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**TRADE CIRCULAR.**

**Sub:** Amendments to various Acts administered by the Sales Tax Department.

**Ref:** 1) Maharashtra Act No. XXVII of 2014 dated 26<sup>th</sup> June 2014  
2) Notification No. VAT 1514/CR 46/Taxation-1 dated 11<sup>th</sup> July 2014 issued u/s 9(1) of the Maharashtra Value Added Tax Act, 2002.

*No. VAT/AMD-2014/2/Adm-8*

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*Trade Cir. 15 T of 2014*

*Mumbai Dt: 06.08.2014*

To give effect to the Budget proposals for the year 2014-15, a Bill (Legislative Assembly Bill No. XIX of 2014) to amend the various Acts, administered by the Sales Tax Department has been passed by the Legislature and has received assent of the Governor on 26<sup>th</sup> June 2014. The Act (Maharashtra Act No. XXVII of 2014) is published in the Maharashtra Government Gazette dated 26<sup>th</sup> June 2014. Schedule 'A' and "C" have been amended by notification u/s 9(1) of the MVAT Act, 2002, (reference no. 2) issued on 11<sup>th</sup> July 2014.

The Acts, administered by the Sales Tax Department, amended are as follows:

1. The Maharashtra Purchase Tax on Sugarcane Act, 1962.
2. The Maharashtra State Tax on Professions, Trades, Callings And Employments Act, 1975.

3. The Maharashtra Tax on Luxuries Act, 1987.

4. The Maharashtra Value Added Tax Act, 2002.

The effective date for each of the amendment has been mentioned in the para explaining the respective amendment.

**The salient features of the amendments are explained below:-**

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

**1. Insertion of section 12AA:**

Section 34 of the Maharashtra Value Added Tax Act, 2002(MVAT Act) empowers, the authorities appointed under that Act, with special powers to recovery any sum due under the Act as arrears of land revenue. For this purpose, these authorities have powers of the corresponding authorities under the Maharashtra Land Revenue Code, 1966 (MLRC).

A new section 12AA has been inserted w.e.f. 26<sup>th</sup> June 2014 in the SCPT Act, which makes these provisions for recovery under the MVAT Act applicable for the purpose of recovery under the SCPT Act. As per this section, the authorities appointed under the SCPT Act shall exercise all the powers and perform all the duties of the authorities appointed under the MLRC. The provisions contained in Section 34 of the MVAT Act, shall be applicable *mutatis mutandis* for the purposes of recovery under the SCPT Act.

**2. Amendment of Section 12B:**

- i. Section 12B of the SCPT Act empowers the State Government to remit or exempt the tax payable by issuing a notification, for the purposes, specified in clauses (a) to (d) in the said section.
- ii. Clause (e) has now been added on 26<sup>th</sup> June 2014 in the said section to enable State Government to issue a

notification, providing for exemption from the payment of SCPT by the factories to enable payment of fair and remunerative price to the farmers for the year 2013-14.

- iii. The amended provision has been informed to Sugar Commissioner. If the Sugar Commissioner informs to Commissioner of Sales Tax that a sugar factory has not paid fair and remunerative price to the farmers, then the exemption availed/granted shall stand withdrawn.

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

### **1.Amendment to section 6:**

- i. The provision regarding late fee has been introduced in the PT Act from 1<sup>st</sup> August 2012, by virtue of sub-section (3) in section 6. An employer who files a late return is required to pay late fee of rupees 1000/- before uploading such late return. Late fee is payable irrespective of the reasons for delayed return. Late fee is mandatory and cannot be exempted by any profession tax authority.
- ii. A proviso has been added to sub-section (3) of section 6, w.e.f. 26<sup>th</sup> June 2014, to empower the State Government to issue a notification in the Official Gazette and exempt, in public interest, the whole or any part of the late fee, payable by the notified class or classes of employers. The State Government may also mention in such notification the periods and conditions, applicable for the purpose of exemption. This proviso is similar to the proviso of section 20(6) of the MVAT Act, 2002.

A separate Trade Circular will be issued after the State Government issues notification.

### **2.Amendment to Section 27A:**

- i. Clause (e) of section 27A provides for exemption from payment of profession tax to the parents or guardian of any person suffering from mental challenge. However, such person, himself, was not eligible for exemption.

- ii. Many persons with Intellectual and Development Disabilities (Mental Retardation) are nowadays undergoing vocational training and therefore are getting employed.
- iii. Clause (e) in section 27A has now been substituted w.e.f. 26<sup>th</sup> June 2014. Person with Intellectual and Development Disabilities (Mental Retardation) has also been exempted from payment of profession tax. The exemption available to the parents and guardian of such person continues.
- iv. To claim exemption, a certificate from a psychiatrist working in the Government Hospital would be required to be produced once before the assessing authority, in respect of the first assessment year.

### **3. Amendment to Schedule:**

- i. Schedule I, appended to the PT Act provides for rates of tax for different classes of persons. Entry 1 in this Schedule contains slab wise rates of tax, applicable to salary and wage earners. Persons drawing salary/wages up to rupees 5,000/- per month were exempted from the payment of tax.
- ii. Entry 1 in Schedule I has been amended w.e.f. 1<sup>st</sup> July 2014 to increase the exemption limit to rupees 7,500 per month. Therefore, the persons, drawing salary/wages up to rupees 7,500 per month shall not be liable to pay tax.
- iii. This enhanced exemption limit would be effective from 1<sup>st</sup> July 2014. Therefore, tax need not be deducted, if the salary or wages, paid on or after 1<sup>st</sup> July 2014 do not exceed rupees 7,500 per month. It may be noted that an employer is liable to deduct tax from the salary/wages payable, before such salary/wages is paid to that person. Therefore, the enhanced exemption limit would be applicable for the salary/wages, which are disbursed on or after 1<sup>st</sup> July 2014, irrespective of the month for which such salary/wage is being disbursed.
- iv. The rates of PT for other slabs of salary/wages remain unchanged.

## **C. Amendments to Luxury Tax Act.**

### **1. Amendments to clause (b-1A) and clause (d-1) of Section 2:**

Amendments to section 2 are technical in nature. *[effect date 26<sup>th</sup> June 2014]*

Clause (b-1A) and (d-1) contain the definitions of "Certificate of Entitlement" and "Eligibility Certificate" respectively. These definitions have references to the various Incentive Schemes for Tourism Projects.

Reference to the Tourism Policy, 2006 has now been added in these clauses.

### **2. Amendment to section 3:**

The slabs for the levy of Luxury Tax have been modified w.e.f. 1<sup>st</sup> July 2014.

Luxury Tax was not payable if the charge for luxury provided in a hotel was up to rupees 750 per day per accommodation. From 1<sup>st</sup> July 2014, this exemption limit has been increased to rupees 1,000 per day per accommodation. Therefore, Luxury Tax shall not be payable if the charge for luxury provided in a hotel is up to rupees 1,000 per day per accommodation.

Where the charge provided for luxury in a hotel is between rupees 1,001 and rupees 1,500 per day per accommodation, tax shall be payable at 4%.

If such charge is more than rupees 1,500 per day per accommodation, then tax shall be payable at 10%.

### **3. Insertion of section 22B:**

- i. The Tourism Policy-2006 provides for incentives to the Tourism Unit, depending upon the Zone in which it is situated. For this purpose, the State is divided into three zones i.e. Zone-A, Zone-B and Zone-C.
- ii. New sub-section 22B has been inserted w.e.f. 26<sup>th</sup> June 2014. As per this newly inserted section, the Certificate of Entitlement shall be granted to the Eligible Unit situated in Zone B and Zone C only. In other words, the units situated in Zone A comprising of areas of Mumbai, Mumbai Suburban District, Navi Mumbai, Thane, Pune

Municipal Corporation and Pimpri Chinchwad Municipal Corporation shall not be granted the Certificate of Entitlement. The units, situated in rest of Maharashtra, shall be eligible for the Certificate of Entitlement, subject to the conditions, mentioned as under:

- a) The Eligibility Certificate, under the Tourism Policy-2006, issued by the Maharashtra Tourism Development Corporation (MTDC), should have been granted to the unit on or after 26<sup>th</sup> June 2014.
- b) The Tourism Policy, 2006 provides benefits to an Expansion Unit on the basis of increase in fixed capital investment or increase in capacity by at least 50%, as compared to the last financial year. However, in view of the newly inserted section 22B, the Certificate of Entitlement shall not be granted to Expansion Unit, which has not added new capacity.

In order to issue Certificate of Entitlement, there has to be minimum increase in investment or capacity by more than 50% as compared to last financial year. The various scenarios are explained below:

- i. Increase in investment by say 40% and increase in capacity by 30%:* In this case, Certificate of Entitlement shall not be granted as neither investment nor capacity has increased by more than 50%.
- ii. Increase in investment by say 80% and increase in capacity by 30%:* In this case, Certificate of Entitlement shall be granted as investment has increased by more than 50%.
- iii. Increase in investment by say 20% and increase in capacity by 70%:* In this case, Certificate of Entitlement shall be granted as capacity has increased by more than 50%.
- iv. Increase in investment by say 70% and no increase in capacity:* In this case,

Certificate of Entitlement shall not be granted as there is no increase in capacity.

The benefits under the Luxury Tax Act would be admissible only to the extent of increased capacity, as explained in the succeeding paras.

c) If any Unit has taken benefit of Luxury Tax exemption, for any earlier period, even though the Certificate of Entitlement was not issued to him, then recovery of the tax shall be done from him along with the applicable interest and penalty.

d) For computing the benefits under the Act, to an Eligible Expansion Unit, the following principles shall be applicable:

a. If such unit has maintained separate accounts of receipts and is able to identify the receipts pertaining to the increased capacity, then the benefits shall be calculated solely on the basis of such identification.

b. If such unit has not maintained separate accounts of receipts and is not able to identify the receipts pertaining to the increased capacity, then the benefits shall be calculated after applying the following formula:

$$\text{Eligible turnover of receipts} = \frac{\text{Turnover of receipts X increase in capacity}}{\text{Total capacity after such increase}}$$

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

##### **1. Amendment to section 3:**

- i. Sub-section (4) of section 3 contains turnover limits for registration, in respect of importers and other dealers.

- The turnover limit for an importer is rupees 1 lakh in a year and for all other dealers, it is rupees 5 lakhs in a year.
- ii. Sub-section (4) of section 3 has been amended. The turnover limit for dealers, other than importers, has been increased from rupees 5 lakh to rupees 10 lakh. This amendment is effective from 26<sup>th</sup> June 2014.
  - iii. If such dealer's turnover of sales has exceeded rupees 5 lakh before 26<sup>th</sup> June 2014, then he would be required to apply for registration. However, if the turnover upto 26<sup>th</sup> June 2014 does not exceed rupees 5 lakh, then such a dealer would be liable for registration only when the turnover exceeds rupees 10 lakh in the year.
  - iv. The turnover limit for registration of an importer remains same.

## **2. Amendment to Section 16:**

- i. Sub-section 6 of section 16 provides for the contingencies in which a dealer can apply for cancellation of his registration.
- ii. In the said sub-section, a new clause (c) has been added [effect date 26<sup>th</sup> June 2014]. The newly added clause (c) provides one more ground for cancellation of registration i.e. the turnover of sales or purchases of a dealer, other than an importer, does not exceed rupees ten lakh during the year 2013-14.
- iii. Sub-section (6) has been amended to provide that such dealer may apply for cancellation of his registration on or before the 30<sup>th</sup> September 2014. The registration officer, after scrutinising the application, may cancel the registration of such a dealer w.e.f. 1<sup>st</sup> October 2014, in case such dealer has applied up to 30<sup>th</sup> September 2014.
- iv. Needless to say, in case if the turnover of such a dealer during 2013-14 was less than rupees 10 lakh but has exceeded rupees 10 lakh during the period from 1<sup>st</sup> April 2014 to 30<sup>th</sup> September 2014, then the registration officer shall not cancel the registration in 2014-15.

## **3. Amendment to sub-section 6 of section 20:**

- i. Late fee of rupees five thousand has been introduced, under sub-section (6) of section 20 w.e.f. 1<sup>st</sup> August 2012, for filing of late returns. Late fee was payable irrespective of period of delay. Thus, a dealer whose return is late by 1 day was also liable to pay late fee of rupees five thousand.
- ii. Sub-section 6 of section 20 has been amended w.e.f. 1<sup>st</sup> July 2014 to provide that if a dealer files return within 30 days after expiry of the due date for such return, then he shall be liable to pay late fee of rupees two thousand only instead of rupees five thousand. For a delay beyond 30 days from the expiry of the due date, late fee of rupees five thousand shall be payable.
- iii. This exemption shall be applicable for such late returns, filed on or after 1<sup>st</sup> July 2014.
- iv. The relaxation of 10 days period for uploading returns, explained in Trade Circular No. 16T of 2008 , 31T of 2008 and 1T of 2009 shall continue, provided the payment of tax as per return is made on or before the prescribed due date.

#### **4. Amendments to Section 23:**

- i. **Deletion of sub-section (9) of section 23:** A dealer was able to apply in Form 305 requesting the Commissioner of Sales Tax to issue directions to the assessing authority in the assessment proceedings in his case. Sub-section 9 of section 23 has been deleted w.e.f. 26<sup>th</sup> June 2014 and hence a dealer shall not be entitled to apply in Form-305. This amendment shall be effective from 26<sup>th</sup> June 2014. Therefore, no directions shall be given on or after 26<sup>th</sup> June 2014, irrespective of the fact that the application in Form 305 was filed prior to 26<sup>th</sup> June 2014.
- ii. **Addition of proviso in sub-section (10) of section 23:** A dealer can be assessed either for the whole year or for a return period or for a particular transaction, under different sub-sections of section 23. Certain type of dealers are required to file returns in more than one form type. For example, a dealer holding Entitlement Certificate under the Package Scheme of Incentives and

having a non-Eligible Unit is required to file returns in Form-234 as well as in Form-231. The assessing authority for both these units could be different in most of the cases. The PSI Unit is required to be assessed for every year. Once an assessing officer, in respect of the PSI Unit issues notice for assessment, the other assessing officer, in respect of the non-PSI Unit loses jurisdiction to assess.

Sub-section (10) has been amended [*effect date 26<sup>th</sup> June 2014*]. For the assessment periods commencing on or after the 1<sup>st</sup> April 2011, a dealer, who is required to file multiple returns, may be assessed separately for each return type.

**iii. Amendment to sub-section 11 of section 23:**

- a) A dealer, who is assessed under section 23(2), 23(3) or 23(4) and if he is not able to attend or remain present at the time of hearing when the assessment order had been passed, can apply in Form 316 under section 23 (11) within 30 days from the date of service of the assessment order. After verifying that the contention of applicant is correct the assessing authority can cancel the assessment order.
- b) Previously, there was no limitation period for passing an order u/s 23(11), after receipt of the application in Form 316.
- c) Sub-section 11 of section 23 has been amended [*effect date 26<sup>th</sup> June 2014*] to provide that after verifying that contentions of the dealer are correct and that the prescribed conditions have been fulfilled, the assessing authority shall cancel the order in writing within 3 months. This period of 3 months shall be computed from the end of the month in which application in Form-316 has been made.
- d) If the assessing officer does not pass an order under section 23(11) within the said period of 3 months, then the assessment order shall be deemed to be cancelled.

e) The applications u/s 23(11), filed up to 26<sup>th</sup> June 2014, shall be disposed off by the assessing authority before 30<sup>th</sup> September 2014.

**iv. Amendment to sub-section (12) of section 23.**

Sub-section (12) of section 23 provides that a fresh order of assessment, after the dealer's application in Form 316, may be passed before the expiry of a period of eighteen months from the date of service of the cancellation order u/s 23(11).

As per the amended section 23(11), in case, an assessing officer does not pass the cancellation order u/s 23(11) within the aforesaid period of 3 months, then the assessment order shall be deemed to be cancelled. An amendment has been made to sub-section (12) [effect date 26<sup>th</sup> June 2014] to provide that in case the assessment order is deemed to be cancelled then for the purpose of passing a fresh assessment order, the date on which the assessment order is deemed to have been cancelled shall be considered for the purpose of computing the period of 18 months.

**5. Amendment to section 26:**

- i. The appellate authority or the Tribunal, may grant stay to the order appealed against, by directing the appellant to deposit the disputed amount whether partly or wholly.
- ii. A proviso had been added to sub-section (6) of section 26 with effect from 1<sup>st</sup> May 2012, providing that in case an appellant seeks three adjournments or fails to attend for hearing on three dates, then the appellant shall make part payment of 15% of the disputed dues.
- iii. A proviso has been inserted in sub-section (6) of section 26 w.e.f. 26<sup>th</sup> June 2014 to govern the procedure regarding granting of stay in appeals against any order, in which claim against declarations/certificates (forms) has been disallowed on the grounds of non-production. The amended provisions are applicable only for the appeals filed on or after 1<sup>st</sup> July 2014. The amendment is explained as follows:

- a) If such appeal is filed after two years from the end of the year, to which such claim relate, then the appellant would be required to make 100% payment of tax, in respect of such claim, in order to get stay.
- b) If such appeal is filed before the expiry of two years from the end of the year to which the claim relates, then the dealer must produce the required forms till the end of the period of two years, otherwise the stay, if already granted, shall stand vacated, in respect of such dues. The appellant, in this situation, may either produce the required forms or make payment of 100% tax in respect of such claims to continue the stay.
- c) In case, an appellant receives some forms, after the assessment order is passed, then the appellant can always produce such forms before the appellate authority before part payment is fixed. The appellate authority, in such case, would not insist on any payment of tax, in respect of such forms, produced before him.
- d) The amended provision shall be applicable to appeals before the appellate authority as well as the Tribunal.
- e) It may be noted that the amended provision is applicable only to the appeals filed on or after 1<sup>st</sup> July 2014.
- f) Needless to say that part payment for dues other than those related to declarations, shall be governed by the existing provisions.

## **6. Amendments to section 29:**

### **i. Amendment to sub-section 3:**

- a) Section 29(3) provides that penalty may be imposed if a person or a dealer has concealed particulars or has knowingly furnished inaccurate particulars, misclassified, knowingly claimed excess set off of a transaction liable to tax etc.

b) Penalty u/s 29(3) may be imposed "equal to the amount of tax found due as a result of any of the acts" (i.e. up to the amount of tax due), enumerated above.

c) Sub-section 3 of section 29 has now been amended w.e.f. 26<sup>th</sup> June 2014. The sales tax authorities would continue to have discretion as regards the decision to impose penalty. Once the authority, in an appropriate case, decides to impose penalty under section 29(3), then it must impose minimum penalty equal to 25% of the amount of tax found due. The maximum amount of penalty under section 29(3) would continue to be 100% of the amount of tax due.

ii. Insertion of new sub-section 7(A):

a) Late fee has become applicable for all late returns which are filed on or after 1<sup>st</sup> August 2012. Late fee is payable even for a return, which pertains to periods prior to 1<sup>st</sup> August 2012, if filed on or after 1<sup>st</sup> August 2012.

b) Before the introduction of late fee, penalty under section 29(8) was being imposed in case of late returns. There are number of cases in which penalty under section 29(8) had already been imposed prior to 1<sup>st</sup> August 2012 but the dealer has filed returns on or after 1<sup>st</sup> August 2012. In such a situation, the dealer would be burdened with penalty under section 29(8) of rupees 5,000 as well as a late fee of rupees 5,000 under section 20(6).

c) Newly inserted sub-section 7(A) [effect date 26th June 2014] provides that in case of a dealer, who has filed late return on or after 1<sup>st</sup> August 2012 and has also paid the late fee under section 20(6), penalty, if already imposed u/s 29(8), in respect of such return, shall not be recovered. However, if in any case a dealer has paid the penalty as well as the late fee then the penalty amount shall not be refunded to him.

iii. Insertion of new sub-section 11(A):

a) Section 29(11) provides for a limitation period of 8 years for imposing penalty under any of the sub-sections of section 29. In certain situations, an assessment order/appeal order is passed after 8 years. However, in view of the limitation period of 8 years in section 29(11) for imposing penalty, the assessing authority/appellate authority is unable to impose penalty even though facts of the case may be otherwise appropriate for imposing penalty.

b) Sub-section 11(A) has been inserted [effect date 26th June 2014] in section 29 which provides that limitation period of 8 years shall not be applicable for imposing penalty under section 29, while passing an order under the Act. In other words, authority may impose penalty under section 29 even after a period of 8 years from the end of the year containing the said period, while passing an order under any other provisions of the Act. However, the authority is not permitted to pass an independent penalty order under section 29 after a period of 8 years.

iv. Deletion of sub section (12) of section 29:

a) Sub-section (12) of section 29 provided that, for imposing penalty above a particular monetary limit prior approval of the supervisory authority must be taken. A Sales Tax Officer or an Assistant Commissioner was required to obtain prior approval of the Deputy Commissioner if the penalty amount exceeded rupees 5 lakh. Similarly, the Deputy Commissioner was required to obtain prior approval of the Joint Commissioner if the penalty amount exceeded rupees 10 lakh.

b) Sub-section (12) has been deleted [effect date 26th June 2014] and therefore prior-approval for imposing penalty from the supervisory authority shall not be required.

c) This waiver of prior-approval from the supervisory authority shall be applicable for the penalty to be imposed on or after 26<sup>th</sup> June 2014.

#### **7. Amendment to Section 30:**

- i. Sub-section 4 of section 30 provides that, interest at 25% shall be payable if a dealer files a return or a revised return in the contingencies specified in that sub-section.
- ii. Interest @ 25% u/s 30(4) is payable on the additional tax payable as per return or revised return. Once a dealer opts to file return or a revised return after any of the contingencies specified in section 30(4), then the payment of interest under section 30(4) becomes mandatory. This interest is payable irrespective of the amount of the additional tax liability or the grounds for such additional tax liability.
- iii. A proviso has been added to section 30(4), which provides that interest under section 30(4) shall not be payable on account of the additional tax liability arising due to non-production of declarations or certificates.
- iv. Second proviso has been added to section 30(4). This proviso provides that if the amount of tax paid as per revised return is less than 10% of the aggregate amount of "tax paid as per the original returns", then interest under section 30(4) shall not be payable.
- v. An Explanation has also been added in sub-section (4) to explain the terms, "tax paid as per the original returns" and "tax paid".
- vi. The term, "Tax paid as per the original returns" shall, include the tax paid as per the original returns and also the amount of tax paid as per the revised returns, which are filed before the commencement of proceedings, specified in clause (a) or before the receipt of intimation specified in clause (b) of sub section (4).

vii. A revised return filed, as advised by the "accountant" in Form 704 shall be considered as an "original return" if such revised return is filed:

a) before the commencement of audit, inspection, search & seizure proceedings etc. as referred to in section 30(4)(a), or

b) before the receipt of intimation in form 604, as referred to in section 30(4)(b).

viii. In view of the Bombay High Court judgment in the case of M/s Taurus Auto Dealers V/s D.P. Amberao [49 VST 339] it is clarified that the benefit of the amended provision shall be available to the dealers filing revised return on or after 26<sup>th</sup> June 2014. The dealers, who have already filed the revised return prior to 26<sup>th</sup> June 2014 shall not be eligible for the benefit of this amended provision.

#### **8. Amendment to section 31A:**

i. Section 31A empowers the State Government to issue notification providing for Tax Collection at Source (TCS) from the successful bidders in auctions of sand conducted by various authorities. A notification has accordingly been issued on 2<sup>nd</sup> February 2013 providing for TCS @ 10%.

ii. Now clause (c) has been added in Section 31A(1) providing for TCS for minor minerals. Therefore, now the State Government has been empowered to issue notification for TCS, in respect of minor minerals. The authority awarding quarrying lease or quarrying permit, in respect of minor minerals to a dealer, would be required to collect the tax amount at the notified rate, after the State Government issues notification.

iii. In view of this amendment, consequential technical amendments have been made to sub-section (2) and sub-section (3).

iv. TCS on minor minerals shall be collected after the issue of notification in this respect.

## 9. Amendments to section 61:

- i. Sub-section (1) provides for the contingencies in which a dealer becomes liable to file an Audit Report in Form-704 in clauses (a), (b) and (c).
- ii. Clause (a) provided that a dealer, whose turnover of sales or purchases exceeded rupees 60 lakh in any year was liable to file Form 704.
- iii. The said clause (a) has been substituted [*effect date 26th June 2014*]. The substituted clause (a) now provides that a dealer:
  - a) whose turnover of sales plus the value of goods transferred to any other place of his business or of his agent or principal, situated outside the state, not by reason of sale, or
  - b) whose turnover of purchases  
  
has exceeded rupees one crore shall be liable to file the audit report in Form 704.
- iv. This amendment would be applicable for the Audit Report for 2013-14 onwards. Therefore, the dealers, whose turnover of either sales or purchases has not exceeded rupees one crore in the year 2013-14 would not be liable to file Form 704.
- v. It may be noted that for the purpose of computing the limit of turnover for audit report, the branch transfers/consignment transfers to other states would be considered and added to the turnover of sales. However, the branch transfers/consignment transfers received from outside the state shall not be added to the turnover of purchases.
- vi. As per clause (b) of sub section(1), a dealer, holding any of the Liquor Licenses, mentioned in that clause was required to file Form 704, irrespective of the turnover limit mentioned in clause (a). The said clause (b) has now been deleted. Hence, a dealer, holding any of the Liquor Licenses would not be required to file Form 704, unless the limits provided in clause (a) are exceeded.

- vii. Sub-section (2) provides that if a dealer liable to file Form 704 fails to file then after hearing the dealer, a penalty, within prescribed limits, equal to one tenth per cent of the total sales may be imposed. In the case of M/s. Ankit International, the Bombay High Court has ruled that the penalty u/s 61(2) is discretionary in nature. It held that "*the discretion must extend both to whether a penalty should be imposed and on the quantum.*"
- viii. Proviso to this sub-section provided that if such late Form 704 is filed within one month from the end of the prescribed period and if the dealer proves satisfactorily that the delay was on account of factors beyond his control, then the penalty shall not be imposed. This proviso is now deleted. In case of late filing of audit report, imposing of penalty shall be governed by section 61(2).
- ix. Dealers, required to file audit report in Form 704 are not required to file e-annexures along with the last return of the year. The dealers, whose turnover was between rupees 60 lakh and rupees 1 crore during the year 2013-14, may not have filed the e-annexures along with their return for March 2014. Such dealers would now be required to file e-annexures along with their return for the period ending on 30<sup>th</sup> September 2014. Instructions, in this regard, have already been given on the Department's web-site. Necessary amendment to the MVAT Rule is also being proposed.

**10. Amendment to section 63:**

- i. Sub-section (7) provided that if during the course of any proceedings, it appears to the authority that the quantum of tax payable or the amount of set-off or refund as disclosed in the returns or as recorded in the books of accounts by the dealer, is incorrect then it **may** send an intimation to such dealer. The intimation is sent in Form 604. Sending of an intimation in Form 604 was not mandatory.
- ii. Now, the word, "may" has been substituted with the word, "shall" in sub-section (7) [effect date 26th June 2014]. Therefore, now intimation has become

mandatory in every case, where the authority finds that the quantum of tax payable or the amount of set off or refund as disclosed in the returns or recorded in the books of accounts is incorrect.

- iii. Necessary amendments to MVAT Rules are also proposed. It is proposed that in case of Computerised Desk Audit (CDA), intimation shall be in form 604A. In all other cases, intimation shall be in form 604. The new Form 604A and amended Form 604 will be notified very soon.
- iv. It is also provided that in every case, where the audit proceedings are closed due to dealer accepting findings of auditing officer, partly or fully, a closure intimation in form 605 shall be issued.

#### **11. Amendment to Schedule A:**

- i. **Insertion of entry 2A:** A new entry 2A has been inserted in Schedule A. Aircraft spare parts, to be notified by the State Government, would be tax free, being covered by this newly inserted entry. This entry has been inserted w.e.f. 1<sup>st</sup> August 2014. [*Notification u/s 9(1) No. VAT 1514/Cr 46/Taxation 1 Dated 11<sup>th</sup> July 2014*].
- ii. **Substitution of entry 39:** Prior to this amendment, "poha, lahya and chirmura" were tax-free being covered by entry A-39. Roasted gram and dalwa were taxable @ 5%, being covered by Schedule entry C-83. Now, roasted gram and dalwa have also been included in entry A-39 w.e.f. 1<sup>st</sup> August 2014 and hence would be tax free. [*Notification u/s 9(1) no VAT 1514/Cr 46/Taxation 1 Dated 11<sup>th</sup> July 2014*]
- iii. **Insertion of entry 26A:** Copyrights are intangible/incorporeal goods. Copyrights are covered by entry (9) of the notification no. VAT 1505/CR-114/Taxation 1 dated 1<sup>st</sup> June 2005, issued under Entry 39 of Schedule C and are taxable at 4% till 31<sup>st</sup> March 2010 and at 5% thereafter. The said entry (9) in the notification was substituted with effect from 1<sup>st</sup> May 2011. From 1<sup>st</sup> May 2011, copyrights for distribution and exhibition of cinematographic films in theatres and cinema halls have been excluded from the said

notification. Therefore, such copyrights were consequentially covered by the Schedule entry A-27 from 1<sup>st</sup> May 2011 onwards.

However, from 1<sup>st</sup> April 2005 to 30<sup>th</sup> April 2011, all types of copyrights, including copyrights for distribution and exhibition of cinematographic films in theatres and cinema halls were taxable at 4% or 5%, as mentioned above.

Now a specific entry 26A has been inserted, by the Amendment Act XXVII of 2014 dated 26<sup>th</sup> June 2014, in Schedule A, in respect of the "copyrights for distribution and exhibition of cinematographic films in theatres and cinema halls, sold during the period from 1<sup>st</sup> April 2005 to 30<sup>th</sup> April 2011". Hence, sale of such copyrights during this period would be exempt from tax under Schedule entry A-26A.

It is clarified that, a cinematographic film may also involve some other copyrights like copyright for music, mobile ringtones, satellite rights, TV rights etc. All these copyrights would continue to be taxable for all the periods starting from 1<sup>st</sup> April 2005 onwards under schedule entry C-39.

## **12. Amendments to Schedule C:**

- i. **Substitution of entry 25:** All kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise including cotton waste was taxable @ 5% under entry 25. Now this entry has been substituted w.e.f. 1<sup>st</sup> August 2014. As per the substituted entry, rate of tax on all kinds of cotton (indigenous or imported) in its unmanufactured state, whether ginned or unginned, baled, pressed or otherwise excluding cotton waste would be taxable @ 2%.

Cotton waste would continue to be taxable @ 5%.

It needs to be noted that surgical cotton was always covered by the residuary entry, being manufactured cotton and hence would continue to be covered by the residuary entry and taxable at 12.5%.

*[Notification u/s 9(1) no VAT 1514/Cr 46/Taxation 1 Dated 11<sup>th</sup> July 2014].*

**ii. Insertion of entries 55A and 55B:**

The Supreme Court in the case of Bansal Wire Industries (42 VST 372) held that 'stainless steel wire' is not 'declared goods', as per section 14 of the Central Sales Tax Act, 1956. The implications of this judgment were explained in Trade Circular no. 11T of 2014 issued on 4<sup>th</sup> April 2014. It had been explained in the said circular that all transactions effected on or after 26<sup>th</sup> April 2011 would be governed by this Supreme Court judgment and for periods prior to 26<sup>th</sup> April 2011, the matter was referred to the Government for guidance.

The issue before the Supreme Court was regarding clause (iv) of section 14 of the Central Sales Tax Act, 1956 (CST Act). This clause (iv) has 16 sub clauses.

Sub-clause (ix) in that clause reads as follows:

"(ix) tool, alloy and special steels of any of the above categories."

Due to positioning of this sub-clause (ix) and in view of the term, "of any of the above categories" the Supreme Court interpreted that tool, alloy and special steels, which fall in the categories, mentioned in clauses (x) to (xv), would not be declared goods under section 14.

Entry 55 in Schedule 'C' is identical to clause (iv) of Section 14 of the CST Act. Hence, the principles laid down by the Supreme Court in this judgment are squarely applicable to this entry. As a consequence, the tool, alloy and special steels of the categories specified in clauses (x) to (xv) became taxable at 12.5%.

A new entry 55A has now been inserted in Schedule 'C' to cover tool, alloy and special steels of any of the categories, specified in clauses (x) to (xv) of entry 55. This entry is applicable for the sales of these goods

during the period from 1<sup>st</sup> April 2005 to 30<sup>th</sup> April 2011.  
Rate of tax shall be 4% for this period.

Another entry 55B has been inserted for these goods sold during the period from 1<sup>st</sup> May 2011 onwards and would be subjected to tax @ 5%.

*[These entries have been added by the Amendment Act XXVII of 2014 dated 26<sup>th</sup> June 2014.]*

- iii. **Substitution of entry 83:** Roasted gram and dalwa were covered in entry C-83. Now, since roasted gram and dalwa have been included in entry A-39, they have been excluded from entry C-83. It may be noted that fried pulses including fried gram would continue to be taxable @ 5%.

However, roasted or fried pulses, when served for consumption, would continue to be covered by the residuary entry and taxable @ 12.5%. *[Notification u/s 9(1) no VAT 1514/Cr 46/Taxation 1 Dated 11<sup>th</sup> July 2014]*

- iv. **Sub-entry (2A) added in entry 107:** Sub-entry (2) in entry 107 covers capital goods and parts and components, thereof as may be notified by the State Government. So far, notification has not been issued under this sub-entry.

A new sub-entry (2A) has been inserted in entry 107 to cover the capital goods and parts and components, thereof, when sold to the State Government Departments or the Central Government Departments. The State Government has been empowered to notify the capital goods, for the purpose of this sub entry. The capital goods and parts and components, thereof, as may be notified by the State Government, would be covered by this sub-entry and taxable @ 5%. *[Notification u/s 9(1) no VAT 1514/Cr 46/Taxation 1 Dated 11<sup>th</sup> July 2014]*

*Notification issued by the State Government shall be immediately made available on the Department's web site, after it is published in the Official Gazette.*

**13. Other amendments, relating to Budget Speech:**

- i. **Border Check Post Draft Rules:** Border Check Posts would be soon functional in the State. Necessary amendments in the Maharashtra Value Added Tax Rules, 2005 have been drafted. Draft rules were published on 23<sup>rd</sup> June 2014 and were made available on the Department's web site. Suggestions or any objections, in respect of the draft rules were invited upto 25<sup>th</sup> July 2014. The suggestions/ objections received would be considered by the State Government and final amendments to rules would be published.
- ii. **Concessional late fee for old returns:** Notification u/s 20(6) has been amended on 9<sup>th</sup> July 2014. For any of the periods upto February 2014, the defaulters can file returns, by paying late fee of just rupees 1,000, instead of rupees 5,000. Trade Circular explaining the amendment has already been issued on 2<sup>nd</sup> August 2014[Read Trade Circular No 13T of 2014]
- iii. **Review of notifications u/s 8(5) of the Central Sales Tax Act:** As announced in the Budget Speech, a review of all the notifications, issued under section 8(5) of the Central Sales Tax Act, 1956 is being done and fresh notification would be issued by the State Government.
- iv. **Retailer Composition Scheme:** The existing Composition Scheme for retailers would be replaced by another simplified and attractive composition scheme, which would be effective from 1<sup>st</sup> October 2014. A notification u/s 42 of the MVAT Act would be issued by the State Government. A separate Trade Circular would be issued, explaining the features of the new composition Scheme.
- v. **Luxury Tax exemption to Yashada:** Notification, exempting the payment of Luxury Tax by Yashada, would be issued u/s 22 of the Luxury Tax Act, 1987 by the State Government.

vi. **Exemption to inter-state sales of unmanufactured tobacco:** As announced in the Budget Speech, a notification u/s 8(5) of the Central Sales Tax Act, 1956 would be issued by the State Government.

14. You are requested to bring the contents of this circular to the notice of all the members of your association.

Yours faithfully,



**(Dr. Nitin Kareer)**

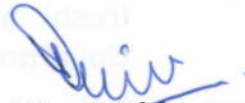
Commissioner of Sales Tax  
Maharashtra State,  
Mumbai.

No.VAT/AMD-2014/2/Adm-8

Mumbai Dt: 06.08.2014

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Trade Cir. IST of 2014

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



**(Vivek Bhimanwar)**

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