



SUPPLY, PLACE OF SUPPLY AND TIME OF SUPPLY UNDER GST REGIME

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ABSTRACT

GST is a destination based consumption tax. The notion of GST is one tax for India. The final date for implementing Goods and Services Tax (GST) is from 1st July, 2017. The introduction of GST in India will revolutionized the way people are doing Business both internally and externally. The concept of Supply lies in the heart of GST. In other words, Supply is the taxable event in GST. So if any transaction of goods or services falls within the ambit of supply, it will be taxable. Two broad limbs of supply are place of supply and time of supply. Place of supply will determine whether the supply is intrastate or interstate. If the supply happens to be intrastate, State Goods and Service tax (SGST) will be levied and in cases of interstate transaction, Integrated Goods and Service tax (IGST) will be levied. Time of Supply will dictate when the tax liability regarding GST arises and at what rate. The basic objective of this paper is to discuss in detail through illustrations the concept of Supply, Place of Supply and Time of Supply under GST Regime so that a reader may understand and appreciate the implications of these concepts.

Key words: GST, VAT, CST, Consideration, supply

I. Introduction

Supply is the taxable event in GST. So if any transaction of goods or services falls within the ambit of supply, it will be taxable. Two broad limbs of supply are place of supply and time of supply. Place of supply will determine whether the supply is intrastate or interstate. If the supply happens to be intrastate, State Goods and Service tax (SGST) will be levied and in cases of interstate transaction, Integrated Goods and Service tax (IGST) will be levied. Time of Supply will dictate when the tax liability regarding GST arises and at what rate.

II. Objectives of the study

- a) To study and elaborate the provisions relating to supply, place of supply and time of supply as included under the GST law.
- b) To study the related impact of above provisions on day to day business activities or transactions of taxable person under GST regime.

III. Literature Review

- a) Monika Sehrawat and Upasana Dhanda (2015) studied about concept, features, advantages and disadvantages of GST and implementation of GST challenges in India. As per the study, GST would be a simple, user friendly and will bring a transparent tax system in India. However the effective implementation of GST is a challenge for India and this can be achieved only through more analytical research on the subject matter.
- b) Akanksha Khurana and Aastha Sharma (2016) performed a study on introduction of the GST, objective, structure rate under GST and has examined the impact of GST on certain selected sectors. The study has concluded that the GST will provide relief to producers and consumers due to its unique feature of input tax credit. It has emphasized that introduction of GST will lead to increase in Government revenue and it will have positive impact on some sectors. However as per the Authors, the implementation of GST will need concentrated efforts of all stake holders.
- c) Girish Garg (2014) studied about impact of GST in Indian tax scenario. It has discussed about features, benefits, challenges and its impact. The study concluded that GST is the most logical steps towards the comprehensive indirect tax reform in our country. GST

will lead to improved tax collections and will Boost India's economic development. It will divide the tax burden and lower the tax rate in India.

- d) Shefali Dani (2014) conducted a study to analyze the impact of GST on Indian economy and also discussed how the GST may hamper Indian economy. This study concluded that undoubtedly GST will simplify the existing tax structure, however, there are many issues which requires consensus and then only GST should be implemented in India.
- e) Dr. R. Rupa (2017) through a light on concept of GST, its advantages and disadvantages and international scenario. This paper has nicely explained the model of GST with illustrations. It concluded that there are many challenges as far as states are concerned
- f) Hitesh K. Prajapati (2016) worked on concept, challenges and implementation issues of GST in India. It concluded that Government will face major challenges as far successful implementation of GST in India is concerned.
- g) Jaspreet Kaur (2016) studied the related impact of GST on the prices of different goods and services and on different sectors in Indian economy. This paper concluded that GST is a major change in India. Due to GST the prices of some commodities will fall while some will rise
- h) Azharuddin Mohammad Mussaiyib (2016) studied the structure, objectives of GST and its related impact in India on different industries. This paper concluded that GST will bring economic wellbeing but at the same time remove many of the complexities and will positively impact the Indian economy
- i) Lourdunathan F and Xavier P (2017) conducted a study to derive opinions of society on GST, challenges and prospects. This study concluded that GST will provide relief to producers and consumers, will lead to revenue gain of the Government and will reduce corruption and tax evasion.

IV. Supply as taxable event

Under Excise law, manufacture or production of excisable products in India was the taxable event. Under VAT law and CST, sales or purchase was the taken as the base for taxing transactions relating to goods. Service tax was levied on gross value of taxable services. Unlike sales, manufacture, service, import-export which were defined as taxable event in earlier Indirect Tax law, the Goods and Services law includes supply as taxable event. So, if any activity or

transaction of either goods or services or both fall under the ambit of supply, the person shall be liable to pay tax under the current tax regime of Goods and Services tax Act.

V. Meaning and scope of Supply

The term supply has been defined in a very broader way under GST. As per the definition the term supply includes sale, transfer, barter, exchange, licence, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business. Thus, now not only sales but also transfer, barter, exchange, rental lease or disposal has been brought under the umbrella of supply.

a) Agreement to sales as supply and treatment of advances received

Further agreement to sales or service is also supply. Therefore the liability to pay Goods and Services tax also arises in case of advance received against booking of orders. However, as far as availability of input tax credit is concerned, it will be available only when actual sales takes place. Thus, provision of tax on advances will increase the need for working capital requirement for business houses.

b) In the course or furtherance of business

To call any activity or transaction as supply, it is necessary that it is entered in the course or furtherance of business. Thus, occasional sales made by one person to another person not during the course of business are not supply as per reading of law. For example suppose Mr. X, one house hold, sells his old furniture to Mr. Y for Rs. 50,000. This is not a supply since it has not been made in the course or furtherance of business.

c) Consideration

Again consideration is also one of the important limbs in the definition of supply. It appears that if any activity or transaction is not for consideration, it is not supply. However, Goods and Services tax Act has inserted schedule-I where in activities or transactions have been specified for which no consideration is required for taxability under GST Law. The first activity is permanent transfer or disposal of business assets where input tax credit has been availed on such

assets. This clause has been inserted to ensure inflow of input tax credit already availed off on business assets.

d) Supply of goods or services between related persons needs no consideration

The second specified activity under schedule-I is supply of goods or services or both between related persons when made in the course or furtherance of business. Here mandatory condition of consideration has been removed. Thus, if a transaction is entered into between related persons, it will fall within the definition of supply irrespective of consideration. Probably the intent of law may be that the related parties may enter into transaction without consideration leading to loss of revenue to the Government.

e) Gift by employer to employee for no consideration

The third clause of schedule-I tells that any gift exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall be taxable even if this gift is for no consideration. So now due to insertion of this clause the cost of gifts by employer to employee will exceed. Thus, if an employer offers car to its employees as diwali gift, it will be deemed to be supply and hence taxable.

f) Supply of goods by a principle to his agent

Forth clause of schedule-I deals with supply of goods by a principal to his agent or vice-versa. This will ensure revenue to the Government but leading to blockage of funds of principles who can claim input tax credit only when the goods are actually sold by his agent.

g) Import of services by a taxable person from a related person

Finally, Import of services by a taxable person from a related person from outside India, in the course or furtherance of business irrespective of consideration is also supply. It should be noted that the term supply as per the main definition of supply also includes within its ambit Import of services for a consideration whether or not in the course or furtherance of business. Thus, by virtue of this clause import of services for personal use is also supply. However, the law is silent as far as the provision regarding import of goods for personal use is concerned

h) Extended scope and coverage of Supply

Schedule II has been incorporated to further extend the coverage of supply. It says that transfer of title in goods is supply of goods; whereas transfer of right to use the goods without transfer of title is supply of service. Even an agreement to transfer goods at some future period of time is also supply of goods. Further any treatment or process applied to another person's goods is a supply of services. Here probably the law intends to include Job work as supply of service. In case business goods are taken off for private use is also supply of goods. Further if the goods forming part of assets are sold not as going concern where the person ceases to be a taxable person is supply of goods.

Even building or civil structure under construction meant for sale to a buyer before receiving completion certificate is also supply. Thus, by virtue of this law any housing loan installment which is taken for under construction property is also supply and liable to GST. This clause again is going to increase problems for the builders regarding their fund requirement for under construction property. Finally supply of goods by any unincorporated institution to its members for consideration is also supply of goods liable to GST.

i) Activities or transactions which are not supply

There is exemption from GST for activities specified in schedule III or Activities or transactions undertaken by Central Govt., State Govt., or local Authorities except certain specified transactions.

As per schedule III any service provided by employee to his employer in normal courses of business is not supply. Further sale of land and sale of building has been kept out from GST liability. Finally activities relating to lottery, betting and gambling are also liable to GST. Thus now activities relating to lottery, betting and gambling will attract GST in addition to 30% tax rate under income tax law.

VI. Place of Supply for Goods and services

a) Place of supply for goods

Place of supply has been defined under chapter-V of IGST Act. Two broad parameters have been specified (a) Location of supplier and (b) Place of supply. If both occur in one state, it is

intrastate supply, else inter-state. If it is intra-state supply then CGST and SGST will be levied. However, if it is inter-state, IGST shall be levied. If the supply involves movement of goods, 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.

Thus, if goods are sent by Supplier of Uttar Pradesh via Delhi to Haryana, the place of supply shall be Haryana and not Delhi. However, if we suppose that a trader of Delhi asks the supplier of Uttar Pradesh to give delivery of goods in Haryana. In this case the place of supply shall be Delhi i.e. principal place of business of such third party and not Haryana since the goods have been delivered on the direction of third party.

Now if 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. Thus, if the goods are handed over by supplier of Uttar Pradesh from its warehouse in Delhi to the buyer of Haryana, the place of supply shall be Delhi and not Haryana.

Where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly. Further, if goods are imported into India, place of supply shall be location of importer. Thus, here it does not matter in which port the goods land. In case of export the place of supply shall be outside India. Here the law does not make it clear whether place of supply shall be location of exporter or place of delivery.

b) Place of Supply for Services.

The place of supply of services made to a registered person shall be the location of such person and if made to any person other than a registered person shall be the location of the recipient where the address on record exists otherwise place of supply shall be the location of the supplier of services.

The place of supply of services for immovable property shall be its location, whereas the place of supply of restaurant and catering services, personal grooming, fitness, beauty treatment, health service including cosmetic and plastic surgery shall be the location where the services are actually performed. Thus, if a plastic surgeon of Mumbai Hospital visits Hospital in Haryana for treating a patient belonging to Gujarat, the place of supply of service shall be Haryana where the surgery is actually performed.

In case of services relating to training and performance appraisal, place of supply shall be location of registered person. If the person is unregistered, the place of supply of service shall be the place where the services are actually performed.

Further, as far as the services relating to admission to some cultural or artistic events are concerned, the place of supply of service shall be the place where the event is actually held. However, as far as the services relating to organizing of some cultural or artistic events are concerned, the place of supply of service shall be the location of registered person. If the person is unregistered, the place of supply of service shall be the place where the event is actually held.

Services of transportation of goods mail or courier the place of supply of service shall be the location of registered person. If the person is unregistered, the place of supply of service shall be the location at which such goods are handed over for their transportation.

In case of supply of passenger transportation service also courier the place of supply of service shall be the location of registered person. If the person is unregistered, the place of supply of service shall be the location at which where the passenger embarks on the conveyance for a continuous journey.

In case of mobile connection and internet services provided on post-paid basis, the supply of service shall be the location of billing address of the recipient of services on the record of the supplier of services. In cases where mobile connection for telecommunication, internet service and direct to home television services are provided on pre-payment basis through a voucher or any other means be the address of the selling agent at the time of supply shall be the place of supply of service.

VII. The time of supply of goods and services

a) Time of supply for goods

The time of supply of goods shall be the date of issue of invoice by the supplier or last date on which invoice needs to be issued or date of receipt of payment, whichever is earlier. It should also be noted that the invoices should be issued on or before date of removal of goods. However, where goods do not involve movement, invoices should be issued on or before date of delivery of goods to the recipient.

In case of continuous supply of goods the invoice may be issued before or at the time each such statement is issued or, as the case may be, each such payment is received.

b) Time of Supply for Service

The time of supply for service has been defined based on the fact whether the invoice is issued within the period prescribed or not. If the invoice has been issued within the period prescribed, the time of supply for service shall be earlier of the date of issue of invoice by the supplier or the date of receipt of payment. However, if the invoice has not been issued within the period prescribed, the time of supply for service shall be earlier of the date of provision of service or the date of receipt of payment. Further, the time limit for issue of invoice in case of supply of service is within thirty days from the date of supply of service and in case of Bank or NBFCs, it should be issued within 45 days from the date of supply of service.

c) Time of supply, where there is a change in the rate of tax

Three main determining factors in this case are date of supply of goods and service, the date of issue of invoice and the date of receipt of payment. If any two out of the three happens to be before change in rate of tax, the old rate will apply. However, if any two out of the three happens to be after change in rate of tax, the new rate will apply

VIII. Findings of the study

- a) The term “supply” has been defined in a very broader way. Supply will now include transactions for consideration as well as for no consideration.
- b) To be called some activity as supply, it should normally be entered in the course or furtherance of business. However, GST law has also specified the cases where a transaction or activity may be termed as supply even if it is not entered in the course or furtherance of business.
- c) Now even agreement to sales is also supply and liable to GST
- d) Many activities or transactions have been exempted by bringing into schedule-III
- e) Except a few instances, the place of supply means location of person if he is registered. In case of unregistered persons, place of supply shall be where the goods or services are actually delivered.

- f) Now, the liability to pay GST will arise earlier of issue of invoice or receipt of payment.
- g) In case of goods, invoices should be issued on or before removal of goods however, in case of services, except in case of Banking or finance company, it should be issued within 30 days from the date of supply of service.

IX. Conclusions

Due to wide coverage of the term “supply” mostly all activities or transactions relating to goods and services will fall within the umbrella of GST liability. This will positively impact the Government’s revenue. However, there are certain instances where more clarifications are needed to the producers and consumers for better understandability of provisions. The implementation of GST will definitely ensure ease of doing business but the cost of doing business will also rise in GST regime since more working capital will be needed due to the gap between time of paying GST and time when facility of input tax credit will actually be available.

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