

PRACTICE ALERT – DISCUSSIONS ON VAT IN KARNATAKA

By CA Annapurna Kabra

1) The New Notification is issued on 02/01/2015 with Notification reference of CCW/CR 8/2013-2014

As per Rule 12 of CST (R& T) Rules 1957, The declarations and the certificate as referred in sub section (4) of section 8 shall be in Form C provided further that a single declaration may cover all the transactions of sale, which take place in a **quarter** of a financial year between the same two dealers.

- Instead of Quarterly C form, the Monthly C form can be issued.
- Gross value should be disclosed
- If Transit sale is made and C forms are issued, it should be shown in C form column and not in sale in transit column
- The E-Upass should be submitted and against that only C form can be issued. It should be equivalent to the total amount declared in E-Upass statement
- The C forms were issued manually based on request and approval method till December 2012 and from January 2013 to April 2014 through Auto generation the C forms were issued and from May 2014 based on E-upass statement the C forms are issued

- In case of the dealer whose total turnover is below 50 lakh then in such instance they have to upload E-Upass and can get the C form
- If uploaded value is more than the amount disclosed in the return then C form equivalent to the amount in the return should be disclosed
- C forms will be generated on Invoice date
- Until the returns are filed and taxes are paid C form cannot be generated
- It is only the option to get the seal on the form from the department
- Dealer can approach department for cancelling the Form C and can resubmit the revised details for new C form.

C form for dealers who have failed to disclose in the return- Circular 12/2014-2015

C form for the composition works contractor

II)E-Upass – Circular 22/2014-2015 dated 30/12/2014

The objective of bring E-upass initiative is to minimise the disputes relating to input tax credit, facilitate electronic audit across VAT chain for all dealers for faster processing of refunds.

The revision option has been inserted for the period from May 2014 to August 2014 for all the dealers. And From September 2014 it can be revised by filing the revised return.

Harsha Enterprises Malavagoppa, Shimogha and Another Vs State of Karnataka and Another (HC) 2015 (81) Kar.L.J (HC)

Notification dated 29.4.2014 issued by the Commissioner of Commercial Taxes (Karnataka). The directions are issued to a specified class of dealers in terms of turnover to furnish all details electronically through internet. Whether it would affect the business of the dealer?

The requirement of uploading the data will enhance the transparency in the business of the dealers and would bring efficacy in the assessment proceedings and avoidance of tax and legal wrangles and uncertainty in payment of tax. It will lend efficacy to recovery of tax from errant dealers and will be in interest of Revenue.

The entry of the details as sought in the impugned Notification by the user name and pass word is only to the Department and not for public consumption. The details will be used by the department only for the Assessment purpose and not for any other purpose. Therefore it will not affect the business of the dealer.

III) Notification No FD 88 CSL 2014 dated 30.09.2014

The input tax shall not be deducted in calculating the net tax payable under the said Act on rubber compound, cushions, patches

and rubber bonding solution by whatever name called used as inputs in the business relating to Tyre retreading

IV) Notification No FD 229 CSL 2013 dated 04.9.2014

The amendment in the Notification as follows

The old entry **is deleted** as “ Microphones and stands thereof, headphones and earphones, whether or not combined with a microphone and sets consisting of a microphone and one or more loudspeakers and Audio frequency electric amplifiers.

The new entry is

- Microphones and stands thereof
- Multimedia speakers with price not exceeding Rs. 1000/- per set
- Headphones and earphones, whether or not combined with a microphone and sets consisting of a microphone and one or more loudspeakers

LATEST JUDGEMENTS

I) Bharath Heavy Electricals Ltd and Others Vs State of Karnataka (TS-499-HC-2014 (Kar)-VAT) dated 4.11.2014)

Issue: Whether interest is chargeable from the return date or from the date of assessment on non production of C forms under the CST Act 1956.

The department can levy the interest and penalty under KVAT Act for non submissions of C forms under the CST Act 1956. There was an argument that whether interest should be levied from the date of tax due or from the date of assessment. The Tribunal has decided that it should be from the date of assessment as per Karnataka Appellate Tribunal case in BHEL Vs State of Karnataka 2515-2518 dated 4.8.2011 but the appeal was filed by State to higher authority. The High Court quashes the Tribunal order and interest is chargeable from the date of furnishing monthly returns in case of default in furnishing C form declarations claiming concessional rate under CST Act. The Tribunal has misread the Honorable Supreme Court judgment in case of J.K.Synthetics wherein liability to pay tax and interest arises after adjudication and not earlier. In the instant case assessee was aware of his liability on interstate sale and hence tax paid pursuant to assessment order ought to have been paid along with the return as prescribed under the CST Act. **Therefore interest is chargeable from return date on non production of C form and not from the date of Assessment under CST Act 1956.**

II) TVS Motors Co Ltd Vs State of Karnataka TS-276-HC-2014(KAR)-VAT

Issue: Whether supply of food and beverages at subsidised rates at factory canteen constitutes 'sale' u/s 2(29) of Karnataka VAT Act;

The appellant collected the amount from employees and guests and contends that canteen is a welfare measure required under the Factories Act and there is no transfer of property in food items and it is not a sale. It is contended by the revenue that running of canteen by dealer falls within the definition of 'business' u/s 2(6) of KVAT Act and it includes any transaction in connection / incidental / ancillary to main business. It is contended that once there is sale transaction, irrespective of profit or loss, such transaction has to be shown in VAT returns. **Therefore it is held that proof of profit-motive is not necessary to constitute business and supply of food and beverages at canteen constitute 'sale' under the KVAT law.**

**III) Milan Plywood Suppliers Vs State of Karnataka (HC)
STRP 315-12 dated 10.7.2014**

The assessee has claimed deduction of input tax on the basis of three invoices showing purchase of goods from three dealers. These three dealers have not remitted the tax recovered from the assessee. The department is not justified in drawing the inference that the said three dealers are bogus unless the Authority is not satisfied that the transaction in question is genuine one, the assessee has paid the money and received the goods and necessary entries are made in the books of accounts of the assessee. It should be proved by the department that the said purchase transaction is not genuine, bogus or fraud for disallowing the input tax credit

IV) Intel Technology (India) Private Limited Vs State of Karnataka (HC) STRP 18-10-18.06.2014

The High Court allows input tax rebate on Xerox machines, air conditioners and security systems used for export of developed software. The HC has rejected the revenue contention stating that such equipment is not used directly in relation to 'software development'. Hence the rebate is inadmissible. There should be direct nexus between machinery and main activity is not necessary. The transaction ancillary / incidental is sufficient to bring machinery under 'capital goods' definition under Karnataka VAT Act. However HC denies input tax rebate on stationery and building materials, says same cannot by any stretch of imagination be construed as machinery / equipments / tools used in course of business other than for sale.

A slotted angle framework is used to keep manufactured goods is in the nature of capital goods. It does not fall under the restricted goods. The input tax credit is to be made available. (*State of Karnataka Vs Vinyas Innovative Tech Private Limited 2014 (80) KLJ 141 (HC)(DB)*)

V) S.P Fabricators Private limited Bangalore Vs State of Karnataka (Tri) (DB)

Clarification regarding rate of tax given by Authority under section 60 of the Act is applicable only to particular dealer in response to whose seeking it was given. Such clarification held is not binding in proceedings before Tribunal/Commissioner

- VI)** Aluminium Rods are not liable to entry tax by virtue of Entry 29-A of Second schedule to Act (*Bharath Conductors Private Limited Vs State of Karnataka 2015 (81) Kar L.J 91 (Tri)(DB)*)
- VII)** Assessee showing tax paid on capital goods as input tax in appropriate column of Form VAT 100 without claiming credit in respect of the same. There is no liability of output tax. It is indicated that he is not entitled to refund of input tax. There is no case of overstatement of input tax credit. The penalty is levied on such ground and it is set aside. (*Enercon (India) Infrastructure Private Limited Vs Additional Commissioner of Commercial Taxes (Zone- I) Bangalore 2015 (81) Kar.L.J.88(HC)(DB)*)
- VIII)** Declarations in Form C,F and I in support of claims of concessional rate of tax and exemption submitted before Appellate Authority can also be accepted. (*G.E India Industrial Private Limited Bangalore Vs State of Karnataka 2014 (80) KLJ 588 (Tri)(DB)*)
- IX)** Difference of tax on account of non furnishing of Statutory forms like C forms at the time of assessment cannot be treated as understatement of liability attracting penalty under section 72(2) of the KVAT Act (*Forsec Chemicals (India) Private Limited Vs State of Karnataka 2014 (80) Kar.L.J.497 (HC)(DB)*)

- X)** Hand held electronic ticketing machine is liable to tax at 12.5% and is not an IT product. (Micro fix Bangalore Vs State of Karnataka 2014 (80) Kar.L.J 484 (HC)(DB)
- XI)** When used cars are purchased and sold, the rate of tax is 4% as per the Notification. This is not applicable when new car is purchased and sells the same after use. (*Mandovi Motors Private Limited Vs State of Karnataka 2014 (80) Kar.L.J 337 (HC) (DB)*)
- XII)** Tribunal is competent to review and to review its own order when party brings to its notice that relevant facts were not brought before while passing the original order (*Mandovi Motors Private Limited Vs State of Karnataka 2014 (80) Kar.L.J. (HC) (DB) 337*)
- XIII)** Order levying penalty less than the minimum penalty prescribed passed by Tribunal set aside and penalty levied at double tax payable (*State of Karnataka Vs Gati Limited Bangalore) 2014 (80) KLJ 281 (HC)(DB)*)
- XIV)** Order of Appellate Authority passed without considering plea of assessee for grant of time to submit C/D forms set aside and remanded to consider the plea and to pass the reasonable order. (*Pepsic Holdings India Limited Bangalore Vs The Joint Commissioner of Commercial Taxes (Appeal-06) Bangalore*)
- XV)** Aids and implements used by handicapped persons is broad enough to cover not only hearing aids but also their parts

*(State of Karnataka Vs Siemens Hearing Inst Private limited
2014 (80) KLJ 28(HC)(DB))*

By CA Sanjay Dhariwal

I) Centum Industries ts-376-HC-2014 (Kar)-VAT dated 31st July 2014

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.

II) International Hospital Private Limited Vs State of Uttar Pradesh and Others 2015 (81) Kar.L.J. 50(HC)(DB)

The issue in the present case relates to a contract between patient and a hospital where an individual gets admitted as an indoor patient for the purposes of a surgical procedure under medical supervision. Admittedly, Neither of the six clauses of Article 366 (29-A) of the constitution is attracted to the rendering of such a service and hence, the deeming definition under which a contract is regarded as a contract for the sale of goods is not attracted. According to the hospital, where a patient comes to get admitted for a surgical procedure like an angioplasty, the contract is indivisible, in the course of which medical service is rendered to the patient. The issue as to whether a service of this nature would fall within the ambit of the

expression “sale” has to be determined with the reference to the definition of that expression in the section 2(ac) of the Act.

‘Sale’ with its grammatical variations and cognate expressions, means any transfer of property in goods (otherwise than by way of a mortgage, hypothecation, charge or pledge) by one person to another, for cash or for deferred payment or for any other valuable consideration.....The test for deciding whether a contract falls into one category or the other is to as what is “the substance of the contract”.....

There can be no doubt about the position that in the case of patient who enters the hospital for the purpose of a surgical procedure like an angioplasty, there is no intent between the parties to the agreement, namely, the hospital and the individual that there would be a sale of stent or valve by the hospital to the patient. The substance of the contract is not a contract for sale of the stent or valve that is used in the course of the surgical procedure.

The contract, in substance, is an agreement in which the patient enters the hospital and is administered treatment in the form of a medical procedure, like an angioplasty. An intrinsic and integral element of that procedure, is the implantation of a stent or valve in the heart of patient.

True, the patient may have a choice of the nature of medicated stent or valve or otherwise, or in regard to the quality of the stent or valve which is implanted but even if that is so, that would not dilute the

essential nature of the transaction, which is the performance of a medical procedure.....

Admittedly, the present case does not involve the application of one of sub-clauses of Article 366(29-A). The deeming provision of clause (29-A) are not attracted..... Therefore Implant of stents or valves in a patient in the course of the surgical procedure is not a sale

III) The Managing Partner, Silver line Estate Bangalore Vs State of Karnataka 2015(81) Kar.L.J. 99 (Tri)(DB)

The Managing Partner Silver line estate Bangalore V/s State of Karnataka

Appellant/assessee is registered as 'Works Contractor' under regular scheme under KVAT Act 2003. Filing NIL returns in Form VAT 100 is itself a valid and sufficient reason for the AA to invoke Section 39 for the purpose of re-assessment. The First Appellate Authority is correct in upholding order of Adjudicating Authority. AA has followed statutory provision.

Appellant is registered as 'Works Contractor'. Whether appellant has carried the business activity which involves the transfer of goods which is in the nature of works contract? If so, whether appellant has to be treated as a dealer engaged in execution of works contract?

Whether receipts in the hands of appellant relates to execution of works contract liable for tax under section 4(1)(c) of the Act? If so

whether appellant is entitled for deduction of 30% towards labour and like charges on gross consideration?

Whether appellant is entitled for input tax credit on purchase of goods from unregistered dealers?

Whether gross profit should be added on sub-contractors payments for purpose of rule 3(2)(i-1) of the KVAT Rules?

IV)State of Punjab & ors Vs Nokia India Private Limited 2015 (81) Kar.L.J.3(SC)

It is held that the mobile/cell phone charger is an accessory to cell phone and is not a part of the cell phone. Therefore the rate of tax on mobile charger is different from mobile rate of tax. Battery charger cannot be held to be a composite part of the cell phone and it is only the accessory to the mobile. The battery charger is an independent product which can be sold separately. Therefore it is held that mobile/cell phone charger is an accessory to the cell phone.

V) Surya Constructions Vs Commissioner of Tax Officer (WC&T) and another 2015 (81) Kar.L.J.9 (HC)

The petitioner has sub contracted the entire work. The work executed by the sub contractor results in a single transaction and not multiple transactions. Amount retained by the petitioner form out of payment made by awarder of the contract has represented only profit element that accrued to him as the main contractor. There is no liability on the petitioner since there was no sale of material in the course of execution of works contract. The demand of the tax on amount

representing only profit from the transaction is illegal and liable to be set aside.

VI) State of Karnataka Vs Transglobal Power Limited Bangalore 2014 (80) Kar.L.J.575 (HC)(DB)

If the contract is indivisible then it is liable to tax under sixth schedule and if it is divisible contracts then materials are liable to tax individually and labour contracts are not liable to tax. It is held that “even if contract is composite, it is a divisible contract, then the levy of tax cannot be on the basis of works contract, but on the basis of sale of goods falling under third schedule and unscheduled goods. In case of composite contract, which are not divisible, such contract should be treated as work contract and levy should be as per VI Schedule”. As KPTCL had entered into four contracts, unless these four contracts are performed in unison, the object of given contract would have been frustrated. All the four contracts are given to the same assessee. Therefore, they wanted to ensure that the erection work which is purely a labour work was also to be treated as an integral part of this composite contract on the single source responsibility basis and the contractor was bound to perform the total contract in its entirety and non performance of any portion of the contract was to be treated as breach of the entire contract. The intention was that the contractor does not wriggle out of the situation and the object of the contract is not frustrated. The KPTCL was insisting that it is a composite contract to be performed by the

assessee in its entirety. Therefore, it is not a case where a contract which is entered into is not divisible as contract for supply of material and contract for labour. Even if it is a composite contract, if it is a divisible contract, then the levy of tax cannot be on the basis of works contract only. In cases of composite contract, which are not divisible, such contract should be treated as work contract, and levy should be under Schedule VI of entry 23. In the instant case, as rightly pointed by the Tribunal, there are four contracts in nature. Each one of them is separate. In respect of the contract for sale of material the taxes have been paid in accordance with law. No tax is payable in respect of contract for supply of labour. In civil works, it is a work contract and tax is levied under Schedule VI entry 23.

Practical issues

Case Study 1

The dealer is registered as a civil works contractor under the KVAT law. The rate of tax under entry 23 of the Sixth Schedule states that “All other works contract not specified in any of the categories specified in the sixth schedule and therefore it attracts tax at 14.5%. Therefore civil works contractor are liable to tax at 14.5% on civil works contract subject to declared goods liable to tax at 5%. The dealer s has offered the tax at 5% of turnover of iron and steel involved in the execution of the works contract. Analyze the basis for analyzing the turnover pertaining to declared goods turnover at 5% with Illustration

Case Study 2

ABC Restaurants is registered under the KVAT Law. ABC is engaged in the business of running restaurant. The primary mandate of the ABC is to build a network of restaurants in Karnataka. Company has three branches. The majority of purchases are within Karnataka except limited number of items from outside the State. ABC is in the process of routing all purchases from indenting cum Logistics Company by paying local VAT. Certain capital goods will be imported. However these items can also be purchased through the indenting agent. Whether goods can be imported under Composition Scheme by restaurant and whether restaurant can be operated separately on each branch-wise for easy operation.

Case Study 3

ANB is a civil works contractor and registered under the composition scheme. The dealer has purchased the capital goods from outside the state used for the construction and also for their interior of the office. They also had subcontracted the work to the sub contractor who is under regular scheme and some of the sub contractors are unregistered under the KVAT law. They made URD purchase of consumables from the registered dealers. They have also stock transferred the goods outside the state.

Case Study 4

The dealer is situated in Hospeth. It is a registered Institution and it runs several other educational institutions and hostels for students. During the year they are planning to build indoor stadium at the cost of Rs. 10 crores. They will give contract to build the same to local contractors (mostly registered dealer under VAT). Further, the main contractor has sub contracted the work to the extent of 9 Crores to the another Contractor situated in Bengaluru and such sun contractor is claiming the TDS deducted to the Main Contractor by such institution. The implications of TDS based on the above facts with reference to section 9-A of KVAT Act.

Case Study 5

The ACD company located in Shimoga is a registered dealer for the year 2007-2008 and is into sale of motor cycles. The Motor Cycles

are purchased from outside the State and are sold locally and the turnover of such sale is at 40 lakhs. In addition to the trading business, the company also engaged in works contract with the PWD authorities and receives consideration for such works through RA Bills after the Tax is deducted at source at 4% on the consideration of Rs 1 Crore during that year. To execute the works contract, the dealer has effected purchase of goods from the local RDs to the extent of 10 lakhs, with in input tax of Rs 55,000 and 5 lakhs worth of jelly, stones and sand from URD. Whether the dealer can opt for Composition, if so what are the VAT returns, the dealer has to file. Illustrate the Computation of turnover and tax payable by such dealer.

Case Study 6

The XYZ company is running a Multiplex Theatre and also selling food and drink to the audience. The dealer has effected purchase of materials for construction of Multiplex from outside the State. The bill issued for sale of food and drink during the interval is by the computerized system and the tax is inclusive. The dealer maintains the tax amount equivalent to the rate of tax in the computerized system and claims the tax collected in the VAT returns files for the year. Such tax amount on Rs 1 Crore is at 14 lakhs 50 thousand. Analyze the tax payable by the dealer on such sale of food and drink for the year .

Case Study 7

A Company has developed Video/Computer Games software and is selling it by means of DVD's and also through internet. It allows its customers to download the games from its website and provides them the pass word when they make the payment through online. It will not know the place where the customer is situated i.e, whether within the State, outside the State or outside the Country. In such cases, please explain how the Invoice has to be raised and at what rate of KVAT? If the Customer is situated outside the Country then the Company need not have to collect any VAT, as it amounts to export of goods; what is the correct procedure to be followed? Explain the impact of VAT/CST in the above case

