

Issues in Form 'F' in CST

-By CA Mahadev R

When a dealer is transferring goods to another state not as a result of sale but as stock transfer to any other place of his business (branch, godown, warehouse etc.), then such transfer would not be liable for CST as per CST Act 1956. However, the burden of proving that the goods have not moved as a result of sale is on the dealer transferring such goods.

In this article, an effort has been made to understand the concept of Form 'F' and few related issues with regard to issue of Form 'F'.

Whether Form 'F' is mandatory?

As discussed, the burden of proving that a transfer of goods to other state is not as a result of sale is always on the dealer and not on the tax authorities. Tax authorities can treat any transfer as sale unless contrary is proved by the dealer. For this purpose, the dealer shall mandatorily furnish Form 'F'. Such form shall be obtained by the transferor of goods from the transferee (transferee would obtain Form F from the local sales tax/VAT office). It is interesting to note that prior to 11th May 2002, filing Form F was not mandatory. Other documents could have been filed to prove stock transfers. Even the Honourable High Court of Kerala has held that Form F is not the only document to prove stock transfer but it could be proved by other documents as well [*CPK Trading Co. Vs. Addl. STO 1990 (76) STC 211 (Ker HC)*]. However, Form F is mandatory now as per the amendment made in Section 6A with effect from 11th May 2002.

Whether Form 'F' is conclusive evidence?

Section 6A (2) provides that if assessing authority is satisfied after making enquiry that the declaration furnished (Form F in this case) by dealer are true, he shall make an order to that effect and thereupon, the movement of goods to which the declaration relates shall be deemed for the purpose of the CST Act to have been occasioned other than as a result of sale.

However, it is important to note that Form 'F' itself is not conclusive evidence in all the cases. The assessing authority can always make enquiry in this regard to verify if it is true and can even reject if the same is found to be false or not genuine. In such cases, the dealer shall be required to submit other records to prove the

genuineness of the transactions. Many High courts have held that Form 'F' is not conclusive evidence.

How many forms to be issued?

As per Rule 12(5) of the CST (R&T) Rules, 1957, a single declaration in Form 'F' may cover details of all transfer of goods made during a period of one calendar month. However, it is interesting to note that the Form F cannot be rejected merely based on the fact that it covers transactions for more than a month. Recently, the Calcutta High Court in *Cipla Limited vs Deputy Commissioner, Commercial Tax reported [VSTI 2013 Vol. 17 B-509]* has held that there is nothing in Rule 12(5) of CST (R&T) Rules which could be construed to vitiate a declaration form i.e "F" form on a ground that such declaration form covered transactions for a period of more than a month. Therefore, it can be concluded that the forms can cover transactions of more than a month as well.

When Stock transfer is treated as Interstate sales?

If there is movement of goods (even as stock transfer) which is occasioned on account of sales, the movement would be treated as interstate sales.

The Punjab & Haryana High court has held that where goods were despatched and sold through branch (but buyer was known and identified before goods dispatched from factory), the transaction is interstate sales and not a stock transfer [*Electric Construction and Equipment Ltd Vs State of Haryana- (1990) 77 STC 424*]. Therefore, when there is a conceivable link between contract of sale and the movement of goods from one state to another in order to discharge the obligation under the contract of sale, the transaction cannot be exempt from tax.

Whether Form F can be rejected if few information missing?

Due care has to be taken in filling up of the Form F containing details of name of transferor, registration number, amount, description of goods, quantity etc. Sometime it may so happen that the forms are not filled properly or few columns are left blank. In such cases, the assessing authority cannot reject the forms merely for missing information. An opportunity shall be given to rectify the errors. This view is also supported by the Madras High Court in case of *Lanson Cars (P) Ltd Vs. CTO, Koyambedu (2009) 19 VST 414*.

Whether Form F required in case of goods sent on job work basis?

Fortunately or unfortunately, the answer to this question is **‘Yes’** as per the decision of Supreme Court. The Allahabad High Court in case of *Ambica Steels Vs State of UP [2008(12) VST 216 All]* has held that if any person claims that he is not liable to pay tax on transfer of goods from one state to another, he has to furnish Form F. This view was affirmed by the honourable Supreme Court as well. However, as observed many of the dealers are not filing Form F for job work transactions, sales returns etc though the same is required to be filed as per the decision.

The Supreme Court has further said that the assessee cannot be punished for ‘no fault of his’ if the authorities do not provide forms to the assessee for submission with the assessing authorities. If assessee is unable to obtain forms, then the assessing authorities shall decide the matter based on the facts keeping in mind the circumstances which led to non filing of forms. For doubts please e-mail- mahadev@hiregange.com