

SALE IN COURSE OF EXPORT & IMPORT – CST LAW

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Under CST law, the tax cannot be levied on sale of goods in course of import and export. One should refer to Section 5(1) and 5(2) to understand what constitutes sale in course of export and sale in course of import. Even Article 286 of Constitution of India imposes restriction on levy of tax either on sale in course of export or import by a state government. It is interesting to note that such restriction is only for the state government and not for the union government. However, levy of tax on such sales could result in double taxation of foreign trade. Such exemption is important even to ensure that only goods are exported and not the taxes. Even on imports, principle is to impose import duties and not sales tax. Let us understand the important concepts in sale in course of import and export transactions.

❖ *What is Sale in course of export*

As per Section 5(1), Sale is deemed to be in course of export only in case of following:

- a) The sale occasions export
- b) The sale is effected by a transfer of documents of title to goods after goods have crossed the customs frontiers of India

In addition to this, even last sale or penultimate sale to export would be treated as sale in course of export. However, for this purpose the seller should submit Form H with the tax department obtained from buying dealer (generally termed as 'Merchant Exporter').

- *Relevance of crossing the customs frontiers*

Section 2(ab) of the Act states that 'crossing the customs frontiers of India' means crossing the limits of customs area station in which goods imported or for exports are ordinarily kept before clearance by customs authorities. It is important to note that the goods should be meant for foreign destination to be treated as sale in course of export. Based on this logic, there are decisions of Supreme Court wherein it has been held that sale of food to aircraft/vessels would not be treated as sale in course of export. However, sale of goods to a buyer in India who ultimately takes goods outside India cannot be treated as in course of export. But the same would be treated as sale inside the state or inter-state sale.

- *Penultimate sale would be considered as in course of export*

The last sale or penultimate sale would be exempt from CST as the same is treated as in course of export. However, such penultimate sale must take place after an agreement/order under which goods are to be exported out of India and such penultimate sale is for the purpose of complying with such export agreement/order. These conditions are specified by Supreme Court in case of *State of Karnataka vs. Azad Coach Builders in 2006*. If such sale is prior to agreement, then the same would not be treated as penultimate sale.

In addition to this, goods are to be exported in same form as sold in penultimate sale. However, activities like cleaning, freezing before export would not change the form of goods. Similarly roasting of coffee seeds do not results in change in form. It is essential that the identity of goods procured under penultimate sale do not lose the identity to be eligible for exemption from CST under Section 5(3). The packing materials used for packing or use as containers would also be eligible for the exemption unless there is change in form.

However, having Form H for the purpose of exemption is very important. Such Form should contain all necessary details like description of goods, quantity, name etc.

❖ ***What is Sale in course of import***

As per Section 5(2), a sale is deemed to be in course of import of the goods into the territory of India in case of following:

- a) The sale occasions such import
- b) The sale is effected by a transfer of documents of title to goods before the goods have crossed the customs frontiers of India (Usually termed as High sea sale)

Direct imports are exempted from levy of central sales tax. Such imports could be even through agents which quite common. However, if the goods are imported by the agents and sold to customer in India wherein the two sales are integrated or inter-linked so as to form one transaction, the same could be considered as sale in course of import. Accordingly, sale by the agent to customer would be eligible for exemption.

- Is Privity of contract must?

In case of High sea sale, to treat a transaction as a sale in course of import, there should be privity of contract entitling each other to sue one another between actual buyer of goods in India and the foreign supplier. This is confirmed even by High Courts on many occasions.

- Relevance of crossing the customs frontiers

It is important to note that to treat a sale as in course of import by a way of transfer of documents of title, such transfer must have completed before the goods cross the customs frontiers.

As explained, customs frontiers mean area where the imported goods are kept before clearance by customs authorities. Therefore, sale by way of transfer of documents of title even when goods are in customs bonded warehouse could be treated as sale in course of import. However, this view would be proper only when the custom bonded warehouse could be held as customs frontiers. The Supreme Court in case of *Kiran Spinning Mills Vs. CC 1999 (113) E.L.T. 753 (S.C.)* has held

that the goods would not be considered to be crossed the customs barriers if they are in bonded warehouse.

Conclusion: One could avoid payment of local sales tax/CST with proper planning under the high sea sale mode. Having a contract which clearly stipulates the terms, rights and obligations of the parties to contract is absolute must. The high sea sale buyer should also ensure that the declaration for goods valuation under Rule 11 of Customs Valuation provisions is filed by him including filing bill of entry. These precautions would prove handy and avoid unwarranted disputes.