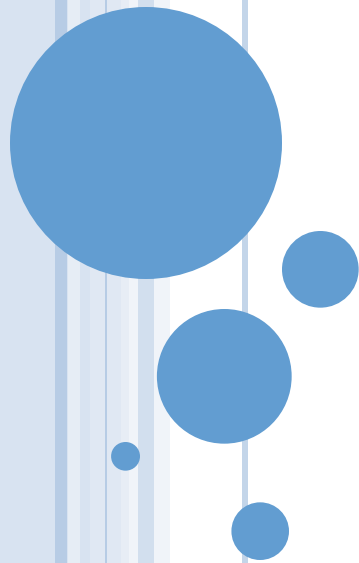


DETERMINATION OF TURNOVER OF SALES AND PURCHASES



- By CA Yash K. Verma

NEED FOR DETERMINING TURNOVER

- **CERTIFICATION IN FORM 704:**

- In Part 1 (Audit report and Certification), auditor in point 2B(e) certifies that “the adjustment to turnover of sales and or purchases is based on entries made in the books of accounts during the period under Audit and same are supported by necessary documents.”
- The auditor further certifies in point 2B(f) that “ the deductions claimed from gross turnover of sales and other adjustments thereto including deduction on account of goods return, discounts etc are in conformity with the Act.

A	B	C	D	E	F	G	H	I	J
		Annexure-I	<input type="checkbox"/>	Annexure-J_1	<input type="checkbox"/>	Annexure-J_2	<input type="checkbox"/>		
				Annexure-J_5	<input type="checkbox"/>	Annexure-J_6	<input type="checkbox"/>	Annexure-K	<input type="checkbox"/>
c)	<p>The books of account and other sales tax related records and registers maintained by the dealer alongwith sales and purchase invoices as also Cash Memos and other necessary documents are sufficient for computation of the tax liability under the MVAT Act and the CST Act and the gross turnover of sales and purchases, determined by us, includes all the transactions of sales and purchases concluded during the period under audit.</p>								
d)	<p>on the basis of an information available on the website of the department the period under audit involves no issue in the case of this dealer in which a decision against the State Government or the Commissioner was delivered by the Tribunal and the Reference and/or Appeal therein is pending before appropriate forum except detailed in table 7 herein below, if applicable.</p>								
e)	<p>The adjustment to turnover of sales and or purchases is based on entries made in the books of account during the period under Audit and same are supported by necessary documents.</p>								
f)	<p>The deductions claimed from the gross turnover of sales and other adjustments thereto including deduction on account of goods return, adjustments on account of discounts as also debit/credit notes issued or received on account of other reasons, are supported by necessary documents and are in conformity with the provisions of the relevant Act.</p>								
g)	<p>Considering the schedule and entry wise classification of goods sold, classification of exempted sales, sales at reduced rates are correct. The tax leviable on sales is properly computed by applying applicable rate of tax and/or composition tax.</p>								



- **DISCLOSURE IN FORM 704**

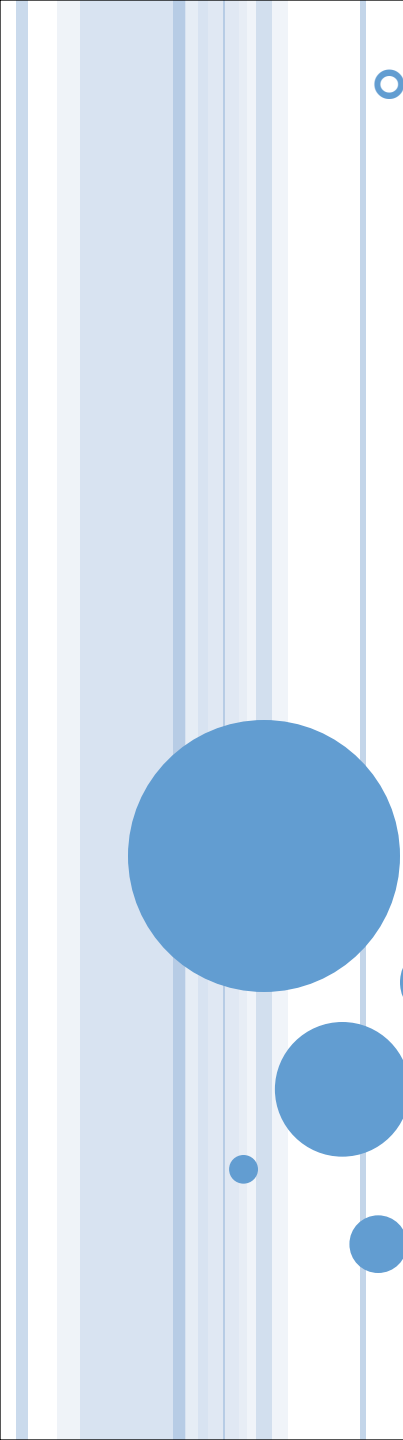
- Some of the important places where turnover of sales and purchases needs to be shown in Form 704 are as follows:
 - Part 1 – Table 2 – Gross Turnover of Sales as determined under Audit
 - Part 3 – Relevant Schedule- Computation of Net turnover of sales and purchases as per Audit.

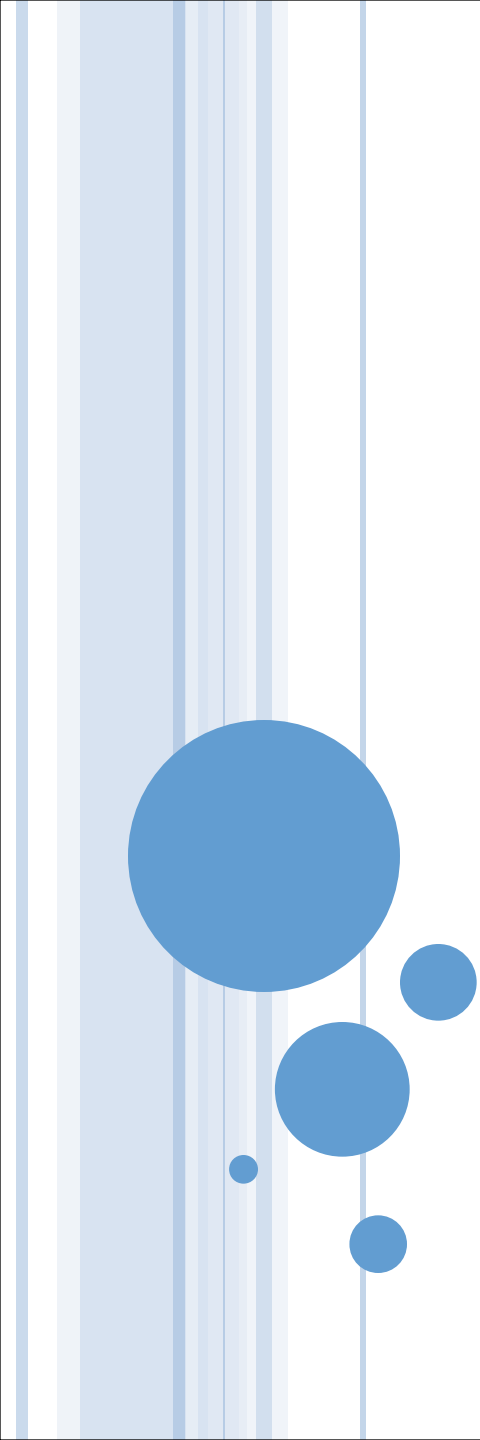
A	B	C	D	E	F
2	PART-3 SCHEDULE-I				Applicable
3	TIN		PERIOD		TO
4	1)	Computation of Net Turn-Over of Sales liable to tax			
5		Particulars	As per return	As per Audit	Dif
6			(Rs.)	(Rs.)	(Rs.)
7	1	2	3	4	
8	a)	Gross Turn-Over of Sales, including taxes as well as Turn-over of Non-Sales Transactions like Value of Branch Transfers/ Consignment Transfers and job work charges			
9	b)	Less: - Turn-Over of Sales (including taxes thereon) including inter-State Consignment Transfers and Branch Transfers Covered under Schedule II, III, IV or V			Enter Amount of GROSS TURNOVER OF SALES as determined by the Auditor
10	c)	Balance:- Turn-Over Considered under this Schedule (a-b)	0		
11	d)	Less:- Value of Goods Return (inclusive of tax), including reduction of sale price on account of rate difference and discount.			
12	e)	Less:- Net Tax amount (Tax included in sales shown in (a) above less Tax included in (b) and (d) above)			
13	f)	Less:- Value of Branch Transfers/ Consignment Transfers within the State if tax is to be paid by an Agent.			
	g)	Less:- Sales u/s 8 (1) i.e. Interstate Sales including Central Sales Tax, Sales in the course of Imports, Exports and value of Branch Transfers/			

Sales



- As defined in section 2(24) of MVAT Act, 2002 sale means a sale of goods made within the State for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge. These words sale, buy and purchase shall be construed with all their grammatical variations and cognate expressions.

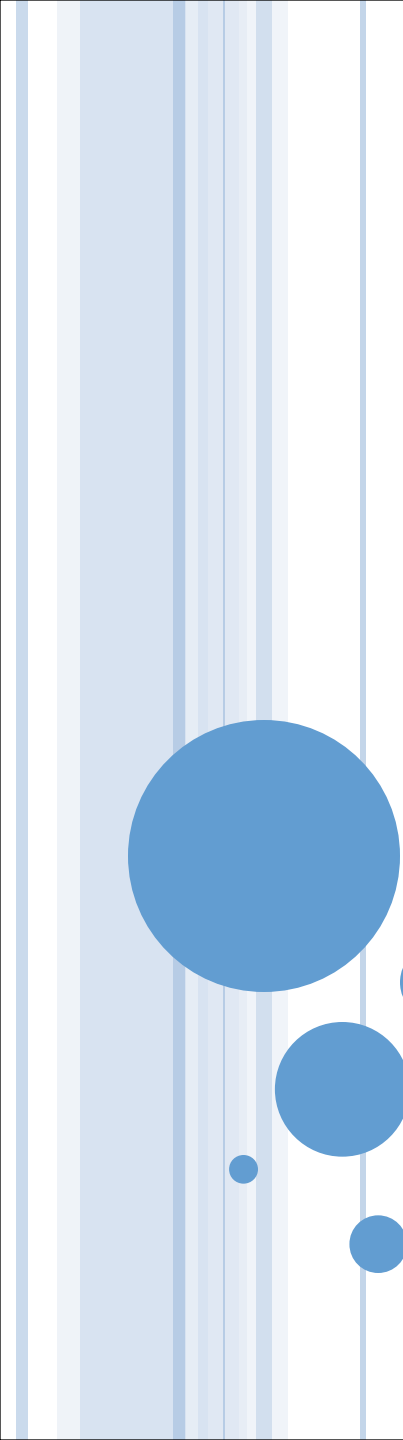
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- For the Purpose of above section, following types of transactions are also included in definition of sale.
 - The transfer of property in any goods, otherwise than in pursuance of a contract, for cash, deferred payment or other valuable consideration;
 - The transfer of property in goods (whether as goods or in some other form) involved in the execution of' a works contract including an agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property; (known as works contract transactions)

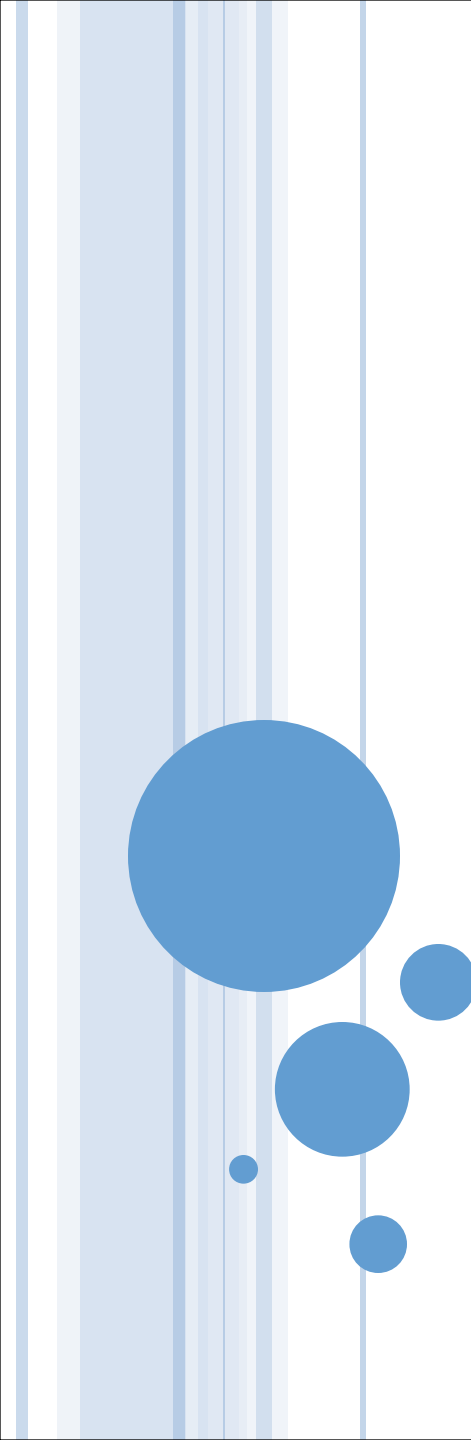
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- A delivery of goods on hire-purchase or any system of payment by instalments;
 - The transfer of the right to use any goods or any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration; (known as lease transactions)
 - The supply of goods by any association or body of persons incorporated or not, to a member thereof for valuable consideration;
 - The supply, by way of or as part of any service or in any other manner whatsoever, of goods, 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.

TURNOVER OF SALES



- “Turnover of sales” means the aggregate of the amounts of sale price received and receivable by a dealer in respect of any sale of goods made during a given period after deducting the amount of —
- (a) sale price, if any, refunded by the seller, to a purchaser, in respect of any goods purchased and returned by the purchaser within the prescribed period; and
- (b) deposit, if any, refunded in the prescribed period, by the seller to a purchaser in respect of any goods sold by the dealer.

- 
- *Explanation I:* In respect of goods delivered on hire purchase or any system of payment by installment or in respect of the transfer of the right to use any goods for any purpose (whether or not for a specified period) the amounts of sale price received or receivable during a given period shall mean the amounts received or as the case may be, due and payable during the said period
 - *Explanation III:* Where the registration certificate is cancelled, the amounts of sale price in respect of sales made before the date of the cancellation order, received or receivable after such date, shall be included in the turnover of sales during a given period.



INCLUDES	EXCLUDES
Freight, packing, forwarding and insurance charges	Cost of labour and services for Works Contracts
Works Contracts and Leases	Payments to sub-contractors in certain cases
Local, Inter-State and Export sales	Interest on Hire Purchase transactions
Branch Transfers outside the State of Maharashtra	Goods returns within 6 months from date of sale
Transit Sales u/s. 6(2) of CST Act	Credit Notes for reasons other than Goods Returns
TDS deducted by customer	
Sales of Capital Assets	
Miscellaneous disposals of goods	
Debit Notes for reasons other than Goods Returns	
Exempt Sales	

TURNOVER OF PURCHASES

- “Turnover of purchases” means the aggregate of the amounts of purchase price paid and payable by a dealer in respect of any purchase of goods made by him during a given period, after deducting the amount of,—
 - (a) purchase price, if any, refunded to the dealer by the seller in respect of any goods purchased from the seller and returned to him within the prescribed period; and
 - (b) deposit, if any, refunded in the prescribed period to the dealer by the seller, in respect of any goods purchased by the dealer.



- *Explanation I:*

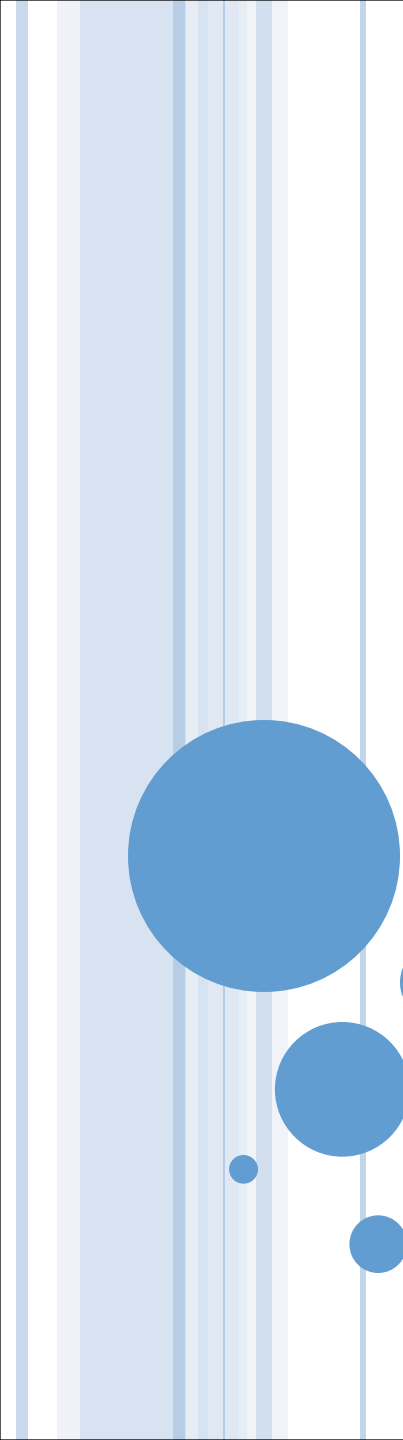
In respect of goods delivered on hire purchase or any system of payment by instalment or in respect of the transfer of the right to use any goods for any purpose (whether or not for a specified period) the amounts of purchase price paid or payable during a given period shall mean the amounts paid or, as the case may be, due and payable during the said Period.

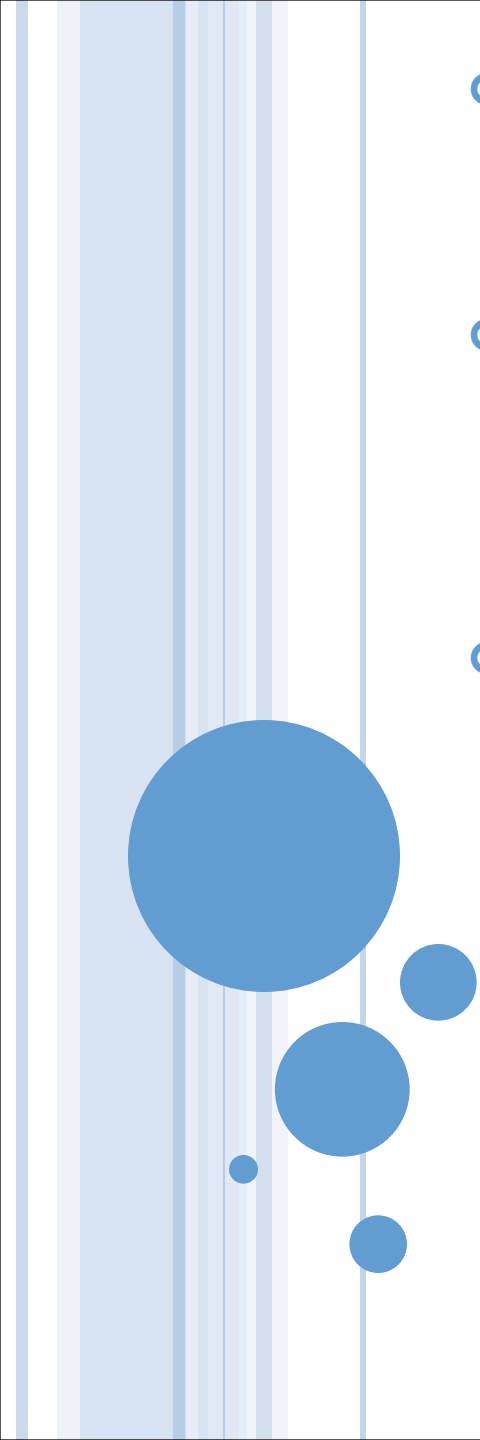
CALCULATION OF GROSS TURNOVER

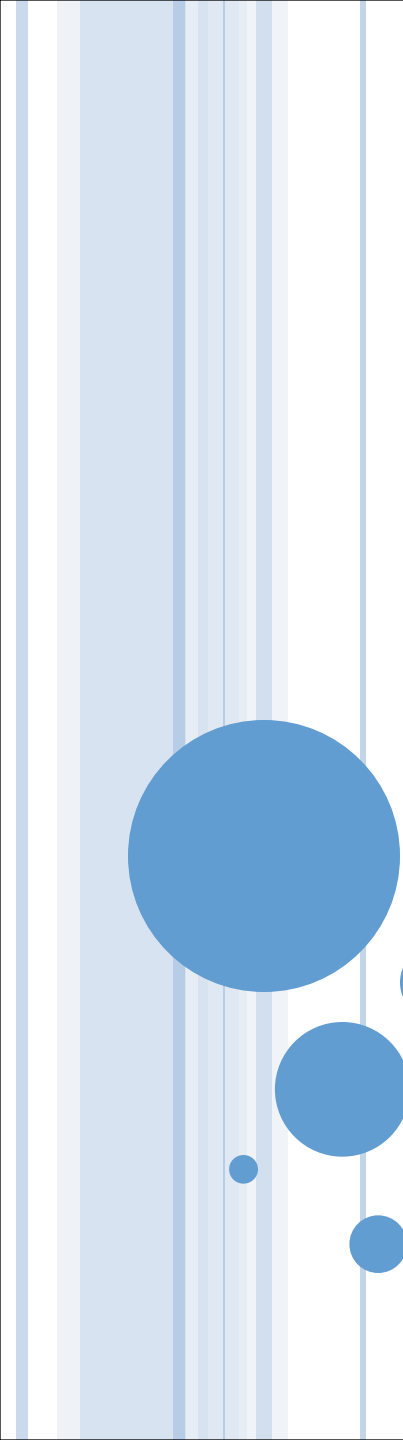
Particulars	Rs
Sale within State Taxable under MVAT Act	XXX
Add:-Inter State Sale	XXX
Add:- Sale in Course of Import and Export including penultimate export	XXX
Add:- Stock Transfer from within the State to Branches/agents in Other State	XXX
Add:- Excise Duty (Local and Central) and Custom Duty	XXX
Less:- MVAT/CST payable by the dealer .. (If already included)	XXX
Less:- Cost of Freight or delivery separately charged in the Invoice provided that the ownership of the goods is not transferred at the buyer's place	XXX
Less:- Cost of installation separately charged in the Invoice	XXX
GROSS TURNOVER	XXX

CRITICAL ISSUES

- Before the discussion on deemed sales we must be well known of the general facts of sale.
- Meaning of Sale:
- There are various definitions of the term “Sale” is generally specified in different laws and different State VAT acts. Hence we need to understand the basic concept behind the actual meaning of the term.
- Supreme Court in the case of “Gannon Drunkerley” has held that the meaning of the expression ‘sale of goods’ had the same meaning as per defined by the ‘Sale of goods act, 1930’.

- 
- Sale of goods act, 1930 defines sale as a contract where one person transfers or agrees to transfer his property in goods to another person for a price.
 - Elements of Sale:
 - Thus in the above mentioned definition these are the conditions which must be required to call a transaction as a simple sale.
 - There must be a contract between the parties. As per the Indian contract act, 1872 any agreement which is enforceable by law will be considered as a contract. Hence all the conditions should require which are necessary for the construction of an agreement i.e. free will of buyer and seller etc. This contract can be written, oral, express or implied.

- 
- There must be two distinct persons who may be either natural or artificial. A person can't make sell to himself.
 - There must be a transfer of property. Here the term transfer of property means all the rights and obligations should transfer from seller to buyer.
 - Transfer of property should be in goods. The meaning of goods as defined in the Sale of goods act, 1930 in which the relevant section 2(7) reads as goods means every kind of movable property other than actionable claims and money; and includes stock and shares, growing crops, grass, and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale

- 
- The meaning of price is defined in the Sale of goods act, 1930 which reads as money consideration for sale of goods. However many VAT Acts use the term ‘other valuable consideration’ instead of the term price. Supreme Court in the case of ‘Devidas Gopal Krishan’ has defined the term ‘other valuable consideration’ as Cash, Cheque, promissory note or equivalent to money. Thus anything which can be determined in money value would be covered under the term consideration.
 - Hence if any transaction which doesn’t satisfy any of the above mentioned conditions would not be considered as a sale.

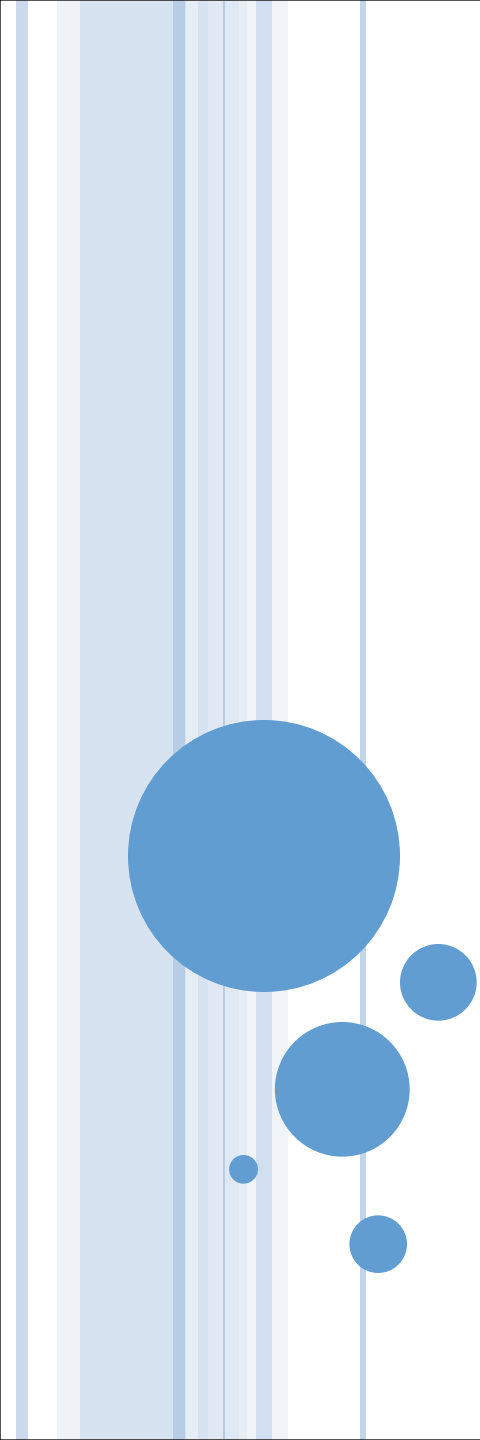
POWER TO IMPOSE TAX



- Article 245 of Indian Constitution, India 1950 provides that Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.
- However the subject matter on which the authorisation is provided to make laws is specified in

ARTICLE 246

- As per Article 246 the parliament has exclusive power to make laws with respect to any of the matter enumerated in List 1 in the Seventh Schedule and the Legislature of any State also, have power to make laws with respect to any of the matters enumerated in List III in the Seventh Schedule.

- 
- **Entry No. 92A** of List I read as ‘Taxes on Sale or purchase of goods other than newspaper, where such sale or purchase takes place in the course of Inter- State trade or commerce.’
 - **Entry No. 54** of List II read as ‘Taxes on Sale or purchase of goods other than newspaper, subject to the provision of entry 92A of List I.
 - Hence State government has power to impose tax on sale of goods within that state.

CONCEPT OF DEEMED SALES

- As per the definition of sale according to Sale of Goods Act, 1930 the following transactions shouldn't be considered as a sale –

- 1. Compulsory Acquisition for consideration:-

Here the free will of Seller is missing. Hence this transaction is not satisfying the basic condition for forming a contract for sale.

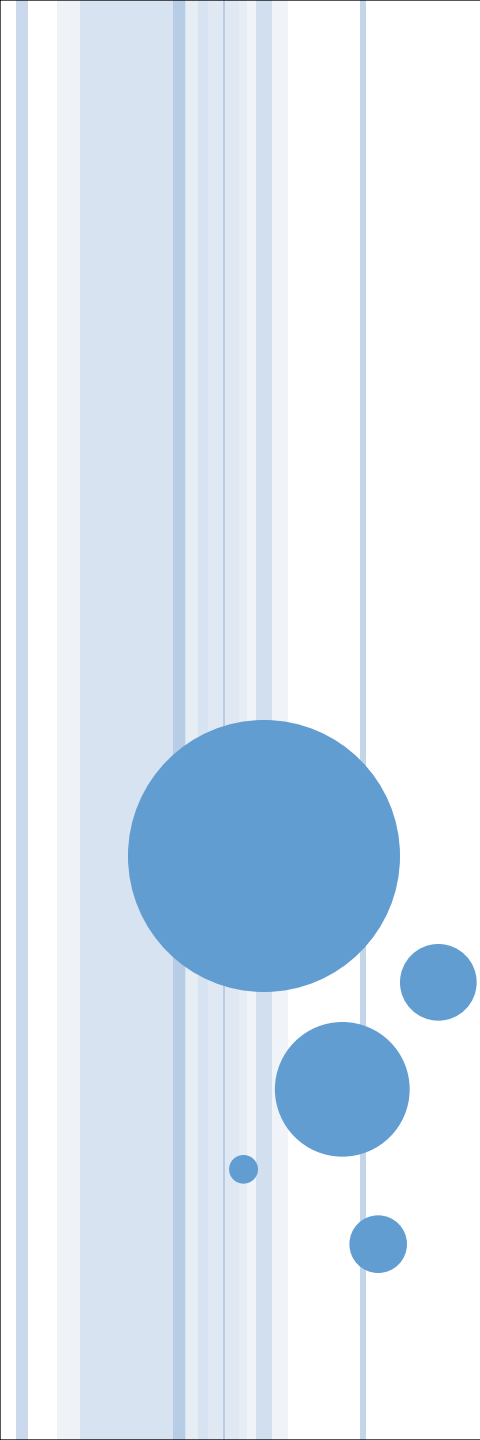


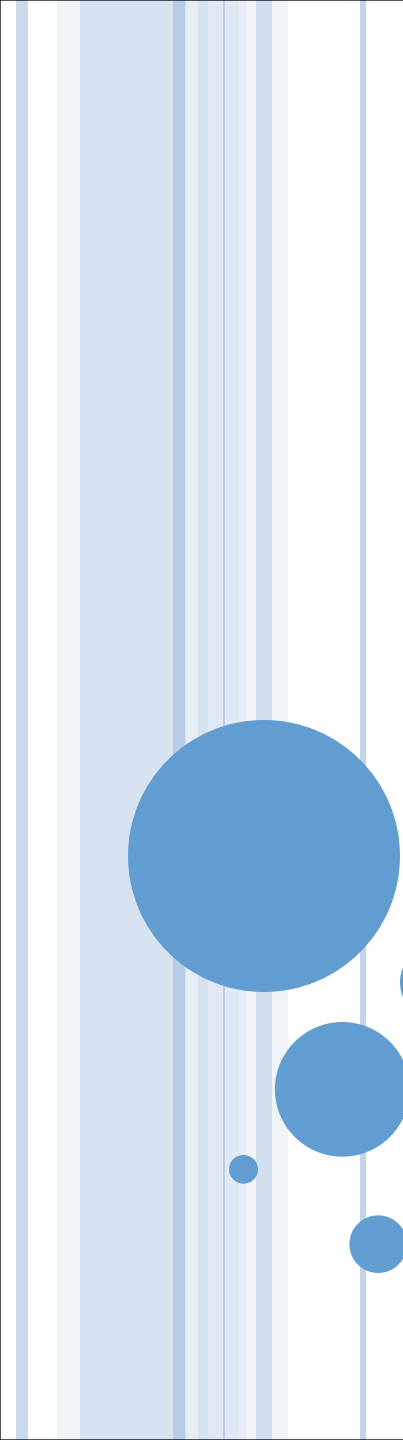
- 2. Works contract:-

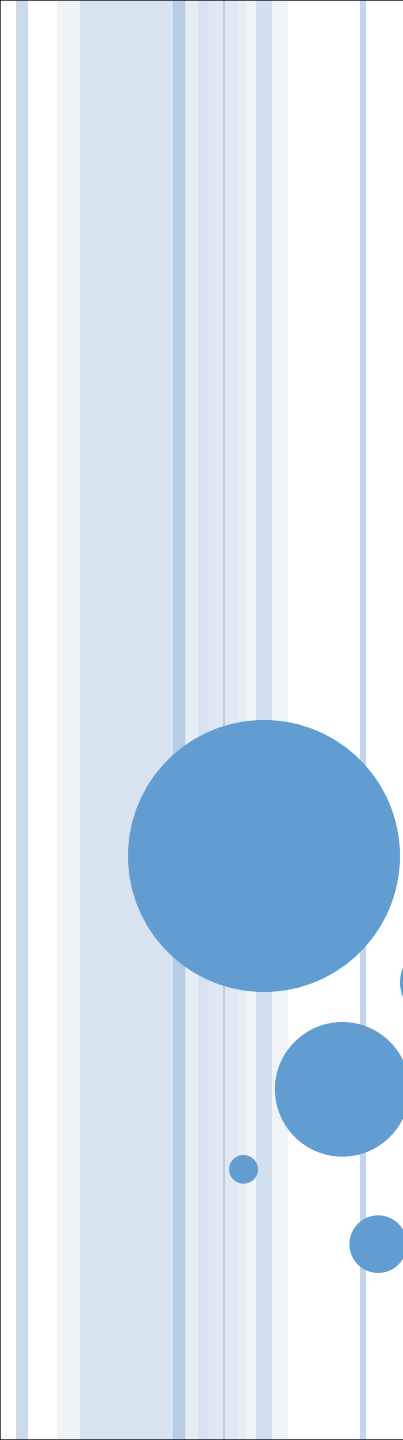
In case of Works contract goods are not transferred in same form. As condition of goods being transferred as goods is not satisfying, hence it shouldn't be considered as a simple sale.

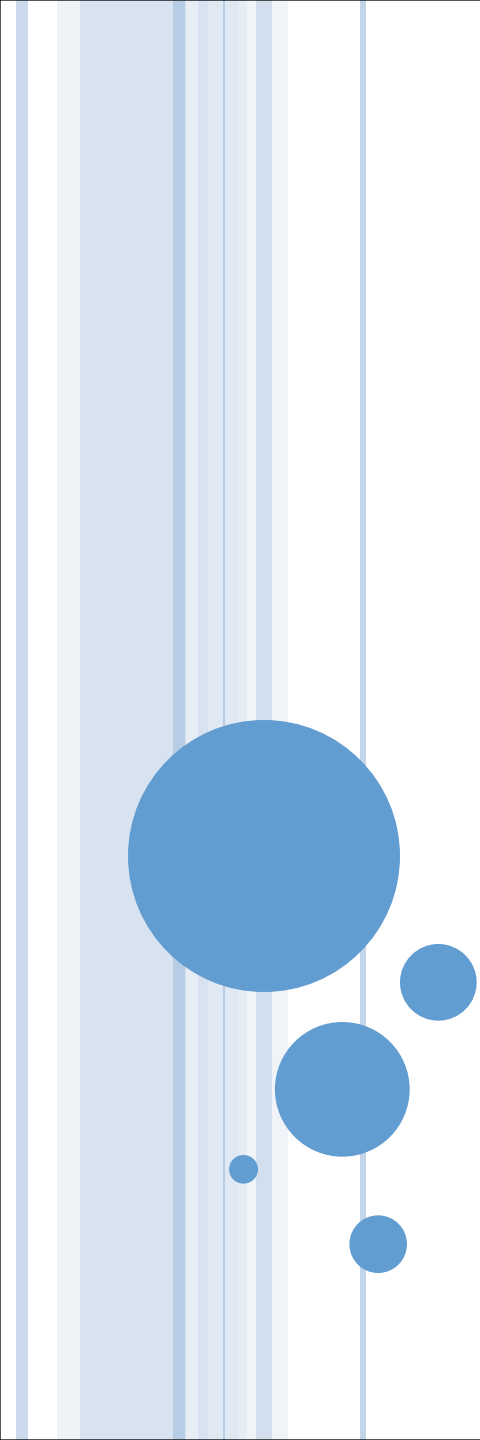
- 3. Hire Purchase Transaction:-

In a hire purchase agreement the goods are transferred from seller to buyer on the same day but the ownership of such goods will be transferred only after the payment of last instalment by the buyer. Hence it shouldn't be considered as a simple sale.

- 
- So the above mentioned transactions which though appear as sale are not sale as they are missing one of the essential elements of the sale
 - In order to bring such transaction in VAT net, concept of deemed sale is introduced by the amending
 - Constitution of India. Article 366(29A) of constitution cover cases of 'Deemed Sales'

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- Hence to charge tax on sale/ purchase of goods as existing in Entry no. 54 of List I of the Seventh Schedule was defined by Article 366(29A) of constitution to cover up taxes on all such transactions which read as
 - **Taxes on sale of purchase/goods shall include**
 - A tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration;
 - A tax on the transfer of property in goods (whether as goods or in some other form) invoked in the execution of a works contract;

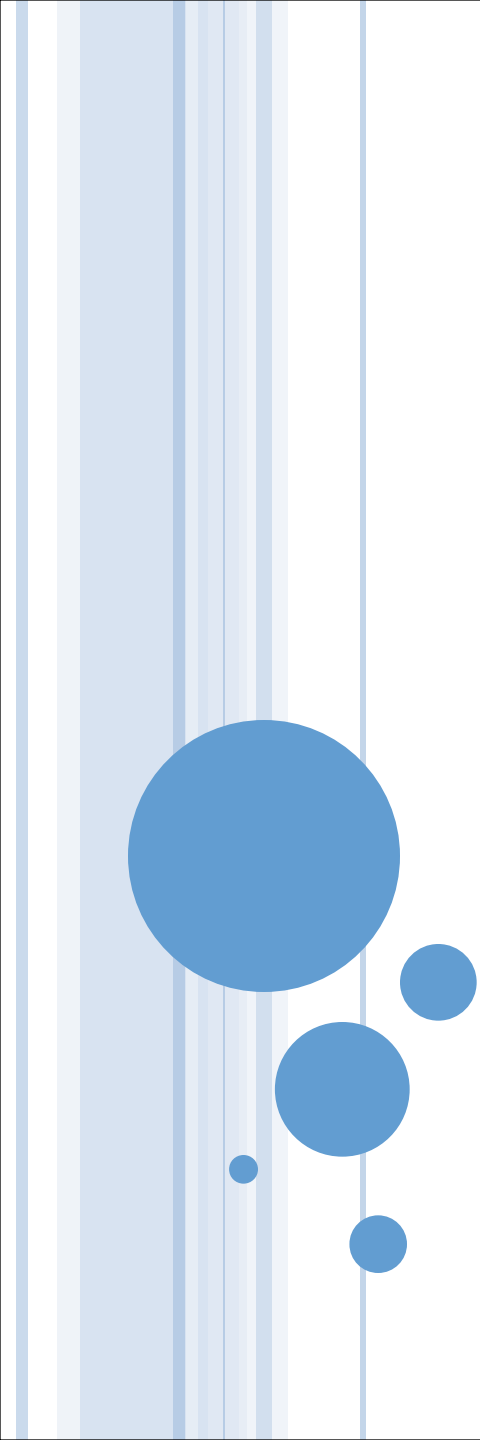
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- A tax on the delivery of goods on hire purchase or any system of payment by Installments;
 - A tax on the transfer of the right to use any goods for any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration;
 - A tax on the supply of goods by any unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration;

- 
- A tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration, and such transfer, delivery or supply of any goods shall be deemed to be a sale of those goods by the person making the transfer, delivery or supply and a purchase of those goods by the person to whom such transfer, delivery or supply is made
 - As per the constitution of India, 1950 here are some transactions which would be considered as deemed sales

WORKS CONTRACT

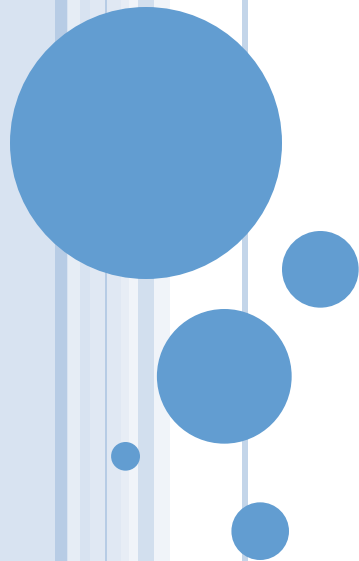


- Works contract means a contract for carrying out any work in which goods and services are provided compositely and the value of goods can't be identifiable separately.
- To ascertain a contract as a works contract following are the elements which should be required in a contract to consider it as a works contract

- 
- The existence of indivisible contract must be required. It means the consideration for value of goods and services can't be identifiable separately.
 - Goods must be involved in the execution of works contract. Goods must be incorporated in the works
 - The property in goods should pass during the course of execution of the works.

COMPUTATION OF TAXABLE TURNOVER IN WORKS CONTRACT

- The turnover arising in the execution of works contract the amount of taxable turnover means the total consideration paid by the dealer excluding the charges towards labour, service and other like charges.

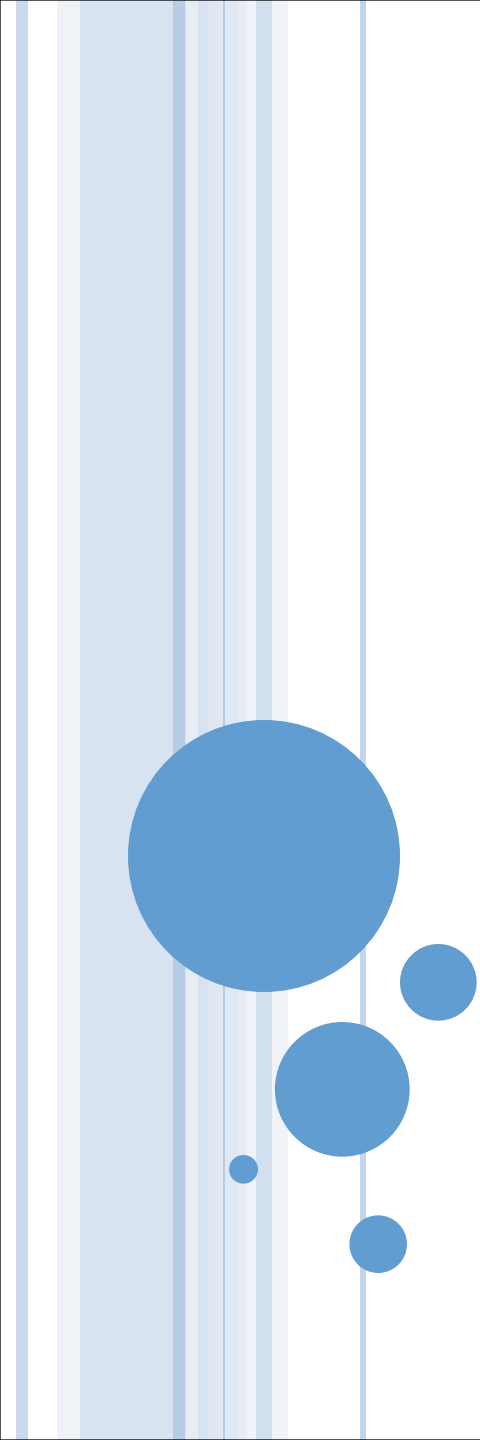


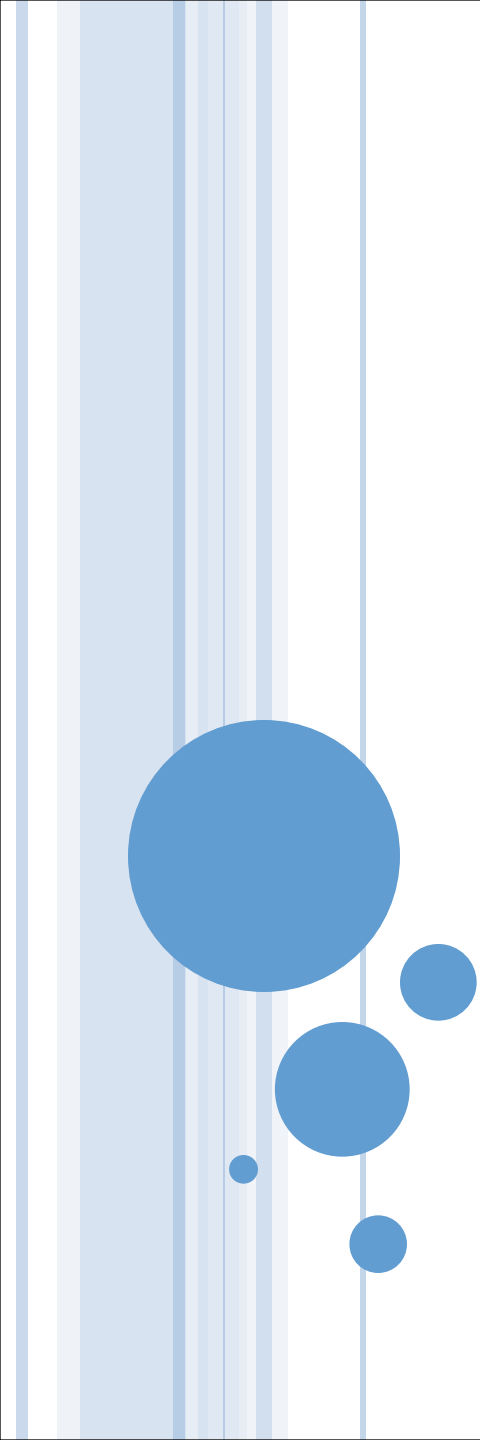
- Total consideration paid by the dealer

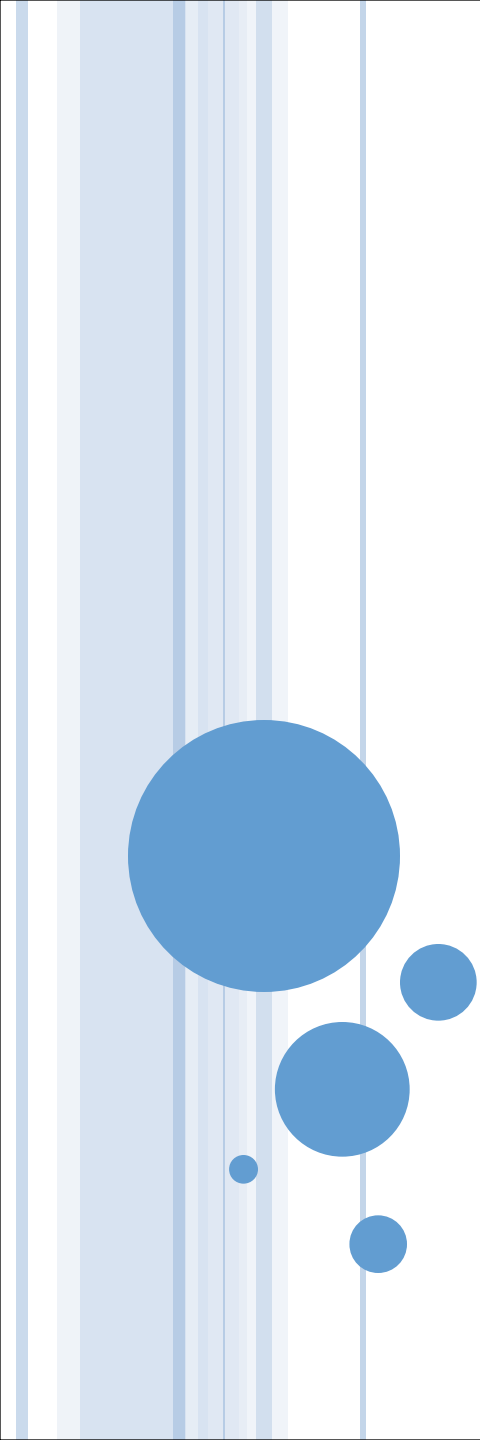
Less -

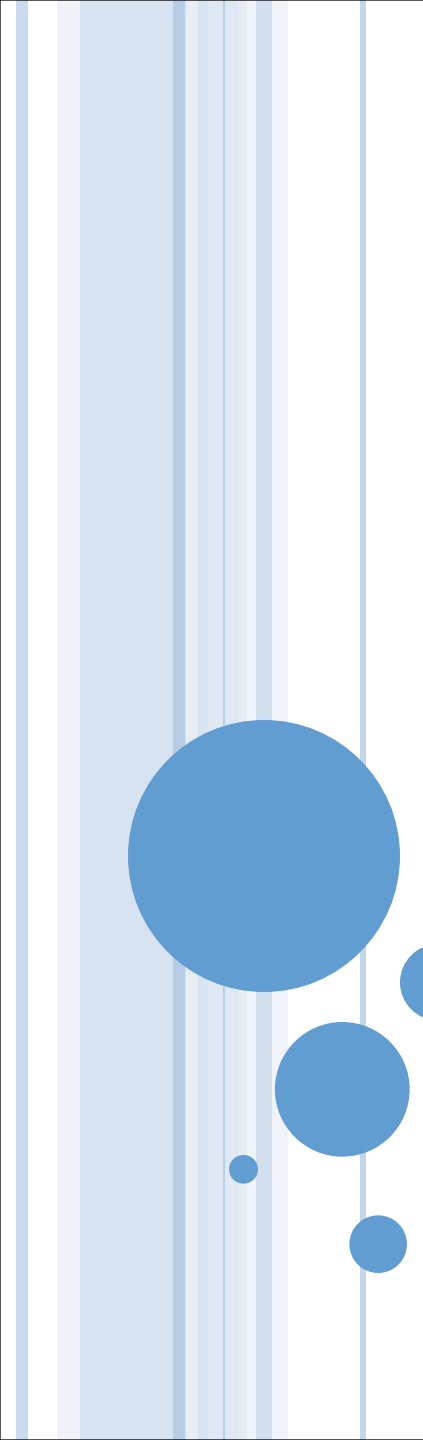
Charges towards labour, service and other like charges

= Taxable Turnover for the purpose of
IN SHORT
VAT

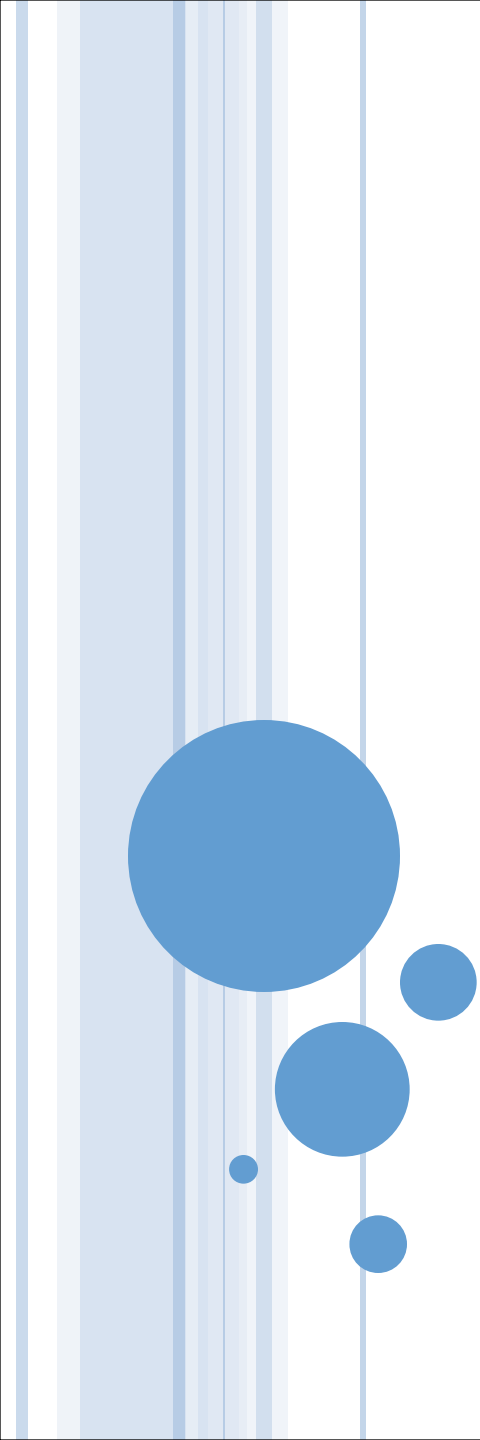
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- The Charges towards labour, service and other like charges shall include
 - Labour charges for execution of works
 - Charges for planning and architects fees;
 - Charges for obtaining on hire or otherwise machinery and tools used for the execution of the works contract;
 - Cost of consumables such as water, electricity, fuel, etc. used in the execution of the works contract the property in which is not transferred in the course of execution of a works contract

- 
- Cost of establishment of the contractor including cost of marketing, finance expenses and securities deposits to the extent it is relatable to supply of labour and services
 - Other similar expenses relatable to supply of labour and services;
 - Profits earned by the contractor to the extent it is relatable to supply of labour and services subject to furnishing of a profit and loss account of the works sites.

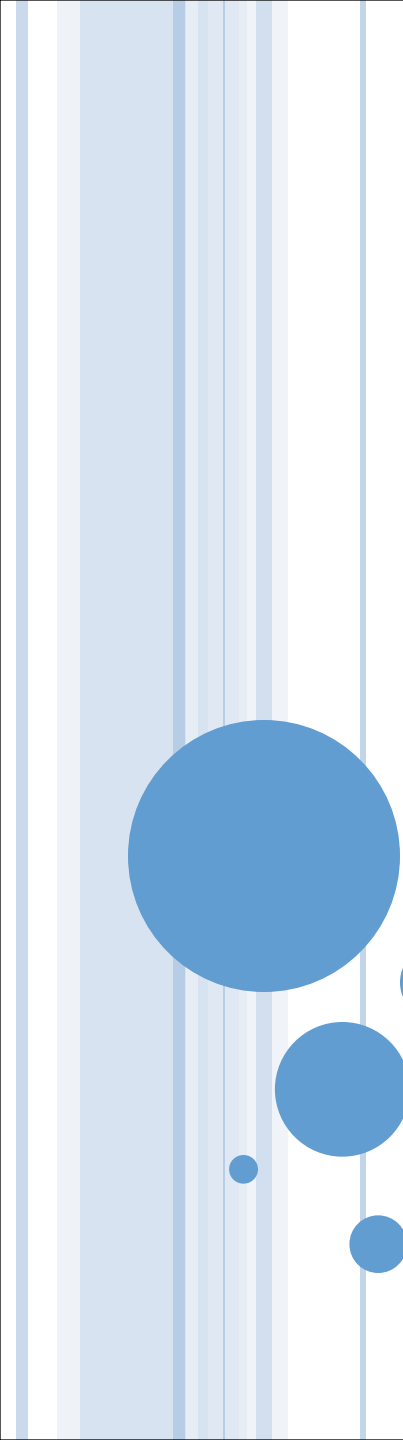
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- If these charges can't be ascertained by the books of accounts of the contractor then a **specified percentage** of total consideration for these like charges is fixed in different VAT Laws.



Sr No	Type of Works Contract	Amount to be deducted from works Contract
1	Installation of plant and machinery	15%
2	Installation of air conditioners and air coolers	10%
3	Installation of elevators (lifts) and escalators	15%
4	Fixing of marble slabs, polished granite stones and tiles (other than mosaic tiles)	25%
5	Civil works, like construction of buildings, bridges, roads, etc.	30%
6	Construction of railway coaches or under-carriages supplied by Railways	30%

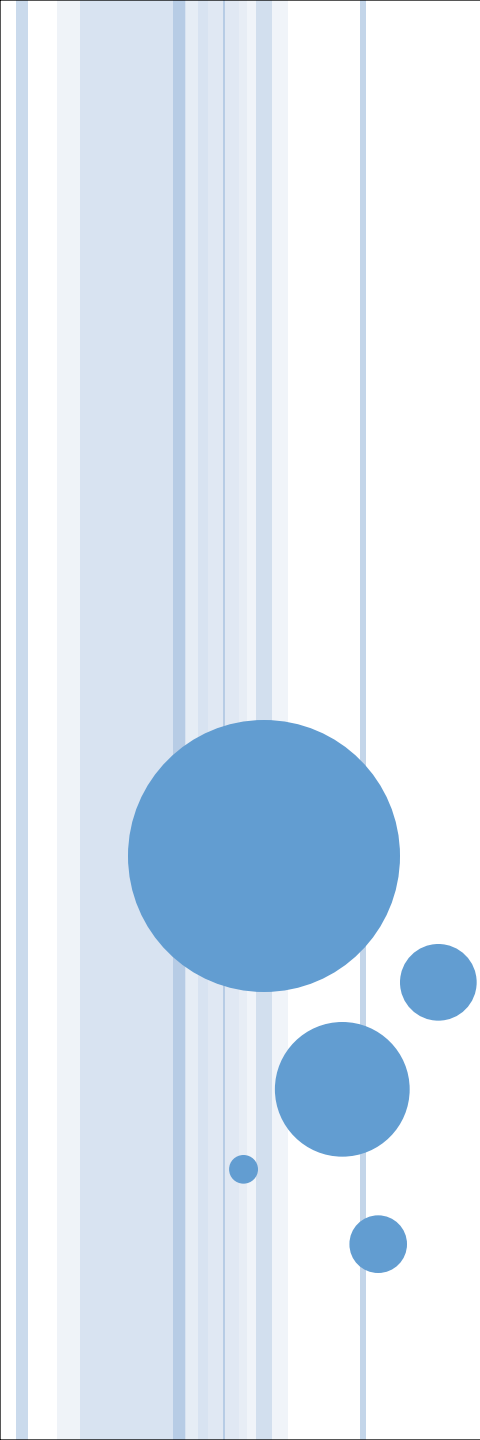


7	Ship and boat building including construction of barges, ferries, tugs, trawlers and dredgers	20%
8	Fixing of sanitary fittings for plumbing, drainage and the like	15%
9	Painting and polishing	20%
10	Construction of bodies of motor vehicles and construction of trucks	20%
11	Laying of pipes	20%
12	Tyre re-treading	40%
13	Dyeing and printing of textiles	40%
14	Any other works contract	20%

- 
- Section 42(3) provides for a Works Contract Composition Scheme, whereby a dealer, at his option, may choose to pay tax **@ 5% on the total contract value**. (After deducting therefrom the amount paid towards sub-contract, if any.)
 - This tax liability is reduced by the amount of taxes paid on purchases.

WORKS CONTRACT –

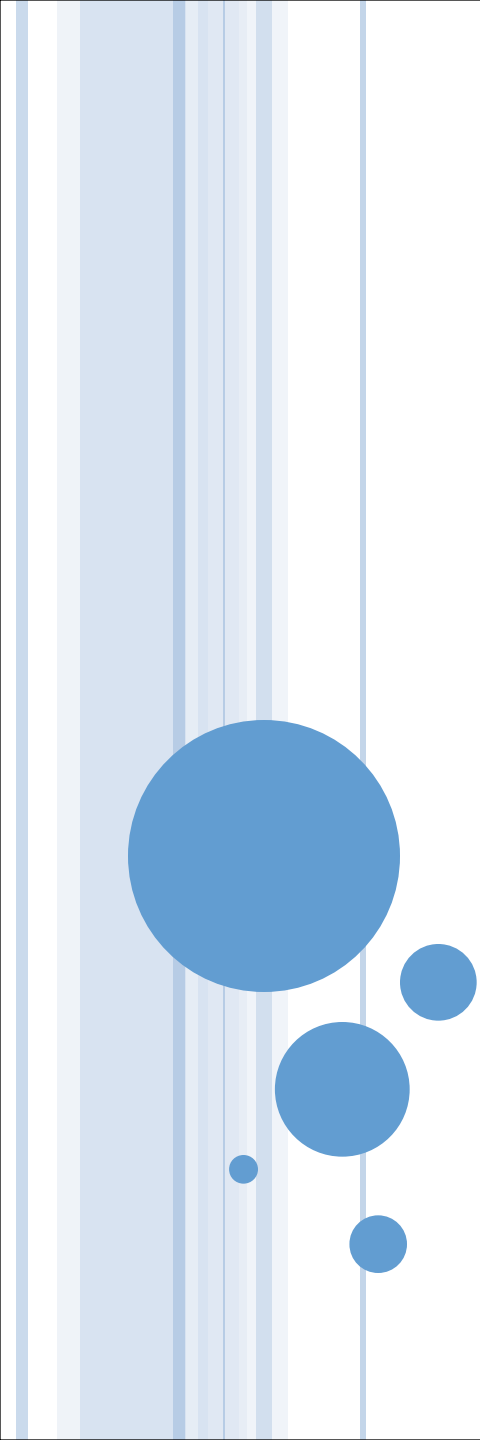
- Note: A dealer, executing works contract, whether chooses to pay tax u/r 58 or under the composition scheme, u/s 42(3), is entitled to issue tax invoice in respect of all such sales effected by him by way of execution of works contract, by charging tax separately in such tax invoice.

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- VAT to apply on under-construction flats sold
 - Apart from above 3 options, developer has the option to pay VAT u/s 42(3A) at 1% of agreement value.

COMPOSITION SCHEME -

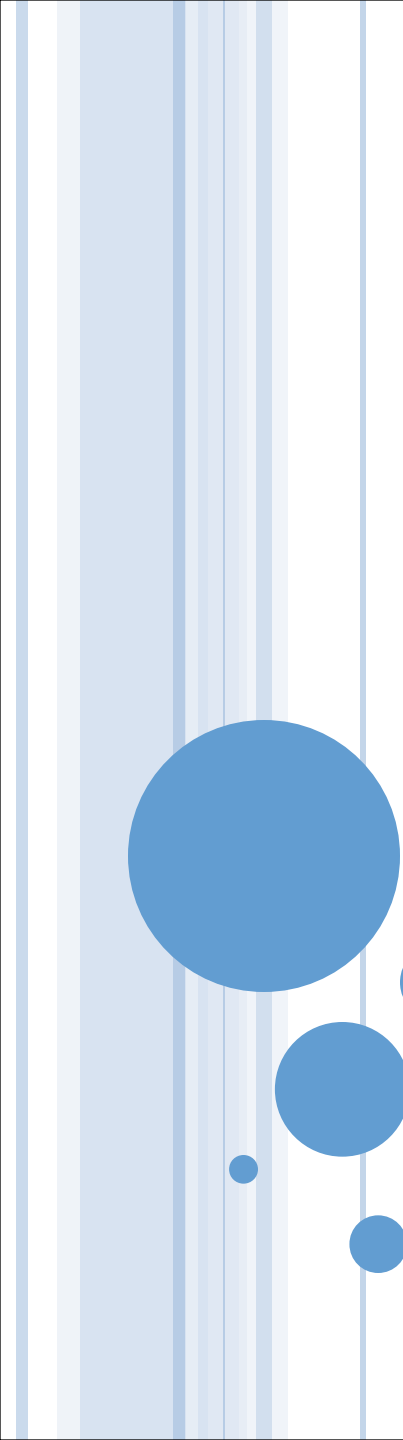
DEVELOPERS

- No tax credit and input tax credit is available.

- 
- In such transactions owner of the goods gives right to use the goods for a valuable consideration. However the ownership of the good is not transferred by the owner to the goods user. Hence there is no sale as there is no transfer of title. By way of constitutional amendment in Article 366(29), a transfer of right to use has been deemed to be a sale for sales tax purposes.

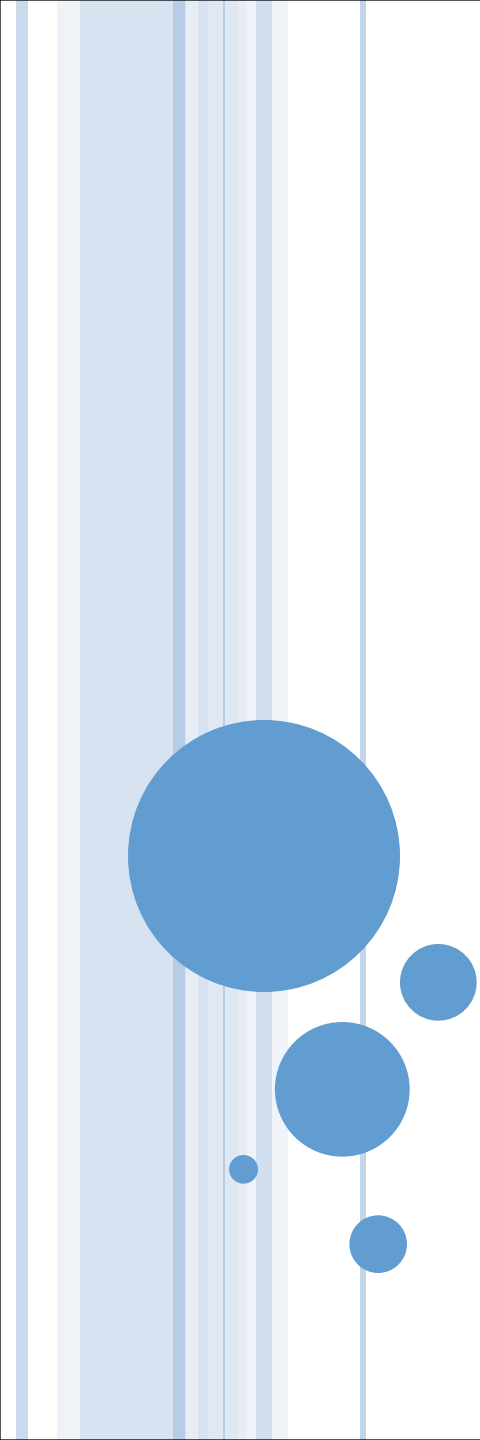
TRANSFER OF RIGHT TO USE
○ By this clause of the constitution tax could be levied on transactions of leasing such as leasing of films and hiring of goods for a period, even if there is no transfer of property.

- Supreme Court in 'BSNL' case has held that the essence of the expression 'Right' under Article

- 
- 366(29A) (d) shows that levy of tax is not on use of goods but the transfer of the right to use goods. In other words it means that right to use arises only on the transfer on such right and not merely on the actual delivery of the goods.
 - Hence the following attributes that should be required to constitute a transaction a transfer of right to use goods
 - There must be goods available for the delivery
 - The transferee should have a legal right to use that goods
 - During the period for which it is to be transferred, the owner cannot transfer the right to use same goods to others.

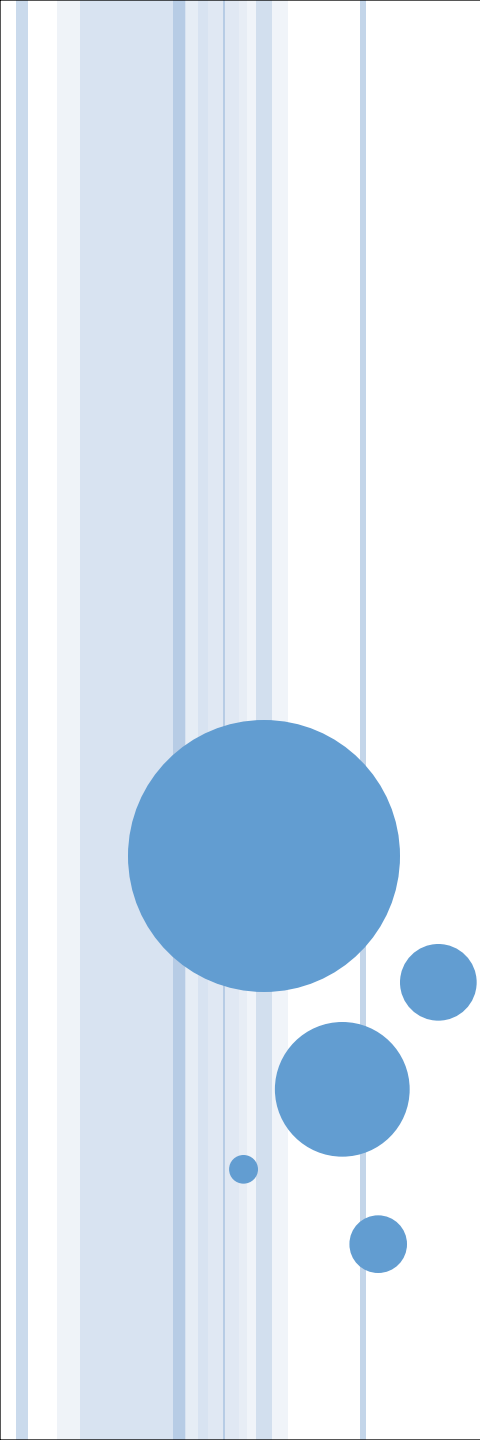
HIRE PURCHASE TRANSACTIONS

- Hire purchase is an alternative mode of financing where goods are transferred by a person to the user (Hirer) without transferring the ownership. Hirer has the option to get the ownership to his name when all the Installments are paid during the tenure of hire purchase agreement.
- As per the Hire Purchase Act, 1972 ‘ Hire Purchase Agreement means an agreement under which goods are let on hire and under which the hirer has an option to purchase it according to the terms of an agreement under which –

- 
- Possession of goods is delivered by the owner on a condition to pay the periodical installments for such goods.
 - Goods should pass to such person only after the payment of all the Installments.
 - Hirer has an option to terminate the agreement at any time before the goods so pass.

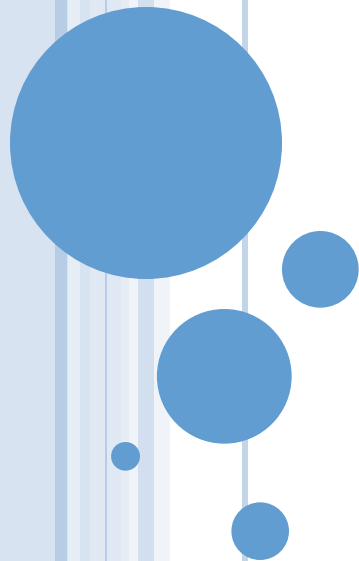
TAXABILITY

- Supreme Court in the case of 'K.L. Johar & Co.' has held that sales tax on hire purchase transactions could be levied only after the transfer of property in the goods. Here the expression transfer of property in goods emphasis is on the transfer of the goods. However as per the amending constitution relevant entry read as 'tax on delivery of goods on hire purchase or any system of installment.' Here it emphasis on delivery on goods. So Hire purchase transaction is subjected to tax on the exercising of the option.

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- As per the decision given by the Delhi high court in the case of ‘CST vs. The Motor & General Finance Ltd.’ it was held that sale takes place when the agreement is entered into and the goods are transferred and not on the payment of all the Installments.

TAXABLE TURNOVER

- The Amount of Turnover arising in the tax period in the case of hire purchase is the total amount of the sale price that will be due and payable under the agreement irrespective of the due date and release of the payment.

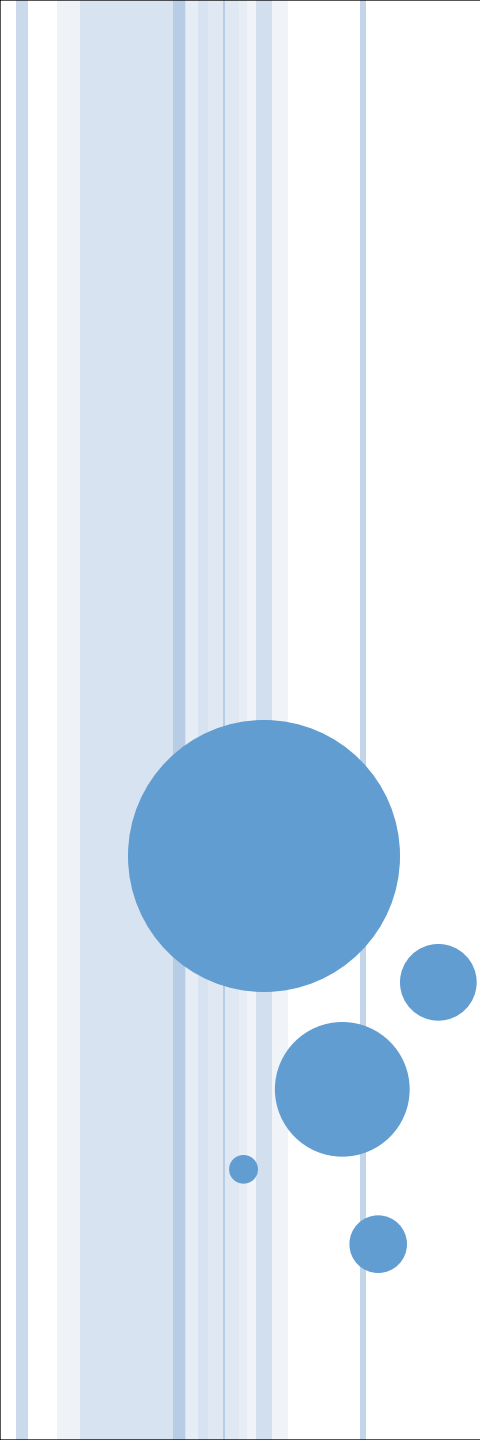


TRANSFER OTHERWISE THAN IN PURSUANCE OF CONTRACT

- As per the Sale of Goods act, 1930 there must be a condition of existence of a contract for forming a transaction as a sale. But the introduction of this entry in Article 366(29A) of the constitution read as:
- 'a tax on the transfer, otherwise than in pursuance of a contract, of property in any goods for cash, deferred payment or other valuable consideration' now authorise to impose tax on transactions where is no contract between the buyer and the seller.
- Therefore compulsory acquisition for a consideration will be covered under this clause.

SUPPLY OF FOOD OR OTHER ARTICLE FOR HUMAN CONSUMPTION

- After the introduction of entry no. 366(29A) (f) read as ‘a tax on the supply, by way of or as part of any service or in any other manner whatsoever, of goods, being food or any other article for human consumption or any drink (whether or not intoxicating), where such supply or service, is for cash, deferred payment or other valuable consideration’, it gives the power to state legislatures to impose tax on sale of any type of human consumption article.

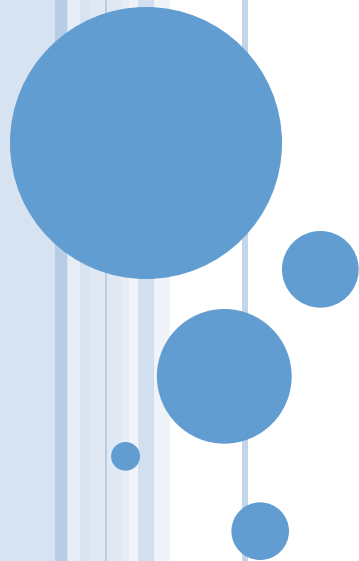
- 
- Cooked food is covered in the definition of goods. Hence in all the restaurant's where cooked food is served to the customers is covered in the ambit of sales tax. Further the consideration charged by the customer cannot be split up between what was charged for food and what for service part because restaurants could not correlate the charges levied with the amenities towards facilities like air-conditioning, bar etc and hence sales tax will be leviable on total consideration.
 - Hence if any transaction which doesn't satisfy any of the above mentioned conditions would not be considered as a sale.

LUXURY TAX

- The tax is payable by a hotelier who carries on the business of providing residential accommodation in Maharashtra and the term 'business' includes the activity of providing residential accommodation and any other service in connection with, or incidental or ancillary to, such activity of providing residential accommodation, by a hotelier for monetary consideration.
- The tax is leviable on the turnover of receipts of a hotelier which means the aggregate of the amounts of monetary consideration received or receivable by a hotelier or by his agent in respect of the Luxuries provided in a hotel during a given period

SOME PRACTICAL ISSUES

- 1. UNRECORDED TRANSACTIONS :
 - There may be certain transactions not recorded in books of accounts. However, the auditor has to find out such unrecorded transactions and include them in turnover.

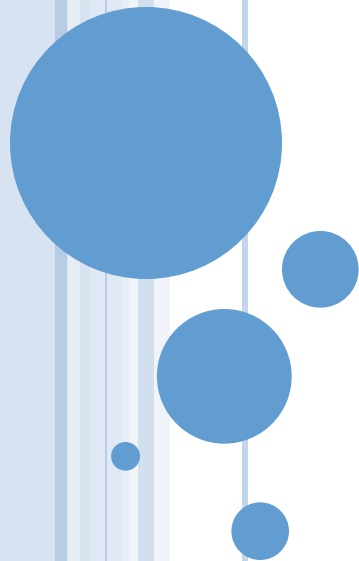


2. GOODS RETURN

- As per Rule 3 of MVAT Act, 2002 :-
- If the goods are returned within 6 months from date of purchase or sale then deduction is allowed from turnover.
- Likewise, refund of deposit made within 6 months will be allowed as deduction from the turnover.
- Goods returned after 6 months even for valid reason are not deductible as per High Court decision in Glaxo Pharmaceutical Ltd Vs State of Kerala

3. INTERSTATE PURCHASES

- Accounting of Inter-State Purchases on receipt of inventory basis rather than on Invoice basis can lead to many issues like difficulty in issuing C Forms etc.
- Hence, proper care should be taken that all the Interstate purchases are accounted on Invoice Basis.



Thank
you

