GOA, DAMAN & DIU

SALES TAX MANUAL

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Foreword

In a democratic country of ours, we are committed to progressive reforms for the welfare of millions of our country-men. Taxation has, therefore, constituted basic structure of our development oriented economy as it is only through various taxes that we are able to raise our revenue through effective tax structure for realising welfare measures to make the living of our people more comfortable and meaningful.

Sales tax is one of the taxes in our country which is concerned with the day to day needs of the common man. We introduced Sales Tax in this territory as far back as 1964 as it forms the main source of revenue for the Government. We have a sizeable number of registered dealers in this territory from whom Sales Tax is collected to the extent of over Rs: 35 crores. It is however, found that many of the provisions of the Act are not adequately known to the common dealer who need to be properly informed and educated on various procedures in simple language so that they may not be misled.

The effort of Shri V. B. Prabhu Verlekar - a leading Chartered Accountant in bringing out the Goa, Daman and Diu Sales Tax Manual, a publication first of its kind, to educate the members of trade and commerce on various provisions of the Act and their obligations to the Tax Enforcing Authority together with the details of penal provisions to meet the ends of justice in case of defaulters, is commendable.

This publication, in fact fulfils the long felt professional need of the business communities and also the sales tax practitioners.

I congratulate Shri. Verlekar on his successful writing of this publication and look forward to Shri. Verlekar to bring out many more similar publications on various Tax Laws for the benefit of the common man of this territory.

Panaji-Goa.

Pratapsingh Rane
CHIEF MINISTER
GOA, DAMAN & DIU
Foreword

I have great pleasure in writing this Foreword to Shri V. B. Prabhu Verlekar's commentary on the Goa, Daman & Diu Sales Tax Laws.

Laws governing indirect taxes in general and sales tax in particular are acquiring increasing complexities and assuming more and more importance in these days. Chartered Accountants also play an increasing role in these fields.

I compliment Shri Verlekar for his efforts in bringing out this volume, which clearly reflects his rich professional experience and academic bent of mind.

I have no doubt that this publication will prove to be an extremely useful guide to all those who have to deal with this branch of law in the Union Territory of Goa, Daman & Diu.

P. A. Nair
PRESIDENT
The Institute of Chartered Accountants of India

New Delhi - 110002
4th October, 1985
Preface

This is the first and the only comprehensive book on Goa, Daman and Diu Sales Tax Laws as amended up to 30th September, 1985 with Act, Rules, Notifications, Court Judgments and other useful information with notes and comments.

The economics of limited circulation due to the smallness of this territory is going to make difficult to make both ends meet. However, this book is written to fill a need of trade and industry to which I owe so much.

Every possible effort has been made by me to make the book handy and a real guide to dealers, consultants and tax administrators. I am confident that this book will prove to be extremely useful.

While writing this book, I have gone through the Sales Tax Laws of most of our other States and I find that the Goa, Daman and Diu Sales Tax Act is comparatively simpler. A dealer with little working knowledge of sales tax laws can himself represent in assessment proceedings. An attempt is therefore made to keep the language and presentation style as simple as possible, so that anyone who has anything to do with the sales tax can deal with it himself directly.

It would not have been possible for me to bring out this book in spite of my best wishes and efforts without the active help of Shri. S. V. S. Usgaonkar, retired Sales Tax Officer, who has guided me through out and has gone through the manuscript with meticulous care. The Officials of the Sales Tax Department
have cooperated with us in providing timely information on various amendments to make this book up to date. Shri. Ashok, Ramesh and Shashi Pai Raikar of Ashok Printing Press, Vasco-da-Gama enthusiastically toiled for six months to do an excellent printing job. My entire office staff ungrudgingly bore with my irritating demands in different matters connected with the publication of this book.

I am really indebted and grateful to all of them.

This book has been blessed with the forewords by Shri. Pratapsingh Rane, Hon'ble Chief Minister of Goa, Daman and Diu and by Shri. P. A. Nair, President of the Institute of Chartered Accountants of India, New Delhi.

Lastly I am thankful to my wife Rasika and children Ashish and Tanya for allowing me to carry on with the work of this book after returning home, on the condition that I should acknowledge their names, as all authors do. This is their only contribution!

Dear readers, I have done my best. I would appreciate your comments and suggestions, so that the same could be incorporated in future editions.


V. B. Prabhu Verlekar
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[ No. 4 of 1964 ]

[ As Amended up to date ]

An Act to impose a tax on the sale of goods in Goa, Daman and Diu and to provide for matters connected therewith.

Be it enacted by the Legislative Assembly of Goa, Daman and Diu in the Fifteenth Year of the Republic of India, as follows :-

Short title, extent and commencement.

1. (1) This Act may be called the Goa, Daman and Diu Sales Tax Act, 1964.

(2) It extends to the whole of the Union Territory of Goa, Daman and Diu.

(3) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different areas or different goods.

COMMENTS

The Goa, Daman and Diu Sales Tax Act, 1964, is applicable to the whole of Union Territory of Goa, Daman and Diu and has come into force with effect from 1-10-1964 vide Notification dated 23-9-1964. However, the liability to pay tax under section 4 of the Act, commenced with effect from 1-11-1964 vide another Notification dated 23-9-1964.

Though this territory was liberated on 19-12-1961, Legislation to tax sale of goods within Goa, Daman and Diu did not come until 1-10-1964. The Central Sales Tax Act, 1956 was made applicable to this territory, since 21-1-1963 vide The Goa, Daman and Diu (Laws) Regulation Act, 1962 (No. 12 of 1962) by Order dt. 21-1-1963 but charging section 6 of the Act (liability to tax) came into force w.e.f. 1-11-1964 under Notification F No. 8(6)-ST/62-II dt. 28-9-1964.
THE GOA, DAMAN AND DIU SALES TAX ACT, 1964

This Act is amended eleven times to suit the needs of the changing times and interpretation of laws as under:

Act No. 5 of 1965
Act No. 6 of 1970
Act No. 7 of 1972
Act No. 10 of 1972 (Validation)
Act No. 12 of 1973
Act No. 6 of 1974
Act No. 12 of 1975
Act No. 5 of 1978
Act No. 7 of 1980
Act No. 3 of 1985
Act No. 7 of 1985.

Definitions.

2. In this Act, unless the context otherwise requires,—

1 (a) 'agriculture' with all its grammatical variations and cognate expressions includes horticulture, the raising of crops, grass, or garden produce, and also grazing; but does not include dairy farming, poultry farming, stock breeding, or the mere cutting of wood or grass or gathering of fruit;

2 (aa) 'agriculturist' means a person who cultivates land personally;

3 (aaa) 'business' includes—

(i) any trade, commerce or manufacture or any adventure or concern in the nature of trade, commerce or manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with a motive to make profit and whether or not any profit accrues from such trade, commerce, manufacture or concern; and

1 Inserted by Act 12 of 1973 w. e. f. 1-11-1974.
(ii) any transaction of buying, selling or supplying plant, machinery, raw-materials, processing materials, packing materials, empties, consumable stores, waste products, or such other goods, or waste or scrap of any of them, which is ancillary or incidental to or resulting from such trade, commerce, manufacture, adventure, or concern;

But does not include any activity in the nature of mere service or profession;

1 (aaaaa) "Commissioner" means the Commissioner of Sales Tax appointed under sub-section (1) of section 3;

2 (aaaaaa) ‘to cultivate’ with all its grammatical variations and cognate expressions means to carry on any agricultural operation;

3 (aaaaaaa) ‘to cultivate personally’ means to cultivate on one’s own account—

(i) by one’s own labour, or
(ii) by the labour of one’s own family, or
(iii) by servants on wages payable in cash or kind (but not in crop share) or by hired labour under one’s personal supervision or the personal supervision of any member of one’s family;

Explanation I — A widow or a minor or a person who is subject to any physical or mental disability or is a serving member of the armed forces of the Union, shall be deemed to cultivate land personally if it is cultivated by her or his servants or by hired labour;

Explanation II — In the case of a Hindu undivided family, land shall be deemed to be cultivated personally, if it is cultivated by any member of such family;

1 Renumbered for clause (a), by Act 12 of 1973, w. e. f. 1-11-1974.
1 (b) 'dealer' means any person who sells, supplies or distributes goods directly or otherwise, in Goa, Daman and Diu in connection with his business and includes the Government of India, or of any State, or of any Union Territory, or a casual trader.

Provided that an agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally, shall not be deemed to be a dealer within the meaning of this clause:

Explanation 1 — A Hindu undivided family, a firm and any other association of persons whether incorporated or not will be deemed to be a person for the purpose of this definition.

Explanation 2 — A co-operative society or a club or any association of persons, which sells goods to its members is a dealer;

Explanation 3 — A factor, a broker, a commission agent, a delcredere agent, an auctioneer or any other mercantile agent, by whatever name called, and whether of the same description as hereinbefore mentioned or not, 2 [who sells goods in connection with the business and who has authority to sell goods] belonging to a principal, is a dealer;

Explanation 4 — The manager or an agent in Goa, Daman and Diu of a dealer who resides outside Goa, Daman and Diu 3 [but sells goods in connection with the business] in Goa, Daman and Diu shall, in respect of such business, be deemed to be a dealer;

Explanation 5 — "Casual trader" means a dealer who has,

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1 Only main clause (b) reading as 'dealer' means any person who carries on the business of selling goods in Goa, Daman and Diu and includes the Government of India or of any State, or of any Union Territory is substituted, by Act 12 of 1973, w. e. f. 1-11-1974.

2 Substituted by Act 12 of 1973, for: 'who carries on the business of selling goods and who has in the customary course of business authority to sell goods', w. e. f. 1-11-1974.


whether as principal, agent, or in any other capacity, occasional transactions involving the selling, supply or distribution of goods in the Union territory of Goa, Daman and Diu;

(c) "Goa, Daman and Diu" means the Union Territory of Goa, Daman and Diu;

1(d) 'goods' means all kinds of movable property (not being newspapers, actionable claims, stocks, shares, securities or money) and all materials, articles and commodities, including standing trees and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale;

(c) "Government" means Government of Goa, Daman and Diu;

2(ee) "importer" means a dealer who brings any goods into Goa, Daman and Diu, or to whom any goods are despatched from any place outside Goa, Daman and Diu;

(f) "manufacture" with all its grammatical variations and cognate expressions means any process of producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods [but does not include such manufactures or manufacturing processes as may be prescribed];

(g) "Official Gazette" means the Goa, Daman and Diu Gazette;

(h) "prescribed" means prescribed by rules made under this Act;

(i) "raw materials" means goods which go into and form part of the finished product and include materials which are consumed in the process of manufacture;

(j) "registered" means registered under this Act;

1 Substituted by Act No. 12 of 1973, w. e. f. 1-11-1974.
2 Inserted by Act No. 6 of 1970 w. e. f. 1-7-1970.
(k) "sale" with its grammatical variations and cognate expressions, means any transfer of property in goods by one person to another for cash or deferred payment or other valuable consideration, and includes a transfer of goods on hire purchase or other system of payment by instalments, but does not include a mortgage or hypothecation of or a charge or pledge on goods;

Explanation. — A sale or purchase of goods shall be deemed to take place inside Goa, Daman and Diu if the goods are within that territory —

(i) in the case of specific or ascertained goods, at the time the contract of sale is made; and

(ii) in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer, whether assent of the other party is prior or subsequent to such appropriation;

1 (I) 'sale-price' means the amount paid or payable to a dealer as consideration for the sale of any goods, excluding any sum allowed as cash discount or trade discount according to the practice normally prevailing in the trade, but inclusive of any sum charged for anything done by the dealer in respect of the goods at the time of or before the delivery thereof, other than the cost of freight or delivery, the cost of installation, or the cost of insurance for transit, in cases where such cost is separately charged;

2 (II) 'Tribunal' means a Tribunal constituted under section 3A;

3 (m) 'turnover' means the aggregate of the sale-prices received and

1 Substituted by Act No. 12 of 1973, w. e. f. 1-11-1974
2 Inserted by Act No. 6 of 1970, w. e. f. 1-7-1970.
3 Substituted by Act No. 12 of 1973 w. e. f. 1-11-1974 for: "turnover used in relation to any period means the aggregate of the sale-prices or parts of sale-prices receivable, or if a dealer so elects, actually received, by the dealer during such period after deducting the amounts, if any, refunded by the dealer in respect of any goods returned by the purchaser within such period as may be prescribed".

6
DEFINITIONS

receivable by a dealer in respect of any sale of goods made during a given period after deducting therefrom—

(i) the amount arrived at by applying the following formula:

\[
\text{Rate of tax} \times \frac{\text{aggregate of sale-prices}}{100 + \text{rate of tax}}
\]

Provided that no deduction on the basis of above formula shall be made if the amount by way of tax collected by a registered dealer in accordance with the provisions of the Act, has been otherwise deducted from the aggregate of sale-prices.

Explanation. — Where the turnover of a dealer is taxable at different rates the aforesaid formula shall be applied separately in respect of each part of the turnover liable to a different rate of tax.

(ii) the amount of sale-prices of all goods returned to the dealer, within the prescribed period, by the purchasers of such goods:

Provided that satisfactory evidence of such return of goods and of refund or adjustment in accounts of the sale-price thereof is produced before the assessing authority;

(n) 'year' means a financial year, but in relation to any particular registered dealer for the purposes of the Act (except for the purposes specified under sections 4, 5, 11, 12, 13 and 14) means the year with reference to which, according to the option declared by such dealer within the prescribed period, the accounts of that dealer are ordinarily maintained in his books;

Provided that where an option has once been exercised by a registered dealer, he shall not, except with the consent of the Commissioner and upon such conditions as the Commissioner may determine, make any variation in respect thereof:

1 Substituted by Act No. 12 of 1973, w. e. f. 1-11-1974.
Business [ 2(aaa) ]

The definition of the term "business" is an inclusive definition and has done away with the profit motive. Almost every commercial activity is covered under this definition irrespective of profit motive. Actual accrual of gain or profit is not necessary.

It will also include any transaction in connection with or incidental or ancillary to such trade, commerce, adventure or concern. If it could be proved that any transaction has such connection, it will fall under the definition of "business". It was therefore held to include: sales of advertisement materials, scrap, empty containers, unserviceable machines, unserviceable materials, sale of car purchased for office use except when they have been made taxable at first point of sale and proof of payment of tax at first point is adduced to the satisfaction of Assessing Authority.

An agriculturist who sells agricultural produce grown on land cultivated by him personally, will not be liable to tax on sale of such agricultural produce. However, the business of selling trees grown spontaneously in the land of a dealer will be regarded as sales made by him in the course of his business and only such turnover of an agriculturist, considered for determining liability to pay tax.

Dealer [ 2(b) ]

"Dealer" refers to a person who sells goods in Goa, Daman and Diu, directly or indirectly in representative capacity, in connection with his business, and not otherwise.

The word "person" includes:

i) Central, State or any Union Territory Government.

ii) Hindu undivided families, partnership firms, co-operative societies, private and public limited companies, statutory corporations and bodies, clubs, association of persons, etc.

iii) A casual trader.

It is not necessary that the dealer should be an owner of goods sold. A manager, factor, broker, commission agent, auctioneer, agent, etc. who is in possession of goods and who has authority to sell the goods in the ordinary course of business on behalf of his principal is a "dealer".
A person who occasionally undertakes transactions for supply of goods in Union Territory of Goa, Daman and Diu, falls under the category of a "dealer".

Every seller cannot be treated as a dealer. In order to bring him within the definition, it is additionally necessary to show that he carries on those activities in the course of his business. But the person selling goods cannot always be a dealer.

"A bhatkar" (landlord) not being an agriculturist, who sells exclusively agricultural produce grown on his land, is a dealer.

A dealer carrying on regular business in some commodities and also has occasional transaction in other goods though as a casual trader, nevertheless is a regular dealer and not a casual trader. Hawkers are as a rule casual traders, but those having fixed place of business carrying on regular activity of selling goods, are regular dealers.

Dealers selling goods on weekly market days, at fairs in different villages on religious occasions etc, are casual traders. Bidders of cashew distilleries selling cashew juice or liquor are casual traders.

To make the point clear, following examples will be useful :-

(a) Medical Practitioner: He is not a dealer in so far as the sales of "mixtures" or loose patent medicines supplied to his patients upon his own prescriptions, since he is considered to be one who is rendering professional services rather than making sale of goods [C. S. T. v. Dr. Sukh Dev. (1969) 23 STC 385 S. C. and Kaviraj Pt. Durga Dutta Sharma v. State of Punjab (1974) 33, S. T. C. 479 (Punj)]. However, he will be a dealer in so far as the general sales of patent medicines to persons other than his patients [Pearl & Co. v. State of Bombay (1960) 11 S. T. C. (T. D.) 48 (Bom. Trib) and Shri Damma Pedda Yellappa v. State of Andhra Pradesh, (1960) 11 STC 691 (Andhra)].

(b) Printer: The Printer supplying printed articles on paper supplied by his customers is not a dealer because the paper all along remain the property of the customer and mere impression on papers cannot be goods. [(Rajasthan Printing Works Ltd. vs. Board of Revenue (1952) 3 STC 62)]. However, the printer supplying papers along with the impression to the customer is a dealer [S. R. P. Works & Ruby Press v. State of A. P. (1972) 30 STC 195 (AP)].
(c) Where the petitioners supplied publicity posters on their designs approved by the customers and issued two bills, one for the sale of paper and the other for charges for work, labour and skill, it was held that it was not necessary for claiming exemptions for the second bill to show that paper was first purchased by the customer from them and thereafter delivered to them under a separate and distinct contract for the purpose of designing and printing. Even if the entire contract was entered into at one and the same time, it could still be shown by the petitioner that it consisted of a sale of goods only so far as the supply of paper was concerned and the rest of it was a contract for work and labour [Kwick Stationery Mart v. State of Maharashtra, (1963) 14 STC 282 (Bom.) and D. Ramswamy v. State of Madras (1954) 5 STC 250 (Mad)].

(d) Transport Company selling unserviceable vehicles is not a dealer [A. P. State Road Transport Corp. v. CTO (1971) 27 STC 42 (A. P.)], since the corporation was primarily constituted to provide efficient system of road transport and therefore, it could not be held to be carrying on the business of selling old and scrapped material.

In order that an incidental or ancillary transaction or activity may amount to business, it should be in connection with the trade or commerce or adventure carried on by the assessee and should itself partake of the nature of trade, commerce, adventure, manufacture or concern.

Photographer taking photographs, doing photographic works and supplying photo prints to customers amounts to contract for work and labour, and therefore no sales tax is payable by photographer. [Asstt. S. T. O. v. B. C. Kame (1977) 39 STC 237 (S. C.)].

Applying above analogy, a radiologist, tailor, ornament maker, photographer, artist, sculptor, cannot be considered as dealers.

(e) Newspaper Publisher - The assessee carrying on business of publishing and sale of newspapers are held to be dealers in respect of sales of unsold newspapers and waste [State of Tamil Nadu v. Indian Express (Madurai) Ltd. (1974) 34 STC 231 (Mad)].

Goods [2 (d)]

In determining the taxability or otherwise of a transaction, the definition of "goods" as given in the Sales Tax Act prevails and not the definition as given in the Indian Sale of Goods Act. [Husenali Adamji & Co. v. CST (1956) 7 STC 88 (Nag)].
According to section 2(7) of the Indian Sale of Goods Act, 1930, the term "goods" means every kind of movable property other than actionable claims and money and includes stocks and shares, growing crops, grass and things attached to and forming part of the land which are agreed to be severed before sale or under the contract of sale. Under section 2(d) of the Goa, Daman and Diu Sales Tax Act, "goods" include all materials, articles, commodities and all other kind of movable property but does not include newspapers, actionable claims, stocks, shares, securities or money. It also includes standing trees and things attached to or forming part of the land, which are agreed to be severed before sale or under the contract of sale.

Animals and birds in captivity are movable property and are therefore goods. Postcards, inland letters, aerogramme letters, court-fee and revenue stamps, are not goods because they are in token of service rendered by Government. Lottery tickets are not goods, they are considered to be actionable claims. [Abraham v. Asstt. S. T. O. (1960) 11 STC 291 (Ker)].

Manufacture [2 (f)]

In order to constitute manufacture, all that is necessary is that the materials should be changed or modified, so as to make it capable of being sold in marketable form. Thus component parts of an article assembled together, resulting into a finished product, is different from the component part and amounts to manufacture.

Merely selling the goods purchased under a different label or trade name may not amount to manufacture even if such label or trade name is known in the market as a commercial commodity different from that by which the goods purchased are known in the market [CST v. Dunken Coffee Mfg. Co. (1975) 35 STC 493 (Bom.)].

The activity of roasting or grinding of coffee seeds or chicory seeds would amount to processing but such process is not included in the definition of manufacture under Rule 3A.

Bottling is a process of packing and hence it does not amount to manufacture, but any process of blending is processing the goods and hence amounts to manufacture except blending of different varieties of tea as per Rule 3A.

Grinding various ingredients of spices to convert them into powder as "garam masala" is a manufacturing process.

The word "manufacture" should normally imply a change from the process of manufacture, a new article commercially known by a different name.
must emerge. But in the operation of processing goods, the article may be known by the same name, as for instance, roasted coffee, blended tea, roasted groundnuts, roasting of grams into futanas etc., nevertheless it is a manufacture.

**Processes not included in "manufacture"**

Under Rule 3A of the Goa, Daman and Diu Sales Tax Rules 1964, the term "manufacture" shall not include the following manufactures and manufacturing processes, namely:

i) The decorticating, colouring, scenting, boiling, cutting, crushing or roasting of betelnuts.

ii) The blending of different varieties of teas.

iii) The rolling of biddies by hand.

iv) Preparing of patravalis and dromas from leaves.

v) Cutting of plaintain leaves into sizes.

vi) The threading of iron pipes including galvanized pipes.

vii) The roasting or grinding of coffee and/or chicori seeds.

viii) The preparing from betel leaves of pan, tambul, vida or patti, and

ix) The roasting of grams into futanas.

Thus, the dealers engaged in the aforesaid activities of manufacture or manufacturing processes, are themselves not manufacturers and, therefore, the limit of taxable quantum i.e. the limit of turnover exceeding which the dealer’s liability accrues, is not Rs. 20,000/- or Rs. 10,000/-, as the case may be, but it will be Rs. 30,000/-, provided he is not an importer of goods.

**Raw Material [2 (i)]**

Raw materials are component parts of the finished article and also materials consumed in the process of manufacture. Thus the mine-owner while extracting mineral ore from his mine uses explosives for digging the mine and therefore explosives are raw materials.

**Sale [2 (k)]**

In order to constitute "sale", there must be concurrence of the four elements, viz. i) two different parties competent to contract ii) an agreement between the parties for the purpose of transferring title to goods (mutual assent) iii) transfer should be for money consideration, and iv) that as a
result of the transaction, property in the goods must actually pass. If any one of these elements is absent, it will not constitute "sale" under the Sales Tax Act.

Consideration for "sale" should be cash or deferred payment or other valuable consideration. As per Supreme Court decision in the case of State of Madras v. Messrs. Gannon Dunkerley (Madras) Ltd. (1958) 9 STC 353-(S.C.), sale in State Sales Tax Laws is to be given the same meaning as it has been assigned to it under the Indian Sale of Goods Act, 1930. According to this Act, consideration for sale should be money i.e. it should be cash or deferred payment only. So if the consideration for the transfer was not money but other valuable consideration, it may then be exchange or barter but not a sale and hence not liable to tax under the Act. But since the definition includes 'other valuable consideration' it must mean any monetary payment other than in the nature of cash or deferred payment, it may be by way of cheque, draft, insurance, promissory note etc. [State of Andhra Pradesh v. Hotel Shri Laxmi Bhavan (1974) 33 STC 444].

In order to attract sales tax, sale should take place inside Goa, Daman and Diu in respect of goods which are within the territory. Sales, in the course of export or import or in the course of inter-state trade and commerce or sales outside the Union Territory of Goa, Daman and Diu are not liable to tax under this Act. Sales in the course of export or import are totally exempt from tax under the Constitution of India but inter-state sales are liable to central sales tax under Central Sales Tax Act, 1956.

When prices are controlled by Government orders, there is liberty to enter into a contract of sale and hence it constitutes a sale of goods [Visnu Agencies (Pvt.) Ltd. v. Commercial Tax Officer and others and Danya Laxhmi Rice Mills v. Commercial Tax Officer of Eluru (1978) 42 STC 31 (S. C.)].

A transaction which is in fact a genuine works contract, where there is no contract for sale of goods used in such a contract of work, does not render a person liable to pay sales tax thereon.

The primary difference between a contract for work or service or skill and a contract for sale of goods is that in the former, there is in the person performing work or rendering service no property in the things produced as a whole, not notwithstanding that a part or even the whole of material used by him may have been his property. In the case of a contract of sale, the thing produced as a whole has individual existence as the sole property of the party who produced it, sometime before delivery and the property therein passes only under the contract relating thereto to the other party for a price. Mere transfer of property in goods, used in the performance of a contract is not sufficient,
to constitute a sale, there must be an agreement express or implied relating to the sale of goods and completion of the agreement by passing of title in the very goods contracted to be sold. [Hindustan Aeronautes Ltd. v. State of Orissa (S.C.) (1970) 26 STC 38 (S.C.)]. Diesel engine fitted to customers vehicle is a sale. [The Govt. of Madras v. Simpson & Co. Ltd. (1968) 21 STC 21 (S.C.)]. The supply of bus bodies after fitting them to the chassis supplied by customers amounts to sale of goods for which the assessee would be liable to pay sales tax. [T. V. Sundram Iyengar & Sons v. State of Madras. (1975) 35 STC 24 (S.C.)].

Food supplied to employees and a fixed sum deducted from their wages — The supply of food by the owners of hotels, residential houses and eating houses to their employees is an advantage amounting to an amenity and incident of contract of service entered into between the parties. Such supply of food cannot be held to be in pursuance of a contract of sale. [State of Andhra Pradesh v. Hotel Sri. Lakshmi Bhavan, (1974) 33 STC 444 (AP)].

Hotelier serving guests — There is no sale when food and drink are supplied to guests residing in the hotel. The supply of meals is essentially in the nature of service provided to them and cannot be identified as a transaction of sale. The sales tax authorities are not entitled to split up the transaction into two parts one of service and the other of sale of foodstuffs. [The State of Himachal Pradesh v. Associated Hotels of India Ltd. (1972) 29 STC 474 (S.C.)].

The hire-purchase agreement has two elements: (i) the element of bailment and (ii) the element of sale, in the sense that it contemplates an eventual sale. The element of sale fructifies when the option is exercised by the intending purchaser after the fulfillment of the terms of the agreement. When all the terms of the agreement are satisfied and the option is exercised a sale takes place of the goods which till then had been hired. When this sale takes place, it will be liable to sales tax under the Act and the sales price will be the sale price which the article may fetch in the market when the taxable event took place. [Marikar (Motors) Ltd. Trivandrum v. S. T. O. Trivandrum (1967) 19 STC 18 (S.C.)].

The term ‘appropriation’ in the explanation (ii) is used in the sense that the goods are identified by the agreement of the parties, as the goods about which they are contracting, so that the contract can never apply to any other goods. It connotes the setting apart of goods as specific goods to be delivered under the contract of sale and not an appropriation linked with passing of property. [Indian Wood Products Co. Ltd. v. Sales Tax Officer Ward. No. 3 New Delhi (1968) 21 STC 437].
Sale - Price [2(1)]

Sales tax is levied on the "sale price" received or receivable by a dealer as consideration for the sale of goods. It excludes cash discount or trade discount allowed by the dealer; cost of freight or delivery; cost of installation; cost of transit insurance; in case they are separately charged in the bill. However, if dealer charges any sum for anything done by him in respect of goods at the time of or before delivery of goods, it will form part of sale price. In a "F.O.R Destination Contract", cost of freight, delivery and packing charges are not to be excluded from sale price. [C.S.T. v. Anwar Khan Mehboob & Co. (1956) 7 STC 197 (Nag)].

Excise duty paid by customer constitutes a part of the sale price itself and cannot therefore be excluded from it. The dues charged for weighing, packing or testing of goods at the time or before the delivery of goods are to be included in the taxable turnover since they represent the sums charged for anything done by the dealer in respect of the goods sold.

Turnover [2(m)]

In order to calculate turnover of a dealer for the purpose of ascertaining tax liability, deduction should be made for sales tax amount included in the sale price. Further deduction could be claimed for goods returned to the dealer by the purchaser within a period of six months from the date of purchase under Rule 2 A.

Where no tax collection is shown separately in the bill or cash memo, the prima facie assumption is that the turnover is inclusive of tax and the claim for such tax deduction should be made by applying the following formula:

\[
\frac{\text{Rate of tax}}{100} \times \frac{\text{aggregate of sale prices}}{\text{Rate of tax}}
\]

For example, if the dealer charges composite amount of Rs. 1,120 for supply of goods chargeable at 12%, deduction for tax will be made as under:

\[
\frac{12 \times 1120}{100 + 12} = \frac{13,440}{112} = 120
\]

Thus sale price will be Rs. 1,000/- and Rs. 120/- will be sales tax.

Since provision for deduction of sales tax from the turnover has been made under this definition, the sales tax so charged will not be included in the gross turnover for calculating the tax. If however, sales tax is already collected separately, there is no question of further deduction.
In the context of the Entry No. 39 of the First Schedule and the Entry No. 45 of the Second Schedule, the meaning of the expression "total turnover of sales" and "the turnover of sales" should be restricted to the turnover of sales of cooked food and non-alcoholic drinks served in the hotels, restaurants, eating houses etc. and not the turnover referred to in the definition given under section 2(m) of the Act, since in interpreting the phrase turnover of sales, it would be useful to consider how Entry No. 45 (which has been bifurcated in Entry No. 39 of the First Schedule and the existing Entry No. 45 of the Second Schedule) stood prior to its amendment, because that would indicate the context in which the phrase 'turnover of sales' is to be interpreted. In view of this, one cannot lose sight of the fact that in the said Entry No. 45 as stood earlier, the wording used is cooked food and non-alcoholic drinks served at one time at a price not more than thirty rupees per person, for consumption at or outside any eating house, restaurant, hotel etc. which clearly show that the 'total turnover of sales' or 'the turnover of sales' are only such sales which would not have been exempted from the payment of tax or subjected to tax at 12% but for such limit of turnover of sales in the hotel or restaurant and not the total turnover of sales to which the definition given in section 2(m) refers. Similar interpretation was made by the Bombay High Court in the case of Commissioner of Sales Tax v. Punjab National Hotel (1985) 53 STC 68.

To illustrate: A dealer runs an hotel and also deals in say motor spare parts. For the purpose of either Entry No. 39 of First Schedule or entry No. 45 of the Second Schedule, the limit of the turnover of Rs. 5 lakhs shall be the aggregate of sales prices of cooked food and non-alcoholic drinks served in the hotel only.

Year [2(n)]

Normally the year under Sales Tax Act commences on 1st April and ends on 31st March. However, option is available to a dealer to adopt any accounting year other than financial year like samvat year, co-operative year, calendar year etc. But, having exercised option once, he cannot subsequently change the accounting year without consent of the Commissioner, who can impose such conditions as he may deem fit, in the interest of revenue.

However, for the purposes specified under sections 4 and 5 (fixing the liability to pay tax), section 11 (compulsory registration), section 12 (voluntary registration), section 13 (provisional registration) and section 14 (special registration), the year commences on 1st April and ends on 31st March.

In Entry No. 68 of Second Schedule, the period of exemption for 15 years granted to Small Scale Industries is 15 calendar years reckoned from the date of the first sale made by the industrial undertaking on or after
the date of validity of registration certificate and registration as small scale industry with the Directorate of Industries.

For Example, in case a small scale industry is registered as such with Directorate of Industries say on 11-2-1984, and the first sale took place say on 13-2-1984, then the period of exemption will start on 13-2-1984 and end on 12-2-1999.

**Taxing Authorities.**

13. (1) For carrying out the purposes of this Act, the Government shall appoint an officer to be called the Commissioner of Sales Tax.

(2) To assist the Commissioner in the execution of his functions under this Act, the Government shall appoint Assistant Commissioner of Sales Tax and such number of,—

(a) Sales Tax Officers
(b) Assistant Sales Tax Officers
(c) Sales Tax Inspectors, and
(d) other officers and persons, and give them such designations—

as the Government thinks necessary.

(3) The Government may, subject to such restrictions and conditions as it may impose, by notification in the Official Gazette, delegate to the Commissioner the powers (not being powers relating to the appointments of Assistant Commissioner of Sales Tax and Sales Tax Officers) conferred on the Government by sub-section (2).

(4) The Commissioner and all officers and persons appointed under sub-section (2) shall exercise such powers as may be conferred and perform such duties as may be required, by or under this Act.

(5) The Commissioner and all officers and persons appointed

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1 Substituted by Act No. 6 of 1974 w. e. f. 1-11-1974.