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# Representations & Responses

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3rd December, 2007

To

Shri Sanjay Bhatia,  
Commissioner of Sales Tax,  
Maharashtra State,  
Mazgaon, Mumbai  
Hon'ble Sir,

On 31-10-2007 the Maharashtra Value Added Tax (Second Amendment) Rules, 2007 have been notified through Notification VAT-1507/CR 17/TAX-1.

Most of the amendments are welcome change, mainly to streamline and provide for in the rules, which were left out in publishing original set of rules or their amendment on 8-9-2006.

We take this opportunity to represent and make certain suggestions. We are sure that you will note the same and take appropriate action.

## **Rule 11: Sub-rules 4 and 6**

- a) The substituted rule 4(b) states "the date on the certificate of registration issued". We feel that some words are missing in the said amendment to make it clear as to from which date the number would be cancelled.
- b) Form 109 which is inserted for notice carries reference of one year instead of six months as is intended in section 16(6).

## **Rule 18**

Sub-rule 3(a) is for PSI units under exemption mode. Exception provided for units under Power Generation Promotion Policy 1998 scheme.

It seems that through oversight, Clause (b) of sub-rule 3 for Deferral units has remained unchanged so as to provide for exception for units under Power Generation Promotion Policy 1998 scheme.

## **Rule 54**

Clause 54(f): Due to amendment to clause (f), set off on 'Duty Free Replenishment Certificate' is available w.e.f. 31-10-2007. Kindly note that for DFRC, entry 13 was inserted in Notification for C-39 on 12-1-2007. Thus dealers though have to pay tax on purchases of DFRC from 12-1-2007 will be eligible for set off from 31-10-2007 only.

Set off for intervening period 12-1-2007 to 31-10-2007 requires to be provided for.

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Secondly, on 2-7-2007 DFIA (Duty Free Import Authorisation) has been notified as Intangible goods. Keeping in mind the spirit of clause (f) amendment, set on these purchases has to be provided from the date of insertion.

Clause 54(j): Clause (j) for Mandap keeper has been amended to clarify non availability for purchases on or after 20-6-2006. Section 42(4) was amended on 15-8-2007 to state that composition option to Mandap keepers would be applicable from 1-4-2005.

In this scenario, we feel that this amendment was uncalled for. If at all it was to be made, effect should have been from 1-4-2005.

### **Rule 65**

The dealer has also to file electronically readable CD-ROM. Form 704 to be downloaded from [www.mahavat.gov.in](http://www.mahavat.gov.in) Amendment is effective from 31-10-2007. However, many of our members have reported that the site does not open and it shows it is under construction. If at all it opens there is no direct link available for Form 704.

We are unaware about data protection available to dealers when data is copied/filled in on CD-ROM and filed with the Department. We feel that till the concept is finally chalked out, the filing of CD-ROM should be kept optional.

### **Rule 66**

W.e.f. 1-4-2007, time limit for filing of audit report within 10 months of the end of the year to which report relates. Being Procedural amendment, for 2006-07, due date will be 31-1-2008

Trade Circular 66-T which is even dated to the amendment states the time limit to be 31-12-2008. Kindly clarify the issue.

### **Rule 79(3)**

Sub rule 3 added. It provides that no refund under sub-rule 2 to be granted, unless Exemption unit debits said amount of refund to CQB, Deferral unit has to admit liability of amt. of said refund for deferment of payment of taxes, and has to file returns or revised returns accordingly.

The rule *prima facie* is effective from 31-10-2007. But looking to the amendment made to sub-rule 2 which was retroactive from 1-4-2005, this amendment should have been from 1-4-2005.

We are sure that you will look into this representation. If needed for some points, we may meet to clarify elaborately our say in the matter.

Thanking you,

Yours faithfully,

KIRAN G. GARKAR  
For Law & Representation Committee

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No. MVAT>Returns Dvn. Mumbai/RBI/STP/B-1022

Date : 28-11-2007

To

The General Manager (PAD)  
Reserve Bank of India, Fort,  
Mumbai – 400 001.

**Sub : Payment of tax for the old periods**

Sir,

Sales Tax Department has received a letter dt. 6-10-2007 from the Sales Tax Practitioners' Association of Maharashtra alleging that the banks are not accepting payment of taxes, made under the Bombay Sales Tax Act, 1959 ("the BST Act") citing following reasons:

1. Registration Certificate No. (R.C.Nos.) quoted on the Return-cum-Challan are granted under the BST Act and
2. Tax payments are made in old challans, It is also alleged that the banks are insisting to change period on the challans.

It may be appreciated that although the BST Act is repealed with effect from 1-4-2005, the dealers would be making tax payments under the BST Act for the periods ending on 31-3-2005 due to various contingencies such as decisions in appeal or upon finalisation of assessment orders for the period ending 31-3-2005.

You are, therefore, requested to instruct all nationalised banks to accept returns/challans in Form N-18/N-25 from the dealers who have mentioned R.C. Nos. for the periods of returns prior to 1-4-2005. A copy of the letter dt. 3-8-2007 by the Addl. Commissioner of Sales Tax (Registration) Mumbai in which this aspect was, *inter alia*, communicated to all banks is enclosed herewith for your perusal.

Yours sincerely,

Jt. Commissioner of Sales Tax (Adm)  
Returns Branch, Mumbai.

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**Annexure to the letter of Joint Commissioner of Sales Tax (Adm.)  
Returns Branch, Mumbai, Date: 28-11-2007, on  
Payment of tax for the old periods**

To

The General Manager,

No: VAT/Returns/Mumbai/JC(Adm)/Bank/B-536 Date: 03.08.2007

**Sub : Queries raised by banks.**

**Ref : Meeting held with the bank officials in Vikrikar Bhavan,  
Mazgaon, Mumbai on 17/07/07**

Gentlemen,

Some queries have been raised by the banks regarding acceptance of Returns/Chalans without TIN, acceptance of 'Nil' returns and acceptance of tax payment by cheques which are drawn on other banks. The points are clarified as under:-

**1. Mention of TN on returns/chalans :** All VAT (Value Added Tax )/ CST (Central Sales Tax)/ BST (Bombay Sales Tax) registered dealers in Maharashtra are allotted Tax identification Numbers (TIN) w.e.f. 01/04/2006. Earlier, the Registration Numbers ("RC Nos") were in force. Banks will continue to receive tax payments mentioning periods prior to 01/04/2006 for some years as the assessments, appeals or other proceedings will continue for some more years to come. **Banks are requested to accept returns/chalans from dealers who have mentioned RC Nos. for the "periods of return/payment" those are prior to 01/04/2006.** These BST/CST RC Formats are as follows :-

**BST/CST/VAT NUMBERING SCHEME**

Return Period	RC/TIN/Format for BST/VAT/CST	Return/Chalan Form No.
Before 31st March, '06	6 digit Pincode/S/XXXXX 5 digit Serial No. /V/ /C/ eg. 400010/S/05432 or 400010/C-05372 S- BST, C-CST, V-VAT	N- 18 (BST) N- 25 (Bombay Sales Tax)
After 1st April, 2006	27CCXXXXXXXXV (VAT) 27CCXXXXXXXXC (CST)	210, 221, 222, 223, 224, 225 (VAT) III-B(CST)

CST : Central Sales Tax

BST : Bombay Sales Tax

VAT : Value Added Tax

### Profession Tax Registration Certificate Number Format

ACT	Return-cum-Chalan Form No.	PT Registration Certificate Number Format
Profession Tax (PT-RC)	Form-III	<p>OLD – Mumbai – PT/R/1/1/WW/SSSS  ↓ eg. PT/R/1/1/21/1234  Fixed</p> <p>Rest of Maharashtra – PT/R/X/Y/TT/SSSS  eg. PT/R/2/3/02/369</p> <p>WW - Range from 21 to 35 or 50  SSSS - 5 digit Serial Number  X - 1 digit (Division Code) (Value from 1 to 4)  Y - 1 digit (District Code) (Value from 1 to 8)  TT - 2 digit (Taluka Code) (Value from 1 to 15)  NEW - 27CCXXXXXXXXP  27 - State Code  CC - Check Digit  XXXXXXX - Serial Number  P - Profession Tax</p> <p>If a dealer is already registered under VAT, same Sr. No. is allotted with P as suffix. If he is registered only under Profession Tax, regular Sr. No. is allotted with P as suffix.</p>
Profession Tax (PT-EC)	Form - VIII	<p>There are two formats</p> <p>OLD – a) PT/E/1/1/WW/EE/SSSS – for Mumbai  ↓ eg, PT/E/1/1/32/8/1234  Fixed</p> <p>b) PT/E/X/Y/TT/EE/SSSS – Rest of Maharashtra  ↓ eg. PT/E/4/2/04/13/456  Fixed</p> <p>WW - Range from 21 to 35 or 50  SSSS - 5 digit Serial Number  X - 1 digit (Division Code) (Value from 1 to 4)  Y - 1 digit (District Code) (Value from 1 to 8)  TT - 2 digit (Taluka Code) (Value from 1 to 15)  EE - 2 digit Entry Code (Value from 1 to 22)</p> <p>Sometimes this entry code is also followed by 1 digit sub-entry code.</p>

ACT	Return-cum-Chalan Form No.	PT Registration Certificate Number Format
Profession Tax (PT-EC) (contd....)	Form - VIII	<p>For computerisation of EC holder's data, these numbers were converted into 14 digit number as shown :</p> <p>1 2 3 4 5 6 7 8 9 10 11 12 13 14</p> <p>Div Div T T W W EC EC Sec Sr Sr Sr Sr</p> <p>1 - Division or Region Code 2 - District Code 3, 4 - Taluka Code (Mofussil) 5, 6 - Ward Code (Mumbai) 7, 8 - Entry Code 9 - Sub-entry Code 10 to 14 - Serial Number allotted to the professional</p> <p>Taluka Code for Mumbai = 00 Ward Code for Mofussil = 00 except city area eg. for Mumbai</p> <p>1 1 0 0 3 2 0 5 0 1 2 0 3 4</p>

Luxury Tax Act Sugarcane Purchase Tax Act Entry Tax on Motor Vehicles Act Entry Tax on Petroleum Goods Act	No fixed format as it varies from place to place
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As Profession Tax – EC Number has 20 digits in old format, hence TN/PT-EC/PT-RC/Luxury Tax No. field width has been increased from 14 to 20.

A dealer who has applied for TIN will pay his registration fees and/or other charges through chalan in Form – 210 without mentioning his TIN. **Payment of such “NEW” dealers without RC No. TIN should be accepted.**

It may be noted that the dealers filing returns after 01/04/06 under the MVAT Act, 2002 and the C.S.T. Act, 1956 shall mention TIN in the returns so filed. However, the dealers filing returns under the Profession Tax Act, Sugarcane Purchase Tax Act, etc., shall mention the R.C. Nos. allotted to them under the respective Acts.

2. **Use of CIN :** Banks should generate a unique Chalan Identification Number (CIN) while accepting any tax payment. This should be same as followed in OLTAS by the Income Tax Department. It will consist of bank and branch, 7 digit BSR Code, 8 digit date (dd/mm/yyyy), 5 digit serial no. and signature of the bank clerk. The format of stamp is given as under :-

7 cm

Bank						4 cm
Branch						
BSR Code						
Date of Deposit (dd/mm/yyyy)						
Serial No.						

In the meeting held on 18/07/07 with bank officials, the issue of generation of CIN was discussed. It is unanimously decided that CIN will be generated in the evening of the day during which return is filed or the next working day.

3. **File naming format :** Banks have requested for format of file names while sending the e-scrolls to the Sales Tax Department. It should be as under :-

Name of bank Location Date Act

eg. SBI\_Mumbai\_17072007\_V

V for VAT, C for CST, P for Profession Tax, & L for Luxury Tax.

ACT v/s RETURN NO./CHALAN NO. TABLE

ACT	RETURN-CUM-CHALAN "CHALAN NO."	
	RETURN-CUM-CHALAN (TIN NO./RC No. Mandatory)	CHALAN NO. (TIN No./RC No. not Mandatory)
VAT	221, 222, 223, 224, 225	210
BST	N-18	N-25
CST	III-B	
Profession Tax	Form-III	Form - VIII
Luxuries Tax	Form-8	

ACT-ID TABLE

In order to facilitate use of same e-Scroll by both Treasury and STD, it has been decided to increase Act-ID width to 12 digits.

Act Name	Act ID
Central Sales Tax (CST)	010040001101
Bombay Sales Tax (BST)	020040002201
Value Added Tax (VAT)	170040010201
Entry Tax on Vehicle (ET on Vehicle)	160042004400
Surgarcane Purchase Tax (SCPT)	120040005801
Profession Tax (PT)	030028001200
Entry Tax on Petroleum (ET on Goods)	040040006705
Luxury Tax on Hotel (LT)	060045004201

In order to take into requirement of receipt head of Accounts & Treasury, it has been decided to increase field width of Act- ID from 5 to 12 and Field Type SMALL INTEGER to DOUBLE A revised format of e-scroll is enclosed herewith.

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**4. Acceptance of NIL Returns :** It was pointed out that some dealers file returns with banks where no tax, penalty, interest or lump-sum is payable. As per rule 17(2) (b) of the Maharashtra Value Added Tax Rules, 2005, (MVAT Rules, 2005) it is mandatory for the dealer to file such returns with the Sales Tax Department. A bank should refuse such return pointing out the said rule. It is needless to add that the banks should not, however, refuse acceptance of return, if it is accompanied by small tax/interest amount.

**5.** Acceptance of tax by cash or cheques drawn on other banks: Attention is invited to definition of "Government Treasury" provided in rule 2(1)(f) of the MVAT Rules 2005. The rule has prescribed banks where a dealer can deposit the tax for Brihanmumbai, district headquarters and the place other than district headquarters. Any dealer can pay his tax by way of cash with any of the banks mentioned in the rule in the respective areas. Such banks cannot refuse the payment by cash for the reason that the dealer does not hold an account with the bank.

However, the position of tax payment is different in case of payment made by cheques drawn on other banks. The RBI can accept cheque drawn on any bank in Maharashtra. The rule has given different powers to 'the SBI and its subsidiaries', the banks appointed as 'agents' by the RBI and other 'notified' banks for accepting cheques drawn on any/ same bank in respective areas. Copy of the said rule is attached herewith, which is self-explanatory and should be adhered to. Banks other than RBI, SBI & its associates shall accept cheques from the dealers drawn on the same branches only.

**6.** This office has received information from our Zonal Joint Commissioners that your Zonal Offices (excluding Mumbai Zone) have not received any directions from you on the roll out plan for e-scrolls. You are requested to direct your Zonal Offices outside Mumbai to make preparation for roll out of e-scrolls, as the roll out date for six cities, viz. Pune, Nasik, Aurangabad, Nagpur, Thane & Raigad and for Rest of Maharashtra is fast approaching.

Yours Sincerely,

Sd/-

(Santosh Kumar)

IAS

Addl. Commissioner of Sales Tax,  
Registration, Mumbai

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Date : 11th December, 2007

To

The Editor  
Economic Times  
Times of India Building, D. N. Road, Fort,  
Opp. V.T., Mumbai – 400 001.

Sir,

**Sub : Big Bonanza (Taxation)**

This has a reference to your Cover page news item published in Economic Times dated 11-12-2007 wherein it is stated that Income up to Rs. 1,50,000. may be exempted from the payment of Income-tax and hence a person drawing salary up to Rs. 12,500 per month shall be exempted from payment of Income-tax.

However, our readers will be surprised to know that in Maharashtra a poor labourer getting a salary of Rs. 2,501 per month has to pay Rs. 60/- per month to the State Government as Profession Tax. How far this levy is reassurable can only be commented upon by the Politicians who prepare the State Budget.

May, I therefore request our State Finance Minister to at least exempt person drawing salary up to Rs. 7,500 per month from the levy of Professional Tax.

Thanking you,

With warmest regards

Yours sincerely,

(Mahabirprasad S. Deora)

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To

Shri Jayantrao Patil  
The Minister for Finance,  
Maharashtra State,  
Mumbai

Hon'ble Sir,

**Sub : Amendment to section 55(1) of the Bombay Sales Tax Act, 1959**

We require your urgent attention for amending section 55(1) of the Bombay Sales Tax Act, 1959. The said Act has been repealed with effect from 31-3-2005.

As section 55(1) of the Bombay Sales Tax Act, 1959 contain the words "An appeal from every original order" the Bombay High Court (Nagpur Bench) in Writ Petition No. 312 of 1989 in the case of Shiv Shyam Sales Enterprises, held that remedy of appeal under section 55 of the BST Act is available in the case of original orders only and not in the case of orders passed in revision u/s 57. To overcome the aforesaid judgment, the words "original order" are required to be substituted by "every order" with effect from 1-1-1960 to avoid hardships in case of orders of revision, rectification etc.

Above necessity was brought to the notice of the then Commissioner Mr. Khatua as well as to the notice of Mr. Sanjay Bhatia, present Commissioner of Sales Tax, Maharashtra.

We also bring it to your kind notice that Hon'ble Tribunal has kept pending, all the appeals preferred before them against the orders of revision and rectification, because of the assurance given by the Commissioner of Sales Tax to make necessary amendment in the BST Act.

Though similar amendment is made to section 26(1) of the MVAT Act, 2002, no such amendment is yet made in section 55(1) of the BST Act, 1959.

We earnestly request your Honour to look into the matter at the earliest, to avoid the hardships to the dealers in whose case the appeals are pending and where there is possibility of revision or rectification.

Thanking you in anticipation,

Yours faithfully,

DEEPAK BAPAT  
*Chairman* - Law and Representation Committee

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25th October, 2007

To

Shri Sanjay Bhatia,  
Commissioner of Sales Tax, Maharashtra,  
Mumbai

Hon'ble Sir,

We recently had occasion to attend to presentation by your honour on "15 Point Action Plan" designed by the Sales Tax Department. We are sure that under your leadership and able determined guidance, you will complete the upheave task before you.

We have noticed certain points which also require your urgent attention. They pertain to administrative difficulties, statutory provisions etc. We have categorised them so that you may assign them to specific action group/desk and call for follow up from time to time.

We are sure that you will appreciate our feelings/desire to make the Department's working more dealer friendly and this will help effective implementation of the MVAT Act, 2002.

Thanking you in anticipation,

Yours faithfully,

DEEPAK BAPAT  
*Chairman - Law and Representation Committee*

Encl:

1. Annexure A: Regarding Trade Circulars
2. Annexure B: Regarding Central Repository
3. Annexure C: Recent amendments and Trade Circular 64-T of 2007.
4. Annexure D: Regarding Refunds under the MVAT Act, 2002.
5. Annexure E: Suggestions about required amendments to Act and Rules
6. Annexure F: Representation from our member of Sangli regarding non receipt of TIN Certificates.
7. Annexure G: Representation to amend section 55(1) of the B.S.T. Act, 1959

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## **Annexure A: Regarding Trade Circulars**

### **A] Trade Circular No. 52-T of 2007 dated 21-7-2007**

We welcome the circular granting exemption from filing of CST returns where interstate sales are NIL. It is going to save lots of stationery and procedural compliance yielding no revenue.

In Para 3, last line reads, "This concession will be available to the dealer **till** he effects any sales in the course of interstate trade or Commerce."

Consider following situation that there are NIL interstate sales for June, July, September and October 2007. There are some interstate sales in the month of August 2007.

We understand that actual concession granted under the said Circular is for all the four months. But the impression on reading above mentioned line is that exemption would be allowed only for June and July, 2007.

The correct position of granting exemption for all periods where sales u/s 8(1) of the MVAT Act, 2002 are NIL, may be suitably clarified.

### **B] Trade Circular 53-T of 2007 dated 7-8-2007**

The Circular states that calculation of tax liability under the MVAT Act may be done on *pro-rata* basis, based on classification of purchases. It however states that the turnover of sales in the immediately preceding year should be less than Rs. 2 crores.

We draw your kind attention to clarificatory letter issued by Sr. D.C. of Sales Tax (Act and Rules), Maharashtra State to Mandvi Meva Masala Merchants' Association. [Ref: VAT/MMB-1005/40/Adm-3/ b35 dated 31-1-2006]. In this clarification no specification was made about the turnover.

Wherever identification is impossible in the case of retailers, semi-wholesalers, the problem arises because they sell in small quantities and cash memos are very large in number. In this situation we submit that upper cap of turnover of Rs. 2 crores is unwarranted and be deleted from the Circular.

### **C] Trade Circular 23T of 2007 dt. 12-3-2007**

It is regarding preservation of records. [Section 86(5)] In this connection we wish to bring to your kind notice that, the limit of cash memos prescribed in Para 4(i) of the said trade circular is on higher side. The same may please be brought down substantially instead of ten lakhs. This issue needs to be reexamined because there are many small dealers who wish to keep their sale invoices/cash memo etc. on electronic data.

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**D] Trade Circular No. 18T of 2006 dt. 1-8-2006 and 41-T of 2007 dated 21-5-2007**

These circulars allow adjustment of the refund for 2005-06 in 2006-07 and that of 2006-07 in 2007-08 respectively. When the last date for filing VAT audit report of 2005-06 and consequential revised return is extended, this facility also should be extended to F.Y. 2007-08. Otherwise, it means that dealer will have to revise the returns for the year 2006-07 and claim such refund in F.Y. 2007-08 which is a futile exercise. There is an urgent clarification needed in this regard.

**Annexure B : Regarding Central Repository**

1. The dealers are facing following problems when they opt for online application:

- Failure to receive e-mail for password generated by the system.
- Failure to log in on getting password.
- Balance other than actual balance is displayed. Sometimes it shows bare minimum balance even though fresh amount is deposited and entered at the Department's end. In this situation online application cannot be proceeded with.

The Officers are expressing their inability to do anything to help out dealers in this scenario. Renewal of software Maintenance Contract may be undertaken urgently.

It has been informed that the said contract has expired in early months of 2007-08 and not renewed.

2. The Department is following practice of issuing H forms quarterly on the lines of C forms. But H forms are required to certify the fact that purchases are against confirmed export order and proof of dispatch etc. has to be mentioned. As such if out of 2/3 purchases in quarter if some assignment is pending for dispatch, the form cannot be issued.

We request you to look into this practical problem. H form may be issued qua transaction if required by the dealer. Kindly note that you intend to scan all applications and store them in your system. This will always enable you to keep track of forms issued per vendor by the dealer during financial year.

3. Many times corrections to C forms are required due to some clerical error creeping in. Sometimes, even big corporates face this problem due to time gap in actual receipt of purchase bill and confirmation through GRN (Goods Received Note) by sister Department.

The method followed for correction as on today requires submission of original declaration obtained from the Department. It is difficult for dealer to go

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through this ritual. Many times it happens that the declaration having reached to Vendor, mistake is pointed out.

The correction system has to be dealer friendly with proper safeguards.

4. In case of Form C received from customers the authorities insists for effective date of CSTRC of the issuer. However when the Central Repository issues Form C it does not mention effective date of CSTRC. Therefore the software be amended to mention the effective date of CSTRC.

### **Annexure C: Recent amendments to various Acts and Trade Circular 64-T of 2007**

1. Change of system of Taxation on Drugs and Medicines:
  - (i) Composition dealers dealing in above goods find the scheme as most uneconomical and have to bear the brunt of non-collection of tax and payment of 5% on difference.

The amendment on 1-7-2007 was never apprehended by them beforehand. Those who wish to leave the scheme should be allowed to do so from 1-7-2007.

Alternatively, we suggest that like bakers, they may be put up in separate category.

- (ii) Though six monthly return is already due for such dealers, kindly clarify as to how they have to file returns- They were not to include medicine turnover for first quarter. Then work out excess for six months (Including drugs/ medicines sale for 2nd quarter) etc. The clarification will guide the community in correct, complete and self consistent returns.

2. Amendments to Profession Tax Act and Trade Circular 64-T of 2007 dated 15-10-2007

Refer to clarification given in Para 3(b). Under the Profession tax Act there are certain entries where a rate of tax is not yet Rs. 2500. e.g. Entries 7(b), 8 [Proprietor having turnover below Rs. 20 lakhs], 10(1) (A & B) etc.

The composition section may be suitably redrafted so that the enrolled persons in above entries can also take benefit of composition at the rates applicable to them.

3. Section 51 for refund has been amended on 15-8-2007.

Trade Circular 56-T of 23-8-2007 has not taken into consideration the amendments made to section 51 and intention of legislature regarding the same. Separate annexure is attached herewith.

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4. Section 86: Sub-section 3 is substituted.

The Trade Circular says it is technical in nature. May we submit that entire section 86 if read in entirety, creates confusion. Sub-section 6 and replaced 3 are overlapping.

Secondly, sub-section 3 prior to its substitution put a specific bar on collection of taxes when tax invoice is not issued. This prohibition does not appear in the substituted section. What will be its implication? And whether this deletion was intended?

#### **Annexure D: Regarding Refunds under the MVAT Act, 2002**

Section 51 for refund has been amended on 15-8-2007. Trade Circular 56-T of 23-8-2007 has not taken into consideration the amendments made to section 51 and intention of legislature regarding the same. Our Past President Mrs. Sujata Rangnekar has written detailed 'Current Notes' in the Sales Tax Review (October 2007 issue). We hereby give the said points in short.

1. Sub-sections 51(2) (a), 51(4) and 51(5) have been substituted and due cognizance thereof ought to have been taken in the said Circular.

2. Returns for incorrect periods:

In Para 3, it is stated that refund will not be granted if returns are filed for incorrect period. Section 51(2) before and after amendment provides that the refund may be granted by a single order for all periods contained in one year.

Further, Trade Circular No. 26T of 2006 dated 18-9-2006 provides in point No. 15 that dealer can file a revised return only for the month of March 2006 to pay the additional tax liability or claim refund or additional refund so as to give effect to all observations made in the VAT audit report. It is presumed that concessions allowed in the said circular will be applicable to all subsequent years too.

In that case, the dealer will revise his last return; i.e., either Q.E. March or for the month of March. He will not revise his earlier returns even if filed for incorrect periods. Therefore, imposing such a condition for grant of refund would be contradictory to this circular and unreasonable too.

3. Additional information:

It is not clear what additional information is needed to be furnished and what is the scope of such demand. Time and again, it is represented that annexure required to be attached along with Form 501 is quite voluminous virtually resulting into reproduction of entire purchase register for the full year.

The vendors normally have continuous transactions with the dealer and therefore, information relating to a single month also can provide necessary data as

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regards the selling vendors. Efforts should be made to make this annexure data as concise and compact as possible to minimise the time and energy of both department and dealers.

Additional information should be strictly confined to the claim made and this right should not be exercised to gather irrelevant information. The concerned authority must issue a proper notice calling for such information.

4. Clause (iv) of Para 7 states that refund shall be granted within 3 months from the date of application in Form 501 or from the date of submitting the details, i.e. additional information, whichever is later. The amendment effective from 15-8-2007 makes it obligatory (substituted sub-sec. 4 of section 51) to grant the refund within six months from the receipt of the application even if such additional information is not received. This amendment has not been considered at all while prescribing above time limits. This aspect needs to be clarified.

5. CST declarations:

Even in absence of any authority under the law, the circular continues to maintain that refund will be reduced by the CST liability arising out of non-receipt of declarations in Form C/D/H/F etc. Although not provided in Form 501, such dealer needs to furnish list of unreceived forms under C.S.T. Act.

Further, Circular pretends to allow one opportunity to produce the declarations received after refund order is passed only after six months. Meanwhile, the dealer loses his right to make an appeal. It should have been done in such a manner that the dealer does not lose his right to make such application even if he prefers an appeal since this right is given to him only vide this circular and not under the provisions of the Act.

6. Assessment of the refund period:

Para 10(i) of the circular grants wide power and discretion to the authorities who can initiate assessment u/s. 23 if additional information is not given or dealer does not co-operate during the course of audit or in the view of the auditor (business audit) assessment is necessary.

There is a clear cut provision under sec. 51(5)(b) that any excess refund granted shall be recovered as if it is tax due and even interest shall be levied for the intervening period. In such a situation, there was no reason to withhold the refund on initiation of the assessment.

7. Refund Audit and Business Audit:

Para 11(iv) provides that no separate business audit would be conducted in respect of the same dealer for same period if Refund Audit Branch conducts the audit. However, an exception is carved out where business audit in addition to

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refund audit can be conducted with the prior approval of concerned Joint Commr. of Sales Tax. It is not clear what the criteria for conducting these two tier audits are?

8. Adjustment of refunds for the years 2005-06 and 2006-07: Para 12 second line:

The departmental staff in mofussil areas of Maharashtra (read Nashik, Jalgaon) interpret the said clause as prohibiting such adjustment for the years 2005-06 and 2006-07 in spite of specific Trade Circulars after 23-8-2007.

The Commissioner of Sales Tax vide his Trade Circular Nos.18T of 2006 dt.1-8-2006 and 41T of 2007 dt. 21-5-2007 has allowed the dealers to adjust the refunds for F.Ys. 2005-06 and 2006-07 against tax liability for the subsequent year. The same facility is confirmed in Para 12 of the above circular dt. 23-8-2007. Para 2 of this circular states that the procedure therein will apply to all claims of refund made before and after the date of circular.

At the same time, Para 12 stipulates that facility of adjustment of refund against the tax liability of the subsequent year will not be granted henceforth. We understand that this being FINAL Circular you wanted to point out that refund for 2007-08, etc. cannot be adjusted. However, the departmental staff in mofussil areas interpret the said clause as prohibiting such adjustment for the years 2005-06 and 2006-07 also in spite of the above Trade Circulars when VAT audit reports in Form 704 and consequent revised returns are filed after 23-8-2007 in some cases.

We earnestly request you to take call on these points regarding REFUND.

#### **Annexure E:**

##### **Suggestions about required amendments to Act and Rules**

1. Passenger motor vehicles are matter of double taxation with introduction of VAT.

In one of the Service Cell meetings, on a query from Shri Janak Vaghani it was told that set off on motor car has been denied as per consensus arrived at Empowered Committee. Request was made to the then Commissioner Shri B.C. Khatua to inform if other States are also levying tax when motor cars (held as Assets) are subsequently sold by other dealers (in chemicals etc.)

We earnestly request to study this aspect of taxation of motor cars in other states and urge once again to look into this issue or to point out position at the Empowered Committee meeting about double taxation due to denial of set off.

2. After Government Resolution dated 5-1-2007 on restructuring of Sales Tax Department, there is no clarity about pending assessments under the earlier laws; i.e., BST, Works Contract etc. Now notices for assessments of earlier periods have

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been invariably issued and officers mention that past assessments have to be regularly completed under section 33(3), even though case is not covered by 7 exceptions mentioned in the said GR.

We request that detailed circular be issued so to speedy disposal of pending back log of assessments.

#### **Amendment to MVAT Rules, 2005**

1. Our counterpart from Akola had been informed that words 'Corresponding goods' appearing in set off rules would be defined. We await the said amendment for smooth administration of the rule.

In fact some officers from Pune region have recently taken a stand that retention would be applicable as to 4% of all 'corresponding goods' even though they are purchased from OMS, imports etc. and do not have any connection with set off .

This thinking and analogy is fallacious and against the spirit of VAT concept adopted by State (under Empowered Committee's guidance). Suitable clarification is urgently required before the problem snowballs.

2. Rule 53(3) provides for retention of 4% tax from available set off. The rate was 4%, so as to be on par with rate under the CST Act. After amendment to the CST Act w.e.f. 1-4-2007, retention provided under said sub-rule requires to be scaled down to 3%.

3. Rule 88 prescribes rate of interest for sections 30, 51, 52 and 53. It is noticed that rate is specified for each month or for part thereof.

In fact, sections rightly mention that interest is to be levied for each month or part thereof.

But the rate prescribed has to be for month/ quarter/year; i.e., 'unit of period'. Hence the words 'or for part thereof' appearing in rule 88 be deleted.

4. Amendments to Returns forms, especially CST Return (III B)

President Deepak Bapat with Ashvin Acharya has been actively participating in 'e-filing of returns' work group formed by you. They have made certain suggestions from time to time regarding Form 221.

Following points may also be considered for amending present Form 221 in physical form also.

1. Separate column for showing purchase price and entry tax element is necessary below present set off table for sales tax.

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2. Amendment to Column 15A of the return:

- (i) There are certain activities for which there is confusion as whether they are works contracts or sale - printing jobs, rubber stamp/stereos (as per specific order), advertising material to name a few. Sometimes, even though seller treats them as sale, purchaser deducts Works Contract TDS. We would like that credit of such TDS should be provided for in the Return form also.
- (ii) There should be column for adjusting CST refund (though in rare cases) Or you may think of providing one blank line for such occasional amendments, so that return would be more clarificatory.

**CST Returns.**

1. In return to be filed under the MVAT Act, figure of sales u/s 8(1) is to be shown along with Branch Transfers. If CST Return is perused, at item No. 5 deduction of Branch transfer is provided for. Actually, branch transfer needs to be deducted before the turnover for CST taxation is worked out. We suggest that deduction for Branch Transfer should be shifted to above portion before 2 as item 1(E).

2. In the return, columns need to be provided for following deductions:

- a. sales against Form I to SEZ units.
- b. sales taxable u/s 8(5) at reduced rates
- c. adjustment of MVAT Refund against CST dues.
- d. Interest amount

**Annexure F:  
Representation from our member of Sangli  
regarding non receipt of TIN Certificates**

The letter received from our member of Sangli is given below. The same is self explanatory.

To

The Commissioner of Sales Tax,  
Maharashtra State,  
Mumbai.

**Subject: Non-receipt of TIN Certificate**

Hon'ble Sir,

Your honour is well aware that a number of representations from the State of Maharashtra have been received by your officer regarding non-receipt of TIN

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Certificates. We have also discussed this issue with your Honour as well as with other concerned authorities on a number of occasions. In this connection, we want to bring to your notice that as per our knowledge, hardly 20% to 30% of the registered dealers have received the said Certificates. Please do not mix-up this issue with the Certificates lying with Sales Tax Offices of Maharashtra as undelivered due to wrong postal addresses. We are specifically on the issue of non-dispatch of TIN Certificates from your officer (may be ECIL) to the respective registered dealers. Your Honour can very well take a sample survey of the dealers to come out to a proper conclusion.

We opine, a through investigation of the outward of the ECIL has to be made to check the correctness of this complaint which has come from the registered dealers at large. Your immediate action in the matter will be highly appreciated.

Thanking you,

Yours faithfully,

KISHOR LULLA

*Convenor - Tax Payers Protection Committee of STPAM*

**Annexure G:**  
**Representation to amend section 55(1) of the B.S.T. Act, 1959**

As section 55(1) of the B.S.T. Act, 1959 contain the words "An appeal from every original order" the Bombay High Court (Nagpur Bench) in Writ Petition No. 312 of 1989 in the case of Shiv Shyam Sales Enterprises, held that remedy of appeal under section 55 of the BST Act is available in the case of original orders only and not in the case of orders passed in revision u/s 57. To overcome the aforesaid judgment, the words "original order" are required to be substituted by "every order" with effect from 1-1-1960 to avoid hardships in case of orders of revision, rectification etc.

Above necessity was brought to the notice of your predecessor Mr. Khatua as well as to your notice in the Service Cell Meeting held under your Chairmanship immediately after you took over the charge.

We also bring it to your kind notice that Hon'ble Tribunal has kept pending, all the appeals preferred before them against the orders of revision and rectification, because of the assurance given by your predecessor to make necessary amendment

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in the BST Act. Though similar amendment is made to section 26(1) of the MVAT Act, 2002, no such amendment is yet made in section 55(1) of the BST Act, 1959.

We earnestly request your Honour to look into the matter at the earliest, to avoid the hardships to the dealers in whose case the appeals are pending and where there is possibility of revision or rectification.

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Date : 22-11-2007

To

The President  
STPAM, Mumbai

**Re – Administrative difficulty in condonation of delay.  
Representation to the Comm. of Sales Tax, Mumbai.**

Dear Sir,

Following are the facts of the case :

The dealer has been doing the business from 1989 but never applied for RC under BST Act, 1959, But applied for RC on 27-3-2007 and hold liable w.e.f. 1-4-1997 to 26-3-2007 as URD. And afterwards as RD Dealer.

The dealer according to Notification applied for Condonation of Delay to the Joint Comm. of Sales Tax (H.Q.) Bombay under the TIN No. allotted to him.

But during the course of proceeding issue came about the condonation of delay of the period covered under the BST Act (i.e., 1-4-1997 to 31-3-2005) as the BST No. is not allotted to the dealer first and then TIN No. as per law and procedure. The Jt. Comm. is ready to condone the delay from 1-4-2006 as TIN No. is effective from 1-4-2006, but how to condone the delay for the period covered under BST Act is the question before the JT Comm. of Sales Tax (H.Q.) Mumbai.

As it is the condition and MVAT Act, 2002 has no solution to it, so it is requested to you to represent the matter and find out the solution at your level and oblige.

Thanking you,

Yours faithfully,

S.M. Bothara

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