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Indirect Tax Alert

June 6th, 2009
Volume: IDTX/14/2009

Maharashtra Value Added Tax (VAT) Notification ¹

Background

The definition of 'sale' as per the Maharashtra Value Added Tax (MVAT) Act, 2002 was amended w.e.f. June 20, 2006 so as to include, inter alia, agreement for construction of immovable property, for levy of tax on transfer of property in goods involved in the execution of such works contract. This amendment was made consequent to the Supreme Court decision in the Raheja case².

Rule 58 of the MVAT Rules provides the mechanism for determination of sale price of the goods transferred during the execution of a works contract.

New provision for determination of sale price in respect of contracts for construction of immovable property

A new sub rule in Rule 58 of the MVAT Rules has been introduced by the subject notification, retrospectively with effect from June 20, 2006, for determination of sale price of goods transferred during execution of contracts for construction of immovable property along with conveyance of land or interest in land underlying the immovable property. While determining the value of goods transferred during the execution of such construction contracts for levy of VAT, the following deductions are now permitted from the total agreement value:

- **If the contractor has maintained separate accounts for goods and services**
 - Specified deductions such as labour and service charges, amounts paid to sub contractors, planning, designing and architect fees etc.,
 - Cost of land underlying the immovable property.
- **If separate accounts for goods and services are not maintained**
 - Standard deduction of thirty percent of the contract price as applicable for civil work such as construction of buildings.
 - Cost of land underlying the immovable property.

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The cost of land to be deducted would be determined in accordance with the annual rates prescribed under the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 as on January 1 of the year in which agreement for sale of the immovable property is registered. The deduction allowed in respect of cost of land would be restricted to 70% of the agreement value.

Source:

1. *Notification VAT-1507/CR-53/Taxation-1 dated June 1, 2009*
2. *141 STC 298 (SC)*

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