

# Ex-works Supply & GST- A Big Jurisdictional Fight



## A. INTRODUCTION

Recent decision of Telangana Authority for Advance Ruling ('AAR') in the case of ***Penna Cement Industries Limited, 2020-VIL-129-AAR***, must be a great relief to the Applicant and is also welcomed by the taxpayers across the country. It, however, may not be welcomed by some of the States in India.

The AAR was dealing with the question as to '*whether an ex-works supply is an inter-State supply or intra-State supply under Goods and Services Tax ('GST') laws?*'

## B. WHY THIS ISSUE?

- Since the inception of GST, there has been an apprehension that in an ex-works supply of goods, supply ends at factory gate. Therefore, it may not be correct to say that the supply 'involves' movement of goods and place of supply shall be the location of goods at the time of its delivery.
- Also, the expression '**for delivery to the recipient**' used in Section 10(1)(a) of the Integrated GST Act, 2017 ('IGST Act'), cannot entirely be ignored.

### C. FINDINGS & DECISION BY AAR

- AAR observed that under Section 10(1)(a) of the IGST Act, the usage of the words '**whether by the supplier or by recipient**' after the words 'where the supply involves movement of goods' perceptibly indicate that the movement can also be effected by the recipient or any other person on his behalf.
- AAR deduced that in terms of Section 10(1)(a), movement of goods in case of ex-factory sales does not conclude at factory gate but terminates at place of destination of goods as per the billing address.
- It was, therefore, held by the AAR that the place where the goods are destined (in a different State) is to be considered as place of supply in case of ex-works supply of goods. Hence, IGST is chargeable on ex-works supplies where goods are moving from one State to another.
- Notable that the Department was also of the view that IGST is to be levied in an ex-works supply.

### D. GABA & CO. INSIGHTS

- *This has been one of the most controversial issue in the GST Laws yet almost all the big taxpayers in the country apply IGST in case of ex-works supply of goods.*
- *The complexity of the issue can be realised by the very fact that the GST Implementation Committee ('GIC') in its 30th Meeting held on July 9, 2019, opined that it is a sensitive policy issue and should not be taken up by GIC.*
- *Also, deliberations were made by the Law Committee in its meetings held on 30th May / 1st June, 2019 and again on 27th-28th June, 2019. The Law Committee, by way of a draft circular, recommended that IGST is to be applied in ex-works supply of goods made to a **registered recipient**.*
- *However, **States of Delhi and Haryana** opposed the proposal of Law Committee whereas the **States of Punjab, Himachal Pradesh and Kerala** were in favour of applying IGST in such cases.*
- *The matter has been remanded back to the Law Committee for afresh consideration after taking opinions of all the States.*
- *It is pertinent to mention that in 2018, Kerala High Court in the case of **Kun Motor Co. Limited and Vishnu Mohan, 2018-VIL-554-KER**, had the occasion to deal with a related matter in the context of generation of e-waybill. The Court observed that a transaction which terminates with the supply within a State is an intra-State supply.*
- *It is noteworthy that the above observation by the Court was merely an **obiturn dictum** and not a **ratio decidendi**. Thus, the decision is not very relevant to come to a definite conclusion.*
- *In our view, the idea behind Section 10(1)(a) was to levy GST in the jurisdiction where the goods are **delivered or shipped** and not the where the movement terminates. The expression 'delivery' is to be analysed in terms of Sale of Goods Act, 1930.*
- *Having said above, a supplier may not worry since Section 77 of the Central GST Act 2017 and Section 19 of the IGST Act, provide relief for such mistakes. The provisions allow taxpayers to pay the correct*

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*GST without any interest and get the refund of incorrect GST already paid. We believe that the time limit under Section 54 does not apply to such refunds.*

- *GST Laws, however, are silent on how it will affect the Input Tax Credit (ITC) at recipient's end. We will cover this aspect in our separate update.*

**Disclaimer:**

*The views expressed in the update are strictly personal, based on our understanding of the underlying law. We are not responsible for any injury, loss or cost arising to any person who refers this update and acts or refrains from any act accordingly. We would suggest that a detailed legal advice must be sought before relying on this update.*