

**INTRICATE ISSUES ARISING OUT OF
CONDUCTING
MVAT AUDIT
AT
SEMINAR
HELD
BY
WIRC OF ICAI
ON
20-12-2014**

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ISSUES UNDER MVAT AUDIT

Q.1 : One dealer had opted for composition scheme for retailer for financial year 2012-13. For financial year 2013-14, he has collected VAT from April'13 to September'13 under Normal system, but he forgot to intimate to the Sales Tax Department before 31-3-13 for option to change of method. His consultant came to know this when he gathered the data for filing Half Yearly return from April'13 to September'13. What should he do?

Q. 2 : An Unregistered Dealer M of Mumbai had Imported goods worth Rs.1.10 Cr. and having no Sales, whether liable for VAT Audit U/S 61 of the MVAT Act,2002 ?

Will it make any difference if Dealer M is a Registered Dealer and had Imported goods worth Rs.1.10 Cr. and also Effected Local Sales of Rs. 95 lacs . Whether liable for Vat Audit ?

Q. 3 : The Firm's T. O. of Sales for the F.Y.2013-14 was Rs. 1,06,00,000 consists of VAT collected Rs.2 Lacs, CST collected Rs.1 lac as well as labour charges of Rs.3.50 lacs. There is also a transfer of asset i.e. Car worth Rs.4 lacs to partner as his capital withdrawal and shown under the head Removal /Sales of asset in the annexure of Fixed Assets under Balance sheet. Similarly Firm's T.O. of Purchases was Rs.98 Lacs .Whether Dealer is liable for VAT Audit ?

Q.4 : A dealer in Mumbai SEZ sends the goods to duty free shop at International Airport at Mumbai, Chennai & Delhi. After a month, the shop send the unsold goods back to the dealer & the dealer raises the invoice on shop for the goods sold from shops. However, no VAT/CST is charged. The duty free shop maintain the details regarding passengers & their flight numbers to whom the goods are sold. Whether VAT/CST is to be charged for the sales to such shop?

If yes, whether shop can issue “H” Form as sale is made only to the passengers who will board the flights & treated as export by the shop?

Q. 5 : A transporter having permit gives his trucks on hire to a company. Company employs his driver to run the truck . Hire charges collected are in excess of 100 lakhs for F.Y. 13-14. Whether the transporter is liable to pay VAT as well as liable for VAT Audit ?

What is the position if the Transporter gives the Trucks on hire with their own drivers ?

Will it make any difference if he is not a transporter but normal dealer say of paper and Gives his trucks on hire ?

Q.6 : A specific order was placed by a Customer with the Branch. Accordingly, the goods were transferred from Head Office situated in other State to it's Branch. Whether claim of branch transfer be allowed or not. If not, Whether the issuance of "C" Form by the branch instead of Form "F" will be sufficient for such a 'sales'?

Q. 7 : In a case where the goods have been transferred on consignment basis to other State say in the month of April'13 worth Rs.1,00,000/- . Out of this goods worth Rs.40,000/- have been returned in the same month. Whether Form 'F' is required for gross or net amount of transfer? Or whether Form 'F' is required for both the transfers?

Q. 8: H.O. has transferred certain samples to it's Branch in which it has put values of all the samples for Transport purpose and also written that it has got no commercial values. Whether Form 'F' is required to be taken from Branch ?

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Q-9 : While conducting VAT Audit you come across that there was OMS Sales sold against Form "C" at 2% and in support of that you found Sales Invoice and Form "C" received but no Dispatch proof i.e. Lorry Receipts/ Rail Receipts were Found. As a VAT Auditor whether you should allow said sales as OMS Sales or to be treated as Local Sales and liability to be discharged at local VAT Rate ?

Q.10 : The Assessee has filed the original returns for the year 2013-14 on due dates. He has also revised all the returns but not within in the prescribed time. All the revised returns are correctly prepared . He approached the auditor for the purpose of MVAT Audit. The VAT auditor has considered the revised returns Correctly filed by him & prepared the Audit Report in Form 704 on that basis. Since the revised return are not filed in the specified time , can sales tax department raise the point of non filing of revised returned in time and hence the Audit Report based on it becomes void ? Whether the action of STO will stand ?

Q.11 : Registered dealer in Maharashtra is engaged in business of diamonds. During the course of business dealer purchases rough diamonds from local market and send the same outside Maharashtra either to his own office or to external contractors for manufacturing i.e. Rough Diamonds are processed/converted into Polished Diamonds. Upon manufacturing of polished diamonds, it is sent back to Mumbai office. In the entire manufacturing process diamonds remains as diamonds. In fact value of polished diamonds received upon manufacturing is more than the rough diamonds sent. At the same time, it may be noted that if rough diamonds of say 100 carats is sent for manufacturing, approx. 35 carats of polished diamonds is received. Balance quantity is lost in the manufacturing process.

-VAT Department is contemplating reduction of VAT set off under MVAT Rule 53(3) since rough diamonds is not received back in Maharashtra.

-Whether under rule 53(3) or any other MVAT Act/Rules, vat paid locally at the time of purchase can be reduced based on the facts given above ?

Q.11A: In the given above case, now Form 'F' became mandatory for all types of issue/receipt of goods. Now say in the case of goods sent for Job work on "principal to principal" basis, the cost of Rough Diamonds of 100 carats is say Rs.10 lacs and cost of addition towards labour charges is say Rs.2 lacs whereas Market value of Polished Diamonds of 35 carats is say Rs.25 lacs.

So the main issues is what value should have been mentioned in Form 'F' against issue of goods as well as receipt of goods ?

Another issue crop up is suppose Form 'F' of certain value has not been received till the date of finalization of VAT Audit, than whether such value should have been shown as part of G.T.O. and as a Auditor whether we should furnish the details of non-receipt of such declarations in Annexure-I of Form 704 with quantification of Tax liabilities?

Q.12: Importer having registered office at Delhi, import goods in Mumbai Port say worth Rs. 25 lacs. Foreign supplier's import invoice shows address of Delhi. After clearing the goods at Mumbai Port, Delhi dealer transfer all these goods to his agent and branches in different States in smaller lots or bulk to bulk. Now, whether registration is required in the State of Maharashtra either under MVAT Act or CST Act ? and in which State 'F' form is required to be produced, Maharashtra or Delhi?

Will the answer differ if Importer has transferred goods worth Rs.23 lacs to his agent and branches in different States and sold goods locally worth Rs.3 lacs (Cost Rs. 2 lacs) and there are no chance that the declarations to the tune of Rs. 10 lacs will be received ?

Q-13: M/S Nayan traders which is a proprietary concern doing retail business of paper having turnover less than Rs.50 lacs in both years i.e.2011/12 and 2012/13. He has opted for Composition Scheme in the year 2013-14. What will be the repurcation under various types of contraventions such as

Either,

- Dealer who has purchased from unregistered dealer in the month of June'13.

or

- Dealer who has purchased Capital Assets from OMS such as computer or air conditioner for his office on 01-10-2013.

- Now the question is from which date the benefit of **Composition Scheme be withdrawn?**

Q.14 : Set-off is already claimed on purchase of raw material in the return for the month of December, 2013. Subsequently, the raw material is destroyed .Thereafter , in the month of February, 2014, insurance claim is admitted .Whether the amount of insurance claim received is taxable? Whether set-off already claimed needs to be reversed and to be paid to the Government?

Q. 15 : Whether VAT Auditor should take cognizance of List of Hawala Dealers /Short Filers/Non-Filers while Conducting VAT Audit ?

Q. 16 : A dealer who was dealing in plastic containers discontinued the line of business and started the business of selling born baby items . The auditor is in two minds in respect of set-off claimed on the stock of plastic container in which the client is no more dealing ?

Q.17: In clause 2(a) of Rule 53 retention is made applicable on the Purchase Price of corresponding goods used in the manufacture of tax free goods. Whether “Machine Oil” which is used to keep the machine in condition which is used for manufacturing goods can be said to be corresponding goods purchased and hence retention would apply ?

Q.18 : Honest Ltd has purchased goods worth Rs.10 lacs + MVAT 5% from M/s Fortune Ltd. in March'13. In the month of Jan'14 M/s Honest Ltd. received Debit Notes from M/s Fortune Ltd. for March'13 due to difference in tax rate. The tax rate charged by Fortune Ltd. in March'13 was wrongly charged @ 5% instead of 12.5% and debit note was raised for the difference in tax liability.

(a) In which year M/s Honest Ltd. would be eligible to claim the set off i.e. in March'13 by revising the said return or in January'14 since the accounting is done in January'14 ?

Q.19 : Consider a situation where a seller charged VAT @12.5% instead of 5%. The purchasing dealer pays VAT @ 12.5% and claimed set off thereon. The A.O. wants to disallow the claim of set off to the extent of 7.5% as the goods are taxable @ 5%? Whether the act of the assessing officer is correct?

Q.20 : A main contractor has accepted contract of Rs.10 lacs. Out of which he has subcontracted contract of Rs. 4 lacs . Main contractor has opted to pay composition sum on whole contract value. Whether sub contractor can claim set off on materials purchased and used in the execution of works contract? If yes, whether the assessing officer can apply retention on set-off if the main contractor has paid by way of composition tax ?

Q. 21: Total contract value is Rs.1 crore . Out of that Main Contractor has given contract of Rs. 60 lacs to Registered Sub-Contractor. if main contractor decided to discharged tax liability on whole contract value and issue certificates in form 406 & 409 to the sub contractor . Whether Main Contractor is entitled to claim set off on purchases made by Sub-Contractor or only Sub-Contractor should claim Set-Off on Purchases made by him ?

Will the answer differ if the Sub-Contractor is Un-registered ?

Q.22: In case of Works Contract whether Main Contractor Instead of claiming Sub-contractor's value as deduction from total contract value, can he treat the same as purchases and claim Input Credit under the provisions of MVAT Laws ?

Q.23 : A civil contractor prepares concrete mix by using sand, cement, steel etc. The said concrete mix is applied in construction contract. At what rate VAT to be paid ? – Whether at individual rate for cement, sand etc. or at the rate of concrete.

Q.24 : A dealer having sales receipts which is less than 50% of total receipts, had purchased office equipments, whether retention would apply as per the provisions of the rule 53(6) or rule 53(7A)?

Q. 25 : A Dealer (Trader) has made Purchase of Rs.3.50 Crs. supported with Tax Invoices. During F. Y. 2013-14. Out of this dealer has sold the goods costing Rs.75 lacs at Rs.1 Cr. The balance goods costing Rs. 2.75 Crs. are in Closing Stock. Such Closing Stock dealer has sold in next Financial Year say in the month of January'14. During F.Y. 2013-14 dealer is also having Share Trading Turnover of Rs. 35 Crs. as well as share profit of Rs. 5 crores which has been shown in Trading and Profit & Loss Account. Whether dealer is entitled to claim set off on the Whole purchases of Rs. 3.50 Crs. ?

Q.26 : A Tyre manufacturer sold the car against replacement warranty for one year. Car users comes to Manufacturer for replacement of tyres within the warranty period as well as after the warranty period . It is the company's policy to replace the tyre after warranty period in case of manufacturing defects. While replacing old tyres with new one under above cases while making the bill of new tyre the company deducts value of old tyre from Sales price of new tyre under the head "Claim Loss" and VAT is charged on such net amount, Whether practice is correct ?

Q.27 : A company is doing software development. For developing any software they have to purchase some of the modules in the form of software outrightly being a part of the main software and then after they sale the whole software. Whether set off be available for purchase of software (Modules)?

Q. 28: Under painting contract when paints applied to building which was already being constructed, Whether set off will be available or will it hit by Rule 54-G ?

Q. 29 : A Firm is a trader in Furnitures has opted for Retailer Composition scheme and discharging the liability of VAT @ 8%. During the year they have sold the car. At what rate they should discharge the liability of vat on sale of car. Whether @8% or @12.5 %?

Q. 30 : Whether under the MVAT Laws, a contractor opting for Composition Scheme and issued bill inclusive of composition sum is entitled to reimbursement of Taxes as per the provisions of Rule 57(1) ?

Q-31 : The contractor has opted to discharge works contract tax (VAT) liability under composition scheme. He has charged composition sum (VAT) and service tax on basic selling price separately in his Tax Invoice. Whether it is correct or composition sum (VAT) is payable on the basic selling price plus service tax?

Q.32 : The principal has awarded contract worth Rs.1crore to main contractor and in turn the same contract has been awarded by the main contractor to sub-contractor for Rs. 90 lakhs . Sub-Contractor has discharged tax liability on Rs. 90 lakhs under say either under Normal method or Table method. Whether main contractor is liable to discharge liability on Rs.10 lakhs if he opts to discharge liability under Normal Method or Table Method ?

Will the answer differ if Main Contractor has discharged tax liability under Composition Scheme ?

Q.33 : "A" is in the business of development of premises (residential and commercial). He is registered under MVAT – though currently A is filing 6 monthly VAT returns and complies with Tax deduction provisions under section 31 of the MVAT Act .

A new commercial project has been proposed to be developed in Suburban Mumbai. In this regard, the assessee has entered into a composite contract with a registered dealer where under, the contractor shall be responsible to demolish an existing structure, clear all the *raabit*, dispose the same in accordance with the relevant regulations and handover clear ground for further action by the builder. Further as per the terms all the material namely raabit, steel and iron rods, wood, other materials which is extracted or found in the course of the said demolition process shall belong to the contractor and the builder shall not claim any of such material. The contract value shall be Rs. 71 lakhs for the whole premises which shall be subjected to all tax deduction under Income Tax, VAT or any other taxes and duties whichever may be applicable .

1. Whether the contract is a Works Contract liable for VAT ?

2. What is the liability of VAT of the Builder in case of raabit , steel and iron rods, wood, other materials which becomes the property of contractor in the course of the said demolition process ?

3. Whether the provisions of TDS under MVAT are applicable?

Q.34: A developer enters into an agreement under SRA scheme whereby the existing occupants are given 400 sq ft each free and on the balance available land, a tower is constructed and also an additional TDR is bought to increase the number of floors of the new building

- Whether tax is payable on the transfer of property to the existing occupant?**
- If no, whether the cost of construction pertaining to existing occupant can be added to the cost of construction of new tower and whether for the payments of tax under Works Contract the said cost will be allowed?**

Q. 35: Consider a Situation that a contract of Rs.10 Crores is subcontracted for a sum of Rs. 9 crores. The subcontractor undertakes to make the payment of taxes. The contractee deducts TDS of main contractor. Whether the subcontractor shall be entitled to take credit of the TDS deducted of the Main Contractor by the Contractee ? [Section 31(4) & 31(9)]

Q. 36 : Suppose Contractee has not deducted WCT TDS from the payment made to Contractor but Contractor has discharged his VAT liabilities on the said transaction than whether still Sales Tax Department can recover the said WCT TDS amount from Contractee ?

Q. 37 : The branch of XYZ LTD. at Gujarat entered in to a contract with ABC LTD. Of Gujarat for steel Fabrication Contract. In pursuance of contract it placed an order with its Head Office, Mumbai to supply Steel Rods. Head Office has Transferred Steel Rods to Branch and claimed exemption from Tax being Branch Transfer u/s 6A of the CST Act,1956. Whether Such claim is allowable ?

□ Will the answer differ if Branch has entered in to a contract for Construction and Head Office has transferred Cement and sand to Branch ?

Q. 38 : Where there is specific mention in the contract to install OTIS Elevator which are to be purchased from specified manufacturer abroad and accordingly order for all the parts of elevator was placed by the contractor and the same have been received in dismantle condition and was directly supplied to the site of the contractee. After receipt of the said parts, assembling and installation of elevator was done by the contractor at the site of the Contractee during the execution of Works Contract. Whether Contractor can Import the same and used during execution of Works Contract and claim exemption of Section 5(2) of the CST Act being sales in the course of Import ?

Q. 39: Whether in the case of Interstate Works Contract Table Method as provided U/R 58(1) of MVAT Act be applicable ?

Q.40: Whether in the case of Interstate Works Contract Composition Scheme be applicable ?

Q.41: Whether WCT TDS to be deducted in the case of Interstate Works Contract ?

Q. 42 :Whether 6(2) transaction is possible in the case of Inter-State Works Contract ?

Q. 43 : Mumbai Dealer takes Ornament personally to Jaipur for exhibition & during exhibition some Ornaments have been sold . The Dealer is not Registered in Rajasthan but only Registered in Maharashtra . The Ornaments had taken back personally to Maharashtra after completion of Exhibition. Whether “F” Form is required while bringing Ornaments from Maharashtra to Jaipur or from Jaipur to Maharashtra? Whether there will be any liability of payment of tax in Maharashtra or Jaipur ?

Q. 44 : The Dealer is an importer of Dental Implants of different sizes. They sell to Doctors in a package which may consist of different sizes of dental implants with different prices. Upon sales dealer raises the Tax Invoice with VAT/CST charged separately and payment are also received. During the course of business in majority of the cases it happens that say the dealer has sold 10 Implants say sizes 'A' to 'J'. But say patient comes to Doctor may be after 6 months or one or two years for implantation and require Say size 'P'. In such a case doctor returns say size 'B' and dealer send size 'P'. The price of 'B' and 'P' need not be the same. Dealer either recovers the differential amount or refund to the doctor upon exchange. Whether such exchange can be treated as replacement and allowed or will it be covered under the provisions of section 63(5) of the MVAT act, 2002 as goods returned and period of six month will hit?

Q. 45 : The Dealer has entered into works contract with say ABC LTD for Construction of Building. It is consolidated Contract. Major portion of the contract is Sub-Contracted. For Civil Work the dealer has given Sub-Contract to say M/s PQR worth Rs.145 Crores . There is a Condition that such work should be completed within 24 months. In the said sub-contract sub-contractor has to raise the bill on the basis of BOQ Rate. The contract is framed in such a way that Total BOQ Value would be raised by sub-contractor throughout the contract would be 140 Crores . The amount of Rs.3 crores will be payable as Milestone Payment as and when total work will be completed say within Two Years or thereafter. But Rs.2 crores will be payable as Performance bonus only if work will be completed within Two years. Whether sub-contractor is liable to pay VAT on Rs.145 crores or Rs.143 crores or on Rs.140 crores?

Q-46 : In F.Y.2012-13 where contract for construction of building of Rs. 1 Crore was given by Principal to the Contractor. IN turn Contract worth Rs. 60 Lacs was given to Sub-contractor. Sub-contractor has discharged the VAT liability towards Rs.60 lacs and furnished Form 407/408 to the Main Contractor. When Main Contractor has raised bill to Principal he has charged total VAT (including Sub-Contractor's VAT) separately in his Sales bills. In the last year's Assessment i.e. F.Y. 2012-13 Assessing Officer has treated the total vat as output vat and also forfeited the vat collected being excess tax collection to the extent on which sub-contractor has discharged the liability. As a VAT Auditor for F.Y.2013-14 what stand you will take ?

Q-47 : There was a contract for supply and installation of Machineries and its parts and components worth Rs.10 Crores. There was also a condition in the contract that till the completion of installation of all the Machineries in case of any defects the parts or Machineries have to be replaced. There is also a condition in the contract that till one year after the installation of machineries Contractor has to provide maintenance service to the contractee and wherever required Parts and components have to be replaced. There are no additional consideration to be paid by the Contractee for the same. However, to replace the parts and components as required the contractor has to purchase the same by paying VAT. Now the question is whether Set-off on the Vat paid on the said replaced parts and Components are available ?

THANK YOU

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