



STOCK TRANSFER

(UNDER CST ACT, 1956)



CONSIGNMENT

- Consignment means transfer of goods by one dealer for the purpose of selling at the risk of sender on commission basis (even within the state*).

(*Havell's India Ltd. Vs The Commissioner of Vat & anrs. DHC dt.19-04-2010)



Legal Provisions of CST Act For Stock Transfer

- 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 agent or principal, as the case may be and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, along with the evidence of dispatch of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale.



Contd.

- If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration in the declaration furnished by the dealer under sub-section(1) are true, he may, at time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed for the purpose of this act to have been occasioned otherwise than as a result of sale.
- Explanation- In this section, “assessing authority”, in relation to dealer, means the authority for time being competent to assess the tax payable by the dealer under this Act.

What is transfer of goods by way of consignment ?



- The Honorable Supreme Court has levied the tests regarding transfer of goods in the case of Hafiz Din Mohd. Haji Abdullah vs. State of Maharashtra (1962) 13 STC 292 (SC)
 - 1) Determination of sales price of the goods transferred is with the transferor.
 - 2) Sales Consideration has to be remitted by the Transferee.
 - 3) Commission has to be paid against the labour / Services of the Transferee.
 - 4) Right of termination of the agreement is with the Transferor.



Branch Transfer

- Branch(s) means every office outside the State, where the dealer has its head office (i.e. Principal place of Business). Branch may be an office, merely for booking the orders in complete control of the head office or it may be an independent office, monitored by the head office. Even separate registration of branch in other State will not constitute their separate entity.
- Basic elements required for treating a transaction a complete sale in case of Branch Transfer
- 1) There must be two parties, who are competent to contract
- 2) There must be mutual assent
- 3) There must be transfer of property
- 4) Valuable consideration must exist.



Examples of Branch Transfer

- Manufacturing unit of the assessee in Maharashtra transfers goods to Punjab branch. Company was having one main buyer in Punjab who used to give orders to Punjab office, based upon his requirements. As the goods were transferred on regular basis/generally and not on the order of the main buyer, this is a case of **Branch Transfer**.

[Based on the decisions of Honorable Andhra Pradesh high Court in the cases of Gromor Chemicals (P) Ltd. Vs. State of A.P. (1990) 79 STC 42 (AP) ; State of A.P. vs. Coromandel Paint & Chemical Ltd. (1995) 98 STC 82 (AP)]

- The dealer transferred stock in bulk from one state to another state, but not in pursuance to a contract of sale. It was held as **Branch Transfer**.

[Based on the decision of Honorable Allahabad High Court in the case of CST vs. Modi Pon Ltd. (1995) 96 STC 394 (ALL)]



JOB WORK

- Furnishing of Form-F is mandatory for claiming exemption by a dealer for stock transfer from one state to another for the purposes otherwise than sale, It is immaterial whether the person to whom the goods are sent for or received is a **Job worker or bailee**. The requirement to file declaration in form F is applicable in case of goods returned also.



Constitutional Validity of Section 6A of CST Act

- 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).



Responsibility of the dealer as per section 6A(1)

- It is the responsibility of the dealer to prove that the movement of the goods is occasioned by the reason of transfer of such goods.
- The transferor dealer shall furnish declaration in form- F received from the transferee along with the evidence of dispatch.



IS SUBMISSION OF FORM- 'F' MANDATORY ?

- Yes, As per Section 6A(1) as amended w. e.f. 11th may 2002, submission of form-F is mandatory to prove Stock Transfer and in the absence of form-f, transactions shall be deemed as sales for all purposes of CST Act.

Exp.

A dealer from M.P. brings goods in Punjab for sale, gets registered as casual trader and pays tax in accordance with the provisions of Punjab VAT Act.

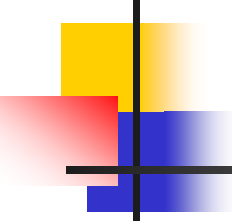
However to claim exemption under M.P. Act, he needs to furnish Form-F (to be issued by Punjab VAT department) to his M.P. assessing authority otherwise his transfer of goods from M.P. to Punjab will be taxed as interstate sales in M.P.



Is it essential to be registered under CST Act to get Form- 'F' ?

YES

There are no restrictions in getting the Form- F if dealer is not registered but there is no provision in Delhi for obtaining Form-F from the department without obtaining registration under CST Act in Delhi Therefore, practically form-F can only be issued to registered Dealers.



Requirement of form 'F' for job work in case of inter state transaction.

Yes

With effect from 10th November 2005 it is mandatory to file form-f for all the movement of goods of a state which have taken place otherwise than in pursuance of sales, as per Government letter no. 2452/eleven-2-2005-9(134)/2000 dated 10th Nov 2005 by Department of Trade & Taxes, U.P., because in section 6A of CST Act, it is mandatory to submit form F in all movements of goods from a state which have taken place otherwise than in pursuance of sale.



Is it necessary that the documents must be in writing?

No

The documents can be either oral or written. It will depend on the nature of transaction ,that is why form- f may be issued to the particular agreement may not be in writing, **however it is advisable to have the agreement in writing .**



Is FORM- F conclusive evident ?

NO

If other required documents are not maintained by the dealer as prescribed by the Rules of the respective state like in Delhi, Form no.7 of CST (Delhi) Rules 2005, the transaction shall be deemed as inter state sale and exemption can be denied.



What If form- F is Lost ?

If the form is lost, indemnity bond has to be given and duplicate form clearly marked as 'Duplicate' can be issued.



CAN GOODS PURCHASED ON THE STRENGTH OF FORM 'C' CAN BE TRANSFERRED AGAINST FORM 'F'?

- YES
- C form does not specify that the goods must be utilized in the same state ,but the goods must be used by the same entity. Therefore goods purchased on the strength of C form can be transferred against F form.



Is failure of submitting Form-F is a Taxable Event ?

- **YES**
- 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. Therefore, it will be a taxable event.



Is Form 'F' mandatory for **sales return** from outside the state?

- YES
- As per Ambica Steels Ltd. Decision of Honorable Supreme Court, Now it is mandatory



Can the Goods be sent in other State for further manufacturing ?

- **YES**

It is held in *Indian Aluminium Co. Ltd. v. STO* - (1993) 90 STC 410 (Ori HC DB), the company was manufacturing Aluminium Ingots at Hirakud, Orissa. These were despatched to plants of the company in other States for further manufacture of Aluminium coils, sheets etc. Plants in other States were sending 'F' forms. The department accepted the forms without any objection.



Difference between Consignment and Interstate sales

There is no contract of sale in case of consignment, whereas the contract of sales is must in case of interstate sales.

e.g.

Goods were dispatched through agent to buyer pursuant to a contract of sales which came into existence directly between the seller and the buyer, the transaction was held as an interstate sale and not a consignment sale.



Inter State Sales

- The respondent imported cement into India under an import license. The ships were berthed to port in Bengal, where it had opened its branch office well before arrival of the good. It took delivery of the cement at Bengal and transported it directly to various parties in Himachal Pardesh. However, sales were shown as if they were sales from its depots in Himachal Pardesh. The supreme court ,however held that as the sales tax authorities had recorded factual findings that the respondent had opened a branch office at Bengal well before the arrival of the ships; cement was unloaded during a period of 6 months ; the sale of cement from Bengal was directly made to the parties in Himachal Pardesh, and the transactions were camouflaged to show as if cement was being sent to the the warehouse of the respondent, the facts clearly indicate the transaction to be **inter- state sale** from the state of Bengal.

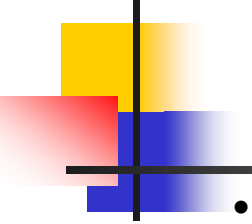
[As in the decision given by the Honorable Supreme Court in the case between State of Tamilnadu vs. Kerala State Small Ind. Dev & Emp. Corp. Ltd. (2001) 122 STC 608.]



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- The assessee was a manufacturer of air compressor having its principal office at Haryana and factory at Bihar. The Company at Haryana office received specific orders from customers and passed it to its Bihar branch, which in turn, on the basis of specifications, manufactured the goods and transferred it to Haryana office, which supplied it to the customers. Except manufacture of goods at the factory at Bihar, all other activities including that of booking of orders, sales, dispatching, billing, and receiving of sale price are being carried out from the head office in Haryana. The court however, held that it is an **Inter –State sale** from Bihar because movement of the goods from Bihar has caused in pursuance to an agreement and incidental to the contract of sale.

[As the Decision given by the Honorable Supreme Court in the case between U.O.I. vs. K.G. Khosla & Co. (1979) 43 STC 457 (SC).]

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- Coal India Ltd. Placed orders to the appellant stating that a fixed quantity to be supplied to collieries inside and outside the state. The managers of the collieries in various states had to place orders with the consignment agents of the appellant from its depot and purchase the goods through these agents. The transit insurance was to be borne by the collieries. The mode of dispatches was also mentioned. Excess supplies made, if any, were to be accepted to the extent of specified percent over the quantities against each item in respect of each area as indicated in schedules to the purchase order. The price was firm for the contract period but there was provision for its variation. The nature of indent and the modalities were agreed, the quantity of the goods to be supplied to various collieries at fixed price was firm, the insurance and freight was borne by Coal India and 98 percent of the payment was to be made by the collieries of Coal India.

[As in the decision given by the Honorable Supreme Court in the case I.D.L. Chemical vs. State of Orissa (2007) 10 VST 644(SC)]



Sale Price / Consideration For Branch Transfer

- The term sale price u/s 2(h) of CST Act refers to the amount payable to a dealer as CONSIDERATION for the sale of any goods, it may be market price, cost price or any other deemed consideration.
- There is no consideration payable incase of branch transferred and any such consideration to be taxed is yet to be settled by courts.



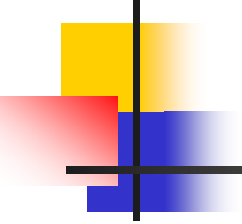
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- It was held by the supreme court that from the facts it was clear that this was purchase order issued by the apex body, coal India by fixing the price and the quantities to be purchased by its collieries. The whole movement of the goods from the factory at Roukema was triggered in pursuance of the particular order . There was no independent contract by the subsidiaries of coal India with the appellant. This was no transfer of stock in trade to various branches. The movement of the goods was triggered from Rourkela and they were essentially meant to be sold to the subsidiaries of coal India and the transaction amounted to **inter- state sale**.

Consignment and Branch Transfer



- All the movement from one state to another are not inter state sale, if goods are transferred from head office to its branch or by principal to its agent or vice-a-versa, these type of transactions are “transfers” or “consignment sales” but not the inter state sales because goods did not move from one state to another in pursuance of the contract of sale. However, if the ownership is transferred to the agent, it becomes the transaction of sale instead of transfer.

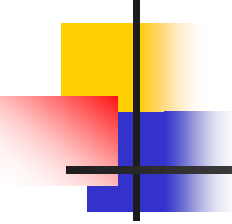
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- It was held by the Honorable Supreme Court in the case of Bhopal Sugars Industries Ltd vs. STO, (1977) 40 STC 42 (SC), the terms of the agreement, intention of the parties and dealings between them will determine the nature of transaction whether the transaction is a ***sale*** or ***transfer to an agent***.



Use of Form –F for transfer of Stock for execution of Work Contract

The dealer can transfer goods against form f from one state to another where he is having his other office if the dealer is executing work contract

e.g. the dealer transferred goods from Delhi against form f to its branch in Punjab for the purpose of using them for work contract of installing electrical wires. hence the exemption is allowed under section 6A of CST Act.

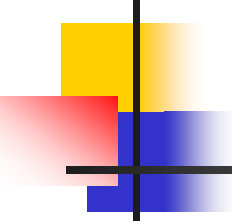


EFFECT OF HYDERABAD ENGG.(SC) CIVIL APPEAL NO. 3781 OF 2003

- The SC held that following cases are covered under “inter-state sales” (Para-32)

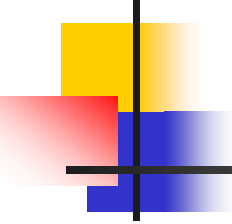
“Sale” or “agreement to sell” occasions movement of goods from one state to another (irrespective of whether such movement has been provided in the agreement)

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)



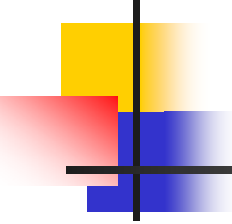
EFFECT OF HYDERABAD ENGG.(SC) CIVIL APPEAL NO. 3781 OF 2003

- Thus, it is not necessary that sale must precede movement of goods or the fact of movement of goods is mentioned in the agreement
- Meaning thereby even an agreement to sell may also now result in classification of such stock transfers as “inter-state sales” and not “branch transfer” which resulted in movement of goods from one state to another **(even before the date of sales)**



EFFECT OF HYDERABAD ENGG.(SC) CIVIL APPEAL NO. 3781 OF 2003

- Where there is a positive case of inter-state sales, even if the dealer had procured F - Form, the declaration form would be of no avail. (Para -18)
- That either of the branch or head office can bill or collect the payment. It does not change the character of the transaction.(Para-31)



EFFECT OF HYDERABAD ENGG.(SC) CIVIL APPEAL NO. 3781 OF 2003

- **HAVING ADVERSE EFFECT ON THE DEALERS**
- Where after transfers made to branch, the goods are sold to very few particular dealers.
- Stock balance generally remains ZERO
- Direct nexus between stock transfer and sale of goods



Thank You

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