Technical Guide to Karnataka VAT

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

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Foreword

VAT is an internationally recognized multipoint tax system. The principle of VAT contemplates levy of tax at each stage of value addition till the point of consumption, and realization of full tax on the final sale value from the consumer. In India, VAT was introduced in most of the State from April 1, 2005. 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.

The system of VAT, on the one hand, remove the cascading effect of taxes as it allow credit of taxes paid at the earlier stages and thus benefiting the consumer. On the other hand, it increases the 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.

Considering that though the broad design of the State-level VAT is uniform across the country, every State has its own VAT legislation and procedures differ on many counts from one State to another, Indirect Taxes Committee of the Institute of Chartered Accountants of India (ICAI) published Technical Guides to VAT in respect of 10 States in the year 2014-15. During the year, the Committee has been revising all these guides as a publication in tax laws retains its significance only when it is updated and reflects the current position of the law. I compliment CA. Atul Gupta, Chairman, CA. Shyam Lal Agarwal, Vice-Chairman and other members of Indirect Taxes Committee of ICAI for their untiring efforts in bringing out the revised edition of *Technical Guide to Karnataka VAT*.

I am sure that this updated Guide would be warmly received and appreciated by the members and other interested readers.

Date: 31st July, 2015
Place: New Delhi

CA. Manoj Fadnis
President

Preface

Based on sound economic rationale, the system of Value Added Tax was introduced in majority of the States from April 1, 2005. The objective of bringing transparency in taxation, minimizing cascading effect of taxes and cutting trade barriers to large extent has been achieved as it allow credit of taxes paid on earlier stages and meticulous documentation is a *sine quo non* for it. Further, the requirement of maintaining tax invoices for claiming input tax credit has also increased self-compliance by the dealer and has thus resulted in increase in the total revenue of State Governments. The Country is now all set to witness another major reform i.e. introduction of GST which will integrate the principle of taxation of value added in India at the State level in the form of State VAT and at the Central level in the form of CENVAT.

In order to facilitate the members in understanding the State level VATs, the Indirect Taxes Committee in the year 2014-15 has brought out Technical Guides to VAT in respect of various States. Considering the changes made in the VAT Law through Finance Act, notifications/ circulars etc., the Committee thought it fit to revise all these guides as a publication in tax laws retains its significance only when it is updated and reflects the current position of the law. Accordingly, it has been revised. This revised guide intends to give a general guidance to the members to address the various issues that may arise in the Karnataka VAT.

I am extremely thankful to CA. Manoj Fadnis, President and CA. M. Devaraja Reddy, Vice-President, ICAI and members of the Committee for their support and guidance in this initiative. Further, I thank CA. Annapurna Kabra for thoroughly revising the Guide with updated provisions of Karnataka VAT. I am sure that this revised publication would help the members and readers to be well equipped in effectively discharging their duties as Karnataka VAT practitioners.

I look forward to receiving feedback for further improvements in this Technical Guide at idtc@icai.in.

Date: 31st July, 2015
Place: New Delhi.

CA. Atul Gupta
Chairman
Indirect Taxes Committee

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Chapter1
Introduction

Tax is a price which people have to pay for living in a civilised society, said Judge Holmes of the US Supreme Court; the same was reiterated in the case of *Parashuram Pottery Works Co Ltd*[1]. The government needs taxes to maintain a civilised society, and these are collected across the globe directly or indirectly through direct and indirect taxes.

In the Indirect tax regime, VAT is an internationally recognized multipoint taxation system, providing for levying of tax on goods as well as on services on the value addition provided at every stage in the supply chain of a business activity.

The principle of VAT contemplates levying of tax on the consumption of either goods or service or both. The tax burden is borne by one person, but is paid by another person. The collector acts as a mere agent who collects the tax and remits the same to the credit of the State or Central Government (as the case may be).

In India, the Constitution of the country empowers the State Governments to levy tax only on the sale of goods.

VAT comprises of three words Value, Added and Tax. Value Added Tax is a tax on every value addition. The value addition is subjected to tax at each stage of the transfer in property. At each stage of trade/transfer involving the act of value addition, such value addition is taxed and tax paid on all purchases including on capital investment is rebated. The thesis explains the basics of technical guide of VAT under the Karnataka VAT Act, 2003 ('KVAT law')

[1] 1977 – 106 – ITR – 1 - SC

Chapter 2
Registration of a Dealer

Registration Criteria

Registration will be compulsory for dealers having a turnover that exceeds the threshold decided by each state of India. In Karnataka, if the taxable turnover of a dealer is likely to exceed 10 lakh[2] during a financial year or if the taxable turnover exceeds 83,330.00 (eighty three thousand three hundred and thirty)[3] in any one month, then such a dealer has to get himself registered.

The KVAT law provides also for voluntary registration and Suo Moto registration, but it does not provide for temporary registration before granting final registration. The KVAT law states that a dealer who sells taxable goods but is not liable to register under section 22 can get himself registered voluntarily, if he so desires. For this, he will need to l make an application to the prescribed authority in such form and in such manner as may be prescribed, giving correct and complete particulars.

A dealer who effects sale of exempted goods or a dealer whose turnover is below the prescribed limit is exempted from registration.

Registration Procedure

All the dealers who want to get registered have to submit Form VAT 1 to the Jurisdictional Registering Authority (a person in charge of local VAT office or a VAT sub office). The prescribed authority may for the proper payment of tax from time to time demand from a registered dealer or from a dealer who has applied for registration under this Act a reasonable security amount, but it cannot exceed the prescribed amount to be paid in a prescribed manner. The security for a composition dealer shall be the amount of tax anticipated in following two months and in the case of a regular dealer the tax, anticipated in the following three months. The mode of security can be either

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[2] Substituted vide Karnataka VAT (Amendment) Act, 2015. Earlier limit was ₹ 7.50 Lakhs

[3] Substituted vide Karnataka VAT (Amendment) Act, 2015. Earlier limit was ₹ 62,500.00

Government securities, guarantee by a scheduled bank or in any other form notified by the Commissioner:

The documents to be attached with the application of registration are: the dealer's PAN Card Copy, MOA & AOA Copy/partnership deed/etc, copy of ROC Form-32, Form18, copy of Office Address Proof (Rent Agreement) or Corporation tax receipt as proof of owned property, Copy of property details either in the name of the company or in the name of the director, Copy of VAT and CST Registration obtained from another state, copy of residential address proof & ID proof of each director, copy of the office electricity and telephone bill, list of branches and bank accounts, six passport size photographs of the Directors and an Authorized person (Manager), details of business, which include the list of manufactured goods, list of trading goods, list of packing goods, list of machinery, estimated date of the commencement of business with estimated turnover for the forthcoming tax periods.

Revolution in Registration

Earlier, dealer filed the registration application manually for registering under the KVAT Act. But after the introduction of the E-VARDAN in February 2011, the dealers can request for registration under KVAT law through the departmental website. This facility helps both the dealers and the department in maintaining a correct and a complete updated registration data base which also enables new registrants to obtain C Forms, e-sugam, etc.

Once the registration process is accepted, then the 'TIN' (registration number) is allotted along with user ID and password. To complete the process of registration, the dealer has to log into website http://ctax.kar.nic.in/ and follow the simple procedure contained in the user's manual on registration by entering the applicable details. The information is required to be entered in the appropriate boxes by choosing respective business status, business address, and residential address, statutory authorities, bank details, PAN Number, Central Excise/Service Tax Registration and tax regime (VAT/COT/MULTIPLE).

Further, the dealer has also to scan and upload all the relevant documents required for registration. The registration processing Fee (RF) of ₹ 500/- has to be remitted through e-payment/cash/ DD in favour of LVO/VSO [Registering Authority (RA)] concerned. The date of the payment of registration fee will determine the effective Date of Registration approved by the registering authority. The application will be rejected if the Registration Fee is not paid within seven days from the date of acknowledgment. The

dealer should pay Registration Fee preferably by e-Payment mode. The Registration Authority will process the application only after the registration fee has been remitted.

When the process of registration is completed, the dealer should note down the e-registration reference number and date for future reference. The dealer should view 'status' option to know the appointments/visit to his business premises by Commercial Tax Inspector (CTI) for verification/enquiry/ inspection. The dealer should then produce all the original documents and furnish the related information to CTI when he visits dealer's business place for verification/confirmation. The dealer should handover a signed copy of form VAT-1 completed in all respects to the CTI at the time of his/her visit. Once the registration is granted, the dealer can download Registration Certificate (RC) from the system. The dealer may get the signature and seal of the Registration Authority on the Registration certificate, if required.

The registration numbers are allotted electronically and the registration certificate shall be in Form VAT 7 for regular dealers and Form VAT 8 for composition dealers. No separate registration is required for works contract. The registration procedure is the same for all kinds of dealers. The details of additional place of business should be furnished in Form VAT 3 and the details of partners/directors should be furnished in Form VAT 4. The Authorized signatory should fill Form VAT 5.

The registration is centralized within the State and the data of all the branches is consolidated and filed to the Jurisdictional Principal place of business. But Rule 47 provides for separate registration and filing of returns by the branches of corporate bodies. Where the dealer is a body corporate and has more than one place of business, then, if it so desires, the Commissioner, on an application from him, and on being satisfied that filing of monthly return within the specified time causes hardship to the dealer, may by a special order, permit each branch to file separate return to the VAT officer in which the main place of business of such dealer is situated.

Each of these returns will be treated as a separate business and has to be assessed or reassessed separately but by the same officer as authorized by the Commissioner and such permission shall be subject to the provision of the Act and rules relating to registration, filing of returns, assessments, payments and recovery of tax or other amounts due and subject to the condition that the tax payable under any of the provisions of the Act by each of such branches, together with other places of business in the state shall not be less than the tax that would have been payable by him under any of such

provisions of the Act if such branch was not treated as a separate unit. Every branch shall get registered as required under these rules irrespective of its turnovers in any year. Every branch shall be assessed to tax under the Act irrespective of its turnover and as such rate or rates applicable.

There is a provision for registration of non-resident dealers and dealers from abroad who do not have offices in India. The procedure for them is similar to what it is for the state dealers but they have to produce property details, and VAT registration details in other state. The security deposit will generally be more than that of the local dealer.

Amendment to Registration

Amendment to registration certificate is required in the following instances: where a registered dealer sells or otherwise disposes of his business or any part thereof or there is any other change in the ownership of business including any change in its status or a registered dealer discontinues his business or changes his place of business or opens a new place of business or a registered dealer changes the name or nature of the business and also in the case of the death of a dealer, his legal representative informs the changes accordingly.

The time limit for intimating the authorities about amendment in the registration certificate is 30 days from the change of data or details furnished. The registration is cancelled where any business of a registered dealer has been discontinued, transferred fully or otherwise disposed of or there is any change in the status of the ownership of the business or the taxable turnover of the sale of goods of a registered dealer has during any period of twelve consecutive months not exceeded 10 Lakh[4] rupees or a dealer issues tax invoices without effecting any taxable sales or a dealer registered as an individual under this Act, dies.

There is no provision for suspension of registration, where a change of ownership of the business takes place on account of transfer of business from one registered dealer to another, and the dealer succeeds to the business or there is any change in the status of the ownership of the business. In such instances, a fresh application for registration should be made. When the application for local registration is made and if there is any interstate transaction either of purchases or sales, then Even CST form in

[4] Substituted vide Karnataka VAT (Amendment) Act, 2015. Earlier limit was ₹ 7.50 Lakhs

Form A should be applied along with VAT Application. There will be one common TIN for both local law and interstate transactions. The registration certificate for interstate transactions will be in Form B. Along with the application for registration even the power of Attorney in Form VAT 555 can be submitted for representing before the departments with respect to registration and for further proceedings of the law.

Dealer [Section 2(12)]

'Dealer' means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, or for remuneration, or for any other valuable consideration, and includes

(a) an industrial, commercial or trading undertaking of the Government, the Central Government, a State Government of any State other than the State of Karnataka, a statutory body, a local authority, a company, a Hindu undivided family, an Aliyasanthana Family, a partnership firm, a society, a club or an association which carries on such business;

(b) a casual trader, a person who,, whether as principal, agent or in any other capacity, carries on occasional transactions of a business nature involving buying, selling, supplying or distributing goods in the State, whether for cash or for deferred payment, or for commission, remuneration or for any other valuable consideration;

(c) a commission agent, a broker or del credere agent or an auctioneer or any other mercantile agent by whatever name called, who carries on the business of buying, selling, supplying or distributing goods on behalf of any principal;

(d) a non-resident dealer or an agent of a non-resident dealer, a local branch of a firm or company or association situated outside the State;

(e) a person who sells goods produced by him by manufacture or otherwise;

(f) a person engaged in the business of transfer otherwise than in pursuance of a contract of property in any goods for cash deferred payment or other valuable consideration;

(g) a person engaged in the business of transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract;

(h) a person engaged in the business of delivery of goods on hire purchase or any system of payment by installments;

(i) a person engaged in the business of transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or any other valuable consideration.

Explanations: (1) A society (including a cooperative society), club or firm or an association which, whether or not in the course of business, buys, sells, supplies goods or distributes goods from or to its members for cash, or for deferred payment or for commission, of for remuneration or for any other valuable consideration, shall be deemed to be a dealer for the purposes of this Act.

(2) The Central Government or a State Government or a local authority or a statutory body which whether or not, in the course of business, buys, sells, supplies or distributes goods, directly or otherwise, for cash or deferred payment or for commission, or for remuneration or for any other valuable consideration shall be deemed to be a dealer for the purposes of this Act.

(3) In respect of the transfer of the right to use feature films, the person who transfers such right to the exhibitor and from whom the exhibitor derives the right to make such use shall be deemed to be the dealer under this clause.

(4)(a) An agriculturist who sells exclusively agricultural produce grown on land cultivated by him personally or a person who is exclusively engaged in poultry farming and sells the products of such poultry farm shall not be deemed to be a dealer within the meaning of this clause;

(b) Where the agriculturist is a company and sells [1][arecanut][1] , pepper, cardamom, rubber, timber, wood, raw cashew or coffee grown on land cultivated by it personally, directly or otherwise, such company, shall be deemed to be a dealer in respect of turnovers relating to sales of such produce.

Liability to Register (Section 22)

Section 22(2): Every dealer who at any time has reason to believe that his taxable turnover is likely to exceed 10 Lakh[5] rupees during any year after the

[5] Substituted vide Karnataka VAT (Amendment) Act, 2015. Earlier limit was ₹ 7.50 Lakhs

year ending 31st day of March shall be liable to be registered and report such liability forthwith or on such date as may be notified by the Government.

Section 22(3): Every dealer whose taxable turnover exceeds Eighty three thousand three hundred and thirty[6] rupees in any one month after the date from which the tax shall be levied, in accordance with Section 3, shall register forthwith.

Section 22(4): Every dealer to whom a business or part of a business is transferred by another dealer who is liable to be registered under this Act, shall apply for registration from the date of that transfer, if he is not already registered.

Section 22(5): Every dealer liable to register under sub-sections (2), (3) or (4) shall report his liability to be registered in the prescribed manner as stated in Rule 4 at the end of the month on which that liability arises or on such date as may be notified under sub-section (2).

Section 22(6): Every dealer who obtains or brings taxable goods from outside the State, whether as a result of purchase or otherwise, shall be liable to be registered after such first purchase or procurement irrespective of the value of goods purchased or procured and shall report such liability at the end of the month in which such purchase or procurement takes place.

Section 22(7): Every dealer who exports taxable goods is liable to register after the first export and shall report such liability at the end of the month in which such export takes place.

Section 22(8): Every dealer who effects sale of taxable goods in the course of interstate trade or commerce or dispatches taxable goods to a place outside the State is liable to register after the first sale or dispatch and shall report such liability at the end of the month in which such sale or dispatch takes place.

Section 22(9): Every casual trader and every non-resident dealer or his agent shall be liable to register [before the commencement of his business] irrespective of the value of the taxable goods sold and shall report such liability forthwith.

Section 22(10): In determining whether a person is liable to be registered under sub-sections (1), (2) or (3), the prescribed authority may have regard

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[6] Substituted vide Karnataka VAT (Amendment) Act, 2015. Earlier limit was ₹ 62,500.00

to the total or taxable turnover or total receipts of any other person where both persons are associates, and where the prescribed authority deems that any business has been deliberately broken up into smaller businesses to avoid registration, the prescribed authority may issue a notice requiring those businesses to be registered as one business entity.

Voluntary Registration (Section 23)

A dealer who sells taxable goods, and is not liable to register under Section 22, but desires to register voluntarily, shall make an application to the prescribed authority in such form and in such manner as may be prescribed, giving correct and complete particulars; on becoming liable to register under section 22, the dealer shall on the date he becomes so liable, be eligible for deduction of input tax as specified under section 13 (Pre registration purchases, subject to the conditions specified in section 11 (Input tax restrictions)

Application for Registration (Rule 4)

Every dealer who is liable to be registered under section 22 and any dealer who desires to register voluntarily under section 23 shall:

(i) Submit an application for registration in Form VAT 1, duly filed in and accompanied by a fee of five hundred rupees and the required documents as specified in Form VAT 1 and any other documents as notified by the Commissioner, to the Jurisdictional Registering Authority in whose area the principal place of business of the dealer is located.

(ii) Make an application for registration, signed and verified as specified in the application and every person signing and verifying such application shall furnish two copies of his recent photograph in passport size along with the application and shall also furnish such photographs once in every five years.

(iii) If he is a casual trader or a non-resident dealer, submit the application in Form VAT 1 before commencement of his business; and

(iv) Where the details in his Form VAT 1 change at any time, as specified under Section 28, submit an application in Form VAT 1, showing changes in such details within thirty days of the date of changes.

Application for Registration of Additional Place of Business (Rule 5)

If a registered dealer has more than one place of business, he shall submit a further application in Form VAT 3 to the Jurisdictional Registering Authority, along with Form VAT 1, if the additional place of business exists at the time of submission of application for registration and in other cases within 10 days from the opening of an additional place of business.

Application for Partners (Rule 6)

If a registered dealer is a partnership firm or an association of persons, it shall submit a further application in Form VAT 4 to the Jurisdictional Registering Authority.

Acknowledgment of Receipt of Application (Rule 7)

The Registering Authority shall review each application for registration to ensure that it contains all the required information and acknowledge receipt of the application.

Rejection of Application and Demand for Security (Rule 8)

(1) Where the Registering Authority is not satisfied that the particulars contained in the application are correct and complete, he shall reject the application for reasons to be recorded in writing, after giving the dealer an opportunity of showing cause in writing against such rejection.

(2) The Registering Authority may demand a security prescribed under rule 23, before issuing a certificate of registration.

Issue of Registration Certificate (Rule 9)

(1) The Registering Authority shall assign a registration number or Taxpayers Identification Number (TIN) to the dealer and issue a certificate of registration in From VAT 7 or Form VAT 8 to him, and also certified copies of such certificate for any additional place of business.

(2) The Commissioner shall authorize any Local VAT officer or VAT sub-officer to issue a certificate of registration with an assigned registration number to the Central or any State Government, statutory or local authority specified under sub-section (4) of section 25 for the purposes of collection and payment of tax.

(3) The Commissioner may authorize any local VAT officer or VAT sub officer to assign a Tax Deducting Authority Identification Number (DAIN) to

the Central Government or any State Government or others specified under sub section (1) of section 9-A for the purposes of deduction and remittance of tax.

Issue of Duplicate Registration Certificate (Rule 10)

Where a certificate of registration is lost or destroyed, a certified copy of the registration certificate shall be issued by the jurisdictional Registering Authority on a written request by the registered dealer and on payment of a fee of one hundred rupees.

Display and Surrender of Registration Certificate (Rule 11)

(1) Every dealer shall display his certificate of registration in a prominent location at his main place of business, and certified copies shall be displayed at his additional place(s) of business.

(2) Every registered dealer who closes any of his additional places of business shall report such closure and surrender the certified copy of the certificate of registration, issued to such additional place of business, to the jurisdictional Registering Authority.

Suo Motu Registration (Section 24)

Where a dealer liable to be registered has failed to inform the competent authority of his liability to be registered, the competent authority may after conducting such survey, inspection or enquiry as may be prescribed, proceed to register such person under Section 22.

Suo Motu Registration (Rule 12)

(1) Where a dealer liable to get registered under section 22 has failed to do so, the Registering Authority of the area shall proceed to register such dealer under section 24 after conducting such survey, inspection or inquiry as specified in sub-rules (2), (3) and (4), and after giving the dealer a reasonable opportunity of being heard.

(2) The Registering Authority may inspect the offices, shops, business premises, godowns, vessels, receptacles or vehicles belonging to the dealer and may also conduct inquiry as he may consider necessary for the purposes of determining the taxable turnover of the month or year.

(3) The Registering Authority may visit the business premises of the dealer including any place or receptacle or vehicle where the dealer has

stored his goods and obtain stock inventory of the goods held in stock and on that basis arrive at the approximate stock value of the goods taking into consideration the prevailing market rates or the purchase invoices, if any produced.

(4) The Registering Authority may also record the daily sales particulars as per the books of accounts maintained and produced and if the books of accounts are not produced or if the particulars recorded in the books of accounts, in the opinion of the Registering Authority are not true and correct, he may proceed to estimate the same on the basis of any other material which he considers relevant.

(5) The Registering Authority may proceed to estimate the taxable turnover in a month or year for the purpose of registration either on the basis of daily sales particulars or on the basis of stock value whichever he considers more relevant.

Registration (Section 25)

(1) The form of application to register under Section 22 or 23, the time and manner of making application, and the fee payable shall be as may be prescribed.

Provided that the Commissioner may notify the website in which an application shall be made electronically.

(2) On receiving an application to register under Section 22 or 23, the prescribed authority shall register any such dealer and grant him a certificate of registration, if he is satisfied that the applicant is a bona fide dealer and that he complies with the requirements of this Act, the date of such application or from the date of commencement of business by such dealer, whichever is later.

(3) The prescribed authority may refuse to grant a certificate of registration to the applicant for any good and sufficient reasons to be recorded in writing, after allowing the applicant to show cause in writing against such refusal.

(4) In respect of the Central Government, any State Government, any statutory body or any local authority liable to collect tax under sub-section (2) of Section 9, the Commissioner may authorize issue of a certificate of registration to such body in the manner as may be prescribed.

Security (Section 26)

(1) The prescribed authority may, for the proper payment of the tax, from time to time, demand from a registered dealer or from a dealer who has applied for registration under this Act, reasonable security not exceeding a prescribed amount to be paid in the prescribed manner.

(2) The prescribed authority may, by order, forfeit the whole or any portion of the security furnished by a dealer

(a) for collecting any amount of tax, interest or penalty that is payable by such dealer, or

(b) if such dealer is found to have misused any prescribed certificate or declaration or has failed to keep or retain them in the prescribed manner.

(3) No order shall be passed under sub-section (2), without giving the dealer an opportunity of showing cause in writing against such forfeiture.

Payment of Security

Demand of Security (Rule 23)

(1) The Registering Authority may, subject to sub-rule (2), demand from any dealer a security as specified under section 26 in a sum not exceeding the limits specified in rule 24, after giving the dealer the opportunity of showing cause in writing against such demand.

(2) The Government or the Commissioner may, by notification, fix the amount of security in the case of specified categories of dealers.

Amount of Security (Rule 24)

Where a dealer is required to pay a security, the amount payable shall not exceed

(1) if he has opted to pay tax by way of composition under section 15, an amount equivalent to the tax anticipated to be payable by him in a two months period, and

(2) in other cases, an amount equivalent to the tax anticipated to be payable by him in a period of three months.

A security may be furnished by the dealer (Rule 25)

(1) by depositing with the Registering Authority, Government securities for the amount fixed by the said authority; or

(2) by furnishing to the said authority a guarantee from a Scheduled Bank as defined in the Reserve Bank of India Act, 1934, agreeing to pay the Government on demand, the amount of security fixed by the said authority; or

(3) by furnishing any other form of security as may be notified by the Commissioner.

Maintenance of security (Rule 26)

The security paid under rule 23 shall be maintained in full until it is dispensed with by the jurisdictional Registering Authority on being satisfied that the reasons for its demand no longer exist, or until the registration certificate is cancelled, whichever is earlier.

Cancellation of Registration (Section 27)

(1) In any case where,

(a) any business of a registered dealer has been discontinued, transferred fully or otherwise disposed of; or

(b) there is any change in the status of the ownership of the business; or

(c) the taxable turnover of sale of goods of a registered dealer has, during any period of [twelve consecutive months] not exceeded [Ten Lakh][7]

(d) a dealer issues tax invoices without effecting any taxable sales; or

(e) a dealer being an individual, registered under this Act dies, and for any other good and sufficient reason, the prescribed authority may, either on its own motion or on the application of the dealer, or in the case of death, on the application of the legal heirs, made in the prescribed manner, cancel the registration certificate from such date, including any anterior date, as it considers fit having regard to the circumstances of the case.

[7] Substituted vide Karnataka VAT (Amendment) Act, 2015. Earlier limit was ₹ 7.50 Lakhs

Provided that in the case of a deceased individual, on application by his legal heirs for transfer of registration and subject to such conditions as may be prescribed, the prescribed authority may instead of cancellation permit transfer of his certificate of registration to the legal heirs.

(2) The cancellation of a certificate of registration under this Section shall not affect the liability of the dealer to pay tax, any penalty and interest due for any period prior to the date of cancellation whether or not such tax, penalty and interest is assessed before the date of cancellation but remains unpaid or is assessed thereafter.

(3) On cancellation of registration, except where the business is transferred as a whole to another registered dealer as specified, a dealer who has availed deduction of input tax, shall be liable to repay such input tax on any taxable goods held by him calculated on] at their prevalent market price.

(4) A dealer liable to pay tax under sub-section (3) shall furnish a final return at such time as may be prescribed.

Request for Cancellation (Rule 13)

(1) Every registered dealer, other than a dealer falling under sub-sections (7), (8) or (9) of Section 22, may submit a written request, together with a final return in Form VAT 100, to the Registering Authority to cancel his registration where in the previous twelve consecutive months his total or taxable turnover did not exceed the threshold as specified under Section 22, and such request shall be made within twenty days after the end of such period.

(2) Every registered dealer who either sells or discontinues his business shall submit a written request, together with a final return in Form VAT 100, to the Registering Authority to cancel his registration, and such request shall be made within fifteen days after such event.

Request for Cancellation of Voluntary Registration (Rule 14)

Any dealer who was voluntarily registered may submit a written request to cancel his registration only after two years have passed from the effective date of the registration, and such request together with a final return in Form VAT 100, shall be made within twenty days after the end of such period.

Obligation of Registered Dealer to Inform Changes after Registration (Rule 28)

(1) Where:

(a) a registered dealer sells or otherwise disposes of his business or any part thereof, or

(b) there is any other change in the ownership of the business including any change in its status, or

(c) a registered dealer discontinues his business or changes his place of business or opens a new place of business, or

(d) a registered dealer changes the name or nature of the business, such registered dealer or, in case of his death his legal representative, shall within the prescribed time, inform the prescribed authority accordingly.

(2) Where:

(a) a change of ownership of the business takes place on account of transfer of business from one registered dealer to another, the dealer succeeding to the business, or

(b) there is any change in the status of the ownership of the business, the registered dealer shall surrender the certificate of registration already issued in respect of the business and apply for registration afresh in the prescribed manner.

(3) On any application for amendment of a certificate of registration or on his own, the prescribed authority may amend the registration certificate of a dealer or reject the application within thirty days of the date of receipt of such application, after making such enquiry as it deems fit and after giving the dealer the opportunity of showing cause in writing against such amendment or rejection.

(4) Any amendment of a certificate shall take effect from the date of the event referred to in sub-section (1) where applicable and in all other cases the amendment shall take effect from the date of application.

(5) Where any change in registration other than that caused by the death of a registered dealer is not reported to the prescribed authority within the prescribed time, it shall be deemed that no such change has occurred and the dealer as a registered one shall be liable to tax that is payable in respect of any business carried on.

Request for Cancellation by Legal heir (Rule 15)

(1) Where a registered dealer carrying on business as an individual enters into a partnership, he shall report the fact to the Registered Authority, together with a final return in Form VAT 100, within 15 days of his entering into such partnership, requesting cancellation of his registration, and make an application for a new registration of the partnership under rules 4 and 6.

(2) Where a registered dealer is a partnership, any change, including dissolution, shall be reported to the Registered Authority, within fifteen days of such change, and in the case of dissolution, a request made for cancellation of the registration together with a final return in Form VAT 100.

(3) The heirs of a deceased registered dealer shall submit a written request, together with a final return in Form VAT 100, to cancel the registration within thirty days from the date of death.

(4) The legal heir or heirs of a deceased individual dealer requiring for transfer of registration under the proviso to sub section (1) of section 27 shall make an application in Form VAT 1 along with

(a) the death certificate issued by the competent Authority;

(b) a succession certificate obtained from the competent court;

(c) a sworn affidavit of the legal heirs who do not opt for inclusion of their name in the registration or consenting for inclusion of the name or names of other legal heir or heirs;

(d) a Sworn affidavit undertaking to pay any tax or other amount due under the Act by the deceased individual.

(5) The Registering Authority may after such enquiry as he may deem fit permit transfer of registration to the applicant or applicants.

Surrender of Certificate of Registration (Rule 16)

Every dealer or any other person who requests cancellation of any registration issued shall surrender the certificate of registration together with any certified copies issued to the jurisdictional Registering Authority.

Cancellation Not to Affect Liability of the Dealer (Rule 22)

The duties and obligations imposed by the Act and these rules on any registered dealer shall not be affected by the cancellation of his registration, to the extent that they are necessary to recover the tax due and obtain any information for which the dealer was responsible during the period of his registration.

Chapter 3
Liability to Pay Taxes

Section 3 provides the charge for levy of tax under the Karnataka Value Added Tax Act, 2003. It is divided into two parts; the first sub section deals with the levy of tax on sale of goods in the State by a registered dealer and the second sub section deals with the tax on purchase of taxable goods from an unregistered dealer.

The levy is imposed on transactions of sale of goods, the classification of goods and the rate of tax on them are governed by the relevant schedules. In case of sales of goods affected by a dealer, the dealer collects the tax at the specified rates and deposits the same in the account of the State government. The rate at which the tax is to be levied is stated in the schedules to the Act. If the taxes are collected and discharged on the basis of the value of goods, then it becomes imperative to determine the value of the goods in the manner and method provided under the Act and the Rules. The ensuing paragraphs deal with the manner of determining the taxable turnover.

Tax on the Sale of goods

In accordance with the provisions of section 3, tax shall be levied on every sale of goods in the state either by a registered dealer or a dealer liable to get himself registered in accordance with the provisions of the KVAT Act.

Therefore, to levy tax under the KVAT Act, the following conditions have to be satisfied cumulatively:

(a) There should be sale of goods;

(b) Such sale of goods should be within the State; and

(c) Such sale should be effected either by the registered dealer or a dealer required to be registered under the KVAT Act.

Tax on Purchase of Goods [Section 3(2)]

When a registered dealer or a person who is required to get himself registered, purchases goods from a dealer who is not registered under the KVAT, then on such purchases the registered dealer will be required to

discharge tax. This is in the nature of reverse charge, wherein the tax is discharged by the purchaser on purchases made from an unregistered dealer. It is relevant to note that the levy is still on the sale of goods in the State, only the duty of collecting and paying tax is shifted from the seller to the purchaser.

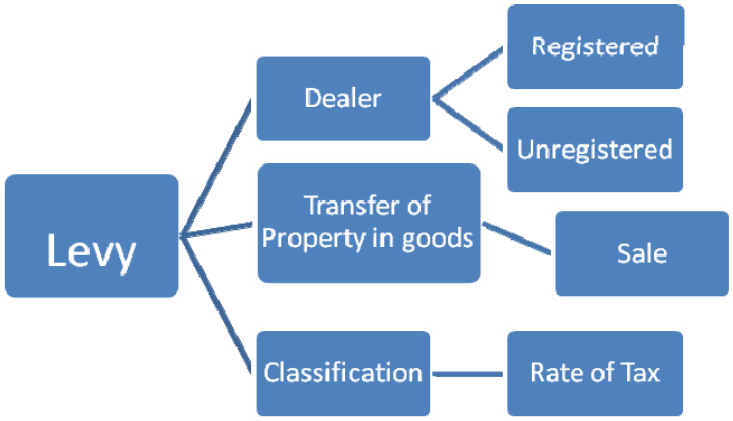
Therefore to attract levy under the KVAT on purchase of goods, the following conditions have to be fulfilled cumulatively;

(a) There should be sale of taxable goods to the registered dealer or a dealer liable to be registered;
(b) Such sale is made by the person who is not registered under the KVAT Act; and
(c) Such goods are for use in the business of the registered dealer or a dealer liable to be registered.

In this regard the tax is to be paid by the person to whom the sale is made and not by the person who is making the sale. It is important to note that such tax is required to be paid on purchases only if such goods are taxable goods and are meant for use in the business of the buyer.

The rate of tax will be the normal VAT applicable to similar goods purchased from a registered dealer. It is pertinent to note that the tax paid by the purchaser will be available to him as an eligible input credit (unless and until restricted by section 11). Hence, apart from paying tax on sale made to him, the other treatment of the tax remains the same as it would apply to purchases made from a registered dealer.

Hence from the foregoing paragraphs it becomes clear that for levying tax the following are necessary



Registered Dealer or Dealer to be Registered

Registered dealer means a dealer who is registered under the KVAT Act and a dealer liable to be registered means a person who is supposed to have been registered as prescribed in law but has failed to register.

Sale (Section 2(29))

"Sale", which excludes from its preview any transfer of property in goods by way of mortgage, hypothecation charge, or pledge. The sale should happen in the course of trade or commerce. There should be flow of consideration in the form of cash or deferred payment or any other valuable consideration.

The definition of sale is wide enough to cover within its ambit the following, which are otherwise not covered under the normal meaning of sale,

- Transfer of property in goods in the execution of works contract (deemed sales)
- Transfer of property in goods while granting a right to use goods for any purpose.
- Transfer of property in goods by way of hire purchase, etc.

The seller of goods or works contract or the hirers of goods who are liable to be registered are liable to pay tax. The levy is attracted on the dealer on effecting a transfer of property in goods, granting them a right to use the goods at their discretion. The transferor does not have any control or right over the goods, as long as the right is transferred to the other person to use the same.

VAT will be charged in accordance with the provisions of the Act on every sale of taxable goods within the State made by a person whose gross turnover in a year exceeds the taxable quantum (₹ 10 Lakh)[8]. A dealer who obtains registration voluntarily is not required to pay tax on his taxable turnover if it is less than 10 Lakh rupees.

Classification

Rates of Taxes (Section 4)

To reiterate, the levy is on sale of taxable goods and these goods are

[8] Substituted vide Karnataka VAT (Amendment) Act, 2015. Earlier limit was ₹ 7.50 Lakhs

governed by the relevant schedules to the Act. These schedules enumerate the list of goods that will be subjected to varied rates of tax vide section 4.

For ascertaining the tax to be paid on goods, if the taxes are collected based on value, there is a need for valuing them so that the rate is applied on such value. Section 4 of the KVAT specifies and also grants power to the State Government to reduce the tax payable. However, the State government has no power to increase the rate of tax.

In terms of Section 4, the applicable rates are as follows:

S No	Schedule/ Product	Rate of Tax
1	Goods in the Second Schedule	1 %
2	Goods in the Third Schedule	5.5 %
3	Goods in the Fourth Schedule	20 %
4	Goods not covered under any schedule	14.5 %
5	Cigars, Cigarettes, Gutkha and other manufactured tobacco products	20%[9]
6	Declared goods (Defined under section 14 of the Central Sales Act)	5 %

Schedules I to VI to the Act enlist various goods which will be subject to exemption and rates of tax to be imposed and remitted on effecting sale. Unscheduled goods are taxable at the Revenue Neutral Rate of 14.5%.

Scheduled goods are those that are covered by the various schedules of the VAT Act. Every registered dealer is required to pay tax on his taxable turnover at the rate notified or specified in the respective notification/schedules. The fifth schedule deals with the Input Tax on restricted goods. Input Tax Credit paid on such goods are upfront restricted; however, the same are allowed on specified usage as referred under section 11 of the ACT.

The Sixth Schedule deals with the rate of tax for different description of the works contract. If the description of such works contract does not fall in any category specified in the schedule, then such works contract is liable to tax at the rate of 14.5%.

[9] Substituted vide Karnataka VAT (Amendment) Act, 2015. Earlier Rate of Tax was 17%.

It is pertinent to note that on any goods which are declared goods of special importance under the CST Act, the states do not have the power to levy a higher rate of tax on them. Hence, the highest rate of tax prescribed for declared goods is 5%.

To determine the taxability of the interstate sales, it is necessary to identify whether goods are declared goods or undeclared goods. Declared goods are those which are listed in section 14 of the CST Act. Sales of declared goods made against Form C taxable at a rate of 2%. Goods generally exempted from local sales are also exempted from CST.

Packing materials when charged separately in the bills will attract the same rate as applicable to goods sold. When the goods sold are packed in any materials, the tax shall be leviable on the sales of such packing materials at the same rate of tax at which rate tax is leviable on the goods so packed. This is applicable whether such packing materials are charged separately or included in the price of the goods sold. If the goods are not taxable, then there will be no tax on the packing material used. When the goods are sold along with packing materials or containers, such sale needs to be treated as one integrated sale and such sale is the sale of goods and not of packing materials or containers.

Accordingly, the rate of tax applicable to such sales is the rate applicable to the respective goods sold/purchased but not the rate of tax applicable to packing materials or containers. Conversely, if the goods sold/ purchased are exempt under the Act, the containers or packing materials with which the goods are sold/ purchased are also exempted from tax. Therefore though technically it is possible to split and tax the goods and packing material/containers separately, the KVAT law mandates that no such splitting shall be done and taxable status of packing/containers will be the same as that of goods sold/purchased as an integrated transaction.

The Charging section and classification section are not independent or self contained section. They are to be read in conjunction with other section of Net Tax, Input Tax restrictions and other relied sections. Although every transaction of purchase or sale of taxable goods may attract levy of tax, the liability to pay tax on the part of dealers is restricted to Net tax which shall be arrived after deducting Input Tax from the Output Tax.

The Law states that the tax shall be charged on every sale of goods in the state. So when tax is charged on every sale, the rate of tax has to be determined by the taxable goods as in the classified schedule and exempted

goods as included in the first schedule and notification. In the case of sale of taxable goods, tax shall only be levied but in the case of unregistered purchase from unregistered dealer it has to be levied and also to be paid. A registered dealer dealing in pharmaceutical products may pay the VAT of 4% on MRP less on amount equal to the tax payable.

If an interstate purchase of taxable goods is made from an unregistered dealer, then no tax is payable on such a purchase. Also if the goods are exempted within the State then there is no URD tax on such purchases.

Exemption of Tax (Section 5)

It provides for exemption of goods listed in its first Schedule. In addition, the section also grants power to the State Government to issue notifications for exempting certain goods from the payment of tax.

The Government has specified by notification that some goods, like molasses etc., are exempted from tax. It is relevant to note that, though few goods may find an entry in schedule two to six having a rate of tax, however if any exemption Notification is issued specifically covering such goods , then such goods shall stand exempt *vide* section 5(1-A). The Government may withdraw such a notification by issuing another notification and the exempted goods will taxed thereafter.

Export sales qualify as zero rated sales under the KVAT law, but these do not qualify as exempted sales. The tax payable on exports is nil. However, section 11(1), does not restrict the input credit on the materials used for manufacturing/ trading of the goods meant for export. Hence, though tax is not payable on exports, a dealer will be eligible for either claiming refund of the input tax credit or can set off the same against any output tax payable.

Place of Sale of Goods (Section 6)

In conjunction with applying the ingredients for levying tax it also becomes relevant to note the taxing jurisdiction within which such transfer of property in goods is being effected. Accordingly, it becomes relevant to determine the place where the goods are subjected to tax. Section 6 provides the manner in which the place of sale of goods can be determined.

In terms of the said definition, all the sales or purchases made, otherwise than in the course of interstate trade or commerce or in the course of import or export, shall be deemed to have taken place in the State, independent of where the contract for sale or purchase was executed.

With regard to the timing of sale, there, is a difference between ascertained goods and unascertained goods. In the case of ascertained goods, the sale takes place at the time when the contract of sale or purchase is made and the goods are within the State. In case of unascertained goods or future goods, the sale takes place at the time of their appropriation, to the contract of sale or purchase by the seller or buyer by the purchaser, and the goods are within the State.

Goods can be classified as specific or ascertained goods when they are identified and agreed upon between the parties to sale, i.e., buyers and sellers. When the contract of sale is made and if at that point of time, it is possible to identify the goods, it can be said that the contract of sale is made in respect of specified or ascertained goods. Under this category, a sale or purchase of goods shall be deemed to have taken place inside the State if the goods are within the State at the time of making the contract of sale in case of ascertained goods .

Goods can be identified as unascertained or future goods when the goods are not identified and agreed upon between parties to the Sale Contract, i.e., they exist but are not identified and agreed upon at the time of sale. The process of making the goods ascertained is known as appropriation of the goods to the Contract of Sale. When the goods are unascertained, and are within the State at the time of appropriation to the contract of sale either by the seller or by the buyer i.e. when the goods are identified and agreed upon, then such sale or purchase of goods shall be deemed to have taken place inside the State.

Further, if there is a single contract for sale or purchase of goods, which are situated in different places, then the said contract will be considered as separate contracts for each of the goods situated in the respective states. In regard to the execution of work contract, the sale will be considered to have taken place in the State if at the point of transfer of property in such goods, which is being transferred in the execution of works contract, is situated in the state. As regards the h right to use, the sale will be considered to take place in the State when the goods are available in the State and in which rights are vested The place of contract of transfer of the right to use of the goods is irrelevant in this regard.

Time of Sale (Section 7)

The law provides by a legal fiction the time when a transaction culminates into a point of sale when tax becomes payable thereon.

According to sub section 1, the time of sale will occur when there is transfer of title or possession of goods, and in case of works contract, when there is incorporation of goods in the execution of works contract. However, if the invoice is issued within 14 days from the date of sale, then the date of invoice will be considered the time of sale.

Independent of the above, if the payment is received as advance or otherwise, or when tax invoice is raised before the time prescribed in sub section one, then time of sale will be earlier than the receipt of payment or issuance of invoice.

Hence it can be summarized that the time of sale will be earlier of the following

- The date of transfer of title or possession in goods or incorporation of the same in the execution of works contract, or
- The date when payment is received, or
- The date of issuance of invoice (except when issued within 14 days after the date referred to in sub section 1 to section 7)

Agents Liable to Pay Tax (Section 8)

Where the goods are either sold or purchased through agents within the State then the agent is liable to pay tax under the KVAT. However, the principal would not be required to discharge tax on the turnover effected by the agent. When goods are sold through agents of non-resident principals then the resident agent is liable to pay the KVAT. He would also be eligible for input credits.

When a buying commission agent or selling commission agent effects purchase or sale of taxable goods on behalf of any principal who is a resident of Karnataka, he will be liable to pay tax on such transactions of purchase or sale as the case may be of the taxable goods on behalf of the principal, even if the principal is not a dealer as per the Act or his turnover is less than the specified limit.

Deduction of Tax at Source in Works Contract (Section 9A)

It provides that where a works contract involving transfer of property in goods is executed within the State of Karnataka for Contractee, namely either the central government or any state government or any public sector undertaking of the central or state Government or any joint sector undertaking of the

central government or any state government or any local authorities or statutory authorities or any trading industrial or commercial undertaking, such contractee shall deduct out of the amount payable to the contractors, tax at source and remit the same to credit of the state government.

Such contractee shall deduct out of the amount payable by them to a dealer, in respect of any works contract executed for them in the State, an amount equivalent to the tax payable by such dealer under the Act. The amount to be deducted will be the quantum of tax payable as calculated by the dealer.

No such deduction shall be made if the amounts payable by them are in respect of sales of any goods, in the course of interstate trade or commerce or in the course of export out of the territory of India or import into the territory of India or outside the State.

Section 2(37): Works contract includes any agreement for carrying out for cash, deferred payment or any other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property.

Section 9A(4): where it is found that the tax payable as calculated by any dealer is less than the tax payable for the works contract executed by them, is more than 15% and being so informed by an officer authorised by the Commissioner, the paying authority shall make an application to the empowered officer to issue a certificate.

On the basis of the certificate, the paying authority can deduct the tax prescribed in it. If the empowered officer does not issue the certificate within ten days from the date of receipt of application, then the paying authority can continue to deduct and pay tax as computed by the dealer.

Section 9A(5): The Paying Authority shall send every month to the Prescribed Authority a statement in the prescribed form (Form 125) containing particulars of tax deducted during the preceding month and pay full amount of the tax deducted by it, within twenty days after the close of the preceding month. The tax so collected shall be remitted to the state by the Contractee along with the Form VAT 100, if the Contractee are departments of governments or statutory bodies or local authorities. In all other cases, the amount of tax deducted at source shall be accompanied by Form VAT 125. In the event of default on the part of the contractee, the VAT officer is empowered to pass an order estimating the amount of tax deductible at

source by the contractee and communicate the same to the contractee along with Form VAT 210.

The Contractee, who deducts tax at source, shall obtain Form VAT 156 from the authorities under the Act and as and when the tax is deducted at source, the contractee shall issue a certificate to that effect in Form 156 within twenty days from the end of the month in which the deduction of tax is made. The certificates in Form VAT 156 shall be obtained from the VAT officer and not the self printed.

New proviso has been inserted after sub section (5) which is as follows: "Provided that among the authorities making deduction under sub section (1), the specified class of authorities as may be notified by the Commissioner shall submit a statement in the prescribed form electronically and make payment electronically to the prescribed authority through the internet in the manner specified in the notification"[10]

There were difficulties in getting the TDS certificates by the dealers from the Government organization and as a consequence, unnecessary demand of taxes were being created against the dealers. This proviso is aimed to submit the statement electronically and make payment electronically to streamline with the deduction availed by the dealer and TDS credited by the Government departments.

Insertion of new section 9-B-Deduction of tax at source (in case of purchases made by Government departments and others)[11]

The new section was inserted in line with the provisions of section 9-A of the KVAT Act. The new section 9-B is inserted in respect of all the transactions of sale of taxable goods by the dealers in the State of Karnataka to the Central Government or any State Government or an industrial, commercial or trading undertaking of the Central Government or of any state or any such undertaking in Joint sector or any other industrial, commercial or trading undertaking or any other person or body as may be notified by the Commissioner in Karnataka. The newly inserted provisions of section 9-B of the Act authorizes the above authorities to deduct TDS equal to the output tax payable under the Act on the value of goods sold to them by the dealers in the state at the time of release of payment to such dealers and remit the same to the State. As in respect of TDS effected as per the provisions of section 9-A, the authority deducting the TDS

[10] Inserted vide Karnataka VAT (Amendment) Act, 2015.

[11] Inserted vide Karnataka VAT (Amendment) Act, 2015

under section 9-B(1) shall remit the same along with a monthly return for the month in which such deduction is effected.

Tax Deduction at Source in Case of Canteens (Sec 18)

In respect of the business carried on by the dealers running canteens in the premises of industries or factories which are generally called Industrial canteens, whose annual turnover is ₹ five lakhs or more, such industrial concern /unit or factory shall deduct out of the amount payable to the dealer running such canteen towards the supply of articles of food and drink as amenity to the employees.

The tax to be deducted will be at the rate of 4% on the total amount payable as contribution by the industrial unit or factory towards the supply made and including the amount paid or payable by the employee towards such supply. .

The industrial unit or the factory will remit the amount of tax deducted along with the monthly return in Form VAT 126 in the office of LVO where the industrial unit is registered as provided in rule 44, within 20 days from the end of the amount in which the amount of tax is deducted. Further, it is mandatory for the industrial unit deducting tax at source as provided under this section that it should issue a certificate of deduction to the dealer running the industrial canteen a certificate of deduction of tax in Form VAT 158 within twenty days from the end of the month in which the tax is deducted.

The blank certificate in Form VAT 158 is required to be obtained by the Industrial unit from the offices of the LVO and such unit shall maintain the stock of certificates in Form VAT 159. Failure to remit the tax deducted at source or belated remittance of tax deducted would render the industrial unit liable for payment of interest at 1.50% per month besides other recoveries.

Composition Scheme (Section 15)

Though the intention and objective of the VAT Scheme is to bring all the manufacturers or traders into a cycle wherein each of them charges KVAT and subsequent person takes such deduction and effectively pays only on his value addition including margin, it may be difficult for all businesses to get into such a regime due to the inherent methods of operation for certain activities. The reasons may be related to tracing the purchases and tracing the sales, etc. Similarly, where the nature of business is such that elaborate records are not possible to be maintained and many activities are sub contracted, the dealer may require a special method of accounting. This

could be applicable to small time traders, construction and hotel industries or any other works contract where there is labour component as well as material component.

It is relevant to note that the Composition Scheme is an option and can be exercised by a dealer only when he satisfies all the conditions provided in the scheme. Accordingly, this option is available only to the following:

- A dealer whose total turnover for the period does not exceed the amount of twenty five lakhs, vide Notification No FD 82 CSL 10 (IV), Bangalore dated March 31, 2010.
- A hotelier, restaurateur, caterer or a dealer running a sweetmeat stall or an ice cream parlour, or
- A dealer engaged in the mechanized crushing unit producing granite or any other metals.

This group of dealers includes a dealer who is engaged in the execution of works contract. However, with regard to works contract, there are specific provisions, which are provided in the ensuing paragraphs.

The common condition for the above referred dealer other than works contract dealers are enumerated herewith:

- The dealer cannot purchase goods from outside the State or import goods from outside the territory of India. and
- Such a dealer cannot avail any input tax credit.

The specified rates of tax for the above referred dealers are provided vide Notification No FD 116 CSL 2006(13) Bangalore March 31, 2006.

<table>
<tr><th>Section Ref</th><th>Dealer</th><th colspan="2">Quantum of Tax</th></tr>
<tr><td>15(1)(c)</td><td>Hotelier, Restaurateur & others covered in the section</td><td colspan="2">4 Percent of total turnover</td></tr>
<tr><td>15(1)(a)</td><td>Other dealers</td><td colspan="2">1 Percent of the Total Turnover</td></tr>
<tr><td rowspan="3">15(1)(d)</td><td rowspan="3">Mechanized crushing unit producing Granite metals</td><td>One Mechanized crushing unit</td><td>Rate per month</td></tr>
<tr><td>Size exceeding 16”x9”</td><td>16,500</td></tr>
<tr><td>Size exceeding 12”x9” but</td><td>8,250</td></tr>
</table>

		not exceeding 16"x9"	
		Size Upto 12"x9"	4,000
15(1)(d)	Mechanized crushing unit producing metals other than granite metals	One Mechanized crushing unit	Rate per month
		Size exceeding 16"x9"	10,500
		Size exceeding 12"x9" but not exceeding 16"x9"	5,000
		Size Upto 12"x9"	3,000

A composition dealer executing words contract is liable to pay tax on the total consideration received and not merely on the taxable turnover).The rate of composition tax on Works Contracts is 4%. In Karnataka the composition dealer executing works contract can make imports/interstate purchases/stock inwards; however, when these goods are transferred in the execution of works contract, then tax become payable on them at the regular rate applicable within Karnataka. The total value of goods purchased on which tax is paid at regular rates can be availed as deduction from the total turnover to compute the composition tax payable at 4%.

There will be no eligibility of input tax credit for composition dealers and they cannot claim deduction on labour and like charges either on actual basis or ad hoc basis. However, deduction will be available on the sub-contractor deduction (provided he is registered and he is declaring his turnover). The composition dealer executing works contract will also be liable to pay unregistered purchase tax, for which he is not eligible to avail the input tax credit. Such dealers can collect composition tax and can issue the Bill of Sale. Such dealer should also file statement of accounts of audit in Form VAT 240 within nine months from the end of financial year.

Under the Karnataka VAT law a dealer cannot opt for composition scheme and regular scheme for different kinds of projects. Therefore, the provisions as applicable for composition dealers will be different in all the states. There is an amendment in the Act with effect from April 01, 2007 wherein such dealer can opt for composition scheme for one business even if the other business is under regular scheme, but on the condition that he maintains separate books of accounts. It is not set out in the law whether such composition can be opted for portion of the turnover when the other portion is under a regular scheme. Since the wordings in the statute use no input tax claim on any purchases, it can be presumed that mixing composition and regular payment with credit is not permissible.

Where a builder or developer has opted for payment of tax on his turnover relating to transfer of property in goods involved in execution of works contract under the composition scheme as provided under section 17 of the KST Act, 1957 or Section 15 of the KVAT Act, 2003, the total consideration on which such dealer is liable to tax would not include the amount received from the customers towards their undivided share in land. However, this exclusion is not applicable in the case of a joint development projects as is clarified by a circular issued by the Commissioner.

Section 15(5)(e) specifies that dealers executing works contract and opting for composition of tax under sub section(1) shall be liable to pay tax, if any, under sub section (2) of section 3, in addition to the tax by way of composition on the total consideration for the execution of works contract. Stated simply, the composition dealers are liable to pay unregistered purchase tax in addition to the composition tax on their unregistered purchases.

The composition dealers are required to file the monthly/quarterly return in Form VAT 120. Such dealers can file a revised return within six months from the end of the relevant tax period, if there has been some omission or there is an incorrect statement in the return submitted. Such dealers can withdraw from the scheme, if they have submitted returns for twelve consecutive months and have filed final return in Form VAT 120, by surrendering their certificate of registration in Form VAT 8. They will be liable to pay regular tax from the first day succeeding the month in which such dealers have withdrawn the option of composition. Such dealers can get the benefit of input tax credit prior to three months of cancellation of composition, subject to the condition that such goods are in stock at such a date. Also when the dealer is opting from regular scheme to composition scheme and has availed the input tax credit to the extent of stock of goods as held on that date, he shall be liable to repay the tax equivalent to market value of such stock of goods on such date.

Therefore the comparison of the scheme either regular or composition under the KVAT law should be determined on the basis of quantum of local and interstate purchases, cost of labour, percentage of unregistered purchases, rate of tax as applicable, compliances, etc

Special Accounting Schemes (Section 16)

If a dealer liable to pay tax under section 4 is unable to identify each

individual sale, its value, or the rate of tax, or is unable to issue a tax invoice as specified in section 29 for each individual sale, he may apply to the prescribed authority to pay net tax under section 10 under a special method to be mutually agreed by such authority in such manner as may be prescribed.

Rule 134: The Commissioner or the Joint Commissioner authorized to him may permit under section 16, the taxable turnover of sales by a registered dealer who makes sales of goods by retail directly to the customer to be determined by a method agreed with the dealer.

Method for Retailer (Rule 134(1))

Option 1: Where taxable turnover relates to different rates the dealer is able to record the sales at different rates on a daily basis. The total of the month rate wise is to be made and tax to be paid based on the same.

Option 2: If the dealer is unable to record the sales differently, then he is allowed to calculate his total sales for the day. A total sale for the month rate wise is to be calculated. He would then provisionally discharge the tax on the same proportion as that of the purchases. Since the sales made by him include the tax element the same is required to be removed by using the formulae tax rate/100+tax rate

The retailer would be allowed input credit, but he has to pay the net tax provisionally. At the end of the year he would be required to rework the entire period purchases and adjust the VAT payable accordingly. This is to remove the errors that could, arise otherwise.

If the dealer is unable to use the schemes set out then he is required to apply to the Commissioner with the difficulties and suggestions on alternatives under which he can calculate and discharge his liability under VAT. Dealers who have been used to a particular type of recording may make use of the same.

Interstate Sales

Sale in the course of inter-state trade or commerce is not taxable under the KVAT Act; it is taxable under the Central Sales Tax Act, which is a levy of the Union and not of the state.

Chapter 4
Determination of Total and Taxable Turnover

In order to determine taxable turnover, it is important to understand the meaning of Turnover, Total Turnover and Taxable Turnover. Their definitions are provided in the following sections.

'Total Turnover' [Section 2(35)]

It "*means the aggregate turnover in all goods of a dealer at all places of business in the state, whether or not the whole or any portion of such turnover is liable to tax, including the turnover of purchase or sale in the course of interstate trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India and the value of the goods transferred or dispatched outside the state otherwise than by way of sale*."

The definition clarifies that apart from the sale within the State any stock transfer to other states is also covered within it. The total turnover also includes those transactions which are effected in the course of interstate trade and international trade.

'Taxable Turnover' [Section 2(34)]

It 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, but shall not include the turnover of purchase or sale in the course of interstate trade or commerce or in the course of export of the goods out of the territory of India or in the course of import of the goods into the territory of India and the value of the goods transferred or dispatched outside the state otherwise than by way of sale.

Turnovers on which the states do not have jurisdiction to levy tax have been specifically excluded from the taxable turnover. These exclusions are only to be reported in respective monthly returns.

(I) Computation of Taxable Turnover by Regular dealer

Taxable Turnover = Total Turnover – Deductions

Total Turnover

The total turnover of the dealers is the sum of the following:

(a) The total amount paid or payable as consideration for the **purchase** of any goods **from unregistered dealers.** So when the registered dealer purchases taxable goods from an unregistered dealer, such purchases form part of the total turnover as the purchasing dealer becomes liable to pay tax thereon as per subsection 2 of section 3.

(b) The total amount received or receivable as consideration for the **sale, supply or distribution** of any goods, which has taken place **within the State**, made either by himself or through his agent. When the registered dealer makes sale or supply or distribution of any taxable goods against consideration within the State, either by himself or through his agent, such consideration receivable or received forms part of the total turnover.

(c) The total amount received or receivable

- towards transfer of goods in the execution of the works contract;
- towards transfer of right to use the goods;
- towards transfer of goods in terms of hire purchase;

(d) The aggregate of sale prices received and receivable by the dealer in respect of sale of any goods in the course of interstate trade or commerce and export out of the territory of India and sale in the course of import into the territory of India.

(e) The value of all goods transferred or dispatched outside the State otherwise than by way of sale.

(a) **Deductions Allowed:** The total amount received or receivable as consideration for sale of goods in the course of inter-state trade or commerce, export out of India or sale in the course of import into the territory of India.

(b) The value of all goods transferred or dispatched outside the State otherwise than by way of sale, i.e., stock transfers outside the State.

(c) All amounts allowed as discount only if it is allowed in accordance with the regular practice or the terms of any agreement in a particular case and reflected in the tax invoice or bill of sale.

(d) All amounts of refund made for sales returns only when such return is made within a period of six months from the date of delivery of the goods and the accounts reflect the date of return, the amount of refund and the details of credit notes issued.

(e) All amounts received as refund for purchase returns of taxable goods when such return is made within six months from the date of delivery of goods and the accounts reflect the date of return and the amount of refund.

(f) All amounts of sales of exempted goods.

(g) All amounts realized by sale of his business as whole.

(h) All amounts collected as tax under this Act.

(i) The amount of turnover in respect of which the dealer's agent has paid tax and the dealer has issued the certificate in Form VAT 140.

(j) All amounts collected by a commission agent as commission shown separately in the tax invoice under the provisions of Agricultural Produce Marketing (Regulations) Act,1966 only when the tax is not charged and collected on such amount of commission.

(II) Computation of Taxable Turnover by Works Contractor

Taxable Turnover = Total Turnover-Deductions

Total Turnover

The total turnover of the dealers is the sum of the following:

(a) The total amount paid or payable as consideration for the purchase of any goods from unregistered dealers. So when the registered dealer purchases taxable goods from an unregistered dealer, even such purchases form part of the total turnover as they were not taxed at the time of sale by the unregistered dealer.

(b) The total amount paid or payable to the dealer as consideration for transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract including any amount paid as advance to the dealer as a part of such consideration.

Explanation: Any amount paid as advance to a dealer as part of such consideration for transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract shall be included in his total turnover in the month in which execution of such works contract commences.

Relevant Deductions in case of works contract (Rule 3)

All amounts collected by way of tax under the Act include

(i) All amounts paid to the sub-contractors as consideration for the execution of works contract whether wholly or partly, provided the deduction is allowed only when the dealer claiming deduction produces a document in proof that the sub-contractor is a registered dealer liable to pay tax under the Act and that the turnover of such amounts is included in the return filed by such sub-contractor.

Further, in terms of section 11(c) no Input Tax credit is availed in respect of tax paid to any sub-contractor.

Here the landmark judgment of Supreme Court can be referred in the case of *Larsen & Tubro* wherein, the court had allowed (sub-contractor deduction on the ground that under a deemed sale there is transfer of property in goods happening from the sub-contractor to the contractee by theory of accretion and there virtually is no sale of goods made by the main contractor. The only sale by the main contractor is the sale of immovable property.

(ii) All amounts actually expended towards labour charges and other like charges not involving any transfer of property in goods in connection with the execution of works contract including charges incurred for erection, installation, fixing, fitting out or commissioning of the goods used in the execution of a works contract

Explanation I: In the case of a dealer executing works contract, in determining the taxable turnover during any tax period, the deduction under clause (ii) shall be allowed so that such deduction is proportionate to the value of goods, the property which has been transferred in the execution of

works contract in that period, and if the total turnover is not sufficient to cover, apart from other deductions, such taxable turnover and such deduction, they shall be determined and allowed proportionately to the extent of the turnover of the dealer in that period, and the balance shall be carried forward to the following tax period or any subsequent tax period to be determined and allowed in the same manner

Explanation II: For the purpose of clause (ii) "labour and other like charges" includes charges for obtaining on hire or otherwise machinery and tools used in the execution of the works contract , charges for planning, designing and architect fees, cost of charges for planning , designing and architect fees, cost of consumables used in the execution of works contract, cost of the establishment to the extent relatable to supply of labour and services and other similar expenses relatable to supply of labour and services.

It can be inferred from the explanation that, in essence only expense of pure service nature or on rightly understanding all charges which do not involve any transfer of property in goods is required to be deducted from the total turnover, so that only the element of transfer of property in goods is taxed.

Explanation III: For the purpose of clause (ii), gross profit earned by a dealer shall be apportionable to the value of goods and labour and like charges involved in the execution of works contract in the same ratio as in total turnover.

(iii) Such amounts calculated at the rate specified in the table towards labour charges and similar other charges incurred in the execution of a works contract when such charges are not ascertainable from the books of accounts maintained by a dealer.

In case a dealer in execution of works contract is not able to determine the actual labour cost and (other like charges, then he can adopt the ad hoc percentage of deduction provided under the said sub rule. The following table provides deduction rates with regard to the nature of works contract activities.

Sl. No.	Type of contract	Charges for erection, installation, fixing, fitting out or commissioning as a percentage of the value of the contract
(1)	(2)	(3)
1.	Installation of plant and machinery	Fifteen per cent
2.	Installation of air conditioners and air coolers	Ten per cent
3.	Installation of elevators (lifts) and escalators	Fifteen per cent
4.	Fixing of marble slabs, polished granite stones and tiles (other than mosaic tiles)	Twenty five per cent
5.	Civil works like construction of buildings, bridges, roads, etc.	Thirty per cent
6.	Construction of railway coaches on under carriages supplied by Railways	Thirty per cent
7.	Ship and boat building, including construction of barges, ferries, tugs, trawlers and draggers	Twenty per cent
8.	Fixing of sanitary fittings for plumbing, drainage and the like	Fifteen per cent
9.	Painting and polishing	Twenty per cent
10.	Construction of bodies of motor vehicles and construction of trucks	Twenty per cent
11.	Laying of pipes	Twenty per cent
12.	Tyre re-treading	Forty per cent
13.	Dyeing and printing of textiles	Forty per cent
14.	Any other works contract	Twenty five per cent

(III) Computation of Taxable Turnover by hire Purchaser or Instalment system

Taxable Turnover= Total Turnover- deductions

Total Turnover

(a) The total amount paid or payable as consideration for the purchase of any goods from unregistered dealers. So when the registered dealer purchases taxable goods from an unregistered dealer, even such purchases form part of the total turnover as they are not taxed at the time of sale by the unregistered dealer.

(b) The total amount payable to the dealer as consideration in respect of goods delivered on hire purchase or any system of payment by Instalments.

Deductions allowed

All amounts received or receivable as interest on the balance amount receivable in respect of goods delivered on any system of payment by instalments. Here the interest amount should be specified and charged separately, and not be included in the price of goods and the interest amount should not exceed twenty percent per annum on the remaining amount receivable.

The following illustration clarifies the above referred position of law.

Hire Purchase of goods vehicles

Details of purchases made in the books of Hire seller

Particulars	Amount
Local Purchase of goods vehicles from RD	1,00,000
Local purchase of goods vehicles from URD	1,50,000
Import of goods vehicles	1,75,000
Interstate purchase of goods vehicles	1,25,000
Total	5,50,000

Hire charges including interest in the books of Hire seller

Particulars	Amount (inclusive of Interest)	Interest Component
Local Purchase of goods vehicles from RD	1,25,000	25,000
Local purchase of goods vehicles from URD	1,75,000	25,000
Import of goods vehicles	2,00,000	25,000
Interstate purchase of goods vehicles	1,50,000	2,5000
Total Turnover	6,50,000	

Calculation of Taxable Turnover

Sl. No	Particulars	Total Turnover (a)	Purchase price (b)	Hire charges (a)-(b)= (c)	Interest at 20% on unpaid amount (d) (a) *20%	Taxable Turnover (a)-(d) or (a)-(c) whichever is lower
1	Local Purchase of goods vehicles from RD	1,25,000	1,00,000	25,000	25,000	1,00,000
2	Local purchase of goods vehicles from URD	1,75,000	1,50,000	25,000	35,000	1,50,000
3	Import of goods vehicles–	2,00,000	1,75,000	25,000	40,000	1,75,000
4	Interstate purchase of goods vehicles	1,50,000	1,25,000	25,000	30,000	1,25,000

Calculation of output tax to be collected from hire purchaser under the VAT in case of Hire Purchase transactions

Sl. No	Particulars	Taxable Turnover	VAT Rate	Output tax
1	Local Purchase of goods vehicles from RD	1,00,000	14.5%	14,500
2	Local purchase of goods vehicles from URD	1,50,000	14.5%	21,750
3	Import of goods vehicles–	1,75,000	14.5%	25,375
4	Interstate purchase of goods vehicles	1,25,000	14.5%	18,125

Calculation of Input tax credit

Sl. No	Particulars	Amount	VAT Rate	Output tax
1	Local Purchase of goods vehicles from RD	1,00,000	14.5%	14,500
2	Local purchase of goods vehicles from URD	1,50,000	14.5%	21,750
	Total	2,50,000		36,250

Calculate of output tax payable by the Hire Seller

Sl. No	Particulars	Amount	VAT Rate	Output tax
1	Output tax collected	5,50,000	14.5%	36,250
2	Input tax credit	2,50,000	14.5%	36,250
	Total			Nil

Under the KVAT regime, there is no specific rate on hire charges or instalments. Therefore hire purchase transactions for goods vehicles shall be taxable @ 14.5%. Input tax credit can be taken against local purchases from registered dealers. (However, if goods sold on hire charges is at 5.5% than that rate shall be applicable).

(IV) Computation of Taxable Turnover by lessee (In the case of right to use)

Taxable Turnover= Total Turnover- deductions

(a) The total amount paid or payable as consideration for the purchase of any goods from unregistered dealers. So when the registered dealer purchases taxable goods from an unregistered dealer, even such purchases form part of the total turnover as they are not taxed at the time of sale by the unregistered dealer.

(b) The total amount paid or payable to the dealer as consideration for transfer of the right to use any goods for any purpose (Whether or not for specified person)

Under the VAT regime, there is no specified rate on receivable rentals. Therefore lease tax shall be applicable @ 14.5%. Input tax credit can be taken against local purchases from registered dealers. However if the goods sold on lease are taxable at 5.5% then that rate shall be applicable.

The following illustration clarifies the above referred position of law,

Leasing of goods vehicles

Details of purchases made in the books of Lessor

Particulars	Amount
Local Purchase of goods vehicles from RD	1,00,000
Local purchase of goods vehicles from URD	1,50,000
Import of goods vehicles	1,75,000
Interstate purchase of goods vehicles	1,25,000
Total	5,50,000

Lease Rentals

Particulars	Amount
Local Purchase of goods vehicles from RD	1,25,000
Local purchase of goods vehicles from URD	1,75,000
Import of goods vehicles	2,00,000
Interstate purchase of goods vehicles	1,50,000
Total Turnover	6,50,000

Calculation of output tax to be collected from lessee under VAT in case of leasing transactions

Sl No	Particulars	Lease Amount	VAT Rate	Output tax
1	Local Purchase of goods vehicles from RD	1,25,000	14.5%	18,125
2	Local purchase of goods vehicles from URD	1,75,000	14.5%	25,375
3	Import of goods vehicles–	2,00,000	14.5%	29,000
4	Interstate purchase of goods vehicles	1,50,000	14.5%	21,750
	Total	6,50,000		94,250

Calculation of Input tax credit

Sl. No	Particulars	Amount	VAT Rate	Output tax
1	Local Purchase of goods vehicles from RD	1,00,000	14.5%	14,500
2	Local purchase of goods vehicles from URD	1,50,000	14.5%	21,750
	Total	2,50,000		36,250

Calculate of output tax payable by the Lessor

Sl. No	Particulars	Amount	VAT Rate	Output tax
1	Output tax collected	6,50,000	14.5%	39,875
2	Input tax credit	2,50,000	14.5%	36,250
	Total	4,00,000		3,625

FOR MRP DEALERS

Rule 3(a): A dealer opting to pay tax on the sale of goods under sub-section (4) of section 4 shall report his option in writing to the Jurisdictional local VAT officer or VAT sub officer within fifteen days from the commencement of these rules or on the first day of any month after such commencement indicating the date from which he so opts.

Rule 3(b): Notwithstanding anything contained in clause (b) of sub Rule (1) and sub Rule (2), the total turnover in respect of such dealer in respect of sale of goods where the sale has taken place inside the State shall be

(i) the aggregate of maximum retail prices of the goods sold where such maximum retail prices are exclusive of tax payable under the Act and all amounts collected by way of tax under the Act, or

(ii) Rule 3(b)(ii) states that the aggregate of the maximum retail prices of the goods sold, where such retail prices are inclusive of tax payable under the Act, the taxable turnover in respect of such sales shall be determined by allowing deductions towards sales return, tax collected, and agent's turnover from the total turnover.

(c) The tax invoice issued by such dealers shall contain the details of maximum retail price of goods including whether such retail price is inclusive or exclusive of tax payable under the Act, in addition to the details prescribed in Rule 29.

Rule 4 (a) Notwithstanding anything contained in clause (b) of sub Rule (1) and sub Rule (2), the total turnover in respect of a dealer liable to pay tax on the sale of manufactured tobacco under sub section (5) of section 4, where the sale has taken place inside the State shall be the aggregate of maximum retail prices of the goods sold and the taxable turnover in respect of such sales shall be determined by allowing deductions specified in clauses (d), (h) and (i) of sub rule (2) from the total turnover.

(b) The tax invoices issued by such dealers shall contain the details of maximum retail price of goods, in addition to details specified in Rule 29.

Chapter 5
Input tax Credit

The main objective of the VAT scheme is to prevent cascading tax effect, i.e., to avoid paying tax on tax, hence in to avoid this cascading effect there was introduction of VAT system wherein the dealer is allowed the input credit of the tax paid on purchases and only the value added part is taxed.

Therefore, in the VAT regime, input tax credit is at its centre. This facility provides for limiting the cascading effect of multi point levies, making the products globally competitive, and thus a transition from an assessment to a self assessment procedure. So it is important to understand the concept of Input tax credit for computing the net tax payable under the KVAT law.

In simple terms, full credit of the input tax is available when the tax is paid on inputs by a dealer who sells goods within the State or outside the State or tax is paid by agents of non-resident principal or tax paid towards goods which are exported.

The input tax deduction is not available with regard to inputs used in the manufacture of exempted goods, the reason being that when no tax is paid on the output, no credit would be available thereon. An unregistered dealer too will not be allowed to avail the input credit on purchase of goods, as he does not pay any output tax.

In the case of some goods, schedule V specifically provides for restriction of input credit, although they are used in the course of business. Further, in some instances proportionate credit is available on the purchase of inputs used in manufacture of goods stock transferred, the fuel used in the production of goods for export, or taxable goods, or for generating captive power, etc.

Therefore, it is imperative that we understand the meaning of the term input credit, and to determine when it can be availed or restricted partly or wholly upfront or when it has to restrict proportionately or fully depending on the nature of sale effected.

Section 2(19) 'Input' wherein input "*means any goods including capital goods purchased by a dealer in the course of his business for re-sale or for*

use in the manufacture or processing or packing or storing of other goods or any other use in business"

Section 2(20) "*Input tax": Input tax has the meaning assigned to it in Section 10.*

Section 2(7): "Capital goods" *for the purposes of section 12 mean plant, including cold storage and similar plant, machinery, goods vehicles, equipments, moulds, tools and jigs, and used in the course of business other than for sale;*

Section 2(16) 'Goods vehicle' *means any kind of vehicle used for carriage of goods either solely or in addition to passengers (other than aeroplanes and rail coaches) and includes push cart, animal drawn cart, tractor-trailer and the like.*

Output Tax, Input Tax and Net Tax (Section 10)

Output Tax [Section 10(1)]

Output tax in relation to any registered dealer is as tax payable under the KVAT in respect of any taxable sale of goods made by a dealer in the course of his business. Further, it includes tax payable by a commission agent in respect of taxable sales of goods made by such agent on behalf of a dealer subject to issue of a prescribed declaration.

Output tax means the tax charged or chargeable under the VAT Act by a registered dealer for the sale of goods in the course of business.

Input tax [Section 10(2)]

Input means goods purchased by a dealer to be used in the course of his business. Inputs may be used either for manufacture, sale, CST sale, export, or processing, packing or resale or any other use in business. Input also includes capital goods. These goods include plant and machinery, goods vehicle, equipments, moulds, tools and jigs, etc.

Input tax is a tax paid or payable on the input purchased in the course of business from a registered dealer of the State and also includes purchase tax if any paid by the purchasing registered dealer. A complete set off of input tax paid on inputs including Capital Goods can be availed fully, however subjected to restriction provided under the respective sections.

There is no set procedures provided for availing input tax credit. However, on conjoint perusal of section 10(3) and the case of the *State of Karanatak Vs Centum Industries Private Limited*[12] it becomes evident that input credit is to be availed within a period of six months' time provided for revising return. Section 10(3) makes it clear that deduction of input credit will be allowed only for the month to which it pertains and is accounted in accordance with the provisions of the KVAT Act.

Hence input tax credit of a later period will not be allowed for set off against the earlier period output tax payable.

With regard to tax paid on purchases made from an unregistered dealer, the registered dealer will be eligible to claim deduction against the output tax only in the following circumstances and conditions

Where tax is payable on such goods or are used in such goods which are subjected to tax or

Where the goods are exported out of the territory of India; or

Such goods are consumed in the manufacture of taxable goods either for sale or for export out of the territory of India; or

Consumed in the manufacture of exempted goods for export out of the territory of India.

Net Tax [Section 10(3)]

Section 10(3):

Subject to input tax restriction specified in sections 11, 12, 14, 17, 18 and 19, the net tax payable by a registered dealer in respect of each tax period shall be the amount of output tax payable by him in that period less the input tax deductible by him as may be prescribed in that period ***and relatable to goods purchased during the period immediately preceding five tax periods of such tax period, if input tax of such goods is not claimed in any of such five preceding tax periods and shall be accounted for in accordance with the provisions of this Act."***[13]

Net tax payable by a registered dealer in respect of each tax period

[12] 2014 – 80 – KLJ – 65 – Karnataka HC

[13] Section 10(3) Substituted vide Karnataka VAT (Amendment) Act, 2015.

shall be the amount of output tax payable by him in that period less the input tax deductible by him.

Net tax= Output tax- Input tax

For example: If a dealer has purchased the inputs of ₹ 1,000 at the rate of 5% and sold the same at 1,200 at 5%, the Net Tax will be

Output tax (1200*5%) = ₹ 600

Input tax (1000*5%) = ₹ 500

Net Tax= ₹ 600 - ₹ 500

Net Tax= ₹ 100/-

Net tax is calculated by deducting the Input tax credit from the output tax in the tax period.

The amended restriction allows the dealer to claim input tax relating to purchase made during five months prior to the current tax period. This will help those dealers who have intentionally or unintentionally missed out to claim input tax credit. This will help in avoiding filing of revised returns for the dealers. This change has brought multiple benefits to the dealer. The Dealer need not file revised return for the tax period in which invoice is related. Earlier only option for claiming input tax credit was to file a revised return for the month to which purchases were relating. In case of online filing, if the dealer is to file a revised return for claiming the additional/missed out input tax, the excess amount could not be carried forward for adjustment in subsequent month, but to opt for refund. This amendment is with an intention to overcome the law decided by of Hon'ble High court decision in case of State of Karnataka Vs Centum industries private limited *-376-HC-2014 (Kar)-VAT dated 31st July 2014)*

Deduction only with proper tax invoice, debit note or credit note [Section 10(4)]

It is set out that deduction will be available for input tax while determining net tax payable only if the tax invoice, debit note or credit note issued in relation to sale is in accordance with the provisions of the KVAT (Section 29 and section 30).

Further, such document should be with the registered dealer taking the deduction at the time any return in respect of the sale is furnished. The documents like Tax invoice, cash memo/ bill are to be issued compulsorily.

The prescribed particulars should be entered in the Invoice.

The dealer availing credit in the return filed for a tax period should have the tax invoice or the credit note or debit note on the basis of which credit is availed by him at the time of furnishing the return for the tax period. In other words, the benefit of the input tax deduction is inadmissible to a dealer registered under the Act unless he is in possession of a valid Tax Invoice or a debit note or credit note as the case may be.

Adjustment or refund of excess input tax [Section 10(5)]

For any tax period, the input tax deductible exceeds the output tax payable; the excess amount shall be adjusted or refunded together with interest, as may be prescribed. When the dealer utilizes goods for purposes which are eligible to tax and which are not eligible to tax, only proportionate tax attributable to the use for tax purposes will alone qualify for Input Tax Credit. The date of receipt of goods by the dealer with necessary documentation is the point at which input tax credit can be taken. Input tax is subject to restrictions set out in the input tax restrictions, deduction of Input tax in respect of capital goods, special rebating scheme, partial rebate, change in use, etc.

Input tax Restrictions [Section 11(a)]

The main purpose of introducing the VAT deviates at this juncture, where the credit of the input is not allowed for varied reasons, and this (culminates into cost of the product, and the dealer while collecting tax ends up collecting tax on such restricted input tax also.

Hence the entire act of introducing VAT to avoid cascading effect of tax on tax gets jeopardised here.

Purchases attributable to exempted goods [Section 11(a)(1)]

Input Tax is not deductible in respect of tax paid on purchase attributable to the sale of exempted goods under section 5 except when the goods are sold in the course of export out of the territory of India. If tax paid goods are consumed in the manufacture/processing of exempted goods, then such input tax paid does not qualify for deduction unless such goods are used for export. Export sales are zero rated and not exempted from tax. So tax paid on inputs used for export of the goods can be rebated.

Input tax restricted goods [Section 11(a)(2)]

Tax paid on goods mentioned in the fifth Schedule, except those which are meant for resale or used in manufacture or any other process of other goods for sale. The fifth schedule deals with the input tax restricted goods. If such goods are used in manufacture or other processes, or in resale or in business or consumption or in the execution of the works contract, then there will not be any restrictions of input tax credit. But if such input tax restricted goods are used otherwise, then they are not eligible for taking the input tax credit.

Notified goods [Section 11(a)(3)]

If any goods are notified by the Government or the Commissioner for restricting the input tax credit on them, then the dealer is restricted to avail the input tax paid on the purchase of such goods.

Capital goods [Section 11(a)(4)]

Capital Goods are also inputs, hence any tax paid on their purchase is eligible for tax credit provided such input taxes paid are not capitalized as value of assets. Secondly, they should not appear in the fifth schedule of input tax restricted goods. They should have been purchased for use either wholly or partly in the business of taxable goods or in the course of export out of territory of India. The deduction of Input tax will be allowed only after the commencement of commercial production or sale of taxable goods or sale of any goods in the course of export out of the territory of India.

For example, furniture is a capital good, but because it is in the restricted list, no input tax credit can be claimed for it. Similarly, if a dealer buys building material for the construction of a factory, the input tax paid on the purchase of construction material would be denied to him, because it is in the list of restricted goods.

Stock transfer [Section 11(a)(5)]

The tax paid by a trader on the goods which are purchased and subsequently transferred to a place outside Karnataka, not as a sale (which can generally includes a stock transfer transaction) or Where the tax paid by a manufacturer on purchase of goods are used as inputs in the manufacture, or processing or packing of other taxable goods which are dispatched to a place outside the State otherwise then as sale, then the input tax to restricted will be calculated on the basis of special rebating scheme.

Accordingly, the dealer will have to restrict 2% of the proportionate input tax credit towards such transfer of taxable goods outside the State otherwise then by way of sale.

Fuel [Section 11(a)(6)]

Tax paid on petroleum products like naphtha, liquefied petroleum gas, furnace oil when used as fuel in motor vehicles is not considered input tax. However, if the same are used as fuel in the production of taxable goods or captive power, input tax will be eligible, but an upfront 2% will have to be restricted thereon.

Unregistered purchase of fuel [Section 11(a)(7)]

If the tax is paid on purchase of fuel from an unregistered dealer, then no deduction is available. In other words, if the tax is paid on purchases from unregistered dealers under sub-section (2) of Section 3 on the purchase of fuel, such input tax is upfront restricted.

Tax paid on purchases from unregistered dealers [Section 11(a)(8)]

When tax is paid on URD purchases of any goods other than fuel, then unless and until output tax is payable on such goods or used in other goods on which tax is payable, or when such goods are sold in the course of export out of the territory of India, then input credit will not be available thereon.

So for goods other than fuel, the tax paid therein will be allowed as deduction as input tax only when the output tax is payable on such goods (trader) or are put to use in (manufacturer/ works contractor), or when the same is exported.

Tax paid to the person who has failed to register [Section 11(a)(9)]

A dealer who is required to register as per provisions of section 22 of this Act, and fails to get himself registered, then such a dealer is not eligible for input tax deduction of the input tax/Purchase tax paid under Section 3(2) of this Act.

Input tax deduction by an Agent [Section 11(b)]

Where the goods are sold through the agents within the State then the agent

is liable to pay the KVAT. However, the principal would be eligible for deduction for the same. When goods are sold through agents of non-resident principals then the resident agent would be liable to pay the KVAT. He would also be eligible for input credits. The agent shall issue Form VAT 140 and Form VAT 145 to the principals respectively. The VAT provisions are inapplicable to the agents acting for non-resident principals.

Input tax deduction by an dealer executing works contract [Section 11(c)]

Input tax shall not be deducted by any dealer executing a works contract

- in respect of the amount paid or payable to any sub-contractor as consideration for execution of part or whole of such works contract for him, that is claimed as deduction in accordance with rule 3(i-1);and
- in respect of the amount actually expended towards labour and other like charges not involving any transfer of property in goods in connection with the execution of works contract, that is claimed as deduction in accordance with rule 3(l).

Rule 3(2) (l) of the KVAT Rules, 2005 provides exemption towards amounts actually expended towards labour and similar other charges from the total turnover. Such labour and other charges on which tax is paid normally include consumables, which are consumed in the process of execution of works contract, and there does not arise any transfer of property in goods. Accordingly, no taxes are levied on such consumables.

The identity of the consumable is entirely lost in executing the works contract. The nature of consumables may be gas, electrodes, electricity, water, chemicals etc. These and such other items, which are consumed or used and in such cases there will be no liability to pay tax because there would be no material or goods, property in which could be said to pass from the contractor to the Contractee.

Prior to the introduction of the said section, dealers were getting double deductions, one is by way of availing input tax credit on purchase of material which are in the form of consumables, and the subsequent benefit by way of labour & other like charges as there was no transfer of property happening. Therefore a sub section c to section 11 was introduced with effect from April 1, 2012 wherein in respect of the amount actually expended towards labour and other like charges not involving any transfer of property in goods in

connection with the execution of works contract that is claimed as deduction and the input tax credit thereon stood mutually exclusive.

Section 11(d): Notwithstanding anything contained in this Act, where any dealer has sold goods at a price lesser than the price of such goods purchased by him, the amount of input tax credit shall be restricted to the amount of output tax of such goods."[14]

The objective of VAT i.e., widening of Tax base by taxing value addition at each stage of sale was defeated by refund claims by the various dealers by selling goods at lower price than the purchase price. This sub section has been inserted to safeguard the revenue by allowing input tax credit limited to the output tax payable of such goods. The above provisions was inserted to provide for reversal of input tax credit in case a dealer sells goods at a rate lower than the purchase price in the guise of business practices like post-sale discounts/annual discounts/special discounts etc., in certain commodities to safeguard the State revenue.

Deduction of input tax in respect of Capital goods (Section 12)

Credit of input tax paid on capital goods which are used wholly or partly in the business of taxable goods or goods sold in the course of export can be availed in one instalment and the month in which they are purchased. However, deduction of such input tax is allowed only after the commencement of commercial production or sale of taxable goods or sale of goods in the course of export.

Capital goods scheme (Rule 133)

Where capital goods are disposed of other than by way of sale after the date of commencement of commercial production or the sale of taxable goods or the sale of any goods in the course of export out of the territory of India, the dealer shall *repay **input tax deducted in respect of such capital goods, and such amount repayable shall be*** calculated on the prevailing market value of such capital goods at the time of such disposal.

In the case of J.K. Cement Works v. the State of Karnataka 2013 (77) KLJ 445 (Karn.– Tri.) (DB); In the instant the Honourable Karnataka Appellate Tribunal held that 'cement' used in construction of factory building and foundation therein for installing machinery cannot be regarded as 'capital

[14] Inserted vide Karnataka VAT (Amendment) Act, 2015

goods' to claim input tax credit on the same. While holding so the Tribunal held as under: (a) To claim input tax credit on capital goods, the claim must be in respect of movable goods and must be capital in nature i.e. For use in business other than for sale; (b) Further, it must not be any of goods enumerated as 'input restricted goods' in Fifth Schedule under Section 11(a)(3); Cement though forms part of plant, is an immoveable property and it is also enumerated as one of the 'input restricted goods' in Fifth Schedule under Section11(a)(3) of the Karnataka VAT Act, hence input credit thereon cannot be availed.

Pre-registration purchases (Section 13)

A dealer who starts a business may procure some goods on which the KVAT would have been paid prior to registration. He would be eligible for the pre-registration purchase for the purchase made in the period of past three months if the same are in the stock subject to input tax restrictions.

Special Rebating Scheme (Section 14)

Input tax credit will have to be restricted with regard to the use of inputs referred to in subsections 5 and 6 of section 11. In the following instances 2% of either directly identified input tax credit or proportionately determined input tax credit will have to restricted,

Where purchases are made within Karnataka and are later transferred (otherwise then as sale or in finished goods which are taxable; or are used in manufacturing as petroleum products.

No Rules have been framed for quantifying the special rebate. However, the following formula prescribed under section 17 and rules thereunder can be used to compute the eligible input credit after restricting a portion under the partial rebating scheme.

Deductible Input tax = Value of stock transfer/ Total sales *Non identifiable Input tax *12.5/14.5

Non identifiable Input tax means Input tax paid on common inputs used in relation to sale of taxable goods, exempted goods and non-taxable transactions like branch transfers.

The total sales include non-taxable transactions like stock transfer, consumables used, etc.

The total input tax credit available when inputs are used in relation to stock transfer of goods and if it is not possible to identify the inputs used in relation to stock transfer

Deductible Input tax credit =Total Input tax- Input tax (partial rebate) - Input tax (Special rebate).

If the petroleum products are used as fuel and other inputs, the rebate may be calculated on the estimate of consumption.

Partial Rebate (Section 17)

Section 17 foresees four situations, which may create difficulties in arriving at a correct and exact deductable input tax credit, and provides for solutions for mitigating these difficulties. If any excess input tax credit is availed, which otherwise was to be restricted, that will have to be repaid to the Central Government.

Partial rebate scheme will apply when

(a) A dealer makes sale of taxable and exempted goods; or

(b) in addition to the sale of taxable goods or the above referred, transfers exempted or taxable goods outside the State otherwise then by way of a direct sale or purchase ;or

(c) puts to use the inputs for any purpose other than selling, manufacturing, processing, packing or storing of goods in addition to using them in the course of business; or

(d) in addition to any of the above activities the dealer purchases petroleum products for use as fuel in the production of any goods or captive power.

It can be inferred from the situations mentioned above that the dealer will have to restrict the input tax credit to the extent that they or it relate to the transfer of goods which do not generate output tax.

Rule 131 prescribes the method for apportioning and attributing the input tax credit among the above activities. Input tax directly relating to sale of exempted goods, except when such goods are sold in the course of export, is not deductible. Input tax relating to both sales of taxable goods as well exempted goods including tax on inputs used for non taxable transactions is not deductible to the extent provided in the formula.

Deductable input tax credit =

$$\frac{\text{Sale of taxable goods} * \text{non-identifiable input tax credit}}{\text{Total Sale}}$$

Apart from the formula prescribed by the rule, the input tax to be restricted can be computed in the following manner,

Non deductible input tax =

$$\frac{(\text{Sale of exempt goods} + \text{non taxable transaction}) * \text{total input tax}}{\text{Total sales (including non taxable transaction)}}$$

The definition for the purpose of above formula as prescribed by rule is provided herewith,

Sale of Taxable Goods :			
	Aggregate of rule 3(b) to (f) i.e		
3(1)(b)	Total amount received towards normal sale, supply or distribution with in the state. (other than sales which are exempted under section 5)		XX
3(1)(c)	Total amount received towards execution of works contract		XX
3(1)(d)	Total amount received towards transfer of right to use goods.		XX
3(1)(e)	Total amount received towards transfer of goods on hire purchase		XX
3(1)(f)	Aggregate sale amount of any goods sold — In the course of interstate sale — In the course of export, or (including exempted goods which are exported) — In the course of import (high sea sales)		XX
	Total sale of taxable goods		XXX
Total Sale :			
Section 2(35)	Total Turnover	XX	
Rule 3(1)(a) – 3(2)(e)	Less: Net purchase from unregistered dealers (Total amount paid to the unregistered dealer – amount received for goods returned with a period of six		

	months(account should reflect the date of return and the date of amount being received from the unregistered dealer))	
	Net Total Sales	XX

Non-Identifiable Input tax credit will be the common input credit which is not directly related either to the trading of taxable goods or exempted goods.

Procedure for apportionment

Apportionment under partial rebating scheme is to be done each month on a provisional basis. True apportionment is to be done in returns filed for the months of September (six months) and March (whole year) where input tax on non-taxable transactions is not more than ₹ 500, which shall be treated as input tax on taxable sales.

Under Rule 131(5) the Commissioner can specify a special formula, if the formula given in Rule 131(3) does not give the correct amount of non-deductible input tax. The formula has to be dealer specific, for he does not have the power to give a formula that can be applicable to all the dealers. Input tax on capital goods used in relation to sale of taxable goods or goods sold in the course of export and also in relation to exempted goods or goods stock transferred outside the State or non-taxable transactions are eligible for partial rebating.

When a registered dealer wishes to claim deduction of input tax for certain types of transactions (as set out below) he will have to apportion the tax paid on the purchases in accordance with Rule 131 or by special methods to be approved by the Commissioner or any other authorized person. If any input tax is deducted in excess the same has to be paid on such ascertainment.

Claims to input tax (Rule 132)

Rule 132 (1) prescribes that a dealer claiming partial rebate as per Rule 131 shall file monthly returns, calculating the deductible input tax provisionally. However, such a dealer is required to calculate the actual deductible input tax rebate in his return filed for the sixth month and the twelfth month of every year.

Where under sub Rule (1), in any period of one month the total input tax due on a dealer's non taxable transactions does not exceed five hundred rupees, all such input tax in that period shall be treated as input tax on taxable sales.

Change in use after deduction of input tax (Section 19)

In cases where a registered dealer has already deducted input tax on any goods which for any reason are not used by him in the course of his business or which are lost or destroyed, then any input tax deducted becomes repayable. Such repayment has to be made in the period following the date on which those goods were put to such other use or got destroyed.

In cases where change of use has taken place pertaining to goods which are wholly or mainly used or are intended for use in the sale of taxable goods or in sale of any goods in the course of export out of the territory of India, the amount of repayment is required to be calculated based on the prevailing market value of such goods at the time of change of use.

In cases where a registered dealer after deducting input tax on any goods used in the course of his business opts for composition of tax under section 15, the input tax deducted on the goods held in stock on the date on which the dealer so opts shall be repayable by the dealer in the tax period following such date and the input tax so repayable shall be calculated on the market value of such goods on such date.

Deduction of input tax on exports (Section 20)

All the tax paid under the KVAT by any dealer on purchase of inputs in respect of any goods sold in the course of export out of the territory of India is allowed for claiming input deduction in terms of input tax, output tax and net tax, subject to the restrictions discussed above. This is irrespective of the fact that no tax is payable on the exports. The said input tax is effectively used for paying taxes on other sales made within the state.

Deduction of input tax on interstate sales (Section 20)

Similar to the deduction of input tax on exports even in interstate sales, all the VAT paid on purchase of inputs in respect of any taxable goods can be set off against the CST payable for interstate sales.

Deduction of input tax on special economic zone and developers (Section 20)

Tax paid under this Act on purchase of inputs by a registered dealer who is a developer of any special economic zone or any unit located in any special economic zone established under authorization by the authorities specified

by the Central Government in this behalf shall be refunded or deducted from the output tax payable by such dealer, subject to such conditions and in the manner as may be prescribed as specified in Rule 130-A

Can input tax related to purchase of a month more than a year back be claimed in the current return?

Input tax related to purchase of a month more than a year back cannot be claimed in the current month. The Honorable High court in the decision of Centum Industries ts-376-HC-2014 (Kar)-VAT dated 31st July 2014 held that if input tax credit is not claimed in the original return as well as in the revised return by filing within six months, Input tax credit cannot be allowed even if it is filed in the subsequent tax period. The Honorable High Court at para twelve held that, as per section 10(3), input taxes must be accounted in the books of account, and if the same is accounted in the subsequent tax period, then input tax credit cannot be allowed under law.

Chapter 6

Filing of Returns and Payment of Taxes

Returns (Section 35)

A registered dealer / Central / State Government is required to file a return (electronic method) within twenty days after the end of the month together with the amount of tax due.

The Competent Authority can insist upon filing separate branch returns if a dealer has more than one place of business in the State.

Tax on any sale or purchase of goods declared in a return furnished shall become payable at the expiry of the period specified. The Authority may require any registered dealer to furnish a return for such periods to furnish separate branch returns where the registered dealer has more than one place of business. The MRP dealer should submit the monthly return in Form VAT 105.

Any omission or incorrect statement in the return will have to be revised within a period of six months {except if such revised return is on issue of a debit note u/s 30 till 31.03.2012}

Returns (Rule 38)

Monthly return shall contain particulars of net values of sales / purchases and other transactions, including input and output tax claimed or collected and net tax relating to all places of his business in Form VAT 100. The return shall be filed along with the proof of payment of net tax as per the return.

Net Value (Rule 36)

Net Value

In respect of sale within the State means the aggregate of

- Sales or purchase [URD purchases u/s 3(2)];

- Works contract, lease, hire-purchase Sale in the course of interstate trade, transfer of goods to other states, otherwise than as direct sale, exports and sale in the course of import;

Less: deductions as per rule 3(2)

- Inter-State sales / exports / dispatches outside the State other than by way of sale;
- All amounts allowed as discounts and URD returns u/s 3(2)
- Goods exempted u/s 5 and sale of business as a whole
- All amounts collected by way of tax under this Act
- Agents turnover supported by Form VAT 140
- APMC Commission collected
- Hire purchase interest to the extent of 20% of the unpaid amount
- Deductions related to works contract
- Inter-State sale – as determined under the provisions of the CST Act
- Stock transfer – their value (at Sale price/Market price explain to definition of turnover u/s 2(36)) less freight, insurance and similar other charges
- Export / import - their value, less freight, insurance and similar other charges
- Purchases – their value on which tax is charged
- Receipts of goods other than by way of purchase - their value less freight, insurance and similar other charges

Returns (Rule 38)

- As long as any dealer remains registered, he shall submit such monthly return, whether or not any tax is due for any tax period (one calendar month for dealers other than composition dealers – Rule 37)
- Payment of taxes through banks is possible
- Electronic return may be submitted to the VAT Officer according to the prescribed procedure

Incomplete / Incorrect returns (Rule 39)

- In case the return filed is incomplete or incorrect, the VAT officer shall issue a notice in Form VAT 150 to the dealer to submit a complete or correct return within 10 days of issue of the notice.
- If he fails to file it within the given time, he will have to pay penalty with interest penalty u/s 72 with interest dealt separately.

Returns (Rule 40, 41, 42, 43)

- If a return is not accompanied by proof of payment, the VAT Officer may issue a demand notice to a dealer in Form VAT 210, demanding tax plus interest specified in section 36 / 37 (1.5% p.m.).
- Such taxes plus interest are payable within 10 days.
- A belated return (including revised return) has to be furnished along with proof of payment of the interest due u/s 36 / 37
- On cancellation of registration, the registered dealer is required to furnish a Final return.

Time period for filing final return

- In case of sale / discontinuation of business – within 15 days after such event
- Cancellation of voluntary registration – within 20 days after the end of such period
- Conversion of individual to partnership firm / any change including dissolution – within 15 days of his entering into such partnership
- In case of death – within 30 days from the date of death
- In case of a registered dealer whose total or taxable turnover did not exceed the threshold limit as specified u/s 22 – within 20 days after the end of such period

Return- Composition dealer

- The dealer to report his option in Form VAT 1, not later than the date on which registration becomes effective

- If already registered under regular scheme, the option to move to composition shall come into force from 1st day of the following month
- Until composition is confirmed, - to file return in VAT 100
- On confirmation, the return shall be in Form VAT 120
- Works contractors, Hoteliers / Restaurateurs, caterers, sweetmeat / ice cream sellers, producers of granite metals by mechanical devices – shall furnish the monthly return within 15 days after the end of the relevant month
- Others (small dealers) – shall file quarterly returns within 15 days after the end of the relevant quarter.

Return- Casual trader (Rule 43)

- A casual dealer will have to file Monthly return in Form VAT 110 with proof of payment within 10 days after the end of the month.
- If he stops his occasional transaction during the course of a month – monthly return in VAT 100 within 7 days of the completion of the last transaction.
- Where he leaves the jurisdiction – he shall before leaving and immediately following the closure of the said transaction – submit the final return in VAT 110 along with the full payment of tax.

Return – Government Department (Rule 44)

- Every department of the government will file Monthly return in Form VAT 100 within 20 days after the end of the relevant month in which the tax was collected. If the return is not accompanied by proof of full payment, the VAT office may issue a demand notice in Form VAT 210 demanding to pay tax plus interest specified in section 36 (1.5% p.m.).
- On government department deducting TDS u/s 9-A – then a monthly Statement in Form VAT 125 to be filed within 20 days after the end of the relevant month.

Provisional Return – Rule 132

- Any dealer claiming input tax deduction relating to partial exemption

and capital goods (Rule 131) shall complete his return on a provisional basis each month.

- The true apportionment for the year shall be made in the returns to be furnished for the 6th month (September return to be filed in October) and final month of the year (March return to be filed in April) calculating the true apportionment as per rule 131 for the part period and the whole year.

Return means any return including a revised return prescribed or otherwise required to be furnished by under this Act. It includes monthly return, quarterly return, revised return and final return.

The KVAT law requires the dealer to file the monthly return as prescribed in the law. Every registered dealer under this Act is required to file the return in Form VAT 100. Payment of taxes as declared in the return should be made within twenty days from the end of the preceding month.

Every dealer shall submit a monthly return, containing particulars of net values of sales, purchases and other transactions, including input and output tax claimed or collected and net tax relating to all his places of business and accompanied by proof of full payment of any tax due to the jurisdictional Local VAT officer in Form VAT 100 within 20 days after the end of the relevant proof of full payment due.

A dealer may also submit a return electronically. Where any return submitted is apparently incomplete or incorrect, the jurisdictional Local VAT officer or VAT sub officer shall issue a notice in Form VAT 150.

In case of omissions or incorrect statements in the return submitted, a revised return can be filed by the registered dealer within six months from the end of relevant tax period except when such revised return is due to the issue of a debit note. Tax Period is a calendar month. Return is to be filed even if no tax is payable. A revised return can be filed in Form VAT 100 within a period of six months from the end of the relevant tax period.

It is a consolidated statement of turnover and tax paid or refund of excess tax paid. In other words, if there is change in the turnover or tax details in monthly return, the same has to be revised by revised return within six months from the end of the tax period.

The composition dealers are required to file the monthly/quarterly return as in Form VAT 120. If they are the composition dealers and their total turnover in

not exceeding the notified limit (₹ 25 lakhs), then they are required to file the quarterly return.

All other composition dealers are required to file the monthly return. Even the dealers can file the revised return within six months from the end of the relevant tax period if there is an omission or incorrect statement.

Every registered dealer, the Central Government, the State Government, a statutory body and a local authority liable to pay tax collected is required to furnish a return. Return in Form VAT 100 has to be filed giving details of particulars of net values of sales, purchases and other transactions, including input and output tax claimed or collected and net tax relating to all his places of business.

Payments towards interstate sales would also be indicated therein. The said return should be accompanied by proof of full payment of any tax due. The return with all the required enclosures has to be filed to the jurisdictional Local VAT officer or VAT sub-officer within twenty days after the end of the relevant tax period.

In the case of Government, Statutory or Local Authority a monthly return has to be submitted to the jurisdictional Local VAT officer or VAT sub-officer. Where such body is located in areas falling under more than one Local VAT officer or VAT sub-officer, it has to file a return to such Local VAT officer or VAT sub-officer as may be notified by the Commissioner in this regard.

The provision also adverts to electronic filing of returns, which is provided in Rules. Such return can be submitted to the jurisdictional Local VAT Officer or VAT sub-officer or to a bank or any intermediary appointed by the Government, as per the specified procedure.

The law empowers the prescribed authority to require any registered dealer either to furnish a return for such periods or to furnish separate branch returns where the registered dealer has more than one place of business. This is however subject to the specified terms and conditions. As long as any dealer remains registered, he shall submit such monthly returns, whether or not any tax is due for any tax period.

Tax Payment

The tax due on such return has to be paid within twenty days after the end of the preceding month or any other tax period as may be prescribed. The

provision clearly sets out that tax becomes due automatically and there is no requirement to make a separate demand for such tax payment. The tax indicated in the return shall be due on the twenty first day or the sixteenth day after the end of the relevant tax period

Outsourcing of Tax collection and Return collection

The Government may notify any bank or appoint any intermediary in respect of any class of dealers for receiving returns along with payment of tax or any other amount due under the Act electronically or otherwise, subject to such conditions as may be specified. Many banks have been notified and it is now mandatory for making electronic payment while filing the return, when the tax payable amounts exceeds Rs 10,000.

Revised Return

If any dealer having furnished any return under the KVAT (except return against the best judgment assessment) discovers any omission or incorrect statement therein by himself, he can furnish a revised return in Form VAT 100 within six months from the end of the relevant tax period.

However, if there is any understating of his liability to tax or overstating of his entitlement to a tax credit by more than five per cent of his actual liability to tax, he is liable for penalty equal to ten per cent of the amount of such tax under or overstated after being given the opportunity of showing cause in writing against the imposition of a penalty. No such revised return can be filed if such omission or incorrect statement is found as the result of an inspection or receipt of any other information or evidence by the prescribed authority.

As per section 36 of the KVAT Act interest shall be payable

In the following few instances the dealer will be required to pay interest at the rate of 1.5%,

- If the dealer fails to pay any amount of tax or additional tax declared in the return, or
- The dealer furnishes a revised return after three months declaring additional tax payable but fails to pay interest, or
- The dealer fails to declare any tax or interest which should have been declared

- The dealer fails to file a return.
- The dealer fails to pay the amount specified in section 42 of KVAT Act.

Suggested records to be maintained for effective filing of Value Added Tax Return in Form VAT 100

1. Purchase records showing details of Net value of purchases on which tax has been paid at different rates, Net value of purchases of capital goods. Net Value denotes purchases excluding Schedule V items (Input tax restricted items) of the KVAT Act.
2. Purchase records showing details of purchases made without payment of tax, purchases made from outside the state, purchases made from outside the country, value of goods received by stock transfer/ consignment transfer, etc
3. Sales Records showing separately taxable turnover made at different tax rates, taxable turnover of interstate sales, turnover of exports, turnover of exempt sales, turnover of consignment/stock transfers sales. If possible, a product-wise bifurcation could also be made. .
4. A monthly account specifying separately output tax collected against taxable turnovers at different rates of taxes within the State
5. A monthly account specifying separately output tax collected against taxable turnover of interstate sales
6. A monthly account specifying input tax in relation to net value of purchases at different rates and includes input tax deductible in case of capital goods
7. Non-deductible input tax including partial rebate scheme
8. Deductible input tax under special rebating scheme
9. Deductible input tax paid for unregistered purchases with a tracking of URD purchases to sale (liable for output tax)
10. Deductible input tax for fuel
11. Net tax payable or tax refundable
12. Consolidated Input/ Output tax Account

E filing

A dealer may also submit a return electronically to the VAT officer or to a bank or to any intermediary appointed by the Government as per specified procedure.

Rule 38 (7)

The VAT Scheme works on the principle of self assessment which is known as Deemed assessment based on the acceptance of the returns filed as true and correct. An assessment or reassessment is required to be completed within a period of five years from the end of the tax period or 3 years after the evidence of facts sufficient to justify the making of the reassessment whichever is later Section 40 (1) (a).

In case of Deemed Assessment, the acceptance of the returns filed by the dealer as true or correct and assessing the tax based on the returns filed. But the Commissioner may notify the cases for production of accounts before the prescribed authority which can be taken up for Scrutiny Assessment. Therefore Assessment is carried out only for selective taxpayers.

Section 38(1): Explanation for the purposes of Clause (1), a quarter shall mean any period ending on the final day of the months of March, June, September and December of a Calendar Year. The tax period for every registered dealer, other than those dealers opting for payment of composition of tax, shall be one calendar month or such period as specified by the Registering Authority under section 35.

Chapter 7

Adjustments and Refund of Taxes

Refund [Section 10(5)]

If the eligible input tax deductible exceeds the output tax payable by him, the excess amount shall be adjusted or refunded together with interest as per the prescribed procedure.

Adjustments (Rule 127)

The essence of the VAT is in providing set off for the tax paid earlier and this is given effect through the concept of input tax credit/rebate. This input tax credit in relation to any period means the setting of the amount of input tax by a registered dealer against the amount of his output tax.

So any dealer, in whose case the input tax deductible exceeds the output tax payable, on the basis of monthly/quarterly return filed, or where the registration has been cancelled, the dealer can seek adjustment of the same against the CST payable, entry tax payable or special entry tax payable or the KST tax payable.

Any dealer who fails to furnish particulars of preparation of the return as required shall not be eligible to make the adjustments stated above.

Even the Jurisdictional Local VAT officer or VAT sub officer can make the adjustment of the excess amount towards the arrears of any tax found and shall issue a notice in Form VAT 250 showing details of the adjustments made to the dealer who is found to have arrears of KVAT payable, CST payable, Entry tax payable, Special Entry Tax payable and KST payable.

Refunds Payment order (Rule 128)

The dealer has the option to claim refund or carry forward the excess input tax credit against the output tax payable. He can claim the refund of tax based on the monthly return after seeking adjustment of tax. The dealer who fails to furnish particulars of preparation of the return as required shall not be eligible to make the adjustments provided above.

Accordingly, the authorized officer shall proceed to issue the refund payment order. The refund payment order in Form VAT 255 shall be sanctioned within thirty five days after the end of the month for which return is furnished or within fifteen days from the date of receipt of return, if it is filed after the time specified, or within thirty five days from the date of receipt of the final return.

The authorized officer may reject the refund if there is mistake apparent on the record or appears to be incorrect or incomplete based on any information available on the record after giving the opportunity to show cause in writing against such rejection.

While computing the period of thirty five days, the period excluded will be the period of delay attributable to conduct of person, the period relating to inquiry and the time taken for adjustment by the refunding authority.

If such amount is not refunded to the dealer within the period specified, the refund payment order in Form VAT 255 shall include the interest specified under section 50 covering the period following the end of the said period to the day of refund.(presently 6 % per annum).

The Local VAT officer or VAT sub-officer shall, if he is satisfied that any other refund is due to any person under the Act, by virtue of any order or proceeding, issue to such a dealer a refund payment order in Form VAT 255, sanctioning refund of such amount. It will include any interest payable as per section 50.

Where a refund payment order is issued, the officer will simultaneously send a copy of such order to the Treasury Officer concerned. In cases where the cash transactions of the Government are handled by the Reserve Bank or any other bank, then such copy will be sent to the officer in charge of such bank where the payment of the refund is to be made.

Application for Refund (Rule 129)

In cases where the amount is collected by any dealer, which is not required to be collected has to be paid to the government. The government on such collection will relieve the dealer from any liability against such tax claim from its buyers/seller. Such buyer or seller has to make a claim from the government as refund. Such refund application shall be in Form VAT 260.

The person claiming refund shall enclose with the application copies of tax invoices duly certified by the dealer in respect of whom the order of forfeiture

under section 47 is passed, and a certified copy of the order of forfeiture so passed.

If the claim for refund relates to collection of tax by more than one dealer, separate application in respect of each of such dealers shall be made. On receipt of the application, the Commissioner, if he is satisfied after holding such inquiry as he considers necessary, that the claim for refund is valid and admissible, he shall pass orders for such refund of the amount or any part thereof by the jurisdictional Local VAT Officer or VAT sub-officer.

Reimbursement of tax to specialized agencies of UNO and consulates etc. (Section 21)

Any tax collected under the KVAT on purchases made by

(a) Specialized agencies of the United Nations Organization and Consulates; or

(b) Embassies of any other country, but excluding consulates or embassies of such countries as may be notified, shall be reimbursed in such manner and subject to such conditions as may be prescribed. Till date, no such rules have been prescribed.

Application for Reimbursement of tax (Rule 130)

Tax collected on purchases made by any of the specialized agencies of the United Nations Organization and Consulates or Embassies of any other country, but excluding consulates or Embassies of such countries as may be notified, shall be reimbursed.

Any person claiming reimbursement of such tax shall make an application in Form VAT 165 to the Commissioner within sixty days from the date of purchase, together with copies of invoices. On receipt of the application, if the Commissioner is satisfied that the claim for reimbursement is valid and admissible, he shall pass orders for such reimbursement of the amount or any part thereof by the jurisdictional Local VAT Officer or VAT sub-officer.

Provided that any claim of reimbursement shall be restricted to goods that are purchased for the chancery and residence of the head of the mission or post of British High Commission or Deputy High commission of India except those goods purchased in respect of receptions hosted by the British High Commission and Deputy High Commission of India.

Refund to Export Dealers

Refund of input tax in the case of an exporter which shall be granted within thirty five days from the end of the tax period if the return is filed within the stipulated time and where the return is filed belatedly within fifteen days from the date of the filing. Refund of input tax in excess of output tax in the case of dealers other than the exporters shall be granted on the basis of the return filed for the last month of the year within thirty five days of filing of such return if it is filed well within the specified time and where it is filed belatedly within fifteen days from the date of filing. Refund may arise on account of orders of rectification, revision, appeals, and writ petitions.

Chapter 8
Penalties

The types of offences and penalties which are set out in the provisions of the KVAT are summarized in the table below:

Section	Nature of default or offence	Quantum of Penalty	Authority empowered to levy
Section 71 (1)	Failure to apply for registration within the time unless there is a reasonable cause for such default	Upto ₹ 5,000/- (this is in addition to interest payable)	Jurisdictional Registering Authority
Section 71(2)	Failure to report to Jurisdictional Registering Authority as to changes referred in section 28 with regard to registration - like sale or disposal of business, change in ownership of business, change or opening of new place of business, discontinuation of business, etc.	Not exceeding ₹ 5,000/-	Jurisdictional Registering Authority
Section 72 (1)(b)	Failure to furnish a return	Upto ₹ 50/- per day of default and maximum upto Rs 250/- if the tax amount is lower than 250/- and	Jurisdictional Local VAT officer or VAT sub-officer

Section	Nature of default or offence	Quantum of Penalty	Authority empowered to levy
		if the tax amount payable is more than 250/- then the penalty amount will not exceed the tax amount payable. In addition to above, a penalty of 5% of tax due or fifty rupees, if the default is not more than ten days, or additional penalty of 10% of tax due or fifty rupees, if the default is more than ten days.	
Section 72(2).	Understating of tax liability in the returns, which is more than 5% of his actual liability to tax	10% of the amount understated	Jurisdictional Local VAT officer or VAT sub-officer after providing the opportunity of being heard.
Section 72(2).	Overstating of credit in the returns of more than 5% of his actual liability to tax	10% of the amount understated	Jurisdictional Local VAT officer or VAT sub-officer after providing opportunity of being heard.
Section 72(3)	Furnishing of incomplete or incorrect particulars in the returns.	Up to ₹ 50/- for each day until such incompletion or incorrect information continues.	Jurisdictional Local VAT officer or VAT sub-officer

Section	Nature of default or offence	Quantum of Penalty	Authority empowered to levy
Section 72(3-A)[15]	Fails to Furnish or Furnishing of incomplete or incorrect particulars for preparation of returns	₹ 50/- per day of default till the return remains incomplete or incorrect	Jurisdictional Local VAT officer or VAT sub-officer
Section 72(4)	Failure to furnish return and assessment is made determining the tax liability.	Up to 10% of the tax so under assesse (since no return, it will be considered as under assessed).	Jurisdictional Local VAT officer or VAT sub-officer after providing opportunity of being heard.
Section 72(5)	A dealer who fails to get registered, in spite of being liable to be registered	Up to 30% of the tax under-assessed.	Jurisdictional Local VAT officer or VAT sub-officer after providing opportunity of being heard.
Section 72(7)	Fails to submit returns continuously for three months or two quarters	Punishable with simple imprisonment which may extend to six months or with a fine which shall not be less than five thousand and not exceeding twenty five thousand rupees, and when offence is continuing one with a fine not exceeding two hundred rupees. The above will be in	Jurisdictional Local VAT officer or VAT sub-officer after providing opportunity of being heard.

[15] Inserted vide Karnataka VAT (Amendment) Act, 2015

Section	Nature of default or offence	Quantum of Penalty	Authority empowered to levy
		addition to the other penalties leviable.	
Section 73	Collection of any amount by way tax or purporting to be tax by an unregistered dealer	Equal to the amount so collected (in addition to paying of amount so collected)	Assessing Authority, after providing opportunity of being heard.
Section 74(1)	Failure to maintain records about all his purchases, receipts, sales, other disposals, production, manufacture and stock showing the values of goods subject to each rate of tax including input tax paid and output tax payable.	Penalty not exceeding ₹ 5,000/- plus up to ₹ 200/- per day if such penalty is first during the year. And Penalty not exceeding ₹ 10,000/- plus up to ₹ 200/- per day if such penalty is first during the second or any subsequent year	Office authorized by the commissioner for making entry, search and seize, after providing opportunity of being heard.
Section 74(2)	Failure to retain the records maintained either manually or electronically for a period of 5 years or until the finalization of assessment or disposal of Appeal or revision, whichever is later	An amount of ₹ 10,000/-	Office authorized under section 52
Section 74(4)	Fails to submit audited statement of account or annual statement containing information as	₹ 5000/- plus ₹ 50 penalty per day for each day of failure towards non submission of such statements	

Section	Nature of default or offence	Quantum of Penalty	Authority empowered to levy
	prescribed by section 31(5)	continues.	
Section 75	Failure to produce any records or furnish any information in accordance with the requirements of the Law on demand.	Upto ₹ 10,000/- Plus ₹ 200 per day until the failure continues.	Office authorized by the Commissioner to for making entry, search and seize, after providing opportunity of being heard.
Section 76(1)	Failure to issue tax invoice,	From ₹ 2,000/- to tax payable or an amount equivalent to the tax payable on the transaction whichever is higher if it is first offence; and penalty of ₹ 5,000/- or an amount equivalent to the tax payable on such transaction whichever is higher on subsequent similar failures.	Office authorized by the commissioner for making entry, search and seize under section 52.
Section 76(2).	Failure to issue tax invoice, credit note or debit note in accordance with the provisions like having all the required details (original to buyer and copy to the dealer), issuing	From ₹ 1,000/- to tax payable on such transaction if it is the first offence and ₹ 2000/- if it is not the first offence.	Office authorized by the commissioner for making entry, search and seize under section 52.

Section	Nature of default or offence	Quantum of Penalty	Authority empowered to levy
	every taxable sale or taxable sale along with exempted sales, etc.		
Section 77 (1)	Removal or tampering of seal attached to any box or receptacle, godown or building etc., by the officer during search and seizure of dealer or carrier or other bailee for transportation.	From ₹ 5,000/- to 25,000/- and imprisonment up to one year	On conviction by a Court, not inferior to that of a Magistrate of the First Class.
Section 77 (1-A)	Any dealer who is required by the Commissioner to maintain electronic tax register under section 31(2-A), and such dealer either - Refuses to install, or - Refuses or fails to use or - Removes or tampers or destroys or attempts to destroy	From ₹ 5,000/- to 25,000/- and imprisonment upto one year	On conviction by a Court, not inferior to that of a Magistrate of the First Class.
Section 77(2)	Having possession of stocks of any taxable goods	Penalty which shall not be less than the amount of tax	Office authorized by the Commissioner to enter, search and

Section	Nature of default or offence	Quantum of Penalty	Authority empowered to levy
	which are not accounted for in his accounts records or documents maintained in the course of his business.	leviable or one thousand rupees whichever is higher. Not exceeding double of the amount of tax leviable or five thousand rupees whichever is higher.	seize, after providing opportunity of being heard.
Section 78	Obstructing,, hindering,, molesting, or assaulting an authorised officer or any other public servant assisting him in the performance of their duties under the K-VAT, or doing anything which is likely to prevent or obstruct any search or production of evidence.	From ₹ 5,000/- to 25,000/- or imprisonment up to one year or Both	On conviction by a Court, not inferior to that of a Magistrate of the First Class.
Section 79	Knowingly concerned with, or taking steps with a view to, fraudulently evading of tax by him or any other person.	Fine of one lakh rupees or double the amount of the tax evaded, whichever is higher, or imprisonment from 6 months to five years, or to both. This is cognizable and bailable.	No Court inferior to that of a Magistrate of the First Class can try any such offence. Such a court has to take cognizance of any such offence with the previous sanction of the Joint

Section	Nature of default or offence	Quantum of Penalty	Authority empowered to levy
			Commissioner. (section 80)
Section 57	Failure to furnish such information, document or statement for the purpose of any proceedings by any bank or any officer thereof (As specified in section 75)	Upto ₹ 10,000/- Plus ₹ 200 per day until the failure continues.	Office authorized by the Commissioner to enter, search and seize, after providing opportunity of being heard.
Section 55	Undervaluation in the document accompanying the goods liable to tax in transit or in the purchase invoice of more than 30% of the prevailing market price or MRP.	Sum not exceeding twice the amount of tax due on such goods.	Prescribed authority or officer empowered by the Commissioner.
Section 53	Establishment of check post and inspection of goods in movement	Levy of penalty on minimum one times and maximum one and half times of the tax due.	Check post officers/Prescribed Authority
Section 54	Penalty relating to transit pass	Penalty can be levied under the Act by way of a sum not exceeding twice the amount of tax leviable on the goods transported.	Prescribed Authority
Rule 172	Failure to properly display notices for	Fine of ₹ 1,000/- and ₹ 100 per day if	On conviction by a judicial magistrate

Section	Nature of default or offence	Quantum of Penalty	Authority empowered to levy
	customers as per Rule 172.	such default continues.	of First Class. Compounding of fine with the departmental officer is permissible on payment of ₹ 1,000/- on complying with the provision.
Rule 172	For breach of rules: 11, 14, 15,16, 26, 27, 28,29, 30, 31, 32, 33, 34, 157, 159, 160,171 and 172	Not less than ₹ 2,000 but not exceeding 5000/- and a further fine of ₹ 100 per day if such default continues	On conviction by a judicial magistrate of First Class.

Chapter 9
Accounts and Audit

Every registered dealer is expected to maintain proper books of accounts. If proper accounts are not maintained, penalty can be levied. The Act requires that a dealer has to maintain his books of accounts for a period of five years or till the assessment attains finality. The dealer shall provide access to electronic data if the records are maintained in any electronic medium. The officer can either take extracts of these records or place marks on such records as are found in such inspections.

Every dealer shall keep and maintain true and correct account of his daily transactions showing the goods produced, manufactured, bought and sold by him and the value thereof separately, together with invoices and bills.

A registered dealer shall maintain a separate purchase, disposal and sale accounts in respect of each commodity, whether taxable or not, dealt by him;

Every dealer shall maintain a VAT account containing details of input and output tax, together with credit or debit notes issued during the period.

Section 31(2) states that if the Commissioner or prescribed authority is of the opinion that the accounts kept and maintained by any dealer or any class of dealers do not sufficiently enable them to verify the returns or make assessment, then they may require any dealer or class of dealers to keep such accounts and records including tax invoice of manufacture, sales, purchases, disposals or transfer of stock other than by way of sales in such form and in such manner as they may direct.

Keeping of Books of Account and Records

Every registered dealer and every other dealer who is liable to pay tax under the VAT Act shall keep and maintain the true and correct account in Kannada or English or Hindi or in such other language as the Government may, by notification, specify. A registered dealer shall maintain separate purchase, disposal and sale accounts in respect of each commodity, whether taxable or not, dealt by him. Every dealer shall maintain a VAT account containing details of input and output tax, together with credit or debit notes issued during the period.

Where shall the books be kept?

Every dealer shall keep current books of account at the place or places of business entered on his certificate of registration and every purchase and sale shall be brought to account as soon as the purchase or sale is made.

Manual books and books maintained in computers

Registers, accounts and documents maintained should be sequentially numbered. Where the books are maintained by means of a computer or any other mechanical device, the dealer shall maintain copies in paper of such (register and other documents printed on a monthly basis.

Any entry in such registers, accounts and documents shall not be erased, effaced or overwritten, and all incorrect entries shall be scored out under attestation and correct entry recorded, and where the registers, accounts and documents are maintained by means of a computer or any other similar mechanical device, the dealer shall also maintain a record of correction or change made in any entry.

Books required to be maintained by the Agents

(i) Every commission agent, broker, Del credere agent, auctioneer or any other mercantile agent shall maintain accounts showing

(a) Particulars of authorization received by him from each principal to purchase or sell goods on behalf of each principal separately;

(b) Particulars of goods purchased or goods received for sale on behalf of each principal each day;

(c) Particulars of purchases or sales effected on behalf of each principal each day;

(d) Details of accounts furnished to each principal each day; and

(e) The tax paid on purchases or on sales effected on behalf of each principal and the challan number and date of remittance of the tax into the Government Treasury.

(ii) Every purchasing agent shall keep particulars of the names and addresses of the dealers or persons from whom he purchased goods and every selling agent shall keep the particulars of the names and addresses of the dealers or persons to whom he sold his goods.

Stock Book

Every wholesale dealer, importer, exporter and manufacturer is required to maintain monthly stock accounts in respect of each commodity dealt by him and such stock account shall contain particulars of purchases or receipts, sales, deliveries and balance of stock. Every dealer who is required to maintain stock accounts shall maintain subsidiary accounts for each godown, if there is more than one godown for keeping his stocks.

Manufacturing Account

Every manufacturer of goods shall maintain monthly production records, showing quantitative details of the various raw materials used in the manufacture and the quantitative details of the goods so manufactured.

Works Contract Accounts

A dealer who is a works contractor shall keep separate accounts showing the

- particulars of the names and address of persons for whom and on whose behalf he carried on the execution of works contract in respect of each works contract;
- particulars of goods procured by way of purchase or otherwise for the execution of works contract;
- particulars of goods to be utilized in execution of each works contract; and
- details of payment received in respect of each works contract.

Books required to be maintained by the dealer engaged in the transfer of right to use goods:

A dealer who is engaged in the transfer of right to use goods shall keep the following records:

- Particulars of the names and addresses of the persons to whom he delivered the goods for use
- Details of amounts received in respect of each transaction and
- Monthly stock accounts in respect of each commodity dealt with by him and such stock account shall contain particulars of purchases or receipts, deliveries and balance of stock.

Period of Retention of accounts

A dealer is required to maintain the books of account for a period of five years from the end of the year to which it relates or until the completion of assessment, whichever is later. If a dealer has gone for an appeal, he shall retain the books of account and other records until the appeal is finally disposed.

Declaration from the Agent

Rule 33(16): Every dealer claiming exemption on his turnover under sub section (2) of section 8 shall retain for every tax period a declaration in Form 140 obtained from the registered dealer who sold the taxable goods relating to such turnover on his behalf and the selling agent shall issue the declaration to his principal within twenty five days from the end of the month in which such goods were sold.

Declaration from the Principal

Rule 33(17) every dealer claiming deduction of input tax on goods purchased on his behalf by any other registered dealer shall retain for every tax period a declaration in Form VAT 145 obtained from the registered dealer who purchased the taxable goods in his behalf and also the tax invoices in original relating to such purchases and the purchasing agent shall issue the declaration and furnish the tax invoices to his principal within ten days from the end of the month in which such goods were purchased.

One of the reasons for the introduction of the VAT is to make the levy of tax transparent. The law provides for subjecting the accounts to a VAT audit.

Audit under section 31(4)

In the KVAT, audit means scrutiny of the records of the assesse and verification of the actual K-VAT payments and receipts of inputs and capital goods with a view to checking whether the assesse is paying the K-VAT correctly and following the K-VAT provisions and procedures. Rule 33 provides an elaborate listing of the methodology of maintaining accounts and records. Because of this, it becomes necessary for the auditors to look into the assesse records under the KVAT as well as own records to verify whether he is paying the KVAT correctly and following the laid down

procedures. The Audit can be of various types, such as statutory audit, Procedures Audit, Internal Audit of K-VAT and CST transactions, Input Credit Audit (Inputs and capital goods Credit), legal compliance audit, and review audit.

The KVAT Audit provides various advantages to the Government a well as to the dealers; it is advantageous to the government because it increases its revenue, lessens the cost of administration and collection of taxes, checks misclassification of goods to ensure the correct rate of tax and availing of input tax credit as per law. It is also beneficial to the Industry, as it updates the assesse with respect to exemptions and clarifications and about notifications and circulars.

After the introduction of VAT, almost all the registered dealers became taxpaying assesses. The assessing officers, at their present strength, found it difficult to cope with increased assessment work. Hence there was need for a system of self-assessment under which the return filed by all the dealers would be accepted as such and the dealers deemed to be assessed on the basis of those returns. The basic feature of the VAT system is that the VAT liability will be assessed by the dealers on their own and reflected in their returns, which would set off the tax credit. The correctness of self-assessment would be checked through a system of audit.

To prepare a meaningful audit report, the auditor must have sound knowledge of the relevant statutory requirement under the KVAT law. The audit notes and observations must be prepared in a systematic and methodical manner. These audit notes are the basis of drafting the report. There are some errors, which are committed accidentally due to lack of correct knowledge of accounting principles or statutory law. The auditor should use his professional judgment to rectify the accounting principles and statutory laws followed by the dealer. Some audit observations require classification to ensure minimum legal requirements and some audit observations require the auditor to make a qualification due to infringement of statutory requirements.

Generally, the basic audit procedures include verification of sales book, corresponding entries in the stock records should have been made, ensure that rates on which sales have been made are according to price list, sales return should be duly accounted for and stock should be duly adjusted to ensure that goods sent on approval basis or goods sent on consigner are not

recorded as sales. Sale in books of accounts is required to be reconciled with sales tax returns, VAT collections reconciled with payments and transfer after adjusting the input tax credit, and the net balance to appropriate accounts. The auditors have also to check adjustment of input tax by setting it off against output tax by relevant journal entries, check the different classification of sales at different taxes as per schedule, check the credit notes issued and the reason for their issue, check tax invoices and , bills of sale to make sure that they have been prepared as per the provisions of account, tally the monthly figures with the figures shown in the monthly return, check the purchase invoices to see that proper classification of purchases is made at different rate of taxes, and purchase returns are accounted correctly, check whether any stock is transferred to branches within the state and outside the state, and finally, check whether capital goods have been purchased, and rebates and discounts have been adjusted properly.

Section 31(4) Every dealer whose *'total turnover'* in a year exceeds rupees one Crore shall have his accounts audited, by a chartered accountant or a cost accountant or a tax practitioner subject to such conditions and such limits as may be prescribed and shall submit to the prescribed authority a copy of the audited statement of accounts and prescribed documents in the prescribed manner in Form VAT 240 within nine months from the end of the Financial Year.

The role of the auditor in the KVAT Audit is that he should obtain knowledge of the business of the dealer by evaluating its internal control and assessing the audit risk. He has to conduct audit as per the audit plan and the audit programme. He should conclude his audit on the basis of audit evidence and report the findings to the management. The auditor should be held liable for misstating for failing to detect a material fact.

Although the provision under Sec 31(4) is not obligatory, the benefits of making the audit mandatory are considered to be of great importance for growth in trade and commerce industry. The burden on the department is reduced significantly because the dealers already audited under the mandatory audit need not be subjected to audit by the department. There is no prescribed manner in which the Audit under the VAT has to be conducted.

Rule 33: The audited statement of accounts shall be submitted in Form VAT 240 to the jurisdictional Local VAT officer or VAT sub-officer within nine months of the end of the relevant year.

The KVAT law has cast primary responsibility on the auditors to verify the authenticity of books of accounts maintained by the dealers as well as the tax paid by them. The auditors can be chartered accountants, cost accountants or tax practitioners. They should basically verify whether the dealer has paid the taxes and availed the input tax credit by following the provisions and procedures as specified in the KVAT law. The KVAT Audit Report (Form VAT 240) has been bifurcated between the Certificate and the report. A report is a formal statement usually made after enquiry, examination or review of specified matters under report and includes the reporting auditor's opinion. The contents of the KVAT Audit report are classified as general information, particulars of turnover, deduction and payment of tax and particulars of declaration and certificates.

Basically the audit requires meticulous planning, considering the volume of work, strict time line and nature of business of the dealer. The dealer can be trader, Manufacturer, Works contractor, lessee, retailer, Distributor or Agent, etc whose total turnover exceeds one Crore for the financial year. They have to file the Audit Report within nine months from the end of the financial year. The Due date for filing the KVAT Audit Report shall be 31st December 2014 for the financial year 2013-2014. In case the KVAT Audit Report is not filed within due date then the dealer shall be liable to pay the penalty of ₹ 5000/- plus ₹ 50/- per day under section 74(4) of the KVAT Act. Auditor should be updated with KVAT laws, CST laws, KTEG laws, applicable notification, exemptions, and circulars while conducting the audit. The auditor forms the opinion or conclusion based on the audit evidence and decides the matters, which are required to be reported and commented.

Revised Returns

Every dealer is required to file revised returns within six months from the end of the tax period. During the process of KVAT Audit, if there is a difference in sales, purchases, Input tax credit, set off credit, tax payable etc then the Auditor can incorporate the same in the Audit certificate with the reasons.

Payment of Taxes

In the course of Audit, if there is an additional tax payable by the dealer then in such scenario the auditor can compute the taxes and should declare in the Audit Certificate. The Payment of the taxes can be made along with the

KVAT Audit Report accordingly. The new format prescribed by the department has done away with the requirement of computing and reporting interest and penalty in the audit report.

Monthly Details

The KVAT Audit Report is a consolidated report of all the transactions in a financial Year. The details of monthly transactions have also to be enclosed along with the KVAT Audit Report for the better comparison of details as per books of accounts and the monthly return filed.

Statutory Forms

The KVAT Auditor has to verify the statutory forms obtained manually or electronically from the department under the KVAT law and CST law. The KVAT Auditor should verify the usage of such forms and the stock of unused forms lying at the end of the financial year. But in case of sales or transfers against statutory forms, the dealer has to compute the difference in tax liability due to non availability of the statutory forms and can comment on the same in the KVAT Audit Report.

Classification of goods

It is an important aspect for computation of output tax liability and eligibility of input tax credit from the Audit point of view. In case the classification made by the dealer is in contravention with the classification made by the auditor then the he can either get a third independent expert opinion or make a comment on the same in the Audit Certificate. Even the matter pending before Commissioner or Appeal can be added in the report for the information of the VAT officer.

Financial Statements

The financial statements have to be enclosed along with the certificate and the report. The Audited financial statements have to be enclosed along with the certificate. In case the trading account with different classification of goods and profit and loss account and Balance sheet for transactions within the State and outside the State cannot be prepared then the auditor can give his reasons for not filing the same and can enclose the trading account with sales and purchase at different rate of taxes for the local sales and interstate sales as made by the dealer.

Notices received from the department

The department might issue a notice before and after the compliance of the KVAT Audit Report. With regard to the notices received, the auditor is not required to report anywhere in the audit report as.

Entry tax and Professional tax Compliance

There is no clause for the entry tax and professional tax compliance but as an auditor the details can be extracted and can be added to the report if there is grave deviation in compliance with the above provisions. It is to be noted that, such information are not called forth by the audit report, however it is on pure discretion of the auditor whether he has to report the same or no.

Books of Accounts Maintained

The auditor has to verify whether the books of accounts are maintained as specified in the KVAT Rules. For example,: Rule 33 of the KVAT Rules specifies the maintenance of books of accounts for the works contractor, agent, lessee, etc. In the case of a works contractor, the contractee details register, receipts details, labour and like charges register, sub contractor register, purchase register, etc.

Valuation of stock

There is no specific method specified by the KVAT law for the valuation of the opening stock or closing stock of dealers. Basically, it differs from dealer to dealer, just as valuation may differ for manufacturing industry, trader, works contractor, etc. In the case of manufacturing industry the valuation of stock can be different for raw material, semi-finished goods and finished goods, and has to be highlighted separately in the Audit Report.

Additional place of Business outside the state

In case the dealer has a place of business outside the State which is a branch or unit of the place of business within Karnataka, then the details of such additional places have to be added to the Report. In case the dealer is a partnership firm and one of the partners is engaged in another firm which is outside the State then as per our view the details of such places of business could be included in the Audit Report.

Eligibility of input tax credit as per Special rebate or Partial rebate formula

The KVAT law has specified the formula for calculating the special rebate and partial rebate; if there is a discrepancy between the auditor formula and the dealer formula, then the auditor will have to highlight in the KVAT Audit report the eligibility of input tax credit as per his view.

Input tax credit pertaining to interstate sales/Export sales

It is one of the unfeasible clauses in the Audit report where it is difficult to ascertain the input tax credit apportioned to interstate sales and export sales. Basically, the dealer deducts the eligible input tax credit from the output tax payable without bifurcating the credit apportioned to local sales and interstate sales as the input tax credit can be adjusted against the local tax as well as CST tax. Therefore, in such cases the auditor can state that it is not possible to ascertain the input tax credit pertaining to interstate sales as well as export sales.

Sale of Fixed Assets

The auditor while verifying the books of accounts of the dealer has to verify the sale of fixed assets because the tax is offered as per the law. In case there is buyback of a fixed asset like a motor vehicle, then as per our view it is liable to tax as per the provisions of the law.

TDS certificates (Form 156/158/161)

The auditor has to verify the TDS certificates issued by the dealer, such as TDS certificates to the industrial canteen or to the Government contracts.

Composition scheme

The auditor has to specify whether the dealer has opted for composition scheme and have fulfilled the conditions applicable for composition scheme. It was an issue whether the auditor has to verify the purchases or not as the composition dealers are not eligible for input tax credit. As per our view, the accounting of purchases with the Invoices have to be verified for the compliances and to state if it will be helpful if there is a change in the scheme, from that of composition scheme to regular scheme.

SEZ registered dealer

The KVAT Audit Report does not include the details of I form, but the auditor has to verify the details of I forms obtained from the department and their utilization and state them in the Audit certificate in the category of 'other information.' The auditor will have to verify that the input tax credit/refund has been availed in accordance with Rule 130-A.

Operation of the software

In the current scenario, different types of dealers account the transactions in different software and it may be difficult for the Auditor to understand the nature of transactions and accounting of the same. In such scenario he has to take assistance of the dealer to understand the accounting of the transactions and can obtain the hard copies for the verification.

Internal Documents by the Auditor

The auditor should

- Ensure that a dealer is registered,
- List the activities undertaken by the business,
- Note the accounting records used by the dealer,
- Ensure that records correctly reflect the business activities of the dealer,
- Ensure that return and other statutory filings have been done timely by the dealers.

Seek any other information that he considers relevant for discharging his professional duties honestly and efficiently.

Chapter 10
Invoices

Production of valid tax invoice issued by registered dealer indicating payment of tax is sufficient discharge of burden that lies on the dealer making claim of input tax credit. In case the selling vendor does not issue tax invoice despite having collected tax, then the buying dealer will not be eligible for input tax credit. A sales invoice or a bill of sale is a primary document for accounting a transaction of purchase or sale of goods and it is this document which evidences a transaction of purchase or sale of goods. Under this Act it is provided that every registered dealer shall issue a tax invoice in respect of any transaction of sale of taxable goods or exempted goods along with any taxable goods within the state.

Dealers to issue tax invoice (Rule 27)

Every registered dealer shall issue a tax invoice, when he sells taxable goods or exempted goods along with any taxable goods where the value of the goods sold is in excess of one hundred rupees, as specified in section 29:

Provided that a consolidated tax invoice shall be prepared by the dealer at the close of each day in respect of all sales whose value does not exceed one hundred rupees;

Provided further that where the purchaser so requires, a tax invoice may be issued irrespective of the value of the goods sold;

Provided also that where the value of taxable goods sold exceeds the value shown in the tax invoice already issued for such sale, a tax invoice shall be issued by the registered dealer for the excess value, and where any other document containing particulars of a tax invoice is issued by the registered dealer for the excess value, such document shall be deemed to be a tax invoice.

Notwithstanding anything contained in sub-rule (1) and Rule 29, every registered dealer executing a civil works contract, shall issue a tax invoice, in duplicate, or where he has opted to pay tax by way of composition under Section 15, a bill of sale, at the time of receipt of any amount including an

amount paid as advance falling under Explanation to sub-rule (1) of Rule 3 as consideration for transfer of property in goods involved in the execution of such works contract, whichever is earlier, and the original of such tax invoice or bill of sale issued shall be delivered to the person paying such amount or liable to make such payment and the copy thereof retained by the registered dealer;

Provided that in case of a registered dealer executing a civil works contract awarded by the Government, the running account bill prepared by such a department shall be deemed to be a tax invoice or bill of sale issued by the registered dealer (for the purpose of this rule.

Tax invoice to be in duplicate (Section 28)

(1) A tax invoice shall be issued even if it is generated by any mechanical device, with the original, marked "original-buyer's copy" delivered to the buyer, and the copy marked "seller's copy", to be retained by the registered dealer.

(2) On demand, another copy of the tax invoice, marked "transporter's copy" shall be issued to the buyer.

(3) A registered dealer shall not issue more than one tax invoice in respect of any sale, and may provide a duplicate, where the original of the tax invoice is lost or destroyed, with the declaration that it is a duplicate of such tax invoice.

Particulars of tax invoice (Section 29)

(1) A tax invoice shall contain the following details: -

(a) A consecutive serial number;

(b) the date of its issue;

(c) the name, address and registration number (TIN) of the selling dealer;

(d) the name, address and registration number (TIN) (if registered) of the buyer;

(e) a full description of goods;

(f) the quantity of goods;

(g) the value of goods;

(h) the rate and amount of tax charged in respect of taxable goods;

(i) the total value; and

(j) signature of the selling dealer or his agent:

Provided that in respect of a dealer issuing tax invoices under any centralized invoicing system is unable to issue tax invoices with consecutive serial numbers, such dealer shall be permitted to do so on informing the Jurisdictional Local VAT office or VAT sub-office before commencement of issue of such tax invoices:

Provided further that where a dealer or his agent has a Digital Signature Certificate issued to him as provided under the Information Technology Act, 2000 (central Act 21 of 2000) shall be permitted to affix his digital signature in the manner prescribed under the rules made by the Central Government in this regard, on the tax invoices issued by such dealer, after informing the Jurisdictional Local VAT Office or VAT sub-office before commencement of issue of tax invoices with such digital signature and the person authorized to affix such digital signature along with the copy of the digital signature certificate.

(2) A tax invoice issued by a registered dealer executing a civil works contract shall contain the following details, namely-

(i) a consecutive serial number;

(ii) the date of its issue;

(iii) the name, address and registration number (TIN) of the dealer;

(iv) the name and address of the contractee (if registered, his TIN);

(v) a brief description of the works contract being executed and the date of its commencement;

(vi) the amount of total consideration payable for works contract being executed and the amount already paid or payable with serial number/s and date/s of tax invoice/s issued towards such amount;

(vii) the total amount paid or payable as per sub-rule (2) of Rule 27 (any amount paid or payable other than as consideration for transfer of property in goods involved in the execution of such works contract may be mentioned separately with brief description of the nature of such amount and if it is part of any lump sum paid or payable, and the basis on which it is apportioned;

(viii) the taxable amount (taxable amounts with different tax rates shall be mentioned separately), if any amount is charged as tax, and , in other cases, the amount paid as consideration for transfer of property in goods involved in the execution of such works contract:

Provided that where the works contract being executed is not complete and the registered dealer is unable to compute correctly the taxable amount as per Rule 3 for the purpose of issuing a tax invoice, then such a dealer shall immediately after commencement of the works contract or within thirty days from the date of notification of Karnataka Value Added Tax (Amendment) Rules, 2007 whichever is later, file a statement to the Jurisdictional Local VAT Officer or VAT sub-office declaring the basis on which such taxable amount would be computed till the completion of the works contract.

Provided further that where it is found on the basis of any information available that the taxable amount as calculated by any dealer in any tax invoice issued is less than the actual taxable amount by more than fifteen percent or a dealer has failed to issue a tax invoice though required to do so, then any officer authorized under Section 38 or 39 shall provisionally determine the actual taxable amount and require such dealer to issue tax invoices based on such amount or the date on and the amount for which the tax invoice should have been issued, after giving him the opportunity of being heard.

Provided also that where default is made in complying with any order made under the second proviso or where tax invoice has not been issued on the date determined under the second proviso, the amount of tax payable on the taxable amount as determined shall be deemed to be the tax due under section 42 of the Act.

(ix) the rate and amount of tax charged on taxable amount or amounts;

(x) Signature of the dealer or his agent.

Particulars of the bill of sale (Section 30)

(1) A bill of sale as specified in section 29, issued by a registered dealer where the value of the goods sold is in excess of one hundred rupees, or a registered dealer selling non-taxable goods or a registered dealer selling goods in the course of inter-state trade or commerce or in the course of export out of the territory of India or import into the territory of India, shall contain the following details, namely-

(a) a consecutive serial number with date of sale;

(b) the name, address and registration number of the selling dealer; and

(c) a description of goods and their value.

Provided that a consolidated bill of sale shall be prepared by the dealer at the close of each day in respect of all sales whose value does not exceed one hundred rupees:

Provided further that where the purchaser so requires, a bill of sale may be issued irrespective of the value of the goods sold.

(2) A bill of sale shall, on demand, be issued in duplicate, even where it is generated by any electronic or mechanical device, with the original marked "original" and delivered to the buyer, and a copy retained by the registered dealer.

(2-A) A bill of sale issued by a registered dealer executing a civil works contract shall contain the following details, namely-

(i) a consecutive serial number;

(ii) the date of its issue;

(iii) the name, address and registration number (TIN) of the dealer;

(iv) the name and address of the contractee (if registered, his TIN);

(v) a brief description of the works contract being executed and date of its commencement;

(vi) the amount of total consideration payable for works contract being executed and the amount already paid or payable with serial number/s and date/s of bills of sale issued toward such amount;

(vii) the total consideration paid or payable as per sub-rule (2) of rule 27 (any amount paid or payable other than as consideration for the execution of such works contract may be mentioned separately with brief description of the nature of such amount and if it is part of any lump sum paid or payable then, and the basis on which it is apportioned):

Provided that where it is found that the total consideration as calculated by any dealer in any bill of sale issued is less than the actual amount of total consideration by more than fifteen per cent on

the basis of any information available or a dealer has failed to issue a bill of sale though required to do so, then any officer authorized under Section 38 or 39 shall provisionally determine the actual total consideration and require such dealer to issue bills of sale based on such amount or the date on and the amount of total consideration for, which the bill of sale should have been issued, after giving him the opportunity of being heard.

Provided further that where default is made in complying with any order made under the first proviso or where the bill of sale has not been issued on the date determined under the second proviso, the amount of composition payable on the total consideration as determined shall be deemed to be the tax due under section 42 of the Act.

(viii) the composition amount charged on the total consideration;

(ix) signature of the dealer or his agent.

Self purchase bill in case of unregistered purchase

Every registered dealer who buys goods from a person other than a registered dealer shall raise a bill recording such transaction containing the following details, namely.-

(a) A consecutive serial number with date of purchase;

(b) The name and address of the seller; and

(c) A description of the goods with its value.

Chapter 11
Special Economic Zone and Refund of Taxes to SEZ

Tax paid by a unit located in SEZ

Sub section (2) of section 20 has been amended and provides that a SEZ or a developer of SEZ would be entitled to refund of tax paid on purchase of inputs by them. SEZ unit or the developer can make an application for refund of tax paid as per the rules framed. The exemption from tax has been provided by a refund mechanism to such SEZ developers and the units located therein. Such dealers should use the inputs for development, operation or maintenance of the processing area in a special economic zone, or for the purpose of setting up, operating or maintaining a unit in the processing area of a special economic zone or for use in manufacture, trade, production, and for processing, assembling, repairing, reconditioning, reengineering or for packing in a unit located in the processing area of any special economic zone.

The refund or deduction shall be allowed on the goods actually used in the processing area of special economic zone for authorized operations as specified. However, If such goods are resold within the State or any goods are manufactured or processed with such goods and sold within the State, then tax shall be payable by the registered dealer on such sales without any deduction of input tax paid earlier: and

If such goods are put to any use other than for the authorized operations as specified, then the entire input tax refunded on such goods shall be repayable by the registered dealer. The registered dealer shall claim refund or seek adjustment of the tax paid in the monthly return along with a statement giving details of each purchase made by him and the purpose for which it was purchased and the expected time in which it would be put to use.

The refund is any claimed, shall be refunded by the Jurisdictional local Vat office or VAT sub office within thirty five days of the relevant month or within

fifteen days from the date of filing of return in the manner prescribed under rule 128 (Refund payment Order) and interest shall be paid for any delay in refund at six percent per annum.

If the registered dealer is not putting to use the goods on which he has claimed the refund shall seek the extension of such time by a period not exceeding more than ninety days. Where he does not put to use the goods within such extended time, then he shall be liable to repay entire input tax refunded or deducted on such goods.

Rule 130-A: Any registered dealer being a developer of any special economic Zone or unit located in any special economic zone shall be eligible for refund of tax if such inputs are purchased for the purpose of development, operation or maintenance of the processing area in a special economic zone. The inputs should be purchased for the purpose of setting up, operating or maintaining of a unit in the processing area of a special economic zone. The inputs should be purchased for use in manufacture, trading or production. The refund or deduction of tax under this rule shall be allowed on the goods actually used in the processing area of a special economic zone for the authorized operations as specified.

If such goods are resold within the State or any goods manufactured or processed out of such goods are sold within the State or in the course of inter-state trade or commerce then tax shall be payable by the registered dealer on such sales without any deduction of input tax paid earlier if such input tax has been already refunded or deducted.

If such goods are put to any use other than for the authorized operations as specified, then the whole of e input tax refunded on such goods shall be repayable by the registered dealer. The registered dealer claiming refund or deduction under this rule shall claim refund or seek adjustment of tax paid on the goods purchased by him towards any output tax payable by him, in the return made under Rule 38 along with a statement giving the details of each purchase made by him and the purpose for which it was purchased.

The refund claimed under this rule shall be paid by the Jurisdictional Local VAT Office or VAT Sub-office within thirty five days after the end of the month to which the return relates if it is furnished within the time specified under section 35 of the said Act or within fifteen days from the date of filing of the return if it is filed after the time specified. The refund application

should be made in Form VAT 166 to the Jurisdictional local VAT officer or VAT sub officer within sixty days from the date of purchase together with the copy of the tax invoice. On being satisfied the refund payment order in Form VAT 255 shall be made within sixty days from the date of application.

Chapter 12
Assessments

Deemed Assessment (Section 38, 39)

Where dealers shall be deemed to have been assessed to tax based on the return filed by them. In other words, the dealer computes the tax based on his assessment and files the return accordingly. This is known as self-assessment. The scheme of deemed assessment is envisaged in the Act, except in cases where the Commissioner notifies production of accounts before the prescribed authority. It implies that only the Commissioner is empowered to notify the cases that should be taken up for scrutiny assessment by the prescribed authority. The authority shall assess any dealer notified by the commissioner on the basis of his filed return.

If the assessing authority has grounds to believe that any return furnished which is deemed as assessed or any assessment issued understates the correct tax liability of the dealer, he can reassess the tax, penalty and interest to the best of his judgment based on the available information. In such cases, the tax has to be paid within ten days of serving of notice.

Best Judgment Assessment is envisaged in cases where monthly return or final returns are not filed within the due date; that is, where a registered dealer is required to file his monthly return or final returns but fails to furnish such returns on or before the date provided in the law., The prescribed authority will then issue an assessment to the registered dealer to the best of its judgment. The tax assessed including interest has to be paid within ten days from the date of serving of the assessment notice. In cases where the best judgment assessment is completed and the dealer subsequently files the returns within a period of one month, the prescribed authority may withdraw such best judgment assessment, but the dealer will be liable to penalty and interest thereon.

The authority authorized by the Commissioner is empowered to pass best judgment assessment order in case of those dealers who are liable to get registered but have failed to obtain registration. In such cases, the tax will be payable along with interest within ten days from the date of the serving of notice.

Protective assessment can be passed if the assessing authority (with prior permission of the Joint commissioner or Additional commissioner) has evidence to prove that there is liability to tax, and has reason to believe that the dealer registered/or liable to be registered, will fail in discharging the tax, interest or penalty (imposed/ assesses or payable). In such cases, of protective assessment the tax/penalty/interest will become payable forthwith. Protective assessment can also be passed by an inspecting authority.

Within thirty days from the date of receipt/issue of such assessment order, a dealer can make an application or the JC/AC on its own can pass such order if JC/AC thinks that the protective assessment passed is erroneous.

In case of a body corporate having more than one place of business, the Commissioner is empowered to treat each place of business as a separate unit. Consequently, the levy, assessment, collection, returns, etc. shall apply independently.

Reassessment

Normally, the filing of a return suggests that the assessment process has been completed. However, where the prescribed authority has grounds to believe that any such return has understated the correct tax liability, then he may re-assess the additional tax payable to the best of his judgment, along with interest and penalty.

The prescribed authority shall proceed to issue a notice of reassessment, wherein he will provide for levy of tax, interest and penalty, which shall be payable within ten days from the date of serving of notice. The prescribed authority shall provide the reason for reassessment in the reassessment notice and provide an opportunity to the dealer to be heard.

Re-assessment after Re-assessment

The prescribed authority is empowered to further reassess any reassessment completed, based on any further evidence which comes in the notice of officer.

The amendment lists the cases comprehensively under which the Assessing Authority can select the cases for Re-assessment.

(i) Any further evidence comes to the notice of the prescribed authority.

(ii) If the prescribed authority has reason to believe that whole or any part of the turnover of a dealer in respect of any tax period has escaped re-assessment to tax.

(iii) Tax has been under re-assessed.

(iv) Has been re assessed at a rate lower than the rate at which it is assessable under this Act.

(v) Any deductions or exemptions have been wrongly allowed in respect thereof, the prescribed authority may, notwithstanding the fact that whole or part of such escaped turnover was already before the said authority at the time of re-assessment, in addition to such earlier re-assessment.

Time limit for Assessment or Re-Assessment

As per the amended provision the time limit for the finalization of assessment or re-assessment is given in the table:

Serial No.	Period	Time limit Specified
1.	Registered dealers. tax period commencing from 1-4-2012	5 years from the end of each tax period
2.	Registered dealers. April 2007 to March 2012	7 years from the end of each tax period
3	Registered dealers. April 2005 to March 2007	8 years from the end of each tax period
4	Un-registered dealers. April 2005 to March 2007	10 years from the end of each tax period
5	Un-registered dealers. April 2005 to onwards	8 years from the end of each tax period

For computing the period of limitation for assessment or re-assessment, under the Act, the time taken for disposal of any appeal against an assessment or other proceeding by the appellate authority, a tribunal or competent court shall not be taken into account in computing such period for assessment or reassessment, as the case may be

Chapter 13
Appeals and Revision

Appeal

The term appeal as defined in the Black's Law Dictionary means 'resort to a superior court to review the decision of an inferior (i.e. trial) court or administrative agency.' Similarly the word Appellant means 'the party who takes an appeal from one court or jurisdiction to another.'

Under the KVAT law, section 62 deals with the appeal provisions. Wherein the First Appeal lies with the Appellate authority and subsequently the appeal will be to Tribunal and later on to High Court. The appeal to Appellate Authority and Appellate Tribunal are discussed below.

Appeal to First Appellate Authority (JCCT Appeal) (Section 62)

When to file an Appeal? [Section 62(1)]

If any person is objecting to any order or proceedings by the prescribed authority (not being a officer of Joint Commissioner Rank) affecting him can appeal to the Joint Commissioner authorized by the Commissioner in this behalf. It is critical to know that the person who prefers the appeal should be the aggrieved party i.e. to say the order should effect him. This could also be the officer/ Tax department who is prejudiced.

Time limit for Appeal [Section 62(2)]

The general time limit is 30 days from the date of communication of the order or from the date of serving of notice of Assessment. (In case of Assessment, there will not be an order; instead it will be a Notice of assessment.

Delayed Appeal [Section 62(3)]

The appellate authority has got the powers to admit an appeal preferred after the period 30 days from the notice of assessment or 30 days from the date of communication of such order to the appellant, if such authority is satisfied that the appellant had sufficient cause for not preferring the appeal within

that prescribed period. However, such extension can be for a further period of one hundred and eighty days. Where the appeal is filed after the expiry of the period of limitation, it shall be accompanied by an application for Condonation of delay supported by a sworn affidavit as to the cause of the delay.

Pre-deposit of undisputed tax before Appeal [Section 62(4)(c)(i)]

When an appeal is made against the assessment order, the undisputed tax and penalty has to be paid before filing it. The Appellate Authority will entertain the appeal only if it is accompanied by a satisfactory proof of the payment of such tax and penalty. Further, the disputed tax or (other amount has to be paid in accordance with the order against which the appeal has been made. However, the appellate authority may, stay payment of one half of tax, if the appellant makes payment of the other half of the tax along with the prescribed form of appeal in Form VAT 430.

Furnishing of security for stay application [Section 62(4)(c)(ii)]

Where the appellant is required to furnish security with regard to the payment of tax or fee or any other amount, he or any person on his behalf has to furnish security or bank guarantee as per the direction of the authority before which the appeal or application has been made. The security bond shall be in Form VAT 455.

Deemed Stay of recovery of tax or other amount [Section 62(4)(c)(ii)]

Where any application made by an appellant for staying proceedings of recovery of any tax or other amount, the same has to be disposed off within thirty days from the date of such application, if it is not been disposed off by the Appellate Authority within such period, it is deemed that the Appellate Authority has made an order staying proceedings of recovery of such tax or other amount. This is subject to a condition that one half of the tax disputed has been paid and for the other half a sufficient security to the satisfaction of the assessing authority has to be furnished, within further period of fifteen days.

Disposal of appeal [Section 62(4)(d)]

In cases where an order staying proceedings of recovery of any tax or any other amount is passed, the appellate authority has to dispose of the appeal within a period of two hundred and forty days from the date of such order.

Section 62(5): The appeal shall be in prescribed form and shall be verified in the prescribed manner

Amendment of Section 62 (5) Pertaining to Appeal

"Provided that the Commissioner may notify the website in which appeal shall be filed electronically"

"Provided further that a single appeal may be preferred against orders of assessment or reassessment or any other orders or proceedings, in respect of more than one tax period of any financial year"[16]

This proviso has been introduced for reduction of paper usage as earlier appeal had to be filed for every tax period though involving same issues which was merely a duplication of work. This is in order to avoid duplication of work and to make it simpler.

Passing of order by Appellate Authority [Section 62(6)]

In the course of disposing of an appeal, the appellate authority has to give the appellant a reasonable opportunity of being heard. After such hearing,

(a) if it is a case of an order of assessment or penalty:

  (i) to confirm, reduce or enhance the assessment including any part thereof whether or not such part is objected to in the appeal;

  (ii) to pass such other orders as it may think fit; and

(b) in the case of any other order of proceedings, confirm, cancel or vary such order.

Power to remand the matter [Section 62(6-A)(i)]

The appellate authority in the course of disposing of an appeal before it cannot remand the case to make fresh assessment or fresh order, but shall

[16] Inserted vide Karnataka VAT (Amendment) Act, 2015

proceed to dispose of the appeal on its merit, as it deems fit, if necessary, by taking additional evidence.

Time for disposing of an appeal [Section 62(6-A)(ii)]

The appellate authority has to dispose of an appeal and pass an order within a period of ninety days from the date on which the hearing of the case was concluded.

Finality of the order passed by the Appellate Authority [Section 62(7)]

Every order passed by the appellate authority is final unless it is taken up for appeal before the Tribunal or High court or taken up for revision by the Additional Commissioner or Commissioner or High court.

Appeals to the Appellate Authority (Rule 148)

(1) An appeal under section 62 against any order or proceedings of an officer below the rank of a Joint Commissioner shall be referred to the Joint Commissioner authorized by the Commissioner.

(2) The Commissioner may, either suo motu or on application, for reasons to be recorded in writing, transfer an appeal pending before an appellate authority to another appellate authority.

(3) The order of transfer shall be communicated to the appellant, to every other party affected by the order, to the authority against whose order the appeal was referred and to the appellate authorities concerned.

(4) Where the appeal is filed after the expiry of the period of limitation, it shall be accompanied by an application for condoning the delay, supported by a sworn affidavit as to the cause of the delay.

Procedure for appeal before Joint Commissioner (Appeal) (Rule 149)

(1) Every appeal shall be made in Form VAT 430 and shall be accompanied by.

(a) two copies of the order against which the appeal is made,. one of which shall be the original or an authenticated copy.;

(b) an application for condoning the delay or stay of the payment of tax or

any other amount disputed in the appeal accompanied by a sworn affidavit as to the cause of the delay.

(2) The appeal may be sent to the appellate authority by registered post or presented to that authority or to such officer as the appellate authority may appoint in this behalf, by the appellant or his authorized agent or a legal practitioner or an accountant or a tax practitioner duly authorized by the appellant in writing.

(3) If the court fee payable has not been paid or proof of payment of the tax not disputed in the appeal has not been produced or the papers presented are not in conformity with the provisions of the Act, the appellate authority shall issue a notice in Form VAT 435 requiring rectification of the defects, and the appellant or his agent or pleader shall rectify the defects within a period of thirty days from the date of issue of the notice.

(4) If the defects are not rectified within the time specified, the appellate authority, after giving the appellant or his representative the opportunity to show cause in writing against the notice of requiring rectification, shall pass an order directing the appeal to be registered or rejected.

(5) Where the appellate authority is satisfied that the appellant was prevented from presenting the appeal for sufficient cause within the time specified, he may condone the delay and admit the appeal.

(6) Where the appellate authority is not satisfied with the cause shown by the appellant for the delay, he may, after recording reasons, reject the appeal.

(7) The appellate authority may dispose of any stay application as it deems fit, after giving the appellant or his representative the opportunity to show cause in writing against such disposal.

Appeal to the Appellate Tribunal (Section 63)

Who can file an Appeal?

Any officer empowered by the Government or Commissioner in this behalf to act on behalf of the Department or any other person objecting to an order passed by the first appellate authority or the Joint Commissioner under section 63-A, can appeal to the Appellate Tribunal (hereinafter called the Tribunal).

It is pertinent to note that though under the KVAT Act a calendar month qualifies to be a tax period, the aggrieved person instead of filing an appeal for each tax period separately can file a single appeal for more than one tax period of the entire year. (Hence, if the dispute goes beyond a period of one year, then the aggrieved person can file a single appeal for each year respectively.

Time limit [Section 63 (1 & 2)]

Such appeal has to be filed within a period of sixty days from the date on which the order is s communicated to the officer or any other person who makes the appeal.

The Tribunal has got the power to admit an appeal, which is made after the period of sixty days if it is satisfied that the appellant had sufficient cause for not making the appeal within that period. However, such delay cannot be more than one hundred and eighty days from the due date for making an appeal.

Cross objection [Section 63(3)]

When any appeal is made either by the empowered departmental officer or aggrieved person, notice of such appeal will be served to the person against whom an appeal has been made.

On receipt of such notice by the other party that an appeal against the order of the appellate authority has been made, he can file at any time before the appeal is finally heard, a memorandum of cross-objections verified in the prescribed manner, against any part of the order of the appellate authority, and such memorandum shall be disposed of by the Appellate Tribunal as if it were an appeal presented within the prescribed time.

Such cross-objection can be filed irrespective of the fact that he has not appealed against such order or any part thereof.

Pre-deposit of tax or disputed amount and fee for appeal [Section 63(4)]

In the case of an appeal made by any person other than an officer empowered by the Government or the Commissioner, that is, by the assesse or any other aggrieved person has to enclose the proof of payment of one half of tax or any other disputed amount along with the duly verified appeal form.

Further, it is also required to enclose the proof of payment of a fee equal to two percent of the amount of assessment objected to. However, such 2% calculated amount cannot be less than ₹ 200/- or be more than ₹ 1,000/-.

Passing of Order [Section 63(5)(a)]

The Appellate Tribunal after giving both parties to the appeal a reasonable opportunity of being heard can pass orders thereon as it thinks fit.

Cases where issue is pending before High Court or Supreme Court [Section 63(5)(b)]

If in any case of appeal before the Tribunal, there is an issue which involves a question of law on which the Appellate Tribunal has already given its decision in another appeal and a revision petition in the High Court against such decision is pending or an appeal in the Supreme Court is filed against the order of the High Court and the same is pending, then the Appellate Tribunal can defer the hearing of the appeal before it till such revision petition in the High Court or the appeal in the Supreme Court is disposed of.

Assessment consequent to order of Appeal [Section 63(5)(c)]

If as a result of the appeal any change becomes necessary in the assessment, which is the subject matter of the appeal, the Appellate Tribunal may authorize the prescribed authority to amend the assessment, and the prescribed authority will amend the assessment accordingly.

On such change in the assessment, any excess amount paid by the assesse has to be refunded to him without interest, or any additional amount of tax due from him will be collected in accordance with the provisions of the Act.

Stay of recovery of tax [Section 63(7)(a)]

The Tribunal may, in its discretion, stay payment of one half of the tax or any other disputed amount, if the appellant makes payment of the other half of the tax or the disputed amount along with the prescribed form of appeal.

Vacation of stay [Section 63(7)(b)]

If any stay is granted to the appellant, the Tribunal has to dispose of his appeal within a period of one hundred eighty days from the date of the order staying proceedings of recovery of one half of the tax or any other disputed amount. If the appeal is not disposed of within 365 days, the order of stay

shall stand vacated. After the period of 365[17] days, the Tribunal has no power to order staying proceedings of recovery of the said tax or any other amount.

Review of its own orders by the Tribunal

Section 63(8)(a)&(b): The Tribunal can review any order passed by it on the application either of the appellant or of the respondent, on the basis of facts, which were not before it when it passed the order. However, such application for review can be made only once in respect of the same order.

Section 63(8)(c):The application for review has to be made in the prescribed manner within six months from the date on which the order to which the application relates was communicated to the applicant. (If a person not being an officer empowered by the State Government or the Commissioner for departmental is making such a review petition, then a fee that is equal to the amount paid in respect of the appeal has to be paid along with it.

Section 63(8)(d): However, there is a concession of 50% of fee if such application is made within 90 days from the communication of the order.

Here, it can be inferred that such an application has to be filed i within six months, there is no provision for condoning any delay for such application.

Rectification of Order [Section 63(9)(a)]

The Tribunal has got the power to rectify any mistake in the record at any time, within five years from the date of any order passed. The order may be original or the one passed against the review application. Such rectification of order can be passed only after giving both parties affected by the order a reasonable opportunity of being heard.

Costs of Appeal [Section 63(10)]

Unless it is clearly set out in the KVAT Rules, the Tribunal does not have the power to award costs to either of the parties to the appeal or review.

Communication of order [Section 63(11)]

Every order passed by the Tribunal either original or on review or on rectification has to be communicated to the appellant, the respondent, the

[17] Substituted vide Karnataka VAT (Amendment) Act, 2015. Earlier the limit was 180 days.

appellate authority on whose order the appeal was made, and the Commissioner.

Finality of the order of Tribunal [Section 63(12)]

Every order passed by the Tribunal (not on review or rectification) will be final unless it is taken up for review or rectification before the Tribunal or taken up for appeal before the High court.

Appeals to the Appellate Tribunal (Rule 150)

(1)(a) Every appeal under section 63 to the Appellate Tribunal shall be in Form VAT 440 and shall be verified in the manner specified.

(b) The appeal form shall be in quadruplicate and accompanied by four copies, one of which shall be the original or an authenticated copy of the order appealed against, and also four copies of the order giving rise to the first appeal.

(c) In the case of an appeal made by any person other than an officer empowered by the State Government under sub-section (1) of section 63, the memorandum of appeal in Form VAT 440 shall be affixed by a court-fee stamp or shall be accompanied by a treasury receipt in support of having paid the fee calculated at the rate of two percent of the amount of assessment objected to, subject to a minimum of two hundred rupees and a maximum of one thousand rupees.

(d) Every memorandum of cross-objection under section 63 shall be in Form VAT 445 and shall be verified in the manner specified therein.

(2)(a) Every application for review under sub-section (8) of section 63 to the Appellate Tribunal shall be made in Form VAT 450 and shall be verified in the manner specified therein.

(b) The application for review shall be in quadruplicate and accompanied by four copies of the order of the Appellate Tribunal, including the original one. .

(c) The application for review shall also, where it is made by the appellant other than the State Government, carry a court- fee stamp or shall be accompanied by a treasury receipt in support of having paid the fee calculated at the rate of two per cent of the amount of the assessment objected to, subject to a minimum of two hundred rupees and a maximum of one thousand rupees.

(3) If the Appellate Tribunal allows an appeal or application for review made by the appellant other than the State Government under section 63, it may, in its discretion, order refund either wholly or partly of the fee paid by such appellant under sub-section (4) or clause (c) of the sub-section (6) of section 63.

Differences between filing Appeals before JCCT (Appeals) and The Appellate Tribunal

Sl No.	JCCT (Appeals) (section 62)	Appellate Tribunal(Section 63)
1.	The Appeal has to be made in Form VAT 430.	The Appeal has to be made in Form VAT 440.
2.	The time limit for making the appeal is 30 days from the date of receipt of the order.	The time limit to file an appeal is 60 days from the date of receipt of order.
3.	The appeal will be made against an order made by the Assessing authority, the one who is lower than the rank of a Joint Commissioner.	The appeal will be made against an order made by JCCT (Appeals) or the Joint Commissioner.
4.	The appeal may be made by the dealer or the commissioner.	The appeal can be made by the dealer or Commissioner or an officer appointed by the state Government.
5.	N fee is to be paid with the appeal.	The fees will be 2% of amount disputed subject to minimum of ₹ 200/- or maximum of ₹ 1,000/-.
6.	There is no court procedure prescribed for the proceedings of JCCT appeals.	The court procedures as prescribed in Karnataka appellate Tribunal Regulations are to be followed.
7.	The stay order passed by JCCT (Appeals) will be valid until quashed. This provision is made applicable from April 1, 2012	The stay order passed by Tribunal is valid for 180 days. After which the recovery can be made. And also no further stay can be granted.

Sl No.	JCCT (Appeals) (section 62)	Appellate Tribunal(Section 63)
8.	No time limit is specified within which the proceeding has to be completed.	No time limit is specified in the act; however, court procedures will be followed.
9.	It has the authority to reduce or enhance the liability but cannot send back to lower authority to make a fresh assessment.	It shall direct the lower authority to change the order.
10.	If one is not satisfied with the order issued by JCCT (Appeals), they shall prefer an appeal to Appellate tribunal.	If one is not satisfied with the order issued by the Appellate authority, they shall prefer an appeal to the High Court.
11.	The order will be passed by JCCT (Appeals) within 90 days after the hearing and proceedings of the case will be concluded.	Nothing is specified in the KVAT Act. Court procedure will be followed.

Revision of orders by Additional Commissioner (Section 64)

The Additional Commissioner is empowered to suo moto call for and examine the record of any order passed or proceeding recorded and if he considers that any order passed therein by any officer is erroneous in so far as it is prejudicial to the interest of the revenue, he can stay the operation of such order for such period as he deems fit he feels it if necessary.

Further, the Additional commissioner will give the assesse an opportunity of being heard and to explain his case. After making such inquiry as he deems necessary, he can pass an order thereon as the circumstances of the case justify, including an order enhancing or modifying the assessment, or canceling the assessment or directing a fresh assessment.

Such revision by the Additional Commissioner is permissible only in cases where the order is passed by officers who are not of the rank of a Joint Commissioner.

For the purposes of such revisions (including revision by the Commissioner) 'record' will include all records relating to any proceedings under this Act

available at the time of examination by the Additional Commissioner or the Commissioner.

Revision of orders by Commissioner (Section 64)

The Commissioner is empowered to call for and examine the record of any proceeding. with regard to any order passed by any officer subordinate to him or the Authority for clarification and Advance Rulings, if he considers that such order is erroneous and is prejudicial to the interest of the revenue, and he may, if necessary, stay the operation of such order for such period as he deems fit.

Further, the Commissioner will give the assesse an opportunity of being heard to explain his case. After making such inquiry as he deems necessary, he can pass an order and as the circumstances of the case justify, including an order enhancing or modifying the assessment, or canceling the assessment or directing a fresh assessment.

Cases where Revision by Additional Commissioner or Commissioner is not permitted (Section 64)

In the following cases, the Additional Commissioner or Commissioner is not permitted to exercise the power to revise.

(a) The time for appeal against the order has not expired;

(b) The matter has been subject to an appeal before the Tribunal or is under revision in the High Court; or

(c) More than four years have expired after the passing of the order sought to be revised.

Provided that in the case of an order passed by the Appellate Authority under section 62 allowing the appeal preferred in full the condition specified in clause (a) shall not apply.

However, such restrictions will not apply to cases where such revision is on any point which has not been raised and decided in an appeal before the Tribunal or revision before the High Court. Such revision can be before the expiry of one year from the date of the order in such appeal by the Tribunal or revision by the High Court or before the expiry of four years after the passing of the order sought to be revised, whichever is later.

It is important to note that in calculating the said 4 years, following period has to be excluded

(a) The period spent between the date of the decision of the High Court and the date of the decision of the Supreme Court in case of the order passed or proceedings recorded by the Additional Commissioner or Commissioner involving an issue on which the High Court has given its decision adverse to the revenue in some other proceedings and an appeal to the Supreme Court against such decision of the High Court is pending.

(b) The period during which any proceeding under Revision by Additional Commissioner or Commissioner is stayed by an order or injunction of any court.

Finality of the order passed in Revision (Section 64)

Every order of revision passed by the Additional Commissioner will be final unless it is subjected to revision by the Commissioner or High court. Similarly, every order for revision passed by the Commissioner will be final unless it is subjected to revision by the High court or Appealed to the High court

Revision by High Court (Section 65)

Orders which can be referred to High court for revision

The order of the Tribunal, which may be an original or revised order or the rectification order of an earlier order can be referred to the High court for revision. The basis for such a petition should be that the Appellate Tribunal has either failed to decide or decided erroneously any question of law. Such reference cannot be made in case of questions related to facts.

Time limit

Such reference should be made within one hundred and twenty days from the date of communication.

The High Court can admit a petition made after the period of one hundred and twenty days, if it is satisfied that the petitioner has sufficient cause for not making the petition within that period.

Who can file the petition and in what form?

The appellant or the respondent of the order of the Tribunal can make a petition against it to the High Court. Such petition should be in VAT 460 and verified in the manner specified therein, and if it is made by any person other than an officer empowered by the Government, it should be accompanied by a fee of one hundred rupees.

Further, the petition has to carry a certified copy of the order of the Appellate Tribunal.

If the High Court, on perusing the petition, considers that there is not sufficient ground for interfering, it may dismiss the petition summarily.

However, the High Court cannot dismiss any petition unless the petitioner has had a reasonable opportunity of being heard. .

Orders by the High court

If the petition is admitted, the High Court will determine the question or questions of law raised in it and either reverse, affirm or amend the order against which the petition was made. The High court can also remit the matter to the Appellate Tribunal with the opinion of the High Court on the question or questions of law raised by it. The High Court can also pass any other order in relation to the matter as it thinks fit.

Such orders can be passed only after giving both the parties to the petition a reasonable opportunity of being heard,

However, if the High court considers it necessary, it can remit the petition to the Appellate Tribunal and direct it to return the petition with its finding on any specific question or issue.

Orders and assessment consequent to order by the High Court

Where the High Court remits the matter to the Tribunal with its opinion on questions of law raised (not for returning), the latter shall amend the order passed by it in conformity with such opinion.

If as a result of the petition any change becomes necessary in such assessment, the High Court can authorize the prescribed authority to amend the assessment and the prescribed authority shall amend the assessment accordingly and any excess amount paid by the assesse shall be refunded to

him without interest. On the other hand, if there is additional amount of tax due from him, it will be collected from him.

Review of its own order

The High court can review any order passed by it on the application either of the appellant or of the respondent, on the basis of facts, which were not before it when it had passed the order.

The application for review has to be made in Form VAT 265 verified in the manner specified therein within 90 days from the date on which the order to which the application relates was communicated to the applicant;

If a person not being an officer empowered by the State Government for departmental appeal is making such review petition, then a fee of ₹ 100/- should accompany such application.

Rectification of Order

The High Court has got the power to rectify any mistake apparent from the record at any time, but within five years from the date of any order passed by it originally (not reviewed order).

Such rectification of order can be passed only after giving both parties affected by the order a reasonable opportunity of being heard.

Costs of Revision

In respect of every petition made either for revision or review of order, the costs shall be awarded by the High Court.

Appeal to High Court (Section 66)

Any assesse objecting to any revised order passed by the Commissioner or the Additional Commissioner or an order passed by the Advance Ruling Authority can appeal to the High Court within sixty days from the date on which the order was communicated to him.

The High Court can admit an appeal made after the period of sixty days d, if it is satisfied that the assesse had sufficient cause for not making the appeal within that period.

The appeal has to be in From VAT 475 verified in the manner specified therein, and shall be accompanied by a fee of five hundred rupees. The form should be accompanied by the original order or a certified copy of the order

of the Additional Commissioner or Commissioner or the Advance Ruling Authority against which the appeal has been filed.

The order will be passed by the High Court, after giving both parties to the appeal a reasonable opportunity of being heard.

The provisions pertaining to the passing of the order by the High court and the passing of orders or passing of assessment by the Tribunal or authority (as discussed above pertaining to revision by the High court is equally applicable here also. However, the form for the review application will be VAT 470.

Rectification of mistakes in General (Section 69)

If there is any mistake in the appeal orders passed, the rectification powers are given along with the relevant provisions itself. However general power of rectification is discussed as follows.

In order to rectify any mistake apparent from the record, the prescribed authority, appellate authority or revising authority, may, at any time within five years from the date of an order passed by it, amend such order.

If any such amendment, which has the effect of enhancing an assessment or otherwise increasing the liability of the assessee, has to be made only after giving notice to the assessee of their intention to do so and reasonable opportunity should be allowed to the assessee to showing cause in writing against such amendment.

If any order in which the subject matter of rectification has been considered and decided in any proceedings by way of appeal or revision, the authority passing such order in which mistake exists can amend the order under rectifying the mistake in relation to any matter other than the matter which has been so considered and decided in appeal and revision.

An order of rectification will be deemed to be an order passed under the same provision of law under which the original order, the mistake in which was rectified, has been passed.

Appeals related to a Deceased Person (Rule 151)

Proceedings in Appeal on the death of appellant or applicant

Where an appellant dies while the appeal or application is pending the same

cannot be proceeded with unless his legal representative is brought on record. In such cases, the Appellate Authority or the Appellate Tribunal should adjourn further proceedings to enable his legal representative to appear and apply for being made a party. If the legal representative fails to do so within ninety days from the date on which the appellant or applicant died, the appeal or the application shall abate as regards the deceased.

If a respondent dies while an application for review by the Appellate Tribunal is pending and it cannot be proceeded with unless his legal representative is brought on record, the applicant has to apply to the Appellate Tribunal for making the legal representative of such respondent a party to the application for review within ninety days from the date of death of the respondent, and if the applicant fails to do so, the application shall abate as regards the deceased.

However, there shall be no abatement by reason of the death of any party between the conclusion of the hearing and passing of the order, but in such cases, the order may be passed notwithstanding the death, and shall have the same force and effect as if it had been passed before the death took place.

If any question arises in any appeal, revision or review, whether a person is or is not the legal representative of a deceased appellant, applicant or respondent, such question may be determined by the Appellate Authority or the Appellate Tribunal as the case may be, in a summary way, if necessary, after taking evidence.

Quantification of tax by Appellate authority or Revisionary authority

Where the tax as determined by the initial authority assessing such tax appears to the Appellate Authority or Revisionary Authority to be less than the correct amount of the tax payable by the dealer, the Appellate or Revisionary Authority before passing orders has to determine the correct amount of tax payable by the dealer, after issuing a notice to the dealer in Form VAT 480 and after making such enquiry as it considers necessary.

Chapter 14

Inspection and Power of Authorities

Inspection under VAT

The Commissioner authorizes an officer tor, search places and seize and inspect things related to a dealer's business.

Sec 52(1)(a): Inspection of the place of business of any dealer or where goods, accounts and documents are maintained.

Sec 52(1)(a-1): The empowered officer can purchase any goods to check the issue of tax invoices and bills of sale.

Sec 52(1)(b): Direction to the dealer: the dealer needs to produce the accounts, registers and documents relating to his business activities for examination, as required by the officer.

Sec 52(1)(d): Search of place of residence: Where concealment of facts relating to the business is suspected, the office has the power to enter and search the place of residence of the dealer.

Sec 52(1)(e): Seizure of accounts, register and documents: A reason to suspect that a dealer is attempting to avoid or evade tax or concealment of tax liability will lead to seizure. Reasons will be recorded in writing and a receipt for documents seized will be provided.

Sec 52(1)(f) & (g): Seal or Break open any box, receptacle, godown or building. When the dealer or person-in-charge has vacated the premises refusing to open any box, godown etc, the officer can take action of seal/break open.

Sec 52(1)(h): Recording of dealer's or the person-in-charge's statement, identification marks on accounts, registers, and documents of goods. Extracts from records found in documents are also taken.

Sec 52(1)(i): Taking samples of goods (in order to protect revenue from mistakes or frauds) against a proper receipt. The goods will be returned to the dealer or disposed of after obtaining his consent. .If he is charged with any offence, the samples will be retained.

Sec 52(1)(j): Seizure of unaccounted stock: If the stock of goods liable to

tax is found unaccounted in the dealer's accounts, then his registers and documents will be seized. The value of the seized goods shall not exceed the tax liability and penalty (including interest).The officer will prepare the list of goods seized and a copy will be given to the dealer.

Sec 52(1)(k): Identification marks are put on the accounts, registers, and documents of goods. Issue of order in case seizure of books, documents, accounts or goods is not possible: After such an order is issued the dealer shall take steps to secure the items referred in the order.

Sec 52(2): Providing access to the officer in case accounts are maintained electronically means as may be required by the officer authorized.

Period of retention of books, accounts, register and stock seized [Section 52(4)]

The Retention period should not exceed 180 days.

If there is a requirement for extension of the retention period is required reasons should be stated and approval should be obtained from the next higher authority. In such case the extension shall not be more than 60days at a time.

Time limit to appeal against seizure of the goods [Section 52(6)]

The dealer or the person from whom goods have been seized shall have a period of 7 days to appeal against seizure of the goods.

Disposal of goods and settlement of dues [Section 52(7)]

If the tax assessed or penalty/interest due is not paid by the dealer, the officer shall auction the goods in public. The proceeds shall be adjusted towards the amount due and the expenses incurred by the state. Excess amount, if any, shall be refunded to the dealer.

The empowered officer can purchase any goods to check the issue of tax invoices and bills of sale. He can also direct the dealer to produce accounts and records of his business for inspection. Failure to do so can invite penalty. He can also record the statement of the dealer.

Inspection

Inspection is done to verify whether the records are properly maintained e as per the prescribed law. It enables the officer to satisfy himself that the taxes

that have been due have been paid. In this regard, he can also record the statement of the dealer. The dealer shall provide him access to electronic data, if the records have been maintained electronically. The officer can either take extracts of the records or place marks on such records as are found on such inspection. The officer can also verify if an unregistered dealer has been collecting tax.

The officer can inspect the place of business of any dealer to check where goods, accounts and documents are maintained. The dealer has to produce the accounts, registers and documents relating to his business activities for examination. If he suspects that facts relating to the business are being concealed, he can enter and search the place of residence of the dealer. If he finds that the stock of goods is not accounted for in the books of account, records or documents, he can seize the goods to meet the liability on account of tax, interest, penalty, etc.

The officer has the obligation to prepare a list of goods seized. If it is not possible to seize the goods, he can prohibit the removal of such goods.

If the officer finds evidence showing liability to tax and believes that the dealer may not have paid such tax, penalty, etc, he may issue a protective assessment order determining the tax payable. Such tax, penalty, and interest has to be paid immediately. If there is suspicion that facts relating to business have been concealed in any place, the officer can enter and search that place as well as the dealer or his agent.

Upon the search if it is suspected that there is an attempt to evade the tax, the accounts, documents etc can be seized, however before seizure reasons should be recorded. The officer should give a receipt for the documents seized and if so requested for copies of the documents seized shall also be given.

The seized documents etc can be retained for 180 days. Permission to retain them beyond this limit can be granted to the officer after the approval of the next higher authority. However, such permission cannot be granted for more than 60 days at a time.

In a search operation the place where the records or goods are kept can be sealed if the owner leaves the premises or is not available or refuses to open such place. Any person removing or tampering with the seal shall be liable to penalty.

The authorized officer is also empowered to break open any godown, building etc if the person in charges leaves the premises to be searched or refuses to open it. Before breaking it open, the person in charge shall be given an opportunity to open it. The officer is also empowered to take samples of goods from the possession of a dealer. If there is any seizure, the dealer can appeal against such seizure within seven days, after which, if the assessed tax, and penalty, and is not paid, the officer can dispose of the goods in public auction and appropriate the proceeds towards the dues and excess if any shall be returned to the dealer.

A reason to suspect that a dealer is attempting to avoid or evade tax or concealment of tax liability will also lead to seizure. Reasons will have to be recorded in writing and a receipt for documents seized will be provided. When the dealer or person-in-charge has vacated the premises refusing to open any box, Godown etc, the officer can take action of seal/break open. Identification marks on accounts, register, and documents of goods can be done. Extracts from records from any document can be taken. The receipt should be issued for any samples which are taken by the officer. The goods will be returned to the dealer or disposed after obtaining the dealer's consent .(In case any offence is found the samples will be retained.

Power of Authorities under VAT Act

Powers to Summon (Rule 173)

The officer can summon a person whose evidence he considers necessary for any enquiry to appear before him and give evidence and also examine him on oath or affirmation.

He has also the power to secure attendance of persons or production of documents.

Power in relation to inspection

Power of the officer to dispose of goods in a Public auction.

Seal or break open any box, receptacle, godown or building

Power of rectification of assessment or re-assessment in certain cases (Sec 41)

Where any assessment or re-assessment or an order of an appellate authority or of a Revisional authority other than a court or tribunal, is found

erroneous and pre-judicial to the public interest, the authority concerned has the power to rectify the assessment or re-assessment and determine the tax payable by the dealer. The lime limit for such an action is 3 years from the date of such judgment or order.

Power to reduce the tax payable on any taxable goods [Sec 4(3)]

The State Government is empowered to reduce the tax payable on any taxable goods mentioned in Section 4 of the Act by issuing a notification in the Official Gazette. It does not have the power to exempt a class of commodities or class of dealers.

The Power of making rules vests with the Government (Sec 88)

Subject to the conditions of the previous publication, the Government make rules by issuing notifications.

Power to withhold refund in certain cases (Sec 51)

An order giving rise to a refund that is a subject matter of an appeal or any other proceedings under the Act, which according to the authority is prejudice to the public revenue, may withhold the refund for a required period. However the dealer shall be paid interest as already stated on the amount of refund ultimately determined to be due to the dealer as a result of such proceedings for the period commencing from the expiry of thirty five days from the date of the order originally when the refund was due to the date of refund.