ASSESSMENT PROVISIONS UNDER VAT ACT

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Under UPTT Act 1948, there were provisions regarding assessment of turnover and tax payable, provisionally or finally, while under the VAT Act 2008-

the assessing authority will assess/determine the turnover and tax payable thereon, besides this he will also allow/determine amount of input tax credit admissible and reverse input tax credit payable by the dealer provisionally (u/s. 25) and finally (u/s. 26,27, 28 & 29).

So, therefore as it is clear from above, the assessment order will contain two parts i.e.
1. ITC admissible and reversal of input tax, and
2. Turnover and tax payable thereon.

Determination of ITC admissible and reversal of input tax payable

This part of assessment order will deal the circumstances in which input tax credit is admissible or not admissible and reversal of input tax as per the provisions contained u/s. 13 and in rule 21.

Related provisions in which assessee claims ITC

Goods defined in section 2(m),sec. 13(11) explanation (i), have been divided in two categories i.e. Non-vat goods (Sec.-2(v) – described in col. 2 of schedule-iv) and VAT goods (all goods other than goods mentioned in schedule-iv – not defined in section 2).

Goods are either exempt goods [sec. – 2(l)- described in col.-2 of schedule-I of this act, sec. – 7(b),(c)] and taxable goods [sec.-2(ai) – any goods except goods mentioned or described in col.-2 of schedule-I].

Provisions related to admissibility of ITC are mentioned in sec.-13(1)a,b,c,d,e - This section 13(1) clearly not allows ITC benefit in respect of Non-VAT goods. So, therefore ITC can be claimed only in respect of VAT goods.

Input Tax Credit may be allowed in full or partial, circumstances have been specified in sec.-13, besides this circumstances where ITC is not allowable have been mentioned in sec.-13, read with rule 21, and also in other provisions mentioned in different sections and rules.

ITC allowed in Full-

<p>| 1 | If purchased goods are resold - State sale, Inter-state sale or Export | Full ITC allowed | Sec 13(1)(a)(1) |
| 2 | If purchased goods are used in manufacture of any goods (may be exempt goods) except | Full ITC allowed | Sec 13(1)(a)(2)(i) |</p>
<table>
<thead>
<tr>
<th></th>
<th>Description</th>
<th>ITC Type</th>
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</thead>
<tbody>
<tr>
<td>3</td>
<td>If purchased goods used in manufacturing of taxable goods except non-vat goods - sold-state sale or central sale</td>
<td>Full ITC allowed Sec 13(1)(a)(2)(ii)</td>
</tr>
<tr>
<td>4</td>
<td>Capital goods (sec.-2f)-used in manufacture of taxable goods (except non -vat goods) sale of manufactured goods in any manner</td>
<td>Full ITC allowed Sec 13(1)(b)(i)</td>
</tr>
<tr>
<td>5</td>
<td>Capital goods used in manufacture of exempt goods- export sale</td>
<td>Full ITC allowed Sec 13(1)(b)(ii)</td>
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**ITC allowed in Partial**

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<thead>
<tr>
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<th>Description</th>
<th>ITC Type</th>
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<tbody>
<tr>
<td>1</td>
<td>If purchased goods are transferred or consigned outside the state- otherwise than sale</td>
<td>Partial amount Sec 13(1)(a)(3)(i) of input tax which is in excess of 3% (upto30/05/2008), 2% (from 01/06/2008 to 27/02/2009) and 4% (from 28/02/2009) of the purchase price on which tax has been paid</td>
</tr>
<tr>
<td>2</td>
<td>If purchased goods (not capital goods) used in manufacturing of taxable vat goods which are transferred or consigned outside state-otherwise than sale</td>
<td>Partial amount Sec 13(1)(a)(3)(ii) of input tax which is in excess of 3% (upto30/05/2008), 2% (from 01/06/2008 to 27/02/2009) and 4% (from 28/02/2009) of the purchase price on which tax has been paid</td>
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<td>3</td>
<td>Where purchased goods used or disposed of partially, for the purpose specified in clause (a) of sub-sec(1) of 13 or otherwise</td>
<td>Proportionate ITC allowed to the extent goods are used or disposed of for the purpose specified</td>
</tr>
<tr>
<td>4</td>
<td>Manufacturing of vat goods taxable, exempt and non-vat goods</td>
<td>Proportionate ITC to the extent goods are used in manufacturing of taxable VAT goods</td>
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<td>5</td>
<td>Goods purchased from UP and ex-UP but no separate accounts maintained by the dealer as required in rule 28(2) and 29 (2)</td>
<td>Proportionate ITC- It shall be deemed that goods purchased from within the state have been used/consumed or utilized for various purposes, in the ratio of purchase price (rule 31) of such goods purchased from within the state to the aggregate of purchase prices of such goods purchased from both sources.</td>
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For goods except non-vat goods, capital goods and captive power plant, which are in stock on 01/01/2008 [in same form and condition/used in manufacturing of taxable goods except non-vat goods - in finished or semi-finished condition] purchased within six months and have suffered tax in UPTT act – Credit be allowed in full or partial as provided in sec.-13(1) (a) - sec.-13(1) (c) - sec.-13(1) (3).

Similar type of above provisions are also applicable for goods other than non-vat goods, capital goods and captive power plant which
are purchased after 01/01/2008, after obtaining sale invoice from registered dealer within six months ending on the date preceding the date on which such dealer has become liable to tax and are in stock on the date on which dealer become liable to pay tax. (sec.-13(1)(d)).

Credit of full or partial amount of ITC be allowed as per provisions of sec.-13(1)(a), (c) or (d) in respect of all taxable goods except non-vat goods, capital goods and captive power plant which are held in stock at the end of the period during which provisions of sec.-6 remains applicable [after closure of compounding period of a dealer] (sec.-13(1)(e)).

Where more than one item is produced during the process of manufacturing of any goods, for the purpose of Input Tax benefit, it has been clarified in explanation (iii) and (iv) of sec.-13(11), what good is manufactured i.e. taxable, exempt or non-vat.

**ITC not allowed**

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<tbody>
<tr>
<td>1</td>
<td>If purchased goods used in manufacture of exempt goods sold otherwise than export</td>
<td>Reference from 13(1)(a)2(i)&amp; 13(7)(b),(c)(ii)</td>
</tr>
<tr>
<td>2</td>
<td>Capital Goods used in manufacture of exempt goods sold otherwise than export</td>
<td>13(1)(b)(ii)</td>
</tr>
<tr>
<td>3</td>
<td>If purchased goods sold to exporter against form E</td>
<td>Rule 21 (1)(l)</td>
</tr>
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<td>4</td>
<td>Goods transfer for right to use</td>
<td>Sec. 13(7)(iii)</td>
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<tr>
<td>5</td>
<td>Capital goods purchased before 01/01/2008, or dealer becomes liable to tax (after 1-1-2008), but goods purchased before that</td>
<td>Sec. 13(1)(b),(c),(d)</td>
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**Rule 21 prescribes the various situations where ITC is not permissible.**

**Reversal of Input Tax Credit**

In sec-13(5) and in sec.-14, provisions for reversal of input tax credit have been given, besides this, in sec.-14(2)proviso – it has been mentioned that where event giving rise to reverse input tax credit comes to the notice of the dealer after the tax return, for the tax period in which such event occurred, has been submitted, the dealer shall be liable to pay such amount of input tax credit after the event comes to the notice of the dealer, along with simple interest at the rate of
15% p.a., for the period (for details see proviso).

Procedure for computation of amount of reversal of ITC by a trader has been given in rule 22 and for other dealers in rule 23. When reverse input tax credit amount has to be debited into account by the dealer, it has been explained in section 13(6), rule 25.

For computing purchase price for reverse input tax credit provision has been provided in rule 31.

Account books and other/record’s requirements for ITC-

Sec-13(10) – every dealer, who claims input tax credit under this section shall in respect of Input Tax, Input Tax Credit and inventory of goods maintains such records as may be prescribed. Under rule 28, for traders and under rule 29 for manufacturers, requirement of account books and ITC register [see also sec.21 (11)] has been prescribed. For traders, ITC register has been prescribed in Form – L, which is approximately the copy of Annexure -A [form-24 – return], while still no ITC register is prescribed for manufacturers.

When and who can claim ITC-

When a dealer has to claim Input tax credit, provisions have been given in sec. 13(4) read with rule 24. A dealer having a tax invoice or sale invoice [in specified cases-reference from rule 21(k) and rule 30(2)] can claim ITC or dealer who has deposited the tax for purchase of taxable vat goods from unregistered dealers. In case of principals / agents, ITC is to be claimed as per provisions of sec.-13(9) read with rule 17.

ITC in absence of Tax Invoice-

When a tax invoice is lost by a dealer ITC shall be allowed on the basis of tax payment certificates issued by the assessing authority of selling dealer [rule 30]. In other case or class of cases, in which commissioner may permit [rule 30(3)].

For first part of assessment for Input Tax Credit and reversal of Input Tax, we must keep in mind above provisions with other details mentioned in various section and rules of vat act and rules.

Assessment proceedings-

For assessment of a year (sec.-26) every taxable dealer shall submit annual return of turnover and tax thereon [sec.-24(7)] on or before 31st October to the assessing authority for the preceding assessment year (rule 45(7)), alongwith copies marked original of all forms of declaration or certificates on the basis of which exemption or concession from taxes claimed or which determine the nature of a transaction. Assessing authority may, for adequate reasons extend the time for filing such return upto a period of 90 days beyond October 31st [sec 24(7) proviso and rule 45(7) proviso].

Variety of annual returns for different dealers [rule 45(7)] is as under:
(a) Form 26 A - in case of dealers exclusively dealing sale and purchase within the state.
(b) Form 26 B - in case of dealers executing works contract.
(c) Form 26 - in case other than (a) and (b) above.

Annual Statement (return) in Form – XXVII upto 31st October [previously it was upto 30th June] for the preceding assessment year by dealers/persons liable to deduct tax at source u/s. 34 [sec.-24(8) and rule 45(9)]. Assessing authority may extend the time to submit form XXVII upto 90 days [previously it was 60 days- rule 45(9) proviso].

Under entry tax act – every dealer liable to pay tax under the act shall submit to the assessing authority for each assessment year, an annual return of self-assessed tax in form – F. Provision of vat rules relating to the submission of annual return shall mutatis mutandis apply [entry tax rule 4(3)]. Form- F for 2008-2009 may be submitted upto 31/03/2010 by CCT circular no. 1796 dated 29/01/2010. By amendment in rules, by notification no. KA-NI-2-241 dated 04/02/2010, commissioner commercial tax and state government have been authorized to extend the time to file annual return beyond the period prescribed in the vat act and rule. [rule 45(7) proviso]

Hon’bl Commissioner Commercial Tax, has extended the time for filing annual returns of 2008-09 and 2009-10 without any application of the dealers –

<table>
<thead>
<tr>
<th>Assessment Year</th>
<th>Last date for filling annual return</th>
<th>Circulars of Commissioner</th>
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<tbody>
<tr>
<td>2007-08</td>
<td>31-8-2009</td>
<td>CCT Circular no. 1389 dated 26-10-2010</td>
</tr>
<tr>
<td>2008-09</td>
<td>31-03-2010</td>
<td>CCT Circular no. 1921 dated 17-02-2010</td>
</tr>
<tr>
<td>2009-10</td>
<td>29-01-2011</td>
<td>CCT Circular no. 1390 dated 17-10-2010</td>
</tr>
</tbody>
</table>

Dealers having gross turnover more than Rs. 1 crore, shall get their accounts audited and obtain within 6 months audit report in Form-XXIII and shall submit it along with annual return to his assessing authority,[sec.-21(17), rule 42(1)] failing which assessing authority may impose penalty not exceeding Rs. Ten Thousand [sec. 21(18)].

Deemed assessment – Section-27-

Subject to provisions of section-28, every dealer, who has submitted annual return of turnover and tax, shall be deemed to have been assessed to an amount of tax admittedly payable on the turnover of
purchase or sale or both as the case may be disclosed in such return and to an amount of Input tax credit shown admissible in the return. Last date of assessment year succeeding the assessment year, in which the date prescribed for submission for such annual return falls, shall be deemed to be the date of such assessment order.[still no provision in VAT act/rules and even no circular by CCT office whether the assessee will be informed by the department for deemed assessment]

**Assessment of tax after examination of records**

In following types of cases / dealers, assessment order shall be passed after examination of records, account books etc.:

**28(1)**

(a) – Cases selected for tax audit [u/s. 44 rule 43]

(b)(i) – Dealer who has not submitted annual return of turnover and tax within the time prescribed or extended; or

(ii) – Dealer by whom tax return for one or more tax periods of the assessment year have not been submitted; or

(iii) – Dealers in whose Case provisional assessment order u/s. 25 has been passed to the best of judgment; or

(iv) – Dealers in whose case on the basis of material on records, if the assessing authority is satisfied that turnover of sales or purchases or both, as the case may be, and amount of tax payable as disclosed by the dealer in annual return of turnover and tax are not worthy of credence or tax shown payable in the return has not been deposited by the dealer or the amount of ITC claimed is wrong, or the amount of tax payable shown is incorrect; or

(v) – Dealer who has prevented or obstructed an officer empowered to make audit, survey, inspection, search or seizure under the provisions of this act

Hon’ble CCT has recently issued a circular no. 292 dated 15/06/2010 explaining the scope of sec. – 28(1)(B)(i)to(iv) when the case be picked up for scrutiny for which an order with reasons and basis must be passed and such order is appealable. Thus the intention of the department for making the assessment u/s. 28 is limited to particular cases and not in general.

After examination of books, accounts, documents and other records, assessment order will be passed u/s. 28(2). In case of acceptance of turnover of sale or purchase or both [u/s. 28(2)(i)] and in case of best judgment u/s. 28(2)(ii). Besides this assessing authority will also determine admissible amount of input tax credit and reverse input tax credit payable by the dealer.

Moreover before making assessment u/s. 28(2), dealer shall be required to submit annual return [sec.-28(3)(i)], meaning thereby, no assessment will be final in hearing without annual return.
Show cause notice is to issued where determination of turnover, input tax credit or reverse input tax credit, or assessment of tax, all or any one of them, as the case may be are to be made to the best of the judgment of the assessing authority. Show cause notice shall contain all such reasons on which the assessing authority has formed his opinion.

For the determination of turnover of sale (rule 7), taxable sale (rule 8), in work contract (rule 9), in right to use (rule 10), provisions are mentioned and in rule 11, provisions for determination of purchases are mentioned.

**Limitation**

Three years for assessment or reassessment from the end of such assessment year (sec.-29(3)).

For provisional assessment – no order shall be made after the dealer has submitted annual return of turnover and tax, and where such annual return has not been submitted by the dealer, after the expiration of time prescribed or extended by the assessing authority, for submission of annual return.

For other various proceedings related to assessment/reassessment, limitation has been prescribed in section-29. For ex-parte case and remand case limitation in section 29 has been changed in comparison to UPTT act. Be careful.

**Account Books**

Requirement of maintenance of account books has been mainly specified in section 21. In VAT act and rules requirement/maintenance of inventory of stock at different dates (sec.-21(13)) is most essential. Inventory of closing stock is to be filed along with the annual return.

Dealer maintaining accounts in computer, shall also maintain day to day print out of all such books,accounts and documents. (sec 21(12)).

Maintenance of different types of details as required in Vat act and rules [section 21(10)] is not possible for the dealers.

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