



KVAT (Amendment) Act, 2013

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Analysis of Input Tax Credit under  
Karnataka VAT

**Bangalore Branch of SIRC of ICAI**

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# **KVAT (Amendment) Act, 2013**

## **Snippets**

# Rates of Tax

- Basic rates of tax at 5.5% and 14.5% remain unchanged
- Reduction of tax on following goods

Description of goods	w.e.f. 01.04.2013	Upto 31.03.2013
Compression-ignition internal combustion piston engines. (diesel or semi-diesel engines) for air compressors mounted on a wheeled chassis for towing ; Air compressors mounted on a wheeled chassis for towing; Parts of portable air compressors and water well compressors. (included under 'capital goods')	5.50%	14.50%
Doors and window frames and shutters made from waste plastic	5.50%	14.50%
Paddy, rice, wheat, pulses and products of rice and wheat	Exemption extended upto 31.03.2014	Exempt upto 31.03.2013
Arecanut de-husking machines	5.50%	14.50%
Cocoa husk	5.50%	14.50%
Refractory monolithic powder	5.50%	14.50%
Supplementary nutrition food under the integrated child development scheme (subject to conditions)	5.50%	14.50%
Containers used in kitchen or household, namely, tiffin carriers; vessels, pots, boxes, cans and drums of different shapes with or without lids; basins; bowls; tumblers; jars; and jugs.	5.50%	14.50%
Footwear costing Rs. 200 or less, per pair	Exempt	14.50%

# Other

- **Appeals – pre-deposit of taxes:** The requirement of pre-deposit of disputed taxes and other amounts prior to filing an appeal at the First Stage (Joint Commissioner – Appeals) and Tribunal is reduced to 30% (earlier 50%)
- **Time limit for remittance of additional taxes:** The time limit for remittance of additional taxes demanded on assessment/ re-assessment is increased to 30 days from the date of service of the assessment / re-assessment order. Hitherto, it was 10 days.



# **Analysis of Input Tax Credit under Karnataka VAT**

# Introduction

- Under the erstwhile Karnataka Sales Tax Act, 1957 taxes paid on goods purchased by manufacturers or traders resulted in cascading effect in every supply chain leading to increased cost of goods sold to the consumers.
- VAT was introduced to mitigate the cascading effect of tax.
- VAT provides for set-off tax paid at earlier points in respect of goods sold (defined as input tax) against the tax payable (defined as output tax)
- Set-off input tax is provided only in respect of tax paid on inputs purchased within the State against the goods sold within the State and in the course of inter-state trade.

# Meaning of terms

- **Input** means any goods **including capital goods** purchased by a dealer in the course of his business for re-sale or for use in the manufacture or processing or packing or storing of other goods or any other use in business-Section 2 (19)
- **Capital goods** means plant, including cold storage and similar plant, machinery, **goods vehicles**, equipments, moulds, tools and jigs, and used in the course of business other than for sale- Section 2(7)
- **Goods vehicle** means any kind of vehicle used for carriage of goods either solely or in addition to passengers (other than aeroplanes and rail coaches) and includes push cart, animal drawn cart, tractor-trailer and the like-Section 2(16)

# Meaning of terms

## Input Tax

- It means tax paid or payable by a registered dealer on purchase of goods under KVAT Act, 2003 in the course of business.
- It includes tax paid by the registered dealer to his agents who purchases on his behalf.
- It is sum total of tax paid on purchase of goods listed in the second, third, fourth and un-scheduled goods effected from the registered dealers inside the State.
- Such purchases are meant for sale / resale, for use in the manufacture / processing of goods or capital goods purchased for use in the business.

Section 2(20) read with Section 10

# Document

- Input tax deduction can be claimed based on tax invoice issued by the selling dealer.
  
- URD purchases- no invoice is required. However, the purchasing dealer to support his purchase by raising a bill in terms of Rule 30 (3)
  - ❑ Consecutive serial number
  - ❑ Date of purchase
  - ❑ Name and address of the seller
  - ❑ Description of goods
  - ❑ Value of goods

# Restrictions

- Tax paid on goods purchased, which are used for sale or manufacture or processing or packing or storage of exempted goods, is not allowed as input credit.
  - Exempted goods means goods specified in First Schedule to the Act or goods which are exempt by way of notification issued by the State Government.
  - If goods are exported, input tax can be claimed even if the goods are exempted goods specified in First Schedule to the Act or goods which are exempt by way of notification
  
- Tax paid on goods specified in Fifth Schedule of the Act. If the goods specified in Fifth Schedule of the Act are meant for resale or manufacture or any other process of other goods for sale, then input credit can be availed on such goods



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# Restrictions

- Tax paid on purchase of goods as may be notified by the Government or Commissioner u/s 11(a)(3). The State Government vide notification No. FD 116 CSL 2006 (10) dated 31.03.2006 and notification No. FD 141 CSL 07 (2) (10) dated 30.03.2007 has specified that input tax shall not be deducted in calculating the net tax payable by a dealer on the following goods:
  - All goods used as inputs in the business relating to liquor including beer, fenny, liquor, wine and narcotics.
  - Cement used as inputs in the business relating to pipes and fittings.
  - Naptha used as raw material in the manufacture of other goods.
- Molasses and rectified spirit deleted w.e.f. 30.03.2007 vide notfn issued under Sec. 5(1). This suffers from illegality since Sec. 5(1) empowers Govt to exempt commodities from tax

# Restrictions

- The State Government vide notification No. FD 373 CSL 06 dated 15.12.2006 has specified that input tax shall not be allowed in respect of **furnace oil** used as fuel in captive power generation and for other purpose by dealer engaged in manufacture of chemical fertilizers

# Restrictions

- Tax paid on purchase of goods or goods used as inputs in the manufacture, processing or packing of other taxable goods that are dispatched outside the State other than as a direct result of sale in the course of interstate trade or commerce (viz stock transfer to branches, goods sent for job work).
- Tax paid on purchase of naphtha, liquefied petroleum gas, furnace oil, superior kerosene oil, kerosene and any other petroleum product used as fuel in motor vehicle. When used as fuel in production for export or taxable goods or captive power plant allowed as deduction

Section 14 read with notification no. FD 507 CSL (IX) date 01.04.2008 provides input tax in excess of 2%-**Special Rebate**

# Restrictions

## Special Rebate

- What is the value to be considered for stock transfer”
  - The amount for which the goods are ordinarily sold by the dealer or the prevailing market price of such goods when dealer does not ordinarily sell the goods
  
- The Commissioner of Commercial Tax vide circular No.KSA.CR.311/2005-06 dated 09.06.2006 has clarified that as the goods are temporarily sent outside the State , there is no need to reverse the input tax rebate availed and later claim input tax rebate after receipt of goods

# Restrictions-Special Rebate

Particulars	Input Tax	Upto 2%	> 2%
5.5%-Purchase	2,00,000	72,727	1,27,273
14.5%-Purchase	3,00,000	41,379	2,58,621
		<b>1,14,107 –A</b>	<b>3,85,893-B</b>
14.5% - Petroleum Product	40,000	5,517	34,483
Taxable TO	50,00,000 –C		
Stock Transfer	10,00,000 –D		
Total TO	60,00,000 –E		
		<b>Ineligible</b>	<b>Eligible</b>
	Petroleum Product	5,517	34,483
	Stock Transfer	19,018 [F= A*D/E]	4,80,982 – [A-F+B]

# Restrictions

## Partial Rebate

### ■ Registered dealer

- ❑ makes sales of taxable goods and goods exempt under Section 5, **or**
- ❑ in addition to sales of taxable goods or the sales referred above, dispatches taxable goods or goods exempted under Section 5 outside the State not as a direct result of sale or purchase in the course of inter-State trade, **or**
- ❑ Puts to use the inputs purchased in any other purpose other than sale, manufacturing, processing, packing or storing of goods
- ❑ Falls under any of the above category and also purchases any petroleum product for use as fuel in production of any goods or captive power

Apportionment of input tax credit to be done as per Rule 131  
**or by special methods to be approved by the  
Commissioner or any other authorized person**

# Restrictions

## Partial Rebate

- ❑ Input tax directly relating to sale of goods exempt under Section 5 **other than** such goods sold in the course of export out of the territory of India, is non-deductible.
- ❑ Input tax directly relating to taxable sales may be deducted, subject to the provisions of Section 11.
- ❑ Input tax used in both taxable goods ,exempt goods, non-taxable transactions- non deductible input tax to be computed using the below formula

Non-deductible input tax = (Sales of exempt goods + non taxable transactions) x total input tax

Total sales (including non-taxable transaction)

# Restrictions

## Partial Rebate

- ❑ Total Sales – Total Turnover less
  - URD purchases
  - URD purchases return
  - E 1 sales
  - Sale in the course of export-Sale against Form H
  - Sale in the course of import
  
- ❑ Apportionment under Rule 131 in monthly return is provisional

# Restrictions

## Partial Rebate-True Apportionment- Rule 132

- True apportionment to be made in
  - Return to be filed for 6<sup>th</sup> month (September) and
  - Return to be filed for final month of the year (March)
  
- True apportionment to be made by reapplying the formula for the above respective period

# Restrictions: SR viz-a-viz PRS

- ❑ Dealer engaged in taxable sales, stock transfer, samples- how to apply SR and PRS
- ❑ Bifurcate the amount of input tax as 2% and > 2%
- ❑ Apply proportionate formula on 2% input tax determined- Stock transfer to Total Turnover-**Special Rebate**
- ❑ Apply proportionate formula on full input tax for non-taxable transaction (other than stock transfer)- Non-taxable transaction to Total Turnover-**Partial Rebate**

# Restrictions: SR viz-a-viz PRS

Particulars	Input Tax	Upto 2%	> 2%
5.5%-Purchase	2,00,000	72,727	1,27,273
14.5%-Purchase	3,00,000	41,379	2,58,621
<b>Total</b>	<b>5,00,000</b>	<b>1,14,107</b>	<b>3,85,893</b>
<b>Sales - taxable: Input</b>			
*Taxable TO/Total TO	50,00,000	71,317	2,41,183
<b>Stock transfers: Input</b>			
*Stock Transfer/Total TO	20,00,000	28,527	96,473
<b>Samples/Exempt goods: Input</b>			
*Samples/Total TO	10,00,000	14,263	48,237
<b>Total</b>	<b>80,00,000</b>	<b>1,14,107</b>	<b>3,85,893</b>
<b>Allowed</b>	<b>408973</b>		<b>Total Disallowance</b>
<b>SRS</b>	<b>28527</b>		<b>91027</b>
<b>PRS</b>	<b>62500</b>		
	<b>500000</b>		

# Restrictions- SR viz-a-viz PRS

<b>Particulars</b>	<b>Input Tax</b>
5.5%-Purchase	2,00,000
14.5%-Purchase	3,00,000
	5,00,000
<b></b>	
Sales - taxable	50,00,000
Stock transfers	20,00,000
Samples/Exempt Goods	10,00,000
<b>Total TO</b>	<b>80,00,000</b>
<b>Disallowance: Input * (Stock Transfer+Samples)/ Total TO</b>	1,87,500

# Restrictions

- Tax paid on purchase of fuel from unregistered dealer
- Tax paid by a dealer on purchase of goods (excluding fuel) from unregistered dealer shall be allowed when output tax is payable on such goods (i.e. when the goods are sold by the dealer or when such goods are put to use viz used in manufacture of taxable goods).
- Tax paid on goods purchased by a dealer who is required to be registered under the Act, but has failed to register
- Input tax shall not be allowed to be deducted by an agent purchasing or selling goods on behalf of any other person

# Restrictions

Input tax restriction for works contract:

- Dealer executing works contract claiming deduction of amounts paid or payable to sub-contractor cannot claim deduction of input tax relating to sub-contractor invoices.
- In respect of hiring of tools or machinery and use of consumables in the execution of works contract, a simultaneous claim of deduction as 'labour and other like charges' and 'input credit' of VAT paid on such purchases is restricted

# Capital Goods

- Deduction of input tax shall be allowed only after
  - the commencement of commercial production
- This condition is applicable not only in case of a new entity but also in case where capital goods are subsequently procured by the dealer during the course of business.
- Conditions-Rule 133
  - No deduction is allowed if the capital goods are used wholly for sale of exempt goods. However, if exempted goods are exported, then the input tax can be claimed.
  - In case of change in use of capital goods -from sale of exempt goods or non-taxable transactions to sale of taxable goods wholly or partially, within 12 months from the date of purchase, the dealer is entitled to input tax.

# Capital Goods

- ❑ Capital goods when used for export sales, sale of taxable goods, exempt goods and taxable goods disposed of otherwise than by way of sale or non-taxable transaction, then non-deductible portion of input tax will have to be determined as per the formula prescribed under Rule 131 of KVAT Rules, 2005
- ❑ Input tax deduction shall not be allowed to a dealer where the taxable turnover of the dealer is less than limit prescribed under Section 22(2) of KVAT Act, 2003 (presently the limit is Rs. 5 Lac) during the year in which the capital goods are purchased.

# Capital Goods

- ❑ VAT return does not provide for declaring and carrying forward of input tax credit in respect of capital goods where commercial production is not commenced. In such situation how to claim input tax credit?
- Change in use of capital goods\*-
  - ❑ the dealer shall inform the jurisdictional Local VAT officer or VAT Sub-officer within ten days of such change in use
  - ❑ The term change in use is not defined in the Act. To borrow from Section 19(1) – change in use would mean goods that are not used in the course of his business or lost or destroyed.
  - ❑ Stock transfer after use of capital goods- no reversal of input tax
- Capital good disposed off\*

\*Dealer to repay input tax deducted in respect of such capital goods and such amount repayable shall be calculated on the prevailing market value of such capital goods at the time of such disposal.

# Pre-registration purchase

- Input tax on purchases made prior to 3 months of the date of registration can be claimed subject to the condition that the goods purchased have not been sold or disposed prior to registration.

# Change in use/ Tax payment scheme

- Input tax claimed on goods- not used in the course of his business or such goods are lost or destroyed
  - input tax claimed on such goods should be paid in the period following the date on which such goods are put to such other use or lost or destroyed
  - repayment needs to be computed on the prevailing market value of such goods at the time of change of use
- Regular dealer shifts to composition scheme
  - input tax deducted on the **goods held in stock** on the date on which the dealer opts for composition shall be repayable by the dealer in the tax period following such date
  - input tax repayable shall be calculated on the market value of such goods on such date

# Refund

- Dealer-Domestic Sales
  - Input tax exceeds the output tax-refund granted
- Tax paid by a dealer on purchase of inputs can be claimed as refund in respect of goods sold in the course of export out of territory of India. Further, even in respect of export of exempted goods input tax refund can be claimed
- Refund should be mentioned in the return

# SEZ

- Developer of any special economic zone or an unit located in special economic zone is entitled to refund of input tax or shall be eligible to set-off the same with output tax payable. Conditions
  - The inputs are for the purpose of development, operation or maintenance of the **processing area** in special economic zone
  - The inputs are for the purpose of setting up, operation or maintenance of an unit in the **processing area** of a special economic zone
  - The inputs are purchased for use in manufacturing, trading, production, assembling, repairing, recondition, re-engineering or packing in an unit located in **processing area** of any special economic zone.

# Adjustment

- If input tax exceeds output tax , dealer
  - can adjust the excess input tax against the tax payable under Central Sales Tax Act, 1956
  - can **seek permission** for adjustment of excess input tax towards tax payable under Karnataka Sales Tax Act, 1957 or Karnataka Tax on Entry of Goods Act, 1979

# Wrong claim of input tax

- Input tax claimed on the basis of false tax invoice, declaration, certificate etc.- Section 70(2)
  - In case of first detection – 3 times the tax due in respect of such claim
  - In case of second or subsequent detection- 5 times the tax due in respect of such claim
- If the claim of input tax is overstated by more than 5% of actual tax credit
  - penalty equivalent to 10% of such claim of input tax in terms of Section 72 (2)
  - Even if the dealer is in refund position, the claim of input tax credit should be on eligible goods only; else the dealer will be liable for penalty if the claim is wrongly overstated by more 5% of his actual credit
  - Penalty is imposable only after giving the dealer an opportunity to show cause

# Points to Ponder

- What if the selling dealer does not pay taxes on his sales but issues a tax invoice?
  - Dealer is entitled to claim input tax credit based on the invoice issued by the selling dealer irrespective of the fact that the selling dealer has not paid taxes-**Laxmi Cashew Industries-(72) KJ 22 (Karnataka Tri DB); Centum Industries Pvt. Ltd. (71) KJ 341 (Karnataka Tri-DB) and Shree Vinayaka Cashew Exports (71) KJ 846 Tri DB**
- Is there any time limit to claim input tax?
  - No time limit prescribed in the Act
  - **K Bond Polymers Pvt. Ltd 73 KJ 429 Kar HC (DB)**-Delay of 5 months in putting forth claim is not ground to deny benefit of refund which is legitimately due

# Points to Ponder

- When can input tax be claimed?
  - Input tax can be claimed on receipt of invoice. Receipt of goods not a pre-condition
  - In case a dealer sells the goods to Mr.X and during the movement of goods Mr.X endorses the LR to deliver the goods to Mr.Y, Mr. X is entitled to avail input tax credit based on the invoice even if the goods are not received by Mr.X
- In case of purchase from registered dealer how to claim input tax if the invoice is inclusive of tax?
- Can a job worker claim input tax on purchases of consumables?
  - If the job worker carries on manufacture and sale of goods and also takes job work separately- Partial rebate to be applied

# Points to Ponder

- What happens to input tax credit when business is transferred as a whole?
  - Transfer of business as a whole on a/c of sale/ merger/ amalgamation- Input tax credit can be transferred to the purchasing company
  - The transferor to make an application to its jurisdictional LVO/VSO within 30 days of cancellation of registration
  - Jurisdictional LVO/VSO will pass an order within 30 days from date of application indicating excess input tax credit available to transferee
  - Transferee can claim input tax credit based on the order passed by the LVO/VSO

# Points to Ponder

- Can a dealer claim input tax credit on purchase of goods vehicle for transporting manufactured goods or tippers used in mines?
  - Goods vehicle means any kind of vehicle used for carriage of goods
  - **Tarus Earth Mover Pvt. Ltd. V. State of Karnataka (910 VST 224)-** Hon'ble Karnataka High Court held that JCB 3D machine are taxable as earth movers and not as tractors under Schedule II, Part M, Entry 1(i)(a) "Earthmovers, such as dumpers, dippers, bulldozers and the like" –Under KSCT Act, 1957
    - Ratio of the said decision would equally apply to tippers used in mines

# Points to Ponder

- Can a hotel industry claim input tax credit on crockery, cutlery, kitchen equipment etc.
  - Yes, since it is used in processing of other goods for sale
    - Ratio of Mac Charles Brothers (Private) Limited 82 STC 162 (Kar-HC) where in the Hon'ble Karnataka HC under CST Act, 1956 held that Goods integrally connected with ultimate production of goods — to be included in certificate of registration u/s 8 (3) (b) of CST Act
- What happens to input tax credit in respect of goods lost in handling , processing, ground loss etc. i.e. normal loss?
  - Normal loss does amount to goods lost or destroyed u/s 19

# Points to Ponder

- What happens to goods in stock purchased locally and the dealer shifts from composition scheme to regular scheme?
  - Dealer is entitled to deduction of input tax allowed subject to the restrictions imposed by Section 11, in respect of tax charged to him by a seller on taxable sale of goods made to him for the purpose of the business **within three months** prior to the effective date of cancellation of his certificate in Form VAT 8.
  - The goods should be in stock on such date.

# Points to Ponder

- What happens to input tax credit of goods in stock at the time of cancellation of registration?
  - Dealer liable to repay input tax on taxable goods held in stock – to be calculated at the prevailing market price of such goods
- When can input tax credit be claimed in respect of tax paid on URD purchase?

To be eligible to claim deduction of tax u/s 3(2) as input tax from output tax, dealer must have paid input tax on purchase within prescribed period. Condition precedent for claiming deduction from output tax is payment of input tax on such purchase. Law does not provide for book adjustment of two taxes- **Concorde Hitech City (Private) Limited (70) KLJ 39 Karnataka HC (DB)**

# Points to Ponder

- What happens to input tax credit in case of civil construction under JDA?
  - Transfer of flats by developer of flats to the land owner in exchange of land not liable to VAT when consideration is not in money-**Ozone Properties Pvt. Ltd. 72 KLJ 15 HC (DB)**
  - Input tax credit to be restricted in proportion flats given to land owner

# Points to Ponder

- Balanoor Plantations and Industries Ltd-56 VST 482 Kar HC  
Fertilizers, pesticides, fungicides, chemicals, used in tea cultivation and agricultural machinery, pump sets and other electrical equipment, **used by tea planters for growing tea leaves cannot be regarded as goods used in the course of production of tea meant for sale.** There is no direct relation between the two. This applies to coffee also : the cultivation and growing of coffee is distinct from manufacturing/preparing coffee for sale.



# Thank you

**Singhvi, Dev & Unni**

**[siddeshwar@sduca.com](mailto:siddeshwar@sduca.com)**

**+ 91 80 2226 1371**