

a compendium of
SIKKIM VALUE ADDED TAX

for contractors
for manufacturers
for hoteliers
for traders

MANOJ RAI

a compendium of
SIKKIM VALUE ADDED TAX

(includes amendment up to June 2006)

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MANOJ RAI

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Preface

The subject of tax has always been responded with much anxiety in Sikkim. Sadly, the anxiety has so far made ways for gossips and tales of horrors of tax, instead of generating positive curiosity to learn its topography. Being cornered in hilly terrain of the Great Himalayas, we already inherit the inconvenience of extra transport costs and other incidental charges, there comes the dire need of rationalizing tax system for enabling the consumer to maintain living standard and for our producers to compete in national market. Rationalizing would only follow the understanding. Only if we know where we are leaking then only the pasting goes into right place.

The silver lining in the history of taxation in Sikkim is the unequivocal congeniality between taxpayer and tax collector. The mutual respect and trust transacted between these two sections for ages is distinctive instance of positive mindset and upright tolerance. This marriage of co-existence has surpassed wild imagination of suspicious minds as the collection of revenue has increased manifolds during nineties and in early years of new millennium as well. The cordiality of relationship was seen graduating as all sections of the business community of Sikkim marched shoulder to shoulder with the State Government towards implementation of VAT, when the fellow communities in rest of the nation was all out in the streets holding blacks.

The traders are abiding, the tax authorities are reasonable, the consumers are understanding and the State Government is determined. This is perfect juxtaposition of planets and stars in the sky of economy

of Sikkim to set up an efficient viable compatible system of revenue collection and be in course of time a financially self-sufficient rich state of Indian Union. May be a day will come the taxmen of advanced states would come to our place to learn the way to success.

This book on VAT system of levy and collection of tax on sale of goods is first of its kind in Sikkim. I did go through all the sixteen chapters wherein the taxation phenomenon is dissected and discussed at length brilliantly. The author himself is part of implementing organisation. He has undergone many trainings on policy and administration of VAT under premier institutes of India. He has experience of enforcing sales tax laws for over a decade. On his part this is a commendable effort to bring awareness on VAT, and also on part of the Government, this is rare occasion of having gone out of way in favour of transparency and right to information. Both deserve our appreciation and good wishes.

T. T. Rufus

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About this book

The legislature enacts laws to govern the public and to administer the implementing departments. Consequently, the provisions of law apply to we government employees in our role as part of the administration as well as the general public. It is twice essential for us to understand and analyse the extent, application and impact of such laws. However we are rather comfortably ignorant of this responsibility because it is widely found in our system that personal bonds in face value are accounted more than the text and spirit of law while making the decisions. This is common in small societies like the one we have. And in the kind of small society we have, a bad decision is as common as a good one.

But how long the indifference is going to remain?

With the upcoming trade with China, big investments pouring-in in industrial sectors and foreign made goods all over in the store down town, we have already moved into the Global Village. The next person who is going to sit on the visitors' chair across my table could possibly be landing straight from South Africa. Apparently I can't decide his case on personal score, because I don't have one with him. So here we are in new situation where if anything, but only the text and spirit of law prevail.

Notwithstanding the need born out of changing socio-economic-political standards, law of land is always supreme and above everything that has ever substituted it.

As the organized form of the indirect tax in Sikkim enters into its third decade, coming as a part of most radical countrywide fiscal reform of post-independent period, with immediate challenge of promoting eco-tourism and industrial growth in the State, Value Added Tax is here with dreams and despair. The dreams that VAT tucks along are relief from cascading effect, rationalisation of price structure and computerisation

CONTENTS

Chapter **Page no.**

Part I

01. Introduction 03

Part II

02. The Sikkim Value Added Tax Act, 2005 13

03. The Sikkim Value Added Tax Rules, 2005 125

04. The Central Sales Tax (Sikkim) Rules, 1983 231

Part III

05. The Structure 248

06. Computing VAT 259

07. Return, Assessment & Audit 268

08. Tax on inter-state sales 283

09. VAT on Contractors 319

10. VAT on manufacturers 328

11. VAT on hoteliers 334

12.	VAT on traders	336
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Part IV

13.	Frequently asked questions	341
14.	Commodity Classification	352
15.	VAT Forms	392
16.	Notification & Circulars	471

INTRODUCTION

Taxation is one major component of financial policy of a government. It is mostly regarded as source of revenue of the government, which of course, is its first and foremost feature. Taxation attained high value in policy formation due to its resource-generating feature at the time of advent of phenomenon of Welfare State. The newly formed democratic governments of early twentieth century used taxes as tool to shrink the economic disparity created by preceding autocratic regimes. Comparatively high rate of taxes were levied on high-income group people and on sale of luxury goods. The treasury so accumulated was poured over welfare schemes targeting the poor and weak sections of society. Tax was just new legal avatar of *Robin Hood and his merry men*.

In the process over the years it is observed that levy or non-levy of certain tax on certain item not only adds or lessens revenue, it also enables the government to control and drive the market economy towards the desired direction. It is this second feature of taxation that invited extensive study and research on the tax. The short-term and long-term consequences on the economy as a whole were observed, recorded, published, studied and debated. And all the findings led into the conclusion that the over and above an adequate level, tax is a hindrance in free play of market forces. Preferably the Government need not interfere through imposition of tax to balance the economy. The market economy itself has such forces at work that they figure problems in an economy and provides solutions as well.

During late twentieth century and after, the business world expanded spectacularly making the whole earth a Global Village, as multinationals moved into all the sectors, competition in quality and cost turned very stiff. In the new scenario, the Government of some countries came in rescue of the local economy by rationalizing taxation; due to which the

industries of those countries acquired the advantage of lower production cost. Though, in other hand, the tax rationalizations did reduce the government's revenue collection, due to which the government had to give up the welfare schemes. However, privileged by the advantage of low production cost, the industries of those countries flourished and could provide more employment and investment. In the end of the day, the economy was booming.

The Government is expected to confine itself in the role of Facilitator to the private entrepreneurs, because it is the private entrepreneur who creates demand and supply in the market resulting into growth in investment, employment and per capita income. In other words, instead of collecting huge taxes from rich to feed and foster the poor, the order of the day is to facilitate the rich to inspire and enable them to go into expansion and integration that would provide employment to the poor. This has element of natural justice as well, because one is rich for he is intelligent, hard working and sincere, and the other is poor as he is worthless. Then the act of snatching the hard-earned money of rich to feed the good-for-nothing poor in the name of welfare is three-edged weapon on State. Firstly, it discourages the working or producing sector, secondly it pampers the non-working lots and thirdly the administrative system that is responsible to take from rich and deliver to the poor indulges into corruption generating black money.

Hence the first and foremost feature of taxation of being a source of revenue, has taken a back seat in current fast growing economy. Whereas its role as a serving agent of government in the market economy has attained more significance. The spirit of ideal taxation in present scenario should be entrepreneur-friendly, not resource oriented. Today if anyone goes for higher rate of tax for greater revenue collection then it is behaving like the man who killed the golden egg-laying hen to have them all at one go. A prudent person would foster the hen for one golden egg everyday and fill his coffer with them.

After experiencing half decade of socialistic pattern of society under parliamentary democracy, the Indian market is crying hard for radical

Introduction

reforms in various fiscal policies. Multi-point Sales Tax is one of the fields where reform is required. As the goods change many hands after it comes out as finished product from manufacturers till reaching to the final consumer, the levy of sales tax on total sale price at each stage of sales leads to tax upon tax, tax upon margin and margin upon tax. This is called Cascading effect.

Value added tax is also a multi point sales tax, but it has inbuilt mechanism of *input tax credit* which permits incidence of tax only on the extent of value addition.

The history of VAT

The concept of value added tax was first introduced in France in 1954 as consumption tax. Of course, the wholesome shape of the then VAT was not entirely same as one we have today. Over the years, compating with the different time and place, its concept has covered very long distance. Today, after half a century, one hundred and seventy countries of world have adopted this system.

Indian experience with VAT can be traced to the year 1986 when MODVAT was levied as Central Excise on manufacture of certain items. The present day CENVAT on Central Excise is improved form of same MODVAT, which came into being from 01/04/2000.

Not only the Central Government, the State Governments also have had their experience on VAT. The State Government of Andhra Pradesh Kerala, Maharastra and Madhya Pradesh levied VAT on sale of selected items in late nineties. However, there were many inherited predicaments in implementing VAT by individual states. Kerala and Madhya Pradesh had to abort VAT and revert back to sales tax system. Through those experience it was learnt that for realising the full benefit of VAT, it should be adopted nationwide. So the Empowered Committee of State Finance Ministers was formed to reach consensus deicision in this regard. The present day scenerio of Indian states on VAT implementation is as under:

a compendium of Sikkim Value Added Tax

Sl.No.	Name of State/UT	Status
1.	Haryana	VAT introduced earlier w.e.f. 1st April.03
2.	Andhra Pradesh	VAT implemented w.e.f. 1st April, 05
3.	Arunachal Pradesh	-- do --
4.	Bihar	-- do --
5.	Dadra & Nagar Haveli	-- do --
6.	Daman & Diu	-- do --
7.	Goa	-- do --
8.	Himachal Pradesh	-- do --
9.	Jammu & Kashmir	-- do --
10.	Karnataka	-- do --
11.	Kerala	-- do --
12.	Maharashtra	-- do --
13.	Mizoram	-- do --
14.	Nagaland	-- do --
15.	NCT of Delhi	-- do --
16.	Orissa	-- do --
17.	Punjab	-- do --
18.	Sikkim	-- do --
19.	Tripura	-- do --
20.	West Bengal	-- do --
21.	Assam	-- do --
22.	Mehalaya	VAT implemented w.e.f. 1st May, 05
23.	Manipur	-- do --
24.	Uttaranchal	VAT implemented w.e.f. st July, 05
25.	Chandigarh	VAT implemented w.e.f. 1st Oct. 05
26.	Rajasthan	VAT implemented w.e.f. 15th Dec. 05
27.	Gujarat	VAT implemented w.e.f. 1st April, 06
28.	Madhya Pradesh	-- do --
29.	Chattisgarh	-- do --
30.	Jharkhand	-- do --
31.	Andaman & Nicobar Island	-- do --
32.	Lakshdweep	These UTs have no sales tax/VAT
33.	UP	-- do --
34.	Tamil Nadu	These States/UT have not yet decided to implement VAT
35.	Pondicherry	-- do --
		-- do --

The initial period of VAT implementation featured many confusions in all the states. The tax rate difference on various items among the VAT states was one of the major concern. Moreover the phasing out of CST after first year of VAT implementation could not be carried out. Nevertheless, as five major states joined the group from 1st April 2006, it showed that despite of teething problems of transition period, VAT experience had been beneficial to the states.

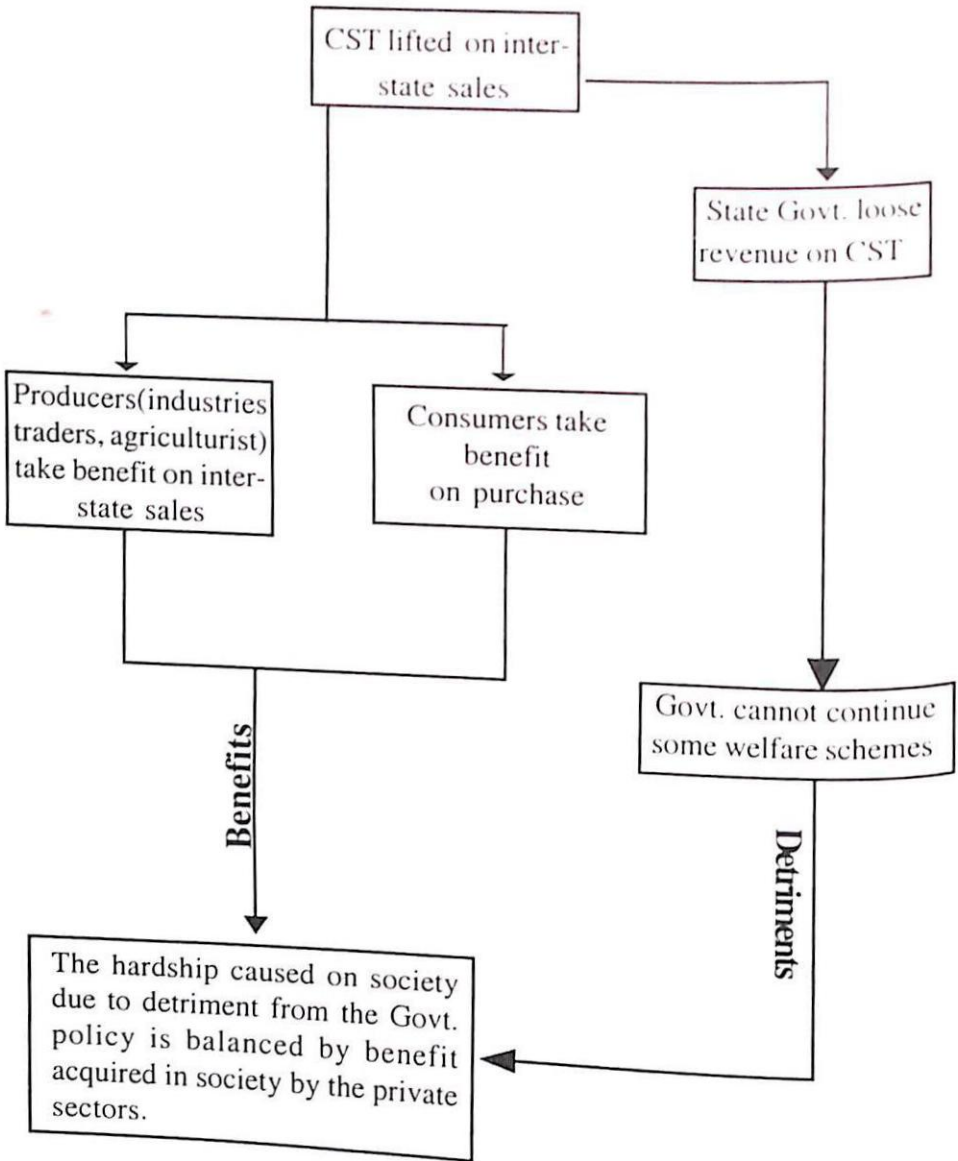
The essence of VAT in Sikkim

A person with little knowledge of taxes may contest that VAT was not needed in Sikkim as the cascading effect was never felt here because Sikkim had system of first point sales tax since 06.12.2001. Whereas, in the contrary, the cascading effect was most felt here. As we don't have many industries here, the entire goods consumed in our state are imported from other states. Those goods are manufactured in other states, the distributors of those goods have sales depots in other states. Hence each goods entering into Sikkim carry:

- taxes paid by manufacturer on purchase of raw material & packing items.
- taxes (including excise duty) paid by distributors on the purchase of the finished goods from the manufacturer.
- Central Sales Tax paid by local wholeseller who is importing the goods to Sikkim.

With introduction of VAT, now any goods imported into Sikkim carry the third element, namely, CST only. The first two taxes are neutralized as the manufacturer and the distributor of the other state can claim input tax credit of taxes paid on purchases against the CST collected. Moreover, after CST is phased out, any goods entering Sikkim from other states will not carry any tax whatsoever. In same manner, whatever little we produce, such as Jewels, Cardamom, Ginger, Orange, Watches, Herbal medicines and cosmetics, will become more cheap in national market as we also shall not charge CST on export of those items. That way our products can compete for market in international level. As said previously in this chapter that in a free market economy

the forces of demand and supply, if not influenced by external factors, provide for solutions to economic problems automatically. In context of lifting of CST, this phenomenon is depicted in diagram as under :



So we see that after zero-rating of inter-state sales our State Government will lose some revenue because the part of revenue collected as CST on inter-state sales of those items today will not be there anymore. But the loss to Government will bring advantage to the agriculturists, industries and traders. The consumers of Sikkim will also get to buy things cheaper. The extra gain made by agriculturists, industrialists and traders, and relief availed by consumers, together will compensate for whatever adverse effects come upon the market due to no-flow or less-flow of money from Government sector. Therefore VAT is not an necessary evil, but it is a welcome guest, a benefactor for Sikkim.

Notwithstanding anything, the benefit of cut in market price or the advantage of lower production cost are not likely to be exploited fully, if other levies, such as supervision charge, turnover tax etc are not rationalized. Because all these levies are indirect in nature. The businessmen who seem to be bearing these levies actually pass the burden to consumer at the time of sale, which reopens the gate for anarchy of Cascading Effect. That is why it was agreed nationwide that all forms of indirect taxes should be lifted after introduction of VAT.



THE SIKKIM VALUE ADDED TAX ACT, 2005

(ACT NO. 5 OF 2005)

An

ACT

to consolidate the law relating to the levy of tax on sale *or purchase** of goods in the State of Sikkim and for matters connected therewith or incidental thereto.

Be it enacted by the Legislature of Sikkim in the Fifty-Sixth Year of the Republic of India as follows: -

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement:

- (1) This Act may be called The Sikkim Value Added Tax Act, 2005.
- (2) It extends to the whole of Sikkim.
- (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions: In this Act, unless the context otherwise requires, –

- (i) “Act” means the Sikkim Value Added Tax Act, 2005;

* inserted by SVAT(Amendment) Act, 2005 vide notification no. 4/LD/2005 dated 20/09/2005.

- (ii) "Appellate Authority" means the Sikkim Commercial Taxes Appellate Authority constituted under sub-section (1) of section 4;
- (iii) 'appointed day' means the date on which this Act comes into force;
- (iv) "assessee" means any person by whom tax or any other sum of money is payable under this Act and includes every person in respect of whom any proceedings under this Act have been taken for the assessment of tax payable by him.
- (v) "assessing authority" means any officer not below the rank of Assistant Commissioner authorized by the Government or by any authority empowered by the Government to make any assessment under this Act;
- (vi) 'Business' includes-
 - (a) any trade, commerce, manufacture, or any adventure or concern in the nature of trade, commerce, manufacture, whether or not such trade, commerce, manufacture, adventure or concern is carried on with the motive to make gain or profit and whether or not any profit accrues from such trade, commerce, manufacture, adventure or concern irrespective of the volume, frequency, continuity or regularity of such trade, commerce, manufacture, adventure or concern.
 - (b) any transaction of sale or purchase in connection with or ancillary or incidental to such trade, commerce, manufacture, adventure or concern referred to in sub-clause (a);
 - (c) any transaction involving goods, whether original or secondhand, unserviceable, obsolete or discarded goods, mere scrap or waste material; and
 - (d) any transaction involving goods obtained as waste

products or by-products in the course of manufacture or processing of other goods or mining or generation or distribution of electrical energy or any other form of power;

- (vii) “capital goods” means plant, machinery, dyes, tools, and equipment used in the process of manufacturing, excluding civil structures and such goods as may be notified from time to time;
- (viii) “Commissioner” means the Commissioner of Commercial Taxes and includes, unless the context requires otherwise, the Special, Additional, Joint, Deputy and Assistant Commissioner of Commercial Taxes appointed under section 3;
- (ix) “Central Act” means the Central Sales Tax Act, 1956 (Act 74 of 1956);
- (x) “Contractee” means any person for whom or for whose benefit a works contract is executed;
- (xi) “Contractor” means any person who executes, either himself or through a sub-contractor, a works contract;
- (xii) “dealer” means any person who, whether regularly or otherwise, in the course of business buys, sells, supplies, distributes or does anything incidental to such buying, selling, supplying or distributing of goods, directly or indirectly, whether for cash or for deferred payment or for commission, remuneration or other valuable consideration and includes;
 - (a) a casual trader;
 - (b) a commission agent, a broker or a delcredere agent or an auctioneer or any other mercantile agent, by whatever name called,
 - (c) a non-resident dealer or an agent of a non-resident dealer or a local branch of a firm or company or association or body of persons whether incorporated or not, situated outside the State;

a compendium of Sikkim Value Added Tax

- (d) a person who, whether in the course of business or not, -
- (i) sells goods produced by him by manufacture, agriculture, horticulture or otherwise; or
 - (ii) transfers any goods, whether in pursuance of a contract or not, for cash or for deferred payment or for other valuable consideration;
 - (iii) supplies, by way of, or as part of any service or in any other manner whatsoever, goods being food or any other articles for human consumption or any drink (whether or not intoxicating), where such supply or service is for cash, deferred payment or other valuable consideration;

Explanation I – Every person who acts as an agent on behalf of a dealer residing outside the State and buys, sells, supplies or distributes goods in the State or acts on behalf of such dealer as –

- (a) a commission agent, broker, factor, a del credere agent, an auctioneer or other mercantile agent, by whatever name called; or
- (b) an agent for handling goods or documents of title to goods; or
- (c) an agent for the collection or the payment of the sale price of goods or as guarantor for such collection or payment and every local branch of a firm or company situated outside the State; shall be deemed to be a dealer for the purpose of this Act.

Explanation II – The Central or the State Government or any of their departments or offices which, whether or not in the course of business, buy, sell or supply for commission, remuneration or for other valuable

consideration, shall be deemed to be a dealer for the purpose of this Act.

Explanation III – Any commercial or financial establishment including a bank, an insurance company, a transport company and the like which whether or not in the course of business buys, sells, supplies or distributes goods directly or otherwise, for cash or for deferred payment, commission, remuneration or for other valuable consideration, shall be deemed to be a dealer for the purpose of this Act;

- (xiii) “goods” means all kinds of movable property (other than newspapers, actionable claims, electricity, stocks and shares and securities) and includes live stock, all materials, commodities and articles and every kind of property (whether as goods or in some other form) involved in the execution of a works contract, and all growing crops, grass or things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale;
- (xiv) “Government” means the Government of Sikkim;
- (xv) “gross turnover”, means –
 - (a) in respect of sale of goods, aggregate of the sale prices received or receivable by a dealer on sales as defined under clause (xxix) and includes sale of goods made outside the State or in the course of inter-State trade or commerce or export but does not include sale price of goods which have borne the incidence of purchase tax under this Act;

- (c) issue such orders, instructions and directions to such officers and persons as it may deem fit, for the proper administration of this Act.
- (3) (a) The Government shall appoint the Special Commissioner, Additional Commissioner and as many Joint Commissioners, Deputy Commissioners, Assistant Commissioners, Commercial Tax Inspectors and such other persons as it think fit for the purpose of performing the functions respectively assigned to them by or under this Act.
- (4) All officers and persons employed for the execution of this Act shall observe and follow the orders, instructions and directions of the officers superior to them:
- (5) The Commissioner may by order in writing;
 - (a) transfer any case or cases relating to any assessee or class of assessee pending before an assessing authority to another assessing authority having jurisdiction to deal with such case or cases; or
 - (b) specify any one of the assessing authorities having jurisdiction over an area which shall deal with any case or cases relating to any assessee or class of assessee.
- (6) Where any case is transferred to an assessing authority under clause (a) of sub-section (5), such assessing authority may deal with the case either de novo or from the stage at which it was transferred.

4. Appellate Authority -

- (1) The Government shall appoint the Sikkim Commercial Taxes Appellate Authority to perform the functions assigned to the Appellate Authority by or under this Act.
- (2) The Appellate Authority shall be a person who is or has been an officer not below the rank of the Secretary to Government of Sikkim and has served for a minimum period of two years in the department of Commercial Taxes.

