

Office of the
Commissioner of Sales Tax,
Maharashtra State,
8th floor, Vikrikar Bhavan,
Mazgaon, Mumbai – 400 010.

TRADE CIRCULAR

No. Build-Devep/Adm.Relief.06-10/Adm-8
Trade Circular No. 12T of 2014.

Mumbai, dated 17/04/2014

Sub: Certain queries raised by the Trade and Associations in respect of computation of tax liability of developers

BACKGROUND:

In view the judgment of the Supreme Court in case of M/s. Larsen & Toubro Limited & Anr, (65 VST 1), it was necessary to frame rules under MVAT Act to provide for-

- i) the levy of tax on goods which are used in works contract, from the stage when agreement is entered with the flat buyer.
- ii) the deduction of the actual cost of the land which is higher than that determined in accordance with the Ready Reckoner.

Amendment to Rule 58(1) and (1A) of the Maharashtra Value Added Tax Rules, 2005 was carried out by notification No. VAT 1513/CR-147/Taxation-1 Dt. 29/01/2014. Hon. Supreme Court by its order Dt. 31/01/2014 clarified that if the developers file revised returns in terms of the Supreme Court order And/or Notification Dt. 29/01/2014, such returns will be examined by the concerned assessing officer appropriately in accordance with law.

2. Trade Circular 7T of 2014 Dt. 21/02/2014 was issued in this regard and the returns for the period from 20/06/2006 to 31/12/2013 were allowed to be revised till 30/04/2014 in case of developers.

3. There were certain queries and suggestions received from the trade and associations on the amended rule 58. The issues raised are examined and clarified as under:-

- (1) To prescribe format for issuance of certificate by the RCC consultant or clarify that the certificate issued by registered RCC consultant confirming that “the plinth level of (building name) is/was completed on (date)” shall be sufficient.**

Ans. Normally there is procedure in local bodies to issue plinth level completion certificate. Such certificate issued by the local body shall be accepted. Certificate of registered RCC consultant for plinth level completion is not allowed, where there is a procedure for grant of certificate by local bodies. Registered RCC consultant certificate is allowed for completion of 100% RCC framework. The said certificate need not be in any specific format. However, it must clearly certify the date on which 100% RCC frame work for entire building was completed.

- (2) Whether completing of 100% RCC framework should be read as 100% RCC framework of the floors or entire building being constructed?**

Ans. The 100% RCC framework means 100% RCC framework of the entire building.

- (3) Whether extension of the commencement certificate by endorsement on the back side would be accepted as certificate of plinth level completion?**

Ans. Different local bodies may have different procedure and format to issue completion certificate. Certificate issued by local bodies in any format shall be accepted.

- (4) In order to comply with the proviso inserted in Rule 58(1A) what is the procedure required to be followed by the builder/developer? For**

uniformity, format of the certificate may be prescribed and indicate the authority within that department who would be authorised to issue such certificate to the members.

Ans. The Department of Town Planning and Valuation has been informed about the changes made to rule 58 of MVAT Rules, 2005. It is expected that they will soon devise the procedure for issuance of such certificate.

(5) Whether the certificate issued by a Chartered Accountant for the Computation of the 'value of the goods' incorporated in the contract is acceptable?

Ans. No.

(6) Whether the Department of Town Planning and Valuation would issue letter certifying of having verified the actual cost of land as per claim made by the builder/developer?

Ans. The Department of Town Planning and Valuation will certify the actual cost of land.

(7) Rule 58(1B) requires RCC consultant's certificate for claiming stage-wise deductions. While it will not be possible for dealers to obtain RCC consultants certificate, for period 2006 till December 2013, certificate issued by Architects or other evidence in this respect be accepted.

Ans. No other certificate other than registered RCC consultant shall be accepted for certifying the stage of completion of 100% of RCC framework.

(8) While the stamp duty has been collected on higher of the actual cost of land or value determined in accordance with the Annual Statement of

Rates (including guidelines) prepared under the provisions of the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995; however requirement of proving before the Department of Town Planning and Valuation in cases where stamp duty has been paid on the basis of actual cost of land is resulting into repetition.

Ans. As per amended rule 58(1A), any claim of land value higher than the ready reckoner value of the land shall be made before the Department of Town Planning and Valuation. Certificate given by the Town Planning Department shall be accepted by the Sales Tax Department.

(9) The amended rule 58(1A) of the Maharashtra Value Added Tax Rules, 2005 does not include profit earned on sale of land.

Ans. Rule 58 provides for deduction of land cost as per ready reckoner value. Any claim regarding the actual cost of the land is higher than ready reckoner value has to be made before the Department of Town Planning and Valuation.

(10) Land cost deduction as per rule 58(1A) is available. Similarly, deduction is available towards subcontracted work, labour and other services under rule 58(1) and stage wise deduction under rule 58(1B). Can the dealer claim the entire deduction in the first month itself? In case of excess i. e. consideration received during that period less land deduction towards subcontracted work, labour and other services and stage wise deduction under rule 58(1B), may result into negative amount. Whether this amount can be adjusted in other returns/periods?

Ans. Deduction for land can be claimed in the first year or proportionately during the period of construction. For each return period, the deduction towards

subcontracted work, labour and other services under rule 58(1) and stage wise deduction under rule 58(1B) has to be computed and claimed. It is possible that during a return period, deductions are more than the receipts and as a result it is not possible to claim the entire deduction in that return period. In such cases, the unclaimed/unutilized amount should be adjusted to any other return of the project until the end of the project.

- (11) To what extent the builder/developer would be eligible to claim subcontractor deduction, labour and service charges deduction attributable to the work done until Stage during which the developer enters into a contract with the purchaser of the flat/unit?**

Ans. As deduction of work done until stage during which contract is entered is allowed under rule 58 (1B), no further deduction on account of sub-contract or labour deduction attributable to the work done until stage during which contract is entered shall be available. As per provision of rule 58(1B), first the deduction under rule 58(1A) is to be applied from the agreement value then the deduction under rule 58(1) and the stage-wise deduction is to be applied to balance amount.

- (12) For the periods 2006 to 2010, Considering that certain flats have been handed over to the buyers, whether percentage specified in table for purpose of Rule 58(1B) for determining the value of goods involved in works contract from the stage the developer enters into contract with the buyer can be followed in the initial year for the entire agreement value or every time certain amount is received/receivable from the buyer of the flat/unit?**

Ans. The liability is to be determined upon the amount received or receivable by the dealer in a particular return period.

(13) Whether percentage specified for determining the value of goods involved in works contract from the stage the developer enters into contract with the buyer will be applicable to builder/developer opting to pay tax under composition scheme?

Ans. No. The stage wise deduction is not available under Composition Scheme. Composition amount has to be paid on entire agreement value.

(14) Though the notification provides for different stages, the said sub-rule does not provide for the deduction which should be available if the said dealer proves to the satisfaction of the assessing officer about the work done prior to entering into the contract with the probable customer. Thus it is mandatory to pay the tax as per the stages mentioned in the rule.

Ans. It is mandatory to pay tax as per the stages mentioned in rule 58(1B). The percentage of deduction mentioned in the rule at the various stages of construction shall only be available as it is the appropriate measure of tax. It is not open to the dealer to claim or prove that the actual cost of goods consumed till a particular stage/s of construction is different than it mentioned in rule 58(1B).

(15) The stages mentioned are not based on any scientific data, e.g. after the plinth level to completion of 100% RCC work, 85% of the works contract amount is estimated. Whereas as per the Construction Industry's standard, the actual cost incurred upto RCC work is around 45%.

Ans. The stages mentioned and percentage deduction provided for various stages of

construction are based upon the recommendations of the Public Works Department of Government of Maharashtra.

- (16) In case of builder/developer whether the excess tax payment in certain years can be adjusted against additional tax liability of remaining years including subsequent period/years?**

Ans. As mentioned in earlier FAQ 38, builder/developer can adjust refund of any year to any other year for the period from 20/06/2006 to 31/03/2010. For the period from 01/04/2010 to 31/03/2012 it was administratively allowed in Trade Circular 6T of 2011 and 6T of 2012 to carry forward refund upto Rs. 1 lakh to subsequent financial year. After 01/04/2012 refund upto Rs.5 lakhs can be carried forward to next financial year as per provision of section 50 of MVAT Act, 2002.

- (17) What shall be procedure of claiming refund on account of excess tax paid or set-off of tax paid in case of the builder/developer?**

Ans. It can be claimed in revised return, or during the course of Assessment. For the period in which due date of filing of Form 501 is yet not over, it is necessary to claim refund by filing Form 501. In other cases, where period of filing of form 501 is over and the dealer has revised the returns till 30/04/2014, then such cases will be assessed.

- (18) Re-computation of liability for the period 2006-07 till December 2013 may result in refund to be carried forward in excess of Rs. 5 lakhs to the subsequent year. Such refund be allowed to be carried forward for period upto 2013-14. It is quite likely that period for filing refund application in form 501 may be over for period upto 2011-12. In view of this it is**

appropriate that the refund be allowed to be carried forward administratively.

Ans. Request to carry forward refund beyond Rs. 5 lakhs is not be accepted. However for the periods where date of filing of Form 501 is over, refund shall be granted after assessment.

(19) In terms of the order and judgment of the Hon. Supreme Court dated 31.01.2014 in SLP No.14153/2013 whether the assessing authority would consider for examination in accordance with law the revised returns filed by the builder/developer after the date of issuance of Notice of assessment in Form 301.

Ans. Yes, it is clarified in Trade Circular 7T of 2014.

(20) Can the builders/developers file one single revised return (Annual) for the respective period comprised in one year for the period from 2006-07 to 2012-13.

Ans. As per section 20(4) (a) of MVAT Act, 2002, dealer requires to file separate return for each return period. However, now administratively it is decided only for the developers, to allow them to file one annual return for the entire year, for the period from 2006-07 to 2012-13.

(21) In several cases, builders have opted registration beyond the date fixed as per circular no 17T/2012 i.e 15/10/2012. In several cases, returns for one or several cases have not been filed / uploaded and / or ad-hoc taxes paid. Such dealers may also be allowed to regularise their liability because in many cases they were advised not to file returns in view of the pending litigations. Some such dealers would have filed application for DDQ also.

Ans. The date for making application for registration and for filing of return was 15/10/2012 and 31/10/2012. These dates were given by Hon. Supreme Court and hence same cannot be altered. The consequences of not obtaining registration or not filing return till that date will follow as per the Supreme Court's order. However, any return to be filed or revised after the date of notification dated 29/01/2014, has to be in conformity with amended rule 58. As mentioned in Trade Circular 7T of 2014 dated 21/02/2014 such returns shall be filed by 30/04/2014. All such return shall be assessed.

(22) The applicability of interest on the tax liability determined now in accordance with new rules.

Ans. Interest is applicable as per provisions of law. However, the stay to coercive recovery of interest granted by Division Bench of Supreme Court in the SLP No. 17709 of 2012 continues till it is finally disposed by Supreme Court.

(23) The value of goods incorporated in the contract shall be equal to the cost of the goods incorporated in the contract plus the profit attributable to such cost.

Ans. Discharging the tax liability by applying the method of Cost of material plus Gross Profit has been discarded by the Hon. Bombay High Court by its judgment in Writ petition 2440 of 2012 dated 30/10/2012. In this respect, Trade Circulars 18T of 2012 dt. 26/09/2012 and 7T of 2014 dt. 21/02/2014 are already issued.

(24) The profit attributable to the cost of the goods incorporated in the contract shall be deemed to be equal to 20% of such cost.

Ans. Trade Circulars 18T of 2012 dt. 26/09/2012 and 7T of 2014 dt. 21/02/2014 have already been issued. No method other than the statutory method is

allowed to discharge the tax liability in case of works contract.

- (25) Almost all builders have been served with multiple notices in either Form 301, Form 302 or in Form 603. Only one officer may be designated in such cases.**

Ans. It is convenient to complete the assessment of the developers for the entire project. Therefore, it is decided that all assessment periods of one particular TIN shall be allotted to one officer for the assessment. In case, multiple notices are received from the different officers for the same TIN, the same may be brought to the notice of the Joint Commissioner of Sales Tax (EIU) by e-mail at dceiu.dataunit@gmail.com who shall make the necessary changes.

- (26) How the builder/developer should be eligible to claim set-off of tax paid on purchases of material used in the work done until Stage during which the developer enters into a contract with the purchaser of the flat/unit?**

Ans. The builder/developer is eligible to claim set-off on purchases in respect of transfer of property in goods from the stage where the developer enters into contract with the purchaser. Needless to state that the set-off is subject to restrictions of rule 53 and rule 54 of MVAT Rules, 2005.

- (27) Whether the developer can collect tax without issuing tax invoice?**

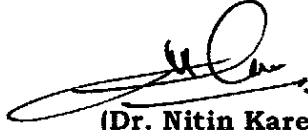
Ans. In the earlier FAQ's, it was clarified that VAT can be collected by raising debit note.

- (28) Whether stamp duty paid is available as deduction/set off determining the sale price?**

Ans. Tax is leviable on that portion of the value of the immovable property in which

owing to the agreement between the developer/contractor & the purchaser, there is transfer of property in the goods used in the construction of the property. The value of stamp duty does not form part of the contract value. Stamp duty is not included in the cost of the flat but it is levied on the cost of the flat. Therefore tax shall not be levied on value of Stamp Duty paid or payable.

4. If any member of the trade has any doubt, he may refer the matter to this office for further clarification.


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


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