Place of depositing tax under GST Law. Definite or choice based?

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For any taxing statute to be functional, it should define a taxable event, value and rate of tax, time of deposition of tax, person liable to deposit tax and **with whom tax is to be deposited**. The Supreme Court in Govind Saran Ganga Saran v. Commissioner of Sales Tax observed that the taxing statue comprises of the following components:

(i) The first is the character of the imposition known by its nature which prescribes the taxable event attracting the levy

(ii) The second is a clear indication of the person on whom the levy is imposed and who is obliged to pay the tax

(iii) The third is the rate at which the tax is imposed

(iv) The fourth is the measure or value to which the rate will be applied for computing the tax liability

The taxable event under Model GST Laws is the supply of goods/ services or both. Intra-state supply of goods/ services or both is leviable to Central and State Goods and Services Tax (CGST and SGST), whereas Inter-state supply of goods/ services or both is leviable to Integrated Goods and Services Tax (IGST). The value of supply generally is transaction value liable to tax at the rate specified in schedule to the Act. The moot question is who is the person liable to deposit tax and with whom such tax is to be deposited. Our unsuccessful attempt to find an answer to the same is as follows.

As per Model GST Laws, tax is payable by every **'taxable person'** in accordance with the provisions of the Act. 'Taxable person' has been commonly defined under Section 9 of the Model CGST/SGST law for both CGST/ SGST Law and IGST Law as follows - *'taxable person' (subject to certain specific exclusions) means a person who carries on any business at any place in India/ State of ______ and who is registered or required to be registered under the Act.*

Further, the requirement to register is provided under Schedule III of the Act, as *“Every supplier shall be liable to be registered under this Act in the State from where he makes a taxable supply of goods and/ or services”*.

Effectively and quite clearly, under the Model GST Laws, tax is to be deposited with the State Government from where the taxable supply is made by the taxable person.

But, this where the buck stops!! The Model GST Laws restricts itself to provide that tax is to be deposited with the State from where the supply of goods/ services or both is made. There is no provision under the Model GST Laws which provide for the principles for determining the ‘place from where the supply of good/ services or both is made’. This may lead to an anomalous situation wherein the Taxpayer as well as the Tax Authorities are clueless about the State where tax is to be deposited and the persons against whom tax can be enforced respectively. Illustrative examples of such situations may be as follows:

<u>Illustration 1:</u> Chartered Accountant (CA) has offices in Delhi, Mumbai and Ahmedabad. CA enters into a contract with its customer in Bangalore for consultancy services. The consultancy contract is entered into with Delhi Office, the commercial invoice and accounting is in Mumbai Office and services are provided by Ahmedabad Office. Now, where is the tax to be deposited viz. from where the supply is made??

<u>Illustration 2:</u> Trader has head office in Delhi, Sales office in Mumbai and Godown in Ahmedabad. Trader enters into sale contract with customer in Bangalore. The sale contract is entered into with Delhi Office, the commercial invoice and accounting is in Mumbai Office and goods are supplied by Ahmedabad Godown. Now, where is the tax to be deposited viz. from where the supply is made??

The above is in stark contradiction to the present laws, wherein in respect of goods, Section 9 of the CST Act, 1956 clearly provides that tax is to be deposited with the State from where the movement of goods commences. Further, tax on services being a central legislation, the question 'which State tax is to be deposited' holds no relevance.

In the above legal position, it remains to be seen whether Empowered Committee comes up the principles for determining the 'place from where supply is made' in the yet to be out Rules to the Act. In absence of such Rules, the basic question of 'place where tax is to be deposited' may remain unanswered and open to scrutiny and interpretation of courts, which might take decades to settle, leaving the taxpayers with the planned choice to select the place of depositing tax under GST Law.

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