

## Registration at Place of Importation is no more a conundrum in GST Law



**CA DEEPALI MISHRA**

*Deepali Mishra & Associates*

### INTRODUCTION

Since GST is understood as a 'destination-based consumption tax', there is no provision that declares this fact. This missing declaration is more than adequately supplied by the principle being embodied in the provisions of 'place of supply'. The law makers have declared, in each case of supply, its destination of supply.

However, for the purpose of registration in GST, it is important to identify the 'origin' of supply as Section 22 of CGST Act, 2017, which is statutory provision for the registration under GST, mandates that every supplier is liable to be registered in the State from where he makes a taxable supply of goods or services or both if his taxable turnover in a financial year extends twenty lakh rupees. This article is drafted with a view to explain as whether the importers are mandatorily required to take registration at each place of importation and the legal backing behind the same.

### Provisions under GST

Section 22 of Central Goods and Services Tax 2017 deals with registration of every supplier effecting taxable supplies, subject to a threshold limit. Section 22 of CGST Act reads as under

*22(1) Every supplier shall be liable to be registered under this Act in the State or Union territory, other than special category States, from where he makes a taxable supply of goods or services or both, if his aggregate turnover in a financial year exceeds twenty lakh rupees*

From bare perusal of this section it can be implied that for the purpose of the registration it is important to determine the location of the supplier and his aggregate turnover in a financial year.

Keeping in mind that the supplier can either be the supplier of goods or supplier of services, it is pertinent to refer to the definitions of phrases 'location of supplier of goods', 'location of supplier of services', and 'aggregate turnover' used under section 22(1) of CGST Act 2017.

As what shall constitute 'location of supplier of services', and 'aggregate turnover' in GST has been clearly defined under section 2(71) and 2(6) of CGST Act 2017, respectively, the act is completely silent on location of supplier of goods.

However, it is imperative to note that section 2(85) of CGST Act defines "Place of Business" in GST.

Section 2(85) of CGST Act reads as under

**2(85)** "place of business" includes—

- (a) a place from where the business is ordinarily carried on, and includes a warehouse, a godown or any other place where a taxable person stores his goods, supplies or receives goods or services or both; or
- (b) a place where a taxable person maintains his books of account; or
- (c) a place where a taxable person is engaged in business through an agent, by whatever name called;

### **Reason behind the Dispute**

If one carefully reads the provision of Section 22 of CGST Act 2017, it states that *Every supplier shall be liable to be registered under the Act in the State **from which he makes a taxable supply of goods or services** or both. It is important to note that registration is required 'in' the State 'from which' taxable supplies are made.*

Let us understand the complete scenario with the simple example: -

**Example:** Importer located in Delhi imports goods at Mundra Port in Gujarat and decides to supply the goods from Gujarat itself (without bringing the goods to Delhi) to its vendor

Case 1: - Vendor to whom goods are supplied is located in Gujarat.

Case 2: - Vendor to whom goods are supplied is located in some other state.

Then, which place shall be considered for the importer to be the place from where he is making the taxable supplies?

**Query 1:** - Is the Gujarat port now be deemed to be his place from where he is making the taxable supplies and is liable for registration in the state of Gujarat? or

**Query 2:** - The location of the importer i.e. Delhi shall continue to be the place from where he is making the taxable supplies?

Our solutions to the above raised queries will not only solve the issues relating to the registration but also will clarify us the tax to be charged at the time of supply of these goods directly from the place of importation.

### **Issues involved**

- *Is it feasible for an importer who is importing various goods at different ports, to take registration at each place of import? and*
- *Also, as to what tax is to be charged in case the goods are sold directly from the place of importation?*

### **Intention to be sought from various Clarifications issued by CBIC**

As on date there has been no circular issued by CBIC clarifying the aforstated confusion. However, there had been instances where CBIC on perusal to the confusion raised by different industries sought as to what shall be deemed to be the location of supplier of goods.

Thus, although we cannot completely take inferences of these circulars on the issues raised in this article, still an idea could be drawn as what intention department holds when it comes to define the location of supplier of goods on certain situations.

**Circular No. 10/10/2017-GST dated 18<sup>th</sup> October 2017** deals with Clarification on issues wherein the goods are moved within the State or from the State of registration to another State for supply on approval basis. In this circular the department clarified that the person carrying the goods for such supply can carry the invoice book with him so that he can issue the invoice once the supply is fructified.

This indicates that even though the supplier who is located in Delhi has sent his goods on approval basis to Mumbai, the invoice shall be raised from his registered office in Delhi.

For instance the suppliers of jewellery who are registered in one State but may have to visit other States (other than their State of registration) and need to carry the goods (such as jewellery) along for approval, in such cases if jewellery, etc., is approved by the buyer, then the supplier would issue a tax invoice only at the time of supply. Until the supply is made, movement shall be done on delivery challan. For the purpose of issuance of tax invoice, he can carry the invoice book with him so that he can issue the invoice once the supply is fructified.

Similarly, **Circular No.38/12/2018- GST dated 26<sup>th</sup> March 2018** deals with Clarification on issues related to Job Work wherein the department clarified that whenever the principal supply goods directly from the job worker's place of business / premises to its end customer the supply will be regarded as having been made by the principal even though the Principal and Job worker are located in different states.

Thus, on the basis of these circulars we may consider the fact that though the provisions of section 22 of CGST Act 2017 mandates to take registration from the place where taxable

supplies takes place, the department from time to time clarified in the midst of confusion that the origin of supply shall be deemed from place where the supplier is actually located.

### **Place of Supply in case of Import of Goods**

Place of supply of goods where the goods are imported into or exported from India will be determined in accordance with Section 11 of the IGST Act 2017.

Import of goods is defined in Section 2(10) of the IGST Act. Section 2(10) of IGST reads as under

*2(10)"import of goods" with its grammatical variations and cognate expressions, means bringing goods into India from a place outside India;*

This definition, which is with reference to the movement of goods and not the location of the supplier or recipient, in this case, the place of supply will be: -

(a) In the case of import of goods, the location of the importer and

(b) In the case of export of goods, the location outside India where the goods are exported.

Inference may be drawn from Section 11 of IGST Act 2017, that although goods are imported at Gujarat (as per the aforstated example) the Place of supply for such goods shall be the location of the importer i.e. Delhi.

As the importer clears his goods from the port of import by paying IGST using GSTIN issued to it in Delhi, the place of supply shall be the location of the importer, i.e. Delhi and thus, the importer can clear the goods on the basis of bills/invoices issued by Delhi Office.

### **Decisions held by various Advance Rulings**

To cater the needs of applicant various advance rulings has held that there is no requirement of separate registration or multiple registration at the place of import and the applicants may continue to do the transactions from the place of their registered office which is importing such goods.

In ***Aarel Import Export (P.) Ltd [2019] 106 taxmann.com 292 (AAR - MAHARASHTRA)*** it has been held by the authority that the applicant company having its head office at Mumbai, wishes to import coal from Indonesia at Paradip Port in State of Odisha to sell the same directly from Paradip Port Warehouse (Ex-BOND) to customers in Odisha by raising bills from Mumbai office, then the applicant need not take separate registration in State of Odisha and further it can do transaction on Mumbai Head Office GSTIN.

Similar view has been taken by ***Gandhar Oil Refinery (India) Ltd [2019] 106 taxmann.com 291 (AAR - MAHARASHTRA)*** wherein it has been held that the applicant, who was engaged in trading activity of non-coking coal in various States and importing coal at various ports in India, was registered with GST department in all such places, it can do business from their

Head Office/Registered Office at Mumbai under GSTIN of Maharashtra and need not take separate registration in other States.

The case referred in both the aforstated Advance Rulings was *Sonkamal Enterprises (P.) Ltd., In re [2018] 100 taxmann.com 213 (AAR - MAH.)* where it was held that the applicant importer do not have any separate GST Registration in West Bengal and charged IGST from its Mumbai head office to its customers, procedure to raise invoice from Mumbai Head Office for imports received at Haldia Port, Kolkata is correct and for this transaction, no separate registration in State of West Bengal is required.

## **Conclusion**

On perusal of definition of **Place of Business** in accordance with CGST Act 2017, **Place of supply of imported goods** and the **pronouncement of various advance rulings**, it can be concluded that since the importer has no establishment or place of operation or any godown or GSTIN at the port of import, thus the place from where he ordinarily carries on his business shall be deemed to be the place from where he makes the taxable supplies and thus, there shall be no requirement to take separate registration in the State of import.

Accordingly, as per the cases cited in the Example of this article it can be concluded that in both the cases IGST shall be charged by the importer even if he sells his goods directly form Gujarat port to any other supplier and the importer having its office in Delhi, may raise his bills from his Delhi Office even though he directly supplies his goods from the port of import (without bringing back his goods to Delhi) to any other place.

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