

MVAT Audit Report related Interest & Penal Provisions and Judgments.



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- Penalty for filing "Incomplete" Audit Report & issues.
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Provisions related to filing MVAT Audit Report.

- Section 61:
- provides that vat auditor has to give his audit report in the prescribed form stating the prescribed particulars.
- Rule 65:
- provides that the audit report should be in Form 704.

Responsibility of Dealer.

- Section 61(1) provides that a dealer should get his accounts audited for the year in which audit criteria are applicable.
- Rule 66 provides that the dealer should get his accounts audited and furnish the audit report within the due date. i.e, 9 months and 15 days from end of the financial year.
- To e-file "Complete" Audit report?
- To agree or disagree on dues as mentioned in Audit report.
- To submit copy of Letter of submission, Ack, Part 1, Challans and revised returns, if any. (Trade Circular No.10T of 2013 Dt: 16-12-2013)

Responsibility of Auditor.

- The vat auditor is required to give his certificate/opinion/report on the requirements prescribed in Form 704.
- The vat auditor is not required to give his opinion on Financial Statements?
- *However Refer for e.g.*
- *Instruction no.10: material difference in excise, customs and vat.*
- *Certification clause m of Table 2B of Part 1: bank statement fully reflected in books.*

Responsibility of Auditor.

- The vat auditor is also required to give his remarks and observations for differential dues or refund as well as qualifications or remarks having impact on the tax liability and advise the dealer about further action to be taken for the period.
- To upload Vat audit report is the responsibility of Dealer, but practically who is uploading it?

Responsibility of Auditor.

- *The report so drawn be submitted to the dealer/person (client).*
- *After submission of the audit report to the client, assignment of Vat Auditor comes to an end.*
- *It is advisable to submit the duly signed hard copy of the report to the dealer against the acknowledgment.*
- *There is no responsibility on the vat auditor to furnish his report to any VAT Authorities.*
- *However vat auditor needs to re-verify the details uploaded electronically by dealer and compare the same with the report.*
- *Thus vat auditor is advised to do necessary verification before signing the acknowledgment and Part I of Form 704.*

Responsibility of Auditor.

- A question may arise whether a vat auditor appointed under section 61 can be held responsible, if he does not complete the audit and give his audit report before the specified date.
- *If there is any delay on his part, he is answerable to the Institute if the complaint is made by the client. However, if the delay in the completion of audit is attributable to his client, the vat auditor cannot be held responsible.*
- Reference can be made to “Guide to MVAT Audit” published by WIRC of ICAI.

Penalty for Late filing of Audit Report.

- As per Section 61(2)
- “ If any dealer liable to get his accounts audited under sub-section (1) fails to furnish a copy of such report within the time as aforesaid, the Commissioner may, after giving the dealer a reasonable opportunity of being heard, impose on him, in addition to any tax payable, a sum by way of penalty equal to one tenth per cent. of the total sales.”
- Provided that, if the dealer fails to furnish a copy of such report within the period prescribed under sub-section (2), but files it within one month of the end of the said period, and the dealer proves to the satisfaction of the Commissioner that the delay was on account of factors beyond his control, then no penalty under this sub-section shall be imposed on him.

Penalty for Late filing of Audit Report.

- **Some peculiar characteristic of penalty are:**
- 1/10th of “total sales” . (not on purchases),
- E.g. audit is mandatory even if purchases cross 60 lakhs and if, no sales during the year.., e.g. project stage of manufacturing unit.
- “Total Sales” means the turnover of sales as per section 2(33)?
- No upper ceiling. (upto 15-8-2007 maximum ceiling of Rs.1 lakhs was there).
- A opportunity is given to dealer of additional one month to file as per proviso.
- A reasonable cause showing factors beyond control of dealer and satisfaction of authority.

Penalty for Late filing of Audit Report.

- **Questions arises ...**
- Is penalty automatic?
- Is penalty amount is fixed?
- Is penalty levied within One month of due date, if reasonable cause produced?
- Is penalty levied after One month of due date, if reasonable cause produced?

Penalty for Late filing of Audit Report.

- Case laws:
- Nitco Paints Limited. (2011) 42 VST 71 Mumbai.
- *Balaji Steel and Cement Traders (VAT SA 90&91 of 2009).*
- ***Further reference can be made to HC order of Additional Commissioner of Sales Tax Mumbai vs. Ankit International (Sales Tax Appeal 9 of 2011).***
- ***Vishal Metal Corporations vs. The State of Maharashtra: VAT Second Appeal No.51 of 2011 Date: 20-12-2011.***
- ***Sentinel Surgical Suture Ltd (SA No. 61 of 2010)***
- ***Chanayak International Pvt. Ltd. (2011) 46 MTJ 262)***

Penalty for Late filing of Audit Report.

- **What are the Imp findings/ references of the Judgment**
 - Nitco Paints Limited. (2011) 42 VST 71 Mumbai.
- Before the Mumbai High Court:
- The section 61(2) says “ commissioner may provides reasonable opportunity to dealer” .
- The quantum of penalty is 1/10th of sales.
- The Authority is duty bound to verify the corrections and genuinely of the reasons given by the applicant.
- The Appellate authority should give “Speaking Order” and give reasons for non acceptance of evidence produced by the applicant.
- Tribunal gone through the reasons, but judgment was not given on the basis of “CONJECTURE”. Its was not based on all material facts of the cases.

Penalty for Late filing of Audit Report.

- **What is the Conclusion of the Judgment?**

- High court:
- Rejected the Judgment given by the Tribunal and remanded back the case to the Dy.CST for reconsideration.
- Discretionary powers are give to Commissioner for the levy of penalty u/s 61(2).
- Penalty for late filing of audit report is not automatic, otherwise there was no need to give reasonable opportunity to the dealer u/s 61(2).
- Further the commissioner or authorities has power to reduce the penalty u/s 61(2) ,even though it is based on automotive formula of 1/10th of Sales.

Penalty for Late filing of Audit Report.

- **Examples of reasonable causes:**
- (a) Death or physical inability of the partner in-charge of the accounts;
- (b) Non-availability of books of account due to seizure;
- (c) Resignation of the tax auditor and consequent delay;
- (d) Labour problems such as strike, lock out for a long period etc.;
- (e) Loss of books of account because of fire, theft, etc. beyond the control of the assessee;
- (f) Bona fide interpretation of the term “turnover” based on expert advice;
- (g) Natural calamities, commotion etc.
- (h) No loss to revenue in cases where all taxes and dues are paid in time.

Penalty cause not applicable to:

- Departments of the Union Government,
- any Department of any State Government,
- local authorities,
- the Railway Administration as defined under the Indian Railways Act, 1989 (24 of 1989),
- the Konkan Railway Corporation Limited and
- the Maharashtra State Road Transport Corporation constituted under the Road Transport Corporation Act, 1950 (64 of 1950).]

Penalty for filing “Incomplete” Audit Report.

- Section 61(2A):
- “Where a dealer liable to file audit report under this section has **knowingly** furnished the audit report **which is not complete**, then the Commissioner may, after giving a reasonable opportunity of being heard, impose on him, in addition to any tax payable or any other penalty leviable under this section or any other section, a sum by way of penalty equal to one tenth per cent., of the total sales.”

Penalty for filing “Incomplete” Audit Report.

- ***What is mean by “Complete Audit Report”?***
- ***Explanation-II.-*** For the purposes of this section, an audit report shall be ***deemed to be the “complete audit report”*** only if all the items, certification, tables, schedules and annexures are filled appropriately and are arithmetically self-consistent.

A Complete Audit Report means:

- if all the items,
- certificates,
- tables,
- schedules and
- annexures
- are filled appropriately
- and are arithmetically self-consistent.

Penalty for filing “Incomplete” Audit Report.

- Why this provision came w.e.f. 1st May 2011?
- Is this due to negligence or one more TRICK from Sales Tax Dept. to shift the burden?
- Is this not, a very Stringent Compliance of Audit Procedures and Data Compliance on we Auditors?
- Can dealer prove that he does not “know” about the complete report?
- Can dealer shift the responsibility on Auditor for filing incomplete audit report - as he has a faith in him or auditor has prepared and uploaded it?
- Can a Auditor prove that, dealer is “only” responsible for incomplete audit report?
- Is it time to take professional indemnity insurance policy by Auditor?
- Lets discuss how sales dept. will find out “incomplete audit report” ...,

Internal Circular of Desk Audit of 704:

- Security or Desk Audit reports of Form 704 files u/s 61 of the MVAT Act, 2002.
- Refer Internal Circular No.7A of 2009 Dt: 24.03.2009 for Audit Reports of F.Y.2005-06. [7A of 2009](#)
- Refer Internal Circular No.12A of 2009 Dt: 21.05.2009 for Audit Reports of F.Y.2006-07. [12A of 2009](#)
- Internal Circular No.8A of 2010 Dt: 20.07.2010.
- Internal Circular No.7A of 2012 Dt: 10.07.2012.

Internal Circular of Desk Audit of 704:

- The scrutiny & Desk Audit to be done by the 704 Cell in Mumbai and in moffussil , etc a dedicated officer in the Business Audit branch should be entrusted with this job.
- Detailed procedure is laid down in the circular for :

Scrutiny of Audit Reports:

- ▶ All the 704 Forms shall be scrutinized for the discrepancies noted by the auditor and the line of action in such cases, where the auditor has advised the dealer to pay the additional tax shall be as follows:
- ▶ A Notice will be send to dealer, if he pays along with interest the dues, cases will be closed.
- ▶ If not, than assessment proceedings will be initiated and 100% penalty may be levied.

Procedure in case of wanting declarations:

- Issue notice for pending declaration of CST act for assessment directly.
- Transaction wise assessment to be completed .

Criteria for selection of Audit reports for Desk Audit:

- ▶ Detailed desk audit as per internal circular no.7A and 12A should be conducted in the following cases:
 - ▶ **Risky commodities like:**
 - ▶ Works Contract & Builders Cases.
 - ▶ Utensil Dealers.
 - ▶ Paper Dealers.
 - ▶ HAWALA DEALERS AND PURCHASES FROM THEM?
 - ▶ LTU
 - ▶ **A certain cases as selected by Desk Audit Cell (Mumbai). For e.g., J1 and J2 mismatch.**
 - ▶ **All late filers of 704.**
 - ▶ **EIU findings.**

CRITERIA FOR SELECTION UNDER DESK AUDIT:

- **Complexity of VAT dealer business**
- o Dealer whose business involves international exports/ SEZ -
- o Dealer who holds a certificate of entitlement under a package scheme of incentives -
- o **Dealer whose business involves:**
- □ International importer
- □ Branches within the state of Maharashtra
- □ Inter-state Branch transfer and consignment sales
- □ Sales to other states
- □ Purchases from other states
- □ Works contracts
- □ Exempt goods

References of Audit Reports to Business Audit/Investigation Branch:

- In the case where business audit/Refund audit/Investigation has been taken up, the form 704 should be transferred to the respective branches/divisions by the Desk audit cell.
- Respective cell of business audit/refund audit will carry out the desk audit of 704.

Committee of Disciplinary Action on Auditors of 704:

- During the scrutiny or desk audit of 704, if it is observed by the officer that the audit report submitted by the auditor is
- incomplete or
- has been wrongly certified by the auditor or,
- Auditor is negligent in preparing audit report.

Committee of Disciplinary Action on Auditors of 704:

- ▶ Desk audit cell in Mumbai or JCIT (VAT admin) will report to the following committee for examination and further necessary action. The constitution of the committee is as under:
- ▶ Addl. Commissioner of Sales Tax (Est.) **Chairmen.**
- ▶ Joint Commissioner of Sales Tax (HQ-1) **Member.**
- ▶ Joint Commissioner of Sales Tax (Legal) **Member.**
- ▶ Deputy Commissioner of Sales Tax (Desk Audit Cell Mumbai) **Member Secretary.**

Committee of Disciplinary Action on Auditors of 704:

- ▶ The committee shall scrutinize the audit report referred to them and if they form an opinion that disciplinary action needs to be initiated against the auditor, then the committee shall refer the case to respective Institute for initiation of disciplinary action, with the approval of Commissioner of Sales Tax.
- ▶ Such cases should be selected for business audit.
- ▶ All the officers are directed to follow the instructions scrupulously and any deviation from these instructions will be viewed seriously.

General Discrepancies observed by S.T. Dept. in MVAT Audit Report Form 704 filed

- **No information is filled in Annexure J1**

Due care needs to be taken to fill the details in Annexure J1 and tally with the tax wise details mentioned in Schedule I to V

- **Copying TIN of one Dealer and Figures of another Dealer**

Due care to be taken in filling up Annexure J1 and J2 as it is observed that in many cases figures are interchanged.

- **Information in Annexure J1 and J2 be net of Returns, D/N and C/N**

As the Annexure J3 and J4 are deleted in the new format, the figures to be given in the Annexure J1 and J2 should be net of Goods Returns, Discounts, Debit Notes, Credit Notes etc.

General Discrepancies observed by S.T. Dept. in MVAT Audit Report Form 704 filed

- **Invoice wise Details are not required in the Annexure J1 and J2**

The details in Annexure J1 and J2 are TIN-wise and not Transaction wise.

- **Tax Paid in Annexure J2 not reconcile with Annexure E and ITC**

Similarly care needs to be taken to fill the details in Annexure J2 to cover all the purchases whether set-off is taken or not and tally with the tax wise details mentioned in Annexure E Section I.

Remember to enter the figures at Sr No 12 of Annexure E Section 2 of the purchases and tax paid of which set-off is not claimed so that ITC can be matched with Annexure J2.

General Discrepancies observed by S.T. Dept. in MVAT Audit Report Form 704 filed

- Due care to be taken in filling Net Purchases amount and Tax Amount in respective columns as in many cases it is observed that figures are interchanged.
- Also ensure that tax amount is not more than the maximum tax rate applicable multiplied by Net Purchase Amount.
- Details of VAT TDS needs to be mentioned in Annexure C and D
TDS deducted as per the provisions of the MVAT Act, 2002 needs to be mentioned in Annexure D and not the TDS as per the provisions of the Income Tax Act, 1961.

General Discrepancies observed by S.T. Dept, in MVAT Audit Report Form 704 filed

- Tax Position as per Part 1 and Schedules
- Ensure that the Tax Position as per Part 1 Table 2 matches with Total Tax Position as per Schedules I to V.
- Similarly Ensure that the Tax Position as per Part 1 Table 3 matches with Tax Position as per Schedule VI.
- Mention the items like b/f refund, refund already granted, purchase tax payable, late fee payable in others wherever necessary.
- Hawala transactions and there audit.
- Non compliance of Instructions of Audit report.

Unanswered issues:

- Auditor is servant of the Govt? to whom no fees is paid by the Govt, rather it is paid by the dealer. The MVAT Audit report format is a format of Assessment Order.
- There is vast difference in treatment given to an Assessing officer and a Auditor now a days.
- Rather than giving a reward to auditor, he is punished, is that same happening with Assessing officer?

Unanswered issues:

- If any mistake is committed by Auditor or by the dealer while submitting Audit Report, levy of harsh penalties for technical errors through oversight is unjustifiable.
- As such there should be provision for rectification of Audit Report filed by the Auditor on behalf of the dealer in the interest of revenue.

How to make it complete and save us from penalty:

- Following points, which will help in completing Audit Report in Form 704:
- **Complete Disclosure under Part I- Para 3 for specified certifications points and Para 5 for other Observations...**
- What is mean by Qualification, Remark, Observation, Opinion or Disclosure?
- Disclosure under Annexure E- Reasons for Excess or Short Claim of Setoff.
- Disclosure under Annexure F- Method of Computation and Observations, if any.
- Annexure J- Tin wise MS Sales, Purchases, OMS Purchases, etc.
- (Keep minimum amount entries on NON Tin Line item of Annexure)
- **(Credit Notes and Debit Notes to be checked fully)**
- Annexure K- Reconciliation Statement of Sales and Purchases.
- Audit working Paper and letter of management representation must.

Some illustrative notes, remarks, comments...

- **Accounting Treatment and disclosure of VAT Setoff:**
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- *For Accounting purchases other than capital goods, the Dealer has followed Para 6 and 7 of AS-2 " Valuation on Inventories" were " Cost of Purchases" includes only those taxes, which are not subsequently recoverable by the enterprise from the taxing authorities." Accordingly a separate ledger of Setoff receivable has been mentioned.*

Some illustrative notes, remarks, comments...

- **Accounting Treatment and disclosure of Capital Goods and Setoff thereof:**

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- *The dealer has followed Para 9.1 of AS-10 "Accounting of Fixed Assets", which provides that "The Cost of an item of fixed assets comprises its purchase price, including import duties and other non-refundable taxes or levies and directly attributable cost of bringing the assets to its working condition for its intended use; any trade discounts and rebates are deducted in arriving at the purchase price..."*

Some illustrative notes, remarks, comments..,

- **Instruction No. 29 to Audit Report;**

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- **Non availability of Trial Balance in case of dealer having Multi State Activity:**

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- “The dealer is carrying on business in Multi States, i.e., in state other than Maharashtra. It’s HO/ Branch is at _____ in Maharashtra for which MVAT and CST registration is obtained by the dealer. As per information and explanation provided by the dealer, separate books of accounts are not maintained State Wise. Further dealer do not have an accounting system or software for preparing State wise trial balance. The dealer maintains accounts in SAP/ERP software on all India bases and have common data base. Separate Sales and purchase register is maintained by the dealer for the transactions of Maharashtra State, on the basis of which the dealer regularly files MVAT and CST returns. The Sales and Purchase reconciliation of Books of accounts and Form 704 is provided in Annexure “K”. Due to non availability of trial balance of Maharashtra State from dealer the same has not been attached which was required as per instruction no 29 to Audit report.”

Some illustrative notes, remarks, comments..,

- **Verification of Bank Statements: Clause m certification:**
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- “The Statutory Audit of Books of Accounts of Dealer has been conducted by an independent auditor under the companies act or under Income tax Act. The dealer has provided the audited books of accounts to us. As per the information and explanation provided by the dealer, the statutory auditors have audited the books of accounts with the bank statements and drawn profit and loss account and balance sheet. The dealer has certified that the books of accounts drawn are in agreement to all bank statements. With reference to Para 1C in part 1 of 704, the limitation of audit, we have certified the same on the above basis and explanation provided by the dealer.”

Some illustrative notes, remarks, comments..,

- **Annexure J: TINWISE details of sales and purchases.**
- “The dealer has provided information in Annexure J to the extend available and possible. The same has been reported on the basis of test check carried out by us as mentioned in para 1 of Part 1 of this report .”

PLEASE REMEMBER!

- The vat auditor will have to make suitable observations, remarks, qualifications, etc. depending on the facts of the each case and guidelines issued by ICAI in this regards.



Section 32A & 61: Payment of agreed dues as per Form 704 by dealer.

- Recent amendment w.e.f. 1st May 2013.
- After submission of Audit report u/s 61, if any dues are recommended by Auditor,
- And dealer has accepted the dues, then
- On receipt of Notice by dealer to pay the dues,
- All agreed dues along with interest u/s 30(2) needs to be paid.
- Within 30 days from date of receipt of Notice.
- Dues below Rs. 100 may not be recovered.
- Thus now Automatic recovery on acceptance of Audit report dues.
- *In such cases interest U/s 30(4) shall not be made applicable.*

Thanks and wish you all a
happy new year

