# Overview of CST/ KVAT Law
# ( Including Impact on other IDT)

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**Introduction**

Karnataka Value Added Tax is a tax on sale of goods. The KVAT law also provides for setting off of the tax paid on inputs (goods purchased) against the tax payable on sale of goods. This has been done in order to avoid the cascading effect of taxes. This concept was earlier used in Central Excise as modvat and from 2004 as cenvat credit scheme.

The concept of value added tax can be explained with the help of an example. Suppose a dealer purchases goods worth Rs. 100 with a tax rate of 12.5% and makes a value addition of Rs. 50, in the absence of set off, he would sell the product to his customer at Rs. 162.50. If the tax rate on sale is 12.5%, the total value would be Rs. 182.82 with the tax payable being Rs. 20.32. If the set off is available, the price would be Rs. 150 with the tax on input being available for set off. The total price would be Rs. 168.75 with the tax payable being Rs. 18.75. This can be used for setting off by the customer where he himself happens to be a dealer. For the seller, the net outflow would be Rs. 6.25 (18.75-input set off of Rs. 12.5 on purchases). This in effect is the tax on his value addition alone.

A modified version of this set off scheme has been in force in India in the form of Cenvat under Central Excise Law. Under KVAT Act, the set off available is of tax paid under this Act and not under any other Act. In other words, where CST is paid on interstate purchase, the same will not be available for set off though KVAT paid on inputs used in interstate sales can be set off against CST payable on such interstate sales.

Under this law, the concept of sale, dealer and goods assume importance.

Goods generally include movable property with the exception of newspaper, actionable claims, stocks and shares and securities. It includes articles involved in the execution of works contract as well.

As per Section 2 (29) of the VAT Act, "sale" with all its grammatical variations and cognate expressions means every transfer of the property in goods (other than by way of a mortgage, hypothecation, charge or pledge) by one person to another in the course of trade or business for cash or for deferred payment or other valuable consideration. This includes transfer of rights to use goods as well as delivery of goods on hire purchase basis. Even where goods are transferred during the execution of works contract the same would be covered under this definition. Transfer of property in goods by government/local authorities/statutory bodies would be covered even if such transfers are not in course of business. Even distribution of goods by clubs or associations to members would be covered.

“Dealer” means any person who carries on the business of buying, selling, supplying or distributing goods, directly or otherwise, whether for cash or for deferred payment, or for commission, remuneration or other valuable consideration. Even a casual trader would be covered. The definition also covers government undertakings. Clubs/associations/societies would be dealers if they distribute goods to members (whether or not in course of business). An agriculturist (excluding companies selling pepper, cardamom, rubber, timber, wood, raw cashew or coffee cultivated personally by them) who sells products cultivated by him personally or a person who is exclusively engaged in poultry farming would not be dealers.

Once the dealer ascertains as to whether the transaction amounts to a sale or not as aforesaid, he has to find out whether it is a sale within the state of Karnataka. Where the transfer of right to use goods is involved, sale is said to be within the state if the goods are for use within the state. Sale is also deemed to be within the state in case of contract of sale or purchase where in case of specific or ascertained goods, the goods are within the state at the time when such contract is made. In case of unascertained goods, sale will be within the state if the goods are within the state at the time of their appropriation to the contract of sale or purchase.

The sale is normally said to have taken place at the time of transfer of title or possession or incorporation of goods in the course of execution of works contract whether or not there is receipt of payment.

Where an invoice is raised within 14 days from the date of sale, the sale shall be deemed to have taken place at the time the invoice is raised.

As per Section 2(14), "export" means a sale of goods taking place in the course of the export of the goods out of the territory of India only if the sale either occasions such export or is effected by a transfer of the documents of title to the goods after the goods have crossed the customs frontiers of India and includes the last sale of any goods preceding the sale occasioning the export of those goods out of the territory of India, if such last sale took place after, and was for the purpose of complying with the agreement or order or in relation to such export.

The dealer will have to pay applicable taxes on sales to 100% EOU or to a SEZ unit. SEZ unit or a developer of SEZ would be entitled to refund of tax paid by them on their inputs as section 20 has been amended in this year's budget. The 100% EOU if it desires has to go in for refund under normal scheme under KVAT.

The importance of this definition stems from the fact that input tax on goods used for exports is not restricted under the law.

*Agent and principal*

The agent of a principal is not entitled to deduct input tax unless he happens to act on behalf of a non-resident principal (resident outside the state). The principal would be entitled to deduct input tax in respect of the purchases made by the agent on his behalf and the principal shall for this purpose get a declaration (VAT 145) from the agent before the prescribed date (within ten days from the end of the month).

**Registration under KVAT Act**

*Who is liable to register?*

A dealer is liable to register under the KVAT Act when -

- ✓ His taxable turnover is likely to exceed rupees two lakhs during any year
- ✓ His taxable turnover exceeds fifteen thousand rupees in any one month
- ✓ A business or part of a business is transferred to him by another dealer liable to register but who has not registered

- ✓ He obtains or brings goods from outside the state whether as a result of purchase or otherwise
- ✓ He exports goods outside the country
- ✓ He effects a sale in the course of interstate trade or commerce or dispatches goods to a place outside the state
- ✓ He is a casual trader or a non-resident dealer or his agent
- ✓ He is involved in the execution of works contract

The registration is granted only from the date of application or from the date of commencement of business whichever is later.

Cancellation of registration may be needed where -

- ✓ Any business has been discontinued, transferred or disposed off or
- ✓ There is a change in the status of the ownership of the business or
- ✓ The taxable turnover during twelve months does not exceed rupees two lakhs or
- ✓ Death of a proprietor (legal heirs can apply for cancellation)

An amendment of the registration certificate might be needed where -

- ✓ A registered dealer sells or otherwise disposes off his business or part thereof or
- ✓ There is a change in the ownership of the business including any change in status or
- ✓ Business is discontinued or changed or new place of business is opened or
- ✓ Name of the business or the nature of the same is changed

Depositing security where required

As per Rule 24 of the VAT Rules, the security that can be demanded cannot exceed the limits as explained below -

- ✓ Where the dealer has opted to pay tax by way of composition u/s 15, an amount equivalent to the tax anticipated to be payable by him in a two months period, and
- ✓ In other cases, an amount equivalent to the tax anticipated to be payable by him in a three months period.

*Dealers not registered*

Where a dealer purchases his inputs from another dealer who is not registered under the Act, the purchasing dealer will be liable to pay tax on his purchases. This would be so even in case of transfer of property in goods during the execution of works contract by a contractor not registered under KVAT. The set off of such tax paid on purchases would be carried out as stipulated u/s 11.

**Tax invoice under KVAT**

A dealer making a taxable sale is required to issue a tax invoice for such sale. In case of sale of exempt goods or if the dealer pays tax under composition scheme, he is to issue a bill of sale. With effect from 01.04.2007, the amendments made even allow for affixing of digital signatures on the tax invoices.

The tax invoice like the invoice under Central Excise is a valuable document based on which the buyer is admissible for input/ capital goods set off. The procedure to raise such an invoice is as under:

The registered dealer shall issue a tax invoice when he sells taxable goods or sells exempted goods along with any taxable goods.

The tax invoice raised by the dealer should consist of complete details regarding the sale such as, serial number of invoice, date of issue of invoice, time of issue of invoice, name, address and registration number of the selling dealer, name and address of the buyer with registration number, full description of the goods, quantity of goods, value of the goods, rate and amount of tax charged in respect of taxable goods, total value and the signature of the selling dealer or his agent.

As per law, a duplicate invoice can be raised when the buyer requests for the same in case of loss of the original. The duplicate copy is to specifically state the fact that it is a duplicate.

**Bill of sale under KVAT**

A registered dealer selling non-taxable goods or selling goods in the course of inter-state trade or commerce or in the course of export out of the territory of India or import into the territory of India or a dealer opting to pay tax by way of composition u/s 15 and selling goods in excess of rupees one hundred shall issue a Bill of Sale. Where the values do not exceed Rupees 100, the transactions are

to be consolidated at the end of the day, unless the buyer specifically requires for the bill of sale even where the value of sales is less than Rs. 100.

The Bill of sale shall contain the details such as, a consecutive serial number, date of sale, the name, address and the registration number of the selling dealer, description of the goods, the value of the goods.

The registered dealer who purchases from a person other than a registered dealer shall raise a bill consisting of the particulars such as, consecutive serial number with the date of purchase, name and address of the seller, description of the goods, value of the goods.

*Computerised invoices*

Even computerized invoices can be issued subject to safeguards. This year's amendments have even made usage of digital signatures possible.

Where digital signatures (issued under IT Act 2000) are sought to be affixed, intimation is to be given to the LVO regarding the same with a copy of the digital signature certificate and the name of the person authorized to sign. This facility is under Rule 29 and extends to agents too.

*Stock transfer notes*

Where goods are not sold and are transferred, they should be accompanied by a stock transfer note in the prescribed form (VAT 515/505 as the case may be depending on the items involved). It is also the responsibility of every carrier of goods to ensure that valid documents in respect of such goods exist. This may be either a tax invoice or bill of sale or a stock transfer note in the prescribed form. Failure to follow this could result in goods being held up at check posts.

**Filing of return**

The dealer shall submit the return in Form VAT 100 along with the document showing the proof of payment of tax, to the jurisdictional local VAT officer or sub-officer on or before the twentieth day from the end of the month pertaining to which the return relates.

*Revised return under KVAT*

Where the registered dealer having filed the return in the normal course, finds any omission or incorrect statement therein, other than as a result of an inspection or receipt of any other information or evidence by the prescribed authority, he can file a revised return within six months from the end of the relevant tax period.

This is however, subject to sub-section (2) of section 72 which states that the dealer shall be liable to penalty where he understates his liability or overstates his entitlement to tax credit by more than five percent of his actual tax liability. The revised return cannot be filed where the original return had been filed after the best judgement assessment had been completed u/s 38 (2).

Note: - Where the local VAT officer has found any apparent errors/omissions in the return, he shall issue a notice in Form 150 requiring the dealer to submit the correct return and such a return shall be furnished within ten days of issue of notice where again the above procedure could be followed.

**Audit requirement**

Where the turnover exceeds Rs. 40 lakhs, the accounts will have to be audited in accordance with section 31.

**Input tax set off scheme**

"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.

"Capital goods" means plant, including cold storage and similar plant, machinery, goods vehicles, equipments, moulds, tools and jigs whose total cost is not less than an amount to be notified by the government or the commissioner, and used in the course of business other than for sale.

The restrictions as to the deduction of input tax in the calculation of net tax payable are basically contained in section 11 and 12 of the VAT Act besides Schedule V to the KVAT Act. Section 12 deals with the capital goods whereas Section 11 concentrates on inputs. Input tax is *not deductible* in the following cases –

- ✓ Input tax paid on purchases attributable to the sale of goods exempted u/s 5 unless such goods are sold in the course of export out of the territory of India.
- ✓ Input tax paid by an agent purchasing or selling goods on behalf of any other person other than a non-resident principal.
- ✓ Input tax paid on goods specified in the Fifth Schedule and subject to such conditions as my be specified, purchased and put to use for purposes other than for resale or manufacture or any other process of other goods for sale.
- ✓ Tax paid on purchase of goods as may be notified by the Govt. or the Commissioner subject to specified conditions.
- ✓ Input tax paid on purchases attributable to naphtha, liquefied petroleum gas, furnace oil, superior kerosene oil, kerosene and any other petroleum product, when used as a fuel in motor vehicles.
- ✓ Input tax paid on purchase of fuel from unregistered dealers.
- ✓ Input tax on goods purchased by a dealer who is required to be registered under the Act, but has failed to register.

Where the input tax is paid in terms of purchases (other than fuel) from an unregistered dealer, no deduction shall be allowed until the output tax is payable on such goods or other goods in which such goods are put to use (except when the said goods are exported out of the territory of India).

Tax paid on purchase of LDO would be available as a set off as the reference in section 11(6) has been deleted with retrospective effect from 01.04.2005. This means set off on LDO used in motor vehicles should be available.

The dealer seeking set off shall also ensure that the inputs are not subject to restriction under Schedule V to the Act as far as input tax set off is concerned.

As per Section 14 of the Act, the deduction of input tax shall be allowed to the extent of the input tax charged at a rate higher than four percent or any other lower rate notified by the government (through notification FD 115 CSL 2007 dated 30.03.2007, the tax paid in excess of the rate of 3% has been allowed) in respect of the following purchases–

- ✓ Purchases of goods that are dispatched outside the state (other than through sale), or are used as inputs in the manufacture, processing or packing of other taxable goods, which are dispatched to a place outside the state other than as a direct result of sale or purchase in the course of inter-state trade.
- ✓ Purchases of naphtha, liquefied petroleum gas, furnace oil, superior kerosene oil, kerosene and any other petroleum product used as fuel in the production of any goods for sale in the course of export out of the territory of India or taxable goods or captive power.

With regard to the capital goods input tax, the following may be noted as per Section 12–

- ✓ The input tax deduction is available in respect of the purchase of capital goods for use in the business of sale of any goods in the course of export out of the territory of India in case of registered dealer.
- ✓ Input tax deduction is also available in respect of purchase of capital goods wholly or partly for use in the business of taxable goods. In such cases the set off will be in the manner prescribed.
- ✓ Deduction is available only after commencement of production, or sale of taxable goods or sale of any goods in the course of export out of the territory of India by the registered dealer.
- ✓ The deduction shall be available in one lump sum since the system of apportioning was done away with in 2006 by way of an amendment in section 12.

The taxable turnover of the dealer should not be less than the limit fixed u/s 22(2) in the year of purchase in order to avoid a situation where set off is not available on capital goods. (Limit is Rs. 2 lakhs)

*Partial rebating – Rule 131 read with section 17*

Where a registered dealer deducting input tax, makes sales of taxable goods and goods exempt u/s 5 or in addition to those sales, dispatches taxable goods or goods exempted u/s 5 outside the state otherwise than a direct result of sale or purchase in the course of interstate trade or puts to use the inputs purchased for any other purpose (other than sale, manufacturing, processing, packing or

storing of goods), in addition to the use in course of his business, he shall be required to apportion and attribute the input tax between such sales/dispatches and other purposes.

The scheme of partial rebating would also apply to petroleum products (eligible for set off) by this year's amendment.

The rule deals with finding out the non-deductible input tax as follows -

$$\frac{\text{(Sales of exempt goods + non taxable transactions) X total input tax}}{\text{Total sales (including non-taxable transactions)}}$$

This amount has to be deducted from the total input tax to arrive at the deductible amount of input tax.

Note: - All input tax directly relating to sale of exempt goods is non-taxable. All input tax directly relating to taxable sales may be deducted, subject to provisions of Section 11. Purchase of petroleum items/fuel items specified u/s 11(6) shall be subjected to special rebating u/s 14 and if used towards both taxable as well as exempted activity/stock transfers outside state, to partial rebating u/s 17 as well.

**Payment of VAT**

The tax or any other amount under the Act or these Rules shall be paid by the dealer or any other person either in cash or by postal order, money order, crossed cheque or crossed demand draft which shall be drawn in favour of either the Registering authority, Jurisdictional local VAT officer or VAT sub-officer or any other authorized officer or by remittance into the Govt. treasury or SBI or its associate bank or any other bank approved by RBI (payment can be even by electronic remittance). The payment shall be along with a tax challan in Form VAT 152.

The tax is payable at the rates specified in the schedules with regard to the goods in question after setting of the input tax set off available.

*Belated payment of VAT*

Where the dealer having filed the return, fails to pay the tax declared on the return, he shall be liable for payment of interest u/s 37 at the rate of one and a quarter percent per month simple interest for the period of default.

*Adjusting VAT set off*

Rules 127 (1) and 127 (2) provide for the adjustment of excess amounts of input tax towards tax payable for any other month or quarter in arrears under the KST Act 1957, CST Act 1956 or the KTEG Act 1979, Karnataka Special Tax on Entry of Certain Goods Act 2004.

- ✓ The input tax deductible should exceed the output tax payable u/s 10(5) or as per final return submitted at the time of cancellation of return (where the dealer is liable to pay tax).
- ✓ The adjustment can be made against the liability for any other month or quarter under this Act or under CST Act.
- ✓ Where adjustment is to be made against liability under the other Acts specified above, the dealer can apply to the LVO
- ✓ Even the LVO is empowered to make adjustment and issue notice in Form VAT 250.
- ✓ Where eligible, the dealer can get a refund u/r 128 after such adjustment as long as he complies with the requirements as to furnishing of details of purchases on website as notified by commissioner in certain cases.

**Refund of VAT**

The provisions pertaining to refund under KVAT can be examined in two ways -

- ✓ Rule 128(1) read with section 10(5) allows the dealer to get a refund where the input tax set off exceeds the output tax payable as per the return furnished and the adjustments as laid out under Rule 127 have been carried out as applicable. Here, the officer authorized by the Commissioner can issue a refund payment order in Form VAT 255 within 35 days from the date of filing of return within the specified time allotted or within 15 days from the date of receipt of a return filed after that period. The law does not provide for a separate refund application in this case.

- ✓ In addition to the aforesaid provision section 47 of the Act read with rule 129 provides for filing a refund claim where amounts are wrongly collected from a dealer. This refund would not be available where the dealer from whom it has been wrongly collected has availed input tax deduction of the amount of tax paid.

**Deduction of tax at source**

Section 18A requires every registered dealer to deduct and remit tax to the government at the rate applicable to the goods (on their sale) when they purchase the following goods from other registered dealer –

- ✓ Oil seeds
- ✓ Non refined oil
- ✓ Oil cakes
- ✓ Scrap of iron and steel
- ✓ Such other goods that may be notified by the commissioner

Question of deducting tax does not apply to inter state purchases. Delay in remittance will attract interest at 1 ¼ % per month. Statement of tax deducted is also to be submitted within 20 days from the end of the month.

**Goods covered under MRP**

Section 4 of KVAT Act provides a mechanism whereby a dealer dealing in pharmaceutical products may pay VAT at the applicable rate on the basis of the MRP of the product. If so, subsequent dealers would be exempted from payment of VAT. A clarification has also been issued to state that the taxable turnover shall not include the tax payable and the same shall be deducted from the MRP.

**Records**

Every registered dealer and every dealer liable to pay tax under this Act, shall keep and maintain a true and correct account of all his purchases, receipts, sales, other disposals, production,

manufacture and stock showing the values of goods subject to each rate of tax under this Act including the input tax paid and output tax payable.

The specified category of dealers shall also be required to enter the prescribed details in the individual account provided to him in the website notified by the Commissioner and obtain from the website an acknowledgement of such an entry.

*VAT set off/credit ledger (Register of purchases)*

Rule 33(2) of KVAT Rules requires every dealer to maintain a register of purchases made within the state in Form VAT 170. (In reality the assessee rely on their accounting software to give the requisite information). This form has the following details -

- ✓ Serial number
- ✓ Date of entry
- ✓ Input supplier name
- ✓ TIN number of the supplier
- ✓ Description of the goods
- ✓ Tax invoice number and date
- ✓ Value of the goods with rate wise segregation
- ✓ Input tax amount with rate wise segregation

*Record keeping - Production*

Rule 33 (1) requires every registered dealer and every person liable to be registered under the Act to keep and maintain a true and correct account of his daily transactions showing the goods produced, manufactured, bought and sold by him and the value thereof separately together with invoices and bills.

*VAT account*

Rule 33 (3) of KVAT Rules (Rule 33(3a) as per latest draft rules) requires a dealer to maintain a VAT account containing details as to the input and output tax together with the debit and credit notes issued during any tax period.

*Debit notes and credit notes*

Section 10 (4) of the VAT Act, allows the dealer to avail input tax deduction on the basis of a debit note or credit note, in relation to a sale, provided it is issued in accordance with Section 30 and is with the registered dealer taking the deduction at the time any return in respect of the sale is furnished. As per Section 30, these notes are to be issued containing the particulars as may be prescribed. As per Rule 31, a credit note or a debit note can be issued by a registered dealer who has given a tax invoice in respect of sale of goods and thereafter, the goods or any part thereof are returned, the sale is cancelled or the value of the sale is altered whether due to a discount or otherwise.

*Records by the agent, broker, del credere agent or any other mercantile agent (for non-resident principal)*

Every commission agent, broker, del credere agent, auctioneer or any other mercantile agent is required to maintain accounts showing the prescribed particulars regarding their dealings with the principal. The particulars which an agent is supposed to disclose, are listed below –

- ✓ Authorisation from the principal to purchase or sell goods on his behalf.
- ✓ Goods purchased or goods received for sale on behalf of the principal.
- ✓ Purchases and sales affected on a day-wise basis in terms of each principal.
- ✓ Correspondence's with the principal.
- ✓ Tax paid on purchases and sales on behalf of the principal and the references for the same.
- ✓ Names of customers and suppliers for goods sold or purchased as the case may be.

*Special Accounting Scheme*

Where a dealer is liable to pay tax and he is unable to identify each individual sale, its value or the rate of tax, he may apply to the Commissioner to pay the net tax u/s 10 under the Special Accounting Scheme.

**Total and taxable turnovers**

The computation of total turnover and taxable turnover can be seen clearly from the table mentioned below –

| **Category of sale** | **Values/turnover** |
|---|---|
| Sales within the State of Karnataka | The total turnover is the Aggregate of: -<br><br>A1.The total amount paid or payable by the dealer as the consideration for purchase of any goods from Unregistered Dealer.<br><br>A2.The total amount paid or payable to the dealer as the consideration for the sale, supply or distribution within the state of any goods, whether by the dealer himself or through the agent.<br><br>A3.The total amount paid or payable to the dealer as consideration for transfer of the right to use any goods for any purpose.<br><br>A5.The total amount payable to the dealer as consideration in respect of goods delivered on hire purchase or any system of payment by instalment.<br><br>A6.The aggregate of the sale prices received or receivable by the dealer in respect of sales of any goods in the course of inter-state trade or commerce, export out of the territory of India and sales in the course of import into the territory of India<br><br>A7.The value of all goods transferred or dispatched outside the state by way of stock transfer (otherwise than by sale)<br><br>***The aggregate of the above shall be reduced by the following in order to arrive at the taxable turnover–***<br><br>B1. The aggregate of the sale prices received or receivable by the dealer in respect of sales of any goods in the course of inter-state trade or commerce, export out of the territory of India and sales in the course of import into the territory of India |

| | |
|---|---|
| | B2. The value of all goods transferred or dispatched outside the state by way of stock transfer (otherwise than by sale)<br><br>B3. Discount allowed in accordance with regular practice or as per terms of contract and the invoice or bill of sale discloses such discount and the purchaser has in reality paid the amount net of discount.<br><br>B4. All amounts allowed to purchasers for goods returned by them within six months from the date of delivery of goods.<br><br>B5. All amounts received from the URD when the goods purchased are returned within six months from the date of delivery.<br><br>B6. Sales of exempt goods<br><br>B7. All amounts realised by the sale of business as a whole<br><br>B8. All amounts collected by way of tax under the Act<br><br>B9. Turnover in respect of which the dealer's agent has paid tax and the dealer has furnished a certificate in Form VAT 140<br><br>B10. All amounts collected under Agricultural Produce Marketing (Regulations) Act 1966 as commission by a commission agent as long as no tax is collected on such commission.<br><br>B11. Interest on unpaid amount under hire purchase or system of payment by installment provided, such interest does not exceed twenty percent per annum on amount remaining unpaid and is charged for separately.<br><br>B12. All amounts actually expended towards labour charges and other like charges for erection, installation, fixing, fitting out or commissioning of the goods used in the execution of works contract<br><br>For the purposes of this rule, it is also sought to be clarified that maximum retail prices shall exclude the tax payable under this Act and the tax collected |

| | |
|---|---|
| | for the purpose of arriving at taxable turnover. Where taxes are included, they shall be deducted including taxes paid by agent (Form VAT 140 to be obtained) along with the allowance for purchase returns. |

**Inspection, search and seizure**

The KVAT law provides for inspections by authorized officers. The following points may be noted –

- ✓ Officers having permission of the Commissioner can enter and inspect the place of business or any other place where business is carried or accounts/documents are kept.
- ✓ The empowered officer can also go in for test purchases (This budget has also given them power to ask for refund once the goods are returned to the dealer)
- ✓ He can also direct the dealer to produce accounts and records of his business for inspection and can also record statement of the dealer
- ✓ There is a resumption that accounts and records found t any place of business relate to such business
- ✓ The officer can even take extracts of the records or place marks on such records as are found on such inspection
- ✓ Failure to maintain books of account for five years or till completion of assessment may invite a penalty of Rs. 10000
- ✓ For first failure to maintain books penalty not exceeding Rs. 2000 can be imposed and for subsequent failure, amount not exceeding Rs. 5000 can be imposed with additional Rs. 200 for every day of default.
- ✓ Even where there is failure to furnish information/records penalty not exceeding Rs. 5000 can be imposed with additional penalty of Rs. 200 per day of default.
- ✓ Unaccounted goods can be seized so as to meet the tax liability or where they cannot be seized, issue prohibitory orders prohibiting their removal
- ✓ Protective assessment order can be issued where it is believed dealer would not pay tax, penalty etc, and the amount becomes payable immediately

- ✓ In case of concealment of facts relating to business, search can be undertaken and the records can be seized if attempt to evade tax is suspected (receipt for documents seized to be given if requested)
- ✓ Seized documents can be retained for 180 days (with permission from higher authority beyond this period not exceeding 60 days at a time)
- ✓ Sealing or breaking down of godown etc possible if owner refuses cooperation
- ✓ Samples of goods can also be taken
- ✓ Appeal against seizure of goods to be within 7 days

*Assessment and rectification*

- ✓ Assessment means an assessment made or deemed to have been made on a return filed by the dealer under this Act and includes re-assessment (which can be taken up where a return is deemed to incorrectly assessed or section 38 assessment is regarded to have understated tax liability)
- ✓ Best judgement assessment may be taken up where the return is not filed (monthly or final). In such cases, tax shall be paid within 10 days from the date of receipt of assessment.
- ✓ Assessment can be withdrawn when return is filed after best judgement assessment (within one month of receipt of assessment) but penalties and interest would be payable.
- ✓ Commissioner is empowered to notify cases for production of accounts in support of returns filed
- ✓ Protective assessment can be passed by authority permitted by Joint Commissioner/Additional Commissioner where there is reason to believe that the dealer shall not pay tax. (The dealer can make an application to JC/AC or the authority itself can pass order that such assessment was erroneous)
- ✓ Period of limitation for assessment/re-assessment normally is five years from the end of the tax period unless facts necessitating re-assessment were discovered in which case, it would be 3 years from the knowledge of such fact (without curtailing initial period of five years)
- ✓ In case of fraud or unregistered dealers liable to be registered, the period will be ten years

- ✓ Period relating to disposal of appeals shall not be reckoned to compute the period of limitation
- ✓ Rectification of assessments/re-assessments/appeal orders or revision orders as a consequence of a court order deeming them erroneous, would be within 3 years from the date of such order
- ✓ Rectification as a result of court order holding the tax to be assessed under a different provision of the law from the one it was assessed under, would be within 5 years from the date of such order.

## Overview of CST

**Introduction**

The provisions of K-Vat Act 2003 and the Rules made thereunder concentrates on the sale or purchase of goods within the State, whereas the provisions of C.S.T Act 1956 and the Rules made thereunder formulates the principles for determining,

- ✓ when a sale or purchase of goods takes place in the course of inter-state sales or purchases
- ✓ when a sale or purchase of goods takes place outside a State
- ✓ when a sale or purchase of goods takes place in the course of import into India
- ✓ when a sale or purchase of goods takes place in the course of export out of India

The CST law also,

- ✓ provides for the levy, collection and distribution of taxes on inter-state sale of goods.
- ✓ declare certain goods to be of special importance in the case of inter-state sales or purchases
- ✓ specify the restrictions and conditions to which the state laws imposing taxes on the sale or purchase of such goods of special importance shall be subject.

**Registration of dealers**

The dealers liable to pay tax under the C.S.T Act 1956 shall get themselves registered under the said Act. Further any changes in the information provided in the application for registration shall be

intimated by the dealer, so that the prescribed authority may amend the registration certificate to reflect such changes. For the purpose of granting registration, the prescribed authority may demand security from the dealer, if it considers necessary.

**Inter-state sales or purchases**

A sale or purchase is considered as inter-state sales or purchases, if the sale or purchase,-

- ✓ results in the movement of goods from one state to another; or
- ✓ is effected by transfer of documents of title to the goods during their movement from one state to another.

Hence movement of goods from one state to another is must and should, for attracting levy under CST law. However where the movement of goods commences and terminates in the same state it shall not be deemed to be a movement of goods from one state to another by reason merely of the fact that in the course of such movement the goods pass through the territory of any other state.

**Sale or purchase of goods outside the state**

So far we have seen cases where goods are purchase and sold within the state (where provisions of K-Vat law is applicable) and purchase and sale of goods from our state to other state or from other state to our state. It may be noted that only in the aforesaid two categories of sales or purchases the Government of Karnataka can collect the revenue (directly or by way of allocation by the Central Government towards the share of CST). In other cases, that is where the sales or purchase of goods takes place outside the state, where there is no movement of goods from or to our state, the taxes are collected by the Central Government under the CST law and our State Government is not entitled to share of such tax. Thus it becomes critical to know when the sale or purchase of goods takes place outside the state.

As per Section 4 of the C.S.T Act 1956, when a sale or purchase of goods is determined to take place inside a state, then such sale or purchase shall be deemed to have taken place outside all other states.

A sale or purchase of goods shall be deemed to take place inside a state if the goods are within the state-

- ✓ in the case of specific or ascertained goods, at the time the contract of sale is made; and
- ✓ in the case of unascertained or future goods, at the time of their appropriation to the contract of sale by the seller or by the buyer.

**Sale or purchase of goods in the course of exports**

A sale or purchase of goods shall be deemed to take place in the course of export of goods only if the sale or purchase either occasions such export or is effected by a transfer of documents of title to the goods after the goods have crossed the customs frontiers of India.

Even the last sale or purchase of any goods preceding the sale or purchase occasioning the export of those goods shall also be deemed to be in the course of such exports, if such last sale or purchase took place after, and was for the purpose of complying with, the agreement or order for or in relation to such export.

**Sale of purchase of goods in the course of imports**

A sale or purchase of goods shall be deemed to take place in the course of the import of the goods only if the sale or purchase either occasions such import or is effected by a transfer of documents of title to the goods before the goods have crossed the customs frontiers of India.

**Liability to tax on inter-state sales**

Every dealer shall be liable to pay tax under the C.S.T Act 1956, on all sales of goods effected by him in the course of inter-state sales. Exports are not taxed even under this Act.

If during the course of movement of goods from one state to another state a sale or purchase is affected for the second time by a transfer of document of title to such goods, then such sale for the second time is exempted from CST. However the dealer affecting such second time sales shall furnish to the prescribed authority in the prescribed manner and within the prescribed time a certificate signed by the dealer from whom the goods were purchased by him, which shall contain the prescribed details.

**No tax on inter-state stock transfer**

As per Section 6 of the C.S.T Act 1956, no tax is payable in case of inter-state stock transfer if the dealer effecting such inter-state stock transfer furnishes to the prescribed authority a declaration in Form-F.

**Rates of tax**

The rate of CST prescribed under Section 8 of the C.S.T Act 1956 is as follows,

- ✓ two percent of his turnover - subject to production of C- Form as prescribed.
- ✓ Otherwise, at the rate applicable to the sale or purchase of such goods inside the state under the sales tax law of that state.

The Government can also prescribe the different rates for different products by way of a Notification. Further no tax is payable for sale of goods to SEZ units or to the Developer of SEZ.

The following are the aforesaid prescribed conditions and procedures for C form,-

- ✓ the exemption is available only for the specified goods (generally all goods specified in the purchasing dealers registration certificate as being intended for resale or for manufacture or processing of such goods for sale is available for exemption)
- ✓ the selling dealer shall obtain Form-C (in case the buyer is a registered dealer) or Form-D (in case the buyer is Government) from the purchasing dealer.

**Determination of turnover**

As per Section 2 (j) of the C.S.T Act 1956, turnover means the aggregate of the sale prices received and receivable by the dealer in respect of inter-state sales of any goods, made during any prescribed period. However the following shall be deducted from the aggregate of the sale prices received and receivable by the dealer,

- ✓ amount of CST, if the aggregate of sale prices comprises of the same.
- ✓ value of goods returned to the dealer from the buyers, within six months from the date of sales

- ✓ such other deductions as the Government may prescribe.

In case the dealer is registered under the local VAT laws of the state, then the tax period is same as that applicable under the local VAT laws, and in other cases, it is a 'quarter'.

**Levy and collection of tax and penalties**

The tax will be levied and collected by the Central Government from the state from which the movement of goods commenced. Even though the authority to collect CST is the Central Government, the authorities of the VAT law of the state are empowered to assess, collect and enforce payment of the CST. For this purpose the authorities of the VAT laws of the state are bestowed with the required powers of administration under the CST law. Hence the provisions relating to invoicing, record keeping, assessment, etc., as discussed under K-Vat chapter may be referred to.

**Goods of special importance in inter-state trade**

The Central Government has declared the following category of goods to be of special importance in the inter-state trade.

- ✓ Paddy, rice, wheat etc.; Coal; Cotton; Crude oil
- ✓ aviation turbine fuel; hides and skin; iron and steel
- ✓ jute ; LPG for domestic use; Oil seeds
- ✓ Pulses; Sugar; Woven fabrics ; The aforesaid list indicates the broad categories of goods declared and hence please refer Section 14 of the CST for the details of the goods declared. The following are the main restrictions and conditions imposed on such goods.
- ✓ No state shall levy tax on such goods above 4%, even on sales within the state
- ✓ In case any local VAT of the state is levied on such goods, the same will be reimbursed to the dealer, if such goods are sold in inter-state trade with payment of CST.

## Impact on Other Indirect Taxes

The multiplicity of taxation in India has meant that the dealers have to be aware of several other taxes as there maybe an impact of a business decision under one tax

law having an adverse impact under another tax law. We examine briefly what could be the impact of CST/ VAT on other taxes and those taxes on CST/ VAT. Other taxes examined are: Central Excise; Service Tax; Customs and briefly impending GST in 2017. Some aspects may have relevance for VAT/ CST are as under:

**Central Excise (CE)**

The duty of excise is collected on the activity of manufacture on value of goods removed for home consumption. As the sales tax is on the sales and the excise duty is on the manufacture which is in fact payable at the time of removal, it is not necessary to think that whenever there is excise duty liability there is sales tax liability.

1. **Manufacture** – CE is liable on goods manufactured. The definition of manufacture has 3 limbs with the first one which connotes conversion of a product into another. This definition is important to understand manufacture under CST in the sense that any manufacture under CE which connotes conversion would also be manufacture under CST. The concept of deemed manufacture under CE may not apply to CST. However any process which results in transfer of property would be covered under CST. Coverage under CST therefore could be wider.

   Illustrations for what are the activities amounting to manufacture is in Appendix 1 to this chapter.
2. **Removal** – Under CE duty is payable on removal. Many times the sales and removal coincide. However manufacture being an activity prior to sale, the CST would be payable on the amount of duty also.

   However when goods are transferred to the depots/ branches, the duty of excise is payable as per the valuation rules. They maybe sent on stock transfer basis without CST. Goods which are removed for free distribution/ samples/ donation and such also would be liable to duty of CE, however not liable for CST.

   In case of works contracts of larger values the possibility of goods fabricated at or off site for use in the projects is a reality. Theremaybe a need to pay the central

excise duty say on concrete blocks, RMC, window frame, pre fabricated building tiles etc consumed in a project.

3. **Cenvat Credit** - Under CE the concept of credit of CE paid on capital goods and inputs is available. Also the service tax paid on input services eligible is also available for set off. However none of this credit can be set off against CST/ VAT.
4. **Investigation/ Audit Under CE** - The administration of CE is quite comprehensive for the reason that the number of manufacturers is limited and the exemption available is for Rs.150 lakhs. The investigations resulting in detection of suppressed turnover would directly also have avoided recording of sales. Further at the time of audit also excess credit availment, clandestine removal, undervaluation aspects being all in relation to goods would equally result in detecting leakage of revenue under CST/ VAT.
5. **Valuation** – The inclusion of value of goods supplied free of cost may also have some bearing when the gross amount is billed but deduction claimed for the material supplied free of cost.
6. **Export/ Supply to SEZ** – The documentation for export under central excise is reconciliation based. Therefore it can aid in proving sale in course of export. Various forms are also parallelly used such as CT-1 = Form H. Similarly for supply to SEZ Form I is relevant.
7. **Job Work** – Job work under CE is under various provisions wherein the material sent and received back are reconciled. Similar reconciliation is required for ensuring that the ITC is reversed for material not received back. Also to ensure that removals from the job worker directly where JW discharges the duty of CE are not omitted at the time of making the payment of CST by selling dealer who is selling the job worked final goods.

**Service Tax**

The levy of tax on services initially was on specified taxable services categories set out in Section 65(105). From July 2012, it was made comprehensive and only few services which are covered in negative list or exempted are excluded. Rest all is taxable. Some aspects of transactions where both goods and services are involved

pose a few challenges. There could however be a transaction of supply, design, erection and installation where on the amount of supply of goods sales tax could be applicable and on amount of service, service tax be applicable. The dispute arises when the contract is composite and break up of components is not available.

1. **Definition of Service** - The definition of "service" excludes trading as well as deemed sales. Therefore an activity which constitutes merely a transfer of title in goods by way of sale, would be excluded from service tax levy. In some cases, both VAT/CST and service tax could be payable on composite contracts as in case of: works contract; supply of food by restaurants and outdoor caterers, licensing of software.
2. **Declared Service** - The definition of service also includes declared services wherein some intangible goods usage are also included. Therefore conflicts on what is liable for CST and what for service tax would exist.
3. **Bundle of Services** – Today's transactions where both services and goods are involved are varied and many. It is estimated that 40% of all transactions are a combination. The concept of bundled service provides that the main service is the service category into which the service gets covered. However the goods transferred in the service would be liable to CST.
4. **Right to Use** - The right to use goods necessarily under CST is where the effective control and possession is with the customer. Therefore in a contract if an operator is involved and full control does not exist then the same would be liable for service tax rather than CST.
5. **Valuation of WC/ Supply of Foods** – The value of goods involved is what is subjected to CST. However where the value of services and labour are not determinable then the value can be fixed as per the deduction allowed. Similarly in service tax. Therefore in some transactions the CST/VAT is payable on 75% and Service Tax on 70%. In the case of original works contract it could be CST/VAT on 70% and Service Tax on 40%. At times when the customer is unable to avail the credit therefor, there are objections.

6. **Point of Taxation** – In case of continuous service like works contract AMC etc the payment of service tax is on completion of work or raising the bill or receipt of monies which is similar to CST once work is commenced. Therefore the timing of payment of CST/VAT would also be determinable based on the same criterion. However where the work has not started and advances received under CST/ VAT there is no liability.
7. **Place of Provision of Services** – The place of provision of services w.r.t. goods being repaired or AMC would be the place where the goods are located. This would also determine whether the activity is export or interstate or intra state sale of goods.

**Customs**

The connection to CST/ VAT may only be relevant in a few situations as under:

1. **Sale or Purchase in course of Import**- The filing of the bill of entry is the point when customs is applicable. If there is the endorsement of the title of goods imported before the crossing of the customs frontier. It is not liable as purchase/ sale in the course of import.
2. **Sale or Purchase in course of export** - Similarly the title of goods transferred after they cross the customs frontier is important for sale/ purchase in the course of export.
3. **Payment of SAD in lieu of sales tax**- When goods are imported they are liable for special additional duty [SAD] of customs @ 4%. When these goods are subsequently sold they are eligible for SAD refund subject to proof that they have been sold under CST / VAT. In some cases where MRP is affixed prior to import, the SAD itself may not be payable. At present refunds are delayed and have a transaction cost attached to them.

**Impact Under GST**

The fact that Central excise, service tax, part of customs [other than BCD] would all get subsumed in GST means that these connections would not be so relevant or necessary to be planned for. However till pure GST comes there would be some

impact as the erstwhile sales tax on petroleum and CST @ 1% is expected to continue.

**Conclusion**

The understanding of the inter connection with the above taxes provides a holistic picture of the care to be taken in structuring the transaction. Also to ensure that while planning for optimising one indirect tax it does not lead to a disadvantage in another. For the tax authorities this understanding could provide vital signs of leakages. For the professionals ensure that wholesome advice without repercussions under other taxes is given.

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