

Seminar on MVAT Audit

✓ Determination of turnover of
Sales and Purchases

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Important definitions

- **Business** :Sec.2(4) includes any service, trade, commerce or manufacture OR any adventure in the nature of service , trade, commerce or manufacture
- Whether or not with a motive to make gain or profit
- Whether or not any gain or profit accrues.

Business

- The definition is broadened to bring into the tax net the sales and purchases effected by the organizations engaged in service activities-services to be notified-sec.2(27).

Business: Explanation

- Activity of raising man made forest or rearing of seedlings or plants.
- Any transaction of sale or purchase of capital assets
- Sale or purchase of any goods , the price of which is debited to profit & Loss a/c of business under double entry system of accounting.
- Transaction in connection with commencement or closure of the business.

Important definitions

- **Capital asset** :sec.2(5): To have same meaning as assigned to it under Income Tax Act 1961, but not to include jewellery held for personal use or property not connected with the business

- **The term “turnover of sales” is defined under MVAT Act. Therefore, no other meaning can be assigned to this term.**
- **Generally accepted accounting principles cannot be applied for the purpose of determination of turnover of sales or purchases.**

“turnover of sales”:Sec. 2 (33)

- **“turnover of sales” means the aggregate of the amounts of sale price received and receivable by a dealer in respect of any sale of goods made during a given period after deducting the amount of :-**

- **sale price, if any, refunded by the seller, to a purchaser, in respect of any goods purchased and returned by the purchaser within the prescribed period; and**
- **deposit, if any, refunded in the prescribed period, by the seller to a purchaser in respect of any goods sold by the dealer.**

- **Explanation I. —In respect of goods delivered on hire purchase or any system of payment by instalment or in respect of the transfer of the right to use any goods for any purpose (whether or not for a specified period) the amounts of sale price received or receivable during a given period shall mean the amounts received or as the case may be, due and payable during the said period;**
- **Explanation II-.....(deleted)**

- **Explanation III. —Where the registration certificate is cancelled, the amounts of sale price in respect of sales made before the date of the cancellation order, received or receivable after such date, shall be included in the turnover of sales during a given period.**

- In order to compute the turnover of sales, the definition of terms “goods”, “sale” and “sale price” are relevant.

Goods: Section 2(12)

- **“Goods” means every kind of movable property not being newspapers, actionable claims, money, stocks, shares, securities or lottery tickets and includes like stocks, growing crop, grass and trees and plants including the produce thereof including property in such goods attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale.**

- Goods do not include immovable property, newspapers, actionable claims, money, stocks, shares, securities or lottery tickets.
- The goods of intangible or incorporeal nature are also goods and therefore, Schedule A entry 27 and Schedule C entry 39 covers such goods

Sale: Section 2 (24)

- **“sale” means a sale of goods made within the State for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge; and the words “sell”, “buy” and “purchase”, with all their grammatical variations and cognate expressions, shall be construed accordingly;**

Explanation:

For the purposes of this clause

- **a sale within the State includes a sale determined to be inside the State in accordance with the principles formulated in section 4 of the Central Sales Tax Act, 1956;**
- **the transfer of property in any goods, otherwise than in pursuance of a contract, for cash, deferred payment or other valuable consideration;**

Explanation:

For the purposes of this clause

- **the transfer of property in goods (whether as goods or in some other form) involved in the execution of ' a works contract including, an agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property;**

Explanation:

For the purposes of this clause

- **a delivery of goods on hire-purchase or any system of payment by instalments;**
- **the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;**

Explanation:

For the purposes of this clause

- **the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is made or given for cash, deferred payment or other valuable consideration.**

Explanation:

For the purposes of this clause

- **the supply of goods by any association or body of persons incorporated or not, to a member thereof for cash, deferred payment or other valuable consideration**
- **Therefore, all amounts received or receivable for such deemed sales shall form part of the turnover of sale of goods.**

- **Sale includes sale of goods made within the State only. Sale within the State will have to be determined in accordance with the principles formulated under section 4 of the CST Act.**
- **An inter-State sale, occasioning the movement of goods from the State of Maharashtra would be a sale within the State of Maharashtra.**

- **Subsequent inter-State sale covered by section 6(2) of the CST Act where the movement may or may not occasion from Maharashtra but for purchases of which a declaration under CST Act is issued from the State of Maharashtra would also be a sale within the State of Maharashtra since Maharashtra would be an appropriate State for levy of tax on such transaction.**

- The definition of the term “sale” includes deemed sales like lease, sale of goods involved in the execution of works contracts, hire purchase, transfer of property in any goods otherwise than in pursuance of the contract, supply of food and drinks by a hotelier, etc., and supply of goods by any association or club (whether incorporated or not) to any member.

- Other transactions of receipts such as labour charges, service charges will not form part of sales unless they are in relation to sale. Branch transfers, stock transfers, consignment transfers are also non-sale transactions.

- However, for the purpose of reporting the gross turnover of sales in the schedules to the vat audit report, these charges are included though they will not form part of turnover criteria for applicability of section 61.
- Similarly, sale of immovable property, shares and securities, newspapers, lottery tickets, etc. which are not regarded as goods would not form part of sales.

Sale Price : Section 2(25)

- **“sale price” means the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged.**

- Explanation I. —The amount of duties levied or leviable on goods under the Central Excise Act, 1944 or the Customs Act, 1962 or the Bombay Prohibition Act, 1949, shall be deemed to be part of the sale price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person.

- Explanation II. — Sale price shall not include tax paid or payable to a seller in respect of such sale.
- Explanation III. — Sale price shall include the amount received by the seller by way of deposit, whether refundable or not, which has been received whether by way of a separate agreement or not, in connection with or incidental or ancillary to, the said sale of goods;

- **Under section 2(25) “sale price” means the amount of valuable consideration paid or payable for any sale including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof. However, the definition provides for exclusion of cost of insurance for transit or of installation when such cost is separately charged.**

- **Sale price will thus include charges towards Freight, Packing and Forwarding, Processing charges, Octroi, etc. before delivery of the goods which may be charged by the seller to the buyer. However, the statutory recoveries such as APMC fees will not form part of the “sale price”.**

- Keeping in mind, Explanation I, sale price in the hands of the seller is enhanced by these duties irrespective of the person paying the same.

- **Under Explanation II, the sale price does not include tax paid or payable to the seller under the MVAT Act. This would also apply under the CST Act.**

- Under Explanation III, the sale price will include the amounts received by the seller by way of deposit, whether refundable or not, in connection with or incidental or ancillary to the sale. In order to form part of the sale price, the deposit should be connected to the sale of goods. Deposits such as security deposit, dealer deposit, etc. would not form part of the sale price.

Dedn u/Rule 57 from Sale Price

- Under Rule 57, certain deductions are provided from the sale price. These deductions are only for the purpose of levy of tax. Therefore, for all other purposes, these deductions will not reduce the sale price. In other words, sale price of the goods will have to be considered without considering the deductions provided in Rule 57.

Deductions u/Rules 58 & 59

- **Rule 58 provides for determination of sale price and of purchase price in respect of sale by transfer of property in goods involved in the execution of a works contract.**

Deductions u/Rules 58 & 59

- Similarly, Rule 59 provides for determination of turnover of sale of goods by the residential hotels charging a composite sum for lodging and boarding.
- Therefore, deductions provided in Rules 58 and 59 will reduce the sale price.

- **Rule 58**
- **Determination of sale price & of purchase price in respect of sale by transfer of property in goods (whether as good or in some other form) involved in the execution of a works contract.**

- (a) labour & service charges for the execution
- (b) amounts paid by way of price for sub-contract, if any, to sub-contractors;
- (c) charges for planning, designing and architect's fees;
- (d) charges for obtaining on hire or otherwise, machinery & tools for the execution
- (e) cost of consumables such as water, electricity, fuel, the property in which is not transferred in the course of execution

- (f) cost of establishment of the contractor to the extent to which it is relatable to supply of the said labour & services;
- (g) other similar expenses relatable to the said supply of labour & services, where the labour & services are subsequent to the said transfer of property;
- (h) profit earned by the contractor to the extent it is relatable to the supply of said labour and services

Rule 59

- Residential hotels, providing lodging & boarding charging a composite sum, which is inclusive of breakfast or lunch or dinner or, as the case may be, a combination of all or any of the above, the Commissioner shall determine the taxable turnover of sales, in respect of any period in the specified manner

- Rules 58 and 59 will be after deducting the amount as prescribed in the respective rules and accordingly, sales turnover will have to be calculated after reducing the amount of available deductions under these rules.

Discounts

- **Discounts agreed to be given as a part of contract of sale, whether given in the invoice or under any other separate document, to the purchaser will not form part of the sale price.**
- **Section 63(6) of MVAT Act: such amounts will be deducted from turnover of sales of the period in which the effect of such discount is given in books of account.**

Turnover of Sales

- As per the definition of the term given in the section 2 (33), the turnover of sale means the aggregate of the sale price received or receivable in respect of sale of goods. The following deductions are to be made from the turnover of sales :

- **Sale price refunded by the seller to the purchaser in respect of goods returned within the prescribed period. The time limit for this purpose under Rule 3 is six months. Therefore, price refundable in respect of goods returned during the period of six months from the date of sale will only be deductible.**

- **Deposit in respect of the goods sold, refunded by the seller to the buyer within the period of six months (as prescribed under Rule 3).**

- **While making above deductions from turnover of sales, the provision of section 63(5) and (6) should be considered. The said section provides that in case of goods returned or reduction of sale price for any deduction by way of debit or credit notes be given effect in the month in which the appropriate entries are recorded in the books of account.**

- **Under Explanation I, it has been provided that the turnover of sales in respect of transaction of hire purchase, instalment sales and transfer of the right to use goods would be the aggregate amount of instalments received or instalments due and receivable during the period are only to be considered as turnover of sale.**

■ Thus, in respect of such sales, aggregate of all instalments or rentals receivable during the tenure of the agreement is not required to be considered. However, advance instalments received will form part of turnover of sales during the year of receipt.

- **Under Explanation III, it has been provided that the turnover of sales in respect of transaction of sales made before the date of order under which certificate of registration is cancelled will have to be considered.**

- **Special issues under CST Act, 1956**
- **While determining the turnover of sales for the purpose of section 61, the vat auditor will have to give special consideration for the following special issues which may arise under the Central Sales Tax Act, 1956:**
- **Deposits > The sale price will not include deposits, if any, in connection with or incidental or ancillary to the sale.**

- **Works Contracts —** The sale price will have to be determined in accordance provisions of the MVAT Rules in view of the judicial pronouncements of Supreme Court of India in case of Mahim Patram Private Ltd. vs. Union of India (6 VST 248).
- **Option for composition will also be available under the CST Act as held by the Central Sales Tax Appellate Authority in the case of Commissioner of VAT vs. State of Haryana (23 VST 10).**

- Goods Returns — Effect of goods returned within the prescribed period of 6 months should normally have to be given in the period in which the original sale was made, as held by the Supreme Court in the case of BASF India Ltd. (117 STC 543).

- Provisions of section 63(5) and (6) of the MVAT Act may not be apply to turnover under the CST Act. However, the Commissioner of Sales Tax had clarified vide Trade Circular No. 26T of 2006 dated 18.9.2006 that section 63 would apply mutatis mutandis to the claim of 'goods return' under the CST Act.

- **Customs and Excise Duty — Where the Customs or Excise duty in respect of the goods sold is paid by the buyer or by any other person, when there is no liability to pay such duty by the seller, such Customs or Excise Duty will not be included in the turnover of sales under the CST Act.**
- **Only the duty charged by the seller to the buyer will form part of the sale price and will be included in the turnover of sales.**

“turnover of purchases”: Sec. 2(32)

- **“turnover of purchases” means the aggregate of the amounts of purchase price paid and payable by a dealer in respect of any purchase of goods made by him during a given period, after deducting the amount of,—**

- **purchase price, if any, refunded to the dealer by the seller in respect of any goods purchased from the seller and returned to him within the prescribed period; and**
- **deposit, if any, refunded in the prescribed period to the dealer by the seller, in respect of any goods purchased by the dealer.**

- **Explanation I. —In respect of goods delivered on hire-purchase or any system of payment by instalment or in respect of the transfer of the right to use any goods for any purpose (whether or not for a specified period) the amounts of purchase price paid or payable during a given period shall mean the amounts paid or, as the case may be, due and payable during the said period.**

Purchases

- The term “purchases” is not defined under the MVAT Act. However, the definition of the term “sale” in section 2(24) provides that the words “buy or purchase” with all their grammatical variations and cognate expressions, shall be construed in accordance with the definition of sale. Thus, sale and purchase are two sides of the same transaction.

- **Purchase price in respect of certain purchases, will not form part of turnover of purchases for section 61(1), e.g.,**
- **Inter-State purchases and/or imports, since in both cases situs of sale is not in the State of Maharashtra.**
- **Goods received on consignment, branch transfer, etc. since these are not purchases.**

- **Amount of expenditure incurred by the purchaser in relation to purchase like freight, octroi, etc. since it is not a consideration for purchase though in normal accounting, it forms part of purchase cost. However, if any, refundable duties are excluded from purchase as per AS, the same will form part of purchases**

- **Purchase of any goods including capital assets or purchases debited to profit and loss account (such as stationery, gift articles, etc.) will have to be taken into account for the purpose of determination of turnover of purchases.**

Turnover of Purchases or Sales

For the purpose of section 61

- **the turnover of sales or purchases will have to be determined in respect of all places of business of the dealer within the State of Maharashtra and will include turnover of trading goods, manufactured goods, raw materials, consumables, fuel, capital assets (excluding immovable property), tax free goods, intangible or incorporeal goods, waste, scrap, any sale or purchase of goods credited or debited to profit & loss account.**

- **In other words, everything connected with the sale or purchase of goods in the course of business within the State of Maharashtra will have to be included for determination of turnover of sales or purchases, as the case may be.**
- **From 2013-14 onwards, to calculate this limit, even value of inter-State branch transfer/consignments transfers are also to be considered.**

Gross Turnover of Purchases or of Sales

- The turnover of purchases or sales and gross turnover of purchases or sales are two different terminologies used in MVAT Law.
- While turnover of purchases or sales is required to be determined in accordance with earlier slides, the gross turnover will include total turnover before any deductions.

- In the returns & audit report format, the gross turnover of sales and purchases is required to be given
- Claim of the goods returned during the period reduces the turnover of sales or purchases, it forms part of gross turnover of sales or purchases.
- GTO will be including value of branch transfers, consignment transfers, job work charges, taxes collected, etc.

- **Term gross receipt used in the MVAT Rule 53(6) should not be confused with the gross turnover of sales. While for the purposes of Rule 53(6), gross receipts will also include receipts pertaining to all activities including business activities in the State of Maharashtra.**
- **For the purpose of section 61, the criteria is of turnover of sales or purchases and not of gross turnover of sales or purchases.**

Year: section 2 (35)

- The term “year” is defined in to mean “the financial year”.
- Liability to get registered on turnover basis
- In order to find out as to whether the dealer has to get the books of account audited.

- **Since audit report, in Form 704, is required to be given for the year, meaning thereby for the financial year, vat auditor will have to take into account all particulars for the financial year.**

Section 58 of MVAT Act

- Turnover limits for part of the year
- Where any order under this Act is being passed in respect of a dealer for a part of a year for any reason whatsoever, then for the purposes of levy of tax or exemption from the payment of whole or part of tax & for any purposes incidental or ancillary thereto, any reference to any specified amount or amounts in any section other than section 3 or in any rule or in any notification issued under this Act in relation to a year shall be taken proportionately

- **Normally three eventualities are envisaged where the accounts would be prepared for part of the year, viz :**
- **Year in which business is commenced;**
- **Year in which the business is closed;**
- **Transfer of Business.**
- **Section 58 may have to be applied differently in the above contingencies**

DDQ

- VEDPMC LTD.
- DQ11/2010/Adm3/38/B1 dt7.8.14
- Sale price under invoice no1226 dt15.7.10
would include freight, handling, octroi and
other incidental charges and all other
charges being incurred at the time of or
before delivery of the goods
- prospective effect request rejected

DDQ

- Sujata Painters
- DDQ-11-2007/Adm-3/16/B-1 dt 20.1.12
- Held 1) Service Tax forms part of sale price
- 2) As per Rule 58 after legitimate deduction remainder is sale price

Thank you !



Best wishes for VAT practice