

SEMINAR ON
ASSESSMENT
AND BUSINESS AUDIT

(Under The MVAT ACT 2002)

ORGANISED BY ICAI- WIRC ,MUMBAI

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MVATASSESSMENT

- Assessment(Meaning)-No where defined in the Act .
- It is ascertainment of Turnover declared ,ITC/ Set Off claimed , Tax liability declared and other claims as per returns filed by the assessee based on Books of accounts & other documents & records maintained .
- It is done by the Departmental officer.
- It also includes verification of claims as per returns filed and books of accounts maintained with relevant documentary evidences.

What is a return?

- Return -Summary of Sales and Purchases effected by a dealer disclosing its break up with eligible set off and liability on sales side with tax paid details for a specified period.
- It is filed periodically say monthly , quarterly or six monthly as the case may be based on refund / tax liability of previous year .
- Now days the periodicity of filing the returns is declared on Web site of the Department.

What constitutes Purchase & Sale

Purchase includes

- ./ Local Tax paid purchases.
- ./ Interstate purchases
- ./ Imports Direct
- ./ Tax free purchases
- ./ High seas purchases
- ./ Job work / labour charges
- ./ Others .

Sale includes

- Local sales
- Exports
- Interstate sales
- Job work / labour receipts
- Deemed sale receipts ie Works Contract , lease
- Tax free sales .
- Others



Importance of Assessment & Business Audit

- VAT / Sales Tax being an Indirect Tax it is collected ultimately from the consumers / public at large making its accountability a very important duty of the Government .
- Government probably wanted to have proper check on Tax Collection and its Deposits by the assessee's / dealers who acts as an agents of the Government who collect taxes & pay into Government treasury.
- In pre-VAT era also (Bombay Sales Tax Act 1959) assessment was considered very important .
- It is provided in all State VAT Acts and was very much prevalent in pre VAT period of Sales Tax.prior to 2005.

Assessment & Business Audit

Assessment

- Strictly speaking it is conducted under section 23 of The MVAT Act 2002 and assessment order is passed.
- There are many sub sections in this section 23 covering different situations for assessment .
- Usually it is for 12 months (FY) and less likely to be for a shorter period except initial period & last period of the business .
- All Large Tax Payer (LTU) are assessed every year.

Business Audit

- This is new concept introduced after introduction of VAT under section 22
- Though not a full fledge assessment , it is for specific issues raised or queries raised by Department based on returns filed and VAT Audit Report in Form no 704 uploaded by the Dealer .
- Very thin line difference between Assessment & BU.
- The criterias for selection of the cases is not static but dynamic and it is discretion of the Commissioner
- The criterias may change every year

Assessment & Business Audit

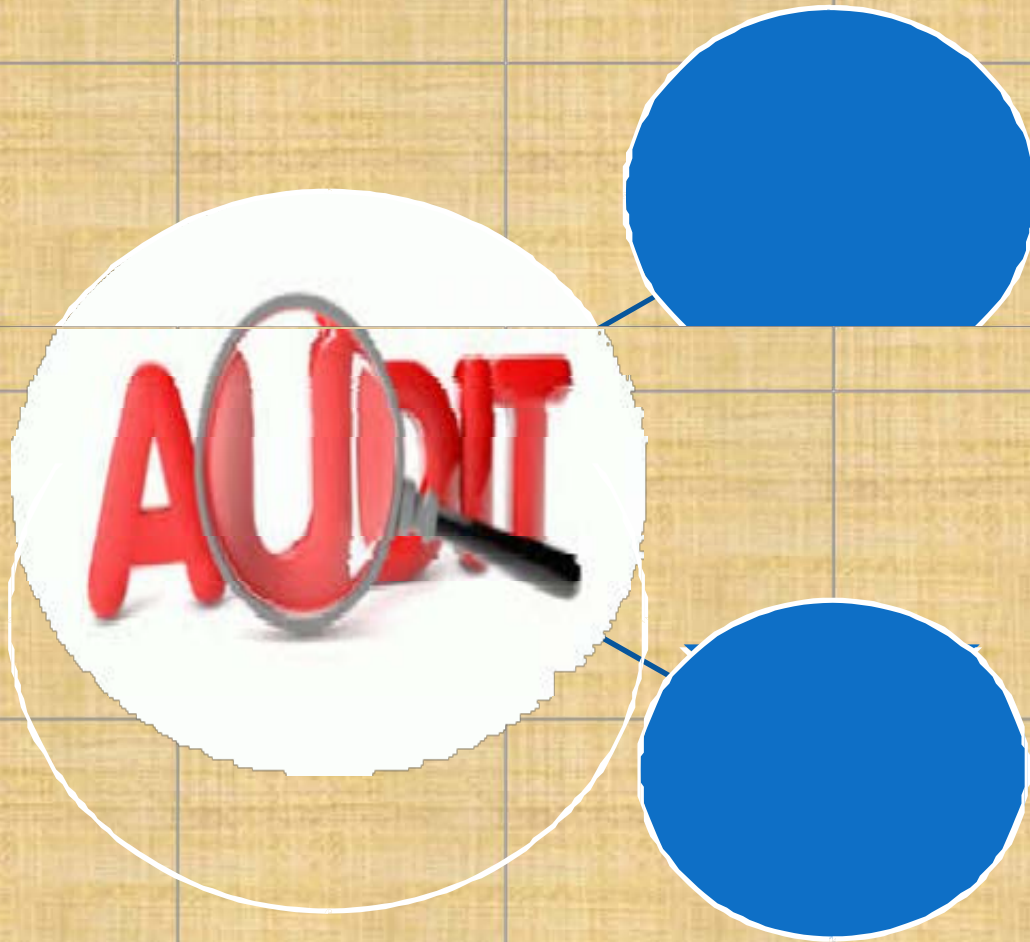
Assessment

- Once notice for assessment is issued assessment order is passed by the authority.
- The cases are selected by Central unit called EIU (Economic Intelligence Unit) & allotted.
- Invariably assessment order is passed in each & every case where notice under section 23 is issued for assessment ie 301, 302 .

Business Audit

- Usually assessment notice is not issued & Form no 603 is issued calling details & relevant records pertaining to the query raised.
- Subsequently observations & defects / findings by the officer are intimated in Form no 604 .
- Usually revised return & tax payment is expected from the assessee./ dealer based on Form 604.
- If assessee does not agree finally assessment notice is issued & order is passed .

Types of Business Audit



DESK AUDIT

- **Desk Audit** is conducted usually for glaring mistakes / defects noticed in returns or VAT Audit Report in Form no 704 uploaded by the assessee eg. CST declarations pending (Form C , F , H etc.).
- Purchase & Sales mismatch ,TDS etc. The assessee is asked to cure the defects or answer the queries raised by the Department.
- If assessee agrees to the findings , defects as pointed out by the Department ,then assessee is directed to revise the returns accordingly and pay taxes if any .
- No need to pass assessment order by the Departmental Officer because of self admission by the dealer through REVISED RETURN .

Business Audit-Issue Based

- Issue Based Audit ; Here certain issues are raised and communicated to the dealer & dealer is asked to explain the same with records & Books Of Accounts eg. Set off claim , Job Work details , Tax Free Sales, High Seas Sales , Pending Declarations , other deductions , TDS certificates , Exporters with huge claim etc.
- It is conducted under section 22 of The MVAT Act 2002 .
- Now since last 3 year th dealer' whos purchase include Hawal suppliers identified by the Department are covered under Issue Based Audit & other cases selected based on different criteria's are also covered under IBA.
- Assessee is asked to revise the returns if dues are created due to withdrawal of set off or any of the reasons which results in increased liability as per Department's findings The extra dues are payable with regular interest @ 1.25% pm (s.30(2)) and 25% penal interest (s.30 (4)) on additional dues created & deducted .
- Non filers , Short filers of returns & dealers depositing taxes on adhoc basis Dealers filing inconsistent returns may be covered under Business Audit .

When Business Audit is converted into Assessment?

- If assessee files revised returns as per findings of the Officer the matter is closed after taxes are paid and returns are revised by the dealer according to the findings noted by the officer .
- If assessee does not file revised returns and disagrees to the findings of the officer the case is taken up for assessment after issuing the notice under section 23 of The MVAT Act 2002
- For pending CST declarations assessment notice is issued under The CST Act 1956 .

Records to be submitted for Verification

- In Issue Based Audit the query is supposed to be complied and therefore the relevant records and its summary may be produced before the assessing authority .
- No need to produce all the Books of Accounts. except the record directly linked to the query.
- In case of regular assessment under section 23 (2) (3) (4) usually all Books of accounts are directed to be produced before the assessing authority .INCLUDING THE BALANCE SHEET AND OTHER BUSINESS RELETED DOCUMENTS.
- If records are not produced assessing officer is free to pass Ex. Parte Order as per his Best Judgement and discretion .
- ALL ASSESSMENT ORDERS ARE APPELLABLE AT HIGHER FORUMS ie DC APPEAL / JC APPEAL/ TRIBUNAL /HC / SC.

ComputerizedDeskAudit(CDA)

- New Concept introduced vide circular dated 06/08/2014 no. 14 T of 2014 it is for the FY 2011/12.
- No personal hearing but acceptance / non acceptance through system only.
- It is for the cases other than those selected for comprehensive assessments .It is based on electronic analysis of the data available with the Department .
- LTU & high value discrepancy cases are not covered .

CDA ...

- In the said CDA 11 parameters are checked which are from the information available with the Department ie Form no 704 and its annexures & returns filed by the dealers .
- The 11 parameters declared are mainly related to set off claims excess, set off from non filers , set off from short filers , set off from non genuine suppliers . Asked to pay amount as per VAT Audit Report in Form 704.are detected in the CDA.
- CDA dealer list available on web site

CDA ...

- Communication of CDA findings by the Dept. in Form no 604 A followed by annexures . It is based on 11 parameters as defined in the circular.
- Either to accept the parameter fully or not depend upon the assessee but it cannot be accepted partly ie suppose 3 discrepancies are communicated (out of 11 parameters) assessee can accept all or fully reject them or can accept one but with full figures of additional dues mentioned against that discrepancy

CDA ...

- Compliance on the system itself with interest u/s 30(2) & 30(4) payable
- Partial acceptance of additional tax liability against any parameter not provided to be accepted fully or not.

CDA ...

- Once additional tax liability as per CDA is accepted & paid with interest u/s 30 (2) & 30(4). Revised return to be filed by the assessee on line & case will be closed .
- If findings as per CDA not accepted as per procedure described then case will be taken up for regular assessment for scrutiny for confirmations of facts through personal hearings of the assessee in which the penalty u/s 29 (3) will be leviable by the Department .
- Closure of CDA will be done issuing Form no 605.

Assessment under MVAT section 23 with subsections.

- D₂₃(1) –Best Judgement Assessment (BJA) for non filing of returns done by the Departmental officer. When a RD fails to file return within the prescribed date .No notice /opportunity is required to be given to the dealer. Usually passed for a single period of return say monthly , quarterly .when there is default .
- Once return is filed by the dealer within 3 months of the said BJA . The BJA gets automatically cancelled.
 - BJA Order required to be passed within 3 years of the period of the defaulted return.If return defaulted is not filed by the dealer then BJA becomes final and dues recoverable as per law.
 - Even after the return is filed within time after the BJA case is open for regular assessment under other subsections. This subsection is provided in the Act probably to reduce number of late filers & non filers of the returns .

ASSESSMENT UNDER MVAT section 23

- D₂₃ (2) - Regular Assessment (in time returns) where commissioner /Department wants to check the correctness & completeness of the returns filed.
- The assessment to be completed within 4 years of the FY end. After verification of the records & books of accounts.
 - Notice issued in Form no 301 & it must be served properly .
 - The period for the assessment was extended for 3 months for the FY 2008/2009 ie up to 30/06/2013 ,instead of 31/03/2013.
 - For initial 3 FY'S of VAT era ie FY 2005/2006 to 2007/2008
 - Separate sub section is provided .which provides 7 years for completing the assessments of first 3 years of VAT .

Assessment section 23 ...

- D23 (3)- Regular assessment (late returns filed by the dealer or returns not filed)assessment to be completed within 5 years from the end of the FY. Notice in Form no 301.
- 23(3A)- Special provision for initial 3 Vat YEARS Regular assessment for the FY.2005 to 2008 .
 - Assessment to be completed within 7 years of the FY end.
 - The said period of the assessment was extended by three months for the First FY 2005/2006 ie. assessment were completed before 30/06/2013 instead 31/03/2013.
 - The F.Y. 2007/2008 will become time barred on 31/03/2015. Notice in Form no 301.

Assessmentsection23 ...

- D23(4)-Assessment of Unregistered dealers to be completed within 8 years of the FY end .
- Where a commissioner has reason to believe a dealer has failed to apply for registration or has not applied for a RC/ TIN in time .even after exceeding the turnover limit to obtain a TIN number .
 - The Commissioner can proceed to assess the dealer any time & assessment shall be completed within 8 years of that FY .end sought to be taxed .

Assessment section 23 ...

□ 23(5) - It is transaction assessment

◆ 23(5) (a)-

- It is most widely used section it can be called a Transaction assessment section.
- Here commissioner is satisfied that tax is evaded or sought to be evaded or tax liability is not disclosed correctly or excess set off has been claimed by any dealer in respect of any period or periods by not recording or incorrectly recording the transactions of sale or purchase.
- This sub section can be invoked .
- The notice for assessment in Form no 302 u/s 23(5) can be issued even though any other notice is issued under other provisions of the MVAT Act ..
- Surprisingly No time limit prescribed for the initiation & completion of the assessment under this sub-section.

Assessment section 23 ...

- ◆ 23 (5) (b)-when action u/s 64 is initiated by the Dept.ie. search & seizure.
- The visiting officer is deemed to have acquired jurisdiction under this subsection .The officer is required to issue notice & assess the dealer under this sub section .It may be for certain issues or transactions or claim relating to any period or periods .Such assessment proceedings shall be deemed to have been transferred to the said visiting officer .
- ◆ 23 (5)(C)-
The assessment proceedings under this subsection shall be without prejudice to the assessment proceedings in respect of any period or periods under any other provisions of this act by any authority who other wise has the jurisdiction to assess such dealer or person in respect of other transactions of sale or purchase or any other claim not covered by subsection 23 (2) (3) .

Assessment section 23 ...

D 23 (5)-

- ◆ 23(5) (d)-This sub section provides that a dealer to be assessed for the transactions so detected & may be assessed separately for other sale or purchase by other officer .
- Provided same transactions shall not be taxed once again under other provision of the law .Thus two assessment orders may be passed for a single FY by two different officers covering different turnover / transactions .

D 23(6)-If concealment is noticed by the Commissioner in respect of any sale or purchase or in his opinion set off is claimed excess or deductions wrongly given or tax paid at lower rate by the dealer then BJA may be passed within 6 years from FY end.

- It is irrespective of all other subsections having overriding effect .on above sections Notice in Form no 315 must be issued to the dealer.

Assessment section 23 ...

- ◻ 23 (7)- Where fresh assessment is to be done to give effect to any Tribunal or HC or Apex Court findings then such assessment is required to be made within 36 months from the date of communication of such findings or direction to the commissioner .
 - If dealer provides certified copy of the said order to the commissioner then 36 months to be counted from such date of supply of such order to the commissioner by the dealer .

- ◻ 23(8) The commissioner may call for the record and assess a dealer even though the said issue involved in the matter is already decided against state or commissioner by the Tribunal or the High Court & CST has filed appeal against such order.
 - But no recovery proceedings to be initiated as per this order . Such order to be modified as per order of Higher legal Forum .

Assessment section 23 ...

- D 23(9)- deleted
- D 23(10) a dealer or a person may be assessed under a single notice and by a single order of assessment in respect of more than one period covered by a return so long as all such periods are comprised in one FY .
 - This sub section appears to be a clarificatory in nature that single assessment order will be/ may be passed for a FY.
- D 23 (11) This section provides for cancellation ex-parte order issued u/s 23 (2) (3) (4) . Application in Form no 316 to be filed by the dealer within one month of receipt of such assessment & officer to issue Form no 317 within 3 months cancelling the said order. Only one application for a single FY to be entertained .
 - If no order passed by the officer in response to Form no 316 within 3 months then it is deemed that the said assessment is cancelled .

Assessment section continued....

- ◻ 23(12)-The fresh order of assessment shall be passed within 18 months of the date of service of the cancellation order or from the date the assessment order that is deemed to have been cancelled under provision of section 11 .

- ◻ 23 (13)-special section for Builder & Developer .
 - By this new section all assessments to be time barred on 31/03/2014 will have to be completed by 30/09/2015.
 - Thus time barring period extended for the FY which otherwise would have become time barred on 31/03/2014.ie FY. 2006/2007 .& 2009/2010.will now become time barred on 30/09/2015 .
 - Assessment order in Form no 303 under all sub sections.

Conclusion-Assessment&BusinessAudits

Assessment

- After verification of Books of accounts & records officer will pass assessment order with his findings & reasoning for disallowing the claims if any disallowed by the authority.
- He will levy interest & penalties also Assessment may result in additional dues refund or NIL dues .
- The assessment order is appealable at higher level based on facts & legal issues .

Business Audits

- After verification of Books of accounts & records ,officer will issue his findings in Form no 604 & will direct to file revised returns if findings are acceptable to the dealer.
- If dealer accepts the same & files revised returns & pay taxes .The file is closed.
- No assessment order is passed Form no 605 is issued which is a closure intimation to the dealer It is introduced very recently .

Conclusion-Assessment&BusinessAudit

Assessment

- Once order is passed it can be challenged in 1st appeal or second appeal at Tribunal Then to the Hon.High Court & Finally to the Hon. Apex Court

Business Audit

- If Dealer do not agree to the findings then it results into assessment order after proper service of notice in Form no 301, 302 315 etc. to be issued to the dealer.
- Once revised return is filed dealer cannot challenge the same . No appeal can be filed against revised returns.

