



**ISSUES OF INTERSTATE
TRANSACTIONS UNDER
CST LAW**



Presented by :

**C.A.Madhukar Khandekar
Partner**

Suresh Surana & Associates LLP

Introduction

The Central Sales Tax Law is comparatively very small Act. But the issues raised by the Sales Tax Department and Dealers are numerous. We have touched upon a few important issues and views taken by the Courts.

Introduction

We have discussed the following:-

- 1. Inter-State Transactions**
- 2. Sale in the course of Transit**
- 3. Stock transfer**
- 4. Inter-State Works Contract**
- 5. Sale in the course of Import and Export**
- 6. Sale to Mumbai High Location**
- 7. High sea Sales**
- 8. Concessional Tax against declarations**
- 9. Intangible Goods**
- 10. Sale of Right to use Goods.**

Interstate Transactions

- ▶ **When a Sale or Purchase of goods takes place in the course of Inter-state trade or commerce**
- ▶ **VAT : Movement of goods within the same state**
- ▶ **CST : Goods crossing the geographical boundaries of one state to another state**

Interstate Transactions

- ▶ Benchmark decision:

No Vat is leviable on E-Commerce website. They are only facilitators to the transaction of sale and not acting as sellers themselves. The actual sellers have discharged their tax dues in full and therefore place of delivery has no relevance because as per Article 286 and Section 3 of CST Act, tax is payable in the state from where sales have 6 occasioned- Held by Kerala High Court in Flipkart Internet Private Limited WPC 5348/2015 pronounced on 26-10-2015.

Interstate Transactions

- ▶ Interstate sale :

Dealer in gold in Maharashtra effected sales of gold to certain customers located in other states.

Delivery of gold was personally taken by representative of buyers who came to Maharashtra for taking delivery. Sale is completed in Maharashtra. Sale is not interstate sale but local sale.

**Surajmull Gouti vs. State of Maharashtra
(2015)50 GST 356)**

Declared Goods

Declared under section 14 to be of special importance in Inter-state trade or commerce

E.g. : Cereals, Cotton, Coal, iron & steel, Jute, Oilseeds, etc.

Taxable rate : 5% u/s 15

Goods

Include all materials, articles, commodities and all other kinds of moveable property,

but does not include actionable claims, stocks, shares and securities.

Inter-state Sale

A sale is an inter-state sale if the contract therefore contemplates or necessarily involves the movement of goods from one state to another

Works Contract

Contract for carrying out the any work which includes assembling, construction, building, alteration, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of moveable or immovable property

Section 3 of CST Act 1956

Definition

A Sale or Purchase of goods takes place in the course of Inter-state trade or commerce,

where a Sale or Purchase...

- a) Occasions the movement of goods from one state to another**

OR

OR

Where a Sale or Purchase,

b) Is effected by a transfer of documents of title to the goods during their movement from one state or another

Exemption u/s 6(2)

Conditions:

- Same goods
- Sale made to registered dealer
- Goods covered by CST Registration Certificate (for subsequent sale)
- Form E1 or E2 received from selling Dealer
- Form C issued by Subsequent dealer

Case Law Ref.: 2008-VIL 40 SC

Parties :
A&G Projects and Technologies
Ltd.
Vs.
State of Karnataka

Section : 3(a) of CST Act

Fact of Case

A&G (Karnataka) and Customer (Karnataka) entered 3 independent contracts for

1)Supply of equipment,

2)Execution of civil works at site located in Karnataka,

3)Erection and commissioning.

Fact of Case

1) A&G appointed Sub contractor for procurement of equipment

2) Sub contractor ordered Manufacturer for the fabrication of equipment.

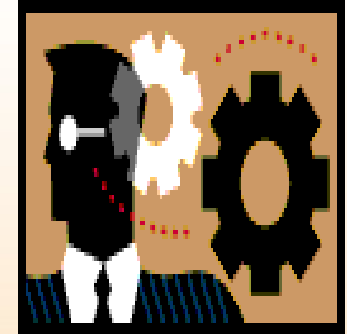
Contentions of Parties

A&G Projects and Technologies Ltd.:

- 1) Sale between Manufacturer and Sub Contractor is 1st sale
- 2) Subsequent sales were eligible for exemption.

**A&G Projects -
Karnataka -Appellant**

**Contractor – outside
Karnataka**



**2nd Contract –
Inter-state
sale for
Procurement
of equipment**

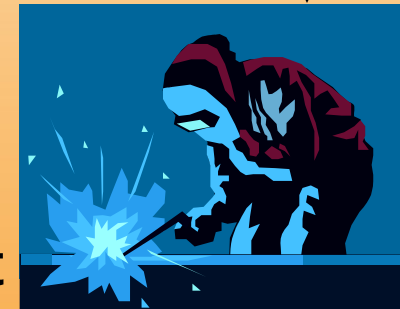
**3rd Contract
– Inter-state
sale**

1st Contract

**Supply of
equipment**



Delivery of Equipment



Customer- Karnataka

**Manufacturer of
equipment-TN**

Judgment by SC:

Rejected the claim as

1)The subsequent sale contracts were in place prior to the commencement of inter-state movement of goods

2) Subsequent sales are made effective only after and not before the commencement of the inter-state movement of goods as per first sale

3)SC held that Tamil Nadu alone could tax all three sale transactions as Manufacturer has moved the goods from Tamil Nadu

Ref : 2001(124) STC 0330 WBTT

Parties :
**State Trading Corporation of
India (STC)**
Vs.
**Assistant Commissioner of
commercial Taxes**

Section : 3(a) of CST

Fact of Case

- **STC imported newsprints from Overseas and distributed the same to different publishers at various locations in different States**
- **STC delivered the newsprints in West Bengal**

Contentions of Parties

STC : Claimed deduction on basis of inter-state subsequent sale

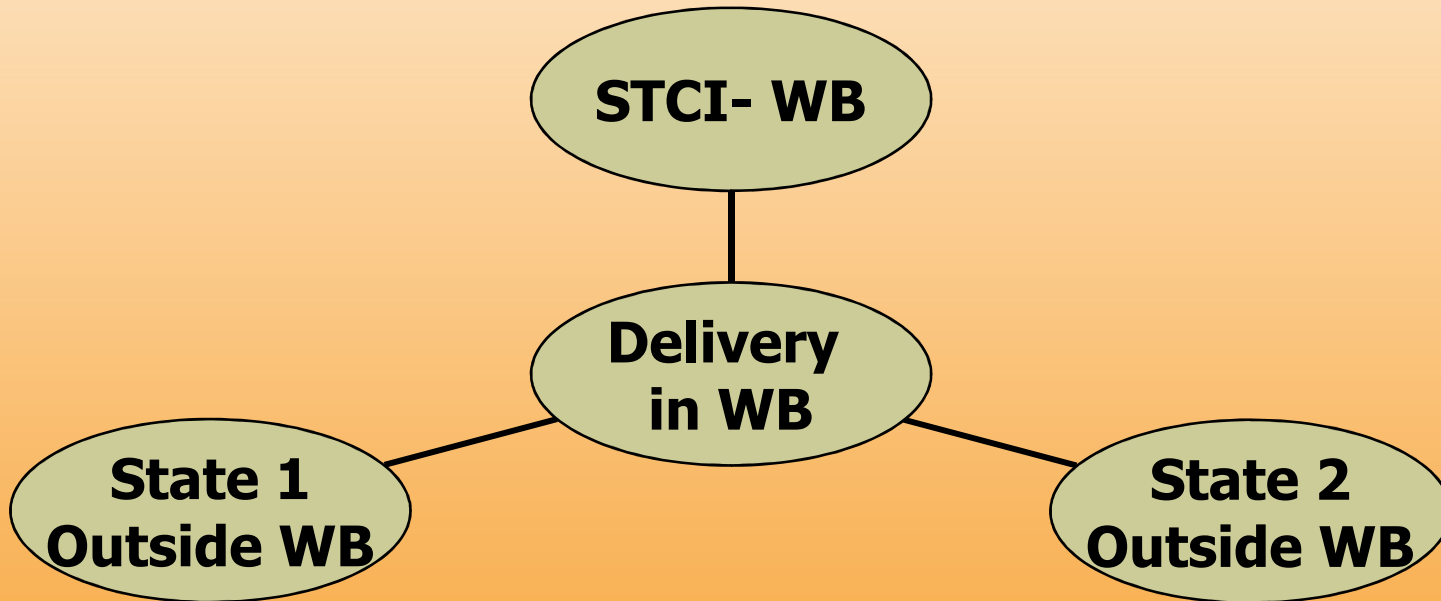
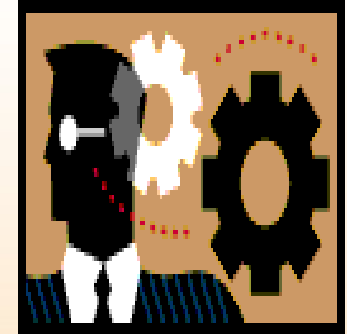
Judgment by
West Bengal Commercial Taxes
Appellate and Revisional Board

Rejected claim and levied tax under Bengal Finance Act 1941 on the ground that delivery of goods was made in West Bengal and not outside the State

State Trading Corporation of India (STCI) - West Bengal-Appellant



← **Import of Newsprints**



Judgment by Court :

STC is canalizing agent of Government importing newsprint from overseas and distributing to the publishers of different States as per allocation of orders of the Registrar of Newspapers in India

Delivery to buyer is strong evidence of intention to change the ownership but it is not conclusive

Delivery of newsprints was made within West Bengal but transport in pursuance of allotment was done outside West Bengal

**Before
Maharashtra Sales Tax Tribunal**

**Ref : SA 894 of 1990 dated 12 Aug
1991**

**Party:
M/s Fatechand Chaturbhujdas**

Section : 3(a) of CST

Fact of Case

Sale made among local parties situated at Maharashtra.

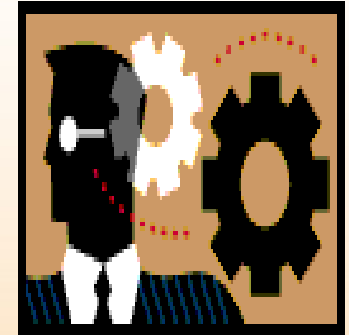
Purchasing party directed the goods to be dispatched to party outside the State

Fatehchand - Maharashtra

**Customer - outside
Maharashtra**



Delivery of material



1st Sale



**2nd Inter-state
sale - EXEMPT
U/S 6(2)**

Dealer- Maharashtra

Contentions of Parties :

Local Party : Argued that sale between local parties is 1st inter-state sale and sale by local party to outside party is subsequent inter-state sale duly exempted u/s 6(2)

1)The transfer of property to ultimate purchaser gets synchronized at the time of booking the goods with the carrier

2)The subsequent sale takes place by transfer of documents of title to goods eligible for deduction on production of form “C’ by outside party and Form E1 from Local party

Ref : 84 STC 317 Gujarat

**Parties:
State of Gujarat
Vs.
Haridas Mulji Thakker**

Section : 3(a) of CST

Fact of Case

Sale made between local parties in Gujarat.

Seller in Gujarat ordered to Maharashtra dealer to deliver the goods to purchasing party in Gujarat

Contentions of Parties : Before Gujarat High Court

Local Party :

Argued that second interstate sale was exempted though there was no physical transfer of LR there was constructive transfer by instruction and hence covered by section 6(2)

Ref : 113 STC 431 Madras

Parties :
Duvent Fans Pvt Ltd
Vs.
State of Tamil Nadu

Section : 3(a) of CST

Fact of Case

Sale made among local dealer and purchasing dealer in Madras.

Purchasing dealer instructed to deliver the goods to ultimate purchaser's place in other State

Decision of Madras High Court :

1st transaction is 1st interstate sale

**Second sale is subsequent sale and
hence exempt u/s 6(2)**

Example of Sale in Transit

1)A Contractor (Mumbai) places an order to Steel Manufacturer (Gujarat).

2)Delivery place : Mumbai

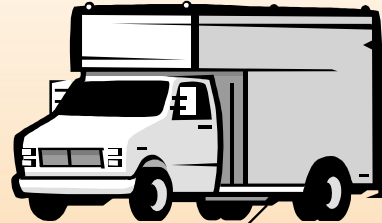
3) Contractor (Mumbai) diverted the location of dispatch to customer at Bhopal and the carrier delivers the goods to Customer at Bhopal

Contractor - Mumbai



1st Contract

**Inter-state
sale-
Taxable**



**Manufacturer of
Steel - Gujarat**



**2nd
Contract**

**Inter-state
sale –
Exempt u/s
6(2)**



**Diverted after
the
transportation
started on
way to
Mumbai**

Customer- Bhopal

Contractor - Mumbai



**1st Inter-
state Sale**

**Form E1 by
Manufacturer**

**Manufacturer of
Steel - Gujarat**



**Form C by
Customer**

**Diverted
Delivery to
customer**

**2nd Inter-
state Sale**



Customer- Bhopal

Conditions to get Exemption u/s 6(2):

- **At primary sale ultimate customer is not existing**
- **Same goods must be diverted in transit towards Customer from Contractor**

Conditions to get Exemption u/s 6(2) :

- **Sale is effected by endorsement of transport documents**
- **Contractor has to transfer the Lorry receipt in the name of Customer (affixed by his signature, stamp, Date and time on LR)**

Exemptions u/s 6(2):

- **Sale between Contractor and Manufactures is primary sale and it is Taxable under CST Act**

Exemptions u/s 6(2):

➤ **Sale between Contractor and Customer is subsequent sale exempted from the tax if Contractor produces certificate “C” issued by Customer and Form E1 issued by Manufacturer**

STOCK TRANSFER TO BRANCH OUTSIDE THE STATE

Head Office –
Maharashtra

Branch Office
– Gujarat



Applicability of Form F

Section 6A of Central Sales Tax, 1956 puts a burden of proof on the person claiming transfer of goods otherwise than by way of sale and not liable to pay tax under the Central Act. Burden is to be discharged only submission of Form F

Applicability of Form F

Form F is required to be filed with support of dispatch proof in respect of all transfer of goods which are otherwise than by way of sale and also applies to all goods sent or received for job work or goods returned.

Applicability of Form F

- **Movement of specifically manufactured goods from H.O. In one State to Branch in other state, pursuant to a specific order placed with branch, amounts to inter - state sale from H.O. Sahney Steel Press Works Ltd. (60 STC 301) (S. C.)**

Applicability of Form F

An unregistered dealer can not be issued Form F under Central Sales Tax as registration number and its date of validity is to be shown in the form.

Applicability of Form F

No specification of goods in the registration certificate is required for the issue of or use of Form F.

Applicability of Form F

Periodicity to cover transactions :

Periodicity of one month for coverage in one single Form is directory and not mandatory.

Cipla Ltd. (61 VST 445)(Cal. HC)

Applicability of Form F

Interstate transfer for Exhibition cum sale.

Appellant took goods to other states and sold the same there in exhibition. Local tax paid on such sales.

Applicability of Form F

- **Assessing authority in Maharashtra levied tax under CST law on the ground that Form F not produced.**

Held :

allowed claim of non taxability. Such transfer is not transfer to any place of business of appellant. Hence Form F not required.

Shobha Asar : STA 1 of 2014 dated 8th July 2014
. Bombay High Court

Ref : 2004-134-STC-0473 SC

Parties :
Ashok Leyland Ltd (ALL)
Vs.
State of Tamil Nadu

Section 6

Fact of Case:

- 1) ALL is manufacturer of commercial vehicles. Company is having sales depots in various states.
- 2) ALL transfers finished products and spares to sales depots.
- 3) The dispatches are supported by Stock Transfer Invoice, transport details and Form F

Judgment by SC

Appellant has to undergo the enquiry about whether the movement of goods is not occasioned because of sale and it is a stock transfer to get the exemption u/s 6A

Ref :Writ Petition No 302 of 2007

**Parties :
Ambica Steels Ltd
Vs.
State of UP and others**

Section : 6A

Fact of Case :

Ambica had sent iron and steel ingots to various firms outside UP for the purpose of converting them into iron and steel rounds, bars and flats.

Ambica Steel Ltd - Allahabad



Sent iron and steel ingots for job processing

Contractor for Processing – Gujarat

Transaction between Ambica and contractor is job work and not sale but for exemption from CST, Form F is required



Contentions of Parties :

Ambica : Argued that goods sent to outside states for processing purpose and it was not sale and therefore no CST is applicable for the same.

Commissioner (UP) :

- 1) Form F is required to submit in respect of transaction of job work failing which tax would be imposed.
- 2) Non submission of Form F will mean the movement of goods occasioned because of sale, which falls u/s 3(a)

Judgment with reference to

Circular dated 28 November 05 published by Lucknow Sale Tax, mentioned that transactions including transfers of material required in job work need to be supported by Form F.

Judgment with reference to

Circular published by Tax Commissioner of Uttarakhand with reference to Ashok Leyland Ltd. stating that if the transfer of goods is made without Form F it will be considered as sale and liable for CST

Form F is not Conclusive


Transactions done by Branch or Sales Depot or C & F Agent attract the tax liability, if the movement of goods is against existing orders. It is considered as Sale and the case falls under section 3

Tax on Sales in the course of Inter-State Trade or Commerce

Section 8 deals with Form C

A sale or purchase of any goods shall be supported by Form C (with conditions)

Dealer is charged 2% CST



When sale is made to a registered dealer and goods are of the description and for the purposes as specified in the certificate of registration.

Section (3)

Raw Material

**Use by dealer in manufacturing or
processing of goods for sale**

Section (3)

Materials

**For Purposes of Telecommunication
network**

Section (3)

Material

used in Mining work

Section (3)

Material

**Purpose of Generation or
Distribution of Electricity or any
other form of power**

Section (3)

Packing Material

1) Container

2) Material used for the packing of goods for sale

What is Inter-state Works contract ?

Contractor located in one state entering into an agreement for execution of Works Contract in another state is an Inter-state Works Contract (Materials are transferred from one State to another)

Whether Inter-state WC is liable for CST ?

**46th Constitutional Amendment made
in 1983 for including WC as a
deemed sale**

**No amendment was done in
CST Act**

Whether Inter-state WC is liable for CST ?

CST Act was amended on 11 May 2002 by including WC under definition of “Sale”

WC is deemed Sale w.e.f. 11 May 2002

Whether Inter-state WC is liable for CST ?

Dispatches from other state and inter-state purchases used in the works contract in Maharashtra in the same form is covered by section 3 (a) of CST Act. Hence cannot be taxed in Maharashtra.

Mazz India P. Ltd . (SA No. 167 of 1997, dated 31st March 1998.)

**Whether a Contractor can issue
Form C
for purchases ?**

**A.P. based contractor enters into WC
for Delhi for Bridge construction.**

**Issued Form C against Equipment
purchased to use in construction**

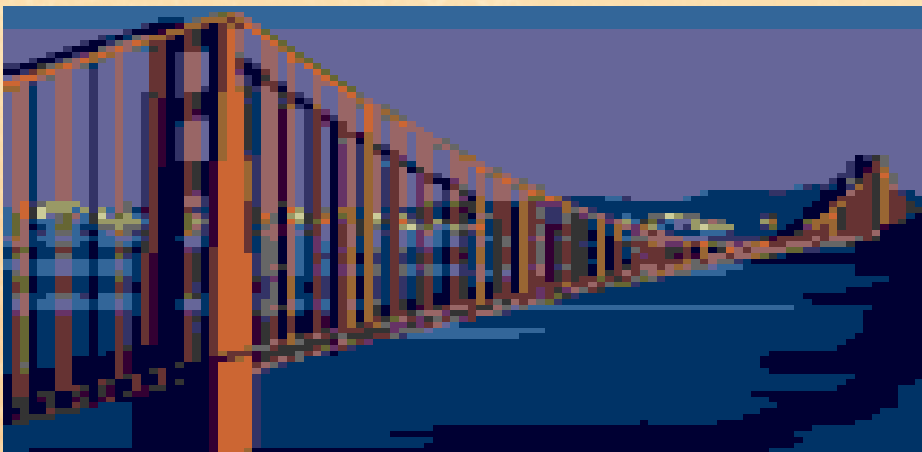
Contractor – in A.P.



Equipment is not consumed in WC, Claim is disallowed in Form C



Purchase and movement of Equipment from A.P. for Delhi WC



WC in Delhi

Commissioner of Commercial Taxes, A.P.

**Contractors are eligible to purchase
against Form C ,
the goods which are incorporated
into the work**

Commissioner of Commercial Taxes, A.P.

**Transactions of the execution of WC
can not be treated as Manufacturing
or Processing of the goods**

Commissioner of Commercial Taxes, A.P.

**The goods like Plant and Machinery,
earth moving equipment's and their
spare parts , scaffolding material can
not be treated as goods used in
manufacturing or processing of
goods for Sale**

Ref : Appeal No 103 of 2006

**Parties :
Mazgaon Dock Ltd
Vs.
The State of Maharashtra**

Section 8 (3)

Fact of Case

**Mazgoan Dock Ltd takes WC for
fabrication, transportation and
installation of Offshore platforms
for ONGC**

Contentions of Parties :

Mazgaon Dock Ltd :

**Claimed as WC not taxable under
Bombay Act**

State of Maharashtra :

If the purchases are utilized in the execution of WC, Tribunal held that there is no contravention of Form C and there is no penalty

**Ref : Appeal No 865 and 866 of
2001**

Parties :

L & T Niro Ltd

Vs.

The State of Maharashtra

Section 8 (3)

Fact of Case :

Appellant is engaged in importing and reselling engineering goods. He was assessed during April 1995 to March 1996

Contentions of Parties :

Appellant:

Claimed purchases against Form C

State of Maharashtra :

Disallowed the claim as RC effect is later i.e. from 19 July 1996 and transaction is on prior date i.e. 18 Dec 1995

Section 5 (1) : Export

The exclusive economic zone of India is an area beyond and adjacent to the territorial waters, and the limits of such zone is 200 nautical miles from the baseline.

Distances from the shore of India

**Territorial Waters : 12 Nautical
miles**

**Continental Shelf
& Exclusive**

**Economic Zones : 200 Nautical
miles**

Ref. Application

Parties :

Pure Helium India P. Ltd.

Vs.

The State of Maharashtra

(49 VST 14)

Section 5(1)

Fact of Case :

The appellant is a manufacturer of Pure Helium Gas

The ONGC produces gas and crude oil at Mumbai high which is situated about 150 km away from shore of Maharashtra

Contentions of Parties :

Appellant :

- 1) Mumbai high is a destination beyond territorial waters of India**
- 2) Whether such sales are taxable under Section 5 of CST Act 1956**

State of Maharashtra :

1) Whether Mumbai high is foreign destination ?

It will taxable u/s 2(21) of Customs Act

State of Maharashtra :

2) Impugned goods were supplied to Mumbai high situated in the exclusive economic zone of India.

Whether These goods will be taken as EXPORTS with no tax imposed

- Recently Bombay HC has answered the question.
- Ref No.15 of 2003
Pure Helium (India) Ltd. Dt 9 January 2012
- Mumbai High is not considered as Foreign Destination nor it will be treated as inter-state sale.

Ref : Appeal No 45 of 1990

**Parties :
Industrial Oxygen Co Ltd.
Vs.
The State of Maharashtra**

Section 5(1)

Fact of Case :

The appellant sold helium gas to ONGC for diving operations at Bombay offshore oil fields

Contentions of Parties :

Appellant :

Whether tax is payable on the sales?

State of Maharashtra :

Whether u/s 6(6) and 7(7) of Territorial Waters, Continental shelf, Exclusive Economic Zone and other Maritime Zones Act, they form part of “India” for the purpose of Central Sales Tax Act, 1956?

Judgment by Tribunal

This issue of May 2007 is still pending for the decision of the Larger Bench of the Tribunal

**Ref : SPECIAL CIVIL APPLICATION
No. 5575 of 2011**

**Larsen & Toubro Ltd
Vs.
Union Of India
(45 VST 361 (Guj)**

Facts of the case :

- L&T undertakes turnkey projects for ONGC and installs it at Bombay High and other places which are situated in Exclusive Economy Zone as defined in Territorial Waters, Continental Shelf, Exclusive Economic Zone and Other Maritime Zones Act, 1976 ('Maritime Zones Act' for short).
- To execute such turnkey contracts, the L & T had arranged for supply of certain parts, equipment's and machineries from its Hazira plant at Surat to ONGC at Bombay High, which is situated around 180 kms off the baseline of coast of India and forms part of "Exclusive Economic Zone

Contentions of Parties:

Petitioner

Movement of goods cannot be categorized as interstate sale, particularly, when no Notification under Section 7 (7) of the Maritime Zones Act, has been issued by the Central Government covering such area for the purpose of Central Sales Tax Act.

Judgment by High Court of Gujarat

- High Court concluded that the movement of goods from Hazira to Bombay High was not covered within the expression “movement of goods from one State to another” (Section 3(a) of the CST Act) since Bombay High did not form part of the territory of India in general sense, under MZA or any other law.
- No notification had been issued by the Government under the CST Act so as to extend the provisions of the CST Act to the EEZ.
- In the absence of such notification, the court held that the Gujarat VAT authorities could not demand tax under the CST Act treating the sale transaction under consideration as an interstate sale

High Sea Sale

Imported goods diverted directly to customer when in High Sea and not crossed the territorial boundaries of India

Coverage of High Sea Area

Sale or Purchase is effected by a transfer of documents of title to the goods before the goods have crossed Custom frontiers of India

Coverage of High Sea Area

Custom frontiers of India :

Crossing the limits of the area of Custom station in which imported or exported goods are ordinarily kept before Clearance by customs authorities

Clearance of Goods

- 1) **Clearance for Warehousing**
i.e. for Storage and then Export
- 2) **Clearance for Home Consumption**
i.e. for Local Sale

Clearance for Warehousing

Bill of Entry issued by importer to shift goods from warehouse of Bombay port trust to “Bonded Warehouse” of customs

Clearance for Home Consumption

**Custom duty paid by importer
to release the goods**

Sale in the course of import.

.....Section 5 (2) of CST Act.

- It is essential that there must be an inextricable link or a back to back transaction in the sale or purchase occasioning such import.
- The transaction must establish nexus between the parties to the transaction. The transaction must have all the ingredients necessary for the purpose of section 5(2) as explained by the apex court in

State of Bihar vs. Tata Engg. & Locomotive Co . Ltd. (27 STC 127) and K. Gopinath Nair vs. State of Kerala (105 STC 580)

Sale in the course of import from
Bonded Warehouse :

Claim of sale of imported oil from Bonded Warehouse as high sea sale allowed following Hotel Ashoka (ITDC)(48 VST 443)(SC),

disregarding decision in Indo Tex Pvt. Ltd.

Liberty Oil Mills Ltd. (S A No. 28 of 2006)

**Ref : Appeal No 1358 and 1359
of 2003**

Parties :

Radha Sons International

Vs.

The State of Maharashtra

Section 5(2)

Fact of Case :

Appellant is reseller and importer of HR/CR sheets, strips, import license, canals, etc.

Fact of Case :

STO assessed Appellant to examine the validity of turnover of sales claimed as “High Sea Sale”

Fact of Case :

Appellant sold goods from
warehouse by transfer of
documents :

e.g. Bills of lading, clearing
agent's bill and other supporting
documents

**The assessment of customs duty
is the point of crossing of custom
frontiers**

Fact of Case :

Transfer is made before payment of duty while the goods were in “Bonded Warehouse”

Fact of Case :

**The goods landed were sent to
Bonded Warehouse.**

**On a later date those were cleared
from the warehouse for
Home Consumption**

Before completion the course of import, the sales effected by the Appellant covered by second limb of sub section (2) of Sec 5 of CST Act 1956

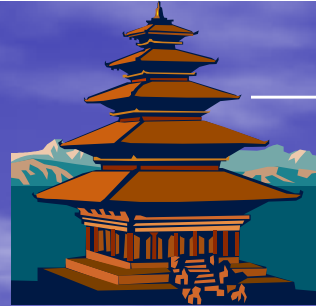
Fact of Case :

While the goods are in bonded warehouse (i.e. before clearance for Home consumption) would qualify as sale under second limb of sub section (2) of Sec 5 of CST Act 1956

Fact of Case :

Imported goods were

- 1) Assessed to customs duty
- 2) Sent to Bonded warehouse by filling the Bill of entry for warehousing



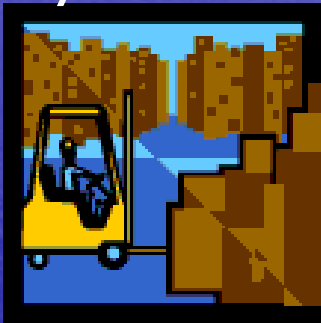
Importer- Coffee Board – pay custom duty – for Home Consumption

Customer pay custom duty and release goods from Bonded WH – Clearance from WH

HIGH SEA SALE

4- Bonded W/H

3- Bill of Entry by importer to BPT



4

1- Goods landed to berth

2- Goods to BPT WH





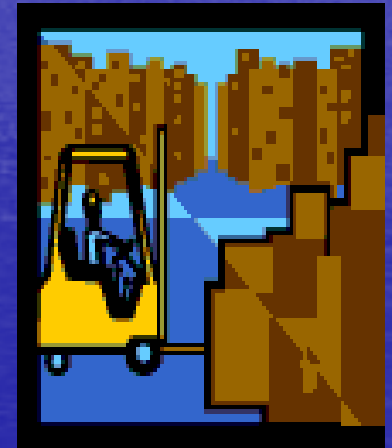
**4 - Bill of Entry
For HC by importer
Date : 31 Jan 1996**

HIGH SEA SALE

Date : 20 Nov 1995



**1- Bill of Lading
by Exporter
Date : 15 Sept 1995**



**2- Bill of Entry
by importer to BPT
Date : 13 Nov 1995**

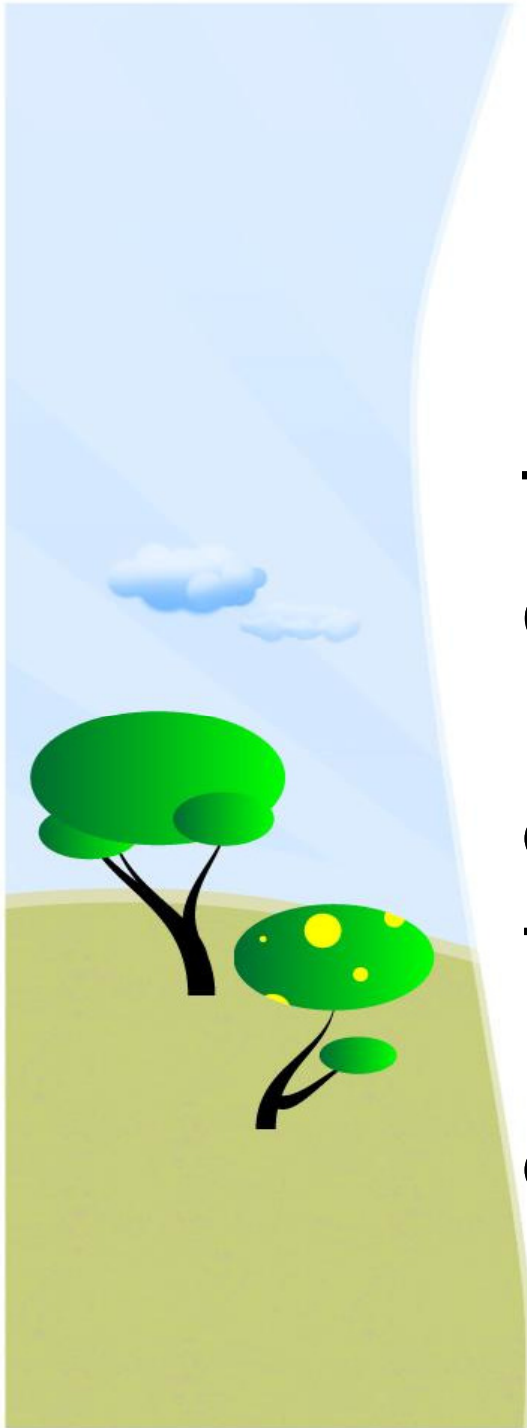


**3- Bill of Entry
For WH
Date : 15 Nov 1995**

Section 5(3)

Definition :

The last Sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods out of the territory of India shall also be deemed to be in the course of such sale of Export



Conditions : Section 5(3)

If such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export



Section 5(3)

- **Sale made to Foreign buyer**
- **Seller can claim deduction against “Form H” u/s 5(3)**





Conditions for exemption

- **Pre-existing agreement or order to sell specific goods to foreign buyer**

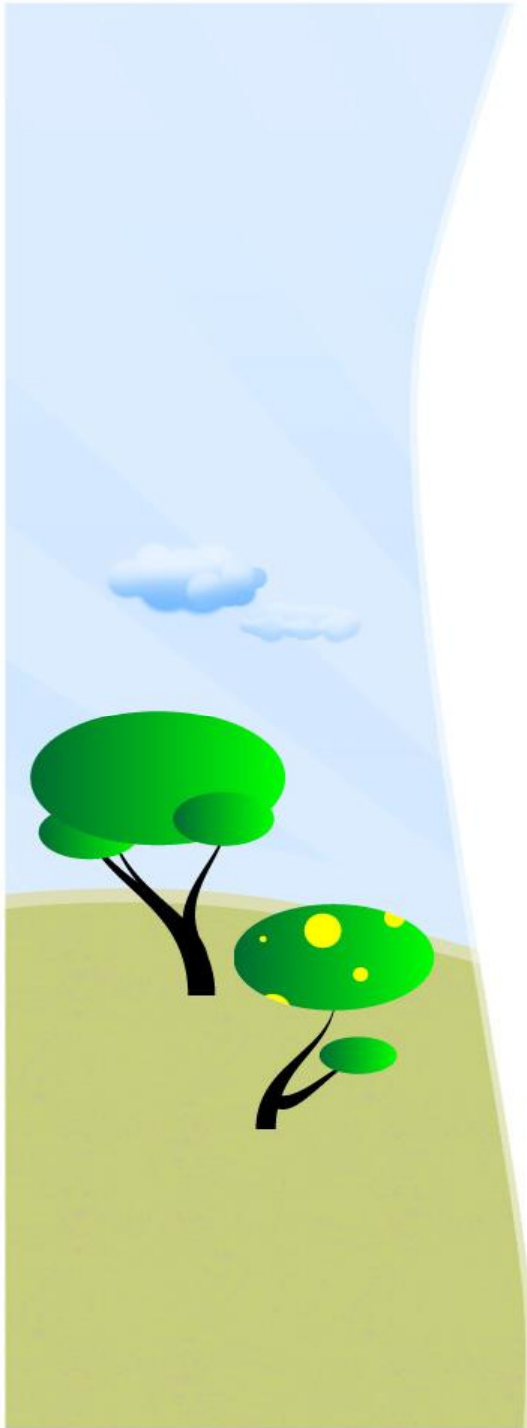
Conditions for exemption

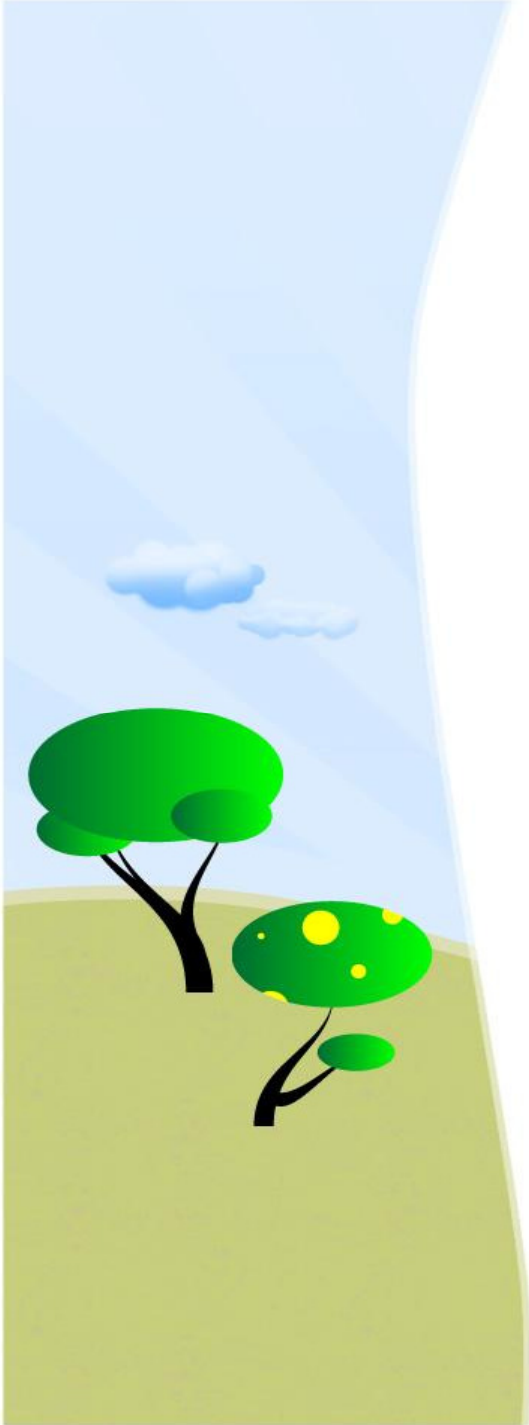
- **Last purchase must have taken place after that agreement with the foreign buyer was entered into**



Conditions for exemption

- **Last purchase must made for the purpose of complying with pre-existing agreement or order**





**Ref : 1980 (ST2) GJX
0080 SC**

**Parties :
Consolidated Coffee Ltd
Vs.
Coffee Board, Bangalore**

Section 5(3)

Fact of Case :

**Sale in the course of export u/s. 5
(3)of CST Act.**

The "same goods" theory has no application if sale is inextricably connected with export out of India and once integral connection is proved, claim is allowable even if export is of manufactured goods.

**State of Karnataka vs. Azad Coach
Builders Pvt.Ltd.
36 VST 1 (SC)**



Fact of Case :

Paper cartons were used by exporters for wrapping the goods which were exported.

No independent contract was proved for export of packing materials.

There has to be an inextricable link between the local sale or purchase with the export of goods. Such a link was absent hence the benefit of section 5 (3) of CST Act will not be available to sale of packing materials.

Super Packaging Industries

(2015)52 GST 441 (Kerala HC)



Fact of Case :

Penultimate sales by the coffee board to registered exporter include in them covenant to export the coffee



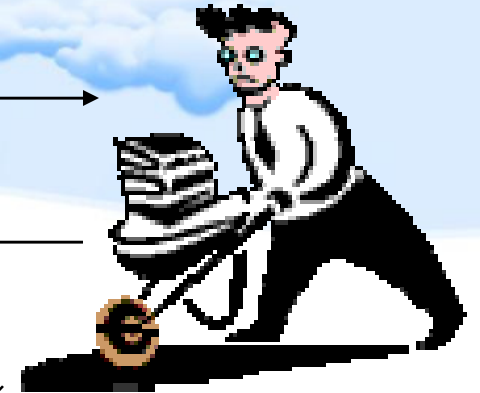
Foreign Buyer

DISALLOWED u/s 5

Exporter



Specific Order - 1



Export - 4

Supply -3 considered as Local Sales and exemption granted to exporter for the same goods

Supply - 3

Same order for Manufacturing - 2



Coffee Board - Appellant - Supporting Manufacturer

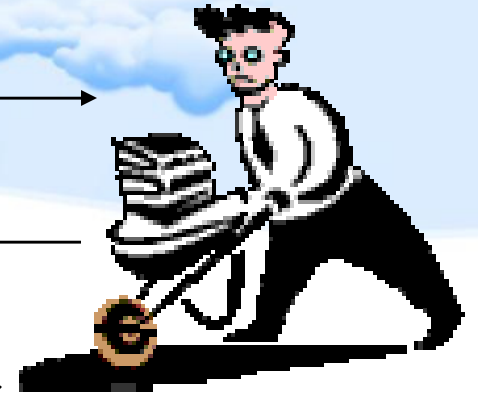
Foreign Buyer

AMENDMENT OF SEC 5(3)

Exporter



Specific Order - 1



Export - 4

Supply -3 considered as PENULTIMATE SALE and ALLOWED AS DEDUCTION WITH CONDITIONS u/s 5(3)

Supply - 3

Same order for Manufacturing - 2



Supporting Manufacturer

Amendment of Sec5(3) under CST Act

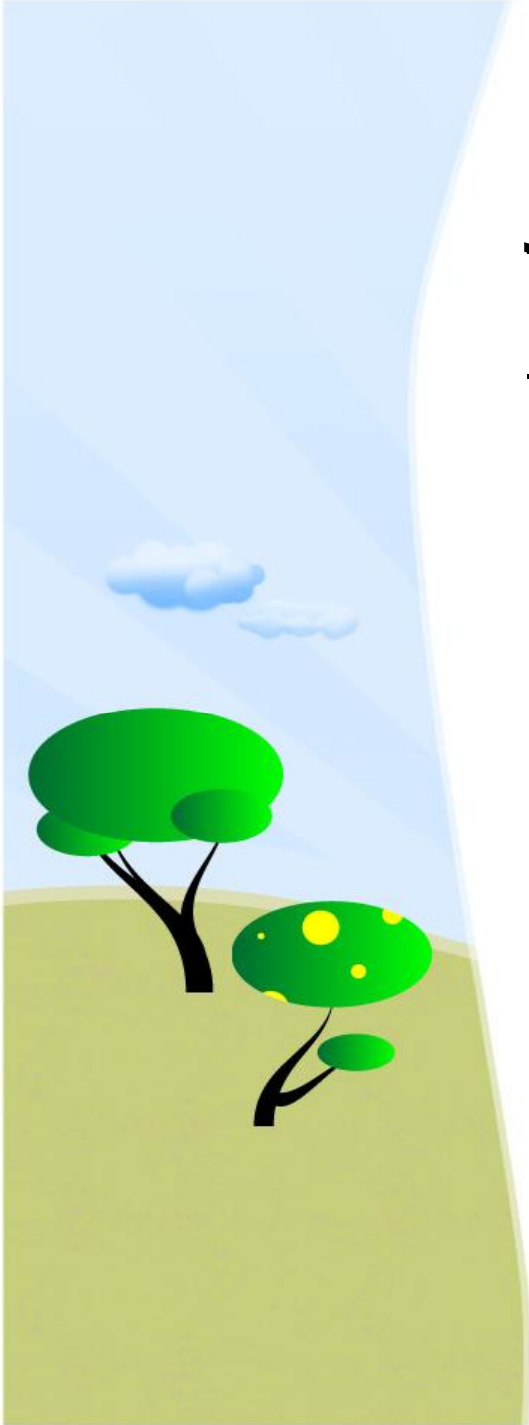
**Penultimate sale occasions
by the reason of pre-
existing agreement with
foreign buyer**



Amendment of Sec5(3) under CST Act

Supporting Manufacturer is allowed deduction with “Form H” issued by Exporter to Supporting manufacturer





Judgment by Court :
Deduction is allowed with

**1) Form H issued by Exporter
to Supporting Manufacture**

**2) Bill of Lading or Air Way
Bill**



Sale against Form H for the purpose of export.

Goods were delivered locally and moved outside country.


No inter state movement of goods.

The dealer could not produce the purchase order of the foreign buyer, bill of lading for claiming exemption under CST Act.

Transaction could not be taxed under CST law.

**Paper Products Ltd. Vs. State of Maharashtra
(SA 804 of 2002)**

**Hind Enamel Vs. State of Maharashtra (SA 145A
of 2012)**



**Ref : Appeal No 769 and 770
of 2005**

**Parties :
PCE Electro Controls Pvt. Ltd.
Vs.
The State of Maharashtra**

Section 5(3)



Fact of Case :

**Appellant is manufacturer
in Electric Control Panels
(ECP)**

**ECP were shown as Spare
Parts**



Fact of Case :

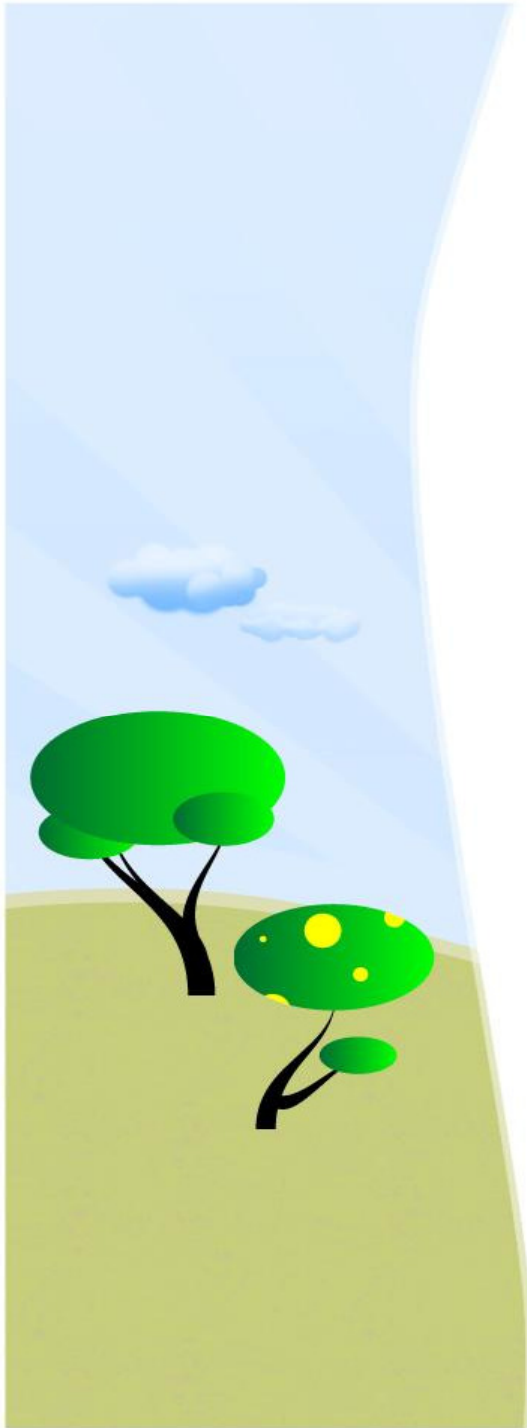
**ECP were part of contract
between**

**Kirloskar Bros. (Exporter)
and**

Ministry of irrigation (Iraq)

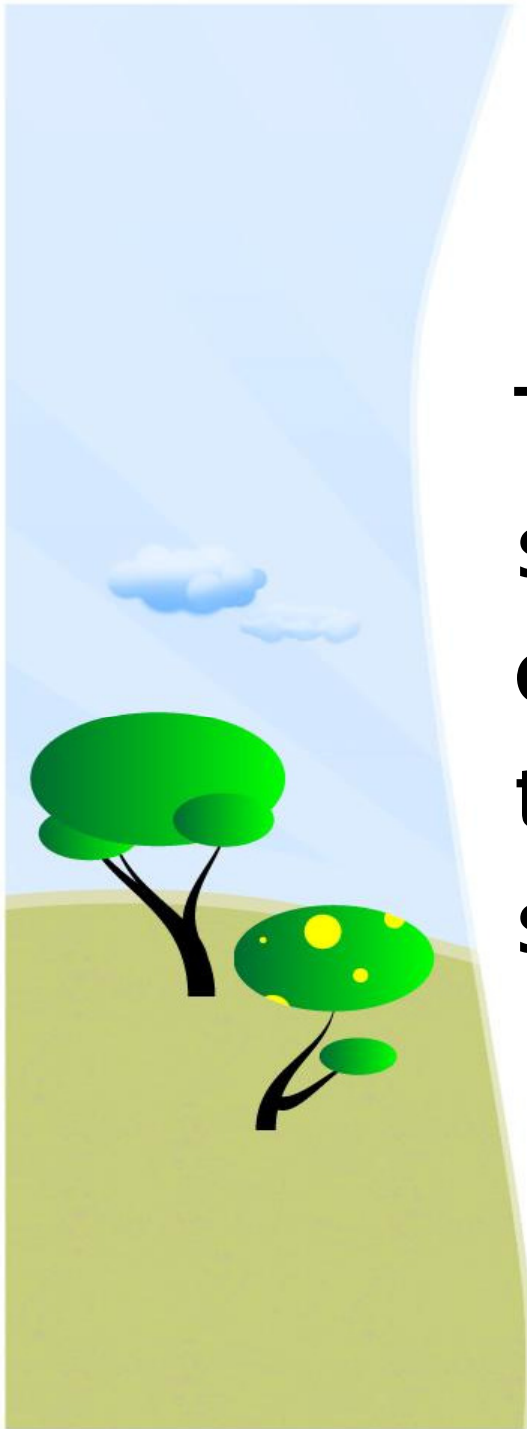
Contentions of Parties :

**Appellant :
ECP as part of technical
specification of “Portable
Centrifugal Pump” and
eligible for deduction**



State of Maharashtra :

The Appellant failed to substantiate that ECP were exported by Kirloskar Bros. to Iraq in same form and same condition



State of Maharashtra :

In 2nd Appeal Appellant submitted Form H and was allowed deduction



Section 8 of CST Act
Issue “Form I” for
Special Economic Zone



Conditions for Purchase against “Form I”

**1)Registered Dealer having Unit
in SEZ**



**2)Developer of SEZ or
Developer of Warehouse unit**

**3)Items specified in Registration
Certificate**

**Purchases made for the purpose
of manufacturing, processing,
reconditioning, re-engineering for
EXPORT ORDER**

Purchases made by Developer for development, operations, and maintenance of SEZ



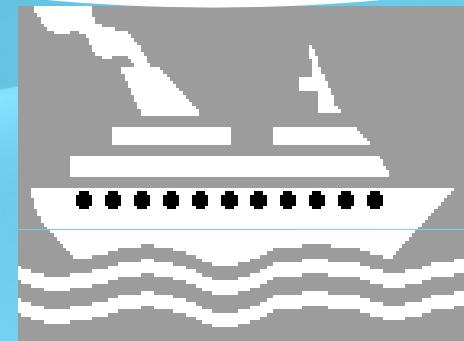
Exemptions for SEZ

PRE-EXISTING EXPORT ORDER

No Excise duty for production



No Custom duty on Import



No Service Tax for Services rendered in SEZ

No CST for Inter-state Sale for EXPORT ORDER AGAINST "FORM I"



Who can issue “Form I”?

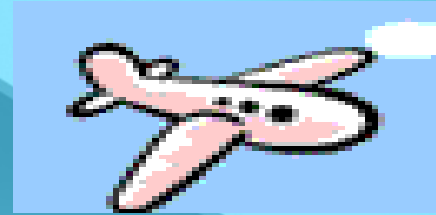
Development Commissioner of SEZ issues “Form I” to the unit in SEZ for authorized operations

Export Trader

**Export Trader can
Hire Warehouse unit in SEZ**

**Claim deduction u/s 5(3) by
issuing Form H against pre-
existing order**

**Make purchases against Form I
for resale**



Purchasing from Maharashtra against Export Order

Exported by W/H Keeper

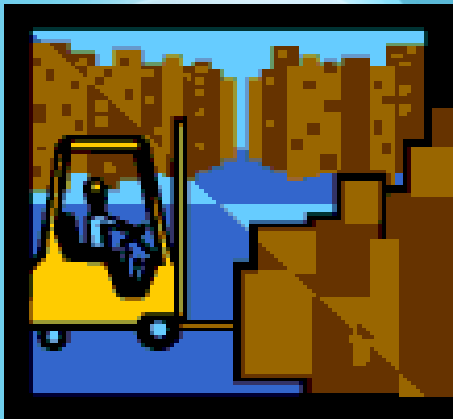


Supply of Goods

Form H

SEZ Unit

Hire WH In SEZ

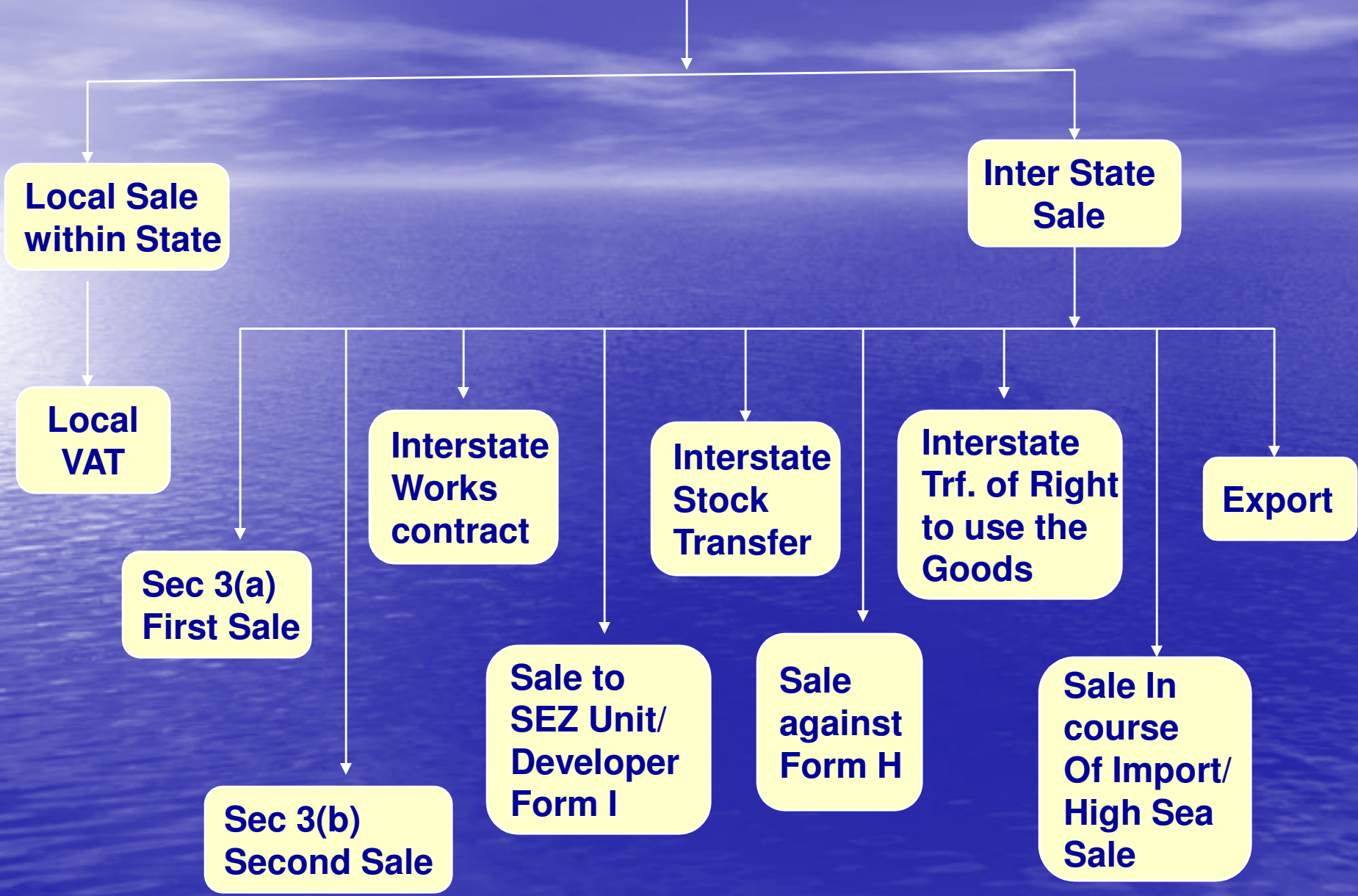


Export Trader



160

Movement of Goods



Movement of Goods

Inter State Sale

**Sec 3(a)
First Sale**

**Sec 3(b)
Second Sale**

**Inter State
Works contract**

**Stock
transfer**

**Against
Form C**

**Without
Form C**

**Sec 6 (2)
No Tax E I, EII
issued by
Seller**

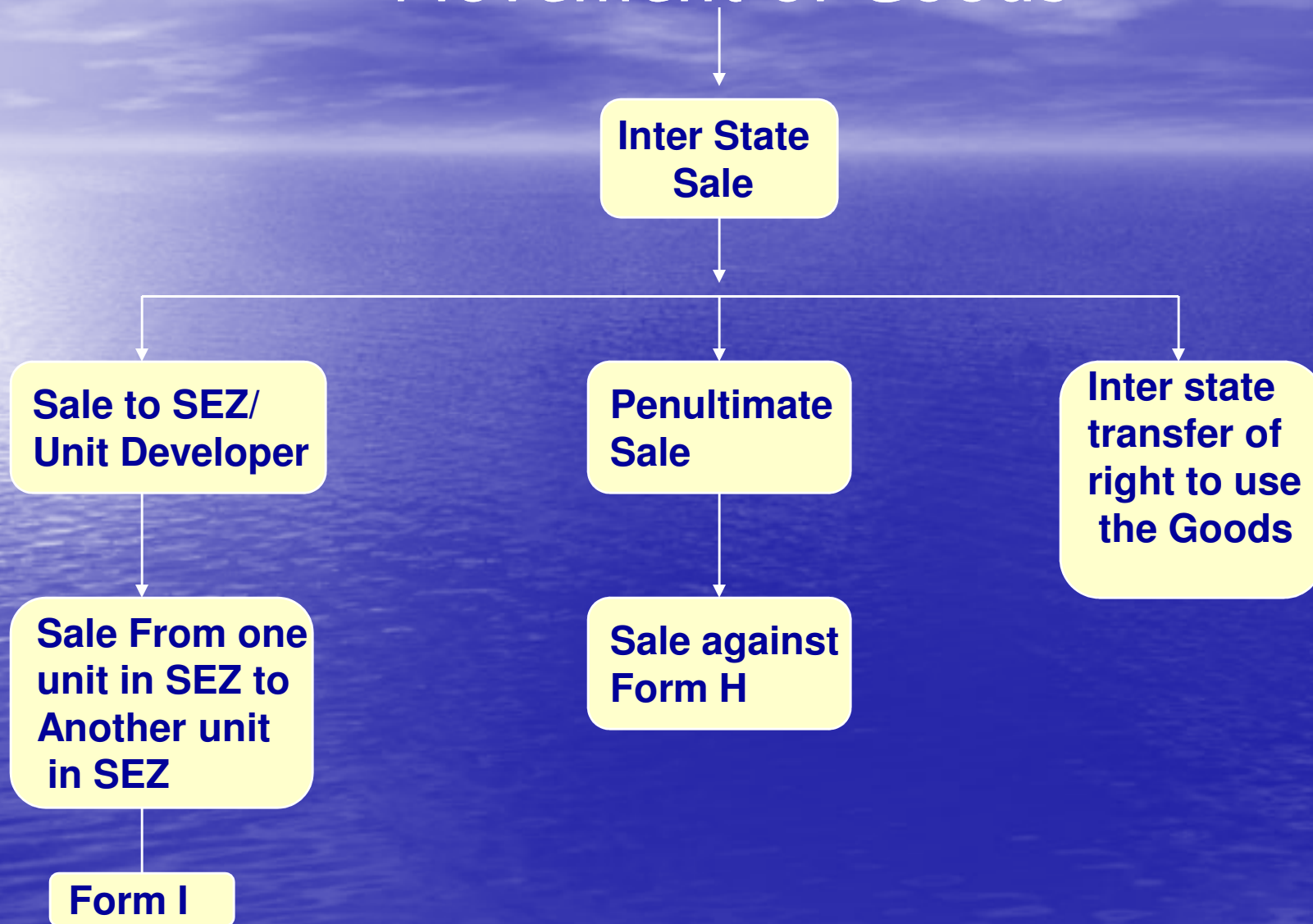
**Place of
execution
of Works
contract**

**Sale
against
Form H**

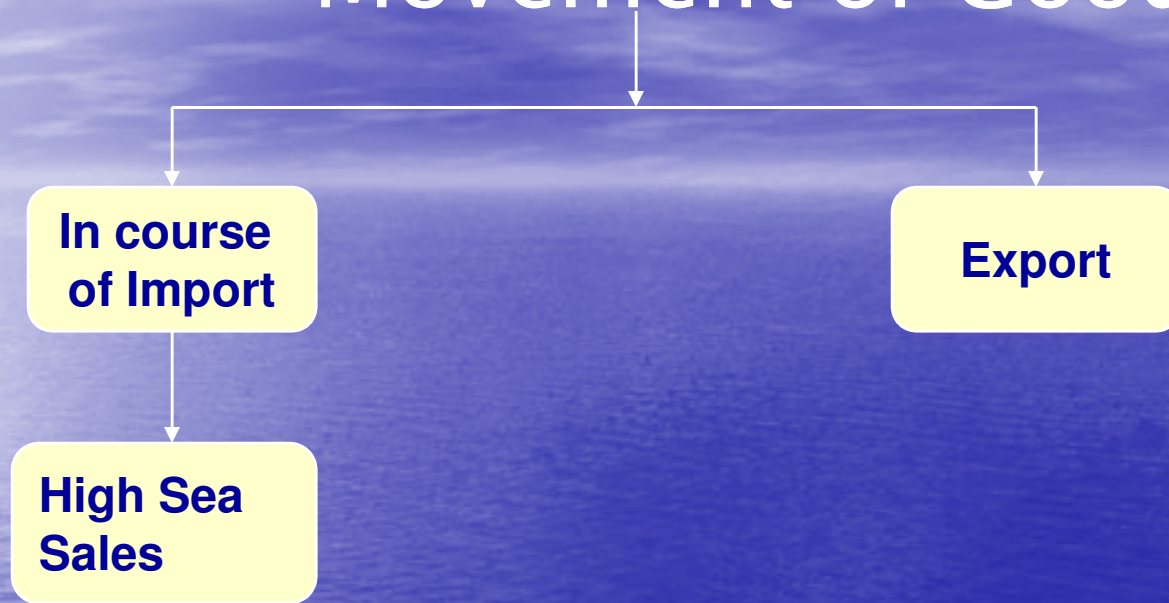
CST @ 2%

CST Full Rate

Movement of Goods



Movement of Goods



Intangible Goods taxable under MVAT Act 2002

- 1) Patents**
- 2) Trademarks**
- 3) Import Licenses**
- 4) Export Permit or License or Quota**
- 5) Software Package**
- 6) Credit of Duty Entitlement Pass Book**
- 7) Technical Know-how**

Intangible Goods taxable under MVAT Act 2002

8) Goodwill

9) Copyright

10) Designs

11) SIM Cards (Cell Phones)

12) Franchise

**13) Credits of duty free replenishment
certificate**

**14) Credit of duty free import
authorization**

Ref : Appeal No 1038 of 2003

Parties :

M/s Memon Piston Ltd.

Vs.

Assessing Authority

Section : 13

**Import of Technical Know-how
(TKH)**

Fact of Case

Appellant entered in to agreement with M/s Izumi Industries Ltd of Tokyo for TKH on 5 July 1997

The balance payment made in 1998-99 and levied purchase tax u/s 13

Contentions of Parties

Appellant :

- **TKH are covered under entry C-I-26 which was inserted from 1 May 1998**
- **The purchase contract was executed on 5 March 1997**

Judgment by SC

- **The agreement providing consulting, engineering services, training, advise was incidental to the main contract of furnishing TKH by way of documentation and in any case the said contract is not divisible**

Judgment by SC

- **The said electronic record is deemed to be dispatched from the said place of business of the originator**

Judgment by SC

- **Intangible goods (TKH) are purchased by the appellant in the course of import and it is not local purchase**

**Ref : DDQ-11-2006/ Adm-5/26/B-6
dated 30/04/2007**

**Party :
Phonographic Performance Ltd**

Issue : Copyright

Fact of Case :

Appellant is engaged in recording musical works on behalf of copyrights owners

Fact of Case :

Appellant in Maharashtra entered into agreement with a party in Delhi

Judgment by Court :

- **Appellant is dealer under provisions of MVAT Act 2002**
- **Copyright resided in Maharashtra and sale was Inter-state sale Taxable under CST Act 1956**

**Ref : TREVC No 213 and 214 of
2004**

Parties :

Ushakiran Movies

Vs.

State of AP

Issue : Copyrights

Fact of Case :

- Appellant entered into contract with ETV at Hyderabad for Transfer of right to use the goods
- ETV copied programme from the Master cassette for telecast

Judgment of Court :

- **Transfer of right to use occurred within the state i.e. AP**
- **ETV telecast it outside state, it is Inter-state trade of Copyright**

Ref : 137 STC 620

Parties :

Tata Consultancy Services (TCS)

Vs.

State of A.P.

**Issue : Sale of customized
software**

Fact of Case :

TCS developed customized software and sold against price

Judgment by Court :

- **Developer transfers customized software and it is not transfer of property in software which belongs to developer**

Judgment by Court :

- **Sale of customized software is sale of Copyrights and taxable under CST Act 1956**

Trade Circular for Copyright :

**In the Film and television industry
who is the consumer to pay VAT?**

Producer

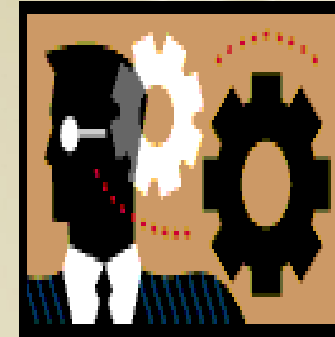


VAT



Tax Authority

Theater Owner



**1,2,3 Can claim
input tax credit**

3-VAT

1- VAT



Distributor

2-VAT



Sub -Distributor

VAT treatment for various agreements

**License on Outright Basis :
Transaction will be considered
as “sale price”**

VAT treatment for various agreements

License on Minimum Guarantee Basis

- **Sale price is inclusive of Minimum Guarantee amount**
- **Parties are liable to pay tax for Gross Receipts**

VAT treatment for various agreements

License on part Minimum Guarantee and Part refundable Advance Basis :

- **Sale Price = Lease Transaction price of Agreement**
- **Advance : If not refunded it is part of Sale Price**

VAT treatment for various agreements

License on Purely Refundable Advance Basis :

- **Advance : If not refunded is Sale Price**
- **Sale Price = Any amount realized from the exhibition of the film**

Point of Sale

- **Date stipulated in the Agreement**
- **In the absence of stipulated date
the 1st release of the film**
OR
the Agreement date,
whichever is earlier

Place of VAT applicability

The State in which the transaction would be taxable is the place where the place of the business of the seller is perceived to be located

VAT treatment if Producer exhibits the film

If producer exhibits the film without transfer of the right to use the copyright to theater owner VAT is not applicable

**TAX treatment for sale of Audio/
Video rights**

**Same as sale of Copyright to
exhibit the film**

Sale of cassettes/ CD/ VCD etc.

As normal sale of tangible goods

Ref : 2005-(031)-MTJ-0060-MAD

Parties :
S.P.S. Jayam and Co.
Vs.
Registrar

Issue : Trademark

Fact of Case :

**Appellant allowed Muthu
Agencies to use Trademark
against payment of Royalty**

Judgment of Court :

Transfer of Trademark right is sale of incorporeal goods for consideration and so the amount received is Taxable

Franchise

Agreement by which the Franchisee is granted representational right to

- **Sell**
- **Manufacture goods**
- **Provide service**
- **Undertake any process identified or associated with franchisor**

Franchise

Whether or not a trade mark, service mark, trade name or logo or any symbol, as the case may be, is involved

Royalty is paid for use of Franchise

Some of the Franchisees

- **McDonalds**
- **Pizza Hut**
- **Domino's Pizza**
- **Subway**

- **NIIT**
- **MS CIT**

**Whether Educational Institutes
are liable for Royalty paid as
Franchisee?**

**Educational Institutes are
excluded from Definition of Dealer
Ref : Exception II**

Exception II

Education institute carrying on the activity of manufacturing, buying, or selling goods, in the performance of it's functions for achieving it's objects shall not be deemed to be a dealer within the meaning of this clause

Right to use goods

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

Works Contract

The transfer of property in goods for any purpose (whether as goods or in some other form) involved in the execution of Works Contract

Sale of Right to use goods

Dry Lease

**Transfer of right of effective Control
and possession in movable property**

E.g. Car without Driver

**Crane or Equipment without
operator**

Sale of Right to use goods

Wet Lease

Only transfer of movable property without effective Control and possession

It is deemed to be service and not Sale

E.g. Car with Driver

Ref : Appeal No 54 of 1995

**Appellant :
M/s General Cranes**

Fact of Case :

Appellant offered for hire of crane without transfer of control & possession

Contentions of Parties :

Appellant argued that the effective control and possession is not given, hence there is no transfer of right to use and hence, not taxable under Lease Act

Judgment by Court :

The Hirer was not free to use the crane for other work

Effective control was with operator provided by Appellant

Judgment by Court :

The Appellant has provided service, hence not covered under CST Act

Ref : DDQ-10-2006/Adm-5/60

**Party :
M/s Kone Elevators (India) Ltd.**

Fact & Contentions of Parties :

Appellant installed lift

**Installation of lift is Works
Contract**

Judgment by Court :

**The transaction treated as Sale
with reference to previous case
issue of similar transaction**

Previous Preference

Hindustan Shipyard Ltd the transaction considered as Sale as

“The skill and labor are only incidentally used, the delivery of end-product by the seller to the buyer would constitute a sale”

Previous Preference

Otis Elevators

**The transaction considered as
Works Contract
with reference to Works Contract
definition**

Maharashtra Government :

Transactions up to 31 March 2006 activity of manufacture, supply, installation and commissioning of elevators shall be treated as “Works Contract”

Maharashtra Government :

Transactions from 1 April 2006
the similar activity shall be
treated as “Sale”

Thank You!