

Overview of KVAT law

CA. Annapurna Kabra

HISTORY

- VAT (Value Added Taxation) was first implemented in France in 1954.
- VAT was introduced on the basis “White paper” issued by the empowered committee of consisting of the State Finance Ministers
- “White paper” released to maintain uniformity among states in implementing the VAT .
- First state to implement VAT is Haryana. Results, growth in tax collection!!!

- KVAT Act has been enacted by the State legislature of Karnataka in exercise of legislative powers conferred by Article 246(3) read with Entry 54 of List II in seventh schedule of the Constitution of India
- The Act received the Assent of the President of India on 15th December 2004
- In terms of the Notification No FD 55 CSL 2005(1) dated 11.3.2005 all the provisions of the Act except the provisions of Section 3 and section 22 have come into force with effect from 11.3.2005 And in terms of Notification No FD 55 CSL 2005(2) dated 23.3.2005, the provisions of section 3 and section 22 of the Act have come into force with effect from 1st April 2005. Hence the Act came into force with effect from 01.4.2005

- Besides for the effective Administration of the Act as well as to specify the procedural requirement of the Act, the Government of Karnataka in exercise of the powers conferred by section 88 of the Act have enacted the KVAT Rules 2005. The said Rules have been notified vide Notification No FD 54 CSL 2005 dated 31.3.2005 and has come into force with effect from 01.4.2005
- The Act and Rules are applicable to the State of Karnataka as a whole.
- The said Act provides for levy and collection of tax on all the transactions of sale or purchase of goods, other than the transactions of sale or purchase of goods that are covered under section 3, 4 and 5 of the Central Sales Tax Act 1956.

- The Act is based on principle of levy of tax on value Addition at each stage of sale or purchase of goods with a set off/ deduction of tax paid under the Act on transactions of purchase of taxable goods including the purchase of capital goods which is based on input tax credit method on the strength of tax invoices or debit notes or Credit Notes as the case may be.
- Consequently the Act provides for levy of tax at multipoint with a set off or deduction of tax paid under the Act on penultimate transactions on purchase or sale of goods including capital goods. The Act does not provide for deduction of tax paid under the CST Act 1956 and the Entry Tax Paid under the Karnataka Tax on Entry of Goods Act 1979.

- Consequent upon introduction of VAT Act, the KST Act and Rules have not been repealed either partially or fully.
- Therefore the KST Act and the Rules made continues to be in force. Whereas in terms of the Notification No FD CSL 2005 (5) dated 23.3.2005 issued by the Government of Karnataka in exercise of the powers conferred by section 8-A of the above Act except for petrol, Aviation Fuel, Diesel including LDO and Sugarcane all other goods which attracted levy of tax under the said Act up to 31 st March 2005
- have been generally exempt from tax payable under the said Act since the goods so exempted from tax have been brought under tax under the KVAT Act 2003.

- The Definition provisions as dealt in section 2 of the KVAT Act 2003.
- The Charging provisions (Section 3 read with section 4, 10,11,12,14,17,19 and 20)
- The machinery provisions of the Act deal with the procedural requirements, obligations and administration of the Act such as registration of the dealer, issuance of tax invoice/bill of sale, credit notes/debit notes, maintenance of accounts, filing of returns and payment of tax, establishment of check post, search and seizure, offences and levy of interest and penalty, appeals, revision by the Authorities under the Act, rectification, appeals and revision by the High Court, recovery, Forfeiture, etc

Amendment under KVAT Act 2003-

- **VAT EXEMPTION**

- There is a Notification (No FD 21 CSL 2014) under the KVAT law to continue the VAT exemption for paddy and rice, wheat, pulses, Flour and soji of Rice and wheat and Maida of wheat with effect from 01.04.2014 to 31.3.2015.. The exemption for the above goods already exists through notifications for the financial year 2013-2014.
- Vide Notification No FD CSL 2014 dated 28.2.2014 the State Government exempts with effect from the first day of March 2014 the tax payable under the said Act on sale of liquor including beer, fenny, liqueur, and wine by a dealer who is not a person holding license in Form CL-9 for vending in the BBMP, City Municipal Corporation Areas, City Municipal Council Areas and Town Municipal Council or Town Panchayat areas issued under Karnataka Excise (Sale of Indian and Foreign Liquors) Rules 1968 or CL-4 or CL-6A or Cl-7 issued under Karnataka Excise (Sale of Indian and Foreign Liquor) Rules 1968.

Amendment under KVAT Act in Finance Act, 2014-

- **DECREASE IN TAX RATES**
- Vide Notification No FD 21 CSL 2014 dated 28.2.2014, there is a decrease in the tax rates from 14.5% to 5.5% on scented areca nut powder other than mixtures, to be reduced from.
- There is a to decrease the tax rates from 14.5% to 5.5% for the commodities like Scented, Sweetened, and crushed arecanut but excluding arecanut mixed with panmasala and also excluding other arecanut mixture containing all or any among copra, saunf, tobacco, lime, kaththa, dates, sesame and sugar confectionery.

Amendments

- **TURNOVER LIMIT**

Registration:

- There was always recommendation made to state representatives for increase in the registration limit by different associations to reduce the procedural compliance of the dealer and department. Therefore there is an increase in the registration limit from rupees five lakhs to seven lakhs fifty thousand of taxable turnover under section 22 (2) of KVAT Act 2003. The monthly turnover limit increased from Forty thousand to sixty five thousand only.
- Under section 9-A of KVAT Act every dealer engaged in the execution of works contract shall be liable to register and shall report such liability after the end of the month in which execution of any works contract is undertaken. Therefore there was no registration limit for the works contractor. Now the registration exemption limit will be applicable to works contractor also.

Amendment under KVAT Act-

- **APPEAL ANNUALLY UNDER SECTION 63(4) of KVAT Act**
- Single appeal to be filed for several tax periods of one financial year in case of Second appeal (Tribunal) against re-assessment. The assessment under VAT should be a yearly affair. This will reduce administration tribulations; provide relief to dealers in terms of reduced departmental visits; make VAT audit more effective, ultimately resulting in a better tax module.
- **E-SUGAM:** Vide Notification No Adcom (I&C) /P.A/C.R-31 / 2011-2012 dated 9/10/2013, sub section 2-A of section 53 of KVAT Act 2003 authorizes the Commissioner to notify the goods, the transport of which needs to be entered in the notified website. For dispatching the notified goods by registered dealers as a result of sale, if the sale value exceeding **twenty thousand** then the dealer have to enter the details to obtain in the website. Now the limit will be increased to **twenty five thousand**.

Amendment under KVAT Act-

- **PENALTY:** There is no levy of penalty in case of small dealers who have opted for cancellation of registration and they have no tax liability under section 72(1) of KVAT Act 2003.
- **ANNUAL STATEMENTS:** Filing of annual statements mandatory by dealers in order to avoid disputes in the information provided in electronic returns under section 31(5) of KVAT Act 2003.

Amendments in VAT law

- The Honorable High court in the decision of Centum Industries ts-376-HC-2014 (Kar)-VAT dated 31st July 2014 wherein, it is held that, if input tax credit is not claimed in original return as well as in the revised return by filing within six months, Input tax credit cannot be allowed even if it is filed in the subsequent tax period. The Honorable High Court at para twelve held, that as per section 10(3) input taxes must be accounted in the books of account, if the same is not accounted but accounted in the subsequent tax period, and input tax credit cannot be allowed under law.

Case law

- **2014] 72 VST 338 (P&H - HC):** State of Punjab and another v. Genus Overseas Electronics Ltd. - In the instant case the Honourable Punjab and Haryana High Court held the Check Post Officer has the authority only to check nature of transaction and determine the goods but does not have jurisdiction to go into disputed question of nature of item and rate of tax applicable
- **Commissioner Trade Tax v. Triveni N. L. Ltd.** - In the instant case the Honourable Allahabad High Court held that plant and machinery embedded to earth and installed in factory is not goods under Uttar Pradesh Trade Tax Act. Therefore, the Court held that tax is not leviable for lease of industrial unit for purpose running it.

Case law

- **[2014] 73 VST 166 (Guj. – HC): Bhavesh Trading Co. and another v. State of Gujarat and another** - In the instant case the Honourable Gujarat High Court held that action of the Department in collecting the cheques from the dealer towards future tax demand or liability without passing any final or provisional assessment order and without the tax demand having crystallised is bad in law.
- **[2014] 79 KLJ 533 (Karn. –HC)(DB): Southern Motors v. State of Karnataka** - In the instant case the Honourable Karnataka High Court held that if the discount given is not shown in the tax invoice or bill of sale, then the dealer is not entitled to deduction of the said amount from the total turnover.

Case law

While holding so the Court held as under:

(a) Section 30, Rule 31 and 3(2)(c) of the Karvat Act makes it clear that if a assessee has claimed the tax in excess of what is payable under the Act, he can issue a credit note for the excess amount claimed from the purchaser within six months from the date of sale invoice.

The Court **denied** the contention of the Assessee that once the credit note is issued, the said discount falls outside the turnover and therefore, there is no question of applying Rule 3(2)(c).

[2014] 79 KLJ 356 (Karn. – HC): Primacy Industries Ltd. v. Asst. CCT: In the instant case the Honourable Karnataka High Court held that the Authorised Officer cannot refuse to refund excess input tax for a particular period, merely on the ground that the audit of said period has not been completed

- **2014 (79) KLJ 1 (Karn. – HC)(DB): State of Karnataka v. PVR Ltd.** – In the instant case the Honourable Karnataka Division Bench held that issuing tax invoice showing only gross amount collected and putting seal on tax invoice that the gross amount is inclusive of tax, is not sufficient compliance with statutory requirement. Therefore, the Court held omission to comply with requirements, entails forfeiture of dealer's right to claim deduction of amount collected by way of tax from the total turnover to arrive at taxable turnover. As per the aforesaid decision, it is necessary to clearly indicate the **tax collected** in the tax invoice. In the absence of the same, it is not permissible to claim the same as deduction in computing taxable turnover.

Case law

- **2014 (78) KLJ 21 (Karn. - HC): SAP India Pvt. Ltd. v. Dy. CCT** - In the instant case the Honourable Karnataka High Court held that issue of notice by the authority for encashing bank guarantee even before appeal has been filed by the assessee or even before the expiry of time limit prescribed for filing appeal is violative of assessee's right to file appeal and hence held that the said notice is liable to be set aside

Case law

- **2013 (77) KLJ 445 (Karn. – Tri.) (DB); J.K. Cement Works v. State of Karnataka -**
- In the instant the Honourable Karnataka Appellate Tribunal held that ‘cement’ used in construction of factory building and foundation therein for installing machinery cannot be regarded as ‘capital goods’ to claim input tax credit on the same. While holding so the Tribunal held as under:
 - (a) To claim input tax credit on capital goods, the claim must be in respect of movable goods and must be capital in nature i.e. For use in business other than for sale;
 - (b) Further it must not be any of goods enumerated as ‘input restricted goods’ in Fifth Schedule under Section 11(a)(3) of the Karvat Act; Cement though forms part of plant, is immoveable property and it is enumerated as one of the ‘input restricted goods’ in Fifth Schedule under Section 11(a)(3) of the Karvat Act

Levy of Tax

- **Tax on Sale of goods:**

- Therefore to attract levy under KVAT the following conditions has to be fulfilled.
- There should be a sale of goods;
- Such sale of goods should be within state;
- Such sale should be effected either by the registered dealer or dealer required to be registered under the KVAT.

- **Tax on purchase of goods:**

- There should be sale of taxable goods to the registered dealer or dealer liable to be registered
- Such sale is made by the person who is not registered under the KVAT.
- Such goods are for use in course of business of the registered dealer or dealer liable to be registered.

- **Rates of Tax (Section 4)**

- Second schedule goods including gold, silver, platinum jewellery and articles thereof- 1%)
- Goods in Third schedule and Notifications issued under Entries 20, 51, 52 and 53 of the Third Schedule- 5.5%)
Third Schedule of KVAT Act 2003-4 or 5 or 5.5%
- S1 No 20-Capital Goods-Notified
- S1 No 51- Industrial Inputs –Notified
- S1 No 52-IT Products-Notified
- 22.No FD 197 CSL 2005(6), Bangalore Dt 30.04.2005 : 201 entries- Industrial Inputs & Packing Materials
- 23.No FD 197 CSL 2005(7), Bangalore Dt 30.04.2005: 30 entries- IT Products
- 32.No FD 316 CSL 2005(1), Bangalore Dt 05.08.2005- 40 entries-Capital Goods

- Goods specified in Fourth Schedule- Section 4(1)(a)(iii))- 20%
- Declared goods covered under section 14 of the CST Act – Non schedule Section 4(1)(b)(ii)- Five percent
- Cigarettes, cigars, Gutkha and other manufactured tobacco- 17%
- Goods not covered in any schedule and goods not covered in section 4(1)(a) and section 4(1)(b)(i) and section 4(1)(b)(ii) – 14.5%

- **Rates of Tax (Section 4)**

- Goods not covered in any schedule and goods not covered in section 4(1)(a) and section 4(1)(b)(i) and section 4(1)(b)(ii) – 14.5%
- Sales to Specified Goods to CSD (Canteen Stores department of Defence services) –Notification No FD 82 CSL 10(V) dated 31.3.2010- 5.5%
- 26 class of goods specified in the Notification – Non Schedule goods- Section 4(1)(b)(iii) Rate of tax reduced as per Notification No FD 82 CSL 10(III) dated 31.3.2010- 5.5%
- Used Motor Vehicles- 5.5% (Notification No FD 82 CSL 10(V) dated 31.3.2010)
- Transfer value of goods involved in execution of works contract- 5.5% and 14.5% (Sixth schedule)

• **Rates of Tax (Section 4)**

- Composition scheme works contractor- 4%
- Composition scheme- Hoteliers, caterers, sweetmeat stalls, bakery, ice cream parlour- 4%
- Dealers opting to pay tax under the scheme of composition under section 15(1)(a)- 1%
- Under the scheme of composition tax payable by mechanised stone/granite crushing unit
- For the right to use the goods, the rate of tax as applicable to commodity/goods which is transferred.
- MRP rate of tax for pharmaceutical 5.5%

- **Exemption of Tax (Section 5):**

- Section 5 of KVAT provides exemption for the goods listed in First Schedule to the KVAT. In addition to this there power is given to the State Government to issue notification exempting any goods from payment of tax under KVAT.
- The Government has specified by notification certain goods which are exempted from tax like molasses, etc. Government may withdraw the notification through other notification and exempted goods can be classified as taxable goods.
- Sale of goods which are exempt from payment of tax under the Act will either be notified or stated separately in the relevant schedule to the Act.

- **Agents liable to pay tax (Section 8):**

(1) Notwithstanding anything contained in any law for the time being in force including this Act, every person who, for an agreed commission or brokerage, buys or sells on behalf of any principal who is a resident of the State shall be liable to tax under this Act at the rate or rates leviable there under in respect of such purchase or sale, notwithstanding that such principal is not a dealer or that the turnover of purchase or sale relating to such principal is less than the minimum specified in sub-sections (1), (2) and (3) of Section 22.

(2) The principal shall not be liable to tax on his turnover in respect of which the agent is liable to tax under sub-section (1), and the burden of proving that the turnover has been effected through an agent liable to tax under the said sub-section, shall be on such principal.

Valuation Rules (Rule 3)

- **Determination of Total and Taxable Turnover**

I) Computation of Taxable Turnover by regular dealer

II) Computation of Taxable Turnover by works contractor

*III) Computation of Taxable Turnover by hire Purchaser or
Installment system*

*IV) Computation of Taxable Turnover by lessee (In case of
right to use)*

- **Composition Scheme (Section 15)**

- A special scheme has been provided for small dealers whose turnover does not exceed Rs 25 Lakhs, works contractors (without limit), restaurants/ hotels (without limit) , Outdoor caterers (without limit) or mechanized crushing units producing granite metals. The following further conditions are to be followed to opt composition scheme:
 - There is no stock of interstate/imported goods in hand.
 - No further interstate purchases/Imports would be made
 - They would not avail the input or capital goods credit
 - They would absorb the composition tax and would not collect tax from buyers

- **Special Accounting Scheme (Section 16)**

- Small Dealers Accounting Schemes: Section 16 sets out that where a dealer is unable to identify the sale and type he may apply to the Commissioner for adopting a special method

- **Tax deduction at source**
- **[9-A. Deduction of tax at source (in case of works contract).-** (1) Notwithstanding anything contained in this Act, the Central Government, or any State Government, or an industrial, commercial or trading undertaking of the Central Government or of any State, or any such undertaking in joint sector or any other industrial, commercial or trading undertaking or any other person or body as may be notified by the Commissioner from time to time or a local authority or a statutory body, shall deduct out of the amounts payable by them to a dealer in respect of any works contract executed for them in the State, an amount equivalent to the tax payable by such dealer under the Act.

- **Tax deduction at source**
- **Deduction of tax at source in the case of canteens.-**

(1) Notwithstanding anything contained in this Act, a factory or other industrial concern or any other establishment, in which a canteen or cafeteria or restaurant or other similar facility is run, through a dealer, as an amenity provided for the employees of such factories or concerns or establishments, shall deduct out of any amounts payable by them to such dealer as their contribution by whatever name called, in respect of sale of articles of food and drinks to their employees, an amount at the rate of four percent of the aggregate of the sale prices received or receivable by such dealer from the employees and contribution paid or payable by such factories or concerns or establishments to such dealer.

- **Registration:**

- Interstate trade or imports/ exports
- Taxable turnover in the year crosses Rs.7.5 Lakhs p.a/62500 p.m
- Casual trader/Non resident dealer or his agent- No Exemption limit
- But Rule 47 provide for separate registration and filing of returns by the branches of corporate bodies.
- No provision for transfer of TIN (Propertior to Partnership)
- Same TIN for Regular scheme and composition scheme
- Circular 45/2013
- Registration certificate in VAT 7 for regular dealer and VAT 8 for composition dealer
- Cancellation of Registration

- **Accounts and Documents**

- Tax Invoice and Bill of Sale

- Period of retention of Accounts- Five years or the Assessment reaches finality whichever is later

- Electronic records

- Returns

- The returns for a tax period (i.e. 1 month) are to be filed within 20th day or 15th day as applicable of the subsequent month after paying the Net tax.

- *Revised Return*: If any error is found in the returns filed under *this Act [other than that filed u/s 38(3) (returns filed in pursuance of best judgment)]* then the he shall make a revised return within time prescribed.

- ***Self - Assessment:*** The K-VAT law envisages that the scheme of monthly returns will be treated as Self-Assessment.
- ***Best Judgment Assessment:*** Where the dealer does not file a return then the Vat Officer or doesn't respond to the notice to the satisfaction of the officer, then he may assess the same as per his best judgment. The same maybe withdrawn if the dealer files the returns within the period provided for the same. (Sec. 38 (1)(b) & Sec. 38(2))
- ***Protective Assessment:*** Where the Officer is of the view that the dealer may fail to pay the tax then he may issue a protective assessment.
- ***Re - Assessment:*** Where the officer is of the view that the return is incorrect or that understatement has occurred then the same maybe re assessed after providing an opportunity of being heard to the dealer (Section 39(1)).
- ***Assessment after Reassessment:*** Based on Further evidence, Escaped turnover, tax has been under reassessed, reassessed at lower rate and wrong deductions and exemptions.
- **Period of limitation of Assessment**

- **Interest:** The dealer who fails to pay the tax or delays in payment of tax would be liable to pay 1.50% per month tax on the amount due.
- **Penalty:** There are a number of penalties specified in KVAT Act relating to registration, returns & assessment, Unauthorized collection of tax, keeping and maintaining books of accounts, production of records, tax invoices, Unaccounted stocks. The sections dealing with this range from Sec.72 to 77.
- **Refunds:** The amount if any refundable would carry interest @ 6% per annum if the same is not refunded within a period of 35 days of the order, unless and until no specific objection to this has been specified.

APPEALS

- **JCCT(Appeals):** Any person aggrieved by any Order or proceedings affecting him passed by any authority under the Act, he may appeal to 1st Appellate Authority i.e. JCCT (Appeals). The Appeal shall be filed *Within 30 days* from the date of serving the Order in the Form VAT 430. (Section 62)
- **Appellate Tribunal:** Any officer of State Govt. or Commissioner or any other person affected by the Order passed by the JCCT (Appeals), may appeal to next Appellate Authority i.e. Appellate Tribunal.). The Appeal shall be filed *Within 60 days* from the date of serving the Order by the JCCT (Appeals) in the Form VAT 440. (Section 63)
- **High Court:** Any person aggrieved by any order passed u/s 62 by the Tribunal shall be appealable to Jurisdictional High Court.