CHAPTER: 5

“VAT: ADMINISTRATION AND OPERATION”

Section: A

5.0) Administration

Section: B

5.1) Operation of Taxation
5.2) Assessment
5.3) Payment of Tax
5.4) Appeals
5.5) Offences and Penalty
5.6) Penalty and Interest
CHAPTER: 5

“VAT: ADMINISTRATION AND OPERATION”

Section: A

5.0) ADMINISTRATION:

The hierarchy of authority involved in administration of VAT within the state includes the following:

- **Sales Tax Authorities:**

1) For carrying out the purposes of this Act, the State Government shall appoint an officer to be called the Commissioner of Sales Tax.

2) Likewise, the State Government may appoint such number of Additional Commissioners of Sales Tax and such number of-

   a) Joint Commissioners,

   b) Senior Deputy Commissioners,

   c) Deputy Commissioners,

   d) Assistant Commissioners,

   e) Sales Tax Officers and
f) Other officers and persons and give them such designations, as the Government deems necessary.

**Rules and Responsibility**

The Commissioner shall have jurisdiction over the whole of the State. All other officers shall have jurisdiction over the whole of the State or over such local areas as the Commissioner may, by notification in the Official Gazette, specify.

The Commissioner shall have and exercise all the powers and perform all the duties, conferred or imposed on the Commissioner by or under this Act and the Additional Commissioner or Additional Commissioners of Sales Tax, if any be appointed, shall, save as (otherwise directed by the Commissioner) by notification in the Official Gazette, have and exercise, within his or their jurisdiction, all the powers and perform all the duties, conferred or imposed on the Commissioner, by or under this Act.

A Joint Commissioner shall save as otherwise directed by the Commissioner by notification in the Official Gazette, have and exercise, in the area within his jurisdiction, all the powers, and shall perform all the duties, conferred or imposed on the Commissioner, by or under this Act.

Senior Deputy Commissioners, Deputy Commissioners, Assistant Commissioners, Sales Tax Officers, other officers and persons shall, within their jurisdiction, exercise such of the powers and perform such of the duties of the Commissioner under this Act, as the Commissioner may subject to such conditions and restrictions as he may, by general or special order impose, delegate to them
either generally, or as respects any particular matter or class of matters by an order notified in the Official Gazette.

The State Government may subject to such restrictions and conditions, if any, as it may impose by notification in the Official Gazette, delegate to the Commissioner the powers (not being the powers of the appointment of Additional Commissioner or Joint Commissioner) conferred on the Government by sub-section (2).

No person shall be entitled to call in question in any proceeding, any exercise of power including the territorial jurisdiction of any officer or person appointed under sub-section (2), after the expiry of the period of thirty days from the date of receipt by such person of any communication, intimation, order or notice under this Act or under any earlier law, issued by such officer or person. If within the period aforesaid, an application in writing in the prescribed form raising an objection as to such exercise of power by or the jurisdiction of any such officer or person is made to such officer or person, he shall refer the question to the Commissioner, who shall, after giving the applicant a reasonable opportunity of being heard, make an order determining the question. The order made by the Commissioner shall be final.

All officers and persons appointed under sub-section (2) shall be subordinate to the Commissioner; and the subordination of officers other than the Commissioner and of persons, amongst themselves shall be such as may be prescribed.

The Commissioner may, from time to time, issue such instructions and directions as he may deem fit to the authorities and officers subordinate to him for carrying out the purposes of this Act and such authorities and officers shall
observe and follow such instructions and directions of the Commissioner: provided that, no such instructions or directions shall be issued—

I) so as to require any authority to pass a particular order or to dispose of a particular case in a particular manner; or

II) so as to interfere with the discretion of the appellate authorities in any particular case:

Provided further that, if the Commissioner is of the opinion that it is necessary in the public interest so to do, he may cause such instructions and directions to be published and circulated for general information.

1) There shall be a Tribunal to be called “the Maharashtra Sales Tax Tribunal”. The Tribunal shall consist of such number of members appointed by the State Government as the Government may, from time to time, consider necessary for the proper discharge of the functions conferred on the Tribunal by or under this Act.

2) The State Government shall appoint one of the members of the Tribunal to be the President thereof on the basis of his seniority in the Judicial Service.

3) The qualification and the terms of office of the members of the Tribunal shall be such as may be prescribed and a member shall hold office for such period as may be prescribed or as the State Government may, by special order in his case, specify.

4) Any vacancy of the member of the Tribunal shall be filled up by the State Government as soon as practicable.

5) The functions of the Tribunal may be discharged by any of the members sitting either singly, or in Benches of two or more members, as may be determined by the President.
6) If the members of a Bench are divided, the decision shall be the decision of the majority if there be a majority; but if the members are equally divided, they shall State the point or points on which they differ and the case shall be referred by the President of the Tribunal for hearing on such point or points to one or more of the other members of the Tribunal, including himself and such point or points shall be decided according to the majority of the members of the Tribunal who heard the case including those who first heard it.

7) During the course of any proceedings, if a Bench is of the opinion that any earlier decision of any Bench on any point or issue requires reconsideration, or where such Bench is inclined to take a decision on any point or issue different than the decision earlier taken by any Bench then such Bench shall refer the point or the issue to the President for formation of a larger Bench. The president shall thereupon form a larger Bench of such members of the Tribunal as he may determine. Such larger Bench shall, as far as practicable, be presided over by the President. The point or the issue shall be decided according to the decision of the majority of the members constituting such larger Bench. Where any member including the President is sitting singly he may in similar circumstances refer the matter to the President for formation of a larger Bench.

8) The Tribunal shall have power towards costs after giving the dealer or person, as the case may be, a reasonable opportunity of being heard and the amount of such costs shall be recoverable from the dealer or person ordered to pay the same in the manner provided in this Act for recovery of arrears of tax.

9) The Tribunal shall, with the previous sanction of the State Government, for the purpose of regulating its procedure including the place or places at which
the Tribunal, the Benches or the members thereof shall sit and dispose of its business, make regulations consistent with the provisions of this Act rules and notifications.

10) The regulations made under sub-section (9) shall be published in the Official Gazette.

The Commissioner may-

I) on receipt of any complaint in the prescribed form from any dealer or person liable to pay tax under this Act or from any authority appointed under section 10, that any particular authority has made in the proceedings of such dealer or person a false or vexatious order or has taken any action under this Act vindictively or has vindictively not acted within a reasonable time upon any application provided for by or under this Act, or

II) on receipt of a report from the Tribunal that a particular authority has knowingly or willfully under-assessed any dealer or person or has passed a false or vexatious order or has taken any action under this Act vindictively, or has vindictively not acted any reasonable time upon any application provided for, by or under this Act, or

III) on his own motion, if he has reason to believe that any authority has passed such order or taken such action or has made such under-assessment, or has not so acted upon any application

Initiate appropriate enquiry or action in the matter and if in his opinion, prima facie case against such particular authority or officer exists; he may initiate appropriate action against such authority under the Maharashtra Civil Services (Conduct) Rules, 1979, or the Maharashtra Civil Services (Discipline and Appeal) Rules. 1979, or any other relevant rules for the time being in force. The
Commissioner shall within one year of the receipt of the complaint referred to in clause (i) or report referred to in clause (ii), send intimation to the person or dealer making the said complaint or to the Tribunal, stating therein whether he has decided to initiate or has initiated any action against the concerned authority or officer.

The Commissioner may, on finding that any complaint made by any dealer or person is false or mischievous or has been made with a view to defeating the application or purposes of this Act, within one year of the receipt of the complaint, after giving the person or the dealer a reasonable opportunity of being heard, impose on him such fine not exceeding five thousand rupees as he deems fit and the fine so levied may be recovered in the manner provided in this Act for recovery of arrears of tax.

The Commissioner and all officers and persons appointed under section 10 and all the members of the Tribunal shall be deemed to be public servants within the meaning of section 21 of the Indian Penal code.

1) In discharging their functions by or under this Act, the Tribunal and the Commissioner shall have all the powers of a Civil Court for the purpose of—
   a) proof of facts by affidavit;
   b) summoning and enforcing the attendance of any person and examining him on oath or affirmation;
   c) compelling the production of documents; and
   d) Issuing commissions for the examination of witnesses.
2) In the case of any affidavit to be made for the purposes of this Act, any officer appointed by the Tribunal or the Commissioner may administer the oath to the deponent.

3) Without prejudice to the provisions of any other law for the time being in force, where a person, to whom a summons is issued by the Tribunal or the Commissioner either to attend to give evidence or produce books of accounts, registers or other documents at a certain place and time, intentionally omits to attend or produce the books of accounts, registers or documents at the place and time the Tribunal or, the case may be, the Commissioner, may impose on him such fine not exceeding five thousand rupees as it or he thinks fit; and the fine so levied may be recovered in the manner provided in this Act for recovery of arrears of tax:

Provided that, before imposing any such fine, the person concerned shall be given a reasonable opportunity of being heard.

4) When any documents are produced by a person or dealer on whom the summons was issued by the Commissioner and the Commissioner is of the opinion that such dealer or any other dealer has evaded or is attempting to evade the payment of any tax due from him and the documents produced by such dealer or person are necessary for establishing the case against such dealer, the Commissioner may, for reasons to be recorded in writing, impound the documents and shall grant a receipt for the same and retain the same for so long as may be necessary in connection with the proceedings under this Act or for a prosecution;

It provided that, if the original documents are required by any statutory authority for any official purpose, then they said documents shall be made available to such authority for such purpose for such duration as may be required.
No suit, prosecution or other legal proceedings shall lie against any servant of the Government for anything which is in good faith done or intended to be done under this Act, the rules or notifications.

**Table 5.1: Administrative Staff (2010 – 2011)**

<table>
<thead>
<tr>
<th>Post</th>
<th>Strength</th>
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</thead>
<tbody>
<tr>
<td>1. Commissioner</td>
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<tr>
<td>2. Additional Commissioner</td>
<td>9</td>
</tr>
<tr>
<td>3. Joint Commissioner</td>
<td>58</td>
</tr>
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<td>4. Senior Deputy Commissioner</td>
<td>167</td>
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<td>5. Deputy Commissioner</td>
<td>231</td>
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<td>6. Assistant Commissioner</td>
<td>631</td>
</tr>
<tr>
<td>7. Sales Tax Officer</td>
<td>995</td>
</tr>
<tr>
<td>8. Sales Tax Inspectors</td>
<td>3780</td>
</tr>
<tr>
<td>9. Clerks</td>
<td>3413</td>
</tr>
</tbody>
</table>

**SECTION: B**

5.1) **OPERATION OF TAXATION:**

5.1.1) **REGISTRATION:**

1) No dealer shall, while being liable to pay tax under this Act, be engaged in the business as a dealer, unless he possesses a valid certificate of registration as Provided by this Act:

Provided that, the provisions of this sub-section shall be deemed not to have been contravened, if the dealer having applied, within the prescribed
time, for such registration as provided in this section, is engaged in such business:

Provided that, the provisions of this sub-section shall be deemed not to have been contravened, if the dealer having applied, within the prescribed time, for such registration as provided in this section, is engaged in such business:

Provided further that, if any dealer, holds the certificate of registration granted under the Bombay Sales Tax Act, 1959 which is effective or valid immediately before the appointed day, it shall not be necessary for him to apply for a fresh certificate under this section so long as the said certificate is not duly cancelled under this Act:

Provided also that, a dealer holding an effective certificate of registration or, as the case may be, a license granted before the appointed day, under any laws other than the Bombay Sales Tax Act, 1959, shall, notwithstanding the fact that he is holding such effective certificate be required to apply for grant of certificate of registration under this section.

2) Every dealer, required by sub-section (1) to possess a certificate of registration or one who voluntarily desires to get registered shall apply in the prescribed manner to the prescribed authority for grant of such registration.

3) If the prescribed authority, after scrutiny of the application and after such inquiry as it deems fit, is satisfied that the application for registration is in order and the prescribed conditions, if any, are fulfilled, shall register the applicant and issue to him a certificate of registration in the prescribed form:

Provided that, the prescribed authority, on finding that the application is not complete or that the information or documents prescribed for grant of
registration certificate have not been furnished, or the prescribed conditions are not fulfilled, may after giving the applicant a reasonable opportunity of being heard, reject the application for reasons to be recorded in writing.

4) The Commissioner may, after considering any information furnished under any of the provisions of this Act or otherwise received, amend from time to time, any certificate of registration.

5) A person or a dealer who has got himself registered shall be liable to pay tax during the period in which his registration certificate is effective; notwithstanding the fact that subsequently it is found that no registration certificate was necessary in his case.

6) Where—
   a) any business, in respect of which a certificate of registration has been issued under this section, has been discontinued or otherwise disposed of, or has been transferred or the place of such business is changed to a different local area, or
   b) the turnover of sales or the turnover of purchases of a registered dealer who has become liable to pay tax under section 3 has during any year not exceeded the relevant limit specified in sub-section (4) of section 3 then in the case covered by clause (a), the dealer shall apply in the prescribed manner and within the prescribed time, for cancellation of his registration to the Commissioner and in the case covered by clause (b), the dealer may apply, in the prescribed manner, for cancellation, of his registration to the Commissioner; and thereupon the Commissioner may, after such inquiry as he deems fit and subject to the rules, cancel the registration with effect from such date including any date earlier to the date of the order of cancellation as he considers lit having regard to the circumstances of the case. The
registration certificate cancelled under this sub-section shall be returned to the Commissioner within the prescribed time:

Provided that, where the Commissioner is satisfied that any business in respect of which a certificate has been issued under this section has been discontinued or disposed of or the place of such business is changed to a different local area and the dealer has failed to apply under clause (a) as aforesaid for cancellation of registration, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, cancel the registration with effect from such date as he may fix to be the date in accordance with the rules, if any, from which the business has been discontinued or disposed of or changed to a different local area, as the case may be:

Provided further that, the cancellation of a certificate of registration on an application or otherwise shall not affect the liability of the dealer to pay the tax including any penalty, amount forfeited and interest due for any period ending on or before the date of cancellation whether such tax including any penalty, amount forfeited and interest is assessed before the date of cancellation but remains unpaid, or is assessed thereafter.

Explanation — for the purposes of this section, local area means the area to which the Post and Telegraph authorities have assigned a Postal Index Number (PIN).

7) The Commissioner shall, by such date as he may notify in the Official Gazette, prepare a list of all registered dealers and may amend the list, from time to time. Any person may make an application in the prescribed form to the Commissioner for a certified copy of any extract from the list and
thereupon the Commissioner, shall furnish a copy of the extract to the applicant.

8) Save as otherwise provided in sub-section (9), a certificate of registration granted under this section and any certificate that may be granted under this Act, shall be personal to the dealer or person to whom it is granted and shall not be transferable.

9) Where a registered dealer—
   a) effects a change in the name of his business, or
   b) is a firm and there is a change in the constitution of the firm without dissolution thereof, or
   c) is a trustee of a trust and there is change in the trustees thereof, or
   d) is a guardian of a ward and there is a change in the guardian or termination of guardianship, or
   e) is a Hindu Undivided Family and there is a change of Karta, or
   f) is a private limited company which is converted into a public limited company, then, merely by reason of occurrence of any of the changes aforesaid, it shall not be necessary for the dealer, or the firm with the changed constitution, or the new trustees, or new guardian or the ward or the new Karta or the public limited company to apply for a fresh certificate of registration and on information being furnished in the manner required by section 18, the certificate of registration shall, where necessary, be amended and any other certificate granted under the Act, rules or notifications shall also continue to be valid and be amended where necessary with effect from the appropriate date.

- **Details and Procedure for filling Application for Registration:**

   If a dealer holds certificate of registration under BST Act, 1959, which in force prior to 1st April 2005 he need not apply for fresh registration. But
the commissioner of Sales Tax has issued Circular No. 5 T of 4.5.2005 on this issue. It has been stated in this circular that even if the turnover during 2004-2005 is less than the prescribed limit, still he can, if he so desires may apply for revalidation of Registration certificate. And if certain conditions are satisfied then the Assessing Officer will revalidate the Registration Certificate.

But if he is license holder under any other than Bombay Sales Tax Act, 1959 then he will have to apply for fresh registration. Under sub – section 2 of section 16, a dealer can apply for voluntary registration, even if his turnover has not exceeded the prescribed limits. He has to make this application under rule 8 (11) of the rules and application will have to be filled in Form No: 101. While filling the application he will have to file the following documents along the application.

- **Documents to be Filed:**

  1) Partnership Deed / Memorandum and Articles of Association.

  2) Residential Proof (any two of the following)

     Xerox copy Ration Card / Passport / Driving License / Election Photo

     Identity Card / Property Tax paid Receipt / Latest Paid Electricity bill in the

     name of Applicant.

  3) Proof of Place of Business

     Copy of Property Card / Ownership Deed / Agreement with Builder or any

     other relevant documents.

  4) Proof of Additional Place of Business (Branch, Godown, Factory, Depot etc.) Copy of Property Card / Ownership Deed / Agreement with Builder or any other relevant documents.

  5) Introduction by Registered Dealer (in case of voluntary Registration)
6) Two latest Passport Size Photographs of the applicant (for other than Public Ltd Co.)

7) Copy of Pan Card or copy of Income Tax Assessment Order having PAN (Not applicable to the persons in Section 2 (8) of the Act. But out of these explanations this is applicable to incorporated or unincorporated societies, clubs or other association of persons.

8) Profession tax no’s of firm / company / Director and all the individual’s / partners.

9) Xerox copy of Factory Act / Shop and Establishment Act License or municipal Act as applicable.

10) Bank Details (Proof of Name, Branch & Account No {Current A\c case of Voluntary Registration})

11) Challan in Original of Rs. 5,000 in case of Voluntary Registration and Rs. 500 in other cases as registration Fees and Court Fee Stamp of Rs.25 for CST Registration.

12) Detail Statement of Purchase and Sales along with Purchase and Sales Register.

13) Xerox copies of all the bills of Purchase above Rs. 10,000.

14) Xerox copies of all the bills of Purchase made OMS (Out Maharashtra State) along with octroi and LR (if applicable).

15) Annexure 1 to Form No 101.

16) Nature of goods sold and nature of business whether manufacturing, leasing etc.

It has been stated in the rule 8 that under MVAT Act the entire document should be attached along with an application. If they are not so attached then the application is likely to be rejected.
It has been stated that the form should be complete “in all respects” and if it is not complete in all respects then the department will not accept the form; the application for Registration Certificate is to be filled within 30 days from the date on which above any of referred event (viz. turnover, transfer, etc.) occurs.

But under section 16 (6) (b) if the turn over does not exceed the prescribed limit in any year then the dealer has to apply for cancellation of his Registration Certificate.

This has been explained by commissioner of Sales TA vide Trade Circular No. 5-T Dated 4.5.2005. The gist of the said circular is as under:

The forms & certificates prescribed under BST Act, 1959 stands cancelled.

The Registration Certificate under BST Act, 1959 would continue to be valid, under MVAT Act, if the turnover of the dealer has exceeded the prescribed limit (viz. Rs. one lac or five lac as the case may be) during the year 2004 - 05. In case of those dealers’ whose turnover during 2004-05 is less than the prescribed limits, their Registration Certificate is liable for cancellation. But for such dealer’s administrative relief is provided which is as under:

If such dealer desires that they want to continue their Registration Certificates (even though their turnover is below the prescribed limit) they should apply to their respective Assessing Authority in Form No: 107 before 15.9.2005. The original Registration Certificate must be attached to this application. Such dealers will have to file a declaration that their Registration Certificate was legally in force as on 31.3.2005. On the receipt of this application the Sales Tax Officer will revalidate the Registration Certificate by writing the word “BSTRC” Revalidated w.e.f. 1.4.2005. If Registration
Certificate is lost or misplaced then the dealer should obtain a duplicate Registration Certificate from the Sales Tax Officer and such duplicate copy should be attached to the application.

The importance of this concession is as under:

- The set-off is allowable only to Registered Dealer and not to Un-Registered Dealer. So if dealer remains unregistered then he will result in enhancement of his cost.
- Registered dealer can collect tax only in the invoice. When his purchaser gets the invoice from his vendor then as tax is separately charged he (purchase) will get set-off. If he is unregistered dealer then he cannot charge the tax separately. So the purchase will not set-off on such transaction (As tax is not separately charged) and so he will prefer to purchase goods from Registered Dealer. In way his business will suffer.
- The time limit for filling application for dealers who are liable to pay tax from 1.4.2005 is extended to 15.9.2005.
- No administrative relief is granted under this scheme to those dealers who are late in filling application due to shifting, change in constitution. But would be considered as per normal procedure.
- Dealer whose Registration Certificate was liable to be cancelled by u/s 22 (8) of the BST Act cannot take the benefit of the administrative relief but shall have to apply for registration as per provisions of MVAT Act, 2002.

The Application is to be filled as under:

In case of a dealer whose turnover exceeds the prescribed limit as stated in section 3 (4) then he has to apply within 30 days from the date on which the turnover of sales has exceeded the prescribed limits.
1) In case of dealer to whom section 3 (8) is applicable (succession) within 60 days from the date of succession.
2) And in case where the business is transferred [as mentioned in section 44 (4)] then within 30 days from transfer.

Under rule (8) sub – rule (2), it has been provided that the application shall be complete in all respects. If the required documents are not provided then it shall not be accepted and shall not be considered to be an application made under the rule.

Table 5.2: The Certificate of Registration

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<thead>
<tr>
<th>Sr. No.</th>
<th>Particulars</th>
<th>Effective Date</th>
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</thead>
<tbody>
<tr>
<td>1</td>
<td>Applied within 30 days from the appointed day</td>
<td>Effective from appointed day.</td>
</tr>
<tr>
<td>2</td>
<td>Applied within 30 days when the turnover has exceeds the prescribed limit</td>
<td>From the time on which the dealer’s turnover first exceeded the relevant limit</td>
</tr>
<tr>
<td>3</td>
<td>Applied due to succession within 60 days.</td>
<td>From the dated of succession.</td>
</tr>
<tr>
<td>4</td>
<td>Delay in filling the application</td>
<td>From the date on which the application is made.</td>
</tr>
<tr>
<td>5</td>
<td>In case of voluntary registration</td>
<td>From the date of application or the date of payment of the required fee whichever is later.</td>
</tr>
</tbody>
</table>

In view of amendment made in sub-rule (3) (a) of rule 8, it has been provided that if a dealer is having more than one place of business within state then
he shall make a single application in respect of all places of business including any
place for which he has obtained certificate of entitlement under the package of
scheme of incentives. This amendment came into force from 1.4.2006.

5.1.2) FRESH REGISTRATION:

1) Every registered dealer who holds on such date as the Commissioner may by
notification in the Official Gazette specify, a certificate of registration,
which is valid on the said date (hereinafter, in this section, referred to as “the
existing certificate of registration”), shall obtain in lieu of the existing
certificate of registration a fresh certificate of registration as provided in this
section.

2) Every dealer, who is required to obtain a fresh certificate under sub-
section (1), shall apply in such form, manner and time and to such
authority as may be prescribed; and such application shall be accompanied
by the existing certificate of registration together with all additional copies
thereof, if any, issued to him.

3) On receipt of such application, the prescribed authority shall, subject to
rules, issue a fresh certificate of registration, in the prescribed form to the
applicant; and thereupon the fresh certificate of registration, so issued, shall,
for all the purposes of this Act, be deemed to be a certificate of registration
issued under section 16.

4) Without prejudice to the other provisions of this Act, all the existing
certificates of registration shall stand cancelled with effect from such date as
the Commissioner may notify in the Official Gazette.

5) The Commissioner may, by the notification issued under sub-section (1) or
(4), also provide that such notification shall apply only to such class of
registered dealers as are specified in the said notification and such notification may be issued by him from time to time.

6) The provisions of this section shall mutatis mutandis apply in respect of any other certificate issued by or under the provisions of this Act as they apply in respect of the certificate of registration.¹

5.1.3) ONLINE PROCESS OF VAT REGISTRATION:

1) Present Procedure:

At present, the applications for registration are being made manually to the Registering Authority. On the receipt of the application, the application and the enclosed documents are verified by the Registering Authority and TIN Allotment Letter is issued on the same day. TIN certificates are being issued afterwards.

2) Revised Procedure:

As a further step towards e-governance, the above procedure of manually submitting applications for registration is being changed. From 1st October 2009 onwards, the application for registration under Maharashtra Value Added Tax, 2002 should be electronically uploaded in ‘Form e-101’ provided on the Web-site of the Sales Tax Department, Government of Maharashtra. Notification to that effect has been issued, as referred above. The remaining process of obtaining registration such as verification of documents, Photo attestation etc. will remain the same. Manually filled forms will not be accepted on or after 1st October 2009 except for non-resident dealer and Government

department. It may be noted that non-resident dealer/s and Government Department/s should continue to apply manually.

3) Steps to make online application:

Applicant dealer should open the homepage of website “www.mahavat.gov.in” for the first time for registration.

a) Log on to the web site of the Sales Tax Department, Govt. of Maharashtra at www.mahavat.gov.in
b) Click e-registration in e-services link on homepage
c) Read the instructions. Detailed guidelines regarding application process flow, location details, list of required documents are provided in the instruction sheet. Click “next” and then “e-registration information” page will appear.
d) On the “e Registration Information”, dealer should enter /select details such as PAN, location, name of business, name of applicant, status of applicant and Act. Applications under MVAT Act and CST Act shall be made electronically. For the time being applications for registration under all other Acts such as Profession Tax Act, Luxury Tax Act, Maharashtra Tax on the Entry of Goods into Local Areas Act and Sugarcane Purchase Tax Act should be submitted manually.
e) After the information on the “e Registration Information” page is entered, the dealer should click “next”.
f) The e-application under MVAT will open. Information in the form should be completely filled either by entering in the relevant fields or selecting from the given lists and then “submit” button should be clicked. In case a dealer has opted for CST also, then the CST e-application form will open. The data
in the field’s common to both VAT and CST shall get populated for the ease of the applicant. Remaining fields are expected to be entered / selected by the applicant.

g) In case the data in any of the fields is not entered, then the applicant would get error message and would be prompted to enter the said data.

h) After the completely filled application form is submitted (uploaded) then the acknowledgment containing date and time for attending before Registering Authority along with code/designation and address of Registering Authority would be generated. This acknowledgment can be saved and should be printed for producing before the registering authority. The dealer should also save the downloadable MVAT and CST e-application form of registration and should take out a print of it.

i) The proprietor, partner, karta, Director, as the case may be are required to sign at relevant place/places on the print out of the application so taken and submit it to the concerned Registration Authority at the time of verification and photo attestation on given date and time along with relevant documents. In case of voluntary registration signature of “introducer” should also be obtained.

j) The Demand Draft/PO towards fees and deposits for MVAT registration should be furnished on the appointed date. The fees of Rs. 25/- towards CST registration shall continue to be paid by affixing the court fee stamp. The dealer can also pay fees of Rs.500/- for MVAT registration by affixing court fee stamp. In this respect the instruction given in Trade Circular 42T of 2008 dated 26.12.2008 continue to apply.
4) Grant of Registration Certificate:

If the application is correct and complete in all respect along with relevant documents then Registering Authority will generate TIN after verification. Registration certificates shall be printed and issued to the dealer on the appointed day. In case the application is eligible for granting registration then the date of uploading the application shall be considered as the date of application for the purpose of determining the effective date of MVAT RC. In case the dealer has uploaded CST application also then for the purpose of determining the CST RC effective date, the date of uploading CST application shall be considered as the application date.

5) Defective Application:

If the application is defective, defect memo will be issued after giving him opportunity of being heard. If dealer does not comply defects, then the application shall not be treated as valid and shall not be processed.

6) Rejection of application:

If the dealer is not able to appear on appointed date and time then dealer should obtain date and time from concerned Registering Authority within ten days. The details of Registering Authority along with the designation and their telephone numbers are available on the instruction sheet. The dealer should contact the Registering Authority whose designation appears on the acknowledgement. It may be noted that only one request for change of date shall be entertained. If the dealer does not attend before Registering Authority on appointed date and time along with acknowledgment and copy of relevant downloaded form or does not obtain date & time within ten days, then the application shall be rejected.
7) Abundant care is being taken not to give appointments on public/local holidays. However in case a public holiday/local holiday gets declared on the given date of appointment then dealer should attend on ‘first working Friday’ subsequent to the said date of public holiday/ local holiday.

8) In case of any difficulty or queries regarding e-registration please contact:
   a) help desk, call on the number given below – 022-23760646
   b) sends an e-mail to: eregistrationhelp@mahavat.gow.in
   c) Respective Sales Tax Office

5.1.4) Voluntary Registration:

   Every person who is required to pay tax under MVAT Act is required to get himself registered under provisions of MVAT Act and obtain the certificate of Registration. Such persons cannot carry on business without obtaining registration; they are mandatorily required to obtain registration certificate or they will not be able to collect sales-tax on sales and have to pay the sales-tax from their pocket, they will not be entitled to set-off/VAT input credit. They may have to pay interest and penalty and will also be disadvantaged in other matters. Other dealers may want to voluntarily apply for registration, as some benefits are available to registered dealer. Such unregistered dealers will be able to take advantage of these benefits if they obtain registration voluntarily.

   Any person can apply for voluntary registration by depositing Rs.25, 000/- towards taxes in advance this amount will then be adjusted against taxes payable by him during the year. Any amount of advance not adjusted during the year will be refunded back to the Dealer.

   [www.mahavat.gov.in]
- **Fees payable along with application for registration**

Application for Mandatory Registration may be accompanied with challan of payment of fees of Rs.500/-. For voluntary application, the application has to pay fees of Rs.5,000/-. If application for registration under Central Sales Tax is made along with MVAT registration, the fees of Rs.25/- is to be paid for CST Application. All fees must be paid before making application.

**5.1.5) RETURNS:**

1) A) Every registered dealer shall fill correct, complete, self-consistent return in such form, by such date, for such period and to such authority as may be prescribed. Different types of returns may be prescribed for different classes of dealers.

B) The Commissioner may examine the return to ascertain whether it is complete and self-consistent. If the return is not complete or self-consistent, the Commissioner may serve on the dealer, within four months of date of filling of the return, a defect notice in the prescribed form. The said registered dealer shall correct the defects and submit to the prescribed authority a fresh, complete and self-consistent return within one month of the service of the defect notice:

Provided that, the registered dealer who fails to submit a complete or self-consistent fresh return within the given period of one month shall be deemed not to have submitted the return within the prescribed time as required under clause (a)
2) Notwithstanding anything contained in sub-section (1), the Commissioner may subject to such terms and conditions, as may be prescribed, permit any dealer —

a) to furnish returns for such different period, or
b) to furnish a consolidated return relating to all or any of the places of business of the dealer in the State for such period or periods, to such authority, as he may direct.

3) Every person or an unregistered dealer who is required to fill a return under any other provision of this Act, shall fill such return for such period, in such form, by such date and to such authority as may be prescribed and the provisions contained in paragraph (b) of sub-section (1) shall apply to such return as they apply to the return prescribed under paragraph (a) of sub-section (1).

4) Any person or dealer who, having furnished a return under sub-section (1), (2) or (3) discovers any omission or incorrect statement therein, may furnish a revised return in respect of the period covered by the return at any time before a notice for assessment is served on him in respect of the period covered by the return or before the expiry of a period of six months from the end of the year containing the period to which the return relates, whichever is earlier.

5) Where a dealer is required to fill a fresh return or, as the case may be a revised return, he shall fill such fresh or revised return with the authority prescribed and if any amount of tax is required to be paid in accordance with such fresh or revised return, then he shall pay such amount in the Government Treasury and attach a self-attested true copy of the receipted challan with the fresh or revised return.
Under this section it has been provided that, the dealer should fill “correct, complete and self–consistent return.” And it should be in prescribed form. The term correct and complete means “All the items” stated in the form must be filled in, at appropriate place. No column should be kept blank. Under VAT, department has given great importance to returns. The policy of the department is to accept maximum possible returns, without calling the dealer if they are properly filled up. Therefore, great care should be taken to see that correct and complete return is prepared and filed in time.

- Incorrect Return

Under section 20 of the Act a dealer has of fill correct and complete return. What is the exact meaning of the term “Correct and Complete Return”. This Lordship has interpreted this term in the case of Santlat Takechand V. State of Haryana. In this case while filling 3rd Quarterly return the dealer did not disclose the purchases of paddy amounting to Rs. 920554/- and did not deposit the tax of Rs. 65727/- as required by section 25 (3) of that act. But the dealer has paid the tax due for 3rd quarter in the 4th quarter. However the assessing officer had levied penalty as his stand was that the dealer has not filled the return correctly for the 3rd quarter and was done with a view to avoid the payment. The matter went up to High court and their Lordships took the view that the levy of penalty is valid and legal.

This judgment requires reconsideration because barring certain exceptions the assessment is for one year. Therefore, while finalizing the assessment, the tax position of the entire period is to be considered and if this is considered then it cannot be said that there is concealment and hence the question of penalty should not arise. Of course, if the penalty may arise. But broadly
speaking it can be argued that when a dealer has filled return in time and he has paid less tax for a particular quarter and if he rectifies his mistake it cannot be said that he has furnished inaccurate particulars of transaction because he has voluntarily paid the tax in succeeding quarter when this mistake was detected.

- Let us consider this point by taking another Example:

A dealer thinks that on particular transaction the rate of tax is 4%. The Sales Tax Officer came to conclusion that the rate is 12.5%. Dealer has paid the tax at the rate of 4% while filling the return. Now, if the assessment is finalized by adopting 12.5% rate, then does it means that the return is complete or self-consistent? The answer according to me would be “No”. Nobody can predict as to what decision the assessing officer will take in future, i.e., at the time of assessment. As the tax is paid as per return it is definitely a complete return in all respect. The authorities cannot argue that it is not complete. After all in taxation matters there is always scope for bona fide difference of opinion or any legal issue. Under such circumstances it cannot be said that the return is not complete.

Under sub-rule 2 (17), it has been provided that, if a dealer is having more than one place of business then the dealer can fill separate returns for each place of business or for each constituents of his business after obtaining permission under rule 19 from the department. Thus if dealer wishes to fill a separate return for his different place of business or for constituents of his business then the application in Form No: 211 should be made immediately to the Joint commissioner of Sales Tax (HQ) Maharashtra State Mumbai. If such permission is not taken then the dealer will have to fill one consolidated return for all places of business or for different constituents of his business. Now, if we compare this provision with the earlier one then the position is reversed. Under this old act
dealer was required return and if permission is not obtained then he was required to fill separate return. Now under this Act if he wants to fill single consolidated return then he will have to obtain permission from the sales tax authorities.

If any tax, interest, penalty is due as per fresh or revised then the dealer has to pay that amount is government treasury, attach a self-attested copy of the challan with fresh or revised return and then the same is required to be filled with the Registering Authority. The due date for filling of the returns is as under:

**Table 5.3: Return when to be filled**

<table>
<thead>
<tr>
<th>Sr. No</th>
<th>Criteria for Returns</th>
<th>Periodicity of Returns</th>
<th>Due Date for Returns</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Registered Dealer (Retailers) opted for Composition Scheme.</td>
<td>Six Monthly Return</td>
<td>Within 21 days from the end of six months.</td>
</tr>
<tr>
<td>2</td>
<td>Registered Dealer (other than above) whose tax liability or refund of previous year was Rs.36,000/- or less</td>
<td>Six Monthly Return</td>
<td>Within 21 days from the end of six months.</td>
</tr>
<tr>
<td>3</td>
<td>Registered Dealer whose tax liability or Refund of Previous year had exceeded Rs. 1,00,000/-</td>
<td>Monthly Return</td>
<td>Within 21 days from the end of months</td>
</tr>
<tr>
<td>4</td>
<td>Any other registered Dealer (Not covered by above 3 categories) that means such dealers whose tax liability or return of the previous year had exceeded Rs. 36,000/- but was below Rs. 1,00,000/-</td>
<td>Quarterly Return</td>
<td>Within 21 days from the end of months</td>
</tr>
</tbody>
</table>

Where a dealer is required to fill quarterly return u/r 18 in respect of his place of business for which he has obtained a certificate of entitlement and has obtained permission to fill separate returns then he shall fill separate quarterly return notwithstanding other provision of this sub-rule.

Every dealer who is required to furnish return under Rule 17 or 18 whether monthly / quarterly / six monthly or for any period or as the case may be revised return of any such period has to fill the return on or before the specified dates and has dates and has to pay the tax due from him for period covered by the return into government treasury.

Similarly, the tax or interest payable and the balance payable according to return or revised return or fresh return shall be accompanied by respective return – cum – challan.³

5.1.6) E – RETURN

1) General Instructions:-

- New return forms Form 231, Form 232, Form 233, Form 234, Form 235 and CST Form III (E) have been introduced in place of Form 221, Form 222, Form 223, Form 224, Form 225 and CST Form III (B) respectively.
- Now for all the Dealers, filling of e-Return has been made mandatory, have to make the payment before the online filling of return.
- IN case of MVAT payments such payments should be made in the Challan 210 where as in case of CST payment should be made in Return Form III (E) showing only amount of CST payable and paid (as there is no prescribed form of challan for CST.

• While preparing the electronic return, dealers shall write the amount paid in the field "Amount Already Paid" provided in the return form.

• Dealers shall also write details of Challan Number, date of payment and name of bank and Branch in the file provided in the e-Return.

• Then refer the notification available on website www.vat.maharashtra.gov.in

2) Procedure for online filling of E-Returns:

Step 1. Online Registration for filling of e- return

• Dealer can fill e - return only after getting enrolled for e-Services through New user registration utility available on web site of department of sales tax http://www.mahavat.gov.in

• After selecting above utility, a home page will be displayed wherein dealers have to click on “New User Register Here link. This link is also available from e-Returns window available on Home page.

• A new screen will be displayed wherein dealers have to enter TIN No and press Submit button.

• After, a new screen will be displayed wherein basic information in the DEALER INFO should be entered. i.e. PAN No., Mobile No., Email id, Address.( * fields are mandatory )

• In the same screen facility to CREATE PASSWORD is available, wherein dealer should enter the password of his choice which should be used at the time of login for e-filling utility or for other e-Services.

• In the same screen under PASSWORD RECALL screen, the dealer should select the question of his choice and enter the answer in the given field which enables the department to ask the secret question in the event the user
forgets his password. Dealer should enter these fields carefully and also remember the details entered.

- Upon successfully registered for e-Services, E-SERVICES ACKNOWLEDGEMENT sheet will be generated with a unique transaction Id. Dealer should take a print out of the acknowledgment and submit the copy duly signed by authorized person to the respective Registering Authority.

- In case of any difficulty in user registration please contact,

  a) In case of LTU Dealer, the Incharge Officer from LTU Branch of Department,

  b) In other E-Return Mandatory Dealers, the liaison officer from sales tax department (the officer monitoring the dealers filling of E-Returns)

  c) In other Cases, authority in charge of return branch under whose jurisdiction place of business of dealer falls

  d) Contact on Toll Free number given below in help desk 022 - 23735601

  e) Send mail on e-Mail Id mentioned below in help desk eReturns@mahavat.gov.in

**Step 2. Downloading the Return template (forms)**

- The template of e-return is prepared in MS Excel and freely available on web site. [http://www.mahavat.gov.in](http://www.mahavat.gov.in) from DOWNLOAD menu in Home Page.

- Presently templates of Form 231, 232, 233, 234, 235 and CST return Form are available.

- The return templates have inbuilt validation utility in MS Excel as well as Visual Basic to check the self-consistency of data entered.
• The templates downloaded from the web site shall be used by dealer as these templates will be uploaded and accepted on web site.
• This template can be used for offline preparation of return.
• Downloads ⇒ Forms ⇒ E-Return Forms ⇒ Electronic Forms or
• Simply follow the URL http://www.mahavat.gov.in/eforms.xls.html

Step 3. Preparation of Return.

• Dealers shall take precaution to use MS Excel in MS Office for preparation and validation of return.
• Macro security level setting: Dealer should keep macro security level medium or low in tools menu on Menu Bar. This will activate the Visual Basic Validation utility in template of return form.

• After setting the macro security level, the templates should be closed after saving. Thereafter again the same template should be re-opened for the purpose of entering the information.
The return templates have inbuilt validation utility in MS Excel as well as Visual Basic. There are two sheets in the return template. First sheet provides for entering of data whereas on second sheet errors are displayed along with detailed error messages.

After entering the data, dealers must validate the data by pressing validate button which at the bottom of the first sheet. After validation errors are displayed on Error Sheet.

Dealer must ensure that the data entered is error free and not a single error message is displayed on error sheet and information entered in such template should be saved. E- Return filling utility will accept only validated and error free returns.

When the E-return Template is error-free, the validation utility (after pressing the “Press” to Validate Button), the separate rem.xls file is automatically generated and saved in My Documents by default.

Dealer should ensure that this automatically generated rem.xls file should be uploaded. Other file will not be accepted by E-Return uploading utility.

Downloadable templates 231, 232, 233, 234, 235 and CST return Forms made available.

**Step 4. Uploading the return**

Facility of uploading of electronic return is restricted to authorized dealers only. These are the dealers who are successfully registered from New user registration utility on the Sales tax Department website URL :- [http://mahavat.gov.in](http://mahavat.gov.in)

At the homepage, select dealer type as “Dealer” and enter valid user Id & password and press the “Submit” button.
• After successful login, click on the e-returns link Or Submit E Return link available on homepage.

• There is an option to browse the file that you intend to upload. You may manually enter the path & file name that you wish to upload or browse & select it. (Remember that you should upload the correct rem.xls file generated after offline validation of return template)

• After selecting the file to be uploaded, press the button validate & upload. The process of uploading starts & the system validates the template that is being uploaded. If the same is error-free it is validated & uploaded. Please note that the system shall not upload the return, if Correct rem.xls file is not uploaded, User Id TIN and TIN mentioned in return is not correct.

• If uploading process detects errors or defects in return, then error sheet is generated showing details of fields in which errors are detected. This error sheet helps you to make necessary correction in the return file.

**Step 5. Generation of an Acknowledgment:**

• Upon successfully validating & uploading of the form, an acknowledgement sheet will be generated. With a unique transaction Id and transaction date.

• It shall contain some key fields that you have filled in your e-return.

• You can take a print-out of the acknowledgement and retain it for future reference & record.

• Now, facility of downloading acknowledgements of last 4 e-transactions is available after login. Through the transaction sub-utility under dealer information utility.
Step 6. Submission of physical signed Copy of Acknowledgement

- Department is in the process of issuing a notification whereby dealer filling e-Return with the digital signature will not be required to file physical copy of return. The date will be separately notified.
- Dealer uploading return without digital signature after the notified date shall submit the physical copy of the acknowledgement generated duly signed by authorized person.
- Such copy should be submitted to the officer in charge in the LTU branch in case of dealer being monitored by LTU branch of the department Or Liaison officer who is monitoring the dealer e-return filling or in other cases to the authorities in charge of return branch under whose jurisdiction the place of business of dealer falls.

Help Desk:-

- In case of any difficulty please contact,
  a) call on the Number given below in help desk
     022 - 23735601
  b) e-Mail Id mentioned below
     eReturns@mahavat.gov.in

Problem during accessing web site:-

Password Retrieval: Should You Forget your login password you can retrieve your password using the link “Forgot Password" from the homepage, wherein you can reset the password after entering the key information.
On the website of Sales Tax Department tax [http://www.mahavat.gov.in](http://www.mahavat.gov.in), there are some add on programs. For function these programs, certain utilities are needed on the personal computer from which website is accessed. If these utilities are not available, then these add on programs may interfere the operation of browser. On the department web site there is Add On program Shock Wave Flash object. If the problem is faced in accessing the Web site then, it is necessary to disable this Add On program from the Manage Add On's utility in Tools menu on Menu bar.\(^4\)


5.1.7) SET –OFF & REFUNDS

1) The State Government may, by rules, provide that—
   a) in such circumstances and subject to such conditions and restrictions as may be specified in the rules, a set-off or refund of the whole or any part of the tax—
      i) paid under any earlier law in respect of any earlier sales or purchases of goods treated as capital assets on the day immediately preceding the appointed day or of goods which are held in stock on the appointed day by a person who is a dealer liable to pay tax under this Act, be granted to such dealer; or
      ii) paid in respect of any earlier sale or purchase of goods under this Act be granted to the purchasing dealer; or

\(^4\)[www.mahavat.gov.in](http://www.mahavat.gov.in)

295
iii) paid under the Maharashtra Tax on Entry of Motor Vehicles into the Local Areas Act, 1987 be granted to the dealer purchasing or importing motor vehicles;
iv) paid under the Maharashtra Tax on Entry of Goods into the Local Areas Act, 2002 be granted to the dealer;
b) For the purpose of the levy of tax under any of the provisions of this Act, the sale price may in the case of any class of sales be reduced to such extent and in such manner, as may be specified in the rules.

2) No set-off or refund as provided by any rules made under this Act shall be granted to any dealer in respect of any purchase made from a registered dealer after the appointed day, unless the claimant dealer produces a tax invoice, containing a certificate that the registration certificate of the selling dealer was in force on the date of sale by him and the due tax, if any, payable on the sale has been paid or shall he paid and unless such certificate is signed by the selling dealer or a person duly authorized by him.

3) Subject to the provisions contained in sub-section (4), where no tax has been charged separately under any earlier law, the rate of tax applicable for the purposes of calculating the amounts of set-off, or refund in respect of any earlier sale or purchase of goods, or for the purposes of reduction of sale or purchase price for levy of tax, shall be the rate set-out against the goods in the relevant Schedule under any earlier law.

4) Where, under any notification issued under this Act or as the case may be, any earlier law, any sale or purchase of goods has been exempted from the payment of whole of sales tax or purchase tax then, for the purposes of sub-section (3), the rate of tax applicable shall be nil; and where it is exempted from payment of any part of sales tax (or purchase tax), the rate of tax
applicable shall be the rate at which the payment of tax is to be made by virtue of such exemption.

5) For the removal of doubt it is hereby declared that, in no case the amount of set-off or refund on any purchase of goods shall exceed the amount of tax in respect of the same goods, actually paid, if any, under this Act or any earlier law, into the Government treasury except to the extent where purchase tax is payable by the claimant dealer on the purchase of the said goods effected by him:

Provided that, where tax levied or leviable under this Act or any earlier law is deferred or is deferrable under any Package Scheme of Incentives implemented by the State Government, then the tax shall be deemed to have been received in the Government Treasury for the purposes of this sub-section.

6) Where at any time after the appointed day, a dealer becomes entitled to a refund whether under any earlier law or under this Act, then such refund shall first be applied against the amount payable. If, under any earlier law or this Act and the balance amount, if any, shall be refunded to the dealer.

1) When, How and How much Set–off is Allowable

This is the basic section. According to this section dealer gets full set-off on Raw material and goods purchased for resale. He also gets set-off on capital goods and partial set – off on fuel, material used in production of tax-free goods, including packing material used in resale of tax free goods, on branch transfers as stated in Rule 53 he gets set-off.

The condition that the goods must be used in taxable manufacturing of goods is absent. The moment goods are purchased either for manufacture or for
resale dealer is entitled to set-off. The set-off is allowable subject to rules 52, 53 and 54. There is no correlation needed for purchases irrespective of the point of its sales or use. Thus when certain goods given away by way of samples there is no reduction warranted on inputs and full set-off is available. Similarly, if there is no value addition or goods are sold at loss then no reduction of set-off is warranted.

While calculating the set-off the dealer is entitled to set-off on the sum collected separately from the claimant dealer by way tax on the purchases made by the dealer being capital goods and goods purchases of which are debited to profit and loss account or this rule came into force from 1.4. 2005. In view of this I am of that the stationery etc. purchased for the purpose of business by the dealer then he is also entitled to the set-off of entry tax paid under Motor Vehicles Act and Maharashtra Tax on Levy of Goods into Local Areas Act.

Rules 52

In short the set-off can be claimed on following type of goods: (subject to Rule 51 to 55)

- Trading goods.
- Raw material
- Parts, components, spares (other than the components of motor vehicle)
- Packing material
- Fuel
- Capita; assets
- Purchases debited to P&L A\c.
- Entry tax on Motor Vehicles.
- Entry tax on other goods.

Set-off is allowable only if a claimant dealer is a registered dealer under this act or earlier law at time of purchase on entry of goods. In short,
unregistered dealer is not entitling set-off. However, by virtue of amendment in rule 55, it has been Provided 55 (1) (a) that, after the 1st day of April of the year in which dealer has obtained registration (including capital asset) set-off is allowable if the goods should have been held by the dealer as on the date of registration.

Similarly, set-off would be allowed only tax is separately show in the tax invoice and if will have to be produced before the Assessing Authority at the time of assessment.

**Rule 53**

Partial set-off under following circumstances.

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Any taxable goods used as fuel.</td>
</tr>
<tr>
<td>2</td>
<td>Manufacture of tax – free goods (purchase other than capital goods and fuel)</td>
</tr>
<tr>
<td>3</td>
<td>Packing material used by a reseller of tax – free goods</td>
</tr>
<tr>
<td>4 A</td>
<td>Branch and consignment transfer, of taxable goods (purchase other than capital assets and fuel)</td>
</tr>
<tr>
<td>4 B</td>
<td>If taxable goods dispatch to branches outside the state pertains to goods covered by schedule B (namely – gold, bullion, etc.)</td>
</tr>
<tr>
<td>4 C</td>
<td>If goods dispatched outside the state pertains to goods covered by schedule entry C-29 (Drugs etc.)</td>
</tr>
</tbody>
</table>
| 5 | Works contractor who opts for composition scheme. | He is entitled to full set-off in respect of property which is not transferred to the
customer, is not considered for the purpose of reduction. In short, there would be no reduction in respect of consumables that are not transferred to be the customer in execution of works contract. Items debited to profit and loss account (expenses) and capital assets. In respect of quantum of reduction on item other than above the reduction would be as under:
Set-off on purchase other than above x 16/25, if the dealer has opted to pay tax at 8% on the total contract value. In respect of period starting from 21.6.2006. Where a dealer has opted to pay composition contracts in reduction shall be 4%. The state government would notify the term construction contract. (Notification is awaited.)

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>6</td>
<td>Discontinuance of business – purchase in respect of goods in stock (purchase other than capital assets)</td>
</tr>
<tr>
<td></td>
<td>No set-off shall be allowed on such purchase lying in stock.</td>
</tr>
<tr>
<td>7</td>
<td>Sale receipts are less than 50% of Gross receipts.</td>
</tr>
<tr>
<td></td>
<td>Set-off shall be allowed only on purchase corresponding to goods sold. However, after the amendment the dealer shall be entitled to claim set-off only on those purchases effected in that year where the corresponding goods are sold within six months of the date of purchases or are consigned within the given period not by way of sale to another state to oneself or one’s agent or purchase of packing of such goods sold or consigned and purchase of capital assets and consumable pertaining to the kitchens and services of food and drinks (where alcoholic or not) in the case of Hotel, Clubs.</td>
</tr>
<tr>
<td>8</td>
<td>Liquor dealer holding License in FL II/Cl III/CL/FL/TOD/III (If</td>
</tr>
<tr>
<td></td>
<td>The dealer shall be allowed set-off only on ratio of actual price/MRP x set-off</td>
</tr>
</tbody>
</table>
actual Sale price is less than determined.

No deduction is provided under sub-rule 3, if goods dispatched are brought back into the state within six months of the date of dispatch whether for processing or otherwise.

Under sub-rule 6 if out of the gross receipts of dealer in any year on account of sales are less than 50% of the gross receipts then the dealer shall be entitled to set-off in receipts of goods that are sold within the 6 months of purchase or consigned or dispatched other than by way of sale to one’s branch / agent.

An explanation is added to this rule, which defines “receipts” it means the receipts pertaining to all activities including business activities carried out in the state but does not include the amount representing the value of goods consigned not by way of sale to oneself or one’s agent. This condition is not applicable in case hotel, clubs. Such dealer can claim set-off on purchase of capital assets and consumable pertaining to kitchen, service of food and drinks (whether alcoholic or not).

Now, liquor dealers holding licenses in Form-II Form CL/Fl/TOD/III are liable to suffer a reduction in set-off in proportion to actual seals of good covered by schedule C/2/20 or C22 to the turnover liquor calculated on MRP basis. By virtue of insertion of an explanation actual sale price shall mean sale price exclusive of tax element where tax has been charged separately. And where tax has not been charged separately the price would be arrived at by applying deduction under Rule 57 (1) Claim should be made whenever such contingency occurs.

Under this act the question of purchasing the goods against declaration does not arise. Now, suppose the goods are purchased and are lost in
transit or an account of fire or in loading and unloading operations then can dealer, under such circumstances, claim set-off under rule 52? Under this rule, it has been stated, “The Commissioner shall, in respect of, grant him set-off”. This rule or rules 53 or 54 nowhere state that the set-off is allowable only if they are under in manufacturing or in reselling of such goods.

Rule 53 only says, “In respect of the purchases of goods made by the claimant dealer.” So the moment goods are purchased subject to rules 53, 54, 55 dealers are entitled to set-off.

Under BST Act 1959, there was a provision to purchase goods by issuing declaration in F.16. And there the recital was that the goods are for “Resale” In case of Commissioner of Sales Tax V. Lalji Poonshi and Co. the facts were as under:

“The dealer had purchased castor oil, for resale, on furnishing declaration in F.16. In the course of handing the oil, small percentage of oil was lost on account of spillage while being poured or transferred from one container to other. The Sales Tax Authorities came to the conclusion that it is a contravention of the condition of Form No.16. Inspite of this Bombay High Court came to conclusion is that “The goods are purchased” so even if the goods are destroyed or lost, still dealer is entitled to set-off under this rule.

2) SET-OFF ALLOWABLE IF TAX IS ACTUALLY PAID:

The wording used in section 48 (1) (2) (3) that set-off would be allowed if the dealer has actually “paid” the tax. The words “payable” are absent. How a purchaser will prove that his vendor is under no obligation to disclose this fact. When tax is separately charged on this issue, according to another school of
thought, the set-off is allowable even on the “payable” by the dealer. If we consider the legislative intent then the intention is to allow full set-off on inputs.

It is true that the legislature is sovereign. But suppose if they enact the law that all citizens should not carry on the business during daytime it is possible? Or they make a law that the citizen should treat black colure as white colure and vice versa. Is it possible? Legislature cannot enact a law, which is possible to comply. This is known as doctrine of impossible performance.

When tax is charged in the bill separately then the presumption would be that his vender has either paid the tax or will pay the tax. If he has not paid, then it is the duty of the department to recover the same. This condition that tax has been paid can be termed as “Doctrine of impossible performance” so the conclusion would be “paid” means “payable”.

The set-off is allowable only to Registered Dealer (at the time of purchase) (but under rule 55 (1) if the goods are held as stock before the date of registration then set-off is allowable) not to unregistered Dealer. He has to maintain true accounts. The rule contemplates “true account” and not book of account. So even if register is maintained that would be compliance of rule. Under Rule 6F of income tax act it has been provided that, certain professionals should maintain the books of item state in the rule is “cash book duly balanced either on daily basis or weekly basis”. In the absence of such specific provision it cannot be said that the maintenance of cashbook and ledger is a must unless to commissioner issues a notice under section 63 (2) of the MVAT Act. The records should be preserved for period not less than 5 years when the authorities demand original tax invoice then it is obligation on the part of the dealer to produce the same before assessing authority. The amount of set-off can be adjusted against his tax liability
under VAT for same period. The excess if any can be adjusted against his tax liability under VAT for same period. The excess if any can be adjusted against CST liability of same period and balance can be carried forward for subsequent period failing within same year. By virtue of trade Circular No. 18T of 2006 a dealer is allowed to carry forward this unadjusted set-off to the financial year 2006-07 and adjusts any tax payable. However, this is the subject to fulfillment of conditions therein.

If dealer is unable to identify the goods purchased with the goods resold then it shall be presumed for the purpose of reduction or disallowance of set-off that the goods have been used or consumed in the chronological order. In short, it would be on first come first used basis.

When a dealer has failed a return then he can adjust the return (payable as per return) excess set-off for refund towards any payment payable under this act, VAT Act or Entry Tax and if after making adjustment there is any excess then the excess shall be carried forward for adjustment as per return to be filed for subsequent period (including payment under CST & Entry Tax).

55(3)(b) the adjustment to be made “for any subsequent period contained in the given year under. While in the un-amended rule it was stated that, the excess should be adjusted for any subsequent period falling in the same year. Now as the word same year are amended I am of the view that, the refund can be adjusted in the subsequent year also.

As per sub-rule (5) Rule 55 where a register dealer to liable to pay tax under this Act, dies and the business in which the dealer was engaged is continued after his death, by any person or persons or transfers or otherwise disposes of his business in whole or in part of effects any change in the ownership thereof, in
consequence of which he is succeeded in the business or part thereof, by any other
person then the person succeeded shall be entitled to take credit forward, if any, at
the time of the said death, transfer, disposal or change.

While calculating the turnover of purchases the amount of tax paid by
the purchases to his vendor is not be considered by virtue of this amendment even
service tax also will have to be deducted.

3) ILLUSTRATION OF SET-OFF (VAT)

Regular

1) ‘A’ purchased same goods from ‘B’ who is a registered dealer in
Maharashtra, for Rs. 1000 and paid tax @ 4% i.e. Rs. 40 and he sold the
same to ‘C’ for Rs. 1200 collecting tax @ 4% i.e. Rs. 48. In this case he will
get set-off Rs. 40 and will pay Rs. 8 to Government.

<table>
<thead>
<tr>
<th>Transaction</th>
<th>Net (Rs.)</th>
<th>Tax (Rs.)</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sale</td>
<td>1000</td>
<td>40</td>
<td>1040</td>
</tr>
<tr>
<td>Purchase</td>
<td>1200</td>
<td>48</td>
<td>1248</td>
</tr>
</tbody>
</table>

2) Rule Ref. – 53 (2a): Manufacturing Tax Free Goods

‘A’ is a manufacturing of Bread which is a Tax Free Commodity,
purchased same Raw Material to manufacture Bread (other than Capital Assets or
goods used as Fuel) from ‘B’ who is a Registered Dealer in Maharashtra, for Rs.
1000 and paid Tax @ 4% i.e. Rs. 40 and he sold the same to ‘C’ for Rs. 1200
collecting “Nil Tax”.

305
Net | Tax
---|---
Raw Material | 1000 | 40

(-) Reduction Set-off @ 4% on Rs. 1000 as per Rule 53(2)(a) | 40

Set-off Available | 0

---
Nil

P.S.: It is presumed that “A” has not served that bread for consumption.

3) **Rule Ref. – 53 (3): Branch transfer**

Suppose ‘A’ dispatched some goods to its Branch in Chennai. The set-off reduction can be explained as per illustration shown below:

Details of Sales are as follows:

<table>
<thead>
<tr>
<th>Description</th>
<th>Amount</th>
</tr>
</thead>
<tbody>
<tr>
<td>Total sales</td>
<td>10,7500</td>
</tr>
<tr>
<td>Less: Branch Transfer (OMS)</td>
<td>40,000</td>
</tr>
<tr>
<td>Less: Tax Collection @ 12.5%</td>
<td>7,500</td>
</tr>
<tr>
<td>Balance Net Amount</td>
<td>60,000</td>
</tr>
</tbody>
</table>

\[
\text{Branch Transfer Ratio} = \frac{\text{Branch Transfer}}{(\text{Total Sales} – \text{Tax Collection})} \\
= \frac{40,000}{(10,7500 – 7,500)} \\
= \frac{40,000}{10,000} \\
= 40\%
\]

Details of Total Purchase are as follows:
Total Purchase 402000
Less : OMS Purchase 230000
Less : URD Purchase 16000
Balance RD 156000

<table>
<thead>
<tr>
<th>Raw Material</th>
<th>Net</th>
<th>Tax</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>150000</td>
<td>6000</td>
</tr>
</tbody>
</table>

(-) Branch Transfer @ 40% 60000 - @ 4% - 2400
Balance available set-off 90000 3600

4) Rule 53 (4): Composition Scheme

Suppose ‘A’ is a contractor who has for composition scheme under the MVAT Act 2002. He has raised the following bill:

Bill for work done 200000
Add: 8% VAT 16000
Total Bill 216000

Suppose the breaks up of purchases are as follows:

Total Purchases 137500
Less: OMS 39000
Less: URD Purchases 14850
Balance RD Purchases 83650

Break up of RD Purchases are as follows:

<table>
<thead>
<tr>
<th>4% Purchases</th>
<th>12.5% Purchases</th>
</tr>
</thead>
<tbody>
<tr>
<td>Net</td>
<td>Tax</td>
</tr>
<tr>
<td>35000</td>
<td>1400</td>
</tr>
<tr>
<td>42000</td>
<td>5250</td>
</tr>
</tbody>
</table>

307
### Total Purchases

<table>
<thead>
<tr>
<th></th>
<th>77000</th>
<th>6650</th>
<th>83650</th>
</tr>
</thead>
<tbody>
<tr>
<td>Less: 36% as per rule 53(4)</td>
<td>27720</td>
<td>2394</td>
<td>30114</td>
</tr>
<tr>
<td>Balance available set-off</td>
<td>49280</td>
<td>4256</td>
<td>53536</td>
</tr>
</tbody>
</table>

1) Examples are based on Provision to 20th June, 2006.

2) Purchases shown above are pertaining to purchases required for works contract. There are no purchases of assets or expenses debited to profit and loss Account.

**Rule Ref – 54(g)**

Suppose ‘A’ purchased some material for Rs. 1000 paying tax @ 4% i.e., Rs.40 for erection of immovable property by way of works contract, set-off on the same will be disallowed, i.e., he will not get set-off Rs.40.

**Rule Ref – 54(h)**

If ‘A’ has purchased some ‘Building Material’ to construct factory building then he will not get set-off for the same, but if the same material purchased for the purpose of resell then set-off will be definitely available. If the material issued for one’s own self then set-off is not available.

**5.2) ASSESSMENT:**

1) Where a registered dealer fails to file a return in respect of any period by the prescribed date, the Commissioner may assess the dealer in respect of the given period to the best of his judgment without serving a notice for assessment and without affording an opportunity of being heard.

Provided that, if after the assessment order is passed, the dealer submits the return for the given period along with evidence of payment of tax due as per the return or submits evidence of return for the given period
having been filed before the passing of the assessment order along with evidence of payment of tax, due as per the return then the Commissioner shall cancel by order in writing, the said assessment order and after such cancellation, the dealer may be assessed in respect of the given period under the other provisions of this section:

Provided further that, such cancellation shall be without prejudice to any interest or penalty that may be levied in respect of the given period.

It also provided that, no order under this sub-section shall be passed after three years from the end of the year containing the given period.

2) Where the return in respect of any period is filed by a registered dealer by the prescribed date and if the Commissioner considers it necessary or expedient to ensure that return is correct and complete and he thinks it necessary to require the presence of the dealer or the production of further documents, he shall serve on such dealer, a notice requiring him on a date and at a place specified therein, either to attend and produce or cause to be produced all documents on which such dealer relies in support of his return or to produce such documents or evidence as is specified in the notice.

On the date specified in the notice or as soon as may he thereafter, the Commissioner shall, after considering all the documents or evidence which may be produced, assess the amount of tax due from the dealer.

Provided that, if a registered dealer fails to comply with the terms of any notice issued under this sub-section, the Commissioner shall assess, to the best of his judgment the amount of tax due from him.

Provided further that, no order of assessment under this sub-section shall be made after the expiry of three years from the end of the year containing the period to which return relates.
3) Where a registered dealer has not filled the return in respect of any period by the prescribed date then the Commissioner may, at any time, within three years from the end of the year containing the given period, serve on the dealer a notice requiring him to attend on a date and at a place specified therein and after giving the dealer a reasonable opportunity of being heard, proceed to assess, to the best of his judgment, the amount of tax due from him.

It provided that, no order of assessment under this sub-section shall be made after the expiry of four years from the end of year containing the given period.

4) Where the Commissioner has reason to believe that a dealer is liable to pay tax in respect of any period but has failed to apply for registration within the time as required by or under this Act, the Commissioner may at any time within five years from the end of the year in which such period occurs, after giving the dealer a reasonable opportunity of being heard, proceed to assess to the best of his judgment, where necessary, the amount of tax, if any due from the dealer in respect of that period and any period or periods subsequent thereto.

It provided that, no order of assessment under this sub-section shall be made after the expiry of eight years from the end of the said financial year containing the given period.

5) a) During the course of any proceedings under section 64, in case of any dealer or person, if the prescribed authority is satisfied that tax has been sought to be evaded in respect of any period or periods by not recording or recording in an incorrect manner, any transaction of sale or purchase, or that any claim
has been incorrectly made, then in such a case notwithstanding that any notice for assessment has been issued under other provisions of this section or any other section of this Act, the prescribed authority may, after giving such dealer or person a notice in the prescribed form and a reasonable opportunity of being heard, initiate assessment of the dealer or person in respect of such transaction or claim.

b) During the course of any proceedings under Sec. 64, if the prescribed authority is satisfied that the tax has been or is sought to be evaded, as provided under clause (i) by any dealer or person, the said authority may, after issuing a notice in the prescribed form and after giving a reasonable opportunity of being heard to such dealer or person proceed to assess such dealer or person as provided in clause (i) in respect of any such transaction or claim relating to any period or periods and such authority shall, notwithstanding anything contained in section 59, be deemed to have the requisite jurisdiction and power to assess such dealer or person in respect of such transaction of sale or purchase or claim, covered by clause (i) and such assessment proceedings shall for all purposes of this Act, be deemed to have been transferred to such authority.

c) The assessment proceedings under this sub-section shall be without prejudice to the assessment proceedings in respect of the given period or periods under any other provisions of this Act by any authority who otherwise has the jurisdiction to assess such dealer or person in respect of other transactions of sale or purchase or any other claim which are not covered by clause (a) and clause (b).

d) The assessment under this sub-section shall be made separately in respect of the transaction or claim relating to the given period or periods to the best of the judgment of the prescribed authority where necessary and irrespective of
any assessment made under this sub-section, the dealer may be assessed separately under the other provisions of this section in respect of the given period or periods.

Provided that, once the dealer or person is assessed under this sub-section, no tax from such transaction or claim and penalty and interest, if any, consequent upon such tax shall be levied or demanded from such dealer or person, at the time of assessment to tax under the other provisions of this section in respect of the given period or periods relating to such transaction or claim.

e) If the Commissioner is of the opinion that, in respect of any period covered by a return, any turnover of sales or of purchases has not been disclosed or that tax has been paid at a lesser rate, set-off has been wrongly claimed or deduction has been wrongly claimed, then notwithstanding anything contained in section 21 or the other provisions of this section Commissioner may at any time within five years from the end of the year containing the given period, serve a notice in the prescribed form on the dealer and proceed to assess him in respect of the given period after giving him a reasonable opportunity of being heard.

It provided that, the assessment order shall be passed by the Commissioner to the best of his judgment, where necessary, within six years from the end of the year containing the given period.

f) Where a fresh assessment has to be made under this section to give effect to any finding or direction contained in any order made under this Act including an order made by the Tribunal or the High Court or the Supreme Court, then notwithstanding anything contained in this section, such
assessment shall be made within a period of thirty-six months from the date of communication of such finding or direction contained in the order, as the case may be to the Commissioner.

Provided that, if a certified copy of the said order is supplied by the dealer concerned to the Commissioner earlier than the said date of communication, then the period of thirty six months shall be counted from the date of the said supply.

g) The Commissioner may call for the record of any matter and conduct an examination in respect of the same, in the manner as provided in sub-section (2), call for the books of accounts and other evidence in such matter and after hearing the dealer concerned pass an appropriate order of assessment in the matter notwithstanding the fact that in a similar matter, the Tribunal has given a decision against the State Government or the Commissioner, if in such matter the State Government or the Commissioner has already filed an appeal before the appropriate forum against the order of the Tribunal and such appeal is pending before such appropriate forum.

Provided that, no order of recovery of the dues including the penalty or interest or forfeiture shall be passed by the Commissioner or the State Government in such case, pending decision by such forum, in the matter and on decision of the appropriate forum, the Commissioner shall modify the order in accordance with the order of such forum after giving the dealer concerned, an opportunity of being heard.

h) The Commissioner, may on an application in the prescribed form made by any dealer, call for and examine the record of any proceeding in which an assessment is pending and if he considers that having regard to the
nature of the case or the amount involved or for any other reason, it is necessary or expedient to do so, he may issue such directions as he thinks fit for the guidance of the assessing authority in charge of the case to enable him to complete the assessment and such directions shall be binding on the assessing authority.

Provided that, no direction which is prejudicial to the dealer shall be issued without giving the dealer a reasonable opportunity of being heard. However, no direction as to the lines on which any investigation connected with the assessment should be made, shall be deemed to be a direction prejudicial to the dealer.

i) A dealer or a person may be assessed under a single notice and by a single order of assessment in respect of more than one period covered by a return so long as all periods are comprised in one year.

j) Where a dealer has been assessed under Sub-Section (2), (3) or (4) and he makes an application in the prescribed form to the commissioner within thirty days of the date of service of the assessment order, for cancellation of the assessment on the ground that he had not been able to attend or remain present before the commissioner at the time of hearing when the assessment order had been passed, the commissioner shall, after verifying that the prescribed conditions have been fulfilled, including any penalty or interest levied in relation to or in consequence of the said assessment and shall make a fresh assessment in accordance with the provision of sub-section (2), (3) or (4) including levy of interest or penalty, as the case may be.

Provided that, only one application for cancellation shall be entertained under this sub-section in respect of any period of assessment.

314
k) Notwithstanding anything contained in sub-section (2), (3) or (4), the fresh order of assessment as provided under sub-section (11) may be passed before the expiry of a period of eighteen months from the date of service of the cancellation order.

5.3) PAYMENT OF TAX:

1) Tax shall be paid in the manner herein provided and at such intervals as may be prescribed.

2) A registered dealer furnishing returns as required by section 20 shall pay into the Government treasury, in such manner and at such intervals as may be prescribed the amount of tax due from him for the period covered by a return which he is required to fill along with the amount of interest and any other sum payable by him.

3) A registered dealer furnishing a revised return in accordance with sub-section (4) of section 20, when the revised return shows that a larger amount of tax than, the tax already paid, is payable, shall first pay into the Government treasury, the extra amount of tax.

4) a)

i) The amount of tax due where the return or revised return has been furnished without full payment thereof shall be paid forthwith.

ii) The amount of tax which it becomes necessary to pay on account of the reduction in set-off because of any contingency specified in the rules, shall be paid at the time prescribed for making payment of tax for the period in which such contingency occurs.

b)

i) The amount of tax due as per any order passed under any provision of this Act, for any period, less any sum already paid in respect of the given period;
and

ii) The amount of interest or penalty or both, if any, levied under any provision of this Act; and

iii) The sum, if any, forfeited and the amount of fine, if any, imposed under the Act or rules; and

iv) The amount of tax, penalty and interest demanded in the context of excess avail of incentives or avail of incentives not due; and

v) any other amount due under this Act

Shall be paid by the person or dealer or the person liable there for into the Government treasury within thirty days from the date of service of the notice issued by the Commissioner in respect thereof:

Provided that, the Commissioner may, in respect of any particular dealer or person and for reasons to be recorded in writing, allow him to pay the tax, penalty, interest or the sum forfeited by installments but the grant of installment to pay tax shall be without prejudice to the other provisions of this Act including levy of penalty, or interest, or both.

5) Any tax, penalty, interest, fine or sum forfeited which remains unpaid after the service of notice under sub-section (4) or any installment not duly paid or any amount due or payable under this Act, shall be recoverable as an arrears of land revenue.

6) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, where any sum collected by a person by way of tax in contravention of section 60, is forfeited under section 29 and is recovered from him, such payment or recovery shall discharge him of the liability to refund the sum to the person from whom it was so collected. A refund of such sum or any part thereof can he claimed
from the Commissioner by the person from whom it was realized by way of tax provided, such person has not resold the goods within a period of two years from the date of purchase and an application in writing in the prescribed form is made to the Commissioner, within two years from the date of the order of forfeiture. For this purpose, the Commissioner may send intimation in the prescribed form to such of the said purchasers whose names and addresses are available in the records of the person who has collected any sum in contravention of section 60. On receipt of such application, the Commissioner shall hold such inquiry as he deems fit and if the applicant proves to the satisfaction of the Commissioner that the goods are not resold by him as aforesaid and if the Commissioner is satisfied that the claim is valid and admissible and that the amount so claimed as refund was actually paid in Government treasury or recovered and no set-off or refund in respect of that amount was granted, he shall refund the sum or any part thereof, which is found due to the person concerned.

7) i) There shall be established a Fund to be called “The Maharashtra Consumer Protection and Guidance Fund” (hereinafter, in this section, referred to as “the Fund”). From the amounts forfeited and recovered except for the amounts refunded as aforesaid to the purchasers and except for the amounts in respect of which a set-off or refund is granted, the remaining amount shall, after deducting the expenses of collection and recovery as determined by the Slate Government under appropriation duly made by law in this behalf, he entered into and transferred to that Fund.

ii) No sum from the Fund shall be paid or applied for any purpose other than the one specified in clause (iii).

iii) The Fund shall be administered in the prescribed manner and the amount in
the Fund shall be utilized for meeting the expenses of any activities related to consumer protection and guidance as the State Government may direct and for giving grant in the prescribed manner to any voluntary consumer organization, society, association, body or institution engaged in providing for the better protection of the interests of the consumers and having such qualifications as may be prescribed.

8)

a) Any dealer or person may apply to the Commissioner in the prescribed form for a clearance certificate and thereupon the Commissioner may, on the basis of the record, issue a certificate in the prescribed form within a period of fifteen days from the date of receipt of the application, in so far as he may, stating therein, the periods for which the returns have been filed or as the case may be, have not been filed, assessments have been made, the status of pending proceedings, if any and the amounts payable by the applicants, if any.

b) The Commissioner may, every year on the basis of the record, issue to every registered dealer a certificate regarding the amounts payable by him, as on the 1st April of that year, stating therein the periods for which returns have not been filed, the period wise outstanding amounts of tax, penalty, interest and sum forfeited payable by the dealer including the amounts for which the due date of payment is not yet over, the amounts, the recovery of which has been stayed and the amounts under installment. The certificate shall in so far as it may be issued immediately after the 1st of April every year.

c) Nothing in the certificates issued under this sub-section shall be a bar on the Commissioner to initiate or continue any proceedings including recovery
proceedings. If it is subsequently found that the certificates were issued on the basis of incomplete or erroneous information.5

5.3.1) E- PAYMENT:

The Government of Maharashtra has issued Notification No. VAT 1510/C R-165/Taxation-1 dated 20 December 2010 in pursuance of the powers conferred under rule 45A of the Maharashtra Value Added Tax Rules, 2005. As per the said notification, the dealers liable to file six-monthly returns under Maharashtra Value Added Tax (‘MVAT’) laws shall make payments electronically with effect from 31 March 2011 of any amount under Maharashtra Value Added Tax Act, 2002.

Thus, with effect from 31 March 2011, e-payment of taxes has been made mandatory for all the dealers liable to file six-monthly returns under MVAT laws.

Maharashtra Sales Tax Department has introduced e-payment of taxes in a phased manner. Now, this has been made mandatory for all classes of dealers as mentioned below:

---

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Type of Dealers</th>
<th>Date from which e-payments made mandatory</th>
<th>Notification / Trade Circular No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Dealers liable to fill monthly returns under MVAT laws</td>
<td>1 June 2010</td>
<td>Notification No. VAT 1510 / CR-64 / Taxation-1 dated 26 May 2010</td>
</tr>
<tr>
<td>2</td>
<td>Dealers liable to fill monthly returns under Maharashtra Profession Tax Act, 197</td>
<td>1 June 2010</td>
<td>Trade Circular No. 17T of 2010 dated 17 May 2010</td>
</tr>
<tr>
<td>3</td>
<td>Dealers liable to fill quarterly returns under MVAT laws</td>
<td>1 October 2010</td>
<td>Notification No. VAT 1510 / CR-90 / Taxation-1 dated 28 July 2010</td>
</tr>
<tr>
<td>4</td>
<td>Dealers liable to fill six-monthly returns under MVAT laws</td>
<td>31 March 2011</td>
<td>Notification No. VAT 1510/ CR-165 /Taxation-1 dated 20 December 2010</td>
</tr>
</tbody>
</table>

Following are the banks through which e-payment can be made by using internet banking facility:

<table>
<thead>
<tr>
<th>E-payment directly from Bank’s website</th>
<th>Banks integrated with Maharashtra Sales Tax Department</th>
</tr>
</thead>
<tbody>
<tr>
<td>State Bank of India</td>
<td>IDBI Bank</td>
</tr>
<tr>
<td>State Bank of Hyderabad</td>
<td>Corporation Bank</td>
</tr>
<tr>
<td>State Bank of Travancore</td>
<td>Union Bank of India</td>
</tr>
<tr>
<td>State Bank of Mysore</td>
<td>Bank of Maharashtra</td>
</tr>
<tr>
<td>State Bank of Bikaner &amp; Jaipur</td>
<td>Indian Overseas Bank</td>
</tr>
<tr>
<td>State Bank of Patiala</td>
<td>Indian Bank</td>
</tr>
<tr>
<td>IDBI Bank</td>
<td>Central Bank of India</td>
</tr>
<tr>
<td>Corporation Bank</td>
<td>Dena Bank</td>
</tr>
<tr>
<td>Union Bank of India</td>
<td>Allahabad Bank</td>
</tr>
<tr>
<td>Bank of India</td>
<td></td>
</tr>
<tr>
<td>Bank of Maharashtra</td>
<td></td>
</tr>
<tr>
<td>Bank of Baroda</td>
<td></td>
</tr>
<tr>
<td>Punjab National Bank</td>
<td></td>
</tr>
</tbody>
</table>

320
Mandatory e-Payment of Central Sales Tax (CST) Act:

Combined reading of Rule 45A of MVAT Rules, 2005 above referred Notification and Section 9(2) of CST Act makes it clear that e-Payment of CST has been made mandatory for all the dealers with effect from 31 March 2011.6

5.4) APPEALS

1) An appeal, from every original order, not being an order mentioned in sub-section (2) of section 85 passed under this Act or rules or notifications, shall lie if the order is made—
   a) by a Sales Tax Officer or an Assistant Commissioner, or any other officer sub-ordinate thereto, to the Deputy Commissioner;
   b) by a Deputy Commissioner or Senior Deputy Commissioner, to the Joint Commissioner;
   c) by a Joint Commissioner, Additional Commissioner or the Commissioner, to the Tribunal.
2) In the case of an order passed in appeal by a Deputy Commissioner or a Joint Commissioner, a second appeal shall lie to the Tribunal.
3) Every order passed in appeal by the Tribunal under this section shall, subject to the provisions of sections 24 and 27, be final and every order passed in appeal by any other appellate authority, shall subject to the provisions of sections 24, 25 and 27 be final.
4) Subject to the provisions of sections 80 and 81, no appeal including a second appeal shall be entertained unless it is filed within sixty days from the date of the communication of the order appealed against.
5) Subject to such rules of procedure as may be prescribed, every
appellate authority (both in the first appeal and the second appeal) shall have
the following powers, namely —

a) in an appeal against an order of assessment, it may confirm, reduce, enhance or annul the assessment:

   Provided that, where the appeal is filed before the Tribunal, the Tribunal may set aside the assessment and refer the case back to the assessing authority for making a fresh assessment in accordance with the direction given by it and after making such further inquiry as may be necessary; the assessing authority shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment.

b) in an appeal against an order imposing a penalty, the appellate authority may confirm or cancel such order or modify it in accordance with the provisions of this Act;

c) in an appeal against an order levying interest, the appellate authority may confirm or cancel such order or modify it in accordance with the provisions of this Act;

d) in any other case, the appellate authority may pass such order in the appeal as it deems just and proper.

   Provided that, the appellate authority shall not enhance an assessment or a penalty or interest or sum forfeited or reduce the amount of set-off or refund of the tax, unless the appellant has been given a reasonable opportunity of showing cause against such enhancement or reduction.

   Explanation — While disposing of an appeal, the appellate authority may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, not-withstanding that such matter was
not raised before it by the appellant or that no order was made in the said proceedings regarding such matter.

6) The Appellate authority or the Tribunal, as the ease may be, while admitting the appeal, pending the disposal of the appeal, stay the order appealed against in full or part, subject to such conditions or restrictions as it may deem necessary including a direction for depositing of a part or whole of the disputed amount by the appellant.

7) Every appellate authority, including the Tribunal, in so far as it may, shall decide the appeals pending before it by such priorities as may be prescribed.

Provided that, if a person has attained the age of seventy-five years or more and such person is the proprietor of the business, a partner in a firm or a director having substantial interest in a company being a body corporate, then on an application in the prescribed form made by him in this regard, any appeal made by the proprietary concern, partnership firm or the company shall be decided on priority to the exclusion of all other appeals.

5.5) Offences and Penalties:

1) Whoever knowingly,
   a) Not being a registered dealer under this Act, represents that he is or was a registered dealer when he sells or buys goods or,
   b) furnishes a false return, or
   c) produces before the Commissioner or the Tribunal, a false bill, cash memorandum, voucher, declaration, certificate or other document referred to in sub-section(4) of section 29, or
   d) keeps false account of the value of goods bought or sold by him in
contravention of sub-section (1) of section 63, or

e) produces false accounts, registers or documents or knowingly furnishes false information, or

f) issues to any person any certificate or declaration, under the Act, Rules or notifications or a bill, cash memorandum, voucher, delivery challan, lorry receipt or other document which he knows or has reason to believe to be false, or

g) falsely represents that he is authorized under section 82 to appear before any authority in any proceeding,

    Shall on conviction be punished with rigorous imprisonment for a term which shall not be less than one month but which may extend to one year and with fine?

2) Whoever will fully attempts in any manner whatsoever to evade any tax leviable under this Act or payment of any tax, penalty or interest under this Act shall on conviction be punished with rigorous imprisonment which shall not be less than three months but which may extend to one year and with fine.

3) Whoever -

a) fails without sufficient cause, to comply with the requirements of sub-section(1) of section 14, or

b) is engaged in business as a dealer without being registered under section 16, or

c) fails without sufficient cause, to obtain in lieu of the existing certificate of registration of fresh certificate of registration when required to do so as provided in sub-section(1) of section 17, or
d) fails without sufficient cause to furnish any information required by section 18, or

e) fails without sufficient cause to furnish a declaration or as the case may be, a revised declaration as provided in sub-section (1) of section 19 or fails without sufficient cause to communicate the permanent account number obtained under the Income Tax Act, 1961 or as the case may be, fails to state whether he has applied for the same and fails without sufficient cause to provide the details of the application as provided in sub-section (2) of section 19, or

f) fails, without sufficient cause to furnish any return or as the case may be a self-consistent and fully filled in return as required by section 20 by the date and in the manner prescribed, or

g) fails without sufficient cause to pay the tax deductible at source or to deduct at source such tax, or fails without sufficient cause to obtain the sales tax deduction account number or fails without sufficient cause to fill a return as required under the provisions of section 31, or

h) fails without sufficient cause to comply with the requirements of the notice issued under sub-section (1) of section 33, or

i) fails without sufficient cause to comply with the requirements of any order issued under sub-section (1) of section 35, or

j) fails without sufficient cause to comply with the requirements of any order issued under sub-section (3) of section 38, or

k) fails without sufficient cause to comply with the requirements of section 42, or

l) without reasonable cause, contravenes any of the provisions of section 60, or

m) fails, without sufficient cause to get his accounts audited or furnish the report of the audit, as required under section 61, or
n) fails, without sufficient cause to comply with requirements of section 63, or
o) fails, without sufficient cause to comply with the requirements of section 64, or
p) fails without sufficient cause to comply with requirements of section 65, or
q) fails, without sufficient cause to furnish any information or return required by section 70 by the date and in the manner prescribed or willfully furnishes any information or return which he knows to be incorrect or false, or
r) fails, without sufficient cause to issue a tax invoice, a bill or cash memorandum as required under section 86, or
s) contravenes, without reasonable cause, any of the conditions subject to which the Certificate of Entitlement is granted, or
t) fails, without sufficient cause to comply with any notice in respect of any proceedings.

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

4) Whoever aids or abets or induces any person in commission of any act specified in sub-sections (1) or (2) shall, on conviction, be punished with simple imprisonment which shall not be less than one month but which may extend to one year and with fine and whoever abets or induces any person in commission of any act specified in sub-section (3) shall, on conviction, be punished with simple imprisonment which may extend to one month and with fine.

5) Whoever commits any of the acts specified in sub-sections (1) to (4) and the offence is a continuing one under any of the provisions of these sub-sections, shall, on conviction, be punished with daily fine not less than rupees one
hundred during the period of the continuance of the offence, in addition to the punishments provided under this section.

6) Where a dealer is accused of an offence specified in the sub-sections (1), (2) or (3), the person deemed to be the manager of the business of such dealer under section 19 shall also be deemed to be guilty of such offence, unless he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission thereof.

7) In any prosecution for an offence under this section, which requires a culpable mental state on the part of the accused, the court shall presume the existence of such mental state, but it shall be a defense for the accused to prove the fact that he had no such mental state with respect to the act charged as an offence in that prosecution.

Explanation— Culpable mental State includes intention, motive or knowledge of a fact or belief in or reason to believe a fact and a fact is said to be proved only when the court believes it to exist beyond reasonable doubt and not merely when its existence is established by a preponderance of probability.

5.6) PENALTY AND INTEREST

1) While or after passing any order under this Act, in respect of any person or dealer, the Commissioner, on noticing or being brought to his notice that such person or dealer has concealed the particulars or has knowingly furnished inaccurate particulars of any transaction liable to tax or has concealed or has knowingly misclassified any transaction liable to tax or has knowingly claimed set-off in excess of what is due to him, the Commissioner may, after giving the person or dealer a reasonable
opportunity of being heard, by order in writing, impose upon him, in addition to any tax due from him, a penalty equal to the amount of tax found due as a result of any of the aforesaid acts of commission or omission.

2) Where any person or dealer has knowingly issued or produced any document including a false bill, cash memorandum, voucher, declaration or certificate by reason of which any transaction of sale or purchase effected by him or any other person or dealer is not liable to be taxed or is liable to be taxed at a reduced rate or incorrect set-off is liable to be claimed on such transaction, the Commissioner may, after giving the person or dealer a reasonable opportunity of being heard, by order in writing, impose on him in addition to any tax payable by him, a penalty equal to the amount of tax found due as a result of any of the aforesaid acts of commission or omission.

3) Where, any person or dealer contravenes the provision of section 86, so as to have the quantum of tax payable by him to be under-assessed, the Commissioner may, after giving the person or dealer a reasonable opportunity of being heard, by order in writing, impose on him, in addition to any tax payable by him, a penalty equal to half the amount of tax which would have been under-assessed or one hundred rupees, whichever is more.

4) Where, any person or dealer has failed without reasonable cause to comply with any notice in respect of any proceedings, the Commissioner may, after giving the person or dealer a reasonable opportunity of being heard, by order in writing, impose on him, in addition to any tax payable by him, a penalty equal to one thousand rupees.

5) Where, any person or dealer has failed without reasonable cause to fill within the prescribed time, a return for any period as provided under section 20, the Commissioner may, after giving the person or dealer a reasonable opportunity of being heard, by order in writing, impose on him,
in addition to any tax payable by him, a sum of rupees two thousand by way of penalty. Such penalty shall be without prejudice to any other penalty, which may be imposed under this Act.

Provided that, if the return is filled before the initiation of the proceeding for levy of penalty, the penalty shall be levied at rupees one thousand and in any other case, the penalty shall be levied at rupees two thousand.

6) C) Where a dealer has tiled a return and such return is found to be not complete or self-consistent then the Commissioner may, after giving the dealer a reasonable opportunity of being heard, impose on him, by order in writing, a penalty of rupees one thousand. The levy of penalty shall be without prejudice to any other penalty which may be imposed under this Act.

7) Where a person or dealer has collected any sum by way of tax in contravention of the provisions of section 60 —

a) he shall be liable to pay a penalty not exceeding two thousand rupees and

b) In addition, any sum collected by the person or dealer in contravention of section 60 shall be forfeited to the State Government.

If the Commissioner in the course of any proceeding under this Act or otherwise, is of the opinion that any person has become liable to a penalty or forfeiture or both penalty and forfeiture of any sum under this sub-section, he may serve on such person a notice in the prescribed form requiring him on a date and at a place specified in the notice to attend and show cause why a penalty or forfeiture or both penalty and forfeiture of any sum as provided in this sub-section should not be imposed on him. The Commissioner shall
thereupon hold an inquiry and shall make such order as he thinks fit. When any order of forfeiture is made the Commissioner shall publish or cause to be published a notice thereof for the information of the persons concerned giving such details and in such manner as may be prescribed.

8) No order levying penalty under the foregoing provisions of this section shall be passed in respect of any period after five years from the end of the year containing the given period.

9) No order levying penalty under any of the foregoing sub-sections shall be made -

a) by a Sales Tax Officer, or an Assistant Commissioner, where the penalty exceeds rupees five lac except with the prior approval of the Deputy Commissioner.

b) by a Deputy Commissioner or a Senior Deputy Commissioner, where the penalty exceeds rupees ten lac except with the prior approval of the Joint Commissioner.

It provided that, nothing in this sub-section shall apply to any penalty which can be imposed by an appellate authority.

10) For the purposes of this section, Commissioner includes any appellate authority appointed or constituted under this Act.

1) Interest Payable by a dealer or Person

1) A dealer who is liable to pay tax in respect of any year and who has failed to apply for registration or has failed to apply for registration within the time as required by or under this Act, shall be liable to pay by way of simple interest, in respect of each of such years, in addition to the amount of tax
payable in respect of such year, a sum calculated at the prescribed rate on the amount of such tax for each month or part thereof for the period commencing on the 1st April of the respective year to the date of payment of tax. The amount of such interest shall be calculated by taking into consideration the amount of and the date of, such payment, when the payment is made on different dates or in parts or is not made. When, as a result of any order passed under 45 this Act, the said amount of tax is reduced, the interest shall be reduced accordingly and where the said amount is enhanced as a result of any order, the interest on the enhanced amount shall be calculated mutatis mutandis up to the date of such order.

Provided that, in respect of any of such years, the amount of the interest payable under this sub-section shall not exceed the amount of tax found payable for the respective year.

2) A registered dealer who has failed to pay the tax within the time specified by or under this Act, shall be liable to pay by way of simple interest, in addition to the amount of such tax, a sum calculated at the prescribed rate on the amount of such tax for each month or part thereof after the last date by which he should have paid such tax.

Provided that, in relation to the tax payable according to the return or, as the case may be, a fresh return or revised return, they said dealer shall, not-withstanding anything contained in any other provision of this Act, be deemed not to have paid the amount of such tax within the time he is required by or under the provisions of this Act to pay it if he has not paid the full amount of such tax on or before the last date prescribed for furnishing of such return and accordingly, if he has not paid the full amount of such tax or
has paid only the part of the amount of such tax by such date, he shall be liable under this clause for payment of interest after such date on the full or part, as the case may be, of the amount of tax which has not been paid by such date and where a dealer has furnished a fresh return or revised return and the amount of tax payable as per the fresh return or revised return exceeds the amount of tax payable as per the original return, then for the purposes of this sub-section, the dealer shall be deemed to have been required to pay the excess amount of tax at the time he was required to pay the tax as per the original return and accordingly he shall be liable to pay interest under this sub-section on the said excess amount of tax.

3) In the case of a registered dealer, in whose case, any tax other than the tax on which interest is leviable under sub-section (2) has remained unpaid up to one month after the end of the period of assessment, such dealer shall be liable to pay by way of simple interest, a sum calculated at the prescribed rate on the amount of such tax for each month or part thereof from the date next following the last date of the period covered by an order of assessment till the date of the order of assessment and where any payment of such unpaid tax whether in full or part is made on or before the date of the order of assessment, the amount of such interest shall be calculated by taking into consideration the amount and the date of such payment. If, as a result of any order passed under this Act, the said amount of tax is reduced, then the interest shall be reduced accordingly and where the said amount is enhanced, then interest on the enhanced amount shall be calculated mutatis mutandis up to the date of such order from the said date next. 

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References:


2) www.mahavat.gov.in


4) www.mahavat.gov.in


6) www.google.com