

# **Latest Amendments In DVAT Act, 2004**

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# Scheme of the Act

- Firstly to calculate the output tax liability by applying the rate of tax as specified u/s 4 or under composition scheme on turnover of sales and making adjustment to tax u/s 8 read with Rule 7A
- To calculate input tax credit on turnover of purchases as per the provisions of Section 9 and adjustment to tax credit under Section 10 read with rule 6 & 7 of DVAT Rules 2005
- Difference either to be paid or to be claimed as refund as per provisions of Section 38 or to be carried forward to next tax period in terms of Section 11 of the Act

# Scheme of the Act

- Tax on value addition
- Most scientific method of collecting indirect tax.
  - If implemented in letter and spirit there cannot be any fraud.
  - However, some fraudulent dealers tried to mis-utilize the scheme to claim refund. Thus department has to be cautious with regard to dealers who claim refund from the department.
- Strength of the chain is the strength of the weakest link. Mis-utilization of ITC is the key factor

# Scheme of the Act

- Amendment in only Section 9 and 10 and both the sections relates to claim of ITC
- Amendment in section 9(1) and insertion of new sub-clause 2(g)
- Insertion of sub-clause 5 in section 10
- New rule 6A and sub-clause 9 inserted in Rule 34
- No amendment in provisions relating to calculation of output tax liability

# Purposes for making these Amendments

- To counter the malpractices in claiming ITC
  - (a) making the sales outside the books of accounts to reduce the net tax payable
  - (b) making the payment of tax on value addition only without making payment/making short payment of tax on purchases
  - (c) reducing the sale price and compensating the gross loss of the selling dealer by giving incentives to the selling dealer

# DVAT – LATEST AMENDMENTS

- Options Available To The Department
  - Lessons from Excise where VAT is implemented since 1986. To allow the credit on turnover of purchases but not to allow cash refund except in the case of exporters, to dealers making inter-state sales and where finished product is liable to be taxed at lower rate as compare to raw material. Cash refund to such dealers only after proper safeguards.
  - Similar provisions from other States like Haryana i.e. simplified method of getting certificate from the selling dealer
  - Administrative measures like self declaration that stock shown in return is physically available and lying in premises registered with the department and compulsory prosecution in case of wrong statement.
  - No right to put the whole dealer community at ransom because of some dishonest dealers

# DVAT - LATEST AMENDMENTS

- **Section 9 (1):** Subject to sub-section (2) of this section and such conditions, restrictions and limitations as may be prescribed, a dealer who is registered or is required to be registered under this Act shall be entitled to a tax credit in respect of the turnover of purchases **occurring during the tax period [to the extent of proportion of the goods which have been put to sale]** in the course of his activities as a dealer and the goods are to be used by him directly or indirectly for the purpose of making
  - (a) sales which are liable to tax under section 3 of this Act; or
  - (b) sales which are not liable to tax under section 7 of this Act.

**Explanation:** Sales which are not liable to tax under section 7 of this Act involve exports from Delhi whether to other States or Union territories or to foreign countries.

# “PUT TO USE” AS INTERPRETED UNDER

## INCOME TAX ACT

- The term ‘put to use’ has been used in section 32 (Dealing with depreciation) of Income Tax Act, 1961. While interpreting the term various courts have defined the term as under :-
  - Expression ‘put to use for 180 days’ cannot be interpreted to mean as ‘exploited for 180 days’ but it would comprehend those cases also where machinery has been kept ready by owner for its use in business and failure to use it actively in business has not been, on account of its incapacity for being used for that purpose or its non-availability - **Siv Industries Ltd. v. Dy. CIT [2009] 187 Taxman 442 (Mad.)**.
  - Where machinery was kept ready for use but could not be put to use, assessee would be entitled to depreciation on machinery - **CIT v. Nahar Exports Ltd. [2007] 163 Taxman 518 (Punj. & Har.)**



# DVAT – LATEST AMENDMENTS

- **Rule 6A (1)**

For the purpose of working out the entitlement of tax credit under sub-section (1) of section 9 of the Act of the extent of proportion of the goods which have been put to sale during the tax period, the input tax credit on the closing stock available with the dealer at the end of every tax period shall be carried forward to the next tax period or the following tax period or periods, as the case may be, till such stock is sold by the dealer;

# DVAT – LATEST AMENDMENTS

- **IMPLICATIONS**

- One to one co-relation which is against the basic scheme of the VAT Regime. In contradiction to VAT principles as made applicable to excise and service tax and is going to be the basis for implementation of GST
- Investment in closing stock goes up to the extent of tax paid on such stock
- Sale made but not recorded in books of accounts could not be taxed therefore department founded a novel way to give credit of ITC only when the goods are sold
- Allowance of ITC is deferred to the month of sales and not denied to the buying dealer

# DVAT - AMENDMENTS

## How to calculate the value of eligible ITC

- ITC on turnover of purchases – Tax Credit on the value of closing stock for the first tax period and thereafter adjustment with opening and closing stock
- Firstly calculation of the valuation of closing stock itself is a tedious job and some times almost impossible particularly in the case of manufacturers, chemists, kiriyana goods dealers and D retailers
- Moreover even if it is possible whether one would like to reconcile financial records vs. store records vs. physical stocks every month. Is it not penny-wise and pound foolish.
- Looking from another perspective how many dealers do physical verification of stock and compare it with book records . More difficult for the dealers having presence in number of states

# DVAT - AMENDMENTS

## **How to calculate the value of eligible ITC – (Continued)**

- Five Trading accounts to be prepared on the basis of rate of tax i.e. NIL, 1%,4%, 12.5% and 20%
- ITC on closing stock to be calculated on average rate of tax on turnover of purchases
- In both the situations some amount of guesswork is needed
- Question of refund does not arise except for the exceptions provided in the proviso
- Final accounts to be submitted within 9 months from the end of financial year

# DVAT – LATEST AMENDMENTS

- **Proviso to Rule 6A(1)**

Provided that this sub-rule shall not prevent the claim of refund of a dealer

- for sales already effected during the relevant tax period or
- to a dealer who makes sales in the course of exports out of India,
- or in the course of inter-state trade and commerce,

or,

- in such cases where the dealer being a manufacturer is required to make purchases of raw materials taxable at a higher rate of tax, while the sales of goods manufactured by him (not being goods exempt under section 6 as specified in the first Schedule to the Act) are taxable at the lower rate under the Act.

# DVAT – LATEST AMENDMENTS

- Dealers falling under exceptions as provided in proviso can claim refund – Rightly so as in other cases refund cannot arise
- Tax Credit is available on ITC on turnover of purchases to be adjusted with the value of opening and closing stock [as discussed in previous slide] but no restriction on claiming refund; or
- Does it mean that full tax credit is available without adjusting the same with the tax credit on opening and closing stock in the case of exceptions provided in proviso? – In my opinion ‘No’, the only advantage is claim of refund

# DVAT – LATEST AMENDMENTS

## **CONCLUSION:**

- Tax credit not available on the value of closing stock for the first tax period commencing after 01.04.2010 and to be adjusted with the value of opening and closing stock in subsequent tax period
- Exceptions provided in proviso to Rule 6A(1) can claim refund but eligible ITC to be claimed

# DVAT – LATEST AMENDMENTS

- **Section 9(2)(g) - No tax credit shall be allowed:**
  - to the dealers or class of dealers unless the tax paid by the purchasing dealer has actually been deposited by the selling dealer with the Government or has been lawfully adjusted against output tax liability and correctly reflected in the return filed for the respective tax period.



# DVAT - AMENDMENTS

- **Issues**
  - Lawfully included (and not lawfully adjusted against) in output tax liability
  - How to implement it when seller and buyer are having different tax periods particularly when selling dealer is having a longer tax period
  - Not the responsibility of buyer to ensure the above conditions but he has to face the consequences. No control over the activity of selling dealer **or** the assessing officer who has to ensure the compliance of this section

# DVAT - AMENDMENTS

Against the already accepted legal position i.e. buying dealer cannot be penalised for the fault committed by the selling dealer and also against the principles of natural justice

Judgments:-

- (i) Chunni Lal Prasadi Lal Vs CST 62 STC 112 (SC)
- (ii) Milk Food Review 28 DSTC J-33
- (iii) J.K. Trading Corp. Vs. CST 24 DSTC C-10
- (iv) Vimal Electricals Vs CST 28 DSTC J-73
- (v) Studio Saket Vs CST 28 DSTC J-137
- (vi) Kwality Paint Industry Vs CST 34 DSTC J-9 (STAT)
- (vii) Vasco Enterprises Vs CST 28 DSTC J-290
- (viii) A.D.M. Stores & Others Vs CST 18 DSTC J-290
- (ix) K.D. Metal Industries Vs CST 34 DSTC J-36 (STAT)
- (x) Calcutta Wax Trading Co. Vs CST 32 DSTC J-195
- (xi) Ganesh Chemicals Vs CST 28 DSTC J-261

# DVAT – LATEST AMENDMENT

- **Rule 6A(2)**
  - Before allowing the claim of input tax credit to a dealer, the assessing authority may satisfy himself that the conditions laid down in clauses (g) of sub-section (2) of section 9 of the Act are also satisfied.
- **Issues**
  - If selling dealer is having a longer tax period, VATO shall either contravene Section 38(3) or 9(2)(g) and where the buying dealer has opted for cash refund

# DVAT - AMENDMENTS

- **CONCLUSION**
  - Department to deny ITC to the purchasing dealer for the tax he has paid to the selling dealer in case he does not pay to the government and duly reflect in its return submitted to the department .
  - Provision is likely to stay because of huge financial implications and department's lack of faith in its own administering machinery .

# DVAT – LATEST DEVELOPMENT

- **SUGGESTIONS FOR THE BUYER**
  - Dealer may opt for composition scheme wherever feasible and even at the cost of splitting its business wherever possible. Because under composition scheme , provisions of section 9 will not be applicable and in terms of section 16(4) the dealer net tax shall be the amount determined at the rate of one paisa in the rupee of the turnover of the dealer
  - Buying dealer has to be cautious while making purchases from dubious dealers

# DVAT – LATEST AMENDMENTS

## Rule 34 (9)

Before allowing the claim for refund to a dealer under section 38 of the Act, the Authority concerned **shall** satisfy himself that the conditions laid down in the clause (g) of sub-section (2) of section 9 of the Act are fulfilled.

- Manage your affair in such a manner that no refund becomes due to you

# DVAT – LATEST AMENDMENTS

- **Section 10(5)**

Where the goods which have been purchased by a dealer are sold at a price lower than the price at which it was purchased by the dealer, the tax credit on such purchases **shall be reduced proportionately in the tax period during which the goods are sold.**

**Explanation.** – The tax credit claimed on a particular purchase shall not exceed the amount of tax payable on its sale.

**KBACE TECH PVT LTD - (ST/304, 341/08)  
2010-TIOL-564-CESTAT-BANG**

(Total 12 Cases)

- Rules Cannot supersede Statutory Provisions
- No refund in respect of services not consume for providing output services
- Proposed retrospective amendment to Notification 5/2006-CE(NT) does not alter the relevant statutes or rules
- Circular 120 dated 190/01/2010 many not have binding nature as it is does not indicate that it has been issued u/s 39 (b) of Central Excise Act.



# DVAT – LATEST AMENDMENTS

- **ISSUES**
  - No justification as VAT is implemented on Invoice based method
  - Tax credit shall be reduced proportionately in the tax period during which the goods are sold – logically correct as amount of reversal cannot be ascertained without sale price
  - Tax credit claimed on a particular purchase shall not exceed the amount of tax payable on its sale. Provisions are applicable on a particular purchase basis i.e. bill wise and not commodity or period wise
  - Difficult to implement if overall there is gross profit though some of the goods are sold at lower price as compared to its purchase price

# DVAT – LATEST AMENDMENTS

- **Rule 6A(3)**

The provisions of sub-section (5) of section 10 of the Act relating to proportionate reduction of tax credit on purchases of goods sold at a price lower than the purchase price shall apply to the cases where, **during the tax period, the dealer receives credit note or notes from the selling dealer on account of discount, commission, rebate, remission in price or incentive, or by whatever name called.**

**Explanation-** For the removal of doubt, it is hereby clarified that the provisions of sub-section (5) of section 10 of the Act shall not apply to a case where **in the ordinary course of business** the goods are sold by a dealer at a loss.

# DVAT - AMENDMENTS

## ISSUES:

- Restricted the scope of section, very limited applicability if read with rule which is self contained code in itself
- Apply to the cases where, during the tax period, the dealer receives credit note or notes from the selling dealer on account of discount, commission, rebate, remission in price or incentive, or by whatever name called.
- Against the statutory provision where reduction of tax credit is envisaged in the month of sale.
- Otherwise this rule is welcome because it has simplified the things for the dealer. In my opinion but for this rule it was almost impossible to implement the said proposition because of various accounting issues involved in it.

# DVAT - AMENDMENTS

## CONCLUSIONS:

- Rigorous of the section has been minimized to a great extent by restricting its applicability only in cases where credit note/notes are issued by the selling dealer. Exemption is provided where sale take place at a lower than price due to any business reasons like price fluctuations, deterioration in quality or any other reason.
- Reversal to be done in the tax period when credit note/notes are received further makes the implementation much easier.
- No major implications
- Can be nullified by issuing credit notes in terms of Section 51 read with Rule 45

# DVAT – LATEST AMENDMENTS

- **Rule 6A(4)**

In the cases where the sale has been made at price lower than the purchased price in Pursuance of the administered prices of the oil companies, that is to say, Indian Oil Corporation, Hindustan Petroleum Corporation Ltd. and Bharat Petroleum Corporation Ltd. the provisions of section 10(5) shall not apply.

# DVAT - AMENDMENTS

- Amendment in DVAT-16 to give details:-
  - Party wise purchase
  - Party wise sales
  - Details of Opening & Closing Stock
- Whether new format is applicable for the returns to be filed for the month/quarter/half year/year ending March, 2010?
- It is being explained that commissioner has issued clarification that new form is not applicable for the tax period ending march.

# Other Important Amendment

- Change in Rate of Tax
- **Costing** upto Rs.....:-  
Writing Instruments, Mobile Phones,  
Readymade Garments, Watches
- **What does it mean ?**
- Is it cost to the Seller or cost to the buyer?

## NOTIFICATION

**No. F.F. 3(27)/Fin(T&E)/2009-10/JSfin/195      Date:**  
**17.03.2010**

No. F.F. 3(27)/Fin(T&E)/2009/ In exercise of the powers conferred by section 102 of the Delhi Value Added Tax Act, 2004 (Delhi Act 3 of 2005), the Lt. Governor of the National Capital Territory of Delhi, hereby, makes the following rules to further amend the Delhi Value Added Tax Rules, 2005, namely:-

### **RULES**

- 1. Short title and commencement** – (1) These rules may be called the Delhi Value Added Tax (Amendment) Rules,2010.  
(2) They shall come into force on the date of notification in Delhi Gazette.
- 2. Amendment of Rule 7** – In the Delhi Value Added Tax Rules, 2005 (hereinafter referred to as “the principle Rules”), in rule 7, in sub-rule (1),-
  - (i) for clause (b) of the following clause shall be substituted, namely:-  
“(b) In the case of goods specified in the third schedule – 40 percent”
  - (ii) after clause (d), the following clause shall be inserted, namely:-  
“(e) declared goods, as defined from time to time in section 14 of the Central Sales Tax Act, 1956 (74 of 1956), - 50%



## **NOTIFICATION**

**No. F.F. 3(27)/Fin(T&E)/2009-10/JSfin/195      Date:**

**17.03.2010**

3. Amendment in Form DVAT-16- In the principle Rules, in the Form DVAT-16 appended therein, -
- (i) after entries in row R 5.2 and before the entries in row R 5.3 the following row shall be inserted namely:-  
“R 5.2 (1) Goods taxable at 5%”;
  - (ii) In row R 5.7, after the words “exempted sale”, the words “other deduction claimed” shall be inserted:
  - (iii) after entries in row R 6.2, the following rows shall be inserted namely:-
    - “R 6.2(1) Goods taxable at 1%
    - R 6.2(2) Goods taxable at 4%
    - R 6.2(3) Goods taxable at 5%
    - R 6.2(4) Goods taxable at 12.5%
    - R 6.2(5) Goods taxable at 20%
    - R 6.2(6) Goods taxable at 4%
    - R 6.2(7) Goods taxable at 12.5%
    - R 6.2(8) Exempted purchase”
  - (iv) For the words “Balance brought forward from line R8” occurring above row R 9.1. the following entry shall be

## **NOTIFICATION**

**No. F.F. 3(27)/Fin(T&E)/2009-10/JSfin/195      Date:**  
**17.03.2010**

- (v) after row R 11.7, the following row shall be inserted, namely:-  
“R 11.7(1) Exempted sale / purchase including High Sea Sale etc” .
- (vi) after instruction 5, the following instructions shall be added, namely:-
- “6. Attach copy of month wise summary of Sale and Purchase registers maintained in Form DVAT-30 & 31 in the format appended at Annexure-2A & 2B. This should be reported dealer wise instead of bill & date wise. Sale/purchase made from un-registered dealers may be reported in one row for a month.
  7. Dealers having tax period other than a month should also report the sale/purchase summary month wise.
  8. Works Contractors should report gross sale turnover during the tax period including labour, services and consumables in the return and claim exemption for service charges etc. by mentioning it under item R 5.7.”

## **NOTIFICATION**

**No. F.F. 3(27)/Fin(T&E)/2009-10/JSfin/195**

**Date:**

**17.03.2010**

(4. In the principle rules, in the Form DVAT -16 appended, in Annexure after row A 3.14, following rows shall be inserted, namely:-

“A3.15 Reduction in Input Tax Credit due to sale of goods at price lower than the purchase price [section 10(5)].

A3.16 Second or third installment of balance tax credit on capital goods [section 9(9)(a)].

A3.17 – Opening stock

A3.18 – Closing stock”

By order and in the name of the Lt. Governor, of the National Capital Territory of Delhi.

**(AJAY KUMAR GARG)**  
**JOINT SECRETARY (FIN/PLANN.)**

## **NOTIFICATION**

**No. F.F. 3(27)/Fin(T&E)/2009-10/JSfin/285**

**Date:**

**01.04.2010**

Whereas the Lt. Governor of the National Capital Territory of Delhi is of the opinion that it is expedient in the interest of general public so to do.

Now, therefore, in exercise of the powers conferred by section 103 of the Delhi Value Added Tax Act, 2004 (Delhi Act 3 of 2005), the Lt. Governor of the National Capital Territory of Delhi, hereby, makes the following amendments in the Schedules appended to the said Act, namely:-

### **Amendments**

1. In the First Schedule appended to the Delhi Value Added Tax Act, 2004 (Delhi Act 3 of 2005), hereinafter referred to as the "Principal Act" -
  - (a) The commodity mentioned at Sl. No.73 and 74 shall be omitted.
  - (b) After commodity at Sl. No.75, the following commodities shall be added, namely :-
    - “76 Oral Iron Chelator Defarasirox.
    - 77 Liquefied Petroleum Gas (LPG) for domestic use.”

## **NOTIFICATION**

**No. F.F. 3(27)/Fin(T&E)/2009-10/JSfin/285**

**Date:**

**01.04.2010**

2. In the Third Schedule appended to the principal Act –
- (a) The commodities mentioned at Sl. Nos. 20, 118, 165, 166, 168, 169, 171, 179, 181, 182, 184, and 186 shall be omitted;
- (b) For the commodity at Sl. No. 6, the following commodity shall be substituted, namely :-
- “6 All utensils (including pressure cookers/pans) except utensils made of precious metals”;
- (c) For the commodity at Sl. No. 24, the following commodity shall be substituted, namely:-
- “24 Declared goods as specified in section 14 of the Central Sales Tax Act, 1956 but not including cereals, pulses, sugar, textiles, tobacco and Liquefied Petroleum Gas (LPG) for domestic use “;
- (d) For the commodity at Sl. No. 41, the following commodity shall be substituted, namely :-
- “Computers, telephone and parts thereof, teleprinter and wireless equipment and parts thereof, Mobile phone and all mobile accessories costing upto rupees ten thousand”;

## **NOTIFICATION**

**No. F.F. 3(27)/Fin(T&E)/2009-10/JSfin/285**

**Date:**

**01.04.2010**

- (e) in the commodity at Sl. No. 41A, in the table, in column 2, for entry against Sl.No.7, the following entry shall be substituted, namely:-  
“Uninterrupted Power Supplies (UPS) and their parts”;
- (f) for the commodity at S. No. 57, the following commodity shall be substituted, namely:-  
“57 Readymade garments costing upto rupees five thousand but not including those made up of khadi”;
- (g) for the commodity at Sl. No. 76, the following commodity shall be substituted, namely:-  
“76 Writing instruments costing upto rupees one thousand per piece, geometry boxes, colour boxes, crayons and pencil sharpeners
- (h) for the commodity at Sl. No. 81, the following commodity shall be substituted, namely:-  
“81 Kirana items namely ararote, singhara, kuttu & their atta, kala namak, sendha namak, heeng, aam papar, mushram, khumba and guchchi, goley ka burada, til, rai postdana, mungfali dana, sabudana, roli, mehendi, patti pisi mehendi”;

## NOTIFICATION

**No. F.F. 3(27)/Fin(T&E)/2009-10/JSfin/285**

**Date:**

**01.04.2010**

- (i) for the commodity at Sl. No. 81, the following commodity shall be substituted, namely:- domestic use and Piped Natural Gas (PNG) other than for domestic use
- (j) after the commodity at Sl. No. 187, the following commodities shall be added, namely:- commodities
- “188 Bio-inputs like bio-fertilizers, micro-nutrients and Plant Growth Promoters. 189 Kerosene-stoves, Lanterns and Petromax and their spares.”
3. In the Fourth Schedule appended to the Principle Act,-
- (a) in the commodity at Sl.No.1, for entry (v), the following entry shall be substituted, namely:- following
- “(v) Diesel;”;
- (b) after the commodity at Sl.No.10, the following commodities shall be added, namely:-
- “11 Aerated Drinks. 12 Watches costing above rupees five thousand”.
- This notification shall be come into force with immediate effect.

**(AJAY KUMAR GARG)**

## **NOTIFICATION**

**No. F.F. 3(27)/Fin(T&E)/2009-10/JSfin/286**

**Date:**

**01.04.2010**

**No. F.3(23)/Fin.(T&E)/2009-10/JSFin/286- In exercise of the powers conferred by sub-section (3) of section 1 of the Delhi Value Added Tax Act, 2004 (Delhi Act 3 of 2005), the Lieutenant Governor of the National Capital Territory of Delhi, hereby, appoints the 1<sup>st</sup> day of April 2010, as the date on which sections 3 and 4 of the said Act shall come into force.**

**(AJAY KUMAR GARG)  
(JOINT SECRETARY)**



## **NOTIFICATION**

**No. F.F. 3(27)/Fin(T&E)/2009-10/JSfin/287      Date:  
01.04.2010**

No.F.3(23)/Fin. (T&E)/2009-10/JSFin/287 - In exercise of the powers conferred by section 102 of the Delhi Value Added Tax Act, 2004 (Delhi Act 3 of 2005) read with the Delhi Value Added Tax (Amendment) Act, 2009 (Delhi Act 01 of 2010), the Lt. Governor of the National Capital Territory of Delhi, hereby, makes the following rules to amend the Delhi Value Added Tax Rules, 2005, namely:-

## **RULES**

1. Short title and commencement.-
  - (1) These rules may be called the Delhi Value Added Tax (Second Amendment) Rules, 2010
  - (2) They shall come into force with immediate effect.

## **NOTIFICATION**

**No. F.F. 3(27)/Fin(T&E)/2009-10/J.Sfin/287**

**Date:**

**01.04.2010**

2. Insertion of new rule 6A.- In the Delhi Value Added Tax Rules, 2005 (herewith referred to as "the principal Rules"), after rule 6, the following rule shall be inserted,  
Namely:-

"6A. Restriction and conditions governing tax credit- (1) For the purpose of working out the entitlement of tax credit under sub-section (1) of section 9 of the Act of the extent of proportion of the goods which have been put to sale during the tax period, the input tax credit on the closing stock available with the dealer at the end of every tax period shall be carried forward to the next tax period or the following tax period or periods, as the case may be, till such stock is sold by the dealer:

- Provided that this sub-rule shall not prevent the claim of refund of a dealer for sales already effected during the relevant tax period or to a dealer who makes sales in the course of exports out of India, or in the course of inter-state trade and commerce, or, in such cases where the dealer being a manufacturer is required to make purchases of raw materials taxable at a higher rate of tax, while the sales of goods manufactured by him (not being goods exempt under section 6 as specified in the first Schedule to the Act) are taxable at the lower rate under the Act.

## **NOTIFICATION**

**No. F.F. 3(27)/Fin(T&E)/2009-10/J.Sfin/287**

**Date:**

**01.04.2010**

(2) Before allowing the claim of input tax credit to a dealer, the assessing authority may satisfy himself that the conditions laid down in clauses (g) of sub-section (2) of section 9 of the Act are also satisfied.

(3) The provisions of sub-section (5) of section 10 of the Act relating to proportionate reduction of tax credit on purchases of goods sold at a price lower than the purchase price shall apply to the cases where, during the tax period, the dealer receives credit note or notes from the selling dealer on account of discount, commission, rebate, remission in price or incentive, or by whatever name called.

**Explain-** For the removal of doubt, it is hereby clarified that the provisions of sub-section (5) of section 10 of the Act shall not apply to a case where in the ordinary course of business the goods are sold by a dealer at a loss.

## **NOTIFICATION**

**No. F.F. 3(27)/Fin(T&E)/2009-10/JSfin/287**

**Date:**

**01.04.2010**

(4) In the cases where the sale has been made at price lower than the purchase price in Pursuance of the administered prices of the oil companies, that is to say, Indian Oil Corporation, Hindustan Petroleum Corporation Ltd. and Bharat Petroleum Corporation Ltd. the provisions of section 10(5) shall not apply.”

Amendment of rule 34- In the principal Rules, in rule 34, after sub rule (8), the following sub rule shall be inserted, namely:-

“(9) Before allowing the claim for refund to a dealer under section 38 of the Act, the Authority concerned shall satisfy himself that the conditions laid down in the clause (g) of sub-section (2) of section 9 of the Act are fulfilled.”

**(AJAY KUMAR GARG)**  
**(JOINT SECRETARY)**

**CIRCULAR NO. 10 OF 2009-10**

**No. F.6(73)/Policy-IVAT/2010/022      Date: 23.03.2010**

**Sub: Acceptance of Manual Return**

In view of the certain amendments made in DVAT Act 2004 vide which requisite amendments have been suggested for notification. The approval of the Govt. of Delhi in respect of some amendments in aforesaid Act & Rules is yet to be received. Therefore, till amendment in the DVAT Act & Rules is notified. DVAT-16 shall be accepted manually for the month of February, 2010 also. On notification of the same all returns so accepted manually shall be uploaded in the system.

The manual returns will be accepted in Front office, KCS and Special Zones as usual.

This issue with the approval of the Commissioner (T&T)

**(NAVEEN KATARYA)  
VATO (POLICY)**

# DETAILED NOTE ON REVERSAL OF ITC u/s 9 (1)

## Formula for Calculation of Reversal of ITC

- **The following steps are required to Calculate the Value of ITC Reversal**
  - 1) 1st Step is to prepare Trading Account for the Last year on the basis of either GP Ratio or on the basis of actual Stock as per stock register. This will give the amount of closing stock as at 31 March 2010 on which ITC has already been claimed. No adjustment is required on this value of closing stock.
  - 2) Prepare Trading Account for April 2010 on the basis of either GP Ratio of the previous year or on the basis of actual stock as per Stock Register.

# Formula for Calculation of Reversal of ITC

**(Cont...)**

- 3) Calculate the value of ITC Reversal and the formula for reversal of ITC is:
- a) If purchases consist of Local Purchases only on which ITC is available.  
Vat paid on Local Purchase / Total value of Purchases \* Local Closing Stock
- b) If the purchases consist of local purchases on which ITC is available as well as Central Purchases.

- Firstly calculate the value of Closing Central Stock on the basis of following formula:

Central Closing Stock = Total Stock \* Central Purchase / Total Value of Purchases

Now deduct the amount of Central Closing stock from the value of total stock which will give the figure of local closing stock.

Now reverse ITC on Local Purchases the basis of following formula:

Vat paid on Local Purchase / Total value of Local Purchases \* Local Closing Stock

# Formula for Calculation of Reversal of ITC (Cont...)

- 4) Now, adjust ITC after reversal against OTL and pay the rest amount of VAT payable.
- 5) Though as per Sec 9 (1) ITC to be reversed for the purchase made during April but practically it is not possible in the absence of detailed stock register maintained.



## Illustration to explain the above said

### proposition

Illustration - 1 - On the assumption that all the purchases are Local Purchases on which ITC is available.

### Trading Account for April 2010

Particulars	Amount	ITC	Particulars	Amount	OTL /ITC
To Opening Stock	10	1	By Sales	110	11
To Purchases	100	10	By Closing Stock	20	
To Gross Profit	20				
<b>Total</b>	<b>130</b>		<b>Total</b>	<b>130</b>	

Cont...

## Illustration 1 (Cont...)

Reversal of Local ITC

$$10 / 100 * 20 = 2.00$$

ITC that can be adjusted against OTL

$$10 - 2 = 8$$

Vat to be paid under new system

$$11 - 8 = 3$$

VAT Payable the under existing system

$$11 - 10 = 1$$

### HIGHLIGHTS

- 1) No Refund.
- 2) Every Return accompanied by challan except for three exceptions.
- 3) Investment goes up to extent of VAT paid on Closing Stock.

# Illustration - 1 A

## Trading Account for May 2010

Particulars	Amount	ITC	Particulars	Amount	OTL /ITC
To Opening Stock	20	2	By Sales	125	12.5
To Purchases	100	10	By Closing Stock	20	
To Gross Profit	25				
<b>Total</b>	<b>145</b>		<b>Total</b>	<b>145</b>	

Cont...

# Illustration 1 A (Cont...)

**Reversal of Local ITC**

$$10 / 100 * 20 = 2$$

**ITC that can be adjusted against OTL**

$$2 + 10 - 2 = 10$$

**Vat to be paid under new system**

$$12.5 - 10 = 2.5$$

**VAT Payable the under existing system**

$$12.5 - 10 = 2.5$$

## **HIGHLIGHTS**

- 1) Same outgo as is the case presently as there is no change in the value of Opening/Closing stock.**
- 2) Calculation of OTL remains unaffected.**

**Illustration - 2 - On the assumption that purchases consist of Local as well as Central Purchases.**

**Trading Account for April 2010**

Particulars	Amount	ITC	Particulars	Amount	OTL
To Opening Stock	20	1	By Sales	180	18
To Purchases Local	100	10	By Closing Stock	30	
To Purchases Central	50				
To Gross Profit	40				
<b>Total</b>	<b>210</b>		<b>Total</b>	<b>210</b>	

**Cont...**

# Illustration 2 (Cont...)

## Calculation of Local Closing Stock

$$\text{Central Closing Stock} = 30 * 50 / 150 = 10$$

$$\text{Local Closing Stock} = 30 - 10 = 20$$

## Reversal of Local ITC

$$10 / 100 * 20 = 2$$

## ITC that can be adjusted against OTL

$$10 - 2 = 8$$

Vat to be paid under new system

$$18 - 8 = 10$$

VAT Payable the under existing system

$$18 - 10 = 8$$

## HIGHLIGHTS

1) Calculation of OTL remains unaffected.

# Illustration - 2 A

## Trading Account for May 2010

Particulars	Amount	ITC	Particulars	Amount	OTL /ITC
To Opening Stock	30	2	By Sales	180	18
To Purchases Local	100	10	By Closing Stock	45	
To Purchases Central	50				
To Gross Profit	45				
<b>Total</b>	<b>225</b>		<b>Total</b>	<b>225</b>	

Cont...

## Illustration 2 A (Cont...)

### Calculation of Local Closing Stock

$$\text{Central Closing Stock} = 45 * 50 / 150 = 15$$

$$\text{Local Closing Stock} = 45 - 15 = 30$$

### Reversal of Local ITC

$$10 / 100 * 30 = 3$$

### ITC that can be adjusted against OTL

$$2 + 10 - 3 = 9$$

Vat to be paid under new system

$$18 - 9 = 9$$

VAT Payable the under existing system

$$18 - 10 = 8$$

### HIGHLIGHTS

1) Calculation of OTL remains unaffected.



## Illustration to explain the above said

### proposition

Illustration - 3 - On the assumption that purchases as well as sales consist of Local & Central purchases.

#### Trading Account for April 2010

Particulars	Amount	ITC	Particulars	Amount	OTL /ITC
To Opening Stock	20	1	By Sales	135	13.5
To Purchases Local	100	10	By Closing Stock	45	0.9
To Purchases Central	50				
To Gross Profit	40				
<b>Total</b>	<b>210</b>		<b>Total</b>	<b>210</b>	

Cont...

## Illustration 3 (Cont...)

### Calculation of Local Closing Stock

$$\text{Central Closing Stock} = 30 * 50 / 150 = 10$$

$$\text{Local Closing Stock} = 30 - 10 = 20$$

### Reversal of Local ITC

$$10 / 100 * 20 = 2$$

### ITC that can be adjusted against OTL

$$1 + 10 - 2 = 8$$

Vat to be paid under new system

$$14.40 - 8 = 6.40$$

VAT Payable the under existing system

$$14.40 - 10 = 4.40$$

### HIGHLIGHTS

1) Calculation of OTL remains unaffected.

# Illustration - 3 A

## Trading Account for May 2010

Particulars	Amount	ITC	Particulars	Amount	OTL /ITC
To Opening Stock	30	2	By Sales	135	13.5
To Purchases Local	100	10	By Closing Stock	45	0.9
To Purchases Central	50				
To Gross Profit	45				
<b>Total</b>	<b>225</b>		<b>Total</b>	<b>225</b>	

Cont...

# Illustration 3 A (Cont...)

## Calculation of Local Closing Stock

$$\text{Central Closing Stock} = 45 * 50 / 150 = 15$$

$$\text{Local Closing Stock} = 45 - 15 = 30$$

## Reversal of Local ITC

$$10 / 100 * 30 = 3$$

## ITC that can be adjusted against OTL

$$2 + 10 - 3 = 9$$

Vat to be paid under new system

$$14.40 - 9 = 5.40$$

VAT Payable the under existing system

$$14.40 - 10 = 4.40$$

## HIGHLIGHTS

- 1) Calculation of OTL remains unaffected.
- 2) Further Investments in proportion to increase in closing stock.
- 3) Reverse if value declines.
- 4) No Change if value remains same.

# **OTHER POINTS FOR CONSIDERATION**

- 1) One to One co-relation not needed.
- 2) 3CD - Schedule VI to be kept in mind.
- 3) Once one to one co-relation- difficult to change stand subsequently.
- 4) Issue of penalty for not maintaining stock register - Not yet resolved - Must not change our stand not Possible.
- 5) Where maintaining stock register calculation too complicated.
- 6) I .T. - Co-relation fairly reasonable - Closing Stock preferable in round figures.
- 7) In Work in progress only value of material to be considered.
- 8) Though as per Sec 9 (1) ITC to be reversed for the purchase made during April but practically it is not possible in the absence of detailed stock register maintained.

# THANKS

12th April, 2010

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