

***WIRC SEMINAR ON INDIRECT TAX
ON REAL ESTATE AND
CONSTRUCTION- JUGAL BUNDHI***

***TAXATION OF WORKS
CONTRACTS REAL ESTATE AND
CONSTRUCTION UNDER MVAT AND
ENTRY TAX
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TRANSACTIONS OF REAL ESTATE AND CONSTRUCTION INDUSTRIES

- Generally in real estate vat is applicable on sale of goods involved in execution of works contract As well as sale of scrap assets etc.
- Works contracts transactions are considered as deemed sales means transactions which are not sales
- But for the purpose of levy of tax considered as sales includes as
- Transfer of property in goods involved in execution of works contract

'Works Contracts'

- Transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract [*Constitution of India : Article 366(29A)(b)*]

'Works Contracts' ...

- 'Works Contract' was not defined till 20.6.2006
- Generally understood as a contract for work involving use of materials by the Contractor
- Work done on the property belonging to another
- The property in the goods passes during the execution of works contract
- Applicable when contract is Indivisible and composite
- Divisible contracts subject to vat and service tax as general sale and service tax

Sales Vs. Works Contracts

- 'Sale' of 'Goods'
- Transfer of property and ownership
- Intention to buy and sell goods
- Goods are the essence of the contract
- Property passes under the contract on Appropriation

- Transfer of property in goods involved in the execution of works contracts
- No intention to sell and purchase goods
- Agreement for one kind of property but transfer takes place in another
- Property passes on theory of 'accretion' or 'accession' at the time of incorporation

Sales Vs. Works Contracts...

- Purchasing a car
- Purchasing clothes
- Buying a house
- Buying a book
- Buying a tyre
- Buying machinery
- Purchasing paint

- Repair of a car
- Stitching clothes
- Constructing a house
- Printing of book
- Re-treading a tyre
- Setting up a plant
- Painting of building

Liability on Works Contracts

- Tax is payable on the 'value' of the materials supplied
- All provisions relating to sales will apply.
- Taxable under the local State sales tax / VAT laws for local sales and under the CST Act, 1956 for inter-State sales
- No tax on materials in which property does not pass to the client, for example, capital assets and consumables
- No tax on labour, engineering, designing, etc.
- Liability on sub-contracted work only by any one
- ITC available to seller and purchaser subject to Rules

Works Contracts under MVAT Act

Amendment to Definition of Sale

- Amendment to definition of sale by Act XXXII of 2006 from 20/06/2006
- Words added in Explanation sale of goods involved in execution of works contract including
- Effect is that it defines all type of works contracts over and above mentioned therein

Works Contracts

- *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.*

Builders/Developers

- As per SC judgment in case of Larsen and Tubero Ltd and others- larger bench [2013] 65 VST 1
- Works contract includes agreement for sale of flats/shops entered before or during construction of building
- But taxable only on value of material used after agreement is entered
- No tax on any agreement entered after completion of construction of building

Builders/Developers

- Allotment of flats to slum dwellers taxable refer tribunal judgment in case of M/S Sumer Builders SA No. VAT/335 of 2015 dated 03.05.2016
- However as per FAQ no. 25 on builders clarified no tax on allotment of flats to land owner
- Land owner not liable for vat

Builders/Developers

- Rule 58(1A) provides deduction for cost of land or interest in land
- Rule 58 provides for determination of value of material depending upon stage of completion of construction of building at the time of agreement
- Tax payable on value of material to be calculated after deducting cost of land, sub contract, labour and services and stage wise deduction from agreement value

Builders/Developers

- Option to pay composition @ 1% on total agreement value or stamp duty value whichever is higher in respect of agreement registered on or after 01/04/2010
- To pay in the return period in which agreement is registered
- No set off
- Can not issue tax invoice but can collect tax separately
- C form can not be issued
- Can not issue forms to sub contractor

Works Contracts : Turnover

➤ Determination of Turnover – Total contract value *less* specified deductions [S. 2(25); R.

58], viz –

- Labour and service charges
- Amounts paid for sub-contracted work
- Planning, designing and architects charges
- Cost of hiring equipment, etc.
- Cost of consumables
- Establishment cost relatable to labour & services
- Expenses relatable to labour and services
- Profit on labour and services
- Amount of service tax collected separately

Works Contracts : Turnover...

- Where accounts not maintained or
- are insufficient,
- total contract value less
- lumpsum deduction for labour and services at prescribed percentages
- Percentage deduction to

Sub-Contracts

- Joint & Several Liability [S. 45(4); R. 50] –
 - Liability of Contractor and Sub-contractor to be joint and several
 - Main Contractor not liable on corresponding 'turnover of sales' if sub-contractor has paid taxes – Forms 407 & 408
 - Sub-contractor not liable if Main Contractor has paid taxes – Forms 406 & 409
 - Set off to Sub contractor subject to composition availed by Main contractor

Tax, Composition & Tax Invoice

- Rate of Tax – At Schedule Rate
- Composition – Lump sum tax @8% on total contract value after deducting amounts payable to sub-contractors [S. 42(3)]
- From 20.6.2006 5% for notified construction
- Builders/developers 1% on agreement value or stamp duty value which ever is higher
- Service tax collected not included for composition
- Refer Tribunal judgment in case of M/S Technocrate Engineers VAT SA No.237 of 2014 dated 03.11.2015
- Konstra Constructions Pvt Ltd VAT SA No.13 of 2015 dated 20.06.2016

- Tax or Composition Amount can be collected separately
- Contractor can issue 'Tax Invoice' whether paying full tax or opting for composition but builder can not when opted to pay 1%

Tax, Composition & Tax Invoice

- Tax or Composition Amount can be collected separately
- Contractor can issue 'Tax Invoice' whether paying full tax or opting for composition but builder can not when opted to pay 1%
- Where tax is not collected separately, reduction u/r. 57(1) permissible

Input Tax Credit

- Input Tax Credit (ITC):
 - ✓ Contractor entitled to ITC on purchases [R. 52]
 - ✓ Contractor opting for composition entitled to ITC in the proportion of 16/25 only i.e. 64% ,In case of construction contracts in excess of 4% of purchase price [R. 53(4)] Builders no set off when opted to pay 1%.
 - ✓ Builder/ Developer - No ITC where purchases effected by way of works contract results in immovable property other than plant and machinery [R. 54(g)]
 - ✓ No ITC on purchases of goods but used in the activity of construction of immovable property other than plant and machinery. [R. 54(h)]

Tax Deduction at Source [S. 31; R. 40] –

- To be deducted by prescribed persons
- TDS at 2% if Contractor is RD and at 5% if Contractor is URD
- No deduction on payments to sub-contractors

Tax Deduction at Source ...

- Deposit TDS by e payment within 21 days of next month – Chalan MTR 6
- To file monthly e return in form 424 on or before 21st of next month
- Issue TDS Certificate in

Tax Deduction at Source

- Transfer of credit of TDS allowed to Sub contractor from 01.04.2016
- For Any tax deducted and paid by employer after 01/04/2016
- To issue TDS certificate in form 402A
- To file monthly E return in form 424A
- No time limit for filing of return prescribed
- But Advisable to file immediately otherwise sub contractor will not be able to claim credit

Tax Deduction at Source

- Under New Return System
- It is proposed to allow credit of TDS
- On the basis of filing of TDS return by Employer/ Contractor
- TDS return can be revised within 9 Months from end of the year to which it relates

Tax Deduction at Source

- The facility for transfer of credit of TDS is not available to sub contractor to his sub contractor
- TDS Registration Number to be obtain by employer if not registered under the MVAT Act.
- The provision of TDS Number not brought in to force till date.

Tax Deduction at Source

- Penalty is provided for not obtaining TDS number up to amount of TDS after giving opportunity of hearing. (Section 31(12).
- Penalty is also provided upon employer for failure to file return in time up to RS. 5000/- . (Section 31(13).
- But no penalty upon contractor for failure to file return by him.

Entry Tax

- Entry tax is payable in Maharashtra Under The Maharashtra Tax on Entry of on Entry of Goods in Local Area Act
- Of specified goods brought in the State from any place outside the State whether by way of purchase or otherwise
- For consumption, sale or use
- Payable by any person who is bringing goods in the
- Tax is payable on value of goods

Entry Tax

- Following goods generally purchased by builders are liable for entry tax;-
- Bitumen, LDO, Furnace Oil, Air Conditioning Machines, comprising a Motor Driven Fan and Elements for Changing the Temperature, All types of Tiles Slabs of Marble, Goods Covered by Clauses (iv) and (v) of entry 55 of Schedule C of MVAT Act i.e. Steel Structural and Sheet Hoops Strips and Skelp.

Entry Tax

- Entry tax is not payable if the goods are resold
- Sale of goods involved in execution of works contract is also a resale
- As such not liable for entry tax if such goods are used in execution of works contract as it is
- Set off of entry tax is available under MVAT Act subject to rules

THANK YOU