

Issues of MVAT Set Offs

A Detailed Article

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Set offs: Sales tax department grants set off, if goods are purchased by registered dealers of the state.

For e.g.:

If registered dealer Mr. "A" (Purchasing Dealer) has purchased goods from Mr. "B" (Selling dealer) then "A" can avail set off of Sale Tax paid on purchases. If B has sold goods worth Rs. 1,00,000/- and levied sales tax @ 12.5% of Rs. 12,500/- and Tax Invoice of Rs. 1,12,500/- is given then "A" can avail the set off of Rs. 12,500/-.

If "A" further sales these goods for Rs. 1,50,000/- then it levies sales tax @12.5% of Rs. 18,750/- on it. While paying sales tax, "A" will reduce Rs. 12,500 from Rs. 18,750/- and will pay net tax liability of Rs. 6,250/- to the state government. Thereby "A" and "B" both carry the business in the State.

In Maharashtra, availing setoff has become difficult due to the other provisions of sales tax law as interpreted by the sales tax department.

Mr. "A" has made the payment of purchases to Mr. "B". As per MVAT provisions, afterwards Mr. "A" will have to mention TIN and other details in the return and in Annexure J 2 for purchases made from Mr. "B".

Similarly Mr. "B" will have to mention TIN and other details in the return and in Annexure J 1 of the sales made to Mr. "A".

If these and other provisions are followed then set off can be availed.

If Mr. "B" does not pay taxes or makes errors, then set off availed by Mr. "A" is disallowed without any mistake of Mr. "A" and he is required to pay taxes, interest and penalty also - This is absurd.

Mr. "A" (buyer) and Mr. "B" (seller) are registered with sales tax department. Therefore responsibility of proper implementation, administration of the tax laws and final assessment of tax of dealers is of the department. If Mr. "A" and Mr. "B" decided to enter into bogus purchases and sale transactions, then set off of Mr. "A" may be disallowed and tax is collected from him, if tax is not collected from Mr. "B". However this is may be correct in bogus transactions only, to safe guard the revenue of state government.

Now if, sales tax department has collected taxes from "A" without granting set off and also collected taxes from "B" then department is collecting taxes two times on one transaction. Is this not a contradiction or illegal?

Sales tax department in the Bombay High Court has filed a affidavit in the case of Mahalaxmi Cotton Ginning, that if taxes are collected from both parties then Mr. "A" will be given refund.

Further Honorable State Finance Minister while delivering 2014 budget speech, has stated that in such cases, refund will be given faster. However, it is also true that, how Mr. "A" will come to know that Mr. "B" has paid the taxes or not. As per today's computerized system of Sales tax department, the dealer has not been provided with such a mechanism.

In such cases as per law, taxes should have been collected from Mr. "B" first. Sales tax department cannot collect taxes on same thing twice. In these cases taxes should be collected from Mr. "B" first.

Mr. "B" should be assessed and asked to pay taxes forcefully. If all the recovery proceedings fails then, at the end if taxes were not collected from Mr. "B" then only it should be collected from Mr. "A". This seems to be logical.

However, this may be correct for bogus purchases. But now if Mr. "B" made any technical error then also set off of Mr. "A" is disallowed and taxes are collected from Mr. "A". So the question arises - What are these circumstances or parameters issued by department of disallowance of setoff?

In reality, for disallowing set off, department is using following parameters:

1. If TIN of Mr. "B" (Seller) is not seen in the computer system of sales tax department
2. If TIN of Mr. "B" is cancelled

3. If Mr. "B" has not filed returns
4. If Mr. "B" is a specific composition dealer
5. If Mr. "B" has shown all tax free sales in the return
6. If Mr. "B" has given wrong incorrect information in Annexure J 1, etc.

Due to these technical mistakes of Mr. "B" (Seller) the Mr. "A" (Buyer) should not be penalized. Sales tax department should get rectified the mistakes from Mr. "B" and collect taxes from Mr. "B" subject to compliance of laws.

Due to this if, goods are purchased from Maharashtra State, then after some years if, seller have made mistake then purchaser is penalized. This is not correct. Mistake of one and other have to suffer for it. It seems that it's beneficial to purchase from other states, instead of purchasing from Maharashtra State. Because on the goods purchased from Maharashtra, when the "atom bomb" of set off of goods purchased will explode no one knows. No one takes the guarantee of following tax laws by seller, while purchasing goods in business world. In business there is no guarantee of many goods, then how one should obtain the guarantee of seller.

Firstly refund is not received from years. Refund means excess set off remained after adjusting sales tax collected. As refund is not issued, it is as good as benefit of set off is not given to dealer. Further, disallowing set off means punishment for purchasing goods from Maharashtra. If businessman purchases goods from other states, then set off will not be allowed of Central Sales Tax, and there will not be refund to such dealer. Even if CST is cost to dealer, the Cost of disallowance of setoff or refund is unbearable. But he will be relieved from the unnecessary responsibility casted on him under MVAT as discussed above.

In Maharashtra, if facilities are given to business, then only financial growth will take place. due to such tax provisions, it seems that government in putting honest taxpayer in trouble. In the Tax policy of government, tax follower should not be penalized, rather he should be saved.

In the recent case of TCS Company, Honorable Supreme Court has also stated that "government should collect taxes with interest and should give refund with interest. No one's money should not be misused, it may be of government or taxpayer". All citizens of country should follow tax laws and pay taxes, they should not do transaction, by which government's revenue suffer. Tax policies of Governments, should be equal to all tax payers as well as to tax authorities.