

KVAT – Updates & Issues



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Coverage



- ❖ Budget 2015 – 16 amendments
- ❖ Recent decisions
- ❖ Issues

Budget Amendments – 2015-16



Section 9-A – New Proviso



- ❖ The Commissioner may notify specified class of authorities to submit statements in prescribed form electronically and make payments also electronically
- ❖ TDS return to be filed by the specified authorities electronically
- ❖ Penalty for not filing / filing incorrect or incomplete also prescribed

Section 9-B – New Section



- ❖ Dealers / Bodies as listed in Sec. 9-A
- ❖ To deduct TDS – at the rate applicable on purchase of such goods
- ❖ On goods purchased by them from within the State
- ❖ Date to be notified
- ❖ To file TDS returns electronically
- ❖ ISSUES
 - TDS to be deducted without considering the input tax credit available to the dealer
 - May lead to situation of refund for the dealers supplying goods to these bodies

Section 10(3) - Substitution



- ❖ As it existed earlier prior to 01.04.2015–
- ❖ Calculation of net tax payable
- ❖ Output tax payable in that period
(Less)
Input tax deductible for that period
- ❖ Centum Industries Pvt. Ltd. 80 KLJ 65 case –Input tax credit has to be claimed in the returns / revised returns filed for the month to which the purchase relates.
- ❖ SLP in Supreme Court has been admitted against this decision.

Section 10(3) - Substitution



- ❖ On or after 01.04.2015 -

- ❖ Calculation of net tax payable

Output tax payable in that period

(Less)

Input tax deductible for that period and for five months immediately preceding such tax period, if it has not been deducted earlier

- ❖ Relief for dealers

- ❖ Time available for claiming credit – 11 months ☺

Section 10(3) - Substitution



❖ Illustration

- Purchase invoice – 01.04.2015
- Input tax credit not claimed in the return filed for the month of April 2015
- Credit can be claimed in the return to be filed for the months upto September 2015
- If credit not claimed by September 2015 –
- Option 1 – Claim credit by filing revised return for the month of April 2015 - Time limit 6 months - i.e. time available upto October 30, 2015
- Option 2 – Claim credit by revising the returns for May to September 2015 – Practically time available till March 2016

Section 10(3) - Substitution



❖ Budget speech – Para 502

“To facilitate the dealers to claim input tax credit of previous months in the returns filed during subsequent months, I propose to amend sub-section 3 of Section 10 of KVAT Act, 2003 to allow claiming input tax credit for a period of five months from the month in which it has accrued”

❖ Whether amendment is retrospective?

❖ Substitute means – to put in place of another; to replace

❖ GOI Vs. Indian Tobacco Association – 2005 (7) SCC 396 – *by substitution, a mistake that has occurred is sought to be removed*

❖ Sakthi Masala Vs. Asst. Commr. 2013(64) VST 385 – Effect of substitution is as if the old provisions were never there

Section 11(d) – New Sub-section



❖ Budget speech – Para 503 –

*“One of the objectives of VAT Act is to widen the tax base through value addition at each point of sale. This is being defeated by refund claim of a portion of a output tax paid at the earlier stage by selling the goods at a price lower than the purchase price in the guise of business practices in certain commodities. In order to safe guard the revenue I propose to amend section 11 of the KVAT Act, 2003 to limit input tax credit to the extent of output tax paid on **particular commodities**.*

Section 11(d) – New Sub-section



❖ Section 11(d) –

*“Notwithstanding anything contained in this Act, where **any dealer has sold goods** at a price lesser than the price of such goods purchased by him, the amount of input tax credit shall be restricted to the amount of output tax of such goods.*

❖ All dealers and all goods covered by the sub-section

❖ Contrary to the budget speech

❖ Does not apply to goods which are consumed by the dealer

Section 11(d) – New Sub-section



❖ ISSUES

- Goods where prices are driven by market conditions?
- Is it possible to maintain one – to – one co-relation of sales with purchases for large dealers?
- Method of finding out the cost – FIFO or LIFO?
- Goods purchased locally and sold outside the State at lesser price. Whether this provision will apply? Whether CST paid can be treated as output tax?

Section 11(d) – New Sub-section



❖ ISSUES

- Goods purchased by dealer at Rs. 100. Vendor gives incentive at the end of the month / quarter of Rs. 25. Goods sold by dealer for Rs. 90 after considering the incentive received. Whether input tax to be restricted?
- Works contract transactions – How to find the price at which the are goods transferred in the execution of the works contract?
- Part quantity sold in May at a lesser price. Balance quantity sold in June at more than cost price. Total price received from both transactions is more than the purchase price. Whether credit has to be restricted for May?

Section 22 and 27



- ❖ Threshold limit for compulsory registration increased from Rs. 7.5 Lakh to Rs. 10 Lakh in a year;
- ❖ If taxable turnover less than Rs. 10 Lakh in a year, department can cancel the VAT registration of the dealer

Section 62 – Appeal to FAA



- ❖ Proviso – Commissioner may notify the website where appeal can be filed electronically
 - Once notified – mandatory to file appeal electronically
- ❖ Proviso – Single appeal for all tax periods of a financial year
- ❖ Aimed to reduce paper work

Section 63



- ❖ For appeals filed to KAT – Once stay has been granted the Tribunal has to dispose off the appeal within 365 days.
- ❖ If not disposed, stay gets vacated automatically
- ❖ Tribunal does not have power to extend the stay
- ❖ Only remedy available is to file writ petition before HC

Section 73(3-A) – New sub-section



- ❖ Dealers / bodies specified in Section 9-A or 9-B who are liable to deduct tax
- ❖ If they fail to furnish return / furnishes incorrect or incomplete return
- ❖ Shall be liable to penalty of Rs. 50 each the day the return remains incomplete or incorrect
- ❖ Notice to be issued before levying penalty

Other amendments



- ❖ Rate of tax on tobacco products like cigarettes, cigars, gutkha and other manufactured tobacco increased from 17% to 20%
- ❖ Petrol and Diesel – Rate increased by 1%
- ❖ Products exempted
 - Paddy, rice, wheat, pulses, maida of wheat and Flour and Soji of rice and wheat exempted for one more year
 - Footwear costing upto Rs. 500 per pair
 - Hand made products like table mats, floor mats and runners, utility bags and other utility products made of Banana Fibre and other natural fibre of agricultural waste – excludes rubberized fibre products

Other amendments



- ❖ KVAT reduced from 14.5% to 5.5%
- Kerosene wick-stoves
- M-Sand and M-sand manufacturing machines
- Industrial Cables
- Mobile phone charger – sold along with mobile or otherwise
- Industrial inputs list amended to include Pallets, Box Pallets, Pallet Collar and other Load Boards

Other amendments



- ❖ Statutory forms filed should be linked to turnovers declared in the returns
- ❖ Appellate authorities are required to upload the orders electronically on the department's website before the orders are served on the appellant



Recent Decisions



Pro Lab – 81 KLJ 377



❖ Background

- Entry no. 25 inserted in the KST Act w.e.f 01.07.1989 to levy sales tax on processing and supplying of photographs;
- This entry was challenged and Hon'ble Karnataka High Court held it to be unconstitutional – Keshoram Surindranath's case
- State's appeal to Hon'ble Supreme Court was dismissed by following earlier decision in the case of Rainbow Colour Lab and Another
- Law laid down in Rainbow Colour Lab's case doubted by the Larger bench of Hon'ble Supreme Court in ACC Ltd' case.

Pro Lab – 81 KLJ 377



- Commissioner issues circular to AA's to proceed with Assessment as per Entry no. 25
- This Circular of Commissioner challenged before Hon'ble Karnataka High Court – It was held that an entry which was held unconstitutional cannot be bought back to life by merely issuing circular – Golden Colour Labs and Studio
- Karnataka re-enacts Entry no. 25 in 2004 retrospectively w.e.f. 1989 by following appropriate procedures
- Re-enactment challenged again before Hon'ble High Court – Held unconstitutional again

Pro Lab – 81 KLJ 377



- Karnataka files appeal to Hon'ble Supreme Court – Held levy is valid. The theory of dominant intention does not apply to transactions falling under Sec. 366(29-A)
- It was also held that the Legislature has the power to pass amendments with retrospective effect

BHEL – 79 KLJ 642 / 78 VST 429



- ❖ Whether interest is chargeable from the date of tax due or from the date of assessment?
- ❖ Tribunal held that interest is chargeable only from the date of assessment
- ❖ Karnataka High Court reversed the decision of the Tribunal and held that interest is chargeable from the date of tax due
- ❖ SLP filed in Supreme Court is dismissed

Fosroc Chemicals – 80 KLJ 497 / 79 VST 25



- ❖ Whether penalty u/s 72(2) can be levied for non-payment / short payment of tax due to non submission of 'C' / 'I' / 'F' Forms.
- ❖ At the time of filing the return, the dealer has not understated the tax liability
- ❖ CST Act provides for 3 months time to furnish the Forms
- ❖ It cannot be said that the dealer had any intention to avoid payment of tax
- ❖ It cannot be said that the dealer has understated his tax liability in the return
- ❖ High Court held that the penalty u/s 72(2) cannot be levied when the default is due to non submission of Forms.

PENALTY

Fosroc Chemicals – 80 KLJ 497 / 79 VST 25



- ❖ Whether re-assessment u/s 39(1) of the KVAT Act can be initiated without recording the reasons / satisfaction in writing that there is understatement of tax liability?
- ❖ Grounds to believe that the returns furnished understates the tax liability to be recorded in writing before issuing notice
- ❖ Dealer has to right to ask for the recorded reasons grounds
- ❖ Dealer should ask for reasons / grounds as soon as notice for production of books of accounts / proposition notice issued

Nokia India Pvt. Ltd. – 81 KLJ 3 - SC



- ❖ NIPL sold mobile charger along with mobile in a consolidated package
- ❖ Rate of tax on mobile is 4% and on mobile charger (electrical goods) is 12.5%
- ❖ NIPL charged KVAT @ 4% on the mobile package
- ❖ Department demanded 12.5% on mobile chargers
- ❖ Held
 - Battery charger sold along with mobile is not a part of the mobile
 - Initially mobile can be used without the charger
 - Mobile can be charged through other modes also
 - Battery charger is not a composite part of the mobile. It is to be treated as an accessory of the mobile. To be taxed as electrical goods. Liable to KVAT at higher rate of 12.5%.



Harsha Enterprises – 81 KLJ 13



- ❖ Whether the notification issued specifying certain class of dealers to upload sales and purchase date electronically valid in law?
- ❖ High court held that it does not adversely affect the dealer. It is in the interest of the revenue.
- ❖ Notification issued is administrative in nature and is not any substantial new law which is not envisaged in the Statute.

Silverline Estates – 81 KLJ 99



- ❖ Deduction towards labour and other like charges as per Rule 3(2) is on the total contract price or on the turnover after deducting payments made to sub-contractor?
- ❖ Rule 3(2) uses the phrase “Labour and other like charges as percentage of the value of contract”
- ❖ However, Tribunal held that deduction is allowed at 30% of the turnover after deducting the payments made to the sub-contractor
- ❖ Tribunal held that the sub-contractor would have also claimed the deduction towards labour and other like charges

Kothari Sales and Agencies – 81 KLJ 145



- ❖ Appellant filed returns for the period April 2005 to February 2007 only on 16.01.2010
- ❖ Claimed refund of input tax credit in such returns filed
- ❖ Tribunal allowed the refund
- ❖ High Court held that it is mandatory to file returns on time in order to claim input tax credit – Relied on Centum Industries case

International Hospitals – 81 KLJ 50 (All. H.C.)



- ❖ Stents / valves implanted during surgery
- ❖ Department imposed tax on the value of stents and valves which were used in the surgery
- ❖ Held
 - Stents / valves used is incidental to providing medical services
 - Sub – clauses (a) to (f) of Clause 366(29-A) is not attracted –
 - Since transaction does not fall under Clause 366(29-A), dominant intention theory applies
 - Intention is not to sell stents / valves. Intention is to provide medical services
 - Therefore, not liable to sales tax / VAT



Issues



Issue – Development of layout



- ❖ Developer develops land and sells to customers
- ❖ As per the terms of development, the civic amenities, road, park, etc are to be transferred to the Government
- ❖ Electricity and Water connection provided upto the site
- ❖ Developer marks the boundary using stones
- ❖ Whether the consideration received is liable to KVAT?

Issues – O & M Manual sold separately



- ❖ Dealer sold equipment along with O & M manual and charged appropriate tax on the sale of such equipment
- ❖ Dealer then sold extra copies of O & M manuals for a consideration
- ❖ Whether these O & M manuals can be treated as 'books' falling under entry no. 11 of First schedule?

Issue – Works Contract



- ❖ Dealer received a project of Rs. 100 crore
- ❖ The consideration is split into three parts:-
 - Design – Rs. 20 Crore
 - Supply – Rs. 50 Crore
 - Execution – Rs. 30 Crore
- ❖ Dealer considers total turnover as Rs. 80 Crore and discharges KVAT under normal scheme after claiming sub-contractors and labour charges deduction
- ❖ He considers Design charges as a pure labor contract and excludes it from the turnover
- ❖ Whether the dealer is right in excluding the value of design charges from the turnover?

Issue – AMC



- ❖ In an AMC contract which includes maintenance as well as supply of components / parts
- ❖ Invoices raised on a quarterly basis in advance
- ❖ On what value should KVAT be charged?
- ❖ Industry practice – KVAT on 75% and ST on 70%. Whether tax on 145% of the value can be levied?
- ❖ Sky Gourmet Catering 43 VST 32 – Karnataka High Court held that entire consideration cannot be subject to service tax nor can it be subject matter of sales tax. The consideration received has to be apportioned and appropriate tax has to be levied.

Issue – Deduction for land value



- ❖ Agreement entered into for construction and sale of flat. Land value fixed in the agreement at Rs. 10 Lakh
- ❖ Department contends that the land value fixed is very high allows deduction towards land for Rs. 2 Lakh only
- ❖ Whether the department can question the value of land fixed in the agreement between the buyer and seller?
- ❖ Contract entered into between the private parties cannot be questioned by the department unless it proves that the contract is not genuine - Hon'ble Karnataka High Court in S.D. Muniswamy Vs CIT 202 ITR 399
- ❖ It is for the transferor and transferee to fix the consideration for the subject matter of transfer. It is beyond the purview of the department to raise any issue on the adequacy of the consideration - Hon'ble Income Tax Appellate Tribunal in IGFT Ltd Vs ITO 24 ITR (Trib) 192

Thank You



In this world nothing can be said to be certain,
except death and taxes.

- Benjamin Franklin

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