

Refreshing **MVAT SET-OFF RULES**



By CA Umesh Sharma

Agenda

- To refresh our self on MVAT Setoff rules and Issues before closer of Audits.
- In a unique and very practical way i.e., P&L Account and Balance Sheet Review method.
- Its very simple way to understand complex setoff rules.
- WITH FUN AND IN SIMPLE LANGUAGE. SO BE RELAX AND BEAR ME FOR AN HOUR.
- But why all this.....,



- *MVAT i.e. Value Added Tax concept runs on the principal of charging of tax at every stage of transaction*
- *From Manufacturing to the Final consumption, generally every goods has to move in different hands e.g.
manufacturer -to-C&F Agent-to-distributor-to-dealer-to-consumer.
And at each stage there is some element of value addition in price of goods*

Input and Output Tax

Input Tax



VAT paid by a registered dealer on taxable input purchases for business

Output Tax



VAT charged by a registered dealer on sales made by the business to its customers

VAT SET-OFF “MEANING”

- The word “Set-off” though not defined under the MVAT Act, but it generally means

Adjustment of
Input tax credit *against the*
Output tax liability.



“VAT SET-OFF”

Audit Report Requirements



- ***AUDIT AND CERTIFICATION, Auditor has to verify the correctness and completeness of sales tax returns,***

auditor has to certify that,

Computation of set-off admissible in respect of purchases made during the period of review and adjustments thereto are correct.....

“VAT SET-OFF”

Audit Report Requirements



- *Further, MVAT Auditor has to mention the difference in set-off claimed and set-off as per audit.*
- *He is also required to report the difference between the final tax liability as per return and final tax liability as per audit.*
- *Set-off ultimately affects the final tax liability of the dealer*

VAT SET-OFF “PENAL PROVISIONS”



- Section 29 (3) – If dealer knowingly claimed set-off in excess of what is due to him – penalty equal to amount of tax due.
- Section 29(4) – If dealer knowingly issued any false document on the basis of which incorrect set off is claimed - penalty equal to amount of tax due.
- Section 30(4): Additional Interest @25% on additional tax liability.
- Rule 90 – If dealer has made breach of any of the rules (including set-off rules), penalty. 8

VAT SET-OFF

“RELATED SECTIONS AND RULES”



Section 48 – Conditions for set-off.

Section 50 – Adjustment of excess amount.

Rule 52 – Tax amount eligible for Set-off.

Rule 53 – Reduction of Set-off.

Rule 54 – Non-admissibility of Set-off.

Rule 55 – Conditions for grant of Set-off.

Rule 79 – Cases for Refund of Set-off to PSI.

VAT SET-OFF

(Section 48)



“CONDITONS FOR CLAIMING SET-OFF”

- Claimant dealer should obtain **Tax Invoice** from the selling dealer.
- Such Tax invoice should contain the certificate signed by selling dealer, containing that, his registration certificate was in force as on the date of sale by him **and he has paid or he shall pay the tax due if any.**
- **In no case, set-off shall exceed the amount of tax in respect of the same goods actually paid or deferred.**

VAT SET-OFF



“AMOUNT ELIGIBLE FOR SET-OFF”

- tax paid on capital goods or
(Rule 52)
- tax paid on goods the purchases of which are debited to profit & loss account or
- tax paid on goods the purchases of which are debited to the trading account or
- tax paid under Maharashtra tax on the entry of Motor Vehicles into Local Areas Act, 1987 and
- tax paid under Maharashtra tax on the entry of goods into Local Areas Act, 2003 e.g. Tiles, Air conditioners ,etc.

MVAT SET-OFF

“PURCHASE OF RAW MATERIAL”

Full Setoff available other than following transactions:

1)Manufacturer of Tax-free goods	53(2)(a)	<ul style="list-style-type: none">■“Reduction rates are linked to CST rates”_■<u>From 01-06-08 onwards</u>- 2% of purchase price of corresponding taxable goods shall be reduced from set-off.■No reduction in case 1) Sarki Pend, de-oiled cakes, w.e.f 1-5-2012 and 2) of Export of “Sch. A” goods.■ (If it is not possible to ascertain the corresponding purchase price by reference to books of account, the ratio of sale of taxable goods and tax-free goods shall be applied.)
2)For EC Holder	54 (e)	■No set-off (only refund can be granted under rule 79)

VAT SET-OFF

“PURCHASE OF RAW MATERIAL”

Full Setoff available other than following transactions:

<p>3) Dealer dispatches taxable goods outside state (Other than Sales/ i.e., Branch Transfer)</p>	<p>53(3) (a)</p>	<ul style="list-style-type: none"> ■ From 1st-April 2012: 4% of purchase price of corresponding taxable goods shall be reduced from set-off. (Capital assets, fuel and natural gas excluded) ■ (w.e.f 1st-May-2012: In case of Goods having rate of tax below 4% reduction rate will be the rate of tax on such goods) <i>(Watch out for April 12)</i> ■ <i>The deduction provided in this sub-rule shall not apply if the goods dispatched are brought back to the State within six months of the date of dispatch whether after processing or otherwise;</i> ■ <i>(1st take reduction on transfer and then reverse back when received) (Issue in MVAT Audit to keep track of records).</i>
<p>4) If Receipts on account of sales are less than 50% of gross receipts (other than Job worker, Hotels and Clubs)</p>	<p>53 (6)</p>	<ul style="list-style-type: none"> ■ Set off is available only on those purchases where corresponding goods are sold/dispatched within <u>six months of date of purchase.</u> ■ “Receipts” pertaining to all activities including business activities in the state excludes branch transfer value.

VAT SET-OFF

“PURCHASE OF **STORES & CONSUMABLES**”

Full Setoff available other than following transactions:

1) Manufacturer of Tax-free goods	53(2)(a)	<ul style="list-style-type: none">■ <u>W.e.f 1st –May -2012</u> :■ No “Reduction rates are linked to CST rates”.■ <u>Change in corresponding taxable goods. It excludes stores, consumables.</u>
2) For EC Holder	54 (e)	<ul style="list-style-type: none">■ No set-off (only refund can be granted under rule 79)■ Issue:■ As per rule 80 raw material definition includes stores and consumable. Where as w.e.f. 1-5-2012 rule 53(9)(a) corresponding goods do not include it.

VAT SET-OFF

“PURCHASE OF **STORES & CONSUMABLES**”

Full Setoff available other than following transactions:

3) If Receipts on account of sales are less than 50% of gross receipts (other than Job workers, Hotels and Clubs)	53(6)	■Set off is available in respect of such purchase for a period of three years starting from (the end of the year in which R.C. obtained up to 1-7-09) date of effect of registration .
4) In Case of Job Worker	54(d)	■If dealer is principally engaged as job worker and sale of scrap, waste etc is incidental to job work, <u>No set-off</u> is allowed in respect of consumables.

VAT SET-OFF

“PURCHASE OF **STORES & CONSUMABLES**”

Full Setoff available other than following transactions:

5) Dealer dispatches goods outside state (Other than Sales/ i.e., Branch Transfer)	53(3)	<ul style="list-style-type: none">■ <u>W.e.f 1st –May -2012 :</u>■ No “Reduction rates are linked to CST rates” _■ <u>Change in corresponding taxable goods. It excludes stores, consumables.</u>
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VAT SET-OFF

"PURCHASE OF FUEL"

Purchase of Fuel (other than motor spirits)	53(1)	<p>Applicable to All dealers</p> <p>From 01-04-07 to till date Reduction of 3% of corresponding purchase price.</p> <p>From 1-5-2012 Natural gas is excluded from fuel. But if <u>Natural gas</u> is used as raw material, consumables 3% retention is applicable.(not applicable if resold, export or branch transfer)</p>
Purchase of Fuel (being motor spirits)	54 (b)	<p><u>NO SET-OFF</u> For Tax paid on Purchase of Motor Spirit. (Motor Spirit i.e. HSD, ATF, Petrol ,etc. list given in rule 54 (b) w.e.f. 16-2-2012)</p> <p>Applicable : All dealers (except reseller of motor spirit)</p>
For EC Holder	79	<p>■No reduction of set-off (refund can be granted subject to reduction of CQB)</p>
No Definition of Fuel?		<p>■Refer "Gupta Metallics & Power Ltd. (54 VST 292) (Bom). Use of Coal in Sponge Iron manufacturing is not fuel but raw material.</p>

VAT SET-OFF

“PURCHASE OF CRUDE OIL”

Purchase of Crude Oil by Oil Refinery for Refining	^{54(C)}	NO SET-OFF
Purchase of Crude Oil by Other dealers		Set-off is available with reduction ,if it is used as fuel.

VAT SET-OFF

“PURCHASE OF **PACKING MATERIAL**”

Manufacturer or Reseller of Tax-free goods	53(2)(a) & (b)	<ul style="list-style-type: none">■ <u>From 01-06-08 onwards</u>- 2% of purchase price of corresponding taxable goods shall be reduced from set-off.■ (w.e.f 1-5-2012: In case of Goods having rate of tax below 4% reduction rate will be the rate of tax on such goods) <i>(Watch out for April 12)</i>
For Manufacturer, If Receipts on account of sales are less than 50% of Gross receipts.	53 (6)	<ul style="list-style-type: none">■ Set off is available in respect of such purchase for a period of three years starting from date of effect of registration .

VAT SET-OFF

“PURCHASE OF *EXPENSES* ITEMS”

Purchase of parts and accessories of Passenger and Goods Motor Vehicles (i.e, Vehicle repairs)	54(a)	No Set-off is allowed in respect of tax paid on these purchases. W.e.f. 1-6-2012 Goods Carriers are also included in the disallowance list.
Software purchases debited to profit & loss account	54(f)	No Set-off is allowed in respect of tax paid on these purchases (except for a dealer who is software trader)
Building repairs	54(g)	No Set-off is allowed in respect of tax paid on these purchases being immovable property.
What about Liquor?		?

VAT SET-OFF

“PURCHASE OF LIQUOR”

<p>Purchases of Liquor covered under Sch. D-entry 1,2 AND 3.</p>	<p>53(i)</p>	<p>W.e.f 1-5-2011: Full setoff available for OMS, Exports , Branch Transfers (with retention) and Customs bond to foreign going ships and aircrafts.</p> <p>No Setoff for sale in Maharashtra State.</p>
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**“VAT SET-OFF
 “PURCHASE of GOODS FOR TRANSFERRING INTO **WORKS CONTRACT**” :**

Works contractor opted for composition	u/r 53(4)	<ul style="list-style-type: none"> ■ If dealer opted to pay 8% composition - 36% of tax amount is disallowed for setoff. (Other than Const Contracts) ■ If the dealer opted to pay 5% composition (Const contract) <ul style="list-style-type: none"> – 4% of purchase price of corresponding taxable goods is disallowed. ■ Applicable to Sub-contractor if, principal contractor is under Composition scheme.
Works contractor not opted for composition. (Actual or % Method)		<ul style="list-style-type: none"> ■ Full set-off is available on goods which are transferred in the process of Works Contract.
Builders and Developers not under composition scheme	u/r 58 (1A)	<ul style="list-style-type: none"> ■ Full setoff. But wait for taxability of these dealers.
Builders and Developers under composition scheme		<ul style="list-style-type: none"> ■ No Setoff.

VAT SET-OFF

Balance Sheet items

Tax paid on erecting of Immovable property (other than plant & machinery) by way of works contract.	54(g)	No Set-off is available in respect of tax paid to works contractor for such erecting.
Tax paid on purchases of goods & used for erecting of Immoveable property (Plant & Machinery) For e.g. Foundation of P&M, ETP, etc.	54(g)	Set-off is available in respect of tax paid on goods which are used in erecting of immovable property (Plant & Machinery).

VAT SET-OFF

"PURCHASE OF PLANT & MACHINERY"

In case of Manufacturer, If Receipts on account of sales are less than 50% of gross receipts. (other than job worker)	u/r 53(6)	■ Set off is available in respect of such purchase for period of three years starting from date of effect of registration .
In case of Reseller, If Receipts on account of sales are less than 50% of Gross receipts.	u/r 53(6)	No Set-off allowed on purchase of any Plant & Machinery.
In case of Job worker	u/r 54(d)	No Set-off allowed on purchase of any Plant & Machinery.
In case of Hotelier and If Receipts on account of sales are less than 50% of Gross receipts.	u/r 53(6) & 54(k)	Setoff on capital items which do not pertain to service other than foods, etc. i.e, used in lodging and boarding. (<u>No restriction of 3 yrs</u>)

VAT SET-OFF

"MOTOR VEHICLE"

Purchase of <u>Passenger</u> Motor Vehicles & treated as capital assets	54(a)	No Set off allowed to any dealer <u>except used in hiring of it. (Without driver).</u> W.e.f. 1st-May-2013 no setoff is available hiring of passanger vehicles.
Purchase of <u>Goods</u> Motor Vehicles & treated as capital assets	54(d), 53(6)	<u>For Job worker</u> , No set-off is allowed on these purchases. <u>For Reseller or Manufacturer</u> , a) If receipts on account of Sales are less than 50% of Gross Receipts- No set-off is allowed on these purchases. b) In any other case, Full Set-off is allowed in respect of tax paid on these purchases .

VAT SET-OFF

“OFFICE EQUIPMENT, FURNITURE & FIXTURE”

Purchase office equipment, furniture & fixture & treated them as capital assets.

54(d),
53(6)
53(7A)

For Job worker, No set-off is allowed on these purchases.

For Reseller or Manufacturer, If receipts on account of Sales are less than 50% of Gross Receipts - No set-off is allowed on these purchases.

In any other case

From 01-04-07 onwards, 3% of purchase price of such purchase shall be reduced from set-off.

Full Setoff available for dealer using in business of right to use these goods .

VAT SET-OFF

“INTANGIBLE OR INCORPOREAL GOODS”

<p>Purchase of</p> <ul style="list-style-type: none">a) import license,b) export permit,c) Sim Cards,d) Software for trading,e) Copyright which is sold within 12 months of purchase	54(f)	<ul style="list-style-type: none">■ Full Set-off is available in respect of tax paid on these intangible goods
<p>In respect of Tax paid on any other intangible or incorporeal goods</p>	54 (f)	<ul style="list-style-type: none">■ No Set-off is available in respect of tax paid on these goods e.g. goodwill, copyright for own use, software for own use etc.

VAT SET-OFF

OTHER DEALERS

Sr. No.	Nature/situation of Dealer	of	Reduction of set-off
1	If dealer is electricity distribution generation transmission company.	is or or	From 01-06-08 onwards- 2% of purchase price of goods for use in distribution or generation or transmission of electricity (Including capital goods)
2	Dealer executing a contract processing textiles.	a of of	■ From 01-06-08 onwards- 2% of purchase price of corresponding goods, packing goods, shall be reduced from set-off. ■ On Capital Goods as per other rules.

VAT SET-OFF

OTHER DEALERS

Sr.No.	Nature/situation of Dealer	Reduction/disallowance of set-off
3	Composition dealers i) Restaurants, eating house, hotels etc, ii) Bakers, iii) Retailers, iv) dealers in second hand motor vehicles	<ul style="list-style-type: none">■ Set off is not allowed in respect of corresponding goods purchased and packing materials used in packing of those goods .■ Setoff available on P&L and Capital Assets.
4	Mandap keepers opted for composition u/s 42(4)	No set-off is available in respect of purchase of mandap, tarpaulin, pandal, shamiana, decoration, and furniture, fixtures, lights and light fittings, floor coverings, utensils and other articles ordinarily used along with a mandap, pandal or shamiana.

VAT SET-OFF

ENTITLEMENT CERTIFICATE HOLDER DEALER

Tax paid on Purchases made by EC holder of raw material	Rule 54(e), 79(1)	No set off allowed. However, dealer is entitle to claim refund of tax equal to set-off on which he would have been entitled.
Tax paid on Purchases made by EC holder of capital assets & other items	55(3)	If there is no tax liability, dealer is entitle to claim refund of tax equal to set-off on which he would have been entitled.

VAT SET-OFF

ENTITLEMENT CERTIFICATE HOLDER DEALER

<ul style="list-style-type: none">■ Tax paid on Fuel purchase by EC Holder <hr/>	Rule 79(2)	Dealer is entitle to claim refund equal to the extent of retention as per Rule 53, i.e. From 01-06-08 onwards- 2% of corresponding purchase price. (except fuel)
<ul style="list-style-type: none">■ Tax paid on Purchase (other than fuel) used in manufacture of tax free goods by EC Holder. <hr/>		Condition : Dealer must reduce such refund amount from the balance of monetary ceiling available at the beginning of the return period in respect of which refund is claimed.
<ul style="list-style-type: none">■ Tax paid Purchase (other than above) used in manufacture of goods which are dispatched outside the state as branch transfer or to its own agent by EC Holder.		

VAT SET-OFF ON SALE BY MEGA PROJECT -PSI DEALER

- Sale by Mega Project dealer of manufactured goods other than raw material.

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Rule 52A

In case of local resale of these goods full setoff available to the extend of tax paid under local sales.

In case of CST sale, setoff to the extend of tax paid under CST sale.

Setoff to be claimed in the month of sale.

VAT SET-OFF

“CONDITIONS DEPENDING ON CIRCUMSTANCES”

Dealer obtained new registration for the first time Rule 55 (1)

- Set-off is available only in respect of purchases on or after 1st April of the year in which the dealer has obtained registration and subject to following conditions:

A) If the goods purchased are treated as capital assets, and they are purchased on or after 1st April of the year of registration, set-off is available on all such capital goods, *if the dealer have not sold these capital assets before the date of effect of registration;*

VAT SET-OFF

“CONDITIONS DEPENDING ON CIRCUMSTANCES”

Dealer obtained new registration for the first time Rule 55 (1)

- B) In case of Reseller, If the dealer is not a registered dealer at the time of purchases, set-off is available only if such goods are not sold or disposed off before the date of registration.
- c) In case of Manufacturing concern, if the dealer is not a registered dealer at the time of purchases, set-off is available only if such goods are used or consumed in manufacture and such manufactured goods have not been sold before the date of registration.
-) **For Setoff on URD Period, claim under administrative relief- refer circular 33T of 2007.**

VAT SET-OFF

“CONDITIONS DEPENDING ON CIRCUMSTANCES”

Dealer dies or transfers or disposed off his business in part/full [Rule 55(7)] :

- The person succeeding shall be entitled to take credit of any set-off that is carried forward at the time of death, transfer, disposal or change.
- **[Rule 53(5)]**
- If discontinued than no setoff on closing stock of unsold goods. Needs to reversed the setoff taken on it.

VAT SET-OFF

“CONDITIONS DEPENDING ON CIRCUMSTANCES”

Dealer unable to identify the goods purchased with goods sold Rule 55 (5)

- It shall be presumed that it is used or sold or consumed in chronological order in which it has been acquired.

ADJUSTMENT OF SET-OFF WITH TAX PAYABLE

As per Rule 55 (3), claimant dealer can adjust set-off amount,

- against the tax payable under VAT Act or
- against the tax payable under CST Act or
- against the tax payable under the Maharashtra Tax on Entry of Goods into Local Areas Act, 2003

and after adjustment of set-off if there is any **excess**, then the dealer may claim **refund of excess** or **part of excess** or **may carry forward the same** for **subsequent period** in the same year to set-off against above taxes.

ISSUE

But as per Section 50 (2), dealer may adjust excess refund **against any return for any period** contained in year whereas as per rule 55, dealer may adjust only against subsequent period.

Under such overriding provisions, **Section will prevail over rules**. Further, a dealer has to be interpreted the provisions which are more beneficial to him.

Setoff- Issues- Cross Check- tax paid.

- Reference to section 42,48 and rules 51 to 55.
- Issues in purchases are more related to accounting, Software, Vendor master, etc. which are practical in nature.
- The biggest issues that the auditor and dealer has no machinery to ascertain the

Setoff- Issues-

TIN no and URD dealer

- TIN No. of Parties needs to be mentioned on Invoice. If not, a technical default, no effect on setoff. (rule 89 read with section 48 (5)).
- For URD dealer setoff allowable only for the purchase made in the F.Y. in which he gets registered. However Administrative relief can be made for the other years. (rule 55)

Setoff- Issues- Fuel- tax free-branch transfer ratio

- U/r 53(1)- No definition of fuel? Retention of 3%. In common parlance material used to generating any source of energy, heating, boiling, etc. is fuel.
- U/r 53(2),(3)(4)- retention of 2% on manufacturing or resale of tax free goods or branch transfer on **Corresponding goods.**

Setoff- Issues- discontinued business- sales below 50%.

- In case of discontinued **business** setoff is not available on closing stock. But setoff is available in capital goods. (rule 53(5)). Please note discontinuance of product is not covered.
- Were the sales is less than the 50% of gross receipts- Setoff is available on:
- Corresponding goods sold within 6 months. Issues raised on setoff allowably⁴¹ in such

Setoff- Issues – definition of Capital Goods?

- U/s 2(5) r/w rule 53(7):
- Definition of Capital goods not provided in MVAT Act, reference of Income tax act needs to taken.
- **Issues arises when goods are capitalized under Plant and Machinery or Electrical Items under Income Tax Act, were as they are covered under IT equipment's list as per Notification of C-54 schedule entry.**

Setoff- Issues- other

- No setoff reversal on loss or destroy of goods.
- As per rule 55 the documents of purchases need to be maintained i.e. in chronological order, tax invoices, etc.
- **In one case we had face a problem of setoff disallowance for non production of party ledger.** He cannot deny setoff for non production of Party Ledger ⁴³ when other

Summary

- Check out input tax credit for following dealers;
- 1) Manufacturer of tax free goods and branch transfer for corrected corresponding goods list w.e.f 1-5-2012.
- 2) Natural Gas and Fuel.
- 2) Ginning and Pressing Units.
- 2) Textile processing unit.
- 3) Purchases from Mega Unit.
- 4) Liquor Dealers.
- 5) ITC Mismatch reports and issues.

Thanks

