

CHAPTER – V (Revenue Sector)

TAXES ON SALES, TRADE, *etc.*

AUDIT OF TRANSACTIONS

- 5.4 Erroneous allowance of dual credit of interest**
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CHAPTER V

TAXES ON SALES, TRADE, ETC.

5.1 Tax administration

Levy and collection of Value Added Tax (VAT) receipts is governed by the Maharashtra Value Added Tax Act, 2002 (MVAT Act), Maharashtra Value Added Tax Rules, 2005 (MVAT Rules), notifications and instructions issued by the Government from time to time.

The Sales Tax Department renamed as Department of Goods and Services Tax (GST) from 01 July 2017 functions under the administrative control of the Additional Chief Secretary, Finance Department at the Government level. The Commissioner of State Tax, Maharashtra State heads the department and is assisted by a Special Commissioner of State Tax/Additional Commissioners/Joint Commissioners/Deputy Commissioners/Assistant Commissioners and State Tax Officers at various levels. There were 13 divisions dealing with registration, assessment and collection of the taxes in the department.

The MVAT Act came into force with effect from 01 April 2005. Prior to the introduction of the MVAT Act, the assessment, levy and collection of sales tax was governed by the Bombay Sales Tax Act, 1959 (BST Act) which was repealed with effect from 01 April 2005. With effect from 01 July 2017, tax payable on sales and services of all goods (except petroleum products and alcoholic drinks) is governed by the Maharashtra Goods and Services Tax Act, 2017. Taxation of petroleum and alcoholic products still continues to be governed under the MVAT Act.

5.2 Internal Audit

The department has an internal audit wing (IAW) headed by the Joint Commissioner of State Tax (Internal Audit).

Information regarding position of cases selected for internal audit and actually audited is mentioned in **Table 5.2**.

Table 5.2

Year	No. of cases selected for audit by IAW	No. of cases audited by IAW	Audit observations raised By IAW	Audit observations settled till date	Audit observations pending as on 31 March of the year
2014-15	13,140	17,209	5,028	3,869	1,159
2015-16	15,660	17,086	4,312	2,825	1,487
2016-17	15,055	18,197	4,185	1,564	2,621
2017-18	17,350	25,673	5,288	3,265	2,023
2018-19	17,350	23,475	4,206	1,642	2,564
Total	78,555	1,01,640	23,019	13,165	9,854

Source: Information furnished by the department

During the last five years, the number of cases actually audited has exceeded the number of cases planned to be audited. The department has settled 57 per cent of the observations raised by IAW.

5.3 Results of Audit

There are 354 auditable units in the Goods and Services Tax Department, out of these, audit selected 166 units for test check wherein 1,32,998 assessments were finalized. Out of these, Audit test checked 33,301 assessments (*approximately 25.04 per cent*) during the year 2018-19 and noticed irregularities/omissions in 975 cases (*2.93 per cent* of the selected sample), relating to non/short levy of tax/interest/penalty, irregular/excess grant of set-off of tax, non-submission of declaration forms, *etc.* involving amount of ₹ 40.15 crore.

Audit had pointed out similar omissions in earlier years also, but not only do these irregularities persist but also remain undetected till the next audit is conducted. There is a need for the Government to improve the internal control system including strengthening of internal audit so that recurrence of such cases can be avoided. Irregularities noticed are broadly categorized as follows-

Table 5.3

(₹ in crore)

Sl. No.	Category	Number of observations	Amount
1	Non/short levy of tax	313	14.69
2	Incorrect grant/excess set-off of tax	95	16.81
3	Non/short levy of interest/penalty	180	3.84
4	Non-forfeiture of excess collection of tax	30	0.74
5	Other irregularities like non submission of declaration forms, computation errors <i>etc.</i>	357	4.07
Total		975	40.15

During the year, the department accepted underassessment and other deficiencies of ₹ 4.78 crore in 185 observations out of which 34 observations involving ₹ 42.78 lakh were pointed out in audit during 2018-19 and the rest in earlier years. The department also recovered an amount of ₹ 4.49 crore in 2018-19 in respect of 199 observations accepted during 2018-19 and earlier years, of which an amount of ₹ 39.80 lakh pertained to 31 observations pointed out in 2018-19.

In addition to this, the department also intimated recovery of ₹ 1.95 crore by way of explanatory memoranda during the year in respect of paragraphs appearing in earlier audit reports.

With automation of the collection of Goods and Service Tax (GST) having taken place, it is essential for Audit to transition from sample checks to a comprehensive check of all transactions, to fulfil the CAG's Constitutional mandate. The State Government did not provide access to the data related to GST. This is in violation of constitutional provisions (Article 149) and the Section 18 of the Duties, Powers & Conditions of the Services of CAG Act 1971.

Not having access to the data pertaining to all the GST transactions has come in the way of comprehensively auditing the GST receipts.

The accounts for the year 2018-19 are, therefore, certified on the basis of test audit, as was done when records were manually maintained, as a one-time exception.

A few illustrative cases involving an amount of ₹ 1.65 crore are discussed in the succeeding paragraphs.

COMPLIANCE AUDIT

Though the procedures for assessments under the Maharashtra Value Added Tax, 2002 (MVAT Act) and the Central Sales Tax Act, 1956 (CST Act) are well laid out, the assessing authorities are required to exercise due diligence while assessing the cases and there should be zero tolerance towards any errors/omissions on their part. However, audit observed cases of non-observance of provisions of Acts/Rules, short levy of tax, irregular grant of set-off, etc. A few interesting cases are mentioned in the succeeding paragraphs.

5.4 Erroneous allowance of dual credit of interest

According to section 30(2) of the Maharashtra Value Added Tax Act 2002 (MVAT Act), a registered dealer who fails to pay the tax as per his returns within the specified time, is liable to pay by way of simple interest, a sum calculated at the prescribed rate on the amount of such tax for each month or part thereof after the last date by which he should have paid such tax.

According to section 30(3) of MVAT Act, if any tax remains unpaid up to one month after the end of the period of assessment, then the dealer is liable to pay simple interest at the rates as specified from time to time, on such tax for each month or part thereof from the date immediately following the last date of the period for which the dealer has been assessed till the date of the order of assessment.

According to section 40 of MVAT Act, any payment made by the dealer or person in respect of any period towards any amount due as per any order passed under the Act shall first be adjusted against the interest payable by him on the date of payment in respect of the said period and thereafter towards the amounts due as a penalty, sum forfeited and fine. Any amount remaining unadjusted shall then be adjusted towards the tax payable in respect of that period.

During scrutiny (September 2018) of assessment records in the office of the Deputy Commissioner of Sales Tax, E-638, Large Taxpayer Unit, Mazgaon, Audit noticed that an importer and reseller in electronic goods paid VAT of ₹ 2.03 crore (tax of ₹ 1.88 crore and interest of ₹ 15.05 lakh under section 30(2) of the Act) for the year 2013-14. The assessing authority while finalising the assessment order (March 2018) allowed the entire payment of ₹ 2.03 crore as tax credit and determined interest of ₹ 15.05 lakh for delayed payment of tax against which he again gave the credit of ₹ 15.05 lakh paid by the dealer as interest in his returns. Thus, the amount of ₹ 15.05 lakh was credited twice (for tax and interest). This resulted in short raising of demand of ₹ 15.05 lakh.

Further, in view of section 40 of the MVAT Act, interest under section 30(3) on dues arising after assessment was also leviable and was worked out to ₹ 11.93 lakh by Audit. Thus, the total underassessment amounted to ₹ 26.98 lakh.

On this being brought to notice (September 2018) the assessing authority concerned accepted the observation and raised (April 2019) additional demand

of ₹ 26.99 lakh including interest under section 30(3) of ₹ 11.93 lakh. A report on the recovery was awaited.

The matter was brought to the notice of the Government in August 2019; reply was awaited (June 2020).

5.5 Short levy of tax due to irregular allowance of inter-state sales at concessional rate

Under the provisions of section 8(1) of the Central Sales Tax Act 1956, every dealer who sells goods in the course of inter-state trade or commerce to a registered dealer outside the state is liable to pay tax at the rate of two *per cent* (with effect from 01 June 2008) on such turnover. Section 8(3) of the Act further states that such goods or class of goods should be specified in the certificate of the registration of the purchasing dealer, and should be used by him either for resale or in the manufacture or processing of goods for sale or in the telecommunication network or in mining or in the generation or distribution of electricity or any other form of power or for packing of goods or classes of goods specified in the registration certificate of the purchasing dealer. As per section 8(4) of the Act, the selling dealer should furnish a declaration in form C, duly filled and signed by the purchasing dealer for claiming the concessional rates of tax.

During the test-check (May 2018) of assessment orders and other relevant records in one office¹, it was noticed that a dealer of motor cars, spare parts and accessories (taxable @ 12.5 *per cent* under schedule E of the Maharashtra Value Added Tax Act, 2002) had claimed concessional rate of tax on inter-state sales of four cars valued at ₹ 1.58 crore on the production of declarations in form C. These sales were made to four dealers in the Union Territories of Daman & Diu and Dadra & Nagar Haveli during the year 2011-12 and 2013-14. The assessing authority had allowed (December 2017 and March 2018) the claim of concessional rate of tax of two *per cent* on the sales.

Audit scrutiny revealed that one purchaser/dealer to whom the car was sold, had purchased the car on borrowed capital and the car was hypothecated to a financial institution as per the tax invoice found on record. This indicated that the car was not purchased for resale but for personal use. Hence, the sale on form C was liable to be disallowed as contravention under section 8(3) of the Central Sales Tax Act and taxed @ 12.5 *per cent* under the Maharashtra Value Added Tax act instead of the concessional rate of two *per cent* under the Central Sales Tax Act. Tax invoices of the other dealers were not available on record. As such, the sale of these cars on form C needed verification, as it involved tax implication of ₹ 16.29 lakh, along with interest thereon of ₹ 15.64 lakh.

On this being brought to notice (June 2018), the department accepted the observation and passed (September 2018) rectification order raising additional demand of ₹ 36.52 lakh including interest. The department further intimated (February 2019) that the dealer had filed appeal against the rectification order. Further progress in the matter has not been received.

¹ Office of the Dy. Commissioner of State Tax E-624, Large Taxpayer Unit, Mazgaon, Mumbai

Similar case has been earlier reported in paragraph 2.5.2.2 in the audit report of the Comptroller and Auditor General of India for the year ended 31 March 2017 on the Revenue Sector of the Government of Maharashtra. In the paragraph, we had commented on the sale of luxury cars on form C by a car dealer in Maharashtra to purchaser/dealers in other states, who were not sellers/resellers of cars. Since, these dealers had not purchased the cars for resale, the use of form C for such purchases was in contravention of section 8(3) of the Central Sales Tax Act. The department had countered that in such transactions, the seller has no control over the purchasers situated in other states and can collect the amount only in the light of declaration mentioned in the certificate in form C.

Though it is true that the department has no control over the purchasers of other states, it can liaise with the form C issuing authorities of other states for verification in such cases, so that the loss of revenue can be avoided.

The matter was brought to the notice of the Government in December 2019; reply was awaited (June 2020).

5.6 Non-levy of penalty under section 61(2) of MVAT Act for late filing of Audit Report in Form 704

As per provision of section 61(1) of MVAT Act, read with Rules 65 and 66 of MVAT Rules, every dealer having a turnover over ₹ 60 lakh shall get his accounts in respect of such year audited by a Chartered Accountant within the prescribed period from the end of the year and submit the report of audit (in Form 704) within ten months (nine months and fifteen days vide notification dated 21 November 2012) of the year to which the report relates. Under section 61(2) of the said Act, 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, for failure to file the audit report. As per Maharashtra Sales Tax Trade Circular No. 2T of 2015 dated 14 January 2015, the due date for filing audit report in form 704 for assessment year 2013-14 was 30 January 2015 and Trade Circular No. 3T of 2016 dated 28 January 2016, the due date for filing audit report in form 704 for assessment year 2014-15 was 21 January 2016.

Scrutiny of records in five offices² between June 2018 and March 2019 revealed that five dealers had submitted/uploaded the reports of audit in form 704 after the due date/extended date prescribed by the office of the Commissioner from time to time. However, the assessing authorities had not issued show cause notices for levy of penalty as prescribed under the Act. Thus, penalty leviable in these cases amounting to ₹ 63.67 lakh could not levied. The cases are as follows:

² Office(s) of the Deputy Commissioner of State Tax-LTU E-634, Nodal-4-VAT-E-825, Nodal-6-VAT-E-908 Mazgaon, NAN-E-002 Nanded and PUN-E-803 Pune

Table 5.6

(₹ in lakh)

Sl. No.	Name of Dealer	Assessment Period	Due/ extended date of filing F-704	Actual date of filing F-704	GTO of sales	Penalty leviable under section 61(2)
		Date of Assessment				
1	Dealer A	2011-12	15/01/2013	10/03/2014	4,782.77	4.78
		28/10/2016				
2	Dealer B	2013-14	30/01/2015	31/10/2015	10,404.16	10.40
		25/01/2018				
3	Dealer C	2013-14	30/01/2015	19/10/2015	26,591.07	26.59
		06/11/2017				
4	Dealer D	2014-15	21/01/2016	15/06/2016	19,397.77	19.40
		31/05/2017				
5	Dealer E	2013-14	30/01/2015	01/09/2016	2,502.59	2.50
		20/03/2018				
Total						63.67

The matter was brought to the notice of the department between June 2018 to March 2019. In one case, the assessing authority stated that penalty u/s 61(2) was discretionary in nature and hence the observation regarding levy was not acceptable. However, the reasons behind exercising discretionary powers were not available on record. Replies in respect of the remaining cases not received.

The matter was brought to the notice of the Government in January 2020; reply was awaited (June 2020).

5.7 Non/short levy of interest under section 30(2) of Maharashtra Value Added Tax Act 2002

Under the provisions of section 30(2) of MVAT Act, a registered dealer who fails to pay the tax according to the return within the time specified by or under the Act shall be liable to pay by way of simple interest in addition to the amount of such tax, a sum calculated at the prescribed rate on the amount of such tax, for each month part thereof, after the last day by which he should have paid such tax.

Scrutiny of records in nine offices³ revealed that nine dealers assessed between February 2017 and March 2018 for the periods from 2011-12 to 2013-14 had delayed payment of taxes ranging from one day to 53 months. Since the dealers had not paid the taxes along with their returns, they were liable to pay interest for the period of default. However, the assessing authorities concerned either did not levy the interest or levied it short, resulting in non/short levy of interest aggregating to ₹ 42.58 lakh as follows: -

³ Office(s) of the Deputy Commissioner of Sales Tax- ADM E-201, E-812 Pune, BA E-007 Aurangabad, E-004 Thane, INV E-001 Thane, Nodal E-704, E-821, E-906 Mumbai and R&RA E-007 Palghar

Table 5.7

(₹ in lakh)

Sl. No.	Name of dealer	Assessment period	Amount of tax paid with delay	Delay in days/ months	Interest leviable	Interest levied	Difference (6-7)
		Date of assessment					
1	2	3	4	5	6	7	8
1	Dealer A	2013-14	12.12	14 days to 22 months	2.41	0.00	2.41
		28/03/2018					
2	Dealer B	2012-13	18.37	1 day to 18 months	2.86	0.72	2.14
		01/03/2017					
3	Dealer C	2011-12	7.59	49-50 months	4.96	1.43	3.53
		27/03/2018					
4	Dealer D	2013-14	50.56	17 days to 13 months	4.38	0.00	4.38
		23/02/2018					
5	Dealer E	2013-14	20.16	1 day to 53 months	7.44	0.85	6.59
		19/03/2018					
6	Dealer F	2013-14	15.63	22 days to 34 months	5.01	2.53	2.48
		29/03/2018					
7	Dealer G	2012-13	30.65	11 days to 16 months	5.44	0.30	5.14
		28/02/2017					
8	Dealer H	2013-14	39.54	03 days to 30 months	10.31	0.00	10.31
		28/02/2018					
9	Dealer I	2013-14	82.25	09 days to 14 months	5.60	0.00	5.60
		09/03/2018					
Total			276.87		48.41	5.83	42.58

We brought the matter to the notice of concerned assessing authorities between June 2018 and April 2019; their replies have not been received (June 2020).

The matter was brought to the notice of the Government in January 2020; reply was awaited (June 2020).