

## **CHAPTER II**

### **Imposition of Tax**

#### **3 Imposition of tax**

(1) Subject to other provisions of this Act, every dealer who is –

- (a) registered under this Act; or
- (b) required to be registered under this Act;

shall be liable to pay tax calculated in accordance with this Act, at the time and in the manner provided in this Act.

<sup>1</sup>[(2) Every dealer shall be liable to pay tax at the rates specified in section 4 of this Act on every sale of goods effected by him –

- (a) while he is a registered dealer under this Act; or
- (b) on and from the day on which he was required to be registered under this Act.]

<sup>2</sup>[(3) The amount of tax payable under this Act by a dealer, is the dealer's net tax for the tax period calculated under section 11 of this Act.]

<sup>3</sup>[(4) the net tax of a dealer shall be paid within twenty-eight days of the conclusion of the dealer's tax period:

PROVIDED that the Commissioner may, by an order, prescribe that irrespective of the tax period of a dealer or class of dealers, the net tax of a dealer or a class of dealers shall be paid within 28 days of the conclusion of a period shorter than the tax period that may be specified in the order.

*Explanation.-* The obligation to pay the tax arises by virtue of this provision and is not dependent on furnishing a return, nor on the issue of a notice of assessment to the dealer.]

(5) Tax shall be paid in the manner specified in section 36 of this Act.

(6) Every dealer who has become liable to pay tax under this Act on the sale of goods shall continue to be so liable unless his taxable turnover during the preceding twelve months (and such further period as may be prescribed) has remained below the taxable quantum and on the expiry of the twelve months or such further period his liability to pay tax shall cease:

PROVIDED that any dealer whose liability to pay tax under this Act ceases for any other reason may apply earlier for the cancellation of his registration, and on such cancellation, his liability to pay tax shall cease:

PROVIDED FURTHER that a dealer shall remain liable to pay tax until the date on which his registration is cancelled.

(7) Every dealer whose liability to pay tax under this Act has ceased or whose registration has been cancelled, shall, if his turnover calculated from the commencement of any year, including the year in which the registration has been cancelled, again exceeds the taxable quantum on any day within such year be liable to pay such tax on and from the date on which his turnover again exceeds the taxable quantum, on all sales effected by him on and after that day.

(8) Where it is found that any person registered as a dealer ought not to have been so

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<sup>1</sup> Substituted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

<sup>2</sup> Substituted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

<sup>3</sup> Substituted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

registered, then notwithstanding anything contained in this Act, such person shall be liable to pay tax for the period during which he was registered.

(9) If any person who transports goods or holds goods in custody for delivery to or on behalf of any person, on being required by the Commissioner so to do, fails –

- (a) to furnish any information in his possession in respect of the goods; or
- (b) fails to permit inspection thereof;

then without prejudice to any other action which may be taken against such person, a presumption may be raised that the goods in respect of which he has failed to furnish information or permit inspection, are owned by him and are held by him for sale in Delhi and the provisions of this Act shall apply accordingly.

<sup>4</sup>[(10) If any person who, whether as principal, agent or in any other capacity organizes any exhibition-cum-sale in Delhi and fails –

- (a) to furnish any information in respect of the goods brought or kept in stock or sold by any participant before or during or after the exhibition-cum-sale; or
- (b) to ensure that all the participants in the exhibition-cum-sale have obtained registration under this Act and paid due tax; or
- (c) to permit inspection of the business premises or goods or account and records of the participants; or
- (d) to permit inspection of the accounts and records of the organizer in respect of the exhibition-cum-sale;

then, without prejudice to any other action which may be taken against such participant, a presumption may be raised that the goods of the participant who fails to obtain registration under this Act or the goods in respect of which the participant has failed to furnish information or failed to permit inspection, are owned by the organizer and are held by him for sale in Delhi and the provisions of this Act shall apply accordingly.]

#### **4 Rates of tax**

(1) The rates of tax payable on the taxable turnover of a dealer shall be-

- (a) in respect of goods specified in the Second Schedule, at the rate of one paise in the rupee;
- (b) in respect of goods specified in the Third Schedule, at the rate of four paise in the rupee;
- (c) in respect of goods specified in the Fourth Schedule, at the rate of twenty paise in the rupee; <sup>5</sup>[\*\*\*]

<sup>6</sup>[(d) in respect of the goods involved in the execution of the works contract, at the rate of twelve and a half paise in the rupee; and]

<sup>7</sup>[PROVIDED that tax shall be paid at the rate of four paise in the rupee of the turnover of the dealer pertaining to declared goods, as defined from time to time in the Central Sales Tax Act, 1956 (74 of 1956), involved in the execution of works contract if such goods are transferred from the contractor to the contractee in the same form in which they were purchased by the contractor:

PROVIDED FURTHER that in respect of the works contracts which are in the nature of

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<sup>4</sup> Inserted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

<sup>5</sup> Omitted the word “and” vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

<sup>6</sup> Inserted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

<sup>7</sup> Inserted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 01.04.2005, retrospectively.

printing works, the rate of tax shall be four paise in the rupee.]

<sup>8</sup>[(e)] in the case of any other goods, at the rate of twelve and a half paise in the rupee:

PROVIDED that the rate of tax on packing materials or containers shall be the same as the rate at which the goods sold are chargeable to tax.

(2) The Government may, if it deems necessary, reduce the rates of tax as specified in sub-section (1), by a notification to that effect in the official Gazette.

## **5 Taxable turnover**

(1) For the purposes of this Act, taxable turnover means that part of dealer's turnover arising during the tax period which remains after deducting therefrom -

- (a) the turnover of sales not subject to tax under section 7 of this Act; and
- (b) the turnover of sales of goods declared exempt under section 6 of this Act.

<sup>9</sup>[(2) In the case of turnover arising from the execution of a works contract, the amount included in taxable turnover is the total consideration paid or payable to the dealer under the contract excluding the charges towards labour, services and other like charges, subject to such conditions as may be prescribed:

PROVIDED that where the amount of charges towards labour, services and other like charges is not ascertainable from the books of accounts of the dealer, the amount of such charges shall be calculated at the prescribed percentages.]

## **6 Sale exempt from tax**

(1) The sale of goods listed in the First Schedule shall be exempt from tax subject to the conditions and exceptions set out therein.

(2) The dealers or class of dealers specified in the Fifth Schedule shall be exempt from payment of tax on all sales of goods effected by them subject to such conditions as may be prescribed.

(3) Where a dealer sells capital goods which he has used since the time of purchase exclusively for purposes other than making non-taxed sale of goods, and has not claimed a tax credit in respect of such capital goods under section 9, the sale of such capital goods shall be exempt from tax.

## **7 Certain sales not liable to tax**

Nothing contained in this Act or the rules made thereunder shall be deemed to impose or authorise the imposition of tax on any sale of goods when such sale takes place -

- (a) in the course of inter-state trade or commerce; or
- (b) outside Delhi; or
- (c) in the course of import of the goods into or export of the goods out of, the territory of India.

*Explanation.* - Sections 3, 4 and 5 of the Central Sales Tax Act, 1956 (74 of 1956) shall apply for determining whether or not a particular sale takes place in the manner indicated in clause (a), clause (b) or clause (c) of this section.

<sup>10</sup>[(d) in accordance with the notification issued by the Central Government in exercise of its powers under section 3 of the Foreign Aircraft (Exemption from Taxes and Duties on Fuel) Act,

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<sup>8</sup> Re-lettered from "(d)" to "(e)" vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

<sup>9</sup> Substituted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

<sup>10</sup> Inserted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 01.04.2005, retrospectively.

2002 (36 of 2002), no tax shall be levied on sales of the fuel and lubricants which are filled into receptacles forming part of any aircraft registered in a country other than India, if-

- (i) the said country is a party to the Convention on International and Civil Aviation, 1944; and
- (ii) the said country has entered into an Air Services agreement with India; and
- (iii) the aircraft is operating on a scheduled or non-scheduled service to or from India.]

## **8 Adjustments to tax**

(1) <sup>11</sup>[Subject to such conditions as may be prescribed, this section shall apply where, in relation to the sale of goods by any dealer – ]

- (a) that sale has been cancelled;
- (b) the nature of that sale has been fundamentally varied or altered;
- (c) the previously agreed consideration for that sale has been altered by agreement with the recipient, whether due to the offer of a discount or for any other reason;

<sup>12</sup>[(d) the goods or part of the goods sold have been returned to the dealer within six months of the date of sale; or]

(e) the whole or part of the price owed by the buyer for the purchase of the goods has been written-off by the dealer as a bad debt;

and the dealer has –

(i) provided a tax invoice in relation to that sale and the amount shown therein as tax charged on that sale is not the tax properly chargeable on that sale; or

(ii) furnished a return in relation to a tax period in respect of which tax on that sale is attributable, and has accounted for an amount of tax on that sale that is not the amount properly chargeable on that sale.

(2) Where a dealer has accounted for an incorrect amount of tax as contemplated in sub-section (1), that dealer shall make an adjustment in calculating the tax payable by that dealer in the return for the tax period during which it has become apparent that the tax is incorrect, and if –

(a) the tax payable in relation to that sale exceeds the tax actually accounted for by the dealer, the amount of that excess shall be deemed to arise in the tax period in which the adjustment is made, and shall not be attributable to any prior tax period; or

(b) the tax actually accounted for exceeds the tax payable in relation to the sale, the amount of that deficiency shall be subtracted from the tax payable by the dealer in the tax period in which the adjustment is made, and shall not be attributable to any prior tax period.

(3) Where a dealer sells goods that have been used in part for making -

(a) sales that are subject to tax under this Act or sales that are not liable to tax under section 7; and

(b) partly for other purposes,

the amount of tax on the sale of the goods shall be the greater of -

(i)  $A - (A \times B / C)$ ; or

(ii)  $A - B$ ;

where

A = the tax for which the dealer would be liable in respect of the sale apart from this section;

<sup>11</sup> Substituted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

<sup>12</sup> Substituted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

- B = the amount by which the tax credit of the dealer in respect of the goods was reduced under sub-section (4) of section 9 of this Act;
- C = the amount of the tax credit before reduction under sub-section (4) of section 9 of this Act.

## 9 Tax credit

<sup>13</sup>[(1) Subject to sub-section (2) of this section and such conditions, restrictions and limitations as may be prescribed, a dealer who is registered or is required to be registered under this Act shall be entitled to a tax credit in respect of the turnover of purchases occurring during the tax period where the purchase arises in the course of his activities as a dealer and the goods are to be used by him directly or indirectly for the purpose of making –

- (a) sales which are liable to tax under section 3 of this Act; or
- (b) sales which are not liable to tax under section 7 of this Act.

*Explanation.-* Sales which are not liable to tax under section 7 of this Act involve exports from Delhi whether to other States or Union territories or to foreign countries.]

(2) No tax credit shall be allowed –

- (a) in the case of the purchase of goods for goods purchased from a person who is not a registered dealer;
- (b) for the purchase of non-creditable goods;
- (c) for the purchase of goods which are to be incorporated into the structure of a building owned or occupied by the person;

*Explanation.-* This sub-section does not prevent a tax credit arising for goods and building materials that are purchased either for the purpose of re-sale in an unmodified form, or for the performance of a works contract on a building owned or occupied by another;

- (d) for goods purchased from a dealer who has elected to pay tax under section 16 of this Act;

<sup>14</sup>[(e) for goods purchased from a casual trader;]

<sup>15</sup><sup>16</sup>{(f)} to the dealers or class of dealers specified in the Fifth Schedule except the entry no.1 of the said Schedule.]

(3) The amount of the tax credit to which a dealer is entitled in respect of the purchase of goods shall be the amount of input tax arising in the tax period reduced in the manner described in sub-sections (4) and (6) of this section.

(4) Where a dealer has purchased goods and the goods are to be used partly for the purpose of making the sales referred to in sub-section (1) of this section and partly for other purposes, the amount of the tax credit shall be reduced proportionately.

(5) The method used by a dealer to determine the extent to which the goods are used in the manner specified in sub-section (4) of this section, shall be fair and reasonable in the circumstances:

PROVIDED that the Commissioner may -

- (a) after giving reasons in writing, reject the method adopted by the dealer and calculate the amount of tax credit; and
- (b) prescribe methods for calculating the amount of tax credit or the amount of any

<sup>13</sup> Substituted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

<sup>14</sup> Inserted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

<sup>15</sup> Substituted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 01.04.2005, retrospectively.

<sup>16</sup> Re-lettered from “(e)” to “(f)” vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

adjustment or reduction of a tax credit in certain instances.

*Explanation.-* A person may object in the manner referred to in section 74 of this Act to a decision of the Commissioner to reject a method of calculating a tax credit.

(6) <sup>17</sup>[Notwithstanding anything contained to the contrary in sub-section (1), where – ]

(a) a dealer has purchased goods (other than capital goods) for which a tax credit arises under sub-section (1) of this section;

(b) the goods or goods manufactured out of such goods are to be exported from Delhi by way of transfer to a –

(i) non-resident consignment agent; or

(ii) non-resident branch of the dealer; and

(c) the transfer will not be by way of a sale made in Delhi;

the amount of the tax credit shall be reduced by the prescribed percentage.

(7) For the removal of doubt, no tax credit shall be allowed for -

(a) the purchase of goods from an unregistered dealer;

(b) the purchase of goods which are used exclusively for the manufacture, processing or packing of goods specified in the First Schedule.

<sup>18</sup>[(c) any purchase of consumables or of capital goods where the dealer is exclusively 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, obtains any waste or scrap goods which are sold by him.]

(8) The tax credit may be claimed by a dealer only if he holds a tax invoice at the time the prescribed return for the tax period is furnished.

<sup>19</sup>[(9)(a) Notwithstanding anything contained to the contrary in sub-sections (1) and (3) and subject to sub-section (2), tax credit in respect of capital goods shall be allowed as follows: -

(i)  $\frac{1}{3}$ <sup>rd</sup> of the input tax on such capital goods arising in the tax period, in the same tax period;

(ii) balance  $\frac{2}{3}$ <sup>rd</sup> of such input tax, in equal proportions in two immediately successive financial years :

PROVIDED that, where the dealer sells such capital goods, the dealer shall be allowed as tax credit, the balance amount of the input tax, if any, in respect of such capital goods as has not been earlier availed as tax credit, such tax credit shall be allowed in the tax period in which such capital goods are sold and only after adjusting the output tax payable by him:

<sup>20</sup>[PROVIDED FURTHER that where the dealer transfers such capital goods from Delhi otherwise than by way of sale before the expiry of three years from the date of purchase, he shall, after claiming the balance amount of input tax, if any, not availed earlier in respect of such capital goods, reduce the input tax credit by the prescribed percentage of the purchase price of such capital goods and make adjustments in the input tax credit in the tax period in which these capital goods are so transferred:

PROVIDED ALSO that where a dealer has purchased capital goods and the capital

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<sup>17</sup> Substituted for the word “Where” vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

<sup>18</sup> Inserted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

<sup>19</sup> Inserted vide DVAT (Amendment) Act, 2005; No. F.14(6)/LA-2005/112, dt. 28.03.2005 w.e.f. 01.04.2005.

<sup>20</sup> Substituted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

goods are to be used partly for the purpose of making sales referred to in sub-section (1) of this section and partly for other purposes, the amount of tax credit shall be reduced proportionately:]

PROVIDED ALSO that no tax credit in respect of capital goods shall be allowed if such capital goods are used exclusively for the purpose of making sale of exempted goods specified in the first schedule:

PROVIDED ALSO that no tax credit in respect of capital goods shall be allowed on that part of the value of such capital goods which represents the amount of input tax on such capital goods, which the dealer claims as depreciation under section 32 of the Income Tax Act, 1961 (43 of 1961).

(b) If any capital goods in respect of which tax credit is allowed under clause (a) of this sub-section is transferred to any other person otherwise than by way of sale at the fair market value before the expiry of a period of five years from the date of purchase, the tax credit claimed in respect of such purchase shall be <sup>21</sup>[reversed] in the tax period during which such transfer takes place.]

## **10 Adjustment to tax credit**

(1) Where any purchaser has been issued with a credit note or debit note in terms of section 51 of this Act or if he returns or rejects goods purchased, as a consequence of which the tax credit claimed by him in any tax period in respect of which the purchase of goods relates, becomes short or excess, he shall compensate such short or excess by adjusting the amount of the tax credit allowed to him in respect of the tax period in which the credit note or debit note has been issued or goods are returned.

(2) If goods which have been purchased were -

(a) intended to be used for the purposes specified under sub-section (1) of section 9 of this Act and are subsequently used, fully or partly, for purposes other than those specified under the said sub-section; or

(b) intended for purposes other than those specified under sub-section (1) of said section 9 of this Act, and are subsequently used, fully or partly, for the purposes specified in the said sub-section;

the tax credit claimed in respect of such purchase shall be reduced or increased (as the case may be) for the tax period during which the said utilization otherwise has taken place.

(3) Where -

(a) goods were purchased by a dealer;

(b) the dealer claimed a tax credit in respect of the goods, and did not reduce the tax credit by the prescribed percentage; and

(c) the goods are exported from Delhi, other than by way of a sale, to a branch of the registered dealer or to a consignment agent;

the dealer shall reduce the amount of tax credit originally claimed by the prescribed proportion.

(4) If goods which have been purchased by a dealer were -

(a) intended to be used for the purposes specified under sub-section (1) of section 9 of this Act; and

(b) are subsequently incorporated into the structure of a building owned or occupied by the person;

the tax credit claimed in respect of such purchase shall be reduced in the tax period

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<sup>21</sup> Substituted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005 for the word "reduced".

during which such incorporation takes place.

## **11 Net tax**

- (1) The net tax payable by a dealer for a tax period shall be determined by the formula:

$$\text{Net Tax} = O - I - C$$

where

O = the amount of tax payable by the person at the rates stipulated in section 4 of this Act in respect of the taxable turnover arising in the tax period, adjusted to take into account any adjustments to the tax payable required by section 8 of this Act.

I = the amount of the tax credit arising in the tax period to which the person is entitled under section 9 of this Act, adjusted to take into account any adjustments to the tax credit required by section 10 of this Act.

C = the amount, if any, brought forward from the previous tax period under sub-section (2) of this section.

- (2) Where the net tax of a dealer calculated under sub-section (1) of this section amounts to a negative value, the dealer shall –

(a) adjust the said amount in the same tax period against the tax payable by him under the Central Sales Tax Act, 1956 (74 of 1956), if any; and

(b) be entitled to claim a refund of any surplus amount and the Commissioner shall deal with the refund claim in the manner described in section 38 and section 39 of this Act.

*Explanation.-* The dealer may elect to adjust the refund as a tax credit in the next tax period.

## <sup>22</sup>**[11A Tax on goods supplied by contractee**

No tax shall be payable under this Act by a contractor on the amount representing the value of the goods supplied by the contractee to the contractor in the execution of works contract in which the ownership of such goods remains with the contractee under the terms of the contract and the amount representing the value of the goods supplied by the contractee to the contractor does not form part of the contract and is not deductible from the amount payable to the contractor by the contractee for the execution of the works contract.]

## **12 Time at which turnover, turnover of purchases and adjustments arise**

(1) Subject to sub-sections (2), (3) and (4) of this section, the amount of the turnover and the turnover of purchases of a dealer which arises during any tax period shall be the amount recorded in the accounts of the dealer where those accounts are regularly and systematically prepared and maintained, give a true and fair view of his dealings, and are employed by the dealer in determining the turnover of the dealer's business for commercial or income tax purposes.

- (2) The Commissioner may by notification –

(a) permit certain classes of dealer to record turnover based on amounts paid or received; and

(b) require certain classes of dealer to record turnover based on amounts payable or receivable.

(3) Where a dealer wishes to change the method of determining the turnover and turnover of purchases, he may only make the change with the consent of the Commissioner and on such terms and conditions as the Commissioner may impose.

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<sup>22</sup> Inserted vide DVAT (Second Amendment) Act, 2005; No.F.14(29)/LA/2005/333 dated 16.11.2005 w.e.f. 16.11.2005.

- (4) The Government may prescribe the time at which a dealer shall treat the –
- (a) turnover;
  - (b) turnover of purchases; and
  - (c) adjustment of tax or adjustment to a tax credit;  
as arising for a class of transactions.