



Amendments in MVAT Act, Rules & Amnesty Scheme

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8th May, 2016

SCOPE OF DISCUSSION

- Maharashtra Act No XV OF 2016.- Amendment in MVAT Act
- No. VAT/1516/CR 53 /Taxation-1 dt. 01/04/2016 - Amendment in Rules
- No. VAT/1516/CR 52 /Taxation-1 dt. 22/04/2016 - Amendment in Rules
- VAT 1516 / C.R. 51/Taxation-1, Dated: 30-03-2016 Amendment in Composition Scheme
- Maharashtra Act No XVI OF 2016 - Maharashtra Settlement of Arrears in Dispute Act 2016
- VAT 1516/C.R. 31/Taxation-1, Dated: 30-03-2016. Amendment in Schedules

AMENDMENT IN MAHARASHTRA ACT NO: XV OF 2016



EXEMPTION TO WARPING AND SIZING OF YARN - NEW SUB-SECTION 8(3D)

The State Government may by issuing the notification provide partial or full exemption from payment of tax on transfer of property in goods involved in the sizing and warping of Yarn

Accordingly a notification is issued on 29th April 2016 effective from 1st April 2016

Full exemption is granted from payment of tax on transfer of property in goods involved in the sizing and warping of Yarn on following conditions.

- 1) The said goods are consumed or used
- 2) Setoff will be granted after retention of 2% on purchases of consumable and packing material
- 3) Setoff on capital assets used exclusively for sizing and warping of yarn will be granted as per rule 52



ONLINE REGISTRATION AND REJECTION



ONLINE REGISTRATION AND REJECTION-AMENDMENT IN RULE 8 AND 16

- With the amendment made in Rule 8, the application for Registration is required to be submitted electronically on the website
- This application is required to be signed, verified and submitted electronically
- Now there is no need to sign the copy of the photograph in front of the registering authority
- In case of Voluntary registration, introduction by a registered dealer was required. This provision is done away with
- Along with the form 101, form 105 is required to be submitted electronically



ONLINE REGISTRATION AND REJECTION-AMENDMENT IN SECTION 16(3)

- The proviso to sub-section 3 which gives powers to registering authority to reject the application for registration is substituted.
- Prior to amendment before rejection the authority was required to give *reasonable opportunity of being heard* to the dealer.
- With the amendment, the authority can reject the application **without giving any opportunity to Tax payers**



ONLINE REGISTRATION AND REJECTION - AMENDMENT IN SECTION 16(3)

If;

(i) the application is not complete, or

(ii) the documents prescribed for grant of registration certificate have not been uploaded on the department's web site i.e. www.mahavat.gov.in, or

With the amendment in Rule 8, no documents are required to be attached along with application. [Only PAN and current account details were required prior to amendment] The documents which are required to be attached are now mentioned in the form prescribed by issuing the notification.

Whether such documents are said to be prescribed ? If not then for not uploading those documents can the form be rejected?

ONLINE REGISTRATION AND REJECTION-AMENDMENT IN SECTION 16(3)

(iii) such documents are not consistent with the information contained in the application or are not legible, or

(iv) the prescribed conditions are not fulfilled,

then the prescribed authority may pass the rejection order without giving an opportunity of being heard and shall intimate the applicant accordingly in the prescribed manner: **[This prescribed manner is not yet prescribed]**



ONLINE REGISTRATION AND REJECTION-AMENDMENT IN SECTION 16(3)

- The applicant has to comply and remove the defects within 30 days from the receipt of rejection order
- If the authority approves the compliance then the application rejected earlier shall stand restored
- The applicant shall be eligible to comply with the discrepancies under this proviso only once
- **The above amendment in sub-section 3 of section 16 will come into existence from the date to be notified. This date is not yet notified**



CANCELLATION OF REGISTRATION CERTIFICATE- AMENDMENT IN SECTION 16(6)

- The second proviso to sub-section 6 is substituted, now under the substituted proviso in addition to existing power to cancel the registration certificate in case of voluntary registration the Commissioner can cancel the registration certificate of any dealer if;
 - The registration is obtained by fraud or
 - By misrepresentation of facts
- However, before cancelling the certificate under this sub-section the authority is required to give a reasonable opportunity of being heard.
- This subsection is made effective from the date of publication of the Act in the official gazette i.e. 26th April 2016



CANCELLATION OF REGISTRATION CERTIFICATE- AMENDMENT IN RULE 11(4)(B)

The cancellation of certificate;

- In case of voluntary registration will be from the date of effect of registration certificate issued
- In case the registration is obtained by fraud or by misrepresentation of facts, from the date as the Commissioner may deem fit



CHANGES IN RETURN PERIODICITY [RULE 17 AND 18]

1. Sub rule 4A is inserted in rule 17 to decide the periodicity of returns under various circumstances occurring on or after 01 April 2016.

For Registered Dealers:

CONDITION	PERIODICITY	DUE DATE
Dealer whose Tax Liability in previous year > Rs. 10 Lakhs or Entitlement of refund in previous year > Rs. 1 Crore	Monthly	21st day from end of the month
Any other registered dealer	Quarterly	21st day from end of the quarter

CHANGES IN RETURN PERIODICITY

2. All the registered dealers are required to file Annexures for the entire year as mentioned in Form 704 along with the last return of any financial year which is required to be filed before 21st April of the year succeeding the year to which such return relates. However,

1. Dealer who has **wholly** opted for Composition Scheme u/s 42(1) i.e. Retailers or u/s 42(2) i.e. Restaurant / Catering etc and

2. Dealer who is not required to file Audit report u/s 61

Are not required to file such annexures



CHANGES IN RETURN PERIODICITY

3. Under Rule 18, Sub rule 1A is inserted for returns to be filed by unregistered dealers for the period from 01 April 2016
 - a. For Unregistered Dealer: who has not applied for registration in prescribed time limit

NATURE OF RETURN	PERIOD	PERIODICITY	DUE DATE
1st return for unregistered period	From Date of 1st Sale / Purchases to the end of month in which such date occurs	Monthly	21st of next month
Last return for unregistered period	From 1st day of such month in which registration is effective upto the date immediately before Date of effect of registration	Monthly	21st of next month
1st Return for registered period	From the date of effect of registration to end of month in which effect of registration is given	Monthly	21st of next month

CHANGES IN RETURN PERIODICITY



b. Dealer who has applied for registration in prescribed time limit

NATURE OF RETURN	PERIOD	PERIODICITY	DUE DATE
1st return	From Date of 1st Sale / Purchases to the end of month in which such date occurs	Monthly	21 st of next month
Subsequent returns	Till the end of the year containing the said date of effect of registration	Monthly	21 st of next month

CHANGES IN RETURN PERIODICITY

4. Last Return in case of cancellation of

Registration Certificate:

In case, the registration is cancelled w.e.f.

01 April 2016 or thereafter then along with

last monthly / quarterly return dealer shall

file annexures as mentioned in Form 704.



CHANGES IN RETURN PERIODICITY

5. Returns for the dealer who has been granted a Certificate of Entitlement involving incentive from exemption / deferment of payment of tax (except when it is granted under Power Generation Promotion Policy, 1998)
- a. When dealer is not engaged in execution of works contract or transfer of right to use goods

PERIOD	PERIODICITY	DUE DATE	FORM OF RETURN
From 1 st day of the month / quarter to date immediately preceding Date of effect of certificate of entitlement	Monthly / Quarterly	21 st of next month / next month after quarter ending	Form 231
From Date of effect of Certificate of Entitlement till end of month	Monthly	21 st of next month	Form 234

CHANGES IN RETURN PERIODICITY

PERIOD	PERIODICITY	DUE DATE	FORM OF RETURN
<p><u>Last Return when certificate of entitlement is ceased</u></p> <p>From the 1st day of a month to the date on which such certificate ceases to be valid</p>	Monthly	21 st of next month	Form 234
<p>Next immediate return for the period from the date immediately succeeding the date on which such certificate ceases to be valid till end of month</p> <p>(Thereafter dealer shall continue to file monthly return for that year)</p>	Monthly	21 st of next month	Form (as per rule 17)

CHANGES IN RETURN PERIODICITY

b. If dealer is also engaged in execution of works contract or transfer of right to use goods then along with Form 234 additionally he shall also file Form 233 during the period when certificate of entitlement is valid.



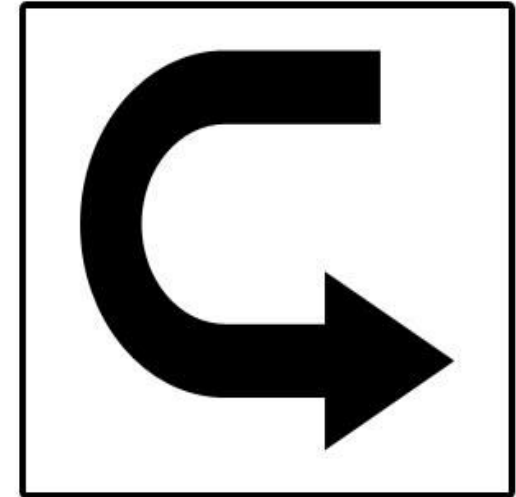
“Does ‘high-rise’ refer to the building or the budget?”

REVISED RETURNS



REVISED RETURNS- Amendment In Section 20(a)

- Under clause (a) of sub-section 4 of section 20, a dealer can revise the return if he discovers any omission or incorrect statement therein
- The earlier period of filing the revised return i.e. 31st Jan is now prescribed as up to the date prescribed for filing audit report under section 61.[15th Jan]
- The earlier restriction of filing only one revised return under clause (a) is now removed and now dealer can file multiple return



RETURNS

RETURNS

This amendment has come into existence from the date of publication of the Act in the official gazette i.e. 26th April 2016

INTIMATION REGARDING ACCEPTANCE OF RETURN AND DEEMED ACCEPTANCE - New Sub-section 2A Of Section 23

- The long awaited amendment with regards to deemed assessment is now introduced
- If the dealer files returns for the period after 1st April 2012 before the period prescribed under clause (a) of sub-section 4 of section 20 and also pays the tax and
- If the Commissioner is satisfied that the returns so filed are correct and complete then he may assess the amount of tax due from such dealer on the basis of such returns
- If no such order is made within four years from the end of the year to which such returns relate then such return shall be deemed to have been accepted
- *Will it have impact on section 51 in a sense that if the application for refund is not made under section 51 within the prescribed period still the dealer can get the refund?*
- *This amendment has come into existence from the date of publication of the Act in the official gazette i.e. 26th April 2016*

NEW INSERTION OF SUB-SECTION 5A IN SECTION 23

- During the course of assessment under sub-section 2,3,4,and 5 , the assessing officer may send an intimation regarding proposed tax and interest liability and if the observations are accepted and tax is paid by filing revised returns under section 20(4)(c)
- Then confirmation order accepting the revised return shall be passed and the assessment proceedings shall be deemed to have been closed
- This provision will be applicable even to assessment which are pending on 1st April 2016
- ***This amendment has come into existence from the date of publication of the Act in the official gazette i.e. 26th April 2016***

FAIR MARKET PRICE



FAIR MARKET PRICE

- This concept is already in operation in some States and Union territories like
- Andhra Pradesh , Arunachal Pradesh , Dadra and Nagar Haveli, Daman And Diu, Delhi Jharkhand , Karnataka , Nagaland Puducherry and West Bengal
- In those states FMV is more or less defined as
- *“The value at which goods of like kind and quality are sold or would be sold in the same quantities between unrelated parties in the open market”*
- The Customs Act, Central Excise Act and Service Tax also have the similar concept but all are codified and broadly speaking it is invoked when the transaction is between related parties



FAIR MARKET PRICE - New Section 28A

During the course of any proceedings under the- Act,

- if the Commissioner is of the opinion that
- any transaction entered into by any dealer for sales price, which is below the prescribed fair market price for commodity for a prescribed class of dealers,
- so as to be liable, to pay tax less than the tax, which would have been otherwise become payable on such sales or purchases,
- then the Commissioner shall determine the tax liability as per the fair market price of such transaction while passing an order in the said proceedings



FAIR MARKET PRICE - Applicability

- The proceedings under the act should be pending.
- The Commissioner is required to form an opinion during the course of any proceedings
- The sale price should be below the prescribed fair market price for commodity for a prescribed class of dealers.
- The transaction is to be entered into so as to liable to pay less tax than the tax which would have been otherwise become payable on such transaction
- The Commissioner will pass the order under the said proceedings.



FAIR MARKET PRICE - Applicability

- The proceedings under the act should be pending
- The proceedings under the act are Assessment, Appeal and Review. As the Commissioner is required to pass the order under the said proceedings, business audit under section 22 cannot be considered for the purpose of this provision
- The Commissioner is required to form an opinion during the course of any proceedings
- The Commissioner must form the opinion during the course of any proceedings. This opinion must be supported with the reasoning. It is expected that this should be communicated to the assessee



FAIR MARKET PRICE - Applicability

- The sale price should be below the prescribed fair market price for commodity for a prescribed class of dealers
- What is 'prescribed fair market price for commodity for a prescribed class of dealers' is required to be defined
- The Commodity and class are not independent but are to be read together
- The transaction is to be entered into so as to liable to pay less tax than the tax which would have been otherwise become payable on such transaction
- The Commissioner's opinion should spell out that the transaction is entered into for making lesser payment of tax



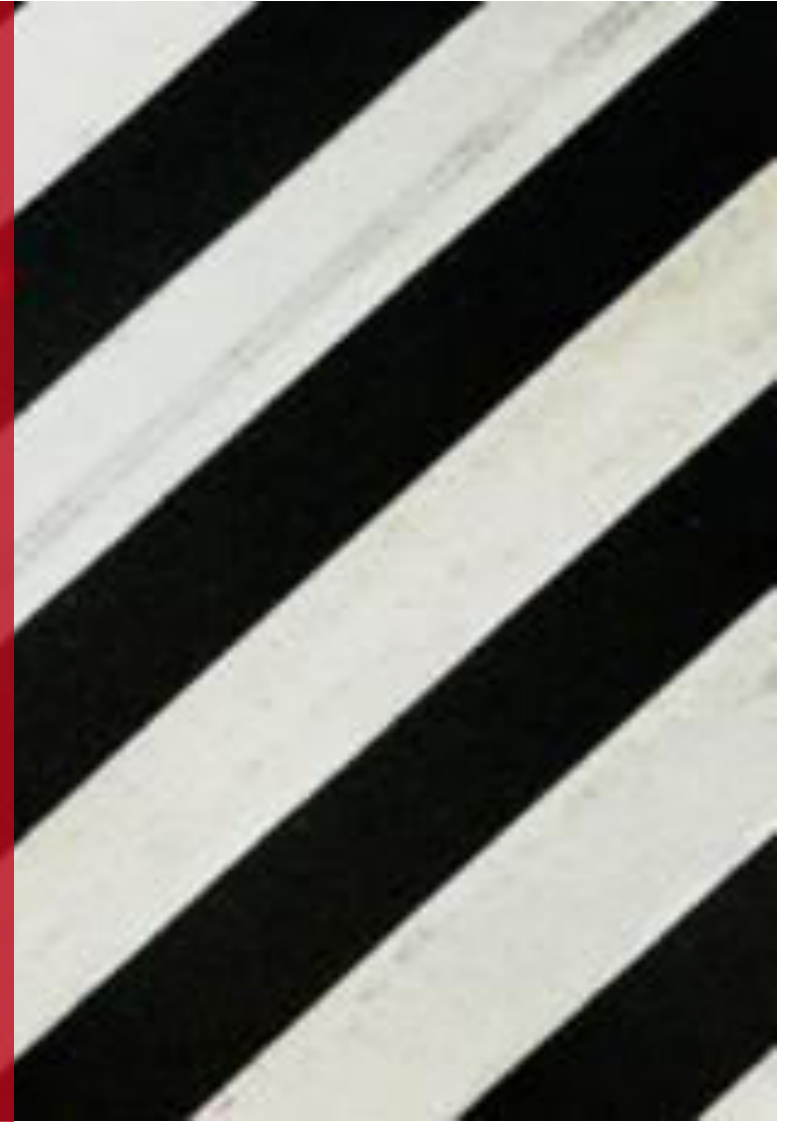
FAIR MARKET VALUE

- This section is inserted retrospectively from 1st April 2011. Whether such introduction which increases the liability retrospectively is permissible?
- If it is proved that this amendment is required to plug the loop hole of under invoicing resulting in lesser payment of tax and is made in public interest, then I think no court will held it otherwise and may upheld the retrospective operation
- Looking at the wordings, it is likely that the blanket powers will not be given to assessing authority and the scope also will be restricted to few commodities. Otherwise it is likely that it will lead to lot of litigation



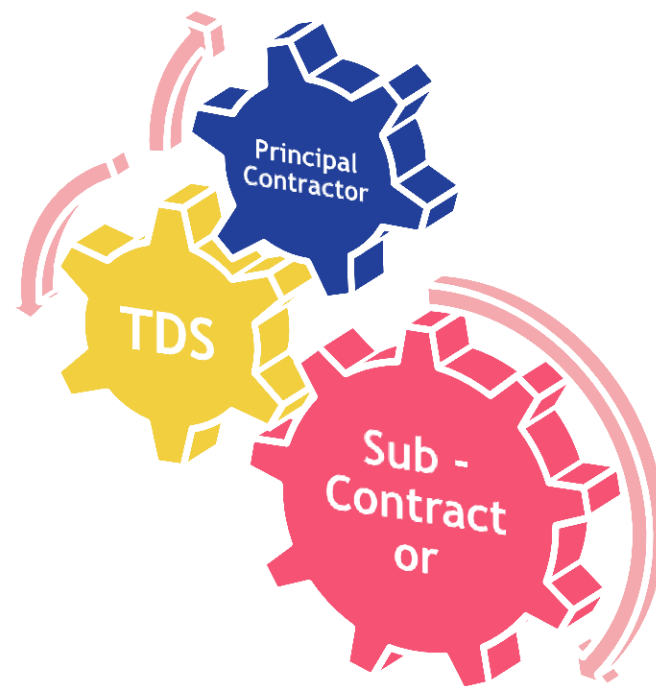


TRANSFER OF WCT TDS CREDIT TO SUBCONTRACTOR



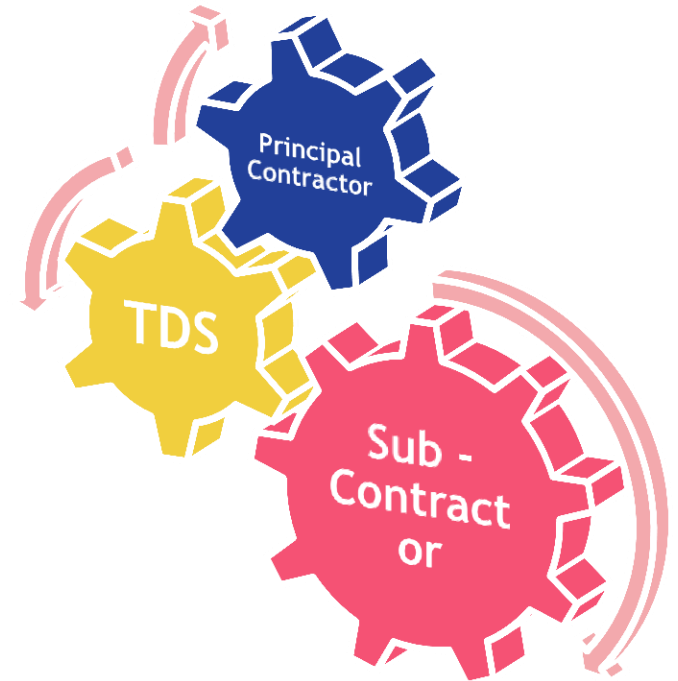
TRANSFER OF WCT TDS CREDIT TO SUB-CONTRACTOR- Section 31(4)

- An employer is required to deduct Tax at source while making payment to contractor
- From 1st April 2016, the contractor can transfer the credit of the tax so deducted to the sub-contractor
- The manner in which it to be transferred is prescribed
- The principal contractor, desiring to transfer the credit to the sub-contractor, shall file a return in Form 424A electronically on the website
- After filing of such return, the principal contractor shall issue a certificate in Form 402A to the sub-contractor for transferring such credit
- Such principal contractor shall maintain a separate account in Form 404 A, for each year, containing details of credit, so transferred.";



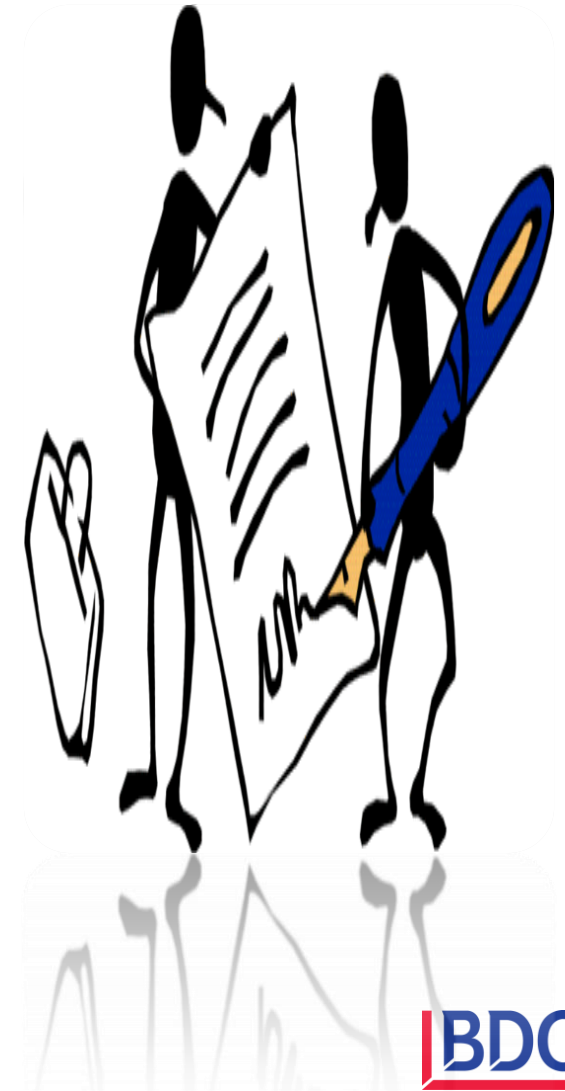
TRANSFER OF WCT TDS CREDIT TO SUB-CONTRACTOR- SECTION 31(4)

- The sub-contractor can claim the credit in the period in which the principal-contractor has transferred the credit or in any subsequent period
- The sub-contractor shall not be called upon to pay the tax to the extent the tax has been transferred to him
- The principal contractor shall not be called upon to pay the tax which is deducted by the principal and is not transferred to the sub-contractor
- This amendment has come into existence from the date of publication of the Act in the official gazette i.e. 26th April 2016



PRINCIPAL TO APPLY FOR SALES TAX DEDUCTION ACCOUNT NUMBER- 31(8)

- The provision to apply by the Principal who is liable to deduct tax at source for sales tax deduction account number is reintroduced. The time for application is not yet prescribed
- If the employer is registered under MVAT Act then he is not required to apply
- The above provisions will come into existence from the date to be notified by the Government. The said date is not yet notified



PRINCIPAL TO APPLY FOR SALES TAX DEDUCTION ACCOUNT NUMBER- 31(8)

- If he fails to apply then the authority may impose penalty up to the amount of tax deductible by the employer
- The principal is required to file the return in prescribed form and in prescribed time
- He can revised the return within the period of Nine months from the end of the year to which it relates
- If he fails to file the return then the Commissioner shall levy penalty of Rs. 5000/-
- This amendment has come into existence from the date of publication of the Act in the official gazette i.e. 26th April 2016

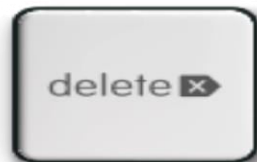


**DELETION OF SECTION 56
AND PROVISION FOR
ADVANCE RULING -
SECTION 55- EFFECTIVE
FROM 1ST MAY 2016**



DELETION OF SECTION 56

- The Provision relating to determination of disputed question is deleted from 1st May 2016.
- It is provided in section 55 that the Commissioner may allot any application made under section 56 and pending on the date of effect of this amendment to the Advance ruling Authority.
- What about the application which are heard and pending for orders?
 - From 1st May 2016 as section 56 is no more on statute book, the said applications will also either be transferred to ARA or Commissioner himself will hear it u/s 55.



ADVANCE RULING - SECTION 55



The applicant may make an application to the Commissioner for Advance Ruling on the following questions.

Whether, for the purposes of this Act;

- a) such a person, society, club or association or any firm or any branch or department of any firm, is a dealer, or
- b) such a person or dealer is required to be registered, or
- c) any particular thing done to any goods amounts to or results in the manufacture of goods, within the meaning of that term, or
- d) any transaction is a sale or purchase, or where it is a sale or purchase, the sale price or the purchase price, as the case may be, thereof, or
- e) in the case of any person or dealer liable to pay tax, any tax is payable by such person or dealer in respect of any particular sale or purchase, or if tax is payable, the rate thereof, or
- f) set-off can be claimed on any particular transaction of purchase and if it can be claimed, what are the conditions and restrictions subject to which such set-off can be claimed.

ADVANCE RULING - SECTION 55

- The application is to be made in Form 703 along with the prescribed fee which is Rs 2000/-
- The Commissioner shall constitute the Advance Ruling Authority, comprising three officials, not below the rank of Joint Commissioner by notification in the Official Gazette.
- The Commissioner may allot any of the questions or, as the case may be, all the questions prescribed under sub-section (1) to such Advance Ruling Authority.
- The Commissioner may also allot any application or question in such application made under section 56 and pending on the date of effect of this amendment, to such Advance Ruling Authority.



ADVANCE RULING - SECTION 55

- The Commissioner or, as the case may be, the Advance Ruling Authority shall, subject to rules, make Advance Ruling, within ninety days from the date of acceptance of the application by the Commissioner or, as the case may be, the Advance Ruling Authority.
- The applicant may withdraw his application within thirty days from the date of submission of the application.
 - (a) No application shall be accepted where the question raised in the application,-
 - is already pending before the Tribunal, Bombay High Court or, as the case may be, the Supreme Court in respect of the applicant, or
 - (ii) relates to a transaction or issue which is designed apparently for the avoidance of tax.



ADVANCE RULING - SECTION 55

- The communication regarding the acceptance of the application shall be made in form 703B to the applicant within thirty days from the date of submission of the application.
- No application shall be rejected under this sub-section unless an opportunity of being heard has been given to the applicant and where the application is rejected, reasons for such rejections shall be recorded in the order.
- The Advance Ruling of the Commissioner shall be binding on all the officers, including the appellate authority or, as the case may be, on the Advance Ruling Authority in respect of the similarly situated persons.
- The Advance Ruling of the Advance Ruling Authority shall be binding on all the officers, including the appellate authority, other than the Commissioner, in respect of the similarly situated persons.

ADVANCE RULING - SECTION 55

- The appeal against the Advance Ruling order shall lie to the Tribunal and shall be subject to the conditions prescribed.
- Notwithstanding anything contained in this Act, no appeal shall be entertained under any circumstances whatsoever, after the date of expiry of period of thirty days from the date of communication of the Advance Ruling order to the applicant.
- Under section 26 the appeal is required to be filed within 60 days from the date of receipt of order. Section 81 gives powers to the appellate authority to accept the appeal even if it filed after 60 days. The question is though the appeal is filed under section 26 against the order passed under 55, will section 55 will override section 81? The answer is in the affirmative as section 55 starts with non obstante clause.



ADVANCE RULING - SECTION 55

- Will the DDQ decided under section 56 till date will be binding on the Advance ruling authority?

The answer to above question is provided in sub-section 12 which reads as *'The Advance Ruling order passed by the Advance Ruling Authority shall be subject to any directions or, as the case may be, instructions, issued under subsection (10) of section 10 by the Commissioner and any order passed by the Commissioner under section 56, as it existed.'*



ADVANCE RULING - SECTION 55

- The Commissioner or, as the case may be, the Advance Ruling Authority may on his own motion, rectify any mistake apparent from the record and may rectify any order passed by it before the order so issued has been given effect to by the officer concerned.
- The applicant may also bring to the notice of the Commissioner or, as the case may be, Advance Ruling Authority, any such mistake within thirty days from the date of receipt of the said order
- The order in rectification shall be passed within a period of 60 days
- The Commissioner can review the order passed by Advance ruling Authority within six months from the end of the year containing the date of Advance Ruling
- The Commissioner can also review the order passed by him however for such review he will require the prior permission of the state Government. Such permission is also required when the proposed order to be passed is contrary to order passed under section 56. Here also the time limit is prescribed to pass the order
- This order is to be passed within three months of obtaining the permission



PERIODICAL INFORMATION FROM E-COMMERCE COMPANIES

SALE

PERIODICAL INFORMATION FROM E-COMMERCE COMPANIES

- Though in the budget Speech it is proposed to periodically obtain information from e-commerce companies regarding sales-purchase transactions made on the portal. Such notification which is required to be issued under section 70 is not yet issued
- However the penalty provision by inserting sub-section 3 in section 70 is made for not submitting the information asked for within prescribed time. And it is not exceeding rupees one lakh and in case of continuing default, for a period beyond two months, a further penalty of rupees one thousand for every day of such continuance
- The above provisions have come into existence from the date of publication of the Act in the official gazette i.e. 26th April 2016

AMENDMENT IN SETOFF RULES



AMENDMENT IN RULES- RULE 52B:

- This rule is inserted on 30th December, 2015 effective from 1st January, 2016
- Now from 1st April 2016 apart from goods covered by schedule entries D-13 & D-14 i.e. Aerated & carbonated non-alcoholic beverages & cigars & cigarettes, *mobile phones or cellular handset* i.e. telephone for cellular network or for other wireless network also got covered
- Set off on above mentioned goods will be available to the extent of aggregate of
 - The taxes paid or payable under CST act on the interstate resale of corresponding goods, and
 - The taxes paid on the purchase of said goods, if are sold locally under the Act
- The Set-off can be claimed only in the month in which the corresponding sales are reflected
- The set-off will not be available if the mobile is not resold
- This Rule shall not be applicable in case of exports of such goods



AMENDMENT IN RULES- RULE 53(11)

In rule 53 of the principal Rules, after sub-rule (10), the following shall be added, namely :-

"(11) (a) If the claimant dealer is engaged in the business of transferring the right to use (whether or not for a specified period) for any purpose, of passenger motor vehicles, then he shall be entitled to claim set-off of tax paid on the purchase of such motor vehicles only to the extent of tax payable on such transfer of right to use ;

(b) the set off as determined under clause (a) in respect of the such vehicles shall be claimed in the period in which such right to use has been transferred by the claimant dealer."

AMENDMENT IN RULES- RULE 53(11)

- Applicable in case of passenger motor vehicle when the sale is effected by way of 'Right to use'
- Set-off is to be claimed in the period in which right to use has been transferred.
- Set-off is to be claimed only to the extent of tax payable on such transfer of right to use
- Proviso to section 50(2) allowing c/f setoff only if it is less than Rs 5 lacs - Transactions entered into and transactions not entered into effect thereof
- If the purchase and Right to use is spread over different financial years or months then displaying it in the return is a challenge. The dealer will be claiming the setoff without showing the purchases. At the same time it is not c/f of setoff
- The dealer will have to keep a track of how much setoff is claimed for different transactions to meet the restriction mentioned in the rule

AMENDMENT IN RULES- RULE 54

In Rule 54 (a):

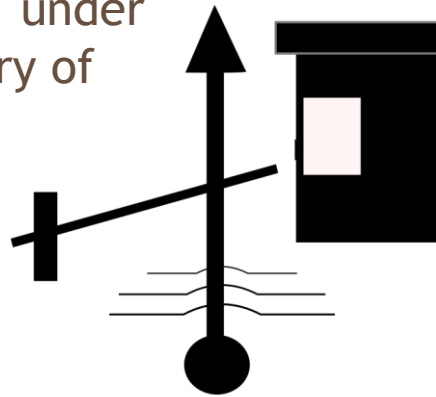
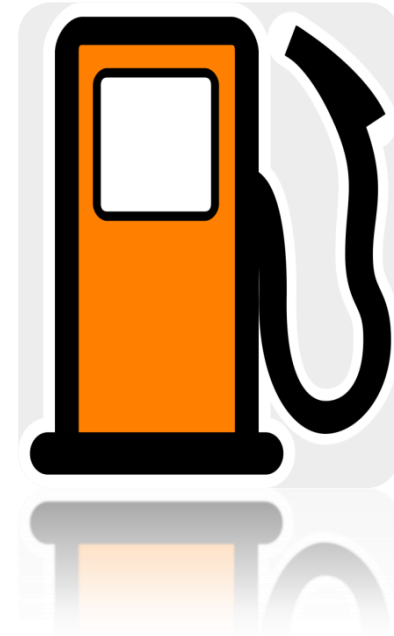
- Clause (a) of the Rule 54 refers of denial of set-off to passenger motor vehicles. The amendment made on 1st May 2013 to deny the set-off even if the said vehicle is given on hire is *deleted from 1st April, 2016 and the original position prior to 1st May, 2013 is reinstated*
- Thus from 1st April, 2016 the set-off on purchase of passenger motor vehicle *is allowed* even if it is given on hire



AMENDMENT IN RULES-RULE 54

In Rule 54 (b):

- Clause (b) denies set-off on purchase relating to Diesel, ATF, Petrol. With the amendment made in this clause, even the set-off claimed of Entry tax paid on such commodities is denied
- In brief, by adding the word ‘entry...’ under the Entry Tax Act, the set-off on entry of motor spirit is denied under the Act.



COMPOSITION SCHEME





COMPOSITION SCHEME:

The Department vide Notification No *VAT 1516/C.R.51/Taxation-1 dated 30th March*

2016 has notified few changes in the composition schemes applicable to restaurants,

hotels and caterers, bakers and retailers. The amendment is applicable *from 01 April*

2016

COMPOSITION SCHEME: RESTAURANTS



COMPOSITION SCHEME: (Restaurant, Eating houses, refreshment room, boarding establishment, factory canteen clubs, Hotels and Caterers)

PARTICULARS	BEFORE AMENDMENT	AFTER AMENDMENT
Composition Amount	<p>A dealer opting for composition under this entry was liable to pay:</p> <ul style="list-style-type: none"> - 5% of the turnover of sales in the case of a registered dealer and - 10% of sales in case of an unregistered dealer. 	<p>A dealer opting for composition under this entry is liable to pay:</p> <ul style="list-style-type: none"> - 5% of the turnover of sales in the case of a registered dealer whose turnover of such sales <i>does not exceed three crores</i> in the previous year - 8% of the turnover of sales in the case of a registered dealer whose turnover of such sales <i>exceeds three crores</i> in the previous year and - 10% of sales in case of an unregistered dealer.

COMPOSITION SCHEME: (Restaurant, Eating houses, refreshment room, boarding establishment, factory canteen clubs, Hotels and Caterers)

PARTICULARS	BEFORE AMENDMENT	AFTER AMENDMENT
Conditions for application	A claimant dealer had to make an application in the form specified, to The Joint Commissioner of Sales Tax (Registration) in case of the dealers in Mumbai and in other cases to the Joint Commissioner of Sales Tax (VAT Administration concerned)	A claimant dealer will have to make an application in the form specified, to The Joint Commissioner of Sales Tax (VAT Administration) concerned or the Joint Commissioner of Sales tax of concerned Nodal Division as the case may be



COMPOSITION SCHEME: (Restaurant, Eating houses, refreshment room, boarding establishment, factory canteen clubs, Hotels and Caterers)

PARTICULARS	BEFORE AMENDMENT	AFTER AMENDMENT
Conditions on exit	--	<p>The dealer <u>who opts out</u> or ceases to be the eligible for the composition scheme, may claim <u>the set-off</u> on the purchases of goods which <u>are held in the stock</u> on the date of opting out of the composition scheme and set off on the same has not claimed by him any time prior to this. Details of the same should be reflected by him in the first return to be uploaded as non-composition dealer</p>



COMPOSITION SCHEME: (Restaurant, Eating houses, refreshment room, boarding establishment, factory canteen clubs, Hotels and Caterers)

PARTICULARS	BEFORE AMENDMENT	AFTER AMENDMENT
Conditions on entry	--	<p>The dealer who <u>opts for</u> the composition scheme shall <u>reverse</u> the <u>set off</u>, claimed by him on the purchases of goods which are <u>held in the stock</u> on the date of option for the composition scheme. Such amount of set off shall be paid by him along with his first return under composition.</p> <p>A dealer desirous to opt in or opt out can apply before 15th May 2016. [9T of 2016]</p>

COMPOSITION SCHEME: BAKERS



COMPOSITION SCHEME: (Baker)



PARTICULARS	BEFORE AMENDMENT	AFTER AMENDMENT
Composition amount	<p>A Registered dealer opting for composition under this entry was liable to pay tax at a specified rate of 4% on the first 50lacs on aggregate of sales of bakery products which are manufactured by baker himself and goods imported out of Maharashtra State, if any, including bread in loaf, rolls, or in slices, toasted or otherwise. In case of unregistered dealer the rate of tax would be 6%</p>	<p>A dealer opting for composition under this entry would be liable to pay tax at a specified rate on aggregate of sales of bakery products which are manufactured by baker himself and goods imported out of Maharashtra State, if any, excluding bread in loaf, rolls, or in slices, toasted or otherwise.</p>

COMPOSITION SCHEME: (Baker)

PARTICULARS	BEFORE AMENDMENT	AFTER AMENDMENT
Conditions for application	A claimant dealer had to make an application in the form specified, to The Joint Commissioner of Sales Tax (Registration) in case of the dealers in Mumbai and in other cases to the Joint Commissioner of Sales Tax (VAT Administration concerned)	A claimant dealer will have to make an application in the form specified, to The Joint Commissioner of Sales Tax (VAT Administration) concerned or the Joint Commissioner of Sales tax of concerned Nodal Division as the case may be.



COMPOSITION SCHEME: RETAILERS



COMPOSITION SCHEME:

3. Retailers:

- The Government of Maharashtra has raised the threshold limit of turnover of sale of goods, for opting the composition scheme
- This amendment would enable many dealers to opt for the composition under this entry



COMPOSITION SCHEME: (Retailer)

PARTICULARS	BEFORE AMENDMENT	AFTER AMENDMENT
Conditions for eligibility	The turnover of sales of goods has not exceeded Rs. 50 Lakh in the previous year to which composition is desired	The turnover of sales of goods has not exceeded Rs. 1 Crore in the previous year to which composition is desired
Conditions on filing of returns	Dealer opting composition under this entry, were required to file six monthly returns	The said condition of filing six monthly return has been <u>deleted</u>



COMPOSITION SCHEME: (Retailer)

PARTICULARS	BEFORE AMENDMENT	AFTER AMENDMENT
Conditions for application	A claimant dealer had to make an application in the form specified, to The Joint Commissioner of Sales Tax (Registration) in case of the dealers in Mumbai and in other cases to the Joint Commissioner of Sales Tax (VAT Administration concerned)	A claimant dealer will have to make an application in the form specified, to The Joint Commissioner of Sales Tax (VAT Administration) concerned or the Joint Commissioner of Sales tax of concerned Nodal Division as the case may be before 30 th April 2016



MAHARASHTRA SETTLEMENT OF ARREARS IN DISPUTES ACT, 2016

AMNESTY SCHEME

- This is called as Maharashtra Settlement of Arrears in Disputes Act, 2016
- It shall come into force on the date of Publication in the Official Gazette
- It is applicable to 11 different Acts which are governed by the Sales Tax Department including the earlier laws
- It is applicable for all the periods ending on or before 31/03/2012 and the appeal is filed and stay has been granted
- The order of settlement of arrears in dispute Act, 2016 shall be issued u/s 7(1) and 7(2) of the Act



AMNESTY SCHEME

- Arrears in dispute means tax, interest and penalty
- Requisite Amount means tax and interest required to be paid u/s 6 of this Act
- The applications for amnesty must be submitted to designated authority upto 30/09/2016 in the prescribed form along with the requisite amount as per sub sec. (1) or (2) of sec. 6 of this Act
- Separate application to be made for each statutory order
- The applicant has to produce the proof of withdrawal of appeal as per Section 5 or withdrawal of such issues for which he has opted for amnesty scheme



AMNESTY SCHEME

- Pay full amount of tax after reducing part payment made in appeal for which waiver is sought for the ***periods upto 31/03/2005*** and claim the waiver of full interest and penalty pertaining to issues withdrawn
- Pay full amount of tax after reducing part payment made in appeal for which waiver is sought + ****Interest u/s 30(2) and 30(4) [for any period from 01st May 2010 to 31st March 2012] + 25% interest*** for the periods from ***01/04/2005 to 31/03/2012*** and claim the waiver of balance amount of interest and full penalty pertaining to issues withdrawn
- If appeal is withdrawn for some issues, ***credit of part payment will be given proportionate to tax involved***



****Trade Circular 10T of 2016***

AMNESTY SCHEME

- The designated authority may issue defect notice for incomplete or incorrect application with seven days from receipt of application.
- The applicants shall remove such defects and make the payment, if any and submit to the authority within a period of 15 days
- If the applicant fails to do so then the designated authority may reject an application for settlement for reasons to be recorded in writing and after granting an opportunity of hearing to the applicant within a period of 30 days
- If designated authority is satisfied that appeal is withdrawn and requisite payment is made, then he shall pass an order of settlement for each application.



AMNESTY SCHEME

- **Rectification of Order:** The designated officer may rectify any error apparent on face of record on his own motion or on application received from the applicant within 30 days from the date of receipt of order
- No adverse order be passed without granting a reasonable opportunity of hearing to the applicant
- **Appeal against order of Rejection:** The settlement order passed u/s 7(1) rejecting the amnesty is appealable and will lie to the DC or Additional Commissioner as the case maybe within 60 days from the date of receipt of order
- An order passed u/s 7(2) allowing the amnesty is non appealable
- Under no circumstances, applicant is entitled for refund of any amount under this scheme



AMNESTY SCHEME

- Revocation of order of settlement:-

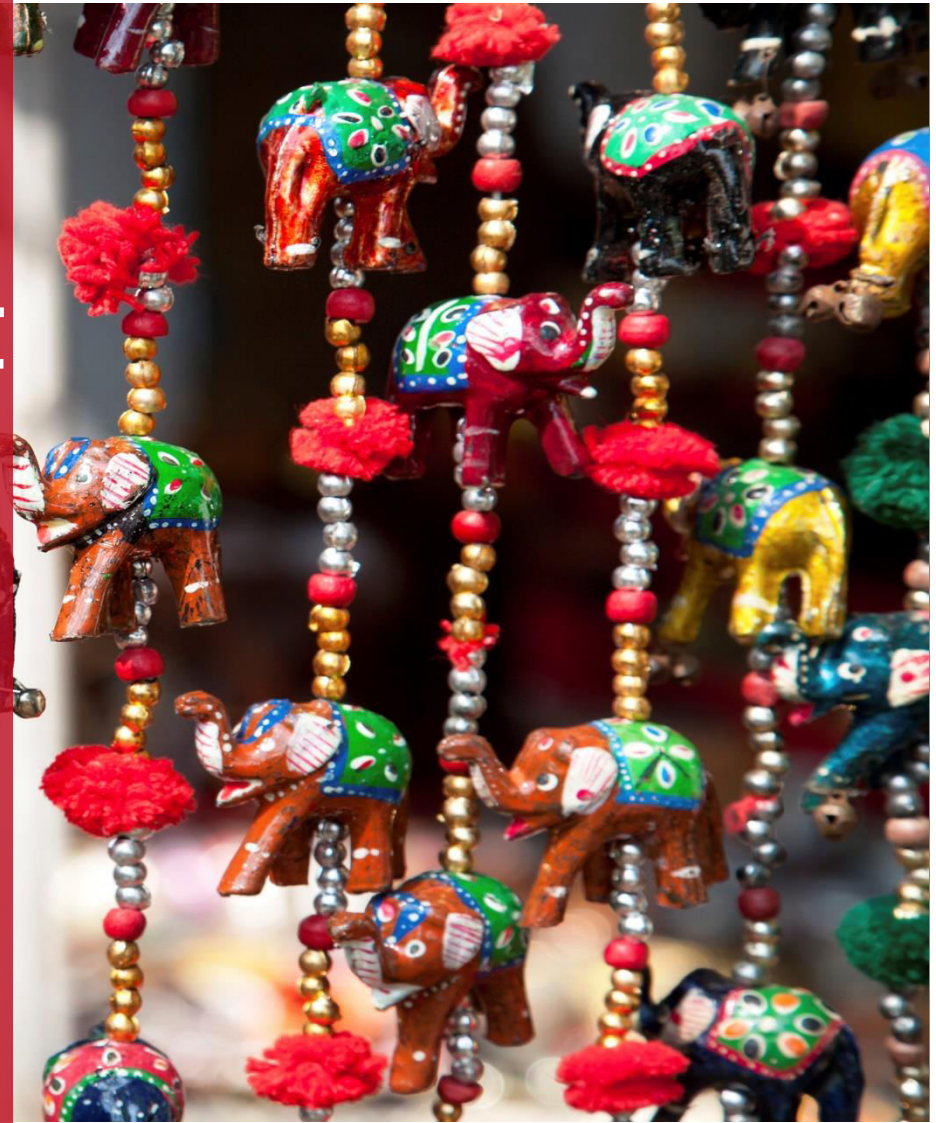
If it is found that the applicant has obtained the benefit of settlement by suppressing any information or particulars or any incorrect or false information if found in the proceeding related to search and seizure, then the designated authority may revoke settlement order passed u/s 7(2) of this Act after recording reasons in writing and after granting reasonable opportunity of being heard

- Review:-

The Commissioner may within 12 months from the date of service of settlement order, after noticing an error prejudicial to the revenue and after serving a notice to the dealer pass an order in review



AMENDMENT IN SCHEDULE ENTRIES



AMENDMENT IN SCHEDULE A



ENTRY A-12A SUBSTITUTED:

- This entry is divided in two sub-entries
- Sub-entry 1 relates to notified drugs for treatment of cancer *[Notification already issued on 12th August 2015]*
- **New sub-entry 2 is added;**
“Mammography machines, used for the diagnosis of Breast Cancer”



ENTRY A-13A: HYBRID ELECTRIC BUSES & BATTERY OPERATED BUSES:

In order to promote public transport, the Government has *exempted sales of* hybrid electric buses & battery operated buses, subject to following conditions:

1. The buses sold should either be hybrid electric buses or battery operated
2. Sale should be made to Public Transport undertaking in the State for public transportation



ENTRY A-13A: HYBRID ELECTRIC BUSES & BATTERY OPERATED BUSES:

■ Section 2(42) of The Motor Vehicles Act, 1988

(42) “State transport undertaking” means any undertaking providing road transport service, where such undertaking is carried on by,—

(i) the Central Government or a State Government;

(ii) any Road Transport Corporation established under section 3 of the Road Transport Corporations Act, 1950 (64 of 1950);

(iii) any municipality or any corporation or company owned or controlled by the Central Government or one or more State Governments, or by the Central Government and one or more State Governments.

(iv) Zila Parishad or any other similar local authority.

Explanation.—For the purposes of this clause, “road transport service” means a service of motor vehicles carrying passengers or goods or both by road for hire or reward;



ENTRY A-13A: HYBRID ELECTRIC BUSES & BATTERY OPERATED BUSES:

- **Whether lease of those buses will qualify for exemption?**

As under the MVAT Act, “sales” covers deemed sales, if those buses are given on hire then the same should be exempt from payment of tax

- Sale should be to public transport undertaking in the State. Therefore, if public transport undertaking in Karnataka [KSRTC] buys buses in Maharashtra, the same will not qualify for exemption.
- The interstate sale of such buses to State Transport undertaking of other state also will *not qualify* for exemption



ENTRY 27B - HANDICRAFTS MADE OF BAMBOO

- New entry at serial no. 27B is inserted exempting Handicrafts made of Bamboo
- This entry does not cover Bamboo
- It also excludes Bamboo furniture
- Consequential amendment in Entry C-10 is also made so as to exclude handicrafts made from bamboo from the scope of that entry



EXTENSION OF TAX EXEMPTION ON ESSENTIAL COMMODITIES COVERED BY A-51 CONTINUES UPTO 31-03-2017

The State has continued its exemption on some of the essential commodities up-to 31st March 2017 such as:

- | | |
|--------------------------|---------------------|
| ▪ Rice | ▪ Wheat |
| ▪ Pulses and their flour | ▪ Turmeric |
| ▪ Chillies | ▪ Tamarind |
| ▪ Gur | ▪ Coconut |
| ▪ Coriander seeds | ▪ Fenugreek |
| ▪ Parsley (suva) | ▪ Papad |
| ▪ Wet dates | ▪ Solapuri chaddars |



Entry A-59: CURRANTS & RAISINS

The tax exemption on *currants* and *raisins* will also continue up-to 31st March, 2017

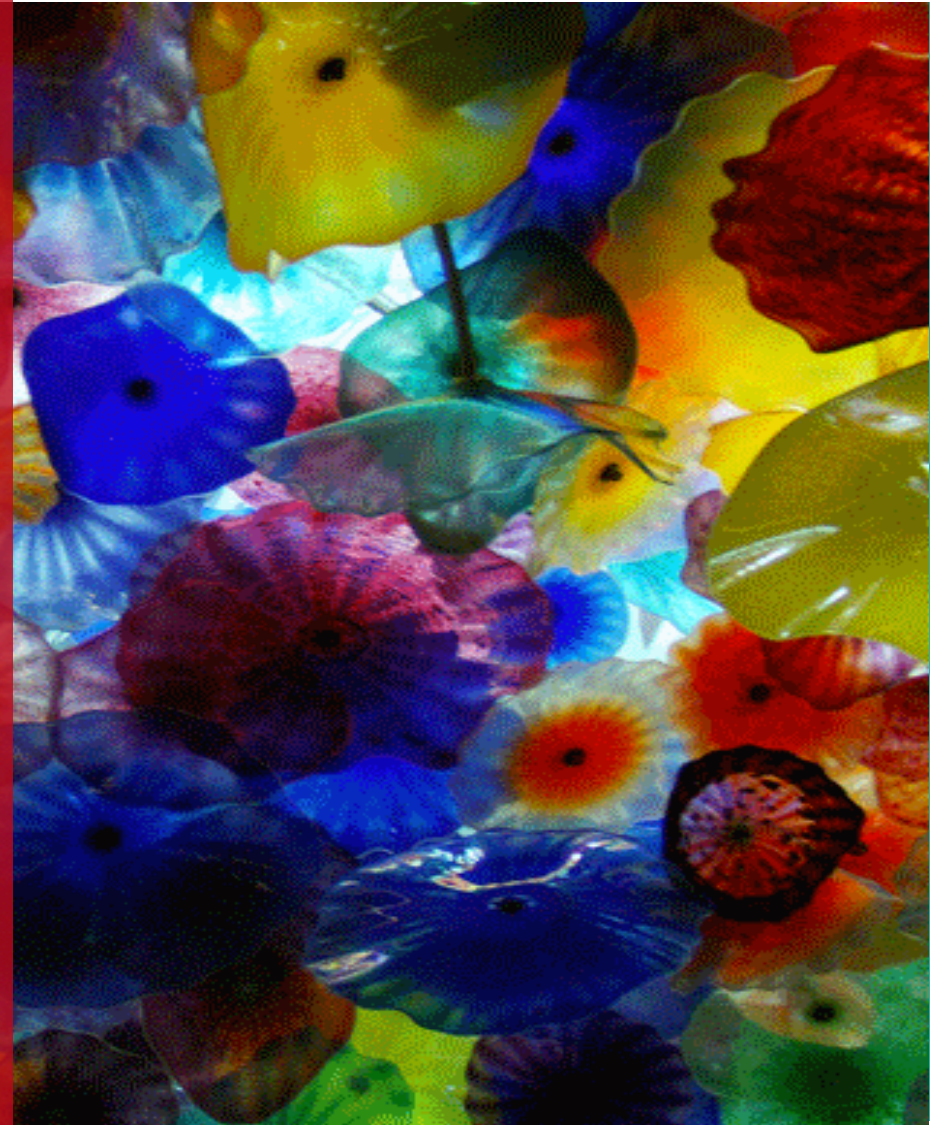


RETROFIT KIT USED TO MODIFY THE VEHICLES OF SPECIALLY PRIVILEGED PERSONS A-59A

- Sale should be effected by the Dealers Authorised by the Testing Agencies prescribed in the Central Motor Vehicle Rules, 1989
- Testing agencies are prescribed under rule 126 of the Central Motor Vehicle rules, 1989 and some of them are:
 - Automotive Research Association of India, Pune [ARAI]
 - Indian Institute of Petroleum, Dehradun
 - the International Centre for Automotive Technology, Manesar
- Retrofit kit sold by other than those specified in the Entry will attract tax



AMENDMENT IN SCHEDULE C



HAIR OIL: ENTRY C-29 & C-30

- As regards hair oil amendment is made in entry 29 relating to drugs & medicines as well as Entry 30 relating to edible oil
- Entry C-29 excludes hair oil even if they are basically medicines. The exclusion clause states that if the product is capable of being used as hair oil then the same is excluded from the purview of this entry. Thus, **any hair oil whether coconut or not, whether edible or not will not be covered by entry C-29 even though it is covered by the earlier part of the entry**
- In entry 30 relating to edible oil the following explanation is added:
 - *“Coconut oil measuring 500 milliliters or its equivalence in weight or less and sold in any form of packaging shall be deemed to be not covered in this entry”*
- Effect on closing stock of above goods as on 31-03-2016 will have to be considered



RATE OF TAX ON HAIR OIL

CASE LAW:

Jain Exports Pvt. Ltd., & another vs. Union of India & others

▪ *Jain Exports Pvt. Ltd., & another vs. Union of India & others (1987 (29) E.L.T. 753 (Del.)* wherein it states that ‘Coconut oil’ - In common parlance and trade circles understood to include both edible and non-edible variety - 4037 of 1982

▪ This case was further **approved** in the year 1992 (61) E.L.T. 173 (S.C.)

▪ Even in case of *Marico Ltd. Vs Commissioner, Commercial Taxes U.p. Lucknow(ALL Trade Tax Revision No. 153 to 170 of 2011 dated 12-09-2014)* it is held that Parachute pure coconut oil which is marked as “edible” on its packaging cannot be labelled as hair oil



ENTRY C-29A: STERILE WATER:

- Clause (c) is added in this Entry so as to include sterile water for injection
- The applicable rate of tax is now **5.5%**

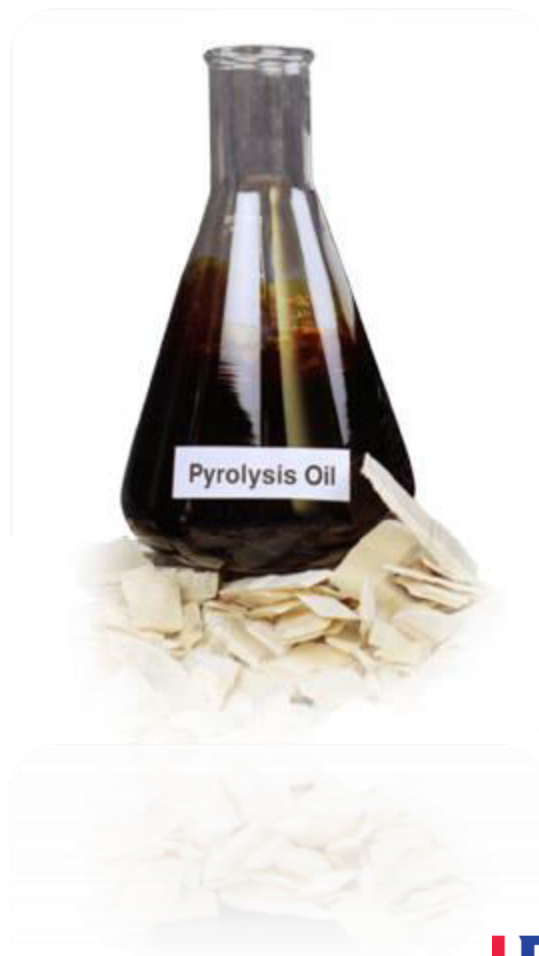
The MSTT vide its judgment dt 11/01/2016 in the case of Vifor Pharma Pvt Ltd has upheld the levy on `Sterile Water for injection at 12.5% being covered by residual entry E-1.



ENTRY 79A: PYROLYSIS OIL MADE FROM PLASTIC SCRAP & ORGANIC WASTE

In the budget it is stated that in order to achieve ‘Swacch Bharat’ mission, the industry which processes plastic waste needs to be promoted.

Therefore, the rate is *reduced to 5.5%* on Pyrolysis Oil produced by processing plastic waste and other organic waste



ENTRY C- 82B: TAX ON USED VEHICLES:

- A new entry at serial no. 82B has been inserted which reads as follows:
 - *“Repossessed motor vehicles, sold by banks & financial institutions, on which entry tax or, as the case may be, sales tax, has been paid at an earlier stage in the State.”*
- A tax of 1.88% is levied on sale of used vehicles by the dealers opting for composition scheme. However, on the repossessed vehicles by the banks or financial institutions such sale attracts 12.5% tax. To give some solace, a reduced rate of 5.5% on sale of repossessed vehicles is made
- *However, this concession will be available only to such vehicles on which sales tax or entry tax has been paid at the earlier stage in the State*



C-102 DELETED

- Entry C-102 related to vegetable oil including gingili oil, Castor oil & bran oil is deleted
- As these are edible oils, the same should get covered by entry relating to edible oil i.e. C-30



C-104(c) AMENDED

- Entry C-104(c) is amended so as to include following items:
 - *Pencil box, gum, glue sticks, stapler pins, tape dispensers, dusters and files*
- The rate prescribed is 5.5%



ENTRY C-107(11)(g): SHELLED SWEET CORN:

This Entry reads as follows:

“processed, semi-processed, semi-cooked, ready-mix, ready to eat, shelled sweet corn whether or not sold,-

I. in a frozen state or

II. in a sealed container, or

III. under a brand name

except when served for consumption”

- The above condition of sale are independent and not cumulative
- This entry does not cover when it is served for consumption



ENTRY C-107(11)(g): SHELLED SWEET CORN:

- What is meant by “served for consumption?”
- Served for consumption contemplates, served in Hotels, restaurants, eating houses, etc. - *Chavan Foods vs. Commissioner of Sales Tax (STA 5 of 2008 dated 15-04-2010)*
- The Larger Bench of MSTT in the case of *HAK Agro(Appeal no. 21 of 2004 dated 5th March, 2009)* held that can shelled sweet corn are nothing but cereals. Thus, when shelled sweet corn will be served for consumption it will get excluded from Entry C-107(11)(g) and will get included in Entry A-9 relating to cereals

ENTRY 108(1)(b)

- The rate of 5% tax on tea will now be 5.5% upto 31st March, 2017.

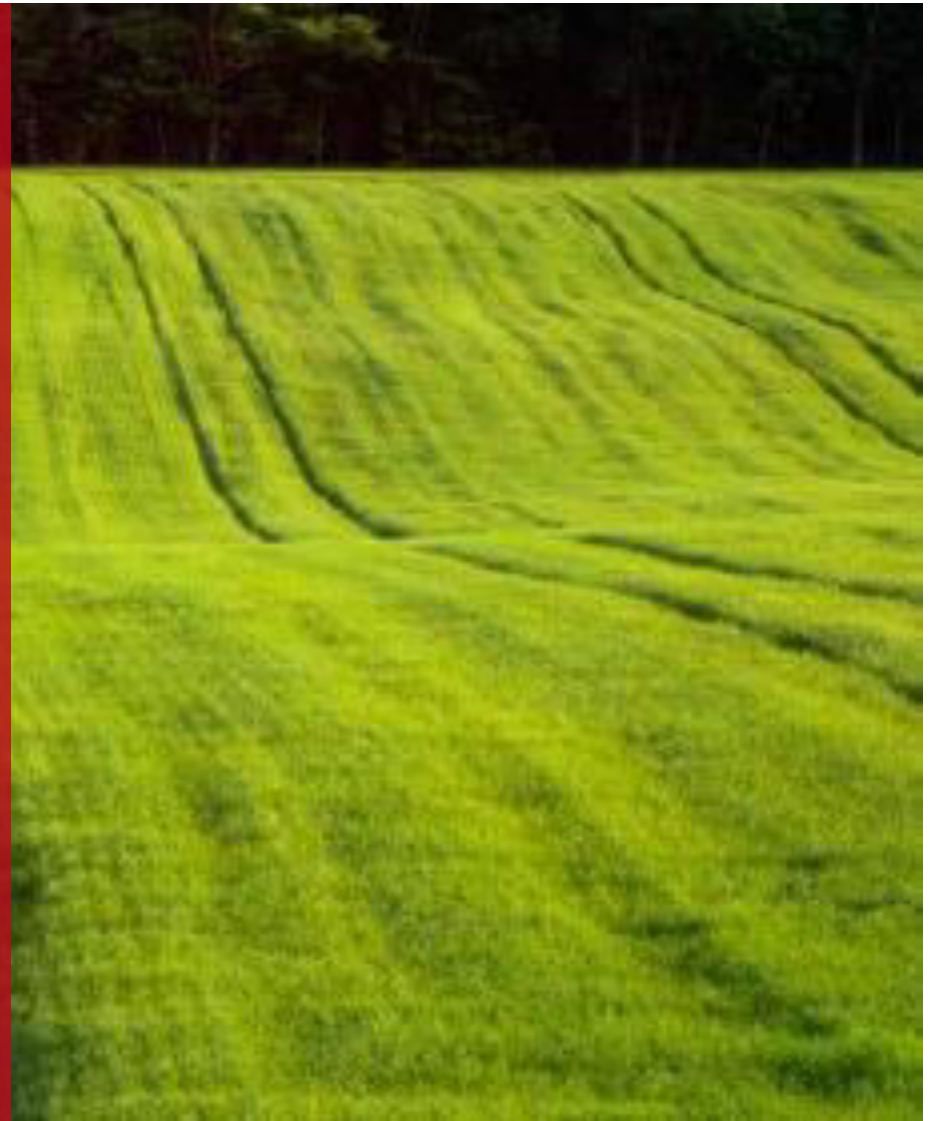


Entry C-111: TAX ON LED TUBES:

- This Entry refers to compact fluorescent lamps and LED bulbs. Now, LED tubes are also added in this entry and the applicable rate of tax is 5.5%
- It appears the DDQ in the case of Philips Electronics India Ltd Dt 27/10/2015 must have triggered this amendment wherein it was held that Tubes are not covered by entry C-111 as at the relevant time only lamps and bulbs were mentioned in the said entry



NEW ENTRIES



NEW ENTRY / AMENDMENT:

ENTRY 3A: BARBED WIRE, WIRE MESH AND CHAIN LINKS:

- In the budget Speech it is stated that “as a small goodwill gesture to the farmers, the proposed tax rate is reduced to 5.5% on the above goods”. However, the entry does not make any reference to farmers as such and therefore the sales of such items irrespective of type of buyer will be liable to tax at 5.5%



C-10A: BAMBOO AND BAMBOO PRODUCTS EXCLUDING THOSE TO WHICH ENTRY 27B OF SCHEDULE APPLIES

This is a consequential amendment to exclude the items covered by Schedule Entry A-27B



COTTON SEED: ENTRY C-25(c) & C-68(III)

- Cotton seed which is an oil seed which deleted from Entry C-68 relating to oil seeds and a separate entry at Clause (c) in Entry 25 is inserted
- The rate prescribed is 2% instead of 5%
- It is stated in the budget that amendment is made so as to avoid the situation of refund to the cotton seed oil manufacturers because of 5% tax on cotton seed



FATE OF G.I. PIPES?

- Entry C-72 reads as
 - *“Pipes of all varieties including G.I. Pipes. C.I. Pipes Ductile pipes, PVC pipes and their fittings”*
- Rate increased to 5.5% from 1st April 2016
- **Whether rate on G.I. Pipes can be increased to more than 5%?**
- Hon’ble S.C. in the case of Gujarat Steel Tubes 74 STC 176 has held that G.I. pipes are steel tubes within the meaning of item (xi) specified in section 14(iv) of CST Act.
- By virtue of restriction provided by section 15 of the CST act to impose tax by State, the rate of G.I. Pipe cannot exceed 5%.
- ***A clarificatory circular till the amendment is made in entry C-72 is required***



AMENDMENT IN OTHER ACTS

ENTRY TAX



ENTRY TAX-AMENDMENT IN SCHEDULE

- Entry 15 relating to tiles has been amended. The existing Entry is re-numbered 15(1) and a new Entry at sub-entry (2) is added as follows:

Slabs of marble & granite

- In the case of *Sushila industries 25 VST 605* the Madras High Court has held that marble tiles & marble stones are different



Thank You

