

SUPPLEMENTARY AMENDMENT
CENTRAL SALES-TAX Act, 1956

THE FINANCE ACT, 2005

(Act No 18 of 2005)¹

[13th May, 2005]

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.—This Act may be called the Finance Act, 2005.

* * * *

89. Amendment of Sec. 2.—In Sec. 2 of the Central Sales-Tax Act, 1956, [74 of 1956] (hereinafter referred to as the Central Sales-Tax Act),—

- (a) in Cl. (h) the following proviso shall be inserted at the end, namely:—

"Provided that in the case of a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, the sale price of such goods shall be determined in the prescribed manner by making such deduction from the total consideration for the works contract as may be prescribed and such price shall be deemed to be the sale price for the purposes of this clause."

- (b) for Cl. (i), the following clause shall be substituted, namely:—

'(i) "sales-tax law" means any law for the time being in force in any State or part thereof which provides for the levy of taxes on the sale or purchase of goods generally or on any specified goods expressly mentioned in that behalf and includes value added tax law, and "general sales-tax law" means any law for the time being in force in any State or part thereof which provides for the levy of tax on the sale or purchase of goods generally and includes value added tax law;'

- (c) after Cl. (j), the following clause shall be inserted, namely:—

'(ja) "works contract" means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property;'

90. Amendment of Sec. 5.—In Sec. 5 of the Central Sales Tax Act, after sub-section (3), the following sub-sections shall be inserted, namely:—

1. Assented by the President on 13th May, 2005.

'(4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.

(5) Notwithstanding anything contained in sub-section (1), if any designated Indian carrier purchases Aviation Turbine Fuel for the purposes of its international flight, such purchase shall be deemed to take place in the course of the export of goods out of the territory of India.

Explanation.—For the purposes of this sub-section, "designated Indian carrier" means any carrier which the Central Government may, by notification in the Official Gazette, specify in this behalf;'

91. Amendment of Sec. 6.—In Sec. 6 of the Central Sales Tax Act, for sub-section (3), the following sub-sections shall be substituted, namely:—

"(3) Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter- state trade or commerce, to any official, personnel, consular or diplomatic agent of —

(i) any foreign diplomatic mission or consulate in India; or

(ii) the United Nations or any other similar international body,

entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force, if such official, personnel, consular or diplomatic agent, as the case may be has purchased, such goods for himself or for the purposes of such mission, consulate, United Nations or other body.

(4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of inter-state trade or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and signed by the official, personnel, consular or diplomatic agent, as the case may be".

92. Amendment of Sec. 13.—In Sec. 13 of the Central Sales Tax Act, in sub-section (1), Cl. (aa) shall be re-lettered as Cl. (ab) thereof, and before Cl. (ab) as so re-lettered, the following clause shall be inserted, namely:—

"(aa) the manner of determination of the sale price and the deductions from the total consideration for a works contract under the proviso to Cl. (h) of Sec. 2."

X

SUPPLEMENTARY AMENDMENT CENTRAL SALES-TAX Act, 1956

THE FINANCE BILL, 2005

(Bill No. 35 of 2005)¹

Be it enacted by Parliament in the Fifty-sixth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

Short title and commencement.—This Act may be called the Finance Act, 2005.

* * * *

89. Amendment of Sec. 2.—In Sec. 2 of the Central Sales-Tax Act, 1956, (74 of 1956) (hereinafter referred to as the Central Sales-Tax Act),—

- (a) in Cl. (h) the following proviso shall be inserted at the end, namely:—

"Provided that in the case of a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, the sale price of such goods shall be determined in the prescribed manner by making such deduction from the total consideration for the works contract as may be prescribed and such price shall be deemed to be the sale price for the purposes of this clause."

- (b) for Cl. (i), the following clause shall be substituted, namely:—

'(i) "sales-tax law" means any law for the time being in force in any State or part thereof which provides for the levy of taxes on the sale or purchase of goods generally or on any specified goods expressly mentioned in that behalf and includes value added tax law, and "general sales-tax law" means any law for the time being in force in any State or part thereof which provides for the levy of tax on the sale or purchase of goods generally and includes value added tax law;'

- (c) after Cl. (j), the following clause shall be inserted, namely:—

'(ja) "works contract" means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property;'

90. Amendment of Sec. 5.—In Sec. 5 of the Central Sales Tax Act, after sub- section (3), the following sub-sections shall be inserted, namely:—

(4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.

(5) Notwithstanding anything contained in sub-section (1), if any designated Indian carrier purchases Aviation Turbine Fuel for the purposes of its international flight, such purchase shall be deemed to take place in the course of the export of goods out of the territory of India.

Explanation.—For the purposes of this sub-section, "designated Indian carrier" means any carrier which the Central Government may, by notification in the Official Gazette, specify in this behalf.

91. Amendment of Sec. 6.—In Sec. 6 of the Central Sales Tax Act, for sub-section (3), the following sub-sections shall be substituted, namely:—

"(3) Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-state trade or commerce, to any official, personnel, consular or diplomatic agent of —

(i) any foreign diplomatic mission or consulate in India; or

(ii) the United Nations or any other similar international body,

entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force, if such official, personnel, consular or diplomatic agent, as the case may be has purchased, such goods for himself or for the purposes of such mission, consulate, United Nations or other body.

(4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of inter-state trade or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and signed by the official, personnel, consular or diplomatic agent, as the case may be".

92. Amendment of Sec. 13.—In Sec. 13 of the Central Sales Tax Act, in sub-section (1), Cl. (aa) shall be re-lettered as Cl. (ab) thereof, and before Cl. (ab) as so re-lettered, the following clause shall be inserted, namely:—

"(aa) the manner of determination of the sale price and the deductions from the total consideration for a works contract under the proviso to Cl. (h) of Sec. 2."

Ministry

SUPPLEMENTARY AMENDMENT
THE CENTRAL SALES TAX ACT, 1956

(No. 23 of 2004)

Dated 10th September 2004

THE FINANCE (NO. 2) ACT, 2004¹

CHAPTER I
PRELIMINARY

Short title and commencement.—This Act may be called the Finance (No. 2) Act, 2004.

* * * *

118. Amendment of Sec. 8.—In Sec. 8 of the Central Sales Tax Act, 1956 (74 of 1956) (hereinafter referred to as the Central Sales Tax Act),—

(a) for sub-section (6), the following sub-section shall be substituted, namely:—

"(6) Notwithstanding anything contained in this section, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter- State trade or commerce to a registered dealer for the purpose of setting up, operation, maintenance, manufacture, trading, production, processing, assembling, repairing, reconditioning, re-engineering, packaging or for use as packing material or packing accessories in an unit located in any special economic zone or for development, operation and maintenance of special economic zone by the developer of the special economic zone, if such registered dealer has been authorised to establish such unit or to develop, operate and maintain such special economic zone by the authority specified by the Central Government in this behalf.";

(b) in sub-section (8), for the words, brackets and figures "authority referred to in sub-section (6) a declaration in the prescribed manner on the prescribed form obtained from the authority referred to in sub-section (5)", the following shall be substituted, namely:—

"prescribed authority referred to in sub-section (4) a declaration in the prescribed manner on the prescribed form obtained from the authority specified by the Central Government under sub-section (6)."

119. Amendment of Chapter VI.—In Chapter VI of the Central Sales Tax Act, as directed to be inserted by Sec. 3 of the Central Sales Tax (Amendment) Act, 2001 (41 of 2001), and as it stands amended by the Finance Act, 2003 (32 of 2003), with effect from the commencement of the Central Sales Tax (Amendment) Act, 2001,—

- (a) in Sec. 19, in sub section (1), for the words, figures and letter "Sec. 6-A or Sec. 9", the words, figures and letters "Sec. 6-A read with Sec. 9" shall be substituted;
- (b) in Sec. 20, in sub-section (1), for the words figures and letters "Sec. 6-A or Sec. 9", the words, figures and letters "Sec. 6-A read with Sec. 9" shall be substituted;
- (c) in Sec. 21, in sub-section (3), in the first proviso, for the words "also to the State Government", the words "also to each State Government" shall be substituted;
- (d) in Sec. 22, after, sub-section (1), the following sub-section shall be inserted, namely:—

"(1-A) The Authority may grant stay of the operation of the order of the assessing authority against which the appeal is filed before it or order the pre-deposit of the tax before entertaining the appeal and while granting such stay or making such order for the pre-deposit of the tax, the Authority shall have regard, if the assessee has already made pre-deposit of the tax under the general sales tax law of the State concerned, to such pre-deposit;"

- (e) in Sec. 25, for the words "every appeal", the words "any proceeding" shall be substituted;
 - (f) in Sec. 26, for the words "the assessing authorities", the words "each State Government concerned, the assessing authorities" shall be substituted.
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SUPPLEMENTARY AMENDMENT

CENTRAL SALES TAX (REGISTRATION AND TURNOVER) AMENDMENT RULES, 2003

G.S.R. 36 (E), dated 16th January, 2003¹.—In exercise of the powers conferred by Cl. (aa) of sub-section (1) of Sec. 13 of the Central Sales Tax Act, 1956 (74 of 1956), the Central Government hereby makes the following rules further to amend the Central Sales Tax (Registration and Turnover) Rules, 1957, namely:—

1. **Short title and commencement.**—(1) These rules may be called the Central Sales Tax (Registration and Turnover) Amendment Rules, 2003.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In the Central Sales Tax (Registration and Turnover) Rules, 1957, the following proviso shall be inserted at the end of Cl. (a) of the sub-rule (10) of Rule 12, namely:—

"PROVIDED THAT where the claim of the dealer relates to sub-section (8) of Sec. 8, the dealer shall get the Form H duly countersigned and certified by the authority specified by the Central Government authorising the establishment of the unit in the Special Economic Zone [notified under Sec. 76-A of the Customs Act, 1962 (52 of 1962)], that the sale of goods is for the purpose of establishing a unit in such zone, and the in Form H prescribed under this rule shall, mutatis mutandis, apply to the declaration of the dealer and certificate to be obtained from the said authority notified under Sec. 76-A of the Customs Act, 1962.".

1. Published in the *Gazette of India, Extraordinary*, Pt. II, Sec. 3 (i) dated 16th January, 2003).

THE CENTRAL SALES-TAX ACT, 1956

(Act No. 74 of 1956)¹

[21st December, 1956]

An Act to formulate principles for determining when a sale or purchase of goods takes place in the course of inter-State trade or commerce or outside a State or in the course of import into or export from India, to provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-State trade or commerce and to declare certain goods to be of special importance in inter-State trade or commerce and specify the restrictions and conditions to which State laws imposing taxes on the sale or purchase of such goods of special importance shall be subject.

Be it enacted by Parliament in the Seventh Year of the Republic of India as follows:

STATEMENT OF OBJECTS AND REASONS OF ACT 74 OF 1956

"In the interest of the national economy of India certain amendments were undertaken in the Constitution by the Constitution (Sixth Amendment) Act, 1956, whereby—

- (a) taxes on sales or purchases of goods in the course of inter-State trade or commerce were brought expressly within the purview of the legislative jurisdiction of Parliament;
- (b) restrictions could be imposed on the powers of State Legislatures with respect to the levy of taxes on the sale or purchase of goods within the State where the goods are of special importance in inter-State trade or commerce.

The amendments at the same time authorised Parliament to formulate principles for determining when a sale or purchase takes place in the course of inter-State trade or commerce or in the course of export or import or outside a State in order that the legislative spheres of Parliament and the State Legislatures become clearly demarcated. In the case of goods of special importance in inter-State trade or commerce, a law of Parliament is to lay down the restrictions and conditions subject to which any State law may regulate the tax on sales or purchases of such goods in the State.

2. This Bill seeks to provide for the legislation authorised by the Constitution as amended above with a view to enabling the State Governments to raise additional revenues by levying tax on inter-State transactions which are at present immune from tax under their respective sales tax laws. After taking into account the recommendations of the Taxation Enquiry Commission and in consultation with the States the Government of India were of the view that the following principles should

1. The Act has been extended to Goa, Daman and Diu (with modifications) by Reg. 12 of 1962, Sec. 3 and Schedule ; to Kohima and Mokokchung districts of Nagaland (as in force on 5th August, 1971) by Act 61 of 1972, Sec. 14(1) (w.e.f. 30th November, 1972). The amendments made to the Act by Act 61 of 1972 came into force in the said districts (w.e.f. 1st April, 1973) vide Sec. 14 (2); *ibid*.

govern the scheme of the detailed legislation on the three inter-related subjects:

(i) The Central Government should authorise the State Governments to impose on behalf of the Central Government tax on the sale or purchase of goods in the course of inter-States trade or commerce. The Central legislation should also delegate to the States the Central Government's power to levy and collect the tax and for this purpose prescribe the same system of registration, assessment, etc., as prevails in the States concerned under their own sales tax system.

(ii) An important aspect of the Central legislation will be concerned with the definition of the local sales, for the purpose of defining in detail the relative jurisdiction, *firstly* of the Union and the States, and *secondly* of the States *inter se*. It is therefore, necessary that the law should define clearly, with specific reference to sales tax the circumstances in which a sale or purchase becomes taxable by a particular State and no other. It should also define for the purpose of the constitutional restrictions on the State's power to impose a tax under Item 54 of the State list, when a sale or purchase of goods may be said to take place :

(a) in the course of export out of India,

(b) in the course of import into India, and

(c) in the course of inter-State trade or commerce.

(iii) The Central legislation should provide for the declaration of certain commodities which are in the nature of raw materials and of special importance in inter-State trade or commerce and lay down the restrictions and conditions as to the rate, system of levy and other incidents of tax subject to which the States may impose tax on the sale or purchase thereof.

3. Necessary provisions have, therefore, been made in the different Chapters of this Bill incorporating the principles stated above.

CHAPTER I

PRELIMINARY

1. **Short title, extent and commencement.**—(1) This Act may be called the Central Sales-tax Act, 1956.

(2) It extends to the whole of India¹ [***].

(3) It shall come into force on such date² as the Central Government may, by notification in the Official Gazette, appoint, and different dates may be appointed for different provisions of this Act.

COMMENTS

Presumption against retrospective operation.—The presumption against retrospective operation of a fiscal statute is not applicable to declaratory statutes.³

Cardinal principle of construction.—It is a cardinal principle of rule of construction of statute that when the language of statute is fairly and reasonably clear, then inconvenience or hardships are no considerations for refusing to give effect to that meaning.⁴

1. The words "except the State of Jammu and Kashmir" omitted by Act 5 of 1958, Sec.2.

2. Enforced from 5th January, 1957, all sections except Sec. 15, *vide* Notification No. S.R.O. 78, dated 4th January, 1957, *Gazette of India, Extraordinary*, 1957, Pt. II, Sec. 3, p. 57 and Sec. 15 (w.e.f. 1st October, 1958); *vide* Notification No. G.S.R. 897, dated 23rd September, 1958, *Gazette of India, Extraordinary*, 1958, Pt. II, Sec. 3 (i), p. 476.

3. *Lucas T.V.S. Ltd. v. C.I.T.*, 1996 (217) I.T.R. 382 at p. 403 (Mad.); *C.I.T. v. Achaldas Dhanraj*, 1996 (217) I.T.R. 799 at p. 805 (Raj.).

4. *State of Maharashtra v. Nand-Parbhani Z.L.B.M.V. Operator Sangh*, J.T. 2000 (1) S.C. 290 at p. 294; *Mohar Mal v. Kay Iron Works (P.) Ltd.*, A.I.R. 2000 S.C.C. 1261 at p. 1267; *T.M.A. Pai Foundation v. State of Karnataka*, A.I.R. 2003 S.C. 355 at p. 455.

Shall.—It is settled law that when used in a statute, the word "shall" sometime may be interpreted to mean "may" and sometime "may" is equivalent to "shall" depending upon the context.¹

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "appropriate State" means—

- (i) in relation to a dealer who has one or more places of business situated in the same State, that State;
- (ii) in relation to a dealer who has ²[***] places of business situated in the different States, every such State with respect to the place or places of business situated within its territory;

³[* * * *]

⁴(aa) "business" includes—

- (i) any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; and
- (ii) any transaction in connection with or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;

(ab) "crossing the customs frontiers of India" means crossing the limits of the area of a customs station in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

Explanation.—For the purposes of this clause, "customs station" and "customs authorities" shall have the same meanings as in the Customs Act, 1962 (52 of 1962);

⁵[(b) "dealer" means any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes—

- (i) a local authority, a body corporate, a company, any co-operative society or other society, club, firm Hindu undivided family, or other association of persons which carries on such business;
- (ii) a factor, broker, commission agent, *del credere* agent, or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying,

1. Anil Kumar Tekriwal v. Navin Chandra Singh, 1997 (1) B.L.J. 52 at p. 56 (Pat.); Dinkar Anna Patil v. State of Maharashtra, A.I.R. 1999 S.C. 152 at p. 159; Nand Prakash Vohra v. State of H.P., A.I.R. 2000 H.P. 65 at p. 72.

2. The words "one or more" omitted by Act 31 of 1958, Sec. 2 (w.e.f. 1st October, 1958).

3. Explanation omitted by Sec. 2, *ibid.*, (w.e.f. 1st October, 1958).

4. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 2.

5. Subs. by Central Sales-tax Act, 1976, Sec. 2.

Shall.—It is settled law that when used in a statute, the word "shall" sometime may be interpreted to mean "may" and sometime "may" is equivalent to "shall" depending upon the context.¹

2. Definitions.—In this Act, unless the context otherwise requires,—

(a) "appropriate State" means—

- (i) in relation to a dealer who has one or more places of business situated in the same State, that State;
- (ii) in relation to a dealer who has ²[***] places of business situated in the different States, every such State with respect to the place or places of business situated within its territory;

³[* * *]

⁴(aa) "business" includes—

- (i) any trade, commerce or manufacture, or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such trade, commerce, manufacture, adventure or concern; and
- (ii) any transaction in connection with or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern;

(ab) "crossing the customs frontiers of India" means crossing the limits of the area of a customs station in which imported goods or export goods are ordinarily kept before clearance by customs authorities.

Explanation.—For the purposes of this clause, "customs station" and "customs authorities" shall have the same meanings as in the Customs Act, 1962 (52 of 1962);

⁵[(b) "dealer" means any person who carries on (whether regularly or otherwise) the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash, or for deferred payment, or for commission, remuneration or other valuable consideration, and includes—

- (i) a local authority, a body corporate, a company, any co-operative society or other society, club, firm Hindu undivided family, or other association of persons which carries on such business;
- (ii) a factor, broker, commission agent, *del credere* agent, or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, who carries on the business of buying,

1. Anil Kumar Tekriwal v. Navin Chandra Singh, 1997 (1) B.L.J. 52 at p. 56 (Pat.); Dinkar Anna Patil v. State of Maharashtra, A.I.R. 1999 S.C. 152 at p. 159; Nand Prakash Vohra v. State of H.P., A.I.R. 2000 H.P. 65 at p. 72.

2. The words "one or more" omitted by Act 31 of 1958, Sec. 2 (w.e.f. 1st October, 1958).

3. Explanation omitted by Sec. 2, *ibid.*, (w.e.f. 1st October, 1958).

4. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 2.

5. Subs. by Central Sales-tax Act, 1976, Sec. 2.

¹[(g) "sale", with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or for any other valuable consideration, and includes,—

- (i) a transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
- (ii) a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;
- (iii) a delivery of goods on hire-purchase or any system of payment by instalments;
- (iv) a transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
- (v) a supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;
- (vi) a supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration,

but does not include a mortgage or hypothecation of or a charge or pledge on goods;.]

- (h) "sale price" means the amount payable to a dealer as consideration for the sale of any goods, less any sum allowed as cash discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof other than the cost of freight or delivery or the cost of installation in cases where such cost is separately charged;
- (i) "sales-tax law" means any law for the time being in force in any State or part thereof which provides for the levy of taxes on the sale or purchase of goods generally or on any specified goods expressly mentioned in that behalf, and "general sales-tax law" means the law for the time being in force in any State or part thereof which provides for the levy of tax on the sale or purchase of goods generally;
- (j) "turnover" used in relation to any dealer liable to tax under this Act means the aggregate of the sale prices received and receivable by him in respect of sales of any goods in the course of inter-State trade or commerce made during any prescribed period ²[and determined in accordance with the provisions of this Act and the rules made thereunder];

1. Subs. by the Finance Act, 2002 (20 of 2002), Sec. 150.

2. Subs. by Act 28 of 1969, Sec. 2 for "and determined in the prescribed manner" (retrospectively).

- (k) "year" in relation to a dealer, means the year applicable in relation to him under the general sales-tax law of the appropriate State, and where there is no such year applicable, the financial year.

COMMENTS

Central Sales Tax Act is a special sales tax law.—There is a clear distinction between a general sales tax law that provides for levy of tax on the sale or purchase of goods generally and a special sales tax law that provides for the levy of tax on the sale or purchase of specified goods or in specified circumstances. Tax under the Central Sales Tax Act would clearly fall within the second category.¹

Dealer, meaning of.—The Supreme Court in *Joint Director of Food v. State of Andhra Pradesh*,² held that the Joint Director of Food, Visakhapatnam—an officer of the Central Government—was proposed and to be treated and taxed as a "dealer". According to the definition of "dealer" in Sec. 2 (b) of the Central Sales Tax Act, 1956, a person will be a dealer only if he carries on business with a profit-motive, the requirements of profit-motive was absent under the Andhra Pradesh General Sales-tax Act. Evidently, the Court was referring to the definition of dealer in the Central Act before it was amended by Act 103 of 1976, doing away with the requirement of profit-motive. It was held that inasmuch as the Joint Director of Food, Visakhapatnam, had not profit-motive in undertaking the distribution of essential commodities, he cannot be treated as a dealer under the Central Act, though he would be a dealer for purposes of the State Act.³

Applicability of the section.—In *Cement Marketing Co. of India Ltd. v. Assistant Commissioner of Sales-tax, Indore*,⁴ it was held that the amount of freight formed part of the sale price within the meaning of this first part of the definition of that term in Sec. 2 (o) of the Madhya Pradesh General Sales-tax Act, 1958, and Sec. 2 (h) of the Central Sales-tax Act, 1956, and was rightly included in the taxable turnover of the assessee.

"Sale" meaning of.—The transfer of stock from Mathura to Hodel Office⁵ can be recorded as a sale. In this connection it is made clear that the partnership firm is not a separate legal entity like limited liability company. Even before the dissolution, the partnership firm was not separated and distinct from its partners. Hence, the dissolution of the firm will not mean that some legal entity came to an end as in the case of winding-up of a limited liability company. Hence, the transfer of stock from Mathura to Hodel cannot be said to be a transfer of some other legal entity. Moreover, the transfer of stock cannot be said to be sale. Hence, the finding of the Tribunal to this extent is arbitrary and illegal and is hereby set aside.⁵

Sale price—Meaning of.—By reason of the provisions of the Cement Control Order which governed the transactions of sale of cement entered into by assessee with the purchasers, the amount of freight formed part of the "sale-price" within the meaning of the first part of the definition of that term in Sec.2(h) of the Central Sales-tax Act, 1956, and was includible in the turnover of assessee.⁶

1. *Birla Corporation Ltd. v. State of Rajasthan*, A.I.R. 1999 S.C. 2211 at p. 2212. : 1999 (3) S.C.C. 138 at p. 140.
2. 1976 (38) S.T.C. 329 (S.C.).
3. *Rashtriya Chemical and Fertilizers Ltd. v. State of Andhra Pradesh*, 1990 (76) S.T.C. 360 at p. 366 (A.P.); *Beekay Engg. Corpn. v. State of Bihar*, 1993 S.T.J. 217 (Pat.).
4. A.I.R. 1980 S.C. 346 at p. 347; *Arvind Industries v. State of Gujarat*, A.I.R. 1995 S.C. 2477 at p. 2479.
5. *Mathura Tractors v. C.S.T., S.T.I.*, 1992 All. 348 at p. 349; *Dhariwal Bottle Trading Co. v. State of Maharashtra*, 1995 (99) S.T.C. 326 at p. 328 (Bom.).
6. *Cement Marketing Co. of India Ltd. v. Commissioner of Commercial Taxes, Karnataka*, A.I.R. 1980 S.C. 952 at p. 953; *T.V.L. Ramco Cement Distribution Co. P. Ltd. v. State of Tamil Nadu*, A.I.R. 1993 S.C. 123.

Thus the Tribunal was in error in concluding that there was sale involved in these transactions.¹

CHAPTER II

FORMULATION OF PRINCIPLES FOR DETERMINING WHEN A SALE OR PURCHASE OF GOODS TAKES PLACE IN THE COURSE OF INTER-STATE TRADE OR COMMERCE OR OUTSIDE A STATE OR IN THE COURSE OF IMPORT OR EXPORT

3. When is a sale or purchase of goods said to take place in the course of inter-State trade or commerce.—A sale or purchase of goods shall be deemed to take place in the course of inter-State trade or commerce if the sale or purchase—

- (a) occasions the movement of goods from one State to another; or
- (b) is effected by a transfer of documents of title to the goods during their movement from one State to another.

Explanation I.—Where goods are delivered to a carrier or other bailee for transmission, the movement of the goods shall, for the purposes of Cl.(b), be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailee.

Explanation II.—Where the movement of goods commences and terminates in the same State it shall not be deemed to be a movement of goods from one State to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other State.

COMMENTS

Deemed—Meaning of.—The word "deemed" always means to be treated "as if it were".²

Scope.—It is well settled that a sale shall be an inter-State sale under Sec.3(a) of the Central Sales-tax Act if there is a contract of sale preceding the movement of goods from one State to another and the movement is the result of a covenant in the contract of sale or is an incident of that contract; in order that a sale may be regarded as an inter-State sale it is immaterial whether the property in the goods passes in one State or another.³

It is not disputed in the instant case that the bamboos in respect of which the sales-tax paid by the respondent were, in fact, taken to Raniganj in West Bengal for the use in the respondent's mills. In these circumstances, it is clear that the movement of bamboos from the State of Madhya Pradesh to the State of West Bengal was under a covenant of the contract of sale and that the said movement was a necessary incident of sale. There was a direct nexus between the movement of goods from one State to another and the sale. The sales of bamboos under the contract therefore constituted inter-State sales under Sec. 3(a) of the Central Sales-tax Act.⁴

Scope of Sec. 3 (b).—From a perusal of the provision of Sec.3(b) it is clear that until and unless it is proved that the goods sold was transferred to the assessee during the movement from one State to another and the assessee endorsed the documents of title, the transfer of such property shall not be taxable in the hands of the assessee. Counsel for the assessee invited the attention of the Court to the

1. Hindustan Aeronautics Ltd. v. State of Orissa, A.I.R. 1984 S.C. 753 at pp. 757, 758: 1984 Tax.L.R. 2831.

2. Kalika Kaur *alias* Kalika Singh v. State of Bihar, 1990(38) 1 B.L.J.R. 51 at p. 73. (Pat.)

3. Indian Oil Corporation Ltd. v. Union of India, A.I.R. 1981 S.C. 446 at p. 449.

4. State of Madhya Pradesh v. Bengal Paper Mills Company Ltd., (1979) M.P.L.J. 478 at p. 480.

decision of the Supreme Court in *Tata Iron and Steel Co. v. Sarkar*.¹ On the strength of the said decision of the Supreme Court counsel for the assessee contended that the Tribunal committed an error in imposing the tax under Sec.3(b) of the Central Sales-tax Act. The Court held that since no tax could be imposed under Sec.3(b) of the Central Sales-tax Act on the facts of the case, the order passed by the Tribunal cannot be sustained.²

Contract of sale—Requirement of.—It is true that the contracts of sales does not require or provide that goods shall be moved from one place to another. But it is not true to say that for the purposes Sec. 3 (a) of the Central Sales-tax Act, it is necessary that the contract of sale must itself provide for and cause the movement of goods or that the movement of goods must be occasioned specifically in accordance with the terms of the contract of sale.³

Sales in the course of inter-State sales.—The findings of the Tribunal are that the assessee who is a commission agent, placed an order of despatch of the goods to ex-U.P. principal with the selling dealer. The selling dealer booked the goods with the railways and got the railway receipt prepared in the name of the selling dealer. The selling dealer then endorsed the railway receipt in the name of the assessee who in its turn endorsed the same to ex-U.P. principal. On these facts, Sec.3(b) of the Central Sales-tax Act would be clearly applicable and the sales would be sales in the course of inter-State sales. The findings recorded by the Tribunal are that the assessee placed the orders on the selling dealer in Uttar Pradesh and asked them to despatch the goods to ex-U.P. principal. The railway receipts were prepared by the selling dealer in their own name and then endorsed in the name of the assessee who in its turn endorsed them in favour of the ex-U.P. principal. On these facts, there can be no manner of doubt that the sales in question were sales in the course of inter-State sales.⁴

Transfers effected by the assessee when could not be said to be inter-State sale.—The assessee in the present case was a manufacturer of pencils and has a factory at Ghaziabad and a head office at Delhi. The assessee's case was that he made pencils which were not completely finished at Ghaziabad and then transported them to Delhi where they were finished and sold to various customers. The authorities levied Central Sales-tax on the assessee. It is well known that before a sale can be said to be an inter-State sale, (i) there must be an agreement to sell which contains a stipulation express or implied, regarding the movement of the goods from one State to another; (ii) that in pursuance of the said contract the goods in fact moved from one State to another and (iii) that ultimately a concluded sale takes place in the State where the goods are sent which must be different from the State from which the goods move. There is no evidence in this case to show that there was any completed contract between the assessee's factory at Ghaziabad with any specific customers for the sales of goods with ex-U.P. buyer. In the absence of any such findings, the movement of goods from Ghaziabad to the head office in Delhi can only be treated as stock transfers. The order of the Tribunal was set aside and it was held that the transfer effected by the assessee was not inter-State sales.⁵

For the purpose of Sec.3 of the Central Sales Tax Act, 1956, it has to be examined whether the movement of goods had taken place from inside the State to outside State in pursuance of prior contact of sales or not. Unless it is established that the movement of goods had taken place outside the State in pursuance of prior contract of sale, it cannot be taxed and classified as inter-State sale.⁶

1. 1960 (11) S.T.C. 655 (S.C.).

2. *Hirason Enterprises v. Commissioner of Sales-tax, U.P., Lucknow*, 1990 (76) S.T.C. 365 at pp. 359, 360 (All.).

3. *Union of India v. K.G. Khosla & Co. Ltd.*, A.I.R. 1979 S.C. 1160 at p. 1163.

4. *Commissioner of Sales tax, U.P. v. Rati Lal Ranchor Das and Bros.*, Kanpur, 1983 U.P.T.C. 1270 at p. 1271.

5. *Neelam Pencil Factory, Ghaziabad v. Commissioner of Sales-tax, U.P.*, 1984 U.P.T.C. 146 at pp. 147, 148.

6. *Indo-Bulgar Foods v. C.S.T.*, A.I.R. 1993 All 164 at p. 165.

Inter-State sales—Estimation of.—The Revenue has not shown that the goods had moved from Uttar Pradesh to Calcutta in course of inter-State sales. Simply because the goods were sent to Calcutta and there they were sold, no inference for suppressing inter-State sales could be drawn. The Tribunal was, therefore, right in accepting the book version, so far as the disclosure of inter-State sales is concerned, simply because the books were rejected, the assessing officer was not justified in estimating the inter-State sales. To estimate the inter-State sales, he should have pointed out some instance of suppression of inter-State sales or a cogent material leading to suppression of the turnover of inter-State sales.¹

Inter-State sales—What amounts to.—Once it is found that the movement of the goods was not occasioned by the placing of specific orders on the assessee, the movement could not be treated in the course of inter-State sales. In the present case, unless the revenue proves that the movement of the goods from Shikohabad to Delhi was occasioned by the placing of a particular order, it cannot amount to an inter-State sale. The Tribunal was of the view that on the facts of the case it was not established that the movement of the goods from Shikohabad to Delhi was connected with any order placed on the assessee and consequently it held that there was no inter-State sales when the goods moved from Shikohabad to Delhi by the assessee.²

Where the electricity as goods comes into existence and is consumed simultaneously, the event of sale in the sense of transferring property in the goods merely intervenes as a step between generation and consumption. In such a case when the generation takes place in one State wherefrom it is supplied and it is received in another State where it is consumed, the entire transaction is one and can be nothing else excepting an inter-State sale on account of instantaneous movement of goods from one to another occasioned by the sale or purchase of goods, squarely covered by Sec. 3 of the Central Sales-tax Act, 1956.³

Inter-State sales and Intra-State sale.—A perusal of the judgment of the first Appellate Authority shows that it treated the transactions as inter-State sales whereas on the same material the Sales Tax Tribunal held them to be inter-State sales. No additional evidence was adduced before the Sales Tax Tribunal by either party to indicate whether they were inter-State sales or intra-State sales. It appears from the orders passed by the three authorities below that they proceeded on the assumption that those very goods which were supplied by the applicant to M/s. Metal Box India Limited, Faridabad were sold by the latter to the said three parties. However, there seems to be no evidence to prove positively that the delivery of the goods was taken by M/s. Metal Box India Limited, Faridabad and those very goods were sold or sent by M/s. Metal Box India Limited to the three parties. It appears necessary that there should be a finding of fact on these points before the matter is decided finally. Thus there seems to be no option but to send back the case to the Assessing Authority.⁴

Inter-State sale or local sale.—In the instant case, all the subsequent sales effected by the appellant during the course of inter-State movement of the subject goods are exempt in terms of Secs. 3(b) and 6(2) of the Central Sales-tax Act. The subject sales is governed by the Act and, therefore, beyond the scope of Rajasthan Sales Tax Act. The proceedings initiated by the authorities under the Rajasthan Act

1. Commissioner of Sales-tax, U.P. v. Mohammed Sabir Riyasat Ali and Company, 1986 A.T.J. 472 at p. 473.
2. Commissioner of Sales tax v. Hind Lamps Ltd., Mainpuri, 1983 U.P.T.C. 1056 at pp. 1058, 1059, 1060; Commissioner of Sales Tax, U.P. v. Basdeo Mishra Vijai Kumar, S.T.I. 1993 All. 62; C.S.T. v. Bakhtawar Lal Kailash Chand Arthi, S.T.I. 1992 S.C. 74; Ashok Kumar Sudhir Kumar v. C.S.T., S.T.I. 1992 All. 382 : 1993 S.T.J. 232 (S.C.).
3. State of A.P. v. N.T.P.C. Ltd., A.I.R. 2002 S.C. 1895 at p. 1911.
4. Metal and Board Containers v. C.S.T., S.T.I. 1992 All. 333 at pp. 334, 335; A.S. Chinnaswamy v. State of T.N., 1998 (8) S.C.C. 681 at p. 681; Hindustan Paper Corporation Ltd. v. Commissioner of Taxes, (2002) 3 Gau. L.R. 564 at p. 568.

are wholly without jurisdiction and without authority of law.¹

When a transaction is not a stock transfer but is of sale.—In *Union of India, v. K.C. Khosla and Company Ltd.*,² the Supreme Court held that it is not true to say that for the purposes of Sec.3(a) of the Central Sales-tax Act, 1956, it is necessary that the contract of sale must itself provide for and cause the movement of the goods or that the movements of the goods must be occasioned specially and in accordance with the terms of contract of sale. Affirming its earlier decision in *Tata Iron and Steel Company Ltd., Bombay v. S.R. Sarkar*,³ the Supreme Court further added that Sec.3 (a) covers sale, in which the movement of the goods from one State to another is the result of a covenant or incident of the contract or sale. In *Indian Oil Company Ltd. v. Superintendent of Taxes*,⁴ the Supreme Court observed that:

- (i) a sale which occasions movement of goods from one State to another is a sale in the course of inter-State trade, no matter in which State the property in goods passes;
- (ii) it is not necessary that the sale must precede the inter-State movement; and
- (iii) it is also not necessary for a sale to be deemed to have taken place in the course of inter-State trade with the covenant regarding inter-State movement must be specified in the contract itself. It would be enough if the movement was in pursuance of an incidental to the contract of sale.

Applying the principles enunciated by the Supreme Court to the facts of the instant case, it must be held that the movement of the goods from factory to Delhi office was occasioned by the sale or that the movement was incidental to the contract of sale.⁵

4. When is a sale or purchase of goods said to take place outside a State.—(1) Subject to the provisions contained in Sec.3, when a sale or purchase of goods is determined in accordance with sub-section (2) to take place inside a State, such sale or purchase shall be deemed to have taken place outside all other States.

(2) A sale or purchase of goods shall be deemed to take place inside a State, if the goods are within the State—

- (a) in the case of specific or ascertained goods, at the time the contract of sale is made; and
- (b) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation.

Explanation.—Where there is a single contract of sale or purchase of goods situated at more place than one, the provisions of this sub-section shall apply as if there were separate contracts in respects of the goods at each of such places.

COMMENT

Sale of goods and question of place.—Sale took place by appropriation of goods, such appropriation took place in the bonded warehouse. Such bonded warehouses were within the territory of State of Tamil Nadu. Therefore, under sub-section (2), sub-clauses (a) and (b) of Sec.4 of the Central Sales-tax Act, 1956,

1. *Guljag Industries Ltd. v. State of Rajasthan*, (2003) 129 S.T.C. 3 at p. 24 (Raj.).

2. 1979 (49) S.T.C. 457.

3. 11 S.T.C. 655 (S.C.).

4. 1975 (35) S.T.C. 445.

5. *Commissioner of Sales tax, U.P. v. Housing and General Finance Co. Ltd.*, 1990 S.T.J. 105 at p. 108 (All.); *C.S.T. v. Cooperative Textiles Mills Ltd.*, S.T.I. 1991 All. 52.

the sale of goods in question shall be deemed to have taken place inside the State because the contract of sale of ascertained goods was made within the territory of Tamil Nadu and furthermore in case of unascertained goods appropriation had taken place in that State in terms of Cl.(b) of sub-section (2) of Sec.4 of the Central Sales-tax Act, 1956. There is no question of sale taking place in course of export or import under Sec.5 in this case.¹

5. When is sale or purchase of goods said to take place in the course of import or export.—(1) A sale or purchase of goods shall be deemed to take place in the course of the export of the goods out of the territory of India only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

(2) A sale or purchase of goods shall be deemed to take place in the course of the import of the goods into the territory of India only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

²[(3) Notwithstanding anything contained in sub-section (1), 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 export, 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.]

COMMENTS

Scope of Sec. 5(1).—Under Sec. 5(1) of the Act there are two limbs and the first limb provides for a circumstance in which the sale itself occasions the export while the second limb contemplates a sale which arises as a result of transfer of documents of title after the goods crossed the customs frontiers. In the opinion of the Court the second limb of Sec. 5(1) is not at all attracted to the present case. It is clear that in finding the course of export the principles of Sec. 5(1) of the Act should be complied with. If any one of the tests fail, there will be no export sale or a sale in the course of export attracting Sec. 5(1) of the Act so as to be exempted from taxation under Art. 286 of the Constitution.

The word "deemed"—Meaning of.—When sub-section (3) of Sec.5 of the Central Sales-tax Act uses the word "deemed" and says that the penultimate sale "shall also be deemed to be in the course of export" what is intended to be conveyed is that the penultimate sale shall also be regarded as being in the course of such export. In other words, no legal fiction is created.⁴

Sale and agreement to sell—Meaning of.—The definitions of "sale" and "agreement to sell in the Sale of Goods Act, 1930, would not apply to the expression "sale" occurring in the Central Sales-tax Act, 1956, wherein the expression "sale" has been defined in Sec.2(g) for the purpose of that Act and under Sec.2(g) of the Central Sales-tax Act, "sale" means any transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration, and includes a transfer of goods on the hire-purchase or other system of payment by instalments, but does not include a mortgage or hypothecation of or a charge or pledge on goods". In other words, wherever the word "sale" occurs in the Central Sales-tax Act, 1956, it is this definition given in Sec.2(g) that will be applicable and therefore the word "sale" in Sec.5(3) must mean transfer of the goods by one person to another for cash or for any other valuable considerations, it cannot mean agreement to sell.⁵

1. Madras Marine and Company v. State of Madras, A.I.R. 1986 S.C. 1760 at pp. 1768, 1769.
2. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 3 (w.e.f. 1st April, 1976).
3. Coffee Board v. State of Karnataka, 1990 (76) S.T.C. 337 at pp. 342, 343 (Knt.).
4. Consolidated Coffee Ltd. v. Coffee Board, Bangalore, A.I.R. 1980 S.C. 1468 at p. 1479.
5. *Ibid.*, at p. 1487s

Raw material paddy—Purchase tax on.—When the order to fulfil an export obligation some goods are purchased and processed which resulted in change of the identity and character of the goods like processing of paddy into rice, which is exported, then it would not be an export of the same goods. Therefore, in the present case, the assessee will not be entitled to exemption under Sec. 5(3) of the Central Sales Tax Act.¹

Sale in the course of import.—It is well settled in the commercial world that a bill of lading represents the goods and the transfer of it operates as the transfer of goods. The delivery of the bill of lading while the goods are a float is equivalent to the delivery of the goods themselves. The facts of the case is based upon documents, show that the bill of lading had been endorsed in favour of SAIL while the consignment of the coils was still upon the high seas. The sale, therefore was a sale in the course of the import of the coils to the territory of India; it was effected by transfer of the documents to the said coils before they had crossed the limits of the customs station of Paradeep Port. The aforesaid sales being covered by the provisions of the latter part of Sec. 5 (2) read with Sec. 2 (ab) of Central Sales-tax Act, they are sales in the course of import and not liable to tax.²

Applicability of Sec. 5(3).—Section 5(3) would be applicable where the goods which are sold or purchased have not undergone any transformation. In the instant case what is purchased by the appellant are raw hides and skins and it is not the same goods which are exported. Those raw hides and skins are then processed and it is the dressed hides and skins which are exported. Therefore, Sec. 5(3) would have no application.³

CHAPTER III

INTER-STATE SALES TAX

6. Liability to tax on inter-State sales.—⁴[(1)] Subject to the other provisions contained in this Act, every dealer shall, with effect from such ⁵[date] as the Central Government may, by notification in the Official Gazette, appoint, not being earlier than thirty days from the date of such notification, be liable to pay tax under this Act on all sales ⁶[of goods other than electrical energy] effected by him in the course of inter-State trade or commerce during any year on and from the date so notified:

⁷[PROVIDED THAT a dealer shall not be liable to pay tax under this Act on any sale of goods which, in accordance with the provisions of sub-section (3) of Sec.5, is a sale in the course of export of those goods out of the territory of India.]

⁸[(1-A) A dealer shall be liable to pay tax under this Act on a sale of any goods effected by him in the course of inter-State trade or commerce notwithstanding that no tax would have been leviable (whether on the seller or the purchaser) under the sale-tax law of the appropriate State if that sale had taken place inside that State.]

1. *Satnam Overseas (Export) v. State of Haryana*, A.I.R. 2003 S.C. 66 at p. 80.

2. *Minerals and Metals Trading Corporation of India v. Sales Tax Officers*, A.I.R. 1999 S.C. 121 at pp. 123, 124.

3. *Shafeeq Shameel & Co. v. Assistant Commissioner, Commercial Taxes*, (2003) 129 S.T.C. 1 at p. 2 (S.C.).

4. Section 6 re-numbered as sub-section (1) of that section by Act 31 of 1958, Sec.3 (w.e.f. 1st October, 1958).

5. Enforced from 1st July, 1957, *vide* Notification No. S.R.O. 940-A, dated 26th March, 1967, *vide* *Gazette of India, Extraordinary*, 1957, Pt. II Sec. 3, p. 1233/1.

6. Ins. by Act 61 of 1972, Sec.2 (w.e.f. 1st April, 1973).

7. Ins. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec.4 (w.e.f. 1st April, 1976).

8. Ins. by Act 28 of 1969, Sec.3 (retrospectively).

¹[(2) Notwithstanding anything contained in sub-section (1) or sub-section (1-A), where a sale of any goods in the course of inter-State trade or commerce has either occasioned the movement of such goods from the State to another or has been effected by a transfer of documents of title to such goods during their movement from one State to another, any subsequent sale during such movement effected by a transfer of documents of title to such goods,—

(A) to the Government, or

(B) to a registered dealer other than the Government, if the goods are of the description referred to in sub-section (3) of Sec. 8,

shall be exempt from tax under this Act:

PROVIDED THAT no such subsequent sale shall exempt from tax under this sub-section unless the dealer effecting the sale furnishes to the prescribed authority in the prescribed manner and within the prescribed time or within such further time as that authority may, for sufficient cause, permit,—

(a) a certificate duly filled and signed by the registered dealer from whom the goods were purchased containing the prescribed particulars in a prescribed form obtained from the prescribed authority; and

(b) if the subsequent sale is made—

(i) to a registered dealer, a declaration referred to in Cl. (a) of sub-section (4) of Sec. 8, or

(ii) to the Government, not being a registered dealer, a certificate referred to in Cl. (b) of sub-section (4) of Sec. 8:

PROVIDED FURTHER THAT it shall not be necessary to furnish the declaration or the certificate referred to in Cl. (b) of the preceding proviso in respect of a subsequent sale of goods if—

(a) the sale or purchase of such goods is, under the sales-tax law of the appropriate State, exempt from tax generally or is subject to tax generally at a rate which is lower than ²[four per cent.](whether called a tax or fee or by any other name); and

(b) the dealer effecting such subsequent sale proves to the satisfaction of the authority referred to in the preceding proviso that such sale is of the nature referred to in Cl. (A) or Cl. (B) of this sub-section.]

³[(3) Notwithstanding anything contained in this Act, if—

(a) any official or personnel of—

(i) any foreign diplomatic mission or consulate in India; or

(ii) the United Nations or any other similar International body,

entitled to privileges under any Convention to which India is a party or under any law for the time being in force; or

(b) any consular or diplomatic agent of any mission, the United Nations or other body referred to in sub-clause (i) or sub-clause (ii) of Cl. (a),

purchases any goods for himself or for the purposes of such mission, United Nations or other body, then, the Central Government may, by notification in the Official Gazette, exempt, subject to such conditions as may be specified in the notification, the tax payable on the sale of such goods under this Act.]

1. Subs. by Act 61 of 1972, Sec. 2, for sub-section (2) (w.e.f. 1st April, 1973).

2. Subs. by Act 25 of 1975, Sec. 38, for "three per cent." (w.e.f. 1st July, 1975).

3. Ins. by Finance Act, 2003 (32 of 2003), Sec. 161, dated 14th May, 2003.

COMMENTS

Benefit of exemption not available to Commission.—The exemptions apply to sales of specified goods effected by the certified institutions and persons. The Commission is not a certified person or institution. Therefore, the benefit of notification in question is not available to Commission.¹

Inter-State and Inter-State Sales tax—Liability to.—Any transaction which is taxed as inter-State sale is not to be taxed again as inter-State sale, which appears to be the view from the impugned order of High Court. Accordingly that part of the High Court's order being incorrect has to be set aside.²

³[6-A. Burden of proof, etc. in case of transfer of goods claimed otherwise than by way of sale.—(1) Where any dealer claims that he is not liable to pay tax under this Act, in respect of any goods, on the ground that the movement of such goods from one State to another was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal, as the case may be, and not by reason of sale, the burden of proving that the movement of those goods was so occasioned shall be on that dealer and for this purpose he may furnish to the assessing authority, within the prescribed time or within such further time as that authority may, for sufficient cause, permit, a declaration, duly filled and signed by the principal officer of the other place of business, or his agent or principal, as the case may be, containing the prescribed particulars in the prescribed form obtained from the prescribed authority, alongwith the evidence of despatch of such goods ⁴[and 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.]

(2) If the assessing authority is satisfied after making such inquiry as he may deem necessary that the particulars contained in the declaration furnished by a dealer under sub-section (1) are true he may, at the time of, or at any time before, the assessment of the tax payable by the dealer under this Act, make an order to that effect and thereupon the movement of goods to which the declaration relates shall be deemed for the purposes of this Act to have been occasioned otherwise than as a result of sale.

Explanation.—In this section, "assessing authority", in relation to a dealer, means the authority for the time being competent to assess the tax payable by the dealer under this Act.]

COMMENTS

Provisions of Sec. 6-A—When could not be attracted.—It is clear that till the year 1971-72 the burden was on the revenue and not on the assessee. Moreover, in the instant case, the Assistant Commissioner (Judicial) has recorded a finding that no material was furnished by the department to establish that the sales made by the respondent assessee were inter-State sales. In view of the said fact it is clear that the order passed by the Tribunal does not suffer from any error of law and is liable to be maintained.⁵

Burden of proof.—In *Commissioner of Sales-tax, U.P. v. Iron Traders*,⁶ the Tribunal has clearly mentioned in its order that the department did not produce any evidence to show that the sale made by the assessee was inter-State sales. A careful reading of the order of the Tribunal indicates that it has proceeded on the assumption that the burden was on the department to prove that the goods despatched from Ghaziabad by the assessee to Surmala in Punjab was inter-State sale. In fact, it was for the assessee to have furnished sufficient material and evidence to prove that the said sale was inter-State sale. Since the Tribunal has wrongly applied the law in deciding the appeal, the order passed by it cannot be sustained.

1. Khadi & Village Industries Commission, Sattur v. State of T.N., 1998 (8) S.C.C. 546 at p. 547.

2. A.S. Chinnaswamy v. State of T.N., 1998 (8) S.C.C. 681 at p. 681.

3. Ins. by Act 61 of 1972, Sec.3 (w.e.f. 1st April, 1973).

4. Ins. by Finance Act, 2002 (20 of 2002), Sec. 151.

5. Commissioner of Sales-tax, Uttar Pradesh v. Jawahar Niwar Factory, 1986 A.T.J. 535 at p. 535.

6. 1986 A.T.J. 319 at p. 320.

How a dealer can discharge the burden.—Sub-section (1) of Sec. 6-A of the Act exempts consignment sales from Central Sales-tax but places the burden on the dealer to prove that the movement of the goods was made in that manner and it was not an inter-State sale. This sub-section also provides that the dealer may furnish to the assessing authority a declaration in the prescribed form and within the prescribed time. Rule 12(5) prescribes that form, which is in Form "F". The Form shows that the declaration is to be furnished by the transferee to the transferor and thereafter it has to be submitted to the assessing authority. There is nothing either in Sec. 6-A or in Rule 12 of the Central Sales-tax Rules, 1957, to indicate that Form "F" is intended by the Legislature to be the only method of discharging the burden that lies on the dealer. No other provision of law has been brought to notice that lies on the dealer. No other provision of law has been brought to notice which may indicate that declaration in Form "F" is the only method which had to be adopted by the dealer to discharge the burden which lies on him. The provision for furnishing a declaration in Form "F" is only an enabling provision and it does not exclude other modes of discharging the burden. In this connection reference may also be made to a circular letter, dated 22nd January, 1974, issued by the Deputy Secretary to the Government of India to all the Finance Revenue Secretaries of all State Governments and the Union Territories. Thus, the legal position is that the dealer can discharge the burden which lies upon him under sub-section (1) of Sec. 6-A by other modes, as well, apart from submitting a declaration in Form "F" to the assessing authority.

Scope of Sec. 6-A.—The scope of Sec. 6-A of the Central Sales-tax Act came up for consideration before the Court in *Vijayamohini Mills v. State of Kerala*.² It was held that under Sec. 6-A(1) of the Central Sales-tax Act, the burden of proof is on the dealer to prove that the movement of the goods was occasioned not by reason of sale, but was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal. The burden so cast on the dealer may be discharged by furnishing the declaration as prescribed (F Forms), along with the evidence of despatch of such goods. Furnishing of the declaration (F Forms) is not compulsive or mandatory. It is only permissive. It is open to the dealer to discharge the burden of proof cast on him, in any other manner, by adducing other evidence. In other words, it is open to the dealer to discharge the burden of proof cast on him either by furnishing the declaration (F Forms), as enjoined by Sec. 6-A (1) of the Central Sales-tax Act, or by adducing necessary proof in accordance with law and show that the movement of the goods was occasioned not by reason of sale, but was occasioned by reason of transfer of such goods by him to any other place of his business or to his agent or principal. In other words, production of the declaration (F Forms), as enjoined by Sec. 6-A of the Central Sales-tax Act is not compulsive. It is permissive. It is optional.³

7. Registration of dealers.—(1) Every dealer liable to pay tax under this Act shall, within such time as may be prescribed for the purpose, make an application for registration under this Act to such authority in the appropriate State as the Central Government may, by general or special order, specify and every such application shall contain such particulars as may be prescribed.

⁴[(2) Any dealer liable to pay tax under the sales-tax law of the appropriate State, or where there is no such law in force in the appropriate State or any part thereof, any dealer having a place of business in that State or part, as the case may be, may, notwithstanding that he is not liable to pay tax under this Act, apply for registration under this Act to the authority referred to in sub-section (1), and every such application shall contain such particulars as may be prescribed.]

Explanation.—For the purpose of this sub-section, a dealer shall be deemed to be liable to pay tax under the sales-tax law of the appropriate

1. Commissioner of Sales-tax, Uttar Pradesh v. Agra Food Production Pvt. Ltd., 1984 U.P.T.C. 362 at pp. 364, 365.
2. 1989 (75) S.T.C. 63; (1989) 1 Ker.L.T. 515.
3. C.P.K. Trading Company v. Additional Sales Tax Officer, II Circle, Mattancherry, 1990 (76) S.T.C. 211 at pp. 217, 218 (Ker.); R.H. Enterprises v. C.S.T., S.T.L., 1991 Delhi 1; C.S.T. v. Snehar Tubes Pvt. Ltd. 1994 U.P.T.C. 104 at p. 105.
4. Subs. by Act 31 of 1958, Sec. 4 for sub-section (2) (w.e.f. 1st October, 1958).

State notwithstanding that under such law a sale or purchase made by him is exempt from tax or a refund or rebate of tax is admissible in respect thereof.]

¹[(2-A) Where it appears necessary to the authority to whom an application is made under sub-section (1) or sub-section (2) so to do for the proper realization of the tax payable under this Act or for the proper custody and use of the forms referred to in Cl. (a) of the first proviso to sub-section (2) of Sec. 6 or sub-section (1) of Sec. 6-A or Cl. (a) of sub-section (4) of Sec. 8 he may, by an order in writing and for reasons to be recorded therein, impose as a condition for the issue of a certificate of registration a requirement that the dealer shall furnish in the prescribed manner and within such time as may be specified in the order such security as may be so specified, for all or any of the aforesaid purposes.]

(3) If the authority to whom an application under sub-section (1) or sub-section (2) is made is satisfied that the application is in conformity with the provisions of this Act and the rules made thereunder ¹[and the condition, if any, imposed under sub-section (2-A), has been complied with], he shall register the applicant and grant to him a certificate of registration in the prescribed form which shall specify the class or classes of goods for the purpose of sub-section (1) of Sec. 8.

¹[(3-A) Where it appears necessary to the authority granting a certificate of registration under this section so to do for the proper realisation of tax payable under this Act or for the proper custody and use of the forms referred to in sub-section (2-A), he may, at any time while such certificate is in force, by an order in writing and for reasons to be recorded therein, require the dealer, to whom the certificate has been granted, to furnish within such time as may be specified in the order and in the prescribed manner such security, or, if the dealer has already furnished any security in pursuance of an order under this sub-section or sub-section (2-A), such additional security, as may be specified in the order, for all or any of the aforesaid purposes.]

²[(3-B) No dealer shall be required to furnish any security under sub-section (2-A) or any security or additional security under sub-section (3-A) unless he has been given an opportunity of being heard.

(3-BB) The amount of security which a dealer may be required to furnish under sub-section (2-A) or sub-section (3-A) or the aggregate of the amount of such security and the amount of additional security which he may be required to furnish under sub-section (3-A) by the authority referred to therein, shall not exceed—

(a) in the case of a dealer other than the dealer who has made an application or who has been registered in pursuance of an application, under sub-section (2), a sum equal to the tax payable under this Act, in accordance with the estimate of such authority, on the turnover of such dealer for the year in which such security or, as the case may be, additional security is required to be furnished, and

(b) in the case of dealer who has made an application, or who has been registered in pursuance of an application, under sub-section (2), a sum equal to the tax leviable under this Act,

1. Ins. by Act 61 of 1972, Sec. 4 (w.e.f. 1st April, 1973).

2. Ins. by Act 61 of 1972, Sec. 4 (w.e.f. 1st April, 1973) and subs. by Central Sales-tax (Amendment) Act, 1976 (103 of 1976), Sec. 5 (w.e.f. 7th September, 1976).

in accordance with the estimate of such authority on the sales to such dealer, in the course of inter-State trade or commerce in the year in which such security or, as the case may be, additional security is required to be furnished, had such dealer been not registered under this Act.]

¹[(3-C) Where the security furnished by a dealer under sub-section (2-A) or sub-section (3-A) is in the form of a surety bond and the surety becomes insolvent or dies, the dealer shall, within thirty days of the occurrence of any of the aforesaid events, inform the authority granting the certificate of registration and shall within ninety days of such occurrence furnish a fresh surety bond or furnish in the prescribed manner other security for the amount of the bond.

(3-D) The authority granting the certificate of registration may by order and for good and sufficient cause forfeit the whole or any part of the security furnished by a dealer,—

(a) for realizing any amount of tax or penalty payable by the dealer;

(b) if the dealer is found to have misused any of the forms referred to in sub-section (2-A) or to have failed to keep them in proper custody:

PROVIDED THAT no order shall be passed under this sub-section without giving the dealer an opportunity of being heard.

(3-E) Where by reason of an order under sub-section (3-D) the security furnished by any dealer is rendered insufficient, he shall make up the deficiency in such manner and within such time as may be prescribed.

(3-F) The authority issuing the forms referred to in sub-section (2-A) may refuse to issue such forms to a dealer who has failed to comply with an order under that sub-section or sub-section (3-A), or with the provisions of sub-section (3-C) or sub-section (3-E), until the dealer has complied with such order or such provisions, as the case may be.

(3-G) The authority granting a certificate of registration may, on application by the dealer to whom it has been granted, order the refund of any amount or part thereof deposited by the dealer by way of security under this section, if it is not required for the purposes of this Act.

(3-H) Any person aggrieved by an order passed under sub-section (2-A), sub-section (3-A), sub-section (3-D) or sub-section (3-G) may, within thirty days of the service of the order on him, but after furnishing the security, prefer, in such form and manner as may be prescribed, an appeal against such order to such authority (herein after in this section referred to as the "appellate authority") as may be prescribed:

PROVIDED THAT the appellate authority may, for sufficient cause, permit such person to present the appeal,—

(a) after the expiry of the said period of thirty days; or

(b) without furnishing the whole or any part of such security.

(3-I) The procedure to be followed in hearing any appeal under sub-section (3-H), and the fees payable in respect of such appeals shall be such as may be prescribed.

(3-J) The order passed by the appellate authority in any appeal under sub-section (3-H) shall be final.]

²[(4) A certificate of registration granted under this section may—

1. Ins. by Act 61 of 1972, Sec.4 (w.e.f. 1st April, 1973).

2. Subs. by Act 31 of 1958, Sec. 4, for sub-section (4) (w.e.f. 1st October, 1958).