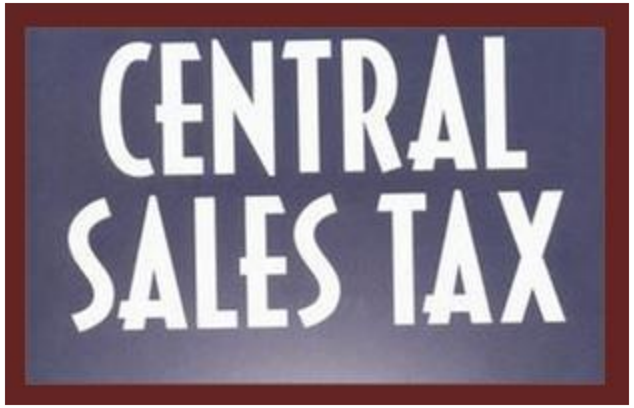
Law relating to Sales Tax for Construction sector



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State List – List II of Schedule VII of Article 246

Extracts:

51. Duties of excise on the following goods manufactured or produced in the State and countervailing duties at the same or lower rates on similar goods manufactured or produced elsewhere in India:-

    (a) alcoholic liquors for human consumption;

    (b) opium, Indian hemp and other narcotic drugs and narcotics,

    but not including medicinal and toilet preparations containing alcohol or any substance included in sub-paragraph (b) of this entry.

54. Taxes on the sale or purchase of goods other than newspapers, subject to the provisions of entry 92A of List – I.

60. Taxes on professions, trades, callings and employments

63. Rates of stamp duty in respect of documents other than those specified in the provisions of List I with regard to rates of stamp duty.

Sales Tax on Works Contract

Initially, when the sales tax on civil works contract was sought to be levied, there was stiff resistance from the industry on the ground that no sale element is involved in the civil works contract but only service element is involved.

The **Supreme Court** in the case of *State of Madras v. Gannon Dunkerley & Co.* held that in an indivisible works contract, there is no sale of good as there could be no agreement to sell materials as such and the property does not pass as movables.

In order to empower the State Legislature specifically to levy sales tax on works contract, the 46th Constitutional Amendment was bought about in 1982 by inserting clause (29A) in the Article 366 of the Constitution with effect from 2-2-1983.

By virtue of this constitutional amendment, transfer of property in goods involved in execution of a works contract was deemed akin to sale or purchase of goods.

In pursuance of 46th Constitutional amendment, consequential amendments were made in the State Sales Tax Acts in order to levy sales tax on the transfer of goods involved in the execution of works contract.

WORKS CONTRACT AND SALES TAX – BACKGROUND

Prior to 3-2-1983, i.e., the date when 46th Constitutional Amendment Act, 1982 was passed, transactions in the nature of works contract were not chargeable to sales tax.

Because in earlier times the State Legislature was not empowered to levy sales tax on transfer of property in goods involved in the execution of works contract. Thus works contract was not included within the meaning of 'sale' as defined under the State sales tax laws.

<u>In case of works contract, the transfer of property can be said to have taken place only on completion of the contract. But at that time, the goods used in the completion of the contract become part of an immovable property</u>.

The sales tax legislation as it stood at that point of time did not permit bifurcation of an indivisible contract into contract of rendering of service and contract of supply of material. The first authority on this proposition was the Supreme Court judgment in *Gannon Dunkerley and Co. (1958)* wherein it was observed:

"We are concerned here with a building contract, and in the case of such a contract, the theory that it can be broken up into its component parts and as regards one of them it can be said that there is a sale must fail on both the grounds that there is no agreement to sell materials as such, and that property in them does not pass as movables".

The 46th Constitutional Amendment

The Supreme Court held in building contracts there is no agreement to sell materials as such and that property in them does not pass as movables. It was also observed that a building contract is entire and indivisible which cannot be bifurcated by the provincial Legislature to impose a tax on the supply of the material used in such a contract treating it as a sale.

Entry 54 of List II of Schedule VII of the Constitution empowers the State Legislature to impose taxes on the sale or purchase of goods other than newspaper, subject to the provisions of Entry 92A of List I. However, prior to 3-2-1982, works contract was not included within the meaning "tax on the sale or purchase of goods".

In pursuance of recommendations of Law Commission and in order to nullify the judgment of Supreme Court in Gannon Dunkerley & Co., Clause (29A) was introduced in article 366 of the Constitution through the 46th Constitutional Amendment.

Clause 29A of Article 366 of Constitution Of India

In this Constitution, unless the context otherwise requires, the following expressions have the meanings hereby respectively assigned to them, that is to say

(29A) tax on the sale or purchase of goods includes

a) a tax on the transfer, otherwise than in pursuance of a contact, of property in any goods for cash, deferred payment or other valuable consideration;

b) a tax on the transfer of property in goods (whether as goods or in some other form) invoked in the execution of a works contract;

c) a tax on the delivery of goods on hire purchase or any system of payment by installments;

d) a tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

e) a tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

f) a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made;

46TH AMENDMENT IS CONSTITUTIONALLY VALID

The Supreme Court in *Builders Association of India v. Union of India (1989)*, upheld the constitutional validity of 46th Amendment of the Constitution. The Supreme Court observed:

"After 46th amendment, it has become possible for the States to levy sales tax on the value of goods involved in the works contract in the same way in which the sales tax was leviable on the price of the goods and materials supplied in a building contract which had been entered in two distinct and separate parts as stated above.

It could not have been the contention of the revenue prior to the 46th amendment that when the goods and materials had been supplied under a distinct and separate contract by the contractor for the purpose of construction of a building, the transfer of property in the material supplied in the execution of contract should be considered as sale.

If the power to tax a sale in an ordinary sense is subject to certain conditions and restrictions imposed by the constitution, then the power to tax a transaction which is deemed to be a sale in an ordinary sense is subject to certain conditions and restrictions imposed by the Constitution, then the power to tax a transaction which is deemed to be a sale under Article 366(29A) of the Constitution should also be subject to the same restrictions and conditions.

There should not be any hesitation in giving full effect to it."

Principle of Dominant Intention

After 46th Constitutional amendment, the taxability of transfer of property in goods involved in the works contract was no longer in dispute. But disputes arose with regard to ascertaining as to what would constitute a works contract. The Supreme Court in *Rainbow Colour Lab v. State of Madhya Pradesh (2000),* enunciated the **principle of dominant intention**. It was held that there must be an dominant intention to effect the transfer of property in goods in order to cover a transaction within the purview of article 366(29A)(b). The Supreme Court, thus held that if the passing of the property in goods is only incidental to the contract, the transaction is not a deemed sale.

The Supreme Court observed:

"………………. all that has happened in law after the 46th amendment and the judgment of this Court in Builder's case (1989), is that it is now open to the States to divide a works contract into two separate contracts by a legal fiction (i) contract of sale of goods involved in the said works contract, and (ii) for supply of labour and service. This division of contract under the amended law can be only if the works contract involved a dominant intention to transfer the property in goods and not in the contracts where the transfer in property takes place as an incident of contract of service.

Principle of Dominant Intention

The amendment, referred to above, has not empowered the State to indulge in microscopic division of contracts involving the value of materials used incidentally in such contracts.

What is pertinent to ascertain in this connection is what was the dominant intention of the contract. State is not empowered by the amended law to impose sales tax on such incidental materials used in such contracts.

The Supreme Court finally held:

"Thus, it is clear that unless there is sale and purchase of goods, either in fact or deemed, and which sale is primarily intended or not incidental to the contract, the State cannot impose sales tax on a works contract simpliciter in the guise of the expanded definition found in article 366(29A)(b) read with section 2(n) of the State Act. On facts as we have noticed that the work done by a photographer which, as held by this court in Kame's case (1977), is only in the nature of service contract not involving any sale of goods, we are of the opinion that stand taken by the respondent State cannot be sustained."

Principle of Dominant Intention

However, in *Associated Cement Co. Ltd. (SC)(2001)* case, a three-Judges Bench of the Supreme Court negatived the principle of dominant intention. The Supreme Court held that even if the dominant intention of the works contract is the rendering of services which amount to works contract, after the 46th amendment, the State would now be empowered to levy sales tax on the material used in such contract.

The Supreme Court observed:

"The 46th amendment was made precisely with a view to empower the State to bifurcate the contract and to levy sales tax on the value of the material involved in the execution of the works contract, notwithstanding that the value may represent a small percentage of the amount paid for the execution of the works contract. Even if the dominant intention of the contract is rendering of a service which will amount to a works contract, after the 46th amendment the state would now be empowered to levy sales tax on the material used in such contract. The conclusion arrived at in *Rainbow Colour Lab case (2000) (SC)*, in our opinion, runs counter to the expressed opinion contained in Article 366(29A) as also of the Constitution Bench Decision of this court in *Builders' Association of India v. Union of India (1989) (SCC)*.

Contract for works v. Contract for sale

A contract for work is a transaction wherein the goods or material is supplied to a works contractor for the working upon them. The supplier of material has absolute control over the material of goods. The works contractor works upon the material according to the instruction of the supplier. Whereas in a contract of sale, the entire goods or material belong to the seller and he, though works upon the material in accordance with the instructions of the purchaser, the property in goods vests with the seller before the sale of goods.

The Supreme Court in *State of Tamil Nadu v. Anandam Viswanathan (1989)* observed:

"The primary difference between a contract for work or service and a contract for sale is that in the former there is in the person performing or rendering service no property in the thing produced as it whole, notwithstanding that a part or even the whole of the material used by him may have been his property. Whether the finished product supplied to a particular customer is not a commercial commodity in the sense that it cannot be sold in the market to any other person, the transaction is only works contract."

In *Sunder Printing Press v. CST (SC)(1989)*, the assessee received orders for supply of cardboard with specified printing thereon. The Supreme Court observed:

"There is no dispute that the cardboard boxes supplied by the assessee to the customers after printing can be used only by the customer and by no one else and that is not a commercial or marketable commodity. The printing on cardboard boxes is admittedly, in the nature of advertisement of the Company and that could be used only by the Company, namely Modi Thread. The cardboard boxes were purchased by the assessee itself and then printing was done by the assessee. Lump sum money was paid to the assessee by the Purchaser.

CONTRACT FOR WORKS V. CONTRACT FOR SALE

The submission of the revenue is that the standing orders are placed by the Purchaser Company on the assessee and then the latter goes on printing cardboard boxes and they are supplied to the purchasers as and when they are required. On these facts, the revenue submits that the supply of cardboard boxes is under the contract of sale and not under the works contract. I do not see any substance in the submission of the revenue as on the facts of the instant case, the decision of the Supreme Court is squarely applicable. In the cardboard boxes printed by the assessee, property in the boxes produced as a whole remained in the purchaser and not in the assessee. The purchase of cardboard boxes which are printed by the asessee is merely an incident to the works contract. For the reasons, <u>contention of the assessee that the supply of the boxes is not taxable is accepted</u>."

In *Hindustan Shipyard Ltd. v. State of A.P. (SC)(2000)*, the Supreme Court evolved the principles for distinguishing between a contract of sale and a works contract. It was observed:

"The <u>distinction between a contract of sale and a works contract is not free from difficulty and has been subject matter of several judicial decisions</u>. No straight jacket formula can be made available nor can such quick-witted tests devised as would be infallible. Its all a question of determining the intention of the parties by culling out the same on an overall reading of the several terms and conditions of a contract.

Principles for distinction between Contract for Works & Contract for sale

The principles deductible from the several decided cases may be summed up as under:

(1) It is difficult to lay down any rule or inflexible rule applicable alike to all transactions so as to distinguish between a contract for sale and a contract for work and labour.

(2) Transfer of property of goods for a price is the linchpin of the definition of "sale". Whether a particular contract is one of sale of goods or for a work and labour depends upon the main objects of the parties found out from an overview of the terms of the contract, the circumstances of the transactions and the custom of the trade. It is the substance of the contract documents and not merely the form, which has to be looked into. *The Court may form an opinion that the contract is one whose main object is transfer of the property in a chattel as a chattel to the buyer, though some work may be required to be done under the contract as ancillary or incidental to the sale, then it is a sale. If the primary object of the contract is the carrying out of the work by bestowal of the labour and services and materials are incidentally used in the execution of such work then the contract is one for work and labour.*

(3) If the thing to be delivered has any individual existence before the delivery as the sole property of the party who is to deliver it, then it is a sale

(4)The bulk of material used in construction belongs to the manufacturer who sells the end-product for a price, then it is a strong pointer to a conclusion that the contract is in substance one for the sale of goods and not one for the work and labour.

Works Contract Vis-à-vis Specific Activities

Installation and Commissioning of Elevators and lifts

In State of *Andhra Pradesh v. Kone Elevators (India) Ltd. (SC)(2005)*, it was held that manufacture, supply, installation amd commissioning of elevators and lifts constitute a sale and not a works contract. The Supreme Court observed:

"On a careful study of the aforestated clause in the delivery schedule, it is clear that the customer was required to do the actual work at site for the installation of lift. On reading the above clause, it may be observed that the entire onus of preparation and making ready of the site for installation of lift was on the customer. It was agreed that under no circumstances, the assessee shall undertake installation of lift if the site is not kept ready by the customer. Under clause 4(g) of the "Customers' Contractual Obligations", the assessee reserved the right to change the customer for delays in providing the required facilities. These facts clearly indicate that the assessee divided the execution of the contract into two parts, namely, "the work" to be initially done in accordance with the specifications laid down by the assessee and "the supply" of lift by the assessee. "The work" part in the contract was assigned to the customer and "the supply" part was assigned to the assessee. This "supply" part included installation of lift. Therefore, contractual obligation of the assessee was only to supply and install the lift, while the customer's obligation was to undertake the work connected in keeping the site ready for installations per the drawings.

Installation and Commissioning of Elevators and lifts

In view of the contractual obligation of the customer and the fact that the assessee undertook exclusive installation of the lifts manufacture and brought to the site in knocked-down state to be assembled by the assessee, it is clear that the transaction in question was a contract of "sale" and not a "works-contract". Moreover, on perusal of the brochure of the assessee company, one finds that the assessee is in the business of manufacturing of various types of lifts, namely, Passenger lifts, elevators etc. As per brochure, it is open for a prospective buyer to place purchase order for supply of lifts as per his convenience and choice. Therefore the assessee satisfies, on facts, the twin requirements to attract the charge of tax, namely, that it carries on business of selling of lifts and it has sold the lifts. In present case, on facts, we find that the major component of the end-product is the material consumed in producing the lift to be delivered and the skill and labour employed for converting the main components into the end-product was only incidentally used and, therefore, the delivery of the end-product by the assessee to the customer constitute a "sale" and not a "works-contract."

Fabrication and Installation of Electrode Plant at Customers' site

In *Heera Electrodes v. CST (ALL-HC)(2006)*, an important issue came up for consideration as to whether contract for supply, fabrication and installation of complete machinery and equipment of electrode plant on composite price is a contract for work or contract for sale. The Allahabad High Court observed:

"Manufacturing, fabrication and installation was one single indivisible process and electrode plant comes into existence only when it was completely fabricated and installed. The installation is thus a fundamental and integral part of the contract, because without it complete electrode plant does not come into existence. The applicant at some stage, was no doubt the owner of material in the process of fabrication, but at no stage had become the owner of electrode plant as a unit so as to transfer the property in it to the customer. Electrode plant comes into existence as a unit only when the materials are fabricated and installed at the site, but at that stage, it became the property of the customers because it was permanently embedded in the land belonging to the customer.

Fabrication and Installation of Electrode Plant at Customers' site

The result is that as soon as electrode plant came into being, it became the property of the customer and therefore, no transfer of property in it by the applicant to the customer as a chattel. It was essentially a transaction for fabrication of various items putting them together fabricating and installing them at the site so as to constitute electrode plant. What is relevant for the determination as to whether contract is works contract or contract for sale, is that in the execution of contract, there is supply of chattel as such or plant as unit, after being installed. The mode of payment is wholly irrelevant. It is also irrelevant that the agreement provides to take back the plant if it fails to give full performance during the period of one year from the date of installation of the plant. In view of the above, I hold that the work executed by the applicant was in nature of works contract and not contract for sale".

Article 286 in The Constitution

Restrictions as to imposition of tax on the sale or purchase of goods

(1) No law of a State shall impose, or authorise the imposition of, a tax on the sale or purchase of goods where such sale or purchase takes place

(a) outside the State; or

(b) in the course of the import of the goods into, or export of the goods out of, the territory of India

(2) Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned in clause (1)

(3) Any law of a State shall, in so far as it imposes, or authorises the imposition of,

(a) a tax on the sale or purchase of goods declared by Parliament by law to be of special importance in inter State trade or commerce; or

(b) a tax on the sale or purchase of goods, being a tax of the nature referred to in sub clause (b), sub clause (c) or sub clause (d) of clause 29 A of Article 366, be subject to such restrictions and conditions in regard to the system of levy, rates and other incidents of the tax as Parliament may by law specify

Central Sales Tax – An Overview

Central Sales Tax Act, 1956 provides for levy of sales tax on inter-State sale. Article 286(2) of the constitution empowers the Parliament to formulate principles for determining as to when the sale or purchase takes place outside a state or in the course of import or export. Also, by virtue of Article 286(3) , the Parliament is empowered to place restrictions on the State Government vis-à-vis taxing declared goods.

Objectives of CST Act

(i) To formulate principles for determining: (a) when a sale or purchase of goods takes place in the course of inter-State trade or commerce; (b) when a sale or purchase takes place outside a State; and (c) when a sale or purchase takes place in the course of import into or export out of India;

(ii) To provide for levy, collection and distribution of taxes on sale of goods in the course of inter-State trade or commerce;

(iii) To declare certain goods to be of special importance in inter-State trade or commerce;

(iv) To subject the State laws to restrictions and conditions in the matter of imposing taxes on the sale or purchase of goods declared by the Central Government to be of special importance; and

(v) To provide for collection of tax in the event of liquidation of a Company.

Rates of Central Sales Tax

Local Rate of Tax (Prior to 1-4-2007)	Rate of Tax under C.S.T. Act	
	Supported by Form 'C' or 'D'	**Without 'C' or 'D' Form**
Declared goods	Local rate of tax	Twice the local rate of tax
If the goods are generally exempt under Local Act	Exempt	Exempt
Less than 4%	Local Rate of tax	10%
4% or more, up to 10%	4%	10%
More than 10%	4%	Local rate of tax

Local Rate of Tax (From 1-4-2007 to 31-5-2008)	Rate of Tax under C.S.T. Act	
	Supported by 'C' Form (Form D is abolished)	**Without 'C' Form**
Declared goods	3%	4%
If the goods are generally exempt under Local Act	Exempt	Exempt
1%	1% (C form not required)	1%
4%	3%	4%
12.5%	3%	12.5%

Rates of Central Sales Tax

(From 1-6-2008 onwards)

Local Rate of Tax	Rate of Tax under C.S.T. Act	
	Supported by 'C' Form (Form D is abolished)	Without 'C' Form
Declared goods	2%	4%
If the goods are generally exempt under Local Act	Exempt	Exempt
1%	1% (C form not required)	1%
4%	2%	4%
5%	2%	5%
12.5%	2%	12.5%

EXEMPTIONS FROM CENTRAL SALES TAX

a) Section 6 is charging Section. As per Section 6(2) subsequent inter-state sale transaction taking place by transfer of documents of title to goods, when the goods are in course of movement, are exempt. For this purpose the claimant dealer has to obtain Form E-1 from his vendor (if such vendor is first seller otherwise, E-II) and Form 'C' from the buyer.

b) Sale to notified foreign diplomat authorities is also exempt u/s. 6(3) against Form 'J'.

c) The inter state sale to units situated in Special Economic Zone (SEZ) or developers of SEZ against Form 'I' are exempt as per Sections 8(6) read with Section 8(8).

d) The sale of goods to any exporter for the purpose of complying with the pre-existing order and covered by Section 5(3) is also exempt as deemed export. These sales are to be supported by Form H along with export order details and copy of bill of lading etc. as evidence of actual export.

e) Under Section 6A, branch/consignment transfer is allowed only if Form 'F' is produced, else it will be deemed to be a sale. Form 'F' is required to be obtained from transferee branch/agent. One Form 'F' can cover transfers effected in one calendar month.

Central Sales Tax on works contract

Central sales tax is levied on transfer of goods during the course of inter-State trade and commerce. With the development of commerce and industry, dealers are undertaking inter-State works contracts. In order to levy Central Sales tax on such contract, suitable amendment has been made in the Central Sales Tax Act, 1956. Consequently, transfer of goods involved in the execution of inter-State works contract is exigible to Central Sales Tax.

In order to make definition of 'sale' under the CST Act, 1956, on the terms similar to provisions contained in clause (29A) of article 366 of the constitution of India, the Finance Act, 2002 substituted the definition of 'sale' under CST Act, 1956. Thus with effect from 11-5-2002, the inter-State transfer of property in goods involved in works contract is chargeable to Central Sales Tax Act.

Levy and collection of tax under CST

Even though the Act is called as the Central Sales Tax Act taxes are levied under the Act by the concerned State Governments and collected by them and they retain the full amount collected under CST. Concerned State Sales Tax law is applicable in relation to return, assessment, appeals, recovery, etc. It is matter of interest that only 24 sections are there in the CST Act. Under the CST Act the right to tax a sale in the interstate trade is conferred on the State from where the movement of goods commences. Such state is defined as an "Appropriate State" in the Act

Case laws in CST Act

Section 2(h) – **Sale Price**

Sale Price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged.

However, the section talks about cash discount only. However, it was held in many cases that trade discount, additional discount etc., are deductible.

The Andhra Pradesh High Court held in *State of Andhra Pradesh v. T.V. Sundaram Iyengar and Sons Ltd.(1987)* that ordinarily any concession shown in the price of goods for any commercial reason would be a trade discount which can be legitimately claimed as a deduction from the turnover and the fact that the discount was not allowed at the time of sale but on a later date, does not make it any-the-less a trade discount.

Sale Price should be known at the time of sale

In *C.T.O.v. Radiant Industries of India (1994),* it was a contrary decision. The court held that if at the time of effecting the sale or entering into the contract of sale no such stipulation is made and subsequently a contract is entered into then it would not be reducing the price of the sale which has already been concluded.

Inter-State Sale or Purchase

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 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 baileee 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.

Explanation 2.— Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

An analysis of the above definition would reveal that there are two parts of Section 3 which lay down the circumstances under which the sale is said to take place in the course of Inter-State Trade or Commerce.

Section 3(a) deals with inter-state sale which occasions the movement of goods from one state to another.

Section 3(b)deals with sale which is effected by transfer of documents of title to the goods during their movement from one State to another.

Salient features of inter-State sale

(i) There should be a completed sale.

(ii) There should be agreement or contract with a stipulation regarding movement of goods from one State to another State.

(iii) The goods should move due to the stipulation in the agreement or contract.

(iv) Concluded sale should take place in a State which is different from the State from where the movement started.

(v) The movement might be incidental to the contract of sale.

(vi) Where the property in the goods passes on to the buyer is not important.

(vii) The sale can precede the movement of the goods or movement of the goods can precede the sale.

(viii) If the movements of the goods commence and terminates in the same State, even though it passed through other State, it will not be treated as inter-State sale

Case Laws distinguishing Inter-State Sales and Local Sales.

1. *CST v.Lakhmi Ladha & Co. (Bom)*

In this case Lakhmi Ladha & Co was manufacturer of Tarpaulins at Bombay. They entered into contract with Gujrat State Road Transport Corporation for supply of Tarpaulins to Ahemedabad. The goods were first transferred to Branch at Surat and that branch delivered the goods to the Transport Corporation. It was held to be inter-State transaction as the goods had moved from Bombay to Surat under a contract of sale.

2. *State of Bihar v. Tata Engineering & Locomotive Company Ltd. (S.C.)*

Tata Engineering & Locomotive Company Ltd. had agreement with the dealers stipulating that delivery of the vehicles will be made in the State of Bihar and the dealer had to remove the goods to place outside the State. TELCO delivered the vehicles against payment to the dealers in Bihar and this was held by Supreme Court as inter-State sale.

3. *CST Delhi v. Motorades (Delhi)*

Dealer in Delhi sold auto part to government departments of Himachal Pradesh and Haryana Governments. Vehicles sent from those state to Delhi, parts were fitted therein by the dealer and vehicles reached to purchasers and parts supplied approved orally. In this case Delhi High Court held that there is implied term that parts will move from Delhi to H.P. or Haryana and it was held as inter-State sale

Case Laws distinguishing Inter-State Sales and Local Sales.

4. *Sahney Steel Press Works Ltd. v. Commercial Tax Officer (1985)60 STC 301 (S.C.)*

While delivering this landmark judgment the apex court has observed that the movement of goods from the registered office in Hyderabad was occasioned by the order placed by the customer and movement was an incident of the contract and therefore from the very beginning from Hyderabad all the way until delivery to the customer it was an interstate movement even though the customer placed an order with the branch office and the branch office communicated the terms and specifications of order to registered office .

5. NCR Corporation India Pvt.Ltd. VS. Dy.Commssioner of Commercial Taxes, Bangalore.

The Karnataka High court decided if there is a conceivable link between movement of goods and the buyers contract and such a nexus otherwise inexplicable, then the sale of specific or ascertain goods ought to be deemed to have taken place in the course of interstate trade or commerce irrespective of presence of an intermediary such as the sellers own representative or branch office.

6. *State of Tamilnadu Vs. Sun Paper Mill Ltd. (2009) 23 VST 191 (Mad)*

Madras High court decided that newsprints sold by seller in Tamilnadu to buyer in Kerala – during the movement the said goods were dispatched to the place in Tamilnadu only for converting newsprints into news magazine and thereafter sent to Kerala. Movement of goods contemplated under contract and no sale thereof in Tamilnadu. Sale was interstate sale

Case Laws distinguishing Inter-State Sales and Local Sales.

7. *DCM Ltd. Vs. Commissioner of Sales Tax Delhi (2009)(SC)*

The apex court laid down the principle that purchasing dealers took the deliveries in the state of sale but where under obligation to take the delivered material out of the state of sale (Delhi) and to sale in respective assigned territories at the price fixed by the assessee, such sale to purchasing dealer is an interstate sale only.

8. *State of A.P. Vs. Computer Graphics Pvt.Ltd. (2009)(A.P)*

The A.P. High court decided as the goods sold where ascertained goods in a deliverable state , the property in those goods , sold by respondent , passed to the buyer immediately on the delivery of the goods to the person authorized by the principal outside state even though such authorized person dispatched those goods outside the state to the said principal the sale is decided as local sale.

Genesis of VAT in India

The State level Value Added Tax comes into effect from April, 2005, in place of sales tax structure prevalent in various States. At present VAT has been adopted by all States. Haryana was the first State to adopt and U.P. was the last State to adopt VAT.

The States, through discussion in the **Empowered Committee of State Finance Ministers**, constituted by the Ministry of Finance, Government of India, have found it in their interest to have certain features of VAT to be common for all the States with a view to avoid unhealthy competition.

- These features are contained in the 'white paper on State-Level Value Added Tax released by Empowered Committee.
- This white paper constitutes the basic design of VAT. But at the same time, the States have freedom for making appropriate variations in their respective State laws consistent with this basic design.

Genesis of VAT in India

Mutual consensus was received by Empowered Committee of Finance Ministers as to following matters:

- Implementation of uniform floor rates of sales-tax
- Discontinuation of sale-tax related incentive schemes

These steps were very much needed in order to avoid any unhealthy competition among the States which otherwise was leading to distortions in manufacture and trade. The VAT intends to bring harmonization in the tax structure of various States and rationalize the overall tax burden.

State VAT laws common provisions

- **Registration**

  Every dealer, who becomes liable to pay tax under the provisions of VAT, shall apply for registration to the prescribed authority, within 30 days from the date of such liability.

- **Rate of tax**

  – As per schedules

- **Filing of returns and payment of taxes**

  Every registered dealer shall be required to file correct, complete and self-consistent return, in prescribed form, by the due date.

- **Input tax credit (ITC) (set off)**

  All registered dealers, whether manufacturer or traders, are eligible to take full set off of the taxes paid on inputs; i.e., Value Added Tax paid, within the State on purchases of Raw Material, Finished Goods and Packing Material, or any goods debited to profit and loss account.

Eligible VAT credits

- **Entry Tax**: – The amount of entry tax, paid by a registered dealer on the goods the sale of which is liable for VAT under State VAT law, will be eligible for full set off.
- **ITC on Capital Goods**: – Tax paid on certain items of capital goods (defined) such as machinery, components, parts and spares etc. are also eligible for full set off. (On certain other items of capital assets such as furniture and fixtures, office equipments, etc. set off is admissible, subject to retention of specified percentage)
- **ITC on Miscellaneous Goods**: – The amount of VAT paid on purchase of miscellaneous goods, debited to Profit & Loss A/c. (such as printing and stationery, repairs, sales promotion etc.) also eligible for full set off.
- **ITC on Fuel**: – Tax paid on purchase of goods, which is used as fuel, shall be eligible for set off, in excess of specified percentage

DEALERS LIABLE TO PAY TAX

- The dealers, holding a valid registration certificate under the earlier laws, whose turnover of either of sales or purchases exceeds the specified limits during the preceding financial year, shall be deemed to be registered dealer under VAT Act and shall, therefore be liable to pay tax.
- The dealers, holding a valid registration certificate under the earlier laws, whose turnover of either of sales or purchases has not exceeded the specified limits during the preceding financial year, but who have opted to continue their registration certificate (by applying to assessing officer in specified format), shall also be deemed to be registered dealer under VAT Act and shall, therefore be liable to pay tax.
- New dealers, whose turnover of sales exceeds the prescribed limits during any year, commencing on or after 1st April, 2005, are liable to pay tax from the date on which such limit exceeds.
- A successor in business of any dealer shall become liable to pay tax on and from the date of succession.
- A dealer, applying for voluntary registration, shall be liable to pay tax from the date of registration.

TAX INVOICE

Essential ingredients of a Tax Invoice: – Under the scheme of VAT, the most important document is tax invoice. A registered dealer is entitled to claim set off only on the basis of a valid tax invoice. Set off is not available on purchases affected through a bill or cash memorandum. A 'Tax Invoice' is must to claim input tax credit (set off). To be a valid tax invoice, section 86(2) provides that it shall contain the following particulars: –

- The word Tax Invoice in bold letter at the top or at a prominent place.
- Name, Address and Registration Number of Selling Dealer.
- Name, Address and Registration Number of the Purchasing Dealer.
- Serial Number and Date.
- Description, Quantity and Price of the Goods sold.
- The amount of tax charged, to be shown separately.
- Signed by the selling dealer or a person authorized by him.
- A declaration

WORKS CONTRACTS

There is no separate Act governing works contract transactions, all such transactions are now taxable as deemed sales under the State VAT Act. The rate of tax, on such deemed sales of goods, used in the execution of works contract, shall remain same as prescribed in the aforesaid schedules to the respective goods. However the sale price of such goods has to be determined in accordance with the provisions contained in the State VAT Laws.

Accordingly the value of the goods, at the time of the transfer of property in the goods (whether as goods or in some other form) involved in the execution of works contract, has to be determined by effecting the following deductions from the value of entire contract in so far as the amounts relating to the deduction pertain to the said works contract: –

- Labour and service charges for the execution of the works contract

WORKS CONTRACTS

- Amounts paid by way of price for sub-contract, if any, to sub-contractors.
- Charges for planning, designing and architect's fees.
- Charges for obtaining on hire or otherwise, machinery and tools for the execution of the works contract.
- Cost of consumables such as water, electricity, fuel used in the execution of works contract, the property in which is not transferred in the course of execution of the works contract.
- Cost of establishment of the contractor to the extent to which it is relatable to supply of the said labour and services.
- Other similar expenses relatable to the said supply of labour and services, where the labour and services are subsequent to the said transfer of property.
- Profit earned by the contractor to the extent it is relatable to the supply of said labour and services.

WORKS CONTRACTS

Provided that where the contractor has not maintained accounts which enable a proper evaluation of the different deductions as allowed or where the Commissioner finds that the accounts maintained by the contractor are not sufficiently clear or intelligible, the contractor at his option or, as the case may be, the Commissioner may in lieu of the deductions as above provide a lump sum deduction as provided in the schedule of State VAT Laws and determine accordingly the sale price of the goods at the time of the said transfer of property.

- The percentage as specified in the schedule(s) should be applied on total contract price after deducting the price on which tax is paid by sub-contractor. It is also provided that if any tax is separately charged by the contractor as per terms of contract then the deduction should be after excluding such separate tax.
- The value of goods so arrived shall, for the purposes of levy of tax, be the sale price or, as the case may be, the purchase price relating to the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract.

WORKS CONTRACT – TDS PROVISIONS

VAT Law provisions provides that the department may, by notification, require any dealer or person or class of dealers or persons (hereafter referred as 'the employer') to deduct tax on such amount payable on the purchases effected by them, as may be notified.

All such employers shall have to: –

- Deduct tax, at prescribed rate, from the amount paid or payable to a contractor during a given period.
- Deposit the amount so deducted with the Govt. treasury within time specified.
- Issue a certificate of deduction of tax.
- Maintain necessary records in prescribed format.
- Submit Annual Return in prescribed form and within such time limits as may be prescribed.

WORKS CONTRACT – TDS PROVISIONS

The following points shall be noted:

- The TDS provisions are applicable only to specified employers.
- A contractor, awarding sub-contracts, is not required to deduct TDS from such sub-contractor/s.
- TDS provisions are not applicable in respect of works contract liable to tax under the CST Act.
- TDS not required to be deducted where the amount or the aggregate of the amount payable to a dealer by such employer is less than rupees 5 lakhs during the financial year.
- TDS is required to be deducted on the amount paid/payable in respect of works contract. Thus TDS not to be deducted on taxes (whether VAT or service tax) charged separately by the contractor.
- No TDS on advance payments, however TDS on such advances to be deducted at the time when such advance is adjusted towards the amount payable.
- A contractor can apply in prescribed form for a certificate of no deduction of tax at source if the contract is not a works contract.

Thank You

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