



C. B. Thakar, Advocate

Valuation under Central Sales Tax Act, 1956

Introduction

Under Indirect Taxation, Laws for levy of VAT and CST are important laws. States levy tax under State VAT Acts, whereas on inter-State sale transactions, tax is levied under CST Act, 1956. For discussion about Valuation Rules under Indirect Taxation, discussion here is made with reference to Maharashtra Value Added Tax Act, 2002 (MVAT Act, 2002) and Central Sales Tax Act, 1956 (CST Act, 1956).

Valuation Rules

Normally tax is levied on the consideration agreed between seller and buyer. Valuation Rules are provided when such consideration is not ascertainable due to nature of transaction or for any other reason. Generally, the function of Valuation Rules is to arrive at assumed price for given transaction.

MVAT Act, 2002

Under MVAT Act, 2002, there is no specific provision about Valuation Rules. Normally, the tax is payable on 'sale price'. The term 'sale price' is defined in section 2(25) of MVAT Act as under:

"2(25) "sale price" means the amount of valuable consideration paid or payable to a dealer for any sale made including any sum charged for anything done by the seller in respect of the goods at the time of or before

delivery thereof, other than the cost of insurance for transit or of installation, when such cost is separately charged.

Explanation I — The amount of duties levied or leviable on goods under the Central Excise Act, 1944 or the Customs Act, 1962 or the Bombay Prohibition Act, 1949, shall be deemed to be part of the sale price of such goods, whether such duties are paid or payable by or on behalf of the seller or the purchaser or any other person.

Explanation II — Sale price shall not include tax paid or payable to a seller in respect of such sale.

Explanation III — Sale price shall include the amount received by the seller by way of deposit, whether refundable or not, which has been received whether by way of a separate agreement or not, in connection with or incidental or ancillary to, the said sale of goods."

The above section cannot be said to be Valuation Rules.

The inference can be that when sale price is not ascertainable, no tax can be attracted under MVAT Act, 2002.

For example, if the sale is of movable/immovable property at composite price, then movable items cannot be subjected to sales tax as there is no ascertainable consideration for movable items.

The above situation arises due to non availability of Valuation Rules under MVAT Act. A question can arise whether legislature can provide for such rules. In other words, an issue is whether legislature has such constitutional power?

It appears that there is no such power.

Reference can be made to judgment of Hon. Supreme Court in case of *Rajasthan Chemists Association (147 STC 542)(SC)*. In this case the Rajasthan Sales Tax Law contemplated to levy tax on MRP of the goods though the goods were sold at lesser than MRP. Supreme Court held that the tax cannot be levied on price more than the actual price received from the buyer. The levy of tax on MRP value was held as unconstitutional by the Supreme Court. The relevant observations of the Supreme Court are as under.

“30. The question of tax on sale of goods may be examined in the said back-ground. The subject of tax being sale, measure of tax for the purpose of quantification must retain nexus with "sale" which is subject of tax. As noticed above, tax on sale of goods, is tax on vendor in respect of his sales and is substantially a tax on sale price. The vendor or buyer cannot be taxed *de hors* the subject of tax that is sale by the vendor or purchase by the buyer. The four essential ingredients of any transaction of sale of goods include the price of the goods sold, therefore, in any taxing event of sale, which become subject-matter of tax price component of such sale, is an essential part of the taxing event. Therefore, the question does arise whether a particular taxing event of sale could be subjected to tax at the prescribed rate to be measured with such price which is not the component of the transaction of sale, which has attracted the sales tax”.

In Para 52, Hon'ble Supreme Court further observed as under:

“Substitution of assumed price or the assumed quantity in place of actual price/quantity in a completed sale transaction, for the purpose of levy of tax on the subject-matter of tax results

in taking away from it the character of "sale of goods" as envisaged under the Sales Act.”

(underlining ours)

TISCO General Office Recreation Club (126 STC 547)(SC)

In this case the subsidy was given by the TISCO to TISCO club which provided food to the employees and issue was whether this subsidy amount received by the club is also liable to tax in the hands of club. Supreme Court held that since it is not relatable to any particular item, it cannot become a sale price i.e. it is not part of the turnover and accordingly no tax is payable on the said amount. This judgment of the Hon. Supreme Court has also been applied by the Hon. Tribunal in case of Colgate Palmolive (I) Ltd. Factory Canteen (S.A. 464 and 465 of 97 dt. 5-10-2002).

Above judgments show that sales tax can be levied on actual price which is identifiable. Conversely, it also comes out that there is no power to assume price by rules or by any other manner.

Substitution of Price – Section 57

Though there are no positive Valuation Rules in MVAT Act, as discussed above, a note can be taken of section 57 of the MVAT Act, 2002. The said section is reproduced below for ready reference.

“57. Agreement to defeat the intention and application of the Act to be void:

- (1) If the Commissioner is satisfied that an arrangement has been entered into between two or more persons or dealers to defeat the application or purposes of this Act or any provision of this Act, then the Commissioner may by order declare the arrangement to be null and void as regards the application and purposes of this Act. He may, by the said order, provide for increase or decrease in the amount of tax payable by any person or dealer who is affected by the arrangement whether or not such dealer or person

is a party to the arrangement, in such manner as the Commissioner considers appropriate so as to counter act any tax advantage obtained by that dealer from or under the arrangement.

- (2) For the purposes of this section,—
- (i) “arrangement” includes any contract, agreement, plan or understanding, whether enforceable in law or not, and all steps and transactions by which the arrangement is sought to be carried into effect;
 - (ii) “tax advantage” includes,—
 - (a) any reduction in the liability of any dealer to pay tax,
 - (b) any increase in the entitlement of any dealer to claim set-off or refund,
 - (c) any reduction in the sale price or purchase price receivable or payable by any dealer.
- (3) Before passing any order under this section, the Commissioner shall afford a reasonable opportunity of being heard to any such person or dealer whose tax advantage is sought to be counteracted.”

It can be seen that the authorities can substitute the price under above provision, if there is allegation of tax avoidance. Therefore, it can be said that there is valuation method by negative manner in specified circumstances.

Works Contract

One of the categories of “sale” is “works contract”. As held by Hon’ble Supreme Court in case of *Builders Association of India (73 STC 370)* in case of Works Contract, tax is leviable on the value of the goods and the service (labour) portion is required to be separated from the total contract price. The contractor is entitled to determine the said service portion based on guidelines given by Hon’ble Supreme Court in case of *Gannon Dunkerley & Co. (88 STC 204)*.

However, in case the contractor is not in position to segregate the same as per above guidelines then an alternative method to grant deduction for labour/service portion at pre-determined percentage is provided. Such percentages are provided in proviso to rule 58(1). The said proviso is reproduced below for ready reference. “58. Determination of sale price and of purchase price in respect of sale by transfer of property in goods (whether as goods or in some other form) involved in the execution of a Works Contract. –

- (1) The value of the goods at the time of the transfer of property in the goods (whether as goods or in some other form) involved in the execution of a Works Contract may be determined by effecting the following deductions from the value of the entire contract, in so far as the amounts relating to the deduction pertain to the said works contract:—
- (i) labour and service charges for the execution of the works;
 - (ii) amounts paid by way of price for sub-contract, if any, to sub-contractors;
 - (iii) charges for planning, designing and architect’s fees;
 - (iv) charges for obtaining on hire or otherwise, machinery and tools for the execution of the Works Contract;
 - (v) cost of consumables such as water, electricity, fuel used in the execution of Works Contract, the property in which is not transferred in the course of execution of the works contract;
 - (vi) cost of establishment of the contractor to the extent to which it is relatable to supply of the said labour and services;
 - (vii) other similar expenses relatable to the said supply of labour and services, where the labour and services are subsequent to the said transfer of property;

- (viii) profit earned by the contractor to the extent it is relatable to the supply of said labour and services.

Provided that where the contractor has not maintained accounts which enable a proper evaluation of the different deductions as above or where the Commissioner finds that the accounts maintained by the contractor are not sufficiently clear or intelligible, the contractor or, as the case may be, the Commissioner may in lieu of the deductions as above provide a lump sum deduction as provided in the Table below and determine accordingly the sale price of the goods at the time of the said transfer of property....”

It can be said that to above extent there is Valuation Rule for Works Contract. However it is not mandatory but optional.

CST Act

Under CST Act also there are no specific valuation rules. Under CST Act also tax is required to be discharged on the sale price as defined in section 2(h) of the CST Act, 1956. The definition is almost similar to the definition of ‘sale price’ under MVAT Act, 2002 reproduced above and hence not reproduced again.

Branch/Consignment transfer

However, reference can be made to provisions of section 6A of the CST Act, 1956. The said section provides that if there is claim of inter-State branch transfer or consignment transfer then such claim should be supported by ‘F’ Form. It is also provided that in case of failure to produce ‘F’ Form, the transaction will be deemed to be sale for all the purposes of CST Act.

In case of branch transfer/consignment transfer, the transferor may not assign the values, as it is not sale. Some time value may be given for different purposes like Octroi, check post etc.. However, strictly speaking, this cannot be said to be sale price.

Therefore the question arises that if there is a branch transfer but ‘F’ Form is not available and hence the said transaction is deemed to be inter-State sale, what should be the taxable price for the said transaction. In my view, in such situation, the valuation rules are required to be provided. The assessing authority may determine value on estimation basis. However, this cannot be said to be correct as per law. This issue can be challenged at proper forum that even if the inter-State branch transfer is deemed to be sale, in absence of method and manner of deciding sale price, no tax can be attracted on the same.

Taxation of Works Contracts under CST Act

Under CST Act also the transactions of Works Contracts are liable to tax.

Under CST Act, at present, there is no separate provision like rule 58 of MVAT Rules for determining value of taxable quantum in Works Contract. Therefore, it can be said that the CST Act is lacking in providing valuation rules in respect of Works Contract taxation.

However, it can be noted that the law cannot become inapplicable because of above lacuna. Reference can be made to the judgment of Hon’ble Supreme Court in case of *Mahim Patram Pvt. Ltd. vs. U.O.I.* (6 VST 248)(SC) in which Supreme Court has turned down argument on similar line. Hon’ble Supreme Court has also held that the local provisions about taxation of Works Contract will apply to CST Act.

Conclusion

From above discussion, it can be seen that in general there are no speaking provisions to be called as Valuation Rules. However, there are provisions which indirectly lead to such situation. It is desirable that wherever necessary and allowable by law, the legislatures should provide such rules to avoid ambiguity and unwarranted litigation.

