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Availability of Cenvat credit on partially paid invoices

By **V. Sivasubramanian**

Prior to 2011-12[1], service tax was payable on receipt basis in the calendar month or quarter, depending on the class of the assessee, immediately following the calendar month or quarter in which the payments are received towards the value of taxable services. The payment[2] could be by cheque, credit card, deduction from account, issue of credit notes or debit notes, and also by book adjustments.

Cenvat credit of the service tax paid on an input service was allowed[3] upon such payment, on the basis of the invoice raised. It may be noted that payment of invoice value and not merely the service tax component of the invoice, was a pre-requisite to taking Cenvat credit.

From 2011-12 onwards[4], the point of taxation has been moved, broadly speaking, to the date of invoice or the date of receipt of payment, whichever is earlier. Though credit is now allowed on the basis of the invoice, even if no payment has been made, the credit taken needs to be reversed if the payment of value of input service and the service tax paid or payable as indicated in the invoice is not made within three months of the date of the invoice. Thus the requirement for payment of the invoice value rather than only the service tax component has continued even though an extra time period appears to have been allowed for such payment.

Two questions arise in this context. Firstly, why should a law relating to levy and collection of service tax mandate payment of the full invoice value for allowing Cenvat credit. While there could be a concern about someone taking credit for an amount beyond what has been paid as service tax into the treasury, payment of the remaining amount would appear to be a matter to be settled either between the parties concerned or under a law governing commerce or business.

Secondly, what happens if the entire invoice value is not settled in one go? There are varying commercial practices adopted for settlement of payments amongst parties having regular business dealings. For example, the commercial practice is to deduct a small percentage (usually between 5-10%) of the invoice as retention money, to be returned only after completion of the entire contract. Though the full value of the invoice may be passed for payment and the value of the works is included by the service recipient in the value of work-in-progress, etc. the payment is released against the invoice only after deducting the retention. There could also be net settlement amongst parties after adjustments for amounts payable to the service recipient, payments

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1 Under Rule 6 of the Service Tax Rules, 1994.

2 Refer Explanation to Section 67 of the Finance Act, 1994. In the case of associated enterprises, debit or credit to any account (even if it be a suspense account) in the books of a person liable to pay service tax, shall amount to payment.

3 Under Rule 4(7) of the Cenvat Credit Rules, 2004.

4 Under the Point of Taxation Rules, 2011 notified effect with effect from 1-4-2011.

received from third parties on behalf of the service recipient, etc. What is the legal position relating to availability of Cenvat credit in these cases?

CESTAT, New Delhi[5] recently dealt with both the aforesaid questions while deciding on whether Cenvat credit is allowable on the basis of invoices where a percentage of the billed amount is retained as performance guarantee. In this case, the department sought to disallow proportionate Cenvat credit to the extent the billed amount had been retained. The Tribunal held that so long as the service charges as well as the service tax have been paid in any of the prescribed manners the credit should be allowed.

The Tribunal also partly answered the first question above by holding that the policy rationale behind the relevant provisions of the Cenvat Credit Rules[6] was to prevent a situation where credit is availed by the service provider on receipt of invoice, even though he has not paid the service tax for the reason that there is delay in receipt of payment by him from the service recipient. But this still does not explain why the invoice value rather than only the service tax component is required to be paid, nor does it explain why a similar dispensation is being continued even in the new regime!

It is necessary here to keep in mind that in India, taxation is not merely viewed as a tool to raise resources to meet budgetary needs, but also as an instrument of fiscal policy to influence socio-economic behaviour. Sometimes the legislative provisions cross-reference or reinforce each other so as to achieve certain common objectives even without explicitly stating so.

For example, the provisions relating to MRP[7] based valuation under central excise law seek to ride on the Legal Metrology Act, 2011 so as to reduce valuation disputes. However, the penal provisions for alteration of MRP, etc. under central excise law reinforce the provisions of the latter Act, thereby enhancing consumer protection.

Similarly, denial of Cenvat credit under service tax provisions in case of non-payment of the invoice value within prescribed time limit could be part of policy disincentives against delays in payments to Micro, Small and Medium Enterprises (MSMEs). The Government has stipulated provisions for timely and prompt payment for the goods and services supplied by MSMEs under the MSMEs Development Act, 2006[8]. Such timely payment also lowers the credit risk to MSMEs which may even be granted collateral free loans in terms of RBI guidelines[9]. However even this unstated explanation is only partial as it still does not explain such mandate for non-MSME cases.

In any case, it is a settled principle that a notification/rule is to be construed according to its language and there is no room for intendment while interpreting it. Hence it can be said that the questions relating to availability of Cenvat Credit on partially paid invoices have not been settled as yet.

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5 Order No. 56583/2013 dated 15-5-2013 in the case of *Hindustan Zinc Limited*.

6 As they existed during the period prior to 2011-12

7 Maximum Retail Price

8 As per Section 15 of the said Act, the buyer is required to make payment on or before the date agreed upon with the supplier or, where there is no such agreement before the appointed day. The agreement between seller and buyer shall not exceed more than 45 days. The delayed payments are subject to compound interest with monthly rests at thrice the Bank Rate notified by the Reserve Bank of India.

9 Refer discussion at http://rbi.org.in/scripts/FAQView.aspx?Id=84

CUSTOMS

Notifications & Circulars

Export Obligation regularization - Option provided for payment of interest not exceeding duty: Interest component in the case of regularization of Export Obligation (EO) default should not exceed customs duty amount. As per DGFT Public Notice No. 22(RE-2013)/2009-2014, dated 12-8-2013 issued in this regard, any default in meeting EO under Advance Authorisation / DFIA / EPCG scheme can now be regularized by paying customs duty, corresponding to the shortfall in EO, along with interest not exceeding the customs duty amount. Customs duty can be paid either by cash or by debiting valid duty credit scrips issued under Chapter 3 of FTP but interest is required to be paid only in cash. Such option to regularize any default is available till 31st March 2014.

Special Economic Zone Rules, 2006 amended – To revive investors' interest in SEZs, the annual supplement to the Foreign Trade Policy had proposed certain changes in the SEZ provisions. Notification No. 1/2013-SEZ, dated 12-8-2013 issued in this regard makes following amendments in the SEZ Rules:

- Option has been given to the SEZ unit to opt out of the SEZ scheme by transferring its assets and liabilities to another person by way of transfer of ownership including sale of SEZ unit subject to certain specified conditions.
- Minimum land area requirement for SEZ (multi-product) has been reduced from 1000 hectares to 500 hectares;
- Minimum land area requirement for SEZ (multi-product) to be set up in Assam, Meghalaya, Nagaland, Arunachal Pradesh, Mizoram, Manipur, Tripura, Himachal Pradesh, Uttarakhand, Sikkim, Jammu & Kashmir, Goa or in a Union Territory has been reduced from 200 hectares to 100 hectares;
- Minimum land area requirement for SEZ for a specific sector or for one or more services or in a port or airport has been reduced from 100 hectares to 50 hectares;
- There will be no minimum land area requirement for setting up SEZ for Information Technology or Information Technology Enabled Services, but a minimum built up processing area requirement shall be applicable, based on the category of city;
- The minimum land area requirement for agro-based processing has been reduced to 10 hectares with a minimum built up area of 40,000 sq. meters.

Postal exports - Procedure for claiming benefits under Chapter 3 of FTP, issued: A new project has been introduced for 60 days, on pilot basis, permitting export of goods through Foreign Post Office (FPO), New Delhi under the claim of benefits under Chapter 3 of the Foreign Trade Policy (FTP). CBEC's Circular No. 29/2013-Cus., dated 5-8-2013 prescribing procedural modalities relating to implementation of this project provides instructions in relation to processing of these postal bills of export, examination of cargo, testing of samples, preparation of bags for export, proof of export, etc.

Steel and steel products – Relaxation from applicability of Steel and Steel products (Quality Control) Second Order, 2012: Steel and steel products imported for specific projects have been exempted from mandatory requirement prescribed under Para 2(A) of General

Notes pertaining to BIS license for using standard mark. DGFT Notification No. 33(RE-2013)/2009-2014, dated 7-8-2013 issued in this regard provides exemption, for two years, for projects in infrastructure, petroleum, manufacturing products involving high end technologies, nuclear reactors, defense, chemical and petrochemicals and fertilizer sectors, subject to certain conditions. Importers availing such exemption have to submit quarterly reports on details of type, quantity and value of steel/steel products to the Ministry of Steel and the Regional Authority of DGFT.

Purchase Orders acceptable as "deed of contract" under Project Import Regulations, 1986: CBEC has clarified that a "Purchase Order" that contains all the essential ingredients of a valid contract as provided under the Indian Contract Act, 1872 is acceptable as a "deed of contract" for the purpose of Regulation 5 of Project Import Regulations, 1986. This regulation mandates registration of contract at the port of import under Heading 9801 besides providing that such application has to be accompanied by "deed of contract".

Bluetooth wireless headset for mobile phones / cell phones – Classification clarified: Bluetooth wireless headsets for mobile phones / cell phones are classifiable under sub-heading 8517 62 of the Customs Tariff. CBE&C Circular No. 36/2013-Cus., dated 5-9-2013 issued for this purpose notes that bluetooth headset with mobile telephony function is an active part of a wireless network, includes a software part for the wireless network and simultaneously receives/ transmits voice and data in a wireless network. Classification under Heading 8518 as headphones combined with a microphone, was rejected as products of latter heading carry only audio signals and are not an active part of a network. General Rules of Interpretation (GRI) 1 (Note 3 to Section XVI), 3(b) and 6 were applied for the purpose.

Ratio decidendi

Exemption to goods used for the intended purpose outside importer's factory: Goods imported at concessional rate under Customs (Import of goods at concessional rate of duty for manufacture of excisable goods) Rules, 1996 and subsequently sent to another factory where the goods were processed and sold in the name of the importer would be eligible for exemption. CESTAT in this case observed that the requirement to bring the goods for use in importer's factory was procedural and that there was no dispute that the goods were used for the intended purpose. Department had alleged violation of end use condition provided in the rules as the goods were not received at the importer's factory. [*Commissioner* v. *Vijay Solvant Extraction Ltd.* - 2013-TIOL-1264-CESTAT-MUM]

Interest on delayed refund of duty paid under protest – Relevant date: Interest on refund of duty paid under protest is payable after expiry of three months from the date of receipt of the relevant final order. The Madras High Court was dealing with the issue pertaining to claim of interest from the date of payment of duty under protest. It held that interest on refund in such cases is payable from the date immediately after expiry of three months from the date of receipt of the relevant final order of CESTAT and refund claim could be validly held to have been made only on disposal of appeals by the Tribunal and not on any date prior to that. [*Shakun Overseas Ltd* v. *Commissioner* - 2013-TIOL-609-HC-MAD-CUS]

Policy or norms prevalent at the time of issuance of licence applicable: Madras High Court has held that the import policy or norms

prevalent at the time of issuance of licence will be applicable and subsequent changes in the policy/ norms, at the time of actual import of goods under such licence, will be of no consequence. It was noted that the import under the licence was valid considering specific provisions contained in 9.11A read with paras 2.12.1 and 2.12.2 of the Handbook of Procedures Vol. 1. In the present case, the norms pertaining to the specified product were changed after issuance of licence. [*Hoewitzer Organic Chemicals Limited* v. *DGFT* - 2013-TIOL-612-HC-MAD-CUS]

Commissioner empowered to adjudicate advance bill of entry: Advance bill of entry was filed for import of a new vehicle without producing a Type Approval Certificate (TAC). Request for adjudication was rejected on the ground that there has not been any examination of goods and such adjudication could not be made in advance, before arrival of goods. CESTAT, Mumbai however held that Commissioner is empowered to adjudicate advance bill of entry as Section 46(3) of the Customs Act, 1962 read with Circular 22/97-Cus, dated 4-7-1997 allows for filing of bill of entry prior to arrival of goods to facilitate faster clearance. It was also noted that Para 3 of the said circular allows for processing of advance bill of entry by adjudicating authority if filed along with an undertaking by the importer. [*Libra Natural Resources (P) Ltd.* v. *Commissioner* - 2013-TIOL-1183-CESTAT-MUM]

Valuation, comparable goods - Single entry in Customs database without adequate specification: CESTAT, Chennai has held that the goods like fabrics *prima facie* cannot be compared without samples from both consignments being together. It was observed that comparison with one entry in a database without adequate specification of parameters can lead to unjustifiable results. In the present case adjudicating authority had enhanced the value of the imported fabric on the basis of one entry in the database by merely comparing the description of the goods and this order was held as not maintainable by Commissioner (Appeals). The Tribunal refused to stay order of the Commissioner (Appeals). [*Commissioner* v. *Crescent Enterprises* - 2013-TIOL-1190-CESTAT-MAD]

CENTRAL EXCISE

Circular

Duty paid by debit in specified scrips issued under FTP - Cenvat Rule 6(3) not applicable: Goods cleared by availing exemption under relevant notification by way of debit of duty in scrips issued under FPS, FMS, VKGUY, SHIS and Agri. Infrastructure Incentive Scheme of the Foreign Trade Policy are duty paid goods, such clearances are not treatable as exempted and such debit shall be treated as payment of duty and that provisions of Rule 6(3) of the Cenvat Credit Rules are not applicable in such cases. CBEC Circular No. 973/7/2013-CX, dated 4-9-2013 issued for this purpose notes that the scrip holder is also permitted to avail Cenvat credit of duties debited in the above said scrips.

Ratio decidendi

Medicament or cosmetic – Classification to be decided considering whether product cures or cares: A product used mainly in curing or treating ailments or diseases and containing curative ingredients even in small quantities, is to be classified as a medicament. Classifying 'Moisturex' as

medicament, the Supreme Court observed that 'care or cure', is the clue for resolution of the question as to whether a product is a medicament or cosmetics. It was observed that proportion of pharmaceutical ingredient having therapeutic, prophylactic or curative properties is not decisive, but presence of curative properties only is important for the decision. Noting that there are several products sold over-the-counter and are yet, medicaments, the Court rejected department's plea of classification under pharmaceuticals as the product was sold without a prescription of a medical practitioner. Further, observing that understanding of the people who use the product was also to be seen by the court, the Apex Court held that only if a product's primary function is "care" and not "cure", it is not a medicament. It was held that the impugned product was being prescribed by dermatologist for treating the dry skin conditions and that the same was also available in chemist or pharmaceutical shops in the market. [*Commissioner* v. *Ciens Laboratories* – Supreme Court Order dated 14-8-2013 in Civil Appeal Nos. 6988/ 2003 and 4434/2004].

Exemption under Notification No. 8/97-C.E. for goods manufactured using inputs from another EOU: The Larger Bench of the Tribunal has held that the goods manufactured by one Export Oriented Unit (EOU) using raw materials provided by another EOU shall be eligible for benefit of Notification No. 8/97-C.E. Under the said notification, exemption was available to goods manufactured by an EOU from raw materials produced or manufactured in India. While rejecting the reference, the Larger Bench followed the decision of Supreme Court in the case of *Favorite Industries* [2012 (278) ELT 145] which had held that goods supplied by one EOU to another shall be considered as goods manufactured in India for the purpose of said notification. [*Commissioner* v. *Ghodela Implex* - 2013 (294) ELT 223 (Tri-LB)].

MOT charges not payable to Excise Officers for services rendered during working hours: Larger Bench of Tribunal has rejected the reference to it, on the question of requirement of payment of MOT charges for supervision, by the Central Excise officers, of loading of export goods. It relied upon Delhi High Court Order [*Sigma Corporation Pvt. Ltd.* - 2013 (293) ELT 649 (Del.)] holding that where an excise officer provides supervision at the factory of an assessee within the jurisdiction, such service is rendered within the range of such officer and are executed during normal working hours. Contentions of the department that the High Court judgment was flawed since it does not adequately analysed provisions of Customs (Fees for Rendering Services by Customs Officers) Regulations, 1988, was rejected by the Tribunal holding that conclusions recorded by Delhi High Court cannot be considered *per incuriam*. [*Commissioner* v. *Reliance Industries Ltd.* - 2013 (294) ELT 403 (Tri-LB)]

Pre-deposit made to expedite decision cannot be relied upon to again order pre-deposit: In the instant case, the assessee was ordered to make pre-deposit relying on another decision in assessee's own case. In the earlier case, the assessee had accepted to deposit the amount before the Tribunal in anticipation that its case would be heard early. The Bombay High Court in the present case observed that the assessee had made pre-deposit in its earlier case conditionally so as to expedite the proceedings and that the Tribunal in the present case has also given *prima facie* finding of non-applicability of Valuation Rule 10A. Tribunal's order directing pre-deposit was hence set aside by the High Court. [*Hyva India Pvt. Ltd.* v. *Commissioner* - 2013 (294) ELT 543 (Bom.)]

Printing texts on steel sheets is manufacture – Printed sheets to be considered product of printing industry: CESTAT, New Delhi has held that activity of printing various texts on steel sheets received by the assessee, as per the designs and specifications of the sheet supplier, amounts to manufacture. It was further held that the printed sheets have to be treated as products of printing industry classifiable under Chapter 49 of the Central Excise Tariff as printing on the sheets conveys some message/information. The Tribunal hence rejected department's contention of classification under sub-heading 7210 30. [*J.J. Enterprises* v. *Commissioner* – 2013 (295) ELT 324 (Tri.-Del.)]

SERVICE TAX

Ratio decidendi

Refund of service tax when service not provided: For the purposes of refund of value and service tax on the insurance services when policy is refused by the insured, as per Rule 6(3) of the Service Tax Rules, 1994, the appellant had credited the account of their intermediaries through whom the insurance transaction was to be executed. The Tribunal held that such crediting of amount was enough to comply with the requirements of Rule 6(3) as the same became part of the advance deposit made by the intermediary, available for payment of premium and service tax thereon for future policies issued through them. The Tribunal held that in these cases refund by way of individual cheques need not be insisted. It observed that the Department also follows different methods for granting refund like crediting to Cenvat account, PLA etc. The case was remanded for passing *de novo* order considering the observations made by the Tribunal. [*Cholamandalam General Insurance Co.* v. *Commissioner*, 2013-TIOL-1187-CESTAT-MAD]

Franchise service – Liability when sub-license to use technology given: The key requirement for qualifying as taxable franchisee service is that the franchisee must be granted a representational right to sell/ manufacture goods or to provide services or undertake any process identified with the franchisor, whether or not a trade mark, service mark, trade name or logo or any such symbol is involved. The individual identity of franchisee is lost and he represents the identity of franchisor as far as the outside world is concerned. Agreeing with the appellant, the Tribunal held that in the impugned transaction, where the appellant imported technology and gave sub-licenses no representational right was granted either to the appellant or the sub-licensee and no liablity arose under Franchise service. [*Global Transgene Limited* v. *Commissioner,* 2013-TIOL-1259-CESTAT-MUM]

Place of provision of services when sales promotion undertaken in India for service recipient abroad: The marketing and sales support services rendered by the applicant company, a wholly owned subsidiary of its parent company in Singapore, in relation to the distribution of floor coverings or carpet manufactured by its sister concerns in USA and China and sold to the customers in India, shall be covered within Rule 3 of the Place of Provision of Services Rules, 2012. The place of provision shall be where the recipient

is located namely outside India. The said service will also qualify as export of services as per the Advance Rulings Authority. [*Tandus Flooring India Pvt. Ltd.* v. *Commissioner*, 2013-TIOL-03-ARA-ST]

Valuation - Free supplies by service recipient not includible in taxable value: Value of goods and materials supplied free of cost by a service recipient to be used in the execution of taxable construction services provided to him by the service provider, would be outside the taxable value or the gross amount charged, as defined under Section 67 of the Finance Act, 1994. The Tribunal while holding so noted that only monetary or non-monetary consideration is chargeable to service tax under Section 67 while the goods and materials supplied free of cost are not in the nature of either monetary or non-monetary consideration. It was further held that the value of such goods and materials supplied free of cost does not form part of the gross amount charged for the purposes of Notification No. 15/2004-ST which provides for payment of service tax on 67% of the gross amount charged for taxable construction service. In other words, the benefit under the said notification may be claimed without adding the value of free issue material to the gross amount charged from the service recipient. [*Bhayana Builders (P) Limited* v. *Commissioner,* CESTAT Order dated 6-9-2013]

Ropeway operation not covered under Tour Operator service: The assessee was operating a ropeway leased from the municipality. The department treated the said activity as tour operator service and demanded service tax from the assessee. The Tribunal held that the said activity is not covered under the Tour Operator service reasoning that the assessee was transporting tourists without any planning, scheduling, organizing or arranging for their tours. The tourists merely availed the facility of ropeway during its prescribed working hours. The Tribunal observed that for tour to be taxable planning, scheduling, organizing or arranging tours by any mode of transport was essential. [*Shail Shikhar Associates* v. *Commissioner* - 2013 (31) STR 433 (Tri-Del)]

Distributor not liable when tax paid by principal on value including commission: In the present case, department had raised a demand on the distributor of SIM cards to pay service tax on the commission received by it from the telecom service operators for sale of such SIM cards. The Tribunal held that since the telecom operator is discharging service tax liability on the entire amount received from the customer and the said amount also includes the commission paid to distributors, no service tax needs to be paid by the distributors. Otherwise, it would lead to a situation of double taxation. [*Commissioner* v. *Moradabad Gas Service* - 2013 (31) STR 308 (Tri-Del)]

VALUE ADDED TAX (VAT)

Notifications

Form DP-1 under Delhi VAT – Last date for online submission extended: The last date of online submission of Form DP-1 has been extended from 16-9-2013 to 16-10-2013. This form seeks information regarding name of manager of business, PAN and Importer Exporter Code (IEC) and other details of the dealer. Notification No. F.3(352)/Policy/VAT/2013/751-762 dated 9-9-2013 has been issued in this regard by Commissioner, VAT, Delhi.

Works contract in Rajasthan – Exemption on payment of fees: Registered dealers in

Rajasthan, engaged in execution of works contract have been exempted from payment of tax levied on the transfer of property in goods involved in the execution of works contract. The exemption, subject to conditions, would be available on payment of specified exemption fee to be calculated as percentage of total value of contract. As per Notification No. F.12 (101) FD/Tax/2011-59, dated 13-8-2013 granting said exemption from 1-10-2013, the rates of exemption fee are as under:

Item No.	Description of Works Contract	Rate of exemption fee
1.	Works contract where the cost of material does not exceed 5% of the total contract amount	0.25
2.	Works contract relating to EPC turnkey power projects awarded by Rajasthan Rajya Vidyut Utpadan Nigam Ltd.	1.00
3. to 17.	Works contract relating to construction and repair of roads, runways, bridges, dams, drains excluding sewerage system, tunnels, canals/channels, barrages, diversion, railway track, causeways, subways, spillways, boundary walls, water harvesting structure.	1.00
18.	Any other kind of works contract not covered above	3.00

Ratio decidendi

Advance Ruling Authority's Order – Applicability to third party: Andhra Pradesh High Court has held that the order of the Advance Ruling Authority (ARA) made under Section 67 of the AP VAT Act, 2005 shall also be binding on third parties dealing with the same goods. Noting that upon plain reading of Section 67 of the APVAT Act, it is clear that the scope of the decision of the ARA extends in respect of goods or transaction in relation to which a clarification was sought, the court held that the ARA decision shall be binding upon non-applicant dealers as well. The decision was given in light of the specific wordings of the provision under the APVAT Act. Proviso to Section 67(4) of the said Act was considered by the court while it further observed that order of ARA shall cease to be operative till appeal against it is not decided. [*RAK Ceramics (India) Pvt. Ltd.* v. *Assistant Commissioner* - 2013-VIL-62-AP]

Sale in case of endorsement of title documents when goods in transit: Madras High Court has held that in case of a hire-purchase transaction, if there is an endorsement of title documents to the goods while in transit, it has to be considered a sale under Section 3(b) of the Central Sales Tax Act, 1956. It was held that the definition of 'sale' under Section 2(g) also included transactions which are strictly speaking not sales. Delivery of goods on hire-purchase or in system of payment by installments is treated as deemed sale. Reliance was placed on the decision of the Supreme Court in *Jay Bharat Credit & Investment Co. Ltd.* – 2000 (7) SCC 165 wherein transfer of goods on hire purchase was held as enough to attract levy under CST Act in a hire-purchase transaction. It was noted that there is no requirement that the property in goods should be transferred. The assessee in this

case had purchased machinery from outside Tamil Nadu and gave dispatch instructions to consign the goods directly to the hirer inside Tamil Nadu, who had entered into hire-purchase agreement with the assessee. Subsequently, the assessee claimed it to be a sale under Section 3(b) of the CST Act wherein inter-state sale is effected by transfer of documents of title to the goods during their movement from one state to another. The Tamil Nadu Sales Tax Appellate Tribunal rejected the claim holding that in the absence of transfer of property in goods, the assessee could not have carried out subsequent inter-state sale under the CST Act by endorsing the documents of title to the goods. [*National Small Industries Corporation* v. *State of Tamil Nadu* - 2013-VIL-65-MAD]