

## Goods shipped to overseas customer directly by foreign vendor are liable to IGST: Gujarat AAR

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## Summary

The Gujarat Authority for Advance Ruling (AAR), in a recent case, has held that Goods and Services Tax (GST) is payable on goods **sold** to customer located outside India even when goods are shipped directly from the vendor's premises located outside India to the customer's premises. The AAR held that in such cases, the transaction would be liable to integrated tax (IGST).

However, the AAR directed that GST would not be payable on goods **procured** from a vendor located outside India, if the goods so procured are not brought into India.

## Facts of the case

- The applicant<sup>1</sup> (a registered taxpayer) is engaged in the development and supply of telecommunication software in the nature of WiFi service management platform.
- **Proposed transaction:** The applicant proposed to undertake transaction and supply of hardware, commercially known as 'Merchant Trade Transaction', wherein the applicant will receive an order from the customer located outside India. The applicant's vendor (a person located outside India, in the instant transaction) would ship the goods directly to the customer.
- **Flow of consideration:** The vendor would issue invoice on the applicant against which payment would be made in foreign currency. Separately, the applicant would raise invoice on the customer and would receive the consideration in foreign currency.

- The applicant sought an advance ruling from the Gujarat AAR to determine the taxability of the proposed transaction.

## AAR's observations and ruling

### Whether GST is payable on goods procured from vendor located outside India when such goods are not brought into India?

- The AAR held that where the bill of entry/import declarations are not being filed with respect to the goods so procured, the GST would not be leviable<sup>2</sup>.

### Whether the GST is payable on goods sold to customer located outside India when goods are shipped directly from the vendor's premises (located outside India) to the customer's premises?

- **Classified as 'inter-state supply':** The applicant is selling goods for a consideration in the course or furtherance of business and as such the transaction would be treated as

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<sup>1</sup> M/s Sterlite Technologies Ltd.

<sup>2</sup> Circular No. 33/2017 Customs dated 1 August 2017 issued in the context of 'High Sea Sales'

'supply'. Further, since the supplier is in India and the place of supply is outside India, the said transaction would qualify to be an interstate supply<sup>3</sup>.

- **Transaction would not be treated as 'export':** The AAR noted that since the goods have not crossed the Indian customs frontier, the goods are not physically available in the Indian territory. Thus, it held

that in such situation the question of taking goods out of India would not arise.

- **IGST applicable:** Accordingly, the AAR concluded that since the subject transaction does not qualify as 'export of goods' and is covered within the ambit of inter-state supply, the same would be liable to IGST.

### Our comments

As per provisions of the GST law, a transaction of sale of goods is not treated as supply and consequently not liable to GST, if the supply of goods takes place from one non-taxable territory to another without such goods entering into India.

The Kerala AAR had earlier held that merchant trade transactions in which the traded goods never enter the Indian territory are not liable to GST, as the goods are never imported to India. Contrary to this, the Gujarat AAR has now ruled that such transactions would attract GST even when the goods do not enter the Indian territory.

Such contrary rulings create confusion amongst the taxpayers and may give rise to further litigation. As such, the taxpayers entering into similar kinds of transactions need to be cautious. A clarification from the government on this issue will surely be helpful in preventing unnecessary litigation.

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<sup>3</sup> Section 7(5) of IGST Act, 2017

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