Technical Guide
to
Delhi 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 Delhi 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 Delhi 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. Vijay Gupta for thoroughly revising the Guide with updated provisions of Delhi VAT. I am sure that this revised publication would help the members and readers to be well equipped in effectively discharging their duties as Delhi 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

Contents

Part 1 Glossary

VAT Glossary/Important Definitions 3

Part 2 Conceptual Understanding of the VAT

Chapter 1- Introduction to VAT 15

Chapter 2- Introduction to Delhi VAT 18

Part 3 Guide to DVAT Act

Chapter 3- Registration of Dealers 23

Chapter 4- Amendment in Registration 29

Chapter 5- Cancellation of Registration 32

Chapter 6- Returns and Tax Periods 36

Chapter 7- Accounts and Records 41

Chapter 8- Refunds 48

Chapter 9- Taxes under DVAT 52

Chapter 10- Penalties and Offences 56

Chapter 11-Recovery of Tax, Interest and Penalties 70

Chapter 12- Liability to Pay Tax in Certain Cases 79

Chapter 13- Investigation and Enforcement 84

Chapter 14- VAT Authorities and Appellate Tribunal 96

Chapter 15- Objections, Appeals, Disputes and Questions 102

Chapter 16- Other Provisions 126

Chapter 17- Capital Goods 141

Chapter 18- Composition Scheme 144

Chapter 19- Deemed Sales 160

Chapter 20- Route or Way Bill 194

Part 4 Reports and Forms under DVAT

Chapter 21- Forms under DVAT 199

Chapter 22- Audit and Audit Report 205

Part 5 Appendix

Appendix 1- Role of Chartered Accountants 213

Part 1

Glossary

VAT Glossary/Important Definitions

1. **"Accountant"** means

(i) a chartered accountant as defined in the Chartered Accountant's Act, 1949 (Act 38 of 1949); or

(ii) a person who by virtue of the provisions of sub-section (2) of section 226 of the Companies Act, 1956 (1 of 1956), is entitled to be appointed to act as an auditor of companies registered; or

(iii) a cost accountant as stated in the Cost and Works Accountants Act, 1959 (23 of 1959); or

(iv) a person referred to in section 619 of the Companies Act, 1956 (1 of 1956);

2. **"Adequate Proof"** means such documents, testimony or other evidence as may be prescribed;

3. **"Appellate Tribunal"** means the Appellate Tribunal constituted under section 73 of this Act;

4. **"Business"** includes

(i) the provision of any services, but excluding the services provided by an employee;

(ii) any trade, commerce or manufacture;

(iii) any adventure or concern in the nature of trade, commerce or manufacture;

(iv) any transaction in connection with, or incidental or ancillary to, such trade, commerce, manufacture, adventure or concern; and

(v) any occasional transaction in the nature of such service, trade, commerce, manufacture, adventure or concern whether or not there is volume, frequency, continuity or regularity of such transaction;

whether or not such service, trade, commerce, manufacture, adventure or concern is carried on with a motive to make gain or profit and whether or not any gain or profit accrues from such service, trade, commerce, manufacture, adventure or concern.

*Explanation:-*For the purpose of this clause

I. any transaction of sale or purchase of capital assets pertaining to such service, trade, commerce, manufacture, adventure or concern shall be deemed to be business;

II. purchase of any goods, the price of which is debited to the business and sale of any goods, the proceeds of which are credited to the business shall be deemed to be business;

5. "Business Premises" includes

(i) the address of a dealer, registered with the Commissioner; and

(ii) any building or place used by a person for the conduct of his business, except for those parts of the building or place used principally as a residence;

(iii) any place from where a dealer carries on business through an agent (by whatever name called), the place of business of such an agent; and

a warehouse, godown, or such other place where a dealer stores his goods *[Rule: 19]*

6. "Capital Goods" means plant, machinery and equipment used, directly or indirectly, in the process of trade or manufacturing or for execution of works contract in Delhi;

7. "Casual Trader" means a person who, whether as principal, agent or in any other capacity undertakes occasional transactions in the nature of business involving buying, selling, supply or distribution of goods or conducting any exhibition-cum-sale in Delhi whether for cash, deferred payment, commission, remuneration or other valuable consideration;

8. "Commissioner" means the Commissioner of Value Added Tax appointed under sub-section (1) of section 66 of this Act;

9. "In the course of" includes activities done for the purposes of, in connection with, or incidental to and activities done as part of the preparation for the activity and in the termination of, the activity;

10. "Dealer" means any person who, for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of his business, buys or sells goods in Delhi directly or otherwise, whether for cash or for deferred payment or for

commission, remuneration or other valuable consideration and includes, -

(i) a factor, commission agent, broker, *del credere* agent or any other mercantile agent by whatever name called, who for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of the business, buys or sells or supplies or distributes any goods on behalf of any principal or principals whether disclosed or not ;

(ii) a non-resident dealer or, as the case may be, an agent, residing in the State of a non-resident dealer, who buys or sells goods in Delhi for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of the business;

(iii) a local branch of a firm or company or association of persons, outside Delhi where such firm company, association of persons is a dealer under any other sub-clause of this definition;

(iv) a club, association, society, trust, or cooperative society, whether incorporated or unincorporated, which buys goods from or sells goods to its members for price, fee or subscription, whether or not in the course of business;

(v) an auctioneer, who sells or auctions goods whether acting as an agent or otherwise or, who organizes the sale of goods or conducts the auction of goods whether or not he has the authority to sell the goods belonging to any principal, whether disclosed or not and whether the offer of the intending purchaser is accepted by him or by the principal or a nominee of the principal;

(vi) a casual trader ;

(vii) any person who, for the purposes of or consequential to his engagement in or in connection with or incidental to or in the course of his business disposes of any goods as unclaimed or confiscated, or as unserviceable or scrap, surplus, old, obsolete or as discarded material or waste products by way of sale.

Explanation: For the purposes of this clause, each of the following persons, bodies and entities who sell any goods whether in the course

of his business, or by auction or otherwise, directly or through an agent for cash or for deferred payment or for any other valuable consideration, shall, notwithstanding anything contained in clause (d) or any other provision of this Act, be deemed to be a dealer, namely:-

(a) Customs Department of Government of India administering Customs Act, 1962 (52 of 1962);

(b) Departments of Union Government, State Governments and Union territory Administrations;

(c) Local authorities, Panchayats, Municipalities, Development Authorities, Cantonment Boards;

(d) Public Charitable Trusts;

(e) Railway Administration as defined under the Indian Railways Act, 1989 (24 of 1989) and Delhi Metro Rail Corporation Limited;

(f) Incorporated or unincorporated societies, clubs or other associations of persons;

(g) Each autonomous or statutory body or corporation or company or society or any industrial, commercial, banking, insurance or trading undertaking, corporation, institution or company whether or not of the Union Government or any of the State Governments or of a local authority;

(h) Delhi Transport Corporation;

(i) Shipping and construction companies, air transport companies, airlines and advertising agencies.

11. **"Delhi"** means the National Capital Territory of Delhi;

12. **"Fair Market Value"** means the value at which goods of like kind and quality are sold or would be sold in the same quantities between unrelated parties in the open market in Delhi;

13. **"Goods"** means every kind of moveable property (other than newspapers, actionable claims, stocks, shares and securities) and includes -

(i) livestock, all materials, commodities, grass or things attached to or forming part of the earth which are agreed to be severed before sale or under a contract of sale; and

(ii) property in goods (whether as goods or in some other form) involved in the execution of a works contract, lease or hire-purchase or those to be used in the fitting out, improvement or repair of movable or immovable property;

14. **“Goods Vehicle”** means a motor vehicle, vessel, boat, animal and any other form of conveyance used for carrying goods;

15. **“Government”** means the Lieutenant Governor of the National Capital Territory of Delhi appointed by the President under article 239 and designated as such under article 239AA of the Constitution;

16. **“Import of Goods into Delhi”** means taking, receiving, bringing, carrying, transporting, or causing to bring or receive goods into Delhi from any place outside Delhi;

Explanation: In the case of goods arriving in Delhi from a foreign country through Customs, the “import of the goods in Delhi” occurs at the place where the goods are cleared by Customs for home consumption;

17. **“Importer”** means

(i) a person who brings his own goods into Delhi; or

(ii) a person on whose behalf another person brings goods into Delhi; or

(iii) in the case of a sale occurring in the circumstances referred to in subsection 2 of section 6 of the Central Sales Tax Act, 1956 (74 of 1956), the person in Delhi to whom the goods are delivered;

18. **“Input Tax”** in relation to the purchase of goods means the proportion of the price paid by the buyer for goods which represents tax for which the selling dealer is liable under this Act;

19. “**Manufacture”** with its grammatical variations and cognate expressions, means producing, making, extracting, altering, ornamenting, finishing or otherwise processing, treating or adapting any goods, but does not include any such process or mode of manufacture as may be prescribed;] *[Rule: 2(5)]*

20. **“Net Tax”** means the amount calculated for a tax period under section 11 of this Act;

21. **“Non-creditable Goods”** mean the goods listed in the Seventh Schedule;

22. **“Non-resident”** means a person who has no fixed place of business or residence in Delhi;

23. **“Notified”** means notified by the Commissioner in the official Gazette;

24. **“Official Gazette”** means the Delhi Gazette;

25. **“Prescribed”** means prescribed by rules made under this Act;

26. **“Registered Dealer”** means a dealer registered under this Act;

27. a person is **“Related”** to another person (referred to in this definition as a “dealer”) if the person –

(i) is a relative of the dealer;

(ii) is a partnership of which the dealer is a partner;

(iii) is a company in which the dealer (either alone or in conjunction with another person who is, or persons who are, related to the dealer under another sub-clause of this clause) directly or indirectly holds forty per cent or more of the outstanding voting stock or shares;

(iv) is a person who (either alone or in conjunction with another person who is, or other persons who are, related to the person under another sub-clause of this clause) directly or indirectly owns forty per cent or more of the outstanding voting stock or shares of the dealer;

(v) is a company in which forty per cent or more of the outstanding voting stock is held directly or indirectly by a person (either alone or in conjunction with another person who is, or other persons who are, related to the person under another sub-clause of this clause) who also holds forty per cent or more of the outstanding voting stock or shares of the dealer; or

(vi) is controlled by the dealer, a person whom the dealer controls, or is a person who is controlled by the same person who controls the dealer;

28. **“Relative”** means a relative as defined in clause 41 of section 2 of the Companies Act, 1956 (1of 1956);

29. **“Sale”** with its grammatical variations and cognate expression means any transfer of property in goods by one person to another for cash or

for deferred payment or for other valuable consideration (not including a grant or subvention payment made by one government agency or department, whether of the central government or of any state government, to another) and includes-

(i) a transfer of goods on hire purchase or other system of payment by installments, but does not include a mortgage or hypothecation of or a charge or pledge on goods;

(ii) supply of goods by a society (including a co-operative society), club, firm, or any association to its members for cash or for deferred payment or for commission, remuneration or other valuable consideration, whether or not in the course of business;

(iii) transfer of property in goods by an auctioneer referred to in sub-clause (vii) of clause (j) of this section, or sale of goods in the course of any other activity in the nature of banking, insurance who in the course of their main activity also sell goods repossessed or re-claimed;

(iv) transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;

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

(vi) transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;

(vii) supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;

(viii) every disposal of goods referred to in sub-clause (vii) of clause (j) of this sub- section

and the words "sell", buy" and "purchase" wherever appearing with all their grammatical variations and cognate expressions, shall be construed accordingly;

30. **"Sale Price"** means the amount paid or payable as valuable consideration for any sale, including-

(i) the amount of tax, if any, for which the dealer is liable under section 3 of this Act;

(ii) in relation to the delivery of goods on hire purchase or any system of payment by installments, the amount of valuable consideration payable to a person for such delivery including hire charges, interest and other charges incidental to such transaction;

(iii) in relation to transfer of the right to use any goods for any purpose (whether or not for a specified period) the valuable consideration or hiring charges received or receivable for such transfer;

(iv) any sum charged for anything done by the dealer in respect of goods at the time of, or before, the delivery thereof;

(v) amount of duties levied or leviable on the goods under the Central Excise Act, 1944 (1 of 1944) or the Customs Act, 1962 (52 of 1962), or the Punjab Excise Act, 1914 (1 of 1914) as extended to the National Capital Territory of Delhi whether such duties are payable by the seller or any other person; and

(vi) amount received or receivable by the seller by way of deposit (whether refundable or not) which has been received or is receivable whether by way of separate agreement or not, in connection with, or incidental to or ancillary to the sale of goods;

(vii) in relation to works contract means the amount of valuable consideration paid or payable to a dealer for the execution of the works contract;

less –

(a) any sum allowed as discount which goes to reduce the sale price according to the practice, normally, prevailing in trade;

(b) the cost of freight or delivery or the cost of installation in cases where such cost is separately charged;

and the words "purchase price" with all their grammatical variations and cognate expressions, shall be construed accordingly;

Provided that where the dealer makes sales of goods imported into the territory of India, the sale price shall be greater of the following:

(a) the valuable consideration received or receivable by the dealer;

(b) value determined by the custom authorities for payment of custom duty at the time of import of such goods.

Explanation-1.- A dealer's sale price always includes the tax payable by it on making the sale, if any; ***[Rule: 4A]***

Explanation-2-The amount received or receivable by oil marketing companies for the sale of diesel and petrol shall be deemed to be equivalent to the price on which the retail outlets will sell these commodities to the consumer.

31. **"Schedule"** means a Schedule appended to this Act;

32. **"Tax"** means tax payable under this Act;

33. **"Taxable Quantum"** means the amount defined in sub-section (2) of section 18 of this Act;

34. **"Tax Invoice"** means the document defined in section 50 of this Act;

35. **"Tax Period"** means the period prescribed in the rules made under this Act; ***[Rule 26]***;

36. **"Tax Fraction"** means the fraction calculated in accordance with the formula, r / (r+100) where 'r' is the percentage rate of tax applicable to the sale under this Act;

37. **"Taxable Turnover"** means that part of dealer's turnover arising during the tax period which remains after deducting therefrom

(i) the turnover of sales not subject to tax under section 7 of this Act; and

(ii) the turnover of sales of goods declared exempt under section 6 of this Act.

In the case of turnover arising from the execution of a works contract, the amount included in taxable turnover is the total consideration paid or payable to the dealer under the contract excluding the charges towards labour, services and other like charges, subject to such conditions as may be prescribed.

Provided that where the amount of charges towards labour, services and other like charges is not ascertainable from the books of accounts of the dealer, the amount of such charges shall be calculated at the prescribed percentages.

38. **“Transporter”** means any person who, for the purposes of or in connection with or incidental to or in the course of his business transports or causes to transport goods, and includes any person whose business consists of or includes operating a railway, shipping company, air cargo terminal, inland container depot, container freight station, courier service or airline;

39. **“Turnover of Purchases”** means the aggregate of the amounts of purchase price paid or payable by a person in any tax period, excluding any input tax;

40. **“Turnover”** means the aggregate of the amounts of sale price received or receivable by the person in any tax period, reduced by any tax for which the person is liable under section 3 of this Act;

41. **“Value of Goods”** means the fair market value of goods at that time including insurance charges, excise duties, countervailing duties, tax paid or payable under the Central Sales Tax Act, 1956 (74 of 1956) in respect of the sale, transport charges, freight charges and all other charges incidental to the transaction of the goods;

42. **“Works Contract”** includes any agreement for carrying out for cash or for deferred payment or for valuable consideration, building construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, repair or commissioning of any moveable or immovable property;

43. **“Year”** means the financial year from the first day of April to the last day of March;

PART 2

Conceptual Understanding of the VAT

Chapter-1
Introduction to VAT

Introduction to VAT

Introduction of VAT in India was difficult because sales tax is a state subject: sales tax can be levied and administered only by states. Even though Central Sales Tax, is levied under the Central Sales Tax Act, 1956, the CST so collected is retained by State Governments where from the sale has originated. After a great deal of persuasion by the Union Government, most of the States of the country agreed to introduce the State Level VAT on April 1, 2005.

Single Point Taxation System

Before the implementation of VAT, Delhi had two systems to collect sales tax. In the first point tax system, tax was levied at the prescribed rate at the time of first sale. Thereafter, the sales of first point goods were not taxed, subject to the satisfaction of some prescribed conditions. In the last point of tax, tax was always paid by the last registered dealer. In spite of having two systems within it, the single point tax system resulted in considerable amount of evasion of tax.

Weaknesses of Single Point Taxation system

1. **Narrow Tax Base:** Single Point Taxation System captured the value addition only at the first point of sale. Value additions at subsequent stages were not taxed by this system.
2. **Cascading Effect:** As inputs were subjected to sales tax at various stages, it resulted in multiple taxation, which results in increase in the price of commodities. Because of this cascading effect, the final or finished products become expensive.
3. **No Transparency:** The exact incidence of tax is not visible in this system, as the seller does not charge tax separately in the sale voucher.
4. **Multiplicity of Taxation:** Under this system, different types of taxes were levied on the same base. These include state levies, sales tax, turnover tax, entry tax, surcharge, composition scheme fee and the infrastructure development cess.

5. **Inefficient administrative control**: Since the major part of taxes is collected at the first stage, the department concentrated its attention on a small number of big dealers; i.e., first sellers in respect of imported goods. A large number of dealers who traded in these commodities in the subsequent level of distribution escaped taxation, leading to evasion of tax and loss of revenue.

VAT in India

The very first discussion on State-level VAT was held in a meeting of Chief Ministers, convened by Dr. Manmohan Singh, the then Union Finance Minister, in 1995. The members discussed the basic issues related to VAT in general terms. This was followed up by periodic interactions of the finance ministers of the states. After that, on November 16, 1999, a meeting of all the Chief Ministers was convened by Shri Yashwant Sinha, the then Union Finance Minister, in which the following three important decisions were taken:

(i) That the unhealthy sales tax rate war among the states should have to end. The tax rates need to be harmonized by implementing uniform rates of sales tax for different categories of commodities from 1st January 2000.

(ii) The sales-tax related industrial incentive schemes have to be discontinued, in the interest of harmonization of incidence of sales tax, from 1st January 2000.

(iii) An Empowered Committee of State Finance Ministers was setup, for implementing these decisions.

After several rounds of discussions and meetings, the design of the State-level VAT was worked out by the Empowered Committee, maintaining a federal balance between the common points of convergence regarding VAT and flexibility for the local characteristics of the States. Since the State-level VAT was centered around the basic concept of "set-off' for the tax paid earlier, the needed common points of convergence also relate to this concept of set-off/input tax credit, its coverage and related issues.

Considering that problems and difficulties in the administration of VAT in India could arise in the initial years of its implementation, the Government of India provided a number of assurances to the states. These are:

(a) The Government agreed to compensate the states or the loss they would suffer during the first three years of the introduction of VAT, at the following rates; 100% in the first year, 75% in the second year, and

50% in the third year. A concrete formula for computing the loss and its compensation was worked out jointly by the Union Finance Minister and the Empowered Committee.

(b) During a joint meeting of the Finance Minister and the Empowered Committee of India held on 25th March 2005, it was decided that the rate of CST will be reduced in a phased manner. Though Central Sales Tax (CST) is incompatible with the VAT regime, phasing out of the CST, which provided revenue of Rs.15,000/- crores to the State Governments collectively, was deferred for at least one year.

(c) Entry tax in lieu of octroi would continue even under the VAT regime.

The Indian economy has experienced a much-needed reform, which has come into effect vide the Taxation Laws (Amendment) Act, 2007 with effect from 1st April 2007. The main features of the Amendment Act are:

(a) The rate of CST on inter-State sale to registered dealers against Form 'C' has been reduced from 4% to 3% *[2% w.e.f. 1.6.2008]* or the rate of VAT/State Sales Tax applicable in the State of the selling dealer, *whichever is lower.*

(b) The rate of CST on inter-State sale other than sale to dealers other than those indicated in (a) above, shall be the rate of VAT/State Sales Tax applicable in the State of the selling dealer.

(c) With the withdrawal of Form 'D' the rate of CST on inter-State sale to State of the selling dealer, indicated at (b) above. Enabling provisions have been provided to the States to levy VAT on tobacco, which has been dropped from the First Schedule of the Additional Duties of Excise (Goods of Special Importance) Act, 1957 as also from the list of declared goods, at a rate higher than 4% *[5%w.e.f. 1.6.2008]***.**

Chapter-2

Introduction to Delhi VAT

VAT in Delhi

The present Delhi Value Added Tax Act, 2004 (Delhi Act 3 of 2005) was passed by the Legislative Assembly of the National Capital Territory of Delhi on 22nd December 2004 and received the assent of the President of India on 15th February 2005. Necessary amendments were made therein through the Delhi Value Added Tax (Amendment) Act, 2005 as notified on 28th March 2005. The Act came into force with effect from 1st April 2005 vide Notification No. F.101(318)/2005-Fin.(A/Cs)(i)/8581, dated 30th March 2005. Delhi Value Added Tax Rules were made on 1st April 2005 and came into the effect from the same date. Significant changes were made in the rates of tax by amending various Schedules of the DVAT Act from time to time.

1. General Scheme of the Delhi VAT Act

A dealer is liable to pay tax at the prescribed rates on every sale of goods effected by him. The goods are taxed at the following rates:

(i)	Goods specified in the first schedule	Nil
(ii)	Goods specified in the second schedule	1%
(iii)	Goods specified in the third schedule	5%
(iv)	Goods specified in the fourth schedule	12.5% to 30%[1]
(v)	Unspecified goods	12.50%

A dealer is entitled to tax credit under Section 9(1) subject to restrictions laid down in Section 9(2) in respect of purchases, made by him during the tax period, which are used by him, directly or indirectly for the purpose of making sales which are liable to tax under Section 3 of the Act and also to effect sales which are not liable to tax under Section 7.

Section 3, which is the charging section, imposes tax on every dealer in

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[1]Rate changed vide Notification No. F.14(6)/LA-2015/Cons 2 law/112-126 Dated 14th July, 2015 i.e. DVAT (Second Amendment) Act 2015. Earlier the rate was 20%

respect of every sale of goods effected by him. Interstate sales which are governed by the CST Act 1956.Section 9, however, allows tax credit in respect of inputs used to effect both types of sales, that is, sales which are liable to tax and which are not liable to tax. Sales which are exempt under the provisions of Section 6(1) of the Act are not eligible for input tax credit under Section 9(1) of the Act.

Composition schemes have also been announced for certain classes of dealers. Rate of tax on goods specified in Schedule III (other than declared goods) has been increased to 5% (from 4%) w.e.f. 13.01.2010. Rate of tax on declared goods specified in Schedule III was increased from 4% to 5% w.e.f. 01.10.2011.

2. Significant amendments in the Delhi VAT in 2014-15

(i) As per section 11(2), where the net tax of a dealer amounts to a negative value, the dealer shall be entitled to carry forward the amount to next calendar month or tax period, as the case may be, of the same year meaning thereby that excess tax credit can be carried to next financial year. However refund can be claimed at the end of tax period only.[2]

(ii) Form DP-1 (Dealer Profile-1) shall be submitted online by all the dealers latest by 31/08/2015.[3]

(iii) A return to provide details of dealers. located in Delhi, supplying goods either to customers of Delhi or outside Delhi and details of dealers located outside Delhi, supplying goods to customers of Delhi, for the persons engaged in providing facility of electronic shopping (commonly known as e-commerce) through their web-portals in Form EC-I, EC-II, EC-III.[4]

1. All such persons engaged in the business of e-commerce shall have to enroll themselves by logging on to the web-site of the

[2] Section 11(2)(b) substituted vide Notification No. F.14(2)/LA-2015/Cons2law/40-54 Dated 30th March, 2015 i.e. DVAT (First Amendment) Act 2015.

[3] Date extended vide Notification No. F.3(352)/Policy/VAT/2013/346-357 Dated 30th June, 2015.

[4] Date extended vide Notification No. F.3(515)/Policy/VAT/2015/330-41 Dated 26th June, 2015

department (www.dvat.gov.in) at first by clicking on the relevant link in the Menu. Basic information has to be filed online in Form EC-I. A unique ID would be generated after successful submission. This ID should be used for filing the said return. Password for logging on to the site would be communicated on email provided by the person.

2. Return should be filed on quarterly basis in Form EC-II (Information in respect of Delhi Dealers making sales to Delhi Consumers as well as to outside Delhi Consumers) & EC-III (Information in respect of Outside Delhi Dealers making sales to Delhi Consumers) by 20th day of the month following the quarter to which the return pertains.

(iv) Form-9 prescribed under Rule-4 of Central Sales Tax, Rules, 2005 need not to file by the dealers who have not made interstate sale at concessional rates against statutory forms.

Review of System Generated Orders

(v) For making the default assessment the systems branch considered the Central, Sales declared in the Latest Return furnished by the dealer for the year 2010-11 and assessed for such dealer who had not declared the status of the Central Statutory Forms received by them against such concessional sales to the department neither in Column R-10 for the 3 rd Quarter return for the year 2013-14 before May 2014, nor in Reconciliation Return in CST Form 9 for the financial year 2010-11, before 30.3.2015. The rate of tax has been considered as per the tax declared in the available returns/DP-1 or otherwise as 12.5%.[5]

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[5] Circular No. 7 of 2015-16 No.2947-52, Dated 30th April, 2015

PART 3

Guide to DVAT Act

Chapter-3
Registration of Dealers

Registration

Every dealer whose turnover exceeds the taxable quantum, specified under section 3(1) is mandatorily required to register under DVAT Act, (while it is recommendatory to register under DVAT Act for those dealers who wish to issue Tax Invoice, that enables the purchasing dealer to claim input tax credit as a dealer selling cannot issue tax invoice unless he is registered.

1. Requirements for Registration Mandatory Registration *[Section 3(1) read with Section 18(1)]*

It is mandatory for every dealer to apply for registration under DVAT Act if-

(a) he has turnover exceeding the *taxable quantum* or

(b) he is involved in interstate sales or purchase irrespective of the quantum of turnover.

Taxable quantum has different meaning for different dealers. It means for a:

(i)	Casual dealer	Nil
(ii)	Dealer who imports goods for sale in Delhi	Nil
(iii)	for Others	20,00,000

In accordance with Section 18(3) of the DVAT Act, taxable quantum excludes

(a) Sales of capital assets;

(b) Sales made in the course of winding up the dealer's activities; and

(c) Sales made as part of the permanent diminution of the dealer's activities.

It must be noted that the dealers who are exclusively engaged in exempted goods shall not be required to get registered and need not comply with the provisions of the DVAT Act.

A dealer shall continue to comply with the provisions of the Act until he has surrendered his registration certificate.

1.1.1. Liability for Registration in special cases

(i) Exporters

Now a question arises, as to whether a dealer, who is exclusively engaged in sale in the course of export, is liable for Mandatory Registration under the DVAT Act, or not? This is so, because these dealers are not liable for registration under the CST Act since there is no inter-State sale and export is exempt under the DVAT Act.

Although export is exempt under section 7, but to claim deduction for export under section 5(1)(b), it is necessary for exporter to file returns and prove his claim and for this purpose, he is required to get registered.

In the case of Prince Exports vs. CST (Appeal No. 362/ATVAT/06-07 dated 31.01.2007 (Del Trib)), the DVAT Tribunal, after going through the provisions of Section 18(1) and (2) of the DVAT Act, opined that it is mandatory for the exporters to obtain the registration under the Act.

Some related provisions of registration:

(i) If a dealer is engaged in interstate sale, then he will be liable for registration under CST Act as well as DVAT Act, from the date on which such interstate sale took place;

(ii) If a dealer has purchased goods from any state other than Delhi, then he is liable for registration under the DVAT Act, from the date of first sale after that purchase.

(iii) If a dealer is already engaged in local sale as on the date of first central purchase, then he will be liable for registration from the date of that purchase.

(iv) If a dealer is making central purchases, but not making any central sale or stock transfer to another state, then he is not liable for registration under the CST Act. He is required to get registered under DVAT Act only.

(ii) Multiple Businesses in Delhi

If a dealer is having more than one business in Delhi, then he can obtain a single TIN for all the businesses carried on by him in Delhi. But, if he runs different businesses under different trade names, he can obtain different TINs for different trade names, with prior intimation to the department that he has multiple business premises in Delhi. Inspite of having different

registrations, he is not eligible for separate basic exemptions of *taxable quantum* for separate trade names as exemption is provided only assessee wise.

1.1.2. Penalty for non- registration *[Section 86(4)]*

If a dealer fails to apply for registration ***within one month*** from the date on which he is liable for registration, he shall be liable to pay, by way of penalty, an amount equal to Rs. 1,000 per day, subject to a maximum amount of Rs. 1,00,000 from the date of expiry of the period of one month, until the person files an application for registration in the prescribed form, containing all the required particulars and information accompanied by such fee and other documents as may be prescribed.

1.1.3. Penalty for falsely representing as a Registered Dealer *[Section 86(7)]*

In case, where an unregistered dealer intentionally represents himself to be a registered dealer, then he is liable for a penalty equal to the amount of tax wrongly collected, or Rs. 1,00,000/- whichever is greater.

The term *'False'* does not merely mean furnishing untrue or incorrect particulars; it is a reflection of the intention of the dealer.

1.2. Voluntary Registration *[Section 18(4)]*

Any person may apply for registration under DVAT Act voluntarily if

(a) he is a dealer; or

(b) he intends to undertake activities, from a particular date, which would make him a dealer.

1.2.1. Benefit of Voluntary Registration

According to section 50(1) of the DVAT Act, a registered dealer shall be authorized to issue tax invoice only after obtaining a certificate of registration. It has also been clarified vide clarification no. VAT/Policy III/2005-06/898 dated 13.07.2005 that a dealer who has been provided with TIN can issue tax invoice from the date of communication of TIN. Thus, dealers who want to claim input tax credit will not purchase goods from an unregistered dealer as he cannot issue tax invoice; or in other words, the tax shall be borne by the selling dealer. So, it is in the interest of such dealer to obtain registration even before making a local sale.

1.2.2. Penalty for failure to comply conditions *[Section 86(8)]*

A registered dealer shall be liable to pay a penalty of Rs. 10,000 if,

(i) either he has failed to carry out activities which would make him a dealer, within the period specified in his application; or

(ii) has failed to comply with any of the restrictions or conditions subject to which such registration was granted.

1.2.3. Casual Dealer *[Section 2(1)(g)]*

A. A *'Casual Dealer'* means a person who undertakes occasional transactions (without carrying on regular business) in the nature of business involving buying, selling, supplying or distributing goods or conducting any exhibition-cum-sale in Delhi whether for cash, deferred payment, commission, remuneration or any other valuable consideration.

B. *'Taxable Quantum'* in respect of a casual dealer is NIL, in accordance with section 16A(7) of the DVAT Act.

C. A casual dealer shall make an application in Form DVAT 04A, at least 3 days before commencing his business in Delhi, in person or through his authorized agent to the Commissioner.

D. As per Section 16A(1)(e) of the DVAT Act, a casual dealer shall not issue any tax invoice. However, he is required to issue retail invoice for all sales.

E. Every casual dealer shall pay tax daily on sales made during the previous day, and the return shall be furnished in Form DVAT 16A to the Commissioner immediately after the conclusion of his business in Delhi.

2. Application for Registration

2.1. A dealer liable to get himself registered under section 18 shall make an online application for registration to the Commissioner in Form DVAT 04, within a period of 30 days from the date of becoming liable to pay tax under the Act. DVAT 04 shall be filed along with a filing fee of Rs. 1,000/-.

2.2. Process of Online Registration and documents to be enclosed[6]

1. Dealers seeking registration have to submit some basic details online including name, constitution, PAN and contact details.
2. PAN has to be verified by NSDL.
3. After successful PAN verification, the dealer would be provided a Reference Number which is to be used as Login id, and a password through e-mail.
4. Through this, the dealer has to login and fill up the registration form, deposit fee online and upload supporting documents, in pdf or jpeg format, such as Address and ID proof.
5. Registration number/TIN would be generated on submission of application. Registration Certificate would be made available in the login of dealer on the same day. It would be a Provisional Registration till physical verification is made.
6. The application would be made available in the login of concerned ward VATO who will examine the application documents and get the physical verification done through ward VATI as per the instructions already issued on the subject within 7 days.
7. The Ward VATO has to approve/reject/issue deficiency memos based on the facts submitted within 15 days of the generation of the receipt.
8. On satisfactory inspection and due verification of requisite documents, signed copy of the RC would be dispatched to the dealer by post till the online dispatch facility through digital signatures is extended to all Registration authorities of the Department.
9. In case of adverse report, show cause notice in Form DVAT-10 would be issued and disposed of.

Checklist of Documents required for Registration under DVAT Act:

1. Form DVAT 04 for DVAT Registration,
2. Proof of incorporation of company, i.e., MOA and AOA with the list of Directors, if applicant is a company,

[6] Procedure is defined vide Circular No. 3 of 2015-16 No.F.3(521)/Policy/VAT/2015/PF/86-92 Dated 27th April, 2015

3. Partnership deed in the case of a partnership firm,
4. Sale Deed / Power of Attorney, Rent Deed, Rent Receipt and NOC from the landlord of the principal/ additional place of business,
5. Copy of the PAN of the proprietor in case of Proprietorship; of the Firm and its partners in case of Partnership Firm and, of the company and its Directors in case of Pvt. Ltd. / Ltd. Company.
6. Two Photographs of Proprietor/ Directors/ Partners and the Authorized Signatories.
7. One Cancelled Cheque,
8. List of the Products for Sale and Purchases
9. Copy of the Election I.D. / AADHAR Card / Driving License / Passport,
10. Two self-addressed envelopes of the size 11” x 4.5”.

2.3. Nomination of Principal Place of Business *[Rule 19 of DVAT Rules]*

In case a dealer has more than one place of business within Delhi, he needs to nominate any one of such branch or place as its principal place of business, but it is also necessary to mention all the premises in the registration application.

Chapter-4
Amendment in Registration

Amendments

[Section 21 of DVAT Act]

After obtaining registration number under the DVAT Act, any changes in the registration particulars shall be intimated to the authority by submitting an online application for changes in Form DVAT 07 *"Application for Amendment in Particulars subsequent to Registration" within one month of the concerned change.*

1. Circumstances leading to Amendments

Under the following circumstances, a dealer is required to apply for amendments under the DVAT Act:

(a) Where there has been a change in the ownership of business;

(b) In case of discontinuation of business activities;

(c) Where a dealer sells or disposes of a part or whole of his business;

(d) Where there has been a change in the principal place of business or any additional place, or a new place of business has been added;

(e) Where the business has been closed for a period of more than one month;

(f) In case of change in the name, style, constitution or nature of business;

(g) Where there has been a change in the particulars of authorized signatories or persons having interest in business;

(h) If a dealer enters into any agreement or partnership or any other association, in respect to his business.

and if any registered dealer dies, and his legal heir(s)inform the said authority about this.

2. Time Period for Amendments [*Section 21(1)*]

An application for amendment in Form DVAT 07 shall be filed *within one month* of such change.

3. Procedure for Amendment in Registration [Rule 15 of the DVAT Rules]

1. Whenever any of the changes mentioned above take place, an application for amendment to an existing registration under the DVAT Act shall be filed by the dealer in Form DVAT 07.
2. This application, in the prescribed form and prescribed manner, is to be filed within thirty days, to inform the Commissioner of such change.
3. Along with the amendment application, the following documents are to be attached, depending upon the nature of change:
   (a) Proof of change in the *address of Principal or Additional Place* of Business.
   (b) Proof of change in the *name and style* of Business.
   (c) Supporting documents in case of change in the *constitution* of the business.
   (d) Proof of Acquisition/ sale or disposal of the whole or part of the business.

Note: In case an additional place of business/ godown/ branch is not registered with the Department, all the goods kept at that place will be regarded as sales, and no Input Tax Credit will be allowed. (Tower Vision India (P) Ltd. vs. Asstt. CCT (2013)(1) TMI 407 (Mad).

4. Application for amendment under CST Act [Rule 10A of the CST (Delhi) Rules]

An application for amendment under Central Sales Tax Act may be filed by the dealer in Form 11 and will be processed in the manner specified under DVAT Act and Rules.

However, a DVAT 07 is not to be filed in case of amendment under the Central Sales Tax Act, 1956. An application for such change under the CST Act may be filed on plain paper by the applicant dealer.

5. Effective Date of Amendment [Section 21(3)]

The change in the registration becomes effective from the date, which indicates the actual date of such change or modification, irrespective of the fact that, the information in that behalf is furnished within the prescribed time or not.

6. Penalty *[Section 86(5)]*

In case of non-filing of the information of amendment in the particulars subsequent to registration, a penalty of Rs. 200/-[7] per day of default shall be chargeable subject to a maximum of Rs. 10,000/-.

[7] Penalty amount reduced vide Notification No. F.14(6)/LA-2015/Cons 2 law/112-126 Dated 14th July, 2015 i.e. DVAT (Second Amendment) Act 2015. Earlier the same was 500/-

Chapter-5
Cancellation of Registration

Cancellation *[Section 22 and 23]*

1. On the part of the Commissioner

1.1. Circumstances under which registration is cancelled *[Section 22(1) of the DVAT Act]*

(a) When a registered dealer has ceased to pay taxes, or interest/ penalties, if any;

(b) When a misleading or deceptive return has been filed by the dealer intentionally;

(c) When the dealer has contravened any provision of the Act or committed any other offence, the Commissioner, after looking into the matter, may cancel the dealer's registration;

(d) When the owner of a proprietorship business dies, leaving no successor to carry on the business;

(e) Where a partnership firm or association of persons or an incorporated entity is closed down;

(f) When a dealer has stopped carrying on business activities, which entitled him to be registered under the DVAT Act;

(g) Where the Commissioner, after making necessary inquiries, is satisfied that registration of the dealer should be cancelled.

1.2. Serving of Notice of Cancellation

The notice of cancellation is served by the Commissioner in form DVAT 10. The commissioner may after serving notice, cancel the registration under DVAT Act from the date specified in the notice.

1.3. Procedure

(a) A notice is served by the Commissioner upon the dealer in the prescribed form DVAT 10, in the prescribed manner under Rule 62.

The notice is issued on the basis of the report of an assessing officer, indicating evasion of tax/ interest or penalty, if any, for any particular period, mentioned therein.

(b) After the dealer comes to know, of the cancellation of the registration, he needs not to surrender the certificate of registration[8]. Earlier he is required to surrender the certificate of registration when the dealer comes to know the cancellation of registration.

(c) An objection can be made by the dealers to the Commissioner under Section 74, against the wrong cancellation of registration. In such cases, the dealer may retain the certificate of registration pending resolution of the objection. *[Proviso to Rule 16(5)].*

(d) The date from which registration of the dealer shall be treated as cancelled is specified by the Commissioner in Form DVAT 11. After cancellation, the dealer is supposed to comply with all the requirements specified by the Commissioner either through notice in Form DVAT 11 or by any other separate communication or letter served in the manner specified under Rule 62. *[Rule 16(6)].*

1.4. Restoration of Registration [Section 22(5) & (6)]

If after an appeal, or other proceeding against the cancellation and the dealer is able to prove that the cancellation was inappropriate, it shall be restored by the Commissioner. After the restoration of registration, the dealer will be liable to pay tax, as if his registration had never been cancelled.

If during the period of cancellation, the dealer has paid excess tax which would not have otherwise been paid by him, and has satisfied the Commissioner of the fact, then the amount of such tax shall either be refunded to him or readjusted in his name, in whatever way possible.

2. On the part of the Dealer

2.1. Circumstances under which registration is cancelled [Section 22(2) of the DVAT Act]

A registered dealer may apply on his own or through a legal representative in the case of his death, for the cancellation of registration in the following

[8] Section 22(7) omitted vide Notification No. F.14(6)/LA-2015/Cons 2 law/112-126 Dated 14th July, 2015.

circumstances:

(a) The registered dealer has ceased to carry on the activities, which entitled him to get registration under the DVAT Act;

(b) The dealer has ceased to be liable to pay taxes under the DVAT Act;

(c) The owner of a proprietorship business dies, leaving no successor to carry on the business;

(d) The partnership firm or association of persons is dissolved;

(e) An incorporated body is closed down.

2.2. Procedure

(a) An application for registration under the DVAT Act may be made by the dealer in Form DVAT 09 within 30 days from the date the dealer intends to apply for cancellation. *[Rule 16(1)].*

(b) The dealer applying for cancellation of his registration need not to surrender with his application the certificate of registration and all other certified copies issued to him. *[Rule 16(2)].*

(c) On receipt of the application from the dealer, and satisfying himself of the fact that the dealer has ceased to be entitled for registration, the Commissioner may cancel the registration. *[Section 22(3)].*

(d) The date of cancellation of registration may be specified by the Commissioner by sending a notice in Form DVAT 11. After cancellation, the dealer is supposed to comply with all the requirements specified by the Commissioner either in the notice in Form DVAT 11 or by any other separate communication or letter to be served in the manner specified under Rule 62.*[Rule 16(6)].*

Note: *"A dealer shall remain liable to pay all the taxes until the date on which his registration is cancelled."*

2.3 Tax on Closing Stock [Section 23 of the DVAT Act]

A dealer whose registration has been cancelled shall pay in respect of all the goods held by him till the date of cancellation an amount higher than

(a) The tax payable on such goods, if the goods would have been sold at their fair market value; or

(b) The input tax credit claimed in respect of such goods.

2.4 Tax on unsold assets at the time of Cancellation of Registration

Levy of VAT on unsold capital assets/ goods is not justified unless there are specific provisions in the Statue to levy tax on such goods.*[Rajgarhia Oil Mills vs. State of Haryana (2010) 9 VSTI C-854 (HarTrib)].*

2.5 Penalty *[Section 86(6)[9] of the DVAT Act]*

A registered dealer shall be liable to pay a penalty of Rs. 200/- per day of default, subject to a maximum of Rs. 25,000/- if he fails to apply for cancellation when his liability to pay tax ceases; fails to comply with the provision of Section 22(2).

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[9] Penalty amount reduced vide Notification No. F.14(6)/LA-2015/Cons 2 law/112-126 Dated 14th July, 2015 i.e. DVAT (Second Amendment) Act 2015. Earlier the same was 1000/-

Chapter-6
Returns and Tax Periods

Return

A return under DVAT Act 2004 is a statement in which details of gross turnover, local turnover, central turnover, output tax, input tax credit and net VAT payable/ refundable for a particular tax period is shown.

It is mandatory for a registered dealer to file his DVAT return otherwise penalties shall be imposed upon the dealer as well as he shall not be given right of self-assessment.

1. Tax Period [*Section 2(1)(zi)*]

[Rule 26 read with Section 26(1) of the DVAT Act]

According to *Section 26(1)* of the DVAT Act, every dealer registered under the Act, shall submit the return for each and every tax period and by due dates in the prescribed form and manner.

Due date for filing of return under the DVAT Act is prescribed in rule 26 of the DVAT Rules and depends upon the tax period.

As per Rule 26(1) of DVAT Rules, all dealers are required to file their returns on a quarterly basis, irrespective of the amount of turnover.

1.1. First Tax Period *[Rule 26(5)]*

A dealer who has been granted new registration under the DVAT Act, the tax period for him

(a) Shall be a *quarter*; and

(b) Shall commence from the *date of his liability*.

2. Features of DVAT Return

Returns of normal dealers as well as dealers registered under composition scheme shall be filed online on the website of DVAT Department ***www.dvat.gov.in*.** Hard copy of DVAT 56 shall be submitted to the department after due verification and signature.

The salient features of DVAT returns are as under:

S.N.	Return Form		Features
1	**DVAT 16**		**To be used by all the Dealers except Composition Dealers and Casual Dealers**
	a	Main Return	Apart from dealer's details and main commodities dealt in by him, the main return consists of: (i) Description of top items along with sale contribution; (ii) Rate-wise turnover of sales and purchases; (iii) Net tax payable after making adjustments in the input and output tax; (iv) Details of payment of tax including TDS; (v) Amount carried to the next tax period or refund claimed; (vi) Information by way of aggregate amount relating to central purchases/ sales, stock inwards/outwards from/to branches, imports, exports, high seas sales, etc.
	b	Annexure 1	Annexure 1 consists of: (i) Rate-wise adjustments in output tax under section 8; (ii) Rate-wise adjustments in input tax under section 9 and 10.
	c	Annexure 1A	It comprises additional details from works contract dealers.
	d	Annexure 1B	It consists of additional details right to use dealers.
	e	Annexure 1C	It comprises additional details and information relating to sale against Form-H to Delhi Dealers.
	f	Annexure 2A	It is a quarter-wise and dealer-wise summary of Form DVAT 30, showing aggregate of rate-wise and nature-wise purchases/ inwards

S.N.	Return Form		Features
			from every dealer. Purchases from unregistered dealers may be consolidated tax rate-wise for that tax period.
	g	Annexure 2B	It is a quarter-wise and dealer-wise summary of Form DVAT 31, showing aggregate of rate-wise and nature-wise sales/ outwards to every dealer. Sales to unregistered dealers may be consolidated tax rate-wise for that tax period.
	h	Annexure 2C	It is a quarter-wise and dealer-wise summary of debit/credit notes related to purchases.
	i	Annexure 2D	It is a quarter-wise and dealer-wise summary of debit/credit notes relating to sales.
	j	Annexure 1C	It comprises additional details to be filled by the dealers in case of refund claim.
2	**DVAT 17**		**To be used by the Composition Dealers [Under General Scheme u/s 16(1) or Specific Scheme u/s 16(12)]**
	a	Main Return	Apart from the dealer's details and main commodities he deals in , the main return consists of: (i) Rate-wise turnover of sales and purchases; (ii) Net tax payable; (iii) Details of payment of tax including TDS; (iv) Amount carried to the next tax period or refund claimed; (v) Information by way of aggregate amount relating to central purchases, stock inwards, imports, etc.
	b	Annexure 2A	It is a quarter-wise and dealer-wise summary of local and central purchases, imports, etc. and works contracts executed by the sub-contractors.
	c	Annexure 2B	It is a quarter-wise and dealer-wise summary of sales, works contracts executed, sale of scraps and capital goods.

S.N.	Return Form		Features
3	**Form 1 (CST)**		**To be used by all the Dealers registered under the CST Act**
	a	-	Apart from the dealer's details and the main commodities in which he deals, the CST returns consists of: i. Rate wise turnover of sales of all types, such as, exports, sale in the course of import, sale to SEZ, stock transfers u/s 6A, central sales against Form C, etc. ii. Excess tax may either be adjusted against liability under DVAT Act or be carried forward to the next tax period.

3. Due date for furnishing of Returns

3.1. Periodical Returns *[Rule 28(3) read with rule 26(1)]*

Quarterly DVAT return shall be filed within 28 days of the next month following the quarter online.

Hard copy of DVAT 56 shall also be submitted within 28 days of the next month following the said quarter.

3.2. Other Returns

Rule	Nature of Return	Due Date	Form
28(3)- Proviso	New Registration: If due date for filing of return has expired, on the date of grant of registration	Return should be furnished within 7 days	Composition Dealers- DVAT 17 Other Dealers- DVAT 16
28(4)	Cancelled Registration Restored: Returns for the periods during which the registration remained	Returns for such tax periods shall be filed within 28 days of the restoration	Composition Dealers- DVAT 17 Other Dealers- DVAT 16

Rule	Nature of Return	Due Date	Form
	inoperative		
67(1)	Quarterly Reconciliation [Omitted w.e.f. 05.03.2014]: or transactions under the CST Act	Within three months after the end of each quarter	Form DVAT 51
Rule 4- CST (Delhi) Rules	Yearly Reconciliation Return: For the dealers selling goods on the strength of Central Declaration Forms	Within a period of six months from the year end to which it relates, electronically	Form 9 (CST Delhi Rules)

Details of stock as on 31st March shall be submitted with the DVAT Return of the second subsequent quarter of the year.

Furnishing of advance information in respect of functions organised in Banquet Halls, Farm houses, Marriage/Party Halls, Hotels and Open Ground etc.:

Where Programmes/functions are to be organized in banquet halls, farm houses, marriage/party halls, hotels, open grounds etc., where food and/or liquor items are to be supplied/provided and the cost of booking exceeds rupees one lakh per function, the owner/ lessee/ custodian is required to get himself enrolled by filing form BE1 and thereafter to submit return in Form BE2 at least 3 days before the first day of a month and for the second fortnight by the 12th of the month. *(Circular 9 of 2014-15)*

All the scheduled banks, whether registered or not under the Act, having their branches in Delhi and engaged in the business of silver, gold, repossessed vehicles, shall furnish the return on a quarterly basis, in **Form Bank 1** prescribed for the purpose. Such return shall be furnished within twenty eight days of the end of the each quarter commencing from the quarter ending 30th June, 2013. *(Notification issued on 29-05-2013)*

Chapter-7
Accounts and Records

1. Records and accounts

As per section 48, read along with Rule 42,

(1) Every

(a) dealer;

(b) person, **whether a registered dealer or not**, on whom notice has been served to furnish return under section 27 of this act

shall prepare and retain **sufficient records at the principal place of business** as recorded in his certificate of registration to allow the Commissioner to readily ascertain the amount of tax due under this Act, and to explain all transactions, events and other acts engaged in by the person that are relevant for any purpose of this Act.

Provided that the dealer maintaining computerized books of accounts using software should be able to readily provide soft and/or hard copy of the records at the principal place of business as recorded in his certificate of registration, as and when required by the Commissioner.

Explanation: the dealer may maintain and retain soft copy of the records to means of comply with the requirement of this subsection.

Rule 42(1) of Delhi Value Added Tax Rule, 2005, requires that **following records shall be maintained** by a dealer at his principal place of business

(a) A **monthly account** specifying:

- Total output tax,
- Total input tax, and
- Net tax payable or excess tax credit due for carrying forward.

(b) **Purchase records** in **Form DVAT30,** showing details of:

- Purchase on which tax has been paid,
- Purchase made without paying f tax,

- Purchase made from an exempted unit, and
- Purchase made from outside Delhi.

Original tax invoices for purchases on which tax has been paid and invoices for purchases made without payment of tax shall be preserved date-wise and in numerical order.

(c) **Sale records in Form DVAT31, showing detail of**

- sales made at different tax rates,
- zero– rated taxable sales, and
- tax-free sales.

Copies of tax invoices related to taxable sales and invoices related to exempt sales shall be retained date-wise and in numerical order.

(d) Record of **inter-state sales, interstate transfer of goods** (including that of goods sent for job work) **supported by statutory declarations** and such other evidence as may be relevant.

(e) **Details of input tax calculations** where the dealer is making both taxable and tax-free sales.

(f) Stock records showing

- stock receipts,
- Stock deliveries, and
- Manufacturing records.

(g) Stock records showing separately the particulars of goods stored in cold storage, warehouse, godown or any other place taken on hire.

(h) Order records and delivery challans, wherever applicable.

(i) Annual accounts including trading, profit and loss accounts and the balance sheet.

(j) Bank records, including statements, cheque book counter foils and pay-in slips.

(k) Cash book, daybook and ledger.

(l) Record of credit/ debit notes relating to purchases in Form DVAT30A and sales in Form DVAT31A.

Moreover, books of accounts specified in this rule shall be **maintained separately in relation to business carried out in Delhi**.

Dealers elected for composition scheme under section 16 of this Act

As per rule 42(2)

The following records shall be maintained by a dealer having chosen to pay tax under section 16:

(a) Details of the goods purchased and sold by him; and

(b) Cash book, daybook, ledger, invoice books and purchase vouchers.

(2) Notwithstanding the generality of Section 48(1)–

(a) every registered dealer shall preserve a copy of all the tax invoices issued by him;

(b) every dealer shall preserve the original copy of all the tax invoices received by him; and

(c) every person who has paid any amount of tax, interest, penalty or any other amount owed under this Act, shall preserve a copy of the challan evidencing the making of the payment.

- The Commissioner may prescribe the manner and form in which accounts and records are to be prepared.
- If the Commissioner considers that such records are not sufficiently clear and intelligible to enable him to make a proper check of the obligations required of the person under this Act, he may require such person by notice in writing to keep such accounts (including records of purchase and sales) as may be specified therein.
- The Commissioner may, by notification in the official Gazette, direct any class of dealers, transporters or operators of warehouses to keep such accounts (including records of purchases and sales) as may be specified in the notification.

Warehouse operator [Rule 42(3)]

Every owner or lessee of a cold storage, warehouse, godown or any such place, who stores goods for hire or reward shall maintain or cause to be maintained a correct and complete account indicating:

(a) Full particulars of the person whose goods are stored;

(b) Quantity and value;

(c) Date of arrival and date of dispatch;

(d) Proposed destination of such goods.

Carrier of goods [Rule 42(4) and Rule 43]

Every person who carries goods for reward shall maintain or cause to be maintained a correct and complete account indicating:

(a) Full particulars of the person whose goods are carried;

(b) Quantity and value of such goods;

(c) Place and date of delivery of such goods;

(d) vehicle number; and

(e) serial number and date of Goods Receipts (GR) note and his office copy of the same.

Preservation and retention of records

Every person require to preserve records and accounts shall retain the required records and accounts for, at least, seven years after the conclusion of the events or transactions which they record unless any proceedings in respect of that year are pending in which case they shall be preserved till the final decision in those proceedings. Any loss thereof shall be reported to the Police and the Commissioner within a period of fifteen days from the date of occurrence.

2. Tax Invoice (Section 50)

A registered dealer making a sale liable to tax under this Act shall, at the request of the purchaser, provide him at the time of sale a tax invoice containing the particulars specified below:

1. The words 'tax invoice' in a prominent place;
2. Name, address, and registration number of the selling registered dealer,
3. Name and address of purchaser and his registration number, where the purchaser is a registered dealer;

4. An individual pre-printed serialized number and the date on which the tax invoice is issued. Dealers may maintain separate numerical series, with distinct codes, either as prefix or suffix, for each place of business in Delhi or for each product. Numerical series may be granted by the Commissioner, in such a manner and from such date as may be notified by him;
5. Description, quantity, volume and value of goods sold and services provided and the amount of tax charged thereon to be indicated separately;
6. The signature of the selling dealer or his servant, manager or agent, duly authorized by him; and
7. Name and address of the printer and first and last serial number of the tax invoices printed and supplied by him to the dealer.

Only one tax invoice shall be issued for each sale. In case an invoice has been issued under the provisions of the Central Excise Act, 1944, it shall be deemed to be a tax invoice if it contains the particulars specified above.

A tax invoice in respect of a sale shall be **issued in duplicate**; the original shall be issued to the purchaser (or the person taking the delivery, as the case may be) and the duplicate shall be retained by the selling dealer.

A tax invoice shall be issued by a registered dealer **only after a certificate of registration is issued by the Commissioner**.

A tax invoice **shall not be issued by a dealer** who

(a) Is specified in the Fifth schedule;

(b) elects to pay tax under Composition basis;

(c) makes the sale in the course of interstate trade or commerce or export; or

(d) is a casual trader

3. Retail Invoice

Except when a tax invoice is issued, if a dealer sells any goods exceeding the amount in value of Rs. 100 in any one transaction to any person, he shall issue to the purchaser a retail invoice containing the particulars is specified below:

1. The words 'retail invoice' or 'cash memorandum' or 'bill' in a prominent place;
2. Name, address and registration number of the selling dealer, if registered;
3. in case the sale is in the course of inter-state trade or commerce, the name, registration number and address of the purchasing dealer and type of statutory form, if any, against which the sale has been made;
4. An individual pre-printed serialized number and the date on which the retail invoice is issued. Dealer may maintain separate numerical series with distinct codes, either as prefix or suffix, for each place of business in Delhi or for each product. Numerical series may be granted by the Commissioner, in such manner and from such date as may be notified by him;
5. Description, quantity, volume and value of goods sold and services provided and the amount of tax charged thereon to be indicated separately; and
6. The signature of the selling dealer or his servant, manager or agent, duly authorized by him.

Retail invoice shall be issued **in duplicate;** the original shall be issued to the purchaser and the copy shall be retained by the selling dealer. Composite dealer shall clearly endorse the words "**Composition dealer, VAT not to be charged**" on the retail invoice.

4. Issue of Duplicate invoice

As per section 50(8) read with Rule 44, where a purchasing dealer claims to have lost the original tax invoice, the selling dealer may, upon a request made by the purchasing dealer accompanied by an undertaking cum indemnity in form DVAT36, provide a copy of such lost tax invoice clearly marked 'duplicate' and shall furnish a copy of such undertaking cum indemnity along with his return for the tax period in which such 'duplicate' invoice has been issued.

5. Credit and Debit notes (Section 51, Rule 45)

- Subject to 8(1) and 8(2)[10], Where a **tax invoice** has been issued in respect of a sale and the **amount shown as tax** in that tax invoice **exceeds** the **tax payable in respect of sale**, the dealer shall provide the purchaser with a credit note.
- Where a **tax invoice** has been issued in respect of a sale and the **tax payable** in respect of sale **exceeds** the **amount shown as tax on the tax invoice**, the dealer shall provide the purchaser with a debit note.

Particulars contained in Credit and debit notes

A credit and debit note should have contained the following particulars:

1. Name, address and registration certificate number of the seller;
2. Name, address and registration number of the purchaser
3. The reason for issuing credit note or debit note, as the case may be;
4. Serial Number of the relevant tax invoice affected by the credit note or debit note, as the case may be;
5. Amount of variation in the tax amount shown in the tax invoice
6. Signature by the dealer or the person duly authorized to sign the return to be filed under this Act.

- However, this provision does not restrict issuing a credit note or debit note in respect of sale made on the basis of retail invoice. However, in case of sale made on the basis of tax invoice, it is mandatory for the selling dealer to issue a credit note or debit note, as the case may.
- It is important to note that no adjustment in output tax/input tax is required to be made in respect of credit note issued for post sale discounts or incentives by the seller/ buyer respectively. It is further clarified that for the purpose of Sec. 10(5) of DVAT-04, purchase price will be net of post sale discount or incentives.[11]

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[10]Words added vide Notification No. F.14(6)/LA-2015/Cons 2 law/112-126 Dated 14th July, 2015 i.e. DVAT (Second Amendment) Act 2015.

[11]Explanation inserted to Section 8(2)(b) vide Notification No. F.14(6)/LA-2015/Cons 2 law/112-126 Dated 14th July, 2015 i.e. DVAT (Second Amendment) Act 2015.

Chapter-8
Refunds

1. When refund can be due?

Generally, Refund can be due to the dealer in the following circumstances:

(i) Excess payment of Tax, Interest, Penalty made by him.

(ii) Export sale of the goods purchased within the state.

(iii) Interstate sale made by the dealer for the goods purchased within Delhi.

(iv) Appeal/objection effect which allows refund of any Tax/ Interest/ Penalty paid earlier.

2. Security

The commissioner can demand security in Form DVAT-21A for grant of refund within 45 days from the date on which the return was furnished or claim for the refund was made.

3. Power to Enquire/Investigate

The commissioner may issue notice for seeking additional information under section 59 or audit/investigation or inquiry under section 58 before grant of refund.

4. Manner to apply

The refund will be allowed to a dealer on his application form DVAT-21 along with a certified copy of such judgment or order or the claim made by him in the return form. The refund will be allowed after recovery of any amount due under DVAT Act/CST Act, 1956 within two months.

5. Time Limit for Grant of Refund

At present, quarterly return is prescribed to all the dealers and hence refund is made to the dealer within 2 months. For calculating the period, the time taken to-

(a) furnish the security under sub-section (5) to the satisfaction of the Commissioner; or

(b) furnish the additional information sought under section 59; or

(c) furnish returns under section 26 and section 27; or

(d) furnish the declaration or certificate forms as required under Central Sales Tax Act, 1956; **shall be excluded.**

6. Withholding of Refund

The Commissioner may withhold the refund by stating the reasons to be recorded in writing either obtained a security equal to the amount to be refunded or withhold the refund till audit has been concluded in case-

(a) audit under section 58 is pending against him.

(b) The payment of such refund is likely to adversely affect the revenue and it may not be possible to recover the amount later.

7. No Refund

No refund shall be allowed to a dealer who has not filed any return due under this Act and has not paid any amount due under the Act [Rule 34(8)].

8. Procedure for Refunds above Rs. 10 lacs[12]

The following certificates are required to be recorded by the concerned officer if the amount of refund is above Rs. 10 Lacs.

(1) Certificate by Value Added Tax Inspector (VATI)

It is hereby certified that the transporters have been found functioning on field visit. All the GRs have been verified. Transportation charges have been received by the transporters from dealers in authorized mode of payment.

Value Added Tax Inspector (VATI)

[12] Procedure defined vide Circular No. 12 of 2015-16 No.F.3(378)/Policy/VAT/2015/264-270 Dated 10th June, 2015

(2) Certificate by Ward In-Charge

It is certified that all the ITCs are duly and adequately matched with the corresponding VAT payments. All the requisite information available in the computer data base relating to this refund case has been thoroughly examined and verified in the light of the DVAT Act 2004, DVAT Rules 2005, CST Act 1956, CST (Delhi) Rules 2005 and CST (Registration & Turnover) Rules 1957 and all the guidelines and circulars issued time to time under these Acts and Rules and also in the light of audit para-CAG/Internal raised by the audit in the past relating to refund cases. The proposal for release of refund amount to Rs…………………… is in order. Therefore, after being fully satisfied, I hereby propose and recommend that the competent authority may be requested for approval of refund amount to the tune of Rs…………………… for the period………………… in favour of M/s…………………………..

VATO/AVATO/WARD INCHARGE

(3) Certificate by Zonal Accounts Officer (Refund)

Seen the proposal of Ward In-Charge and it has been found that the Ward InCharge has earlier examined and verified all the requisite documents and the information available in the computer system related to this refund case. I have also examined the proposal thoroughly in the light of the DVAT Act 2004, DVAT Rules 2005, CST Act 1956, CST (Delhi) Rules 2005 and CST (Registration & Turnover) Rules 1957 and all the guidelines and circulars issued time to time under these Acts and Rules and also in the light of CAG/ internal audit para raised in respect of refund cases. The proposal for release of refund amount to the tune of Rs………………..……….. is in order. Therefore, after being fully satisfied, I hereby propose and recommend that the competent authority may be requested for approval of refund amount to the tune of Rs………………………….for the period…………………….. infavour of M/s…………………………….

Z.A.O

(4) Certificate by Zonal Incharge

Proposal submitted by the Ward In-Charge duly examined and verified and re-examined and re-verified by Z.A.O. has been seen and found in order. Therefore, I recommend to approve the above refund.

Zonal Incharge

Chapter-9
Taxes under DVAT

Net Tax Payable [Section 11 of DVAT Act]

The net tax payable by a registered dealer, for a tax period shall be calculated as under:

NET TAX = O – I – C

Where,

O = Net Output Tax

I = Net Input Tax

C = Input Tax Credit brought forward from the previous tax period.

With effect from F.Y. 2013-14, excess tax credit in a particular year shall be claimed as refund in the relevant financial year and cannot be carried forward.

Computation of Net Output Tax (O):

Output tax = Turnover* Tax rates specified under Section 4

Add/ Less: **Adjustments to Output Tax:** *[Section 8]*

(a) Adjust the amount of output tax for *Sales cancelled*; *[Section 8(1)(a)]*

(b) Adjust the amount of tax if the *nature of sales* has changed;*[Section 8(1)(b)]*

(c) The previously agreed consideration for that sale has been altered by agreement with the recipient for any reason except where a discount or incentive is offered through a credit note after issuance of tax invoice in respect of sale to a registered dealer.[*Section 8(1)(c)]*[13]

(d) Decrease the amount of tax on account of *Goods returned* to the dealer; *[Section 8(1)(d)]*

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[13] Section 8(1)(c) substituted vide Notification No.F.14(6)/LA-2015/Cons 2 law/112 126 Dated 14th July, 2015 i.e. DVAT (Second Amendment) Act 2015.

(e) Decrease the amount of tax on account of *written off Bad Debts; [Section 8(1)(e) and Rule 7A]*

(f) Other Adjustments, if any.

Computation of Net Input Tax (I)

Input tax is the tax paid by a dealer on his purchases of business inputs, including the goods bought for resale, raw materials, capital goods as well as other inputs for use directly or indirectly in the business. The dealer shall compute the amount of input tax credit arising in the tax period as per section 9(1), (2) and (9).

Add/ Less: **Adjustments to Input Tax:** *[Section 9, 10]*

(a) Receipt of *Debit/ Credit* noted from the seller; *[Section 10(1)]*

(b) Goods purchased *returned or rejected*; *[Section 10(1)]*

(c) *Change in the use* of goods, for purposes *other than* for which credit is allowed; *[Section 10(2)(a)]*

(d) Change in the use of goods for purposes *for which* credit is allowed*; [Section 10(2)(b)]*

(e) Tax credit disallowed in respect of *stock transfer* out of Delhi; *[Section 10(3)]*

(f) Tax credit for *Transitional stock* held on 1st April 2005; *[Section 14]*

(g) Tax credit for purchase of *Second-hand* goods; *[Section 15]*

(h) Tax credit for goods held on the date of *withdrawal from Composition Scheme;[Section 16]*

(i) Tax credit for trading stock and raw materials held at the time of registration; *[Section 20]*

(j) Tax credit disallowed for *goods lost or destroyed; [Rule 7]*

(k) Tax credit adjustment on sale or stock transfer of capital goods; *[Section 9(9)(a)]*

(l) Reduction in Input Tax Credit due to *sale of goods at a price lower* than the purchase price; *[Section 10(5)]*

(m) *Second or third installment* of balance tax credit on capital goods *[Section 9(9)(a)].*

(n) Other adjustments, if any.

Reversal of Input tax credit under section 10 of DVAT Act 2004 in respect of Debit/ Credit related to discounts: If any purchaser has been issued with a debit/ credit note or returns/ rejects goods purchased, he shall compensate such shortage or excess by adjusting the amount of tax credit allowed in the tax period in which debit or credit has been issued. ***(Circular No. 30 of 2013-14)***

Note: No Tax credit shall be allowed in respect of:

(a) CST paid (or payable) on interstate purchases;

(b) Central excise duty or Service Tax;

(c) Additional Custom Duty (CVD) under Section 3(5) of Customs Tariff Act in lieu of local taxes;

(d) Any other type of tax, paid or payable to/in other States or Union Territories.

Dealers eligible to claim input tax credit

Provisions for claiming input tax credit are not merely procedural but substantive provisions. The following dealers shall be eligible to claim input tax credit:

(i) Dealers who are registered or required to be registered under the DVAT Act *[Section 9(1)];* and

(ii) Dealers who hold the tax invoice at the time of furnishing of return *[Section 9(8)]*

A dealer, who has applied for registration, will also be entitled to claim input tax credit, for eligible purchases supported by the ***tax invoice*** *from the date he becomes liable to pay tax under the DVAT Act.*

Dealers not eligible to claim input tax credit

(i) A dealer who pays tax under the composition scheme under Section 16 of the DVAT Act;

(ii) A casual dealer will not be eligible to claim input tax credit;

(iii) All the dealers mentioned in The Fifth Schedule, except Canteen Stores Department, w.e.f 02.06.2005.

Due Date for payment of Tax

Even though returns are to be filed quarterly but the tax has to be deposited every month within 21 days of the next month in Form DVAT 20.

Interest on Failure to pay tax

In case of any delay in payment of taxes required to be deposited within the due date, the amount of interest shall also be paid along with the amount of tax. Interest is to be calculated at the rate of 15% per annum (i.e., computed on daily basis), from the date on which tax became due.

Mode of payment of Tax

(a) All the dealers and contractees deducting TDS are required to pay all their dues under DVAT electronically, except the contractees who are Department Public Undertakings/ Autonomous Bodies/ Ministries/ Local Bodies/ Corporations of Central/ State Governments or Union Territories. These contractees can pay their dues through offline mode by depositing them at the Punjab & Sind Bank, Vyapar Bhawan Branch, New Delhi.

(b) *Banks to Act as Third Party:* For the dealers who are not having internet facility or who are hesitant to avail the same, certain banks have been notified by the department to act as third party for all such dealers who also have accounts in the respective banks.*[issued vide circular no. F. No. 1(1)/T&T/collection/e-pay/2012-13/1602 dated 13.02.2013]*

(c) *Offline payment of tax*: Besides online payment, the amount of tax, interest, penalty or any other amount due under the Act can also be deposited by the dealer using offline facility specified by the Commissioner of Delhi VAT. The challan will be filled up on the department's website both for online and offline payment. For making offline payment, the dealer has to present the challan bearing unique code and make the payment in cash or by cheque.

Chapter-10
Penalties and Offences

1. Tax deficiency [Section 86(1)]

In section 86, "tax deficiency" means the difference between the **tax properly payable** by a person in accordance with the provisions of this Act and the **amount of tax paid** by him in respect of a calendar month. Here, Tax properly payable' includes the amount of tax assessed under default assessment of section 32 of the 'Act'.

However, due tax paid after the period specified in sub-section (4) of section 3 of the Act, is also a tax deficiency.

2. Penalties

Section	Defaults related to Provisions of this act	Amount of Penalty
86(4)	Fails to apply for registration within one month from the day on which the requirement arose	Rs. 1000/- per day from the day immediately following the expiry of the said period until the person makes an application for registration in the prescribed form, containing such particulars as prescribed. Maximum-Rs. 1,00,000/-
86(5)	Fails to file information u/s 21(1) for amendment in registration	Rs.200[14] per day of default; Maximum – Rs.10000.

[14] Penalty amount changed vide Notification No. F.14(6)/LA-2015/Cons 2 law/112-126 Dated 14th July, 2015 i.e. DVAT (Second Amendment) Act 2015. Earlier the penalty amount was Rs 500/-.

Section	Defaults related to Provisions of this act	Amount of Penalty
86(6)	Fails to apply for cancellation of Registration certificate u/s 22(2) or fails to surrender his certificate of registration as provided in the sub-section	Rs.200/-[15] per day of default Maximum- Rs. 25,000/-
86(7)	any person falsely represents that he is registered as a dealer under this Act	Equal to the amount of tax wrongly collected or one lakh rupees, whichever is greater
86(8)	Where a person voluntary registered himself under DVAT Act fails to undertake activities which would make the person a dealer within the period specified in his application or fails to comply with any of the restrictions or conditions subject to which such registration was granted	Rs. 10,000/-
86(9)	If a person required to furnish a return under Chapter V of this Act or to comply with requirement in a notification issued u/s 70 of the Act– (a) fails to furnish the return by the due date; or (b) fails to furnish with the return any other document that is required to be furnished with it; or	Rs.200[16] per day from the day immediately following the due date until the failure is rectified Maximum – Rs.50,000

[15] Penalty amount changed vide Notification No. F.14(6)/LA-2015/Cons 2 law/112-126 Dated 14th July, 2015 i.e. DVAT (Second Amendment) Act 2015. Earlier the penalty amount was Rs 1000/-.

[16] Penalty amount changed vide Notification No. F.14(6)/LA-2015/Cons 2 law/112-126 Dated 14th July, 2015 i.e. DVAT (Second Amendment) Act 2015. Earlier the penalty amount was Rs 500/-.

Section	Defaults related to Provisions of this act	Amount of Penalty
	(c) being required to revise the return already furnished, fails to furnish the revised return by the due date; (d) fails to comply with the requirement in a notification issued u/s70	
86(10)	Any person who (a) furnishes a return under this Act which is false, misleading or deceptive in material particulars; or (b) omits from the return furnished under this Act any matter or thing without which the return is false, misleading or deceptive in material particulars	Rs. 10,000 or amount of the tax deficiency*, whichever is greater
86(11)	Any dealer who (a) has claimed tax credit under section 14 of this Act to which he is not entitled; or (b) has claimed a greater tax credit under section 14 than is allowed.	Rs.10,000/- or amount of tax credit claimed, whichever is greater
86(12)	Where a tax deficiency* arises in relation to a person, the person shall be liable to pay, by way of penalty,	1% of the tax deficiency* per week or Rs. 100/- per week, for the period of default, whichever is higher
86(13)	Where a person who (a) fails to prepare the prescribed or notified records and accounts; (b) fails to prepare prescribed or notified records and accounts in the prescribed manner; (c) fails to retain the prescribed or	Rs. 50000/- or 20% of the tax deficiency*, whichever is greater.

Section	Defaults related to Provisions of this act	Amount of Penalty
	notified records and accounts for the prescribed period; (d) fails to retain and/or produce the prescribed or notified records at the principal place of business as recorded in his certificate of registration; (e) fails to comply with a direction issued or fails to produce prescribed or notified records and accounts, on or before the date specified in any notice served u/s 58A(1)	
86(14)	Any person who fails to provide the documents requirement under section 59(2) or 59(3).	Rs. 50,000/-
86(15)	Prepares false, misleading or deceptive records and accounts	Rs. 1,00,000 or the amount of the tax deficiency*, if any, whichever is greater.
86(16)	Where a person (a) has issued a tax invoice or retail invoice with incomplete or incorrect particulars; or (b) having issued a tax invoice or retail invoice, has failed to account it correctly in his books of account or (c) failed to issue a tax invoice or retail invoice as required under the provisions of section 50[17]	Rs. 5000 or 20% of the tax deficiency*, if any, whichever is greater.

[17] Section 86(16)(b) substituted vide Notification No. F.14(6)/LA-2015/Cons 2 law/112-126 Dated 14th July, 2015 i.e. DVAT (Second Amendment) Act 2015.

Section	Defaults related to Provisions of this act	Amount of Penalty
86(17)	Where a person who is not authorized under this Act to issue a tax invoice has issued it for a sale	Rs.1,00,000 or the amount of tax deficiency*, if any, whichever is greater.
86(18)	A dealer fails to furnish the audit report to the Commissioner as specified in provisions of section 49 of this Act	Rs.1,00,000 or 1% of the turnover ,whichever is less
86(19)	Where goods are being carried by a transporter without the required documents or without genuine documents or without being properly accounted for in the documents referred to in subsection (2) of section 61 of this Act	20% of the value of goods
86(20)	Any person who (a) makes a statement to the Commissioner which is false, misleading or deceptive in material particulars; or (b) omits from a statement made to the Commissioner any matter or thing without which the statement is false, misleading or deceptive in material particulars	Rs.50,000 or the amount of tax deficiency*, if any, whichever is greater
86(21)	Where a casual trader who is required to be registered under this Act has failed to apply for registration within the stipulated period,	Rs. 5000/ per day, from the day immediately following the expiry of the due date until the person makes an application for registration under this Act. Maximum – Rs.1,00,000.

Section	Defaults related to Provisions of this act	Amount of Penalty
86(22)	If a casual trader required to furnish a return under this Act (a) fails to furnish the return by the due date; or (b) fails to furnish with the return any other document that is required to be furnished with it	Rs.1000/- per day from the day immediately following the due date until the failure is rectified. Maximum- Rs.25000/-
86(23)	Where any person who, whether as principal, agent or in any other capacity organizes any exhibition-cum-sale in Delhi and fails – (a) to furnish any information in respect of the goods brought or kept in stock or sold by any participant before or during or after the exhibition-cum-sale; or (b) to ensure that all such participants in the exhibition-cum-sale have obtained registration under this Act and paid due tax; or (c) to permit inspection of the business premises or goods or account and records of the participants; or (d) to permit inspection of the accounts and records of the organizer in respect of the exhibition-cum-sale	Rs. 50,000 or the amount of tax payable on such goods if such goods were sold in Delhi, whichever is greater.
86(24)	Any person, who contravenes any of the provisions of this Act or any Rules made thereunder for which no penalty is separately provided under this Act	Rs.10,000/-
86(3)	Where two or more penalties under this Act in respect of the same conduct of a person.	Pay only greater penalty.

* Refer point 1 'Tax Deficiency' on page no. 56

As per section 86(2), the Government may, from time to time, if it deems it necessary, vary the amount of any penalty due under this section by a notification to that effect in the official Gazette.

PROVIDED that any penalty which is increased under this section shall have effect only for offences or failures occurring after the date of such notification.

1. Automatic mitigation and increase of penalties (Section 87)

Penalty shall be increased or reduced in the following situations:

Section	Situations when penalty will be reduced	Reduction of Amount
87(1)	Where as a result of any proceedings the amount of tax with respect to which a penalty was levied has been wholly reduced	Penalty levied shall be cancelled and if the penalty has been paid, it shall be refunded.
87(2)	Where a person is liable to pay a penalty under section 86(12) of this Act and the person voluntarily discloses to the Commissioner in writing the existence of the tax deficiency* before the Commissioner informs the person that an audit of the person's tax obligations is to be carried out.	80% of the penalty
87(3)	Where a person is liable to pay a penalty under section 86(12) of this Act and the person voluntarily discloses to the Commissioner in writing the existence of the tax deficiency* after the Commissioner informs the person that an audit of the person's tax obligations is to be carried out.	50% of the penalty
87(4)	• Where a person is liable to pay a penalty u/s 86(12) of this Act; • the tax deficiency* arose	100% of the penalty

Section	Situations when penalty will be reduced	Reduction of Amount
	because the person treated this Act as applying to the person in a particular way; and • the decision to adopt that treatment was made by the person relying on a determination given to the person by the Commissioner under section 84 of this Act or a ruling issued by the Commissioner under section 85 of this Act.	
87(6)	• Where a person is liable to pay penalty u/s 86 as per this Act; and • The person voluntarily disclosed to the Commissioner, in writing, the existence of the tax deficiency*, during the course of proceedings u/s 60; and • Makes payment of such tax deficiency within 3 working days of the conclusion of the said proceeding.	80% of the penalty
Section	**Situations when penalty will be increased**	**Increase the Amount**
87(5)	**Subsequent offence:** Where penalty under this Act has been assessed, has not been remitted in full after objection; and the person is subsequently assessed to a further penalty in respect of the same or a substantially similar failure occurring on another occasion :	50% of the penalty

Section	Situations when penalty will be reduced	Reduction of Amount
	(1) in the case of the first subsequent offence; (2) in the case of the second and any further subsequent offence.	100% of the penalty

* Refer point 1 'Tax Deficiency' on page no. 56

3. Relationship to assessment and impact on criminal penalties

1. The penalties specified under this Act are owed notwithstanding that no assessment of tax owed under this Act has been made.
2. Any penalty imposed under this Act shall be without prejudice to any prosecution for any offence under this Chapter.

4. Offences and criminal penalties (Section 89)

1. Whoever
   (a) not being a registered dealer, falsely represents that he is or was a registered dealer at the time when he sold or sells or buys goods;
   (b) knowingly keeps false accounts or does not keep account of the value of goods bought or sold by him in contravention of section 48; or
   (c) issues to any person a false invoice, bill, cash-memorandum, voucher or other document which he knows or has reason to believe to be false;

   shall, on conviction, be punished with rigorous imprisonment for a term which may extend to **six months**, and also **with a fine.**
2. Whoever knowingly
   (a) furnishes a false return;
   (b) produces before the Commissioner a false bill, cash-memorandum, voucher, declaration, certificate, tax invoice or other document for claiming deduction on tax credit; or
   (c) produces false accounts, registers or documents or knowingly furnishes false information;

shall in case where the amount of tax which could have been evaded if the false return, bill, cash-memorandum, voucher, declaration, certificate, tax invoice or other document for claiming deduction on tax credit, accounts, registers or documents or false information, as the case may be, had been accepted as true exceeds fifty thousand rupees, on conviction, be punished with rigorous imprisonment for a term which may extend to **six months**; and

3. in any other case, with rigorous imprisonment for a term which may extend to **six months, and with a fine.**

4. **Whoever, willfully attempts**, in any manner whatsoever, to evade payment of tax, penalty or interest or all of them under this Act, shall, on conviction, be punished.

   (a) in any case where the **amount involved exceeds fifty thousand rupees** during the period of a year, with rigorous imprisonment for a term which may extend to **six months, and with a fine;**and

   (b) in other cases, with rigorous imprisonment for a term which may extend to **three months and with a fine.**

5. **Whoever**

   (a) carries on business as a dealer without being registered in willful contravention of sub-section (1) of section 18 of this Act;

   (b) fails without sufficient cause to furnish any information required under section 21 of this Act;

   (c) fails without sufficient cause to furnish any returns as required under section 27 of this Act by due date or in the manner prescribed;

   (d) without reasonable cause, contravenes any of the provisions of section 40 of this Act;

   (e) without sufficient cause fails to issue invoice as required under section 50 of this Act;

   (f) fails without sufficient cause, when directed to do so under section 48 of this Act to keep any accounts or record, in accordance with the directions;

   (g) fails, without sufficient cause, to comply with any requirements under sections 58, 58A or 59 of this Act, or obstructs any officer

from conducting inspection or search or ordering seizure under sections 60 and 61 of this Act;

(h) obstructs or prevents any officer from performing any function under Chapter X of this Act;

(i) being owner in charge of a goods vehicle fails, neglects or refuses to comply with any of the requirements contained in section 61 of this Act; or

(j) interferes in the work of the Commissioner or any officer and prevents them from performing f their duty or check exercising any other power conferred under this Act;

shall, on conviction, be punished with imprisonment for a term which may extend to **six months**, and **with a fine**.

6. Whoever aids or abets any person in the commission of any act specified in sub-sections (1) to (3) of this section shall, on conviction, be punished with rigorous imprisonment which may extend to **six months, and with a fine.**

7. Whoever commits any of the acts specified in subsections (1) to (5) of this section and the offence is a **continuing one under any of the provisions of these subsections**, shall, on conviction, be punished with a **fine of not less than one hundred rupees per day** during the period of the continuance of the offence, in addition to the punishments provided under this section.

8. Notwithstanding anything contained in sub-sections (1) to (5) of this section, no person shall be proceeded under these sub-sections, if

   (a) the total amount involved is less than two hundred rupees during the period of a year; or

   (b) the person has voluntarily disclosed existence of tax deficiency under sub-section (6) of section 87 of the Act.

9. Where a dealer is accused of an offence specified in subsections (1), (2) or (3) or in clauses (a), (b), (c), (d), (e), (f), (g), (h) and (i) of sub-section (4), or subsection (6) of this section, the person deemed to be the manager of the business of such dealer shall under section 95 be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission thereof.

5. Offences by companies [Section 90(1) & 90(2)]

1. Where an offence under this Act or the rules has been committed by a company, every person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company, as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

   However, such a person shall not be liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such an offence.

2. Notwithstanding anything contained in section 90(1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

   Explanation: For the purpose of this section

   (a) "company" means a body corporate, and includes a firm or other association of individuals; and

   (b) "Director" in relation to a firm means a partner in the firm.

6. Offence in the case of a Hindu Undivided family [Section 90(3)]

Where an offence under this Act has been committed by a Hindu undivided family, the Karta thereof shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render the karta liable to any punishment if he proves that the offence was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence;

Provided further that where an offence under this Act has been committed by a Hindu undivided family and it is proved that the offence has been

committed with the consent or connivance of or is attributable to any neglect on the part of any adult member of the Hindu undivided family, such member shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

7. Cognizance of offences (Section 91)

1. No court shall take cognizance of any offence under this Act or rules made there under except with the previous sanction of the Commissioner, and no court inferior to that of a Metropolitan Magistrate shall try any such offence.
2. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 all offences punishable under this Act or the rules made there under shall be cognizable and bailable.

8. Investigation of offences (Section 92)

1. The Commissioner may authorize either generally or in respect of a particular case or class of cases any officer or person subordinate to him to investigate all or any of the offences punishable under this Act.

   However, the Commissioner shall not authorize any officer who is lower in rank than an assistant Value Added Tax Officer.
2. Every officer or person so authorized shall, in the conduct of such investigation, exercise the powers conferred by the Code of Criminal Procedure, 1973 upon an officer in charge of a police station for the investigation of a cognizable offence.

9. Compounding of offences (Section 93)

The Commissioner may, before the institution of proceedings for any offence punishable under sub-section (4) of section 89 of this Act or under any rules made under this Act, accept from any person charged with such offence by way of composition of offence, a sum higher of following

(a) a sum not exceeding fifty thousand rupees; or

(b) a sum not exceeding three times the amount of tax which would thereby have been avoided.

On payment of such sum as may be determined by the Commissioner as aforesaid, no further proceedings shall be taken against such person in respect of the same offence.

10. Chapter XXXVI of the Code of Criminal Procedure, 1973, does not to apply to certain offences (Section 94)

Nothing in Chapter XXXVI of the Code of Criminal Procedure, 1973 shall apply to

(a) any offence punishable under this Act; or

(b) any other offence which under the provisions of that Code may be tried along with such offence; and

Every offence referred to in clause (a) or clause (b) above may be taken cognizance of by the court having jurisdiction under this Act as if the provisions of that Chapter were not enacted.

Chapter-11
Recovery of Tax, Interest and Penalties

1. Recovery of tax (Section 43, Rule 37)

(1) The amount of **tax, interest, penalty or any other amount due** under this Act shall be paid in the manner specified in section 36 of this Act and **a notice of assessment served** on the person for such an amount shall constitute a demand for payment of the amount stated in the assessment by **the time stipulated in the notice** of assessment.

(2) On an application made **before the expiry of the due date under section 35** of this Act, the Commissioner may, in respect of any dealer or person and for reasons to be recorded in writing, **extend the time for payment or allow payment by instalments**, subject to such conditions as he may think fit to impose in the circumstances of the case.

(3) Any amount of tax, interest or penalty, composition money or other amount due under this Act which remains unpaid, shall be **recoverable**

(a) as arrears of land revenue, or

(b) by the Commissioner in accordance with the provisions of sub-section (6) of this section and the rules regulating the procedure of recovery of tax, interest or penalty, composition money or any other amount due as may be prescribed.

(A) Procedure of recovery as land revenue

The Commissioner may issue to the Collector a Certificate in Form DVAT25. However, the Commissioner may encash the security furnished by any person, if it is capable of being encashed simultaneously with the issue of certificate to the Collector, and shall notify the Collector of the amount so realized.

The Collector shall intimate to the Commissioner the amount recovered by him together with the date thereof and provide such other details as the Commissioner may require.

Without prejudice to the provisions of section 57(4), if at any time after the recovery proceedings commenced by the Collector, as the case may be, the defaulter dies the recovery proceedings shall be continued against his legal representatives.

(B) Power and Procedure to recover by the Commissioner

Where any amount of tax, interest or penalty, composition money or other amount due under this Act is recoverable in accordance with the provisions of section 43(3)(b), the Commissioner may prepare a recovery certificate (hereinafter referred to as "**certificate**") under his signature, specifying the amount of such tax, interest or penalty, composition money or other amount due from the dealer, casual dealer, transporter, carrier or transporting agent, owner or lessee or occupier of warehouse, owner of any goods or any other person (hereinafter referred to as the "**certificate-debtor**") and he shall cause the said certificate to be served upon the certificate debtor, in such manner and form as may be prescribed and proceed to recover from the certificate-debtor the amount specified in the certificate by one or more of the **following modes,** in accordance with the prescribed rules

(a) **attachment and sale of immovable property** of the certificate-debtor;

(b) **arrest of the certificate-debtor** and his detention in prison for a period of fifteen days;

(c) **appointment of a receiver** for the management of the movable and immovable properties of the certificate-debtor. [section 43(6)]

The Commissioner may serve upon the defaulter the recovery certificate under section 43(6), notwithstanding that proceedings for recovery of such tax, interest or penalty, composition money or any other amount due have been initiated or are continuing by any other mode.[section43(7)]

On serving the certificate under section 43(6) upon a certificate-debtor.-

(a) **any private transfer or delivery of any of his immovable property or of any interest in any such property**, shall be **void** against any claim enforceable in the execution of the certificate; and

(b) the amount due from time to time in respect of the certificate shall be a **charge upon the immovable property** of the certificate-debtor, to which every other charge created subsequently to the service of the said certificate shall be postponed.

The certificate-debtor may, **within thirty days** from the serving of the certificate, present to the Commissioner **a petition** denying his liability in whole or in part. The Commissioner shall **hear the petition**, take evidence, if necessary, and determine whether the certificate-debtor is liable for the whole or any part of the amount for which the certificate was signed.

Where any proceedings for the recovery of any tax, interest or penalty, composition money or other amount due remaining unpaid have been commenced under this section and the tax, interest or penalty, composition money or other amount due is **subsequently modified, enhanced or reduced** in consequence of any assessment made, or order passed on objection, appeal, revision or review under this Act, the Commissioner may inform the certificate-debtor and thereupon such proceedings may be continued as if the tax, interest or penalty, composition money or other amount due as so modified, enhanced or reduced has been substituted for the tax, interest or penalty, composition money or any other amount due which was to be recovered under section 43(3).

Manner of recovery by the Commissioner

1. The certificate referred to in section 43(6) shall be in **form DVAT-25A** and shall be served upon the certificate-debtor **by the Value Added Tax Inspector** functioning under the control of the Commissioner, along with a Writ of Demand as prescribed in the Delhi Land Reforms Rules, 1954.

2. The **procedure laid down in the rules made under the Delhi Land Reforms Act, 1954** (Act No.8 of 1954) **and the provisions thereof** relating to the recovery of arrears of land revenue in general and relating to attachment and sale of movable and immovable property, arrest and detention in prison for a period of 15 days, in particular, shall apply *mutatis mutandis* for the purpose of recovery from the certificate-debtor under section 43(6).

3. The amount of **interest** payable under section 36 for the period commencing immediately after the date of the recovery certificate till

realization, shall be calculated by the Collector or the Commissioner, as the case may be, and recovered along with the amount of tax, penalty or other sums mentioned in the said recovery certificate issued by the Commissioner.

4. Where movable or immovable property is attached, the Commissioner may, instead of directing a sale of the property, **appoint a person as a receiver to manage such property**.

5. Where any movable or immovable property is attached and taken under management, the receiver shall, subject to the control of the Commissioner, have such powers as may be necessary for the proper management of the property and the realization of the profits, or rent and profits, thereof.

6. The profits, or rents and profits of such movable or immovable property, shall, after defraying the expenses of management, be adjusted towards discharge of the arrears, and the balance, if any, shall be paid to the defaulter:

   PROVIDED that where the balance cannot be paid to the defaulter due to any reason, the said balance shall be deposited in the Government treasury.

7. The attachment and management of movable and immovable properties may be withdrawn at any time at the discretion of the Commissioner, or if the arrears are discharged by receipt of such profits and rents or are otherwise paid.

8. There shall be recoverable, in the proceedings in execution of every certificate, all charges incurred in respect of -

   (a) the service of notice upon the defaulter to pay the arrears, and the warrants and other processes, and

   (b) all other proceedings taken for realizing the arrears.

9. Without prejudice to the provisions of sub-section (4) of section 57, if at any time after the recovery proceedings commenced by the Commissioner, as the case may be, the defaulter dies, the recovery proceedings shall be continued against the legal representatives of the deceased.

Forfeiture of security

Where security, other than in the form of a surety bond, has been furnished

under the Act, the Commissioner may, for reasons to be recorded in writing, recover any amount of tax, interest, penalty, composition money or any other amount due or part thereof by ordering the forfeiture of the whole or any part of the security.

Where any security tendered for the purposes of this Act is to be sold, it shall be sold in the manner stipulated in section 63 of this Act.

2. Application of the Delhi Land Reforms Act, 1954 for purposes of recovery (Section 44)

(1) For the purposes of recovery of any amount recoverable as arrears of land revenue under this Act, the provisions of the Delhi Land Reforms Act, 1954 (Delhi Act 8 of 1954), as to the recovery of arrears of land revenue shall, notwithstanding anything contained in that Act or in any other enactment, be deemed to be in force throughout Delhi and the provisions of the Revenue Recovery Act, 1890 (1 of 1890) shall have their effect accordingly.

(2) For the purposes of section 44(1)

(a) the Additional Commissioner of Value Added Tax and the Joint Commissioner of Value Added Tax shall have and exercise all the powers and perform all the duties of the Deputy Commissioner under the Delhi Land Reforms Act, 1954 (Delhi Act 8 of 1954);

(b) the Deputy Commissioner of Value Added Tax and the Assistant Commissioner of Value Added Tax shall have and exercise all the powers and perform all the duties of Revenue Assistant under the said Act;

(c) the Value Added Tax Officers and the Assistant Value Added Tax Officers shall have and exercise all the powers and perform all the duties of Tehsildar and Assistant Collector of the First Grade under the said Act.

3. Continuation of certain recovery proceedings (Section 45)

Where a assessment or notice of demand in respect of any tax, penalty or any other amount payable under this Act in this section referred to as “government dues” is served upon any person and any objection or appeal is

initiated by the person against the assessment or demand for such government dues then

(a) if the objection or appeal is disallowed in whole or in part, any recovery proceedings taken for the recovery of such government dues before the making of the objection or appeal, may, without the service of any fresh assessment or notice of demand, be continued from the stage at which such recovery proceedings stood immediately before the person made the objection or appeal; and

(b) where such government dues are reduced in any objection or appeal

  (i) it shall not be necessary for the Commissioner to serve upon the person a fresh assessment or notice of demand; and

  (ii) theCommissioner shall give intimation of such reduction to him and the person with whom recovery proceedings are pending.

  (iii) any recovery proceedings initiated on the basis of an assessment or notice of demand served upon a person before the disposal of such objection or appeal,may be continued in relation to the amount so reduced from the stage at which such proceedings stood immediately before the person made the objection or appeal.

(c) no recovery proceedings in relation to such Government dues shall be invalid by reason only that no fresh notice of demand was served upon the dealer or person after the disposal of such objection or appeal or such Government dues have been enhanced or reduced in such objection or appeal.

Procedure for recovery (Rule 38)

For the purposes of section 45, the Commissioner shall notify to the Collector any reduction of government dues in Form DVAT26, a copy of which shall also be served on the person in the manner prescribed in rule 62(refer chapter audit for rule 62).

4. Special mode of recovery (Section 46)

(1) Notwithstanding anything contained in any law or contract to the contrary, the Commissioner may, at any time or from time to time, by

giving a notice in writing, a copy of which shall be forwarded to the person at his last known address, require

(a) any person from whom any amount of money is due, or may become due, to the person (in this section called "the taxpayer") liable to pay tax, interest or penalties u/s 45 of this Act, or

(b) any person who holds or may subsequently hold money on account of the taxpayer,

to pay to the Commissioner, either forthwith upon the money becoming due or being held or within the time specified in the first mentioned notice (but not before the money becomes due or is held as aforesaid) so much of the money as is sufficient to pay the amount due by the taxpayer in respect of the arrears of tax, interest and penalty under this Act, or the whole of the money when it is equal to or less than that amount.

Explanation- For the purposes of this subsection, the amount of money due to a taxpayer from, or money held for or on account of a taxpayer by any person, shall be calculated by the Commissioner after deducting therefrom such claims, if any, lawfully subsisting, as may have fallen due for payment by such taxpayer to such person.

(2) The Commissioner may amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

(3) Any person making any payment in compliance with a notice under this section shall be deemed to have made the payment under the authority of the taxpayer, and the receipt thereof by the Commissioner shall constitute a good and sufficient discharge of the liability of such a person to the extent of the amount specified in the receipt.

(4) Any person discharging any liability to the taxpayer after receipt of the notice referred to in this section shall be personally liable to the Commissioner to the extent of the liability discharged or to the extent of the liability of the dealer for tax and penalty, whichever is less.

(5) Where a person to whom a notice under this section is sent proves to the satisfaction of the Commissioner that the sum demanded or any part thereof is not due to the taxpayer or that he does not hold any money for or on account of the taxpayer, then, nothing contained in

this section shall be deemed to require such person to pay any such sum or part thereof, as the case may be, to the Commissioner.

(6) Any amount of money which the aforesaid person is required to pay to the Commissioner, or for which he is personally liable to the Commissioner under this section, shall, if it remains unpaid, be recoverable as arrears of land revenue.

(7) The Commissioner may apply to the court, in whose custody money belonging to the taxpayer is held, for payment to him of the entire amount of such money or if it is more than the tax, interest and penalty, if any, due, an amount sufficient to discharge such tax and the penalty.

Procedure for recovery (Rule 39)

For the purposes of section 46, the Commissioner shall serve on the person in Form DVAT-27 notifying the person of the requirement to pay the specified amount to the Commissioner in the manner prescribed in rule 62(refer chapter audit for rule 62).

5. Provisional attachment to protect revenue in certain cases (Section 46A)

(1) Where, during the course of inquiry of any proceeding including any proceeding for recovery of any amount due in respect of any person or dealer or during any inspection or search in relation to the business of any person or dealer under this Act, the Commissioner is of the opinion that for the purpose of protecting the interest of the revenue it is necessary so to do, he may, notwithstanding anything contained in any law for the time being in force or any contract to the contrary, by order in writing, attach provisionally any property movable or immovable, belonging to such person or dealer.

(2) Every such provisional attachment shall cease to have effect after the expiry of a period of six months from the date of the order made under section 46A(1):

PROVIDED that the Commissioner may, for reasons to be recorded in writing, extend the aforesaid period by such further period or periods

as he thinks fit, so, however, that the total period of extension shall not in any case exceed two years:

PROVIDED FURTHER that the Commissioner may, by an order, revoke such order if the person or the dealer furnishes to the Commissioner, a Bank guarantee in such time, for such period as may be specified by the commissioner in this behalf.

PROVIDED ALSO that the power under this section shall be exercised by the Commissioner himself or by the Additional Commissioner to whom the Commissioner has delegated such power.

6. Transfer of assets during pendency of proceedings void (Section 47)

Where, during the pendency of any proceedings for the recovery of an amount owed by a person under this Act, that person creates a charge on or parts with the possession by way of sale, mortgage, gift or exchange or any other mode of transfer whatsoever, any of his assets in favour of any other person, such charge or transfer shall be void against any claim by the Commissioner in respect of the amount which is the subject of proceedings, unless the other person

(a) acted *bona fide* and without notice of the recovery proceedings; and

(b) has paid the fair market value for the assets.

Explanation: In this section "assets" include land, building, machinery, plant, equipment, shares, securities and fixed deposits in the banks, vehicles, furniture and fixture to the extent to which any of the assets aforesaid does not form part of the stock in trade of the business of the person.

7. Liability under this Act to be the first charge (Section 47A)

Notwithstanding anything contained in any contract to the contrary, but subject to any provision regarding the creation of first charge in any Central Act for the time being in force, any amount of tax, penalty, interest, composition money, sum forfeited, fine or any other sum payable by a dealer or any other person under this Act, shall be the first charge on the property of the dealer or, as the case may be, the person

Chapter-12
Liability to Pay Tax in Certain Cases

1. Liability in the case of transfer of business (Section 52)

(1) Where a dealer liable to pay tax under this Act transfers his business in whole or in part, by sale, gift, lease, leave or licence, hire or in any other manner whatsoever, he and the person to whom the business is transferred shall **jointly and severally** be liable to pay tax, interest or penalty due from the dealer up to the time of such transfer, whether such amount has been assessed before such transfer, but has remained unpaid or is assessed thereafter.

(2) Where the transferee or the lessee of a business referred to in section 52(1) carries on such business either in his own name or in some other name, he shall be liable to pay tax on the sale of goods effected by him with effect from the date of such transfer and shall, if he is registered as a dealer, apply within one month from the date of transfer for the amendment of his registration.

2. Liability in case of company in liquidation (Section 53)

(1) Every person

(a) who is a liquidator of any company which is being wound up, whether under the orders of a court or otherwise; or

(b) who has been appointed the receiver of any assets of a company (hereinafter referred to as the "liquidator");

shall, within one month after he has become such liquidator, give **notice of his appointment** as such to the Commissioner.

(2) The Commissioner shall, after making such inquiries or calling for such information as he may deem fit, **notify the liquidator within three months** from the date on which he received notice of the appointment

of the liquidator, the amount which, in the opinion of the Commissioner, would be sufficient to provide for any tax, interest or penalty which is then, or is likely thereafter, to become payable by the company.

(3) The liquidator shall not part with any of the assets of the company or the properties in his hand until he has been notified by the Commissioner u/s 53(2) and on being so notified, he shall set aside an amount equal to the amount notified and until he has set aside such amount, he shall not part with any of the assets of the company or its properties in his hand.

Nothing contained in this sub-section shall debar the liquidator from parting with such assets or properties in compliance with any order of a court or for the purpose of the payment of the tax and penalty, if any, payable by the company under this Act or for making any payment to secured creditors whose debts are entitled under law to priority of payments over debts due to government on the date of liquidation or for meeting such costs and expenses of the winding up of the company as are in the opinion of the Commissioner reasonable.

(4) If the liquidator fails to give notice u/s 53(1) or fails to set aside the amount as required u/s 53(3) or parts with any assets of the company or the properties in his hand in contravention of the provisions of that subsection, he shall be personally liable for the payment of tax and penalty, if any, which the company would be liable to pay under this Act. However, if the amount of tax and penalty, if any, payable by the company is notified u/s 53(2), the personal liability of the liquidator under this sub-section shall be to the extent of such amount.

(5) Where there is more than one liquidator, the obligations and liabilities attached to a liquidator under this section shall attach to all the liquidators jointly and severally.

(6) When any private company is wound up and tax and penalty, if any, assessed under this Act on the company for any period, whether before or in the course of or after its liquidation, **cannot be recovered**, then every person who was a **director of the private company** at any time during the period for which the tax is due, shall be jointly and severally liable for the payment of such tax and penalty, if any, **unless he proves to the satisfaction of the Commissioner that non-**

recovery cannot be attributed to any gross neglect, misfeasance or breach of duty on his part in relation to the affairs of the company.

(7) The provisions of this section shall have effect notwithstanding anything to the contrary contained in any other law for the time being in force.

(8) For the purposes of this section, the expressions “company” and “private company” shall have the meanings respectively assigned to them under clauses (i) and (ii) of subsection (1) of section 3 of the Companies Act, 1956.

3. Liability of partners of firm to pay tax

Notwithstanding any contract to the contrary, where any firm is liable to pay any tax, interest or penalty under this Act, the **firm and each of the partners of the firm shall be jointly and severally liable** for such payment:

where any such partner retires from the firm, he shall intimate within 15 days from the date of his retirement to the Commissioner by a notice to that effect in writing and he shall be liable to pay tax, interest or penalty remaining unpaid at the time of his retirement and any tax, interest or penalty due up to the date of his retirement though unassessed on that date. If no such intimation is given within fifteen days from the date of retirement, the liability of the partner shall continue until the date on which such intimation is received by the Commissioner.

4. Liability of guardians, trustees etc.

Where the business in respect of which tax is payable under this Act is carried on by, or is in the charge of any guardian, trustee or agent of a minor or other incapacitated person on his behalf and for the benefit of such minor or other incapacitated person, the tax, interest or penalty shall be levied upon and recoverable from such guardian, trustee or agent, as the case may be, in like manner and to the same extent as it would be assessed upon and recoverable from any such minor or other incapacitated person, if he were of full age and of sound mind and if he were conducting the business himself, and all the provisions of this Act shall, so far as may be, apply accordingly.

5. Liability of Court of Wards, etc.

Where the estate or any portion of the estate of a dealer owning a business in respect of which tax is payable under this Act is under the control of the Court of Wards, the Administrator-General, the Official Trustee or any receiver or manager (including any person, whatever be his designation, who manages the business) appointed by or under any order of a court, the tax, interest or penalty shall be levied upon and be recoverable from such Court of Wards, Administrator General, Official Trustee, receiver or manager in like manner and to the same extent as it would be assessable upon and be recoverable from the dealer if he were conducting the business himself, and all the provisions of this Act shall, so far as may be, apply accordingly.

6. Liability in other cases (Section 57)

(1) Where a dealer is a firm or an association of persons or a Hindu Undivided Family, and such firm, association or family has discontinued business

(a) the tax payable under this Act, by such firm, association or family up to the date of such discontinuance may be assessed as if no such discontinuance has taken place; and

(b) every person who was at the time of such discontinuance a partner of such firm, or a member of such association or a member of Hindu undivided family, shall, notwithstanding such discontinuance be liable jointly and severally for the payment of tax assessed and penalty imposed and payable by such firm, association or family, whether such tax, interest or penalty has been assessed prior to or after such discontinuance, and subject as aforesaid, the provisions of this Act shall, so far as may be, apply as if every such person or partner or member were himself a dealer:

PROVIDED that where the partner of a firm liable to pay such tax, interest or penalty dies, the provisions of section 57 (4) shall, so far as may be, apply.

(2) Where a change has occurred in the constitution of a firm or an association of persons, the partners of the firm or members of the association as it existed before and as it exists after its reconstitution

shall, without prejudice to the provisions of section 54 of this Act, jointly and severally be liable to pay tax, interest or penalty due from such firm or association for any period before its re-constitution.

(3) The provisions of section 57(1) shall, so far as may be, apply where the dealer, being a firm or association of persons is dissolved or, being a Hindu undivided family, has effected partition with respect to the business carried on by it and accordingly references in that subsection to discontinuance shall be construed as references to dissolution or, as the case may be, to partition.

(4) Where a dealer liable to pay tax under this Act dies, then

(a) if a business carried on by the dealer is continued after his death by his legal representative or any other person, such legal representative or other person, shall be liable to pay tax, interest or penalty due from the dealer under this Act, whether such tax, interest or penalty had been assessed before his death but has remained unpaid, or is assessed after his death,

(b) if the business carried on by the dealer is discontinued after his death, his legal representative shall be liable to pay out of the estate of the deceased, to the extent the estate is capable of meeting the charge, tax, interest or penalty due from the dealer under this Act, whether such tax, interest or penalty had been assessed before his death but has remained unpaid, or is assessed after his death.

and the provisions of this Act shall, so far as may be, apply to such legal representative or other person as if he were the dealer himself.

Explanation- For the purpose of this section "legal representative" has the meaning assigned to it in clause (11) of section 2 of the Code of Civil Procedure, 1908.

Chapter-13
Investigation and Enforcement

1. Inspection of Records (Section 59)

(1) All records, books of accounts, registers and other documents, maintained by a dealer, transporter or operator of a warehouse shall, at all reasonable times, be open to inspection by the Commissioner.

(2) The Commissioner may, for the proper administration of this Act and subject to such conditions as may be prescribed, require

- (a) any dealer; or
- (b) any other person, including a banking company, post office, a person who transports goods or holds goods in custody for delivery to, or on behalf of any dealer, who maintains or has in his possession any books of accounts, registers or documents relating to the business of a dealer, and, in the case of a person which is an organization, any officer thereof; to –
  - (i) produce before him such records, books of account, registers and other documents;
  - (ii) answer such questions; and
  - (iii) prepare and furnish such additional information relating to his activities or to the activities of any other person as the Commissioner may deem necessary.

(3) The Commissioner may require a person referred to in section 59(2) above to

- (a) prepare and provide any documents; and
- (b) verify the answer to any question, in the manner specified by him.

(4) The Commissioner may retain, remove, take copies or extracts, or get copies or extracts made of the said records, books of account, registers and documents without fee by the person in whose custody the records, books of account, registers and documents are held.

2. Power to enter premises and seize records and goods (Section 60)

(1) All goods kept at any business premises by a dealer, transporter or operator of a warehouse shall at all reasonable times be open to inspection by the Commissioner.

(2) Where the Commissioner, upon information in his possession or otherwise has reasonable grounds to believe that any person or dealer is attempting to avoid or evade tax or is concealing his tax liability in any manner and for the purposes of administration of this Act, it is necessary so to do, the Commissioner may-

(a) enter and search any business premises or any other place or building;

(b) break open the lock of any door, box, locker, safe, almirah or other receptacle for exercising the powers conferred by clause (a) where the keys thereof are not readily available;

(c) seize and remove any records, books of account, registers, other documents or goods;

(d) place marks of identification on any records, books of account, registers and other documents or make or cause to be made extracts or copies thereof without charge;

(e) make a note or any inventory of any such money or goods found as a result of such search or place marks of identification on such goods; and

(f) seal the premises including the office, shop, godown, box, locker, safe, almirah or any other receptacle.

(3) Where it is not feasible to remove any records, books of account, registers, other documents or goods, the Commissioner may serve on the owner and any person who is in immediate possession or control thereof, an order that he shall not remove or part with or otherwise deal with them except with the previous permission of the Commissioner.

(4) Where any premises have been sealed under 60(2)(f) or an order made under 60(3), the Commissioner may, on an application made by

the owner or the person in occupation or in charge of such shop, godown, box, locker, safe, almirah or any other receptacle, permit the de-sealing or release thereof, as the case may be, on such terms and conditions including furnishing of security for such sum in such form and manner as may be prescribed.

(5) The Commissioner may requisition the services of any police officer or any public servant, or of both, to assist him for all or any of the purposes specified in section 60(2).

(6) Save as otherwise provided in this section, every search or seizure made under this section shall as far as possible be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 relating to searches or seizures made under that Code.

However, the powers under this section may also be exercised in respect of a dealer or a third party for the purposes of undertaking audit or to assist in recovery.

3. Custody and release of records (Section 62)

(1) Where the Commissioner seizes any books of accounts or other documents, he shall give the dealer or the person present on his behalf, as the case may be, a receipt for the same and obtain acknowledgement of the receipt given to him.

PROVIDED that if the dealer or person from whose custody the books of accounts or other documents are seized refuses to give an acknowledgement, the Commissioner may leave the receipt at the premises and record this fact.

(2) The Commissioner shall keep in his custody the books of accounts, registers, and other documents seized under section 60 of this Act for a period not exceeding one year, and thereafter return the same to the dealer or person from whose custody or power they were seized;

PROVIDED that the Commissioner may, before returning the books of accounts, registers and other documents, require the dealer or the person, as the case may be, to give a written undertaking that the books of accounts, registers and other documents shall be presented whenever required by the Commissioner for any proceedings under this Act.

PROVIDED FURTHER that the Commissioner shall, when requested, allow the person, whose books of accounts, registers and documents have been seized, reasonable access to the books of accounts, registers and documents for the purpose of inspection and shall allow him the opportunity to make copies thereof at his own expense.

PROVIDED also that the period of custody of the books of accounts, registers and other documents seized under section 60 of this Act may be extended beyond one year if any proceedings under this Act are pending or for reasons to be recorded by the Commissioner in writing.

4. De-sealing/release of premises/articles [Section 60(4)]

Where any premises have been sealed under clause (f) of section 60(2), or an order made under section 60(3), the Commissioner may, on an application made by the person or the person in occupation or in charge of such shop, godown, box, locker, safe, almirah or any other receptacle, permit the de- sealing or release thereof (as the case may be) on such terms and conditions including furnishing of security for such sum in such form and manner as may be prescribed.

As per the DVAT Rules, a person required to pay security under section 60(4) for de-sealing or release of any premises including the shop, godown, box, locker, safe, almirah or other receptable shall furnish security of a sum equal to 1% of the maximum of GTO of last three years or a sum equal to Rs. 5 lacs, whichever is higher. Further, the security required to be furnished by a person shall be atleast 50% in the form of cash and the balance may be in any of the form specified under Rule 23.

5. Power to stop, search and detain goods vehicles (Section 61)

(1) To enable proper administration of this Act, the Commissioner may, at any check-post or barrier or at any other place, require the owner, driver or person in charge of a goods vehicle to stop the vehicle and keep it stationary for as long as may be required to search the vehicle, examine the contents therein and inspect all records relating to the

goods carried, which are in the possession of such owner, driver or person in charge.

(2) The owner, driver or person in charge of a goods vehicle shall carry with him such records as may be prescribed in respect of the goods carried in the goods vehicle and produce the same before any officer in charge of a check post or barrier or any other officer or any agent as may be empowered by the Commissioner.

(2A) The owner, driver or person in charge of a goods vehicle entering or leaving Delhi shall also file a declaration containing such particulars in the prescribed form obtainable from the Commissioner and in such manner as may be prescribed, before the officer in charge of a check post or barrier or before any other officer or agent empowered as aforesaid:

PROVIDED that where the owner, driver or person in charge of a goods vehicle, after filing a declaration at the time of entering Delhi that the goods are meant to be carried to a place outside Delhi, fails, without reasonable cause, to carry such goods outside Delhi within the prescribed period, he shall, in addition to the payment of tax, if any, be liable to a penalty not exceeding two and a half times the tax that would have been payable had the goods been sold inside Delhi or one thousand rupees, whichever is more.

(3) The owner, driver, or person in charge of the goods vehicle shall, if required, inform the Commissioner of

(a) his name and address;

(b) the name and address of the owner of the vehicle;

(c) the name and address of the consignor of goods;

(d) the name and address of the consignee of goods; and

(e) the name and address of the transporter.

(4) If, on an examination of the contents of a goods vehicle or the inspection of documents relating to the goods carried, the Commissioner has reason to believe that the owner or driver or person in charge of such goods vehicle is not carrying the documents as required by section 61(2) or is not carrying proper and genuine documents or is attempting to evade payment of tax due under this

Act, he may, for reasons to be recorded in writing, do any one or more of the following:

(a) refuse to allow the goods or the goods vehicle to enter or leave Delhi;

(b) seize the goods and any documents relating to thegoods; and

(c) seize the goods vehicle and any documents relating to the goods vehicle.

(5) Where the owner, driver or the person in charge of the goods vehicle

(a) requests time to adduce evidence of payment of tax in respect of the goods to be detained or impounded; and

(b) furnishes security to the satisfaction of the Commissioner in such form and in such manner as may be prescribed for the prescribed amount;

the goods vehicle, the goods and the documents so seized may be released.

PROVIDED that where the owner or his agent, driver or person in charge of the goods vehicle exercises the option of paying, by way of penalty, a sum equal to three and a half times the tax, which in the opinion of the Commissioner, would be leviable on such goods, if such goods were sold in Delhi, the Commissioner instead of detaining or impounding the goods or the goods vehicle or the documents relating to the goods and goods vehicle shall release the same.

(6) The Commissioner may permit the owner, driver or person in charge of goods vehicle to remove any goods or goods vehicle seized under 61(4) subject to an undertaking

(a) that the goods and goods vehicle shall be kept in the office, godown or any other place within Delhi, belonging to the owner of the goods vehicle and in the custody of such owner; and

(b) that the goods shall not be delivered to the consignor, consignee or any other person without the approval in writing of the Commissioner,

and for this purpose the person in charge of the goods vehicle shall furnish an authorization from the owner of the goods vehicle authorizing him to give such undertaking on his behalf.

(7) Save as otherwise provided in this section, every search or seizure made under this section shall as far as possible be carried out in accordance with the provisions of the Code of Criminal Procedure, 1973 (2 of 1974) relating to searches or seizures.

(8) Nothing contained in this section shall apply to the rolling stock as defined in the Railway Act 1989.

Records to be carried by a person in charge of a goods vehicle (Rule 43)

(1) The owner, driver or person in charge of the goods vehicle shall carry the Transport Receipt in Form DVAT32, sale invoice or delivery note in Form DVAT33, and, as the case may be, export declaration in Form DVAT34, import declaration in Form DVAT35 or transit slip in Form DVAT 35A.

(2) For obtaining export or import Declaration in Forms DVAT34 and DVAT35, an application in Form DVAT 46 shall be made to the Commissioner by the user dealer.

(3) Account of the usage of Forms DVAT 34 and DVAT 35 shall be maintained by the user dealer in Form DVAT 35B which shall be open for inspection by the Commissioner and shall be filed with the Commissioner every quarter or with every new application for obtaining Form DVAT 34 and DVAT 35, whichever is earlier.

(4) A declaration in Form DVAT 34 or DVAT 35 shall be in three parts. Each part shall be filled and signed by consignor, the consignee and the transporter, as the case may be. The owner, driver or person in charge of the goods vehicle shall keep with him such declaration forms in duplicate while carrying the goods. He shall submit the declaration forms in duplicate at the check post or barrier. The officer in charge shall retain the original part of such declaration and shall return to the owner, driver or person in charge of the goods vehicle, the duplicate part duly verified, signed and stamped. The duplicate part of such declarations shall be furnished by the user dealer to the Commissioner

along with the account of such declaration maintained in Form DVAT 35B at the time of obtaining of additional declaration forms.

(5) Where the goods vehicle entering Delhi is bound for any place outside Delhi and passes through Delhi, the owner, driver or the person in charge of the goods vehicle shall furnish, in duplicate, to the officer in charge of the check post or barrier, a Transit Slip in duplicate in Form DVAT35A duly filled, signed and verified. He will obtain from the officer in charge of the check post or the barrier one copy of the Transit Slip duly countersigned. The owner, driver or person in charge of the goods vehicle, shall deliver within twelve hours of its entry into Delhi, the said countersigned copy to the officer in charge of the check post or barrier at the point of his exit from Delhi.

(6) The owner, driver or his agent or the person in charge of the goods vehicle when required to furnish security under section 61(5), shall furnish security in the form and in the manner and subject to the conditions specified in rule 23. The security referred to in this sub-rule shall be furnished within the time specified in the order not exceeding seven days from the detention of the goods. The Commissioner shall issue to the depositor a receipt in Form DVAT 47 acknowledging the receipt of the security.

(7) The officer in charge of the check post or barrier detaining the goods shall make a report to the Commissioner about all the facts and circumstances of the case within twelve hours of the detention of the goods.

(8) Where the goods detained are not released owing to the failure to furnish the security required to be furnished under section 61(5), within the specified time, the notified detained goods shall be sold by public auction after following the procedure specified in rule 41.

Explanation: For the purpose of this rule, unless the context otherwise requires, "officer in charge" of the check post of barrier shall also include any officer or any agent as may be empowered by the Commissioner.

6. Custody, return and disposal of goods, goods vehicle and security (Section 63)

(1) Where the Commissioner seizes any goods or goods vehicle, he shall give the dealer, the person in charge of the goods vehicle or the person present on his behalf, as the case may be, a receipt for the same and obtain acknowledgement of the receipt given to him.

PROVIDED that if the person from whose custody the goods or goods vehicle are seized refuses to give an acknowledgement, the Commissioner may leave the receipt in his presence and record this fact.

(2) The Commissioner

(a) shall keep any goods or goods vehicle seized under section 61 in his custody;

(b) may retain them for such time as he considers reasonable; and

(c) subject to section 63(3), shall return the goods or goods vehicle to the dealer or any other person from whose custody or power they were seized.

(3) Where the Commissioner –

(a) has seized any goods;

(b) has seized a goods vehicle; or

(c) holds any goods as security for the performance of an obligation under this Act;

the Commissioner may, not sooner than one month after serving notice on

(i) the person from whom the goods were seized;

(ii) the person from whom the goods vehicle was seized;

(iii) the person for whom security was given; and

(iv) any person against whom security is to be enforced;

as the case may be, of his intention to sell the goods, direct the auction of such goods or goods vehicle to meet any arrears of tax, interest or penalty owed under this Act.

(4) An **auction of goods or a goods vehicle** shall be carried out **in the manner prescribed for the sale of property** held by the Commissioner.

Procedures for sale of property held by the Commissioner (Rule 41)

(1) Where the Commissioner has in his possession any goods, goods vehicle, or any other property, including goods seized at any border or checkpost and goods held as security for the performance of an obligation under the Act (in this rule called "the property"), which may be sold by the Commissioner in pursuance of any powers conferred under the Act to recover tax, interest, penalty or other amount due under the Act, the power of sale shall be exercised in the manner set out in this rule.

(2) The Commissioner shall serve a notice in Form DVAT29 in the manner prescribed in rule 62 on the person recorded as the owner of the goods in the Commissioner's records requiring the person to redeem the property within fifteen days by making payment in cash of all the amounts owed under the Act.

(3) Where the person has not redeemed the property within the time specified in the form, the Commissioner may proceed to sell the property by public auction as per the following procedure.

(a) A report shall be prepared of the facts and circumstances in which the property is required to be sold by public auction and the Commissioner shall make a written order for sale or disposal of property.

(b) The officer nominated by the Commissioner for the purpose shall cause to be published on the notice board of his office, a list of the properties intended for sale with a notice under his signature specifying the place where, and the day and hour at which, the property is to be sold and display copies of such list and notices at more than one public place near the place where the property is currently held, and the place of the proposed auction. A copy of the list and notice shall also be displayed in the office of the Commissioner. Except in exceptional circumstances, a notice for not less than seven days shall be given before the auction is conducted.

(c) Intending bidders shall be required to deposit as earnest money a sum equal to ten per cent of the estimated value of the property. The officer conducting the auction shall prepare a receipt acknowledging the receipt of the earnest money. Earnest money deposited by unsuccessful bidders shall be refunded to them immediately after the auction is over.

(d) At the appointed day and time, the property shall be put up in one or more lots, as the officer conducting the auction sale may consider fit and shall be knocked down in favour of the highest bidder subject to confirmation of the sale by the Commissioner.

(e) The purchaser shall pay the sale value of the property in cash immediately after the sale and he shall not be permitted to carry away any part of the property until he has paid for it in full and until the sale has been confirmed by the Commissioner. If the purchaser fails to pay the purchase money within three days of the confirmation of sale by the Commissioner, the property shall be re-offered for auction and any earnest money deposited by the defaulting bidder shall be forfeited to the Government.

(4) If any order directing that detention is reversed on appeal, the property detained, to the extent they have not been sold before such reversal comes to the knowledge of the officer conducting the sale, shall be released or, if such property has been sold, the net proceeds thereof shall be paid to the owner of the property.

(5) Notwithstanding anything contained in this rule, if the property is of a perishable nature or subject to speedy and natural decay or when the expenses of keeping it in custody are likely to be high, the Commissioner may

(a) reduce the time stated in rule 41(2) within which the owner may redeem the property;

(b) reduce the time for display of any notice; and

(c) accelerate the time for conducting the auction of the property.

(6) Where property is sold under the preceding subrules, the proceeds of sale shall be applied in the following order

(a) payment of any expenses of the sale, including tax arising under the Act by virtue of the sale, and other incidental charges;

(b) in respect of any surplus, payment of the amount of any tax, interest and penalty recoverable under the Act or Delhi Sales Tax Act, 1975or the Delhi Sales Tax on Works Contract Act, 1999 or the Central Sales Tax Act, 1956or The Delhi Sales Tax on Right to Use Goods Act, 2002;

(c) in respect of any surplus, on application made to the Commissioner and upon provision of sufficient proof, payment to the person who was the owner of the property; and

(d) in respect of any surplus, in the absence of any claimant, deposited in the Consolidated Fund of the National Capital Territory of Delhi.

7. Detention of goods pending disclosure (Section 64)

(1) If any person, on being required by the Commissioner, fails to give any information in respect of any goods in his possession or fails to permit the inspection thereof, the Commissioner may seize any goods in his custody or possession in respect of which the default is committed.

(2) The seizure shall remain in force until it is revoked or the person concerned furnishes the information required or makes proper arrangements for the inspection of the goods, whichever occurs first.

8. Obligation to provide reasonable assistance

Every person shall provide all co-operation and reasonable assistance to the Commissioner as may be required to conduct the Commissioner's activities under the Act.

Chapter-14
VAT Authorities and Appellate Tribunal

1. Value added tax authorities (Section 66 & Rule 47)

(1) For carrying out the purpose of this Act, the Government shall appoint a person to be the Commissioner of Value Added Tax.

(2) To assist the Commissioner in the administration of this Act

(a) the Government may appoint as many Special Commissioners of Value Added Tax Joint Commissioner, Deputy Commissioner, Assistant Commissioner, Assistant Value Added Tax Officer, Value Added Tax Officers, and Value Added Tax Inspector as it thinks necessary; and

(b) the Commissioner may, with the previous sanction of the Government, engage and procure the engagement of any other persons to assist him in the performance of his duties.

(3) The Commissioner and the Value Added Tax authorities shall exercise such powers as may be conferred, and perform such duties as may be required, by or under this Act.

(4) The powers exercised by the Value Added Tax authorities for the making of assessments of tax, the computation and imposition of penalties, the computation of interest due or owed, the computation of the entitlement and the amount of any refund, the determination of specific questions under section 84, the making of general rulings under section 85, and the conduct of audit or investigations shall, for the purposes of this Act, be administrative functions.

However, as per rule 49, subject to the general control and superintendence of the Government, control and superintendence over all officers appointed under section 66(2) shall vest in the Commissioner.

2. Powers and responsibilities of the Commissioner (Section 67)

(1) The Commissioner shall have responsibility for the due and proper administration of this Act and shall have jurisdiction over the whole of Delhi.

(2) Subject to section 67(3), the Commissioner may, from time to time, issue such orders, instructions and directions to any Value Added Tax authorities as he thinks fit for the due and proper administration of this Act and all such persons engaged in the administration of this Act shall observe and follow his orders, instructions and directions.

(3) No order, instruction or direction may be issued by the Commissioner to a person exercising the power to determine

(a) a particular objection made or to be made under section 74 of this Act; or

(b) a particular question under section 84 of this Act;

so as to require the person to determine the objection or answer to the question of a particular person in a particular manner.

(4) Nothing in section 67(3) shall prevent the Commissioner from issuing general orders, instructions and directions to any person who determines objections under section 74 or answers questions under section 84 of this Act about the manner of determining classes of objections or answering classes of questions.

3. Delegation of Commissioner's powers (Section 68)

(1) Subject to such restrictions and conditions as may be prescribed, the Commissioner may delegate any of his powers under this Act to any Value Added Tax Authorities.

(2) Where the Commissioner delegates his powers under Chapter X related to audit, inspection and enforcement, the delegate shall carry and produce on demand evidence in Form 50 when exercising the powers.

(3) Where the Commissioner has delegated power to a Value Added Tax Authority, the Commissioner may supervise, review and rectify any decision made or action taken by that Authority.

Explanation: The exercise of this power of supervision, review or rectification will not lead to the issue of assessment or re-assessment after the expiry of the time referred to in section 34 of this Act.

(4) Notwithstanding any law or doctrine to the contrary, the power delegated by the Commissioner to a person to determine any objection under section 74 of this Act may be exercised by that person, even though the person determining the objection is equal in rank to the person whose decision is under objection.

Conditions upon delegation of powers by the Commissioner (Rule 48)

Without prejudice to the provisions of section 68, the Commissioner may delegate any of his powers to any person not below the rank of an Assistant Value Added Tax Officer, but he may delegate his powers

(a) under sub-sections (1) and (2) of section 60, to a person not below the rank of a Value Added Tax Officer;

(b) under section 61, to a person not below the rank of a Value Added Tax Inspector; and

(c) under section 84, to a person not below the rank of a Special Commissioner.

Officers to carry and produce authorizations (Rule 65)

(1) Where the Commissioner wishes to appoint an officer or any other person to exercise any of the powers in Chapter X of the Act, the grant of authority to exercise the powers shall be in Form DVAT50 and shall be issued by the person empowered by him in this regard.

(2) The grant of authority shall

(a) be limited to a period not exceeding three years;

(b) be to a specific person; and

(c) expireon the retirement, resignation or transfer of the person;

PROVIDED that the authority granted is renewed.

(3) Every officer or any other person authorised by the Commissioner under subrule (1) shall

(a) carry the authorization in Form DVAT50 with him when purporting to exercise any of the powers conferred under Chapter X of the Act; and

(b) produce the authorization in Form DVAT50, if requested by the owner or occupier of any premises where he proposes to exercise these powers.

4. Change of an incumbent of an office

Whenever in respect of any proceeding under this Act the Commissioner or any Value Added Tax authority is succeeded by another person-

(a) no delegation of power made by the former incumbent shall be revoked by virtue of the succession; and

(b) the person so succeeding may continue the proceeding from the stage at which the proceeding was left by his predecessor.

5. Power of the Commissioner to make notifications (Section 70)

(1) The Commissioner may **notify and publish any forms** which may be necessary for the reporting of information to the Value Added Tax authorities.

(2) Where the Commissioner has **notified a form for a particular purpose**, all persons shall be required to report the information using the form, in such manner as may be notified by him.

(3) Where in his opinion it is necessary or convenient to do so, the Commissioner may issue notifications for carrying out the purposes of this Act. However, any notification shall not be inconsistent with this Act or any rules or regulations made pursuant to it.

(4) In particular and without prejudice to the generality of the foregoing power, a notification issued by the Commissioner may stipulate all or

any of the matters which in his opinion are necessary or convenient for the proper administration of this Act.

(5) Every notification issued by the Commissioner under this Act shall be published in the official Gazette, and shall not have any effect prior to such publication.

Power to extend time (Rule 49A)

Where in **these rules** a time-frame is prescribed for doing a certain act, the Commissioner may, for reasons to be recorded in writing, extend its limit.

6. Persons to be public servants

The Commissioner, all Value Added Tax authorities and all members of the Appellate Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860.

7. Immunity from civil suit

No suit shall be brought in any civil court against the Government, the Commissioner, any Value Added Tax authorities, or any member of the Appellate Tribunal for anything done or intended to be done in good faith under this Act or the rules made thereunder.

8. Appellate Tribunal (Section 73)

(1) The Government shall, as soon as it may, after the commencement of this Act, constitute an Appellate Tribunal consisting of one or more members, as it thinks fit, to exercise the powers and discharge the functions conferred on the Appellate Tribunal by or under this Act.

where the Appellate Tribunal consists of one member, that member shall be a person who has held a civil judicial post for at least ten years or who has been a member of the Indian Legal Service (not below Grade III) for at least three years or who has been an advocate for at least ten years; where the Appellate Tribunal consists of more than one member, one such member shall be a person qualified as aforesaid.

(2) Where the number of members of the Appellate Tribunal is more than one, the Government shall appoint one of those members to be the Chairperson of the Appellate Tribunal.

(3) Subject to the provisions of section 73(1), the qualifications and other conditions of service of the member or members constituting the Appellate Tribunal and the period for which such member or members shall hold office, shall be such as may be determined by the Government.

(4) Any vacancy in the membership of the Appellate Tribunal shall be filled by the Government as soon as practicable.

(5) Where the number of members of the Appellate Tribunal is more than one and if the members differ in opinion on any point, the point shall be decided according to the opinion of the majority; but if the members are equally divided, the decision of the Chairperson of the Appellate Tribunal shall be final.

(6) Subject to the previous sanction of the Government, the Appellate Tribunal shall, for the purpose of regulating its procedure and disposal of its business, make regulations consistent with the provisions of this Act and the rules made there-under.

(7) The regulations made u/s 73(6) shall be published in the official Gazette.

(8) The Appellate Tribunal shall, for the purpose of discharging its functions, have all the powers which are vested in the Commissioner under section 75 of this Act and any proceeding before the Appellate Tribunal shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228, and for the purposes of section 196 of the Indian Penal Code, 1860 and the Appellate Tribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973.

(9) Notwithstanding anything contained to the contrary in this section, the Government may, by a notification in the official Gazette, constitute benches comprising one or more members, subject to such conditions and regulations as may be laid down in notification.

Chapter-15
Objections, Appeals, Disputes and Questions

1. Objections

As per section 74

(1) **Any person** who is dissatisfied with

(a) An assessment made under DVAT Act (including an assessment under section 33 of this Act); or

(b) Any other order or decision made under this Act;

may make an objection against such assessment, or order or decision, as the case may be, **to the Commissioner.** No objection can be made against a non-appealable order as defined under section 79 of the Act. **Only one objection** may be made by the person **against any assessment, decision or order.**

However, no objection against an assessment shall be entertained unless the amount of tax, interest or penalty assessed that is not in dispute has been paid, or failing to comply of which the objection shall be deemed to have not been filled.

The Commissioner, after giving to the dealer an opportunity of being heard, may direct him to deposit an amount deemed reasonable, out of the amount under dispute, before such objection is entertained. Further, no objection shall be made to the Commissioner against an order made under section 84 or section 85 of this Act if he has not delegated his power under the said sections to other Value Added Tax authorities.

In the case of an objection to an amended assessment, order, or decision, an objection may be made only to the portion amended.

(2) A person who is aggrieved by the failure of the Commissioner to reach a decision or issue any assessment or order, or undertake any other procedure under this Act, within six months after a request in writing

was served by the person, may make an objection against such failure.

(3) An objection shall be in writing in the prescribed form and shall state fully and in detail the grounds upon which the objection is made.

(4) The objection shall be made

(a) in the case of an objection made under section 74(1), within two months of the date of serving the assessmentorder or decision, as the case may be,; or

(b) in the case of an objection made under section 74(2), no sooner than six months and not later than eight months after the written request was served by the person:

PROVIDED that where the Commissioner is satisfied that the person was prevented for sufficient cause from lodging the objection within the time specified, he may accept an objection within a further period of two months.

(5) The Commissioner shall conduct its proceedings by an examination of the assessment, or order or decision, as the case may be, the objection and any other document or information as may be relevant:

PROVIDED that where the person aggrieved, requests a hearing in person, the person shall be afforded an opportunity to be heard in person.

(6) Where a person has requested a hearing under section 74(5) and the person fails to attend the hearing at the time and place stipulated, the Commissioner shall proceed and determine the objection in the absence of the person.

(7) Within three months after the receipt of the objection, the Commissioner shall either

(a) accept the objection in whole or in part and take appropriate action to give effect to the acceptance (including the remission of any penalty assessed either in whole or in part); or

(b) refuse the objection or the remainder of the objection, as the case may be; and in either case, serve on the person objecting, a

notice in writing of the decision and the reasons for it, including a statement of the evidence on which it is based:

PROVIDED that where the Commissioner within three months of the making of the objection notifies the person in writing, he may continue to consider the objection for a further period of two months:

PROVIDED FURTHER that the person may, in writing, request the Commissioner to delay considering the objection for a period of up to three months for the proper preparation of its position, in which case the period of the adjournment shall not be counted towards the period by which the Commissioner shall reach his decision.

(8) Where the Commissioner has not notified the person of his decision within the time specified under section 74(7), the person may serve a written notice requiring him to make a decision within fifteen days.

(9) If the decision has not been made by the end of the period of fifteen days after being given the notice referred to in section 74(8), then, at the end of that period, the Commissioner shall be deemed to have allowed the objection.

(10) Where on the date of commencement of this Act a dispute under the Delhi Sales Tax Act, 1975 (43 of 1975) has been pending before a sales tax authority referred to in section 9 of the Delhi Sales Tax Act, 1975 (43 of 1975), the dispute shall be disposed of within a period of eight years from the date of commencement of this Act.

(11) Where the dispute referred to in section 74(10) has not been decided within the time required, the dispute shall be deemed to have been resolved in favour of the dealer.

Authority to whom objection may be made (Rule 51)

An objection under section 74(1) shall lie with the Special Commissioner, Additional Commissioner, Joint Commissioner, Deputy Commissioner, Assistant Commissioner, Value Added Tax Officer and Assistant Value Added Tax Officer:

PROVIDED that the Commissioner may, by notice published in the official Gazette, fix the jurisdiction of the respective authority on the basis of territory or pecuniary limit or nature or class of objections or any other basis that may be deemed appropriate by him.

Making of objections (Rule 52)

(1) Every objection shall be made in Form DVAT-38 accompanied by a copy of the notice of assessment, order or decision against which the objection is being preferred and shall be submitted in triplicate with one copy to the Commissioner or the Value Added Tax authority against whose order the objection has been made.

(2) Every objection shall contain a clear statement of facts, precise grounds of objection and the relief claimed.

(3) Where an objection is made after the time limit prescribed under sub-section (4) of section 74, it shall be accompanied by a statement in Form DVAT39, showing the reason for the delay in making the said objection.

(4) Where fresh evidence is sought to be produced, the objection shall be accompanied by a memorandum of such evidence, , stating clearly the reasons why such evidence was not adduced before the Value Added Tax authority, against whose order the objection is being made.

(5) The objection in Form DVAT38 shall be signed by the person making such objection or his agent and shall be presented by him or his agent to the authority in person.

(6) The authority shall issue or cause to be issued an acknowledgement of the objection received, to the person who has filed the objection, specifying the date of personal hearing.

Determination of Objections (Rule 53)

The Commissioner while deciding the objection shall conduct the proceedings by examining

(a) the registers and records maintained by the Value Added Tax Authority against whose order or decision or assessment the objection has been preferred;

(b) the objection; and

(c) any other document, information or report, which, in his opinion, is relevant to decide the objection;

and may

(i) admit any further oral or documentary evidence that is relevant to the matters in dispute; and

(ii) allow the applicant to present his arguments in person, or by a representative authorized to appear before any authority under section 82 and by submission in writing, if any.

Hearings of objection (Rule 54)

(1) Unless the person making the objection has expressly waived the personal hearing, the Commissioner or the Value Added Tax Authority (together referred to in this rule as "authority") deciding the objection shall pass the order on the objection after affording a reasonable opportunity of being heard to such person or his authorized representative.

(2) The authority deciding the objection may, before deciding the objection, cause such further and other enquiry or direct such enquiry to be held by the authority against whose decision the objection has been made, as the authority deciding the objection may consider necessary. The authority against whose order or decision or assessment the objection has been made may be represented by a person authorized by him.

(3) The authority deciding the objection shall not at any hearing, allow the objector to argue or present any ground of objection not specified in the objection unless the authority is satisfied that omission of that ground there from was not willful or unreasonable.

Intimation of outcome of objection (Rule 55)

The decision of the Commissioner or the Value Added Tax Authority deciding the objection shall be intimated to the applicant in Form DVAT40 and shall be served on the person making the objection in the manner prescribed in rule 62 (refer chapter audit).

Delay (Rule 56)

1. A notice for the purpose of sub-section (8) of section 74 shall be in Form DVAT41.

2. The notice shall be signed by the person making the objection or his authorized signatory and shall be served by him in person on the Commissioner or the Value Added Tax Authority deciding the objection.

Refund on account of objection (Rule 57)

The procedure for the refund of any amount due in consequence of an order made pursuant to an objection, or any other proceeding under the Act, shall be the one that is provided in rule 34.

2. Burden of proof (Section 78)

The burden of proving any matter in issue in proceedings under section 74 of this Act, or before the Appellate Tribunal which relates to the liability to pay tax or any other amount under this Act, shall lie with the person alleged to be liable to pay the amount. The burden of proof in criminal prosecutions is unaffected by this section.

3. Power of the Commissioner and other authorities to take evidence on oath, etc. (Section 75)

(1) The Commissioner or any person determining objections under section 74 of this Act, for the purposes of this Act, has the same powers as are vested in a court under the Code of Civil Procedure, 1908, when trying a suit, in respect of the following matters:

   (a) enforcing the attendance of any person and examining him on oath or affirmation;

   (b) compelling the production of accounts and documents; and

   (c) issuing commissions for the examination of witnesses; and any proceeding under this Act before the Commissioner or person determining objections under section 74 of this Act shall be deemed to be a judicial proceeding within the meaning of sections 193 and 228 and for the purposes of section 196 of the Indian Penal Code, 1860.

(2) Subject to any rules made in this behalf, the Commissioner or any person determining objections under section 74 of this Act may impound and retain in his custody, any books of accounts or other

documents produced before him in any proceedings under this Act until such proceedings are concluded.

However, the Commissioner or the person determining an objection under section 74 shall not impound any books of accounts or other documents without recording in writing his reasons for doing so.

4. Revision (Section 74A)

(1) After any order including an order under this section or any decision in objection is passed under this Act, rules or notifications made thereunder, by any officer or person subordinate to him, the Commissioner may, on his own motion or upon information received by him, call for the record of such order and examine whether -

(a) any turnover of sales has not been brought to tax or has been brought to tax at a lower rate, or has been incorrectly classified, or if any claim has been granted incorrectly or that the liability to tax has been understated, or

(b) if in any way, the order is erroneous, in so far as it is prejudicial to the interest of revenue, and after examination, the Commissioner may pass an order to the best of his judgment, where necessary.

(2) (a) For the purpose of the examination and passing of the order, the Commissioner may require, by service of notice, the dealer to produce or cause to be produced before him such books of accounts and other documents or evidence as he thinks necessary for the purposes aforesaid.

(b) Notwithstanding anything contained to the contrary in section 34, no order under this section shall be passed after the expiry of four years from the end of the year in which the order passed by the subordinate officer has been served on the dealer.

(3) Notwithstanding anything contained to the contrary in section 34, where in respect of any order or part of the said order passed by the subordinate officer, an order has been passed by any authority hearing the objection or any appellate authority including the Tribunal or such order is pending for decision in objection or in appeal, or an objection or an appeal is filed, then, whether or not the issues involved in the examination have been decided or raised in the objection or the

appeal, the Commissioner may, within five years of the end of the year in which the said order passed by the subordinate officer has been served on the dealer, make a report to the said objection hearing authority or the appellate authority including the Tribunal regarding his examination or the report or the information received by him and the said appellate authority including the Tribunal shall thereupon, after giving the dealer a reasonable opportunity of being heard, pass an order to the best of its judgment, where necessary.If the Commissioner has initiated any proceeding before an appropriate forum against an issue which is decided against the revenue by an order of the Tribunal, then the Commissioner may, in respect of any order, other than the order which is the subject matter of the order of the Tribunal, call for the record, conduct an examination as aforesaid, record his findings, call for the said books of account and other evidence and pass an order as provided for under this section as if the issue was not so decided against the revenue, but shall stay the recovery of the dues including the interest or penalty, insofar as they relate to such issue until the decision by the appropriate forum and after such decision, may modify the order of revision, if necessary.

(4) No proceedings under this section shall be entertained on any application made by a dealer or a person.

(5) Notwithstanding anything contained in any judgment, decree or order of any court, the provisions of this section shall be deemed to have come into effect with effect from 1st April, 2005.

Form of notice for revision (Rule 36A)

The notice for the purposes of sub-section (2) of section 74A shall be in form DVAT 24B.

5. Rectification of mistakes and Review (Section 74B)

(1) Notwithstanding anything contained to the contrary in section 34, the Commissioner may, at any time **within four years from the end of the year in which any order passed by him** has been served, on his own, rectify any mistake apparent on record and shall within the said period or thereafter rectify any such mistake which has been brought

to his notice within the said period, by any person affected by such order.

(2) The provisions of section 74B(1) shall apply to the rectification of **a mistake by the appellate authority or an objection hearing authority** as they apply for the rectification of mistake by the Commissioner.

PROVIDED that where any matter has been considered and decided in any proceedings by way of objection or appeal or review in relation to any order or part of an order, the authority passing the order on objection, appeal or review, may, notwithstanding anything contained in this Act, rectify the order or part of the order on any matter other than the matter which has been so considered and decided.

(3) Where any such rectification has the effect of reducing the amount of tax or penalty or interest, the Commissioner shall refund any amount due to such person in accordance with the provisions of this Act.

(4) Where any such rectification has the effect of enhancing the amount of tax or penalty or interest or reducing the amount of refund, the Commissioner shall recover the amount due from such person in accordance with the provisions of this Act.

(5) Save as provided in the foregoing sub-sections, and subject to such rules as may be prescribed, any assessment or re-assessment made or order passed under this Act or the rules made thereunder by any person appointed under section 66 may be **reviewed by such person** *suomotu* **or upon an application made** in that behalf.

Rule 36B:

(1) The application for rectification of a mistake in any order shall be filed in Form DVAT 38B.

(2) The application for review of an assessment or reassessment or order shall be in Form DVAT 38C.

(3) No application for review under sub-section (5) of section 74B of an assessment or reassessment or an order shall be entertained if the application is not presented within thirty days from the date of such assessment or reassessment or order.

(4) The Commissioner or any person appointed under section 66 shall be competent under sub-section (5) of section 74B to review any assessment or reassessment or order made by his predecessor in office.

(5) Where a person has made an application for review of an assessment or reassessment or an order under the provisions of section 74B, the Commissioner shall not be prevented from enforcing the payment of any amount in dispute in that order.

(6) Where a person, who has made an application for review of assessment or reassessment or an order, intends to file an objection under section 74 or an appeal under 76, the person shall withdraw his application for review before filing the objection or the appeal.

(7) The Commissioner shall not review any assessment or reassessment or an order where an objection under section 74 or an appeal under section 76 against such assessment or reassessment or order is pending for decision.

6. Appeals to Appellate Tribunal

As per section 76 read with Rule 57A, Rule 57B and Rule 57C

1. **Any person** aggrieved by a decision made by the Commissioner **under sections 74, 84 and 85** of this Act may appeal before the Appellate Tribunal against such decision **unless it is a non-appealable order** under section 79 of this Act.

   The Commissioner does not appeal to the Appellate Tribunal but may make a re-assessment of tax where he is of the opinion that further tax is owed.

2. **Time Limit:** Appeal shall be made within two months from the date of the decision appealed against (section 76(2)). The Appellate Tribunal may admit an appeal after the expiry of the period of two months, if it is satisfied that the appellant had sufficient cause for not making the appeal within the said period.

3. **Application Form:** Every appeal shall be made in the form of a memorandum of appeal which shall be-

   1. in form 38A when the appeal is against an order of assessment.

2. Written on a standard watermarked judicial paper when the appeal is against any other order or decision.

Every Memorandum of appeal shall contain a clear statement of facts, precise ground(s) of appeal and relief claimed.

4. **Fee:** Every memorandum of appeal shall be accompanied by a fee of fifty rupees in the form of court fee stamps.

5. **Manner of filing of appeal:** Every appeal shall be filed in triplicate and shall be accompanied by three copies (at least one of which shall be certified) of the order appealed against and three copies of the order of the original authority. Copies, other than those that are certified, shall be attested by the appellant or his authorized representative as true copies. Where an appeal is made after the expiry of the period specified in 76(2), it shall be accompanied by a petition duly verified setting forth the facts showing sufficient cause for not making the appeal within the said period.

6. **Signing of Appeal:** An appeal shall be signed by the appellant and presented by him in person or by his authorized representative to the Appellate Tribunal or to an officer authorized by the Appellate Tribunal.

7. **Payment of amount in dispute and stay petition: The a**ppeal shall be accompanied by satisfactory proof of the payment of the amount in dispute and any other amount assessed due from the person.

   Where the appeal is made without payment in full of the tax or any penalty in respect of which the appeal is being made, the memorandum of appeal shall be accompanied by a petition duly verified stating the facts on which the appellant relies to satisfy the Appellate Tribunal to entertain his appeal without such payment or on payment of such lesser amount as remains unpaid.

   Appellate Tribunal may, for reasons to be recorded in writing, entertain an appeal against such order without payment of some or all of the amount in dispute, on the appellant furnishing in the prescribed manner security for such amount as it may direct. The applicant shall furnish security in any one of the modes specified under Rule 23, as the Appellate tribunal may direct and subject to the conditions specified therein.

No appeal shall be entertained by the Appellate Tribunal unless it is satisfied that such amount as the appellant admits to be due has been paid.

8. **Restrictions on the appellant:** In proceedings before the Appellate Tribunal

(a) the person aggrieved shall be limited to disputing only the matters stated in the objection;

(b) the person aggrieved shall be limited to arguing only the grounds stated in the objection; and

(c) the person aggrieved may be permitted to adduce evidence not presented to the Commissioner for good and sufficient reasons.

9. **Every appeal where fresh evidence is sought to be produced**, shall be accompanied by a memorandum of evidence sought to be produced, stating clearly the reasons why such evidence was not adduced before the authority against whose order the appeal is being made.

10. **Hearing and Disposal of Appeal:** If the Appellate Tribunal does not reject the appeal summarily, it shall fix a date for its hearing and send a notice to the appellant and the Commissioner. The Appellate Tribunal may, before deciding the appeal, hold such further enquiry or direct it to be held by the authority against whose decision the appeal has been made, as may appear necessary to the Appellate Tribunal. The Commissioner can be represented by a person authorized by him.

Where a **person has failed to attend** the hearing at the time and place stipulated, the Appellate Tribunal may adjourn the proceedings, strike out the appeal or proceed to make an order determining the objection in his absence.

The Appellate Tribunal shall not, for the **first time receive in evidence** on behalf of the appellant, an account, register, record or other documents, unless it is satisfied that the appellant was prevented by sufficient cause from producing such documents before the authority against whose order the appeal has been preferred.

The Appellant Tribunal shall not, at the hearing of appeal allow the appellant to go into any **new ground of appeal not specified in the memorandum of appeal** unless it is satisfied that the omission of that ground therefrom was not willful or unreasonable.

The Appellate Tribunal shall

(a) in the case of an assessment, confirm, reduce, or annul the assessment (including any penalty and interest imposed);

(b) in the case of any other decision of the Commissioner, affirm or reject the decision; or

(c) pass any other order for the determination of the issue as it thinks fit.

The Appellate Tribunal shall **give reasons in writing** for its decision which shall include its findings on material questions of fact and the evidence or other material on which the findings were based.

The Appellate Tribunal shall use its best endeavours to make a final resolution of the matter before it and for this purpose may make a decision in substitution for the order in dispute, including the exercise or re-exercise of any discretion or power vested in the Commissioner.

The Appellate Tribunal shall not set aside an assessment and remit the matter to the Commissioner for a further assessment, unless it has first

(a) advised the aggrieved person of the proposed order;

(b) offered the person the opportunity to adduce such further evidence before it as might assist the Appellate Tribunal to reach a final determination.

Where the Appellate Tribunal sets aside an assessment and remits the matter to the Commissioner for a further assessment, it shall at the same time order the Commissioner to refund to the person some or all of the amount in dispute. However, where no order is made, it shall be presumed that the Appellate Tribunal has ordered the refund of the amount in dispute.

Save as provided in section 81 and section 76(12) of this section, an order passed by the Appellate Tribunal on an appeal shall be final.

The Appellate Tribunal may **rectify any mistake or error** apparent from the record of its proceedings.

Any order passed by the Appellate Tribunal may be **reviewed** *suo-motu* **or upon an application** made in that behalf. However, before

any order which is likely to affect any person adversely is passed, such person shall be given a reasonable opportunity of being heard.

7. Bar on appeal or objection against certain orders (Section 79)

No objection or appeal shall lie against

(a) a decision of the Commissioner to make an assessment of tax or penalty;

(b) a notice requiring a person to furnish a return;

(c) a notice issued under section 58, section 59 and direction under section 58A of this Act;

(d) a decision of the Commissioner to notify any matter;

(e) a notice asking a dealer to show cause why he should not be prosecuted for an offence under this Act;

(f) a decision relating to the seizure or retention of books of account, registers and other documents;

(g) a decision sanctioning a prosecution under this Act;

(h) an interim decision made in the course of any proceedings;

(i) a decision of the Commissioner touching the internal administration of the Value Added Tax authorities;

(j) an assessment issued by the Commissioner to give effect to an order of the Appellate Tribunal or a court. Save as mentioned above, nothing shall prevent the person from objecting to the amount or the obligation to pay any amount assessed by the Commissioner under section 74 of this Act.; or

(k) a notice served on the person u/s 84(10). (In this Act referred to as "non-appealable orders").

8. Extension of period of limitation in certain cases (Section 77)

The Appellate Tribunal may admit an appeal under section 76 of this Act after the period of limitation laid down in that section, if the appellant satisfies

the Appellate Tribunal that he had sufficient cause for not preferring the appeal within such period.

In computing the period laid down under sections 76 and 81 of this Act, the provisions of sections 4 and 12 of the Limitation Act, 1963, shall, so far as may be, apply. In computing the period of limitation prescribed by or under any provision of this Act, or the rules made thereunder, other than sections 76 or 81 of this Act, any period during which any proceeding is stayed by an order or injunction of any court shall be excluded.

9. Appeal to the High Court (Section 81)

(1) An appeal shall lie to the High Court from every order passed by the Appellate Tribunal in appeal under this Act, if the High Court is satisfied that the case **involves a substantial question of law.**

(2) The Commissioner or the other party aggrieved by any order passed by the Appellate Tribunal may file an appeal to the High Court in the form of a memorandum of appeal precisely stating therein the substantial question of law involved.

(3) **Time Limit:** Appeal shall be filed within 60 days from the date on which the order appealed against is received by the Commissioner or served upon the other party. The High Court may entertain an appeal after the expiry of the period of 60 days, if it is satisfied that there was sufficient cause for not filing it within that period.

(4) **Formulation of question by the High Court:** Where the High Court is satisfied that a substantial question of law is involved in any case, it shall formulate that question.

(5) **Hearing of Appeal:** The appeal shall be heard only on the question so formulated, and the respondents shall, at the hearing of the appeal, be allowed to argue that the case does not involve such question.

(6) However, nothing in this subsection shall be deemed to take away or abridge the power of the Court to hear, for reasons to be recorded, the appeal on any other substantial question of law not formulated by it, if it is satisfied that the case involves such question.

(7) **Judgment by the High court:** The High Court shall decide the question of law so formulated and deliver such judgment thereon

containing the grounds on which such decision is founded and may award such cost as it deems fit.

(8) The High Court may determine any issue which

(a) has not been determined by the Appellate Tribunal;

(b) has been wrongly determined by the Appellate Tribunal, by reason of a decision on such question of law as is referred to in this section.

(9) **Decision by majority:** The appeal shall be heard by a bench of not less than two judges of the High Court, and shall be decided in accordance with the opinion of such judges or of the majority, if any, of such judges.

Where there is no such majority, the judges shall state the point of law upon which they differ and the case shall, then be heard upon that point only by one or more of the other judges of the High Court and such point shall be decided according to the opinion of the majority of the judges who have heard the case including those who first heard it.

Save as otherwise provided in this Act, the provisions of the Code of Civil Procedure, 1908 (5 of 1908), relating to appeals to the High Court shall, as far as may be, apply in the case of appeals under this section.

10. Appearance before any authority in proceedings (Section 82)

(1) Any person, who is entitled or required to attend before any authority in connection with any proceedings under this Act, may attend

(a) by a person authorized by him in writing in this behalf, being a relative or a person regularly employed by him; or

(b) by a legal practitioner or chartered accountant or cost accountant or company secretary; or

(c) by a Value Added Tax practitioner who possesses the prescribed qualifications and is entered in the list, which the Commissioner shall maintain in that behalf.

(2) The Commissioner may, for reasons to be recorded in writing, disqualify any legal practitioner, chartered accountant, cost accountant and value added tax practitioner for some period from appearing before any such authority

(a) who has been dismissed from government service; or

(b) who, being a legal practitioner or chartered accountant, or cost accountant or company secretary is found guilty of misconduct in connection with any proceedings under this Act by an authority empowered to take disciplinary action against the members of the profession to which he belongs; or

(c) who, being a Value Added Tax practitioner, is found guilty of such misconduct by the Commissioner.

(3) Any person who is disqualified under this section may, within one month of the date of disqualification, appeal to the Government to have the disqualification cancelled.

(4) The decision of the Commissioner shall not take effect until one month of the making thereof or when an appeal is made, until the appeal is decided.

(5) The Commissioner may, at any time, *suo moto* or on an application made to him in this behalf, revoke any decision made against any person under section 82(2) and thereupon such person shall cease to be disqualified.

However, a decision made by the Commissioner under this section may also be the subject of an objection under section 74 of this Act.

Qualification to be possessed by Value added tax practitioner (Rule 64)

1. A value added tax practitioner shall be eligible to have his name entered in the list, if

(a) he possesses any of the qualifications specified in rule 50 or rule 51 of the Income Tax Rules, 1962, as amended from time to time; or

(b) he

(i) was formerly an employee of the Sales Tax Department or Value Added Tax Department;

(ii) held during service in the department an office not lower in rank than that of an Assistant Sales Tax Officer or Assistant Value Added Tax Officer for not less than seven years; and

(iii) is, in the opinion of the Commissioner, a fit and proper person to appear or act in proceedings under the Act and these rules.

(2) A person referred to sub-rule 1(b) shall not be eligible to appear before the Authority deciding the objection on behalf of a person for a period of one year after he has ceased to be an employee of the Department.

(3) A person who wishes to have his name entered in the list referred to in section 82(1)(c), shall

(a) apply to the Commissioner in writing;

(b) pay the fee as prescribed in Annexure 1 of these rules; and

(c) furnish with his application documentary evidence of his eligibility.

(4) The Commissioner shall maintain a list of all persons whose names are entered as per this rule.

(5) A Certificate in Form DVAT49 would be provided to each qualified value added tax practitioner.

11. Determination of specific questions (Section 84)

(1) If any determinable question arises, **otherwise than in proceedings before a court**, a person may apply in the prescribed manner **to the Commissioner** for the determination of that question.

(2) Subject to section 84(3), an application for the determination of a determinable question may be made in respect of a **proposed transaction**, a transaction that is being undertaken, **or a transaction that has been concluded**.

(3) An application for the determination of a determinable question **may not be made after**

(a) the Commissioner has commenced the audit of the person pursuant to section 58 of this Act; or

(b) the Commissioner has issued an assessment for the tax period in which the transaction that is the subject of the determinable question has occurred.

Explanation:- For the purposes of this subsection, the Commissioner shall be deemed to have commenced the audit of a person under section 58 of this Act when he serves a notice to this effect.

(4) For the purposes of this section, the following shall be the **determinable questions**:

(a) whether any person, society, club or association or any firm or any branch or department of any firm is or would be a dealer;

(b) whether any dealer is or would be required to be registered under this Act;

(c) the amount of the taxable quantum of a dealer for a period;

(d) whether a transaction is or would be a sale, or requires an adjustment to be made under section 8 of this Act arising out of a sale;

(e) whether a transaction is or would be in the nature of works contract, or transfer of right to use any goods;

(f) whether a sale is not liable to tax under section 7 of this Act;

(g) whether a sale is exempt from tax under section 6 of this Act;

(h) what is the sale price of a transaction;

(i) what is the proportion of the turnover or turnover of purchases of a dealer which arises in a tax period, and the time at which an adjustment to tax or tax credit arises;

(j) whether any transaction is or would be the import of goods;

(k) what is the value of any goods imported into Delhi;

(l) what is the rate of tax that is payable on a sale or import of goods and the classification of the goods under the Schedules;

(m) whether a transaction is the purchase of goods, or requires an adjustment to be made under section 10 of this Act arising out of a purchase;

(n) what is the amount of any tax credit to which the dealer is entitled in respect of a purchase or import of goods;

(o) what is the amount of any tax credit in respect of any used goods purchased by a dealer;

(p) what is the location of any sale or purchase;

(q) what is the application of a composition scheme in the circumstances of the dealer; or

(r) what is the tax period of a dealer.

(5) The Commissioner shall make the determination within such period as may be prescribed.

(6) Where –

(a) the Commissioner fails to make a determination under this section within the time prescribed under sub-section (5) of this section;

(b) the person thereafter implements the transaction which is the subject of the application and in the manner described in the application; and

(c) the person has, in the application for the determination of the determinable question, indicated the answer to the determinable question which the person believes to be correct (in this section called the "proposed determination"); the Commissioner shall be deemed for the purposes of this Act to have made and issued to the person on the day after the expiry of the prescribed period, a determination of the determinable question in the terms of the proposed determination.

(7) The Commissioner may

(a) direct that the determination shall not affect the liability of any person under this Act with respect to any transaction effected prior to the determination;

(b) limit the period for which the determination will apply;

(c) limit the transactions to which the determination will apply; and

(d) impose such other limitations or restrictions on the determination as seem appropriate.

(8) If any such question arises from any order already passed under this Act or under the Delhi Sales Tax Act, 1975 (43 of 1975) or the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) or the Delhi Tax on Entry of Motor Vehicles into Local areas Act, 1994 (Delhi Act 4 of 1995), as then in force in Delhi, no such question shall be entertained for determination under this section but such question may be raised in an objection or appeal against such order.

(9) Where

(a) the Commissioner has issued to a person a determination in respect of a particular transaction; and

(b) the person implements the transaction based on the determination issued to him under this section and in the manner described in the application; no assessment may be raised by the Commissioner against that person which is inconsistent with the determination and no penalty may be imposed on the person if the determination is later held incorrect.

(10) The Commissioner may, by notice served on the person, withdraw or qualify a determination issued under this section but such withdrawal or qualification shall not affect the entitlement of any person to rely on the determination with respect to any transaction or action which he has commenced or which he has completed prior to the withdrawal or qualification.

Manner of filing and disposal of application (Rule 58)

(1) Any person desiring that a question be determined by the Commissioner pursuant to section 84 shall furnish **a concise statement** of the case in form DVAT42 stating therein precisely the question to be determined, and indicating clearly the basis for the question. Where the person applying for the determination so desires, the statement may separately include a draft ruling for the Commissioner's consideration and shall be accompanied by a demand

draft of Rs. 500/- in favour of "The Commissioner Delhi Value Added Tax" towards the fee.

(2) The statement of the case referred to in sub-rule (l) shall contain a declaration that the question submitted for determination of the Commissioner does not arise from any order passed under the Act or under the Delhi Sales Tax Act, 1975 (43 of 1975), or the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999), or the Delhi Sales Tax on Right to Use Goods Act, 2002 (Delhi Act 13 of 2002), which were in force before the commencement of the Act and shall be signed by the person or his agent.

(3) The Commissioner, after considering all the relevant material produced before him in this connection, shall determine the question or questions referred to him.

(4) The decision of the Commissioner shall be prepared and notified to the applicant in writing.

(5) An order determining the questions shall be made by the Commissioner **within a period of six months** from the date of submission of the question, failing which, the provision of sub-section (6) of section 84 shall apply.

12. Ruling on general questions (Section 85)

(1) The Commissioner may, by notification in the official Gazette, publish his ruling on the answer to any question involving the interpretation of this Act or application of this Act to a class of persons or class of transactions.

(2) A ruling issued by the Commissioner under this section may be issued subject to such restrictions and conditions as the Commissioner may deem fit.

(3) The ruling shall be treated as coming into effect on the date stated in the ruling (which may be a date prior to the publication of the ruling) or, if no date is stated in the ruling, on the date of publication of the official Gazette.

(4) Where –

(a) the Commissioner has published a ruling in respect of a class of persons or transactions;

(b) a person implements a transaction or undertakes any action based on the ruling;

(c) the ruling has, at the time of implementing the transaction or undertaking the action, not been withdrawn by the Commissioner; and

(d) according to the terms of the ruling, the ruling purports to apply to the transaction or action undertaken by the person;

No assessment which is inconsistent with the ruling may be raised by the Commissioner against that person and no penalty may be imposed on the person if the ruling is later held incorrect. A person may rely on the Commissioner's ruling or on the determination made under section 84 of this Act.

(5) The Commissioner may, by notification published in the official Gazette, withdraw or qualify a ruling already issued under this section but such withdrawal or qualification shall not affect the entitlement of any person to rely on the ruling with respect to any transaction or action commenced or completed by him prior to such withdrawal or qualification.

13. Assessment proceedings, etc. not to be invalid on certain grounds

As per section 80,

1. No assessment, notice, summons or other proceedings made or issued or taken or purported to have been made or issued or taken in pursuance of any of the provisions of this Act or under the earlier law shall be invalid or shall be deemed to be invalid merely by reason of any mistake, defect or omission in such assessment, notice, summons or other proceedings, if such assessment, notice, summons or other proceedings are in substance and effect in conformity with or according to the intent and purposes of this Act or any earlier law.

2. The service of any notice, order or communication shall not be called in question if the said notice, order or communication, as the case may be, has already been acted upon by the dealer or person to whom it is issued or which service has not been called in question at or in the earliest proceedings commenced, continued or finalised pursuant to such notice, order or communication.

3. No assessment made under this Act shall be invalid merely on the ground that the action could also have been taken by any other authority under any other provisions of this Act.

As per rule 40,

(1) A summons shall be issued in Form DVAT28, requiring a person

    (a) to appear before the Commissioner;

    (b) to produce documents to the Commissioner; or

    (c) to appear before the Commissioner and produce documents

(2) The Commissioner shall serve summons under sub-rule (1) in the manner prescribed in rule 62(refer chapter audit)

14. Bar on suits in civil courts

No suit shall be brought in any civil court to set aside or modify any assessment made or any order passed under this Act or the rules made thereunder.

Chapter-16
Other Provisions

1. Dealer to declare the name of the manager of business, permanent account number and IEC (Import Export Code)

(a) Dealer to Declare name of the manager of business

Every dealer being a Hindu undivided family or an association of persons or club or society or firm or company or any person or body who is engaged in business as the guardian or trustee or otherwise on behalf of another person, and who is liable to pay tax under this Act, shall, at the time of application for registration, furnish a declaration in Form DVAT04, stating the name of the person or persons who shall be deemed to be the manager or managers of such person's business for the purposes of this Act.

Where there is any change in the person or persons named in Form DVAT04 as manager or managers of business on account of death or otherwise, the registered dealer or his legal representative, as the case may be, shall inform the Commissioner within thirty days from the date of such change in Form DVAT07 and also provide the name of the person or persons who shall be manager or managers thereafter.

(b) Dealer to declare Permanent account number (PAN)

Every dealer at the time of applying for registration under this Act shall mention the Permanent Account Number (PAN) obtained under the Income Tax Act, 1961. The dealers already registered under the Act shall intimate the Permanent Account Number (PAN) obtained under the Income Tax Act, 1961 in the Form DVAT52, within two months of notification of the amendment.

(c) Dealer to declare import export code (IEC)

Every dealer liable to pay tax under this Act and having an IEC (Importer Exporter Code) under the Foreign Trade (Development and Regulation) Act, 1992 shall mention the IEC (Importer Exporter Code), at the time of applying for registration under this Act,

However, dealers already registered under the Act and having IEC (Importer Exporter Code) under the Foreign Trade (Development and Regulation) Act, 1992 shall intimate the details in the prescribed form, within two months of the notification of this amendment.

FURTHER, every dealer registered under the Act, who obtains an IEC (Importer Exporter Code) under the Foreign Trade (Development and Regulation) Act, 1992, shall provide the IEC details in the Form DVAT52, within 15 days of obtaining the IEC.

(d) Penalty for non-submission of declaration of name of the manager of business, PAN and IEC

Any person who fails to furnish a declaration of the name of the manager of his business or fails to provide details of the Permanent Account Number obtained under the Income Tax Act, 1961 or fails to provide the IEC (Importer Exporter Code) under The Foreign Trade (Development And Regulation) Act, 1992 (No. 22 of 1992) shall be liable to pay, by way of penalty, a sum of equal to Rs. 1000/- per week of default, subject to a maximum of Rs. 50000/-

2. Service of notice when a family is disrupted or a firm is dissolved

Where a Hindu undivided family has been partitioned, notices under this Act shall be served on the person who was the last manager of the Hindu undivided family, or if such person cannot be found, then, on all adults who were members of the Hindu undivided family, immediately before the partition.

Where a firm or an association of persons is dissolved, notices under this Act may be served on any person who was a partner (not being a minor) of the firm, or a member of the association, as the case may be, immediately before its dissolution.

3. Service of notice in the case of discontinued business

Where an assessment is to be made in respect of business which has been discontinued, a notice under this Act shall be served in the case of a firm or an association of persons or any person who was a member of such firm or

association at the time of its discontinuance or in the case of a company on the principal officer thereof.

4. Confidentially of Returns and other documents, etc. (Section 98)

(1) All particulars contained in any statement made, return furnished or accounts or documents produced in accordance with this Act, or in any record of evidence given in the course of any proceedings under this Act, other than proceedings before a criminal court, shall, save as provided in section 98(3), be treated as confidential, and notwithstanding anything contained in the Indian Evidence Act, 1872, no court shall, save as aforesaid, be entitled to require any servant of the Government to produce before it any such statement, return, account, document or record or any part thereof, or to give evidence before it in respect thereof.

(2) If, save as provided in section 98(3), **any servant of the Government discloses any particulars referred to in section 98(1)**, he shall be punishable with **imprisonment which may extend to six months, and shall also be liable to fine**.

(3) Nothing in this section shall apply to the disclosure

(a) of any particulars referred to in sub-section (1) of this section for the purposes of investigation or prosecution under this Act or the Indian Penal Code 1860 or any other enactment for the time being in force;

(b) of such facts to an officer of the Central Government or any State Government as may be necessary for verification of such facts or for the purposes of enabling that Government to levy or realize any tax imposed by it;

(c) of any such particulars where such disclosure is occasioned by the lawful employment under this Act of any process for the service of any notice or the recovery of any demand;

(d) of any such particulars to a civil court in any suit or proceeding to which the Government or any Value Added Tax authority is a party and which relates to any matter arising out of any proceeding under this Act or under any other law for the time being in force

authorizing any Value Added Tax authority to exercise any powers thereunder;

(e) of any such particulars by any public servant where the disclosure is occasioned by the lawful exercise by him of his powers under the Indian Stamp Act, 1899 to impound an insufficiently stamped document;

(f) of any such particulars to the Reserve Bank of India as are required by that Bank to enable it to compile financial statistics of international investment and balance of payment;

(g) of any such particulars to any officer appointed by the Comptroller and Auditor General of India for the purpose of audit of tax receipts or refunds;

(h) of any such particulars relevant to any inquiry into a charge of misconduct in connection with income-tax proceedings against a legal practitioner or chartered accountant, to the authority empowered to take disciplinary action against members of the profession to which he belongs;

(i) of such particulars to the officers of the Central Government or any State Government for such other purposes, as the Government may, by general or special order, direct; or

(j) of any information relating to a class of dealers or class of transactions, if, in the opinion of the Commissioner it is desirable in the public interest to publish such information.

5. Publication and disclosure of information in respect of dealers and other persons in public interest (Section 99)

1. Notwithstanding anything contained in this Act, if the Government is of the opinion that it is necessary or expedient in the public interest to publish or disclose the names of any dealers or any other persons and any other particulars relating to any proceedings under this Act in respect of such dealers and persons, it may publish or disclose or cause to be published or disclosed such names and particulars in such manner as it thinks fit.

2. No publication or disclosure under this section shall be made in relation to any tax levied or penalty imposed or interest levied or any conviction for any offence connected with any proceeding under this Act, until the time for presenting an appeal to the appropriate appellate body has expired without an appeal having been presented or the appeal, if presented, has been disposed of.

   However, In the case of a firm, company or any other association of persons, the names of the partners of the firm, the directors, managing agents, secretaries, treasurers or managers of the company or the members of the association, as the case may be, may also be published or disclosed, if, in the opinion of the Government, the circumstances of the case justify it.

6. Power to collect Statistics (Section 100)

1. If the Commissioner considers that for the purposes of the better administration of this Act it is necessary, he may, by notification in the Official Gazette, direct that statistics be collected relating to any matter dealt with in this Act.

2. Upon such direction being made, the Commissioner or any person or persons authorized by him in this behalf may call upon all dealers or any class of dealers or persons to furnish such information or statements as may be stated therein relating to any matter in respect of which statistics are to be collected and the form in which the persons to whom or, the authorities to which, such information or returns should be furnished, the particulars which they should contain, and the intervals in which such information or returns should be furnished, shall be such as may be prescribed

   However, the call for information may be made by notification in the official Gazette, by notice in newspapers or in such other manner as, in the opinion of the Commissioner or the said person, is best calculated to bring to the attention of dealers and other persons.

3. Without prejudice to the generality of the foregoing provisions, the Government may by rules provide that every dealer or, as the case may be, any class of dealers shall furnish such statements as defined in Rule 67, with their self-assessment, and different provisions may be made for different classes of dealers.

Other returns and additional information for proper administration of the act.

Rule 67: Every transporter, cold storage or warehouse operator, or any other person shall produce such information as is required for the proper administration of the Act.

Where, upon the commencement of the Act, a person who is deemed to have been registered under the Act pursuant to section 24, shall furnish a statement of opening stock held by him and that has not suffered tax under Delhi Sales Tax Act, 1975 in Form DVAT18A along with his first return to be filed in Form DVAT16.

7. Automation (Section 100A)

1. The Government may, by notification in the official Gazette, provide that the provisions contained in the Information Technology Act, 2000, as amended from time to time, and the rules made and directions given under that Act, including the provisions relating to digital signatures, electronic governance, attributation, acknowledgement and dispatch of electronic records, secure electronic records and secure digital signatures and digital signature certificates specified in the said notification, shall, insofar as they may, as far as feasible, apply to the procedures under this Act.

2. Where a notice or communication is prepared on any automated data processing system and is properly served on any dealer or person, then, the said notice or communication shall not be required to be personally signed by the Commissioner or any other officer subordinate to him, and the said notice or communication shall not be deemed to be invalid only on the ground that it is not personally signed by the Commissioner.

8. Setting up of Check-post and barriers (Section 101)

The Government may, by notification in the official Gazette, set up check posts or barriers, or both, at any place in Delhi with a view to preventing evasion of tax and other dues payable under this Act.

9. Power to make rules (Section 102)

(1) The Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for :

- (a) documents, testimony or other evidence constituting adequate proof under the Act,
- (b) services which may constitute business under clause (i) of sub-clause (d) of sub-section (1) of section 2 of this Act,
- (c) activities referred to under clause (ii) of sub-clause (j) of sub-section (1) of section 2 of this Act,
- (d) the tax period referred to under sub-clause (zi) of sub-section (1) of section 2 of this Act,
- (e) the time within which the return may be furnished,
- (f) the further period referred to under sub-section (6) of section 3 of this Act,
- (g) the conditions and method subject to which the amount to be included in the turnover of a dealer engaged in works contract under section 5 of this Act,
- (h) conditions subject to which the dealers specified under the Fifth Schedule may be exempt from payment of tax under section 6 of this Act,
- (ha) the conditions subject to which a dealer can make adjustments to tax in relation to the sale of goods under section 8 of this Act;
- (i) the method to be used by a dealer to calculate the amount of tax credit under section 9 or section 10 of this Act,
- (j) the time at which the turnover, turnover of purchase or adjustment of tax or tax credit may arise under section 12(4) of this Act,
- (k) the form of statements, manner, conditions and restriction subject to which credit may be claimed for stock brought forward during transition under section 14 of this Act,

(l) the circumstances and the conditions subject to which, a dealer may be permitted to pay tax by way of composition under section 16 of this Act,

(la) the procedure and forms relating to casual dealers under section 16A of this Act ;

(m) the procedure for and other matters incidental to the registration of dealers under section 19 of this Act,

(n) form in which the statement of trading stock is to be furnished under subsection (2) of section 20 of this Act,

(o) the amount of tax credit allowed to a dealer under sub-section (3) of section 20 of this Act,

(p) matters relating to amendment of registration certificate under section 21 of this Act,

(q) matters relating to cancellation of registration certificate under section 22 of this Act,

(r) the conditions, amount, manner, time within which and other matters incidental to the security required under section 25 of this Act,

(s) the manner in which, and the time by which, , the information to be included and the form in which the returns under section 26 or section 27 of this Act are to be furnished,

(t) the manner in which any tax, interest, penalty or any other amount due under this Act is to be paid,

(u) the restrictions and conditions subject to which and the manner and the time within which the application for refund may be made under section 41 of this Act,

(ua) the manner and the form in which the recovery certificate under section 43 of this Act is to be served and the amount mentioned in the said certificate is to be recovered;

(v) the manner and form in which the accounts and records are to be prepared under section 48(3) of this Act,

(w) the turnover, the form of the audit report, the particulars to be set forth in such report and the time of furnishing such report under section 49 of this Act,

(x) the amount referred to in section 50(4) or the conditions and restrictions referred to in section 50(8) of this Act,

(y) the particulars to be contained in the debit or credit notes under section 51 of this Act,

(z) the conditions subject to which the Commissioner may require any person to produce records, books of account, registers and other documents, answer questions or prepare and furnish additional information under section 59(2) of this Act,

(za) records that an owner or person in charge of a goods vehicle shall carry with him in respect of the goods carried in the goods vehicle under section 61(2) of this Act and the form, manner and amount of security under section 61(5) of this Act,

(zb) the manner in which auction of goods or a goods vehicle shall be carried out under section 63 of this Act,

(zc) the restrictions and conditions subject to which the Commissioner may delegate his powers, and the form of evidence of such delegation under section 68 of this Act,

(zd) ~~deleted~~

(ze) the form and manner in which an objection under section 74 of this Act or an application for review under section 74B of this Act may be filed and the fee payable in respect thereof,

(zf) the form and manner in which appeals may be filed under section 76 of this Act, the manner in which such appeals shall be verified and the fee payable in respect thereof,

(zg) the amount of fee under section 81 of this Act,

(zh) the qualifications of a Value Added Tax practitioner under section 82 of this Act,

(zi) the manner in which an application may be made and the period within which the determination shall be made under section 84 of this Act,

(zj) the conditions subject to which the Commissioner may authorise any officer or person subordinate to him to conduct investigations under section 92 of this Act,

(zk) the period within which and the manner in which [2][the declaration or the communication under section 95 of this Act is to be furnished,

(zl) the manner in which, and the time within which, applications shall be made (including fees payable in respect thereof), information furnished, securities given and notices served under this Act,

(zm) any other matter which is required to be, or may be, prescribed.

(2A) Without prejudice to any provision made in this behalf, any rule made under this Act may be made so as to be retrospective to any date not earlier than the date of commencement of this Act. However, no rule shall be given effect retrospectively if it would have the effect of prejudicially affecting the interests of a dealer.

(3) In making any rules under this section, the Government may direct that a breach thereof shall be punishable with fine not exceeding five thousand rupees and, when the offence is a continuing one, with a fine not exceeding two hundred rupees per day during the continuance of such offence.

(4) Every rule made under this Act shall be laid, soon after it is made, before the Legislative Assembly of Delhi, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, the House agrees in making any modification in the rule or the House agrees that the rule should not be made, the rule shall have effect only in such modified form or be of no affect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Power to prescribe Acknowledgment (Rule 67A)

The Commissioner may prescribe the mode of acknowledgment for applications/ returns filed by the dealer online, in lieu of hard copy of such applications/ returns.

10. Power to amend Schedules (Section 103)

If the Government is of the opinion that it is in the interest of the general public to do so, it may, by notification in the Official Gazette, add to, or omit from, or otherwise amend, the First, the Second, the Third, the Fourth, the Fifth, the Sixth, or the Seventh Schedules, thereupon the said Schedules shall be deemed to have been amended accordingly.

However, no such amendment shall be made retrospectively if it will have the effect of prejudicially affecting the interests of a dealer.

The Commissioner may, on the recommendation of the Ministry of External Affairs, Government of India, if he is of opinion that it is in the interest of general public to do so, by a notification in the Official Gazette, add to, or omit from, or otherwise amend, the Sixth Schedule.

11. Power to remove difficulties (Section 104)

1. If any difficulty arises in giving effect to the provisions of this Act, the Government may, by general or special order published in the official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for the removal of the difficulty:

   PROVIDED that no such order shall be made after the expiration of two years from the commencement of this Act.

2. Every order made under sub-section (1) of this section shall be laid, as soon as may be after it is made, before the Legislative Assembly of Delhi.

12. Application to sales and purchases(Section 105)

(1) The tax imposed by section 3 of this Act applies to every

   (a) sale, including instalment sale and hire purchase of goods, made on and after 1st April, 2005;

   (b) sale in the form of the transfer of the right to use goods, to the extent that this right is exercised after 1st April, 2005.

(2) Tax credit arising under section 9 of this Act shall be allowed only for–

(a) a purchase, including a purchase under an instalment sale and hire purchase of goods, made on and after 1st April, 2005; and

(b) a purchase occurring in the form of the acquisition of the right to use goods, to the extent that this right is exercised after 1st April 2005.

However, aforesaid provision does not prevent a person from claiming the special tax credit allowed under section 14 of this Act.

(3) Where an amount is paid or received prior to 1st April, 2005 in respect of a sale or purchase occurring after 1st April, 2005, and the person calculates his turnover or turnover of purchases based on amounts paid and received, the amount shall be treated as forming part of the person's turnover or turnover of purchases in the tax period in which the sale occurs.

(4) Where a dealer registered under the repealed Delhi Sales Tax on Works Contract Act, 1999 (hereinafter referred to in this subsection as "the repealed Act"), is liable to pay tax under this Act, and has at any time prior to the 1st day of April, 2005 entered into any works contract, where the total contract value was inclusive of the tax payable under the repealed Act, and the execution of the said work contract has continued after the 1st day of April, 2005, then the liability of the dealer to pay tax under this Act shall be discharged at the rates applicable under this Act, and the liability so discharged in respect of the said contract shall not exceed the liability which would have accrued under the repealed Act if it had continued to be in force and in the case of a dealer who had opted for composition of tax under the repealed Act, the liability under this Act in respect of a contract where the execution has started before the 1st day of April, 2005 and has continued thereafter shall not exceed the sum which would have been payable by way of composition in respect of the said contract under the repealed Act if it had continued to be in force:

PROVIDED that the provisions of this subsection shall be valid up to the 31st day of March, 2007.

PROVIDED FURTHER that the provisions of this subsection shall not apply where the contract value has been changed on account of increased liability under this Act.

PROVIDED ALSO that the provisions of this subsection shall apply only if there was no provision in the contract for revising the value of the contract on account of the change of tax liability.

Discharge of liability in respect of a continuing works contract (Rule 30A)

(1) A dealer, registered under the Delhi Sales Tax on Works Contract Act, 1999 (Delhi Act 9 of 1999) (hereinafter referred to in this section as "the repealed Act"), who is eligible and liable to discharge his tax liability under the Act in accordance with the provisions of section 105(4), shall furnish the details of all partly executed contracts as on 31st March, 2005 to the Commissioner, in a statement in Form DVAT 53 along with his first return due to be filed after the notification of the Delhi Value Added Tax (Fifth Amendment) Rules, 2005 along with the documents and information as specified in the said Form DVAT 53 and he shall compute his tax liability in the manner as given in the statement in Form DVAT 54.

PROVIDED that where a dealer fails to furnish a statement in Form DVAT 53, complete in all respects, within the time so prescribed, his liability to pay tax shall not be discharged in accordance with the provisions of section 105(4) and he shall be liable to pay tax at the rates specified in section 4.

(2) The dealer who is eligible and liable to discharge his tax liability under the Act in accordance with the provisions of section 105(4) and has submitted the statement in Form DVAT 53 in accordance with the provisions of sub-rule (1), he shall furnish information in Form DVAT 54 along with his return in Form DVAT16 for each and every tax period ending up to 31st March 2007:

PROVIDED that a return furnished for any tax period in the absence of duly filled in, signed and completed Form DVAT 54 shall be treated as invalid and incorrect.

13. Repeal and savings (Section 106)

(1) The Delhi Sales Tax Act, 1975, the Delhi Tax on Entry of Motor Vehicles into Local Areas Act, 1994, the Delhi Sales Tax on Works Contract Act, 1999, and the Delhi Sales Tax on Right to Use Goods

Act, 2002as in force in Delhi (referred to in this section as the "said Acts"), are hereby repealed.

(2) Notwithstanding subsection (1) of this section, such repeal shall not affect the previous operation of the said Acts or any right, title, entitlement, obligation or liability already acquired, accrued or incurred thereunder.

(3) For the purposes of subsection (2) of this section, anything done or any action taken including any appointment, notification, notice, order, rule, form or certificate in the exercise of any powers conferred by or under the said Acts shall be deemed to have been done or taken in the exercise of the powers conferred by or under this Act, as if this Act were in force on the date on which such thing was done or action was taken, and all arrears of tax and other amounts due at the commencement of this Act may be recovered as if they had accrued under this Act.

(4) Notwithstanding anything contained in this Act, for the purpose of levy, assessment, deemed assessment, reassessment, appeal, revision, review, rectification, reference, registration, collection, refund or input or credit of input tax of allowing benefit of exemption or deferment of tax, imposition of any penalty or of interest or forfeiture of any sum, which relates to any period ending before 1st day of April, 2005 or for any other purpose whatsoever connected with or incidental to any of the purposes aforesaid, and whether or not the tax, penalty, interest or sum forfeited, if any, in relation to such proceedings, is paid before, on or after 1st day of April, 2005, the repealed Act and all rules, regulations, orders, notifications, forms and notices issued thereunder and in force immediately before 1st day of April, 2005 shall continue to have effect as if this Act has not been passed.

As per Rule 68,

(1) The Delhi Sales Tax Rules, 1975, the Delhi Sales Tax on Works Contracts Rules, 1999, the Delhi Tax on Entry of Motor Vehicles into Local Areas Rules, 1995 and The Delhi Sales Tax on Right to Use Goods Rules, 2004 as in force in Delhi (referred to in this rule as the "said rules"), are hereby repealed.

(2) Notwithstanding sub-rule (1), such repeal shall not affect the previous operation of the said rules or any right, title, obligation or liability already acquired, accrued or incurred thereunder.

For the purposes of sub-rule (2), anything done or any action taken including any appointment, notification, notice, order, rule, form or certificate in the exercise of any powers conferred by or under the said rules shall be deemed to have been done or taken in exercise of the powers conferred by or under these rules, as if these rules.

Chapter-17
Capital Goods

Definition *[Section 2(1)(f)]*

Capital Goods means plant, machinery and equipment used, **directly or indirectly**, in the process of trade or manufacturing or for the execution of works contract in Delhi.

Taxability of Capital Goods

The sale of capital goods is subject to tax at the rates specified in the schedules for goods, unless exempted under section 6(3) of the Act or adjustment from the output tax under section 8(3).

Tax credit on the purchase of capital goods (except for non- creditable goods listed in schedule-VII as explained later.

Exemption on the Sale of Capital Goods *[Section 6(3)]*

If a dealer sells capital goods

(a) which have been used by him exclusively for making *non- taxed sale* of goods, and

(b) *input tax credit* has *not* been claimed by him in respect of such capital goods under section 9,

then the sale of such capital goods shall be exempted from tax.

In a recent HC judgment, the issue raised was "Whether the Appellate Tribunal, Value Added Tax, Delhi was right in holding that the sale of motor cars or other capital assets are not exempt under Section 6(3) of the Delhi Value Added Tax Act, 2004"

Honorable Mr. Justice Sanjeev Khanna held that sale of capital assets is not taxable under Section 6(3) of DVAT Act, 2004.

Tax Credit on capital Goods *[Section 9(9)]*

Input tax credit in respect of capital goods shall be allowed as described under:

(i) 1/3rd of the input tax arising in the tax period, in the same tax period.

(ii) Balance 2/3rd such input tax in, equal proportions, in corresponding tax period, in two immediately successive financial year.

(iii) No tax credit shall be allowed if capital goods have been purchased from an unregistered dealer.

(iv) No tax credit shall be allowed in case of purchase of non-creditable goods specified under schedule VII

(v) No tax credit shall be allowed, if capital goods have been purchased from a dealer who has elected to pay tax under section 16 of the DVAT Act. If the capital goods are purchased from a casual dealer, no ITC will be allowed in respect of such purchases.

(vi) From the dealers or class of dealers as specified in the schedule V except entry no 1 of the said schedule, i.e., CSD stores.

(vii) Again, no ITC will be allowed for the purchase of goods which are to be incorporated into the structure of a building owned or occupied by the person. However, this section does not prevent an ITC on goods that are purchased either for resale or in an unmodified form, or for the execution of a works contract on a building owned or occupied by another.

Adjustments in input tax at the time of sale of capital goods:

If a dealer has sold capital goods before claiming the eligible tax credit on them, the tax credit to be claimed shall be calculated in the manner given below:

(i) Calculate the output tax payable on sale of capital goods;

(ii) Determine the amount of unclaimed tax credit on such capital goods;

(iii) If the output tax payable as calculated in (i) is more than the amount of tax credit available as per (ii), the difference is to be paid by the dealer in that tax period; and

(iv) If the input tax credit is more than the amount of output tax payable, the difference is to be claimed by him in that particular tax period.

Adjustments in input tax at the time of transfer of capital goods to another state before the expiry of 3 years

If any capital goods purchased by a dealer have been transferred by him to another state, otherwise than or except by sale before the expiry of three years, he shall reduce the amount of input tax credit by the prescribed percentage of the purchase price of such capital goods and make necessary adjustments in the ITC in that particular tax period in which the capital goods have been transferred.

Reversal in the case of transfer of capital goods before the expiry of 5 Years

If capital goods are transferred to any other person *otherwise than by way of sale at its fair market value*, before the expiry of five years from the date of its purchase, then the input tax credit claimed in respect of such purchase shall be reversed in that particular tax period of its sale.

No input tax is allowed on the amount of Vat under DVAT-2004 [Sec 9(9)(a)] if the dealer has claimed or claims the depreciation on Vat amount. Similar provisions also exist in Income Tax Act 1961.

Capital Goods partly used for purposes specified under section 9(1)

If the capital goods purchased are to be used partly for the purpose of making sales as referred under section 9(1) and partly for other purposes (like manufacturing of exempted goods or using in non-taxable activities), the amount of tax credit in relation to such capital goods shall be reduced proportionately.

As Per Section 9(11), the goods which are covered under section 2(2c) clause (vi), ¼th tax credit will be available in first year and balance 3/4th tax credit on capital goods shall be allowed, in equal proportions, in the corresponding tax periods in two immediately successive financial year.

Chapter-18
Composition Scheme

Composition Scheme for Specified Dealers

[Section 16 of the DVAT Act]: Section 16(1) gives overriding effect to the composition scheme over other provisions of the Act. Moreover, composition schemes have been held to be constitutionally valid by the judgment of Apex court in the case of State of Kerala vs. Builders Association of India (1994) 104 STC 134 (SC).

Section 16(12) of the DVAT Act 2004 empowers the government to notify the composition scheme.

	Activities of the Dealers	**Rate of Tax**
A	Registered dealers engaged in the works contract exclusively: Comprehensive composition scheme, covering all types of works contract activities (No turnover limit) **(effective from 01.04.2013)**	1% to 6% of the entire turnover (depending upon the nature of activity and the manner of purchases)
B	Registered dealers engaged exclusively in the trading of drugs and medicines whose turnover in the current year does not exceed Rs. 1 Crore (w.e.f. 01.02.2006)	1% of the entire turnover
C	Registered dealers engaged exclusively in the trading of bullion (No turnover limit) w.e.f. 01.05.2006)	0.1% of the entire turnover

As per section 16(6), the Commissioner may notify a dealer or a class of dealers who shall not be entitled to opt for payment of the composition tax u/s 16(1).

General Conditions

(a) Applicability of other provisions of the Act and Rules

All provisions of the Act and rules made there under, which are not contrary to this scheme, shall apply to every dealer opting to pay tax under this scheme.

(b) Manner of issue of retail invoice

The dealers who have opted for composition scheme can issue retail invoice only, and not the tax invoice.

Further, it has been made mandatory for the composition dealers to clearly endorse, at the top of the invoice, the words, **'Composition Dealer (Not eligible to charge VAT on Bill Amount)'. [Rule 44A]**

Upto 11.7.2013, composition dealers were required to endorse the words "Composition dealer, VAT not to be charged" in bold letters below the space provided for indicating the total amount payable on their Retail Invoices/Cash Memos/Bills.

(c) Composition dealers have to file a return in Form No. DVAT-17.

General composition scheme for all dealers

[Section 16(1) to 16(11) of the DVAT Act]

Rate of tax & meaning of "turnover" for general composition scheme

Effective date	Nature of dealers	Rate of tax u/s 16(4)
1.4.2005	All dealers (other than the dealers for whom notification has been issued u/s 16(12) – w.e.f. 1.4.2013)	1% of the turnover

This scheme is applicable to all dealers whose turnover in the preceding year did not exceed 50 lacs and who are not engaged

- Exclusively in works contract transactions
- In trading of bullion
- In trading drugs and medicines

The term "turnover" will not include that consideration which is outside the purview of DVAT Act, e.g., consideration received from purely labour or purely service contracts.

A question also arises: "Can the transactions, which are exempted under the State Statute, be taxed under a composition scheme?" In this regard, the following observations of the Supreme Court in the case of State of Kerala vs. Builders Association of India relating to taxing turnover in the course of inter-state and commerce under the Works Contract Act are important: -

"It is true that the goods transferred in the course of execution of the works contract may be chargeable at different rates under different Schedules appended to the Act; it may also be that some of them are 'declared goods', the levy of tax upon which is subject to certain restrictions specified under sections 14 and 15 of the CST Act; **it may also be that sale of some of the goods are subject to Central sales tax.** It must yet be remembered that the alternative method of taxation is in the nature of composition of tax payable, which has evolved a convenient, hassle-free and simple method of assessment. It is not necessary to enquire and determine in the course of execution of a works contract, the rate applicable to them and so on. It is only an alternative method of ascertaining the tax payable, which may be availed of by a contractor if he thinks it advantageous to him."

Features of the General Composition Scheme

Composition scheme for works contractors u/s 16(12)

The Government has notified a new comprehensive composition scheme covering all type of works contracts activities effective from 1.4.2013, which was amended w.e.f. 01.10.2013. The term "composition dealer" means a contractor, or as the case may be, a sub-contractor, who has opted for the composition scheme. The features of the Scheme are as under:

	With effect from 1.04.2013 (modified w.e.f. 1.10.2013)
(a) Eligibility	Registered dealers engaged exclusively in carrying out works contracts in Delhi (all types of works contract are covered in this scheme).
(b) Turnover Limits	No Limits

(c) Rate of tax	Nature of the works contract	Sch.A	Sch.B
	I) Category 2:- Construction of complex, building, a civil structure or a part thereof, including residential unit or complex or building, for sale whether wholly or partly, to a buyer before construction is complete, where value of the land is included in total consideration. (Excluding contracts where entire consideration is received by the competent authority.)	1%	3%
	II) Category 3:- (i) Printing and/or book-binding. (ii) Textile processing, such as dying, fabrication, tailoring, embroidery and other similar activities. (iii) Electro plating, electro galvanizing, anodizing, powder coating and other similar activities. (iv) Re-treading of old tyres.	2%	3%
	III) Category 1: All other works contracts Composition tax shall be the percentage of the entire turnover in relation to works contracts in Delhi.	3%	6%
	Note 1: A dealer, who opts to pay composition tax and **executes different types of works contracts** which are liable to tax at different rates under this notification, shall pay tax according to the rate applicable to each of such contracts. **Note 2:** The dealer shall be **eligible to opt for only one Scheme,** that is either Scheme "A" or Scheme "B", for all categories of works contract to be		

	executed by him in a financial year. **Note 3 – Shifting of option:** A dealer who is paying tax in scheme "B" under composition may opt scheme "A" (and vice-versa) by filing an application to this effect in form WC01 within a period of 30 days from the 1st day of the year for that year with effect from which he opts to change the scheme (or by 31.10.2013 for the last two quarters of the year 2013-14). **Note 4:** (a) The term "**Turnover"** means Total consideration, received or receivable by the dealer under the contract for transfer of property in goods (whether as goods or in some other form) involved in the execution of the contract together with the charges for labour, services and other like charges. (b) In relation to the complex construction category at serial No.1 above, "Turnover" shall include, in addition to clause (a) above, the value of land also. **Note 5:** The term **"sub-contractor"** means any person who has been awarded a works contract by the main contractor, or the sub-contractor, as the case may be.
(d) Restrictions during the composition period **- Inter-State Business**	**Scheme A:** He shall (i) not purchase or procure goods from any place outside Delhi at any time during the period for which he opts to avail this Scheme; and (ii) not sell or supply goods to any place outside Delhi at any time during the period for which he opts to avail this Scheme. However, he may procure his own plant and machinery and equipment from outside Delhi, meant exclusively for use in the execution of the works contract by him. **Scheme B:** He shall be entitled to make purchases of goods required for the execution of the contract in the course of inter-State trade or commerce on the strength of his certificate of registration against

	declaration in Form C or by way of inward transfer of stocks from other States against Form F or by way of imports from other countries solely for the purpose of utilizing the same in the execution of works contract in Delhi only. However, the dealer shall use the material/goods imported or procured from outside Delhi strictly for use in the execution of the works contract transactions.
- Purchase from unregistered dealers	He shall not purchase or procure goods, other than those specified in Schedule I appended to the Act, within Delhi, from a person who is registered under the Act, except to the extent of [5%] of his total purchase turnover during the year or [Rs. 50 lakhs], whichever is lower.
- Tax Credit	Not be eligible to claim tax credit u/s 9, 14 & 15 of the Act
- Computation of Tax.	Not to compute his net tax u/s 11 of the Act.
- Issue of the Invoice.	Not be entitled to issue 'Tax Invoice'. He shall issue only Retail Invoices, as per provisions of the Act and the Rules.
- Collection of Tax.	Not to collect any amount by way of tax under the Act.
- Maintenance Record	(i) He shall continue to retain the originals of all tax invoices and all the retail invoices for all his purchases and copies of all retail invoices issued by him as required u/s 48 of the Act. (ii) He shall maintain separate records of all the purchases made within Delhi or in the course of inter-State trade or commerce and by way of transfer of stock or from outside India.
- Restriction on Refund	He shall not be entitled to refund before his assessment has been made u/s 32 of the Act.
(e) Composition period	
- New Registration	From the date of registration till the date of withdrawal or till the default in furnishing of returns. From 1st April of any year till the date of withdrawal or

- Existing Registration	till the default in furnishing of returns
(f) Application - New Registration - Already registered & paying tax at normal rates u/s 3	- By filing an application for composition in Form WC 01 (online) along with application for registration in DVAT04. - By filing an application for composition in Form WC 01 up to 30th April of the year for which composition is opted. (e.g., application for the year 2013-14 shall be filed up to 30.4.2013) - Dealers who had opted for composition scheme under notification dated 17.3.2006 could also opt for new composition scheme effective from 1.4.2013 by filing an application in WC01 up to 30.04.2013. - Dealers who were paying tax on 30.9.2013 either as normal dealers or under the composition scheme, may opt for this scheme (notified w.e.f. 1.10.2013) from the third quarter of 2013-14 by filing an application in Form WC 01. - A dealer who is paying tax in scheme "B" under composition may opt for scheme "A" (and vice-versa) by filing an application to this effect in form WC01 within a period of 30 days from the 1st day of the year of that year with effect from the time he opts to change the scheme (or by 31.10.2013 for the last two quarters of the year 2013-14).] - No need to file application again for the subsequent years.
(g) Tax on opening stock - By the dealers already registered &paying tax u/s 3 of the Act (i.e., at normal rates)	— Pay tax on entire opening stock of goods held by the electing dealers on the first day of the period with effect from which the dealer opts to pay the tax under this Scheme. — A dealer who changes from scheme "B" to scheme "A" shall be required to pay tax at the rate specified in section 4 of the Act, on the entire opening stock of goods held by him on the

	first day of the year with effect from the time the dealer opts to change the scheme (or on the 1.10.2013 for the year 2013-14). However, if the dealer has, as per Form DVAT-16 filed by the dealer, certain amount of tax to his credit at the end of the previous financial year (or at the end of the second quarter of the year 2013-14), he shall be entitled to adjust the amount payable as per SS-01 with the said tax amount at his credit. After the said adjustment, if the dealer is still left with some tax amount at his credit, he may, at his option, either claim refund of the remaining amount or carry forward the same to subsequent tax periods.
- Tax Rate - Payment & manner of filing information	As specified under section 4 of the DVAT Act. Along with the application for electing composition scheme furnish the details of such stock and the payment of tax thereon in Form SS 01 along with the copy of challan in proof of payment of tax in DVAT 20, if any.
(h) Tax Period	Quarter
(i) Payment of Tax	Within 21 days of the end of the month
(j) Withdrawal from Scheme	
- Optional - Tax credit on stock as on day of withdrawal	From 1st April of the following year; Cannot be withdrawn at any time during the year, Inform in WC-02 up to 30th April of that year. Such dealers can claim input tax credit on the opening stock, subject to the conditions contained u/s 20 and other conditions.
- Mandatory - Default in furnishing of returns	Failed to furnish VAT Return for two consecutive tax periods by the prescribed due date for the later tax period.

For other details, refer Notification No. 3(13)/ Fin. (Rev-I)/ 2012-13/ dsvi/ 180 dated 28.2.2013 w.e.f. 1.4.2013 as modified vide No. 3(5)/Fin. (Rev-I) 2013-14/ dsvi/801 dated 30.9.2013 w.e.f. 1.10.2013.

Category 1 in the Table of the Notification

Category 1 in the Table in the Notification prescribes composition rate of 3% of the entire turnover under Scheme A and6% under Scheme B. Category 1 comprises the following categories and incidental or ancillary activities in connection with or thereto:

(A) Civil Contracts, such as,

(i) Civil construction, improvement, modification, repair and maintenance electrification, sanitary fittings, flooring, plastering, finishing, white washing, painting, polishing, interior decoration, etc. of any immovable property, including a building or a complex - residential or commercial.

(ii) Water works and Sewerage works, including treatment plants, whether meant for individual houses/buildings/complexes or for general public.

(iii) Fabrication & fixing of shutters, doors, gates, windows, grills, furniture, fixtures, fitting outs, and other similar contracts.

(iv) Procurement, erection, fabrication, installation and commissioning of any plant, machinery, equipment, transformers, lifts, elevators, escalators, weighing machines, air conditioners, air coolers, fire-fighting systems, audio-visual systems, security systems, computer systems, EPABX telecommunication system and other similar contracts.

(v) Construction and maintenance of Civil works, such as,

- Green houses and other similar structures.
- Swimming pools.
- Bridges, flyovers, dams, barriers, diversions, or other similar structures.
- Canals, spillways or other similar activities.
- Roads, causeways, subways, or other similar contracts.
- Rail, railway over bridges or other similar activities.

(vi) Any other contract for civil construction and maintenance as may be notified by the Commissioner.

(B) Repair and maintenance of any moveable property, including vehicles, annual maintenance contracts **(AMCs)** and other similar contracts.

(C) All other types of works contracts, including those involving moveable goods, not specified elsewhere in this notification.

It is pertinent to mention that residual category [at Sl. No. (C)] has also been included in the afore-stated Category No.1; and therefore, actually, there was no need to separately specify civil contracts at Sl. No. (A), and repair and maintenance contract at Sl. No. (B), in length.

Turnover for the purpose of computing tax

In accordance with the new composition scheme effective from 01.04.2013, tax shall be computed at the percentage (specified in the notification) of the entire turnover in relation to works contracts in Delhi.

With reference to section 7(7) of the Kerala General Sales Tax Act, the High Court opined that the compounded rate of tax available under the section for dealers engaged in civil construction work is computed on the whole amount of contract and not on the net amount received by the contractor after recoveries of tax made by the awarder of the contract. State of Kerala vs. Alex V. Chacko (2010) 27 VST 278 (Ker)

Pure labour contracts: In relation to Karnataka VAT Act, the High Court observed that composition scheme opted by the works contractors for payment of tax at the fixed rate of the entire turnover would include labour charges forming part of works contract transaction: but, however, not the turnover of purely labour contracts. H.S. Chandra Shekar Hande vs. State of Karnataka (2012) 57 VST 234 (Kar)

Material supplied by the contractee

[Notification No. 3(13)/Fin.(Rev-I)/2012-13/dsvi/180 dated 28.2.2013 w.e.f. 1.4.2013 – Sl. No. 11 of General Conditions]

On the lines of section 11A of the Delhi VAT, provisions have been made in this composition scheme (effective from 01.04.2013) so that no tax shall be payable under this Notification by a composition dealer on the amount representing the value of the goods supplied by the contractee to the

contractor in the execution of works contract in which the ownership of such goods remains with the contractee under the terms of contract, and the amount representing the value of the goods supplied by the contractee to the contractor does not form part of the contract, and is not deductible from the amount payable to the contractor by the contractee for the execution of the works contract.

Further, no TDS shall be deducted by the contractee on the value of goods supplied as such by it to the contractor.

Sale/Disposal of capital assets, scrap, surplus etc.

[Notification No. 3(13)/Fin.(Rev-I)/2012-13/dsvi/180 dated 28.2.2013 w.e.f. 1.4.2013 – Sl. No. 10 of General Conditions]

Where any composition dealer sells, transfers or disposes of any capital assets, including plant, machinery, equipments, scrap, surplus, waste or discarded material, he-

- shall not make such sale outside Delhi against Central Statutory Forms, and
- shall pay tax on such sale, transfer or disposal at the rates specified in Section 4 of the Act, as if he had not opted for this Scheme.

Deduction of tax at source by the contractee (w.e.f. 1.4.2013)

[Notification No. 3(13)/Fin.(Rev-I)/2012-13/dsvi/180 dated 28.2.2013 w.e.f. 1.4.2013 – Sl. No. 9 of General Conditions]

— The composition dealer, who opts to pay composition tax, shall make an application to the contractee/awarder; not being an individual or a Hindu Undivided Family, authorizing it to deduct tax at source at such rate, as may be applicable to the contracts for which composition is opted by the dealer.

— On making of application, the contractee shall deduct the TDS accordingly.

  Therefore, where rate of composition is 2%, then on making of application by the contractor, TDS shall be deducted by the contractee/awarded of the contract at the rate of 2% (instead of 4% as prescribed under section 36A of the Delhi VAT Act).

— The contractor shall not claim benefit of the TDS in his return unless

(i) the contractee has deposited the amount in the appropriate Government Treasury, and

(ii) he is in possession of the original/electronic TDS Certificate obtained in the prescribed form and in the prescribed manner, along with challan in proof of such deposit is enclosed with the return.

Deduction of TDS by contractor; and taxation of sub-contractor

[Notification No. 3(13)/Fin.(Rev-I)/2012-13/dsvi/180 dated 28.2.2013 w.e.f. 1.4.2013 – Sl. No. 7 and 9 of General Conditions]

Applicability of Modality No.7

— This clause is applicable where the composition dealer (contractor) has made any payment to a registered sub-contractor, and the latter has also opted for the composition scheme under this notification for the execution of works contract, whether wholly or partly.

— Thus, the sub-contractor will get benefit only if he is opting for the composition scheme; otherwise, he shall pay tax at the normal rates on such turnover, inspite of the turnover being already taxed in the hands of main contractor.

Form CC-01 by the contractor and taxation of the sub-contractor

— The composition dealer (contractor) shall issue a certificate to such sub-contractor in **Form CC 01** for the work executed by the sub-contractor.

— The sub-contractor shall be **eligible to claim deduction of the amount of tax** which shall be computed on the amount paid to him as mentioned in Form CC01, at the lower of the two rates of composition opted: one each by the contractor and the sub-contractor.

Under the erstwhile notification, the sub-contractor was required to deduct the amount of turnover itself as stated in Form CC01; whereas, as per the notification dated 30.9.2013, the sub-contractor shall deduct the amount of tax stated in Form CC01, that too, subject to restrictions. The present composition scheme has two schemes "A" and "B" and the contractor and the sub-contractor might opt for

different schemes; therefore, to safeguard the interest of the revenue, this amendment has been introduced.

TDS by the contractor on work executed by the sub-contractor

— The contractor is exempt from deducting TDS from payments made to such registered sub-contractors in respect of turnover covered by Form CC01.

  However, where the rate of the composition tax of the contractor is lower than that of the sub-contractor, the contractor shall be liable to deduct TDS, at the differential rate of composition tax between the two, in respect of the turnover covered by their respective Form CC01.

— The sub-contractor shall not claim benefit of the TDS in his return **unless.**

  (i) the awarder has deposited the amount in the appropriate Government Treasury, and

  (ii) the sub-contractor is in possession of the original/electronic TDS Certificate obtained in the prescribed form and in the prescribed manner, along with challan in proof of such deposit enclosed with the return.

Scheme beneficial only if the contractor as well as his sub-contractor has opted for the composition scheme

If the sub-contractor has opted for the composition scheme but his main contractor is paying tax at the normal tax at the normal rates, the latter will be a looser because due to inability of the sub-contractor to issue tax invoice, main contractor could not claim any input tax credit. This scheme is beneficial only if the contractor as well as his sub-contractor has opted for this scheme. If any one of them is paying tax at the normal rates, another will either pay tax on his turnover (sub-contractor) or will not get any benefit of input tax credit (main-contractor).

Withdrawal from composition scheme – Due to default or otherwise

[Notification No. 3(13)/Fin.(Rev-I)/2012-13/dsvi/180 dated 28.2.2013 w.e.f. 1.4.2013 – Sl. No. 5 & 6 of the Modalities]

Default in furnishing of returns – Liability to pay tax u/s 3 of the Act

A composition dealer who has opted to pay tax under this scheme and has defaulted in furnishing the returns **for two consecutive tax periods,** by the prescribed due date for the latter tax period, shall, from the beginning of the tax period in respect of which the default was first committed-

(i) cease to be liable to pay composition tax under the scheme; and

(ii) be liable to pay tax under section 3 of this Act;

To illustrate, a dealer has defaulted in furnishing of return for the quarters ended 30th June 2013 and 30th September 2013, and did not file both returns up to 28th October 2013, then he shall be liable to pay tax at the normal rates prescribed under section 4 of the Delhi VAT Act with effect from 1st April 2013.

In the new composition scheme, liability to pay tax at the normal rates begins from the tax period in respect of which the default was first committed whereas under the erstwhile composition scheme, the liability to pay tax at normal rates started from the first day of the period immediately next to the period when default was committed. Taking the same illustration, had the erstwhile notification existed, then liability to pay tax at normal rates would be effective from 1st October 2013.

Eligibility to claim tax credit on the opening stock – Dealers withdrawing from the scheme voluntarily; and the defaulting dealers

Such a dealer shall be eligible to claim credit of the tax paid under the Act on the opening stock held by him in Delhi on the first day of the first tax period in respect of which the default was committed, which shall however be,

(i) subject to the conditions contained in section 20 of the Act, and further,

(ii) subject to furnishing of intimation in Form WC 02 within 7 days after the end of the date prescribed for filing of return for the latter tax period in respect of which the default has been committed,

Continuing the above illustration, he shall be eligible to claim tax credit on the opening stock held by him on 1st April 2013.

Consequences if fail to comply with the conditions specified

With effect from 01.4.2013 in the new composition scheme (Sl. No. 8 of the General Conditions): In case a dealer has opted for this scheme but has failed to comply with the conditions specified herein or if at any later stage, he is found not eligible for having opted for this scheme, all the provisions of the Act and Rules including the liability to pay tax under section 3, if any, shall apply mutatis mutandis as if the dealer had never opted for the composition scheme, **from the financial year in which default had been committed** and the amount deposited by such dealer as composition tax, if any, shall stand forfeited, to the extent of 50%.

In the case of New TajMahal Café Pvt. Ltd. vs. State of Karnataka (2009) 26 VST 101 (Kar), the High Court observed that if the liability for payment of additional tax had arisen on the petitioner, who had opted for the composition scheme, because the facility of composition was withdrawn or cancelled, then, the petitioner should be permitted to avail of the statutory remedies (in so far as levy of penalty i.e., natural justice.

No restriction on purchase of capital goods from other States

The benefit of the composition scheme under the Karnataka Sales Tax Act was subject to the condition, inter-alia, that the dealer shall not purchase or receives goods from outside the State for execution in works contract. The court held that **this restriction would not cover those cases** where machinery is purchased from outside the State for use in the execution of works contract since such machinery is neither used as raw material nor did title in the machinery pass to the contractee. S. R. Ravi Shankar vs. Addl. CCT (2012) 54 VST 448 (Kar)

Burden to prove

Where the Statute provides for exemption to the contractor in respect of local purchases, which have already suffered tax, then the burden of proof lies upon the contractor to prove that his purchases had suffered tax by producing purchase invoices. CTT vs. Chatkarwati Construction Co. (2012) 47 VST 428 (All)

Other Provisions

The Commissioner may notify, by a special or general order, that any or all the Forms appended in this notification shall be filed online.

All the provisions contained in the DVAT Act and Rules made thereunder, which are not contrary to the provisions of the composition scheme under this notification, shall apply to the dealers opting for composition. [Sl. No. of the Modalities]

Chapter-19
Deemed Sales

Brief History

The deeming fiction of the constitution made the following transactions, which, otherwise, are not sales, to be deemed as "sales":

1. Hire Purchase Transactions;
2. Transfers, otherwise than in pursuance of a contract;
3. Works Contract Transactions;
4. Transfer of right to use transactions;
5. Supply of food, etc.

Transfer, otherwise than in pursuance of contract- Sub-Clause (vi) of Section 2(1)(zc) of DVAT Act, 2004:

This sub-clause empowers to levy tax on transfers made otherwise than in pursuance to a contract, e.g., transfer of controlled commodities for consideration.

Hire Purchase Sub-Clause (i) of Section 2(1)(zc) of DVAT Act, 2004

Pursuant to article 366(29A) sub-clause (c), States are empowered to "tax on delivery of goods on hire purchase basis or under any other system of installments".

Specific provisions under the DVAT Act

(i) Sale price

Sale price means the amount paid or payable for the delivery of goods on hire purchase or any system of payment by installments including hire charges, interest and other charges incidental to such transaction. Hence, the entire amount of installments received/receivable, including incidental charges, shall be subject to sales tax.

(ii) Time and amount of turnover

In hire purchase transactions, the dealer is liable to pay tax on the total amount at the time of agreement itself, irrespective of the due date or the date of receipt of installment.

Works contract – Sub-Clause (v) of section 2(1)(zc)

Pursuant to Article 366 (29A) (b) of the Constitution of India, States are now empowered to levy tax on transfer of goods involved in execution of works contract.

What is a Works Contract?

"Work contract" includes any agreement for carrying out for cash or for deferred payment or for any valuable consideration, building construction, manufacture, processing, fabrication, installation, fitting out, improvement, repair or commissioning of any movable or immovable property."(Section 2(1)(zo))

A transaction may fall in one of the following four categories of contracts:

S.No.	Nature of transaction	Nature for Delhi VAT purpose.
(i)	Exclusive labour contracts	Neither sale nor works contract, Not subject to VAT
(ii)	Supply of goods contracts	Sale Transaction
(iii)	Divisible contracts, i.e., where the elements of sale of goods and labour can be clearly segregated	Sale transaction to the extent of supply of goods; the, rest is labour contract not subject to VAT
(iv)	Composite contracts, where the parties agree to r a lump-sum consideration for the entire contract. The sale consideration of the materials used in the contract and remuneration for labour is not separately identifiable.	Works contract transaction. Taxable to the extent of the material involved in the composite contract.

The basic principles differentiating contract of sale and contract of works and labour are:

1. A contract whereby a chattel is to be made and affixed by the workman to land or to another chattel before the property therein is to pass, is not a contract of sale, but a contract for works, labour and materials.

2. When a chattel is to be made and ultimately delivered by a workman to his employer, the question whether the contract is one of sale or of a bailment for work to be done depends upon whether previously to the completion of the chattel the property in its materials was vested in the workman or in his employer. If the intention and result of the contract is to transfer for a price property in which the transferee had no previous property then the contract is a contract of sale.

   Where, however, the passing of property is merely ancillary to the contract for the performance of work, such a contract does not become a contract of sale.

3. Accordingly

   (i) Where the employer delivers to a workman either all or the principal materials of a chattel on which the workman agrees to do work, there is a bailment by the employer, and a contract for work and labour, or for work, labour and materials by the workman. Materials added by the workman, on being affixed to or blended with the employer's materials, thereupon vest in the employer by accession, and not under any contract of sale.

   (ii) Where the workman supplies either all or the principal materials, the contract is a contract for sale of the completed chattel, and any materials supplied by the employer when added to the workman's material vest in the workman by accession."

   The Supreme Court, in CST vs. Purshottam Premji (1970) 26 STC 38 (SC), dealt with the difference between "works contract" and "contract of sale" and held that

   "The primary difference between a contract for work or service and a contract for sale of goods is that in the former there is the person performing work or rendering service on property whereas in the case of a contract for sale, the thing produced as a whole has individual

existence as the sole property of the party who produced it, at some time before delivery, and the property therein passes only under the contract relating thereto to the other party for price."

The Supreme Court in the case of Hindustan Shipyard Ltd. vs. State of A.P. (2000) 119 STC 533 (SC) held that:

(a) It is difficult to lay down any rule or inflexible rule applicable alike to all transactions so as to distinguish between a contract for sale and a contract for work and labour.

(b) Object of the parties is the sole determination to decide whether a particular contract is for sale of goods or for work and labour, the circumstances of the-transaction and the custom of the trade. The court may form an opinion that the contract is one whose main object is transfer of property in a chattel as a chattel to the buyer, though some work may be required to be done under the contract as ancillary or incidental to the sale, then it is a sale; if the primary object of the contract is the carrying out of work by bestowal of labour, and service and materials are incidentally used for the execution of such work then the contract is one for work and labour.

(c) If the thing to be delivered exists on its own as the sole property of the party who delivers it, then it is a sale. If "A" transfer property for a price in a thing in which "B" had no previous property, then the contract is a contract for sale. On the other hand, where the main object of work undertaken by the payee of the price is not the transfer of a chattel qua chattel, the contract is one for work and labour.

(d) If the bulk of the material used in construction belongs to the manufacturer who sells the end product for a price, then it is a strong pointer to suggest that the contract is for the sale of goods and not for work and labour. However, the test is not decisive. If the major component of the end product is the material consumed in producing the chattel to be delivered and the skill and labour are employed for converting the main components into the end-products the skill and labour are used only incidentally, then the delivery of the end product by the seller to the buyer would constituted a sale. On the other hand, if the main object of the (contract is to avail the skill and labour of the seller though some material or components may be used incidentally during the process of the making of the end-product through the

investment of skill and labour of the supplier, the transaction will be a contract for work and labour.

The Supreme Court in the case of **State of A.P. vs. Kone Elevators (India) Limited (2005) 140 STC 22 (SC) held that a transaction may be termed as works contract, if:**

(a) there is transfer of chattel to chattel, i.e., work on the property of contracts or work has been executed solely on the basis of specification provided by the contractee;

(b) the contractee becomes the deemed owner during construction itself and the contractor has no right to remove the goods transferred during construction.

(c) Both the principles of accretion and accession come into play. . In the case of works contract of immovable property, good are transferred on the principle of accretion and in the case of movable property, on the principle of accession.

(d) The contract is an indivisible contract; and

(e) Looking at the judgment by the Supreme Court on the Hindustan Shipyard theory of considering those transactions as "works contracts" where goods are manufactured by specifications, (is almost eliminating. What is more significant for the purpose of levying sales tax is the time of transfer of property in the goods. If a good, whether a ship or anything, is supplied as chattel as chattel, it will be considered 'sale' instead of 'works contract'.

Sale incidental to contract / Service contract

It is important to note that

(I) The Supreme Court in the Builders' Association of India vs. the Union of India (1989) 73 STC 370 (SC), ruled that it open to the States to divide the works contract into two separate contracts by a legal fiction: (i) contract for the sale of goods involved as the works contract, and (ii) the supply of labour and service. This division of works contract under the amended law can be made only if the contract involves the dominant intention to transfer the property in goods and not in contracts where the transfer of property takes place as an incident of a

contract of service. The amendment has not empowered the State to indulge in microscopic division of contracts involving the value of materials used incidentally in such contracts of service."

(II) Unless there is sale and purchase of goods, either in fact or deemed, and that sale is primarily intended and not incidental to the contract, the sale cannot impose sales tax on a works contract in the light of the expanded definition of article 366(29A)(b). The work done by the appellants was only in the nature of a service contract did not involve the sale of goods and therefore, the appellants were not liable to sales tax. (Rainbow colour lab vs. the State of M.P.)

Determination u/s 84 by the Commissioner [No.71/CDVAT/2005 dt.7.12.2005 – Northern India Colour Lab. Assn.]

In the latest judgment of the Apex court in **C.K. Jidheash's vs. U.O.I. (2005) 279 ITR 118 (SC),** it was opined by the Commissioner after considering the case of the applicant as covered by the ruling in Rainbow Color Lab's case, and held that developing the negatives and giving the customer positive prints on photo paper will not amount to transfer of property in works contract and hence is not liable to tax under DVAT Act.

(III) The Supreme Court, in another judgment in **Associated Cement Companies Ltd. vs. the Commissioner of Customs(2001) 124 STC 59 (SC)**, doubted its earlier judgment in Rainbow's case and opined that the 46th Amendment was made precisely with a view to empowering the State to bifurcate the contract and to levy sales tax on the value of the material involved in the execution of the works contract, notwithstanding that **the value may represent a small percentage of the amount paid for the execution of the works contract. Even if the dominant intention of the contract is the rendering** of a service, which will amount to a works contract after the 46th Amendment, the State would now be empowered to levy sales tax on the material used in such contract.

(IV) **Supreme Court in Bharat Sanchar Nigam Ltd. Bharat Sanchar Nigam Ltd. vs. U.O.I. (2006) 145 STC 91 (SC) (Three judges) on ACC in 2006 held that**

This conclusion was doubted in Associated Cement Companies Ltd. vs. Commissioner of Customs (*supra*), in our opinion, runs counter to

the express provision contained in article 366(29A) as also of the Constitution Bench decision of this Court in Builders' Association of India vs. Union of India(1989) 73 STC 370 (SC). After the 46th Amendment, the sale element of the contracts which are covered by the six sub-clauses (29A)of article 366 are separable and may be subjected to sales tax by the States under entry 54 of List II.

(V) **Value of material to be taxed – To the extent of transfer of material**

It was held in the case of Matushree Textile Ltd. that tax is leviable on the chemical solution used for dyeing since it retains its property even after dyeing and the solution prepared for dyeing is specific to a particular customer and on completion of dyeing, the chemical solution becomes worthless and is thrown as waste. (Therefore, on completion of dyeing, the entire property of the materials used in dyeing is passed on and what remains as solution is nothing but the residue or waste.

(VI) The Kerala High Court held in the case of Enviro Chemicals vs. State of Kerala (2011) 39 VST 434 (Ker) that the petitioner carried out pollution control treatment for M and used a chemical product by the name of "envirofloc", and claimed that no transfer or sale took place in the execution of works contract since the chemical was consumed in the process. It was, however, held that admittedly the chemical in question was goods and the petitioner was owner of the chemical. The intention of the parties was that the petitioner must use the chemical in the effluent treatment process. The moment the petitioner poured chemicals into the effluent, it ceased to be the owner and at that point of time, M must be deemed to have taken delivery thereof. The property in the chemicals passed to M at the moment they were put into the effluent by the petitioner and their subsequent consumption took place after sale, which did not detract from the *factum* of sale, and consequently, eligibility to tax. In case of an indivisible works contract, it is open to the taxing authority to split up an indivisible works contract and tax the transfer of property in goods.

(VII) In the case of Sri Krishna Spinning and Weaving Mills Pvt. Ltd. vs. the Authority for Clarification Advance Rulings, the appellant was engaged in the business of dyeing and printing of textiles and procuring dyes, chemicals and colours both within and outside the State. The High

Court observed that taxable turnover would be arrived at by determining how much of chemicals, dyes and colours got washed out in the process of dyeing and printing of fabrics undertaken by the appellant. The matter was remanded with the remarks that after completing the aforesaid exercise, the assessing officer would be at liberty to proceed in the matter and to add to the value of the turnover, in accordance with the law, the actual percentage of chemicals, dyes and colours which are retained or embedded on the textile or fabric, as the case may be. (Sri Krishna Spinning and Weaving Mills Pvt. Ltd. vs. Authority for Clarification and Advance Rulings (2010) 27 VST 194 (Ker)

(VIII) Contract for pest control by spraying and applying chemicals was held not be a works contract as there could be no transfer of property in goods unless the goods themselves existed. (Pest Control India Ltd. vs. U.O.I. (1989) 75 STC 188) (Pat)

(IX) Sterilization of goods is not a works contract [Microtrol Sterilization Services vs. State of Kerala (2009) 26 VST 213 (Ker)]

(X) **Installation of lifts held as works contract and not sale:** In the case of *Kone Elevator India (P) Ltd. v. State of Tamil Nadu and Others [2014] 71 VST 1 (SC)*the Hon'ble Supreme Court dealt with a question whether a contract for manufacture, supply and installation of lift is a works contract or a contract for sale. The Hon'ble Court overruled *State of Andhra Pradesh v. Kone Elevators (India) Ltd. [2005] 140 STC 22 (SC)*, approved *Larsen and Turbo Ltd. v. State of Karnataka [2013] 65 VST 1 (SC)* and followed *Builders Association of India v. UOI [1989] 73 STC 370 and Gannon Dunkerley & Co. v. State of Rajasthan [1993] 88 STC 204 (SC).* The Hon'ble Court held that if there are two contracts, namely, purchase of components of the lift from a dealer, it would be a contract for sale and similarly, if a separate contract is entered into for the purposes of installation that would be a contract for labour and service. But once there is a composite contract for supply and installation, it has to be treated as a works contract, for it is not a sale of goods or chattel simpliciter. While holding so the Court observed that a lift has to be understood in the conceptual context of the manufacture and installation of a lift in a building. The lift basically comprises components like the lift car, motors, ropes, rails, etc., having their own identity even prior to

installation. Without installation, the lift cannot be mechanically functional because it is a permanent fixture of the building having been so designed. **Therefore, the installation of a lift in a building cannot be regarded as a transfer of a chattel or goods but a composite contract. The Court further observed that once the characteristics of a works contract are met in a contract entered into between the parties, any additional obligation incorporated in the contract would not change the nature of the contract.** As such the Hon'ble Court directed that the show-cause notices, which have been issued by taking recourse to the reopening of assessment, shall stand quashed. The assessment orders which have been framed and are under assail before this Court are set aside. It is necessary to state here that where the assessments have been framed and have attained finality and are not pending in appeal, they shall be treated to have been closed, and where the assessments are challenged in appeal or revision, the same shall be decided in accordance with the decision rendered by us.

Builders Agreements-Owner of property can himself be contractor

The apex court in the case of **K. Raheja Development Corporation vs. State of Karnataka (2005) 141 STC 298 (SC)** where the owner of the flats were engaged in the business of constructing residential apartments and/or commercial complexes and for this purpose, they had entered into agreements of sale with the intended purchasers. It was held that even an owner of the property might also be said to be carrying on a works contract if he enters into an agreement to construct.

It was held that

1. **"workscontract"** has a wide definition which includes "any agreement" for carrying out building or construction activity. The definition does not make a distinction based on who carries on the construction activity. Thus even an owner of the property may also be said to be carrying on a works contract if he enters into an agreement to construct for cash, deferred payment or any other valuable consideration.

2. The developer has merely a lien over property and the right of forfeiture is insignificant;

3. The builder is liable to pay tax if he has entered into agreement with the prospective purchasers before construction of apartments or complex (even if the land is owned by the builder at the time of agreement).

4. However, he is not liable to pay tax if the builder agreement is entered after the completion of construction.

It was further affirmed in the case of Larsen & Tourbo Ltd. vs. State of Karnataka (2013) 65 VST 1 (SC) that

(i) For sustaining the levy of tax on goods deemed to have been sold in execution of a works contract, three conditions must be fulfilled: (one) there must be a works contract, (two) the goods should have been involved in the execution of a works contract and (three) the property in those goods must be transferred to a third party either as goods or in some other form.

(ii) For the purposes of Article 366(29A)(b), in a building contract or any contract to do construction, if the developer has received or is entitled to receive valuable consideration, the above three things are fully met. It is so because in the performance of a contract for the construction of a building, the goods (chattels) like cement, concrete, steel, bricks etc. are intended to be incorporated in the structure and even though they lose their identity as goods but this factor does not prevent them from being goods.

(iii) Where a contract comprises both a works contract and a transfer of immovable property, it does not denude it of its character as works contract. The term “works contract” in Article 366(29A)(b) takes within its fold all genres of works contract and is not restricted to one respect to one species of contract to provide for labour and services alone. Nothing in Article 366(29A)(b) limits the term “works contract”.

(iv) Building contracts are species of the works contract.

(v) A contract may involve both a contract of work and labour and a contract for sale. In such a composite contract, the distinction

between contract for sale of goods and contract for work (or service) is virtually (diminished.

(vi) The dominant nature test has no application and the traditional decisions which have held that the substance of the contract must be seen have lost their significance where transactions are of the nature contemplated in Article 366(29A). Even if the dominant intention of the contract is not to transfer the property in goods but rendering of service, or the ultimate transaction is the transfer of immovable property, then also it is open to the States to levy sales tax on the materials used in such contract if such contract otherwise has elements of the works contract. The enforceability test is also not determinative.

(vii) A transfer of property in goods under clause 29A(b) of Article 366 is deemed to be a sale of the goods involved in the execution of a works contract by the person making the transfer and the purchase of those goods by the person to whom such transfer is made.

(viii) Even in a single and indivisible work contract, by virtue of the legal fiction introduced by Article 366(29A)(b), there is a deemed sale of goods which are involved in the execution of the works contract. Such a deemed sale has all the incidents of the sale of goods involved in the execution of a works contract where the contract is divisible into one for the sale of goods and the other for the supply of labour and services. In other words, the single and indivisible contract, now by Forty-sixth Amendment has been brought on par with a contract containing two separate agreements and States have now the power to levy sales tax on the value of the material in the execution of works contract.

(ix) The expression "tax on the sale or purchase of goods" in Entry 54 in List II of Seventh Schedule when read with the definition clause 29 A of Article 366 includes a tax on the transfer of property in goods whether as goods or in the form other than goods involved in the execution of works contract.

(x) Article 366(29A)(b) serves to bring transactions where essential ingredients of 'sale' defined in the Sale of Goods Act, 1930 are absent within the ambit of sale or purchase for the purposes of

levy of sales tax. In other words, transfer of movable property in a works contract is deemed to be a sale, even though it may not be a sale within the meaning of the Sale of Good Act.

(xi) Taxing the sale of goods element in a works contract under Article 366(29-A)(b) read with Entry 54 List II is permissible even after the incorporation of goods provided tax is directed to the value of goods and does not purport to tax the transfer of immovable property. The value of the goods, which can constitute the measure for the levy of the tax, has to be the value of the goods at the time of incorporation of the goods in works even through property passes as between the developer and the flat purchaser after incorporation of goods.

Further, in the development agreement between the owner of the land and the developer, direct monetary consideration may not be involved but such agreement cannot be seen in isolation from the terms contained therein and following the development agreement, the agreement in the nature of the tripartite agreement between the owner of the land the developer and the flat purchaser where the developer has undertaken to construct a flat for purchaser for monetary consideration.

It was, however, clarified that the activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the purchaser of the flat. The value addition made to the goods transferred after the agreement is entered into with the purchaser can only be made chargeable to tax by the State Government.

The Supreme Court in the case of Xerox Modicorp Limited vs. State of Karnataka (2005) 142 STC 209 (SC) observed that under the agreements, apart from the service element, for which no tax is sought to be levied, there is the element of supplying parts and components like toners/developers etc. Merely because price is not being separately charged for this, it does not mean that the supply is not for a price. There is a transfer of title in movables for a price. The mere fact that it is not known in the beginning whether or not a part will have to be replaced is irrelevant. It could not be denied that, even in the absence of any

such Agreements, if a part required to be replaced was replaced there would be a sale of that part. The same position remains even under the Agreements. As and when a part is required to be and is replaced, a sale takes place at that instance. To leave no room for doubt **it must be mentioned that the tax in on sale. So if there is no replacement of a part then there is no sale of a part.** So far as toners and developers are concerned it is known from the beginning that they will require regular replenishment.

Transactions which are held as works contract

1. Supply of printed wedding cards, bills, ledgers, letterheads etc. where the paper was supplied by the printer itself. In this case, a customer, when he places an order for printing a particular article for himself, does not enter into a contract to purchase only the paper or material used in producing the printed article but the said material used in the article comes to the customer merely as incidental or ancillary to the main contract of work and labour. Thus it is a works contract (Court Press Job Branch vs. State of T.N. (1983) 54 STC 382 (Mad), CST vs. Ratna Fine Arts Printing Press (1984) 56 STC 77 (MP), Sarvodaya Printing Press vs state of Maharashtra (1994) 93 STC 387affirmed in (1999) 114 STC 242 (SC)

2. Printing of question papers at the behest of a university or an educational institution. The court held that the goods prepared by the assesse could not be exhibited for sale, and rather it is confidential and a delegated kind of work. The price paid for supplying such question paper entails primarily the confidence and secondly, the skill and to a very small measure the material" (State of Tamil Nadu vs. Anandam Vishwanathan (1989) 73STC 1 (SC). However, a contrary judgment was delivered by the Hon. Kerala High Court in the case of P.T.Varghese vs State of Kerala (1976)37 STC171 and Thomson press (I) ltd. vs State of Haryana(1996) 100STC417(P&H)

3. Printing of tickets to transport corporation or cinema hall or cinema posters. Not a sale but a works contract as printed tickets are commercially not marketable. **(**Dy CST vs. Victory Offset Printers (1994) 94 STC 406 (Ker); Babu Litho Press vs. State of T.N. (2001) 124 STC 663 (Mad))

4. Printing of lottery ticket being the end product is not a commercial property and the job involves not only skills and expertise but also confidentiality and security(Thomson Press LTD vs. State of Haryana (1996) 100 STC 417 (P& H)

5. Printing and supply of account books, cheque books on the order of banks because these have no commercial value and cannot be sold to any other person (State of Tamil Nadu vs. Gunasundari Modem Art Printers (1995) 97 STC 489 (Mad)). However, contrary views were .expressed by the Hon. Kerala high Court in the case of Palakkad distt. Co-op printing press ltd. vs state of kerala (2004) 135 STC 207.

6. Printing of Currency notes.-Thomson press (I) ltd. vs State of Haryana(1996) 100STC417(P&H)

7. Printing of educational books by printers being in the book content provided are the most important factor which distinguish whether transaction is a works contract or sale (Somya Graphics; No: 284/CDVAT/2011/08).

8. Photocopying is held as works contract as the property in goods (paper and ink) passes on to the contractee (CST vs. Hari and Company (2006) 148 STC 92 (Bom))

9. Fabrication work done in the nature of partition or making a cabin where the work is executed at the site of a party (I.T. Johny vs. State of Kerala (2007) 10 VST 19 (Ker))

10. Development of barred land by providing amenities like common road, culverts, drains, etc. Continental Builders vs. State of Karnataka (2008) 14 VST 175 (Kar)

11. Denting, painting, contracts of vehicles are covered under works contract to the extent of transfer of property in goods. (Indo Asiatic Engg. (P) Ltd. vs. CST (2010) 8 VSTI 648 (Del Trib))

Transactions which are not held to be as works contracts

1. Supply of stationery and doing printing work according to the specification given by the customer (where stationery is independently purchased by the printing press) is a sale being stationery is a independent commercial commodity which was capable of being sold and supply (Saraswati Printing Press vs. CST (1959) 10 STC 286

(Bom)), (State of A. P. vs. Sri. Krishna Power Press (1960) 11 STC 498 (AP)).

2. Supply of cinema tickets as finished product (S.R.P. Works and Ruby Press vs. State of A.P. (1972) 30 STC 195 (AP))

3. Supply of labels (Bharath Litho Press vs. State of A.P. (1978) 67 STC 53 (AP))

4. Pure printing job contracts where papers, cards are supplied by the contractee by applying theory of accretion

5. Supply of packing materials or labours manufactured on the basis that specification is a contract of sale as per the Judgment given by the Honorable Court in the case of BDA Ltd. vs. ITO (TDS)and Delhi HC in the case of Dabur India Ltd. (2005) 198 CTR 375 (Del). However, contrary judgment was given in the case Madras HC in the case of State of Tamilnadu vs. Premier Litho Works (2009) 26 VST 205 (Mad).The controversy is settled by the judgment of Honorable SC in the case of Hindustan Shipyard Ltd. vs. State of A.P. (2000) 119 STC 533 (SC) where it is held that if the goods are supplied as chattel, it will be considered a sale and not a works contract.

Rate of tax (unless opted for the composition scheme)

— Declared goods transferred in the same form: 5% [4% up to 30.09.2011]

— Printing contracts: 5% [4% up to 30.09.2011]

— Other works contracts: 12.5%

Specific Provisions under the Delhi VAT Act

Turnover of Contractor and Sub-contractor: The judgment given by the Honorable SC in the case of State of A.P. vs. Larsen & Tourbo Ltd. (2008) 17 VST 1 (SC) where it is held that the transaction is taxable once even if the work is executed by the sub- contractor. In this case, L& T with the consent of the contractee assigned part of the construction to the sub-contractor who worked under the overall supervision of the consultant nominated by the contractee. The SC held that in such a case, the work executed by the sub-contractor result as a single transaction and not as a multiple transaction.

The Delhi HC distinguish with the above said judgment and opined in the case of L & T vs. Union of India (2012) 14 VST 1 (Delhi)

(a) that the Judgment of the Supreme Court in State of A.P. vs. Larsen & Tourbo Ltd. (2008) 17 VST 1 (SC) was based upon the provisions of Andhra Pradesh Act which are materially different from Delhi VAT Act. Even if it is presumed that the provisions in Andhra Pradesh VAT Act make it a better legislation in comparison to Delhi VAT Act, this cannot be a ground for declaring provisions under the DVAT Act as arbitrary or ultra vires. Bad legislative drafting, if at all, cannot furnish a ground for judicial review of the legislative action. It has to be shown that a particular provision is either beyond the legislative competence and is thus ultra vires or is unconstitutional.

(b) the Delhi High Court also opined that double taxation is avoided under the DVAT Act and Rules through input tax mechanism. As per the mechanism provided in the DVAT Act, turnover of the sub-contractor is not taxed in the hands of the contractor through a different mechanism of allowing input tax credit of the tax paid by sub-contractor to the main contractor, and thus, does not result in multiple taxation.

In another case, the petitioner, a contractor who had opted for the composition scheme, awarded the sub-contract to a registered dealer. On the question whether the turnover of the sub-contractor would be included in his turnover, the high court held that once the work is assigned by the contractor to its sub-contractor, the contractor ceases to execute the work because the property passes by accretion and there is no property in goods left with the contractor, which is capable of retransfer either as goods or in any other form. Thus, the transfer of property is from the sub-contractor to the contracting party, that is, the contractee. Hence, the work executed by the sub-contractor results in a single transaction, and not in multiple transactions. Skyline Constructions and Housing Pvt. Ltd. vs. Authority for Clarification and Advance Rulings (2011) 37 VST 290 (Kar)

Where the contractor has awarded the sub-contract, he is entitled to the deduction of labour charges. And if, he is unable to show the actual amounts spent, het is entitled to deduction as per the standard percentage prescribed under law. Moreover, if the sub-contract is for landscaping, stone cutting, etc. involving no sale of goods, the amount shall be excluded from the total

taxable value(Concorde Hitech City (P) Ltd. vs. State of Karnataka (2011) 39 VST 52 (Kar))

The petitioner was claiming deduction on account of works contract carried on by the sub-contractors. In respect of validity of the provisions requiring production of documentary evidence of payment of tax with a declaration from the sub-contractor, the Court held that there could be no difficulty in giving such information. No doubt, the format of declaration had not been prescribed; but in the absence thereof, declaration from the sub-contractor giving relevant particulars to connect the payment of tax to the turnover could certainly be furnished; thus, there was no illegality in the provisions.Larsen &Tourbo Ltd. vs. State of Assam (2013) 60 VST 554 (Gau).

Liability of the sub-contractor: Sub-contractor is liable to pay tax on his taxable turnover. The judgment in L&T case State of A.P. vs. Larsen &Tourbo Ltd. (2008) 17 VST 1 (SC) allows exemption to the contractor in respect of the turnover of the sub-contractor, but the said judgment does not allow any such exemption to the sub-contractor. Gautam Construction vs. State of Assam (2010) 35 VST 441 (Gau)

Transaction between Joint Venture and Members thereof: The petitioner was a joint venture (JV) consisting of two companies – "PSB", a company incorporated in Malaysia and having a local project office in Delhi, and "P", a company incorporated in India under the Indian Companies Act. These two companies were separately awarded contracts by the DMRC for the execution of certain works. Under the MOU between these two companies, each member of the JV had to raise its own independent bill for the work executed. Payment to be received by the JV from DMRC was to be distributed by the JV between its two members in terms of their separate bills. The Delhi High Court observed that the JV did not effect any sales to its sub-contractors; all it did – and this fact had also been accepted by the respondents – was to pass on the monies received from DMRC to the sub-contractors, acting as a conduit. This question of turnover in the hands of JV would arise only if it indulged in sale of goods. The JV merely transferred the monies received from DMRC to the member-companies. PersysPunj Lloyd Joint Venture vs. CVAT (2013) 61 VST 113 (Del)

Separate bill for services and supply in a composite contract

The appellant was an advertising agency. It created original concept and designed advertising material for its clients and also designed brochures, annual reports, etc. There was generally no written contract; however a purchase order was issued stating the amount of design and supply and tax thereupon. In the invoice, the appellant billed separately for designs and supply and charged service tax and sales tax on the respective portion. The Tribunal as well as the High Court held that since design was an integral part of supply, sales tax would be levied on full consideration. The **Supreme Court in Imagic Creative Pvt. Ltd. vs. CCT (2008) 12 VST 371 (SC)**, however, held-

"If the submission of Revenue is accepted in its entirely, whereas on the one hand, the Central Government would be deprived of obtaining any tax whatsoever under the Finance Act, 1994, it is possible to arrive at a conclusion that no tax at all would be payable as the tax has been held to be an indivisible one. **A distinction must be borne in mind between an indivisible contract and a composite contract.** If in a contract, an element to provide service is contained, the purport and object for which the Constitution had to be amended and clause (29A) had to be inserted in article 366, must be kept in mind.

The court, while interpreting a statute, must bear in mind that the legislature was supposed to know law and the legislation enacted is a reasonable one. **The court must also bear in mind that where the application of a Parliamentary and a legislative Act comes up for consideration, endeavours shall be made to see that provisions of both the Acts are made applicable.**

Payments of service tax as also the VAT are mutually exclusive. Therefore, they should be held to be applicable having regard to the respective parameters of service tax and the sales tax as envisaged in a composite contract as contra distinguished from an indivisible contract.

It may consist of different elements providing for attracting different nature of levy. It is, therefore, difficult to hold that in a case of this nature, sales tax

would be payable on the value of the entire contract; irrespective of the element of service provided."

Transfer of right to use [Sub-Clause (vi) of section 2(1)(zc)]

Transfer of right to use goods means

(a) there must be goods available for delivery;

(b) there must be a consensus *ad idem* as to the identity of the goods;

(c) the transferee should have a legal right to use the goods;

(d) for the period during which the transferee has such legal right, it has to be to the exclusion of the transferor;

(e) during the period for which it is to be transferred, the owner cannot again transfer the same right to others.

Some relevant issues:

1. Leasing of movable property is taxable under the DVAT Act as transfer of right to use, as the definition of goods does not include immovable property (CST vs. Prahlad Industries (1999) 112 STC 548 (All))

2. Transfer of effective control and possession is essential, as has been held in the case of Rashtriya Ispat Nigam Ltd. vs CTO (1990) 77 STC 182 (AP),for charging it under the DVAT Act as the transfer of right to use.

3. States are not empowered to tax those transfers as transfer of right to use which are made in the course of inter-state trade (20th Century Finance Corpn. Ltd. vs. State of Maharashtra (2000) 119 STC 182 (SC)

4. Proper agreement and documents must be maintained to prove that there is effective transfer of control and possession only then it can be taxed under DVAT Act (Hind Nippon Rural Ind. Pvt. Ltd. vs. State of Karnataka (2010) 29 VST 468 (Kar)

5. Leasing to a sister concern is a transfer of right to use goods (Kaveri Feeds vs. Secretary, ST Appellate Tribunal (2011) 12 VSTI B-488 (Mad)

6. Transfer of factory as a whole including plant and machinery is not covered under deemed sales (CST vs. Prahlad Industries (1999) 112STC 548 (All)

7. Supply of machinery to contractors is not a transfer as the effective control and possession remains with the supplier (Rashtriya Ispat Nigam Ltd. vs CTO (1990) 77 STC 182 (AP) which is further affirmed in State of A.P. vs. Rashtriya Ispat Nigam Ltd. (2002) 126 STC 114 (SC)

8. Transfer of cranes shall be the transfer of right to use goods if effective control has been transferred (Onaway Engineering Pvt. Ltd. vs. State of A.P. (2006) 146 STC 634 (AP)

9. A bus given on hire for transporting employees is a deemed transfer as there is transfer of possession of the buses since there is acquisition of right by the transferee and loss of it by the transferor (Harbans Lal vs. State of Haryana (1993) 88 STC 357 (P&H)); (Jasper Aqua Exports (P) Ltd. vs. State of A.P. (2011) 37 VSTI 481 (AP))

   However, if the assesse gave the buses on hire for transportation of employees from their residence to factory and back, then the possession of the vehicle remained with the assesse and the entire expenses, namely, diesel charges, salary of driver/conductor, road tax, passenger tax etc. were born by him. It is not a transfer and no tax is leviable (CTT vs. Jamuna Prosad Jaiswal (2008) 13 VST 403 (All); (CTT vs. Prince Tourists Bus Service (2008) 13 VST 412 (All)); (Bharat Sanchar Nigam Ltd. vs. U.O.I. (2006) 145 STC 91 (SC)); (Mohd. Wasim Khan vs. CTT (2009) 20 VST 196 (All)); (Assam State Transport Corporation vs. Oil and Natural Gas Corp. Ltd. (2013) 57 VST 549 (Gau))

   The petitioner gave on hire a bus to the Orissa State Road Transport Corporation, under which the owner had to abide by all orders and directions of the Corporation in regard to the starting station of the journey, operation, haltage, destination, timing and routes, issued from time to time. In this case, there is no transfer of right. (Krushna Chandra Behera vs. State of Orissa (1991) 83 STC 325 (Ori); Upasana Finance Ltd. vs. State of T.N. (1999) 113 STC 413 (TNSTC); CTT vs. Sri Ram (2009) 20 VST 747 (All)

10. Supply of vehicles, compulsorily, for election purposes is a sale and, therefore, taxable [State of Tripura vs. Tripura Bus Syndicate (2001) 122 STC 175 (Gau)]

    However, Delhi High Court reversing the above decision in the case of International Travel House Ltd. vs. CST 47 DSTC J-240 held that it is merely a contract of rendering of services and hence not taxable.

11. Rent-a-cab for fixed time or fixed mileage:Whether there is a transfer of the right to use or not is a question of fact which has to be determined in each case having regard to the terms of the control under which there is said to be a transfer of the right to use. (RashtriyaIspat Nigam Ltd. vs. CTO (1990) 77 STC 182)

12. Time charter party agreement of hiring a ship is not subject to sales tax (State of T.N. vs. Essar Shipping Ltd. (2012) 47 VST 209 (Mad)

13. Hiring of cine studios: The hiring of studios for the purpose of recording songs, background music and dubbing of sound does not amount to transfer of right to use any movable property and, hence, such transactions do not fall within the extended definition of sale (CST vs. Bombay Sound Service (1999) 112 STC 290 (Bom))

    Hiring of audio visual and multimedia equipments:

    (i) If it is the discretion of the customer to transport the equipments, install and operate them in any manner he wants and at the end of the period of hiring, return them to the petitioner, it is a sale.

    (ii) where the customer engages the petitioner for providing audio visual services for any programme or event and the petitioners do not deliver any equipments to the customer, but take the equipments at the site of the programme, install them, operate them and then dismantle them and bring them back after the period of hiring, it is not a sale (Lakshmi Audio Visual Inc. Vs Asstt. CCT (2001) 124 STC 426 (Kar))

14. Hiring of tents*, pandals,* furniture etc:.If a *pandal*, after having been erected, is given to the customers for use, then it may not be a transfer of goods. However, when tents and furniture are given by dealers to customers as such and the customers erect the tents, etc., and pay hire charges for the tents, crockery, etc. there would be transfer of goods and the right to use them would be taxable. (HarbansLal vs.

State of Haryana (1993) 88 STC 357 (P&H)) affirmed in (Aggarwal Brothers vs. State of Haryana (1999) 113 STC 317 (SC))

In the case of SatkarShamiana Services as modified by the Delhi VAT Tribunal, it has been determined that "Where the pandal or Shamiana is erected and subsequently dismantled on the order of his customer, there is only a custody and license to use given by the Contractor and not the effective and general control imparted to the customer. In such a case, there is no transfer of right to use the pandal or the Shamiana and, accordingly, no tax is payable under the DVAT Act.

15. Hiring of shuttering to builders:Shuttering supplied to the builders for a specified period for the purposes of construction at a consideration is a sale (Aggarwal Brothers vs. State of Haryana (1999) 113 STC 317 (SC))

16. Advertisement hoarding:It is a sale unless it could not be claimed to be immovable property (Selvel Advertising (P) Ltd. vs. CTO (1993) 89 STC 1 (WBTT))

    For hire-charges of t hoardings, the person who erects them is certainly liable to be tax for transfer of right to use (Upasana Finance Ltd. vs. State of T.N. (1999) 113 STC 413 (TNSTC))

17. Bank lockers:The lease of bank lockers does not come within the expanded meaning of sale (Bank of India vs. CTO (1987) 67 STC 199 (Cal)); (State of Bank of India vs. State of A.P. (1988) 70 STC 215 (AP)); (Oriental Bank of Commerce vs. State of U.P. (2010) 33 VST 117 (All))

18. Telecommunication services and telephone instruments:It is a sale (State of U.P. vs. U.O.I. (2003) 130 STC 7 (SC)); overruling (U.O.I. vs. Govt. of A.P. (1999) 113 STC 203 (AP)) and (U.O.I. vs. State of Haryana (2001) 123 STC 539 (P&H)) and reversing (U.O.I. vs. State of U.P. (1999) 114 STC 288 (All))

    However, the Supreme Court in BSNL's case Bharat Sanchar Nigam Ltd. vs. U.O.I. (2006) 145 STC 91 (SC) opined that telecommunication services are not sale but telephone instruments, mobile handsets, modems and Caller ID instruments are "goods" and sale tax is leviable.

19. Passive telecommunication infrastructure services, Towers etc.If the component's delivery is involved, there is transfer of right to use goods (Essar Telecom Infrastructure (P.) Ltd. vs. U.O.I. 2012 (25) S.T.R. 16 (Kar))

    However, Andhra Pradesh High Court observed that a telecom tower was immovable property in that it could not be moved to another place in the same position, but necessary to be dismantled for re-erection at such other place. Accordingly, it held that the passive infrastructure could not be held to be moveable goods so as to be charged to the sales tax (State of A.P. vs. Bharat Sanchar Nigam Ltd. (2012) 49 VST 98 (AP); Indus Towers Ltd. vs. CTO (2012) 15 VSTI B-441 (AP))

20. Telecasting of TV programmes: It is a sale (Ushakiran Movies vs. State of A.P. (2006) 148 STC 453 (AP))

21. Electricity meter rent: It is a deemed sale (CESC Ltd. vs. CTO (1995) 99 STC 446 (WBTT)); (A.P. State Electricity Board vs. State of A.P. (2011) 43 VST 359 (AP))

    However, in S.E. Hydel Circle vs. Addl. E&T Comm. (2008) 18 VST 246 (HP), it was held that since there is no transfer of any interest or right in the electricity meter to the consumer, it does not amount to 'sale' in the form of transfer of right to use goods.

22. Cylinder retention charges: There is transfer of the right to use the cylinders and hence taxable (State of Orissa vs. Asiatic Gases Ltd. (2007) 7 VST 531 (SC); (Industrial Oxygen Co. (P). Ltd. vs. State of A.P. (1992) 86 STC 539 (AP)); (Indian Oxygen Ltd. vs. State of T.N. (2001) 122 STC 288 (TNSTC)); (Harbans Lal vs. State of Haryana (1993) 88 STC 357 (P&H))

23. Supply of video cassettes: It is a transfer of right (Rohini Panicker vs. Addl. STO (1997) 104 STC 498 (Ker)

24. Transfer of trade mark/logo: It is a transfer of right to use goods (S.P.S. Jayam and Co. vs. Registrar TNTST (2004) 137 STC 117 (Mad)); (Vitan Departmental Stores & Industries Ltd. vs. State of T.N. (2014) 68 VST 70 (Mad)); (Vikas Sales Corporation vs. CCT (1996) 102 STC 106 (SC))

25. Transfer of technical know-how: It is a deemed sale (Mechanical Assembly Systems (India) Pvt. Ltd. vs. State of Kerala (2006) 144 STC

536 (Ker)); relied upon (Tata Consultancy Services vs. State of A.P. (2004) 137 STC 620 (SC)) and (Associated Cement Companies Ltd. (2001) 124 STC 59 (SC))

26. Transfer of generator with operator: It is a sale (Skan Renting & Leasing)
27. Lease of hotel: It is liable to sales tax (Jai Parkash Industries Ltd. vs. CCT (2010) 36 VST 152 (Uttara))
28. Lease of showcase outside the shop: It is a sale (Studio Line vs. CTT (2012) 14 VSTI C-461 (Del-Trib.))

Specific provisions under the DVAT Act

(i) Incidence of tax

In case of transfer of right to use goods, income would accrue every month on payment of installments and tax is paid for respective month (Infrastructure Leasing & Financial Services Ltd. vs. CVAT (2010) 29 VST 346 (Del))

(ii) Tax credit to the lessee

As per section 105(2)(b), tax credit arising u/s 9 shall be allowed only for a purchase in the form of acquisition of a right to use goods made on or after 1.4.2005.

(iii) Input and Tax credit to the leasing company (Lessor)

Contrary to the above, the Commissioner in **Delhi VAT Digitech Systems** has determined that the leasing company is not eligible for input tax credit.

The Delhi VAT Tribunal against the order of the Commissioner L&T Finance Ltd vs. CTT (2011) 10 VSTI C-131 (Del Trib) held that leasing companies are eligible for input tax credit u/s 9 of the DVAT Act on goods purchased by the them in the course of activities as a dealer for the purpose of making sales, which are liable to tax u/s 3 of this Act, or sales which are not liable to tax u/s 7 of this Act.

As per Section 9(11) inserted w.e.f. 01.04.2013, the judgment has partially overruled and provisions are made to allow input tax credit to the lessor on purchase of its goods in four years from the date of purchase.

Section 9(11) of the Act reads

"Subject to sub-section (1), (2) and (3) of this section, the tax credit of goods to be used for sale, as defined in sub-clause (vi) of clause (zv) of sub-section (1) of Section 2 of the Act, shall be allowed as follows:

(a) 1/4th of the input tax on such goods arising in the tax period, in the same tax period;

(b) balance 3/4th of such input tax, in equal proportions, in corresponding tax periods, in three immediately successive financial years."

Taxability of transactions relating to transfer of right to use goods

For taxability purpose, transfer of right to use goods transactions can be divided into two categories:

(a) Financial lease; and

(b) Operating Lease or Normal hiring transactions.

Finance lease means all risks and rewards incident to ownership of an asset have been substantially transferred. Under such a lease, the lessee himself identifies the equipment required and requests the lessor to acquire it and lease it to him. The full responsibility of the choice, design, size, quality, utility or marketability of the equipment rests with the lessee. The lease agreement is non-cancelable. The maintenance, repairs, payment of taxes, insurance, etc. are all the lessee's responsibility. Thus, such a lease is only a financial agreement. Since these transactions are similar to hire purchase transactions, taxability shall be as in relation to the hire purchase transactions will be same for financial lease transaction.

Operating lease means such a lease where the same asset will be turned over to different customers. The lessor usually has the goods in his stock and does not acquire them specifically for a particular lessee as under a financial lease. The lessee gets possession and the right to use the goods as also substantial control over the goods subject to certain restrictive stipulations. The period of hiring may be long or short; and when goods are returned by one user, the company will hire the same goods to another.

(a) Operating lease :

(i) Leasing of goods by the lessor :

S.No.	**Description**	**Leasing Company is situated in Haryana**	
		Customer is in Delhi	**Customer is in Haryana**
a.	Turnover	The portion of the sale price that is due and payable during the relevant tax period. Taxable under the CST Act if the customer is in Haryana and goods are transferred in pursuance of a contract.	
b.	**Rate of tax**		
	Agreement is executed in Delhi and goods are located in Delhi	Rate of tax as applicable under DVAT Act to the respective item.	CST rate, which is based upon tax rate in DVAT Act to the respective item.
	Agreement is executed in Haryana and goods are located in Delhi	Same as stated in the preceding Para since goods are located in Delhi and *situs* of sale will be determined in accordance with sections 3 and 4 of the CST Act. [Determination u/s 84 in Sunbeam Industrial Product (77/CDVAT/2005 dated 29.03.2006)] However, there is another opinion t too; relying upon the judgment by the apex court in 20th Century Finance, *situs* will be at a place where agreement is executed. In relation to the transfer of right of intangible goods, such as patents, etc., it will be difficult to fix any *situs* other than the place of agreement as opined in 20th Century Finance' case.	
c.	Availability of tax credit to the customer	If eligible to claim tax credit u/s 9(1) & (2) of the Act, the customer	As the customer will pay CST, no tax

		can claim tax credit. Generally, it will be available when goods (other than those listed in Schedule VII) are taken on hire for use in making taxable sale.	credit will be available.

Supply of food etc. – Sub-Clause (vii) of section 2(1)(zc)

This sub-clause imposes a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or any other valuable consideration.

"Cooked food" is covered under the definition of "goods" and when a customer goes to a restaurant and orders food in respect of which he pays the price, it would be a transfer of property in goods to the customer. (East India Hotels Ltd. vs. U.O.I. (2001) 121 STC 46 (SC))

The transactions relating to supply of foods etc. by way of or as part of any service can be classified into three broad categories:-

(a) Food supplied by a restaurant/hotel to casual visitors;

(b) Food supplied by a residential hotel during boarding of a customer in a composite plan and

(c) Food supplied by a mandap keeper and outdoor caterer for a composite charge of food, crockery, furniture, rent for the space and other services.

Food supplied by the hotels/ restaurants to casual visitors

In the case of Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi case (1978) 42 STC 386 (SC); State of H.P. vs. Associated Hotels of India Ltd. (1972) 29 STC 474 (SC), the issue raised is "Whether the service of meals to casual visitors in the restaurant is taxable as sale (i) when the charges are lump sum per meal, or (ii) when they are calculated per dish?"

The Supreme Court held that the service of meals to the visitors in the restaurant was not liable to sales tax. However, in the review petition in the case of **Northern India Caterers (India) Ltd. vs. Lt. Governor of Delhi (1980) 45 STC 212 (SC); State of Karnataka vs. Udipi Krishan Bhavan (1981) 48 STC 513 (SC) held that** "Where food is supplied in an eating-house or restaurant, and it is established upon the facts that the substance of the transaction, evidenced by its dominant object, is a sale of food and the rendering of services is merely incidental, the transaction would be liable to sales tax.

As it is difficult to split the price between the sale of goods and services rendered, so tax is leviable on total consideration (K. Damodaraswamy Naidy vs. State of T.N. (2000) 117 STC 001 (SC))

Charges for "amenities" towards facilities like lawn, air-conditioning in the bar, restaurant, parking space for vehicles, etc. would be included in the sale consideration as it is not possible to separate the charges (State of Kerala vs. Mukkadan's Hotel (2011) 41 VST 500 (Ker))

Service charges collected by the restaurant/hotel in addition to tariff of food supplied forms part of the sale price and are taxable to the sales tax (Sun-N-Sand Hotel Private Ltd. vs. State of Maharashtra (1969) 23 STC 507 (Bom))

Food supplied by the residential hotels under American Plan: As it is not possible to split the price, hence tax shall be leviable on composite price. But considering the verdict of Judges in case of K. Damodaraswamy Naidy vs. State of T.N. (2000) 117 STC 1 (SC), rule 4A has been inserted in the DVAT Rules, 2005 and methods for valuation have been laid down to split the turnover.

Food supplied by a mandap keeper and outdoor caterer for a composite charge provide sales-cum-services in relation to supply of food and also provide furniture, cutlery, linen, lights, premises for the function and other services to their clients at a composite charges.

As per Article 366(29A)(f), sales tax can be levied on the component relating to supply of food.

On the basis of the judgment in K. Damodaraswamy Naidy vs. State of T.N. (2000) 117 STC 1 (SC), sales tax cannot be charged in the case of an indivisible contract. However, it can be levied if there are some reasonable means of separation of cost.

Sales tax can be levied on the turnover of sale, after excluding the turnover attributable to service. (Cap 'N' Chops Caterers vs. State of Haryana (2011) 37 VST 226 (P&H))

However, in a determination KIC Food Products Pvt. Ltd. and Season Catering Services Pvt. Ltd. Delhi VAT, which is upheld by the Delhi VAT Tribunal KIC Food Products (P) Ltd. vs. CTT, it was held that the outdoor catering contract is one simple contract for supply of food at the chosen venue of the customer and there is no question of splitting it into what part of it is service and what part of it is sale. In factual context the entire transaction amounts clearly to sale within the meaning of Section 2(zc)(vii) of the DVAT Act, 2004 and the entire proceeds of said transactions are eligible to VAT. The judgment of the Supreme Court in Damodarasamy's case is clearly distinguishable and cannot be of any assistance to the Applicant.

BOT/BOOT CONTRACTS

Introduction

The concept of Public-Private Participation (PPP), particularly for the infrastructural development of our nation, is quite familiar at present. Projects of construction and modernization of highways, railways and airports in India are now taken up by the Government under the PPP. In today's global economy, many countries, especially representing emerging economies, have opted for build-operate-transfer (BOT) or build-won-operate-transfer (BOOT) schemes to attract private foreign and national investors to finance, design, construct, operate and maintain large-scale infrastructure and development projects.

BOT contracts (concessions) are new developmental entities which need to be adopted and regulated within the framework of special accounting and auditing standards and taxation rules. Many developing countries have not yet introduced statutes and tax laws to treat these infrastructure contracts in their economies.

Generally, these contracts involve the value of hundreds of crores rupees. The sales tax/VAT wings of the State Government of the country have initiated measures to consider the BOT activity as works contract transaction and liable for payment of VAT. With the peculiar form of transactions involved in such contracts, coupled with lack of clarity on the taxation laws, there are

conflicting opinions about taxability of such contracts as works contracts. The main conflict lies in respect of taxability in the hands of concessionaire/operator. So far as other major parties to the contract, i.e., the grantor and EPC contractor, are concerned, there is no dispute with regard to their taxability.

Sales Tax/VAT on BOT contracts as works contracts

Since these contracts involve substantial money, the VAT Departments of some States (including Delhi) have initiated proceedings against the concessionaries by treating them as works contractors. In a ruling issued u/s 85 of the Delhi VAT Act No: 281/CDVAT/2010/42 dated: 25.11.2010, it is determined that the BOT, BOO, BOOT and BOMT contracts are in the nature of works contract as defined under the Delhi VAT Act and, therefore, liable for compulsory registration.

The taxability of BOT contract as works contract, however, would depend upon the nature and terms of the contract, but in general, and in the opinion of the author, the goods involved in such activity cannot be taxed as sale of goods in the hands of Concessionaries, even in view of the expanded definition under clause (29A) of article 366 of the Constitution of India.

Definition of Works Contract – Section 2 (2ja) of the CST Act

"Works contract" means a contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property.

Purpose of the award of BOT contractor by the Grantor

The main objective is to build or improve infrastructure for the furtherance of economic growth and development without impacting the financial burden of the grantor. The contract is largely a service contract having elements of construction, operation, management and service.

Role of the sponsors / concessionaire / operator

A contractor is liable to pay tax on goods involved in the execution of works contract, if he is executing the contract "for and on behalf of' the contractee. However, where the builder is constructing the property not for and on behalf

of the contractee, but otherwise, it cannot be treated as works contract. In the BOT contracts, the construction is for the provision of service in future.

It is important to refer to the judgment of the apex court in the case of K. Raheja Development Corporation vs. State of Karnataka (2005) 141 STC 298 (SC); affirmed in Larsen and Tourbo Ltd. vs. State of Karnataka (2013) 65 VST 1 (SC), where the owner of the flats were engaged in the business of construction of the residential apartments and/or commercial complexes, and for this purpose, they entered into agreements of sale with the intended/ prospective purchasers. It was held by the two-judge bench of the Supreme Court that even an owner of the property might also be said to be carrying on a works contract if he enters into an agreement to construct. However, if the agreement is entered into after the unit is already constructed, then there will be no works contract.

Absence of consideration or deferred payment

"Sale" implies transfer of property in goods by one person to another for cash or for deferred payment or for any other valuable consideration. Works contract transaction is subject to VAT if consideration in the form of cash, negotiable instrument or deferred payment is received by the contractor from the contractee. It will also be taxable if the consideration is received from the third party on behalf of the contractee/transferee of the goods. Mohd. Ekram Khan and Sons vs. CTT (2004) 136 STC 515 (SC). In the BOT transaction, no consideration is generally received by the operator from the grantor. Where, however, consideration is paid by the grantor to the concessionaire in any form, then liability for payment of tax cannot be denied.

Bharat Sanchar Nigam Ltd. vs. UOI (2006) 145 STC 91 (SC) (BSNL)

The Supreme Court in *BSNL*'s case had occasion to discuss the taxability of works contract transactions. The apex court observed,

All the clauses of article 366(29A) serve to bring transaction where one or more of the essential ingredients of a sale, as defined in the Sales of Goods Act, 1930,are absent within the ambit of purchase and sales for the purposes of levy of sales tax. *Gannon Dunkerley State of Madras vs. Gannon Dunkerley & Co. (Madras) Ltd. (1958) 9 STC 353 (SC)* survived the 46th Constitutional Amendment in two respects. First, with regard to the definition of 'sale' for the purposes of the Constitution in general and for the purposes of entry 54 of list II in particular except to the extent that the clauses in article

366(29A) operate. **By introducing separate categories of 'deemed sales' the meaning of the word 'goods' was not altered.** Thus, the definitions of the composite elements of a sale such as intention of the parties, goods, delivery etc. would continue to be defined according to the known legal constitutional. This does not mean that the content of the concepts remains static. However, the 46th Amendment does not give license, for example, to assume that a transaction is a sale and then to look around for what could be the goods. The second respect in which *Gannon Dunkerly* has survived is with reference to the dominant nature test to be applied to a composite transaction not covered by article 366(29A). **Transactions which are mutant sales are limited to the clauses of article 366(29A). All other transaction would have to qualify as sales within the meaning of Sales of Goods Act, 1930 for the purpose of levy of sales tax.** Of all the different kinds of composite transactions , the drafters of the 46th Amendment chose three specific situations, a works contract, a hire purchase contract and a catering contract for bringing them within the fiction of a deemed sale. Of these three, the first and third involve a kind of service and sale at the same time. Apart from these two cases, where splitting of the service and supply has been constitutionally permitted in sub-clauses (b) and (g) of Clause 29A of article 366, there is no other service which has been permitted to be so split.

if there is an instrument of contract which may be composite in form in any case other than the exceptions in article 366(29A), **unless the transaction in truth represents two distinct and separate contracts and is discernible as such, then the State would not have the power to separate the agreement to sell from the agreement to render service, and impose tax on the sale. The test, therefore, for composite contracts other than those mentioned in article 366(29A) continues to be - did the parties have in mind or intend separate rights arising out of the sale of goods.** If there was no such intention, there is no sale even if the contract could be disintegrated. The test for deciding whether a contract falls into one category or the other is to as what is "the substance of the contract", in other words. "dominant nature test".

State of A.P. vs. Larsen & Tourbo Ltd. (2008) 17 VST 1 (SC)

Even if it is assumed for a while that a concessionaire is a works contractor, then question would also arise as to what he is transferring in the form of goods to the grantor. In majority of such contracts, the entire construction

activity is awarded by the Concessionaire to an EPC contractor, who pays VAT on the amount of contract as per the provisions of the Act. If the concessionaire is considered the main contractor, then the EPC contractor will be considered a sub-contractor. Since the property in the goods is transferred by the sub-contractor as per the theory of accretion, there cannot be multiple sales. In the L&T case, the Apex Court observed,-

"If one keeps in mind the above quoted observation of this Court in the case of Builders' Association of India (*supra)* the position becomes clear, namely, that even if there is no privity of contract between the contractee and the sub-contractor, that would not do away the principle of transfer of property by the sub-contractor by employing the same on the property belonging to the contractee. This reasoning is based on the principle of accretion of property in goods. It is subject to the contract to the contrary.

Thus, in our view, in such a case the work, executed by a sub-contractor, results in a single transaction and not as multiple transactions. In our view, if the argument of the Department is to be accepted, it would result in plurality of deemed sales which would be contrary to Article 366(19A)(b) of the constitution as held by the impugned judgment of the High Court."

The Apex Court, thus, observed that the property in goods passes directly to the contractee by the theory of accretion, and in the event of a contractor awarding the contract to a sub-contractor, the property in goods does not pass to the contractor at any point of time. Therefore, relying upon the said judgment, the concessionaire (alias main contractor) would not be liable to pay sales tax/VAT, atleast, to the extent of value of contract awarded to the EPC contractor (alias sub-contractor).

Conclusion

Therefore, in the BOT Contracts, for a specified period of lease, the concessionaire enjoys exclusive right of accession to the site and is deemed to have acquired and owned the project site to the exclusion of grantor. Thus, whatever goods are used by the concessionaire in the development, construction and maintenance of the infrastructure under the agreement continue to remain his property. Consequently, there is no transfer of property in the goods from the concessionaire in favour of the grantor, which would attract any tax under entry 54 of the State List appended to the Constitution of India. Further, on expiration of the lease period, the entire infrastructure, being an immovable property, reverts back to the grantor,

which would again be outside the scope of tax on the sale of goods. Again, in the BOT transaction, the concessionaire is generally not paid any "consideration" by the grantor in the strict sense. Recovery of return on the concessionaire's investment is made from such users, who are not parties to the BOI agreement. Thus the essential ingredients of a transaction to be called a transaction of sale or purchase, as envisaged in the Sale of Goods Act and the Delhi VAT Act, are clearly absent. Nevertheless, the Government collects tax on the contract value awarded to EPC contractor by the concessionaire; the dispute would be only in relation to value addition, if any.

Though taxability would depend upon the nature and terms of the contract, yet the BTO or BT contracts can certainly be distinguished by the tax authorities from the BOT contracts, where, in the former case, the ownership is transferred by concessionaire to the grantor as soon as the construction of the project is completed.

It is interesting to note that whereas the Central Government has granted exemption from service tax to infrastructure works contracts, the State Governments, on the other hand, are keen to recover VAT on such activities. It needs to be mentioned again that no law has yet been legislated by the Government, and not even guidelines or clarifications have been issued in respect of BOT contracts. In majority of the cases, the grantor is either the Government (Centre of the State) or any of its Authority, who, generally, do not pay any consideration to the operator, and levy of sales tax/VAT would ultimately be borne by the Government, either in the form of increase in the lease period or by permitting additional avenues to the operator for generating more revenue.

Infrastructure is the key to development of any economy. In the absence of proper legislation and judicial pronouncements upholding the levy of tax on such activities, the tax authorities, in their enthusiasm to generate more revenue by subjecting such activities to value added tax, shall only be acting as road blocks in the development of the nation's economy.

Chapter-20
Route or Way Bill

Submission of details online for movement of specified goods outside Delhi in Form T-1

Notification No.F.7(433)/Policy-II/VAT/2012/1464 dated 23.03.2012 *(as amended from time to time)* has been issued by the Delhi VAT Commissioner to report by the registered dealers of details of movement of certain goods [in pursuance of inter-State sale, stock transfer and export] to the Department. These details would be reported by the dealer on the web-site of the Department (www.dvat.gov.in). The notification read as,

The Commissioner, Value Added Tax, Government of National Capital Territory of Delhi, considers it necessary that details relating to any movement of petroleum products (except [Kerosene Oil], Petrol, Diesel, Aviation Turbine Fuel, Liquid Petroleum Gas or Compressed Natural Gas), tobacco and gutka, consequent to their movement [in pursuance of inter sale, stock transfer and export], is to be reported by the registered dealers engaged in their trade, *[within 48 hours after the movement of goods begins]*

Now, therefore, in exercise of the powers conferred on me by sub-section (1) read with sub-section (3) of section 70 of Delhi Value Added Tax Act, 2004,the Commissioner directs that the details in respect of the above mentioned goods shall be submitted by the dealer electronically using his login, *[within 48 hours after the movement of goods begins].* For this purpose, Form T1 shall be used, which is provided at the website of the Trade & Taxes department. The manner of using the annexure of T1 is also mentioned at the website of the Department."

Form T2

For Movement of Specified Goods inside Delhi

All the dealers, except dealers exclusively dealing in Tax Free Goods, having Gross Turnover of more than Rs. 1 crore in 2012-13 or on any date in the current financial year on which the dealer attained/ attains the lower limit of Gross Turnover of Rs. 1 crore, shall submit details of Invoice and GR Note in

respect of all goods purchased or received as stock transfer or on consignment basis from outside Delhi.

The details are to be submitted by the dealers on Department's website, using their login id and password, of inward movement of goods in Delhi.

For this, T2 is to be filed by every dealer for every vehicle entering Delhi carrying the goods.

The T2 form can also be submitted through mobile application/ SMS in a summarized manner. The format shall be as under:

"DVAT<space>T2<space>Vehicle No.<space>Amount<space>DVAT rate"

Provisions regarding Form T2

1. If Goods Receipt (GR) Note is not available to the dealer, T2 can still be filed by the dealer, but it must be updated within 24 hours of receipt of goods by him.

2. The goods received from outside Delhi cannot be disposed of /sold or dispatched by the purchasing dealer till all the details are updated online in Form T2, including the GR number.

3. The transporter is required to carry a copy of receipt of T2 submitted online, or the unique code received through SMS on submission of details through mobile.

4. If a new vehicle (i.e., without Registration No.) is entering Delhi for sale for the first time, then its Engine No. and Chassis No. should be mentioned in the column of Vehicle No. in Form T2.

   If details for such vehicle are to be submitted via Mobile, the Vehicle No. shall be NV01 (for cars), NV02 (for trucks), NV03 (for buses) and NV04 (for other vehicles).

5. Where it is practically not possible to carry a GR Note, on purchasing goods from National Capital Region (NCR), as defined in NCR Planning Board Act of 1985, from vehicles owned by the supplier, then Form DVAT32 must be filed and carried with the vehicle.

PART 4

Reports and Forms under DVAT

Chapter-21

Forms under DVAT

A. Forms in the Delhi VAT for use by the DEALER / ANY OTHER PERSON

Form DVAT-	Title
01	Application for opting for Composition scheme by a Dealer registered under Delhi Value Added Tax Act, 2004
02	Application for opting for Composition Scheme by a Dealer registered during transition
03	Application for withdrawal from Composition Scheme
03A	Intimation of withdrawal from Composition scheme during the year
04	Application for Registration
04A	Application for Registration by a Casual Trader
07	Application for Amendment(s) in Particulars subsequent to Registration
09	Application for Cancellation of Registration
12	Form for furnishing Security
13	Application for Return, Release or Discharge of Security
16	Delhi Value Added Tax Return and Revised Return
16A	Form of Return to be Furnished by a Casual Trader
17	Composition Tax Return Form and Revised Return
18	Statement of Tax paid Stock in hand on April 01, 2005
18A	Statement of Stock in hand as on April 01, 2005 (which has not suffered tax)
19	Statement of Trading Stock and Raw Material as on the date of Registration
20	Challan for payment of Tax etc. under Delhi Value Added Tax
21	Refund Claim Form
23	Refund form for Embassies, International and Public Organizations

27A	Intimation of Deposit of Government Dues
30	Specimen of Purchase/Inward Branch transfer Register
30A	Specimen of Debit/Credit Notes Related To Purchases Register
31	Specimen of Sales/Outward Branch transfer Register
31A	Specimen of Debit/Credit Notes related to Sales Register
32	Goods Transport Receipt
33	Delivery Note
34	Export Declaration
35	Import Declaration
35A	Goods Transit Slip
35B	Account of Declaration Forms DVAT 34/DVAT 35
36	Undertaking cum Indemnity by Purchasing Dealer for obtaining a duplicate tax invoice
38	Objection Form
38A	Memo of Appeal to the Tribunal
38B	Application for Rectification under section 74B
38C	Application for Review under section 74B
39	Application for Condonationof delay
41	Notice of delay in deciding an Objection
42	Application for the determination of Specific Questions
43	Certificate of Deduction of Tax at Source
44	Application for allotment of Tax Deduction Account Number (TAN)
46	Application for obtaining Form DVAT 34 or DVAT 35
48	Form of Quarterly Return by the Contractee for the quarter ending
52	Declaration of Permanent Account Number / Importer and Exporter u/s 95
53	Statement of partly executed Works Contracts as on 31st March 2005, where the Contracts were inclusive of tax payable under the Delhi Sales Tax on Works Contract Act, 1999
54	Details of partly executed Contracts as on 31st March 2005 which have been executed during the tax period
56	Return Verification Form

B. Forms in the Delhi VAT for use by the DEPARTMENT

Form DVAT-	Title
05	Notice Proposing Rejection of Registration Application
06	Certificate of Registration
06A	Certificate Of Registration for a Casual Trader
08	Amendment of Existing Registration
10	Show Cause Notice for the Cancellation of Registration
11	Cancellation of Registration
14	Notice for Forfeiture and Insufficiency of Security
15	Order of Forfeiture of Security
21A	Notice For Furnishing Security for Granting Refund
22	Refund Order
22A	Notice for withholding Refund / furnishing Security u/s 39 of the Delhi VAT Act, 2004
24	Notice of Default Assessment of Tax And Interest
24A	Notice of Assessment of Penalty
24B	Notice under sub-section (2) of section 74A
25	Recovery Certificate
25A	Certificate to be served upon the Certificate-Debtor u/s 43(6)
26	Continuation of Recovery Proceedings
27	Notice For Special Mode of Recovery
28	Summons to Appear In Person/or to Produce Documents
29	Notice for redeeming goods
37	Notice for audit of Business Affairs
40	Decision of the Commissioner in respect of an objection
45	Tax Deduction Account Number (TAN) Certificate
47	Receipt for Security deposited u/s 61(5)
49	Certificate of Enrolment as a Value Added Tax Practitioner
50	Grant of Authority by the Commissioner

C. Forms in the Delhi VAT in respect of the Composition Scheme notified by the Government u/s 16(12) for WORKS CONTRACTORS

Form No.	Title
WC 01	Application Form for (Opting Composition by an Eligible Works Contractor
WC 02	Application Form for Withdrawing From Composition by a Works Contractor
SS 01	Statement of opening stock held on the first day of the period for which Composition is to be opted
CC 01	Certificate by the Contractor

D. Forms in the Delhi VAT in respect of Composition Scheme notified by the Government U/S 16(12) for DRUGS & MEDICINE DEALERS

Form No.	Title
DM 01	Application Form For Opting Composition By An Eligible Drugs And Medicine Dealer
DM 02	Intimation Regarding Withdrawal by a Drugs And Medicine Dealer From Composition Scheme
SS 02	Statement of Opening Stock held on the first day of the year from which Composition is to be opted

E. Forms in the Delhi VAT in respect of Composition Scheme notified by the Government U/S 16(12) for BULLION TRADERS

Form No.	Title
BU 01	Application Form For Opting For Composition Scheme As Notified Exclusively for Bullion Traders
BU 02	Intimation Of Withdrawal From Composition Scheme Notified Exclusively For Bullion Traders

F. Forms in the Central Sales Tax (Registration & Turnover) Rules, 1957

Form No.	Title
A	Application for Registration under section 7(1) / 7(2) of the Central Sales Tax Act, 1956
B	Certificate Of Registration
C	Form Of Declaration
D	Form of certificate for making Government purchases
E-I	Certificate under subsection (2) of section 6
E-II	Certificate under subsection (2) of section 6
F	Form of Declaration To be Issued by the Transferee
G	Form of Indemnity Bond
H	Certificate of Export
I	Form by SEZ Dealer
J	Form of Certificate for Claiming Exemption under section 6(4)

G. Forms in the Central Sales Tax (Delhi) Rules, 2005

1	Return of sales tax payable for the quarter/month
2	Register of Declaration Forms maintained under rule 5(8)
2A	Requisition Account of Declaration Forms
2B	Utilization Account of Declaration Forms issued in Advance
2C	Application for issue of Forms
3	Register of Declaration Forms maintained under rule 7(3)
4	Register of Inter-State Sales
5	Register of Declaration Forms under rule 8(5)
6	Register under rule 8(12)
7	Register under rule 9(1)
8	Memorandum of appeal under sub-section (3-H) of section 7

H. Other Forms in the Delhi VAT

Form	Title
AR 1	Audit report to be submitted by specified dealers under section 49 of the Delhi Value Added Tax Act, 2004
Stock-1	Online details by all dealers of stock held as on 31st March of every year
CD-1	Online quarterly details relating to central declaration forms received against stock transfer or central sales made on concessional rates, missing forms and tax deposited on account of missing forms
T-1	Online details of outward movement in pursuance of inter-state sale, stock transfer and export of Petroleum products (except Kerosene Oil, Petrol, Diesel, Aviation Turbine Fuel, Liquid Petroleum Gas or Compressed Natural Gas), Tobacco and Gutka
T-2	Online details of inward movement of all goods purchased / received as stock transfer in Delhi from outside Delhi

Chapter-22
Audit and Audit Report

1. Audit (section 58)

(1) The Commissioner may serve on any person in the prescribed manner **a notice** informing him that **an audit of his business affairs** shall be performed and where applicable, that an assessment already concluded under this Act may be reopened. **A notice may be served** notwithstanding the fact that the person may **already have been assessed under self-assessment, default assessment of tax payable or assessment of penalty** of this Act.

(2) A notice served under section 58(1) may require the person on whom it is served, to appear on a date and place specified therein, which may be at his business premises or at a place specified in the notice, to either attend and produce or cause to be produced the books of accounts and all evidence on which the dealer relies in support of his returns (including tax invoices, if any), or to produce such evidence as is specified in the notice.

(3) The person on whom a notice is served under section 58(1) shall provide all co-operation and reasonable assistance to the Commissioner as may be required to conduct the proceedings under this section at his business premises.

(4) The Commissioner shall, after considering the return, the evidence furnished with the returns, if any, the evidence acquired in the course of the audit, if any, or any information otherwise available to him, either –

- (a) confirm the assessment under review; or
- (b) serve a notice of the assessment or re-assessment of the amount of tax, interest and penalty if any pursuant to sections 32 and 33 of this Act.

(5) Any assessment pursuant to an audit of the person's business affairs shall be without prejudice to prosecution for any offence under this Act.

Rule 46: Where the Commissioner has decided to audit the business affairs of any person under section 58, the Commissioner may serve on that person **a notice in Form DVAT-37** in the manner prescribed in rule 62.

Manner of service of notices of summons or order (Rule 62)

1. (1) Without prejudice to the provisions of sections 96 and 97, notices of summons or orders (in this rule called a 'document') under the Act or these rules may be served by any of the following methods:

   (i) by delivering or tendering to the addressee or his agent, or to a person regularly employed by him in connection with the business in respect of which he is registered or to any adult member of his family, a copy of the notice, summons or order;

   (ii) by post

   PROVIDED that if upon an attempt having been made to serve any such notice or summons or order by any of the above mentioned method, the Commissioner is satisfied that the addressee is evading service of notice, summons or orders or that for any other reasons, the notice, summons or order cannot be served by any of the above mentioned methods, the Commissioner shall cause such notice or summons or orders to be served by affixing a copy thereof-

   (a) if the addressee is a dealer, upon some conspicuous part of any place of the dealer's business last notified by the dealer or if the said place of business is known not to exist or is not traceable, upon some conspicuous part of the last known place of residence of its proprietor or partner or director or trustee or manager or authorised signatory or any other person authorised to receive notice on behalf of the dealer;

   (b) if the addressee is not a dealer, on some conspicuous part of his residence or office or the building in which his residence or office is located; and such service shall be as effectual as if it has been on the addressee personally:

   PROVIDED FURTHER that where the Commissioner at whose instance the notice or summons or order is to be served, on inquiry, is satisfied that the said office, building, place of residence is known not

to exist or is not traceable, he may, by order in writing, dispense with the requirement of service of the notice or summons or order under the preceding proviso;

(i) by sending the document by facsimile;

(ii) by sending the document by electronic mail;

(iii) by sending the document by courier; or

(2) in such other manner as the Commissioner thinks fit.

2. When the officer serving a notice or summons or order delivers or tenders a copy of the notice or summons or order to the addressee personally or to his agent or to any other person referred to in clause (i) of sub-rule (1), he shall require the signatures of the person to whom the copy is so delivered or tendered, as an acknowledgment of the service, endorsed on the original notice of summons, or order;

PROVIDED that where the addressee or his agent or any such person refuses to sign the acknowledgment, the servicing officer shall affix a copy of the notice or summons or order on the outer door or some other conspicuous part of the premises in which the addressee ordinarily resides or carries on business or personally works for gain.

3. When the notice, summons or order is served by affixing a copy thereof in accordance with the provisions to sub-rule (1) or sub-rule (2), the officer serving it shall return the original to the Value Added Tax authority which issued the notice, summons or order with a report endorsed thereon or annexed thereto, stating that he so affixed the copy, the circumstances under which he did so and the name and address of the person, if any, by whom the addressee's place of business or residence was identified and in whose presence the copy was affixed. The said officer shall also obtain the signatures or thumb impression of the person identifying the addressee's residence, office, or place of business.

4. When the notice is served by post, it shall be deemed to be effected by properly addressing, pre-paying and posting by registered post the notice, summons or order and unless the contrary is proved, the service shall be deemed to have been effected at the time at which the notice, summons or order would be delivered in the ordinary course by post.

5. When the notice is served through a courier, the service shall be deemed to have been effected by properly addressing, pre-paying and delivering to the courier the notice, summons or order and unless contrary is proved, it shall be deemed to have been effected at the time at which the notice, summons or order would be delivered in the ordinary course by courier.

6. The sufficiency of the mode of serving any notice, summons or order shall be decided by the Value Added Tax authority which issued the same.

2. Special Audit (Section 58A)

(1) If the Commissioner, having regard to,-

(a) the nature and complexity of the business of a dealer; or

(b) the interest of the revenue; or

(c) volume of accounts; or

(d) doubts about the correctness of the accounts; or

(e) multiplicity of transactions in the accounts; or

(f) the specialized nature of the business activity; or

(g) non-production of all records and accounts; or

(h) non-filing of audit report under section 49 of this Act; or

(i) any other reason.

is of the opinion that it is necessary to do so, he may **direct the dealer** by **a notice in writing** to **get his records, including books of accounts, examined and audited** by an accountant or a panel of accountants or any other professional or panel of professionals nominated by him in this behalf and **to furnish a report** of such examination and audit in the format that he may specify, duly signed and verified by such accountant or panel of accountants or professional or panel of professionals and setting forth such particulars as may be specified.

(2) The provision of section 58A(1) shall have effect notwithstanding that the accounts of the dealer have been audited under any other

provision of this Act or any other law for the time being in force or otherwise.

(3) Every report under section 58A(1) shall be furnished by the dealer to the Commissioner within such period as may be specified by the Commissioner. The Commissioner may, on an application made in this behalf by the dealer and for any good and sufficient reason, extend the said period by such further period or periods as he thinks fit. Provided that the **aggregate of the period originally fixed and the period or periods so extended shall not, in any case, exceed one hundred eighty days** from the date on which the direction under section 58A(1) is received by the dealer.

(4) The expenses of, and incidental to, the examination and audit of records under section 58A(1), (including the remuneration of the accountant or a panel of accountants or professional or panel of professionals) shall be determined and paid by the Commissioner and that determination shall be final.

3. Furnish a report by the dealer, audited by accountant

Section 49: If, in respect of any particular year, **the gross turnover** of a dealer exceeds sixty lakh rupees or such other amount as may be prescribed, then, he shall **submit a report** in such **manner, form and period as may be notified by the Commissioner**.

Gross Turnover limit for accounts to be audited

Rule 42A: For the purpose of aforesaid provisions, a dealer whose gross turnover in a year **exceeds one crore rupees**, shall get his accounts of such year **audited by an accountant**, and shall be liable to submit a report, as **notified by the Commissioner**, from time to time.

Provided that the Commissioner may, by an order, require a dealer or class or classes of dealers, to submit a simplified version of the report in lieu of report notified by him under section 49,

Provided further that the commissioner may, by an order, exempt a dealer or class or classes of dealers, from furnishing a report, for the purpose of Section 49.

PART 5
Appendix

Appendix 1

Role of Chartered Accountants

Chartered Accountants have the following key roles to play in the proper implementation of VAT:

(a) Record Keeping: VAT requires proper record keeping and accounting. Systematic records of input credit and its proper utilization is necessary for the success of the VAT. The Chartered Accountants are well equipped to perform such tasks

(b) Tax planning: In order to establish an efficient plan for purchases and sales, a careful study of VAT is required. A Chartered Accountant is competent to analyze the impact of various alternatives and choose the most optimum method of purchases and sales in order to immunize the tax impact.

(c) Negotiations with suppliers to reduce price: VAT credit alters the cost structure of goods supplied as inputs. A Chartered Accountant will ensure that the benefit of such cost reduction is passed on by the suppliers to his company. However, if the buyers of his company make a similar demand, he must be ready with full data to resist their claim. .

(d) Handling the audit by Departmental officers: There will be an audit wing in a Department and certain percentage of dealers will be taken up for audit every year. Chartered Accountants can ensure that proper records are produced to the Department.

(e) External audit of VAT records: Under the VAT system, trust has been reposed on the tax payers as there will be no regular assessment of all VAT returns but only few returns will be scrutinized. In other cases, returns filed by dealer will be accepted. Thus, a check on compliance becomes necessary. Chartered Accountant can play a very vital role in ensuring tax compliance by auditing VAT accounts.

(f) Verification of Books of Accounts: The auditor has to verify the following:

    (i) Books of accounts of tax payers

(ii) Analyzing and interpreting the provisions of the state level VAT laws

(iii) Reporting underassessment, if any, made by the dealer requiring additional payment

(iv) Reporting any excess payment of tax and warranting refund to the tax payer.