

**National conclave on GST – Transitional
Credit Issues and recap of MVAT Audit**
organized by CPE Committee , ICAI
hosted by WIRC of ICAI

Presentation by

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Broad aspects of Transition to GST

Transition aspects mainly relate to:

1. Input Tax Credit of the old regime that RP want to claim in the new regime (report in TRAN-1)
2. Avoid any disruption to material sent to job workers (report in TRAN-1)
3. Report agent principal dealing and dispatch of goods, works contracts (report in TRAN -1)
4. Tax refunds and claims under the old regime (not reportable in TRAN -1 or TRAN -2)

Common points:

1. Transition forms must be filed for each GSTIN separately.
2. Any credit that carry forward from the old regime must be eligible credit under GST as well.
3. Accumulated credits of old regime can be taken to GST. This is allowed only when you have filed past six months returns under the old regime. So you must file old returns of VAT properly.
4. Any central taxes and duties such as Excise and Service tax will be carried forward as CGST
5. Any state taxes such as VAT will be carried forward as SGST

Categories of transitional credit

Credit Balances

- C/f in return
- Unavailed ITC on Capital goods
- Credit on Goods held in Stock

Stocks

- Stock in hand
- Stock held of/by agent
- Goods sent on Job Work

CREDITS C/F IN RETURNS -Sec
140(1)

REGISTERED PERSON

NOT UNDER COMPOSITION IN
GST

COMPOSITION SCHEME IN
GST

CREDITS CAN BE C/F

NO CREDITS CAN BE
C/F

VAT

CENVAT

ENTRY
TAX

Amount C/F in VAT RETURNS admissible as SGST &
CENVAT as CGST in electronic credit ledger

CONDITIONS

(1st proviso to sec 140(1))

1. Such credit is admissible under GST.
2. All returns under existing law should be furnished for 6 months preceding the appointed date.
3. ITC is not related to units NOT entitled to ITC (PSI unit).

ITC attributable any claim related to following is NOT allowed to be c/f in GST regime:
 2nd Proviso to Sec 140 (1) – however can be claimed under existing law

ITC related to sales under	In Respect of	Not supported by -Pending Declaration/ Certificate in Form
Sec 3 of the CST Act	Interstate sales – concessional rate of CST	C
Sec 5(3) of the CST Act	Penultimate sales to export	H
Sec 6 of the CST Act	In transit sales	C & E1/E2
Sec 6A of the CST Act	Interstate Stock Trf	F
Sec 8(8) of the CST Act	SEZ	I

ITC related to following is NOT allowed to c/f in GST regime: 2nd Proviso to Sec 140 (1)
Contd...

As per 2nd proviso	As per Tran-1
Corresponding ITC is NOT allowed to be carried forward	Differential Tax less Retention taken is Not allowed to be carried forward

Table 5(c)

(c) Amount of tax credit carried forward to electronic credit ledger as State/UT Tax (For all registrations on the same PAN and in the same State)

Registration No. in existing law	Balance of ITC of VAT and [Entry Tax] in last return	C Forms		F Forms		ITC reversal relatable to [(3) and] (5)	H/I Forms		Transition ITC 2- (4+6-7+9)
		Turnover for which forms Pending	Difference tax payable on (3)	Turnover for which forms Pending	Tax payable on (5)		Turnover for which forms Pending	Tax payable on (7)	
1	2	3	4	5	6	7	8	9	10

Revision of return after 1.7.2017

- What is the treatment regarding revision of returns under existing law - fall out under GST?

 - Sec 142(9)(a) – CGST and MAH GST Act
 - 142(9)(b) – CGST and MAH GST Act
- If return revised before uploading of TRAN-1 & amount carried forward as credit as per the revised return.
 - Within the prescribed time of filing return
 - If beyond the prescribed time of filing, revised return
- If return revised after uploading of TRAN-I
 - To be paid under old Act – if credit amount reduced
 - To be claimed as refund under the old Act

Clerical errors in filling form TRAN 1

- Wrong selection of box in filling of TRAN-1 instead of **box 7(a) in place of box 7(b)** selected /filled in (notices received what to do?)
- The credit of CGST Act reflected as credit of SGST Act
 - Any opportunity to file revised TRAN-1 (Rectifying a genuine clerical error?)
- Refund as per MVAT return shown as 'claimed' instead of carried forward in the monthly / quarterly June'17 return
 - Will the claim get disallowed?
 - SCN received

Other common errors/issues

- No deduction in amount carried forward made to the extent of forms pending as on 1.7.2017!
 - Forms received since then – by the time scrutiny /notice received?
- Claim of credit in TRAN-1
 - In proceedings held as not eligible
 - Amount to be paid with interest
 - Can it be adjusted /paid through electronic credit ledger?
 - What if amount is claimed but not utilized?

Other common errors/issues

- Stock in hand as on 1.7.17 but purchase return after that
 - Within prescribed period of VAT provisions
 - What is the fall out?
 - What if vendor has claimed as G/R under old Act & filed his return accordingly?
- Credit claimed on account of input services
 - KKC & SBC not eligible

UNAVAILED CREDIT ON CAPITAL GOODS - Sec-140(2)

VAT/ CENVAT

IF CREDIT AVAILABLE IN
OLD LAW

IF CREDIT NOT AVAILABLE
IN OLD LAW

BALANCE OF CREDITS CAN BE
AVAILED

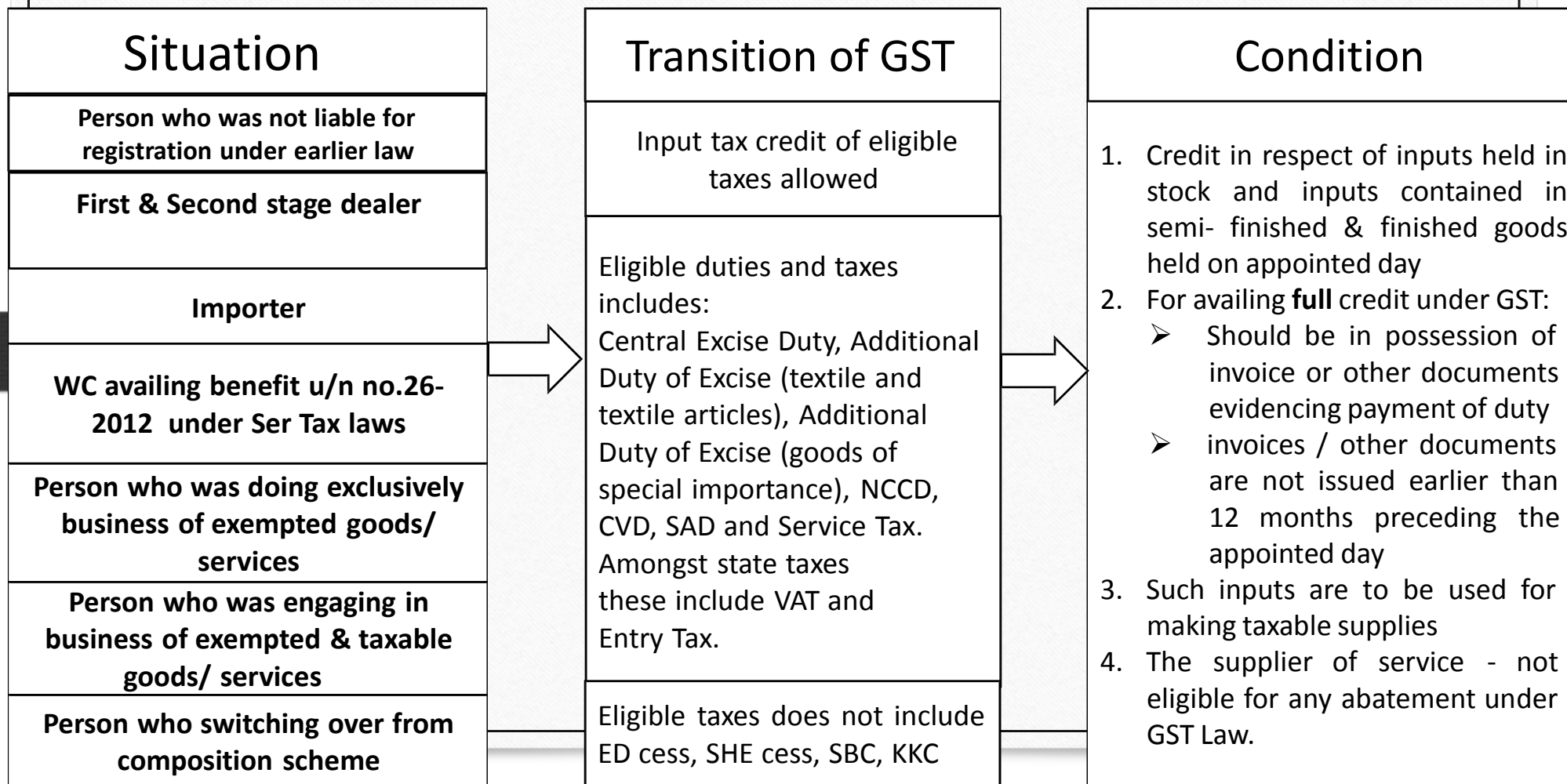
CREDITS CANNOT BE
CARRIED FORWARD

Eg. where 50% availed in first year,
balance in GST

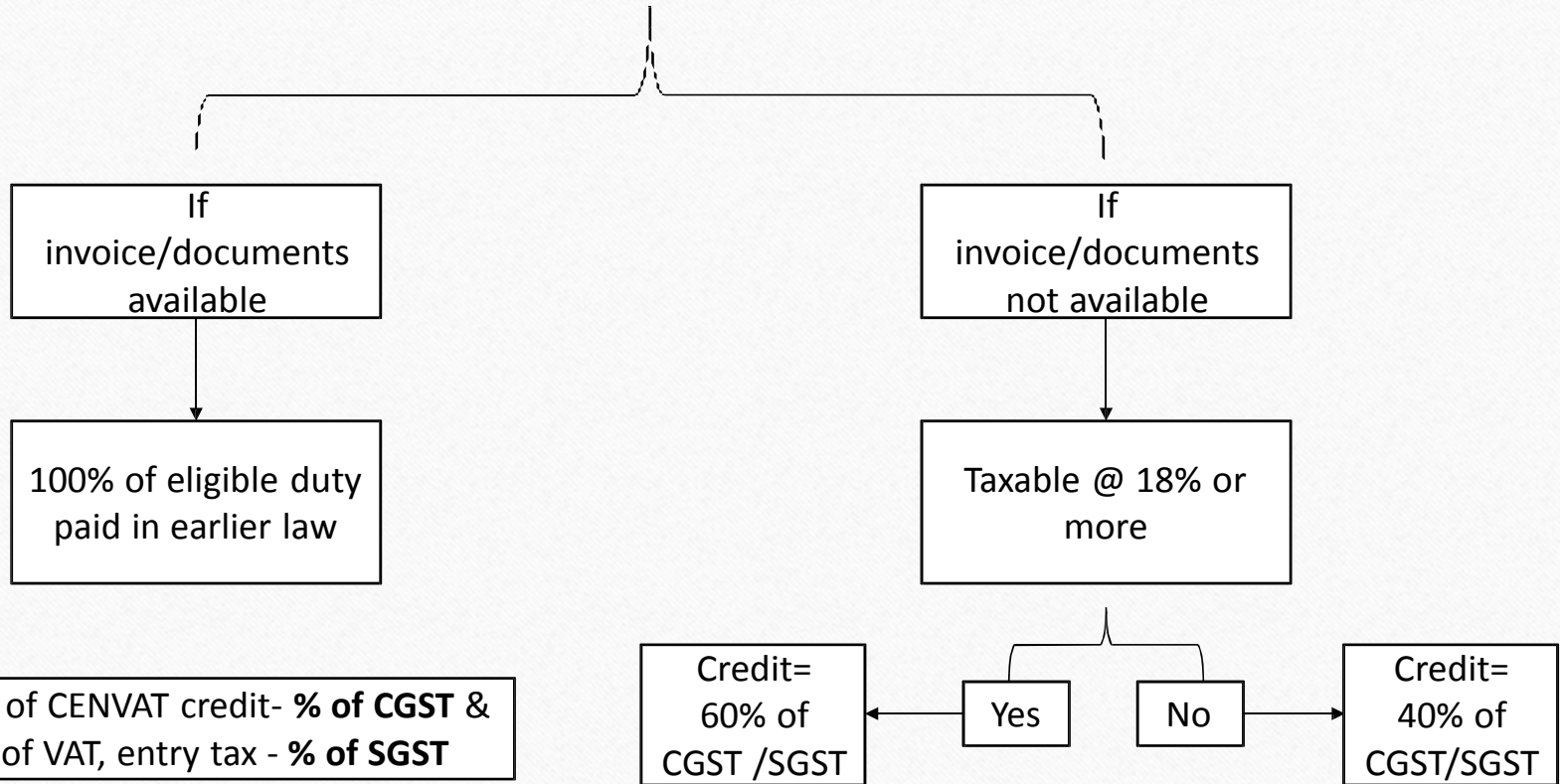
Eg. Retention of Fixed Assets other
than Plant & Machinery

Credit of CENVAT/VAT in stock

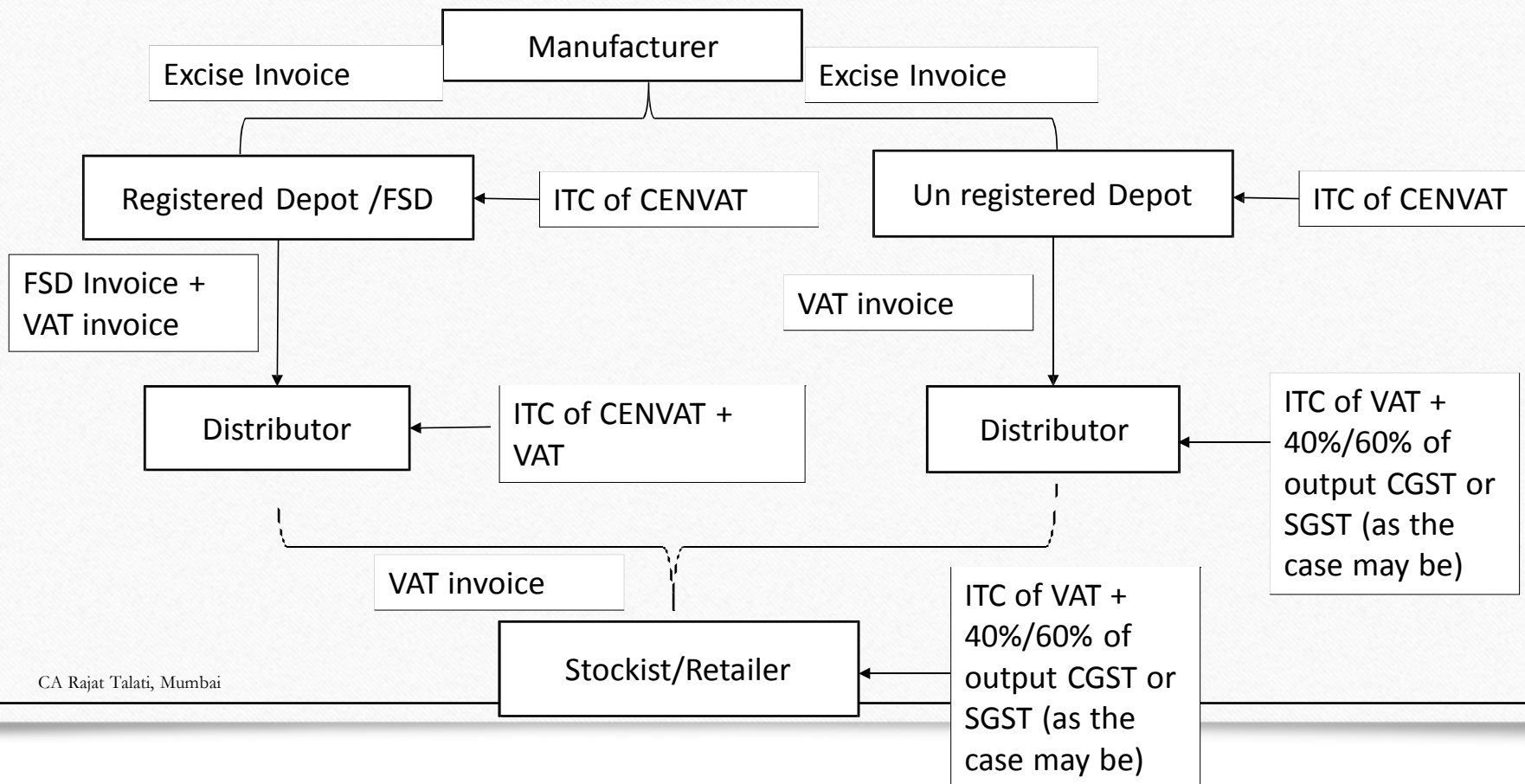
Credit in respect of Input held in Stock and contained in Semi-finished and Finished Goods



Eligible credit on input held in stock and contained in Semi-finished & Finished Goods Cont....



Credit of ITC in distribution channel [Sec 140(3)]



Issues in Transit credit

- Stock dispatched on 29.6.2017 but not accepted by customer on 2.7.2017 & returned forthwith
 - Whose stock is it?
 - What should be treatment under GST

stock

- Sec 140(3) – stock of goods lying as on 1.7.17
- VAT credit
 - Stock eligible for ITC under VAT Act – would have been claimed as ITC while filling return & resultant dues, if any, paid or resulted refund can be claimed u/s 140(1).
 - Thus no issues
 - In case of builders – stock lying can be claimed

Closing stock - GOODS – MOVABLE / IMMOVABLES

- Inputs contained in semi- finished stock
- **WIP – builders & developers**
 - under construction -is it goods?
 - Can it be argued that it be considered as 'goods' for the purposes of TRAN-1 credit?
 - Output is taxable being under construction
 - Clarifications /internal instructions issued by the CBIC & state VAT dept.
 - **Internal Circular No. 23A of 2018 dt 1.9.18 for Verification of Tran-1 credit u/s 140(6) & 142(11)(C) of SGST Act – Mah GST Authority**
 - **F No 381/274/2017, 27.2.2018 – WIP – Transitional credit not available- CGST authority**
 - What is the legal stand / remedy available?

Closing stock

-
- Can one say – since no deduction from taxable value provided qua ‘immovable part’ of the total consideration payable as on the date of entering into agreement by buyer of flat / office in an ‘under construction project, even the WIP – should qualify?
 - How much weight would it carry?
 - Tax paid at fixed rate or amount paid in lieu of tax under existing law [SEC 140(6)]
 - Can it be claimed transitional credit for State VAT on this ground?
 - Uttrakhand AAR – National Construction dt 20.3.2018 – TRAN-1 Credit allowed on WIP in case of Builder – read with a caution

Sec 140(6) - conditions

- Tax paid at fixed rate or amount paid in lieu of tax under existing law [SEC 140(6)]
- Registered taxable person, who as per VAT Act was paying tax,
- At fixed rate or at fixed amount in lieu of tax
 - shall entitled to take credit of VAT in respect of inputs as on appointed date
 - held in stock, contained in SF and FG
 - input /SF or FG used or intended to be used for making taxable GST supplies – not under Sec 10
 - Eligible for ITC under GST
 - Possesses invoice or other prescribed documents evidencing payment of tax – not older than 12 months

Closing stock

- Stock of goods where excise invoice is not in hand – 40% - 60% credit to be claimed
 - Is it available for manufacturing /service provider?
 - Is it available to a works – contractor (service provider – under GST)?
- TRAN-1 to TRAN-2
 - When is credit available
 - Only when TRAN-2 is filed?
 - What if stock not sold by 31.12.2017 (date)
 - What if goods sold by 31.12.2017 but returned after that date?

Closing stock

- TRAN-1 credit claimed & allowed
 - Credit note received later on an account of incentive
 - With tax credit – VAT/CST
 - Without tax credit
 - Will it trigger inquiry about ‘Anti profiteering’? (distribution allowed special discounts by brand owner / manufacturing for stock held on 30.6.2017)

Tran-1 to Tran -2

- Goods in stock to be identifiable [Rule 117(4)(b)(v)
 - Stock purchased at H.O. (say -State A) with Excise invoice. Goods were transferred during Pre-GST period to depot in State B under a stock transfer advice – no excise amt shown separately. Stock lying at State b as on 1.7.2017
 - Which State to claim CGST credit? Sate A or B?
 - Should it be claimed in full or 40-60%? [See Sec 140(3) – proof of payment?

Goods sent on approval

- Not reported in TRAN -1 – Goods returned in 6 months pf 1.7.2017
 - No impact on TRAN -1 credit
 - Any fall out under GST?
 - Is return of stock liable to GST?

Revision of TRAN- 1

- -Only once... that too within prescribed time i.e. 27.12.2017
- Technical glitches – recommended by Council till 31.3.2019
 - Ref – CBIC –Circular 39/2018 dt. 3.4.2018 & 48/2018 dt 10.9.2018

Issues in MVAT Audit

In view of introduction of GST – Last VAT Audit

Determination of turnover- VAT Audit

- Determination of Turnover for Q1 2017-18
 - Check what is reported in VAT/ Service tax/ CENVAT records
 - Treatment given in GST
 - TRAN 1 filed
- Audited financial year for full year
 - $\text{VAT turnover} + \text{GST turnover} = \text{full year's turnover}$
 - Special care for service income and other income reported in books
 - Effect ,if any, of ITC/ DNs & CNs adjusted in GSTR 3B till Sept 2018
 - Sale of assets/ items credited / debited to P & L Accounts
 - Keep in mind the reporting in GST Audit report in Form GSTR 9C

Reconciliation - VAT Audit issues

- **Observe quarterly figures – tallied with ledger abstracts**
- Cut off period transactions
 - GRN/ DNs & CNs etc
 - Date of input invoice and its recording in books V. VAT/ CENVAT return filed
- **Stock records**
 - Traditionally F-3CD reported as not possible to maintained stock records
 - How TRAN-1 is filed?
- **TRAN -1 credit** claimed on refund c/f – VAT & reduction made of pending declarations
 - Such declarations reported as pending in VAT Audit – fall out?

G/R v. MVAT Audit V. Books

- Goods sold in Pre-GST but returned in post GST
 - Treatment in books vis a vis under GST
 - Example : original sale Rs.100 + Rs. 13.5 VAT therefore customer has to raise tax invoice – say Rs. 100/- + Rs.18/- GST .
 - Will Rs.4.5 = (18-13.5) payable by original seller to the customer?
 - Will the account get settled for Rs.100 – 4.5
 - How to reconcile with financials?
 - Recording of enhanced turnover of purchases? ERP software limitations

C/N issued - incentives

- Credit note issued for incentives
 - For Pre-GST period in Post-GST
 - Can VAT / CST credit be allowed?
 - Are these financial credit note only?
 - What about contractual obligation?

W/C TDS

- W/C TDS under VAT laws for payments received in GST period
 - If invoice raised in VAT era – no WC TDS [Sec 142(3)]
 - However, PWD other Govt Dept deducts TDS
 - How to treat such in Vat Audit? Can credit be claimed?
 - Generally would lead to refund under Audit – blockage of funds

MVAT Audit issues

- Annexure F – ratios to be reported
 - G/P & N/P
 - Stock as on 30.6.17
 - Stock turnover ratio
 - Other income to gross receipts
 - Turnover for sales as per P&L – quarterly or yearly?
 - All ratios are not comparable

Thank you