PLACE OF SUPPLY - GST

Place of Supply (POS) in GST

In GST, the concept of a place of supply has been made relevant not only for the supply of services but also for the transaction of goods. In this article, we shall be discussing on provisions relating to the place of supply of goods.

Which tax is to be levied (IGST or CGST and SGST/UTGST) will depend on whether a particular transaction is an Inter-state supply or Intra-state supply. Hence, every transaction will have to go through the test of provisions relating to the place of supply in order to determine which tax is to be levied.

The purpose of the place of supply provisions is two-fold:
1) In case of cross-border transactions, to determine whether tax is to be levied on a particular transaction
2) In the case of domestic transactions, to determine whether a particular transaction is an inter-state supply or an intra-state supply.

Before discussing core provisions of the place of supply of goods, we need to first have a look at few terminologies. To start off with let’s see what is an inter-state and an intra-state supply.

Section 7 of IGST Act defines what a inter-state supply is. Broadly, inter-state supply is when “location of supplier” and “place of supply” are not in the same state or same union territory.

Similarly, Section 8 of IGST Act speaks about Intra-state supply. Broadly, intra-state supply is when “location of supplier” and “place of supply” are in the same state or same union territory.

There are some finer aspects which have been discussed later in the article.

It is worth noting that “location of the recipient of services” and “location of the supplier of services” have been specifically defined under CGST Act (Section 2(70) and 2(71)). However, “location of the recipient of goods” and “location of the supplier of goods” has not been defined at any place.

The provisions have been broadly divided into two categories-
Section 11 - Supplies which are Imports or Exports
Section 10 - Supplies other than Imports and Exports
Transactions are further divided into some broad categories which are illustrated as under

**POS for Imports and Exports (Section 11)**

1) Imports -  
The place of supply of goods imported into India shall be the location of the importer.

2) Exports -  
The place of supply of goods exported from India shall be the location outside India.

**Transactions other than Import or Export (Section 10)**

1) **Movement of Goods** -  
Section 10(1)(a) states that "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"

This implies that place of supplier or receiver is of no consequence to determine the place of supply when it comes to those transactions which involve the movement of goods. The place where delivery terminates i.e. where the ownership is passed on shall be critical to determine the place of supply.

Let us understand this with few examples -

**Example** -  
Rathi Limited of Rajasthan sells 50 cell phones to Shah Traders in Gujarat. Rathi Limited delivers the product to Shah Retailers in its warehouse in Ahmedabad. Place of supply, in this case, will be Ahmedabad and IGST will be levied as it is an Inter-State transaction.
2) Bill To Ship To Transactions:

Section 10(1)(b) states "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"

When goods are delivered to a party on the direction of a third person the place of supply will be the location of such third person and not where the delivery terminates.

Example 1-
Hanuman Traders, a dealer in furniture, located in Maharashtra, receives an order from Ram Traders, also located in Maharashtra. The order is for the supply of 50 Tables, with an instruction to ship the Tables to Prime Hardwares, located in Tamil Nadu. Prime Hardwares is a customer of Ram Traders.
There are two parts to this transaction:

- **First part of the transaction – between Hanuman Traders and Ram Traders:** Hanuman Traders is the supplier of Tables, and Ram Traders is the buyer. Accordingly, Hanuman Traders bills the transaction to Ram Traders, and as per the instruction, ships the goods to Prime Hardwares in Tamil Nadu.

- **The second part of the transaction – between Ram Traders and Prime Hardwares:** Ram Traders is the supplier, and Prime Hardwares is the buyer. Ram Traders bills the transaction to Prime Hardwares, and endorses the lorry receipt (goods shipped in a lorry by Hanuman Traders) in favour of Prime Hardwares. This lorry receipt (LR) will enable Prime Hardwares to take the delivery of the goods.

Over here, on the instruction from Ram Traders, Hanuman Traders ships the aluminum ladders to Prime Hardwares located in Tamil Nadu.

Here, Ram Traders is deemed as the third person. Therefore, the **place of supply** will be the principal place of business of the third person, i.e., Maharashtra. Accordingly, Hanuman Traders charges CGST and SGST on billing to Ram Traders. The second part of the transaction between Ram Traders and Prime Hardwares will also be interstate, and IGST will be charged.

Example 2-
Chamunda Traders in Maharashtra receives an order from Queens Associates in London to deliver 100 cell phones at Maheshwari Dealers in Maharashtra. On application of section 10(1)(b) place of supply will be London. The question arises will this transaction be taxed even if the place of supply is London?
There will be two parts to this transaction as well-

a) **Between Chamunda Traders and Queens Associates:**
First, we need to understand whether the transaction between Chamunda Traders and Queens Associates will be considered as Export? As per section 16, export of goods is a “Zero Rated Supply” and tax need not be levied on the same.

As per section 2(5), “export of goods” means taking goods out of India to a place outside India. In our case, as goods are not moving out of India hence it cannot be termed as exports.

Section 7(5)(a) states that supply of goods or services or both when the supplier is located in India and the place of supply is outside India shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce.

Above section applies to the present case, supplier (Chamunda Traders) is located in India and place of supply (London) is outside India. Hence, the transaction between Chamunda Traders and Queens Associates will be considered as an inter-state supply, and IGST shall be levied on it.

b) **Between Queens Associates and Maheshwari Dealers:**
The transaction between Queens Associates and Maheshwari Dealers cannot be considered as the import of goods as according to Section 2(11) “import of goods” means bringing goods into India from a place outside India.

This transaction will be covered under section 7(5)(c) which states that supply of goods or services or both in the taxable territory, not being an intra-state supply and not covered elsewhere in section 7 shall be treated to be a supply of goods or services or both in the course of inter-state trade or commerce.

In the present case, the supply of goods is in the taxable territory (Maharashtra), it is not an intra-state supply as a supplier (Queens Associate) is located outside the taxable territory and such a situation is not covered elsewhere in section 7. Hence, transaction between Queens Associates and Maheshwari Dealers is also an Inter-state transaction and IGST will have to be paid by Maheshwari Dealers under reverse charge mechanism (Section 5(4))
3) No Movement of Goods-
Section 10(1)(c) states that where 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;

When goods are of such nature which does not require any movement, place of supply shall be the location of such goods.

Example 1-
Bharat Limited registered in Maharashtra sold its pre-installed transmission tower(electric tower) located at Madhya Pradesh to Hindustan Limited registered in Delhi.

In this case, the location of the supplier is Maharashtra, but a place of supply will be Madhya Pradesh. Hence, IGST will be levied.

Example 2-
Rathi Limited of Rajasthan gets an order of 100 cell phones from Patil Electronics in Maharashtra. Patil Electronics informs Rathi Limited that they will take the delivery of the cell phones from the factory of Rathi Limited at Jaipur.

Over here the location of the supplier is Rajasthan and location of the receiver are Maharashtra. However, Patil Electronics has agreed to take the delivery from Rathi Limited's Jaipur factory. This implies that the termination of the movement of the cell phones to Patil Electronics takes place at the factory of Rathi Limited, i.e., in Jaipur. Hence, the place of supply is Jaipur in Rajasthan.

This is an intra-state transaction and CGST, and SGST will be levied by Rathi Limited. It should be noted that Rathi Limited will be charging SGST and CGST in Rajasthan, the credit of which will not be available to Patil Electronics in Maharashtra. Hence, there will be a loss of credit.

Alternatively, if Patil Electronics would have asked Rathi Limited to deliver goods at its factory in Maharashtra it would have become an inter-state transaction and IGST would have been levied. The credit of IGST would have been available to Patil Electronics.

Many experts have an alternate view on this topic it says as the transaction involves the movement of goods by the buyer it should be covered under Section 10(1)(a) and not 10(1)(c). Which implies that place of supply should be Maharashtra and IGST shall be levied on the transaction.

4) When Goods are Installed-
Section 10(1)(d) states where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly;
Example-
Bharat Limited registered in Maharashtra opens a new office in Delhi. It purchases 10 ACs to be installed at its Delhi office from Patil electronics in Maharashtra.

In this case, the location of the supplier is Maharashtra, but a place of supply will be Delhi. Hence, IGST will be levied.

5) Goods on Board a conveyance-
Section 10(1)(e) states "where the goods are supplied on board a conveyance, including a vessel, an aircraft, a train or a motor vehicle, the place of supply shall be the location at which such goods are taken on board."

This provision includes those purchases which are done while traveling on a conveyance.

Example-
Mr. Mehta is traveling on a cruise liner from Mumbai to Goa. He purchases a book from the in-house store in the cruise liner. These books were onboarded from Mumbai. Registered place of business of the book shop is in Mumbai. Place of supply, in this case, will be Mumbai. This is an intrastate supply, and CGST and SGST will be charged.
Above provisions have been summarized in a diagram below for a quick glance: