

What it is and How it Works:-

High Sea Sales (HSS) is a sale carried out by the carrier document consignee to another buyer while the goods are yet on high seas or after their dispatch from the port/airport of origin and before their arrival at the port/airport of destination.

An High Sea Sales contract/ agreement should be signed after dispatch of goods from origin & prior to their arrival at destination. The agreement should be on stamp paper.

On concluding the High Sea Sales agreement, the bill of lading (B/L) should be endorsed in favor of the new buyer. In respect of air shipment, High Sea Sales seller should write to the airline / consol agent informing that a High Sea Sales agreement has been established with the High Sea Sales buyer and that the carrier document should therefore be considered as endorsed in favour of High Sea Sales buyer and further the Import General Maniface (IGM) should be filed by the carrier in the name of the High Sea Sales buyer.

If the electronic data interchange (EDI) system allows name of High Sea buyer to be entered in the system, then there may not be any need to amend the Import General Mainface (IGM). In this case, the bill of entry/exchange (B/E) is filed in the name of the original exporter as the IGM is in this importer name. However, the bill of entry/exchange (B/E) shows the name of High Sea buyer under a separate head in the B/E format. If the system has no provision for showing the name of High Sea buyer on the B/E, then the IGM should be got amended and B/E filed in the name of the High Sea buyer.

In the case of High Sea Sales, the cargo in freight (CIF) value for calculation of duty is taken to be the High Sea Sales value.

It should further confirm that the buyer will bear all the risk and cost of clearance of goods. The Agreement is normally prepared by seller and Buyer signs the same as a mark of acceptance.

Any one copy of Bill of lading that is not marked as “not negotiable” can be endorsed. The copy is first endorsed by Bank, then by the importer.

Once the bill of lading is endorsed, all the import documents must be retired from Bank. Even the correspondence with Bank helps to establish the dates at times. All the documents along with original bill of lading duly endorsed should be handled over to the

High Sea buyer under acknowledgement. This acknowledgement must have date. In fact, it is this date that is crucial. This date can be any date after the documents are retired and before the duty is assessed.

The payment of Octroi, port charges etc. must be by High Seas buyer.

There is no bar on same goods being sold more than once on high seas. In such cases, the last High Sea Sales value is taken by customs for purposes of duty levying. The last High Sea Sales agreement should give indication of previous title transfers. The last High Sea buyer should also obtain copies of previous High Sea Sales agreement as such documents may be called upon by the customs.

High Sea Sales is also applicable to goods imported by air. Sea appearing in High Sea Sales should not be constructed by its grammatical meaning. As long as the sale is formalized after dispatch from dispatch/ airport at destination, such sale is considered as High Sea Sales.

If the High Sea Sales does not mind disclosing original import values to High Sea buyer, in such cases it is better from custom clearance point of view for the seller to endorse the Bill of Lading, invoice, packing list in favour of the High Sea buyer. The endorsement should read “Transferred on High Sea Sales basis to M/S _____ for a sales consideration of (currency and amount in that currency)”. Such endorsement should be stamped and signed by the High Sea Seller.

Tax Benefits:-

High Sea Sales is considered as a sale carried out outside the territorial jurisdiction of India. Accordingly, no sales tax is levied in respect of High Sea Sales. The customs documents (B/E) is either filed in the name of High Sea buyer or such Bill of Entry has an endorsement indicating High Sea buyer’s name.

The title of goods transfers to High Sea buyer prior to entry of goods in territorial jurisdiction of India. The delivery from customs is therefore on account of High Sea buyer. The CENVAT credit in respect of CVD paid on import is entitled to High Sea buyer.

High Sea Sales goods are entitled to classification, rates of duty and all notification benefits as would be applicable to similar import goods on normal sale.

Constitutional Validity:-

The concept of High Sea Sales finds its authority from **Article 286 (1) (b)** of the Constitution of India which states that no law of a State shall impose or authorize the imposition of, a tax on sales or purchase of goods where such sale or purchase takes place in the course of import of the goods into, or export of the goods out of, the territory of India.

Article 286(2) further provides that the Parliament may by law formulate principles for determining when a sale or purchase of goods takes place in any of the ways mentioned above.