

A. Input Tax Credit

1. In Audit assessments, when there is refund, the assessing authorities are carrying forward of ITC on closing stock at the end of the year. Is this Legal?

2. In audit assessments ITC on capital goods is allowed only 20% in first year and then 20% in each 4 subsequent years. Is this Legal?

3. ITC is disallowed on account of non receipt of cross checks as well as negative replies. In fact negative replies are issued without verifying full details of sales effected by vendors. This resulted in unnecessary expenses for appeal proceedings and heavy financial burden on account of tax interest and penalty, invariably running from 150% 34(12) 150% 34(7) and in some cases even 200% under section 12(7). How far this is legal?

4. Disallowance of ITC on account of non- payment of VAT by vendors.

Is this Legal? If the vender fails to pay taxes collected from purchaser, the purchasing dealer is punished by disallowance of such ITC plus interest @18% p.a. and penalty of 150% or more.

5. Retrospective cancellation of R.C.

There are lot of retrospective cancellations of R.C.'s of vendors. And a list of such cancellations is published on website recently. The Vat authorities are instructed to disallowed such ITC for past period i.e. purchases effected prior to date of publication of such cancellation details. More over no full details i.e. date of cancellation, reason etc are shown, enable the dealer to know the exact details. Is this Legal?

6. In some cases ITC is disallowed on Purchases of stores. In spite of the judgment of Hon Tribunal in Anil's Products Case

7. Whether ITC is available on purchases of stores material used for quality control and for research?

8. Recently the audit assessing authorities have started deducting ITC @ 4% on purchases used in Stock Transfer, where no ITC is available on such purchases, say lignite?

Lignite is not eligible for ITC in the case of manufacturer using lignite as fuel, and making stock transfer of manufactured goods. In this case no ITC is admissible on purchases of lignite, but deductions @4% each to be made for (i) use as fuel and (ii) use in branch transfer. Thus ITC of VAT paid on purchases of lignite @20% +2.5% is not admissible and again there will be reduction of 8% from other ITC, as used as fuel and for use in branch transfer of manufacture used goods. Is this legal?

"The crucial words are reduced." Can a reduction be effected from a zero? i.e. can an ITC be reduced where there is no positive balance on ITC in purchases of lignite?

If this is legal then it creates lot of burden to a manufacturer effecting branch transfer. What is the way out?

9. Can ITC be reduced on account of the goods cannot be used as per section 11(3) as the same is destroyed in fire or flood or by act of god.

10. Can ITC be reduced for the goods used in free samples?

11. Can ITC claimed on purchases of heat/ steam be reduced under section 11(3)(b)(iii) i.e. used as fuel.

12. Can an ITC be claimed on purchases of fuel i.e. natural gas used in co-generation i.e. for manufacturing purchases in proportion to use in manufacturing activity?

13. Can ITC be claimed on purchases of goods by Retail invoice?

14. For the purpose of reduction under section 11(3)(b) the purchase price should be adopted with VAT or without VAT.

15. A dealer in medicines claimed ITC on purchases of medicines. After some time he receives credit notes for discounts as well as for expiry date medicines.

No ITC is shown separately in credit note. Whether he is liable to reserve the ITC claimed earlier. What happens if VAT is shown separately in credit notes, for discounts and expiry date medicines?

16. A dealer in mobile phone, sells goods i.e. mobile phone at a certain price and he is also giving gift of mobile cover, mobile stand and other gift articles for which no amount is charged.

The purchases of gift items are made from registered dealers of Gujarat under tax invoice and ITC is claimed on such purchases.

Is the authority is justified in denying ITC claimed on purchases of gift articles? Goods which are given as gift?

What happens if gift items are charged for token amount?

17. To reduce the ITC for OGS sales @2% the purchases of capital goods are required to be considered or not?

18. Whether, New capital goods purchased from registered dealer and used for lease rental business, where the dealer is paying regular VAT @4%+1% can he be entitled to ITC?

19. A manufacturer of Intra Ocular Lenses (Tax Free Goods) supplied injector and cartridge (Taxable Goods) free of cost alongwith lenses. The purchases of injector and cartridge are made from Registered Dealer with tax invoice by paying 15% VAT, which the dealer has reversed.

In assessment the authority determined deemed sales of injector and cartridge by adding 15% gross profit in purchases by granting input tax credit. He has also levied interest and penalty u/s.34(7) @ 150% whether Justified?

B Assessment :

1. A dealer does not receive any notice under section 34 for audit assessment within time limit of 2 years. He is deemed to have been assessed under section 33. Can he be assessed again under section 34 as provided in proviso to section 33?

2. The time limit for issue of notice for audit assessment is provided within 2 years from end of the year. Where as under proviso to section 33 it is provided such notice can be issued within 3 years from end of the year.

Please clarify whether, there is some mistake or both are separate proceedings?

3. Re assessment under section 35 can made of any dealer who has been assessed under section 32/33 or 34 for any year, under circumstances provided in section 35(1).

There are 2 assessment proceedings except provisional assessment proceedings.

(1) under section 33 (self assessment)

(2) audit assessment (section 34)

again audit assessment can be made as provided in section 33.

So, how many assessments can be made for a single year and what should be the basis for reassessment? i.e. 1). Deemed assessment or
(2). audit assessment or audit assessment made under proviso to section 33.
(3). can provisional assessment be made after completion of the year?

4. Whether form 'F' is required, to claim deduction under section 6A of

the CST Act, though the stock transferred goods are tax free goods.

5. A company has sold car, furniture, T.V., Air conditioner etc being non-business items (used for personal purpose in office / guest house). Company is Liable to pay VAT on sales of such goods.

6. The company has sold car for Director's use, for Rs. 3 lakh which was purchased from OGS on which entry tax is paid. Can the benefit under entry 46 of notification issued under section 5(2) is available? Or the sales of used car are non-business sales, not liable to VAT?

7. Sales of bus used for staff members – whether covered by definition of business under Gujarat Value Added Tax Act?

C Works Contract :

1. An entire work order for works contract is awarded to sub contractor. The margin is 5% of total value.

Whether main contractor is liable to pay VAT on such receipts of profit amount?

2. A deduction under sub Rule 18AA(1) to GVAT Rules 2006 is available for sub contract amount for work awarded to sub contractors. The departments view is that the sub contractor should be registered dealer. If the sub contractor is not a registered dealer, whether deduction is available to main contractor?
3. Can a works contractor be eligible to lumpsum payment under section 14A if he has purchased some machinery / equipments from out of Gujarat state for executing works contract?
4. A Developer of a land starts work of construction on his land. The scheme is for 50 flats. At the time of application for registration only 5 flats are booked. The Developer has spent Rs. 2 Crore for site development and construction works. How for he is Liable to pay VAT i.e. entire amount of Rs. 2 Crore? Or 10% on works contract receipts.
5. A main contractor has awarded sub contract for entire work. He forget to deduct TDS and to pay into govt. treasury. Though he is liable to TDS and consequential penalty etc. Can the deduction under Rule 18AA(1) is denied on account of non-deduction of TDS?
6. As per A.G. Audit in works contract for a normal dealer, no method is prescribed for addition of gross profit to purchases. Taxable sales is to be arrived at by reducing 30% or 20% as labour charges from total receipt as per

rule 18AA. Some time the total receipts of current year including receipts of previous years also or the party is paying service tax on 70% labour and VAT on 30% material. The working does not tally at all. How to determine deemed sales in such cases?

D. MISC :

1. Taxability of DEPB sales?

2. A cardiologist providing services for heart operations, charges lump sum Amount, including charges for medicines, implants etc. such as stent, pace makers, etc. Can he be made liable to get registered under the provisions of GVAT Act and liable to pay tax on such deemed sales of medicines and medical implants?

3. A charitable trust is running a hospital, wherein it provides in door hospital services including major operations and also running a medical store for indoor patients as well as outdoor patients.

The Trust is registered dealer for medical store activity is concerned

The Trust charges lump sum amount for operation including medicines and implants etc.

Can the Trust be made liable to pay tax on such deemed sales of medicines, medical implant etc used in operation and post operation treatment of indoor patients?

4. A Company registered under GVAT Act 2003 carrying out manufacturing activity. The company is also making huge purchases of non-business goods such as furniture air conditioner, Tele com equipment etc. for office use, as well lot of items for labour welfare, security, etc. such as canteen, employee's uniform, safety shoes, building and infrastructure maintenance (other than machinery and equipments). Are these purchases to be included in turnover of purchases?

5. (1) Penalty : Can a penalty be imposed under section 12(7) in the assessment year 2007/08, for some wrongly claimed ITC.

(2) A penalty can be imposed under various sections for the single offence
i.e. Wrong claim of ITC

(i) under section 34(7) and

(ii) under section 34(12) (tax payable exceeds 25% of tax paid)

Can it be levied twice/ thrice for the same set of facts?

6. An Auditor while carrying out audit proceedings found some liability which he suggests to be paid by the dealer as per audit report.

Can this amount be liable to interest?

7. A dealer filling Annual return finds some mistake in his returns filed. And there is a liability arises for additional amount. Will this additional amount payable as per self assessment be liable to interest also.

8. Survey / Seizure :

The Vat authorities pay spot visit to dealers place, and though nothing is found concealed, the authorities insists for making payments of tax / and penalty @ 150% on alleged stock difference at the time of spot visit and insists for post dated cheques.

Can this practice of collecting taxes and penalty without passing any order is legal?

9. An unregistered dealer, whose turnover of sales / purchases exceeds Rs. 1 Crore. Is he liable to get his accounts audited under section 63 of the GVAT Act, 2003?

10. As an auditor under VAT Act, the Auditor is required to take cognizance of various default / contravention found committed by the dealer during the course of audit. Whether he is duty bound to calculate the penalty leviable or to point out the lapses.

11. Fresh Registration:

A partnership firm (registered under VAT/CST) converted into private limited company under chapter IX of the companies Act, 1956. whether fresh registration requires to be obtained under GVAT Act / CST Act or only amendment to old RC will do?

12. Section 34(12) restricts penalty of 150% only if tax payable exceeds by more than 25% of tax already paid. It does not start with the words not withstanding or provided.

Whether sub section 34(12) is independent worded of all the sub section or it is overriding sub-section. The assessing authority considers separate defaults for each sub section.

13. How far judgment under Gujarat Sales Tax Act in case of DK. Patel & Company will apply under the VAT Act, respect of such already paid for levy of penalty u/s. 34(12), i.e. ITC to be considered as payment of tax.

14. Judgment of Hon'ble Supreme Court in case of India Meters Ltd. how to distinguish, where there is no specific reference of delivery but instruction for payment separate transportation charges is made.