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IMPLICATION UNDER VAT  
DISALLOWANCE OF ITC – SEC  
48(5), HAWALA PURCHASES /  
MIS-MATCHES etc.

❑ The claims of Input Tax Credit (ITC) under the Maharashtra Value Added Tax (MVAT) Act, 2002 are allowed as per the provisions of sec 48 of the MVAT Act.

❑ **Section 48(5) states as under;**

*“For the removal of doubt it is hereby declared that, in no case the amount of set-off or refund on any purchase of goods shall exceed the amount of tax in respect of the same goods, actually paid, if any, under this Act or any earlier law, into the Government treasury except to the extent where purchase tax is payable by the claimant dealer on the purchase of the said goods effected by him”*

*“Provided that, where tax levied or leviable under this Act or any earlier law is deferred or is deferrable under any Package Scheme of Incentives implemented by the State Government, then the tax shall be deemed to have been received in the Government Treasury for the purposes of this sub-section.”*

## **DISALLOWANCE OF ITC – SEC 48(5):**

- ❑ With a view to enforce the above provisions of law the department has developed annexures J1 and J2.
- ❑ The department tries to match up electronically these J1 and J2 and undertook a process of investigation in respect of the mismatches.
- ❑ The department investigation led to certain hawala dealers who simply issued bills in the market without there being purchases corresponding to the sales.

## **DISALLOWANCE OF ITC – SEC 48(5): HAWALA DEALER:**

The hawala dealer were prized catch for the department.

With a view to prove their phenomenal success they started declaring dealers as hawala dealers without proper investigation, listed the dealers on the website and with the help of the provision of sec 48(5) created legal terror.

There is no denial to the fact that there are certain hawala dealers which needs to be caught and punished and consequently the setoff to the beneficiaries of such dealers needs to be disallowed. However it is equally a fact that not all the dealers in the list published by the department are hawala dealers.

The dealers in the list of hawala can be classified into different types,

- (a) Purely a hawala dealer: simply giving bills with bogus registration numbers.
- (b) A registered dealer doing business but also issuing some bogus bills to augment revenue.
- (c) a registered dealer doing business not traceable by the department due to change of place etc.
- (d) a registered dealer who has died the business is closed and no response to the notice issued by the department.

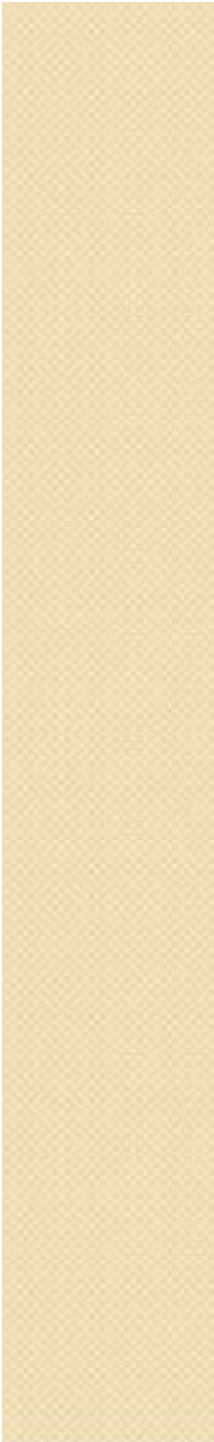


## **DISALLOWANCE OF ITC – SEC 48(5):**

The department uniformly treated all the dealer listed in hawala as dealers who had not made any sale purchases.

The department issued noticed to the beneficiaries dealers of all the listed hawala dealers directing them to pay up the amount with, tax interest and 25% penal interest.

In the event of the beneficiaries dealer paid the above sum, no action was taken on them and the notices were closed without any further proceedings.



In the event the beneficiaries dealer argued with the assessing officer and asked for details such as statement recorded etc. assessment were done without granting any documentary proof of the fact that the declared dealer in the list is a hawala dealer.

No assessments were made of the hawala dealers to confirm on the basis of evidence with the department that the said dealers are actually hawala dealers.

To pressurizes for payment without granting any documentary evidence and simply on the basis of the list put up on the website prosecution notices were sent and certain complains were made to the police to investigate the connivance of the selling dealer and the purchasing dealer.

Writ petition was filled in Bombay high court with respect to the constitutional validity of sec 48(5). Held as under,

Section 48(5) uses the expression “actually paid” into the government treasury. The words “actually paid” must receive their ordinary and natural meaning. A set off under Section 48(5) would be allowable only to the extent of the tax, if any, that has been actually paid into the treasury in respect of the purchase tax paid on the same goods. The use of the word “actually” in conjunction with the word “paid” leaves no manner of doubt about the legislative intent. A set off is available where tax has been deposited in the treasury and to the extent of the tax deposited. Where no tax has been deposited in the treasury, there is no tax actually paid in respect of which a set off can be granted.

In the context in which the words “actually paid” are used in the MVAT Act, “actually paid” means what has been as a matter of fact deposited in the treasury. Hence, in the context of the provisions of Section 48(5), we cannot accept the contention of the Petitioner that “actually paid .. in the government treasury” means or should be read to mean what tax ought to have been deposited but has not actually been deposited in the treasury.



The department used the above writ petition and quoted in the assessment order, "investigation done by the department of the sales tax has revealed the existence of hawala transactions where there was no sale of goods in the invoice issuing dealer had merely issued tax invoice to the so called purchasing dealer in order to defraud the revenue and to allow the benefit of set off.

**In the eye of law these are SHAM transactions and involving fraud, collusion or connivance between so called selling and purchasing dealers.(Referred to as hawala purchases or hawala transactions in common parlance or also called as bill trading).** The necessary ingredients of sales as per sale of goods act - that is transfer of property in goods from the seller to the buyer is missing in these transactions. **These vendors have during the course of investigation and as per the admission given in the affidavit/statement under section 14 of MVAT Act, 2002 by the proprietor/partner/director and or operator of the firm/company admitted before before investigation officer that they have not done genuine business but have issued false invoices only.** The registration certificates of these dealers have been cancelled by the department as per provisions of law. Hon'ble Bombay high court judgment in case of Mahalaxmi Spinning Mills (2012) 51 VST 1 has in paragraph 10 observed and held that in the present proceedings as well as in the companion petitions, **it has not been the contention of the petitioners that a claim to a set off under section 48 should be allowed even in those cases where the transaction of sale is sham or in cases involving fraud, collusion or connivance between selling and purchasing dealers.**"

All the norms of natural justice were thrown to the dustbin.

Multiple assessments were made of the beneficiaries dealers, some assessments were made inspite of the fact that the amounts were paid.

More than 50% of the assessments made for the period 05-06 and 08-09 were done ex-party.

In more than 90% of the cases no documentary evidence was granted to prove that the dealers were hawala dealers i.e. statements recorded, the purchase bills etc. of the hawala dealers.

The above anarchy continued inspite of the fact that in the course of the hearing of the writ petition.

The State Government has placed before the Court, both on affidavit and during the course of the hearing, the steps which it shall pursue against a selling dealer who, having collected tax from the purchasing dealer does not deposit the tax into the Government Treasury.

Further Trade Circular no. 8 T of 2012 was issued by the commissioner, which states as under,

*“The result of match/mismatch along with details of unmatched shall be communicated to every dealer on his email. Subsequently, if such defaults are made good, the system shall be updated and the process will be re-run at the end of the year and the earlier denied credit will be allowed to the purchasing dealer as refund or carry forward such available refund.”*

WAY FORWARD AFTER ASSESSEMENT.....

Efforts will have to be made to collect information in respect of the declared hawala dealers and then produce the same to counter the allegations of the department.

The best method to gather information is RTI, here to the department will first reject the application and then on appeal information will be granted. A must seek information should be J2 of the hawala dealers for all the relevant years.

## **WHETHER A HAWALA DEALER:**

SITUATION 1: A father and son are doing business from the same premises. The firm of the father and the firm of father's HUF are declared to be hawala and the son's firm is currently allowed to do business as genuine dealer.

SITUATION 2: A proprietor of business has died in 2010. the said dealer is declared hawala and RC cancelled.

Situation 3: A firm is declared as hawala dealer and notices are sent to the beneficiaries and tax collected with interest and penal interest. Suddenly the firm's name is removed from the list of hawala

## **DISALLOWANCES UNDER SEC 48(5): MIS-MATCHES:** **TYPES OF MIS – MATCHES:**

The system of mahavikas is used to track the mismatches.

The mismatches are classified in to the following annexures.

- Annexure 1: Tax credit from Hawala (Beneficiary of Hawala).
- Annexure 2: Tax shown in J1 of Hawala.
- Annexure 3: Tax credit from Fake Tin.
- Annexure 4: Tax credit from RCC.
- Annexure 5: Tax credit from Return defaulter.
- Annexure 6: Wrong ITC from Composition dealer.
- Annexure 7: Tax credit from civil contractor.
- Annexure 8: Excess ITC from full J1 filers (Unmatch).
- Annexure 9: Excess ITC from full J1 filers (Mismatch).
- Annexure 10: Ask to pay amount (MVAT)
- Annexure 11: J4 J3 Negative mismatch (Excess ITC)
- Annexure 12: sales suppression J2 REV
- Annexure 13: Ask to pay amount (CST)
- CST declaration tax
- Form C excess value
- Form F excess value

On the basis of above mismatches the department issues the notice to the defaulters under section 603.

### **□Annexure 3: Tax credit from Fake Tin:**

The system of filling up J2 is very tedious and time consuming. It is always possible that certain times clerical errors occur and tin number mentioned in the J2 does not match.

There can be a case where tin number does not exist and in such cases credit of fake tin is invoked to disallow the set off.

In the event the dealer admits the mistakes, the dealer is asked to revised the J2 and the ledger confirmation of the party along with the xerox of the bill are asked to be submitted.

In the event the tin is fake take interest and penal interest are asked to be paid and if the dealer does not pay tax interest and 100% penalty are levied under section 29(3).

#### **□Annexure 4:Tax credit from RCC.**

RCC – Registration Certificate Cancelled.

In certain cases proprietors are converted into partnership and partnership are converted in to pvt ltd companies, one pvt ltd merges with another., take over of business.

In all the above cases the tin number changes but the buyer does not change old tin number in his system and continues to write the old tin number in his J2.

In all such cases tax credit is sought to be disallowed.

The dealer has to obtain the ledger confirmation from the party along with zerox copies of the bill submission has to be made before the assessing officer and J2 also has to be revised. So as to avoid disallowance of tax credit.

## **□Annexure 5:Tax credit from Return defaulter**

This type of mismatch fetches maximum revenue to the government and all of it unjustly.

The mahavikas system of the government shows the list of return defaulters and in all cases of the dealer who have purchase from such dealers the tax credits is sought to be disallowed.

Consider a situation where the dealer is a defaulter for a sum of Rs. 50,000/- the credit is sought to be disallowed to all the parties to whom the sales have been made by the defaulter. There by unjustly enriching the government.

Further let us say after a year he pays Rs. 50,000/- then there is no provision under the law or a procedure prescribed to grant credit to all the sales parties of that return defaulter.



## **□Annexure 6:Wrong ITC from Composition dealer**

The system of mahavikas has been set up to report mismatch pertaining to tax credit taken of dealers who have opted for composition schemes where by the dealer is not allowed to collect tax which he is liable to pay as composition.

There have been cases where certain composition dealer have issues tax invoices in regular course collected tax and paid the taxes. Even then instead of rejecting the composition of the selling dealer the tax credit of the buying dealer is disallowed.

Legally, once the tax is collected and paid into the government treasury the buying dealer should be entitled to setoff, however, the same is not implemented at the ground level.

## **□Annexure 7:Tax credit from civil contractor**

There are major issues in the mahavikas pertaining to the above mismatch.

Works contractor are classified as civil contractors and notices are sent to all the dealers who has reported purchase from such dealers. On the presumption that all the sales made by the works contractors has resulted into immoveable property and therefore the set off is wrongly claimed by the purchasing dealer.

Practically however not all the works contractors are civil contractors and presuming a contractor is a civil contractor then if the contract is pertaining to plant and machinery then whole of the setoff is allowable.

In cases pertaining to printing contracts, there have been lots of notices seeking to disallow the setoff since the tax has been paid by the works contract dealers either under rule 58(1) table method or under composition.

- ❑ **Annexure 8: Excess ITC from full J1 filers (Unmatch).**
- ❑ **Annexure 9: Excess ITC from full J1 filers (Mismatch).**
- ❑ **Sales Suppression J2 Rev**

This is a reverse match verification where by from the J2 of the dealer the corresponding entry of the selling dealer is sought to be matched.

In the event the credit shown in the J2 is not seen at all in J1 of the selling party then J1 filer (unmatch) notice is sent.

In the event the credit shown in the J2 does not match exactly in J1 of the selling party then J1 filer (mismatch) notice is sent.

In the event the transactions are to be proved necessary amendments by way of filing fresh / amended J1 has to be filled.

### **J4 J3 Negative mismatch(Excess ITC)**

Set off is sought to be disallowed in the event the J3 J4 filled up by one dealer does not show up in the corresponding other dealer.

There can be various situation like the J1 itself or the J2 is reported after taking into consideration the effect of the corresponding debit credit notes.

In the event the account is not reconciled and necessary documents are not produced then setoff will be disallowed and consequential interest and penal interest shall follow.

## **Other Mismatches:**

There can be mismatches due to accounting method followed by the dealer.

The purchasing dealer follows cash system of accounting where as the selling dealer follows mercantile system where by the sale may booked in one period where as the purchase may be in another period.

In certain organizations the purchase register is prepared on the basis of posting date in the system and due to the time lag of receipt of goods and its entry in the books of accounts.

In annexure D reporting has to be made of TDS certificate issued. The same has to match with the purchases shown in J2.

There may be mismatches in Form 407 and 408 due to the fact that some part of the turnover may have been taken in the prior period or the subsequent period.



**THANKING YOU**  
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