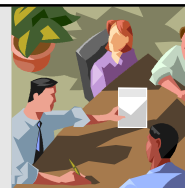


JB Nagar Andheri East CPE SCM
of WIRC of ICAI



Imp Issues in Vat & Vat Audit
by
CA Deepak Thakkar, Mumbai
on
4 Jan 2015

1 Jan 2015

CA Deepak Thakkar, PHD & Asso.

1

Please Put your Mobile on Silent Mode



1 Jan 2015

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2



Imp Issues in Vat & Vat Audit

1 Jan 2015

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3

Case Study 1

- Cell Joint is a mobile dealer. He is offered incentive scheme by Samsung if he reaches a target of selling mobiles worth Rs. 5 Lacs in one month.
- Cell Joint takes up the challenge and to stay in market competition, he passes some amount of incentive to the customer by selling the mobile at a discounted rate than the market rate.
- Cell Joint Purchases mobile at Rs. 30,000/- plus 12.5% VAT of Rs 3,750/-. But he sells at Rs. 24,000/- plus 12.5% VAT of Rs. 3000/- & claims refund of Rs. 750/- in vat returns filed

Issue-1: Whether said incentive should be added to sale price and to pay VAT on higher price?

Issue-2: Whether it has any impact on reduction of setoff?

1 Jan 2015

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4

Case Study 2

- Ankit Traders (AT) supplies cardboard for packaging to various dealers.
- AT places an order with Mah. manufacturers to purchase same and dispatch directly to the customers say Mala Packaging (MP) at Indore.
- Manufacturer raises Invoice on AT charging CST. Lorry receipt contains the name of Mfr as consignor, AT as agent and MP as consignee.
- AT treats this transaction as 'sale-in-transit'.
- Issue-1: As a VAT auditor what documents you will verify?
- Issue-2: Whether it is a 'sale-in-transit' sale?
- Issue-3: What will be the tax rate where Form C & EI both not received?
- Issue-4: What will be the tax rate where one of the Forms is not received?
- Issue-5: How you will report when CST forms are not received?

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5

Case Study 3

- PK dispatches the goods from Mah. to Modi at Guj. on 30th March 2014 & raises the sales bill on same day charging CST @ 2% under form 'C'.
- Goods reached Guj on 2nd April 2014.
- Modi records it as purchases in Apr 2014 & issues 'C' form to PK for QE June 2014.
- Issue-1: Whether Mah. Vat Officer can disallow such 'C' form & levy full CST for Mar 2014?

1 Jan 2015

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6

Case Study 4

- X Ltd supplies Xerox machines to ABC Offset services. All the materials like paper, Ink, etc will be provided by X Ltd & will charge 30 Paise per copy, but for minimum 5000 copies per month, irrespective of its lower usage.
- X Ltd treats this transaction as a works contract and charges VAT on 75% of the value of Invoice and also levies service tax on 70% of the value of invoices as per the valuation rules of service tax.
- **Issue-1: Whether said transaction is a service contract or a works contract or sale of paper/ink or a transfer of right to use Xerox machine?**
- **Issue-2: What will the taxable value & tax rate applicable for same?**

1 Jan 2015

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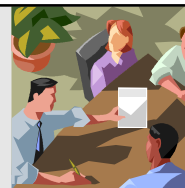
Case Study 5

- MC Builders (MC) is a builder & Developer.
- For construction of one building, the entire contract (Material & Labour) is given by MC to Suraj Contractors (SC).
- MC wants to use Cement & Steel of specific quality. So MC purchases it @ Rs. 4,000 + Vat, but supplies to SC at the pre-agreed rate @ Rs. 3,000 + Vat, with a condition to use for his said building only.
- MC works out gross vat payable, i.e. on Rs. 3000 for supply of cement & steel to SC and on sale of flats @ 1% under composition scheme (CS), and takes setoff on purchases of cement & steel.
- **Issue-1: Vat Officer objects to allow setoff as under CS @ 1%, the developer is not eligible for setoff on inputs used in construction. Is the stand of officer valid?**

1 Jan 2015

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8



B.O.T. Infra Project Mah. Sales Tax Tribunal Ruling dt 10 Sept 2014

1 Jan 2015

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9

Ashoka Infrastructures Nasik SA 138 of 2003 dt 10 Sep 2014 (MSTT) (Hon. J. J A Shaikh & Smt. A K Jadhav-Jagiasi, B-III)...

1. Appeal against **DDQ** (Application on 8-12-1999) Order of Addl. Commissioner **dt 19 Jul 2003 under Earlier Works Contract Act (WCT)**, 1989: Held: Applicant as dealer; It executed a works contract on Govt property, so liable to sales tax on turnover of sales.
2. **Facts:** It is a consortium of 3 diff Cos. which executed contract with Govt of Mah. for highway improvement in Mah. in 9 mths on the basis of Build, Operate & Transfer (B.O.T) at its own cost of Rs. 514 lakhs. It had to maintain said road for next 8 yrs. during which in return it had a right to collect toll from road users. After 8 yrs. said project was to be handed over to Govt of Mah, free of cost.
3. **Argument of dealer:** Land was given on lease by Govt. Construction was on said land. One cannot sell to oneself so it is not taxable. Price for said work is not paid by Govt. but by third party. There is no element of profit but it is an adventure as project is to be handed over to Govt free of costs. Infact it is a barter.
4. **Argument of Govt:** All works are covered under WCT Act hence taxable.

1 Jan 2015

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10

...Ashoka Infrastructures Nasik SA 138 of 2003 dt 10 Sep 2014 (MSTT)
(Hon. J. J A Shaikh & Smt. A K Jadhav-Jagiasi, B-III)...

5. **Question:** Whether B.O.T. Contract is a WC? Whether liable to pay tax on turnover of sales in respect of goods used at the time of construction of road & other constructions?
6. **Observations of Tribunal:** After Re-enacted WCT Act of 1989, all works taken up would become WC; **SC in case of Kone Elevators India Pvt. Ltd. vs State of TN (2014) 71 VST 1** observed that **WC is an indivisible contract**, but by legal fiction, is divided in two parts, one of sale of goods & other for supply of labour & services; In present case, appellant had to use his own skill, labour & goods for construction of road, which is the end product to be delivered. Therefore it is a WC applying ruling of Kone. Further the **SC in case of L&T Ltd vs State of Kar (2013) 65 VST 1**, held that to sustain levy of sales tax in WC, **3 conditions are given:** there must be a WC, goods should have been involved in execution of a WC & the property in those goods must be transferred to a third party either as goods or in some other form. In present case also all 3 conditions are met.

1 Jan 2015

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11

...Ashoka Infrastructures Nasik SA 138 of 2003 dt 10 Sep 2014 (MSTT)
(Hon. J. J A Shaikh & Smt. A K Jadhav-Jagiasi, B-III)....

Instead of the State, **price** is paid by public at large by way of toll, therefore element of price is involved. In BOT projects entire cost is to be recovered by way of toll from public then to be handed over to Govt. free of costs.

Powers are given for revising toll rates. Para 3.1.12 of agreement specifies that project cost is deemed to be inclusive of all taxes, reasonable profits & interest on cost. Handing over the project free of cost is after the concession period is over as it is deemed that entire project costs & **profit** is realised. Therefore contention that there is no element of profit cannot be accepted;

Though land was given on **lease** by Govt., Para 3.6.25 clearly mentions that **ownership of the project** continues to vest in Govt and the entrepreneur is not entitled to any revenue except toll from vehicles using road.

Regarding **non payment of price by purchaser**, Tribunal observed that infact toll is collected for & on behalf of Govt as toll can be collected only by State.

Barter is an exchange of goods for goods but here toll is collected for recovery of entire project cost.

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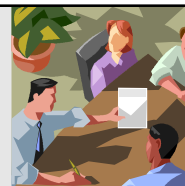
...Ashoka Infrastructures Nasik SA 138 of 2003 dt 10 Sep 2014 (MSTT)
(Hon. J. J A Shaikh & Smt. A K Jadhav-Jagiasi, B-III)

- **Decision:** The dominant nature test or degree of intention test or overwhelming component test for treating the contract as WC is not applicable, as observed by SC in Kone case. Thus B.O.T projects are WC.
- **Said view is fortified by AP HC ruling in case of NIIT Ltd vs DC, Hyderabad, (2014) 71 VST 481**, which held that imparting of computer education in high schools, leasing of computer hardware, software on Build, Own, Operate & Transfer (B.O.O.T) basis is a WC.
- **Meghalaya HC ruling in case of TCS Ltd vs State of Megh. (2014) 69 VST 230**, regarding **BOOT case** that petitioners are still not only in control & possession of equipment imported but also they are owners as such there is neither sale nor transfer nor supply of material nor transfer of rights of goods can be said to have taken place it cannot be said to be a tax on sale or purchase of goods; **this ruling is not applicable to present case.**
- **Thus BOT project involves both goods, labour & services, therefore, it is a WC. Property in goods gets transferred to public at large by way of use on payment of toll. Toll collected is an element of valuable consideration. There is an element of transfer of the project after goods & services are utilised for completion of project. Therefore, appellant is a dealer & has done WC by accepting B.O.T project, hence liable to pay tax on turnover of sale in respect of goods. Appeal dismissed.**

1 Jan 2015

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13



Issues in 1% Composition Scheme for Developers & Builders

1 Jan 2015

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14

Vat Composition @ 1% on sale during construction phase under Notification # VAT. 1510/CR-65/TAX-1 dt 9 July 10 wef 1 Apr 10.....

1. **Composition Scheme (CS)** u/s 42(3A) of MVAT Act for Registered Dealer (**RD**) who undertakes **construction** of flats, dwellings or buildings or premises and **transfer** them **in pursuance of an agreement** along with land or **interest underlying the land**
2. **CS @ 1% of the aggregate amt specified in agreement or Stamp Duty Value** under Bombay Stamp Act, 1958, **whichever is higher**
 - a. Developer following **Vat Rule 58** for certain construction works contract (for certain Units sold prior to 1 Apr 10), eligible for this new CS for other Units sold on or after 1 Apr 10 ?
 - b. Developer following **CS @ 5% u/s 42(3)** for certain construction works contract (for certain Units sold prior to 1 Apr 10), eligible for this new CS for other Units sold on or after 1 Apr 10 ?

(Ans to Q.16 of Trade Circular # 14T dt 6 Aug 12, permits for CS 1% as 4th Option for tax computation method for Developers)
3. **Conditions & restrictions** specified in new CS @ 1% shall be fulfilled

1 Jan 2015

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15

...Vat Composition @ 1% on sale during construction phase wef 1 Apr 10....Conditions & Restrictions of CS...

1. **All agreements registered on or after 1 Apr 10 shall be covered** under this CS
 - a. Unit booked prior to 31 Mar 10 but agreement registered after 1 Apr 10, covered?
 - b. Agreements regd upto 31 Mar 10, not covered ? May be eligible?
 - c. All Agreements qua building or qua project or qua dealer?
2. **Such Turnover** of sales shall be included in the **Return period** in which agreement is regd & make e-payment of tax
 - a. To pay 1% fully on entire turnover or can pay as & when installment is due?
 - b. **'Turnover' will include deposits or charges for:**
 - i. Layout, Infrastructure, labour cess & Development chs.?
 - ii. Common areas & facilities like compound, passage, terrace, garden, play area, swimming pool, club house, gymnasium, etc.?
 - iii. Parking space/stack parking facility, allotted on license basis? (Use is operational on giving possession of Unit sold)

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16

...Vat Composition @ 1% on sale during construction phase wef 1 Apr 10....Conditions & Restrictions of CS...

- iv. Cost of Installation of Electric meter, sub-station, Gas meter, water meter, etc.?
- v. Cost of Society/Company formation, registration, legal chs., share money, entrance fees for membership?
- vi. Security Deposit for building maintenance chs., removal of debris for interior work, Advance maintenance chs., property tax, Non-Agriculture Tax, land revenue, etc?
- vii. Onetime Membership fees for club house or Gymnasium?
- viii. Service Tax for said agreement?
(Nikhil Comforts, S.T. Appeal # 21 of 2013 dt 15 July 2014 BHC)
- iv. Stamp Duty for said agreement?
- 3. Said dealer shall **not be eligible for setoff** in respect of purchases
 - a. Purchases qua said building or project or dealer?
- 4. Said dealer shall not transfer property in goods purchased under **"form C"** in the contract opted for said CS
 - a. "Form C" can be used for other projects / business?
 - b. "Form C" can be used for purchase of Construction Equipments / machinery for said project?
 - c. "Form C" if issued in past for purchases then eligible for CS 1%?

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...Vat Composition @ 1% on sale during construction phase wef 1 Apr 10....Conditions & Restrictions of CS...

- 5. Said dealer shall not issue **"form 409"** to his sub-contractor in respect of WC opted for said CS
 - a. **"Form 407 & 408"** obtained from Sub-contractor, still CS @ 1% payable?
- 6. Said dealer shall **not be entitled to change the method of computation** of tax liability in respect of contract opted for said CS
 - a. For other contract, other computation method can be opted?
 - b. Such other contract may be in same building or same project?
- 7. Said dealer shall **not issue "Tax Invoice"**
 - a. Qua other transactions?
 - b. Other trading business activity?

Note: No application needed for exercise of option for CS @ 1%

Issue: If any condition broken then what consequence? Since when?

1 Jan 2015

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18

L&T Ltd & ors vs State of Karnataka & ors

Civil Appeal # 8672 of 2013 **Order dt 26 Sept 2013 65 VST 1 (SC)**
Larger Bench of 3 Judges (R M Lodha J, J Chelameswar J, M B Lokur J).....

- **Vat Issues in Agreements registered prior to 31 Mar 2010 for under construction properties:**
- SC LB reconsidered its Division Bench ruling in **K. Raheja Development Corpn v. State of Karnataka; (2005) 5 SCC 162** as referred by its Division bench ruling in **L&T Ltd & Anr. v. State of Karnataka & Anr. SLP(C) No. 17741 of 2007**
- **SC considered 12 appeals from Maharashtra** & 14 appeals from Karnataka, thus in all 26 appeals decided which include Promoters & Builders Asso. filed SLP # 17738 & 17709 of 2012

1 Jan 2015

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19

.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:
Taxable Event in building construction: Stage from which vat liable: Importance of date of contract with flat buyer:

- **Para 115:** *"It may, however, be clarified that activity of construction undertaken by the developer would be works contract only from the stage the developer enters into a contract with the flat purchaser. The value addition made to the goods transferred after the agreement is entered into with the flat purchaser can only be made chargeable to tax by the State Government."*
- **Para 117:** *"The submission of Mr. K.N. Bhat (Karnataka Govt) that the view in Raheja Development that when a completed building is sold, there is no work contract and, therefore, no liability to tax is not correct statement of law, does not appeal to us. If at the time of construction and until the construction was completed, there was no contract for construction of the building with the flat purchaser, the goods used in the construction cannot be deemed to have been sold by the builder since at that time there is no purchaser. That the building is intended for sale ultimately after construction does not make any difference."*

1 Jan 2015

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20

.....L&T Ltd & Ors vs St of Karnataka & Ors 26-9-13 SC:
Approval of K. Raheja Dev. Ruling dt 5-5-2005 SC:

- **Para 118.** “We are clearly of the view that Raheja Development lays down the correct legal position and we approve the same.”
- **Para 121:** “..... Thus, in our view, there is no merit in the challenge to the constitutional validity to the provisions of explanation (b)(ii) to Section 2(24) of MVAT which were amended with effect from 20.06.2006....”
Excerpts from Para 34 of BHC decision in MCHI:
“ Whether there is a works contract in a given case is for assessing authorities to determine....
..... the amended definition in the State legislation in the present case provides a clarification or clarificatory instances....”
- **Para 122:** “We are in agreement with the above view and reject challenge to amendment to the provisions of explanation (b)(ii) to Section 2(24) of MVAT Act.”

1 Jan 2015

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21

.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:
**Mode of valuation of goods provided under Rule 58(1A)
needs clarity from Maharashtra State Govt:**

- **Para 123:** “Sub-rule (1A) was inserted into Rule 58 by a notification dated 01.06.2009....
..... The challenge was laid to Rule 58(1A) of the MVAT Rules before the Bombay High Court.....”
- **Para 124:** “The value of the goods which can constitute the measure of the levy of the tax has to be the value of the goods at the time of incorporation of goods in the works even though property in goods passes later. Taxing the sale of goods element in a works contract is permissible even after incorporation of goods provided tax is directed to the value of goods at the time of incorporation and does not purport to tax the transfer of immovable property. The mode of valuation of goods provided in Rule 58(1A) has to be read in the manner that meets this criteria and we read down Rule 58(1-A) accordingly. The Maharashtra Government has to bring clarity in Rule 58 (1-A) as indicated above. Subject to this, validity of Rule 58(1-A) of MVAT Rules is sustained.”

[So Land cost or land value as per SDRR, whichever higher ?? Evidence??]

1 Jan 2015

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22

.....L&T Ltd & Ors vs St of Karnataka & Ors dt 26-9-13 SC:
Mah. AG assures that implementation of Rule 58(1A) shall not result in double taxation; Circulars are only clarificatory in nature, so not binding to tax payer:

- **Para 125:** "Once we have held that Raheja Development¹ lays down the correct law, **in our opinion**, nothing turns on the circular dated 07.02.2007 and the notification dated 09.07.2010. **The circular is a trade circular which is clarificatory in nature only.** The notification enables the registered dealer to opt for a composition scheme. The High Court has dealt with the circular and notification. **We do not find any error** in the view of the High Court in this regard. **Moreover, the Advocate General for Maharashtra clearly stated before us that implementation of Rule 58(1-A) shall not result in double taxation and in any case all claims of alleged double taxation will be determined in the process of assessment of each individual case.**"

Double taxation qua: sub-contract; stamp duty & vat; Land value deduction; etc??

- **Para 126:** "After having given answer to the reference, **we send the matters back to the Regular Bench for final disposal.**"

1 Jan 2015

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23

WP at BHC filed against Rule 58 Notification & Circulars qua Developers & Builders

- **Writ Petitions filed before BHC:**
Maharashtra Credie-WPST/11433/2014;
Builders' Association- WPL/11482/2014;
Prime Property Corpn. Ltd.-WPL/1146/2014:
 Etc.....
Against Amended Rule 58, Notification dt 29.01.2014 and Circular No 7 T of 2014 dt 21 Feb 2014 and 12 T of 2014 dt 17 Apr 2014 alleging that directions of SC are not complied with fully:

29 Apr 2014: No interim relief;

Revised Return due dt 30 Apr 2014 not extended

26 Jun 2014: Admission & Hearing.....adjourned....Next dt 13 Jan 2015

Auditor's Role: Vat liability as per rules; Vat liability as per dealer; Disclosure about pending writs & rulings

1 Jan 2015

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24

VAT AUDIT in MAHARASHTRA effective from 1 Apr 2005 (Sec.61, Rule 65, 66 & 17A of MVAT Law)

1. Audit under diff. laws:
Companies Act since 1956, Income Tax Act since 1985, MVAT Act since 2005
2. Dealer, whose **turnover of sales** (including interstate stock transfers) **or purchases** exceed **Rs. 1 Crore in a year**, is liable for VAT Audit. (Rs. 60 lakhs upto FY 2012-13 & Rs. 40 lakhs upto FY 2009-10); Turnover limits apply to **Liquor License holders** also from 2013-14 onwards
3. Vat audit compulsory for **PSI Units**, irrespective of any T.O.
4. Vat Audit **not required** for Dept. of Union Govt. or State Govt., Local Authority, Railways & MSRTC.
5. Vat Audit Report in **Form e-704**
6. Audit of Books of account of Dealer **by CA** (Chartered Accountant or Cost Accountant)
 - Report the Particulars
 - Certify Correctness & Completeness of Returns
 - Advise to pay Shortfall or claim Refund

1 Jan 2015

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25

AUDIT REPORT FURNISHING (Sec. 61 & Rule 66)

(Trade Cir # 21T dt 20 Dec 2014 for Vat Audit Report for FY 2013-14)

1. Dealer shall **upload e-Audit Report** within **9.5 mths.** of year end i.e. for FY 2013-14, on or before **15 Jan 2015**;
2. **Physical filing of:**
 - (i) Letter of Submission, duly stamped & signed by dealer,
 - (ii) e-acknowledgement copy of form 704 uploaded, duly stamped & signed by Dealer & Vat Auditor,

by **27 Jan 2015**

with LTU or e704 Cell, by Mumbai dealers or
with LTU or Location in-charge Officer, by Other dealers;

* **Physical copy of Part-I & Tax paid challan not reqd;**

* In case of acceptance of auditor's recommendation by dealers, information about revised return, tax & interest payments shall be uploaded online when facility of **Computerised Desk Audit (CDA) for FY 2013-14** is made available

1 Jan 2015

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26

Penalty for Default in furnishing Vat Audit Report (Sec. 61 & Rule 66)

1. **Proviso** to Sec.61(2) **deleted** on 26 Jun 2014: which provided that **for beyond control reasons**, the Due Date of 15 Jan is extended till 15 Feb
2. **Penalty** may be levied @ 0.1% of Total Sales, if **audit report not filed** or filed late [Sec. 61(2)]
3. **Penalty** may be levied @ 0.1% of Total Sales, if audit report filed is **knowingly incomplete or arithmetically inconsistent** [Sec. 61(2A) from 1 May 2011]
4. Default in filing report, without sufficient cause: Dealer faces **Simple imprisonment** upto 6 months, with fine [Sec. 74(3)(m)];
- **Manager of business** may be deemed as guilty [Sec. 74(6)]

1 Jan 2015

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Vat Audit Report form e-704

1. **Instructions** for Filling up Form e-704 (Commr G.N.# VAT/AMD-2013/1B/Adm-8 dt 23-8-2013) **Order of filling Form**
2. Part 3: **Annexures A to K** (Tax credit-TDS Certificates, Setoff details, Financial Ratios, CST Forms, Sales & Purchase Data)
3. Part 3: **Schedule I to VI** (**Auto picked** certain data from Annexures)
4. Part 2- **General Information** of Dealer & Business Activities
5. Part 1- **Certification, Notes, Qualifications**, Remarks, Computation Tables (7 Tables), & Final Recommendation by Auditor, Appeal/Reference filed by Dept & pending before Court, Date & Sign of Vat Auditor (**Auto picked** certain data from Schedules & Annexures)
6. **Letter/Statement of Submission by Dealer-**
Auditor's recommendations whether accepted, Reasons for non-acceptance & **Details of payments made, if any, based on Auditor's recommendation**

1 Jan 2015

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Annexure E for Setoff

SECTION-6 Total Set-off Available (Section 3+4+5)				
Amount of Total Set-off Available to Dealer				
Sr. No.	Particulars/	Amount of Set-off claimed in Returns	Set-off determined by auditor	Difference (c-d)
a	b	c	d	e
1	Gross Input Tax		0	0
2	Setoff (ITC) Not Admissible		0	0
3	Reduction in Setoff (ITC)		0	0
9	Balance Available Set-off (ITC)		0	0
	Total		0	0

Reasons for Excess or Short claim Set-off:- (Cross Check on Website with List of Suspicious Dealers/ Non-filers/ Short-filers.....Effect on setoff claim & Proper Reporting at apt place) Website List updated as on 18 Nov 2014

1 Jan 2015

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Annexure I- (Inst # 21) Pending CST Forms (Form C/E-I/E-II/F/I/J??/ H (for inter-state Deliveries))

Sr. No.	Name of the Dealer who has not issued Declarations or Certificates	CST TIN, if any	Decl/ Certif type	Invoice No.	Invoice Date	Taxable Amt (Rs.) (Net)	Tax Amt (Rs.)	Rate of Tax applicable (Local Rate)	Amt of tax (Column 7*9*%)	Diff Tax Liab (Rs.) (Col 10-Col 8)
1	2	3	4	5	6	7	8	9	10	11
1									0	0
2	Enter (value wise) Top 4999 entries sep. & put total of others on 5000th row.									
....									0	0
...									0	0
5000	Remaining transaction Total								0	0
	Total			(Inst # 22)		0	0		0	0

1 Jan 2015

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Annexure J-1 (Inst # 23)				
(Sec. 1)- Customer wise VAT sales (Net = Gross – CN / DN)				
Sr. No.	TIN of Customer	Net taxable Amt Rs.	VAT Amt Rs.	Gross Total Rs.
1	2	3	4	5
1				0
2				0
...	Enter (value wise) Top 4999 entries sep. & put total of others on 5000th row.			
...	Refer Inst # 23: Values in J1 must be given after giving effect of DN/CN			0
4999				0
5000	Remaining local transaction total where tax is collected separately, not covered above			0
5001	Gross local sale to Non Tin holders			0
5002	Gross Local sales where tax is not collected separately			0
5003	Gross Total	0	0	0
1 Jan 2015				
CA Deepak Thakkar, PHD & Asso.				
31				

Annexure J-2 (Inst # 23)				
(Sec. 2)- Supplier wise VAT purchases (Net = Gross – CN / DN)				
Sr. No.	TIN of Supplier	Net taxable Amt Rs.	VAT Amt Rs.	Gross Total Rs.
1	2	3	4	5
1	Refer Inst # 23: Values in J2 must be given after giving effect of DN/CN			0
2				0
...	Enter (value wise) Top 4999 entries sep. & put total of others on 5000th row.			
5000	Remaining local transaction total where tax is paid separately, not covered above			0
5001	Gross local purchases from Non Tin holders		?????	0
5002	Gross Local purchases where tax is not paid separately			0
5003	Gross Total	0	0	0
* Net Taxable Amt means – Purchase amt on which VAT is charged separately.				
Note: Annexure J-3 & J-4 Deleted (regarding DN/CN qua Customers & Suppliers)				
1 Jan 2015				
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32				

Annexure J-5 (Inst # 23)

(Section 5)-Customer wise transactions of Direct Exports & High Seas Sales under CST Act, 1956

Sr. No.	Name of Customer	TIN of Customer, if any	Transaction Type	Gross Total Rs.	Major Commodity
1	2	3	4	5	6
1			Direct Export or Sale in Course of Import or Highseas Sale		
2					
...	Enter (value wise) Top 199 entries sep. & put total of others on 200 th row.				
...					
...					
200	Remaining transaction total				
201	Gross Total			0	

1 Jan 2015

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Annexure J-6 (Inst # 25)

(Section 6)-Supplier wise transactions under CST Act, 1956

Sr. No.	Name of Supplier	TIN of Supplier, (if any) (Put CST TIN)	Transaction Type	Any other cost of purchase	Gross Amt. Rs.
1	2	3	4	5	6
1			OMS Pur or Direct Import or Highseas Pur or Pur u/s 6(2) or Local Pur under Form 'H' or Interstate Stock Trf		
2					
...	Enter (value wise) Top 999 entries sep. & put total of others on 1000 th row.				
...					
1000	Remaining transaction total which not covered				
1001	Purchase from Unregistered Dealers				
1002	Gross Total				0

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Part 1 – Pt 7: Tabulate details of Reference/Appeal filed by the Dept against Tribunal's Order if similar issue is involved in Auditee's case- **few examples**

Issue	Reference/Appeal No	Name of Dealer
1. Freight on sales side, not taxable?	APP.154/1998 Rectification Appl. # 68/ 2001 dt. 31.5.2003	Parle Products Ltd.
2. High Seas Sales based on Airway Bill & Delivery Order, allowable?	S.A. 435/1991 dt. 9.2.1996	Mahindra & Mahindra Ltd.
3. Whether the Electrical contract executed is a construction contract & eligible for lower composition sum of 5% instead of 8%?	S.A.434/07 dt. 16.12.2011	Gammon India Ltd.
4. License of plant & machinery is not a lease & so not liable to sales tax?	S.A. 91/1997 dt. 18.09.1999	Maharashtra Soya Inds. Ltd

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Vat Audit, Statement of Submissions by Dealer and levy of Additional Interest u/s 30(4) & or Penalty u/s 29(3)

▪ **Statement of Submissions by dealer accepting or objecting recommendation of Vat Auditor;**

If accepted then details of payments & revision of Returns;

If not accepted then to give reasons for same;

▪ **Additional Interest u/s 30(4) @ 25% on Additional Tax payable as per Return or Revised Return filed after commencement of Business audit or Inspection of accounts (notice in form 603) or Search or notice in form 604 issued u/s 63(7) of MVAT Act**

▪ **Penalty u/s 29(3) @ 100% of tax payable for concealment of any transaction or knowingly furnishing inaccurate particulars of any transaction liable to tax or knowingly claiming excess setoff under MVAT Act**

▪ **If revised return is filed & Additional Interest is paid then penalty shall not be levied.....Trade Cir # 22T dt. 6 Aug 2009, Para 4(b)(viii).**

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Issues in e-filing of Vat Audit Report form e-704

Annexure, Schedules, Part I, Fields tried to be linked

Validation of Annex & Form; Uploading of entire Report; Print, Stamp & Sign on all pages by both, Dealer & Vat Auditor

E-acknowledgment: To be signed by both, Dealer & Vat Auditor

Physical submission of e-Ack, Part I & Statement of Submission, duly signed by both, Dealer & Vat Auditor

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Penalty @ 0.1% of Total Sales u/s 61(2) for Non-filing or late-filing of Vat Audit Report (VAR)....

Issue involved	Reason & Ruling	Citation of Ruling
VAR filed late	Penalty is discretionary; burden of proof is on Revenue to prove culpability; Overall compliance is most important guiding factor for levy of penalty	Balaji Steel & Cement Traders. SA # 90 & 91 of 2009 dt 10 Jul 2010
VAR filed late	In view of dealer's consistent & clear track record in paying taxes, filing returns, etc.; Penalty levy set-aside fully	Centinial Surgical Suture Ltd. SA # 61 of 2010 dt 23 Aug 2010
VAR filed late	In absence of specific mention of penalty amount in Order, it ceased to be a valid order & demand notice had no significance under the law; Penalty levy set-aside fully	Ramnarayan Ramratan Dahad. VAT SA # 23 of 2012 dt 10 Sep 2012

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...Penalty @ 0.1% of Total Sales u/s 61(2) for Non-filing or late-filing of Vat Audit Report (VAR)...

Issue involved	Reason & Ruling	Citation of Ruling
VAR filed late	U/s 61(2), there is discretion to levy or not to levy penalty. There is also a discretion qua quantum of penalty.	Addl. Commr of S.T. v/s Ankit International (46 VST 1) (Bom)
VAR for FY 2006-07 was due on 31-8-2008 but filed on 18-5-2009	Delay as old employee resigned and new accountant was appointed. Considering facts penalty reduced to Rs.1,00,000 from Rs.2,48,616.	Fair Exports (I) Pvt. Ltd. Misc. App.6 & 7 of 2011 alongwith VAT S.A.13 & 14 of 2011 dt. 6.10.2012.
VAR for FY 2007-08 was due on 2-3-2009 but filed on 2-4-2009	By internal circular guidelines were given for non levy of penalty if VAR filed within 30 days of due date. In this case the delay is of 31 days i.e. marginal, so penalty was set aside.	Fair Exports (I) Pvt. Ltd. Misc. App.6 & 7 of 2011 alongwith VAT S.A.13 & 14 of 2011 dt. 6.10.2012.

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...Penalty @ 0.1% of Total Sales u/s 61(2) for Non-filing or late-filing of Vat Audit Report (VAR)

Issue involved	Reason & Ruling	Citation of Ruling
VAR for FY 2006-07 filed late by 4 mths & 22 days	HO is at Bangalore and their C.A. in Karnataka was unable to conduct audit under MVAT Act. Therefore, other CA was appointed do report was delayed. Tribunal reduced penalty to Rs.1,00,000 from Rs. 10,91,966.	Evergreen Hardware Stores. VAT App. No.30 of 2012 dt. 15.10.2012
VAR for FY 2005-06 was filed late	Appellant was under bonafide belief that turnover of Sale of petrol & diesel is not taxable, so no vat audit report is required. Revenue contended that even ignorance of law could not be believed; there was legal debate amongst traders, as well as writ Petition being filed in High Court due date for filing audit report was extended from time to time. Tribunal concluded that explanation given was not spontaneous but was an after thought. The appeal was dismissed, relief not granted in penalty.	Lathi Enterprises. VAT SA # 16 of 2012 dt 3/09/2012.

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Reference Material

MVAT & CST Act, Rules & Notifications, Trade Circulars, DDQs: Publications, MST News, Website

MVAT Audit Guide by WIRC, Nov 2014

Rulings by MSTT, High Courts & Supreme Court: Website, STC, VST, STR, etc

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“Bridge & Wall are made with same **material, but Bridge joins people & Wall divides people”**



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**Efficient Vat Audit &
Happy New Year 2015**

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