

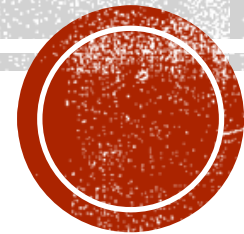
ISSUES IN TIME, VALUE & PLACE OF SUPPLY

STUDY CIRCLE MEET

NAGPUR BRANCH OF WIRC OF ICAI

24TH JANUARY, 2023

CA PRATEEK GUPTA



ISSUES IN PLACE OF SUPPLY UNDER GST



NEED FOR PLACE OF SUPPLY PROVISIONS?

LETS TAKE AN EXAMPLE TO UNDERSTAND

- SUPPLY OF GOODS FROM DELHI TO HARYANA
- WHERE TO GET REGISTERED?
- PLACE FROM WHERE YOU MAKE SUPPLY OF GOODS / SERVICES
- CHARGE IGST
- IGST CONTAINS BOTH CGST AND SGST

- **QUESTION : CGST COMPONENT WILL GO TO UNION GOVT. WHICH STATE WILL RECEIVE SGST COMPONENT? DELHI OR HARYANA???**

- GST IS A DESTINATION BASED TAX.



NEED FOR PLACE OF SUPPLY PROVISIONS?

- WHEN GST WAS INTRODUCED COMMITMENT WAS MADE TO STATES BY THE CENTRE REGARDING REVENUE LOSS.
- COMPENSATION TO STATES – FOR ANY REVENUE LOSS AFTER GST INTRODUCTION
- GROWTH – 14%
- HENCE COMPENSATION CESS

- MANUFACTURING STATES LIKE GUJARAT AND MAHARASHTRA – ESPECIALLY CONCERNED REGARDING PLACE OF SUPPLY PROVISIONS
- AS GST IS DESTINATION BASED TAX.



CASE STUDY 1 : EX FACTORY SALES

- A LTD IS A MANUFACTURER OF TELEVISION SETS
- FACTORY OF A LTD IS AT DELHI.
- A LTD IS REGISTERED IN DELHI
- CUSTOMER B LTD FROM MUMBAI, MAHARASHTRA
- ORDERS FOR 100 TV SETS.

- **2 TYPES OF CONTRACTS**
- **EX FACTORY** : DELIVERY AT FACTORY GATE
- **FOR DELIVERY** : DELIVERY AT MUMBAI

- **QUESTION 1 : WHAT IS PLACE OF SUPPLY IN BOTH CONTRACTS?**



CASE STUDY 1 : EX FACTORY SALES

○ PROVISION:

- LOCATION OF SUPPLIER AND PLACE OF SUPPLY ARE IN THE SAME STATE, THEN TRANSACTION IS INTRA STATE : CGST AND SGST SHALL APPLY
- LOCATION OF SUPPLIER AND PLACE OF SUPPLY ARE IN THE DIFFERENT STATE, THEN TRANSACTION IS INTER STATE : IGST SHALL APPLY

○ SECTION 10(1)(a) OF IGST ACT : 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.

- CONTRACT 1 : INTER STATE SUPPLY
- CONTRACT 2 : INTER STATE SUPPLY



CASE STUDY 1 : EX FACTORY SALES

- **CASE LAW : PEENA CEMENT INDUSTRIES LTD 2020 (6) TMI 162 – AAR TELANGANA**
 - What tax should be charged on ex-factory inter state supplies?
 - **HELD THAT :** In case of ex-factory inter state sales affected by the applicant, the goods are made available by the supplier to the recipient at the factory gate, but this is not the point where movement terminates since the recipient subsequently assumes the charge for transportation of the goods up to the destination in another state. Thus, termination of the movement of goods evidently takes place at the location (in a different state) to which the goods are consigned / destined and such movement is effected by the recipient or by any other person such as transporter authorized by the recipient.
- **ISSUE DISCUSSED IN 37TH COUNCIL MEETING ALSO**
- **DRAFT CIRCULAR DATED September 2019 was also issued.**
- It has been informed that even though the goods are supplied on OTC basis but the supply involves further movement of goods **which is arranged by the recipient, the expression “movement of goods terminates” would mean the place where the movement of goods terminates when the goods reach the place of registration of the recipient or to the address that has been declared in the tax invoice, as the case may be.** It is, accordingly, clarified that the place of supply in case of such supplies, i.e. where the recipient is registered or the address declared in the tax invoice (in case such recipient is not registered) in a State other than the State in which the supplier is located, shall be determined in accordance with the provisions contained in clause (a) of sub-section (1) of section 10 of the IGST Act. Accordingly, such supplies would be treated as inter-State supplies in accordance with the provisions contained in sub-section (1) of section 7 of the IGST Act. It is further clarified that the supplier would be liable to pay integrated tax in such cases.
- **Till date the Circular has not been notified.**



CASE STUDY 1 : EX FACTORY SALES

○ **THUMB RULE :**

- NO CREDIT TO MAHARASHTRA DEALER IF YOU CONSIDER THIS AS INTRA AND CHARGE CGST & SGST.
- YOU CAN SAFELY ASSUME THAT MAHARASHTRA DEALER WILL TAKE THE GOODS TO MAHARASHTRA UNLESS SPECIFICALLY STATED BY CUSTOMER.
- KEEP LR COPY
- TAKE DECLARATION FROM BUYER.



CASE STUDY 1 : COUNTER SALES

○ QUESTION 2: COUNTER SALE TO BE INTER STATE OR INTRA STATE

- UNREGISTERED CUSTOMER FROM MAHARASHTRA COMES TO DELHI TO BUY GOODS. WILL THIS BE INTRA OR INTER STATE SUPPLY. GENERALLY SUPPLIER CONSIDERS THIS AS INTRA STATE SUPPLY. SUPPLIER DOES NOT KNOW WHERE GOODS WILL BE TAKEN.

- **PROVISION : INVOICE RULES**

- IF SUPPLY IS BELOW 50,000/- THEN THERE IS NO DISPUTE

- IF SUPPLY IS GREATER THAN 50,000/- THEN THERE IS BURDEN ON SUPPLIER TO MENTION PLACE OF DELIVERY ON THE INVOICE.

- **NOTE : AS PER SECTION 77 OF CGST ACT, IN CASE OF INCORRECT TAX PAID, SUPPLIER TO PAY CORRECT TAX AND TAKE REFUND OF INCORRECT TAX PAID.**

- ***** 2 YEARS TIME LIMIT FOR CLAIMING REFUND STARTS FROM DATE OF PAYING CORRECT TAX AND NOT FROM THE DATE ON WHICH INVOICE WAS RAISED.**



CASE STUDY 1 : COUNTER SALE FOREIGN TOURIST

○ QUESTION 3:

- FOREIGN TOURIST COMES TO DELHI TO BUY GOODS. WILL THIS BE INTRA OR INTER STATE SUPPLY?
- GENERALLY SUPPLIER CONSIDERS THIS AS INTRA STATE SUPPLY. SUPPLIER DOES NOT KNOW WHERE GOODS WILL BE TAKEN.
- THERE IS A CONCEPT OF REFUND OF GST IN CASE GOODS ARE TAKEN BY THE FOREIGN TOURIST OUTSIDE INDIA.
- IF FOREIGN TOURIST STAYS AT A HOTEL IN DELHI. SERVICE GETS CONSUMED IN DELHI. HENCE HOTEL WILL CHARGE CGST SGST. THERE IS NO CASE OF REFUND OF GST IN CASE OF CONSUMED SERVICES.



CASE STUDY 2 : REGISTRATION

- THERE IS A **WORKS CONTRACT SERVICE PROVIDER ABC LTD**
- THAT IS SERVICES RELATED TO IMMOVABLE PROPERTY.
- IT IS REGISTERED IN JAIPUR.
- SERVICE TO BE PROVIDED UNDER A CONTRACT TO SHREE LTD IN KARNATAKA FOR CONSTRUCTION OF A FACTORY.
- **QUESTION 1** : WILL ABC LTD JAIPUR HAVE TO TAKE REGISTRATION IN KARNATAKA?



CASE STUDY 2 : REGISTRATION

LOCATION OF SUPPLIER IS BASED ON FOLLOWING

- **NORMALLY PLACE WHERE SUPPLIER IS REGISTERED**
- **UNLESS THERE IS FIXED ESTABLISHMENT IN KARNATAKA FOR EXECUTION OF CONTRACT.**
- **FIXED ESTABLISHMENT = SUFFICIENT DEGREE OF PERMANENCE.**
- **NOT FIXED ESTABLISHMENT IF CONTROL AND MANAGEMENT FROM JAIPUR.**



CASE STUDY 2 :

- **QUESTION 2** : WHAT ABOUT PURCHASES OF STEEL AND CEMENT FROM KARNATAKA FOR CONSTRUCTION OF PLANT AT KARNATAKA? **CGST/SGST OR IGST?**
- SUPPLIER IN KARNATAKA WILL HAVE TO BILL TO JAIPUR AND SHIP TO KARNATAKA SITE.
- **SECTION 10(1)(b) of IGST ACT** : 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;
- **SUPPLIER IN KARNATAKA, THOUGH DELIVERY IS AT KARNATAKA. THE DELIVERY IS AT THE DIRECTIONS OF PERSON SITUATED IN JAIPUR. HENCE TRANSACTION WILL BE REGARDED AS INTER STATE.**



CASE STUDY 3 : INTERMEDIARY SERVICES

- ABC LTD IS LOCATED IN DELHI
- THEIR KOREAN SUPPLIER LG LTD SAYS THAT THEY WANT TO PROMOTE THEIR PRODUCT IN DELHI.
- LG LTD KOREA HAS ENGAGED ABC LTD TO PROMOTE THEIR GOODS IN DELHI.
- ABC LTD WILL IDENTIFY THE CUSTOMER
- LG KOREA WILL RAISE INVOICE TO CUSTOMER DIRECTLY
- ABC LTD WILL KEEP 10% COMMISSION ON EACH INVOICE RAISED TO CUSTOMERS IDENTIFIED BY THEM.
 - **QUESTION : WILL INVOICE RAISED FOR COMMISSION BY ABC LTD TO LG KOREA BE AN EXPORT OF SERVICE?**



CASE STUDY 3 : INTERMEDIARY SERVICES

PROVISION : INTERMEDIARY IS A PERSON WHO IS AGENT OR BROKER AND IS ARRANGING OR FACILITATING SUPPLY OF GOODS BETWEEN TWO PERSONS. THIS MEANS ABC LTD IS AN INTERMEDIARY.

CONDITIONS FOR EXPORT :

- SUPPLIER MUST BE LOCATED IN INDIA
- RECEPIENT MUST BE LOCATED OUTSIDE INDIA
- MONEY SHOULD BE RECEIVED IN CONVERTIBLE FOREIGN EXCHANGE
- THEY SHOULD NOT BE MERELY ESTABLISHMENTS OF DISTINCT PERSON
- PLACE OF SUPPLY SHOULD BE OUTSIDE INDIA



CASE STUDY 3 : INTERMEDIARY SERVICES

SECTION 13(8)(b) r.w.s. SECTION 8(1) OF IGST ACT :

- **FOR INTERMEDIARY SERVICES PLACE OF SUPPLY WILL BE LOCATION OF SUPPLIER.**
- **THUS, PLACE OF SUPPLY = DELHI,**
- **LOCATION OF SUPPLIER = DELHI.**
- **HENCE NOT EXPORT.**
- **FOREX INTO INDIA. STILL NOT EXPORT.**



CASE STUDY 3 : INTERMEDIARY SERVICES

- **QUESTION 2 : MARUTI LTD, DELHI HAS ENGAGED XYZ LTD KOREA TO IDENTIFY CUSTOMER BASE IN KOREA. THIS IS INTERMEDIARY SERVICE. WILL MARUTI LTD HAVE TO DEPOSIT GST ON RCM ON SERVICES PROVIDED BY XYZ LTD KOREA?**
- **ANSWER : NO RCM.**
- **CONDITION FOR IMPORT :**
- **LOCATION OF SUPPLIER MUST BE OUTSIDE INDIA**
- **LOCATION OF RECEPIENT MUST BE IN INDIA**
- **PLACE OF SUPPLY MUST BE INDIA**
- **SECTION 13(8)(b) : PLACE OF SUPPLY IN THIS CASE IS KOREA. HENCE, THIS IS NOT IMPORT OF SERVICE. HENCE NO RCM APPLICABLE.**
- **FOREX OUTFLOW. STILL NOT IMPORT. STILL NO RCM.**



CASE STUDY 4 : SALES OUTSIDE INDIA

- **A LTD OF INDIA PLACES ORDER ON CHANG LTD OF CHINA TO DELIVER GOODS TO APPLE INC IN USA.**

QUESTION : WHAT IS PLACE OF SUPPLY OF EACH OF THE TRANSACTIONS?

- **1. CHANG LTD CHINA TO A LTD INDIA – IS IT IMPORT?**
- **2. A LTD INDIA TO APPLE INC USA – IS IT EXPORT?**



CASE STUDY 4 : SALES OUTSIDE INDIA

- **SECTION 7(5)(a)** : Supply of goods or services or both is inter-state in nature, when the supplier is located in India and the place of supply is outside India.
- **AS PER SCHEDULE III CLAUSE 7 : W.E.F. 01-02-2019**
- Supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India. – NOT A SUPPLY
- Upto 01-02-2019 – IGST is leviable. It is an EXPORT.
- From 01-02-2019 – IT IS NOT A SUPPLY.
- **THIS TRANSACTION IS NEITHER SUPPLY OF GOODS NOR SUPPLY OF SERVICES.**



CASE STUDY 4 : SALES OUTSIDE INDIA

- **ADVANCE RULING :**
- **SYNTHITE INDUSTRIES LTD**
- **IGST NOT LIABLE ON OUT AND OUT TRANSACTIONS.**



CASE STUDY 5 : CONFERENCE RELATED SERVICE

ABC LTD MUMBAI ORGANISES CONFERENCE IN GOA. BOOKED CONFERENCE HALL AT ITC GOA. THEY AVAILED FOLLOWING SERVICES :

- A. LODGING – BOARDING OF PARTICIPANTS**
- B. CATERING SERVICES**
- C. LAPTOP, SOUND, PHOTOGRAPHY ETC**
- D. SUPPLY OF SERVICE BY WAY OF ADMISSION TO EDUCATIONAL EVENT**
- E. PICKUP & DROP FACILITY**
 - WHAT IS POS IF ONE LUMP SUM CONSIDERATION IS CHARGED BY ITC GOA?**



CASE STUDY 5 : CONFERENCE RELATED SERVICE

- **WILL ANSWER CHANGE IF SEPARATE CONSIDERATION IS CHARGED FOR EACH SUPPLY?**
- **WILL ANSWER CHANGE IF ABOVE SERVICES ARE TAKEN FROM XYZ LTD AN EVENT MANAGER LOCATED IN GOA?**
- **SECTION**
- **12(3) : SUPPLY DIRECTLY IN RELATION TO IMMOVABLE PROPERTY**
- **12(4) : SUPPLY OF RESTAURANT & CATERING SERVICES**
- **12(6) : SUPPLY OF SERVICE BY WAY OF ADMISSION TO EVENT**
- **12(7) : SUPPLY OF SERVICE BY WAY OF ORGANISING AN EVENT**



CASE STUDY 6 : BILL TO SHIP TO TRANSCATIONS

■ **FACTS :**

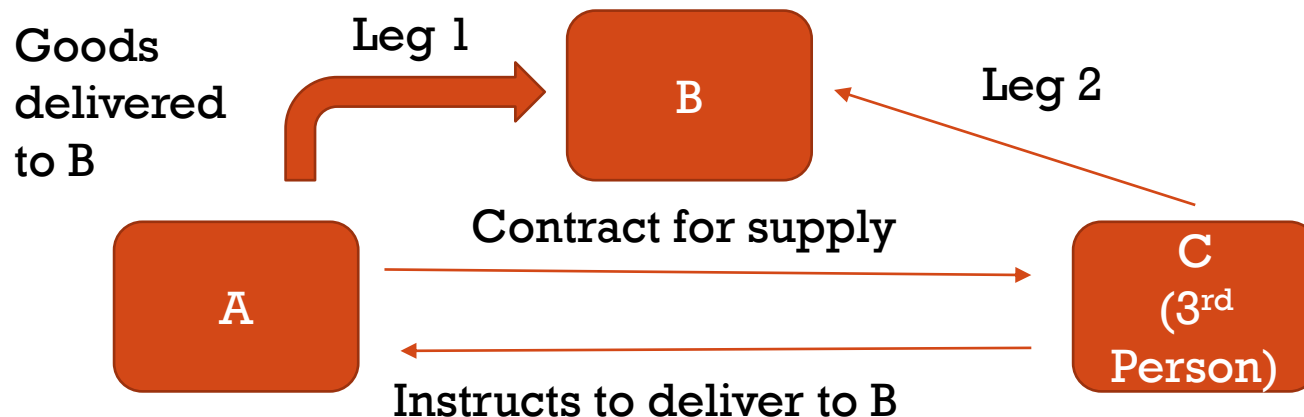
- **A and C have a contract for Supply**
- **C authorizes B to collect goods from A**
- **C instructs A to deliver goods to B**

Leg 1 : Section 10(1)(b)

Leg 2 : Section 10(1)(c)

Leg 1 : Place of supply by A to C will be the registered place of business of C

Leg 2 : Place of Supply by C to B will be location at which goods are delivered to B



CASE STUDY 6 : BILL TO SHIP TO TRANSCATIONS

- LEG 1:** Place of Supply between supplier (A), Third Party (C) and Recipient (B) – Section 10(1)(b)

Location of Supplier (A)	Location of Third Party (C)	Place of Delivery of Goods to Recipient (B)	Place of Supply between A & C	Nature of Tax payable by supplier
Bangalore	Chennai	Hyderabad	Chennai	IGST @ Bangalore
Bangalore	Chennai	Bangalore	Chennai	IGST @ Bangalore
Bangalore	Chennai	Chennai	Chennai	IGST @ Bangalore
Bangalore	Bangalore	Hyderabad	Bangalore	CGST + Karnataka SGST

CASE STUDY 6 : BILL TO SHIP TO TRANSCATIONS

- **LEG 2:** Place of Supply between Recipient (B) and Third Party (C) – Section 10(1)(c)

Location of Supplier (A)	Location of Third Party (C)	Place of Delivery of Goods to Recipient (B)	Place of Supply between C & B	Nature of Tax payable by supplier
Bangalore	Chennai	Hyderabad	Hyderabad	IGST @ Chennai
Bangalore	Chennai	Bangalore	Bangalore	IGST @ Chennai
Bangalore	Chennai	Chennai	Chennai	CGST + Tamil Nadu SGST
Bangalore	Bangalore	Hyderabad	Hyderabad	IGST @ Bangalore

CASE STUDY 7 : IMMOVABLE PROPERTY SERVICE

- **ABC LTD IN DELHI.**
- **PURCHASE LAND IN MUMBAI**
- **WANT TO DISPOSE OFF LAND IN MUMBAI**
- **THEY CONTACT ABC CA FIRM IN MUMBAI FOR TAXATION ADVISE**
- **QUESTION : WHAT IS PLACE OF SUPPLY?**



CASE STUDY 8 : IMMOVABLE PROPERTY SERVICES

- **LANDLORD IN DELHI**
- **HAS 4 IMMOVABLE PROPERTIES IN 4 DIFFERENT STATE – MH, RAJASTHAN, MP & KARNATAKA**
- **QUESTION : IS REGISTRATION REQUIRED IN 4 DIFFERENT STATES?**
- **TENANT IN THE RESPECTIVE STATES.**
- **QUESTION : IGST OR C/SGST?**



CASE STUDY 9 : CA SERVICES

- **CLIENT FROM MAHARASHTRA REGISTERED**
- **CA FROM DELHI**
- **CASE 1 : ONLINE ADVICE**
- **CASE 2 : COMES TO DELHI OFFICE FOR ADVICE**
- **QUESTION : WHAT IS PLACE OF SUPPLY?**



CASE STUDY 10 : RCM ON RESIDENTIAL RENTING

- **FROM 18TH JULY 2022 – CHANGES IN RENTING OF RESIDENTIAL PROPERTY**
- **LANDLORD IN DELHI HAS A RESIDENTIAL PROPERTIES IN DELHI AND HAS BEEN GIVEN ON RENT FOR COMMERCIAL PURPOSES TO PERSON REGISTERED IN MAHARASHTRA.**
- **IS RCM APPLICABLE?**
- **IS RCM – IGST PAYABLE OR C/SGST PAYABLE?**
- **HOW TO PAY DELHI SGST FROM MAHARASHTRA REGISTRATION?**



CASE STUDY 10 : RCM ON RESIDENTIAL RENTING

- **2 OPTIONS :**

- **OPTION A : TAKE REGISTRATION IN DELHI**

TAKE ISD REGISTRATION IN DELHI

TRANSFER ITC TO MAHARASHTRA

- **OPTION B : DON'T TAKE ANY REGISTRATION**

IN DELHI

PAY IGST FROM MAHARASHTRA

GSTIN WITH PLACE OF SUPPLY AS DELHI

IS ITC AVAILABLE?



CASE STUDY 11 : PLACE OF SUPPLY IN CASE OF RCM ON FREIGHT

- **Section 12(8) – The place of supply of services by way of transportation of goods to :**
 - **(a) a registered person, shall be location of such person**
 - **(b) a person other than a registered person, shall be location at which such goods are handed over for their transportation.**



CASE STUDY 11 : PLACE OF SUPPLY IN CASE OF RCM ON FREIGHT

- **Example 1 :**
- **GTA Registered in Delhi**
- **Customer Registered in Delhi**
- **Goods transported to Haryana**
- **What is POS?**



CASE STUDY 11 : PLACE OF SUPPLY IN CASE OF RCM ON FREIGHT

- **Example 2 :**
- **GTA Registered in Delhi**
- **Customer Un-Registered**
- **Goods handed over in Haryana for delivery at Delhi.**
- **What is POS?**



CASE STUDY 11 : PLACE OF SUPPLY IN CASE OF RCM ON FREIGHT

- **Example 3 :**
- **GTA Un-Registered in Delhi**
- **Customer Registered in Delhi**
- **Situation 1 : Goods handed over Haryana for delivery at Delhi.**
- **Situation 2 : Goods handed over in Delhi for delivery at Haryana.**
- **What is POS?**



CASE STUDY 11 : PLACE OF SUPPLY IN CASE OF RCM ON FREIGHT

- **Example 4 :**
- **GTA Registered in Delhi**
- **Customer Registered in Maharashtra**
- **Situation 1 : Goods move from Delhi to Delhi**
- **Situation 2 : Goods move from Delhi to Chennai**
- **What is POS?**



CASE STUDY 11 : PLACE OF SUPPLY IN CASE OF RCM ON FREIGHT

- **Example 5 :**
- **GTA Un-Registered in Delhi**
- **Customer Un-Registered in Maharashtra**
- **Goods move from MH to MH**
- **What is POS?**



IMPORTANT JUDGEMENTS & CASE LAWS

- **Gogte Infrastructure Development Corporation Ltd (AAR Karnataka) : Accommodation and restaurant services provided by applicant within premises of hotel, to employees and guests of SEZ Units cannot be treated as supply of goods and or services to SEZ unit, as applicant was located outside SEZ.**
- **Thus, services will be Intra State, and taxable accordingly**



IMPORTANT JUDGEMENTS & CASE LAWS

- **INR Bearings (AAR Maharashtra) : Applicant purchases goods from A in Germany. Goods remain in Germany. Applicant invoices the goods to customer B in India.**
- **Sale of Goods, which are located outside India, would not be liable to tax in India.**



IMPORTANT JUDGEMENTS & CASE LAWS

- **K M Trans Logistics Pvt. Ltd. (AAR Rajasthan) :**
Whether vacant land leased for parking facilities at various cities, requires registration in various states when billing, control, registered office, head office only at Jaipur?
- **HELD :** Applicant is providing services from its registered place of business, i.e. Rajasthan. Location of Supplier is therefore Rajasthan. No GST Registration required in other States.



IMPORTANT JUDGEMENTS & CASE LAWS

■ Konkan Railway Corporation Ltd. (AAR Orissa) (20-09-2022) :

■ Facts :

- 1. The applicant is engaged in providing Works Contract Service to Zonal Railways and other agencies in Maharashtra.**
- 2. The applicant received contract for construction of Major Bridges, ROB's, Site facilities and other allied works of M/s. East Coast Railway, Orissa.**
- 3. The applicant sought advance ruling as to whether it is required to be registered in the State of Orissa, for rendering works contacts services in Orissa.**



IMPORTANT JUDGEMENTS, AMENDMENTS & CASE LAWS

- **Konkan Railway Corporation Ltd. (AAR Orissa) (20-09-2022) :**

- **Judgement:**

- 1. GST Registration is required 'in' the State 'from which' taxable supplies are made. Therefore, for the purposes of obtaining registration, it is important to identify the 'origin' of supply even though GST is a 'destination' based tax.**
- 2. In case of 'works contract' service which is immovable in nature, place of supply is where the immovable property is located.**
- 3. Place of supply provides the 'destination' which is not relevant for registration, it is the location of Supplier which is relevant for registration.**



IMPORTANT JUDGEMENTS, AMENDMENTS & CASE LAWS

- 4. In the instant case, the location of supplier seems to be at the project site in Orissa. The nature and volume of supply is such that it is not feasible to get it supplied from the State of Maharashtra. Thus, an establishment is definitely required in the state of Orissa, where work is carried out.**
- 5. Accordingly, it was held that applicant is required to be registered in Orissa.**



ISSUES IN VALUE OF SUPPLY UNDER GST



WHY VALUATION?

- **Business Dynamics require companies to adopt various models of transactions.**
- **The nature and manner of executing such transactions is decided by them considering many business factors.**
- **Eg : A company launching a new product may launch it at a lesser price to penetrate the market.**
- **In such cases the bigger question that can arise is valuation of such supplies.**
- **The specific inclusions (such as incidental expenses, interest etc.) are merely break up of price payable for a supply**
- **This does not mean that those inclusions alone can be part of value of a supply.**



WHY VALUATION?

- **Considering, the possibility of ‘non-monetary’ considerations various Valuation Rules were framed.**
- **As per Section 15(1), ‘Transaction Value’ is understood as the ‘price actually paid or payable’ for a supply when such price is the SOLE CONSIDERATION.**
- **The phrase ‘sole consideration’ has been interpreted in various judgements also where it has been observed that the usage of the above phrase is indicative of the fact that the price ascertained for a good should not be influenced by any factors / other forms of consideration.**
- **If the said price is influenced in any manner, it cannot be said that such price is the ‘SOLE CONSIDERATION.’**



ISSUES :

A. BUY SHERWANI AND GET SHOES FREE

SHERWANI – 5%

SHOES – 18%

DEPARTMENT WILL SAY – IT IS MIXED SUPPLY – TAXABLE AT 18%

ARGUMENT : SHOES ARE MADE OF COTTON – TAXABLE AT 5%

B. SINGAPORE TRIP FREE IF YOU BUY 10,000 COMPUTERS IN A YEAR

IF YOU DON'T GO TO SINGAPORE – CREDIT NOTE OF RS. 1,00,000/-

OR YOU CAN BUY 2 COMPUTER WORTH FOR FREE

HOW WILL THIS SUPPLY BE VALUED?



ISSUES :

C. Audit Fees to Tata – Rs. 1,00,000 – free transport and food
Audit Fees to Godrej – Rs. 1,25,000 – no transport no food.

Is there any issue?

D. Room No. 105 – Rs. 4,000 – books for 100 nights

Room No. 106 – Rs. 7,000 – books directly at hotel

Room No. 101 – Rs. 12,000 – instant last minute booking

E. Company 'A' issues a single invoice for sale of three items to Company 'C' -
50,000 @ 5% GST, ` 60,000 @ 12% & ` 40,000 @ 18%. These items are
independent and not related to each other.

Company 'A' levied freight charges of ` 25,000 in the same invoice against all
these items? What shall be the GST Rate on freight charges, 5% or 12% or 18%?



ISSUES :

- F. Valuation of Personal Guarantees given by Directors (without any consideration) on loans sanctioned to the Company**
Department adopting 3% of the total loan amount as value of Guarantee Services on the basis of guarantee commission charged by banks.
- Open Market Value not available.
- Like Kind and Quality – No similarity to the services provided by Banks. None of the circumstances of the Banks and that of the director of the Company are similar as Banks exploit guarantees as their professional ventures while the directors are just doing it in their absolute mandate.



CIRCULAR NO. 92/11/2019 :

○ **BUY ONE GET ONE FREE OFFER :**

- It is not an individual supply of free goods, but a case of two or more individual supplies where a single price is being charged for the entire supply.
- Taxability of such supply will be dependent upon as to whether the supply is a composite supply or a mixed supply and the rate of tax shall be as per Section 8 of the CGST Act.

○ **DISCOUNTS INCLUDING 'BUY MORE, SAVE MORE' OFFERS:**

- Example : Get 10% discount for purchases above Rs. 5,000/-
Get 20% discount for purchases above Rs. 10,000/-
- Such discounts and post supply/ volume discounts to be excluded to determine value of supply.



CIRCULAR NO. 92/11/2019 :

○ **SECONDARY DISCOUNTS:**

- Example : A supplies 10,000 packets of biscuits to B at Rs. 10 per packet.

Afterwards, A revalues it at Rs. 9 per packet.

A issues credit note to B for Rs. 1 per packet.

- Such secondary discounts, which are not known at the time of supply shall not be excluded while determining value of supply.
- Financial / Commercial credit notes can be issued by supplier in such cases.
- In such case, no impact on ITC for recipient.



CIRCULAR NO. 102/21/2019 :

- **APPLICABILITY OF GST ON ADDITIONAL / PENAL INTEREST:**
- **CASE 1 : X SELLS MOBILE TO Y FOR RS. 40,000/-**
 - X GIVES Y OPTION TO PAY RS. 44,000/- IN 4 INSTALLMENT**
 - IF DELAY IN PAYMENT BEYOND REPAYMENT SCHEDULE –**
 - PENAL INTEREST OF RS. 500 PER MONTH TO APPLY**
- ❖ **GST ON RS. 44,000/- AND GST APPLICABLE ON PENAL INTEREST AT RATE APPLICABLE TO ORIGINAL SUPPLY**
- **CASE 2 : X SELLS MOBILE TO Y FOR RS. 40,000/-**
 - Y HAS OPTION TO AVAIL LOAN AT 2.5% P.M. FROM ABC LTD**
 - TIME FOR REPAYMENT IS 4 MONTHS.**
 - PENAL INTEREST OF 1.25% PER MONTH FOR ANY DELAY**
- ❖ **NO GST ON INTEREST AND PENAL INTEREST ON TRANSACTION BETWEEN Y AND ABC LTD.**
GST AT APPLICABLE RATES ON RS. 40,000/-



CIRCULAR NO. 47/21/2018 :

- Issue : Whether moulds and dies owned by Original Equipment Manufacturers (OEM) that are sent free of cost (FOC) to a component manufacturer is leviable to tax and whether OEMs are required to reverse input tax credit in this case?

Clarification :

- Moulds and dies owned by the original equipment manufacturer (OEM) which are provided to a component manufacturer on FOC basis does not constitute a supply as there is no consideration involved.
- Further, since the moulds and dies are provided on FOC basis by the OEM to the component manufacturer in the course or furtherance of his business, there is no requirement for reversal of input tax credit availed on such moulds and dies by the OEM.
- It is further clarified that while calculating the value of the supply made by the component manufacturer, the value of moulds and dies provided by the OEM to the component manufacturer on FOC basis shall not be added to the value of such supply because the cost of moulds/dies was not to be incurred by the component manufacturer and thus, does not merit inclusion in the value of supply in terms of section 15(2)(b).
- However, if the contract between OEM and component manufacturer was for supply of components made by using the moulds/dies belonging to the component manufacturer, but the same have been supplied by the OEM to the component manufacturer on FOC basis, the amortised cost of such moulds/dies shall be added to the value of the components.
- In such cases, the OEM will be required to reverse the credit availed on such moulds/ dies, as the same will not be considered to be provided by OEM to the component manufacturer in the course or furtherance of the former's business.
- **Lear Automotive India Pvt Ltd (2019) (AAR Maharashtra) and Nash Industries Pvt. Ltd. (AAAR Karnataka) – Cost of Tools / Amortized Value of Tools received free of charge from customer shall not be includible in the value of goods manufacture and supplied by the applicant to cutomer.**



CIRCULAR NO. 47/21/2018 :

- Issue : How is servicing of cars involving both supply of goods (spare parts) and services (labour), where the value of goods and services are shown separately, to be treated under GST?

Clarification :

- The taxability of supply would have to be determined on a case to case basis looking at the facts and circumstances of each case.
- Where a supply involves supply of both goods and services and the value of such goods and services supplied are shown separately, the goods and services would be liable to tax at the rates as applicable to such goods and services separately.
- What about AMC Charges? How to separate into Goods & Services?



IMPORTANT CASE LAWS ON VALUE OF SUPPLY:

Ultratech Cement Ltd (AAR Maharashtra)

- **Applicant had entered into an agreement for supply of goods.**
 - **Agreement provides for various discounts to the Dealers at the rates to be decided by applicant from time to time. It also provides for various quantity, cash and other discounts pre decided in the agreement.**
 - **The Dealers sell goods at prices lower than the purchase price**
 - **The Dealers are compensated later by applicant in form of “rate difference” or “trade discounts”.**
 - **Section 15(3)(b) – discount is to be established in terms of agreement entered into at or before time of original supply.**
- HELD : As regards, cash discount, price equalisation, a shoppe discount, quantity discount and annual discount as mentioned in the GST annexure (supporting documents comprising of type and quantum of discounts offered by the applicant to ADs) are complying with the requirements of the CGST Act as the same are specifically mentioned in the agreement □ With respect to special discounts and rate difference, there are no pre-fixed criteria, basis or rationale for arriving at the quantum of these discounts mentioned in either the GST annexure or the agreements Thus it was held that in the event of lack of any rationale or basis, the rate difference or special discount offered post supply does not comply with the requirements of Section 15(3)(b) of the CGST Act and accordingly the same cannot be considered for the purpose of arriving at the transaction value.



IMPORTANT CASE LAWS ON VALUE OF SUPPLY:

Aquarelle India Pvt. Ltd. (AAR Karnataka)

- **Applicant had taken premises on lease.**
 - **Applicant wishes to vacate the premises and intends to hand over premises to landlord along with various fixtures owned by them as fixtures cant be dismantled.**
 - **Fixtures capitalized in books of accounts of Applicant and no GST ITC Taken.**
 - **Whether, disposing off assets fastened to building on delivering possession to lessor, on which no consideration is received will fall under supply and if yes, what will be value of such supply?**
- HELD : Yes, the same is supply and the value would be determined as follows :
 - (a) Open Market Value of such Supply
 - (b) Value of supply of like kind and quality
 - (c) 110% of the book value of such goods in the applicant's books.



IMPORTANT CASE LAWS ON VALUE OF SUPPLY:

E Square Leisure Pvt. Ltd. (AAR Maharashtra)

- **Applicant is engaged in the business of renting.**
 - **Applicant collects expenses of electricity, water charges etc. from the lessee at actuals apart from rent for immovable property.**
 - **Whether, GST is to be levied on reimbursement of expenses from the lessee by the lessor at actuals.**
- HELD : Yes, Renting of immovable property would be the main supply and provision of other utilities such as electricity, and water supply, fuel etc. would be in the nature of ancillary supply. The utility charges reimbursed by the Applicant from lessee forms part of composite supply. Thus, GST is payable at a rate as applicable to the principal supply



IMPORTANT CASE LAWS ON VALUE OF SUPPLY:

Gujarat Narmada Valley Fertilizers & Chemicals Ltd (AAR Gujarat)

- **Applicant lessor was collecting electricity charges from the lessee as per actual usage of power ascertained from the sub meter installed.**
 - **The same was then paid to the electricity company.**
 - **Whether, GST is to be levied on reimbursement of expenses from the lessee by the lessor at actuals.**
- HELD : No, the electricity charges were not covered under the provisions of section 15(1)(c) and would not be includible in the value of supply.



IMPORTANT CASE LAWS ON VALUE OF SUPPLY:

Bhadreshkumar Ramchandra Dave (AAR Gujarat)

- **Applicant intends to act as pure agent of company XYZ**
 - **Applicant will make payment for labour services to 3rd parties.**
 - **Contract between Company XYZ and 3rd Parties.**
 - **Payment made by Applicant is separately indicated in the invoices issued.**
 - **Exact amount paid to 3rd parties is only recovered by applicant.**
- HELD : Applicant cannot be categorized as a “pure agent” as such he is engaged in the supply of labour services. Therefore to pay GST @ 18% on the whole amount.



IMPORTANT CASE LAWS ON VALUE OF SUPPLY:

Godawari Power & Ispat Ltd vs Commr. Of C. Ex. Raipur – Supreme Court

- **GPII provides services of crushing operations on iron ore lumps received from customers.**
- **A monetary consideration i.e. crushing charges is agreed for such services.**
- **Issue : Inclusion of Value of Iron Ore Fines emerged from crushing operations (within the agreed percent of loss generated) and retained by GIPL.**
- **DISCUSSION :**
 - **Emergence of Iron Ore Fines having some value, is not determinable at the time of fixing of crushing charges and entering into contract.**
 - **Similar crushing charges were agreed for in other contacts where there was no emergence of iron ore fines.**



IMPORTANT CASE LAWS ON VALUE OF SUPPLY:

Godawari Power & Ispat Ltd vs Commr. Of C. Ex. Raipur – Supreme Court

- **HELD :**
- **CRUSHING CHARGES ARE NOT INFLUENCED BY THE POSSIBLE EMERGENCE OF IRON ORE FINES AND THEIR ADDITIONAL VALUE.**
- **THEREFORE VALUE OF IRON ORE FINES IS NOT A ‘NON-MONETARY’ CONSIDERATION TOWARDS CRUSHING SERVICES.**



IMPORTANT CASE LAWS ON VALUE OF SUPPLY:

Kanahiya Realty Private Limited (AAR West Bengal)

- Applicant was supplying goods such as gold coins, refrigerator etc (i.e. promotional items) at nominal price to retailers against purchase of specified units of hosiery goods such as vests and briefs.
- Whether the supply of various promotional goods to retailers at nominal price against purchase of specified units of hosiery goods would qualify as individual supplies or mixed supplies?
- Whether credit on ITC on the items being sold at nominal prices would be available to the applicant?
- **HELD :**
- Since, applicant first sold hosiery goods on a separate invoice and thereafter eligible customers were supplied promotional items under a separate invoice, therefore not 'mixed supply'. Also not 'composite supply' as they are not naturally bundled.
- Since, nominal value is present, these are not free supplies or gifts. Hence ITC available.



IMPORTANT CASE LAWS ON VALUE OF SUPPLY:

Kanahiya Realty Private Limited (AAR West Bengal)

- **Captioned Ruling can be differentiated from**
- **M/s. Moksh Agarbatti Co. – AAR Gujarat**
- **M/s. Bioatadt India Ltd – AAR Maharashtra**

Where incentives / promotional goods were given free of cost.

Thus, AAR should not be followed blanketly as the valuation aspect of promotional materials would be prone to dispute by department.



IMPORTANT CASE LAWS ON VALUE OF SUPPLY:

Specsmakers Opticians Pvt. Ltd. (AAAR Tamil Nadu)

- **Goods supplies to distinct person (i.e. branch outside the state).**
- **Branch was eligible for ITC on the said goods.**
- **Held : Value Declared by Specsmakers in invoice raised to branch would be deemed to be open market value for such transaction. (Second Proviso to Rule 28)**

GKB Lens Pvt. Ltd. (AAR West Bengal)

- **Goods transferred from HO to Branches**
- **Branch was eligible for ITC on the said goods.**
- **Held : Valuation could be done at either of : 90% of MRP as required by 1st Proviso to Rule 28 or as per 2nd Proviso to Rule 28 at price as declared in the invoice.**



IMPORTANT CASE LAWS ON VALUE OF SUPPLY:

Navodit Agrawal (AAR Chattisgarh) (2019)

- **Applicant is a transporter, and is engaged in transportation of cement for Mr. A**
- **A provides Diesel free of cost to vehicles used by applicant for transportation.**
- **Whether, GST is to be levied on total freight amount inclusive of cost of diesel provided by Mr. A**
- **HELD : Yes.**

Kerala Forest Development Corporation Ltd (AAR Kerala) (2019)

- **Supply involves both goods and services. Value of goods and services are shown separately in the invoice.**
- **Whether, Goods and Services would be liable to tax at rates as applicable to such goods and services separately.**
- **HELD : Yes.**



IMPORTANT CASE LAWS ON VALUE OF SUPPLY:

Vista Marine & Hydraulics (AAR Kerala) (2019)

- **Agreement between applicant and customer was a non – comprehensive repair rate contract.**
- **Separate rates quoted for spare parts / accessories and repair service.**
- **HELD : spare parts and repair services are not naturally bundled and are in fact separately identifiable supplies.**



IMPORTANT CASE LAWS ON VALUE OF SUPPLY:

Megha Agrotech Pvt. Ltd.. (AAR Karnataka)

Applicant supplies equipment to farmers.

The farmers are granted subsidy by Horticulture Department of Karnataka.

Whether subsidy to be “included” or “excluded” from transaction value?

HELD :

The amount of assistance received by the farmer from Government Department has no bearing on the price and hence not covered by Section 15(2)(e). There is no question of exclusion of subsidy from transaction value.



IMPORTANT CASE LAWS ON VALUE OF SUPPLY:

Indo Thai Securities Ltd (AAR Madhya Pradesh)

Applicant is a stock broker.

Interest / penalty collected from the customers by the stock broker because of delayed payment of brokerage AND delayed payment of cost of securities.

Whether interest / penalty includible in transaction value?

HELD :

The additional amount being charged for delay in payment by whatever name called should be includible in the value of supply by virtue of Section 15(2)(d).

However, the brokerage is the only consideration for the supply of stock broker services whereas the cost of securities is towards the amount incurred by the stock broker for purchase of securities is not a consideration for supply of stock broking services.

Thus, what is includible in the value of supply is only that portion of interest charged on the delayed payment of brokerage and not the interest on delayed payment of cost of securities.



IMPORTANT CASE LAWS ON VALUE OF SUPPLY:

K P Sugandh vs State of Chattisgarh (Chattisgarh High Court)

- **The petitioner was a manufacturer of Pan Masala and Tobacco Products.**
- **It dispatched goods to its customer and issued a tax invoice as well as an e-way bill generated and handed the same to the incharge of the conveyance.**
- **The vehicle was intercepted by the officials of the Department and asked for the details of the consignment.**
- **The driver at the time of interception produced before the authorities the relevant invoice bill and also produced the e-way bill.**
- **The authorities seized the vehicle and the goods on the grounds of there being discrepancies in the valuation of the goods and thereafter detained the vehicle and the goods.**
- **HELD :**
- **Undervaluation of goods in the invoice couldn't be a ground for the detention of goods and vehicles for a proceeding to be drawn under section 129. Therefore, the Court directed the authorities to release the goods belonging to the petitioners based on the invoice bill as well as the e-way bill..**



ISSUES IN TIME OF SUPPLY UNDER GST



TIME OF SUPPLY OF RCM SERVICES

Earliest of the following :

a. Date of payment as entered in the books of accounts of the recipient

OR

Date on which payment is debited to his bank account.

b. The date immediately following 60 days from the date of issue of invoice or any other document, by whatever name called, in lieu thereof by the supplier.



IMPORTANT CASE LAWS ON TIME OF SUPPLY:

Vaishnavi Splendour Home Owners Welfare Association (AAR Karnataka)

Applicant is a Home Owners Association in a residential complex.

Association collects member's annual contribution for maintenance of common areas in residential complex.

What is the time of supply for this collection of annual contribution?

HELD :

The Amount collected is a deposit and utilized by the society as and when required in case of exigencies.

Thus, since at the time of collection, it is not related to any particular service, it is not taxable at that time. However, at the time of actual utilization the same would be taxable with time of supply as per Section 13.



IMPORTANT CASE LAWS ON TIME OF SUPPLY:

Rashtriya Ispat Nigam Limited (AAR Andhra Pradesh)

What is the time of supply for Liquidated Damages & Other Penalties?

HELD :

Liquidated Damages and other penalties like 'milestone penalties' are determined and imposed upon the contractor after in depth study.

In terms of the agreement, the clauses reveal that levy of liquidated damages is not when the delay occurs but the liability of payment of those liquidated damages by the contractor is established and that would define the time of supply.



IMPORTANT CASE LAWS ON TIME OF SUPPLY:

Siemens Ltd (AAR West Bengal)

What is the time of supply for Liquidated Damages & Other Penalties?

HELD :

Liquidated Damages and other penalties like 'milestone penalties' are determined and imposed upon the contractor after in depth study.

In terms of the agreement, the clauses reveal that levy of liquidated damages is not when the delay occurs but the liability of payment of those liquidated damages by the contractor is established and that would define the time of supply.



IMPORTANT CASE LAWS ON TIME OF SUPPLY:

HP India Sales Pvt Ltd (AAR Maharashtra)

Goods delivered by applicant to customers through resellers.

Goods remain property of applicant and are passed on to customer only upon receiving payment and upon invoicing.

The supplies are made on continuous basis in accordance with terms and conditions of the contract entered.

Applicant is supposed to issue invoice on periodic basis i.e. 15th day from the end of calendar month with respect to supplies made in preceding month as per Section 31(4).

HELD :

Supply of goods in present case fulfills basic tenets of continuous supply.

Time of supply in the present case will be earliest of date of invoice or date of payment.



■ **THANK YOU**

