

## Commentary on the devastating impact of proposed amendment in Central Sales Tax Act, 1956

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### Abstract

The Central Sales Tax Act, 1956 (CST Act) is a central legislation enacted to regulate the levy, collection, and distribution of tax on inter-state sale or purchase of goods in India. Derived from Entry 92A of the Union List, the Act provides a framework for concessional tax rates, particularly under Section 8, where registered dealers can purchase goods at a reduced rate against declaration forms (C Forms) for specified purposes such as manufacturing and power generation.

With the introduction of the Goods and Services Tax (GST) in 2017, most indirect taxes, including CST, were subsumed under a unified tax regime. However, certain goods like petroleum products and liquor for human consumption remain outside the GST ambit, thereby preserving the limited applicability of the CST Act. Judicial pronouncements have further clarified that C Forms continue to be valid for such goods even after GST implementation. Thus, the CST Act continues to operate in a restricted scope within India's indirect tax framework.

**Keywords:** Central sales Tax Act, 1956, interstate trade, section 8 CST Act, C form, concessional tax rate

### Introduction

#### What is Central Sales Tax Act, 1956?

The Central Sales Tax Act, 1956 (hereinafter to be referred as Act of 1956) is the Statute legislated by the Parliament and forms to be part of the Central Legislature. The said Act of 1956 is derived out of Entry No. 92A of the Union List of the Schedule VII of the Constitution of India.

The Act of 1956 has been enacted with the purport of laying down principles for levy, collection and distribution of the tax being imposed on the sale or purchase of goods that takes place in the interstate trade or commerce. The Act of 1956 prescribes mechanism of different declaration forms by virtue of which the tax rate of the interstate purchase of goods is reduced to very nominal tax rate. The dealer has to apply for the registration under the Act of 1956 to avail the benefit of the concessional tax rate as prescribed under the Act of 1956.

The Act of 1956 prescribes mechanism for concessional tax rate under its Section 8. In order to avail the benefit of the concessional tax rate, the legislature has crafted Section 8 wherein it has been prescribed that the dealer to furnish a declaration form during the interstate purchase of the goods and the said goods so purchased against the declaration form are used as per the prescribed manner under Section 8(3)(b) of the Act of 1956.

#### What is Section 8 of The Act of 1956?

Section 8 of the Act of 1956 plays an important role in the operational arena of the Act of 1956. The said Section of the CST Act provides for interstate procurement of goods or class of goods as mentioned under the Registration Certificate of the dealer at reduced tax rate and such purchased goods shall be utilised for the purpose of manufacturing, mining, telecommunication and electricity or any other form of power. The concessional tax rate provided is 2 percent and to avail the said concessional tax rate, the registered dealer, purchasing the goods, is required to furnish declaration form i.e Form C. The very purpose of prescribing the filing of C Forms is that there should not be suppression of any inter-State sales by a selling dealer and

evasion of tax to the State from where the actual sales are affected. Secondly, the purchasing dealer also cannot suppress such purchases once he issues C Form to the selling dealer. Since the dealer should issue C Form, he has to maintain a detailed account of such C Forms obtained from the department prescribed under the State's taxation law. The C Form is a declaration to be issued only by the Sales Tax Authorities of the States concerned. By issuing declaration in C Form the purchasing dealer would be benefited as he is entitled to purchase goods by paying only concessional rate of tax of 2% as prescribed by the State concerned of the purchasing dealer otherwise the purchasing dealer has to pay tax at a higher rate besides additional taxes on such sales effected within the State where the selling dealer is situated.

#### What is the status of The Act of 1956 after the advent of Goods and Service Tax Act, 2017?

The Goods and Service Tax Act, 2017 (hereinafter to be referred as GST Act) was introduced on 01.07.2017 as a central legislation and similarly, State Goods and Service Tax Act, 2017 was introduced by State Legislature in respective States. By virtue of the GST Act, indirect taxes like CST, VAT, Service Tax etc subsumed in the said Act and as such, the propaganda of One Nation One Tax was achieved. Also, for sale or purchase of goods during the interstate trade and commerce, Integrated Goods and Service Tax Act, 2017 (IGST Act) has been introduced.

Even after the dawn of the GST Act and IGST Act, 6 goods viz a viz High Speed Diesel, Aviation Turbine Fuel, Liquor for Human Consumption, Natural Gas, Petroleum Crude, Petrol have been kept away from the taxability ambit of the GST and IGST vide stipulated Sections of the GST Act and IGST Act. The said six goods shall be brought within the taxing domain of the GST Act and IGST Act after such being notified by the Government on the recommendation of the GST Council.

It is to highlight here that the Act of 1956 contains definition of "Goods" under its Section 2(d). Prior to the introduction of the GST Act, the Section 2(d) was amended

vide The Taxation Laws (Amendment) Act, 2017 (18 of 2017) dated the 4th May 2017 and High Speed Diesel, Aviation Turbine Fuel, Liquor for Human Consumption, Natural Gas, Petroleum Crude, Petrol were only kept within the purview of the definition of "Goods" as defined under Section 2(d) of the Act of 1956.

The cumulative effect of the aforementioned facts is that the Act of 1956 has its effect and operation for the purchase or sale of goods in the course of interstate trade and commerce but to the extent of the goods being prescribed under the definition of the "Goods" under Section 8(3)(b) of the CST Act.

Interestingly, the Commercial Taxes Department raised dispute on the issuance of the C form for the interstate transaction and the registered dealer was denied to issue C form on the contention taken by the Commercial Taxes Department that after rolling out of GST Act, C form cannot be issued and deprived the assesseees from availing concessional tax benefit. The said dispute persisted across the Nation and the registered dealers situated in various States of the Country approached respective High Courts for the adjudication of the case. The authors have also been counsels for contending the matters before Hon'ble Rajasthan High Court, Jodhpur and Hon'ble Chhattisgarh High Court, Bilaspur. As a result of the adjudication of the controversy, the Hon'ble High Courts and Hon'ble Supreme Court held, vide its various judgments, that even after the rolling out of the GST, C form is to be issued for interstate purchases of the goods which are being used in the manufacture and processing of goods, re sale, mining, telecommunication and electricity/ power generation. It was also held by the Hon'ble Court that it shall not impact that the goods being manufactured are covered under the definition of the "Goods" as defined under the GST Act. Hence in view of the judgements rendered in the case of Caparo power, Hindustan Zinc Ltd, Shree Raipur Cement plant it was held that despite of the introduction of the GST Act, the CST Act continued to remain in operation in respect of the purchase and sale of goods i.e High Speed Diesel, Air turbine fuel, petroleum crude, petrol, natural gas and Human consumption liquor as they have been specifically kept out of the ambit of GST Act vide Section 9 of GST Act and Section 5 of IGST Act.

### **Proposed Amendment to The Act of 1956 Vide Finance Bill, 2021**

The Hon'ble Finance Minister, Smt. Nirmala Sitharaman, has presented the Union Budget 2021 in the Parliament on 1.02.2021. It was the first-ever digital Union Budget as Government has decided not to print the budget documents. The Finance Bill 2021 tabled in the Parliament has proposed 80 plus amendments to the different Statues which includes the Act of 1956.

Now, by virtue of the Clause 141 of the Finance Bill, it has been proposed to substitute the existing Section 8(3)(b) of the CST Act 1956. The proposed amendment states that the benefit of the concessional tax rate shall be granted to the registered dealer in the event that the goods of the class or classes specified in the certificate of registration of the registered dealer purchasing the goods as being intended for re-sale by him or subject to any rules made by the Central Government in this behalf, for use by him in the manufacture or processing for sale of goods specified under clause (d) of section 2.

### **Devastating Impact of the proposed amendment in Section 8(3)(B) of The Cst Act**

After the passing of the Finance Bill, 2021, as and when done, the effect of the amended Section 8(3) (b) shall be that exclusively the six goods mentioned in Section 2(d) of the CST can be interstate bought against C form at concessional tax rate, if the said six goods are used in the manufacturing or processing of the goods as mentioned in Section 2(d) or resale of the said goods. Further, the industries as that of mining, telecommunication and electricity generation have been clearly ousted from availing benefit of the reduced tax rate on procuring interstate goods against C form.

On the analysis of the proposed amendment it is clearly derived that the manufacturers (registered dealers) apart from the manufacturer (registered dealers) of the High Speed Diesel, Aviation Turbine Fuel, Liquor for Human Consumption, Natural Gas, Petroleum Crude, Petrol have been ousted and also, the three industries viz. mining, telecommunication and power generation have been overthrown for availing the concessional tax rate.

The said proposed amendment can be tagged as "devastating cometry" since the proposed amendment will have farfetched and humongous impact of the escalated tax as the ousted manufacturers and industries will be exposed to high taxability, in the event the goods are purchased interstate. After the proposed amendment being passed, the excluded registered dealers will be exposed to the tax rate as is prescribed under the VAT Act of the buying State. This proposed amendment will have impact to the par as that of the comet striking the Earth and impacting Dinosaurs in a devastating way.

Also, the exposure to the excluded manufacturers and industries will ultimately burden the end consumer since the imposition of the high tax rate will lead to escalation of the cost of the final product and thus, will be ultimately borne by the Consumers or public at large.

Moresoever, the Act of 1956 does not stipulate any mechanism by virtue of which the registered dealer paying the tax imposed by the Act of 1956 can obtain any Tax Credit. Also, while introducing the proposed amendment to Sec 8(3)(b), there has been no amendment under the IGST Act so as to bring within the ousted registered dealers and the three, aforementioned, industries under the IGST Act so that parity is maintained.

### **The Situation will worsen in view of the ongoing pandemic**

It is not out blue to mention here that the impact of COVID-19 has been destructive across the Globe and Nation, be it human life or financial stream. The pandemic COVID-19 has not only caused serious threat to the health of the people but has also cast its shadow on the economic and financial growth of the country as well as the entire world. Due to lockdown imposed by the Government of India in exercise of powers under the Disaster Management Act, 2005, there can be no denial that most of the businesses including private sector as well as public sector has been adversely affected. For several months, large number of industries were not allowed to function and exemptions were granted only to few of the industries to run and carry on its activities, which were found essential and necessary in the fact situation. Although, gradually, due to Unlock- 1, 2 and 3, the industries and other business activities have been restored and the economy of the country is on track

although at a slow pace. As a result, the Industries of the Nation are suffering grievously and facing the financial distress. The devastating impact is persisting even if the COVID-19 is controlled and the industries are reviving financially so to stand back and run optimally. If, in such persisting and tough times, the tax levy is escalated then it may lead to more destruction to the industry as well as to the public largesse. The industries like that of mining, telecommunication and power generation form to be factor of the economy of the nation and bringing in the unsympathetic and negative law against the lifestream industries will certainly pull down the economical and financial growth of the nation.

### **Litmus test on the constitutional principles**

Also, on the test run and exposure of the proposed amendment to the Constitution of India, it is very much derived that the proposed amendment appears to be in contravention to the Article 14, 16 and 19(1)(g) of the Constitution of India as the proposed amendment clearly makes illegal distinction of the manufacturers, other than of the six goods, and three industries from that of other industries without any basis and intelligible differentia. The authors are of the view that the proposed amendment infuses discrimination amongst the industries as there is no laid foundation for debarring the manufacturers and industries as that of mining, telecommunication and power generation industry from procuring goods interstate against C form and similarly, there has been no foundation to grant benefit under the law to the industries manufacturing High Speed Diesel, Aviation Turbine Fuel, Liquor for Human Consumption, Natural Gas, Petroleum Crude, Petrol.

The proposed amendment is also in contravention to the Article 301 to 304 of the Constitution of India. By virtue of the proposed amendment, interstate purchase of goods for purpose of manufacturing, mining, telecommunication and power generation will certainly be taxed at much higher rate and shall be deprived from the benefit of the concessional tax rate without any justification and reasonability. Also, for the higher tax, there is no availability of credit mechanism. Such restriction, as will be imposed by the amendment, is unreasonable and also, does not involve any element of public interest as making the manufacturing and mining, telecom and power generation industries suffer to extremes can never lead to any sort of public interest.

### **Conclusion**

If the proposed amendment is brought forward and it takes the shape of an enactment, the industries across will be directly affected as their right to avail the benefit of concessional rate of tax while interstate purchase of the goods will stand seized. Also, the Government of India has still not brought the six goods i.e High Speed Diesel, Aviation Turbine Fuel, Liquor for Human Consumption, Natural Gas, Petroleum Crude and Petrol under the ambit of GST as no such recommendation by the GST council has been proposed as of now. Hence in view of the proposed amendment in Section 8(3)(b) of the CST Act, 1956 all the manufactures of goods other than the six goods along with mining, telecom and power generation industries shall be adversely affected as they would be debarred from purchasing these six goods at concessional tax rate and will always be exposed to much higher tax rate, resultantly the cost of the final product will get much higher in the hands of

the public. Thus the impact is not just confined to the industry but will percolate to the public at large.

In the end, the author, being tax practicing Advocate, express the intent and purport to pen down this article so that the “devastating Cometary” analysis of the proposed amendment for withdrawing C form facility and debarring the industries from the concessional tax benefit can be brought forward. In these circumstances, it would be very much effective if the Finance/ Tax Ministry is given appropriate representations such as to not implement the proposed amendment and continue with the existing provisions of the law. In the event, the amendment to the Act of 1956 is made, it may be assailed before the Hon’ble High Courts for considering the vires of the amended provision at the touchstone of the Constitution of India, whenever passed, so that proper justice may prevail.

### **References**

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