project. Naturally, therefore, any or all the said materials is required to be transferred to any other site(s) either within the same state or outside the State. So long as said the materials/equipments are transferred to any other site within the state, it does not pose any difficulty as it may not amount to supply within the meaning of Section 7 of CGST Act and obviously, therefore, no GST shall be payable. However, if the said materials/equipments are transferred or shifted to any place, outside the State, even without payment of consideration, it would be a case of

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Clause 2 of Schedule-I of CGST Act – warranting the payment of CGST Act. (Schedule-I speaks of supply without consideration even).

3: Section 7(1) For the purpose of this Act, the expression supply includes:-

- a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- b) .....
- c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

3.1: The clause 2 of Schedule-I reads as under:-

Supply of goods or services or both between the related persons or between distinct persons as specified in Section 25, when made in the course or furtherance of business.

3.2: Section 25(5) of CGST Act, reads as under:-

Where a person who has obtained or is required to obtain registration in a State or Union Territory in respect of an establishment, has an establishment in another State or Union Territory, then such establishments shall be treated as establishments of distinct persons for the purpose of this Act.

4: Let me first deal with the transfer/shifting/movement/carriage of all or any types of material(s) from one site in a state to any other site or sites outside the State. So long as the transfer/shifting/movement is within the same state, it does not pose any problem and undoubtedly no GST shall be payable. The difficulty arises only when there is transfer/shifting/movement from one state to another State. In accordance with the provisions of Clause 2 of Schedule-I (reproduced in para 3.1 above), it shall amounts to supply within the meaning of Section 7 of CGST Act and, therefore, GST would be payable. The question arises as what price or value, such materials or plant is required

to be transferred without in any manner violating the provisions of Section 15 of CGST Act or Rule 27 to 33 of CGST Rules. The valuation of materials may not pose serious threat or problem - valuation or pricing of plant, machinery, equipments, tools or tackle or spares, rigs etc. would really pose serious problem as all these items would have been bought in the distant past and valuation or pricing would really call for intense and serious calculation – valuation ultimately may not satisfy Tax Authorities. The process of valuation of materials would be dealt with in another Article as the transfer/movement/shifting of materials from one site to another site in another state or UT shall definitely be termed as “supply” within the meaning of Section 7 of CGST Act as much as the materials would be used for execution of a project.

5: In order to find answer to issue of payability of GST, we may have to see Circulars issued by the Government. The Government of India, Ministry of Finance, Department of Revenue (TRU) has come out with a Circular No.1/1/2017-IGST dated 7<sup>th</sup> July, 2017 which has further been modified/clarified/enlarged by another Circular No.21/21/2017-GST dated 22.11.2017. Both these Circulars are re-produced below for ready reference.

Circular No.1/1/2017-IGST  
Dated the 7<sup>th</sup> of July, 2017

F. No 354/119/2017- TRU (Pt)  
Government of India Ministry of  
Finance Department of Revenue  
Tax Research Unit

To,  
The Principal Chief Commissioners/ Chief Commissioners/  
Principal Commissioner/ Commissioner of Central Tax (All)/  
Director General of Systems

**Subject: Clarification on Inter- state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance- regarding.**

The issue relating to levy of IGST exemption on inter- state movement of various modes of conveyance, carrying goods or passengers or for repairs and maintenance, between distinct persons as specified in section 25(4) of the Central Goods and Services Tax Act, 2017, carrying goods or passengers or both; or for repairs and maintenance, [except in cases where such movement is for further supply of the same conveyance] has been examined.

*In the above context, the legal provisions in GST laws are as under:*

- a. As per section 24(1) (i) of the Central Goods and Services Tax Act, 2017, persons making any inter-State taxable supply shall be required to be registered under this Act.
- b. As per section 25(4) of the said Act a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as *distinct persons* for the purposes of this Act.
- c. Schedule I to the said Act specifies situations where activities are to be treated as supply even if made without consideration which also includes supply of goods or services or both between related persons or between distinct persons as specified in section 25, when made in the course or furtherance of business
- d. Section 7 (2) envisages where that activities or transactions undertaken by the Central Government, a state Government or any local authority in which they are engaged as *public authorities*, as may be notified by the Government on recommendations of the *Council*, shall be treated *neither as a supply of goods nor a supply of services*.

Against the above background, the issue of interstate movement of goods like movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the said Act, not involving further supply of such conveyance, including-

- i. Trains
- ii. Buses,
- iii. Trucks,
- iv. Tankers,
- v. Trailers
- vi. Vessels
- vii. Containers
- viii. Aircrafts

carrying goods or passengers or both; or (b) for repairs and maintenance, [except in cases where such movement is for further supply of the same conveyance] was discussed in GST Council's meeting held on 11<sup>th</sup> June, 2017 and the Council recommended that such inter-state movement shall be treated 'neither as a supply of goods or supply of service' and therefore not be leviable to IGST.

In view of above, it is hereby clarified that "inter-state movement of goods like movement of various modes of conveyance, between distinct persons as specified in section 25(4) of the Central Goods and Services Tax Act, 2017, including the ones specified at (i) to (viii) of para 3, may not be treated as supply and consequently IGST will not be payable on such supply.

However, applicable CGST/SGST/IGST, as the case may be, shall be leviable on repairs and maintenance done for such conveyance.

Circular No. 21/21/2017- GST  
Dated the 22<sup>nd</sup> of November, 2017

F. No. 354/320/2017-TRU (Pt)  
Government of India  
Ministry of Finance

Department of Revenue  
Tax Research Unit

To,  
The Principal Chief Commissioner/Chief Commissioners/Principal Commissioners/ Commissioner of Central Tax (All)/ Director General of Systems

**Subject: Clarification on Inter-state movement of rigs, tools and spares, and all goods on wheels [like cranes] – regarding.**

The issue of IGST exemption on interstate movement of various modes of conveyance, between distinct persons as specified in Section 25(4) of the Central Goods and Services Tax Act, 2017, carrying goods or passengers or both ; or for repairs and maintenance,[except in cases where such movement is for further supply of the same conveyance] was examined and a circular 1/1/2017-IGST dated 7.7.2017, was issued clarifying that such interstate movement shall be treated “ neither as a supply of goods nor supply of Service” and therefore would not be leviable to IGST

The issue pertaining to inter- state movement of rigs, tools and spares , and all goods on wheels [like cranes] was discussed in GST Council’s meeting held on 10<sup>th</sup> November , 2017 and the Council recommended that circular 1/1/2017- IGST shall mutatis mutandis apply to inter-state movement of such goods, and except in cases where movement of such goods is for supply of the same goods, such inter- state movement shall be treated ‘neither as supply of goods or supply of service, and consequently no IGST would be applicable on such movements.

In this context, it is also reiterated that applicable CGST/SGST/IGST, as the case maybe, is leviable on repairs and maintenance done for such goods.

Difficulty if any, in the implementation of the circular should be brought to the notice of the Board. Hindi version would follow

(Ruchi Bisht)  
Under Secretary (TRU)

6: Para 3 of the Circular No.1/1/2017 dated 7<sup>th</sup> July, 2017, inter-alia, clarify that whenever there is inter-state movement of goods like movement of various modes of conveyance such as (i) trains, (ii) buses, (iii) trucks, (iv) tankers, (v) trailers, (vi) vessels, (vii) containers and (viii) aircrafts for the purpose of movement of either goods or passenger or both and not for the purpose of supply, such movement shall not be treated as "Supply" within the meaning of Section 7 of CGST Act entailing payment of IGST. In other words, whenever there is a inter-state movement of goods which are in the nature of (i) trains, (ii) buses, (iii) trucks, (iv) tankers, (v) trailers, (vi) vessels, (vii) containers and (viii) aircrafts (ix) other vehicles of similar nature and when any of these move from one site to another site in another state, there would not be any levy of GST as per above Circular dated 7<sup>th</sup> July, 2017. It would be beneficial to know, at this stage, the definition of "goods" as defined in Section 2(52) of CGST Act, reproduced below:-

Section 2(52): "Goods" means every kind of moveable property other than money and securities but includes actionable claim, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before supply or under a contract of supply.

7: The Supreme Court in the case of H Anraj Vs. Government of Tamil Nadu MANU/SC/0318/1985 has defined the "goods" in the following words:-

22: Section 2(7) of the Sale of Goods Act defines 'goods' as meaning "every kind of movable property other than actionable claims and money". Section 3(26) of the General Clauses Act, 1897 defines 'immovable property' by stating that it "shall include land, benefit to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth", while 'movable property' is defined in Section 3(36) thus: "Movable property" shall mean property of every description, except immovable property.

It is thus clear that when Section 2(7) of the Sale of Goods Act defines 'goods' as meaning 'every kind of movable property other than actionable claims and money', the expression 'movable property' occurring therein must mean property of every description except immovable property.

8: Therefore, with such expansive and wide meaning of word “goods”, it would cover everything available on the earth except (i) land and (ii) immovable property. In other words, the “goods” would encompass all types of plant, machinery, equipments etc and would include (i) Trains, (ii) Buses, (iii) Trucks, (iv) Tankers, (v) Trailers, (vi) Vessels, (vii) Containers, (viii) Aircrafts (ix) Road Rollers (x) Paver Finishers (xi) Mixer (xii) Grinders (xiii) Generators (xiv) Welding machines (xv) Rigs (xvi) Cranes (xvii) all other Material Handling Equipments and when any of these move from one state to another state or UT in the aid or for the purpose of execution of any project or for any other purpose such as (i) repair (ii) maintenance or (iii) renewals/overhauling, it shall not amount to “supply” within the meaning of Section 7 of CGST Act, as explained and amplified in para 3 of the Circular No.1/1/2017 dated 7.7.2017 and obviously, therefore, shall not be subject to payment of IGST. In fact, the above issue has been troubling the mind of trade and industry engaged in (a) Real Estate Business (b) Works Contract (c) Execution of Turn-Key Contract. Needless to say, if the movement of any of the above items takes place within the same State, there is absolutely no question of supply within the meaning of Section 7 CGST Act, and obviously no question payment of either CGST or SGST or UTGST.

9: The interpretation which I am canvassing is fully supported by some of the landmark judgments of the Hon’ble Supreme Court in the case of Standard Chartered Bank and Ors. vs. Directorate of Enforcement and Ors. (24.02.2006 - SC): MANU/SC/8069/2006, has observed as under:-

In view of the immunity from challenge enjoyed by the provisions of the Act, there arises no necessity to read down the provisions of the Act so as to ensure that they do not violate the rights conferred by Article 14 of the Constitution. The provisions, therefore, call for a natural interpretation and, if necessary, a purposive

interpretation, keeping in view the object sought to be achieved by the Act. In the guise of interpretation, there is no occasion to whittle down the ambit of the provisions to save them from the charge of arbitrariness, hit by Article 14 of the Constitution.

10: The Supreme Court in the case of Southern Electricity Supply Company of Orissa Limited (Southco) and Another V. Sri Seetaram Rice Mill MANU/SC/1334/2011 : (2012) 2 SCC 108 laid down golden rule of interpretation.

57: No doubt, it is possible that two interpretations can be given to the expression ' accidental falling of a passenger from a train carrying passengers ', the first being that it only applies when a person has actually got inside the train and thereafter falls down from the train, while the second being that it includes a situation where a person is trying to board the train and falls down while trying to do so. Since the provision for compensation in the Railways Act is a beneficial piece of legislation, in our opinion, it should receive a liberal and wider interpretation and not a narrow and technical one. Hence, in our opinion the latter of the abovementioned two interpretations i.e. the one which advances the object of the statute and serves its purpose should be preferred

11: The Supreme Court in the case of RBI V. Peerless General Finance and Investment Company Limited MANU/SC/0073/1987 : (1987) 1 SCC 424 has observed as under:-

33. Interpretation must depend on the text and the context. They are the bases of interpretation. One may well say if the text is the texture, context is what gives the colour. Neither can be ignored. Both are important. That interpretation is best which makes the textual interpretation match the contextual. A statute is best interpreted when we know why it was enacted. With this knowledge, the statute must be read, first as a whole and then section by section, clause by clause, phrase by phrase and word by word. If a statute is looked at, in the context of its enactment, with the glasses of the statute-maker, provided by such context, its scheme, the sections, clauses, phrases and words may take colour and appear different than when the statute is looked at without the glasses provided by the context. With these glasses we must look

at the Act as a whole and discover what each section, each clause, each phrase and each word is meant and designed to say as to fit into the scheme of the entire Act. No part of a statute and no word of a statute can be construed in isolation. Statutes have to be construed so that every word has a place and everything is in its place. It is by looking at the definition as a whole in the setting of the entire Act and by reference to what preceded the enactment and the reasons for it that the Court construed the expression ' Prize Chit ' in Srinivasa and we find no reason to depart from the Court's construction.

12: In the light of the above well-settled principle of interpretation, in my humble view, whenever there is a shifting/transfer/movement/transportation of any of the items (as specified in para 8 hereinabove) from one site to another site within the same State or from one place to another place but outside the State or UT, it shall not be treated as “Supply” within the meaning of Section 7 of CGST Act and consequently, no IGST shall be payable so long as the assessee himself is not treating “supply”.

13: In the above case, since there is no “supply” within the meaning of Section 7, hence “Tax Invoice” within the meaning of Rule 46 of CGST Rules shall not be required to be issued whenever there is a movement, transfer, shifting or transportation of items (outlined in para 8 above) outside the State to any other State or UT, the delivery challan shall be required to be issued as required under Rule 55 (1) © of CGST Rule.

14: The transfer, movement, shifting or transportation from one state to another State or UT, of any of the items as specified in para 8 hereinabove, if not treated as supply, it shall substantially save the working capital of the company – otherwise whenever there is movement, transfer, shifting or transportation, the IGST would be payable.

15: The next issue which falls for consideration is about the treatment of (A) transfer of construction materials such as (a) Cement (b) Steel (c) Marble (d) Tiles (e) Floorings (f) Wooden Doors, Windows, Floors, False Ceiling (g) Electrical & Electronics Items (h) Sanitary Items (i) Air-condition items (j) Finishing, Furnishing, Items required for completion (k) Paints, Polish, Distemper, Finishing materials (l) other materials, articles, goods required for Construction, Completion, Renovations, Additions, Alterations, Modification etc.etc. (hereinafter called the said “materials” (B) Material Handling Equipment such as (i) Loaders (ii) Dumpers (iii) Excavators (iv) Road Rollers (v) Paver Finishers (vi) Generators (vii) Welding Machines (viii) Trucks, (ix) Trailers (x) Tankers (xi) Vessels (xii) Buses (C) Spare Parts, Tools, Tackles, Oils, Lubricants etc.etc. In order to find answer to the above, it would be beneficial to read para 3(a) of the Circular No.1/1/2017 dated 7<sup>th</sup> July, 2017 read with para 2 of the Circular No.21/21/2017 dated 22<sup>nd</sup> November, 2017 and conjoint reading of the above two circulars, makes it very clear that any materials, items, goods, substance, when carried on any conveyance on wheels, the same shall again not amount to supply within the meaning of Section 7 of CGST Act and naturally, therefore, not liable to payment of IGST.