

MULUND CA CPE STUDY CIRCLE
SATURDAY, 9th AUGUST, 2014

**RECENT AMENDMENTS
 IN MVAT & PROF. TAX
 THROUGH STATE BUDGET 2014
 AND
 DRAFT RULES FOR CHECK POST &
 TRANSIT PASS**

BY CA PRASHANT VORA

09.08.2014

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State Budget presented on 5th June 2014

The state of Maharashtra had introduced a Bill No. XIX (19) on 9th June 2014

**The bill is passed and converted to Act by Notification dated 26th June 2014 & was made available to general public on 7th July 2014.
 (Mah. Act. No. XXVII of 2014).**

Prof. Tax on Salaries & Late fees for return will be effective from 1st July 2014 and other sections on passing & publication of this Act i.e. 26th June 2014

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Profession Tax

Returns : Sec. 6(3)

Employers who are at default, liable for late fee of Rs. 1,000/- per return w.e.f. 1st May 2012.

Gist of Amendment :

Now proviso is added that State Govt. is empowered to issue Notification to exempt any class of Employers from late fees for return, either wholly or partly, for any period either prospectively or retrospectively.

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Exemptions : Section 27A-Clause(e)

Parents or Guardian of any person who is suffering from mental retardation specified in the rules made in this behalf, which is certified by a psychiatrist working in a Government Hospital :

Provided that such individual produces such certificate before the prescribed authority in respect of the first assessment year for which he claims deduction under this sub-section.

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Exemptions : Section 27A-Clause(e) ... (Continue)**Gist of Amendment :
Sec. 27A, Clause (e) substituted**

Any person with Intellectual & Development Disabilities (Mental Retardation) as per Rules, which is certified by a psychiatrist working in a Govt. Hospital and which has the effect of reducing such individual's capacity for normal work or engaging in gainful employment or occupation....and parents or guardian of such person continues for said exemption

Such Individual or Employer shall produce such Certificate in 1st assessment year

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Schedule I of PT Act : Entry 1 amended from 1 July 2014

Salary & Wages per month : **PT wef 1 July 2009**
Do not exceed Rs. 5,000.....PT Nil
Exceed Rs. 5,000 upto Rs.10,000PT Rs. 175
Exceed Rs. 10,000PT Rs. 200
(For Feb Rs. 300)

Gist of Amendment :

Salary & Wages per month : **PT wef 1 July 2014**
Do not exceed Rs. 7,500.....PT Nil
Exceed Rs. 7,500 upto Rs.10,000PT Rs. 175
Exceed Rs. 10,000PT Rs. 200
(For Feb Rs. 300)

The revised rate of tax will apply to wages/salaries earned for monthly periods starting on or after 1st July 2014. (Circular No. 5 of 1989 No. PFT-1189/Adm-7/28/B-383, dt. 12.04.1989 & Circular No. 32T of 2009 dt. 24th November, 2009)

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Amendments to MVAT Act**Turnover limits for Registration : Sec. 3(4)(b)**

Prior to 01-05-2012 : Turnover Limit was only based on sales.

WEF 1 May 2012: If turnover of sales or purchases liable for Purchase Tax u/s. 6A and 6B exceeds Rs. 5 lakhs during the year (and value of taxable goods sold or purchased is not less than Rs. 10,000): liable for Registration;

Gist of amendment :

T.O. limit increased from Rs. 5 lakhs to Rs. 10 lakhs

T.O. limit of Rs. 1 lakh for importer, unchanged.

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Cancellation of Registration : Sec. 16(6)(c) added**Gist of Amendment :**

The registered dealer, other than an importer, whose Turnover of Sales has not exceeded the T.O. limit during FY 2013-14 may apply for cancellation of RC on or before 30 Sept 2014 w.e.f. 1st Oct 2014.

T.O. limit to be considered is Rs. 10 Lakhs

To apply for cancellation on or before 30 Sept 2014

Reminder : Deposit of Rs. 25,000 shall be claimed as refund on completion of 3 yrs of registration or within 6 months from cancellation of RC u/r. 60A (Trade Cir. 7T dt. 4th May 2011) (Originally introduced from 01-05-2011)

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Late Fees : Sec. 20(6) amended wef 1st July 2014

Fees for filing return late is Rs. 5,000 per return wef 1st Aug 2012 ; [Prior to this it was Penalty u/s. 29(8)]

Gist of Amendment :

wef 1st July 2014 : If the return is filed within 30 days from due date, then late fees is Rs. 2,000, else it will be Rs. 5,000

Due Date ??? Due date of payment or from date of uploading of the return ???

(Refer Commissioner's Circular No. 16T of 2008 dated 23-04-2008, 31T of 2008 dated 08-09-2008 and 1T of 2009 dated 12-01-2009).

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Late Fees : Sec. 20(6) amended wef 1st July 2014 ... (continue)**Reminder :**

Notification No. VAT 1514 / C.R. 44 / Taxation-1, dated 9th July 2014 has been issued for the Dealers who have not filed any of the returns for the period upto February, 2014. Now they can file the said returns on or before 30th September, 2014 with applicable tax and interest then they will get the benefit of lower late fees i.e. Rs. 1,000/-

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Amendments to Assessment Proceedings**Assessment : Sec. 23(9)**

In case of pending assessment proceedings, dealer could apply in Form 305 (Rule 22) to Commissioner for issuing directions to guide assessing authority to complete assessment.

Gist of Amendment :

Said application and provision is deleted.

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Assessment : Proviso added to Sec. 23(10)**Gist of Amendment :**

In respect of period after 1st April 2011 where dealer is required to file more than one return in different forms, may be assessed separately for each return form.

e.g. PSI Units (Form 234) & Notified Oil Companies (Form 235) along with Form 231 or 233

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Assessment : Sec. 23(11) amended

In case of ex-parte assessment under sub-section (2)/ (3)/ (4) for **non-attendance**, such order can be cancelled by applying in Form 316 within 30 days of date of service of Order. But there was no time limit for passing cancellation order in Form 317

Gist of Amendment :

Authority shall cancel such Order within 3 months from end of the month in which such application is made; else such order will be deemed as cancelled.

Thus the tendency to postpone the 18 months period by holding up cancellation now stands plug.

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Appeals : Proviso added to Sec. 26 (6)**Most draconian provision****Gist of Amendment : Proviso Added**

In case of an appeal filed on or after 1st July 2014 against any Order in which claim against declaration or certificate is disallowed for non-production then where appeal is filed after 2 yrs from end of the relevant year, then the stay shall not be granted unless the appellant makes 100% payment of tax as part payment; where such appeal is filed before expiry of such 2 yrs, the stay shall stand vacated if the appellant fails to produce required declarations before the expiry of said period of 2 yrs.

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Appeals : Proviso added to Sec. 26 (6) ... (continue)**Issues :-**

- 1) Whether assessment order for taxing the pending declarations, may be passed within a short period of two years ?.... So that the stay order will not be granted in appeal**
- 2) What treatment will be given to defective forms when submitted ?**
- 3) Can the State Legislature make separate provision for appeal under CST Act ?**

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Penalty : Sec. 29(3) amended

Concealment Penalty was levied equal to amount of tax found due as a result of an act of commission or omission;

According to decision of Bombay High Court in Ankit International (2011) 46 MTJ 491, Levy of penalty is at the discretion of the Officer, because of the word "may" and it can extend from 0% to 100%.

Gist of Amendment :

Said Penalty provision is amended to provide for minimum amount of 25% of tax found due and maximum upto the amount of tax due.

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Penalty : Sec. 29(7A) added

Penalty u/s. 29(8) for late filing of return was replaced by levying Late fee u/s. 20(6) wef 1st Aug 2012.

Gist of Amendment :

If the dealer has paid such late fee & yet such penalty was levied then such penalty shall not be recovered.

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Penalty : Sec. 29(11A) added**Gist of Amendment :**

Penalty u/s. 29 may be imposed while passing an Order under this Act, notwithstanding 8 yrs of time limit provided u/s. 29(11)

Issue :-

For completing assessment u/s. 23(5), there is no time limit & hence the said amendment ???

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Penalty : Sec. 29(12) deleted

Section 29(12) - No order imposing a penalty under any of the foregoing sub-sections shall be made,-

- (a) by a Sales Tax Officer or an Assistant Commissioner where the penalty exceeds rupees five lakh except with the prior approval of the Deputy Commissioner;
- (b) by a Deputy Commissioner or a Senior Deputy Commissioner, where the penalty exceeds rupees ten lakh except with the prior approval of the Joint Commissioner:

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Penalty : Sec. 29(12) deleted ... (Continue)

Provided that, nothing in this sub-section shall apply to any penalty which may be imposed by an appellate authority.

Gist of Amendment :

Prior approval of DC or JC before levying penalty exceeding Rs. 5 Lakhs or 10 Lakhs, done away with.

Judgment effect nullified (VAT Second Appeal No. 66 & 67 of 2012 dt. 4th April, 2014 M/s. Mark-O-Line Traffic Controls (P) Ltd. v/s. The State of Maharashtra)

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Additional Interest : Sec. 30(4) amended**Gist of Amendment :**

If additional tax liability arises due to non-production of declarations or certificates then additional interest shall not be payable;

If tax paid as per revised return is less than 10% of the aggregate amount of tax paid as per original returns in respect of corresponding period, then additional interest not payable.

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**Additional Interest : Sec. 30(4) amended ...
(Continue)****Remark :**

- “Tax paid as per Original returns” shall include tax paid as per revised return filed before commencement of proceedings specified u/s. 30(4);
- “Tax Paid” shall mean tax paid after adjustment of setoff.

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Tax collection of source : Sec. 31A (1) (c) added

“Who awards quarrying lease or quarrying permit in respect of minor minerals to a dealer, within their jurisdiction to collect an amount at the time of such award or, as the case may be, auction, at such rate as provided in sub-section (2) towards the liability of sales tax to be incurred on sale of minor minerals”.

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**Tax collection of source : Sec. 31A (1) (c) added ...
(Continue)****Note :**

Ores & Minerals - Sch. Entry C-69 @ 5% wef 1st Apr 2010; “minor minerals” means building stones, gravel, clay, ordinary sand other than sand used for prescribed purposes, and any other minerals which the Central Govt. may declare by way of notification etc...refer Trade Circular No. 13T of 2005 dt. 7th Jun, 2005

Earlier they have notified category of person who auction the rights for excavation of sand.

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VAT Audit : Sec. 61 (1) (a) & (2) amended**Gist of Amendment :**

If the aggregate T.O. of sales and value of interstate stock transfers OR T.O. of purchases exceeds Rs.1 Crore in any year, requires Vat Audit;

Since section 61(1)(b) is deleted, Such T.O. limit also applies to dealers holding Liquor Licence i.e. including even Hoteliers and Restaurants who holds Liquor Licence;

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VAT Audit : Sec. 61 (1) (a) & (2) amended ... (Continue)**Gist of Amendment :**

The relief from penalty, if audit report filed within 1 month from due date for beyond control reasons, is removed. (Proviso to section 61(2))

T.O. limit of Rs. 60 Lakhs increased to Rs. 1 Crore w.e.f. F.Y. 2013-14 as per Statement of Object and Reasons appended to Law Amending Bill dt. 9th Jun 2014.

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VAT Audit : Sec. 61 (1) (a) & (2) amended ... (Continue)**Issues will arise on account of :**

Valuation in respect of stock Transfer ?

How to value stock transfer of Gift Articles, Stationery etc or goods send for display having no commercial value ?

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Intimation in Form 604 u/r. 67(2) r/w. Sec. 63(7) :**Gist of Amendment :**

During the course of any proceeding it appears to commissioner that quantum of tax or setoff is varied, resulting in tax dues then issue of intimation in Form 604, is must.

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Amendments to Schedule Entries

Sch. Entry A-26(A) inserted

Exemption - “Copyrights, for distribution and exhibition of cinematographic films in theatres and cinema halls, sold during the period commencing on the 1st April 2005 and ending on the 30th April 2011”

Remark / Issue

- Retrospective amendment from 1 April 2005
- Revised Return or Revised Refund Application for those who have paid taxes during aforesaid period ???

Corporation Bank v/s. Saraswati Abharansala (2009) 19 VST 84 (SC)

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Sch. Entry C-55(A) inserted

“Tool, alloy and special steels of any of the categories, specified in clause (x) to clause (xv) of entry 55 of this schedule, sold during the period commencing on the 1st April, 2005 and ending on the 30th April, 2011”Vat @ 4%

Remark

SC decision in Bansal Wire Industries (42 VST 272) dt. 26th April 2011 & Trade Circular 11 T dt. 4th April 2014, responded to by Govt.

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Sch. Entry C-55(B) inserted

“Tool, alloy and special steels of any categories, specified in clause (x) to clause (xv) of entry 55 of this Schedule, sold on or after the 1st May 2011”Vat @ 5%

Remark

SC decision in Bansal Wire Industries (42 VST 272) dt. 26th April 2011 & Trade Circular 11 T dt. 4th April 2014, responded to.

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Annexure J-1/J-2 :

For the Dealers having Turnover between Rs. 60 Lacs and Rs.1 Crore for the F.Y. 2013-14 and who have not filed said Annexures than they have to file Such Annexures with the return for the period ending 30th September'14.

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Draft Rules for Check-post and Transit pass

By notification dated 23rd June 2014 the State of Maharashtra has notified 32 places for establishment of check post and erection of the barrier in the State or at the Border of the State w.e.f. 25th July' 2014. The places are stated in the said notification

By Notification dated 23rd June 2014 the State of Maharashtra has circulated draft rules for consideration by the Government of Maharashtra on or after 25th July 2014.

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Draft Rules for Check-post and Transit pass

Few new definitions are inserted in the MVAT Rules in furtherance of the intention to establish check post.

a) Rule 2 (C-1) "Claimant" Claimant means the person who receives the goods on behalf of consignee.

b) Rule 2(d-1) "E-way bill" means a document uploaded electronically by a consignor, claimant or transporter giving details relating to the consignment of goods and includes any other details prescribed in the forms.

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Draft Rules for Check-post and Transit pass

c) Rule 2(g-1) – The officer incharge of the check post - Means any officer appointed under the provisions of the MVAT Act to whom the powers are delegated by the Commissioner and who for the time being is on duty at the check post and exercising jurisdiction over the area where the check post is located.

d) Rule 2(i-1) – Person in charge of vehicle – It shall include the owner or driver of the goods vehicle.

e) Rule 2(n-1) – Transporter shall include **owner of the vehicle, **manager, agent** or **employee** of the owner of goods vehicle, a person in charge of a place of loading or unloading of goods or incharge of the goods carrier, carrying goods for dispatch to other places or gives delivery of any consignment of the goods to the consignee.**

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Enrollment on web-site

Rule 91 is added to the principal MVAT Rules. This rule relates to enrolment on website. As per Rule 91(1) every dealer shall transport any consignment of goods in the State or outside the State in the manner as laid down in Rules 92, 93 and 94.

e-Enrollment by Non RD

A consignor, consignee, claimant, dealer or transporter who is not a registered dealer shall get itself enrolled on the website www.mahabcp.in. On getting enrolled the user ID and password will be created and confirmed by him while enrolling himself. Such user ID and password shall be used for uploading the e-way bill.

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e-Enrolment by RD

A dealer registered under the MVAT Act shall use the user ID and password created by him on the MSTD website for logging on www.mahabcp.in website. Any e-way bill or transit pass or any other document uploaded electronically by using user ID and password so created and confirmed shall be deemed to have been uploaded by such consignor, consignee, claimant or transporter.

Uploading of e-waybill and movement of goods

Rule 92 relates to uploading of e-way bill and movement of goods. Any consignor, consignee, claimant of goods situated within the State dispatches the goods outside the State or receives the goods from outside the State shall upload the e-way bill in electronic form on the check-post website before entry of goods in the State or exit of the goods outside the State.

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Uploading of e-waybill and movement of goods

➤ If any individual dispatches the goods outside the State or receives the goods from outside the State for other than Business purchase then it is not necessary to upload e-way bill.

Issue :-

How an individual, not carrying on business, who brings some goods in bulk quantity for his personal use, will prove at the check post that he is not liable to complete above mentioned formalities?

➤ However, if the individual within the State purchases the goods from outside the State and the consignor of goods who is not an individual shall upload e-way Bill.

Issue :-

Is it right to expect a person outside the State to comply with our rules ?

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Uploading of e-waybill and movement of goods

Issue :-

Why only individuals are conferred the immunity? There are many other persons who are not required to pay taxes under the Act such as service oriented organisations, charitable trusts, dealers having turnover less than the prescribed threshold limit (now ` 10,00,000/- w.e.f. 26-6-2014) etc.

The main object of these rules and establishment of the check-posts is curbing evasion of tax under the MVAT Act and therefore, it logically follows that the persons who are not covered by the Act in the net of taxation have to be offered immunity at par with individuals.

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Uploading of e-waybill and movement of goods

➤ The E-Way bill for consignee or claimant should be uploaded in FORM 901.

Issue :-

How consignee or claimant will upload e-waybill (901) when he doesn't know the details of invoice issued by vendor.

➤ The consignor shall upload the E-way bill in Form 902.

➤ A Registered Dealer under the Act as consignor, consignee or claimant dealer shall use TIN. Other than RD shall use, PAN, TAN or Aadhar Card UID while uploading the e-way bill.

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Uploading of e-waybill and movement of goods

➤ Every transporter who enters into the State or departs from the State for transporting the goods shall upload E- Way Bill in Form 903. However he shall also carry documents stated herein below along with E-way bill, prescribed for consignee / claimant or consignor as the case may be.

Issues :-

- 1) Transporters / drivers are normally not educated people and would not be able to comply with such requirements.
- 2) Many small transporters like Tempo, Rickshaw, Bullock Carts who transport inter-State, does not have any system of electronic uploading.
- 3) Why such duplication of work ? Additional details can be sought in the Forms 901/902 themselves. why 903 is required when same information is uploaded either by consignee in 901 or by consignor in 902 ?

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Uploading of e-waybill and movement of goods

- E-way bill is non transferable under any circumstances, the person who uploads the E way bill shall be responsible for its proper use.
- Where the consignment is to be transported through rail, steamer or air, the consignor shall endorse serial no of the receipt of railway, steamer or air or any other document required for the purpose of taking delivery of the consignment on the copy of the e way bill.

Transit pass

Every transporter of goods, passing through the State while transporting the goods from any place outside the State to another place outside the State, shall upload a transit pass in Form 904.

Issue :-

How can they be expected to register themselves under the rules of this State and apply for a transit pass?

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Powers of inspection and examination of goods vehicles and documents

The person in charge of the vehicle must carry with him following documents:-

- a) a copy of the transporter e-way bill or transit pass
- b) Copy of consignor or consignee e-way bill.
- c) Tax invoice or a bill of sale or a bill of dispatch.
- d) The invoice, bill of sale, delivery note or consignment note must indicate name of the consignor and consignee, place of dispatch, place of destination.
- e) Description, quantity and value of goods.

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Powers of inspection and examination of goods vehicles and documents

- f) All such documents should be carried by the person in charge of vehicle and retained with him till the moment goods are delivered at destination.
- g) If the officer at Check Post is satisfied with the reason for not carrying the documents or there are any defects or omission in the form, he may after noting reasons allow the goods to be transported.

Issue :-

Whether this kind of discretion may not lead to corruption ?

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Powers of inspection and examination of goods vehicles and documents

h) The vehicle shall not be stopped at the check-post by the officer in charge unless

it is found that

I) The transporter is not carrying on e-way bill or transit pass

II) Finds discrepancy in the weight stated in e-waybill or transit pass

Issue :-

The Officer will have Power to check quantity, weight of each and every goods in truck which will turn into heavy corruption.

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Duty of the Transporter or person in charge of vehicle

a) To allow the officer in charge of check-post to inspect the documents and goods to check that the goods are the same goods and quantity as described in the e-way bill/transit pass.

b) All possible assistance be rendered for examination or inspection.

Procedure at check-post

➤ If the officer in charge is satisfied that the goods transported are the same goods both in quantity and description he shall allow the vehicles to move. However if the person in charge of vehicle fails to present e-way bill or transit pass, at the time of entry the officer in charge shall allow the person in charge of vehicle to upload the e-way bill or transit pass . Till such e-way bill or transit pass is uploaded the goods shall remain stationary at the check post. The vehicle will be allowed to move after presentation of e-way bill or transit pass as the case may be.

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Procedure at check-post

➤ If on inspection of vehicle or examination of goods and the records connected with the goods, the officer in charge finds that any consignment or goods or part of the consignment is not covered by proper documents or that the documents are defective or description of goods is wrong, the officer shall immediately issue notice in Form 905 to the said person for submitting revised e-way bill or transit pass. After submission of such revised e-way bill or transit pass the officer in charge shall allow the vehicle to move.

Issue :-

1) *There can be some cases where revision of e-way bill is not required. Then, how is the person transporting the goods to comply with notice in Form 905? And what is the consequential action on the part of the officer in charge ?*

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Procedure at check-post

Issue (continue):-

2) *Whether the trader or his tax consultant is expected to visit check-post anytime, any day if some problem could not be solved between officer and transporter? No other mechanism is provided for any sort of harassment by the officer ?*

3) *How the drivers of various States who have no knowledge of local language or if they are illiterate, will submit the revised e-waybill at the check Post?*

➤ In case the vehicle is carrying perishable goods then the officer in charge at the check post shall record his findings and allow the perishable goods to be transferred. He would also transfer the records of discrepancy in the goods or defect in the record or other omission to the Economic Intelligence Unit of the Sales Tax department.

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Other Issues :-

- 1) *Even if consignor and consignee are from Maharashtra, the truck will be withheld at check-post if it is crossing between two State Districts.*
- 2) *Clarification for filing up forms to be issued for Rules 6(2) and 6A of the CST transactions.*
- 3) *In rules 94(2)(b), the word used is 'weight'. So whether vehicle can be stopped if there is discrepancy in respect of description, quantity and value of goods.*

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