



Analysis of GST Council's Decision on Clarification on availability of Input Tax Credit as per section 16(2)(b) of CGST Act, 2017 in respect of goods which have been delivered by the supplier at his (supplier's) place of business; & Impact of Place of Supply u/s 10(1)(a) & (b) of IGST Act

By: Vivek Jalan
Team Tax Connect

Decision:

Clarification on availability of Input Tax Credit as per section 16(2)(b) of CGST Act, 2017 in respect of goods which have been delivered by the supplier at his (supplier's) place of business : The GST Council recommended to clarify that in an Ex-Works contract, where goods are delivered by the supplier to the recipient or a transporter at the supplier's place of business, and the property in goods transfers to the recipient at that point, the goods are considered to be "received" by the recipient under section 16(2)(b) of CGST Act, 2017 and the recipient may claim Input Tax Credit (ITC) on such goods, subject to the conditions outlined in Sections 16 and 17 of the CGST Act, 2017.

Our Comments:

Section 16(2)(b) provides -

- (2) Notwithstanding anything contained in this section, no registered person shall be entitled to the credit of any input tax in respect of any supply of goods or services or both to him unless,--*
- (b) he has received the goods or services or both.*

¹*[Explanation.-For the purposes of this clause, it shall be deemed that the registered person has received the goods or, as the case may be, services--*

(i) where the goods are delivered by the supplier to a recipient or any other person on the direction of such registered person, whether acting as an agent or otherwise, before or during movement of goods, either by way of transfer of documents of title to goods or otherwise;

(ii) where the services are provided by the supplier to any person on the direction of and on account of such registered person.]

Hence, as per explanation to Sec 16(2)(b) It would construed that transfer of property is passed on by the supplier to the recipient and he has received the goods where the goods are delivered by the supplier to a transporter or another person before movement of goods. Therefore, the recipient may claim ITC on date of such 'receipt'.

However, we draw the attention to Section 10(1)(a) & 10(1)(b) of IGST Act which state as follows -

10. (1) *The place of supply of goods, other than supply of goods imported into, or exported from India, shall be as under,--*

(a) 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;

(b) 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;

Hence, the place of supply for Ex-Works should thus be the supplier's place and CGST+SGST should be chargeable as per Section 10(1)(a) of IGST Act.

BRIEF ABOUT THE AUTHOR:

Vivek Jalan is a Chartered Accountant, M.B.A (International Trade) & a qualified L. LM (Constitutional Law) & LL.B. He is the Founder & Partner of Tax Connect Advisory Services LLP. He is the Chairman of The Indirect Tax Core Group of The Confederation of Indian Industries – EAC(ER). He is the Chairperson of The National Fiscal Affairs & Taxation Committee of The Bengal Chamber of Commerce and Industry. He is a Member of The Managing Committee of The Bengal Chamber of Commerce and Industry.

He is a regular Columnist and guest expert in Economic Times, Times of India, Dalal Street Journal, Money Control, Live mint, CNBC, Hindustan Times, Zee Business, Financial Express, other dailies and business magazines like Business Today, etc. He is also a guest expert on Taxation matters in All India Radio and other media platforms. He is the Editor of Weekly Bulletin TAX CONNECT, a publication on Indirect Taxes and Direct Taxes which reaches more than 70000 professionals.

He is also a visiting faculty for Taxes in The Confederation of Indian Industries (CII), The Institute of Chartered Accountants of India, Institute of Cost Accountants of India, Indian Institute of Foreign Trade, The Bengal Chamber of Commerce and Industry, The Indian Chamber of Commerce and other Business Forums. He has also delivered Lectures at various Government Taxation Forums including the CGST & SGST Departments across the country.

He has worked as a Finance Manager in ITC Ltd. and Chief Compliance Officer with IntraSoft Technologies Ltd. He has more than 15 years of experience in the field of Indirect & Direct Taxation. He was also an All-India Rank holder in CA Final Examination conducted by the Institute of Chartered Accountants of India.

His Books on taxation include the following –

- **Income Tax Section Wise Commentary and Analysis of Recent Developments**
- **Union Budget 2024 Edition**
- **GST APPELLATE TRIBUNAL (GSTAT)**
- **TAX PLEADING & PRACTICE JOURNAL – OCTOBER 2023**
- **GST PLEADING & PRACTICE – SEPTEMBER 2023**
- **UNION BUDGET – 2023-24**
- **HANDBOOK ON GST – August 2022**
- **COMMENTARY ON UNION BUDGET 2022 – Feb 2022**
- **GST PLEADING & PRACTICE – AUGUST 2021**
- COMMENTARY ON UNION BUDGET 2021 – Feb 2021
- SECTION-WISE COMPENDIUM ON GST – Oct 2020
- INTEGRATED APPROACH TO GST E-INVOICE, E-WAYBILL & RETURN E-FILING – Oct 2020
- COMMENTARY ON UNION BUDGET 2020 – Feb 2020
- COMMENTARY ON DIRECT TAX VIVAAD SE VISHWAS SCHEME – Feb 2020
- SECTION-WISE COMMENTARY ON GST – SEPTEMBER 2018
- HOW TO HANDLE GST-TDS, GST-TCS, GST AUDIT & GST ANNUAL RETURN – NOVEMBER 2018
- COMMENTARY ON UNION BUDGET 2019 – July 2019
- WITHDRAWAL OF LEGAL TENDER 2016
- COMMENTARY ON UNION BUDGET 2017
- A COMPENDIUM ON GST W.E.F. 1ST JULY 2017
- GST MODEL LAW (NOVEMBER 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY
- GST MODEL LAW (JUNE 2016) & BUSINESS PROCESSES – A TECHNICAL COMMENTARY

He is a regular speaker at various professional forums on the various key areas in Indirect & Direct Taxes and has delivered more than 300 lectures on various topics under GST, Customs, Foreign Trade Policy of India, Income Tax, etc.