8th floor,Vikrikar Bhavan,
Mazgaon, Mumbai – 400010.

TRADE CIRCULAR.

Sub: Amendments to the Maharashtra Value Added Tax Act, Sugarcane Purchase Tax Act, Profession Tax Act and Entry Tax Rules.

Ref: 1)Mah. Act No. XXXI of 2017 Dt 15th April 2017

No.VAT/AMD-2017/1A/2/Adm-8

Trade Cir. \\ T of 2017

Mumbai Dt: 20th April 2017

To give effect to the Budget proposals for the year 2017-18, a Bill (L.A. Bill No.XVIII of 2017) to amend the above referred Acts/Rules, has been passed by the Legislature and has received assent of the Governor on 15th April 2017. The Act *(Maharashtra Act No. XXXI of 2017)* is published in the Maharashtra Government Gazette dated 15th April 2017.

The Acts and Rules, which are amended, are as follows:

1. The Maharashtra Purchase Tax on Sugarcane Act, 1962(SCPT Act);
2. The Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (PT Act);
3. The Maharashtra Value Added Tax Act, 2002 (MVAT Act);
4. Maharashtra Tax on the Entry of Goods into Local Area Rules, 2002 (ET Act/Rules).

The date of applicability for each of the amendment has been mentioned, wherever relevant, in the respective para explaining the amendment.

The salient features of the amendments are explained below:-

A. Amendments to the Maharashtra Purchase Tax on Sugarcane Act, 1962 (SCPT Act):-

1. Exemption from payment of SCPT for 2015-16 *(Deletion of sub-sec. (2) of sec. 12B)*:

Earlier provision: Section 12B(2) provided for exemption from payment of SCPT, on sugarcane purchased during the year 2015-16, by a sugar factory, which exports sugar to the extent of the Mill-wise Indicative Export Quota(MIEQ) during the year 2015-16*[Amendment Act No. XV. of 2016 dated 26th April 2016]*. The MIEQ for the sugar factories had been laid down by the Department of Food and Public Distribution, Govt. of India.

Amended provision: The Central Government has withdrawn the policy of the MIEQ. In view of this, the condition of export of sugar in the year 2015-16, to the extent of MIEQ, to claim exemption from SCPT has been deleted. *[sub-sec. (2) of sec. 12B deleted].* The SCPT on the purchase of sugarcane has been exempted to assist the sugar factories to pay Fair and Remunerative Price to the farmers.

2. Exemption from payment of SCPT for the year 2016-17 *[Amendment of clause (e) of sec. 12B (1)]:*

In view of the announcement of the Hon. Finance Minister in the Budget Speech for the year 2017-18, the SCPT on the purchase of sugarcane in the year 2016-17 would also be exempted by the State Government by notification in the Official Gazette.

The exemption from payment of the SCPT for the years 2015-16 and 2016-17 is to assist the sugar factories to pay Fair and Remunerative Price to the farmers in the State. A notification u/s 12B, in this regard, is being issued by the State Government.

B. Amendments to the Maharashtra State Tax on Professions, Trades, Callings and Employments Act, 1975 (PT Act):

1. Liability of un-enrolled persons to pay tax restricted *[Amendment to third proviso of sec. 3(2) of the PT Act]*:

Earlier provisions: Section 3(2) of the PT Act provides that a person, who is liable to pay tax, has remained un-enrolled, then his liability to pay tax for the periods for which he has remained un-enrolled shall not exceed **eight years**, from the end of the year, immediately preceding the year, in which he has obtained enrolment certificate or the year in which the proceedings have been initiated against him, whichever is earlier.

Amended provision: As per the amended provision, if a person, who is liable to pay tax, has remained un-enrolled, then his liability to pay tax for the periods for which he has remained un-enrolled shall not exceed **four years**, from the end of the year, immediately preceding the year, in which he has obtained enrolment certificate or the year in which the proceedings have been initiated against him, whichever is earlier. This benefit of curtailed tax liability is admissible to those persons, who have obtained enrolment certificate (EC) on or after the 1st April 2017.

The persons, who have been granted EC or against whom the proceedings have been initiated prior to the 1st April 2017, shall be liable to pay PT for a maximum period of preceding 8 years.

Last year, concession for a limited period was provided to those persons, who applied for E.C. during the period from the 1st April 2016 to the 30th September 2016 and whose application for E.C. was pending on 1st April 2016. These applicants were liable to pay PT for a maximum period of 4 years only.

2. Liability to pay tax by an unregistered person restricted: *(Insertion of new sec. 4A):*

Earlier provision: An employer, unregistered for past periods, applying for registration was liable to pay tax from the day on which he became actually liable to pay tax. Thus, there was no limitation for the tax liability.

Amended provision: An employer, who has been granted certificate of registration (R.C.) on or after the 1st April 2017, shall not be liable to pay tax for a period of more than four years from the end of the year immediately preceding the year in which R.C is granted to him or the year in which the proceeding for registration has been initiated, whichever is earlier. *[New sec. 4A inserted]*

It is needless to add that the benefit of this amended provision shall not be admissible to those employers, who have already obtained registration prior to the 1st April 2017.

Illustration 1: An employer applies for registration on 20th April 2017 and is granted registration on 21st April 2017. This employer was actually liable for registration as an employer since August 2010. In this case, this employer shall be liable to pay tax from 1st April 2013 only.

3. Liability to deduct tax at source from agent-*(Insertion of new sec. 4B):*

Earlier provision: An employer is liable to deduct PT from the salary or wages paid to his employee. Certain organisations appoint agents, who are paid commission on the basis of the business done by them. The relationship between such organisation and the agent may not amount to employer-employee relationship. These agents are paid commission and may not get any salary as an employee gets. Hence, the provisions regarding deduction of tax at source are not applicable for such agents.

Agents, registered under the Insurance Act, 1938 etc. are liable to obtain E.C. and pay tax, under entry 2(d) in Schedule I.

Amended provision: By a newly inserted section 4B, the State Government has been empowered to issue a notification to provide that the organisations, shall deduct tax out of the amount of commission payable to the agents. The notification is being issued by the State Government. The class of persons(organisations), who shall be liable to deduct tax and the agents from whose commission, the tax is to be deducted would be specified in the notification.

A new entry 1A has been inserted in Schedule I to cover the agents, notified under section 4B. Such agents would be liable to pay Rs. 2,500 per annum. The manner in which the deduction is to be made by the organisation giving commission shall be specified in the notification, to be issued u/s 4B.

All the provisions, regarding an employer and an employee shall be deemed to be applicable to such organisation and it's agents.

The organisation, which appoints such agents, shall be liable to deduct and pay tax and hence these agents may apply for the cancellation of the enrolment certificate.

It may be noted that no agent shall be liable to pay tax in excess of Rs. 2,500.

4. Change in rate of interest- *[Amendment to sec. 9(2)]*

Earlier provision: Employers and enrolled persons are liable to pay interest at the rate of 1.25% per month, in case of failure to pay the tax within the prescribed period. The rate of interest is specified in the Act itself in sec.9(2).

Amended provision: This provision in sec. 9(2) has been amended to provide that the rate of interest shall now be prescribed in the rules. As announced in the Budget Speech for 2017-18, the rate of interest shall be aligned with the rates of interest under the Maharashtra Value Added Tax Act, 2002. The rates of interest under the MVAT have been provided in rule 88. The rates of interest shall be incorporated in PT rules.

5. New categories of persons liable to PT [Insertion of new entries in Schedule I]

Schedule I contains entries enlisting a classes of persons, liable to pay PT and the rate at which they are liable to pay P.T.

In this Schedule, the following entries have now been inserted w.e.f. 1st April 2017:

(i) **Persons, as notified under section 4B:** As explained above, these persons, would be agents, who receive commission. The details, as regards the agents, and the organisations, liable to deduct tax shall be mentioned in the notification u/s 4B, to be issued soon. The agents, so notified would be liable to pay tax at Rs. 2,500 per annum. *[Entry 1A inserted in Sch. I]*

(ii) **Service provider, registered under the Finance Act, 1994:** The dealers, who are registered under the Maharashtra Value Added Tax Act, 2002 or the Central Sales Tax Act, 1956 are liable to pay PT. Now, from 1st April 2017, service providers, who are registered under the Finance Act, 1994 shall also be liable to pay PT. *[Entry 20A inserted in Sch. I]* The service providers, who already hold E.C. under any other entry, would continue with the said certificate.

C. Amendments to Maharashtra Tax on the Entry of Goods into Local Area Rules, 2002 (Entry Tax Rules):

Limitation period for assessment

Earlier provision: Rule 8(1) of the Entry Tax Rules, 2002 provided limitation period for assessment. On the other hand, section 6 of the Entry Tax Act, 2002 provides that the authorities empowered to assess, review, collect and enforce payment of tax under the Value Added Tax Act shall assess, review, collect and enforce payment of tax including any interest or penalty, payable by an importer under the ET Act, as if the tax or interest or penalty payable by such dealer or importer under the ET Act is a tax or interest or penalty under the VAT Act and for this purpose they may exercise all or any of the powers under the VAT Act.

In view of the provisions of section 6 & rule 8 made under the Act, these two provisions were not in sync with each other and the said rule created unreasonable restrictions for assessment.

In order to remove the ambiguity related to limitation period of assessment and to make provisions more explicit that the limitation periods under the MVAT Act are equally applicable to assessments under the Entry Tax Act, rule 8 of the Entry Tax Rules, 2002 has been amended retrospectively w.e.f. 1st April 2005. Due to this amendment of rule 8, it's redundancy has also been removed.

By this retrospective amendment to rule 8 in the Maharashtra Tax Laws (Levy, Amendment and Validation) Act XXXI, 2017, the legislative intention has been made expressly clear that section 6 of the ET Act provides that all the relevant provisions under the MVAT Act are applicable to the Entry Tax Act, 2002.

D. Amendments to the Maharashtra Value Added Tax Act, 2002 (MVAT Act)

1) <u>Exemption to sizing and warping of yarn</u> *[Amendment to sec. 8(3D)]*:

Section 8(3D) of the MVAT Act empowers the State Government to exempt fully or partially, payment of tax on the transfer of property in goods involved in the sizing and warping of yarn.

Accordingly, the State Government has issued a notification No VAT-1516/CR 62/Taxn. 1 dated 29th April 2016 providing for full exemption from payment of tax on transfer of property in goods involved in the sizing and warping of yarn w.e.f. 1st April 2016. *[Refer Trade Cir No 14T of 2016 dated 7th May 2016].*

Sub-section (3D) of section 8 empowered the State Government to exempt the tax prospectively. The said sub-section (3D) is now amended to empower the State Government to exempt such tax retrospectively also. Accordingly, a notification is being issued by the State Government.

2) <u>Amendments related to assessment</u>-*<u>[Amendments to sec. 23]</u>*

a) Passing of fresh assessment order on remand back [Amendment to sec. 23(7)]:

Earlier provision: As per the provisions of section 23(7), a fresh assessment to give effect to any finding or directions by the Tribunal, High Court, or the Supreme Court is required to be passed within a period of 36 months from the date of communication of such order. The appellate authority in first appeal did not have powers u/s 26 to set aside and refer back the case for fresh assessment to the assessing officer.

Amended provision: By virtue of an amendment to section 26, the appellate authority in first appeal is now empowered to set aside and refer the case back to the assessing authority for making fresh assessment u/s 23(7). The appellate authority may exercise these powers, in case of an order appealed against, wherein the dealer was not able to attend or remain present before assessing authority at the time of hearing when the assessment order had been passed.

In view of the above, sec. 23(7) has been amended to provide that the assessing authority shall be required to pass fresh assessment order within 18 months from the date of communication of the order to him.

The limitation period for passing of fresh assessment to give effect to any finding or direction contained in any order of the Tribunal, High Court or the Supreme Court continues to be 36 months.

b) Cancellation of ex-parte assessment order-[Amendment to sec. 23(11)]:

Earlier provision: Section 23(11) provides that if any dealer is not able to attend or remain present at the time of hearing when the assessment order had been passed, then he may apply to the assessing officer in Form 316 for the cancellation of such assessment order. Thus, the dealer had an option either to file an appeal against such ex-parte assessment order or to apply in Form 316 for the

cancellation of such ex-parte assessment order, to the concerned assessing officer.

Amended provision: In case of such ex-parte assessment order, passed on or after 15th April 2017, an application in Form 316 cannot be made. Therefore, the dealer may file an appeal u/s 26 before the concerned appellate authority, if desired. *[Proviso added to sec. 23(11)]*

It is clarified that the assessing authority can cancel the assessment if the dealer has already filed Form 316 before 15th April 2017. Secondly, the assessing authority can also accept Form 316, even on or after 15th April 2017 if the assessment order has been passed prior to the 15th April 2017.

3) Amendments related to appeals *[Amendments to sec. 26]* **:**

A. Powers to refer the case back to assessing authority (remand back):

Earlier provision: The Tribunal has powers to set aside the assessment and refer back to the assessing authority *(remand back)* to pass fresh assessment order, as per directions. The first appellate authority did not have such powers to remand back any assessment order, including an ex-parte assessment order. The appellate authority, therefore, had to himself verify the books of accounts etc. and pass an appropriate order.

Amended provision: The appellate authority has now been given powers to set aside the ex-parte assessment order and refer the case back to the assessing authority for making a fresh assessment. It is clarified that the first appellate authority can set aside and refer back the assessment only in a case, where the dealer was not able to attend or remain present before the assessing authority at the time of hearing when the assessment order had been passed. The assessing authority shall make a fresh assessment u/s 23(7) within 18 months from the date of communication of the appeal order.

The appellate authority may set aside and refer the case back to the assessing authority within:

a) nine months, in case of appeals, filed prior to 15th April 2017

b) six months, from the date of filing of appeal, in case of an appeal filed on or after the 15th April 2017.

The appeals, which are not so remanded back to the assessing authority within the stipulated period, shall be disposed by the First Appellate Authority on merits.

In case, an appeal is pending before the Tribunal against the part payment order of the First Appellate Authority, in respect of an ex-parte assessment order, then even such assessment order can be set-aside and referred back to the assessing authority for making a fresh assessment u/s 23(7). In this situation, the appellate authority shall inform the Tribunal, accordingly and the dealer should withdraw the appeal before the Tribunal.

B. Filing of appeals before the First Appellate Authority:

Earlier provision: Part payment is required to be made, as per the provisions of section 26(6) only if the dealer desires stay to the recovery of disputed dues. An appellant is required to make an application in Form 311 for obtaining stay to the recovery of disputed dues.

Amended provision: The provisions regarding filing of appeals and part payment for stay to the recovery have been modified. Part payment, as per the newly inserted sub-section (6A) in section 26, is necessary for the filing of appeals. The amended provisions are explained as follows:

i. Filing of appeal: An appeal can be filed before the First Appellate Authority only on making the payment of the requisite amount of tax or penalty, as applicable.

ii. Effect date of the amended provisions: The amended provisions shall be applicable only for appeals filed against the orders passed on or after 15th April 2017.

iii. Filing of appeal: An appellant would file an appeal in Form 310 and shall also enclose the proof of payment of the payment of tax/penalty, as per the amended provisions of sec. 26(6A). An appeal shall not be allowed to be filed, unless the proof of payment of the requisite payment is furnished.

iv. Fixed part payment: The First Appellate Authority and the Tribunal would not have discretion in fixing the part payment for admission of appeal.

v. Amount of payment required to be made for filing of appeal:

Broadly speaking, appeals under the MVAT/CST could be against the following classes of orders. Fixation of part payment, as per the amended provisions of section 26(6A), is based on this classification:

(i) An order, in which the dealer has claimed sales against certain declarations/certificates such as 'C', 'F', 'H' etc. but could not produce these forms before the authority and hence these claims have been disallowed. *[clause (a) of sec. 26(6A)]*

An appellant, who desires to file an appeal against such an order, shall pay 100% of the amount of tax, disputed by him in appeal.

Illustration-2: In an assessment order, sales of Rs. 1,00,000 have been disallowed on the grounds of non-production of Form 'C', the local rate of tax on the goods is 12.5%. In this case, the dealer may have already paid Rs. 2,000 being a claim against form 'C'. In the assessment order, the assessing authority would raise differential tax of Rs. 10,500. If the dealer wishes to file an appeal, then he would be required to pay Rs. 10,500. If he pays Rs. 10,500 then he can file the appeal and on filing of the appeal, he shall immediately get stay to the dues on account of interest and penalty in this case.

It may be noted that this clause is not applicable if the dealer has furnished the declarations before the

assessing authority but still the declarations were disallowed due to some other defects. Therefore, in this situation, the dealer will not be required to pay 100% of the disputed tax amount.

*(ii)*An order, in which the claim of sales against declarations, as stated above have been disallowed and there is tax liability on certain other grounds, too. *[clause (b) of sec. 26(6A)].* In this case, dealer shall be required to make payment of 100% of the tax liability on account of non-produced declarations and 10% of the tax liability on "other grounds". In no case, the part payment of 10% of tax liability on "other grounds" shall exceed Rs. 15 crores.

Illustration-3: Sales against form 'C' are disallowed due to non-production and goods return claim is also disallowed. The additional tax, payable as per the assessment order is Rs. 1,00,000 for non-produced declarations and Rs. 2,00,000 for disallowance of goods return claim. In this case, the dealer would be required to make the payment of Rs 1,20,000 [i.e. 100% of Rs. 1,00,000 plus 10% of Rs. 2,00,000]

Illustration-4: Sales against form 'C' are disallowed, being defective and goods return claim is also disallowed. The additional tax, payable as per the assessment order is Rs. 1,00,000 for defective produced, and Rs. 2,00,000 for disallowance of goods return claim. In this case, the dealer would be required to make the payment of Rs 30,000 [i.e. 10% of Rs. 3,00,000]

Illustration-5: Suppose, in the assessment order, the tax liability is on account of disallowance of claim of Rs. 1,00,000 on account of non-produced declarations as well as tax liability on the grounds of disallowance of high seas claims of Rs. 2,00,000. The goods are taxable at 12.5%. In this case, in the assessment order, the differential tax liability would have been raised at Rs. 10,500 (on account of disallowed declarations) and Rs. 25,000 (on account of disallowed high sea sales. Suppose, the interest payable u/s 30(3) is say, Rs. 18,000 and penalty imposed is Rs. 35,500. Thus, the total dues would be Rs. 89,000. If the dealer wishes to file an

appeal against this order, then he would be required to make part payment of Rs. 13,000 (Rs. 10,500+2,500).

(iii) An order, in which the tax liability is only on account of other grounds *[clause (c) of sec. 26(6A)]*. In other words, there is no disallowance of declarations. For filing appeal against such order, the dealer would be required to pay 10% of the disputed tax amount with a maximum limit of Rs. 15 crore.

Examples: High seas sales are disallowed or set off is disallowed.

Illustration-6: In an assessment order, the goods return claim of Rs. 1,00,000 has been disallowed and the goods are taxable at 12.5%. In this case, the tax liability would be of Rs. 12,500. If the dealer desires to file an appeal and obtain stay against this assessment order, then he would be required to pay Rs. 1,250.

(iv) A separate order, in which penalty is imposed *[clause (d) of sec. 26(6A)]*. For example, a separate penalty order u/s 61(2) for non-filing of audit report in form e-704. If the dealer desires to file an appeal against this penalty order, then he shall be required to pay an amount, as fixed by the appellate authority. But, the First Appellate Authority shall not fix part payment of more than 10% of penalty amount, in such cases.

Illustration-7: In an independent penalty order u/s 61(2), the authority imposed penalty of Rs. 10,000 u/s 61(2). If the dealer desires to file an appeal against this penalty order, then the dealer shall be required to make a part payment, as ordered by the appellate authority. But, in any case, the appellate authority cannot fix part payment of more than Rs. 1,000 in this case. In other words, the discretion shall be only to the extent of 10% of the penalty amount.

*(v)*Any other order under the Act. For example, an appeal against cancellation of registration. In appeals against

such orders, there would not be any question of part payment.

C. Filing of appeals before the Tribunal:

An appeal against an order, passed on or after the 15th April 2017 can be filed before the Tribunal only after making the payment of tax, as determined under the newly inserted sub-section (6B) in section 26.

The orders, against which a dealer files an appeal before the Tribunal have also been classified on similar lines, as described above. Before filing an appeal to the Tribunal, the appellant shall be required to make the payment of tax, as follows, depending on the order, appealed against:

a) If the appeal is against an order, in which claim against declaration or certificate, has been disallowed on the grounds of non-production, then 100% of the amount of tax liability shall be required to be paid before filing of appeal. *[clause (a) of sec. 26(6B)]*

b) If the appeal is against an order, which involves disallowance of claims as stated above and also tax liability on other grounds, then in addition to 100% of tax liability on account of declarations/certificates, 10% of the balance amount of disputed tax liability on "other grounds". *[clause (b) of sec. 26(6B)]*. In no case, the part payment of 10% of tax liability on "other grounds" shall exceed Rs. 15 crores.

Illustration-8: As per the assessment order, the tax liability is Rs. 1 Lakh. Dealer files an appeal before the first appellate authority and disputes the entire tax liability of Rs 1 lakh. He makes a part payment of Rs. 10,000. In first appeal, the dealer gets a relief of Rs. 40,000 and now the dealer desires to file an appeal before the Tribunal for the remaining disputed tax of Rs. 60,000. For filing an appeal before the Tribunal, dealer would be required to make the part payment of Rs. 6,000 (i.e. 10% of balance disputed tax of Rs 60,000).

c) An order, in which the tax liability is only on account of other grounds *[clause (c) of sec. 26(6B)]*. In other words, there is no disallowance of declarations. For filing appeal against such order, the dealer would be required to pay 10% of the disputed tax amount with a maximum limit of Rs. 15 crore.

Example: High seas sales are disallowed or set off is disallowed.

Illustration-9: In an assessment order, the goods return claim of Rs. 1,00,000 is disallowed and the goods are taxable at 12.5%. In this case, the tax liability would be of Rs. 12,500. Dealer files an appeal and pays Rs. 1,250 before filing an appeal to the First Appellate Authority. The First Appellate Authority allows the goods return claim of Rs. 60,000 only. Now dealer desires to file second appeal before the Tribunal disputing the balance tax liability of Rs. 5,000. In this situation, the dealer would be required to make a part payment of Rs. 500 [i.e. 10% of Rs. 5,000].

d) An, order than any of the above. In this appeal, the Tribunal would have absolute discretion for fixing the part payment.

D. Clarifications on some general issues in appeals:

i. Payment of tax, in respect of declarations:

Earlier, by Trade Circular No 7T of 2015, dated 7th January 2015, a clarification, in this regard has been issued. These guidelines are reproduced for ready reference, as follows:

" (c) In case, an appellant receives some forms after the assessment order is passed, then the appellant should produce the list in the enclosed format at the time of filing of appeal. The appellate authority shall check the declarations as per the list and accordingly fix the part payment, as per the amended provision. It is clarified that the declarations received up to the date of filing of appeal only would be considered for the purpose of the proviso to section 26(6)."

ii. Appeals pending before the First Appellate Authority(FAA) and Tribunal:

For appeals, pending before the FAA and the Tribunal, the amended provisions of fixed part payment shall not be applicable. The part payment, for granting stay, shall be fixed, as per the provisions of section 26(6).

iii. Filing of appeals against the orders, passed prior to 15th April 2017:

The part payment in appeals, filed against orders, passed prior to 15th April 2017 even if filed after on or after 15th April 2017, shall be fixed as per the provisions of sec. 26(6). Therefore, for such appeals, the dealers shall be required to make an application for stay in Form 311 along with the appeal memo in Form 310, if he desires stay for disputed dues.

iv. Submitting of appeal papers:

Submission of appeal papers, which is not accompanied by the proof of payment of tax/penalty, as per the provisions of sec. 26(6A) shall not treated as "filing of appeal", in any case. Consequentially, such submission shall also not be eligible for stay.

v. Immediate stay to disputed dues:

Due to this amendment, the final stay to the disputed dues shall be granted immediately on filing of an appeal. Thus, there would not be any question of granting of any ad-interim or interim stay for such appeals. After this Amendment, no separate application for obtaining stay needs to be filed. Appellant shall get final stay order immediately on filing of a valid appeal.

vi. Undisputed dues:

It goes without saying that the dealer is required to pay the undisputed amount. If the undisputed amount is not paid by a dealer, then even though the appeal shall be allowed to be filed, the undisputed dues shall be available for recovery.

vii. Appeals against orders passed under the CST Act: The amended provisions shall be equally applicable to the appeals filed under the Central Sales Tax Act.

4) Amendments relating to Appeal before the High Court *[Section 27]:*

Earlier provision: An appeal against an order passed by the Tribunal may be filed before the High Court by the Commissioner or an assessee within 120 days from the date on which the said order is received by the Commissioner or the assessee.

Amended provision: The period for filing of an appeal to the High Court u/s 27 has been increased from 120 days to 180 days.

5) Remission of interest-*[Amendment to Section 30]:*

Earlier provision: Interest u/s 30 is payable by the dealer in case of certain contingencies such as failure to apply for registration in time, failure to pay tax as per the returns in time, failure to pay assessed tax and on payment of additional tax on the account of business audit etc.

New provision: The State Government is now empowered to remit the whole or any part of the interest in respect of any period payable by any prescribed class of registered dealers as follows:

a) The dealers who were not able to pay tax during prescribed period due to technical problems of the automation system of the Sales Tax Department.

b) Dealers who have obtained registration late.

In exercise of the powers conferred by this sub section (5), State Government would be issuing notifications for remitting interest payable by such class of dealers, as mentioned in the notification.

Notifications, after they are issued by the State Government, shall be immediately available on the Department's website.

6) First charge for recovery of dues *[Amendment to Section 37]*:

Earlier provision: Section 37 provides that any amount of tax, penalty, interest, sum forfeited, fine or any other sum payable by dealer or any other person under this Act shall be the first charge on the property of such dealer or such person. This provision is subject to any provision regarding creation of first charge in any Central Act.

New provision: Sometimes controversies were arising on the issue about the date on which the first charge is created.

In order to specify this aspect, a new sub-section (2) has been inserted in section 37. As per this sub-section (2), the first charge shall be deemed to have been created on the expiry of the period specified in section 32(4) for the payment of tax, penalty, interest, sum forfeited, fine or any other amount. Section 32(4) mentions different contingencies which are as follows:

a) Tax payable, as per the return or revised return, is required to be paid forthwith.

b) The amount of tax payable on account of reduction in set off because of happening of any contingency specified in rules is required to be paid at the time prescribed for making of payment of tax for the period in which such contingency occurs.

c) The following dues are required to be paid within 30 days from the date of the service of the notice:

   i) amount of tax due, as per any order passed under the Act, for any period, less any sum already paid in respect of the said period; and

   ii) amount of interest or penalty or both, if any, levied under the Act; and

iii) sum, if any forfeited and the amount of fine, if any imposed under the Act or rules; and

iv) amount of tax, penalty and interest demanded in the context of excess availment of incentives or availment of incentives not due; and

v) any other amount due under this Act,

In view of the amended provision, the first charge shall be deemed to have been created on the dates mentioned above.

7) Recovery from directors of a private company *[Amendment to sec. 44]*:

A new sub-section (6) has been inserted in sec. 44, to provide that in case the dues of the private company cannot be recovered for any reasons, whatsoever, then subject to the provisions of the Companies Act, 2013, the directors of such company shall also be jointly and severally liable for the dues of the company. Of course, the person, who was director of the private company, during such period, shall only be held to be so liable.

If such a director proves that there was no gross neglect, misfeasance or breach of duty on his part, then he would not be held liable personally. However, the burden of proving this shall be on the director.

This provision shall be applicable to a private company, in existence, wound up or under liquidation.

***8)* Interest on delayed refunds** *[Amendment to sec. 53]*:

Earlier provision: A dealer is eligible to get interest @.0.5 per cent. per month, in case a refund due to him u/s 51 or by virtue of any order passed under the Act is delayed beyond 90 days.

Amended provision: Interest u/s 53 for delayed refund would now be admissible, if the delay in granting refund is more than 60 days. This reduced period of 60 days shall be admissible for the refunds, which become so due on or after 15th April 2017.

9) Sweet-corn-amendment to Schedule 'A':

In Schedule 'C', a new clause (g) had been added in entry C-107 w.e.f. 1st April 2016 for "sweet corn". Due to this clause, "sweet corn" became taxable at 5.5% for the period from 1st April 2016 to 16th September 2016 and at 6% from 17th Sep. 2016. This new Schedule entry C-107(g) covers processed, semi-processed, semi-cooked, ready-mix, ready to eat, shelled sweet corn irrespective of the fact as to whether the sweet corn is sold in a frozen state, or in a sealed container or under a brand name. However, if the sweet corn is served for consumption, then it is taxable at the rate of 12.5%.

Now, a new entry 64 has been added in Schedule 'A' in which the sweet corn, described above is included and hence such sweet corn shall be tax-free for the period from 1st April 2005 to the 31st March 2016. For the period from 1st April 2016 to 16th September 2016, it will continue to be taxable at 5.5% and at 6% from 17th September 2016.

10) Textile processors

Section 8(3C) empowers the State Government to exempt tax payable by the textile processors in respect of the material transferred in the execution of works contract. As per section 8(3C), this exemption can be made available to processing of textiles/fabrics as covered by the First Schedule to Additional Duties of Excise (Goods of Special Importance) Act, 1957. This First Schedule was amended w.e.f. 8th April 2011. Section 8(3C) of the MVAT Act was also amended by section 21(2) of the Maharashtra Amendment Act No. VIII of 2012 to make the exemption admissible to the textiles/fabrics, covered by the First Schedule, as it stood on 7th April 2011. However, this MVAT amendment was effective from the 1st May 2012. Therefore, this activity of textile processing became taxable for the period from the 8th April 2011 to the 30th April 2012.

By this Amendment Act, the effect date of the said amendment to section 8(3C) of the MVAT Act has been changed from the 1st May 2012 to the 8th April 2011. In view of this change of the effect date, the activity of textile

processing can be exempt even for the intervening period starting from the 8th April 2011 to the 30th April 2012.

(Rajiv Jalota)
Commissioner of Sales Tax
Maharashtra State, Mumbai

No.VAT/AMD-2017/1A/2/Adm-8

Trade Cir. \\ T of 2017

Mumbai Dt: 20.4.2017

Copy forwarded to the Joint Commissioner of Sales Tax (Mahavikas) with a request to upload this Trade Circular on the Departments web-site.

(D.M.Thorat)
Joint Commissioner of Sales Tax,
(HQ)1, Maharashtra State, Mumbai.