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TRADE CIRCULAR.

Sub: Amendments to the Maharashtra Value Added Tax Act, 2002

Ref: 1) Mah. Ordinance No. VI of 2019 Dt 6th March 2019
2) Trade Circular No. 15T of 2017 dated 20th April 2017

No.VAT/AMD-2019/1A/1/Adm-8/B-193

Mumbai Dt: 06/05/2019

Trade Cir. 16 T of 2019

Background:

Certain amendments have been carried out to the Maharashtra Value Added Tax Act, 2002 by the Mah. Ordinance No. VI of 2019 dated 6th March 2019. Amended provisions of MVAT Act are explained as follows:

2. Rectification of ITC mismatch/un-match {Amendment to sec. 24}

Existing provisions: An application for rectification, of a mistake apparent on the record, can be made to the officer, who has passed the order [sec. 24(1)].

A dealer can also apply to the assessing officer in case claims against declarations or certificates were disallowed in the assessment order due to non-production of such declarations or certificates and if such declarations or certificates have now been received. [sec. 24(2)]
Rectification application can be filed only if appeal is not filed.

However, in case input tax credit has been disallowed in the assessment order for any reasons whatsoever, the dealer was required to file an appeal against such order and application u/s 24 was not maintainable.

Amended provision: Now, in view of the insertion of a new sub-section (2A) in sec. 24, a dealer can make an application to the assessing officer even if set-off claimed in the returns is disallowed in the assessment order for any reasons whatsoever. In such a situation too, a dealer has the option to either file an application for rectification or file an appeal. This amendment is explained as follows:

- i. In case, set-off has been disallowed in the assessment order and if the dealer is in a position to produce the necessary evidence regarding eligibility of such set-off, then such a dealer can apply for rectification under sec. 24(2A) to the assessing authority.
- ii. Such an application shall be made within two years from the end of the financial year, in which the said assessment order has been served.
- iii. The assessing officer, on verifying the evidence produced and on making necessary enquiries, can allow such set-off and rectify the assessment order, if the claim for set-off is confirmed.
- iv. Dealer, who desires to make such an application u/s 24(2A) should not have filed an appeal against such assessment order.

In case, any dealer, who has already filed an appeal desires to make an application u/s 24(2A) to the assessing authority then he can make such application only after he withdraws the said appeal completely. If the dues, as per the said assessment order were earlier stayed by the appellate authority, then such dues shall not be recovered till the passing of the rectification order u/s 24(2A).

3. Pre-payment for filing MVAT/CST appeals {Amendment to sec. 26}

As you are aware, that to file an appeal against an order under the MVAT Act and CST Act, pre-payment of an amount as mentioned in sec. 26 (6A) and 26(6B) is mandatory, in view of insertion of these sub-sections in sec. 26. [Mah. Amendment Act No. XXXI of 2017 dated 15th April 2017]. These provisions have been elaborately explained in the Trade Circular No. 11T of 2017 dated 20th April 2017.

In the case of M/s Anshul Impex, the Tribunal had not admitted the appeal on the grounds of non-depositing of mandatory pre-payment of 10% of disputed tax liability before filing appeal. In an appeal against this order, the Hon. Bombay High Court has observed that *“the Tribunal should have considered that the review proceedings had been initiated on 13th Apr. 2017, i.e. before the amended provisions of sec. 26 were brought into force (i.e. 15th Apr. 2017). [Sales Tax App. No. 2 of 2018 dated 28th Sep. 2018]*

By the Mah. Ordinance No. VI of 2019 dated 6th March 2019, an Explanation has been inserted with effect from the 15th April 2017 after sub-section (6C) of section 26 of the MVAT Act, which reads as follows:

“Explanation.—For the removal of doubts, it is hereby clarified that, the provisions of sub-sections (6A), (6B) and (6C) shall be applicable for any appeal, against all such orders, referred to in those sub-sections, irrespective of the period to which the order, appealed against, relates or irrespective of the date on which the proceedings in respect of such order have commenced.”.

In view of this Explanation, stipulated payment, as per provisions of sec. 26(6A) and sec. 26(6B) continues to be mandatory for filing an appeal before the appellate authority and the Tribunal, against orders

passed on or after the 15th April 2017, irrespective of the period to which the order, appealed against relates or the date on which proceedings, in respect of such order has commenced. In view of the above amendment, ratio laid down in the case of Anshul Impex is not applicable.

4. Other amendments

- a) A technical amendment has been done to sec. 10 of the MVAT Act w.e.f. 1st July 2017 to provide that the Officers, appointed by the State Government under the MGST Act shall be deemed to be officers appointed under the MVAT Act.
- b) Sale of natural gas by Gas Authority Of India Ltd. to Ratnagiri Gas & Power Pvt. Ltd. during the period from the 1st April 2017 to the 15th Sep. 2017 has been made tax free, if conditions mentioned in the newly inserted entry 3 in schedule A have been complied with.



(Rajiv Jalota)

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Maharashtra State,
Mumbai

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