

WIRC

Seminar on VAT-CST

HIGH SEA SALES AND SALES IN TRANSIT

- Vikram Mehta

HIGH SEA SALES

Section 5(2)

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. It is a transfer of goods between one country to another.

Document of title to the goods

Document of title to the goods is not defined under the CST Act. **Section 2(4)** of the **Sale of Goods Act, 1930**, defines document of title to goods which '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, authorising or purporting to authorise, either by endorsement, by mere delivery or by endorsement and delivery, the possessor of the document to transfer or receive goods thereby represented'.

Delivery order is also a document of title to goods and the possessor of such a document has the right not only to receive the goods but also to transfer it to another. (Bayyana Bhimayaa & Sukh Devi Rathi, 12 STC 147)

The transfer of document of title to the goods maybe effected by endorsement, mere delivery or by endorsement and delivery. (The Deputy Commissioner of commercial Taxes, Madurai Division, Madurai vs. A.R.S. Thirumeninatha Nadar Firm, Tuticorin 21 STC 184)

The document of title of goods acts like a negotiable instrument and hence is transferable.

Whether Air waybills are negotiable??

- Air waybill is a contract for transportation only and does not represent (the value of) merchandise mentioned in the box nature and quantity of goods. However, the ocean bill of lading, if negotiated, represent (the value of) the goods and must be endorsed by the party ultimately accepting the goods.
- AWB is hence a **non-negotiable** document which can be used as a means of payment through the intermediary of a bank and only when the carriage is subject to a letter of credit.
- The Maharashtra Sales Tax Tribunal and Mumbai High Court have confirmed that Airway bill is non negotiable instrument.
- **Commissioner of Sales Tax, Bombay**
- V.
- **B.M. Shah and Company (and other cases)**
- [2005] 142 STC 291 (**Bom**)

CUSTOM FRONTIERS

- Area of customs station where imported goods and export goods are ordinarily kept for clearance by the customs authorities as customs station.
- Customs Station and Customs Authorities have same meaning as per Customs Act. Customs Station means customs port (for vessels), customs airport (for aircrafts) or land customs station (for trucks or motor vehicles). Central Government is authorised to specify such places. Within such customs port, 'Customs Area' is specified by Customs Authorities where imported goods or export goods are ordinarily kept by customs authorities.
- Relevance of this provision : Documents of title can be transferred immediately after goods are entrusted to the carrier after obtaining clearance from Customs authorities for export, thus its not necessary to wait till the ship/aircraft actually leaves India.

- When goods come into hands of the custom authorities by way of confiscation or otherwise, they are not goods which have not yet crossed the custom frontiers of India.

Sale of imported goods confiscated by Custom Authorities and sold later on cannot be called “Sales during the course of import”. [Held in the case of **Collector of Customs Vs. State of W.B. 85 STC 121 (WBTT)**]

- Custom Area includes any area where imported goods are ordinarily kept before clearance by the Custom Authorities.
- Clearance by Custom Authorities will be after bill of entry and after the assessment of duty u/s 28 of the Customs Act, 1962.
- Before assessment of duty, goods kept in the customs port cannot be said to have crossed the limits of the Customs Port.
- **Whether sale in the course of import can take place by transfer of document of title to goods while the goods are in bonded warehouse???**

- Sale is exempted provided it is effected prior to crossing the Customs Frontiers of India.
- In case of sale from bonded warehouse it appears that the goods imported will be first cleared by importer from Customs authority by presenting bill of entry by himself, though such clearance may be for bonded warehouse. No sale is effected by transfer of Bill of Lading etc. prior to this clearance. The sale will be effected after the goods are in bonded warehouse probably by way of bond transfer basis.
- When the sale is effected from bonded warehouse, the sale cannot be said to be before crossing the Customs Frontiers of India and hence cannot be exempt.
- When the goods are first cleared by presenting bill of entry the goods have “Crossed Customs Frontiers of India” as per definition of said term in CST Act,1956 (Sec.2(ab)). There cannot be crossing of Customs Frontiers again when goods are cleared from bonded warehouse and hence claim of sale in course of import cannot be allowed from bonded warehouse, such warehouse being outside custom station.

Examples of High Sea Sales:

1) Suppose Mr A of Mumbai needs raw material, which if imported would be more economical and affordable, however, he cannot directly import because the volumes do not justify such direct import. Thus he approaches a Sugar Trading company whose main business is import/export of goods.

Suppose the Trading company was in Mumbai where it normally unloads the imported goods, Mr A would have to pay sales tax as the transaction is between two parties, and the trading company has already paid import duty.

In this situation, if Mr A could have approached the trading company much before the goods reached the Mumbai port, i.e. the trading company could have sold the goods to Mr A while they were in “ High Seas”(by endorsement of document of title of goods).

Now, since the goods were sold in high seas, Mr A becomes a direct importer and will be liable to pay custom duty(which he would have to pay in any case, even though he purchased the goods from the trading company once the goods crossed the Mumbai port).

However, now Mr, A will not be liable to pay Local sales tax/Vat, since the transaction is not between two local parties, but just a transport of goods from one location to another by the same owner, without involving any sales.

Also, it does not matter whether the trading company and the final buyer are in the same state, but what really matters is that the final buyer becomes the importer and does not have to buy imported goods locally.(Embee Corpn -107 STC 196)

Sale By Agents

- This concept is explained by the Apex Court in K.G Khosla And Company Vs Dy C.C.T 17 STC 17STC 473(SC).
- M/S K.G.Khosla entered into a contract of sale for supply of axle bodies to DGS and D. These goods were to be manufactured in Belgium by principle of K.G.K & Co. and were to be inspected by DGS and D in Belgium, and rejected if they were not as per the specifications when received in India.
- Goods were cleared by Khosla from port and dispatched by railway.It was held that Khosla & Co, were agents of foreign manufacturer and the sale was in course of imports. Two sales are integrated and interlinked so as to form one transaction, they are sale in the course of imports

Sale In Transit

Section 3(b) r w s 6(2)

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 is effected by a transfer of ***documents of title to the goods*** during their movement from one ***State*** to another.

Section 6(2):- 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:

Provided that no such subsequent sale shall be exempt from tax under this subsection 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

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) a 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 percent or such reduced rate as may be notified by the Central Government by notification in the *official gazette*, under subsection (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 proceeding proviso that such sale is of the nature referred to in this subsection.

Essentials for getting the benefit of Sec 6(2):

- The subsequent sale must also be an interstate sale u/s 3(b) of the CST Act, of an earlier interstate sale (which may fall u/s 3(a) or 3(b) of the CST Act).

[Section 3(a): 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 occasions the movement of goods from one State to another]

- The subsequent sale must be effected by transfer of documents of title to the goods.

The transfer of document of title to the goods may be effected by endorsement, delivery or endorsement and delivery.

- The subsequent sale must be during the movement of goods from one state to another.

The movement of goods starts when the goods are delivered to a carrier or other bailee for transmission and ends when the delivery of such goods is taken from such carrier or bailee.

However, there is an exception wherein landing of goods in the importing state is considered as termination of the movement of goods [Arjan Dass Gupta & Bros vs. Commissioner of Sales Tax (45 STC 52)]

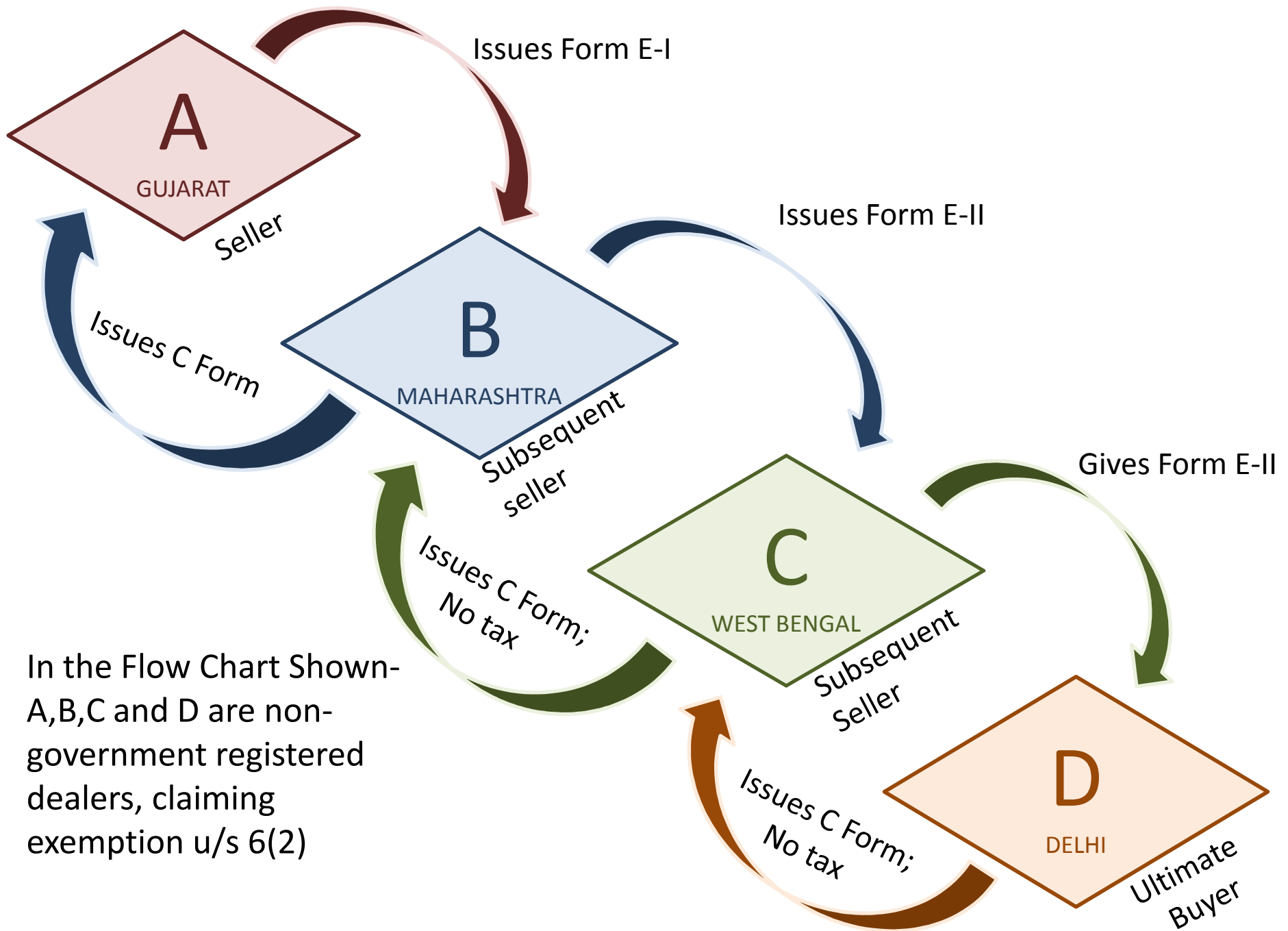
- Subsequent sale must be effected to the to a registered dealer.

In order to claim exemption u/s 6(2), C Form is to be obtained from the purchaser and Form E-I / E-II is to be obtained from the seller

Issues:

When a buyer say A, a dealer outside the state places an order on say M on maharastra and M of maharastra places the order on M1 also of Maharashtra and M1 supplies the goods to A by way of bill to M and Despatch to A outside the state ,whether such a transaction can be covered u/s 6(2) in the books of M of Maharashtra ?

Whether Certificate in Form E-1 can be issued by dealer enjoying sales tax incentives???



In the Flow Chart Shown-
 A,B,C and D are non-
 government registered
 dealers, claiming
 exemption u/s 6(2)

- Here, A of Gujarat, sold goods to B of Maharashtra. However, the title of goods are transferred in the course of transit by endorsement of document of title of goods in favour of C of West Bengal by B.
- B issues C Form to A, and C issues C Form to B. The above sale being sale in transit u/s 3(2) r/w 6(2), A gives Form E-I to B, and B given Form E-II to C.
- Now C, subsequently sells those goods to D of Delhi u/s 6(2).
- D gives C Form to D (being interstate sales) and C gives Form E-II to D u/s 6(2)

THANK YOU

VIKRAM D MEHTA (C.A)