

8th Floor, Vikrikar Bhavan,
Mazgaon, Mumbai – 400010.

Internal Circular

To,

No. VAT/ACST-1/Int Cir/ Form 704/ Scrutiny /B-370
(Internal Circular No. 12 A of 2009.)

Mumbai, Date 21-05-2009.

Subject – Scrutiny of audit report in form 704, post scrutiny management and levy of penalty under section 61(2) of the MVAT Act, 2002.

Background –

General guidelines for completing scrutiny of audit report in form 704 along with format of reporting were issued to all concerned in the State wide Internal Circular No. 7A of 2009; dated 24-3-2009. It was also instructed to complete scrutiny of forms 704 by officers form business audit branches. It is expected that, scrutiny, in case of form 704 related to financial years 2005-06 and 2006-07 is already completed by this time.

2. Following instructions are being issued in respect of the acceptance of the Audit Reports in Form 704 and the further process to be followed:
- a) For each location, an officer (referred to as Desk Audit Officer in this circular) shall be designated for the purpose of accepting and processing the Audit Reports in Form 704.
 - b) Audit Reports in Form 704 for the all the periods including 2005-06 and 2006-07, filed after the date of this circular shall be accepted by the said Desk Audit Officer.
 - c) The scrutiny of the Audit Reports, for the year 2005-06 and 2006-07 shall be done by the Business Audit officer. Subsequent actions after the scrutiny shall also be taken by the same officer. In other words, such officer shall cure the discrepancies and bring them to the logical end.
 - d) Scrutiny of the Audit reports for the period 2007-08 or any period thereafter shall be done by the Desk Audit Officer.
 - e) In case any discrepancy is reported by the CA, then an intimation letter shall be issued to the dealer in the format specified in **Annexure A**(VAT discrepancies)or **Annexure B** (CST discrepancies/missing declarations), as the case may be.
 - f) In case, the dealer accepts the discrepancy and files the revised returns and also pays the tax, then the Desk Audit could be closed.
 - g) In case of the Audit Report for 2007-08, if the dealer does not accept the findings of the Accountant, then such a case should be reported to the Business Audit Branch for initiating the Business Audit procedure or assessment, if necessary. In case of the Audit Reports for 2005-06 and 2006-07, such processes shall be initiated by the Business Audit Officer himself.
 - h) It goes without saying that the Desk Audit officer or the Business Audit Officer is expected to follow the procedure laid down in the manual of procedure.
 - i) The probable discrepancies to be pointed out by the officer are listed in **Annexure C**, for illustration purpose. The Desk Audit officer need not restrict his scrutiny only to the listed discrepancies since the list is illustrative and not

exhaustive. The discrepancy reported by the Auditor should also be communicated to the dealer in the said notice.

- j) The entire process of scrutinizing the Audit Reports received till the date of this circular and follow up action, specified above should be completed within 3 months from the date of this circular.
- k) In Mumbai, the monitoring of this entire operation for the Audit Reports for the period 2005-06 and 2006-07 shall be done by the respective Joint Commissioner of Sales Tax (Business Audit). The monitoring of the Audit Reports for the period 2007-08 and the periods thereafter shall be done by DC Desk Audit.
- l) In the moffussil, the monitoring shall be done by the concerned Joint Commissioner (VAT Admin) for all the cases.
- m) KKPI in this regard shall be submitted by all the Joint Commissioners of Sales Tax every month before 10th of every month in the format as specified in

3. Process to be followed in the case of non filers of the Audit Report in Form 704:

As per Section 61(2) of the MVAT Act, 2002, in case a dealer fails to furnish the Audit Report in Form 704 by the prescribed date, then after hearing the dealer, penalty can be levied equal to one tenth percent of total turnover of sales or purchases. However in case a dealer files the report within one month from the prescribed date and proves that the delay was on account of factors beyond his control, then no penalty shall be levied.[MVAT Section 61(2) First Proviso]. The proforma of show cause for levy of penalty for non filing of the Audit Report by the prescribed date is provided at **Annexure D**.

The dealers had been permitted on earlier occasions to file their audit Reports during the period extended by the Trade Circulars issued from time to time. Such extended dates were as follows:

Year	Extended date for Form 704	Refer circular No.
2005-2006	31-8-2008	27 T of 2008, date 31-7-08
2006-2007	31-8-2008	27 T of 2008, date 31-7-08
2007-2008	2-3-2009	3 T of 2009, date 23-1-09

In this regard it is instructed that, in case where audit form is filed late but within one month from the extended date of filing the audit report, penalty may not be levied as provided under the proviso to Section 61(2) of MVAT Act, 2002.

In other cases the decision to levy penalty for this default, shall be taken on merits and facts of the individual case. However it is made clear that, no case where audit report in form 704 is filed late should be left unattended for levy of penalty. This work should be completed within 3 months from the receipt of this circular in case of form 704 related to financial years 2005-06, 2006-07 and 200-08.

**Sd/-
Sanjay Bhatia)
Commissioner of Sales Tax,
Maharashtra, Mumbai**

No. VAT/ACST-1/Internal Circular/ Form 704/ Scrutiny /B-370 Mumbai, Date-21.05-2009.
(Internal Circular No. 12 A of 2009.)

Copy forwarded to,

- a) All Additional Commissioners of Sales Tax in the State
- b) All Joint Commissioners of Sales Tax in the State
- c) All Deputy Commissioners of Sales Tax in the State
- d) All Assistant Commissioners of Sales Tax in the State
- e) All Sales Tax Officers in the State

(Dr.S. Chokalingam)
Additional Commissioner of Sales Tax,
(VAT – 1), Mazgaon, Mumbai.

Annexure A

Asst.Com.of Sales Tax
Desk Audit Branch,
Vikrikar Bhavan,
Mumbai - 400010.

To,
M/S _____

NO- Desk Audit / AC- D----/ 07-08 /B-

Date-

Subject - Follow up of the additional tax liability in Form 704 under MVAT Act in case of M/s..... holding TIN - for **Period** – 2007-08.

Reference - Desk Audit / AC- D----/ 07-08 /B-

Date-

Gentlemen,

This is with reference to the Audit Report filed in form 704 for the period _____. Your auditor has pointed out certain material remarks and qualifications in the said Audit Report, leading to additional tax liability of Rs.....under MVAT Act, 2002.

You have been advised by your auditor to file revised returns for the above-referred period and pay additional tax at Rs under the MVAT Act, 2002.

You are requested to file the return/ revised return and pay the taxes accordingly along with the interest till the date of payment, immediately. The proof of such filing of the return/revised return and the payment of tax should be submitted to the undersigned within 10 days from the date of receipt of this letter.

In case you do not agree with the findings of your auditor, then you may send your written submissions accordingly within 10 days from the date of receipt of this letter.

In any of the above situations, your response is expected within 10 days from the date of receipt of this letter by you, failing which I may be compelled to initiate the necessary legal proceedings.

Yours faithfully,

Annexure B

Assistant. Commissioner Of Sales Tax
Desk Audit Branch, Vikrikar Bhavan,
Mumbai - 400010.

To,
M/s _____
<Phone1><phone_2><mobile> _____

NO - Desk Audit / AC- D----/ 07-08 /B-

Date-

Subject – Desk Audit in the case of M/s..... holding
TIN.....Pending Declarations in form C / D / E-I / E-II/H/F/I
under the CST Act, 1956 for the period 2007-08.

Gentlemen,

Desk Audit of the Audit Report in Form 704 filed by you for the period fromto.....has been conducted by this office. Your auditor has reported that certain declarations in Form C / D / E-I / E-II/H/F/I have not been received by you. The details are as follows:

Sr	Type of declaration not received	Amount of declaration	Differential tax amount
1	C		
2	D		
3	E1/E II		
4	H		
5	F		
6	I		
	Total		

Thus, the total value of the declarations not received by you as per the audit report is Rs.....You are requested to either produce these declaration forms, if received by you now. In case the said declaration forms are still not received by you, then you should file the revised return and make the payment of tax at Rs..... along with the interest under section 9(2) of CST Act 1956 read with section 30(2) of the MVAT Act 2002.

In case you do not agree with the findings of your auditor, then you may send your written submissions accordingly within 10 days from the date of receipt of this letter.

In any of the above situations, your response is expected within 10 days from the date of receipt of this letter by you, failing which I may be compelled to initiate the necessary legal proceedings.

Yours Faithfully,

Assistant. Commissioner Of Sales Tax

Annexure C

List of the discrepancies

- 1) GTO of sales not disclosed in the returns. (Sales of assets, Scrap, and items out of other income etc.)
- 2) Application of incorrect rate of tax by dealers/ statutory auditors.
- 3) Incorrect claim of set off (ITC) or non reduction of ITC as provided under rule 53 of MVAT, Rules.
- 4) Liability to pay tax on account of missing declarations under CST Act.
- 5) Non deduction of TDS and interest on late payment of TDS if any.
- 6) Other discrepancies such as interest payable under section 30(2) of MVAT Act, 2002 and read with section 9(2A) of CST Act.

Relevant Provisions regarding Audit Report in Form 704

Maharashtra Value Added Tax Act, 2002

- Section 61. Accounts to be audited in certain cases: -**(1) Every dealer liable to pay tax shall,
- a) if his turnover of sales or, as the case may be, of purchases cases, exceed or exceeds rupees forty lakh in any year, or
 - b) a dealer or person who holds license in,-
 - (i) Form P.L.L under the Maharashtra Distillation of Spirit and Manufacture of Potable Liquor Rules 1966.
 - (ii) Form B-RL under the Maharashtra Manufacture of Beer and Wine Rules, 1966 or,
 - (iii) Form E under the Special Permits and Licence Rules, 1952.
 - (iv) Forms FL-I, FL-II, FL-III, FL-IV under the Bombay Foreign Liquor Rules, 1953
 - (v) Forms CI-I, CL-II, CL-III, CL/FL/TOD III under the Maharashtra Country Liquor Rules, 1973;

get his accounts in respect of such year audited by an Accountant within the prescribed period from the end of that year and furnish within that period the report of such audit in the prescribed form duly signed and verified by such accountant and setting forth such particulars and certificates as may be prescribed.

Explanation. For the purposes of this section, Accountant means a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949 or a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959.

(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.

(3).....

Maharashtra Value Added Tax Rules, 2005

Rule 65- The report of audit under section 61 shall be in Form 704.

Rule 66- Submission of audit report: The report of the audit under section 61 shall be submitted within ten months of the end of the year to which the report relates.