

पत्रांक 4059/आयु0क0उत्तरा0/वाणि0कर/विधि-अनुभाग/2007-08/देहरादून

कार्यालय आयुक्त कर उत्तराखण्ड,  
(विधि-अनुभाग)  
देहरादून:दिनांक 29 फरवरी 2008

समस्त डिप्टी कमिश्नर(क0नि0), वाणिज्य कर  
समस्त असिस्टेंट कमिश्नर, वाणिज्य कर  
समस्त वाणिज्य कर अधिकारी,श्रेणी-2

केन्द्रीय बिक्रीकर अधिनियम 1956 की धारा-6ए में बिक्री के अलावा किसी अन्य प्रकार से माल के अन्तरण के लिए प्राविधान किए गये हैं।

इस प्राविधान के अनुसार यदि किसी व्यापारी के द्वारा बिक्री के अतिरिक्त अन्य किसी प्रकार से या अन्तरण किया जाता है, तो अन्तरण के प्रमाण के लिए फार्म 'एफ' का प्रस्तुत करना अनिवार्य है। इस सम्बन्ध में वाणिज्य कर विभाग उत्तर प्रदेश द्वारा परिपत्र सं0 विधि -2 (1) केन्द्रीय बिक्रीकर -8 (5) -(05-06)/1464/व्यापार कर दिनांक 28-11-2005 जारी किया गया था, जिसमें उ0प्र0 शासन के पत्र का आलेख करते हुए जाबवर्क करने या कराने के लिए माल के अन्तःप्रान्तीय अन्तरण पर फार्म-एफ आवश्यक होने के निर्देश दिये गये थे।

उक्त परिपत्र को सर्वश्री अम्बिका स्टील्स लि0 बनाम उ0प्र0 सरकार व अन्य (2008) 12 VST 216 में मा0 उच्च न्यायालय, इलाहाबाद के समक्ष चैलेंज किया गया था। मा0 उच्च न्यायालय इलाहाबाद द्वारा अपने निर्णय में, मा0 सर्वोच्च न्यायालय द्वारा दिये गये निर्णय Ashok leyland Ltd, Vs State of Tamil Nadu (2004) 134 STC 473(SC) को आधार बनाते हुए कहा गया कि केन्द्रीय बिक्रीकर अधिनियम 1956 की धारा-6ए के प्राविधानों को देखते हुए जॉब बर्क पर माल के अन्तःप्रान्तीय अन्तरण करने पर प्रमाण हेतु फार्म 'एफ' प्रस्तुत करना आवश्यक है।

यदि व्यापारी द्वारा फार्म 'एफ' प्रस्तुत नहीं किया जाता है तो व्यापारी पर भेजे गए माल को केन्द्रीय बिक्री मानते हुए कर आरोपित किया जा सकता है। उक्त प्रकार दिये गए निर्णयों के सन्दर्भ में निर्देश दिये जाते हैं कि केन्द्रीय बिक्री कर अधिनियम-1956 की धारा-6ए के प्राविधानों के अनुरूप कार्यवाही करना सुनिश्चित करें।

(एल.एम.पन्त)  
आयुक्त कर,  
उत्तराखण्ड, देहरादून।

MW


समस्त वाणिज्य कर अधिकारी, श्रेणी-2

दिनांक: 23/02/08

पृ०प०सं० 4059/दिनांक उक्त:-

प्रतिलिपि- निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रेषित।

- 1- प्रमुख सचिव, वित्त उत्तराखण्ड शासन देहरादून।
- 2- महालेखाकार, उत्तराखण्ड वैभव पैलेस इन्द्रा नगर देहरादून।
- 3- अध्यक्ष/सदस्य वाणिज्य कर अधिकरण देहरादून/हल्द्वानी।
- 4- एडीशनल कमिश्नर, वाणिज्य कर गढ़वाल जोन देहरादून/कुमाऊ जोन रूद्रपुर।
- 5- एडीशनल कमिश्नर (आडिट)/(प्रवर्तन) वाणिज्य कर मुख्यालय देहरादून।
- 6- समस्त ज्वाइंट कमिश्नर (कार्य०) वाणिज्य कर देहरादून/हरिद्वार/काशीपुर/हल्द्वानी को इस निर्देश के साथ प्रेषित कि वे उक्त परिपत्र की अतिरिक्त प्रतियां कराकर अपने अधीनस्थ अधिकारियों/बार एसोसिएशन के पदाधिकारियों को उपलब्ध कराने का कष्ट करें।
- 7- ज्वाइंट कमिश्नर (अपील) वाणिज्य कर देहरादून/हल्द्वानी।
- 8- ज्वाइंट कमिश्नर (वि०अनु०शा०/प्र०) वाणिज्य कर हरिद्वार/रूद्रपुर।
- 9- वरिष्ठ तकनीकी निदेशक, एन०आई०सी० सचिवालय परिसर देहरादून को इस आशय से प्रेषित कि वे उक्त परिपत्र को वाणिज्य कर विभाग की वेबसाइट पर प्रसारित करने का कष्ट करें।
- 10- पोर्टल प्रबन्धक उत्तरा पोर्टल जी०ओ०यू० परियोजना कार्यालय आई०आई०टी० रूड़की।
- 11- श्री वी०के० वर्मा, विशेष कार्यधिकारी को इस निर्देश के साथ कि उक्त परिपत्र स्कैन कर व्यापार प्रतिनिधियों/अधिवक्ताओं को ई-मेल द्वारा प्रेषित कर दे।
- 12- नेशनल लॉ हाउस बी-2 मॉडर्न प्लाजा बिल्डिंग अम्बेडकर रोड गाजियाबाद।
- 13- नेशनल लॉ एण्ड मैनेजमेन्ट हाऊस-15/5 राजनगर गाजियाबाद।
- 14- लॉ पब्लिकेशन व्यापार कर भवन, कलेक्ट्रेट कम्पाउण्ड राजनगर गाजियाबाद।
- 15- कार्यालय अधीक्षक की केन्द्रीय गार्ड फाइल हेतु।
- 16- विधि अनुभाग की गार्ड फाइल हेतु।

  
29/2/2008

आयुक्त कर,

उत्तराखण्ड, देहरादून।

[19]

जॉबवर्क करने या कराने के अन्तर्प्रान्तीय अन्तरण पर  
फार्म-एफ की अनिवार्यता होने के सम्बन्ध में

कम्प्यूटर परिपत्र संख्या-841/दि०29.11.2005  
संख्या-विधि-2(1) केन्द्रीय  
बिड्डीकर-8(5)-(05-06)-/1464/व्यापार कर  
कार्यालय कमिश्नर, व्यापार कर, उत्तर प्रदेश।  
(विधि अनुभाग)

लखनऊ : दिनांक : 28 नवम्बर, 2005

समस्त डिप्टी कमिश्नर, असिस्टेंट कमिश्नर,  
समस्त व्यापार कर अधिकारी,  
व्यापार कर, उत्तर प्रदेश।

उद्योग बन्धु के पत्र संख्या-एन०सी०एम०/52, दिनांक 4.07.2005  
के साथ सिकन्दराबाद उद्योग संघ के ज्ञापन दिनांक 10.05.2005 की प्रति  
प्राप्त हुई थी, जिसमें अपना जॉबवर्क करने या कराने के लिए माल के  
अन्तर्प्रान्तीय अन्तरण पर फार्म-एफ की अनिवार्यता होने या न होने के  
सम्बन्ध में स्पष्टीकरण की मांग की गई थी।

2. व्यापार कर मुख्यालय का मत था कि अपना जॉबवर्क करने या कराने  
के लिए माल के अन्तर्प्रान्तीय अन्तरण पर भी फार्म-एफ की अनिवार्यता  
होने की स्थिति प्रतीत हो रही है।

3. प्रसंग का शासन स्तर पर भी परीक्षण कराते हुए यथा आवश्यक  
मार्गदर्शन का अनुरोध किया गया था। शासन के पत्र संख्या -2452/  
ग्यारह-2-2005-9(134)/2000, दिनांक 10 नवम्बर, 2005 द्वारा सूचित  
किया गया है कि केन्द्रीय बिड्डी कर की धारा 6-ए के अन्तर्गत बिड्डी के  
अलावा किसी अन्य प्रकार से माल के अन्तरण के लिए फार्म-एफ आवश्यक  
है। अतः जॉबवर्क करने या कराने के लिए माल के अन्तर्प्रान्तीय अन्तरण पर  
फार्म-एफ आवश्यक होगा।

4. तदनुसार कार्यवाही कराना सुनिश्चित करें।

(दीपक त्रिवेदी)

कमिश्नर व्यापार कर, उत्तर प्रदेश।



*contract is treated to be a sale. If the petitioner claims that it is not liable to tax on transfer of goods from U. P. to a place outside State then it would have to discharge the burden placed upon it under section 6A by filing declaration in form F. It would be immaterial whether the person to whom the goods are sent for or received after job work is a bailee. The requirement to file declaration in form F is applicable in cases of goods returned also. Thus the petitions lack merit. (see paras 11, 13 to 15 and 17)*

ASHOK LEYLAND LTD. V. STATE OF TAMIL NADU [2004] 134 STC 473 (SC) followed.

Cases referred to :

Ashok Leyland Ltd. v. State of Tamil Nadu [2004] 134 STC 473 (SC). (para 12)

Hindustan Aeronautics Limited v. State of Orissa [1984] 55 STC 327 (SC). (para 7)

UCO Bank v. Hem Chandra Sarkar [1990] 3 SCC 389. (para 6)

C. M. W. P Nos. 1094, 1166 and 1495 of 2006, 69, 302, 310, 502, 503, 775, 831 and 832 of 2007.

### JUDGMENT

The judgment of the court was delivered by

R. K. AGRAWAL J.—In all these writ petitions, the petitioners have challenged the circular letter dated November 28, 2005 issued by the Commissioner of Trade tax, U. P., Lucknow, wherein it has been mentioned that, under section 6A of the Central Sales Tax Act, 1956 (hereinafter referred to as, "the Central Act"), form F is required to be filed in respect of all transfer of goods which are otherwise than by way of sale and also applies to all goods sent or received for job work or goods returned.

As all these petitions do not involve adjudication of any facts but raise a common question of law, i.e., interpretation of the provisions of section 6A of the Central Act, they have been heard together and are being decided at the admission stage itself.

C. M. W. P. No. 302 of 2007 is being treated as a leading petition and its facts are given below :

The petitioner is a public limited company and is engaged in the business of manufacture and sale of iron billets and ingots. It is also engaged in the activity of sale of iron and steel rounds, bars, flats, etc. It is a registered dealer under the provisions of the U. P. Trade Tax Act, 1948 (hereinafter referred to as, "the Act") and also under the Central Act. According to the petitioner, during the assessment year 2004-05 it had sent iron and steel

ingots to various firms situated outside the State of U. P. for the purpose of converting them into iron and steel rounds, bars and flats. Those firms were directed to return the converted goods. It also received iron scrap from various firms situate outside the State of U. P. for the purpose of converting them into iron and steel billets and ingots with a direction to return the converted goods to those firms. Under the Central Excise Act, 1944 and Cenvat Credit Rules, 2002, the cenvat credit is admissible on fulfilment of certain requirements. Central excise duty is also leviable. It had received and made payment in respect of job work done and got done by it, respectively, and the claim is that no part of the payment made or received by it was on account of any action on the part of the petitioner or its job workers as agents or principal of the petitioner and vice versa. It had not effected any sale while sending goods for job work or while receiving goods for doing job work. It had filed its monthly return, both under the Act and the Central Act. However, the petitioner did not submit or obtain any form F in respect of the transaction of job work as it did not involve any sale. Vide notice dated June 23, 2006, the Deputy Commissioner (Assessment) 1-A, Trade Tax, Ghaziabad, respondent No. 3, initiated the assessment proceeding in which the petitioner, participated. The petitioner was asked to submit form F in respect of the ex-U. P. transaction of job work performed by it or got done by others to which it submitted a reply stating therein that no form F is required for such transaction. The explanation was rejected. However, respondent No. 3 granted time up to March 31, 2007 for submitting form F. Another notice was issued on February 27, 2007 calling upon the petitioner to submit declaration form F. The action of respondent No. 3 in demanding form F in respect of transaction of job work failing which tax would be imposed, including the circular dated November 28, 2005 issued by the Commissioner of Trade Tax, U. P., Lucknow, are under challenge in the present writ petition.

- 4 In some of the writ petitions, apart from the transaction of job work there have been return of goods from outside the State of U. P. on which the respective assessing authorities have directed the petitioners to furnish declaration form F failing which the tax under the Central Act would be imposed or had been imposed.
- 5 We have heard Sarvasri S. D. Singh, Nishant Mishra and Ashok Kumar, learned counsel for the petitioners, and Sri A. C. Tripathi, learned Standing Counsel, on behalf of the respondents! Shri S. D. Singh, learned counsel, who lead the arguments, submitted that the activities of job work undertaken by the petitioner or getting the goods converted on job work from others, do not amount to sale. Likewise the goods returned also do not



amount to sale. Referring to sections 148, 151 and 152 of the Indian Contract Act, 1872 which deal with bailment, bailor and bailee as also the obligation of the bailee, he submitted that when the petitioner had undertaken job work on behalf of the ex-U. P. firms, its possession was that of a bailee. Similarly, when the petitioner had sent goods for job work to others, i.e., ex-U. P. firms, they would be bailee and not an agent.

He relied upon a decision of the apex court in the case of *UCO Bank v. Hem Chandra Sarkar* [1990] 3 SCC 389, wherein the apex court has pointed out the distinguishing features between agency and bailment and has held that the bailee does not represent the bailor and he merely exercises with the leave of the bailee (under contract or otherwise), certain powers of the bailor in respect of his property and further the bailee has no power to make contract on the bailor's behalf nor can he make the bailor liable simply as bailor for any act he does. 6

He also relied upon a decision of the apex court in the case of *Hindustan Aeronautics Limited v. State of Orissa* [1984] 55 STC 327, wherein the apex court has held that there is no rigid or inflexible rule which applies to all transactions which can indicate distinction between a contract for sale and a contract for work and labour. It has further been held that whether a particular contract was one of sale or for work and labour, depends upon the main object of the purpose and in a contract for sale the main object of the party is to transfer the property and delivery of possession of a chattel as a chattel to the buyer. 7

He further submitted that, from a plain reading of the provisions of section 6 of the Central Act, which is the charging section, there is no liability of payment of tax on job work and section 6A would apply only to a case where the goods are transferred by a dealer from one State to another, either to any other place of his business or to his agent or principal and not to a case where the goods are sent or received for doing job work or where the goods are returned. According to him, form F cannot be issued by a person who is not transferring the goods from one State to another or any other place of his business or to his agent or principal. In this connection, he also referred to the Statement of Objects and Reasons for inserting section 6A in the Central Act. 8

The other learned counsel adopted the arguments advanced by Sri S.D. Singh. 9

Sri A. C. Tripathi, learned Standing Counsel, on the other hand, submitted that, from a plain reading of the provision of section 6A of the Central Act, form F is required to be filed by every person who claims that he is not liable to pay any tax in respect of the goods transferred by him 10

from one State to another and, therefore, the petitioners are under an obligation to furnish declaration form F in respect of goods sent for job work or received back after job work or where the goods are returned.

11 We have given our anxious consideration to the various pleas raised by the learned counsel for the parties. We find that, under sub-clause (ii) of clause (g) of section 2 of the Central Act, a transfer of property in goods whether as goods or in some other form, involved in execution of a works contract, is included in the definition of the word "sale". Section 6 is the charging section and creates liability to tax on inter-State sales. Section 6A puts the burden of proof on the person claiming transfer of goods otherwise than by way of sale and not liable to pay tax under the Central Act. The burden is to be discharged only by furnishing of declaration form F.

12 The provisions of sections 6 and 6A of the Central Act came up for consideration in the case of *Ashok Leyland Ltd. v. State of Tamil Nadu* [2004] 134 STC 473 (SC) ; [2004] 23 PHT 81 (SC). Dealing with sections 6 and 6A of the Central Act, the apex court, in paragraph 33 of the Report, has held as follows :

"... Section 6 of the Act provides for liability to tax on inter-State sales in terms whereof every dealer is liable to pay tax thereunder on sales effected by him in the course of inter-State trade or commerce subject to the exception contained in the proviso appended thereto. Such tax would be leviable notwithstanding the fact that no tax is leviable either on seller or the purchaser under the State tax laws of the appropriate State if that sale had taken place inside the State."

13 In paragraph 34 of the Report, the apex court has further held as under :

"34. The liability to tax on inter-State sale as contained in section 6 is expressly made subject to the other provisions contained in the Act. Sub-section (2) of section 9, on the other hand, which is a procedural provision starts with the words 'subject to the other provisions of this Act and the Rules made thereunder'. Section 6-A provides for exception as regard the burden of proof in the event a claim is made that transfer of goods had taken place otherwise than by way of sale. Indisputably, the burden would be on the dealer to show that the movement of goods was occasioned not by reason of any transaction involving sale of goods but by reason of transfer of such goods to any other place of his business or to his agent or principal, as the case may be. For the purpose of discharge of such burden of proof, the dealer is required to furnish to the assessing authority within the prescribed time a declaration duly filled and signed by the principal officer of the other place of business or his agent or principal. Such



claims that he is not liable to pay tax on transfer of the goods from one State to another, he has to furnish declaration form F. This would be applicable in a case of goods returned also. The Statement of Objects and Reasons, referred to by Sri S. D. Singh, does not advance his case any further.

- 18 Before parting with the case, we may, however, observe that as the petitioners have claimed that they are not liable to furnish declaration form F in respect of the transaction in question and we have come to the conclusion that they are, in fact, liable. We direct the respective assessing authorities to accept the declaration form F of each of the petitioners if they file it within a period of three months from today and to grant exemption in accordance with law.
- 19 In view of the foregoing discussions, we do not find any merit in these petitions and subject to the aforesaid observations, they are accordingly dismissed. All the interim orders are discharged. However, the parties shall bear their own costs.

[2008] 12 VST 222 (CESTAT—Kol)

[BEFORE THE CUSTOMS, EXCISE AND SERVICE TAX APPELLATE  
TRIBUNAL—KOLKATA]

**SUNWIN TECHNOSOLUTIONS PVT. LTD.**

v.

**COMMISSIONER OF CENTRAL EXCISE, RANCHI**

**D. N. PANDA (Judicial Member)**

June 21, 2007.

HF ▶ Assessee

SERVICE TAX—EXEMPTION—VOCATIONAL TRAINING—“COMPUTER TRAINING” IS VOCATIONAL TRAINING—EXEMPT FROM TAX UNTIL ITS SPECIFIC EXCLUSION FROM SCOPE OF EXEMPTION—FINANCE ACT (32 of 1994), s. 65(27)—NOTIFICATION No. 24/2004-ST [GSR No. 598 (E)] DATED SEPTEMBER 10, 2004—NOTIFICATION No. 19/2005-ST DATED JUNE 7, 2005.

*By notification No. 7 of 2003 dated June 20, 2003 issued under the Finance Act, 1994, training and coaching centres were brought to the ambit of service tax and rate of tax was prescribed from July 1, 2003. But three training institutes, namely, vocational training institute, computer training institute and recreational training institute were notified to be exempted from the purview of service tax. This notification remained in force till June 30, 2004.*