



WELCOME TO PRESENTATION ON

MAHARASHTRA MUNICIPAL
CORPORATIONS (LOCAL BODY TAX)
RULES 2010

BY

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INCIDENCE OF LBT- The Act

- Constitution of India- Entry 52 in List-II in Sch.7
- Taxes on entry of goods into a local area for consumption, use or sale *therein*.
- The Maharashtra Municipal Corporation Act, 1949. (name changed w.e.f. 5-12-2012
Previously- The Bombay Provincial Municipal Corporation Act, 1949 –was popularly known as BPMC Act)



INCIDENCE OF LBT- The Act

- Second State Finance Commission in its report of March 2002 recommended State Govt. – octroi should not be reintroduced and suggested to augment financial resources - account based cess system - alternative to octroi at “nakas.”
- Chapter- XI-B- Provisions relating to LBT
- Inserted by Mah. Act 27 of 2009 w.e.f.31-8-2009.
- Constitutionality- Upheld by Hon. Bom HC- *WP 2720 of 2013, order dt.26-3-2013*
- Hon. Supreme Court rejected SLP to grant any stay- *Trade Federation of Trade Ass. of Pune v. State of Maha. & Ors. - dt.10-5-2013*



INCIDENCE OF LBT- The Act

- Chapter- XI-B- Provisions relating to LBT
- Sec. 152 P to 152T.
- 152P- Subject to the provisions of this chapter the Corporation to which Sec.127(2)(aaa) applies may levy tax on entry of goods by way of LBT.
- 127(2)(aaa) - Chapter-XI- later.
- 152Q- Certain goods not liable by notification in the official gazette-Schedule-B.



INCIDENCE OF LBT- The Act

Chapter- XI-B- Provisions relating to LBT

- 152R-Certain sections from Chapter-XI A will apply *mutatis mutandis*.
- *Sec. 152B, 152D, 152E, 152F, 152G, 152I, 152J, 152K, 152L, 152M, 152N and 152O.*
- 152S- Comnr. for the purpose of levy, collection and recovery may assess the dealers for such period and such manner as may be prescribed.
- 152T- Power to State Govt. to make rules and also states procedure to make rules.



INCIDENCE OF LBT- The Act

Rules as per power u/s 152 T

- Notification no. LBT-0209/CR-65/09/UD-34, dated the 25th march, 2010
- Power to make Rules - due to the way the State assembly is functioning- power totally exercised by the executives- no studious members-doubt if even read the rules.
- Rules are badly & hurried drafted - lack of thought process at the drafting stage.
- Rules are very badly administered- no training



INCIDENCE OF LBT- The Act

Chapter- XI- Municipal Taxation

- 127- Taxes to be imposed under this act
- (1) the corporation shall impose the following taxes.....
- (2)(aaa)- LBT on entry of goods into the limits of the city for c/u/s therein in lieu of octroi/cess, if so directed by the State Govt. by notification.



INCIDENCE OF LBT- The Act

Chapter- XI-B- Provisions relating to LBT.....

- 152B- Incidence of cess.
- (1) Every **dealer** whose turnover either of all sales or of all purchases or of all imports made,—
 - (a) during the year immediately preceding to the year; or
 - (b) during the year,
in which the Corporation has decided to levy the cess specified in sub-section (2) of section 127, has exceeded or exceeds the relevant limit prescribed in this behalf, shall be liable to pay the cess under this Act:



INCIDENCE OF LBT- The Act

Chapter- XI-B- Provisions relating to LBT.....

- 152B- Incidence of cess.....

Proviso and sub-sec (2)- a dealer not liable upto the time when his turnover first exceeds the limit.

- This is a one time benefit- for a dealer whose turnover did not exceed in the previous year; or who has commenced business during or after the rules become applicable.
- Similar to MVAT provisions



INCIDENCE OF LBT-152B & 127(2)(aaa)

- 4 conditions

- On entry of goods into the city limits- (larger urban area)
- On the value of goods in Notified Schedule
- by the dealer whose turnover exceeds specified limits
- for consumption, use, or sale therein

- The dealer or any other person importing for self or on behalf of others is responsible



INCIDENCE OF LBT.....

- On entry of goods into the city limits....
- Goods is defined u/s 2(25) of BPMC Act.
- “Goods includes animals”.
- Meaning is very wide and may include intellectual property/software/computer programs, railway, buses, vehicles etc.
- Tax is only on goods in Notified Schedule.



INCIDENCE OF LBT.....

- On what value of goods- not defined anywhere
- Rule 3- Registration -value of Goods.
- Sale price- Sec. 2(16A) Dealer, 2(70A)
Turnover of Purchase, 2(70B) Turnover of
Sales
- Rule 23- fair market value- sale price or
purchase price
- Rule 24-tariff value-Value of goods
- Rule 28(3)/(4)/(6)- Jobwork/export - value of
goods



INCIDENCE OF LBT.....

- Turnover of Purchase- Sec.2(70A)
aggregate of price payable by a dealer.
- Value of article- Sec.2(70C)
Invoice price + all levies, charges etc. But this is only “...where Octroi/Cess is charged...”
- No changes in Act or Rules for LBT.
- Machinery provision fails-
B. C. Shrinivasa Shetty-128 ITR 294 SC
- Stock/Branch transfer- No sale tax/mvat



INCIDENCE OF LBT.....

Dealer u/s 2(16A) means any person who for

- commission/remuneration/or otherwise
- Imports, buys or sells goods in the city
- For the purpose of/in connection with/incidental to his business
- For profit/gain or not
- Municipal Corp./Govt./Railway/ST/Port Trust/
any corp. set-up under any act etc.-included.
- **Business** u/s 2(5A) includes profession-
- Profession- can never be called a business-Bom. & Kar HC
....to discuss later-



AGENT/ AUCTIONEER

- Imports goods on behalf of principal-
- For consumption, use, or sale therein
- Jointly and severally responsible except when Principal shows to the satisfaction –that agent has paid the LBT then he is not liable.
- Non-resident dealer imports- he and his manager etc. jointly and severally responsible except when shows to the satisfaction –that manager has paid the LBT then he is not liable.



INCIDENCE OF LBT.....

Dealer does not include –Exceptions u/s 2(5A)

- **Individual** who imports goods for his exclusive use;
- State/Cent. Govt. Dept. not carrying on any business; and
- **Agriculturist** who sales his agro-produce cultivated by him



INCIDENCE OF LBT.....

Dealer does not include –

Exceptions- by inference

- **Trusts** -who are not carrying on any business.

Ref. 152B- Incidence of tax-Every dealer whose turnover exceeds the limits.

2(16A) Dealer- For the purpose of/in connection with/incidental to his business.

- Unless trust is carrying on any business-
- Applicable in my opinion to the business part only



INCIDENCE OF LBT.....

Dealer does not include –Exceptions- by inference

- **Professionals** -who are not carrying on any business.
- 2(16A) Dealer- “business includes profession”
- High Courts and Supreme Court have held that although the Act may mention that business includes profession- profession can't be equated to business- reason for non applicability of Bombay Shops & Establishment Act – Ref Article



INCIDENCE OF LBT.....

- Consumption use or sale *therein*

Burmah Shell Oil Storage & Distributing Co. India Ltd. v. The Belgaum Borough Municipality- 1963 AIR 906- Full Bench-SC

Therein doesn't mean consumption necessarily in the city.

It is sufficient- goods brought in & to be delivered to the ultimate consumer- he may consume them outside-still taxable

e.g. petrol in the car- totally used outside



INCIDENCE OF LBT.....

- Consumption use or sale therein
 - Mere storage
 - Repacking to small packs from large packs

Horlicks- HMM Ltd. & Anr. v Administrator Bangalore City Corporation, Bangalore & Anr.-SC- 1990 AIR 47.



INCIDENCE OF LBT.....

What is taxable -

*Tata Engg. & Loco. Co. Ltd. v The Mun. Corpn. of Thane-
AIR-1992 SC 645*

- Spare parts stored in the city. Consigned to outside purchasers, transported by the co. itself, right of disposal completely with the vendor.
- Corp. contended- orders received and accepted in Thane, challans were made and property in goods passed in Thane city, and hence sale took place in the city.
- Refund claim rejected for procedure not followed
- Court held –Its export not the procedure- gives rise to refund.

Imp. Point discussed in depth (and even the Corp agreed) -the Sale even if took place within the city but for export- eligible for refund



INCIDENCE OF LBT...Sec.152D

If dutiable goods are imported in the city by an unregistered dealer and are thereafter sold to a Registered dealer, then the Registered dealer becomes liable to pay LBT.

Contrary- taxing point is entry of goods for c/u/s therein. No further requirement in the section that the registered dealer should use, consume or sale the goods so purchased

Looks like purchase tax & not entry tax-the legal validity of this provision is, therefore, doubtful.

INCIDENCE OF LBT.....

Turnover Limits for registration- Rule 3

Type of Dealer/Person	Criteria/Condition
Importer Dealer	Value of Goods Imported is not less than ` 1 lac
Other person or dealer	Turnover of all Sales or Purchases is not less than ` 5 lac
Person not carrying on a particular business regularly	Compulsory registration irrespective of turnover
Existing Regd. under MVAT	Deemed regd. under LBT
New Dealers Turnover Exempt till it crosses the limits specified	

Registration is based on Sale/Purchase and not on entry of goods- Questionable and debatable.



EXEMPTIONS- No LBT – Rule-28

1. If goods imported by State/Cent. Govt. for public purpose and not for earning profit- on certificate from officer empowered by Govt.
2. If goods imported on behalf of State/Cent. Govt. for public purpose and not for earning profit- on certificate within 6 months from officer empowered by Govt.
3. Value of Goods sent outside for enumerated job work and imported back- tax on only value addition
4. Value of Goods imported in for enumerated job work in the city- no tax



EXEMPTIONS- No LBT – Rule-28

5. Sales rejections within 6 months from the date of export out of the city
6. The value of goods used for the purpose of Export out of India
7. If goods do not enter in the city at all- out-n-out sale
8. Schedule B goods



JOB WORK- Goods sent outside

- Goods moved outside the city for enumerated process
- Re-imported within a period of six months
- without any change in condition, appearance or ownership
- The value of goods moved out deductible
- Only value addition and transfer charges etc. taxable



JOB WORK- Goods imported inside

- Goods moved inside the city for enumerated process
- Re-exported within a period of six months
- without any change in ownership and form
- No LBT on value of such goods subject to
 - (i) Such goods shown in the return
 - (ii) The dealer keeps a security deposit
- If carrying on regular basis- On filing a Declaration, continuing deposit may be allowed.



Enumerated Processes -Explanation R-28

- Shall include- Dyeing, Bleaching, Painting, Printing, Finishing, Stentering (?), embroidering, doubling, twisting, metalizing, and electroplating.
- Building/mounting of bodies on any vehicles
- Any other process which Commnr. may approve- on application.



Enumerated Processes -Explanation R-28

Effects of Explanation–

- All other processes will be considered as Sale and/or Purchase
- Problems may be faced by- those carrying on other than specified job-work inside the city



Enumerated Processes -Explanation R-28

Solution to Effects of Explanation–

- Make collective and reasoned representation to the Commissioner to include other processes in the Explanation to avoid ill-effects
- Commissioner has power to add any processes to the list



REFUNDS- under tax on entry of goods

Why a refund is allowed

- Constitution of India- Entry 52 in List-II in Sch.7-Tax is on entry of goods For consumption, use or sale therein
- *Therein* in conjunction with the first 3 words- means sale of taxable goods for the purpose of consumption or use by such person in the city limits area.
- If only passes through city, mere storage etc. not taxable.
 - *Town Municipal Council v. Urmilla Kothari- 1977 AIR 873-SC*
 - *Tata Engg & Loco. Co. Ltd. v Mun. Corpn. of Thane- AIR-1992 SC 645*
- This is the reason there is a refund provision – in every tax on entry of goods- octroi/cess/LBT.
- Right to refund arises on export of goods and not from the procedure prescribed- even if situs of sale is in the city.



REFUNDS- Rule 32

Conditions

1. Goods imported
 2. Re-exported outside without any change
 3. Within 6 months
 4. Sale occasions export
 5. Return furnished
- Refund of 90% of LBT paid
 - If declaration filed – showing regular basis
 - Commissioner may issue order to pay only 10% instead of payment and claiming refund each time
 - Payment of Tax -Rule 40- according to Return- Imp for dealers- explained later



REFUNDS- Rule 32

Amendments dt. 6th Aug. 2012 to Rule 32

Added sub-rule 2-

- (a) Dealer pays net tax after set-off of refund, case shall be taken for assessment.
- (b) In assessment- if tax found short paid- 5 times penalty shall be levied
- (c) If eligible for refund and makes a claim in specified form (form not yet specified) Commnr. shall assess the dealer on priority- within 1 month of receipt of claim.

Amendment dt. 20th June, 2013- Proviso-if export in the same month- Commissioner may allow set-off in the next month-*may*-contrary to constitution & SC



SALE OCCASIONS MOVEMENT OUTSIDE -Concept from CST Interstate sale

- Either the contract of sale itself should provide for the movement of goods, or the movement of goods must be incidental to the contract, there being no possibility of diversion of goods for any other purpose or to any other place

Tata Engg and Locomotive Co. Ltd.- (1971) 27 STC 127 (SC)

- There should be an agreement to sale which contains a stipulation (express or implied) regarding movement of goods outside (city limits)

Balabhagas Hulaschand v. State of Orissa- (1976) 37 STC 207(SC)



SALE OCCASIONS MOVEMENT OUTSIDE

- Even if the buyer is located outside, the sale is not inter-state if goods do not move outside -
Shivnath Raj Harnarain v AC(CT) (2007) VST 114(AP HC)
- Where the buyers purchases within and transfers goods later outside - it was held that it is sale within only and not outside.
Pankaj Biri Mafg. Co. v. State of MP (2002) 128 STC 71 (MP HC)
- **Important is movement of goods outside** for consumption or use outside—not inside – the buyer/sale may be inside the city - *Tata Engg & Loco. Co. Ltd. v The Mun. Corpn. of Thane- AIR-1992 SC 645.*



RECOVERY FROM CUSTOMER

Rule-49

- You can recover the LBT from your customer or companies/suppliers
- You can't recover more than paid
- Keep proper records for the same



PAYMENT OF TAX-Rule 40

- Due & Payable according to the Return
- Every 20th of the next month
- Banks details with A/c Nos.- obtain from Corporation
- Preserve challans- at least 7 years
- Submit xerox copy whenever required
- Challans can be made from your own office if you follow the details & exact format



Payment “According to the Return”

- Return form E-II –

- Clause-33- Deduct -
 - Refund claimed /allowed
 - Amount paid by separate challan



Payment “Composition”- Rule 27

- Small dealers
- Turnover of Purchase below Rs.10 lacs
- Turnover of Sale may be more
- Construction business- 3 options
 1. Builder/Developer- Upto 4 flrs- 100/p.sq.mtr
Upto 7 flrs with lift-150/p.s.mtr.
Highrise above 7 flrs.-200/p.s.mtr.
May Pay 50% on plan approval-no compulsion
Balance 50% -silent-assumption- on Completion
 2. Contractor- 0.25% of the contract value.
 3. Pay tax on regular basis like any other dealer.



RETURNS-Rule 29

- Only Annual Return (20-6-2013-Two returns earlier)
- Return to be filed within 90 days after the period/year ended- i.e. 29th June.
- Return can be revised within 1 month from the last date of filing- 29th July
- These must be extended- reasons- MVAT, I.TAX. Service Tax
- 29(2)(b)- Quarterly Returns-deleted-20-6-2013.



INTEREST- Rule 48(3)(a)

If LBT payment delayed

- 2% p.m.
- In case of dues as per any order- 2% p.m. subject to $\max^m = \text{tax due}$.
- 20-6-2013 -after first 12 months-3% pm-
deleted.



Assessment- Rule 33

Total 14 sub-rules

- (1) Tax due from a dealer- shall be assessed separately for each year.
- (2) If returns furnished are correct & complete- assess on the basis of returns.
- (3)
 - (i) May assess- who failed to furnish return-
 - (ii)Furnished return but **Commnr is not satisfied** about the correctness & completeness of return & thinks presence of the dealer necessary- **highly debatable**
 - (iii) Furnished return & claimed refund
 - (iv) applied for cancellation of registration



Assessment- Rule 33

- (4) (i) is liable to pay tax but failed to pay
 - (ii) is directed by order in Form G to furnish return
- (5) Fails to comply any notice or any terms of notice
- (6) Notwithstanding the foregoing provisions- **Commnr. if not satisfied** about correctness & completeness of the return- may assess to the best of his judgment by estimating the tax due- **highly debatable.**
- (7) For the purpose of sub-rules 3,4,5,6 the Commnr. may assess within 5 years from the end of the yr. to which assessment relates- clear 15 days notice required.
- (8) Assessment u/r 33- without prejudice to penalty/interest/prosecution for any offence.



Assessment- Rule 33

- (9) Order shall be in Form-I
- (10) One single order may be for – imposing penalty u/r48, assessment, forfeiture, interest relating to that period.
- (11) A copy of order shall be furnished to the assessee free of charge with notice of demand in Form-J.
- (12) Additional copy- with a charge of Rs.25 per copy.
- (13) All papers relevant to making an assessment-shall be kept together- this shall form assessment case record.



Assessment- Rule 33

(14) Assessment case records- shall be preserved for 5 years next to the period of assessment or 3 years next following the completion of assessment- whichever is later.

Proviso- added by amendment dt. 20-6-2013-

No assessment case record shall be preserved by the dealer who shall not receive the notice under **sub-rule(1) (?)** within 1 year-from the last dt. of filing return u/r29- i.e.29 the June.

Good provision-appears to be a misprint-sub-rule(7) -
Badly drafted-very badly administered.

PENALTY- Rule 48

Rule-48	Offence	Penalty	
		Maximum	Minimum
(1)	Fails to issue Sale bill/cash memo/invoice as per Sec.152G if transaction is more than Rs.10- This is not a taxing event –still liability is cast	Not exceeding the tax payable	
(2)(a)	Failed to apply for registration or carried business without registration	Not exceeding 5 times the tax payable during the unregistered period	
(2)(b)	Failed to comply any notice in respect of any proceeding in assessment, reassessment, production/inspection of accounts, documents, search or revision	Not exceeding a sum of Rs.5000/-	
(2)(c)	Failed to - - disclose any entry of goods into the city, - to show in the return correct liability, - claimed inaccurate deduction/refund, - disclose fully and truly all material facts,-	A sum not exceeding two times of the tax found payable	

PENALTY- Rule 48

Rule-48	Offence	Penalty	
		Maximum	Minimum
(3)(a)	Interest on late payment of tax- Period- From the last due date till the date of payment.	@2% per month for the month or part of the month of delay	Not exceeding the tax on which interest is charged
(3)(b)	Failed to pay any assessment dues. Interest for Period- From first day after the end of the period assessed till the date of assessment. For 3(a)&(b) a part of the month shall be counted as one complete month.	@2% per month for the month or part of the month of delay	Not exceeding the tax on which interest is charged
(4)(a)&(b)	Knowingly issued or produced a false bill, declaration, document etc. of any goods imported into the city showing – Goods not liable to tax or are liable to tax at a lower rate than applicable.	On the first occasion a sum equal to the tax in respect of such goods	Second or subsequent occasion a sum not exceeding two times the tax

PENALTY- Rule 48

Rule-48	Offence	Penalty	
		Maximum	Minimum
(5)	Knowingly furnished a false declaration or certificate or failed to abide by or acts in contravention of the recitals in the declaration	A sum not exceeding two times the amount of tax would have been leviable on such goods	
(6)	Failed without reasonable cause to furnish return within time (shall not apply when Commissioner may give extension of time)	A sum not exceeding Rs.5000/-	
(7)	Contravenes provisions of Sec.152G- i.e. non issue of bill etc.	The amount of such bill or Rs.100 whichever is more	
(8)	Failed to maintain a/cs in prescribed manner	Not exceeding Rs.5000/- or double the tax whichever is less	



RECORDS- 152G and Rule 22

- A Regd. Dealer sells any goods exceeding Rs.10 in any one transaction- shall issue bill / invoice / cash memo serially numbered, signed, dated –by him or Servant, Manager, Agent showing prescribed particulars -152G of BPMC Act
- If Rs.500/more - Buyer's name, address, LBT Number- Rule 22
- Keep a duplicate/counterfoil



RECORDS- 152G and Rule 22

Declaration on Bill/Invoice/Cash memo

“I/we hereby certify that my/our registration certificate under LBT Rules is in force on the date on which the sale of the goods specified in this bill/invoice/cash memorandum, is made by me/us and that the transaction of sale covered by this bill/invoice/cash memorandum, has been effected by me/us in the course of my/our business.”

- This can be combined with MVAT declaration and a single declaration is possible to print.
- Print on back side is permitted-(recent order-SA No.345 to 348/2001, 19-3-2012- Walput Ind. v. The State of Maha.)



RECORDS.....

- Register in Form D - Rule 19

Sr. No.	Name & address of vendor	Invoice No.	Date	LBT No.	Commodity	LBT Rate	Purchase value goods/Processing charges chargeable to LBT	LBT Payable
1	2	2A	2B	3	4	4A	5	6

- The dealer should maintain register in Form D
 - Chronologically
 - as per date of receipt/entry of goods in the City



RECORDS.....

- Keep details of Purchase, Sales and Goods Returned with details & proofs of entry/exit
- If you are maintaining Purchase register please add columns of Form D only.
- Preserve for minimum 5 years from date of sale
- Follow I. T. period to preserve - 7 years



RECORDS.....

- Maintain separate accounts for Local within the city Purchase, Purchase from outside the city and OMS Purchase
- Keep proper proofs for branch transfers
- In case of Sale or Export of goods outside the city- maintain proofs of movement of goods outside the city



POWERS OF COMMISSIONER -152J

- Production and inspection of accounts and all documents –
- If reason to believe evasion – power to search of premises, seizure of books of a/cs, goods, etc.
- For both the above purposes the Commner may enter and search any place of business
- Any books of a/cs, documents, money or goods are found - Presumption of ownership.
- Powers similar to 133 and 132 of I. T. Act, 1961, except - No power to enter residence.



Punishment for offences - Sec. 152L

- Commissioner has powers of a Civil Judge and he can impose punishment of rigorous imprisonment upto 2 years for Offences listed in Sec. 152L of BPMC Act, 1949



Appeals – Sec.406 r.w. Rule 36

(6) An appeal against the demand notice in respect of levy of LBT under Chapter XIB shall lie,—

- (i) to the Deputy Commissioner, when the demand notice is raised by the Cess Officer or any other officer, not being the Deputy Commissioner;
- (ii) to the Commissioner, when the demand notice is raised by the Deputy Commissioner



Appeals – Sec.406 r.w. Rule 36

- (7) The appeal under sub-section (6) shall be filed within 15 days from the date of the demand notice- **not from the date of receipt**
- (8) No appeal under sub-section (6) shall be entertained by the Deputy Commissioner or, as the case may be, the Commissioner unless the amount of the disputed tax claimed from the appellant has been deposited by the appellant with the Commissioner.



Appeals – Sec.406 r.w. Rule 36

- Appeal to be filed in - Form –S- can be signed by the dealer or his agent.
- To be accompanied by –
 - Certified copy of the order appealed.
 - Demand notice.
 - Proof of payment of tax demanded.
- Request- to accept appeal without payment or part payment- convince Commissioner with System followed under MVAT.



ANY QUESTIONS ?

August 2013

L.B.T. LAW & PRACTICE

Highlights:

- The Maharashtra Municipal Corporations (Local Body Tax) Rules (As amended by Local Body Tax Amendment Rules dated 20-6-2013)
- Exhaustive Commentary below each Rule
- L.B.T. Amendment Rules Notifications dated 20-6-2013 and 6-8-2012 with Comments
- Critical Analysis of Fundamental Concepts
- Text of Relevant Sections of The Maharashtra Municipal Corporations Act with Notes
- Landmark Judgments of Supreme Court on L.B.T. and the Concept of goods brought into the city
- FORM E-II Duly Filled with Instructions

C.A. Anilkumar Shah

Forward by:
Ramnathji Sonawane,
Commissioner of KDMC


Snow white[®]

CA Anilkumar Shah Jalgaon



THANK YOU

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