

WIRC of ICAI

VAT in Ecommerce Space

CA Deepak Thakkar

3 June 2016

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

1

Ecommerce..... growth

1. Ecommerce- a method of conducting business through varying use of electronic means rather than through conventional brick-and-mortar store
2. Ecommerce transaction may be for goods or services
3. Ecommerce transaction may be B2B or B2C
4. e-commerce industry in 2008-09 was merely at US\$ 3.8 billion; it is approx US\$ 38 billion in 2015-16; a whopping 10 times growth
5. PM Narendra Mody integrated 21 online market places of 8 States under a single platform called "National Agriculture Market" (NAM) in Apr 2016
6. Controversy about the taxation of sales made over these online portals.
7. Various Models implemented by the various e-commerce players.

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

2

Ecommerce Models

1. **Model-1: Stock and Sell model:** self-inventory model wherein **owner of the goods operate online portal** to receive booking/order from end consumer; **goods delivery handled by seller/e-commerce player himself or outsourced** to the third party; e.g. **Myntra.com**
2. **Model-2: Marketplace model:** In this model **three parties** are involved; **e-commerce player own the platform** (normally a website or a mobile application), **sellers** leverage on marketplace's website and access their distribution network, maintaining inventory and driving sales, **end-customer** places orders on the portal of e-commerce Company, which is routed to the individual concerned retailer who then processes the order; Normally, **e-commerce company collects the goods from the vendor and delivers it to customer. Vendor raises an invoice on the customer and property in goods is directly transferred to ultimate customer;** e-commerce player gathers commission on ad-valorem basis
3. **Model-3: Fulfilment Centre model:** **Vendor owns the goods,** however, the **inventory is maintained by the e-commerce cos. in their warehouse** which is **registered as an additional place of business of the vendor;** On receipt of order **goods are dispatched by e-commerce cos. to the ultimate consumer; Invoice is raised in the name of supplier/vendor. The property in goods is transferred from the vendor to end consumer; Consideration is received by the E-commerce company** who after retaining the commission remits the same to the vendor/seller. **E.g. Amazon.com**

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

3

Ecommerce....Karnataka VAT

- **Amazon (Kar): Karnataka VAT Authorities view:** that Amazon qualify as a 'Dealer' as contemplated in the Karnataka VAT Act as they are involved in supplying and distribution of goods; Karnataka government proposed to levy 1 % TDS on all payments made by Amazon to the sellers; Amazon shall register itself as an Agent / Dealer; So Amazon is liable to discharge VAT on transfer of goods from the warehouse to the customer as they qualify as local sales; **Amazon's contention:** Advance ruling dt 24 Aug 2014 in case of Amazon Seller Services was obtained wherein the Authority held that Amazon is providing an online retail distribution channel and the associated logistical services, thus, it was held that Amazon is clearly a service provider; Amazon and the vendor transact on principal to principal basis so it cannot be regarded as a commission agent. It is a mere facilitator and is not engaged in the buying or selling of goods;
Issue: Whether Amazon is a dealer, liable for Registration & pay tax on sales effected through its portal?

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

4

Ecommerce....Kerala VAT

Flipkart Internet Pvt. Ltd. Vs St of Kerala (2015) 62 Taxmann.com 387

- **Flipkart:** Kerala VAT Authorities was seeking to levy VAT on e-commerce companies acting merely as facilitators for transactions of sale and purchase effected through their online portals; Show Cause Notice issued to Flipkart contending that the sale was a local sale as the goods were delivered within the state of Kerala from an online portal whose *situs was Kerala*. *Therefore*, even if Flipkart is not the seller, it is liable to VAT u/s 16(13) of the Kerala VAT Act;
Kerala High Court quashed the demand of penalty based on the lack of findings in the show cause notice as to why the transaction are to be treated as local sales as against inter-state sales; this judgment does not deal with merits of the case; High Court did make an observation that the situs of the sale is irrelevant for determining whether a sale is a local sale or inter-state sale; W.S. Retail, a seller/vendor on Flipkart.com portal had declared local turnover as 'nil' as the entire turnover pertained to inter-state sales; the revenue authorities cannot levy tax or impose penalty on Flipkart with respect to the same turnover

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

5

Ecommerce....VAT Amendments

1. **Kerala Govt amended Section 54A w.e.f 29 July 2015** : all companies & entities maintaining an e-commerce website shall file monthly details of goods sold through websites in the prescribed format; **details of seller, buyer, goods, invoice, amt of vat, etc**
2. **Delhi Govt Notification # F.3(20)/Fin (Rev-I)/2015-2016/dsvi/906 dt 12 Nov 2015:** Dealers conducting sales through web portals/e-commerce companies to furnish details of such sales in the prescribed form;
3. **Rajasthan Notification No. F.16 (708) TAX/CCT/2015/7307 dt 31 Dec 2015:** **Ecommerce portals**, transporters and couriers effecting deliveries and receiving such monies in relation with goods sold through e-commerce cos. Shall make declaration and furnish such information;
4. **Entry Tax Act implemented / amended** to levy tax on entry of goods in the state for such transactions; **e.g. Bihar State, West Bengal, Assam, Uttarakhand...**
 - **Uttarakhand High Court granted stay** to Instakart Services (P) Ltd. (Flipkart Group Company) **against entry tax** on goods purchased through e-commerce, imposing entry tax on goods ordered online /through e-commerce and consigned into local area of the State. High Court passed an interim order directing **release of seized goods upon furnishing of bank guarantee**;

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

6

MVAT Act Definitions: Dealer [S. 2(8)]

- Person [S.2(17)] who buys or sells goods
- It includes: a factor, broker, commission agent, del-credere agent, by whatever named called, who for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of the business, buys or sells any goods on behalf of any principal/s, whether disclosed or not ;
- Auctioneer-organizing or conducting auction
- Non-resident dealer (NRD) or **Agent of NRD**
- Society/Club/AOP who deals with its members
- *Explanation* – Deemed dealers qua sales:
 - Customs, Govt Dept, Railways, Insurance Corp, Banks, MSRTC, Shipping Cos, Airlines....
 - Public Charitable Trust
- Exceptions: Agriculturists, Educational Institutions, Transporters

7

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

MVAT Act Definitions: Business [S. 2(4)]

- **Any trade**, commerce or manufacture...
- With/without profit motive, profit earned or not
- Transaction incidental / ancillary to such trade
- Includes—any service notified u/s 2(27)(None)
- *Explanation* –
 - Raising man-made forest, seedlings or plants
 - Sale or purchase of capital assets/scrap/etc
 - Any purchase debited & any sale credited to P&L A/c, deemed in course of business
 - Transactions in connection with commencement or closure of business, part of business

8

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

MVAT Act Definitions: Sale [S. 2(24)]

- Means 'sale' of goods for money consideration, within State (Barter vs Free samples vs Stock Trf)
- CST Act – S. 4 – Sale within the State / Outside state / Interstate
- Excludes mortgage, charge, pledge, hypothecation
- Includes Deemed Sales:
 - ❖ Transfer otherwise under a contract
 - ❖ Works Contracts
 - ❖ Hire Purchase or Installment Sale
 - ❖ Transfer of the right to use goods
 - ❖ Sale by Society/Club/AOP/BOP to its members
 - ❖ Supply of foods and drinks as part of any service

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

MVAT Act Definitions: Sale Price [S. 2(25)]

- Monetary consideration paid or payable by buyer
- Includes any Sum charged for anything done by seller in respect of goods at the time of or before delivery thereof (Packing chs / Cartage chs / Freight chs / Octroi / Cess)
- *Explanation I: Includes* Customs & Excise duty, whether paid or payable by seller or buyer
- *Expln. III: Includes* Deposits incidental to sale, whether refundable or not
- *Excludes* Transit Insurance & Installation cost, if charged separately
- *Explanation IA: Excludes* service tax collected separately from purchaser (inserted on 18 Apr 2015)
- *Expln. II: Excludes* Tax payable to seller in respect of such sale
- *Expln. IV: deleted* wef 1 July 07: MRP for Drugs/Medicines

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

Determination of Tax Liability based on Fair Market Price of Sale or Purchase Transactions : Mah. Act # 15 of 2016 published on 26 Apr 2016

Section ref & wef dt	Gist of amendment	Remark / Issue
<p>Sec 28A inserted w.e.f. Passing and Publication of this Act, deemed to be effective from 1 Apr 2011</p>	<p><i>“During the course of any proceedings under the Act, if the Commissioner is of the opinion that any transaction entered into by any dealer for sales price, which is below the prescribed fair market price for commodity for a prescribed class of dealers, so as to be liable, to pay tax less than the tax, which would have been otherwise become payable on such sales or purchases, then the Commissioner shall determine the tax liability as per the fair market price of such transaction while passing an order in the said proceedings.”.</i></p>	<p>1) Govt wants to replace the sale consideration i.e. actual sale price by prescribed fair market price for any sale / purchase transaction of the prescribed class of dealer and levy tax on such higher deemed value of goods.</p> <p>2) Vat Authority is given such wide power by which tax liability may be increased.</p> <p>Q: Whether State Govt has such power under Constitution?</p> <p>* St of Rajasthan vs Rajasthan Chemists Asso. (2006) 147 STC 542 (SC)</p>

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

11

MVAT Act Definitions:

- **Turnover of Sales [S. 2(33)]** – means aggregate of SP which is due & receivable during a given period (Lease / WC);
after deducting SP/deposit refunded for goods returned within 6 months of sale (Rule 3)
- **Purchase Price [S. 2(20)]** – SP for Seller is PP for Purchaser; almost paripasu with SP
- **Tax [S. 2(29)]** – means sales tax, purchase tax and includes composition sum, leviable / payable
- **Year [S. 2(37)]** – means Financial Year

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

CLASSIFICATION OF GOODS & TAX RATE

- **Maharashtra VAT Act- wef.1-4-05 (Schedules r/w Notifn) Sec. 6:**

Schedule A @ 0% - Tax free goods – Books, Bread, Electricity,..

Schedule B @ 1% / 1.1% - Gold, Silver, Diamonds, Precious Stones, Jewellery, Articles made of it.

Schedule C @ 5.5% - Medicines, Industrial Inputs (Notified),
(5% upto 31-3-2016) Metal, Chemicals (Notified), Packing Materials, IT Products, Notified Intangibles, etc.

Schedule D @ 10% to 50% - Aerated drinks, Liquor & Motor Spirits, Tobacco, etc

Schedule E @ 12.5% - Residuary Entry/Rate

- **Amendment of Schedules (Sec. 9):** State Govt may amend, add or delete any entry in Sch. or modify tax rate specified therein, by issuing Notification in Official Gazette

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

Rate of Tax on Packing Materials (S.7)

- Where any goods are sold duly packed in any material, then tax on sale of such packing material shall be levied at the **same rate of tax** as payable on the goods so packed, **whether packing material is separately charged for or not:**
 - Packed & sold Sch. A goods = 0%
 - Packed & sold Sch. B goods = 1%
 - Packed & sold Sch. C goods = 5.5%
 - Packed & sold Sch. E goods = 12.5%
 - Packed & sold Sch. D goods = respective rate

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

INTERSTATE SALES - CST LAW

1. Local sales (Delivery of goods within State)
2. Interstate Sales (Delivery of goods in Other State)
Pkg liable to CST? Freight liable to CST?
(Under form 'C' CST @ 2% else @ local rate applicable in dispatching State)
3. Sales in the course of Interstate sales i.e. sale in transit (form 'C' & E-I / II)
4. Exports (Remittance may be in Indian Currency)
5. Sales in the course of Exports / Penultimate sales (Form 'H' mandatory from 13 May 2005)
6. Imports in India
7. Sales in the course of Imports / Highseas sales
8. Interstate Stock transfers to Branch/Agent (Form 'F' mandatory from 11 May 2002)

[Even when goods sent for job work & return, requires form 'F']

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

Agents liable to tax for sales on behalf of Principal.... Liability Joint & Several..... Sec. 45 of MVAT Act

- Where Agent sells/purchases any taxable goods on behalf of his principal, the Agent as well as the principal, shall both be jointly & severally liable to pay taxes on turnover of such sales/pur. [Sec. 45(1)]
- Principal & Agent have to show documentary evidence that tax has been paid by agent/principal, then on same transaction tax is not payable again.... [Sec. 45(2) & (3)]
- No Forms are prescribed for above, produce agreement, invoices, ledger accounts, tax workings, tax paid challans, tax returns, confirmation of other party, any other relevant docs....

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

16

Collection of Statistics u/s 70: Mah. Act # 15 of 2016 published on 26 Apr 2016

1. **Commr has powers** u/s 70 to direct that **Specific Statistics** be collected relating to any matter **or return.... from any person for better administration of MVAT Act** for which he may issue Notification & notice in Newspapers
2. Any person who **fails to furnish information** as notified u/s 70, within prescribed period, shall be liable to pay **penalty of a sum not exceeding Rs. 1 Lakh** and in case of **continuing default for a period beyond 2 months, a further penalty of Rs.1000 per day** of delay.

[Valid & Constitutional: State of WB vs E.I.T.A. India Ltd [2003] 131 **STC 111 (SC)**]

E.g. **E-commerce Operators**, who facilitate sales of goods through website, mobile apps, electronic media....may be asked file such Information Returngiving Supplier's Name, TIN, Invoice details.

Questions for Advance Ruling; MVAT Sec. 55 & Rule 63 amended wef 1 May 2016

Rule wef	Questions which can be asked for Advance Ruling wef 1 May 2016 for the purpose of MVAT Act (Similar to old DDQ u/s Sec. 56)
Sec. 55 substituted w.e.f. 1 May 2016; Rule 63 wef 1 May 2016	<ol style="list-style-type: none"> a) Whether a person, society, club, association or firm or any branch / department of any firm is a dealer? b) Whether such a person or dealer is required to be registered? c) Whether any particular thing done to any goods amounts to or results in the 'manufacture' of goods? d) Whether any transaction is a sale / purchase or its sale price / purchase price? e) Whether any tax is payable in respect of any particular sale / purchase, or @ what rate? f) Whether setoff can be claimed on any purchase, or the conditions or restrictions for said claim? <p>Q. Whether question can be raised for future transaction?</p>

Advance Rulings under MVAT Act : Mah. Act # 15 of 2016 published on 26 Apr 2016

Section ref. wef date	Gist of amendment for Advance Ruling (AR)	Remark / Issue
Sec. 55 substituted w.e.f. 1 May 2016; Rule 63 wef 1 May 2016	<ol style="list-style-type: none"> 1. Old AR Provisions of Advance Ruling u/s 55 was never implemented. Old DDQ provisions merged with New AR provisions. 2. Make an application to Commissioner for Advance Ruling (AR) on the Questions, in Form 703 & Manner as Prescribed; with prescribed fees of Rs. 2,000 u/r 73(2)(16), payable online in Form MTR-6; Said fees is not refundable 3. Advance Ruling Authority (ARA) to be constituted by Commissioner by issuing notification, comprising of Addl. Commr. as Chairman & 2 JCs; Commissioner may allot any or all the questions prescribed to such ARA. 4. Commissioner may also allot any pending DDQ application u/s 56 to such ARA. 5. Commissioner or ARA shall make Advance Ruling within 90 days from the dt of acceptance of application. 6. Applicant may withdraw application within 30 days from the date of submission of application. 	<ol style="list-style-type: none"> 1. DDQ provisions u/s 56 deleted from 1 May 2016. 2. Pending DDQ applications on 1 May 2016 will be dealt with under this new AR provisions.

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

19

....Advance Rulings under MVAT ... Mah. Act # 15 of 2016 published on 26 Apr 2016

Section ref. & wef date	Gist of amendment for Advance Ruling (AR)
Sec. 55 substituted w.e.f. 1 May 2016; Rule 63 wef 1 May 2016	<ol style="list-style-type: none"> 7. If the Question/ Issue is already pending before the Tribunal or BHC or SC in respect of the Applicant OR relates to a transaction which is designed apparently for tax avoidance then such issue cannot be applied for AR. <ul style="list-style-type: none"> - Commr or ARA may call for a Report in Form 703A from concerned officer - Communication about acceptance of application shall be made in Form 703B to applicant within 30 days of submission of application - Rejection of application only after hearing & recording reasons in order 8. AR of Commr shall be binding on all Subordinate officers including appellate authority and ARA <ul style="list-style-type: none"> - AR of ARA shall be binding on all Subordinate officers including appellate authority but not to Commissioner. 9. Commissioner / ARA may protect past tax liability of applicant/ other similar Person, for any sale/ Pur effected prior to AR

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

20

Section ref. & wef date	Gist of amendment for Advance Ruling (AR)
<p>Sec. 55 substituted w.e.f. 1 May 2016; Rule 63 wef 1 May 2016</p>	<p>10. Appeal against ARO lies before Tribunal which shall be subject to prescribed conditions</p> <p>11. Appeal shall be filed within 30 days from the date of communication of ARO. Belated appeal will not be entertained under any circumstances whatsoever.</p> <p>12. ARO passed by ARA shall be subject to any directions / instructions u/s 10(10) or DDQ order issued by Commr.</p> <p>13. Rectification of apparent mistake in AR: Commr or ARA may rectify any mistake apparent from the record after issuing notice in Form 703C giving 15 days time for hearing to applicant, pass rectification order before original order's effect is given by concerned officer. Applicant may also apply in Form 703D for rectification of AR, within 30 days of receipt of AR. Rectification order shall be passed within 60 days from the date of receipt of AR by applicant.</p>

Section ref. & wef date	Gist of amendment for Advance Ruling (AR)
<p>Sec. 55 substituted w.e.f. 1 May 2016; Rule 63 wef 1 May 2016</p>	<p>14. Commr may review the AR of ARA & if it is erroneous such that prejudicial to the interest of revenue then after issuing notice in Form 703E for hearing to affected person, verifying records, pass just & proper review order within 6 mths from end of the year containing the date of AR. Commr may review his own AR or earlier DDQ Order, after obtaining prior permission of State Govt., & after hearing applicant, pass review order within next 3 mths. of getting such permission. Review Order may protect past tax liability of applicant/ other similar Person, for any sale/pur effected prior to review order.</p> <p>15. Commr shall formulate Regulations regarding the procedure to be followed for AR</p> <p>16. All Forms / Notices under this rule may be uploaded / issued electronically [Rule 63(8)]</p>

Prof. Tax: Mah. Act # 15 of 2016 published on 26 Apr 2016

Sr. #	Reference & effective date	Gist of amendment	Remark / Issue
1	Amnesty Scheme for Self Employed Persons (PT EC Holder) from 1 Apr 2016 to 30 Sept 2016 (Sec. 3(3))	New Applicants for PT EC , applications pending as on 1 April 2016 and PT EC applications filed from 1 Apr 2016 to 30 Sep 2016 Can be asked to pay tax for the periods only after 1 Apr 2013 . Thus, max liability for FY 2013 – 2014 onwards, waiving liability for earlier periods.	1) To pay full tax + interest @ 1.25% p.m. for delayed period. 2) To pay above sum between 1 Apr 2016 and 30 Sept 2016. 3) If benefit of this not taken then, liability payable since 2008-09 and onwards. 4) For FY 2016 -2017, due dt is 30 June 2016.
2	Clause (h) inserted in Sec 27A w.e.f. 1 April 2016	Armed members of CRPF & BSF, serving in MAH. State have been exempted from the levy & charge of Profession Tax.	

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

23

Tax Payers' Day & Service Cell Meets

1. Trade Circular # 17T dt 9 May 2016
2. Tax payer friendly Tax Administration for ease of doing business
3. Tax payers are cornerstone of economic independence & prosperity
4. Govt ensures responsive governance
5. **Tax Payers' Day** for expeditious redressal of Sales Tax grievances : Every Wednesday, 2 to 5pm, at Zonal/ Divisional/ Unit Heads chambers at all Vat Offices; No prior appointment needed;
6. **Service Cell Meetings at All Divisions:**
1st Saturday of 3rd Month of every Quarter
i.e. 1st Sat of June, Sept, Dec & March

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

24



Thank you

CA Deepak Thakkar
deepak@phd-ca.com
022-2682 0083
98202 98225

2 Jun 2016

CA Deepak Thakkar
PHD & Associates

25