

MVAT REFRESHER COURSE
– INTRICATE ISSUES in in-
transit sales, branch transfer,
and high seas sales

Presentation by
CA Rajat Talati, Mumbai
on 3rd September 2016

Organized by
WIRC of ICAI

AGENDA

- Concepts- taxation under the CST Act

- Branch Transfer

- What is Br. Trf
- Br Trf V/s. Interstate Sales

- Sales in transit

- Sec 6(2) – Conditions
- Documentations

- High seas sales

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Documentations & Issues

Recognition of interstate sales and purchase

Section 3

Interstate sales or purchase is deemed to take place when:

Occasions the movement of goods from one state to another; or

Transfer of documents of title to the goods during their movement from state to another

Recognition of interstate sales and purchase

Section 3

Exp 1.

When goods are delivered to carrier or other bailee the movement of goods for the purpose of clause (b) shall be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier

Exp 2

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When the movement of goods commences and terminates in the same state it shall not be

Rate of Tax in the course of interstate sales

Sec 8

- Every dealer who commences interstate sales to a registered dealer of goods described in sub-section(3) shall be liable to pay tax at two percent of his turnover or at rate applicable to the sales or purchase of such goods inside the appropriate State under the sales tax law of the state whichever is **lower**

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If interstate sales are not supported by declaration in form 'C' sales of such goods will

Determination of turnover

Sec 8(A)

- The following deductions shall be made from the aggregate of the sales price:

- When no tax is collected by the dealer

- Rate of tax*aggregate of sales prices

- 100(+) rate of tax

- Goods returned by the purchaser

- within six months

- production of satisfactory evidence

Such other deductions as prescribed by the Central Government

BRANCH & CONSIGNMENT TRANSFER

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SECTION – 6A

- Dealers claims inter-state movement
 - To its place of business outside state or
 - To the place of business of agent/ principal outside the state
 - **Is otherwise than Sales**
- **Then such transactions would be not taxable provided**
- **Declarations in Form F produced**

BRANCH TRANSFER -instances

- FG to Br. / HO
- FG to Con Agent
- RM/FG to factory for processing
- Fixed Assets
- RM / PM to 3TP for processing / job work

- Ambica Steel Ltd (24:VST:356)(SC), **Maharashtra** Cir.
No.2T/2010 dt.11.01.2010 w.e.f 11.1.2010
(compulsory)

- **Earlier instructions withdrawn**

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- Mah Cir 16T of 2007 dt. 20.02.2007
- Mah Cir 5T of 2009 dt. 29.1.2009

BRANCH TRANSFER – Form F – Some issues

- Br. Trf – return with in 6 months
 - Is form 'F' required?
 - Yes
- Stock transfer OMS – rejection / GR. F form is must for both to & fro movements.
 - Mah Circular 2T/2010 dt.11.1.2010
 - F form reqd even for G/R and jobwork
- STM out to URD agent / Branch
 - F form for URD period

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If Subsequently registered

BRANCH TRANSFER –Some issues

- Rate of tax on Br Trf. Disallowed
 - On what value? Transfer value?
- Dispatch & receipt in different months
- Valuation of stock transfers
 - Transaction value
 - MRP less std %
 - Excise clearance value
 - No commercial value
- Fixed assets

Br. Trf. v/s inter-state sales

- Status of branch / depot & its functioning
 - Power to appropriate goods
- Order processing
 - H.O. processes & issues instruction
 - P.O. processing
 - Credit control
 - Reporting of salesmen / field staff
 - Receipt of payment

Br. Trf. v/s inter-state sales

- One to one correspondence
 - Stock movement
 - product mix
 - Std goods v/s customised goods
 - Dispatch quantity
 - Std qty dispatch
 - Mass dispatches / dispatches in economic qty size
 - Seasonal dispatches

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Labeling on goods

Floating stock

Br. Trf. v/s inter-state sales

- 'Agreement to sale' v/s 'sales agreement'
- Inspection of goods
 - At factory during mfg process
 - At factory on completion of mfg
 - Testing before dispatch by ultimate customer
 - 3rd party testing – Govt approved agencies

IN-TRANSIT SALE

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6(2) – Intransit sale

- Sec 3(b) of CST r/w sec 6(2) of CST Act
 - Section 3(b)
 - Section 6(2)
- Trf of documents of title to the goods
 - Documents of title to the goods
 - L/R, R/R, B/L, Airway bill, any other documents e.g. courier receipts
 - Such documents should be negotiable / transferable.
 - **Airway bill is not negotiable**

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Sec 6(2) – In-transit Sale

- Notwithstanding anything – 6(1) & 6(1A)
- Where sale – in the course of interstate trade or commerce
 - Has either occasioned the movement OR
 - Has been effected by transfer of document of title to such goods
 - To a RD
- Requires to read sec 3(b) along with sec 6(2)

6(2) – In-transit sale

• Sec 3(b) of CST r/w sec 6(2) of CST Act

- Section 3(b)
- Section 6(2)

• Trf of documents of title to the goods

- Documents of title to the goods

- L/R, R/R, B/L, Airway bill, any other documents
e.g. courier receipts

- Such documents should be negotiable /
transferable.

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Airway bill is not negotiable

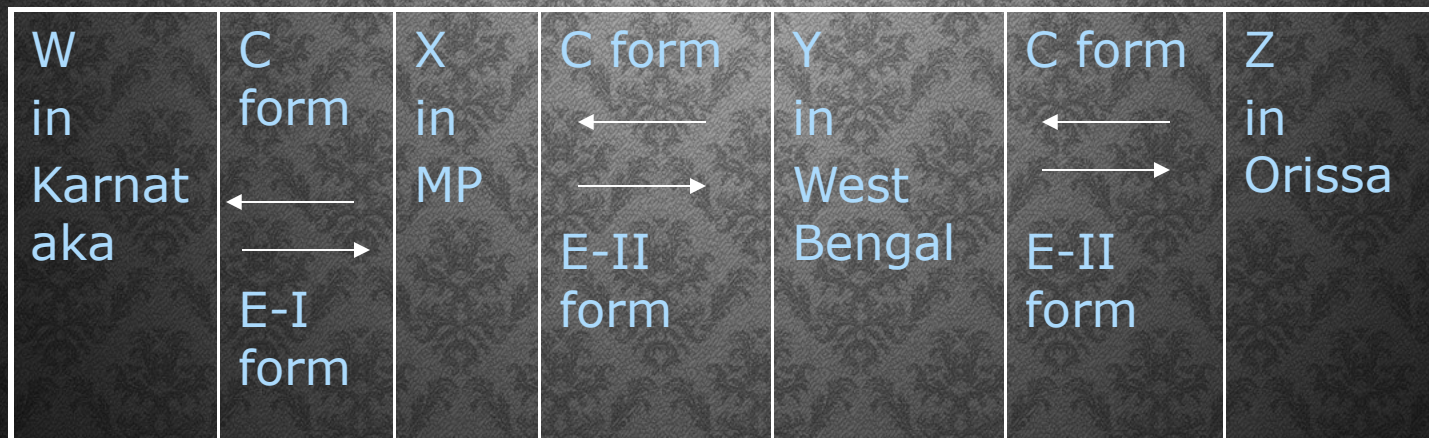
6(2) – In-transit sale

• During their movement

- Endorsement during their movement
- Practical difficulties – passing of CENVAT credit, goods directly getting delivered etc
- M/s. A & G Projects And Technologies Ltd. Vs State of Karnataka [2009] 19 VST 239 (SC) Dated 11.12.2008

6(2) – Intransit sale

- Exchange of declarations
 - W sales to X , X to Y & Y to Z
 - W taxable sales u/s 3(a) & others exempt U/s 3(b)



6(2) – In-transit sale

- Taxability of 6(2) transaction
 - Non-receipt of forms – levy of tax

STATUS OF THE TRANSACTION	PRODUCT TAX RATE	
		4%
	TAX RATE APPLICABLE	
C & E1 BOTH NOT RECD	As per the original trans	
C RECEIVED E1 NOT RECD	2%	2%
E1 RECEIVED C NOT RECD	4%	12.50%
C & E1 BOTH NOT RECD	4%	12.5%

Conditions for claiming exemption

- **First sale should be inter-state sale either u/s 3(a)/3(b), the subsequent sale u/s 3(b) and nexus between two transactions**
- **Movement of goods from one state to another**
- **Documents of title of goods and transfer thereof**
- **Sale to registered dealer**
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- **Submission of declaration forms**

During the movement - Sec 3(b) – Expl

- **Commencement – deemed** – at the time of delivery of such goods to the common carrier or bailee
- **Terminate** – when delivery taken from common carrier or bailee
- If commencement & termination in same state – not a interstate – sale – even if goods pass through any other state

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• Between commencement & termination is

Documents to title to the goods

- CST Act does not define it
- Sec 2(4) of 'sale of goods Act'
 - Includes
 - A bill of lading
 - Dock – warrant
 - Warehouse keeper's certificate
 - Warfinger's Certificates

Documents to title to the goods (cont..)

- Multi-model transport document
- Railway receipt
- Warrant
- Order for delivery of any goods AND
- Any other documents used in the ordinary course of business as proof of the possession or control of goods or authorising or purporting to authorise, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented.

Documents to title to the goods (cont..)

- Where 'not negotiable' mentioned - not a document of title to the goods.
- Commonly taken as 'document title to goods'.
- Delivery order asking commission agent / bankers to deliver.
- Angadia receipt

Is it a document of title or 'a delivery order'?

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Does customer to ask for further action to be done before goods are delivered? If yes, than it is not document of title to the goods

Delivery from transport company

What is 'in-transit'

- Till the time goods are delivered or taken delivery from the carrier

Time frame

Reasonable time [114:STC:598]

Will this apply to say liquid cargo stored in oil tank – delivery in small quantities?

- Comingled goods

Endorsement of L/R

- Is it a must?
- P&G Project [19:VST:239]
- Gujarat HC – Haridas Mulji Thakker [84:STC:317]
 - Pre-conceived second sale
 - Constructive delivery – two delivery synchronised in point of time.
- Ajay trading MSTT VAT SA 111 of 2010 dt. 12.12.2012

A & G Projects (SC) – (19:VST:239)

Facts

- A &G Projects (Karnataka) – PO on manufacturing at TN & supplies directly to KPTCL – Karnataka
- Admittedly, 3 inter-sales covered by sec 3(a) [page 244 para 9]

Held

- All transactions are inter- state sales from TN

Is it setting principals wrt 6(2) sales?

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NO.

Ratio is in respect to Sec 9(1) –appropriate state

Endorsement of L/R

- 'self L/R' – can it be endorsed
 - Movement not 'occasioned' because of sale
- 'Re-booking' – re-routing possible?
 - Notional delivery & fresh contract
 - 89:STC:481
- Splitting of L/R
 - Is it possible?
 - Trade practise

Some issues in 'in-transit sale'

- Short delivery
 - D/N issued
 - Is it G/R?
 - This may also lead to purchase return
- Delivery not accepted on arrival in other State
 - Unfructified sale
 - If not rejected by 2nd seller – amounts to taking delivery in other state

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If sold there – it is local sale

Some issues in 'in-transit sale'

- Goods return
 - 6(2) sales made, part quantity returned – is it possible – yes
- Debit note / credit note
- Splitting L/R : is it possible to claim 6(2)?
- Freight charges separately collected – would it throw challenges in claim?
- Would 'agreement to sale' allow 6(2) claim?

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Some issues in 'in-transit sale'

• Goods to be approved on inspection

- Is claim allowable?
- Delivery of goods not associated with transfer of title – which takes place on fulfilment at later date
- Chem dyes corp 83:STC:488 & 129:STC:3
- Coffee board [46:STC:164](SC)
- Agreement of sale not covered in term 'sale' –

• 'In-transit' buyer – being a SEZ unit

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- Can he issue Form I?

In it, the law is No

Some issues in 'in-transit sale'

- Can form H be issued by the 'in-transit' buyer?
- Sale against form 'J' to diplomat
 - Is it possible to claim 6(2)?
 - Sec 6(4) – non obstinate clause
 - Needs to be tested
- Can a works contractor purchases goods u/s 6(2)?
- Conditions specified for forms 'C' & 'E'
 - CA Rajat B. Talati, Mumbai. Must be specified in RC of purchasing dealer
 - Both forms should be received

Some issues in 'in-transit sale'

- In the absence of C /E1 forms- transaction to be taxed under the CST Act and not under the Local Sales Tax Act.

- Sundaram Finance Ltd vs STO (2002) 125:STC:565(Ori) - under CST Act
- Chordia Electricals – 120:STC:34 appropriate state

- Out & out – 6(2) – disallowed

- Does Maharashtra has any jurisdiction to tax such transaction where movement commenced from outside Maharashtra?

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- Out & delivery in Maharashtra

Some issues in 'in-transit sale' – Infrastructure projects

Infrastructure project

- Splitting of the contract

- Design

- Supply

- Installation & commissioning

- Billing cycle – on sale side is as per 'mile-stone' achieved

- Mis-match with purchase invoice

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- How to claim 6(2) – successfully

Some issues in 'in-transit sale'

- Description in purchase invoice & sale invoice differs
 - Seller matches description as per terminology used in tender.
 - If it can be proved there are some goods – 6(2) allowable [Van Vanaspathy Udyog [98:STC:376] (Mad)

Other than forms – are other evidence like L/R
etc. required?

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Deemed sale – ‘in-transit sale’

- Can leasing transaction be claimed as exempt u/s 6(2)?
- Is it possible to claim 6(2) sale in a hire purchase transaction
 - Whatever concessions available to ordinary sales are also available to HP
 - Cholamandalam Investment & Finance Co Ltd vs State of Tamil Nadu dt. 1.4.99 (Appeal no. 887/98 to 891/98)

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Is 6(2) sales possible in works contract?

Deemed sale – ‘in-transit sale’

- Value of ‘C’ form short received although all transaction covered 35:STC: Orient Paper.
 - MTT followed – Kosan Indu. Ltd SA 1188 to 1190 of 2000 dt. 19.7.2003
- Loss of E1 & EII
 - Indemnity bond to be furnished
 - Rule 12(2) & 12(3) of CST(R&T) Rules

Other Issues for reference

- Trade circular no.17 /2007 dt/ 6.12.2007 – C/F/H could be issued / received in quarter of sale or accounted.
- Inter-state sales to A – who refuses & another buyer takes the delivery – is 6(2) possible?
 - 14:STC:856 (MAD) – A Thiruvengadas Swami Iyenger

• HIGH SEAS SALES

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Sale or purchase in the course of import or export

• Sec 5(1)

- **Sale in the course of export:**

- Sale or purchase occasions such export OR

- Effected by transfer of documents of title of goods

After the goods have crossed the customs frontiers of India

Sale or purchase in the course of import or export

• Sec 5(2)

• Sale in the course of import :

- Sale or purchase occasions such import OR

- Effected by transfer of documents of title of goods

Before the goods have crossed the customs frontiers of India

Sale or purchase in the course of import or export

Sec 5(2)

Sale in the course of import

- **There should be Agreement of sales in the course of import**
- **Such agreement should occasion imports**
- **The agreement date should be before the B/L date**
- **The BOE may or may not be in the name of the importer**

High seas sales

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There should be High Seas sales Agreement

The B/L should be endorsed in favour of the final

Sale or purchase in the course of import or export

Sec 5(3)

- Sale in the course of export (Deemed Export / Penultimate sale):

- Last sale or purchase preceding the export

- If such sale or purchase is for complying with the agreement or order for or in relation to such export

HIGH SEAS SALES

- Section 5(2) of CST Act
- 2nd limb – no term called ‘high seas sales’ under CST Act

HIGH SEAS SALES

- Endorsement of B/L

- Proof thereof
- Bill of entry in the name of high seas buyer

- Air way

- Is it possible to endorse?
- Non-negotiable
- How to do it

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Endorsement of delivery order

Bill of lading

HIGH SEAS SALES

Co-mingled goods

- Goods stored loose on the ship (e.g. liquid loose cargo or dry cargo like iron ore etc)
 - Discharge of cargo at port
 - Is endorsement of B/L constitute transfer of title to the goods
 - Bill of lading Act vs Indian Sale of Goods Act

HIGH SEAS SALES

Bond to bond sale

- Is it high seas sale?
- When is import complete?
- Who pays the customs duty
 - Importer or ex-bond buyer
- Is it taxable under MVAT or CST?
- If taxable

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Notional addition of customs duty – ref definition u/s
2(25) of MVAT Act

Thank you

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