

Intricacies in Central Sales Tax

Deliberations on May 22nd, 2013

P K Bansal, Advocate

98102-88440

Inter-state Sales

Inter State Sales – Concept

- Inter-state sales is defined in Section 3 of the CST Act, which in turn covers 2 situations i.e. 3(a) and 3(b)
- Extracts of the provisions are below

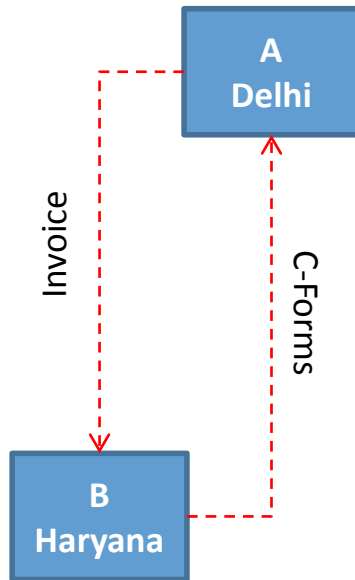
A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase-

(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.

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.

Inter State Sales - Key consideration

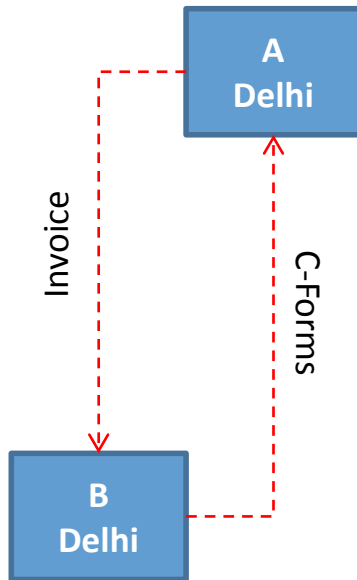


Key Considerations

- Important pre-condition for applicability of Section 3(a) is that there need to be some pre-existing order for which the goods moved from one state to another. At which stage property in goods passed to the buyer is immaterial
- The goods should move from one state to another
- Concessional rate of tax is available where C-Forms are provided by the buyer to the seller. Lower of Local rate or 2% is applicable
- C Forms required to be issued / provided on quarterly basis. However, C-forms are not conclusive evidence that sales is inter-state sales and not local sales.
- Copy of GR must be available with both the buyer and seller

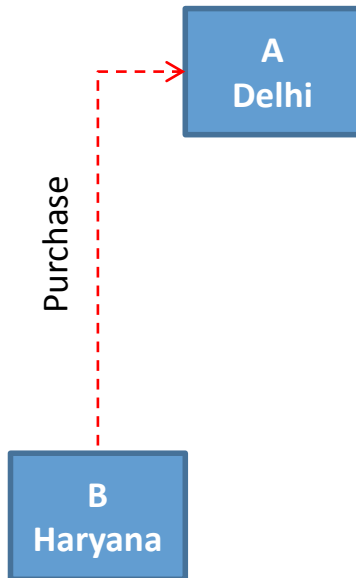
Inter State Sales – Key consideration

Key considerations



- Goods should move from one state to another **by the seller**. Same have been explained with the help of following examples
 - A in Delhi is the seller. B in Haryana comes to A's premises and places certain orders & takes delivery of the goods back to Haryana. This is the case of local sales
 - In above example, B in Haryana, instead of taking the delivery itself asks A in Delhi to deliver to B's place in Haryana. The case shall be inter-state sales
 - However, if in the above, the transporter assigned to take the goods is undertaking the same on instructions of the buyer, it will again become a local sales
- Inter-state sales commence in the state of dispatch and ends in the state of final delivery (irrespective of the number of states where the goods passes through)
 - For example – Goods moving from Noida to Meerut (in same state), but passing from Delhi will still be a local sale

Inter State Purchases – Key consideration



- Inter-state purchases are relevant from the perspective of Purchasing dealers

Key Considerations

- Concessional rate is applicable only where C forms are taken by the purchasing dealer from its state VAT department and provided to the selling dealer
- Goods purchased should be mentioned in the RC of purchasing dealer (even in case of packing material)
- C-forms in case of Capital goods are available only when the same are to be used for the purpose of manufacturing or processing of goods

In-Transit Sales – E-I & E-II transaction

- In-Transit sales, satisfying the conditions laid down in Section 6(2), are exempt from tax.
- Extracts of the provisions are below

6(2) Notwithstanding anything contained in sub-section (1) or sub-section (IA), 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:**

In-Transit Sales – Form C & E-1

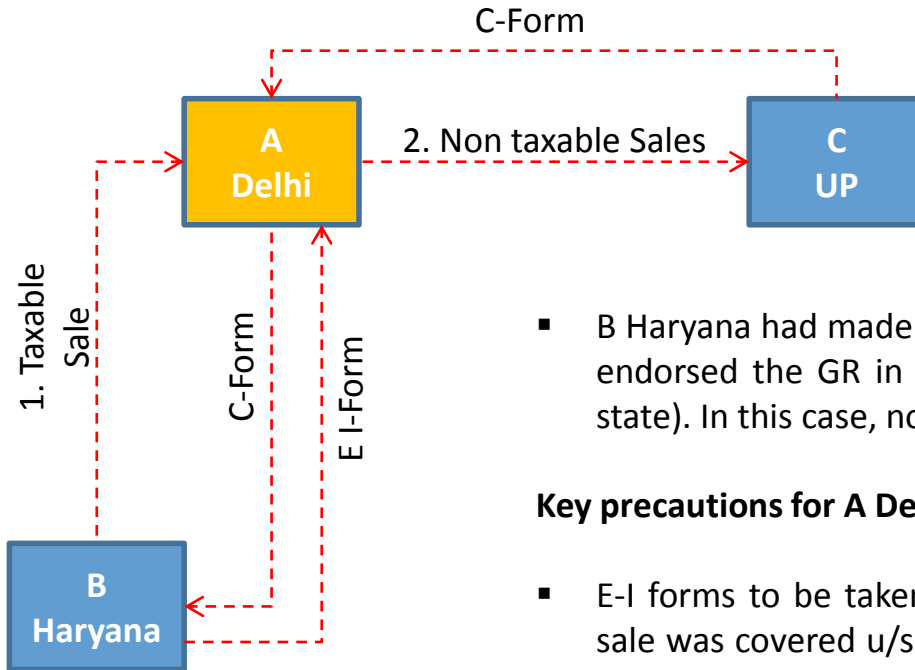
Key Tests

- First sale is either Section 3(a) or 3(b) sale [sale occasioning movement of goods]
- Second / Subsequent sale u/s 3(b) sale [**sale by transfer of documents to title**]; Where any authorization letter is issued by the selling dealer directing the carrier to deliver the goods to a particular place, are only instructions and the same cannot be considered as documents of title to goods
- Subsequent sale is to a registered dealer;
- Goods are of a description referred to in Section 8(3) of the CST Act - Item must be specified in the RC of purchasing dealer
- E-1 Form have been received from the seller [E-1-forms on transaction wise basis]
- C-forms have been received from the purchaser [C-forms on quarterly basis]

Note 1 - Subsequent sale should thus be effected when goods are in movement from one state to another. When goods are given to a carrier, the movement is said to have commenced.

Note 2 – there must be clear nexus between 2 sales i.e. first & second / subsequent

In-Transit Sales – Form C & E-I



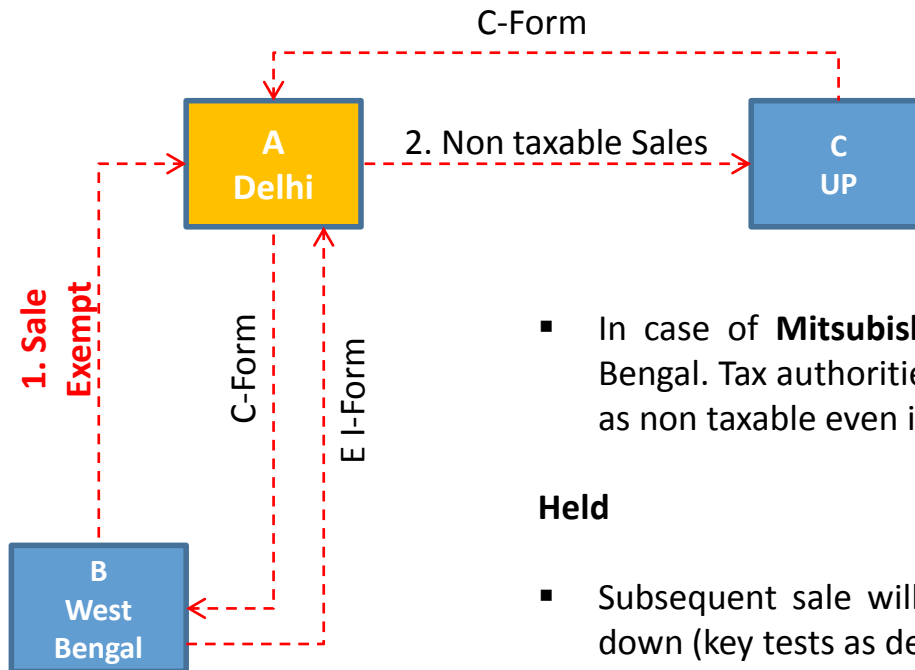
- B Haryana had made inter-state sales to A Delhi. A, without taking delivery, endorsed the GR in name of C (who can be in Delhi or UP or any other state). In this case, no tax shall be leviable as same is exempt under CST Act

Key precautions for A Delhi

- E-I forms to be taken from B Haryana (in order to establish that the first sale was covered u/s 3(a)] and C-form from 'C UP', so as to claim the same as Exempted sale
- Documents of title i.e. GR, should be endorsed by A to C
- A Delhi should not take delivery / unload the goods
- Separate EI form for each purchase



Delhi High court in Mitsubishi Corp

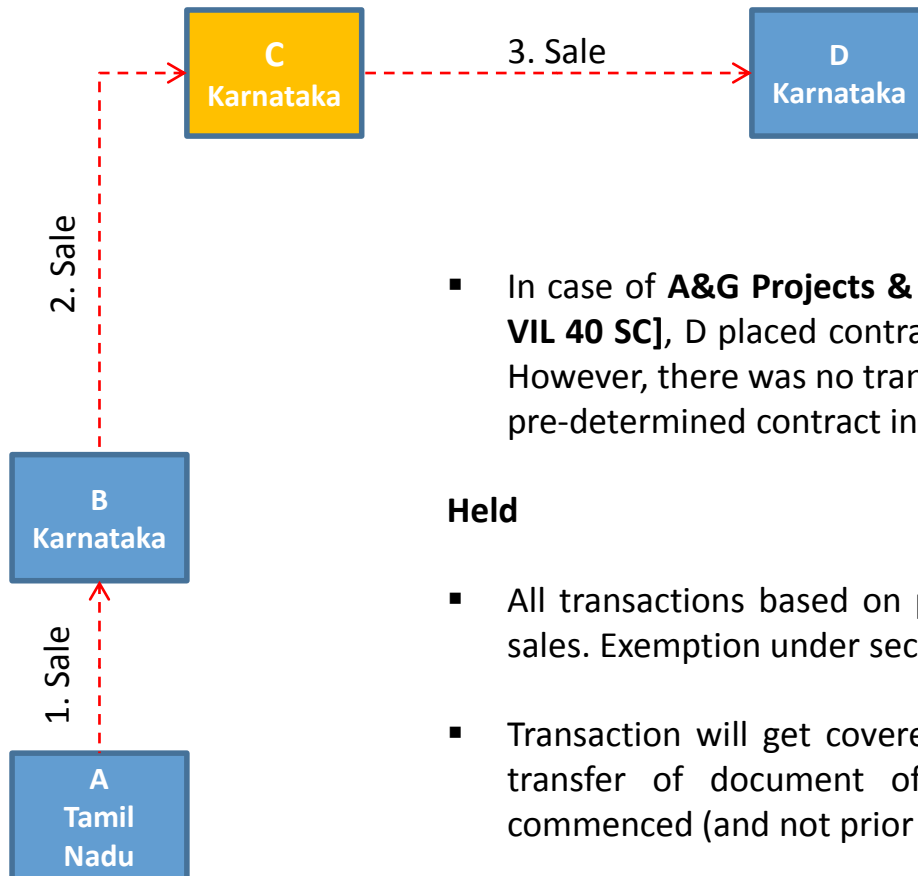


- In case of **Mitsubishi Corp Ind. Ltd**, first sale was exempt i.e. in West Bengal. Tax authorities contend that the second sales cannot be considered as non taxable even if C & EI forms available

Held

- Subsequent sale will still be eligible for exemption as all conditions laid down (key tests as defined in preceding slides) have been complied with
- The exemption under section 6(2) is irrespective of any other exemption available at the state level on first sale

Supreme court in A&G Projects

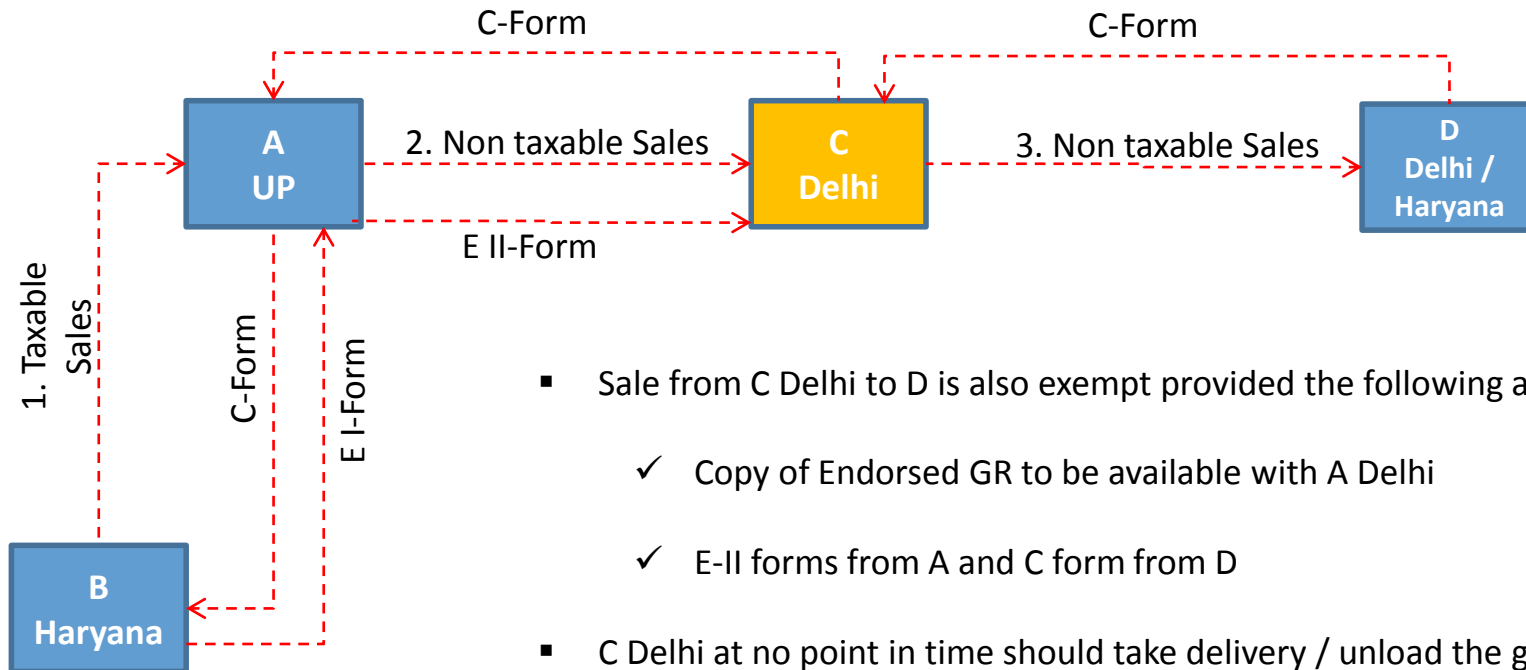


- In case of **A&G Projects & Technologies Ltd Vs State of Karnataka [(2008) VIL 40 SC]**, D placed contract on C, C on B and B on A for purchase goods. However, there was no transfer of documents of title (even when there was pre-determined contract in place)

Held

- All transactions based on pre-determined contracts are independent 3(a) sales. Exemption under section 6(2) is thus not available
- Transaction will get covered under 3(b) sales only when there had been transfer of document of title once the movement of goods have commenced (and not prior to that)

In-Transit Sales – Form C & E-II



- Sale from C Delhi to D is also exempt provided the following are available
 - ✓ Copy of Endorsed GR to be available with A Delhi
 - ✓ E-II forms from A and C form from D
- C Delhi at no point in time should take delivery / unload the goods
- Separate EII form for each transaction

Inter state sales – Other issues

Sr No	Provision	Deliberation
1	<p>Whether C Forms to be issued / applied based on the Invoice date or when the goods are received by the purchaser?</p>	<p>The issue is important as the selling dealer would have booked the</p> <p>Kuppuswami Mudaliar & Sons vs. State of Madras (1974) 34 STC 6 (Mad.), it was held by the Madras High Court that the date of sale should be taken to be the date when the property in the goods passed from the assessee to the purchasing dealers which was, when the purchasing dealers retired the railway receipts from the bank on payment of the sale price as till that time the assessee(seller) should be taken to have retained the right of disposal over the goods. As on the date of sale the purchasing dealers had registered themselves under the Act, the assessee was entitled to the concessional rate of tax.</p>
2	<p>What if forms are not available at the time of assessment stage i.e. whether submission of forms at appellate level is legally possible?</p>	<p>C form can be submitted even at appellate stage if sufficient cause shown [Punjab and Haryana High court in R S Cotton Mills v. State of Punjab]</p>

Inter state sales – Other issues

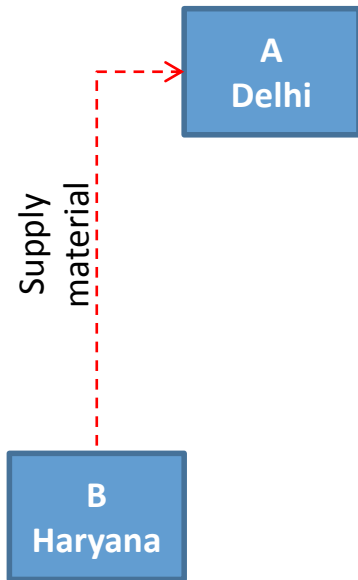
Sr No	Provision	Deliberation
3	<p>Whether Penalty leviable in case of non-submission of C-forms?</p>	<p>The availability of concessional rate of CST is conditional one and is dependent upon the furnishing of prescribed form (i.e. C Form). Based on the ratio provided in the case of Gujarat Ambuja Cement Ltd. Vs. Assessing Authority (2000) 118 STC 315 (HP), it can be said that no penalty can be levied on the selling dealer for mere non submission of requisite C forms</p>
4	<p>Whether interest leviable in case of non-submission of C-forms?</p> <p>Provisions have been amended in the DVAT Act, but still there is controversy</p>	<p>Leviability of Interest in case of shortfall in furnishing of forms had always been controversial point with following decisions coming</p> <ol style="list-style-type: none"> 1. J.K Synthetics Ltd. Vs. CTO(1994) 94 STC 422(SC) – Supreme Court stressed on bona fide disclosure made by the dealer in return 2. Mohindra Enterprises vs CST 36 DSTC (Del Trib) 3. CTT vs Control Switch Gears Co. Ltd. (2011) 10 VSTI 18(All) – Held against the dealer by observing that there is no scope for consideration of legitimate expectation or hope or bonafide plea u/s 8(1)

Inter state sales – Other issues

Sr No	Provision	Deliberation
6	How inter-state sales to be reflected if there is subsequent returns from the buyer?	<p>Turnover to be reduced from the turnover if goods received back within 6 months from the date of dispatch</p> <p>No C-forms to be given if the goods are ultimately received back. Reconciliation was provided to the department earlier</p> <p>With online issuance of C-forms, the problem may arise as reconciliation may not be possible. The specific return may need to be revised as C-forms are being issued automatically from the website</p>

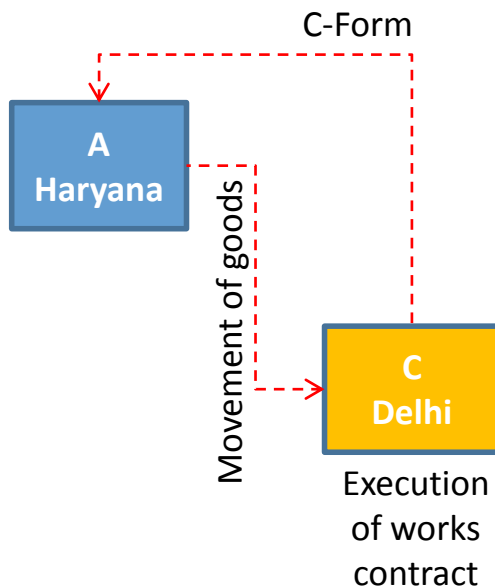
Inter-state sales in case of Works contract & Right to Use

Inter State Sales – Works contract



- Works contract is clearly taxable in view of its specific inclusion in definition of 'sale' in CST Act
- Taxability of WCT shall be in line with the local VAT law. DVAT Act provides for taxable rate in case of WCT as 12.5% after reducing labour and other charges. Further, ITC available on local purchases
- In case of inter-state movement of goods pursuant to Works contract in another state, taxability is not very clear and depends on facts of each case
- For example – B Haryana is executing a works contract for A in Delhi, pursuant to which goods moved from Haryana and other states to Delhi. The issue is whether WCT shall be applicable in Delhi (considering situs of transaction in state where works contract is actually executed) or in Haryana (from where central sales of such goods occasioned pursuant to the contract)
- Conflicting decisions have come which have been discussed in subsequent slides

Example of Inter-State Works contract



View I

- Sales shall be taxed in Haryana as Central Sales, considering there have been an agreement occasioning movement of goods from one state to another i.e. under Section 3(a) of CST Act

View II

- Sales shall be taxed in Delhi as local Sales, as transfer of property in goods consequent to execution of works contract is happening in Delhi

CST in case of Inter-State Works contract

Supreme Court in the case of **Gannon Dunkerley & Co. Vs State of Rajasthan (1993) 88 STC 204 (SC)**

- *“We do not propose to go into this controversy because the question whether a deemed sale resulting from transfer of a particular works contract amounts to a sale in the course of inter-state trade or commerce under section 3 of the Central Sales Tax Act or an outside sale under section 4 of the Central Sales Tax Act or sale in the course of import under section 5 of Central Sales Tax Act, has **to be decided in the light of the particular terms of the works contract** and it cannot be decided in the abstract.*
- *As at present advised, we are not in a position to say that in no case, can there be a sale in the course of interstate trade or commerce or an outside sale or a sale in the course of import in respect of a deemed sale resulting from transfer of property in goods involved in the execution of a works contract falling within the ambit of sub-clause (b) of clause(29A) of Article 366 of the Constitution.”*

Works contract – Key decisions



Decision	Facts
<p>Thomson Press (India) Ltd. Vs. State of Haryana(1996) 100 STC 417 (P&H)</p>	<ul style="list-style-type: none"> ▪ 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 ▪ By introducing a fiction, the State Legislature cannot convert a sale in the course of inter-state trade and commerce into a local sale.
<p>Media Communications vs. Govtof A.P. (1997) 105 STC 227 (AP),</p>	<ul style="list-style-type: none"> ▪ If the purchases are made specifically for the execution of the contract, then the intervention of the branch office of a contractor in the movement of the goods from outside the State, for the execution of the contract inside the State, will not change the character of a transaction and it will remain as an inter-state sale- ▪ Case followed- Sahney Steel and Press Works Ltd.Vs. CTO (1985) 60 STC 301 (SC).

Works contract – Key decisions



Decision	Facts	Held
East India Cotton Manufacturing [90 STC 221] – Punjab & Haryana High Court	<ul style="list-style-type: none"> ▪ Received grey fabric from outside the state ▪ Processed and dispatched back 	Held as Inter-state sales
Sundaram Industries (128 STC 358) – Madras High Court	<ul style="list-style-type: none"> ▪ Worn out tyres entrusted to dealer by customers outside the state ▪ After re-treading, goods moved out of the state 	Sale in pursuance of a contract which occasioned movement of goods and thus, inter-state sales
ECE Industries Ltd (144 STC 605) – Karnataka High Court	<ul style="list-style-type: none"> ▪ Lifts were manufactured in one state and dispatched to the customer in another state 	Goods appropriated to a contract unconditionally, and dispatched from one state to another to an identified customer. Thus, it is an inter-state sale. Merely because installation / assembling done in another state will not result in the same be classified as local sale

CST sales in Works contract – Key precautions

- **Contractee should be a party to the arrangement between the contractor and the supplier. There should be privity of contract between supplier and contractee**
- **The supplier should be specific and specific goods be supplied by them and that too at the instructions of the contractee**
- **The goods transferred by the supplier should be the same as ordered by the contractee through contractor**
- Where the contract does not provide so, specific approval from the Owner may be taken before placing the purchase orders on such out of State vendors
- While issuing the purchase order (PO) on out of State vendor, name and reference of the Owner and the contract should be indicated. The PO should direct that the goods be dispatched to the Owner's site
- Transport documents (prepared by the out of state vendor) must be prepared in the name of the contractor A/c of Owner
- The invoice raised by the vendor should also provide corresponding cross reference to the Contract between the Purchaser and the Owner
- Clear demarcation of value of goods and services (as much as possible)

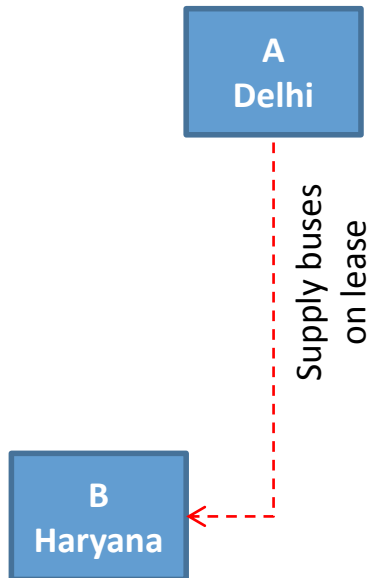
Other issues

- Requirement of deduction and deposit of TDS in case of WCT is applicable only in case Works contract is treated as “local sales”.
- C form to be provided by contractee to contractor
- Goods so supplied should also be mentioned on its registration certificate of contractee
- Where goods are purchased both locally and inter-state, unless the consideration had been adequately split in the contract, the entire works contract will become subject to local tax
- Thus, in works contract, the transaction needs to be structured carefully as the contractor may unnecessarily be saddled with liabilities

Inter State Sales – Right to Use

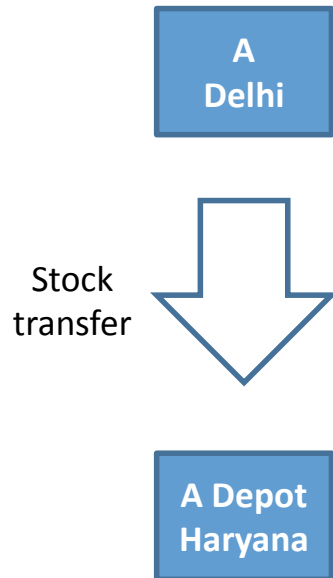
- CST to be applicable on such transactions i.e. on hire charges, provided the conditions for “Right to Use” are in compliance
- No clear cut guidelines available on “right to use”. Based on interpretation of various courts, effective possession and control of the goods should be transferred to the lessee for the transaction to be classified as chargeable to VAT / CST

Rate of tax depends on local rate of tax for the said item. ITC available on local purchases (Amendment in 2013 that entire ITC not available in year of purchase – same is available over 4 years)



Stock Transfer against F Forms

Stock Transfer – Concept



- Movement of goods from one state to another are not inter-state sale if the same is not pursuance of contract of sale. Basically, covers dispatch of goods to branch or consignment agent
- If ownership is transferred to the agent, the same will no longer be stock transfer i.e. would become amount of sale
- F-Forms required to be provided by the said branch or consignment agent **on monthly basis**
- No tax is leviable as property in goods does not pass to the branch / consignment agent at the time of transfer of such goods. Tax is payable in transferee state
- However, in Delhi, Stock transfer requires reversal of ITC claimed on such goods to the extent of 2%
- Intimation in respect of the branch to be provided to the department before undertaking the movement of goods

Stock Transfer – Concept

Key considerations

- Transfer from one state to another
- Consideration is payable on commission basis. Agent can recover his commission, godown charges, insurance, etc
- Relation is of principal & agent. Property / Ownership never pass on to the agent
- Risk is of Principal if the goods are not sold or found defective or gets damaged. For example – Agent liable to return the goods unsold
- Where transferee send back or return the goods, the transferor will again have to issue Form-F
- Liability of bad debts is also borne by the consignor, unless consignee expressly assumes such a liability
- Agent liable to return the remittance alongwith sale patti

Stock Transfer – Concept

Key considerations

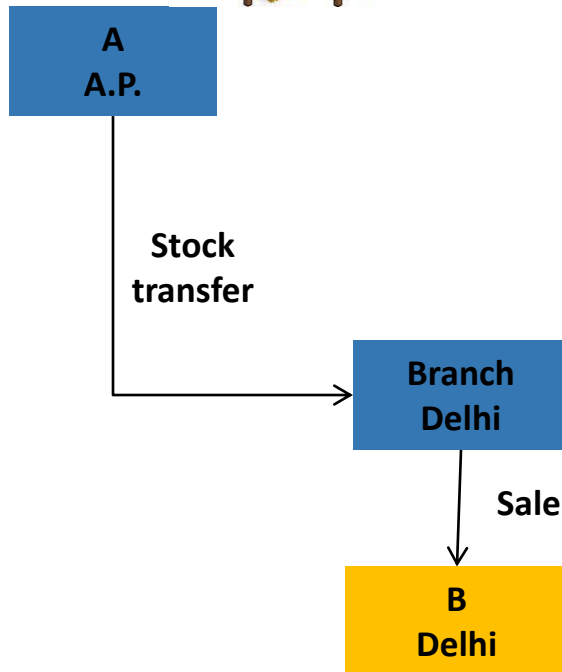
- Production of Form F with evidence of dispatch / GRs. Eventhough Form F is not a conclusive evidence, it still is a mandatory requirement . Non-furnishing of Form F will result in the transaction be classified as Inter-state sales [Form F had become mandatory w.e.f. 11.5.2002]
- Movement of goods shall not be in pursuance of any agreement to sale [Landmark decision by Supreme Court in the case of Hyderabad Engineering] – In such a case, the Stock transfer assumes the form of Inter-State sales transaction, even if the bill had been raised by the local branch
- Accordingly, where order is collected and transferred to HO in pursuance of order from the buyer, it will be Inter-state sales
- Goods need not be specified in RC of the transferee as no duty has been casted upon the dealer in Section 6A

Stock Transfer – Concept

Key Considerations

- Agent to be placing orders in the course of normal business and not on receipt of specific orders [For Expl - If movement of goods from Delhi to Haryana happens in case there is specific order received by the depot, the sale would become inter-state sales in terms of Section 3 as a pre-determined order resulted in movement of goods]
- In case delivery of goods is made by the principal directly to the ultimate buyer, the sale will no longer be “stock transfer” even when goods are accompanied by stock transfer note or F forms have been provided or Entry pass have been supplied to the principal by the concerned branch. Even mentioning of customer name on the cartons (at the time of dispatch of goods from Delhi) will take it out of the ambit of “stock transfer”
- Issue also arises where branch is not maintaining any stock and goods are sold as soon as the same are received.
- **Based on above, it is clear that there is thin line of distinction between stock transfer & Inter-state sales**

Supreme Court in Hyderabad Engineering



- ☉ A has manufacturing facility in Andhra Pradesh and a branch in Delhi.
- ☉ A entered into a 'Sales Agreement' with B in Delhi wherein A proposed to sell the goods on wholesale to B while B to further sell in retail. While B was granted the exclusive rights to sell A's products, distribution to other bulk buyers and government was retained by A. B places its monthly intents for supply of goods.
- ☉ Based on these, the supplies are made by A to its branch from where sales are made to B in Delhi. No Tax paid on transfer from AP to Delhi considering it as stock transfer
- ☉ However, Sales tax department had a different view and considered the same as Inter-state sales, subjecting the same to CST
- ☉ A, after not getting relief from lower authorities, filed an appeal before Supreme court

Supreme Court in Hyderabad Engineering



Section 3. 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

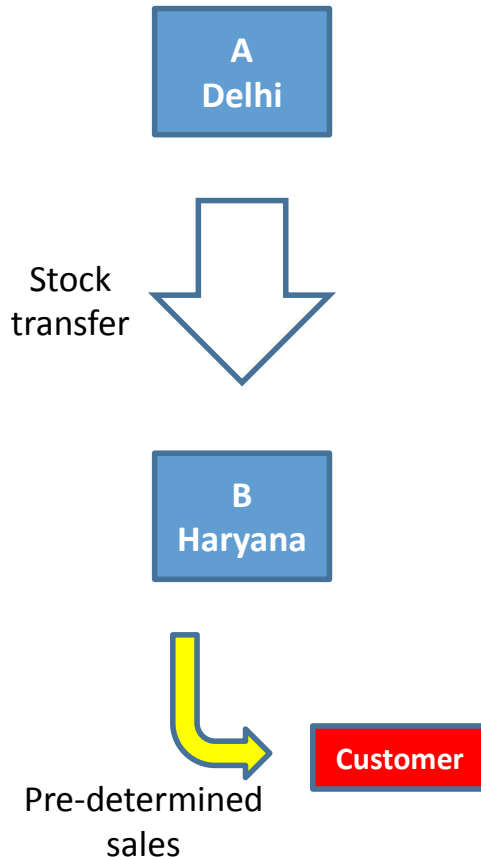
movement from one State to another.

Finally, the Supreme court concluded by observing that following scenarios are covered under “inter-state sales”

- “Sale” or “agreement to sell” occasions movement of goods from one state to another (irrespective of whether such movement has been provided in the agreement) or
- Order placed before HO or branch resulted in movement of goods from one state to another (irrespective of state where property in goods passes)

Thus, it is not necessary that sale must precede movement of goods or the fact of movement of goods is mentioned in the agreement [**Para 32**]

Other Key decisions



- Where goods were sold through branch, but buyer was known and identified before goods were dispatched from factory. Obviously this was held as inter state sales and not a stock transfer- **Electric Construction and Equipment Co. Ltd. V State of Haryana- (1990) 77STC 424 (P&H HC DB)**
- It was held that if there is a conceivable link between 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 will not alter the interstate character of the sale. **South India Viscose Ltd. v. State of Tamil nadu-(1981) 48 STC 232 (SC)= AIR 1981 SC1604** and **D Dhandapani y. State of Tarnilnadu-(1995) 96 STC 98(Mad HC DB)**

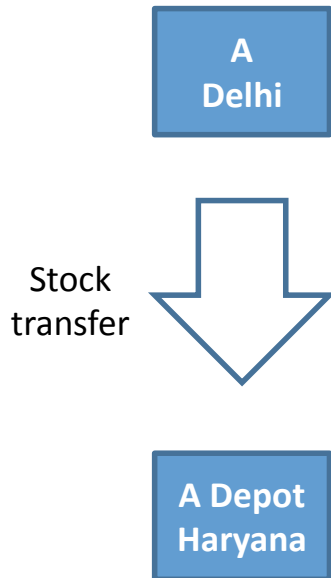
Stock Transfer – Key issues

Sr No	Provision	Deliberation
1	Whether F form is conclusive to provide that stock transfer had actually happened	<p>F form is not a conclusive evidence but it is conclusive after assessing officer passes an order</p> <p>In Assam Company (India) Ltd. y. CT, Assam (1997) 107 STC 154 (Gau HC DB), it was held that F form is not conclusive. Sales Tax Officer can make enquiry whether the declaration is true and can reject the F form, if the transaction is found not to be genuine.</p>
2	What shall happen on reversal of ITC, where the dealer is not maintaining the utilization of goods i.e. from Imports, local purchase or Central purchase?	<p>Reversal of ITC can be done on proportionate basis as there is no method prescribed for the same</p>
3	What records are required to be maintained for the purpose of stock transfer?	<p>In Delhi, transferor is required to maintain a register in Form-7, giving a complete and true account of all the transactions of transfer claimed as exempt from tax</p>

Stock Transfer – Key issues

Sr No	Provision	Deliberation
4	<p>Whether F Form required where goods sent on repair or job work?</p>	<p>Allahabad High court in Ambica Steels Ltd. vs State of UP (2008) 12 VST 216 (ALL HC DB) held that form F is required to be issued even if goods are sent outside for job work or repairs on returnable basis. Decision was upheld by Supreme Court</p> <p>However, the problem is that the relationship between the job worker and the owner of the goods is not of principal-agent but that of Principal to Principal. A pure Job work or repair work does not come under the ambit of tax as there is no transfer of property in goods and therefore he will not be required to get registered under CST Act or concerned State VAT Act.</p> <p>However, Delhi VAT department had issued a notification wherein it has been provided that all dealers involved in doing job work activities are required to seek registration if they conduct inter-state movement of the goods in doing such job work as and when their turnover exceeds the taxable quantum which is 'NIL'</p>

Information / documents can be asked by VATO

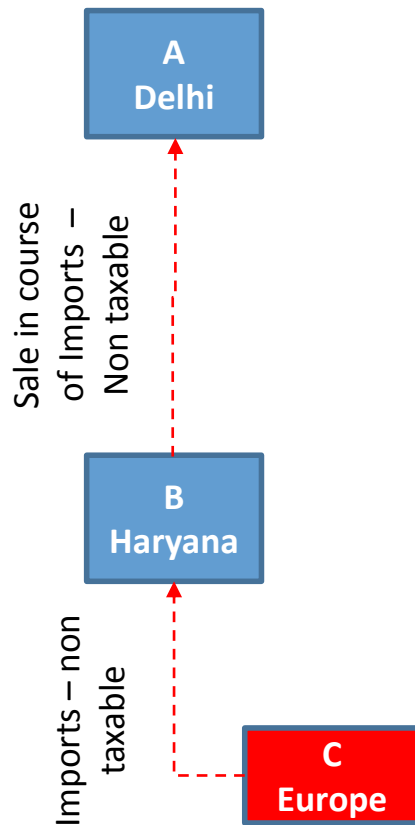


- Name and address of the agent
- Written contract
- Copies of the invoices issued by the agent to the buyers
- Sales Patti reflecting bill no, date, amount, name of the party, TIN No, gross turnover, deduction on account of expenses, deduction on account of expenses incurred & commission
- Copy of account of agent in the books of principal
- Copy of account of principal in the books of agent
- Date and mode of remittance

If the dealer had not been maintaining the requisite documentation to prove that the transactions are infact stock transfer, the exemption can be denied to the dealer even if Form F has been furnished

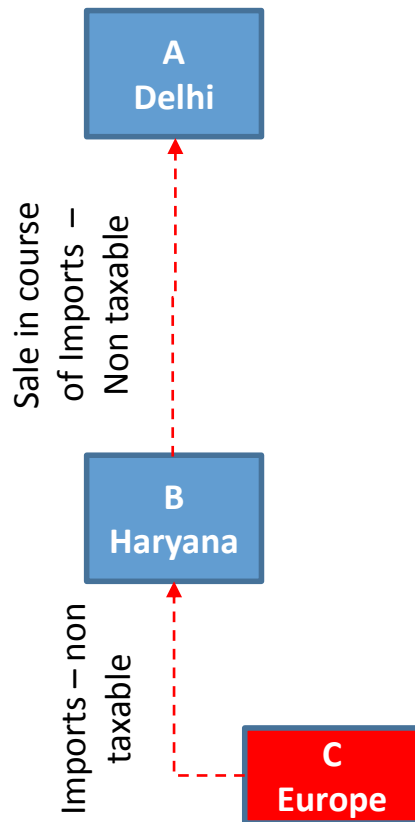
Import / “in the course of import”

Imports - Concept



- Under Sales in the course of imports, 2 types of transactions are covered
 - Sale by transfer of documents of title before the goods cross custom frontiers (even goods kept in custom bonded warehouse are considered to be not crossed custom frontiers) – Also known as High Sea Sales [An agreement with respect to such sales is relevant]
 - Sale / Purchase occasioning the Imports – Explained in subsequent slides
- In case of both the above type of transactions, no tax is applicable

Sale occasioning Imports - Concept

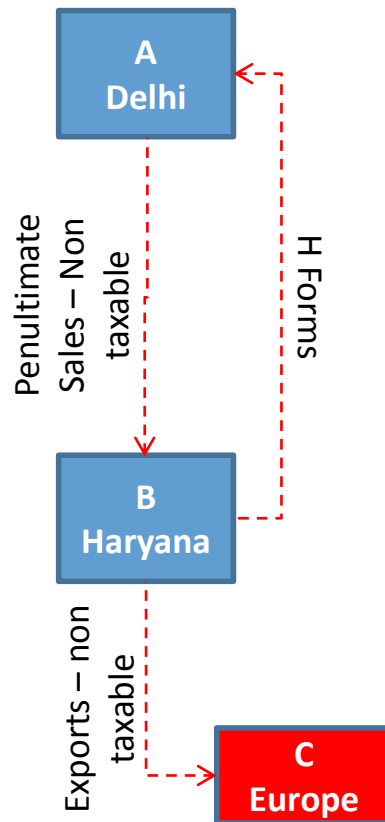


Following precautions to be taken in case of sales occasioning the imports

- The two sales, one between C & B, and the other between A & B, have to be inextricably connected. This means that exporter should also know the name of buyer and the latter's name be also mentioned on the face of invoice
- Advisable for B to enter into a contract or seek purchase order from the A prior to placing the order to C
- Name of A to be categorically mentioned on the Bill of lading
- If duty is being paid by the B, the same shall also be at the specific request / instructions of the actual buyer who shall separately reimburse the same to B.
- Goods shall not be utilized for sale to any other party in any circumstance (other than A).

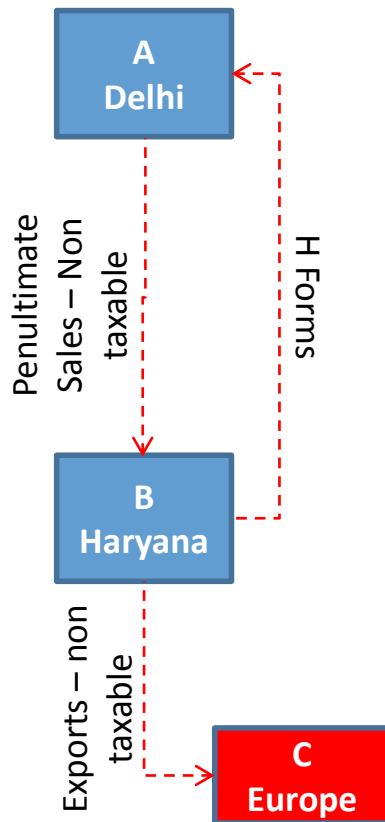
Exports / Penultimate Sale

Exports - Concept



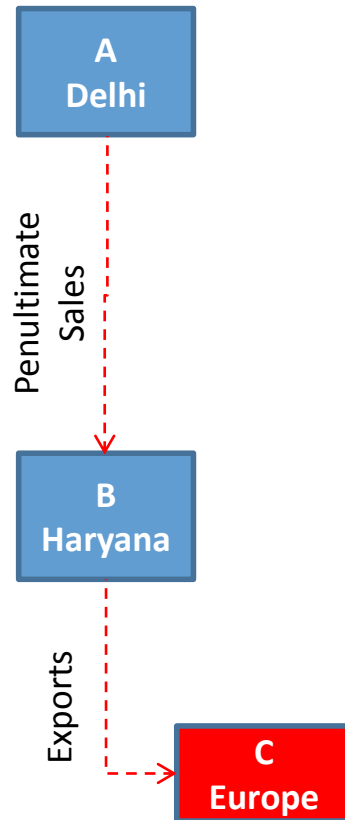
- Two types of transactions are covered under this head
 - Export Sales
 - Penultimate Sale u/s [i.e. one Sale before final Exports]
- No tax on both the above type of transactions
- While Export Sales is clear, Penultimate Sales is always being litigated. Same is being discussed in subsequent slides
- H forms to be provided by Buyer to the seller for the latter to submit to the department
- H forms to be issued / obtained on quarterly basis

Exports - Concept



- Goods in penultimate sales shall be “same” as finally exported. The words “those goods” in Section 5(3) of the CST Act are clearly provided which provides for the exemption.
- However, Supreme Court had provided for an exception in landmark case of “Azad Coach Builders (ACB)” discussed in subsequent slide
- Similar observations were placed by Delhi VAT Tribunal in the case of UKB Electronics Pvt Ltd
- Sale of packing material for purpose of export also covered in “penultimate sale”

Azad Coach Builders analysed



- ACB built and sold bus bodies for TELCO ('the exporter') in accordance with an export order for complete buses (including specifications of bus-bodies) placed on the exporter by a foreign buyer.
- As goods finally exported were not the same, the issue was whether it can be said to be "Penultimate Sales"?
- Supreme Court held as below
 - ✓ The test to be applied is, whether there is an in-severable link between the local sale or purchase on export and if it is clear that the local sale or purchase between the parties is inextricably linked with the export of the goods, then an exemption claim under Section 5(3) is justified
 - ✓ When the transaction between a local seller and an exporter and the transaction between the exporter and a foreign buyer are inextricably connected with each other, the 'same goods' theory has no application.

Thank You

In case of any clarifications, please contact us at

balwantraibansal@yahoo.co.in