समस्त डिप्टी कमिशनर(कोनियो), वाणिज्य कर
समस्त असिस्टेंट कमिशनर, वाणिज्य कर
समस्त वाणिज्य कर अधिकारी, श्रेणी-2

केंद्रीय विक्रियकर अधिनियम 1956 की धारा-6ए में विक्रिय के अनलागा किसी अन्य
प्रकार से गाल के अनलाग के लिए प्राविधिक किए गए हैं।

इस प्राविधिक के अनुसार यदि किसी व्यापारी के द्वारा विक्रिय के अनलागी अर्थ
किसी प्रकार से या अनलाग किया जाता है, तो अनलाग के प्रमाण के लिए फार्मे 'ए' का प्रस्तुत
करना अनिवार्य है। इस सम्बन्ध में वाणिज्य कर विभाग उत्तर प्रदेश द्वारा परिषद एिंटी-2
(1) केंद्रीय विक्रियकर -8 (5) -(05-06)/1464 /व्यापार कर दिनांक 28-11-2005 आपसी किया
गया था। जिसमें 2090 शासन के पत्र का आलेख करते हुए जावर्क करने या करने के लिए
गाल के अनलागात्मक अनलाग पर फार्मे-एक आवश्यक होने के निर्देश दिये गये थे।

उक्त परिषद को सर्वश्री अमिता स्टील लि. बनाम जोप्रो सर्कार न अन्य (2008)
12 VST 216 में माम उच्च न्यायालय, इलाहाबाद के समक्ष शेलेज किया गया था। माम उच्च
न्यायालय इलाहाबाद द्वारा अपने निर्णय में, माम सर्वश्री न्यायालय द्वारा दिये गये निर्णय Ashok
Ieyland Ltd. Vs State of Tamil Nadu (2004) 134 STC 473(SC) को आधार बनाते हुए कहा
गया कि केंद्रीय विक्रियकर अधिनियम 1956 की धारा-6ए के प्राविधिकाओं को देखते हुए जाब नक़ल
पर गाल के अनलागात्मक अनलाग करने पर प्रमाण हेतु फार्मे 'ए' प्रस्तुत करना आवश्यक है।

यदि व्यापारी द्वारा फार्मे 'एक' प्रस्तुत नहीं किया जाता है तो व्यापारी पर बंजे गाल
को केंद्रीय विक्रिय कमाने हुए कर आरोपित किया जा सकता है। उक्त प्रकार दिशे गए
निर्णयों के अनुसार ने निर्देश दिये जाते हैं कि केंद्रीय विक्रिय कर अधिनियम-1956 की धारा-6ए के
प्राविधिकाओं के अनुसरण कार्यवाही करना सुनिश्चित करें।
पूर्वसूत्त्र ५०५९/दिनांक उक्तः—
प्रतिलिपि— निम्नलिखित को सूचनार्थ एवं आवश्यक कार्यवाही हेतु प्रस्तुत है।

1. प्रसुख सचिव, वित्त उत्तराखण्ड शासन देहातुन।
2. महालेखाकार, उत्तराखण्ड कैबिनेट पैलेस इंद्रा नगर देहातुन।
3. अध्यक्ष/सार्वजनिक वाणिज्य कर अधिकरण देहातुन/हल्द्वानी।
4. एडीशनल कमिशनर, वाणिज्य कर गढ़वाल जिला देहातुन/कुमाऊं जिला रुद्रपूर।
5. एडीशनल कमिशनर (आईटी)/प्रवर्तन) वाणिज्य कर मुख्यालय देहातुन।
6. समर्पित ज्वाइट कमिशनर (कार्यक्षेत्र) वाणिज्य कर देहातुन/हल्द्वानी/काशीपुर/हल्द्वानी 
को इस निर्देश के साथ प्रस्तुत कि दे उक्त परिपत्र को अतिरिक्त प्रतियाँ कराकर अपने 
अधिकार सहभागिता/बार एसोसिएशन के पादधिकारियों को समेत करने का कष्ट कर।
7. ज्वाइट कमिशनर (अनुमोदन) वाणिज्य कर देहातुन/हल्द्वानी।
8. ज्वाइट कमिशनर (विभाग आईटी/रुद्रपूर) वाणिज्य कर हल्द्वानी/रुद्रपूर।

विषय: तकनीकी निर्देशक, एनआईआईसी0 सर्विसिलाइट्री परिसर देहातुन को इस आशय से 
प्रस्तुत कि दे उक्त परिपत्र को वाणिज्य कर भिमाग का वेबसाइट पर प्रसारित करने का 
कष्ट कर।

9. पीडीडी प्रवचन उत्तराखण्ड पोर्टल जोआईआई/श्रीमती भिमाग का कर्मचारी आईआईटी/रुद्रपूर।
10. श्री श्रीकेशवमार्ग, विलेश कार्यधिकारी को इस निर्देश के साथ कि उक्त परिपत्र स्क्रीन 
कर यथा प्रतिनिधियां/अधिकारियों को ई-मैल द्वारा प्रस्तुत कर।
11. नेशनल लॉं हाउस बी-2 मोर्टन प्लाजा बिल्डिंग आमेबाकर रोड गाजियाबाद।
12. नेशनल लॉं एड मैनेजमेंट हाउस-15/5 राजनगर गाजियाबाद।
13. लॉं पॅसिवियन व्यापार कर भवन, कल्कटेटर कम्पाउंड राजनगर गाजियाबाद।
14. देखने को कृपया गाजियाबाद की कंट्रिया गाइड फाइल हेतु।
15. विधि अनुमान की गाइड फाइल हेतु।

उत्तराखण्ड, देहातुन।

[Signatures] 29/12/2018
[19]

लॉबरार्क करने या कराने के लिए अन्तर्गतीय अल्टरसन पर पार्श्व-एक की अभिवादनता होने के समय में अत

कमलहूतर परिप्रेक्ष्य संख्या-841/दिसंबर, 2005 संख्या-विभिन्न-2(1) दिसंबर
बिशिक-8(5)-(029,06)-(146/844/द्यापार कर कार्यालय कमिश्नर, द्यापार कर, उत्तर प्रदेश।
(विभिन्न अधिकारी)
लक्ष्य: विभिन्न : 28 दिसंबर, 2005
संबंधित हिस्टेक कमिश्नर, अधिकारी कमिश्नर,
संबंधित द्यापार कर अधिकारी,
द्यापार कर, उत्तर प्रदेश।

उधोब घटना के पश्चात् एनवीय एम/52, विभिन्न 4.07.2005
d दिसंबर, उधोब घटना के बाद विभिन्न 10.05.2005 की प्रति
कार्य करने थे, जिसमें अन्तर्गतीय अल्टरसन पर पार्श्व-एक की अभिवादनता होने ने न होने के
कारण में अन्तर्गतीय संबंधित हो गई थी।

1. द्यापार कर सूचनाएं का भाषा का अन्तर्गतीय अल्टरसन पर भी पार्श्व-एक की अभिवादनता
होने की प्रति ग्राहित रही है।

2. द्यापार कर सूचनाएं का भाषा का पार्श्व-एक की अभिवादनता
होने की प्रति ग्राहित रही है।

3. अल्टरसन का बालक अल्टरसन पर भी पार्श्व-एक की अभिवादनता
होने की प्रति ग्राहित रही है।

4. तद्दूर अल्टरसन कराने का सुझाव करे।

(समक श्रेयसी)
कमिश्नर द्यापार 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)


Cases referred to:


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 situated 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 fulfillment 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.

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.

We have heard Sarvashri 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 of 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.

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.

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.

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

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.
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 other-
wise 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
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:

"...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.

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.

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)


II

Facts


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.