

Chapter 1

CST Law at a Glance

The Central Sales Tax Act, 1956 along with the Central Sales Tax (Registration & Turnover) Rules, 1957 set out that the power of levy is with the Central Government but the collection is left to the States.

They provide for the following:

- i. Determination of when an interstate sale takes place and when not.
- ii. Which are the alternative methods of sale? The sale could be intrastate sale, interstate sale, sale or purchase outside State or in sale in the course of imports and exports.
- iii. When the levy is attracted?
- iv. Who collects the tax?
- v. How the collection is to take place?
- vi. How to distribute?
- vii. Conditions for levy of tax on goods of special importance (declared goods).

The question is also one of when to start paying sales tax and how to comply with the CST law. We need to understand the nature of the law to determine how the liability can accrue and to what quantum.

The various aspects of the law and the manner in which liability is to be determined are provided below:

Step 1: Whether Goods? Section 2(d) defines goods in a wide manner to include “*all materials, articles, commodities and all other kinds of movable property but does not include newspaper, actionable claims, stocks, shares and securities*”.

Movable property has been defined to be what is not an immovable property. Immovable property is defined in General Clauses Act, 1897 as “*land and benefits from land and things attached to earth or permanently fastened*”.

Effectively, immovable goods or property attached to the earth are not “*goods*” and hence tax cannot be levied on the same. Goods which are fastened to the earth and cannot be removed without substantial damage are treated as immovable goods.

Machinery installed at site, tanks embedded to earth, cement poles erected on site are examples of immovable goods.

However, goods which could be moved around but fastened to the earth for convenience or to ensure vibration free operations may not be considered as immovable. Thus, in case where the machine was fastened to the earth using nuts and bolts and the poles inserted 1.5 feet deep to ensure that the machine is stable and at the time of operations and ensure that it does not vibrate. The machine was held to be movable¹.

The right to use immovable property would not amount to a right of use for a movable property, consequently not liable to CST. This would however be a subject matter of either the stamp act or service tax.

If there are no goods there is no levy. Therefore understanding what is included or not is essential. *Judicial Clarity and more in Appendix-4 at end of book.*

Step 2: What is Sale? Next dealer needs to examine whether the transaction is a sale of goods as understood under the CST law.

CST is a tax which is levied on sale of goods which are sold in the course of interstate trade or commerce. CST is an origin based levy, which is levied and collected by the State of origin of the goods. *[More in Chapter on Levy of CST]*

Sale means “*a transfer of property in goods from one person to another for a consideration*”. The essential ingredients to be treated as sale are:

- **Transfer of property in goods** – There has to be change in the title or ownership of the goods. The transfer of property in Immovable property is excluded.
- **There have to be two persons** – There have to be two parties a seller of the goods and a buyer of goods to constitute a sale. A transfer to self or one’s own branch/depot is not a sale.
- **It should be for cash or deferred payment or other valuable consideration** - The consideration has to be in monetary terms such as cheques/drafts as the preceding words to valuable consideration are cash or deferred payment and accordingly the term consideration would need to be understood in that sense.

Interstate sale is “*sale or purchase of goods which occasions the movement of goods from one State to another or is effected by transfer of documents of title to goods during their movement from one State to another*”. *[More in Chapter on Interstate Sale]*

¹ CCE Vs Solid and Correct Engineering Works –(2010-TIOL-25-SC-CX)

Subsequent Sale: Subsequent sale is “*a sale taking place after the original sale started before delivery was complete*”. The intention of Government is not to levy multiple taxes on sale taking place in course of movement interstate. The subsequent sale is exempted. This is subject to production of given forms. *[More in Chapter on Subsequent Sale]*

Step 3: Whether Deemed sale? The deemed sales as per the definition of ‘sale’ are as follows:-

- a. A transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration. This may cover scenario where the goods are not agreed to be sold under any contract but still the property in goods gets transferred for a consideration in money. Eg. Purchase of levy sugar by Government or compulsory acquisition.
- b. A transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract. This covers a transaction where there is contract for work and while executing the goods is transferred in the same form or other form by usage in the works contract. Eg. Cement, steel, etc., gets transferred in the work of construction of building. Paint gets transferred when a work of painting of parts of machinery is undertaken.
- c. A delivery of goods on hire-purchase or any system of payment by installments. In this case the property in goods is not transferred and remains with the financier or hirer. The goods are delivered to other person who would be using the goods, still the transaction is considered as sale to the extent of installment or hire charges charged. Eg. A transaction where the person taking it on hire would be using the goods on payment of installments and if he fails to pay installments, such goods would be taken back by the owner.
- d. A transfer of right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration. This covers transactions whereby the control and possession of the goods for using the same is given to the user for consideration in money, though ownership still remains with the person giving it. Eg. Renting of printer machines on monthly rental basis to a company where the possession is also given to them.

- e. A supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration. This is to cover a transaction between unincorporated association or body of persons to member of such association or body. This is included in deemed sale for the reason that based on the principles of mutuality, such association or body is considered to be one and the same and are not treated as separate persons. Whereas sale requires that the transfer of property between two persons. However still this concept is being agitated before judicial forums and does not have clarity. Eg. Small association of resident welfare association which is not registered as company or society, buys goods collectively and gives it to members against payments.
- f. A transaction of sale by way of or as a part of any service or in any other manner whatsoever, of goods, being food or any other article of human consumption or any drink (whether or not intoxicating) where such sale or service is for cash, deferred payment or other valuable consideration. This covers a transaction whereby food or any other article for human consumption or any drink is given as a part of service or as a service itself. This would be considered as sale of goods and would be liable for sales tax/VAT. Eg. Serving food in hotels; catering for functions.

The concept of “*Deemed sale*” is incorporated in Sales Tax/ VAT Acts and also in CST Act consequent to the amendments brought about in the Constitution in 1982 and based on the definition of “*tax on sale or purchase of goods*” given in Constitution under Article 366 (29A). [*More in Last Section of this book*]

Step 4: Whether in State List or Central? The List II (State List) or List III (Concurrent List) of the VII th Schedule to the Constitution of India do not cover Central Sales Tax. Entry 92A of List I (Union List) empowers Central Government to impose tax on interstate sales. CST though a central levy, the States administer as well as retain the tax. [*More in Chapter on History*]

Step 5: What is the rate of tax and classification of goods?

Rate of tax: When the dealer sells goods which are specified in the certificate of registration of the purchasing dealer, he would be liable to pay CST at concessional

rate of 2% against Form C. Where form is not given, the rate of tax would be as per the local VAT law. If a product is exempt under local VAT laws, it would be exempt even under CST Law. *[More in Chapter on rate of tax]*

Classification: Under CST the goods can be classified into three broad categories- exempted goods, declared goods and goods other than declared goods.

- A. **Tax free or exempted goods:** These are the goods which are exempted from tax. The State VAT Schedule contains list of such goods.
- B. **Declared goods:** The sales tax rate for such specified goods is not to be more than 5%.
- C. **Goods other than declared goods:** This category covers goods which are liable to tax at differential rates as per rates set out in the State VAT Schedule.

The classification of goods consists of determining the Schedules of the VAT Act under which the said goods would be covered.

The schedules could set out the goods which are exempted, eligible to concessional rate, special rate, or the balance revenue neutral rates. Most States also have schedules for rates for different type of works contract transactions. The classification of goods in the States under the local VAT laws is important as that rate would apply where “C” forms are not issued or issuable. *[More in chapter on classification]*

Step 6: Whether Exemptions are Available? The next examination is whether or not the selling dealer is eligible and could avail the exemptions for the goods sold by him to purchasing dealer.

If there is an exemption, then exemption should be claimed. This is also due to reason that the input tax credit of CST paid is not available and cannot be taken by purchasing dealer and ends up becoming a cost.

Some States have provided exemption to new industries from tax or in some cases on payment of taxes collected for period of time. These benefits could be quite substantial as the savings or funding of deferred tax could be used in place of capital. The latest State to join the offering in form of sales tax sops is Telengana. *[More in Chapter on Exemption]*

Step 7: Whether any Other Exemptions? There is an exemption from CST when

interstate sale of goods are to a SEZ unit or SEZ developer. This is subject to Form I being furnished to the supplier. *[More in chapter on SEZ units]*

100% EOU unit however needs to procure the goods from other States on payment of sales tax. Reimbursement of CST on purchases made from Domestic Tariff Area (DTA) is possible. *[More in Chapter on 100% EOU]*

Step 8: Valuation: Every dealer, who sells goods in the course of interstate trade or commerce, is liable to pay CST on his turnover. In determining the turnover of a dealer for the purposes of this Act, there are some specified inclusions and exclusions from the sale price. Sale price normally is the price which captures the costs upto the point of transfer of property. Most of the issues are settled in valuation of goods. *[More in Chapter on valuation]*

Step 9: Input Tax Credit: CST paid is not available as set-off against output VAT liability. However the CST can be paid out of the input tax credits availed under the local VAT laws. In case the credit is not sufficient then to pay in cash.

The input tax credit [only for local intrastate purchases] under various VAT laws normally has eligibility criterion for credit as under:

1. When item procured for resale, then credit is available for all items.
2. The credits on goods which are in the restricted list also are eligible for credit when resold.
3. When any capital goods are procured for the manufacture of goods other than the ones which are specifically excluded.
4. When inputs and consumables are procured for the manufacture of goods other than those which are specifically excluded as ineligible.
5. When goods are procured by the resident agent within the State. The agent is required to pay the VAT on his sales but not eligible for the purchases made on behalf of the principal. *[More in Chapter on input tax credit]*

Step 10: Whether branch transfer? The transfer of goods without payment of CST is permissible when one transfer to self or agent. This could be *by way of transfer to branch/depot*, consignment agent or clearing and forwarding agent.

Such transfer from one State to another is against Form F. However where there is a pre existing order as on date of transfer, the goods would be liable for CST. There are several disputes in this area. *[More in Chapter on stock transfer.]*

Step 11: Whether interstate Job work?The transactions under job work could be either with independent entities who have excess capacities or specialised processing abilities. These entities maybe outside the State. The job worker may add some material or may just work on the materials/ components supplied by the customer. In the event that they add material then to the extent of transfer of property involved there is a need to charge CST. *[More in Chapter on Job Work]*

Step 12: Whether it is Sale in Course of Import?CST is not applicable when goods are imported from outside India. Further the sale or purchase should occasion the import or be effected by transfer of documents of title before the goods have crossed the customs frontier of India. However once the goods are sold after they have crossed the customs frontier then transaction would be liable for CST. *[More in Chapter on sale in course of import]*

Step 13: Whether it is Sale in course of export?CST cannot be charged for goods exported from India. Further export also means a sale of goods taking place in the course of export of the goods out of the territory of India effected by the transfer of the documents of title to the goods after the goods have crossed the customs frontier of India.

It also includes the last sale preceding sale occasioning export, if such last sale took place after and was for the purpose of complying with agreement or order for or in relation to such export.

The penultimate sale [last but one sale before export] of traded goods and packing material is also eligible for exemption from CST, subject to issue of Form “H”.All these measures lead to export competitiveness. *[More in Chapter on Exports]*

Step 14: Whether there are Sales Returns or Warranty Repairs? The sale price of all goods returned by the buyers within a period of 6 months from the date of delivery is deductible while calculating taxable turnover. *[More in Chapter on sales returns]*

Warranty is offered to prospective buyers of the manufacturer's products. This warranty is made to the consumer, who is not identified at the time of manufacturing but as soon as he buys the product, this clause is activated in his favour.

The warranty repairs could be done by the manufacturer, dealers, distributors, authorized service centre. In course of such repairs at times parts could be replaced. Normally the warranty replacements are recovered as a part of the sale price of the product on which central excise duty as well as CST/ VAT is paid. *[More in Chapter on warranty repairs]*

Conclusion

In this segment, we have covered the main concepts under CST law. The CST is charged by the selling dealer and the cost of tax is borne by the buyer and finally by the consumer. The burden of cost is pushed to the next person in the supply chain.

It is a classic case of cascading or pyramiding effect of taxation as no credit similar to cenvat credit or VAT credit is extended to the buyers. The GST regime would address this anomaly, except for the 1% non-vatable additional tax proposed for 2 years accruing to the originating State.