

Recent VAT Updates for Developers & Others

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at JB Nagar CPE SCM, WIRC, ICAI **4 May 2014**

L&T Ltd & ors vs State of Karnataka & ors

Civil Appeal # 8672 of 2013 **Order dt 26 Sept 2013 65 VST 1 (SC)**
Larger Bench of 3 Judges (R M Lodha J, J Chelameswar J, M B Lokur J).....

- SC LB reconsidered its Division Bench ruling in **K. Raheja Development Corpn v. State of Karnataka; (2005) 5 SCC 162** as referred by its Division bench ruling in **L&T Ltd & Anr. v. State of Karnataka & Anr. SLP(C) No. 17741 of 2007**
- SC considered 14 appeals from Karnataka & 12 appeals from Maharashtra thus in all 26 appeals decided which include Promoters & Builders Asso. filed SLP # 17738 & 17709 of 2012 **MCHI filed SLP (Civil) #21934 of 2012 dt 4 July 2012?**
- SC ruling after 6 months of hearing, by LB of 3 Judges, for 26 appeals, running in 83 pages & 126 paras, referring 61st Law Commissions Report, 46th Amendment to Constitution, 28 prominent case laws of SC, English & Australian Court

.....L&T Ltd & Ors vs St of Karnataka & Ors
Civil Appeal # 8672 of 2013 Order dt 26 Sept 2013 (SC)
Larger Bench of 3 Judges (**R M Lodha J**, J Chelameswar J, M B Lokur J).....

- Para 1 to 12: **Facts** of cases reconsidered & heard
- Para 13 to 15: **BHC decision in MCHI** & Ors and provisions of MVAT
- Para 16 to 21: Arguments & Submissions of **Appellants in Karnataka**
- Para 22 to 38: Arguments & Submissions of **Appellants in Mah.**
- Para 39 to 43: Arguments & Submissions of **Karnataka Govt**
- Para 44 to 51: Arguments & Submissions of **Maharashtra Govt**
- Para 52 to 90: **SC's reference to** 61st Law Commissions Report, 46th Amendment to Constitution, 28 prominent case laws of SC, English & Australian Court distinguishing Sale Contract and Service / Works Contract; (Gannon Dunkerley, Builders Association of India, Rainbow Colorlab, ACC, B C kame, Hindustan Aeronautics, Hindustan Shipyard, Kone Elevators, BSNL, etc)

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.....L&T Ltd & Ors vs St of Karnataka & Ors
Civil Appeal # 8672 of 2013 Order dt 26 Sept 2013 (SC)
Larger Bench of 3 Judges (**R M Lodha J**, J Chelameswar J, M B Lokur J).....

- **Para 91 to 100: SC framed its views & opinions on various aspects for levy of sales tax on goods involved in works contract**
- **Para 101: SC summarises legal positions qua levy of vat on goods involved in WC**
- **Para 102 to 118: Raheja Development's decision approved and applied it to Karnataka Law for L&T**
- **Para 119 to 122: Taxability of WC under MVAT Law discussed & decided**
- **Para 123 to 125: MVAT Rule 58(1A) read down & directed Mah. State Govt to bring clarity about deductions for Land & labour to compute value of goods involved in WC for a unit sold in an under construction building; Double Taxation shall be avoided**

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26 Sept 2013 (SC):
MCHI vs St of Mah. & ors (2012) 51 VST 168 (Bom) ruling referred to:

- **Para 14:** "The Division Bench of the BHC on examination of rival contentions has, *inter alia*, held;
 - (a) works contract have numerous variations and it is not possible to accept the contention either as a matter of principle or as a matter of interpretation that a contract for works in the course of which title is transferred to the flat purchaser would cease to be works contract;
 - (b) the provisions of MOFA recognise an interest of the purchaser of the apartment, not only in respect of the apartment which forms the subject matter of the purchase, but also an undivided interest, described as a percentage in the common areas and facilities;
 - (c) the amendment to Section 2(24) clarifies the legislative intent that a transfer of property in goods involved in the execution of works contract including an agreement for building and construction of immovable property would fall within the description of a sale of goods within the meaning of that provision and it brings within the ambit of that expression "transactions of that nature" which are referable to Article 366 (29-A)(b);
 - (d) by amended definition of the expression "sale" in clause (b)(i) of the explanation to Section 2(24), the transactions which involve works contract have been covered;
 - (e) the amendment in Section 2(24) does not transgress the boundary set out in Article 366(29-A);
 - (f) Rule 58(1A) of the MVAT Rules provides that in the case of construction contracts where the immovable property, land or as the case may be, interest therein is to be conveyed and the property involved in the execution of the construction contract is also transferred, it is the latter component which is brought to tax; the value of the goods at the time of transfer is to be calculated after making the deductions which are specified under sub-rule (1); and
 - (g) Rule 58(1A) provides for a measure for the tax by excluding the cost of the land."

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:
Works Contract means? Taxable event in WC?

- **Para 62:** "The States have now been conferred with the power to tax indivisible contracts of works.by enlarging the scope of "tax on sale or purchase of goods" in Entry 54 of List II of Seventh Schedule when read with the definition clause 29-A, includes a tax on the transfer of property in goods whether as goods or in the form other than goods involved in the execution of works contract. The taxable event is deemed sale.
- **Para 64:** "... Whether contract involved a dominant intention to transfer the property in goods, in our view, is not at all material. It is not necessary to ascertain what is the dominant intention of the contract. Even if the dominant intention of the contract is not to transfer the property in goods and rather it is the rendering of service or the ultimate transaction is transfer of immovable property, then also it is open to the States to levy sales tax on the materials used in such contract if it otherwise has elements of works contract...."
- **Para 71:** "... To say that insertion of clause (29-A) in Article 366 has not undone Gannon Dunkerley-I in any manner, in our view, is not correct. The narrow meaning given to the term "works contract" in Gannon Dunkerley-I now no longer survives."

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:
Works Contract means? Taxable event in WC?

- **Para 76:** "In our opinion, the term 'works contract' in Article 366(29-A)(b) is amply wide and cannot be confined to a particular understanding of the term or to a particular form. The term encompasses a wide range and many varieties of contract."
- **Para 91:** "In our opinion, the tests laid down in Hindustan Shipyard after Forty-sixth Amendment are not of much help in determining whether a contract is a works contract or sale of goods."
- **Para 92:** "In our opinion, the distinction between contract for sale of goods and contract for work (or service) has almost diminished in the matters of composite contract involving both (a contract of work/labour and a contract for sale for the purposes of Article 366 (29-A)(b). Now by legal fiction under Article 366(29-A)(b), it is permissible to make such contract divisible by separating the transfer of property in goods as goods or in some other form from the contract of work and labour. A transfer of property in goods under clause 29(A)(b) of Article 366 is deemed to be a sale of goods involved in the execution of a works contract For this reason, the traditional decisions which hold that the substance of the contract must be seen have lost their significance. What was viewed traditionally has to be now understood in light of the philosophy of Article 366(29-A)."

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:
Works Contract means? Taxable event in WC?

- **Para 94 & 101 (i):** "For sustaining the levy of tax on the goods deemed to have been sold in execution of a works contract, in our opinion, three conditions must be fulfilled:
 - (i) there must be a works contract,
 - (ii) the goods should have been involved in the execution of a works contract, and
 - (iii) the property in those goods must be transferred to a third party either as goods or in some other form.**In a building contract or any contract to do construction, the above three things are fully met. In a contract to build a flat there will necessarily be a sale of goods element. Works contracts also include building contracts and therefore without any fear of contradiction it can be stated that building contracts are species of the works contract.**"
- **Para 96:** "Value addition as a concept after Forty-sixth Amendment to the Constitution has been accepted by this Court in P.N.C. Construction (2007) 7 SCC 320. While dealing with this concept, the Court said that value addition was important concept which had arisen after the Forty-sixth Amendment by insertion of sub-clause (b) of clause (29-A) in Article 366. It has now become possible for the States to levy sales tax on the value of the goods involved in a works contract in the same way in which the sales tax was leviable on the price of the goods in a building contract. **On account of the Forty-sixth Amendment in the Constitution the State Governments are empowered to levy sales tax on the contract value which earlier was not possible.**"

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:

Computation of Value of goods involved in WC:

Arguments & Submissions by Counsel of Appellants in Maharashtra :

Para 29: *“As regards constitutional validity of the provisions of Rule 58(1) and 58(1A) of MVAT Rules, it is submitted that these Rules and Rule 58(1-A) of the 2005 Rules include an element of profit earned by a Promoter/ developer on the sale of a flat. There are no provisions to take the profit element from arriving at the value of goods. As a result income earned by the promoter/developer from the profit on sale of the flat also gets included in the value of goods and eventually the said income gets taxed. Imposition of such tax on the income of the promoter/developer is beyond the legislative competence of the State Government.”*

Arguments & Submissions by Maharashtra Govt:

Para 46: *“... According to learned Advocate General, it has now become possible for the States to levy sales tax on the value of the goods involved in the works contract in the same way in which the sales tax was leviable on the price of the goods supplied in a building contract. This is where the concept of “value addition” comes in. It is on account of Fortysixth Amendment to the Constitution that the State Government is empowered to levy sales tax on the contract value which earlier was not possible.*

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:

Computation of Value of goods involved in WC:

Arguments & Submissions by Maharashtra Govt:

- **Para 48:** *“.....The submission of the learned Advocate General is that transfer of immovable property cannot be taxed as a sale of goods but there is no constitutional bar to tax only the sale of goods element and separately tax the transfer of immovable property. Taxing the sale of goods element in a works contract under Article 366 (29-A)(b) read with Entry 54 List II is permissible, provided the tax is directed to the value of the goods and does not purport to tax the transfer of immovable property.”*

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:

Computation of Value of goods involved in WC:

Observations of SC:

- **Para 68:** *“Though the tax is imposed on the transfer of property in goods involved in the execution of a works contract, the measure for levy of such imposition is the **value of the goods involved in the execution of a works contract**. Since, **the taxable event** is the transfer of property in goods involved in the execution of a works contract and the said transfer of property in such goods takes place when the goods are incorporated in the works, **the value of the goods which can constitute the measure for the levy of the tax has to be the value of the goods at the time of incorporation of the goods in works and not the cost of acquisition of the goods by the contractor.**”*
- **Para 70:** *“The Forty-sixth Amendment leaves no manner of doubt that the States have power to bifurcate the contract and levy sales tax on the value of the material involved in the execution of the works contract. The States are now empowered to levy sales tax on the material used in such contract. In other words, clause 29-A of Article 366 empowers the States to levy tax on the deemed sale.”*

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:

Computation of Value of goods involved in WC:

Observations of SC:

- **Para 100:** *“We have no doubt that the State legislatures lack legislative power to levy tax on the transfer of immovable property under Entry 54 of List II of the Seventh Schedule. However, the States do have competence to levy sales tax on the sale of goods in an agreement of sale of flat which also has a component of a deemed sale of goods..... In para 88 of Bharat Sanchar, the Court stated: “the aspects theory does not however allow the State to entrench upon the Union List and tax services by including the cost of such service in the value of the goods. Even in those composite contracts which are by legal fiction deemed to be divisible under Article 366(29-A), the value of the goods involved in the execution of the whole transaction cannot be assessed to sales tax”. Having said that, the Court also stated that the States were not competent to include the cost of service in the value of the goods sold (i.e. the sim card) nor the Parliament could include the value of the sim card in the cost of services. But the statement in para 92(C) of the Report is clear that it is upto the States to tax the sale of goods element in a composite contract of sale and service. Bharat Sanchar thus supports the view that taxation of different aspects of the same transaction as separate taxable events is permissible.”*

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:

SC summarises legal position qua WC in sale of a unit in under construction building at Para 101:

- **Para 101:** SC summarises legal positions for levy of sales tax on goods involved in sale of a unit in under construction building :
- **Para 101(i):** "*(i) For sustaining the levy of tax on the goods deemed to have been sold in execution of a works contract, three conditions must be fulfilled: (one) there must be a works contract, (two) the goods should have been involved in the execution of a works contract and (three) the property in those goods must be transferred to a third party either as goods or in some other form.*"
- **Para 101(ii):** "*For the purposes of Article 366(29-A)(b), in a building contract or any contract to do construction, if the developer has received or is entitled to receive valuable consideration, the above three things are fully met. It is so because in the performance of a contract for construction of building, the goods (chattels) like cement, concrete, steel, bricks etc. are intended to be incorporated in the structure and even though they lost their identity as goods but this factor does not prevent them from being goods.*"

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:

SC summarises legal position qua WC in sale of a unit in under construction building at Para 101:

- **Para 101(iii):** "*Where a contract comprises of both a works contract and a transfer of immovable property, such contract does not denude it of its character as works contract. The term "works contract" in Article 366 (29-A)(b) takes within its fold all genre of works contract and is not restricted to one specie of contract to provide for labour and services alone. Nothing in Article 366(29-A)(b) limits the term "works contract".*"
- **Para 101(iv):** "*Building contracts are species of the works contract.*"
- **Para 101(v):** "*A contract may involve both a contract of work and labour and a contract for sale. In such composite contract, the distinction between contract for sale of goods and contract for work (or service) is virtually diminished.*"
- **Para 101(vi):** "*The dominant nature test has no application and the traditional decisions which have held that the substance of the contract must be seen have lost their significance where transactions are of the nature contemplated in Article 366(29-A).... . The enforceability test is also not determinative.*"

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:
SC summarises legal position qua WC in sale of a unit in under construction building at Para 101:

- **Para 101(vii):** "A transfer of property in goods under clause 29-A(b) of Article 366 is deemed to be a sale of the goods involved in the execution of a works contract by the person making the transfer and the purchase of those goods by the person to whom such transfer is made."
- **Para 101(viii):** "Even in a single and indivisible works contract, by virtue of the legal fiction introduced by Article 366(29-A)(b), there is a deemed sale of goods which are involved in the execution of the works contract. Such a deemed sale has all the incidents of the sale of goods involved in the execution of a works contract where the contract is divisible into one for the sale of goods and the other for supply of labour and services. In other words, the single and indivisible contract, now by Forty-sixth Amendment has been brought on par with a contract containing two separate agreements and **States have now power to levy sales tax on the value of the material in the execution of works contract.**"

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:
SC summarises legal position qua WC in sale of a unit in under construction building at Para 101:

- **Para 101 (xi):** "Taxing the sale of goods element in a works contract under Article 366(29-A)(b) read with Entry 54 List II is permissible even after incorporation of goods provided tax is directed to the value of goods and does not purport to tax the transfer of immovable property. The value of the goods which can constitute the measure for the levy of the tax has to be the value of the goods at the time of incorporation of the goods in works even though property passes as between the developer and the flat purchaser after incorporation of goods."

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:
K. Raheja Dev. Corp. vs St of Karnataka (2005) 5 SCC 162 (SC) referred to:

■ **Para 107: Raheja Development's SC ruling reproduced:**

- "(i) The definition of the term "works contract" in the Act is an inclusive definition.*
- (ii) It is a wide definition which includes "any agreement" for carrying out building or construction activity for cash, deferred payment or other valuable consideration.*
- (iii) The definition of works contract does not make a distinction based on who carries on the construction activity. **Even an owner of the property may be said to be carrying on a works contract if he enters into an agreement to construct for cash, deferred payment or other valuable consideration.***
- (iv) **The developers had undertaken to build for the prospective purchaser.***
- (v) Such construction/development was to be on payment of a price in various installments set out in the agreement."*

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:
K. Raheja Dev. Corp. vs St of Karnataka (2005) 5 SCC 162 (SC) referred to:

■ **Para 107: Raheja Development's SC ruling reproduced:**

- "(vi) The developers were not the owners. They claimed lien on the property. They had right to terminate the agreement and dispose of the unit if a breach was committed by the purchaser. A clause like this does not mean that the agreement ceases to be "works contract". So long as there is no termination, the construction is for and on behalf of the purchaser and it remains a "works contract".*
- (vii) **If there is a termination and a particular unit is not resold but retained by the developer, there would be no works contract to that extent.***
- (viii) **If the agreement is entered into after the flat or unit is already constructed then there would be no works contract. But, so long as the agreement is entered into before the construction is complete it would be works contract."***

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:
Taxable Event in building construction: Stage from which vat
liable: Importance of date of contract with flat buyer:

- **Para 115:** "It may, however, be clarified that activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser. The value addition made to the goods transferred after the agreement is entered into with the flat purchaser can only be made chargeable to tax by the State Government."
- **Para 117:** "The submission of Mr. K.N. Bhat (Karnataka Govt) that the view in Raheja Development that when a completed building is sold, there is no work contract and, therefore, no liability to tax is not correct statement of law, does not appeal to us. If at the time of construction and until the construction was completed, there was no contract for construction of the building with the flat purchaser, the goods used in the construction cannot be deemed to have been sold by the builder since at that time there is no purchaser. That the building is intended for sale ultimately after construction does not make any difference."

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.....L&T Ltd & Ors vs St of Karnataka & Ors 26-9-13 SC:
Approval of K. Raheja Dev. Ruling dt 5-5-2005 SC:

- **Para 118.** "We are clearly of the view that Raheja Development lays down the correct legal position and we approve the same."
- **Para 121:** "..... Thus, in our view, there is no merit in the challenge to the constitutional validity to the provisions of explanation (b)(ii) to Section 2(24) of MVAT which were amended with effect from 20.06.2006...."
Excerpts from Para 34 of BHC decision in MCHI:
" Whether there is a works contract in a given case is for assessing authorities to determine....
..... the amended definition in the State legislation in the present case provides a clarification or clarificatory instances...."
- **Para 122:** "We are in agreement with the above view and reject challenge to amendment to the provisions of explanation (b)(ii) to Section 2(24) of MVAT Act."

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:

Mode of valuation of goods provided under Rule 58(1A) needs clarity from Maharashtra State Govt:

- **Para 123:** "Sub-rule (1A) was inserted into Rule 58 by a notification dated 01.06.2009....
..... The challenge was laid to Rule 58(1A) of the MVAT Rules before the Bombay High Court....."
- **Para 124:** "The value of the goods which can constitute the measure of the levy of the tax has to be the value of the goods at the time of incorporation of goods in the works even though property in goods passes later. Taxing the sale of goods element in a works contract is permissible even after incorporation of goods provided tax is directed to the value of goods at the time of incorporation and does not purport to tax the transfer of immovable property. The mode of valuation of goods provided in Rule 58(1A) has to be read in the manner that meets this criteria and we read down Rule 58(1-A) accordingly. The Maharashtra Government has to bring clarity in Rule 58 (1-A) as indicated above. Subject to this, validity of Rule 58(1-A) of MVAT Rules is sustained."

[So Land cost or land value as per SDRR, whichever higher ?? Evidence??]

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.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:

Mah. AG assures that implementation of Rule 58(1A) shall not result in double taxation; Circulars are only clarificatory in nature, so not binding to tax payer:

- **Para 125:** "Once we have held that Raheja Development¹ lays down the correct law, **in our opinion**, nothing turns on the circular dated 07.02.2007 and the notification dated 09.07.2010. The circular is a trade circular which is clarificatory in nature only. The notification enables the registered dealer to opt for a composition scheme. The High Court has dealt with the circular and notification. **We do not find any error** in the view of the High Court in this regard. Moreover, the Advocate General for Maharashtra clearly stated before us that implementation of Rule 58(1-A) shall not result in double taxation and in any case all claims of alleged double taxation will be determined in the process of assessment of each individual case."

Double taxation qua: sub-contract; stamp duty & vat; Land value deduction; etc??

- **Para 126:** "After having given answer to the reference, we send the matters back to the Regular Bench for final disposal."

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Rule 58 amended vide Notification # VAT 1513/CR-147/Tax-1 dt. 29 Jan 2014, effective retrospectively from 20 Jun 2006....

- **Rule 58(1): Labour & Exps. Dedn. : Note below Table for Std. Dedn. For labour amended:**

Total Contract Price.....	say	Rs. 100
(1) Less: Cost of Land determined u/r 58(1A).....	say	Rs. -40
(2) Less: Quantum of price on which tax paid by Sub-contractor & tax amt. charged separately by Sub-contractor..say (16+1=)		-17
Balance Contract price.....		Rs. = 43
Less: Std. Dedn. For labour @ 30% of balance i. e. of Rs. 43 ...		Rs. - 13
Balance deemed as material value in WC.....		Rs. = 30

- **Rule 58(1A): Land Cost Dedn. :** The value of goods at the time of transfer shall be calculated **after deduction of** cost of land which shall be determined as per Stamp Duty Ready Reckoner (SDRR) as on 1st Jan of the year in which the agreement to sell property is registered.

Proviso added: "Provided that, after payment of tax on the value of goods determined as per this rule, dealer may prove before the Dept. of Town Planning & Valuation that the actual cost of land is higher than that determined as per SDRR then actual cost of land shall be deducted and excess tax paid, if any, shall be refunded."

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...Rule 58 amended vide Notification # VAT 1513/CR-147/Tax-1 dt. 29 Jan 2014, effective retrospectively from 20 Jun 2006

- **Rule 58(1B) inserted:** From Total Contract Price deduct Labour & Exps u/r 58(1) and Land Cost Dedn. u/r 58(1A); Determination of SP of goods in WC, based on the Stage of Construction during which contract is executed by Developer with purchaser: Furnish Certificate from Local or Planning Authority for date of completion of stages; Where such Authority does not have such procedure then such certificate from Registered RCC Consultant;

Stage of Construction during which Contract executed with buyer (Stage qua Project or Bldg or Unit ??)	SP of goods involved in WC determined @	Remarks: Failure to produce such Certificate results in denial of said dedn. [Rule 58(1C)]??
(a) Before issue of Commencement Certificate (CC)	100%	L of A; MOU; Offer Letter; Option Letter; Agreement dt; Agreement Regn. Dt; etc
(b) From CC to completion of Plinth Level (PL)	95%	Assumption of 5% of Total value of goods used till CC?
(c) After PL to completion of 100% of RCC framework (RCC) (of floor or entire building??)	85%	Assumption of 15% of Total value of goods used till PL?
(d) After RCC to Occupation Certificate (OC)	55%	Assumption of 45% of Total value of goods used till 100% RCC?
(e) After OC (Part OC?...Deemed OC under Law?)	Nil %	OC Application or Grant of OC?

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Trade Circular # 12T of 2014 dt 17 Apr 2014: Replies to 28 Queries raised wrt Vat Computation for Developers.....

- **Tax computation method and value of goods liable to tax: (Q # 5,23,24,28,14,15):**

The taxable turnover of goods is to be valued and computed **following the computation rule 58**. From the agreement value of the flat/unit the deduction is to be taken for land value, sub-contract payments, labour/services expense and stage of construction completed at the point of entering into contract, as provided u/r 58 to arrive at the gross taxable turnover for deemed sale of goods on which Vat is calculated. **The circular clarifies that no other method shall be permitted for Vat calculation. No vat on Stamp Duty. (Vat on Service Tax??)**

- **Land value deduction (Q # 4,6,8,9):**

The deduction for land value is available based on land rates given in the Stamp Duty Ready Reckoner (**SDRR**) relevant for the calendar year in which the agreement is executed. If the **actual land cost is higher** as compared to SDRR land value then to take the higher deduction the certificate is to be obtained from The **Department of Town Planning and Valuation (DTPV)** which is informed by Vat Department, about such amendments made to rule 58(1A). **DTPV will devise the procedure for issuance of such certificate**. There is **no prescribed format** for such certificate. In **absence of such certificate** the deduction for land value will be available as per **SDRR**.

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.....Trade Circular # 12T of 2014 dt 17 Apr 2014: Replies to 28 Queries raised wrt Vat Computation for Developers.....

- **Stage-wise completion of construction deduction (Q # 1,2,3,7,11,13):**

Supreme Court in L&T's ruling had directed the Maharashtra state government to amend the Vat computation rule to **grant the deduction for the turnover of construction which was completed prior to the stage of entering into the contract**. In other words, the cost of construction incurred upto the stage of contract with the purchaser, is not taxable.

To grant such deduction **rule 58(1B) is inserted on 29 Jan 2014** effective retrospectively from 20 Jun 2006.

The certificate about the date of **completion of plinth level** construction shall be obtained **from the local body**.

The certificate about the date of **completion of 100% RCC framework** for the **entire (???)** building shall be obtained **from the Registered RCC consultant**. There is **no prescribed format** for such certificate.

In **absence of such certificate** the **deduction** for stage-wise construction completion will **not be available**.

Such deduction is not available under the composition scheme.

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.....Trade Circular # 12T of 2014 dt 17 Apr 2014: Replies to 28 Queries raised wrt Vat Computation for Developers

- **Return / Tax payment and carry forward of negative turnover or refund: (Q # 10,12,19,20,21,16,17,18,26):**

The dealer has to **rework the Vat computation based on above certificates and deductions and file the revised returns for the period from 2006-07 till dt** for all the construction projects. The **negative turnover** arrived at after taking the above deductions **can be carried forward to subsequent periods till the completion of entire project**. The **refund of set off can be carried forward upto March 2010** and thereafter it shall be claimed by filing **refund application in form 501, soon or it may be granted in assessment**.

- **Tax collection, interest and assessment (Q # 22,25,27):**

Tax can be collected vide raising a **debit note or letter**.

Interest will be levied as per the provisions of law.

The developer will be **assessed by one officer for the entire project for all the periods concerned**. [Earlier FAQs are relied upon by Department....]

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WP at BHC filed against Rule 58 Notification & Circulars qua Developers & Builders

- **Writ Petitions filed before BHC:**
Maharashtra Credie-WPST/11433/2014;
Builders' Association- WPL/1148/22014;
Prime Property Corpn. Ltd.-WPL/1146/2014;
Etc.....

Against Notification dt 29.01.2014 and
Circular No 7 T of 2014 dt 21 Feb 2014 and 12 T of 2014 dt 17 Apr 2014:

29 Apr 2014: No interim relief;
Revised Return due dt 30 Apr 2014 not extended

26 Jun 2014: Admission & Hearing

Auditor's Role: Vat liability as per rules; Vat liability as per dealer;
Disclosure about pending writs & rulings

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Example for Vat Computation for Unit sold during construction, based on Rule 58 amended on 29 Jan 2014 wef 20 Jun 2006:

Details of aTransaction	Rule 58: Std. Dedn. as per Table Rs.	Rule 58: Actual Dedn for Labour & Exps as per Books of A/c Rs.	Sec. 42(3): Composition Sch. @ 5% Rs.
Total Agreement Value	100	100	100
Less: Land Cost/Value (Whichever Higher) u/r 58(1A) say	-40	-40	-40?? (Para 101(xi) & 124)
Less: RD Sub-Contracts u/r 58(1) say	-17	-17	-17
Balance WC	= 43	= 43	= 43 or 83?
Less: Labour, Exps, Profit, etc u/r 58(1) say	(@ 30%) = -13	(Actual say..) - 23	-00
Balance Goods Value	= 30	= 20	= 43 or 83?
Stage of Agrmnt. qua Constrn. u/r 58(1B) say SP = 85%	= 26	= 17	= 43 or 83? Or 85% of above balance??
Tax Payable =	Taxable @ respective vat rates & reduce setoff		Tax @ 5% & setoff in excess of 4%

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Taxable Event in building construction: Stage from which vat liable: Importance of date of contract with flat buyer....:

Milestone or Stages	Stage of Construction	Goods used	Approx. value %
1st	Upto Plinth Level or Podium (Piling, Basements, Ground flr)	Steel, Stones, Cement, RMC, etc	??
2nd	RCC framework for Floorwise Slabs	Steel, Stones, Cement, RMC, etc	??
3rd	Masonry work	Bricks, sand, cement or Ciporax or Concrete block	??
4th	Plaster: Internal & External	Sand & cement or Gypsum	??
		Total value from 1st to 4th stage	Steel 18% & Concrete 18% = Total 36%

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...Taxable Event in building construction: Stage from which vat liable: Importance of **date of contract** with flat buyer:

Milestone or Stages	Stage of Construction	Goods used	Approx. value %
5th	Doors & Windows	Timber, Metal, fittings, etc	
6th	Flooring & Tiling	Tiles, Marble, Granite, etc	
7th	Plumbing, Sanitary & Electrical work	Pipes, fittings, sanitary wares, cables, switches, fittings, etc	
8th	Lift / Elevators	Lift	
9th	Painting: Internal & External	Paints, chemicals, etc	
10th	Compound flooring, walls, landscape, etc	Tiles, pavers, bricks, gates, etc	
Certificate of Architect or Civil Engineer or Qty. Surveyor or RCC Consultant...or Accounts ??		Total value from 5th stage to 10th stage	24% So Total goods = 60%
11 th	Application for OC/CC	Grant of OC / CC after 3 / 6 / 12 months	

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Example for Vat Computation for Builder/Developer (Rs. in Lacs)...

Contract During	Agreement	Land Value	Constrn. Stage Dedn.	Bal.	Labour (25% to 40%)	Material (60% to 75%)
Project Launch	100	20	Zero = 0	80	20/24/30	60/56/50
Stage 1	111	20	10% = 9	82	21/25/30	61/57/52
Stage 4	102	30	30% = 22	50	12/16/20	38/34/30
Stage 10	113	30	90% = 75	8	2/3/4	6/5/4
OC Applied	114		100%			No T.O.P = No Vat ?
OC Grant	115		100%			No T.O.P = No Vat

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...Example for Vat Computation for Builder/Developer (Rs. in Lacs)

Contract During	Agreement	Material (60% to 75%)	Gross VAT (4% - 12.5%)	Set-off	Net VAT
Project Launch	100	60/56/50	7/6/5	4/3/2	3/3/3
Stage 1 (10%)	111	61/57/52	7/6/5	4/3/2	3/3/3
Stage 4 (30%)	102	38/34/30	4/3/3	2/1/1	2/2/2
Stage 10 (90%)	113	6/5/4	1/1/1	0/0/0	1/1/1
OC Applied (100%)	114	No T.O.P = No Vat	Zero?	Zero?	Zero?
OC Grant	115	No T.O.P = No Vat	Zero	Zero	Zero

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Issues for Land Value Deduction u/r 58(1A)

- Cost of land shall be determined as per Guidelines to Stamp Duty Ready Reckoner (SDRR)
- Cost if zero, still deduction available?
- Cost, if more than value as per SDRR, allowable?
- SDRR Land rate given per square mtr, whether to apply directly to area of each unit or area of plot & then to apply to each unit proportionately?
- SDRR Land rate given for FSI 1:1 which shall be enhanced by 40% if TDR loaded on said land; or FSI 3:1?
- TDR cost can be added to land cost?
- Corpus fund, rent, etc given to existing occupants in redevelopment project can be added to land cost?
- **Constructed area given free to Land Owner...Value?**
- SDRR Land rate is issued as on 1st Jan every year which is applicable to agreements registered in that calendar year

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Rate of Construction cost, per built-up square mtr., as per Stamp Duty RR Mumbai, for RCC frame (Pukka) Structure;

Guidelines issued by Chief Controlling Revenue Authority & Inspector General of Registration, Maharashtra: **Can we adopt said value for Vat?**

C.Y.	Mumbai Suburb Rs.	Mumbai City Rs.	Material Value @ 70% u/r 58	Gross Vat (4% -12.5%) say Avg. 9%	Gross Vat per Sqr. Ft. (@10.764)	Net Vat after setoff
2006	7,500	8,500	5,950	536	50	
2007	8,000	9,000	6,300	567	53	
2008 & 09	10,000	12,000	8,400	756	70	
2010	11,000	13,000	9,100	819	76	
2011	15,000	16,000	11,200	1,008	94	
2012	16,000	17,500	12,250	1,103	103	
2013	17,600	19,200	13,440	1,210	113	
2014	24,000	25,500	17,850	1,607	150	Deferred?

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Way Forward Post Amended Rule 58 dt 29 Jan 2014...

- **BHC Ruling dt 30 Oct 2012 in Ashok R Gokani & Marathi Bandhkam Asso. held that** "whether a contract constitutes a WC or involves an element of WC is a matter which shall be decided on facts of individual case in accordance with provisions of MVAT Act"
- **Builders Association of India vs. St. of Mah. SLP # 14153 of 2013 SC Order dt 31 Jan 2014 (against BHC order dt 30 Oct 2012, Challenged Trade Cir# 14T dt 6 Aug 2012 of Adm. Relief & 18T dt 26 Sep 2012 rejecting Cost plus method) disposed off holding (J. Lodha & J. Singh):**
 - (1) Controversy is concluded by SC in L&T ruling dt 26 Sep 2013
 - (2) Clarified that grievance against Notification dt 29 Jan 2014 amending Rule 58 can be challenged
 - (3) Clarified that Revised Returns filed in terms of this (SC) Order or Amended rule 58 will be examined by Assessing Officer appropriately in accordance with law
- Whether SC's directions & verdict in L&T Ltd dt 26 Sep 2013 is fully implemented by Mah. State Govt.??
- If there is a cancellation of contract then....adjustment?...refund?...again tax?..
- Remedy: WP in BHC / SC?; Impossible performance? Excessive taxable turnover? Revise Return? File Letter if unable to compute tax.....etc.....

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...Way Forward Post Amended Rule 58 dt 29 Jan 2014

- **Trade Circular # 7T dt 21 Feb 2014: Revised returns** by Developers permitted for the period 20 Jun 2006 to 31 Dec 2013 **till 30 Apr 2014**; revised returns can be filed even where notice of assessment is received by developer; If assessed then claims can be put up before appellate authority; developers shall discharge tax liability by selecting any one option out of four options available under MVAT Act; No other option (such as Cost + GP) would be admissible.
- **Trade Circular # 10T dt 29 Mar 2014: MVAT Audit Report** for FY 2012-13 for Developers (other than those opting for composition scheme), **extended till 10 May 2014** so no penalty u/s 61(2) in such case.
- **Mah. Ordinance # 7 of 2014 dt 3 Mar 2014: New Sec. 23(13)** inserted wrt dealers undertaking construction of building ...& transferring it with interest in land: (Notwithstanding anything contained in sec. 23...) Limitation period for making an order of **assessment, for any period, expiring on 31 Mar 2014 extended till 30 Sep 2015.**
- **Trade Circular # 8T dt 11 Mar 2014: Exemption from late fees** u/s 20(6) for filing late returns: Developers who filed returns before 31 Oct 2012

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...Way Forward Post Amended Rule 58 dt 29 Jan 2014

- **ADM relief orders** shall be passed soon (2 days mentioned in circular) as confirmed by Commissioner in Trade Circular # 14T dt 6 Aug 2012 & 17T dt 25 Sep 2012
- **Refund of any amt be allowed to be c/f to any subsequent year/s without any limit or restrictions**
- **Coercive recovery of tax, interest or penalty shall remain stayed** in cases where dealer followed Trade Circular # 17T dt 25 Sep 2012 & obtained registration on or before 15 Oct 2012 and paid taxes & filed Returns upto 31 Oct 2012 as per directions of SC. The said payment shall be subject to final decision of HC/SC and amended law.
- **Interest & penalty** shall not be levied in such a case where basic levy & computation mechanism was before SC abinitio;
Govt shall be fair to taxpayer
- **New projects of RD Developers**, shall apply composition scheme of 1% of agreement value or stamp duty value, whichever higher, or vat provisions, depending upon facts of each case.

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Time barring of assessment u/s 23 of MVAT Act

Section	Circumstance	Fin. Year	Time barring date	Remark
23(3A)	RD filed Returns in-time or late then pass assessment order within 7 yrs from end of the yr	2005-06	30 Jun 2013	Proviso to sec. 23(3A)
23(3A)	----do----	2006-07	31 Mar 2014	For Developers, till 30 Sep 2015 u/s 23(13)
23(3A)	----do----	2007-08	31 Mar 2015	
23(2)	RD filed Returns in-time then pass assessment order within 4 yrs from end of the year;	2008-09	30 Jun 2013	3 rd Proviso to sec. 23(2)
23(2)	----do----	2009-10	31 Mar 2014	For Developers, till 30 Sep 2015 u/s 23(13)
23(2)	----do----	2010-11	31 Mar 2015	and so on....

Time barring of assessment u/s 23 of MVAT Act

Section	Circumstance	Fin. Year	Time barring date	Remark
23(3)	RD filed Returns late then pass assessment order within 5 yrs from end of the year;	2008-09	31 Mar 2014 <u>For Developers, till 30 Sep 2015 u/s 23(13)</u>	Developer getting Adm relief as per Trade Circular # 14T dt 6 Aug 2012 & 17T dt 25 Sep 2012
23(2)	----do----	2009-10	31 Mar 2015	
23(2)	----do----	2010-11	31 Mar 2016	and so on....
23(4)	URD / URD period , then pass assessment order within 8 yrs from end of the year	2005-06	31 Mar 2014	and so on....

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Time barring of assessment u/s 23 of MVAT Act

Section	Circumstance	Fin. Year	Time barring date	Remark
23(5)	Assessment of any Transaction where tax is evaded or excess setoff is claimed, initiate assessment in any search or other proceedings	???	???	No tax again on said transaction under any provision (Proviso to sec. 23(5)(d)); and so on...
23(6)	Assessment of any undisclosed turnover or tax paid at lesser rate or setoff/deduction wrongly claimed, then pass order within 6 yrs of end of the year	2007-08	31 Mar 201 <u>For Developers, till 30 Sep 2015 u/s 23(13)</u>	and so on...

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Time barring of assessment u/s 23 of MVAT Act

Section	Circumstance	Fin. Year	Time barring date	Remark
23(7)	Fresh assessment to give effect to any finding or direction contained in any order made by Tribunal or HC or SC, pass order within 36 mths from the dt of receipt of said order by Commr.	2006-07 & 2008-09	31 Mar 2014	For Developers, till 30 Sep 2015 u/s 23(13)
23(7)	----do----	2007-08 & 2009-10	31 Mar 2015	and so on...

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Time barring of assessment u/s 23 of MVAT Act

Section	Circumstance
23(1)	RD fails to file return for any period within time, results in ex-parte assessment, within 3 yrs from end of the yr, without hearing dealer; If dealer submits the return then said assessment order shall stand cancelled; (Automatic cancellation wef 1 May 2013)
23(8)	Assessment order passed without considering decision of Tribunal given against the State or Commr, if an appeal is filed against said order which is pending; No order of recovery of tax, interest, penalty or forfeiture be passed in such case till final decision & hearing
23(9)	Dealer may apply in Form 305 to Commr for issuance of direction to assessing authority for guidance, which is binding on authority
23(11) & (12)	Ex-parte assessment made u/s 23(2) or (3) or (4) for non-attendance & when dealer applies in Form 316, within 30 days of service of said order, then make fresh assessment within 18 mths from the date of service of cancellation order; Dealer can apply only once in respect of any period of assessment
23(13) inserted on 3 Mar 2014	Mah. Ordinance # 7 of 2014 dt 3 Mar 2014: New Sec. 23(13) inserted wrt dealers undertaking construction of building ...& transferring it with interest in land: (Notwithstanding anything contained in sec. 23...) Limitation period for making an order of assessment , for any period, expiring on 31 Mar 2014 extended till 30 Sep 2015 .

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Vat Audit, Statement of Submissions by Dealer and levy of Additional Interest u/s 30(4) & or Penalty u/s 29(3)

▪ **Vat Audit for Developers following Rule 58, for FY 2012-13, the due dt extended till 10 May 2014 vide Trade Cir # 10T dt 29 Mar 2014**

▪ **Statement of Submissions by dealer accepting or objecting recommendation of Vat Auditor;**

If accepted then details of payments & revision of Returns;

If not accepted then to give reasons for same;

▪ **Additional Interest u/s 30(4) @ 25%** on **Additional Tax payable** as per Return or Revised Return filed after commencement of Business audit or Inspection of accounts (notice in form 603) or Search or notice in form 604 issued u/s 63(7) of MVAT Act

▪ **Penalty u/s 29(3) @ 100%** of tax payable for concealment of any transaction or knowingly furnishing inaccurate particulars of any transaction liable to tax or knowingly claiming excess setoff under MVAT Act

▪ **If revised return is filed & Additional Interest is paid then penalty shall not be levied.....Trade Cir # 22T dt. 6 Aug 2009, Para 4(b)(viii).**

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**Notfn No. VAT 1514/CR 8/ Taxn1 dt. 20 Feb 2014
effective from 1 April 2014: Tax free period extended**

Schedule Entry	Goods Description	Rate upto 31 Mar 14	Rate wef 1 Apr 14	Remark/ condition
A-9A	(a) Paddy, rice, wheat and pulses in whole grain, split or broken form	NIL	NIL till 31 March 2015	Taxfree when sold from 1st May 2006 to 31 Mar 2015 (Exemption extended)
A-9A	(b) The flour of wheat & rice including atta, maida, rawa and suji whether sold singly or in mixed form;	NIL	NIL till 31 March 2015	..do..
A-9A	(c) The flour of pulses including besan when sold singly and not mixed with flour of other pulses or cereals	NIL	NIL till 31 March 2015	..do..

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**Notfn No. VAT 1514/CR 8/ Taxn1 dt. 20 Feb 2014
effective from 1 April 2014: Tax free period extended**

Schedule Entry	Goods Description	Rate upto 31 Mar 14	Rate wef 1 Apr 14	Remark/ condition
A-51	(i) Papad except when served for consumption	NIL	NIL till 31 March 2015	Taxfree when sold from 1st May 2006 to 31st March 2015 (Exemption extended)
A-51	(ii) Gur	NIL	NIL till 31 March 2015	..do..
A-51	iii) Chillies, turmeric and tamarind whole, powdered or separated but excluding Chilly seed and tamarind seed when sold in separated form;	NIL	NIL till 31 March 2015	..do..

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Notfn No. VAT 1514/CR 8/ Taxn1 dt. 20 Feb 2014
effective from 1 April 2014: Tax free period extended

Schedule Entry	Goods Description	Rate upto 31 Mar 14	Rate wef 1 Apr 14	Remark/ condition
A-51	iv) Coriander seeds, Fenugreek and Parsley (Suva) whole or powdered;	NIL	NIL till 31 March 2015	Taxfree when sold from 1st May 2006 to 31st March 2015 (Exemption extended)
A-51	v) Coconut in shell and separated kernel of coconut, other than copra	NIL	..do..	..do..
A-51	vi) Solapuri chaddars;	NIL	..do..	..do..
A-51	vii) Towels;	NIL	..do..	..do..
A-51	viii) Wet dates,	NIL	..do..	..do..

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Notfn No. VAT 1514/CR 8/ Taxn1 dt. 20 Feb 2014
effective from 1 April 2014: Tax free / Lower rate period extended

Schedule Entry	Goods Description	Rate upto 31 Mar 14	Rate wef 1 Apr 14	Remark/ condition
A-59	Raisins & Currants	NIL	NIL till 31 March 2015	Taxfree when sold from 1 June 2010 to 31 March 2015 (Exemption extended)
C- 108(1) (b)	Tea in leaf or powder form including instant tea.	5% from 1 Apr 2010 to 31 Mar 2015	5% upto 31 Mar 2015	(a) 5% continued for 1 more year; (b) coffee beans & seeds, cocoa pod, <u>green tea leaf</u> and chicory continue @5% u/e. C-23

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**Notfn No. VAT 1514/CR 10/ Taxn1 dt. 20 Feb 2014
effective from 1 April 2014: Lower Rate restored**

Schedule Entry	Goods Description	Rate for FY 2013-14	Rate wef 1 Apr 14	Remark/ condition
B-1	Articles made of Precious Metals of fineness 50% or more, whether or not containing Diamond, Pearls, Precious Stones, ... (i.e. Jewellery & articles of precious metal)	1.10% upto 31 March 2014	1%	(a) Rate enhanced only for 2013-14; (b) Embroidery or Zari material u/e. C-105; Industrial goods & tools u/e. C-53A taxable @ 5%
B-2	Gold, Silver, Platinum, Osmium, Palladium, Rhodium, Ruthenium, and alloys thereof	..do..	..do..	(a) Rate enhanced only for 2013-14;
B-3A	Diamonds (Notfn No. VAT 1513/CR 46(7)/ Taxn1 dt. 4 April 2013	..do..	..do..	(a) Rate enhanced only for 2013-14; (b) Pearls, precious stones... continue @ 1% u/e. B-3 (c) Imitation Jewellery, beads, hairpins & its parts & components continue@ 1% u/e B-4

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Other recent updates wef Jan 2014....

■ **Trade Circular # 4T dt 28 Jan 2014:**

Procedure for e-application for e-CST forms/ declarations/ Certificates & issuance of same electronically i.e. **Digital CST forms wef 1 Feb 2014**

■ **Trade Circular # 9T dt 25 Mar 2014:**

Dealerwise Sales (J1) & Purchase (J2) details Annexures before filing Vat Returns wef 1 Apr 2014 as per applicable periodicity i.e. Monthly/ Quarterly/ Half yearly;

Reconcile with Returns data;

Annual filing of such data is continued;

Deemed dealers shall also file it, except deemed dealers as per sec. 61(3);

Composition dealers viz. Retailers, Bakers, Restaurants, Second hand motor vehicle dealers, Developers opting 1% scheme- shall upload only J2 annexure;

Works Contractors & Mandap Keepers opting composition scheme u/s 42 – shall upload J1 & J2 both

Chronology: First pay tax, upload J1 & J2 Annexures, then Upload Return

Revised Annexures with Revised Returns; Due dates remain same

Purpose: To ensure speedy cross verification of setoff claims & faster processing of Refunds

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Other recent updates wef Jan 2014....

- **Trade Circular # 11T dt 4 Apr 2014:**
Supreme Court ruling in Bansal Wire Industries (26 Apr 2011)
42 VST 372 (*Circular issued after 3 yrs?*):
“**stainless steel wire**” is not covered by clause (xv) of sec. 14 of CST Act which reads as “wire rods....” so it is not a declared goods hence attracts vat @ 12.5% & not @ 4% or 5% under MVAT Act
Earlier **DDQ in Devidayal Electronics & Wires Ltd. (DDQ- 1173/ 165/ B-5/ dt 12 July 1973)** that “stainless steel wire” is declared goods & covered by B-I-3 under BST Act;
- Transactions effected from 26 Apr 2011: Governed by said SC ruling;
- Transactions effected upto 26 Apr 2011: Matter referred to Mah. Govt. for guidance
- *Effect of ratio of above SC ruling on other such declared goods??*
- *Refer other DDQs issued by Commr of Sales Tax, Mah. State.....*

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“Bridge & Wall are made with same **material,
but Bridge joins people & Wall divides people”**



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Thank you

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