

**INTENSIVE STUDY COURSE
ON MVAT- BY WIRC of ICAI**

Input Tax Credit (Set off Rules)

CA KIRAN G. GARKAR

TOPIC OF THE SESSION

- **Set-off, Refunds etc. under the MVAT Act, 2002**
- **To reduce the burden of cascading effect of tax on inputs**
- **Input tax credit is heart of the VAT system.**

Section 48 of the MVAT Act, 2002

- **It empowers the State Government to make Rules for granting the set-off.**
- **The said Section also provides powers to the Government to stipulate any conditions, which Government deems fit before granting such set-off.**
- **Rules 51 to 56**

Section 48 of the MVAT Act, 2002

- **Section 48 does not make it compulsory for the State Government to provide rules for the set-off.**

- **Section 48(5):**

Constitutional validity upheld in the case of Mahalaxmi Cotton Ginning [Bom HC]

[WP 33/2012- Tr. Cir. 8T/21/06/12]

No set off to be granted for non filers, short filers

No set off in any case in respect of purchases from Hawala Dealers

SET OFF

- **Concept under BST Act has undergone a sea change**
- **Concept of Set off is de-linked from manufacture etc., except few instances.**

Set-off [Section 48(1)]

- **Tax paid under any earlier Law on any earlier sale or purchase of goods which are treated as Capital Assets on 31st March, 2005, which are held in stock as on 1st April, 2005. (Section 48(1)(a)(i))**
- **Tax paid in respect of any sales or purchases of goods under this Act.**

Contd.

- **Tax paid under the Maharashtra Entry Tax Motor Vehicle Act, 1987 on purchase or import of Motor Vehicles. (Section 48(1)(a)(iii))**
- **Tax paid under the Maharashtra Tax on Entry of Goods into Local Areas Act, 2002. (Section 48(1)(a)(iv))**

Remember

- *CST paid on inter-State transactions is not covered by this section.*

Thus CST paid on inter-State transaction cannot be considered as eligible amount for set-off and no set-off is available in this regard under any Rules.

Remember

- **The concept of all inclusive tax price or price reduction method (similar to rule 46B in 1995 VAT scene) is not provided for.**
- **Except in respect of resale of goods originally manufactured by a unit enjoying Sales Tax Exemption Benefit under the PSI, as provided in the Rule 57.**

SECTION 49

- **The restrictions imposed by sections 14 and 15 of the Central Sales Tax Act, 1956 [Declared goods], are taken care of by section 49.**
- **Even an unregistered dealer is entitled to claim this set off.**
- **Rule 56**

CONDITIONS : FOR GRANT of SET-OFF

- **Specified in Section 48 of MVAT Act, as well as in Rule 55**

- **Production of Tax Invoice**

- **Payment of Tax into Government Treasury-**

>Ref. Larger Bench Decision

M/s Sanjesh Chemicals [SA1109/2002 dt.15-12-2007]

> Mahalaxmi Ginning [Bombay HC]

CONDITIONS : FOR GRANT of SET-OFF

- **Claimant dealer must be a RD:**

Rule 55(1)(a) is amended from 8-9-06. After amendment, the dealer is eligible to claim set-off of tax paid on purchase of goods effected from registered dealer during the URD period also if in stock on date of Regn.

- **Recast on 31-10-07.**

Effective from 1-4-07.

CONDITIONS : FOR GRANT of SET-OFF

- **Set off available only if goods purchased/ entered after 1st April of the year in which dealer has obtained registration and**
 - Treated as Capital assets & not sold before date of Regn.**
 - Other than Capital assets & have not been sold/ disposed off.**
 - If goods are used or consumed in manufacture & manufactured goods have not been sold before the date of effect of RC.**

CONDITIONS : FOR GRANT of SET-OFF

- **Maintain a true account of all the purchases in chronological order of goods showing the details**
- **Produce the original invoice/ bill/ cash memo [Tr.Cir.30T (23/09/05): Sp. Relief]**
- **Rule 55(3) : Adjustment of set-off**
- **Rule 55(5) : FIFO method in absence of identification**

RULE 51 : Transitional provision

- **If goods are in stock as on 31-3-2005**
- **Capital assets purchased after 1-4-2003**
- **Set off in accordance with Rule 44-D of BST**
- **Set off not available if already claimed.**
- **Goods (Trading goods or capital goods) should be resold or used in the packing of goods so resold on or before 31-12-05**
- **Filing of a stock statement in prescribed form [Sec.84]
>Date notified as 30-4-05 & extended up to 15-9-05
> To file fresh/revise stock statement up to 28-2-07 [5-T dated 15-01-2007]**
- **If goods are not resold before 31st December, 2005 then the dealer to reverse the amount of set-off claimed**

Rule 51: Conditions

- ***'non- obstante'* clause is inserted. The restrictions or retentions or disallowances contained in rules 53 and 54 will not be applicable**
- **The processes prescribed in rule 3 of the BST Rules will be treated as resale. Set-off will be allowed under this rule.**
- **Under Explanation to rule 51, it is provided that set-off will be allowed in full in case of inter-State stock transfer or consignment of goods.**
- **The Commissioner of Sales Tax was empowered to specify the date for filing of stock statement and the month in which set-off can be claimed.**

Rule 52 – Purchases after 1-4-05

- **Aggregate of the following sums –**
- **Tax collected separately from the claimant dealer by the other RDs.**
- **Tax paid in respect of any entry of goods under the Entry Tax Acts**
- **In respect of purchases or entry of goods made on or after 1st April, 2005, no specific use of goods have been prescribed.**

Rule 52 –Purchases after 1-4-05

- **Goods eligible for grant of set-off under this Rule –**
- **Purchase of any goods being capital assets or debited to trading or profit and loss account is eligible for set-off.**
- **Set-off under this Rule is available**
 - subject to reduction of set-off as specified in Rule 53**
 - and**
 - subject to non-admissibility of set-off as provided in Rule 54 of the MVAT Rules, 2005.**

RULE 53:

REDUCTION/ DEDUCTION OF SET-OFF

- **General Retention rate for Rule:**
- **4% From 1-4-2005 to 31-03-2007**
- **3% From 1-4-2007 to 31-05-2008**
[except rule 53(4)]
- **As per rate under Section 8(1) under CST Act, 1956 : 2% from 1-6-2008 [except rules 53(1)/(1A)/(3)/(4) &(7A)]**

RULE 53:

REDUCTION/ DEDUCTION OF SET-OFF

- **Retention applicable in following cases**
- **Rule 53(1)**
- **Fuel: If any taxable goods purchased are used as fuel.**
- **Retention of 3% from 1-4-2007**
- **Not linked with CST rate**

RULE 53:

REDUCTION/ DEDUCTION OF SET-OFF

- **Rule 53(1A)**
- **Inserted w.e.f.01/05/2012**
- **On purchases of natural gas, unless it is resold locally or OMS or Br. Transferred**
- **Retention @ 3%**
- **Expln: Deemed to be resold if sale is after conversion from one form to another form**

RULE 53:

REDUCTION/ DEDUCTION OF SET-OFF

- **Manufacture of Tax-free goods: Rule 53(2)(a)**
Corresponding taxable goods [not being capital assets, fuel & natural gas] purchased.
- **Retention @ CST rate**
- **Explanation: from 1-4-2005, no such retention shall be made in case of manufacture of**
 - >Sarki pend, deoiled cakes and
 - > Any tax free goods if they are exported out of India u/S 5 of CST Act.
[export of sugar and textiles covered by Schedule A 45, upto 31/10/2008]

RULE 53:

REDUCTION/ DEDUCTION OF SET-OFF

- **Rule 53(2)(b)**
- **Resale of tax free goods**
- **Set off on Corresponding packing materials to be reduced.**
- **No benefit of proviso upto 30/06/2009**
- **Proviso of no retention if goods are exported u/S 5 of CST Act**

RULE 53: REDUCTION/ DEDUCTION OF SET-OFF

- **53(3)(a): Dispatches of any taxable goods outside the State, in India, not by reason of sale, to his own POB/ his agent / his principal,**
- **As per proviso, the retention not to apply when dispatched goods are brought back to the State within six months from the date of dispatch.**

RULE 53:

REDUCTION/ DEDUCTION OF SET-OFF

- **Proviso to rule 53(3)(a) : if schedule rate is less than 4 %, retention at such lower rate**
- **Otherwise retention to be at 4% of corresponding taxable goods (not being C/A, fuel or natural gas)**
- **If goods are dispatched to job worker situated outside the State, retention not to apply [Tr.Cir.16T of 2007, 20-2-07]**

RULE 53:

REDUCTION/ DEDUCTION OF SET-OFF

- **Rule 53(b):**
- **If claimant dealer manufactures goods covered by Sch. Entries 5 to 10 of Sch. D. & sends them not by way of sale to Branch within India or sends them to agent or /principal**
- **Retention of 4% of value of goods so dispatched**

REDUCTION/ DEDUCTION OF SET-OFF

- **Rule 53(4):**

In case of construction contracts (under 5% composition) set-off retention to the extent of 4% of P.P.

Others under 8% Composition set-off to be claimed @ 64%.

- **Set-off on purchase of Capital assets and other goods in which property does not transfer shall be allowed full.**

REDUCTION/ DEDUCTION OF SET-OFF

- **Rule 53(4):**Explanation added on 23-10-08, effective from 1-4-05:
- **'If principal contractor has opted for composition u/S 42(3) and has awarded part/full contract to sub-contractor, then claimant dealer shall also include a sub-contractor'**
- **Rule 53 (5):** Disallowance of set-off on stock (except C/A) at the time of discontinuation of business.

REDUCTION/ DEDUCTION OF SET-OFF

- **Rule 53(6)**
- **If Sale Receipts are less than 50% of Total Receipts in any year:**
- **Wef 1-4-05 to 7-9-2006:**
Setoff allowed only on Purchases Corresponding to goods sold or Stock Transferred to Other State

Rule 53(6)

- **Wef 8-9-06 to 31-10-08: [Earlier amendment]**
only on Purchases where Corresponding goods are sold or Stock Transferred to Other State within 6 months of Purchase
Hotels & Clubs : on Capital assets & Consumables pertaining to Kitchens & service of Food & Drinks
Plant & Machinery purchased from 8-9-06
Explanation : 'Gross Receipts' means receipts pertaining to all activities carried out in Maharashtra but does not include Br. Tr.

Rule 53(6)

- **After substitution from 08-09-2006:**
- **In case of a hotel (not being under composition), set off eligible on purchases corresponding to food and drinks sold or resold and capital assets pertaining to kitchen and sale and service of food and drinks**

Rule 53(6)

- **In case of others, set off eligible on purchases corresponding to goods sold or consigned within 6 months from the date of purchase.**
- **Manufacturer (Not Principally engaged in labour work) eligible for setoff on purchases of P& M, their PCA, Consumables, Stores & Pkg. Mat. in respect of 3 yrs from end of the year containing the date of effect of RC**
- **Expl. for ‘Gross Receipts’ continues**

REDUCTION/ DEDUCTION OF SET-OFF

- **Rule 53 (7):**
- **Dealer holding licence in Form FL-II or in Form CL-III or in Form CL/FL/TOD/III and where the actual sale price of liquor is less than M.R.P., then the set-off to be reduced proportionately as per formula**
- **Deleted wef 01/05/2011**

REDUCTION/ DEDUCTION OF SET-OFF

- **Sub-rule (7A) from 8-9-2006**
- **Purchases of furniture and fixture and office equipment & treated by dealer as capital assets**
- **In the business of leasing, full set-off shall be allowed on such purchases without any retention**
- **Earlier under rule 54, no set-off was allowed, now with 3% retention**

Rule 53(7B)

- **Specific rule for Electricity GTD Companies**
- **Retention on Fuel, Natural gas, Office Equip., furniture, Fixtures as per separate rules**
- **Retention on other inputs & goods treated as Capital assets by him, for use in GTD of Electricity @ CST Rate notified u/s 8 (1) of CST Act, i.e. @ 2% w.e.f 1-6-08
(@ 3% from 1-4-07 to 31-5-08 & @ 4% from 1-4-05 to 31-3-07)**

Rule 53(10)

- **Textile Processor : Rule introduced on 01/11/08 effective from 1-4-05**
- **Textile Processing Contract - Fully Exempt wef 1-4-05 vide Notifn issued u/s 8(3C) of MVAT Act**
- **Retention on inputs where TOP takes place & on Pkg Mat. @ CST Rate notified u/s 8(1) of CST Act**
- **Setoff & Retention on other purchases i.e. Consumables, Capital Assets, etc. as provided under other Rules.**

Rule 53(9)

- **Sub Rule (a):**
- **For sub-rules 1, 1A, 2(a) and 3**
- **‘Corresponding’ means which are Contained in the Output & Packing material**
- **and does not include Consumable, Stores, Goods treated as Capital Assets & their PCA and Fuel**

Rule 53(9)

- **For 53 (2), if PP can't be ascertained from books of A/cs then Ratio of SP/Value of Taxable & Tax free goods be applied [Rule 53(9)(b)(i) wef 1-11-08]**
- **For corresponding PP, Ratio of SP of goods sold & Value (inclusive of Excise Duty as per A/cs) of Stock Transfer be applied [Rule 53(9)(b)(ii) w.e.f 1-11-08]**

REDUCTION/ DEDUCTION OF SET-OFF

- **Sub-rule (8) : If any amount of set-off is required to be reduced/ disallowed, on account of happening of any contingency specified in Rule 53, then the same shall be deducted by the dealer in the period in which the contingency specified in rule 53 occurs.**
- **The problem is likely to arise in case of 53(6), where in set off seems to be linked with sale event.**

RULE 54 : SET OFF NON-ADMISSIBILITY

- **No Set-off on certain goods specified in this Rule or if any contingency specified in this Rule occurs.**
- **54(a): MOTOR VEHICLES: On passenger vehicles, treated by the claimant dealer as capital assets and parts, components and accessories thereof.**

Not applicable to the dealer engaged in the business of leasing. [benefit deleted w.e.f. 01/05/13]

RULE 54 : SET OFF NON-ADMISSIBILITY

- **MOTOR SPIRITS: 54(b) No set-off on purchases of motor spirits for own use.**
- **Motor Spirits means as notified from time to time by Government u/s. 41(4) of the Act.**
- **This Sub-Rule further provides that set-off will not be denied if motor spirits are resold or sold in the course of Inter-State Trade or Commerce or in the course of Export out of the territory of India or are transferred outside the State otherwise by way of sales.**

RULE 54 : SET OFF NON-ADMISSIBILITY

- **CRUDE OIL: Sub-Rule 54(c) provides that set-off is not available in respect of purchases of crude oil as described in Section 14 of the CST Act, 1956 to oil refineries for their refining purposes.**

RULE 54 : SET OFF NON-ADMISSIBILITY

- **JOB WORKER: Sub-Rule 54(d)**
No set-off is available on any purchases of consumables or on goods treated as capital assets if principally job worker sells incidentally generated waste/scrap
- **Sub-Rule is not applicable to the dealer, who is engaged in the business of manufacturing of goods and sale by him.**

RULE 54 : SET OFF NON-ADMISSIBILITY

- **BACKWARD AREA UNIT: Sub-Rule 54(e) Set-off is not available to any dealer to whom an Entitlement Certificate is granted for claiming sales tax benefit either by way of exemption or by way of deferment of tax, in respect of purchases of raw materials as defined in Rule 80 of MVAT Rules.**
- Acc. to amendment on 31-10-2007, Exception provided for PSI Units under Tourist Projects, 1999

RULE 54 : SET OFF NON-ADMISSIBILITY

- **Sub-Rule 54(f):**
- **SET OFF ONLY IN RESPECT OF SPECIFIED GOODS OF INCORPOREAL OR INTANGIBLE NATURE:**
 - > **Entries 3 & 4: Import Licenses incl. SIL, DFA and Exim Scrips, Export Permits, DEPB,**
 - > **SIM Cards from 8-9-2006**
 - > **Software packages in the hands of dealer who is trading in software**
 - > **Copyright resold within 12 months of purchase**

RULE 54 : SET OFF NON-ADMISSIBILITY

- **Sub-Rule 54(g): No set-off in respect of purchases effected by way of works contract which results in immovable property.**
- **Under this sub-Rule, the set-off is denied to purchaser of goods; i.e., contractee .The contractor will get the set-off as per the provisions of law.**
- **Sub-rule (g) is substituted from 8-9-2006 it shall not be disallowed in case of plant and machinery.**

RULE 54 : SET OFF NON-ADMISSIBILITY

- **Rule 54(h): No set-off on purchases of any goods in which property is not transferred (either in same form or any other form) to any person and which are used in erection of immovable property other than plant and machinery.**
- **This is corollary of earlier clause.**

RULE 54 : SET OFF NON-ADMISSIBILITY

- **54(i):**
- **No set off to Liquor Dealer opting for composition u/Sec. 42(2), on purchases of IMFL or Country Liquor.**
- **Substituted wef 01/05/2011**
- **Disallowed on purchase of liquor covered under entries 1,2 & 3 of Sch. D except when sold inter-State or Br. Transferred or sold from customs bond to foreign going ships and aircrafts.**
- **From 01/01/2014, Entry 3A for Wine also added.**

RULE 54 : SET OFF NON-ADMISSIBILITY

- Mandap Contractors u/Composition 42(4): Rule 54(j) No set-off on purchase made on or after 20-6-2006 of Mandap, Material used for Decoration of Mandap and Furniture, Fixtures, and other articles ordinarily used along with a Mandap
- Hotelier: Under rule 54(k) added from 8-9-2006, in case of an Hotelier, set-off will not be allowed on purchases of any goods after 1-4-2005, which are treated as Capital Assets, not pertaining to supply by way of or as part of service in any other manner, of food or any drink (including liquor).

Rule 52A

- **Set off in respect of goods manufactured by Mega Units**
- **Notwithstanding anything in Rules 52 & 53**
- **Purchase from mega Unit other than declared goods**
- **Set off only to the extent of aggregate of**
 - > **Taxes paid/payable under CST ACT on OMS sales and**
 - > **Taxes paid on purchase of goods sold locally**
- **Set off to be available in the month of sale**
- **This rule not to apply if goods are used in manufacture within the State.**

Rule 55B

- **Inserted on 16/05/13 w.e.f.15/10/2011**
- **Applicability of set off to Developers and Units in SEZ.**
- **Nothing contained in rule 53(6) or 54(g) or 54(h) shall be applicable to Developers & units in **processing area [PA]** of SEZ.**
- **Expl:** PA to mean as demarcated under Sec.6 of SEZ Act but excl. educational institutions, hospitals, hotels, residential /commercial complexes.

THANK YOU >



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