

GIB/KR/KUN Motors/06-12-2018/HC-163

High Court Category : Place of Supply

State : Kerala

Order No.: GIB/KR/KUN Motors/06-12-2018/HC-163

Name of Entry :

M/s. KUN Motor Co. Pvt. Ltd. & Others v. The Asst . State Tax Officer & Others

Date : 14-03-2021

Breif Issue :

Facts & Issue Involved:

To determine the place of supply of goods, what is relevant is that the movement of goods should be occasioned by the transaction of supply, as evident from the words “where the supply involves movement of goods”. It is in such circumstances that the location of supply would be the location of the goods, at the time at which the movement of goods terminates for delivery to the recipient. What is discernible is that, we repeat, the transaction of supply itself, should occasion the movement of the goods. Then the location of the supply would be fixed as the place where the goods are delivered, so as to apply Section 7 or Section 8.

A transaction which terminates with the supply within a State is an intra-State supply. However, when a dealer or manufacturer within the State of Kerala purchases goods for the purpose of further sale or manufacture within the State of Kerala, from an outside State dealer and transports it to their manufacturing unit or dealership, then the transaction occasions the movement of goods. Though the sale occurs in that outside State, the place of supply of goods is in this State since the transaction of sale occasions the movement of goods from one State to another and the supply is terminated in this State; whether the movement is by the supplier or the recipient himself. But, when a person residing in one State goes to another State and purchase goods for his own use, the supply with respect to the transaction terminates on the individual taking possession of the goods in that other State. The movement of the goods, after such sale is terminated and delivery is effected, whether it be inside the State or to outside that State, would be the prerogative of the purchaser, who owns the goods, in whom the property in such goods vests and such movement would not be that occasioned by the sale transaction or the supply thereon.

Decision of Advance Ruling Authority :

Decision:

Therefore to conclude, since in terms of sec 10(1)(a), goods could be moved even by the recipient; therefore, place of supply of counter sales would be decided as per sec 10(1)(a) provided the supplier is aware about destination. It is important to mention that the supplier are mandatorily required to state the name and address of the recipient if the invoice value exceeds INR 50,000/-. It is agreed that general presumption in case of counter sale is that it is an intra-state supply. However, where the supplier is aware that the recipient has come from the state; and if he charges local GST, it would be against the basic concepts of GST, which is destination/ consumption based tax. Therefore, if the customer is located outside the state, the purpose could be achieved only by charging IGST.