Some Issues in Valuation under MVAT Laws

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1. **Introduction**
   Recently, vat authorities including Tribunal and High Courts have decided certain issues under the MVAT laws relating to determination of turnover of sales having far reaching effect. In this paper some important decisions of SC, High Courts , Tribunal and Commissioner of sales tax given under the MVAT and CST laws on this subject are discussed.
2. **Registration and Insurance Charges Recovered at the Time of Sale of Motor Car/Cycles**
   Under the motor Vehicles Act, the owner of the motor vehicle is obliged to register it. Normally, the selling dealer under takes activity of registration of motor vehicle, at the time of sale of it, for and on behalf of the buyer, and recovers charges for the same including cost of insurance and his service charges. This is not a new activity under the vat régime. This was a common trade practice prior to vat act also and the resale tax was charged by the department on sale price of the motor vehicle excluding recovery of registration and insurance charges by the selling dealer. However, the vat authorities started demanding tax on recovery of handling charges or service charges for registration and insurance charges by the selling dealer of motor vehicle.
   The sales tax tribunal in case of M/S Sehgal Autoriders Pvt. Ltd. by its order dated 20.02.2010 set aside the levy of tax on recovery of handling or service charges for registration of motor cycles and held that these charges does not form part of sale price being post sale charges. The department filed appeal before the Bombay High Court, against this judgment of Tribunal. [Additional commissioner of Sales Tax, VAT III, Mumbai, V. Sehgal Autoriders Pvt. Ltd. [2011] 43 VST 398 (Bom)]. In that case the dealer raised bill for price of the motor cycle along with vat thereon and by separate debit note recovered amount for insurance charges, road tax, registration fees, incidental and handling charges smart card fees etc. The charges other than handling charges were paid to the regional transport office or insurer. Handling charges were retained by the dealer. The high court confirming the judgment of tribunal held that the obligation under the law to obtain registration of motor vehicle is cast upon buyer. The handling charges recovered by the dealer for rendering of facility of registration to the buyer, as an agent of him, cannot be regarded as forming part of consideration paid or payable to selling dealer for sale of goods. Those charges do not constitute a sum charged for anything done by the selling dealer in respect of the goods at the time or before the delivery thereof.

Thus, it is settled by this judgment of Bombay high court, that recovery of registration charges or insurance charges or handling charges etc. by the dealer for sale of motor vehicle, at the time of sale of such goods, does not form part of sale price within the meaning of the term sale price provided in the act so as to attract levy of vat on such charges.

3. **Transport Charges**

Generally, in any transaction of sale of goods, the selling dealer recovers transport charges for delivery of goods up to the place of buyer. Under the MVAT Act , as per definition of the sale price it does form part of sale price. However, when under the contract, sale is complete at the place of the seller and transportation is arranged at the request of buyer and the selling dealer recovers actual amount of freight for delivery of goods to the place of the buyer as imbursement then it does not form part of sale price being a post sale charges. (Refer decision of SC in case of State of Kerala V. Bangalore Soft Drinks Pvt. Ltd.[2000] 117 STC 413).At the same time when under the contract of sale the property in goods passes to the buyer, at the place of buyer when goods are delivered to him, then the freight charges recovered by the selling dealer will form part of the sale price.

Recently the SC in case of India Meters Ltd. V. State of Tamilnadu [2010] 34 VST 273 had held that in case of contract for sale of electric meter where the property in goods intended to transfer at the place of buyer, the recovery of freight charges for delivery of goods to the place of buyer shall form part of the sale price. In that case, under the contract the selling dealer was under an obligation to transport the goods to the place of the buyer and the transfer of property in goods took place at the place of the buyer when goods were delivered to him. Therefore the SC held that such charges shall form part of sale price.

The issue whether the transport charges do form part of sale price or not, depends upon the terms and condition of the contract providing for time and place when property in goods passes. The provisions of Sale of Goods Act are to be considered for determination of the time when the property in goods passes to the buyer.

Under section 19 of The Sale of Goods act, 1930, it is provided that under the contract for sale of specified or ascertained goods, the property in goods passes to the buyer at such time as the parties to the contract intend it to be transferred. It is also provided in section 19(3) of the said act that unless a different intention appears, the rules contained in sections20 to 24 will apply to determine the intention of parties as to the time at which the property in goods passes to the buyer. Under section 20 of said Act, in case of specified and ascertained goods, the property in goods passes at the time when contract is made. Under section

23 of the said act, in case of future goods or unascertained goods, the property in goods passes when the goods are unconditionally appropriated in a deliverable state.

In order to determine sale price of the goods for inclusion or exclusion of transport charges it is necessary to consider the terms of contract and other facts. If under the contract, the property in goods passes to the buyer at the place of seller then the transport charges recovered by the selling dealer for delivery of goods to the place of buyer will not form part of sale price being a post sale charges. Contrary to this, it will form part of sale price when under the contract the property in goods passes to the buyer when delivery of goods is made to him at his place.

4. Vat on Service Tax

In some cases dealer is liable to both vat and service tax on a single transaction like works contract and collects amount of vat as well as service tax. The issue is whether vat is applicable on amount of collection of service tax or not. Under Explanation II to said sub-section it is specifically provided that sale price shall not include tax paid or payable to a seller in respect of such sale. Further, as per rule 57 the deduction is provided for element of tax where sale price is inclusive of tax. Therefore it is settled law that sale price shall not include amount of tax whether collected or not.

At the same time, the definition of sale price provided in section 2(25) of the act does not provide anything specifically for inclusion or exclusion of service tax. Likewise rule 57 do not provide for deduction of amount of service tax from the sale price. However, while providing for deduction of tax from amount paid or payable for execution of works contract in section 31 (b)(i) of the act, it is specifically provided) that tax is to be deducted from and out of the amount payable to the contractor excluding the amount, if any, separately charged as tax or service tax levied by the Government of India, by the contractor.

Recently , vat department has started determining amount of composition on total contract value including amount of service tax charged by the contractor separately on the ground that under section 42 (3) of the act composition is payable on total contract value without any deduction except for amount paid to registered subcontractor upon production of prescribed forms. The Commissioner of sales tax in case of M/S. Sujata Painters DDQ -11 2007/Adm-3/16/B-1, dated 20/01/2012 held that in case of contract for powder coating the services is rendered before the delivery of goods as such amount of service tax collected shall form part of sale price being sum charged for anything done on or before delivery of goods. At the same time he refused to decide the certain deductions under rule 58 for want of details. However while deciding for sale price he did not consider the provisions to determine sale price for works contract under rule 58. He also did not consider settled decisions of SC and Tribunals that any tax collected under the authority of law does not form part of sale price.

In fact subsequently, in case of Fedders Loyds Corporation Ltd, DDQ .11.2010/Adm-3/46/B-3, dated 15/06/2012, the Commissioner of Sales Tax held that under section 56 of the Act , he has no power to decide the contract value

for the purpose of Composition and accordingly he did not determine the questions posed before him for deductions of certain amount of labour charges from total contract value, for the purpose of calculation of composition.
In view of above, at present there is no decision of Commissioner of sales tax holding that amount of service tax collected separately forms part of contract value so as to attract composition on it.
The term “contract value” is not defined in the act. The larger bench of Tribunal in case of M/S Painterior India SA No. 10530 to 1056 of 2006 dated 08.05.2009 had decided the meaning of the term “contract value” appearing in earlier works contract act. In that case, the issue was whether deduction of works contract composition is available from the amount of total contract value where it is not charged separately. The department refused to grant deduction of works contract tax, as under section 6A of the repealed act amount of composition is payable on total contract value after deduction specified therein, which does not include amount of composition. The larger bench of Tribunal held that it is settled law that no tax is payable on amount of tax collected under authority of the law and this settled law shall equally apply to determine the term contract value for the purpose of determination of amount of composition also. Accordingly, the Tribunal held that deduction of works contract composition on the line of rule 46A of the BST Rules, is allowable from the amount of total contract value where it is not charged separately.
The decision of larger bench of Tribunal shall apply with equal force for exclusion of amount of service tax charged separately from total contract value as according to the Tribunal the settled law applicable to levy of tax on turnover of sales as per provisions of the law shall also apply to determine the amount of total contract value for the purpose of determination of amount of composition.
According to settled law laid down by SC in case of Dr. Anand swaroop , the amount of tax collected under authority of any law does not form part of sale price.
The, collection of service tax is under authority of Finance Act, 1994. The Central Board Of Direct Taxes, vide Circular no. 4 of 2008, dated 28.04.2008, while clarifying for TDS on amount of rent under section 194I of the Income Tax Act, 1961, stated in para 3 that:-
“ 3. Service tax paid by the tenant doesn’t partake the nature of “income” of the landlord. The landlord only acts as a collecting agency for Government for collection of service tax. Therefore it has been decided that tax deduction at source (TDS) under sections 194-I of Income-tax Act would be required to be made on the amount of rent paid/payable without including the service tax.”
Thus according to the department of Government of India, the service provider acts as a collecting agency for government for collection of service tax. The same should apply for vat also. Accordingly, the collection of service tax by the service provider is as an agent of the government of India under the authority of law as such it does not form part of sale price of the goods. It also does not form part of amount of total contract value for determination of amount of composition payable in lieu of tax payable on sale of goods involved in execution of works contract. This view also gets support from the express provision contained in

section 31(b) (i) of the act for deduction of tax at source, which excludes amount of service tax charged by the contractor from the amount payable to him. This shows the intention of the legislature to not to levy tax on tax.

The Commissioner of sales tax Delhi clarified that service tax does not form part of sale price. The Andhra Pradesh Sales Tax Tribunal has also held that service tax does not form part of sales price.

Under the Income Tax Act , the CBDT has recently issued circular No. 1 of 2014 dated 13/01/2014 accepting the Rajasthan High Court judgment given in the case of CIT (TDS) Jaipur vs. Rajasthan Urban Infrastructure Appeal No. 235,222 238 and 239 of /2011 in which the High Court held that if as per the agreement the amount of service tax is to be paid separately and was not included in fees for professional service or technical services, no TDS is required to be made on the component of service tax amount u/s 194J.Accordingly it is clarified by the board that in such cases tax shall be deducted under chapter XVII-B of the act on the amount paid or payable without including such service tax component.

In view of above, it is possible to contend that the term sale price as well as total contract value does not include amount of service tax charged by the selling dealer separately. In fact, in one of the service cell meeting, the Commissioner of sales tax agreed to review the issue. It is high time for the Commissioner of sales tax to clarify this issue following the settled position of the law. The Malad Chamber of Tax Consultants has already represented to the Commissioner of sales tax in this respect. Let us hope to get proper reply from the Commissioner of sales tax soon.