Ex-Factory Sales Could be an Area of Litigation

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The introduction of GST was a very noteworthy step in the field of indirect tax reforms in India. Now, GST enters its fourth year and the Government of India so far has proactively taken adequate reforms to give benefits to various stakeholders. Stepping in the fourth year of GST, the country has overcome various teething troubles, and moved on to expedite the missing links in GST reforms. However, many of the mainstream issues faced by the millions of taxpayers in their everyday transactions is yet to be addressed. Even after 3 years the taxpayers are facing several issues which are impacting their trade adversely. From the countless issues, we intend to focus on only one in this article which has seen the news headlines recently –Place of supply for Ex- Factory sales.

Recently, the Telangana State Authority for Advance Ruling (TSAAR) in the case of**M/s. Penna Cement Industries Limited [**TS-341-AAR-2020-NT**]** answered the following question - What tax should be charged on Ex-Factory Inter-State supplies made by the company?

The applicant M/s Penna Cement Industries Limited (the company/ PCIL) is a cement manufacturer located in Telangana. The Company occasionally supplies cement to dealers in another state or ex-factory/ ex-work basis.

The applicant sought advance ruling on whether it should levy central tax (CGST) and state tax (SGST) or integrated tax (IGST) on ex-factory supplies to another state.

Under GST ‘place of supply’ and ‘location of supplier’ determine whether a supply can be treated as an intra state supply or an interstate supply. Integrated Goods and Service Tax, 2017 deals with place of supply of goods where the supply involves movement of goods. As per the relevant provision of such act, 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 movement of goods terminates for delivery to the recipient.

Hence in terms of above mentioned legal aspects it can be inferred that place of supply in case of movement of goods either by the supplier or by the recipient or by any other person shall be the place where the delivery of goods terminates.

In the ruling applicant made goods available at the factory gate i.e. enters into Ex-Factory sale

agreement with the recipient. However, this is not the point where the movement of goods terminates since the recipient subsequently assumes the charge of transportation of the goods up to the destination to his state.

Therefore, termination of the movement of goods evidently takes place at the location (in a different state) to where the goods are destined. Therefore, the 'location of supplier' and the 'place of supply' are in different states and thus supply qualifies as interstate supply. Accordingly, AAR held that the supplier is liable to charge IGST in respect of ex-factory supplies made to other state.

However, the Advance Ruling is in accordance with our view and the GST act. But certain points are noteworthy to the supplier and the recipient before entering into such transactions. In the case under discussion, the supplier charges IGST based on the assumption that the movement is caused by the recipient of goods. A proper officer can question this issue and challenge on charging of IGST rather than CGST/SGST. So, it is advisable to take a declaration from the recipient of goods that the movement is caused by him. This will give strength to the premise of taxpayers treating the goods as inter-state supply rather intra-state.

Further, a similar issue is observed in the case of over the counter ("OTC") sales where the supplier treats it as intra state supply although goods may be moved to some other state. But, in reality the goods may actually be destined to some other state. The destination state will lose on the tax component which the state should ideally have received.

A case can also may be made here if a buyer is of another state and will move these goods to the state but the supplier charges it as intra-state supply, then it will be a non-compliance of the supplier in such a scenario. So, a supplier in all such over the counter sales shall maintain from the recipient the final destination of the goods and charge the tax accordingly.

This advance ruling could be beneficial for many taxpayers to claim credit for the tax charged by their suppliers. The same matter was also discussed earlier by GST council in its 37th meeting. However, the same was not finalized and GST council sent back it to Law committee for fresh consideration after obtaining states opinion.

In light of the above we suggest the supplier should be extra cautious in over the counter or ex-factory sales and take declaration with respect to the movement of goods wherever feasible.

In order to ensure that all provisions are followed by the taxpayers and officer alike the department shall release a detailed circular for OTC and Ex-factory sales so a streamlined and litigation free procedure can be followed.