

# **INTRICATE ISSUES OF WORKS CONTRACT UNDER MVAT ACT, 2002**

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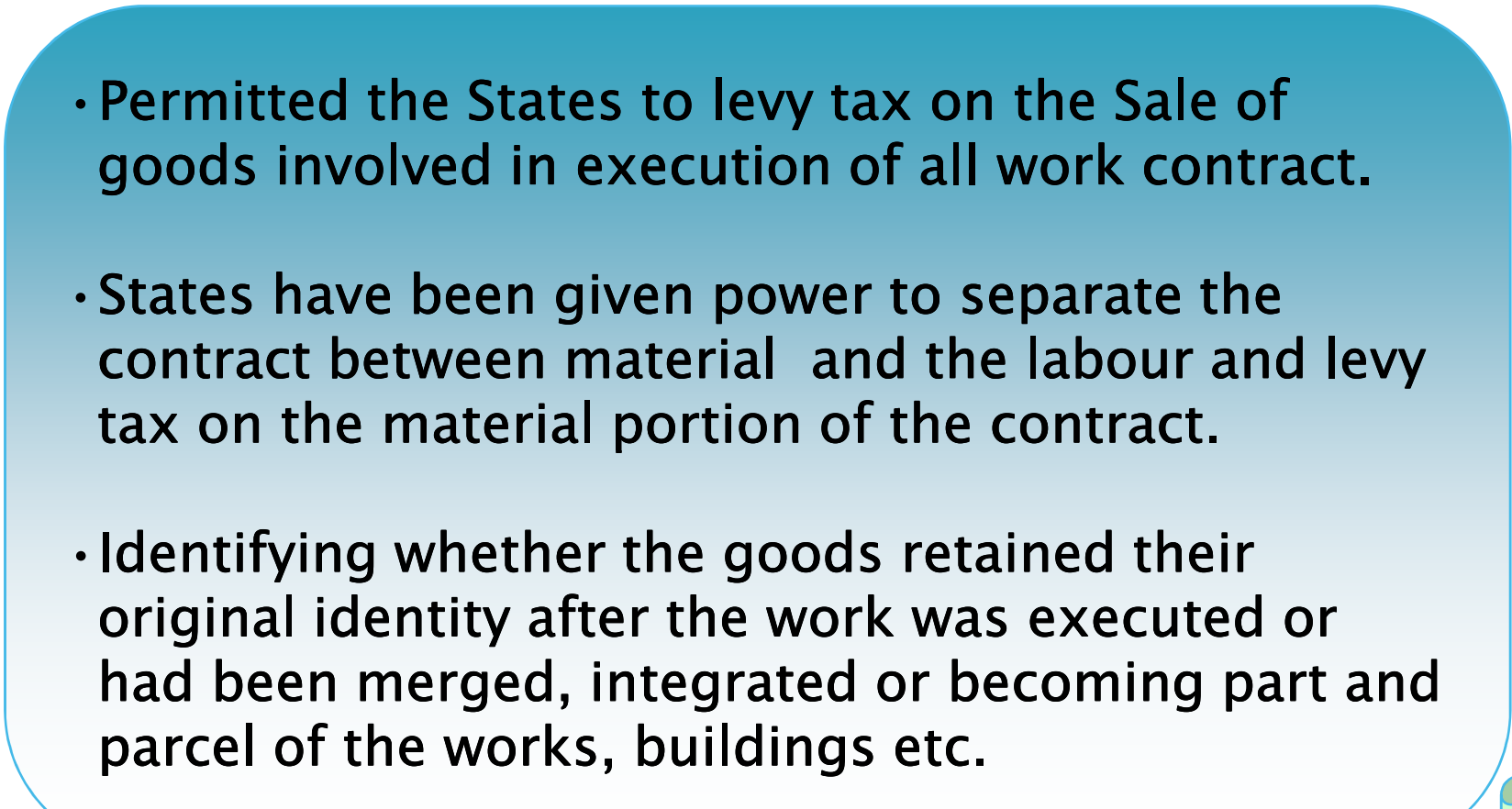


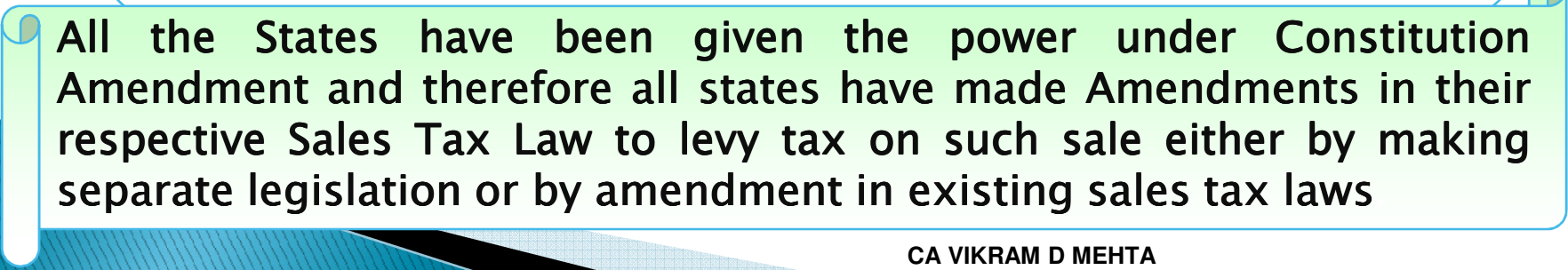
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# Background



46th Amendment made to the Constitution from February 2, 1983- Outcome of the above:

- 
- Permitted the States to levy tax on the Sale of goods involved in execution of all work contract.
  - States have been given power to separate the contract between material and the labour and levy tax on the material portion of the contract.
  - Identifying whether the goods retained their original identity after the work was executed or had been merged, integrated or becoming part and parcel of the works, buildings etc.



All the States have been given the power under Constitution Amendment and therefore all states have made Amendments in their respective Sales Tax Law to levy tax on such sale either by making separate legislation or by amendment in existing sales tax laws



# WORKS CONTRACT

## INTRODUCTION

### Distinction between Works Contract and Sale

### Sales Vs. Works Contracts

- 'Sale' of 'Goods'
- Transfer of property and ownership
- Intention to buy and sell goods
- Goods are the essence of the contract
- Property passes under the contract

- Transfer of property in goods involved in the execution of works contracts
- No intention to purchase goods
- Agreement for one kind of property but transfer of another
- Property passes on theory of 'accretion' or 'accession'

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

## ▶ 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
- Terms of the Contract plays an important role in deciding whether Works Contract or not.



# 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.

# Determination of Turnover of Sales

- ▶ Under the MVAT Act, the Contract Price or Contract Value is not to be considered as turnover of sales or Sales Price. 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
- ▶ 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.

# WCT under VAT



# PROVISIONS OF WORKS CONTRACT UNDER

## MVAT ACT

- ❑ “Works contract” definition amend w.e.f. 20.6.06.
- ❑ “Sale” Means 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 (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”.

# Calculation of Sale Price of Works Contract

**Actual labour deduction – Following deductions are allowed in case books of accounts are maintained**



- (a) Labour charges & Service charges
- (b) Sub-contract charges
- (c) Planning, designing and architect's fees
- (d) Machinery on hire and tools used
- (e) Cost of consumables, the property in which is not transferred
- (f) Cost of establishment to the extent to it is relatable to the supply of labour and services
- (g) Other similar expenses relatable to the supply of labour and services
- (h) Profit earned by the contractor to the extent it is relatable to the supply of said labour and services

**Intention of the government is to levy tax ONLY on Material component**

# Calculation of Sale Price of Works Contract

Indivisible Contract – in case separate books of A/c's are not maintained or where Commissioner finds the books of A/c's intelligible – Lump sum deductions are allowed

Description of Works Contract	Percentage of Deduction
Construction, improvement, repair of any building, road, bridge, dam, canal or other immovable property	30%
Installation, fabrication, assembling, commissioning or repair of any P&M	15%
Installation, fabrication, assembling, commissioning of Air conditioner, air cooler	10%
Assembling, fitting, re-assembling, improving, producing, repairing, furniture, fixtures (interior decoration)	20%
Construction, fabrication, assembling, commissioning, repairs of bodies on chassis of motor vehicles	20%
Overhauling or repairing or dismantling of any motor vehicles, vessels of every description meant for plying on water or any vessel propelled by mechanical means, any air craft, etc	20%

# Calculation of Sale Price of Works Contract

Indivisible Contract – in case separate books of A/c's are not maintained or where Commissioner finds the books of A/c's intelligible – Lump sum deductions are allowed

Description of Works Contract	Percentage of Deduction
Fitting out, assembling, altering, ornamenting, re-assembling, blending, finishing, furnishing, improving, processing, otherwise treating, adapting or fabricating of any goods	15%
Erection, installation and commissioning of wind turbine generator	30%
Fixing of marble, slabs, polished granite stones and tiles other than mosaic tiles	20%
Fixing of sanitary fittings and plumbing	15%
Painting and polishing	20%
Laying of pipes excluding plumbing	20%
Tyre retreading	30%

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# Calculation of Sale Price of Works Contract

Indivisible Contract – in case separate books of A/c's are not maintained – Lump sum deductions are allowed

Description of Works Contract	Percentage of Deduction
Supply of goods in providing know-how, designs, labour, supervision, inspection, training or other services with any of the operations specified above	20%
Dyeing and printing of textiles	30%
Printing contracts	30%
Any other works contract	20%

**The % is to be applied after first deducting from the total contract price, (the cost of land determined under sub-rule (1A) and then) 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.**



# ISSUES

- ▶ 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



# COMPOSITION SCHEME

- 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 Value

XXXXXXXX

Balance contract value **LIABLE @ 5%/8%**

XXXXXXXX

# ISSUES

- ▶ 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?
- ▶ 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)?

## Explanation Added to Rule 58(1) and Sec 42(3)(ii)–

### Table Method and Composition Method

- ▶ 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.

# 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.

# ISSUES

- ▶ 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 ?
- ▶ 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 ?

- ▶ 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 ?
- ▶ 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 ?
- ▶ Will the answer differ if the Sub-Contractor is Unregistered ?



# Construction 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.

- ▶ 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?
- ▶ 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?

# ISSUES

- ▶ 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 in an existing 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:

## Set off on goods used for works contract –

- WC– opted for Normal Method – Full Set Off
- WC– opted for Composition scheme ( 8%) – Set Off shall be reduced by  $\frac{9}{25}$  i.e. 36% ( i.e. allowable only 64%) – Rule 53(4)
- WC– opted for Composition scheme (Construction Contract) @5% – Set Off after retention @ 4%( w.e.f. 20-06-2006). – Rule 53(4)

## Negative List w.r.t setoff 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)

# ISSUES

- ▶ 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 ?
- ▶ 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 ?

# Construction Industries





# Builders and Developers Liability

- ▶ **LARSEN & TOUBRO LIMITED AND ANOTHER  
VS.STATE OF KARNATAKA AND ANOTHER ON  
26-09-2013-SUPREME COURT JUDGEMENT**

## RULE 58(1A)

- *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**
- ▶ Proviso : Provided that, after payment of tax on the value of goods, determined as per this rule, it shall be open to the dealer to prove before the Department of Town Planning and Valuation that the actual cost of the land is higher than that determined in accordance with the Annual Statement of Rates (including guidelines) prepared under the provisions of the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995. On such actual cost being proved to be higher than the Annual Statement of Rates, the actual cost of the land will be deducted and excess tax paid, if any, shall be refunded

## Rule 58(1 B)

“(1 B)(a) Where the dealer undertakes the construction of flats, dwellings, buildings or premises and transfers them in pursuance of an agreement along with the land or interest underlying the land then, after deductions under sub-rules(1) and (1 A) from the total contract price, the value of the goods involved in the works contract shall be determined after applying the percentage provided in column (3) of the following TABLE depending upon the stage at which the purchaser entered into contract.

Sr No. (1)	Stage during which the developer enters into a contract with the purchaser	Amount to be determined as Value of goods involved in Works contract
(a)	<b>Before issue of the Commencement Certificate.</b>	<b>100%</b>
(b)	<b>From the Commencement Certificate to the completion of plinth level.</b>	<b>95%</b>
(c)	<b>After the completion of plinth level to the completion of 100% of RCC framework.</b>	<b>85%</b>
(d)	<b>After the completion of 100% RCC framework to the Occupancy Certificate</b>	<b>55%</b>
(e)	<b>After the Occupancy Certificate</b>	<b>NIL %</b>

b) For determining the value of goods as per the Table of clause (a), it shall be necessary for the dealer to furnish a certificate from the Local or Planning Authority certifying the date of completion of the stages referred above and where such authority does not have a procedure for providing such certificate then such certificate from a registered RCC consultant.

Rule-(1C) : If the dealer fails to establish the stage during which the agreement with the purchaser is entered, then the entire value of goods as determined after deductions under sub\rules (1) and (1A) from the value of the entire contract, shall be taxable.

▶ Composition Scheme for Builders and  
Developers

As per the Notification No.VAT-1510-Cr-65-Taxation-1,Dated 09-07-2010 the composition Rate notified at 1% For any Agreement for Sale Registered on or after 01-04-2010.

# TDS UNDER VAT



## 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

<u>Serial No</u>	<u>Classes of Employers</u>	<u>Amount to be deducted</u>
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	-----“-----

<u>Serial No</u>	<u>Classes of Employers</u>	<u>Amount to be deducted</u>
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.
- ▶ The quantum of such deduction shall not exceed the quantum of tax payable towards such 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)]

- ▶ 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.: MTR-6 .
- 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. 424 is required to be 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 Challan No. 210 along with 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).

# ISSUES

- ▶ 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.

# ISSUES

- ▶ 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)]
- ▶ 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 ?

# Inter State Works Contract





# Inter-State Works Contract

- Finance Act 2002, had made certain amendment in the Central Sales Tax Act 1956, to include inter-state sales of goods involved in the execution of works contract taxable from May 11, 2002
- clause (ja) in Section 2 of the CST Act was inserted which define work contract as:-

A 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.

- Citus of taxation will come only when:
  - (a) Contractor executes works in another states and
  - (b) The property over the goods passes from him to his customer either by transfer of document of title over the goods when they are in transit from his state to another state or directly on their incorporation in the works.

## ISSUES

- ▶ 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?
- ▶ Whether standard deduction method provided by Table in Rule 58 (1) of MVAT Rules, 2005 can apply to inter-state works contract?
- ▶ Is T.D.S. to be deducted from the value of inter-State works contract ? [Section 31(1)(b)(i)]

# How to determine the taxable turnover?

- **Proviso to Section 2(h) of the CST Act provides the meaning of sale price as under:-**  
*'sale price' in relation to transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract, shall be determined in the prescribed manner by making such deduction from the total consideration for the works contract as may be prescribed and such price shall be deemed to be the sale price for the purpose of this clause.*
- **However no deductions has been prescribed under the CST Act .**
- **Section 8A of the CST Act does not prescribe any mechanism regarding how to determine the turnover in case of a works contract.**
- **Section 13 (1)(aa) of the CST Act empowers the Central Government to make rules providing for** *"the manner of determination of the sale price and the deductions from the total consideration for a works contract under the proviso to Section 2(h)"*.
- **However no rules has been framed by the Central Government in this regard.**
- **Section 13 (3) the CST Act empowers the State Government to make Rules, not inconsistent with the provisions of this Act and the Rules made under sub-section (1), to carry out the purpose of this Act**

# How to determine the taxable turnover?

- However no specific rules have been made by the State Government in respect of an inter-state works contract.

So, what are the remedies available in this matter -

Recourse needs to be taken to the Supreme Court judgment in the case of "*M/s. Mahim Patram Private Limited v. Union of India (2007)*".

- Brief facts of the case:-
  - Appellant was engaged in the printing of question papers for various universities and boards situated outside the State of Uttar Pradesh;
  - As the goods have moved from one State to another, it was an inter-state works contract;
  - The appellant had contended that in absence of the provisions for determining the 'sale price'; taxable turnover cannot be computed under Section 8A and CST cannot be levied.

# How to determine the taxable turnover?

The learned Supreme Court decided as under:

- Section 9(2) of the CST Act empowers the assessing officer to ‘assess, reassess, collect and enforce payment of tax, including any interest or penalty payable by a dealer under this Act as if the tax, interest or penalty payable by such dealer under this Act is a tax, interest or penalty payable under the general sales tax law of the State’.
- Thus the powers conferred and the procedures laid down under the State sales tax laws would, therefore be applicable for the purpose of carrying out the assessment under the CST Act.

# How to determine the taxable turnover?

- In view of the above ruling, provisions made in a particular State (from where the goods are moving) for determining the taxable turnover and the sale price in case of a works contract would be applicable accordingly in case of an inter-state works contract .

# Rate of Tax Applicable

- After determining the 'sale price' and the 'turnover' as per the provisions of the State Act, rates of CST prescribed under Section 8 of the CST Act would be applicable.
- Section 8 of the CST Act provides the following rates in case of an inter-state sale
  - If sale is made to a registered dealer against Form 'C' – 2%
  - If sale is made to a registered dealer without form 'C' – rate applicable in the respective State
  - If the sale is made to an un-registered dealer – rate applicable in the State from where the goods are moving in the course of inter-state trade or commerce.

# ISSUES

- ▶ 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 ?



# Case study

- ▶ Productking.com is a website which displays products of all types, ranges & Varieties. The membership is free & the members can purchase any commodity listed as available with the prices as declared. When an item is ordered, options are available for payment through Credit card or online transfer or cash on delivery. Productking.com has its head office at Mumbai and has leased out huge warehouses across the country including Kerala. The various vendors of the products have registered the Kerala warehouse as their additional place of business and have declared them as such in their VAT registrations. When a customer in Kerala order a mobile phone, the employees of Productking.com pack the phone in a special cover with all accessories ; affixed the invoice of the phone vendor with VAT ; courier the phone to the customer. The packing has the logo and brand of Productking.com . The Kerala Vat authorities are of the views that Productking.com is also liable to pay Vat since they have facilitated the supply and thereby have become a dealer. Productking.com discharges service tax on the fulfillment charges (packing activity) . **Advise** **????**

# Case Study

- ▶ The Dealer has entered into works contract with say XYZ LTD for Construction of Building. The Contract price was Rs.140 lakhs. There is a Condition that such work should be completed within 24 months, but Rs. 2 crores will be payable as Performance bonus only if work will be completed before 24 months While Rs. 2 crores will be deducted from the contract price if work completed after 24 months. Determine what will be the Contract Price???

*Thank you*

Presented by  
**VIKRAM D. MEHTA**

