



CA Janak Vaghani

Valuation for Levy of LBT

1. Introduction

The Maharashtra Municipal Corporation Act provides for levy of Local Body Tax on entry of goods into local municipal area for consumption, use or sale therein. The LBT is payable on entry of goods into local area and not on any transaction of sale or purchase of goods. The entry of goods into local area may be by way of purchase, or for any reason from any person or branch or agent, but tax is payable on it. There is no specific provision under the Act providing for levy of tax on value of goods or on turnover of purchase or sales of goods. There is no specific provision under the Act defining the term sale price or purchase price of the goods although sections 2(70A) and (70B) of the Act provides for definition of term turnover of purchase or sales respectively. In this article some important provisions relating to determination of value of goods are discussed.

2. Value of the Article S. 2(70C)

Section 2(70C) of the Act provides definition of the term "value of the article". Accordingly value of the article in relation to the goods imported into the city, where "octroi" or "cess" is charged on such goods on *ad valorem* basis, shall mean the value of the article as mentioned in the original invoice, and include the shipping dues, insurance, customs duties, excise duties, counterveiling duty, sales tax (if any), Value

Added Tax (VAT), transport charges, vendor freight charges, carrier charges and all other incidental charges.

This provision is made for levy of octroi or cess but it is very much debatable whether it will apply for levy of LBT. Anyway as per this provision the value of article includes not only the value of the article mentioned in the bill but also includes following:-

- i) Shipping dues
- ii) Transport charges
- iii) Freight charges
- iv) Sales tax or VAT
- v) Customs duty, excise duty etc.

3. Tariff Value (R. 24)

Rule 24 of LBT Rules 2010, provides that the Commissioner, with a view to prevent evasion of tax, may, having regard to the trend of the value of such or like goods, by displaying on notice board of the corporation, fix, from time to time, tariff value of such goods, and where any tariff value of such goods are fixed the LBT shall be payable on such tariff value.

Under this rule, blanket powers are conferred upon the Commissioner to fix tariff value of any goods imported into the city without taking

approval of any legislative authority or without proving or recording reasons for evasion of any tax. Even he is not required to issue any notification for this purpose. It is provided under the rule to fix the tariff value of any goods by displaying on the notice board of the office of the corporation. The rule expects the tax payer to visit the office of the corporation, from time to time, and verify whether the commissioner has fixed any tariff value of the goods imported by him so that he can pay LBT on such value. Further, it is not provided in the rule for time period for which the notice should be affixed in the notice board of the corporation. It is quite possible that Commissioner fixed the tariff value of any goods on earlier occasion and it is removed from the notice board, then issue is whether the dealer is require to pay LBT on tariff value of such goods? If, answer is yes, then how the dealer would come to know about fixation of tariff value of any goods by the Commissioner?

Further, no guidance is provided under rule to fix tariff value of any goods. Rule simply provides that the Commissioner may fix tariff value having regard to the trend of such goods or like goods. It is not provided that the value of goods should be taken at wholesale price or MRP. The Commissioner is free to fix value of tariff of such goods in any manner and the dealer or person is required to pay LBT on it.

The Government should reconsider the provisions contained in this rule giving unrestricted power to the Commissioner to fix tariff value of goods.

4. Determination of Fair Market Price (Rule 25)

Rule 25 provides for determination of Fair Market Price of goods by the Commissioner, for the purpose of passing any order in any proceeding under the rules, after giving reasonable opportunity of hearing in following circumstances:-

- i) Where sale or purchase of any transaction of sale or purchase between related persons is less than the fair market price,
- ii) Where sale or purchase price of the goods imported by the dealer or person is not ascertainable,
- iii) Where goods have not been obtained by sale or purchase.

Under these rules also, the Commissioner is given power to determine Fair Market Price of the goods imported, in specified circumstances, without defining the term Fair Market Price of the goods. Only solace is that the rule provides for giving reasonable opportunity of hearing to the dealer or person concerned before determining the Fair Market Price of the goods. This rule may apply in case of entry of goods by way of stock transfer from branch or agent or gift, job work etc. where the entry of goods is not by way of sale or purchase of any goods. The dealer would be require to prove before the Commissioner in each such cases, the fair market price of the goods imported on which LBT is paid. In order to avoid litigation the Government should provide rules to determine the Fair Market Price of goods so that LBT is paid by the dealer correctly.

5. Conclusion

In this article I have tried to discuss the provisions of the Act relating to determination of value of goods on which LBT is payable. In absence of clear and specific law the levy of LBT on entry of goods into local area in lieu of octroi or cess would lead to unavoidable litigation. It is high time that Government should form a committee consisting of members from trade and legal fraternity to study the existing provisions of the Act to determine the value of goods on which LBT would be payable and should make simple and clear provisions to determine the value of goods liable for LBT at the earliest point of time.

