



# **Set off/Refund & Refund procedure under the MVAT Act , 2002**

Presentation on 20<sup>TH</sup> December 2013

For WIRC

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# Set off / Refund

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- **Set off provisions**
  - **Amendments**
  - **Birds eye-view**
  
- **Refund**
  - **Main reasons**

# **Refund & Refund Audit**

## **under the MVAT Act , 2002**

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- **Refund provisions: Section 51**
- **Refund audit provisions: Section 22**
- **Its procedure**
- **Circulars & Case laws**

# Set off provisions

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- **Rule 52A: In respect of goods manufactured by Mega Unit : wef 17/03/2011**
  
- **Rule 53(1A) : Natural Gas**
  
- **Rule 55B: Developers and units in SEZ**
  - **Inserted on 16/05/2013**
  - **Wef 15/10/2011**
  - **Tr. Circular 8T/2013 dt. 29/11/13**

# Set off provisions

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## ■ Retention

- Use as fuel
- Tax free goods
- Branch Transfer
- Works contractor: Composition
- Composition of sales/ total receipts
- Office equipment, furniture: cappitalised
- Electricity Cos involved in G/T/D
- Processor of textiles

# Set off provisions

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## ■ Negation

- **Motor vehicles not being goods vehicle**
- **HSDO, other aviation fuels, petrol**
- **Crude oil used by oil refinery for refining**
- **Job worker**
- **Goods of incorporeal /intangible nature**
- **Works contract: Immovable property**
- **Mandap & other articles under composition**
- **Hotelier: specified goods**

# Set off provisions

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- **Rule 55(1)**
  - **In case of newly regd. Dealer**
  
- **Rule 55**
  - **Original tax invoice**
  - **Adjustment in returns**
  - **FIFO method**
  - **Availability to successor**

# Refund

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- **Thumb rule: value addition**
- **Refund**
  - **Seasonal goods/ stock piled up**
  - **OMS sale/Exports**
  - **Manufacturer of tax free goods**



# Refund when arises?

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- **When set off available for specific period exceeds tax payable under MVAT & CST Acts, then excess is refundable.**
- **It needs to be carried forward to the next return period and likewise upto the end of financial year**
- **In certain cases it can be claimed as per returns filed.**

# Section 51:

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- **Grant of refunds**
- **When a registered dealer has in respect of any return, fresh return or revised return shown any amount refundable and it is not to be adjusted as per section 50, then on application CST shall refund**
- **CST may, subject to such conditions and restrictions as may be prescribed, reduce the refund and grant only part of the refund claimed in such application.**

# REFUND – Section 51

- The application for refund can be made after filing of return, fresh return or revised return, as the case may be, by following dealers:
  - a) an exporter[ as per Explanation],
  - b) 100% EOU, SEZ, STP or EHTP [Sec.8(3)]
  - c) PSI unit except Tourism Projects-'99 Scheme
  - d) more than 50% sales to OMS in PY
  - e) CSD or Indian NCS
- In any other case, application for refund can be made only after end of the year.

# REFUND – Section 51

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- **Additional info. may be called for**
- **To specified dealers BG for certain period may be prescribed. Refund within one month of the receipt of BG. The maximum period of Bank Guarantee shall be of 36 months.**
- **Refund to be granted within 18 months from the end of the month of application**
  - **Proviso: for applications prior to 31/03/2011**
  - **Period prior to 31/03/2010 : Before 30/09/2011**
  - **Period 2010-2011: Before 30/06/2012**

## **REFUND – Section 51**

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- **No refund under section 51 shall be granted unless an application is made and the application shall not be entertained if it is made after 18 months [three years] from the end of the period covered by return**
- **Ref: Vaibhav Steel Corporation**  
**[ Bombay HC: WP 1735/26-11-13]Period 2009-10**
- **Commissioner is satisfied that a refund is due, he shall record an order in Form 502**

## **REFUND - Section 51**

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- **Refund shall not be granted if before the grant of refund, a notice for assessment covering the period to which the refund relates is issued or proceedings under sub-section (3) or (4) of section 64 are initiated.**
  - **However, refund shall be granted of on amount equal to amount of Bank Guarantee furnished, if any.**

# Rule 55A

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- **On application in Form 501, if it is noticed by CST that**
  - **Tax has not been paid on the earlier sales in respect of the transactions on which set off has been claimed**
  - **Declarations/certificates under the CST Act are not received**
- **Reduction of refund/set off shall equal to amount of set off on such purchases & differential tax on non receipt of declarations**

# Rule 60

- **Application for refund in Form 501.**
- **At present, r/W rule 17A(2), it is e-application**
- **Format of application**
  - **General form**
  - **Annexure A: Purchase details**
  - **Annexure B: Request for early grant of refund**
  - **Annexure C: Declarations not received**
  - **Annexure D: Declarations received.**
- **Refund order shall be passed in Form 502**
- **Refund payment order in Form 503 or 504.**
- **Refund adjustment order in Form 506.**



# Carry forward of REFUND

- **C/forward refund as per any return to subsequent period within the said year allowed , but not to subsequent year.**
- **However, by Trade Circulars allowed as a specific case for certain years**
  - **18-T [01/08/2006] , 41-T [21/05/2007]**
  - **15-T [15/04/2010] & 05-T [11/04/2011]**
- **1/4/12onwards Refund upto 5 lakh allowed to be c/fd**

# REFUND – Trade Circulars

- **Master Trade Circular for Refund:**
  - **56-T/2007 dt.23-08-2007**
  
- **Trade Circulars for Refund:**
  - **6-T/08 [01-03-08]: Bk. Guarantee**
  - **19-T/08 [23-05-08] , 30-T/08 [21/08/08] & 36-T/08 [20/10/08]: Specified category of Dealers with Net worth > 100 Cr.**
  - **35-T/08 [10/10/08]: Voluntary Refund Scheme**

# REFUND – Trade Circulars

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- **Trade Circulars for Refund:**

- **24-T/09[29/08/09]: Specified category of Dealers with Net worth > 100 Cr.**
- **28-T [15/10/09] & 33-T/09 [01/12/09]: e-application of refund claim**

- **Trade Circulars for Refund:**

- **3-T/10 [18/01/10]: Revision of norms for Bank Guarantee**

# REFUND – Trade Circulars

- **22-T/ 2010 dated 05/10/2010**
  - **Part A General Information**
  - Part B Refunds against Bank Guarantee**
  - Part C Fast Track Refund Scheme**
  - Part D Refunds under the Exporter Refunds Scheme.**
  - Part E Part Refund Scheme for Annual Refunds (for periods from 1/4/08 onwards)**
  - Part F Refund After Refund Audit**
  - Part G Annexure**

# REFUND – Trade Circulars

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- **05-T/ 2011 dated 11/04/2011**
  - **"The refunds against bank guarantee Shall be granted any time for any period even after the due date of filing of audit form 704 is over. The condition of refund audit of previous period and major discrepancy will not be applicable in the bank guarantee cases."**

# Internal circulars

- **2A/10 [10/02/10]**
  - **Internal audit before Vat refund**
    - **Specified commodities, PSI units**
    - **Refund > Rs. 5 lakhs**
  - **X-check instructions**
  - **Desk audit of audit report Form 704**
  - **Exception for printing of cheques**
    - **Fast track refund/ Bank guarantee cases**
- **5A/10 [31/03/10]: procedural guidelines for cross checks & internal audit in refund cases**

# REFUND- Judicial position

- **M/s Solar Explosives Ltd. :VAT A 1/ 2 of 07  
Dt.27-07-07 [Refund order u/S 51]**
- **M/s Seagram India Ltd. : VAT SA 8 of 07  
Dt. 20-12-07 [Maintainability of appeal ag.  
Refund order]**
- **M/s S P & Co.: VAT appeal no.3 of 09  
Dt. 06-04-09 [Tax not received into Govt.  
Treasury to be brought on record transaction  
wise]**
- **Mahalaxmi Cotton Ginning [Bom HC]  
[WP 33/2012- Tr. Cir. 8T/21/06/12]**

# Objective of Refund Audit

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- **To ascertain and ensure compliance of laws implemented by Sales Tax Dept.**
- **Practical level- to ascertain correctness of returns & refund claim**
- **To identify inadequacies of returns,**
  - **when checked with books of accounts**
  - **And the circumstances of the business.**
- **To quantify refund [or the liability , if any].**



# Sec.22 : Audit – An Analysis

contd....

- **Sub-sec.1: Criteria for selection of dealers**
  - who have
    - Not filed returns in time
    - **Claimed refund of tax**
    - CST prima facie not satisfied with correctness of any return filed OR is not satisfied with any claim, turnover etc
    - Selected based on ‘criteria or on random’
    - Reason to believe

# Sec.22 : Audit – An Analysis

contd....

- **Sub-sec.5: During the course of audit – the dealer to**
  - **Afford him necessary facility to inspect Books, documents – which may be available at such a place.**
  - **Afford him facility to check or verify the cash or stock.**
  - **Furnish information**

# Sec.22 : Audit – An Analysis

contd....

- **Officer cannot remove any books of accounts, other documents or any cash or stock**
- **Time with in which Business audit is to be completed – not provided**

# Documents/data required at the time of business audit.

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- **Balance sheet/Trial balance/ Sch. under Companies Act, IT Act incl. Tax Audit Report in Form no.3CD.**
- **Sale & Purchase register- Summaries**
- **Sales invoices/Purchase invoices**
- **Returns & challans filed under MVAT Act, 2002 & CST Act, 1956.[Allied laws also]**
- **Ledger and all books of account**

# Documents/data required at the time of business audit (cont..)

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- **Stock registers/ verification sheets –to facilitate verification of cash & stock @ POB**
- **Detailed party wise statement of sales and purchases**
  - **[e-Form 801 now prescribed for audits which commenced on or after 1.4.2009]**
- **DN & CN , dispatch proof of return of goods**
- **Transport receipts and delivery challans.**
- **Import/export documents**

# Documents/data required at the time of business audit (cont..)

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- **Reconciliation statement of sales and purchases with MVAT returns filed Registers, Ledger, Manufacturing , Trading, Profit & Loss A/c, Balance Sheet**
- **Month wise summary of sales/purchases.**
- **Declarations in support of exemptions claimed under MVAT ACT, 2002 and CST Act, 1956; i.e. C forms, H forms, F forms etc.**
- **Any other documents/books required during conduct of audit.**

# Documents/data required at the time of business audit (cont..)

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- **Statement of various input tax credit availed on**
  - opening stock as on 1.4.2005
  - Regular purchases
  - Expenses
  - Assets purchased.
- **Rate of tax on input and output goods.**
- **List of capital assets, and addition/reduction if any.**

# Scope of Audit

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- **Interview**
- **Free hand u/S 14**
- **Physical stock of goods**
- **Cash/bank balance**
- **Reconciliation**
- **Discretion of checking other period/ issues**
- **Intervention by Investigation Branch**
- **If info. Not kept ready, Penalty ?**



# Powers of Audit officer

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- **Powers or Duties?**
- **To communicate his observations to the dealer, if possible on the date of audit or immediately thereafter.**
- **No order / information contemplated**

# Powers of Audit officer

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- **If discrepancies found**
  - **After 1.7.09, under section 63(7)**
  - **Form 604 prescribed on 1-5-2010.**
  - **To ask dealer to file revised return & pay differential tax, claim lesser refund or recalculate CQB.**

# Powers of Audit officer

- **Corrective action**
  - **File revise returns, pay off differential dues with interest.**
  - **W.e.f 1.7.09, interest @25% under Sec.30(4)**
- **If not acceptable to dealer- initiation of appropriate proceedings incl. assessment.**
- **Rejection of claim of refund / reduction in claim - Assessment notice (u/s.23)**
- **If already assessed – review u/s.25**
- **Intimation to appellate authority**
- **Orders to levy interest and penalties**

# Practical scenario

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- **To avoid granting of refund.**
  - **[Situation of automation with silver lining]**
- **To reject application for technical defects**
- **To ask for details/copies pertaining to third parties**
- **To make them file annexure J-1/J-2 of MVAT audit report [2011-12 onwards, except composition dealers, rest have filed ]**

# Practical scenario

- **Internal Circular 17A /2008 dtd.18.08.08**
- **Pre audit preparations, dealer's profile, planned approach**
- **Type of audit: Entire year or periods, Scope of specific audit: expandable**
- **Time limit: Three months from date of visit**
- **Scrutiny of Bk. State.:**
- **Taking Stock/Cash counting: Not to be resorted in routine manner**
  - **Express permission from JC for strong and valid reasons/ 20A/2009 dtd 4.9.09: Instead of permission, discretion to be exercised**

# Refund –Some issues

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- **Refund of non return filers**
  - Tr. Circular 9T dated 12/11/2013
  - Refund without application
  
- **Refund of Deposit for voluntary registration**
  - **Rule 60A**
  - **Application within 6 months if RC cancelled prior to 36 months**
  - **Otherwise within 12 months**



Thank you !