C.A. IPCC : Taxation

Central Sales Tax Act

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INTRODUCTION

- Central Sales Tax Act (CST Act) provides for levy of sales tax on Inter State sales.
- Whereas tax on intra-state sale is levied by the state governments, Constitution authorises Central Government to impose tax on inter-state sales.
- Accordingly Central Sales Tax Act (CST Act) has been enacted by the Central Government.
- However, though it is a Central Act, the tax collected under the act in each state is kept by that state only.
- CST in each state is administered by local sales tax(VAT) authorities of each state.

CONSTITUTIONAL AUTHORITY

Central Government derives power to levy CST from entry 92Aof the Union List which provides for " tax on sale or purchase of goods other then newspaper, where such sale or purchase takes place in the course of inter-state trade or commerce."

OBJECTS OF CANTRAL SALES TAX ACT

The Central Sales Tax Act has been designed :

1. To formulate principles for determining as to
   (a) where a sale or purchase of goods takes place in the course of inter-state trade or commerce [Section 3].
   (b) when a sale or purchase takes place outside a state [Section 4].
   (c) when a sale or purchase takes place in the course of import into or export from India [Section 5].
2. To provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-state trade or commerce
3. To declare certain goods to be of special importance in inter-state trade or commerce (called declared goods)
4. To specify the restrictions and conditions to which state laws imposing taxes on the sale or purchase of declared goods shall be subject.

LEVY AND COLLECTION OF CST – Sec. 9(1)

Levy of CST – CST is levied by Central Government.

Collection of CST – CST is collected by that state government from where the movement of goods is commenced.

IMPORTANT CONCEPTS

GOODS. [Sec. 2(d)]

CST is levied on sale of "goods" . The definition of ''goods'' in the act :

Includes	Does not include
All materials,	Newspapers
Articles or commodities and	Actionable claims
All kinds of moveable property	Stocks and Shares

- No sales tax under this act shall be leviable on items not included in definition of goods.
- In an interesting case, one News paper publisher sold bundles of old news paper as waste paper and claimed that no CST is leviable in the case. It has been held that this was not the sale of news paper as such, and hence not exempt. (Andhra Prabha Pvt. Ltd.)
- As per above definition, electrical energy is treated as goods but sec. 6(1) of C.S.T. Act exempts sale of electrical energy from the levy of C.S.T.
- Standing Tress are **not goods** for the purpose of C.S.T.
- Packaged Software are considered goods as per court's decisions.

SALE [Sec. 2(g)]

"Sale" with its grammatical variations and cognate expressions, means

- any transfer of property in goods
- by one person to another
- for cash or deferred payment or for any other valuable consideration,
- and includes, *(transactions mentioned below are called **deemed sales**)*–

i. a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

ii. a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

iii. a delivery of goods on hire-purchase or any system of payment by instalments;

iv. a 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;

v. a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

vi. a supply of goods, by way of or as part of any service or in any other manner whatsoever, 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.

- but does not include a mortgage or hypothecation of or a charge or pledge on goods.

☞ **"works contract" [Sec. 2(ja)]** 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.

DEALER [Sec. 2(b)]

Any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash or for deferred payment, or for commission, remuneration or other valuable consideration, and includes-

(i) a local authority, a body corporate, a company, any co-operative society or other society, club, firm, Hindu undivided family or other association of persons which carries on such business ;

(ii) a factor, broker, commission agent, del credere agent, or any other mercantile agent, by whatever name called, who carries on the business of buying, selling, supplying or distributing goods belonging to any principal whether disclosed or not; and

(iii) an auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal.

Explanation 1:

Every person who acts as an agent, in any State, of a dealer residing outside that State and buys, sells, supplies, or distributes, goods in the State or acts on behalf of such dealer as-

(i) a mercantile agent as defined in the Sale of Goods Act, 1930 , or

(ii) an agent for handling of goods or documents of title relating to goods, or

(iii) an agent for the collection or the payment of the sale price of goods or as a guarantor for such collection or payment,

and every local branch or office in a State of a firm registered outside that State or a company or other body corporate, the principal office or headquarters whereof is outside that State, shall be deemed to be a dealer for the purposes of this Act.

Explanation 2:

- A Government which, buys, sells, supplies or distributes, goods, directly or otherwise, for cash or for deferred payment or for commission, remuneration or other valuable consideration, shall be deemed to be a dealer for the purposes of this Act.
- This buy, sell etc. by the government may or may not be in the course of business.
- However government shall not be treated as dealer in relation to any sale, supply or distribution of surplus, unserviceable or old stores or materials or waste products or obsolete or discarded machinery or parts or accessories thereof.

SALE OR PURCHASE IN THE COURSE OF INTER-STATE TRADE : Sec. 3

The liability to Central Sales Tax arises only if the sale takes place in the course of inter-state trade or commerce. Section 3 states that a sale or purchase of goods shall be deemed to take place in the course of inter-state trade or commerce in the following two circumstances :

1. If the sale or purchase occasions the movement of goods from one state to another (also called Direct inter state sale), or

2. If the sale or purchase is effected by a transfer of documents of title to the goods during their movement from one state to another.

<u>When a sale occasions the movement of goods from one state to another</u>

When a sale creates the movement of goods from one state to another, it would be treated as a sale in the course of inter- state trade. For this, two conditions are required to be satisfied:

(i) There should be a sale

(ii) Due to this sale, the goods must move from one state to another.

For example : MRF from Chennai sells tyres to Maruti of Delhi and in terms of contract of sale, transport tyres to Delhi, such a sale would be said to have occasioned the movement of goods from one state to another and therefore will be an inter-state sale.

- *What is important is the movement of goods from one state to another in consequences of sale. Thus even if buyer and seller are in the same state, the sale may be inter state sale. And on the other hand, buyer and seller may be inn different state, still the sale may not be inter state sale if there is not movement og goods from one state to another.*

However 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 simply because in the course of such movement, the goods had passed through the territory of any other state. Therefore, sale or purchase of such goods shall not be deemed to be sale or purchase in the course of inter-state trade or commerce.

<u>When a sale is effected by a transfer of documents of title to the goods during their movement from one state to another</u>

If a sale is effected by a transfer of documents of title to the goods during their movement from one state to another, this is also an inter state sale. For this, following three conditions are required to be satisfied:

(i) The goods must be in the movement from one state to another.

(ii) The sale must be effected during the course of continuance of this movement

(iii) The sale must be effected by transfer of document of title to the goods.

For example, When Essal of Mumbai sends a consignment of Packing Tubes to its branch in Delhi and while goods are in transit, HLL of Delhi approaches Essal and buys the R.R. , the sale is an inter state sale.

<u>What is document of Title:</u>

When the goods are handed over to the carrier, he hands over a receipt to the seller (called R.R.- Railway Receipt in case of Railways, L.R.- Lorry Receipt in case of road transport, Bill of Lading –in case of transport by sea and Airway Bill- in case of transport by air). The seller sends this receipt to the buyer and buyer gets delivery of goods by submission of this receipt to the carrier. This receipt is "document of title to goods".

<u>Movement of Goods: Commencement and Termination</u>

For a sale to have been occasioned during the course of inter-state sale, the transfer of document must be made ''during the movement''. The **movement of the goods is deemed to have commenced at the time of delivery of goods to a carrier and terminate at the time when delivery is taken from such carrier**. Therefore, if the documents of title are transferred within this period with a view to effect the sale or purchase, the transaction shall be treated as a sale in the course of inter-state trade or commerce.

- ☞ If the sale is made during the course of movement of goods from one country to another, this will not be an inter state sale.

Stock Transfer/ Branch Transfer (Sec. 6A)

One of the basic and obvious conditions of inter-state sale is that there should be a 'sale'. If a manufacturer sends goods to his branch in other state, it is not a 'sale' as one cannot sell to oneself. Similarly, if a dealer sends goods to his agent in other state who stocks goods on behalf of the dealer, it is not a sale. Such agent is usually called 'consignment agent'. Goods are dispatched to another state on consignment basis and the person dispatching goods retains ownership of goods. Since no sale is involved, there is no 'inter state sale' and consequently ther is no CST liability.

This is called 'stock transfer' or 'branch transfer'. Here, movement of goods takes place from one state to another, but it is not an inter state sales.

As per Sec. 6A, where any dealer claims that an inter state movement of goods is due to stock transfer and not due to sale, the burden of proving this is on that dealer.

For this purpose he should furnish to the assessing authority, a **declaration in Form F**, duly filled and signed by the principal officer of the branch or agent to whom goods have been transferred, along with the evidence of dispatch of such goods.

If the assessing authority is satisfied, after making necessary inquiry, that the particulars contained in form F are true, he may, at the time of assessment or before the assessment of the tax payable by the dealer, make an order to that effect. Thereupon the movement of goods to which the declaration related, shall be deemed to have been occasioned otherwise than as a result of sale.

SALE OR PURCHASE TAKNIG PLACE OUTSIDE A STATE OR INSIDE A STATE : Sec. 4

Apart from providing for levy of CST on inter state sales, CST Act also lays down rules for determining as to in which state a "non inter state sales" shall be deemed to have taken place. This determination is necessary in order to find out which state shall levy local sales tax.

For this purpose, goods have been divided into two groups (i) Specific or ascertained and (ii) Unascertained or Future goods.

i. In the case of specific or ascertained goods, the sale or purchase shall be deemed to have taken place inside a state if the goods were within that state at the time the contract of sale was made. For example, if Anil of Trivandrum sells a car which was lying at Trivandrum to Bhasker of Mumbai and Bhasker directs Anil to deliver the car to Sekhar of Cochin, both the sales would be inside Kerala state; i.e., the sale would be outside all other states, inasmuch as the car was inside Kerala state at the time the contract of sale was made.

ii. As regards the Unascertained goods or future goods, their sales or purchase of goods shall be deemed to take place inside a state if the goods are within the state at the time of their appropriation to the contract of sale either by the seller or by the buyer. It is immaterial whether the other party to the contract gives his assent to the appropriation prior or subsequent to such appropriation. For example: Madan of Mysore contracts to purchase from Chander of Kolkata 10 cycles to be manufactured at Chander's factory in Kolkata and subsequently Chander manufactures the cycles and separates them out and appropriates them to the contract, the sale would be within the state of West Bengal since the goods were in that state at the time of appropriation.

iii. In the case of both the above groups of goods, it may so happen that there is a single contract of sale or purchase of goods situated at more places than one. In such a case it shall be deemed that there are separate contracts in respect of the goods at different places.

Above provisions are subject to provisions of Sec. 3 meaning thereby that these provisions shall be applicable only when the sale is "not an inter state sale".

SALE OR PURCHASE IN THE COURSE OF EXPORT : Sec. 5

CST Act also lays down principal for determining when a sale or purchase of goods shall be deemed to have taken place in the course of export of the goods out of India.

Accordingly following 3 sales shall be deemed to have taken place in the course of export of the goods out of India :

- When such sale occasions such export.

  For example, where Reliance Ltd. enters into a contract of sale with BP of London and moves the goods out of the territory of India, the sale by Reliance to BP would be deemed to have occasioned the export of the goods out of the territory of India. OR

- When such sale is effected by a transfer of documents of title to the goods ***after*** the goods have crossed the customs frontier of India.

- The last sale of any goods preceding the sale occasioning export of those goods out of the territory of India shall also be deemed to be in the course of such export if following conditions are fulfilled

  ⇒ Such sale took place after agreement of export entered into by the exporter or the order of export has been obtained and

  ⇒ Such sale is for the purpose of complying with the order/ agreement for such export.

  ⇒ Seller obtains from the exporter a declaration in form H .

There is an interesting question that whether sale of petrol (Aviation Turbine Fuel) by a petroleum company from his Indian depot to an aircraft proceeding abroad is an export sale?

In this regard there is a specific provision u/s. 5(5) which provides that if any designated Indian carrier purchases Aviation Turbine Fuel for the purposes of its international flight, such purchase shall be deemed to take place in the course of the export of goods out of the territory of India.

☞ This is a very specific provision applicable in the case of only Indian carriers(Air India, Indian Airlines, Jet Airways etc.) for their international flights.

If this sale has been made to a foreign airline, it is **Not an Export Sale** as per the decision of Supreme Court [Burmah Shell Co. v. CTO- SC]

The proviso to section 6(1) provides that the sale of goods which qualify as sales in the course of export out of the territory of India shall not be liable to Central Sales Tax.

SALE OR PURCHASE IN THE COURSE OF IMPORT : Sec. 5(2)

Like export, CST Act also lays down principal for determining when a sale or purchase of goods shall be deemed to have taken place in the course of import of the goods into the India.

Accordingly following 2 sales/purchase shall be deemed to have taken place in the course of import of the goods in to India :

- When such sale or purchase occasions such import. *OR*
- When such sale or purchase is effected by a transfer of documents of title to the goods **before** the goods have crossed the customs frontier of India.
  - ☞ As per Sec. 2(ab) "crossing the customs frontiers of India" means crossing the limits of the area of a customs station in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

LIABILITY TO TAX ON THE INTER-STATE SALE : Sec. 6

- Every dealer is liable to pay sales tax under the act on all sales effected by him in the course of inter-state trade or commerce during any year.
- Above rule is subject to following exceptions :
  - ⇒ **Certain items are not treated as goods** as per the definition u/s. 2(d). Thus their sale is also not liable to Central Sales Tax.
  - ⇒ Inter-state **sale of electrical energy** is not liable to Central Sales Tax.
  - ⇒ The **sales of goods in the course of export** out of the territory of India is also not liable to Central Sales Tax.
  - ⇒ **Sale to Foreign Diplomats etc. : Sec. 6(3) :** If the goods are purchased by official of any foreign diplomatic mission or consulate in India or official of United Nations or any other similar international body for himself or for such mission etc., no tax is payable in respect of such goods. For this the seller needs to obtain a declaration in form J from the purchaser.

- A dealer is liable to pay tax under the act on his inter-state sale even if no tax would have been leviable, under the sales tax law of the state if that sale had taken place inside that state.

Subsequent Sale : Sec. 6(2)

As per Sec. 6, goods sold in the course of first inter-state sale are taxable. During the movement of goods under this first sale , if goods are further sold by transfer of document, this subsequent sale is exempt from CST, if the subsequent sale is to a registered dealer and is of the goods which are of the description referred to in Sec. 8(3).

This exemption is subject to the condition that such "subsequent seller" obtains a declaration:

- From purchaser , in C form
- From the selling dealer i.e. from registered dealer from whom he (subsequent seller) has purchased the goods, in form E-I or E-II.

  The selling dealer has to make declaration in E-I form if it is a " first sale" and in E-II form if it is " subsequent sale".

One example will clarify the requirements :

- Assume that W dispatches goods from Karnataka and raises invoice on X in Madhya Pradesh, W charges CST and pays the same in Karnataka.
- During movement of goods, X sells goods to Y in Punjab and Y ultimately sells goods to Z in Orissa. Z takes delivery of goods and the 'movement of goods' comes to end.
- Sale from X to Y and Y to Z is by transfer of document. In this case :-
  - ⇒ W will receive declaration in 'C' form from X and will issue declaration in 'E-I' form to X.
  - ⇒ Later, X will issue declaration in 'E-II' form to Y and receive declaration in C form from Y.
  - ⇒ Finally, Y will issue declaration in E-II form to Z and will receive declaration in 'C' form from Z, which will complete the chain. If the chain is broken, CST will be payable again.

RATES OF TAX : Sec. 8

Inter state sale to Registered Dealers -

Every dealer who sells goods in the course of inter-state trade to a **registered dealer** has to charge sales-tax at the **rate of 2% or the rate applicable for local sales in the appropriate state, which ever is lower,** provided goods are eligible as per section 8(3) and these are specified in the Registration Certificate of purchasing dealer.

Following goods are eligible as per section 8(3) :

1. Goods specified in the purchasing registered dealer's certificate of registration -

   as intended for resale by him or

for manufacturing or processing of goods for sale or

used in mining or

in the generation or distribution of electricity or any other form of power.

2. Containers or other materials specified in the purchasing dealer's certificate of registration and intended for being used for the packing of goods for sale .
3. Containers or other materials used for the packing of any goods specified in the purchasing dealer's certificate of registration, or for the packing of any containers or other materials specified in the said certificate of registration .

Purchasing dealer has to submit declaration in form C to the selling dealer.

Other Inter state sale
In case of inter state sale which is not covered above (i.e. sale to unregistered dealer or a sale without C form) the rate of tax is **the rate applicable for local sales in the appropriate state.**

Sales to units located in Special Economic Zones
No tax is payable in case of sale of goods to a registered dealer for use in a unit located in any Special Economic Zone. For this seller has to obtain a declaration in form I from the purchasing dealer.

DETERMINATION OF TURNOVER FOR CST : Sec. 8A

Turnover of a dealer for the purpose of this Act shall be calculated as follows

Aggregate of the sale prices

Less

(a) The amount arrived at applying the following formula :

$$\frac{\text{rate of tax X aggregate of sale price}}{100 + \text{rate of tax}}$$

- The deduction on the basis of the above formula is to be made only if the amount by way of tax collected by a registered dealer is included in the aggregate of sale prices.

- Where the turnover of a dealer is taxable at different rates, the above formula is to be applied separately in respect of each part of the turnover taxable at a different rate of tax.

(b) The sale price of all goods returned to the dealer by the purchasers of such goods within a period of six months from the date of delivery of the goods.

For this satisfactory evidence of such return of goods and of refund or adjustment in accounts of the sale price is to be produced before the assessing authority.

⇒ Sales Returns shall be reduced from the current turnover only when it relates to the sales made in the current period. If sales return has taken place in the current period but sales itself relates to the earlier period, this return shall be reduced from the turnover of earlier period only.

⇒ In case of returned goods, their sale price is to be reduced only when goods have been returned within 6 months from the date of delivery. However as per certain court judgments, this restriction of 6 months is not applicable in case of ***rejected*** goods. Thus sale price of rejected goods is always a permissible deduction even if they have been received back after 6 months.

(c) Such other deductions as the Central Government may, having regard to the prevalent market conditions, facility of trade and interests of consumers, prescribe.

☞ As per Sec. 2 (h), 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 practice normally prevailing 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 then the cost of fright or delivery or the cost of installation in cases where such cost is separately charged.

☞ Weighment Charges/Tulai Charges have been held to be the part of delivery charges and accordingly are not to be included in the sale price if charged separately.

☞ Packing charges have been held to be the part of sale price.

☞ If any deposit etc. has been received from the buyer(e.g. for returnable containers), it will not form part of turnover for calculating C.S.T. liability.

☞ Excise duty is treated as part of sale price.

☞ Charity or dharmada collected by dealer will not form part of sale price.

DECLARED GOODS : (Sec. 14)

"Declared goods" are given a separate treatment in the CST Act. These are the goods which are treated of special importance in inter-state trade. CST Act provides a list of such goods and further specifies various restrictions to which any state law imposing local sales tax on these goods shall be subject to.

The following goods have been declared as of special importance in inter-state trade and commerce and constitute ''declared goods'' :

1. Cereals (paddy, rice, wheat, jowar, bazra etc.)
2. Coal, including coke in all its forms, but excluding charcoal.
3. Cotton, (indigenous or imported) in its unmanufactured state, where ginned or unginned, baled, pressed or otherwise, but not including cotton waste.
4. Cotton fabrics.
5. Cotton yarn, but not including cotton yarn waste.
6. Liquefied petroleum gas for domestic use(LPG)
7. Crude oil.
8. Hides and skins, whether in a raw or dressed state.
9. Iron and steel.
10. Jute.
11. Oilseeds.
12. Pulses.
13. Man-made fabrics.
14. Sugar.
15. Woven fabrics of wool.

Restrictions and conditions in regard to tax on sale or purchase of declared goods within a State. (Sec. 15)

Act provides that in respect of declared goods, following restrictions and conditions shall be applicable on state sales tax law:-

(a) the rate of tax in respect of any sale or purchase of declared goods inside the State can not exceed 5%.

(b) Where a tax has been levied under state law on the sale or purchase inside the State of any declared goods and such goods are sold in the course of inter-State trade or commerce, and tax has been paid under CST Act in respect of the inter state sale of such goods, the tax levied under state law shall be reimbursed to the person making such sale in the course of inter-State trade or commerce.

Some Definitions

"Appropriate State" means-

(i) In relation to a dealer who has one or more places of business situate in the same State, that State.

(ii) In relation to a dealer who has places of business situate in different States, every such State with respect to the place or places of business situate within its territory. [Sec. 2(a)]

"Business" includes- [Sec. 2(aa)]

(i) Any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern ; and

(ii) Any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;