

Overviews to The Amendments in The Central Sales Tax Act, 1956

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< E X E C U T I V E S U M M A R Y >

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The amendments are made in the act now authorizing the Central Government to levy the Central Sales Tax on deemed sales. Hence

the inter state deemed sales are subject to Central Sales Tax and they include Works contract, Installment sale on Hire Purchase of goods and lease of Goods. The article below highlights the changes in the C.S.T. Act and the discussion on the Inter State Works Contract.

LEGISLATIVE HISTORY



The Central Sales Tax Act, 1956 was necessitated as the States levied the tax on the interstate transactions on the basis of 'nexus' theory.

However, the discussions in this Article are mainly kept limited to the changes in the C.S.T. Act and the discussion on the Inter State Works Contracts. Finance Act 2002, having been passed by the legislature, it got assent on 11th May 2002 of the President of India. The amendments made are now authorizing the Central Government to levy the Central Sales Tax on deemed sales. Hence, the inter state deemed sales are subject to Central Sales tax and they include Works Contract, Installment sale or Hire Purchase of goods and Lease of goods.

FORM-F UNDER THE C.S.T. ACT.

This is a declaration issued by the registered dealer. It

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is claimed by the registered dealer that without any liability to pay tax on the movement of goods from one state to another state by him or by the principal or by his agent to any other place of his business. The section 6A of the C.S.T Act (this section deals with the burden of proof and mode of proof of movement of goods) is amended to make the declaration in form- F mandatory by the registered dealer. This form-F is prescribed in Rule 12(5) of the C.S.T. (Registration and Turnover) Rules, 1957. The proviso to Rule 12 (5), one F-form can be issued for all the transactions of transfer in one month. If the F-form is not issued, the transfer shall be deemed to be interstate sales and the Central sales tax shall be levied. This is as per the deeming provision in section 6A (1) of the C.S.T. Act.

FORM-C/D UNDER THE C.S.T. ACT

This declaration is made by the registered dealer (purchaser) to the seller. The Government purchases requisition form-D. With effect from 1st April 1998, one C-form can be issued for all the transactions covering one financial year. The following paragraphs state the requirement of issue of C-form and the applicable rates of Central Sales Tax as per section 8(5) of the C.S.T. Act (this section deals with the rates of Central Sales Tax on goods)

between the period 31-3-1999 to 10-5-2002 and from the period 11-5-2002 onwards.

FOR THE PERIOD 31-3-1999 TO 10-5-2002:-

If the rate of local tax in the schedule of the state is 4% ad valorem or lower than it, then the Central Sales Tax rate shall be 4% ad valorem or lower respectively. The C/D form procurement in this case was not necessitated. However, when the rate of local tax in the schedule of the state is more than 4% ad valorem, the procurement of form C/D is mandatory and consequently the rate of Central Sales Tax shall be concessional rate of 4% ad valorem. In the absence of form C/D, the 10% or the higher rate as per the rate of local tax in the schedule of the state is applicable.

FOR THE PERIOD FROM 11-5-2002:-

The section 8 of the C.S.T. Act is amended from 11-5-2002 and accordingly following is the position now.

The section 8(5) of the C.S.T. Act specifies the notified rate of all goods falling under that section. The declaration under C/D form is mandatory for all the interstate transactions irrespective of the fact of the rate of tax on goods or goods are under exemption from the tax or goods attract nil rate of the tax. If the rate of local tax in the schedule of the state is 'nil', then the rate of central sales tax shall be nil. If the rate of local tax in the schedule of the state is 10% ad valorem or lower than it, then the rate of Central sales Tax shall be 10% ad valorem-- if the form C/D is not procured.

If the rate of local tax in the schedule of the state is higher than 10% ad valorem, then the rate of central sales tax shall be at the rate specified by the state as local tax- if the form C/D is not procured.

DECLARATIONS BY THE USER OF THE FORMS UNDER THE DEEMED INTER STATE SALES

Article 246 (entry 92A, List-I, Schedule VII), Article 269 and Article 286 of the Constitution of India contains restrictions and hence the states are not empowered to levy the works contract tax on the sales taking place 'outside the state', 'in the course of interstate trade or commerce' and 'in the course of export or import'.

With effect from 11-5-2002, section 2(g) of the C.S.T. Act to include a transfer of property in goods (whether as goods or in some other form) involved in execution of a Works Contract and as such the Central Sales Tax is payable on inter state Works Contract.

Basically, the agreement to move the goods from one

state to another state and the actual movement of goods from one state to another state and the finality of the transaction (conclusive sale) taking place in different state where the goods have moved- these factors decide nature of the inter state Works Contract.

If the goods along with the main article moves from one state to another state in pursuance of any contract of repairs, services and processing and the contractor and the contractee are in the different states, then the same amounts to sale under inter state Works Contract and Central Sales Tax shall be levied as per section 3(a) of the C.S.T. Act. In view of this, such contractors are liable to get registered under the C.S.T. Act. The 'Sale Price' on which the Central Sales Tax is leviable- should be worked out as per guidelines of the apex court in Gannon Dunkerly & Co. (88 STC 204).

In the inter state Works Contract the contractor (registered under the C.S.T. Act) can purchase the goods under form- C if the property in such goods transfer in execution of the works contract. However, if the property in the goods, for example, crane/vehicles machines etc. do not pass in the execution of the works contract and hence the same cannot be purchased under issue of form-C.

The rate of Central sales Tax under the C.S.T. Act on interstate Works Contract is as under:-

- If the Form-C/D is available, then for goods liable at the rate of 4% or more, the rate of 4% Central Sales tax.
- If the Form-C/D is available, then for goods liable at the rate of 4% or less, such lower rate of Central Sales tax as applicable under the local Act.
- If the Form-C/D is not available, then for goods declared goods, rate of 8% Central Sales tax.
- If the Form-C/D is not available, then for other than declared goods, such higher rate as applicable under the local Works Contract Tax Act.

It is pertinent to note that the contractee can issue form-C/D to a contractor if the conditions prescribed under the C.S.T. Act are satisfied and the contractee is registered under the C.S.T. Act.

PAYMENT OF CENTRAL SALES TAX

Section-9 of the Central Sales Tax Act provides for the appropriate state. In case of deemed interstate sales in case under the works contract, the central sales tax will be payable in the states from which the goods moves (in execution of the works contract in the state of destination). In the case of inter state Hire purchase or Installment sale transactions; the central sales tax has to be deposited in the state from which the delivery of the goods is moved. In the case of inter state lease of goods, the taxable event

would be the state from where the leased goods would move to the other state.

EXEMPTIONS TO SPECIAL ECONOMIC ZONES

As per the amendments of section 8 of the Central Sales Tax Act, there would be no central sales tax payable in the inter state sale of goods by the dealers of the units located in any Special Economic Zones (as specified in Section 3, clause (III), explanation 2 proviso of the Central Excise Act, 1944).

CENTRAL SALES TAX APPELLATE AUTHORITY (CSTAA):

After the observations of the apex court in Ashok Leyland Ltd. Vs. Union of India and others (1997) 9 SCC 10, the Central Sales Tax Authority is formed by insertion of new Chapter VI Sections 19 to 26 are inserted in this new chapter by C.S.T. (Amendment) Act, 2001.

Within the overall powers to decide the disputes in the course of interstate trade and commerce and basically the disputes falling under section 6A and/or section-9 of the C.S.T. Act fall within the purview of Central Sales Tax appellate Authority.

Newly inserted section-22 specifies the power of this authority. The powers of the Court under the Code of Civil Procedure, 1908 are vested to the authority. The powers vested are as under:-

1. Enforce the attendance of any person and examining

him on oath or affirmation;

2. Requisitioning the production of books of accounts and documents;
3. Issuing commission for examination of witness;
4. Reception of evidence on affidavits;
5. Any other matter, which may be prescribed.

All the proceedings before the CSTAA are deemed to be judicial proceedings as per section 22(2).

The appeal before the CSTAA are to be filed by the aggrieved dealer within 45 days from the date of the service of the order rejecting the claim u/s.9 of the C.S.T. Act. The court fee of Rs.5000/- is prescribed for filing the appeal before CSTAA. On receipt of the appeal in time or within belated 60 days from the date of the service of the order rejecting the claim u/s. 6A or u/s. 9 of the C.S.T. Act (in case of belated appeal, the appellant dealer has to give sufficient cause (s) for the delayed filing of the appeal), the CSTAA shall call upon the records from the assessing officer, examine the evidences and give the appellant proper opportunity of the hearing. Then, it shall adjudicate and decide upon the appeal and shall pronounce the order in writing, as far as possible, within six months from the date of the receipt of the appeal. The copy of the order pronounced by CSTAA is to be sent to the assessing officer and to the appellant.

Such order pronounced by CSTAA shall be binding on assessing authorities of all the states and Union territory. ■

"Depreciation- Accounting, Taxation and Company Law Issues- A Study" (New publication of the Fiscal Laws Committee)

Depreciation is an important issue in the area of business accounting, Taxation and company law. While drawing up the profit and loss account of a business entity, depreciation is to be provided as a charge in order to find the true and fair profit or loss of the entity. In the field of taxation depreciation has been given an important place. It is used by the policy makers as an incentive for the promotion of economic growth in the prescribed field of activity. The Companies Act enacts that depreciation is to be provided for before arriving at the profit and loss of the company. There are several important issues relating to depreciation in all the three areas mentioned above.

The differences in perspective from the accounting, taxation and company law angles have been very carefully brought out in this landmark publication of the Fiscal Laws Committee. This publication has been moderately priced at Rs.100 and is available at the Sales Counters of our Regional Offices.