
SALE OR PURCHASE AGAINST H- FORM: CST ACT 1956



EFFECT ON PENULTIMATE SALES: FEEL THE GIST

Restriction by Constitution of India & CST Act 1956 on imposition of Tax on sale of goods in course of import or Export:

Tax by State Governments on sales or purchase of goods made during the course of import or export of such goods is prohibited by article 286(1) (b) of the Constitution of India. Section 6(1) of CST Act also levies tax on interstate sales hence there is no CST liability on the sale is the course of import or export of goods. Thus neither the State Government can impose tax/vat on sales of goods in the course of import or export nor CST Act 1956 imposes any tax on such sales.

Direct & Indirect Export: Effect of the word “in the course of”

The word Export sales means direct exports i.e. direct selling of goods out of India. The word Export sales has not been used in the CST Act 1956 but the word sales in the course of exports has been used which is a wider term and includes not only direct export but also sales by transfer of documents after goods cross customs frontier and the Penultimate sale for export and export with the help of agent. Thus even indirect export could also be sales in the course of exports.

Concept of PENULTIMATE Export

As per section 5(3) of CST Act last sales or purchase of goods preceding the sales or purchase occasioning the export of those goods out of territory of India shall also be deemed to be in the course of export, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

Take Exemptions: After Fulfilling Conditions!!

Let's know what the conditions for exemption to penultimate export...

As per section 5(3) of CST Act, before claiming exemption for penultimate export, it is necessary that the final exporter should be in possession of export order from the foreign buyer and should take delivery of goods from the penultimate seller solely for the purpose of execution of such export order and should export the same goods.

Review the conditions avail the exemptions!!!

Conditions:

1. The sales must be for the purpose of complying with agreement or order in relation to export, **and**
2. Such sale is made after the agreement or order in relation to export, **and**
3. Same goods which are sold in penultimate sale should be exported.

Better to focus.....

- **Same goods must be sold:** It is very necessary to claim exemption for penultimate export that the goods sold by the exporter must be the same as have been acquired by him from his penultimate supplier. For example if a person sells raw material to an exporter and the exporter manufactures some goods out of that raw material then exports such goods, in such case the sale of raw material to exporter will not be treated as penultimate sale and no exemption will be available on such sale of raw material to the exporter.
- **Sale of Packing Material for the purpose of export is also a penultimate sale:** Exporters also tend to purchase the packing material which are to be used for packing of the goods to be exported. Such sales of packing material to the exporter is also a penultimate sales and is liable for exemption u/s 5(3) of CST Act.
 - **Case Law :** In State of AP v. Standard Packing's-(1995) 96 STC 151(AP HC DB) it was held that if gunny bags purchased are used as containers for export of certain goods to a foreign country, it is deemed as export sale as per section 5(3) . The last purchase preceding the sale occasioning export should be for complying with an export order. In this case, the gunny bags purchased were for complying with export order and hence are eligible for exemption u/s 5(3).

Concept of H-form: Get them issued to clear the hassle!!

- ❖ Section 5(4) of CST Act provides that "The provisions of sub-section (3) [section 5(3)] shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority."
- ❖ This prescribed form is H form and is mandatory and prescribed in Rule 12(10)(a) CST Rules 1957 .The exporter issues H form to the penultimate exporter i.e. from whom the exporter has obtained the goods to be exported. The person exporting the goods will always be having proof of export like Bill of lading/Airway bill, custom clearance certificate etc., with him to claim exemption in respect of

goods exported but the penultimate seller may not possess all these documents. Hence the exporter issues H form to the penultimate seller declaring therein that the goods procured from him have been exported.

- ❖ **Periodicity:** *Where C forms are required to be issued for transactions covering 3 months (quarter) in a year and F forms are to be issued monthly. But it is nowhere mentioned in the CST (R&T) Rules clearly about the periodicity of H forms.*
- *However Rule 12(10)(b) provides “The provisions of the rules framed by the respective State Governments under sub-section (3), (4) and (5) of Section 13 relating to the authority from whom and the conditions subject to which any form of certificate in Form H may be obtained, the manner in which such form shall be kept in custody and records relating thereto maintained and the manner in which any such forms may be used and any such certificate may be furnished in so far as they apply to declaration in form C prescribed under these rules shall mutatis mutandis apply to certificate in form H.”*
- *Section 13(4)(e) of CST Act provides that State Government may make rules regarding the authority from whom, the conditions subject to which and the fees subject to payment of which any form or certificate prescribed under clause (a) of the first proviso to sub-section (2) of section 6(E-I and E-II forms) or of declaration prescribed under sub-section (1) of section 6A(F forms) or sub-section (4) of section 8(C forms) may be obtained, the manner in which such forms shall be kept in custody and records relating thereto maintained and the manner in which any such form may be used and any such certificate or declaration may be furnished*
- *Thus it is clear from the wording of above rule 12(10) (b) that any rule made by State Governments under section 13(3), 13(4), 13(5) in respect of C forms relating to authority from whom form to be obtained, conditions, manner of custody of such form, manner of furnishing forms and the use of such forms, shall also apply to H forms.*

“EXPORT THE GOODS NOT THE TAXES”

