

Office of the
Commissioner of Sales Tax,
8th floor, Vikrikar Bhavan,
Mazgaon, Mumbai-400010.

TRADE CIRCULAR

To,

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No. D.C.(A&R)-02/VAT/MISC/2017/2/ADM-08 Mumbai dated 31st May 2017.
Trade Cir. No. 18T of 2017

Subject : New Composition Scheme for Builder and Developer

Ref. : (1) Finance Department Notification No. VAT-1510/C.R.-65/Taxation-1 dated 9th July 2010.
(2) Finance Department Notification No. VAT-1517/C.R.-57/Taxation-1 dated 26th May 2017.
(3) The Maharashtra Goods and Services Tax Bill, 2017 (Bill No. XXXIII of 2017) published in the Official Gazette dated 12th May 2017.
(4) Maharashtra Goods and Services Tax related Laws (Amendment, Validation and Savings) Act, 2017 (Mah. XLI of 2017) published in Official Gazette dated 29th May 2017.

Gentlemen/Sir/Madam,

1. You are well aware that under the Maharashtra Value Added Tax Act, 2002 (hereinafter referred to as "MVAT Act"), the dealer who undertakes the construction of flats, dwellings, buildings, commercial complexes etc. (hereinafter referred to as "Developer") and agrees to transfer them in pursuance of an agreement or otherwise, is considered as works contract and, is therefore, liable to pay tax in respect of the value of the goods transferred during the execution of the said works contract.
2. So as to compute the tax liability in respect of aforesaid works contract activity the MVAT Act provides following options to the dealer,-
 - (1) Actual (Labour, Service Charge etc.) Expense Method [Rule 58(1)].
 - (2) Standard deduction method [Rule 58(1) proviso].
 - (3) Composition Scheme under section 42(3).
 - (4) Composition Scheme under section 42(3A).

3. Among aforesaid four options, in most cases the Developer has opted to pay tax as provided in the notification issued under section 42(3A) of the MVAT Act.

4. **Composition Scheme under section 42(3A):** As per the provisions of section 42(3A) of the MVAT Act, the State Government, has issued a notification cited at Ref. (1) above and introduced the Composition Scheme with effect from 1st April 2010 which is briefly explained below:

(1) A Developer who opted for the said Composition Scheme was required to pay 1% composition amount in lieu of the tax, on the agreement (i.e. registered) value or the value determined for the purpose of payment of Stamp Duty, whichever is higher.

(2) The said 1% amount becomes payable on the date on which the agreement is registered, irrespective of the fact whether the Developer has received any payment or not. In other words, the tax payment is not linked to the amount of advance payment received but is linked with the registration of an agreement. Thus, once the agreement is registered then the said developer becomes liable to pay 1% amount under this Composition Scheme.

(3) The benefits under aforesaid notification is available subject to the conditions given therein. The important conditions are the said developer is not entitled to claim set-off and is also prohibited from issuing the Tax Invoice.

(4) This scheme was effective during the period 1st April 2010 to 31st May 2017. The same is discontinued with effect from 1st June 2017 and a new composition scheme is provided which is explained in the latter part of this Trade Circular.

5. **Taxation of Works Contract (Developer) under MVAT Act and Service Tax Act:**

(1) As explained above, under MVAT Act, the liability to pay tax in respect of the works contract arises at the time when the goods are incorporated during the execution of the works contract. This is also applicable to a Developer whether he pays tax under rule 58 or, as the case may be, under 5% composition scheme.

- (2) However, in case of a Developer, who opts for 1% composition the time of payment of composition amount is decided in terms of condition no. (2) of the notification issued under section 42(3A) dated 9th July 2010.
- (3) The said condition provides that e-payment of 1% composition amount shall be made alongwith the return for the period in which the agreement is registered. This payment is required to be made in the said month, irrespective of the time of transfer of property in goods or date of receipt of the payment. The said Developer is also not entitled to claim the deduction towards the Land cost.
- (4) Under MVAT Act, a contract for the construction of a flat etc. is treated as a deemed sale of goods and accordingly liable to VAT. At the same time, such contracts are also liable for Service Tax. The Service Tax is levied on the value as reduced by the rebate of certain percentage of the contract value.
- (5) However, as per existing provisions of the Service Tax Act, the time of supply of services is determined on the basis of the date payment, the date issuance of invoice or rendering the service. The earliest of these three is treated as time of supply and accordingly the service provider is liable to calculate and pay the tax even on the amount received as advance. Whereas under MVAT Act, liability to pay tax is not linked directly to the advance amount received.
- (6) This is the basic difference between the provisions under the MVAT Act and existing Service Tax (Finance) Act.

6. Taxation of works contract (Developer) under GST:

- (1) The Goods and Services Tax is going to be introduced very soon. The Maharashtra State Legislature has also passed the Goods and Services Tax Bill, 2017 cited at Ref. (4) above.
- (2) Under the GST, contract for construction of flats etc. is considered as "service". SGST [*Schedule II, para 5 clause (b)*].
- (3) Therefore, under SGST, the developer would be a supplier of services and his liability to pay tax would arise at the "time of supply [sec. 13 of SGST] which can be earliest of the date of issue of invoice or the date of receipt of payment, the date of provision of service etc.

- (4) The issue is mainly about the construction contracts, which continue even after the date of commencement of SGST Act. Chapter XX of the SGST [*Transitional Provisions*], provides for different contingencies and the treatment to such contracts.
- (5) As per the provisions of section Sec. 142 (11)(c) of the SGST Bill, the tax is leviable in respect of the supply taking place on or after the date of commencement of the SGST Act. As a result of this provision, the works contracts which are continued after the commencement of SGST Act, the said supplier would be liable to pay tax (GST) in respect of the supply that takes place after the commencement of SGST Act, irrespective of the fact that the Developer has discharged the liability on the value stated in the registered agreement.
- (6) The provisions of said clause i.e. 142(11)(c) reads as under:-
"where tax was paid on any supply, both under the Maharashtra Value Added Tax Act, 2002 and under Chapter V of the Finance Act, 1994, tax shall be leviable under this Act and the taxable person shall be entitled to take credit of value added tax or service tax paid under the existing law to the extent of supplies made after the appointed day and such credit shall be calculated in such manner as may be prescribed"
- (7) In view of the aforesaid provision the Developer will be liable to pay tax in respect of the construction contracts where supply is continued on or after the commencement of the SGST Act. The said clause also provides that in respect of such construction contracts the said Developer would be entitled to take the credit of the tax paid under the MVAT Act to the extent of the supplies made on or after the date of SGST Act coming into force.

7. Amendment to Notification issued on 9th July 2010 (1% Composition Scheme):

- (1) For the reasons stated hereinabove and in order to align the provisions under the MVAT Act to the provisions under the SGST vis-à-vis taxation of Developer, the notification dated 9th July 2010, is amended and published in the Official Gazette cited at Ref. (2)

above. The amendments to said notification are briefly explained below:

- (a) As per the amended notification cited at Ref. (2) above, the registered dealer (Developer), who undertakes the construction of flats, dwellings, buildings etc. and agrees to transfer or transfers the said flats, dwellings, buildings etc. in pursuance of the agreement or otherwise and who desires to opt for the revised Composition Scheme is required to pay one *per cent.* of the amount received (as advance or otherwise) towards the booking of the aforesaid property.
- (b) Under amended notification the link between payment of tax and registration of an agreement is done away with. Now, the said Developer, under revised composition scheme will be liable to pay tax as given below:

➤ **Agreement to sale has not been registered on or before the 31st May 2017**

- (i) Under this contingency the Developer is required to pay one *per cent.* of the amount received as advance or otherwise, in respect the flats, dwellings, buildings etc.
- (ii) The tax so computed is to be paid on or before 30th June 2017, and
- (iii) The payment so received needs to be disclosed as turnover of sales in the return for the month of June-17 if the periodicity of filing return is Monthly and in case the periodicity of filing return is Quarterly then in the return for the quarter ending June-2017.

➤ **If the agreement to sale is registered or not, on or after the 1st June 2017:**

- (i) Under this contingency the Developer is required to pay one *per cent.* of the amount received as advance or otherwise, in respect the flats, dwellings, buildings etc.
- (ii) The tax so computed is required to be paid on or before the 21st day of the succeeding month in which the payment is received and the amount so received needs

to be disclosed as turnover of sales in the return for the said month if the periodicity of filing return is Monthly and in case the periodicity of filing return is Quarterly then in the return for the said quarter.

(2) In consonance with the amendment to the aforesaid notification vis-à-vis works contract the Developer who opts for the Composition on or after 1st June 2017 till the date of commencement of SGST Act would be liable to pay 1% tax in respect of the amount received from prospective buyer towards booking of flat, dwelling, building, commercial complex etc.

(3) Needless to say that the payment of 1% tax is now de-linked from the registration of an agreement and thereby the payment of tax on the value stated in the agreement so registered.

8. Amendments to Section 42 of the MVAT Act:

(1) As a corollary to the aforesaid developments, the section 42 of the MVAT Act is amended and new sub-section (3B) is added vide Amendment Act, 2017 [Section 67(3)] cited at Ref. (4) above. Therefore, after the commencement of the SGST Act, the Developer, would be required to take the credit of the tax paid under the MVAT Act, to the extent of the supply made on or after the commencement of SGST Act.

(2) As a result of aforesaid amendment, the Developer who had made the payment of 1% tax under notification issued on 9th July 2010 cited at Ref. (1) above is required to follow the provision of section 42(3B) of the MVAT Act.

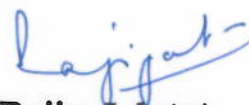
(3) The salient features of the said amendment are as under:

(a) The Developer who had paid tax under Composition Scheme as per notification dated 9th July 2010 (Old Composition Scheme) and if the said contracts (supply) are continued on or after the commencement of the SGST Act then such Developer is mandatorily required to determine 1% tax in respect of the amount received as advance or otherwise, immediately before the date of commencement of the SGST Act and deduct the

amount so calculated from the composition amount paid earlier under the Old Composition Scheme.

- (b) Under the Old Composition Scheme the dealer has calculated and paid 1% tax on the basis of the value stated in the registered agreement. It may happen that the tax so paid is more than the amount of 1% tax calculated in respect of the payment received towards the booking of the flat. In such scenario the Developer would be eligible to take the credit into the electronic credit ledger prescribed under the SGST Act of the balance unutilized amount remained on the date of commencement of the SGST Act.
- (c) In other words, the Developer in respect of the Works Contract activity i.e. where supply is made after the commencement of the SGST Act, shall determine the composition amount on the basis of the advances received immediately before the date of commencement of the SGST Act and deduct such amount from the composition amount paid earlier under the registered agreement and take the credit of the remaining amount for the purpose of discharging the liability under the SGST Act that may arise as a result of supply taking place on or after the commencement of SGST Act.
9. All the concerned stake holders are requested to take the note of these amendments and arrange their affairs accordingly.

Yours faithfully,




(Rajiv Jalota)

Commissioner of Sales Tax,
Maharashtra State, Mumbai.

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Trade Cir. No. 18T of 2017

Copy to,-

The Joint Commissioner of Sales Tax (Mahavikas) with a request to upload this Circular on Departments Web-site.



(D.M. Thorat)

Joint Commissioner of Sales Tax,
(HQ)-1, Maharashtra State, Mumbai.