

Bill to – Ship to Model Under the Draft India GST Law

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Chapter IV, Section 7(3) of the draft IGST Act reads as below (verbatim):

“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.**”

While the First Leg of the Transaction is reasonably clear, the second leg does seem to have ambiguity, as discussed below:

A. The First Leg of the Transaction

It could be inferred from the above section that, the supply can be intra-state, but the tax trigger/place of supply would be the location of the third person who gives instructions for delivery of the goods.

In other words, a person could supply goods intra-state (which ideally should trigger CGST + SGST), but, if the “third person” who gives instructions for such supply is located outside the particular state, then, regardless of the actual movement of goods, the location of such person would be deemed to be the place of supply and result in triggering of IGST.

As a corollary, if the ‘third person’ discussed under Section 7(3) of the IGST Act, is located in the same state as the supplier but issues instructions for delivery of the goods on inter-state basis (which ideally should trigger IGST), then, regardless of the actual movement of goods, his location would be deemed to be the place of supply and result in triggering of CGST + SGST.

The aspects discussed above are only in relation to the first leg of the transaction, i.e. between the Supplier of goods and the ‘third person’, whether located within or outside the state.

B. The Second Leg of the Transaction

The next point to reckon with would be the nature of the second leg of the transaction, i.e. between the ‘third person’ and the ultimate customer who receives the goods.

Whether a transaction triggers IGST or CGST + SGST is based on whether the supply is inter-state or intra-state. In so far as the ‘bill to – ship to’ model is concerned, there is just one transaction of movement of goods from the Supplier to the Ultimate Customer. The transactions between the ‘third person’ and the Ultimate Customer are just paper transactions.

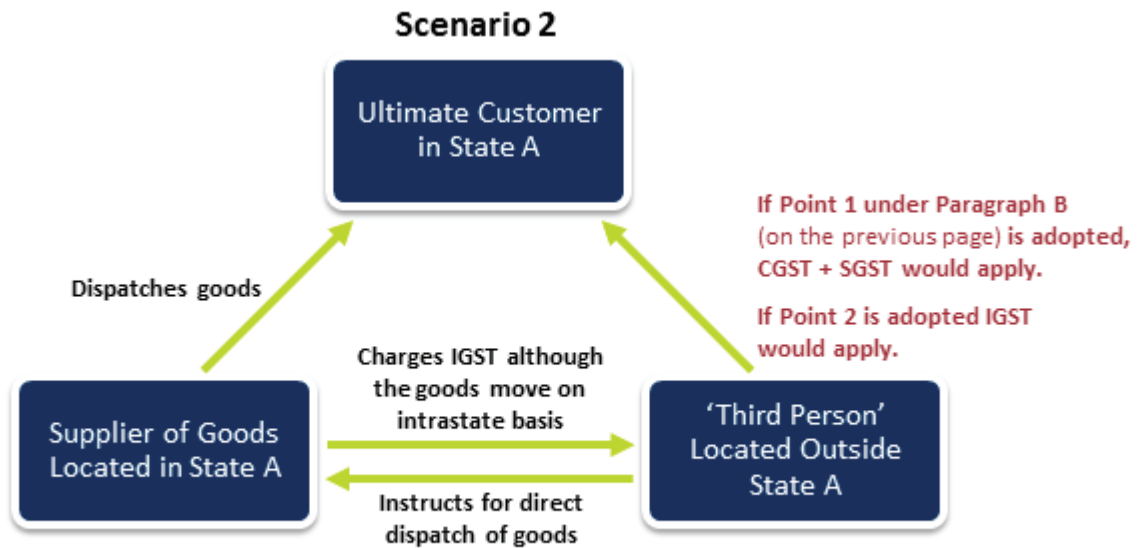
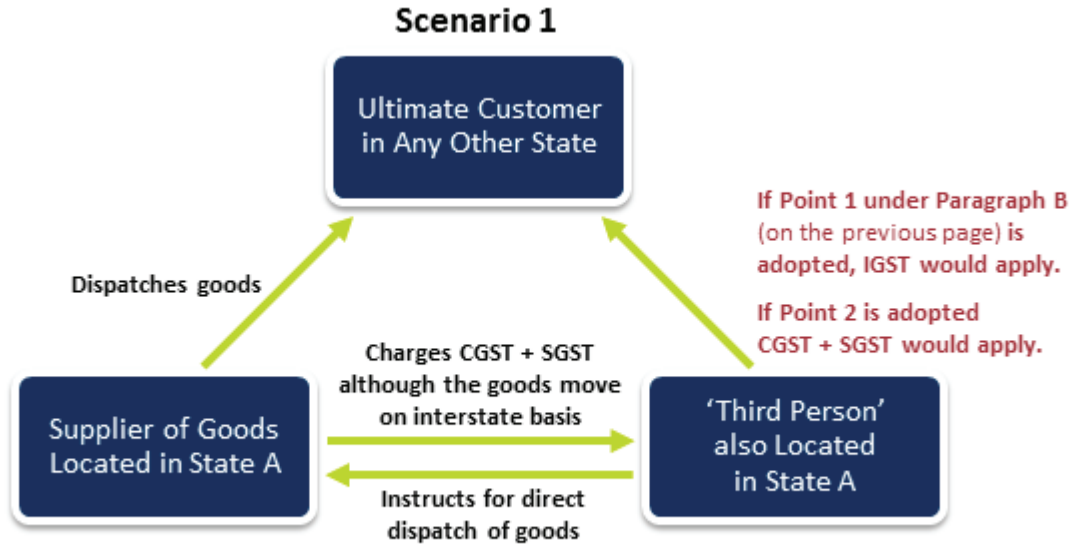
With respect to the above, it is pertinent to analyze Section 7(4), which states that,

“Where the supply **does not involve movement of goods**, (in this case, between the ‘third person’ and ‘ultimate customer’), whether by the supplier or the recipient, the **place of supply** shall be the **location of such goods at the time of the delivery to the recipient.**”

There are two interpretations possible for the second leg of the transaction. At the time of effecting the second leg of the sale transaction,

1. The goods might have reached the ultimate customer. In which case, the place of supply would be the destination of the ultimate customer.
2. Going back to Section 7(3), in this transaction of ‘bill to – ship to’, it is deemed that the ‘third person’ is the recipient of the goods, even though the actual recipient is the ultimate customer. This concept could further complicate the process of determining the actual place of supply.

The above information has been diagrammatically presented on the next page.



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