

GST Alert **24/2017-18**Date **12.12.2017****Taxability of Inter-Branch movement of Conveyances and Goods**

Companies are required to move goods like tools, spares, machinery, equipment by loading them into various modes of conveyances like Trucks, trailers, buses or smaller vehicles between its registered branches either inter-state or in same state. In terms of section 25 (4) of the CGST Act these 2 registered branches of the same company are termed as a “Distinct Person”, hence both these registered branches are treated as separate legal entities under GST law.

Twin questions arose from this normal every day transaction, which were as under:

1. Whether Interstate movement of conveyances (on which these goods are loaded for transport) between one branch to another branch will also be treated as a Supply of Goods and therefore will they be taxable?
2. Whether the transfer of goods like tools, spares machineries (like JCB, cranes etc) from one branch to another branch will be treated as a Supply of Goods and therefore will they be taxable?

1. Taxability of Interstate movement of Conveyance between distinct persons

Reading section 7 and Schedule I of CGST Act it was felt that both these transactions were satisfying the definition of “Supply” and IGST was payable. Council in its meeting on 11th June, 2017 discussed first question above and decided to grant exemption to movement of conveyances between two registered branches of one company.

Based on the decision of the council, CBEC issued circular No. 1/1/2017-IGST dated 7.07.2017, following was clarified in it:

- a. Inter-state movement of various modes of conveyance, between 2 registered branches of one company will not be treated as supply and consequently IGST will not be payable on such supply.

- b. This exemption will apply to only goods which are classifiable as “Conveyances” and not otherwise. Conveyances shall include Trains, Buses, Trucks, Tankers Trailers, Vessels, Containers and so on.
- c. In other words, the act of sending (supplying) a truck (laden with say cement) from one registered branch to another will not be taxable.
- d. However, the value of goods being sent in that conveyance will be taxable. For eg. A company sends a crane by loading it on a trailer, then the supply of trailer will not be taxable but the supply of crane would be taxable and IGST thereon would be payable
- e. It must be noted that in case the conveyance is being sent to another branch with a specific or general intent of further supplying (selling, leasing etc) then the above stated exemption shall not apply

2. Taxability of Interstate movement of Goods between distinct persons

Second question with regards to taxability of goods being transported from one branch to another, was however left unanswered in the first circular and by design it was taxable and IGST was payable thereon.

Council its meeting held on 10th Nov, 2017, discussed this issue as well, based on this CBEC issued a circular no. 21/21/2017-GST dated 22.11.2017, In this circular they have clarified as under:

- a. Interstate movement of goods like rigs, tools and spares, and all goods on wheels (like cranes) between 2 registered branches of one company will also not be taxable and no IGST will be payable
- b. It does not clarify what it means by “Goods on wheels”, so will cranes or machinery which are not on wheels but are mounted on chains be included in this exemption?
- c. Further like earlier circular, this one as well says that if the goods being sent from one branch to another are meant for “**further supply**” then this exemption shall not apply. When a crane is being sent by one branch to another, it is normally sent for use in another project hence this issue would be open to interpretation as it could be treated as it has been supplied further.

3. Our Opinion on the twin issues:

Based on the above 2 circulars and various provision of GST law, following is our opinion:

On Movement of Conveyances:

- A. Interstate movement of conveyances like trucks, trailers, buses for transportation of goods between 2 branches of the same company will not be taxable as the same is not a “Supply”. When goods are sent by loading them on to a Truck, there is never an intent even remotely to Supply the truck itself, it is just a mode of transport. So, in our view there is no question of considering a mode of transport as a Supply itself. Accordingly, even if this circular was not issued, question of taxing this transaction cannot arise.
- B. However, if these conveyances are sent with an intent to further supply the same by the other branch then the transaction will be taxable and IGST will be payable. For example a company sends cement by loading it in its own Truck to its another registered branch, it also further intends to further lease the truck from that other branch, in this case sending of truck from branch 1 to branch 2 will be a taxable supply.

On Movement of Goods:

- C. If any rigs, tools spares or any machine whether mounted on rubber wheels or on steel chain wheels is sent by one registered branch to another then the same will also be exempted from levy of GST **if the same are not further supplied.**

In other words if the machinery is supplied by one branch to another with an intent that the other branch is going to further supply the same to some other person by way of sale, lease etc than the first transaction between branch 1 and branch 2 will be out of the purview of this circular and will be taxable being a Supply. But if the goods are merely being sent to be used in other project of the same company then as per the circular the same will not be taxable.

- D. Term “Supply” is defined in section 7 and schedule I as under:

7. (1) For the purposes of this Act, the expression “supply” includes—

(a) all forms of supply of goods or services or both such as 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;

(c) the activities specified in Schedule I, made or agreed to be made without a consideration; and

SCHEDULE I

[See section 7]

ACTIVITIES TO BE TREATED AS SUPPLY EVEN IF MADE WITHOUT CONSIDERATION

2. 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:

Provided that gifts not exceeding fifty thousand rupees in value in a financial year by an employer to an employee shall not be treated as supply of goods or services or both.

Reading the above definition of Supply it is conclusive that if a crane or similar machinery is TRANSFERRED by one registered branch to another for use in another project then the same shall be deemed to be a supply and it will be taxable under GST. **Hence, our view it would be better to charge GST right now and take credit in another branch so as to avoid any potential litigation risk in future.**

- E. Having said so, it is important to note that Section 7 (2) of the CGST, Act read with Schedule III thereof prescribes a list of activities or transactions which shall neither be treated as “supply of goods nor a supply of service”. Above stated transaction of supply of goods between distinct persons however doesn’t form part of section 7(2) prescription, hence in my view, clarification granting exemption issued by the TRU section of Department revenue has no legal force unless the same is done by way of a notification under section 6 of the IGST Act and/or section 11 of the CGST Act. To make the decisions of the Council applicable, they have to be notified by the Central Government by issuance of notification in case of IGST and CGST which in this case is not done. Merely issuing a circular would not be sufficient. However, in view of various decisions of the Supreme Court, whereby it is said that a circular which is in favour of the assessee is binding on the issuing government and its department, it is our firm opinion that this exemption will be applicable. Secondly as this is done by way of a Clarification, these will be applicable from 1.07.2017 itself and not from 7.07.2017 or 22.11.2017 only.

Another question that may arise in future is whether the states will agree to a circular granting exemption issued by a board administered by Central Government.

Lets examine by way of an example, what may happen if the second circular is agreed to:

A company ABC Ltd. has 2 projects one in Gujarat and another in Karnataka, both of them are separately registered under GST. Its Gujarat branch buys construction equipment (all are mounted on wheels) worth Rs. 100 crores on which it pays say 20 crores as IGST. It employs all these machinery in its Gujarat project and claims full credit of 20 crores. After 6 months entire lot of these machineries is transferred to its project in Karnataka under a Delivery challan on the grounds that it is not a Supply as per the circular discussed above. All these machineries are transferred by Gujarat with a sole intent these will be exclusively used by the Karnataka Branch in its project and will not be supplied to any other person. Question that will now arise in the minds of the Gujarat Authorities would be that entire credit of 20 crores was used in Gujarat, but subject machinery is now being employed in Karnataka and thereby generating revenue in Karnataka, whose tax will also be reaped by Karnataka. **Would Gujarat allow this to happen just because Centre issued a circular?**

Both the circulars discussed above are reproduced below

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

North Block, New Delhi
Dated the 7th of July, 2017

To,

The Principal Chief Commissioner/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.

2. 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 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 the recommendations of the Council, shall be treated neither as a supply of goods nor a supply of services.

3. Against the above background, the issue of inter-state 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,

(a) 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 11th 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.

4. In view of above, it is hereby clarified that "the 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.

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

(Ruch Bisht.)
Under Secretary (TRU)

F. No. 354/320/2017 –TRU (Pt)
Government of India
Ministry of Finance
Department of Revenue
Tax Research Unit

North Block, New Delhi
Dated the 22nd of November, 2017

To,

The Principal Chief Commissioner/Chief Commissioners/ Principal Commissioner/
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 inter-state 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 inter-state movement shall be treated “neither as a supply of goods nor supply of service” and therefore would not be leviable to IGST.

2. 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 10th November, 2017 and the Council recommended that the 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 further supply of the same goods, such inter-state movement shall be treated ‘neither as a supply of goods or supply of service,’ and consequently no IGST would be applicable on such movements.

3. 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.

4. 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)

