

NOTES on Set-off Under MVAT Act,2002

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1) Introduction of MVAT Act, 2002:

The Maharashtra Value Added Tax 2002 (Herein after called as MVAT Act) has replaced the Bombay Sales Tax Act, 1959 on & w. e. f. 1st April 2005 and now the sales tax is collected by the Maharashtra government under MVAT Act, 2002. Up to 31st March 2005 the sales tax was collected under the Bombay sales Tax Act, 1959 (Herein after called as B. S. T. Act).

When the sales tax was collected under The B. S. T. Act, 1959, What was the reason to introduce the new MVAT Act, 2002 or what is the difference between the two Acts. Why the government felt the need to replace the B. S. T. Act? The basic difference is the charging of sales tax. Under the B.S.T. Act, 1959 it was a single point levy of tax i. e. tax collection was at first stage and other stages are allowed as resales and no tax payable on subsequent stages. However to increase the revenue the Govt. of Maharashtra in the BST regime introduced resale tax which was maximum at 0.5 percent on sales.

Under the MVAT Act, 2002 the concept of collection of sales tax has changed and now the sales tax is collected at every stage of value addition till the goods reaches to the end user or consumer.

We are paying sales tax and not VAT. Though the name of the Act is Maharashtra Value Added Tax Act, it does not define what value addition is or what VAT is. However section 2(29) defines "Tax" means sales tax (Purchase tax deleted on and w.e.f. 01/04/2005) leviable or as the case may be payable under this Act and includes any amount payable by way of composition.

Example of Value Addition:-

Particulars	Purchase	Sales	Value Addition	Tax on value addition
Purchases / Sales	100000	110000	10000	-----
Tax at 5%	5000	5500	-----	500

Total	105000	115500	10000	500
Exp. Incurred on Purchases				
Freight	2000	-	-	-
L. B. T.	2000	-	-	-
Others	300	-	-	-
Sub Total	4300	-	-	-
Total Cost to the Dealer	104300	110000	5700	285

2) Set off under MVAT Act, 2002:

- a) What is Setoff ?
- Set off is not defined under MVAT Act, 2002 or MVAT Rules, 2005.
 - Dictionary meaning of the word set off is, thing set off against another, thing of which the amount or effect may be deducted from that of another.
 - In common parlance – adjustment with other.

- b) Setoff in other Acts
- The concept of the set off has first started in The Central Excise Act by way of MODVAT now as CENVAT. Set off was also available to some dealers in B. S. T. Act, 1959 and is now available in MVAT Act, 2002 w. e. f. 01/04/2005.

3) Set off Provisions under MVAT Act, 2002:

The provisions of set off as governed by MVAT Act, 2002, MVAT Rules, 2005, Notifications and circulars are discussed as under:

Chapter VIII of the MVAT Act, 2002 deals with the provisions of setoff, refund etc. This chapter covers section 48 to section 54 out of which setoff provisions are dealt by section 48. Other sections covers the provisions of refund etc. Relevant section is section 48; relevant rules are Rule 51 to 55:-

Section 48 (1)(a): It states that the state government may provide by rules that in which circumstances and subject to such conditions and restrictions the set off or refund may be granted in whole or in part of the tax to the dealer.

- i. Tax on capital goods and goods which are held in stock as on 31/03/2005 i.e. day immediately preceding the appointed day or
- ii. Tax in respect of any earlier sales or purchases. i. e. Billing is before 31/03/2005 and goods received after 31/03/2005 set off is granted to purchasing dealer (Refer item 1 of circular no. 17T of 2005 dt. 14/07/2005. The limit for such transaction was up to June 2005.)
- iii. Tax paid under Maharashtra tax on Entry of Motor Vehicle into the Local Areas Act, 1987 or
- iv. Tax paid on Maharashtra tax on Entry of Goods into the Local Areas Act, 2002.
 - High Speed Diesel Oil.
 - Bitumen.
 - Naphtha
 - Furnace oil etc. total 15 products

It is clear from the provision of this section that it is applicable only to the purchases before 31/03/2005 only.

For declaration of stock as on 31/03/2005 refer Notification No. VAT – 1505/ CR – 125, Taxation 1 dt. 01/04/2005 issued under section 84.

- As per notification cited above last date for submission of closing stock statement, statement of capital goods & other details in Form 6 was 30/04/2005
- Circular No. 3T of 2005 Dt. 28/04/2005 extended the date up to 15/06/2005.
- Circular No. 14T of 2005 Dt. 13/06/2005 extended the date up to 15/07/2005.
- Circular No. 17T of 2005 Dt. 14/07/2005 extended the date up to 16/08/2005.
- Circular No. 24T of 2005 Dt. 18/08/2005 extended the date up to 15/09/2005.

Section 48(2):- The section specify that no set off or refund under this Act or rules shall be granted to any dealer in respect of his purchases after the appointed date from the register dealer unless he produces the tax invoice along with declaration certificate that his registration is valid on the date of tax invoice.

What is Tax Invoice? (Section 86) :- Section 86 deals with the tax invoice. The requirements of the tax invoice are

- 1) It shall contain the word "Tax Invoice" in bold letter at the top or at any prominent place of all the copies.
- 2) The tax invoice should contain name, address and registration certificate number of the selling dealer. On and w. e. f. 01/05/2010 the tax invoice should contain the name, address and registration certificate number of the purchasing dealer.
- 3) Tax Invoice shall be serially numbered and the date on which the tax invoice is issued should be mentioned in it.
- 4) It shall contain the description of goods, quantity, rate. The amount of tax shall be shown separately.

This section does not mention about the declaration regarding the validity of registration number of the selling dealer but section 48(2) provides for the same.

- 5) Tax invoice shall be signed by the selling dealer, or his manager, servant or agent duly authorized by him.

Section 48(3):- Provides that where no tax is charged separately under any earlier law then rate of tax for set off, or reduction of sale or purchase price on the earlier sales or purchases shall be the rate as per the schedule of the earlier law subject to Section 48(4).

Section 48(4):- If any sales or purchases are exempted from payment of tax by any notification issued under any earlier law or under this Act the rate of tax shall be Nil for the purpose of calculation of set off as provided in Section 48(3).

Section 48(5):- For removal of doubts this section makes it clear that set off on any goods purchased shall not exceed the amount of tax in respect of the same goods actually paid under this Act or any earlier law.

Proviso to this section clarifies that where the tax payable is deferred under this Act or any earlier law under package scheme of incentives then the tax shall be treated as paid.

Section 48(6):- This sections states that, after the appointed day any dealer entitled to refund under this Act or under any earlier law, the refund shall be first applied against the amount payable if any under this Act or any earlier law.

Rule 51 Claim and grant of set off in respect of purchases held in stock at the appointed day:

- 1) The registered dealer has to claim set off on closing stock as on 31/03/2005 within the period 01/04/2005 to 31/03/2006.
- 2) Goods purchased before 31/03/2005 and held in stock only eligible for set off.
- 3) Set off of turnover tax, surcharge & resale tax is not allowed.
- 4) Purchases including tax are eligible for set off as per the provisions of Rule 44D with form 31.
- 5) Set off of Entry tax paid under The Maharashtra Tax on the Entry of Motor Vehicle into the Local Areas Act, 1987 or The Maharashtra Tax on the Entry of goods into the Local Areas Act, 2002 are allowed.
- 6) Goods on which set off already claimed before 31/03/2005 not eligible for further set off under this Act.
- 7) Goods held in stock must be sold before 31/12/2005. Here sales include branch transfer.
- 8) In case of capital goods - set off is not available unless the goods are purchased or entered into the state on or after 01/04/2003 and resold before 31/12/2005 set off is to be claimed only when capital goods are sold.
- 9) Set off under this rule shall not be granted unless the requirements of filling stock statements are complied with.
- 10) Set off under this rule is not subjected to Rule 53 and Rule 54 of MVAT Rules 2005.
- 11) Purchase tax paid or payable under section 13, 13A, 13B, 14 (except S. 14(1)) & 41 are eligible for set off.
- 12) Manufacturers are not entitled to set off under this rule as they have to claim set off under applicable rules as on 31/03/2005.

Rule - 52:- Claim and grant of set off in respect of purchases made in the period commencing on of after the appointed day.

- 1) This rule provides for set off to the registered dealer on their purchases of capital goods i. e. fixed assets and goods which are purchased on or after

01/04/2005 debited to trading and profit and loss a/c. Therefore all the goods on which tax is paid separately are entitled to set off. Eg. Trading goods, raw material, packing material, repairs and maintenance, spare parts, components, printing and stationery, fuel etc. In this rule the word 'Trading A/C' is substituted on 08/09/2006 with retrospective effect from 01/04/2005.

The set off is the aggregate of following sums

- a) Tax paid separately to other registered dealers.
 - b) Entry tax paid in respect of entry made after 01/04/2005 under the Maharashtra State Tax on entry of motor vehicles in to the local areas Act, 1987 and
 - c) Entry tax paid in respect of entry made of any goods under the Maharashtra State Tax on the entry of goods into the local areas Act, 2003.
- 2) Set off under this rule is not allowed if it is already claimed under rule 51.
 - 3) This rule provides for set off to the medicine dealers on the closing stock as on 30/06/2007 as these dealers are liable to pay tax on value additions on and w. e. f. 01/07/2007. The condition is to submit stock statement before 31/08/2007. However if the dealer has opted for composition scheme he is not entitled to set off. In this rule M.R.P.= M.R.P.+ Sales Tax if separately charged. In other case M.R.P. includes sales tax.

After going through the provisions of this rule we find that the dealer is entitled to get set off of tax paid on every purchase including purchases of capital goods. Rule 52 is not specifically subjected to rule 53 and 54 like rule 51. Even though rule 52 is not specifically subjected to rule 53 and 54, isolated reading of rule 52 may mislead because rule 53 deals with reduction of set off and rule 54 deals with non-admissibility of set off. One needs to read all the rules simultaneously to arrive at the correct amount of set off available to a registered dealer.

Rule – 53 (Reduction of set off):- This rule provides that the set off otherwise available is subject to reduction in the circumstances and extent specified below:-

Rule	Description	Used By	Amount on which reduction is made	Quantum of Reduction
53(1)	Taxable goods used as fuel	By a dealer (the word	Corresponding purchase price.	4% up to 31/03/2007.

	(Eg. Oil)	manufacturer is not used)	Refer section 2(20) for purchase price.	3% from 01/04/2007.
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53 (2)(a)	Corresponding taxable goods (except capital assets and goods used as fuel)	Dealer manufacturing tax free goods of schedule – A (if the tax free goods are exported as per section 5 of C. S. T. Act, 1956 reduction is not applicable w. e. f. 01/11/2008.	Purchase price of corresponding taxable goods. Refer rule 53 (9) for corresponding taxable goods.	4% up to 31/03/2007. 3% up to 31/05/2008. 2% from 01/06/2008.
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53 (2)(b)	Corresponding taxable goods of packing material.	Dealer resells tax free goods packed in a taxable packing material.	Corresponding purchase of packing material.	4% up to 31/03/2007. 3% up to 31/05/2008. 2% from 01/06/2008.
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Note: No reduction is to be made where the tax free goods are sold in the course of export as per section 5 of the C. S. T. Act, 1956.

53(3)	Corresponding taxable goods (Except capital assets & goods used as fuels)	Dealer dispatches the goods on consignment basis. i. e. against 'F' Form.	Purchase price of corresponding taxable goods.	4% up to 31/03/2007. 3% up to 31/05/2008. 2% from 01/06/2008. For 'B' Schedule goods 1%
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53(4)	Corresponding purchases of goods used in the execution of works contract (Except capital assets)	Claimant dealer is a works contractor and opted for composition. Section 42(3). Here claimant dealer includes sub contractor.	Corresponding amount of setoff	-
Note: Set off shall be allowed by multiplying 16/25 if the dealer opted to pay 8% on the total contract value and from 20/06/2006 4% of the corresponding purchase price on which setoff is claimed is reduced from the setoff available if the dealer opts for composition at 5% on the total construction contract value.				

53(5)	Corresponding purchases of goods held in stock on the date of discontinuation of business. Except capital assets.	Dealer discontinued his business, not transferred, not disposed of, not continued by any other person.	Corresponding purchases held in stock.	Full Setoff
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53(6)	If in any year sales are less than 50% of gross receipt
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53(6)(a)	Dealer is Hotel or restaurant and not opted for composition. Note: 1) Such dealers are entitled to set off on their purchases corresponding to the food and drinks (Whether alcoholic or not) which are served, supplied, sold or resold and 2) On purchases of capital assets and consumables pertaining to the kitchen and sale, supply or service of the food & drinks. 3) Therefore Hotels and restaurants are not entitled to setoff on other capital assets & items debited to trading & Profit & Loss account.
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53(6)(b)	The dealer who is not engaged in Hotel or restaurant business, setoff is available only on purchases of goods in a year which are sold within six months from the date of purchase.
	If the dealer is manufacturer and not principally engaged in doing job work is entitled for set off on purchases of Plant & Machinery which is treated as capital assets and parts & components and accessories of the said Plant & Machinery for the period of Three years from the date of effect of the registration certificate.

53(7)	Deleted w. e. f. 01/05/2011 which was related to Liquor dealer.
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53(7A)	Purchases of Furniture, Fixture, Office equipment	Dealer is not engaged in the business of transferring the right to use the goods.	Corresponding purchase price.	3% of the purchase price. W. e. f. 08/09/2006. Up to 07/09/2006 these items were in negative list of Rule 54(L)
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53(7B)	Related to transmission & distribution of electricity – Not Discussed.
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53(8)	Provides that the reduction shall not exceed the amount of set off available and if exceeds the dealer has to pay by way of tax.
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53(9)	Provides the definition of 'Corresponding Goods'
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53(10)	This rule is inserted from 01/11/2008 with retrospective effect from 01/04/2005			
	Goods in respect of which property is transferred during the	The dealer is engaged in exercising contract of processing of	Purchase price of goods of which property is transferred, Packing	4% up to 31/03/2007. 3% up to 31/05/2008. 2% from

	processing of textile, packing material.	textile.	material.	01/06/2008.
Note: Setoff on other purchases including capital goods shall be calculated as permissible under other rules.				

Rule 54 (Non admissibility of Setoff):- No setoff under any rule shall be allowed on the following:

- a) Passenger motor vehicle as defined in Motor Vehicle Act, 1988. However full setoff is available to the dealers, who are dealers in such motor vehicles and to the dealers who are engaged in the business of transfer of right to use.
- b) Motor spirit which includes High Speed Diesel Oil, Aviation Turbine Fuel, Aviation Gasoline, Petrol. However if the motor spirit sold in the course of inter state trade or export or send on branch transfer is eligible for full setoff.
- c) Crude oil when used by the refinery for refining
- d) Any purchases of consumable or goods treated as capital assets where the dealer is principally engaged in the business of doing job work or labour work.
- e) Raw materials purchased by units holding entitlement certificate under exemption or deferred mode as these units are entitled to refund under rule 79.
- f) Any purchase of goods of incorporeal or intangible nature are not eligible for setoff. However purchases of following intangible assets are eligible for setoff:
 - Import license, Export permit or license or quota, Credit of duty entitlement pass book, Sim cards, Dealers in software etc.
- g) Purchases effected by way of works contract of immovable property other than plant & machinery.
- h) Purchases of any goods by a dealer the property in which is not transferred to any other person in the same form or any other form which are used in the erection of immovable property other than Plant & Machinery.
- i) Purchases of Indian made foreign liquor or country liquor if the dealer opted for composition u. s. 42(2).
- j) A mandap keeper dealer opted for composition u. s. 42(4) not eligible for setoff on purchases of Mandap, Shmiyana, Pandal, Tarpaulin, decorations, furniture, fixture, lights, light fitting, floor covering, utensils etc.
- k) Purchases of capital assets by the hotelier or restaurant which are not used in supply of such service.

- l) Purchases of Office equipment, furniture, fixture & electric installation during the period 01/04/2005 to 07/09/2006. However the dealer engaged in the leasing business of such goods was entitled to setoff.

Rule – 55 Conditions for Grant of Set Off:

To avail the set off following conditions are to be satisfied:-

- 1) The dealer shall be a registered dealer.
- 2) The dealer has to maintained the records of purchases in chronological order showing the following particulars:
 - Date of Purchase
 - Bill No.
 - Name & address of the Selling Dealer
 - Registration certificate number of the Selling Dealer
 - Description of the goods purchase
 - Quantity
 - Rate per quantity
 - Purchase Price
 - Amount of VAT charged in the bill
- 3) Production of tax invoice with all details.

Thank You.

Summary of the Setoff Provisions

- 1) Set off is an adjustment allowed for payment of sales tax.
- 2) Set off is available only to the registered dealers.
- 3) For getting the benefit of set off the dealer must have obtained a Tax Invoice.
- 4) Set off is not allowed on the goods specified in Rule 54 of MVAT Rules 2005.
- 5) Set off is reduced in certain circumstances on goods listed in Rule 53.
- 6) Set off is available as soon as the goods are purchased vide Rule 52.
- 7) There is no condition that purchased goods must be sold.
- 8) Set off is not available to the composition dealers except works contractors to the some extent.
- 9) Set off is available on every purchases debited to the Trading and Profit & Loss account and on purchases of capital assets(Fixed Assets).
- 10) Set off is also available on Entry tax paid under Entry Tax Acts, if the goods are purchased after 01/04/2005.
- 11) For allowing set off no forms are required to be produced.
- 12) Refund for F. Y. 05-06 allowed to carry forward in F. Y. 06-07 vide circular no.18T of 2006 Dt. 01/08/2006.
- 13) Refund for F. Y. 06-07 allowed to be adjusted in F. Y. 07-08 refer to circular no.41T of 2007 Dt. 21/05/2007.
- 14) Adjustment of refund up to Rs.100000/- from F. Y. 09-10 to F. Y. 10-11 refer circular no.15T of 2010 Dt. 15/04/2010.
- 15) Adjustment of refund up to Rs.100000/- from F. Y. 10-11 to F. Y. 11-12 allowed refer circular no. 6T of 2011 Dt.15/04/2011.