

8th floor, Vikrikar Bhavan ,
Mazgaon, Mumbai 400 010.

TRADE CIRCULAR

To

No.CST-1002/9/Adm-3
Circular No 28 T of 2005

Mumbai, Dt. 24.10.2005.

Sub: Amendments to Central Sales Tax Act, 1956 (Act No. 74 of 1956) by Finance Act 2005 (No. 18 of 2005).

Ref: (1) The Finance Act, 2005 (Act No.18 of 2005).

(2) Notification Dt. 7th June 2005.

(3) Notification Dt. 14th July 2005.

(4) Notification Dt. 16th September 2005.

Gentlemen/Sir/Madam,

Certain amendments to the Central Sales Tax Act, 1956 (C.S.T.Act) are carried out by the Union Government by Finance Act 2005 (No. 18 of 2005). The Finance Bill has been passed by the Parliament and assented to by the President of India on 13th May 2005. The salient features of the amendment Act are explained below. The amendments to C.S.T. Act came into force with effect from 13th May 2005. Certain amendments to the Central Sales Tax (Registration and Turnover) Rules, 1957 have also been carried out by Notifications referred to above.

1. Amendment of Section 2:

a) The definition of 'sale' contained in section 2(g) of the C.S.T. Act was amended by the Finance Act, 2002, so as to bring in its sweep the activities of works contract, lease etc. The definition of 'sale price' in so far as it pertains to works contract is now amended. The amendment reads as follows:-

“(a) in clause (h), the following proviso shall be inserted at the end, namely:-

“Provided that in the case of a transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, the sale price of such goods shall be determined in the prescribed manner by making such deduction from the total consideration for the works contract as may be prescribed and such price shall be deemed to be the sale price for the purposes of this clause.”

The Karnataka Sales Tax Act contained a similar provision regarding the sale price of works contract. This definition was approved by the Hon. Supreme Court in the case of M/s. Builders' Association of India Vs State of Karnataka & Others.(88 STC 248) The C.S.T. Act has

now been amended by the Finance Act, 2005 to give effect to this judgment. The Central Government has not so far notified the required rules for determination of the sale price of an inter-State works contract. Till such time the required rules are notified, the 'sale price' of an inter-State works contract will have to be determined in accordance with the principles laid down by the Hon. Supreme Court in the aforesaid judgment.

b) Various State Governments including the State of Maharashtra have introduced Value Added Tax Acts with effect from 1st April 2005. In view of this change, the Central Government has amended the definition of 'sales tax law' contained in section 2(i) of the C.S.T. Act by way of abundant precaution. The amendment reads as follows:

“(b) for clause (i), the following clause shall be substituted, namely:-

‘(i) “sale tax law” means any law for the time being in force in any State or part thereof which provides for the levy of taxes on the sale or purchase of goods generally or on any specified goods expressly mentioned in that behalf and includes value added tax law, and ‘general sales tax law’ means any law for the time being in force in any State or part thereof which provides for the levy of tax on the sale or purchase of goods generally and includes value added tax law;”;

c) Although the definition of 'sale' contained in the C.S.T. Act was expanded by the amendment made in 2002, the expression 'works contract' was not defined at that time. An inclusive definition of the expression 'works contract' is now provided. The amendment reads as follows:-

“(c) after clause (j), the following clause shall be inserted, namely:-

‘(ja) ‘works contract’ means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property;”.

2. Amendment of section 5:

a) Section 5 of the C. S. T. Act deals with the principles of determining when a sale or purchase takes place in the course of export or import. A new sub-section, namely sub-section (4) is now added to complement the existing sub-section (3). Because of the newly inserted sub-section (4), Form H has now become mandatory for making a claim under section 5(3). The necessary rules have been brought into effect from 14th July 2005. In respect of any transaction taking place on or after that date, Form H will now have to be procured and produced in order to substantiate any claim regarding export under section 5(3) of the said Act. The amendment reads as follows:-

“(4) The provisions of sub-section (3) shall not apply to any sale or purchase of goods unless the dealer selling the goods furnishes to the prescribed authority in the prescribed manner a declaration duly filled and signed by the exporter to whom the goods are sold in a prescribed form obtained from the prescribed authority.

b) The Central Government had earlier enacted the Foreign Aircraft (Exemption from Taxes and Duties on Fuel) Act, 2002. By virtue of this Act, no tax can be levied on fuel supplied to scheduled flights of aircrafts registered in other countries. This Act did not apply to aircrafts registered in India and engaged in international flights. A new sub-section, namely sub-section (5) is now added to section 5 to provide that the sale of aviation turbine fuel (ATF) to a designated Indian carrier for the purposes of international flights shall be deemed to be a sale in the course of export. The Central Government has not so far notified any Indian Carrier for the purposes of this section. The amendment reads as follows:-

“(5) Notwithstanding anything contained in sub-section (1), if any designated Indian carrier purchases Aviation Turbine Fuel for the purposes of its international flight, such purchase shall be deemed to take place in the course of the export of goods out of the territory of India.

Explanation.- For the purposes of this sub-section. ‘designated Indian carrier’ means any carrier which the Central Government may, by notification in the Official Gazette, specify in this behalf.”

3. Amendment of section 6:

Section 8(5) of the C.S.T. Act was amended in May 2002 so as to make ‘C’ form compulsory in respect of any concession granted under that sub-section. Diplomatic missions, consulates, the United Nations or other International bodies cannot issue ‘C’ form, not being dealers under the Act. In order to protect the diplomatic missions etc. from the burden of tax, a new sub-section namely sub-section (3) had been added in 2003.

Under sub-section (3) as originally enacted, the Central Government was authorised to exempt by notification in the Official Gazette, the tax payable on the sales made to foreign diplomats etc. No notification was issued under this sub-section. That sub-section is now substituted by new sub-sections (3) and (4). It is now provided that sales to foreign diplomatic missions, consulates, the United Nations or any other similar international body shall not attract payment of tax. The exemption is subject to the purchaser furnishing a declaration. The Central Government is now not required to issue any notification under this sub-section. The amendment reads as follows:-

“In section 6 of the Central Sales Tax Act, for sub-section (3), the following sub-sections shall be substituted, namely:-

“(3) Notwithstanding anything contained in this Act, no tax under this Act shall be payable by any dealer in respect of sale of any goods made by such dealer, in the course of inter-State trade or commerce, to any official, personnel, consular or diplomatic agent of-

(i) any foreign diplomatic mission or consulate in India; or

(ii) the United Nations or any other similar international body, entitled to privileges under any convention or agreement to which India is a party or under any law for the time being in force, if such official, personnel, consular or diplomatic agent, as the case may be, has purchased such goods for himself or for the purposes of such mission, consulate, United Nations or other body.

(4) The provisions of sub-section (3) shall not apply to the sale of goods made in the course of inter-State trade

or commerce unless the dealer selling such goods furnishes to the prescribed authority a certificate in the prescribed manner on the prescribed form duly filled and signed by the official, personnel, consular or diplomatic agent, as the case may be,”.

4. Amendment of section 13:

In view of the amendment made to the definition of sale price as regards works contract, the Central Government has now taken power to itself to prescribe rules for determination of sale price for inter-State works contract. The amendment reads as follows:-

“In section 13 of the Central Sales Tax Act, in sub-section (1), clause (aa) shall be re-lettered as clause (ab) thereof, and before clause (ab) as so re-lettered, the following clause shall be inserted, namely:-

“(aa) the manner of determination of the sale price and the deductions from the total consideration for a works contract under the proviso to clause (h) of section 2;”.

5. Amendment to the Central Sales Tax (Registration and Turnover) Rules, 1957,-

(i) As per sub-rule (1) of rule 12 of the C.S.T. (Registration and Turnover) Rules, 1957, as it stood before the present amendment, a single declaration in Form ‘C’ could cover all transactions of sale between the same two dealers which take place in one financial year. This provision is now restricted. A single declaration in Form ‘C’ can now only cover transactions which take place in one quarter of a financial year. This amendment to sub- rule (1) came into force with effect from 1st October 2005. The amendment reads as follows:

“(i) In rule 12, in sub-rule (1), for the second and third provisos, the following provisos shall be substituted namely:-

Provided further that a single declaration may cover all transactions of sale, which take place in a quarter of a financial year between the same two dealers.

Provided also that where, in the case of any transaction of sale, the delivery of goods is spread over two different quarters in a financial year or of different financial years, it shall be necessary to furnish a separate declaration or certificate in respect of goods delivered in each quarter of a financial year.”

By virtue of sub-rule (9)(b), the above amendment also applies to certificates in Form E1 and EII.

(ii) A consequential amendment is made to sub-rule (7) of rule 12 to provide that the ‘C’ form shall be furnished to the assessing authority within three months of the end of the period to which the transaction relates. This amendment came into force with effect from 1st October 2005. The amendment reads as follows:-

“in rule 12, for sub-rule (7), the following sub-rule shall be substituted, namely:-

“The declaration in Form C or Form F or the certificate in Form EI or Form E II shall be furnished to the prescribed authority within three months after the end of the period to which the declaration or the certificate

relates:

Provided that if the prescribed authority is satisfied that the person concerned was prevented by sufficient cause from furnishing such declaration or certificate within the aforesaid time, that authority may allow such declaration or certificate to be furnished within such further time as that authority may permit."

The rule as amended requires that the selling dealer should furnish to the prescribed authority within three months of the end of the period, the declarations in Form C or Form F, or Form H, or the certificate in Form E1 or Form E-II pertaining to that period. This provision has been reviewed. It may not be possible in Maharashtra for the dealers to physically deliver the declarations in Form C, F,H, E1 and EII to the prescribed authority as required by the rules.

It is now decided on the administrative ground that the selling dealer making a claim regarding sale against declarations (in Form C,F, H, E1, and EII) need not furnish the declarations to the prescribed authority. However, the dealer making such claims should furnish a list of declarations which are not received till due date, in the proforma enclosed in Annexe-1 with this circular. For the time being the list of declarations which are not received should be furnished to the assessing officer in charge of the case. This list should be furnished separately for each type of declarations or certificates within three months after the end of the period to which the declaration or certificate relates. The said declarations should be furnished to the prescribed authority only when specifically asked for or at the time of assessment.

(iii) An amendment is now made to sub-rule (10) of rule 12. The text of the amendment makes it clear that the mandatory form for the purposes of section 5(3) and 5(4) is the existing Form 'H'. The amendment came into force with effect from 14th July 2005. The amendment reads as follows:

" In rule 12, in sub-rule (10), for clause (a), the following shall be substituted, namely:-

"(a) the declaration referred to in sub-section (4) of section 5 shall be in Form H and shall be furnished to the prescribed authority upto the time of assessment by the first assessing authority."

(iv) For the existing sub-rule (11) of rule 12, the following shall be substituted, with effect from 7th June 2005 namely:-

"(11) the declaration referred to in sub-section (8) of section 8 of the Act, shall be in Form I."

The declaration form to be used by the SEZ units is now amended. For Form I, a new Form I is substituted which is shown in Annexe-2.

(v) The declaration to be used by the diplomatic missions, consulates, United Nations and international bodies is to be in the newly inserted Form 'J'. The amendment comes into force with effect from 14th July 2005. The amendment reads as follows:-

"In rule 12, after sub-rule (11), the following shall be inserted, namely:-

"(11A) the certificate referred to in sub-section (4) of section 6 shall be in Form J and shall be furnished to the prescribed authority upto the time of assessment by the first assessing authority."

Newly inserted Form "J", is shown in Annexe-3.

6. This circular cannot be made use of for legal interpretation of provisions of law, as it is clarificatory in nature. If any member of the trade has any doubt, he may refer the matter to this office for further clarification.
7. You are requested to bring the contents of this circular to the notice of all the members of your association.

Yours faithfully,

(B.C.KHATUA)
Commissioner of Sales Tax,
Maharashtra State, Mumbai.

ANNEXE -1

Proforma for Furnishing List of Declarations which are not received till due date.

Sr.No.	Name of the purchasing dealer and address	R.C.No. under local Act and C.S.T. Act	Invoice no. and date	Invoice amount (Net)
1	2	3	4	5

ANNEXE - 2

COUNTERFOIL THE CENTRAL SALES TAX (REGISTRATION AND TURNOVER) RULES, 1957 FORM I [See rule 12(11)]	THE CENTRAL SALES TAX (REGISTRATION AND TURNOVER) RULES, 1957
Serial No..... Issuing Authority Date of Issue Details of the SEZ dealer, to whom issued (a) Name and Address (b) Number and Date of Registration under Central Sales Tax Act, 1956 (74 of 1956) (c) Number and Date of Registration No. issued by the Development Commissioner, SEZ concerned, along with details of goods specified in the Certificate of Registration Seal of the Issuing Authority To (Name and address of the Seller, with name of the State) Certified that the goods *(ordered for in our Purchase Order No. Dated and supplied by you as per your Bill/ Cash Memo/ Challan) No..... Dated for an amount of Rs..... are for the purposes specified under sub-section (6) of Section 8 of the Central Sales Tax Act, 1956. The above statements are true to the best of my knowledge and belief. (Signature) Name of the person signing the Declaration, on behalf of the SEZ dealer..... Status of the person signing the declaration in relation to SEZ	Serial No..... Issuing Authority Date of Issue Details of the SEZ dealer, to whom issued (a) Name and Address (b) Number and Date of Registration under Central Sales Tax Act, 1956 (74 of 1956) (c) Number and Date of Registration No. issued by the Development Commissioner, SEZ concerned, along with details of goods specified in the Certificate of Registration Seal of the Issuing Authority To (Name and address of the Seller, with name of the State) Certified that the goods *(ordered for in our Purchase Order No. Dated and supplied by you as per your Bill/ Cash Memo/ Challan) No..... Dated for an amount of Rs..... are for the purposes specified under sub-section (6) of Section 8 of the Central Sales Tax Act, 1956. The above statements are true to the best of my knowledge and belief. (Signature) Name of the person signing the Declaration, on behalf of the SEZ dealer..... Status of the person signing the declaration in relation to SEZ

Dealer * Strike out, whichever is not applicable. (Note: To be retained by the SEZ dealer)	 * Strike ou (Note: To t dealer)
---	--

COUNTERFOIL	DUPLICATE	ORIGINAL
THE CENTRAL SALES TAX (REGISTRATION AND TURNOVER) RULES, 1957 FORM J	THE CENTRAL SALES TAX (REGISTRATION AND TURNOVER) RULES, 1957 FORM J	THE CENTRAL SALES TAX (REGISTRATION AND TURNOVER) RULE FORM J
Form of Certificate for Claiming Exemption under Section 6(4) [See rule 12(11A)] (To be used when making purchase by diplomatic mission, consulates, United Nations and other international body and diplomatic agent, consular, officials or personnel thereof)	Form of Certificate for Claiming Exemption under Section 6(4) [See rule 12(11A)] (To be used when making purchase by diplomatic mission, consulates, United Nations and other international body and diplomatic agent, consular, officials or personnel thereof)	Form of Certificate for Claiming Exemption under Section 6(4) [See rule 12(11A)] (To be used when making purchase by diplomatic mission, consulates, United Nations and other international body and diplomatic agent, consular, officials or personnel thereof)
Name of the mission, consulate, United Nations or other International body and of the diplomatic agent, consular, Official or personnel thereof, making the purchase Country to which the purchaser belongs (Designation and office address of the purchaser (with Tel No., Fax No., E' mail address etc.) To, * (Seller) Certified that the goods ** Ordered for in or purchase order No. Dated purchased from you as per bill/cash memo stated below*** Supplied under your challan No. Dated are purchased for this mission/consulate/body or its diplomatic agent/ consular/official/personnel and the same are eligible for tax exemption u/s 6(4) under an international convention/agreement/law. Date..... Signature Designation of the purchaser/ Authorised officer with seal of the mission/ consulate/Body concerned	Name of the mission, consulate, United Nations or other International body and of the diplomatic agent, consular, Official or personnel thereof, making the purchase Country to which the purchaser belongs (Designation and office address of the purchaser (with Tel No., Fax No., E' mail address etc.) To, * (Seller) Certified that the goods ** Ordered for in or purchase order No. Dated purchased from you as per bill/cash memo stated below*** Supplied under your challan No. Dated are purchased for this mission/consulate/body or its diplomatic agent/ consular/official/personnel and the same are eligible for tax exemption u/s 6(4) under an international convention/agreement/law. Date..... Signature Designation of the purchaser/ Authorised officer with seal of the mission/ consulate/Body concerned	Name of the mission, consulate, United Nations or other International body and of the diplomatic agent, consular, Official or personnel thereof, making the purchase Country to which the purchaser belongs (Designation and office address of the purchaser (with Tel No., Fax No., E' mail address etc.) To, * (Seller) Certified that the goods ** Ordered for in or purchase order No. Dated purchased from you as per bill/cash memo stated below*** Supplied under your challan No. Dated are purchased for this mission/consulate/body or its diplomatic agent/ consular/official/personnel and the same are eligible for tax exemption u/s 6(4) under an international convention/agreement/law. Date..... Signature Designation of the purchaser/ Authorised officer with seal of the mission/ consulate/Body concerned

*Name & Address of the seller with name of the state.

** Strike out, whichever is not applicable.

*** Particulars of bill/cash memo.

(Note:- To be retained by the Purchaser)

*Name & Address of the seller with name of the state.

** Strike out, whichever is not applicable.

*** Particulars of bill/cash memo.

(Note:- To be retained by the Selling Dealer)

*Name & Address of the seller with name of the state.

** Strike out, whichever is not applicable.

*** Particulars of bill/cash memo.

(Note:- To be retained by the Assessing Authority)