

W I R C

*INTRICATE ISSUES UNDER
THE INPUT TAX CREDIT (ITC)*



PRESENTED BY

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BASIC PROVISION:

Section 48 of **MVAT Act, 2002** provides that the State government may, by Rule, make provisions for Set-off and refund and *Section 49* empowers the State government for the reimbursement of the tax paid on declared goods under local Sales Tax Act , which are resold in the course of inter- State trade or commerce. In pursuance of powers granted under *Section 48* and *49* of the **MVAT Act, 2002**, Maharashtra Government has incorporated Rules 51 to 56 for grant of set-off.

SET OFF PROVISION UNDER VAT:

- Rule 51:- Set-off on stock as on 31.3.2005.
- Rule 52:- Items on which set-off is available.
- Rule 52A:- Set-off in respect of goods manufactured by Mega Unit.
- Rule 52B:- Set-off in respect of certain goods.
- Rule 53:- Items on which retention is applicable.
- Rule 54:- Items on which no set-off eligible.
- Rule 55:- Terms and Conditions for grant of set-off
- Rule 56:- Re imbursement of tax on declared goods.

RULE 51: CLAIM AND GRANT OF SET-OFF IN RESPECT OF PURCHASES HELD IN STOCK IN THE APPOINTED DAY:

- **If goods are in stock as on 31-3-2005**
- **Capital assets purchased after 1-4-2003**
- **Set off in accordance with Rule 44-D of BST**
- **Set off not available if already claimed.**
- **Goods (Trading goods or capital goods) should be resold or used in the packing of goods so resold on or before 31-12-05**
- **Filing of a stock statement in prescribed form [Sec.84] >Date notified as 30-4-05 & extended up to 15-9-05**
 - > **To file fresh/revise stock statement up to 28-2-07 [5-T dated 15-01-2007]**
- **If goods are not resold before 31st December, 2005 then the dealer to reverse the amount of set-off claimed**

CONDITIONS FOR ELIGIBILITY OF RULE 51:

- ***'non- obstante'* clause is inserted. The restrictions or retentions or disallowances contained in rules 53 and 54 will not be applicable**
- **The processes prescribed in rule 3 of the BST Rules will be treated as resale. Set-off will be allowed under this rule.**
- **Under Explanation to rule 51, it is provided that set-off will be allowed in full in case of inter-State stock transfer or consignment of goods.**

RULE 52: SET-OFF IN RESPECT OF PURCHASES ON OR AFTER 01ST APRIL, 2005

- This rule specifies the eligible purchase on which the dealer is entitled to claim set-off subject to following conditions:
- Available to Registered Dealers (subject to Exception in Rule 55)
- Purchase of goods or entry of goods made on or after 1st April 2005.
- Taxes should be charged/collected separately.

- Goods debited to Trading , P&L A/c would be eligible for set-off
- Set off would be also available on purchase treated as Capital Asset, (as defined under the I T Act).
- Set off also available of Entry tax paid under Motor Vehicles Entry into local Areas Act 1987.
- Set off also available of Entry tax paid under Entry of goods into local Areas Act 2003.
- Set-off under this rule would not be available if it is already claimed under any earlier laws.
- Set-off is available in the month of purchase of goods, itself
- Set-off under this rule is available subject to reduction of set-off as specified in rule 53 and non admissibility of set-off as provided in Rule 54 of MVAT Rules,2005.
- Other conditions specified in Rule 55

Rule 53(9)(b): For reducing set-off under,- Rule 53(2) ,

- When purchase price is not ascertainable, the ratio of the sale price of the taxable goods and tax free goods to be taken
- Where there is no sale price, the value of the taxable goods and tax free goods shall be applied; and
- In 53(3), the ratio of the value of the goods inclusive of any duty of Excise as it appears in the books of accounts of the goods dispatched as aforesaid and the sale price of other goods shall be applied for deciding the corresponding purchase price.

RULE 52A: SET-OFF IN RESPECT OF GOODS MANUFACTURED BY MEGA UNIT:

Notwithstanding anything contained in rules 52 and 53,

1) The claimant dealer must have purchased the declared goods which are originally manufactured by the Mega Unit holding the valid Identification Certificate under the Act.

- The claimant dealer is entitled to set-off in respect of the said goods only to the extent of aggregate of,
 - The taxes paid or payable Under the Central Sales Tax Act, 1956 on the inter-state re-sale of the corresponding goods, and
 - The taxes paid on the purchases of said goods, if they are re-sold locally under the Act.

2) The set-off as determined under sub-rule (1) above in respect of the said goods shall be claimed only in the month in which corresponding sale of such goods is effected by the claimant dealer.

Provided that, nothing in this rule shall apply to the purchases of such goods that are used within the State in the manufacturing of the goods.

52B: SET-OFF IN RESPECT OF CERTAIN GOODS:

Notwithstanding anything contained in rules 52, 53 and 54

- 1) If the claimant dealer has purchase,
 - Goods covered under the entries 13 and 14 of the Schedule 'D' appended to the Act, or
 - Mobile phone or cellular handset i.e. telephones for cellular network or for other wireless network,

Then the said dealer shall be entitled to claim set-off in respect of the said goods only to the extent of aggregate of,

- ✓ The taxes paid or payable under the Central Sales Tax Act, 1956 on the inter-state resale of the corresponding goods, and
- ✓ The taxes paid on the purchases of said goods, if are resold locally under the Act.

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2) The set-off as determined under sub-rule (1) above in respect of the said goods shall be claimed only in the month in which corresponding sales of such goods is effected by the claimant dealer

RULE 53: REDUCTION IN SET-OFF:

(1) Used any taxable goods as fuel, then

- Amount equal to three per cent of the corresponding purchase price shall be reduced.
- Retention not reduced to 2%
- Any type of goods if used as fuel retention applies.

(2) (a) Claimant dealer manufactures any tax free goods

Retention applicable at the following rates;

- 4% 1st April 2005 to 31-3-2007
- 3% 1st April 2007 to 31-5-2008
- 2% 1st June 2008 Onwards
- On Purchase Price of Corresponding taxable goods
- Goods treated as capital assets or used as fuel, Retention not to apply.

(b) Claimant dealer resells any tax free goods and the tax-free goods are packed in any material,

Retention applicable at the following rates;

- 4% 1st April 2005 to 31-3-2007
- 3% 1st April 2007 to 31-5-2008
- 2% 1st June 2008 Onwards
- On the purchase price of the corresponding purchases of packing materials,
- Retention not to apply when goods, being Schedule A tax free goods, are exported.
- Covers direct exports u/s 5(1) and exports u/s 5(3)

Rule 53(9)(b): For reducing set-off under,- Rule 53(2) ,

- When purchase price is not ascertainable, the ratio of the sale price of the taxable goods and tax free goods to be taken
- Where there is no sale price, the value of the taxable goods and tax free goods shall be applied; and
- In 53(3), the ratio of the value of the goods inclusive of any duty of Excise as it appears in the books of accounts of the goods dispatched as aforesaid and the sale price of other goods shall be applied for deciding the corresponding purchase price.

(3) Claimant dealer dispatches any taxable goods outside the State, to any place within India, not by reason of sale, to his own place of business or of his agent or where the claimant dealer is a commission agent, to the place of business of his principal,

Retention applicable at the following rates;

- 4% retention.
- On Purchase Price of Corresponding taxable goods
- Goods used as Capital assets or used as fuel shall not be liable for retention

- Explanation.- For dispatch of Goods covered under Schedule B retention of only 1% to apply.
- Provisio: No Retention is to be made applicable if the goods dispatched comes back in the state within a period of Six months, whether after processing or otherwise i.e. in the same form or not.
- Recent Circular of Commissioner on the issue of whether principal to principal is Branch trf, to clarifying the stand of the dept.(Cir. No 5T of 2009)
- Finally circular no 2T of 2010 dated 11th January 2010 making F form Mandatory From Jan 2010.

Rule 53(9)(b): For reducing set-off under,- Rule 53(2) ,

- When purchase price is not ascertainable, the ratio of the sale price of the taxable goods and tax free goods to be taken
- Where there is no sale price, the value of the taxable goods and tax free goods shall be applied; and
- In 53(3), the ratio of the value of the goods inclusive of any duty of Excise as it appears in the books of accounts of the goods dispatched as aforesaid and the sale price of other goods shall be applied for deciding the corresponding purchase price.

(4) Claimant dealer has made a sale by way of transfer of property in goods (whether as goods or in some other form) involved in the execution of works contract

The claimant dealer has opted for composition of tax under sub-section (3) of section 42,

Retention of Set off on the corresponding amount pertaining to purchases other than capital assets and goods in which property is not transferred shall be calculated, as under --

(a) by multiplying the said amount of set-off by the fraction $16/25$ where the dealer has opted to pay tax @ 8% on the total contract value, and

(b) in respect of periods starting on or after 20th June 2006 by reducing from the amount of set-off a sum equal to 4% of the purchase price on which such set-off is calculated where the dealer has opted to pay tax @ 5% on the total contract value in the case of construction contracts.

Explanation .- Expression claimant dealer shall also include a sub-contractor if the principal contractor has awarded the contract or part of contract to a sub-contractor and the principal contractor has opted in respect of the said contract for the composition of tax under sub-section (3) of section 42. (Inserted on 23-10-08 with retrospective effect from 1-4-05)

(5) Business in which the dealer is engaged is discontinued and is not transferred or otherwise disposed of and is not continued by any other person,

The set-off on purchases not being purchases treated as capital assets, corresponding to the goods held in stock at the time of discontinuance shall be disallowed and accordingly be reduced fully.

(6) If out of the gross receipts of a dealer in any year, receipts on account of sale are less than fifty per cent. of the total receipts, -

(a) then to the extent that dealer is a hotel or club, not being covered under composition scheme, the dealer shall be entitled to claim set-off only,-

(i) on the purchases effected in that year corresponding to the food and drinks (whether alcoholic or not) which are served, supplied or, as the case may be, resold or sold, and

(ii) on the purchases of capital assets and consumables pertaining to the kitchens and sale, service or supply of the said food or drinks, and

(b) Dealer not a hotel or restaurant,

- Set-off only on those purchases effected in that year where the corresponding goods are sold or resold within six months of the date of purchase or are consigned within the said period, not by way of sale to another State, to oneself or ones agent or purchases of packing materials used for packing of such goods sold, resold or consigned:
- Proviso : Clause(b), not be applicable to the dealer who is a manufacturer of goods not being a dealer principally engaged in doing job work or labour work.

- Manufacturer shall be entitled to claim set-off on his purchases of plant and machinery which are treated as capital assets and purchases of parts, components and accessories of the said capital assets, and on purchases of consumables, stores and packing materials in respect of a period of three years starting from the end of the year containing the date of effect of the certificate of registration.

Explanation:- For the purposes of this sub-rule, "receipts" 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 the goods consigned not by way of sales to another State to oneself or one's agent.

(7A) Claimant dealer has purchased office equipment, furniture or fixtures and has treated them as capital assets, then Retention of 3% on the corresponding amount of set-off is calculated and the balance shall be allowed.

The above proviso is not applicable to dealer engaged in the business of transferring the right to use these goods.

(7B) Claimant dealer is holding a license for transmission or as the case may be, distribution of electricity under the Electricity Act, 2003 or is a generating company as defined in the said Act,

Then in respect of the periods starting on or after the 1st April 2005, *save as otherwise provided under sub-rule (1),*

Retention on the basis of under mentioned rates shall be applied to purchase price of the goods purchased including goods treated as capital assets by him for use in the generation, transmission, distribution of electricity.

- 4% (1st April 2005 to 31st March 2007)
- 3% (1st April 2007 to 31st May 2008)
- 2% 1st June 2008 Onwards.

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(8) Retention to be applied as and when the eventuality/ contingencies specified in this rule occurs and claim only the balance amount as set-off.

- In the event , the retention when applied exceeds the said amount of set-off available in respect of that period,
- The amount equal to the excess is required to be paid as tax in respect of the said period.

Rule 53(9)(b): For reducing set-off under,- Rule 53(2) ,

- When purchase price is not ascertainable, the ratio of the sale price of the taxable goods and tax free goods to be taken
- Where there is no sale price, the value of the taxable goods and tax free goods shall be applied; and
- In 53(3), the ratio of the value of the goods inclusive of any duty of Excise as it appears in the books of accounts of the goods dispatched as aforesaid and the sale price of other goods shall be applied for deciding the corresponding purchase price.

- (10): Dealer being executing contract of processing of textiles,
- then set-off on the goods purchased on or after 1st April 2005, shall be allowed to the extent of tax paid on purchases in excess of the amount calculated as under;
 - 2% 1st June 2008 Onwards
 - For the goods in respect of which property is transferred during the said processing, and
 - For packing materials used for packing of the said textiles,
 - For other purchases including purchases of capital assets as permissible under other rules
 - Above rule introduced on 23rd October 2008 with retrospective effect from 1st April 2005.

53(11): This sub rule (11) was added by Notification No. VAT-1516/c.r.53/Taxation-1, dt.01.04.2016, w.e.f. 01-04-2016

- (a) If the claimant dealer is engaged in the business of transferring the right to use (whether or not for a specified period) for any purpose, of passenger motor vehicles, then he shall be entitled to claim set-off of tax paid on the purchase of such motor vehicles only to the extent of tax payable on such transfer of right to use;
- (b) The set off as determined under clause (a) in respect of the such vehicles shall be claimed in the period in which right to use has been transferred by the claimant dealer.

- Considered a case where the motor car has been purchased in March 2016 and the transfer of right to use has not been made till the date. Whether the set-off paid on the purchase of such motor car would be available to the claimant dealer in March 2016?
- In the above case the motor car is given for 2 years under contract for right to use from April 2016 to March 2018, in this case the claimant would be allowed to claim the set-off completely in the month of April 2016 when the right is transferred or on each payment of installment?

RULE 54: NON-ADMISSIBILITY OF SET-OFF:

No set-off under any rule shall be admissible in respect of, -

(a) purchases of motor vehicles (being passenger vehicles) which are treated by the claimant dealer as capital assets and parts, components and accessories (irrespective of whether it is treated as capital asset or not).

The above rule does not apply to the dealer engaged in the business of transferring the right to use (whether or not for a specified period).

(b) No Set off on purchases of motor spirits as notified under section 41(4) .

The above rule is not applicable to:

Sales/ Branch transfer of motor spirits by the dealer

(c) No set off on purchase of crude oil as described in section 14 of the Central Sales Tax Act, 1956," when used by an oil refinery for refining";

(d) No Set off on purchase of consumables or of goods treated as capital assets by the claimant dealer where the dealer is principally engaged in doing job work or labour work even if in the course of labour or job work scrap goods obtained are sold.

Exceptions:

Dealer engaged in the business of manufacturing of goods for sale by him

(e) any purchase made by any dealer to whom an Entitlement Certificate (except the Entitlement Certificate under the New Package Scheme of Incentive for Tourism Projects - 1999) to claim incentives by way of exemption from tax or deferment of tax has been granted, being purchases of raw materials as defined in rule 80

(f) any purchase of goods of incorporeal or intangible nature other than,

(i) import license, export permit or license or quota, credit of duty entitlement pass book, SIM cards, Duty free Replenishment Certificate

(ii) software in the hands of a dealer who is trading in software;

(iii) Copyright which is resold within twelve months of the date of purchase.

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(g) No Set off on purchases made from a works contractor if the contract *results in immovable property*

The above does not apply if the WCT purchase pertains to plant and machinery;

(h) purchases of any goods by a dealer, the property in which is not transferred [whether as goods or in some other form] to any other person, which are used in the *erection of immovable property* other than plant and machinery ;

(i) Purchase (od liquor covered under entries 1,2 and 3 or, as the case may be, Wine, as covered under entry 3A) of Schedule “D” appended to the Act except when the said goods are,

(i) sold in the course of inter-State trade or commerce or in the course of export out of the territory of India or are sent, not by reason of sale, outside the State to any place within India by the claimant dealer to his own place of business, or the place of business of an agent or where the claimant dealer is a commission agent, to the place of business of his principal; and

(ii) sold from customs bond to foreign going ships and aircrafts.]

(j) Purchases made on or after the 20th June 2006 of mandap, tarpaulin, pandal, shamiana, decoration of such mandap, pandal or shamiana, and furniture, fixtures, lights and light fittings, floor coverings, utensils and other articles ordinarily used alongwith a mandap, pandal or shamiana if the purchasing dealer has opted for composition of tax under sub-section (4) of section 42.

(k) No set-off is available on the purchases made on or after 1st April 2005 by a hotelier on:

Purchase treated as capital assets and

Which do not pertain to the supply by way of or as part of service or in any other manner, being food or any other article for human consumption or any drink [whether or not intoxicating] where such supply or service is made or given for cash, deferred payment or other valuable consideration.

(1) purchases of office equipment, furniture, fixture and electrical installation by a claimant dealer during the period commencing from the 1st April 2005 and ending on the 7th September 2006 if such goods purchased are treated by the claimant dealer as capital assets .

Exception: The claimant dealer not engaged in the business of transferring the right to use the said goods (whether or not for a specified period) for any purpose.

RULE 55: CONDITION FOR GRANT OF SET-OFF OR REFUND AND ADJUSTMENT OF DRAWBACK, SET-OFF IN CERTAIN CIRCUMSTANCES:

(1) No setoff or refund under these rules shall be granted to a dealer in respect of any amount of tax recovered from him on the purchase of any goods or paid by him or in respect of entry of any goods, —

(a) unless the goods are purchased or entry is effected on or after the 1st April of the year in which the dealer has obtained registration and, —

(1) the goods are treated as capital assets by the dealer and have not been sold before the date of effect of registration, or

(2) the goods are not treated as capital assets and have not been sold or disposed of before the date of effect of registration, or

(3) the goods are not treated as capital assets and have been used or consumed in manufacture and the manufactured goods have not been sold before the date of effect of registration, or

(4) the dealer was a registered dealer at the time of such purchase or entry]

(b) unless such dealer has,—

(i) maintained a true account in chronological order of all the purchases of goods made by him on or after the appointed day, showing the following details:—

(A) the date on which the goods were purchased;

(B) the name of the selling dealer and his registration certificate number, if registered, from whom the goods are purchased, and the description of the goods;

(C) the number of the tax invoice under which they were purchased;

(D) the purchase price of the goods;

(E) [the amount of tax], if any, recovered from him by the selling dealer;

(ii) in the case of goods in respect of the purchase of which tax has been [recovered from the claimant dealer or is payable by him as purchase tax under an earlier law, maintained a true account in chronological order of the goods so purchased and held by him on the appointed day, which shall show the particulars mentioned at (A) to (E) above, and the amount of tax recovered under each of the earlier laws separately.

(2) The claimant dealer shall, if so required, produce before the Commissioner the original bill/invoice/cash memorandum relating to each purchase in respect of which the claim for setoff has been made in respect of purchase made before the appointed day, of any and a tax invoice in respect of any purchase made after the appointed day.

INTRICATE ISSUES IN ITC:

- M/s. SBM Ltd has incurred certain expenses in F.Y. 2013-14 which have been debited to Capital Work in Progress Account in the Balance Sheet. The said amount has been capitalised in subsequent year 2014-15.

- Whether the Company is eligible to claim set off on the VAT paid on such purchases which are neither debited to P & L A/c nor treated as Capital Asset but are termed separately as Capital Work in Progress.?

- M/s. Star International purchased gift items Worth Rs. 1,00,000 + VAT 12,500 from a big Departmental Store by making payment in Cash. It has obtained a Tax Invoice for the same, mentioning the tax amount separately. However the said Tax Invoice does not mention the name & address of the Purchasing Dealer.

- Whether the company would be entitled to claim set off on the said Tax Invoice?

- Mega Mart is selling taxable as well as tax-free goods. The goods are given to customers in carry bags (packing material) . During May'15 Taxable sales are Rs. 10 lacs and Taxfree sales are Rs.5 lacs. Value of Packing Material Purchased is Rs. 20,000/-.
- Whether retention would be applicable u/r 53(2b).
- What is the method of calculating retention.

- 53(9B)-Specifies the methodology for calculating the ratio u/r 53(2) and 53(3) whether the dealer can calculate ratio on quantities and not values as specified in the rule.

In case goods transferred to Branch, set-off is required to be reduced. When such goods are returned whether we can again claim back the reduced set-off ? If yes whether it is necessary that goods returned must be within six months of transfer ?

- ☞ In which period return such set-off can be claimed back – whether in the return when the goods are transferred or in the return period when the goods are returned and accounted in the books of account.

- ABC manufactures tax-free goods. Furnace Oil is used in the manufacturing process. 50% of the manufactured goods are transferred to branches outside the state. Whether retention for the goods used will be @3% u/r 53(1) or @2% u/r 53(2a).

- Whether retention u/r 53(3) @ 2% will also be applicable ?

- Q M/s. KPPL is engaged in the work of Thermal Insulation. It undertakes Works Contract jobs as well as pure labour jobs.
- WCT Jobs Rs. 2 Crore + VAT @ 12.5% on 75% Value
 - Labour Jobs Rs. 3 Crore + Service Tax @ 14%

 - The Co. is discharging its VAT Liability on its WCT Bills by claiming 25% Adhoc deductions U/R 58(2) and claiming Full Set off on the materials purchased including purchases of various tools and tackles, handgloves, wire ropes, safety helmets, scaffolding pipes etc. Is the Co. entitled for full set off on all the above purchases ?

- Q Whether works contractor who transfer a property in goods worth less than 50% of the contract value shall be hit by rule 53(6).

- Q What would be the point of time for claiming set-off u/r 53(6). Whether at the time of purchase or when the goods are sold within 6 months ?

Q Fitt N Trim is a company to which rule 53(6) applies. It purchases office equipment. Whether no set-off shall be allowed considering rule 53(6) or whether set-off is allowable after retention u/r 53(7A).

Q Whether set-off will be allowable on items debited to profit & loss account in respect a dealer who is processor of textiles

☞ Consider a case where dealer buys software, modifies the said software and then sells the said software under his own brand name. The software sold is considerably different in all respect then the one which is purchased can the dealer claim set-off on software purchase as a Trader. It is pertinent to note that under the excise law his activity is treated as manufacture and excise duty is charge. He is recognized as an STPI unit from where he exports and sells locally the manufactured of software.

- Q Trimutri Films has purchased copyright of a film for Rs One Crore plus Vat. Within a period of six month it sold the music rights of the films to T-series for a sum of Rs 50 lakhs. Whether set-off will be allowed on the whole of purchase value of Rs one crore.

- Q A telecommunication company has laid underground cables all over the state. These cables are the very item on which the entire communication services are rendered. Works contractors were given the job to lay the cables. The company capitalized the entire cost of laying the cable as Plant and Machinery. It therefore wants to claim set-off on the tax charged by the works contractors for laying the cables, which are capitalized as P&M.

Q M/s Honest Ltd has purchased goods worth Rs.10 lacs + MVAT 4% from M/s Fortune Ltd. in FY 2013-14. In month of Jun'14 M/s Honest Ltd. received Debit Notes from M/s Fortune Ltd. for FY 13-14 due to difference in tax rate. The tax rate charged by Fortune Ltd. in FY 2013-14 was wrongly charged @ 4% instead of 12.5% and debit note was raised for the difference in tax liability.

(a) Whether M/s Honest Ltd. will be able to claim set off due to the differential liability paid by it to Fortune Ltd. in Jun'14 ?

(b) In which year M/s Honest Ltd. would be eligible to claim the set off i.e in Mar'14 by revising the said return or in Jun'14 since the accounting is done in Jun'14 ?

- Whether set-off on goods destroyed in the floods of July 2005?
- Whether steam is fuel?
- Consider a situation whereby cotton coated fabrics is covered under schedule entry A-45. The total turnover of the manufacture of these tax free goods is say 700 crores. The goods exported are 80 crores. In this situation will the dealer be entitled to full set-off? Will there be any retention, if yes to what extent and how shall it be calculated?
- An exporter of fresh fruits buys cartons for packing of fresh fruits, which are to be exported. The question raised is whether retention is applicable on cartons Purchased?

- Whether retention will be applicable to Sales Promotion items purchased centrally at the head office and then transferred to all the branches across India?
- If a dealer purchases plywood and makes furniture and capitalizes the whole amount, whether retention under section 53(7A) would be applicable?

- Consider these situations to work out the ratios.

I Sales valued at Sales price Rs. 1000

Branch transfer valued at cost Rs. 100

[500 Qty. sold and 100 Qty. Branch Transferred]

II Sales valued at Sales price Rs. 1000

Branch transfer also valued at sales price Rs. 200

[500 Qty. sold and 100 Qty. Branch Transferred]

In the first situation the ratio to be applied for retention on purchases will be $100/1000=10\%$

In the second case it would be 20%.

If the Quantities are considered then in both cases retention ratio would be 20%.

The above examples are given to drive home the point that depending on the valuation of branch transfers the ratios will change and for arriving at correct ratios of retention, the two figures, for which the ratios are taken, have to be absolutely comparable. We can compare oranges with oranges and not apples with oranges. Thus care needs to be taken while working out ratios for retention.

- A dealer is a works contractor and uses welding electrodes in a Fabrication work in which tax is paid by composition. Whether retention would be applicable on the electrodes?

- Mr. Contractor has bagged a contract worth Rs 10 lakhs. Mr. contractor executed contract worth Rs 5 lakhs & balance contract is sub-contracted to Mr. sub-contractor for Rs 400000/- . Mr. Sub-contractor does the works & levies Rs 16,000/- as tax on bill given to Mr. Contractor. Mr. Contractor wants to recover Rs. 16,000/- tax from the contractee and claim the amount paid to Mr. Sub-contractor as set-off. Mr. Contractor seeks our advice.

- Whether interest and dividend will from part of receipts?

- A dockyard has obtained an order to build a ship. It takes 2 ½ years to build a ship. Purchases are made and ship is build in a period of 2 years whether set-off would be available on all the purchases made in the first and second years.

- Whether set off is available in respect of components parts and accessories of passenger vehicle which are not capitalized, but the purchases of the same are debited to Profit and loss a/c?

- Clause (b) of rule 54 disallows notified motor spirits if they are not resold locally, interstate or exported. Consider this peculiar situation. Mahindra Logan whenever it is sold from factory premises is sold with 10 liters of petrol in it. Can it be argued to say that since the price of the car includes the cost of 10 liters petrol, the petrol being motor spirit is resold?

- M/s Trimurti metals is doing labour job for a steel factory. The process involves cleaning the steel material with chemicals, bending the same to the required angle and cutting off the excess deposits from the corner, which is sold off as scrap. The process undertaken by them is a manufacturing process u/s 2 (f) of the central excise. The cenvat credit of duty paid on material coming for job work is taken and excise of tax charged on the completed work on removal of goods. The bill will consist of conversion charges plus the excise duty. Whether the dealer can be termed to be “principally engaged in doing job work or labour Work”

- Mr. Dilip Chabbria is a car design specialist. He modifies the cars to special designer cars. He purchases design software for his use, whether he will be entitled to set-off on the car design software?

- Consider a case where a dealer buys software, modifies the said software and then sells the said software under his own brand name. The software sold is considerably different in all respects than the one which is purchased. Can the dealer claim set-off on software purchase as a trader? It is pertinent to note that under the excise law his activity is treated as manufacture and excise duty is chargeable. He is recognized as an STPI unit from where he exports and sells locally the manufactured software.

- When a dealer purchases music rights and makes CDs & DVDs for sale whether setoff of the tax paid on purchases of music right would be allowed?
- How can one define the term “results in immovable property” as mentioned in clause(g) of rule 54?
- An electrical contract is granted for entire factory wiring & for wiring Plant & Machinery. The company wants to claim set-off of the tax charged by the contractor whether it would be eligible?

- Consider a painting contract given for an existing building. Whether set-off of taxes paid to contractor will be disallowed u/r 54 (g)?

- The query which regularly comes is, whether generator set purchased for a hotel is eligible for set-off?

- Consider a situation where a small restaurant is there and on the outer side of the restaurant a counter is there for sale of sweetmeats. Does the dealer have an option to pay tax on the sale of food within the restaurant on composition method and pay tax on sale of sweetmeats in the normal legal method?

- A duty free shop is located at the international Airport Mumbai; they are selling liquor under license FL II. They have purchased liquor locally and paid vat on the same. Whether they would be entitled to claim set-off?

- A vat dealer sold Industrial Input covered by schedule entry C-52 by charging Vat @ 12.5% in a Tax Invoice. Whether the buyer shall be entitled to set-off on tax paid on purchase?

- Whether rules 53 and 54 would be applicable to SEZ dealers covered by sec. 8(3)?

- M/s Narayan Ltd. Purchased office equipments in Mumbai and then after a few months transferred the same to their branch office at Daman. What would be the position of set-off.
- In the leasing Industry, the purchaser is always asked to bill to lessee a/c Lessor.

HANUMAN MOTORS
Ayodhya Nagar
Maharashtra

Billed To.
M/s. Vishnu Industries
Gopal Industrial Estate
Wadala, Mumbai

Account: Kuber Bank

The registration book of the vehicle will also have the name of Vishnu Industries The name of bank will only appear in the book as a hypothecator. Given this situation can the bank claim set-off on the above bill?

CA VIKRAM D MEHTA

Thank You

Presented by

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