



SEMINAR on VAT-CST

Saturday 4th April 2014

ICAI Tower, BKC,
Bandra(E), Mumbai

“Declaration of Forms in C.S.T.”

by

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“Declaration of Forms in C.S.T.”

- VAT Auditor to certify in clause (i) of Part I to E-704 :
“wherever the dealer
has claimed sales against any declarations or certificates;
except given in Annexure H and Annexure I,
all such declarations or certificates are produced before me.
I/We have verified the same and
they are in conformity of the provisions relating thereto.”
- Qualification / Negative certification to be made in para 3 of Part I
- Test Check ?



“Declaration of Forms in C.S.T.”

- Between Para 1(C) & 2 (A) of Part 1
“the audit includes examining on a test basis, evidence supporting amounts or disclosures in financial statements.”
- Sample Size & Audit Working papers
- Reporting in Annexure G
- Reporting in Annexure H & I
- Differential Tax Liability as per Annex. H / I
- Auto-reflected in Table 2 (xv) , Table 3 (xi) of Part I
- Table 5 of Part I –classification of additional dues ; serial no 2/3/5

“Declaration of Forms in C.S.T.”

- Para 6 of Part I : Whether Recommendation to dealer reqd. ?
Para 30.5 ;page 153 of ‘ A Guide to MVAT Audit ‘ (2nd Edition)
Not required to quantify diff. liability unless it is
Sure that Decl. are not going to be received.
- Validity as per provisions of law.
- Different Declarations: MVAT & CST
- Forms 406 ,407,408 & 409 , H-local ,etc under MVAT
- C,D,F,H, E-I , E-II, I , J under CST Act

Auditor to verify the concession/exemption

Form C -- Concessional rate @ 2% u/s 8(1) or
-- Exemption from payment of tax u/s. 6(2) or
-- Any 8(5) notification Rule 12(1)

Form D -- Sale @ Concessional rate to Govt ,
RD or otherwise (only upto 31-3-2007)

E-I / E-II -- Exemption u/s. 6(2) r.w. Rule 12(4)

Form F -- Exemption u/s 6A r.w. Rule 12(5)

Form H -- Exemption u/s 5(3) r.w. Rule 12(10)

Form I -- Exemption u/s 8(8) r.w Rule 12(11)

Form J -- Exemption u/s 6(4) r.w. Rule 12(11A)

C Forms

8(1) @ 2% / Local Rate whichever is less. (wef 1-6-2008)

8(2) @ Local Rates

8(3) (b) Class/ classes of goods included in RC

goods being intended for

re-sale by him or

use by him in manufacture or processing of goods

for sale or

in telecommunications network or

in mining or

in generation /distribution of electricity or

any other form of power.

(c) Packing Materials as are included in RC

(d) PM for packing of clause b / c goods

C Forms

Rule 12(1) of CST (Registration & Turnover) Rules, 1957

Single C form covering all transactions per quarter b/w. same
2 dealers

If in a sale transaction ; delivery spread over 2 different
quarters ; then separate Form for goods delivered in each
quarter.

Delivery of goods is the key !

Quarter mismatch –Trade Circular 70T dt 6-12-2007

C Forms

- Each and every item need not be mentioned in CST RC :
- Class of goods to be included with full description –
State of Tamil Nadu V. South India Drum Mfg. Co -60 STC 110 (Mad)
- Term ETC would cover all those articles mentioned and also allied articles –State of TamilNadu Vs. A.S.A.M.Adian Chettiar (55 STC 353) (Mad). ;
- Trade circular 26T of 2006. – CST RC Amendment.
- Trade Circular 22T of 2012 dt 26-11-2012. ,
r.w. Trade Circular 2T of 2009 dt. 23-01-2009 (Class of goods)

C Forms

Defective Declarations

Misspelling

W.e.f. CST RC date is missing

Non-striking of blank spaces

No Totaling of Sales

Date of Form is missing /

No date below sign /

Issued without striking off any of 4 alternatives /

No dating of the form.

Shri Anilkumar Dutta Vs.Addl Member, Board of Revenue, (20 STC 528)
(Calcutta HC)

- Minor / Clerical defect can be removed by granting opportunity to the dealer– Omprakash Trading Co. SA 2108 of 2003 dt 2-6-2008

C Forms

- NOT for the officer to hold an enquiry as to the actual /probable use of the goods mentioned in the CST RC .

Mere mention of goods in RC is enough.

State of Madra V Radio & Electricals Ltd.-- 18 STC 222 (SC)(96) Shri Murugan Eng.Products Vs CTO 148 STC 419 (Mad)

-- 10(d) Penalty for contravention be levied on the buyer

- Approach of the authorities NOT to be too technical – Invoice no did not tally – Other particulars matching...

Iron Exchange India Ltd. RA 25 of 2007 in SA 596 of 2003 dt 28-9-2007.

C Forms

Entire transaction liable for concessional rate of tax even if value of C form received is of lesser amount.—

Orient Papers Ltd. –35 STC 84 (Andhra Pradesh) followed by MSTT in Kosan Industries Ltd. –SA no. 1188 to 1190 of 2000 dt 19-7-2003

Quarter Mismatch

Customer receives goods / books the transn. in next quarter.

Strict interpretation and in MSTT decision of Spicer India Ltd.

(SA 2376 of 2003 dt 17-12-2005) held that :

C form has to be as per date of sale.

However 70 T of 2007 dt 6-12-2007 allows such mismatch subject to reconciliation

C Forms

- C Forms on or before 31-3-2008

MSTT has ordered to issue C forms to appellants for periods before 31-3-2008 . – S.A. 766 & 767 of 2010 dt 10-1-2011.

(Following ST Bar assn & Others Vs. CST, Delhi –85 STC 251)

- Prior period Declarations are being issued manually with some procedural formalities.
- Can amalgamated company issue Form C for the amalgamating co ?

C Forms

- Issuance of C form by a job worker :
Empire Dying Vs Mah. State 40 STC 1 (Bom)
- 10(d) can not be levied if dealer bonafidely believed that he is eligible to issue C form :
Sanjiv Fabrics Vs. CST (2004) 137 STC 563 (All)
- Penalty u/s. 9(2) of CST r.w. 29(3) of MVAT Act Not justified ;
where appellant could not produce declarations & AO has not made efforts to know whether the appellant has knowingly misclassified Sales t.o.against C form
SA No. 192 of 2011 dt 13th Aug 2012 M/s. Anusaya Auto Press Parts Pvt Ltd. vs. The State of Maharashtra

C Forms

- Some States allow dealer to apply and generate C forms online & print the same himself. Self-printed declarations are equally authentic even w/o manually fixed rubber stamp. Circular dt 27-5-2011.F (11) / CCT/2010/349-MSTN dt. 16-9-2011

Issues u/s 6A –F Forms Branch / Consignment /Distributor

- Burden of proof on the dealer
- F Form + Dispatch proof
- Part I –Table 5 – point no 2 in 704 to calculate additional dues on account of disallowances
- No conceivable link b/w. transfer and sale by branch
English Electric Co. –38STC 475 (SC) ; K.G.Khosla –43STC457(SC)
- C Form can be issued by ultimate buyer even @ belated stage.
Sahney Steel 60STC301 (SC)
- Substantial sale to one customer does not negate 6A –
126 STC 458 (Kar) Jindal Alluminium
- Specific v/s Standard goods.
- Written agreement for Branch / consignment / distribution is mandated ?

6A –Transfers

- How to identify branch transfers ?
- Form 1B – BR4A(1)* by transferor
*proviso allows Serially Bound Sales(transfer) Invoices ; where Invoices contain all relevant details of Form1(B)
Form 1A(B) – BR A(2) by recipient branch.
- Obtain a representation letter from the dealer containing the list of their Branches and /or Consignment agents /Distrib. situated OMS along with the summary of stock transfers.
- GTO to include ALL branch transfers in 704
- Inter state transfers reported in Annex J-6
- F Forms received /not received in Annex G / Annex I

6A – F Forms

- Annex F of Form 704 requires reporting of ratios with respect to inter state stock transfers.
- Differential tax liability on such pending F forms + other pending decl. as per Annexure I gets auto reflected @ point XI of Table 3 in Part I of Form 704.
- No need to reflect in sl.no.2 of Table 5 of Part I
- Rule 12(5) : F form on monthly basis
If issued on quarterly basis, suitable note in clause (i) of Para 2B of Part I
- Return of goods which were consigned/ BT
OMS Br. Tr. – Purch / Sale to be properly reflected in VAT returns / 704.

Different types of Stock Transfers

- (i) STOCK & Sale by Branch / Agent / Distributor
- (ii) Exhibition, Trade Fairs, etc. – Display / Display & Sale
not bound to obtain RC in transferee State unless his sales exceeds the prescribed limit.
- (iii) Purchase Returns
- (iv) Goods Rejection i.e. Uncompleted Sale
- (v) job work or processing (not a WC)
- (vi) repairing
- (vii) after completion of job work or processing(where transferor is job worker) (not a WC)

Different types of Stock Transfers

- (viii) of repaired goods (where transferor is repairer and job of repairing is not a WC)
- (ix) Free Distributions
- (x) Dealer of transferor State Transfers Machinery, Tools etc. for rendering any service in transferee State or for use and not for sale / deemed sale.

Whether F Form mandatory for All branch transfers w.e.f.
11-01-2010 ?

Ambica Steels' case

- Ambica Steels Ltd vs. The State of Uttar Pradesh (12 VST 216).
Subsequently decided by the Supreme Court (24 VST 356)
- 6A applicability in case of inter-state job work transactions on P to P basis had not been deliberated by the S.C.
- SC Observation : “.....we are informed that certain States within whose jurisdiction the transferee is located are not issuing F forms. In such an eventuality it would be open to the assessing officer to complete reassessment proceedings on its own merits after examining the transaction between the parties, keeping in mind the circumstance that the assessee is not in a position to obtain the Form F, for no fault of his.”

6A - Transfers

- 6A Headnote : “transfer of goods claimed otherwise than by way of sale .”
Actual section states : ““transfer of such goods to any other place of his business or to his agent or to his principal”.
- 6A(1) further states : “If the dealer fails to furnish such declaration, then, the movement of such goods shall be deemed for all purposes of this Act to have been occasioned as a result of sale”.
- 4 Trade Circulars on the subject i.e.
16T dtd. 20/02/2007,
5T dtd. 29/01/2009,
2T dtd. 11/01/2010 and
12T dtd. 22/03/2010

F Forms

- ACPL Jewels –Allahabad HC 39VST44 ; after considering Ambica Steels stated that where for URD –F form not possible to be issued / labour charges transaction only : Assessing Authority to examine other evidences in lieu of F Form
Alternatively Book Transfers as Sale @ zero value
- Presentation : -
 - In returns : show value of the goods transferred.
 - In books : show only the conversion charges.
S T Dept. will have to give Form F for the value of the goods, even if the invoice is only for the conversion charges.

F Forms

- Can there be transfer of Intangible goods ?
- Intra-state branch transfers.
- Can newly Regd Dealer issue F form for past transactions of URD period ?
State of T.N. Vs Coca Cola Products -109STC634 (Mad)
- Can there be 6A transfers in Inter-State Works Contract ?
- 6A(2) : Conclusive presumption except for fraud,etc ; Ashok Leyland Vs. state of TN (134 STC 473 –SC)
- 6A(3) : wef 8-5-2010 ; power to reassess/revise the decisions as re. F forms

H Forms

- 5(3) Penultimate Sale / Stringer Export sale / Sale in the course of exports / Back to Back Exports – H Form
- Reference to a pre-existing PO from foreign buyer is a must.
- purchase of goods should be the same goods which are exported out of the territory of India– Sterling Foods
- Constitution Bench in Azad Coach Builders Pvt Ltd & others Vs State of Karnataka –36 VST 1 (SC) : When the transaction between the assessee and the exporter and the transaction between the exporter and foreign buyer are inextricably connected with each other, the ‘same goods’ theory has no application .

H Forms

- Circular No. 11T of 2005 dated 30-5-2005
Form H is allowed under MVAT even for local purchases !!
Dept. insists : Local Purchases for export of goods be shown
under the CST Act if H Form is to be obtained
from dept.
- Sale in course of export comprises of 3 essentials :
 - i) there must be a sale ,
 - ii) goods must actually be exported ,
 - iii) sale must be part and parcel of the exports. --
Nipha Exports Pvt Ltd. 8VTC466 (SC)

H Forms

- Whether Packing materials be sold against –H Form ?
Special PM vs. General PM forming part of the export agreement only is allowable
Suraksha Packers – S.A.1345 of 2003 dt 6-6-2011 ;
Brown Box ; Appeal no 2 & 3 of 2005 dt 24-8-2010 .
- Notif u/s 8(5) dt 1-5-2002 issued : Allowable on production of C form.

6(2) Sales (E-I / E-II)

- CST Act : to save multiple tax on a single transaction
Subsequent sale during movement of goods in pursuance of an inter-state sale is exempt from tax subject to certain conditions.

6(2) starts with : “notwithstanding anything contained in sub-section (1) or sub-section (1A)”, gives this section an overriding effect and stipulates that if conditions prescribed are satisfied, then charging section 6(1) and 6(1A) shall not come into force.

6(2) to satisfy ‘2 terminee test’ as set out in Expln 1 to S/3 :
TISCO ,Bombay – 11STC 655 (SC)

6(2) Sales (E-I / E-II)

- ‘documents of title of goods’ : S 2(4) of Sale of Goods Act, 1930 : Detailed discussion in Madras State Vs Ramu 89STC481 (Mad) : SLP dismissed -89STC 007
- Post Parcel Receipts are not DOT to goods – Vikas Electrical Vs. State of Tamil Nadu 56STC286
- ‘in the course of trade’ :
Transporters Godown / Transshipment
Seller -- Transporter – handover of goods to buyer.
- If goods are exempt from tax in the state of 1st seller & are sold in transit ; in such a situation can the selling dealer (1st Seller) issue E-1 ?

6(2) Sales (E-I / E-II)

6(2) for subsequent sale to govt. (after 1-4-87) ??

6(2) ; 2nd proviso : Subsequent regd selling dealer NOT required to furnish the form C for subsequent sales if

- (i) these goods are either exempt from tax generally or taxable generally at the rate lower than 2% (3% for 1.4.2007 to 31.5.2008), in his state AND
- (ii) he is able to prove to the satisfaction of the authority that such sale is of the nature referred to in this subsection

Endorsment on DOT

- M/s. Haridas Mulji Thakkar (94: STC: 317) (Gujarat)
Endorsement of LR is not necessary where LR contains the name of the ultimate buyer / consumer in whose favor the final delivery is made & the 1st buyers' (in the chain) name appears as the consignee of the goods. In such a case, it would be considered as Constructive Endorsment of LR .
- Chhaganlal Savchand –62 ITR 133 (SC) also held that Trf of DOT to goods d.n.mean by endorsment only ; also confirmed in TISCO – 11 STC 655 (SC)
- P.A.George 110 STC 253 (Bom) : No production of endorsed copy of LR/ RR as only C ; E1 / E II are mandated in 6(2) .
Not followed in Maharashtra !!!!

A & G Projects (SC)

- A & G Projects and Technologies Ltd vs. the State of Karnataka 19: VST: 239 (SC). : Predetermined sale
- The issue before the SC, in A & G 's case was to decide on the facts, where two inter-state sales were admitted, as to which state, the TN or Karnataka was eligible to levy & collect tax as per sec 9(1) of the CST . 6(2) Claim was not an issue before the court. Moreover, the court was not confronted with the question of 6(2) Claim The observations in respect of the 6(2) claim therefore, be considered as 'obiter dictum'.
- Decision in the A & G's case is by the division bench of SC comprising two judges, where as Bench of 3 judges has decided in G.A.Galiakotwala that mere production of C and E are sufficient to 6(2) Claim.
- G.A.Galiakotwala Vs State of Madras (37 STC: 536) (SC ; 3Members) was not referred / considered in M/s A & G Project & Technologies Pvt Ltd, which is a direct decision on the subject

6(2)

- Trade Circular issued by the Comm. Of Commercial Taxes, Andhra Pradesh [ref. CCT's Ref All (2)/91/201030 /7-5-2010
- Circular issued by the Govt. of West Bengal, Directorate of Commercial Taxes through the Comm. of Commercial Taxes, West Bengal (Trade Circular 11/ 2010 dt 4-10-2010
- Ajay Trading Company – VAT S.A. -111 dt 12/12/2012
- MVAT Auditors can make a disclosure in Annexure K

E-I Example

- 'a' of Ahmedabad sells goods to 'b' of Bombay (an interstate sale) During movement of goods ; 'b' of Bombay sells goods to 'C' of Kolkata ; another Registered dealer. 2nd Interstate sale by 'b' to 'c' can earn exemption on production by 'b' Form E-I issued by 'a' on issuance of Form 'C' by 'b' to 'a'
- 'a' ❖ 'b' ❖ 'c'
- 'A' : RECEIVES C FORM from 'b'
 GIVES E-I FORM to 'b'
- 'B' : GIVES C FORM to 'a'
 RECEIVES E-I FORM from 'a'
 RECEIVES C FORM from 'c'
- 'C' GIVES C FORM to 'b'

E-II Example

- If 'c' without taking delivery in the course of movement of goods sells the same goods to 'd' of Delhi; another R.D. ,then sale by 'c' to 'd' can also enjoy exemption if 'c' produces C form obtained from 'd' and E-II obtained from 'b'

• 'a' \diamond 'b' \diamond 'c' \diamond 'd'

- 'A' : RECEIVES C FORM from 'b'
GIVES E-I FORM to 'b'
- 'B' : GIVES C FORM to 'a'
RECEIVES E-I FORM from 'a'
RECEIVES C FORM from 'c'
GIVES E-II FORM to 'c'
- 'c' GIVES C FORM to 'b'
RECEIVES E-II FORM from 'b'
RECEIVES C FORM from 'd'
- 'D' GIVES C FORM to 'c'

Form I

- Form I -- Exemption u/s 8(8) r.w Rule 12(11)
- OMS Sale to a Regd SEZ unit / Regd. SEZ developer
- SEZ akin to a Different Territory
- To be obtained from Development Commr by the Purchaser
- Can be issued by RD u/s 7 of CST
- SEZ Unit to be authorized by Devpt. Commr of SEZ
- Goods mentioned in RC
- Same state sale from SEZ to Domestic Tariff Area Dealers is taxable : India Exports Vs. State of UP (Civil Misc WP 1488 of 2009 dt 11-2-11)

Form I

- EOU can claim reimbursement of CST paid on Inter state purchase : Foreign Trade policy by DGFT ; subject to certain conditions + Application in Annex I duly certified by a CA in Annex II with Table
- EOU can issue C forms – avail 2% concessional Inter State purchases
- Form I issued by Local Sales tax authority to be allowed in Maha : Trade Circ 8T of 2005 dt 9-3-2005 and 19T of 2009 dt 20-6-2009

Form J

Form J -- Exemption u/s 6(4) r.w. Rule 12(11A)
OMS sale to Foreign Diplomat / UN, etc
for their
official purposes.

: WORDS OF CAUTION :

- Views expressed are the personal views of faculty based on his interpretation of law .

Application / implications of various provisions will vary on facts of the case and law prevailing on relevant time.

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& GOOD
LUCK**