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LOCAL BODY TAX (LBT) : Simplified

Octroi v/s LBT: At present octroi is the main source of revenue of Municipal Corporations in Maharashtra. This is the exclusive State where octroi is levied. In fact it is not levy but it is forcibly collection at the check post. It is the spot of harassment for the traders. The presence of any provision of Law is always absent at the check post. I am doubtful whether any of the officers or traders have read the provisions of octroi ! There may be hardly any octroi practitioner or consultant who can legally fight against the malpractices in octroi department. Due to heavy corruption on one side and leakage in octroi on the other side, there was a demand from a class of traders to abolish the octroi. This can save the wastage of diesel and also time consumed at the check posts. Due to political unwillingness the octroi is still in existence in most of the Corporations. In the forthcoming G.S.T. also, this Act is not subsumed.

2. Birth of LBT:

In exercise of the powers conferred by sub section (1) of Section 152T of the Bombay Provincial Municipal Corporation Act, 1949; and of all other powers enabling it in that behalf, the Government of Maharashtra, made rules namely "Bombay Provincial Municipal Corporations (local body tax) Rules, 2010" and tried to levy LBT in all Corporations of Maharashtra from 21.08.2012, the name of the Act is changed as The Maharashtra Municipal Corporations Act (Act No. LIX of 1949). The concerned sections are sec. 152A to sec. 152 O in chapter XI–A and sec 152 P to sec 152 T in chapter XI-V. The Act is governed by Urban Development Department. It extends to the areas of Municipal Corporation. Hence if any trader is carrying on business in more than one Municipal Corporations, he has to obtain registration certificate in each such Corporation separately. Due to agitation by traders and legal battle, it was implemented in some Corporations and it will be implemented in other Corporations at different dates subject to pending Court decisions and political will. As a student of Law let us study some highlights of LBT.

3. Definition of LBT (S. 2 [31A]) w.e.f 31.08.2009 :

LBT is another name of Octroi. Octroi is collected at check posts. In LBT check posts are supposed to be removed. It is a tax which can be collected by Corporations on the basis of books of accounts like VAT. Any goods which are brought into the Corporation area (import) from outside Corporation area for **use, consumption or sale** are liable for LBT. It is a tax on purchase and not on the sale of goods. It is a self assessment account based tax. If goods are purchased inside Corporation area from unregistered dealer under LBT Act, then also LBT is payable. [The terms import & export are not defined under the Act.]

4. Goods (S. 2 [25]): "Goods" includes animals.

5. Importer: "Importer" means a person who brings or causes to be brought any goods into the limits of city from any place outside the area of the city for use, consumption or sale there in.

6. Dealer (S. 2[16A]) : "Dealer" means any person who weather for commission, remuneration or otherwise imports, buys or sells any goods in the city **for the purpose of business** or in connection with or incidental to his business and includes factor, broker, commission agent, auctioneer, Central & State Government, Society, Club and A.O.P. As under MVAT Act Port Trusts, Railway etc are also covered to the extent of disposal of goods etc. Non-resident dealers like petrol, diesel and oil companies and their dealers, traders doing temporary business like sale, exhibitions are also covered.

Exception in the definition of dealer

Any individuals who imports goods for his exclusive consumption or use and a department of State & Central Government not engaged in business shall not be a dealer.

7. Business (S. 2 [5A]): "Business" includes any trade, commerce, profession, consumption or manufacturer ——carried on with a motive to gain or profit and whether or not any gain or profit accrues——- and whether or not there is a volume, frequency, continuity or regularity in such trade ——.

8. Registration:

a. Importer: The dealer who is an importer and whose turnover of sale or purchases of taxable goods during the year, equals or exceeds Rs. 5,000/- and the value of goods imported equals or exceeds Rs. 5,000/- and the turnover of Sales or Purchases equals or exceeds Rs. 1,00,000/-, then he is liable for registration under LBT Rules.

b. **In any other case:** The dealer who is not an importer and whose turnover of purchases of taxable goods equals or exceeds Rs. 5,000/- and turnover of all his sale or purchases during such year equals or exceeds Rs. 1, 50,000/-.

c. Temporary Registration [Rule 3(2)] If a dealer is carrying on a business in the city on a temporary basis, then he shall be liable for temporary registration under the Act & Rules, irrespective of turnover of Sales & Purchases mentioned in sub-rule (1) as above.

Schedule A is for taxable goods and schedule B is for tax free goods.

9. Purchase and Sale Outside Corporation Area:

If the goods imported are not brought in Corporation area and directly sent to godown/ office/ branch and sold directly from outside Corporation limit then LBT is not payable. Proper recording in books of accounts, inward – outward register, delivery challans and dispatch proofs are required.

10. Value of the Article S. 2(70C): "value of the article", in relation to the goods imported into the city, where "octroi" or "cess" is charged on such goods on ad valorem basic, shall mean the value of the article as mentioned in the original invoice, and include the shipping dues, insurance, custom duties, excise duties, counter vailing duty, sales tax (if any), Value Added Tax (VAT), transport charges, vendor freight charges, carrier charges and all other incidental charges.

(I have a doubt whether this definition is applicable for LBT since words used are octroi or cess)

11. Certificate & Particulars of bill (R. 21& 22) :

i) Where a dealer who holds any goods in the area of the City, sells the goods to any other dealer in the area of the City, then the selling dealer shall issued to the purchasing dealer a bill, invoice or cash memorandum containing a certificate.

ii) Every dealer who is required to issue the bill, invoice or cash memorandum in respect of the goods sold or supplied by him, shall specify in the bill or cash memorandum issued by him, the full name and style of business, the address of his place of business and number of his certificate of registration and the particulars of the goods sold and –

a. Where the bill, invoice or cash memorandum is issued by a registered dealer, then the bill, invoice or cash memorandum shall contain a certificate as follows, namely -

"I/we hereby certify that my/our registration certificate under these rules is in force on the date on which the sale of the goods specified in this bill/invoice/cash memorandum, is made by me/us and that the transaction of sale covered by this bill/invoice/cash memorandum, has been effected by me/us in the course of my/our business".

b. Where the sell price is not less than Rs. 500, the dealer shall also enter in the bill, invoice or cash memorandum the full name and style of business of the buyer (if any), and his address and the number of any certificate of registration held by him.

12. Liability of LBT in certain cases (S. 152 D) :

Where any goods on which LBT is leviable, are imported into the limit of the City by any person (not being a registered dealer) from any place outside of the City area and sold to a registered dealer, there shall be levied and collected LBT on such goods at the rate fixed by the Corporation, under the rules, from time to time, and such registered dealer shall be liable to pay the LBT so levied.

Provided that no LBT on the same goods shall be levied if such purchasing dealer proves to the satisfaction of the Commissioner that the LBT has been paid earlier on the said goods to the Corporation.

13. Exemption in certain cases (R. 28)–

[i] No LBT shall be levied on the goods imported into the city by State or Central Government, on production of a certificate from an officer empowered by the Government concerned in this behalf, certifying that the goods so imported belong to the Government and are imported for public purpose and are not used or intended to be used for the purpose for earning profit.

[ii] No LBT shall be levied on the goods imported into the limits of the City on behalf of, or an account of State or Central Government, on production of a certificate from an officer empowered by the Government concerned in his behalf, within a period of six months from the date of importation, certifying that the goods so imported belong to the Government and are imported for public purpose and are not used or intended to be used for the purpose of earning profit.

[iii] If any goods held by a dealer or a person in the City are moved outside the City for carrying out the processes enumerated in the Explanation to this rule, and are re-imported without effecting any change in condition or appearance, as also the ownership of the goods, the value of the goods moves out, shall be allowed to be deducted from the total value of processed goods reimported and LBT shall be leviable only on the value added i.e. Processing charges, transfer charges, etc.

Provided that, the goods are reimported within a period of six months from the date of export outside the City and the dealer furnishes the information of such export in the returns for the relevant period.

[iv] If any dealer in the city imports any goods from any place outside the city for carrying out any of the processes enumerated in the explanation under this rule, on job work basis and proves to the satisfaction on the Commissioner that the goods processed have been exported within a period of six months from their importation, to the same person outside the city and there had been no change in the ownership and in the form of the goods at the time of export, no LBT shall be levied subject to the following conditions namely :-

a. That dealer shows the value of such goods in the return of the relevant period.

b. The dealer pays security deposit, as a guarantee, as may be, determined by the Commissioner in this behalf. However, a dealer importing the goods for processing on regular basis, may make a deposit as standing deposit as may be fixed by the Commissioner from time to time.

Explanation – For this purpose processing shall include –

a. Grinding, dyeing, bleaching, painting, printing, finishing, stentering, embroidering, doubling, twisting, metallising and electroplating;

b. Building and mounting of bodies over chassis of vehicles of all kinds and shall also include such other processes as may be approved by the Commissioner, from time to time.

The decision of the Commissioner in this respect shall be final.

[v] When any goods held in the City are sold and exported outside the City are received back due to rejection of goods by the purchaser, no LBT shall be levied on such goods, provided that the goods are received back in the City within a period of six months from the date of their export and the dealer proves to the satisfaction to the Commissioner that the sale of such goods was disclosed in the return of the relevant period.

[vi] The registered dealer who is exporting the goods outside the territory of India, shall be exempt from the levy of the LBT in respect of the value of the goods used for the purpose of such export.

14. Refund of LBT in case of Export (R. 32) :

i) Where any goods which are imported in the City on which LBT has been paid, are exported outside the City by the same person by way of sale or otherwise, then ninety percent of such amount of LBT so paid, shall be refunded to that person on satisfaction of following conditions :-

a) The details of import made for export are given the relevant return furnished.

b) LBT on such import is paid with relevant return.

c) Goods are exported within period of six months from date of importation.

d) Relevant Return claiming of refund after export is furnished.

e) The Person when asked by Commissioner, shall prove that goods imported have been exported without making change in the goods, (i.e. in the same form)

Proviso to the Rule 32 provides that if a dealer who is importing and exporting taxable goods on regular basis, the Commissioner may allow such dealer to pay 10% of LBT, after obtaining a declaration from such dealer that the goods are to be exported within the specified period. For this, prior permission of the Commissioner is necessary.

ii. (a) Where the dealer or person has made the payment of tax, after adjustment of refund without prior permission of the Commissioner, the cases shall be taken up for regular assessment.

(b) On such assessment, if it is found that, the dealer or a person who has claimed the refund, in excess of what he is eligible for, then on such differential amount, a penalty at five times of such differential amount found due, shall be levied

(c) Where the dealer or person is eligible for refund and make such claim the Commissioner shall assess the dealer on priority basis within one month from receipt of such application and decide the claim. If the Commissioner fails to decide the claim of refund within two months from the due date of filling of such application, then the dealer or person shall be eligible for interest at 6% of such refund which becomes due, till the date of payment.

15. Return & Payment (R. 29 & 40):

Every registered dealer shall furnish half yearly and annual return. He can furnish revised return before the expiry of one month from the date prescribed for original return. Every dealer liable to pay LBT (Whether registered or unregistered) or a person liable to pay LBT shall pay Local Body Tax, interest due & payable according to return with the 10 days from the end of the month to which such payment relates.

16. Lump Sum Payment (R. 27) :

i. A composition scheme of lump sum payment of LBT is provided for dealers having purchases up to Rs. 10 lakhs per year. It starts with nil tax up to turnover of purchases of Rs. 1 lakh and ends with Rs. 20 thousand for turnover between 9 to 10 lakhs.

ii. Any builder or contractor who undertakes the work of construction within the Municipal limits shall get himself registered with the Corporation under LBT and shall have the option of either paying LBT on the value of the goods imported into the limits of the City for construction or use, or alternatively making the lump sum payment of LBT in accordance with the following norms-

a. For construction up to 4 floors (where the building is without lift)- Rs. 100 per sq. meter

b. For construction up to 7 floors(where the building is with lift) – Rs. 150 per sq. meter

c. For construction high rise building (above 7 floors) – Rs. 200 per sq. meter

The contractor who opts for lump sum payment of tax may make the payment of LBT, in advance to the extent of 50% of such amount due, on applying for grant of commencement certificate for such construction.

iii. Any dealer or person undertaking any work within the area of Municipal Corporation shall have the option of either paying LBT on the value of goods imported into the limits of the City for undertaking such work or alternatively, paying the said tax on lump sum basis at 0.25% of their total amount of contract value.

17. Inspection of goods in transit: (Rule 26)

In order to prevent evasion of LBT, the Commissioner may require to stop and keep stationary any vehicle including goods vehicle, and examine the contents of the vehicle and inspect all records related to goods carried in such vehicle, to give name and address of the driver, person in change, owner of the vehicle and consigner & consignee of the goods, and may require such person concerned to pay the LBT on such goods.

Vehicle is defined in sec. 2(71) as vehicle includes a carriage, a cart, van, truck, hand-cart, bicycle, tricycle, motor car, and every wheeled conveyance which is used or is capable of being used on a street.

18. Interest (R. 48[3]) : If a dealer liable to pay LBT does not pay the LBT on or before the due date, then he shall be liable to pay simple interest, in addition to amount of LBT, a sum equal to

i) 2% per month of such LBT for first 12 months after due date, and

ii) 3% per month of such LBT for each month thereafter during the time dealer continues to make default in the payment of LBT.

If any LBT is found due as a result of order of assessment passed under this Act, then such dealer is liable to pay simple interest, a sum equal to 2% of such LBT for each month from the first date after assessment period till the date of such order of assessment.

Provided that such interest shall not exceed the amount of LBT due on which such interest is charged.

19. Penalty [Rule 48(1) & (2)]:

i. If a selling dealer fails to issue to the purchasing dealer, a bill, invoice or a cash memo, a penalty of a sum not exceeding double the amount of LBT may be levied.

ii. In any Proceedings under the Act or LBT rules, if a dealer-

(a) has failed to apply for registration, a penalty of sum not exceeding ten times of the amount of the LBT payable may be levied.

(b) Has failed to comply with any notice under the Rules, a penalty of sum not exceed Rs.10, 000/- may be levied.

(c) has failed to disclosed any entry of goods or claimed in accurate deduction, refund or failed to disclose true material fact, a penalty of a sum not exceeding 5 times the amount of LBT found payable may be levied.

iii. A penalty for production of false bill, cash memo, declaration or document, shall be not exceeding twice the amount of LBT due for first occasion and not exceeding five times the amount of LBT due for second or any subsequent occasion.

iv. A penalty for furnishing false declaration or certificate shall be not exceeding five times the amount of LBT due.

v. A penalty for late filing of return shall be not exceeding Rs. 5,000/- for each return.

vi. A penalty for excess collection of LBT shall be Rs. 2000/- or double the amount of excess collection of LBT, whichever is less, in addition to forfeiture of the LBT collected in excess.

20. Procedural Provisions:

There are provisions of returns, payment of tax, interest, penalty, assessment, reassessment, rectification, appeal, enforcement, D.D.Q. Special mode of recovery, provisional attachment, power to withhold refund; notice for production of documents as they are available under MVAT Act.

21. Fair Market Price

The Commissioner of Corporation have wide powers under the LBT Act. He can determine the fair market price if he feels that the cost of purchase is undervalued. He can inspect the goods in transit. The rates of LBT are decided by State Government which are usually recommended by Commissioner of Corporation.

22. Appeals (S. 406):

The appeals under this Act shall be heard and determined by the judge. If the demand notice is raised by any officer, the appeal shall lie to Deputy Com and if demand notice is raised by Deputy Com then appeal shall lie to the Commissioner. Full payment of disputed tax has to be made for entertainment of appeal.

23. Suggestions:

It is suggested that –

i. For proper implementation of LBT, there should be a Committee of trading Organizations and consumer bodies under the chairmanship of Commissioner who should discuss to solve the common problems of traders, once in a month.

ii. A proper check on U.R.D. dealers should be kept instead of harassing the registered dealers.

iii. The registration limit should be Rs. 5 lakhs as available under MVAT Act.

iv. Check Posts must be removed.

v. The administrative system should work in such a way that it should not be a golden opportunity to tax evaders due to removal of check post.

vi. Clear provisions for right to claim set-off in the returns should be made.

vii. The Rules are not properly worded. There is wide scope for discretion and interpretation. A committee should be formed to study the anomalies in the LBT Rules.

viii. One full day workshop of officers & traders to be arranged by the Commissioner for smooth implementation of LBT.

ix. Details of Act, Rule, Schedule A (taxable goods), Schedule B (Tax free goods), Circulars, Internal Guidelines & decisions in appeal to be displayed on website.
