



**Bombay Chartered Accountants' Society**

7, Jolly Bhawan No. 2, Ground Floor, New Marine Lines, Mumbai – 400 020  
T : +91 22 6137 7600 | F : +91 22 6137 7666  
E : bca@bcasonline.org | W : www.bcasonline.org  
BCAS Web TV : www.bcasonline.tv | E-Journal : www.bcaonline.org

**Nitin P. Shingala**  
President

**Raman H. Jokhakar**  
Vice President

**Narayan R. Pasari**  
**Sunil B. Gabhawalla**  
Hon. Joint Secretaries

**Mukesh G. Trivedi**  
Hon. Treasurer

7<sup>th</sup> March 2015

**Shri Sudhir Mungantiwar**  
Hon'ble Finance Minister,  
Government of Maharashtra,  
Mantralaya, Mumbai.

Respected Sir,

**Sub: A few suggestions for your kind consideration in the Maharashtra State Budget 2015-16 and necessary changes in Sales Tax Laws**

Sir, we the people of Maharashtra are eagerly awaiting to listen to your Budget Speech, which you are ready to deliver in a few days from now. We understand that we are too late to make any suggestions at this stage, but there are a few matters on which we would like to draw your kind attention.

All these matters may be very much petty and sundry but are of great concern to the tax payers. Your kind attention in such matters will certainly provide much needed relief to small and medium level businesses. Some of these suggestions would be helpful in smooth and straight administration of tax collection and at the same time remove undue fear amongst the traders and small tax payers.

We may mention here that as we could not get an opportunity to meet you personally, we have narrowed down our suggestions, in this memorandum, to a bare minimum and only those which are most urgent. For other suggestions and further discussion in these matters, may we request your good selves to kindly grant us an appointment on which day we shall meet you personally and discuss various aspects concerning protection of revenue of the Government and mitigating difficulties faced by small and medium tax payers.

Thanking you.

Yours faithfully

For Bombay Chartered Accountants' Society

**Nitin P. Shingala**  
President

**Govind G. Goyal**  
Chairman:  
Indirect Taxes & Allied Laws Committee

- cc. to: 1. The Chief Secretary, Finance, Government of Maharashtra  
2. The Commissioner of Sales Tax, Maharashtra



## **Pre-Budget Memorandum to the Finance Minister, Government of Maharashtra**

### **I. LBT and Octroi**

It is high time now to consider abolition of both these duties, which are hampering the movement of goods within the State. Your good selves may be well aware that the system of levying octroi duty was prevalent during ancient time when the kings were ruling the people of their territories. This age old system is abolished long ago in almost all the countries. And probably Maharashtra is the only State in the world where this system is still continued. These levies are affecting the businesses all over the State. The impact of recently introduced LBT is very much visible on manufacturing sector, the small and medium size units are closing down and large manufacturers are not keen to setup their new units in the State. The retail price of goods to common man is much higher than retail price of same goods in the cities of neighboring States.

**It is suggested that LBT and Octroi may kindly be abolished with immediate effect.** And it should be ensured that municipalities, municipal corporations and such local governments should not levy any kind of tax on sale, purchase, entry, exit or movement of goods in any manner.

Respected Sirs, it may be noted that these local authorities have several other avenues to augment their revenues, levy of tax on sale, purchase, production and distribution of goods may kindly be left to the Central and State Governments only.

### **II. Profession Tax**

Profession Tax, in Maharashtra, is payable by a person carrying on any trade, business, profession or vocation, etc., at the rate of Rs. 2500/- per annum. In addition, every employer has to deduct profession tax at prescribed rate from the salary paid to its employees.

At present, every employee getting a salary of more than Rs. 7500/- per month is liable for profession tax deduction at the rate/s of 175 to 200 per month (subject to a maximum of Rs. 2500).

Looking into the rate of inflation and this meager amount of Rs. 7500/- (earlier it was Rs. 5000/-), we sincerely feel that such poor people (the employees) should not be made liable to contribute profession tax. This limit needs to be revised substantially. If synchronized with income tax exemption limit of Rs. 2.5 lacs, it works out to more than Rs. 20000/- p.m. But, for the time being, may be suggest this limit may kindly be raised to Rs. 15000/-. And the rate of tax should be only one that is Rs. 2500/- per annum or Rs. 200/- pm as the case may be.

**Thus, employees getting salary up to Rs. 15000/- p.m. should not be liable to pay profession tax.**

**Filing of Return:**

The employers, employing any employee getting salary above Rs. 7500/- pm is required to file monthly/yearly return of profession tax on or before the last day of month/year in which tax deducted.

This is an un-necessary requirement, consuming precious time of our respected officers and the employers of all categories all over the State. Earlier there were several different rates for different salary brackets, but now there is only one rate (as proposed). Thus number of employees can be mentioned in the payment challan itself. No separate return is required. It will save lot of time and energy of the Department as well as of the people, without any loss of revenue to the Government.

It may further be noted that the periodicity for filing Profession Tax Return was designed sometimes about 40 years ago on something like cash basis of accounting. Whereby it is considered that the employer is paying salary for the month of March in the month of April, therefore, while filing return for the month of April the employer has to consider salary for the month of March, make payment of tax before 30<sup>th</sup> April and also file a return before 30<sup>th</sup> April. Similarly for yearly return say for the year 2014-15, one has to consider salary for the period from March 14 to February 15. As you are aware that now a day accounting is done on accrual basis and the accounts are prepared for the period 1<sup>st</sup> April to 31<sup>st</sup> March every year, there is always a mismatch of the figures in the profession tax return for a financial year and books of account for that financial year. This leads to un-necessary confusion, requirement of reconciliation, etc., which needs to be avoided to save precious time and energy.

### **III. Maharashtra VAT (Sales Tax)**

#### **Filing of Returns and Payment of Taxes**

At present, under the Maharashtra VAT Law, the dealers are required to file their returns either monthly, quarterly or six monthly, depending upon the quantum of their annual tax liability. The payment of tax is also linked with the periodicity for filing of returns.

For smooth administration, and to eradicate the nuisance of 'bogus dealers', we would like to suggest that periodicity for payment of tax may kindly be delinked from the periodicity of filing of returns. While for regular inflow of tax collection, you may decide periodicity for payment of tax on the basis of annual tax liability or any other basis as may deem fit. But, as far as the filing of return is concerned it should be same periodicity for all the dealers irrespective of their turnover or tax liability. In almost all tax laws, the periodicity for filing of return is always kept common for all the dealers/tax payers.

It will help you reducing the total number of returns to be processed and more importantly it will help the Department in comparing the data of one dealer with other. We feel it will help you a lot in eradicating the menace of Hawala (bogus) Dealers.

**May we suggest that the periodicity for filing returns by all types of dealers may kindly be kept six monthly (same as for service tax). And the due date for filing return, with necessary details, should be kept at 90 days from the end of the relevant period.**

We are sure the Sales Tax Department will find it most convenient and helpful in monitoring the dealers in a much more effective manner.

#### **Revised Returns**

Many a times a dealer has to file revised return either to rectify an error in reporting the turnover or to pay additional tax or to rectify because of change in Law, etc. Even for issuing "C" forms and other such declaration forms, for earlier period, returns already filed may need revision.

At present, there is a restriction that a dealer can file revised return only once. Second time, even for rectifying a genuine mistake, it is prohibited. In fact, there should be no reason to

restrict revision of return for rectifying genuine mistakes and errors, if any. Ultimately, the object is to report the correct figures.

**In the interest of all, it is suggested that restrictions imposed under section 20 with regard to filing of revised return/s may kindly be deleted. And the time limit for filing revised return/s should be same as may be the due date for completion of assessment u/s 23.**

**Havala Dealers**

The Sales Tax Department has recently hosted on its website a list of 'havala dealers'. We have been told that this list contains name and sales tax registration number of those dealers, who have issued bills without delivery of goods.

It may be noted that all such dealers are holding a certificate of registration issued by the Sales Tax Department. They may or may not have filed returns and they may and may not have paid tax to the Government.

It seems to be a very serious matter, which needs to be investigated thoroughly and may need strict action so in future no such dealer is able to act as a 'Havala Dealer'. After all they have cheated the Government, their modus operandi need to be examined. Whether they have issued bogus bills? Whether they have collected tax from other dealers? What about their bank accounts? Whether they are working as a cover to actual suppliers of goods? And, if that is so whether there are a few such suppliers or a large number of manufacturers or suppliers who are actually carrying on business of selling goods but not registered with the Sales Tax Department.

**Although, the investigating officers of your Department are competent enough to find out why and how such registered dealers became bogus dealers, we feel that if the periodic returns from all the dealers are collected with necessary details and as per a common periodicity such a problem of bogus dealers may be controlled to a considerable extent. It will also help the Department to evaluate returns, assess and grant refunds expeditiously.**

At present, the Department is working overtime to disallow setoff claimed by those dealers who have claimed credit on the basis of bills issued by such dealers whose names have been listed in the aforesaid list. Although, it may take some time to really find out the real truth behind issue of bills and credit thereof, it may be premature to conclude that all those purchases are bogus purchases. Thus a dealer, who might have effected genuine purchases and paid the amount for goods as well as for taxes, may have to suffer because the dealer who has collected tax has not deposited the same with the Government Treasury.

To protect the interest of such genuine dealers, it is suggested that the Department may pass necessary order withholding claim of setoff in doubtful cases but recovery thereof may not be forced till the investigations are completed. Further, wherever recovery has already been made penalty u/s 30(4) may be waived.

### **Refunds**

This is one area which is being represented continuously at every forum for last about six years. Although, many changes have been carried out in the relevant sections and Rules from time to time but there is no fruitful result. The problem of not granting refunds, too much delayed refunds and short refunds by the Sales Tax Department has become a matter of undue harassment to all those dealers whether small or big.

It may be noted that in many cases refunds are pending for past 3 to 5 years. May we request your good selves to kindly call a meeting, in your personal presence, of all those refunds seekers with the chief of the Sales Tax Department and draw a time bound program to grant refunds for periods ended up to 31<sup>st</sup> March 2014. And for future periods, refund mechanism should be worked out in such a manner that refunds are granted within 30 days of making an application for any period (if refund is claimed before the end of financial year) and within a prescribed period (say three months) from the date of filing return (involving refund) for last period of a financial year. Further, the requirement of making application (presently in Form 501) may kindly be deleted for all those dealers who are claiming refund after end of the financial year.

**Thus, application for refund (in Form 501) should be required only in those cases where the refund is claimed for any return period before the end of financial year involving such refund.**

It may also be provided that if refund is not granted within the said prescribed period, the dealer shall be eligible to receive interest for delayed period at such rate as may be prescribed (say 9% or 12% pa).

It is further suggested that all cases of refunds (whether application for refund filed or not) should be compulsorily taken up for scrutiny assessment and the refunds be granted in a time bound manner.

### **Payment of Taxes**

As per recent directives, issued by the Sales Tax Department, all the dealers liable to pay tax have to deposit the due amount of tax through an e-payment mode only. There is no facility whereby a dealer, liable to pay say a small sum of Rs. 1000/- or 10000/-, can deposit the same in an authorized bank. It is creating undue hardship to small tax payers. Although, it is stated that State Bank of India will receive payment in cash from those dealers who are liable to file six monthly returns, but the real difficulty is: (1) all the branches of State Bank of India are not providing such facility (only a few selected branches are accepting payment in cash) and (2) what about those dealers who have to file monthly or quarterly returns but the amount payable is very small say less than Rs. 10000/-?

**To mitigate the hardship caused to such small dealers, it may kindly be provided that payment up to a sum of Rs. 10000/-, whether monthly, quarterly or six monthly, shall be accepted by all authorized banks**

### **Overlapping of VAT and Service Tax**

While introducing the concept of VAT, in 2005, it was publicized that there shall be no tax on tax. The avoidance of cascading effect of tax was advertised as one of the main feature of VAT. But, it seems that while spreading the tax net this principle has lost its existence. Today, there are a large number of transactions attracting sales tax as well as service tax. There is an urgent need to avoid double taxation of same transaction. We may agree for the time being that one single transaction may have two different components where one is liable for sales tax and the other may be liable for service tax. Then it is necessary to define very clearly that on which portion tax is payable under which Law. And, it should not happen that service tax and sales tax both are being levied on the same amount. Today, the effective rate of service tax as well as sales tax is around 12.5%. If, the same value is taxable under both the laws then the consumer has to pay almost 25% as tax. This is not desirable.

Although, there are a few provisions under the Maharashtra VAT law where rebate is granted for labour portion in transactions of works contract, and, similarly there are provisions under the service tax Law to grant abatement in respect of certain transactions. There is an urgent need to synchronize the rules of abatement under the VAT Law with that under the Service Tax Law.

**It should be specifically provided that VAT shall not be payable on the service portion of a deemed sale transaction and similarly service tax shall not be payable on the value, which is chargeable to VAT.**

**“Sale Price” Definition under Maharashtra VAT Act**

**The definition of “sale price” as given u/s 2 (25) of Maharashtra VAT Act also need an urgent clarificatory explanation so as to clarify (with retrospective effect) that VAT is not payable on the amount of service tax collected separately.**

**Composition Scheme for Retailers/small businesses**

Section 42(1) provides for a composition scheme for small businesses particularly the ‘Retailers’. This optional scheme for payment of taxes was designed at the beginning of VAT era with a turnover limit of Rs. 50 lacs. Considering inflation and various other factors this turnover limit may now be raised to Rs. 100 lacs (rupees one crore). It will help such retailers to discharge their tax liability in a hassle free manner. There is no loss of revenue to the Government.

**Composition Scheme for tax on agreement to sale under construction flats**

As your good selves are well aware that there is a large scale controversy regarding levy of tax on agreement/s to sale under construction flats, and, the matter is now under consideration before the Supreme Court of India. Whatever may be the decision that will have to be acceptable to all stake holders. Howsoever, in the meantime to avoid unnecessary disputes between the Department and builders and between the builders and ultimate flat purchasers, who have purchased flats during the period between 20<sup>th</sup> June 2006 and 31<sup>st</sup> March 2010, it is suggested that the Composition Scheme of 1% for Builders and Developers (as applicable for agreements registered after 1<sup>st</sup> April 2010) may kindly be extended to all agreements executed on or after 20<sup>th</sup> June 2006.



**Business Audit u/s 22 of MVAT Act**

The provisions of business audit, by the Department, were introduced in the MVAT Law with a view to fast track assessment and promote compliance, etc. However, over the years the Department has now developed various modes of audit and assessment such as Desk Audit, Issue Based Audit, Refund Audit, etc. In addition, the provisions of assessment are intact u/s 23 of the MVAT Act. In the circumstances, section 22 has lost its eminence and need to be deleted.

**It is suggested, therefore, that section 22 of MVAT Act may kindly be deleted.**

**If, however, the same is continued, a time limit of one year may kindly be provided, for issue of notice to conduct business audit, from the end of financial year for which the Department may wish to conduct such an audit.** Any such audit, beyond one year from the end of financial year is an undue burden on the Department as well as businesses.

**Interest payable by the Dealers u/s 30**

Section 30 of MVAT Act provides for interest payable by the dealer on delayed payment of taxes. Sub-sections (1), (2) and (3) covers various situations in which the dealer is liable to pay interest at prescribed rates.

However, another sub-section (4) was inserted, w.e.f. 27.06.09, which provides an additional interest to be calculated @ 25% of difference of tax payable. This additional interest is in addition to the normal interest which is payable @ 15% pa. Thus, in case of a revised return in given circumstances the dealer has to pay interest @ 40% (i.e. 15 + 25).

We earnestly appeal to you Sir, to kindly have a re-look into this provision. Is it justifiable to levy interest at such a prohibitive rate? It may kindly be noted that there are provisions intact for levy of penalty u/s 29 of the Act.

**It is suggested, for your kind consideration, to delete sub-section (4) of section 30 of the MVAT Act with immediate effect.**

**Imposition of Fees (Penalty) for late filing of returns:**

A newly inserted sub-section 20(6) provides for levy of late fee of Rs. 5000/- for late filing of every return by a dealer.

Sir, this is for the first time in the history of indirect taxes that such a huge amount of late fee has been prescribed for complying with the statutory requirement of filing periodic return/s. This amount of late fees is payable by all the dealers who have not been able to upload the return by due date without considering the circumstances because of which the return could not be uploaded in time. A dealer who has paid all his tax dues in time or even if no tax payable one has to pay Rs. 5000/- as late fees. It seems to be too harsh. Although, some relief has been provided last year in respect of those dealers who file return within 30 days of the due date, they pay a little less late fee. But, the real problem still remains. Sir, we feel that above provision prescribing such a prohibitive amount of late fee needs to have a re-look.

**May we suggest that:**

- (a) No Late Fess in case of –
  - (1) Nil returns
  - (2) Where return is filed within 30 days of due date.
  - (3) Where tax has been paid in time but return could not be uploaded electronically because of reasons beyond the control of dealer.
  - (4) Where VAT return is uploaded in time but CST return has remained.
- (b) For all other cases, the amount of late fees shall not be more than Rs. 2000/-.

**Issue of Declaration Forms**

At present all Declaration Forms such as “C” Form. “F” form, etc., are issued by the Department electronically. But, in many cases where any amount is outstanding for any period, the Department is withholding applications for issue of such forms. It results into lot of difficulties to the genuine dealers. The amount may have been outstanding for want of credits to be given or for any other reason. The process of clearance of dues may kindly be de-linked with the statutory duty of issuing declaration forms in time.

**Advance Ruling & Settlement Commission**

The modern system of taxation requires healthy practices of transparency and clarity of law. The provisions of ‘Advance Ruling’ are available almost in all tax laws. The same need to be adopted in Maharashtra VAT law, and, similarly the provisions of settlement commission. We would also like to suggest setting up of a ‘Grievance Redressal Cell’ so as to resolve various difficulties faced by the dealers.

**Publication of updated Act and Rules**

The system of VAT was introduced in the State of Maharashtra from 1<sup>st</sup> April 2005. The Act and Rules in this regard were published at that time. There are thousands of amendments effected in past 10 years. It is necessary, therefore, that the Government to publish updated Maharashtra Value Added Tax Act, Maharashtra Value Added Tax Rules and a 'Compilation of Notifications' issued from time to time.

**IV. Other Matters of General Public Interest**

**Swachchha Maharashtra Swastha Maharashtra:**

May we take this opportunity to request you that in support of the vision of Prime Minister of India, the Government of Maharashtra should also undertake to promote cleanliness and in turn wellness of the people of Maharashtra. The Government may design such projects and involve therein all Government Departments, NGOs, Charitable & Religious Trusts and the people in general. Similarly, there is need to provide appropriate education facilities to each and every child born in Maharashtra. Today the cost of education and medical facilities is so high that the common man cannot afford the same. The municipalities and municipal corporations have miserably failed in their duty to provide primary education and primary medical facilities. The Government may have to take these areas under its own control. We need to make our State as real Maha – Rashtra by providing appropriate facilities of quality education to all children from nursery to higher secondary at an affordable cost and the best medical facilities to all needy persons. Let's have a "Swachchha Maharashtra, Swastha Maharashtra and Shikshit Maharashtra".