

NOTES ON CENTRAL SALES TAX

Sec.3, Sec.4, Sec.5, Sec.6A & Sec. 6(2)

Introduction:-

Sales Tax is a state subject. Entry 92A of List I and entry 54 of List II of the constitution of India demarcates the power of Central Govt. and State Govt. to levy tax on sale of goods.

Entry 92A of List I empowers Central Govt. to levy taxes on the sale and purchase of goods other than newspaper, where such sale or purchase takes place in the course of interstate trade or commerce. Thus legislation in respect of interstate transactions, exports and imports is a prerogative of the parliament.

The Central Sales Tax Act 1956 extends to whole of India. Therefore interstate movement of goods from and to any part of India as a result of trade, commerce and other business activity, export of goods from any part of the India and import of goods in any part of India would be governed by the Central Sales Tax 1956.

Levy and collection of tax under CST:-

Even though the Act is called as the Central Sales Tax Act taxes are levied under the Act by the concerned State Governments and collected by them and they retain the full amount collected under CST. Concerned State Sales Tax law is applicable in relation to return, assessment, appeals, recovery, etc. It is matter of interest that only 24 sections are there in the CST Act. Under the CST Act the right to tax a sale in the interstate trade is conferred on the State from where the movement of goods commences. Such state is defined as an "Appropriate State" in the Act. Thus in the state of Maharashtra interstate transactions are regulated as per the provisions of CST Act 1956, the rules made there under , as per the provisions of Bombay (Registration and Turnover) Rules 1957 , notifications issued under sec.8(5) of the CST Act and the circulars issued by the Commissioner.

Definitions:-

Sale

The term 'Sale' is defined in Section 2(g) as given below :

"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 include, --

- (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."

Sale Price

"Sale Price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice 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[2(h)].

Sale price is the amount payable to the seller by the buyer, which includes the following :

- (a) Consideration for the sale of any goods;
- (b) Any sum charged for anything done by the seller in respect of the goods at the time of or before the delivery thereof.

However, the following deductions will be allowed from the above sale price :

- (i) Any sum allowed as cash discount according to the practice prevailing in the trade. This deduction will be allowed from the amount given from the consideration. Although the Act talks above cash discount as deduction it has been held by various courts that the trade discount, additional discount, quantity discount, etc., are also deductible from the consideration.
- (ii) The cost of freight for delivery or the cost of installation in case where such cost is separately charged. If the freight or delivery or installation charges are already included in the selling price and not being separately charged, no deduction of such freight etc., will be allowed in calculating the sale price.

The sale price includes Central Sales Tax whether it is shown separately or not.

Cash discount

As stated earlier the section talks about cash discount only. However, it was held in many cases that trade discount, additional discount etc., are deductible.

The Andhra Pradesh High Court held in ***State of Andhra Pradesh v. T.V. Sundaram Iyengar and Sons Ltd.*** (1987) 65 STC 41 that ordinarily any concession shown in the price of goods for any commercial reason would be a trade discount which can be legitimately claimed as a deduction from the turnover and the fact that the discount was not allowed at the time of sale but on a later date, does not make it any-the-less a trade discount.

Should be known at the time of sale

In ***C.T.O.v. Radiant Industries of India*** (1994) 95 STC 463 it was a contrary decision. The court held that if at the time of effecting the sale or entering into the contract of sale no such stipulation is made and subsequently a contract is entered into then it would not be reducing the price of the sale which has already been concluded.

Inter-State Sale

Introduction

As stated in the introduction one of the objectives of CENTRAL SALES TAX ACT is the following:

- (iv) "To formulate principles for determining--
 - (a) When a sale or purchase takes place in the course of inter-state trade or commerce.
 - (b) When a sale or purchase takes place outside a State."

Section 3: This section defines the inter-Sate sale

in the following words.:

“ A sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce if the sale or purchase-

- (a) occasions the movement of goods from one state to another ; or
- (b) is effected by a transfer documents of title to the goods during their movement from one State to another.

Explanation 1.—Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of clause (b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation 2.— Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State”.

An analysis of the above definition would reveal that there are two parts of Section 3 which lay down the circumstances under which the sale is said to take place in the course of Inter-State Trade or Commerce.

Section 3(a) deals with inter-state sale which occasions the movement of goods from one state to another.

Section 3(b)deals with sale which is effected by transfer of documents of title to the goods during their movement from one State to another.

Salient features of inter-State sale are as

under :-

- (i) There should be a completed sale.
- (ii) There should be agreement or contract with a stipulation regarding movement of goods from one State to another State.
- (iii) The goods should move due to the stipulation in the agreement or contract.
- (iv) Concluded sale should take place in a State which is different from the State from where the movement started.
- (v) The movement might be incidental to the contract of sale.
- (vi) Where the property in the goods passes on to the buyer is not important.
- (vii) The sale can precede the movement of the goods or movement of the goods can precede the sale.
- (viii) If the movements of the goods commence and terminates in the same State, even though it passed through other State, it will not be treated as inter-State sale.

Who can collect the tax

State from which movement of goods commences is entitled to collect the CST. As per the provision of sec.9(1) "The Tax payable by any dealer under this Act on sales of goods effected by him in the course of interstate trade or commerce, whether such sales fall within clause (a) or clause (b) of sec.3 shall be levied by the Government of India and the tax so levied shall be collected by that Government in accordance with the provisions of sub sec.(2), in the state from which the movement of the goods commenced".

Important Case Laws distinguishing Inter-State Sales and Local Sales.

1 *CST v. Lakhmi Ladha & Co.* 77 STC 366(Bom)

In this case Lakhmi Ladha & Co was manufacturer of Tarpaulins at Bombay. They entered into contract with Gujrat State Road Transport Corporation for supply of Tarpaulins to Ahemedabad. The goods were first transferred to Branch at Surat and that branch delivered the goods to the Transport Corporation. It was held to be inter-State transaction as the goods had moved from Bombay to Surat under a contract of sale.

2 *State of Bihar v. Tata Engineering & Locomotive Company Ltd.* 27 STC 127(S.C.)

Tata Engineering & Locomotive Company Ltd. had agreement with the dealers stipulating that delivery of the vehicles will be made in the State of Bihar and the dealer had to remove the goods to place outside the State. TELCO delivered the vehicles against payment to the dealers in Bihar and this was held by Supreme Court as inter-State sale.

3 *CST Delhi v. Motorades* 89 STC 542(Delhi)

Dealer in Delhi sold auto part to government departments of Himachal Pradesh and Haryana Governments. Vehicles sent from those state to Delhi, parts were fitted therein by the dealer and vehicles reached to purchasers and parts supplied approved orally. In this case Delhi High Court held that there is implied term that parts will move from Delhi to H.P. or Haryana and it was held as inter-State sale.

4 Sahney Steel Press Works Ltd. v. Commercial Tax Officer (1985) 60 STC 301 (S.C.)

While delivering this landmark judgment the apex court has observed that the movement of goods from the registered office in Hyderabad was occasioned by the order placed by the customer and movement was an incident of the contract and therefore from the very beginning from Hyderabad all the way until delivery to the customer it was an interstate movement even though the customer placed an order with the branch office and the branch office communicated the terms and specifications of order to registered office .

5 NCR Corporation India Pvt.Ltd. VS. Dy.Commissioner of Commercial Taxes, Bangalore.

The Karnataka High court decided if there is a conceivable link between movement of goods and the buyers contract and such a nexus otherwise inexplicable, then the sale of specific or ascertain goods ought to be deemed to have taken place in the course of interstate trade or commerce irrespective of presence of an intermediary such as the sellers own representative or branch office.

6 In the case of State of Tamilnadu Vs. Sun Paper Mill Ltd. (2009) 23 VST 191 (Mad)

Madras High court decided that newsprints sold by seller in Tamilnadu to buyer in Kerala - during the movement the said goods were dispatched to the place in Tamilnadu only for converting newsprints into news magazine and thereafter sent to Kerala. Movement of goods contemplated under contract and no sale thereof in Tamilnadu. Sale was interstate sale.

7 In the case of DCM Ltd. Vs. Commissioner of Sales Tax Delhi (2009) 21 VST 417 (SC) .

The apex court laid down the principle that purchasing dealers took the deliveries in the state of sale but were under obligation to take the delivered material out of the state of sale (Delhi) and to sell in respective assigned territories at the price fixed by the assessee, such sale to purchasing dealer is an interstate sale only.

8 In the case of state of A.P. Vs. Computer Graphics Pvt.Ltd. (2009) 21 VST 42 (A.P)

The A.P. High court decided as the goods sold were ascertained goods in a deliverable state, the property in those goods, sold by respondent, passed to the buyer immediately on the delivery of the goods to the person authorized by the principal outside state even though such authorized person dispatched those goods outside the state to the said principal the sale is decided as local sale.

While deciding this case the Hon. High court applied the judgments of apex court in the case of Balabhagas Hulaschand V. State of Orissa (1976) 37 STC 207 (SC) and Commissioner of Sales Tax V.Suresh Chand Jain (1988) 70 STC 45 (SC)

Essential Conditions of Inter-State Sale under sub-section (b)

Sale under this sub-section is known as 'Sale In Transit' or 'Sale effected by of Documents of title to the goods'.

Document of title of Goods

Section 2(4) of the Sale of Goods Act, 1930 defines "Document of the title of Goods" as under :-

"Document of title of goods" includes a Bill of lading, dock-warrant, warehouse keeper's certificate, wharfingers' certificate, railway receipt, warrant or order for the delivery of goods, and any other document used in the ordinary course of business as proof of the possession or control of goods or authorizing or purporting to authorize, either by endorsement or by delivery, the possession of the document to transfer or receive goods thereby represented by such document.

Ingredients of Sale in Transit u/s 6(2) read with sec. 3(b)

A sale or purchase of goods shall be deemed to take place in the course of inter-State trade, if the sale or purchase is effected by a transfer of documents of titles to the goods during their movements from one State to another. If any sale is to be treated as sale in transit, the following conditions are to be satisfied.

- (i) Subsequent sale should be of the very goods which were sold under the first Inter-State sale.
- (ii) It is to the dealer, registered under C.S.T.
- (iii) Goods sold are covered in Registration Certificate by description of goods covered by Section 8(3) of the CST so far as subsequent purchaser is concerned.
- (iv) Form E-I or E-II issued by dealer from whom the goods were purchased were produced.
- (v) Form-C issued by subsequent purchaser is produced.

- (vi) If subsequent buyer is a Government Department, it has to issue Form-D. W.e.f. 01.04.2007 Form D not allowed.

Sale Outside the State and Inside the State u/s 4.

Section 4 defines the Sale outside the State in the following words. "

"(1) Subject to the provisions contained in Section 3 when a sale or purchase of goods is determined in accordance with sub-section(2) to take place inside a State, such sale or purchase shall be deemed to have taken place outside all other States.

- (2) A sale or purchase of goods shall be deemed to take place inside a State, if the goods are within the State-
 - (a) In the case of specific or ascertained goods, at the time of the contract of sale is made;
 - (b) In the case of unascertained 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.

Importance of concept of 'Sale inside the State'

This is important to decide which State got the right to levy tax on a particular sale. If a sale is inside a particular State, then, that State only got right to levy tax on that sale. In other words, situs of sale decides the State which got the right to tax a particular sale.

One Contract and goods are in different States

Explanation to this section clarifies that where there is a single contract of sale or purchase of goods situated at more than one, the provisions stated above shall apply as if there were separate contracts in respect of the goods at each of such places.

Examples :

1. Mr. X of Maharashtra sell 100 tables to Mr. Y and transports them to Surat in Gujrat as per the Contract. At the time of the Sale Contract the tables were in Mumbai. The sale takes place inside Maharashtra.
2. Mr. T of Tamil Nadu enters into contract in the month of February with K of Bangalroe to sell 100 bags of Paddy to be produced and delivery to be made in June. In the month of June he appropriates 100 bags of paddy in Nellur of Andhra Pradesh and informs Mr. K. At the time of appropriation the goods are in Andhra Pradesh and the sale takes place inside the State of Andhra Pradesh and Andhra Pradesh State alone got right to levy tax on this sale.
3. Mr. M. of Madhya Pradesh enters into contract to sell 1000 bags of Wheat to Mr. G. of Gujrat. When he enters into contract 500 bags of Wheat were in Madhya Pradesh, 200 bags were in Uttarapradesh and 300 bags were in Maharashtra. In this case sale of 500 bags takes place in Madhya Pradesh, sale of 200 bags in Uttarpradesh and sale of 300 bags in Maharashtra. Mr. M. has to pay sales tax with reference to 500 bags to M.P. Government, with reference to 200 bags to U.P. Government and with reference to 300 bags to Maharashtra Government.

Branch Transfer

Introduction

The basic condition of inter-State sale is that there should be a sale. If an assessee sends goods to his branch in other State, it is not a sale as he cannot sell to himself. Likewise, if a dealer sends goods to his Agent in other State who stocks goods on behalf of the dealer, it is not a sale. These transactions are popularly known as 'Branch Transfer' or 'Stock Transfer'.

Goods are dispatched to branch/ consignment agent in other State and then these goods are sold from the branch, depot or place of consignment agent. However, if the movement of goods is occasioned on account of sale, the movement will be treated as inter-State Sale. In other words, if the goods are transferred due to existing Purchaser Order, then it will be treated as inter-State sale and taxable.

FORM F

Since Branch Transfers are usually resorted to avoid sales tax liability under CST, Section 6A of CST Act provides that when dealer claims that transfer of goods outside State is not a sale, he has to prove that the Branch Transfer is not sale. For this purpose, he has to produce declaration from the Branch Manager/ Agent from other State in Form F. **If Form F is not submitted, the transfer will be treated as SALE.** In the case of Branch Transfer there is no CST but if it is treated as Inter-State sale, appropriate CST is to be paid. Even though the Finance Act 2002 amended the Central Sales Tax Act to provide that if Form F is not submitted for stock transfer it will be

treated as inter-state sale and it is taxable under CST, it is doubtful whether the Courts will accept this proposition. As stated earlier to treat a transaction as the ingredients should be present:

- (i) Two parties
- (ii) Offer and acceptance and other requirements as per contract act
- (iii) Consideration
- (iv) Transfer of property in the goods.

In the case of stock transfer none of them are present. By producing other evidence such as stock registers, copy of Lorry Receipts or Railway Receipts, order received from the buyer etc., it can be proved that it is really stock transfer and not inter-State sale. However, assesses should obtain Form F from their branch managers/ Consignment Agents and submit the same to the assessing officer in order to avoid the litigation.

Exports and Imports

No tax on export Sale

If a sale is a export sale as explained below, no sales tax is leviable under CST and VAT

Export Sale u/s 5(1)

A sale or purchase of goods is deemed to be in course of export of the goods out of the territory of India, only if—

- (i) Sale/purchaser either occasions such export; or
- (ii) is effected by a transfer of documents of title to goods after the goods have crossed the customs frontiers of India.

We can note the following points regarding `Export Sale':

- (i) Sale should occasion the export
- (ii) Sale to foreign tourist do not constitute `Sale in the course of Export'. Sales by star hotels of food to foreign airlines on any airports in India does not amount to `sales in the course of export'.
- (iii) Goods should be destined to foreign country , though actual reaching of destination not necessary.

Penultimate sale or sales u/s 5(3)

Penultimate sale means a sale preceding the sale occasioning export is also deemed to be in the course of export u/s 5(3). The conditions to be fulfilled:

- (a) The sale is for purpose of complying with agreement or order in relation to export.
- (b) It is made after the agreement or order in relation to export.
- (c) Same goods which are sold in penultimate sale should be exported.
- (d) The exporter has to submit Form H to the dealer who is supplying the goods by way of penultimate sale for export.

In the case of Iqra Traders Vs Commercial Tax Officer, Chennai (2009) 21 VST 245 (MAD) Madras high court decided that in order to decide whether the penultimate sale or purchase would be deemed sale or purchase under sec. 5(3) of the Central Sales Tax Act, 1956, the goods, the subject matter of the sale within the state, must be the same goods that are exported out of India, i.e., the goods exported out of India must be the same as the goods purchased by the exporter. There may be small changes, but

essentially the identity of the goods should not be lost. If they are lost, then it will not be a deemed sale for the purpose of section 5(3) of the Act.

Export sale by transfer of documents

After the goods crossed the customs frontier, the goods can be sold by way of transfer of documents of title of goods and it will be treated as export sale. However, due to customs formalities prevailing in India, this sale is not taking place.

Procedural Requirements

The Finance Act, 2005 inserted sub-section (4) in Section 5. It reads as follows; " The provision Of Sub-section (3) shall not apply to any sale or purchaser of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority."

This sub-section has come into effect from 11th May 2002 Submission Form H is mandatory.

Submission of Form H to the Authority

Form H has to be submitted to the first Assessing Authority at the time of assessment.

Penultimate Sale

In the case of George Maigo & Co v. State of Andhra Pradesh (1980)46 STC 41 (AP). In order to treat a sale as penultimate sale and give the benefit of export sale the following conditions are to be fulfilled.:

- i. There must have been pre-existing agreement or order to sell the goods to a foreign buyer.
- ii. The last purchase referred to in Section 5(3) must have taken place after that agreement with the foreign buyer was entered into.
- iii. The last purchase must have been made by the purchaser for complying the pre-existing agreement or order.

Moreover, the goods purchased must be exported without doing anything which tantamount to manufacture.

SALE DURING IMPORT-SECTION 5(2)

No tax on Import

If a purchase is an import as explained below, no sales tax is leviable under CST and VAT.

Import

A sale or purchase of goods is deemed to be in course of import of the goods into the territory of India, only if-

- (i) The sale or purchase either occasions such import, or
- (ii) Is effected by a transfer of documents of title to goods before the goods have crossed the customs frontiers of India.

Imports by transfer of documents of title to goods or High Sea Sale

Imports by transfer of documents is popularly known as " High Sea Sales".

Necessity for High Sea Sale : If A imports the goods from foreign country and sells the goods locally, he will not pay tax when he imports the goods and he has to pay local sales tax if sells locally or he has to pay CST if he sells the imported goods in inter-state trade. On the other hand, if the manufacturer imports on his own and uses it for manufacture , he will not pay any tax when he imports the goods. However, it is not possible for manufacturers and others who requires imported goods to import goods directly due to many reasons. In these cases in order to avoid the sales tax, parties resort to 'High Sea Sale'.

Salient features of High Sea Sale

- (i) If imported goods are sold to a buyer in India by transfer of documents of title of goods, before the goods have crossed the customs frontier of India, it will be treated as Sale or purchase in the course of import.
- (ii) Where transfer of documents of title effects sale, such transfer should take place before the goods are moved out or customs station.
- (iii) If the above mentioned conditions are satisfied in any sale transaction, then there will be no CST or VAT.

Sec. 5(2) of the CST Act prescribes two conditions for a sale or purchase of goods to be deemed to have taken place in the course of import of the goods into the territory of India if the sale or purchase either occasions such import or is effected by transfer of documents to the title of

goods. Thus there are two limbs to the said section. For a transaction to fall under the first limb it is essential that there must be an inextricable link or a back to back transaction in the sale or purchase occasioning such import. And as per second limb of the sec 5(2) the sale can be effected by transfer of documents to the title of goods on arrival of the subject-matter of the transaction. Endorsement of negotiable instrument is necessary before the goods cross the custom frontier of India.

Procedural safeguards

The following procedure should be followed to effect High Sea sale:

- (i) The Indian buyer and seller should enter into a formal contract. If there is no contract, at least there should be exchange of letter.
- (ii) The contract must clearly stipulate the rights, duties and obligations of the parties to the contract. It should have clear provision regarding discharge of statutory obligations such as payment of duty and disclosure of information.
- (iii) If the seller agrees to the receipt of the price of the goods at a later date, it should be clearly mentioned that the transfer of property will take place as soon as the documents in question are endorsed and delivered to the buyer although the payment of the price of the goods may be made at the future date.
- (iv) The High Sea buyer should file the declaration form under rule 10 of the Customs Valuation Rules. 1998.
- (v) The High Sea buyer should file the Bill of Entry in his name only.

- (vi) The importer must retain copies of the bill of lading duly endorsed in favour of the buyer where the sale is made in the course of import. Ordinarily, the original negotiable copy of the bill of lading is surrendered to the shipping company. It is, therefore, absolutely necessary that photocopies of these documents clearly showing the endorsement of these should be kept by the seller and buyer.
- (vii) A question often arises as to whether the endorsement should bear any date. It is not mandatory to record such a date of endorsement but it will be essentially the burden of the seller to show that the sale by endorsement was effected before the goods had crossed the customs frontier.

