

## The Institute of Chartered Accountants of India

### Post-Budget Memorandum – 2002 on Amendments to Central Sales Tax Act

#### A. Introduction

- 1.0 The council of the Institute of Chartered Accountants of India has already submitted Post-Budget Memorandum on amendments to other acts except amendments to Central Sales Tax Act. We are submitting the same on CST Amendments now.
- 1.1 Hon'ble Finance Minister has not made any reference to these amendments in his Budget speech. He has not even mentioned the name of Central Sales Tax Act in para 153 where he has mentioned that he has proposed some legislative changes with regard to Customs, Excise and Service Tax Laws.
- 1.2 Amendments are a few but are of far reaching impact. Some amendments are welcome but some have potentiality of creating practical difficulties for the assesses at large.
- 1.3 The amendment to Section 2(g) which has expanded the definition of sale was long overdue after the Constitution (46<sup>th</sup> Amendment) Act, 1982 was passed whereby clause 29A inserted in Article 366 to tax the deemed sales in the case of transactions of Lease, Hire-Purchase, Works Contract etc. This is a welcome amendment as it will avoid many disputes regarding taxability of Inter-State Lease and Inter-State Works Contract. It will also augment State revenues on such Inter-State deemed sales. However, these amendment require some clarifications to avoid practical difficulties and disputes.
- 1.4 Amendment to Section 6A which has made compulsory the furnishing of Form F by the dealer to prove Stock Transfer, is not a welcome step.
- 1.5 Amendments to Section 8 are welcome changes, as the compulsory production of C/D forms will help curbing tax evasion. However, genuine difficulties of exempted units and goods having 4% or less sales tax rate, need to be looked at.
- 1.6 Amendment to Section 8(3)(b) which has expanded the scope of issue of Form C/D for purchase of goods for use in telecommunication networks is also a welcome change in view of importance of IT sector today. However, this scope of C-form needs to be further expanded in public interest.
- 1.7 Introduction of Section 8(6), 8(7) and 8(8) allowing exemption to Special Economic Zones from pay-

ment of Central Sales Tax against concessional forms is a welcome step.

- 1.8 Our suggestions on the specific amendments are given in the following pages.

#### B. Our Observations and Suggestions

##### 2.0 Amendment to Section 2(g)

This amendment has empowered the States to levy tax on deemed inter-State sales transactions. However, the amendment has raised the following questions:-

- a) In case of inter-State lease whether the Supreme Court judgement in the case of 20<sup>th</sup> Century Finance Corporation Limited V/s. The State of Maharashtra (2000) 119 STC 182 can be said to have been over-ruled? In other words even after amendment it is arguable whether appropriate state to levy lease tax is the State where the Agreement to transfer the right to use is signed or whether it is the State where the goods are actually being used?
- b) Section 9(2) of The Central Sales Tax Act, 1956 has empowered the states to make assessment, reassessment etc under the Central Sales Tax Act as if the assessment etc are carried out under the General Sales Tax Law of the State. In case of the works contract, different states have different definitions of sales price, deductions to be allowed from the work contract value, composition tax and provisions relating to sub-contractors. It is not clear as to what will be the effect of these different provisions on the sale price of inter-state works contract?
- c) Now, for inter-state works contract also, C-form is allowed to be issued, however, in case of normal inter-state sales of goods property immediately passes on to the buyer. There will be hardly any time lag between the movement of goods from one State to another State and passing of the property in the said goods from seller to buyer. However, in case of big works contracts there will be a very long time lag between the movement of goods from one State to another State and passing of the property in the said goods because in the case of works contract property passes through accretion. E.g, in case of building contracts for the inter-state purchase of cement C-form can be issued as cement is going to be used in the inter-state works contract or even local work contract and there will be resale. However, if there is a bulk purchase of cement by way of inter-state purchase, the property in the last bag of cement will be transferred to contractee say after two years when the building gets completed. In the meantime, as C-form is already issued and resale has not taken place whether there can be violation of

- C-form conditions during the intervening assessment periods. Whether penalty u/s 10 will be attracted?
- d) The question also arises as to for which sale price C-form needs to be issued. As explained in (b) above there is variation in the definition of sale price in different states. Thus, it is possible that C-form issued as per definition of one state may not be acceptable by other state.
  - e) Certain intangible goods such as Trademark, Licenses, Goodwill, etc., are also taxable under Sales Tax laws as goods. The question arises as to under what conditions sale of such goods can be considered inter-state sales? E.g. a license holder of State "A" sells the license to a party in State "B". It is possible that State "A" will tax this as inter-state sales and State "B" will tax the same as local sales as there cannot be movement of intangible goods and hence a State in which the license is used, will tax the same. Thus, there can be double taxation.
  - f) The question arises as to what will happen to ongoing inter-state works contracts and inter-state leases? **It is suggested that Government should come out with amendment to Central Sales Tax Rules, in which clarification about above mentioned questions, should be provided.**

### 3.0 Amendment to Section 6A

- 3.1 This amendment has made compulsory the furnishing of Form F by the dealer and has authorized levy of tax as inter-State sales where the dealer fails to furnish Form F to prove stock transfer.
- 3.2 It is pertinent to note that on 26<sup>th</sup> January, 1974, then Deputy Secretary to the Government of India, Ministry of Finance, Department of Revenue and Insurance had written to all Finance and Revenue Secretaries that Form F should not be considered mandatory. Other dispatch proofs can be accepted for proving stock transfer. This letter itself shows that such amendment is not required.
- 3.3 This amendment is a retrograde step. Under the proposed VAT all the forms are going to be removed for simplification. While, here the form, which was voluntary, is being made mandatory. It is feared that henceforth, like C forms, F form will also command "cost", increase administrative hurdles and unnecessary disputes.
- 3.4 It is also debatable whether provision to tax stock transfers as "sales" on failure to produce Form-F is constitutional or a reasonable law, if alternative dispatch proofs are provided. Under Article 246, Central Government is authorized to tax actual inter-State sales and purchases. Central Government is also authorized to tax deemed sales such as inter-State lease and works contract after the introduc-

tion of Entry 29A in Article 366 and above amendment of Section 2(g). However, even this Entry 29A which has expanded the definition of sale, does not cover "stock transfers". Thus it is viewed that this provision can be held to be violative of Article 246 read with Article 366 or violative of Article 14 for being unreasonable law.

**Hence it is suggested that this amendment should be withdrawn and original Section 6A should prevail.**

### 4.0 Amendment to Section 8

- 4.1 With deletion of Section 8(2A) and amendment to Section 8(5), no concessional rate will be applicable without production of Form C/D. Even State Governments cannot do away with the requirements of Form C/D for any goods except when goods are generally exempted. Thus goods exempted under the State incentives schemes will require Form C/D to avail of exemption itself. In absence of such forms, such exempted units will have to pay Central Sales Tax in cash at the highest applicable rate. This seems to be an unintended effect of the amendment.
- 4.2 **Hence, it is suggested that explanation should be added to Section 8(5) or in Central Sales Tax Rules that exempted units enjoying State incentives schemes will be deemed to be dealing in goods which are generally exempted goods during the period of incentives scheme.**
- 4.3 In the meetings of Empowered Committee, all States have agreed to have 4% sales tax rate for the goods which are mainly used as raw-materials or intermediary goods without any concessional forms. **It is suggested that the same principle should apply to inter-State sales of such goods. There should not be any requirement of C-form for any of such goods for which all States have agreed to have uniform rate of 4%.**
- 4.4 Section 8(3)(b) has widened the scope of Form C/D allowing the purchase of goods for use in telecommunication network. This is a welcome step. However, in view of globalisation, era of import parity prices, proposed introduction of VAT, acceptance of uniform minimum sales tax rates through out the country and need to avoid cascading effect, **it is also suggested that scope of such forms should be further expanded by allowing every dealer to issue such forms for inter-State purchase of goods for use or captive consumption apart from use in manufacture or sale or generation and distribution of electricity.**
- 4.5 Introduction of Section 8(6), 8(7) and 8(8) have fulfilled long felt need for relief to Special Economic Zones pro-

moting exports. Until now units in such Zones were first required to pay Central Sales Tax and then they used to get refund of such tax paid from Central Government. Now, they will enjoy exemption from payment of Central Sales Tax against issue of specific form. **This amendment shows that the Government has realized the importance of exemption against concessional form at National level. We earnestly suggest that same importance should be realized at State level and backward area units (which are in a way Special Economic Zones for States) should be allowed to continue enjoyment of exemption (which is promised to them under the State laws) against concessional forms in the VAT regime also during the incentive period.**

### 5.0 Amendment to Section 15

5.1 This amendment which has authorized State

Governments to impose tax on declared goods at more than one stage shows government intention to facilitate the introduction of VAT. However, merely providing for power to tax at each stage without provisions for setoff of tax paid at earlier stage is against the basic principles of VAT. In fact, it will not be wrong to say that allowing of setoff of Central Sales Tax paid in case of every inter-State sale transaction is a pre-requisite for REAL introduction of VAT.

**5.2 As VAT is being discussed at all levels we would also like to suggest that to have real benefits of amendments to Central Sales Tax Act and introduction of VAT, Central Government should also debate, discuss and if need be pressurise State Government to remove “barriers of Entry tax” in the national interest of development of inter-State trade and discouragement of fragmented local markets. ■**

## ANNOUNCEMENT

### Status of Accounting Standard (AS) 3, Cash Flow Statements, under Section 211 Of The Companies Act, 1956

1. Section 211 of the Companies Act, 1956, as amended by the Companies (Amendment) Act, 1999, requires that every profit and loss account and balance sheet of the company shall comply with the accounting standards. For the purpose of Section 211, the expression “accounting standards” means the standards of accounting recommended by the Institute of Chartered Accountants of India as may be prescribed by the Central Government in consultation with the National Advisory Committee on Accounting Standards established under sub-section (1) of section 210A of the said Act. Provided that the standards of accounting specified by the Institute of Chartered Accountants of India shall be deemed to be the Accounting Standards until the accounting standards are prescribed by the Central Government under section 211(3C) of the Act.

2. Accounting Standard (AS) 3, Cash Flow Statements, was made mandatory in respect of accounting periods commencing on or after 1.4.2001 for the following:

- (i) Enterprises whose equity or debt securities are listed on a recognised stock exchange in India, and enterprises that are in the process of issuing equity or debt securities that will be listed on a recognised stock exchange in India as evidenced by the board of directors’ resolution in this regard.
- (ii) All other commercial, industrial and business reporting enterprises, whose turnover for the accounting period exceeds Rs. 50 crores. (Announcement published in December 2000 issue of the Institute’s Journal.)

3. The Council, at its meeting held in September 2002, decided that AS 3 should also be treated as a ‘specified’ accounting standard for the purpose of section 211 of the Act. Accordingly, the companies in respect of which AS 3 is mandatory, are required to comply with AS 3 under section 211 of the Companies Act, 1956. In view of this, the statutory auditors of such companies are required to give an assertion in respect of compliance with AS 3 along with other ‘specified’ accounting standards while reporting under section 227 (3)(d) of the Act.

The Council decided that the above position in respect of ‘specified’ status of AS 3 is applicable in respect of accounting periods commencing on or after 1-4-2002.

4. Accordingly, in view of the announcements published in the Institute’s Journal, from time to time, in respect of ‘specified’ status of Accounting Standards, read with this announcement, the extant position is that all the accounting standards, issued by the Institute which have been made mandatory by the Institute as indicated in the respective standards or made mandatory by way of a separate announcement are ‘specified’ for the purpose of the proviso to section 211 (3C) and section 227(3)(d) of the Act.