

SYNOPSIS ON LOCAL BODY TAX (LBT)

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Present Position

At present Municipal Corporations in Maharashtra levy Octroi. Octroi is main source of revenue for the Corporation. However, collection of Octroi is done at the entry point in the city. This requires detention of vehicles which result in wastage of fuel and time. It is also said that there is large scale corruption at the Octroi Naka.

LBT is account based system. The dealers importing the goods from out of city will be required to compute such purchases and discharge LBT liability by filing periodical returns. In other words, this is similar to VAT system. However, instead of liability on sale it is liability on imported purchases, to be discharged by the purchasing dealer.

LBT is permissible under Article 246(3) readwith entry 52 in List II of the VII-Schedule to the Constitution of India.

In Mumbai LBT is proposed to be implemented from 1st October, 2013.

Relevant Act and Rules

There is no separate Act for LBT. There is The Maharashtra Municipal Corporations Act, 1949 (MMC Act) wherein various issues about Corporations are covered, like levy of property tax, Constitution of Corporation etc.. In other words this is a comprehensive enactment covering divergent issues about running and Administering the Municipal Corporations. LBT is leviable under the Authority of Section 152P of the MMC Act.

Under the Authority of above Act the Urban Development Department of Government of Maharashtra has drafted Rules which are also known as "Bombay Provincial Municipal Corporations (Local Body Tax) Rules, 2010" (LBT Rules). Rules are still in draft form.

The most of the substantive provisions are given in the Rules. Therefore, more study should be of the Rules.

Important Features of the LBT Rules

Rule 2 covers various definitions. Amongst others it is provided that words and expressions not defined should have same meanings respectively as may be assigned to them in the MMC Act.

In the MMC Act, Section 2 gives certain definitions. Out of the same, some are relevant for LBT. Important one can be noted as under:

Section 2(5A) – This section defines “**business**”. This is inclusive definition and it is on line with definition of above term in the MVAT Act. However, the important difference is that it covers Profession also. Further, occasional transactions are also covered within the definition.

Section 2(16A) – “**dealer**” – This definition is similar to definition under MVAT Act. However, the added feature is that Manager or Agent of Non Resident dealer is added. Further, the agent is also covered in very broad category. By Exception, individual who import goods for his exclusive consumption for use and Department of State or Central Government, not engaged in the business, are excluded.

Section 2(25) – “**goods**”- This definition is very short defining, “goods” includes animals. This is inclusive definition and it will have normal meaning under the Constitution of India. However, animals are specifically included in goods, though otherwise also they are covered by the term “goods”.

Section 2(31A) – “**Local Body Tax**” means a tax on the entry of goods into the limits of the City, for consumption, use or sale therein, levied in accordance with the provisions of Chapter XIB, but does not include cess as defined in clause (6A) and octroi as defined in clause (42).

Section 2(44) – “**year**” is defined as year commencing from 1st April i.e. financial year.

Section 2 (70A) and 2(70B) – define the terms “turnover of purchases” and “turnover of sales”. They are reproduced for ready reference.

(70A) “Turnover of purchases” means the aggregate of the amount of purchase price paid and payable by a dealer or a person in respect of any purchase of goods made by him during a given period, after deducting the amount of purchase price, if any, refunded to the dealer or the person by the seller in respect of any goods purchased from the seller and returned to him within a period of six months;

(70B) “turnover of sales” means the aggregate of the amount of sale price received and receivable by a dealer or a person in respect of any sale of

goods made during a given period after deducting the amount of sale price, if any refunded by him to a purchaser, in respect of any goods purchased and returned by the purchaser to him within a period of six months and where the registration certificate is cancelled, the amount, in respect of sales made before the date on which the cancellation became effective, received or receivable after such date;

Turnover Limits for Registration

Rule 3 prescribes limits of turnover for registration.

Dealer, who is importer

Turnover of Sales/Purchases not less than Rs.1 lakh, Turnover of sales/purchases of taxable goods (Schedule A) not less Rs.5,000/- and value of imported goods not less than 5,000/- .

Dealer, who is not importer

Turnover of Sales/Purchases not less than Rs.1,50,000/-, Turnover of purchases of taxable goods (Schedule A) not less than Rs.5,000/- .

Temporary Registration

Any person/dealer not carrying regular business and has carried on temporary business will be liable for temporary registration irrespective of above turnover limits.

Provision about vicarious liability

There are provisions by way of Rule 5 for vicarious liability in case of death, Partition of HUF, Transfer of business etc..

If any person succeeds in the business of any dealer then he will be liable from the date of succession and irrespective of limits of turnover will be liable for registration.

Rule 6 provides for liability of Firm and Partners as joint and several liabilities.

In case of retirement of partner intimation of retirement should be given within 60 days, otherwise his liability will be continued till the date of intimation.

As per Rule 7, Commission Agent etc. remains liable to pay LBT on account of principal, jointly and severally.

Registration

The person liable for registration should apply within 30 days. In case of temporary registration, the application should be made 15 days prior to commencement of business.

Dealers registered under MVAT Act will be deemed to be registered from the appointed date.

Information about changes in business

Rule 14 provides for various instances where dealer should give intimation about changes in business.

There are incidental provisions about continuation of registration of certificate, exhibition of certificate, cancellation of certificate etc..

Presumption and burden of proof

LBT is applicable when there is import from outside the city. Where the purchase is from within the city, the LBT will not apply. For the purpose of proving that the purchase is from within city, purchasing dealer should produce certificate issued by the selling dealer. It is like certificate which was in operation under BST Act for claiming of resale.

The wordings of the certificate are provided in Rule 22, they are as under **"I/We hereby certify that my/our registration certificate under these rules is in force on the date on which the sale of the goods specified in this bill/invoice/cash memorandum, is made by me/us and that the transaction of sale covered by this bill/invoice/cash memorandum, has been effected by me/us in the course of my/our business."**

Tariff Value

Rule 24 gives power to the Commissioner to notify tariff value of any goods and if such value is notified LBT should be paid on such value and not as per purchase documents etc..

Fair Market Value

As per Rule 25 Commissioner has also power to decide fair market price for levy of LBT in certain circumstances, after giving hearing opportunity.

Inspection of goods in transit

Rule 26 gives power to Commissioner to stop any vehicle and keep it stationary for the purpose of inspection of goods and to find out any evasion of LBT. If the documents with the goods are not satisfactory then the Commissioner can levy LBT, interest, penalty etc.. The power is to be exercised by Commissioner or Officer not below the rank of Deputy Municipal Commissioner.

Lump sum payment scheme

Like MVAT Act, 2002 under LBT also composition scheme, named as Lumpsum payment, has been devised by way of rule 27. There are different rates for payment of lumpsum.

Exemptions

Rule 28 deals with exemptions in various circumstances.

The exemption is granted to the State or Central Government, if the import is for public purpose and not for earning profit. The exemption is subject to fulfillment of further conditions.

As per rule 28(3) if the dealer has dispatched the goods out side the city for processing etc., and re-imported the same within six months without effecting any change in condition, appearance and ownership, the LBT will be payable only on the value addition i.e. processing charges, transfer charges etc..

Conversely, if the dealer receives goods from out side city for enumerated processes on job work basis and they are exported back within six months to the said person and there is no change in the ownership and form of the goods then no LBT will be payable on the said goods. In this respect, the Commissioner can ask for security deposit.

Goods return

If the goods sold out side city are received back as goods return then no LBT will be payable on the said goods subject to that they are received back within six months.

Export goods

There is no LBT on goods which are exported out side the territory of India.

Returns/payments etc.

Rule 29 provides for filling of returns. Normally, there will be two returns. Return in form E-I for half year and return in form E-II for full year. The returns are required to be filed within 15 days from the end of the respective period.

There are powers to grant different periodicity for returns, for different dealers.

As per rule 40 the LBT should be paid within 10 days from the end of the month. The return is half yearly or yearly, whereas payments are to be made monthly. The provisions about returns and payments are not very clear and clarifications are required.

DDQ

Like MVAT Act, 2002 there are provisions for Determination for Disputed Question (DDQ).

Refund of LBT

There is provision for refund of LBT paid earlier. If on the imported goods any LBT is already paid and they are dispatched outside the city or exported outside the city by way of sale then 90% of the LBT paid earlier will be refunded back. The export should be within six months without any change in the goods. There are further procedural requirements.

Assessment of LBT

As per rule 33(1) there should be separate assessments for each period. There can be assessment by accepting the returns. If the returns are not accepted then dealer will be assessed by speaking order after giving hearing opportunity. There is also power for best judgment assessment.

If the Commissioner is not satisfied with the correctness and completeness of the accounts of the dealer, he can assess him to the best of the judgment.

The assessments should be initiated within 5 years from the end of the relevant year.

Reassessment

There is also provision for reassessment. In case of escapement or under assessment or wrong deduction/refund etc., there can be reassessment. The

reassessment should be initiated within 3 years from the date of the communication of relevant assessment order.

Rectification

There is also power for suo-moto rectification or rectification by application from the dealer. The rectification should be done within 2 years from the date of the order.

Appeals, Recovery, Interest, Penalty & Power to collect statistics etc.

A separate note (curtsey STR) is appended, which is elaborate.

Appearance

Like MVAT Act, 2002, under LBT also a relative of the person. Advocate, CA, Cost Accountant and LBT Practitioner are entitled to appear on behalf of the dealers.

Schedules

Schedule-A – List of taxable goods.

Schedule-B – List of tax free goods.

Forms

Form 'A' –Application for registration.

Form 'B' – Certificate of registration.

Form 'C' – Application for cancellation of certificate of registration.

Form 'D' – Purchase register or register of goods.

Form 'E-I' – Half yearly return.

Form 'E-II'- Annual return.

Form 'F' – Intimation of nomination/declaration of name of manager of business.

Form 'G'- Direction for return filing.

Form 'H' – Notice for assessment.

Form 'I' – Order of assessment.

Form 'J' – Notice of demand.

Form 'K'- Notice for reassessment.

Form 'L'- Notice for payment of dues as property tax.

Form 'M' –Refund payment order.

Form 'N'- Notice for production of accounts or documents.

Form 'O'- Notice for forfeiture/penalty.

Form 'P'- Notice for rectification of mistake.

Appendix- Note on appeals etc..

**APPEALS, RECOVERY, INTEREST, PENALTY &
POWER TO COLLECT STATISTICS ETC.**

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INTRODUCTION

From the overall provisions of Local Body Tax (LBT), it appears that the scheme of administration including above aspects of appeals, recovery etc., are on the line of VAT provisions. The main provisions are available in the Maharashtra Municipal Corporations Act, 1949 (MMC Act). However, most of the administrative provisions are in Rules.

Appeals

The filing of appeals is provided in section 406(6) of the MMC Act. The appeal against the demand notice levying LBT should be filed before the Deputy Commissioner, if the demand notice is raised by the LBT Officer or any other Officer, not being the Deputy Commissioner. In other words, the demand raised by Officer below the rank of Deputy Commissioner should be filed to the Deputy Commissioner.

In MVAT Act the appeal lies against 'order' and hence orders without raising demand are also appealable. In LBT it appears that order accompanied by demand notices will only be appealable.

If the demand notice is raised by the Deputy Commissioner, the appeal should be filed before Commissioner. The time allowed is very short and at least two months are required to be given like under MVAT Act.

As per section 406(7) the appeal should be filed within 15 days from the date of demand notice.

As per section 406(8) no appeal shall be entertained by the respective appellate authority unless the disputed tax amount is deposited by the appellant.

As per legal position, appeal is a statutory right and can be subject to conditions including for making payment. In that sense, providing payment of disputed amount of tax may be legally correct. However, in the case of heavy demand or high pitched order the appellant will find difficult to exercise his

appeal right because of such stringent condition of making payment of disputed tax amount.

There is no second appeal provision. In case appellant is not satisfied with the first appeal order, the only remedy will be to approach High Court under Writ jurisdiction.

Procedural aspects of appeals

Bombay Provincial Municipal Corporation (LBT) Rules, 2010, referred to as 'LBT Rules', provide for procedural aspects. These rules are still in the draft form. Some of the procedural requirements about appeals can be noted as under;

Rule 36 provides about appeal form. The appeal should be in form-S. Like VAT appeal, it should contain certain basic information like name & address of the appellant, date of order against which appeal is filed, contain a clear statement of the fact and also briefly the relief prayed etc.. It should be accompanied by challan for payment of disputed tax amount. The quantum of relief sought should also be specified. The term 'quantum of relief sought' is also explained in sub-rule 3(b) of Rule 37. The said explanation is as under; "Sub-rule 3(b) For the purpose of these rules, the expression "quantum of relief sought" means:-

- (i) the aggregate of the amount of local body tax or penalty or interest, if any, or sum forfeited or demanded and the amount claimed by the appellant as refundable, or
- (ii) the difference between the amount of refund claimed by the appellant and the refund granted in the order against which the appeal is filed, or
- (iii) the difference of the amount of local body tax or interest, if any, or sum forfeited, demanded and the amount accepted by the appellant to be payable."

Appeal form should be signed and verified.

The memorandum of appeal should be accompanied by certified copy of the order or duly authenticated copy of the said order. If it is not available at the time of filing appeal, then appellant should explain the omission to the satisfaction of the appellate authority. The appeal can be presented personally or through the agent or can be sent by registered post.

Rule 37 provides for hearing. The notice for hearing should give 10 days time. It can be earlier, by consent. If there is non attendance, the appellate authority can dismiss the appeal or decide ex-parte.

If the appeal is dismissed ex-parte or decided ex-parte, the same can be restored, if the application for restoration is filed by the appellant within 30 days from the date of order. If it is satisfactorily proved that the appellant did not get notice of hearing or was prevented by sufficient cause from appearing then the appellate authority can restore the appeal.

Rule 37(3)(a) mandates the appellate authority to maintain appeal register.

Rule 38 mandates to supply certified copy of the appeal order to the appellant and the officer, who has passed the order.

Continuation of recovery proceedings

Rule 41 provides about continuation of recovery proceedings in case, there is appeal against the original order. It provides for 3 contingencies.

If due to appeal order the LBT, penalty/interest, sum forfeited or fine (referred to as 'corporation dues') are enhanced then the Commissioner should issue demand notice for such enhanced amount.

If the corporation dues are reduced in the appeal then Commissioner should give intimation of the same to the appellant.

If the appellant becomes entitled to refund because of appeal order, it should be refunded to the appellant.

Special mode of recovery

Rule 42 provides for garnishee proceedings. Powers are like in section 33 of the MVAT Act, 2002. The authorities can issue notice to any person from whom money is due to the dealer or who holds money on behalf of the dealer, to pay the same to the Commissioner. The rule also provides power for Commissioner to amend or revoke the said order. It is also provided that money paid to corporation as per above proceedings, will absolve the person from his liability to pay such amount to the dealer. It is further provided that any payment to the dealer in contravention of the above notice will make such person, personally liable to the corporation, which can be recovered as arrears of

property tax. A person to whom notice for payment is issued is also entitled to prove to the satisfaction of authority that actually no money is due to the said dealer, and in such case proceeding will not apply against him.

Provisional attachment

Like section 35 of the MVAT Act, 2002 under LBT also, there is rule 43 providing for provisional attachment. In the course of enquiry or proceedings for assessment, inspection/search etc., for protection of revenue, Commissioner can attach provisionally any property belonging to the dealer, including money due from any person. It appears that the powers under this section are wide as compared to MVAT Act as under LBT there is power to attach the property also in addition to bank account and debtors. However, the positive side is that the Commissioner is required to give reasonable opportunity of hearing before attachment.

The provisional attachment will cease to have effect after expiry of six months, which can be extended, maximum upto two years. The attachment order can be amended or revoked as deemed fit. It is also provided that this power can be used by Commissioner or any Officer not below the rank of Deputy Municipal Commissioner.

Imposition of penalty and interest

Non issue of bill/invoice etc.

Section 152G of the MMC Act provides that when registered dealer sells goods to another registered dealer or he sells goods exceeding Rs.10 in the value to any person he shall issue a bill/cash memorandum etc., which are serially number, signed and dated. A counter foil should also be preserved for not less than 5 years from the date of sale.

Rule 48(1) provides that if the dealer so fails to issue bill/invoice etc., Commissioner can levy penalty after hearing the dealer. The penalty quantum can be double the amount that would have been payable, if the goods sold had been imported by the selling dealer in the city for consumption, use or sale therein. The power to levy penalty is discretionary as to levy and quantum. Therefore, all the principles applicable for levy of penalty will also equally apply here.

Other penalties

Rule 48(2) provides penalties in following contingencies;

- (a) failure to apply for registration though required;
- (b) failure to respond to any notice;
- (c) failure to disclose entry of goods where LBT is leviable or claiming inaccurate deduction, refund or failure to disclose fully and truly all material facts necessary for proper and correct quantification of the LBT.

The quantum of penalty is specified as under;

In case of (a) not exceeding 10 times of the LBT payable during the URD period;

In case of (b) a sum not exceeding Rs.10,000/-;

and in case of (c) a sum not exceeding 5 times of the LBT found payable under clause (c).

The penalty can be levied after giving hearing opportunity. The levy of penalty under this rule is discretionary as to levy and quantum and therefore all the principles as applicable to levy of penalty will apply here also.

Rule 48(4) provides penalty for the offence of knowingly producing bill/cash memorandum etc., which is not true by reason of which any goods imported in the city for consumption, use or sale are not liable to LBT or liable at lower rate of LBT. The penalty can be levied after hearing opportunity. The penalty should not exceed twice the amount of LBT due in respect of same goods, if it is first occasion. On the second and subsequent occasion, the penalty can be to the extent of 5 times of the LBT in respect of the same goods.

Similarly, rule 48(5) provides for penalty where a dealer or person furnishes declaration or certificate by reason of which LBT is not leviable or leviable at a lower rate and such dealer or person had knowledge or reason to believe that such declaration or certificate was false. The penalty can be levied after hearing opportunity and it is discretionary. The quantum is maximum upto 5 times of the LBT which would have been leviable on such goods.

Penalty for delayed filing of returns

If the return is not filed within the prescribed time then the delay will attract penalty upto Rs.5000/- u/r.48(6). The penalty is discretionary and can be levied after giving hearing opportunity. The Commissioner can grant

exemption from above penalty to the class or classes of dealers as may be specified. This penalty is without prejudice to Rule 48(2)(c).

Penalty for non issue of cash memo/bill etc.

As per rule 48(7) if the dealer fails to issue cash memo/bill etc., as required under section 152G then he can be liable for penalty, not exceeding double the amount of cash memo/bill for which it should have been issued or Rs.100/- whichever is more. The penalty can be levied after giving hearing opportunity. There appears to be duplication of this penalty as similar penalty is also provided under Rule 48(1).

Penalty for non maintenance of records

If dealer liable to pay LBT or to whom notice is issued by Commissioner to maintain accounts, fails to maintain accounts in manner prescribed or directed, he shall be liable to penalty under Rule 48(8) which can be upto Rs.5000/- or double the amount of LBT payable, if there was no contravention, whichever is less.

Interest

Rule 48(3)(a) provides for interest for delay in payment as considered from due date. For the first 12 months of delay, the rate is 2% p.m. and thereafter 3% per month.

Similarly, rule 48(3)(b) provides for interest in case of differential dues arising due to assessment. The rate of tax is 2% per month from 1st date after end of the assessment period till the date of assessment. The interest can be modified because of any other order having effect on the assessment dues. It is also provided that this interest should not exceed the differential dues.

By explanation, it is provided that any part of the month shall be construed as month for levy of interest.

Forfeiture

Like MVAT Act under LBT also there is provision in Rule 49 for forfeiture and imposition of penalty. The said rule provides that if any person collects LBT in excess of LBT payable or collects LBT in respect of goods mentioned in Schedule B i.e. tax free, then such excess amount should be forfeited. Further, penalty not exceeding Rs.2000 or double the sum collected as LBT, whichever

is less, can be levied. Forfeiture notice in Form "O" should be issued to the concerned party. There is also requirement of publishing the information about forfeiture made for the knowledge of concerned persons. However there is no provision for refund of money to the persons from whom it is collected in excess.

Normally LBT is to be paid on the imported purchases by the purchasing dealer. There is no occasion to charge the LBT to the buyer by selling dealer. Therefore it appears that there will not be any real instances for applying forfeiture provisions. However, if any purchasing dealer shows LBT amount payable by him in the sale bill issued to his buyer, in that case the question of collection and forfeiture may arise. However, this is to be seen on the facts of the case.

Power to collect Statistics

Under Rule 50, Commissioner has power to collect statistics for better administration. For this purpose Commissioner can give notice in news paper or by any other manner and can ask for submission of details, returns etc. as may be specified by him.

Section 152M of the MMC Act says that any particulars contained in any statement / returns and other relevant records should be treated as confidential. It is further provided that if any unauthorized disclosure is made by the servant of the Corporation it will be punishable. However, Rule 51 enumerates instances where section 152M will not apply.

Rule 52 provides that information in any individual returns etc. should not be published which can be identified as relating to particular dealer. Similarly no person, except the person engaged in collection of statistics or administration, should have access to such information.

It is also provided that if any person required to furnish information as per Rule 50 willfully refuses or neglects to furnish such information or gives false information then Commissioner can levy fine upon him upto Rs.100 and if it continuing offence, daily fine not exceeding Rs.10. This fine can be levied after giving hearing opportunity. Similarly if any employee or servant of the

corporation is found willfully disclosing any information except required under the Act for prosecution etc. he can be liable to fine up to Rs.1000/-.

Rule 53 gives power to Commissioner to publish information in respect of any dealer or person, if he is of the opinion that it is required in public interest. Similar information can be published in relation to partner, director etc. if it is felt necessary by the Commissioner.

It is provided that no information in respect of LBT levied or penalty imposed or any conviction should be published until the time for presenting any appeal to the appropriate appellate authority has expired or if any appeal is presented, it has been disposed of.

Conclusion

The subject of article is new and still under formation. Though the provisions are on line of VAT, minute differences are there. We as practitioners, have to study the subject in depth. I hope my above article will be useful to give some insight of the subject.