

TRADE CIRCULAR.

Sub: Amendments to various Acts, rules and notifications issued thereunder.

- Ref:** 1) Mah. Act No. XV of 2016 Dt 26th Apr. 2016
2) Notfn. No. VAT 1515/CR 158/Taxn-1 Dt 30th Dec. 2015
3) Notfn. No. VAT/ADM-2016/1B/ADM-8 Dt 24th Feb. 2016 (3 notifications) issued by the Commissioner.
4) Notfn. No. VAT 1516/CR 53/Taxn-1 Dt 1st Apr. 2016.
5) Notfn. No. VAT. 1516/CR-52/Taxn-1 Dt 22nd Apr. 2016.
6) Notfn. No. VAT/ADM-2016/1B/ADM-8 Dt 28th Apr. 2016 issued by the Commissioner.
7) Notfn. No. CST-1516/CR 45/Taxn-1 Dt. 22nd Apr. 2016
8) Notfn. No. VAT-1516/CR 62/Taxn-1 Dt 29th Apr. 2016
9) Notfn. No. VAT 1516/CR-64/Taxn-1 Dt. 29th April 2016

No. VAT/AMD-2016/1A/1/Adm-8

Trade Cir. 14 T of 2016

Mumbai Dt: 07/05/2016

To give effect to the Budget proposals for the year 2016-17, a Bill (Legislative Assembly Bill No. XVIII of 2016) to amend the various Acts, administered by the Sales Tax Department has been passed by the Legislature and has received assent of the Governor on 26th April 2016. The Act (Maharashtra Act No. XV of 2016) is published in the Maharashtra Government Gazette dated 26th April 2016.

The Acts, which are amended, are as follows:

1. The Maharashtra Purchase Tax on Sugarcane Act, 1962 (SCPT Act);
2. The Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (PT Act);
3. Maharashtra Tax on the Entry of Goods into Local Area Act, 2002 (Entry Tax Act);
4. The Maharashtra Value Added Tax Act, 2002 (MVAT Act).

The date of applicability for each of the amendment has been mentioned, in the respective para explaining the amendment.

The salient features of the amendments are explained below:-

A. Amendment to Maharashtra Purchase Tax on Sugarcane Act, 1962 (SCPT Act):-

Exemption from payment of SCPT for 2015-16 *(Amendment of section 12B):*

Earlier provision: Section 12B empowers the State Government to exempt the payment of Sugarcane Purchase Tax (SCPT), in certain specified circumstances, by issuing a notification in the Official Gazette.

Amended provision: Section 12B has been amended. New sub-section (2) provides for exemption from payment of SCPT, on sugarcane purchased during the year 2015-16, by a sugar factory, which exports sugar to the extent of the Mill-wise Indicative Export Quota(MIEQ) during the year 2015-16. The MIEQ for the sugar factories has been laid down by the Department of Food and Public Distribution, Govt. of India.

“Year” as defined in sec. 2(i) means year starting from 1st October to 30th September. Therefore, the new provision regarding exemption is applicable for the period starting from 1st October 2015 to 30th September 2016. In other words, the exemption from payment of SCPT shall be available, if sugar to the extent of the MIEQ is exported by a sugar factory during the year 2015-16.

B. Amendments to the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (PT Act):

1. Amnesty to un-enrolled persons *(Amendment to sec. 3 of the PT Act):*

Earlier provisions: Section 3(2) of the PT Act provides that liability to pay tax of an un-enrolled person shall be restricted to 8 years, preceding the year, in which he has applied for enrolment.

Now a new sub-section (3) has been added in section 3 w.e.f. 1st April 2016, which provides that an un-enrolled person shall not be liable to pay for any periods prior to 1st April 2013, if :

- a) he makes an application for enrolment from 1st April 2016 to 30th September 2016, or
- b) his application for enrolment is pending on 1st April 2016.

A detailed Trade Circular, containing guidelines and procedure, separately issued.

2. Exemption from PT: *(Amendment to Sec. 27A):*

Earlier provision: Members of the Armed Forces are exempt from the payment of PT.

Amended provision: Now, armed members of the Central Reserve Police Force and armed members of the Border Security Force are also exempt from the payment of PT.

This amendment is effective from 1st April 2016. The benefit of this exemption is available to the salary for the month of April 2016 and onwards, irrespective of the date on which the salary is disbursed.

C. Amendments to Maharashtra Tax on the Entry of Goods into Local Area Act, 2002 (Entry Tax Act):

Applicability of provisions of the MVAT Act etc regarding e>Returns, e-payment etc. to Entry Tax Act :(Insertion of sec. 6A):

Provisions under the Maharashtra Value Added Tax Act and Rules for e>Returns, e-payment, e-application, etc. are now made applicable *mutatis mutandis* to provisions of the Entry Tax Act. A new section 6A has been inserted w.e.f. 26th April 2016 i.e. date of Amendment Act.

D. Amendments to the Maharashtra Value Added Tax Act, 2002 (MVAT Act)

1) Exemption to sizing and warping of yarn:

Section 8 of the MVAT Act empowers the State Government to exempt fully or partially from payment of tax by certain classes of dealers by issuing a general or special order in the *Official Gazette*. A new sub-section (3D) has been inserted in section 8 to empower the State Government to issue an order providing for full or partial exemption from payment of tax to the dealers transferring property in goods involved in the sizing and warping of yarn.

Accordingly, the State Government has issued a notification No VAT-1516/CR 62/Taxn. 1 Dated 29th April 2016 providing for full exemption from payment of tax on transfer of property in goods involved in the sizing and warping of yarn w.e.f. 1st April 2016. The dealers claiming exemption under this notification shall be eligible to claim set-off in the following manner:

- ✓ Set-off on the capital goods, used exclusively for sizing and warping of yarn, can be claimed as per rule 52.
- ✓ Set-off on goods, consumed or used in the sizing and warping of yarn and consumables and packing materials used in the said process shall be admissible after reducing it by 2% of the purchase price.

2) Amendments related to registration-

I. Amendment of Section 16 & related rules:

Trade is aware that registration procedure has been automated. A dealer applying for registration is required to upload an electronic application on the department's website. Necessary documents are also required to be scanned and uploaded on the department's website. In other words, the applicant dealer is not required to attend before the registration officer. The objective behind this procedure is to avoid the visits of the applicant dealer to the Sales Tax Office and to grant registration in minimum possible time.

In view of the above modified procedure, certain amendments have been made to Section 16 and related rules which are explained as follows:

a) Rejection of registration application [Substitution of proviso to sec. 16(3)]:

Earlier provision: Proviso to sec. 16(3) provided that if an application for registration is incomplete, or if the information or prescribed documents etc. are not furnished then application can be rejected after giving a reasonable opportunity of being heard to the applicant.

Amended provision: Proviso to sec. 16(3) has been substituted, in view of the automation process. As per the amended provision, an application for registration may be rejected if:

- i) the application is incomplete, or
- ii) required documents are not uploaded on the department's website, or
- iii) documents are inconsistent with the information in the application, or
- iv) documents are not legible, or
- v) prescribed conditions are not fulfilled.

The registration officer would pass rejection order in the above contingencies. To speed up the registration process, application shall be rejected without giving an opportunity of being heard. However, the applicant shall be permitted to comply with the deficiencies communicated to him within 30 days from the date of intimation of rejection order.

If the applicant dealer complies with the deficiencies within the said period then original application shall stand restored. The application would be restored in this manner only once within the said period of 30 days. If a dealer complies with the deficiencies after the said period of 30 days, then the earlier rejected application shall not be restored and the application shall be treated as a fresh application. Benefit of restoration of earlier application shall not be available and the date of such fresh application shall be considered for deciding the date of effect of registration, as per rule 9.

This amendment shall come into force on the date, notified by the State Government.

b) Cancellation of registration, obtained by fraud(Second proviso to sec. 16(6) substituted):

Earlier provision: The person applying for registration is expected to upload an application as well as the documents on the department's website. He is not required to attend the sales tax office for verification of documents and application. The objective behind this procedure is to create an environment of trust amongst the dealers and also to speed up the registration process. Certain contingencies i.e. discontinuance of business, disposal or transfer of business, turnover falling below limits of registration have been provided in sec.16(6). Second proviso of sec. 16(6) provides for cancellation of registration if a voluntarily registered dealer fails to commence business within 6 months from the date of registration.

New provision: Second proviso to sec. 16(6) has now been substituted w.e.f. 26th April 2016 to provide for an additional contingency for cancellation of registration.

It is now provided that if any person obtains registration by fraud or by misrepresentation of facts, then his registration may be cancelled after an opportunity of being heard is given to such a dealer. The effective date for cancellation of registration in these circumstances shall be decided by the authority, after making enquiry. *[Rule 11(4)(b) substituted by GN No.VAT. 1516/CR-64/Taxn. Dated 29th Apr. 2016.]*

II. Other amendments relating to registration:

i. Form substituted:

Application for registration in Form 101 and application for cancellation of registration in Form 103 have been substituted. *[Notfn. No. VAT/ADM-2016/1B/ADM-8 Dt 28th Apr. 2016, issued by the Commissioner]*

ii. Condition of introduction deleted:

The persons, applying for voluntary registration were required to furnish introduction from a registered dealer, as per rule 8(11). Now, no such introduction is required for the voluntary registration applicants. *[sub-rule (11) of rule 8 is deleted by GN No. VAT.1516/CR-52/Taxation-1 dated 22nd April 2016]*

iii. Submission of Form 105/V(B) with Form 101:

Form 105/V(B) is an intimation under MVAT & CST respectively, given to the Department regarding appointment of a Manager/authorized person of the business. Every dealer, who is a Hindu Undivided Family, an association of persons, club, society, firm, company, guardian or trustee is required to submit Form 105/V(B), declaring the name of the Manager/authorized person of the business within 30 days from the date of appointment or from the date of change of Manager. *[Rule 16(1) & 16(2)].*

From 1st April 2016, Form 105/V(B) has been made mandatory for the above referred types of dealers. Therefore, it would be mandatory for these applicants to submit Form 105 electronically along with the application for registration in Form

101. [Rules 8 (1), 16(1) & 16(2) are amended w.e.f. 1st April 2016 by GN No. VAT.1516/CR-52/Taxation-1 dated 22nd April 2016]

When the new automation system for registration becomes functional in the next few days, Form 101 of such dealers would not get uploaded unless Form 105/V(B) is submitted online. Form 105/V(B) is not mandatory for a proprietary concern.

iv. TAN mandatory for certain types of dealers:

PAN under the Income Tax Act is mandatory for registration. However, PAN was not mandatory for the Customs Department, Departments of Union and State Governments, Local authorities, Port Trusts, Railway Administration and Konkan Railway Corporation Ltd. [Rule 8(12) Proviso].

From 1st April 2016, these entities would be required to furnish Tax Deduction Account Number under the Income Tax Act (TAN) with the application for registration. [Rule 8(12) proviso amended by GN No. VAT.1516/CR-52/Taxation-1 dated 22nd April 2016]

3) Amendments related to returns :

I. Return forms and submission procedure:

Templates of the VAT returns, to be filed for the periods starting on or after 1st April 2016 have been modified and notified by the Commissioner by Notfn. VAT/ADM-2016/1B/ADM-8 dated 24th Feb. 2016. Return templates of CST returns have also been modified and notified [Notfn. No. CST-1516/CR-45/Taxn. 1 dated 22nd April 2016]. Return templates are available on the Department's website. The procedure for online submission of returns has also changed. Frequently Asked Questions (FAQs) on the new returns submission process has also been published in the "What's New" section on the home page of the website.

II. Change in periodicity:

The periodicity for filing of returns for the periods starting on or after 1st April 2016 is as follows [rule 17(4A) inserted by GN No. VAT.1516/CR-52/Taxation-1 dated 22nd April 2016]:

(i) **Monthly returns** to be filed by dealers,:

- o whose tax liability during the previous year had exceeded Rs. 10 lakh, [rule 17(4A)]
- o whose entitlement for refund during the previous year had exceeded Rs. 1 crore, [rule 17(4A)]
- o who have obtained registration on or after 1st April 2016 [rule 18(1A)]
- o who hold Certificate of Entitlement, under the Package Scheme of Incentives.

(ii) **Quarterly returns** to be filed by rest of the dealers. Retailer, who has opted for the Retailer Composition Scheme was earlier required to file six-monthly returns. For the periods starting from 1st April 2016, such Retailer Composition dealers shall file returns, as per the normal provisions.

(iii) **Six monthly returns** shall not be filed by any dealer for any periods starting from 1st April 2016.

The periodicity of returns for the periods, prior to 1st April 2016, has not been changed.

The clarification of the terms, “tax liability” and “entitlement for refund” in Explanation I and Explanation II of rule 17(4), for determining the periodicity of refund shall be applicable for the periods from 1st April 2016 onwards also. [rule 17(4)(c)]

III. Annexures, along with last returns of the year:

All dealers, other than those mentioned below, shall also furnish other details, in Annexures appended to Form 704, for the entire year, along with their last monthly or quarterly return:

(i) Dealers, liable to file e-704 u/s 61,

(ii) Dealers, who have opted wholly for the composition scheme under sec. 42(1) or sec. 42(2) i.e. retailer composition scheme,

restaurant composition scheme, baker composition scheme, second hand motor vehicle composition scheme.

Such Annexures with the last return shall be filed for year 2016-17 along with the return for the month or quarter ending on 31st march 2017 and shall be filed up to 21st April 2017. *[Proviso to rule 17(4A)]*

A dealer, whose registration is cancelled on or after 1st April 2016, shall file such annexures for the period from 1st April of the year, in which the registration is cancelled, to the date of cancellation of registration along with his last monthly or the quarterly return for that year. *[rule 18(2A) inserted by GN VAT.1516/CR-52/Taxation-1 dated 22nd April 2016]*

- IV. Period for furnishing revised return u/s 20(4)(a)[suo-motu]: Section 20 contains provisions regarding filing of revised returns. Section 20(4)(a) provides for filing of a revised return by a dealer, if he discovers any omission or any incorrect statement in the original return.

Earlier provision:

Revised return under section 20(4)(a) was required to be filed on or before the expiry of a period of 10 months from the end of the year to which the return related or before assessment notice is served for the period, covering the said return.

Amended provision:

The period of 10 months for filing of revised return has now been curtailed and brought at par with the due date of filing of e-704 audit report u/s 61. The period for filing e-704 audit report is 9 months and 15 days from the end of the year to which the e-704 relates. In other words, a revised return u/s 20(4)(a) would be required to be filed up to 15th January of the year, succeeding the year, to which the revised return relates.

For example, revised return for any return period in 2015-16 can be filed up to 15th January 2017.

This provision shall be applicable for the revised returns relating to periods starting on or after 1st April 2015.

- V. Bar on filing multiple revised returns:

Earlier provision: The proviso to sec. 20(4) bars filing of multiple revised returns for a particular period under clause (a) [*suo-motu revised return*] and clause (b) [*as advised by the accountant in e-704*] of that section. Multiple revised returns are allowed u/s 20(4)(c) i.e. if dealer agrees with the observations contained in intimation u/s 63.

Amended provision: The bar on filing multiple revised returns u/s 20(4)(a) [*suo motu*] has been removed. Therefore, if any dealer discovers any omission or incorrect statement in any return, then he can file a revised return more than once for the same period. Such revised returns u/s 20(4)(a) can be filed up to 15th January of the year succeeding the year to which the returns relate, as explained above.

This amendment comes into force from 26th April 2016.

VI. Filing of returns for the periods from 1st April 2016 onwards, by dealers, holding Entitlement Certificate (EC) under the Package Scheme of Incentives (except Power Generation Promotion Policy, 1998):

- i. If a dealer is liable to file returns in Form-231 for his other non-PSI business, then he shall also file returns in Form 231 along with returns in Form 234. [*Explanation II of Rule 17(1) substituted by GN No. VAT.1516/CR-52/Taxation-1 dated 22nd April 2016*]
- ii. Monthly returns shall be filed in Form 234 for the periods starting on or after 1st April 2016. [*Sub-rule (3A) added in rule 18 by GN No. VAT.1516/CR-52/Taxation-1 dated 22nd April 2016*]
- iii. A dealer, who has executed any works contract or has transferred the right to use any goods for any purpose or has part of the business under composition, then he shall file a monthly return in Form 233 in respect of such activities in addition to the return in Form 234. [*Proviso of newly inserted sub-rule (3A) in rule 18 by GN No. VAT.1516/CR-52/Taxation-1 dated 22nd April 2016*]
- iv. The provisions regarding filing of pre-EC period, first return as EC holder and last return as EC holder and post EC returns have also been suitably modified in view of the change in periodicity from quarterly to monthly.

VII. TCS returns by the authorities:

The authorities, which auction rights for excavation of sand and which award quarrying lease or quarrying permits, in respect of minor minerals are required to file return in Form 423. This return contains details about the person, from whom tax has been collected (TCS), auction amount etc.

For the periods starting from 1st April 2016, the return in Form 423 shall be filed electronically by these authorities on the Department's website. The format of return in Form 423 has also been changed, as notified by the Commissioner on 24th Feb. 2016 [Notfn. No. VAT/ ADM-2016/1B/Adm-8].

VIII. TDS returns by employers:

An employer, who awards works contracts, is required to file return in Form 424, containing details about the amount paid to the contractor and the amount of tax deducted etc. The Commissioner has modified Form 424 for the periods starting from 1st April 2016 onwards by notification dated 24th February 2016.

4) Amendments relating to Assessment [Section 23]:

a. Summary assessment [insertion of new sub-sec. (2A) in sec. 23]:

Earlier provision:

Section 33(2) of the Bombay Sales Tax Act provided for summary assessment of a dealer who had filed correct and complete returns within the stipulated period.

Under the MVAT Act, 2002 provision for summary assessment did not exist.

New provision:

A new sub-section (2A) has been inserted in section 23 of the MVAT Act providing for summary assessment of a dealer on the basis of returns filed by him.

Provision regarding summary assessment is explained as follows:

- Assessment of a dealer may be done on the basis of returns filed by him, subject to the conditions laid down in section 23(2A).
- Only a registered dealer shall be eligible for summary assessment.
- Summary assessment is applicable for periods starting from 1st April 2012 onwards.
- All the returns for the year should have been filed within the period provided for filing revised returns under section 20(4)(a) for the respective year.
- The dealer should have paid tax payable, as per the returns within the period stipulated above.
- The assessing officer should be satisfied that the returns filed by the dealer for the said year are correct and complete. The correctness and completeness of the returns shall be ascertained on the basis of the electronic data with the department.
- If summary assessment order is not passed in any case even though the dealer has complied with all the conditions stipulated above up to a period of 4 years then on expiry of the 4 years period, his returns shall be deemed to have been accepted.
- It is also clarified that in case of late returns the dealer would be liable to pay interest under section 30(2).

Example: For the year 2012-13, the dealer should have filed all the returns up to 15th January 2014. If the dealer has also paid the tax as per the returns up to 31st January 2014 and his returns are confirmed to be correct and complete, then this period could become eligible for summary assessment.

- b. Closure of assessment proceedings [Insertion of new sub-sec. (5A) in sec. 23]:

Background: In many cases, it is noticed that after the commencement of assessment proceedings and verification of his books of account etc. the dealer agrees with the findings of the assessing authority but due to bar to file a revised return u/s 20(4)(a), after commencement of assessment

proceedings, the assessment order is required to be passed invariably even in such cases.

New Provision: A new sub-section 5(A) has been inserted in section 23 to provide for closure of assessment proceedings in certain circumstances.

The steps involved in the closure of assessment proceeding shall be as follows:

- Assessment proceedings shall be initiated under section 23(2) (i.e. return in time), under section 23(3) (i.e. late return), section 23(4) (i.e. URD assessment) and under section 23(5) (i.e. transaction wise assessment).
- The dealer shall produce the books of accounts, documents etc. before the assessing officer.
- The assessing authority shall verify the books of accounts, documents, declarations etc. produced by the dealer, as in any normal assessment proceedings.
- The assessing officer shall decide as to whether a particular assessment proceeding should culminate in an assessment order or can be closed by a revised return from dealer.
- In case, the assessing authority decides that the assessment proceeding is fit for closure on filing of revised returns, then he shall intimate to the dealer, his observations about tax liability and interest payable. Such intimation shall be issued at least six months prior to the expiry of the limitation period for the said assessment proceeding.
- If a dealer agrees with all the observations, he shall file a return or a revised return within 30 days from the date of receipt of the intimation by him and also pay tax and interest applicable till date within the said period of 30 days. The revised return shall be filed u/s 20(4)(c) of the Act.
- If a dealer complies fully, as above, then a confirmation order shall be passed by the assessing officer. Assessment proceedings, initiated earlier, shall be closed.
- Assessment proceedings shall not be closed if a dealer does not fully agree with the observations of the assessing authority but agrees partly. In this

situation, assessing authority shall pass assessment order, as per the provision under which notice of assessment had been issued earlier.

- This provision shall be applicable even to those assessment proceedings, which have been initiated prior to 1st April 2016 but were pending on the 1st April 2016.
- Of course, the dealer would always have a choice whether to file revised return alongwith applicable tax, interest u/s 30(2) and 30(4) and have the proceedings closed or instead ask for an assessment order.
- The relevant rules and forms are also being suitably modified and the revised rules & forms shall be notified by the State Government.

5) Determination of tax liability as per “fair market price” [FMP](Insertion of new section 28A):

A new section 28A has been inserted to determine tax liability of a dealer on the basis of ‘fair market price’.

Salient features of this provision are as follows:

- I. Section 28A comes into force retrospectively from 1st April 2011.
 - II. During the course of any proceedings under the Act, if an authority is of the opinion that any transaction entered into by a dealer is for a sales price, which is below the ‘fair market price”, then said authority shall determine the tax liability on the basis of the ‘fair market price’ for such transaction.
 - III. Section 28A empowers the State Government to prescribe fair market price for a commodity and the class of dealers and accordingly, a notification shall be issued by the State Government.
 - IV. Power to determine tax liability on the basis of ‘fair market price’ is applicable to all proceedings under the Act i.e. assessment, rectification, review, appeal etc.
- 6) Amendments to TDS provisions (amendment of sec. 31, relevant rules,forms):**

- I. Transfer of TDS credit :

Earlier Provision: The principal contractor is permitted to claim credit of TDS deducted by an employer and paid to the State Government. The credit for such payment is permitted to be taken by the principal contractor in the period in which TDS certificate is furnished to him by his employer. In case the principal contractor has awarded sub-contract, the transfer of TDS credit to such sub-contractor was not permitted.

Amended Provision: Sub-section (4) of section 31 has been substituted and the substituted provision is explained below:

- i) Principal contractor may claim credit of TDS payment as payment of tax by him or if he has awarded sub-contract, then he may transfer the credit of such TDS amount to such sub-contractor.
- ii) Principal contractor shall file a return in Form 424A electronically on the website in FORM 424A. Thereafter, he shall issue a certificate in Form 402A to the sub-contractor, in respect of the credit so transferred. *[rule 40(1)(e) inserted by GN No. VAT-1516/CR-64/Taxn. 1 dated 29th Apr. 2016]*. Even though no time limit is prescribed for filing of return in Form 424A by the principal contractor, it is advisable that the return is filed at the earliest since TDS credit will not be transferred till he files the return.
- iii) Principal contractor issuing a certificate in Form 402A shall maintain for each year a separate account in Form 404A register. *[GN No. VAT-1516/CR-64/Taxn. 1 dated 29th Apr. 2016]*. This register shall contain details of TDS credit transferred to the sub-contractor and about certificates in Form 402A. *[Rule 40(1)(e) inserted by GN No. VAT-1516/CR-64/Taxn. 1 dated 29th Apr. 2016]*
- iv) Principal contractor shall be eligible to claim the credit of such TDS amount in the period in which TDS certificate in Form 402 is furnished to him by his employer.
- v) Sub-contractor may claim the credit of such TDS amount transferred to him in the period in which the principal contractor has transferred the TDS credit to him, by issuing a certificate in Form 402A or in any subsequent period.

vi) This facility of transfer of TDS credit to the sub-contractor shall be available only where an employer has deducted and paid the TDS amount on or after 1st April 2016.

vii) If a sub-contractor awards further sub-contract, then he shall not be eligible to transfer the TDS credit transferred to him by the principal contractor.

II. Sales Tax Deduction Account Number (TDS number) (Insertion of sub-sec. (8) & (12) in sec. 31) :

Earlier provision: An employer, deducting TDS amount u/s 31 was not liable to obtain sales tax deduction account number.

New provision-A [TDS Number]: An employer is liable to deduct TDS u/s 31, if the amount payable to a contractor is Rs.5 lakh or more during any year. A co-operative housing society registered under the Mah. Co-operative Societies Act 1960, which has awarded works contract aggregating to Rs. 10 lakh or more in the previous year or in the current year is also liable to deduct TDS amount.

Sub-section (8) has been inserted in sec.31 and shall come into force from the date to be notified by the State Government. Said notification, as soon as it is published, shall be made available on the Department's website.

As per this newly inserted sec. 31(8), an employer, who is liable to deduct TDS amount shall be required to obtain sales tax deduction account number by making an e-application on the department's website.

If an employer, being a dealer, is registered under the MVAT Act then, he shall not be liable to obtain the sales tax deduction account number.

Amendments to relevant rules, forms shall be notified and published on the Department's website after the newly inserted sub-section (8) of sec. 31 is brought into force by a notification in the *Official Gazette*.

New provision-B [Penalty for failure to obtain TDS number]: New sub-section (12) has been inserted in sec. 31 to provide for penalty in case an employer fails to apply for the sales tax deduction account number.

A penalty to the extent of amount of tax deductible by him for the period during which he had not obtained the sales tax deduction account number can be imposed after reasonable opportunity of being heard is given to such employer.

III. Filing of return and revised return by an employer (Insertion of sub-sec. (10), (11) and (13) in sec. 31):

Earlier provision-A [Returns]: As per provisions of rule 40(1)(d), an employer is required to file return within 3 months from the end of the year, to which the return relates. Thus, yearly return was expected from an employer.

New provision-A [Monthly returns]: A new sub-section (10) has been inserted in sec. 31, which provides that an employer who has deducted TDS amount and has also paid such amount in the Government Treasury shall file monthly return for such month. Rule 40(1)(d) has also been amended. [GN No. VAT 1516/CR-64/Taxn-1 dated 29th Apr. 2016]. As per this amended rule, return shall be filed within 21 days from the end of the month to which such return relates. Thus, it may be noted that the periodicity for filing of return by an employer has been changed from yearly to monthly and due date for filing of return has also been modified. However, the return would be required to be filed only if TDS has been deducted and paid into the Government Treasury and not otherwise.

New provision-B- [Revised return]: A provision for filing of revised return has also been made in the newly inserted sub-section (11) of sec. 31. If an employer discovers any omission or an incorrect statement in the original return, then he can file a revised return within 9 months from the end of the year to which return relates.

New provision-C-[Penalty for non-filing of a return]: A new sub-section (13) has been inserted in sec. 31 to provide that penalty up to Rs.5000/- shall be imposed, if an employer fails to file return within the prescribed time.

7) Advance Ruling introduced[Substitution of section 55]:

Earlier Provision: Section 55 of the MVAT Act provided for Advance Ruling. Section 56 of the MVAT Act provided for determination of disputed question

(DDQ) on questions referred to in section 56. The Advance Ruling provision [sec. 55] though in existence since 2005 had not been brought into force.

New Provision: Section 55 has been substituted by new section 55 w.e.f. 1st May 2016.

The provisions regarding Advance Ruling (A.R.) in the new section 55 are explained below:

- i) Who may apply: An application for A.R. can be made by any person, i.e. a registered dealer, unregistered dealer or any other person.
- ii) Application format: An application for A.R. should be made in Form 703 to the Commissioner of Sales Tax. [Sec. 55(1)] [rule 63 (1) inserted by GN No. VAT-1516/CR-64/Taxn. 1 dated 29th Apr. 2016]
- iii) Submission of application: Application for AR shall be submitted to the Commissioner.
- iv) Questions, which can be raised: The questions on which A.R. can be sought by a person are prescribed in the newly inserted rule 63 [GN No. VAT-1516/CR-64/Taxn. 1 dated 29th Apr. 2016]. The questions, prescribed under rule 63 are as follows:-

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

The questions prescribed under rule 63 are same as the questions which were specified in section 56.

- v) Application fees: Application fees of Rs. 2000/- shall be paid by the applicant, as provided in rule 73(2)Sr.16. Fees shall be paid electronically in Form MTR-6. This fee is non-refundable. [GN No. VAT-1516/CR-64/Taxn. 1 dated 29th Apr. 2016]
- vi) Who passes A.R. Order: The Commissioner may either himself pass A.R. order or he may transfer the application to the A.R.A. [Sec. 55(3)]
- vii) Constitution of Advance Ruling Authority (A.R.A): The Advance Ruling Authority (A.R.A) shall be constituted by the Commissioner by a notification in the Official Gazette. The Addl. Commr. of Sales Tax shall be the Chairman and two Joint Commissioners shall be the Members thereof.
- viii) Subordination: A.R.A. shall be subordinate to the Commissioner. [Sec. 10(9)]
- ix) Refusal of application: Application for A.R. shall not be accepted if the applicant has already raised the said question before the Tribunal, Bombay High Court or the Supreme Court and is pending. The application shall also not be accepted if a question raised in the application relates to a transaction or issue which is designed apparently for avoidance of tax. [Sec. 55(7)(a)]
- x) Acceptance of application: The Commissioner or the Advance Ruling Authority may call for a report from the concerned Joint Commissioner of Sales Tax (Nodal Divn/VAT Adm). The concerned Joint Commissioner shall send his report in Form 703A. [GN No. VAT-1516/CR-64/Taxn. 1 dated 29th Apr. 2016]. The intimation regarding acceptance or non-acceptance of the application shall be communicated to the applicant in Form 703B within 30 days from the date of submission of the application by him. [Sec. 55(7)(c)] [rule 63(4)- GN No. VAT-1516/CR-64/Taxn. 1 dated 29th Apr. 2016]
- xi) Time limit for A.R. Order: The A.R. order shall be passed within 90 days from the date of acceptance of the application. [Sec. 55(5)]
- xii) Withdrawal of application: An applicant, if he so desires, may withdraw his application with 30 days from the date of submission.[Sec. 55(6)]

xiii) Rejection of application: The Commissioner or the A.R.A. may reject an application by affording an opportunity of hearing to the applicant and by recording the reasons for rejection of application. [Sec. 55(7)(d)]

xiv) Binding nature: The A.R. order passed by the Commissioner shall be binding on all the officers including appellate authority and also on the A.R.A in respect of the similarly situated persons. [Sec. 55(8)(a)]

The A.R. order passed by the A.R.A shall be binding on all the officers (other than the Commissioner) including appellate authority in respect of the similarly situated persons. [Sec. 55(8)(b)]

xv) Applicability of A.R. order to other similarly situated persons: The Commissioner or, as the case may be, the A.R.A. , may direct that the A.R. shall not affect the liability of the applicant or, if the circumstances so warrant of any other person similarly situated, as respects any sale or purchase effected prior to the A.R. [Sec. 55(9)]

xvi) Appeal against A.R. Order: The appeal against the A.R. order shall lie to the Tribunal. The Tribunal shall entertain an appeal only if it is filed within thirty days from the date of communication of the A.R. order to the applicant. [Sec. 55(10)& (11)]

xvii) Orders of the Commissioner to prevail: The A.R. order passed by the A.R.A. shall be subject to any directions or, as the case may be, instructions of the Commissioner, issued under section 10(10) and any DDQ order passed by the Commissioner u/s 56. [Sec. 55(12)]

xviii) Rectification of Order: The Commissioner or, as the case may be, the A.R.A. may on his own motion, rectify any mistake apparent from the record and may rectify any order passed by it before the order so issued has been given effect to by the officer concerned. The applicant may also make an application in Form 703D [GN No. VAT-1516/CR-64/Taxn. 1 dated 29th Apr. 2016] for rectification bringing to the notice of the Commissioner or, as the case may be, A.R.A., any such mistake within thirty days from the date of receipt of the said order. Before passing the rectification order, the applicant shall be given a reasonable opportunity of being heard. [Sec. 55(13)]

Rectification order shall be passed within a period of sixty days from the date of receipt of the Advance Ruling by the applicant. [Sec.55(13) Second Proviso]

xix) Review of Order passed by ARA: The Commissioner can on his own motion call for the record of any A.R. issued by the A.R.A. to examine as to whether the said ruling is erroneous in so far as it is prejudicial to the interests of revenue. [Sec. 55(14)(a)]

A notice in Form 703E [GN No. VAT-1516/CR-64/Taxn. 1 dated 29th Apr. 2016] shall be issued by the Commissioner to initiate the proceedings. After verification of records and hearing the applicant, a just and proper order shall be passed.

xx) Review of order passed by the Commissioner: The Commissioner may also, for reasons to be recorded in writing on his own motion, review the A.R. order passed by him and pass such order as he thinks just and proper. However, before initiating any such action, the Commissioner shall obtain prior permission of the State Government. Such permission shall also be obtained when the A.R. order is proposed to be made contrary to an order passed by the Commissioner under section 56. [Sec. 55(14)(b)]

xxi) Prospective effect to Review order: The Commissioner may direct that, the order of review shall not affect the liability of the person in whose case review is made in respect of any sale or purchase effected prior to the review and may likewise, if the circumstances so warrant, direct accordingly in respect of any other person similarly situated.

xxii) Limitation period for Review: The Review order, in respect of the A.R. order passed by the A.R.A. shall be passed within six months from the end of the year containing the date of Advance Ruling.

Review order, in respect of an order passed by the Commissioner shall be passed within three months from the end of the month in which the State Government gives permission to initiate action of Review.

xxiii) The regulations regarding the procedure to be followed shall be formulated by the Commissioner and published on the Department's web site.

8) DDQ provision deleted [Deletion of section 56]:

Section 56, which is about determination of disputed questions (DDQ) has been deleted w.e.f. 1st May 2016. The applications under section 56 received up to 30th April 2016 and pending on 1st May 2016 shall be disposed under the provisions of said section after 1st May 2016.

9) Penalty for non furnishing of information [insertion of sub-sec.(3) in sec. 70]:

For the purposes of better administration of the Act, the Commissioner can issue a notification u/s 70(1) in the Official Gazette directing that statistics be collected related to any mater pertaining to the Act.

Section 70(2) of the MVAT Act empowers the Commissioner or any person authorised by the Commissioner to call for information or returns from dealers or any class of persons. The periodicity and the particulars of the information or return and the authorities to whom the return is to be furnished can be notified by the Commissioner. [Sec. 70(2)]

An information return would be soon introduced for the e-commerce operators, who facilitate the sales of goods through website, mobile app or through any other electronic means. This information return would contain names of the suppliers, TIN of the suppliers, Invoice value, nature of commodity etc.

New provision: A new sub-section (3) inserted in section 70 w.e.f. 26th April 2016 provides that penalty of an amount up to Rs.1 lakh can be imposed, if any person fails to furnish the information or return, as notified by the Commissioner. If offence of non-furnishing of information or return continues beyond a period of 2 months then a further penalty of Rs.1000/- per day can also be imposed.

10) Amendments to PSI provisions [amendment of sec. 88 and 89]

I. Declaration in invoices [Substitution of sub-sections (3) and (4) of sec. 88]:

Earlier provision- : Section 89(3)(a) provided that an invoice issued by a Mega Unit, holding a valid Identification Certificate, shall contain a declaration as prescribed in rule 83A. Similarly, an invoice issued by its immediate

purchaser or subsequent purchasers shall also contain a declaration as provided in rule 83A.

Amended provision:

Sub-sections (3) and (4) of section 89 are substituted w.e.f. 26th April 2016.

As per the amended sec. 89(3) and 89(3A), the invoices of following types of dealers shall also contain declaration, as prescribed.

- a) Ultra Mega Unit, holding a valid Identification Certificate,
- b) Mega Unit, holding Entitlement Certificate, under the Package Scheme of Incentives, 1993, and availing benefits by way of deferment,
- c) Very Large Unit, holding Entitlement Certificate, under the Package Scheme of Incentives, 1993 and availing benefits by way of deferment ,
- d) Other dealers, purchasing from any of the above dealers, mentioned above and the subsequent purchasers of the goods manufactured by the units, referred at a), b) and c).

It goes without saying that an invoice issued by a Mega Unit, holding Identification Certificate, its immediate purchaser and subsequent purchasers shall contain the declaration as prescribed.

II. Penalty u/s 89(4):

Earlier provision: Failure to incorporate the declaration, referred above, in an invoice, attracts penalty u/s 89(4). Penalty can be imposed u/s 89(4) equal to the amount of tax contained in the invoice, which does not contain the said declaration.

Amended provision: Sub-section (4) of section 89 has been recast, in view of the addition of Ultra Mega Units, Very Large Units and Mega Units in sec. 89(3A). The quantum of penalty remains same. Failure to incorporate the applicable declaration in Invoice by these units shall also now attract penalty u/s 89(4). However, since rule 83A has not been amended so far, the penalty would not be imposed against the newly added Units.

III. Technical amendment to sec. 88:

Earlier provision: Clause (a-1) defines “identification certificate” to mean a certificate issued by the Commissioner to a Mega Unit, covered under the PSI, 2001, PSI, 2007 and PSI, 2013.

Amended provision: Package Scheme of Incentive 2013, also includes Ultra Mega Units. Identification Certificate shall be issued by the Commissioner to such Ultra Mega Units also. Hence, technical amendment is made to clause (a-1) of sec. 88 to include “Ultra Mega Unit” in the definition of “identification certificate” in clause (a-1) of sec. 88.

E. Amendments to set-off provisions under MVAT Rules:

1) Restrictions on set-off on purchases of certain commodities:

Rule 52B has been inserted w.e.f. 1st January 2016 to restrict the set-off on the purchases of goods covered by Schedule entry D-13 and D-14.
[Notfn. No. VAT 1515/CR 158/Taxation-1 Dated 30th December 2015]

Sch. entry D-13 covers “aerated and carbonated non-alcoholic beverage whether or not containing sugar or other sweetening matter or flavor or any other additives”.

Sch. Entry D-14 covers “Cigar and cigarettes”.

Restrictions provided in rule 52B are explained as follows:

- a. Inter-state sales: In case, a dealer effects inter-state sale of the above referred goods, then set-off of the tax paid on the purchases is restricted to the Central Sales Tax paid or payable on the corresponding inter-state resale of these goods.
- b. Sales in Maharashtra: In case the goods are sold in Maharashtra, then full set-off shall be available as any other goods.
- c. Set-off claim: Set-off can be claimed only in the period, in which such goods are sold.
- d. Exports: In case the goods are exported outside the territory of India then these restrictions shall not be applicable.

- e. Branch transfer etc. u/s 6A of CST Act: No set-off shall be admissible, in case the goods are sent outside the state to an agent's place of business or to the principal's place of business or to one's own place of business.

Now, w.e.f. 1st April 2016, "mobile phone or cellular handset i.e. telephones for cellular network or for other wireless network" have also been included in rule 52B [Notfn. No. VAT 1516/CR 53/Taxation-1 Dated 1st April 2016]. Therefore, the set-off restrictions explained above shall be applicable to the purchases of these goods also on or after the 1st April 2016.

2) Set-off to the dealers engaged in leasing business:

Earlier provision: Rule 54(a) bars set-off on purchases of passenger motor vehicles, treated by the claimant dealer as capital assets and parts, components and accessories thereof. This bar was applicable also to dealers engaged in the business of leasing passenger motor vehicles.

Amended provision: As per the amended rule 54(a), the bar on claiming the set-off shall not be applicable to the dealers, engaged in the business of transferring the right to use passenger motor vehicles (whether or not for a specified period) for any purpose. This removal of bar shall be applicable to the purchases of passenger motor vehicles effected on or after 1st April 2016.

The set-off, of course, shall be subject to restrictions, put in new sub-rule (11) in rule 53, which is explained as follows:

- a. Such claimant dealer can claim set-off only to the extent of his tax liability on such transfer of right to use.
- b. Set-off can be claimed only in the period in which the right to use has been transferred by the claimant dealer.

3) Non-admissibility of set-off on "entry" of certain goods:

Set-off is not admissible u/r 54(b) on the purchases of High Speed Diesel Oil, Aviation Turbine Fuel (Duty Paid), Aviation Turbine

Fuel(Bonded), Aviation Gasoline (Duty paid), Aviation Gasoline (Bonded), and petrol. Set-off is admissible only if such goods are sold in the manner specified in the said sub-rule.

The said rule 54(b) has been amended w.e.f. 1st April 2016. By virtue of this amendment, set-off shall not be admissible even on the "entry" of such goods from any place outside the state. The term, "entry" carries the meaning as assigned to it in section 2(1)(b) of the Maharashtra Tax on the Entry of Goods into Local Areas Act, 2002.



(Rajiv Jalota)

Commissioner of Sales Tax
Maharashtra State, Mumbai

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(D.M.Thorat)

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