

MAHARASHTRA VALUE ADDED TAX ACT, 2002

INTRODUCTION

WHAT IS VALUE ADDED TAX (VAT) ?

VAT (Value Added Tax) is a multistage tax system for collection of sales tax. The system envisages levy of tax on the sale at each stage and contemplates allowing of set off of tax paid on purchases. Thus, tax is getting paid on the value addition in the hands of each intermediary vendor. The process covers whole chain of distribution i.e. from manufacturers till retailers.

Prior to 1-4-2005, the system for levy of tax in Maharashtra was, in general, single point tax system. As a consequence to national consensus for introduction VAT, the earlier Bombay Sales Tax Act, 1959 is replaced by Maharashtra Value Added Tax Act, 2002. The Act has come into force with effect from 1-4-2005. Thus, from 1-4-2005, sales tax is being collected under VAT system in Maharashtra. Salient features of this Act are mentioned hereunder:

(I) DEFINITIONS

Section 2 gives definitions of various terms. The definitions are almost at par with earlier law i.e. Bombay Sales Tax Act, 1959.

Some of the important definitions:

- **Section 2 (4) – “Business”** – The definition of Business includes in its scope any service, trade, commerce, manufacture or any adventure or concern in the nature of such service, trade, commerce or manufacture, whether carried on with or without profit motive and whether actual profit is earned or not. Further, it also includes any transaction which is incidental or ancillary to such trade, commerce, manufacture, adventure, concern or service and also includes any transaction which is incidental or ancillary to commencement or closure of such trade, commerce, manufacture, service etc. The purchase of any goods the price of which is debited to business is also be deemed to be the purchase effected in the course of business. Similarly sale of any goods, the proceeds of which are credited to the business is also deemed to be the sale effected in the course of business.

Though service is also included in the definition of business, as per Section 2(34) only notified services are to be included in the scope of the definition. As on today no such services are notified and as such at present no service gets covered under the definition of business.

- **Section 2(12) – “Goods”** means every kind of movable property. The definition specifically includes live stocks, growing crop, grass and tree, plants including produce thereof under given circumstances. However, it excludes newspapers, money, stocks, shares, securities, lottery tickets and actionable claims.
- **Section 2(8)- “Dealer”** - Definition of Dealer includes any person who buys or sells goods in the state for commission, remuneration or otherwise. It also includes, among others, by an Explanation, public charitable trust, government departments, societies, State Government, Central Government, shipping companies, airlines, advertising agencies etc.
- **Section 2(13) : “Importer”** means a dealer who brings any goods into the State or to whom any goods are dispatched from outside the state, which will include import out of India also.

Section 2(24) – “Sale” — Sale means a sale of goods made within the State for cash or deferred payment or other valuable consideration but does not include a mortgage, hypothecation, charge or pledge. Ordinarily sale means transfer of property to buyer in goods for cash or deferred payment or other valuable consideration. A sale within the State includes a sale determined to be inside the State in accordance with the principles formulated in Section 4 of the Central Sales Tax Act, 1956. Following types of transactions are also included in definition of sale.

- i. the transfer of property in any goods, otherwise than in pursuance of a contract, for cash, deferred payment or other valuable consideration;
- ii. the transfer of property in goods (whether as goods or in some other form) involved in the execution of a works contract including an agreement for carrying out for cash, deferred payment or other valuable consideration, the building, construction, manufacture, processing, fabrication, erection, installation, fitting out, improvement, modification, repair or commissioning of any movable or immovable property; (known as works contract transactions)
- iii. a delivery of goods on hire-purchase or any system of payment by instalments;
- iv. the transfer of the right to use any goods or any purpose (whether or not for a specified period) for cash, deferred payment or other valuable consideration; (known as lease transactions)
- v. the supply of goods by any association or body of persons incorporated or not, to a member thereof for valuable consideration;
- vi. the supply, by way of or as part of any 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:

- **Section 2(25) – “Sale Price”** — The definition is almost at par with old definition under BST Act, 1959. Therefore, interpretations made under BST Act will apply in relation to this definition also. Sale price is defined to mean an amount received/ receivable for any sale including any sum charged by seller in respect of the goods at the time of or before delivery thereof. The amount of duties levied or leviable on goods under the Central Excise Act, 1944 or the Customs Act, 1962 or the Bombay Prohibition Act, 1949, shall be deemed to be part of the sale price of such goods, whether such duties are paid or payable by or on behalf of, the seller or the purchaser or any other person.

However, the definition excludes the cost of insurance for transit or of installation, when such cost is separately charged. Sales tax, if any, charged separately shall not form a part of sale price.

Generally, freight/ and octroi will be part of sale price if the sale is door delivery contract. If the same is ex-seller's place and the above expenses are received as reimbursement then it will not form part of sale price.

However, freight separately charged on interstate sale will not form part of sale price, because the definition of sale price under the C.S.T Act specifically excludes freight charged separately.

Discount - The discount will be deductible as per the legal position interpreted so far i.e. if discount agreed before sale, the same is allowable, otherwise not.

(II) REGISTRATION

Section 3 of the Act provides for turnover limits for liability to pay tax as well as for registration. The registration number, which used to be referred to as Registration Certification No. (R.C. No.) has been changed to TIN (Tax Payers' Identification Number) and hence the R.C. No. is now referred to as VAT TIN (Tax Payers' Identification Number). This change is effective from 1-4-2006. The limits for registration are as under:

Threshold Turnover Limit:

Sr. No.	Category of Dealer	Total turnover of sale to exceed	Turnover of sale or purchases of taxable goods
1	Importer	Rs. 1,00,000/-	Not less than Rs. 10,000/-
2	Others (Including manufacturer, reseller, liquor dealer, works contractors, lessors; etc.)	Rs. 5,00,000/-	Not less than Rs. 10,000/-
3	Voluntary Registration	- NA-	-NA-

Notes:

- i. Reference of turnover of Rs. 1,00,000 or Rs. 5,00,000 is with respect to sales only. Sales will include sales of both, tax-free goods as well as taxable goods.
- ii. No turnover limit for import is specified for importer. Even an import of Re. 1 is sufficient to treat the dealer as an importer.
- iii. The dealer who is liable to pay tax is required to apply for registration under the Act within 30 days from the date on which prescribed limit of turnover exceeds. In case of change in ownership or constitution, an application for new registration certificate (TIN certificate) is to be made within 30 days from the date of such change. In case of death of a dealer, an application for new registration for transfer or succession of business can be made within 60 days from the date of death of dealer. If application for TIN is made within the time as mentioned above, then registration certificate will be granted from the date of liability, otherwise from the date of application. One TIN number will be issued for the whole state of Maharashtra, which will cover all the places of business of the dealer in Maharashtra. The VAT TIN numbers may be given retrospective effect by the concerned Joint Commissioner of Sales Tax on making separate application for Administrative Relief. (Refer Circular No. 33T of 2007 dated 18th April, 2007 issued by Commissioner of Sales Tax).
- iv. With effect from 20th June 2006, if there is a shifting of place of business from one place to another place, there is no need to cancel the existing TIN and apply for new TIN. However, the event of shifting should be intimated to the registration authority of the new place.
- v. The dealer can also apply for voluntary registration by paying registration fees of Rs. 5,000/-. Registration certificate in such case will be granted with effect from the date of application. Apart from registration fee of Rs. 5000/-, a dealer is also required to deposit Rs. 25,000/-. This deposit is in the nature of advance tax and is to be adjusted against his tax liability during the year of registration and in subsequent financial year.

- vi. The application for registration (VAT TIN) is to be made in Form No. 101 and in Form A for C.S.T. TIN.

Following documents are required to be submitted along with the application. (Refer Commissioner's Circular No. 4T of 2005 dated 4th May, 2005)

- Two passport size photographs of the proprietor/any one partner of the firm/ any one director of private limited company. This requirement is not applicable in case of Public Ltd. Co., public trusts, corporations or a local authority.
- Payment of registration fees of Rs. 500 or Rs. 5,000/- and deposit of Rs. 25,000, as the case may be for Vat TIN and Rs. 25/- for C.S.T.TIN. Payment is to be by way of Demand Draft or Pay Order in favour of 'Bank of Maharashtra – A/c. MVAT' for Mumbai region and 'State Bank of India – A/c. MVAT' for other regions. The draft or pay order should be accompanied by challan No. 210. For CST TIN fees of Rs. 25, is to be paid in the form of Court fees stamp.
- Bill wise statement of sales and purchases from the beginning till the date on which turnover of sales or purchases exceeds the prescribed limit for registration. However, the same is not required in case of application for TIN is under voluntary registration scheme.
- Copy of partnership deed/memorandum and articles of association/trust deed etc.
- Proof of address of place of business:
 - In case of Owner: Proof of ownership of premises viz. copy of property card or ownership deed or agreement with the builder or any other document.
 - In case of tenant/Sub-tenant: Proof of tenancy /Sub-tenancy like copy of tenancy agreement or rent receipt or leave and licence or consent letter, etc.
- Proof of permanent residential address (any two documents are to be provided out of the following):
 - Copy of ration card, copy of passport, copy of driving licence, copy of election photo identity card, copy of property card or latest receipt of property tax of Municipal Corporation/Council/Grampanchayat as the case may be, copy of latest paid electricity bill in the name of applicant.
- Income Tax PAN of the applicant/company/firm/partners/HUF and Karta.
- Profession tax number of the proprietor /company /partners/directors.
- Proof of bank account of the proprietary concern, firm or company.
- Copy of proof of filing of last return and assessment order, if any (applicable only in case of application for registration due to change in constitution or change in ownership of the concern).

III. LEVY OF TAX

Under MVAT Act, 2002, sales tax is payable on all sale of goods effected from the state, whether such goods are manufactured or resold or imported from out of the State of Maharashtra or purchased from registered or unregistered dealers in Maharashtra. There is no concept of 'resale' or 'second sale' under the MVAT Act, 2002.

IV. CHARGING PROVISIONS

Sections 4, 5, 6 and 7 are charging Sections.

As per Section 5, no tax is to be levied on sale of goods covered by Schedule A.

Section 6 provides for levy of tax on turnover of goods covered by Schedules B, C, D and E.

Section 7 specifies the rate of tax on packing material. Where any goods are sold and such goods are packed in any material, then the tax on such sale of packing material shall be at the same rate of tax, if any, at which tax is payable on the goods so packed, whether the packing material is charged separately or not.

V. SCHEDULES AND RATE OF TAX

- All the goods are classified under Schedules A to E.
- Schedule A covers goods, which are generally necessities of life. Goods covered by Schedule A are free from tax. Some of the items covered by Schedule A are agricultural implements, cattle feed, books, bread, fresh vegetables, milk, sugar, fabrics, plain water, etc.
- Schedule B covers jewellery, diamonds, precious stones and imitation jewellery. Goods covered by Schedule B are subject to tax at 1%.
- Goods covered by Schedule C are subject to tax @ 4%. Schedule C covers items of daily use or raw material items like drugs, readymade garments, edible oil, utensils, iron and steel goods, non-ferrous metal, IT products, oil seeds, paper, ink, chemicals, sweetmeats, farsan, industrial inputs, packing materials etc.
- Schedule D covers liquor which was subject to 20% tax up to 30th June, 2009. With effect from 1st July, 2009, rate of tax is increased to 25%. It also covers various types of motor spirits that are subject to tax from 4% to 34%.
- All items which are not covered in any of the above Schedules are automatically covered in residuary Schedule E. Goods covered by Schedule E are subject to tax at 12.5%.

VI. EXEMPTIONS

Following sales transactions are exempt from payment of tax under MVAT Act:

- Interstate sale is exempt from payment of sales tax and it may be liable to tax under C.S.T. Act. [Section 8(1)]
- Sales taking place outside the state as determined under Section 4 of the C.S.T. Act. [Section 8(1)]
- Sales in the course of import or export [Section 8(1)]
- Sales of fuels and lubricants to foreign aircrafts. [Section 8(2)]
- Inter se sales between Special Economic Zones, developers of SEZ, 100% EOU, Software Technology Parks and Electronic Hardware Technology Park Units subject to certain conditions. [Section 8(3)]
- Sales to any class of dealers specified in the Import and Export Policy notified by the Government of India [8(3A)]. This is subject to issue of notification by State Government under this Section. However, no such notification is issued till today.
- As per Section 8(3B), the State Government may, by general or special order, exempt fully or partially sales to the Canteen Stores Department or the Indian Naval Canteen Services.
- Under power granted u/s. 8(3C), the State Government, by general order, has exempted fully the sale by transfer of property in goods involved in the processing of textile covered in column 3 of the First Schedule to the Additional Duties of Excise (Goods of Special Importance) Act, 1957.

- Sales effected by manufacturing units covered by Package Scheme of Incentives and under exemption mode are exempt from payment of tax u/s. 8(4).
- As per Section 8(5), the State Government may, by general or special order, exempt fully or partially sales to specific category of dealers mentioned in this sub Section. By Notification dated 19-4-2007 concessional rate of tax @ 4% is provided for sale to specified Electric Power Generating and Distribution Companies, MTNL, BSNL, other specified telephone service providers and telecom infrastructure providers.
- One more notification dated 29th June, 2009 is issued by the State Government u/s. 8(5) by which sale of certain specific goods for satellite launch system to the Department of Space; Government of India is exempted from payment of tax with effect from 1st July, 2009.
- The State Government may issue the notification to grant refund of any tax levied on and collected from any class or classes of dealers or persons or as the case may be, charged on the purchases or sales made by such class or classes of dealers or persons. (Section 41). At present this notification is issued for grant of refund in case of Consulate and Diplomat authorities.
- As per Section 41(4)(b) read with notification dated 30-11-2008 issued under the said section, the sale of motor spirit at retail outlets is exempted from tax, if the retail outlet purchases the same from registered dealer.

VII. SET-OFF (INPUT TAX CREDIT)

Section 48 of the MVAT Act provides for grant of input tax credit to any registered dealer in respect of any tax paid on his purchases subject to conditions provided in the rules made in this behalf by the State Government. The provisions for grant of set-off are contained in Rules 52 to 55 of the MVAT Rules, 2005. There are changes in rules from time to time. The updated position of set-off Rules as on 01.07.2009 can be summarized as under.

Important conditions:

1. To be eligible for set off, a dealer must be registered under MVAT Act at the time of purchase of goods, except as provided in Rule 55(1)(a).
2. As per rule 52 set off is available on RD purchases of goods being capital assets and goods, the purchases of which are debited to Profit and Loss Account or Trading A/c.
3. Following sums are eligible for set off:
 - (i) Tax paid separately on purchases effected within the State and supported by 'Tax Invoice'. Entry tax paid under Maharashtra Entry Tax on Goods Act as well as Maharashtra Entry Tax on Motor Vehicles Act.

However, CST paid on interstate purchase is not eligible for set off.

4. Set off is allowable as and when purchase is made, irrespective of its disposal. However, it is subject to the restrictions specified in Rule 53 and negative list contained in Rule 54.

Retention (Reduction) in set off (RULE 53):

In certain circumstances set off granted will be reduced. Following are such circumstances:

CIRCUMSTANCE	REDUCTION FROM SET OFF AMOUNT
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1) Purchase of fuel – 53(1)	@ 3 % of purchase price (PP) of taxable goods used as fuel (prior to 1-4-2007 the reduction rate was 4%).
2) Manufacture of tax free goods (other than goods covered by Schedule A which are exported as per section 5 of CST Act, 1956) — 53(2)(a)	From 1-6-2008, @ 2% of PP of taxable goods (other than capital assets and fuel) (Prior to 1.6.2008, the reduction rate was 3% and prior to 1-4-2007 it was 4%).
3) Resale of tax free goods — 53(2)(b)	From 1-6-2008 @ 2% of PP of corresponding packing material used to pack tax free goods. (Prior to 1-6-2008, the reduction rate was 3% and prior to 1-4-2007 it was 4%). However, from 1-7-2009, no reduction, where packing materials are used for packing of tax free goods which are exported and export sales are covered by section 5 of the CST Act, 1956.
4) Transfer of taxable goods to branch in other State or to agent in other State — 53(3)	From 1-6-2008 2% of corresponding PP (other than capital assets and fuel) (Deduction not to apply if goods are brought back in the state within six months. In case, purchases eligible to set off are covered by Schedule B, the reduction should be 1%, instead of 2%). (The above reduction rate was 3% prior to 1-6-2008 and 4% prior to 1-4-2007).
5) If opted composition scheme on works contract — 53(4)	9/25 of tax amount (thus only 16/25=64% of tax is eligible as set off) in case normal composition scheme is opted or 4% of PP in case of composition scheme or 5% for notified construction contracts is opted. The provision of reduction is also made applicable to sub-contractor where principal contractor has opted for composition scheme for works contract.
6) Business discontinued or not continued by successor — 53(5)	No set off on closing stock (other than capital assets) on the date of such event.
7) If the receipts from sale of goods are less than 50% of the gross receipts of the business — 53(6)	1) In case of hotels etc. (not under composition) set off is eligible on purchases corresponding to food and drinks sold/resold and capital assets pertaining to kitchen and sale/service of food and drinks. 2) In case of others, set off is eligible on purchases corresponding to goods sold or consigned within six months from date of purchase. 3) In case of manufacturer who is not principally engaged in job work, set off is eligible on plant and machinery and its

	parts components, accessories and consumables, stores and packing materials for 3 years from the date of effect of registration certificate.
8) If retailer of liquor holding specific liquor licence, effects sale of liquor at the price lower than MRP. – 53(7)	Set off available = set off allowable on purchase x selling price at MRP value of liquor sold. Not applicable to Indian Naval Canteen Services and Canteen Stores Department.
9) Office equipments and furniture and fixture, if the same is treated as capital asset — 53 (7A)	3% of corresponding PP (Not to apply in case of leasing business). (Prior to 1.4.2007, the rate was 4% and prior to 9.9.2006 no set off was available).
10) Electricity Generation, Transmission or Distribution Companies- 53(7B)	2% of PP from 01.06.2008 (Prior to 01.06.2008, rate was 3% and prior to 01.04.2007, rate was 4%.)
11) If the dealer has executed a works contract of processing of textiles – 53(10)	From 1.6.2008, 2% in case of goods in which property transferred and goods used as packing materials (prior to 1.6.2008, rate was 3% and prior to 1.4.2007, rate was 4%) In case of other purchases as per normal Rules.

- Rule 53(8) provide that the above reductions should be made in the return in which the given eventuality occurs.

- Rule 53(9)(a) is inserted to explain the meaning of “corresponding goods” for the purpose of Rules 53(1), 53(2)(a) and 53(3).

- Rule 53(9)(b) provides for eventualities for adopting ratio basis for Rules 53(2) and 53(3).

Non-Admissibility of Set off – Negative List (Rule 54)

Following purchases of goods are not eligible for set off:

1. Passenger motor vehicles, if treated as capital assets & their parts components and accessories. However, a dealer dealing in sale of motor vehicles or leasing of motor vehicles is entitled to set off. Rule 54(a).
2. Motor spirits, as notified u/s. 41(4) unless it is resold or transferred to branch or agent outside the State.
Rule 54(b).
3. Crude oil described in Section 14 of the C.S.T. Act, if it is used by refinery for refining.
Rule 54(c).
4. If a dealer is principally engaged in job work or labour work and where only waste/scrap is sold then no set off will be granted on consumables and capital assets.
Rule 54(d).
5. Unit covered by package scheme of Incentives under exemption scheme or deferment scheme is not entitled for set off of tax paid on “raw materials” as defined in Rule 80 [Rule 54(e)]. However, it can claim refund of tax paid on such purchases, as per Rule 79.
6. Incorporeal or intangible goods, other than import licenses, export permits

licence/Quota, DEPB, Sim cards, and DFRC, are not eligible for set off. Software packages are eligible for set off in the hands of software trader. Also copyrights are eligible to set off if sold within 12 months of the date of purchase. Other incorporeal and intangible goods like trade marks, not eligible to set off. Rule 54(f).

7. Purchases effected by way of works contract where the contract results in immovable property, other than plant and machinery. Rule 54(g).
8. Purchases used in erection of immovable property other than plant and machinery. Rule 54 (h).
9. Purchases of Indian Made Foreign Liquor in hands of dealer opting composition scheme under sub-Section (2) of Section 42. Rule 54(i).
10. Purchase of Mandap decoration /tarpaulin items after 20th June, 2006 in hands of dealer who has opted for composition scheme under sub-Section (4) of Section 42. Rule 54(j).
11. Purchases in hands of hotelier, which are treated as capital assets and which do not pertain to supply and sale of food/drinks. Rule 54(k).
12. Purchases of office equipment, furniture, fixture and electrical installation till 7-9-2006, (Not applicable if the dealer is engaged in the business of leasing). Rule 54(l).

VIII. TAX INVOICE – SECTION 86

One of the distinguishing features of VAT Act is the provision for Tax Invoice. There can be two types of sale invoices, Tax Invoice and other than Tax Invoice i.e. bills, normal invoice or cash memo etc. The provisions relating to the sale bill are contained in Section 86 read with Rule 77. For individual sale up to Rs. 50, making of invoice is not mandatory.

Tax Invoice

A registered dealer, selling any goods, may issue to the purchaser a 'Tax Invoice' containing following particulars, and retain a copy thereof for three years from the end of the year in which sale took place:—

1. The word Tax Invoice must appear in bold letter at the top or prominent place.
2. Name, address and registration number of selling dealer.
3. Name and address of the purchasing dealer.
4. Serial number and date.
5. Description, quantity and price of the goods sold.
6. The amount of tax charged is to be indicated separately.
7. Signed by the selling dealer or a person authorised by him.
8. A declaration as provided in Rule 77(1).

To claim input tax credit, the purchaser must have tax invoice.

The dealer opting for composition scheme, u/s 42(1) or (2) cannot issue Tax Invoice. Instead he shall issue a Bill or Cash Memo in the prescribed manner.

Bill or Cash Memo

Any registered dealer at his option, may issue to the purchaser a Bill or Cash Memo serially numbered, dated and signed by him or his servant or manager or agent. Such bill or cash memo shall contain a declaration as provided in

Rule 77(3) and such other particulars as may be prescribed. However, it must not contain the word "Tax Invoice" and the selling dealer cannot collect tax separately. The counterfoil or duplicate of such bill or cash memo shall be preserved for a period of three years from the end of the year in which such sale took place.

Under Section 86(5), a dealer may apply for permission to maintain the records of the bill or cash memo on such electronic systems as may be approved. On getting such permission, a dealer will be exempted from signing and keeping the counterfoils of the bills or cash memos. The Commissioner of Sales Tax vide Circular No. 23T of 2007 dated 12.3.2007 and Circular No. 11T of 2008 dated 04.04.2008 has specified the scheme for the same.

IX. COMPOSITION SCHEMES

Section 42 of the Act empowers State Government to issue Notification to provide for a scheme of Composition. Accordingly, State Government has issued Notification No. VAT-1505/CR-105/Taxation-1 dated 1st June, 2005, which provides for Composition to different types of dealers subject to various conditions, which are as follows:

Though the provisions are not very clear, it appears that existing dealers who did not opt for the scheme in the year 2008-09 and who wanted to opt for the scheme for the year 2009-10 were required to apply for the same in the prescribed form at the beginning of the year 2009-10. Similarly, existing dealers who opted for the scheme for the year 2008-09 and who did not want to continue, were required to withdraw from the scheme at the beginning of the year 2009-10.

New dealers should apply for composition at the time of registration. The prescribed form for making application for various categories of dealers is as follows:

Form No	Class of dealers
'Form 1'	Restaurants, eating house, refreshment room, boarding establishment, factory canteen, clubs, hotels
'Form 2'	Caterers
'Form 3'	Bakers
'Form 4'	Retailers
'Form 5'	Dealers in second hand motor vehicles
	Liquor Vendor – still not effective

General Conditions applicable to all dealers opting for composition

1. Dealer opting for composition is not eligible for any set-off or refund under the MVAT Rules, 2005 in respect of the purchases corresponding to any goods which are sold or resold or used in packing of goods, except dealer in second hand motor vehicle. Second hand motor vehicle dealers are entitled to set off in respect of items used for refurbishing or refurbishing of second hand motor vehicles.
2. The dealers cannot issue 'tax Invoice'. The claimant dealers shall not be eligible to recover composition amount from any customer separately. It can issue bill or cash memo, wherein tax cannot be separately collected.

3. If the option to join the composition scheme is exercised, in any year then it can be changed only at the beginning of the next financial year.

The Schemes for different types of dealers' along with the specific conditions are as follows:

1. Retailers:

1.1 Reference is available in Section 42(1) and Rule 85. The scheme is meant for registered dealers in business of reselling the goods at retail level, having at least 90% of sales to persons who are non dealers.

1.2 Turnover of sales of goods shall not exceed Rs. 50 lakhs in the year previous to the current year for which the composition is to be availed of and if the dealer was not liable for registration under B.S.T Act or as the case may be under MVAT Act in the immediately preceding year, then he shall be entitled to claim the benefit of the scheme in respect of the first fifty lakhs rupees of the total turnover of sales in the current year.

1.3 Further eligibility criteria

Such retailers shall not have –

- Manufacturing activity
- Imports
- Inter-state Purchase/Stock transfers

1.4 Additional condition:

The taxable goods resold must be purchased from registered dealers. However, purchase of tax free goods can be from registered dealers as well as unregistered dealers. Also Packing Materials can be purchased from unregistered dealers.

1.5 Taxable Turnover:

For calculating the composition amount, first a dealer has to arrive at the figure of resale made by a registered dealer of all goods, tax free and taxable, excluding the turnover of resale of the following goods, on six monthly basis:—

(a) Foreign Liquor, as defined in rule 3(6)(1) of the Bombay Foreign Liquor Rules, 1953.

(b) Country liquor as defined in Maharashtra Country Liquor Rules, 1973.

(c) Liquor imported from any place outside the territory of India as defined, from time to time in rule 3(4) of the Maharashtra Foreign Liquor (Import and Export) Rules, 1963.

(d) Motor Spirits notified by the State Government under sub-Section (4) of Section 41 of the Act.

Thereafter, the dealer has to work out the turnover of purchases of goods i.e. tax free and taxable except (a) to (d) as above on same six monthly basis. The turnover of purchases shall be increased by the amount of tax collected by the vendor of the retailer separately from the retailer. Such turnover of purchases shall be reduced by the amount of every credit of any type received by the

selling dealer from any of his vendors whether or not such credit is in respect of any goods purchased by the selling dealer from the said vendor.

As stated above both these turnovers have to be worked out for six months. After reducing figure of purchase from the figure of sales arrived at as above, composition sum at prescribed rate is payable on excess of turnover of sales, if any.

1.6 Composition Rate:

The applicable rate is 6% for the retailers whose at least 3/4th of the turnover of sales of goods is of drugs covered by Schedule Entries C-29 & C-29A. For other retailers, the applicable rate is of 5% whose aggregate of the turnover of sales of goods, covered by Schedule A and goods taxable at the rate of 4%, if any, is more than 50% of the total turnover of sales, excluding the turnovers of liquor and motor spirits. Composition is payable at the rate of 8% in any other case. Thus, the retailers dealing in goods with rate of 12.5% only or having more than 50% turnover of such goods, will have to pay 8% on the difference between sales and purchases.

Special provision for first six months of 2005-06

In respect of the six monthly periods starting on the 1st April 2005, for calculating the excess, 5/6th of the turnover of sales of the six monthly periods was to be considered instead of the entire turnover of sales of that period.

Restaurants and caterers: Sec. 42(2)

Eligibility Criteria

List of eligible dealers in this category includes restaurants, eating house, refreshment room, boarding establishment, factory canteen, clubs, hotels and caterers.

The Composition is available qua aggregate of sales of food and non-alcoholic drinks served for consumption in hotel at or in the immediate vicinity of such hotel or supplied by them, not being served for consumption in any restaurant or hotel or any part thereof having gradation of "Four star" and above.

The claimant dealer has to apply in the 'Form-2' if he is a caterer and in the 'Form-1' in other cases.

Restaurant etc. serving alcoholic drink can also opt for this composition scheme in relation to food and non-alcoholic drinks. In respect of alcoholic drinks he will be required to discharge tax liability as per the provisions of the Act.

Composition amount

8% on the turnover of sales in the case of registered dealer and 10% on the turnover of sales in case of unregistered dealer. However, with effect from 1st July 2009, rate of composition is reduced to 5% on turnover of sales effected by registered dealers.

Bakers

Eligibility criteria

Bakers can opt for composition. The term 'Baker' is not defined, but baker is a

dealer whose business is of manufacturing and selling of bread, cakes and other bakery products. If he is trading in bakery products, he is not entitled for composition on traded goods.

Compliance

He is supposed to apply and will be allowed composition only if the turnover of sales of bakery products including bread has not exceeded rupees thirty lakhs in the year previous to year for which the composition is to be availed and if the dealer was not liable to pay tax in the immediately preceding year, then he is entitled to claim the benefit of the scheme in respect of the first thirty lakhs rupees of the total turnover of sales in the current year.

Additional Condition:

An application is to be made to the Joint Commissioner, who shall certify the claimant dealer for the purpose of claiming benefit under composition scheme.

Composition amount

On first turnover of Rs. 30 lakhs of bakery products, claimant dealer has to pay composition amount @4%, such turnover will include the sale of bread in loaf, rolls, in slices or toasted form. If the claimant dealer is unregistered, the rate will be 6% instead of 4%.

For turnover exceeding prescribed limit, he has to pay tax as per normal sales tax rates. In such case he will get deduction for tax free sales of bread.

Dealer in second hand motor vehicles: Sec. 42(2)

Eligibility Criteria

Registered dealer whose principal business is of buying or selling of motor vehicles is eligible in respect of the turnover of sales of second hand passenger motor vehicle whether or not sold after reconditioning or refurnishing.

Additional conditions

1) An application is required to be made to the Joint Commissioner, who shall certify the claimant dealer for the purpose of claiming benefit under composition scheme

2) The selling dealer has to prove to the satisfaction of the Commissioner that the Entry tax in respect of the said vehicle has been paid or that the said vehicle is registered at the time of purchase under the Central Motor Vehicle Rules, 1989 in the State of Maharashtra and accordingly, registration mark of this state was allotted to the said vehicle.

Composition amount

Composition amount is payable at 12.5% on 15% of the sale price of the vehicle.

Composition Scheme for Liquor dealers

As per the amendments effected in the M.V.A.T. Act by Maharashtra Ordinance No. VI of 2006 dated 20th June, 2006 the benefit of Composition Scheme is extended to vendors selling Indian Made Foreign Liquor or Country Liquor on

retail basis and holding licence in Form FL II or CL III or CL/FL/TOD/III.
However, the details of the scheme are yet to be notified.

X. TAX LIABILITY ON WORKS CONTRACT TRANSACTIONS

Works Contract transaction consists of supply of material and labour. However, tax under MVAT Act is leviable on sales value of materials only. Therefore, a dealer has to identify the sale value of the material transferred under works contract. Rule 58 prescribes the deductions available which can be deducted from the value of contract to arrive at the sale price of the goods transferred in the execution of the works contract.

The eight items, which are eligible for deduction from total contract value for arriving at value of goods, are as under.

- (a) labour and service charges for the execution of the works;
- (b) Amounts paid by way of price for sub-contract, if any, to sub-contractors;
- (c) Charges for planning, designing and architect's fees;
- (d) Charges for obtaining on hire or otherwise, machinery and tools for the execution of the works contract;
- (e) Cost of consumables such as water, electricity, fuel used in the execution of works contract, the property in which is not transferred in the course of execution of the works contract;
- (f) Cost of establishment of the contractor to the extent to which it is relatable to supply of the said labour and services;
- (g) Other similar expenses relatable to the said supply of labour and services, where the labour and services are subsequent to the said transfer of property;
- (h) Profit earned by the contractor to the extent it is relatable to the supply of said labour and services:

Alternatively, proviso to the Rule 58 has prescribed the specific percentages for different types of works contracts. A dealer may deduct the prescribed percentage from the total value of contract.

The Table for standard deduction towards labour charges

Serial No.	Type of Works contract	*Amount to be deducted from the contract price (expressed as a percentage of the contract price)
(1)	(2)	(3)
1	Installation of plant and machinery	Fifteen per cent.
2	Installation of air conditioners and air coolers	Ten per cent.
3	Installation of elevators (lifts) and escalators	Fifteen per cent.

4	Fixing of marble slabs, polished granite stones and tiles (other than mosaic tiles)	Twenty five per cent.
5	Civil works like construction of buildings, bridges, roads, etc.	Thirty per cent.
6	Construction of railway coaches on under carriages supplied by Railways	Thirty per cent.
7	Ship and boat building including construction of barges, ferries, tugs, trawlers and dragger	Twenty per cent.
8	Fixing of sanitary fittings for plumbing, drainage and the like	Fifteen per cent.
9	Painting and polishing	Twenty per cent.
10	Construction of bodies of motor vehicles and construction of trucks	Twenty per cent.
11	Laying of pipes	Twenty per cent.
12	Tyre re-treading	Forty per cent.
13	Dyeing and printing of textiles	Forty per cent.
14	Annual maintenance contracts	Forty per cent.
15	Any other works contract	Twenty Five per cent.

Note:

(1) The percentage is to be applied after first deducting from the total contract price, the quantum of price on which tax is paid by the sub-contractor, if any, and the quantum of tax separately charged by the contractor if the contract provides for separate charging of tax.

The balance value arrived at by deduction of labour charges by any of above methods will be taxable value of goods. On such value, tax will be required to be paid at 0%, 4% or 12.5% depending upon the goods transferred in the contract. Contractors can issue 'tax invoice' while charging above tax.

(2) In case of a construction contract, where along with the immovable property, the land or, as the case may be, interest in the land, underlying the immovable property is to be conveyed, and the property in the goods (whether as goods or in some other form) involved in the execution of the construction contract is also transferred to the purchaser then such transfer is liable to tax under rule 58(1A). The value of the said goods at the time of the transfer shall be calculated after making the deductions as aforesaid under Rule 58(1) and the cost of the land as per Rule 58(1A) from the total agreement value.

The cost of the land shall be determined in accordance with the guidelines appended to the Annual Statement of Rates prepared under the provisions of the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995, as applicable on the 1st January of the year in which the agreement to sell the property is registered. It is, however, provided that deduction towards cost of land shall not exceed 70% of the agreement value.

Composition Scheme for works contract

Alternatively, a composition scheme is prescribed u/s. 42(3). A contractor may pay tax @

8% on the total contract value without claiming the deduction for labour. However, deduction for payment to sub-contractor is available subject to conditions. Such composition tax @ 8% can be collected separately by issuing 'tax invoice'.

From 20th June, 2006 a composition scheme for payment at 5% is also available for notified construction contracts.

The notified construction contracts as per Notification No. VAT.1506/CR-134/Taxation-1 dated 30.11.2006 are as under.

(A) Contracts for construction of, —

- (1) Buildings,
- (2) Roads,
- (3) Runways,
- (4) Bridges, Railway overbridges,
- (5) Dams,
- (6) Tunnels,
- (7) Canals,
- (8) Barrages,
- (9) Diversions,
- (10) Rail Tracks,
- (11) Causeways, Subways, Spillways,
- (12) Water supply schemes,
- (13) Sewerage works,
- (14) Drainage,
- (15) Swimming pools,
- (16) Water Purification plants, and
- (17) Jetty.

(B) Any works contract incidental or ancillary to the contracts mentioned in paragraph (A) above, if such work contracts are awarded and executed before the completion of the said contracts.

Contractor/ Sub-contractor

If the contractor allots the works contract to the sub-contractor, then the contractor and sub-contractor are treated as Principal and agent. The responsibility for payment of tax will be joint and several. However the contractor can make the payment of tax on contract and sub-contractor can take deduction by obtaining declaration and certificate in Forms 406 and 409 from the contractor. Similarly if the sub contractor has made payment of tax on contract allotted to him, then contractor can take deduction to that extent by obtaining declaration and certificate in Forms 407 and 408 from sub-contractor.

XI. T.D.S PROVISIONS FOR WORKS CONTRACT TRANSACTIONS

(Section 31 and Rule 40)

The TDS provisions were there under the earlier Maharashtra Works Contract Act, 1989. Under VAT Act also the provisions are continued but with certain changes. The important ingredients of the provisions can be noted as under.

1. Section 31 of the MVAT Act authorizes the Commissioner of Sales Tax to bring suitable TDS scheme in respect of Works Contract or any purchase transaction. However at present the scheme is made applicable in respect of works contract transaction only.
2. By Notification dated 29.8.2005, the Commissioner of Sales Tax has specified the list of employers liable to TDS and the rates of TDS.

3. The list of employers liable for deduction of TDS is as under:

SCHEDULE

Serial No.	Classes of Employers	Amount to be deducted
(1)	(2)	(3)
(1)	The Central Government and any State Government	Two per cent of the amount payable as above in the case of a contractor who is a registered dealer and four per cent in any other case
(2)	All Industrial, Commercial or Trading undertakings, Companies or Corporations of the Central Government or of any State Government, whether set up under any special law or not, and a Port Trust set up under the Major Ports Act, 1963	— do —
(3)	A Company registered under the Companies Act, 1956	— do —
(4)	A local authority, including a Municipal Corporation, Municipal Council, Zilla Parishad, and Cantonment Board	— do —
(5)	A Co-operative Society excluding a Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960	— do —
(6)	A registered dealer under the Maharashtra Value Added Tax Act, 2002	— do —
(7)	Insurance or Financial Corporation or Company; and any Bank included in the Second Schedule to the Reserve Bank of India Act, 1934, and any Scheduled Bank recognised by the Reserve Bank of India	— do —
(8)	Trusts, whether public or private	— do —
(9)	A Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960 which has awarded contracts of value aggregating to rupees 10 lakhs or more in the previous year or as the case may be, in the current year	— do —

4. The rates of TDS are prescribed at 2% if the contractor is registered dealer and 4% if the contractor is unregistered dealer.
5. The TDS is not to be made when the payment or aggregate of payment to the contractor in a year is less than Rs. 5 lakhs. In other words it will apply when the payments are exceeding Rs. 5 lakhs.
6. The TDS is to be deducted from net amount and no TDS is required to be deducted from sales tax or service tax separately charged by the contractor.
7. TDS should not exceed the tax payable by such contractor.

8. TDS should not apply to contracts taking place in course of inter-state trade or in course of import/ exports.
9. No TDS is required when principal contractor is making payment to sub-contractor.
10. In relation to advance payment, the TDS will apply as and when the advance payment is adjusted towards the actual amount payable to the contractor.
11. There are provisions for obtaining certificates for no deduction. The application is to be made in Form No. 410.
12. The credit of TDS should be available to dealer from whose payment the TDS is deducted. The credit will be available in the relevant period in which TDS is deducted or certificate is obtained.
13. The employer failing to deduct or after deduction failing to pay to Government will be considered to be dealer in arrears and other provisions of Act including payment of interest will apply to him accordingly.
14. Chalan No. 210 is to be used for depositing the tax deducted.
15. The TDS amount should be paid within 21 days from end of the month in which TDS is deducted, irrespective of the amount of TDS.
16. Annual TDS return in Form No. 405 is required to be filed before the Joint Commissioner (Returns) in Mumbai and with Joint Commissioner (VAT Administration) in the rest of the State, within three months from the end of relevant accounting year.
17. Unregistered employers who have deducted tax at source, on payments made to the contractors, are required to file Challan No. 210 along with demand draft/ pay order and photocopy of his PAN card before the Deputy Commissioner of Sales Tax (E-810), Business Audit (2), Vikrikar Bhavan, Mazgaon for Mumbai location and concerned Sales Tax Officer, Returns Branch for rest of the Maharashtra locations. For Mumbai location, the employers should draw demand draft/ pay order in favour **of the Bank of Maharashtra A/c MVAT payable at Mumbai**. For rest of the Maharashtra, the employers should draw demand draft/ pay order in favour of **the S.B.I. A/c MVAT payable at respective locations. (Refer Circular No. 42T of 2008 dt. 26-12-2008)**.
18. The employer should issue TDS certificate to the contractor. The TDS certificate should be in form 402 and be issued after payment of TDS is made in Government Treasury.
19. The employer should maintain a separate register of TDS in Form 404.

XII. TAX LIABILITY ON LEASE TRANSACTIONS

There is no specific schedule of lease tax. In case of transaction of lease of any movable goods, tax is payable on the amount received or receivable at the same rate as applicable to the normal sale of such goods.

Composition scheme for mandap decorators

Where a dealer is liable to pay tax on sales effected by way of the transfer of the right to use mandap, tarpaulins, shamiana or pandal (including the transfer of the right to use furniture, fixtures, lights and light fittings, floor coverings, utensils and other articles ordinarily used alongwith a mandap, pandal or shamiana), then he may pay a tax @ 1.5 % of the turnover of sales effected by him instead of payment as per provisions of Act.

XIII. FILING OF RETURNS

Section 20 states that every registered dealer shall file correct, complete and self-consistent returns. Rules 17 and 18 deal with forms and periodicity of returns etc. The information is tabulated as under:

Periodicity of filing of returns

To be used by	Form No.
Oil companies & any other dealer effecting sales of motor spirits	235
Dealer holding entitlement certificate and enjoying tax benefit under package scheme of incentives	234
Dealers who are fully or partially in the business of works contracts and/or leasing	233
Dealers who are covered under the composition scheme except works contract composition scheme	232
All other dealers are required to file their monthly or quarterly or six monthly returns in this form. (Note: As per present position, it appears that "any other dealer effecting sales of motor spirits" will be required to file return in Form 231 in addition to Form 235)	231
C.S.T returns in all cases	III-E

With effect from 1st May, 2008, the forms of return are changed. All the Vat returns whether original, revised or fresh and for whatever period are required to be filed in newly prescribed forms, which are as follows:

	Payment of Taxes	Periodicity of Payment/Return	Returns to be filed
(A)	In case of First Year	(a) From 1st day of April of the year or from the date of event dealer becomes liable to pay tax till the end of half yearly period in which the certificate of registration is granted. (b) Thereafter six monthly	Within 21 days from the end of the six monthly period. — As above —
(B)	In case of Subsequent Year	(a) If tax liability during the previous year exceeded Rs. ten lakhs or refund during the previous year exceeded Rs. 1 crore (b) If tax liability during the	Monthly Quarterly

		previous year did not exceed Rs.ten lakhs but exceeded Rs.one lakh. Or refund during the previous year did not exceed Rs. one crore but exceeded Rs. 10 lakhs (c) If tax liability during the previous year did not exceed Rs. one lakh. Or refund during the previous year did not exceed Rs. ten lakhs	Six Monthly
(C)	In case of Last Year	(a) Returns as per (B) above (b) Last return from the first day of month, quarter or half year as the case may be till the date of closure/discontinuation of the business	Monthly or quarterly or six monthly depending upon the previous year's liability — do —
Some category of dealers and requirement of filing of returns/payment of tax			
(D)	Dealers covered under Composition Scheme	(a) Retailer (b) Restaurant (c) Bakery (d) Dealer of Second Hand Motor Vehicles (e) Caterer	Half yearly depends upon the previous year's liability depends upon the previous year's liability depends upon the previous year's liability depends upon the previous year's liability depends upon the previous year's liability
(E)	For other types of Dealers	(a) Motor Spirit Dealer (b) Certificate of Entitlement Holder (For both — Exemption as well as Deferral units) (c) Any other dealer	depends upon the previous year's liability with provision for advance payment Quarterly — Refer Rule 18 depends upon the previous year's liability

Tax liability

It means total tax payable under the MVAT Act as well as CST Act after adjustment of the amount of set-off or refund claimed by the dealer, if any, under the MVAT Act.

If dealer does not have any transactions covered by the CST Act than he is not liable to file/upload any returns under CST Act, 1956. (Commissioner's Circular No. 52T of 2007 dated 31-7-2007 and 15T of 2009 dated 21-4-2009).

In the State of Maharashtra, filing of returns through electronic system started from February, 2008. Initially, dealers whose tax liability was Rs. One crore or more was liable to upload the electronic returns. Gradually dealers having lesser tax liability were also covered and from October, 2008 all the dealers are made liable to upload their returns through electronic system. (Refer Commissioner's Circular No. 1T of 2009 dated 12-1-2009).

All the dealers who are required to file returns for the previous defaulting period or revised returns for the past period are also required to file it only in electronic form from 1st February, 2009. (Refer Commissioner's Circular No. 6T of 2009 dated 30-1-2009).

Electronic return uploaded within 10 days from the due date will not be treated as late return provided that the payment of tax is made on or before the due date. (Refer Commissioner's Circular No. 16T of 2008 dated 12-5-2008 and 1T of 2009 dated 12-1-2009).

DUE DATE CHART FOR PAYMENT OF TAX UNDER THE MAHARASHTRA VALUE ADDED TAX ACT, 2002 FROM 1/4/2008 onwards

For monthly payments		For quarterly payments		For half yearly Payments	
1) If tax liability exceeded Rs. 10,00,000- or 2) refund exceeded Rs. 1,00,00,000		1) Tax liability exceeded Rs. 1,00,000 but did not exceed Rs. 10,00,000 or 2) Refund exceeded Rs. 10,00,000 but did not exceed Rs. 1,00,00,000 3) PSI Units		1) Tax liability up to Rs.1,00,000 or Refund up to Rs. 10,00,000 2) Retailers who opted for Composition 3) Newly registered dealers	
Months	Due Date	Quarters	Due Date	Half year	Due Date
April	21st May				
May	21st June				
June	21st July	1st Quarter	21st July		
July	21st August				
August	21st September				
September	21st October	2nd Quarter	21st October	1st half	21st October
October	21st November				
November	21st December				
December	21st January	3rd Quarter	21st January		

January	21st February				
February	21st March				
March	21st April	4th Quarter	21st April	2nd half	21st April

1] If the due date falls on a State Holiday or Sunday, the immediate next working day will be the due date.

2] Date of presentation of cheque will be considered to be the date of payment.

Revised return

Any person or dealer who, having furnished a original return can file revised return as under:-

- After furnishing the original return the dealer can file revised return or if revised return is already filed, can file further revised return on his own, to correct any mistakes committed in the same. Such revised return is to be filed within 9 months from the end of the year in which the period of revised return is covered or before the notice for assessment is issued, whichever is earlier;
- If as a consequence to VAT Audit a revised return is required to be filed it can be filed within 30 days from due date of filing audit report;
- Dealer can file revised return upon issue of intimation by Business audit officer, if he agrees to proposal in the said intimation, within 30 days from receipt of such intimation.

Fresh return

If after filing original return, the department issues defect notice mentioning the defect remained in such return, the dealer will be required to file fresh return within one month from the date of receipt of defect notice.

Annual return

As per amendment in Rule 17(4)(a)(ii) dated 14.03.2008, a registered dealer to whom the Explanation to clause (8) of section 2 applies (i.e. deemed dealers) and if his tax liability during the previous year was rupees one crore or less, he can file an annual return within twenty-one days from the end of the year to which such return relates, instead of filing monthly, quarterly or six monthly returns. However, an application to the Joint Commissioner is required for the same.

XIV. ASSESSMENT, REVIEW, RECTIFICATION, APPEAL

Sec. 23(1): Best Judgment Assessment

To ensure that return is correct and complete and if Commissioner of Sales Tax (CST) thinks that presence of the dealer is necessary, assessment may be undertaken for which following provisions are made:

Sections	Period for issue of notice	Period for passing of A.O.
21(1)/23(2): In case return is filed by prescribed date	Before two years from the end of the year containing the	Before expiry of three years from the end of the said financial year.

	period of return.	
21(2)/23(3): In case return is not filed by prescribed date	Before three years from the end of the year containing the period of return.	Within four years from the end of the said financial year.
21(3)/23(3A): Assessment for any period ending on or before 31-3-2008	Before six years from the end of the year containing the period of return.	Before seven years from end of the said financial year.
23(4): In case dealer is unregistered	Before five years from the end of the year containing the taxable period.	Before expiry of eight years from the end of the said financial year.

Special Provisions for and about assessments

1. Sec. 23(1): Where the dealer fails to file a return for any period within time, the Commissioner may assess for such period to the best of his judgment without a notice and opportunity of being heard. The said order is non appealable. However, on dealer's furnishing evidence of return being filed with payment of tax, such order will be cancelled.
2. Sec. 23(5): If during investigation proceedings, if tax-evasion or incorrect recording of transactions/claim is noticed then transaction wise assessment can be completed. This assessment shall be without prejudice to the other provisions of assessment.
3. Sec. 23(6): If Commissioner is of the opinion that there is non disclosure of sales/purchases, wrong set-off claim, payment of tax at lesser rate, he may within five years from end of the year containing the said period serve a notice and assessment has to be completed within six years from such period.
4. Sec. 23(7): Fresh assessment to give effect to directions of higher appellate authority shall be made within 36 months from the date of communication of such finding or direction.
5. Sec. 23(8): The Commissioner may pass assessment order by ignoring the decision of the Tribunal, if it is appealed before the appropriate forum. No recovery of such dues shall be made pending decision by such forum.
6. Sec. 23(9): If dealer applies to the Commissioner, he may give directions to the assessing authority. Those will be binding on assessing authority. Directions as to the lines on which any investigation connected with the assessment should be made shall not be deemed to be prejudicial to the dealer.
7. Sec. 23(10): Dealer may be assessed under a single notice and by a single order of assessment in respect of more than one period covered by a return as long as all such periods are comprised in one year.
8. Sec. 23(11): In case an ex parte assessment order is passed, then dealer may apply to the same authority for cancellation of such order within thirty days from the date of service of the assessment order. The assessing authority will cancel the ex parte order and may make a fresh assessment.

Review: Section 25

1. Any order can be reviewed by the Commissioner either suo motu or on receipt of report or information of the turnover of sales or purchases not brought to tax, taxed at lower rate, incorrectly classified, claims incorrectly granted, liability is understated,

that the order is erroneous or prejudicial to the interest of revenue. The order shall be passed within five years of the end of the year in which the order to be reviewed is served on the dealer.

2. If appeal order is passed by the Appellate authority or Tribunal or is pending for decision in appeal, the Commissioner shall report to them within five years from end of year in which the order to be reviewed is served and the said authority shall thereafter pass the order under this sub Section (2) after giving opportunity of hearing. Such order shall be deemed to be an order passed in appeal.
3. No order under this Section will be passed on receipt of application from a dealer or person.

Rectification: Section 24

1. Any order passed under the MVAT Act, can be rectified for any mistake apparent on the record. The Commissioner has to rectify the order within two years from end of a financial year in which the order has been served, if he wants to rectify it on his own motion. The person affected by such order can apply for rectification within same time frame. In such case rectification order can be passed even after two years, from end of the year in which order to be rectified is served.
2. Where a dealer has applied in the form 307 for rectification, the Commissioner shall till deciding the said application, stay the recovery of amount likely to be reduced in rectification.
3. In case tax dues arise due to non-submission of declaration/certificates, then if appeal is not filed against the said order, the dealer may apply within two years period from the end of financial year, in which the said order had been served, for rectification under sub-Section (2). Only one such application for rectification shall be entertained.

Appeals: Sections 26 & 27

If the order is passed by	1st Appeal to be filed with	2nd Appeal to be filed with
S.T.O./A.C. or any officer subordinate to D.C.	Deputy Commissioner	Tribunal
D.C./Senior D.C.	Joint Commissioner	Tribunal
Joint Commissioner/Addl. Commissioner/Commissioner	Tribunal	—

- Appeal is to be filed within stipulate time limit of 60 days. Of course, there is a power with the Appellate Authority to condone the delay in given circumstances.
- The appeal fees as prescribed in the rule is required to be paid before filing of appeal.
- The appeal should be submitted in Form 310. The stay application can be filed in Form 311.
- The powers of the appellate authority shall be subject to rules and procedures. In case of appeal against Penalty/Interest order, the Appellate Authority has powers only to confirm, cancel or modify the penalty/Interest.
- Power of remand of the case has not been given. Restricted power to remand the matter for fresh assessment has been given to Tribunal.
- The appeal by person of more than 75 years of age shall be decided on priority basis,

if he has a substantial interest in the business.

- Explanation added to sub-Section (5) makes it clear that while disposing of an appeal, the Appellate Authority may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before it by the Appellant or that no order was made in the said proceedings regarding such matter.
- Instead of Reference (as under the BST Act) to be filed against Tribunal order, now an appeal can be filed before the High Court within 120 days of the order, if the case involves substantial question of law. The Court can determine any issue in appeal, whether or not dealt with by the Tribunal and also which has been wrongly determined by the Tribunal by reason of a decision on such question of law as is referred to it.

XV. REFUND

Section 51 deals with the refund of tax.

The salient features of Section 51 are as follows:

- The application for refund is required to be made in Form No. 501 to the Refund Branch. The application will be entertained only if return is filed. The refund granted under this Section is final unless scrutiny assessment is done by the authorities.
- For grant of refund, different time limits to entertain refund applications are prescribed for different categories of dealers.
- In case of new dealers, the time limit is six months from the end of succeeding financial year. If the dealer demands early refund, the Commissioner may ask for bank guarantee. The refund in such case will be granted within one month of submitting bank guarantee and if no bank guarantee is asked, then refund will be granted within three months from the date of receipt of application. If in case any additional information is asked, then the refund will be given within three months from the receipt of such additional information or date of receipt of application whichever is later. If additional information is not furnished then the refund will be granted within six months from the date of receipt of application.
- An exporter covered by Section 5(1) or 5(3) of C.S.T. Act, a unit situated in SEZ, 100% EOU, unit in STP/EHTP, developer of SEZ, dealers effecting inter-state sales, any unit situated in backward area holding entitlement certificate or Canteen Stores Departments can apply for refund after filing of the return due as per their periodicity. The Commissioner can ask for further information or ask for bank guarantee as may be required within one month from the date of receipt of application. The refund will be granted within one month of receipt of bank guarantee and if no bank guarantee is required the refund will be granted within three months from the date of receipt of application. If in case any additional information is asked, then the refund will be given within three months from the receipt of such additional information or three months from date of receipt of application whichever is later. If additional information is not furnished then the refund will be granted within six months from the date of receipt of application.
- After submitting bank guarantee, refund will have to be granted within one month of receipt of bank guarantee.
- In case of dealers, other than specified above, the application for refund can be filed after end of the year. The refund will be granted within three months from the receipt of the application or if any additional information is asked then within three months from the receipt of the additional information, whichever is later. If additional information is not furnished then the refund will be granted within six months from

the date of receipt of application.

In all cases, if the bank guarantee is submitted then the refund will be granted within one month from the submission of bank guarantee.

- If assessment or any enforcement action u/s. 63(3)/(4) is taken before the grant of refund, then refund due as per return or enforcement proceedings will be then granted as per normal procedure on completion of the said action. However, if any bank guarantee is already furnished before the initiation of assessment or enforcement action, then the amount equal to bank guarantee will be granted without waiting for completion of respective action. If it is found as a result of any order passed under this Act that the refund granted under this section is in excess of the refund, if any, determined as per the said order, then the excess amount shall be recovered as if it is an amount of tax due from the dealer and the dealer shall be liable to pay simple interest at the prescribed rate per month or part thereof from the date of the granting of refund.
- No interest is given on refund granted under this Section.
- No refund under this section shall be granted unless an application in Form No. 501 is made and no application under this section shall be entertained unless it is made within three years from the end of the year containing the period to which the return relates.
- The Commissioner of Sales Tax has issued Circulars from time to time giving directions to lower authorities for refund. The last two of such Circulars are Circular No. 56T of 2007 dated 23-8-2007 and 35T of 2008 dated 10-10-2008. The readers are requested to go through these Circulars.
- In the recent budget proposal in June, 2009, the Finance minister of Maharashtra has announced simplified and speedy refund scheme for refunds upto Rs. 5 lakhs. The details of the scheme are awaited.

Sections 52 and 53: Interest on refund and interest on delayed refund

- Refund arising in assessment order is entitled for interest @ 6% p.a. for maximum upto 24 months.
- Interest on refund is available for the period commencing on the date next following last date of the period to which refund relates and ending on the date of the order sanctioning the refund or for a period of twenty four months whichever is less. It is to be worked out on net refund after adjustment of any dues under earlier law, MVAT Act or CST Act.
- It shall not be granted towards any refund granted under Section 51.
- In case of delayed refund, it is available from the date immediately following the expiry of the period of 90 days from the date of order granting the refund till the date of refund. Decision of Commissioner for exclusion of any period, while working out such interest shall be final.
- If refund is delayed beyond 90 days from the date of passing of refund order or from the time given in Section 51 for granting refunds, then the dealer will be entitled to interest for delayed period @ 6% p.a.
- **Rule 88:** Rate of interest presently notified for Sections 52 and 53 is half percent of amount of tax for each month or for part thereof.

XV. INTEREST & PENALTY

Penalties: Section 29

Section	Nature of offence	Penalties
29(3)	(i) Concealment (ii) Knowingly furnishing inaccurate particulars of transactions liable to tax (iii) Concealment or knowingly misclassifying any transaction liable to tax (iv) Knowingly claiming excess set-off.	Equal to the amount of tax found due.
29(4)	Knowingly issuing/producing any document including a false bill, cash memo, voucher, declaration certificate by which tax is not levied or is levied at reduced rate or incorrect set-off is claimed.	Equal to the amount of tax found due.
29(5)	Where a buyer enjoys exemption u/s. 8(3), 8(3A), 8(3B) or 8(5) and thereafter do not comply with the conditions specified therein	Equal to one and half times of the tax payable on sale.
29(6)	Contravention of provision of Section 86 (Tax Invoice and memorandum of Sales or Purchases) resulting in under assessment.	Equal to half the amount of tax which would have been under assessed or Rs. 100, whichever is more.
29(7)	Failure without reasonable cause to comply with any notice in respect of any proceedings.	Rs. 1,000
29(8)	Failure without reasonable cause to file within prescribed time, a return for any period under Section 20	With effect from 1st July, 2009 fixed penalty amount of Rs. 5,000 is payable. The penalty is attracted automatically and no appeal can be filed against such penalty.
29(9-c)	When return is found to be not complete and self consistent	Rs. 1,000.
29(10)	Collection of any sum by way of tax in contravention of provisions of Section 60	Not exceeding Rs. 2,000
61(2)	Failure to furnish copy of audit report u/s 61 within prescribed time.[If filed within one month from due date and delay was on account of factors beyond dealer's control then no penalty as per proviso.]	One-tenth per cent of total turnover of sale.

Rule 90	Breach of any of the rules	Fine which may extend to Rs.2,000 and for continuing offence with a daily fine not exceeding Rs.100
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- No order of penalty shall be passed in respect of any period after 5 years from the end of the year containing the said period.
- If penalty exceeding Rs. 5 lakhs to be levied by Sales Tax Officer, Assistant Commissioner then it can be levied only with prior approval of the Deputy Commissioner and
- If Penalty exceeding Rs. 10 lakhs is to be levied by Deputy Commissioner, Senior Deputy Commissioner then it can be levied only with prior approval of the Joint Commissioner

Prosecution

Section 74 of the Act, provides for prosecution of any dealer or person who has committed any default provided in it, with or without fine. Section 74(7) states that in any prosecution for an offence under this Section, which requires a culpable mental state on the part of the accused, the Court shall presume the existence of such mental state. The accused has to prove that he had no such mental state with respect to the act charged as an offence in the prosecution.

Section 78 of the Act provides for compounding of any specified offences by the Commissioner of the Sales Tax, upon payment of any sum not exceeding double the amount of tax that would have been payable on turnover of sales or purchases.

Interest: Section 30

- Unregistered Dealer: Section 30(1) — Interest for Unregistered dealer period is to be levied for each month or part thereof for the period commencing on the 1st April of the respective year to the date of payment of tax.

Interest levied under this sub-Section shall not exceed the amount of tax found payable for the respective year.

If as a result of any order passed under the Act amount of tax is reduced, the interest shall be reduced accordingly and where the said amount is enhanced, it shall be calculated upto the date of such order on such enhanced amount.

- **Registered Dealer**

Section 30 (2)

- Failure to pay tax within time specified by or under this Act shall be visited with interest after last date by which he should have paid such tax.
- If dealer has filed fresh/Revised return, and if the amount of tax payable as per such return exceeds the amount of tax payable as per Original return, then the dealer shall be deemed to have been required to pay the excess amount of tax at the time he was required to pay the tax as per the original return and accordingly he shall be liable to pay interest on the excess amount of tax subsequently paid with fresh/revised return accordingly.

Section 30(3)

- In case of a registered dealer, any tax other than the one subjected to interest under sub-Section (2) has remained unpaid upto one month after the end of the period of assessment, such dealer shall pay interest from the date next following last date of the period covered by an order of assessment till the date of order of assessment or date of payment; if payment is made before the date of assessment. If as a result of any order differential dues are reduced then the interest should be reduced and if the differential dues are enhanced then on enhanced dues, it will be calculated upto the date of such order.
- **Rule 88:** Rate of interest presently notified for Section 30 is one and quarter percent of amount of tax for each month or for part thereof.

Additional Interest u/s. 30(4)

With effect from 1-7-2009, a new sub-Section (4) is inserted in Section 30. As per this sub-section (4), if after the commencement of,—

- i. business audit of the dealer in respect of any period, or
- ii. inspection of the accounts, registers and documents pertaining to any period, kept at any place of business of the dealer, or
- iii. entry and search of any place of business or any other place where the dealer has kept his accounts, registers, documents pertaining to any period or stock of goods,
- iv. in consequence of any intimation issued under sub-section (7) of section 63, the dealer files one or more returns or, as the case may be, revised returns in respect of the said period, then he shall be liable to pay by way of interest, in addition to the amount of tax, if any, payable as per the return or, as the case may be, revised return, a sum equal to 25 per cent, of the additional tax payable as per the return or, as the case may be, revised return.

Section 40

Any payment made by a dealer or person in respect any period towards any amount due as per any order passed under the Act shall first be adjusted against the interest payable by him on the date of payment, penalty, and sum forfeited and fine. Any amount remaining unadjusted shall then be adjusted towards the tax payable.

XVII. SURVEY, SEARCH, SEIZURE AND CHECK POST

Sections 64, 65 & 66 of the Act provides for survey, search and seizure.

Section 67 of the Act provides for establishment of check post and barriers. However, this provision is yet not made operative.

XVIII. MAINTENANCE OF RECORDS

Although no specific format has been prescribed for the maintenance of records under MVAT Act, 2002, it is expected that every dealer shall keep such accounts and records as usually required to be maintained in his normal course of his business.

Section 63 of the MVAT Act, 2002 requires every dealer to maintain a true account of the value of the goods sold and goods purchased by him. It also requires that every registered dealer shall ordinarily keep all his accounts, registers and documents relating to his stocks of goods, purchases, sales and delivery of goods made by him or payments made or received towards sale or purchase of goods, at the place or places of business specified in

his certificate of registration.

As per Section 63(5)/(6) the effect of credit notes/debit notes for goods return or variation in sale price is to be taken in the period in which the entries for the same are made in the books. It is also provided that if such credit/debit notes have the effect of varying the sale/purchase price then tax element should be shown separately.

Preservation of books of account, registers, etc.

Every registered dealer shall preserve all books of accounts, registers and other documents relating to the stocks, purchases, dispatches and deliveries of goods and payments made towards sale or purchase of goods for a period of not less than six years from the expiry of the year to which they relate. (Rule 68). It is also provided that if within the said six years any proceedings are initiated then the dealer should preserve the records beyond six years till final order is passed in respect of the said proceedings.

XIX. AUDIT OF ACCOUNTS (SEC. 61)

Every dealer liable to pay tax shall, if his turnover of sales or, as the case may be, of purchases, exceeds rupees forty lakhs in the year or if he is a dealer or person who holds specified liquor licence, is required to get his accounts audited by a Chartered Accountant or a Cost Accountant. The audit report in Form 704 is to be submitted to the sales tax department within ten months from the end of the relevant year.

If any dealer liable to get his accounts audited under sub-Section (1) fails to furnish a copy of such report within the time as aforesaid, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, impose on him a sum by way of penalty equal to 1/10th per cent of the total sales.

It is also provided that if the dealer fails to furnish a copy of such report within the aforesaid period but files it within one month of the end of the said period and the dealer proves to the satisfaction of the Commissioner that the delay was on account of factors beyond his control, then the Commissioner may condone the delay.

However, the provisions of VAT Audit prescribed under Section 61 shall not apply to Departments of the Union Government, any Department of any State Government, local authorities, the Railway Administration as defined under the Indian Railways Act, 1989, the Konkan Railway Corporation Limited and the Maharashtra State Road Transport Corporation constituted under the Road Transport Corporation Act, 1950.

Some of the important features of VAT audit are as follows:

1. Turnover of all purchases including purchases debited to Profit & Loss Account (like printing and stationery, packing material, consumables, etc.) and purchase of assets are to be considered for deciding the limit of Rs. 40 lakhs.
2. Turnover of all sales including sale of scrap, old assets, sale to employees, sale of goods on commission basis etc. is to be considered for deciding the limit of Rs. 40 lakhs.
3. Unlike Income Tax Audit, the VAT auditor is not required to certify the true and fair view, but is required to certify the correctness and completeness of the VAT and C.S.T returns filed by the dealer.
4. Copy of the Statutory Audit Report, along with Profit & Loss Account and Balance Sheet is required to be enclosed with VAT audit report in Form No. 704.
5. The auditor is required to determine the amount of tax payable, compare it with the amount of tax paid along with return and is required to advise the dealer to file the

revised return and pay the differential tax or claim the refund of excess tax paid.

6. In case a dealer has opted for any composition scheme, then he has to verify and report whether the dealer has fulfilled the required conditions of the composition scheme as specified in the notification.
7. In case of export sales, high seas sales, sale in transit, sales to an exporter against Form H or inter-state transfer of goods to a branch or an agent against Form F, an auditor is required to verify all relevant documents and operating procedure in terms of the provisions of the C.S.T. Act and legal position in this regard.
8. The auditor has to give the details of purchases of Rs. five lakhs or more per annum from the new supplier if on such purchases set off is claimed.
9. The auditor has to verify whether dealer has deducted the TDS on transactions liable for the same under M.V.A.T. Act, 2002 and report about non deduction or non deposit or late deposit of T.D.S. amount.
10. The auditor has to provide the details of inter-state sales or transfers not supported by the declarations in Form C, H, E-I or E-II or F in the prescribed format.
11. The auditor has to give the figures of payment of tax, detail about the late payment of tax and has to calculate interest on late payment of tax.

XX. FEES PAYABLE FOR VARIOUS PURPOSES (RULE 73)

Sr. No.	Description of Memorandum or Application	Amount of fee
(1)	(A) Application for voluntary registration under section 16 (B) Application for registration other than voluntary registration under section 16	Rs. Five thousand Rs. Five hundred
(2)	Application for a duplicate copy of registration certificate	Rs. Twenty five
(3)	Application for certified copy of any extract from the list of registered dealers — Section 16(7)	Rs. Twenty five
(4)	Application for stay order against recovery of dues — Section 26(6)	Rupees Twenty five
(5)	Application for tax clearance certificate — Section 32(8)(a)	Rs. Ten
(6)	Application for advance ruling — Section 55	Rs. Five hundred
(7)	Application for determination of disputed question — Section 56	Rs. One hundred
(8)	Memorandum of appeals — Section 26 (a) where the quantum of relief sought is less than rupees one lakh (b) where the quantum of relief sought is rupees one lakh or more (c) in case of an appeal not covered by (a) and (b) above	Rs. One hundred One-tenth of a per cent of the amount in dispute subject to a maximum of rupees one

		thousand Rs. One hundred
(9)	Application for true copies of the document	Rs. Five per page (urgent copy Rs. 10 per page)
(10)	Applications in respect of provisional attachment under Section 35(5)	Rs. One hundred
(11)	Application for restoration of appeal	Rs. Ten
(12)	Authority letter in favour of a person who is a relative or person regularly employed — Section 82	Rs. Five
(13)	Authority letter in favour of Legal Practitioner, Chartered Accountant, Cost Accountant or, as the case may be, Sales Tax Practitioner — Section 82	Rs. Two
(14)	Application for being enrolled as a Sales Tax Practitioner	Rs. Five

Note:

- The amount of fees indicated in column (3) of the table against entries 12, 13 & 14 may be paid by affixing court fee stamp of such value on the respective application form.
- All others fees payable under this rule shall be paid in the manner in which tax is to be paid under Rule 45 i.e. payment into the bank through Challan No. 210.