

53. Reduction in set-off. –

(A) 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 four per cent of the corresponding purchase price shall be reduced from the amount of set-off otherwise available in respect of the said purchase.**

(In the sub-rule (1) of Rule 53, for the words "four per cent" the words "three per cent" are substituted and shall be deemed to have been substituted with effect from 1st April 2007, amended sub-rule (1) is as under, as per Notification No. VAT-1507/CR-17/Taxation-1 Dt. 31 October 2007)

(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.

(2) **(a) If the claimant dealer manufactures any tax free goods then an amount equal to four 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.**

(In the sub-rule (2), in clause (a) of Rule 53, for the words "four per cent" the words "three per cent" are substituted and shall be deemed to have been substituted with effect from 1st April 2007, and amended sub-rule (2) (a) is as under, as per Notification No. VAT-1507/CR-17/Taxation-1 Dt. 31 October 2007)

(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.**

(For the above sub-rule 2(a) the following sub-rule 2(a) is substituted by Notification No. VAT-1508/CR-69/Taxation-1 Dt. 23rd October 2008 and shall be deemed to have been substituted w.e.f. the 1st April 2007)

(2) (a) If the claimant dealer manufactures any tax free goods then an amount equal to the amount calculated at the rate notified from time to time, by the Central Government for the purposes of sub-section (1) of section 8 of the Central Sales Tax Act, 1956 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.

(The above explanation is added w.e.f. 1st April 2005 by Notification No. STR-1506/CR-38/Taxation-1 Dt.08.09.2006)

(For the above Explanation the following Explanation is substituted by Notification No. VAT-1508/CR-69/Taxation-1 Dt. 23rd October 2008)

Explanation .- For the purpose of this clause " manufactured tax free goods" will not include goods to which Schedule A applies if 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.

(b) If the claimant dealer resells any tax free goods and the tax-free goods are packed in any material, then an amount equal to four 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.

(In the sub-rule (2), in clause (b) of Rule 53, for the words "four per cent" the words "three per cent" are substituted and shall be deemed to have been substituted with effect from 1st April 2007, and amended sub-rule (2) (b) is as under, as per Notification No. VAT-1507/CR-17/Taxation-1 Dt. 31 October 2007)

(b) If the claimant dealer resells 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.

(For the above sub-rule 2(b) the following sub-rule 2(b) is substituted by Notification No. VAT-1508/CR-69/Taxation-1 Dt. 23rd October 2008 and shall be deemed to have been substituted w.e.f. the 1st April 2007)

(b) If the claimant dealer resells any tax free goods and the tax-free goods are packed in any material, then an amount equal to the amount calculated at the rate notified from time to time, by the Central Government for the purposes of sub-section (1) of section 8 of the Central Sales Tax Act, 1956 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.

Provided that no reduction under this clause shall be made if the goods packed are sold in the course of export out of territory of India and the export is covered by section 5 of the Central Sales Tax Act, 1956.

(The above proviso is added by Notification No. STR-1509/CR-16/Taxation-1 Dt.18.06.2009)

(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 four 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.

(In the sub-rule (3) of Rule 53, for the words "four per cent" the words "three per cent" are substituted and shall be deemed to have been substituted with effect from 1st April 2007, and amended sub-rule (3) is as under, as per Notification No. VAT-1507/CR-17/Taxation-1 Dt. 31 October 2007)

(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.

(For the above sub-rule 3 the following sub-rule 3 is substituted by Notification No. VAT-1508/CR-69/Taxation-1 Dt. 23rd October 2008 and shall be deemed to have been substituted w.e.f. the 1st April 2007)

(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 the amount calculated at the rate notified from time

to time, by the Central Government for the purposes of sub-section (1) of section 8 of the Central Sales Tax Act, 1956 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 are the goods covered by any entry in Schedule B, 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;

(In the sub-rule (3) of Rule 53, in the Explanation in clause (a) the words and letter " are the goods covered by any entry in Schedule B" are deleted as per Notification No. VAT-1507/CR-17/Taxation-1 Dt. 31 October 2007, and amended clause (a) is as under.)

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;

(b) If the goods purchased are covered by the entry 29 of Schedule C and the said goods are dispatched outside the State in the same form in which they were purchased or, as the case may be, without doing anything to them which amounts or results in a manufacture, then the purchase price for the purposes of this sub-rule shall mean the actual purchase price as it appears in the books of account and not the maximum retail price printed on the package containing the said goods.

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.

(The above explanation is added w.e.f. 1st April 2005 by Notification No. STR-1506/CR-38/Taxation-1 Dt.08.09.2006)

(The above clause (b), in sub-rule (3) of Rule 53 is deleted as per Notification No. VAT-1507/CR-17/Taxation-1 Dt. 31 October 2007)

(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 to which he is otherwise entitled shall be reduced and the set-off to be allowed shall accordingly be calculated by multiplying the said amount of set-off by the fraction 16/25,

(For the above sub-rule (4) the following sub-rule(4) is substituted by Notification No. STR-1506/CR-38/Taxation-1 Dt.08.09.2006)

(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 21st 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.

(In sub-rule (4), in clause (b), for the figures, letters and word "21st June 2006" the figures, letters and word "20th June 2006" are substituted and shall be deemed to have been substituted with effect from the 8th September 2006, and amended clause (b) is as under, as per Notification No. VAT-1507/CR-17/Taxation-1 Dt. 31 October 2007)

[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.

Explanation :- For the purposes of this sub-rule, the expression "claimant dealer" shall also include a sub-contractor if the principal contractor has awarded the contract or part of contract to a sub-contractor and the principal contractor has opted in respect of the said contract for the composition of tax under sub-section (3) of section 42.

(The above Explanation is added by Notification No. VAT-1508/CR-69/Taxation-1 Dt. 23rd October 2008 and shall be deemed to have been added w.e.f. 1st April 2005)

(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, receipts on account of sale are less than fifty per cent. of the total receipts, then the dealer shall be entitled to claim set-off only on the purchases corresponding to goods sold, consigned 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.

(For the above sub-rule (6) the following sub-rule (6) is substituted by Notification No. STR-1506/CR-38/Taxation-1 Dt.08.09.2006)

(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 set-off only 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).

(In sub-rule (6), after the words "to claim set off only" the words "on the purchases of plant and machinery if the dealer has treated the plant and machinery as capital assets or" are inserted with effect from 8th September 2006, and amended sub-rule (6) is as under, as per Notification No. VAT-1507/CR-17/Taxation-1 Dt. 31 October 2007)

(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 set-off 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).

(For the above sub-rule (6) the following sub-rule (6) is substituted by Notification No. VAT-1508/CR-69/Taxation-1 Dt. 23rd October 2008 and shall be deemed to have been substituted w.e.f. the 8th September 2006)

(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, -

(a) then to the extent that dealer is a hotel or club, not being covered under composition scheme, the dealer shall be entitled to claim set-off only,-

(i) on the purchases corresponding to the food and drinks (whether alcoholic or not) which are served, supplied or, as the case may be, resold or sold, and

(ii) on the purchases of capital assets and consumables pertaining to the kitchens and sale, service or supply of the said food or drinks, and

(b) in so far as the dealer is not a hotel or restaurant, the dealer shall be entitled to claim set-off only on those purchases effected in that year where the corresponding goods are sold or resold 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, resold or consigned:

Provided that for the purposes of clause (b), the dealer who is a manufacturer of goods not being a dealer principally engaged in doing job work or labour work shall be entitled to claim set-off on his purchases of plant and machinery which are treated as capital assets and purchases of parts, components and accessories of the said capital assets, and on purchases of consumables, stores and packing materials in respect of a period of three years starting from the end of the year containing the date of effect of the certificate of registration.

(For the above proviso, the following proviso is substituted w.e.f. (deemed) 8th September 2006 by Notification No. STR-1509/CR-16/Taxation-1 Dt.18.06.2009)

Provided that for the purposes of clause (b), the dealer who is a manufacturer of goods not being a dealer principally engaged in doing job work or labour work shall be entitled to claim set-off on his purchases of plant and machinery which are treated as capital assets and purchases of parts, components and accessories of the said capital assets, and on purchases of consumables, stores and packing materials in respect of a period of three years from the date of effect of the certificate of

registration.

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 sales to another State to oneself or one's agent.

(The above Explanation is added w.e.f. (deemed) 8th September 2006 by Notification No. STR-1509/CR-16/Taxation-1 Dt.18.06.2009)

(7) If the claimant dealer is holding Liquor Vendor Licence in Form FLII appended to the Bombay Foreign Liquor Rules, 1953 or, in Form CLIII 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_

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.

Provided further that, nothing in this sub-rule shall apply to the Indian Naval Canteen Service and the Canteen Stores Department.

(The above proviso is added and deemed to have been added with effect from the 1st April 2005, by Notification No. VAT-1508/CR-69/Taxation-1 Dt. 23rd October 2008)

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 rule 57.

(The above explanation is added by Notification No. STR-1506/CR-38/Taxation-1 Dt.08.09.2006)

(For the above Explanation following Explanation is substituted by Notification No. VAT-1508/CR-69/Taxation-1 Dt. 23rd October 2008 and shall be deemed to have been substituted w.e.f. the 4th July 2008)

Explanation: For the purposes of this sub-rule, the expression "actual sale price" shall mean the aggregate of sale price and the tax charged separately, if any, and in any other case the sale price inclusive of tax.

(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 four per cent of the purchase price on which such set-off is calculated and the balance shall be allowed.

(The above sub-rule (7A) is inserted by Notification No. STR-1506/CR-38/Taxation-1 Dt.08.09.2006)

(In sub-rule (7A), for the figures and words "4% of the purchase price" the words "three per cent of the purchase price" are substituted and shall be deemed to have been substituted with effect from the 1st April 2007, and new sub-rule (7A) is as under, as per Notification No. VAT-1507/CR-17/Taxation-1 Dt. 31 October 2007)

(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 per cent 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.

(The above sub-rule (7B), is inserted as per Notification No. VAT-1507/CR-17/Taxation-1 Dt. 31 October 2007)

(For the above sub-rule (7B) the following sub-rule (7B) is substituted by Notification No. VAT-1508/CR-69/Taxation-1 Dt. 23rd October 2008 and shall be deemed to have been substituted w.e.f. the 31st October 2007)

(7B) If the claimant dealer is holding a license for transmission or as the case may be, distribution of electricity under the Electricity Act, 2003 or is a generating company as defined in the said Act, then in respect of the periods starting on or after the 1st April 2005, save as otherwise provided under sub-rule (1), an amount equal to the amount calculated at the rate notified from time to time, by the Central Government for the purposes of sub-section (1) of section 8 of the Central Sales Tax Act, 1956 of the purchase price of the goods purchased including goods treated as capital assets by him for use in the generation, transmission, or, as the case may be, distribution of electricity shall be reduced from the amount of set-off otherwise available in respect of the said purchases 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.

(The following sub-rule (9) & (10) are added by Notification No. VAT-1508/CR-69/Taxation-1 Dt. 23rd October 2008)

(9)(a) For the purposes of sub-rule (1), clause (a) of sub-rule (2) and sub-rule (3), any reference to the corresponding goods on the purchase of which set-off is claimed, shall be construed in relation to any period starting on or after the 1st April 2005, as a reference to the corresponding goods (not being consumable, stores, or goods treated as capital assets, parts, components and accessories of capital assets and goods used as fuel) which are resold or are so dispatched outside the State or are used in or relation to the manufacture of goods so sold or dispatched and are contained in the goods so sold, resold or dispatched and the packing material used alongwith the goods so sold, resold or dispatched. Any reference to the corresponding purchase price, corresponding taxable goods or corresponding purchases of packing material shall be construed accordingly.

(b) While reducing set-off under,-

- (i) sub-rule (2), for the purpose of determining the purchase price of the corresponding taxable goods, where it is not possible to ascertain the purchase price by reference to the books of account, the ratio of the sale price of the taxable goods and tax free goods or where there is no sale price, the value of the taxable goods and tax free goods shall be applied; and
- (ii) sub-rule (3), the ratio of the value of the goods inclusive of any duty of Excise as it appears in the books of accounts of the goods dispatched as aforesaid and the sale price of other goods shall be applied for deciding the corresponding purchase price.

(10) If the dealer has executed a contract, at any time after the 1st April 2005, of processing of textiles, then set-off on the goods purchased on or after the said date, shall be allowed to the extent of tax paid on purchases in excess of the amount calculated at the rate notified from time to time, by the Central Government for the purposes of sub-section (1) of section 8 of the Central Sales Tax Act, 1956 on the purchase price,-

- (a) as regards the goods in respect of which property is transferred during the said processing, and

- (b) as regards packing materials used for packing of the said textiles, and
- (c) as regards other purchases including purchases of capital assets shall be calculated as permissible under other rules