

Input Tax Credit and Reduction in Input Tax credit Under MVAT Act,2002

Presentation by

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Input Tax Credit (ITC)

- Enabling provisions – sec 48
 - State Govt. may ,by rules ,provide
- Tax paid
 - Under earlier law
 - Goods + cap. Goods
 - Under MVAT Act,2002
 - Entry tax on motor vehicles
 - Entry tax on others items- like petroleum products
- S.P. may be reduced For levy of tax
 - Purchases from exempted unit (PSI)

SET OFF

- Concept under BST Act has undergone a sea change
- Concept of set off is de-linked from manufacture etc., expect few instances.
- Section 48 does not make it compulsory for the State Government to provide rules for the set-off.

GENERAL CONDITIONS - ITC

Rule 55

- Claimant dealer must be a RD:
 - Rule (55) (1)(a) is amended from 8-9-06. After amendment, the dealer is eligible to claim set-off tax paid on purchase of goods effected from registered dealer during the URD period also if in stock on date of Regn.
- Recast on 31.10.2007
- Effective from 08.09.2006

GENERAL CONDITIONS - ITC--- RD at the time of purchase...

- Set off available only if goods purchased/ entered after 1st April of the year in which dealer has obtained registration and
- Treated as Capital assets & not sold before date of Regn
- Other than Capital assets & have not been sold/disposed off.
- If goods are used or consumed in manufacture & manufactured goods have not been sold before the date of effect of RC.
- Maintain a true account of all the purchases in chronological order of goods showing the details
- Produce the original invoice/bill/cash memo [Tr.Cri.30T(23/09/05):Sp. Relief]
- Rule55(3) : Adjustments of set-off
- Rule55(5) :FIFO Method in absence of identification
- No case ITC exceed amount paid in treasury.
 - Recent BHC decision April 2012-Laxmi cotton
- Refund 1st to be adjusted against o/s liability
- Tax deferred – deemed as received in treasury.
- Advance tax deposited – voluntary registration –now deposit
 - eligible for adjustment against VAT/CST/ET payable during the year

ITC – OP. Stock as on 1.4.2005 (R-51)

- Who Can Claim
 - Any registered dealer(period 01-04-2005 to 31-3-2006)
- On What Goods
 - Any goods (including capital assets purchased on or after 01.04.2003) lying in stocks as on 31st march,2005 except goods in stocks to be used in manufacturing.
- Conditions:
 - No set off claimed
 - Under earlier law.

ITC – OP. Stock as on 1.4.2005 (R-51)

- Resold, used in packing or subject to processes enumerated in rule 3 of best rules, 1959 on or before 31.12.2005
- Failed stock statement u/s .84
- In case capital of good Which are purchased after 01.04.03 & sold before 31.12.05
- Reduction, if any from amount
 - This clause is not subject to deduction/non allowance of set off as per the rules 53 & 54

ITC –Purchase after 1.04.2005 Rule 52

- What is eligible U/r 52/
- RD purchase for mfg, trading, works cont., lease
 - Tax paid separately +tax invoice of goods.
 - Capital assets
 - Goods-purchase debited to P&L A/c
 - Trading goods[see amended provision]
 - RM, parts ,components, spare [see amended provision]
 - Packing material [see amended provision]
 - Fuel [see amended provision]
 - Entry tax paid (M. Vehicles +other)
- In respect of purchase or entry of goods made on or after 1st April,2005,no specific use of goods have been prescribed

ITC –Purchase after 1.04.2005

- Goods eligible for grant of set-off under this Rule
- Purchase of any goods being capital assets or debited to trading or profit and loss account is eligible for set-off

- Set –off under this Rule is available
 - Subjected to reduction of set-off as specified in Rule 53 and
 - Subject to non-admissibility of set-off as provided in Rule 54 of the MVAT Rules,2005.

REDUCTION/DEDUCTION OF SET-OFF RILE 53

- General Retention rate for Rule
 - 4% From 1.04.2005 to 31.03.2007
 - 3% thereafter [except rule 53(4)]
 - 2% From 8.06.08[In Rule 53(2)]

Remember

- As per rate under Section 8(1) under CST Act,1956-sale against Form C
- 2% from 1.6.2008
- Retention rate not reduced to 2%

Reduction in set off (Rule 53)

Rule no.	Event of contingency for reduction of set off	WEF	Reduction by
53(1)	Taxable goods used as fuel	1.4.2005 To 31.3.2007	4% of corresponding Purchase price
		w.e.f 1.4.2007	3% of Corresponding Purchase price
53(1A)	Natural gas	w.e.f 1.5.2012	3% of Corresponding Purchase price
53(2)(a)	Dealer manufacturing tax-free Goods (if sugar or fabric manufactured is exported u/s 5 of CST Act then such reduction does	1.4.2005 To 31.3.2007	4% of purchase Price of corresponding taxable goods (Not on Capital Assets or Fuel)

	Not apply)		
	-----do-----	w.e.f 1.4.2007 To 31.05.08	3% of Purchase Price of corresponding taxable goods (Not on Capital Assets or Fuel)

Reduction in set off (Rule 53)

Rule No	Event of Contingency for Reduction of Set off	WEF	Reduction by
53(2)(a)	Dealer manufacturing tax-free Goods (if sugar or fabric manufactured is exported u/s 5 of CST Act then such reduction does not apply)	1.6.2008 To 30.10.2008	2% of Purchase Price of corresponding taxable goods (Not on Capital Assets or Fuel)
	-----do-----	w.e.f 1.11.2008 To date	2% of Purchase Price of corresponding taxable goods (Not on Capital Assets or Fuel)

Note : Manufactured Tax free goods shall not include Sarki pend. De oiled cakes and other goods covered by Sch A, if they are sold in the course of export w.e.f 01.05.2012

Reduction in set off (Rule 53)

Rule no.	Event of contingency for reduction of set off	w.e.f.	Reduction by
53(2)(b)	Dealer reselling tax-free goods	1.4.05 To 31.3.2007	4% of Purchase price of Corresponding Purchases of Packing Materials
		w.e.f 1.4.07 to 31.05.08	3% of Purchase price of corresponding purchases of packing Materials
		w.e.f	2% of Purchase price of

		1.11.08 To date	corresponding taxable goods (Not on Capital Assets or Fuel)
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Reduction in set off [Rule 53(2)]

<p>Rule 53 (2) (a)</p> <ul style="list-style-type: none"> ▪ Manufacture of tax free goods ▪ Retention directly linked to CST Rates notified u/s 8(1) of CST act i.e. Wef 1-6-08 @2% of purchase price. ▪ No retention on any tax free goods (Sch. A) when sold in the course of export u/s 5 of CST Act Wef 1-11-2008 ▪ Read with rule 53(9) (a) & (b) 	<p>Rule 53 (2) (a)</p> <ul style="list-style-type: none"> ▪ Resale of tax free goods ▪ Retention directly linked to CST Rates notified u/s 8(1) of CST act i.e. Wef 1-6-08 @2% of purchase price. ▪ Read with rule 53(9) (a) & (b)
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Reduction in set off (Rule 53)

Rule no.	Event of contingency for reduction of set off	w.e.f.	Reduction by
53(3)	Dealer dispatching taxable Goods to other states. Under form-F (if the goods are brought back in Maharashtra within 6 months. Whether after processing or otherwise. Then such reduction does not apply)	1.4.2005 To 31.3.2007	1] 4% of Purchase Price of Corresponding taxable goods (Not on Capital Assets or Fuel) 2] if the goods dispatched are covered by Schedule B (Gold, Silver, Jeweler, Diamond etc.) then reduction shall be at 1% 3] if the goods dispatched are Drugs and Medicines covered by Schedule Entry

			C-29 then reduction of 4% shall be made of Actual Purchase Price and not of MRP.[Applicable up to 30.6.07]
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Reduction in set off (Rule 53)

Rule no.	Event of contingency for reduction of set off	w.e.f.	Reduction by
53(3)	-----do-----	w.e.f. 1.4.2007 to 31.05.2008	1]3% of Purchase Price of Corresponding taxable goods (Not on Capital Assets or Fuel) 2] if the goods dispatched are covered by Schedule B (Gold, Silver, Jeweler, Diamond etc.) then reduction shall be forgo at 1%
53(3)	-----do-----	1.6.2008 to 31.03.12 W.e.f 01.04.12	1]2% of Purchase Price of Corresponding taxable goods (Not on Capital Assets or Fuel) 2] if the goods dispatched are covered by Schedule B (Gold, Silver, Jewellery, Diamond etc.) then reduction shall be forgo at 1% 1]4% of Purchase Price of corresponding taxable goods (Not on Capital Assets or Fuel) 2] if the goods

			dispatched are covered by Schedule B (Gold, Silver, Jewellery, Diamond etc.) then reduction shall be at 1%
53(4)	Works Contractor paying tax. Opting Composition scheme u/s 42(3)	1.4.2005	Corresponding Setoff be reduced by 36% (No reduction on Capital Assets and on goods in which property is not transferred)
	-----do-----	20.6.2006	Where the dealer has opted to pay composition at 5% on Construction Contracts. Setoff Shall be reduced by 4% of such Purchase price. For other W/Cs s/o reduced by 36% as discussed above.

53(5)	When the business is discontinued fully (such reduction does not apply when the business is sold partly or fully)	1.4.2005	No Setoff on goods held in stock on the date of discontinuance. (such reduction does not apply to stock of Capital Assets)
53(6)	If the Receipts on account of Sale are less than 50% of Total Receipts	1.4.2005 To 7.9.06	Setoff allowed only on the purchases corresponding to goods sold or Stock Transferred under Form F.
	'Receipts' means the receipts pertaining to all activities including	8.9.06	1] Setoff allowed only on those purchases (and Packing materials)

	business activities carried out in Maharashtra, but does not include the value of Stock Transfer under Form F		effected in that year where the corresponding goods are sold or sent on Form F, within 6 months of the date of purchase. 2] in case of hotels and clubs, Setoff on purchases of Capital Assets and Consumables pertaining to Kitchen and services of Food and Drink, is allowable
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▪ **Rule 53(6)**

Wef 8-9-06 to 23-10-08: [Earlier amendment]

- Only on Purchases where Corresponding goods are sold or Stock Transferred to Other State within 6 months of Purchase
- Hotels & Clubs : on Capital Assets & Consumables Pertaining to Kitchens & Service of Food & Drinks
- Plant & Machinery Purchase from 8-9-06, setoff allowable
- Explanation : 'Gross Receipts' means receipts pertaining to All activities carried out in Maharashtra

Rule No.	Event of Contingency for Reduction of Set off	w.e.f.	Reduction by
		w.e.f. 1.4.07	Above clauses continue. Further on Plant & machinery purchases on or after 8-9-06, (setoff will be allowable for the first 3 years from the effective date of certificate of registration.)

53(7)	Liquor Vendor, holding license in FL II/CL III, whose Actual Sale Price (ASP) of liquor is less than MRP of Liquor. (Actual Sale Price means Sale Price exclusive of tax element)	1.4.05	Setoff granted = Setoff amount X (ASP Turnover / MRP Turnover) (deleted w.e.f 01.05.11)
53(7A)	Purchase of Office Equipment, Furniture or Fixture treated as Capital Assets	8.9.06	1] Setoff shall be reduced by 4% of Purchase Price of such asset 2] No such reduction, if dealer is engaged in the business of transferring the right to use them. 3] Purchases of all other movable business Capital Assets are eligible for full Setoff
53(7A)	Purchase of Office Equipment, Furniture or Fixture treated as Capital Assets	w.e.f. 1.4.07	1] Setoff shall be reduced by 3% of Purchase Price of such asset 2] No such reduction, if dealer is engaged in the business of transferring the right to use them. 3] Purchases of all other movable business Capital Assets are eligible for full Setoff
53(7B) Inserted on 31-10-07	The Dealer holding a license for transmission or distribution of Electricity under Electricity Act,2003, Shall be liable for setoff Reduction:	1.4.05 to 31.3.07	4% of purchase price of goods purchased for use in transmission / distribution of Electricity, including on Capital Assets
		w.e.f 1.4.07 to	3% of purchase price of above goods

		31.05.08	
53(7B) Inserted on 31-10-07	The Dealer holding a license for transmission or distribution of Electricity under Electricity Act,2003, Shall be liable for setoff Reduction:	w.e.f. 1.06.2008	2% of purchase price of goods purchased for use in transmission / distribution of Electricity, including on Capital Assets

REDUCTION IN SET OFF (Rule 53)

- Rule 53(8) : If any amount of set-off is required to be reduced/ disallowed, on account of happening of any contingency specified in Rule 53, then the same shall be deducted by the dealer in the period in which the contingency specified in rule 53 occurs
- The Problem is likely to arise in case of 53(6), where in set off seems to be linked with sale event

Rule 53(9)

- For sub-rules 1,2(a) and 3
- 'Corresponding' means which are contained in the output & packing material and does not include Consumable, Stores, Goods treated as Capital Assets & their PCA and Fuel [Rule 53(9)(a)]
- For 53 (2), if PP can't be ascertained from books of A/c then Ratio of SP/Value of Taxable & Tax free goods be applied [Rule 53(9)(b)(i) w.e.f. 1-11-08]
- For corresponding PP, Ratio of SP goods sold & value (inclusive of Excise Duty as per A/c) of Stock Transfer be applied [Rule 53(9)(b)(ii) w.e.f. 1-11-08]

Rule 53 – Notes

- R. 53(2)(b): Resale of tax free goods: Corresponding packing materials, However, under provision retrospectively inserted from 1.4.2005, no such retention shall be made in case of export of sugar and textiles covered by schedule A 45
- Provision to 53(3): The retention not to apply when dispatched goods are brought back to the State within six months from the date of dispatch
- If goods are dispatched to job worker situated outside the State, retention as per R 53(3) not to apply
[Tr.Cir.16T of 2007, 20.2.2007]

ITC – NEGATIVE LIST Rule 54

- No Set-off on certain goods specified in this Rule or if any contingency specified in this rule occurs
- R 54(a) : Motor Vehicles : On passenger vehicles, treated by the claimant dealer as capital assets and parts, components and accessories thereof
 - N.A, for dealer in M. Vehicles, Leasing Co.

ITC – NEGATIVE LIST Rule 54

- Motor Spirits [54(b)]
 - N.A. for dealers in Motor Spirits & dispatches as stock transfer outside Maharashtra
 - High speed diesel oil, Aviation Turbine Fuel (duty paid), Aviation Turbine Fuel (bonded) and petrol when used for own consumption
- Crude oil [54©]- used by petroleum oil refinery for refining oil
- Principally engaged in job-work or labour [54(d)]
 - Not paying tax as works contractor
 - Not engaged in manufacturing of goods for sale by him.
 - Not set-off is not available on any purchases of consumables or on goods treated as capital assets

ITC – NEGATIVE LIST Rule 54

- Rule 54(e) : PSI units (exemption + deferral unit)
 - Purchase of 'raw material' – as per Rule 80
 - To claim refund

- Eligible for capital assets purchases
- Acc. To amendment on 31.10.2007 – Exception provided for PSI Units under Tourist Projects,1999

ITC – NEGATIVE LIST Rule 54

- **Sub-Rule 54(f)**
- SET OFF ONLY IN RESPECT OF SPECIFIED GOODS OF INCORPOREAL OR INTANGIBLE NATURE

<p>Import License & export license like DFRC, VKGUY, FMS etc. Software packages in the hands of dealer who is trading in software. Copyright which is resold within 12 months from the date of purchase (w.e.f.8.9.06)</p>	<p>w.e.f.1.4.2005 to 31.3.2010</p>
<p>ITC available on items mentioned at Sr. no. 2 & 3 of notification issued C-39 i.e. Import Licenses & export license like DFRC, VKGUY, FMS etc. Software packages in the hands of dealer who is trading in software. Copyright which is resold within 12 months from the date of purchase</p>	<p>w.e.f.1.4.2010 till date</p>

ITC – NEGATIVE LIST Rule 54

- Sub-Rule 54(f)
 - From 8.9.2006. Purchase of copyright which is resold within twelve months of the date of purchases is eligible for set-off

- This rule is substituted w.e.f. 01/01/11 & now provides that import license & export permit or quota or licenses covered by entries 3 & 4 respectively of the notification issued under schedule C-39 will be eligible for set off along with SIM cards, copy rights which are resold within 12 months of purchase and in the hands of a software trader of software packages.

ITC – NEGATIVE LIST Rule 54

- Sub-Rule 54(g): No set-off in respect of purchases effected by way of works contract which results in immovable property.
 - Under this Sub-Rule, the set-off is denied to purchaser of goods; i.e., contractee. The contractor will get the set-off as per the provision of law.
 - Sub-rule (g) is substituted from 8.9.2006 it shall not be disallowed in case of plant & machinery.

Rule 54(h): No set-off in respect of any goods in which property is not transferred (either in same form or any other form) to any person and which are used in erection of immovable property other than plant & machinery.

- This is corollary of earlier clause.
- Rule 54(i): Liquor Dealer opting for composition: No set-off to the dealer under composition sec. 42(2), on purchases of IMFL or Country Liquor.
 - Except for interstate –sales & sales from customs bond to foreign going ships
- Rule 54(j): Mandap Contractors under composition u/s. 42(4): No set-off on purchase made on or after 20.6.2006 of Mandap, Material used for Decoration of mandap and Furniture, Fixtures , and other articles ordinarily used along with a mandap
- Rule 54(k):

Hotelier: Added from 8.9.2006, in case of an Hotelier, set-off will not be allowed on purchases of any goods after 1.4.2005, which are treated as Capital Assets, not pertaining to supply by way of or as part of services in any other manner, of food or any drink (including liquor).
- R[54(1)] – office equipment, F & F and electrical installation – 1.4.05 to 7.9.06 – treated as capital assets.
 - Leasing of these goods not subject to disallowance of set off.

Rule 52A

Set-off in respect of goods manufactured by mega units

- Who Can Claim ? – Any registered dealer
- On What Goods
 - Resale of goods purchased originally mfg by Mega Units (Other than declared goods)
- Set off restricted to
 - Tax paid or payable under the CST Act on the inter-state resale of corresponding goods.
 - Taxes paid on purchase of said goods, if they are sold under the Local Act.
- Conditions:
 - To be claimed only in the month of sale
 - This rule not applicable if purchased are used within the state of Maharashtra in the manufacturing of the goods

Issues in Input Tax Credit

Rule 52-Eligible purchases

- Purchases debited to P & L
 - Includes expenses debited to P & L A/c
 - Purchases in Maharashtra & transfer to other branches. Is set off available?
 - Purchases & by JV-expenses shared with group companies-
 - Is set off available?
 - Other consequences.
 - Goods purchased & subsequently lost in fire in the same year. Is ITC available/ Insurance claim received in full / part
- Purchases of capital assets
 - Is capitalization necessary to claim ITC?
 - What about CWIP?
- Purchases of components & parts
 - Fabrication of plant & machinery
 - Will it be eligible for set off ?
 - Also consider wordings of rule 53(7A)

Sales promotion exps

- Rule 52 allow ITC on exps
 - Maharashtra is probably only state having such provisions
 - Plan national distribution from Maharashtra
- Avail set off
 - Care to be taken
 - Stock transfers out of Maharashtra-rule 53(3)applicable
 - F form?-how to go about?

Other basic issues

- Registration-set off [Rule 55(1)]
 - Proviso allows set off if goods are capitalized or not sold/consumed before date of registration.
 - Plan accordingly or els go for voluntary registration before hand
- Tax invoice-to be in the name of Dealer
 - Executive seek reimbursements-credit card payments
 - J1-J2 mismatches
 - Audit disclosures

Branch transfer-Rule 53

- Dispatches to branch/agent outside state and goods received back
 - Is retention to be made?
 - In 6 months-no
 - Beyond 6 months-yes(refer explanation)
- Participation in exhibition in other states
 - Goods sold there
 - Is set off to be deducted?
- Dispatches to OMS branch/Con Agt of capital goods
 - No retention –see rule53(3)
- Corresponding goods'
 - Rule 53(9)(a)-defines,
 - Should be 'contained in the goods'
 - What about evaporation loss/handling loss?
- Ratio proportion method
 - Follow scientific methods-ratio analysis

- Avoid MRP based valuation
- Transfer to Con Agent-near mkt.price
- Changing ratio
 - Month on month
 - Review after 3/6 months
 - Weighted average method
- Goods dispatched –OMS-processed-returned back
 - Within 6 months-no disallowance
 - Only part of qty returned /only one product in recd.back-proportionate disallowance
 - Value based v.qty.based
- Goods dispatched –OMS-processed-returned back
 - Is rule 53(3) applicable on DEPB purchase?

Rule 53(4)-53(6)

- Reduction –used in w/c composition-Rule53(4)
 - Some contract-composition scheme-other not
 - How to work out retention?
 - Site wise accounting
 - Ratio method
- 'gross receipts'-Rule53(6)
 - Receipts in Maharashtra
 - Dividend
 - Interest-inter-corporation-bank deposit
 - Scrap
 - Royalty, franchisee fees
 - Insurance claim
 - Other miscellaneous income

Valuation for reduction

- For rule 53(2)&(b)
 - When no PP of 'corresponding'-work it out on SP.
 - Stock transfer out-valuation –what to take?-which method?
- For Rule 53(3)
- Ratio-Stock transfer(inclusive of excise) & SP
- Is this appropriate method?

- Are other valuation methods appropriate?
 - MRP LESS FIXED VALUE
 - COST+FIXED percentage
 -

Set off to a restaurant –under composition scheme

Rules 53(6)&54(k)+Compo scheme

- Purchases of Kitchen equipments
- Purchases debited to P&L A/c
- Purchases of inputs to cook/serve food/drinks
- Purchase of IMFL/wine/beer etc
 - See also the amended scheme of taxation of Liquor[other than wine]

Other Issues

- Minor processing of textile-dyeing, printing embroidery-no VAT payable.
 - Set off available on inputs-where property is transferred & its packing material.
 - On other –including capital assets-other rules applicable.
- Purchases of scooter & used for delivery of goods sold.
 - Is set off available?[Rule54(a)]
- Purchases of DFIA,VKUY,FMC[Rule 54(f)]
 - Is set off available?
 - Before 1.1.2011
 - After 1.1.2011

Resulting in immovable property

- Purchase of goods by way of W/C-other than plant & machinery –resulting in immovable property [Rule 54(g)]
 - What is ‘immovable’
 - Is this sub-rule applicable to ‘principal contractor’?
- Purchase of goods –the property not transferred-which are used in erection of immovable goods[Rule 53(h)]
 - Is set off available on
 - Scaffolding & centering material
 - Batching plant
 - Construction equipments, tools, etc..?

Hawala Purchase

- Disallowance of ITC
 - Circular transactions
 - Accommodation bills
 - Affidavit by Hawala operators
 - Beneficiary
- Any way out?
 - Counter affidavit
 - No goods-no tax
 - Fight out legally-do not file revised return but file appeal
- BHC-WP-48(5) cases
 - Mahalaxmi Cotton
 - Assmt+ other promises by state

REFUND

- Circular 22T of 2010-22 sheets dt 5.10.2010
- Cross check
- J1 & J2 matching
 - D/N & C/N-impact
 - Incomplete J1and/or J2
 - Net accounting
 - Unilateral action by seller/buyer
 - Invalid TIN-only on validation.
- Internal circular-46 pages
- CA certification-condition relaxed
- TINXSYS