Input Tax Credit Set off Rules under the MVAT Act

55. Condition for grant of set-off or refund and adjustment of drawback, set-off in certain circumstances

55(1)(a) No set-off or refund under these rules shall be granted to a dealer in respect of any amount of tax recovered from him on the purchase of any goods or paid by him or in respect of entry of any goods, -
unless the goods are purchased or entry is effected on or after the 1st April of the year in which the dealer has obtained registration and,-

(1) the goods are treated as capital assets by the dealer and have not been sold before the date of effect of registration, or
(2) the goods are not treated as capital assets and have not been sold or disposed off before the date of effect of registration, or
(3) the goods are not treated as capital assets and have been used or consumed in manufacture and the manufactured goods have not been sold before the date of effect of registration, or
(4) the dealer was a registered dealer at the time of such purchase or entry

Comment [s1]: Amended w.e.f 8/09/06 After the Amendment the dealer shall be entitle to claim set off on purchases made ,from another registered dealer in the URD period also, if in stock on date of registration

55(1)(b) unless such dealer has,-

(i) maintained a true account in chronological order of all the purchases of goods made by him on or after the appointed day, showing the following details:-

(A) the date on which the goods were purchased;
(B) the name of the selling dealer and his registration certificate number, if registered, from whom the goods are purchased, and the description of the goods;
(C) the number of the tax invoice under which they were purchased;
(D) the purchase price of the goods;
(E) the amount of tax, if any, recovered from him by the selling dealer;

(2) The claimant dealer shall, if so required, produce before the Commissioner the original bill/invoice/cash memorandum relating to each purchase in respect of which the claim for set-off has been made in respect of any purchase made before the appointed day, and a tax invoice in respect of any purchase made after the appointed day.

(3)(a) Where a dealer has filed a return in respect of any period contained in a year, then he may, subject to the other provisions of these rules, adjust the aggregate of

(i) payment made in respect of the said period before filing of the said return,
(ii) total value of the tax deduction certificates received by him in that period,
(iii) amount adjustable by way of refund adjustment order issued in respect of that period.

(A) against the tax payable according to the said return, or
(B) against the tax payable according to the return for the said period filed by him under the Central Sales Tax Act, 1956, or
(C) against the tax payable according to the return which may be due or may become due under the Maharashtra Tax on Entry of Goods into Local Areas Act, 2003.
(iv) set-off or refund to which the dealer has become entitled in the said period.
(v) deposit paid towards voluntary registration.

(b) If after making adjustment, if any, as provided in clause (a), there be any excess, then the dealer may claim refund of the excess or part of excess in accordance with the rules, or carry forward the same for adjustment towards the tax payable as per the returns to be filed for any subsequent period contained in the said year under the Maharsthra Value Added Tax Act, 2000 , the Central Sales Tax Act, 1956 or the Maharashtra Tax on the Entry of Goods into Local Areas Act, 2003.

(4) Where a notice under sub-section (4) of Section 32 or, as the case may be, a notice under the corresponding provisions of any earlier law has been issued for the payment of any sum by a dealer or the dealer has filed any return or revised return without full payment of tax and who is entitled to a refund under these rules or, as the case may be, under any earlier law, the amount so due by way of refund, shall first be applied towards the recovery of the amount in respect of which such notice has been issued or towards the payment of the said tax and the balance amount, if any, shall thereafter be claimed as refund.

(5) Where the claimant dealer is unable to identify the goods purchased with the goods resold or with the goods used in the manufacture of goods or in the packing of goods, it shall be presumed for the purpose of reduction or disallowance of set-off that the goods so purchased have been used or consumed in the chronological order in which they were acquired whether before or after appointed day. (i.e FIFO basis of using goods)

(6) Set-off of the tax paid under the Maharashtra Tax on Entry of Motor Vehicles into the Local Areas Act, 1987 and of the tax paid under the Maharashtra Tax on Entry of Goods into the Local Areas Act, 2002 in respect of any goods shall be granted to a dealer as if such tax is a tax levied under this Act or, as the case may be, under any earlier law and all of the provisions of these rules including those relating to reduction in set-off and non admissibility of set-off shall mutatis mutandis apply accordingly.

(7) Where a registered dealer liable to pay tax under this Act,
(i) dies and the business in which the dealer was engaged is continued after his death, by any person or persons,
(ii) transfers or otherwise disposes of his business in whole or in part or effects any change in the ownership thereof, in consequence of which he is succeeded in the business or part thereof, by any other person,

then the person succeeding shall be entitled to take credit of any set-off that is carried forward, if any, at the time of the said death, transfer, disposal or change.

51. Claim and grant of set-off in respect of purchases held in stock in the appointed day (transitional provision)

(1) Notwithstanding anything contained in rules 53 and 54, while assessing the amount of tax payable by any registered dealer in respect of any period starting on or after the 1st April, 2005 but ending on or before the 31st March, 2006, the Commissioner shall in respect of the purchases or, as the case may be, entry of any goods made by the registered dealer (hereinafter in this rule referred to as "the claimant dealer") at any time on or **before** the 31st March, 2005 and **held in stock** by him on 31st March, 2005 at the close of business, grant him a set-off of an amount equal to the aggregate of the following sums that is to say,-

(a) in respect of the said purchases covered by the Bombay Sales Tax Act, 1959, a sum calculated in accordance with rule 44D of the Bombay Sales Tax Rules, 1959, as the rule stood immediately before the appointed day, if the conditions specified in the said Act and Rule are fulfilled.

(b) in respect of purchases covered by any of the earlier laws other than the Bombay Sales Tax Act, 1959, a sum collected separately from the claimant dealer by the other registered dealer or, as the case may be, person holding licence, by way of tax on the purchase made by him from the other registered dealer or, as the case may be, person holding license, of the said goods.

(c) any sum paid by the dealer on his purchases or, as the case may be, the entry of goods, under the Maharashtra Tax on Entry of Motor Vehicles into the Local Areas Act, 1987 or the Maharashtra Tax on the Entry of Goods into the Local Areas Act, 2002.

(2) No set-off shall be allowed under this rule,-

(a) in respect of any purchase or entry of goods if the claimant dealer has claimed set-off, drawback or, as the case may be, refund in respect of the said purchase or entry under any earlier law, and

(b) unless the **goods** are **resold** on or after the 1st April, 2005 and on or before the 31st December, 2005 or are used in the packing of goods so re-sold or, as the case may be, the goods are subjected to a process enumerated in rule 3 of the Bombay Sales Tax Rules, 1959, as the rule stood immediately before the appointed day and the processed goods are sold on or before the 31st December 2005 or are used in the packing of goods so sold,

(c) in respect of goods **treated as capital assets** unless the said assets are purchased on or after the 1st April, 2003 or their entry in the State has taken place on or after the 1st April, 2003 **and are resold** on or before the 31st December, 2005.

Explanation.- For the purposes of clause (b) and (c) the words "goods resold " will also include goods dispatched outside the State, to any place within India, not by reason of sale, to the dealer's own place of business or of his agent and where the claimant dealer is a commission agent, to the place of his principal or are used in the packing of goods so dispatched.

(3) The set-off under this rule shall be claimed,-
(a) in respect of capital assets only when they are resold and such claim shall be made in the return for the period in which the said capital assets are resold, and
(b) in respect of other goods in the period starting on the 1st April, 2005.

(4) The set-off under this rule shall not be granted unless the claimant dealer has complied with the requirements of the notification issued under section 84.

52. Claim and grant of set-off in respect of purchases made in the periods commencing on or after the appointed day

(1) In assessing the amount of tax payable in respect of any period starting on or after the appointed day, by a registered dealer (hereinafter, in this rule, referred to as "the claimant dealer") the Commissioner shall in respect of the purchases of goods made by the claimant dealer on or after the appointed day, grant him a set-off of the aggregate of the following sums, that is to say,

(a) the **sum collected separately** from the claimant dealer by the other registered dealer by way of sales **on the purchases made** by the claimant dealer from the said registered dealer of goods being capital assets and goods the purchases of which are debited to the profit and loss account or, as the case may be, the trading account,

(b) **tax paid** in respect of any entry made after the appointed day under the **Maharashtra Tax on the Entry of Motor Vehicles into Local Areas Act, 1987**, and

(c**) the tax paid** in respect of any entry made after the appointed day under the **Maharashtra Tax on the Entry of Goods into Local Areas Act, 2003.**

(2) The set-off under this rule shall not be granted in regard to any quantum of tax if setoff under rule 51 has been claimed in respect of the same quantum of tax or if set-off has been claimed in respect of the said quantum under any earlier law.

(3) The Commissioner shall, in respect of the purchases of drugs specified in sub-entry (a) of entry 29 of Schedule 'C' held in stock at the close of business on the 30th June,2007 by the claimant dealer, a grant him a set off as per the following formula, namely:-
Provided that the claimant dealer shall not entitled to claim set-off under this sub-rule unless he files a stock statement with the registering authority in the format appended hereto on or before the 31st August, 2007.

Explanation.- For the purposes of this sub-rule "maximum retail price" shall mean,-
(1) the sum of maximum retail price and sales tax, where it is separately charged in the invoice; and MRP inclusive of sales tax.

Set off : - Maximum Retail Price X 4/104

Comment [s2]: Ayurvedic, Homeopathic , Unani Drugs, which are prepared and ready for use internally or on the body of Human beings, which is manufactured or imported , stocked distributed or sold under license of Drug Act 1940

FORMAT

Details of goods held in stock at the close of business on 30th June, 2007 as specified in sub entry (a) of entry 29 of Schedule 'C' appended to the Maharashjtra Value Added Tax Act, 2002.

Sr. No.	Date of Purchase	Description of Goods	Actual Purchase price	M.R.P. (in Rs.)	
				Maximum Retail Price	Tax (if charged seperately in invoice)
(1)	(2)	(3)	(4)	(5)	(6)

53. Reduction in set-off-

The set-off available under any rule shall be reduced and shall accordingly be disallowed in part or full in the event of any of the contingencies specified below and to the extent specified.

(1) If the claimant dealer has **used any taxable goods as fuel**, then an amount equal to three per cent of the corresponding purchase price shall be reduced from the amount of set-off otherwise available in respect of the said purchase.

Explanation .- For the purpose of this clause " manufactured tax free goods" will **not include sugar or fabrics** to which entry 45 of Schedule A applies and the said goods are sold in the course of export out of the territory of India and the export is covered by section 5 of the Central Sales Tax Act, 1956 or,

(2) (a) If the claimant dealer **manufactures any tax free goods** then an amount equal to three per cent of the purchase price of the corresponding taxable goods purchased by him (not being goods treated as capital assets or used as fuel) shall be reduced from the amount of set-off otherwise available in respect of the said purchases.

Explanation .- For the purpose of this clause " manufactured tax free goods" will not include sugar or fabrics to which entry 45 of Schedule A applies and the said goods are sold in the course of export out of the territory of India and the export is covered by section 5 of the Central Sales Tax Act, 1956 or,

(b) If the claimant dealer **re-sells any tax free goods and the tax-free goods are packed in any material,** then an amount equal to three per cent of the purchase price of the corresponding purchases of packing materials, if any, shall be reduced from the amount of set-off otherwise available in respect of the said purchases of packing materials.

(3) If the claimant dealer **dispatches any taxable goods outside the State**, to any place within India**, not by reason of sale, to his own place of business** or of his agent or where the claimant dealer is a commission agent, to the place of business of his principal, then an amount equal to three per cent of the purchase price of the corresponding taxable goods (not being goods treated as capital assets or used as fuel) shall be deducted from the amount of set-off otherwise available in respect of the said purchases.

Explanation.- (a) If the taxable goods dispatched outside the State then an amount equal to one per cent. of the purchase price of the corresponding taxable goods, in so far as the corresponding taxable goods are covered by any entry in schedule B, shall be deducted from the amount of set-off otherwise available in respect of the said purchases; provided that 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;

(4) If the claimant dealer has made **a sale by way of transfer of property** in goods (whether as goods or in some other form) involved **in the execution of works contract then, if the claimant dealer has opted for composition** of tax under sub-section (3) of section 42, the corresponding amount of set-off other than the set-off pertaining to purchases of capital assets and set-off pertaining to goods in which property is not transferred shall be reduced and the set-off shall be allowed and calculated, -
(a) by multiplying the said amount of set-off by the fraction 16/25 where the dealer has opted to pay tax @ 8% on the total contract value, and

(b) in respect of periods starting on or after 20th June 2006 by reducing from the amount of set-off a sum equal to 4% of the purchase price on which such set-off is calculated where the dealer has opted to pay tax @ 5% on the total contract value in the case of construction contracts.

(5) If the **business** in which the dealer is engaged is **discontinued** and is not transferred or otherwise disposed of and is not continued by any other person, then the **set-off on purchases not being purchases treated as capital assets, corresponding to the goods held in stock at the time of discontinuance shall be disallowed** and accordingly be reduced fully.

"(6) **If out of the gross receipts of a dealer in any year, receipts on account of sale are less than fifty per cent. of the total receipts, then** the dealer shall be entitled to claim setoff only on the purchases of plant and machinery if the dealer has treated the plant and machinery as capital assets or on those purchases effected in that year where the corresponding **goods are sold within six months** of the date of purchase or are consigned within the said period, not by way of sale to another State, to oneself or one's agent or purchases of packing materials used for packing of such goods sold or consigned
and in the case of Hotels, clubs purchases of capital assets and consumables pertaining to the Kitchens and services of food and drinks (whether alcoholic or not).

Explanation.- For the purposes of this sub-rule, "receipts" means the receipts pertaining to all activities including business activities carried out in the State but does not include the amount representing the value of the goods consigned not by way of sale to another State to oneself or one's agent.

(7) If the claimant **dealer is holding Liquor Vendor Licence** in Form FL II appended to the Bombay Foreign Liquor Rules, 1953 or, in Form CL III or in Form CL/FL/TOD/III appended to the Maharashtra Country Liquor Rules, 1973, **and where the actual sale price is less than the maximum retail price (M.R.P.)** the set-off, drawback shall be granted to the extent of sum determined in accordance with the formula given below-

Explanation.- For the purposes of this sub-rule the expression "the actual sale price" shall mean sale price exclusive of the element of tax where tax is charged separately and where tax is not charged separately, the price arrived at by applying sub-rule (1) of rule57;

Comment [s3]: w.e.f 04/07/08 Sales price is inclusive of tax

Table
SP/M.R.P. X SUM of Set-off, drawback, etc. determined
SP = Actual turnover of sales of goods covered by Entry 1 or 2 of Schedule D
MRP = Total turnover according to the Maximum Retail Price of the liquor sold.
Provided that in any case, the drawback, set-off, or, as the case may be, a refund under this sub-rule shall not exceed the amount of tax payable by the claimant dealer on sale of such goods.

(7A) If the claimant dealer has **purchased office equipment, furniture or fixtures and has treated them as capital assets** and he is not engaged in the business of transferring the right to use these goods (whether or not for a specified period) for any purpose, then the corresponding amount of set-off to which he is otherwise entitled shall be reduced by an amount equal to three percent of the purchase price on which such set-off is calculated and the balance shall be allowed.

(7B) If the claimant dealer is **holding a license for transmission** or, as the case may be, **for distribution of electricity under the Electricity Act, 2003**, then in respect of any period starting on or after the 1st April 2005 and ending on the 31st March 2007, an amount equal to four per cent. of the purchase price of the goods purchased by him for use in the distribution or transmission of electricity (including the goods treated as capital assets) and an amount equal to three per cent. of the said purchase price in respect of any period starting on or after the 1st April 2007, shall be reduced from the amount of set-off otherwise available in respect of the said purchase of goods including goods treated as capital assets.

(8) The claimant dealer shall deduct the amount required to be reduced under this rule from the amount of set-off available in respect of the period in which the contingencies specified in this rule occur and claim only the balance amount as set-off and **when the amount so required to be deducted exceeds the said amount of set-off available in respect of that period**, he shall pay an amount equal to the excess at the time when he is required to pay the tax in respect of the said period.

54. Non-admissibility of set-off

No set-off under any rule shall be admissible in respect of, -

(a) purchases of motor vehicles (being passenger vehicles) which are treated by the claimant dealer as capital assets and parts, components and accessories thereof unless the claimant dealer is engaged in the business of transferring the right to use (whether or not for a specified period) for any purpose, in respect of the said vehicles and the expression "motor vehicles" and "goods vehicles" shall have the same meanings as respectively assigned to them in the Motor Vehicles Act,1988;

(b) purchases of motor spirits as notified under sub-section (4) of section 41 unless such motor spirits are resold or sold in the course of inter-State trade or commerce or in the course of export out of the territory of India or are sent, not by reason of sale, outside the State to any place within India by the claimant dealer to his own place of business, or the place of business of an agent or where the claimant dealer is a commission agent, to the place of business of his principal;

(c) purchase of crude oil as described in section 14 of the Central Sales Tax Act, 1956, when used by an oil refinery for refining;

(d) any purchase of consumables or of goods treated as capital assets by the claimant dealer where the dealer is principally engaged in doing job work or labour work and is not engaged in the business of manufacturing of goods for sale by him and incidental to the business of job work or labour work any waste or scrap goods are obtained and are sold;

(e) any purchase made by any dealer to whom an Entitlement Certificate except the Entitlement Certificate under the New Package Scheme of Incentive for Tourism Projects - 1999 to claim incentives by way of exemption from tax or deferment of tax has been granted, being purchases of raw materials as defined in rule 80.

(f) any purchase of goods of incorporeal or intangible nature other than,

(i) import licence, export permit or licence or quota, credit of duty entitlement pass book, Duty free Replenishment Certificate, SIM cards;

(ii) software in the hands of a dealer who is trading in software;

(iii) Copyright which is resold within twelve months of the date of purchase.

(g) purchases effected by the employer by way of works contract when the contract results in immovable property other than plant and machinery;

(h) purchases of any goods by a dealer, the property in which is not transferred [whether as goods or in some other form] to any other person, which are used in the erection of immovable property other than plant and machinery ;

(i) purchases of Indian Made Foreign Liquor or of country Liquor if the dealer has opted for composition under sub-section (2) of section 42,

(j) purchases made on or after the 20th June 2006 of mandap, tarpaulin, pandal, shamiana, decoration of such mandap, pandal or shamiana, and furniture, fixtures, lights and light fittings, floor coverings, utensils and other articles ordinarily used alongwith a mandap, pandal or shamiana if the purchasing dealer has opted for composition of tax under sub-section (4) of section 42.

(k) purchases made on or after 1st April 2005 by a hotelier, which are treated by him as capital assets and which do not pertain to the supply by way of or as part of service or in any other manner whatsoever of goods, being food or any other article for human consumption or any drink [whether or not intoxicating] where such supply or service is made or given for cash, deferred payment or other valuable consideration.

Set Off charts

Conditions for granting Set off : Rule 55

Rule 55(1)(a)

No set off shall be granted unless

1) Goods are purchased after 1st april of yr. in which dealer registers himself

2) Goods which are capital assets are not sold

3)Goods which are not Capital assets are not sold

4) Goods which are not Capital assets are consumed in manufacture and such manufactured Goods are not sold.

5)W.e.f 8/09/2006 Dealer shall be entitled to claim set off of goods purchased from registered. Dealers in his URD period , if in stock on date of obtaining registration.

Rule 55(1) (b)

No set off shall be granted unless

1) Dealer maintains in chronological order purchases of goods

Rule 55 (2)

Dealer shall IF REQUIRED produce the original bills before the commissioner

Rule 55 (3) (a)

Dealer adjust

1.The Payment of tax made
2. TDS
3. RAO (refund adjustment order)

AGAINST TAX PAYABLE

1. under VAT
2. under the CST Act
3. under the Mah. Entry of goods in Local Areas Act.

Rule 55 (3) (b)

after making adjustment under 55 (3) (a) if there is any excess , then the dealer may claim refund of such excess

Rule 55 (5)

Where the dealer is unable to identify the goods purchased with the goods resold it shall be presumed that goods so purchased are used in chronological order of purchase of the goods i.e. FIFO method in claim of set off

Rule 55 (7)

If the dealer dies and business is continued by his successor or If the dealer transfers his business, the person succeeding shall be entitled to claim the set off

Rule 51 : Set Off in respect of purchases made before the 31st march 2005 and goods are held in s tock as on 31st march 2005

Set off of tax paid on purchases under the BST act in accordance with rule 44D of the BST act

Ste off of tax paid in respect of purchases made and tax collected from claimant under any other law than the BST act

Tax Paid by the dealer on purchases under the Maharashtra tax on entry on motor vehicles in Local areas act and Maharashtra tax on entry on Goods in local area Act

No set Off shall be allowed unless
1)The goods are resold on or before the 31/12/05 or are used in packing of the goods resold and the processed goods are sold before 31/12/05
2) Goods treated as capital assets are sold on or before 31/12/2005

Rule 52 : For Purchases made on or after 1st April 2005 set off shall be granted of the following

Any sum collected separately from the claimant dealer of goods **being capital assets or purchases debited to the profit and loss account and trading account**

Tax paid on
1) Mah. Entry of goods in local areas act
2) Mah. Entry of motor vehicles in local areas act

In respect of specified drugs under the schedule C29 (a) which are held in stock on 30/06/07 and stock statement is filed (in prescribed form) set off = MRP (X) 4/104

No set off shall be granted if set off is claimed under Rule 51

Rule 53 : Reduction of set off

General reduction from set off
@ 4% from 1/04/05-31/03/07
@3% from 01/04/07-31/05/08
@ 2% from 01/06/08

Rule 53(2)(a)
If taxable goods purchased (not being capital assets and fuel, consumables 539) are used in the manufacture of tax free goods (not being sugar and textiles)

Rule 53(2)(b):
If the dealer re sells any tax free goods and taxable goods purchased used as packing material then set off on the packing materials to be reduced

Rule 53(3)
If the dealer dispatches any goods (not capital assets or fuel, consumables /PCA 539) outside the state not by reason of sale to his own place of business/agent set off shall be reduced
set off shall not be reduced if the goods are brought back in the state within 6 months of dispatch.
Schedule B goods retention @ 1% shall apply
(rule does not apply to goods sent for job work w.e.f 20/02/07)

Rule 53(7A):
If the dealer has purchased office equipment, furniture and fixtures and treated them as capital assets and he is not in business of selling the assets , set off shall be reduced

Rule 53(7B) :
If the dealer hold a license for distribution of electricity under the electricity act 03 then the goods purchased by him for use in the distribution and transmission of electricity (including those as capital assets)

Rule 53(1):
If dealer uses any **taxable good**s purchased as **fuel**(not being CA/consumables/PCA 539) then set off reduced @3% w.e.f.01/04/07

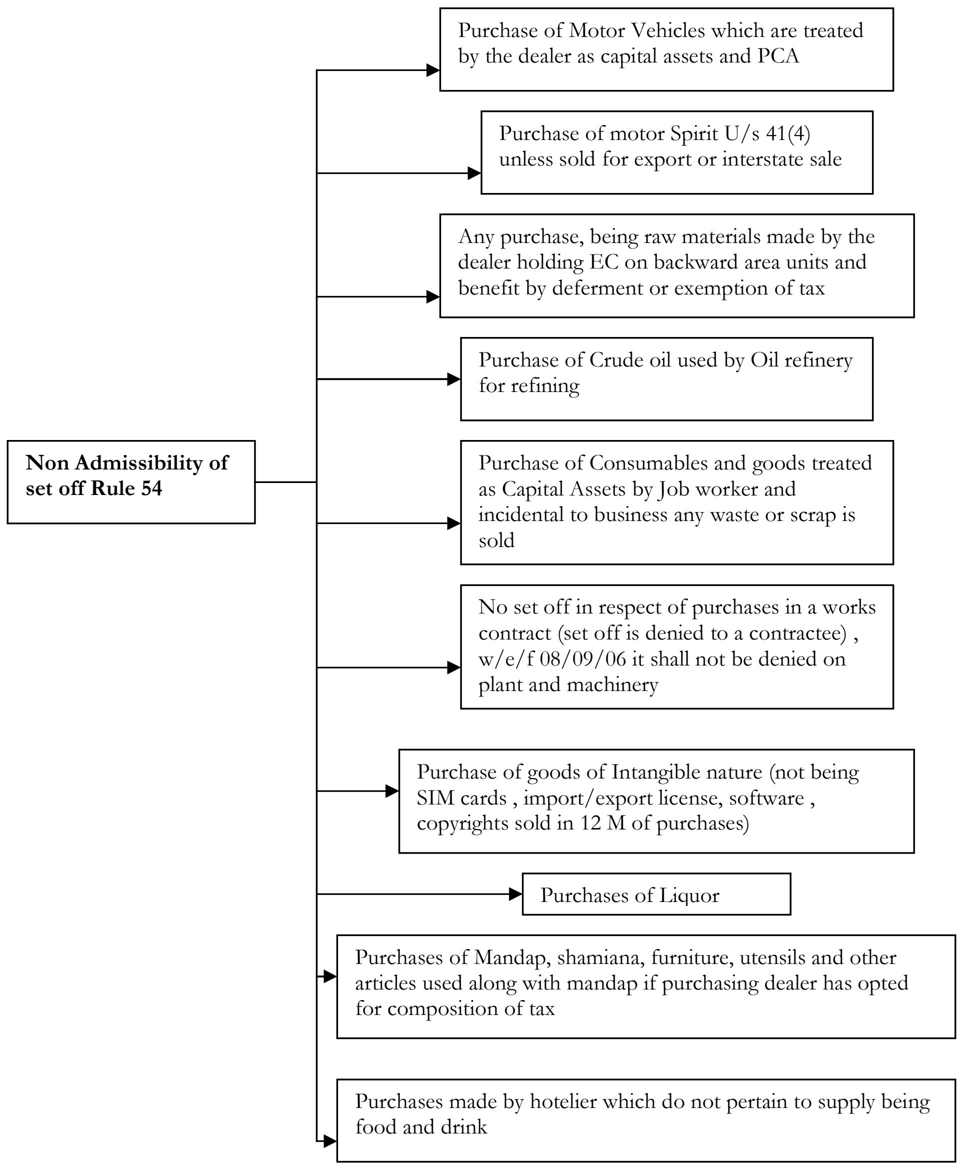
Rule 53(4):
If sale by transfer of property involved in the execution of works contract (not being capital goods and goods whose trf. of property does not take place)
And dealer opts for composition
@ 8%
set off allowed = P.P (X) 16/25 or 64%
@ 5% in case of construction contacts,
set off = 4% (X) P.P

Rule 53(6):
If the sale receipts are less than 50% of total receipts then set off shall be reduced if the corresponding goods are not sold in 6 months of purchase.
w.e.f 8/09/06 for Hotels set off of purchases corresponding to food and drinks sold capital assets pertaining to kitchen

Rule 53 (5):
If Business is discontinued no set off shall be granted on goods held as stock in trade as on date of discontinuance (not being capital assets)

Rule 53(7) :
Dealer holds Liquor Vendor License and where the sale price is less than MRP set off shall be granted will be according to formula
S.P (inclusive of tax) / MRP (X) set off calimed

Rule 53(8)
If the amount of set off to be deducted exceeds the said amount of set off available in respect of the period the dealer shall pay such excess while payment of tax of the said period


Non Admissibility of set off Rule 54
Purchase of Motor Vehicles which are treated by the dealer as capital assets and PCA
Purchase of motor Spirit U/s 41(4) unless sold for export or interstate sale
Any purchase, being raw materials made by the dealer holding EC on backward area units and benefit by deferment or exemption of tax
Purchase of Crude oil used by Oil refinery for refining
Purchase of Consumables and goods treated as Capital Assets by Job worker and incidental to business any waste or scrap is sold
No set off in respect of purchases in a works contract (set off is denied to a contractee) , w/e/f 08/09/06 it shall not be denied on plant and machinery
Purchase of goods of Intangible nature (not being SIM cards , import/export license, software , copyrights sold in 12 M of purchases)
Purchases of Liquor
Purchases of Mandap, shamiana, furniture, utensils and other articles used along with mandap if purchasing dealer has opted for composition of tax
Purchases made by hotelier which do not pertain to supply being food and drink