

Indian Industries Association comments and suggestions on the proposed VAT act 2007
(Amendments & Modifications suggested in Draft VAT Act -2007) -24th Aug 07

General Observations

1. “The appended schedule of rates” has been mentioned in the act but the rate schedule has not been appended and released with the act as to see whether the protection to home industries is envisaged as to make the home industry competitive in the inter state trade and commerce and global competitions. The comparative study of the rates of different commodities in different states can not be examined. This point is very vital for the very existence of the home industries.
2. The rules & procedures have not been framed to see that the provisions and procedures have been made smoother in the present act in comparison to already existing stringent in trade tax act so far. The same may kindly be released at the earliest so that in the background of the present act their intention and direction could be ascertained.
3. The composition scheme has been provided under the act but their direction and fundamentals, rates and the industries and trades have not been identified so as to assess the future of those industries and trades which are feeling the burnt of the present taxation system.
4. Forms and registers as are likely to be introduced have not been identified though mentioned in the act. The ambiguity of the section may cause serious repercussions for the respective industries and trades.
5. The fundamentals of white paper speak clearly that the states will not levy any other tax when VAT is implemented but this spirit of the white paper as is compulsory has not been mentioned in the act which should also find mention as a clear reiteration of the fact that the state is committed by white paper which has been unanimously accepted & will not levy other Taxes.
6. There are different provisions for making an assessment order, a rectification order the likewise. There is provision for this limitation but no limitation has been prescribed for passing the order. The same limit may also be made for passing an order by the officer of the jurisdiction within a time which may extend between fifteen to thirty days at the most.

Amendments & Modifications suggested in Draft VAT Act -2007

In Sec 2(g) (v) (c)

in the definition of "Dealer" "guarantor for such collection & payment" may be deleted as it would put disruption in smooth business process and management.

In sec 2 (ai)

definition of "Taxable goods" the provision may be substituted with, "Means any goods mentioned as Taxable goods in appended schedule".

2-(n) In this section the input tax has been defined which is the backbone of the value added tax. This input tax has been considered for the sitting of the high impact of taxes as a major to rescue the industry and business from extinction. In almost all the other states input tax credit has been defined to be given on capital goods and captive power plants but in this act no such mention has been made which is to be included. This is worth while to mention that the provisions of this definition section are governed by section 13 of the VAT act which excludes the capital goods and captive power plants and non-VAT goods from the ambit of input tax credit. In the proviso to section 13 restrictions have been imposed on the input tax credit in certain conditions and subjected the rate to the notification by the state government in this behalf which also is against the spirit of white paper.

In this section various restriction, conditions, circumstances and rate have been mentioned which are not in keeping with the spirit of white paper agreed upon by various state. Therefore this section should be made as simple as possible and in very clear term input tax credit should be available to each & every dealer on the goods in his stock, plant & machinery, capital goods, captive power plant, semi processed/ manufactured goods, manufactured goods (as mentioned in white paper and reiterated in various VAT meetings under the chair of empowered committee on VAT).

In sec 3 (4)

Taxable quantum referred to in Sub Section (3) may be substituted with 25 lakhs instead of 5 lakhs considering Rise in prices, Inflation, Global competition in Industry & in retailing etc.

In sec 3 (5)

Every Dealer..... its proviso, "Instead of three consecutive years" may be substituted, "Once such Dealer applies & the officer confirms that the Turnover would not exceed the minimum taxable turnover, limit in the given circumstances".

Sec 3- (9) (2)

To be substituted with "be liable to..... Taxable at a lower rate than packing material or the lower packing rate will apply".

Sec-4-

After clause (d) the first proviso ending with "goods or class of goods" the following may be added "The Provision/Notification will not interfere with article 301 & 304 of Indian Constitution".

Sec 7- (c)

In the proviso to this Sub Section at the end of & after word "specified" the following may be added" as are not violative of article 301 & 304 of Indian Constitution".

Sec 15 (2)-

Proviso after Sub Sec (c) may be deleted to the extent that it does not cast responsibility on dealer to furnish the proof, but the Deptt. may kindly be held for updating the Refunds, Deposits or Adjustments according to the In-built system as envisaged in white paper.

Sec-17 :-

In this section the words and provisions "Date on which Registration Certificate is issued" be substituted with "The date from which Registration Certificate is granted".

17. (11) (c) (iii)

In the above section the liability will create heavy responsibility on business and fictitious and cooked up cases will retard the business. This has no sense when separate penalty provision has been made. This sub- clause may be deleted.

Sec 19. (4)

This section imposes a blanket time limit on a person to know what he despite his best efforts has no knowledge of. Therefore in this section discretion to officer to examine be given to see the uprightness of deals & drastic action as cancellation of registration should not be taken. The officer of jurisdiction should himself gather this information through his in built mechanism & should ask the dealer to make up the deficiency.

Sec. 19 (8)

Discharge of surety or refund should come automatically through in built mechanism even without any application form the dealers as provision in Trade-Tax had so far been likewise. While VAT is considered more liberal.

Sec 21 (2)

The provision for Industries/Manufacturers is unconstitutional. Because such record is not possible to be maintained physically, where the manufacturer gets the manufacture done by third party or through Job-work which is well permissible under law. This provision is arbitrary & invites corruption & fabrication of record. Hence to be deleted. The biggest Indian Companies & MNC's are doing this practice which can not be avoided.

Sec- 21. (17) & (18)

The imposition of compulsory audit system as well as submission of such Audit Report within prescribed time is violative of free trade. These provisions along with the provision of penalty be deleted.

Sec-22 (7) & (8)

This provision is very ambiguous. On the one hand if purchaser does not disclose his name & address or he is purchasing for any person outside state or he is consumer, the particulars cannot be ascertained & verified, this will either prevent the issue of Tax Invoice (legitimate sale) or sale without voucher or else the seller will invite rejection of accounts.

Sec 38

In this section a negative duty on the Director has been cast. The process of liquidation is amply analysed under Indian Company Act 1956. Any additional provision repugnant to such central act is unconstitutional. Therefore this section requires re-structuring in tune with Indian Company's Act.

Sec 40 (2)

Provision of 9% interest on late refunds is not uniform & commensurate & logical as the interest rate on late deposits is 15%. This will not stop arbitrary withholding of refunds practiced so far. Logically it should also be at par with charge of govt. i.e. 15%. This will result in smooth flow of Refunds.

Sec 42

In this section refunds have been permitted to be withheld in certain events and circumstances. Since refund is an independent process it cannot be withheld encroaching upon the said section. What will happen to interest during this span is not mentioned - when there is a stay on interest. Moreover separate penalties in addition have been provided in the said events & circumstances. This would create double burden on the dealers. Therefore this section should be deleted.

Sec. 54

In this section no significance has been given to "Mens-rea" It is a unanimous judicial conviction that for levying penalty guilty intention has to be determined. Because penalty is levied on offenders while (Extra) tax or fee on evaders. To this extent this section requires modification.

Sec 55. (8)

Appellate authority has been placed under supervision & superintendence of the commissioner which hampers the impartial & free flow of justice as on one side commissioner is a party to the Appeal. Therefore control on the office giving judgment on the appeal of the party will be against the principle of fair-play & justice. Therefore he should be placed under the control of "Tribunal".

56. (4)

The provision of Revision/Review has been made within a period of four years from the orders. Whereas the appeal of the order sec u/s 55 may be filed within thirty days. But the provision u/s 56 (4) is in the liberal background considering the circumstances of the dealer having not been able to file the appeal. The provision of restricting the revision even if appeal has not virtually been "filed" but "lies" under the Act is against the justice & fair play by giving an opportunity to get position redressed & then technically withhold & zero the same provision.

Sec. 57 (13) & 58 (5)

This section is absolutely arbitrary in the background of deptt. working. To explain that the domain of state is divided between 15 to 20 courts of Tribunal & the assessments are made through 500 offices or so. To combine & correlate the similar issue will result in the delay of justice & never the order of Tribunal may be considered final. The circumstances / grounds of one business may be quite different from another. Higher courts connect & correlate the matters agitated on the same issue of one individual case & not the matters of entire state or nation on the similar issue in different matters. This analogy has been gravely misunderstood. This will ruin the business and encourage arbitrariness. This section is absolutely illegal & may be totally deleted.

The judgment of commissioner u/s-59 has been binding on the Dealer & the assessing & appellate authority. But the decision of tribunal which is empowered to hear appeals against the orders of the commissioner has not been made binding. The same may also be made binding.

Sec . 60 (c)

Direction issued by commissioner should be appealable before high court & Tribunal . So that any arbitrary direction which solely has revenue leaning & irrational may not be sustained.

Sec 72

Before VAT was implemented it was advocated that the fees will be reduced, which was also in the interest of cheap impart of justice. For instance under Right to Information Act fees has been rationalized & higher courts hear writs sent on post card or letters. Therefore no maximum fee exceeding Rs. 1000/- should be fixed either for Appeal or Tribunal.

Sec. 73 (10)

The restriction on sale or transfer of property has been disallowed during any proceedings. Proceedings do not by themselves encumber the property. Therefore this section be modified & restriction should only be made when there is encumbrance or liability or charge.

Sec. 76

The commissioner may not arbitrarily ask for statistics. He can simply ask for the furnishing of statics under the provisions of VAT Act & should clearly explain as the said statistics is relevant to his business & accounts, useful in public interest. So to this extent this section requires modification.

Sec. 77

Sec 77 is clearly violative of Indian Constitution as central law & laws of other states cannot be encroached upon by state law. The priorities of “charge” have already been defined which cannot be altered. To this extent modification is required.

Sec 79 (1)

Members of settlement commission to be free to exercise his process as fair play & justice facer according to law & should not be brought under the control of commissioner. The section requires modification.

Sec 79 (3) & (4)

Under this section provision for hearing by issue of notice has been made within the period of limitation prescribed. Similar provision may be made as under to avoid harassment & back dating of notice & assessment orders:-

- (i) That the notice will be issued & hearing fixed within one month.
- (ii) No arbitrary orders making reference to other Act's lapses such as Income Tax Act, Food Act, Essential commodities Act, Labour Act, Companies act & likewise unless a clear correlation has been made with evasion under this said act and same is mentioned & discussed in assessment orders. It should also be obtained from the assesses that the ground for making best assessment does not interfere with any binding judgment of Higher courts as well as reason of clash of opinion on the said judicial verdict if any shall also be mentioned mandatorily.
- (iii) The period may be reduced to two years maximum to avoid unnecessary uncertainty & cause of apprehensive mental agony to dealers.

Sec 79 (6) & (7)

The directions of the commissioner may not be against the law superseding VAT Act & should have a respect of judicial verdicts. To this extent the Section requires modification.

S.No.	Event	Amount of Penalty	Logic of Suggestion	Amount Suggested
1	The dealer has without reasonable cause failed to deposit the tax due for any tax period or failed to submit the tax return for any tax period in the prescribed manner; or within the time prescribed or	20% of tax payable	When act provided for compulsory interest & the dealers explains that the urgency in the delay no penalty in general where interest has been	Not exceeding 10% of tax

	extended;		paid should be levied	
2.	The dealer has concealed particular of his turnover or had deliberately furnished inaccurate particulars of such turnover; or submits a false tax return under this act or evades payment of tax which he is liable to pay under this act.	300% of amount tax concealed or avoided	Normally in such cases re-assessment & enhancement is made excessively. Then no need of penalty should be there.	Maximum 150% of tax
3.	The dealer has maintained or produced false accounts, registers or documents;	300% of amount tax concealed or avoided	If it is proved beyond doublet on the basis of final order, the penalty must be levied but it should not be a penalty to destroy business.	Maximum 150% of tax
5	The dealer has failed to issue a tax invoice or sale invoice in accordance with the provisions of this Act;	40% value of goods	In such cases notice is taken when caught by enforcement. It has to be seen that no of provisions are not adopted on the same fault	one & a half % of the tax avoided
6.	The dealer has failed to issue a challen, transfer invoice or transport memo in respect of dispatch or delivery of goods in accordance with the provisions of this Act;	40% value of goods	In such cases notice is taken when caught by enforcement. It has to be seen that no of provisions are not adopted on the same fault	one & a half % of the tax avoided
8.	Upon requiring by the officer empowered under this Act, to inspect, examine and obtain copy, the dealer <u>or other person</u> , as the case may be, refuses or neglects- (i) to produce any book,	A sum of rupees twenty five	How far the dealers can secure the other person should also be seen legitimately & reasonably & such requirement of officer too should have norms	Maximum 5000/-

	document or account; or (ii) to operate his computer used in connection with business; or (iii) to allow copies or print outs etc;		& code.	
9.	the dealer or other person, as the case may be, obstructs or prevents an officer empowered under section 45 or section 48 or an officer in-charge of a check-post or barrier from performing any of his functions under this Act;	A sum of Rupees fifty thousands	-	Maximum 15000/-
10.	The dealer or other person, as the case may be, refuses or neglects to furnish any information, which is in his knowledge or possession or furnishes false information'	A sum of Rupees twenty five thousands	Legitimacy of the refusal as such be also seen & considered (trading the explanation) favorably	5000/-
11	Where the dealer or other person, as the case may be - (i) issues or furnishes a false or wrong certificate or form of declaration prescribed under the Act, by reason of which a tax on sale or purchase, ceases to be leviable, whether in full or in part; or (ii) issues a tax invoice or sale-invoice	50% of value of goods	In these cases it is Tax which is avoided & not the value of goods. Penalty should have link with tax only.	150% Tax.

	<p>without actual sale of goods; or</p> <p>(iii) issues a transport memo, challan or transfer invoice without actual dispatch or delivery of goods; or</p> <p>(iv) receives a tax invoice of sale-invoice without actual purchase of goods; or</p> <p>(v) receives a transport memo, challan or transfer invoice without actual receipt of goods; or</p> <p>(vi) issues or furnishes a false tax invoice, sale invoice certificate or declaration, by a reason of which a tax on sale or purchases cases to leviable under this act or rules made under this act or rules made under</p>			
12.	<p>Where a dealer or other person, as the case may be -</p> <p>(i) makes use of a prescribed form of declaration or certificate which</p>	50% of value of goods	In these cases it is Tax which is avoided & not the value of goods. Penalty should have link with tax only.	150% Tax.

	<p>has not been obtained by him or by his principal or agent in accordance with the provisions under this Act; or</p> <p>(ii) (ii) transfers a prescribed form of declaration or certificate to any other person except for lawful purposes; or</p> <p>(iii) possesses a prescribed form of declaration or certificate which has not been obtained by him in accordance with the provisions under this Act;</p>			
13.	<p>Where the dealer or other person, as the case may be-</p> <p>(i) Closes or leaves place of business with an intention of avoiding inspection under this Act; or.</p> <p>(ii) being a driver or person in-charge of vehicle leaves the vehicle with an intention of avoiding inspection</p>			Maximum 5000/-

	<p>of goods and documents; or</p> <p>(iii) willfully does not stop the vehicle carrying taxable goods required by an officer empowered to inspect goods;</p>			
14.	<p>Where the dealer or any other person, as the case may be-</p> <p>(i) imports or attempts to import or abets the import or abets the import of any goods, in contravention of the provisions under section 50 or section 51 with an intention of evading payment of tax on sale of-</p> <p>a) such goods; or</p> <p>b) goods manufactured, processed or packed by using such goods; or</p> <p>(ii) transports, attempts to transport any taxable goods in contravention of any provisions of this Act;</p>	40% of value of goods	It is Tax which is avoided & not value of goods	150% of Tax
15.	<p>Where the driver or person in charge of the vehicle, as the case may be-</p> <p>(i) fails to obtain</p>	40% of value of goods	It is Tax which is avoided & not value of goods	150% of Tax

	<p>authorization for transit of goods through the State and also fails to prove that goods are meant for delivery to dealers or persons outside the State; or</p> <p>(ii) Fails to obtain authorisation for transit but proves that goods are meant for delivery to dealers or other persons outside the State; or</p> <p>(iii) while obtaining authorisation for transit of goods through the State undertakes responsibility of handing over such goods to a bonafide person inside the State for carrying them outside the State but fails to hand over such goods to such bonafide person; or</p> <p>(iv) being a person, who receives any goods from driver or person in-charge of a vehicle for</p>			
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	<p>carrying them outside the state, does not carry such goods outside the state; or</p> <p>(v) being driver or person in-charge of a vehicle or a transporter who receives goods inside the State for carrying them outside the State, fails to produce copies of authorisation for transit of goods along with goods before the officer in-charge of the exit check post but proves that goods have been carried outside the state; or</p> <p>(vi) being a transporter or hirer of a vehicle prepares goods receipt by showing false destination of goods outside the state;</p>			
16	Where any dealer <u>demand</u> s or charges or realises any amount as tax in contravention of the provisions of this Act;	3 times of the tax so realised	The "word demands" can be of wide & far reaching consequences. Therefore "charges" will suffice	150% of Tax

18	Where dealer or any other person, as the case may be, makes a false verification, declaration or attestation in any matter connected with this Act;	Sum of Rupees fifty thousands	Either penalty should be levied or I.P.C. & Cr. P.C. should not be resorted.	Maximum 15000/-
19	Being dealer or any other person who is required maintain any book, account or other document, does not maintain such book, account or document in the prescribed manner;	A sum of Rupees twenty-five thousands	This is arbitrary & will give wide discretionary powers & will duplicate the already existing provision.	To be deleted
20.	Where dealer or any other person, as the case may be, wrongly claims an amount as input tax credit;	A sum equal to 5 times of	Dealer can also mistake unknowingly & due to error of information	150% of input tax
22.	Dealer or any other person, as the case may be, tampers with any seal put under sub-section 6 of section 45	Sum of Rupees fifty thousands	-	Maximum 5000/-
23.	Dealer or any other person who, otherwise acts in contravention of the provision of this Act or rules made there under.	Sum of Rupees ten thousands	All the offences under the Act cannot the said to be at par. Therefore the minimum & maximum should be averaged.	2000/-