

CHAPTER II

TAXES ON SALES, TRADE, ETC.

2.1 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 Goods and Services Tax Department (GST) from 01 July 2017 functions under the administrative control of the Additional Chief Secretary, Finance Department (ACS FD) at the Government level. The Commissioner of State Tax, Maharashtra State (CST) heads the Department and is assisted by a Special Commissioner of State Tax/Additional Commissioners/Joint Commissioners (JCs)/Deputy Commissioners (DCs)/Assistant Commissioners (ACs) and State Tax Officers (STOs) 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 1 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the assessment, levy and collection of Sales Tax was governed by the Bombay Sales Tax Act, 1959 (BST Act) which was repealed with effect from 1 April 2005. With effect from 1 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.

2.2 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 as furnished by the Department is mentioned in **Table 2.2**.

Table 2.2

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
2013-14	16,695	18,628	5,808	4,982	826
2014-15	13,140	17,209	5,028	3,856	1,172
2015-16	15,660	17,086	4,312	2,808	1,504
2016-17	15,055	18,197	4,185	1,550	2,635
2017-18	17,350	25,673	5,288	3,215	2,073
Total	77,900	96,793	24,621	16,411	8,210

Source: Information furnished by the Department

During the last five years, the number of cases actually audited have exceeded the number of cases planned to be audited. The Department has settled 67 per cent of the observations raised by IAW.

2.3 Results of audit

There are 351 auditable units in the Goods and Services Tax Department, out of these, audit selected 204 units for test check wherein 39,793 assessments were finalised. Out of these, audit test checked 37,615 assessments (approx. 95 per cent) during the year 2017-18 and noticed irregularities/omissions in 1,101 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 ₹ 21.34 crore.

Audit pointed out some of the 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 2.3

(₹ in crore)			
Sr. No.	Category	No. of observations	Amount
1	Audit on "Assessment of dealers-Builders/Developers under VAT Act"	1	9.82
2	Audit on "Preparedness for transition to Goods and Services Tax"	1	0.00
3	Non/short levy of tax	122	6.08
4	Incorrect grant/excess set-off of tax	107	0.20
5	Non/short levy of interest/penalty	319	3.52
6	Non-forfeiture of excess collection of tax	11	0.03
7	Other irregularities like non submission of declaration forms, computation errors etc.	540	1.69
Total		1,101	21.34

- The Department accepted underassessment and other deficiencies of ₹ 4.45 crore in 122 observations which were pointed out during 2017-18 and in earlier years.
- The Department also recovered an amount of ₹ 2.16 crore during 2017-18. Of these, an amount of ₹ 2.02 crore pertained to observations pointed out in earlier years.

A few illustrative cases involving ₹ 15.01 crore including paragraphs on "Assessment of dealers - Builders/Developers under VAT Act" and "Preparedness for transition to Goods and Services Tax" are discussed in the succeeding paragraphs.

2.4 Audit on “Assessment of dealers - Builders/Developers under VAT Act”

Introduction

Maharashtra Value Added Tax Act, 2002 (MVAT Act) and the Maharashtra Value Added Tax Rules, 2005 (MVAT Rules) framed there under governed the levy and collection of Value Added Tax (VAT) on the sale of goods made by Builders and Developers with effect from 20 June 2006.

The transfer of property involved in the execution of works contract (including an agreement for carrying out for cash or deferred payment) in the form of goods or in some other form, the building, construction, manufacture, processing, fabrication, erection, installation fitting out, improvement, modification, etc., was defined as Sale under Section 2(24) of the MVAT Act (amended by a legislative amendment dated 20 June 2006). Thus, the transactions carried out by the Builders and Developers (B&Ds) in the form of sale of flats etc. were liable to be taxed with effect from that date.

The Builders and Developers challenged (2007) the constitutional validity of the amendment before the Bombay High Court. But the amendment was upheld by the Bombay High Court on 10 April 2012 and later by the Supreme Court of India on August 2012. The Apex court while pronouncing the judgment (in favour of the Government on August 2012) had however, stayed coercive recovery of tax, interest and penalty and had directed the petitioners (B&Ds) to pay tax under MVAT Act on or before 31 October 2012. The B&Ds started filing the returns from the said date (31 October 2012) and the Department started finalising the assessments of Builders and Developers (B&Ds) from 2014-15 onwards.

Procedure of Assessment of B&Ds

Rule 58 of MVAT Rules determines the sale price and purchase price of sale by transfer of property, in the form of goods or otherwise, involved in the execution of a works contract. Liability of tax payable by the B&Ds on under-construction property is assessed after allowing the following deductions from the sale value of the property.

1. Cost of land determined as per the provision of Rule 58(1A) of MVAT Rules in accordance with the annual statement of rates. The cost of land shall be the same, as the value of land for stamp duty purposes as applicable on the 1st January of the year of registration of agreement to sale.
2. Amounts paid to sub-contractors provided the sub-contractors are liable for tax on their turnover.
3. Cost of labour and services relating to the said works including service tax collected separately and service charges etc. or standard deduction @ 30 *per cent*, as per the provision of Rule 58(1) of MVAT Rules.

The value of the goods at the time of transfer is worked out after allowing the aforesaid deductions from the total agreement value of the property and tax is levied at the rates prescribed in the MVAT Act. The dealer is also eligible to claim Input Tax Credit on the material consumed in the contract such as, cement, steel, bricks, etc.

The dealer could opt for composition scheme and pay tax at a flat rate of one *per cent* on the agreement value also called sale value with effect from 01 April 2010. However, the dealer who had opted for composition scheme was neither eligible for any deductions from his sale turnover nor was he entitled to Input Tax Credit (ITC) on the purchase(s) made by him. Prior to 01 April 2010, the rate of tax was five *per cent*, with retention of ITC claim up to four *per cent*.

Audit objective

Audit was conducted to ascertain whether-

- all Builders and Developers that had crossed the threshold limit¹ for registration in the state were identified and registered with the Department, and
- a proper mechanism existed in the Department for monitoring the assessment, levy and collection of taxes payable by the Builders and Developers.

Scope and methodology of audit

The audit of assessment cases of Builders and Developers (B&Ds) was conducted from 3 January 2018 to 30 June 2018. Eight divisions² out of the 13 divisions of the Department were selected by audit for detailed scrutiny. The divisions were selected on the basis of maximum tax revenue receipts and covered 97.42 *per cent* of total tax receipts from B&Ds during 2014-15 to 2017-18.

The Department had finalised 5,787 assessment cases of 3,335 B&Ds during 2014-15 to 2017-18. Of these, 2,458 assessment cases of 2,057 B&Ds were selected for detailed scrutiny. The Department produced 1,231 assessment cases (50.08 *per cent*) of 870 B&Ds for audit scrutiny. Audit noticed discrepancies in 142 assessment cases involving 99 B&Ds, which was 11.54 *per cent* of the test checked cases produced for audit scrutiny.

Goods and Services Tax (GST) was introduced with effect from 1 July 2017 and the Department shifted to new electronic SAP system. The function of the Maharashtra Vikrikar Automation System (MAHAVIKAS) was stopped from April 2018. The MAHAVIKAS data for the period under audit was not made available audit, as such the cross verification of the manual records with MAHAVIKAS data could not be carried out.

Audit findings

Audit scrutiny of 1,231 assessment cases of 870 B&Ds revealed discrepancies in 142 assessment cases of 99 B&Ds. Of these, short realisation of revenue of ₹ 9.82 crore was found in 62 assessment cases of 46 B&Ds. These are mentioned in the succeeding paragraphs.

¹ The threshold turnover for registration of a Builder & Developer (B&D) as a dealer was ₹ five lakh up to 25 June 2014 and thereafter was ₹ 10 lakh.

² Aurangabad, Kolhapur, Mumbai, Nashik, Pune, Raigad, Thane City and Thane Rural.

2.4.1 Registration of B&Ds

As per the MVAT Act, every dealer whose sales turnover crossed the threshold limit (monetary limit) defined in the Act should be registered under the Act. Under section 3(4) of the MVAT Act, the threshold turnover for registration of a Builder & Developer (B&D) as a dealer was ₹ five lakh up to 25 June 2014 and thereafter was ₹ 10 lakh. Under Section 66 of the MVAT Act, the Department was also required to conduct a survey for identification of the unregistered dealers whose sales turnover had crossed the threshold limit. The Commissioner in his Trade Circular dated 6 August 2012 issued under the MVAT Act directed that all the B&Ds should register themselves up to 15 October 2012 and make payment of the tax up to 30 October 2012. During the course of audit it was found that the Department had registered only those B&Ds who had voluntarily come forward for registration.

Audit called for the details of the B&Ds who had completed their construction works projects in the Municipal Corporation of Greater Mumbai³. The Corporation furnished a list of the B&Ds who had completed their projects but did not furnish their sales turnover. As per the list, 99 B&Ds had completed their projects in the district of Greater Mumbai.

Cross verification of the details with the records in Sales Tax Department⁴ revealed that 53 B&Ds out of these 99 B&Ds were not registered with the Department. The Department had, at no time, made any effort to find out the turnover of each such dealer to bring him under tax net. The Corporation also did not intimate the reason(s) for allotting the works to these unregistered dealers. Audit noticed that the Department had not conducted any surveys either by way of inspections or by cross verification of the data with other departments/corporations etc. for identification and registration of the B&Ds.

Since the transactions of the B&Ds are usually high valued, the Department should have ensured their eligibility for registration by conducting surveys at regular intervals to prevent the possible loss of revenue to the Government.

The fact was communicated to the Department in August 2018; their reply has not been received (October 2019).

2.4.2 Verification of deduction on account of cost of land

2.4.2.1 As per provision of Rule 58(1A) of MVAT Rules, while determining the sale price of goods transferred under a construction contract, which the land/ interest in land, underlying the immovable property is to be conveyed along with immovable property, the B&D is eligible for deduction of value of land from the total agreement value. The cost of the land is determined in accordance with the guidelines appended to the Annual Statement of Rates prepared under the provisions of the Bombay Stamp Rules 1995.

It was observed in 14 B&D cases that the assessing officers allowed deduction of ₹ 77.59 crore on account of cost of land. There was nothing on record to indicate that the assessing officers had verified the correctness of the claims.

³ The Corporation was responsible for issue of “Completion Certificate/Occupancy Certificate” to the construction projects completed by the B&Ds in its jurisdictional area.

⁴ Renamed as Goods and Services Tax Department from 01 July 2017.

In one case the assessing officer allowed deduction on account of cost of land twice, i.e. ₹ 15.09 crore during 2008-09 and ₹ 6.77 crore during 2009-10. The basis on which it was allowed was not found on record.

On this being brought to notice, the assessing officer concerned rechecked the facts and rectified (November 2018) the mistakes. It allowed deduction of ₹ 3.71 crore on account of cost of land instead of ₹ 21.86 crore and raised demand of ₹ 2.99 crore.

It is recommended that the Department may be advised to keep a record of the documents checked for allowing the deductions and ensure that deduction allowed to a dealer are correct.

2.4.2.2 Verification of payments of tax into the Government treasury deduction under sub-contract:

Audit found in six B&D cases that the assessing officers allowed deductions amounting to ₹ 81.62 crore to the principal contractors on account of the payments made by sub-contractors on production of Form 407 and 408 in accordance with Section 45 of MVAT Act. However, in none of these cases, cross verification for actual payment of tax with the treasury records was ensured. It could not also be checked by audit on MAHAVIKAS as the system was not functioning. The Department may develop a system of cross verification of the payments made by the sub-contractors.

The matter was brought to the notice of the Department, their reply has not been received.

2.4.3 Allowance of excess standard deduction

2.4.3.1 As per the provisions of Rule 58(1) of MVAT Rules, while determining the sale price of goods transferred in a works contract, deductions for labour and service charges for the execution of works, amounts paid by way of price for sub-contract to subcontractors, hire charges for machinery and tools, cost of consumables such as electricity, water fuel, etc., cost of establishment relating to supply of labour and services and profit thereon, are allowed as per actual expenses. Further as per proviso thereunder, if the contractor has not maintained accounts, a lump sum standard deduction is allowed, which is @ 30 per cent in case of construction contracts.

The turnover of four dealers for five periods⁵ was ₹ 44.74 crore. As per the assessment orders (the dealers had not maintained the accounts for claiming the deductions) they were entitled to lump sum standard deduction of ₹ 13.43 crore against which deduction ₹ 15.16 crore was allowed. This resulted in grant of excess allowance of standard deduction of ₹ 1.73 crore involving short levy of tax of ₹ 15.47 lakh.

On this being brought to notice, the assessing officers concerned intimated that in two cases the observations had been forwarded to the appellate authorities for taking the irregularity into cognizance at the time of deciding the appeals. Reply in the remaining cases has not been received.

⁵ 2009-10, 2010-11, 2007-08, (2007-08 and 2008-09).

2.4.3.2 As per Rule 58(1) and 58(1A) cost of land and the amount paid to the sub-contractor are deducted from the agreement value (Gross Turn Over) for working out the contract price (net taxable sales) of a contract. Standard deduction @ 30 per cent is admissible⁶ on contract price (Net taxable sales) of a contract.

In one case, it was noticed that a dealer claimed deductions aggregating to ₹ 53.71 crore on account of sub-contracts (₹ 31.39 crore), standard deduction @ 30 per cent (₹ 13.29 crore) and land cost (₹ 9.03 crore) respectively, in his Audit Report (Form 704) for the year 2008-09. The dealer had claimed standard deduction before the deduction of cost of land from the Gross Turn Over which was contrary to the recitals of the Note below Rule 58(1) of the MVAT Rules. This resulted in the understatement of the taxable turnover of ₹ 2.71 crore and consequent short levy of tax of ₹ 22 lakh as follows -

(₹ in crore)		
Particulars	Allowed by department	Admissible under the Act
Gross turnover of sales	75.71	75.71
Deductions: Sub-contract	31.39	31.39
Standard deduction allowed 30% of ₹ 44.32 crore (GTO of sales of ₹ 75.71 crore – payment made to sub-contractor ₹ 31.39 crore)	13.29	-
Land Cost	9.03	9.03
Standard deduction admissible 30% of ₹ 35.29 crore (GTO of sales of ₹ 75.71 - payment made to sub-contractor ₹ 31.39 crore - cost of land ₹ 9.03 crore)	-	10.58
Net Taxable sales	21.99	24.70
Tax	1.67	1.89
Short levy of tax	0.22 crore	

This mistake resulted in short levy of ₹ 22 lakh for the year 2008-09. On this being brought to notice, the assessing authority accepted the audit observation and stated that the case for the period 2008-09 has been taken up for review.

We also noticed that the dealer had been assessed for the year 2009-10, wherein he had claimed standard deduction before deducting land cost. This omission was pointed out to the Department. However, the Department stated that the assessment for the year 2009-10 had been cancelled and the remarks of audit will be considered at the time of re-assessment.

It is recommended that the Department may consider revising all such cases in the interests of revenue.

⁶ As per Note below Rule 58(1) of the MVAT Rules, the percentage of standard deduction shall be applied after deducting (i) the cost of land determined under Rule 58(1A), and (ii) the value of sub contract(s) on which tax has been paid by the subcontractor(s).

2.4.4 Non/short levy of interest

2.4.4.1 Interest on delayed payment of taxes: As per Section 30(2) of the MVAT Act, a registered dealer who has failed to pay the tax within the specified time, 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 or part thereof after the last date by which he should have paid such tax.

We noticed in 17 cases that the dealers had paid taxes along with returns for various periods from 2007-08 to 2011-12 with delays ranging from one to 98 months. However, the concerned assessing officers either did not levy the interest or levied it short. The non/short levy of interest worked out to ₹ 4.08 crore under Section 30(2).

On this being brought to notice, the Department accepted the short levy in three cases and raised additional demand of ₹ 14.33 lakh against which an amount of ₹ 1.55 lakh was recovered in one case. Reply in the remaining cases has not been received.

2.4.4.2 Interest on assessed dues: As per Section 30(3) of MVAT Act, any registered dealer, in whose case any tax remained unpaid up to one month after the end of the period of assessment, shall be 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, from the date following the last date of the period covered by an order of assessment, till the date of the order of assessment.

We noticed in 12 cases that the dealers were assessed to tax dues amounting to ₹ 5.57 crore in respect of various assessment periods from 2006-07 to 2013-14. The assessments had been carried out 48 to 122 months after the end of the assessment periods. The interest leviable in these cases amounted to ₹ 8.31 crore. The concerned assessing officers incorrectly worked out the interest due to arithmetical mistakes etc. and levied interest amounting to ₹ 6.68 crore. The omission resulted in short levy of interest by ₹ 1.64 crore.

On this being brought to notice, the Department accepted the short levy in two cases and raised additional demand of ₹ 2.52 lakh in these cases, against which an amount of ₹ 2.05 lakh was recovered in one case. Reply in the balance cases has not been received.

Case study

Non/short realisation of interest in an assessment of a dealer is discussed as follows:-

It was observed that assessment for the period 2009-10 was selected for the dealer by the Department. Scrutiny of records revealed that while finalising the assessments (September 2017) for the period 2009-10 the assessing officer has taken into account the tax dues paid by the dealer for the years 2006-07 to 2008-09 in October 2012 and June 2013. These assessment periods (2006-07 to 2008-09) were not selected for finalising the assessment of these years but were selected to check the tax paid by the dealer for the year 2009-10.

Audit found the dealer had not paid the tax regularly along with his returns for the above periods, as such, he was liable to pay interest of ₹ 51.44 lakh under section 30(2) of the MVAT Act against which the Assessing officer incorrectly worked out ₹ 3.73 lakh. Thus, demand of ₹ 47.71 lakh was raised short.

After this being pointed out (October 2018) the assessing authority (AA) stated (October 2018) that since assessment were not initiated for the periods 2006-07, 2007-08 and 2008-09, the question of levy of interest did not arise.

The reply of the AA was not correct since the AA had finalised the assessment for the year 2008-09 after taking into account the tax dues of the earlier periods. A refund of ₹ 0.68 lakh was allowed for the year 2008-09 and adjusted against the dues of 2009-10. Had the interest been worked out correctly the refund amount would have been reduced to that extent.

The reply of the AA further indicates the need for finalisation of the assessments of all these periods in a sequential year wise order so that the tax dues payable by B&Ds dealers are worked out correctly.

Interest payable under section 30(3) of the Act

The dealer was also liable to pay interest under section 30(3) of the Act from the date of filing the return to the date of payment of tax (to be worked out at the time of completing the assessments for the respective periods). Since the assessments were not finalised, the exact amount of interest payable by the dealer could not be worked out by audit, however it was found the dealer was liable to pay interest of ₹ 52.02 lakh up to the September 2017⁷.

The above fact reveal that since the sale of flats in each project is spread over a number of years, the assessments of each B&Ds should be taken up in a chronological year wise order to ensure correct levy and collection of tax.

It is recommended that the Government may advise the Department to complete the assessment of each B&Ds in a chronological year wise order so that there are no gaps in completing the assessments.

2.4.5 Non levy/short levy of penalty on delayed submission of Audit Reports

As per Section 61(1) of the MVAT Act, 2002 every dealer liable to pay tax, shall get his accounts in respect of such year audited by a Chartered Accountant within the prescribed period from the end of that year and submit the report of audit within 10 months of the year to which report relates, failing which, under Section 61(2) 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* (0.1 *percent*) of the total sales.

We observed in 20 cases of 15 dealers that the dealers had not filed the Audit Reports within the stipulated period, however, the Department had either not levied the penalty or had levied it short. This resulted in non/short realisation of penalty amounting to ₹ 47.69 lakh.

⁷ The month of finalisation of assessment for the year 2009-10.

After this was brought to notice, the Department recovered ₹ 0.28 lakh in two cases. In another case involving penalty of ₹ 18.74 lakh orders to recover the penalty were issued. Replies in the remaining cases have not been received.

2.4.6 Levy of tax on consideration not covered under composition

The B&Ds were assessed in regular taxation up to 2009-10, either based on the agreements executed during that particular year or based on actual receipts made during that year in respect of sales up to that year. From 2010-11 onwards as per Section 42(3)A of MVAT Act, they could opt for composition tax @ one *per cent* on the total agreement cost or market value, whichever is higher in that year.

We observed in two cases in Kolhapur and Raigad Divisions that, the B&Ds were assessed up to 2009-10, considering the GTO of sales, based on the actual receipts made during that year on sale of flats up to that particular year, regardless of the total agreement costs executed in that year. During 2010-11, the GTO of sales was considered based on the total agreement costs executed in that year on which composition tax @ one *per cent* was levied.

However, the receipts relating to the agreements executed prior to 2010-11 (for which composition rates were not applicable) was not worked out. As such the correctness of the tax levied could not be ascertained.

We brought the matter to the notice of the Department, their reply has not been received.

2.4.7 Short determination of GTO of sales

2.4.7.1 It was observed that a B&D who was also dealing in sale and purchase of cement, had filed (May 2016) an affidavit stating that he had not carried out any sale or purchase activity, except for resale of cement during 2006-07 and 2008-09. The assessing officer concerned accepted the contention of the dealer and determined (October 2016) the GTO of sales and purchases of both these periods as nil. However as per the P&L Accounts of these years the dealer had made the sale of cement valued at ₹ 1.56 crore which was not taken into account for levy of tax by the assessing Authority. This resulted in short levy of tax of ₹ 19.47 lakh. Further interest was also leviable as per the provisions of the MVAT Act.

On this being brought to notice, the assessing officer accepted the audit observation and stated that the case was submitted for review in the light of audit remarks. Further progress in the matter was awaited.

2.4.7.2 As per Section 42(3)A of MVAT Act, with effect from 1 April 2010, a dealer can opt for composition tax @ one *per cent* on the total agreement cost or market value, whichever is higher.

Audit found in one case that the agreement value of 19 flats was ₹ 4.03 crore and market value was ₹ 11.07 crore. However the assessing officer levied tax of ₹ 4.03 lakh, i.e. @ one *per cent* on agreement value instead of market value, which was higher. This resulted in short levy of tax of ₹ 7.04 lakh.

We brought the matter to the notice of the Department, reply has not been received.

2.4.8 Conclusion and Recommendations

The Department has not conducted surveys to ensure registration of all the builders and developers. Audit noticed that there was lack of sharing of information between the GST Department and other departments and corporations. Out of 99 B&Ds contractors who had obtained completion certificates in respect of their projects in the Municipal Corporation of Greater Mumbai, 53 dealers were found unregistered with the GST department. The Department had, at no time, made any effort to find out the turnover of each such dealer to bring him under tax net. No effort was made to register the dealers either on collateral basis or on the basis of cross verification of records was made with other departments like IGR, local bodies, Income Tax Department to bring the B&D dealers under tax net whose turnover had exceeded the threshold limit.

- **The Department may conduct surveys of B&Ds in the State, identify URDs and bring them into the tax net. The Department may ensure collection of data of B&Ds from other Departments, Corporations and Local Bodies and make use of it in the registration of these dealers.**

The deductions like cost of land, standard deduction, stage-wise deduction, etc., were being allowed without proper verification.

- **Deduction may be allowed only after proper verification of records, certificates from appropriate authorities, returns and previous Assessment orders passed by the assessing authorities.**

2.5 Audit on “Preparedness for transition to Goods and Services Tax”

Introduction

Goods and Services Tax (GST) was introduced with effect from 1 July 2017. GST⁸ is being levied on intra-State supply of goods or services (*except alcohol for human consumption and five specified petroleum products*⁹) separately but concurrently by the Union (CGST) and the States (SGST)/Union territories (UTGST). Further, Integrated GST (IGST) is being levied on inter-State supply of goods or services (including imports) and the Parliament has exclusive power to levy IGST. Prior to implementation of GST, VAT was leviable on intra-State sale of goods in the series of sales by successive dealers as per Maharashtra Value Added Tax (MVAT) Act, 2002 and Central Sale Tax (CST) on sale of goods in the course of inter-State trade or commerce as per CST Act, 1956. The State Government was empowered to regulate the provisions of MVAT Act whereas provisions relating to GST were being regulated by Centre and State on the recommendation of Goods and Services Tax Council (GSTC) which was constituted with representation from Centre and all the States to recommend on the matters related to GST.

Maharashtra Goods and Services Tax Act, 2017 was passed by the State Legislature and published in the Gazette on 15 June 2017. With the implementation of GST in Maharashtra, Value Added Tax and Central Sales Tax levied on sale of goods except crude oil, high speed diesel, motor spirit (Petrol), aviation turbine fuel, natural gas and alcoholic liquor for human consumption; and Entertainments Duty on various classes of entertainments levied by the State, were replaced by GST. Octroi and Local Bodies Tax levied by Urban Local Bodies were also abolished.

The following Acts were repealed on introduction of Maharashtra Goods and Services Tax Act, 2017:

- The Maharashtra Betting Tax Act, 1925
- The Maharashtra Purchase Tax on Sugarcane Act, 1962
- The Maharashtra Advertisements Tax Act, 1967
- The Maharashtra Forest Development (Tax on Sale of Forest Produce by Government or Forest Development Corporation) Act, 1983
- The Maharashtra Tax on Luxuries Act, 1987
- The Maharashtra Tax on Entry of Motor Vehicles into Local Areas Act, 1987
- The Maharashtra Tax on Entry of Goods into Local Areas Act, 2002
- The Maharashtra Tax on Lotteries Act, 2006

At the end of January 2019, 10,88,458 taxpayers had been allotted to the Maharashtra GST Department.

⁸ Central GST: CGST and State/Union Territory GST: SGST /UTGST.

⁹ Petroleum products: crude, high speed diesel, petrol, aviation turbine fuel and natural gas.

Organisational Set-up

Maharashtra GST Department, under the Finance Department of the Government of Maharashtra, is headed by a Commissioner of State Tax who is assisted in his functioning by one Special Commissioner, nine Additional Commissioners and 72 Joint Commissioners. There are 280 audit unit offices headed by Deputy Commissioners. The State is divided into 13 divisions for tax purpose activities each headed by Additional Divisional Commissioner.

Audit Objectives

Audit seeks to determine the preparedness of Maharashtra GST Department to meet the challenges of implementation of GST in relation to:

- Development of IT systems for performing various statutory functions
- Capacity Building
- Migration of existing taxpayers to GST
- Refunds under GST
- Disposal of legacy issues

Audit Criteria

- The Central Goods and Services Tax Act, 2017
- The Maharashtra Goods and Services Tax Act, 2017
- The Integrated Goods and Services Tax, 2017
- The Central Goods and Services Tax Rules, 2017
- The Maharashtra Goods and Services Tax Rules, 2017
- Guidelines/ Instructions/ Circulars/ Orders issued by the Department.

Scope and methodology of audit

The Audit on “Preparedness for transition to Goods and Services Tax” was conducted from April 2018 to October 2018 and was limited only to the Maharashtra GST Department. Audit covered the office of Commissioner of State Tax along with field offices situated in Mumbai. Records of 14 offices out of 127 offices in Mumbai were scrutinized.

Trend of revenue

The trend of revenue during the last five years is shown in the following table:

(₹ in crore)					
Year	Receipts under pre-GST taxes	Receipt under SGST*	Receipts under Entertain-ments Duty, Luxury Tax, Betting Tax etc. subsumed in GST	Total receipts under pre-GST taxes and GST	Increase in percentage
2013-14	62,530.04	-	2,497.89	65,027.93	-
2014-15	67,466.29	-	1,915.02	69,381.31	6.69
2015-16	69,660.82	-	3,052.65	71,713.47	3.36
2016-17	81,174.17	-	3,472.76	84,646.93	18.03
2017-18	54,893.51	50,063.36	1,553.06	1,06,509.93	25.83

*including advance apportionment of IGST of ₹ 2,648.00 crore and apportionment of IGST of ₹ 1,486.37 crore by transfer of IGST to SGST.

In addition to the above, the share of net proceeds of taxes received by the State on account of Central Goods and Services Tax (CGST) and Integrated Goods and Services Tax (IGST) was ₹ 522.44 crore and ₹ 3,754.16 crore respectively, and compensation of loss of revenue arising out of implementation of GST received from the Central Government was ₹ 1,488.00 crore.

Thus, the total receipts during 2017-18 on account of “Tax on Sale Trade, etc. receipts under entertainments Duty, Luxury Tax, Betting Tax etc. subsumed in GST” (₹ 56,446.57 crore) and GST (₹ 55,827.96 crore) including State’s share in Union taxes and compensation were ₹ 1,12,274.53 crore.

2.5.1 IT preparedness and capacity building efforts by the Department

2.5.1.1 Training to Staff

The Department had made arrangements for training the staff, in order to make them familiar with various provisions of the Goods and Services Taxes. Training was arranged to be imparted to 119 officers for tax laws and 170 officers for Goods and Service Tax Network (GSTN) by the National Academy of Custom, Indirect Tax and Narcotics (NACIN). These 289 officers (called master trainers) trained 5,030 officials in dealing with GST laws and 5,830 officials¹⁰ for dealing with the Goods and Services Tax Network.

It was found that 498 GST campaigns were organised by the Department for making the taxpayers familiar with the GST laws and payment of taxes under the new regime. These taxpayers dealt in various commodities and services like Garment, Steel, Construction, and Retail Food industries etc. Thus, it would be seen that the Department had made good efforts in capacity building both at Departmental and taxpayers levels.

It is recommended that these exercises may continue to educate the stakeholders about the GST laws.

¹⁰ These included some of the tax officials that were trained in GST laws also.

2.5.1.2 Administrative Restructuring

The Government decided (June 2018) on restructuring of the GST Department and constituted a committee under the chairmanship of a retired IAS officer, for suggesting recommendations on 19 terms of references. These terms of references *inter alia*, included

- quantification of the present workload and assessing the further growth potential,
- deciding allocation of assessment and adjudication, appeal functions among different cadre of officers,
- revision of Manual of Procedures as per the new law and fixing the staff strength of divisional and regional offices,
- merging and demerging of different functions, nature of function and strength of vigilance branch etc.

The committee submitted its report to the Government on 30 November 2018. The Department intimated (January 2019) that recommendations of the Reorganization Committee were under consideration at the Government level and the change(s) will take place in accordance with the recommendations by issuing necessary orders.

Report on the action taken in this regard has not been received (October 2019).

2.5.1.3 IT preparedness

The Goods and Services Tax Network (GSTN) has been set up by the Government of India primarily to provide IT infrastructure and services to the Central and State Governments, taxpayers and other stakeholders for implementation of GST. Maharashtra being a Model I State is developing its own back-end system for the performance of statutory functions under GST. GSTN is developing the Common Portal. It also releases the Application Programme Interface (APIs) for different modules to act as interface for data exchange which is then further developed, tested and rolled out by the State in accordance with the requirement of its back-end system.

M/s NIIT Technologies Ltd (M/s NIIT) is employed as System Integrator for implementation of total solution for e-governance in the Department. Since the State is a Model I State, APIs are required to be developed by M/s NIIT. The details of APIs shared by GSTN, tested, developed and rolled out by the Maharashtra GST Department up to October 2018 are as under:

Module	Total APIs received for development	APIs developed and rolled-out	Development in progress as on October 2018
Registration	46	42	4
Return	22	8	13
Payment	5	2	3
Ledger	5	3	2
Recovery	2	0	2
Refund	11	5	6
Others	16	4	12
Total	107	65	42

The details of 42 APIs at the development stage are given in **Appendix I**.

The modules relate to important provisions of the GST law like Tax Deduction at Source (TDS), Tax Collection at Source (TCS) and Inward Supply, their development would enhance the efficiency and efficacy of the department in collection of the taxes.

2.5.2 Migration of existing taxpayers

As per Rule 24 of Maharashtra GST Rules, 2017, every person registered under any existing law and having a PAN shall enroll on common portal by validating his e-mail address as well as mobile number. Such person shall be granted registration on a provisional basis. Every person who has been granted provisional registration shall submit an application along with the information and document specified in the application on common portal. A certificate of registration shall be made available to the registered person electronically if the information and the particulars furnished in the application are found to be correct and complete.

The details of the dealers registered under the MVAT Act and completed migration to GST are given in the following table:

Total number of dealers under MVAT Act as on 30 June 2017	Total number of provisional ID granted	Number of dealers primary enrolled	Completed migration
7,78,463	7,78,463 (100 per cent)	7,10,604 (91 per cent)	7,04,758 (90.53 per cent)

After the allocation of the provisional IDs, the dealers had to authenticate the same for obtaining the GST TIN. Since the threshold turnover limit under GST is ₹ 20 lakh whereas under the MVAT Act it was ₹ 10 lakh, registration under GST for dealers having turnover limit up to ₹ 20 lakh was voluntary.

It would be seen from the above table that 90.53 per cent of the existing dealers completed the migration process and finally registered under GST. However 5,846 out of 7,10,604 primary enrolled dealers were not migrated to the GSTN. Thereafter, the Department launched a special campaign for migration of the non-migrated dealers from 6 to 18 August 2018, as a result of which, a further 2,307 dealers were recommended for migration to GST. The reasons for not migrating the remaining 3,539 dealers was not intimated to audit.

Audit checked (October 2018) VAT/ CST returns of the 50 dealers who had not migrated to GST and noticed that these dealers were either not filing returns or were showing nil or small turnover (below ₹ 20 lakh) during the period 2016-17 (prior to implementation of GST). Thus, these dealers did not require registration under the GST, Act.

2.5.3 Allocation of taxpayers between Central and State

2.5.3.1 Existing registered taxpayers of Sales Tax Department and Central Excise Department: As per recommendation of GST Council, 90 per cent of existing registered taxpayers having turnover up to ₹ 1.5 crore and 50 per cent of existing registered taxpayers having turnover of more than

₹ 1.5 crore were allotted to the State. Accordingly, the State was allotted the jurisdiction of 6,80,987 taxpayers out of existing 8,52,297 registered taxpayers as detailed below:

Under jurisdiction of	Existing registered taxpayers		
	Turnover above ₹ 1.5 crore	Turnover below ₹ 1.5 crore	Total
State	1,07,592	5,73,395	6,80,987
Centre	1,07,596	63,714	1,71,310
Total	2,15,188	6,37,109	8,52,297

2.5.3.2 New Taxpayers: Jurisdiction of newly registered taxpayers is being allotted to the State and Centre by GST portal electronically during submission of application for registration by the taxpayers. The newly registered tax payers are divided between Centre and State in 1:1 ratio. A total of 4,83,830 newly registered dealers have been allocated (20 March, 2019) to the State.

2.5.4 Refunds under GST

The provisions for grant of refund of taxes are stipulated in Section 54 of the Maharashtra GST Act, 2017 and Section 54 of the Central GST Act 2017.

For claiming refund of SGST, CGST and IGST on goods and services (other than on goods exported out of India for which refunds are processed by the Customs Department), a dealer has to file online refund claim in Form GST RFD-01A. Since the refund module on GSTN is not yet fully functional, the registered tax payer has to manually submit the acknowledgment of online-filing to the concerned desk officer. If the refund claim is found to be in order, provisional refund amounting to 90 *per cent* is sanctioned within seven to 14 days after the receipt of online acknowledgement. The balance 10 *per cent* is refunded after due verification of records within 60 working days from the grant of provisional refund.

The details of the refund claims received and sanctioned/rejected as under till the end of October 2018 is as under:

(₹ in crore)								
Year	Refund claims Received	Amount of claims	Provisional Refund orders		Final Refund order		Pending Applications (Up to October 2018)	
	No.	Amount	No.	Amount	No.	Amount	No.	Amount
2017-18	4,564	1,723.77	3,326	1,522.99	1,066	128.88 ¹¹	172	71.90
2018-19 ¹²	18,121	3,620.89	11,053	2370.31	5,171	209.00 ¹³	1,897	1,041.58

Source-Information furnished by the department

¹¹ including rejected amount of ₹ 52.06 crore.

¹² April 2018 to October 2018.

¹³ including rejected amount of ₹ 209 crore.

Thus, it would be seen from the above 2,069 applications for grant of refunds involving ₹ 1,113.48 crore were pending finalisation.

It was observed during the audit that due to non-availability of the refund module at that time, export details as well as inward supply details were verified by calling for the details from the refund claimant. Details of the export furnished by the dealer were then verified by going on the website of ICEGATE (website of Indian Customs) to check whether shipping bills and invoice value as per the Custom Department are matched which was being shown in GSTR-1 on which refunds are being claimed. Similarly for the inward supply, GSTR-1 of the supplier was checked as to ascertain whether he is showing sale to the refund claimant.

Audit checked 217 refund claims and it was observed that though the provisional refunds were given in time, the final refunds were delayed by more than 60 days in respect of 194 cases while in the remaining 23 cases refund was allowed within 60 days from the date of granting provisional returns.

The GSTN was primarily responsible for providing front end systems for performance of statutory functions under GST. Returns in GSTR-2¹⁴ and Refund Module were not made operational by GSTN. Hence, refund process involved manual intervention. Thus, the Government of Maharashtra was hamstrung in implementing the provisions of GST as it had limited role in these matters.

The above facts indicate that there is a need for making the refund module on GSTN functional so that refunds are made to the registered tax payers in a timely manner.

2.5.5 Legacy Issues

2.5.5.1 Pending Assessments

Section 23(2) of Maharashtra Value Added Tax Act, 2002 stipulates the time period of four years for the assessment of dealers filing returns. In respect of assessment cases remanded back by the appeal, fresh assessment orders are to be made within 24 months from the date of cases remanded back.

As per information furnished (November 2018) by the Department, 2,82,314 cases up to the assessments periods 2017-18 were pending for assessment/Issue Based Audits (IBA) as on September 2018 as follows-

¹⁴ GSTR-2: (a) Invoice wise details of all inter-State and intra-State supplies received from the registered persons or unregistered persons, (b) Import of goods and services made and (c) Debit and credit notes, if any, received from supplier.

Year-wise breakup of pending assessments

Year	Cases selected for assessment/IBA in 2018-19	Cases assessed up to September 2018	No. of cases pending assessments/IBA as on September 2018*
2005-06 to 2013-14	1,36,207	10,392	1,25,815
2014-15	72,872	2,752	70,120
2015-16	86,427	2,562	83,865
2016-17	2,262	105	2,157
2017-18	376	19	357
Total	2,98,144	15,830	2,82,314

* Proceedings in cases older than four years are live and they are not time-barred.

Source: information furnished by the Department KKPI.

As would be seen from the above, the percentage of disposal of cases during 2018-19 up to September 2018 was only five *per cent*. In addition to above the department notified (May 2019) 75,138 cases for the assessment pertaining to the 2016-17 for comprehensive assessment/IBA. For the assessment period 2017-18, the total number of cases to be taken up for comprehensive assessment/IBA are yet to be selected by the Department.

Steps taken for finalisation of the assessments;

The department notified a scheme in February 2018 for selection of cases for assessment having probable revenue earnings above ₹ one¹⁵ lakh and withdrawal of cases having probable revenue earnings below ₹ one¹⁵ lakh from assessment proceedings. The Commissioner was required to publish a list of cases that would not require detailed scrutiny in accordance with the parameters mentioned in the scheme. Based on the above parameters, 3,693 cases¹⁶ pertaining to the periods from 2012-13 to 2015-16 were withdrawn by the Department in March 2019.

The Department notified (May 2019) 75,138 cases for assessment for the period 2016-17. These are in addition to the existing cases pending for assessment. Thus, the number of cases pending assessment will increase to that extent and in addition, the assessments under the MGST Act are also required to be made.

As would be seen from the above the number of cases selected for assessments was increasing from year to year but the pace of their finalisation was very low with the result that there would be more accumulation of the arrears in assessments. The Department needs to chalk out an action plan for early finalisation of MVAT assessments in a time bound manner.

2.5.5.2 Pendency of recoveries

As per the information furnished by the Department, an amount of ₹ 1,07,576.01 crore in was in arrears as on December 2018 on account of various causes such as pendency in various Tribunals and Courts, dealers not traceable, property not available, etc., which are as follows-

¹⁵ Increased to ₹ 2.5 lakh from October 2018.

¹⁶ Division-wise withdrawal list was published (March 2019).

(₹ in crore)				
Sr. No.	Stage of recovery of arrears	Amount involved		
		BST	VAT	Total
1	2	3	4	5
1	Department Appeal	2,737.92	44,619.70	47,357.61
2	Tribunal	1,367.89	19,328.92	20,696.81
3	High Court/ Supreme Court	715.68	4,952.73	5,668.40
4	Official liquidator/ DRT	632.45	3,574.69	4,207.15
5	RRC	420.18	1,680.81	2,100.99
6	Cases under BIFR	639.54	1,756.21	2,395.75
7	Dealer not traceable	1,479.73	2,578.99	4,058.72
8	Property not available	168.20	886.24	1,054.45
9	Other reasons like due date not over, installment payment, stay order, etc.	441.73	10,641.25	11,082.98
10	Arrears available for recovery	1,076.98	7,876.17	8,953.15
Total		9,680.30	97,895.71	1,07,576.01

Source: Information furnished by the Department.

It would be seen from the above that

- An amount of ₹ 8,953.15 crore (eight *per cent* of the total arrears) was recoverable as on December 2018. The amounts in these cases are to be recovered by the assessing officers.
- An amount of ₹ 2,100.99 crore (two *per cent* of the total arrears) was pending recovery under Maharashtra Land Revenue Code, 1966. The Department has been empowered to recover the arrears as arrears of land revenue under the MLR Code.

When this was pointed out, the Department intimated (October 2019) that out of ₹ 8,953.15 crore, ₹ 4,040.03 crore (45 *per cent*) have been recovered from 01 January 2019 to 31 March 2019. Further, it was intimated that out of ₹ 2,100.99 crore pertaining to Revenue Recovery Certificates (RRC), recovery of ₹ 9.40 crore (0.45 *per cent*) was made from 01 January 2019 to 31 March 2019 and recovery of remaining dues was in progress.

Since the above amounts are free from any dispute, the Department may take immediate action for their recovery, as with the passage of time, possibility of recovery may become remote.

- Major portion of the revenue ₹ 47,357.61 crore (44 *per cent* of the total arrears) is locked up in appeals with Departmental authorities. As such, the Department may be advised to chalk out an action plan for early finalisation of the appeal cases.
- An amount of ₹ 4,058.72 crore (3.77 *per cent* of the total arrears) was recoverable from the dealers who were untraceable.

Steps taken for settlement of arrears:-

The Government of Maharashtra has brought an ordinance date 06 March 2019 to provide for settlement of arrears of tax, interest, penalty etc. payable or imposed under various Acts administered by the GST Department. The ordinance provides for concession by way of waiver of amounts under dispute in respect of tax, interest and penalty.

2.5.6 Conclusion

The Government/ Department was prompt in its preparedness for implementation of GST. Audit also noticed that frequent changes were made in the rules since 1 July 2017 on recommendations of GST Council by the State Government which have resulted in non-implementation of many of the procedures laid down in SGST Act.

The GSTN was primarily responsible for providing front end systems for performance of statutory functions under GST. Return in form GSTR-2 and Refund Module were not made operational. Hence, refund process involved manual intervention. Out of 217 refund claims test checked, audit noticed that final refunds were delayed by more than 60 days in respect of 194 cases from the date of granting provisional returns. Thus, the Government of Maharashtra was hamstrung in implementing the provisions of GST as it had limited role in these matters.

The number of cases selected for assessments was increasing from year to year but the pace of their finalisation was very low with the result there would be more accumulation of the arrears in assessments. The Department needs to chalk out an action plan for early finalisation of MVT assessments in a time bound manner.

An amount of ₹ 8,953.15 crore (eight *per cent* of the total arrears) was recoverable as on December 2018. The amounts in these cases are to be recovered by the assessing officers. In addition ₹ 2,100.99 crore (two *per cent* of the total arrears) was pending recovery under Maharashtra Land Revenue Code, 1966. The Department has been empowered to recover the arrears as arrears of land revenue under the MLR Code. These amounts are free from any dispute, the Department needs to take immediate action for their recovery, as with the passage of time, possibility of recovery may become remote.

A major portion of the revenue ₹ 47,357.61 crore (44 *per cent* of the total arrears) was stated to be locked up in appeals with Departmental authorities. As such, the Department needs to chalk out an action plan for early finalisation of the appeal cases and take these cases to their logical end.

An amount of ₹ 4,058.72 crore (3.77 *per cent* of the total arrears) was recoverable from the dealers who were untraceable. The Departments need to trace out the dealers in the interest of revenue collection.

Other audit observations

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 officers are required to exercise due diligence while assessing the cases and there should be zero tolerance towards any errors/omissions on their part. Our scrutiny of the 37,615 assessment records out of 39,793 records finalised in 204 units of the Sales Tax Department revealed 1,099 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. These cases are pointed out in audit each year, but not only do these irregularities persist, they also remain undetected till we conduct audit. There is need for the Government to improve the internal control system including strengthening of internal audit.

2.6 Erroneous allowance of dual credit

According to Section 30(2) of the MVAT Act, 2002, 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.

During scrutiny (December 2017) of assessment records in the office of Dy. Commissioner of Sales Tax, E-002, LTU, Palghar, audit noticed that a manufacturer of automobile parts paid VAT of ₹ 13.85 crore including interest of ₹ 1.10 crore under Section 30(2) of the Act for the year 2012-13. The assessing officer while finalising the assessment (March 2017) allowed the entire payment of ₹ 13.85 crore as tax credit and determined interest of ₹ 3.04 crore for delayed payment of tax. While working out the interest payable by the dealer he again allowed credit of interest of ₹ 1.10 crore and demanded interest of ₹ 1.94 crore in the assessment order. Thus, the amount of ₹ 1.10 crore was credited twice (for tax and for interest). This resulted in less raising of demand of ₹ 1.10 crore.

This was brought to the notice of the Department in December 2017 and the Government in September 2018; their reply has not been received (October 2019).

2.7 Short levy of tax due to incorrect determination of sales turnover

As per Rule 57(1) of Maharashtra Value Added Tax Rules, 2005 (MVAT Rules), a registered dealer may, in respect of any sales effected by him on which sales tax is payable by him and where he has not separately collected any amount by way of sales tax, deduct from the sale price of the goods a sum calculated in accordance with the formula¹⁷ under the Rule.

During scrutiny (September 2017) of assessment records in the office of the Dy. Commissioner of Sales Tax, Large Taxpayer Unit E-617, Pune Division,

¹⁷ Amount of deduction=SP x [R/100+R] - where R = the rate of tax applicable to the sale of goods and SP= the sale price of the goods.

it was observed that turnover of a works contract dealer was ₹ 112.74 crore inclusive of tax element for the assessment period 2012-13.

The dealer had purchased goods taxable at the rate of 12.5 per cent and five per cent in the ratio of 67.5 per cent and 32.5 per cent respectively. Based on this ratio, the turnover of the dealer for the goods taxable at 12.5 per cent was ₹ 69.17 crore and that taxable at five per cent was ₹ 33.26 crore. The dealer was thus liable to pay tax of ₹ 10.31 crore. However, the AA incorrectly worked out his sales turnover of goods taxable at 12.5 per cent as ₹ 67.68 crore and that taxable at five per cent as ₹ 34.86 crore and raised the tax demand of ₹ 10.20 crore. This mistake resulting in short raising of demand of ₹ 11 lakh.

We brought the matter to the notice of the department and to the Government in July 2018; their reply has not been received (October 2019).

2.8 Non-levy of penalty for late filing of Audit Report

As per provisions of Section 61(1) of the Maharashtra Value Added Tax Act, 2002 read with Rules 65 and 66 of the Maharashtra Value Added Tax Rules, 2005, 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.

Scrutiny of records in 11 offices¹⁸ between April 2017 and January 2018, revealed that 14 dealers had submitted/uploaded the reports of audit in Form 704 after the due date/extended date prescribed by the Commissioner from time to time. However, the assessing officers had not issued show cause notice for levy of penalty as prescribed under the Act. Thus, penalty leviable in these cases amounting to ₹ 3.32 crore could not be levied. A few illustrations are as follows:

Table 2.8

(₹ in lakh)						
Sr. No.	Name of dealer	Assessment Period Date of assessment	Due/extended date of filing F-704	Actual date of filing F-704	GTO of sales	Penalty leviable under Section 61(2)
1	Dealer A	2012-13 10/03/2017	15/01/2014	29/05/2015	2,22,701.68	222.70
2	Dealer B	2012-13 20/03/2017	15/01/2014	07/02/2014	11,767.38	11.76
3	Dealer C	2011-12 19/12/2015	15/01/2013	15/01/2015	24,346.15	24.35

¹⁸ DCST LTU – E-003 Aurangabad; E-630, E-641 Mazgaon; E-002 Palghar; E-003 Thane; DCST BA- E-006, E-007 Kolhapur; E-811, E-812 Mazgaon; E-008 Nashik; E-808, Pune.

The matter was brought to the notice of the Department and to the Government in May 2017 and February 2018. The Department accepted the audit observation in three cases and raised additional demand of ₹ 2.31 crore.

The matter regarding the action taken in the remaining cases and status of recovery was brought to the notice of the Department and the Government in March 2019; their reply has not been received (October 2019).

2.9 Non/short levy of interest under Section 30(2) of the Maharashtra Value Added Tax Act, 2002

Under the provisions of Section 30(2) of Maharashtra Value Added Tax Act, 2002, 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 or part thereof, after the last day by which he should have paid such tax.

Scrutiny of records in 10 offices¹⁹ revealed that 10 dealers assessed between March 2016 and March 2017 for the periods from 2010-11 to 2012-13 had delayed payment of taxes ranging from one to 58 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 concerned assessing officers either did not levy the interest or levied it short, resulting in non/short levy of interest aggregating to ₹ 66.27 lakh. A few illustrative cases are as follows:

(₹ in lakh)							
Sr. No.	Name of the Dealer	Assessment Period Date of assessment	Amount of tax paid with delay	Delay in months	Interest leviable	Interest levied	Difference (6-7)
1	2	3	4	5	6	7	8
1	Dealer A.	2012-13 28/02/17	1,076.53	01 to 42 months	61.10	52.16	8.94
2	Dealer B	2010-11 07/11/16	8.29	15 months	1.64	0.00	1.64
3	Dealer C	2011-12 11/11/16	93.33	29 to 45 months	41.62	29.35	12.27
4	Dealer D	2012-13 30/03/17	66.27	01 to 09 months	4.82	0.00	4.82
5	Dealer E	2011-12 31/01/17	191.46	06 to 27 months	27.83	25.43	2.40

We brought the matter to the notice of the Department (May 2017 and April 2018) and the Government in September 2018 and March 2019; their reply has not been received (October 2019).

¹⁹ DCST LTU – E-003, Aurangabad; E-608, E-620, E-641 Mazgaon; E-003 Nashik; DCST (Inv.) – E-005, Mazgaon; DCST BA – E-812, E-816 Mumbai, E-008 Nashik; E-808, Pune.