

STUDY NOTE - 11

CENTRAL SALES TAX

This Study Note includes

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- Sale under Sales Tax Act
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11.1. INTRODUCTION

- Sale tax on Inter State sale is levied by Union Government, while sales tax on intra-State sale (sale within State) is levied by State Government.
- Sale can be either Inter-State, sale in the course of import / export or intra-State.
- CST is payable on inter-State sales, while Vat (State sales tax) is payable on sale within the State. No sales tax is payable on sale in the course of import / export.
- Even if CST is levied by Union Government, the revenue goes to State Government. CST Act is administered by State Government.

Categories of Sales - Sales can be broadly classified in three categories. (a) Inter-State Sale (b) Sale during import / export (c) Intra-State (i.e. within the State) sale. - *Murli Manohar & Co. v. State of Haryana* (1991) 80 STC 79 = (1991) 1 SCC 377 (SC 3 member bench). In this case, it was observed that they cannot conceive fourth category of sale.

‘Sale within State’ is residuary sale. Thus, first we have to decide if sale is ‘Inter State’. If not, we have to find if it is ‘Sale during export or import’. If not, then the sale is ‘Intra State’. If a sale is Inter State or during export or import, it cannot be ‘Sale within the State’.

11.1.1 Constitutional Background

Constitutional background relating to sales tax is as follows -

- Entry 92A of List I (Union List) empowers Central Government to impose tax on inter-state sales. The entry reads ‘Taxes on the sale and purchase of goods other than newspapers, where such sale or purchase takes place in the course of Inter-State trade or commerce’.



- Entry 54 of list II - State List - reads : 'Tax on sale or purchase of goods other than newspapers except tax on Inter State sale or purchase'.
- Trade, commerce and intercourse throughout the territory of India shall be free, subject to provisions of Articles 302 to 304 of Constitution. [Article 301]
- State can impose tax on goods imported from other States or Union Territories, but a State cannot discriminate between goods manufactured in the State and goods brought from other States [Article 304(1)].
- State Government cannot impose tax on sale or purchase during imports or exports; or tax on sale outside the State. [Article 286(1)]
- Article 269(3) and Article 286(2) of Constitution authorises Parliament to formulate principles for determining when the sale or purchase takes place outside a State or in the course of imports and exports.
- Article 286(3) of Constitution authorises Parliament to place restrictions on tax on 'declared goods'.

CST Act imposes the tax on inter state sales and states the principles and restrictions as per the powers conferred by Constitution.

CST collected in the State where movement of goods commences - The scheme of CST Act is that Central Sales Tax is payable in the State from which movement of goods commences (i.e. from which goods are sold). The tax collected is retained by the State in which it is collected. CST Act is administered by Sales Tax authorities of each State. Thus, the State Government Sales Tax officer who collects and assesses local (State) sales tax also collects and assesses Central Sales Tax.

11.2 INTER STATE SALE

- Inter State can be either direct u/s 3(a) or by transfer of documents u/s 3(b) of Central Sales Tax Act.
- In case of inter state sale u/s 3(a), sale is inter state if it occasions movement of goods from one State.
- Sale is inter state even if goods move from one State to another under 'agreement to sale'. The agreement may be express or even implied.
- Property in goods can pass to buyer in either State.
- Location of buyers is not relevant. If sale occasions movement of goods from one State to another, it is inter state even if both buyer and seller are in same State.

11.2.1 Inter State Sale by transfer of documents

- Inter State sale can be by transfer of documents of title during movement of goods from one State to another. The 'document' can be LR, RR or AWB.
- The movement of goods commences as soon as goods are handed over to transporter. The 'movement' is deemed to be continuing till delivery of goods is taken at other end.
- Transfer of Document is a symbolic delivery of goods to the purchaser. It carries with it full ownership of goods. Delivery of 'document of title' is equivalent to the delivery of goods themselves.
- E-I/E-II transactions are required to establish sale during movement. If done, all subsequent sales are exempt from sales tax/Vat.

11.2.2 Stock Transfer/Branch Transfer

- In stock/branch transfer, goods move from one State to another, but there is no 'sale'.
- Stock transfer can be only of standard goods. Stock transfer of tailor made goods for a specific customer is a bogus stock transfer.
- If buyer is identifiable before goods are dispatched, it is 'Inter State' sale and not a 'stock transfer'.
- Form F is required to be submitted to establish stock transfer.
- It is possible that a dealer may treat a transfer as 'stock transfer' while STO may tax it as 'sale'. In such case, the same transaction will be taxed by two States. If there is double taxation, CST Appellate Authority can grant relief.

11.2.3 Sale inside the State

- If a sale is inside one State, it is outside all other States.
- In case of specific or ascertained goods, sale within State takes place at the time of contract.
- In case of unascertained or future goods, sale takes place when goods are appropriated to contract in the State.
- If sale is inter-state as defined in section 3 of CST Act, it can never be 'intra state' sale.
- Sale within territorial waters of India i.e. within 12 nautical miles from the base line on the coast of India the is 'local sale'.



11.3 GOODS UNDER SALES TAX ACT

- Goods include all kinds of movable property, but not newspapers, actionable claims, stocks, shares and securities.
- Intangible or incorporeal articles are 'goods' e.g. patent, copyright.
- Software (branded as well as unbranded) is goods - *Tata Consultancy Services v. State of Andhra Pradesh* (2004) 141 Taxman 132 = AIR 2005 SC 371 = 2004 AIR SCW 6583 = 271 ITR 401 = (2005) 1 SCC 308 = 137 STC 620 = 178 ELT 22 (SC 5 member bench) * *Bharat Sanchar Nigam Ltd. v. UOI* (2006) 3 SCC 1 = 152 Taxman 135 = 3 STT 245 = 145 STC 91 = 282 ITR 273 = AIR 2006 SC 1383 = 2 STR 161 (SC 3 member bench).
- Lottery ticket is 'actionable claim' and not taxable - *Sunrise Associates v. Government of NCT of Delhi* (2006) 4 STT 105 = 145 STC 576 (SC 5 member Constitution Bench) [This decision applies prospectively w.e.f. 28-4-2006 and not retrospectively, as per specific order of SC].
- In view of the above, earlier judgments about DEPB/ Advance Authorisation have come into doubt.
- Simple sale of SIM card can be taxed, but not when supplied as incidental to service - *Bharat Sanchar Nigam Ltd. v. UOI* (2006) 3 SCC 1 = 152 Taxman 135 = 3 STT 245 = 145 STC 91 = 282 ITR 273 = AIR 2006 SC 1383 = 2 STR 161 (SC 3 member bench).

11.4 'SALE' UNDER SALES TAX ACT

- Sale can be actual (conventional) sale or deemed sale.
- Conventional sale takes place when there is complete transfer of property in goods from buyer to seller for money consideration.
- Charge, mortgage, hypothecation, pledge, simple job work, branch transfer and barter is not sale.
- Supply to Agent is not 'sale'.

Deemed sales under CST Act – 'Deemed sale' is treated as 'sale' for sales tax purposes, though it does not have all ingredients of 'sale'

- Concept of deemed sale has been introduced by 46th amendment to Constitution, by inserting Article 366(29A) in 1983.
- Compulsory sale, hire purchase, leasing, hire (transfer of right to use), sale of food articles, sale by unincorporated association and goods involved in works contract are 'deemed sales'.

- In case of works contract, sales tax / vat can be levied only on value of goods involved and not on entire value of contract.
- Composition scheme to levy tax on flat basis on entire value of contract is permissible.

11.4.1 What is works contract

Section 2(ja) of CST Act defines 'works contract' as follows – 'Works contract' means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property.

Definition of 'works contract' in section 2(zt) of Haryana VAT Act is identical. Definitions in section 2(zo) of Delhi VAT Act, section 2(52) of Tamilnadu VAT Act, section 2(45) of AP Vat Act and section 2(zu) of Punjab VAT Act. Definition in section 2(57) of West Bengal VAT Act is elaborate, but more or less similar.

Explanation (b)(ii) to section 2(24) of Maharashtra Vat Act states that works contract *includes* an agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property.

Definition in section 2(37) of Karnataka VAT Act is also similar.

Any contract for carrying out work is covered.

Tax is on goods involved in works contract and not on works contract as such - Note that the CST is on 'goods involved in works contract' and **not on** 'works contract' as such. In *Studio Kamalaya v. CTO* 1993(89) STC 307 (WBTT), it was observed, 'All works contract are not taxable. Transaction is taxable only when there is transfer of property in goods involved.

Basic distinction between sale of goods and works contract - Distinction between sale of goods and works contract is as follows –

Sale	Works Contract
It is 'sale'	It is 'deemed sale'.
Relation is seller and buyer	Relationship is contractor and contractee
In sale of goods, the thing produced/manufactured as a whole is absolute property of maker when it comes into existence. He then transfers it to buyer.	In works contract, the things produced as a whole is never absolute property of maker, even though material used in works contract might have been his absolute property.
In sale, the sale is ' <i>chattel qua chattel</i> ', i.e. 'goods' are sold as 'goods'. The property in goods is transferred at the time of delivery of finished article	The article produced as a whole directly becomes property of buyer, without first becoming property of maker. Property in goods contained in works contract passes by accretion, accession or blending during the execution of work.
Contract is primarily for supply of materials at prices agreed and the work or service is incidental to the execution of contract	Contract is primarily a contract of work and labour and materials are supplied in execution of such contract.
Rejection of goods is possible.	Rejection of goods is generally difficult.
Sale is taxable under sales tax laws.	Transfer of property in goods involved in works contract is 'deemed sale' and taxable under sales tax laws.
Sale can be of standard goods as well as tailor made goods.	Works contract is only tailor made i.e. for a specific contractee.
Buyer usually never supplies any material to seller.	Contractee often supplies material to contractor.
Sale of Goods Act applies to the transaction.	Indian Contract Act applies to transaction.
TDS provisions are not applicable (though there is no constitutional bar in applying TDS provision to sale of goods)	TDS provisions are applicable to works contract – both under Income Tax Act and many State Vat Acts.

11.5 DEALER UNDER SALES TAX ACT

Definition of 'dealer' and 'business' vary from State to State. However, broadly, following principles apply, unless the definition of Vat Act of a State has made specific different provision in the definition.

- Definition of 'dealer' is wide, but only those who 'effect' sale are liable to register and pay CST.
- Ancillary, incidental and casual business is also taxable, but main activity should be 'carry on business'.
- Government and railways are 'dealers'.
- In *State of Tamilnadu v. Board of Trustees* 1999 AIR SCW 1262 = AIR 1999 SC 1647 = (1999) 4 SCC 630 = 114 STC 520 [confirming *Board of Trustees of Port of Madras v. State of Tamilnadu* (1998) 108 STC 66 = (1997) 10 MTCR 373 (Mad HC DB)], it was held that Government is dealer only if it is 'carrying on business of buying, selling, supplying or distribution of goods'.
- Insurance company is also 'dealer'.
- Bank can be dealer in respect of sale of pledged goods, if definition of 'dealer' includes bank. Sale of pledged goods takes place in the course of business – *Federal Bank Ltd. v. State of Kerala* (2007) 6 VST 736 (SC)
- In *Karnataka Pawn Brokers Assn. v. State of Karnataka* AIR 1999 SC 201 = 111 STC 752 = 1999 AIR SCW 3564, it was held that an auctioneer is not a dealer, if he does not transfer the property in the goods to the highest bidder.
- Profit motive is not material for 'Business'. Adventure is also 'business'.
- Incidental business can be taxed. However, sale of business is not 'business' and cannot be taxed under sales tax provisions.

11.6 QUANTUM OF CST PAYABLE

Following are broad principles. Generally, these apply to State Vat also, unless the definition of State law is different.

- CST rate for sale to registered dealers is 3% or local sales tax rate, whichever is lower.
- Turnover for purpose of levy of CST is equal to Aggregate Sale price minus CST payable.
- CST is payable on excise duty, cesses on goods, packing material, *dharamda* and goods returned beyond 6 months.



- CST is not payable on outward freight, insurance, installation and commissioning and goods rejected. Discounts are excluded for purpose of calculating CST.

CST rate at a glance- The CST rates at a glance as applicable w.e.f. 1-4-2007 are as follows, in case of both declared goods and other goods –

Vat (Sales tax) rate for sale within the State	CST rate in case of sale to registered dealers (applicable to declared goods as well as other goods)	CST rate in case of sale to unregistered dealers (applicable to declared goods as well as other goods)
Nil	Nil	Nil
1%	1%	1%
2%	2%	2%
3%	3%	3%
4%	3%	4%
8%	3%	8%
10%	3%	10%
12.5%	3%	12.5%
20%	3%	20%

Note – Usually, State Vat rates of 2%, 3%, 8% and 10% do not exist. However, these rates are given only to explain the principle, particularly because UP and Uttaranchal have not introduced Vat.

11.6.1 Goods eligible for purchase at concessional rate in inter-state sale

- Only those goods for which a dealer is *eligible* and which are *contained in his Registration Certificate* are eligible for concessional rate.
- Goods intended for resale, for use in manufacture or processing for sale, for use in tele-communications network, for use in mining, for use in power generation / distribution, or containers and packing materials are only eligible for concessional rate.
- ‘For use’ means ‘intended for use’.
- Purchasing dealer has to issue ‘C’ form to selling dealer to avail concessional rate.

11.6.2 Exemptions from CST

- CST is not payable in case of subsequent sale by transfer of documents if E-I/E-II declarations are given.
- CST is exempt if sale within the State is exempt.
- State Government can exempt CST, but it cannot waive condition of issue of C form.
- Sale in the course of export/import are not taxable.
- Sale to Special Economic Zone (SEZ) and to foreign missions/UN are exempt.

Sale in course of export – (a) Export sale can be direct or by transfer of documents after goods cross customs frontier of India. (b) Penultimate sale i.e. sale prior to actual export is exempt if exporter issues H form to supplier [section 5 of CST Act].

Sale in the course of Import – (a) Sale by Agent in India after import of goods is exempt only if there is privity of contract between ultimate buyer and exporter. (b) Sale in course of imports by transfer of documents is not taxable (c) Sale of goods in customs bonded warehouse is 'sale during import'. (d) Sale after import is a distinct sale and sales tax/Vat will be payable.

11.7 GOODS OF SPECIAL IMPORTANCE

Some goods like sugar, textiles, jute, iron and steel, tobacco products have been declared as goods of special importance. State Government cannot levy sales tax on these goods exceeding 4%. If declared goods are sold inter-State, tax paid within the State is reimbursed.

Section 14 of CST Act gives list of 'goods of special importance' called 'declared goods'. Important among them are :

- Cereals i.e. paddy, rice, wheat, bajra, jowar, barley, maize etc.
- Coal and coke in all forms *excluding* charcoal
- Cotton in un-manufactured form but not cotton waste
- Cotton fabrics, cotton yarn
- Crude oil
- Hides and skins
- Iron and Steel i.e. pig iron, sponge iron, iron scrap, steel ingots, billets, steel bars, steel structurals, sheets, plates, discs, rings, tool steel, tubes, tin plates, steel wheels, wire rods; defectives of above etc.
- Jute



- Oil-seeds i.e. groundnut, til, cotton seed, linseed, castor, coconut, sunflower, mahua, kokum, sal etc.
- Pulses i.e. gram, tur, moong, masur, urad etc.
- Man-made fabrics - fabrics of man-made filament yarn i.e. artificial textile materials, polyester filament yarn, staple fibres, polyester staple fibre, tyre cord fabric, impregnated textile fabrics etc.
- Sugar and Khandsari Sugar
- Woven fabrics of wool
- Aviation Turbine Fuel sold to an aircraft with a maximum take-off mass of less than 40,000 kilograms operated by scheduled airlines i.e. airlines permitted by Central Government to operate any scheduled air transport service (entry as substituted w.e.f. 11-5-2007 by Finance Act, 2007. Earlier, the entry read as follows - Aviation Turbine Fuel sold to a turbo-prop aircraft)
- LPG (Liquid Petroleum Gas) for domestic use (inserted w.e.f. 18-4-2006 to maintain tax rates at reasonable level).

Un-manufactured tobacco, cigars, cigarettes, biris, chewing tobacco, snuff etc. have been omitted from the list w.e.f. 1-4-2007. This will enable State governments to impose Vat/sales tax on these products.

11.8 APPEALS AND PENALTY UNDER CST ACT

CST Act is administered by State Government. Appeal and penalty provisions as applicable to State Vat Act apply to CST also. However, following specific provisions have been made under CST Act.

- In case of dispute whether a particular transaction is inter state sale or stock transfer, appeal can be filed with CST Appellate Authority, if the order is made u/s 6A read with section 9 of CST Act
- Authority for Advance Ruling (AAR) under Income Tax has been constituted as CST Appellate Authority w.e.f. 17-3-2005
- Such appeal can be filed only on decision of highest Appellate Authority in the State (excluding High Court).
- CST Act makes provisions for punishments for certain offenses. In some cases, compounding is permissible.
- Directors of private limited company in liquidation are liable for payment of CST liability.

11.9 PRESCRIBED FORMS UNDER CST

Following are the forms prescribed under CST (Registration and Turnover) Rules, 1957.

Form	Description	Frequency
A	Application for registration	Once
B	Certificate of Registration	Once
C	Declaration by purchasing registered dealer to obtain goods at concessional rate	To be obtained for every quarter and submitted on quarterly basis
D	Form of certificate for making government purchases (D form cannot be issued in case of sale made to Government on or after 1-4-2007)	No question arises after 1-4-2007
E-I/ E-II	Certificates for sale in transit	To be obtained for every quarter and submitted on quarterly basis
F	Form by branch/consignment agent for goods received on stock transfer	Monthly, but to be submitted quarterly
G	Indemnity bond when C form lost	When required
H	Certificate of Export	Upto the time of assessment by first assessing authority.
I	Certificate by SEZ unit	Not specified in rules (but should be submitted before assessment).
J	Certificate to be issued by foreign diplomatic mission or consulate in India or the UN Agency	Upto the time of assessment by first assessing authority.