

CST exemption for penultimate sale

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Under CST law, the tax cannot be levied on sale of goods in course of import and export. Article 286 of the Constitution of India imposes restriction on levy of tax either on sale in course of export or import by a state government. The exemption is mainly to counter double taxation of foreign trade. Even the Government's policy is to export goods and not to export taxes.

Tax exemption on exports and penultimate sales

As per Section 5(1) of CST Act 1956, 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

Further, Section 5(3) of CST Act 1956 provides that even last sale or penultimate sale to export would be treated as sale in course of export. However, such penultimate sale must take place for the purpose of complying with an agreement/order under which goods are to be exported. It is important to note that if such sale is prior to agreement, then the same would not be treated as penultimate sale and therefore, liable for tax.

Only the penultimate sale is exempt and the purchase earlier to penultimate sale is not exempt and purchase tax if any imposed by the State Government on such purchase, then tax would be payable on it. This view was affirmed in case of *State of Tamilnadu v. Madras Pack Marine (2000) 120 STC 105*.

Form 'H' required for claiming exemption

As per Section 5(4) of CST Act, the exemption on penultimate sale is available only if dealer selling the goods furnishes a prescribed form to the prescribed authority in the prescribed manner which is duly filled and signed by the exporter to whom the goods are sold. As per Rule 12 (10) (a) of CST (Registration & Turnover) Rules 1957, the form prescribed for this purpose is form 'H'.

Goods to be exported in same form

In addition to conditions discussed above, the dealer shall ensure that the goods are exported in same form as sold in penultimate sale. If there is change in form of goods, then the benefit of CST exemption would be disallowed.

However, activities like cleaning, freezing before export would not result in change the form of goods. Similarly roasting of coffee seeds do not results in change in form. Therefore, when these minor activities are undertaken the exemption cannot be denied.

Even the packing materials used for packing or use as containers would be eligible for the exemption unless there is change in form. In case of *State of AP Vs. Standard Packing's* [(1995) 96 STC 151(AP HC)], the court held that that if gunny bags purchased are used as containers for export of certain goods to a foreign country, it is deemed as export sale as per section 5(3). The last purchase preceding the sale occasioning export should be for complying with an export order. In this case, the gunny bags purchased were for complying with export order and hence are eligible for exemption u/s 5(3). The goods procured under penultimate sale should not lose the identity to be eligible for exemption from CST.

Periodicity of filing Form 'H'

Under CST law, C forms are required to be issued for transactions covering 3 months (quarter) in a year and F forms are to be issued monthly. But it is nowhere mentioned in the CST (R&T) Rules clearly about the periodicity of H forms. But Rule 12(10)(b) of CST (R&T) Rules prescribes that state provisions applicable to Form 'C' shall apply *mutadis mutandis* to Form H as well. Therefore, dealers could file the form H according to state rules prevailing.

Conclusion: The dealer engaged in clearing goods as penultimate sale to export and dealer procuring such goods for export shall take due care and ensure that all important conditions are satisfied in order to claim CST exemption. Clearing goods without having an export contract, undertaking any major processing on the goods procured for export, non submission of form H would lead disallowance of CST exemption.