



Intra-company supplies – The undefined issue in GST

When GST was introduced in 2017, an area of taxation which failed to be addressed was the taxability of intra-entity supply of services. While taxability of stock transfers was customary for manufacturing & trading businesses, taxability of intra-entity transactions was an unexplored area for the service industry. With GST law encompassing a deeming fiction for taxing goods/ services provided between different GST registrations of a business, a re-evaluation/ streamlining of intra-company arrangements was imperative for businesses.

While businesses had evaluated and implemented various transformations to understand and define liabilities on account of such deeming fiction, the potential vices of this segment remains unknown and daunting. With varied interpretations to the scope of this deeming fiction being slowly unraveled, industry should be prepared for significant changes and upheavals.

A glimpse of the potential construal was observed in the Ruling by the Hon'ble Authority of Advance Ruling, Karnataka in an application filed by M/s Columbia Asia Hospitals Private Limited [**Advance Ruling No. KAR ADRG 15/2018**] and upheld by the Appellate Authority of Advance Ruling as well. In this instance it was held that support services are rendered by the corporate office to various locations/ branches of the company, and these are squarely covered under the manifested deeming fiction of taxing intra-entity services. As such services are liable to GST even without a contractual arrangement/ consideration, a potential risk of there being GST implications on any activity executed by offices of a company for offices in other states cannot be negated.

A separate aspect of concern on such intra-entity transactions has been the nature of supplies. Issues such as possibility of taxing intra-entity supplies as a sale/ transfer [without transfer of title or all movements (temporary or permanent)] between company branches being treated as supply of goods remain vulnerable subjects for businesses.

The above question becomes more relevant in the context of sectors where either input tax credit is not available for significant business activities as they are exempt/ excluded from the GST regime or in sectors where there are restrictions on availment of input tax credit on specified nature of supplies like procurement of goods, etc. To illustrate, power transmission businesses do not generally avail input tax credit on procurements made by them as transmission of power is exempt from GST. However, business contingencies may entail requirement of temporarily transferring business assets from one location to another for emergency restoration purposes or similar reasons.

Similarly, in the aviation sector, businesses are not eligible for input tax credit on goods but are allowed input tax credit on services. There may be scenarios where reusable spare parts for the aviation sector are required to be moved from one location to another and where such transfers are corresponded as stock transfer of goods vis-à-vis services, there could be potential tax costs in the supply chain for the sector. Most of such potential tax costs are linked to there being deadlines for availment of credit and these businesses are unable to procure credit on account of restrictions in the law. While one could argue on availment of credit with immediate reversal as an option, there remains ambiguity on right to reavailment of such reversed credits, given the nonexistence of explicit provisions for reavailment in the legislation.

While the above impacts specific sectors, in general, there is also an implication for businesses where temporary movement of goods is common, like movement of tools/ spares in the EPC sector, machines in the



equipment leasing sector, etc. The contractual liabilities for supplies to the end customers is at the origin locations of such goods and doctoring such supplies as supply of goods would entail accumulation of input tax credit at destination locations of such temporary movements and would lead to unwarranted working capital costs. A significant contributor for such concerns is also linked to the prescribed valuation provisions for such intra-company supplies, including an arms-length valuation where full input tax credit is not available at the recipient's end.

For the above aspects, including the scope of such intra-company supplies and nature of supplies, the recent ruling by the Authority of Advance Rulings, Karnataka in an application filed by **M/s Chep India Private Limited [2021 (7) TMI 973]**, is worth contemplation. The Applicant wished to understand if a potential leasing arrangement was possible between different GST registrations of a company for temporary movement of goods and further movement of such goods to other destinations as well without returning to the origin location. Certain other clarifications including valuation, documentation for movement as well were requested for.

The Ruling, interestingly, upholds the possibility of temporary arrangements like leasing/ renting between intra-company offices and related applicability of GST. The Ruling also upholds valuation of such service arrangements basis invoice value and movement basis e-way bill and delivery challan. On an extended inference, basis this Ruling, valuation for such transfers could be at invoice value where full input tax credit is claimed and at fair market value of lease rentals (where full input tax credit is not available). Hence, in summary, for exempt businesses/ ITC restricted businesses, qua a significant liability when treated as supply of goods, temporary transfers could be executed through well-defined lease/ rental arrangements between branches. Similar arrangements could also be relevant for working capital optimization in EPC/ equipment rental businesses where such temporary movements are widespread.

While the above clarification in the Ruling is quite a welcome one for various businesses, both from a tax/ working capital optimization and clarification on movement of goods for uniformity, the Ruling opened up a Pandora's box on an issue neither thought of by most industry players nor specifically enquired for by the Applicant. The Applicant proposed to transfer equipment on lease from its branch in Karnataka to that in Kerala; for which the Authority of Advance Ruling had upheld the possibility of a lease arrangement. The Applicant wished to further understand on the possibility of further renting such goods located in Kerala to their Tamil Nadu branch, through a contractual arrangement between its Karnataka and Tamil Nadu location i.e., direct movement from Kerala to Tamil Nadu. While the AAR upheld the possibility of the said transaction with Karnataka raising lease rental invoices on Tamil Nadu, it also observed on there being a related supply of facilitating transportation of goods by the Kerala location for the Karnataka location. The said was also upheld to be exigible to GST.

In general parlance, the goods were to be moved from Kerala location to Tamil Nadu location after use, and instead of being routed back to the origin location (with unwarranted logistics costs), the goods are transported from Kerala location directly. These goods, if not moved to Tamil Nadu location, would have to sent back to Karnataka location by Kerala branch and hence, mere facilitation on transporting of goods being perceived as a supply, could unearth mausoleums of unidentified assistance/ facilitation by intra-company branches, qualifying as a supply and leviable to GST.



Separately, where such transactions are pro-actively defined and valued, for most businesses, liability could be capped to invoice value, but for unthought/ unidentified supplies, these could trigger a significant GST liability, where questioned by revenue authorities; leave alone the related interest and penal implications. For exempt/ excluded businesses, this mysterious box could craft deep holes in the pocket.

With more of such clarifications unearthing and regular investigations by revenue authorities, businesses should proactively evaluate transactions akin to those discussed above and binding to the deeming fiction for taxing intra-entity supplies for capping their tax liabilities on such transactions. Separately, with authorities also endorsing possible temporary arrangements for intra-company transfers, impacted businesses could evaluate different arrangements for optimizing tax/ working capital costs including exploring a non-tax position on such supplies. This essentially being based on a consonance to the principle laid in **Circular 1/1/2017 -IGST**, of inter-state movement of conveyances not being treated as a 'supply'. Even though such conveyances as well stimulate revenue for the embarking location, such supplies have been clarified to not qualify as 'supply'. As a corollary, businesses could argue on similar temporary inter-state movements not qualifying as a supply or consider advocacy options for relief akin to the one provided for inter-state movement of conveyances.

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