

## SECTION 10(1)(a) IGST ACT –PLACE OF SUPPLY

By

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In the present Article, I am raising a very interesting issue about the place of supply of goods as envisaged under Section 10(1)(a) of IGST Act. Practically, in all situation, wherever the movement of goods is terminating at a place (in other State), that place was said to be place of supply of goods except where unregistered buyer come to the place of sellor and takes a delivery of goods, then it was said to be intra-state supply i.e. supply taking place at the door steps of sellor.

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The provisions of Section 10(1)(a), of IGST Act, 2017, is reproduced below for ready reference:-

***Section 10(1)(a): The place of supply of goods, other than supply of goods imported into or exported from India, shall be as under:-***

***(a):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;***

2: The above provision says that the place of supply of goods shall be the place where movement of goods terminate. Thus one leads to

inquisitive query - whether the movement terminate and in whose hands i.e. (a) supplier (b) buyer or (c) third person.

3: The idea behind Section 10(1)(a) was to levy GST at the place where the goods are delivered or shipped and not the where the movement terminates. The word “delivery” is to be analyzed in terms of Sales of Goods Act, 1930 as “delivered” and the word “delivery” has not been defined in CGST Act. As per Section 2(2) of Sales of Goods Act, delivery mean “voluntary transfer of possession from one person to another”. In my view, it cannot be argued that the “delivery” has to be interpreted in any other manner except as defined in Section 2(2) of Sales of Goods Act.

4: In order to decide as to whether movement continued upto a place of buyer, it would also be necessary to understand as to when ownership in the goods passes and for that purpose, we have to understand the provisions of Section 19 Sales of Goods Act, which, as is relevant for our purpose, reproduced below:-

**Section 19(1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred**

5: At this stage, Section 39 of Sales of Goods Act may also kindly be seen, which is, as is relevant, reproduced below:-

**Section 39(1): Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer, or delivery of the goods to a wharfinger for safe custody, is prima-facie deemed to be a delivery of the goods to buyer.**

6: Hence, by virtue of Section 39(1), delivery of goods to the buyer is prima facie shall be deemed to be delivery of goods to buyer at the factory gate when the agreed terms and conditions, inter-alia, stipulate that the goods were Ex-Works, payment terms were through LC/DD/Advance payment and pursuant to which, the goods were delivered to the transporter who is either designated by the buyer or otherwise, it shall be deemed that the goods had been delivered to the buyer.

7: It would be pertinent to see provision of Section 26 of Sales of Goods Act, which provides as under:-

***Unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not:***

***Provided that, where delivery has been delayed through the fault of either buyer or seller, the goods are at the risk of the party in fault as regards any loss which might not have occurred but for such fault;***

7.1: The perusal of Section 26 of Sales of Goods Act makes it clear that when the ownership in the goods stand transferred, risks passes to the buyer irrespective of the fact whether delivery has been made or not to the buyer.

8: The Division Bench of Patna High Court in the case of Coke Oven Construction Company (Private) Ltd. vs. State of Bihar: MANU/BH/0210/1958, has observed that in relation to ascertained goods, when the parties intended to transfer the title:-

*Under Section 23(2) of the Sale of Goods Act, there is a presumption that title passes as soon as the goods are delivered to the carrier, but this presumption is subject to the express term embodied in the actual contract between the parties. This is made clear by Section 19 of the Sale of Goods Act, which is to the following effect:*

*19 (1) Where there is a contract for the sale of specific or ascertained goods the property in them is transferred to the buyer at such time as the parties to the contract intend it to be transferred.*

*(2) For the purpose of ascertaining the intention of the parties regard shall be had to the terms of the contract, the conduct of the parties and the circumstances of the case.*

*(3) Unless a different intention appears, the rules contained in sections 20 to 24 are rules for ascertaining the intention of the parties as to the time at which the property in the goods is to pass to the buyer.*

9: The Hon'ble Supreme Court in CCE vs. Ispat Industries Ltd. MANU/SC/1151/2015 has observed as under:-

*As has been seen in the present case all prices were "ex-works", like the facts in Escorts JCB's case. Goods were cleared from the factory on payment of the appropriate sales tax by the Assessee itself, thereby indicating that it had sold the goods manufactured by it at the factory gate. Sales were made against Letters of Credit and bank discounting facilities, sometimes in advance. Invoices were prepared only at the factory directly in the name of the customer in which the name of the Insurance Company as well*

*as the number of the transit Insurance Policy were mentioned. Above all, excise invoices were prepared at the time of the goods leaving the factory in the name and address of the customers of the Respondent. When the goods were handed over to the transporter, the Respondent had no right to the disposal of the goods nor did it reserve such rights inasmuch as title had already passed to its customer.*

10: Hence, it is a complete sale where-under the ownership, title and possession of the goods had passed on to the buyer at the Ex-Works of the Sellor. In my humble view, the issue of movement of goods completely eclipses and vanishes the moment the goods had been delivered either to the buyer or to the designated carrier at the works of the Sellor or at the godown of sellor. The same is also evident from the following judgment of the Hon'ble Supreme Court.

11: The Hon'ble Supreme Court in CCE Vs. EMCO Ltd. MANU/SC/0824/2015, has observed as under:-

*It was found as a fact that the goods were cleared at the factory gate. On these facts, this Court held that insurance charges, or for that matter, transport charges would not be included even if the Assessee had arranged for the transit insurance. The Court found that the terms and conditions of sale clearly stipulated that it was ex-works at the factory gate of the Assessee. The payment was to be made before discharge of the goods from the factory premises. In the opinion of the Court, the machinery which was handed over to the career/transporter on receiving the payment was as good as delivery to the buyer in terms of Section 39 of the Sale of Goods Act and, therefore, possession of the sold goods was handed over to the buyer at the factory gate. In this manner,*

**the transaction was full and complete and nothing remained to be done after the goods left the factory premises**

12: The Four Member Bench of Hon'ble Supreme Court in the case of Duni Chand Rataria vs. Bhuwalka Brothers Ltd.: MANU/SC/0038/1954 has interpreted that delivery to mean and include "constructive delivery" as well and, therefore, observed as under:-

***Such an eventuality could never have been contemplated by the Government and the only reasonable interpretation of the expression "actual delivery of possession" can be that actual delivery as contrasted with mere dealings in differences was within the intendment of the Ordinance and such actual delivery of possession included within its scope symbolical as well as constructive delivery of possession.***

13: The Rajasthan High Court in Shambhu Dutt Shastri vs. State of Rajasthan: MANU/RH/0397/1985 has observed as under:-

***Section 2(2) of the Sales of Goods Act defines "delivery to mean voluntary transfers of possession from one person to another. The essence of the delivery is voluntary transfer of possession from one person to another.***

14: In view of the above, in cases where the goods are sold (i) at Ex-Works or Ex-Godown, (ii) Payments were received in advance (iii) mutual agreement that risk passes when goods delivered to either buyer representative or carrier or transporter (iv) transporter is agent of buyer, then, in my view, it cannot be said movement of goods continued to, till the premises of the buyer.

15: Another line of thinking is emanating from the judgment of the Hon'ble Kerala High Court and, therefore, it is interesting to note the observation of the Division Bench of Kerala High Court in Kun Motor Co (P) Ltd Vs. STO MANU/KE/3579/2018 (Date 6.12.2018) wherein in para 15 of this judgment, it makes a very interesting reading:

***15: But, when a person residing in one State goes to another State and purchase the goods for his own use, the supply with respect to the transaction terminates on the individual taking possession of the goods in that other State. The movement of the goods, after such sale is terminated and delivery is effected, whether it be inside the state or to outside that state, would be the prerogative of the purchaser, who owns the goods, in whom the property in such goods vests and such movement would not be that occasioned by the sale transaction or the supply thereon.***

16: However, High Court, in the aforesaid case, was dealing the issue of generation of E Way Bill and hence observed that transaction which terminates with the supply within a state is an intra-state supply. Nonetheless it would be held to obiter dictum and not a ratio decidendi and could not be, in my respectful submission, a binding precedent. Even otherwise, in my humble view, the above ratio, in no way, support the view so taken by one segment.

17: It is also relevant to mention that AAA Karnataka in the case of Deputy Conservator of Forest (71 GSTR 429 (Kar) (Advance Ruling No. KAR ADRG 20/2019 dt.26.8.2019, wherein Forest Department, Karnataka disposes off by E –auction Timber of various sizes and specification from their Depot located in the State of Karnataka. It is further was stipulated that point of sale is Depot and the destination of sale is also Depot and resultantly 9% + 9% CGST and SGST was made applicable. It was argued by the Department when the buyer pays full amount, he is free to transport the timber to any place within or outside Karnataka. On the contrary, the contention of the buyer is that since the material purchased is being taken to and consumed outside the State of Karnataka, they should be paying 18% IGST. Notwithstanding the fact that the buyer is registered outside State of Karnataka, AAA, Karnataka,

has held that the depot (delivery having been given at Karnataka itself) delivery, consequently, the transaction is intra-state transaction.

18: However, there is another ruling of AAA Telengana TSAAR Order No.03/2020 dated 2.3.2020 wherein the applicant is manufacturer of cement in the State of Telengana. They make Ex-factory sale from their plant. – A question has arisen what which tax should be charged ?. However, the AAA Telegana, relying upon the language of Section 10(1)(a), while observing that buyer is taking the goods himself to his place outside the State of Telengana, hence the movement terminate in another state and, therefore, IGST shall be payable. However, the AAA did not deal with the issue of buyer having taken over the delivery and only thereafter, good having been taken outside the State of Telengana.

19: The Hon'ble SC in the case of DCM Ltd Vs. CST 2009(2)TMI 444 SC, while dealing with the issue of intra-state sale or inter state sale, has held as under:-

***Once it is found that the purchasing dealers were obliged under the contract(s) to take the chemicals to their respective territories outside Delhi, once it is found that the purchasing dealers were obliged to sell the chemicals in their respective assigned territories, once it is found that the said purchasing dealers were obliged to enter into separate contract(s) with the assessee, once it is found that each of the purchasing dealers were required to sell the chemicals in their assigned territories at the price fixed by the assessee and once it is found that each of the purchasing dealers was obliged to submit monthly reports to the assessee then in that event the mode in which each of the purchasing dealers could sell their goods either by way of stock transfer or inter-State sale or local sale becomes irrelevant.***

20: In my view, because of the following peculiar facts, the judgment of DCM Limited is distinguishable.

*Under the contract(s), each purchasing dealer(s) was assigned an exclusive territory. Each dealer(s) was obliged to take the chemicals to his respective territory outside Delhi where they were to be sold. Despite the fact that the delivery of the goods was taken in Delhi, the purchasing dealer(s) had to move the goods to the respective assigned territories outside Delhi and it was the essential condition of the contract itself that the chemicals would move out of Delhi and would be sold in the assigned territories allotted to each of the respective purchasing dealers. The covenant in the contract obliged each of the purchasing dealers to move the goods to the territories outside Delhi.*

21: The Constitution Bench of Hon'ble Supreme Court in the case of State of AP Vs. NTPC Ltd MANU/SC/0356/2002 has observed as under:-

*24. It is well settled by a catena of decisions of this Court that a sale in the course of inter-State trade has three essential ingredients:*

*(i) there must be a contract of sale, incorporating a stipulation, express or implied, regarding inter-State movement of goods;*

*(ii) the goods must actually move from one State to another, pursuant to such contract of sale; the sale being the proximate cause of movement; and*

*(iii) such movement of goods must be from one State to another State where the sale concludes. It follows as a necessary corollary of these principles that a movement of goods which takes place independently of a contract of sale would not fall within the meaning of inter-State sale. In other words, if there is no contract of sale preceding the movement of goods, obviously the movement cannot be attributed to the contract of sale. Similarly, if the transaction of sale stands completed within the State and the movement of goods takes place thereafter, it would*

*obviously be independently of the contract of sale and necessarily by or on behalf of the purchaser alone and, therefore, the transaction would not be having an inter-State element.*

22: From the above, it is apparent that the movement as envisaged under Section 10 CGST will terminate whenever there is a actual or constructive delivery in accordance with general law. There cannot be any doubt that post delivery movement is absolutely irrelevant in as much as once the constructive delivery or actual delivery has been taken by the buyer or his agent, then when and where, the goods were delivered is, in my considered view, is wholly irrelevant.

23: The underlying principle under Section 10(1)(a) is that if the goods involve movement, whether by any of the person, the place of supply would obviously be the place where movement of goods terminates for delivery to recipient. In case, where there is a constructive delivery by delivery challan, like supplier transferring or alienating the title and ownership in goods kept in his godown by making sale and issues delivery challan and the challan is accepted by the buyer – though the goods remain in the godown of supplier but delivery is complete and calls for payment of CGST and SGST.

24: In my humble view, in case where transactions are in the nature of FOR delivery transaction or ownership in the goods passes at the buyer place or where sellor undertake to deliver the goods to buyers' place and title passes thereat, then, in that event, Section 10(1)(a) would get attracted and call for payment of IGST.

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