

# APPELLATE PROCEDURE UNDER VAT ACT

## *Overview of Basic Concepts*

**PRESENTATION**

BY

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**FOR NAGPUR BRANCH OF WIRC ON  
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## **DISCLAIMER**

**This presentation is purely based on legal provisions and the last 36 year's practice of Mr. Ashok Chandak. Kindly also refer the actual position of law.**

## **DUTY OF REPRESENTATIVE**

- **The person representing before Appellate Authority/Tribunal is not only an agent of the clients but is also an officer of the court.**
- **Thus authorize representative have Duty.**
  - 1. Towards Client**
  - 2. Towards Court/Authority**
  - 3. Towards Opposite Counsel**

**He is expected to place on record full facts and not to hide any relevant Fact.**

**THE ACT ADMINISTERED BY THE SALES TAX DEPARTMENT**

- Maharashtra Value Added Tax Act, 2002. (MVAT Act).
- Central Sales Tax Act, 1956. (CST Act).
- Maharashtra Tax Entry of Motor Vehicle into Local Areas Act 1987. (Motor Vehicle Entry Tax).
- Maharashtra Tax on Entry of the Goods into Local Areas Act, 2002. (Entry Tax on Goods).
- Maharashtra Sales Tax on Professionals Trade, Calling and Employment Act, 1975.(P.T. Act)
- Maharashtra Tax on Luxury Act, 1987.(Luxury Tax Act)
- Maharashtra Tax on Purchase of Sugar Cane Act. (Sugar Cane Tax Act).
- Maharashtra Chit Fund Act.

**All Acts do have provision for appeal but defers, in relation to First and Second Appeal/Revision/Part payment.**

## **APPEALABLE ORDERS**

**All orders passed under any Act are appealable except the following:**

- **Any notice issued under the Act, rules or notifications, or**
- **Any summons issued, or a defect notices issued, or**
- **An assessment order passed under sub-section (1) of section 23, of MVAT Act, or;**
- **Any order issued on an application for installment, or**
- **Any order or notice issued under sub-section (1) or (2) of section 34, under MVAT Act, or;**
- **An order pertaining to the seizure or retention of books of accounts, registers and other documents, or;**
- **Any order or assignment under section 59, of MVAT Act, or an interim order issued in the course of any proceeding not being an order issued under sub-section(6) of section 26 MVAT Act.**



## **AUTHORITIES UNDER SALES TAX LAW**

- **Commissioner of Sales Tax , Maharashtra, Bombay.**
- **Special Commissioner of Sales Tax.**
- **Additional Commissioner of Sales Tax.**
- **Joint Commissioner of Sales Tax.**
- **Sr. Deputy Commissioner of Sales Tax.**
- **Deputy Commissioner of Sales Tax.**
- **Assistant Commissioner of Sales Tax.**
- **Sales Tax Officer.**
- **Other Officer.**

## **1<sup>ST</sup> APPEAL**

**Against every original order 1<sup>st</sup> appeal is provided. 1<sup>st</sup> appeal lies to**

- **Deputy Commissioner of Sales Tax (Appeal)**  
**(if order is passed by any officer sub-ordinate to him)**

**Exception :-**

- 1) Motor Vehicle Entry Tax, where appeal lies to Joint Commissioner.**
- 2) Section 18A of CST Act**

- **Joint Commissioner of Sales Tax (Appeal)**  
**(if order is passed by any Sr. Deputy Commissioner or by any Deputy Commissioner of Sales Tax)**

**Exception :- Section 18A of CST Act**

- **Maharashtra Sales Tax Tribunal**  
**(if order is passed by any officer of a level of Joint Commissioner of Sales Tax and above or any order appealable U/s 18A of CST Act)**

## **SECOND APPEALS**

- All acts administered by Sales Tax Department does not provide for 2<sup>nd</sup> appeal.
- 2<sup>nd</sup> appeal lies against the order in 1<sup>st</sup> appeal under MVAT Act, CST Act, Motor Vehicle Entry Tax and Entry Tax on Goods only.
- There is no 2<sup>nd</sup> appeal provided in Professional Tax Act administered by the Department. However, in such case an application for revision can be filed against the order passed in 1<sup>st</sup> appeal.
- Further against the order passed in the revision proceedings, once again an appeal can be filed to the Higher Authorities/Tribunal.
- Do not file Second Appeal to Joint commissioner.
- If appeal U/s 18A of CST Act then 2<sup>nd</sup> Appeal to Central Sales Tax Appellate Authority.



## **APPEAL TO THE HIGH COURT**

- **Against the order passed in appeal, by the Tribunal a direct appeal lies to the High Court under MVAT Act or CST Act. the earlier provision of filing a reference application to the Tribunal is given go by.**
- **There is no provision for Appeal/Reference to High Court under other Act only writ to be filed.**
- **There is also no provision for Appeal to High Court. If the order is passed by Central Sales Tax Appellate Authority. Only writ to be filed.**

## **PREPARATION FOR DRAFTING OF APPEAL**

- **Draft comparison between the Audit Report in Form 704 and the Assessment Order.**
- **Note down the issues and the facts relating to that issues.**
- **Note kind of an order and find out to whom the appeal lies.**
- **Note the date of service of order and find out the last date for filing of appeal.**
- **See that Appeal is filed in time (60 days from date of service)**

## **DRAFTING OF APPEAL**

**Under every Act form of appeal is prescribed. The forms are as under :**

▪ <b>MVAT</b>	<b>:</b>	<b>Form-310</b>
▪ <b>CST Act</b>	<b>:</b>	<b>Form IXB</b>
▪ <b>Motor Vehicle Entry Tax</b>	<b>:</b>	<b>Form X</b>
▪ <b>Entry Tax on Goods</b>	<b>:</b>	<b>Form 11</b>
▪ <b>Professional Tax Act</b>	<b>:</b>	<b>Form X</b>
▪ <b>Luxury Tax Act</b>	<b>:</b>	<b>Form X</b>

## **DRAWING STATEMENT OF FACTS**

- The law does not required statement of facts to be stated while filing the 1<sup>st</sup> appeal.
- Appeal memo/Form requires only the grounds to be stated.
- As matter of convenience both for the Appellate Authority as well as for the authorize representative it is desirable that clear statement of fact be drawn.
- The statement of facts should be as per disputed issue wise and all facts relating to particular issue are properly clubbed.
- For any Appeal to Tribunal Statement of Fact is necessary.
- The quantum of relief sought is also required to be quantified.

## **DRAWING GROUNDS OF APPEAL**

- The clear as well as legal and vague Grounds be stated in the appeal memo in relation to which particular issue is disputed. The format of grounds could be .

“For that, on facts and circumstances of the case, the Authorities below, erred in law and on facts, while imposing a tax/interest/penalty on your appellant, in relation to on the grounds that ..... In any case the action is unwarranted, prejudice to the interest of the appellant and needs to be set aside/scaled down”.

- A request should also be made to allowed to raise, alter, amend or delete any Grounds.

## **PRAYER CAUSE**

- Every from has a prayer cause. This needs to be correctly filed in.
- The relief be claimed correctly. This will also help in further comparison when the order is received.



### **SIGNATURE**

- After the appeal memo is finalized it needs to be signed by Authorized person.
- Any Appeal memo or any application should not be signed by A.R.

### **ATTACHMENT WITH 1<sup>ST</sup> APPEAL MEMO**

1. Appeal memo duly signed
2. Statement of Facts and Grounds of Appeal duly signed
3. Certified True copy of ordered Appeal against
4. Challan for Payment of Appeal Fees

### **ADDITIONAL ATTACHMENT FOR APPEAL TO TRIBUNAL**

- All earlier orders
- Necessary copy of evidence
- Paper Book

## **STAY APPLICATION**

- When clients decide to file appeal then immediately complete form 314 and file the same with Assessing /Recovery officer. This will stay the recovery till the time prescribed for filing appeal.
- MVAT Act provides the format of Stay application which is Form No. 311.
- Other Acts do not provide for format of Stay application.
- It is suggested that Stay application, under other Act may also be near similar to Form 311.
- Contents of Stay application:- Prima-facie case-Un-reparable loss-Financial position-Balance of Convenience-Chances of successes and recovery if appeal order is against.
- A Court Fee of Rs. 25/- is to be paid for Stay Application.

## **APPLICATION FOR CONDONATION OF DELAY**

- **If appeal could not be filed within the time prescribe under the law then Appellate Authority can condone the delay in filing the appeal. A separate application is required to be filed. Additional court fee of Rs. 25/- is to be paid.**
- **Application for condonation of delay must give, in brief, the reasons as to why the appeal could not be filed in time.**

## **PRESENTATION OF APPEAL**

- Appeal memo with court fees challan
- Certified copy of the order appeal against
- Letter of Authority and
- Stay application
- All these be properly tagged and presented to the Appellate Authority. Similarly if there are more than one appeals involving the same point an application for tagging of all appeals may also be filed
- An application for condonation of delay if possible be filed along with the appeal itself for any reason could not be filed then the same shall be file as early as possible.
- 1<sup>st</sup> appeal is required to be file only in one copy. However, all appeal to the Tribunal (1<sup>st</sup> or 2<sup>nd</sup>) are required to be presented in 4 sets.
- In every appeal before the Tribunal the Respondent be stated as “State of Maharashtra”
- An Index with Page Nos. may also be prepared and be filed as titled sheet.

## ADMISSION PROCEDURES

- Acknowledgement and Ad-Interim-Stay immediately after filing the appeal.
- Defect memo's :- if any defect memo is issued same should be complied and defect be removed.



## **HEARING OF STAY APPLICATION**

- **The Appellate Authority may grant a stay and impose certain condition like certain part payment.**
- **This order is further challengeable to the Higher Forum like Tribunal and High Court.**
- **Non payment of Part Payment will not result in rejection Appeal.**
- **However, in case if the appeal is under Professional Tax Act, or under Motor Vehicle Entry Tax Act then compulsorily payment of 25% of disputed demand is required for the purpose of entertainment of appeal otherwise Appeal will be rejected.**

## **PRODECURE DURING HE PENDENCY OF APPEAL**

- **Change of name of the appellant-merger or for any other reason**
- **Death of proprietor (application for legal heirs on record)**
- **General :- Letter of Authority-No objection for change (desirable)**
- **Procedure of withdrawal of Letter of Authority**
- **Application for tagging the appeal.**

## **TRIBUNAL REGULATIONS**

**The Maharashtra Sales Tax Tribunal Regulation 1960 provides for all procedural matters for hearing before the Tribunal which needs to be read. More particularly.**

- **Procedure for hearing (Regulation-14)**
- **Fresh evidence and witnesses (Regulation-17)**
- **Adjournment (Regulation-18)**
  - a) **Written application with C.f. Rs. 2/-**
  - b) **Section 26(6) proviso (if more than 3 adjournment are sought under MVAT Act)**
  - c) **Section 26(6) proviso do not apply to CST Act.**
- **Bench (Regulation-26) - Preceding officer**
- **Cost (Regulation -31)**

## **COPY OF APPEAL ORDER**

- **Each appellant is entitle for a free certified copy of the order.**
- **Even though the order may have been passed earlier, till the time same is not served, there is no communication and all limitation will start running from date of service of order.**

## **RESTORATION OF APPEAL DISMISSED SUMMARILY**

- Appeal can be dismissed summarily for non attendance or for non supplying the necessary documents.
- The appeal can be restored again
- An application is required to be submitted within 30 days from the communication of the order.
- Please note there is no condonation of delay if such application is not filed in time.
- Application must contained reasons. If such application is not decided within 30 days after filing an application the appeal is deemed to have been restored.
- Further Appeal lies against the order for non restoration.
- It is also suggested that while Restoration application is pending the Second Appeal may also be filed.



## **RECTIFICATION OF MISTAKE IN APPEAL ORDER**

- If there is an apparent mistake in appeal order the same can be rectified
- An application for rectification of mistake is required to be filed within period from 2 years from the date of receipt of the order` with court fees of Rs. 25/-
- Under MVAT Act there is special format which is Form 307
- Careful reading of section 24 of the MVAT will show that once the application in 307 is filed. All dispute dues as per the Form 307, are automatically stand stayed.
- Apparent mistakes are mistakes which does not required any arguments may be mistake of law or of facts

## **EFFECT OF APPEAL ORDER**

- **Except the Tribunal no Appellate Authority can remand the matter. They need to decide the issue.**
- **The Appellate Authority should clearly state in its order about the amount of relief granted.**
- **Therefore, the balance amount if any is payable with interest which will have to be paid immediately.**
- **No re-computation by A.O.**
- **Fresh demand notice is necessary if there are no direction to that extend from the Appellate Authority.**
- **Thus after an appeal if there are still dues and no further appeal is be filed the dues may be paid.**
- **On balance dues further interest is attracted period stafts after 30 days from the date of service of original order which was subject matter of appeal.**

## **REFUND AS PER APPEAL ORDER**

- The Authority below are duty bound of give effect to the order passed in appeal.
- The computed refund is to be given within 90 days from the date of receipt of the order by the Assessing officer. If there is any refund the same is required to be granted during that period.
- If not granted it attracts the interest.
- In case of Remand or Re-computation the order is required to be passed within 3 years.

## **POWER TO WITHHOLD THE REFUND**

- The department has power to ignore the orders of Tribunal, if department has filed or initiated any further proceedings against order of Tribunal.
- In such case the authorities has power to withheld the refund arising out of the orders.
- There is procedure prescribe for which needs to be followed.
- If as a result of further proceedings also still there is a refund the appellant is entitle for interest.

## **PREPARATION FOR FINAL HEARING BEFORE THE TRIBUNAL**

- **Dress Code.**
- **First list out of the issue and state legal proposition for the issue .**
- **State the clear Statement of Facts in relation to that issue.**
- **Advance legal argument without quoting any case laws .**
- **Support the arguments with appropriate case laws.**
- **If there is direct decision of Supreme Court or Bombay High Court i.e. (Jurisdiction Court) there is no need of loading the argument by relying on various other court judgments or the Tribunal judgments.**
- **If there is no direct judgment of the Bombay High Court or Supreme court then a judgment of the Maharashtra Sales Tax Tribunal, other High Court, other Tribunal can also be relied upon.**
- **While relying upon the judgment draw a clear comparison between the facts of case in hand and considered in judgment.**



## **CONCLUSIONS OF THE ARGUMENTS AND APAPROPRIATE PRAYERS**

### **Reply by other party :-**

- carefully listen and take appropriate note of the reply by other parties.
- As far as possible don't disturbed party while reply is going on, unless a clear wrong statement of fact is stated by other party. You can take objection.

### **Reply to the argument of other party :-**

- Appellant will always have a chance to reply the argument of the the other party.
- While replying don't repeat the argument advanced earlier
- Reply only to the reply argument, distinguish case laws stated by the other party on facts or by a latter judgment of the court.

## **MISCELLANEOUS PROCEDURE**

### **Application for early hearing :-**

- **Special provision for Senior citizen above 75 years**
- **Form 313**

# THANK YOU

Any Questions ?