

E-Guide on CST



The Institute of Chartered Accountants of India
(Set up by an Act of Parliament)
New Delhi

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Foreword

Globalization is primarily an economic process of integration. GST being a major tax reform is a turning point for the economy and is expected to boost the economy by reducing cost of goods & services and making them globally competitive. For determining the nature of supply being inter-state supply under GST, one is required to have the knowledge of IGST Law.

Knowledge of Interstate Transactions and erstwhile legal framework governing it, is a pre-requisite to understand the rationale behind related provisions in GST and also the requirement of making them better in future. As such, a need has been felt for reiterating the fundamental provisions governing Interstate Transactions under the erstwhile law to better comprehend and analyse the benefits and lacuna prevails in GST. Hence, to enable these pursuits and grab professional opportunities lying ahead, the Indirect Taxes Committee of ICAI has released the publication on "*E-Guide on CST*".

I appreciate the efforts put in by CA. Madhukar N. Hiregange, Chairman, CA. Sushil Kumar Goyal, Vice-Chairman and other members of the Indirect Taxes Committee in bringing out this inevitable material. I am sure this publication would further enable our members in practice as well as in industry to acquire specialised knowledge and cope-up with the challenges and complexities relating to the inter-state transactions.

I welcome the members to a fruitful and enriching experience.

Place: New Delhi

Date: 14.11.2017

CA. Nilesh S. Vikamsey

President, ICAI

Preface

Advent of One Nation One Tax i.e., GST has provided unified common market resulting in spurring economic growth. The concept of nature of supply being an interstate supply and exigible to IGST i.e., Central Government levy is one of vital abstract whose root lies in erstwhile CST Law. The exempting subsequent Inter-State sales subject to conditions and pursuant to certain forms has led to many irregular valuation adjustments in CST. Credit was blocked to the extent of CST paid. Forms reconciliation was a nightmare. GST by simply providing seamless credit is benefiting the assessee.

In GST regime, CBEC clarifies that IGST would be levied on high seas sale of imported goods only once, at the time of customs clearance is based on the same analogy as pre-existing order for sale to a customer or a transfer of documents of title to the goods before the imported goods cross the customs frontier is not liable for CST/ VAT as they are in the course of import. These were some of the aspects of CST which could be relevant to GST.

The Indirect Taxes Committee of ICAI, therefore, has taken an initiative to apprise its members of certain provisions of CST and reference of relevant case law so that the analogy can be made at the time of combating litigations and rationale of representations for the benefit of industry. Hence, the book named “E-Guide on CST” is designed to provide a good referencer for the professionals specializing in GST.

We would like to express our sincere gratitude and thank to CA. Nilesh Vikamsey, President and CA. Naveen N. D. Gupta, Vice-President, ICAI for their guidance and support in this initiative. We must also thank CA. S Venkatramani and CA. Roopa Nayak for drafting this guide and CA. Jatin Harjai and CA. Rajat Talati for updating and reviewing

We encourage reader to make full use of this learning opportunity. Interested members may visit website of the Committee www.idtc.icai.org and join the IDT update facility. We request to share your feedback at idtc@icai.in to enable us to make this publication more value additive and useful.

Welcome to a professionalized learning experience in Indirect Taxation.

CA. Madhukar Narayan Hiregange
Chairman
Indirect Taxes Committee

CA. Sushil Kumar Goyal
Vice-Chairman
Indirect Taxes Committee

Date: 14.11.2017

Place: New Delhi

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Chapter 1

Basic Concepts of CST

CONSTITUTIONAL BACKGROUND

Central Sales Tax is levied by the Central Government of India under Entry 92A of List I (Union List) of the Seventh Schedule to the Constitution on India. However, by virtue of Article 269 it is collected by that State Government from where the goods were sold. Hence the tax revenue collected is given to the same State Government which collected the tax. The current Central Sales Tax rate in India is 2% in case of sales against declaration in C-Form and in all other cases the rate of CST is the prevailing rate of tax on such goods in the appropriate State.

Article 246 governs the subject matter of the laws made by the Parliament and by the Legislature of States. The matters are listed in the Seventh Schedule to the Constitution. The Seventh Schedule is classified into three lists as follows:

- (a) *List I [referred as Union List]:* This List enumerates the matters in respect of which the Parliament has an exclusive right to make laws.
- (b) *List II [referred as State List]:* This List enumerates the matters in respect of which the legislature of any State has an exclusive right to make laws.
- (c) *List III [referred as the Concurrent List]:* This List enumerates the matters in respect of which both the Parliament and subject to List I, legislature of any State, have powers to make laws.

Union List

It contains entries like Defence of India, Foreign affairs, War and Peace, Banking etc. Some of the important entries relevant to taxation provisions are as follows:

- (a) Entry No. 82 - Tax on income other than agricultural income.
- (b) Entry No. 83 - Duties of customs including export duties.
- (c) Entry No. 84 - Duties of excise on tobacco and other goods manufactured or produced in India except alcoholic liquors for human

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consumption, opium, narcotics, but including medical and toilet preparations containing alcohol, opium or narcotics.

- (d) *Entry No. 92A - Taxes on the Sale or purchase of goods other than newspapers, where such sale or purchase takes place in the course of Interstate trade or commerce.*
- (e) Entry No. 97 - Any other matter not included in List II, List III and any tax not mentioned in List II or List III. (These are called 'Residual Powers'.)

State List

State Government has the exclusive powers to make laws in respect of matters in List II of the Seventh Schedule to our Constitution. These entries include Police, Public Health, Agriculture, Land etc.

Entries in this List relevant to taxation provisions are as follows:

- (a) Entry No. 46 - Taxes on agricultural income.
- (b) Entry No. 51 - Excise duty on alcoholic liquors, opium and narcotics.
- (c) Entry no. 52 - Tax on entry of goods into a local area for consumption, use or sale therein (usually called Octroi or Entry Tax).
- (d) Entry no. 54 - Tax on sale or purchase of goods other than newspapers except tax on inter-state sale or purchase.

VAT is a State subject in India acquired from Entry 54 of the State list which levies Taxes on the sale or purchase of goods other than newspapers, as well as sale or purchase of goods (other than newspapers) in the course of inter-State trade or commerce.

The proceeds in any financial year of any tax, including interest or penalty levied and collected under this Act in any State on behalf of the Central Government, shall be assigned to that State and shall be retained by it; and the proceeds attributable to Union Territories shall form part of the consolidated Fund of India.

SALES TAX AND ASPECT THEORY

Further there is one more concept which is relevant in the present context and that is the *aspect theory*. The *aspect theory* implies that different aspects of transactions can be taxed under different statutes. The aspect

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doctrine legitimises the levy of more than one tax on a subject matter, if the incidence of each of the taxes is different and where each of the taxes is imposed under different statutes and for different reasons.

There are instances where courts have held that both service tax and sales tax can be imposed on a particular transaction. The examples are as follows:

- (a) Both Sales Tax and Service Tax are leviable on a transaction of leasing but to the extent of the respective aspects involved in it.¹
- (b) Property tax, which is a State subject is different from the aspect of usage of immovable property which is service. Therefore, levy of service tax upheld along with levy of property tax.²

Going by the said propositions, it is clear that if there are two different aspects in a particular transaction, one of which is subject matter of sales tax and another is subject matter of service tax, there can be levy and collection of both sales tax and service tax.

HISTORICAL BACKGROUND

In 1937 the British formed princely States in India and introduced sales tax. This was continued in Government of India Act, 1935, the British law to govern India. During pre-independence era, the Government of India Act, 1935 empowered the provinces to levy a tax on the sales of goods, by including Entry 48 in List II of its Seventh Schedule which read as "*Taxes on sale of goods and on advertisements*". There was no specific provision for the levy of tax on inter-State sale of goods but each Province had laid down its own definition of sale in its law of sales tax to cover inter-State transaction by having some connection. This led to multiple taxation of the same transaction by different Provinces as well as disputes. Traders were encouraged to move goods clandestinely without documents to safeguard their margins. Some used one document for several movements with complicity of check post officers, a practice which continues even today.

LEGISLATIVE BACKGROUND OF CST

Sales tax is one of the important indirect taxation resorted by the State

¹ Association of Leasing & Financial Service Companies v. UOI (2010) 20 STR 417 (SC)

² Tamil Nadu Kalyana Mandapam Owners' Association v. U.O.I. (2006) 2 STR 438 (Mad)

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Governments. The States are to collect the sales tax. The collection from sales tax goes to the State from where the movement of goods starts. The tax on inter-State sale of goods is only under the powers given by the law enacted by the Parliament i.e. Union (Central) Government.

CONSTITUTION AND CST

The Constitution of India provides for powers to make laws for ourselves including the taxation laws. It further provides that no law can trample on the fundamental rights conferred on any person. Some of the main Articles provide equality before law or equal protection of laws in India [Article 14], protection of rights to freedom of speech [Article 19], no tax to be imposed or collected except by authority of law [Article 265] among many others.

When the Constitution of India came into force on 26th January 1950, Article 286 thereof provided that a State cannot impose a tax on the sale or purchase of goods taking place outside its territory or in the course of import into or export out of the territories of India and only the Parliament can, , provide for a law of a State imposing tax on the inter-State sales or purchases of goods.

WHY WAS CST ENACTED?

The President of India was empowered to direct that such levies including sales tax previously levied by the Provinces could continue to remain in force till 31st March 1951 and he did so by the Sales Tax Continuance Order, 1950 dated 26th January 1950.

While it was clear that tax on inter-State sales or purchases of goods could not be levied by a State after 31st March 1951 except by a Central legislation permitting it to do so, there was an Explanation that existed under clause (1) of Article 286 which read as under :-

“Explanation: For the purpose of sub-clause (a) “a sale or purchase shall be deemed to have taken place in the State in which the goods have actually been delivered as a direct result of such sale or purchase for the purpose of consumption in the State, notwithstanding the fact that under the general law relating to sale of goods the property in the goods has by reason if such sale or purchase passed in another State”.

There were some issues which arose after the Constitution was enacted. There were more than one State having ‘territorial nexus’ with a sale transaction. The contract of sale of goods may take place in one State,

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goods may be delivered from another State and the property in goods may pass to buyer in the third State.

The Theory of nexus was approved by the Supreme Court which held that it is not necessary that all the ingredients of transaction of sale should take place in the same State for levying tax. This led to more than one State trying to tax the same transaction by relying on one of the ingredients of sale taking place in their State. This led to double levy of tax on the same transaction³.

At that time goods were not taxable unless they were delivered for consumption in the State. It was a destination based tax. Therefore, there was no tax on the intermediate sales within a State.

In 1952 the Bombay State enacted the sales tax law and framed rules thereunder which allowed it to levy tax on inter-State sales. This law was challenged and Supreme Court held that no tax could be collected if goods were delivered to another State⁴. This destination based levy adversely affected net exporting States like Bihar and Orissa and the disparity among the States increased. Richer States became richer and the poor ones poorer. States started to establish territorial nexus with the goods such as origin, location of goods, buyer/seller location resulting in State of origin as well as State of destination taxing the same goods. This led to widespread confusion as well as restricted movement of goods within India. The practice of moving goods without invoices and across the borders started increasing. Some dealers started moving multiple consignments with only invoice at time with the connivance of the checkpost officers.

In the *Bengal Immunity* decision, the SC set out the following principles:

1. Sales outside the State were not to be taxed.
2. Imports and Exports were not to be taxed.
3. Unless the Parliament authorizes, the States cannot impose tax on sale or purchase of goods when sale takes place in the course of inter-State trade or commerce.
4. Declared goods were to be protected from State levies⁵.

The Court further held that till law was passed by Parliament permitting the State to tax inter-State sales, no State law could impose tax on such

³ Popatlal Shah v. State of Madras – (1953) 4 STC 188(SC)

⁴ State of Bombay v. Union Motors – (1953) SCR 1069 (SC)

⁵ Bengal Immunity Co Ltd v. State of Bihar – (1955) 6 STC 446 (SC)

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transactions after 31st March 1951. The States were ordered by the Supreme Court to refund the excess taxes while a tax enquiry committee was formed to look into the difficulties of the States.

This resulted in a huge financial difficulty as the tax collected on inter-State sales was held to be illegal and refundable. This was overcome by promulgating an ordinance by President on 30.1.56 validating all the tax collections made by States from 1.1.51 till 6.9.55. This Ordinance was later converted into the Act. No tax on inter-State transactions could be levied by any State after such date.

CONSTITUTIONAL AMENDMENT TO ENABLE TAX

The Constitution was amended by the Sixth Amendment Act with effect from 11th September 1956 so as to make the following changes:-

1. Entry 92A was inserted in the Union List in the Seventh Schedule so as to specifically empower the Parliament to levy taxes on inter-State sales or purchases of goods (other than newspaper covered by Entry 92),
2. Entry 54 in the State List of the Schedule was made subject to Entry 92A of the Union List, so that a State cannot levy tax on inter-State transactions at all
3. Article 269 was amended so that taxes on inter-State sales or purchases of goods levied by the Centre could be collected and retained by the States, and the Central law could formulate the principles for determining when an inter-State sale or purchase of goods takes place,
4. Article 286 was amended to vest the power with the Parliament to make a law for laying down the principles for determining when a transaction is outside a State and when it is in the course of import/export, so that no State could tax these transactions. Provision was also made in this Article for the Central law imposing restrictions or conditions on the taxation of sales or purchases of declared goods.

Consequent to the amendments, the Central Sales Tax Act, 1956 was passed by Parliament on 21st December 1956.

In terms of Article 269, read with Section 9(3) of this Act, the proceeds of the tax levied under this Act would accrue to the States, which collect them on behalf of the Centre. States would retain the collections made by them.

TERRITORIAL JURISDICTION AND CST

Article 265 of the Constitution of India, specifies that tax not to be imposed save by authority of law. Article 245(2) sets out that no law made by Parliament shall be deemed to be invalid on the ground that it would have extra territorial operation. This means if any nexus can be established, transactions from or to India from another country could also be subjected to tax. It is expected that those transactions which do not suffer any tax in the country of origin may be examined closely to see whether India could tax the same.

WHETHER SALE OF GOODS TO OFFSHORE INSTALLATIONS IS 'LOCAL SALE'?

The Exclusive Economic Zone (EEZ) should be within 200 nautical miles of the appropriate baseline, as per the Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act 1976 (MZA for short). These sales have been the subject of much dispute. Even under erstwhile sales tax law there have been many conflicting judgments. The issue is whether CST is leviable, when there is no sale or purchases occasioning the inter-State movement of goods from one State to another but pursuant to sale, the goods are sent from State of origin of movement of goods to locations within the territorial waters. Territorial water means that portion of sea which is adjacent to the shores of a country.

It is necessary to ascertain whether the sale in question occasioned the movement of goods from one State to another. If yes then CST is leviable on such sale of goods.

Also it is critical as to where the title to goods get transferred. This is to be determined based on terms of the contract. If it gets transferred at the ship installation located in territorial waters, then there may be a need to examine whether CST is leviable at all. Most contracts postulate risk transfer at the customer location.

Article 1 of the Constitution of India (COI) sets out that the territory of India comprises of the territories of the States, Union territories specified in the First Schedule and such other territories as may be acquired. Admittedly, location such as Bombay High which is situated at about 180 kms from the shores of India is not part of the territory of India.

Article 297 of the COI, provides that all lands, minerals and other things of

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value lying under the ocean within the territorial waters, or the continental shelf or the Exclusive Economic Zone of India shall vest in the Union and be held for the purposes of the Union. Thus, for the purpose of vesting of lands, minerals and other natural resources etc., clause (1) of Article 297 clearly provides that the Union has jurisdiction. However, this is not the same thing as to suggest that such areas of Exclusive Economic Zone form part of the Indian Territory.

The movement of goods from State to such installations in territorial waters of India may not be covered within the expression “*movement of goods from one State to another*”, as these locations do not form part of the territory of India.

In the absence of any notification issued by the Union of India extending the CST Act to the EEZ area, coupled with the fact that there is no movement of goods from one State to another makes the levy doubtful.

Important decisions

1. The designated areas in the EEZ are deemed to be a part of the territory of India, for the purposes of the Customs Act⁶.
2. Any sale effected by an assessee must fall in one of three categories, namely local sales, inter-State sales or sales in the course of export outside the territory of India and that there could not be a fourth category of sale, in addition to the above⁷.
3. The goods supplied from Gujarat to ONGC’s oilfield in Bombay High does not constitute an inter-State sale under the CST⁸.

TAX TREATMENT OF TRANSACTIONS WHICH ARE NOT MERELY SALE OF GOODS

The taxation of many transactions which did not fit into the definition of “sale” under the CST law as well as Sales Tax/ VAT laws of States was challenged successfully by the dealers. However, the States were not willing to let go of such significant revenue. These were in the areas of construction and other works involving both material/goods and service [i.e. works contract], supply

⁶ Aban Lloyd Chiles Offshore Ltd v. UOI – (2008)227 ELT 24 (SC)

⁷ Murli Manohar and Co. and Anr v. St of Haryana - 1991 (1) SCC 3777

⁸ Larsen and Toubro Ltd. v. Union of India - (Special Civil Application No. 5575 / 2011)

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of food, hiring of goods, sale in installments/ hire purchase, sale of goods in clubs. After much litigation, the 46th Amendment to the Constitution added clause 29A to Article 366 whereby these exceptions were added as “deemed sales”.

The above transactions of transfer, delivery or supply were deemed to be ‘sale’ for the provider/ seller and ‘purchase’ for the buyer/ receiver. This brought new industries and activities into the tax net and substantial revenue to the States.

CST AND GOODS ON CONSIGNMENT BASIS

Entry 92B was also inserted to tax goods sent on consignment basis in the course of inter-State trade or commerce. Under this provision the States have been enabled to tax goods received by the agent within the State who deals on behalf of the dealers located outside the State. It also enables the dealer to take benefits available under the local VAT in regard to the Input Tax credit. [Set off for tax paid at earlier stage within the State]. Further in case of such consignment agent making an inter-State sale, the Government of India can tax the same under CST.

Important Decisions

- In case of sales tax, the taxable event is the act of sale. It is not a tax directly on goods⁹.
- If the delivery and sale is complete within State itself, it is intra-State sale. If delivery and sale is outside State, it is inter-State sale¹⁰.
- No State legislature can fix the situs of sale within the State or artificially define the completion of sale in such a way as to convert an inter-State sale into intra-State sale or to create a territorial nexus to tax an inter-State sale, unless permitted by appropriate Central legislation.¹¹

CONCLUSION

The 1956 law has not undergone much change though the tax policies have moved over the past decades from that of departmental assessment to self-

⁹ Sea Customs Act, in Re-AIR 1963 STC 437

¹⁰ CTO v. Nahata Textile Industries (2001) 121 STC 250

¹¹ State of AP v. NTPC (2002) 127 STC 280 (SC) (5 Judges Bench)

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assessment and a sense of trust is supposed to be reposed on the tax payer. VAT was implemented from 2003 onwards in different States over a period of next four years. It was supposed to bring in uniformity of taxes in States with regard to the rate and also the concept of set off was put in place. However, in the guise of re-assessment and audit, the State Tax authorities have still not given up the power of scrutiny. The preconceived notion about the citizen in the mind of tax administrator as *one who is habitually used to evade taxes* exists even today. Substantial evasion has ample evidence as the parallel economy exists and some sectors industries are thriving. The introduction of VAT has only reduced the rigor of the sales tax regime to some extent. In recent times the transaction cost of compliance has increased steeply year by year with the State getting deeper and deeper into the dealers business with elaborate details being uploaded. Default would end with dealer not being able to deal at all as they would not be able to file their returns or not get forms required for movement. Mandatory penalties and pre-deposit of disputed dues make tax compliant dealers resigned and frustrated. Very few dealers go to Court due to time and cost involved.

However, disputes continue due to the law not having developed adequately and the States not keen in giving up substantial revenue. The non-issue of "C" forms by the revenue authorities as well as fake forms used by unscrupulous dealers in several States have led to large number of disputes and demands in all States.

CONCEPTS

Levy of CST

Section 6 (1) provides that the dealer who sells goods, other than electrical energy, in the course of inter-State trade or commerce is liable to pay CST. However, no tax is payable on sale in the course of export of goods. Tax shall be collected from the selling dealer by State Government from where the movement of goods has commenced.

CST not to be levied in the following cases

1. Sales or purchase within the State- Section 4(1)
2. Sale in the course of Import or Export – Section 5(1)
3. Purchase of aviation turbine fuel for designated Indian carriers for purpose of international flight- section 5 (5)

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4. Penultimate sales subject to conditions – Proviso to section 5(3) read with Section 6(1)
5. Subsequent inter-State sales subject to conditions – Section 6(2)
6. Sales to foreign missions/ UN as specified subject to conditions – Section 6(3)
7. Sales to SEZ developers and units on production of Form I
8. Sale of goods which are exempt from tax

What is Consideration?

The words *deferred payment or other valuable consideration*, enlarge the ambit of the consideration beyond "cash". The phrase "other valuable consideration" needs to be compared with the two preceding more specific terms "cash" and "deferred payment". The principle of *ejusdem generis* provides that words are to be judged by the company they keep. Therefore, the expression "other valuable consideration" can and must be interpreted restrictively here.

It seems intended to cover cheques and promissory notes or negotiable instruments which serve the purpose of "money" in modern commercial practice and usage and which can be included in the concept of "money"¹².

The difference between sale and exchange is that the former is in money and the later paid in goods by way of barter. If a money consideration is not made, it could either be exchange or barter, but not a sale¹³.

Liability of CST for Purchases

Purchase is the other side of sale and is important. In CST the sale or purchase within the State is not liable to tax. However, when goods are received in the course of inter-State trade unless they are exempted, they would be liable.

The circumstances when there is no liability for purchase are as under :

1. Purchases in the course of import from out of India
2. Purchases in the course of or export out of India
3. Purchase of goods from new industries exempt under notification

¹² STC v. Ram Kumar Agarwal (1967) 19 STC 400 (All)

¹³ Commissioner of Income Tax v. APVs Motors and General Stores(Private) Limited (1967) 66 ITR 692(SC)

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Circumstances/ situations when purchaser is liable for CST

1. Procurement of goods meant for resale from unregistered dealers/ individuals/ growers within State. There is no concept of unregistered person [URD] in CST.
2. Procurement of goods meant for manufacture of goods for sale outside State from unregistered dealers within State.
3. Purchase of old jewelry locally for making new jewelry sold inter-State.
4. Purchase of goods done locally meant for resale to exporter unless in course of export.
5. Sale of Iron and Steel in the course of constructing a building by dealer who is under composition scheme.

Thus it can be concluded that if the consideration for the transfer is not money, cheque and similar instruments but some other valuable consideration, it may amount to exchange or barter but not a sale. When goods are given as replacement or a credit note issued, it may not be treated as a consideration in money, in which case CST will not be applicable.

COLLECTION

Introduction

The tax payable by a dealer in the course of inter-State sale would be levied by the Government of India and collected by the State from which the movement commences in terms of Section 9 (1).

Where there is a sale of goods during the movement of goods from one State to another, being a subsequent sale [independent of the first] and not by transfer of documents as provided in section 6(2), then the tax shall be levied and collected again in the State of the original purchasing registered dealer who could be obtaining the "C" Form in that State.

Tax shall also be levied if the purchasing dealer is unregistered and further sells the goods outside the State.

The above subsequent sale may be to any other State including the State from which the goods were originally moved.

Collection of CST: Section 9

Section 9(1) of CST Act, 1956 sets out that the tax payable by any dealer under this Act on sales of goods made by him in the course of inter-State trade or commerce, shall be levied by the Government of India and the tax so levied shall be collected by the Government.

Machinery Provisions - Local State Sale tax/ VAT Laws Applicable- Section 9 (2)

Section 9(2) empowers the appropriate State on behalf of the Government of India to:

- Assess
- Reassess
- Collect
- Enforce payment of tax, interest or penalty.

These powers would include provisions relating to return, provisional assessment, advance payment of tax, registration of transferee/ successor, transfer of liability of firm or HUF in event of dissolution, recovery of tax from third parties, appeals, reviews, references, refunds, rebates and compounding of offences.

It is further clarified that the provisions relating to due date and rate of interest are covered in the same manner as tax itself. The payment of interest for delayed refund is also covered under this section¹⁴.

Therefore, all administrative facilities have been provided to the State except for penalties specified in section 10 or 10A of CST Act, where the CST law would prevail. Further the power to issue clarification or advance ruling in regard to the CST rate or applicability has not been enabled under section 9 (2)¹⁵.

Section 9(2) of the Act is of wide amplitude. Sub-section (2) of Section 9 provides that the authorities under the State Act for the purpose of making assessment and re-assessment under the CST Act shall have all the powers which they have under the general sales tax law of the State. The powers conferred and the procedures laid down under the State sales tax laws would

¹⁴Sterlite Industries (I) Ltd. v. DCTO (2007) 8 VST 389 (Mad)

¹⁵Business Process Outsourcing (I) P Ltd v. Authority for Clarification/ Advance Ruling (2008) 11 VST 1 (Kar)

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be applicable also for the purpose of carrying out assessment under the State Act.

The Supreme Court in the case of *Mahim Patram P Ltd* in 2007 confirmed that in addition to enforcement of tax, interest and penalty the power of recovery to States was also covered¹⁶. This would be so even though the interest rates may vary from one State to another and could be as high as 24%¹⁷. State rules shall be applicable to determine the sale price of the goods for levy of tax under the CST Act.

Collection of Tax by dealers

As the CST is an indirect tax, the dealers shall collect the taxes from the end users and pay the same to the government.

No person who is not a registered dealer shall collect in respect of any sale by him of goods in the course of inter-State trade or commerce any amount by way of tax under this Act, and no registered dealer shall make any such collection except in accordance with this Act and the rules made thereunder.

¹⁶ MahimPatram P Ltd v. UOI (2007) 6 VST 248 (SC)

¹⁷ English Indian Clays Ltd. v. UOI (2008) 11 VST 709 (Kar)

Chapter 2

Definitions

IMPORTANT DEFINITIONS

(a) Appropriate State – Section 2(a)

The CST law provides that CST would be payable in the State of origin i.e. the State from which the movement of goods commences in an inter-State transaction [except in case of sale of goods by way of transfer of documents [covered under Section 3(b)].

Where the dealer has one or more places of business within a particular State, then the appropriate State is that State itself. [Single Registration with branches within the State-section 2(a)(i).]

Where the dealer has places of business in different States, each of those States are referred to as appropriate States based on the State from which the movement of goods commences. There would be multiple Registrations, equal to number of States in which the dealer has operations. [Section 2(a)(ii)].

This could apply to companies engaged in works contracts, turn-key jobs in different States or to FMCG companies which have a vast distribution network. This could also apply to telecom, engineering or automobile companies which need to provide repair and service for their products as near to the customer as possible. Now a day even for intermediary goods under the concept of just in time, goods need to be near the customer and as per the delivery schedule they can be sent, which can at times be hourly dispatch!!

(b) What is Sale?

CST is a tax which is levied on sale of goods which are sold in the course of inter-State trade or commerce. CST is an origin based levy, which is levied and collected by the State of origin of the goods.

Sale means “a transfer of property in goods from one person to another for a consideration”. The essential ingredients to be treated as sale are:

– *Transfer of property in goods* – There has to be change in the title or

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ownership of the goods. The transfer of property in Immovable property is excluded.

- *There have to be two persons* – There have to be two parties a seller of the goods and a buyer of goods to constitute a sale. A transfer to self or one's own branch/depot is not a sale.
- *It should be for cash or deferred payment or other valuable consideration* - The consideration has to be in monetary terms such as cheques/drafts as the preceding words to 'valuable consideration' are "cash or deferred payment" and accordingly the term consideration would need to be understood in that sense.

Definition

(g) "sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, and includes,

- (i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
- (ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (iii) a delivery of goods on hire-purchase or any system of payment by installments;
- (iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- (v) a supply of goods by any unincorporated association or body of persons to a member thereof for cash deferred payment or other valuable consideration
- (vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, but does not include a mortgage or hypothecation of or a charge or pledge on goods;

Analysis of sale

Broken up main part

- *Any transfer of property in goods* - Immovable property is excluded.

Definitions

Also where the ownership of goods is retained by seller it would not amount to a transfer and hence excluded.

Sale includes goods transferred while providing a service such as printing, dyeing, electroplating, powder coating etc. The exception to these could be where the Courts have held certain processes as amounting to a pure service based on the dominant intention such as use of flowers in the service of decoration, use of hand held devices supplied for collection of information, uploading of information of individuals onto the server for use of bank/ government, consumption of tablets and surgical supplies to patients in the course of being operated.

Further, the goods used up or consumed such as explosives in a quarrying contract or chemicals in purification of waste water while providing a service would not be considered as sale as no property passes on to the buyer.

Manganese ore excavated and sold abroad through different ports. Sales contract entered into outside the State for "*oriental mixture*". Dealer contented that goods came into existence at the port. Held that as no process was involved and what was unloaded was manganese ore, State justified in levying tax¹⁸.

- *by one person to another* - Transfer to self is not a sale. transfer from association to its members is based on the principles of mutuality and hence excluded.
- *for cash or deferred payment or other valuable consideration* - The consideration need to be only in monetary terms as the preceding words to "valuable consideration" are "cash or deferred payment" and accordingly the term 'consideration' needs to be understood in that sense. It was observed in the case of *Devidas Gopaldas*, that barter may not be covered¹⁹. However, payment in gold may be considered as consideration in cash as observed in case of *Vadivel Achar*²⁰.

¹⁸ St of Maharashtra Vs Central Provinces Manganese Ore Co Ltd. – 1977 SCR (1) 1002 (SC)

¹⁹ Devi Das Gopal Krishnan & Ors v. State of Punjab & Ors (1967) 3 SCR 557 (SC)

²⁰ V.P. Vadivel Achariv.s Madras Sales Tax Appellate Tribunal (Second Additional Bench), Madras(1969) 23 STC 273(Mad)

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In this context, an interesting issue came up where the entity would collect aluminium scrap from the customers and manufactured new articles of aluminium for the same customers. The weight of the old scrap collected from the customers would be equal to the new articles/ utensils given to the customers. The entity would collect labour charges from the customers. On the question of levy of sales tax on the said transaction, the court observed that this was not the case of transfer of property for “*cash or other valuable consideration*”. Further, the price of scrap and new articles was not fixed and hence the same was not liable to sales tax²¹.

The main part would cover only a normal sale between a buyer and seller. The ingredients could be:

- i. Contract between buyer and seller [may be oral]
- ii. Purpose of contract - transfer of property in goods from seller to buyer
- iii. For a consideration

These three would constitute an agreement to sell.

- iv. Actual delivery / transfer of goods.

Coupled with (iv) the agreement to sell becomes a sale.

Unless each of the above ingredients is present, the transaction cannot be referred to as sale.

A mere transfer of title without consideration is not sale. A transaction by exchange of consideration, which is not money or its equivalent is barter/exchange of goods and cannot be termed as sales. Where the consideration is paid by another [other than buyer] it would still be considered as sale. Showroom replaced parts free of cost for the customer during warranty period. They got the payment from the manufacturer²².

When refundable deposit was taken for safe return of tins supplied and later on non-receipt the deposit was adjusted it was consideration for sale²³.

²¹ Viajya Aluminium Industries v. State of AP (1996) 103 STC 508 (AP)

²² Mohd.Ekram Khan & Sons v. Commissioner of Trade Tax, U.P.Lucknow (2004) 136 STC 515 (SC)

²³ State of Maharashtra v. Britannia Biscuits Company Limited(1995) 96 STC 642 (SC)

Definitions

The characteristics of the goods whether legal or illegal would not make any difference and the transaction would be liable to tax.

Where any one of the ingredients (i. to iv. above) was not satisfied, the transaction was not liable to erstwhile sales tax. This was also upheld in a number of decisions as under:

- i. Involuntary / compulsory sale [no agreement between parties - as required under (i) above],
- ii. Goods involved in works contract [intention is to build mall, erect a machinery, install a chiller plant, repair a vehicle etc.- purpose is not to transfer goods- as required under (ii) above],
- iii. Supply of foods or beverages in the service of restaurant or outdoor catering – [No transfer of title in goods since the goods are consumed - as required in (ii) above]
- iv. Goods provided to members by club – as required under (i) above-self-service not liable
- v. Hire purchase or sale of goods in instalments – as required under (ii) above as the transfer is only at end of transaction if at all.
- vi. Right to use goods for specific periods – as required in (ii) above-property to remain with the seller only.

This position of law deprived the States of substantial revenues. The States sought the amendment to the definition which led to the above 46th Amendment in 1982 to the Constitution in Article 366(29A) where the deeming fiction was introduced for 6 categories of transactions. The effect however was given only from May 11, 2002 and sale after this date included what we call deemed sales.

Deemed Sales

The six inclusions are analysed further:

- (i) *Transfer otherwise in pursuance of a contract where both parties agree to the terms.* Involuntary sales or compulsory sales would be covered here. The situations when this can occur could be as under:
 - (a) Sale consequent to government order may be at prices dictated by controlling authority
 - (b) Compulsory seizure, consequent to court order in favour of Financial Institutions / Banks,
 - (c) Sale of abandoned goods by Customs Authorities,

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- (d) Unclaimed goods with a bank or pawn broker²⁴,
 - (e) Dissolution of a partnership firm,
 - (f) Where goods provided on bailment (without transfer),
 - (g) Free supply in warranty period where the dealer would not charge the customer but would be compensated by the manufacturer of the product – Motor/ TV Company and transfer of property while providing a service.
- (ii) *Transfer of property in goods, whether as goods or in any other form involved in works contract:* Indivisible contracts of sale or works cover a large number of transactions in the manufacturing, repairing and construction industry. This sector accounts for about 11% of the GDP of India now. One major question which arose was in a contract of sale such as sale of building or part thereof for a composite fee, whether there was any “works contract”.

The Supreme Court in *Kone Elevators* case in 2005 held that the sale of lift was a chattel as it is and could not be broken further²⁵. However, in the Division Bench review of the same decision rendered in the year 2014 it was reversed and the installation part was said to be works contract²⁶. Time tested understanding was reversed and this decision clarified that:

- (a) The dominant nature test or
- (b) the degree of labour and degree of service or
- (c) the overwhelming component test

would not apply in case of works contract.

Similarly, in the case of contracts for sale of apartments the High Court in the case of *K. Raheja* had held in 2005 that there was a works contract even in such single agreements²⁵. This was appealed to the Supreme Court and in the landmark decision in 2013 in the case of *L&T*²⁶ including *K. Raheja & others* it was held that there was a works contract even in sale. However, one important observation was that as on the date when the buyer gets into an agreement, the land and *part*

²⁴ Karnataka Pawn Brothers (1998) 111 STC 752 (SC)

²⁵ *K. Raheja Development Corporation v. State of Karnataka* (2006) 003 STR 0337 (HC)

²⁶ *Larsen And Tubro Limited v. State of Karnataka* -(2013) -TIOL-46-SC-CT-LB)

Definitions

completed buildings would not be subjected to VAT. Only the balance construction pending would be considered as a works contract.

The 2015 landmark Division Bench decision of the Supreme Court in the L&T decision*²⁷ may lead to composite contracts being questioned. They held that as there is existence of goods which are allowed to be used/ enjoyed by the receiver of the service and sales tax being demanded on sale of such goods is valid²⁸.

These two decisions have widespread impact on disputes where on the whole contract - taxes had been collected though it should have been collected only on the incomplete portion and in many cases where the assessments were completed as there was no clarity as to whether the assessments are invariably going to be reopened/ reassessed, consequent to the decisions of the Apex Court.

However only the property in goods transferred are to be subjected to sale tax levy along with the profits allocable. The normal activities which could get covered herein are: building contracts, job work with transfer of material, printing or painting contracts, annual maintenance contracts, repairs, installations etc.

(c) Business – Section 2 (aa)

The common understanding of business is that it is a *continuous, frequent and regular activity for a profit*²⁹. However, the proper understanding under CST would be as per the definition which may be beyond the common understanding. The definition would prevail as long as it is not ambiguous.

Section 2 (aa) has defined business in an inclusive manner [wider coverage] to include:

- **Any trade, commerce** – This has been defined as any activity of sale or purchase of commodities. Primarily it is an exchange of goods for money or activity carried out with a view to gain or profit from the same. However, transactions *not resulting in profit* would also be covered as per the definition as long as the intention was to make profit.

Therefore, it could be said to be any activity be it industry, profession

²⁷ L& T Ltd – Interim Order no 72-74/ 2015.

²⁸ L&T Limited and ors v. State of Karnataka and another (2013) 77 KLJ 177

²⁹ St of Tamil Nadu Vs Board of Trustee Port of Madras (1999) 114 STC 520 (SC)

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or occupation relating to production, supply, distribution or control of goods and would include services.

- **Any manufacture** – This has not been defined in the Act but may take some color from the Central Excise Act, 1944 as well as the Income Tax Act, 1961. The Apex Court had observed that *manufacture is wide enough to cover producing, making, extracting, altering, ornamenting, finishing or otherwise processing of raw material*³⁰. In this case, the process of converting scrap into agricultural implement was said to be covered. The definition under CST has wider coverage than central excise law and therefore any transaction which is manufacture in excise under Section 2(f)(i) would be so in CST also³¹. However, the concept of deemed manufacture under Section 2(f)(ii) and Section 2(f)(iii) may not be applicable to CST in all cases. Under CST processes to make the goods saleable could also be said to be manufacture.

Normally manufacture under CST could be said to be the following:

- (i) Process for bringing into existence a new and distinct object.
- (ii) Process resulting in a commodity with different chemical composition.
- (iii) Where the input material loses its character after the process and cannot be used as it was possible originally.
- (iv) Assembling is manufacture as what goes in are components and what comes out is a different item.

In the above cases, some transformation is necessary. However even when the characteristics are same it could be 'manufacture' under CST, though under central excise it may not be manufacture. Illustrations could be as under:

- (i) Taking a quarry on lease and breaking up boulders extracted, into jelly/ gitti for use in construction makes it another marketable commodity
- (ii) Packing from bulk to retail pack
- (iii) Rice from paddy
- (iv) Refining of Oil from crude³².

³⁰ Steel India v. State of Jharkhand and others (2004) 138 STC 121

³¹ Ashirwad Ispat Udyog v. State Level Comm (1998) 11 TMI 527(SC)

³² BP Oil Mills Ltd (1998) 111 STC 188(SC)

Definitions

Readers who wish to understand further on what amounts to manufacture and what does not may refer the discussion under Section 2(f) of any commentary/ book on Central Excise. The judicial precedents under CST would also provide direction for the doubtful cases.

Any adventure or concern in nature of trade, commerce or manufacture

– This would be understood based on the intention and the circumstances. May be where there are elements of love and care [between family members], assistance to friend, acts of philanthropy on favorable terms of purchase [say a chair worth Rs. 500/- in a school in slum being purchased for Rs. 10,000/-], there would not be any adventure in the nature of trade. Another example could be old furniture sold at the time of shifting of house or a garage sale done to dispose of items, which are unnecessary at home by the householder.

However, where the transaction is one to derive a profit there would be a presumption that it is in the nature of trade or commerce. Recurring activity like sale of damaged packing boxes by a distributor could be said to be covered in this category. A onetime activity not having profit motive may not be covered though it could be covered when ingredients of profit exist.

Whether or not carried on with profit motive or actually no profit or gain arises from that activity- The important point to be noted is that in the absence of profit also it is business as long as it is done with a view to make a profit.

Further, it includes any transactions in connection with or incidental to or ancillary to trade, commerce, manufacture, adventure or concern. [Section 2(aa)(ii)]. A good example could be sale of scrap by manufacturing industries as it is incidental to its manufacturing operations.

Other types of transactions falling into this category could be:

- (i) Sale of spontaneously grown trees
- (ii) Sale of scrap, unused material which was purchased by research organization
- (iii) Sale of seized goods by the Bank/ Customs Authority etc³³.

³³ Federal bank Ltd and others v. State of Kerala and Others – (2007)62 KAR L.J 529 (SC)

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- (iv) Sale of unclaimed goods by the railways/ port / pawn broker^{34, 35, 36}
- (v) Sale of provisions to the workmen³⁷

A few of the cases where the activity / transaction had *not* been considered as business are as follows:

- Books sold by religious concerns – The intention is to spread religion³⁸. The cost could in the view of the authors also be an indicative factor.
- Food provided in the workers canteens – This is statutorily required in establishments beyond certain numbers as per the labour laws prevalent³⁹.
- Ladoos sold in Temples – The ladoos are not sweets but prasadam which have been offered first to the God and then with their blessings are consumed normally in very small quantities and not as food⁴⁰.
- Auction of gold donated by devotees – Similar to the above – part of the religious practices in India⁴¹.

It is also important to note that for the levy of CST to get attracted, sale of goods should take place in the “course of business”. However, where the business itself is sold in its entirety, it is not considered as sale in the course of business since such sale of business puts an end to the business whereas the phrase “in the course of business” envisages continuation of business.

³⁴ Board of Revenue, West Bengal v. Controller of Stores, Eastern Railway, Calcutta (1989) 74 STC 5

³⁵ State of Tamil Nadu and another v. Board Of trustee of the Port of Madras (1999) 13 PHT 513:(1999) 114 STC 520 (SC)

³⁶ Karnataka Pawn Brothers Association and others v. State of Karnataka and Others (1998) 111 STC 752 (SC), (1998)10 TMI 456

³⁷ State of Tamil Nadu v. Binny Ltd Madras (1982) 49 STC 17 (SC)

³⁸ Commissioner of Sales tax v. Sai Publication Fund (2002) 12) STC 288 (SC)

³⁹ Commissioner of sales Tax MP v. Hukumchand Mills Ltd. (1996) 10) STC 141; (1996) 0 MPLJ 585

⁴⁰ Arulmigu Dhandayuthapani Swami Thirukkoil v. Commercial Tax Officer- II Palani (1998) 108 STC 114 (Mad)

⁴¹ Sri VelurDevasthanam v. State of Tamil Nadu (2012) 53 VST 235; (2014)5 TMI 497

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Thus, sale of goods as part of sale of the entire business would not be liable to CST⁴².

Important decisions on 'business'

1. The dealer was in business of manufacture and sale of biscuits and confectionary. It transferred the business as a going concern including trademarks and brand names. The dealer is not in the business of sale and purchase of trade marks. The sale on transfer of trademarks and brand names is not in course of business and not taxable⁴³.
2. Where temple offers prasadam to devotees after pooja, the activity of the temple is not business⁴⁴.
3. Providing accommodation to the devotees by the trust of temple without profit motive was not business⁴⁵.
4. Sale of tender forms is not incidental to business⁴⁶.
5. Sale of used cars by a dealer in chemicals are not sales in connection with or incidental to the business of manufacture and sale of goods⁴⁷.
6. Sale of scrap and sale of advertisement material at cost price was connected with business of assessee and turnover was exigible to tax⁴⁸.
7. Sale of old unserviceable machinery and scrap by manufacturer is incidental to his business⁴⁹.

(d) Dealer - Section 2 (b)

The definition of 'dealer' is very wide which has a "means" part as well as an inclusive part. 'Dealer' means any person who carries on the business of (whether regularly or one off) of buying, selling, supplying distributing goods. This may be done directly or indirectly as in deemed sale like a works

⁴² Bharat Coca-Cola Co v. Asst CCT (1999) 112 STC (AP – FB)

⁴³ Kwaliti Biscuits Vs St of Karnataka (2012) 53 VST 66(Kar HCDB)

⁴⁴ Dhandayuthapani Swami Thirukkoil v. CTO (1998) 10) STC 114(Mad) (DB)

⁴⁵ Sri Palani Dhandayuthabani Devasthanam v. CTO (2001)124 STC 553(Mad)(DB)

⁴⁶ Maharashtra Electricity Board v. State of Maharashtra(1998) 109 STC 69 (Bom)(DB)

⁴⁷ Morarji Bros(I&E) (P) Ltd v. St of Maharashtra (1995) 9) STC 117(Bom)

⁴⁸ State of TN v. sBurmah Shell Oil Co (1973) 31 STC 426 (SC)

⁴⁹ State of Orissa v. Steel Authority of India Ltd (2011) 44 VST 50

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contractor incorporating goods in immovable property or a service provider selling goods in the course of or along with providing a service.

Further the definition has been expanded by including:

- (i) a local authority [For example Municipality],
- (ii) a body corporate,
- (iii) a company,
- (iv) any co-operative society, or other society, club,
- (v) a firm, Hindu Undivided family (HUF),
- (vi) other Association of persons,
- (vii) a factor, broker, commission agent, del credere agent, mercantile agent who carry on business for a disclosed or undisclosed principal
- (viii) an auctioneer who sells/ auctions goods belonging to a disclosed/ undisclosed principal whether offer accepted by him or by the principal.
- (ix) every local branch or office of a firm registered outside that State
- (x) a company or other body corporate, the principal office or headquarters of which is outside the State; and
- (xi) a government buys, sells, supplies, distributes goods for commission/ valuable consideration other than sale, supply of unserviceable old stores or waste, or obsolete, discarded machinery of parts thereof⁵⁰.

which carries on business for cash, deferred payment or commission, remuneration or other valuable consideration.

The understanding of the term “business” is linked directly to this definition which has been discussed in some details earlier. The general principle is that dealer is a person who carries on business of buying and selling goods. If the main activity is not a business incidental activities would not normally be considered as business unless the same can be established⁵¹.

The term ‘consideration’ generally can mean any right, profit, benefit, forbearance, detriment, loss, and responsibility given, suffered or undertaken. However, considering the fact that the earlier terms relate to

⁵⁰ The Joint Director of Food Visakhapatnam v. State of Andhra Pradesh (1976) 38 STC 329 (SC)

⁵¹ CST v. Sai Publication Fund (2002) 126 STC 288 (SC)

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cash, under CST law it would mean cash or its equivalent. Other forms of consideration like barter etc. may have to be examined taking into consideration the facts and circumstances. Presently the view is that barter may not be covered

(e) Place of Business - Section 2 (dd)

This has been defined in an inclusive manner to cover the place where a dealer or his agent carries on business as well as warehouse, godown, or other places where goods are stored and the place where the books of accounts are kept.

Here it may be important to note that when there are several such places the dealer should keep the Revenue intimated on the locations and where required to take the branch registration.

(f) Registered Dealer - Section 2(f)

The dealer registered under Section 7 is a registered dealer. Thus, any person who is granted certificate of registration under Section 7 is a registered dealer. It may be noted that a dealer can also be registered under central excise separately to pass on the central excise duty / cenvatable portion of customs duties, namely CVD and SAD.

(g) Turnover - Section 2(j)

It refers to the aggregate of the selling price received / receivable by a dealer in the course of inter-State trade or commerce.

Chapter 3

Situs of Sale

When sale of goods takes place within a State it is liable to VAT. When it is inter-State sale, it is liable to CST. The location of the goods/ equipment, movement of equipment pursuant to sale would help in determining the situs.

The place where contract is executed is treated as situs of sale in some cases. If there are any ascertained equipments appropriated to contract which are moving inter-State pursuant to transfer of right to use goods, then it is liable to CST.

When it is transfer of right to use of a software [goods] given in soft form or by email, it is difficult to ascertain situs of sale, within or outside State.

IMPORTANT DECISIONS

- If the delivery and sale is complete within the State itself, it is intra-State sale. If delivery and sale are outside State, it is inter-State sale⁵².
- No State legislature can fix the situs of sale within the State or artificially define the completion of sale in such a way as to convert an inter-State sale into intra-State sale or to create a territorial nexus to tax an inter-State sale, unless permitted by an appropriate central legislation.⁵³

DECLARED GOODS - GOODS OF SPECIAL IMPORTANCE

Article 286(3) of the Constitution of India empowers the Parliament to declare some goods as “*goods of special importance*” and to impose restrictions and conditions with regard to power of the States pertaining to levy of tax, rate of tax and other incidence of tax on such goods. Thus, Parliament can restrict the power of the States to tax such declared goods.

If such declared goods are sold within the State, the State Government

⁵² CTO v. Nahata Textile Industries (2001) 121 STC 250

⁵³ St of AP v. NTPC (2002) 127 STC 280 (SC) (Five Judges Bench)

Situs of Sale

cannot levy sales tax on these goods exceeding 5%. If such declared goods are sold inter-State, sales tax paid within the State is reimbursed to the seller provided the goods are sold inter-State in the same form.

As per Section 2(c), 'Declared Goods' means goods declare under section 14 go be of special importance in inter-State trade or commerce.

A few declared goods, which are of special importance in inter-State trade or commerce under Section 14 are as follows:

- (i) Cereals
- (ii) Coal including coke in all its forms excluding charcoal
- (iii) Cotton, (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise, but not including cotton yarn waste
- (iv) Cotton fabrics
- (v) Cotton yarn but not including cotton yarn waste
- (vi) Crude oil
- (vii) Hides and skins, whether in a raw or dressed state
- (viii) Iron and steel

The full list is in Appendix which contains the extract of the CST Act.

Important Decisions on Different Products - Whether Declared Goods or Not?

- In the case of a dealer who purchased un-ginned cotton and converted into ginned cotton, the resultant cotton seeds were not declared goods⁵⁴.
- Flour maida and suji though derived from wheat are not "wheat". Therefore, not declared goods⁵⁵.

⁵⁴ State of Punjab v. Chandulal Kishore Lal & Krishna Cotton, Dal & Oil Co (1970) 25 STC 52

⁵⁵ Rajasthan Roller Flour Mills v. State of Rajasthan (1993) 91 STC 408

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- Pineapple slices sold in containers not regarded as different goods⁵⁶.
- Hydrogenated groundnut oil [commonly called Vanaspati] held not different from groundnut oil⁵⁷.
- Puffed or parched rice not different from rice⁵⁸.

Restrictions on the tax imposed on Declared Goods

Section 15 lists out the restrictions which are imposed on the sale of the declared goods. The restrictions are as follows:

(a) VAT within the State not to exceed 5%

The tax payable under the sales tax law of a State in respect of any sale or purchase of such declared goods within the State shall not exceed 5% of the sale or the purchase price.

(b) Reimbursement of sales tax imposed within the State if declared goods sold inter-State subsequently

If VAT is levied under the State law for sale or purchase of any declared goods inside that State and the same commodity is subsequently sold in the course of inter-State trade and is subjected to CST under the CST Act, then the sales tax paid within the State previously shall be refunded / reimbursed to the person making such inter-State sale.

The refund or reimbursement is subject to the following conditions:

- (i) The refund shall not be granted unless inter-State sales tax (i.e. CST) has been actually paid. Thus, if the dealer has not paid CST on inter-State sales, then he cannot claim back the local sales tax (i.e. VAT) paid by him on purchase of such declared goods from within the State. Similarly, if the inter-State sale of such declared goods is exempt from tax, reimbursement of tax paid on intra-State purchase is not available to such dealer. It may be noted that for dealers claiming set off, this would be automatic as the ITC [input tax credit] can be used for payment of the CST and balance usable for other payments or refund.

The inter-State sale of goods must be in the same form.

- (ii) *Impact of classification on declare goods:* There have been a number

⁵⁶ DCST v. Pio Food Packers (1980) 46 STC 63 (SC)

⁵⁷ Tungabadra Industries Ltd v. CTO-(1960) 11 STC 827(SC)

⁵⁸ Alladi Venkateshwarlu v. AP (1978) 41 STC 394 (SC)

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of disputes where articles have been held not to be declared goods. For instance, wheat is covered in declared goods. Wheat products such as wheat flour, maida are not covered as declared goods. Further reimbursement is permissible when the goods in the same form are sold inter-State. When identity is lost then reimbursement may not be available. Here classification could be important. For example: condensed milk and milk or steel gate/ frame made out of steel.

Chapter 4

Inter-State Trade or Commerce

INTRODUCTION

Under section 6(1), a dealer is liable to pay tax on all sales other than electrical energy effected by him in inter-State trade or commerce.

CST Act is a single point levy of sales tax at the first point of sale. The subsequent sales during movement of goods are exempt to avoid multi-point levy.

CST charged on sales is not available for set off. No input tax credit is available for inter-State sale. When further sold after taking delivery by the buyer, the buyer would again charge either the local VAT or if in inter-State sale, 2% CST against Form C. If the goods are further sold then again the local VAT or the CST would apply. This would result in tax on tax – cascading effect of multi point tax. This is not envisaged in the VAT regime.

In the landmark judgment of *Galia Kotwala v, State of Madras* it was laid down that when the buyer and consignee are different then the control over goods being handed over by endorsement of the LR would entitle one to exemption under Section 6(2)⁵⁹.

The dealers who are into works contract would need to procure goods from across the country from various sources but may not have the capability of identifying and sourcing themselves and may appoint specialized dealers for each product category. In such a case the multi point levy would add to their cost if they were to pay the CST or local VAT for the goods used in the project.

The dealers who specialise in hiring out expensive equipment across India to their customers may end up paying the CST twice or pay the CST to the original seller and local VAT when they provide control and possession to their customers.

⁵⁹ GaliaKotwala v. State of Madras (1976) 37 STC 536 (SC)(LB)

Inter-State Trade or Commerce

SALE OR PURCHASE IN THE COURSE OF INTER-STATE TRADE OR COMMERCE

Section 3 sets out the principles governing sale or purchase of goods in the course of inter-State trade or commerce. It envisages two situations:

Section 3(a): When the sale or purchase occasions the movement of goods from one State to another

Section 3(b): When sale or purchase is effected by a transfer of documents of title to goods during their movement from one State to another.

The Explanation for the second part clarifies that when goods are delivered to a carrier [transporter/ railways/ airway] or other bailee for transmission, the movement of goods starts when goods are delivered to the bailee and completes when delivery is taken at destination.

Hence, where the goods are delivered to the carrier, then the movement of the goods would be deemed to continue even if the goods reach the destination and remain in the possession of the carrier⁶⁰. This means that endorsement can be made on 'document of title' any time after goods are handed over to carrier but before physical delivery is taken from carrier at the destination.

In this context, it would be relevant to note that repeated instances of stocking of goods by transporters can be treated as suspicious transfers and the transporter could be treated as agent of the dealer / his warehouse treated as place of business of the dealer because goods are being stored at such warehouse. In fact, the State of Tamil Nadu has issued a circular that dealers are required to take the delivery of goods within 40 days of landing of goods into the State else it would be treated as local sale⁶¹

Further, when movement of goods commences and terminates within the same State, and the goods pass through another State, it would NOT be Inter-State sale.

The tests to be applied to evaluate whether there is an inter-State sale or not are:

- (a) Agreement to sell requiring [express or implied] movement of goods from one State to another.

⁶⁰ Guljag Industries v. State of Rajasthan (2003)129 STC 3 (Raj)

⁶¹ PT Power Gear v. CTO (1999) 114 STC 603 (TNTST)

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- (b) In pursuance of the contract goods actually move.
- (c) Ultimately the sale concluded in the State to which the goods were sent or in any other State.

The documents which could be relied on to confirm the existence of the conditions above could be contract for sale, purchase order or works order.

The primary condition for inter-State sale is the relationship between sale of goods and transport of the goods from one State to another. Where the transaction of sale and transport of goods are not linked / are independent of each other, the transaction cannot be treated as inter-State sale. The buyer being from outside the State is not relevant where the goods are procured ex- works. The delivery in such cases is at the factory/ selling dealer's premises. The risk is transferred then and there. In such cases the local VAT would be applicable.

In case the purchasing dealer is required to take the goods outside the State and sell as per the terms of sale he has to furnish monthly reports. This was clearly held as an inter-State sale⁶².

Buyer declared to State trading corporation that goods are to be used in factories in AP & Pondicherry. Allocation order by STC as well as proforma invoice is in the name of factories. The fact that delivery was taken at Chennai is not relevant. It is an inter-State sale⁶³.

Sale to a sole selling agent within the State agreed. However, when the orders were received from out of State, the supplier was to book the goods by rail or road to destinations outside and bill the sole seller. Though the sole seller was within the State, the sale was inter-State⁶⁴.

Orders placed to branch, communicated to HO. Manufactured goods moving to branch is an inter-State sale. The fact that branch received the goods on stock transfer and arranged delivery to the customers, raised the bill and collected the consideration is not relevant⁶⁵.

Similarly, it was held that the State in which the property in the goods passed was not material; what was decisive was whether the sale was one which

⁶² DCM Ltd. v. CST (2009) 21 VST 417 (SC)

⁶³ State of TN v. Elgi Tyres & Tread Ltd. (2014) 5 TMI 761

⁶⁴ State of TN v. Dharangadhara Trading Co Ltd – (1988) 3 SCR 805

⁶⁵ Sahney Steel v. CTO AIR (1985) 1754

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occasioned the movement⁶⁶. Buyer in Mumbai negotiated an order from Mumbai branch but the Madras branch dispatched the goods to buyer through its clearing agent. Mumbai held to be only an intermediary. It was an inter-State sale.

Where there is a need of CENVAT credit to be passed, at times the buyer and the consignee are different. In such cases the transfer of goods by dealer to his branch would not be a stock transfer but an inter-State trade.

In the case of gas in pipeline from UP to AP, the responsibility till delivery was on Reliance. Risk passed only after delivery. Therefore, it is an inter-State sale⁶⁷.

Note: The understanding of what constitutes stock transfer is important for clarity as to what is an inter-State sale.

IMPORTANT ASPECTS OF INTER-STATE SALE

- (i) **Chronology of Dates Important:** The dates of the agreement or purchase order or work order as well as the date of delivery to the carrier/ bailee would be critical in deciding whether the transaction is one of Inter-State sale. This could be more relevant in case of transactions of stock transfer.
- (ii) **Movement Connected to Sale Important:** The emphasis on the transportation documents or the insurance taken may not be as important as the fact that the movement of goods and sale is extrinsically connected⁶⁸.
- (iii) **Completion of sale within State:** Where a dealer makes a purchase to carry out his obligations to buyers outside the State, such purchases would be liable for local tax as inter-State trade had not commenced⁶⁹.

⁶⁶ English Electric Co of India Ltd v. DCTO (1977) AIR 19

⁶⁷ Reliance Industries v. State of UP (2013) 5 TMI 32 (All), IOCL v. UOI –1981 AIR 446

⁶⁹ V3 Engineers Private Limited, Bangalore v. State of Karnataka (2012) 73 Kar. L.J 555(Tri) (DB)

⁶⁸ Aspick Engineering P Ltd (2013) 62 VST 216 (Mad) Relying on Co-operative Sugar (Chittur) Ltd v. State of TN –(1993) 90 STC 1 (SC)

⁶⁹ Himatsingka Timber Co Ltd v. St of Orissa (1964) 10 TMI 72

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- (iv) **Point of Transfer of Risk Important:** The place at which the transfer of goods takes place would be relevant in certain cases. If the terms of the contract are ex works then it would not be an Inter State sale even if the goods are moving to another State subsequently. Further if goods are sent inter State and after taking delivery, the goods again are sold to a dealer in the originating State, both transfers would be Inter State sale transactions.

However, the passing of property in goods in a particular State is not a test to determine that there is an inter-State sale⁷⁰.

- (v) **Goods in Destination Godown Still in Movement:** The movement of goods by the carrier/ bailee need not necessarily be a continuous journey. There maybe points of transshipment/ co loading points / consolidation of cargo at point of delivery or later for efficient and cost effective transportation. As long as delivery is not effected the movement is continuing.

The period during which the goods are warehoused/ stored awaiting delivery would also be included in the period of movement.

Even when goods are consigned to self and are lying with the carrier and before taking delivery a buyer is found and documents endorsed in his favour, it would be an Inter State sale.

Therefore, subsequent sale prior to delivery would be possible by mere transfer of documents which is called E-1 sale. It is also possible that the goods be further sold by the subsequent buyer which is called E-2 sale.

- (vi) **Purchaser to be Registered:** The purchaser of goods to whom the inter-State sale is made would have to register as there is no threshold limit for CST if goods are being sent under concession. However, if goods are consigned at full rate of CST, the buyer may not be registered under the local VAT and/or under the CST Act.
- (vii) **Unregistered Dealer sale:** Where the unregistered seller is outside the State and sends the goods on self-consignment basis and endorses the goods in favour of the purchaser, there would be no exemption and the purchaser would have to pay purchase tax⁷¹.

⁷⁰ Duvent Fans Private Limited v. State of TN (1999) 113 STC 431 (Mad)

⁷¹ CaronaSahu Co P Ltd v. State of Maharashtra- AIR (1966) 1153

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- (viii) Section 4 explains when a sale is said to take place outside the State and therefore it may be relevant for determining whether Inter State sale or purchase has taken place. However, section 4 deals with the provisions relating to sale or purchase of goods outside a particular place and would not be relevant for determining inter-State sales.
- (ix) In a bill to X and shipment to Y both being outside the State, the first transaction is under CST liable for tax and the second is a subsequent sale which is exempt⁷².

SPECIAL TRANSACTIONS

- (i) **Value Payable Post:** In certain special cases, such as Value Payable Post where the buyer has a choice whether or not to take delivery, the sale would be complete only when the payment is made.

However, in the same VPP if the buyer has already agreed but does not wish to give an advance payment then the sale is a CST sale even though the completion of sale takes place when the goods are delivered and accepted and payment for the same is made. E-commerce transactions today through the courier would also be similarly understood.
- (ii) **Mould/ Dies Retained by Vendor:** At times the buyer of the moulds, patterns or dies which are used further by the seller in manufacturing parts for the buyer may be within the State, outside the State or outside the Country. In all cases, it would be a Sale within the State as there is no movement of goods. If however there is no transfer of property at that point of time, then depending on the movement at the end of the order of such moulds/ dies/ patterns, the sale would be said to take place. If there is no movement as the buyer has no need for the used mould/ die/ pattern, then there would be no sale at all.
- (iii) **Lease:** In the case of a lease transaction of machinery the contract occasions the movement outside the State then also the transaction would be one of inter-State sale.
- (iv) **Works Contract:** Where Goods move from one State to another in the course of a works contract it will also be an interstate sale⁷³
- (v) **Tax Saving Methods – Not Evasion:** The fact that the normal rate for

⁷² G.A.Galiakotwala & Co P Ltd v. State of Madras AIR (1976) 2084

⁷³ ABB Limited v. State of Karnataka (2014) VIL 90(KAR)

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most products now is in excess of 12.5% as against 2% CST means that dealers are at times willing to be adventurous. This is not recommended.

- (a) Goods which have moved to another State before delivery but after crossing the border sold to a buyer in the original State would also be an Inter State sale. These types of transactions may be examined in depth especially where there is an economic advantage –rate arbitrage or even where the borders are a short distance from the seller and buyer. Examples could be the NCR area, Bangalore in Karnataka & Hosur in Tamil Nadu among many others.
- (b) There are times when dealers indulge in only a paper transaction with no goods actually moving; when detected this could lead to accelerated demands including penalty.
- (c) There are also times when 2 transactions take place by mere exchange of documents en route in the same vehicle. These types of transactions may also raise doubts and if found to be a sham, penal action will be initiated.

The onus is on the Revenue to prove an inter-State sale and maybe the reason why many mal practices continue and are accepted as legally valid.

WHAT IS CLEARLY NOT INTER STATE SALE?

1. The transfer of goods by a factory/ head office to its branches/ other units for use or sale further. Buffer stock maintained and goods not moving due to order⁷⁴.
2. Goods sent on consignment to other States to agent who sells on his own.
3. Movements which are not occasioned by sale such as – free warranty replacement, sample, demonstration units, sale on approval basis, job work, donations [for Tsunami, floods]
4. Movement of goods from one State to another after execution of the sale in a particular State Eg: Mr A from Punjab travels to Haryana and procures certain goods from Mr B in Haryana. Once the goods are

⁷⁴ Swarup Vegetable Products India Ltd. (2014) 3 TMI 39(All)

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purchased by him, the goods are then transported by Mr A to his godown in Punjab – There is inter-State movement of goods but not pursuant to sale and hence cannot be treated as inter-State sale.

Reference could also be made to the decision of the Supreme Court wherein it was held that sale of car by delivery, within the State of the seller, to the driver of outstation dealer would be intra-State sale⁷⁵

UNDERSTANDING OF THE TERMS

- (i) **Deemed** – May not be so but said to be as per law. This would be valid in law as the Parliament has the authority to do so.
- (ii) **Occasions**– Occasion is understood commonly as that which incidentally brings to cause an event. It need not be direct or immediate but can happen in a subsidiary way⁷⁶.

In normal business, a buyer say A in Kolkatta buys goods available with B a dealer in Karnataka to be delivered to him in his factory at Kolkatta, then the purchase by A or sale by B leads to or occasions the commencement of movement from Karnataka. Another example could be that there is an office building being built at Cuttack and goods are ordered from Ranchi in Jharkhand. In this case, also the sale [which includes goods involved in works contract] / purchase occasions the movement.

Goods of a company commenced movement from Rourkela and were sent to Consignment Agents as stock transfer. However, they were further sold to the subsidiaries of the company. In this case as the ultimate customers were clearly the subsidiaries, it was held that it was an Inter-State case and the order from the subsidiaries in other States occasioned the movement of goods⁷⁷.

Ascertained Goods mean goods identified and set aside in accordance with agreement after a contract is made. One should be able to say – these are my goods.

Specific Goods are those identified at the time of the contract. If one were to order for 3 tonnes of sulphuric acid which was bought from AB P Ltd., it could be considered as specific.

⁷⁵ Ashok Leyland Ltd v. State of Madras (1957) () STC 210 (Mad)

⁷⁶ Coffee Board, Bangalore v. Joint Commercial Tax Officer, Madras – AIR (1971) 870 (SC)

⁷⁷ IDL Chemicals Ltd. v. St of Orissa (2007) 10 VST 644 (SC)

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Sale in Auction – where goods not ascertained – only bid and agreed on a rate. Goods not ascertained and contract did not envisage movement. Not an Inter-State sale.

In a long-term contract for procurement of certain tons of particular ore the ore from mines in MP and Maharashtra moved. Goods not ascertained and that which was exported was not in the course of export, therefore not exempt⁷⁸.

- (iii) **Bailee** – Is one to whom personal property has been delivered under a contract. He has temporary possession of them and only for such purposes as specified. Examples could be bankers entrusted with goods for safe keeping or when there has been an accident and the insurance company is given possession of the vehicle for inspection and repair; transporter or courier given goods for onward delivery to consumer etc. The Service centre which carries on repairs - would be sub-bailee.

A bailee can be understood to be a custodian of goods usually acting for the benefit of the owner.

Transfer of Document of title – In trade the document obtained from the carrier/ bailee such as a lorry receipt, goods consignment note, railway receipt, warehousing certificate, Bill of lading, Dock warrants etc. are documents issued on receipt of goods for transportation. These documents entitle one to claim the goods as long as one is the consignee or the title has passed from the original consignee to him by way of valid endorsement. They are similar to negotiable instruments as the right to receive the goods is transferable.

SUBSEQUENT SALE

Introduction

To avoid cascading effect of taxes on single movement of goods, Section 6(2) provides exemption from tax on subsequent sale. (Sale concluded after the original sale took place though delivery was not completed).

⁷⁸ Manganese Ore I Ltd. (1976) 37 STC 489 (SC)

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Definition

Section 6(2) exempts the subsequent sale of goods referred to under Section 8(3) to a registered dealer in the following circumstances:

- (i) The sale of goods in the course of inter-State trade occasions the movement from one State to another.
- (ii) The sale of goods in the course of inter-State trade has been effected by transfer of documents of title to such goods during the course of movement (to oneself or another). Any sale by further transfer of documents of title to a third party would be exempt.

It is important that in the case of transfer of title it should be in the course of movement. Once delivery is taken from the carrier, there would be no exemption available on subsequent sale. It would be another local or inter-State sale.

Exemption as Subsequent Sales can be availed where the following conditions are met:

- (a) The First sale should be an inter-State sale which could be due to movement of goods from one State to another in the course of sale or effected by transfer of document of title when the goods are in movement from one State to another before the sale is complete.
- (b) Mere inter-State purchase from registered dealer is not sufficient. It has to be established that the CST has been paid on inter-State sale⁷⁹.
- (c) The subsequent sale should be executed by transfer of documents (by way of endorsement) when goods are in movement from one State to another. Example: When the first seller hands over the goods to the carrier, such as lorry he gets a receipt (Lorry receipt-LR). The seller sends the lorry receipt to the buyer. The buyer can get delivery of the goods on submission of receipt to carrier at the other end. The carrier receipt is the document of title to the goods. However, he does not take the delivery but transfers that to his buyer.
- (d) The purchasing dealer should be eligible to issue Form C in respect of such goods (i.e. the goods in question should be appearing in the CST registration certificate of the purchasing dealer).
- (e) The First selling dealer should give a declaration that the transaction

⁷⁹ CTT v. Azad Scrap Traders (2009) 20 VST 768(All).

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was a first sale in Form E – I and the subsequent selling dealer(s) should give a declaration that the transaction was second / or subsequent sale in Form E – II.

- (f) The sale should arise during the course of movement of goods. [the delivery to the buyer should not have taken place].
- (g) The condition is that if the declaration in the prescribed form is not obtained from seller who is registered dealer by purchasing dealer, then exemption to subsequent sale is not available.

DOCUMENTATION

The documentation for compliance could be understood by way of case study as under:

Illustration - Subsequent Transaction

Mr Z of Bangalore a registered dealer has a vendor Mr. A from Chennai for an electrical panel. The price agreed is Rs. 200,000/- + 2% CST against Form C. Mr. Z is to sell the panel to be ultimately used by Manufacturer, Mr Y at Hyderabad. The price agreed is Rs. 2,50,000/-. Mr. Z as a prudent dealer does not want Mr Y to know the price of procurement and does not wish Mr A to know who is his buyer. He also does not want to unnecessarily pay CST twice. He also does not want the goods to move to Bangalore and then send them to Hyderabad incurring additional freight. Mr. Z can avail the benefit of Section 6(2) as under:

Stage 1: Mr Z would have option of asking Mr A (Chennai) to consign the Panel to Mr Y at Hyderabad and invoice the Panel to Mr. Z. However, in this option Mr. A may contact Mr. Y directly next time.

Mr. Z has another option where he can ask Mr. A to start the movement towards Hyderabad and send the Consignment Note issued by the transporter to Mr. Z. Then Mr. Z would endorse the Consignment Note to Mr Y and send the same to Mr Y.

Mr Z then would ask the transporter to deliver the goods to Mr Y. Mr Y would provide the consignment note and take delivery.

Stage 2: Mr A would bill Mr Z Rs.2,00,000/- + Rs. 4,000/-. Mr Z would provide C form to Mr A. Further Mr Z would bill Mr Y Rs.2,50,000/- without any CST. However, he would collect the C form from Mr Y. Mr Z would also provide the E1 form to Mr Y indicating subsequent sale proof.

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Here the first part of the transaction is an inter-State sale liable to CST and the next one is subsequent sale which is exempt from CST.

Further Subsequent Sale Transaction

Say Mr Y of Hyderabad is supplying the panel to ANZ a Construction Company at Cuttack at Orissa for Rs.2,75,000/-.

Additional Compliances would be as under:

Stage 3: Mr Y would further endorse the Consignment Note before taking delivery of the Panel to ANZ and obtain the C Form from ANZ. Mr Y would also issue E2 form to ANZ along with his bill for Rs.2,75,000/- with no CST or AP VAT.

Therefore, in this case neither Mr Z nor Mr Y have paid any tax on further transfer of goods.

Exemption on inter-State sale of goods to Consulates/ diplomats etc.

Section 6(3) provides that sales tax is also not applicable on inter-State sale of goods when the goods are sold to official, personnel, consular or diplomat agent independent of whether the goods have been purchased for himself or for any mission, consulate, United Nations or other body. To claim this exemption, declaration in Form J needs to be obtained from the purchaser.

Important Points arising out of the above provisions

- (a) Tax is levied on *all sales of goods* – There is no threshold limit for levy of tax under CST law unlike the State VAT laws which provide for certain threshold limits beyond which tax is applicable.
- (b) For claiming exemption from CST on subsequent sales the various transactions should arise from single movement of goods i.e. buyer/ seller should not take delivery of the goods.
- (c) First sale and subsequent sale exemption transactions are applicable only when sales are made to registered dealers since the pre-requisite for claiming exemption is issuance of Form C.
- (d) Suggested approach for executing subsequent sale and claiming exemption:
 - Execute the first sale of goods which involve movement of goods from one State to another.

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- The goods in movement are sold (transfer of risk and reward) to another buyer by endorsement on the documents of title
- Endorsement could read as under:
The goods are being sold to _____,(Address) vide Invoice Number _____ dated _____ under section 6(2) of the Central Sales Tax Act to whom the goods may be delivered
- Consider each of the sales as individual and separate transaction for the purpose of issuance of Forms – Buyer to issue Form C and Seller to issue Form E – I/ E – II

OTHER IMPORTANT ASPECTS OF SUBSEQUENT SALE

1. Where the original move of the goods is inter-State but ended up in the State of original dispatch on endorsement as in the case of *ANG Projects* it was held by the Karnataka High Court that in such a case it is not a subsequent sale which could be exempt. This case however goes against the grain of the philosophy of subsequent sale.
2. The fact that CST has been paid in the 1st stage is an important part of the subsequent sale being exempt⁸⁰.
3. The exemption as subsequent sale is also available when goods are sent for works contracts in other States⁸¹.
4. Similarly, when in the course of transit from outside the State a lease transaction is entered and goods endorsed in favour of lessee, exemption under Section 3 (b) is available⁸².
5. There is a further situation under Section 6(2) which provides that the declaration in C Form need not be provided as long as the goods are at a rate lower than the present 2% [may include nil in that State] and dealer is able to establish that the transaction is an inter-State sale on which CST has been paid by the seller. This may have very limited coverage.

⁸⁰ CTT v. Azad Scrap Traders (2009) 20 VST 768 (Ahmd)

⁸¹ Siemens India (2003) 132 STC 418 (Ker)

⁸² Sundaram Finance (2002) 125 STC 565 (Orissa)

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6. There can be existing buyers for exemption to be claimed for a transaction of subsequent sale. A manufacturer of tractors placed an order with manufacturers in TN and instructed them to deliver to ultimate buyers outside TN. The documents of title after booking of the consignment for transportation were endorsed to the buyers and sent to them to take delivery. It was held to be a valid exemption claim⁸³.
7. If conditions set out on C Form and E1, E2 Forms are fulfilled all subsequent sales even beyond 3rd or 4th buyer would be exempt⁸⁴.
8. Documents of Title to goods would include: Lorry Receipt (LR), Consignment Note (CN), Warehouse Certificate, Bill of Lading, Warfage Certificate, Railway Receipt, or other similar documents.
9. The endorsement normally means that the authorised person of the buyer instructs the delivery to be given to the next buyer on the face of the document of title. This can also be given by way of an authority letter or separate order of delivery addressed to the transporter/ bailee.
10. The delivery of goods happens only when the buyer takes possession from the transporters' godown. Till then the goods are deemed to be in movement. However inordinate time lag may lead to investigation. Revenue would examine whether the delivery was complete or possession was taken.
11. The States cannot bring in rules which require the copy of the endorsed title to goods or other evidence other than E1 and C Form to evidence this transaction⁸⁵. This would be so even if the Board of Revenue sets out the additional requirement. The instruction would be *non est* in law⁸⁶.
12. However, in practical situations the existence of additional evidence to support these transactions such as the contract, authority letter, shipping instructions, invoices, bills and copy of the document of title endorsement would prove beyond reasonable doubt the *bona fides* of the transactions⁸⁷.

⁸³ Tractors & Farm Equipment Ltd v. State. of TN (1999) 112 STC 300 (Mad)

⁸⁴ CST v. Savathri Agencies (1990) 78 STC 126 (Mad)

⁸⁵ CST v. Shivnarayan Jagatmanje (1978) 42 STC 315 (MP), PA George (1998) 110 STC 253 (Bom)

⁸⁶ P.A. George & Co v. ACST (1998) 110 STC 253 (Ker)

⁸⁷ State of WB v. Joshi Jute Corp (1996) 100 STC 17 (Cal)

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13. In a straight forward case of an endorsement of document of title to subsequent buyer, the invoice can be originally consigned to the ultimate user and address on account of buyer billed to the dealer who ordered. In this type of a case the duty of excise can be charged or passed on without the intermediate dealer being registered under central excise. Under CST when the buyer and consignee are named separately which is quite common in PSU/Government Contract, there have been some disputes⁸⁸.
14. The issue of C forms at times has been found to be a difficult exercise due to too much red tapism of VAT authorities [some States allow online forms download now]and not taking due care at the ordering stage by dealers.
15. The time limit fixed is up to the time of assessment. However, in this era of self -assessment, may be when re- assessed or when best judgment assessment is resorted upto the time of completion of the same one can provide proof. Authorities have also been allowed to extend reasonable time. However, where the authority does not provide any reasonable time, the dealer can approach the court to direct the authority to consider additional time.
16. The reality that there are issues of non- issue of forms, dealers being unorganized has been recognised and therefore forms can also be provided at the appellate stages⁸⁹.

WHEN SUBSEQUENT SALE IS NOT EXEMPT?

The restrictions in the definition and interpretation of the provision have led to some cases where the exemption for the subsequent sale is not available:

- (a) The first sale is not an inter-State sale [see earlier Chapter for what is ISS].
- (b) The delivery by the carrier or bailee is terminated due to buyer collecting the goods or taking possession of the goods.
- (c) Though goods delivered directly to the ultimate buyer, the documents to title not endorsed while in movement but later.
- (d) The buyer/s is/ are not registered under CST.

⁸⁸ A&G Projects & Technologies Ltd. v. St of Karnataka (2008) VIL 40 (SC)

⁸⁹ State of AP v. Sharma Traders (1989) 73 STC 193 (AP)

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- (e) The goods dealt in are not declared in the registration certificate of the buyer/s.
- (f) The goods dealt in are not the goods for which C Form can be issued [See earlier in Chapter].
- (g) Separate consignment note issued for subsequent movement.
- (h) The consignment note indicates the first buyer as the consignor. It is not endorsed.
- (i) There is a fresh contract for transportation for subsequent movement.
- (j) The first buyer handles the goods (may be testing, repacking)
- (k) The first buyer is not providing E1 Form to the second buyer.
- (l) The second or further subsequent buyer not providing E2 Form to his buyer.
- (m) First buyer not issuing C form to the Original seller.
- (n) The second or further subsequent buyers not issuing C Form to their sellers.
- (o) Dealer not providing the original C Form and E1/E2 Form to the assessing authority. Alternative evidences would not be acceptable⁹⁰. Even if one of them is not available, exemption not available⁹¹.

CST ON PRE-DETERMINED SALE

Pre-determined sale refers to the sale of goods which are purchased pursuant to an existing order.

Eg.: Mr X of Ahmedabad receives an order from his customer Vasant of, Bhiwandi, Maharashtra for purchase of certain machinery. Mr X in turn places an order on his vendor Cherian from Calicut in Kerala for purchasing the machinery. Cherian dispatches the machinery to Mr X by way of a lorry and couriers the lorry receipt. Mr X endorses the lorry receipt in favour of Vasant and instructs the transporter to deliver the goods to Vasant.

Here the Sale between Cherian and Mr X is an inter-State sale liable to CST. However, there exists an interpretational issue as to whether sale between Mr X and Vasant would qualify to be subsequent sale and

⁹⁰ Phool Chand Gupta v. St of AP (1997) 104 STC 601(SC)

⁹¹ State of TN v. Chordia Electricals (2000) 120 STC 34 (Mad)

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accordingly not suffer the CST again. The issue arises on account of the decision of the Supreme Court rendered in the case of *A & G Projects* wherein the Court had observed:

“it is essential that the concerned sale must be a subsequent inter-State sale effected by transfer of documents of title to the goods during the movement of the goods from one State to another and it must be preceded by a prior inter-State sale. It is only then that Section 6(2) may be attracted in order to make such subsequent sale exempt from levy of sales tax”⁹².

Thus, the subsequent sale of goods – i.e. transfer of risk and reward, should take place after movement of goods commences.

The departmental authorities in some States are interpreting the above decision to deny the exemption on subsequent sale in the following scenario:

- Where the subsequent buyer of goods is identified prior to the commencement of movement of goods – Identification of buyer cannot be equated to sale of goods before movement of goods
- The buyer enters into an agreement to sell before movement of goods – There is a fundamental difference between “sale” and “agreement to sell”.

The VAT authorities of West Bengal have issued the following clarification on the High Court Judgment (Trade Circular NO. 11/2010 dated 4-10-2010):

“an agreement to sell and a sale of goods are two different concepts under the Sale of Goods Act, 1930..... a sale falling u/s. 3(b) takes place only when the transport documents are physically transferred or stand transferred by implication and obviously, that by instruction.... as contract of sale and sale itself are altogether different in case of interstate sale, pre-existing order or pre-determined parties would not negate any 3(b) sale if other requirements are found fulfilled i.e. physical or constructive transfer of documents of title to the goods is made... once a sale is established as 3(b) sale, the same would automatically qualify itself to come under the ambit of section 6(2) of the Act;”

The VAT authorities of Andhra Pradesh have issued the following clarification (CCT-AIII [2] 91/2010 dated 7-5-2010):

⁹² *A and G Projects and Technologies Ltd. v State of Karnataka* (2009) 19 VST 239 (SC)

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“the second and subsequent inter-State sales [transit sales] are not eligible for exemption on the ground that such sales are made to predetermined buyer, is not legally valid and hence not correct.

The Maharashtra Sales Tax Tribunal in the case of *M/s Ajay Trading Co v. State of Maharashtra* [Second Appeal No. 111/2010 dated 12.12.2012] has referred to these two circulars and also followed the High Court judgements in the case of *Bayyana Bhimayya* [12 STC 147], *Haridas Mulji Thakkar* [84 STC 319] and other decisions to hold that the judgement in the case of *A & G Projects* is not to be considered to disallow the claim of subsequent sale/ in-transit sale.

It may be noted that subordinate legislation can be retrospective if reasonable and consistent with Article 14 [equality before law]. It can be struck down otherwise. Where millers were made liable to pay tax on purchase of wheat it was held invalid and arbitrary⁹³.

Important decisions

1. Second inter-State sale effected by transfer of documents of title to goods is exempt under section 6(2) even though there was no physical transfer of L.R. When there is constructive transfer by instruction it is duly covered by section 6(2)⁹⁴.
2. A local party purchased goods from other local party and directed the same to be dispatched to the outside State party. Even though local party was shown as consignor, while placing order there was direction for out of State dispatches. Held the sale between two local parties is first inter-State sale and the sale by local party to outside party is subsequent inter-State sale, duly exempt under section 6(2)⁹⁵.
3. Subsequent sale by transfer of documents during movement of goods from one State to another would be exempt even if the first sale was exempt from sales tax. There is no requirement that the first sale should be subject to sales tax⁹⁶.
4. Subsequent sale by transfer of documents during movement of goods

⁹³ Seth Brothers Lessee (2013) 59 VST 481 (P&H)

⁹⁴ State of Gujarat v. Haridas Mulji Thakker 84 STC 317(Guj)

⁹⁵ Fatechand Chaturbhujdas v. State of Maharashtra (S.A.894 of 1990 dated.12-8-1991)

⁹⁶ Mitsubishi Corpn v VAT Officer (2010) 3 GST 463(Del)

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from one State to another would be exempt even if first sale was exempt from sales tax⁹⁷.

5. Forms E-1 and E2 are mandatory⁹⁸.
6. Both Forms C and Form E-1 are mandatory to get exemption for subsequent sale⁹⁹.
7. A dealer in Kerala purchased goods from Kolkata and asked the seller to dispatch the goods directly to Tamil Nadu. The dealer in Kerala issued Form C to the seller. The seller (from Kolkata) issued E-1 Form, but the ultimate buyer (who was from Tamil Nadu) did not issue Form C to the Kerala dealer. It was held that sales tax would be payable in Kerala State as he had obtained Form C from Kerala for supply to Kolkata dealer¹⁰⁰.

Conclusion

The existence of an order prior to start of movement of goods from a subsequent buyer in the view of the authors should not be eligible for exemption as subsequent sale. Therefore, unless there was clear revenue instruction in the State that it can be done, it would be advisable to avoid. This type of transaction could easily be identified in case of need for availment of CENVAT credit under either central excise or service tax as the consignee would be the subsequent buyer. It might be preferable to only provide the address of the consignee with name of buyer as consignee as well as buyer.

BRANCH/ STOCK TRANSFER

Introduction

Article 301 of the Constitution provides for free movement of goods and Article 19(1)(g) grants freedom to Trade anywhere in the territory of India. The definition of sale requires the seller and buyer to be different persons. In today's world dealers have operations spread throughout the country and at times throughout the world.

⁹⁷ Mitsubishi Corpn v VAT Officer – (2010) 3 GST 463(Del) (DB)

⁹⁸ Sri Krishna Rice Mill v St of AP (1997) (104) STC 475(AP HC DB).

⁹⁹ State of Tamil Nadu v. Kothari Plantation (1999) 113 STC 82(Mad)

¹⁰⁰ DCST v. Indian Hardware Stores (2003) 13) STC 431(Ker)

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The basic condition of Inter-State sale is that there should be a sale. If a manufacturer sends goods to his branch/depot in other State, it is not a 'sale' as one cannot sell to oneself. Since no sale is involved, there is no 'Inter State Sale'. Sale would take place when such branch or agent sells the goods.

Entry 92B in the Union List of the Seventh Schedule of the Constitution of India empowers the Government to levy tax on consignment transactions. Presently, such transactions are exempted in terms of Section 6A of CST Act. However, the procurement of goods outside the State by the agent and sales thereafter are subject to the local VAT. In a landmark judgment in the case of *K.G.Khosala* the fact that payment is received by the HO without a prior order for supply was held to be irrelevant¹⁰¹. It was also held that the contract need not provide for and cause movement from one State to another.

Stock transfer is one area which has seen lot of conflict with officers seeking to levy tax as inter-State sale of goods liable to CST. There have been instances of dealers who are undertaking sales to other States through stock transfers route as per directions of the customer. Customer would not lose the 2% CST, of which input VAT set off is not available in inter-State sale.

What is stock transfer?

When goods are dispatched to branch office or consignment agent in another State and thereafter these goods are sold from the branch office or by the consignment agent then the first movement is not a sale and is stock or branch transfer. However, if the movement of goods is occasioned on account of a pre-existing order, the movement would be treated as inter-State sales. The first level confirmation of stock transfer is by issue of Form F by the receiving entity.

Example: When the registered dealer from Karnataka sends goods to its branch office situated in Tamil Nadu and the goods are sold partially/ fully in Tamil Nadu later to local customers on receipt of an order, such movement of goods would be treated as stock transfer or branch transfer when Form F is issued by Tamil Nadu branch to HO in Karnataka.

However, in the same background, when an order is placed after which movement of goods from one State to another (irrespective of State where property in goods passes) started it may not be a stock transfer. If there was

¹⁰¹ UOI v. K.G. Khosala & Co Ltd (1979) 43 STC 457(SC)

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an existing order from a local buyer of the branch prior to the transfer and consequent to that order the goods moved then, the transaction would be considered as a camouflaged [hidden] transaction of CST sale even where F form was issued by the branch/ consignment agent. Thus, it is not necessary that the sale must precede the movement of goods or the fact of movement of goods is mentioned in the agreement. The situations when stock transfer takes place are as discussed in the following paragraphs.:

When is stock transfer permissible?

- (a) When the manufacturer sends goods to his branch/depot in another State.
- (b) When the selling dealer sends goods to his agent i.e. consignment agent who stocks goods on behalf of the dealer.
- (c) When there is no concluded contract with the buyer in the other State, when the goods moved from one State say Karnataka to the Tamil Nadu depot.
- (d) When goods are stock transferred for further use in manufacturing of goods or say erection of equipment in another State.
- (e) When the goods are stock transferred to be used in executing works contract in another State.
- (f) When raw material or semi- finished goods move to job worker/s for processing and return.

Whether Stock Transfers are deemed to be Interstate sales?

- (a) A dealer can claim that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of goods by the dealer to any other place of his business or to his agent or principal or for job work and return, and not by reason of sale.
- (b) The burden of proof for availing such exemption is on the dealer who shall be required to furnish to the assessing authority within prescribed time, declaration in the prescribed Form F filled with prescribed particulars together with the evidence of dispatch of such goods.
- (c) If the dealer fails to furnish such declaration, the movement shall be

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deemed [presumed] for all purposes of the Act to have been occasioned as a result of sale.

- (d) The assessing authority may make an order, after making such enquiry as considered necessary and being satisfied that the particulars contained in the declaration furnished are true, to that effect.
- (e) Such order can be made at any time before assessment or at the time of assessment.
- (f) In order to confirm whether a particular transaction is inter-State sale or stock transfer, it needs to be determined as to whether there was movement of goods from one State to another as a result of prior contract of sale or purchase.

When stock transfer could be questioned?

Some dealers may be maintaining supply chains by introducing branches, wherein the CST could be demanded by treating the transactions as interstate sales in following circumstances:

- (a) Where the buyer who is out of State is known, and identified before goods are sent to the depot. Such buyers may have made full payment even before receiving the stock transferred goods.
- (b) Where the goods are moving pursuant to pre-existing order with depot/branch.
- (c) Direct nexus between stock transfer and sale of goods
- (d) Where the goods are directly sent to the end customer of branch and only invoice is raised by the branch.
- (e) Where entire sales are being made by the branch to some particular dealer/dealers.
- (f) Where stock transferred on “goods are on Just in time” [JIT] basis to branch, and the goods are sold to parties and thereafter there is no stock at the branch.
- (g) Where after transfers made to branch, the goods are sold to very few particular dealers.
- (h) Stock balance generally remains ZERO except for the branch stock transfer.
- (i) Where skeletal staff is there at the branch or it is shared with many others and no responsible person is available.

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- (j) Where PO's are sent by the buyers to HO on the basis of which transfers are made to the branch.
- (k) When there is a pre-existing general agreement for sale with a distributor. The movement of goods between two States caused by or under any agreement or arrangement (in writing or otherwise) with any person attracts CST regardless of the fact that the sale is effected after the transfer of goods to any branch or depot of the Taxpayer.¹⁰²

Transfer against pre-existing order

If the goods are moving pursuant to pre-existing order in the other State, it would be treated as a sale.

Example: A in Hyderabad [AP] wants to purchase some goods from B's branch in Hyderabad. B is in Bangalore [Karnataka]. A places order with B's branch in Hyderabad who, then informs B in Karnataka who transfers such goods to the branch. This is not a branch transfer since the movement of goods was due to a predetermined contract of sales. Thus, since the goods were sold through branch, but the buyer was known and identified before the goods were dispatched from B at Karnataka, it is a CST sale.

A. When stock transfer

1. Agreement to keep buffer stock in branch/ consignment agent. Once re-order level was reached goods would be transferred to the branch. Valid stock transfer is not an inter-State sale¹⁰³.
2. When the goods are moved from Hyderabad to Calcutta office and the movement of goods is not pursuant to any contract of sale entered into by the office. In fact there is no contract of sale but only a transfer of the stock from Hyderabad to the assessee's branch at Calcutta which has godown facility and the goods moved were never earmarked and could be sold to anybody.¹⁰⁴
3. The dealer transferred stock in bulk from one State to another State, but not in pursuance of a contract of sale. It was held to be a Branch Transfer¹⁰⁵.

¹⁰² Hyderabad Engineering Industries (Taxpayer)Supreme Court (SC) 11-TIOL-27-SCCT

¹⁰³ Swarup Vegetable Products India Ltd (2014) () TMI 39; Central Distillery & Breweries v. CTT (1999) 115 STC 296 (All)

¹⁰⁴ Gromor Chemicals (P) Ltd. v. State of A.P (1990) 79 STC 42 (AP)

¹⁰⁵ CST v. Modi Pon Ltd (1995) 96 STC 394 (All)

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B. When not stock transfer

1. When purchases were made at concessional rate linked to sale in State or Inter-State, then transfer of manufactured/ processed goods out of inputs or goods themselves would be considered as used for other purposes and concession to that extent could be denied¹⁰⁶.
2. When goods were dispatched and later sold through branch located in another State to identified buyer against pre-existing order placed before goods were dispatched from factory. This is inter-State sales and not a stock transfer¹⁰⁷.
3. If there is a conceivable link between the contract of sale and the movement of goods from one State to another in order to discharge the obligation under the contract of sale, the interposition of the agent of seller who may temporarily intercept the movement would not alter the inter-State character of the sale¹⁰⁸.

Restriction on input tax setoff

If any stock transfer has been effected, then the dealer may be hit by the restriction contained in the local VAT laws. The full input tax credit under local VAT applicable in the respective State from where stock transfer was made may be restricted to some extent as follows:

- (a) In specific instance of Karnataka VAT, goods which are purchased and subsequently transferred to a place outside Karnataka, not as a sale (which is generally called as a stock transfer) or,
- (b) Where the goods are used as inputs in the manufacture, processing or packing of other taxable goods which are dispatched to a place outside the State as stock transfer.

In such a case the input tax would be calculated as provided in the special rebating scheme. The special rebating scheme provides that the difference between the rate of input tax charged over and above 2% is allowed as input tax deduction. The input tax restricted as per the scheme is 2%. In other

¹⁰⁶ Tata Steel Ltd v. State. of Jharkhand (2014) () TMI 247

¹⁰⁷ Electric Construction and Equipment Co Ltd v. State of Haryana- (1990)77 STC 424 (P&H HC DB)

¹⁰⁸ South India Viscose Ltd. v. State of Tamilnadu (1981) 48 STC 232 (SC)

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States the local VAT law could be examined to see if the restrictions exist and to what extent.

Comparison

Stock transfer	Interstate sale
Goods sent to branches and consignment agents - it is stock transfer	Goods sold directly to dealers in different States
CST is not leviable	CST is leviable
Local VAT is payable when the stock transferred goods are sold within the State	CST is payable on the initial transfer to the other State. However, subsequent local sales thereof, would attract local VAT/CST, as the case may be.
Restriction on input VAT credits	There is no such restriction other than that specified in the State VAT laws

Conclusion

Submitting Form F is important but not a conclusive evidence to prove any stock or branch transfer. The dealer would have to prove that it is not an Inter-State sale. Section 6A of the CST Act is an enabling provision for the dealer to prove the transaction as one of transfer and not sale by producing supporting material as provided. Keeping this in mind inter-State stock transfer has to be done by a dealer. Readers may refer to the Chapter on "Invoicing and Forms" for further general understanding.

Chapter 5

Export out of / Import into India

SALE/ PURCHASE IN THE COURSE OF EXPORT AND PENULTIMATE SALE

Introduction

Article 286(1)(b) of the Constitution of India restricts the levy of tax by State Government on sale or purchase of goods when the sale or purchase takes place in the course of import or export. Further this Article provides that no law of the State can impose tax on the sale or purchase of goods when such sale or purchase takes place in the course of export of the goods out of the territory of India. The foreign trade from India enjoys immunity from double taxation¹⁰⁹. This is on the universal principle that only goods should be exported but not the taxes on goods.

This restriction is only on the State Government and not on the Union Government. Article 286(2) empowers the Parliament to formulate principles to determine when the sale is in the course of import/export.

CST is leviable from the first rupee of sale of goods made in the course of Inter-State sale. The tax laws world over, ensure that the export from the exporting country is competitive. They ensure that taxes do not get added to past taxes or getting attached to the goods while exporting [tax not to be exported]. Many countries also provide additional direct and indirect benefits for the exporters. In India, the Commerce Ministry and the Finance Ministry were not totally aligned in the past and were working in silos [compartments] and at times for cross purposes. As a result, some taxes still stick to the exported goods in some measure. The proactive measures of the present Government and the implementation of GST effective 1st July, 2017 could now resolve some of these issues.

What is an Export Sale?

The word 'Export sales' means direct exports i.e. direct selling of goods out

¹⁰⁹ State of Travancore v. Shanmugha Vilas Cashew Nut (1953) () STC 205 (SC)

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of India. Export is a specialized business and many small units are unable to export directly.

Export Sale - Section 5

Sale shall be deemed to take place in the course of export or import as under:

- (a) Section 5(1) : A sale or purchase of goods shall be deemed to take place in the course of export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

The term export sale is not defined in the Act. Export sale is direct exports. "Sale in the course of export" is a wider term than "export sale". Sale in course of export includes:

- (a) Sale by transfer of documents after the goods cross the customs frontier or
- (b) Penultimate sale for export or
- (c) Export with the help of agent.

Sale to foreign tourists in India is not a sale in the course of export. This is so even if the goods are purchased by the tourists in duty free area in airport before departure¹¹⁰. The validity of this decision is doubtful.

Definition of Important terms

As per Section 2(ab) "crossing the customs frontiers of India" means crossing the limits of the area of a customs station in which imported goods or export goods are ordinarily kept before clearance by the customs authorities.

Explanation: For the purposes of this clause, "customs station" and "customs authorities", shall have the same meanings as in the Customs Act, 1962 (52 of 1962);]

The term "Exports" has been defined in the Customs Act 1962. As per Section 2(18) of the said Act, "export", with its grammatical variations and cognate expressions, means taking out of India to a place outside India;

¹¹⁰ Indian Tourism Dev. Corpn in re – (STR Vol 44 No.7 II-113), BHC- 38:VST: 275, also see Hotel Ashoka v. ACCT – (2012) TIOL-08-SC-VAT)

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In short 'export' means the *Movement of goods from a place in India to a place outside India.*

Illustrations of Export Sale

- (a) A of Karnataka enters into a contract of sale with G of Amsterdam and sends the goods out of the territory of India to Amsterdam. Such sale is a direct export sale.
- (b) A of Bangalore sends goods by ship to his branch in Germany. After these goods have crossed the customs frontiers of India, A sells these goods to P of Germany by transfer of documents. Such sale is a sale in the course of export.

Export is often effected through specialized agencies like Export Houses etc. Such indirect exports also need exemption from taxes to make the products competitive. The last but one sale or purchase which is for the purpose of complying with export order is called a penultimate sale and is also deemed to be in the course of export under Section 5(3) and is exempt from CST or VAT.

A sale or purchase of goods in the course of export as per section 5 (1) & 5 (3) would be deemed/ said to take place in the following circumstances:

- (i) When sale or purchase itself occasions the export of goods out of the territory of India. That is to say there is an order and goods are exported based on such order. This could be said to be direct export. - Section 5(2)
- (ii) When documents to title of goods [bill of lading or similar document] are transferred AFTER the goods have crossed the customs frontier of India.
- (iii) The last sale or purchase of any goods preceding the export sale occasioning export of goods outside India, if such penultimate sale or purchase was after the date of order and for complying with the agreement for export. Further, the dealer who claims such exemption must obtain from the exporter valid certificate. [Presently Form- "H"]- Section 5(3), (4).
- (iv) Sale of aviation fuel to designated carriers for international flights. - Section 5(5) of CST Act.

The above aspects have been discussed in greater details in the following paragraphs.

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1. Sale or purchase occasions export of goods out of the territory of India- Section 5(1)

When a contract for sale between two dealers leads to export of goods out of the territory of India, such a sale contract is not liable to tax. These sales are direct exports where the exporter has an agreement with the foreign buyer to purchase and ends with delivery of goods to the common carrier for transport outside the country. Three conditions are required to be satisfied in this case:

- Sale exists
- Goods actually exported
- Sale is part and parcel of export

The phrase “occasions such export” used in Section 5 and “occasions movement of goods” used in Section 3 have the same meaning and should be interpreted in the same manner. Such phrase would mean “moved by reason of sale” i.e. movement of goods being sold is due to the sale or as per the terms of the sale. Accordingly, the case laws and discussions under inter-State sale relating to such term are equally applicable in the context of Section 5.

The purchase of aviation turbine fuel by a domestic Indian carrier like Jet Airways for the purpose of international flights would be deemed to take place in the course of export of goods out of the territory of India.

This exemption is only to Indian carriers designated as such by Central Government Notification. This is as per Section 5(5) of CST Act. CST would also not be levied as it is not inter-State sale.

Important decisions

- (a) In general, where a sale is effected by the seller, and the seller is not connected with the export which actually takes place, it is a sale for export¹¹¹.
- (b) Sale of food articles by flight kitchen to aircraft is local sale. It is not sale in the course of export as sale is before crossing the customs frontier of India and sale is not to an importer. There is no specific destination as the goods are consumed on flight¹¹².

¹¹¹ Ben Gorm Nilgiri Plantations Co. v. Sales Tax Officer, Ernakulam – (1964 SC decision Majority through Shah, J.)

¹¹² Narang Hotels v. State of Maharashtra (2004)135 STC 289(Bom)

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- (c) When goods are purchased in India and then taken outside, it is sale within the State¹¹³.
- (d) Sale in the course of export would be exempt even if made by unregistered dealer¹¹⁴.
- (e) When a company supplied aviation fuel to foreign bound aircrafts at airport it was not treated as sale in course of export as there was no destination to goods in foreign country¹¹⁵.
- (f) If the property in goods passes to the buyer after crossing the customs frontier of India, the sale would be in the course of export¹¹⁶.
- (g) Sale of stores to ship from customs bonded warehouse and delivered on board a ship is not a sale in the course of export, as there is no foreign destination¹¹⁷.
- (h) Spares delivered to the owners of trawlers who took spares on high sea is not sale in the course of export even if removed from customs warehouse for exports. Though these were exports under Customs Act, these are not treated as export under Section 5(1) of CST Act¹¹⁸.
- (i) Sale to foreign tourist at the counter, under export promotion scheme against foreign exchange is not sale in the course of export¹¹⁹.
- (j) The Supreme Court had observed that when two activities are so integrated that the connection between the two cannot be voluntarily interrupted without breach of contract it would be a sale in the course of export. A bond should exist between the contract of sale and the actual export and that link is inextricably connected with one immediately preceding the other. Therefore, the term "in the course" means not only when 'direct' but also 'in relation to'.¹²⁰
- (k) Coffee Board has a coffee export assistance scheme. Under this the

¹¹³ CTT v. Rajesh Spices Company (2008) 11 VST 303(All)

¹¹⁴ K J James v. State of Kerala (2009) 22 VST 165(Ker)(DB)

¹¹⁵ Burmah Shell Oil Storage and Distributing Co of India Ltd (1960) 1) STC 764(SC)

¹¹⁶ B K Wadeyar v. Daulataram Rameshwarlal (1961) 11 STC 757(SC)

¹¹⁷ Madras Marins State of AP (1986) 63 STC 169(SC)

¹¹⁸ Spares Corporation v. State of AP (1995) 97 STC 645(AP)(DB)

¹¹⁹ CST v. Ganesh Lal (1982) 49 STC 253(All)

¹²⁰ Ben Gorm Nilgiri Plantations Co., Coonoor & Ors. v. The Sales Tax Officer, Special Circle, Ernakulam & Ors. (AIR 1964 SC 1752).

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bidders can bid and what they bid need to be exported and evidence provided that such coffee is exported or else the bidders pay penalty. The Coffee Board was of the view that such sale by them to the bidder was in the course of export and hence not liable to tax. The Court observed that two sales are involved in this case, one between the Board and the Exporter and the other between the exporter and the overseas customer. The Board does not have any link with the second sale. Accordingly, the sale by Coffee Board to the bidder was not considered as penultimate sale¹²¹.

- (l) Foreign Buyer gave order for building coaches in a particular design; bus bodies were built not usable for local market. There is an inextricable link between the foreign order and the coaches built which could not have been sold in India and therefore in the course of export¹²².
- (m) Indenting agent procured orders for fruit and vegetable products from Russia for Kisan. Indenting agent procured the orders through the State Trading Corporation where Kisan was indicated as the consignor and foreign buyer as consignee. Here again the fact that Kisan was clearly indicated as the consignor showed that they were purchasing to fulfill an export obligation¹²³.
- (n) Sale of cement by NBCC for a 200-bed hospital in Maldives against an export order - cement shipped out from Tuticorin port. Though there was no Form "H" it was still a valid export. The link between the order and the procurement of cement for the export project clear and pre-existing, therefore it was sale in the course of export¹²⁴.
- (o) Where the dealer was an EOU with obligation to export goods and the goods were later sold to international marketing organization which would later re-sell the goods to foreign buyers, held it was not a case of intermediary purchasing goods from Indian sellers and then exporting them. It was sale in the course of export¹²⁵.

¹²¹ Coffee Board v. Joint CTO (1970) 25 STC 528 (SC)

¹²² State of Karnataka v. Azad Coach Builders P Ltd (2010) 3 VST 1 (SC)

¹²³ Kisan Products v. CST (1998) 111 STC 796 (All)

¹²⁴ The India Cement Ltd v. State of Tamil Nadu – Tax Case (Revision) to revise the order of the Sales Tax Appellate Tribunal, (Main Bench), Chennai dated 3.2.2000 in T.A.No. 283/98 and COP.NO.341/99.

¹²⁵ Ferro Alloys Corporation v. UOI - 112 STC 570

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2. Sale or purchase effected by transfer of documents of title to the goods after they have crossed the customs frontiers – Section 5(1)

Goods can be directly sold to the buyer or document of title can be endorsed in his favour for effecting sales. Export of goods by endorsement on documents of title to the goods for transfer from seller to the buyer is not common. Export transactions are usually executed only after obtaining the order and goods are not shipped in anticipation of any order.

The term “crossed the customs frontier” means the goods have crossed the limits of the area of a customs station like customs port. The Apex Court in a recent decision held that even duty free shops are customs frontiers¹²⁶. The term customs frontier should not be understood to mean customs barrier.

Important decision

Exporter gets an export order through an export house which endorses the Letter of Credit from foreigners in favour of the exporter. This proves beyond doubt that there is a valid export order. In terms of this the exporter procures goods and loads onto the ship. Further the Bill of lading [document to title of goods] transferred to the export house by endorsement. The link is clear and therefore the sale was held to be in the course of export¹²⁷.

3. Penultimate Sale

Concept of Penultimate Sale

Section 5(3) provides that penultimate sale means:

- (a) the last sale or purchase of any goods preceding the sales or purchases occasioning the export of those goods out of the territory of India;
- (b) it shall also be deemed to be in the course of export if such last sale or purchase took place after and was for the purpose of complying with the arrangement or order for or in relation to such export.

Conditions for exemption to penultimate export

- Such sale or purchase took place after the agreement / order for export

¹²⁶ Hotel Ashoka v. ACCT (2012-TIOL-08-SC-VAT)

¹²⁷ DC v. Sea Rose Marine P Ltd – (2008) 11 VST 582 (Ker)

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- The goods exported are the ones procured under the penultimate sale
- The buyer of the goods issues Form H evidencing export of goods by him - Section 5(4)

What is meant by 'same' goods?

In order to claim exemption for penultimate exports it is necessary that the goods sold by the exporter must be the same which were acquired by him from his penultimate supplier.

Example: If a person sells raw material to an exporter and the exporter manufactures some goods out of those raw materials and then exports such goods it would not be treated as penultimate sale and no exemption would be available on such sale of raw material to the exporter. However, it has been held that by cutting heads and tails, cleaning, deveining, peeling and freezing prawns, they do not cease to be prawns, i.e. they do not become distinctly different commodity. Hence, export of the same goods and benefit of section 5(3) is available, i.e. the purchase of prawns would be treated as 'penultimate sale'¹²⁸.

Penultimate Sale – When not exempt

This could happen when there are two separate transactions sought to be linked to claim the benefit. At the time when procured, there may be no order, and on order coming in subsequently the earlier tax may be sought to be avoided. This could also happen when the goods procured are not the same as those which have been exported.

The illustrations of the transactions are:

- The purchase turnover represented that of pepper and dry ginger sold inter-State to exporters who in turn exported the goods outside the territory of India.
- It is only the penultimate sale which is exempt but the purchase earlier to penultimate sale is not exempt and purchase tax if any imposed by the State Government on such purchase would be payable¹²⁹.
- Raw hides purchased and exported after tanning and dressing as "dressed hides and skins" are different products and hence the purchase of raw hides cannot be exempt as penultimate sale¹³⁰.

¹²⁸ Sterling Foods v. State of Karnataka (1986) 3 SCC 469, (63) STC 239 (SC), (1986) UPTC 1236, 1986 AIR 1809 (SC)

¹²⁹ Kepee Sons v. State of Kerala (1999) 116 STC 156 (Ker)(DB)

¹³⁰ Sejwar Traders v. CCT Lucknow (2013) 6 TMI 576(All)

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- Purchase of Paddy and sale of Rice – Both are different commodities and hence it cannot be said that “same products” have been exported. Penultimate sale of paddy is not in the course of export¹³¹.
- Rice miller purchased paddy and after process of milling sold rice to the exporter. It was held that in such a case, only sale of rice to exporter is penultimate sale and is exempt. However, purchase of paddy by millers would not be exempt¹³².

Important decisions

- (a) Section 5(3) applies to penultimate sale if such sale satisfies two conditions – (a) that such penultimate sale must take place after agreement or order under which the goods are to be exported and (b) it must be for the purpose of complying with such agreement or export order¹³³.
- (b) When dealer sold 87 vehicles to Government of India which were gifted by the Government of India to Government of Tanzania as per commitment made by Government of India before procuring trucks from Telco the sale by Telco was held to be the penultimate sale¹³⁴.
- (c) Order was placed by Indian buyer on Indian supplier even before receipt of order from foreign buyer. However, actual dispatch of goods by Indian supplier to Indian exporter for ultimate export was after receipt of order from foreign buyer. Held it was penultimate sale and exemption under section 5(3) available¹³⁵.

When not penultimate sale

- (a) Purchase from unregistered dealers sold to exporters in and outside the State is liable to tax¹³⁶.
- (b) Purchases of goods made before agreement with specific foreign buyer. Held that these were not purchases in the course of export and not exempt from local tax¹³⁷.

¹³¹ Ganesh Trading Co. v. State of Haryana (1973) 32 STC 623 (SC)

¹³² Veerumal Monga v. State of Haryana (2001) 123 STC 158 (P&H HC DB)

¹³³ K Gopinath Nair v. State of Kerala (1997) 105 STC 580 (SC)

¹³⁴ State of Maharashtra v. Tata Engineering Locomotive Co Ltd (2007) 7 VST 583(Bom) (DB)

¹³⁵ Kongarar Spinners v. CTO (2010) 27 VST 71(Mad)(DB)

¹³⁶ P. Ganapathilyer v. State of Kerala (2007) 8 VST 41 (Kerala)

¹³⁷ Mica Trading Corporation of India Limited v. State of AP – (1996) 100 STC 142(AP)(DB)

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- (c) *Whether purchase earlier to penultimate sale is exempt:* The purchase earlier to penultimate sale is not exempt and purchase tax if any imposed by the State Government on such purchase would be payable¹³⁸.

Whether exemption can be claimed for Packing Materials?

Sale of packing material for the purpose of export is also a penultimate sale: Exporters also tend to purchase the packing material, which are to be used for packing of the goods to be exported. Such sale of packing material to the exporter is also a penultimate sale and is liable for exemption under section 5(3) of the CST Act.

Gunny bags purchased and used as containers for export of specified goods to a foreign country, was deemed as export sale as per section 5(3)¹³⁹.

Similarly, when 'banians' were exported, packed in the polythene bags, the purchase of polythene bags was held eligible for exemption under Section 5(3).

Conclusion

Understanding the concept of sale in the course of export and penultimate sale can save taxes which would otherwise have to be applied for refund. It would also ensure that one is competitive while exporting goods.

SALE OR PURCHASE IN THE COURSE OF IMPORT

Introduction

Article 286(1) of the Constitution of India says that sales tax cannot be levied by State Government on sales in the course of import.

High sea sale transaction is in line with the intention of Article 286 of our Constitution which prohibits imposition of tax on

- (a) the sale or purchase of goods in the course of
- (i) import of the goods into or

¹³⁸ State of Tamilnadu v. Madras Pack Marine (2000) 120 STC 105(TNTST) Kepee Sons v St of Kerala (1999) 11) STC 156(Ker)(DB)

¹³⁹ State of AP v. Standard Packing's (1995) 96 STC 151(AP)(DB)

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- (ii) export of the goods out of the territory of India.

The importer at times imports goods for own captive manufacturing purpose. At times he imports and subsequently sells to others. He would be liable for CST/ VAT when he subsequently sells the goods.

However, if there is a pre-existing order for sale to a customer or a transfer of documents of title to the goods before the imported goods cross the customs frontier, then it would be said to be in the course of import and consequently not liable for CST/ VAT. This facility can be used to avoid payment/ double payment of CST.

What is Sale in the course of Import?

Section 5(2) of the CST Act, 1956 provides when a sale or purchase of goods is said to take place in the course of import.

1. As per the first limb of the said section, the sale which occasions the import of goods from foreign country to India is covered as sale in the course of import.
2. As per the second limb, the sale effected by transfer of documents of title to goods before the goods cross the Customs Frontiers of India are covered as sale in the course of import. This is relevant in the context of High sea sale.

The concept of sale or purchase in the course of import is:

1. The course of import of goods starts at a point when the goods cross the customs barrier of the foreign country and ends at a point in the importing country after the goods cross the customs barrier.
2. The sale which occasions/causes the import is a sale in the course of import.
3. A purchase by an importer of goods when they are on high seas by payment against shipping documents is also a purchase in the course of import.
4. A sale by an importer of goods, after the property in the goods passed to him either after the receipt of the documents of title against payment or otherwise, to a third party by a similar process before goods cross the customs frontier of India is also a sale in the course of import.

The Apex Court and various High Courts have held that a sale in the course of import predicates a connection between the sale and import. The two

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activities are so integrated that the connection between the two cannot be voluntarily interrupted, without a breach of the contract or the compulsion arising from the nature of the transaction. This is similar to the decisions under sale in the course of export.

The Supreme Court while interpreting Section 5 observed: “Article 286 of the Constitution forbids a State from imposing or authorizing the imposition of a tax on the sale or purchase of goods when such sale or purchase takes place (a) outside the State (b) in the course of the import of goods into or export of goods outside the territory of India¹⁴⁰. The Parliament had passed the Act with a view to formulate the principles for determining as to when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside the State or in the course of import into or export from India, to provide for levy of collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce. Section 5 of the Act defines what Article 286 of the Constitution forbids and by virtue of clause (2) of Article 286, the Parliament by enacting Section 5 of the Act has laid down the principles when a sale or purchase of goods takes place in the course of the import into or export of the goods outside India”.

The Supreme Court observed that Section 5 envisages the following conditions to be satisfied for sale to qualify as a sale in the course of import:

- That before a sale could be said to have occasioned the import, it was not necessary that the sale should have preceded the import.
- That the movement of goods from Belgium (outside India) into India was incidental to the contract, that they would be manufactured in Belgium, inspected there and imported into India for the consignee, and was in pursuance of the conditions of the contract between the assessee and the Director General of Supplies. There was no possibility of the goods being diverted by the assessee for any other purpose and, therefore, the sales took place in the course of import of goods within section 5(2) of the Act, and therefore not liable to sales tax.

Following are the parameters to be satisfied for a sale to be a “Sale in the course of import”:

1. The sale must actually take place.
2. There should be a clear nexus between the import and the local sale

¹⁴⁰State of Maharashtra v. Embee Corporation (1997) 107 STC 196 (SC)

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and an inextricable link between these two transactions. It is sale in the course of import when the goods are imported for executing a specified project¹⁴¹.

3. The import of the concerned goods must be effected as a direct result of the concerned sale or purchase transaction. In other words, such sale or purchase in India must itself occasion such import, and not vice versa, i.e. the import should not occasion the sale.
4. The importer should not divert the goods for any purpose other than for direct sale to the ultimate customer.
5. If formal sale takes place after import, the two sale transactions must be so *integrally inter-connected* that they almost resemble one transaction so that the movement of goods from a foreign country to India can be ascribed to such a composite well integrated transaction consisting of two transactions dovetailing into each other'.
6. Exporting entity should be known to the ultimate customer'.
7. There should be no stock and sale of such goods.

Thus, it is crucial that a clear nexus should exist for the sale to qualify as a "sale in the course of import" i.e. to say that the Indian entity should import goods pursuant to the order placed by the customers in India and subsequently sell such specific imported goods directly to the customers.

A sale by transfer of documents when the goods are on High seas or before crossing customs frontier is a sale in the course of import. Import is complete only when the goods cross the customs barriers in India. Import starts when goods cross the customs barrier in a foreign country and ends when they cross customs barrier in the importing country¹⁴².

Crossing of Custom Frontier - Section 2 (ab)

This definition is relevant with reference to goods, which are imported into or exported out of India. 'Crossing of customs frontier' means crossing the customs station in which goods are stored prior to their clearance. Thus, crossing the customs frontier would occur on filing of the Bill of Entry for Home Consumption (in the case of imported goods) and filing of Bill of Entry for Export (in the case of export of goods).

¹⁴¹ Indure Ltd v. CTO (2010) 9 SCC 461

¹⁴² J V Gokal v. ACST (1960) 11 STC 186

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'Customs Station' includes Customs Port, Customs Airport, Land Customs Station and Bonded Warehouse as per Customs Act 1962.

The customs frontier for import is not crossed until the customs duty is paid. However, the customs frontier starts when the ship enters the territorial waters of India.

It would be relevant to note that the term 'India' extends to the territorial waters of India which is 12 nautical miles from the base line of the Indian Land Mass (Continental Shelf and Exclusive Economic Zones). Given the definition of the term "crossing of customs frontier" even if the goods enter the territorial waters of India, and are sold before crossing such frontiers (say Duty Free Shops, Bonded Warehouses), such sale could be treated as sale in the course of Import and not a local sale¹⁴³.

When it is not sale in course of import?

1. An importer who imports the goods and resells to Indian buyers, is liable to pay applicable tax on local sale or inter-State sales of such imported goods. Where the imported goods are sold after importation, then it would not be a sale in the course of import. Example of this could be a case where a dealer in machinery importing machinery on behalf of licensee who chose not to take delivery and selling the same to a third party- it will be a local sale and not a sale in the course of import..
2. Sale of imported goods confiscated by customs authorities cannot be called as sale in the course of import as the sale did not occasion import nor was the sale effected by transfer of documents¹⁴⁴.
3. When the user directly imports for own use or consumption, then there is no further sale. This is even if the agent arranges for imports¹⁴⁵.

Important decisions

- (a) There needs to be a privity of contract between the dealer and the foreign seller when the dealer is selling to third party¹⁴⁶.
- (b) Canalising agencies importing goods and selling to the actual users is

¹⁴³ Hotel Ashoka v. ACCT (2012) 03 VIL (SC), (2012-TIOL-08-SC-VAT)

¹⁴⁴ CC v. State of WB (1992) 85 STC 121(WBTT)

¹⁴⁵ CST v. Glass Trading and Sales Corpn (1991) 84 STC 195(Del)

¹⁴⁶ K.G Khosla & Co Ltd v. DCT, Madras (1966) 17 STC 473 (SC)

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a sale on principal to principal basis to the users. Not a purchase in the course of import¹⁴⁷.

- (c) Goods imported against LC. Bank sending letter of delivery to importer who endorse the same in favour of customer who pays the duty. Since the transaction is before crossing the customs frontier, sale is in the course of import. The completed sale need not be preceded by the import.
- (d) Direct and inseverable link should exist between the sale and import.
- (e) This can be evidenced by the invoices, bill of lading, modalities of payment and ultimate consignee is clearly part of the import¹⁴⁸.
- (f) In case of procurement through a canalising agency if it can be proved that the order to them existed by way of evidence, then it would be a sale in the course of import.¹⁴⁹.
- (g) Where a pre-existing order from ERDC for import of MRI system was available and the equipment is imported against that then also it is a sale in the course of import.¹⁵⁰.
- (h) Where the dealer contracted to supply non ferrous metal to DGS&D and the Government granted import license to dealer and then the dealer imported and supplied to DGS&D, held there was no privity of contract between the foreign supplier and DGS&D. The sale by assessee to DGS&D is not sale in the course of import.¹⁵¹.
- (i) The assessee-firm had imported cotton against actual user's import licence granted to the mills concerned and was selling the cotton to them. It was also precluded from selling to anybody other than the mills to whom the user's import licence had been granted. The assessee-firm was acting on behalf of the Indian importer mills concerned. Consequently, the Court treated the assessee as an agent of the Indian importer mills.¹⁵².

¹⁴⁷ Cashew Corporation of India Ltd v. State of Karnataka (1986) 63 STC 90 (Kar), K.Gopinath Nair v. State of Kerala (1997) 105 STC 580

¹⁴⁸ CST v. TISCO (2008) () TMI 495

¹⁴⁹ K. Gopinath Nair v. State of Kerala (1997) 105 STC 580

¹⁵⁰ East Diagnostic & Research Centre v. State of Bengal (2005) (139 STC 406 (Cal)

¹⁵¹ Binani Bros(P) Ltd v. UOI (1974) 33 STC 254(SC)

¹⁵² DC of Agricultural Income Tax and Sales Tax, Ernakulam v. Kotak & Co Bombay – (1973) SC,Hegde, J.)

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- (j) Sale in duty free shop at international airport before goods crossed the customs frontier is not subject to sales tax as it is sale in the course of import. ¹⁵³.

High Sea Sale

High Sea sale (HSS) is a legal transaction by which importer sells the goods to another buyer after the goods are loaded on to a carrier such as ship/ aircraft in exporter's country while the goods are yet on high seas or in the air or sale of the goods after their dispatch from the port/ airport of export and before their arrival at the port / airport of destination. The High Sea Sale by transfer of documents of title to goods is covered by section 5(2) of the CST Act, 1956.

Concept of High sea sale

The high sea sale is done by transfer of the documents of title to the goods such as original bill of lading, in case of import of goods through Sea Shipment or Delivery Order before imported goods cross the customs frontier into India. In case of Air Shipment through carrier document considered as endorsed in favor of the buyer and its acceptance thereof.

In respect of goods coming by air, the high seas sale can be effected if the possibility of endorsing Delivery order either issued by bank or any other competent authority exists.

Once the Bill of Entry is presented, the Customs Frontiers ends and the goods cross the Customs Frontiers of India. Thus, any sale effected by transfer of documents of title to goods before B/E is presented for clearance of goods, would be sale in the course of Import.

High Seas Sale helps to overcome VAT/sales tax which would have to be borne by the final buyer if the goods were imported by the importer and resold to the final buyer.

Features of High sea sales [HSS]

1. There is no bar on same goods being sold more than once on high seas. In such cases, the last High Sea Sales value is taken by customs for purposes of levying duty.

¹⁵³ Hotel Ashoka v. ACCT (2012) 3 SCC 204

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2. The last High Sea Sales agreement should give indication of previous title transfers. The last High Sea buyer should also obtain copies of previous High Sea Sales agreement as such documents may be called upon by the customs.
3. High Sea Sales is also applicable to goods imported by air.
4. As long as the sale is formalized after dispatch from airport / port of origin and before arrival at the first port of discharge / airport at destination, such sale is considered as High Sea Sales.
5. When purchasing dealer had become owner of the respective goods before the clearance from the customs and the purchasing dealer has actually paid the customs duty after he had become the owner of the goods in question.
6. Even bulk and comingled cargo can be claimed as high seas sales covered by the second limb of section 5(2) of the CST Act and exempt from tax.
7. The delivery from customs is on account of High Seas? buyer.
8. CENVAT credit in respect of CVD paid on import is entitled to be availed by the High Seas buyer being a manufacturer of excisable goods or provider of taxable services.
9. High Seas Sales goods are entitled to classification, rates of duty and all notification benefits as would be applicable to similar imported goods on normal sale.
10. Goods duly endorsed on bill of lading before crossing customs frontier would fall under high seas sale category. Same would be exempt from tax.

Transfer of Documents of title to goods

The document of title to goods include a bill of lading, dock warrant, warehouse-keeper's certificate, wharfinger's certificate, railway receipt, warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof to the possession or control of goods.

Sale of bonded goods whether high sea sale?

The imported goods are at times stored in the warehouses on filing the bill of entry for warehousing in the name of importer (or high-seas buyer). The

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storing is commonly referred to as bonding of goods or stored in the bonded warehouse as the customs duty on such goods is assessed and paid only on the date of clearance of goods by the customs authority. Such goods are thereafter sold ex-bond to the buyer and the transaction could be claimed as 'high seas sales – the same will be exempt under section 5(2) of the CST Act.

The taxable event is the crossing of the customs barrier, and not the date when the goods had landed in India, or had entered the territorial waters. When goods are imported into India even after the goods are unloaded from the ship, and even after the goods are assessed to duty subsequent to the filing of a bill of entry, the goods cannot be regarded as having crossed the customs barrier until the duty is paid and the goods are brought out of the limits of the customs station¹⁵⁴.

When goods are first cleared by presenting the bill of entry, the goods can be said to have crossed the Customs Frontiers of India. There cannot be high sea sale after the goods are cleared from bonded warehouse.

The Maharashtra Sales Tax Tribunal held that sale effected from bonded warehouse cannot be allowed as sale in the course of import by transfer of documents of title to goods. The exemption under section 5(2) of CST Act, 1956 was denied to such sale in the above case. The documents of title to the goods were transferred when the goods were in the bonded warehouse¹⁵⁵. This decision may have to be reviewed in the light of the decision of the Apex Court in *Kiran Spinning Mills*. The Madras High Court has taken a contrary view and held that sale from the ex-bond warehouse is covered by section 5(2) of the CST Act¹⁵⁶. In our view this appears to be the correct view.

However, in the case of *M/s Radha Sons International* [37 MTJ 195], following the ratio laid down in 129 STC 294, the Maharashtra Sales Tax Tribunal allowed the exemption under section 5(2) of the CST Act. The State, has however, filed reference before the Bombay HC against this decision.

Procedure for High Sea Sale (HSS)

1. HSS contract/ agreement should be signed after dispatch of goods from origin and prior to their arrival at the destination.

¹⁵⁴ *Kiran Spinning Mills v. The Collector of Customs* - 113 ELT 753 (SC)

¹⁵⁵ *IndoTex Export (P) Ltd* (S.A.No.284 & 285 of 90 dt.17-6-1995).

¹⁵⁶ *State Trading Corporation of India* - 129 STC 294

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2. The agreement should be on stamp paper.
3. On concluding the HSS agreement, the Bill of Lading should be endorsed in favour of the new buyer.
4. HSS is also applicable to goods imported by air.
5. In respect of air shipment, HSS seller should write to the airline / consol agent informing that a HSS agreement has been established with the HSS buyer and that the carrier document should therefore be considered as endorsed in favour of the HSS buyer and further the Import General Manifest (IGM) should be filed by the carrier in the name of the HSS buyer.
6. If the EDI system allows the name of HSS buyer to be entered in the system, then there may not be any need to amend the IGM. In this case the Bill of Entry(B/E) is filed in the name of the original importer as the IGM is in this importer's name. However, the B/E shows the name of HSS buyer under a separate head in the B/E format. If the system has no provision for showing the name of HSS buyer on the B/E then the IGM should be amended and B/E filed in the name of the HSS buyer.
7. In the case of HSS the CIF value for calculation of duty is taken to be the HSS value.
8. There is no bar for same goods being sold more than once on high seas.
9. In such cases, the last HSS value is taken by customs for purposes of levying the duty. The last HSS buyer should also obtain copies of previous HSS agreement as such documents may be called upon by the customs.
10. The title of goods gets transferred to HSS buyer prior to entry of goods in territorial jurisdiction of India. The delivery from customs is therefore on account of HSS buyer. The CENVAT credit in respect of CVD paid on import is available to HSS buyer.
11. HSS goods are entitled to classification, rates of duty and all notification benefits as would be applicable to similar import goods on normal sale.
12. The stamp paper on which the HSS agreement is executed must not bear the stamp paper purchase date as being post cargo arrival date.

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This may be viewed by customs as being a post arrival sale and may question the same.

13. If the HSS does not mind disclosing original import values to HSS buyer, it is better from custom clearance point of view for the seller to endorse the B/L, invoice and packing list in favour of the HSS buyer. The endorsement should read "Transferred on High Sea Sales basis to M/S ----- for a sales consideration of Rupees -----". Such endorsement should be stamped and signed by the HSS seller.

Conclusion

This is a popular method of optimizing tax which would become a cost especially for those who are not dealers under CST such as hospitals and service providers.

CST AND SEZ UNITS

What is SEZ?

Special Economic Zone is a designated area in countries that possess special economic regulations that are different from other areas in the same country. Moreover, these regulations tend to contain measures that are conducive to attract foreign direct investment. China has used SEZ to very great advantage in the past. Conducting business in a SEZ usually means that a company would receive tax incentives in direct as well as indirect taxes as it is set up for export purposes.

Such zone is treated as a foreign country within India as per Section 51A of SEZ Act which overrides the provisions of the other laws. Units in SEZ can import raw materials and capital goods without payment of customs duty and also procure them without payment of excise duty. All the products of a SEZ unit should be exported and if their final product is sold in India, excise duty equal to normal customs duty or import duties on such goods is required to be paid.

As per Explanation to section 8(8) of CST Act the expression "special economic zone" has the same meaning assigned to it in clause (iii) to Explanation 2 to the Proviso to section 3 of the Central Excise Act, 1944, which defines Special Economic Zone as a zone which the Central Government may, by notification in the official gazette, specify in this behalf.

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Taxability of SEZ transaction

In normal course, CST is liable to be paid on inter-State sale of goods by supplier. In order to avail the exemption, Form I has to be furnished to the supplier.

Developers of Special Economic Zones and units within all Special Economic Zones are exempt from payment of CST levied under the CST Act, 1956 for all material procured for authorised operations and liable to such levy. Section 8(6), (7) and (8) of the CST Act covers exemption from CST which is available when inter-State sale of goods is made to a SEZ unit or SEZ developer. This is subject to fulfilment of certain conditions. The conditions and forms relating to such exemption are as follows:

1. The exemption from CST is available only if the sale is to the developer of SEZ or unit setup in the SEZ.
2. The SEZ unit can obtain goods for the purpose of manufacturing, trading, production, processing, assembling, repairing, reconditioning, re-engineering, processing, packaging or for use as or packing material or packing accessories.
3. The Developer of SEZ can obtain goods for development, setting up, operation and maintenance of the zone.
4. The advantage of sales to SEZ by a dealer is that he can utilise the input tax credit on inputs used for goods sold to SEZ, for the payment of CST / Local VAT for his other domestic sales.

Procedure to procure goods by SEZ without payment of CST

1. The registered dealer in SEZ (developer of SEZ or SEZ unit as the case may be) should have been authorized to establish such unit in SEZ by the Development commissioner.
2. The goods which the developer of SEZ or unit in SEZ can obtain without CST must be mentioned in the sales tax registration certificate of SEZ unit. (Section 8(7))
3. Such goods should be of such class or classes of goods as specified in the certificate of registration of the registered dealer.
4. Thus, the sales tax registration certificate must be amended to include all these items which can be obtained without CST, in the certificate from time to time.

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5. Form I is obtained from Development Commissioner by the SEZ unit/developer and issued to the purchasing dealer by him.

Note: The advantage of sales to SEZ by a dealer is that he can utilize the input tax credit on inputs used for goods sold to SEZ, for the payment of CST/local VAT for his other domestic sales.

Sales by SEZ into DTA and CST

Under Article 286 of the Constitution of India, no tax can be levied on sale/purchase taking place in the course of Export and Import.

As regards the question as to whether the sale / purchase by and to SEZ is in the course of export/import for purposes of Sales Tax Act, it needs to be noted that neither the SEZ Act, nor the CST Act supports the view that it will be sale in the course of export/import. The Allahabad High Court observed that deeming clause in one statute cannot apply to another statute unless so specified in the said statute or can be inferred. It was thus held that the claim of sale in course of export/import is not tenable and the court confirmed the levy of tax¹⁵⁷.

Conclusion

The Ministry of Commerce makes provisions to encourage exports. However, the Ministry of Finance at the Center and the States work at restricting the benefits. SEZ can make products and services competitive if all intermittent taxes are not allowed to burden the transaction. Hopefully, with the introduction of GST w.e.f. 1.7.2017, these issues would get addressed.

¹⁵⁷ India Exports v. State of U.P. & Others - Civil Misc. W.P. No. 1488 of 2009 decided on 11-2-2011 (All)

Chapter 6

Valuation

VALUATION UNDER CENTRAL SALES TAX ACT

Introduction

Section 8 of CST Act sets out that tax is payable on the turnover of a period. The raising of invoice alone would not determine the sale price. The completion of contract of sale would decide the sale price¹⁵⁸. All the recoveries made upto the time of transfer of property would have to be included in the normal course other than those specifically excluded or allowed as deduction.

Important Definitions

Turnover - Section 2(j)

It means the aggregate of the sale price received and receivable by dealer in respect of sales of any goods in the course of inter-State trade made during any prescribed period. CST is levied on turnover and not on the sale price.

To paraphrase, turnover means-

- (a) the aggregate of the sale prices received and receivable
- (b) by dealer liable to tax under this Act
- (c) in respect of sales of any goods in the course of inter-State trade or commerce made
- (d) during any prescribed period and
- (e) determined in accordance with the provisions of this Act and the rules made thereunder;

Prescribed period is the period in which return has to be filed as per local VAT laws. Such period could be a month or a quarter.

Sale Price - Section 2(h)

“*Sale Price*” means the amount payable to a dealer as consideration for the

¹⁵⁸ CST v. Ranabhai Bhanji (1976) 36 STC 182(Bom HC).

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sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged. In essence sale price means (i) the amount payable to a dealer (payment by the buyer to the seller) (ii) as consideration for the sale of any goods. And includes the following:

- (a) Sums charged for anything done by the seller at the time of or before delivery of the goods to the buyer (E.g. packing, labelling, designing, etc.).
- (b) Excise duty, customs duty, sales tax & CST.
- (c) Royalty, warranty charges, etc. are also includable in sale price, whether or not charged separately and whether or not recovered along with sale price .
- (d) Insurance charges if goods are insured by the seller.
- (e) Charity or *dharmada* collected by the seller.
- (f) Weighment charges.

Sale price excludes the following:

- (a) Cash discount (Trade discounts are also excluded)
- (b) Freight, delivery and installation, commissioning cost, if charged separately (i.e. not included in sale price).
- (c) Octroi/Entry Tax.
- (d) Deposits taken for returnable containers.
- (e) Transit Insurance charges of goods insured at the request of the buyer.
- (f) Government subsidies on goods sold at controlled price.

Any sum received by the seller for a different purpose and not as consideration for sale is not part of sale price and not a part of turnover. In *Tungabhadra Sugar Works v. State of Karnataka*, it was held that if the price paid is higher than the minimum purchase price fixed, excess amount paid would be taxable¹⁵⁹. Invoice can be prepared where sales tax is not charged

¹⁵⁹ *Tungabhadra Sugar Works v. State of Karnataka* (1994) 93 STC 561 (Kar)

Valuation

separately in the invoice or not disclosed separately in the invoice. Sale price is the total price received inclusive of tax.

Important Inclusions

- (a) *Sums charged for anything done by the seller at the time of or before delivery of the goods to the buyer (E.g. packing, labelling, designing etc):* Sales tax is payable on packing material and packing charges, even if shown separately. Rate of tax is the same for the goods sold and packing material when there is no intention to sell the two separately.
- (b) *Excise duty, customs duty, sales tax & CST:* Sale price is inclusive of taxes and duties payable on goods sold except when the duty/tax is statutorily recoverable from the buyer [E.g. CST]. Excise duty is includible in sale price even if paid by the buyer.
- (c) *Dharmada:* It is an amount collected to pay to charitable organisations or causes. Sale price includes dharmada charges collected from the buyer. However, optional amount collected by restaurants for contribution to NGO do not form part of the sale price.
- (d) *Weighment charges:* Sale price includes any sum charged for anything done by dealer in respect of the goods at time of or before delivery of goods.
- (e) *Freight:* Freight charges are includible only when the freight charges are not shown separately in invoice or terms are FOR basis where the property in goods gets transferred only at buyer's place.
- (f) *Inwards freight:* This is part of turnover even if charged separately¹⁶⁰.
- (g) *Price escalation:* The price variation is part of price of goods even when specific amount is decided later and is includible.
- (h) *Materials sold on approval basis:* Where goods are sold on the basis that they can be returned if not accepted within a specified period, then if not returned it becomes sale and sales tax is payable on such receipts.
- (i) *Commission to distributor:* Commission paid to selling agent is not deductible. It is a service liable to service tax.

¹⁶⁰ CTT v. Alok Kumar Agarwal (2010) 33 VST 246(All)

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- (j) *Sales Tax Incentive Scheme*: Under an incentive scheme, for example only 25% of the sales tax collected needs to be paid to revenue and 75% can be retained by the dealer. What is not payable or to be paid as sales tax/VAT, should not be charged from third party/customer, but if it is charged it cannot be excluded from the transaction value under central excise¹⁶¹. Same could be the treatment under sales tax as well.

Important Exclusions

- (a) *Cash Discounts*: As clarified in Section 2(h) cash discount is not includible.
- (b) *Trade Discount*: It should be a regular practice and the purchaser should have paid the selling price less the discount. There is no requirement that it has to be given at the time of sale itself or shown in the invoice¹⁶². When sale price is arrived at after deducting the trade discount, no question of deducting from sale price arises.

Net Amount after deducting trade discount is sale price¹⁶³. Quantity rebate allowed as discount by dealer through credit notes at year end is allowable as deduction¹⁶⁴.

- (c) *Cost of freight or delivery or cost of installation*: CST is generally payable on ex-works price and no CST is payable on freight and transport charges. The CST is payable on the freight charges if (a) freight charges are not shown separately in invoice or (b) contract is FOR destination and property in goods passes only at the destination.

The Apex Court had held that where transfer of property in goods happens at the place of buyer to which the seller is under obligation to transport goods, the expenditure incurred on freight to carry the goods from the place of manufacture to the place where it is required to be delivered would become part of the amount for which the goods are sold to buyer and would fall within the scope of turnover¹⁶⁵.

- (d) *Transit charges*: Transit insurance charges incurred at the behest of the buyer are not chargeable to sales tax. In this case the risk has already passed to be buyer prior to the transportation.

¹⁶¹ CCE v. Supertex I Ltd (2014) 43 VST 1 (SC)

¹⁶² IFB India v. State of Kerala (2012) 49 VST 1 (SC)

¹⁶³ Dy CST v. Advani Oerlikons (P) Ltd (1980) 45 STC 32 (SC)

¹⁶⁴ Godavari Fertilisers v. CCT – (2004) 138 STC 133 (AP)

¹⁶⁵ India Meters Ltd Vv. State of Tamil Nadu (2010) 34VST 273 (SC)

Valuation

- (e) *Value of free issue materials:* Under central excise, the free issue material used in manufacture of goods is to be added to arrive at the assessable value on which excise duty is to be paid. For capital goods supplied free of cost, the pro-rated cost [also called amortisation] is to be added under central excise. However, under CST / VAT there is no such obligation as the ownership of goods is of importance under these laws¹⁶⁶. There is no such provision under sales tax. Central excise valuation is not applicable to CST/ VAT¹⁶⁷.

Where the contract is on gross value including the value of steel sheets and cement supplied and deducted from the contractors bill, the supply in the first instance was held to be sale by the customer¹⁶⁸.

Thus the taxability of free issues depends on the terms of the contract between the contractor and the contractee.

- (a) Where the contractee supplies the goods to the contractor and recovers the amount of material supplied from the running bills of the contractor, then such a transaction would amount to sale of goods by the contractee to the contractor in the first stage. Thereafter, when the said goods are incorporated into the construction, the contractor is deemed to have sold the materials going in the construction at the second stage¹⁶⁹.
- (b) Where a contract contains a stipulation that the goods supplied by the contractee or the client shall be used only for the execution of the works of the contractee and that unutilized goods shall be returned to the contractee by the contractor, such supply of goods by the contractee to the contractor shall not constitute transaction of sale of goods¹⁷⁰.
- (f) *Service charges collected separately by restaurant:* Sales tax is levied on supply of goods i.e. food or drink by way of or as part of any service for a consideration. The levy of VAT on pure services [no goods] is not

¹⁶⁶ Moriroku UT India Ltd v. State of UP (2008) 224 ELT 365 (SC)

¹⁶⁷ TS Tech Sun(l) Ltd (2008) 15 VST 559 (SC)

¹⁶⁸ RINL v. State. of AP (1998) 100 STC 425 (SC)

¹⁶⁹ NM Goel and Company v. Sales Tax Officer and another (1989) 72 STC 368 (SC)

¹⁷⁰ Bangalore Water Supply and Sewerage Board, Bangalore v. State of Karnataka (1999) 4 KLJ 1 (DB)

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sustainable but the same was not challenged by local Governments. Service tax imposed at 40% not liable to VAT¹⁷¹. Similarly¹⁷² where catering services were provided to bank. Sales tax can be levied upon receipts related to sale after excluding receipts from service. Most States' Revenue Departments are presently not accepting this view.

- (g) *Deposits for returnable containers*: As there is no intention to sell the containers, it cannot be said to be sale proceeds even if the containers are not returned¹⁷³.
- (h) *Duty refund/ export incentives and duty drawback*: It is excluded from turnover as it is not towards sale of goods and no sales tax is payable if exporter receives such benefits. However, sale of REP licences have been considered as sale of goods.
- (i) *Sub-contractors - transfer of property*: When a sub-contractor is buying goods and erecting a structure, property in goods is getting transferred by sub-contractor to the customer. Main contractor not liable for goods transferred by the sub-contractor¹⁷⁴. Additionally, if the main contractor receives an order worth say Rs 1 Crore and sub contracts the same at say Rs 80 Lakhs then the main contractor is not required to remit taxes even on the balance Rs 20 Lakhs (ie the profit earned by the main contractor)¹⁷⁵.
- (j) *Subsidy Received*: Subsidy is not part of sale price, as it is not related to goods sold and is not includible in sale price.
- (k) *Amount Received from third parties*: The amounts received from third parties not related to sale would not be includible¹⁷⁶.
- (l) *Optional warranty charge*: This is not part of sale price¹⁷⁷. Depending on whether the optional warranty is a comprehensive warranty

¹⁷¹ Valley Hotel & Resorts v. CTT (2014) 35 STR 28(Uttarakhand)

¹⁷² Cap N Chops Caterers v. State of Haryana (2010) 4 GST 273(P&H)

¹⁷³ State of TN v. McDowell & Co. – (1997) 105 STC 172 (SC)

¹⁷⁴ State. of AP v. Larsen & Toubro Ltd. (2008) -TIOL-158-SC-VAT)

¹⁷⁵ Surya Constructions v. Commercial Tax Officer (WC & LT) - (2014)-VIL-358-(KER)

¹⁷⁶ Garware Wall Ropes v. State of TN [2011] 46 VST 470(Mad) referred to Neyveli Lignite Corporation Ltd. v. CTO [2001] 124 STC 586 (SC).

¹⁷⁷ CTT v. Kelvinator of India (2006) 146 STC 651(All HC)

Valuation

(including material) or non – comprehensive warranty (only servicing), it would be liable to tax as works contract or as service contract.

On inclusion or exclusion of taxes in the sale price (Valuation) the Supreme Court in the case of *Anand Swarup Mahesh Kumar v. Comm. of Sales Tax* (46 STC 477), observed that “where a dealer is authorised by law to pass on any tax payable by him on the transaction of sale to the purchaser, such tax does not form part of the consideration for purposes of levy of tax on sales or purchases but where there is no statutory provision authorising the dealer to pass on the tax to the purchaser, such tax does form part of the consideration where he includes it in the price and realises the same from the purchaser.”

Illustration: The Sale Price can be determined in the following manner:

Price of the Goods sold by Mr. A	13,340
Add:	
Packing Charges	2,340
Central Excise Duty	1,334
Dharmada (borne by Seller)	1,000
Weighing Charges	200
Transportation Charges	1,200
Other Charges incurred before delivery	1,000
Total	20,414
Less:	
Installation Charges (Shown Separately)	1,200
Cash Discount	1,071
Sale Price for Tax Payment	18,143

Valuation of Works Contract

Section 13(1) of CST Act provides that the Central Government ‘may’ by notification make rules for computation of turnover. As long as there exists no inconsistency between the rules made by the State Government and the rules framed by the Central Government, the rules of the State Government may be made applicable.

Coming to CST, the deduction for labour for works contract has to be the actual labour charges or on presumptive basis [as per State VAT Rules] as

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CST Act, 1956 does not provide any rule to determine the sale price of transfer of property in goods under works contract.

It was held that CST Act, 1956 did not provide any rule for determination of sale price in respect of transfer of property in goods involved in execution of works contract¹⁷⁸. 'Assessment' under the CST Act, 1956 includes power to compute the amount chargeable to tax in terms of the procedure prescribed under State Act. State rules are applicable when not inconsistent with Central rules. Hence turnover is to be determined under State rules.

Year –Section 2(k)

'Year' under the General Sales Tax Law of the Appropriate State is the year under CST Law. (i.e. financial year. Eg .01.04.2014 to 31.03.2015)

Determination of Taxable Turnover – Section 8A

The only deductions which could be made from the turnover under CST Act, 1956 are the deductions which are provided in Section 8A(1) to arrive at the taxable turnover.

Section 8A (1) sets out the adjustments to be made to compute the turnover.

In order to determine the turnover of a dealer, the following deductions shall be made:

- (a) **Sales tax:** The tax payable is to be arrived at by applying the following formula.

$$\text{Tax payable} = \text{Sales} * \text{Rate of Tax} / (100 + \text{Rate of Tax})$$

There would be no deduction on the basis of the above formula, if the amount by way of tax collected by a registered dealer, has already been deducted from the aggregate of sale prices. In other words, the deduction towards sales tax is available only where the dealer has collected sales tax as a part of sale price. This formula applies only when sales tax is not shown separately¹⁷⁹.

The formula has no application when the aggregate sale price does not include CST¹⁸⁰. If CST is charged separately in the invoice, then there is no need to establish that the sale price is inclusive of CST.

¹⁷⁸ Mahim Patram Pvt Ltd v. Union of India (2007) 7 STR 110 (SC)

¹⁷⁹ State of AP v. G V Raman Laxman – (1998) 109 STC 383(Mad)

¹⁸⁰ Rallis India Ltd v. State of AP – (1983) 53 STC 267(AP)

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If the invoice does not show sales tax separately, but indicates sales tax would be absorbed by seller then it means sale price includes sales tax¹⁸¹.

As per explanation to Section 8A (1), where the turnover of a dealer is taxable at different rates, the aforesaid formula shall be applied separately in respect of each part of the turnover which is liable to different rate of tax;

- (b) **Sales returns:** The sale price of all goods returned to the dealer by the purchasers of such goods, within six months from the date of delivery of the goods.

This is subject to the condition that satisfactory evidence of return of goods and of refund or adjustment in accounts of the sale price thereof is produced before the authority competent to assess or, as the case may be, re-assess the tax payable by the dealer under this Act; and

- (c) **Other deductions** as the Central Government may, having regard to the prevalent market conditions, facility of trade and interests of consumers, prescribe.

As per section 8A(2) in determining the turnover of a dealer for the purposes of this Act, no deduction other than those set out above shall be made from the aggregate of the sale prices.

To sum up:

Turnover = Aggregate of the Sale Prices + Section 8A Adjustments

C.S.T. included in sale price:

Sales tax included in sale price shall be deducted. The sales tax amount is arrived at by using the following formula:

$$\frac{\text{Aggregation of Sale prices} \times \text{Rate of tax}}{100 + \text{Rate of tax}}$$

Illustration: Mr. A sells goods charged @ 2% and declared goods @ 4%. The aggregate sale price, including C.S.T. of X (declared goods) and Y, is Rs.4,12,000 which includes Rs.2,08,000 of goods X and Rs.2,04,000 of goods Y. Calculate the turnover of Mr A. All sales are made against Form C furnished by the buyer.

¹⁸¹ State of TN v. Colgate Palmolive (1999) 113 STC 297(Mad) (DB)

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Goods X:	
Aggregate sale price	2,08,000
Rate of tax	4%
C.S.T to be deducted	$\frac{4 \times 2,08,000}{4 + 100}$
	8,000
Turnover (Aggregate Sale price – C.S.T.) (2,08,000-8,000)	2,00,000
Goods Y:	
Aggregate sale price	2,04,000
Rate of tax	2%
C.S.T. to be deducted	$\frac{2 \times 2,04,000}{2 + 100}$
	4,000
Turnover (Aggregate sale price – C.S.T.) (2,04,000-4,000)	2,00,000

Aggregate Turnover of Goods X and Y (2,00,000 + 2,00,000) = 4,00,000.

Illustration:

Compute taxable turnover and CST payable by a dealer carrying on business whose turnover for the year is Rs.16 Lakhs which included the following:

Trade discount	48,000
Installation charges (Shown separately)	25,000
Excise duty	80,000
Freight & Insurance recovered separately in invoices	60,000
Goods returned within 6 months of sale (Inclusive CST)	40,000

Buyers have issued C Forms for all purposes. Applicable tax rate is 2%. Insurance was made at the request of the buyer.

Turnover (Incl. of CST) will be as under :

Valuation

Turnover		16,00,000
Less:		
Trade discount	48,000	
Installation	25,000	
Freight	60,000	1,33,000
Turnover		14,67,000

Computation of taxable turnover

Turnover net of sales returns: $14,67,000 - 40,000 = 14,27,000$.

Since this turnover is inclusive of CST, this is to be excluded to get the taxable turnover.

Taxable turnover = $14,27,000 \times \frac{100}{100+2} = 13,99,020$

Tax payable: $14,27,000 - 13,99,020$ Or $13,99,020 \times 2\% = 27,980$.

Tax rate: C Form received. Hence rate is 2% only.

Note:

- (a) Cash discount is to be deducted.
- (b) Excise duty is includible¹⁸².
- (c) Installation, Freight indicated separately to be deducted.
- (d) Sales return is within six months and deductible.

Important decisions

General

1. Exempt sales are not to be considered for calculating the taxable turnover and for levying sales tax¹⁸³.
2. Levy of tax remains single point levy in a series of sales. Point of taxable sale remains the first point of sale, i.e. from the manufacturer/distributor/wholesaler to the retailer where MRP is published on the package and not by the retailers to the end consumers. The tax is to be charged on the turnover of the assessment year in aggregate. Sales tax is only on sale of goods and cannot be based on an event which has not come into existence¹⁸⁴.

¹⁸² Hindustan Sugar Mills v. State of Rajasthan (1978) 43 STC 13

¹⁸³ Bhawani Cotton Mills v. State of Punjab (1967) 20 STC 290 (SC)

¹⁸⁴ State of Rajasthan v. Rajasthan Chemists Association (2006) 147 STC 542

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Tax on sale price received

3. Excise duty is includible in value even if paid by purchaser¹⁸⁵.
4. If price paid is higher than the minimum purchase price fixed, excess amount paid would be taxable¹⁸⁶.
5. The total amount of consideration including other amounts which represent the expenses required for completing sale would be part of sale price¹⁸⁷.
6. All charges till property in goods gets transferred to buyer are includible in the sale price for sales tax¹⁸⁸.
7. Where dealer was supplying RMC, the pumping charges to deliver the RMC at the site of the customer are to be included in sale price¹⁸⁹.
8. Amount collected for payment to charitable organisation is taxable¹⁹⁰.
9. In respect of goods manufactured as per design of the buyer and sold to buyer, then the cost of design is includible for the purpose of sales tax, as it is a pre-sale expense and forms part of manufacturing cost¹⁹¹.
10. Compulsory warranty charges includible¹⁹².
11. Optional warranty payment charges are not includible in the value of sales¹⁹³.
12. If there was price escalation, the price variation is part of price of sale of goods and is includible¹⁹⁴.

¹⁸⁵ State of Kerala v. MRF (1998) 108 STC 583

¹⁸⁶ Tungabhadra Sugar Works v. State of Karnataka (1994) 93 STC 561(Kar HC)

¹⁸⁷ Ponni Sugar(Erode) Ltd v. DCTO (2005) 142 STC 543(SC)

¹⁸⁸ BOC India v. West Bengal Commercial Tax Appellate and Revisional Board (2010) 4 GST 452

¹⁸⁹ ACC Ltd v. State of Karnataka (2012) 5) VST 129(Kar)(DB)

¹⁹⁰ Pandaria Pillai v. State of Madras (1973) 31 STC 108 (Mad)

¹⁹¹ American Refrigerator Co. Ltd. v. State of Tamil Nadu (1994) 94 STC 261 (Mad)(DB)

¹⁹² State of AP v. Hyderabad Allwyn Ltd. (1970) 79 STC 56 (AP))

¹⁹³ CST v. Kelvinator of India (2006) 146 STC 651 (All)

¹⁹⁴ Keltron Controls Division v. State of Kerala (2007) 10 VST 90 (Ker)(DB)

Valuation

13. Amenities provided/luxury charge while selling liquor and food in bar includible in turnover¹⁹⁵.

Durable container

14. The charge paid by buyer to seller for retention of durable container beyond prescribed period is merely penalty for over detention. It is not taxable as deemed sale under 'transfer of right to use goods'¹⁹⁶.
15. Refundable security deposit against LPG cylinders/regulators is not liable to sales tax¹⁹⁷.
16. Where deposit was paid for the packing material [jerry cans], and there was no obligation on the buyer to return the packing material the same held includible in the turnover and hence taxable¹⁹⁸.

Incidental services

17. Catering services provided to bank. Since catering includes rendering of service as well as sale of goods sales tax could be levied upon receipts relating to sale after excluding receipts from service¹⁹⁹.

Reimbursement

18. Reimbursement of excise duty by way of cash assistance is not includible as it cannot be held to be on behalf of the buyer²⁰⁰.
19. When refund of duty is received from the Government, it is not includible in taxable turnover as duty was not paid or payable by the purchaser²⁰¹.
20. If a tax or fee is statutorily recoverable from buyer, such tax or fee does not form part of consideration for the purpose of levy of tax on sale/purchase²⁰².
21. Market fee/market cess which is to be collected from buyer and paid to government is not includible²⁰³.

¹⁹⁵ St of Kerala v. Mukkadan's Hotel (2009) 1 GST 71 (Ker)(DB)

¹⁹⁶ Asiatic Gases v. State of Orissa (2001) 121 STC 405(Ori HC DB)

¹⁹⁷ State of Punjab v. Hindustan Petroleum Ltd (- 2007) 7 VST 702(P&H) (DB)

¹⁹⁸ State of TN v. EID Parry (- 1998) 109 STC 146(Mad)(DB)

¹⁹⁹ CAP N Chops Caterers v. State of Haryana (2010) 4 GST 273(P&H) (DB).

²⁰⁰ State of AP v. Ranka Cables (1990) 78 STC 111(AP)

²⁰¹ CTO v. Electra(Jaipur) P Ltd (2003) 133 STC 44(Raj TT)

²⁰² State of AP v. T Siddaiah Naidu (1997) 107 STC 478 (AP)(DB)

²⁰³ State of Punjab v. Guranditta Mal Shauti Prokash (2004) AIR SCW 3769

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22. Customs duty paid by buyer when sale is by transfer of documents, where documents handed over to buyer for taking delivery of goods from customs after paying customs duty directly to customs authorities, is not includible in sale price²⁰⁴.
23. Tax/duty which is the responsibility of buyer is not includible²⁰⁵.

Packing

24. Sales tax is leviable on packing charges even if shown separately²⁰⁶.
25. Cost of packing material is includible in sale price²⁰⁷.
26. Rate of sales tax on main article and packing material is same if there is no intention to sell the packing material separately²⁰⁸.
27. Commission paid to sole distributors in respect of direct sale by manufacturer is not allowable as deduction²⁰⁹.

Discount

28. Cash or other discount cannot be included in the turnover for levy of tax²¹⁰.
29. Quantity discounts given to stockists in the form of additional quantity for higher-off take is a form of trade discount. It is not includible in taxable turnover²¹¹.
30. Discount allowable as deduction from price only if shown in the tax invoice, if State law so provides²¹².

Freight

31. Freight charges from factory to depot are includible in turnover for sales tax even if shown separately in the invoice²¹³.

²⁰⁴ Gujarat Export Corporation Ltd v, State of Maharashtra (1990) 20 VST 351 (P&H)(DB)

²⁰⁵ Hindustan Sugar Mills CCT (2010) 1 GST 145 (All)

²⁰⁶ CST v. Rai Bharat Das (1988)71 STC 277 (SC)

²⁰⁷ HPCL v. State of Kerala (1993) 89 STC 106 (Ker)(FB)

²⁰⁸ State of Tamil Nadu v. V Vanniperumal – (1990) 76 STC 203 (Mad)(FB)

²⁰⁹ Sirpur Paper Mills v. State of AP – (1979) 4) STC 126

²¹⁰ Mohan Breweries v. CTO – (2005) 139 STC 477 (Mad)(DB)

²¹¹ Mapra Laboratories v. State of Bihar – (2004) 135 STC 157 (Pat)(DB)

²¹² T V Sundaram Iyengar v. State of Karnataka (2010) 32 VST 489 (Karn)

²¹³ Avon Elastomers Vv. CTO – (2008) 16 VST 510 (All)

Valuation

32. Freight not includible if price F.O.R but risk passes to buyer as soon as goods are delivered to the transporter²¹⁴.
33. If price is for delivery at the factory, but dealer transports goods under separate contract to buyer's place and charges freight separately, then freight is not includible²¹⁵.

Subsidy

34. Any subsidy paid to suppliers or to others on behalf of the suppliers to ensure scheduled delivery is component of selling price²¹⁶.
35. Subsidy is not includible²¹⁷.
36. Subsidy paid by State Government is not includible for purpose of sales tax²¹⁸.
37. Subsidy which is not connected with specific sale is not includible.

Others

38. Duty drawback received by exporter dealer is not part of sales turnover²¹⁹.
39. Duty drawback is simply money. It is not goods and no sales tax is payable if exporter receives duty drawback²²⁰.
40. Duty Drawback received by exporter dealer is not part of turnover²²¹.
41. There is no need to add the value of free- of -cost material supplied by customer to arrive at sales tax liability²²².
42. Sale price does not include royalty paid for mining lease to the lessor as it is not the price paid for removal of minerals²²³

²¹⁴ Hyderabad Asbestos Cement Products Ltd. v. State of AP (1969) 24 STC 487 (SC)

²¹⁵ State of Karnataka v. Bangalore Soft Drinks (2000) 177 STC 413 (SC)

²¹⁶ EID Parry v. ACCT (2000) 2 SCC 321

²¹⁷ Fertiliser Corpn v. CTO (1991) 83 STC 129(AP HC)

²¹⁸ State of Punjab v. Morinda Cooperative Society (2012) 47 VST 54(P&H) (DB)

²¹⁹ State of TN v. Garware Wall Ropes – (2011) 46 VST 470(Mad).

²²⁰ KMA Finished Leather v. State of TN – (2004) 13 STC 185(Mad)(DB)

²²¹ State of TN v. Garware Wall Ropes – (2011) 46 VST 470(Mad)(DB)

²²² State of TN v. Sri Meenakshi Plastic Industries – (2010) 4 GST 292(Mad) (DB)

²²³ State of HP v. Gujarat Ambuja Cement Ltd- (2005)142 STC 1(SC)

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43. Post-delivery charges not connected with sale of goods is not includible in sale price. After delivery of vehicles, charges incurred for arranging for registration, insurance and payment of road tax are not includible in sale price²²⁴.
44. The handling charge of motor vehicle for registration of vehicle is not part of sale price. It is not part of sale price and not liable to VAT²²⁵.
45. Liquidated damages are meant to compensate the party for the loss on account of default of supplier. It is not discount under section 2(h). It has no connection with sale price and hence allowable as deduction from sale price ²²⁶.

Conclusion

Sale price includes sums charged for or recovered by dealer at or before delivery. It could be understood as the amounts incurred and recovered prior to the transfer of property [i.e. point when the risk and reward is of the buyer and seller's obligation is complete].

²²⁴ Auto Hitech v. DCCT (2011) 36 VST 198(WBTT) (3 member bench)

²²⁵ ACST v. Sehgal Autoriders (2011)43 VST 398(Bom)(DB)

²²⁶ Punjab Communications Ltd. v. State of Punjab (2002) 128 STC 306 (P&H) (DB)

Chapter 7

Rate of Tax

INTRODUCTION

When a sale takes place in the course of inter-State trade or commerce, then the CST Act, 1956 is attracted. Sales tax is leviable on sale of goods. Once tax is leviable, the next question is the rate of tax that would be applicable. For this the classification of the goods as well as whether it is declared goods or exempt is to be examined.

CONCESSIONAL RATE OF CST

When the dealer sells goods which are specified in the certificate of registration of the purchasing dealer for specified purposes he shall be liable to pay CST @ 2% [concessional rate]. This concession is available only in respect of eligible goods which are specified in the registration certificate of the dealer prior to the receipt of the goods and only if "C" Form is issued for such sale by the purchasing dealer.

RATE OF TAX – SECTION 8

As per section 8 of the Act, in case of sales not supported with Form C the tax is payable at the rate applicable inside the appropriate State under the General Sales Tax laws. The tax would be payable at the rate of tax payable under the local Act applicable to the goods sold.

In works contract sales, tax is payable on the sale of goods which takes place as and when goods are used in the works contract. Therefore, for the purpose of determination of rate of tax, the form of goods in which sale takes place is to be considered. In case of sale of goods against Form C, at present, the rate of tax is 2%. In any other case, rate of tax would be local rate of tax applicable to the goods sold.

The State Legislature could tax all the goods involved in the works contract at a uniform rate which may be different from the rates applicable to individual goods involved in the execution of works contract²²⁷.

²²⁷ Cooch Bihar Contractors Assn v. St of WB (1996) 103 STC 477(SC)

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The rates of tax applicable to various kinds of works contract are specified in the respective Schedule of the State Acts. As a basic feature, tax is chargeable on the transfer of property in goods involved in the execution of works contract at the rates prescribed for the concerned goods in the Schedules of the concerned State VAT legislation. Where value of each item of material transferred in the course of execution of works contract is identifiable, tax can be charged on the value of individual items of materials as provided under the Schedules to the concerned State VAT Legislation. On inputs the contractor is entitled to avail Input Tax Credit while paying VAT/sales tax. In some States under composition schemes the dealer is restricted to take input tax setoff.

Example: The cost of goods purchased at different rates is Rs. 12,00,000/- and taxable turnover of sale is Rs. 15,00,000/-. Therefore, there is 25% value addition on cost of goods. Thus, rate on sale turnover would be applicable based on the rate applicable in each State. It can be based on the inputs purchased at different rates or a common rate would be applicable depending upon the description of works contract.

Development of software is chargeable to tax at 5% and residuary civil works contract in Karnataka attract tax at 14.5%. The input tax credit is eligible on local purchases made by the works contractor dealer.

Most of VAT laws provides input tax credit on inputs used for executing Works Contract. Some States however, are not considering consumables at par with inputs. There are several schemes for grant of input tax credit. In case of composition some States had not at all provided input tax credit while in some States partial tax credit is provided.

The deduction of the sub contractor's turnover on the basis that the transfer of property by the sub-contractor in a transaction of immovable property has already taken place is a permissible deduction²²⁸. This is based on the theory of accretion that in the construction of immovable property, the property in goods belonging to the sub-contractor gets passed on laying of the brick or on attaching the tile or pipe. However, no credit is available for the same. Also, the fact that tax has been discharged by the sub-contractor needs to be proved.

Under section 8 of the Act, sales to the SEZ or developer of SEZ, is exempt from payment of tax against Form I. This provision is applicable to works contract sales also. Accordingly, no tax is payable under the Act on inter-

²²⁸ Larsen & Tubro Ltd v. State. of Assam (2013) 60 VST 554 (Guw)

Rate of Tax

State works contract sales to SEZ unit or developer of SEZ against Form I.

RATES OF TAXES UNDER STATE VAT

Under VAT laws prevalent in the States, the Schedules enumerate the items and for each Schedule a single rate has been fixed. Further to this there are entries under the Schedules, which give power to notify goods, which would also be subjected to the same rate of tax. Further the exemption notifications would provide concessional rate of tax or exemption from tax on the sale of goods.

The levy is on transactions of sale of taxable goods governed by the relevant Schedule. The classification provision deals with commodities liable to tax as well as the rate of tax thereon.

Every registered dealer is required to pay tax on his taxable turnover at the rate notified or specified in respective Schedule. The rate can be reduced through various notifications issued under relevant Sections. In the Karnataka VAT Act :

- Exempt goods are included in the first Schedule.
- The Second schedule deals with the 1% tax items. The items here are only bullion, jewelry & precious stones.
- The Third Schedule deals with the 5% rate items.
- The Fourth schedule deals with 20% rate goods and if the goods are not included in any of the Schedules, then they are liable to tax @14%. In the case of works contract tax rate is as specified in the Sixth \Schedule.
- *The Sixth Schedule:* Clause (c) of section 4(1) of Karnataka VAT Act reads:” in respect of transfer of property in goods (whether as a goods or in some other form) involved in the execution of works contract specified in column (2) of the Sixth Schedule, subject to sections 14 & 15 of the CST Act, 1956 at the rates specified in the corresponding entries in column (3) of the said Schedule”
- Therefore, now the rate of tax on works contracts depends upon the Sixth Schedule and not as per the regular rates set out in other Schedules.

Note: Fifth Schedule lists input tax restricted goods.

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JUDICIAL DECISIONS ON RATE OF TAX

- (a) The imposition of 30% on Aristams and asavas (ayurvedic medicines) as compared to allopathic medicines which was at 7% due to alcoholic content to be treated in like manner to medicinal preparation having alcohol²²⁹.
- (b) Car seat covers or upholstery are accessories, an adjunct or accompaniment for comfortable use or for adding elegance and not parts²³⁰.
- (c) Perfumes cannot be said to include agarbatti from the dictionary meaning nor common parlance²³¹.
- (d) Chaff cutter or Kuttiki Machine is not a mower as used only after harvest and cannot be treated as agricultural implement²³².
- (e) Ball point pen refills are not pens as they cannot be used for writing without being inserted in a pen²³³.
- (f) Type of Glass as against form of glass- Articles of glass different from glass *per se*. Exemption notification to be read strictly relying on Constitution Bench decision in *Hansraj Govardhandas*²³⁴.
- (g) Aluminium redraw rods classified differently for Hindalco and the dealer held not permissible²³⁵. In line with the principles of equality under Article 14 of COI.
- (h) Facts cannot be decided by Tribunal or Court. In matters of classification of oxygen whether it is a raw material for manufacture of steel or not was to be decided by the assessing authority only²³⁶.
- (i) On the question, as to whether toffee is a mithai, production of evidence of common parlance as per the dealers and consumers is important for classification²³⁷.

²²⁹ Arya Vaidya Pharmacy v. State of TN – (1989) AIR 1230 (SC)

²³⁰ Mehra Bros v. JCTO (1990) 11 TMI 144 (SC)

²³¹ G.RadhakrishnaMurthi& Co v. CTO (1997) 8 SCC 37 (SC)

²³² Agricultural Implements Dealers Assn v. CST (1968) 8 TMI 167 (SC)

²³³ State of Kerala v. V. Padmanabhan (2000) 3 KLT 136 (SC)

²³⁴ State of Jharkhand v. LA Opala KG Ltd–(2014-TIOL-33-SC-CT)

²³⁵ Jai Vijai Metal Udyog Ltd Vs CTT – (2010) 4 TMI 347 (SC)

²³⁶ BOC India Ltd v. State of Jharkhand - 2009 (3) TMI 539 (SC)

²³⁷ CTT v. Associated Distributors Ltd – (2008) 5 TMI 394 (SC)

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- (j) Old Plant & Machinery which has outlived its utility, broken into scrap and sold. Rate of scrap applicable and not the rate for machinery²³⁸.

Conclusion

Unlike other tax laws like central excise, customs or even VAT, under CST not only the rate of tax on the goods is important but whether it is being sold against Form "C". All eligible goods would then only be liable for 2% when sold to registered dealer. Obviously against the local VAT rate of 12-15%, this 2% rate is very important for every business. No business or profession can afford to lose this benefit of concessional tax as mostly the margins would be between 1 to 5%.

WHICH ARE THE GOODS FOR WHICH C FORM CAN BE ISSUED (ELIGIBLE GOODS)

As per Section 8(3) the goods for which C form can be issued are as follows:

1. Goods specified in the certificate of registration of the registered dealer purchasing the goods as being intended for any of the following:
 - (i) *Re-sale by him*: The goods being procured could be meant for resale by dealer who could buy and sell such goods. Reselling means selling in same condition in which goods purchased.
 - (ii) *Use by him in the manufacture or processing of goods for sale* : intended for use as raw materials, processing materials, machinery, plant, equipment, tools, stores, spare parts, accessories, fuel or lubricants in the manufacture of processing of goods for sale. The expression "in the manufacture of goods" normally encompass the entire process carried on by the dealer of converting raw materials into finished goods being fit for market.
 - (iii) *Use in the tele-communications network* : The dealer may purchase, goods intended for use by him as raw materials, processing materials, machinery, plant, equipment, tools, stores, spare parts, accessories, fuel or lubricants, used in tele-communication network²³⁹

²³⁸ CTT v. Chitrahara Traders – (2011) 3 TMI 1420 (SC)

²³⁹ OEN Connectors Ltd v. State of Kerala – (1992) 87 STC 335 (Ker)

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- (iv) *For use in mining:* The dealer may purchase, goods intended for use by him as raw materials, processing materials, machinery, plant, equipment, tools, stores, spare parts, accessories, fuel or lubricants, for use in mining.
- (v) *Goods given on lease/ Works contract:* The goods used in a deemed sale such as lease or works contract are also included in the definition of sale and therefore such goods could be said to be resold.
- (vi) *For use in the generation or distribution of electricity or any other form of power:* The dealer may purchase, goods intended for use by him as raw materials, processing materials, machinery, plant, equipment, tools, stores, spare parts, accessories, fuel or lubricants, in the generation or distribution of electricity or any other form of power. The entry can be read liberally as trucks and trolleys and their spares used, raincoats for linesmen, soap and paint for clearing boilers are all eligible²⁴⁰.
- (vii) For the goods which are containers or other materials intended for being used for the packing of goods for sale. These could be containers, accessories and components of containers, steel sheet and plates for fabrication of containers. Example: Printed cartons used for packing detergents marketed in such cartons.
- (viii) For goods which are containers or other materials used for the packing of any goods or classes of goods specified in the certificate of registration or for the packing of any containers or other materials specified in the certificate of registration. This could cover secondary packing such as toothpaste tube outer cardboard printed pack.
- (ix) *Production:* The process of mining Mica is production which means that what is produced by the result of some action, process or effort²⁴¹.
- (x) *Job Work:* The machinery purchased under “C” Form transferred to job worker for processing goods of the owner of

²⁴⁰ CTO v. Rajasthan Electricity – (1997) 104 STC 89 (SC)

²⁴¹ Chrestien Mica Industries Ltd v. State of Bihar – (1961) 12 STC 150 (SC)

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machine is permissible as there is no requirement that the machine should be used only by him²⁴².

- (xi) *Personal use*: The use for purposes other than business would not be eligible. Goods purchased for the personal use of the dealer therefore not eligible.
- (xii) *Service Activity*: The goods purchased for use in providing a service where the tax is not paid on the transfer of property would not be eligible for issue of "C" Form. However those that are used in works contract would be eligible since it is re sale.
- (xiii) *Captive consumption for immovable property*: Goods used for construction of civil structure, factory/ office buildings would not be eligible.

The Central Government through the Ministry of Finance had issued circular No.9 (88) ST / 57 dt. 12.11.58 which provides a list of goods which are eligible.

Note: No goods other than the above are eligible for issue of C Form.

WHAT IS RAW MATERIAL?

As per the definitions under various State VAT Acts, 'raw material' means goods used as an ingredient in the manufacture of other goods and includes components, parts, preservatives, fuel and lubricant required for the process of manufacture.

Diesel used as raw material for the manufacture of the end product, for example yarn and fabric is eligible as a raw material²⁴³.

'Manufacture' implies change. But not every change is manufacture. The Supreme Court of India, in the landmark decision of *Union of India Vs. Delhi Cloth and General Mills Co. Ltd* (1977) 1 ELT J77 held that manufacture means bringing into existence a new substance known to the market. Manufacture is the end result of one or more processes, through which the original commodity passes. Thus, manufacture implies a change but every change is not manufacture. A new and different article must emerge having a distinctive name, character and use.

²⁴² State of TN Vs Photo Centre – (1997) 114 STC 55 (Mad)

²⁴³ CTO v. Rajasthan Taxchem Ltd – (2007) 5 VST 529 (SC)

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In *Deputy Commissioner of Sales Tax (Law) Board of Revenue (Taxes), Ernakulam v. Pio Food Packers* (1980) 6 E.L.T. 343 (S.C.) the Supreme Court observed thus :-

“ ...there are several criteria for determining whether a commodity is consumed in the manufacture of another. The generally prevalent test is whether the article produced is regarded in the trade, by those who deal in it, as distinct in identity from the commodity involved in its manufacture. Commonly manufacture is the end result of one more process through which the original commodity is made to pass. The nature and extent of process may vary from one case to another, and indeed there may be several stages of processing and perhaps a different kind of processing at each stage.Where there is no essential difference in identity between the original commodity and the processed article it is not possible to say that one commodity has been consumed in the manufacture of another. Although it has undergone a degree of processing, it must be regarded as still retaining its original identity”.

In other words, when the original identity of the product is maintained, then there is no change in raw material which can be said to have taken place. In the conversion of cotton into surgical cotton, it was held that the processing to a superior quality made cotton lose its originality and therefore was manufacture.²⁴⁴ Similarly coal to coal briquettes.²⁴⁵ Manufacture is wide enough to cover production, making, extracting, altering, augmenting, finishing or otherwise processing of raw material. Conversion of Steel scrap to agricultural implements and household articles was held to be manufacture²⁴⁶. *[More in the Chapter on Levy of CST]*

Tax is payable at the full rate on the materials in respect of which the declaration in Form C was wrongly given and not on cost of the finished product manufactured out of such materials²⁴⁷.

²⁴⁴ *Mamta Surgical Cotton Industries v. AC, Rajasthan* – (2014) 68 VST 498 (SC)

²⁴⁵ *B.P.Mills Ltd v. STT*- (1998) 111 STC 188

²⁴⁶ *Steel India v. State of Jharkhand* – (2014) 4 TMI 754

²⁴⁷ *Hira Cement v. State of Orissa* – (1998) 108 STC 619(Ori HC DB)

SITUATIONS WHERE FORM C CANNOT BE ISSUED

Form C may not be issued in the following cases:

1. Motor vehicles and vehicles used for transport which are not directly used in production.
2. Office equipment such as fans, AC used in administrative office and not in factory of production.
3. Office stationary such as printer ribbons and office furniture which are *not used in manufacture*.
4. Medicines which are purchased to be used in factory for employees/others.
5. Cement used for construction of building.
6. Goods used for employees colony, administrative buildings.

Fertilizers, chemicals used in cultivation of agricultural produce during agricultural operations.

IMPACT OF ERROR/ FRAUD BY SELLER/ PURCHASER

1. **No need for enquiry:** The selling dealer is not required to hold an enquiry with regard to purpose for which the materials have been purchased. Once the buyer furnishes necessary declaration forms, nothing more is required to be done²⁴⁸.
2. **Goods mentioned in RC:** The purchasing dealer can issue C Form for purchase of only those goods which are mentioned in his registration certificate. If the buyer so issues C Form for goods not mentioned in his R.C. then it would be misuse of C Form and penalty can be imposed on the buyer.
3. **Sale to registered dealer:** The selling dealer has only the obligation to satisfy himself that the purchasing dealer is a registered dealer; for

²⁴⁸ K G Industries v. STO – (1999) 113 STC 49 (MP HC)

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this he can rely upon the representation made by the buyer in the C Form.

4. **Default by buyer:** If the purchaser misapplies the goods, penalty can be imposed on the purchaser, but selling dealer, who has relied upon C Form issued by purchasing dealer to him, cannot be made liable.

Chapter 8

Works Contract and CST

INTRODUCTION

CST as well as the local sales tax laws were enabling the States to collect tax only on pure sale (as defined) earlier to the 46th Amendment to the Constitution. The usage of material in an immovable or movable property for some composite contract which involved both material and labour such as building construction or powder coating was not considered as sale where the contract was an indivisible one. This was due to the reason that the intention of the parties contracting was not transfer of goods but to complete erection of plant, construction of the factory, getting the machinery repaired, etc. The importance was on dominant intention and all decisions in the case of indivisible contracts were said to be outside the purview of “sale”.

Commercial tax is a large [maximum] contributor of revenue to every State with sales tax forming major part. There were attempts to pull borderline transactions not exactly fitting into the definition into the tax net for several decades by the revenue. The courts at that time always held that it was a works contract and there was no sale and therefore not taxable.

In the first *Gannon Dunkerly* case the contractor was constructing building on the land of the customer. The Supreme Court had held that the property in the goods gets transferred by way of incorporation in the works contract and there is no sale of either the construction materials or the entire building²⁴⁹.

By way of the 46th amendment to the Constitution of India, Clause (29A) was inserted in Article 366 to enable taxing several such activities which were held not liable as a sale. States took time [2002 to 2005] to make laws to specify what was covered as works contract and started to collect the tax on the same from the contractors and dealers involved in works contract of indivisible nature. The distinction between a divisible and indivisible works contract came to an end after the 46th Amendment²⁵⁰.

²⁴⁹ *Gannon Dunkerly & Co., (Madras) Ltd – (2002-TIOL-493-SC-CT-LB)*

²⁵⁰ *National Organic Chemicals Industries Ltd v. State of Maharashtra – (2012) 54 VST 271 (Bom)(DB)*

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The Constitutional Amendment was brought about to levy sales tax on the transfer of property in goods involved in the execution of the works contract when there was no sale of the immovable property i.e. the entire building.

After the 46th amendment to the Constitution of India, the States could levy sales tax on the value of goods involved in a works contract in the same way in which the sales tax was leviable on the price of goods and materials²⁵¹.

The Supreme Court in *Builders' Association of India v. State of Karnataka* has examined the legislative history of the 46th Constitutional Amendment and held that it was brought in to overcome the implication of first *Gannon Dunkerly* case. It held that the property passes when the materials are incorporated in the works. It reiterated the view that there is deemed sale of the goods involved in the execution of the works contract and not of the conglomerate i.e. the entire building that is constructed²⁵².

CONCEPT OF WORKS CONTRACT

1. Works contract is a contract, which involves the labour as well as the materials and the materials are partially transferred.
2. The tax is only on the goods involved in the works contract.
3. All contracts of work are not taxable. Transaction is taxable when there is a transfer of property in goods²⁵³.
4. The materials used could vary from contract to contract. When the contract does not involve transfer of property in goods, it is not a works contract.
5. The transfer of property in goods could be either as goods or in some other form. The property in the bricks, tiles can pass on as and when laid and affixed to the building. They become part of the immovable property.
6. When even a part of the materials is wasted, the property in the materials used and passed on to buyer is liable to tax. For example, when the colour chemicals are used in dyeing or bleaching of textiles there is deemed sale and is taxable²⁵⁴.
7. The State law has the capability of only charging the tax on the goods

²⁵¹ Builders Association of India v. UOI – (1989) 73 STC 370 (SC)

²⁵² (2002-TIOL-602-SC-CT)

²⁵³ Studio Kamalaya v. CTO – (1993) 89 STC 307(WBTT)

²⁵⁴ CST v. Mathushree Textiles Ltd – (2003) 132 STC 539(Bom) (DB)

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and would not be in a position to tax the service element of the transaction.

WHAT IS A WORKS CONTRACT UNDER CST ACT?

Section 2(ja) defines works contract to mean a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property.

Section 2(g)(ii) of CST Act defines sale to include a transfer of property in goods (whether as goods or in any other form) involved in the execution of works contract. This would include iron and steel bars transferred in the form of window frames or cement and jelly stones passed in the form of concrete.

The definition of dealer includes a person engaged in the transfer of property in goods involved in the execution of works contract. These definitions with minor changes are also incorporated under various State VAT Acts.

Therefore, to be covered under the scope of levy under the CST Act on works contract, the following conditions have to be satisfied:

- (a) There should be transfer of property in goods.
- (b) Such transfer of property in goods may be in the form of goods itself or in some other form.
- (c) Such goods, which are being transferred, should be involved in the execution of works contract.
- (d) The person doing such activity should be a dealer as defined.

If any of the above are not satisfied, then the activity is not covered under the scope of levy under VAT.

SOME ILLUSTRATIONS OF WORKS CONTRACT

1. Centralised Air Conditioner manufacturer designing, fitting and commissioning air conditioning equipment in a commercial complex. This is a contract for labour and material. It is not a sale of goods but a works contract²⁵⁵.

²⁵⁵ State of Madras v Voltas Ltd – (1963) 14 STC 446&861(Mad)

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2. Laying pipeline on turnkey basis is a works contract where the passing of property in goods[pipe] is incidental to the works contract²⁵⁶.

WHAT IS THE DIFFERENCE BETWEEN SALE AND WORKS CONTRACT?

- The difference between a sale and a works contract is that a sale involves transfer of property in the goods whereas in a works contract, there is only a contract to render work on the customer's property - whether movable or immovable.
- In a contract for work, the person producing has no right to property in the thing produced as a whole, even if part or whole of the material used by him may have been his property. In a contract of sale, the thing produced as a whole has individual existence as sole property of the party who produces it and the property passes only under the contract relating thereto to the other party for a price²⁵⁷.
- If property in the final article passes only after completion of the contract, it would be of sale even if the raw material is purchased on behalf of the buyer²⁵⁸. Customs designed machinery manufactured and supplied with motors provided by the customer is an example of sale.

WHETHER PURE LABOUR CONTRACT IS WORKS CONTRACT?

1. A transaction can be considered to be works contract only if there is any accession or accretion to the property of the customer.
2. Sales tax is leviable on the transfer of property in goods. In case of a labour contract, there is no transfer of property in goods and there is no tax liability²⁵⁹.

Illustration: If there is no use bringing in and transfer of property in goods such as switch boards/regulators etc. involved in repairing faulty

²⁵⁶ Dodsai Engineering v. CCT – (2012) (55 VST 447(Kar) (DB).

²⁵⁷ Hindustan Aeronautics Ltd v. State of Orissa – (1984) 55 STC 327(SC)

²⁵⁸ UOI v. Central India Machinery Mfg Co Ltd – (1977) 40 STC 246(SC)

²⁵⁹ Ashok Kumar Garg v. UOI – (2002) 128 STC 442(P&H) (DB), Rajiv Gumber v. BSNL – (2002) 128 STC 494(P&H) (DB)

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electrical fittings, then it is not a works contract, but a pure labour contract.

DIFFERENCE BETWEEN SALE, PURE SERVICE AND WORKS CONTRACT

There are several instances when some supply of material or some component of service could be there in a contract. The clarity as to whether the transaction is one of sale or service or a works contract would require examination of the following aspects:

1. Whether the transaction is only for transfer of goods with some insignificant service?
2. Whether the transaction is only a service with goods being incidental to the service?
3. Whether the goods and service [labour skill, advise etc.] are both significant?
4. What is the object of the contract as per the terms of the contract especially regarding the point of transfer of property? [rule of substance of contract rather than form to be applied].
5. What are the circumstances in which the transaction takes place?
6. What are the decisions of the Supreme Court for this type of contracts?
7. If no Supreme Court decisions exist then, what do the jurisdictional High Courts opine or High Courts of other States opine, where there is no decision in the State?

The answers to the above questions could help in being able to distinguish between the sale [sales tax on transfer only] , service[service tax] and works contract [both sales tax as well as service tax.]

DOMINANT INTENTION TEST

To decide whether the contract is one of sale or service the dominant objective or intention of the contracting parties would be important.

However, once a contract is a works contract then the dominant intention test

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is no longer applicable due to the deeming fiction created by change in the law²⁶⁰.

The contracts broadly can be classified as under

- (A) Where the sale is insignificant to service. Then it would be considered as a service only.
- (B) Where the service is insignificant to sale. Then it would be considered as a sale only.
- (C) Where the service as well as sale elements are significant. Then it would be considered as a works contract. The works contracts further could be bifurcated as under:
 - in relation to Immovable property [Buildings, Plant & machinery permanently embedded in earth, Transmission towers, roads, dams bridges etc.].
 - in relation to Movable property [bus bodies, machinery repairs, electroplating, galvanization etc].

DIVISIBLE VERSUS INDIVISIBLE CONTRACTS

Where there are separate contracts for the supply of the goods and another contract for the service or erection, construction, repair, mounting, dyeing, fabricating etc. then the supply would be considered as a sale. The activity of labour/ skill / use of machinery etc. to complete the job would be said to be service. These types of contracts are divisible contracts²⁶¹. The conditions including the penalties built into the purchase order/ work order on different terms for the supply and service would add to the clarity and avoid disputes.

When the intention of the party is to get the work done such as delivery of components supplied after powder coating, repairing the machinery as a composite job with no break up, it would be considered as an indivisible contract.

Few cases are discussed hereunder for providing some clarity :

1. The second *Ganon Dunkerly* landmark decision (often referred to as the second Gannon Dunkerley case), stated that the works contracts are those, in which the contractor incorporates the goods in the

²⁶⁰ L&T Ltd v. State of Karnataka – (2013) 65 VST 1 (SC); BSNL v. UOI – (2006) 145 STC 91 (SC)

²⁶¹ Sarvodaya & Co v. State of Maharashtra – (1976) 38 STC 86 (Bom)

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property of the customer as the part of the works executed by him. The Court held that the entire contract price cannot be subjected to sales tax²⁶².

2. The Andhra Pradesh HC observed that there were no standard formulae to determine whether a transaction was works contract or sale transaction and that it would depend on the facts and circumstances²⁶³. While dealing with the issue in hand, it held that the dealer had entered into a maintenance agreement with the customer to charge labour and overhaul charges at a particular rate and replacement of spares at another particular rate. The Court held that this is a contract of sale and sales tax would be imposed only on the value of spares charged by the customer.

There is a contract which is awarded for a lump sum. However, there is a bill of quantity attached to the same along with the amount payable for each component of supply as well as each component of service. Billing is done exactly as per the break up provided. This may be considered as a divisible contract. This would also be as per the latest decision of *Kone Elevators* (71 VST 1), which is also as per the *Larsen & Toubro* decision of 2013. This view would not hold good however, where such break-up is only for payment mile stones.

3. There is a contract which is awarded by the Government where each stage is broken up into a component of supply as well as a component of labour/ service and the total amount is indicated. This would be considered as a divisible contract. Large private contractors now opt for this methodology to avoid disputes in VAT/ CST as well as service tax as issues on valuation disappear.
4. There is a lump sum contract and for the purpose of releasing payment stages have been set such as supply of steel at site, supply of drawings, testing of the equipment received. In this case it is clear that these are only milestones and not the breakup of the contract per se. Therefore, this could still be considered as a composite indivisible contract²⁶⁴.

²⁶² State of Madras v. Gannon Dunkerly – (2002-TIOL-103-SC-CT)

²⁶³ Eastern Typewriters Service v. State of AP – (1978) 4) STC 18 (AP)

²⁶⁴ CST v. urbotech Precision Engg P Ltd – (2010) 18 STR 545 (Kar)Presently before the SC

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5. There are two separate contracts but they are intrinsically linked to each other and can be said to be co-terminus. Whether such separate contracts can be considered as composite works contract is a matter to be decided judicially in course of time.
6. There is one work order with no bifurcation of the material and labour. The billing for the material is made separately and for the labour and services separately. In this case the Revenue can choose to tax the same as a works contract as the contract would prevail over the mode of billing.
7. However, when there is one work order but the bifurcation of supply and labour is clear, the mere fact that it is one order would not make it indivisible²⁶⁵.

Some of the common activities/ transactions where there is some clarity available relying on the decisions of the Apex and Other courts are as under:

1. **Sale of Immovable Property in the course of construction:** The Larger Bench of the Supreme Court has confirmed the earlier order of the Karnataka High Court in *K.Raheja* that even in the contract for sale of immovable property in future, there is a works contract and that portion of the work which is incomplete as on the date of the contract would be liable to tax²⁶⁶. It was observed that the dominant intention test would not be applicable for works contract.
Sale of Completed Construction: This also means that once the building is complete as evidenced by certification by an Architect or registered qualified engineer duly supported by electricity bills, there would be no sales tax applicable.
2. **Manufacturing of windows and affixing the same in the building** was a composite contract. There were no two contracts one for sale and one for service. It was held as a contract of execution of work and not a contract involving sale of goods²⁶⁷.
3. **Fabrication of a rolling shutter and its fitting at site** is a continuous transaction. It is a composite contract for the supply of material, labour

²⁶⁵ Vijaya Electrical & Engn. Works v. State of Karnataka – (2009) 67 KLJ 385 (Kar-DB)

²⁶⁶ L&T Ltd v. State of Karnataka – (2013) 65 VST 1 (SC)

²⁶⁷ State of Rajasthan v. Man Industrial Corporation Ltd – (1969) 24 STC 349(SC)

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and services. It is works contract²⁶⁸. If the acts of supplying the rolling shutter and fitting it at site are independent contracts and risk and responsibility of manufacturer ceases after the goods leave the factory, it would be contract of sale and not composite contract²⁶⁹.

4. The contract of **fixing auditorium chairs at the site** in the auditorium building by fabricating work at site is a works contract²⁷⁰.
5. The contract of **partition or cabin fabrication at site** is a works contract²⁷¹.
6. **Contract for supplying, designing, erection and commissioning of Machinery/ Equipment:** The contract for supply, erection and commissioning of pulverisers including trial is works contract²⁷².

Where the material handling system came into existence before it became part of immovable property and the buyer had the right to reject the unit as whole, if found defective while commissioning same, it was held to be sale and not works contract²⁷³.

7. **Annual Maintenance Contract:** AMC contract which normally includes the usage / replacement of parts/ material is works contract and sales tax is payable on the value of contract.²⁷⁴ This needs to be differentiated from a service contract, where material if any used is provided by the customer or billed extra as per the terms.
8. **Deduction for Land Value:** The State VAT Act at times provides for VAT on dealers who undertake construction of flats and transfer them in pursuance of an agreement along with land or interest underlying land. The provision to deduct value of land from construction cost is valid²⁷⁵. This clearly brings out that unless one opts for a scheme of

²⁶⁸ Vanguard Rolling Shutters v. CST – (1977) 39 STC 372(SC)

²⁶⁹ Jupiter Rolling Shutters v. State of AP – (2001) 124 STC 396(AP)(DB);
Ernakulam District Rolling Shutter Fabricators Assn v. CCT – (2009) 26 VST 499(Ker)(DB)

²⁷⁰ N Srinivasamoorthy v. State of TN- (1991) 81 STC 52(Mad)(DB)

²⁷¹ IT Johnny v. State of Kerala – (2007) 10 VST 19(Ker)(DB)

²⁷² CST v. Monika Processing Plant – (2006) 146 STC 139(MP)(DB)

²⁷³ State of Gujarat v. Elecon Engineering Company- (1993) 90 STC 74(Guj)

²⁷⁴ Wipro Information Technology v. State of TN – (2011) 6 GST 100(Mad) (DB)

²⁷⁵ Maharashtra Chamber of Housing Industry v. State of Maharashtra -(2012) 51 VST 168(Bom)(DB)

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taxation for paying tax on the entire value, the land value should be deductible.

9. **Civic Amenities Transferred to Local Authority- Sale of sites/ plots after development:** The land developer formed a housing layout on land purchased by him, by constructing roads, culverts, drains, etc. thereon, by way of providing civic amenities to residents of the layout. This infrastructure is transferred free of cost to the government/ local/ village authority concerned for future maintenance, in due compliance with terms and conditions governing the approval of layout development plan.

It was observed by the Tribunal that common facilities constructed by the developer on his own land and at his own cost remained his property till he executed a deed relinquishing his right, title and interest to the authority concerned as per its terms and conditions. The transfer of such infrastructure free of cost did not amount to a deemed sale of goods and hence the transaction was not exigible to tax under Section 5-B of the Karnataka Sales Tax Act, 1957. The KAT in this second round of litigation after remand by the apex court eventually held that the development charges received from the customers in respect of common areas transferred to the local authorities are not liable to tax²⁷⁶.

10. **Brick Making:** The ownership of the clay [land] coal binders by customer would make it a service. Where the same is procured by the dealer then it is a sale.

If raw material is supplied to contractor who makes bricks the contractor at no stage owns the bricks. It is not a contract of sale²⁷⁷.

11. **Erection of Lift:** The Supreme Court reversed its decision holding good for many years in the case of *Kone Elevators* wherein earlier it was held to be a sale. In the latest decision of 2014 it observed that there is a works contract involved in the erection of the lift²⁷⁸. In this case it was explained that the dominant nature test, the degree of

²⁷⁶ Continental Builders & Developers Bangalore v State of Karnataka – (2009) 67 Kar.L.J 359 (Tri) (FB)

²⁷⁷ Ganpat Ram v. State of Rajasthan – (1997) 105 STC 305(Raj)(DB)

²⁷⁸ Kone Elevators I P Ltd v. State of TN – (2014 -TIOL-57-SC-CT-CB), (2014) 34 S.T.R. 641 (SC)

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labour and service involved or the overwhelming component test were held not applicable to works contract.

12. **Photography:** There have been continuous disputes in many States regarding photographic services. However following the decision of the Supreme Court in the *Rainbow Color Labs*²⁷⁹ as well as *C.K.Jidheesh*²⁸⁰, the transfer of paper not being the object, it has been held that the transfer of paper is incidental to the service. Such contract has been held to be one of service and not a works contract²⁸¹. This proposition is widely reported to be incorrect as per the decision in *BSNL*²⁸².

13. **Taking a Xerox copy:** It is works contract as property in ink and paper passes and VAT/sales tax is payable. Value of goods transferred is not relevant²⁸³.

The paper upon which the duplication takes place is incidental to the transaction. The object of the payment of price is to get the document duplicated and not to receive paper²⁸⁴.

In the light of the recent *L&T* decision the predominant object need not be transfer of property in goods. Even if there is small element of transfer of property in goods for a consideration done as a works contract, it is taxable.

14. **Advertisement Contract:** A contract of advertisement was for creating and designing advertisement, preparing material like brochures, annual reports. Though material would be transferred, it was not a works contract²⁸⁵.
15. **Advertisement using hoardings:** The hoarding would be considered as immovable property and the contract to provide space on such hoarding on which the advertisement would be pasted is not one of works contract.

²⁷⁹ *Rainbow Colour Lab v. State of MP* – (2000) 118 STC 9

²⁸⁰ *C.K. Jidheesh* – (2006) 1 STR 3 (SC)

²⁸¹ *Kesharam Surendranath v. ACTO* – (2001) 121 STC 175 (Ker)

²⁸² *BSNL v. UOI* – (2006) 2 STR 161 (SC)

²⁸³ *CST v. Hari and Company* – (2006) 148 STC 92(Bom)(DB)

²⁸⁴ *Everest Copiers v. State of TN* – (1996) 103 STC 360

²⁸⁵ *Imagic Creative P Ltd. v. CST* – (2008) 12 VST 371 (SC)

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16. **Letting out of factory as a whole:** Where a factory including the plant and machinery is let out for rent there is no liability for a composite contract even if some movable property involved.
17. **Quarrying activity:** Where the dealer only undertook the activity of extracting and breaking the boulders into smaller pieces- jelly and the quarry belonged to the customer- there was no sale involved. However, if the dealer paid royalty to the government he would become the owner of the boulders and when sold to others he was liable to tax²⁸⁶.
18. **Printing contracts:** The printing of receipt books was a composite one where the paper as well as the printing ink is transferred. However, the customer is not interested in that but what was printed on the paper. Not a sale or works contract²⁸⁷. Printing of letter heads for specific customer²⁸⁸, lottery tickets²⁸⁹, printing of labels as per specifications of customer are all works contracts²⁹⁰.
19. **Digital Printing:** The contract for printing of a vinyl film of pictures/images provided on CD/digital media is works contract and liable to tax²⁹¹.

In the case of SIM card provided along with the mobile phone, it was held that the transfer of the SIM is incidental to the service and in itself the SIM card had no value²⁹².
20. **Telecommunication Service:** Where the telephone instrument is provided and a rental charged for the same and for calls made also billing made, the rental would be liable to tax though the calls would not be
21. **Direct to Home (DTH)- Tata Sky:** In this transaction, the customer enjoys what is broadcast and the supply of set top boxes only enable

²⁸⁶ Moolje Ramjee v. DCTT – (1966) 17 STC 255 (Mad)

²⁸⁷ State of Maharashtra v. Sarvodaya Printing Press Fine Art- (1999) 114 STC 242 (SC)

²⁸⁸ A K Paper Products v. State of AP – (2010) 3 GST 369 (STAT-AP)

²⁸⁹ Thomson Press (I) Ltd v. State of Haryana – (1996) 100 STC 417(P&H) (FB)

²⁹⁰ State of TN v. Premier Litho Works – (2009) 26 VST 203(Mad)

²⁹¹ MMT(India) Pvt Ltd v. State of Karnataka – (2004) 137 STC 257(Kar) (DB)

²⁹² Idea Mobile Communication Ltd. v. CCE – (2011) 43 VST 1 (SC)

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the service of entertainment to be delivered. Therefore, not a works contract and only a service.

22. **Dyeing of Cloth:** The material which are transferred in the same form or other form are deemed sales. However, the consumables like fuel and chemicals consumed and not transferred are not liable to tax.
23. **Tailoring contract:** A contract to stitch the suit as per the cloth supplied by the customer is a contract for work and labour. If the tailor promises to stitch and deliver the suit for a price agreed upon, investing own cloth and stitching material, it would be sale even if the customer selected the cloth as per his liking²⁹³.
24. **Pest control:** Spraying of chemicals using machines or labour to eradicate pests, rodents, termites etc. The chemicals are sprayed through machines or hand. At the end of the process, nothing tangible remains in which property is transferred. By the process of spraying or applying chemicals, a place is treated against insects and pests but in the process the chemicals are themselves consumed and there remains nothing in which property is transferred²⁹⁴. Therefore, not liable to CST/ VAT.
25. **Event management Contract:** In an event at times free T shirts are distributed with the logo or message of the product or company. Food & beverages may also be offered to the viewers/, participants. However, all these are incidental to the service and therefore would not be works contract.
26. **Packing and Pressing contract:** The baling of cotton and packing the same in gunny bags and returning the same is a service contract and not a works contract. Palletising of cargo is a packaging service for cargo handling service. There is no sale involved.
27. **Artist Drawing a Portrait:** An artist who draws a portrait of the person or a sculptor who chisels out a bust of person are not works contractors. However, if the same persons make standard paintings/ sculptures of god or famous persons then it would be liable as a sale.
28. **Building of buses on chassis owned by Customer:** When the

²⁹³ Hindustan Shipyard Ltd v. State of AP – (2000) 119 STC 533

²⁹⁴ Pest Control India Ltd. v. Union of India & Ors – (1989) 75 STC 188

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chassis is owned and supplied by the transport agency (customer), material for body procured by the bus body builder, the contract is one of works contract²⁹⁵.

29. **Galvanization of Components:** When manufacturer galvanises and sells them it is a sale. When the part as well as zinc for coating is supplied by the customer then it is a pure job work or service. When the job worker purchases the zinc and parts are supplied to the customer then it is works contract.
30. **Repair of Vehicles, Equipment, Tools etc.:** Where it is pure service contract with parts being billed separately [as in a two-wheeler servicing] the part relating to parts is a sale and the other part is a service. Where it is one lump sum then it would be a works contract.
31. **Retreading of Tyres:** The retreading of tyres requires a prepared gauge to be affixed along with adhesives and its vulcanising. This is a works contract²⁹⁶.

The illustrations are not exhaustive but the principles could be applied for similar contracts and the decision whether one is under works contract or not could be arrived.

IMPORTANT DECISIONS ON WORKS CONTRACT

1. Even if the dominant intention of the contract is rendering of service, the State would be empowered to levy sales tax on materials used in such contract. The decision in *Rainbow Color Lab*²⁹⁷ where it was held that the State is not empowered to impose sales tax on incidental materials used in works contract was overruled and is no longer good law²⁹⁸.
2. The nature of contract does not depend on the mode of payment. The payment may be spread over the entire period of execution of contract. That does not make the contract one for sale of goods if it is one for material plus labour²⁹⁹.

²⁹⁵ City Motor Service P Ltd v. St of Madras – (1968) 22 STC 485 (Mad)

²⁹⁶ Stanes Motor (SI) Ltd v. St of Madras – (1959) 10 STC 154 (Mad)

²⁹⁷ Rainbow Colour Lab v. State of MP – (2000) 118 STC 9

²⁹⁸ Associated Cement Companies Ltd v. CC – (2001) 124 STC 59

²⁹⁹ Sentinel Rolling Shutters v. CST – (1978) 42 STC 409

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3. The transfer of property in goods for a price is lynchpin of sale. Substance of the contract and not form has to be looked into. If the thing to be delivered has individual existence before delivery as sole property of the party who is to deliver it, it is sale³⁰⁰.
4. State can levy sales tax on the transfer of property in goods involved in the execution of works contract even if the value of materials involved in execution of works contract was small³⁰¹.
5. A dealer had undertaken blasting job, where he was using explosives. The explosives got exhausted in the course of execution of contract. There was no sale of explosives and sales tax cannot be levied on the explosives used in the contract³⁰².
6. When the consumables are used up in execution of work. There is no transfer of the property in goods to the customer. Value of such consumables is not taxable under the sales tax law³⁰³.

INTERSTATE WORKS CONTRACT

The definition of 'sale' in the CST Act was amended in 2002 to cover the concept of deemed sales involved in the works contracts. At present the Central Government can levy CST on such deemed sales involved in the works contracts if such deemed sales is an inter-State sales.

State VAT law, also provides to levy VAT on the transfer of property in goods in execution of works contract. The tax on such deemed sales of goods can be levied by States if such deemed sales take place within the jurisdiction of the States.

When the dealers entered into contract for getting the old tyres from a party in AP and sent back to AP from Karnataka It was interstate works contract³⁰⁴.

Sale inside a State

Section 4(2) of CST Act states that a sale or purchase of goods shall be

³⁰⁰ Hindustan Shipyard Ltd v. State of AP – (2000) 119 STC 533

³⁰¹ Golden Colour Lab & Studio v. CCT – (2004) 134 STC 570 (Kar)(DB)

³⁰² Shekhawat Explosives v. St of Rajasthan – (2004) 137 STC 326(Raj)(DB)

³⁰³ Microcontrol Sterilisation Services v. State of Kerala – (2009) 26 VST 213(Ker)(DB)

³⁰⁴ Elgi Tyres & Tread v. Dy CCT – (2000) 120 STC 261(Kar)(DB)

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deemed to take place inside a State if the goods are within the State (a) in case of specific or ascertained goods, at the time the contract of sale is made and (b) in the case of un-ascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation. The movement of goods from one State to another when occasioned due to sale is most relevant³⁰⁵.

When a contract can be said to be interstate works contract?

For the determination of the situs of the sale involving works contract, it is important to see the facts and circumstances of the transaction, the terms of contract as well as the actual execution thereof. In the following circumstances, the tax would be leviable as inter-State sale from the State of origin under section 3 on CST Act, 1956.

Movable goods: In the case of movable goods, when the finished goods such as hardware and parts are sent from one State to a different State in pursuance to a contract of sale and integrated into customer's computers by application of labour, the said works contract would be treated as an inter-State sale.

Goods are manufactured by the contractor in accordance with the conditions of the contract and for the purpose of contract to another State to be incorporated in the works contract in that State. This would be treated as inter-State sale.

Immovable property: In a given case where the goods have moved in pursuance of a specific contract and have been used for that contract then such transaction would be inter-State sale.

The Guwahati High Court held that when a contract is undertaken by a contractor situated outside the State of Tripura and goods are brought in to the State of Tripura from the place outside the State for execution of the works contract in the State, it is an inter-State sale³⁰⁶. In such cases the inter-State movement of goods by which property is passed, is to be considered³⁰⁷. Relevant part of the High Court decision reads thus :

³⁰⁵ English Electric Co of India v. DCTO – (1976) 38 STC 475 (SC)

³⁰⁶ Projects & Service v. State of Tripura (1991) 82 STC 89 (Gau)

³⁰⁷ Thomson Press (I) Ltd v. St of Haryana – (1996) 100 STC(417) (P&H)

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“Once the contract occasions the movement of end-product from one State to another, the inputs or the goods involved in the execution of the works contract shall also be deemed to have moved and the levy of sales tax in such a case would be outside the field of legislative competence of the State Legislature. By introducing a fiction, the State Legislature cannot convert a sale in the course of interstate trade and commerce into a local sale.”

The goods procured only in the State where the works contract is executed would be liable to the local VAT.

Features of interstate works contract

The inter-State sale or purchase made pursuant to a pre-existing works contract would be taxed as an inter-State works contract. The terms and facts should be clear to determine whether it is local or interstate contract.

Some of essential features of an inter-State works contract are: -

- (a) There are two States involved, one where work is executed and one from where goods are being transferred to be used in works contract.
- (b) The transfer of goods takes place in pursuance of contract for executing the Works contract.
- (c) The goods as transferred from one State to another are used as in the same form or in any other form in the execution of works contract.
- (d) The goods can only be used for specific works contracts.
- (e) The goods procured locally would not be inter-State sale as situs of sale is the State in which works contract is executed.

Valuation of interstate works contract

Section 13(1) of CST Act provides that the Central Government 'may' by notification make rules for computation of turnover. So long as there exists no inconsistency between the rules made by the State Government and the rules framed by the Central Government, the rules of the State Government may be made applicable.

Each transaction would be required to be examined in the light of the circumstances and the decided cases as may be applicable to the goods dealt in with by them. Considering the above factors it becomes essential to identify whether the activity is covered under the scope of levy in the course of execution of works contract or not. If it is so covered, then the next

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question would be the quantification of such levy. The quantification of tax levy would be based on the tax rate, which has to be applied on the value to be determined.

The valuation of works contract would depend on the alternatives available in the State in which the contract is carried out. The reference to the local VAT laws would be relevant.

Deduction for labour and like charges

1. States have put in place rules to determine and compute the sale price of goods in case of works contract sales for levy under CST. State rules are applicable when not inconsistent with the Central rules³⁰⁸.
2. Transfer of goods involved in the execution of works contract is a deemed sale and therefore, works contract can be split into contract for labour and contract for sale. The transfer of property in goods involved in execution of works contract is chargeable to sales tax.
3. In arriving at the taxable turnover, various deductions from the contract receipt are allowed. The deductions are in respect of labour charges, purchases of material from local registered dealers and payments to sub-contractors.
4. Sale price in relation to transfer of property in goods is arrived at by deducting from the amount of valuable consideration paid or payable to a person for the execution of the works contract, the amount representing labour charges for such execution.
5. The value of the goods involved in the execution of works contract would have to be determined by taking into the entire value of the contract and deducting therefrom the charges towards labour and other services³⁰⁹. In other words labour, service and other charges not relating to transfer of property have to be deducted from the total consideration of works contract.
6. Therefore, turnover for imposition of sales tax in relation to the transfer of property in goods (whether as goods or in some other form) involved in execution of a works contract, shall mean sale price of goods in which there is transfer of property.

³⁰⁸ Mahim Patram Pvt Ltd v UOI – (2007) 7STR 110(SC)

³⁰⁹ Gannon Drunkenly and Company and others v. State of Rajasthan & others – (1993) 88 STC 204 (SC)

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7. Works contract being composite, such amount is to be arrived at by deducting from the total amount of valuable consideration paid or payable to a person for the execution of such works contract, the amount representing labour and other service charges incurred for such execution.
8. Where such labour and other service charges are not quantifiable, the sale price shall be the cost of acquisition of the goods and the margin of profit on them prevalent in the trade plus the cost of transferring the property in the goods and all other expenses in relation thereto till the property in them, whether as such or in any other form, passes to the contractee and where the property passes in a different form it shall include the cost of conversion.
9. The value of the goods involved in the execution of a works contract would have to be determined by taking into account the value of the entire works contract and deducting there from the charges towards labour and services which would cover:
 - (a) labour charges for execution of the works;
 - (b) amount paid to a sub-contractor for labour and services;
 - (c) charges for planning, designing and architect's fees;
 - (d) charges for obtaining on hire or otherwise machinery and tools used for execution of the works contract;
 - (e) cost of consumables such as water, electricity, fuel, etc., used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract; and
 - (f) cost of establishment of the contractor to the extent it is relatable to supply of labour and services;
 - (g) other similar expenses relatable to supply of labour and services;
 - (h) Profit earned by the contractor to the extent it is relatable to supply of labour and services.

Normal Valuation Methods used in States

- I. **Composition Scheme:** This is a very popular option which allows the works contractor to pay the tax as per the schedule wherein different types of contracts are specified and the rate applicable set out. Rates of composition tax vary from 1% to 5% as specified by the States.

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However, these schemes at times also have some conditions such as the following:

- The dealer would not be able to avail any input tax credit.
- The customer cannot avail the credit of the composition tax.
- Procurement of goods from out of the State is barred. Alternatively, they need to suffer the local VAT.
- On purchases from unregistered dealers, the contractor would still have to pay the tax.
- The option may include the value of land in sale of built property.
- The composition tax may not be allowed to be collected from the customer. In some States like Karnataka the law allows collection from the customer.

II. **Regular Scheme on Actual Transfer of property in Goods:** Under this option the dealer would avail the input tax credit on all eligible goods and discharge the tax on the material transferred. That is on the value-added tax would be discharged. There are two methods for arriving at the amount of tax to be discharged as under:

- a. The actual value of material transferred is arrived at by deducting the value of labour, services and like charges and balance offered for tax at the rates as set out in the schedule.

Note: This is by far the best method if the dealer's accounting is robust and would ensure optimisation of sales tax as well as service tax.

III. **Variation of the Regular Scheme where ad hoc deductions are availed:** Here also both the methods discussed above can be used. The credit of the input tax would be available. However, the additional requirement of proving the value of goods does not exist to some extent.

Note (for Regular Scheme- Actual or Adhoc): *The value of goods can be broken into tax rates of goods used, declared goods and others. Steel, bricks, sand etc. at lower rate {maybe 4/ 5%} is estimated along with the gross profit and tax calculated on the same at the same rate. The balance is calculated at the applicable rate [between 12.5- 15 as on date]. This has been confirmed in most States by way of judicial rulings³¹⁰.*

³¹⁰ Durga Projects Inc v. State of Karnataka – (2013) 62 VST 482 (Kar)

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How to arrive at the actual value of goods transferred in works contract for regular scheme?

There could be three alternative methods to bifurcate the total amount as under:

- (i) The cost centre approach of identifying the expenditure clearly and then grouping to arrive at the total cost of goods consumed in the works contract is possible. The gross profit margin to such value maybe added and offered for tax.
- (ii) The total purchases [other than consumables like diesel, electricity, services] could be extracted. The gross profit margin to such value maybe added and offered for tax.
- (iii) The total services, labour costs, consumables could also be arrived at. The gross profit margin to such value maybe deducted from the gross value to arrive at the value of goods transferred.

How to arrive at the Ad hoc value of goods transferred in works contract for regular scheme?

States have provided different percentages for labour and like charges depending on the type of work. This rate may be deducted from the gross value. The question whether gross profit margin on the labour and like charges is deductible maybe examined in the light of the case law development in each State.

Note: In both the methods i.e. actual deduction or ad hoc deduction the possibility of breaking up the goods consumed portion into the goods at special rate [at lower rate] and others may also be examined after considering the case law development in that State.

Criteria for Composition Vs Regular Scheme

Today's business is very competitive and some contractors in the unorganised sector work on cash flow rather than on the extent of profit. This leads to a number of disputes at the completion of the contract. The choice considering the economic viability could be done based on the following criteria:

- (a) The rate of composition as it is from 1% to 5%. If the rate is less than 2% then in most cases the composition scheme may be found to be preferable.

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- (b) The option chosen by the main contractor could be important as, if he were under the regular scheme, the loss of input tax credit for tax paid material purchased by the sub-contractor could be significant. Under composition scheme the tax cannot be availed as credit.
- (c) In case of the contract coming in the middle of the year, the option already chosen by the contractor or sub-contractor cannot be changed from contract to contract and is for a whole financial year.
Note: Large contractors could ensure that they have two concerns-one choosing composition and the other under regular scheme where for some contracts the regular scheme could be economically beneficial.
- (d) When the rate is more than the restriction/ impact of usage of material bought inter-State [by way of stock transfer also] which does not suffer the local tax may become significant.
- (e) The dealer may be barred from doing inter-State sale/ purchase in some States while under the composition scheme. In some States the local taxes paid on inter-State purchases could sufficient for compliance.
- (f) The extent of unregistered dealer purchase especially in the construction sector on which local tax is payable or not would be important.
- (g) Smaller dealers with accounts being prepared at the end of the year and urgent / unplanned purchases would always find the composition less cumbersome and cost effective.

Free of Cost Supply of Material by Customer

The free of cost (FOC) material could be supplied by the customer due to reasons of quality, fund constraints of the sub-contractor/ contractor etc. The contract price is covering the value of goods and services that are required for the execution of the works contract. Later, the customer issues certain materials for use and consumption in the course of execution of the works contract to the contractor. Such issue of free of cost materials may not be liable for WCT.

The revenue could take a stance that free supply made by the customer to the contractor is a sale, and the use by the contractor of the same materials in the course of execution of the works contract is another sale.

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The common types of agreements and their treatment could be as under:

1. Agreement on gross amount from which the value of FOC material would be deducted and on balance payments made. In such cases the value would be the gross value for payment of tax. The supply by customer would be considered as a transfer of property to the contractor and its inclusion in the gross value of the contract as it is incorporated into the immovable property.
2. Agreements where only the value of goods to be provided by the contractor/ sub-contractor along with their labour and like charges is the value of the contract. The contract also mentions that specific items would be supplied free of cost. In such cases the value of materials transferred by the customer would not be reckoned for charge of tax.
3. To mitigate the VAT exposure on such supplies it is advisable to enter into the contract with net material value and supply the goods as free of cost to the contractor with the condition that such material is supplied to the contractor on bailment.
4. There could be works contract where the customer supplies the material free of cost with the condition that such material is supplied to the contractor on bailment. Under this system, the contractor is liable to account for such materials and the ownership in such material always vests in the customer. The cost of such material is nowhere reflected in the consideration for contract and consequently no deduction is made from the running bills. As there is no transfer of property passing from the contractor to the customer in execution of a works contract, such material is not exigible to tax.

Note: The above principles would apply equally to movable or immovable property works contract.

Important decisions on Free of Cost materials

1. The contractee supplies the goods to the contractor to maintain the quality or for any other reasons. In such case if the contract is entered including the value of goods and labour and the contractee deducts the value of the goods supplied by it from the running bills of the contractor, it would amount to sale in the hands of the contractee³¹¹.

³¹¹ NM Goel v. STO – (1989) 72 STC 368 (SC)

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2. Where material supplied by the buyer was incorporated or used by the contractor in the execution of works contract the value of such material is required to be added to the sale price and contractor is liable to pay sales tax on that value³¹².

Sub Contract Compliances

The alternatives for the sub-contractor doing works contracts are the same as with the main contractor unless the sub-contractor is below the threshold limit. However, the majority being very small, the compliances are normally expected to be done by the main contractor on behalf of the sub-contractors.

Deduction of Turnover of Sub contractor

In a works contract of immovable property when the sub-contractor lays a brick or plasters the walls, the property in goods passes onto the ultimate customer/ user. This value should not be subjected to tax again³¹³.

Where the principal contractor has opted for the composition scheme, the deduction of the sub contractor's turnover is allowed as long as the same is tax paid. The main contractor can then pay the tax on the balance turnover. The certificate of payment of tax by the sub-contractor, however, would be important to claim this deduction. In such cases the option chosen by the sub-contractor whether under the regular scheme or composition would not be relevant.

Where a back-to-back arrangement is made with the sub-contractor responsible for the whole project the main contractor does not transfer any property to the buyer and therefore the question of being liable to sale tax does not arise³¹⁴. This is a decision under VAT and may not be applicable under service tax law. For the same taxable contract, both main and sub-contractor could be liable to service tax, even though the sub-contractor executes the entire contract on back- to back-basis.

*Note: The conditions for opting for composition at times are very stringent and do not allow for any exceptions.*³¹⁵ Example- inter-State purchases may not be allowed at all. Therefore, in a contract of 100 crores if Rs. 20,000/- of*

³¹² Hardeo Singh v. State of Bihar – (2004) 137 STC 497(Jhar)(DB)

³¹³ L&T – (2013) (7) KLJ 177

³¹⁴ State of AP v. Larsen & Toubro Ltd- (2008) 1) VST 1 (SC)

³¹⁵ State of Kerala v. Builder Association of India – (1997) 104 STC 134 (SC)

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inter-State purchase is there the option maybe lost. Dealers need to ensure the compliance. This is quite unreasonable but until judicially decided may have to be followed.

Issue of Form C

As a result of amendment by Finance Act, 2002, the dealer can issue Form C for purchase of goods in the course of inter-State trade for the purpose of works contract sales. After the amendment to the definition of “sale” to include “deemed sales”, the dealer is entitled to issue Form C as the term “sale” appearing in section 8 would also include works contract sales.

At the same time while purchasing any goods, by way of works contract which are involved in the execution of works contract for use in manufacturing or processing of goods or packing of goods for sale or resale etc., the C Form can be issued by the employer.

MOVEMENT OF GOODS TO AND FROM JOB WORKER

Introduction

Central Sales Tax Act has nowhere defined the term ‘job work’.

A pure job work does not come under the ambit of tax as there is no movement of goods involved. If a job worker uses some material, there will be transfer of property in goods and the transaction may be taxable.

Job work and Interstate stock transfer of goods

In case goods are sent inter-State for job work outside the State, then the movement of goods from one State to another State takes place otherwise than in the course of sale of goods. We examine below whether it is mandatory that Form F has to be issued in respect of materials sent for job work to different State. Coming to Section 6A, it is clear from the wordings of the said section that it applies only in the following circumstances:

- (a) when the goods are sent inter-State to one’s principal place of business in the other State or to his agent or his principal; and
- (b) the inter-State movement of goods from one State to the other is otherwise than as sale.

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It is made clear that both the above conditions should be cumulatively satisfied before the provisions of Section 6A of the CST Act stand attracted.

The basic principle behind issue of F Form is that the goods are cleared otherwise than by way of sale i.e. *from principal to his other place of business or to his agent*.

In job work material sent by the manufacturer for repair ultimately comes back to manufacturer, which means conditions as stated in Rule 6A of CST are *prima facie* not satisfied. Further it is not explicitly prescribed under CST law that Form F has to be mandatorily issued in respect of materials sent for job work.

However, controversy is created by the decision in the Allahabad High Court which has held that Form F is required to be issued even if goods are sent outside the State for job work or repairs on returnable basis.³¹⁶

The HC decision in *Ambica* was affirmed by SC. The Supreme court held that where the jurisdictional office of the transferee is not issuing F Forms the assessee cannot be punished for 'no fault of his'. If the assessee is not in a position to obtain the "F" Form, then assessing authority shall decide the matter based on the facts keeping in mind the circumstances which led to non-filing of forms by the assessee.³¹⁷

In the light of the above decision which was affirmed by SC, Form F is required to be issued in case of goods sent inter-State on job work basis.

Issues arising in sending goods for inter-State job work

There is an additional complication that the job worker who does pure labour job work does not come under the ambit of tax, as there is no transfer of property in goods and therefore, would not be required to get registered under CST Act or concerned State VAT Act. Consequently, the job worker to whom the materials are sent for inter-State job work may not be registered under VAT and CST and cannot issue Form F either.

In such a case, it would be practically impossible for the job worker to get the relevant Form F from the sales tax department as he is not registered with the sales tax department.

³¹⁶ *Ambica Steels Ltd. v State of UP* (2008)12 VST 216 (ALL)(DB)]

³¹⁷ *Ambica Steels Ltd. v. State of U.P. & Others* [2009] 24 VAT 356 (SC)

Works Contract and CST

This would badly affect inter-State movement of goods, which would be violative of Article 301 as well as of freedom of trade guaranteed under Article 19(1)(g) of the Constitution of India. The interpretation of Section 6A by Allahabad High Court, affirmed by SC in the above case has caused lot of practical difficulties.

Further as observed, many of the dealers are not filing Form F for job work transactions, sales returns etc. though the same could be required to be filed as per the *Ambica Steels'* decision (supra).

Though the Supreme Court has left the matter to the discretion of the assessing authorities if assessee is unable to obtain forms, the VAT authorities may play safe, follow the dictum of *Ambica Steels* and insist for Form F in respect of materials sent inter-State for job work.

We suggest that Form F could be obtained from job workers wherever possible. Form F can be produced at the stage of audit/assessment/appeal.

Important decision

There is appeal to High Court where Form F was not produced before assessing authority though the forms were available with dealer. Orders denying benefit in the absence of forms set aside and matter remanded to the assessing authority for disposal afresh in the light of forms.³¹⁸

TDS ON WORKS CONTRACT

All State Legislatures have provided, in their respective Sales-Tax Acts, for withholding of tax at source in the matter of works contract/sale to some specified dealers. The provision requires tax to be withheld at the appropriate rate from payments above the prescribed limit to contractors or to vendors for the purchase of goods and to be deposited in Government Treasury. The procedural provisions are similar to the provisions under Income-Tax Act. Most States provide for T.D.S. number and returns. If a contractor finds that the total net VAT liability (output tax less input tax credit) is lower than the amount of tax to be deducted, then the contractor may approach the Assessing Officer and obtain a certificate for no/lower tax deduction on the basis of which he would be entitled to receive the payment without/lower tax deduction at source.

In some of the States the Government companies/ entities have to deduct the

³¹⁸ Agrimas Chemicals Ltd v. State of Haryana (2013) 64 VST 134 (P&H)

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TDS for the works contract executed within the State at the net tax payable by the contractor within the State. TDS provisions are not applicable for inter-State trade, Imports and exports respectively. Such provisions are applicable for the sales made within the State. Even in some of the States works contractors have to deduct the TDS on purchase of notified goods used for the execution of the works contract. In some of the States even commercial establishments have to deduct tax at source on canteen payments exceeding specified limits. Therefore, every State would have suitable provisions for withholding tax on specified goods and specified transactions for specified dealers.

Conclusion

The best option to pay CST on works contract is to go on actuals i.e. VAT to be paid on the value of goods used in executing contract and service tax on the balance labour portion. This ensures taxes are not paid on more than 100% base amount of the invoice.

Chapter 9

Inter-State Transfer of IPR

TRANSFER OF RIGHT TO USE GOODS

The right in question is legal right to use goods. The Supreme Court in *Bharat Sanchar Nigam Ltd and Another v. Union of India and Others* (2006-TIOL-15-SC-CT-LB) has also discussed the concepts of sale, deemed sale and the powers of the States to levy sales tax on deemed sales in detail. To constitute a transaction for the transfer of the right to use the goods the transaction must have the following attributes –

- (a) There must be goods available for delivery
- (b) There must be *consensus ad idem* as to the identity of the goods
- (c) The transferee should have a legal right to use the goods – consequently all legal consequences of such use including any permissions or licenses required therefor should be available to the transferee
- (d) For the period during which the transferee has such legal right, it has to be to the exclusion of the transferor
- (e) Having transferred the right to use the goods during the period for which it is to be transferred, the owner cannot again transfer the same rights to others

Where the aforesaid criteria are satisfied in a transaction, the same would fall under clause (d) of Article 366(29A) of Constitution of India and would attract sales tax. When the transaction is subject to sales tax, it cannot be subjected to service tax.

FEATURES OF A LEASE

- (a) There must be a lessor and a lessee both competent to contract
- (b) There must be an asset to be leased
- (c) Actual possession and control on the asset must be transferred
- (d) There must be an acceptance of the lease property

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- (e) There must be transfer of right of enjoyment by the lessor to the lessee
- (f) There must be a consideration.

Important Decisions

1. Assessee had given exclusive possession of lorries to its sister concern. The lorries were maintained by the sister concern. It is transfer of right to use goods and VAT payable³¹⁹.
2. Mere transfer of right to use for a consideration is sufficient. Transfer of goods itself is not necessary³²⁰.
3. Delivery is not an essential part of transfer of right to use goods. The moment right to use goods is transferred, taxable event happens³²¹.

Right To Use

1. When goods are transferred under a written or oral agreement with effective control parted by way of delivery it is a deemed sale³²². [All movable goods like computers rented out to BPO/ software companies, video for individuals, shuttering material to contractors.]
2. INSAT – space (or spare) capacity of transponder allowed to be used. Held that customer has effective control though technical operation was with the Dept. of Space³²³. Letting out of dedicated servers in data centres or specified space in the servers- specifically earmarked and not used for others could also be covered here.
3. Software license is a right to use the data in the form of programs. Software being goods could be liable.

Illustrative Transactions Not Deemed Sale

Right to Use

1. Assignment of trade mark not liable though the transfer of right to use the trademark liable³²⁴.

³¹⁹ Kavri Feeds v. Secretary STAT – (2011) 42 VST 255(Mad)(DB)

³²⁰ Aggarwal Brothers v. St of Haryana – (1999) 113 STC 317(SC)

³²¹ G S Lamba v. State of AP – (2012) 43 VST 323(AP)(DB)

³²² Installment Supply Ltd v. STO – (1974) 34 STC 65 (SC)

³²³ Antrix Corporation Ltd v ACCT Bangalore & Orsv [2010] 29 VST 308 (Kar)

³²⁴ CST Vs Duke & Sons P Ltd – (1999) 112 STC 370 (Bom)

Inter-State Transfer of IPR

2. Use of trade mark “Malabar gold” by franchisee. Effective control not parted as franchisee cannot sublet, sub-lease or transfer³²⁵.
3. In case of rights to exhibit from producer of films to distributors, the restrictions on transfer, copying, lack of exclusivity means that there is no right to use under CST³²⁶.
4. Software development on programs belonging to the customer do not result in any transfer of program as it vests with the customer and hence constitute only a service³²⁷.

TAXABILITY OF IPRS FOR SALES TAX

The taxability of intangibles has always been an area of controversy under Indirect Taxation. The test to determine “licenses to use/temporary transfer” or “transfer of right to use” is based on the test of “possession” and “exclusivity”.

These tests can be applied to physical goods where possession is transferred to the person to whom the right to use is transferred and the goods so transferred are placed under effective control of the transferee. However, the challenge arises in case of intangibles, where the question of physical possession and effective control are difficult to establish.

The term “Intellectual property right” is not defined in VAT. Now the question is when a transaction of IPR is treated as sale of goods and would attract VAT or Sales tax.

In the context of canned software it was held that the Indian law does not recognise or make a distinction between tangible property and intangible property. A ‘goods’ may be a tangible property or an intangible one. It would become goods provided it has the attributes thereof having regard to (a) utility (b) capable of being bought and sold (c) capable of transmitted, transferred, delivered, stored and possessed³²⁸.

The VAT laws of many states have incorporated copyrights and patents in their Schedules for the purpose of taxing the same. It was further observed that the term “goods”, for the purposes of sales tax, cannot be given a

³²⁵ Malabar Gold P Ltd v. State of Kerala – (2013) 63 VST 497(Ker)

³²⁶ AGS Entertainment P Ltd v. UOI – (2013) 65 VST 88 (Mad)

³²⁷ Sasken Communication Technologies Limited, Bangalore v. The JCCT(Appeals-3), (2011) 71 Kar.L.J.647 (HC)(DB)

³²⁸ Tata Consultancy Services v. State of Andhra Pradesh (2004) 178 ELT 22 (S.C.),

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narrow meaning. Properties which are capable of being abstracted, consumed and used and/or transmitted, transferred, delivered, stored or possessed, etc., are "goods" for the purpose of sales tax.

The test to ascertain whether a property is "goods" for the purposes of sales tax is not whether the property is tangible or intangible or incorporeal. The test is whether the concerned item is capable of abstraction, consumption and use and whether it can be transmitted, transferred, delivered, stored, possessed, etc.

Sales tax versus service tax on IPR

"Transfer of right to use the goods" is a well-recognized constitutional and legal concept. Every transfer of goods on lease, license or hiring basis does not result in transfer of right to use goods. "Transfer of right to use goods" involves "transfer of possession and effective control" over such goods³²⁹.

The leasing or sale of trademark was held to be a transaction in tangible property. Reading this decision together with the decision of the Supreme Court³³⁰, which held that service tax and VAT are mutually exclusive, one can say that a transaction for granting the right to use trademarks, patents, technical know-how or literature or technology rights etc., can be construed as a transaction in goods.³³¹

The BSNL case states that the following attributes, inter alia, are relevant for a transaction to constitute transfer of right to use:

- (a) there should be "transfer of the right to use" and not merely a license to use the goods
- (b) transferor cannot again transfer the same right to others

The Madras High Court has made a finer distinction between the applicability of sales and service tax (Para 37). It was observed that in the case of Sales Tax there would be "transfer of Right to Use the Goods ". Under the service tax, what is levied is on "temporary transfer/ enjoyment of the goods". The pith and substance of the enactments are totally different and operate to levy tax on different aspects.³³²

³²⁹ State of Andhra Pradesh v. Rashtriya Ispat Nigam Ltd (judgment dated 6/2/2002 in Civil Appeal no.31 of 1991)

³³⁰ BSNL's case [(2006) 2 S.T.R. 161 (S.C.)]

³³¹ Aviat Chemicals (P) Ltd v. CST Mumbai [(2004) 170 ELT 466 (Tri-Del)],

³³² AGS Entertainment Pvt. Ltd. v. Union of India (2013) 32 S.T.R. 129 (Mad.)

DISCUSSION ON 'SITUS OF SALE'

In case of goods (viz. tangible as well as intangible), the *situs of the transaction* is very important for determining the applicability of CST or VAT (also to determine the State empowered to levy VAT).

In case of *transfer of right to use the Intellectual Property Rights ('IPRs')*, being effected only by an agreement in writing and not involving delivery of any tangible goods or property, the situs of the transaction will have to be determined by applying the principles laid down by the Supreme Court that is, *the place where the agreement assigning the intellectual property is executed or entered into*.³³³

Important Decisions

The Kerala High Court in an appeal against the order of Single Judge, has held that such agreements which entail multiple grant of license to use trademarks coupled with rendering of services would be "Franchise" and would not be taxable under VAT laws but only under the service tax.³³⁴

The Madras High Court, distinguished the Malabar Gold judgment (supra) on facts that the franchisor had granted exclusive rights qua the concerned outlet to the franchisee for a specified period of time and therefore, 'the transaction was not a mere license or mere right to enjoy but, a transfer of right to use intangible goods.' Accordingly held that it was a 'deemed sale' – transfer of right to use trademarks³³⁵.

The Bombay High Court had an occasion to decide as to whether the agreement executed by Tata Sons with the Tata Companies providing detailed guidelines for use of the Tata name and the trade mark under a "Brand Equity arrangement" would attract tax under the Maharashtra Sales Tax on the Transfer of Right to use goods for any purposes Act, 1985 (the MVAT Act'.³³⁶

Distinguishing the remarks of the Supreme Court in the case of BSNL, the Mumbai High Court held that, in case of IPRs, notwithstanding the fact that

³³³ 20th Century Finance Corporation Ltd. v. State of Maharashtra [(2010)119 STC 182]

³³⁴ Malabar Gold Pvt Ltd v. CTO [2013-TIOL-512-HC-KERALA-ST],

³³⁵ Vitan Departmental Store and Industries Ltd [2013-TIOL-897-HC-MAD-CT],

³³⁶ Tata Sons Ltd and Another v. The State Of Maharashtra And Another [2015-TIOL-345-HC-MUM-CT]

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service tax was already being paid on such transaction. *even when there is transfer of right to use goods to multiple users it would attract tax under the MVAT Act. Decision in Malabar Gold which held that letting use trademark was liable to ST (supra) was not considered by the Mumbai HC and could be infirmed to that extent.*

Chapter 10

Exemptions/Refunds

INTERNATIONAL ORGANISATIONS – [SECTION 6(3)]

No tax is payable under this Act on interstate sale of goods to any foreign diplomats/ mission/ consulates/United Nations, etc. against Form J. This is in terms of honouring the World Trade/ Bilateral/ Other agreements to which India is a signatory. [Section 6(3)].

EXEMPTIONS TO SUPPLIES TO FOREIGN MISSIONS/UN

CST is not payable on sale of goods made by a dealer in the course of inter-State trade or commerce, to any official or personnel or consular or diplomatic agent of

- (i) any foreign diplomatic mission or consulate in India or
- (ii) the United Nations or any similar international body.

entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force if such official, personnel, consular, or diplomatic agent, as case may be has purchased such goods for himself or for the purposes of such mission, consulate, United Nations or other similar international body.

The exemption is available only if the dealer selling such goods furnishes to prescribed authority Form J obtained from the official, personnel, consular or diplomatic agent.

EXEMPTION BY NOTIFICATION ISSUED BY THE STATE GOVERNMENT – SECTION 8(5)

The State Government can grant exemption from sales tax by issuing a notification in the Official Gazette in respect of inter-State sales affected from the State subject to the fulfilment of the following conditions:

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- (a) State Government is satisfied that such exemption is necessary in public interest.
- (b) Sales must be to registered dealer.
- (c) The selling dealer must furnish Form C as obtained from the registered purchasing dealer.

The following could be the nature of exemption granted under Section 8(5):

- (i) Exemption could be absolute (complete exemption from CST) or partial (reduced rate of CST)
- (ii) Exemption could be subject to conditions
- (iii) Exemption could be granted to sales of notified goods / classes of goods.
- (iv) Exemptions may be granted to notified dealers / classes of dealers (purchasing and/or selling dealer)

Period of exemption

The exemption could be applicable for the entire year during which tax is payable, irrespective when it was issued unless it gives a different intention or the notification fixed date from which the exemption is commenced

EXEMPTION FROM CST TO A SALE TO UNIT / DEVELOPER OF SEZ – SECTION 8(6), 8(7) & 8(8)

A registered dealer in Special Economic Zone (Unit in SEZ or Developer of SEZ) can obtain goods from outside SEZ, for specified purposes, without payment of CST subject to satisfaction of the conditions set out in the Chapter and when specified Form I is issued by the purchasing dealer.

Chapter 11

Liability in Special Cases

Chapter V of CST covers liability in special cases which includes- liability of company in Liquidation, liability of directors of Private Limited Company in case of liquidation

Section 17 of the Act states that if a liquidator or receiver is appointed for the purpose of liquidation of a company, he shall inform the tax authorities within 30 days of the appointment and the appropriate sales tax authority will inform him within 3 months the amount of tax due from a company which is in liquidation. The liquidator shall not sell any assets of the company before setting aside the amount of tax due as informed by authorities. He can only sell if such transfer or sale is by order of Court. otherwise, liquidator shall be held personally liable.

As per section 18 of the Act, if a private company limited company is being wound up, liability of the directors of such company is personal if the amount cannot be recovered in liquidation i.e. the due can be recovered from his personal property by proving that non-payment of tax was not attributed to any gross neglect, misfeasance or breach of duty on his part in relation to affairs of the company he can save his liability.

Chapter 12

Forms

The Dealers have to issue the declaration and certificate referred in sub-section (4) of section 8 in Form 'C' and Form 'D' respectively.

Form C is issued by VAT department to the registered dealer who makes inter-State purchases of those goods which are mentioned in his RC (registration certificate). While doing the transaction the purchasing dealer has to furnish this Form to selling dealer in course of interstate purchase to get exemption / reduction in sales tax rate.

For instance, the Head Office may transfer goods/stock from one State to another to its branch or agent without becoming liable for CST.

F Form With this, goods can be transferred / delivered from one State to another without recognising it as a sale.

It is issued by the VAT Department on the request of the purchasing dealer (branch); the purchasing dealer submits F form to the selling dealer to claim exemption from making it a CST sale. As per section 6(A) of CST Act F Form is mandatory to prove transaction as stock transfer.

Dealers have to issue certain declarations in the prescribed forms to buyers/sellers. The forms are **C, E1, E2, F, H** and **I**. Forms C, E1, E2, F and H are printed and supplied by the Sales Tax authorities. Dealers have to issue declarations in these forms printed and supplied by the Sales Tax authorities. Form D is to be issued by government organization departments making purchases. These forms are to be prepared in triplicate.

Form C : The sales tax on inter-state sale is 2% or the applicable sales tax rate for sale within the State whichever is lower if the sale is to a dealer registered under CST and the goods are covered in the registration certificate of the purchasing dealer. The purchasing dealer is eligible to get these goods at concessional rate if a declaration in C Form is submitted to the selling dealer.

Form E1: This form is issued by the dealer who makes the first inter-state sale during movement of goods from one State to another. This enables the purchaser to claim exemption from CST on the second inter-state sale during the movement of goods by transfer of documents of title.

Forms

Form E2: This form is issued by the second or the subsequent seller when the goods move from one State to another in a series of inter-State sales by transfer of documents of title. This form enables the purchaser to claim exemption from CST on subsequent sale of goods.

Form F: This form is issued when goods are dispatched to another State as a consignment or to the branch of a dealer in another State. The CST is not payable if there is only inter-State stock transfer and there is no sale. To claim inter-State movement of goods as “not a sale”, the dealer has to produce a declaration in Form ‘F’ received from Consignment Agent or Branch Office in another State. One Form F covering receipts during one calendar month has to be issued.

Form H: This form is issued by an exporter for purchase of goods. The purchase of goods is for an export order or in pursuance of an export order. These goods are then sold in export and the form enables the seller of the goods to the exporter to claim deduction on the goods sold for export.

Form I: This form is issued by a dealer located in a Special Economic Zone (SEZ). No CST is levied when a sale is made to a dealer located in SEZ.

Chapter 13

Provisions of State VAT Law Applicable under CST

Section 9(2) empowers the appropriate State on behalf of the Government of India to:

- Assess
- Reassess
- Collect
- Enforce payment of tax, interest or penalty.

These powers would include provisions relating to return, provisional assessment, advance payment of tax, registration of transferee/ successor, transfer of liability of firm or HUF in event of dissolution, to recover tax from third parties, appeals, reviews, references, refunds, rebates, compounding of offences.

It is further clarified that the provisions relating to due date, rate of interest are covered in the same manner as tax itself.

The payment of interest for delayed refund is also covered under this section³³⁷

Therefore, all administrative facilities have been provided to the State except for penalties specified in section 10 or 10A of CST Act, where the CST law would prevail. Further the power to issue clarification or advance ruling in regard to the CST rate or applicability has not been enabled under section 9 (2)³³⁸.

Section 9(2) of the Act is of wide amplitude. Sub-section (2) of Section 9 provides that the authorities under the State Act for the purpose of making assessment and re-assessment under the CST Act shall have all the powers which they have under the general sales tax law of the State. The powers conferred and the procedures laid down under the State sales tax laws would

³³⁷Sterlite Industries (I) Ltd. v. DCTO – (2007) 8 VST 389 (Mad)

³³⁸Business Process Outsourcing (I) P Ltd Vs Authority for Clarification/ Advance Ruling – (2008) 11 VST 1 (Kar)

Provisions of State VAT Law Applicable under CST

be applicable also for the purpose of carrying out assessment under the State Act.

The Supreme Court in the case of *Mahim Patram P Ltd* in 2007 confirmed that in addition to enforcement of tax, interest and penalty the power of recovery to States was also covered³³⁹. This would be so even though the interest rates from one State to another may vary and could be as high as 24%³⁴⁰. State rules shall be applicable to determine sale price of the goods for levy of tax under the CST Act.

PUNISHMENT FOR OTHER OFFENCES AS PER SECTION 9(2A)

Other than the offences, interest and penalties set out in Sections 10 and 10A, all provisions related to offences, interest and penalties including provisions relating to penalties in lieu of prosecution for an offence or in addition to penalties or punishment for offence of general sales tax law of each State shall apply with necessary modifications in relation to assessment, re-assessment, collection and enforcement of payment of any tax required to be collected under this Act in State or in relation to any process connected with such assessment, re-assessment, collection or enforcement of payment as if the tax under this Act is tax under such sales tax law.

The State laws shall provide for offences such as late payment or non-payment of tax, late filing or non-filing returns, false declaration of turnover etc.

APPLICATION OF STATE SALES-TAX LAW [SECTION 9(2A)]

For assessment, re-assessment, collection and payment of tax and interest or penalty under general sales-tax, provisions of law of the general sales-tax of State shall apply. Similarly for the following, provisions of General Sale-Tax law of a State shall apply:

- (i) Filing of returns;
- (ii) Provisional assessment;

³³⁹ MahimPatram P Ltd v. UOI – (2007) 6 VST 248 (SC)

³⁴⁰ English Indian Clays Ltd. v. UOI – (2008) 11 VST 709 (Kar)

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- (iii) Advance payment of tax;
- (iv) Registration of the transferee of a business;
- (v) Imposition of the tax liability of a person carrying on business on the transferee of, or successor to, such business;
- (vi) Transfer of liability of any firm or H.U.F. to pay tax in the event of dissolution of such firm or partition of such family;
- (vii) Recovery of tax from third parties;
- (viii) Appeals or reviews;
- (ix) Revisions;
- (x) References;
- (xi) Refunds;
- (xii) Rebates;
- (xiii) Penalties;
- (xiv) Charging or payment of interest;
- (xv) Compounding of offences;
- (xvi) Treatment of documents furnished by a dealer as confidential.

Where in any State or part thereof there is no general sales-tax law in force, the Central Government may make necessary provisions for all or any of the matters specified above.

INTEREST ON DELAYED PAYMENT OF TAX [SECTION 9 (2B)]

If the dealer does not pay the tax in time, he shall be liable to pay interest on delayed payment of tax. For this purpose, the following provisions of the general sales-tax law of each State shall apply:

- (i) Due date for payment of tax;
- (ii) Rate of interest for delayed payment of tax;
- (iii) Assessment and collection of interest of delayed payment of tax.

All the provisions relating to interest of the general sales-tax law of each State shall also apply, with necessary modification, to the CST Act.

Where any interest has been levied or proceedings have commenced for imposition or collection of interest under general sales-tax law of any State

Provisions of State VAT Law Applicable under CST

before commencement of this Act (Finance Act, 2000), it shall be deemed to be and to have always been imposed, taken or done as validly and effectively as if the provision of levy of interest had been in force when such interest was imposed or proceedings commenced. Accordingly:

- (a) no suit or other proceedings shall be maintained or continued in, or before, any court, any tribunal or other authority for the refund of any amount received or realized by way of such interest;
- (b) no court, tribunal or other authority shall enforce any decree or order directing the refund of any amount received or realized by way of such interest;
- (c) if the amount of interest has been refunded on an order of an appellate authority the amount so refunded may be recovered as an arrear of tax under the CST Act;
- (d) if any proceedings have not been commenced for imposition or collection of interest on delayed payment of tax before commencement of this section, it may be commenced now.

Chapter 14

Compliances

REGISTRATION

Every dealer who carries on the inter-State sales is liable to pay Central Sales Tax. As per the CST Act, every dealer who carries out inter-State sales has to be registered with the Sales Tax Authority. Intermediaries like agents and transporters are not required to be registered, since they do not affect sales. Registered dealers can purchase goods at concessional rates by issuing the C Form.

The registration for central sales tax is done in the same manner as that of VAT.

To register for C the ST Manufacturers/Traders /Exporters/Dealers have to first acquire TIN registration number.

TIN is an acronym for Tax-Payer Identification Number, which is unique number allotted by Commercial tax department of the respective State.

It is an 11-digit number to be mentioned in all VAT transactions and correspondence.

TIN number is used to identify dealers registered under VAT.

It is a single number which is allotted to the dealers for the registration of all three taxes i.e. VAT, CST and Service tax. First two digits of TIN indicate the issued State code.

However, the creation of other nine digits of the TIN number may differ from State to State. It is applied for both sales done within a State or between two or more States.

TIN is also being used to identify dealers in the same way like PAN, for identification of assesses under Income-tax Act. The mandatory documents required to apply for a TIN registration are:

- (a) ID Proof / Address proof / PAN card of proprietor with 4 to 6 number of photographs
- (b) Address proof of Business premises
- (c) 1st Sale / Purchase Invoice

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(d) Copy of LR/GR & payment/collection proof with bank statement

(e) Surety/Security/Reference.

However, the requirements of certain documents may differ from State to State. This is due to the reason that even though Central Sales Tax Act has been enacted by the Central Government the State governments are allowed to frame such rules, subject to such notification and alteration as it deem fit.

PAYMENT OF TAX AND RETURN FILING

1. Under CST, the same VAT forms are used to give details of inter-State transactions of sale of goods, stock transfer, subsequent sales, penultimate sale. Under VAT forms of returns are simple in most of the States. In few States the returns are to be filed electronically.
2. Returns are to be filed monthly/ quarterly as per the provisions of the State Acts/Rules.
3. In few States, online payment of taxes is enabled. Returns will be accompanied with the payment challan (Some States have devise return cum challan. In those cases, the returns along with the payment can be filed with the treasury).
4. Every return furnished will be scrutinized within the prescribed time limit from the date of filing the return. If any technical mistake is detected on scrutinizing, the dealer will be required to pay the deficit appropriately.
5. The return filing procedures are done to ensure that businesses comply with their obligations to file returns and pay VAT through the application of penalties in case of late payment of VAT and late filling of returns.
6. A registered dealer is required to file a monthly/ quarterly/ annual return along with the requisite details such as output tax liability, value of input tax credit, and payment of CST and VAT. Opportunity is also provided to file revised returns.
7. VAT Returns are filed every month or every quarter depending on the amount of VAT and CST which the dealers pay. In the monthly or quarterly intervals on VAT Return, the dealer should subtract Input Tax (attributable to taxable supplies only) from output tax and pay the difference to the VAT Commissioner. If input tax is greater than the output tax the dealer can carry over the difference as a credit to next VAT Return.

Chapter 15

Offences and Penalties

INTRODUCTION

Though CST is levied by Central Government and tax is collected and administered by State Government. assessment for Central sales tax is done by the State sales tax officer who does assessment of local sales tax. The CST Act provides for penalties and punishments for the offences like non-filing, late filing etc.

There are three types of punishments which can be imposed under CST Act. They are-

- (a) Imprisonment and fine- which can be imposed only by a Court of Law
- (b) Compounding of offences – by Sales Tax Authorities
- (c) Penalty –which can be imposed by Sales Tax authorities

No court shall take the cognizance of any offence punishable under this Act or rules unless it is specified by Government by general order or by special order in this behalf. Court not below the rank of a Presidency Magistrate or Magistrate of First class shall try such offences

All offences punishable under this Act shall be cognizable and bailable.

OFFENCES WHICH ARE PUNISHABLE

A person who has committed an offence under section 10 of this Act shall be punishable with simple imprisonment for not more than 6 months or with fine or both. If the offence is a continuing offence, then fine shall be imposed on daily basis which may extend to Rs 50 for every day during which the offence continues. The offences which attracts the section 10 are as follows

- (a) Knowingly giving of false declaration in forms C, E-I, E-II, For H
- (b) Not registering under CST Act when he is liable or required to be registered or not furnishing security
- (c) Falsely representing as a registered dealer though he is not registered
- (d) After purchasing goods at a concessional rate under C, D. E-I, /E-II, H OR I form, making use of goods for other purposes without showing a reasonable cause

Offences and Penalties

- (e) Having in possession C forms, D forms, E-I/E-II forms, H forms or I forms which are not obtained as per the provisions of the Act.
- (f) Collecting any amount by way of Central Sales Tax in contravention of the provisions contained in section 9-A.

In this context, If C Forms issued in respect of purchase which are covered by the Certificate of Registration on the date when the purchase is made, though the form is issued subsequently when the Registration Certificate is amended, the offence is committed. It is for the assessee thereafter to satisfy that there was a reasonable cause³⁴¹

In *State of Tamil Nadu v. Nu-Tread Tyres*³⁴² it was held that the term 'falsely' implies that the person making the representation knew that the statement is not correct. If there were two views, issuing of Form C will not lead to any question that assessee has made false representation. Thus, *mens rea* is an essential element for levy of penalty under section 10(b) of CST Act and the same was followed in *Shoetek Agencies v. ST of Tamil Nadu*³⁴²

PENALTY IN LIEU OF PROSECUTION

CST Act authorises imposition of penalty in lieu of punishment by way of imprisonment in respect of offences regarding-

- (i) Obtaining goods which is not included in the Registration certificate by making false representation
- (ii) Purchasing of the goods by falsely representing himself as a registered dealer
- (iii) Without a reasonable cause, using of goods for the different purpose other than for which it is being purchased

For the above offences penalty can be levied upto one and a half times of the tax which is payable.

Rule 14 of the CST states that if any person commits a breach of any rules then he shall be liable to be punished with a fine which may extend to Rs 500. If the offence is continuing offence, then fine shall be fined on daily basis which may extend to Rs 50 for every day during which the offence

³⁴¹ State of Tamilnadu v. Nu-Tread Tyres (2006) 148 STS 256(Mad HC FB)

³⁴² Shoetek Agencies v. ST of Tamil Nadu (2014) 45 GST 336 (Mad HC DB)

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ASSESSMENT

The term 'assessment' is understood as the determination of the amount of tax computed and determined as payable. Prior to the self-assessment regime, it related to the determination by an officer/ authority. Assessment could include the filing of return voluntarily [self-assessment], notice to provide information/ documents, computation made as per the procedure prescribed. Assessment includes reassessment.

Post 2003 till 2009 all States adopted the Value-Added Tax regime for specified products

Local Sales tax continues mainly for petroleum. However, gases and ancillary products like lubricants would be covered under VAT. All products under State Sales tax laws are not vatable i.e. no Input tax credit is available. This income constitutes substantial revenue to the State exchequer.

In the VAT regime the dealer himself determines the rate and tax payable consequently, which is called self-assessment in normal circumstances. However, the power to call for information, documents, books of accounts would be available to tax authorities from dealers, who have been regularly paying tax and filing returns³⁴³.

The revision or rejection of the assessments by the tax officer maybe done by way of remand by higher jurisdictional authorities. An example- The Joint Commissioner could remand to the VAT officer who was the original assessing authority. In this case the dispute is sent back to the original assessing authority.

The assessing authority is required to refund the excess tax over that which is due after adjudicating dues if any from the dealer. Interest is also payable to the dealer³⁴⁴.

³⁵² M/s Motorola India electronics Private limited, Bangalore v. State of Karnataka, (2000) 48 Kar L.J.199 (Kar) (DB): (2000)118 STCC 561 (Kar)

³⁴³ A Abdul Nazar v. ACTO – (1993) 91 STC 526 (Ker)

³⁴⁴ Pioneer Fabricators P Ltd v. DCCT – (2013) 57 VST 510 (All)

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Best Judgment assessment could also be made. The subsequent examination, revision, best judgments are all governed by rules to provide for an opportunity to be heard [natural justice] to the tax payer before any order detrimental to the assessee is passed. There is limitation period for each stage prescribed for demanding tax.

BEST JUDGMENT ASSESSMENT

The sales tax enforcement / survey wing visits the business premises of dealers who may or may not have taken registration. These officers may examine whether the proper books of account have been kept, whether they are complete in all respects, whether the input credit availed to extent of the local sales is reasonable. They may also make a surprise visit or at the time of their visit, search, raid, take stock of the goods. At times the tax officer may suspect that there are registered dealers are not disclosing the true turnover. The VAT laws of the States empower higher officers (at times the Commissioner himself) to specifically authorise the officer to carry out a best judgment assessment. This is to ensure that democratic principles of fair dealing are upheld. In best judgment, the officer arrives at his conclusion and sends the same to assessee who can raise his objections. After considering the objections and documents, accounts produced and after opportunity only the liability to pay arises. Therefore, it is valid in law³⁴⁵.

It may be found that no books of account are maintained, books are partially maintained, bills raised are not reflected in the accounts for some period or booked partially. In such cases the assessing authority would have to rely on some amount of guess work and make a *bona fide* estimation on a rational basis without any vindictiveness or capricious intent and that would be valid. The High Court cannot substitute its best judgment for that of the officer³⁴⁶. One month's suppression found and multiplied to arrive at the years suppressed turnover held to be valid³⁴⁷. Estimation based on expenses incurred with profit margin for the sand dealer held to be reasonable³⁴⁸. However, it should not be based on surmises and presumptions³⁴⁹. Non-maintenance of books in themselves may not lead to any adverse findings as

³⁴⁵ Sales Tax Bar Assn. v. Govt. of Del – (2013) 61 VST 43 (Del)

³⁴⁶ CST v. H M Esufali HM Adbuali – (1973) 32 STC 77 (SC)

³⁴⁷ RathiUdyog Ltd. v St. of Haryana – (2013) 60 VST 270 (P&H)

³⁴⁸ CTT UP v Mathura Prasad – (2009) 21 VST 371 (All)

³⁴⁹ Kathyayini Hotel P Ltd v. ACCT -(2004) 133 STC 77 (SC)

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in case of *bkbari* contractors dealing in arrack who could only purchase from the Government and had paid the purchase tax but not posted it in their accounts. Unless the officer is able to explain where they could have purchased arrack, no demand would survive³⁵⁰.

The dealer cannot ignore the notices sent repeatedly. This could lead to a best judgment order which would be valid³⁵¹.

The dealer is also expected to provide the books when there is a lapse notice. In the case of suppression of sales observed, the dealer claimed the books to be with the auditor and after receipt, he would file a revised return. The passing of the order independent of the revised return was held to be valid³⁵².

In *Sarvodaya* case, there was rejection of books based on bills found with third party with whom dealer denied any connection. In the absence of cross examination of the third party, best judgment was held by the Court to be not justified³⁵³.

RE-ASSESSMENT

In the VAT regime most of the self- assessments arising out of returns are supposed to be accepted as they are filed voluntarily unless they are *prima facie* defective. However on a selective basis they would be scrutinised and further action would be taken if there is some additional evidence unearthed by the department.

Re-assessment is an activity conducted by the Commercial Tax department of the States. It is permissible only in the following circumstances where there is a *reason to believe* that:

- Whole or part of the turnover has escaped assessment by reason of fraud or negligence or lack of awareness of the assessing authority as long as there is no bias or vindictiveness on the part of the authority.
- Goods assessed at lower rate.
- Under-assessment has taken place.

³⁵⁰ St of Kerala v. Lovely Thomas – (2003) 131 STC 8 (SC)

³⁵¹ Pavitra Leathers v. CTO – (2013) 63 VST 39 (Mad)

³⁵² St of Kerala v. MM Enterprises – (2013) 63 VST 323 (Ker)

³⁵³ Sarvodaya Stores v CTT UP – (2010) 33 VST 457 (All)

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- Deductions have been wrongly/ excessively claimed.
- Exemptions not available have been taken.

Re-assessment *can be* taken up when there is fresh material which is not already on record. Some illustrations are as under:

1. In case of order under section 6A where the burden of proof of providing form “F” is not discharged by the dealer³⁵⁴.
2. In case of job work the State of the receiving dealer was not issuing the form, Supreme Court allowed the reassessment with a direction to consider the circumstance³⁵⁵.
3. Stay granted by Supreme Court against High Court order in a SLP on a question as to whether bubble gum is a confectionery or unclassified³⁵⁶. Information in the form of High court ruling can also be the basis for reopening. However it may be noted that stay/ interim orders are not precedents. Readers to check the current status of the case before relying on them.

Reassessment *cannot be* taken up in the following circumstances:

1. Reassessment without fresh material not permissible³⁵⁷.
2. There is a change in the opinion of the assessing authority³⁵⁸.
3. There was no fresh material, other than the information that was available at the time of the original assessment³⁵⁹.
4. Consequent to a remark by the audit authority³⁶⁰.

Reason to believe

The essential condition for reassessment is *reason to believe* and it needs to be understood as not merely a suspicion or a reason to suspect. It should be based on valid information/ documents, happening of an event. The circumstances where reason to believe has been upheld are as under:

³⁵⁴ Ashok Leyland Ltd. v. UOI – (1997) 105 STC 152 (SC)

³⁵⁵ Ambika Steel Ltd. v State of UP – (2009) 25 VST 356 (SC)

³⁵⁶ General De Confeteria I Ltd. V. State of UP – (2010) 33 VST 569 (All)

³⁵⁷ Dabur India Ltd v. State of UP – (2011) 43 VST 222 (All)

³⁵⁸ CST v. Adarsh Paper & Board – (1987) 65 STC 243 (All)

³⁵⁹ St of AP v. Ampro Food Products Ltd. – (1995) 96 STC 617 (AP)

³⁶⁰ CST v Bhagwan Industries P Ltd. –(1973) 31 STC 292 (SC)

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- (a) Sale tax exemption claimed was subject to condition that no inter-State sale, transfer to consignment agent or branches would be done for 5 years. On violation of this condition it was held that the assessment taken up was valid³⁶¹.
- (b) In a case where Central Excise authorities seized the computer and material indicating suppression the Director's statement was recorded that goods had been under billed and removed without bills. Held that there was sufficient material to reopen the assessment³⁶².
- (c) When Central Excise authorities found Rs. 3.6 crores of excess finished goods stock not recorded in accounts or stock register, it was held that there was valid re-assessment³⁶³.

In many cases, it has been found that 'reason to believe' did not exist due to no change in affairs and non-application of mind. The various circumstances where *re-assessment was not permitted* are as under:

- a. Two different interpretations by the same authority on the same set of facts. Reassessment was held to be not proper³⁶⁴.
- b. Approval for reopening was granted without application of mind. Further reassessment notice was dated prior to date of approval. Hence the notice was quashed³⁶⁵.
- c. Deduction on account of claims under warranty examined in detail and allowed. Reassessment based on wrong deduction of sales returns was not permitted³⁶⁶.
- d. Original assessment was itself best judgment. Reopening was not permissible³⁶⁷.
- e. The estimate of turnover was based on consumption of electricity. Where the purchase register, stock register was available and officer could have conducted surprise check, compared data with other

³⁶¹ St. of Haryana v Polar Industries Ltd. – (2013) 60 VST 506 (SC)

³⁶² Parmarth Steel & Alloys P Ltd v State of UP – (2013) 64 VST 62 (All)

³⁶³ Associated Pigment Ltd. v State of UP – (2013) 57 VST 40 (All)

³⁶⁴ Jai Vijay Metal Udyog Ltd. v. CTT UP – (2010) 30) VST 1 (SC)

³⁶⁵ ACC Ltd. v. State of UP – (2011) 38 VST 328 (All)

³⁶⁶ Apollo Tyres Ltd. v. State of UP – (2010) 34 VST 401 (All)

³⁶⁷ CCT v Alka Restaurant – (2011) 37 VST 344 (Uttarakhand)

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similar manufacturers/ mills, relying on electricity, which was used for several purposes was held to be not valid³⁶⁸.

- f. Assessment of income and statement of transporter may not be valid for assessment as sales tax and income tax levies were different. Burden to conduct an independent assessment was held to be not discharged³⁶⁹.

Note: In most States, today scrutiny which was prevalent for every dealer under earlier Sales tax law has become an exception. However, the choice as to who would be picked up for scrutiny is not scientific or random with discretion on Revenue. The provision for audit is often used to conduct a re-assessment much to the disadvantage to the compliant dealer. In many States a multiple re-assessment with no finality puts dealers into an uncomfortable position of choosing to accept the unjust demands. This is not fair to the tax payer.

DEMAND OF TAX

The final demand under sales tax/ VAT or CST pre-supposes the following ingredients:

- The officer had applied his mind independently: Demands cannot be foisted based on presumptions and assumptions. A seizure by Central Excise Authorities does not mean that turnover has been suppressed³⁷⁰.
- Dealer to be supplied with incriminating material to be used against him otherwise considered as deprived of opportunity of being heard³⁷¹.
- Assessing Officer to take due care to examine in bona fide manner the objections of the assessee. A *bona fide* buyer of goods who has paid the price and taxes is to be protected. Defaulter is to be given notice before proceeding against the buyer³⁷².
- Assessing officers are expected to pass speaking orders wherein all the objections of the assessee are squarely met and findings recorded.

³⁶⁸ Nithya Rice & Sago Factory v DCTO – (2013) 63 VST 346 (Mad)

³⁶⁹ CP Industries v. State of MP –(2013) 59 VST 338 (MP)

³⁷⁰ Futura Ceramics P Ltd –(2013) 62 VST 488 Guj)

³⁷¹ Deolspat Alloys Ltd v CCT - (2014-TIOL- 1797) (Orrisa)

³⁷² Rukmini v DCTO – (2013) 62 VST 369 (Mad)

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Even the High Court is expected to pass reasoned orders as a part of essential purpose of dispensation of justice³⁷³.

- Assessee is put to notice, provided a reasonable opportunity to be heard and present his case and raised within the limitations prescribed in the State laws. Ex-parte orders are opposed to the principles of natural justice. The right to file a reply and be heard with sufficient time are to be afforded.
- Order to be issued within reasonable time. If beyond that and inordinate time is taken, it could be presumed to be ante dated. Time limit would have expired³⁷⁴. In another case order was issued after 16 months. Dispatch register had gaps in space as well as numbers obviously for filling up later the order dates, which was held to be not correct³⁷⁵.
- The State laws prescribe certain jurisdictional restrictions on officers which have to be strictly complied with. In case of show cause notice without jurisdiction, one can go in a writ to the High Court.
- The tax collected in a procedure claimed to be audit for a dealer who was filing returns monthly without an order was illegal and ordered to be refunded³⁷⁶.
- Similarly, in an audit done by enforcement wing of revenue, the assessment without any opportunity to dealer was remanded for consideration after hearing provided to the dealer³⁷⁷.
- The officer of anti-evasion alleging that sale by Office to its branch was an interstate sale is to be considered in regular assessing authority³⁷⁸.

³⁷³ ACCT v Shukla Brothers – (2010) 4 SCC 785

³⁷⁴ Smt. Mira Poddar v. CTO – (2006) 143 STC 32 (WBTT)

³⁷⁵ Gaurang Alloys & Iron Ltd v. State of Jharkhand- (2013) 63VST 354 (Jhar)

³⁷⁶ Mura Gents v. CTO – (2013) 61 VST 35 (Mad)

³⁷⁷ RavishankarFibres P Ltd v. State of TN – (2013) 61 VST 190 (Mad), Sky World v. CTO – (2013) 61 VST 239 (Mad)

³⁷⁸ ACTO v. K.S.Oil Ltd – (2013) 60 VST 522 (Raj)

DEMAND OF INTEREST

The demand for interest is consequent to the demand for tax. States have different rates of tax levied for different situations. The CST demand would also be as per the interest rate applied under local VAT. It is interesting to note that the interest on penalty under CST has not been empowered under section 9(2)³⁷⁹.

Normally in VAT laws the liability to pay the tax arises on self-assessment or by an order determining the same.

The date of commencement of interest in various situations is as under:

- The interest is payable on the admitted liability only. The liability of interest on matter which is disputed is from the date of determination³⁸⁰.
- Where matter is in appeal and the original tax demand is reduced. Later a fresh demand notice is issued. The interest cannot be from the original date of demand.
- Matter in revision. Revisionary authority order is date for interest and not the date of assessment³⁸¹.
- Interest on refund is applicable from the date of determination of refund. However States have fixed the period of 1-6 months from which it starts.

CONSTITUTION AND POWERS OF APPELLATE AUTHORITY

Central Sales tax Appellate authority is constituted by Central Government. It consists of chairman, officers of Legal Service of Central Government who is or is qualified to be Addl. Secretary to Government of India and an officer of State Government not below rank of Secretary or officer of Central Government not below rank of additional secretary who is expert in sales tax matters. Central Government shall provide authority with such officers and staff necessary for the efficient exercise of powers of authority under this Act.

The CST Appellate authority has powers to enforce attendance of persons,

³⁷⁹ Jaydeva Trading Co v. ACTO – (2006) 60 KLJ 129 (HC)

³⁸⁰ Maruti Wire Industries P Ltd v. STO – (2001) 122 STC 410 (SC)

³⁸¹ Keg Farm P Ltd. v. State of Haryana – (2013) 64 VST 144 (P&H)

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compel production of documents, issue commission for examination of witnesses, receipt of evidence on affidavits and other prescribed powers.

Orders of the Appellate Authority are binding on the assessing authorities and other authorities under State sales tax laws.

The Authority shall have the same powers which are vested in a court under the Code of Civil Procedure, 1908 while trying a suit in respect of the following matters, namely:—

- (a) enforcing the attendance of any person, examining him on oath or affirmation;
- (b) compelling the production of accounts and documents;
- (c) issuing commission for the examination of witnesses;
- (d) the reception of evidence on affidavits;
- (e) any other matter which may be prescribed.

The Authority may grant stay of the operation of the order of the highest appellate authority against which the appeal is filed before it or order the deposit of the tax before entertaining the appeal and while granting such stay or making such order for the deposit of the tax, the Authority shall have regard, if the assessee has made deposit of the tax under the general sales tax law of the State concerned, to such deposit or pass such appropriate order as it may deem fit.]

The Authority may issue direction for refund of tax collected by a State which has been held by the Authority to be not due to that State, or alternatively, direct that State to transfer the refundable amount to the State to which central sales tax is due on the same transaction: Provided that the amount of tax directed to be refunded by a State shall not exceed the amount of central sales tax payable by the appellant on the same transaction.

Every proceeding before the Authority shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 of the Indian Penal Code and the Authority shall be deemed to be a civil court for the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973 (2 of 1974).]

The Authority may grant stay of the operation of the order of the assessing authority against which the appeal is filed before it or order the pre-deposit of the tax before entertaining the appeal and while granting such stay or making such order for the pre-deposit of the tax, the Authority shall have regard, if

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the assessee has already made pre-deposit of the tax under the general sales tax law of the State concerned, to such pre-deposit.”

WHAT ARE THE APPEALABLE MATTERS TO THE APPELLATE AUTHORITIES?

Where a dealer claims a particular transaction as stock transfer and not a sale, then the burden of proof is on him to prove it was not a sale. Further in case of subsequent sale by transfer of documents sales tax is exempt if it is E1 EII transaction under Section 6(2) of CST Act.

If a dealer's claim for the stock transfer is rejected by highest appellate authority of State, then can file appeal to CST Appellate authority.

Section 9 provides that sales tax would be collected in State of origin from where the movement of goods commenced.

The appeal cannot be made for the dispute on value of sale.

PROCEDURE FOR APPEALING

1. Appeal to be filed within 90 days from date when order served on dealer.
2. Delay upto 60 days could be condoned by authority if sufficient cause shown for inability to file on time.
3. Appeal application to be filed in quadruplicate along with fee of Rs 5000.
4. On receipt of appeal, copy would be forwarded to the assessing authority as well as State Governments concerned.
5. Appellate authority would call upon the assessing authority and State Government to furnish relevant records which would be examined and returned as soon as possible.
6. Authority would hear the matter and then accept or reject appeal.
7. Before rejecting the appeal an opportunity of being heard would be given to appellant or his authorised representative and to each of State Government concerned.
8. Appeal to be normally decided within 6 months of receipt of appeal.
9. Copy of order to be sent to appellant, assessing authority, respondent and highest appellate authority of State Government concerned.

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Powers to regulate its procedure:

The Authority shall have power to regulate its own procedure in all matters including stay of recovery of any demand, arising out of the exercise of powers under this Act.

ADVANCE RULING

Background

The multitude of taxation with ambiguities in India has led to the large players many of them Multi-National Corporations wishing to do business in India wanting to know their liability under various taxes so as to avoid disputes in future. This is especially important in indirect taxation as the tax may not be possible to be collected at a later date from the customers. Further the trend of increasing interest rates and mandatory penalties can make business unviable. Therefore, the authority who can in advance advise on some of the matters has been constituted.

The provisions for “advance ruling” was a mechanism introduced by the Legislature to ensure uniformity in orders of the assessment, appellate and revisional orders (other than a revisional order passed by the commissioner), with regard to classification of goods under different entries of the various Schedules to the Act or the rate of tax applicable to such goods, etc., thereby avoiding conflicting orders being passed by different assessing/appellate/revisional authorities. Such a mechanism could only be introduced by way of substantive provision in a statute and could not be implied. The advance ruling authorities at the State level only in some cases have been effective and prompt. This has led to matters remaining confused and clarity lacking for long periods of time.

We can now examine the advance ruling and appellate authority under CST Act.

Advance Ruling Authority under CST

Under section 24 of CST Act the authority has powers to regulate itself in all matter including stay of recovery of any demand. Till the appellate authority was constituted by the Central Government, Advance Ruling Authority was asked to function in its place.

Under section 19(2A) of CST Act, the Appellate Authority under CST shall be the advance ruling authority under section 245-O of the Income Tax Act

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1961. After constitution of the Appellate authority u/s19 of CST act, the appeals would be transferred to that authority.

The Authority for Advance Ruling(AAR) under Income Tax has been constituted as CST Appellate Authority w.e.f 17.3.2005. Sections 19 to 26 with reference to appeals have also been made effective w.e.f 17.3.2005.

Important decisions

1. The authority for advance ruling made under the provisions of the State VAT Act, cannot give advance ruling/clarifications on the matters connected with the CST Act³⁸².
2. When the transaction was claimed as a stock transfer by dealer but held as interstate sale from TN. Then the tax levied by the transferee States ie Karnataka and WB was ordered to be refunded³⁸³.

Conclusion

This advance ruling authority either under CST or Local VAT has largely been ineffective and may have spawned more litigation and added uncertainty to the law. Most tax compliant entrepreneurs avoid this facility as on date.

³⁸² Prathista Industries Limited v. Commercial tax Officer – (2013) 61 VST 58 (AP)

³⁸³ Siddhartha Appeals v. Secretary CTD Chennai – (2008) 13VST 222(CSTAA)

Chapter 17

Accounts and Records

INTRODUCTION

CST (Central Sales Tax) would be levied on the sale price which would include the following:

- CST (whether or not shown separately)
- Excise Duty (whether or not shown separately)
- Cost of Packing Material
- Packing Charges
- Bonus Discount or Incentive bonus for additional sales effected by the dealer
- Insurance Charges
- Dharmada Charges

1. Tax Invoices and Bill of Sale

- (a) **Tax Invoice:** When a Registered Dealer Sells Taxable Goods or Taxable Goods along with exempt goods he is under the obligation to issue Tax Invoice
- (b) **Bill of Sale:** When a Registered Dealer shall issue Bill of sale under following circumstances
 - (i) If he Sells only Exempted Goods or
 - (ii) If he is a Composition Dealer or
 - (iii) If he has opted to pay tax by way of Special Accounting Scheme,
- (c) If Bill of Sale value involves less than Rs 100, Dealer is not under an obligation to issue either a Tax Invoice or Bill of Sale. However he has to issue a consolidated Invoice at the end of the for all transactions whose value is less than Rs.100/

2. In case of the value of taxable goods exceeds the value shown in the tax invoice already issue for such sale, any document issued by the

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Dealer containing the particulars of tax invoice shall be deemed to be a tax invoice.

3. Dealers who are executing Civil Works Contracts shall issue Tax Invoice if they are registered under Regular Scheme and Bill of Sale if they have been registered under Composition Scheme. In respect of Dealers Executing Civil Works Contracts for Government Department, the Running Account Bill prepared by such Department shall be deemed to be tax invoice or bill of sale issued.
4. Tax Invoice to be issued in Duplicate with original, marked "Original Buyers Copy" and "Sellers Copy". On Demand he can issue "Transporters Copy".
5. In case Original Tax Invoice is lost or destroyed Dealer may provide a Duplicate with the declaration that it is a Duplicate of such tax Invoice.
6. Particulars of Tax Invoice

	Tax Invoice	Tax Invoice issued by a Civil Works Contractor
(a)	Consecutive Serial Number	A Consecutive Serial Number
(b)	The date of its issue	The date of its issue
(c)	The name, address and registration number of the Selling Dealer	The name, address and registration number of the Dealer
(d)	The name, address and registration number of the buyer	The name, address and registration number of the Contractee if any
(e)	A full description of goods	Brief description of the works contract being executed and date of its commencement.
(f)	The Quantity of Goods	The Amount of Total Consideration
(g)	The Value of Goods	The amount of escalations if any

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(h)	The rate and amount of tax charged in respect of taxable goods	The taxable amount
(i)	The total value	
(j)	Signature of the selling dealer or his agent	

7. In respect of Centralized Billing System the Dealer is permitted to issue Tax Invoice need not issue serially numbered invoices subject to prior intimation to Jurisdictional Local Vat Officer.
8. The Dealer Can use Digital Signature on the Tax Invoices only after intimating the Jurisdictional Local VAT Officer.
9. Particulars of Bill of Sale

	Tax Invoice	Tax Invoice issued by a Civil Works Contractor
a)	Consecutive Serial Number	Consecutive Serial Number
b)	The date of its issue	The date of its issue
c)	The name, address and registration number of the Selling Dealer	The name, address and registration number of the Dealer
d)	The name, address and registration number of the buyer	The name, address and registration number of the Contractee if any
e)	A description of goods with its fully value	Brief description of the works contract being executed and date of its commencement.
f)		The Amount of Total Consideration
g)		The amount of escalations if any
h)		The taxable amount

Accounts and Records

10. Where a Dealer executing Works Contract for any reason is not in a position to arrive at the Taxable Turnover, he can furnish a method of Computation to Jurisdictional LVO and after taking approval he can start paying taxes accordingly. However there cannot be a variation of more than 15% subsequently.
11. In respect of URD Purchases made the Registered Dealer is under an obligation to raise bill showing therein the value of Purchases and the name and address of the Seller and brief description of the goods.

Accounts and Records to be maintained:

- (a) Accounts can be maintained in local language, Hindi and English.
- (b) Every Dealer whose total turnover exceeds specified limit [in Karnataka it is Rs. One Crore] shall have his accounts audited by a Chartered Accountant or a Cost Accountant or Tax practitioner
- (c) Every dealer is required to maintain books of accounts or other records including tax invoices relating to his purchases and sales shall retain them until the expiration of specified period [in Karnataka it is five years] after the end of the year to which they relate or for such other period as may be prescribed or until the assessment reach finality whichever is later. This applies to even records maintained under electronic mode also.
- (d) Each Dealer shall keep separate purchase, sale and disposal accounts in respect of each commodity in prescribed formats. Further the Dealer shall also maintain a VAT Account containing details of input and output tax, together with credit and debit notes issued during the period.
- (e) The records to be maintained for Input Tax Credit are -
 - Purchase register recording all tax invoices
 - Purchase from unregistered dealer
 - List of debit notes issued
 - Quantity records of inputs
 - Record of tax credit available- Monthly/Quarterly
 - Carry forward/refund of tax credit
- (f) Books of accounts including books maintained in computer system shall be maintained at the place or places of business entered on his

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certificate of registration and every purchase and sale shall be brought to account as soon as the purchase or sale is made.

- (g) Every Commission Agent, Broker, *Del credere* agent, auctioneer or any other mercantile agent shall maintain accounts showing
 - (i) Particulars of authorization received by him from each principal to purchase or sell goods on behalf of each principal.
 - (ii) Particulars of goods purchased or goods received for sale on behalf of each principal each day.
 - (iii) Details of accounts furnished to each principal each day and
 - (iv) The tax paid on purchases or on sales effected on behalf of each principal.
- (h) Every Dealer who is executing Works Contract shall keep separate accounts showing
 - (i) The Particulars of the Names and address of the persons for whom and on whose behalf he carried on the execution of works contract in respect of each works contract
 - (ii) The particulars of goods procured by way of purchase or otherwise for the execution of works contract,
 - (iii) The particulars of goods to be utilized in execution of each works contract and
 - (iv) The details of payment received in respect of each works contract
- (i) Every Dealer or person engaged in the transfer of a right to use goods shall keep
 - (i) Particulars of the names and addresses of the persons to whom he delivered the goods for use
 - (ii) Details of amounts received in respect of each transaction and
 - (iii) Monthly stock accounts in respect of each commodity dealt with by him.
- (j) Tax Deducted at Source Certificates in prescribed forms
- (k) When a Dealer claims an input in respect of Goods purchased by his Agent Certificate in prescribed form.