LOCAL BODY TAX | A simplified analysis

28th May 2013

An essential guide for all businessmen, traders & professionals.
Send it to everyone in your trade associations and fellow colleagues.

What is the present position?

At present Municipal Corporations in Maharashtra levy Octroi. It is collected at the entry point in the city – an entry based tax. This requires detention of vehicles which result in wastage of fuel and time. It is also said that there is large scale corruption at the Octroi Naka.

Is LBT similar to Octroi?

No. LBT is an account based system. The dealers importing the goods from other cities will be required to calculate such purchases and pay LBT liability by filing periodical returns. In other words, this is similar to VAT system. However, instead of the liability arising on sale, it arises on imported purchases, which has to be discharged by the purchasing dealer.

Is LBT constitutional / valid?

Yes, it is constitutional. You may have heard rumours that it is unconstitutional. Do not believe such rumours.

LBT is permissible under Article 246(3) read with entry 52 in List II of the Schedule VII to the Constitution of India. It is leviable under Section 152P of The Maharashtra Municipal Corporations Act, 1949 (MMC Act)

Are only businessmen and traders covered under LBT?

No. According to Section 2(5A) of the MMC Act, businessmen, traders and professionals are covered under LBT.

What is the time limit within which an entity has to register itself?

If you are already registered under MVAT, no further registration is required, since it is 'deemed registration'. However, if your organisation is not already registered under MVAT, then application for registration should be made within 30 days of crossing the exempt sales turnover limit prescribed.

In case of a dispute as to the origin of goods who has the burden to prove?

For the purpose proving that the purchase is from within city, purchasing dealer should produce certificate issued by the selling dealer. This also means that in case of every sale, your organisation must prepare a certificate stating the place of origin of goods.

Can the corporation dispute the market value of goods?

Yes. As per Rule 25 Commissioner has the power to decide fair market price for levy of LBT in certain circumstances, after giving an opportunity to be heard.

Can the corporation stop a vehicle to inspect goods?

Yes. According to Rule 26, the Commissioner has power to stop any vehicle for the purpose of inspection of goods and to find out any evasion of LBT. The Commissioner can levy LBT,

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interest, penalty etc. The power is to be exercised by Commissioner or Officer not below the rank of Deputy Municipal Commissioner.

Is LBT charged if goods are received from other cities for processing?

If the dealer receives goods from outside city for enumerated processes on job work basis and they are exported back within six months to the said person and there is no change in the ownership and form of the goods, then no LBT will be payable on the said goods. In this respect, the Commissioner can ask for security deposit.

Is LBT to be paid in case goods are sent to other cities for processing?

As per rule 28(3) if the dealer has dispatched the goods outside the city for processing etc., and re-imported the same within six months without effecting any change in condition, appearance and ownership, the LBT will be payable only on the value addition i.e. processing charges, transfer charges etc..

Can LBT paid earlier be refunded?

There is provision for refund of LBT paid earlier. If on the imported goods any LBT is already paid and they are dispatched outside the city or exported outside the city by way of sale then 90% of the LBT paid earlier will be refunded back. The export should be within six months without any change in the goods. There are further procedural requirements.

What are the provisions related to filing return and making payment of LBT?

Rule 29 provides for filling of returns. Normally, there will be two returns. Return in form E-I for half year and return in form E-II for full year. The returns are required to be filed by 15th October for April-September & by 15th April for October-March. As per rule 40 the LBT should be paid within 10 days from the end of the month. The return is half yearly or yearly, whereas payments are to be made monthly. The provisions about returns and payments are not very clear and clarifications are required.

Can an Appeal be filed against the demand notice?

The filing of appeals is provided in section 406(6) of the MMC Act. The appeal against the demand notice levying LBT should be filed before the Deputy Commissioner, if the demand notice is raised by the LBT Officer or any other Officer, not being the Deputy Commissioner.

What are the consequences in case of non-payment of LBT?

Like section 35 of the MVAT Act, 2002 under LBT also, there is rule 43 providing for provisional attachment. Commissioner can attach provisionally any property belonging to the dealer, including money due from any person. It appears that the powers under this section are wide as compared to MVAT Act as under LBT there is power to attach the property also in addition to bank account and debtors.

Is everyone required to issue an invoice? What if a person fails to issue an invoice?

Technically no, but for all practical purposes, 'Everyone' is required to issue an invoice. Even your 'sandwich wala' and 'paan wala' would have to issue an invoice under this law. If the

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transaction amount exceeds Rs. 10/- it is mandatory to issue an invoice for a registered dealer.

If a person fails to issue an invoice, interest and penalty shall be levied. The commissioner has been given discretionary powers to levy penalty. Also, a copy of the issued invoice has to be maintained for 5 years with appropriate records, failing which penalty shall be levied.

This is one of the major reasons for traders in Mumbai to go on strike. Small traders and businesses cannot comply with such draconian requirements of law.

If the records required under LBT are not maintained, what are consequences of it?

If the dealer fails to maintain accounts in manner prescribed or directed, he shall be liable to penalty under Rule 48(8) which can be upto Rs.5000/- or double the amount of LBT payable, if there was no contravention, whichever is less.

What if the LBT return is not filed on time by the accountant or professional consultant or if LBT has not been paid on time?

There is a Penalty for delayed filing of returns. If the return is not filed within the prescribed time (i.e. 15th October & 15th April) then the delay will attract penalty upto Rs.5000/- under Rule 48(6).

Interest under Rule 48(3) (a) shall be calculated from the due date. For the first 12 months of delay, the rate is 2% per month and thereafter 3% per month.

Conclusion

LBT has been deferred, not removed – it is a political move. This is the best time to equip your clients & your organisation with the laws and be prepared to comply with it, if at all it is implemented in 2014 after the Maharashtra State Assembly elections.

"Unity over spreading knowledge"

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