

VAT Qua Co-operative Societies

CA Deepak Thakkar

30 Apr 2016

at WIRC of ICAI, BKC, Mumbai

30 Apr 2016

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### 'Dealer' & 'Sale' defn under MVAT Act

1. **'dealer' u/s 2(8)**– means any person who.... in the course of his business buys or sells goods in the state.... Whether for commission, remuneration or otherwise and includes,-  
..... **any society**, club or other association of persons **which buys goods from or sells goods to its members**. [clause (d) of section 2(8)]

**Explanation-** following bodies... **who sells any goods**, whether by auction or otherwise, directly or through agent, for cash or deferred payment.... :

..... **(vi) Incorporated or Unincorporated societies**, clubs or other AOPs

2. **'sale' u/s 2(24) – Explanation**  
.....clause(b) (v) thereof covers “ **the supply of goods by any association** or body of persons incorporated or not, **to a member thereof for cash**, deferred payment or other valuable consideration”

Q: Mutuality concept?; Housing Socy occasionally selling old used asset?

Q: On Sale Consideration vat payable at applicable rate after setoff adj.

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## Vat Issues qua Redevelopment Projects

1. Old flat/property sold to Developer liable to vat?
2. Corpus / Rent / Hardship allowance / shifting allowance given to occupants/tenants liable to vat?
3. Free area given to occupants/tenants, on ownership basis in exchange of old existing area, liable to vat?
4. Additional area given free to occupants/tenants, on ownership basis in exchange of old existing area, liable to vat?
5. Additional area given for an agreed consideration, to occupants/tenants, on ownership basis liable to vat?
6. Agreement registered for purchase of property in new building to be constructed, liable to vat?

10 Dec 2015

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## **L&T Ltd & ors vs State of Karnataka & ors**

Civil Appeal # 8672 of 2013

**SC Order dt 26 Sept 2013, 65 VST 1 (SC)**

**Larger Bench of 3 Judges:**

**R M Lodha J, J Chelameswar J, M B Lokur J**

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## Sale of Unit after completion of construction, is not liable to Vat

1. "...It must be clarified that if the agreement is entered into after the flat or unit is already constructed, then there would be no works contract. But so long as the agreement is entered into before the construction is complete it would be a works contract....."  
*[Para 19 of K. Raheja Development Corporation vs State of Karnataka (2005) 141 STC 298 (SC)]*
2. When construction can be said as complete?  
On getting construction completion certificate from Architect?  
On application for Occupation Certificate (OC)?  
On getting Occupation Certificate (OC)?  
On application / getting Building Completion Certificate (BCC)?

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:

### **Mode of valuation of goods provided under Rule 58(1A) needs clarity from Maharashtra State Govt:**

- **Para 123:** "Sub-rule (1A) was inserted into Rule 58 by a notification dated 01.06.2009....  
..... The challenge was laid to Rule 58(1A) of the MVAT Rules before the Bombay High Court....."
- **Para 124:** "The value of the goods which can constitute the measure of the levy of the tax has to be the value of the goods at the time of incorporation of goods in the works even though property in goods passes later. Taxing the sale of goods element in a works contract is permissible even after incorporation of goods provided tax is directed to the value of goods at the time of incorporation and does not purport to tax the transfer of immovable property. The mode of valuation of goods provided in Rule 58(1A) has to be read in the manner that meets this criteria and we read down Rule 58(1-A) accordingly. The Maharashtra Government has to bring clarity in Rule 58 (1-A) as indicated above. Subject to this, validity of Rule 58(1-A) of MVAT Rules is sustained."

**[So Land cost or land value as per SDRR, whichever higher ?? Evidence??]**

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:  
**Mah. AG assures that implementation of Rule 58(1A) shall not result in double taxation; Circulars are only clarificatory in nature, so not binding to tax payer:**

- **Para 125:** "Once we have held that Raheja Development<sup>1</sup> lays down the correct law, **in our opinion**, nothing turns on the circular dated 07.02.2007 and the notification dated 09.07.2010. **The circular is a trade circular which is clarificatory in nature only.** The notification enables the registered dealer to opt for a composition scheme. The High Court has dealt with the circular and notification. **We do not find any error** in the view of the High Court in this regard. **Moreover, the Advocate General for Maharashtra clearly stated before us that implementation of Rule 58(1-A) shall not result in double taxation and in any case all claims of alleged double taxation will be determined in the process of assessment of each individual case.**"

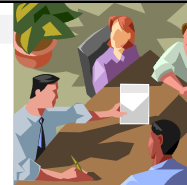
**Double taxation qua: sub-contract; stamp duty & vat; Land value deduction; etc??**

- **Para 126:** "After having given answer to the reference, **we send the matters back to the Regular Bench for final disposal.**"

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**Mah. State Govt. amended Rule 58(1A), (1B), (1C) & 58(2) retrospectively effective from 20 June 2006**

**vide Notification # VAT 1513/CR-147/Tax-1 dt. 29 Jan 2014**

**in pursuance of SC ruling in L&T Ltd dt 26 Sept 2013**

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Builders Association of India & Ors  
v/s State of Mah. & Ors  
**SLP filed in SC: Case is converted to SLP (Civil)  
5729/2016 .....hearing may be in June 16  
against BHC ruling (30 Apr 2015) VIL-195-BOM**

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**Builders Association of India & Ors v/s State of Mah. & Ors  
(30-4-2015) VIL-195-BOM now before SC**

- **WP at BHC against:**
  - (1) Notification dt 29 Jan 2014 amending Rule 58(1A), (1B), (1C) & 58(2) retrospectively effective from 20 June 2006
  - (2) Trade Circular # 7T dt 21-2-2014 & 12T dt 17-4-2014
- **alleging that directions of SC are not fully complied with**
- **J. Sunil P. Deshmukh & J. S C Dharmadhikari Held:**
- (1) We are not impressed by the submissions of Petitioners that valuation of goods u/r 58 would not let the proper authority to probe into transactions of land dealings by the developers, depending upon facts & circumstances of & evidence in particular case, as it would be open for the competent authority to make proper enquiry & seek details of the transactions & the price at which the property had been purchased.
- (2) Investigation & inquiries incidental to valuation assessment & recovery of tax are not precluded or prohibited under the scheme of the rules
- (3) Predominant challenges are not sustainable, the measures & mode being not ultra vires,....do not call for any indulgence...
- (4) Writ petitions dismissed.
- **SLP filed in SC: Case is converted to SLP (Civil) 5729 / 2016.....hearing may be in June 16  
[SLP (C) CC # 22328/2015 dt 15 Dec 2015 (Diary # 41838/2015)]**

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## Composition Sum @ 1% on Agreement Registered after 1 Apr 2010 for Sale of property during construction phase

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### **Vat Composition @ 1% on sale during construction phase under Notification # VAT. 1510/CR-65/TAX-1 dt 9 July 10 wef 1 Apr 10.....**

1. **Composition Scheme (CS)** u/s 42(3A) of MVAT Act for Registered Dealer (**RD**) who undertakes **construction** of flats, dwellings or buildings or premises and **transfer** them in **pursuance of an agreement** along with land or **interest underlying the land**
2. **CS @ 1% of the aggregate amt specified in agreement or Stamp Duty Value** under Bombay Stamp Act, 1958, **whichever is higher**
  - a. Developer following **Vat Rule 58** for certain construction works contract (for certain Units sold prior to 1 Apr 10), eligible for this new CS for other Units sold on or after 1 Apr 10 ?
  - b. Developer following **CS @ 5% u/s 42(3)** for certain construction works contract (for certain Units sold prior to 1 Apr 10), eligible for this new CS for other Units sold on or after 1 Apr 10 ?

**(Ans to Q.16 of Trade Circular # 14T dt 6 Aug 12, permits for CS 1% as 4<sup>th</sup> Option for tax computation method for Developers)**
3. **Conditions & restrictions** specified in new CS @ 1% shall be fulfilled

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### ...Vat Composition @ 1% on sale during construction phase wef 1 Apr 10....Conditions & Restrictions of CS...

1. All agreements registered on or after 1 Apr 10 shall be covered under this CS
  - a. Unit booked prior to 31 Mar 10 but agreement registered after 1 Apr 10, covered?
  - b. Agreements regd upto 31 Mar 10, not covered ? May be eligible?
  - c. All Agreements qua building or qua project or qua dealer?
2. **Such Turnover** of sales shall be included in the **Return period** in which agreement is regd & make e-payment of tax
  - a. To pay 1% fully on entire turnover or can pay as & when installment is due?
  - b. **'Turnover' will include deposits or charges for:**
    - i. Layout, Infrastructure, labour cess & Development chs.?
    - ii. Common areas & facilities like compound, passage, terrace, garden, play area, swimming pool, club house, gymnasium, etc.?
    - iii. Parking space/stack parking facility, allotted on license basis? (Use is operational on giving possession of Unit sold)

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### ...Vat Composition @ 1% on sale during construction phase wef 1 Apr 10....Conditions & Restrictions of CS...

- iv. Cost of Installation of Electric meter, sub-station, Gas meter, water meter, etc.?
  - v. Cost of Society/Company formation, registration, legal chs., share money, entrance fees for membership?
  - vi. Security Deposit for building maintenance chs., removal of debris for interior work, Advance maintenance chs., property tax, Non-Agriculture Tax, land revenue, etc?
  - vii. Onetime Membership fees for club house or Gymnasium?
  - viii. Service Tax for said agreement?  
(Technocrat Engineers VAT SA # 237 of 2014 dt 3 Nov 2015 MSTT; Nikhil Comforts, ST Appeal # 21 of 2013 dt 15 July 2014 BHC)
  - iv. Stamp Duty for said agreement?
3. Said dealer shall **not be eligible for setoff** in respect of purchases
    - a. Purchases qua said building or project or dealer?
  4. Said dealer shall not transfer property in goods purchased under **"form C"** in the contract opted for said CS
    - a. "Form C" can be used for other projects / business?
    - b. "Form C" can be used for purchase of Construction Equipments / machinery for said project?
    - c. "Form C" if issued in past for purchases then eligible for CS 1%?

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### ...Vat Composition @ 1% on sale during construction phase wef 1 Apr 10....Conditions & Restrictions of CS...

5. Said dealer shall not issue "form 409" to his sub-contractor in respect of WC opted for said CS
  - a. "Form 407 & 408" obtained from Sub-contractor, still CS @ 1% payable?
6. Said dealer shall **not be entitled to change the method of computation** of tax liability in respect of contract opted for said CS
  - a. For other contract, other computation method can be opted?
  - b. Such other contract may be in same building or same project?
7. Said dealer shall **not issue "Tax Invoice"**
  - a. Qua other transactions?
  - b. Other trading business activity?

Note: No application needed for exercise of option for CS @ 1%

Issue: If any condition broken then what consequence? Since when?

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### Contractee liable for Vat TDS: Sec. 31 & Rule 40 of MVAT...

1. **Notified Employers of Works Contracts liable to deduct TDS:** - Notification dt.1-4-05 & 29-8-05, Notifying Employers liable to deduct TDS: **Co-op. Societies**, RD under VAT Act, Company, Banks, Trusts, Govt.,etc. Non RD Individuals, Firms, HUF are not liable to deduct TDS
2. **TDS applicable, if** Aggregate Value of WC, Per Contractor, is Rs. 5 Lakhs or more, in a Financial year; **For Housing Socy** said limit is of Rs. 10 Lakhs
3. An employer (**URD Contractee**) liable to deduct Vat TDS, shall **apply in prescribed manner** to prescribed authority **for** obtaining Sales Tax Deduction A/c number (**STD A/c #**). **Sec 31(8) inserted w.e.f. Notified dt**
4. **Registered Dealer (RD) Contractee under MVAT Act need not apply for STD. (TIN may be used)**
5. **Failure to obtain STD A/c #** as aforesaid, Commissioner may impose **penalty of a sum upto the Vat TDS amount deductible**, for the period of such failure. (**Fine??**) **Sec 31(12) inserted on 26 Apr 2016**
6. **Rate of TDS** on Total Contract Value (excluding Service Tax if charged separately) - @ 2% if Contractor is RD under MVAT Act  
- @ 5% if Contractor is URD (upto 31 Mar 2012 @ 4%)

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## ...TDS UNDER VAT

7. **Deposit TDS** by Challan Form MTR-6 (previously Form 210) w.e.f. 1-7-09 within 21 days from the expiry of the month in which tax is deducted  
 - **Interest** is payable @ 1.25% p.m. for late payment of TDS
8. **TDS Certificate** in Form 402 to be issued immediately after tax deduction or TDS depositing in Bank???
9. **TDS Return** in e-Form 424 Annually wef 1 May 2013 (previously Form 405) within 3 months from the end of the year. (Trade Cir # 42T dt. 26-12-08, 37T dt 30-12-09 & 4T dt 26-06-13); **Periodicity may be varied from Apr 2016; Failure to file Vat TDS return** within prescribed time, **shall attract a penalty of Rs 5,000/- (Fine??)**  
**Sec 31(13) inserted on 26 Apr 2016**
10. **TDS Register** in Form 404 showing amt of tax deducted, TDS Certificates issued & remittances made
11. **Advance payments** liable to TDS only when it is adjusted against the amount payable for WC
12. Employer is liable to deposit TDS even if not deducted from payments made to Contractor

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## Prof. Tax: Mah. Act # 15 of 2016 published on 26 Apr 2016

Sr. #	Reference & effective date	Gist of amendment	Remark / Issue
1	<b>Amnesty Scheme for Self Employed Persons (PT EC Holder) from 1 Apr 2016 to 30 Sept 2016 (Sec. 3(3))</b>	<b>New Applicants for PT EC</b> , applications pending as on 1 April 2016 and PT EC applications filed from 1 Apr 2016 to 30 Sep 2016 Can be asked <b>to pay tax for the periods only after 1 Apr 2013</b> . Thus, max liability for FY 2013 – 2014 onwards, waiving liability for earlier periods.	1) To pay full tax + interest @ 1.25% p.m. for delayed period. 2) To pay above sum between 1 Apr 2016 and 30 Sept 2016. 3) If benefit of this not taken then, liability payable since 2008-09 and onwards. 4) For FY 2016 -2017, due dt is 30 June 2016.
2	<b>Clause (h) inserted in Sec 27A w.e.f. 1 April 2016</b>	<b>Armed members of CRPF &amp; BSF, serving in MAH</b> . State have been <b>exempted</b> from the levy & charge of Profession Tax.	

28 Apr 2016

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**Bridge and Wall are  
made with the Same  
Material But Bridge joins  
People and Wall divides  
the People...  
" Choose the Right One."**

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