

WIRC – SEMINAR ON VAT-CST

High Seas Sales and Sales in Transit

Presentation by

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Chapter II of the CST Act

- # FORMULATION OF PRINCIPLES
- # S.3. When is a sale or purchase of goods said to take place in the course of inter-State trade of commerce
- # S.4. When is a sale or purchase of goods said to take place outside a State.
- # S.5. When is a sale or purchase of goods said to take place in the course of import or export.

S.3. When is a sale or purchase of goods said to take place in the course of inter-State trade of commerce:-

- # 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 of documents of title to the goods during their movement from one State to another.

...sec. 3

- # ***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 the 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.

Occasions the movement

- # The SC in *Balabhaguas Hulaschand* (37 STC 207 (SC)) observed that before a sale can be said to take place in the course of inter-State trade or commerce the following conditions must be satisfied:
 - # (i) There is an agreement to sell which contains a stipulation, express or implied, regarding the movement of the goods from one state to another;
 - # (ii) In pursuance of that agreement the goods in fact moved from one State to another;
 - # (iii) Ultimately a concluded sale took place in the State where the goods were sent and that State is different from the State from which the goods moved.

...Occasions the movement

- # If these conditions are satisfied then by virtue of section 9 of the Central Act, it is the State from which the goods moved which will be competent to levy the tax under the provisions of the Central Act.
- # In such a case, the question whether the agreement to sell is in respect of ascertained or ascertained goods, or existing or future goods, makes no difference whatsoever so far as the interpretation of section 3(a) of the Act is concerned.
- # Same principle reiterated in Hyderabad Engg. 39 VST 257 (SC)

Effected by transfer of DOT

- # Tata Iron and Steel Co., Limited, Bombay(11 STC 655(SC)) Constitution bench.
- # *The sale contemplated by clause (b) is one which is effected by transfer of 'documents of title to the goods' ('DOT' for short) during their movement from one State to another.*
- # *Where the property in the goods has passed before the movement has commenced, the sale will evidently not fall within clause (b); nor will the sale in which the property in the goods passes after the movement from one State to another has ceased ,be covered by the clause.*

...effected by transfer of DOT

- ⌘ *Accordingly a sale effected by transfer of documents of title after the commencement of movement and before its conclusion as defined by the two termini set out in Explanation (1) and no other sale will be regarded as an inter-State sale under section 3(b)*

Document of Title to Goods

- # Section 2(4) of the Sale of Goods Act –
- # " 'document of title to goods' includes a bill of lading, dock-warrant, warehouse keeper's certificate, wharfinger's certificate, railway receipt, (multimodal transport document), 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 authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented;

Document of Title to Goods

- # Under the Sale of Goods Act, if a document of title to goods is used in the ordinary course of business as proof of the possession or control of goods, endorsement or delivery thereof according to mercantile practice it will amount to delivery of the goods thereby represented.
- # The transfer of documents contemplated by section 3(b) is therefore such transfer as in law amounts to delivery of the goods. Transfer of documents either by endorsement or delivery does complete transfer of title. Thus railway receipt, consignment receipt, delivery order are held to be valid, generally accepted DOT

The Dividing Line

- The dividing line between sales or purchases under section 3(a) and those falling under section 3(b) is that in the former case the movement is under the contract, whereas in the latter case the contract comes into existence only after the commencement and before the termination of the inter-State movement of the goods.
- Thus, an inter-State sale can either be governed by section 3(a), if it occasions movement of goods from one State to another, or under section 3(b) if it is effected by transfer of documents of title after such movement has started and before the goods are actually delivered.
- In other words, a sale which takes place under section 3(a) is excluded from the purview of section 3(b) and vice versa.

Sec.4. When is a sale or purchase of goods said to take place outside a State

- # (1) Subject to the provisions contained in section 3, when a sale or purchase of goods is determined in accordance with sub-sec.(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; and

...sec. 4

- # (b) in the case of unascertained or future goods, at the time of their appropriation to contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.
- # Explanation.- Where there is a single contract of sale or purchase of goods situated at more places than one, the provisions of this sub-section shall apply as if there were separate contracts in respect of the goods at each places.

Sec.6(2) – Sales in Transit

- # Notwithstanding anything contained in sub-section (1) or sub-section (1A), where a sale of any goods in the course of inter-state trade or commerce has either occasioned the movement of such goods from one state to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods to a registered dealer, if the goods are of the description referred to in sub-section (3) of section 8, shall be exempt from tax under this Act.

...Sec.6(2)

- # Provided that no such subsequent sale shall be exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,-
 - (a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority, and
 - (b) if the subsequent sale is made to a registered dealer, a declaration referred to in sub-section (4) of section 8.



...Sec.6(2)

- # Provided, further that it shall not be necessary to furnish the declaration referred to in clause (b) of the preceding proviso in respect of a subsequent sale of goods if, -
 - (a) the sale or purchase of such goods is, under the sales tax law of the appropriate State exempt from tax generally or is subject to tax generally at a rate which is lower than three per cent or such reduced rate as may be notified by the Central Government, by notification in the Official Gazette, under sub-section (1) of section 8 (whether called a tax or fee or by any other name); and
 - (b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in this sub-section.

Conditions for sec. 6(2)

- # The first sale could be either section 3(a) or section 3(b) sale
- # The second or subsequent sale should be a section 3(b) sale
- # The subsequent sale should be to a Registered Dealer
- # The goods should be of the description referred to in sec.8(3) of the CST Act.

...Conditions for 6(2)

- # The first selling dealer (A) has to issue E-1 form to his purchasing dealer (B)
- # The purchasing dealer (B) will issue C form to the first selling dealer (A)
- # The subsequent purchasing dealer (C) will issue C form to his selling dealer (B)
- # Purpose of sec.6(2) – to remove cascading effect of multiple taxation under the CST Act.

E-I and C Forms

A-Guj. \implies \rightarrow B-Mah. \implies \rightarrow C-Kar.

E-I \dashrightarrow \leftarrow \dashrightarrow C \leftarrow \dashrightarrow C

A-Guj. \implies \rightarrow B-Mum. \implies \rightarrow C-Pune

E-I \dashrightarrow \leftarrow \dashrightarrow C \leftarrow \dashrightarrow C

E-I, E-II and C Forms

A-Guj. \Rightarrow B-Mah. \Rightarrow C-Kar. \Rightarrow D-TN.

E-I \rightarrow \leftarrow C \leftarrow C \leftarrow C

E-II \rightarrow

A-Guj \Rightarrow B-Mum. \Rightarrow C-Pune \Rightarrow D-Nasik

E-I \rightarrow \leftarrow C \leftarrow C \leftarrow C

E-II \rightarrow

Issues

- # Whether the declaration in Form E-1 & Form C is mandatory to claim exemption u/s 6(2)?
- # Yes, Subject to 2nd proviso to 6(2)

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Forms not received/disallowed

What will be the liability in foll. situations vis-a- vis Subsequent Sales to dealer in Maharashtra or Other States ?

#	Recd.	Not Recd	Mah.	Other States
#	C	E-I	Local rate	CST 2%
#	E-I	C	Local rate	Local rate
#	---	C, E-I	Local rate	Local rate

704 FAQ 67

- # In transaction u/s 6(2) under the CST Act , I have received declaration in Form-C but not received declaration in Form-E1/ E2 for the same transaction. Now, in Annexure I, which details are to be written?
- # Ans: In this situation, select Form-E1/E2 in column 4, write details pertaining to purchases in column 1 to 3, write details of sales in the column no. 5, 6, 7 & 8 and write rate of tax under CST Act or MVAT Act as applicable in column 9

704 FAQ 68

- # In transaction u/s 6(2) under the CST Act, I have received declaration in Form-E1/E2 but not received declaration in Form-C for the same transaction. Now, in Annexure I, which details are to be written?
- # Ans: In this situation, write details of sales in the entire row and in column 9, write rate of tax under CST Act or MVAT Act as applicable

704 FAQ 69

- # In transaction u/s 6(2) under the CST Act, I have not received declaration in Form – C & E1/E2 of the transaction. Now, in Annexure I, which details are to be written?
- # Ans: Enter transaction related to Form E1/E2 in one row and corresponding transaction related to Form ‘C’ in the immediate row below as follows. Select Form-C in column 4, enter details of sales in the entire row and in column 9, write rate of tax under CST Act or MVAT Act as applicable. In the row just below, enter details of form E1/E2. Select Form-E1/E2 in column 4, write details pertaining to purchases in column 1 to 3, write details of sales in column 5 & 6, and put zero in column 7 to 9

A & G Projects and Technologies Pvt Ltd -19 VST 239 SC

- # At the outset, the apex Court held that its decision was based on the understanding that all three sales were sales which occasioned the movement of goods from one State to another and were hence all covered under Section 3(a) of the Act and not under Section 3(b) of the Act.
- # This understanding is key to the matter since it has the effect of holding that since the equipment in question was the subject matter of three separate but related contracts of sale, the subject equipment already stood appropriated by the manufacturer in favour of the final consumer through the intervening transactions of sales to the sub-contractor and to the appellants.

...A & G Projects

- # The Supreme Court hence proceeded on the ground that if the subsequent sales agreements were in place at the time that the first sales agreement was executed, the provisions of Section 3(b) relating to in transit sales would not apply and hence the benefit of exemption from central sales tax to such subsequent sales under Section 6(2) of the Act would also not apply

...A & G Projects

- # The Supreme Court held that the dividing line between sales under Section 3(a) and those under Section 3(b) was that in the former case the inter State movement of goods happened because of the contract of sale whereas the sales under Section 3(b) were those where the contracts came into existence after the commencement of movement of goods & before termination of the interstate movement of the goods.

...A & G Projects

- # The Court held that while the movement of goods did not determine the levy of tax, it did determine whether the sales were inter-State sales or were intra-State ones.
- # The Court also held that the nomenclature given to a transaction by the contracting parties could not determine the nature of the transaction.

...A & G Projects

- # The apex Court held that Section 6(2) relating to exemption from tax for in transit sales was only applicable to those sales which qualified under as such Section 3(b), as sales effected by a transfer of documents of title.
- # Since, in the instant case, the subsequent sales were also sales under Section 3(a) in that they also occasioned the movement of goods from one State to another, the benefit of exemption from tax was not available at all under Section 6(2).

...A & G Projects

- # The Court then proceeded to hold that the appropriate State that could consequently charge such subsequent inter-State sales to tax was the State from where the goods originated during their movement from one State to another, as per the first sale. The Supreme Court held that since all three sales in question were Section 3(a) sales, the proviso to Section 9 would not apply in order to enable Karnataka State to tax these subsequent sales. Accordingly, the Supreme Court held that Tamil Nadu alone could tax all three sale transactions

L/R

- # On account of CENVAT requirements, the excise invoice normally mentions the dealer to whom the CENVAT credit is to be passed on. The Excise invoice normally mentions the Name of the Buyer and the name of the consignee separately. In such case if the original L/R is endorsed in favour of the subsequent buyer, the second interstate sale must get recognition as covered by sec.6(2) of CST Act.

L/R

- # The name of buyer and name of consignee are separately stated with this purpose only. Admittedly the seller has no privity of contract with the consignee. He only acts as agent of the buyer. He is acting on instructions of the buyer while delivering goods to the consignee. Here again the consignee presents the L/R duly endorsed by the buyer . Under this circumstances the claim of sec6(2) will be clearly allowable. Moreover the practice has become a trade practice but a line of caution, as observed in case of Galia Kotwala 37 STC 576(SC), the buyer must maintain control by way of endorsement on LR.

...L/R

- # The transfer as envisaged in sec 6(2) can be mere handing over of the L /R and not necessarily by way of endorsement. Some what similar case was before Gujarat High Court .i.e case of State of *Gujrat vs. Haridas Mulji Thakkar. (84 STC 31 7(Guj))*. This case confirms the practice followed by dealers. Here the respondent-dealer was a distributor of carbon dioxide manufactured by a concern in Bombay. The respondent received orders from its purchasers in Gujarat. The respondent placed orders with the Bombay supplier which in turn sent the goods directly to the purchasers f.o.r. Bombay, the transport receipts in their names, according to the instructions of the dealer.

...L/R

- # The price charged by the respondent was higher than that charged by the Bombay supplier. Delivery of the goods was taken by the purchasers by paying the freight charges. The question before the court was whether the sale by the respondent to the purchasers in Gujarat was an inter-State sale within the meaning of section 3(b) of the Central Sales Tax Act, 1956 and not a local sale, liable to tax under the Gujarat Sales Tax Act, 1969.

..L/R CONSTRUCTIVE DELIVERY

- # The Gujarat High Court held that there were two deliveries which synchronized in point of time even though both the sales were separate in point of fact and in the eye of law. When the Bombay supplier transported the goods to Gujarat and took out receipts in the name of the purchaser in Gujarat, there was constructive delivery in favour of the respondent-dealer. At the same time there was constructive delivery of the same goods in favour of the purchasers. While affecting the second delivery, the Bombay supplier acted as agent of the respondent

..L/R

- # . The moment the goods were transported and the transport receipts were taken in the name of the Gujarat purchasers, the property in the goods stood transferred in their favour. The sale was by transfer of documents of title to the goods while the goods were in movement from one State to another although there was no actual endorsement thereon by the respondent. The second sale was, therefore, an inter-State sale within the meaning of section 3(b) of the Central Sales Tax Act, 1956. This is exactly how the business community functions.

Circulars

- # Commissioner of commercial taxes AP
–AIII(2) / 91 / 201030 dt 07-05-2010
- # Commissioner of Commercial taxes WB
(trade circular)no 11/dt.04.10 .2010
- #
- # Ajay Trading Company – VAT S.A. -111 dt
12/12/2012 (MSTT) – Relied on Haridas
Mulji Thakkar , TISCO 11STC,

Time Limit for 6(2)?

- # Whether there is any time limit for effecting the subsequent sale u/s. 6(2) after the movement of goods has started?
- # G.O. 423 dtd 31-12-93 – TN state - time limit of 40 days given to the dealers from the date of arrival of the goods to effect subsequent inter-state sale thereof u/s6(2)
- # Madras HC in case of Shri Hariharan Paper Trader and others (114 STC 598) held that , a fair reading of Para 4(c) of the G.O. does not either exclude the possibility of or prevent the dealers from proving that, in fact even such subsequent sale of goods taking place after the period of

Time Limit for 6(2)?

- # 40 days was a sale effected by a transfer of DOT during their movement from one State to another, in the course of interstate trade or commerce, and as such, it attracted section 6(2) read with section 3(b) of the CST Act.

Works contract transactions u/s 6(2)?

- # The goods to be used in works contract can be transferred u/s 6(2) (Siemens ltd.132 STC 418 (Ker)) . However, the documentation play major role here . – Divisible Contract - ‘Supply Order’ and ‘Service Order’
- # Where the payment for the goods sold/purchased u/s. 6(2) is provided only after such goods are functional in the project, such claim may not be allowed (*The State of Kerala Vs. Unitech Machines Ltd. 32 VST 80*).
- # However there can be no interstate works contract u/s 6(2). By very nature it self there can not be sale in transit.

Lease transactions u/s 6(2)?

- # From the findings recorded by the assessing officer it was held in case of Sundaram Finance 125 STC 565 (SC) that the goods were supplied by the outside State supplier in the course of inter-State sale which is taxable as per provision of section 3(a) of the CST Act, and when title of goods are transferred in course of transit by endorsement of the transit document in favour of the lessee, subsequent sales are transit sale under section 3(b) of the C.S.T. Act.
- # Sale in transit u/s.6(2) is possible in lease transaction depending upon the facts of the case and terms of the contract.

High Seas Sales

- # Sec.5(2) of the CST Act
- # A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

Bill of Lading

Surlab Corporation : (S.A. Nos. 956 and 957 of 1991, dated 18-2-1993). Xerox copy of Bill of Lading showing endorsement is sufficient to claim the sales in the course of imports

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Conceivable link

- # Kirloskar Bros. : (S.A. No. 1362 of 2001 dated 25-11-2004). Even when the assessee cleared the goods and then supplied to his customer in compliance of the condition of import that the import was permitted only for delivery to that customer , it was a case of sale in course of Import where no diversion was possible

...Conceivable link

Mulchand F. Shah : (S.A. No. 499 of 1998, dated 13-10-2000). Import of gold through MMTC/SBI under Replenishment scheme was an integrated transaction, and therefore, covered by Section 5(2) of the CST Act. (Subodhchandra & Co. DDQ confirmed).

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...Conceivable link ?

- # Giesccke & Debrient I.P. Ltd. V. CST (Delhi) 47 VST 343
- # The appellant (Importer) no doubt had entered into an earlier contract with Canara Bank, Bangalore, but for the purpose of the said contract the appellant was not the agent of the supplier in Germany. The contract between the Bank and Importer was on principal to principal basis. The obligation to comply with the purchase order was that of the appellant alone. Similarly, when the appellant entered into contract with the German company it was a contract on principal to principal basis. Canara Bank, did not have privity of contract whatsoever with the German company. Sec.5(2) disallowed.

...Inextricable link ?

- # State of Tamil Nadu V. Steel Authority of India and Another 56 VST 441 (Mad)
- # Held, that conjunct reading of both the agreements would make it clear that these two agreements are independent to one another and were in no way connected with one another. The first agreement was entered by the dealer as a purchaser with the foreign company for conversion of steel strips into coin blanks and the second agreement was entered into by it as a supplier with the Indian Government Mint for supply of steel strips. There was no privity of contract between the local purchaser, namely, the Government and the foreign seller. Sec.5(2) disallowed.

Bill of Lading / Bill of Entry

- # Minerals & Metal Trading Corpn. Of India Ltd. : (S.A. 388 of 98 dt. 10-4-2006). Dealer approved by – Secondary evidence, Endorsement not compulsory. Tribunal held that if for practical difficulty appellant is not able to produce endorsed B/L, which is primary evidence, he can produce secondary evidence. B/E by buyer pre suppose existence of agreement to sale and hence in the absence of any evidence available proving the position otherwise , this secondary evidence should be accepted. Tribunal also held that endorsement on B/L is not compulsory and even by mere delivery transfer can take place.

...Bill of Lading / Bill of Entry

- # Anurag Agencies : (S.A. No. 1506-07 of 1999, dated 31-3-2001). When the Bill of Entry was in the name of buyer, it can safely be assumed that the Bill of Lading must have been transferred earlier. The transaction was in the course of Import.

...Bill of Entry

- # State of TN Vs.Kawarlal and Co. 52 VST 221 (Mad)
- # The Court held that the bill of entry is not a document of title and admittedly it carried the name of the ultimate buyer and that there was no denial of the fact that the assessee had transferred the goods before it crossed the customs station. The only ground on which the claim was rejected was the difference in the name found in the bill of entry available with the assessee and the one with the customs authorities. With the title to the goods thus endorsed even before it crossed the customs station, the claim of the assessee could not be denied just based on the bill of entry which is admittedly not a document of title.

...Bill of Entry

- # Under section 46 of the Customs Act - Entry of goods on importation - the importer has to file bill of entry before the proper officer, which may be for home consumption or for warehousing. Only on filing the bill of entry for home consumption that the goods are allowed to be cleared after the payment of required customs duty. In the absence of any details as to whether the said entries relate to the one in the bill of entry for home consumption or any bill of entry for warehousing, the dealer's claim could not be denied

Airway Bill / Bank Delivery Order

- # B. M. Shah & Co. : (Appeal No. 139 of 1989, dated 7-2-1992). The delivery order by the Bank in respect of an air consignment was a document of title to the goods. On the basis of handing over of the same, the High Seas Sales claim was allowed. Confirmed by the Bombay HC in 142 STC 291.

Import in Bulk/Sale in small lots

- # Tata Iron & Steel Co. Ltd. : (SA.Nos.713 & 714 of 2000,dtd 9-10-2001). Import of goods in bulk and sale thereof by endorsement and delivery of Bill of Lading to various local buyers in small lots after clearance and payment of customs duty by the endorsees- High Seas claim allowed. Provision of sale of goods held as not applicable. (Govt. reference rejected by BHC).

Duty Free Shop

- # India Tourism Development Corpn. Ltd.: (S.A. No.489 of 1997 dated 23-7-2004). Sale of goods to incoming international passengers at duty-free shop situated in the customs area, before the goods purchased were cleared by customs authorities on payment of Import duty if payable, were transactions that took place before the termination of the course of Import and therefore, were not exigible to tax under the B.S.T. Act.
- # Also refer Ashoka Hotels(ITDC) 48 VST 443(SC)

Bonded Warehouse ?

Indotex Exports Pvt. Ltd. : (S.A. Nos. 284 and 285 of 1990, dated 17-6-1995). Sales of goods after they were transferred to the bonded warehouse were sales within the state and not sales in the course of import. (Also refer 129 STC 294(Mad.).

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Bonded Warehouse

- # Borana Plastics Ltd. vs State of Mah. (SA Nos. 1208-1209 of 2001 dtd. 25-8-14
- # Sales from Bonded Warehouse – allowed u/s 5(2) relying on – Ashoka Hotels(ITDC) 48 VST 443(SC), Radhasons International SA no. 1358-1359 of 2003 based on Kiran Spinning Mills vs State of Mah. (Civil App. No. 3166 of 1985 dtd 05-08-99).

❖ THANK YOU !!!!

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