UNIT 16 LOGISTICS AND SCM ENVIRONMENT

Objectives

- discuss the commercial and legal issues concerning logistics;
- describe Sales laws;
- illustrate Warehouse operations; and
- render Documentation procedures such as Insurance, Octroi and Sales tax.

Structure

16.1 INTRODUCTION

We have learnt in detail that logistics forms a key to SCM, and happens to be the most important component in the entire channel. There are however, certain environmental realities that govern the smooth running of this SCM system and it's imperative for every manager dealing with it to learn and know about it.

Legal issues concerning the movement, storage and shipment of materials, insurance coverage, payment of taxes, Octroi and sales taxes are important part of documentation process. In the Indian context it is also referred as consignor note *(Challan)*, delivery note, (delivery challan) etc.

Legal issues play a very important role in SCM, though the best one can do is to avoid legal disputes at all costs, based on the adage, one ounce of prevention is worth a pound of cure. Though, supply management professionals deal with two major aspects of law; the law of agency and law of contracts, yet, they seldom get involved in litigation, provided they are fortunate.

With this as a backdrop let us see an illustration, which will generally explain the entire process of SCM in which a supply manager is likely to get involved in law suits, legal hassles and how can he overcome or avoid it.

16.2 AN ILLUSTRATION

Let us take a company 'A', manufacturing soaps somewhere in outskirts of Mangalore. Whatever raw material it requires comes from areas around it, and its

main constituent Caustic (sodium hydro-oxide or potassium hydro-oxide) is being supplied by a chemical plant located in Kerala. The fat constituent is also available from a nearby unit. The main supplier of caustic is, say company 'X'. So 'X' is the main supplier of the constituents to 'A' and is hence governed by some legal issues and laws of the SCM. 'A' can file a suit of litigation on 'X' for supplying lower graded materials, for delay in dispatch of material, or unable to supply the goods after initial payment has been done and the contract signed. The companies can also be in litigation with each other, in case there are disputes or complaints related to quality of the finished product from the consumers en-mass. At the same time any consumer can sue a company in the court of law or in consumer forum for necessary demurrages accrued on usage of a particular soap, on health related matters, or say in case if the quantity specified on the pack don't match the actual weight, or even the advertisement theme and slogans don't match the product quality. Actually, there are number of places where a company could falter and be charged by law. Companies generally avoid this aspect, and go in for an out of court settlement with such consumers.

Similarly, there are other areas where legal aspects come into play like delayed payments or non-payments. Well, this is better sorted out during the signing of initial contracts and supplier selection processes. Next comes the transportation aspects, wherein insurance has to be catered to for the consignment against theft, loss, damages, fire etc. Sales tax for the goods and Octroi for utilizing the services and infrastructure, differs from state to state. There are also various weighbridges where the vehicles are checked for the load being carried, and in case of discrepancies the companies are charged penalty for non-payment of taxes/less payment/fraudulent. This illustration has purposely been included, just to make you understand, where and how we can go wrong and how best can we sort out these differences, either by law or through negotiation. We will see all this and many such related aspects as we go through the unit.

The first step for all this is to prevent litigation, and how can we achieve this? Let us see.

16.3 PREVENTING LITIGATION

The basic relationship between the supply manager and the buyer is like an agent for his/her firm, and legally this is defined and governed by the law of agency.[1] A purchase represent formation of a purchase contract between the buyer and the seller, and any dispute resulting from this the dispute may enter the realm of dispute resolution governed by the laws of contract, and can be categorized as under:

- Negotiation
- Mediation
- Arbitration
- Litigation

The basic responsibility of a firm is to ensure smooth procurement based on business requirements and judgments, rather than on legal considerations. Getting into litigation not only alienates a good supplier but leaves a scar on the buyer firm too. As a matter of fact litigation is generally the last order of the day, since most of the outcome of court cases are uncertain and delays the complete process.

The very purpose of this unit is to give you a brief insight into legal concepts, as they relate to supply chain professionals across the board in just a nutshell. You should acquire in-depth knowledge of the commercial laws, as applicable both in India and internationally.

Now let us see the four categories of dispute resolution as depicted in table 16.1: Dispute Resulution.

Category	Remarks
Negotiation	Disputes can best be resolved through negotiation and compromise to avoid further confrontation, costs, complication, stress and damaging relationships
Mediation	This is the next step to negotiation, and mediation involves introducing a third party to resolve the issue. The mediator is expected to listen, sympathize, coax, cajole and persuade. He/she could also render suggestion or encourage suggested solutions. A mediator could do anything other than deciding, which is actually arbitration the next step to mediation.
Arbitration	In this process the output of the dispute goes to the third party an arbitrator. Arbitration vests the decision-making authority with the arbitrator wherein he would hear the testimony and study the evidences from both sides, and then take a decision based on facts and law.
Litigation	This is the last stage of the process where the disputants have already lost the battle. In fact, wastages tend to be maximized in this stage relating to time, effort, money, stress and damages to relationship. Knowing and understanding fundamental legal principles better, could help in avoiding such a stage.

Let us now see how the development of commercial laws took place across the world with special reference to USA.

16.4 SALES LAW: AN OVERVIEW

Most of these are academic in nature and you, as a supply chain manager should know them thoroughly. But, in practicality one must understand these aspects before venturing to SCM.

Historically, USA developed its own body of status and a common law for all states to deal with the problem of dispute resolution and prevail uniformity. The transactions for the sale (and leasing) of goods are governed mainly by sales laws of each state. Every state, with the exception of Louisiana, has adopted, Article Two of the Uniform Commercial Code (UCC) as the main body of law regulating transactions in goods. Goods are defined as all things movable and identified to the contract of the sale. It does not include secured transactions, leases, money exchanged as the price, or real property (land and property permanently attached to a piece of land). To be identified to the contract a good must exist and one of the objects will be exchanged. Transactions between merchants and consumers and those solely between merchants are regulated by Part Two. All transactions that are for more that $500 must be in writing. Article 2 regulates every phase of a transaction for the sale of goods and provides remedies for problems that may arise. It provides for implied warranties of merchantability and fitness. There is also a duty of good faith in the UCC that is applicable to all the sections. If a contract contains unconscionable provisions a court may discard the contract or the provisions.

Leases were traditionally governed by Article 2 or Article 9 (secured transactions) of the UCC. This caused confusion and disparate application of the law to leases. In 1987 Article 2A was added to the UCC to regulate leases for goods. It has been adopted, or is being considered for adoption, in a number of states.

[1] WCSCM by TMH, Relationship management, chapter VI, pp. 555-557

Federal law has a limited impact on transactions for the sale of goods. The Bankruptcy Code regulates claims arising from sales transactions in bankruptcy cases. The Magnuson-Moss Warranty, Act regulates explicit and implied warranties. The Consumer Credit Protection Act provides protection to consumers entering into leases.

In 1988, the United States joined the United Nations Convention on Contracts for the International Sale of Goods.

16.5 ENVIRONMENTAL REALITIES: IMPLICATIONS ON SUPPLY CHAIN

The significant impact that members of the supply chain have on organizations' environmental performance, either through their actions or the products they supply, is increasingly becoming recognized throughout business. Examples of organizations, which have faced legal action, financial loss, and damage to corporate image as a result of their supply chain partners' activities, are numerous, and as environmental protection climbs the social and political agenda so the risks will increase.

In many cases action has been driven in response to specific events or pressure from stakeholders (and commonly both) with the full value to the business of this action only being realised subsequently. To exert some influence over supply chain partners' approaches to environmental issues, control the associated risks, and realise further potential benefits, companies have developed proactive environmental supply chain management (ESCM) programmes to complement existing supply chain and environmental management activity.

However, it is not enough to blindly trust that general improvements in the environmental performance of supply chain partners will in turn improve the organization's environmental performance. Furthermore, the methodology employed so far is diverse in design and application, and the focus of initiatives is sometimes open to question. The ESCM process must be structured, and concentrate on delivering benefit for the initiating organization, while a commonly demonstrated by-product of this activity is the strengthening of supply chain partners, and the relationships with them.

16.5.1 Extent of Involvement

The extent of engagement in ESCM activity varies greatly across commercial organizations and industrial sectors. It would be fair to say that many organizations have demonstrated good ESCM practice within individual projects without recognizing it as such, while others have realised environmental benefits through general SCM initiatives.

Business in the Environment (1999) have attempted to gauge environmental engagement among the top 100 quoted companies in the UK since 1996 (and including the mid 250 quoted UK companies since 1998), across a range of environmental management parameters. Supplier focused initiatives represent one of the parameters surveyed. The results of this survey have consistently shown supplier focused initiatives to be the weakest parameter, that is, the least adopted (see table 16.2).

Table 16.2: Environmental Incentives

Percentage of Respondent Companies Engaging in Supplier Focused Environmental Initiatives

Year of Survey	Group of Companies	Percentage Involvement
1996	FTSE 100	37
1997	FTSE 100	42
1998	FTSE 100*	57
1998	Mid 250**	30

* Response rate, 77%; ** Response rate, 19% (Source: BiE Index Report 1999).

* Adapted from Mackenzie 1999

Given the response rate to this survey, the true percentage involvement is probably lower than that stated, assuming that companies who have not responded are likely to be less environmentally engaged on the whole.

Organizations can be categorized into five types when relating to ESCM involvement, namely:

- The Blissfully Ignorant
- Going Through the Motions
- Control Management
- State of the Art
- Ground Breakers

State of the art and groundbreaking organizations are few in number with the blissfully ignorant accounting for the majority. However, larger organizations are beginning to respond to the need for ESCM programmes in increasing numbers and the standard is steadily shifting up the scale.

16.5.2 Trends

Much of the work on ESCM conducted to date has concentrated on the upstream (supply side) relationships. This is as a consequence of a number of factors, namely:

- Influence is commonly greatest from customer to supplier (as opposed to vice versa).
- Environmental problems are best dealt with at source.
- Larger organizations potentially face the greatest risks (particularly in terms of corporate image) but tend to posses the most influence over the supply chain, both upstream and downstream.
- Organizations tend to come under greater scrutiny the closer in the chain they are to the end user.
- Buying power has been seen as a tool for encouraging environmental activity among smaller enterprises by governments.
- There is not as much evidence of organizations initiating dialogue with customers over the environmental probity of their products outside of a focused environmental marketing strategy. Given some of the demands made by buying organizations on their suppliers to demonstrate environmental probity however, a proactive approach could well be advantageous by:
  - Raising company profile.
  - Improving company image.

- Building relationships and possibly dependency.
- Creating new criteria and standards for the sector/competitors.
- Helping the customer to shape ESCM strategy.
- Prompting knowledge exchange.
- Potentially avoiding prescriptive requirements imposed by customers.

The techniques applied in ESCM vary greatly in their sophistication and resource requirement. At the most basic level organizations tend to initiate activity on a reactive basis dealing with a specific issue in response to legislative, financial or moral pressures or crisis.

The first stages of ESCM are typified by environmental surveys and questionnaires of varying sophistication and levels of required detail. While potentially useful for assessment purposes the questionnaire has limitations and requires careful design and evaluation. In the majority of cases questionnaires concentrate almost exclusively on environmental management activity, ignoring actual performance, aspects or impacts.

The use of ISO14001 accreditation as a proxy for environmental probity in supply has become popular due to its international recognition and independent verification. However, the shortcomings of this approach are becoming realised and ESCM systems are being developed to move away from ISO14001 or EMAS as an all-encompassing measure. It is worth noting that this change is only just beginning and some industry sectors (e.g. the motor industry) are still requesting (and starting to request) accreditation to a formal EMS standard.

Audit and independent verification of supply chain partners is commonly applied to substantiate information gathered, albeit that the extent of this activity will be governed by the level of perceived risk, and the availability of resources and competencies. Some organizations have built this process into existing health safety and quality audit processes to reduce resources requirements with varying degrees of success. This approach is highly resource intensive and not always practical or judicious.

Beyond the techniques mentioned above some organizations are beginning to develop partnerships with key suppliers in line with the current supply chain management vogue. The thrust of these partnerships is to improve stability and understanding in the relationship linking to risk reduction and financial performance improvement. Meetings and seminars can prove useful tools for developing the partnership approach and facilitating subsequent action. There is evidence however that the tendency to develop partnership approaches is beginning to revert to more adversarial ones, particularly in the most competitive markets. This could well set the tone for ESCM strategy also.

The most advanced organizations have taken ESCM beyond addressing purely commercial drivers in favour of looking at sustainability issues as embodied through product stewardship, life cycle thinking, and design for the environment. The initiatives of such “ground breaking” organizations encompass social and ethical issues along with the environment, and support clearly defined corporate values relating to these issues.

16.5.3 Future Developments

ESCM has presented difficulties for many organizations with regard to finding a practical and cost effective way of managing out the environmental risks and improving performance. The use of environmental performance indicators for

supplier, service or product evaluation has, arguably, always been present. The selection, and analysis of the indicators which truly reflect performance though, has been lacking and as such has left a hole in any risk assessment process.

The publication ISO14031 (international standard for environmental performance evaluation) does provide a framework that could be applied to the selection of indicators by which to evaluate supplier environmental (and potentially ethical) probity. In view of this, a UK government sponsored ISO 14031-demonstration project is currently under way to assess the feasibility of this approach to ESCM, under the management of 14000 & ONE Solutions Ltd.

The use of performance indicators will provide a more cost effective supplier evaluation tool than has generally been applied, as well as allowing for the measurement of tangible and significant aspects of environmental performance, at a point or over time, by the assessor and the supplier. Indicators will also allow for benchmarking between suppliers and bolster overall company data availability. In addition it is likely that the introduction of environmental performance indicators will encourage wider use and allow for the tailoring of indicator sets as appropriate to the supplier's resources and capabilities, an issue currently overlooked by many ESCM initiatives.

Social and ethical issues are commonly intertwined with environmental issues as demonstrated in sustainability thinking. In view of this there is a growing trend to incorporate ethical and environmental issues together in ESCM activity. Health and safety issues are also being brought in, but recent experiences with introducing quality issues has prompted many companies to resist this.

16.6 WAREHOUSE OPERATIONS

Warehousing is a very important operation of SCM system and without correct understanding of this you as a supply chain manager will often find it difficult to coordinate both ends. Today, under the influence of e-commerce, supply chain collaborations, globalization, quick response and just in time, warehouses today are being asked to[2]

- Execute more, smaller transactions
- Handle and store more items
- Provide more product and service customization
- Offer more value added services
- Process more returns
- Receive and ship more international orders

But, the warehouses today have

- Less time to process an order
- Less margin for error
- Lesser young, skilled, and English speaking personnel
- Less warehouse management system (WMS) capability

A warehouse manager today has to do more with a resource crunch. The environment is changing rapidly and is almost difficult to keep pace with the changing scenario. With this as a backdrop let us see in nutshell the various warehouse fundamentals.

[2] Warehousing Operations in Supply Chain Strategy by Edward H Frazelle pp 224

16.6.1 Warehouse Fundamentals

The missions of warehouses are:

- Component warehouses: hold raw materials at or near the manufacturing unit or the consumer markets.
- Work in process: hold partially manufactured assemblies at various points or near the assembly lines.
- Finished goods warehouses: hold goods to balance the time variation between the production schedule and demand.
- Distribution warehouses: a centrally located point, which holds goods from one firm or many firms but for a common customer.
- Fulfillment centers: receive, pick and deliver small orders for individual consumers.
- Local warehouses: to shorten the transportation distances and create rapid response to customer demands.

16.6.2 Functions in Warehouses

Let us see this with a block diagram, figure 16.1.

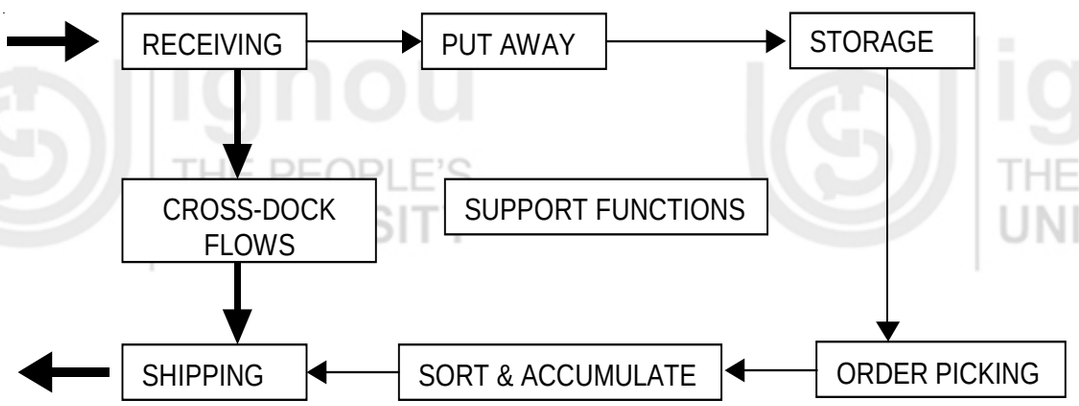

Figure 16.1: Ware housing Activities (Adapted from Frazelle EH (2004)

In a nutshell the various functions are:

- Receiving: a collection of activities involving receipt of materials, quality assurance and disbursing of materials to appropriate places.
- Prepackaging: to break bulk and pack for single unit delivery in merchandisable quantities with other parts to form assortments.
- Put away: for placing the merchandise in storage.
- Storage: physical containment of merchandise.
- Order picking: process of removing items from storage to meet specific demand.
- Packaging and pricing: this is done when it's required, just before sale.
- Sortation and accumulation: this is carried out when the order is more than one item and accumulation is not done as the picks are made.
- Packing and shipping: the final stage before shipment of orders, which include checking for completeness, containerization, documentation, weighing, accumulating orders for outbound carrier, and loading of trucks.

16.7 WAREHOUSE JURISDICTION

The dictionary meaning of the word jurisdiction is 'the area over which the legal authority of a court or other institution extends'. Be it warehouse or any immovable property they are governed by a set of taxable laws governed by the individual state and differs from one country to the other. At times the countries get into a joint tie/ league with each other in order to facilitate easy import and export activities and warehouse activities.

These are once again very academic in nature, and as a supply manager you will have to be in the know of these aspects in order to avoid legal hassles at a later time. Some of these are as listed below.

India and Netherlands Article 5

Permanent Establishment

1) For the purposes of this Convention, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2) The term "permanent establishment" includes especially:

   a) A place of management;

   b) A branch;

   c) An office;

   d) A factory;

   e) A workshop;

   f) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources;

   g) A warehouse in relation to a person providing storage facilities for others;

   h) A premises used as a sales outlet;

   i) An installation or structure used for the exploration of natural resources provided that the activities continue for more than 183 days.

3) A building site or construction, installation or assembly project constitutes a permanent establishment only where such site or project continues for a period of more than six months.

4) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include:

   a) The use of facilities solely for the purpose of storage or display of goods or merchandise belonging to the enterprise;

   b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage or display;

   c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

   d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise or of collecting information, for the enterprise;

   e) The maintenance of a fixed place of business solely for the purpose of advertising, for the supply of information, for scientific research, or for other activities which have a preparatory or auxiliary character, for the enterprise;

f) The maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5) Notwithstanding the provisions of paragraphs 1 and 2, where a person - other than an agent of an independent status to whom paragraph 6 applies - is acting in one of the States on behalf of an enterprise of the other State, that enterprise shall be deemed to have a permanent establishment in the first-mentioned State, if -

a) He has and habitually exercises in that State an authority to conclude contracts on behalf of the enterprise, unless his activities are limited to the purchase of goods or merchandise for the enterprise; or

b) He has no such authority, but habitually maintains in the first-mentioned State a stock of goods or merchandise from which he regularly delivers goods or merchandise on behalf of the enterprise.

6) An enterprise of one of the States shall not be deemed to have a permanent establishment in the other State merely because it carries on business in that other State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business. However, when the activities of such an agent are devoted wholly or almost wholly on behalf of that enterprise, he will not be considered an agent of an independent status within the meaning of this paragraph if it is shown that the transactions between the agent and the enterprise were not made under at arm's-length conditions.

7) The fact that a company which is a resident of one of the States controls or is controlled by a company which is a resident of the other State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

With South Africa & India

Article 5: Permanent establishment

1) For the purposes of this agreement, the term "permanent establishment" means a fixed place of business through which the business of an enterprise is wholly or partly carried on.

2) The term "permanent establishment" includes especially, -

a) A place of management;

b) A branch;

c) An office;

d) A factory;

e) A workshop;

f) A mine, an oil or gas well, a quarry or any other place of extraction of natural resources, including an installation or structure used for the exploration or exploitation of natural resources; and

g) A warehouse, in relation to a person providing storage facilities for others.

3) A building site, a construction, installation or assembly project or any supervisory activity in connection with such site or project constitutes a permanent establishment only if it lasts more than six months.

4) Notwithstanding the preceding provisions of this Article, the term "permanent establishment" shall be deemed not to include, -

a) The use of facilities solely for the purpose of storage, display or delivery of goods or merchandise belonging to the enterprise;

b) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of storage, display or delivery;

c) The maintenance of a stock of goods or merchandise belonging to the enterprise solely for the purpose of processing by another enterprise;

d) The maintenance of a fixed place of business solely for the purpose of purchasing goods or merchandise, or for collecting information, for the enterprise;

e) The maintenance of a fixed place of business solely for the purposes of carrying on, for the enterprise, any other activity of a preparatory or auxiliary character, and

f) The maintenance of a fixed place of business solely for any combination of activities mentioned in sub-paragraphs (a) to (e), provided that the overall activity of the fixed place of business resulting from this combination is of a preparatory or auxiliary character.

5) Notwithstanding the provisions of paragraphs 1 and 2, where a person other than an agent of an independent status to whom paragraph 6 applies is acting on behalf of an enterprise and has, and habitually exercises, in a Contracting State an authority to conclude contracts in the name of the enterprise, that enterprise shall be deemed to have a permanent establishment in that State in respect of any activities which that person undertakes for the enterprise, unless the activities of such person are limited to those mentioned in paragraph 4 which, if exercised through a fixed place of business, would not make this fixed place of business a permanent establishment under the provisions of that paragraph.

6) An enterprise shall not be deemed to have a permanent establishment in a Contracting State merely because it carries on business in that State through a broker, general commission agent or any other agent of an independent status, provided that such persons are acting in the ordinary course of their business.

7) The fact that a company which is a resident of a Contracting State controls or is controlled by a company which is a resident of the other Contracting State, or which carries on business in that other State (whether through a permanent establishment or otherwise), shall not of itself constitute either company a permanent establishment of the other.

Article 6: Income from immovable property

1) Income derived by a resident of a Contracting State from immovable property, including income from agriculture or forestry, situated in the other Contracting State may be taxed in that other State.

2) The term “immovable property” shall have the meaning which it has under the law of the Contracting State in which the property in question is situated. The term shall in any case include property accessory to immovable property, livestock and equipment used in agriculture and forestry, rights to which the provisions of the general law respecting landed property apply, usufruct of immovable property and rights to variable or fixed payments as consideration for the working of, or the right to work, mineral deposits, sources and other natural resources. Ships, boats and aircraft shall not be regarded as immovable property.

3) The provisions of paragraphs 1 shall apply to income derived from the direct use, letting or use in any other form of immovable property.

4) The provisions of paragraphs 1 and 3 shall also apply to the income from immovable property of an enterprise and to income from immovable property used for the performance of independent personal services.

Article 7: Business profits

1) The profits of an enterprise of a Contracting State shall be taxable only in that State unless the enterprise carries on business in the other Contracting State through a permanent establishment situated therein. If the enterprise carries on business as aforesaid, the profits of the enterprise may be taxed in the other State but only so much of them as is attributable to that permanent establishment.

2) Subject to the provisions of paragraph 3, where an enterprise of a Contracting State carries on business in the other Contracting State through a permanent establishment situated therein, there shall in each Contracting State be attributed to that permanent establishment the profits which it might be expected to make if it were a distinct and separate enterprise engaged in the same or similar activities under the same or similar conditions and dealing wholly independently with the enterprise of which it is a permanent establishment.

3) In determining the profits of a permanent establishment, there shall be allowed as deductions expenses which are incurred for the purposes of the permanent establishment, including executive and general administrative expenses so incurred, whether in the Contracting State in which the permanent establishment is situated or elsewhere, in accordance with and subject to the limitations prescribed in the taxation laws in that Contracting State.

4) As it has been customary in a Contracting State to determine the profits to be attributed to a permanent establishment on the basis of an apportionment of the total profits of the enterprise to its various parts, nothing in paragraph 2 shall preclude that Contracting State from determining the profits to be taxed by such an apportionment as may be customary. The method of apportionment adopted shall, however, be such that the result shall be in accordance with the principles contained in this article.

5) No profits shall be attributed to a permanent establishment by reason of the mere purchase by that permanent establishment of goods or merchandise for the enterprise.

6) For the purposes of the preceding paragraphs, the profits to be attributed to the permanent establishment shall be determined by the same method year by year unless there is good and sufficient reason to the contrary.

7) Where profits include items of income, which are dealt with separately in other Articles of this Agreement, then the provisions of those Articles shall not be affected by the provisions of this Article.

Article 8: Shipping and air transport

1) Profits of an enterprise of a Contracting State from the operation of ships or aircraft in international traffic shall be taxable only in that State.

2) For the purposes of this Article, profits from the operation of ships aircraft in international traffic shall include:

   a) Profits derived from the rental on a bare boat basis of ships or aircraft used in international traffic,

   b) Profits derived from the use or rental of containers, if such profits are incidental to the profits to which the provisions of paragraph 1 apply.

3) For the purposes of this Article, interest on funds connected with the operation of ships or aircraft in international traffic shall be regarded as profits derived from the operation of ships or aircraft and the provisions of Article 11 shall not apply in relation to such interest.

4) The provisions of paragraph 1 shall also apply to profits from the participation in a pool, a joint business or an international operating agency.

Article 9: Associated enterprises

1) Where, -

   a) An enterprise of a Contracting State participates directly or indirectly in the management, control or capital of an enterprise of the other Contracting State; or

   b) The same persons participate directly or indirectly in the management, control or capital of an enterprise of a Contracting State and an enterprise of the other Contracting State, and in either case conditions are made or imposed between the two enterprises in their commercial or financial relations which differ from those which would be made between independent enterprises, then any profits which would, but for those conditions, have accrued to one of the enterprises, but, by reason of those conditions, have not so accrued, may be included in the profits of that enterprise and taxed accordingly.

2) Where a Contracting State includes in the profits of an enterprise of that State – and taxes accordingly – profits on which an enterprise of the other Contracting State has been charged to tax in that other State and the profits so included are profits which would have accrued to the enterprise of the first-mentioned State if the conditions made between the two enterprises had been those which would have been made between independent enterprises, then that other State shall make an appropriate adjustment to the amount of the tax charged therein on those profits if that other State considers the adjustment justified. In determining such adjustment, due regard shall be had to the other provisions of this Agreement and the competent authorities of the Contracting States shall if necessary consult each other.

16.8 WAGES, EARNINGS AND HOURS OF WORK

A discussion on daily wagers is very important since such activities are very common in SCM and warehouse handling. As a responsible supply chain manager you must be aware of the rules and regulations in handling the wages of workers and keep yourself updated on this count regularly. This will help you in negotiating any kind of litigations at a later date.

The Minimum Wages Act, 1948 is both a protective and beneficial legislation guaranteeing the payment of minimum rates of wages to the workers in the various Scheduled Employments scattered over different parts of the country. Although the Act does not provide for registration of establishments, yet it is applicable to employments where the workers are particularly vulnerable to exploitation, due to ignorance, poverty, illiteracy and lack of bargaining power. The workers in bidi industry are scattered over large areas and do not have collective bargaining power. Therefore, they are in need of protection. The Act empowers both the Central and the State Governments to fix and revise the minimum rates of wages in the Scheduled Employments falling under their respective jurisdictions. The bidi making establishments, fall under the Scheduled Employment “Tobacco”, (including Bidi Making) manufacturing in the State Sphere. Therefore, the responsibility for implementation of the provisions of the Minimum Wages Act, 1948 rests with the State Governments. They notify the minimum wages for bidi workers within their jurisdiction.

In Madhya Pradesh, the rates of minimum wages for Bidi Rollers are fixed on a piece rate basis (number of bidis rolled), the traditional measure being per thousand bidis. However, fixation and revision of minimum wages is of no consequence unless these are actually paid to them.The problems of the bidi workers continue to be a

cause of concern for the labor administrators and enforcement authorities as the workers often complain of the unfair treatment at the hands of manufacturers, contractors and agents in matters of rejection of finished products, issue of inadequate quantity and poor quality of raw material (tendu leaves, tobacco, thread, etc.) as well as the violation of the provisions of the Bidi and Cigar Workers (Conditions of Employment) Act, 1966, the Minimum Wages Act, 1948 and the Equal Remuneration Act, 1976.The Regional Labor Ministers Conference held during 1994-95 had endorsed the recommendations of the Ministry of Labor for the Constitution of a Tripartite Standardization and District Level Vigilance Committee and had made the following recommendations in respect of bidi workers:-

- The minimum quantity of raw material to be issued should be 800 grams of tendu leaf of standard average quality and 300 grams of tobacco for 1000 bidis of standard size.
- The wage loss due to rejection should not be more than 2.5 percent instead of 5 percent.
- Alternatively, the rejected bidis should be returned to workers after deducting proportionate cost of tendu leaf and tobacco issued to them at the rates to be fixed by the State Governments from time to time alongwith wages.
- The State Governments as well as Welfare Commissioners have been requested to give wide publicity to the statutory provisions of the Bidi and Cigar Workers (Conditions of Employment) Act, 1966, pertaining to rejection of not more than 2.5 percent bidis of sub-standard quality and ensure that employer/Contractor supplies tendu leaf of the optimum quality to the workers. *

Prescribed rates of Minimum Wages

'Tobacco (including bidi making) Manufactories' is a Scheduled Employment originally included in Part-I of the Schedule appended to the Act. The minimum wages applicable to the bidi workers at the time of the Study were notified by the State Government of Madhya Pradesh as provided under Section 3(1)(b) and Section 5 of the Minimum Wages Act, 1948.prior to 1953, Minimum Wages were fixed at Re. 0.62 to Rs. 1.37 per thousand bidis. These wages were revised to Rs. 2.00-2.25 for the first time in 1966.Since then they have been revised several times. The latest wage revision, which was in force at the time of the study, had become effective from 1st October, 2000 vide notification No. 1/9/A/5/97/32759-33288 dated 12-10-2000.The minimum rates of wages for various categories of employees in Tobacco (including Bidi Making) Manufactories appearing in Part I of the Schedule were linked to the Consumer Price Index Numbers (Industrial Workers). The revised rates of minimum wages applicable during the period of study are given below: -

Table 16.3: Prescribed Minimum Rates of Wages for Piece Rated Employees

	Class of Employees	Minimum Wages (in Rs.)
1)	Bidi Rolling	36.17(per thousand bidis)
2)	Wrapping/Packing/Labeling	
a)	***Pasting of Slips on Bidi bundles***	
i)	Labeling, Puda Making etc.	Rs. 19.65 per thousand bundles
ii)	Labeling on both sides of bundles	Rs. 22.00 per thousand bundles
b)	***Wrapping and Labeling***	
i)	Thin paper labeling	Rs. 15.85 per thousand bundles
ii)	Thin paper sticking	Rs. 11.26 per thousand bundles
iii)	Labeling	Rs.4.76 per thousand bundles
iv)	Puda Making	Rs.5.01 per thousand bundles

***Source*: Annual Report 1999-2000, Ministry of Labour, Government of India, p.93**

c)	***Wrapping on 1000 bundle (each bundle of 25 bidis)***	
i)	Wrapping of Horizontal & Vertical Strips	Rs. 68.35 per lakh bidis
ii)	Wrapping/Pasting of paper	Rs. 81.05 per lakh bidis
iii)	Wrapping and Pasting of Trade Mark	Rs. 81.05 per lakh bidis

In Bidi making industry all the time-rated (monthly/daily paid) workers other than the above-mentioned piece rated categories have been classified into three broad categories as Skilled, Semi-skilled and Unskilled workers. The occupations', which comprise these three skill categories, are as under (Table 16.4):

Table 16.4 : Workers in BidiMaking Industry.

1. Skilled	Driver (Heavy Vehicle), Accountant, Munim, Cashier, Store Keeper, Head Clerk, Godown keeper
2. Semi-Skilled	Sorter/Checker, Bhattiwala, Driver (Light Vehicle), Typist, Billman, Clerk
3. Unskilled	Loader, Un-loader, Puda Maker and Chowkidar.

Prescribed rates of Minimum Wages (including V.D.A.) for time rated employees were as below:

Sl. No.	Skill Category	Monthly Wages (Rs.)	Daily Wages (Rs.)
1.	Skilled	1995.44	76.75
2.	Semi-Skilled	1828.30	70.32
3.	Unskilled.	1662.80	63.95

N.B.- The wages includes the variable dearness allowance.

These wages have been linked to 1206 points of the Labour Bureau Series of All-India Consumer Price Index Numbers for Industrial Workers (Base 1960=100).The Variable Dearness Allowance (VDA) is payable at the rate of 1 paisa per point for an increase of 930 points over 1206 points upto 30.09.2001.

The revised rates of minimum wages are subject to the following conditions:-

- The variable dearness allowances shall be calculated on 1st October of every year on the basis of the average indices for twelve months i.e., July to June of the preceding year.
- The revised rates of daily wages are to be worked out by dividing the monthly rates by 26 days.
- Wherever the prevailing wages are higher, the revised wages will not have adverse effect on any employee in any case and the higher rates shall continue to be paid.
- An employee shall be entitled to a guaranteed minimum wage of Rs.178.00 in case the employer fails to supply sufficient quantity of raw material for rolling 5600 bidis per week.
- The guaranteed wage will include the actual number of bidis made by an employee during a week from the raw material supplied to him.
- An employee shall not be entitled to the guaranteed wages if he fails to make full use of the raw material supplied to him while the raw material so supplied is sufficient for rolling 5600 bidis per week.

In case an employer fails to supply raw material due to certain conditions like fire, distress, epidemic etc., which are not under his control, an employee shall not be entitled to the guaranteed wages.

16.9 DOCUMENTATION: INSURANCE & SALES TAX

Everything under the sun can be insured today, thanks to the various insurance companies that have reached out to the environment in a big way. The age-old adage, **'a stitch in time saves nine'** is very important for us to follow in letter and spirit. Why should we insure? Very simple indeed, because a material/product that is insured comes under the purview of Insurance act of 1938 (we will see later) and that enables the consignor to claim the cost of the product in the event of any damage to the product, which may occur, either during storage or transit. Every supply chain manager should therefore understand the nuances of insurance, the risk covered and the benefits accrued of insurance, unless you believe in, 'penny wise and pound-foolish'. Risk factor has enhanced tremendously with the turn of the century and therefore remains covered under the protected wings of insurance and achieve the maximum benefit that is available to you and your company. Let us see them as we progress through the unit.

The Insurance Act, 1938 had provided for setting up of the Controller of Insurance to act as a strong and powerful supervisory and regulatory authority for insurance. Post nationalization, the role of Controller of Insurance diminished considerably in significance since the Government owned the insurance companies.

With the opening up of the insurance industry to the private sector, the need for a strong, independent and autonomous Insurance Regulatory Authority was felt. As the enacting of legislation would have taken time, the then Government constituted through a Government resolution an Interim Insurance Regulatory Authority pending the enactment of a comprehensive legislation.

The Insurance Regulatory and Development Authority Act, 1999 is an act to provide for the establishment of an Authority to protect the interests of holders of insurance policies, to regulate, promote and ensure orderly growth of the insurance industry and for matters connected therewith or incidental thereto and further to amend the Insurance Act, 1938, the Life Insurance Corporation Act, 1956 and the General insurance Business (Nationalization) Act, 1972 to end the monopoly of the Life Insurance Corporation of India (for life insurance business) and General Insurance Corporation and its subsidiaries (for general insurance business).

The act extends to the whole of India and will come into force on such date as the Central Government may, by notification in the Official Gazette specify. Different dates may be appointed for different provisions of this Act.

The Act has defined certain terms, some of the most important ones are as follows: -

Appointed day means the date on which the Authority is established under the act.

Authority means the established under this Act.

Interim Insurance Regulatory Authority means the Insurance Regulatory Authority set up by the Central Government through Resolution No. 17(2)/ 94-lns-V dated the 23rd January, 1996.

Words and expressions used and not defined in this Act but defined in the Insurance Act, 1938 or the Life Insurance Corporation Act, 1956 or the General Insurance Business (Nationalization) Act, 1972 shall have the meanings respectively assigned to them in those Acts.

Insurance Regulatory Authority

Establishment and incorporation of Authority

With effect from such date as the Central Government may, by notification, appoint, the Insurance Regulatory and Develop is to be constituted. The Authority shall be a

body corporate, having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property, and to contract and can be sue or be sued in its own name. The head office of the Authority shall be at such place as the Central Government may decide from time to time and it may establish offices at other places in India.

Composition of Authority

The Authority shall consist of the following members, namely

a) A Chairperson;

b) not more than five whole-time members;

c) not more than four part-time members, to be appointed by the Central Government from amongst persons of ability, integrity and standing who have knowledge or experience in life insurance, general insurance, actuarial science, finance, economics, law, accountancy, administration or any other discipline which would, in the opinion of the Central Government, be useful to the Authority:

The Central Government while appointing the Chairperson and the whole-time members must ensure that at least one person each is a person having knowledge or experience in life insurance, general insurance or actuarial science respectively.

Tenure of office of Chairperson and other members The Chairperson and every other whole-time member shall hold office for a term of five years from the date on which he enters upon his office and shall be eligible for reappointment.

However, no person shall hold office as such Chairperson after he has attained the age of sixty-five years and no person shall hold office as such whole-time member after he has attained the age of sixty-two years.

A part-time member shall hold office for a term not exceeding five years from the date on which he enters upon his office.

A member may:

a) Relinquish his office by giving in writing to the Central Government notice of not less than three months; or be removed from his office in accordance with the following provisions.

Removal from Office

The Central Government may remove from office any member who: -

a) is, or at any time has been, adjudged as insolvent;

b) has become physically or mentally incapable of acting as a member;

c) has been convicted of any offence which, in the opinion of the Central Government, involves moral turpitude;

d) has acquired such financial or other interest as is likely to affect prejudicially his functions as a member;

e) has so abused his position as to render his continuation in office detrimental to the public interest.

No such member shall be removed under clause (d) or clause (e) unless he has been given a reasonable opportunity of being heard in the matter.

Comprehensive Policy

This insurance policy also known as a Comprehensive policy covers all the liabilities of the insured vehicle under the Motor Insurance Act. No vehicle can be used without insurance cover. Use of the vehicle without insurance cover is a penal offence.

This insurance policy protects the motor vehicle owners from these liabilities:

- Fire, Explosion, Self-Ignition and Lightning.
- Burglary, Housebreaking and Theft.
- Riot, Strike, Malicious and Terrorism Damage.
- Earthquake.
- Flood, Typhoon, Hurricane, Storm, Tempest, Inundation, Cyclone, Hailstorm.
- Accidental External Means.
- Transit by road, rail, inland waterway, lift, elevator or air.
- For motorcycles and commercial vehicles, the risk of Frost Damage is also covered.

From the above coverage, for all classes of vehicles, the risks of riot, strike, malicious and terrorism damage, earthquake, flood and storm can be opted out of with a consequent discount in premium. In addition to these, cover is also available for protection, removal costs and authorization of repairs.

Section II covers the liabilities towards third parties, i.e. liabilities of bodily injuries and property damage.

For commercial vehicles, however, an additional Section III covers the vehicle while it is being used for the purpose of towing disabled vehicles. This section covers third party liabilities that the insured vehicle or the one being towed may incur as a result of an accident. This is provided the towed vehicle is not towed for reward/ remuneration. Further, the insurance company is also not liable for damages to the towed vehicle or any property being conveyed thereby.

Compensation Offered

This insurance policy would provide compensation for the motor vehicle owners from these liabilities unlimited liability towards bodily

- Injury to any third party.
- Unlimited liability towards bodily injury to passengers of the vehicle.
- Liability towards third party property damage, limited to Rs.6,000/- only.
- Liability towards employees of the owner of the insured vehicle while travelling or using it, against bodily injury to the extent required by the Workmen's Compensation Act.

If a motor vehicle is disabled as a result of loss or damage due to the perils mentioned above, the insurance company bears the reasonable cost of protection and removal to the nearest repairer and the cost of redelivery to the owner/insured subject to a maximum limit, in respect of any one accident. The limits for various classes of vehicles are as follows:

- Motor cycles/Scooters: Rs.300
- Private Car & Taxies: Rs.1500
- Other Commercial Vehicles: Rs.2500

Motor Vehicle Insurance Act

This insurance policy is essential for all motor vehicle owners since it protects them from legal liabilities that might arise during their vehicle operation. This insurance policy also known as the Act Only policy covers the act liability of the insured vehicle that forms a compulsory requirement of the Motor Insurance Act. No vehicle can be used without this insurance cover and use of the vehicle without this insurance cover is a penal offence.

Risks Covered

This insurance policy protects the motor vehicle owners from the risks of:

- Fire, Explosion, Self-Ignition and Lightning.
- Burglary, Housebreaking and Theft.
- Riot, Strike, Malicious and Terrorism Damage.
- Earthquake.
- Flood, Typhoon, Hurricane, Storm, Tempest, Inundation, Cyclone, Hailstorm.
- Accidental External Means.
- Transit by road, rail, inland waterway, lift, elevator or air.
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- Motor cycles/Scooters: Rs.300
- Private Car & Taxies: Rs.1500
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16.10 INTRODUCTION TO SALES TAX

Sales tax is a tax on sale of goods. The liability to pay sales tax arises on making sales of goods. In India, the law for levying sales tax is provided in the Central Sales

Tax Act, 1966. This act was passed by the Parliament and applies to the entire country. The main objects of this act are: -[3]

1) To formulate the principles for determining as to when sale or purchase of goods takes place (i) in the course of inter-state trade or commerce or (ii) outside a state or (iii) in the course of import into or export from India.
2) To provide for the levy, collection and distribution of taxes on sales of goods in the course of inter-state trade or commerce.
3) To declare certain goods to be of special importance in interstate trade or commerce.
4) To specify the restrictions and conditions in respect of State laws which impose taxes on the sale or purchase of such goods of special importance.

The CST Act, being a Central Act passed by the Parliament regulates and provides for levy of sales tax on the sale and purchase of goods made in the course of inter-state trade or commerce. The sales tax law of each individual State regulates sales and purchases made within a State, e.g., in the State of Maharashtra, the Bombay Sales Tax Act, 1959 provides for the levy of sales tax on sales made within the State of Maharashtra. Similarly, other States will also have their own sales tax laws for levying sales tax on intra-state sales or purchases of goods. Generally the CST Act does not deal with sales made intra-state. However, in respect of certain declared goods oil seeds, sugar, pulses, crude oil, etc, the CST Act imposes restrictions on the powers of State Governments to levy sales tax even in respect of intra-state sales.

Accordingly, Sales can broadly be classified into 3 categories

- Intra-state sales i.e. sales within the state
- Sales during import and export
- Inter-state sales

The provisions of the CST Act apply only in respect of inter-state sales and not intra-state sales or import or export sales.

Definitions

It is essential to understand the meaning of certain terms used in the CST Act. For the purposes of the Act, certain terms have been defined in the Act itself and the meaning of these terms will be as per the definition only and not as per the ordinary meaning of the term. However, where a particular term has not been defined, it will have the same meaning as ordinarily understood.

Business includes

- Any trade, commerce, 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 out with the motive to make gain or profit and whether or not, any gain or profit accrues from such trade, commerce, manufacture, adventure or concern.
- Any transaction in connection with or incidental or ancillary to such trade, commerce, manufacture, adventure or concern.

Dealer means any person who carries on, whether regularly or otherwise, the business of buying, selling, supplying or distributing goods, directly or indirectly, for cash or for deferred payment or for commission, remuneration or for other valuable consideration and includes: -

- A local authority, body corporate, company, co-operative society or other society, club, firm, Hindu Undivided Family (HUF) or other Association of Persons (AOP) which carries on such business.

[3] Shilpa Pandey in Indian sales tax site downloaded from the website www.salestax.com

- A broker, commission agent or any other mercantile agent, by whatever name called and whether of the same description as herein before mentioned or not, who carries on the business of buying, selling, supplying or distributing goods belonging to any principal, whether disclosed or not. An auctioneer who carries on the business of selling or auctioning goods belonging to any principal, whether disclosed or not and whether offers of the intending purchaser is accepted by him or by the principal or by the nominee of the principal.
- A government, whether or not in the course of business buys, sells or supplies or distributes goods, directly or otherwise, for cash or for deferred payment or for commission, remuneration or other valuable consideration shall except in relation to any sale, supply or distribution of surplus, unserviceable or old stores or materials or waste products or absolute or discarded machinery or parts or accessories thereof is deemed to be a dealer for the purposes of this Act.

Sale means any transfer of any property or goods from one person to another for cash or for deferred payment or for any other valuable consideration and includes the transfer of goods on hire purchase or other system of payment by installments but does not include a mortgage or hypothecation or charge or pledge on goods.

Accordingly, consignments to agents or transfers of goods to branch or other offices do not amount to sale for the purposes of the CST Act. Sale Price means an amount payable to a dealer as consideration for the sale of any good less any sum allowed as cash discount according to the practices normally prevailing in the trade but inclusive of any sum charged for anything done by the dealer in respect of goods at the time of or before the delivery thereof. However, it does not include freight or delivery cost or cost of installation where such cost is separately charged.

Declared Goods means goods declared under section 14 to be of special importance in inter-state trade or commerce. In section 14 there is a list of goods of special importance, which are often called, declared goods. The important ones among them are: -

Cereals

Coal in all forms excluding charcoal

Cotton in un-manufactured form

Cotton fabrics and cotton yarn

Crude oil

Hides and skin

Iron and steel

Jute

Oil seeds

Pulses

Man made fabrics

Sugar

Un-manufactured tobacco

Woven fabrics of wool, etc.

The CST Act has imposed certain restrictions on the powers of state government to impose tax on declared goods inside the state.

Sale or purchase in the course of inter-state trade or commerce

A sale or purchase of goods shall be deemed to take place in the course on inter-state trade or commerce if the sale or purchase occasion's movement of goods from one state to another or is effected by the transfer of documents of title to the goods during their movement from one state to another.

Explanation 1

Where the goods are delivered to a carrier or other bailer for transmission, the movement of goods shall, for the purpose of clause 2 above, be deemed to commence at the time of such delivery and terminate at the time when delivery is taken from such carrier or bailer.

Explanation 2

Where that movement of goods commences and terminates in the same state, it shall not be deemed to be a movement of goods from one state to another by reason merely of the fact that in the course of such movements, goods pass through the territory of any other state.

An Illustration

X of Ambala sells goods to Y of Bangalore in Ambala. Such sale is not an inter-state sale since the goods do not move from one state to another. X of Mumbai sells and dispatches goods to Y of Calcutta. This is inter state sales of goods since goods move from one state to another under the contract of sales. X of Delhi sends goods by railways to Y of Mumbai. Y sells the goods to Z of Mumbai and transfers the document of title (railway receipt) during their movement from Delhi to the state of Maharashtra. This is inter state sales since documents of title are transferred while the goods are being moved from one state to another.

Sale or purchase inside the state

A sale or purchase of goods shall be deemed to take place inside the state if the goods are within the state.

- In case of specific or ascertained goods, at the time the contract of sale is made (Specific or ascertained goods means goods which are identified and agreed upon at the time when contract of (sale is made) and
- In case of unascertained or future goods, at the time of appropriation of contract of sale by the seller or by the buyer, whether the ascent of the other party is prior or subsequent to such appropriation.(eg agreement to buy mangoes which are still growing on the trees at a future date)

Explanation: Where there is a single contract of sale or purchase of goods situated at one or more places the provisions of this subsection shall apply as if there were separate contracts in respect of the goods at each of such places.

A sale or purchase of goods, which is not within the state as per the above provisions, will be treated as taking place outside the state. The purpose of determining whether the sales have taken place within the state or outside the state is very important for levying central sales tax since under the CST Act, tax is leviable only on sales in the course of inter-state trade or commerce.

Inter-state sales involve two or more states. It is necessary to determine the state in which the sale or purchase of goods takes place since that becomes the appropriate state for the purpose of levying and collecting central sales tax.

Sale or purchase of goods in the course of import or export

A sale or purchase of goods shall be deemed to take place in the course of exports of goods out of the territory of India only if:-

1) The sale or purchase results in such exports; or

2) Is effected by the transfer of documents of title after the goods have crossed the customs of India.

A sale or purchase of goods shall be deemed to take place in the course of import of goods into the territory of India only if:-

1) The sale or purchase either results into such imports; or

2) Is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

In other words, location of goods when contract of sales is made is very important for determining where the sale took place.

Types of excise duties

Under the excise laws, the following are the various types of duties, which are levied:

Basic duty: This is the basic duty levied under the Central Excise Act.

Special excise duty: This special duty is levied under special circumstances where the levy of such additional duty is justifiable or found necessary to protect other industries.

Additional Duty in lieu of Sales Tax: It can be charged on all goods by the central government to counter balance exemptions from sales tax granted by various State Governments to the detriment of industries in other States.

Additional Duty on specified items under the Act: If the Tariff Commission set up by law recommends that in order to protect the interests of industry, the Central Government may levy additional duties at the rate recommended on specified goods. The notification for levy of such duties must be introduced in the Parliament in the next session by way of a bill or in the same session, if the Parliament is in session. If the bill is not passed within six months of introduction in Parliament, the notification ceases to have force but the action already undertaken under the notification remains valid. Such duty will be payable upto the date specified in the notification. Such duty may be cancelled or varied by notification. Such notification must also be placed before Parliament for approval as above.

It is noteworthy that “basic excise duty” is different from “special excise duty” or “additional duty of excise”. Therefore an exemption from basic duty does not mean that exemption from special duty or additional duty has also been granted unless there is an express provision to that effect regarding the exemption in the notification.

Important definitions

Excisable Goods means goods specified in the schedule to the Central Tariff Act, 1985 as being subject to a duty of excise. The basic conditions to be satisfied by any goods to be called excisable goods are:-

- The goods must be movable.
- The goods must be marketable i.e. saleable in the market as such goods. Actual sale of goods in the market is not necessary because excise duty is chargeable on manufacture and not on sales.
- The goods must be specified in the Central Excise Tariff Act

Factory means any premises including the precincts thereof, wherein excisable goods other than salt are manufactured or wherein any manufacturing process connected with the production of these goods is being carried on or is ordinarily carried on.

Manufacture includes any process:

- Incidental or ancillary to the completion of a manufactured product; and

- Which is specified in relation to any goods in the section or Chapter note of the Schedule to the Central Excise Tariff Act, 1985 as amounting to manufacture and the word "manufacturer" shall be construed accordingly and shall include not only a person who employs hired labor in the production of manufacture of excisable goods but also any person who engages in their production and manufacture on his own account such as on contract basis or job work basis.

Once manufacture of goods is complete, excise duty is payable, whether the goods are sold or self-consumed. Excise duty does not depend on the end use of the goods.

Sometimes, a particular process may not actually amount to manufacture but if it has been specified that it amount to manufacture in the Schedule to the CETA, it will be deemed to be manufacture and all the provisions applicable to manufacture will apply to such process. Like repackaging of goods from bulk packing to small packing units does not normally amount to manufacture. However, repackaging from bulk packing to retail pack of **pan masala** will amount to manufacture on which excise duty has to be paid.

Basis of charge and classification

Excise Duty is a tax on manufacture of goods but for the sake of administrative convenience, it is collected only on removable of goods from the factory.

Excise duty may be levied in any of the following manner:-

Ad-valorem Duty: is levied as a percentage of value of the commodity manufactured. For example excise duty could be 10 per cent of the cost of goods. Most of the excise duty is levied on ad-valorem basis.

Slab System: Under this system, duty varies with the change of the value from one slab to another. Thus for the first 1,000 kg, excise duty is Rs500, for next 1,000 kg it is Rs750 and for production in excess, it is Rs1, 000 for every 1,000 kg manufactured.

Specific Duty Under this system, a specific rate of duty is fixed per unit rate or per quantity item of the product manufactured, for example Rs10 per unit manufactured.

Compounded Duty: Under this system, Duty is levied on productive capacity irrespective of the actual production. For example if a unit has installed capacity to manufacture 10,000 ton, excise duty is Rs50, 000, whatever be the number of units produced.

Once the liability to pay excise duty has been established on manufacture of excisable goods, it is necessary to quantify the amount of excise duty payable. For this purpose, it is necessary to find out, under which particular sub-group heading of CETA do the goods in question actually fall. Since the rates of duty for each sub-group are given in CETA the categorization of goods into sub-group headings is known as classification of goods.

The Central Excise Tariff Act, 1985 (CETA) classifies all the goods under 20 sections and 96 chapters. Each of these sections is related to a particular class of goods. Thus section 1 is on animal products, section 2 on vegetable products, so on and so forth. Each section is divided into chapters and each chapter is sub-divided into groups and sub-groups of excisable goods. This tariff schedule is based on the internationally followed product coding system "Harmonised System of Non-clementure" (HSN)

Excise Duty is payable at the rate specified in CETA against the sub-group heading under which the product falls. However, benefit of exemptions or concessions may be claimed under various notifications if the conditions specified in the notification are satisfied.

Valuation

Since most of the excise duty is levied on ad-valorem basis i.e. at a percentage of value of goods, the value of goods must be determined. Section 4 of the Central Excise Act, 1944 provides for the determination of the value of goods for excise purposes. The following are the provisions in this connection:-

- The value of excisable goods is the normal price of goods. The normal price of goods means the price of goods at which the goods are normally sold in the course of wholesale trade. However recent provisions have been introduced in the Central Excise Act wherein certain specified articles are to be taxed on the basis of the maximum retail price and not the wholesale price. Wholesale trade means sales to dealer, industrial consumers, Governments, Local Authorities and other buyers who purchase their requirements in bulk and not on retail basis.
- In determining the wholesale price, care should be taken that the buyer is not a related person and the sale is for delivery at the time and place of removal. If the buyer is a related person and this relationship has affected the price for sale, suitable adjustments are to be made in arriving at the fair price. Similarly, if the sale is not for delivery at the time and place of removal of goods, suitable adjustments for other expenses such as freight and insurance of goods while in transit from the place of removal to the place of sale must be made. Related persons means a person who is so associated with the assessee that they have interest, directly or indirectly in the business of each other and includes a holding company, subsidiary company a relative and a distributor of the assessee and any sub-distributor of such distributor.
- The price is the sole consideration for the sale. If there are other considerations for the sale, suitable adjustments must be done in order to arrive at the assessable value.
- If goods are sold at different wholesale prices to different classes of buyer (not being related persons), each such wholesale price is deemed to be assessable value. Therefore excisable goods can have more than one assessable value.
- If goods are sold in the course of wholesale trade at prices fixed by law or at prices being the maximum chargeable under any law, such fixed price is taken as the assessable value.
- If the assessee arranges that he does not generally sell goods in the course of wholesale trade except to or through a related person, the price at which such related person sells the goods is taken as assessable value.
- Expenses incurred on primary packing i.e. packing for making the product actually saleable in the market are part of the assessable value. However the packing expense on secondary or special packing or on durable packs, which are returnable by the buyer, is not to be included in the value of the goods for the purpose of calculation of excise duty.
- If the normal price of goods is not ascertainable because such goods are not sold or for any other reason, the nearest equivalent price will be determined in the manner provided in the Central Excise Valuation Rules, 1975.
- If the price at the time of removal of goods from the factory is not known but it is dependent on the time and place of delivery, such price less cost of transportation from the place of removal to the place of delivery will be take to be the assessable value.
- If excisable goods are consumed within the factory, the value of comparable goods produced by another person or the normal wholesale price of such goods will be treated as assessable value.

- The assessable value does not include the amount of excise duty, sales tax and other taxes, if any, payable on such goods and subject to rules made in this behalf, the trade discount allowed under normal wholesale business practices at the time of removal.
- In case law has specified a tariff rate, the assessable value must be calculated on the basis of such tariff rate.
- Excise duty is paid on the basis of normal price even if free samples are given.
- For example ABC Ltd manufactures toys which are chargeable to excise @ 10 percent. Cost of production is Rs10, 000 and profit margin is Rs1,000. Sales tax is five percent. In this situation, excise duty is Rs1,100 ie 10 percent of Rs11,000. Sales tax is included for the purpose of excise duty.

Valuation on retail price basis

The Central Government may notify goods by publication in the OFFICIAL Gazette on which duty will be payable on the basis of the retail selling price. The following are the provisions in this connection: -

1) The goods should be covered by the provisions of Standard of Weights and Measures Act.
2) The Central Government may permit reasonable deductions from the "retail sale price". The Central Government takes into account excise duty, sales tax and other taxes payable on the goods for allowing such reductions.
3) If more than one "retail sale price" is printed on the same packing, the maximum of such retail price will be considered.
4) The "retail sale price" must be the maximum price at which excisable goods in packaged forms are sold to the ultimate consumer. The retail sale price includes all taxes, freight, transport charges, commission payable to dealers and all charges towards advertisement, delivery, packing, forwarding charges, etc.
5) The price is the sole consideration for the sale.

e.g. Notification Nos. 18/97-CE(NT) and 19/97-CE(NT) both dt. 19-6-97 state that excise duty on "cosmetics and toilet preparations" will be payable on the basis of Maximum Retail Price printed on retail carton after allowing a deduction of 50%.

The following excisable goods have been covered under this scheme:

- Cosmetics and toilet preparations - deduction 50%
- Paints & Varnishes - deduction 40%
- Footwear and parts - deduction 40%
- Aerated waters - deduction 50%
- Colour television sets - deduction 30%
- Tooth powder & tooth paste - deduction 30%
- Detergents, Soaps etc - deduction 35%
- Chocolates - deduction - 35%
- Preparation of Malt, Cereals, Flour, Starch or milk - deduction 35%
- Pan masala in retail packs of 10 gms and more - deduction 50%
- Chocolates - deduction 35%
- Perfumes and toilet waters, beauty preparations, shaving preparations - deduction 50%
- Glazed Tiles - deduction 50%

- Cooking appliances and plate warmers - deduction 40%
- Razor and Razor Blades - deduction 40%
- Primary cells and primary batteries - deduction 40%
- Electromechanical domestic appliances, shavers, hair clippers with self contained electric motor - deduction 40%
- Radio and transistors set - deduction 40%
- Electric filament or discharge lamps - deduction 40%

Modvat

Modvat stands for **"Modified Value Added Tax"**. It is a scheme for allowing relief to final manufacturers on the excise duty borne by their suppliers in respect of goods manufactured by them. For example, ABC Ltd is a manufacturer and it purchases certain components from PQR Ltd for use in manufacture. POR Ltd would have paid excise duty on components manufactured by it and it would have recovered that excise duty in its sales price from ABC Ltd. Now, ABC Ltd has to pay excise duty on toys manufactured by it as well as bear the excise duty paid by its supplier, PQR Ltd. This amounts to multiple taxation. Modvat is a scheme where ABC Ltd can take credit for excise duty paid by PQR Ltd so that lower excise duty is payable by ABC Ltd.

The scheme was first introduced with effect from 1 March 1986. Under this scheme, a manufacturer can take credit of excise duty paid on raw materials and components used by him in his manufacture. Accordingly, every intermediate manufacturer can take credit for the excise element on raw materials and components used by him in his manufacture. Since it amounts to excise duty only on additions in value by each manufacturer at each stage, it is called value-added-tax (VAT)

The modvat credit can be utilized towards payment of excise duty on the final product.

When the scheme was first introduced, it covered only some excisable goods. Gradually, the scope of the modvat scheme has been enlarged from time to time under various notifications. From 16 March 1995, all excisable goods can take the benefit of the scheme except those mentioned below:-

In case of inputs

- Tobacco and Manufactured Tobacco Products
- Matches other than pyrotechnics articles of heading number 36.04 of CETA
- Cinematograph Films
- Motor Spirits, Special Boiling Spirits, High Speed Diesel
- In case of final products
- Tobacco and Manufactured Tobacco Products
- Matches other than pyrotechnics articles of heading number 36.04 of CETA
- Cinematograph Films
- Woven fabrics classified under chapter 52,54 & 55 of CETA other than cotton fabrics, man made fibre fabrics and filament yarn fabrics

Advantages of Modvat

- It reduces the effects of taxation at multiple stages of manufacture.
- It facilitates duty free exports.
- It increases the tax base.

Disadvantages of Modvat

- It increases paper work and leads to multiplicity of records.
- It leads to corruption.
- It leads to litigation.

The modvat scheme is regulated by Rules 57A and 57U of the Central Excise Rules and the notifications issued thereunder.

Rule 57A This rule specifies the scope and applicability of the modvat. The modvat scheme applies to all finished excisable goods which have been notified by the Central Government in the Official Gazette for this purpose. The modvat scheme may be made applicable in respect of certain goods or classes of goods with restrictions and conditions.

For the purposes of the modvat scheme, input includes:-

- Inputs which are manufactured and used within the factory of production in or in relation to the manufacture of the final product.
- Paints and packing material
- Inputs used as fuel
- Inputs used for the generation of electricity, used within the factory of production for manufacturing of final products or for any other purpose, but does not include:-

Machines, machinery, plant, equipments, apparatus, tools or appliances which are used for production or processing of any goods or for bringing about any change in any substance in or in relation to the manufacture of the final products. However, on and from 1994-95, the benefit of modvat has been extended to excise duty paid on several capital goods like plant, machinery, equipments, etc which are used for the manufacture of the finished product.

As long as the capital goods are used in the factory of production, credit of modvat will be allowed. No modvat is available in respect of capital goods not used within the factory of production.

- Packing Material in respect of which any exemption to the extent of excise duty payable on the value of packing material is being availed of for packaging of final products.
- Packing materials of the cost of which is not included or had not been included during the preceding financial year in the assessable value of the final products.
- The manufacturer can avail of the benefit of modvat credit on the final product to the extent of specified duties paid on the inputs. The benefit of modvat will be available only if the final product is an excisable goods. Modvat credit will not be available if the final good is not an excisable goods or is exempt from duty or is chargeable at nil rate of duty. However, benefit of modvat will be available to the final goods manufactured by a unit in a Free Trade Zone or in an 100 percent EOU where no excise duty is payable on final goods which are exported.

For example ABC Ltd purchased raw materials of Rs9,900 inclusive of excise duty @ nine per cent and sales tax @ 10 percent. Modvat credit available will be Rs743 (Cost excluding sales tax will be Rs9,000 out of which excise duty will be Rs743 ie 9000/109*9)

Rule 57D Modvat credit will not be denied or varied just because some of the raw materials and other inputs in respect of which excise has been paid become waste or scrap in the course of the manufacturing process.

Similarly, modvat credit will not be denied or varied just because in the course of the manufacturing process of an excisable final product, an intermediate product which is non-excisable or which is chargeable to excise at nil rate of duty or which is exempt from excise duty is created.

Intermediate products are those products which get produced in the course of manufacture of the final product. e.g. in the manufacture of alcohol from sugarcane, first molasses are produced from which alcohol is produced. In such a situation, molasses are an intermediate product, which are charged to excise duty. The benefit of modvat will not be withdrawn if the intermediate product created is non-excisable or is chargeable to excise at nil rate of duty or is exempt from excise duty. Whether a product is an intermediate product or a final product depends on the facts and circumstances of each case. The product may be intermediate so far as a particular process of manufacturing is concerned but may be a final product for another manufacturing process.

Rule 57E If the excise duty paid on modvatable inputs is subsequently increased or refunded, the modvat claimed on the basis of those inputs will also be increased or reduced, as the case may be. If any amount is found due as a result of such increase, he with the excise authorities or in cash shall recover it from the manufacturer either from the balance maintained.

Rule 57F The modvatable inputs must be used in or in relation to the manufacture of final products for which they have been brought into the factory. However, the inputs may be removed from the factory for home consumption or for export under bond but only after intimating the Assistant Collector having jurisdiction over the factory and obtaining a dated acknowledgement of the same. Where the inputs are removed for home consumption, excise duty must be paid, at least of an amount equal to the modvat credit claimed in respect of such inputs.

The modvatable inputs can also be removed from the factory to a place outside either, as such or after they have been partially processed in the course of manufacture but only after intimating the Assistant Collector having jurisdiction over the factory and obtaining a dated acknowledgement of the same for any of the following purposes:-

- For testing, repairs, refining, reconditioning or carrying out any other operation required for the manufacture of final product provided that after such work, the inputs are returned to the factory to be further used in the manufacture of final product. The waste generated in such operation must also be returned to the factory.
- For export of inputs under bond without payment of excise duty.
- For home consumption of inputs on payment of excise duty.
- For manufacture of intermediate products necessary for the manufacture of final products provided that after such manufacture, the intermediate product is brought back to the factory to be further used in the manufacture of final product. The waste generated in such operation must also be returned to the factory.
- For export of the intermediate products under bond without payment of excise duty.
- For home consumption of the intermediate products on payment of excise duty.

However, waste is not required to be returned in case appropriate excise duty is paid on the waste.

The main manufacturer as well as job worker are required to maintain register giving details of materials sent, challan number, etc. similar to a stock register showing

goods lying with the job worker, goods returned by the job worker, etc. Generally, the goods sent must be returned to the main manufacturer within 60 days. If the job is not completed within 60 days, the period may be extended for another 60 days.

The benefit of this rule is available only if the main manufacturer does a certain amount of processing or value addition to make the final product. There must not be complete manufacturing outside the factory by the job worker.

Modvat credit can be utilized for the following purposes:

- Towards payment of excise duty on the final product.
- Towards payment of excise duty on waste arising in the course of manufacture of final product.
- Towards payment of excise duty on inputs themselves where they are cleared for home consumption.
- Modvat credit in respect of finished products exported without payment of duty (like goods manufactured by units in a Free Trade Zone or by 100 percent EOUs or by units in an Electronic Hardware Technology Park or by units in a Software Technology Park) may be utilized for discharging duty liability on similar final products cleared for home consumption. If the manufacturer does not have any excise liability, the modvat credit may be refunded to him provided he has not availed claimed drawback of duty under the Central Excise Rules.

Any waste arising from processing of modvatable inputs in respect of which credit has been availed may:-

- Be removed by payment of duty if such waste is produced in the factory.
- Be removed without payment of duty where permitted by order of the government.
- Be destroyed in the presence of a proper officer on application made by the manufacturer and if found unfit for further use or not worth the duty payable thereon provided the manufacturer informs the appropriate authorities at least 7 days in advance in writing as regards the quantity of waste and the date on which it is supposed to be destroyed and after complying with all the conditions as may be prescribed by the Collector of Central Excise in this behalf.

The manufacturer may transfer or utilize modvat credit from one of his factories to another with approval from the Collector of Central Excise provided application is made by him in this behalf and all conditions imposed by the Collector are satisfied.

Rule 57G For availing the benefit of modvat, the manufacturer must carry out certain procedures. He must file a declaration with the Assistant Collector of Central Excise having jurisdiction over his factory indicating the description of final product manufactured in the factory giving details of the inputs used for such purpose in each of the said products. He must also give detailed information required by the Assistant Collector of Central Excise and must obtain dated acknowledgement for such declaration.

The manufacturer may avail of modvat credit only after he files the above declaration. However, he cannot take credit unless the inputs are accompanied with an invoice prepared as per Central Excise Rules, Form AR-1. In case of imported goods it must be accompanied with triplicate copy of Bill of Entry or Certificate of Appraisal by Custom posted in a foreign post office. In other words, the goods must be accompanied with proof that duty has been paid on them.

The Central Government has the power to direct that modvat credit on specified inputs may be allowed at such rate and subject to such conditions as it may direct without production of documents evidencing the payment of duty.

Where copy of invoice meant for the purpose of claiming modvat is lost or misplaced, the manufacturer can claim modvat credit on the basis of or misplaced, the manufacturer may claim modvat credit on the basis of the original invoice subject to the satisfaction of central excise authorities.

A manufacturer of final products shall maintain:-

- An account in form of RG 23A - Part I and Part II in respect of duty payable on final product. Part I is a record of inputs and subsequent utilization in the manufacturing process. Part II is a record of modvat credit pertaining to such inputs.
- An account current to cover the excise duty payable on the final product cleared at any time.
- A manufacturer of final products must submit within five days after the close of each month to the Superintendent of Central Excise, the following documents:-
    - Original documents evidencing payment of duty
    - Extract of RG 23A Part I and Part II

After verifying their genuineness, the Superintendent shall deface the documents and return them to the manufacturer. The Collector may, having regard to the nature, variety and extent of production or frequency of removal provide for a period shorter than 1 month for submission of such return in respect of any assessee or class of assessees. He may also permit filing of the aforesaid return by an assessee within a period not exceeding 21 days after the close of each month. He may also permit filing of the aforesaid return by an assessee within a period not exceeding 21 days after the close of each quarter where the assessee is availing of an exemption based on the quantity of clearances during a financial year.

In case the manufacturer is not in a position to file the aforesaid return on time for sufficient cause, the Assistant Collector may allow the manufacture to take credit of duty paid on inputs, condoning the delay and giving reasons in writing for such condonation. The Assistant Collector must see that the following conditions are satisfied before giving allowing such modvat credit: -

- Input in respect of which credit of duty is allowed are received in the factory not before six months from the date of filing declaration and not before date of eligibility for modvat credit.
- Amount of duty for which credit is sought has been actually paid on these inputs.
- Inputs have actually been used or are to be used in manufacture of final products.
- The persons issuing invoices for modvatable inputs must follow certain procedures and must get registered with the Central Excise authorities. He must maintain stock account in the RG 23D. He shall make entries in RG 23D at the end of the day of receipt and issue of excisable good and:-
    - Shall enter the date of entry
    - Correctly keep such book, account or register in the manner required
    - Shall not cancel, obliterate or alter any entry therein except for correction of errors
    - Keep such book, account or register open for inspection by the concerned authorities and allow such inspection
    - Allow the concerned officer to take copies or extracts or send the records to the concerned officer.

Such person shall issue serial-wise invoice containing details as prescribed by the Central Board of Excise and Customs or by the Collector of Central Excise in quadruplicate as follows:-

- Original copy is for the buyer.
- Second copy is for the transporter.
- Third copy is for the excise department.
- Fourth copy is to be retained by the issuer.

The invoice contains the following details:

- Evidence showing proof of payment of excise duty.
- Rate of duty paid, amount of duty, duty debit entry in the PLA, date and number of such entry.
- Postal address, range and division of the excise officer under which the manufacturer falls, name and address and code number, excise registration number of the factory and also the name and address of the consignee, description and certification of goods, number of packages, total quantity of goods, total price of goods, total assessable value, rate of duty, total duty paid, serial number of debit entry in the personal ledger account, date and time of removal of goods, mode of transport, motor vehicles registration number and certificate duly signed by authorized person stating that what is stated above is true.
- A working partner or managing director or secretary must authenticate each invoice book.
- Each invoice shall bear a printed serial number running for the whole financial year beginning on the 1st. April each year. The registered person for removal of excisable goods at any one time shall use only one invoice book of each type unless otherwise specially permitted by the collector in writing.
- The owner or the working partner or the managing director or the company secretary shall authenticate each foil of the invoice book, as the case may be, before being brought into use by the registered person. The serial number of the invoice before being brought into use shall be intimated to the Assistant Collector of Central Excise and the registered person shall retain dated acknowledgement of receipt of such intimation. When the invoice is generated through computer, serial number likely to be used in the forth-coming quarter shall be intimated to the Assistant Collector of Central Excise and as soon as the same is exhausted, a revised intimation must be send. Records and invoices generated through computer are also recognized. Such registered dealer shall send details in software used including the format for information to the Assistant Collector of Central Excise.

Rule 57I The excise authority may disallow modvat credit, which has been wrongly availed or incorrectly utilized. In case modvat credit has been taken on account of error or misconstruction, the proper officer may send notice to the manufacturer within 6 months from the date of filing of return to show cause why such modvat credit should not be disallowed. In such cases, where modvat credit has already been utilized, show cause notice must state the utlized amount must not be recovered from the assessee.

In case such wrong modvat credit is on account of willful mis-statement, collusion or suppression of facts on the part of manufacturer, instead of the aforesaid period of 6 months, notices may be sent for a period within 5 years from date of availment of modvat credit. The period of stay by court order will not be considered while determining the aforesaid period.

The proper officer must consider the representation of the manufacture with regard to the show cause notice and thereafter to determine the amount of disallowance, if any.

Introduction of the Cenvat Scheme

The Modvat system, which has been operating in the country, has now become the Cenvat Credit Scheme and the Modvat Rules have been replaced with a new set of Cenvat Rules, combined for inputs and capital goods effective from 1.4.2000.

The scope of definition of inputs/capital goods has been widened. A major disappointment of industry is that H.S.Diesel has been specifically kept outside the purview of the Cenvat Scheme.

Cenvat credit on capital goods imported under Project Imports are now allowed @ 100 % full instead of 75%. However, this credit can be claimed in a phased manner of more than 1 year, provided the capital goods are still in the possession and use of the manufacturer.

It is not necessary to avail Cenvat Credit only after installation of the capital goods. Cenvat Credit on capital goods received after 1.4.2000 will be allowed only to the extent of 50% of the duty paid. The balance credit can be availed in any subsequent financial year, provided the capital goods are still in the possession and use of the manufacturer.

In case of capital goods which have been received prior to 1.4.2000 but have not been installed prior to 1.4.2000, Cenvat Credit @ 50% can be claimed in the financial year 2000-2001 and balance in subsequent financial years.

The Modvat Credit on inputs or capital goods accrued prior to 1.4.2000 and remaining unutilized on 1.4.2000 can be carried forward as Cenvat Credit.

Cenvat credit on items such as lubricating oils / grease, coolants are now covered in the definition of inputs.

The procedure for defacing of the duty paying documents by the Central Excise officers has been dispensed with, thereby giving assessees administrative convenience.

The procedure for maintaining RG-23A Part-I Register has been dispensed with, provided the assessee maintains all the required records as part of his normal accounting system in a manner in which he finds suitable and all the relevant information is contained in the records.

Inputs and semi-finished goods can be removed from the factory for further processing or sub-contracting without debiting duty @ 10% of value of the inputs. Such goods must however, be received back within 180 days. Otherwise, the entire Cenvat Credit claimed will have to be reversed. The Cenvat Credit can be claimed again when the goods are received back.

The scheme for issue of invoices by registered dealers upto second stage dealers has been continued. However, the procedure for authentication of the invoices by Central Excise Officers in case of importers has been dispensed with. The procedure of authentication of invoices issued by the second stage dealer or an by first stage dealer in respect of the imported materials has also been continued.

The procedure for filing Modvat Declaration under rule 57G and rule 57T(1) has been dispensed with. However, the onus of proving admissibility of Cenvat Credit is now on the assessee.

The procedure for movement of the inputs under the existing rule 57 f(4) and for movement of capital goods under rule 57S has been dispensed with. The assessee can now use his own challans, memos or any other document evidencing that the goods sent to job-workers have been received back.

A Manufacturer of the goods failing under Ch.39 of Central Excise Tariff Act and manufacturing the dutiable goods as well as exempted goods will now be required to:

i) Either maintain separate accounts for receipt, consumption and inventory of inputs used in the manufacture of exempted goods and exempted goods and take credit only for those inputs used in the manufacture of dutiable goods ;or

ii) To debit 8% of the value of exempted goods at the time of clearance of such exempted goods.

Cenvat Credit may be claimed on the basis of invoice, bill of entry or any other prescribed document indicating payment of duty.

Service Tax

The major change as far as service tax is concerned is that the Supreme Court Judgement has now been over ruled by amending the law with retrospective effect. The Central Excise Department can now recover service-tax collected by the users of the services. With the result no refund of service-tax paid on the services of goods transport operators and clearing and forwarding agent would be granted.

Customs Duty

The peak rate of Customs Duty has been reduced from 40% to 35%. Special Custom Duty of 10% of basic Custom Duty is being continued with and it is applicable to the peak rate of 35% also.

SAD @ 4 % is now being made applicable to imports of goods by traders also.

In this year's Budget the Finance Minister has attempted to make several changes in the Modvat Scheme, firstly calling it **"Cenvat" (Central Value Added Taxes)**, and these new set of Rule 57A to 57I were introduced in Budget 2000 vide Notification 11/2000 (N.T.) dated 1.3.2000, which now are suddenly replaced vide an entirely new set of Rule from **57AA to 57AK vide Notification No. 27/2000 (N.T.) dated 31.3.2000.**

It is rather unfortunate that this notification was released just one day before the rules become applicable due to which many of the assessees were not even aware of such amendments. Even now, the industries are so confused that they are yet to get the hang of all the procedures and documentations to actually say the procedures are easy.

These new set of rules are welcome to the industry as they are based on the various representations to remove the lacunas in the earlier rules but unfortunately still some of the major procedures present under the Modvat Scheme were missing in these new set of rules.

Under this new Cenvat Scheme, the assessee need not file any declaration to department and he can now avail credit under Rule 57AB for the goods ie. Inputs and capital goods as mentioned in the list, thus making only one set of rules for inputs as well as for capital goods.

Moreover there are no prescribed documents and records to be maintained. This was a welcome scenario but soon it is realised that this is a rather dangerous situation as each one will have different types of records and each one will call it with a different name. Hence the entire onus it is on the assessee, regarding correct documentation. According to me this will lead to a very strict audit by the department and there are

more chances of flaws now than earlier, as these audits (Canadian Audit/EA-2000) are not only restricted to Excise but also all the related areas.

The new Cenvat rules have been amended such that the earlier crucial rules, which were not included, are included now. But, still there remain some gray areas which are not yet covered under the revised Cenvat rules like, there is no mention of the words waste and scrap, even when it arises during the course if manufacture of the final products; or in respect of waste and scrap arising during jobwork.

There is no mention of intermediate product as the earlier Modvat Rule 57D.

Even adjustment of credit under Rule 57E is not provided, where if the differential duty is paid, whether the assessee is allowed to avail Cenvat or not is not clear. Though under the new Cenvat Rule 57AG(2), it is mentioned that when the manufacturer upto for exemption from whole of the duty in respect of goods manufactured under any notification based on value or quantity of clearances in a financial year, and if is availing credit of duty paid on inputs before such option is exercised, he has to pay an amount equivalent to credit allowed to him in respect of inputs lying in stock or used in any excisable goods lying in stock on the date of such option and excess credit if any shall lapse. However, no provision is made to take credit when the manufacturer opts for Cenvat Scheme for the first time or at any time during the financial year in respect of inputs lying in stock on the date he opts to avail Cenvat.

Moreover, there is no provision provided for direct delivery of inputs to the job worker as earlier 57J, or even in case of sending material from one job worker to another. There is no provision to store inputs outside the factory.

After all the hue and cry re-drafting of the new set of rules and bringing in Notification 11/2000 dated 1.3.00, it was a pity that industries started following the scheme, without being aware of the revised Cenvat rules, this is bound to create a scope for unnecessary litigation. And I hope that the Central Board of Excise and Customs provides instructions for not taking any actions for not following the new Cenvat Rules with immediate effect.[4]

[4] Shilpa Pandey, Excise and Service tax Consultant

Appendix 'A'

State Wise Document Required for Goods Transports

States	Sales Tax Form Permit No.	Local Sales Tax No.	Octroi	Remarks
Andhra Pradesh	Not Required	Consignee GST / CST Mandatory	No	Note
Assam	Note	Required	No	Note
Bihar	28B (R Permit)	Required	No	Note
Chandigarh	Not required	Required	No	Note
Delhi	Not required	Required	No	-
Gujarat	Not required	Consignee GST / CST Mandatory	Yes	Note
Goa	Not required	Required	No	-
Haryana	Not required	Required	No	Note
Karnataka	Not required	Consignee KST/CST Mandatory	No	Note
Kerala	Note	Consignee KGST / CST Mandatory	No	Note
Madhya Pradesh	Note	Required	No	Note
Maharashtra	Not required	Required	Yes	-
Orissa	Waybill No.32	Required	-	Note
Pondicherry	Not required	Required	No	-
Punjab	Not required	Required	Yes	Note
Rajasthan	Form 18A	Required	Yes	Note
Tamil Nadu	Not required	Consignee GST / CST Mandatory	No	Note
Uttar Pradesh	Form 31/32	Required	No	Note
West Bengal	Note	Required	No	Note
Chattisgarh	Form 59 A	Required	No	Note
Jharkhand	Note	Required	No	Note
Uttaranchal	Note	Required	No	Note

General Requirements

- Invoices: Minimums of four copies are required.
- Central Sales Tax (CST) / Local Sales Tax (LST) Numbers: All invoices must have both the sender's as well as the recipient's Central Sales Tax (CST)/Local Sales Tax (LST) numbers printed.
- Most of the states do not accept the 10% CST as a criteria to allow entry of shipments in their states without the local sale tax numbers.
- Octroi: An entry
- For Assam form 22/24 is required

Kerala: Only an original copy or a carbon copy of the invoice is acceptable. Photocopies are not acceptable. The consignee's KGST3 (Kerala Government Sales Tax) and CST number must appear on the invoice.

Form 27 A is no longer required for a non-registered party, but the party should give a declaration in duplicate the reason for the purchase of the goods outside Kerala. The declaration should be on its letterhead and should accompany the shipment into Kerala.

If the items categorized below are sent to the Consignee without a KGST3 number, an entry tax would be applicable:
Product Tax(%)

Air Conditioner/Refrigerator/Washing Machine 12%
Iron and Steel 4%
Granite 8%
Marble 10%
Furnace Oil 10%
Generator/Inverter 12%
Photocopier/Fax Machine/Scanner 8%

Entry Tax is not applicable to: Computers, components and spares/Other machinery

Computation of Tax: Tax is computed on: - total invoice value + freight + handling and clearing charges. These should be shown on the invoice.

Entry Tax is exempted if:

The Consignee is a registered dealer having KGST (Kerala Government Sales Tax) numbers. These numbers should be printed on the invoice.

The Consignee is a Central Government body i.e. Railways/Postal/All Defense Services/Telecom/CBI/Account General Offices. The rest of the Central and State Government bodies are subject to applicable taxes. Any shipment traveling out of Kerala has to be accompanied by Form 26 in the absence of a regular commercial invoice.

Activity1

As supply chain managers please read the laws, rules and regulations governing insurance, sales tax as applicable to India and neighboring countries. Critically examine these laws in the present scenario.

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16.11 A CASE STUDY

India, Switzerland and the United States: How Countries Avoid Liability after Disaster (Bhopal gas Tragedy)

(Downloaded from the Internet site Disaster management By Karyn Keenan)

Mass disaster, illustrated by the tragic Bhopal accident, often affects multiple parties, both individuals and nation states, and involves several legal jurisdictions. To resolve such a legal conundrum, it is instructive to examine which parties escape liability as well as those who fall prey. Significantly, in several of the worst international accidents involving hazardous technologies and activities, nations that were arguably responsible for the damage sustained, at least in part, escaped liability. This paper explores how both importers and exporters of dangerous technology avoid accountability, and whether or not the legal apparatus exists for their prosecution.

IMPORTING COUNTRIES

On December 2, 1984, forty tons of methyl isocyanate (MIC) leaked from the Union Carbide India Limited (UCIL) plant in Bhopal, India. Considerable evidence indicates that India was at least, in part, responsible for the accident. Government regulation of

industrial hazards is generally ineffective in this country. Inspection departments are understaffed; those agents who are employed are poorly trained; and funds are scarce. In addition, regulatory legislation is largely ineffective. Implementing procedures for requirements had not yet developed, set out under the Factories Act of 1948. (Castleman et al, 1985). Similarly, the Water Act of 1974 and the Air Act of 1981 both designed to control pollution, are neither implemented nor enforced effectively. Moreover, there is a deficiency of meaningful health and safety regulations, which are actively enforced. Violations of what little law does exist are met with paltry fines and take years to prosecute (Abraham et al, 1991).

India's failure to adequately plan for the plant's associated risk became obvious in the aftermath of the accident. Medical facilities were unprepared for the disaster, and the local community had been given no information regarding the risk inherent in plant operations. Neither warning nor emergency procedures had been established (Cassels, 1991). Moreover, the Indian Government failed to respond when the risk of serious incident became known. A series of leaks, one involving the death of an employee, preceded the December 1984 accident.

Significantly, Indian financial institutions owned approximately twenty per cent of UCIL stock (Cassels, 1991). In addition, Muchlinski (1987) reports that originally, UCC preferred not to construct a plant in India, but rather, to import pesticides manufactured in the United States. India desired self-sufficiency in pesticide production and accordingly, opposed UCC's proposal. UCC gave in to India's requests and agreed to construct the Bhopal plant.

India's failure to draft, implement, and enforce effective regulatory legislation, its neglect for government inspection departments, its failure to respond to obvious signs of impending crisis, its poor performance in anticipating and planning for potential accidents, its interest as a minority owner in UCIL, and finally, its responsibility for the establishment of the plant, point to certain liability in connection with the Bhopal disaster.

Despite compelling evidence of culpability, India's liability toward disaster victims was never considered in the litigation. Following the accident, Americans initiated suits in their domestic courts on behalf of thousands of Indian litigants. In response to the extraordinary circumstances of the situation, including the enormous number of litigants, their inability to effectively seek relief, and the international character of the incident, The Bhopal Gas Leak Disaster Act (Bhopal Act) was passed. This Act gave the Indian federal government *parens patriae* control of the case, allowing it to appropriate the exclusive right to act on behalf of any person who wished to make a claim with respect to the accident (Abraham et al, 1991). Absolute control over the litigation allowed India to ignore any claim brought against itself. Moreover, as the representative plaintiff, it's questionable whether it would be possible for India to sue itself!

This unprecedented act did not pass unnoticed. Bhopal victims claimed that the statute unfairly denied them of control over the proceedings. Others argued that because India was potentially liable both as a shareholder in UCIL, and with respect to its regulatory duties, conflict of interest barred it from acting as the victim representative. Furthermore, the Act jeopardized all future judicial decisions. American courts hearing the case or enforcing an Indian decision were likely to question the legality of the Bhopal Act. It is suggested that the Act both infringes upon individual rights and fails to meet acceptable standards of due process, and accordingly, would prevent a successful claim of the parens patriae doctrine (Cassels, 1991). Post settlement, the constitutionality of the Act was challenged. In December 1989 the Supreme Court of India upheld the statute, explaining that the Government's use of the *parens patriae* power was justified, considering the imbalance in available

resources between UCC and the victims. The Court also stated that the interests of the victims were sufficiently protected by the Act (Cassels, 1991).

The Indian Government's ability to pass legislation granting it exclusive, *parens patriae* power to control the Bhopal litigation precluded any inquiry into its culpability. The ruling of the nation's most exalted judiciary fortified this position. However, India could not legislate away the counter-claim of its defendant. UCC counter-sued the governments of both Indian and Madhya Pradesh in the Southern District Court of New York. The suit was maintained following relocation to India. However, settlement between India and UCC prevented the resolution of this counter-claim (Koh, 1989).

On October 31, 1986, fire broke out in the warehouse of the Swiss pesticide manufacturer, Sandoz. Due to the absence of an established catchments area, fire-extinguishing efforts washed thirty tons of the chemicals into the Rhine. In contrast to the Bhopal disaster, the corporation utilizing hazardous technology in this case was domestic, and the accident caused trans-boundary damage. However, both cases involve international claims. In both situations, the plaintiffs privatized their claims, and the nation that was home to the dangerous activity avoided liability.

Through inadequate supervision over both the development and implementation of Sandoz's emergency plans, as well as its storage methods, Switzerland breached its obligations under the Berne Convention on the Protection of the Rhine against Chemical Pollution. Furthermore, Switzerland failed to satisfy its obligations under Articles 7 and 11 of the Rhine Chemicals Convention, regarding the storage of chemicals, containment of spills, and the notification of the International Commission for the Protection of the Rhine (ICPR) (D'Oliveira, 1991).

Despite these breaches of both its international legal obligations and domestic responsibilities to regulate industry, no claims were brought against Switzerland, either by the foreign governments, which were affected, or by private citizens who sustained damage. Instead, all responsibility was placed, in accordance with the polluter pays principle, on the shoulders of Sandoz. The most important claims from foreign litigants were those made by the Governments of the Netherlands, France and Germany. These countries channeled all claims from their nations directly to the Swiss Government, who transferred them to Sandoz. The Swiss Prime Minister personally pledged the support of Swiss offices for the purpose of reaching settlement. The claim channeling strategy was extremely efficient and by mid-1988, over ninety percent of claims had been processed. The majority of unsettled claims were Swiss.

The Swiss strategy was to create an efficient government-clearing house for claims, which dealt preferentially with foreign claims. This strategy likely included Government pressure on Sandoz to quickly resolve the claims through settlement, in order to avoid litigation that could easily have involved the Swiss. It is conceivable that Sandoz received some form of compensation for its compliance. Although successful, no strategy, regardless of its efficiency in concluding settlement, would have deterred litigation if the injured parties were determined to sue. D'Oliveira (1991) suggests that the Netherlands, Germany and France were aware of the significant possibility that any one of them could find itself in Switzerland's position in the future. By ignoring Swiss liability, it is probable that they anticipated comparable future treatment. Furthermore, these countries wished to maintain friendly relations at the ICPR.

The Indian and Swiss governments adopted different, but equally effective strategies for avoiding liability. Exclusive legislative power and unacceptable high probability of future European accidents were the tools handily wielded by India and Switzerland.

EXPORTING COUNTRIES

Great discrepancy existed between the standards of operation, which were enforced at the UCIL plant in Bhopal and those at the UCC plant in Institute, West Virginia. The Bhopal plant was designed less safely than the corresponding facility in Institute. A May, 1982 safety audit of the Bhopal plant by the Union Carbide headquarters engineering group revealed dangerous operating conditions, which would have merited immediate corrective action in the U.S.A.

Nothing was done in India. The corporate safety and health audit, which revealed this information, was the only one of its kind for Bhopal in seven years of operation. In contrast, American plants were audited every two years. Furthermore, other industries manufacture MIC using a far less toxic process than UCIL. Still other manufacturers choose not to use MIC, or store it in small amounts only, converting it to product as quickly as possible (Castleman et al, 1985).

Based on the few examples listed above, it is clear that UCC took advantage of the foreign locale of its subsidiary and failed to enforce U.S. standards of industry regulation on UNIL. What is at least as significant, however, is the failure of the United States to enforce the implementation of those standards on UCC. Despite arguable liability on the part of the United States for the unsafe operation of UNIL, India failed to bring a claim for American breach of international law, or to seek a bilateral agreement for reparation. India instead privatized its claim. By characterizing itself as an injured state to which UCC owed liability, rather than as an international plaintiff, India avoided vulnerability to counter-suits in international law.

The Amoco Cadiz supertanker grounded in the territorial waters of France in March 1978, spilling dangerous quantities of crude oil. The American company owned the ship, through various subsidiaries, Standard Oil. The Spanish company, Astilleres Espanoles, designed and constructed the ship. The Government of France joined by other injured parties, initiated litigation in the American court system. Standard, its subsidiaries, and Astilleres Espanoles were found liable for negligent design, construction and maintenance of the ship. However, no claims were made against the United States for its failure to regulate the extraterritorial operations of Standard.

Scovazzi (1991) argues that it is doubtful that a principle of customary international law has been established which requires states to regulate the activities of their MNCs abroad. This uncertainty in the law may have discouraged France from bringing an action. Moreover, like India, France may have feared exposing itself to possible counter-suit as the host country within whose jurisdiction the accident occurred.

Handl (1985) supports Scovazzi's assertion, and states that under customary international law, a country which authorizes the export of a hazardous technology is not liable for accidental damage occurring in the use of said technology. In the absence of international law, Handl (1985) looks to the criterion of control over the technology to determine responsibility. He argues that practically, the host country exercises this control. However, control can be defined expansively. Maritime law illustrates the principle. Generally, vessels are deemed to be in the control of their states of origin (Flag State), despite the fact that they may be found in the territory of another. This is especially true with respect of those areas of operation over which the host country exercises no control, such as construction of the ship and the operation of its equipment. Applying this principle to MNCs in place of ships, the United States would be held responsible for damage occurring as result of inadequate safety measures regarding those aspects of operation over which it had greater control than India. Considering that the U.S.A. controlled the plant design and construction, as well as the technology utilized in the plant, its prescriptive jurisdiction over UNIL operations is a convincing reason for holding the United States liable.

In its document, Liability for Injurious Consequences Arising Out of Acts Not Prohibited by International Law, the International Law Commission argues that an exporting state should be subject to strict liability for damage arising out of accidents concerning an area over which it has prescriptive jurisdiction. Smith (1988) argues that the appropriate standard is due diligence, but that if an exporting country is aware that the host lacks the technical and administrative capabilities necessary to prevent the dangers associated with the technology, due diligence may require prohibiting exportation.

Francioni (1991) contends that the argument used by home countries that they lack the jurisdiction to enforce domestic safety and environmental standards on MNCs located abroad is hypocritical. Exporting countries have successfully applied their antitrust laws, fiscal and currency regulations, and trade union laws, among others, to MNCs.

This author further argues that international law provides a basis for home country liability. Principle 21 of the Stockholm Declaration on the Human Environment states that nations are responsible to ensure that activities, which are within their jurisdiction or control, do not cause environmental damage. Francioni (1991) argues that the concept of control includes the type of power exerted by parent corporations over their subsidiaries. He also looks to international human rights law. Several international instruments proclaim the right of individuals to a healthy environment. If the export of a hazardous technology jeopardizes the health of the host country's environment, the exporter could accordingly be found liable in international law.

Although several convincing arguments exist for holding exporting nations liable, developments in the regulation of MNCs do not support this contention. International organs are increasingly involved in the drafting of MNC codes of conduct. Neither the U.N. Draft Code of Conduct on TNCs, nor other similar instruments provide exporting state responsibility for noncompliance of parent companies (Handl, 1985).

Until the ability of government to legislate absolute control over MNC accident litigation is challenged and potential plaintiffs overlook their self-interest as future polluters, importer liability will be avoided. Similarly, despite the possible legal foundations described above, exporter liability remains undeveloped. This weakness must be addressed in order that countries such as India, Switzerland, the United States are held responsible for their reprehensible behaviour.

An important could know fact and figures from Labour Bureau has been included based on bidi workers in India as per minimum wages act of 1948.

16.12 SUMMARY

Legal issues play a very important role in SCM. Supply management professionals deal with two major aspects of law: - the law of agency and law of contracts. This unit has attempted to explain the entire process of SCM in which a supply manager is likely to get involved in lawsuits, legal hassles and how can he overcome or avoid these. The unit covers an overview of the sales laws, environmental realities and their implications on supply chain, warehouse operations and jurisdiction. . It has discussed the rules and regulations in handling the wages of workers Issues pertaining to documentation: Insurance and Sales tax were also discussed.

16.13 SELF ASSESSMENT QUESTIONS

1) As a supply chain manager critically evaluate the laws and regulations of both India and EU countries.

2) How will you arrange for Insurance cover in case your vehicle meets with an accident and causes extensive damage to the goods, in the State of Assam?

3) What are the relaxations of Sales tax on goods across the various states in our country and can we overcome this by a single document procedure?

4) As a warehouse manager list out your duties from receiving the goods to its delivery to the manufacturer or to the end consumer.

16.14 REFERENCES AND SUGGESTED FURTHER READINGS

1) Central excise and Sales Tax laws books.

2) Books on commercial laws

3) Case studies on Litigations and company legal proceedings.

4) Internet sites www.comerciallaws.com , www.salestax.com