

MULUND CA CPE STUDY CIRCLE OF WIRC OF ICAI
STUDY CIRCLE MEETING ON SUNDAY, 9th JUNE 2013
TDS & TCS PROVISIONS UNDER MVAT ACT

CHAIRMAN – ADVOCATE C. B. THAKAR
SPEAKER – CA MAYUR MOMAYA

Basic Guiding Factors :

The TDS Provisions under MVAT Act are provided by Section 31 read with Rule 40. Similarly the TCS Provisions under MVAT Act are provided by Section 31A read with Rule 40A.

Transactions to whom TDS Provisions will be applicable :

- Any transaction of sales or purchase as may be specified by the Commissioner of Sales Tax other than transactions of Sales or Purchase to whom Section 8 of MVAT Act, 2002 applies --- Sec 31 (1) (a).
- Any transaction of sales or purchase involving works contract as may be specified by the Commissioner of Sales Tax other than transactions of sales or purchase to whom Section 8 of MVAT Act, 2002 applies ---- - Sec 31 (1) (b).
- Till now the Commissioner of Sales Tax has only notified transactions of works contract having contract value in excess of Rs. 5 Lacs for certain kind of employers as defined by Notification dated 29.08.2005.

Employers to whom TDS Provisions will be applicable :

- (1) The Central Government and any State Government.
- (2) All Industrial, Commercial or Trading undertakings, companies, or corporations of the Central Government or of any State Government, whether set up under any special law or not, and a Port Trust set up under the Major Ports Act, 1963.
- (3) A Company registered under the Companies Act, 1956.
- (4) A local authority, including a Municipal Corporation, Municipal Council, Zilla Parishad, and Cantonment Board.
- (5) A Co-operative Society excluding a Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960.
- (6) A registered dealer under the Maharashtra Value Added Tax Act, 2002.
- (7) Insurance or Financial Corporation or Company; and any Bank included in the Second Schedule to the Reserve Bank of India Act, 1934, and any Scheduled Bank recognized by the Reserve Bank of India.
- (8) Trusts, whether public or private

- (9) A Co-operative Housing Society registered under the Maharashtra Co-operative Societies Act, 1960 which has awarded contracts of value aggregating to rupees 10 lakhs or more in the previous year or as the case may be, in the current year.
- (10) Societies registered under Societies Registration Act, 1860. (made applicable w.e.f. 01.06.2012)

Rate of TDS applicable :

The rate of TDS applicable on above transactions is 2% in case of the Contractor is a registered dealer and 5% in case the Contractor is unregistered dealer ---- made applicable w.e.f 01.04.2012 till date.

For the period from 01.04.2005 till 31.03.2012 the rates of TDS in case of Contractors is a Registered Dealer would be 2% & in case the Contractor is unregistered dealer then the rate of TDS would be 4%.

When to deduct tax at source :

- Normally as per the provisions of Section 31, the TDS is applicable at the time of credit of bill to the account of contractors or payments towards contract are made whichever is earlier.
- However as far as advance payments made to contractors which are adjustable against the contract value, in such case the TDS to be deducted by the employer at the time of adjusting such advance against the actual amount payable.

Time limit for payment of TDS :

- Tax deducted at source will be paid with in 21 days from the end of the month in which the Tax was so deducted.
- The payment of tax deducted at source can be made in Form 210 (as stated in Rule 40) or in the Challan MTR-6.
- Earlier till 01.07.2009 there was separate Challan cum Return Form No 405 was available for said payment of TDS.
- Unregistered dealers who have deducted tax at source, on payments made to contractors, are required to file Challan in Form 210 along with demand draft/ pay order and photocopy of his PAN card before the Deputy Commissioner of Sales Tax (E-810), Business Audit (2), Vikrikar Bhavan, Mazgaon for Mumbai location and concerned Sales Tax Officer, Returns Branch for the rest of Maharashtra. The employers should draw demand draft/ pay order in favour of the S.B.I. A/c MVAT payable at respective locations. (Kindly refer to Circular No 42T of 2008 dated 16.12.2008)

Certain Key Aspects to understand :

- The TDS will be applicable on the entire value of contract excluding the VAT & Service Tax charged separately.

- The TDS will only be applicable in case of employers as specified while they give the contract to main contractor & not to transactions where main contractor assigns contracts either in part or full to sub-contractors.
- The amount of TDS should not exceed the value of tax payable under MVAT by the contractor.
- The TDS Provisions will not apply to inter state transactions of works contract.
- There is no need to obtain any Tax deduction account number separately from 20.06.2006 & the employers may either use their TIN Numbers or PAN Numbers for the same.
- If the contractor requires there should not be any tax deducted as the contract is not a works contract, then he may apply to the Commissioner of Sales tax for a certificate for no deduction of tax on any particular contract in Form No 410 & the Commissioner may after checking the needed details as required, grant such certificate to the dealer & the employer shall take the same as binding on it.
- If the employer does not deduct or after deducting fails to pay the tax as required by this section, he shall be deemed not to have paid the tax within the time he is required by or under the provisions of this Act to pay it and all the provisions of this Act including the provisions relating to interest shall apply mutatis mutandis to such unpaid tax. Similarly the provisions as stated in Section 74 (3) will also get attracted and the person responsible may be subjected to imprisonment and fine. (The amount of fine may be Rs. 100 per day during which the default continues)

Form No 402 – TDS Certificate :

- Every employer who has deducted the tax at source will have to issue a certificate to the Contractor in Form No 402 immediately after making payment of said TDS to the Government Treasury.
- Form 402 is qua transaction and not for any particular period.
- Details to be feeded in Form 402 are :
 1. Certificate No & date
 2. Name & full address of the employer.
 3. TIN no. of employer if any.
 4. Name & full address of the contractor
 5. TIN no. of contractor if any.
 6. Particulars of Works contract.
 7. Contractors bill no & date.
 8. Amount of bill admitted.
 9. Date of credit or date of payment whichever is earlier.
 10. Amount of Tax deducted.
 11. Date of payment of TDS.
 12. Sign & Status of Person issuing Form 402.

- The contractor can claim the credit of tax deducted at source against his tax liability in the period in which the Form 402 is furnished to him by the respective employer.

Form No 404 – Register to be maintained by the Employer :

- Every employer is required to maintain a Register in Form 404 for each year showing the details as stated below :
 1. Sr No
 2. TDS Certificate No
 3. Date of Certificate
 4. Period to which Certificate relates
 5. Name and address of the contractor to whom the certificate is issued.
 6. R.C No of dealer executing the works contract, if any
 7. Amount credited /paid towards works contract executed during the period
 8. Amount of tax deducted
 9. Amount paid towards tax deducted
 10. Challan No and date
 11. Name and address of Government Treasury /Bank

Form No 405 – Return showing tax deduction at source :

- Every employer is required to file a return in Form 405 within three months from the end of the financial year towards their tax deduction at source and payments thereof during the relevant year with the Joint Commissioner (Returns) in Mumbai and with Joint Commissioner (Vat Administration) in rest of the state.
- Such return should show the details as stated below :
 1. MVAT & CST RC No
 2. PAN No
 3. Period covered by return
 4. Name and address of the dealer including telephone no & email details
 5. Details of the sum payable or paid to the contractors and amount of tax deducted or deductible at source during the period of this return separately, for contractors registered under MVAT Act, 2002 & Contractors un-registered under the MVAT Act, 2002 giving details such as Sr. No, Name of Contractor, TIN of Contractor, Amount paid or payable to the contractor, amount of tax deducted or deductible.
 6. Details of total tax deducted or deductible along with interest thereon if any payable.
 7. Details of total amount paid in challan no 210.
 8. Date and sign of person filing the return.

Transactions to whom TCS Provisions will be applicable :

- Any person, local bodies or authorities or agencies under the Central Government or, as the case may be , the State Government,- who auction the rights for excavation of sand within their jurisdiction ---- Sec 31A (1) (a)
- Any person, local bodies or authorities or agencies under the Central Government or, as the case may be , the State Government,- who has temporary possession or control over the goods pending their clearance by the purchasing dealer ----- Sec 31A (1) (b)
- Till now the Commissioner of Sales Tax has only notified persons liable for collection of tax at source for transactions of auction of rights for excavation of sand by Notification dated 02.02.2013.

Authorities to whom TCS Provisions will be applicable (w.e.f 15.02.2013) :

- (1) District Collectors.
- (2) Cantonment Boards.
- (3) Any other authority under the State Government or Central Government.

Rate of TCS applicable :

The rate of TCS applicable will be 10% on auction amount ---- made applicable w.e.f. 15.02.2013 till date.

When to collect tax at source :

- Normally as per the provisions of Section 31A, the TCS is applicable at the time of awarding the rights by way of auction.

Time limit for payment of TCS :

- Tax collected at source will be paid with in 21 days from the end of the month in which the Tax was so collected.
- The payment of tax collected at source can be made in Form 210 (as stated in Rule 40A) or in the Challan MTR-6.

Form No 421 – TCS Certificate :

- Every authority who has collected the tax at source will have to issue a certificate to the purchaser in Form No 421 immediately after making payment of said TCS to the Government Treasury.
- Form 421 is qua transaction and not for any particular period.
- Details to be feeded in Form 421 are :
 1. Certificate No & date
 2. Name & full address of the Collection Authority.
 3. TIN/PAN/TAN of collecting authority.
 4. Name & full address of the person/ dealer from whom tax is collected.
 5. TIN/PAN/TAN of dealer/ person from whom tax is collected.

6. Particulars of goods (Sand/Other).
 7. Quantity of Sand/ Goods
 8. Reference No (of auction/ Airway bill/ Railway Receipts/ Bill of Entry/ Lorry Receipts) & date.
 9. Value of Auction/ Goods.
 10. Amount collected.
 11. Date of payment of TCS.
 12. Sign & Status of Person issuing Form 421.
- The purchaser /dealer can claim the credit of tax collected at source against his tax liability in the period in which the Form 421 is furnished to him by the respective collecting authority.

Form No 422 – Register to be maintained by the Collecting Authority :

- Every collecting authority is required to maintain a Register in Form 422 for each year showing the details as stated below :
 1. Sr No
 2. Collection Certificate No
 3. Date of Certificate
 4. Period to which Certificate relates
 5. Name and address of the person/ dealer to whom the certificate is issued.
 6. TIN/ PAN/ TAN of dealer
 7. Auction amount/ Value of Goods
 8. Amount of tax collected
 9. Date of collection
 10. Amount paid towards tax collected
 11. Challan No and date
 12. Name and address of Government Treasury /Bank

Form No 423 – Return showing tax deduction at source :

- Every collecting authority is required to file a return in Form 423 within three months from the end of the financial year towards their tax deduction at source and payments thereof during the relevant year with the Joint Commissioner (Returns) in Mumbai and with Joint Commissioner (Vat Administration) in rest of the state.
- Such return should show the details as stated below :
 1. MVAT RC No if any
 2. PAN No if any
 3. Tax Account No (in case no PAN & TIN)
 4. Period covered by return
 5. Designation and address of the Authority including telephone no & email details
 6. Details of total tax collected at source along with interest thereon if any payable.
 7. Details of total amount paid in challan.
 8. Date and sign of person filing the return.
 9. Details to be provided in Annexure A such as Sr. No, Name of Dealer / Person, TIN of Dealer, PAN of Dealer, Auction amount or value of goods, amount collected at source.