

ALL MAHARASHTRA TAX CONVENTION



CPE 6 Hours



Organised by :
Western India Regional Council
of The Institute of
Chartered Accountants of India, Mumbai.
[www . wirc-icai.org](http://www.wirc-icai.org)



Hosted by :
Nagpur Branch of WIRC of ICAI
"ICAI Bhawan", 20/1, Dhantoli, Nagpur-12
☎ : 2443968, 2441196, Fax : 2454166
E-mail : nagpur@icai.org
[www . nagpuricai.org](http://www.nagpuricai.org)



Torch Bearers 2013-2014



CA. Subodh Kumar Agrawal
President



CA. K Raghu
Vice-President

Team - WIRC



CA. Mangesh Kinare
Chairman



CA. Parag Raval
Vice Chairman



CA. Neel Majithia
Secretary



CA. Priti Savla
Treasurer

Team - Nagpur



CA. Swapnil Agrawal
Chairman



CA. Ashwini Agrawal
Vice Chairman



CA. Kirti Agrawal
Secretary



CA. Swapnil Ghate
Treasurer



CA. Sandeep Jotwani
Chairman – WICASA



CA. Suren Duragkar
Executive Member



CA. Kirit Kalyani
Executive Member



CA. Umang Agrawal
Executive Member



CA. Julfesh M. Shah
Regional Council Member,
Ex-Officio



CA. Ashok Chandak
Past President - ICAI
Nagpur



CA. Jaydeep Shah
Past President - ICAI
Nagpur



ALL MAHARASHTRA TAX CONVENTION

Saturday, 4th May 2013

Hotel Centre Point, Ramdaspath, Nagpur.



Hosted by :

Nagpur Branch of WIRC of ICAI

"ICAI Bhawan", 20/1, Dhantoli, Nagpur-12

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PROGRAMME STRUCTURE

Day & Date : **Saturday, 4th May 2013**

Venue : Hotel Centre Point, Ramdaspath, Nagpur.

Inaugural Session : 09.30 a.m. to 11.00 a.m.

Chief Guest : **Shri Vilas Muttemwar**
Hon. Member of Parliament

Guest of Honor : **CA Mangesh Kinare**
Chairman - WIRC

First Technical Session : **11.00 a.m. to 01.00 p.m.**

Topic - 1 : Service Tax – Recent Amendments (Special Focus on Proposed Service Tax Voluntary Compliance Encouragement Scheme, 2013)

Speaker - 1 : **CA. Bakul Modi , Mumbai**

Lunch Break : **01.00 p.m. to 01.30 p.m.**

Second Technical Session : **01.30 p.m. to 05.30 p.m.**

Topic - 2 : Taxation of Works Contract (Relevant Issues)

Speaker - 2 : **CA. Rajat Talati, Mumbai**

Topic - 3 : Intricacies Involved in Local Body Tax (LBT)

Speaker - 3 : **CA. Dilip Phadke , Mumbai**



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2.	Message - President ICAI - CA Subodh Kumar Agrawal
3.	Message - Vice President ICAI - CA K. Raghu
4.	Message - Chairman WIRC - CA Mangesh Kinare
5.	Message - RCM - CA Julfesh Shah
6.	Biodata - Chief Guest - Shri. Vilas Muttemwar
7.	Technical Paper - 1 <ul style="list-style-type: none">- Service Tax – Recent Amendments (Special Focus on Proposed Service Tax Voluntary Compliance Encouragement Scheme, 2013) Speaker : CA. Bakul Modi , Mumbai
8.	Technical Paper - 2 <ul style="list-style-type: none">- Taxation of Works Contract (Relevant Issues) Speaker : CA. Rajat Talati, Mumbai
9.	Technical Paper - 3 <ul style="list-style-type: none">- Intricacies Involved in Local Body Tax (LBT) Speaker : CA. Dilip Phadke , Mumbai



MILESTONES

Sr. No.	Year	Chairman
BEST BRANCH OF ICAI		
01.	1991-92	CA. P. D. M. Agrawal
02.	2001-02	CA. Anil Parakh
03.	2002-03	CA. Pankaj Agrawal
04.	2004-05	CA. Rajesh Loya
05.	2005-06	CA. Anil Mardikar
06.	2008-09	CA. Samir Bakre
07.	2011-12	CA. Satish Sarda
08.	2012-13	CA. Abhijit Kelkar
ALL INDIA BEST BRANCH OF WICASA		
01.	2008-09	CA. Swapnil Agrawal
02.	2010-11	CA. Ashwini Agrawal
03.	2012-13	CA. Satish Sarda
HIGHLY COMMENDABLE PERFORMANCE CERTIFICATE OF ICAI		
01.	1986-87	CA. A. S. Dani
02.	1990-91	CA. A. V. Shenwai
03.	2000-01	CA. O. S. Bagdia
04.	2003-04	CA. Mahendra Kamath
05.	2009-10	CA. Milind Patel
06.	2010-11	CA. Kavita Loya
BEST BRANCH OF WIRC OF ICAI		
01.	1985-86	CA. G. D. Bagri
02.	1986-87	CA. A. S. Dani
03.	1990-91	CA. A. V. Shenwai
04.	1991-92	CA. P. D. M. Agrawal
05.	1992-94	CA. G. M. Wazalwar
06.	1994-95	CA. Jaydeep Shah
07.	1999-00	CA. Kailash Jogani
08.	2000-01	CA. O. S. Bagdia
09.	2001-02	CA. Anil Parakh
10.	2002-03	CA. Pankaj Agrawal
11.	2003-04	CA. Mahendra Kamath
12.	2004-05	CA. Rajesh Loya
13.	2005-06	CA. Anil Mardikar
14.	2006-07	CA. Sudhir Surana
15.	2008-09	CA. Samir Bakre
16.	2010-11	CA. Kavita Loya
17.	2011-12	CA. Satish Sarda
18.	2012-13	CA. Abhijit Kelkar
HIGHLY COMMENDABLE PERFORMANCE CERTIFICATE OF WIRC		
01.	2007-08	CA. Julfesh Shah
02.	2009-10	CA. Milind Patel
BEST BRANCH OF WICASA OF WIRC		
01.	2010-11	CA. Ashwini Agrawal
HIGHLY COMMENDABLE PERFORMANCE CERTIFICATE OF WICASA WIRC		
01.	2008-09	CA. Swapnil Agrawal
02.	2011-12	CA. Kirti Agrawal
03.	2012-13	CA. Satish Sarda



CA. Swapnil Agrawal
Chairman
Nagpur Branch

FOREWORD

It gives me immense pleasure to put before you this paper book on the occasion of All Maharashtra Tax Convention. Nagpur Branch has always been in forefront of organizing programmes for the benefit of the members.

First of all let me thank WIRC Chairman CA. Mangesh Kinare for giving us the opportunity to host All Maharashtra Tax Convention in Nagpur. This convention will be of immense benefit to all of us as learned faculties. CA. Bakul Modi, CA. Rajat Talati and CA. Dilip Phadake, Mumbai will be sharing their expert knowledge on respective topics.

We are very fortunate to have Shri Vilasraoji Muttemwar, Hon. Member of Parliament as Chief Guest and CA. Mangesh Kinare, Chairman WIRC as our Guest of honour of the Convention. I hope we all be benefited by his guidance and words of wisdom.

Nagpur Branch shall also be felicitating the office bearers of WIRC on their maiden visit to Nagpur after assuming the charge. We welcome CA. Mangesh Kinare, WIRC Chairman, CA. Parag Rawal, Vice Chairman, CA. Neel Majethia, Secretary, and Treasurer CA. Priti Savla.

I thank our Regional Council Member CA. Julfesh Shah for his unstinted support & guidance and my Managing Committee Members for their support in hosting this mega event at Nagpur.

Wish you all a great convention





CA. Subodh Kumar Agrawal
President

PRESIDENT'S MESSAGE

The transition of India from an insular economy in the early nineties to a global economy is indeed remarkable. As we come to grips with being a part of a global economy, it is imperative that the tax policies of the country keep pace with the global tax regime. In a time of global economic uncertainty, businesses are increasingly paying close attention to the challenges posed by tax regimes all over the world. With mounting concerns over issues like transfer pricing adjustments, uncertainties surrounding taxability of transactions and the multiplicity of indirect levies, taxpayers in India are no exception to this global trend.

Past more than six decades, the ICAI has achieved recognition as a premier accounting body in the country as well as globally, for its contribution in the fields of education, professional development, maintenance of high accounting, auditing and ethical standards. We expect to closely work with the Government in the implementation of policies that will facilitate the growth of Corporate India and ensure a vibrant Indian economy. The profession of Chartered Accountancy has contributed in its own unique way to the progress by establishment of a mature and reliable system of financial reporting and related governance.

We, Chartered Accountants, have evolved as a professional group with new concepts and procedures to meet the varied demand made by society on their skills. The ICAI being a committed partner in nation building has always been proactive in taking every possible step to enable its members to continue to maintain their core competencies and to uphold the image the profession.

I am happy to note that the Western India Regional Council (WIRC) of the Institute of Chartered Accountants of India (ICAI) is organizing an "All Maharashtra Tax Convention" on May 4, 2013. I am also glad that the Nagpur branch of the WIRC is hosting the same. The topics chosen for the technical sessions like the Service Tax Recent Amendments (Special Focus on Proposed Service Tax Voluntary Compliance Encouragement Scheme, 2013), Taxation of Works Contract & Intricacies involved in Local Body Tax are noteworthy. I hope that it shall equip the delegates with requisite knowledge to deliver their professional duties & obligations. It shall also ensure that the members meet up the rising expectations of the profession and can keep pace with the dynamic business environment.

On this occasion I extend my best wishes to the WIRC & Nagpur branch of WIRC for their persistent efforts and wish this event a huge success.

Best Wishes,

CA. Subodh Kumar Agrawal
President,
The Institute of Chartered Accountants of India





CA. K. Raghu
Vice President

VICE PRESIDENT'S MESSAGE

The Chartered Accountants are entrusted with substantial responsibility under various legislations which shows the confidence and trust reposed by the Government and society in the profession. The assessment of taxes is closely linked to financial accounts. The Chartered Accountant with his experience in accounts is in an advantageous position to prepare the returns for tax purposes, represent an assessee before the income tax authorities and render general advice on taxes to his clients.

The last decade has seen an evolution in the Indian Taxation System. Further lots of changes are due in the area of taxation with the advent of new Direct Tax Code and Goods and Services Tax. Though there has been rationalization in tax rates and simplification in tax laws for a better compliance, still the tax environment in India is often viewed as complex with multiplicity of Indirect taxes, burgeoning litigation and lack of certainty. Therefore it is highly important for chartered accountants to keep abreast with topical and intriguing concepts involved in the dynamic subject like taxation.

It is heartening to note that Western India Regional Council(WIRC) of ICAI is organising the "All Maharashtra Tax Convention" that is being hosted by Nagpur branch of ICAI on 4th May 2013. The workshop will be centred around contemporary issues on taxation such as Service Tax, Taxation of Works Contract and Intricacies in Local Body Tax. The speakers of the sessions are renowned and expert in their respective domains and would surely be a source of motivation to the audience. I am sure the technical deliberations would lead to further enhancing the core competencies of our members paving way for enhancing the quality of services to stakeholders.

Wish you all an enlightening experience!

CA. K Raghu
Vice President, ICAI





CA Mangesh Kinare
Chairman, WIRC

MESSAGE

For the CA fraternity in professional practice, irrespective of their location, still tax practice is considered as the bedrock in the basket of the professional services rendered by them to their clientele. Hence, it is pivotal, that they are constantly updated on the frequent changes that is promulgated through various notifications by the concerned departments. Similarly, while applying the taxation laws and also while referring to various judicial judgements in different practical situations there are bound to emanate various interpretations that will require clarification, explanation, which can happen only through knowledge sharing.

Further, the entire tax regime in India, is set to radically change with the implementation of the Direct Tax Code and Goods and Services Act. This would require most of our CA fraternity, to engage in unlearning and also lot of relearning. This very thought, on face value, may appear disconcerting to us, as it said that "Change is hard to embrace, because people overestimate the value of what they have and underestimate the value of what they may gain by giving that up" Hence, applying this same analogy, new taxation laws is expected to usher in a lot of changes for the good of all, be it our nation, where revenues would get a tremendous boost, tax payer, by way of simplifications in the laws and the tax practitioners, which primarily includes our fraternity, who would get the benefit of ample opportunities that will arise. Thus, it will be a "win-win" situations for all.

In this backdrop, ICAI, recognizing this important aspect had decided to organize seminars, workshops and conferences, tax conventions from time to time through its various constituents. Accordingly, we, at WIRC, too, continue with our relentless efforts in dissemination of knowledge to the members for updating them on the various changes affecting the profession and thus this "All Maharashtra Tax Convention" is being organized by WIRC of ICAI on 4th May, 2013 at Nagpur and hosted by the Nagpur Branch of WIRC. I extend a warm welcome to all the participants, dignitaries and faculties to this one day All Maharashtra Tax Convention.

The title of this Conference, perhaps may convey a message that it is mainly intended for the CAs from the state of Maharashtra, but it is open to all the members, with the primary focus on contemporary issues which are relevant to all tax practicing CAs. The prominence given this time, in the programme structure is for indirect taxation dealing with recent amendments in service tax laws, relevant issues of Works contract tax and also with respect to the intricacies involved in Local Body Tax (LBT), which is applicable in Maharashtra state. It is very much envisaged that various practical issues encountered by the members on a day to day basis with respect to the various amendments etc. would be discussed and deliberated threadbare, and it is expected that good and meaningful solutions also would evolve out this deliberations. The topics chosen and the faculties invited are apt for the members to understand and thus gain the benefit of their exposition. The interaction and networking opportunities that would arise would add to the benefit gained by all the participants.

The office bearers and the managing committee members of Nagpur Branch of WIRC have done an excellent work in making necessary arrangements for this tax convention. I also recognize the efforts of CA Julfesh Shah, my colleague in the Regional Council from Nagpur.

I also thank all the illustrious faculties for sparing their valuable time in accepting our invitation to sharing their knowledge and experience for the benefit of the professional colleagues.

I wish all the participants a great enriching and educative experience in this orange city of Nagpur.





CA. Julfesh Shah
Chief Co-ordinator & RCM, WIRC

MESSAGE

It is a matter of great pleasure & proud privilege for me to welcome you all as a chief co-ordinator in this mega event of 'ALL MAHARASHTRA TAX CONVENTION' organized under the aegis of WIRC & hosted by Nagpur Branch of WIRC of ICAI.

The technical sessions, the topics & the expert faculties like CA. Bakul Modi, CA. Rajat Talati and CA. Dilip Phadke, Mumbai have been chosen meticulously so that the delegates can take maximum advantage and interact to clarify their doubts with these resource persons. I am sure that the topics to be deliberated in the Convention will bring value addition to the treasure of our knowledge about traditional practice and upcoming opportunities as they are being presented by distinguished & eminent speakers of national repute.

I take this opportunity to extend my heartiest congratulations to the entire Managing Committee of Nagpur Branch under the meticulous leadership of Chairman CA. Swapnil Agrawal for organizing such type of knowledge and opportunities based conventions on topics of professional importance on regular basis. I'm also thankful to dynamic WIRC Chairman CA. Mangesh Kinare for reposing faith in us to host this prestigious convention. I also take this opportunity to greet other office bearers viz. Vice Chairman CA. Parag Rawal, Secretary CA. Neel Majithia & Treasurer CA. Priti Savla.

I extend my warm greetings to the participants and wish the convention all success and hope that the interaction with fellow delegates will go a long way for the enrichment of our professional knowledge and traditional practice.

Regards with 'Passion to Perform' for the cause of our profession with these lines :

परिन्दो को मिलेगी मंझील यह फैले हुए रहते है
खामोश अक्सर वही लोग, जमाने मे जिनके हुनर बोलते है





BIODATA CHIEF GUEST

1. Name : VILAS MUTTEMWAR
2. Father's Name : Shri. Baburao Sadashio Muttemwar
3. Date of Birth : 22nd March 1949
4. Place of Birth : Chandrapur.
5. Martial Status : Married on 7th January 1972
6. Spouse's Name : Smt. Chhaya Vilas Muttemwar
7. Children : Two sons and one daughter
8. Educational : B. Com.
9. Qualifications : Educated at New Rajewira High School and Hislop College.
10. Profession : Journalist
11. Present Address : 1, Motilal Nehru Marg, New Delhi- 110 001. Tel. No. 3793721
12. Permanent Address : 18, Ashoka Residency, behind Das Jewellers, Shivajinagar,
Nagpur-440 010. H.O.-105, Yeshwant Stedium, Dhantoli, Nagpur-440
012. Tel. No. 2422289, 2421455. Res. 2248441.
13. Positions held 1980 : Elected to Lok Sabha (Seventh), Cong. (I)- Chimur, Maharashtra.
Member, Committee on papers Laid on the Table. 1984 : Re-elected to Lok Sabha (Eighth) 1985-86: Member, Estimates Committee. 1991 : Re-elected to Lok Sabha (Tenth) For the third time Member, Public Accounts Committee Chairman, Committee on Public Undertakings. 1995 : Minister of State for Rural Areas and Employment (Department of Rural Employment and Poverty Alleviation) and Parliamentary Affairs. 1998 : Re-elected to Lok Sabha (Twelfth). 1999 : Re-elected to Lok Sabha (13th). 2004 : Elected to Lok Sabha (14th) Minister of State (Independent Charge) Non-Conventional Energy Sources, Govt, of India, New Delhi- 110 003. Received on 4th Nov. 2005 "World Wind Energy Award-2005" by the renowned world organisation WWEA at Mejbourne (Austrelia). 2009 : Elected to Lok Sabha (15th), Cong. (I) - Nagpur, Maharashtra Member of Press Council of India. Chairman - Parliamentary Standing Committee on Food, Consumer Affairs & Public Distribution.
14. Other positions held : Joint Secretary, Indian Youth Congress, President, Maharashtra Pradesh Youth Congress, Joint Secretary, All India Congress Committee, Secretary, Congress Parliament, Founder Editor Marathi Daily Janavad.
15. Literary, Artistic and Scientific Accomplishments : Written several articles in Marathi Newspapers on public events and cultural issues.
16. Social and Cultural Activities : Participated in student & Youth activites.trade unions, studied the problems of small cultivators against their exploitation by brokers in urban markets and Secretary Samajwadh Sangram Samiti 1970.
17. Special Interests : Journalistic writings, cultural activities and singing.
18. Favourite Passtime & Recreation : Music and drama
19. Sports and Clubs : Secretary, Nehru Mandal, Nagpur. (A Sports Organisation) Organiser- Nagpur International Marathon. (International Day for Non-violence Organising Committee, Nagpur) President - Maratha Lancers, Nagpur.
20. Other Information : Organising Secretary, Union of Working Journalists, Nagpur, 1974-75, Founder and Convener, Indira Gandhi Samarthan Kriti Samiti, Nagpur, 1976 and imprisoned several times for participation in students and youth organisation activities in Vidarbha region.
21. Tour abroad : UK, USA, Caneda, USSR, Japan, Germany, Swedan, Yugoslavia, Luxemburg, Armenia Hungary etc.





ALL MAHARASHTRA TAX CONVENTION

Saturday, 4th May 2013

Hotel Centre Point, Ramdaspath, Nagpur.



Technical Session I

Service Tax – Recent Amendments (Special Focus on Proposed Service Tax Voluntary Compliance Encouragement Scheme, 2013)

CA. Bakul Modi , Mumbai





BAKUL B MODY

EDUCATION

B Com (Hons) from Sydenhan College, Mumbai Securing 32nd Rank in Bombay University.

FCA from ICAI Securing 42nd Rank in Inter CA Exams. [Membership No. 35564] Grad CWA of ICWAI

TRAINING : Article ship Training undertaken with M/s Bansi S Mehta & Co, CAs Mumbai

PRACTICE : Practising under Sole Proprietorship Concern M/s BAKUL B MODY with Special Focus on Indirect Taxation – Service Tax, Central Excise, & VAT

AUTHORSHIP : Authored Books on Indirect Taxes Subjects like Modvat on Capital Goods, Basics of Central Excise, Service Tax on CAs, Central Excise Audit, Issues on CENVAT, Technical Guide to CENVAT Credit (Manufacturers & Service Providers) etc.

Regular Contributor to Service Tax Columns of BCA Journal, Service Tax Journal and Articles on subjects related to Indirect Taxation in Magazines / Journals of Reputed Professional Bodies.

ASSOCIATION WITH TRADE / PROFESSIONAL BODIES

Associated / was associated with the following Reputed Trade & Professional Bodies as Committee Member

Indian Merchants Chamber, Indian Drug Manufacturers Association, Bombay Chartered Accountants Society, The Chamber of Tax Consultants, WIRC of ICAI, All India Federation of Tax Practitioners, Co-Chairman of Indirect Taxation Committee of, Indian Merchants' Chamber Since 2007, Part of GST Group framed by Fiscal Laws and Indirect Taxes Committee of ICAI

SEMINAR PARTICIPATION

Participated in more than 175 Workshops / Seminars / Conferences/ Courses / Presentations Organised by the following from time to time

(A) INSTITUTE OF CHARTERED ACCOUNTANTS OF INDIA (ICAI)

CPE / Fiscal Laws / Indirect Taxes Committees of ICAI, WIRC of ICAI, Branches of WIRC, Branches of CIRC, Branches of SIRC, Study Circles of WIRC

(B) OTHER PROFESSIONAL BODIES

Bombay Chartered Accountants Society, All India Federation of Tax Practitioners, The Chamber of Tax Consultants, Sales Tax Practitioners Association of Maharashtra, The Institute of Company Secretaries of India The Institute of Cost & Works Accountants of India, Jamnalal Bajaj Institute of Management Studies, Bombay University, CVO Chartered & Cost Accountants Association, The Malad Chamber of Tax Consultants, Income Tax & Sales Tax Practitioners Association of Pune, Southern Gujarat Income Tax Bar Association, Surat

(C) TRADE / BUSINESS / SOCIAL ASSOCIATIONS

Indian Merchants Chamber, Indian Drug Manufacturers Association, Pharmaceuticals Export Promotion Council (PHARMEXCIL), All India Importers & Exporters Association, Trade Association of Information Technology, Bombay Commodity Exchange Ltd, Steel Chamber of India [Steel Chamber Charitable Foundation], Form of Free Enterprises, Bombay Industries Association, Builders Association of Navi Mumbai, Kapol Business Council, Rotary Club.

(D) GOVERNMENT

National Academy for Customs, Excise & Narcotics, Bhandup (NACEN), Central Excise and Revenue Audit Wing of Indian Audit & Accounts Dept. (CERA), Service Tax Commissionerate, Mumbai, Sales Tax Commissionerate, Mumbai.

VII BUDGET / OTHER REPRESENTATIONS

Regular Participation in Preparation of Pre Budget / Post Budget Memorandum & Representations on Indirect Taxes & interactions with Officials of Finance Ministry, Govt. of India and Govt. of Maharashtra.

Interactions with Kelkar Task Force set up by Finance Ministry

Interactions with Rustagi Committee set up by Finance Ministry to Streamline Service Tax Circulars issued from time.

VIII SPECIAL ACHIEVEMENTS

Honoured with RASHTRIYA SANMAN AWARD By the National Education & Human Resources Developments Organisation, New Delhi



SERVICE TAX – RECENT AMENDMENTS

I PROPOSED SERVICE TAX VOLUNTARY COMPLIANCE ENCOURAGEMENT SCHEME, 2013 [“Scheme”]

1.1 Date of Application of the Scheme

Scheme would come into force from the date of enactment of Finance Bill, 2013.

1.2 Period for which the benefit of the Scheme can be availed

The benefit of the Scheme can be availed in regard to the tax dues for the period beginning from 1/10/07 and ending on 31/12/12.

According to Section 70 of the Finance Act 1994 (“Act”) read with Rule 7 of Service Tax Rules, 1994, (“ST Rules”) Service tax return for the half year beginning from 1/10/07 and ending on 31/3/08 is required to be filed by 25/04/08. Thus, the Department cannot issue a Show Cause Notice (SCN) in respect of said half year after the expiry of five years from the relevant date in terms of proviso to Section 73(1) of the Act.

Additionally, tax dues for any period after 31/12/12, are required to be settled in accordance with normal applicable provisions of the Act and ST Rules.

1.3 “Tax Dues” under the Scheme

It means Service tax due under Chapter V of the Act, or any amount due or payable under Section 73A of the Act for the period 1/10/07 to 31/12/12 including cess leviable thereon under any other Act for the time being in force, but not paid as on 1/3/13.

1.4 Persons who cannot avail the benefit of the scheme.

a) Any person to whom a Notice or Order of Determination has been issued before 1/3/13[in respect of his tax dues for any period beginning from 1/10/07 and ending 31/12/12] under any of the following sections:

i) Section 72 of the Act (which empowers Central Excise officer to make the assessment of the value of taxable service to the best of his judgement and determine the sum payable by the assessee on the basis of such assessment - Provisions of Section 72 can be invoked only in those cases where any person liable to pay service tax fails to furnish the return under Section 70 of the Act or having made a return, fails to assess the tax in accordance with the provisions of the Act or rules made thereunder.)

ii) Section 73 of the Act (recovery of service tax not levied or paid or short levied or short paid or erroneously refunded)

iii) Section 73A of the Act (service tax collected from any person but not deposited with Central Government)

b) Any person who has furnished his Service Tax Return [in accordance with provisions of Section 70 of the Act, read with Rule 7(1) of ST Rules and disclosed his true liability but has not paid the disclosed amount of Service tax or any part thereof. In simple words, if any person truly discloses his service tax liability in his service tax return and submits such return to the Department but fails to pay the disclosed amount of service tax either fully or partially, he will become ineligible to avail the benefit of the Scheme. Further, such a person will not be eligible to claim the benefit of the Scheme for the period covered by the Return.

c) Any person to whom a Notice or Order of Determination has been issued [under any of the above mentioned specified sections i.e., Section 72, Section 73 and Section 73A of Act] in respect of any period on any issue, then such person can not take benefit of the Scheme on the same issue for any subsequent period.

1.5 Procedure for making declaration and payment of tax dues

a) Subject to the provisions of the Scheme, a person may make a declaration to the designated authority on or before 31/12/13 in the prescribed form and prescribed manner.

b) The designated authority shall acknowledge the declaration in the prescribed form and prescribed manner

c) The declarant shall, on or before 31/12/13, pay not less than 50% of the tax dues so declared and submit the proof of such payment to the designated authority. In simple words, it is necessary on the part of the declarant to pay at least fifty per cent of the tax dues by 31/12/13.

The tax dues or part thereof remaining to be paid after the aforesaid payment shall be paid on or before 30/06/14.



However, if the declarant fails to pay remaining amount of tax dues on or before 30/6/14, then in addition to the amount of outstanding tax dues he will be required to pay interest at such rate as fixed under Section 75 of the Act or as the case may be, Section 73B of the Act for the period of delay upto the date of actual payment.

d) The declarant shall furnish to the designated authority details of payment of tax dues and interest (if any) made from time to time under this Scheme along with a copy of acknowledgement issued to him.

1.6 Issue of Acknowledgement of Discharge of Tax Dues

On receipt of the details of full payment of declared tax dues and the interest, if any, the designated authority shall issue an acknowledgement of discharge of such dues to the declarant in the prescribed form and in the prescribed manner

1.7 Circumstances under which Declaration shall be rejected

In case where inquiry or investigation has been initiated (as stated hereafter) and the same is pending as on 01/3/13, designated authority shall reject the declaration by passing an order in writing, giving reasons for such rejection:

- a) Search have been conducted of the premises of a person in accordance with provisions of Section 82 of the Act; or
- b) Summons has been issued under Section 14 of Central Excise Act, 1944; or
- c) Any notice requiring production of accounts, documents or other evidence under the Act or ST Rules made thereunder, has been issued; or
- d) Any audit has been initiated.

1.8 Immunity from Penalty, Interest and other proceeding

- a) Notwithstanding anything contained in any provisions of the Act and ST Rules, the declarant shall get immunity from penalty, interest, or any other proceeding under the Act or ST Rules made thereunder, provided he makes payment of tax dues and interest (if any) in accordance with time-limits specified hereinbefore.
- b) Nothing contained in the Scheme shall be construed as conferring any benefit, concession or immunity of the declarant other than benefit, concession or immunity mentioned above.

1.9 When the Declaration becomes conclusive

Barring a case where the declaration made by a declarant under the Scheme is found to be substantially false by the Commissioner of Central Excise ("CCE"), a declaration made by the declarant under the Scheme shall become conclusive upon issuance of Acknowledgment of Discharge by the designated authority. As a result, no matter shall be reopened thereafter in any proceedings under the Act before any Authority or Court, relating to the period covered by such declaration.

1.10 Issue of SCN by CCE under certain circumstances

As mentioned above, if the CCE has reasons to believe that the declaration made by a declarant under the Scheme was substantially false, he may, for reasons to be recorded in writing, serve notice on the Declarant in respect of such declaration, requiring him to show cause why he should not pay the tax dues not paid or short-paid. The SCN can be issued by the CCE within one year from the date of Date of Declaration by the declarant. Moreover, the SCN shall be deemed to have been issued under Section 73 or, as the case may be, under Section 73A of the Act and the provisions of the Act shall apply accordingly.

1.11 Refund of Service tax paid under the Scheme

Any amount paid in pursuance of a declaration under the Scheme shall not be refundable under any circumstances.

1.12 Tax dues declared but not paid

Where declaration has been made by declarant under the Scheme, but fails to pay the tax dues, either fully or in part, as declared by him, then such tax dues along with interest thereon shall be recovered under the provisions of Section 87 of the Act.

1.13 Power to make Rules

The Central Government may, by notification in the Official Gazette, make rules for carrying out the provisions of the Scheme. The foregoing Rules may provide for all or any of the following matters, namely:

- a) The form and the manner in which a declaration may be made by the declarant;



- b) The form and the manner of acknowledging the declaration by the designated authority;
- c) The form and the manner of issuing the acknowledgment of discharge of tax dues by the designated authority;
- d) Any other matter which is to be, or may be, prescribed, or in respect of which provision is to be made, by Rules.

1.14 Power to remove difficulties

If any difficulty arises in giving effect to the provisions of the Scheme, the Central Government may, by order [which is not inconsistent with the provisions of the Scheme] remove the difficulty. However, no such order shall be made after the expiry of a period of two years from the date on which the provisions of the Scheme come into force. Further, every such order, after it is made, shall be laid before each House of Parliament as soon as possible.

IA SOME ISSUES FOR DISCUSSION

1 In regard to ST 3 Returns for the period 1/10/07 to 31/3/08 due for filing on 25/4/08, no SCN can be issued after 25/4/13 – Whether benefit of limitation can be availed.

2 Whether tax dues would cover the following :

- Ø Service tax not paid due wrong / incorrect availment of CENVAT Credit.
- Ø Reversals of Wrong availment of CENVAT Credits for any reasons.
- Ø Refunds erroneously granted & received.

3 Whether benefit of Scheme can be availed, in cases where Service tax was being paid as per ST 3 returns filed upto a particular period, but subsequently filing of returns & payment has been discontinued.

4 Whether benefit of Scheme can be availed by persons registered with Service Dept but are filing “NIL” Returns with a Note setting out reasons [For eg no tax is paid pending final resolvment of dispute in regard to taxability of renting of immovable property]

5 In cases where a Service Provider is providing 3 services and has paid tax only for 2 services & disclosed 3rd service as non – taxable in the ST 3 Return:

- Ø Whether benefit of Scheme can be availed in regard to service disclosed as non – taxable
- Ø Whether benefit of scheme can be availed for a disclosed service, in regard to which a notice was issued for the period 2008-09, for a subsequent period (say 2010-11).

6 Whether persons who have come under the tax net wef 1/7/12 but have not filed their returns / nor paid taxes, can avail the benefit of Scheme for the period 1/7/12 to 31/12/12.

7 Whether benefit of Scheme can be availed by agents of Service providers

8 Whether filing of declaration should precede payment of tax.

9 What are the implications in cases where declaration is which is rejected but part tax has been paid.

10 Whether appeal remedy is available in cases where declaration is rejected.

11 Whether tax payable under the Scheme can be paid through debit in CENVAT Credit Account.

12 Whether, under the scheme, tax can be paid in Cash (unaccounted)

13 In cases of delay in payment, whether interest would be payable from 1/1/14 or 1/7/14.

14 Whether benefit of CENVAT Credit can be availed by a Service receiver in regard to Service tax paid under the Scheme by a Service Provider.

15 What would be regarded as a “Declaration which is substantially false”

2 SOME OTHER AMENDMENTS

2.1 Services by Air-conditioned Restaurants:

a) Background

Whether transaction for supply of food and/or beverages in a restaurant or a hotel is a contract for sale of food or a composite contract for sale and services was a subject of controversy vis-à-vis leviability of Sales Tax (now VAT) under the sales tax law in the States for many years. Consequently amendment was made in Article 366(29A) of the Constitution of India to provide for “the supply by way of or as a part of any service, of food or any drink for cash, deferred payment or other valuable consideration” as a deemed sale. The levy on the composite



charges of food and services has been a matter of litigation under the Sales Tax regime for a long time. The Supreme Court in Northern India Caterers (India) Ltd. Vs. Lt. Governor of Delhi (1978) 42 STC 386 (SC) held that service of meals whether in a hotel or restaurant does not constitute a sale of food for the purpose of levy of sales tax but must be regarded as the rendering of a service in the satisfaction of a human need or ministering to the bodily want of human beings. It would not make any difference whether the visitor to the restaurant is charged for the meal as a whole or according to each dish separately. This led to the amendment in article 366(29A) of the Constitution, whereby the 46th amendment included within its scope "the supply, by way of or as part of any service, of food or any drink for cash, deferred payment or other valuable consideration" as a deemed sale.

Subsequent to the constitutional amendment, VAT is being paid on the sale of food in hotels. However, the question that arose was on what value of the consideration should be VAT be paid.

The five member Bench of the Supreme Court in the case of K. Damodarasamy Naidu & Sons Ltd. vs. State of TN (2000) 117 STC 1 (SC) interestingly held that the entire value should be deemed to be the consideration towards the sale. While delivering its judgment, the Hon. Supreme Court observed as under:

"In our view, therefore the price that the customer pays for the supply of goods in a restaurant cannot be split up as suggested by learned counsel. The supply of food by the restaurant owner to the customer though it may be a part of service that he renders by providing good furniture, furnishing and fixtures, linen, crockery and cutlery, music, a dance floor, and a floor show, is what is the subject of levy. The patron of fancy restaurant who orders a plate of cheese sandwiches whose price is shown to be Rs. 50/- on the bill of fare knows very well that the innate cost of the bread, butter, mustard and cheese in the plate is very much less, but he orders it all the same. He pays Rs 50/- for its supply and it is on Rs 50/- that the restaurant owner must be taxed."

It is interesting to note that the Supreme Court in Tamilnadu Kalyan Mandapam Assn. vs. UOI (2006) 3 STR 260 (SC) observed as under :

"In case of catering contracts, service element is more weighty; visible and predominant and it cannot be considered as a case of sale of food and drink in a restaurant".

Admittedly, there was no question before the Hon. Supreme Court in this case to examine whether sale of food in a restaurant was a service or otherwise. Nevertheless, service tax on the service in relation to serving of food or beverage including alcoholic beverage was introduced with effect from 1/5/11. However, this remained restricted to air-conditioned restaurants which also had a license to serve alcoholic beverages. To justify the levy in this regard, the TRU in its letter dated 28/2/11 clarified that the tax is levied on the service element and it should not be confused with the sale of food. The levy is intended to be confined to the value of services contained in the composite contract and shall not cover either the meal portion in the composite contract or mere sale of food by way of pick up or home delivery as also goods sold at MRP. Subsequently on the onset of negative list based taxation of services with effect from 1/7/12, the list of declared services in section 66E of the Finance Act, 1994 in sub-clause (i) included, the service portion in an activity wherein goods, being food or any other article of human consumption or any drink (whether or not intoxicating) is supplied in any manner as a part of the activity. However, the restaurants other than fully or partially air-conditioned/centrally heated and not having license to serve alcoholic beverages remained exempted as the Mega Exemption Notification No.25/2012-ST dated 20/6/12 ["ME"] provided for the same at Entry 19.

In many cases under the Service category of "Outdoor catering" it has been held that it is possible to take deduction of material component in terms of Notification 12/03, However, the Delhi CESTAT in the case of Sayaji Hotels (2011) 24 STR 177 has held that, in case of a composite contract of a "Mandap keeper" the hotel cannot artificially divide the contract and levy Service tax merely on the value of services so identified. In essence, the Delhi CESTAT rejected the theory of splitting between the value of services and goods and held that the only option the appellant had was to pay tax on the abated value as provided for in Notification 1/06 dated 1/3/06.

It would appear that after the rescinding of notification 12/03 w.e.f. 1/7/12, the Service tax in relation to food contracts may have to be paid on the abated value as provided for or on the entire value of the contract inasmuch the new scheme of Valuation under Rule 2C does not provide for an option for claiming deduction of goods as it is provided for "Works Contract" under Rule 2A of the Valuation Rules.

However, the larger issue as to whether or not taxing entry (i) under Section 66E (Declared Services) which specifies service portion in an activity can include value of goods supplied at all, is a matter being extensively debated.

It needs to be noted that Rule 2C refers only to a "Restaurant" and does not Specify "eating joint or mess". This



appears to inadvertent.

In addition, other valuation issues like charge of VAT on Service tax component (and vice versa), charge on other service charges (due to introduction of definition of service w.e.f. 1/7/12 etc, are likely to be faced which would ultimately increase the final cost to the consumer substantially

b) Implications of amendment with effect from 1/4/13

Now, vide Notification No.3/13-ST, the said Entry No.19 in ME is amended to delete the condition for the restaurant to have a license to serve alcoholic beverages. Consequently, the amendment would have a tremendous impact as a large number of eating places including fast food chains, coffee shops, pizza places, ice-cream parlours, cafeteria in hospitals, educational institutions or corporate offices, airports, multiplex cinema houses, book shops, auditoria, canteens in factories, food courts in shopping malls, clubs etc. could get covered.

The said Entry No. 19 in ME describes a restaurant or eating joint other than those having the facility of air-conditioning or central heating in any part of the establishment, at any time during the year. This gives rise to inclusion of all the above stated illustrations including simple cafes or restaurants having a small portion or a mezzanine portion air-conditioned would be covered under the service tax net. Further even non air-conditioned portion of the café serving food would be subject to the levy. Even if a small ice-cream/yoghurt parlour having air-conditioner in any part of their premises would be subject to the levy. In large departmental/chain stores or book shops, small kiosks/bakeries/prepared food corners are often provided with a few tables and chairs. Since the book shop, the store or the mall has common area air-conditioned and even if the food or snacks, beverages or ice-cream are provided through "self-service" counters/desks in a tray and without the use of crockery, the exemption under Entry No 19 is not available as some part of the establishment is air-conditioned. Many or most of these contracts of providing food are predominantly 'sale' contracts as 'service' element is present in a negligible proportion. In India, we have system of 'thali' places serving only meals in thalis. They are known as Bhojanalayas and only lunch or dinner is served very quickly. These servings have a very little 'service' element. Yet all and sundry could be come subject to service tax subject to available exemptions. [The value of service however in accordance with Rule 2C of the Service Tax (Determination of Value) Rules, 2006 is to be taken at 40% or in other words, after considering 60% presumptive abatement.]

However, the burning issue of dual taxation vis a vis VAT, would continue inasmuch as VAT would continue to be payable on the gross amount & not on 40% (presumptive value of goods).

So far as cafeteria/canteens in corporate offices or factories are concerned, it is relevant to note the views expressed in the Draft Circular dated 25/7/12 vide F. No.354/127/2012-TRU issued by Tariff Research Unit of Ministry of Finance. Relevant extracts are set out hereafter :

"8. A number of activities are carried out by the employers for the employees for a consideration. Such activities fall within the definition of "service" and are liable to be taxed unless specified in the Negative List or otherwise exempted.

9. One of the ingredients for the taxation is that such activity should be provided for consideration. Where the employees pays for such services or where the amount is deducted from the salary, there does not seem to be any doubt. However, in certain situations, such services may be provided against a portion of the salary foregone by the employee. Such activities will also be considered as having been made for a consideration and thus liable to tax. CENVAT credit for inputs and input services used to provide such services will be eligible under extant rules. The said goods or services would now not be construed to be for personal use or consumption of an employee per se and rather shall be a constituent to the taxable service provided to an employee. The status of the employee would be as a service recipient rather than as a mere employee when consuming such output service. The valuation of the service so provided by the employer to the employee shall be determined as per the extant rules in this regard.

10. However, any activity available to all the employees free of charge without any reduction from the emoluments shall not be considered as an activity for consideration and will thus remain outside the purview of the service tax liability (facilities like crèche, gymnasium or a health club which all employees may use without any charge or reduction from the salary will be outside the tax net). However the CENVAT credit for such inputs and input services will be guided by the extant rules."

The above comments are a part of the Draft Circular which is yet not finalized. However, in the context of a



canteen facility extended by an employer and in a case when consideration for the food served in the canteen is recovered by the employer and if the canteen is in the establishment, any part of which is air-conditioned may need to examine service tax liability depending on the facts of each case.

2.2 Construction Services

a) Background

Service of construction of complex, building or civil structure or any part thereof provided by a builder or a developer was notified as taxable service with effect from 1/7/10. This category is included as declared service in section 66E unless the entire consideration for the constructed unit is received post issuance of completion certificate. Vide Notification No.26/2012-ST dated 20/6/12 at Serial No.12, an abatement of 75% subject to prescribed conditions is provided.

b) Implications of amendment with effect from 1/3/13:

Alongside the budget proposals, amendment in the rate of abatement from 75% to 70% in certain cases vide Notification No.2/2013-ST is already effective from 1/3/13 and plain reading of the substituted entry no.12 in the said Notification No.26/12-ST reads as follows:

Subject Value chargeable to Service tax Conditions "12. Construction of a complex, building, civil structure or a part thereof, intended for a sale to a buyer, wholly or partly except where entire consideration is received after issuance of completion certificate by the competent authority,-

(i) for residential unit having carpet area upto 2000 square feet or where the amount charged is less than rupees one Crore;

(ii) for other than the (i) above.

25

30(i) CENVAT credit on inputs used for providing the taxable service has not been taken under the provisions of the CENVAT Credit Rules, 2004;

(ii) The value of land is included in the amount charged from the service receiver."

A reading of the above Notification indicates Entry the following :

a) 75% abatement subject to fulfillment of conditions will continue in two cases viz:

i) Construction of residential unit having carpet area upto 2000 square feet or less
OR

ii) Construction of residential unit where the amount charged is less than rupees one Crore.

To put in simple words, for a flat of 2500 sq. feet, if the amount charged is 80 lakh rupees, it is entitled for abatement @75%. Conversely, even for a flat of 800 sq. feet, if the amount charged is rupees 3 Crore, the abatement is available @75%. In effect, only one of the conditions mentioned above is required to be fulfilled - either the area of the residential unit is less than 2000 sq. feet or the amount charged is less than rupees 1 Crore.

b) The abatement of 75% will no longer be available to complex, building, civil structure or part thereof not covered by the above two categories. As such, a distinction is now made for commercial and residential construction and abatement of only 70% is available for commercial constructions irrespective of the amount charged or the area. Even if the amount charged is less than rupees 1 Crore or the area is less than 2000 sq. feet, the abatement available is 70% and the effective rate of service tax is thus 3.708% in place of 3.09%.

2.3 Renting of immovable property and auxiliary education services provided by specified educational institutions

a) Background:

Entry No.9 in ME exempted service to or by an educational institution in respect of education exempted from service tax by way of renting of immovable property or education auxiliary service. The term "auxiliary educational service" is defined in the said ME itself as under :

"(f) "auxiliary educational services" means any services relating to imparting any skill, knowledge, education or development of course content or any other knowledge – enhancement activity, whether for the students or the faculty, or any other services which educational institutions ordinarily carry out themselves but may obtain as outsourced services from any other person, including services relating to admission to such institution, conduct of examination, catering for the students under any mid-day meals scheme sponsored by Government, or transportation of students, faculty or staff of such institution"



Education in turn “which is not taxable” appears in the negative list in section 66D at entry (I) and reads as follows:

“(I) services by way of-

- (i) pre-school education and education up to higher secondary school or equivalent;
 - (ii) education as a part of a curriculum for obtaining a qualification recognized by any law for the time being in force;
 - (iii) education as a part of an approved vocational education course”
- b) Implications of amendment with effect from 1/4/13:

Exemption will not continue for services provided by such institutes to other persons for the said services. However such other persons providing auxiliary educational services or renting of immovable property services to the educational institutes would continue to be exempt. Educational institutions imparting education recognized by law such as university affiliated colleges or any higher secondary school often provides its premises like halls, auditoria or ground on hire for any official, social, cultural or political functions. Prior to the introduction of negative list from 1/7/12, this service was covered under the category of mandap keeper. In the negative list taxable categories have ceased to exist and entry no.9 exempted renting of immovable property. Therefore letting off of institution's immovable property was declared exempt. Now again, this becomes taxable. Even when the schools provide small counters/place to banks in their premises for facilitating students/parents to pay school fees, this was taxable prior to 1/7/12 and again now. The definition of auxiliary educational services is such that generally services provided by others or those outsourced by the specified educational institutes would get covered. For instance, admission process outsourced by a university or the services of bus contractor etc. Nevertheless, if a school owns its transport vehicles and recovers charges from students of facilities, it now will attract service tax. Similarly, if a place for canteen is let out to a contractor, it will attract service tax. Similarly, if a training programme is conducted by a school for persons other than to specified education institutions, it will also become taxable as the scope of entry 9 is substantially narrowed. Further, educational institutions conduct a large number of extra curricular courses (in addition to basic education) which are usually charged separately. These could get hit unless they fall under Entry No. 8 of ME i.e. recreational activities in relation to arts, sports, etc.

2.4 Transportation of goods by rail and transportation of goods by road.

Exemption in respect of transportation of goods by rail and vessel is contained at Entry 20 and transportation of goods by road at Entry 21 of the ME. Amendments are made wef 1/4/13 in both these entries to bring exemption in respect of all the modes of transport at par. Transportation of petroleum or petroleum products, postal mail or mail bags and household effects by rail or vessel was exempted at Entry 20. This is now withdrawn. Therefore, transportation of petroleum/petroleum products, postal mail or household effects by any mode of transport is now liable for service tax.

Under Entry 21 for goods transportation by road, transportation of fruits, vegetable, eggs, milk, food grain and pulses only was exempt. Now in its place and like in the case of rail or vessel transportation, the exemption is redefined and scope is expanded to include the following products:

- Ø Agricultural produce
- Ø Foodstuff including flours, tea, coffee, jaggery, sugar, milk products, salt and edible oil, excluding alcoholic beverages.
- Ø Chemical fertilizers and oilcakes
- Ø Registered newspapers or magazines, relief material for victims of natural or man-made disasters
- Ø Defence equipments.

The existing exemption in respect of consignment of single goods carriage for Rs.1,500/- or less and consignment for a single consignee for Rs.750/- or less continues to remain exempt.



ALL MAHARASHTRA TAX CONVENTION

Saturday, 4th May 2013

Hotel Centre Point, Ramdaspath, Nagpur.



Technical Session II

- Taxation of Works Contract (Relevant Issues)

CA. Rajat Talati, Mumbai

- Intricacies Involved in Local Body Tax (LBT)

Speaker : CA. Dilip Phadke , Mumbai





Rajat B. Talati

B.Com., L.L.B. (Gen) F.C.A., D.B.F.(I.C.F.A.I)

EXPERIENCE & PROFESSIONAL CONTRIBUTION : After completing C.A. in 1986, joined father and brothers as partner in their practice in the name of Talati & Co., Chartered Accountants. Concentrated practice on the Sales Tax side.

Presently advising a number of leading Indian & Foreign companies in the Sales Tax matter as a retainer. He was a President of Sales Tax Practitioners' Association of Maharashtra for the year 04-05, and was Associate editor of "Sales Tax Review" published by S.T.P. Association of Maharashtra for two years 1996-97 and 1997-98.

Co-authored of the Publication "A Guide to VAT Audit" published by WIRC of ICAI.

: Successfully conducted coaching classes for the juniors in the profession as Convenor of this committee of the S.T.P. Association of Maharashtra.

: Given lectures at the coaching classes and as well as at the Sales Tax Officer's training college and State Revenue Audit Department.

: Co-authored a book titled "Study Material on Sales Tax Laws in Maharashtra for Beginners."

: Contributed Articles/ Regular Column in the 'Sales Tax Review' and 'Bulletin' of All India Federation of Tax Practitioners'.

Active participant as well as group leader at the various seminar and conferences conducted by the S.T.P. Association and Institute of Chartered Accountants of India

Chaired study circle meetings of W.I.R.C.A.

Was Convenor of Sales Tax Study Circle conducted under the banner of W.I.R.C.A.

Done Research Project on "incidence of Sales Tax on Plastic Industries in various states of India.

Was Hon. Jt. Secretary of the All India Federation of Tax, Tax Practitioners' (WZ) for 3 years 1997 to 1999.

Was a member of the "Research Committies" of the I.C.A.I. New Delhi.

EXTRACIRCULAR ACTIVITIES : A nature lover and has under taken various tracks in the Upper Himalyas – tracked to the Holly Kailash and Manas Sarovar.
: Done the course on Ice-skiing. Is an ameture photographer.



Issues in Taxation of Works Contract

Presentation by:
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at
All Maharashtra Tax Convention –
Nagpur Branch of ICAI
On 4.5.2013

Verification of W/c transactions Preparatory work

- ◆ Works contract
 - Nature of contract
 - Method followed for discharge of tax
 - Rule 58
 - Proviso to rule 58(1)
 - Gannon Dunkerly (88 STC 204)
 - Composition u/s 42(3)
 - Method adopted to work out break up of taxable T.O
 - Whether tax collected separately?
 - Goods consumed away in execution of contract

Verification of W/c transactions Preparatory work (Cont...)

- ◆ Method followed for accounting
 - AS 7 – project completion method
 - Transfer of property v. Accounting
- ◆ Reconciliation of T.O of sales (MVAT Act) with sales as per books of Account
 - Labour /supervision charges
 - T.O. offered for ser. Tax
- ◆ Interstate W/c v. Branch transfer

Verification of W/c transactions Preparatory work (Cont...)

- ◆ Deductions
 - Branch transfer (OMS) – method of valuation
 - Non-taxable charges
 - How is gross T.O. of sales determined?
E.g. 20% deduction as per table to rule 58
 - Architect's fees
 - Cost of site office
 - Method adopted to value deduction
 - Site-wise accounting
 - Ratio proportionate basis for site expenses, E.g. labour paid for polishing tiles, hire charges for diff. sites

Sub-contracting

- ◆ Main contractors & Sub contractors - Relationship shall be deemed to be that of the Principal & Agent [Sec45(4)]
 - liability to pay tax shall be joint & several
 - Deductions will be given to either, based on producing prescribed certificates
 - Who discharges the tax, sub-contract or main contractor
 - Forms (407 & 408) or Forms (406 & 409)
 - Mismatch- recent exercise by Dept

W/C vs. Sales

- ◆ Splitting of the contract
 - On shore supplies
 - Off shore supplies
 - On shore & off shore services
 - On shore composite contract e.g. civil work
- ◆ Separate pricing & deliverables
- ◆ Umbrella agreement
- ◆ Performance guarantees & inter-woven mile-stones & payment terms
[refer – splitting accepted proposition- BHEL & Indure (SC)]

Inter-state w/c

- ◆ What is it?
 - When is works contract said to be covered by CST Act?
• SC Builders Assn[88-STC:248] → 20th Century [119 STC 182]
- ◆ Inter-state movement of
 - Raw material/processing material / components
 - Finished goods – not requiring to work upon
- ◆ Is 'in transit sale' possible in inter-state w/c?
 - Very controversial
 - Is 'sale in the course of imports' possible?
- ◆ Is deduction u/r 58(1) – table deduction available? Mahim Patram (6-VST:248) (SC)
- ◆ Is 'composition scheme' available for a inter-state w/c

Composition scheme

- ◆ Is VAT payable on service tax element?
 - MSTT – Nikhil Comforts SA 30/2012 dt. 31.3.12
 - Clarification issued by Commissioner- lease transaction
- ◆ Is deduction u/r 57(1) available?
 - (Painterior –LB SA no. 1053 to 1056 of 06 dt 8.5.09)



Adhoc deduction as per proviso to Rule 58(1)(a)

- ◆ Is dealer to justify such a deduction?
- ◆ Is it that the Business Auditor to attempt to calculate rule 58(1) deduction & then compare with adhoc deduction?

Adhoc deduction as per proviso to Rule 58(1)(a)

- ◆ Is 'depreciation' on plant & machinery' used at site available as deduction u/r 58(1)? – refer L & T [34 VST 53 (kar)]
 - Is interest on loan for the project allowable?
- ◆ Software AMC
 - Is it a works contract or is it right to use?
 - What is the nature of contract?

Works contract TDS

- ◆ Claim of credit
 - TDS certificates – formats
 - For earlier periods – amended sec 31(4)
 - If on sale/supply contract TDS is deducted
- ◆ Deduction of TDS
 - Indivisible contracts
 - Notification – employer
 - Interstate W/C – no TDS deductible

W/C TDS – non deduction by employer

- ◆ What is the fall out?
 - Levy of interest & penalty
- ◆ If contractor has paid tax. Can it be said that no further liability on 'employer'? [Refer Hindustan Coca Cola Beverages P Ltd (SC) 293 ITR 226]

BOOT contracts

- ◆ Is it liable to VAT?
- ◆ Ref DDQ: Ashok Buildcon
 - If yes,
 - ◆ When
 - ◆ On what amount

Cost + GP

- ◆ Constitutional powers of the state
- ◆ Is cost + GP method legal?
 - Old works contract act
 - Common practice
- ◆ Trade circular no.18T/2012 dt 6.9.12
- ◆ BHC WP 2440/2012 dt 30.10.12 – BAI upheld the circular
- ◆ Challenge to SC - pending

Cost + GP = Dilemma

- ◆ Dealers have filed return
- ◆ MVAT Audit based on Cost + GP
 - What next
 - How to rework u/r 58(1)
 - Can there be any difference between 58(1) & Cost + GP working?
 - What should auditor do?
 - ◆ Will disclosure suffice?

Levy of VAT on Builders & developers



Levy of tax

- ◆ Sales tax – levy on sale of movables
- ◆ Sale by builder – Is it taxable under Sales tax? K. Raheja Development Corp (SC) 141 STC 298
 - Booking
 - Under construction
 - After completion of construction

Contract for constructions

- ◆ Relationship
 - Employer / awarder & contractor
 - Application of labour & goods in execution of contract
 - Works contract – VAT attracted

Legal History

contd....

- ◆ K.Raheja Dev.Corp. (SC)[141:STC:298]
Facts :
 - 2 agreements with prospective buyer
 - One for sale of land [undivided portion]
 - Construction contract

SC in K. Raheja's case

- Separate consideration for both
- SC held
 - Contract for construction is subject to W/C Tax / VAT
 - Transfer of property while execution of W/C
 - Definition of W/C under Karnataka Sales Tax Laws – considered
 - If 'transferred' before construction is complete – W/C attracted.

Writ Petition (BHC) – MCHI [2007]

- ◆ Challenged
 - Wires in the amendment
 - Actions of the State VAT Dept
- ◆ Stand – Petitioners
 - Action is to take immovable property
 - Amendment is unconstitutional
- ◆ Interim order
 - Not to insist on registration, assessment in case of members of MCHI
 - Submission of statements

Writ Petition (BHC) – MCHI [2007]

contd....

- ◆ BHC final order dt 30.10.12
 - Upholding the levy
 - Provisions of MOFA discussed
 - BHC – Maratha bandhkam
 - Assessment reqd to determine nature of contract
- ◆ Departmental approach
 - Circulars - FAQ issued
 - ADMn appln filed by 31.10.12
 - Returns filed & taxes paid
 - MVAT Audit reports filed

Different Schemes for taxation of W/C under MVAT Act

- ◆ Normal scheme u/r 58(1) –Gannon Dunkerly (SC) – 88 STC 204
 - Take deductions as given
 - Amt paid to registered Sub-contractor [F 407 & F 408]
 - Balance taxable @ 4, 5, or 12.5% as the case may be

Table –Adhoc deduction

- ◆ Deduction as per table- proviso to rule 58(1)
 - Take deduction @30%
 - Amt paid to registered Sub-contractor [F 407 & F 408]
 - Balance taxable @ 4, 5, or 12.5% as the case may be



Land cost - deduction

- ◆ Insertion of rule 58(1A)
 - Need
 - Representation - Land cost included.
 - Argued before various courts
 - Rule w.e.f. 20.06.2006 [retrospective amendment]
 - Land cost deduction based on ready reckoner - Stamp Act
 - Land cost deduction - not to exceed 70% of the 'agreement value'

Rule 58 (1A)

- ◆ Computation as per Rule 58(1A)

Contract value say	10,00,000/-
Less: ready reckoner rate say	6,00,000/-
Balance	4,00,000/-
Less: dedn u/r 58(1) say	1,20,000/-
Balance taxable @4% or 12.5%	2,80,000/-

Going forward....

- ◆ MCHI has challenged this BHC ruling before SC.
 - At SC matter heard- decision awaited
- ◆ Two columns under Stamp Act
 - Reckoner for land
 - Reckoner for constructed premises.
- ◆ No equity between 2 contractors having projects in different localities

Practical difficulties for implementation

- ◆ Notwithstanding the legal position
- ◆ Reckoner value
 - How to divide between flats
 - When to allow deduction
 - Progressive collection of money
 - Increase in recknor value
 - TDR potential - 1.4 times ready recknor value

Composition Scheme for Builders & Developers

General Composition Scheme- 42(3)

- ◆ Composition Scheme u/s 42(3)
 - Pay composition amt @5% of contract price after deducting amt paid to sub-contractor [F 407 & F 408]
 - ITC in excess of 4% paid on purchases

Works contract composition scheme u/s 42(3A) -1% scheme

- ◆ For builders & developers issued u/s 42(3A) of the MVAT Act, 2002 vide notification dt. 9.7.2010
- ◆ Features of composition scheme
 - Available only to the registered dealer
 - Composition amount payable is @1% of the aggregate amount specified in the agreement or the values specified for stamp duty in respect of agreement, whichever is higher
 - Agreements registered on or before 1.4.2010 covered by the scheme
 - Composition amount paid by making E-payment & include turnover of 'sale' in the sales tax returns

Works contract composition scheme

- **No set-off** in respect of the purchases.
- Concessional interstate purchase agst **Form C is not allowed** if composition is opted.
- Developers cannot issue Form 409 to subcontractor but charge applicable VAT @5% on its billing to the developers.
- Developers to not to issue tax invoice. Once the methods of computation of tax liability in respect of the contract is opted, the same cannot be changed



Issues

Is it Qua Project /contract /agreement?

- Is this scheme qua project, qua contract / agreement or qua dealer?
- Scheme envisages transfer of land / interest in land along with the construction, to the society, is this scheme applicable in majority of cases?
- URD period
 - Scheme is only for RD
 - Builders are URD
 - Is it available from 1.4.2010 till date of effect of RC? Would administrative relief granted as special cases? If yes, from what date – 20.3.2006 or 1.4.2010?

Issues

- RD developers
 - Are the agreements entered into after 1.4.2010 but payment(s) / part payments(s) received prior to 31.3.2010 eligible under the scheme?
 - If yes, dealer could have paid tax under the MVAT Act & Rules for period prior to 31.3.2010. Can such dealer revise the earlier return and claim refund of the taxes so paid under those returns?
 - Paid taxes in past as regular W/C or @5% (construction contract). Can they now switch over to new composition scheme?
 - Under the scheme, purchases against form 'C' is not allowed. If for a particular project, in past (before 1.4.2010) builder has issued form 'C' for some purchases, can he opt for 'composition' u/s. 42(3A) for that project?

Issues

- Form 406 & 409 would have been issued in past, would it be required to withdraw it?
- The scheme provides that the dealer opting for the scheme cannot issue form 409 to the sub-contractor. The sub-contractor would charge the applicable VAT. [ratio laid down by the Supreme Court in the case of Larsen & Toubro Ltd]. Can the scheme be challenged?
- Dealer has paid tax u/s 42(3) for period upto to 31.3.2010. Can he opt for composition u/s 42(3A) for agreement entered into after 1.4.2010?
 - If yes, will it be eligible for set off for period upto 31.3.2010?
 - How to compute liability upto 31.3.2010 & after 1.4.2010?

Practical issues

- At the time of booking flat, booking letter is given. Is composition amount payable on such receipts?
- On cancellation of booking – can the VAT collected @1% & claimed as goods return? Will period of 6 months apply? Will the fresh agreement entered in to after 1.4.2010 for the same flat eligible under the scheme?
- How is investor transaction treated?
- Scheme do not provide for set off. Is set off available on construction machineries, centring material, expenses (purchases) debited to P & L A/c etc, where the property never gets transferred? Purchases prior to the effective date of Registration certificate?

Practical issues

- Can purchases against form C made for construction equipments, machinery etc?
- Can such a dealer receive goods as stock transfer against form F
- Can the sub-contractor issue form C for inter-state purchases?
- With regard to service tax, certificate issued by architects, chartered engineers & licensed surveyors for issue of 'completion certificate' is considered. Can such certificate be also considered / acceptable under the MVAT Act?
- What is the treatment for 'OC' issued for part of the building

Practical issues

- Will 'demand letter' issued by the builder sufficient for the purposes of the Act? Will it be construed as collection of VAT?
- Whether persons making payments to the builders / developers are liable to deduct WCT TDS?
- Will the following amount mentioned in the agreement form part of taxable amount u/s 42(3A)?
 - Advance society maintenance
 - Open parking space
 - Amenities like club membership
 - Common facilities like electricity sub-section charges approach road etc.

Issues

Redevelopment Scheme

- Redevelopment scheme : is VAT payable on flats / premises given free of cost to the land owner / member of the existing societies / any other interested parties? If yes, on what amount?
 - In the above case, will the notional value of 'displacement charges / amount', rental paid for temporary accommodation added?
- Is this barter arrangement? What is 'valuable consideration'?

W/C composition scheme u/s 42 (3A) is it available?

Particulars	RD	RD + MCHI MEMBER	URD	URD + ACM RELIEF AVAILED
a) New Project (started after 1.4.2010)	*	*	*	*
b) Transit cases – i.e. on going projects which were started before 1.4.2010 & continues there after	*	*	*	*
i) Construction completed				
Agreement entered into before 1.4.2010	* - covered by other provisions	* - covered by other provisions	* - covered by other provisions	* - covered by other provisions
Agreement registered after 1.4.2010	*	*	*	*
If agreement registered after OC received	Not liable	Not liable	Not liable	Not liable



W/C composition scheme u/s 42 (3A) is it available?

Particulars	RD	RD + MCH MEMBE R	URD	URD + ADM RELIEF AWAILED
Agreement registered but part / full payment received after 1.4.2010	*	*	*	*
Agreement registered into after 1.4.2010 but full payments received before 1.4.2010?	✓	✓	*	✓
(i) Construction in progress				
Agreement entered into before 1.4.2010 – tax not paid earlier	*	*	*	*
Agreement entered into before 1.4.2010 – party tax paid under other composition method (u/s 43(1))	*	*	NA	NA
can revised return be filed to avail 42(3A)?	✓	✓	NA	NA





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**EDUCATIONAL QUALIFICATION:**

<u>Particulars</u>	<u>Name Of Institution</u>	<u>Year Of Passing</u>
B.Com.	Bombay University	1972
LL.B.	Bombay University	1976
Chartered Accountant	Institute Of Chartered Accountants Of India	1976

ACADAMIC ACHIVEMENTS

Full time professor in accountancy in Lala Lajpatrai College from 1978. Head of Department Accountancy in Lala Lajpatrai College from 1989. Member of Local managing Committee of Lala Lajpatrai College. Visiting Lecturer in management Colleges. Member of Carrier Counselling Committee Western India Regional Council of Institute of Chartered Accountant in 2002 to 2006.

UNIVERSITY OF MUMBAI

Chairman - Board of Studies – Accountancy University Of Mumbai Up to Jan 2011.

Ex Member of the Academic Council University Of Mumbai.

Ex Member of the Faculty of Commerce University Of Mumbai.

Ex Member of the Board of University Teaching and Research for the Faculty of Commerce.

Ex Member of the research and Recognition Committee for the Board of Studies in Accountancy .

Recognized Post graduate teacher in accountancy.

Convener of Syllabus Committee for T.Y.B.Com., S.Y. & T.Y. B.M.S., & B.A.F. for the subject of Management Accountancy & Direct – indirect taxes.

Resource person at various workshops conducted by various colleges jointly with Board of studies in

Accountancy .

Resource person on VAT at refresher courses for professors of Mumbai University conducted by U.G.C. at various colleges

Student guidance lectures in various colleges for improvement of performance of students at

T.Y.B.Com. Examination. Member of selection committee for appointment and placement in senior

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BOOKS & PERIODICALS:

Co author of:

Compilation of the Maharashtra Value Added Tax Act 2002 Published by Maharashtra Sales Tax Vat News

Central Sales Tax Act, 1956, The C.S.T. registration and turnover rules, 1957 & Forms Published by

Maharashtra Sales Tax Vat News Chief Editor of Maharashtra Sales Tax Vat News (Weekly publication)

Financial Accountancy for F.Y. B.Com Published by Chetna Publication Financial Accountancy for S.Y.B.Com

published by Chetna Publication Management Accountancy for T.Y.B.Com. Published by Sheth publishers



Definitions Rule (2)

- Mah. Gov. empowered by sec. 152T(1) of Bombay Provincial Municipal Corporation Act, 1949 to make rules
- The Rules are called Bombay Provincial Municipal Corporation (Local Body Tax) Rules, 2010
- Act means Bombay Provincial Municipal Corporation Act, 1949
- Appointed day means notified day from which the levy of Local Body Tax is to commence.
- Designated Bank means bank authorised to collect the tax on behalf of corp.

Definitions Rule (2)

- **Sch. A** means the sch. notified by state gov. u/s 99B giving the goods & rate of tax leviable under the prov. of Act in corp. area.
- **Sch. B** means the sch. notified by state gov. u/s 152Q giving the goods on which no tax leviable under the prov. of Act in corp. area.
- Notified day means the day on Govt. publishes a notification in official gazette directing a corp. to levy L.B.T. in its area in lieu of Octroi or cess.
- **Taxable Event:** Entry of any goods by purchase, stock trf., sale, job work or by gift in limits of city/corporation

DEFINITIONS

- **Dealer:** Any person who imports or buys any goods in corp. limits for business or in connection with or incidental to business for commission, remuneration or otherwise
- **Purchase Price:** It will include all expenses like transport, commission freight etc. till goods reach in city limit of purchaser.

Incidence of Tax Rule (3)

- **Importer:** T/o of Sch A goods not < 5000/- & value of the goods imported not < 5000/- & T/o of all sales/purchases not < 100000/- (300000/-)
- **Others:** T/o of Sch A goods not < 5000/- & T/o of all sales/purchases not < 150000/- (400000/-)
- **Temporary:** Dealer not carrying on regular business in city but on temporary basis will be liable for registration whether or not he is liable as above.

Calculation of T/o for liability R(4)

- Turnover of all the sales or purchases whether taxable or not
- Turnover to include the Turnover for self as well as on behalf of principals
- Turnover of auctioneer to include price of goods auctioned on behalf of principal if price recd. by him.
- Manager or agent of non resident dealer to be liable for registration. Whether non resident dealer / principal is lia. or not is not imp.

Liability to pay L.B.T. in certain cases R (5)

- a) If dealer dies & business continued by legal rep. the legal rep. liable to pay tax
- b) If business discontinued before death dealer will be lia. Even if L.B.T. is not quantified. If business discontinued after death Legal Rep. liable to pay the amt. of L.B.T. out of estate of the deceased.
- c) In case of H.U.F. is partitioned every member is lia. for L.B.T. jointly & severally
- d) If firm is dissolved every partner lia. for L.B.T. jointly & severally (j&s)

Liability in certain cases R(5)

- e) If dealer liable to pay L.B.T. trf., disposes, sales, leases, effects any change in ownership the person succeeding will be J&S liable for L.B.T.
- f) Guardian in case of ward & trustee in case of trust lia. for L.B.T. liability till the date of retirement.
- g) The successor after death shall apply for L.B.T. reg. within 30 days of succession and will be lia. for tax from date of succession.



Liability of Firm/agent Rule (6)(7)

- Every partner j&s lia for L.B.T. for firm lia.
- If any partner retires from the firm he will be liable for L.B.T. lia. up to that date if he intimates to comm. the same within 60 days otherwise will continue to be lia. for L.B.T. j&s till the date of intimation.
- Com. agent, auctioneer importing material for consumption, sale or use they will be lia j&s with principal to pay L.B.T.
- If agent/ auctioneer pays the amt. principal will not be lia. & v/v.

Lia. Of manger(7)/ Application of prov.(8)

- Manager of non resident dealer importing goods & N.R.D. both will be lia. for L.B.T. j&s.
- If one of them pays the L.B.T. other will be absolved from the lia.
- The provision of this act & rules to apply to the persons mentioned in rule 5,6,&7 as if he was the dealer or the first mentioned person himself. – Rule 8

Registration Rule (9)

- A dealer lia u/r 3 or u/r 5 shall not carry on the business as dealer unless he possesses valid RC.
- **The dealer shall apply for RC**
 - a) Within 30 days from the appointed date if his t/o of sales or pur. in the pr. yr. has exceeded limits of rule 3 or in the period commencing from 1st Apr of that year.
 - b) Within 30 days when he completes the Turnover in the F. Y. as per rule 3
 - c) 15 days prior to commencement of temp. busi.

Registration Rule (9)

- Every dealer reg. under MVAT Act shall be deemed to registered under these rules, but it is advisable to apply for reg.
- Application shall be in Form A along with fees of RS. 100/-
- Every application shall be signed and verified by appropriate person along with photograph which has to be signed before the comm. on the date of hearing.
- In case of firm the every partner shall singed and furnished the declaration given in Form A

Registration Rule (9)

- The details of partner / members of HUF – AOP like POR to be submitted in the application & produce proof at the time of hearing with Xerox copy .
- The application shall be give the class of goods in general term in which they deal.
- If all the details are verified and sufficient the comm. will issue RC.
- If any additional information is furnished under these rules the comm. shall amend the RC

Grant of RC (Rule 10)

- The RC Shall be in Form B
- It shall be in the name of business
- If RC application is in time it shall be w.e.f. the date of liab. / notified date / date of succession u/s 5(7)
- If appl. is late it shall come into force w.e.f. the date of appl.
- If the appl. is for temp. busi. It shall come into force w.e.f the date of appl. and shall be in force till such date as comm. may specify. Such dealer may have to pay deposit adjustable against LBT Liab.
- In case of MVAT dealers it shall be effective from appointed date even if they have not applied it.
- For addl. busi. place the Reg. number will be same

Copies of RC (R -11) / Non Transferability (R - 12) / Exhibition of RC (R – 13)

- Comm shall issue addl. copies of RC at the fee of Rs. 25/- p. copy for addl. P.O.B.
- On payment of Rs. 25/- duplicate RC will be issued on the appl. In case the original RC was lost, destroyed or defaced.
- RC shall not be transferable.
- The RC shall be displayed conspicuously at every P.O.B.

Changes in Business (R – 14)

- Dealer shall intimate comm. within 60 days along with original RC in following cases:
- Trf of business in whole or part, sales, lease, hire or otherwise dispose of business or effects any other change in ownership of business or
- Discontinues business or change place of busi., opens a new place of business or
- Changes name or nature of business or
- Effects change in class of goods or
- Enters into partnership or forms other association
- The comm shall make necessary amendment in view of information and/or issue new R.C.



Production / Continuation of RC (R 15 / 16)

- The comm. may require the dealer to produce RC for carrying out any changes in it under this rule, suo moto.
- It is not necessary for the dealer to change the RC in following cases:
 - a) Change in the name of business.
 - b) Change in the const. of firm w/o dissolution.
 - c) Change in the trustees of the trust.
 - d) Change in the guardian of ward.

Cancellation of RC (R 17)

- a) The busi is discontinued or trf or disposed off.
- b) Neither the t/o of sales or pur during the year has not exceeded the limits specified u/r 3 and applies in Form C for cancellation of RC.
The comm. to hold the inquiry and cancel the RC w.e.f. the date applied.
If cancellation is not applied even after business is discontinued, the comm. may cancel RC suo moto after giving notice
Such cancellation shall not affect the LBT liab.
The comm. shall cancel the RC by order in writing and which shall be displayed on notice board of corporation.

Cancellation of RC (R 17)

- The date of cancellation shall be the date from which the busi. is discontinued / disposed.
- If RC is cancelled for low turnover the effect shall not be later than 1st day of next month
- The dealer shall surrender all copies of RC in original within 15 days from the date of order of cancellation.
- The temp. dealer required to furnish security deposit fails to give notice of discontinuation of business, the comm. after giving notice to him, cancel the RC and display the same on notice board for knowledge of general public.

Manager / Registers / Presumption (R.18.19.20)

- Every dealer shall within 1 month of RC, send to the comm. **Form F** stating the name of person who shall be deemed to be a manager.
- The dealer shall maintain the reg. of pur., receipt of goods on trf. basis in **Form D**
- If dealer purchases sch A goods from a dealer from same city, he shall obtain certificate as per rule 21, which will be verified by the comm. and if it is ok such pur will not be taxable. If such certificate is not produced it will be presumed that such goods are imported and tax will be payable on the same.

Certificate for Local Pur. / Contents (R 21, 22)

- Where dealer sells goods to another dealer in same area he shall issue a invoice containing a certificate in the manner and details u/r 22
- Sales invoice shall specify the full name, style and add of business place and LBT no. of seller, particulars of goods sold including sales price and a certificate mentioned in rule 22.
- Where the invoice amt is more than Rs. 500 it shall give the details of purchaser including name, address and LBT No. of the purchaser.

Notification of Sch A (R 23)

- Before 1st Jan the comm. shall submit list of commodities on which he intends to levy LBT in next FY including the rate thereon with justification thereof to the Govt. The Govt. shall determined the LBT in respect of each commodity and notify the same in Official Gazette before 20th Feb of that year. After such notification in Official Gazette, the comm. can levy the LBT as mentioned in Official Gazette on commodities mentioned in Sch A at the rate specified.

Tariff Value / FMV Fixation (R 24, 25)

- Comm. has got power to fix tariff value of the goods, where he is satisfied that the importer are showing lesser value of the goods. The comm. Shall display such tariff on the notice board of the corporation and thereafter such rate will be applicable for collection of LBT.
- The comm. can determine the FMV of goods by giving reasonable opportunity of being heard in cases of:
 - a) Pur / Sale Price is less in case of the Transaction between related person.
 - b) Pur Price is not ascertainable.
 - c) Goods have not been obtained by of sale or pur.

Inspection of Goods (R 26)

- Comm. or officer authorised by him has got power to stop the vehicle and inspect the goods carried in it, and examine the content of such vehicle, inspect all the paper relating to such goods and can question the driver about name and address of the consigner or consignee or his own.
- If the driver is unable to give such details asked for it will be presumed that he is the owner of such goods and be liable to pay LBT in respect of such goods.



Lump sum Payment of LBT (R 27)

- If the t/o of pur of a dealer are less than 5 lakhs he can apply in **Form R** for lump sum payment. If such application is correct the comm. will give him permission to pay lump sum LBT for such period by such date as may be specified in his order. Such amount should be paid within 15 days from the receipt of the order. The lump sum payment for following t/o is as follows:
- < 1 lakh = Nil, 1 to 2 lakhs = 2000, 2 to 3 lakhs = 3000, 3 to 4 lakhs = 4000, 4 to 5 lakhs = 5000
- If lump sum payment is not made within stipulated time in the order, the dealer may pay the same with int. within subsequent 3 months otherwise such order shall be deemed to be withdrawn.

Lump Sum Payment of LBT (R 27)

- If during the year in which the lump sum payment order is in force and t/o of all the pur of such dealer exceeds the limit of such slab he shall pay differential amount of LBT for difference in slab. If the t/o exceeds Rs. 5 lakhs the differential amt payable by him will be calculated as a normal dealer.
- If the comm. has reason to believe that the pur t/o of the dealer has exceeded the limit declared by him in Form R and not complied with above rule after giving opportunity of heard cancel such permission and proceed to recover from him LBT, Int. and penalty by serving order in respect of same on such dealer.

Exemption from payment (R.28)

- If the goods are imported on behalf of state or central govt. and a certificate from an officer is given within six months certifying that goods so imported are for public purpose & are not used/intended to be used for earning profit.
- If the goods are exported out of city limits for processes mentioned and re-imported without effecting any change in form or ownership of the goods, the value of goods moved out shall be allowed to be deducted from value of goods re-imported and LBT will be applicable on processing charges only.

Exemption from payment (R.28)

- If a dealer imports any goods for allowed processes and re-export them to the same person in same form within a period of six months no LBT will be payable if a) dealer shows the value of such goods in the return of the relevant period. b) pays a security deposit as guarantee as determined by comm. (Regular processor can keep a standing deposit fixed by comm.).
- **Allowed process include only:** grinding, dying, bleaching, painting, printing, finishing, doubling, embroidering, metallising, electroplating.
- Building and mounting bodies over vehicle chassis.

Exemption from LBT payment (R.28)

- If goods sold outside city are received back within six months due to rejection the same will bear no LBT if the sale of such goods was included in the turnover of the respective period.
- If the dealer is exporter out of India shall be exempt from levy of LBT in respect of goods used for purpose of such export.

Notification 0209/CR-65/2009/UD-34

- No tax up to one lack and lump sum payment of 2% for turnover above one lack.
- Any builder/ contractor undertaking const. within corp. limit has to pat LBT: up to 4 floors Rs.100 per sq. meter 5 to 7 floors Rs. 150. 8 & above 200 per sq. meter. He should pay 50% on applying for grant of commencement certificate.
- Dealer undertaking work in corp. limit has option to pay lump sum .25% of total contract value instead of on value of goods imported.

Submission of Returns (R.29)

- Half yearly return for first six months in form E-I & annual return in form E-II within 15 days from end of such period shall be filed.
- A dealer liable for lump sum payment u/r 27 shall furnish annual return in form E-II every year till the order of comm. is in force.
- Comm. has power to specify different periods & dates for different dealers by an order in **Form no. G.**
- Comm. has also power to exempt from dealer from furnishing returns, furnishing consolidated returns & returns for different periods.

Submission of Returns/ Security Dep. (R.29/30)

- If dealer after furnishing return discovers any omission or incorrect statement furnish revised return before expiry of one month from last date for filing org. return.
- If the business is discontinued by dealer in between the yr. shall furnish return in form E-I within ten days from the end of the month in which the business discontinued.
- Comm. May require a defaulting dealer failing to pay taxes for three times to make a security deposit for proper realisation of LBT lia. after giving him opportunity to represent.



Security Dep. (R.30)

- Comm. has got power to change the amount of deposit provided it is not more than amt. of LBT payable.
- Comm. Can by order & for sufficient cause forfeit the whole or part of sec. dep. for realisation of LBT which has remained unpaid.
- Comm. has power to ask the dealer to make up the deficiency in deposit within time allowed.
- Comm. may on application refund the amount of deposit by an order if it not required for the purpose of these provisions.

DDQ (R 31)

- On appl. made by the dealer, comm. can decide about the particular goods on which tax is payable and rate of LBT payable, provided no asst proceedings have commenced u/r 33 or 34.
- Comm. may give prospective or retrospective effect for such order.
- if any order is already passed on any such questions it shall not be entertained again.

Refund in case of Export (R 32)

- If the dealer exports outside the city the goods imported by him otherwise than under a contract of sales then 90% of LBT on import shall refunded to him by an order in **Form M** if following conditions are fulfilled
- a) Details of Goods Imported are given in relevant return and LBT paid thereon.
 - b) The goods are exported outside the city within 6 months from import.
 - c) the return for the said period shows these sale
 - d) goods are exported without change in form.
- Comm. may allow payment of 10% LBT for dealer regularly importing & exporting A sch. goods.

Assessment (R 33)

- The amt of LBT shall be assessed separately for every FY.
 - If returns filed are correct and complete the asst may be completed on the basis of such returns.
 - Comm. may do the asst. by issuing the notice in **Form H** if
- a) dealer has failed to furnish the return,
 - b) comm. is not satisfied that returns are not correct and complete and requires production of further evidence in respect thereof.
 - c) The dealer has claimed refund in return.
 - d) Has applied for cancellation of RC
 - e) Person is liable to pay tax but fails to apply for reg. or is directed to file the returns by an order in Form G.

Assessment (R 33)

- If the dealer fails to comply with the notice best judgment asst. can be done by comm.
- The period for such asst. is 5 years from the end of FY by issuing notice in **Form H** giving minimum 15 days time.
- The Asst. Order shall be in **Form I**.
- The order may incorporate the penalty, int. u/r 48 or forfeiture of the taxes.
- Certified copy of the asst. along with the notice of demand in **Form J** shall be served on assessee free of charge.
- Addl. copies on payment of Rs. 25
- The asst. papers (record) shall be preserved for 10 yrs following the FY to which asst. relates or 3 yrs from the completion of the proceedings.

Reassessment (R 34)

- Comm. can reassess the dealer within 3 yrs from completion of the asst. after recording the reasons in writing by issuing a notice in **Form K** for following reasons
- a) LBT payable has escaped asst.
 - b) Asst. is made at lower rate.
 - c) Deduction / claim has been wrongly granted / allowed.
 - d) Refund is wrongly granted.

Rectification (R 35)

- Comm. may within 2 yrs from the date of passing the order on his own or on application by the dealer rectify the mistake apparent on face of record. Such order shall be passed in subsequent 2 yrs.
- If rectification has effect of increasing the LBT or reducing the refund notice should be given to the dealer in **Form P** and give him opportunity of being heard.
- If by rectification LBT amt get reduced it shall be refunded to such person.
- If by rectification LBT amt get enhanced then, if unpaid it shall be recoverable as arrears of property tax.

Appeals (R 36)

- Every appeal filed against order shall be in **Form S** giving name and address of appellant, date of order of asst., give clear statement of facts, relief prayed for and accompanied by proof of having deposited disputed amt of LBT, quantum of relief sought.
- It shall be verified by the appellant or his authorised agent.
- The appeal shall be accompanied by certified copy of order and presented by the appellant or sent to the appellant authority by Reg.post



Appeals Hearing (R 37)

- The appellant authority shall give min. period of 10 days while fixing the date of hearing for appeal.
- If the appellant does not appear on appointed date or adjourned date the authority may decide the appeal ex parte or dismiss the appeal.
- If appellant within 30 days of such dismissal applies for reinstatement of appeal because of non receipt of notice or any other reason the appellate authority may set aside such order.
- The appellate authority shall decide the case and pass an order regarding his decision.
- The appellate authority shall maintain a reg. showing filling of appeal in chronological order and relief sought.

Order / R/off / Payment (R 38, 39, 40)

- Copy of the appellate order shall be given to the appellant as well as assessing officer.
- The amt of LBT, int., penalty etc. shall be rounded off to the nearest rupee.
- Any LBT, int., penalty etc payable according to returns or otherwise in a month shall be paid before 10th (20th) of subsequent month.
- The comm. may prescribe different dates and interval for such payments.
- If any tax etc remains unpaid it shall be recoverable as arrears of property tax by serving of notice in **Form L**.

Recovery Proceedings / Spl. mode of Recovery (R 41, 42)

- If in appeal order the amt demanded from the dealer has increased, the comm. shall give the notice for enhance dues and recover the same.
- If dues are reduced or if the refund is increased it should be intimated to the dealer and refund shall be made in accordance with the provision of rule 44.
- If any amount remains unpaid by the dealer who is liable to pay LBT, comm. can follow procedure of recovering the said amt from the debtors from the amt the said dealer has to recover as his dues by following proper procedure.

Provisional Attachment (R 43)

- If comm. is of opinion that for protecting the revenue it is necessary, may after giving the dealer opportunity of being heard, attach provisionally by notice in writing any property belonging to such dealer against whom proceedings are pending, search or inspection is undertaken or attach any money due or which may become due.
- Such order shall have effect of 6 months which can be extended totally for 2 yrs.
- Such notice can be amended or revoked by the comm.

Refund / Withholding Refund / Composition / Notice (R 44, 45, 46, 47)

- Comm. Shall refund LBT, paid by such dealer in excess of the amt due from him by an order in **Form M**.
- The refund may be by way of cash payment or deduction of such excess payment from any amt due in respect of any other period.
- If comm. is of the opinion that such refund will adversely affect the revenue can withhold the refund till such time as he may determine.
- The comm. has got power to permit any dealer to pay in lieu of amt of LBT payable by him in respect of any period a lump sum determined by way of composition in accordance with sec. 152 N.
- Notice for production of a/cs and documents shall be in **Form N**.

Penalty & Interest (R 48)

- Failure to issue bill by selling dealer = double the amt of LBT payable if the goods sold had been imported by the selling dealer.
- Failure to a) apply for registration in time (10 times of LBT payable in urd period), b) comply with the notice in respect of the proceeding (Rs. 10000), c) to disclose any entry of the goods on which LBT is payable, claimed inaccurate deduction or refund, disclose fully and truly all the material (5 times the amt of LBT found payable)

Penalty & Interest (R 48)

- If the amt of LBT payable is not paid in time interest payable is 2% p.m. for first 12 months after the last date by which such amt is due and 3% p.m. during the time when default continues after 12 months
- Any part of the month shall be counted as full one month.
- In case of asst. dues int. @ 2% p.m. is payable on the amt due as per order from the end of FY till the date of order.
- Provided the total amt of int. payable shall not exceed original amt of LBT.

Penalty & Interest (R 48)

- If dealer knowingly produced any documents, bills etc the effect of which is non payment of LBT / Less payment of LBT on goods imported the comm. may impose penalty equal to twice the amt of such amt evaded for first occasion or five times for subsequent occasion.
- If the dealer produces any false declaration or certificate which is false or fails to abide by or acts in contravention of recital of terms of such declaration penalty is 5 times amt of LBT which would have been payable.



Various Forms under LBT

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The Institute of Chartered Accountants of India,
New Delhi.

OUR MOTTO

*"Ya Esha Supteshu jagarti Kamam Kamam Purusho nirmimanah |
Tadeva shukram tad brahma Tadevamrutamuchyate |
Tasminlokah shritaah sarve tadu natyeti Kaschana | etad vai tat ||*

*य एष सुप्तेषु जागर्ति कामं कामं पुरुषो निर्मिमाणः ।
तदेव शुक्रं तद् ब्रम्ह तदेवानृतमुच्यते ।
तस्मिन्लोकाः श्रिताः सर्वे तदु नात्येति कश्चन । एतद् वै तत् ।*

The person who remains awake, shaping "all sorts of objects of desire into dreams" even while we sleep.

Verily that is the pure, the Brahman, and that is also called the Immortal. In that rests all the world and none can transcend that. This verily is that "which you ask for"

OUR MISSION

**"The Indian Chartered Accountancy Profession
will be the valued Trustee of
World Class Financial Competencies,
Good Governance and
Competitiveness."**



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