

**INTRICATE ISSUES UNDER WORKS  
CONTRACT  
FOR  
WORKSHOP  
ON  
MVAT AND LBT  
AT  
WIRC OF ICAI  
On  
15-06-2013  
BY  
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# WORKS CONTRACT

## INTRODUCTION

### ■ Distinction between Works Contract and Sale

#### Sales Vs. Works Contracts

- |   |  |
|---|--|
| <ul style="list-style-type: none"><li>➤ 'Sale' of 'Goods'</li><li>➤ Transfer of property and ownership</li><li>➤ Intention to buy and sell goods</li><li>➤ Goods are the essence of the contract</li><li>➤ Property passes under the contract</li></ul> | <ul style="list-style-type: none"><li>➤ Transfer of property in goods involved in the execution of works contracts</li><li>➤ No intention to purchase goods</li><li>➤ Agreement for one kind of property but transfer of another</li><li>➤ Property passes on theory of 'accretion' or 'accession'</li></ul> |
|---|--|

■ Intention of the parties & Object of the Transaction play a major role in determining whether it is a Works Contract or sale.

- Purchasing a car
- Purchasing clothes
- Buying a house
- Buying a book
- Buying a tyre
- Buying machinery
- Purchasing paint

- Repairs of a car
- Stitching clothes
- Constructing a house
- Printing of stationery
- Re-treading of tyre
- Setting up a plant
- Painting of building

# INTRODUCTION (Contd.)

- What is a Work Contract [WC]
  - A contract to execute a job or to undertake an activity on behalf of a principal.
  - Two parties, Contractor [One who accepts the job] and Employer /Principal [One who awards the job]
  - Property in the goods finally passes to the Principal.
  - If passing of property is incidental, and contract is for rendering service only, transaction may not be taxable.

# INTRODUCTION (Contd.)

- Types of Contract
  - Contracts can be divisible or indivisible. Where the value of materials can be identified separately, it is a Divisible Contract.  
e.g. Sales and after sales service contract.
  - When Contract awarded for a lump sum amount, it is an Indivisible Contract.  
e.g. turnkey contract
  - There can be more than one contractors involved in the job. Even Contractors can further pass on the job to other contractors known as Sub-Contractors.

# Taxable Event

The taxable event would be the transfer of property in goods which takes place during the execution of works contract. The goods transferred or delivered simply as it is at site of the contractee it will not attract the tax, but when such goods are used in the execution of works contract, taxability arises. The tax is payable at that time. In other words, in case of execution of works contract, transfer of property in goods takes place not before or after, but during the course of the execution, on the principle of accession, accretion or blending of the property. The tax is payable on the value of the goods so transferred during the execution of the works contract.

# PROVISIONS OF WORKS CONTRACT UNDER MVAT ACT

- “Works contract” defined w.e.f. 20.6.06.
- Means “works contract **namely**, an agreement (express or implied) for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, filling out, improvement, modification, repair or commissioning of any movable or immovable property”.
- i.e. only the items mentioned in definition will be covered.

# Determination of Turnover of Sales:

**Under the MVAT Act, the Contract Price or Contract Value is not to be considered as turnover of sales. It is defined to mean amount paid or payable to a dealer for transfer of property in goods involved in the execution of works contract. In other words now the cost of goods, expenses incurred thereon and profit earned will be treated as Sales Price. Since the State has got no power to levy tax on expenses, labour and services, involved in the execution of works contract Rule 58 is provided, for such determination of sales price.**



# DETERMINATION OF SALE PRICE FOR WORKS CONTRACTS – (RULE 58)

[Gannon Dunkerly & Co. V/s State of Rajasthan (1993)  
88 STC 204 (SC)]

<b>Total Contract Value (Value of Entire Contract)</b>	<b>Say 100</b>
<b><u>Less: Allowable Deductions:</u></b>	
1. Amounts paid by way of price for sub-contract	XXX
2. Labour & Service Charges for execution of WC	XXX
3. Planning, Designing & Architect's fees	XXX
4. Hire Charges or otherwise, for obtaining Machinery & Tools for WC	XXX
5. Cost of Consumables in which there is no transfer of property e.g.: Water, Electricity, Fuel, etc.	XXX
6. Cost of Establishment relatable to supply of labour & services	XXX
7. Similar other expenses relatable to supply of Labour & Services	XXX
8. Profit relatable to supply of Labour & Services	<u>XXX</u>
	<b>Say</b>
<b>33</b>	

**Balance Sales Price ----- Deemed Sale Value of Goods involved  
in execution of WC, in which transfer of property takes place**

=

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## DETERMINATION OF S.P. FOR WC (CONTD...)

1. Where the contractor has not maintained accounts which enable proper evaluation of different deductions as above or where the Commissioner finds that the accounts are not sufficiently clear or intelligible, then the Contractor or Commissioner may in lieu of deductions as above, deduct a Lumpsum deduction as provided in the Table u/r 58, to determine the S.P. of goods involved in WC.

TABLE

Serial No.	Type of Works contract	*Amount to be deducted from the contract price (expressed as a percentage of the contract price)
(1)	(2)	(3)
1	Installation of plant and machinery	Fifteen per cent.
2	Installation of air conditioners and air coolers	Ten per cent.
3	Installation of elevators (lifts) and escalators	Fifteen per cent.
4	Fixing of marble slabs, polished granite stones and tiles (other than mosaic tiles)	Twenty five per cent.
5	Civil works like construction of buildings, bridges, roads, etc.	Thirty per cent.
6	Construction of railway coaches on under carriages supplied by Railways	Thirty per cent.

7	Ship and boat building including construction of barrages, ferries, tugs, trawlers and dragger	Twenty per cent.
8	Fixing of sanitary fittings for plumbing, drainage and the like	Fifteen per cent.
9	Painting and polishing	Twenty per cent.
10	Construction of bodies of motor vehicles and construction of trucks	Twenty per cent.
11	Laying of pipes	Twenty per cent.
12	Tyre re-treading	Forty per cent.
13	Dyeing and printing of textiles	Forty per cent.
14	Annual maintenance contract (w.e.f. 08-09-06)	Forty per cent.
15	Any other works contract up to 07-09-06 w.e.f. 08-09-06	Twenty per cent. Twenty Five per cent

- ❖ **The Sub-Contract Value shall be deducted first from the Total Contract Value and thereafter the lump sum Deduction allowable as per Table shall be made to arrive at the Selling Price of goods involved in WC.**
- ❖ **The value of goods so arrived at shall be the S.P. relating to the transfer of property in goods involved in execution of WC, for the purposes of levy of tax @ 0% / 1% / 5% / 12.5% as applicable.**
- ❖ **Registered Dealer can collect the tax separately, to the extent payable, on any sale of goods [Sec. 60(2)]**
- ❖ **Where RD has not collected the tax separately, the tax element can be reduced from the `Sale Price` for the levy of tax [Rule 57(1)]**

### Issue-1 :-

Whether Rule 58 - Table Method is mandatory?

### Issue-2 :-

In a contract, contractor has quoted his price with material. While executing the contract subsequently contract is amended and employer of the contract has taken responsibility to supply some material to be used in execution of contract. The contractor has to deduct the material price from his bill whenever it is supplied.

= Whether such supply amount to sale? If yes, whether to charge tax separately?

= Can contractor take input credit of tax paid to employer?

= In the event of sale, if purchase price is more than sale price, can employer claim refund of tax paid?

### Issue-3 :-

When less expenditure is incurred for labour and services then whether deduction as per table will apply?

**Example-1 : Printer's supply Board, ink, varnish, gum & incurred labour charges (board 50%, ink 25%, varnish 10%, gum 15% of 75% of Contract price & labour charges 25% of contract price)**

<b>Contract Price</b>	<b>Rs. 1,00,000/-</b>
<b>Less : Labour Charges incurred</b>	<b>Rs. 25,000/-</b>
<b>Sale price</b>	<b>Rs. 75,000/-</b>
	<b>=====</b>

**Bifurcation of taxable turnover of sales for rate purposes:**

<b>TOTAL</b>	<b>Board</b>	<b>Ink</b>	<b>Vanish</b>	<b>Gum</b>
<b>AMT.</b>	<b>(50%)</b>	<b>(25 %)</b>	<b>(10%)</b>	<b>(15%)</b>
<b>75,000</b>	<b>37,500</b>	<b>18,750</b>	<b>7,500</b>	<b>11,250</b>
<b>Rate of Tax on goods</b>	<b>5%</b>	<b>5%</b>	<b>12.5%</b>	<b>12.5%</b>
<b>Add-VAT</b>	<b>1,875</b>	<b>938</b>	<b>938</b>	<b>1,406</b>

**Total VAT = 5157/-**

**Example-2 :** A contract is awarded for integration of penal, supply & installation at site in which following goods are used having different rates of tax. Accounts are not maintained or not intelligible.

	<u>Sale Price</u>	<u>Rate of Tax</u>	<u>20% dedcn. Lab.Chgs.</u>	<u>Sales Price</u>	<u>Tax Amt.</u>
(1)Control Penal	15 lacs	5%	3 lacs	12 lacs	60,000
(2)Transformer	10 lacs	5%	2 lacs	8 lacs	40,000
(3)Cables	4 lacs	5%	0.80 lacs	3.20 lacs	16,000
(4)Switches, wires	6 lacs	5%	1.20 lacs	4.80 lacs	24,000
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Total Contract Price	35 lacs		7 lacs	28 lacs	1,40,000
	=====		=====	=====	=====

## **ISSUE-4 :**

**A works contractor (plumbing contractor) is issuing consolidated bills to his customers inclusive of Vat and Service Tax. His material value is approximately 30% and labour component is approx. 70%. Hence he does not want to opt for standard deduction method as given in the Table u/r 58(1). The works contractor is also finding it practically very difficult to determine actual labour charges to decide his tax liability as per main Rule 58(1). In this situation, if he works out sales price on the basis of purchase value of the material involved in the execution of the works contract added by G. P. margin as per his Profit & Loss Account, whether it will be accepted as correct method?**



# COMPOSITION SCHEME

- Effective from 20.6.06
- Two types of composition Rate
  - Construction contract – 5%
  - Other contract – 8%

■ **COMPOSITION SCHEME FOR WORKS CONTRACTS –**  
**[Sec. 42(3)]**

**Option to Contractors – Contract-wise**

**Total Contract Value**

**XXXXXXXX**

**Less :Sub-Contracts**

**XXXXXXXX**

**Balance contract value **LIABLE @ 8%****

**XXXXXXXX**

- **Such composition sum can be collected separately, to the extent payable by a registered dealer, on any sale of goods [Sec. 60(2)]**
- **Dealers executing works contracts opting for composition may issue ‘Tax Invoice’. [Sec.86(4)]. They can also issue normal bill / invoice / Cash Memo.**

## ISSUE-5 :

**Whether under the MVAT Act,2002, a works contractor opting for composition scheme is entitled to reimbursement of taxes as per the provisions of rule 57(1)?**

## ISSUE-6 :

**The contractor has opted to discharge works contract tax (VAT) liability under composition scheme. He has charged composition sum (VAT) and service tax on basic selling price separately in his Tax Invoice. Whether it is correct or composition sum (VAT) is payable on the basic selling price plus service tax?**

# Explanation Added to Rule 58(1) and Sec 42(3)(ii)- Table Method and Composition Method

## ISSUE 6A :

Vide amendment effected on 20.6.2006, in sub clause (ii) of the Explanation to section 42(3) and Explanation Added to Rule 58(1) it is provided that the deduction towards sub contract should be the quantum of price on which tax is paid by the sub-contractor, if any, and the quantum of tax separately charged by the contractor if the contract provides for separate charging of tax or the aggregate value of the goods on which tax is paid and the quantum of said tax paid by the sub-contractor or the sub-contract value on which tax by way of composition is paid by the sub-contractor, as the case may be. What will be repurcussion of above amendment?

# VARIOUS TYPES OF CONTRACTS

- CONSTRUCTION CONTRACT
- PRINTING CONTRACT
- INTERIOR DECORATOR
- ANNUAL MAINTENANCE CONTRACT
- PHOTOGRAPHY CONTRACT
- COMMISSION, INSTALLATION AND ERECTION CONTRACT
- REPAIRS & MAINTENANCE CONTRACT

## Construction contract

In exercise of the powers conferred by clause (i) of the **Explanation** to sub-section (3) of section 42 of the Maharashtra Value Added Tax Act, 2002 [Mah. IX of 2005], the Government of Maharashtra hereby notifies the following works contracts to be the 'Construction Contracts' for the purposes of the said sub-section, namely (w.e.f.20-06-2006) :-

- (A)** Contracts for construction of,--  
Buildings, Roads, Runways, Bridges, Railway Overbridges, Dams, Tunnels, Canals, Barrages, Diversions, Rail tracks, Causeways, Subways, Spillways, Water supply schemes, Sewerage works, Drainage, Swimming pools, Water Purification plants and Jettys.

**(B)** Any works contract incidental or ancillary to the contracts mentioned in paragraph (A) above, if such work contracts are awarded and executed before the completion of the said contracts.

**ISSUE-7** : XYZ Ltd. Company wants to construct office building for which it has given contracts for Construction, Plumbing, Painting and Interior to various contractors. The Company has not received occupancy certificate from the BMC. Our dealer has received contract from the Company for doing Partition Work as well as Interior work. The dealer has charged 8% VAT in his bill, whereas the Company is insisting the dealer to charge 5% VAT to the Company (being Construction contract.) Whether stand taken by the Company is correct? Whether answer will differ if Company has given all types of contracts as mentioned above to a single contractor?



## Issue-8 :-

**When does property pass in the execution of WC? In a construction contract cement, water, sand, stones are mixed and concrete is made. Whether property passes in cement, water etc or in concrete? At what rate and on which items VAT is to be paid?**

## Issue-9 :-

Whether contractor is liable to pay tax on the basis of running bill raised in a given period or on the basis of final bill on completion of contract ?

## Issue-10 :-

Contractor has entered into a contract with employer worth Rs.1 Crore for supplying and installation of gas pipe lines. Under the contract though contract value is consolidated but in Annexure of the contract the details of materials which are to be used with Quantity, Rate and Total value of Materials are to be used and the VAT amount as applicable based on the Materials to be used are given. Similarly details of Labour Charges as well as Service tax as applicable are also given in such Annexure. As per the Contract even contractor has to make his bill as per the details given under annexure and he has to levy VAT/Service tax as applicable in the bill. Though the employer treat such contract as divisible but still they deduct WCT TDS. Please explain how contractor has to discharged his Tax liability whether as works contractor being indivisible contract or as a supplier for supply of materials?

# REPAIRS & MAINTENANCE CONTRACT

## ■ Repairs & Maintenance of Building

### Issue-11 :-

**In a construction contract, contract is awarded for construction of compound wall of a building which is already being constructed. Similarly contract is awarded to another person for erection of gate and other arches of metal etc, whether such contract is construction contract attracting 5% tax?**

## Issue-12 :-

**A contractor has received a contract from a Housing Society for repairs and renovation of building. This work involves removing and making of plaster, plumbing, painting etc. Whether such contract is construction contract taxable @ 5%?**

## ISSUE-13 :

Let us take an example of repairs contract and decide whether in the given situations it will be treated as construction contract and liable to vat @ 5 % or not. 1. Normal repairs where entire building is new building 2. Slum rehabilitation project (i) where new floors on existing building and renovate with amenities in the old building (ii) Chawl demolished and new building for old tenant and one more building for sale.

## Input Credit:

- 1) Set off on opening stocks as on 1-4-2005, allowable provided the goods are RESOLD (i.e. used in the same form) in WC on or before 31-12-2005 & stock statement is submitted in Form No: 6.
- 2) If on goods lying in opening stock as on 1.4.2005 on which some processes are carried out and then used in Works Contract then no Set-off is available.
- 3) Set off on Local RD purchases of any goods, effected on or after 1-4-2005 will be allowed after reductions as provided for.
- 4) Set off on goods used for works contract -
  - **WC- opted for Tax Provisions and Table Method – Full Set Off**
  - **WC- opted for Composition scheme – Set Off shall be reduced by 9/25 i.e. 36% ( i.e. allowable only 64%)**
  - **WC- opted for Composition scheme (Construction Contract) @5% - Set Off after retention @ 4% ( w.e.f. 20-06-2006).**

## Example-3 :- For Table Method & Composition payable on Works Contract under VAT Act.

### Electroplating Contracts

Illustration of electroplating                      under Table method                      under Composition Scheme

Nikal Electroplating Charges	1,00,000	1,00,000
<u>Less : Deduction u/r 58(1)@25%</u>	25,000	—
	75,000	1,00,000
Tax at @5% / @8%(u/s.42(3))	3,750	8,000
<b>Total Amount</b>	<b>78,750</b>	<b>1,08,000</b>

Purchases	15,000	
Nikal Purchase at 5%	750	
Other Chemicals	15,000	
Tax at 12.5%	1,875	
<b>Total tax paid on Purchase</b>	<b>2,625</b>	
100%/64% of Rs.2,625/- allowable as set-off	2,625	1,680
<b>Balance Payable</b>	<b>1,125</b>	<b>6,320</b>



## Example-4 :-

### Annual maintenance contract – Air conditioners Comprehensive

M/s XYZ Ltd. has entered into AMC (Comprehensive Contract) for air conditioner for Rs.1,20,000/- for the period 01/09/2004 to 31/08/2005 out of which bill for the period 01/09/2004 to 31/03/2005 for Rs. 70,000/- has been raised before 31/03/2005, and tax has been paid at the rate 4% under the old composition scheme. The materials transferred under AMC are at Rs.18,000/- on which tax is paid at Rs.2250/-. The determination of taxable turnover is as under :-

Narration	VAT Method with fixed % of expenses method	Composition Scheme	
AMC Charges from 01/09/04 to 31/08/05	1,20,000/-	1,20,000/-	
<u>Less</u> : charges from 01/09/04 to 31/03/05	70,000/-	70,000/-	
Balance 01/04/05 to 31/08/05	50,000/-	50,000/-	
<u>Less</u> : deduction under Rule 58(1) Provision 20%/40%(w.e.f.8-9-06)	10,000/-	nil	
Balance liable to tax	40,000/-	50,000/-	
Tax deduction as per Rule 57(1) x 12.5%/112.5	4,444/-	-	
Net Turnover	35,556/-	50000/-	
Tax @12.5%/8% Payable	4,444/-	4000/-	
Less: input credit	2250/-	1440/-	33
Net tax payable	2194/-	2560/-	

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## Example-5 :- For All the Three options for payment of Works Contract Tax

### Electroplating Contracts

Illustration of electroplating	under Normal method	under Table method	under Composition Scheme
Nikal Electroplating Charges	1,00,000	1,00,000	1,00,000
<u>Less</u> : Deduction u/r 58(1)@25%	-	25,000	-
<u>Less</u> : Deduction of Labour charges, etc. on actual basis	40,000	-	-
	60,000	75,000	1,00,000
Tax at @5% / @8%(u/s.42(3))	3,000	3,750	8,000
<b>Total Amount</b>	<b>63,000</b>	<b>78,750</b>	<b>1,08,000</b>
Purchases	15,000		
Nikal Purchase at 5%	-	750	
Other Chemicals	15,000		
Tax at 12.5%	1,875		-
<b>Total tax paid on Purchases</b>	<b>2,625</b>		
100%/64% of Rs.2,625/- allowable as set-off	2,625	2,625	1,680
<b>Balance Payable/ Refund</b>	<b>375</b>	<b>1,125</b>	<b>6,320</b>

**Issue-14** : Whether the PWD is liable for registration under MVAT Act, 2002 and eligible to issue Tax Invoice as regards the supply of material, the cost of which is deducted from the contractor's bills? If not, then what is the remedy as there will be double taxation, once on PWD & another on contractor?

# CONSTRUCTION INDUSTRIES

## ISSUE-15 :

**Whether there is any specific provision for levy of tax in relation to builder/developers?**

- APPLICABILITY OF SUPREME COURT JUDGMENT IN THE CASE OF K. RAHEJA DEVELOPMENT CORPN. (141 STC 298) IN MAHARASHTRA.

- TRADE CIRCULAR NO. 12-T DATED 7/2/2007

- ASSOTECH REALTY PVT. LTD. JUDGMENT (207-TIOC-207-HC-ALL-CT)

# Facts: K. Raheja Vs. Assotech

Particulars	K. Raheja	Assotech
Document	Sale agreement	Allotment letter
Sale deed	Before completion of construction	After completion of construction
Agreement	Conveyance of Land and development for purchaser	Agreement to sell apartment
Ownership rights	After full payment	After sale deed
Price and payment	Separate for land and construction	Consolidated

# Facts: K. Raheja Vs. Assotech

Particulars	K. Raheja	Assotech
Plan and Layout	K. Raheja permitted to change	At discretion of Assotech
Common areas until transfer	Belong to K. Raheja	Belong to Assotech
Mortgage by Developer	Permitted	Permitted
Lien and termination	Provided	Provided
Defn. of Works Contract	Similar under both the enactments	Similar under both the enactments

- **MAHARASHTRA CHAMBER OF HOUSING INDUSTRIES (MCHI)**
- **L&T SUPREME COURT JUDGMENT (2008-VIL-29-SC) IN WHICH K.RAHEJA'S JUDGMENT WAS DOUBTED & CASE OF K. RAHEJA REFER TO LARGER BENCH.**



## **ISSUE-16 :**

**A developers enters into an agreement under SRA scheme whereby the existing occupant are given 400sq ft each free and on the balance available land, A tower is constructed and also an additional TDR is bought to increase the number of floors of the new building.**

**Whether tax is payable on the transfer of property to the existing occupant?**

**If no, whether the cost of construction pertaining to existing occupant can be added to the cost of construction of new tower and whether for the payments of tax under Works Contract the said cost will be allowed?**

## ISSUE-17 :

“A” is in the business of development of premises (residential and commercial). It is registered under MVAT – though currently A is filing 6 monthly VAT returns and complies with Tax deduction provisions under section 31 of the MVAT Act.

A new commercial project has been proposed to be developed in Suburban Mumbai. In this regard, the assessee has entered into a composite contract with a registered dealer whereunder, the contractor shall be responsible to demolish an existing structure, clear all the *raabit*, dispose the same in accordance with the relevant regulations and handover clear ground for further action by the builder. Further as per the terms all the material namely raabit, steel and iron rods, wood and other materials which is extracted or found in the course of the said demolition process shall belong to the contractor and the builder shall not claim any of such material. The contract value shall be Rs 71 lakhs for the whole premises which shall be subjected to all tax deduction under Income Tax, VAT or any other taxes and duties whichever may be applicable.

### **1. Whether the contract is a Works contract liable for VAT?**

2. What is the liability of vat on the Builder as well as contractor under MVAT which arises due to materials carved out from demolition process under the said contract?

3. Whether the provisions of TDS under MVAT are applicable?

# RULE 58(1A)

## **Determination of sale price and purchase price in respect of sale by transfer of property in goods (whether as good or in some other form) involved in the execution of a works contract.-**

(1A) In case of a construction contract, where along with the immovable property, the land or, as the case may be, interest in the land, underlying the immovable property is to be conveyed, and the property in the goods (whether as goods or in some other form) involved in the execution of the construction contract is also transferred to the purchaser such transfer is liable to tax under this rule. The value of the said goods at the time of the transfer shall be calculated after making the deductions under sub-rule (1) and the cost of the land from the total agreement value.

The cost of the land shall be determined in accordance with the guidelines appended to the Annual Statement of Rates prepared under the provisions of the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995, as applicable on the 1st January of the year in which the agreement to sell the property is registered:

- *Deduction for Cost of Land* from Total agreement Value (Retrospective w.e.f. 20<sup>th</sup> June 2006)
- Applicable when in the course of execution of Works Contract, land/Interest in Land is also conveyed to the buyer along with transfer of Property in goods.
- Method of Deduction prescribed as per value determined by Bombay Stamp office (Ready Reckoner ) as applicable on the 1st January of the year in which the agreement to sell the property is registered

## ISSUE-18 :

**Whether there is any specific composition scheme for builder/developer ? If yes, validity and effect thereof?**

Amendment of Section 42 of Mah.IX of 2005

In section 42 of the Value Added Tax Act, sub-section (3A) inserted W.E.F.01-04-2010.

The State Government may by notification published in the Official Gazette,-

- (a) Provide a scheme of composition for the registered dealers who undertake the construction of flats, dwellings or buildings or premises and transfer them in pursuance of an agreement along with the land or interest underlying the land:

(b) Prescribe the rate of tax by way of composition, in lieu of the amount of tax payable on the transfer of goods ( whether as goods or in some other form), in the execution of such works contracts by such registered dealer under this Act.

- As per the Notification No.VAT-1510-Cr-65-Taxation-1,Dated 09-07-2010 the composition Rate notified at 1%.

## Negative list w.r.t. set off shall apply - Rule-54

- Purchases effected by the employer by way of works contract where the Contract Results in immovable property. (Rule-54g) [Other than plant & machinery w.e.f. 8.9.06]
- From 8.9.06 Purchases of any goods by a dealer, the property in which is not transferred (whether as goods or some other form) to any other person, which are used in the erection of Immovable property other than plant & machinery. (Rule-54h)

**ISSUE-19 : Under painting contract when paints applied to building which was already being constructed, Whether set off will be available or will it hit by Rule 54-G ?**



## ISSUE-20 :

M/s. Resins Ltd. has spent Rs. 42,00,000 + VAT @ 5% + Service Tax @ 12.36% on 33% value for Repairs of Road inside the Factory Premises. The amount has been debited to 'Repairs A/c' in the P & L Account.

- a) Whether M/s. RPL is eligible to claim VAT Input credit on the repairing of roads ?
  
- a) Would it make any difference if M/s. Resins Ltd. itself has purchased materials and give labour contract for construction of New Roads and capitalised in the Balance Sheet ?

# Main contractors & Sub contractors

- Relationship shall be deemed to be that of the Principal & Agent [Sec45(4)].
  1. Their liability to pay tax shall be joint & several.
  2. Deductions will be given to either, based on producing prescribed Certificate/Declaration i . e. for main contractor Form No: 406 & 409 to be issued and for sub-contractor Form No: 407 & 408 to be issued.

**Example-6** : A Contractor has given sub-contract for doing electrical installation where the sub-contractor as well as main contractor opts for composition scheme. Then the determination of sale price will be as under:-

	<u>Main Contractor</u>		<u>Sub-Contractor</u>
Contract Amount	1,00,000		-
Sub-Contract	<u>80,000</u>		<u>80,000</u>
	20,000		80,000
Add : Tax @ 8 %	<u>1,600</u>	Tax @8%	<u>6,400</u>
	<u>21,600</u>		<u>86,400</u>
	=====		=====

■ ISSUE-21 :

**The principal has awarded contract worth Rs.1crore to main contractor and in turn the same contract has been awarded by the main contractor to sub-contractor for Rs. 90 lakhs . Sub-Contractor has discharged tax liability on Rs. 90 lakhs under say either under Normal method or Table method. Whether main contractor is liable to discharge liability on Rs.10 lakhs ? Will the answer differ if Sub-Contractor has discharged tax liability under Composition Scheme ?**

## **Issue-22 :-**

**A main contractor has accepted contract of Rs.10 lacs. Out of which he has subcontracted contract of Rs.4 lacs. Main contractor has opted to pay composition sum on whole contract value. Whether sub contractor can claim setoff on materials purchased and used in the execution of works contract? If yes, whether the assessing officer can apply retention on set-off if the main contractor has paid by way of composition tax ?**

## **ISSUE-23 :**

**Total contract value is Rs.1 crore . Out of that Main Contractor has given contract of Rs. 60 lacs to Registered Sub-Contractor. if main contractor decided to discharged tax liability on whole contract value and issue certificates in form 406 & 409 to the sub contractor . Whether Main Contractor is entitled to claim set off on purchases made by Sub-Contractor or only Sub-Contractor can claim Set-off on Purchases made by him ?**

**ISSUE-24 : Will the answer differ if the Sub-Contractor is Un-registered ?**

## **ISSUE-25:**

**In case of sub contract the sub contractor has taken over to discharge liability on his part. Therefore the main contractor is discharging liability on the balance value. However the main contractor charges tax on full amount to the employer. Whether can it be said that there is excess collection by the main contractor and hence such excess collection is liable to forfeiture ?**

## **ISSUE-26 :**

**In case of Works Contract whether Main Contractor Instead of claiming Sub-contractor's value as deduction from total contract value, can he treat the same as purchases and claim Input Credit under the provisions of MVAT Laws ?**

# ON GOING WORKS CONTRACTS [Sec. 96(1)(g)]

- What is ongoing contract?
  - Entered into up to 31.3.05
  - Execution started before 1.4.05 and also continued after 1.4.05
- Vide amendment made as per the ordinance no. VI of 2006 and effective from 1-4-05 Liability to be discharged based on the system adopted under the Works Contract Act, 1989
- No set off on corresponding purchases

## Issue-27 :-

**During the period 05-06 a BMC contractor executed all ongoing contractors of BMC and no other execution of contract was done. The dealer has purchased Plant & Machinery on which he has a Tax-Invoice and has paid VAT of Rs. 28300/- whether he can get set-off of this tax paid?**



## TDS UNDER VAT – [ Sec. 31 / Rule 40]

- **TDS provisions applicable to payments made for Works Contracts, or other purchases, as notified.**
- **No such Deduction shall be made where the amount or the aggregate of amount payable to a dealer by such employer is less than rupees 5 lacs during any year**

# Person notified to deduct tax

Serial No	Classes of Employers	Amount to be deducted
1	The Central Government and any State Government,	<u>Two percent</u> of the amount payable as above In the case of a contractor who is a registered dealer and <u>Five percent (from 1-4-12)</u> in any other case.
2	All Industrial, Commercial or Trading Undertakings, Company or Corporation of the Central Government or of any State Government, whether set up under any special Law or not, and a Port Trust set up under the Major Ports Act, 1963	-----“-----
3	A Company registered under the Companies Act, 1956	---“---
4_	A local authority, including a Municipal Corporation, Municipal Council, Zilla Parishad, and Contonment Board,	-----“-----
5	A Co-operative Society excluding a Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960	-----“-----

Serial No	Classes of Employers	Amount to be deducted
6	A registered dealer under the Maharashtra Value Added Tax Act, 2002	-----“-----
7	An Insurance or Finance Corporation or Company, and any Bank included in the Second Schedule to the Reserve Bank of India Act,1934, and any Scheduled Bank Recognized by the Reserve Bank of India.	-----“-----
8	Trusts, whether public or private	----“----
9	A Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960 which has awarded contracts of value aggregating to rupees 10 lakhs or more in the previous year as the case may be, in the current year	----“----
10	Societies registered under the Societies Registration Act, 1860 (W.E.F.01-06-2012)	----“----

# Important Points To Be Noted For TDS Under VAT:

- On advance payment tax is only to be deducted when it is adjusted against amount payable.
- Contractor may apply in Form No.:410 to his Assessing Authority for NO T.D.S. only if it is not a works contract.
- No tax to be deducted on amount of tax as well as Service Tax, if any, separately charged by the contractor.
- No tax is to be deducted from the payments made to sub contractor.
- TDS credit can be available in the month in which TDS certificate was received. [section 31(4)(w.e.f.20-6-06)]

- **Important Points For TDS Contd.....**
- **No tax to be deducted on Purchases covered by section 8 of the VAT Act [Section 31(1) (b) (i)]**
  - **Sales/Purchases outside the State**
  - **Sales/purchases in the course of interstate trade and commerce**
  - **Sales/ purchase in the course of import of goods or the export of goods**
- **If Tax is not deducted by Contractee , still TDS is payable. [Section-31(5)]**
- **Interest is payable for late payment of TDS.**

## TDS – important due dates

- **TDS payment – By 21st of next month by the contractee in Challan No.: 210.**
- **Prescribed TDS certificate – Issue in Form No: 402 immediately on deduction / payment.**
- **Register of TDS to be made by the contractee in Form No: 404**
- **Annual TDS return in Form No. 405 is required to be filed before the Joint Commissioner (Returns) in Mumbai and with Joint Commissioner (VAT Administration) in the rest of the State, within three months from the end of relevant accounting year.**
- **Unregistered employers who have deducted tax at source, on payments made to the contractors, are required to file Chalan No. 210 alongwith demand draft/ pay order and photocopy of his PAN card before the Deputy Commissioner of Sales Tax (E-810), Business Audit(2), Vikrikar Bhavan, Mazgaon for Mumbai location and concerned Sales Tax Officer, Returns Branch for rest of the Maharashtra locations (Refer Circular No.42T of 2008 dt.26.12.2008).**

## **Issue-28 :-**

**If Private Ltd Co. who is Registered dealer in Mumbai having additional place of business in Nashik gives a construction contract to the contractor for consideration of Rs.10 lacs but the consideration is payable on completion of portion of work i.e. Milestone basis . The contract is awarded in Financial year 2008 -2009. The work was done in Financial year 2009-2010 was Rs.7.50 lacs. Out of which amount paid to the Contractor during the year was Rs.4 lacs and for balance Rs.3.50 lacs company has made provision and shown as amount payable to the Contractor in their books. Whether Company has to deduct WCT TDS since amount paid was less than Rs.5 lacs during the year? Please advice.**

## **ISSUE-29 :**

**Consider a Situation that a contract of Rs.10 Crores is subcontracted for a sum of Rs.9 crores. The subcontractor undertakes to make the payment of taxes. The contractee deducts TDS of main contractor. Whether the subcontractor shall be entitled to take credit of the TDS deducted of the Main Contractor by the Contractee ?[Section 31(4) & 31(9)]**

## **ISSUE-30 :**

**In a printing contract, vendor has treated the same as normal sale and charged 5% VAT in his bill and filed return in Form 231. But buyer has treated the same as Works Contract and deducted TDS. How to claim such credit of TDS in return in form 231?**



## Issue 31:

Suppose contractee has not deducted WCT TDS from the payment made to contractor but contractor has discharged his tax liability on the said transaction than whether still Sales Tax Department can recover the said TDS amount from the contractee ?

# Interstate Works Contract

- Dealer liable to pay tax on interstate Works Contract W.E.F.11-5-2002
- Definition of Sales-Section 2(g) & Sales Price-Section 2(h) was amended so as to incorporate transactions of interstate W.C.
- Section 2(ja) introduced to define works contract.
- **"works contract"** means contract for carrying out any work which includes assembling, construction, building, altering, manufacturing, processing, fabricating, erection, installation, fitting out, improvement, repair or commissioning of any movable or immovable property;
- Ingredients of Interstate Purchase or Sales :
- It occasions the movement of goods from one state to another State.
- There must be transport of goods from one State to another under the Contract of Sale or Purchase.
- It is effected by a transfer of documents of title to the goods during their movement from one State to another.

**Example-7** : Contract of printing labels is awarded by Gujarat party to Maharashtra party and Maharashtra party has moved the goods in the form of printed labels. Hence it is a interstate works contract.

**Issue-32** : Under Interstate Works Contract whether C.S.T. is payable on the Whole Contract value or on the value of materials transferred in the execution of such contract?

**Issue-33** : At what rate C.S.T. is payable on interstate works Contract?

**Issue-34** : Is set-off under the MVAT Act & Rules available to a contractor on purchases made for Inter-State works contract ?

**Issue-35** : Whether standard deduction method provided by Table in Rule 58 (1) of MVAT Rules, 2005 can apply to inter-state works contract?

**Issue-36** : Whether in the case of Interstate Works Contract Composition Scheme be applicable ?

**Issue-37** : Is T.D.S. to be deducted from the value of inter-State works contract ? [Section 31(1)(b)(i)]

**Issue-38** : Can a contractor purchase the goods as well as machinery to be used in the execution of W.C. against “C” Form ?

**Issue-39** : Can a Principal/Contractee issue Form ‘C’ to a contractor ?

**Issue-40** : Whether 6(2) transactions are possible for inter-State works contract ?

## ISSUE-41:

**The branch of XYZ LTD. at Gujarat entered in to a contract with ABC LTD. Of Gujarat for Construction Contract. In pursuance of contract it placed an order with its Head Office, Mumbai to supply Cement & Sand . Head Office has Transferred Cement & Sand to Branch and claimed exemption from Tax being Branch Transfer. Whether Such claim is allowable ?**

## ISSUE-42 :

**Where there is specific mention in the contract to use say Fasad (glass) to be purchased from specified manufacturer abroad and to be used after cutting as per required size and to be fixed on building with the help of Panel and gum solution during the execution of Works Contract. Whether Contractor can Import the same and used during execution of Works Contract and claim exemption of Section 5(2) of the CST Act being sales in the course of Import ?**

# THANKS

PRESENTER'S CONTACT DETAILS:

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