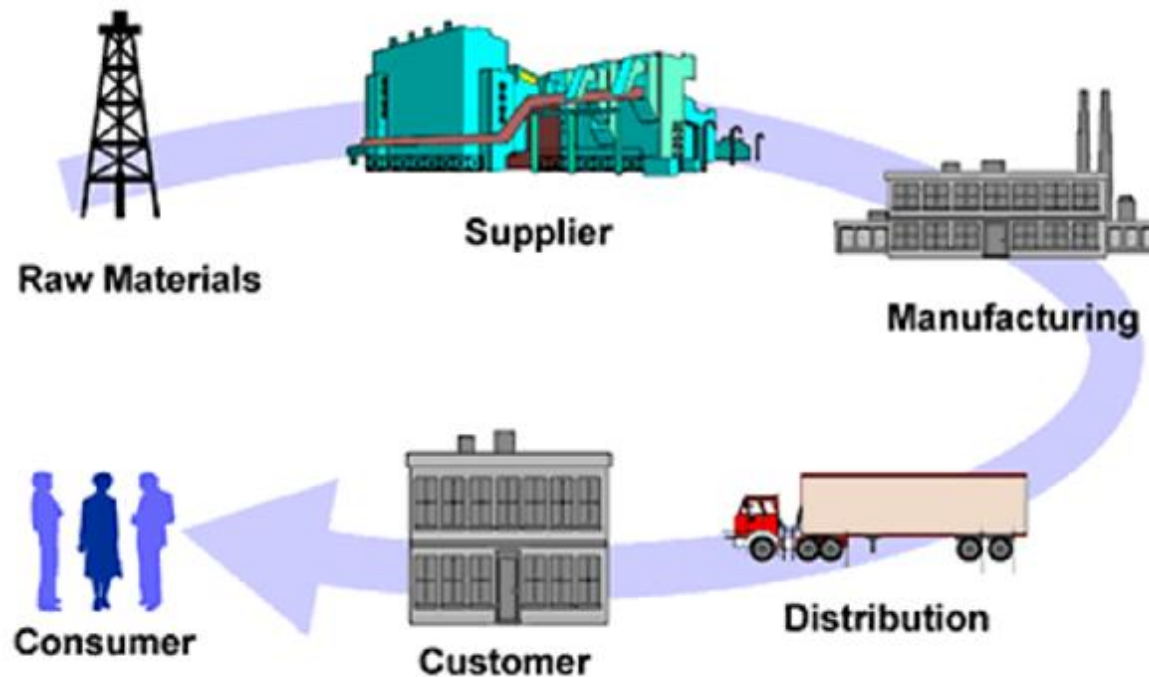


VAT implications on Intra State Stock Transfer – Life after Delhi High court decision in Havell's & ITC



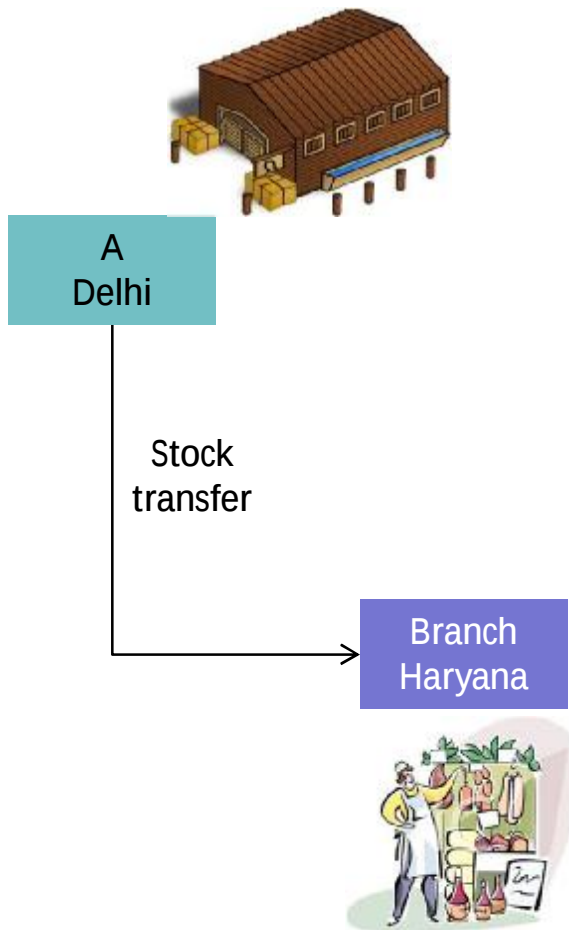
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Background



- Ū Stock transfers to a branch or consignee have been the norms of trade in both pre and post VAT regime. Further, Stock Transfer can be both inter-state and intra-state.
- Ū Various businesses contemplate options of selling the goods to another dealer or opening up a branch in another state, sending the goods on stock transfer and then selling from that branch
- Ū We have evaluated various options being undertaken by corporates and the impact / implications of same under VAT regime in view of judicial pronouncements and legislative enactments have been provided below.

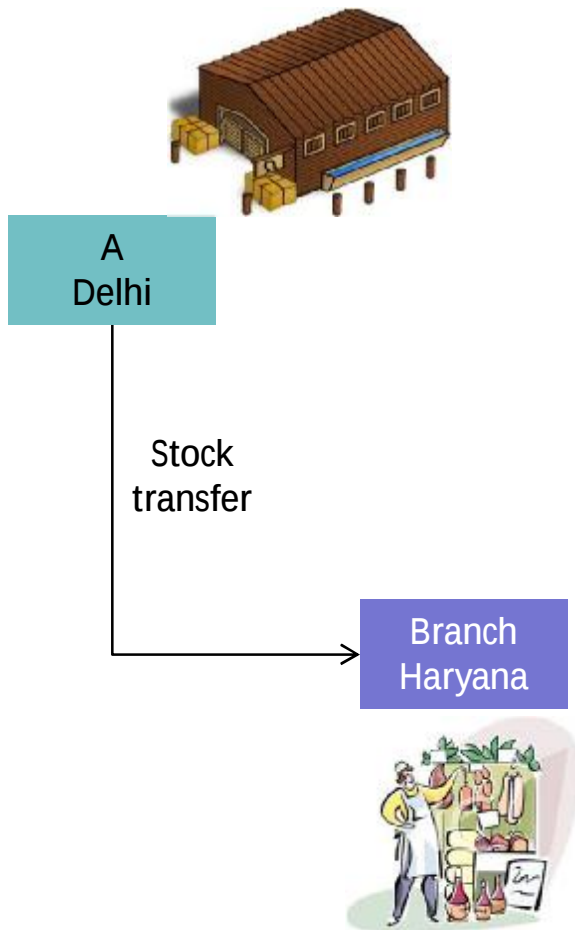
Scenario 1 – Stock transfer to another state



Mechanism / Implications

- û Inter-state sales are covered by Central Sales Tax Act 1956
- û Present rate of CST is 2% of the consideration on sale of goods
- û In stock/branch transfer, goods move from one State to another, but there is no 'sale'. Goods are sent to branch or depot or consignment agent in other State. Stock transfer/branch transfer is not subject to tax since there is no 'sale'.
- û Form F is required to be submitted to establish stock transfer.

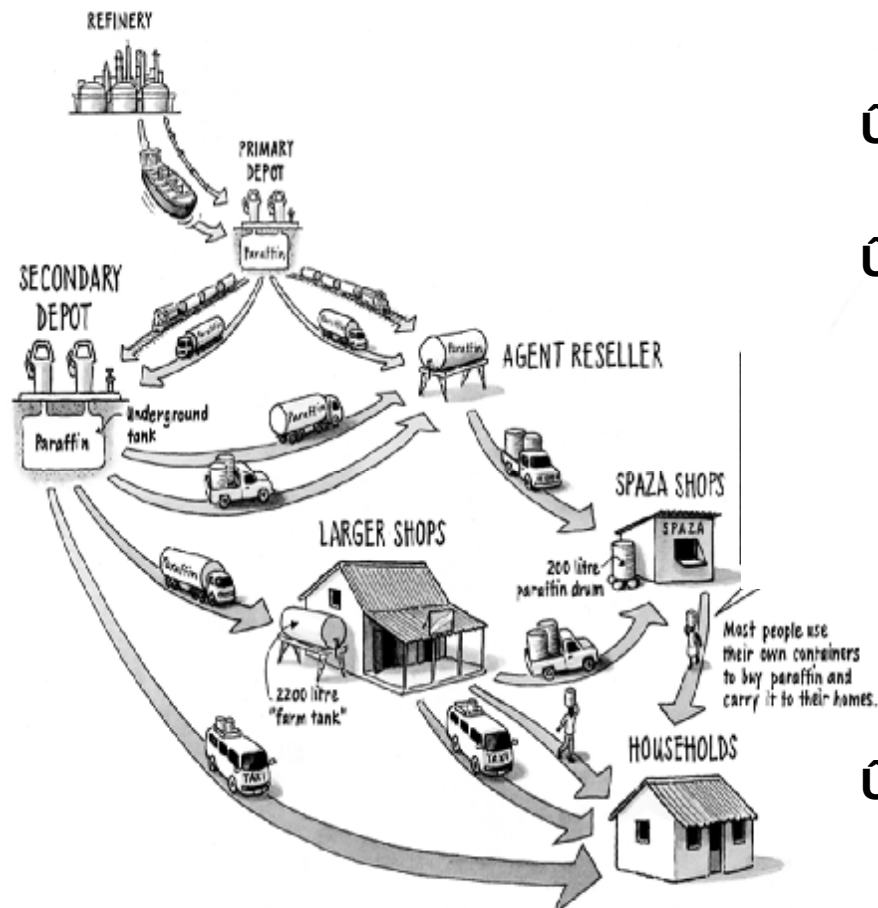
Scenario 1 – Stock transfer to another state



Risk Areas

- ⌚ However, if buyer is identifiable before goods are dispatched, it is 'Inter State' sale and not a 'stock transfer'. Thus, a branch supplying to only one dealer could be subject to detailed scrutiny by VAT authorities
- ⌚ Another problem is that State VAT laws require reversal of input tax credit on purchases if such goods are stock transferred – thus there is no impact only when goods have been imported or purchased from another state (in which case there is no Input tax credit)

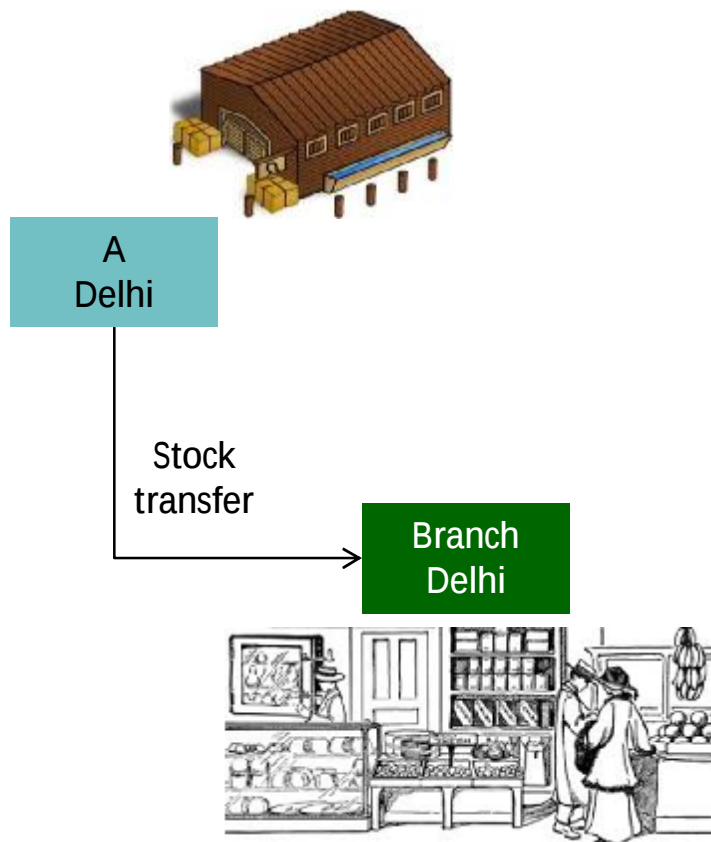
Scenario 2 – Stock transfer within state



Possible Scenarios

- Ø Intra-state sales / transfer of goods are covered by local VAT
- Ø Under this 2 scenarios are possible –
 - § one is when goods are transferred by a dealer to its own branch which is its additional place of business
 - § Second is when goods are transferred to another dealer which will act as consignor and would be selling goods for a commission
- Ø Both cases have been discussed in subsequent slides

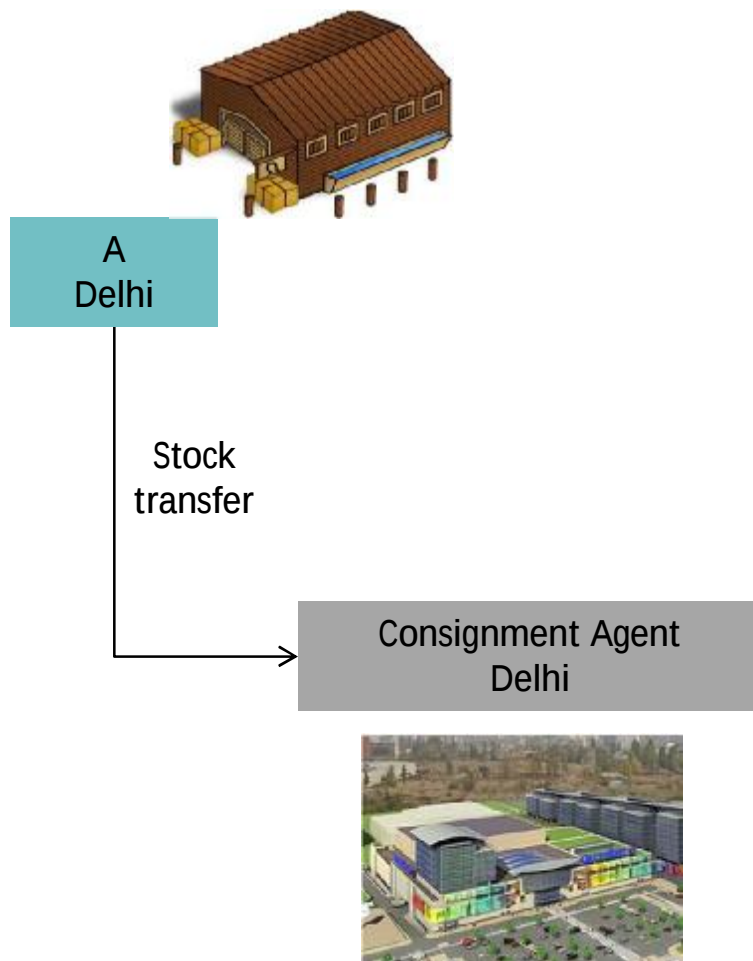
Scenario 2.1 – Stock transfer within state to branch



Mechanism / Implications

- Ū Where goods are transferred by a dealer to its own branch which is its additional place of business, there is no VAT implications
- Ū Dealer to submit consolidated return – VAT credit on purchases (by HO) to be taken and adjusted against output tax liability (at branch level)
- Ū Notification No. F.4(3)/P-II/VAT/2005/1158 dated 2.12.2005 issued by Commissioner of VAT has supported the above contention

Scenario 2.2 – Stock transfer within state to consignment agent



Mechanism / Implications

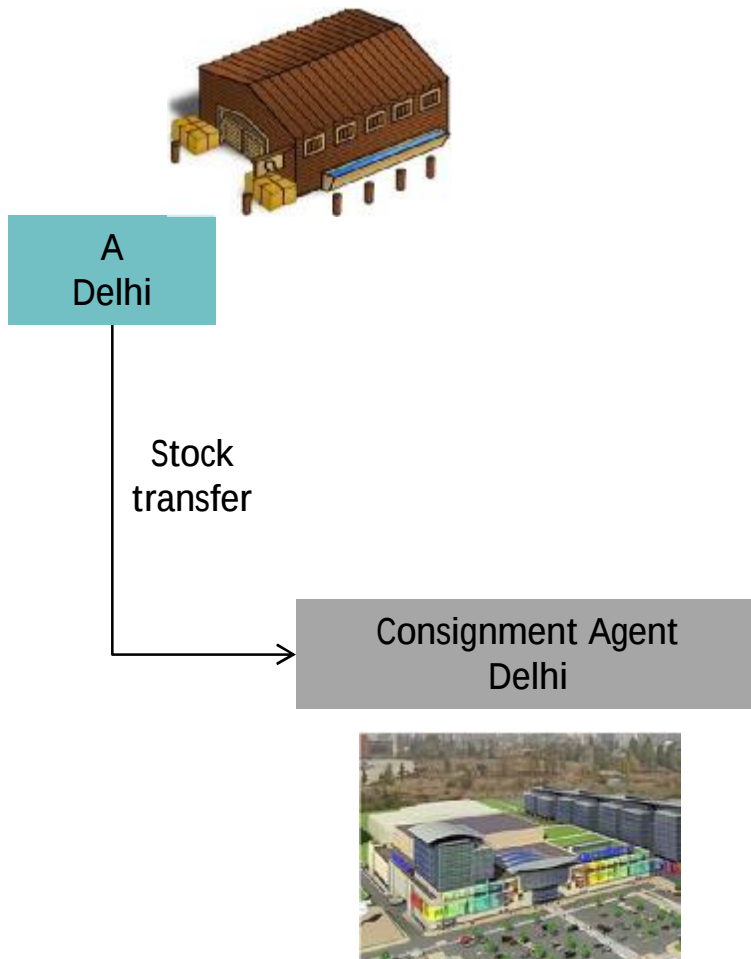
- Ū When goods are transferred to another dealer which will act as consignor and would be selling goods for a commission, there were possible VAT implications in view of following:
 - § Notification No. F.4(3)/P-II/VAT/2005/1158 dated 2.12.2005 issued by Commissioner has supported the contention that VAT is applicable on transfer from dealer to consignor
 - § Even VAT Appellate Tribunal upheld the above notification in the case of “Havell’s India limited” and “ITC Limited”
 - § But the case moved before Delhi high court

Scenario 2.2 – Stock transfer within state to consignment agent

Delhi High court decision - Analysis

- û An appeal was filed by ITC (WP 5430/2008) and Havell's (ST Appl 3/2008 to 7/2008) wherein Delhi High court gave a contrary view as that of Tribunal and accepted dealer's contentions.
- û The Delhi High court observed as follows
 - § The transaction between the Principal and Consignment Agent does not constitute "sale" within the meaning of Section 2(zc) of the Act unless it is coupled with transfer of property in the goods from the Principal to the Consignment Agent.
 - § Hence, it was not open to department to demand VAT unless either the property in the goods supplied by the dealer to its Consignment Agents or the transaction between the parties amounted to sale within the meaning of some other provision of the Act.
- û Thus, the Notification of VAT commissioner was quashed by Delhi high court vide its order dated April 19th, 2010

Scenario 2.2 – Stock transfer within state to consignment agent



Risk Areas

- Ū Even after the said decision, though the tax may not be chargeable on stock transfer from a dealer to another if that is on consignment basis, the decision failed to provide its inputs on the mechanics of the transactions after the order
- Ū Though dealer transferring stock may claim input tax, consignee dealer would be chargeable to output tax. Thus, one dealer may have input credit being piled up, selling dealer (i.e. consignee) would be required to discharge the whole of output tax liability

Whom the decision would impact?

Retail Industry in India – bears the major impact from VAT / GST

- Ū The BMI India Retail Report for the first-quarter of 2011 forecasts that total retail sales will grow from US\$ 392.63 billion in 2011 to US\$ 674.37 billion by 2014.
- Ū Strong underlying economic growth, population expansion, the increasing wealth of individuals and the rapid construction of organised retail infrastructure are key factors behind the forecast growth.
- Ū Retail giants would need to gear up with the changes that would be proposed by GST and would need alteration of their supply chains



Goods & Service Tax – What to Expect



GST – What lies ahead is a big question mark

- û Goods & Service Tax (“GST”), which has been heralded as the next generation of reforms in the area of Indian Indirect taxes is going to be reality sooner than later
- û GST proposes to replace VAT at state level and excise and service taxes at the national level, besides a host of local levies.
- û Presently First Discussion Paper is silent on the mechanism of stock transfer. However, an efficient provision for branch transfer / stock transfer should be put in place under the GST regime so as to ensure maximum compliance and minimise disputes.
- û Given the intent of government, it seems that tax may be required to be paid on stock / consignment transfer (as the credit needs to be transferred to the consumption state, as against the destination state at present)

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Thank You

