

# Technical Guide on Jharkhand VAT



**The Institute of Chartered Accountants of India**  
*(Set up by an Act of Parliament)*  
**New Delhi**

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## Foreword

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One of the important tax reforms initiated at state level since liberalization was the Introduction of Value Added Tax (VAT). Introduction of uniform VAT in the States was a challenging exercise in the federal country like India, where each State Government, in terms of constitutional provision, is sovereign in levying and collecting state taxes.

With the implementation of State Level Value Added Tax (VAT), the main motive to allow input tax credit to the dealer and reduce cascading effect of taxes and price level in general to some extent, has been achieved. This has also lead to increase in collection of revenue of the State Governments due to better compliance of the VAT Law by the dealers. The country is on the verge of most ambitious and largest ever indirect tax reform i.e. introduction of Goods and Services Tax which seeks to create a common national market by bringing down fiscal barriers between the States and reduce the complexities of current tax structure. It is generally said that introduction of Goods and Services Tax will increase the GDP by 1 to 2 per cent as it will facilitate the movement of goods and services across the country without any barrier.

Though the broad design of the State-level VAT is uniform across the country but every State has its own VAT legislation and procedures differ on many counts from one State to another. Considering the importance of all State VAT Laws, Indirect Taxes Committee of the Institute of Chartered Accountants of India (ICAI) has taken an initiative to bring out state wise technical guides. In this regard, the Committee has come out with "Technical Guide on Jharkhand VAT". The Guide explains the concepts relating to Jharkhand VAT laws in a very exhaustive manner.

I congratulate CA. Atul Gupta, Chairman, CA. Nihar Niranjana Jambusaria, Vice-Chairman and other members of Indirect Taxes Committee of ICAI for successfully completing the task.

I am sure that members will find this Guide very useful in their day to day practice in respect of Jharkhand VAT.

Date: 20<sup>th</sup> November, 2014  
Place: New Delhi

CA. K Raghu  
President



## Preface

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VAT, considered as a path-breaking reform in the area of indirect taxation, was introduced in majority of the States from April 1, 2005 with the objective of making accounting more transparent, cutting trade barriers, boosting tax revenues and most important of all doing away with the cascading effect of taxes. However, the State of Jharkhand introduced VAT with effect from 1st April, 2005. During these years, VAT system has not only been able to successfully achieve all these objective but has also increased self-compliance by the taxpayers.

In order to facilitate in understanding the State level VATs, the Indirect Taxes Committee has taken an initiative to prepare State Wise “Technical Guides on VAT” for all States. One of the product of such initiative is “Technical Guide on Jharkhand VAT”. An attempt has been made in this Guide to cover all the aspect of Jharkhand VAT provision such as basic principles, procedure for registration, payment, assessment, refund, penalties, input tax credit, import and exports of goods etc., and is intended to give a general guidance to the chartered accountants to address the various issues that may arise in the Jharkhand VAT. Of course the various individual's practical issues have to be solved by exercising professional judgment.

I am extremely thankful to CA. K Raghu, President and CA. Manoj Fadnis, Vice-President, ICAI and members of the Committee for their support and guidance in this initiative. Further, I thanks to CA. Shekhar Sharad for preparing basic draft of the publication and CA. Amit for reviewing the same. I must also compliment and appreciate the substantial assistance provided by the Indirect Taxes Committee Secretariat to bring this publication to its being.

I am sure that this publication would help the members and readers to be well equipped in effectively discharging their duties as Jharkhand VAT practitioners.

I look forward to receiving feedback for further improvements in this Technical Guide at [dtc@icai.in](mailto:dtc@icai.in).

Date : 20<sup>th</sup> November, 2014  
Place : New Delhi.

CA. Atul Gupta  
Chairman  
Indirect Taxes Committee



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# Glossary

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*This chapter deals with section 2 of Jharkhand Value Added Tax Act, 2005 and Rule 2 of Jharkhand Value Added Tax Rules, 2006.*

## Definitions under the Act

Definitions – In this Act unless the context otherwise requires:

- (i) “Accountant” for the purpose of this Act means —
  - (a) A Chartered Accountant within the meaning of the Chartered Accountant’s Act, 1949 (38 of 1949);
  - (b) A person, who by virtue of the provisions of sub-section (2) of Section 226 of the Companies Act, 1956 (1 of 1956), is entitled to be appointed to act as an auditor of companies registered; or
  - (c) A Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959 (23 of 1959); or
  - (d) A person referred to in Section 619 of the Companies Act, 1956 (1 of 1956);
  - (e) A person, who has passed the final examination of Institute of Companies Secretaries of India, New Delhi;
  - (f) A person, who has passed any other examination in this behalf, notified by the Government.
- (ii) “Act” means the Jharkhand Value Added Tax Act, 2005;
- (iii) “Appointed day”, in relation to any provision of this Act, means the date on which such provision comes into force;
- (iv) “Assessee” means any person by whom tax or any other sum of money is payable under this Act and includes every person in respect of whom any proceeding under this Act have been taken for the assessment of tax payable by him;
- (v) “Assessing Authority” means any person not below the rank of a Commercial Taxes Officer authorized by the Government to make any assessment under this Act;

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- (vi) "Assistant Commissioner" means any person appointed to be an Assistant Commissioner of Commercial Taxes under this Act;
- (vii) "Branded" means any goods sold under a name or Trade Mark registered or pending registration of transfer under the Trade and Merchandise Act 1958 (Central Act 43 of 1958) or the Trade Marks Act 1999 (Central Act 47 of 1999).
- (viii) "Business" includes -
  - (a) The provisions of any services, but excluding the services provided by an employee;
  - (b) Any trade, commerce, manufacture or any adventure or concern in the nature of trade, commerce, manufacture, whether or not such trade, commerce, manufacture, adventure, concern is carried on with a motive to make gain or profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure, concern; and
  - (c) Any transaction in connection with, or incidental or ancillary to such trade or services, commerce, manufacture, adventure or concern; referred to in clause (a) and includes any transactions involving goods whether or not in their original form or in the form of second hand goods, unserviceable goods, obsolete or discarded goods, scrap or waste materials goods, which are obtained as waste-product, by-product in the course of manufacture or processing of other goods or mining or generation and distribution of electricity.
- (ix) "Commissioner" means the Commissioner of Commercial Taxes or Additional Commissioner of Commercial Taxes appointed by the Government under this Act and includes any other officer upon whom the State Government may by notification, confer all or any of the powers and duties of the Commissioner under this Act.
- (x) "Capital goods" means plant, machinery, equipment, apparatus, tools, appliances or electrical installation, Pollution/Quality Control Equipments, used in the process of manufacturing, processing of goods for sale or in the mining, provided such purchases are capitalized for their purposes excluding goods mentioned in negative list as in Appendix - I;
- (xi) "Commercial Taxes Officer" means any person appointed to be a Commercial Taxes Officer under this Act;

## *Glossary*

- (xii) "Casual Trader" means a person who whether as principal, agent or in any other capacity, has occasional transactions involving buying, selling, supplying or distributing goods or conducting any exhibition- cum- Sale in the state, whether for cash or for deferred payment, or for commission, remuneration, or other valuable consideration;
- (xiii) "Dealer" means any person who carries on the business of buying, selling, supplying or distributing goods, executing works contract, delivering any goods on hire-purchase or any system of payment by installments; transferring the right to use any goods or supplying by way of or as part of any service, any goods directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration and includes;
  - (a) a casual trader;
  - (b) a commission agent, a broker or a del credere agent or an auctioneer or any other mercantile agent, by whatever name called,
  - (c) a non-resident dealer or an agent of a non-resident dealer, or a local : branch of a firm or company or association or body of persons whether incorporated or not, situated outside the State;
  - (d) a person who, in the course of business, -
    - (i) sells goods produced by him by manufacture, agriculture, horticulture or otherwise; or
    - (ii) transfers any goods, including controlled goods whether in pursuance of a contract or not, for cash or for deferred payment or for other valuable consideration;
    - (iii) supplies, by way of or as part of any service or in any other manner whatsoever, goods, being food or any other articles for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;
- (xiv) "Declared goods" means goods declared to be of special importance in inter-State trade or commerce under Section 14 of the Central Sales tax Act, 1956 (Central Act 74 of 1956);
- (xv) "Deputy Commissioner" means any person appointed to be a Deputy Commissioner of Commercial Taxes under this Act'.

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- (xvi) "Documents" includes written or printed records of any sort, title deeds and data stored electronically in whatever forms or any other record or form as defined in the Information Technology Act 2000.
- (xvii) "Documents of Title" means, any document which confers a title to goods and includes a bill of lading, dock warrant, warehouse-keeper's certificate, and warrant or order for the delivery of goods and any other document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or to receive goods thereby represented;
- (xviii) "Electronic Record" means, a data, record or data generated, image or sound stored, received or sent in an electronic form or micro film or computer generated micro fiche or in a computer disk or in a computer floppy or computer software/media;
- (xix) "Entry of goods" – "Entry of goods" with all its grammatical variations and cognate expressions means entry of goods mentioned in schedule III into a local Area from any place outside the state
- (xx) "EOU" – (Export Oriented Unit) means any industrial unit, which undertakes to export their entire production of goods and is approved as such by the Development Commissioner of the concerned Export Processing Zone or any other competent authority duly authorized for the purpose by the Ministry of Industry, Government of India.
- (xxi) "EHTP"- (Electronic Hardware Technology Park), is a unit set up under the EHTP, which undertakes to export their entries production of goods outside the territory of India and is approved by the Development Commissioner of the Export Processing Zone or any other competent authority duly authorized by the Ministry of Industry, Government of India for the purpose.
- (xxii) "Goods" means all kinds of movable property (other than newspapers, actionable claims, electricity, stocks and shares and securities) and includes livestock, all materials, computer software sold in any form, SIM cards used in Mobile Telephony or for any other similar activation purposes, commodities and articles and every kind of property (whether as goods or in some other form) involved in the execution of a works contract, and all growing crops, grass, trees and things attached to, or forming part of the land which are agreed to be severed before sale or under the contract of sale;

## *Glossary*

- (xxiii) "Goods carrier" shall include motor vehicle, Vessel, boat, animal or any other means of conveyance but will exclude railway wagon, coach or vehicle or any road transport when plying in collaboration with rail transport and under the control of the Railway;
- (xxiv) "Government" means Government of Jharkhand.
- (xxv) "Gross Turnover" means-
- (i) for the purposes of levy of sales tax, in respect of sale of goods, aggregate of sale prices received and receivable by a dealer, including the gross amount received or receivable for execution of works contract or for the transfer of right to use any goods for any purposes ( whether or not for a specified period) during any given period ( and also including the sale of goods made outside the State, in the course of inter-State trade or commerce or export), but does not include sale prices of goods which have borne the incidence of purchase tax under Section 10.
  - (ii) for the purposes of levy of purchase tax, aggregate of purchase prices paid or payable by a dealer during any given period in respect of purchase of goods or class or description of goods which have borne the incidence of purchase tax under Section 10.
  - (iii) for the purposes of Section 9, the aggregate of the amounts under sub-clauses (i) and (ii);
- (xxvi) "Importer" means a dealer who brings any goods into the State, or to whom any goods are dispatched from any place outside the State;
- (xxvii) "Import Price" means the amount payable by a dealer or any person, as valuable consideration in respect of the sale or supply of goods making entry into the State or into the local area, but shall not include the tax paid or payable under Central Sales Tax Act or under any other State Taxes Act(s), in respect of such sales or purchases.
- (xxviii) "Input" means, goods purchased in course of business - (a) for resale in the same form; or (b) for use in manufacturing or processing of taxable goods for sale; or (c) for directly use in mining or use as containers or packing materials for taxable goods; or (d) for the execution of works contract, but excluding purchases of Petrol, Diesel and Natural Gas and for use as Capital Goods as specified in Appendix-I of this Act.

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(xxix) "Input Tax" means the tax paid or payable under this Act, by a registered dealer to another registered dealer on the purchase of goods, in the course of business for resale or for use in manufacturing or processing of taxable goods for sale, or for direct use in mining or use as containers or packing materials for taxable goods or for the execution of works contract;

Provided that input tax shall also include tax paid on the entry of goods into the local area as specified in Schedule-III.

Provided further that input tax shall also include tax paid on the capital goods for Registered Start-up-business and shall qualify for Input Tax Credit as prescribed.

*\*Provided further, that tax charged at Maximum Retail Price; shall not be treated as Input Tax, for the purpose of resellers, when reselling medicines or drugs, specified in the Drugs (Prices Control) Order 1995.*

*\* Added by the Jharkhand Act 21, 2006 w.e.f. 01/04/2006*

(xxx) "Joint Commissioner" means any person appointed to be a Joint Commissioner of Commercial Taxes under this Act;

(xxxi) "Local Area" means the areas within the limits of a –

- (a) Municipal Corporation
- (b) Municipality
- (c) Notified Area Committee
- (d) Cantonment Board
- (e) Town Board
- (f) Mines Board
- (g) Municipal Board
- (h) Gram Panchayat
- (i) Any Other Local Authority or any Authority by whatever nomenclature called, constituted or continued under or in any law for the time being in force.

(xxxii) "Manufacture" includes any activity that brings out a change in an article or articles as a result of some process, treatment, labour and results in transformation into a new and different article so understood in commercial parlance having a distinct name character use but does not include such activity of manufacturer as may be notified.

(xxxiii) "Maximum Retail Price", in respect of goods taxable under this Act, means maximum price printed on the package of any goods at which such goods may be sold to the ultimate consumer, whether such price is inclusive of tax or not;

## *Glossary*

- (xxxiv) "Month" means a calendar month;
- (xxxv) "Notification" means a notification published in the official Gazette of the Government.
- (xxxvi) "Non Resident Dealer" means a dealer, who effects sales or purchases of any goods in the State, but who has no fixed place of business or residence in the State;
- (xxxvii) "Output Tax" means the tax charged or chargeable under this Act by a registered dealer for the sale of goods in the course of business;
- (xxxviii) "Person" includes:-
- (a) an Individual; (b) a Joint Family;
  - (c) a Company; (d) a Firm;
  - (e) an association of persons or a body of individuals; whether incorporated or not;
  - (f) the Central Government or the Government of Jharkhand or the Government of any other State or Union Territory in India;
  - (g) a local Authority or any Authority established under any law;
- (xxxix) "Place of Business" means any place where a dealer carries on the business and includes :-
- (a) any warehouse, godown or other place where a dealer stores or processes his goods;
  - (b) any place where a dealer produces or manufactures goods;
  - (c) any place where a dealer keeps his books of accounts;
  - (d) in cases where a dealer carries on business through an agent (by whatever name called), the place of business of such agent;
  - (e) any vehicle or vessel or any other carrier wherein the goods are stored or used for transporting the goods;
- (xl) "Prescribed Authority" and "Prescribed" means prescribed by Rules made under this Act;
- (xli) "Principal Officer", in relation to a company, means the director or Managing Director of such company, or the secretary, or any such person of the Company specially authorized to act as Principal Officer by the

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Board of Directors or by such Director or the Managing Director of such company, authorized in this behalf.

- (xlii) "Purchase price" means the amount of valuable consideration paid or payable by a person for any purchase made including any sum charged for anything done by the seller in respect of the goods at the time of or before delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged, and shall not include tax paid or payable under this Act, by a person in respect of such purchase.

Explanation I – The amount of duties levied or leviable on the goods under the Central Excise Act, 1944 (1 of 1944), or the Customs Act, 1962 (52 of 1962) or the Bombay Prohibition Act, 1949 (Bom. XXV of 1949) shall be deemed to be part of the purchase price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person.

Explanation II - 'Purchase price' shall include any amount payable by a dealer who purchases goods for anything done by the seller in respect of the goods at the time of or before delivery thereof to the buyer.

Explanation III - 'purchase price' shall not include –

- (a) the cash discount allowed by the seller according to ordinary trade practice, if shown separately;
  - (b) the cost of transport of the goods from the seller to the buyer, provided such cost is separately charged to the buyer;
- (xliii) "Quarter" means the quarter ending on the 30<sup>th</sup> June, 30<sup>th</sup> September, 31<sup>st</sup> December and 31<sup>st</sup> March:
- (xliv) "Resale" means a sale of goods in the State of Jharkhand or in the course of inter-State trade and commerce and export out of the territory of India;
- (a) in the same form in which they are purchased, or
  - (b) Without doing anything to them, which amounts to, or results in, a Manufacture.

and the term "re-sell" shall be construed accordingly;

- (xlv) "Registered dealer" means a dealer registered under this Act;

- (xlvi) "Reverse tax" means that portion of input tax of the goods on which credit has been availed but such goods are used subsequently for any purpose other than resale or manufacture of taxable goods or execution of works contract or use as containers or packing materials within, the State;
- (xlvii) "Sale" with all its grammatical variations and cognate expressions means any transfer of property in goods for cash or deferred payment or other valuable consideration but does not include a mortgage or hypothecation of or a charge or pledge on goods, and the words "sell", "buy" and "purchase", with all their grammatical variations and cognate expressions, shall be construed accordingly and includes-
- (a) transfer of property in any goods, otherwise than in pursuance of a contract;
  - (b) transfer of property in goods (whether as goods or in some other form)involved in the execution of a works contract;
  - (c) delivery of goods on hire purchase or any other system of payment by installments;
  - (d) a transfer of the right to use any goods for any purpose, whether or not for specified period, for cash, deferred payment or any other valuable consideration;
  - (e) supply of goods made by a society, trust, club or association, whether incorporated or not, to its members or otherwise;
  - (f) the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is made or given for cash, deferred payment or other valuable consideration;
  - (g) a sale within the State includes a sale determined to be inside the State in accordance with the principles formulated in Section 4 of the Central Sales Tax Act, 1956;

and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply, and all grammatical variations and cognate expression shall be construed accordingly;

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and 'purchase' means such acquisition of property in goods or purchase of those goods by the person to whom such transfer, delivery or supply is made.

Explanation I – A transfer or acquisition of goods on hire purchase or under any other system in which payment of valuable consideration is made by installments, shall, notwithstanding the fact the seller retains the title in the goods as a security for the payment of the valuable consideration or for any other reasons, be deemed to be a sale or purchase.

Explanation II – Notwithstanding anything contained in any law for the time being in force, two independent purchases or sales shall, for the purpose of this part, be deemed to have taken place-

- (a) when the goods are transferred from principal to his selling agent and from the selling agent to the purchaser, or
- (b) when the goods are transferred from the seller to a buying agent and from the buying agent to his principal, if the agent is found-
  - (i) to have sold the goods at one rate and to have passed on the sale price to his principal at another rate, or
  - (ii) to have purchased the goods at one rate and to have passed them on to his principal at another rate, or
  - (iii) not to have accounted to his principal for the entire collections or deductions made by him in the sales or purchases effected by him or on behalf of his principal, or
  - (iv) to have acted for a fictitious or non-existent principal.

(xlviii) "Sale Price" means the amount payable to a dealer as valuable consideration in respect of the sale or supply of goods, and shall not include tax paid or payable under this Act, by a person in respect of such sales.

Explanation I – The amount of duties or fees or any sum levied or leviable or charged on the goods under the Central Excise Act, 1944 (1 of 1944), or the Customs Act 1962 (52 of 1962) or the State Excise Act or any law shall be deemed to be part of the sale price of such goods, whether such sum are paid or payable by or on behalf of the seller or the purchaser or any other person.

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Explanation II – Sale price shall include any amount charged by the dealer for anything done in respect of the goods at the time of, or before delivery thereof to the buyer;

Explanation III – Sale price shall not include the cash discount, if shown separately; and allowed by the dealer in the ordinary course of trade practice, provided the same is allowed to a registered VAT dealer. It shall also not include the cost for transport of the goods from the seller to the buyer, provided such cost is separately charged to the buyer.

*\* Explanation IV – For the purpose of this clause, the expression "sale price" shall mean, the maximum retail price, as referred to in clause (xxxiii) of Section 2 of this Act, for a dealer, selling goods, specified in Drugs (Prices Control) Order 1995, to any other dealer.*

*\* Added by the Jharkhand Act 21, 2006 w.e.f. 01/04/2006*

- (xlix) "Schedule" means the schedule appended to this Act;
- (l) "SEZ" – means Special Economic Zone, as defined in the Central Excise Act 1944.
- (li) "State" means the State of Jharkhand
- (lii) "Start up business" means a dealer's intention to set up a factory to manufacture any taxable goods shall be deemed/ treated as a "start up business" until the date of commencement of commercial production.
- (liii) "STP"- (Software Technology Park), unit means a unit set up under the STP, which undertakes to export their entire production of goods outside the territory of India and is approved by the Development Commissioner of the concerned Export Processing Zone or any other competent authority duly authorized by Ministry of Industry, Government of India for the purpose.
- (liv) "Tax" means the tax payable under this Act;
- (lv) "Tax Invoice" means a document listing goods sold with price, quantity and other details as specified in this Act and includes a statement of account, bill, cash register, slip, receipt or similar record, regardless of its form;
- (lvi) "Taxable Turnover" means the "Turnover", on which a dealer shall be liable to pay tax as determined after making such deductions from his total Turnover and in such manner as may be prescribed;

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- (Ivii) "Transporter", "Carrier" or "Transporting Agent" means any person, including the driver of the vehicle, who for the purposes of or in connection with or incidental to or in the course of his business transports or causes to transport goods, or holds goods in custody for delivery to any person after transportation, and includes railway, shipping company, air cargo terminal and courier service;
- (Iviii) "Turnover" means the aggregate amount of purchase price(s) or sale price(s), for which goods are either bought or sold, supplied or distributed by a dealer, either directly or through another, on his own account or on account of others, whether for cash or for deferred payment or for other valuable consideration;

**Explanation-**

- (1) The turnover in respect of delivery of goods on hire purchase or on any system of payment by installments shall be the market price of the goods so delivered,
  - (2) The turnover in respect of the transfer of the right to use any goods shall be the aggregate amount received or receivable by the dealer as consideration for such transfer,
  - (3) Subject to such conditions and restrictions, if any, as may be prescribed in this behalf;
    - (a) the amount for which goods are sold shall include any sums charged for anything done by the dealer in respect of the goods sold at the time of, or before, the delivery thereof;
    - (b) any cash discount on the price allowed in respect of any sale or any amount refunded in respect of articles returned by customers shall not be included in the turnover; and
    - (c) where for accommodating a particular customer, a dealer obtains goods from another dealer and immediately disposes of the same to the said customer, the sale in respect of such goods shall be included in the turnover of the latter dealer but not in that of the former.
- (lix) "Tribunal" means the Tribunal constituted under Section 3 of this Act;
- (Ix) "Value Added Tax" means a tax on sales or purchases levied under this Act;

## *Glossary*

- (Ixi) "Vehicle" includes every wheeled conveyance used for the carriage of goods solely or in addition to passengers.
- (Ixii) "Vessel" includes any ship, barge, boat, raft, timber, bamboos or floating materials propelled in any manner-
- (Ixiii) "Works Contract" means and includes any agreement for carrying out for cash or deferred payment or other valuable consideration, for assembling, construction, fabrication, erection, installation, modification, fitting out, improvement or repair of any building, road, bridge or commissioning of any other immovable or movable property;
- (Ixiv) "Year" means the financial year beginning from 1st April and ending with 31st March;
- (Ixv) "Zero Rated Sales" for the purpose of this Act means a sale of goods, in the course of Inter-State Trade or Commerce, export to outside the territory of India including sale in course of Export and Sale of Goods to any unit located in Special Economic Zone as may be notified.

Provided further, unless otherwise specified in this Act—

- (a) words importing the masculine gender shall include the feminine gender;
- (b) words in singular shall include their plural and vice versa;
- (c) expressions referring to "writing" shall include printing, typing, lithography, photography and other methods of representing or reproducing words in a visible form; and
- (d) with reference to a person who is unable to sign his name, the word "signature" shall include his thumb impression or other mark duly attested to signify his signature.

### **Definations under the Rules**

- (i) "Act" means, the Jharkhand Value Added Tax Act 2005 (Jharkhand Act 05, 2006).
- (ii) "Circle" means, a unit of Commercial Taxes Administration as specified in the Government Notification issued in this behalf from time to time, within the local limits of which a dealer's place of business is situated or in which he is registered, under Rule 3 and includes sub-circle also.

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- (iii) "Contractee", means any person for whom or for whose benefit a works contract is executed;
- (iv) "Contractor" means any person who executes, either himself or through a sub-contractor a works contract;
- (v) "Digital Key", means in an asymmetric crypto system, a private key and its mathematically related public key, which are so related that the public key can verify a digital signature created by the private key or the key of a key pair used to verify a digital signature and listed in the Digital Signature Certificate under the Provisions of Information Technology Act 2000;
- (vi) "Digital Signature" means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of Section 3 of Information Technology Act 2000;
- (vii) "Exempt Transaction" means the transfer of taxable goods outside the State, by any VAT Dealer, otherwise than by way of sale.
- (viii) "Fees" means any fee leviable under these Rules.
- (ix) "Form" means a Form prescribed under these Rules.
- (x) "Government Treasury" means a Govt. Treasury in the State of Jharkhand, and includes a "sub-treasury".
- (xi) "Quarter" means a period of three calendar months ending on the 30<sup>th</sup> June, 30<sup>th</sup> September, 31<sup>st</sup> December, and the 31<sup>st</sup> March.
- (xii) "Registering Authority" means the In-charge of the Circle or sub-circle.
- (xiii) "Repealed Act(s)" means "The Adopted Bihar Finance Act (Part-I) 1981, (Bihar Act 5 of 1981)", and includes "The Adopted Bihar Tax on Entry of Goods into Local Areas for Consumption, Use or Sale therein Act 1993 (Bihar Act 16 of 1993)".
- (xiv) "Section" means a Section of the Act, and includes "Sub-Section".
- (xv) "Signature" includes "Digital Signature".
- (xvi) "Tax Period" means a period of time, usually for the purpose of Section 29, 30, 31, 32, 33 and 58\* shall be a *quarter*<sup>@</sup> and part thereof, and for the purpose of Section 34, 35, 36, 37, 38, 40, 42, 43 shall be a year and part thereof or such period(s) as may be specified from time to time .

- (xvii) “Tax Practitioner” means —
- (a) A “Legal Practitioner”, as defined in Clause (iii) of sub-section (2) of Section 288 of the Income Tax Act, 1961, and who has completed fifteen years as a “Legal Practitioner” under the Provisions of Income Tax Act, 1961 or under the Provisions of the Repealed Acts, Central Sales Tax Act / VAT Act/Acts, and who also possesses a degree in Commerce, or Economics, or Banking including Higher Auditing conferred by any Indian University incorporated by any law for the time being in force or any foreign University duly approved by the State Government, and are also enrolled as “Tax Practitioner” vide sub-rule (9) of Rule 51.
  - (b) A “Tax Practitioner”, is one who has been appointed by the Commissioner as “Tax Practitioner” vide sub-rule (9) of Rule 51.
- (xviii) “Warehouse” means any enclosure, building or place where a dealer, casual dealer or any other person keeps stocks of goods, and includes a vessel, vehicle or godown;
- (xix) Words and expressions used herein but not defined shall have the same meaning as assigned to them in the Act.

# Chapter 1

## Introduction

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### Taxation Powers of the State Government

Taxes are collected by both Central Government and State Government, and their power to collect taxes under various circumstances are clearly specified in the Constitution of India. The power of the Central Government to collect taxes has been specified in List I of The Seventh Schedule to the Constitution of India and includes taxes like Income Tax, Central Excise, Service Tax, Customs Duty etc.

The powers of State to collect taxes are listed in List II of the Seventh Schedule of The Constitution of India as under :

Entry No. 46 Taxes on Agricultural Income

Entry No. 51 Excise duty on alcoholic liquors, opium and narcotics

Entry No. 52 Tax on Entry of Goods into a local area for consumption, use or sale therein

Entry No. 54 Tax on Sale or purchase of Goods other than newspapers except tax on interstate sale or purchase

Entry No. 52 and 54 are normally governed by Sales Tax or Value Added Tax. Before the Year 2005 all the States in India were charging Tax at every stage of Sales resulting into cascading effect of Tax. However, in every developed economy Goods and Service Tax is the best taxation system adopted in the field of Indirect Tax system. India has also started moving towards implementation of GST and as a first step in this direction, State Level VAT was introduced.

### Value Added Tax in Jharkhand

In the State of Jharkhand, Value Added Tax Act, 2005 has been implemented w.e.f. 01-04-2006, unlike in many other States who adopted the Value Added Tax in 2005. In Financial Year 2006-07 when VAT was first introduced, the total tax collection was ₹ 2666.31 Lacs which increased to ₹ 7517.46 Lacs during F.Y. 2013-14 i.e. a growth of 181.94% in 8 Years.

## *Introduction*

The VAT in Jharkhand is administered by Commercial Taxes Department. Presently the Secretary-cum-Commissioner of Commercial Taxes is the Head of the Department. He is assisted by Additional Commissioner, Joint Commissioners, Deputy Commissioners, Assistant Commissioners, Under Secretaries and Commercial Taxes Officers at the Head Quarter Level. Besides 5 Divisions, 28 Circle, 3 VAT-Audit Wings, 5 Appellate Offices and 1 State Level Tribunal are functional in Jharkhand.

The functions of Commercial Taxes Department are as under :

- Levy and collection of VAT, Central Sales Tax and other Minor Taxes.
- Registration and monitoring of the dealers to widen Tax base.
- Receipt and Scrutiny of Returns filed with the Department.
- Assessment, Audit Assessment at regular intervals
- Sanction of Refund.
- Realization of arrears of Tax Revenue.
- Resolution of disputes through Administrative, Appellate and Legal Measures.

## **Minor Acts**

Besides VAT and CST, the Commercial Taxes department is also responsible for levy and collection of other minor taxes. These are as follows:

Sl. No.	GOVERNING ACT
1	Jharkhand Entry Tax on consumption or use of Goods Act, 2011
2	Jharkhand Electricity Duty Amendment Act, 2011
3	Jharkhand Taxation on Luxuries in Hotels Ordinance, 2011
4	Jharkhand Entertainment Tax Act, 2012
5	Jharkhand Advertisement Tax Act, 2012
6	The Jharkhand Tax on Professions, Trades, callings and Employments Act, 2011

\*Entry Tax Act, 2011 was notified in 2011 and consequently all the provisions related to Entry tax contained in JVAT Act have been abolished. Further, the Entry Tax Act has been held as ultra vires and unconstitutional by the

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Hon'ble Jharkhand High Court and as such the provisions related to Entry tax in JVAT Act have not been discussed.

## **Concept of Tax Identification Number**

Tax Identification Number (TIN) is an 11 digit code which is unique on country basis. First Two Digits indicate State Code, and 5th and 6th Digit in Jharkhand indicate the Circle Code. TIN shall be allotted to every dealer who has been granted Registration under the Jharkhand Value Added Tax Act. This TIN shall also remain the same for Registration under The Central Sales Tax Act, 1956.

## **E-Services**

Department of Commercial Taxes has introduced online services for Registration, Return Filing, Generation of Forms and Road Permit and Payment of Taxes. The web portal of Commercial Taxes Department is [www.jharkhandcomtax.gov.in](http://www.jharkhandcomtax.gov.in).

## **Administration of Value Added Tax in Jharkhand**

The Value Added Tax in Jharkhand is governed by Jharkhand Value Added Tax Act, 2005 and Jharkhand Value Added Tax Rules, 2006. There are 98 Sections in the Act (Numbered from Section 1 to 97, with Section 10A as additional in counting) divided into 12 Chapters. The Act contains 3 Schedules and one Appendix as per details given below :

Sl. No.	Particulars	Contents
1	Schedule I	List of Goods Exempted from Payment of VAT
2	Schedule II – Part A	Goods Taxable @ 1%
3	Schedule II – Part B	Goods Taxable @ 5%
4	Schedule II – Part B (Annexure)	Industrial Inputs & Packing materials as specified in Sl. No. 69A of Schedule II – Part B
5	Schedule II – Part C	Goods Taxable @ 5%
6	Schedule II – Part D	Goods Taxable @ 14%
7	Schedule II – Part E	Special rate of Tax
8	Schedule II – Part F	Any rate for any class of goods as may be specified in this part

9	Schedule III	List of Goods Liable to Entry tax(Abolished)
10	Appendix	Negative list of Capital Goods for Input Tax Credit

Jharkhand value Added Tax Rules, 2006 has been divided into 11 Chapters containing 66 Rules (Serially numbered from 1 to 66) and it also contains a List of Forms for various purposes under Acts and Rules along with Format of such forms.

### **Role of Chartered Accountants**

In the past 10 years, Indirect Taxes have emerged as a significant area for Chartered Accountants to utilise the expertise and skill as this area of taxation has undergone sea-change during this period. Chartered Accountants are authorised to conduct Audit under the Act; they can also appear before assessing authority as well as in any proceedings related to revision and appeal. They are also authorised to appear before the Appellate Tribunal. The opportunities for Chartered Accountants lie in the following areas:

- Consultancy
- Records Keeping
- VAT Audit
- Representation before Departmental Authorities
- Filing of Appeals and Revisions

## Chapter 2

# Incidence and Levy of Tax

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*This chapter deals with section 8 to 17, 19, 20, 22, 23 and 24 of Jharkhand Value Added Tax Act, 2005 and Rule 25 of Jharkhand Value Added Tax Rules, 2006.*

### Incidence of Tax (Section 8)

#### Dealers Liable to Pay Tax

The following class of Dealers are liable to pay tax:

1. Whose Gross Turnover first exceeds the specified quantum during any period of 12 consecutive months, or
2. Who has become liable to pay tax under the Central Sales Act, 1956, or
3. Who is registered as a dealer under The Central Sales Tax Act, 1956 or under this act at any time after the commencement of this Act;

Specified Quantum means any dealer who:

Particulars	Specified quantum
Imports for sale any goods into the state of Jharkhand on his own behalf or on behalf of his principal	Nil
Manufactures or produces any goods for sale	₹ 50,000/-
Is engaged in any other business other than above	₹ 5,00,000/-
Involved in the execution of works contract and leasing	₹ 25,000/-
Engaged in any other sales or purchase or class of sales or purchases other than above	As specified from time to time

Section 8(6): For the purpose of calculating Gross Turnover under this section:

- (a) Turnover of all sales or, as the case may be, the turnover of all purchases whether taxable or not shall be taken.
- (b) Turnover shall include all sales and purchases made by a dealer on his own account or also on behalf of a principal whether disclosed or not.

### **Turnover falling below specified quantum**

Section 8(3): Every dealer who has become liable to pay tax shall continue to be so liable even if his turnover falls below the specified quantum. However, if the turnover remains below the specified quantum for three consecutive years, his liability to pay tax shall cease on the expiry of the period specified above.

Section 8(9): Every dealer who has ceased to be liable as above shall be again liable to pay tax with effect from the date immediately following a period not exceeding twelve consecutive months during which his gross turnover again exceeds the specified quantum.

### **Liability to pay Tax in certain cases**

Section 8(8): A registered dealer whose liability to pay tax has ceased under this Act for any reason other than the entire transfer of his business to other person, shall pay tax on the goods remaining unsold at the termination of his liability, after furnishing such declaration as prescribed.

Section 8(10): Where a dealer who is or was, less than 6 months earlier liable to pay tax, starts a new business, either singly or jointly with other persons, or joins other business or partnership firm or concern or HUF; Tax shall be payable by such business or partnership firm or such concern on and from the date the dealer starts or joins it, unless its liability has arisen from an earlier date.

### **Power to collect Advance Tax**

Section 8(13): The tax payable under this Act may be estimated and calculated in advance during a year with the prior approval of Commissioner or any authority empowered in this regard. The prescribed authority may provisionally determine the amount of tax payable under the act on the basis of estimated taxable turnover submitted by the dealer and thereupon, the dealer shall pay the amount so determined, by such date as may be fixed by the authority.

## **Levy of Tax on Sale and determination of Taxable Turnover (Section 9)**

### **Stages at which Tax shall be payable**

The basic concept of Value Added Tax system is that the Tax is payable at every stage of Sale on Sale Price of Goods. The Tax paid by the reseller at the time of purchases shall be available as Input Tax Credit which can be adjusted from the tax payable by him on the sales made. There are two exceptions to this principle:

### **On Medicines and Drugs**

Any registered dealer who imports or manufactures medicines and Drugs as specified in the Sl. No. 85 of the Part B of Schedule II excluding Bulk Drugs, Siddha, Unani or Homeopathic medicines, shall pay the tax at the full rate on the Maximum Retail Price of such goods at the first stage only.

In such cases, no Input Tax Credit shall be admissible to the subsequent purchasing dealers.

### **On Petrol, HSD and liquors**

The tax payable on Petrol, HSD, Liquors and such other goods as mentioned in Part-E of Schedule II shall be levied at the first stage of sale, and the subsequent sales of same goods in the state shall not be liable to tax.

The Government may by notification specify any such goods on which tax shall be levied at more than one stage or at all stages of sales. In that case the amount of tax paid at the preceding stage shall be available as Input Tax Credit.

### **Taxable Turnover**

Taxable turnover shall be calculated after deduction of following amounts from Gross Turnover of the dealer:

- (a) sales of goods declared as exempt from tax in schedule 'I'.
- (b) sales of goods which are shown to the satisfaction of the prescribed authority to have taken place –
  - (i) in the course of inter-State trade or commerce, or

- (ii) outside the State of Jharkhand, or
- (iii) in the course of the import of the goods into or export of the goods out of the territory of India.
- (c) in case of turnover of sales in relation to works contract, the charges towards labour, services and other like charges either on actual basis or percentage basis.
- (d) such other sales on such conditions and restrictions as may be prescribed.

Where a Registered Dealer allows any Trade Discount or incentive whether in terms of quantity of goods or otherwise, the discount so allowed shall be deemed to be sale by the dealer and it shall form part of the sale in relation to which such discount is allowed. It shall also be deemed to be the Purchase by the Purchasing Dealer.

Suppose a registered dealer makes a sale of ₹ 1,00,000/- to another dealer and allows a trade discount or incentive of ₹ 10,000/- at the time of sale or at any time thereafter. In such a case the selling dealer has to pay tax on ₹ 1,00,000/- and not on ₹ 90,000/-

### **Levy of Tax on Purchases (Section 10)**

Every dealer liable to pay tax and purchases on any goods in the course of business:

- (i) from a registered dealer or a dealer or a person in the circumstances where no tax has been paid under this act by that registered dealer or a dealer or person on the sale price of such goods.
- (ii) from a person, where no tax has been paid under this Act, shall be liable to-pay tax on the purchase price of such goods, if after such purchase, the goods are not sold within the State of Jharkhand or in the course of Inter-State trade and commerce or in the course of export out of the territory of India, but are -
  - (a) sold or disposed off otherwise, or
  - (b) used or consumed in the manufacture of goods declared to be exempt from tax under this Act, or

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- (c) after their use or consumption in the manufacture of goods, such manufactured goods are disposed off otherwise than by way of sale in the State or in the course of inter-State trade and commerce or export out of the territory of India; or
- (d) used or consumed otherwise such tax shall be levied at the same rate at which tax under Section 8 would have been levied on the sale of such goods within the state on the date of such purchase.
- (e) The goods other than those specified in part E of Schedule II and tax-free goods, after consumption or use in the manufacture or processing or mining of any goods specified in Schedule II, the manufactured or processed or mined goods are disposed off otherwise than by way of sale within the State of Jharkhand or in the course of inter-state trade or commerce or in the course of export out of the territory of India.

And such tax shall be levied at the rate at which tax would have been levied on the sales of such goods within the State of Jharkhand on the date of such purchase.

Explanation -Sections 3, 4 and 5 of the Central Sales Tax Act, 1956 shall apply for determining whether or not a particular sale or purchase has taken place in the manner indicated in sub-clause 1(ii) and sub-clause 1(ii)(c) & (e).

### **Levy of surcharge**

Section 10A: Every dealer liable to pay tax under this Act shall also pay a surcharge on sale of goods specified in Part E of Schedule II at such rate not exceeding 20% of the total amount of tax payable by him. The dealer shall not be entitled to collect this amount of surcharge. [Surcharge has not been levied as on date]

### **Charge of Tax on Entry of Goods (Section11)**

*Abolished after notification of separate Entry Tax Act in 2011. However, the Entry Tax Act, 2011 was also held as ultra vires and unconstitutional by Hon'ble High Court in a landmark judgement in writ petition filed by Reliance Industries Limited and Others.*

## **Levy of Tax on Containers and Packing Material (Section 12)**

Where any goods packed in any container or packing materials are purchased, sold or brought into the local Area along with the container or packing materials in which such goods are packed, the tax under Section 8 or Section 10 or Section 11 on such container or packing materials shall be levied at the same rate of tax as applicable to the goods themselves treating the containers, packing materials as goods integrated with the goods.

Provided that no tax under Section 8 or Section 10 or Section 11 shall be levied where the container or packing material is sold or purchased along with the goods declared as exempt from tax under this Act.

## **Rate of Tax and Exemption (Section 13 and 14)**

For the purpose of rate of Taxation, goods have been classified into 2 Schedules. Most of the goods are taxable @5% or 14%. Rates of Tax for various schedules are as under:

Class of goods	Rate of tax
Schedule I	Exempt u/s 14
schedule II Part A	1%
schedule II Part B	5%
schedule II Part C	5%
schedule II Part D	14%
schedule II Part E	Varying from 14.50% to 50%
schedule II Part F	Residuary class for which different rate for different goods may be prescribed.

The State Government may provide any rate not exceeding 75% in respect of goods listed in Schedule II Part E.

The State Government may enhance or reduce the rates of taxes for goods specified in other parts of Schedule II.

## **Output Tax (Section15)**

Output tax in relation to a registered dealer means the tax payable under this Act in respect of any sale of goods by that dealer in the course of his business;

Subject to the provisions of Section 18, a dealer shall be liable to pay the output tax under this Act which shall be levied on the taxable turnover at the rates and subject to such conditions and restrictions as may be prescribed from time to time.

## **Input Tax (Section16)**

Input tax in relation to a registered dealer means the tax charged under this Act by the selling dealer from whom such dealer has purchased the goods for resale or for use in manufacturing or processing of goods for sale or for directly use in mining or use as containers or packing materials or for the execution of works contract.

## **Tax Payable and Input Tax Credit exceeding tax Liability (Section 17, 19 & Rule 25)**

The tax payable by a registered dealer for any tax period can be determined with the following formula:

$$\text{Tax payable} = (O+P)-I$$

Where 'O' = Output tax payable for any tax period as determined u/s 15.

'P' = Purchase tax paid for any tax period as determined u/s 10.

'I' = Input tax paid or payable for the said tax period.

If the amount calculated is negative, it means the dealer is having Input Tax Credit exceeding tax liability as per Section 19 and-

- (a) the same shall be adjusted against the tax liability, if any, under the Act as well as under the Central Sales Tax Act, 1956.
- (b) any amount of credit, remaining even after such adjustment shall be carried forward to the next tax period(s)

The tax payable by a dealer liable to pay tax but not registered under this Act for a tax period shall be equal to the output tax payable for the said tax period as

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determined under Section 15 and no deduction of Input Tax Credit shall be allowed.

Rule 25 : Tax payable on a taxable turnover shall be calculated by multiplying the rate of VAT specified in the Act with the Sale Price of the transaction. Where the Sale Price is inclusive of Tax, VAT payable shall be calculated by the formula

$$\frac{\text{Rate of Tax X Sale Price}}{100+\text{Rate of Tax}}$$

## Chapter 3

# Input Credit

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*This chapter deals with section 18, 19, 21 and 24 of Jharkhand Value Added Tax Act, 2005 and Rule 15, 26, 30 of Jharkhand Value Added Tax Rules, 2006.*

### Basic Concept and availability of Input Tax Credit

Input Tax Credit is the crux of every Value Added Tax System of Taxation. The Input Tax Credit is allowed to a Registered Dealer in respect of tax paid by him against purchase of goods. In Central Excise this Credit is known as CENVAT and in Value Added Tax it has been termed as Input Tax Credit.

Input Tax credit shall be allowed:

- (a) on purchase of goods made within the State of Jharkhand
- (b) from a registered dealer
- (c) holding a valid certificate of registration
- (d) and which are intended for the specified purposes

Specified purposes are as follows :

- (a) sale or resale by him in the State of Jharkhand or
- (b) sale in course of interstate trade and commerce or
- (c) use as raw material and for direct use in manufacturing or processing of goods for sale, or for directly use in mining, or for use as capital goods.
- (d) sale in the course of export out of the territory of India; or
- (e) for use as containers for packing of goods for sale or resale or for export out of the territory of India.
- (f) sale by a dealer having business under a SEZ; or a STP; or a EHTP; or by an EOU.
- (g) sale by dealers having business, located within SEZ to another unit located in SEZ.

### *Input Credit*

- (h) sale by dealers: inter-alia between whose units are referred to as, Export Oriented Units.
- (i) sale by dealers, whose business is located within SEZ, to another unit as: "Export Oriented Unit".

However, in respect of clause (c) and (e) if the purchased goods are intended for use in manufacturing/packing of goods which are exempt from tax or goods which are specified in Part E of Schedule II Credit shall not be available

Subject to such conditions and restrictions as may be prescribed, partial or proportionate input tax credit may be allowed in such cases where the purchased materials are partly used or consumed for specified purposes.

### **Input Tax Credit on Capital Goods**

Input Tax credit on capital goods shall be limited to plant, machinery and equipment directly connected with the manufacturing or processing of the finished products and directly for use in mining.

ITC on Capital Goods is not available in respect of items mentioned in Appendix I of this Act. These items are mainly those which are used in Civil Construction or Offices and not used in production activities.

Input tax credit on Capital Goods shall commence from the date of commencement of commercial production and shall be adjusted against tax payable on output, up to the period of three years. In case of closure of business before the period specified above no further input tax credit shall be allowed and input tax credit carried forward, if any, shall be forfeited.

Input tax credit for "start up business" period shall be limited to the immediately last three preceding years, from the date of commencement of its commercial production.

This means that Input Tax Credit on Capital Goods purchased 3 years before the date of production shall not be available.

Rule 26(2) provides that where an existing Industrial undertaking undertakes expansion, modernisation or diversification following an Industrial policy the ITC on Capital Goods shall be allowed in 36 equal monthly instalments, and the ITC shall be claimed from the first return from the date of commencement of commercial sales.

Rule 26(2) provides that if the ITC remains unadjusted after 36 months, no further adjustments shall be allowed from the VAT payable by such dealers.

### **Other Conditions for availing ITC**

Section 18(6) Input Tax credit shall be claimed by the dealer in the tax period in which the dealer receives the tax invoice in original containing the prescribed particulars of the sale evidencing the amount of input tax paid.

Provided that for good and sufficient reasons, to be recorded in writing, where a registered dealer is prevented from producing the Tax Invoice in original, the prescribed authority may allow, such input tax credit as prescribed. Rule 26(3) provides that where Original Tax Invoice has been lost ITC may be allowed on the basis of duplicate copy.

Section 18(7): A registered dealer who intends to claim input tax credit shall, for the purpose of determining the amount of input tax credit, maintain accounts, and such other records as may be prescribed in respect of the purchases, entry of scheduled goods into a local area and sales made by him in the State of Jharkhand.

Section 18(10): The methods that are used by a registered dealer in a tax period to determine the extent of availing the Input Tax Credit shall be fair and reasonable or as prescribed. In the circumstances if any other methods are used, the prescribed authority may, after giving sufficient reason in writing, reject the method adopted by the registered dealer and calculate the amount of input tax credit after giving the registered dealer concerned an opportunity of being heard.

### **Situations where ITC shall not be allowed**

Section 18(8): No ITC shall be claimed or allowed to a registered dealer :

- (i) in respect of any taxable goods under this Act purchased by him from another registered dealer for resale but given away by way of free sample or gift;
- (ii) who has been permitted by the Commissioner to make payment of presumptive tax or under scheme of composition at a percentage of turnover of sales or otherwise in lieu of tax as provided under Section 22 and 58;

*Input Credit*

- (iii) in respect of capital goods, other than those directly used for manufacturing or processing of goods for sale or in mining;
- (iv) in respect of goods brought from outside the State against the tax paid in other States or otherwise;
- (v) in respect of stock of goods remaining unsold at the time of closure of business;
- (vi) in respect of goods purchased on payment of tax, if such goods are not sold because of any theft or otherwise;
- (vii) where the tax invoice is -
  - (a) not available with the dealer, or
  - (b) there is an evidence that the same has not been issued by the selling dealer from whom the goods are purported to have been purchased;
- (viii) In respect of goods purchased from a dealer whose certificate of registration has been suspended;
- (viii) in respect of goods used for manufacture of goods for transfer of stock, or other than by way of sale or for sale outside the State of Jharkhand;

Provided that in respect of transactions falling under this clause, input tax credit may be allowed on the tax paid in excess of 4% on the materials used in the manufacture of the finished products.

- (ix) in respect of sales exempted from tax as specified in Schedule I;
- (x) in respect of capital goods used for manufacturing or processing of goods for sale or directly for use in mining, where the finished products are dispatched other than by way of sales;
- (xi) capital goods mentioned in negative list as in appendix I;
- (xii) goods mentioned in Part E of schedule II of the Act;

The State Government may, by notification in the official gazette, specify any goods or class of dealers that shall not be entitled to full or partial input tax credit.

## **Reverse Tax Credit**

Where ITC has already been availed by a registered dealer and a part of which is used in manufacturing of exempted goods, the ITC so availed for that part of goods shall be deducted from the ITC already availed for that tax period in which such event takes place. (Applicable where separate account is kept for purchases used in taxable and exempted goods).

Where separate accounts are not kept, the "Reverse Tax Credit" shall be calculated by following formula:

$$\frac{\text{ITC availed in that period} \times \text{Sale Value of Exempt Goods in a tax period}}{\text{Total Sale Value of Goods manufactured during that period}}$$

Where a Registered dealer is selling taxable goods, and a part of which is damaged or destroyed, Reverse Tax Credit shall be calculated as follows :

$$\frac{\text{ITC availed in that period} \times \text{Estimated Value of Goods damaged or destroyed}}{\text{Total Sale Value of Goods (including estimated value of damaged/destroyed goods)}}$$

Where goods purchased are returned to the selling dealer and necessary adjustment is made in their respective accounts the purchasing dealer shall "Reverse" the ITC already availed in respect of that part of goods.

Where as a result of deduction of "Reverse Tax Credit" there is a negative balance in the ITC for that Tax period it shall be demanded as tax dues in Form JVAT 308 and shall be recovered as arrear of tax dues.

## **Input tax credit exceeding tax liability (Section 19)**

If the input tax credit of a registered dealer other than an exporter selling goods outside the territory of India determined under Section 18 of this Act for a period, exceeds the tax liability for that period, the excess credit shall be set off against any outstanding tax payable, penalty or interest payable under this Act as well as CST Act 1956.

The excess input tax credit after such adjustment may be carried over as an input tax credit to the subsequent period or periods.

In case where input tax credit is carried forward, a quarterly credit statement may be submitted by the dealer concerned and the claims shall be scrutinised by the prescribed authority.

However, no Input Tax Credit shall be admissible when there is Nil turnover for consecutive period of 3 months.

Input Tax Credit can also be utilised for payment of Penalty and Interest which is in contrast to the CENVAT system under Central Excise, where Input Credit can be utilised for payment of duties only.

### **Adjustment of Input Tax Credit (Section 21)**

Where any purchaser receives a credit note or debit note in terms of Section 24 or if he returns or rejects goods purchased, it may result in less or excess Input Tax Credit as originally availed by him. The dealer shall compensate such less credit or excess credit by adjusting the amount of tax credit allowed to him in respect of the tax period in which the credit note or debit note has been issued or goods are returned subject to conditions as may be prescribed.

### **Credit Notes and Debit Notes (Section 24, Rule 30)**

Where a tax invoice has been issued and the amount shown as tax charged in the tax invoice

- (a) exceeds the Tax payable under this Act
- (b) is found to be less than the amount of tax payable under the Act

the registered dealer making the sale shall provide the purchaser with a credit note (in respect of (a)) and debit note (in respect of (b)) containing the requisite particulars as may be prescribed.

In case of goods returned or rejected by the purchaser, a credit note shall be issued by the selling dealer to the purchaser and a debit note will be issued by the purchaser to the selling dealer containing such particulars as may be prescribed.

Notwithstanding anything contained in this section, wherever after issuing tax invoice any credit notes are to be issued for any discounts or sales incentives by any registered dealer to another registered dealer, the selling dealer shall pass a credit note without disturbing the tax component on the price in the original tax invoice. [comment: This is similar to provisions contained in Section 9.

## Chapter 4

# Registration and Its Amendment, Cancellation, Suspension of Registration

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*This chapter deals with section 25 to 28 of Jharkhand Value Added Tax Act, 2005 and Rule 3 , 3A, 3B , 4 to 12 of Jharkhand Value Added Tax Rules, 2006.*

### **Compulsory Registration of Dealers (Section 25 , Rule 11)**

#### **Registration of Dealers liable to pay tax**

As per Section 25(1) of The Act, every dealer who is liable to pay tax, shall not carry on business as dealer unless he has been registered under this act and possesses a certificate of registration. A time of one month from the date from which he is first liable to pay tax has been granted to obtain the Registration.

Every Dealer required to be registered shall make application in this behalf in the prescribed manner to the prescribed authority and such application shall be accompanied by a declaration in the prescribed form dully filled in and signed by the dealer specifying therein the class or classes of goods dealt in or manufactured by him.

If the said authority is satisfied that the application is in order, he shall grant Registration to the Applicant and issue a certificate of registration in the prescribed form which shall specify the class or classes of goods dealt in or manufactured by him.

#### **Registration of Manufacturers and Power companies**

Notwithstanding that a person is not liable to pay tax u/s 8 of the Act, he may get himself registered under the Act, if he is intending to establish a business in the state:

*Registration and Its Amendment, Cancellation, Suspension of Registration*

- (i) For manufacture of taxable goods for sale of value exceeding ₹ 50,000/- in a year and who is registered in the Industries Department of State Government.
- (ii) for generation or distribution of electricity or any other form of power or in the telecommunication network.

Dealers falling under clause (i) above shall be treated as Start-up business. Further, Rule 11 specifies that a dealer who meets all the following conditions shall be treated as Start-up business :

- Intending to set up a factory to manufacture taxable goods.
- Anticipates making first taxable sales within the next three years.
- Anticipates applying for VAT Registration within next three years.

Such dealer shall be registered for a maximum period of 36 months.

Situation	Consequences
If Taxable Sales are made before 36 months	Registration under start up business shall cease and dealer will get Registration u/s 25(1) i.e. compulsory Registration
If no taxable sales are made at the end of 36 months	Registration shall be cancelled as per the provisions of Rules.

### **Voluntary registration of dealers (Section 26, Rule 10)**

Section 26(1) of the Act prescribes that every dealer whose gross turnover of sales during a financial year exceeds ₹ 25,000/- may apply for registration in the prescribed manner to the prescribed authority.

Every dealer who is registered under this section shall be liable to pay tax till the registration remains in force.

Once registration is obtained it shall continue to be in force for a period not less than three complete years and shall remain in force thereafter unless cancelled under this Act.

Rule 10: A dealer taking Voluntary Registration shall fulfill the following requirements:

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- (a) The dealer shall be making taxable sales. It means dealers dealing in exempted goods only cannot take voluntary registration.
- (b) The dealer shall have a prominent place of business owned or leased or rented in his name.
- (c) The dealer shall have a bank account
- (d) The dealer shall not have any tax arrears outstanding under the Repealed Act or CST Act, 1956.
- (e) The dealer shall maintain the full accounts and records required for VAT.
- (f) The dealer shall file accurate and timely VAT returns and pay any tax due.
- (g) The dealer shall remain registered for 36 months from the date of registration.

Previous Sanction of Commissioner is required before giving Registration under this section. [Inserted w.e.f. 02-07-2014]

**Procedure for Registration (Rule 3, 3A, 3B, Rule 4)**

Category of registration	Applicable form
Compulsory Registration/Voluntary Registration	JVAT 101
Presumptive/Composition Scheme	JVAT 103
Start-up Business	JVAT 102

- ❖ Application is required to be made online on the link <http://jharkhandcomtax.gov.in:8080/viconline/DoRegister?step=1>
- ❖ At present Digital Signature is not required.  
For compulsory/voluntary registration  
[http://jharkhandcomtax.gov.in/commercialtax/sites/default/files/service\\_support\\_attachment/e-registration.pdf](http://jharkhandcomtax.gov.in/commercialtax/sites/default/files/service_support_attachment/e-registration.pdf)  
For presumptive/composition registration  
[http://jharkhandcomtax.gov.in/commercialtax/sites/default/files/service\\_support\\_attachment/Comp\\_delr.pdf](http://jharkhandcomtax.gov.in/commercialtax/sites/default/files/service_support_attachment/Comp_delr.pdf)

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- ❖ Following is an Illustrative List of documents required for obtaining Registration
- ✓ Application Form in JVAT 101 along with Annexures.
  - ✓ Affidavit that all the information are correct
  - ✓ Security Bond as per Rule 5.
  - ✓ Copy of Partnership Deed/MOA-AOA/Trust Deed etc.
  - ✓ Copy of certificate of Incorporation
  - ✓ Copy of PAN Card
  - ✓ 2 photographs of Applicant (proprietor in case of proprietorship, all partners in case of partnership, MD/Director/Authorised signatory in case of Companies, Karta in case of HUF, authorised signatory in all other cases)
  - ✓ Address Proof of Applicant.
  - ✓ Bank Account details
  - ✓ E-mail ID & Mobile Number.
  - ✓ List of items of sale / Purchase
  - ✓ Nature of business
  - ✓ First purchase bill
  - ✓ First sale bill which makes the dealer liable
  - ✓ Resolution authorising the Principal officer to deal with sales tax authorities.

The above list is illustrative only and the prescribed authority may require such documents for its satisfaction as may be deemed necessary.

On making online application, the applicant shall receive an acknowledgement number for further reference.

The said electronic application shall be verified and the applicant shall be informed within 2 days to be present within 2 days before the prescribed authority with the requisite documents.

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On such specified date, the dealer shall file the duly signed hard copy of Form JVAT 101 along with all the annexures and an affidavit that the contents of the said Application are true and correct.

The applicant shall also furnish Security as per Rule 5 along with the Application forms.

The prescribed authority after being satisfied and subject to rule 5 shall issue Registration Certificate in JVAT 106 within 1 day after the hard copy of Form JVAT 101 along with all annexures and other documents have been filed.

## **Security (Section 27 , Rule 5)**

### **Furnishing of Security**

Where the Registering authority is of the opinion that the dealer should furnish security for securing proper and timely payment of tax or any other sum payable under the Act, he may direct the dealer to furnish security for an amount which will be equivalent to the estimated tax payable by the dealer for one quarter. In case no such estimate is possible the said authority may fix such amount as may be deemed just and proper.

The prescribed authority may demand a reasonable security from any person other than a registered dealer who imports any consignment of goods in the State of Jharkhand for ensuring that there is no evasion of tax.

Such security may be in any of the following ways, subject to the satisfaction of the Registering Authority:

- (a) By depositing Government Securities.
- (b) By Depositing Cash amount in Government Treasury
- (c) By depositing amount into different schemes of post office and pledging such certificate with the authority.
- (d) By furnishing two sureties who are registered dealers and are abiding the provisions of The Act and are acceptable to the said authority, by executing a security bond for such amount In JVAT 115.
- (e) By furnishing Bank Guarantee from any nationalised bank.

Such security shall also be furnished once in every five years.

The said authority may increase or decrease the amount of security to his satisfaction.

### **Forfeiture of Security**

The prescribed authority may forfeit whole or any part of the security furnished by the dealer for :

- (a) Realising or recovery of tax or any other sum due.
- (b) Recovery of any financial loss caused to the State Government due to negligence or default in not making proper use of or not keeping in safe custody, blank or unused forms of way bill.

Where such security is forfeited in whole or in part, the dealer shall furnish fresh or further security of the requisite amount within such period or such time as may be specified by the prescribed authority.

### **Refund of security**

The prescribed authority may, on an application made by the dealer, order refund of the security or any part thereof if such security is not required for the purpose for which it was furnished.

### **Certificate of Registration ( Rule 6)**

The certificate granted in Form JVAT 106 after verification of application (single registration to dealer having more than one place of business.)

Dealer deemed to be registered from:

- (a) Date of receipt of application, or
- (b) Date of becoming liable to pay tax.

The Certificate of Registration shall be displayed in a conspicuous place at the place of business.

The certificate of Registration is not transferable.

The Registering Authority may issue a duplicate certificate on payment of prescribed fee in cases where the certificate of registration is lost, destroyed, defaced or mutilated.

The registering authorities shall, after such verification as the case may be necessary and after obtaining an affidavit, in case of loss or destruction, issue to the dealer a copy of the original certificate, after stamping and making in "Red Colour" thereon the words, "Duplicate copy".

The prescribed/Registering authority has not been defined under the Act. However, the in-charge of every circle within whose jurisdiction the place of business falls is the Registering Authority.

### **Imposition of penalty for failure to get Registration (Section 28)**

If a dealer who is required to get himself registered within one month from the date from which he is first liable to pay tax, fails to get himself so registered, the prescribed authority may impose penalty of not less than ₹ 1,000/- and not exceeding ₹ 2,000/- for each month of default.

The penalty shall be imposed only after giving the dealer a reasonable opportunity of being heard.

If any penalty is imposed then the prescribed authority shall issue a notice in the prescribed form directing the dealer to pay such penalty by such date as may be specified in the notice and the date to be specified shall not be less than 15 days from the date of service of such notice and the penalty so imposed shall be paid by the dealer into a Government Treasury by the date so prescribed.

The prescribed authority may, for reasons to be recorded in writing, extend the date of such payment as specified in the notice in this behalf or allow such dealer to pay the penalty imposed in such number of instalments as he may determine in the prescribed manner.

### **Amendment of Registration Certificate (Section 25(4) , Rule 7)**

#### **For basic changes in information**

A dealer registered under Compulsory/Voluntary Registration shall inform about following changes to the Registering Authority in the prescribed form:

- (a) Change in Name, Address of the place of business or branches or discontinuation of the business; or
- (b) Change in circumstances of the dealer which led to cessation of business.
- (c) Change in business activities

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- (d) Change in the nature of taxable sales being made or principal commodities traded
- (e) Change in constitution or status of business
- (f) Change in bank account details.

There is no provision in law for change in information of Presumptive/composition scheme dealers as well as start-up business which seems to be an omission.

### **For change in jurisdiction of place of business**

Where the dealer intends to change his place of business from the jurisdiction of one authority to the jurisdiction of another authority in the state, he shall make an application with full particulars relating to the change of Address and the reasons for such change to the authority prescribed.

Application is to be made in Form JVAT 110 along with Form JVAT 106.

The prescribed authority shall remove such registration from the existing registration records after approval of application by the Commissioner.

The registration file and the application shall be transferred to the authority prescribed in whose jurisdiction the proposed new business is sought to be established.

The change in place of business and a change in business activities shall not in itself result in cancellation and fresh Registration of a VAT dealer.

### **Cancellation of VAT Registration (Section 25(5), Rule 8)**

#### **On Application by the dealer**

Where a Registered dealer ceases to carry on the business, an Application shall be made before the prescribed authority within 30 days of closure of business for cancellation.

Where the taxable turnover of the dealer did not exceed the specified quantum as specified in Section 8(5) during preceding period of 3 consecutive years the dealer shall apply for cancellation of Registration.

Application is required to be made in JVAT 105.

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The Registering Authority may cancel the registration of a VAT Dealer on such application being made if it is satisfied that there are valid reasons for such cancellation of Registration. The cancellation shall be intimated in Form JVAT 111.

If the Registering authority refuses to cancel the Registration he shall intimate the dealer within 14 days of receipt of JVAT 105.

### **Suo Moto cancellation by the authority**

The registering authority may cancel the registration of the dealer in any of the following circumstances:

- (a) If the dealer is not entitled for Registration u/s 25 or 26 of The Act.
- (b) The dealer is not complying with the provisions of the Act and Rules.
- (c) The dealer has not kept proper accounting records relating to any business activity carried on by him.
- (d) The dealer has not submitted correct and complete Tax returns.

The authority prescribed shall issue a notice in Form JVAT 112 to the dealer before compulsory cancellation of Registration.

### **Effect and consequences of cancellation**

The cancellation takes effect from the end of the tax period in which the Registration is cancelled. However, the Registering Authority may order the cancellation to take effect from an earlier date. Till that time there is no effect on liability under the Act or any requirement to comply with the provisions of the Act and the Rules until the date of cancellation of registration.

Wherever any order of cancellation or refusal to cancel an application is made, the VAT dealer shall be given an opportunity of being heard and notice in JVAT 302 shall be issued.

Every dealer applying for registration in JVAT 105 shall surrender all the unused forms which have been authenticated by the prescribed authority.

Every dealer whose registration is cancelled under this rule shall pay back the Input tax Credit availed in respect of all taxable goods on hand on the date of cancellation. *[Comment : reversal is to be made of Input Tax Credit availed in respect of stock in hand and not of Input Tax Credit remaining unutilised on the date of cancellation].*

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In case of capital goods on hand on which input tax credit has been received, the input tax credit shall be paid back, which shall be based on the book value of the taxable goods and capital goods on that date.

When the transfer of business to another dealer, there shall be no requirement to pay back the Input tax credit availed on capital goods and other goods, which shall be deemed to have been transferred to such another dealer.

**Suspension of Registration Certificate (Section 25(7) to 25(9), Rule 9)**

The registering authority may suspend the registration certificate of registered dealer where such dealer has:

- (a) Failed to pay the tax or interest or penalty payable under this Act; or
- (b) Failed to furnish the monthly return as prescribed in rule 14; or
- (c) Knowingly furnished incomplete or incorrect returns; or
- (d) Failed to account for Tax/Retail invoice; or
- (e) Discontinued the business without information with an intention or attempt to evade tax; or
- (f) Prevented or obstructed any survey, inspection, entry, search or seizure

Where the registration of any dealer is suspended, such dealer shall be immediately intimated in Form JVAT 306 with a direction to produce records, documents and evidence on such date, time and place as may be specified.

Every dealer whose registration is suspended shall surrender all the unutilised forms which have been authenticated by the prescribed authority.

Where the suspension is restored or subsequently cancelled, the restoration or cancellation shall take effect from the date mentioned in the order restoring or cancelling the certificate of registration.

# Chapter 5

## Returns

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*This chapter deals with section 29 to 33 of Jharkhand Value Added Tax Act, 2005 and Rule 14 and 18 of Jharkhand Value Added Tax Rules, 2006.*

### Periodical Returns and Payment of Tax etc. (Section 29, Rule 14)

#### Filing of Returns by Registered Dealers

Section 29(1): Every registered dealer shall furnish true, complete and correct return in such form for such period, by such dates and to such authority, as may be prescribed.

Provided that the prescribed authority may, subject to such conditions and restrictions as may be prescribed, exempt any such dealer or class of dealers from furnishing such returns or permit any such dealer;

- (a) to furnish them for such different periods; or
- (b) to furnish a consolidated return relating to all or any of the places of business of the dealer in the State of Jharkhand for the said period or for such different periods and to such authority, as he may direct.

Following Returns are required to be filed

Sl. No.	Form No.	Applicable for	Periodicity	Due Date
1	JVAT 200	General Dealers	Monthly	25 <sup>th</sup> of following month
2	JVAT 204	As above	Annual	31 <sup>st</sup> December of the following year
2.	JVAT 214	Dealers dealing in MRP Goods/Sch. E Goods	Quarterly	25 <sup>th</sup> of following month after the end of qtr.
3.	JVAT 211	Dealers registered under composition/presumptive scheme	Quarterly	25 <sup>th</sup> of following month after the end of qtr.

## Returns

4.	JVAT 212	As above	Annual	31 <sup>st</sup> January
5.	JVAT 200	Dealers registered under composition/presumptive scheme – Revised return	Quarterly	Within 3 months of discovery of the mistake requiring further payment of tax
6.	JVAT 201	Registered dealer – whose certificate is cancelled	-	Within 15 days of the effective date of cancellation
7.	JVAT 201	Registered dealer – in response to change in rate	-	Within the stipulated time
8.	JVAT 202	Casual trader	-	Within 5 days if arrival of goods

### Filing of Returns by Un-registered Dealers

Section 29(2): If the prescribed authority has reason to believe that the turnover of sales or the turnover of purchases of any dealer is likely to exceed or has exceeded the specified quantum as specified in Section 8, he may require such dealer to furnish return as if he were a registered dealer to furnish return, but no tax shall be payable by him unless his gross turnover exceeds the specified quantum.

### Revised Returns

Section 29(3): If any dealer having furnished returns under sub Section (1) or sub-Section (2), discovers any omission or any other error in the return so filed, he may furnish a revised return before the expiry of 3 months, following the last date prescribed for furnishing the original return relating to the tax period.

All returns are to be mandatorily filed online. Where the return has been signed by digital signature there is no need to submit hard copy of return with the department. However, at present the signing of return by digital signature is not operational and therefore, the dealer has to take the printout of the online submitted return and submit a signed copy of the same in their respective circle.

## Payment of Tax

Section 29(4): Every dealer required to file return shall pay the full amount of tax payable according to the return or the differential tax payable according to the revised return furnished, if any, into the Government Treasury or in such other manner as may be prescribed, and shall furnish along with the return or revised return, as the case may be, a receipt showing full payment of such amount.

If the due date of payment falls to be a Holiday, the next working day shall be treated as due date for payment.

## Signing of Return

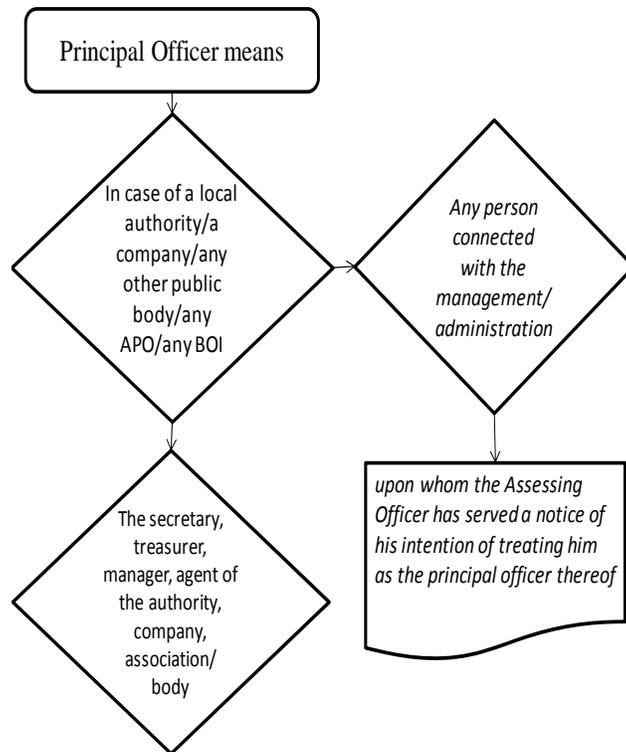
Section 29(5): Every return under this Section shall be signed and verified-

In case of -	Signed & verified by -
Individual	Individual himself, and where the individual is absent by some person duly authorised by him in this behalf
HUF	Karta
Company	principal officer or Chief Executive Officer
Firm	partner thereof not being a minor
Any other Association	person competent to act on behalf of the association

**Explanation :** For the purpose of this section, the post of “ Principal Officer \*” shall have the same meaning as that of section 2, part 35 of Income Tax Act 1961.

The provision for signing by any other authorised person is in the case of individual only and therefore in other cases only the specified person has to sign the return and they cannot authorise any other person to sign the return on his behalf.

\* The below flow chart summaries the position of principal officer as per the Income tax law.



## Return Defaults (Section 30)

### Payment of Interest u/s 30(1)

Defaults covered under this Section:

If a dealer (both registered and unregistered) who is required to file return

- (a) fails without sufficient cause to pay the amount of tax due as per the return for any tax period; or
- (b) furnishes a revised return showing a higher amount of tax to be due than was shown by him in the original return; or
- (c) fails to furnish return;

It shall be treated as default for the purpose of this section.

Quantum of interest for default:

Such dealer shall be liable to pay interest and penalty in respect of;

- (a) the tax payable by him according to the return; or
- (b) the difference of the amount of tax according to the revised return; or
- (c) the tax payable for the period for which he has failed to furnish return;
- (d) for the period he fails to furnish return including monthly abstract

at the rate of 3% per month for the first 3 months and 5% for subsequent month(s) [substituted by the word 1% per month w.e.f. 02-07-2014] from the date the tax payable has become due to the date of its payment or to the date of order of assessment, whichever is earlier.

Although the heading is for Return defaults, this section mainly prescribes Interest and Penalty for default in payment of tax. The Interest has to be calculated from the dates tax payable has become due to the date of its payment; therefore, if the tax has been paid within due date but return has not been filed no interest can be levied under this sub-section.

### **Payment of Penalty u/s 30(3)**

If a registered dealer, without sufficient cause, fails to pay the amount of tax due and interest along with return or revised return in accordance with the provisions of sub-section (1), the prescribed authority may direct him to pay a penalty @ 2% per month on the tax and interest so payable from the date it has become due to the date of its payment or to the date of order of assessment whichever is earlier.

Penalty under this sub-section can be levied on registered dealers only. Further, the penalty can be levied only when the tax has not been paid along with the return. Therefore, if a registered dealer furnishes delayed return and also pays the Tax and Interest along with it, penalty u/s30(3) cannot be levied. If only Tax is paid along with delayed return then penalty under this sub section may be levied. Such penalty shall be calculated from the due date of payment of tax.

### **Payment of Penalty u/s 30(4)**

If a registered dealer or any other dealer required to furnish return u/s 29(1) or 29(2), without any sufficient cause:

- (a) fails to comply with the requirements of the notice issued under sub-section (2) of Section 29; or
- (b) fails to furnish any return by the prescribed date as required under

*subsection (1) or*[Inserted w.e.f. 02-07-2014] sub-Section (2) of Section 29; or

- (c) being required to furnish revised return, fails to furnish the revised return by the date prescribed under sub-Section (3) of Section 29;
- (d) the prescribed authority shall impose a penalty at the rate not exceeding ₹ 50/- for every day of default for any tax period, subject to a maximum of ₹ 25,000/- in a year.

Penalty under this sub-section cannot be levied on Registered dealer for failure to furnish return in accordance with section 29(1) prior to 02-07-2014 as penalty has been prescribed for failures related to return u/s 29(2) only.

No penalty shall be levied under this section without giving a reasonable opportunity of being heard.

Penalty under this sub section shall be without prejudice to any prosecution for any offence under the act.

If the return is not signed in accordance with Section 29(5), it shall be treated as if no return has been filed.

### **Collection of Tax only by Registered Dealers (Section 31)**

No person who is not a registered dealer shall collect in respect of any sale of goods by him in the State of Jharkhand any amount by way of tax under this Act.

No registered dealer shall make any such collection except in accordance with the provisions of this Act and the Rules made thereunder and at the rate specified.

Notwithstanding anything contained in this Section, a registered dealer who has been permitted by the Government to pay presumptive tax under Section 22 or Composition Tax under Section 58, shall not collect any sum by way of tax on the sale of goods.

### **Rounding off of the Amount of Tax or Penalty (Section 32)**

The amount of tax or penalty payable or refundable for any period under the provisions of this Act shall be rounded off to the nearest rupee and, for this purpose, where such amount contains a part of a rupee, then, if such part is

fifty paise or more, it shall be increased to one rupee and, if such part is less than fifty paise, it shall be ignored.

### **Scrutiny of Returns (Section 33, Rule 18)**

Each and every return furnished by a dealer shall be subject to scrutiny by the Assessing Authority who shall verify

- (a) correctness of calculation,
- (b) application of correct rate of tax and interest
- (c) input tax credit claimed therein; and
- (d) full payment of tax and interest payable by the dealer during such period.

If any mistake is detected as a result of such scrutiny, the Assessing Authority shall serve a notice in the prescribed form on the dealer to make payment of the extra amount of tax along with the interest.

## Chapter 6

# Recovery and Refund of Tax

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*This chapter deals with section 43, 46 to 48 ,50 to 56 of Jharkhand Value Added Tax Act, 2005 and Rule 15 , 16,19 and 21 of Jharkhand Value Added Tax Rules, 2006.*

### **Payment & Recovery of Tax, Penalty and Interest: (Section 43, Rule 15)**

#### **Due Date for admitted tax (Rule 15)**

Category of dealer	Periodicity of payment	Date of payment
Dealer Registered under Composition Scheme	Quarterly	15 <sup>th</sup> of the next month after the end of each Quarter. For example, in respect of April-Jun Qtr the due date shall be 15 <sup>th</sup> July.
All other Dealers	Monthly	15 <sup>th</sup> of the next month after the end of respective month. For example, in respect of tax for the month of April, due date shall be 15 <sup>th</sup> May.

#### **Due Date for other taxes, penalties, interest etc**

Section 43(4): Following amounts shall be paid by the dealer or the person concerned by such date as may be specified in a notice issued by the prescribed authority:

- (a) The amount of tax-
  - (i) due where returns have been filed without full payment of tax due; or
  - (ii) assessed under Section 35, Section 36 and Section 37, less the sum already paid in respect of such period together with interest and penalty, if any, imposed at the time of assessment.

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- (b) The amount of penalty imposed under any provision of this Act not covered under sub-clause (ii) of clause (a); or
- (c) any other dues under this Act; The date to be so specified shall, ordinarily, not be less than 30 days from the date of service of such notice;

Provided that the prescribed authority may, in respect of any particular dealer or person and for reason to be recorded in writing extend the date of such payment or allow such dealer or person to make payment of such dues in instalments.

Provided further that where the prescribed authority considers it expedient in the interests of State revenue, it may, for reasons to be recorded in writing, require any dealer, or person to make payment forthwith.

### **Power to extend the Date of Payment**

Section 43(5): Notwithstanding anything contained in the Act, the Prescribed Authority may, subject to such conditions and restrictions as may be prescribed, in respect of any particular dealer or person and for reasons to be recorded in writing, extend the date of such payment and allow such dealer or person to pay any demand in installments on the condition that the said dealer or the person furnishes sufficient security to the satisfaction of Prescribed Authority.

### **Levy of penalty on delayed payment of assessed tax/other dues**

Section 43(6):Where a dealer fails to make payment of the tax assessed or interest levied or penalty imposed on him or any other amount due from him under this Act within 30 days of the date of service of the notice of demand, the prescribed authority shall, after giving the dealer reasonable opportunity of being heard, direct that such dealer shall, pay by way of penalty, a sum equal to 2% of such amount of tax, penalty, interest or any other amount due, for every month, for the period for which payment has been delayed by him after the date on which such amount was due to be paid.

### **Unpaid amount to be recovered as arrears of Land Revenue**

Section 43(7): The amount that remains unpaid even after the due date of payment or installment granted shall be recoverable as arrears of land revenue.

### Grant of Installments (Rule 16)

Eligibility for grant of Instalment	<ul style="list-style-type: none"> <li>- It must be established that the dealer is not in a position to make payment of the total demand outstanding against him, and</li> <li>- The Prescribed Authority has reasons to believe that, if an installment is granted, the recovery of such tax is possible.</li> </ul>
What is the prescribed Form	JVAT 123
To whom shall the application be submitted?	before the in-charge of the Circle, and in the case, where such instalment has to be granted, by any higher authority, the same shall be forwarded by the In-charge of the Circle to such authority
Period of instalment	Not exceeding 12 months, which may be further extended by 6 months. Although the rule prescribes prior permission for giving extension of 6 months, it does not prescribe the authority who will grant permission for such extension.
Condition for grant of Instalment	Where payment of any demand is postponed by instalments, beyond a period of 1 month, the dealer shall be required to furnish a Security Bond in form JVAT 115 executed with two sureties acceptable to the prescribed authority.

### Authority for granting Instalment

Where Total Demand does not exceed ₹ 50,000/-	Commercial Taxes Officer, In-charge of the Circle
Where Total Demand is more than ₹ 50,000/- and does not exceed ₹ 1,00,000/-.	Assistant Commissioner of Commercial Taxes, In-charge of the Circle
Where Total Demand is more than ₹ 1,00,000/- and does not exceed ₹ 10,00,000/-.	Deputy Commissioner of Commercial Taxes, In-charge of the Circle
Where Total Demand is more than	Joint Commissioner of Commercial

₹ 10,00,000/- and does not exceed ₹ 25,00,000/-	Taxes, Administration of the Division
Where total demand exceeds ₹ 25 Lacs	Commissioner of Commercial Taxes

### Special mode of Recovery (Section 46)

This section empowers prescribed authority to recover the amount which was payable by the dealer but has not been paid by him from any other person who holds any money for or on account of dealer or from whom any money is due to the dealer. The Prescribed Authority may issue notice to debtors, banks etc. for payment of amount to them instead of paying the same to the dealer.

The prescribed authority may at any time or from time to time, by notice in writing direct:

- (a) Any person from whom any money is due or may become due to a dealer who has failed to comply with a notice of demand served under Section 43, or
- (b) Any person who holds or may subsequently hold any money for, or on account of such dealer,

to pay into the Government Treasury so much of the money as is sufficient to pay the amount of tax and penalty due from the dealer, subject to maximum amount due or held.

A copy of this notice shall be forwarded to the dealer at his last known address.

The prescribed authority issuing the notice may at any time, or from time to time, amend or revoke any such notice or extend the time for making such payment in pursuance of the notice.

Any person making any payment in compliance with a notice issued shall be deemed to have made the payment under the authority of the dealer and the receipt from the Government Treasury shall construe a good and sufficient discharge of the liability of such person to the dealer to the extent of the amount specified in the receipt.

Any person who makes any payment to the dealer directly instead of depositing the same with the government, after service of the notice on him,

shall be personally liable to the State Government to the extent of the amount paid to the dealer instead of depositing the same with the state government.

Where a person on whom a notice is served proves to the satisfaction of the prescribed authority that the money demanded or any part thereof were not due to the dealer, or that he did not hold any money for or on account of the dealer, at the time the notice was served on him, nor is the money demanded or any part thereof is likely to become due to the dealer or be held for or on account of the dealer, then such person shall not be liable to pay into Govt. treasury any such money or part thereof.

No action shall be taken under this Section in respect of any amount of tax, interest and penalty, if any, the date of payment of which has been extended or the realization of which has been stayed, under this Act during the period of such extension or stay.

Provided that nothing in this Section shall operate to affect any action taken or prevent any action that may be or is being taken under Section 43 for recovery from the dealer of the amount due from him.

### **Collection of Tax by Dealer & Forfeiture of Tax collected (Section 47 & 48, Rule 21)**

Section 47(1): If any person -

- (a) not being a dealer liable to pay tax under this Act, collects any sum by way of tax; or
- (b) being a registered dealer, collects any amount by way of tax in excess of the tax payable by him shall be liable, in addition to the tax for which he may be liable, to a penalty of an amount equal to twice the sum so collected by way of tax.

Section 47(2): If the prescribed authority in the course of any proceeding under this Act or otherwise has reason to believe that any person has become liable to a penalty, or forfeiture, or both, he shall serve on such person a notice in the prescribed form requiring him to appear and show cause as to why a penalty or forfeiture or both of any sum as provided above should not be imposed on him.

Section 47(3): The prescribed authority shall thereupon hold an inquiry as he deems necessary and shall make such order as he deems fit.

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Section 48(3): Where an order of forfeiture has been made, the person making the unauthorized collection shall forthwith pay the amount so forfeited to the State Government, if it has not already been paid, and on his failure to do so, such amount shall be recoverable from him as if it were a tax due from him.

Section 48(4): Where an order for forfeiture is passed, the Commissioner shall publish or cause to be published, in the prescribed manner, a notice for information of the persons from whom the amount so forfeited had been collected giving such details as may be prescribed.

Section 48(5): On the publication of the notice, a refund of such amount or part thereof may be claimed from the State Government within one year from the date of publication of the said notice by the person from whom it was unauthorisedly realized by way of tax and for this purpose the person claiming the refund shall make an application in JVAT 116.

Section 48(6): On receipt of an application, the Commissioner shall hold such enquiry as he deems fit, and if he is satisfied that the claims is valid and admissible and that the amount so claimed as refund was actually paid to the State Government and no refund or remission in respect of that amount was granted, the Commissioner shall refund such amount or any part thereof to the person concerned.

Section 48(7): Notwithstanding anything contained in this Act, or in any other law for the time being in force, where any amount collected by any person is forfeited to the State Government under this Section, such forfeiture shall, if the amount forfeited has been paid to the State Government, discharge him of the liability to refund the amount to the person from whom it was so collected.

Rule 21(3): Where an order for forfeiture is passed under section 48, the Commissioner shall cause a notice to be published in more than one widely circulated newspaper containing the following details: -

- (a) The name of the dealer of person, as the case may be, from whom the amount illegally collected has been forfeited;
- (b) The period during which the amount was illegally collected;
- (c) The amount forfeited; and
- (d) Any other information that may be deemed fit in the facts and circumstances of the case.

### **Period of limitation for Recovery of Tax (Section 51)**

Notwithstanding anything contained in any law for the time being in force, no proceeding for recovery of any amount under sub-Section (7) and (8) of Section 43 and sub-Section (6) of Section 47 shall be initiated after the expiry of 12 years from the date of the relevant assessment.

Provided that when an appeal or revision has been filed, the period of limitation shall run from the date on which the amount due is finally determined.

### **Refund (Section 52)**

Where any dealer pays any amount of tax, penalty and interest in excess of the amount due from him, the prescribed authority shall refund such excess amount.

Where any refund is due to any dealer according to return furnished by him for any period, such refund may provisionally be adjusted by him against the tax due or tax payable as per the returns filed under section 29 for any subsequent period in the year:

Provided that, where any amount of tax or penalty, interest or sum forfeited or all of them are due from the dealer on the date of such adjustment, it shall be deducted from such refund before adjustment.

### **Provisional Refund (Section 53)**

Section 53(1): Provisional Refund can be granted only when all the following conditions are fulfilled –

- (a) The Registered dealer has filed the return.
- (b) The return shows any amount to be refundable
- (c) Such refund is on account of Zero Rated Sales or in course of export out of the territory of India.

Then the dealer may apply in the manner and form prescribed to the prescribed authority for grant of provisional refund.

Section 53(2): Provided further the Refund shall also be admissible to a registered dealer, who owns an industrial unit in the Software Technology Park, or who owns an Export Oriented Unit within the meaning of the Export and Import Policy as formulated under Section 5 of the Foreign Trade

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(Development and Regulation) Act, 1992 (22 of 1992), situated anywhere in Jharkhand a Special Economic Zone or Software Technology Park, the amount of tax realised or realizable from him by another registered dealer in respect of the purchases in Jharkhand—

- (i) of goods for use directly in the manufacture of goods by him in such unit for sale by him in the course of export within the meaning of Section 5 of the Central Sales Tax Act, 1956 (74 of 1956).
- (ii) of goods, being the containers or other packing material for packing of the goods manufactured in such unit.

### **Furnishing of Security**

Section 53(3): The prescribed authority may require the dealer to furnish a Bank Guarantee or other security as may be prescribed for an amount equal to the amount of refund.

### **Early Assessment**

Section 53(4): The prescribed authority may direct the assessment under Section 36 or 37 of such dealer in respect of the year containing the period covered by the said return to be taken up as early as practicable and adjust the grant of provisional refund against tax due, if any, as a result of that assessment.

Section 53(5): If, on assessment, the provisional refund granted is found to be in excess, then the excess shall be recovered as if it is tax due from the dealer under this Act.

Section 53(6): Interest will be charged on such excess amount at the rate of two percent per month from the date of grant of provisional refund till the date of assessment.

### **Refund of Tax to certain categories (Section 54)**

Refund of tax, paid on officials/personal purchases of foreign diplomatic missions/ their diplomats shall be allowed in the State of Jharkhand on reciprocal basis and shall be allowed to U.N. bodies/ their diplomats promptly, as prescribed.

## Procedure for claiming refund and provisional refund (Rule 19)

- Claim for refund u/s 52 shall be made in Form JVAT 206 within 90 days from date of receipt of excess demand notice.
- Claim for provisional refund u/s 53 shall be made in Form JVAT 207.
- Claim for refund u/s 54 shall be made in Form JVAT 208 within 30 days of filing of return
- The commissioner may condone the delay in filing refund claim.
- The authority for issuing refund shall be as follows :

Particulars	Authority
If the amount of refund does not exceed ₹ 25,000/-	Commercial Taxes Officer. In-charge of circle
If the amount of refund does not exceed ₹ 50,000/-	Assistant Commissioner of Commercial Taxes, In-charge of circle
If the amount of refund does not exceed ₹ 1 Lac	Deputy Commissioner of Commercial Taxes, In-charge of circle
If the amount of refund exceed ₹ 1 Lac	Joint Commissioner of Commercial Taxes (Administration)

- Refund of excess VAT shall be allowed only when all the returns have been filed and the taxes, interest and penalties have been paid and notice of excess demand have been issued by the prescribed authority.
- The authority shall have the power to adjust any amount due to be refunded against any taxes, penalties or interest outstanding under the Act or repealed Act or CST Act.
- Refund u/s 52 shall be paid within a period of 90 days from the date of claim.
- The refund payment order, in case of "RAO" [Refund adjustment order] shall be in Form JVAT 210 and in the case of refund in case, shall be in Form JVAT 209.

## Interest (Section 55)

### Interest on Refund (Section 55(1))

A registered dealer entitled to refund in pursuance of any order under this Act or in pursuance of any order by any Court, shall be entitled to receive simple interest at the rate of 6% per annum for the period commencing after ninety days of the application claiming refund in pursuance of such order till the date on which the refund is granted.

### Interest on Default amount (Section 55(4))

When a dealer is in default or is deemed to be in default in making the payment under Section 35, Section 36 and Section 37, he shall be liable to pay simple interest on such amount at the rate of 2% per month from the date of such default for so long as he continues to make default in payment of the said tax.

Particulars	Rate	Manner of computation
Interest payable to the government	2% per month from the date of default	Simple interest computed on daily basis
Interest receivable to the government	6% per annum (for period commencing after 90 days of the application claiming refund.)	

### Power to withhold Refund in certain Cases (Section 56)

Where an order giving rise to refund is the subject matter of an appeal or further proceeding or where any other proceeding under this Act is pending, and the prescribed authority is of the opinion that the grant of such refund is likely to adversely affect the revenue and that it may not be possible to recover the amount later, the prescribed authority may, withhold the refund till such time as he may determine.

Where a refund is withheld the dealer shall be entitled to interest as provided under Section 55, if finally he is entitled to the refund.

## Chapter 7

# Liability in Special Cases

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*This chapter deals with section 65 to 68 of Jharkhand Value Added Tax Act, 2005.*

### Liability to pay Tax in Case of death (Section 65)

In specific circumstances the liability to pay tax may shift on other persons. All such circumstances and the persons liable to pay tax in such circumstances is given below:

Situation	Person liable to pay tax
Where the dealer dies and the business is continued by his legal representative or any other person	Such Legal Person or other person. Moreover, such person shall be liable to pay tax on the sales or purchases of goods made by him on and after the date of such succession and shall (unless he already holds a certificate of registration) within sixty days thereof apply for registration
Where the dealer dies and the business is discontinued	Legal representative shall be liable out of the estate of the deceased.
Where the dealer is a HUF and the partition takes place	Each member or group of members shall be jointly and severally liable.
Where the dealer is a firm and the firm is dissolved	Every person who was a partner shall be jointly and severally liable to pay to the extent to which he is liable under Section 67.
Where the business of the dealer is succeeded by any other person by way of transfer or otherwise	The dealer and the person succeeding shall jointly and severally be liable to pay the tax. Moreover, such person shall be liable to pay tax on the sales or purchases of goods made by him on and after the date of such succession

	and shall (unless he already holds a certificate of registration) within sixty days thereof apply for registration
Where the dealer is the guardian of a ward on whose behalf the business is carried out by the guardian, or is a trustee who carries on the business under a trust for the beneficiary and the guardianship or trust is terminated	The ward or the beneficiary shall be liable to pay the tax

Tax means and includes Tax, penalty, sum forfeited and interest due from such dealer under this Act or under any earlier law.

Tax can be recovered from such persons, in the like manner and to the same extent as the deceased dealer.

### **Certain Agents liable to Tax for Sales on behalf of Principal(Section 66)**

Where any person sells or purchases any taxable goods on behalf of his principal then such person and his principal shall both be jointly and severally liable to pay taxes on the turnover of such sales or purchases.

If the principle on whose behalf the commission agents has sold or purchased any goods shows to the satisfaction of the prescribed authority that the tax has been paid by the such commission agents on such goods then the principal shall not be liable to pay the tax again in respect of the same transaction.

Where a manager or agent of a non-resident dealer sells or purchases any goods on behalf of a non-resident dealer in the State, then the non-resident dealer and the manager or agent residing in the State, shall be jointly and severally liable to pay tax on the turnover of such sales or purchases.

If the non-resident dealer shows to the satisfaction of the prescribed authority that the tax payable in respect of such sale or purchase has been paid by the manager or agent residing in the state then the non –resident dealer shall not liable to pay in respect of the same transaction.

### **Liability of Partners (Section 67)**

Notwithstanding anything contained in the Indian Partnership Act, 1932 or any contract to the contrary, where any firm is liable to pay tax under this Act, the firm and each of the partners of the firm shall be jointly and severally liable for such payments and accordingly any notice or order under this Act may be served on any person who was a partner during the relevant time whether or not the firm has been dissolved and all the provisions of this Act shall apply accordingly.

Where any such partner retires from the firm, he shall be liable to pay the tax, penalty, sum forfeited and interest remaining unpaid at the time of his retirement and any such amount due up to the date of retirement though un-assessed at that date.

### **Amalgamation of Companies (Section 68)**

Section 68(1): When two or more companies are to be amalgamated by the order of a Court or of the Central Government and the order is to take effect from a date earlier to the date of the order and any two or more such companies have sold or purchased any goods to or from each other in the period commencing on the date from which the order is to take effect and ending on the date of the order, then such transactions of sale and purchase will be included in the turnover of the sales or of purchases of the respective companies and will be assessed to tax accordingly.

Section 68(2): Notwithstanding anything contained in the said order, for all of the purposes of this Act, the said two or more companies will be treated as distinct companies and will be treated as such for all periods up to the date of the said order and the registration certificates of the said companies will be cancelled, where necessary, with effect from the date of the said order.

Section 68(3): Words and expressions used in this Section, but not defined, will have the respective meanings to them in the Companies Act 1956.

## Chapter 8

# Works Contract, Deduction of Tax at Source and Composition Scheme

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*This chapter deals with section 22, 44, 45, 58 of Jharkhand Value Added Tax Act, 2005 and Rule 22 to 24, 61 and 62 of Jharkhand Value Added Tax Rules, 2006.*

### Determination of Taxable Turnover for the purpose of Works Contract (Rule 22)

Taxation on works contract has always been a matter of dispute as it contains element of both sales as well as services. After the decision of Honourable Supreme Court in Larsen & Toubro case [2014 (34) STR 481 (S.C.) & 2014 (303) ELT 3 (S.C.)], the following concepts have emerged for Works Contract :

- Works Contract is an indivisible contract but a legal fiction has been created and they can be divided into two parts – one for sale of goods and the other for supply of labour and service.
- Concept of “dominant nature test” i.e. whether the dominant nature is “Sales” or “Service” is irrelevant.

Taxation of Works Contract normally involves three situations :

(a) *When the value of material is ascertainable*

Tax is levied on value of materials only by deducting actual labour and service charges from the Value of Contract.

(b) *When the Value of Material is not ascertainable*

Tax is levied on value after deducting a specified percentage (deemed basis) from the Value of Contract.

(c) *Lump sum payment or Composition Scheme*

Tax is levied at a specified rate on the Gross Value of Contract without allowing any deduction

This Rule provides for determination of taxable turnover in the case of works contract.

### **When the Value of Material is ascertainable**

Section 22(1): The works contractor shall be liable to pay tax at the appropriate rates, on the total value of goods, transferred in property (either in the same Form or in other Form) involved in execution of works contract.

The value of the goods used in execution of work in the contract, declared by the contractor shall not be less than the purchase value and the taxable value shall be total consideration contract charges as reduced by following charges, such as:

(i) Labour charges for execution of the works; (ii) Charges for planning, designing and architect fees; (iii) Charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract; (iv) Cost of consumables such as water, electricity, fuel, etc., used in the execution of the works contract, the property in which is not transferred in the course of execution of a works contract; (v) Cost establishment of the contractor to the extent it is relatable to supply of labour and services; (vi) Other similar expenses relatable to supply of labour and services; (vii) Profit earned by the contractor to the extent it is relatable to supply of labour and services.

The above charges eligible for deduction is an illustrative list only as after the word "following charges" the word "such as" has been put which makes it an illustrative list and not exhaustive list.

The dealer can also claim Input Tax Credit on materials purchased for execution of Works Contract. Further he can also issue Tax Invoices

### **When the Value of Material is not ascertainable**

Section 22(2):Where the amount of charges towards the labour, services, hire charges or all other like charges in any contract are not ascertainable, the amount of such charges shall be calculated on deeming basis at the following percentages:

Sl. No.	Type of Contract	Percentage of the Total value eligible for deduction
1	(a) Electrical Contracts. (i) H.T. Transmission lines	Twenty percent

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	(ii) Sub-station equipment	Fifteen percent
	(iii) Power house equipment and extensions	Fifteen percent
	(iv) 11 and 22 KV and L.T. distribution lines 12+5	Seventeen percent
	(v) All other electrical contracts	Twenty five percent
	(b) All structural contracts	Thirty five percent
2	Installation of plant and machinery	Fifteen percent
3	Fixing of marble slabs, polished granite stones and tiles (other than mosaic tiles)	Twenty five percent
4	Civil works like construction of buildings, bridges roads etc.	Thirty percent
	Fixing of sanitary fittings for plumbing, drainage and the like	Fifteen percent
5	Painting and polishing	Twenty percent
6	Laying of pipes	Twenty percent
7	Tyre re-treading	Forty percent
8	Dyeing and printing of textiles	Forty percent
9	Printing of reading material, cards, pamphlets, posters and office stationery	Forty percent
10	All other contracts	Thirty percent

The Contractor shall be liable to pay tax @ 14% on the value of total consideration received as reduced by the deduction for deemed labour charges etc. as per aforesaid table.

In such cases dealer shall not be eligible to claim Input Tax Credit and shall not issue Tax Invoices.

### **Option for Composition Scheme**

Section 22(3): The Contractor may opt for payment of Tax under Composition scheme and in that case the provision of this Section shall not apply.

## **Special Provisions relating to Deduction of Tax at source in certain Cases (Section 44, Rule 23 and Rule 24)**

### **Authority for deduction and Rate of tax**

Section 44(1): The State Government may specify deduction of Tax at source to be made by any person making payment for execution of works contract involving transfer of property in goods.

The amount of Deduction shall be calculated by multiplying the amount paid with such rate not exceeding ten per cent, as the State Government may specify, by notification in the Official Gazette.

The Rate specified for this purpose is 4%.
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Payment includes payment by cash, adjustment, credit to the account, recovery of dues or in any other manner.

The deductor shall keep record, of the payments made and, of the tax deducted in advance therefrom, for a period of five years from the close of the year when the payments were made and shall produce such record before the prescribed authority when so required.

Provided that no deduction shall be admissible, in the circumstances, where a contractor opts for Composition Scheme of Tax under Section 58 of the Act.

### **Threshold Limit**

Section 44(2): The deduction of tax at source is not required where the amount or the aggregate of the amounts paid or likely to be paid during a year by any person to a dealer does not or is not likely to exceed one lakh rupees or such other amount as may be prescribed.

### **Furnishing of Return**

Section 44(3): Every person who is required to deduct tax in advance shall deposit the deducted tax into the Head "0040" directly into the Government Treasury through a prescribed challan, in the name of such contractors from whose bills such deduction has been made, and furnish a statement to the respective circle in-charge for each month on the 15<sup>th</sup> of the following month along with copies of challan.

## **Issue of Certificate and adjustment**

Section 44(4) & 44(5) :Every person required to deduct tax at source shall issue to the payee a certificate of tax deduction and payment in JVAT 400.

Any tax paid to the State Government in accordance with sub-Section (3) shall be adjustable by the payee, on the authority of the certificate issued, with the tax payable by him under this Act and the assessing authority shall, on furnishing of such certificate to it, allow the benefit of such adjustment after due verification of the payment.

## **Failure to deduct or deposit tax**

Section 44(6): If any person fails to deduct the whole or any part of the tax, or fails to deposit the whole or any part of the tax to the credit of State Government, the prescribed authority may, by order in writing, direct him, after giving him a reasonable opportunity of being heard, to pay, by way of penalty, a sum equal to the amount of tax which he failed to deduct or pay as aforesaid.

No such order can be made after expiry of five years from the close of the year when he failed to do so.

## **Special Provision relating to Advance Recovery of Tax on Sales and Supplies to Governments and Other Persons (Section 45 , Rule 23 & 24)**

When Sales or supply of taxable goods exceeding rupees one lac during a year is made by any dealer to :

- (i) the State Government; or
- (ii) Central Government; or
- (iii) a Company, Corporation, Board, authority, undertaking or any other body owned, financed or controlled either wholly or partly by the State Government or the Central Government,

then any person responsible for paying sale price in respect of such sales or supplies shall, at the time of payment, subject to such conditions and restrictions as may be prescribed, deduct an amount at the rate as may be specified by the State Government by a notification on account of tax on the amount of such payment:

*Works Contract, Deduction of Tax at Source and Composition Scheme*

The rate or rates to be specified by the State Government shall not be more than the rate of tax applicable to the goods sold or supplied.

Payment of the amount deducted into the Government Treasury in the prescribed manner, shall be the liability of the person making such deduction, who shall remit the amount into Government Treasury for credit therein into the head "0040" and a copy of such schedule forwarded to the prescribed authorities of the appropriate circle.

Payment of the amount deducted into the Government Treasury by the person making the deduction shall be deemed to be a payment by or on behalf of the seller or supplier concerned.

If any person contravenes any or all of the provisions as above he shall be liable to pay, by way of penalty, a sum not exceeding twice the amount of tax deductible.

The provisions of Section 44 of the Act shall, mutatis mutandis, apply, so far as it relates, to issuance of certificate to person from whose bills deduction has been made and for filing of quarterly statements.

**Non-Deduction of Tax at Source from the bills of supplier and work contractors (Rule 24)**

No deduction shall be made in the following situation:

If the works contract involves such goods in the transfer of property in goods which are not liable to tax u/s 14, 49 & 57 of the Act; or

If the works contractor has opted for composition scheme u/s 58 and produces a certificate in JVAT 407 issued by the in-charge of the circle in which he is registered.

In case of Contract covered u/s 45 if the dealer is reseller of goods specified u/s 9(2) of the Act and where by notification the tax has been paid and levied at the first stage of sale at maximum retail price.

In case of other Works contractors the Commissioner may issue a certificate in Form JVAT 407 for each work order separately if he is satisfied that the contractor is filing returns and paying taxes regularly.

The certificate in JVAT 407 may be obtained by the contractor by making an application in Form JVAT 120 along with copy of the work order.

## **Levy of Presumptive Tax on Registered Dealers (Section 22, Rule 61)**

The State Government may, subject to such conditions and restrictions as may be specified and prescribed, permit any class or description of registered dealers to pay a lump-sum amount by way of presumptive tax according to the capacity or to the extent of business.

Such amount may be calculated at a flat rate on the gross receipt or gross turnover of purchases or of sales as prescribed.

No input tax credit shall be admissible to such dealer.

This option shall not be available to

- (a) a manufacturer, or
- (b) a trader who imports goods from outside the State
- (c) a dealer making interstate sales or export sales.

The Registering Authority may withdraw the scheme if the dealer fails to make payment of tax for any two quarter of a year. The dealer can also withdraw from the scheme subject to prescribed conditions by making an application in Form JVAT 119.

## **Composition of Tax (Section 58, Rule 60)**

Section 58: The State Government may, provide for a Scheme of Composition of Tax Payable by such dealers or class of dealers, or dealers who are engaged in the retail sale or works contract subject to such conditions and restrictions as may be specified and as prescribed.

The scheme of Composition of Tax shall be available to only such Dealers whose gross turnover does not exceeds ₹ 50 lakhs in a year. This restriction is not applicable for works contractor.

Nothing in this Section shall apply to a dealer

- (a) who is a Manufacturer, or
- (b) who is an Importer of goods into the State, or
- (c) who sells liquor: including liquor imported from outside of India, or Indian Made Foreign Liquor or Country Liquor.

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The Rate of Tax applicable under the Composition scheme referred in this Section shall not be exceeding 8%, on the Gross Annual Turnover and no Input Tax Credit shall be admissible to such dealers. At present it is 4% for works contractor and 0.50% for retailers.

Dealer eligible for Composition of Tax may apply to the Prescribed Authority in the prescribed manner, to exercise his option and he shall pay such amount due, and furnish a Return in such manner as may be prescribed.

Once the dealer elects the option to pay tax under this Section, the option may be reversed only after the end of the year for which the option is made, by an Application to the Prescribed Authority, within such time and in such manner as may be prescribed.

Such dealer shall not be allowed to issue Tax Invoice, and shall not be allowed to collect any amount, by way of Tax under this Act.

Rule 60 : If the turnover of the dealer exceeds ₹ 50 Lakhs he has to inform the prescribed authority within 7 days and he will automatically become VAT dealer for the remaining period of the year.

The Registering Authority may withdraw the scheme if the dealer fails to make payment of tax for any two quarter of a year. The dealer can also withdraw from the scheme subject to prescribed conditions by making an application in Form JVAT 119.

## Chapter 9

# Accounts & Records

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*This chapter deals with section 59 to 62, 64 of Jharkhand Value Added Tax Act, 2005 and Rule 28, 38 of Jharkhand Value Added Tax Rules, 2006.*

### **Maintenance of Accounts & Records etc. (Section 59, Rule 38)**

Every registered dealer or a dealer to whom a notice has been served to furnish return under sub-Section (2) of Section 29 shall maintain a true and up to date account of the value of goods purchased or manufactured and sold by him or goods held by him in stock, and, in addition to the books of account that a dealer maintains and keeps for the purpose referred to in this sub-Section, he shall maintain and keep such registers and accounts in such form in the manner prescribed.

All such accounts, registers and documents shall be kept at his place of business or where the dealer has established branch offices of the business in the State: the relevant accounts, registers and documents in respect of each such branch shall be kept by him at such branch.

If the prescribed authority is of the opinion that the accounts maintained by any dealer or class of dealers do not sufficiently enable him to verify the returns referred to in sub-Section (1) of Section 29 or the assessment cannot be made on the basis thereof, he may, by an order, require such dealer or class of dealers, to keep such accounts, in such form and in such manner as he may, subject to rules made under this Act, direct.

If the commissioner is satisfied that any dealer is not in a position to maintain accounts in accordance with the provisions of sub-Section (1), he may, for reasons to be recorded in writing, exempt such dealer from the operation of the provisions of the said sub-Section.

Rule 38 prescribes a list of records to be maintained in English, Hindi or any other language which can be readable to the prescribed authority. Where the accounts have been maintained in a language other than English, the dealer shall adopt international numerals in the maintenance of such accounts. Two specific Registers has been prescribed to be maintained :

- (i) Monthly Account of Input VAT (total Input tax and net Input tax) in Form JVAT 500, and
- (ii) Monthly Account of Output VAT (Total Output tax and net output tax) in Form JVAT 501.

Besides these specific registers, many other records and documents have been specified in Rule 38 like Purchase Record, Sales Record, credit notes, debit notes, cash book, stock records, manufacturing records, annual accounts, bank records including statements, chequebook counterfoils and pay-in-slips etc.

All such records shall be kept for a period of 5 years after the end of the relevant year.

A VAT dealer making sales predominantly to non-VAT dealers and consumers who does not separately record every sale, shall maintain a daily record of gross receipts at each tax rate including exempt sales.

Every manufacturer shall, in addition to the accounts and register require to be maintained under this rule, shall also maintain month wise Stock Register of different Inputs and Finished Goods.

Every dealer claiming input tax credit on account of capital goods shall maintain a Register of such goods containing the following particulars: .

- (i) Location of the capital goods;
- (ii) Date of purchase of the capital goods and such particulars regarding the purchase as the persons or dealers from whom such goods are purchased, details of bill or invoice relating to such capital goods;
  - (a) Quantity of the capital goods;
  - (b) Cost of purchase of the capital goods.
  - (c) Copy of the customs clearance certificates.

Every dealer or person required by sub-section (1) of Section 63, whose Gross Turnover in a year exceeds ₹ 40 Lakhs, shall get his Accounts audited by an "Accountant" or by a "Tax Practitioner", which shall contain the audited Accounts in Form of a "Statement of Particulars" along with a Certificate in Form JVAT 409, on behalf of such persons, conducting such Audit of accounts, stating therein the genuineness and correctness of the Accounts audited thereof. (Provisions related to Audit has been discussed separately in detail)

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It has been provided that “Except the Registers and Records mentioned in sub-rule (1) and (2) of this Rule, where a manufacturer or other VAT dealer registered under Central Excise Act 1944 (Act 1 of 1944) or Rules made thereunder, and is obliged to maintain Registers or records for the purposes of that Act, shall be deemed to have been kept under this Act also, provided it also contains the particulars mentioned in this rule.”

Following is an Illustrative List of documents to be maintained under JVAT Act as per Rule 38:

Sl. No.	Accounts maintained by	
	Dealer electing for composition	Other dealer
1	Details of goods purchased and sold by him	Purchase and sale records
2	Cash Book	Cash book
3	Day Book	Day book
4	Ledger	Ledger
5	Invoice/Bill books	Stock records
6	Purchase Vouchers	All Annual accounts
7	-	All Bank accounts
8	-	Order and delivery records
9	-	Monthly accounts
10	-	Inter – state sale transactions
11	-	Details of input tax

### **Tax Invoice (Section 60, Rule 28)**

Although the heading of the Section is Tax Invoice only, it contains provisions for both Tax Invoice and Retail Invoice.

Every registered dealer is required to issue Tax Invoice or Retail Invoice depending on the nature of transaction. A comparison of Tax Invoice and Retail Invoice is given below:

Tax invoice	Retail invoice
It is to be issued while making sales to a Registered Dealer located in the State	It is to be issued While making Sales to unregistered Dealers.

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	When the seller is paying tax under presumptive or composition scheme. While Making Export Sales out of India. While Making Sales of Exempt Goods
To be prepared in Triplicate – Original and First copy to be issued to purchasing dealer and Second Copy to be retained by seller.	To be prepared in Duplicate – Original to be issued to purchasing dealer and duplicate to be retained by the seller.
Description, quantity, volume and value of goods sold and amount of Tax charged has to be indicated separately in the Invoice.	Description, quantity, volume and value of goods sold inclusive of tax, charged thereon; [ <i>Comment</i> : This implies that Retail Invoice may be issued inclusive of Tax. However, Rule 28 specifies that the Retail Invoice shall indicate the tax charged at each rate of tax separately. When the Rules are contradictory to the provisions of Act, the provisions contained in the Act will prevail].
Name, Address and Registration Certificate number of the purchasing registered dealer should be mentioned in the Invoice.	No such requirement, however, in case the sale is in course of export out of the territory of India, the name, address and registration number, if any, of the purchasing dealer/ foreign buyer and the type of statutory form, if any against which the sale has been made has to be indicated;
Vehicle number and name of the person carrying the goods (where goods are carried in vehicle).	No such requirement.
The registered dealer being Manufacturers or the Importers of such goods, being sold as specified in sub-section (2) of Section 9 and Notification issued thereunder, and	The registered dealer being Manufacturers or the Importers of such goods, being sold as specified in sub-section (2) of Section 9 and Notification issued thereunder, and

<p>who recovers tax at the full rate on the Maximum Retail Price; shall separately indicate the Maximum Retail Price of the goods; on the body of the tax invoice, and also scribe on it the words: "INVOICE FOR TAX ON MRP".</p>	<p>who recovers tax at the full rate on the Maximum Retail Price; shall separately indicate the Maximum Retail Price of the goods; on the body of the Retail Invoice, and also scribe on it the words: "RETAIL INVOICE FOR TAX ON MRP".</p>
<p>Besides the above, following are the Common Contents of Tax Invoice and Retail Invoice</p> <p>(a) the name, address and registration certificate number of the selling, registered dealer.</p> <p>(b) an individual serialized number and the date on which the tax invoice is issued.</p> <p>(c) signature of the selling dealer or his servant, manager or agent, duly authorised by him;</p> <p>(d) the name and address of the printer, and first and last serial number of tax invoices printed and supplied by him to the dealer.</p>	

Tax Invoice & Retail Invoice are required to be maintained for a period of five years after the end of the year to which they relate or for such other period as may be prescribed or until the assessment reaches its finality whichever is later.

Where such dealer is party to any appeal, or revision under this Act he shall retain, until the appeal or revision is finally disposed of, every record and accounts that pertain to the subject matter of the appeal or revision.

Input Tax Credit can be claimed against Original Tax Invoice only. Where a purchasing VAT dealer loses the Original Tax Invoice, the seller shall provide a copy clearly marked "copy in lieu of lost tax invoice" containing the following certificate.

"I hereby declare that this is the duplicate of the tax invoice bearing No.\_\_\_\_\_, dated \_\_\_\_\_ Issued to \_\_\_\_\_ bearing TIN\_\_\_\_\_." Date:  
Signature:

### **Electronic Record (Section 61)**

Every dealer who maintains the records electronically shall retain them in electronically readable format for a period of 5 years from the end period to

which they relate or for such other period as may be prescribed or until the assessment reaches its finality whichever is later.

### **Requirement to Provide Information (Section 62)**

Notwithstanding anything contrary to the provisions of this Act, the prescribed authority may, for any purpose related to the administration or enforcement of the provisions of this Act, by notice, require any person to provide the prescribed authority, within such reasonable time as is stipulated in the notice, with any information or additional including a return under this Act, or any document including electronic records.

### **Dealer to declare the name of his Business Manager (Section 64)**

Every dealer, who is liable to pay tax, and who is a Hindu Undivided Family or an association of persons, club or society, firm or company, or who is engaged in business as the guardian or trustee or otherwise on behalf of another person, shall within the period prescribed, furnish a declaration in the manner prescribed stating the name of the person or persons who shall be deemed to be manager or managers of such dealer's business for the purposes of this Act.

Such declaration shall be furnished at the time of registration, wherever applicable and shall be revised from time to time.

The statement furnished under this sub-Section shall also contain the name and address with designation in relation to the business of such persons who are authorised to receive notice and other documents under this Act and such service on whom shall be binding on the dealer.

# Chapter 10

## Audit of Accounts

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*This chapter deals with section 63 of Jharkhand Value Added Tax Act, 2005 and Rule 38 (9) of Jharkhand Value Added Tax Rules, 2006.*

### Provisions relating to Audit

Particulars	Provisions
Liability for Audit	If the Gross Turnover of the dealer exceeds ₹ 40 Lakh during any financial year. Gross Turnover will include Sale of Exempted Goods also.
Who are eligible for conducting Audit?	“Accountant “as defined u/s 2(i) of The Act. “Tax Practitioners” as defined under Rule 2(xvii) of The Rules
What is the Time Limit for completion of Audit?	Within 9 months from the end of financial Year i.e. 31 <sup>st</sup> December.
What is the Time Limit for submission of Audit Report?	Within one month after the completion of audit.
What is the consequence for non-compliance?	If the dealer fails to get the accounts audited and submit the same within the prescribed time a penalty of 0.10% of the Turnover may be levied. Penalty can be levied after giving dealer a reasonable opportunity of being heard.
What is the prescribed Form?	Form JVAT 409.

## Important Reporting Aspects in Form JVAT 409

### For Manufacturing Concerns

In the case of Manufacturing Concerns. Detailed Manufacturing Account is required to be certified. The manufacturing Account shall contain following details:

- (a) Quantity and Value of each item of stock of Inputs
- (b) Inputs consumed thereof
- (c) finished goods produced, bye-products if any, and shortage in Production if any
- (d) percentage of yield and shortage thereof.

- In the case of large concerns it may not be possible to separately give details of each items of stock and it shall be sufficient if Principle items of Inputs are given separately. The manufacturing account is required in detail and therefore, each and every item of cost shall also be indicated.
- Apart from Cost of Production, the Sales of Finished Goods or any other items shall also be incorporated preferable incorporating same details as given in format of trading account for other class of dealers.

### In Other Cases

Dealers' Trading Account: separately showing the Particulars in respect of each class of goods classified by the dealers, as given in the Schedules appended to the Jharkhand Value Added Tax Act, 2005, in the following format (separate details in respect of Taxable and non-Taxable Turnover shall be furnished).

Trading Account		
I. Name of the goods	Quantity	Amount
II. Schedule and item under which the above was classified by the dealer with rate of Tax	-	-
(a) Opening stock	-	-
(b) Receipts of goods	-	-
(i) Purchases:	-	-

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(a) Intra-State	-	-
(b) Inter-State	-	-
(c) In the course of import,	-	-
(ii) Received by transfers:	-	-
(a) From head office	-	-
(b) From branches	-	-
(c) Consignment stock transfer	-	-
(iii) Manufactures	-	-
(iv) Other receipts (give details)	-	-
<b>Sales:</b>	-	-
(i) (a) Intra-State	-	-
(b) Inter-State	-	-
(c) In the course of import,	-	-
(ii) Transfers:	-	-
(a) To head office	-	-
(b) To branches	-	-
(c) Consignment stock transfer	-	-
(iii) Consumption	-	-
(iv) Other issues (give details)	-	-
(v) (a) Closing Stock	-	-
(b) Gross profit	-	-
(c) Percentage of gross profit to the Turnover	-	-

Although the Name of Item is also specified to be reported, in most of the cases it may not be possible to give item wise Trading Account and it shall be sufficient if the Trading Account is prepared for each class of goods (i.e. the rate of tax at which they are taxable).

Trading Account of Exempted Goods shall also be given separately.

**In the case of Transfer of Right to use Goods : Give details of turnover -Commodity wise**

**In the Case of Works Contract**

- A. Give details of each Works Contract separately as follows-
  - (i) Total Contract Amount of each Works Contract
  - (ii) Period of Contract
  - (iii) Turnover of Works Contract for the year
  - (iv) Value of the goods supplied by the contractee
  - (v) Value of goods returned to the contractee
  - (vi) Value of the Goods purchases:
    - (vii) Intra-State
    - (viii) Inter-State
    - (ix) Otherwise
  - (x) Details of deductions admissible from the Turnover
  - (xi) Details of sub-contract awarded
    - (a) Turnover in respect of which compounding was opted and as classified by the dealer with compounded Rate of Tax.
    - (b) Tax amounts deducted at source (give details of sources and amounts thereof)

The details are required to be given for each works contract separately and it may be very difficult for large works contractors where they are undertaking several contracts simultaneously. As such combined details for the entire works contract may be given along with a schedule containing details of all contracts undertaken by the Works contractor.

The details required to be furnished in Form JVAT 409 are very extensive and apart from accounting concepts and audit skills the Auditor needs to be well-versed with the provisions of Jharkhand Value Added Tax Act and Rules as well as Central Sales Tax Act and Rules.

### **Other important reporting aspects – General category**

- A. Turnover of Scrap/Wastage and other items, if any.
- B. Turnover in respect of which Tax is leviable under the Jharkhand Value Added Tax Act, 2005.
- C. Particulars of Tax Collected and Deposited
  - (i) Total Amount of Tax collected (monthly collection particulars),
  - (ii) Total Amount of Input Tax Credit claimed,
  - (iii) Total amount of Tax paid (monthly payment particulars),
  - (iv) Total amount of Central Sales Tax collected (monthly collection particulars),
  - (v) Total amount Central Sales Tax paid (monthly collection particulars).
- D.
  - (i) Whether there is any excess or illegal Tax collection,
  - (ii) If yes, whether the same has been remitted to Government or returned to subscriber with proof thereof.
- E.
  - (i) Whether the purchases are supported by bills/invoices.
  - (ii) Whether the input Tax credit claimed are supported by Tax invoices and necessary certificates thereof.
- F. Turnovers covered by sales bills.
- G.
  - (i) Sales turnovers covered by 'C' Forms under Central Sales Tax Act, 1956
  - (ii) Sales turnovers not covered by 'C' Forms under Central Sales Tax Act, 1957.
- H. Value of consignment of goods covered by 'F' Forms
- I. Turnovers relating to sales made in the course of export
  - (i) Turnovers exempted under Section 5(3) of the Central Sales Tax Act, 1956
    - (a) Whether supported by 'H' Forms
    - (b) If not, give details
  - (ii) Turnovers exempted under Section 5(1) of the Central Sales Tax Act, 1956

*Audit of Accounts*

- J. Turnovers relating to second and subsequent sales in the course of inter-State trade or commerce:
  - (i) Turnovers covered by 'C' Forms and 'E-I' or 'E-II' Forms as the case may be
- K. Whether there is any excess or illegal Sales Tax collection under CST Act 1956, and if so, whether the same has been remitted to Government or debited to the subscriber.
- L. Whether the place of business was inspected and Proceedings were initiated under Section 70 during the year

# Chapter 11

## Assessment

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*This chapter deals with section 34 to 42 of Jharkhand Value Added Tax Act, 2005 and Rule 31 to 37 of Jharkhand Value Added Tax Rules, 2006.*

### **Tax Audit (Section 34)**

The Commissioner may select dealers for carrying out tax audits by prescribed authority who will undertake tax audit of records, Stock in trade and the related documents of the dealer.

It shall be generally taken up in the office, business premises or warehouse of the dealer.

The prescribed authority shall examine the correctness of return or returns filed and the admissibility of various claims including Input Tax Credit.

### **Procedure for Tax Audit (Rule 33)**

The Prescribed Authority shall, in respect of any year, select by the 31<sup>st</sup> of March of the year following the financial year, such number of dealers as may be deemed fit, for audit, to be conducted either singly or by a team of officers for ascertaining the correctness of accounts maintained by such dealers. Such selection by the Commissioner shall be made through a formula specially evolved for this purpose. The number of registered dealers to be audited every year shall ordinarily be not more than ten per centum of the total number of registered dealers in the State.

After making selection of the registered dealers, a list relating to each Circle shall be sent to the in-charge of the circle. Upon receipt of such list, the In-charge shall, constitute a team of such officers as may be required to conduct an audit in respect of each such dealer. Such team of audit authority may consist of one or more Commercial Taxes Officers, Assistant Commissioner of Commercial Taxes or Deputy Commissioner of Commercial Taxes, as the In-charge of the circle may deem fit.

The audit authority constituted above shall serve upon the dealer selected for audit, a notice in Form JVAT 304 specifying therein, the time, date, the expected duration of the audit at the place of business of the dealer and the nature of accounts and documents to be examined by the authority, and the dealer shall comply with the terms of such notice.

The Prescribed authorities may require the assistance of any authority or person for the cross verification of any information gathered during the course of an audit assessment.

The audit report drawn by the audit team shall be scrutinized by the Circle in-charge and a final report shall be prepared, a copy of which shall be handed over to the dealer.

The dealer shall file his reply to the issues raised in the final report within a period, which shall not ordinarily be less than fifteen days from the date of the receipt of the report.

If, having regard to the final report and the reply filed by the dealer, the prescribed authority has reasons to believe that the dealer has not disclosed his correct tax liability or has concealed or omitted any fact leading to any reduction in the tax payable by him, he shall proceed to assess to the best of his judgment, the amount of tax due from such dealer in accordance with the provisions of sub-section 5 of Section 37 of the Act.

The Prescribed authorities conducting the audit, shall issue a notice in Form JVAT 304, in accordance with the provisions of sub-section (6) of Section 37, and after hearing the dealer, if the said authority is satisfied, the dealer has, in order to evade or avoid payment of tax, has failed to file a Return or has furnished an incomplete and incorrect Return or has availed Input Tax Credit for which he was not entitled or has employed any such method of accounting, which does not enable the prescribed authority to assess the tax due from him, the Prescribed Authority shall proceed on imposing a penalty, a sum equal to twice the amount of additional tax assessed on account of the aforesaid reason(s).

When the additional tax assessed along with the penalty imposed, the assessing authority shall issue demand notice under in Form JVAT 300.

### **Assessment and Self-Assessment (Section 35, Rule 31)**

This section provides the manner in which tax due from a dealer shall be assessed under the Act.

Where the dealer has not filed return for the tax period, the provisions of this section are not applicable and the prescribed authority shall make provisional assessment u/s 36.

## **Self-Assessment**

As per Section 35(3,) if a registered dealer has filed all the returns and the annual return in respect of any tax period within the prescribed time and the returns so filed are found to be in order, they shall be accepted as self-assessment in the prescribed manner, subject to adjustment of any arithmetical error; apparent on the face of the said return(s).

This Section has been substituted by the following w.e.f. 02-07-2014 :

Where a Registered dealer having a turnover of up to 1 Crore per annum other than the Registered Dealer referred to in Sub-Section 5 has furnished :

- (a) All the returns for any tax period
- (b) Revised returns and annual returns in respect of any tax period within the prescribed time and in the prescribed manner.
- (c) Has paid the tax payable according to such returns or revised returns as also interest payable if any.
- (d) Has furnished the Audit report within the prescribed time if required and in the prescribed manner.

The returns so filed are found to be in order shall be accepted as self - assessment in the prescribed manner subject to adjustment of any arithmetical errors apparent on the face of the said return(s) and his assessment shall be deemed to be have been made for the purpose of Section 35(1), provided this provision shall not be applicable to dealers covered under section 19 of The Act.

The amended provision for self-assessment shall not be applicable to dealers whose Input tax Credit exceeds the Tax Liability during the year.

When all the conditions specified in clause (a) to (d) are complied, the assessment shall be deemed to have been made and adjustment for arithmetical errors only can be made by the prescribed authority.

A new sub-section 9 and 10 has been inserted w.e.f. 02-07-2014 which provides that the Commissioner shall select for assessment or re-assessment a number of such dealers as he may deem fit whose assessment for a year is deemed to have been made in accordance with provisions as stated above. For this purpose the Commissioner shall issue a notice to the registered dealer for producing such documents and records as he may deem fit.

Rule 31 : For the purpose of self-assessment, the Annual Return in Form JVAT 204 and JVAT 124 shall be treated as "self-assessment", provided the VAT dealer, furnishes the under-mentioned documents and Prescribed Forms along with Form JVAT 124-

- (a) A declaration duly issued by a selling dealer in Form JVAT 403 and JVAT 404 as the case may be, as prescribed in sub-rule (1) and (2) of Rule 35.
- (b) Copy of the Audited Accounts, duly certified by such persons specially authorised in this behalf, under Section 63 of the Act, in the circumstances where his gross Turnover exceeds ₹ 40 lakhs, along with the Form of Audit Certificate, in Form JVAT 409.
- (c) Notwithstanding anything contained in clause (b) of this sub-rule, all such dealers shall furnish their profit and loss account, trading account and manufacturing account, as the case may be, stating therein the details of purchases, sales and stocks held.
- (d) Statement showing the purchases / arrivals from outside the State under CST Act 1956;
- (e) Statement showing purchases in course of Import under Section 5(2) of the CST Act 1956;
- (f) Statement showing purchases from the registered VAT dealer of the State of Jharkhand along with the details of Tax Invoices received thereof;
- (g) Statement showing sales of goods to registered VAT dealers to whom Tax Invoices has been issued along with the details of such tax Invoice and particulars thereof;
- (h) Statement showing the details of all Declarations Forms received in support of the claims, whether under the provisions of the CST Act or the Act along with the original copy of such Forms;
- (i) Statement showing the details of all Declarations Forms issued, whether under the provisions of the CST Act or the Act;

All the aforesaid documents required for self-assessment of a Tax Period, shall be filed before the Prescribed Authorities on or before 31<sup>st</sup> January of the following year

Section 35(4): The amount of input tax credit, exemptions and other credits or concessions claimed by the dealer in the return(s) for which no supporting declarations, certificates or evidence required under this Act or Central Sales Tax Act is furnished, self-assessment shall be made accordingly without such input tax credit, exemption and other claims, treating such sales as taxable by levying appropriate rate of tax, notwithstanding the fact that the dealer may have been prevented by sufficient cause to produce such declarations, certificates or evidence in support of his claim.

Section 35(5): If a dealer has furnished all the returns and the revised returns, if any, within the prescribed period and in the prescribed manner or within next fifteen days thereafter and the prescribed authority is satisfied that the returns or the revised returns as the case may be, and self-assessment claim are prima-facie correct, consistent and complete, he shall accept the self-assessment as filed by the dealer and shall assess the amount of tax and interest due from the dealer on the basis of such returns, after making prima-facie adjustment in the nature of arithmetical errors, if any, in the returns and the self-assessment.

### **Assessment**

Section 35(6): If the self-assessment has not been filed within the time prescribed, the prescribed authority shall serve a notice on the dealer requiring him to produce any accounts and other evidence on which such dealer may rely in support of his return. The prescribed authority shall thereafter assess the amount of tax and interest due from the dealer on the basis of such returns and documents which have come on record, after making such adjustments as may be necessary including –

- (i) disallowance of claim of input tax credit, exemptions, discounts and deductions and any other concessions or rebates not supported by requisite evidence as required under the Act or the rules made thereunder; and
- (ii) disallowance of claims of tax payments and refund adjustment not verified or otherwise not admissible; and
- (iii) withdrawal of claim of tax credit including carry forward of tax credit not admissible; and
- (iv) levying of interest applicable under this Act.

### **Best Judgement Assessment**

The prescribed authority shall make assessment to the best of his judgement in the following circumstances:

- (i) Where the registered dealer fails to comply with the notice as aforesaid; or
- (ii) the accounts and other evidence produced by him are incorrect, incomplete or unreliable wholly or partly, his opinion.

### **Adjustment of Sale Value**

Section 35(7): If the prescribed authority is satisfied that goods have been sold at a price higher than that shown by the dealer, he may determine value of goods at the time of sale and proceed to assess the tax on such price.

Before initiating such proceeding he shall record his reasons for doing so and no order shall be passed before giving the dealer a reasonable opportunity of being heard.

### **Time Limit**

Section 35(8): No assessment under this Section shall be made after the expiry of three years, from the end the Tax Period in respect of which or part of which the tax is assessable.

### **Provisional Assessment (Section 36 , Rule 32)**

Section 36(1): Where a registered dealer fails to furnish the return in respect of any tax period within the prescribed time, the prescribed authority shall, notwithstanding anything contained in Section 37, proceed to assess the dealer provisionally for the period for such default.

Section 36(2): The provisional assessment shall be made on the basis of past returns, or past records. Where no such returns are available, or on the basis of information received by the prescribed authority: the prescribed authority shall direct the dealer to pay the amount of tax assessed in such manner and by such date, as may be prescribed.

Section 36(3): If the dealer furnishes return along with evidence showing full payment of tax, interest and penalty, if any, on or before the date of payment specified as above, provisional assessment made under sub-Section (1) shall stand revoked to the extent of tax demanded, interest levied and penalty imposed, on the date on which such return is filed by the dealer.

Section 36(4): Nothing contained in this Section shall prevent the prescribed authority from assessment under Section 37; and any tax, interest or penalty paid against provisional assessment shall be adjusted against tax, interest and penalty payable under Section 37.

Rule 32: As per Explanation to Rule 32, the dealer also furnishes the declarations as specified for regular assessment above and shall also file a copy of Audited Accounts in JVAT 409 in the circumstances where dealer's gross turnover exceeds ₹ 40 lakhs.

## **Audit Assessment: (Section 37)**

### **Criteria for Audit Assessment**

#### **(Section 37(1)) Where**

- (a) a registered dealer has failed to furnish any return in respect of any period; or
- (b) a registered dealer is selected for audit assessment by the prescribed authority on the basis of any criteria or on random basis; or
- (c) the prescribed authority is not satisfied with the correctness of any return filed; or bona fides of any claim of exemption, deduction, concession, input tax credit or genuineness of any declaration, evidence furnished by a registered dealer in support thereof; or
- (d) the prescribed authority has reasons to believe that detailed scrutiny of the case is necessary;

The prescribed authority may, notwithstanding the fact that the dealer may have already been assessed under Section 35 or 36, serve on such dealer, in the prescribed manner, a notice requiring him to appear on a date and place specified therein, which may be business premises or at a place specified in the notice, to either attend and produce or cause to be produced the books of account and all evidence on which the dealer relies in support of his returns including tax invoice, if any, or to produce such evidence as specified in the notice.

Section 37(2): The dealer shall provide full cooperation and assistance to the prescribed authority, to conduct the proceedings under this Section at his business premises.

## **Best Judgement Assessment**

Section 37(3): If proceedings under this Section are to be conducted at the business premises of the dealer, giving him a notice to be present on prescribed date and time at his business premises and if it is found that the dealer or his authorised representative is not available or not functioning from such premises, the prescribed authority shall proceed to assess to the best of their judgement the amount of tax due from him.

Section 37(5): The prescribed authority shall, after considering all the evidence produced in course of proceedings or collected by him and if he is satisfied that; the dealer-

- (a) has not furnished returns in respect of any period(s) by the prescribed date; or
- (b) has furnished incomplete and incorrect returns for any period ;or
- (c) has failed to comply with notice as stated above; or
- (d) has failed to maintain accounts in accordance with the provisions of this Act or has not regularly employed any method of accounting;

the prescribed authority shall assess to the best of his judgement, the amount of tax due from such dealer.

## **Penalty**

Section 37(4): If the prescribed authority is prevented from conducting the proceedings under this Section, he may impose, a sum equal to the amount of tax so assessed, by way of penalty.

Section 37(6): If the prescribed authority is satisfied that the dealer, in order to evade or avoid payment of tax-;

- (a) has failed to furnish without reasonable cause, returns in respect of any period by the prescribed date; or
- (b) has furnished incomplete and incorrect returns for any period; or
- (c) has availed Input Tax Credit to which he is not entitled to or
- (d) has employed such method of accounting which does not enable the prescribed authority to assess the tax due from him;

he shall, after giving the dealer reasonable opportunity of being heard, direct that the dealer shall pay, by way of penalty; a sum equal to *thrice* [*Substituted*

*for the word "twice" w.e.f. 02-07-2014]* the amount of additional tax assessed on account of the said reasons under this Section.

### **Assessment of Dealer who fails to get himself Registered (Section 38, Rule 34)**

If the prescribed authority, upon information which has come into his possession, is satisfied that any dealer who has been liable to pay tax under this Act, in respect of any period, has failed to get himself registered, the prescribed authority shall issue Notice in Form JVAT 302.

If the dealer complies with the notice and produces such records, documents or information as required in the notice, the prescribed authority shall determine the tax and penalty payable by such dealer after examination of such documents.

If the dealer fails to comply with the notice, the prescribed authority shall assess the amount of tax and penalty to the best of his judgement.

Notwithstanding anything contained in Section 28, the prescribed authority may, if he is satisfied that the default was without reasonable cause, direct that the dealer shall pay, by way of penalty, in addition to the amount of tax so assessed, a sum equal to the amount of tax assessed or a sum of rupees ten thousand whichever is greater.

### **No Assessment after five years (Section 39)**

No assessment under Section 37 or 38 shall be made after the expiry of five years from the end of the tax period to which the assessment relates. Provided that in case of offence under this Act for which proceeding for prosecution has been initiated, the limitation as specified in this sub-Section shall not apply.

For Section 35, Assessment a time period of three years has been specified. For Section 37 & 38, time period of 5 years has been specified but for Section 36 Assessment i.e. Provisional Assessment no time limit is specified.
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Any assessment made or penalty imposed under this chapter shall be without prejudice to prosecution for any offence under this act.

## Turnover escaping Assessment (Section 40)

### When is this provision applicable?

When a dealer has been assessed under Section 35 or Section 36 for any year or part thereof, and the Prescribed Authority, upon information or otherwise has reason to believe that the whole or any part of the turnover of the dealer in respect of any period has -

- (a) escaped assessment; or
- (b) been under assessed; or
- (c) been assessed at a rate lower than the rate on which it is assessable
- (d) been wrongly allowed any deduction there from; or
- (e) been wrongly allowed any credit therein;

### Procedure to be followed

The prescribed authority may, serve or cause to serve a notice on the dealer and after giving the dealer reasonable opportunity of being heard and making such inquiries as he considers necessary, proceed to assess to the best of his judgement, the amount of tax due from the dealer in respect of such turnover, and the provisions of this Act shall so far as may be, apply accordingly.

### Penalty

If in respect of clause (a) the prescribed authority has reason to believe that the dealer has concealed, omitted, or failed to disclose wilfully, or furnished incorrect particulars of turnover, a penalty equal to *thrice* [Substituted for the word "twice" w.e.f. 02-07-2014] the amount of additional tax assessed may be levied.

### Interest

If the prescribed authority is satisfied that any registered dealer or a dealer whose registration certificate has been suspended –

- (a) Has concealed any sales or purchase with a view to reducing the amount of tax; or
- (b) Has furnished incorrect particulars of his sales or purchases in the return,

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The prescribed authority shall, after giving the dealer a reasonable opportunity of being heard, direct the dealer to pay by way of *penalty a sum equal to thrice the amount of concealed tax [substituted for words by way of interest a sum @ 5% for each month w.e.f. 02-07-2014]*.

The interest shall be payable before completion of assessment for which the prescribed authority shall quantify the amount of tax provisionally.

This Interest can be levied only when the assessment is made under Section 40 and not in respect of assessment made under 35, 36, 37 or 38.

### **Time Limit**

No order of assessment and reassessment shall be made under this section after the expiry of five years from the end of the year in respect of which or part of which the tax is assessable.

### **Exclusion of time period for Assessment (Section 41)**

In computing the period of limitation specified for assessment or reassessment, as the case may be, the time during which any assessment or reassessment proceeding remained stayed under the order of a competent Court shall be excluded.

### **Power of Reassessment in certain Cases (Section 42)**

#### **Situation I**

Where any order passed by the prescribed authority in respect of a dealer for any period is found to be erroneous or prejudicial to the interests of revenue

- consequent to, or in the light of any judgment or order of any Court or Tribunal, which has become final,
- then notwithstanding anything contained in this Act,
- the prescribed authority may proceed to reassess the tax payable by the dealer in accordance with such judgment or order, at any time within a period of three years from the date of the Judgment or order.

#### **Situation II**

Where any Court or Tribunal passes an order in appeal or revision

- to the effect that any tax assessed under this Act or the Central Sales

Tax Act, 1956 should have been assessed under the provision of a law other than that under which it was assessed

- then in consequence of such order or to give effect to any finding or direction contained in such order such turnover and part thereof
- may be assessed or reassessed, as the case may be, to a tax
- at any time within two years from the date of such order,
- notwithstanding any limitation period which would otherwise be applicable to the assessment or reassessment made.

### **Situation III**

where an objection or observation relating to either in fact or in law has been made by the Comptroller and Auditor-General of India -

- in respect of any assessment or reassessment made or on scrutiny of return made u/s33.
- the prescribed authority shall proceed to reassess the dealer.
- Provided that no such order shall be passed without serving upon the dealer a notice requiring him to file reply to the observation or objection within one month of date of service of notice.

### **Evidence in support of claims in respect of goods leviable to Output Tax at the First Point of Sale within the State of Jharkhand (Rule 35)**

A dealer who claims that any amount of his turnover should be exempted from tax as the Goods have been specified in Part E of Schedule II (Petrol, Diesel, Liquor etc.) or they are covered u/s 9(2) (Medicines on which tax is payable on MRP), shall substantiate such a claim before the authority prescribed by producing the purchase order, if any, the original copy of the cash memoranda or bills issued to him and a true Declaration in writing from the selling dealer in Form JVAT 403 that the goods in question have already been subjected to tax on the first point of their sale in the state of Jharkhand.

Any dealer, who claims Input Tax Credit, shall substantiate such claim by producing a true Declaration in writing, issued by the preceding VAT selling dealer, in Form JVAT 404 evidencing that the goods in question have already been subjected to Tax at the preceding stage of their sale in the State of Jharkhand.

The Input Tax Credit is available on the basis of Original Tax Invoice as per the Act. JVAT 404 is required to substantiate the claim as per Rule 35, therefore, even if JVAT 404 is not available with the dealer but Tax Invoices are available the Input Tax Credit claim cannot be denied.

Registered dealers shall get the Declaration in Form JVAT 403 and JVAT 404 printed thereunder and shall issue such Forms from a bound book containing twenty five leaves in triplicate, duly perforated and such Forms shall bear printed serial number along with the name of the Printer in the Bold letters, or in the circumstances self-printed by the own computer, it shall be printed in Bold letters as "Computer Generated".

The Registered dealer is required to annex a statement along with Form JVAT 204 showing the details of JVAT 403/404 issued by them.

Before furnishing Declaration to the purchasing dealer in Form JVAT 403 and JVAT 404, the selling dealer, shall fill in all required particulars in the Form and shall also affix his signature in the space provided in the Form for this purpose. Thereafter, the counterfoil of the Form shall be retained by the selling dealer and the other two portions marked 'Original' and 'Duplicate' shall be made over by him to the purchasing dealer.

Only one Declaration is required to be issued in respect of one purchasing dealer for the entire sales made during a year.

The selling dealer shall also maintain, serially and chronologically, a complete account in a Register in respect of all Forms of Declarations printed and issued by him and also file a statement of Forms along with the Annual Return.

The purchasing dealer shall also maintain serially and chronologically a complete account in separate Register in respect of the Forms of Declaration, received by him from the selling dealer.

(9)(a) If a registered dealer being Manufacturer or the Importer of such goods, sells such goods as specified in sub-section (2) of Section 9 and Notification issued thereunder, and recovers tax from its purchasing registered dealer at the full rate, on the Maximum Retail Price of such goods; he shall issue Form JVAT 410 to its purchasing registered dealer."

*Assessment*

Provided, registered dealer shall get such Declaration in Form JVAT 410 printed himself and shall issue such Forms from a bound book containing twenty five leaves in triplicate, duly perforated and such Forms shall bear printed serial number along with the name and registration number of the Printer in bold letters, or in the circumstances self-generated by own computer or self-printed in captive printing press, it shall be printed in bold letters as "Computer Generated" or "self-printed". In the case of "Self Printed" or "Computer Generated" the provisions of sub-section (9) of Section 60 shall apply. Before issue of the volume, the dealer shall get it authenticated by the In-charge of the Circle or any other officer of the Circle authorised in this behalf, where such dealer is registered

Provided further, the selling dealer shall issue one Declaration Form in respect of one purchasing dealer for the sales made during a year.

The registered dealer being reseller of such goods sold, as specified in sub-section (2) of Section 9 and Notification issued thereunder, and who recovers tax from its purchasing dealer at full rate, on the Maximum Retail Price, paid by him at immediately preceding stage, shall issue Form JVAT 411 to the purchasing dealer."

Provided, the selling dealer shall issue one Declaration with respect to one purchasing dealer for the sales made during a year.

**Explanation:-** For the purpose of printing of declarations, the provisions of sub rule (3) of rule 42 shall be followed.

## Chapter 12

# Inspection, Search and Seizure

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*This chapter deals with section 69 to 73 of Jharkhand Value Added Tax Act, 2005 and Rule 39 to 46 of Jharkhand Value Added Tax Rules, 2006.*

### **Bureau of Investigation (Section 69)**

The State Government may, by an order published in the Official Gazette, constitute a Bureau of Investigation, and it shall consist of such personnel and in such number of officers and such hierarchy of supervision and control, as may be specified by the State Government in the said order.

If authorities appointed under sub-Section (1) of Section 4 are specified as such it shall without prejudice to the powers under sub-Section (1) of Section 4 exercise the powers of an authority under Section 62, 70 and 72 for carrying out the purpose of this Act.

The State Government may by an order published in the Official Gazette, vest an officer of the Bureau of Investigation with the powers of an officer in-charge of a police-station under the Code of Criminal Procedure, 1973 and with such other powers under different Acts, as it may consider necessary.

The Commissioner may, by an order published in the Official Gazette, authorise an officer of the Bureau of Investigation to exercise the powers of an authority appointed under Section 4 in respect of such matter, as may be specified in the order.

The Bureau of Investigation shall function under the control and supervision of the Commissioner, and shall discharge such duties as may be assigned to it, by the Commissioner, including investigation of offences under Section 87 of this part.

**Production and Inspection of Accounts and Documents and search of premises (Section 70 ,Rule 39, 40 and 46)**

Particulars	Remarks
Documents/Information which may be required by the Prescribed Authority for production	any accounts or documents, any information, relating to stocks of goods, sales, purchase and delivery of goods, payments made or received by the dealer or any other information relating to his business, as may be necessary for the purpose of this Act
Documents/Information which shall be open to inspection by the Prescribed Authority and the prescribed authority may take such copies or extracts of the said accounts, registers or documents and such inventory of the goods and cash found as appears to him necessary for the purpose of this Act	All accounts, registers and documents, records, computer or any electronically stored data relating to stocks of goods, purchase, sale and delivery of goods, payments made or received by any dealer and all goods and cash kept in any place of business of any dealer

**Seizure of documents**

If the prescribed authority has reasons to believe that any dealer has evaded or is attempting to evade the payment of any tax due from him, he may, for reasons to be recorded in writing, seize such accounts, registers or documents of the dealer as may be necessary, and shall grant a receipt for the same, and shall retain the same for so long as may be necessary in connection with any proceeding under this Act or for the prosecution, under any law.

**Power to Enter Premises**

The prescribed authority may enter and search any place of business of any dealer or any other place where the prescribed authority has reason to believe that the dealer keeps or is for the time being keeping any account, registers or documents of his business or stocks of goods relating to his business.

He also has the power to break open the lock of any box or receptacle or door of any other place or premises, seal any box or receptacle, godown or building where any accounts, registers or other documents or goods may be kept or are reasonably suspected to be kept.

### **Seizure of Goods**

If the Prescribed Authority has reasons to believe that any dealer has evaded or is attempting to evade the payment of any tax due from him, he may, for reasons to be recorded in writing, shall have the powers to seize such goods not properly accounted for in the books, accounts, registers and other documents of the dealer or the person in-charge of goods.

Only Goods which are not properly accounted for in the books can be seized.
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Person in-charge of goods means the Broker, or the owner of the warehouse, or the clearing, booking or forwarding agent, or the person engaged in the business of transporting goods in the manner prescribed.

The Expression “proper accounting”, shall-

- (i) in the case of a dealer, mean that the goods have either not been entered in the books of accounts or they have been classified in a manner which is likely to lead to evasion of tax payable under this Act; or
- (ii) in the case of the owner of a warehouse, or a clearing, booking or forwarding agent, or a person engaged in the business of transporting goods, mean properly entered in such registers and accounts as may be prescribed under sub-Section (2) of Section 73.

### **Imposition of Penalty**

The Prescribed Authority shall, in a case where the dealer or the person in-charge of goods fails to produce any evidence or fails to satisfy the said authority regarding the proper accounting of goods, impose a penalty, after allowing an opportunity of hearing in the prescribed manner to the dealer or such person, which shall be equal to three times the amount of tax calculated on the value of such goods and the goods shall be released as soon as the penalty is paid.

### **Furnishing of Security**

If the dealer or the person in-charge of the goods demands time for production of necessary documents in support of proper accounting, the authority shall release the goods on the condition that the dealer or such person furnishes a security equivalent to three times the amount of tax calculated on the value of the goods, either in the form of cash, to be deposited in a Government treasury, or in the form of Bank guarantee or in such other form as acceptable to the authority.

In case where the goods have been released on furnishing of a security and evidence regarding proper accounting of goods, is not produced within the time granted, the amount of security shall stand forfeited to the State Government.

If evidence or document regarding the proper accounting of goods is produced by the date granted, the security shall be released in the prescribed manner.

### **Procedure after seizure**

If the seized goods are not claimed by any person, the authority shall arrange for the safe custody of goods.

In case the penalty imposed is not paid or the goods remain unclaimed for a period of 30 days or more from the date of seizure, the goods so seized shall be sold by auction in the prescribed manner and the sale proceeds shall be appropriated towards the amount of penalty imposed. The balance of the sale-proceeds, if any, shall be deposited in the Government Treasury and shall be refunded to the lawful claimant in the prescribed manner:

Provided that in the case of goods of a perishable nature, the prescribed authority may decide to sell the goods by auction before a period of thirty days.

Detailed procedure for auction of seized goods and release of security has been given in Rule 46.

### **Assistance of Police etc. and assumption as to ownership**

The prescribed Authority, may require the assistance of any person, public servant or police officer in making a search and a seizure or for safe custody of goods seized under this Section, and such person, public servant or police officer shall render necessary assistance in the matter.

Where any books of accounts, other documents, money or goods are found in the possession or control of any person in the course of any search, it shall be presumed, unless it is proved to the contrary, that such books of accounts, documents, money or goods belong to such person.

## **Survey (Section 71)**

### **Purpose**

The survey may be undertaken by the prescribed authority from time to time with a view to identifying dealers who are liable to pay tax under the Act, but have remained unregistered.

### **Power to call for information**

For the purpose of the survey, the prescribed authority may by general or special notice require any dealer or class of dealers to furnish the names, addresses and such other particulars as he may find necessary relating to the persons and dealers who have purchased any goods from or sold any goods to such dealer or class of dealers during any given period.

For the purposes of survey, the prescribed authority may call for details and particulars regarding the services provided by public utilities and financial institutions including banking companies, which he is of the opinion, will be relevant and useful for the purposes of the survey. He may from time to time cause the results of the survey to be published in any manner that he thinks fit so as not to disclose or indicate the identity of any particular unregistered dealer identified during the survey.

### **Power to enter business premises**

The prescribed authority may enter any place where a person is engaged in business but is unregistered or has not applied for grant of the certificate of registration, and require any proprietor, employee or any other person who may at that time and place be attending in any manner to, or helping in, the business;

- (i) to afford him the necessary facility to inspect such books of accounts or other documents as he may require and which may be available at such place,
- (ii) to afford him the necessary facility to check or verify the cash, stock or other valuable articles or things which may be found 'therein, and

- (iii) to furnish such information as he may require as to any matter which may be useful for, or relevant to any proceedings under this Act.

For the purposes of this sub Section, a place will also include any other place in which the person engaged in business or the employee or other person attending or helping in business stays and a place where any books of accounts or other documents or any part of the cash, stock or other valuable articles or things relating to the business are or is kept.

The prescribed authority can enter the place belonging to Unregistered dealers only. The place will also include house of the dealer or the employee or other person attending or helping in the business.

The prescribed authority shall enter the place where the person is carrying on business only during the hours at which such place is open for business and in case of any other place only after sunrise and before sunset.

The prescribed authority may make or cause to be made extracts or copies from books of accounts and other documents inspected by him, make an inventory of any cash stock or other valuable articles or thing checked or verified by him, and record the statement of any person which may be useful for, or relevant to, any proceeding under this Act.

### **No power to seize or move**

The prescribed authority, in exercise of the powers under this Section shall on no account, remove or cause to be removed from the place where he has entered any books of accounts other documents or any cash, stock or other valuable article or thing.

### **Establishment of Check Posts, Inspection of Goods in Transit and Movement of Goods across the State (Section 72, Rule 41)**

To prevent or check avoidance or evasion of tax the Government may direct the establishment of Check post or barrier and appoint officer in-charge who has power to inspect documents produced and goods being moved.

No person shall transport from any railway station, steamer station, airport, post-office or from any other place in the State, whether of similar nature or otherwise, notified in this behalf by the State Government, any consignment of such goods, exceeding such quantity, as may be specified in the

notification, except in accordance with such conditions as may be prescribed and such conditions shall be made with a view to ensuring that there is no evasion of tax payable under this Act.

### **Responsibility of the Driver/Person in charge of goods carrier**

The driver or person in charge of vehicle or goods carrier in movement, shall

- (a) carry with him the records of the goods including challan, bills of sale or dispatch memos and prescribed declaration form duly filled in and signed by the consignor of goods.
- (b) stop the vehicle or goods carrier at every check post or at any other place as authorised by the Commissioner in this behalf;
- (c) produce all the documents including the prescribed form relating to the goods before the officer in charge of the check post or the authorised officer;
- (d) give all the information in his possession relating to the goods;
- (e) allow the inspection of the goods for search of the vehicle by the officer in charge of the check post or any authorised officer.

### **Powers of authorised officer/Officer in-charge**

Where any goods are in movement within the territory of the State of Jharkhand, the authorised officer may stop the vehicle or the goods carrier or the person carrying such goods, for inspection, at any place within his jurisdiction.

Where any goods in movement are without documents, or documents produced appear to be false or forged, the authorised officer/officer in-charge may –

- (a) direct the driver or the person in-charge of the vehicle or goods carrier or of the goods not to part with the goods in any manner, till a proper verification is done or an inquiry is made, which shall not take more than seven days; or
- (b) seize the goods for reasons to be recorded in writing and shall give receipt of the goods to the person, from whose possession of control they are seized;

## Documents for movement of goods (Rule 42)

Where any consignment is transported by or on behalf of any registered dealer it shall be accompanied by a Tax invoice or an invoice, or a cash memo or bill along with following forms :

Sl. No.	Nature of Transaction	Required Form (Permit/Way Bill)
1	Sales within the State of Jharkhand exceeding ₹ 50,000/-	JVAT 504P
2	Sales outside Jharkhand irrespective of value	JVAT 504B
3	Purchase from outside Jharkhand irrespective of value	JVAT 504G

JVAT 504P, 504B and 504G can be generated using online facility. The commissioner is authorised to evolve such criteria and direction as may deem fit for downloading such forms.

Where the transportation is otherwise then by way of sales or purchase, it shall be accompanied by a Challan along with above forms, as applicable.

The Commissioner may exempt any dealer whose taxable turnover exceeds ₹ 200Crores a year for issuing and carrying any declaration under this rules and for this the commissioner shall determine the respective manner and criteria thereof.

If such consignment is to be transported by or on behalf of any unregistered dealer or any other person, he shall make an application in Form JVAT 502 to the prescribed authority who shall issue Form JVAT 503 to enable him to transport the consignment subject to the conditions and procedures prescribed in this Rule.

## Penalty

The officer/officer in-charge, after having given the person in charge of the goods a reasonable opportunity of being heard and after having held such inquiry as he may deem fit, shall impose a penalty equal to the amount of three times of the tax, leviable on such goods, or rupees five thousand whichever is greater for possession or movement of goods, without proper documents.

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The officer/Officer- in- charge may release the goods to the owner of the goods or to any person duly authorised by such owner on payment of the penalty.

Where a transporter, is found to be in collusion with a dealer to avoid or evade tax, the officer/officer- in- charge shall detain the vehicle or carrier of such transporter and after affording him an opportunity of being heard and with prior approval in writing by the Commissioner, may confiscate such vehicle or carrier.

### **Transit Pass**

Where a vehicle carrying goods, coming from any place outside the State and bound for any other place outside the State, pass through the State, the driver or other person-in-charge of such vehicle shall obtain a Transit Pass. The transit pass can be obtained online subject to provisions of Rule 43.

### **Intra State Stock transfer or movement of goods otherwise than by way of sale (Rule 44)**

Where any dealer claims that he is not liable to pay tax under the Act, in respect of any goods on the ground that the movement of such goods from one place to another within the State of Jharkhand was occasioned by the reason of transfer of such goods to other branches, or otherwise than by way of sale under Section 66 of the Act, the burden of proving the claim shall be on that dealer, and for this purpose he shall furnish to the Prescribed Authority along with the Statement / Challans / Transfer Memos / Invoices, required to be furnished by him, under sub-rule (2)(h) of Rule 38.

- (i) a true and complete Declaration in Form JVAT 505, in the case of transfer by Principal to his Agent for sale on commission basis, and in the case of branch transfer from one branch to another in the State in Form JVAT 506 to be issued by the transferee branch.
- (ii) Where any Principal dealer transfers any goods within the state to his Commission Agent or to his branch / units for sale therein, he shall issue a Declaration in Form JVAT 507 in respect of such goods, duly filled in and signed by him to his Commission agent/branches/units bearing Printed Serial Nos. and shall retain a copy thereof for a record.
- (iii) Correct and complete record of the name, address, Taxpayer Identification Number. if any, of the person to whom the goods were transferred incorporating therein the quantity of the goods and the value thereof,

- (iv) Copy of accounts rendered by the Agent or the office to whom the goods were transferred, and
- (v) Copy of the Railway or the Lorry receipts relating to such transfer.

The transferor shall issue to the transferee a Challan or Transfer Memo to this effect.

Provided the transferee / consignee dealer / person shall issue one Declaration, for any such transfer made during a year.

### **Furnishing of Information by Clearing, Forwarding or Booking Agent, Government Departments, Banks, Financial Institutions, Warehouses, Godowns, Cold Storages and any other Person (Section 73, Rule 45)**

Every clearing, forwarding or booking agent, Government Departments, Banks, Financial Institutions, warehouses, godowns, cold storages or Broker or a person transporting goods who in course of his business handles the document of title to the goods or transports goods or takes delivery of goods for or on behalf of a dealer and having his place of business in the State of Jharkhand, shall furnish information about his place of business to the Prescribed Authority, within such time and in such manner as may be prescribed.

Every such agent or person shall maintain true and complete accounts, registers and documents, as may be prescribed, in respect of the goods handled by him and the documents of title relating thereto and shall produce the said accounts, registers and documents before the prescribed authority as and when required by him.

If such accounts etc. are not maintained in the prescribed manner, which is likely to lead to evasion of any tax payable under this Act, the Prescribed Authority may, without prejudice to any action under Section 84, on charge of abetment, after giving such agent or person an opportunity of being heard, direct him to pay by way of penalty an amount which shall be equal to three times the amount of tax calculated on the value of goods in respect of which complete particulars have not been furnished or incorrect particulars or information have been furnished.

Every bank, including any branch of a bank, or any clearing house in the State, or any financial institution, department of Government, corporation,

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institution, organizations or companies, boards, authorities, undertakings or any bodies owned, financed or controlled wholly or partly by the State Government or Central Government, Every clearing, forwarding or booking agent or Broker or a person engaged in the business of transporting goods shall, if so required by any authority appointed under Section 4, furnish any such particulars as may be required by such authority in respect of the transactions of any dealer with or through such banks or clearing house or any financial institution, department of Government, corporations, institutions, organization or companies, boards, authorities, undertakings or any other body owned, financed or controlled wholly or partly by the State Government or the Central Government relating to sales or purchases of goods by such dealers.

“Broker” shall include a person who renders his services for booking of, or taking delivery of, consignment of goods at a Railway station, booking agency, goods transport company office, or any place of loading or unloading of goods or contrives, makes and concludes bargains and contracts for or on behalf of any dealer for a fee, reward, commission, remuneration or other valuable consideration or otherwise.

“Person transporting goods” shall, besides the owner, include the manager, agent, driver or employee of the owner, or person in charge of a place of loading or unloading of goods other than a rail-head, or a post office, or of a goods carrier carrying such goods, or a person who accepts consignments of such goods for dispatch to other places or gives delivery of any consignment of such goods to the consignee.

## Chapter 13

# Appeals and Revisions

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*This chapter deals with section 79 to 83 of Jharkhand Value Added Tax Act, 2005 and Rule 47 to 54 of Jharkhand Value Added Tax Rules, 2006.*

### Appeal (Section 79)

Query	Provision
Who can file Appeal?	Any dealer objecting to an order of assessment or penalty or both passed by the prescribed authority. A person objecting to an order of penalty passed against him other than order u/s 46.
Who is the Appellate Authority?	Joint Commissioner or Deputy Commissioner specially authorised in this behalf.
Whether any Mandatory Pre-Deposit is specified?	Yes, a mandatory pre-deposit has been specified which shall be higher of the following two amount: 20% of the Assessed Tax; 100% of Admitted Tax. The Appeal shall not be admitted unless the pre-deposit has been made.
What is the Time Limit for filing of Appeal ?	Within 30 Days of the receipt of Notice of Demand. The delay may be condoned by the Appellate authority if he is satisfied that the appellant had sufficient reason for not filing appeal in time.
What is the Time Limit for passing of Order?	Within two years from the date of filing of Appeal.

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The appellate authority, while disposing of an appeal against an order, may –

- (a) (i) confirm, annul, reduce, enhance or otherwise modify such order;  
or
- (ii) set aside the order directing the authority to make fresh order, after further enquiry on such points as may be directed; and
- (b) in other cases pass such order as it may, for reasons to be recorded in writing, deem fit.

No order under this Section shall be passed without giving reasonable opportunity of hearing to the appellant, as also the authority whose order has been appealed against.

## **Revision (Section 80, Rule 53)**

### **Revision by Tribunal**

An order passed on an Appeal under Section 79 may, on application, be revised by the Tribunal.

Any other order passed by The Joint Commissioner or Commissioner (except u/s 3 and 4), against which an appeal has not been provided u/s 79, may also be revised by the Tribunal.

### **Revision by Joint Commissioner (Administration)**

Any order passed by an authority not above the rank of Deputy Commissioner, against which an appeal has not been provided u/s 79, may be revised by the Joint Commissioner (Administration).

### **Revision by Commissioner**

The Commissioner may, on his own, or on an application, call for and examine the records of any proceeding in which any order has been passed by any other authority appointed under Section 4, for the purpose of satisfying himself as to the legality or propriety of such order and may, after examining the record and making or causing to be made such inquiry as he may deem necessary, pass such order as he thinks proper.

As per Rule 53 the Commissioner may require any dealer to produce or cause to be produced before him such documents or other evidence which may be deemed fit by issuing Notice in Form JVAT 302.

## *Appeals and Revisions*

*Provided that no revision shall be admitted unless the dealer has paid 20% of the tax assessed or full amount of admitted tax, whichever is higher. [Inserted w.e.f. 02-07-2014]*

### **Time limit for filing revision application**

The Revision has to be filed within 90 days from the date of communication of order. However, in case of delay, the authority may condone the delay if he is satisfied that the applicant had sufficient cause for not filing the revision within the prescribed time.

The Act does not provide time limit for filing of revision before Tribunal against an order of appeal and it seems to be an omission. However, it is advisable to file the Revision before Tribunal within 90 days to avoid any dispute.

### **Time limit for passing of order**

No order shall be passed under this Section after the expiry of two years from the date of filing of such appeal.

### **Opportunity of being heard**

No order under this Section shall be passed without giving the appellant as also the authority whose order is sought to be revised or their representative, a reasonable opportunity of being heard.

### **Review (Section 81, Rule 54)**

Any authority appointed under Section 4 or the Tribunal may review any order passed by it, if such review is, in the opinion of the said authority or Tribunal, as the case may be, necessary on account of a mistake which is apparent from the record;

Authority appointed under Rule 4 are : Commissioner, Additional Commissioner, Joint Commissioner, Deputy Commissioner, Assistant Commissioner, Commercial Taxes Officer.

The review can be done only after recording reasons for doing so.

The review can be done by the authority (other than Commissioner) before the expiry of 12 months from the date of order which is sought to be reviewed. The order may be reviewed after the expiry of 12 years after obtaining approval from the commissioner.

No Time Limit has been prescribed for review of order by Commissioner.

No authority appointed under Rule 4 (other than commissioner) shall review any order which has been passed by any of its predecessor in the office without obtaining approval from the commissioner.

Therefore, only the specific person who has passed the order can review the same. In case the authority wants to review the order passed by his predecessor in office, he has to obtain the prior approval of Commissioner.

No such review, if it has the effect of enhancing the tax or penalty or both, or of reducing a refund shall be made unless the said authority or the Tribunal, as the case may be, has given the dealer, or the person concerned, a reasonable opportunity of being heard.

## **Statement of cases to High Court. (Section 82)**

### **Who can be the Applicant?**

Following persons may require the Tribunal to refer to the High Court any question of law arising out of order passed by the Tribunal u/s 79 or 80.

- (i) The Dealer
- (ii) Any Person in respect of whom order has been passed
- (iii) The Commissioner

**Time Limit:** Within 90 Days of passing of order by the Tribunal.

**Fee:** ₹ 1,000/- when the application is made by the dealer

- The Section prescribes for payment of fee by the dealer only, however, fee shall be payable by any other person also to avoid dispute as there is contradictory provision in this regard.
- Although the provision speaks about order passed by the Tribunal u/s 79 & 80, however, no power has been given to Tribunal to pass order u/s 79. Such power is given only u/s 80.

The Tribunal may refuse to make such reference for reasons to be recorded in writing.

On such refusal by the tribunal, the applicant may, within forty- five days of such order, either-

- (a) withdraw his application ( and if the applicant who does so, is a dealer or a person the fee paid by him shall be refunded), or
- (b) apply to the High Court against such refusal.

If upon the receipt of an application as above, the High Court is not satisfied that such refusal was justified, it may require the Tribunal to state a case and refer it to the High Court and on receipt of such requisition the Tribunal shall state and refer the case accordingly.

If the High Court is not satisfied that the statements in a case referred under this Section are sufficient to enable it to determine the question raised thereby, it may refer the case back to the Tribunal to make such additions thereto or alterations therein as the Court may direct in that behalf.

The High Court upon the hearing of any such case shall decide the question of law raised thereby, and shall deliver its judgment thereon containing the grounds on which such decision is founded, and shall send to the Tribunal a copy of such judgment under the seal of the Court and the signature of the Registrar, and the Tribunal shall, where necessary, amend its order in conformity with such judgment.

Where a reference is made to the High Court under this Section, the cost including the disposal of the fee referred to in sub-Section (1) shall be in the discretion of the Court.

The payment of the amount of tax including penalty, if any, due in accordance with the order of the Tribunal in respect of which an application has been made under this Section shall not be stayed pending the disposal of such application or any reference made in consequence thereof.

The Tribunal or the High Court may admit an application under this Section after the expiry of the period of limitation provided in this Section, if it is satisfied that the applicant had sufficient cause for not presenting the application within that period.

### **Burden of Proof(Section 83)**

The burden to prove the followings lies on the dealer who claims:

- (a) that any receipt or dispatch of goods by him is, otherwise than by way of purchase or sale of such goods by him;
- (b) that any purchase or sale of goods by him is not liable to tax, by reason of such purchase or sale being outside the State or in the course of inter-State trade and commerce or in the course of the import of the goods into, or the export of the goods out of, the territory of India;

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- (c) that any purchase or sale of goods effected by him, is exempt from tax or leviable to tax at a particular rate;
- (d) that any purchase or sale of goods effected by him is not taxable because of return of such goods;
- (e) that he is entitled to any deduction from gross turnover or any deduction of Input Tax, from the tax calculated on the sale of goods;
- (f) that any Purchase, Sale, Import or Export of goods made by him is not the part of his gross turnover.
- (g) that any particular sum has been paid by him as Tax, Interest or Penalty under this Act;
- (h) that any goods, books of account and document discovered at his business premises, or at any other place or in any goods carrier or other vehicle, over which he has control at the time of such discovery, do not relate to his business; or
- (i) that he is eligible to Input Tax Credit under sub-Section (4) of Section 18 of the Act;
- (j) that he is not eligible to pay Purchase Tax under Section 10 of the Act;
- (k) that any relief under this Act or the rules made thereunder is admissible to him.

### **Memorandum of Appeal and Revision (Rule 47)**

List of forms for filing of Appeal/Revision is as under :

Form No.	Purpose	Time Limit
Form JVAT 600	Filing Appeal u/s 79	Within 30 days from date of receipt of notice of demand
Form JVAT 602	Filing Revision u/s 80	Within 90 days from date of receipt of order
Form JVAT 601	Application for condonation in delay in filing Appeal or Revision	Along With Form JVAT 600/602

Every Appeal or application for Revision shall-

- (a) specify the name and address of the appellant/applicant;
- (c) specify the date of order against which it is made;
- (d) specify the date on which order was communicated to the appellant or applicant;
- (e) contain a clear statement of facts;
- (f) specify the grounds on which appeal or revision is preferred without any argument or narration and numbered consecutively;
- (g) state precisely the relief prayed for; and
- (h) be signed and verified by the appellant or applicant or an agent duly authorized by him in writing in this behalf in the following Form, namely:

"I .....the appellant/applicant named in the above memorandum of appeal/application for revision do hereby declare that, what is stated therein, is true to the best of my knowledge and belief.

.....

Signature"

The Memorandum of Appeal shall be accompanied by :

- (i) A certified copy of the impugned order; and
- (ii) a copy of the challan in Form JVAT 205 in proof of the payment of the amount of Pre-deposit;

The memorandum of appeal or application for revision shall be in duplicate and shall either be presented to the appellate or revisional authority either by hand or by registered post.

An appellate authority shall, ordinarily within thirty days of the presentation of the appeal, either admit or reject it after proper examination of the impugned order and/or the record relating to such order.

## **Disposal of Appeal or Application for Revision (Rule 48)**

### **Rejection of Appeal**

Section 48(1) & 48(2): If a Memorandum of Appeal or an Application for

Revision does not comply with all the requirements of Rule 47, the Appellate or Revisional authority may reject it summarily. Before rejection of such Appeal or revision the Appellant or Applicant shall be given a reasonable opportunity to amend the Memorandum or Application to bring it in conformity with all the requirements of Rule 47.

An Appeal or Application for Revision may be summarily rejected on other reasonable grounds after giving the Appellant or Applicant a reasonable opportunity of being heard.

### **Stay of recovery of disputed Demand**

Section 48(3): Stay Petition shall be presented in Form JVAT 603 along with Form JVAT 600/JVAT 602 as the case may be containing, inter-alia, substance of facts leading to the exact amount of tax, penalty or interest sought to be stayed and the exact amount of tax, penalty or interest disputed, payment of tax before and after the said order and reasons in brief for seeking stay.

Where a stay petition has been presented by an appellant, the Appellate Authority/Revisionary Authority shall dispose of such stay petition within one month from the date of presentation of such Petition after giving such Appellant a reasonable opportunity of being heard.

The Appellate or the Revisional Authority, as the case may be, may, in his discretion, by an order in writing, stay realisation of the amount of tax or interest, part or whole, as the case may be, in dispute, on such terms and conditions as he may deem fit and proper in the facts and circumstances of the case.

The Appellate Authority may :

- Stay the realisation of the entire disputed amount.
- Stay the realisation of disputed amount in part, and in that case the appellant shall deposit the remaining amount by the date specified in the order.
- Order for furnishing security for securing the payment of the disputed amount, and in that case the appellant shall furnish such security by the date specified in such order.

Where an appellant fails to pay any amount of tax or interest in dispute which

he is required to pay according to the stay order by the date specified therein or such other date as may be allowed by the Appellate Authority, such order staying realization of the amount of tax, or interest, as the case may be, shall stand automatically vacated after the expiry of the date specified in the order or such other date as may be allowed by the Appellate Authority.

- There is no reference to the payment of penalty in dispute and the order cannot be vacated for non-payment of penalty in dispute.
- The Department may recover the disputed amount on vacation of stay order, however, the appeal cannot be rejected for non-compliance with stay order as there is no specific provision in this regard.

Where an application for appeal or revision is admitted for hearing on merit the Appellate or Revisional Authority shall, after giving the parties concerned a reasonable opportunity of being heard, fix a date for passing the final order on the appeal or application for revision as the case may be, if the order is not passed on the date of hearing.

At many places, only Appellate Authority has been used whereas at some places Appellate or Revisionary Authority is used which appears to be an omission and the Appellate Authority may also be construed as Revisionary authority.

### **Stay of the Recovery of the Amount Payable under the Act (Rule 49)**

Section 49(1): An Appellate or Revisional Authority may, on application, stay recovery of any amount payable under the Act in respect of which an appeal has been entertained by the said authority; before allowing such stay the said authority may obtain and consider a report from the In-charge of the circle, to which such dues relate.

Section 49(2): An application under sub-rule (1) shall not be entertained unless it is filed before the expiry of 3 months from the date the appeal is filed.

- This is in contradiction to Rule 48 3 (i) which states that the Application for stay shall be filed in JVAT 603 along with the Form JVAT 600/602.
- As per rules of interpretation since Rule 49 occurs after Rule 48, the provisions of Rule 49 will prevail and the appellant/applicant may file the stay petition before expiry of 3 months from the date the Appeal is filed.

## **Services of Notice (Rule 50)**

Notices under the Act or these rules may be served by any of the following methods, namely:-

- (i) by delivering or rendering a copy of the notice to the addressee or to any adult male member or his family residing with him or to his manager, if any, declared under Section 64.

The expression "Adult male member" is incomplete and it appears that the intention of the law was to specify "The Adult Male member of his family residing with him ". However, the words "or his family residing with him" has nullified the phrase "any adult male member".

- (ii) by Post or by Speed Post
- (iii) by such courier services as approved by the Commissioner or the Joint Commissioner (Administration) In-charge of the division concerned or
- (iv) by Fax, by e-mail service or by any other electronic means.

Provided that if upon an attempt having been made to serve any such notice by any of the above mentioned methods, the authority under whose orders the notice was issued is satisfied that the addressee is keeping away for the purpose of avoiding service, or that for any other reason the notice cannot be served by any of the above mentioned methods, the said authority shall order the service of the notice by affixing a copy thereof on some conspicuous part of the addressee's office or the building in which his place of business(s)/office is located or where he normally resides, or upon some conspicuous part or any place or business, office or residence last notified by him and such service shall be as if it has been served on the addressee personally or by publication of such notice in any daily newspaper.

A notice under sub-section (5) of Section 72 may be served upon the dealer, or the person for the time being in-charge of goods or the person for the time being in-charge of the vehicle on which the goods are loaded by delivering a copy of the notice to such person or in case of refusal to receive notice, by affixation of such notice either on some conspicuous part of his office or residence or on the vehicle on which goods were being transported.

Section 72(5) deals with the cases where the goods are in movement without documents..

When the serving officer delivers or tenders a copy of the notice to the addressee personally or to his manager or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgement of the service endorsed on the original notice. When the notice is served by affixing a copy thereof in accordance with proviso to sub-rule (1), the serving messenger shall return the original to the authority, under whose order the notice was served, with report endorsed thereon or annexed thereto stating that he so affixed the copy, the circumstances under which he did so and the name and address of the person, if any, by whom the addressee's office or the building in which his office is or was located or his place of business or residence was identified and in whose presence the copy was affixed. The serving officer shall also require the signature or thumb impression of the person identifying the addressee's office or building or place of business or residence to his report.

When the notice is served by affixing a copy thereof it can be done only when there is someone to identify the premises of the addressee who will also sign on the report of server.
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When service is made by post, the service shall be deemed to be effected by properly addressing, pre-paying and posting by registered post the notice, and, unless the contrary is proved, the service shall be deemed to have been effected within fifteen days of issue of such notice.

The authority under whose orders the notice was issued shall, if it is satisfied from the report of the messenger or the postal acknowledgement or by taking such evidence as he deems proper that the notice has not been properly served, he may, after recording an order to that effect direct the issue of a fresh notice.

Provided that if upon service of a notice the person to whom the notice was served files a Time Petition it shall be the duty of such person to inquire about the order passed consequent upon such Time Petition and if a fresh date is fixed on the basis of the time petition filed, no further notice shall be required to be served afresh.

### **Appearance before Taxing Authorities and Tribunal and Appointment of "Tax Practitioners" (Rule 51)**

Any person who is entitled or required to appear before any authority, in relation with any proceedings under the Act: may be represented before such authority-

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- (a) By his relative or a person employed by him, or by a person declared under Section 64 of the Act and where such relative or person is duly authorized by him in declaration in JVAT 113, in this behalf; or
- (b) By a "Legal Practitioner"; or
- (c) By an "Accountant" duly authorized by him in writing in this behalf; or
- (d) By a "Sales Tax Practitioner" or a "Tax Practitioner" duly authorized by him in writing in this behalf.
- (e) A "Sales Tax Practitioner" already enrolled under the Provisions of the Repealed Act and Rules.

In all the cases "duly authorised by him in writing" has been specified except for "Legal Practitioner" and "Sales Tax Practitioner" already enrolled under the provisions of Repealed Act and Rules which appears to be an omission.

An authorization to a "Sales Tax Practitioner" or "Tax Practitioner" for appearing on behalf of any person before any authority appointed under Section 4 shall be in Form JVAT 606. Such authorization shall be valid only in respect of the proceeding for which, or in the course of which it has been given.

A "Sales Tax Practitioner" representing any person before an Authority appointed under Section 4 shall be-

- (i) a person who possesses a degree in Commerce, Law, Economics or banking including Higher Auditing conferred by any Indian University incorporated by any law for the time being in force or any Foreign University duly approved by the State Government, or who possesses such other qualification as may be recognized by the State Government in this behalf; or
- (ii) A former gazetted employee of the State Government with a minimum of ten years of service, including the period of service in the erstwhile State of Bihar in the Commercial Taxes Department, and who has also passed the Departmental Examination as required.

Except "Sales Tax Practitioner" all other class of representatives have been defined in Section 2 or Rule 2. As such the term "Sales Tax Practitioner" has been specifically defined for the purpose of this section.

The Sale Tax Practitioner and Legal Practitioner will have to apply in Form JVAT 104 before the Commissioner for enrolment of his name in a register in

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Form JVAT 605 maintained by the Commissioner. Only after the date of enrolment he shall be eligible to appear.

On receipt of application if the Commissioner is satisfied about the bona fide and antecedents of the applicant register his name shall grant to the applicant a certificate in Form JVAT 109 to that effect.

If any enrolled "Sales Tax Practitioner" or "Legal Practitioner" is found by the Commissioner to have been guilty of misconduct in any proceeding before any authority, the Commissioner may order that the name of such person be removed from the Register in Form JVAT 605 subject to the prescribed conditions.

### **Manner of obtaining copy of certain Orders by Dealers (Rule 52)**

Subject to the provision of Section 76, if any dealer or person requires a certified copy of a document filed by him or of an order concerning him passed by any authority appointed under Section 4, he shall make an application to the authority concerned. The application shall bear adhesive court-fee stamp of the value of rupees fifty for an ordinary copy and such stamps of the value of rupees hundred for an urgent copy. In addition, a searching fee of rupees five shall be levied in all cases except where the papers of which copies are required have not been deposited in the record room of the said authority.

On receipt of the application, the said authority shall inform the applicant of the amount of court-fee stamp required, under the provisions of sub-rule (1), for the supply of the copy. After the requisite amount of court-fee stamps are furnished by the applicant, the said authority shall cause a certified copy of the documents or order to be prepared and granted to the applicant.

The following additional fee in the shape of court fee stamp shall be payable for the grant of copies, namely —

Sl. No.	Particulars	Ordinary Copy	Urgent Copy
(a)	Copying fee for every 150 words or less of the order of document.	₹ 2/-	₹ 5/-
(b)	Authentication fee	₹ 4/-	₹ 7/-

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An application for a copy may also be made by registered post and in which case the applicant shall pay a consolidated fee of ₹ 10/-. In such a case, the application shall be accompanied by a challan in Form JVAT 205 showing payment of the amount into the Government treasury.

## Chapter 14

# Offences & Penalties

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*This chapter deals with section 84 to 89 of Jharkhand Value Added Tax Act, 2005 and Rule 62 of Jharkhand Value Added Tax Rules, 2006.*

### Offences & Penalties (Section 84)

For every offence punishment by way of imprisonment or penalty or both have been prescribed. Details of offences and quantum of imprisonment and fines is as below :

Relevant Section	Nature of Offence	Imprisonment Term	Max. Penalty Amount
84(1)	Whoever falsely represents that he is a registered dealer	Minimum 6 Months Maximum 1 Year	₹ 2000/-
84(2)(i)	Whoever knowingly furnishes a false return and the amount sought to be evaded exceeds ₹ 10,000/-	Minimum 6 Months Maximum 1 Year	₹ 2000/-
84(2)(ii)	Whoever knowingly furnishes a false return and the amount sought to be evaded is ₹ 10,000/- or less	Minimum 3 Months Maximum 6Months	Not specified
84(3)(i)	Whoever knowingly produces false documents before the prescribed authority and the amount sought to be evaded exceeds ₹ 50,000/-	Minimum 6 Months Maximum 1 Year	₹ 5000/-
84(3)(ii)	Whoever knowingly produces false	Minimum 3 Months	Not specified

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Relevant Section	Nature of Offence	Imprisonment Term	Max. Penalty Amount
	documents before the prescribed authority and the amount sought to be evaded is ₹ 50,000/- or less	Maximum 6Months	
84(4)	Whoever knowingly keeps false account of the value of goods bought or sold	Minimum 3 Months Maximum 3 Years	₹ 5000/-
84(5)(i)	Whoever knowingly produces false accounts or information and amount sought to be evaded exceeds ₹ 50,000/-	Minimum 6 Months Maximum 3 Years	₹ 5000/-
84(5)(ii)	Whoever knowingly produces false accounts or information and amount sought to be evaded is ₹ 50,000/- or less	Minimum 3 Months Maximum 1 Year	Not Specified
84(6)	Whoever issues false certificates, declarations etc. to any person which he knows or has reason to believe to be false	Minimum 3 Months Maximum 1 Year	₹ 5000/-
84(7)(ii)(a)	Whoever wilfully attempts to evade tax, penalty or interest and the amount involved exceeds ₹ 50,000/- in a year	Minimum 6 Months Maximum 3 Years	₹ 10000/-
84(7)(ii)(b)	Whoever wilfully attempts to evade tax, penalty or interest and the amount	Minimum 3 Months Maximum 1 Year	Not specified

*Offences & Penalties*

Relevant Section	Nature of Offence	Imprisonment Term	Max. Penalty Amount
	involved is ₹ 50,000/- or less in a year		
84(8)	Whoever aids or abets or induces any person in committing any offence in sub section 1 to 7	Minimum 6 Months Maximum 1 Year	₹ 2,000/-
84(9)	Whoever – (a) Is engaged in business as a dealer without being registered in wilful contravention of Section 25 (b) fails without sufficient cause to furnish any returns as required by Section 29 or 75 by the date and in the manner prescribed, (c) fails without sufficient cause, when directed to keep any accounts or record, in accordance with the provisions of this Act. (d) fails without sufficient cause, to comply with any requirements made of him under Section 71. (e) voluntarily obstructs any officer making inspection or search or seizure under Section 70 and 72.	May extend to one year.	Not specified

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Relevant Section	Nature of Offence	Imprisonment Term	Max. Penalty Amount
84(10)(i), (ii), (iii)	Whoever fails to furnish any return by the date and in the manner prescribed under the Act without sufficient cause	Which may extend to 6 months	which shall not be less than, (i) ₹ 2000, if the tax due for the period covered by the return does not exceed ₹ 20,000; (ii) ₹ 5,000, if the tax due for the period covered by the return exceeds ₹ 20,000 but does not exceed ₹ 1,00,000; (iii) ₹ 10,000/-, if the tax due for the period covered by the return exceeds ₹ 1,00,000/-

Surprisingly, no minimum or maximum fine has been specified in many cases, which appears to be an omission as the imprisonment has been reduced to half but penalty is not prescribed. However, the maximum fine cannot exceed the amount prescribed for evasion of higher amount of similar nature.

Notwithstanding anything contained above, no such prosecution or penalty shall be levied on any person if the total amount of tax evaded or attempted to be evaded is less than ₹ 2000/- during the period of a year.

Where a dealer is accused of an offence specified in sub-Sections (1) to (10) the person deemed to be the manager of the business of such dealer shall also be deemed to be guilty of such offence, unless he proves that the

offence was committed without his knowledge or that he exercised all due diligence to prevent the commission thereof.

In any prosecution for an offence under this Section, which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state, but it shall be a defence for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

There is no prescribed time limit and therefore proceedings under this section may be initiated at any time, and the proceedings will never be time barred.

## **Offences by Companies(Section 85)**

### **Offence by Companies and Firms**

Where an offence under this Act or the rules has been committed by a company, every person who at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that, nothing contained in this sub-Section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Notwithstanding anything contained in sub-Section- (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation -For the purpose of this Section -

- (a) 'company' means a body corporate, and includes a firm or other association of individuals as defined under Indian Companies Act 1956; and

(b) 'director' in relation to a firm means a partner in the firm.

It is interesting to note that instead of providing separate provision for firm or association of individuals, the term "Company" has been defined to include firm or other association of Individual. Further, director has been defined to include partner of a firm which means member of association of individuals will not be liable for punishment.

### **Offence by HUF**

Where an offence under this Act has been committed by a Hindu Undivided Family, the karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly;

Provided that nothing contained in this sub-Section shall render the karta liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence:

Provided further that, where an offence under this Act has been committed by a Hindu Undivided Family and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any adult member of the Hindu Undivided Family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceed against and punished accordingly.

The section has been titled as Offences by Companies, however, it also provides for offences by firms and HUF.

### **Cognizance of Offences (Section 86)**

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences punishable under this Act or rules made thereunder shall be cognizable and bailable.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, it shall be lawful for the Metropolitan Magistrate or Magistrate of the First Class to pass on any person convicted of an offence under Section 70 or 74 a sentence of fine as provided in the relevant Section, in exercise of his powers under Section 29 of the said Code.

### **Investigation of Offences (Section 87)**

Subject to conditions, if any, as may be prescribed, the Prescribed authority may authorize either generally or in respect of a particular case or class of cases any officer or person subordinate to him to investigate all or any of the offences punishable under this Act.

Every officer so authorized shall, in the conduct of such investigation, exercise the power conferred by the code of criminal procedure, 1973 upon an officer in charge of a police station for the investigation of a cognizable offence.

### **Compounding of Offences (Section 88)**

The Prescribed authority may, either before or after the institution of proceedings of any offence punishable under Section 84 or under any rules made under this Act, accept from any person charged with such offence by way of composition of the offence charged under sub-Sections (1) to (10) of Section 84 not exceeding double the amount of tax which would have been payable on the sale or purchase turnover to which the offence relates.

On payment of such sum as may be determined by the Commissioner as above, no further proceedings shall be taken against the accused person in respect of the same offence and any proceeding, if already taken, shall stand abated.

- |   |
|---|
| <ul style="list-style-type: none"><li>▪ Not every offence u/s 84(1) to 84 (10) relates to sales and purchase turnover and therefore, how the amount shall be calculated in those cases is doubtful.</li></ul> |
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## Appendix-I

### List of VAT Forms

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Sl.	Form No.	Purposes & Uses of the Forms thereof, for the purpose of VAT Act & Rules
1.	J VAT 100	Application for Registration for existing dealer under the Repealed Act
2.	J VAT 101*	Application for Registration for the new dealer creating their liability under the VAT Act 05
3.	J VAT102	Application for Registration for start-up business
4.	J VAT 103	Application for Registration for Presumptive Tax / Composition Tax Dealers
5.	J VAT 104	Application for enrolment of STP
6.	J VAT 105	Application for cancellation for Registration Certificate
7.	J VAT 106*	Registration Certificate
8.	J VAT107#	Certification of Registration for start-up business
9.	J VAT 108	Certificate of Registration for Presumptive Tax/ Composition Tax Dealers
10.	J VAT 109	Certificate of STP
11.	J VAT 110*	Amendment in Registration Certificate (for additional places of business)
12.	J VAT 111	Cancellation of Registration Certificate
13.	J VAT 112	Compulsory cancellation of Registration Certificate
14.	J VAT 113	Declaration of Business Manager
15.	J VAT 114	Declaration of Stock as on Appointed Day
16.	J VAT 115	Security Bond
17.	J VAT 116	Application for Refund of amount forfeited u/s 48 of the Act
18.	J VAT 117	Application for obtaining Transit Pass
19.	J VAT 118*	Application for claim of Input Tax paid on Capital goods

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Sl.	Form No.	Purposes & Uses of the Forms thereof, for the purpose of VAT Act & Rules
20.	J VAT 119	Application for withdrawal from opting composition of tax payable by the dealer
21.	J VAT 120*	Appl. for grant of certificate for non-deduction of tax form bills of a supplier / works contractor
22.	J VAT 121	Application for deferment of Tax u/s 95(3) of the Jharkhand VAT Act 05
23.	J VAT 122	Indemnity Bond for loss of Declaration Form in JVAT 505 series
24.	J VAT 123	Application for grant of Installment for payment of Tax
25.	J VAT 124*	Application for Self-Assessment
26.	J VAT 200#	Monthly Returns and Revised Returns
27.	J VAT 201	Return on cancellation of Registration Certificate
28.	J VAT 202	Declaration by a Casual Trader
29.	J VAT 203	Return by Casual Dealer
30.	J VAT 204	Annual Return with Annexure
31.	J VAT 205*	Payment of Tax into the Treasury / Challan
32.	J VAT 206	Application for Refund
33.	J VAT 207	Application for Provisional Refund
34.	J VAT 208	Application for Refund for others
35.	J VAT 209	Refund Order
36.	J VAT 210	Refund by Adjustment Order
37.	J VAT 211	Form of Return for dealers opting Composition and Presumptive Tax
38.	J VAT 212	Form of Annual Return for dealers opting Composition and Presumptive Tax
39.	J VAT 213 @	Form of Monthly Return
40.	J VAT 214 @	Form of Quarterly Return for the dealers dealing in medicine and as well as other Vatable goods
41.	J VAT 300	Notice of Demand
42.	J VAT 301	Notice for attachment (special mode of recovery)

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Sl.	Form No.	Purposes & Uses of the Forms thereof, for the purpose of VAT Act & Rules
43.	J VAT 302	Notice for hearing
44.	J VAT 303	Notice for Scrutiny of Returns
45.	J VAT 304	Notice/Information for Audit Assessment
46.	J VAT 305	Notice for forfeiture u/s 48 of the Act
47.	J VAT 306	Notice of Suspension of Registration Certificate
48.	J VAT 307	Notice for ineligibility of Input Tax Credit on Capital Goods
49.	J VAT 308	Notice of Demand of Excess Input Tax Credit availed
50.	J VAT 400	Certificate of Tax Recovery at Source
51.	J VAT 401	Claim for Input Tax Credit on Opening Stock
52.	J VAT 402*	Information of Input Tax Credit on Opening Stock
53.	J VAT 403	Declaration for First Point of Levy (Part E of Schedule II)
54.	J VAT 404	Form of Declaration under the Jharkhand Value Added Tax Rules 2006 (for goods in Part A, B, C & D of Schedule-II of the Act)
55.	J VAT 405	Claim for Entry Tax paid in the State
56.	J VAT 406*	Grant of Input Tax Credit on Capital goods purchase
57.	J VAT 407	Certificate for non-deduction of Tax u/s 45 of the Act
58.	J VAT 408	Certificate of eligibility for deferment of Tax
59.	J VAT 409	Form of Certificate of Audit
60.	J VAT 410 @	Form of Certificate for collecting tax on MRP for medicines
61.	J VAT 411 @	Form of Certificate to be issued for tax on MRP paid at preceding stage
62.	J VAT 500	Monthly Accounts of Input Tax including Entry Tax
63.	J VAT 501	Monthly Accounts of Output Tax
64.	J VAT 502	Application for obtaining Declaration for Transport of certain goods and Permit thereof
65.	J VAT 503	Permit for Transport of the consignment in the State
66.	J VAT 504P	Road Permit for Registered Dealer

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Sl.	Form No.	Purposes & Uses of the Forms thereof, for the purpose of VAT Act & Rules
67.	J VAT 504G	Road Permit for Registered Dealer
68.	J VAT 504B	Road Permit for Registered Dealer
69.	J VAT 505	Certificate of Sale proceeds by the Commission Agent to the Principal
70.	J VAT 506	Form of Declaration in case of Branch Transfer within State
71.	J VAT 507	Form of Declaration to be issued by the Principal to his Agent or Branches/Unit.
72.	J VAT 508	Transit Pass
73.	J VAT 509	Register for maintaining the declarations in Form JVAT 505 series for the selling dealers
74.	J VAT 510	Register for maintaining the declarations in Form JVAT 505 series for the purchasing dealers
75.	J VAT 511	Register of Delivery Note by a clearing or forwarding agent
76.	J VAT 600	Memorandum of Appeal
77.	J VAT 601	Application for Condonation for delay for filing Appeal
78.	J VAT 602	Application for Revision by Commissioner
79.	J VAT 603	Application for stay of recovery in Appeal/Revision
80.	J VAT 604	Application for revision before the Tribunal
81.	J VAT 605	Form of Register for enrolment of "STP" or "Tax Practitioners"
82.	J VAT 606	Authorisation of STP before the Prescribed Authority

*\* Amended by Notification No. 62 dt. 9/3/07*

*# Substituted by Notification No. 62 dt. 9/3/07*

*@ Added by Notification No. 62 dt. 9/3/07*

## Appendix-II

# Summary of Schedules

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The Act contains 3 Schedules as per details given below :

Sl. No.	Particulars	Contents
1	Schedule I	List of Goods Exempted from Payment of VAT
2	Schedule II – Part A	Goods Taxable @ 1%
3	Schedule II – Part B	Goods Taxable @ 5%
4	Schedule II – Part B (Annexure)	Industrial Inputs & Packing materials as specified in Sl. No. 69A of Schedule II – Part B
5	Schedule II – Part C	Goods Taxable @ 5%
6	Schedule II – Part D	Goods Taxable @ 14%
7	Schedule II – Part E	Special rate of Tax
8	Schedule II – Part F	Any rate for any class of goods as may be specified in this part
9	Schedule III	List of Goods Liable to Entry tax ( <i>Abolished</i> )



