

## Issues & Best Practices on ITC - K-VAT

By: [Madhukar N Hiregange](#)

The K-VAT Act 2003 [ Implemented in 2005- 2007] brought about a welcome change to avoid the cascading effect of multipoint levy and made the taxes borne at each stage reasonable, bearable and less. However as a normal dealer [other than a manufacturer] be adding value to the extent of 10-20 percent , the ITC could be 5 times the tax paid, therefore amount be substantially more.

For readers from other States this article may only be indicative and the provisions may vary and restrictions be different.

In this article we look at examining some of the issues and also the best practices to avoid loss of credit or protracted litigation due to unreasonable restrictions on credits.

- a. ***Can input tax relating to purchase of a month more than a year back be claimed in the current return?***
  - A. No A recent decision [ Infinite Builders & Developers – Kar HC –Restrictions in section 10 (4) tax invoice/ debit note [ sec 29/30] permits deduction at the time of return. Therefore credit to be availed in month of invoice and considering that revised return only upto 6 months, after that maybe in jeopardy. This maybe challenged as it is against the basic fabric of the scheme. The law settled in the cases of [Share Medical Care v Union of India, 2007 \(2\) TMI 2 - SUPREME COURT OF INDIA](#) , [Belapur Sugar & Allied Industries Ltd. v Collector of Central Excise, Aurangabad 1999 \(4\) TMI 79 - SUPREME COURT OF INDIA](#): wherein law is settled to the effect that if a benefit is not claimed initially under a particular notification, the applicant dealer is not debarred, prohibited from claiming such benefit at a later stage, is relevant in this regard.
- b. ***What is the recourse to the dealer where the vendor does not issue tax invoice despite having collected tax?***
  - A. Production of valid tax invoice issued by registered dealer indicating payment of tax is sufficient discharge of burden that lies on the dealer making claim of input tax credit. In case the selling vendor does not issue tax invoice despite having collected tax, then the buying dealer is not be eligible for input tax credit.
- c. ***In respect of input tax refund relating to CST sales and SEZ sales, are conditions of section 11 to 19 applicable?***
  - A. Section 20 states that tax paid under this Act by any dealer on purchase of inputs in

respect of ... shall be deducted as provided under section 10 (Subject to such conditions as may be prescribed) from output tax payable by such dealer. Section 10(5) states that subject to input tax restrictions specified in section 11,12,14,17,18 and 19, where under sub section (3) the input tax deductible by a dealer exceeds the output tax payable by him, the excess amount shall be adjusted or refunded together with interest as may be specified. Therefore as per my view, the conditions of section 11 to 19, is applicable in case of refund of input tax relating to CST sales and SEZ sales.

***d. Whether the ITC on items given free with the product such as 1 free for purchase of 2 is also eligible?***

In normal business there is nothing free. It is just an enticement and therefore ITC would be available.

***e. Whether the recent L&T judgment can cause some issues in ITC?***

Yes. The fact that the K-VAT liability would be on the balance construction pending and not the value of land and building completed as on date of entering into an agreement would mean that to that extent the ITC would have to be proportionately reversed. Of course the payment of VAT following this judgment would reduce the outgo substantially as the construction would be much lesser as construction progresses and booking invariably follow the stage of construction.

***f. When restricted items used as inputs for business like electrical goods to manufacture other electrical goods, cement for pipes, Naptha for manufacture then would there be any restriction?***

No. As inputs no restriction.

However when used for maintenance/ construction etc then they are restricted.

***g. When a dealer changes from regular scheme to Composition scheme, what would be the effect on ITC?***

The excess utilization of credit as compared to the stock may require to be reversed as usage other than for taxable.

**The best practices for optimising ITC could be:**

- i. Sales Strategy based on customer profile to ensure that transactions are structured properly and credit from vendors or to customers are not lost.

- ii. Just mixture of local/ outstation sales to reduce need for going for refund, which presently has a cost in all the states at times upto 10 percent !!!
- iii. Procurement of goods from regd. Dealers. Where supplier provides a gross amount without break up of tax, the tax amount maybe deducted from his bill & URD paid or basic reduced in negotiation.
- iv. Not to procure from black listed dealers [ see web site of CTD] & debit/ recover from them the tax.
- v. Procurement from within the State as CST credits are not available.
- vi. Credit on inputs used in exempted goods manufactured/ traded exported maybe ensured.
- vii. Credit availed on Electric& electronic items used in relation to manufacturing, storing or issuing invoice. [ Refer Sch V] can be availed as specifically allowed within the restriction.
- viii. Availing in tax period or filing revised return promptly [ within 6 months] to avoid loss.
- ix. System to ensure full credits availed by passing entries at the time of booking on gross basis and ITC recoverable shown as asset. At end of month the amount claimed and claimable maybe reconciled.
- x. Ensure that rebating [ reversal of credit due to transfer/ usage ] requirements followed regularly and no disputes in future.
- xi. Applying for refund promptly at the end of each month - reduction in interest.
- xii. Supply material to job workers to avoid tax on value addition where the CST sales are more. Similarly the Job worker to buy goods in name of principal.
- xiii. Disclose issues and your views to the CTO with copy to Commissioner where there are doubts under Speed Post.
- xiv. When any oral information/ copies of documents sought by any officer ensure that the same is put on record and provided.
- xv. Make payments in time and file returns in time
- xvi. Ensure every letter from dept. is replied providing sufficient documentation on record.

- xvii. Integrating VAT accounting and report into ERP
- xviii. Get an indirect tax review audit conducted by professionals for avoiding surprises and optimizing of ITC.