

GOVERNMENT OF WEST BENGAL
DIRECTORATE OF COMMERCIAL TAXES,
14, BELIAGHATA ROAD, KOLKATA-700 015.

Trade Circular No. 11 /2010

Date: 04.10.2010

Sub : Inter state sale that comes u/s. 3(b) of the CST Act, '56 and is usually claimed as exempted u/s. 6(2) of the Act.

Reports are coming in from different corners highlighting the fact that dealers, registered in West Bengal, who have since been effecting inter state sales u/s. 3(b) of the CST Act, '56 and have since been claiming those subsequent sales as exempted u/s. 6(2) of that Act, are now denied their claims by the assessing authorities of Directorate. Further, the dealers, registered in West Bengal, who have effected inter state sales falling u/s. 3(a) of the Act are, in some cases, denied issue of certificates in form E-1 by the assessing authorities. The reason, as presumed by assessing authorities, is that in all such cases the concerned dealers have effected the purported inter state sales u/s. 3(b), not during the movement of goods from one state to another, pursuant to sales u/s. 3(a) but prior to the commencement of movement of goods from one state to another.

The fact cannot be denied that in the commercial world, substantial number of transactions of subsequent sales take place particularly for specially made goods where a dealer first collects order from his outside state customer and thereafter places his corresponding purchase order either to inside state supplier or to outside state supplier. Therefore, there exists one pre-existing order or pre-determined party at the hands of a subsequent seller when he is making agreement of purchase/sale with the inside state or outside state supplier.

Reports, thus received, also show that assessing authorities are following the ratio of the judgment of Hon'ble Supreme Court of India pronounced in the case of A & G Projects & Technologies Ltd. –vs- State of Karnataka reported in 19 VST 239(2009). In that judgment Hon'ble Court had an occasion to refer to inter state sale falling u/s. 3(a) and that u/s. 3(b) and also to refer, in that connection to exemption of sale prescribed u/s. 6(2) while Hon'ble Court was virtually concerned to decide on the appropriate state which would be competent to levy CST in relation to a long chain of 3 inter state sales, all being decided by the assessing authority of Karnataka as inter state sales falling u/s. 3(a) of the Act. (Reference para 8 & 9 of the judgment). Hon'ble Court was pleased in that context to lay down the following principles of law in para 11 :

“The dividing line between sales or purchases u/s. 3(a) and those falling u/s. 3(b) is that in the former case the movement is under the contract whereas in the latter case the contract comes into existence only after the commencement and before termination of the inter state movement of the goods.”

Emphasizing on the part underlined above i.e. the contract comes into existence only after commencement, in the latter case, the assessing authorities are denying the dealer's claim of subsequent sales u/s. 6(2) where they find pre-existing order or pre-determined party at the hands of the subsequent seller. This has resulted in denial of sale falling u/s. 3(b) and consequential denial of issue of certificate in form E-1 etc. to the original supplying dealer who has effected sale u/s. 3(a) and also denial of claim of sale u/s. 6(2) to the subsequent seller who has effected subsequent sale.

Circumstances being as such, we may have a relook on the position of law. From the definition prescribed under the Act, we see that section 3(a) requires that not the contract of sale but the sale itself would occasion the movement of goods from one state to another. Section 3(b) requires that sale is to be effected i.e. contract of sale should come into existence by transfer of documents of title to the goods after the commencement of movement and before termination thereof.

Now let us see what is observed by Hon'ble Courts from time to time. In the judgment delivered in the case of Tata Iron & Steel Co. Ltd. –vs- S.R. Sarkar (1960) 11 STC 655 (SC), Hon'ble Supreme Court has settled the following principles:

- i) Mere contract of sale is not a sale within the definition u/s. 2(g) of CST Act, '56.
- ii) An inter state sale can either be governed u/s. 3(a) if it occasions movement of goods from one state to another or u/s. 3(b) if it is effected by transfer of documents of title after the commencement of movement. They are mutually exclusive.
- iii) A sale (transfer of property) becomes an inter state sale u/s. 3(a) if movement of goods from one state to another is under contract of sale. It implies that not a contract of sale but the sale itself occasions the movement of goods and, therefore, any contemplation of endorsement of consignment note/RR is not permissible under 3(a) sale.
- iv) Transfer of document of title to the goods will arise only in case of sale u/s. 3(b) and that too during its movement irrespective of when the contract of this second/subsequent sale has been made between second seller and the next/the final purchaser.

Moreover, a sale falling u/s. 3(b) takes place only when the transport documents are physically transferred or stand transferred by implication and obviously that by instruction. This has already been accepted as constructive transfer of transport documents, in judicial parlance, as envisaged by Hon'ble Apex Court in the case of G.A. Galiakotwalla & Co. (P) Ltd. –vs- The State of Madras reported in 37 STC 576 (1976)(SC).

Besides above, we see that in the case of State of West Bengal & Others –vs- Joshi Jute Corporation & another reported in 100 STC 17 (1996) Hon'ble Calcutta High Court has observed that a dealer in jute goods in

Calcutta placed an order upon a jute mill in Calcutta for certain jute goods. Under instruction from the dealer, the goods were delivered directly to a party in Kerala. Hon'ble Court has admitted that sale made by dealer in jute goods in Calcutta to Kerala party was subsequent sale within the meaning of section 6(2) of the Act and hence exempt.

When principles of law laid down above are holding the field, Hon'ble Supreme Court has pronounced the judgment in case of A & G. Projects & Technologies Ltd. (supra). As mentioned earlier, in this case Hon'ble Supreme Court again laid down almost the same principles of law in same languages excepting that in earlier judgment (Tata Iron & Steel Co. Ltd. etc.) the sale contemplated u/s. 3(b) is held to be one which is effected by transfer of documents of title to the goods during their movement from one state to another and in the latest case (A & G. Projects & Technologies Ltd.) it is held to be one where contract comes into existence only after the commencement and before the termination of the inter state movement of goods. In both the cases, Hon'ble Court has emphasized on the materialization of the contract by using the terms "sale is effected" in earlier case and "contract comes into existence" in latter one and not on its written or verbal understanding. 'Sale is effected' means contract of sale has come into existence and nothing more than that. Nothing new is, therefore, observed by Hon'ble Apex Court in the latter case.

It is, therefore, clarified for all concerned that –

- i) in case of sale falling u/s. 3(a), any kind of endorsement of consignment note/LR etc. cannot be invited;
- ii) as contract of sale and sale itself are altogether different in case of inter state sale, pre-existing order or pre-determined parties will not negate any 3(b) sale if other requirements are found fulfilled i.e. physical or constructive transfer of documents of title to the goods is made;
- iii) purchase of goods from local dealer and sale of it to outside state purchaser by transfer of documents of title to the goods will also qualify as sale falling u/s. 3(b);
- iv) once a sale is established as 3(b) sale, the same will automatically qualify itself to come under the ambit of section 6(2) of the Act;
- v) section 6(2) is simply concerned with a valid 3(b) sale, a certificate in form E-I/E-II issued by supplier and a declaration in form 'C' collected from customer and nothing more than that.

All concerned are, therefore, requested to follow the clarifications given above. Issue of certificate in form E-I/E-II and of declaration form in Form 'C' in connection with subsequent sale is to be streamlined accordingly. It is hereby informed, in this connection, that authority will take a tough stand if it is found that a dealer registered in West Bengal is claiming input tax credit under WB VAT Act on purchase of an item from a local dealer while at the same time he is claiming inter state sale of the said purchased item u/s. 3(b)

of the CST Act, '56, in this way or that, and thereby as exempted u/s. 6(2) of the same Act.

I want to make it clear that this circular is clarificatory in nature and not at all an interpretation of law.

(H.K. Dwivedi)
Commissioner,
Commercial Taxes, W.B.

**Memo No. 627(500)CT/PRO
3C/PRO/2008**

Date : 04.10.2010

Copy forwarded for information and necessary action to:

- 1) the Principal Secretary, Finance (Revenue) Department, Government of W.B.
- 2) Special Commissioner, Commercial Taxes, W.B./
Additional Commissioner, Commercial Taxes, W.B
- 3) the Special Officer, Bureau of Investigation.
- 4) the Sr. Joint Commissioner, Commercial Taxes, (HQ)
- 5) Sr. Joint Commissioner, Commercial Taxes,
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- 6) Joint Commissioner, Commercial TaxesCircle/Charge
- 7) the Public Relations Officer, Directorate of Commercial Taxes, W.B.
- 8) N.I.C., 14, Beliaghata Road, Kolkata – 15.
- 9) Trade Bodies.....

for Commissioner
Commercial Taxes, W.B