

**CHAPTER-III**  
**THE INCIDENCE AND LEVY OF TAX**

**8. Oil Companies.—** (1) For the purposes of explanation 1 under clause (b) of sub-section (1) of section 10 of the Act, the following shall be the Oil Companies, namely:-

- (i) Oil India Limited;
- (ii) Oil and Natural Gas Corporation Limited;
- (iii) Gas Authority of India Limited;
- (iv) Indian Oil Corporation Limited;
- (v) Bharat Petroleum Corporation Limited;
- (vi) Hindusthan Petroleum Corporation Limited;
- (vii) Bongaigaon Refinery and Petro-Chemicals Limited;
- (viii) Indian Oil Corporation-Assam Oil Division;
- (ix) Indo-Burma Petroleum Company (IBP Co. Ltd.);
- (x) Numaligarh Refinery Limited;
- (xi) Assam Gas Company Limited;
- (xii) Reliance Industries Limited; and
- (xiii) Essar Oil Co. Limited.

(2) The Purchasing Oil Company shall furnish a declaration in Form-1 to the Selling Oil Company declaring, inter alia, that the goods so purchased shall be sold by the Purchasing Oil Company in such a manner that such sale shall be subject to levy of tax under this Act or under the Central Sales Tax Act, 1956, as the case may be. The Purchasing Oil Company shall also declare that for any reason, if the goods so purchased are despatched to a place outside the State otherwise than by way of sale in course of inter-state trade or commerce, the purchasing oil company, shall pay the tax on the turnover of the purchase of such goods.

(3) A single declaration may cover all transactions of sales made during a month. A copy of the declaration shall be preserved in the counterfoil by the Purchasing Oil Company and shall be produced before the Prescribed Authority on demand. The declaration to be issued by the Purchasing Oil Company shall be issued serially and chronologically:

Provided that goods which are purchased by furnishing the declaration and used by a dealer for the purposes other than those specified in such declaration, the sale price of such goods so utilised shall be included in his taxable turnover and assessed to tax accordingly.

8A (1) For the purpose of explanation 2(i) under clause (b) of sub-section (1) of section 10 of the Act, the licensee of the bonded warehouse who purchases potable liquor mentioned in the Fourth Schedule, except country spirit, from another bonded warehouse within the State, the former shall furnish a declaration in Form 1A to the bonded warehouse within the State from whom he purchases potable liquor.

(2) A single form may cover all transactions of purchase made during a calendar month between two bonded warehouses. A copy of the form shall be preserved in the counterfoil by the purchasing bonded warehouse for his

record and shall be produced before the Prescribed Authority on demand. Such form shall be issued serially and chronologically.

(3) The selling bonded warehouse shall furnish such forms along with the tax return to the Prescribed Authority to claim deductions as per provisions of the Act.

*Amendment :In the principal Rules, after rule 8, a new rule 8A has been inserted vide notification no.FTX.29/2003/Pt/27 Dated 22<sup>nd</sup> February, 2010 published in the Assam Gazette Extraordinary No. 38, Dated 22<sup>nd</sup> February, 2010.*

**9. Determination of taxable turnover.—** In determining the taxable turnover as per provisions of section 11, the amount specified below shall also be deductible:-

- (a) in respect of the goods specified in the Fourth Schedule, the turnover of goods which is shown to the satisfaction of the Prescribed Authority to have been subjected to tax in the State;
- (b) amount allowed as discount, provided that such discount is allowed in accordance with the regular practice of the dealer or is in accordance with the terms of any contract or agreement entered into in a particular case having a bearing on the price consideration provided that the accounts show that the purchaser has paid only the sum originally charged less discount;
- (c) amount charged separately as interest in the case of a hire-purchase transaction or any system of payment by instalments;
- (d) amounts allowed to purchasers in respect of goods returned by them to the dealer if the goods are returned within a period of six months from the date of delivery. No claim of return of goods sold to any person shall be admissible, if the claim is not made in the tax return of the tax period in which the goods have been returned. Further, such claim shall be allowed only on the basis of debit note issued by the purchaser for the goods returned:

Provided that the dealer shall, when so required, adduce the evidence of receipt of the goods, corresponding credit of the value of goods to the account of, and payment to the purchaser;

- (e) In case of a dealer who is the owner of tea sold in auction held at Guwahati under the auspices of the committee constituted under Government of Assam Notification No. MI.168/86/17, dated 6th June, 1986 and as reconstituted from time to time, his turnover on such tea (including containers thereof);

Provided that the deduction under this sub-rule in respect of any such sale shall not be allowed if the dealer (owner) fails to produce, on demand in respect of such sale a copy of the relevant account of sale rendered by the broker and also a declaration signed by the broker, or by any other person as may be authorised in writing in this behalf by the broker, that the goods in

question have been sold in auction in Guwahati.

- (f) a sum to be calculated by applying a tax fraction in case the gross turnover includes tax element as in case of retail sales;
- (g) turnover of the sales made to the international organizations as mentioned in section 54;
- (h) zero rated sales or exempted sales of the nature referred to in sub-sections (3), (4) and (5) of section 9.

**10. Determination of sale price in respect of sale by transfer of property in goods involved in the execution of works contract.—** For the purpose of clause (c) of section 11, the value of the goods at the time of the transfer of property in the goods (whether as goods or in some other form) involved in the execution of a works contract may be determined by effecting the following deductions from the value of the entire contract, in so far as the amounts relating to the deductions pertain to the said works contract:-

(a) labour charges for execution of the works;

(b) OMITTED.

*Amendment : In the principal Rules, in rule 10, clause (b) has been omitted vide notification no.FTX.29/2003/Pt/27 Dated 22<sup>nd</sup> February, 2010 published in the Assam Gazette Extraordinary No. 38, Dated 22<sup>nd</sup> February, 2010.*

(Prior to this the clause (b) read as follows:-

*(b) amounts paid by way of price for the entire sub-contract to subcontractors; )*

(c) charges for planning, designing and architect's fees;

(d) charges for obtaining on hire or otherwise, machinery and tools used for the execution of the works contract;

(e) cost of consumables such as water, electricity, fuel, etc. used in the execution of the works contract, the property in which is not transferred in the course of execution of the works contract;

(f) cost of establishment of the contractor to the extent it is relatable to the supply of labour and services;

(g) other similar expenses relatable to the supply of labour and services; and

(h) profit earned by the contractor to the extent it is relatable to the supply of labour and services.

**11. Apportionment of input tax credit.—** (1) The extent of input tax credit available to a registered dealer, for a tax period, shall be equal to the amount of tax paid on purchases as evident from the original tax invoice, and where such invoice has been lost, on the basis of duplicate copy thereof issued to him in accordance with these rules, subject to the other provisions of the Act, and the following conditions.-

(a) that such dealer has maintained a true and correct separate account of input tax relating to his purchases against tax invoice.

(b) that such dealer has maintained a true and correct separate account of output tax relating to his sales against tax invoice.

(2) Where a dealer effects sales of goods both, taxable and exempt goods, under the Act, the following calculation for claiming input tax credit shall apply:

(a) Where all the sales of a dealer in a tax period are taxable under the Act, the whole of the input tax may be claimed as credit;

(b) Where all the sales of the dealer for a tax period are exempt from tax under the Act, no input tax may be claimed as credit;

(c) Where a part of the sales of a dealer in a tax period are taxable and the remaining part of the sales are of exempted goods under the Act and the input tax relating to the inputs of taxable goods and exempted goods are not identifiable, the amount that can be claimed as input tax credit for the purchase of goods at each rate of tax shall be calculated by applying the following formula;

$$\frac{I \times T}{G}$$

Where,--

**I** is the total amount of input tax for each tax rate;

**T** is the “taxable turnover” of sales which shall include inter state sales of taxable goods and zero rated sales i.e. sales in course of export but shall not include sales relatable to goods imported from outside Assam; and

*Amendment : The words “but shall not include sales relatable to goods imported from outside Assam” has been inserted vide notification no.FTX.29/2003/Pt/27 Dated 22<sup>nd</sup> February, 2010 published in the Assam Gazette Extraordinary No. 38, Dated 22<sup>nd</sup> February, 2010.*

**G** is the “Gross turnover” of all sales during that tax period which shall include the sales of exempted goods and the exempt transactions but shall exclude sales relatable to goods imported from outside Assam.

Explanation.- Transactions falling under section 5(2), 6(2) of the Central Sales Tax Act, 1956 (Central Act 74 of 1956) and turnover of purchases under section 12 shall not be included in the taxable turnover and gross turnover for this purpose.

*Amendment : The words “but shall exclude sales relatable to*

*goods imported from outside Assam” has been inserted vide notification no.FTX.29/2003/Pt/27 Dated 22<sup>nd</sup> February, 2010 published in the Assam Gazette Extraordinary No. 38, Dated 22<sup>nd</sup> February, 2010.*

- (3) (a) Where a dealer makes sales of taxable goods and exempt transactions, and the inputs used in such goods are taxable at the rate of 4%, the input tax credit can be calculated by applying the formula, given in sub-rule (2).

**Illustration :** A dealer engaged in the manufacture of a taxable goods, during a particular tax period, used inputs of Rs. 3 lakhs taxable at 4%. The dealer made sales of Rs. 5 lakhs taxable at 4% and also made stock transfer to other state amounting to Rs. 2.5 lakhs.

**Input Tax calculation :**

I = Input tax = Rs. 12,000/- ( 4% of Rs. 3 lakhs)

T = Taxable turnover = Rs. 5 lakhs

G = Gross turnover (including stock transfer) = 7.5 lakhs

**Input Tax calculation :**

$$\frac{I \times T}{G}$$

$$= \frac{12,000 \times 5,00,000}{7,50,000}$$

= Rs. 8,000/-

The out put tax payable = Rs. 20,000/- (4% of Rs. 5 lakhs)

Net tax payable = Output tax – input tax

= Rs. 20,000 – Rs. 8,000

= Rs. 12,000

- (b) Where a dealer makes sales of taxable goods and exempt transactions and the inputs used in such a case are taxable at a rate higher than 4%, the tax amounting to in excess of 4% is given as input tax credit in total and for the remaining 4% portion, the formula as mentioned in sub-rule (2) shall be applied.

**Illustration :** A dealer engaged in the manufacture of cement, during a particular tax period, used inputs of Rs.10 lakhs taxable at 12.5%. The dealer made sales of Rs. 7 lakhs taxable at 12.5% and also made stock transfer to other state (exempt transaction) amounting to Rs. 3 lakhs.

Input tax = Rs. 125,000/- (12.5% of Rs. 10 lakhs)

$$\text{Tax amount allowable in excess of 4\%} = \frac{125,000 \times 8.5}{12.5}$$

= Rs. 85,000 (fully eligible)

$$\text{Tax amount relating to 4\%} = \frac{125,000 \times 4}{12.5}$$

= Rs. 40,000

$$\text{Eligible tax credit out of 4\%} = \frac{I \times T}{G}$$

$$= \frac{40,000 \times 7,00,000}{7,00,000}$$

$$10,00,000$$

$$= \text{Rs. } 28,000$$

$$\text{Total Input Tax credit eligible} = \text{Rs. } 85,000 + \text{Rs. } 28,000$$

$$= \text{Rs. } 113,000$$

The out put tax payable = Rs. 87,500/-

(12.5% of Rs. 7 lakhs)

Net tax payable = Output tax – input tax

$$= \text{Rs. } 87,500 - \text{Rs. } 113,000$$

$$= \text{Rs. } 25,500 \text{ (excess carried forward)}$$

(c ) Where a dealer makes sales of taxable goods, exempt goods and exempt transactions and the inputs used in such a case are taxable at a rate higher than 4%, the tax amount in excess of 4% and the tax amount for the 4% portion shall be calculated first and then the formula as mentioned in sub-rule (2) shall be applied to both the resultant amount to get the eligible amount of input tax credit.

Explanation.- For calculation of input tax credit, in excess of input tax of 4%, the 'taxable turnover' shall include goods transferred outside the State otherwise than by way of sale.

**Illustration** : A dealer engaged in the manufacture of taxable and exempted goods, during a particular tax period, used inputs of Rs. 12 lakhs taxable at 12.5%. The dealer made sales of taxable goods of Rs. 1.50 crores and also made stock transfer to other state (exempt transaction) amounting to Rs. 75 lakhs. The dealer further made sales of exempted goods of Rs. 75 lakhs.

Input tax = Rs. 150,000/- ( 12.5% of Rs. 12 lakhs)

$$\text{Tax amount allowable in excess of 4\%} = \frac{150,000 \times 8.5}{12.5}$$

$$= \text{Rs. } 102,000$$

$$\text{Eligible tax credit over 4\%} = \frac{I \times T}{G}$$

$$= \frac{1,02,000 \times 2,25,00,000}{3,00,00,000}$$

$$= \text{Rs. } 76,500$$

$$\text{Tax amount relating to 4\%} = \frac{150,000 \times 4}{12.5}$$

$$= \text{Rs. } 48,000$$

$$\text{Eligible tax credit out of 4\%} = \frac{I \times T}{G}$$

$$= \frac{48,000 \times 1,50,00,000}{3,00,00,000}$$

$$= \text{Rs. } 24,000$$

$$\text{Total Input Tax credit eligible} = \text{Rs. } 76,500 + \text{Rs. } 24,000$$

$$= \text{Rs. } 100,500$$

**Note** : While calculating tax credit eligible over 4%, the taxable turnover includes exempt transactions (stock transfer). But while

calculating eligible tax credit of 4% portion, the taxable turnover does not include exempt transactions.

- (4) Where in the case of any dealer, the Commissioner is of the opinion that the application of the formula prescribed under this rule does not give the correct amount of deductible input tax, he may approve an alternative formula for apportionment of input tax credit where the dealer makes taxable and exempt sales or exempt transactions.

**12. Reverse tax credit.—** (1) Where input tax credit is already enjoyed by a registered dealer against purchase of goods, which is used in manufacturing tax free goods or goods taxable at the first point of sale as specified in the First and the Fourth Schedule respectively or disposed of otherwise than by way of sale, the input tax credit so enjoyed for such part of goods shall be deducted from input tax credit for the period in which such event takes place.

- (2) Where there is a negative input tax credit for a tax period, as a result of deductions made under this rule, the dealer shall pay such tax forthwith as if the same is payable in the said month along with the interest accrued thereon. If, such excess input tax credit and the amount of interest accrued, is not so paid, the Prescribed Authority shall issue Notice of Demand to the dealer.

- (3) The prescribed authority shall ascertain the amount of input tax credit already availed on the purchases and the eligible amount input tax credit, in accordance with the procedure laid down in rule 11 where such eligible amount of input tax credit is not directly identifiable and then he shall proceed to determine the amount of input tax credit to be reversed.

- (4) In case of a registered dealer selling taxable goods, a part of which is damaged, or destroyed, the input tax to be reversed shall be calculated in the following manner :

$$X = \frac{U \times V}{W}$$

Where 'X' is the input tax credit to be reversed,

'U' is the input tax credit availed during the tax period,

'V' is the total estimated sale value of goods, damaged or destroyed, in that period,

'W' is the total sale of goods including the sale value of 'damaged or destroyed' goods during that tax period.

**Rule 12A :** If a registered dealer, at the time of making an application for declaration forms, namely:- Delivery Note in Form-61 or Road permit in Form-62 under the Act has,-

- (i) defaulted in furnishing any return or returns in accordance with the provisions of law or in payment of tax due according to such return;  
or

- (ii) defaulted in making the payment of the amount of tax assessed, re-assessed or the penalty imposed under the Act and in respect of which no orders for stay have been obtained from the competent authority under the provisions of law; or
- (iii) not filed proper utilization account of any declaration from issued to him earlier; o
- (iv) some adverse material has been found by the Prescribed Authority suggesting any concealment of sale of sale or purchase or furnishing inaccurate particulars in the returns;

then the Prescribed Authority may, after affording the applicant an opportunity of being heard and for reasons to be recorded in writing, withhold issue of any declaration form or issue such forms in such numbers and subject to such conditions and restrictions as he may consider necessary.

*Amendment: After sub-rule 12, a new rule 12A has been inserted vide notification no FTX.55/2005/Pt-VI/41 Dtd. 3<sup>rd</sup> November, 2009 published in the Assam Gazette Extraordinary No.351 Dtd. 3<sup>rd</sup> November, 2009.*