

INDIRECT TAXES UPDATE – 156

VALUE ADDED TAX

WEST BENGAL VAT

Claim of ITC in case of sale-purchase mismatch

Due to clerical mistakes committed while filing annexures along with the returns such as entering wrong TIN, etc., undue hardship is being caused to the purchaser while claiming input tax credit. It has been clarified that the dealers must verify the quarter-wise sale-purchase mismatch list for each quarter available in the module named "Dealer Profile" on www.wbcomtax.nic.in and revises the returns within 6 months from the last date for submission of the original return for the respective quarter, if necessary; failing which demand notice may be issued to the purchasers.

[Circular No 04/2016 dated 4th April, 2016]

Comment: To ensure the facility of seamless input tax credit in the hands of the purchasers, the West Bengal Government has provided a facility for quarterly revision of details of sales uploaded by seller in case of mismatch.

MAHARSHTRA VAT

Amendments made to the Maharashtra Value Added Tax Act, 2002

Following Sections have been proposed to be amended in the MVAT Act, 2002

Section 16 : Rejection / Cancellation of Registration Certificate

- The prescribed authority may pass a rejection order without giving an opportunity of being heard but after intimating the applicant, if the registration application is:
 - not complete or
 - documents required have not been uploaded on www.mahavat.gov.in or
 - documents are inconsistent or
 - prescribed conditions are not fulfilled

Further if the applicant complies with all the discrepancies intimated within 30 days from the date of intimation of rejection order and if such compliance is approved by the prescribed authority then the application so rejected, shall stand restored. However, the applicant shall be eligible to rectify the discrepancies only once.

- If any person has obtained registration by fraud or by misrepresentation of facts then the Commissioner may cancel the registration certificate with effect from such date as he may deem fit after giving a reasonable opportunity of being heard to the dealer.

Section 20 (Returns & Self-assessment)

A revised return for any omission or incorrect statement may be furnished at any time before a notice of assessment is served or before the expiry of a period prescribed for furnishing the audit report i.e. within 9 months and 15 days of the end of the year (earlier 10 Months) to which the report relates to, whichever is earlier.

Section 23 (Assessment)

Returns for the period commencing on or after 01.04.2012 and filed within the due date would be assessed on the basis of such return. Further if assessment order is not made within 4 years from the end of the year to which such returns relate then such returns shall be deemed to have been accepted.

An intimation of assessment proceeding shall be communicated to the dealer within 6 months before the date of expiry of the period of limitation for assessment. If the dealer agrees with the intimation and files the return or revised return along with full payment of tax and interest, then a confirmation order shall be passed and the assessment proceedings shall be deemed to have been closed.

Section 26 (Appeals)

An appeal can also be preferred against the order of Advance Ruling Authority.

A new **Section 28A (Determination of tax liability as per fair market price)** has been inserted providing that during the course of any proceedings if any transaction is entered for a sale price which is below the fair market price (FMP) so as to pay less tax, then the Commissioner shall determine the tax liability as per the FMP while passing an order in such cases.

Section 31 (Deduction of tax at source)

It has been provided to transfer the credit of TDS by the contractor to the subcontractor for the TDS deducted by principal on payment made to a contractor. Further, the employer awarding the contract shall be liable to obtain registration for TDS & such TDS return shall be filed by him. No registration is required to be obtained by an employer if he is already registered under the Act. Penalty upto the amount of tax deductible may be imposed for not obtaining such registration. A further penalty of upto Rs. 5,000 may be imposed for failure to submit the return. The employer may also furnish a revised return on or before the expiry of a period of 9 months from the end of the year to which the return relates.

Section 55 (Advance Ruling)

This section has been substituted with the following:

- The Commissioner or the ARA shall make an advance ruling within 90 days from the date of acceptance of the application for the questions prescribed.
- Application may be withdrawn within 30 days from the date of its submission.
- No application shall be accepted where the question raised in the application:
 - is already pending before the Tribunal/ Bombay High Court/ Supreme Court or
 - involves a transaction which is designed apparently for the avoidance of tax.
- The acceptance of the application shall be communicated within 30 days from the date of submission.
- The Advance Ruling (AR) shall be binding on all the officers, appellate authority or on the ARA/ Commissioner for similarly situated persons.
- The AR shall not affect the liability of the applicant or of any other person similarly situated in respects of any sale or purchase affected prior to the Advance Ruling.
- The appeal / rectification against the AR order can be filed within 30 days.

Section 70 (Power to collect statistics)

A sub-section (3) has been inserted stating that any person who fails to furnish information shall be liable to a penalty of a sum not exceeding Rs. 1 lakh and in case of continuing default for a period beyond 2 months then a further penalty of Rs. 1,000 for every day.

Section 56 (Determination of disputed questions) has been deleted.

[Maharashtra Bill No. L. A. BILL No. XVIII OF 2016]

Comment: To give effect to the budget proposals the following amendments have been made to the MVAT Act, 2002

- a. The provisions relating to registration process has been amended to provide for rectification of mistakes in the application for registration form. The relevant section also speaks of powers to weed out illegal registration.*
- b. The time limit for filing a revised return has been reduced from 10 months to 9 months and 15 days or date of notice, whichever is earlier.*
- c. For returns filed after 01.04.2012, the returns shall be deemed accepted if no assessment order is made within 4 years from the end of the year to which such return relates*
- d. To prevent loss of revenue, the Commissioner is empowered to fix the fair market price and calculate tax liability on such fair market price*
- e. To prevent deduction of tax at source twice, and alleviate the difficulties of a contractor / sub-contractor it is now possible to transfer the tax deducted by the principal on the contractor to the sub-contractor hired by such contractor*
- f. The procedure for obtaining an advance ruling has now been made much simpler.*

UTTARAKHAND VAT

Amendments made to the Uttarakhand Value Added Tax Act, 2005

Following Sections of Uttarakhand Value Added Tax Act, 2005 have been amended by the Uttarakhand Finance Act, 2016 :

Section 17 (Procedure for registration)

A dealer opening / closing any bank account which is not mentioned in the application of registration shall be required to inform of such opening / closing within 30 days.

Section 25(9) : Tax Audit & its Assessment

Clause (e) has been substituted to provide that the officer conducting tax audit shall now have powers to make extracts or copies of other documents, inventory of stock.

Clause (f) has been substituted to provide that the tax audit authority after considering all the evidence collected during the course of assessment proceeding may :-

- Confirm the order which has already been passed or
- Set aside the order and reassess the turnover and tax of the dealer or
- Assess the amount of tax due if no assessment has been made so far;

No such assessment or reassessment shall be made unless a reasonable opportunity of being heard has been given to the dealer. Further, not more than three adjournments shall be granted during the hearing of the case.

Section 29 (heading has been changed to 'Assessment of the Turnover not Assessed or Assessed at lesser rate during the year')

Sub-section (1) has been substituted to provide that the Assessing Authority can make assessment in every case where he has a reason to believe that the whole or any part of turnover or tax has:

- (a) escaped assessment; or
- (b) been under assessed; or
- (c) been assessed at a rate lower than the rate at which it is assessable; or
- (d) been wrongly allowed any exemption or deduction therefrom; or
- (dd-New clause) During assessment, rebate or concession has been allowed on the basis of submitted declaration form or certificate but such declaration form or certificate is found to be false or wrong afterwards; or
- (e) been wrongly allowed any tax credit therein,

Sub-section (4) has been amended to provide that the Commissioner is not authorised to make any reassessment after the expiry of 4 years from the date of the order sought to be

reassessed.

Section 34 (Payment & Recovery of Tax)

Sub-section (17A) has been inserted to provide that if a person fails to pay the amount due to a dealer or money held for or on account of a dealer to the Assessing Authority then he shall be liable to pay an amount not exceeding the amount due as penalty.

Section 34A (Tax to be first Charge) has been inserted to provide that any amount of tax, penalty or other amount payable by a dealer or other person shall be first charged on the property of the dealer or such person.

Section 51 (First Appeal)

A sub-section (4A) has been inserted providing that:

Following appeals shall be entertained-	Condition: Furnish a proof of payment of-
Ex-parte Order	5% of amount of disputed tax or penalty or Rs. 1 Lakh ; whichever is less
Any other order (except ex-parte order) or penalty	20% of the amount of disputed tax/ penalty etc. or Rs. 5 lakhs ; whichever is less
Any declaration form or certificate of turnover of concession or rebate, which is being rejected or not produced before the Assessing Authority	10% of the amount at general rate of tax payable on the amount of the turnover of such declaration form or certificate, rejected or not produced

Section 58 (Offences & Penalties)

The amount of maximum penalty has been increased from Rs. 2,000 to Rs. 10,000 for each default where the dealer refuses or neglects to furnish any information which may be in his knowledge or possession or furnishes information which is false in any material particulars.

Section 61 (Period for which Accounts to be retained)

Every dealer shall preserve all accounts required to be maintained by him for a period of 8 years (earlier it was 6 years) after the close of the assessment or till the assessment or reassessment or any other proceedings for such assessment year is completed, whichever is later.

Section 31 (Power to set aside an Order of Assessment) & Sub-section (6) of Section 32 (Period of Limitation for making Assessment or Reassessment) have been deleted.

[Notification No. 103/XXXVI(3)/2016/15(1)2016 dated 31st March, 2016]

Comments: To give effect to the budget proposals, the following amendments are made:

- a. Process has been set in motion to keep track of bank accounts opened / closed by dealers
- b. The procedure for assessment has been amended to grant powers to the assessing officers to conclude orders based on documents / data / details collated.
- c. To secure the State Revenue tax, will be treated as first charge on property of dealers
- d. To prevent filing of frivolous appeals and to augment State Revenue a new sub-section has been inserted to provide for minimum payment of taxes before an appeal is admitted before the FAA.
- e. To ensure all available information is produced, the penalty for concealing and producing wrong information is enhanced.

HIMACHAL PRADESH VAT

Amendments proposed to the Himachal Pradesh Value Added Tax Act, 2005

Following amendments have been proposed to the Himachal Pradesh Value Added Tax Act, 2005 vide *Bill No. 7 of 2016*:

Section 11 (Input Tax Credit)

Situation where dealer-	Earlier Penalty	Penalty Proposed
Falsely claims ITC in his returns	Twice of such claim or credit	Amount equal to such claim or credit
Claims incorrect ITC in the return	50% of such claim or credit	25% of such claim or credit

Section 14A (Application for grant of Provisional Registration Certificate) has been proposed to be inserted which provides that:

- Any person may apply for registration by way of an online application along with scanned copies of the prescribed documents.
- The Provisional Registration Certificate (RC) shall be granted within 3 working days on receipt of the application.
- Thereafter, the applicant may be directed to produce other evidence and documents and accounts relating to the business for verification. On being satisfied, the prescribed authority shall issue a Permanent RC within 30 days from the date of receipt of application.
- However, the prescribed authority may reject the application & cancel the Provisional RC within 30 days of receipt of application if it is satisfied that the particulars given are incorrect or that the applicant has misrepresented certain facts. Such cancellation may be made only after giving the applicant an opportunity of being heard.

Section 16 (Payment of tax and returns)

Particulars	Earlier penalty when annual tax liability is more than Rs. 20 lakhs	Proposed Penalty
Failure / delay to file monthly returns	Rs. 1,000 per day	Rs. 1,000 per day subject to maximum of Rs. 50,000

Where a dealer has closed down his business or has left the business without getting his RC cancelled then the Assessing Authority shall suspend the RC immediately and thereafter no further incremental penalty shall be imposed.

Section 27A (Special provision for settlement of pendency and arrears) has been amended to provide a Settlement Scheme for cases of a particular period where the dealer could not submit the statutory forms required for assessment. The Scheme will allow for waiver of the tax amount, interest and penalty.

Section 49A (Advance Ruling) has been proposed to be inserted which provides that:

- An 'Advance Ruling Authority (ARA)' is constituted to clarify the rate of tax or the eligibility to tax of any transaction or eligibility of deduction of input tax or liability of deduction of tax at source.
 - Any registered dealer can make an application accompanied by proof of payment of fees.
 - The Authority after examining may either admit or reject the application. Further, the application shall not be accepted where the question raised:
 - is already pending before any appellate authority or
 - relates to a transaction which is designed apparently for the avoidance of tax.
- Moreover, no application shall be rejected unless an opportunity of being heard is given to the dealer and reasons for such rejection shall be recorded in the order.
- The order shall be passed within 90 days of the receipt of application. A copy of every order shall be sent to the applicant and the officer concerned.

[Bill No. 7 of 2016]

Comments: To give effect to the proposals made in the budget, the following amendments have been made:

- a. The provisions relating to penalty in respect of false / incorrect claim of ITC and for belated filing of returns is reduced*
- b. Facility to grant provisional registration is introduced for ease of business*
- c. Settlement scheme for non-receipt of statutory declaration forms for concessional rate of tax introduced which would benefit the dealers at large*
- d. An authority for advance ruling set up which is the need of the hour which could result in reduction of litigation.*

RAJASTHAN VAT

Amendment to the Rajasthan Value Added Tax Act, 2003

Following Sections of Rajasthan Value Added Tax have been amended vide *Act No. 5 of 2016*:

Section 2 (Definitions)- Capital Goods

It has been clarified that generating set used for generation of electrical energy to be used in manufacturing shall be treated as capital goods.

Section 13 (Authority competent to grant registration)

Intimation regarding change in principal place of business outside the territorial jurisdiction of the present assessing authority shall be given within 30 days as against earlier period of 60 days. However, if the permission is not granted within 30 days from the date of the application then such permission shall be deemed to have been granted.

Section 24 (Assessments)

A proviso has been inserted under sub-section (5) providing that the assessment for the year 2013-14 shall be made within 31.07.2016.

Section 33 (Rectification of a mistake)

Under sub-section (3) the period of 1 year for the rectification of mistake has been reduced to 6 months from the date of presentation of application to the assessing authority. Further, the application pending before assessing authority on 1.04.2016 shall be disposed of within 30.09.2016 or within 1 year from the date of presentation, whichever is earlier.

Section 51A (Power of State Government to waive penalty and interest in certain cases)

Now State Government has been empowered to reduce or waive late fee payable for any period by any class of dealers in addition to penalty and interest.

Section 53 (Refund)

A sub-section (3A) has been inserted providing that the Commissioner of VAT has been empowered to grant refund in cases where tax amount has been wrongly deposited or in excess of the amount due.

[Act No. 5 of 2016]

Source: Respective State Commercial Taxes Website

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