

Western India Regional Council of ICAI

Program	:	GST Workshop
Date & Day	:	31 st December, 2017 (Sunday)
Subject	:	Place of Supply for Goods
Venue	:	3 rd Floor, Terapanth Bhawan, Thakur Complex, Kandivali (East), Mumbai
Presented by	:	CA Naresh Sheth

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Broad Framework of GST

Taxable Event
- Supply

When to pay
- Time of Supply

**Whom to pay
(Jurisdiction)**
- Place of Supply

How much to pay
- Valuation
- Rate of tax
- Input Tax Credit

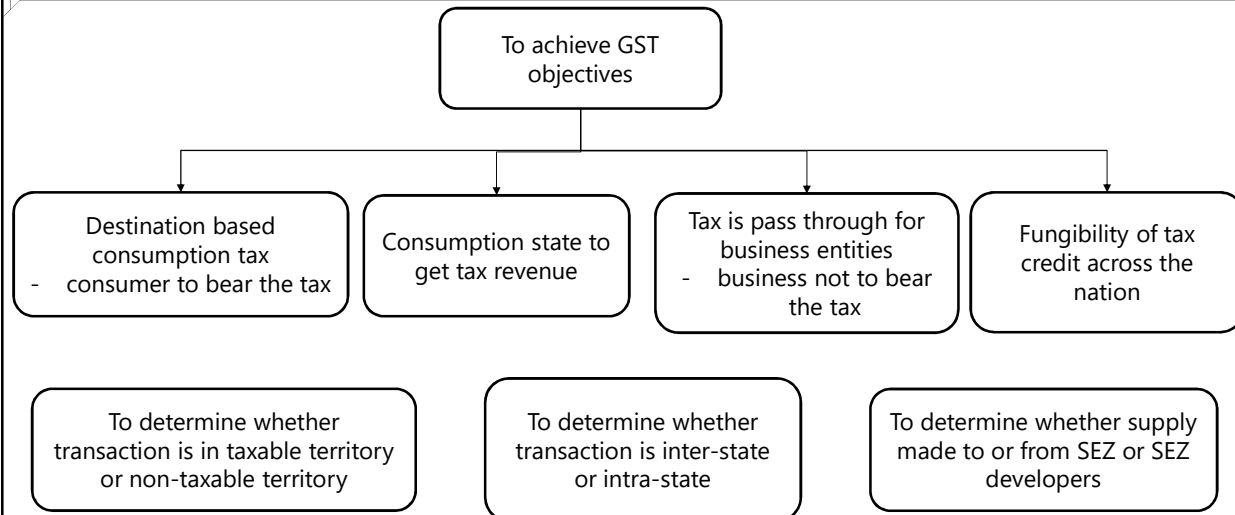
What compliance to be done
- Registration
- Payment
- Returns

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Place of Supply Provisions – Purpose



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Relevant Definitions

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Taxable Territory u/s 1(2) of CGST, IGST, UTGST and SGST Act

- Territory to which the provisions of this Act apply:
 - CGST Act applies to whole of **India**
 - IGST Act applies to whole of **India**
 - SGST Act applies to:
 - 29 States; and
 - Delhi & Puducherry (Union territories with legislation)
 - UTGST Act applies to the Union Territories of:

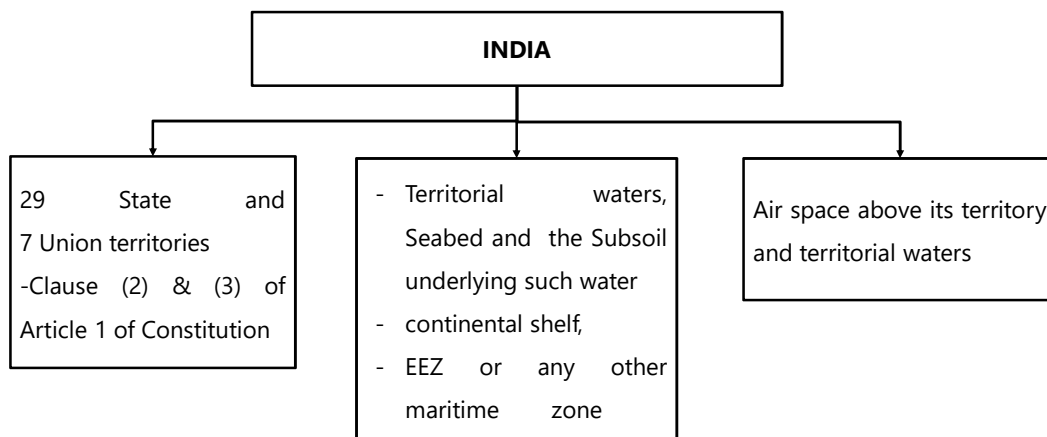
Andaman and Nicobar Islands	Dadra and Nagar Haveli	Daman and Diu
Lakshadweep	Chandigarh	other territory

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India – Section 2(56) of CGST Act



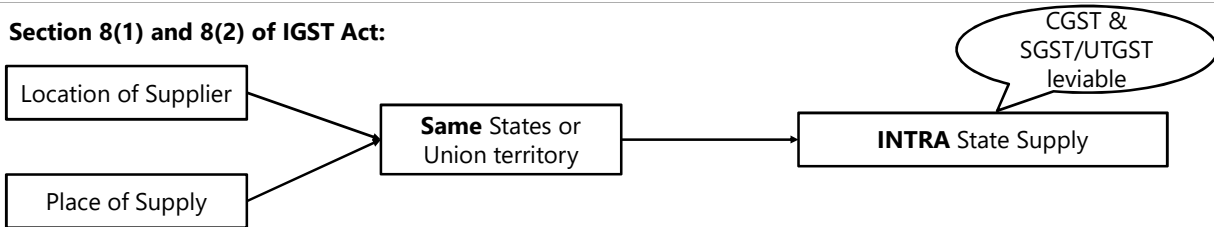
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'Intrastate' – Section 8 of IGST Act

Section 8(1) and 8(2) of IGST Act:



➤ Following shall not be treated as Intra-state supply of goods or service [proviso to section 8(1) and 8(2)]:

- Supply of **goods or services to or by** SEZ developer
- Supply of **goods or services to or by** SEZ unit
- Supply of **goods** imported into territory of India till they cross the customs frontiers of India
- Supply of **goods** made to tourist referred to in section 15 of IGST Act:
 - Supply made to non-resident tourist in India who takes such goods outside India will be liable to IGST
 - Said IGST will be refunded to him in manner to be prescribed

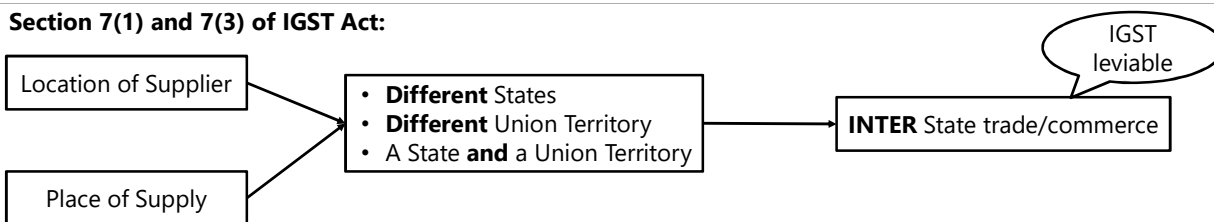
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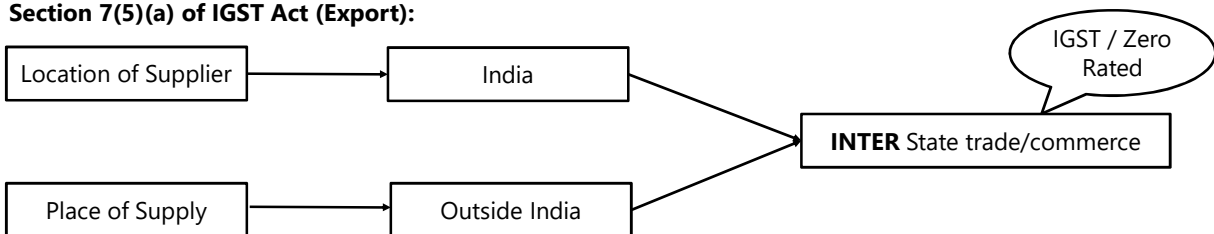
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'Interstate' – Section 7 of IGST Act

Section 7(1) and 7(3) of IGST Act:



Section 7(5)(a) of IGST Act (Export):



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'Interstate' – Section 7 of IGST Act

Section 7(5)(b) of IGST Act:

Supply of goods or services or both **to or by SEZ developer or SEZ unit**

Deemed in course of **INTER** State trade/commerce

IGST / Zero Rated

Section 7(5)(c) of IGST Act:

Supply of goods or services or both in the taxable territory

Not being an intra-state supply

Not covered elsewhere in section 7

INTER State trade/commerce

IGST leviable

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'Import of Goods' – Proviso to Section 5(1) of IGST Act


➤ Proviso to Section 5(1) of IGST Act:

- IGST to be levied on goods imported into India;
- Collected in accordance with provisions of Section 3 of Customs Tariff Act, 1975;
- On the value determinable under Customs Tariff Act, 1975;
- At point when duties of custom are levied on said goods u/s 12 of Customs Act, 1962

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Place of Supply for Goods

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Basic Framework for POS in respect of Goods

Domestic Transactions

Cross border transaction

Section 10(1) – POS to be determined as under

Section	Deals with
10(1)(a)	Supply involving movement of goods
10(1)(b)	Supply of goods on direction of third person
10(1)(c)	Supply not involving movement of goods
10(1)(d)	Supply of installed / assembled goods
10(1)(e)	Supply of goods on board of conveyance / vessel
10(2)	POS cannot be determined in terms of above sections

Section	Deals with
11(a)	Goods imported into India
11(b)	Goods exported from India

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Supply involving movement of goods

Section	Situation	Place of Supply
10(1)(a)	Supply involves movement of goods by supplier or recipient or any other person	Location of goods at the time at which the movement of goods terminates for delivery to recipient

Transaction	Location of Supplier	Location of Recipient	Place of Supply	Tax
Ex-works Sales in same state	Maharashtra	Maharashtra	Maharashtra	CGST & SGST
Door Delivery sale in same state	Maharashtra	Maharashtra	Maharashtra	CGST & SGST
Door Delivery sale in other state	Maharashtra	Goa	Goa	IGST
Ex-Works Sales and Goods delivered in other State – Refer next slide for various scenario	Maharashtra	Goa	???	???

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Ex – Works Sale

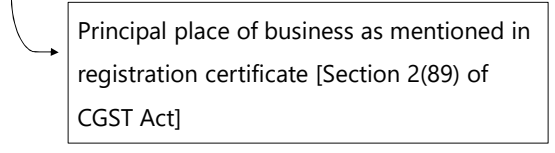
- Ex-Work Sales and good delivered in other State:
 - Seller arranges for transportation at request of buyer and hand overs the goods to transporter
 - Risk & insurable interest in the goods on road is that of buyer
- Ex-Work Sales and goods taken to other State:
 - Buyer arranges for transportation
 - Goods are handed over by seller to the transporter appointed by buyer
 - Risk & insurable interest in the goods on road is that of buyer
- Ex-Work Sales and goods taken to other State:
 - Buyer himself picks up the goods from premises of seller
 - No contract for transportation between buyer and seller
- Ex-Works Sales covered under Section 15 of IGST Act:
 - Foreign Tourist buying the goods from Shop in India :
 - Same goods are taken outside India

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Supply of goods on direction of third person (Bill to Ship Transactions)

Section	Situation	Place of Supply
10(1)(b)	<ul style="list-style-type: none"> Where goods are delivered by supplier to recipient or other person (before or during their movement): <ul style="list-style-type: none"> on direction of third person (whether acting as an agent or otherwise) by way of transfer of documents of title to the goods or other wise 	Principal place of business of third person 

Transaction	Location of Supplier	Location of Recipient	Location of Buyer (Third party)	Place of Supply	Tax
Dealer selling goods to buyer (third party) directly delivered to: <ul style="list-style-type: none"> Customers of buyer Job worker of buyer Own units in other States 	Maharashtra	Gujarat	Maharashtra	Maharashtra	CGST&SGST
	Maharashtra	Maharashtra	Gujarat	Gujarat	IGST
	Maharashtra	UAE	Maharashtra	Maharashtra	CGST&SGST

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Transit Sales

Transaction	Location of Supplier	Location of buyer	Location of Recipient	Place of Supply	Tax
Goods sold and invoiced by supplier A to buyer B and title documents are endorsed by B to C and ultimate delivery made to C	Mumbai	Nagpur	Party C in Indore	Maharashtra	CGST+SGST
Subsequent sale of goods in transit by B to recipient C (Invoice raised by B on C)	Party B in Nagpur	Party C in Indore	Party C in Indore	Madhya Pradesh	IGST

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Supply does not involve movement of goods

Section	Situation	Place of Supply
10(1)(c)	Supply does not involve movement of goods	Location of such goods at the time of delivery to recipient

Transaction	Location of Buyer	Location of Owner	Location of Factory	Place of Supply	Tax
Stock and DG set sold by factory owner to person who has taken factory on lease	Gujarat	Gujarat	Maharashtra	???	???*
Machinery given on lease with option to buy it in stipulated period	Gujarat	Maharashtra	Gujarat	Gujarat	IGST

*Depends on whether Owner of factory is registered for factory location at Maharashtra

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Supply of installed / assembled goods

Section	Situation	Place of Supply
10(1)(d)	Installation/assembly at site	Place of such installation or assembly

Transaction	Location of Supplier	Location of Buyer (H.O)	Plant location of buyer	Place of Supply	Tax
Sale of machine in CKD form, assembled and installed at site in India	Maharashtra	Maharashtra	Haryana	Haryana	IGST
Sale of machine in CKD form, assembled and installed outside India [section 11(b)]	Maharashtra	Gujarat	UAE	UAE	Export – Zero rated

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Supply of goods on board of conveyance / vessel

Section	Situation	Place of Supply
10(1)(e)	Where goods are supplied on board a conveyance (vessel/train/aircraft/motor vehicle)	Location at which such goods are taken on board

Transaction	Goods taken on board at	Location of Airlines [Supplier]	Sale in air zone of	Place of Supply	Tax
On board sale of perfume by Jet Airways (Mumbai – Leh)*	Mumbai	Delhi	Punjab	Mumbai	IGST
Supply of perfume by Jet airways (Delhi – Dubai – London)	Delhi	Delhi	Dubai	Delhi	CGST+SGST

* Goods are taken on Board from various States. Difficult to keep record of goods sold from which lot?

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Place of supply cannot be determined with reference to Section 10(1)

Section	Situation	Place of Supply
10(2)	Where the place of supply cannot be determined in terms of sub section (1)	Shall be determined in the manner to be prescribed

No such rules are prescribed till date

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Section 11 – POS of goods imported into or exported from India

Section	Situation	Place of Supply
11(a)	Where the Goods are imported into India	Location of the importer.
11(b)	Where the goods are exported from India	Location outside India.

Transaction	Location of Supplier	Location of Recipient	Place of Supply	Tax
Import of Perfumes	London	Bangalore*	Karnataka	IGST
Export of spices	Kerala	U.K.	U.K.	Exports – zero rated

* Perfumes cleared at Mumbai Airport by employee or agent of Bangalore based Importer

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Third Party Exports

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Out and Out Exports / Third Party Exports

➤ **Pre-GST position:**

- Purchase leg of such transaction was not liable to Custom Duty, CVD and SAD
- The sale leg of such transaction was not liable to VAT
- Entire transaction was out of the tax net

➤ **Post GST Position – Two School of Thoughts:**

One View:

- Goods are subject matter of the levy
- Tax applies to goods supplied to or from India (i.e. within taxable territory)
- In given case, goods doesn't enter into taxable territory hence not liable to GST

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Out and Out Exports / Third Party Exports

Other View:

- Tax applies to economic activities in taxable territory
- Persons located in taxable territory are liable to tax in respect of economic activities carried out by them
- As taxable activities are happening in taxable territory and person located in India is carrying out such activities, transaction is liable to GST
- If one takes literal interpretation of the provisions, GST may apply in such case as explained under

➤ **Tax implications of purchases from other country:**

- Business entity situated in India is buying from foreign vendor
- Business entity directs foreign vendor to deliver goods directly to it's customer in other foreign country
- Purchase by Indian business entity from foreign vendor is not 'import of goods' within the meaning of section 2(10) of IGST Act as goods are physically not coming in India from outside India

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Out and Out Exports / Third Party Exports

- This not being import, section 11 of IGST Act does not apply
- As per Section 10(1)(b), place of supply of such goods will be location of business entity in India on whose direction goods were supplied by foreign vendor to business entity's customer in other foreign country
- This would be inter-state transaction as provided in section 7(5)(c) and IGST is payable on said transaction
- Business entity is acquiring goods from unregistered supplier (Foreign party) and hence liability under RCM may trigger till 12.10.17 u/s 5(4) of IGST Act, 2017

➤ Tax implications of sales to other country :

- Location of supplier (business entity) is in India
- Goods are not physically moving out of India and hence transaction between business entity in India and foreign customer **is not an export of goods** within meaning of section 2(5) of IGST Act

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Out and Out Exports / Third Party Exports

- Section 11(b) cannot be applied for determining POS as it applies only to export of goods
- In view of non-applicability of section 11(b), Section 10(1)(a) of IGST Act needs to be applied for determining POS
- POS for above sales would be outside India
- Above referred transaction is an inter-state supply u/s 7(5)(a) of IGST Act liable to IGST

➤ Conclusion:

- Goods are not entering Indian tax territories at all
- Taxing authorities assumes extra-territorial powers when it taxes such transaction
- Any tax on export transaction makes Indian exports non-competitive in global market and hence tax should be sanitized in export transactions
- Pre-GST regime above transaction was not taxable
- The status-quo should be maintained
- Advisable for government to come out with proper clarification to avoid litigations and hardships to exporters

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Import of Free of Cost Goods

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Import of Free of Cost [FOC] Goods

- GST levy triggers on inter-state **supply** of goods or service [section 5(1) of IGST Act]
- Section 7 of CGST Act, 2017 defines the term "Supply" where **consideration** is a pre-requisite in case of a transaction between **non-related parties**
- Procurement of goods without consideration from an non-related party **is not a supply** and hence GST levy on such supply should not trigger
- IGST on import of goods is levied and collected in accordance with Section 3 of Customs Tariff Act, 1975 on the value determined as per Customs Tariff Act, 1975 and same is payable along with payment of Custom Duty
- Whether IGST is payable on following goods received from non-related foreign party:
 - Free samples for marketing
 - Gift of car or such other article
 - Marketing literature or technical brochures

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High Sea Sales

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High Sea Sales in Territorial Waters

➤ One view:

- High Seas Sales are not liable to GST as tax is leviable only when goods crosses custom frontier
- Circular No. 33/2017-Customs dated 01.08.2017 clarifies that IGST on high sea sale of imported goods, whether one or multiple, shall be levied and collected only at the time of importation i.e. at the time of clearance from customs port

➤ Other view:

- Territorial waters u/s 3(2) of The Territorial Waters, Continental Shelf, Exclusive Economic Zone And Other Maritime Zones Act, 1976 means:
 - “limit of the territorial waters is the line every point of which is at a distance of twelve nautical miles from the nearest point of the appropriate baseline”
- Territorial waters is a part of India as defined U/s 2(56) of CGST Act

High Sea Sales in Territorial Waters

- High sea transaction taking place in a territorial water of India is not an import as defined u/s 2(10) of IGST Act

- **Section 9 of IGST Act:**

Where Place of Supply is in territorial water

Place of supply will be deemed to be **Coastal State or Union Territory** where nearest point of appropriate baseline is located

- **Section 9 overrides all provisions of the IGST Act**
- In high sea sales title in the good is transferred by way of transfer of documents of title and hence Section 10(1)(b) of IGST Act determines the place of supply
- Place of supply is in territorial water which is a part of nearest state [section 9 of IGST Act]

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High Sea Sales in Territorial Waters

- Place of supply for sales made in territorial water is the nearest coastal state and hence revenue accrues to such state
- **Conclusion:**
 - In earlier regime, High seas sales of imported goods were liable to CVD and SAD only once at the time of clearance of goods at Custom Station.
 - Legislative intent seems not to tax high seas sales multiple time and hence Custom Notification
 - Whether custom circular is binding on GST Authorities?
 - In absence of any such notification, circular or press release under GST legislation, there are probabilities of GST authority levying tax on high seas sales
 - **It is, therefore, advisable to have appropriate clarification issued under GST law**

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Bond Transfer

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Bond Transfers

- Gist of Circular no. 46/2017-Customs dated 24/11/2017:
 - In case of goods deposited in custom bonded warehouse, custom duty and IGST is to be paid at the stage of ex-bonding on the value determined u/s 14 of Customs Act.
 - Transfer or sale of the warehoused goods by the importer (before ex-bonding) to any other person is a 'supply' as defined u/s 7 of CGST Act
 - Section 7(2) of IGST Act provides that any supply of imported goods which takes place before they cross custom frontiers of India shall be treated as inter-state supply
 - Hence, such transfer / sale of goods deposited in custom bonded warehouse will be liable to IGST at the value determined u/s 20 of IGST Act r.w. section 15 of CGST Act
- Whether above circular is in consonance with law?



Advance Ruling

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No provision for Advance Ruling

- Advance ruling can be sought out for following under Section 97(2) of CGST Act :
 - classification of any goods or services or both;
 - applicability of a notification issued under the provisions of this Act;
 - determination of time and value of supply of goods or services or both;
 - admissibility of input tax credit of tax paid or deemed to have been paid;
 - determination of the liability to pay tax on any goods or services or both;
 - whether applicant is required to be registered;
 - whether any particular thing done by the applicant with respect to any goods or services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.
- Does this mean that one cannot go to Advance Ruling Authority for any clarification on Place of Supply?



Jurisdictional Issue

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Jurisdictional Issues

- Commissionerate of a state in which supplier is located will be jurisdictional authority
- The tax revenue accrues to the consumption state and commissionerate of such state may not have jurisdiction over the supplier located in other state
- Following could be the area of concern for inter-state transactions:
 - Jurisdictional officer may lack enthusiasm in tax collection
 - Commissionerate of state due for tax revenue will not have assessment / surveillance powers to curb tax evasion or revenue leakages
 - Possibility (due to difference in interpretation) of both jurisdiction trying to establish that place of supply is within their jurisdiction
 - Supplier's position could be vulnerable in cross fire between two jurisdiction
 - Will there be enthusiastic and effective "Spirit of co-operative federalism" ?

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Words of Caution

- Presentation is based on CGST Act, IGST Act and UTGST Act
- Views expressed are the personal views of faculty based on his interpretation of GST Act
- Presentation is done in educational meeting. Such meeting is arranged with a clear understanding that neither the Faculty nor NACIN will be responsible for any error, omission, commission and result of any action taken by a member or anyone on the basis of this presentation.

THANK YOU

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