

Dear Friends, An interesting article.
Branch / Stock Transfer Under Local VAT/ CST

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Background

The large buyers who pay the local taxes are keen to maximize the procurement under local VAT as they can claim the set off. In case of CST sales the set off [ITC] is not available. This increases their cost by 2%. Therefore they insist that the supplier sell the same from within the state. Suppliers then set up a branch in the state of the buyer and routinely transfer goods to the branch which sells the same thereafter. The dealer be they industry or trade have been known not appreciate the important difference whereby a stock transfer could be considered as sale. In such cases the impact would be the payment of local VAT at the highest rate as the subsequent sale would have been done locally and the "C" form may not be possible. A dent of 5- 14.5% other than interest and penalty on the bottom line of the manufacturer / supplier/ dealer. In this article we examine some basics.

In terms of section 3 of the Central Sales Tax Act, 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 or is effected by a transfer of documents of title to the goods during their movement from one state to another. Under section 6, the interstate sale or purchase of goods is liable for Central Sales tax.

As the basic condition of Inter-state sale is that there should be a sale. If a manufacturer sends goods to his branch in other state, it is not a 'sale' as you cannot sell to yourself. Since no sale is involved, there is no 'Inter State Sale'.

Though entry 92B in the Union List of the Constitution of India, empowers Government to levy tax on consignment transactions, such transactions are exempted in section 6A of CST Act.

Whether Stock Transfer is Inter-State sale?

As per Section 6A -

[6A. Burden of proof, etc., in case of transfer of goods claimed otherwise than by way of sale (1) where any dealer claims 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 such goods by him to any other place of his business or to his agent or principal,the burden of proving that the movement of those goods was so occasioned shall be on that dealer.....

Analysis of Section 6A:

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 dealer to any other place of his business or to his agent or principal, and not by reason of sale.

- b. But the burden of proof for availing such exemption is on the dealer who shall be required to furnish to the assessing authority with prescribed time, declaration in the prescribed Form F filled with prescribed particulars together with the evidence of dispatch of such goods.
- c. If dealer fails to furnish such declaration, the movement shall be deemed for all purposes of 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.

Burden of proof

Section 6A of CST Act provides that when a dealer claims that transfer of goods outside state is not a sale; he has to prove that the inter-state transfer of goods is not a sale.

Section 6A of CST Act, 1956, which governs the transfer of goods otherwise than by way of sale is held Constitutional by Honorable Karnataka High Court in the case of New Kiran Cashews vs. Union of India (2007) 9 VST 220 (KAR).

The means that burden of proof is on dealer to establish that the inter-state transfer of goods is not a sale. VAT authorities do not have to prove that the sale is 'Inter State'. The authorities can presume it is an interstate sale unless contrary is proved by the dealer.

For this purpose, he must produce a declaration from branch from other state in prescribed form 'F'. F form is required to be produced as mandatory proof of stock transfer. Otherwise, the transaction would be treated as 'sale' for all purposes of CST Act.

If the dealer fails to submit Form-F, then the movement of such goods shall be deemed for all purposes of Central Sales Tax Act, 1956 to have been occasioned as a result of Sale and sales tax levied on same.

Transfer against pre-existing order

If the goods are moving pursuant to pre-existing order in other state. It would not be treated as a stock transfer, but as a sale. It was held in A&G Projects & Technologies Ltd. Vs. State of Karnataka [(2008) VIL 40 SC], wherein Court held that if a contract for sales of goods subsequent to the first sale, which occasioned the movement of goods on an interstate basis, was already in place prior to the commencement of the interstate movement of goods, the benefit of exemption from central sales tax on the subsequent sales, as in transit sales, was not available.

We caution thus, though this decision was in context of in transit sales, where pre existing orders were in place and goods transferred pursuant to such orders, it could be denied the benefit of exemption from tax. Herein if customers order is after the date of the order placed for materials from supplier, then exemption benefit could still be available to it as a stock transfer.

Conclusion

Submitting F form is not a conclusive evidence to prove any stock or branch transfer. Dealer would have to prove that it is not an Inter-State sale. Section 6A of the Central Sales Tax Act is an enabling provision for dealer to prove the transaction is one of transfer and not one of sale by producing supporting material as provided. The manner in which such proof is to be produced should be in accordance with the prescribed manner. Keeping this in mind interstate stock transfer has to be done by a dealer.

Warm Regards
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