

GST UPDATE

GST on Merchant Trade
Transactions



GST ON MERCHANT TRADE TRANSACTIONS

In simple terms, merchant trade transaction is one which involves shipment of goods from one foreign country to another foreign country, where the goods do not enter Indian Territory. Recently a ruling in case of “**M/s Sterlite Technologies Limited” (GUJ/GAAR/R/04/2020)** held that supply of goods from a non-taxable territory to another non-taxable territory, shall be an Inter-state supply and henceforth, IGST shall be levied on such merchant trade transaction. Let us understand the view taken by Gujarat AAR:

The applicant proposed to undertake transaction of supply of hardware, wherein the applicant will receive an order from the customer located outside India, and the vendor would directly ship the goods to a customer located outside India. Vendors would issue an invoice on applicants against which payment would be made in foreign currency and applicants would raise invoices on customers and would receive consideration in foreign currency. In the above transaction, goods would not physically come into India but would move from place outside India to another place outside India.

Therefore, basis the above transaction, applicant sought advance ruling on the following two issues:

1. Whether GST is payable on goods procured from outside India, in a context where goods purchased are not actually brought into India.

2. Whether GST is payable on goods sold to customers located outside India, where the goods are shipped directly from vendor's premises (located outside India) to customer's premises (located outside India).

As regards to the first question raised by applicant, AAR ruled out that GST shall not be payable on goods procured from vendor located outside India, (**where the goods have not actually been brought in India**), as no Bill of Entry/Import Declaration is being filed with respect to the goods procured and GST shall only be paid at the time of importation. It is pertinent to note that, Gujarat AAR considered an already issued *Kerala AAR in light of “Synthite Industries Limited”* where it was held that *the goods are liable to IGST when they are imported into India and the IGST is payable only at the time of importation of goods into India* and also took support of the Customs Circular No. 33/2017, dated August 01, 2017 issued in context of High Seas Sale.

However, as regards to the second question, AAR ruled out that IGST shall be payable on goods sold to an overseas customer shipped directly from an overseas vendor, while the location of supplier continues to be in India. The view was taken basis the following points –

- Goods are being sold for a consideration and is in the course or furtherance of business, hence such transaction fulfils the condition of supply in terms of Sec 7 of CGST Act, 2017.
- Supplier is located in India and the place of supply is outside India and as such the same would be Inter-state supply in terms of the provisions of Sec. 7(5) of IGST Act, 2017.
- The act of taking goods out of India to a place outside India qualifies as export. The question of taking goods out of India does not arise in the present case since goods are not physically available in India at any point of time. Thus, the subject transaction does not qualify as export of goods.

Therefore, the transaction is covered under the ambit of Inter-state supply and is neither exempted nor export of services. Thus, the theory of elimination takes us to the conclusion that such supplies will be subject to levy of IGST.

Our Comments -

The taxability of Merchant Trade transaction has not been specifically provided in the provisions of GST law. The taxability of such transaction can be levied by the virtue of the charging section which states that **there should be a supply**. Therefore, as per the provisions of section 7 of CGST Act, 2017 read along with the CGST (Amendment) Act, 2018, -

(1) The expression supply includes-

- a) All forms of supply of goods or services or both such as sale, transfer, barter, exchange, license, rental, lease or disposal made or agreed to be made for a consideration by a person in the course or furtherance of business;
- b) Import of service for consideration whether or not for in course or furtherance of business; and

- c) The activities specified in Schedule I, made or agreed to be made without a consideration.

(1A)

(2) Notwithstanding anything contained in sub-section (1) –

- a) Activities or transactions specified in Schedule III; or
b)

shall neither be treated as a supply of goods nor a supply of service.

Entry 7 of Schedule III as inserted vide CGST (Amendment) Act, 2018 stated that **supply of goods from a place in the non-taxable territory to another place in the non-taxable territory without such goods entering into India**.

It is relevant to note that the above provisions amended in CGST (Amendment) Act, 2018 were enforceable from February 01, 2019 vide Notification No. 02/2019 dated 29.01.2019 – Central Tax and the provisions were made applicable on a prospective basis.

Clearly, Merchant Trade Transactions have been kept outside the scope of GST; and therefore, no GST shall be payable on such transactions. The same view was taken in earlier advance rulings, namely **(a) AAR Kerala – M/s Synthite Industries Limited and (b) AAR Maharashtra – M/s INA Bearing India Private Limited**. Both the rulings ruled that the transaction of purchase and sale completed wholly out of India without the goods entering the customs frontier of India would not be liable to GST.

Going by the view taken by Gujarat AAR i.e. taxability of ‘Merchant Trade Transaction’ would create a distress and worry for the industries. Thereby, the ruling should be revalidated in light of the provisions under Schedule III of CGST Act, 2017.

For more details, Read the Ruling from the link below:-

<http://gstcouncil.gov.in/sites/default/files/ruling-new/GUJ AAR 04 2020 17.03.2020 STL.pdf>

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