

TN VAT AUDIT

Clause by Clause Analysis of Form WW

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VAT Audit in TNVAT Act 2006

- VAT Audit introduced in TNVAT Act through TNVAT (Third Amendment) Act, 2012.
- **Section 63-A**
- Every reg. dealer having **TOTAL TURNOVER** (Taxable sale turnover and purchase turnover + exempted + zero rated + interstate – Turnover effected in other states) exceeding Rs. 1 crore shall get his accounts audited.
- Audit by practising Chartered accountant or Cost Accountant
- Time limit – Rule 16A of TNVAT Rules – Form WW to be submitted within 9 months from the end of the year in duplicate.

SCHEDULES AND RATE OF TAX

SI NO	SCHEDULE	TAX RATE
1	FIRST – PART A	1%
2	FIRST – PART B	5%
3	FIRST – PART C	14.5%
4	SECOND	NON VAT GOODS – VARIOUS RATES (Alcoholic liquors, Aviation turbine oils, petrol, diesel etc.,)
5	THIRD	COMPOUNDING SYSTEM FOR HOTELS
6	FOURTH – PART A	EXEMPTED GOODS
	FOURTH – PART B	EXEMPTED GOODS
7	FIFTH	ZERO RATE SALE TO INTERNATIONAL ORGANISATIONS
8	SIXTH	TRANSIT PASS
9	SEVENTH	COMPOUNDING RATES TO BRICK KILN

Commodities subject to transit pass

- Diesel engines
- Marbles
- Raw rubber
- Refrigerators, air-conditioners, air-coolers and water coolers
- Washing machines
- Alcoholic liquors of all kinds for human consumption other than toddy and arrack
- Foreign liquors
- Kerosene
- Plastic granules and plastic raw materials
- Petrol, High speed / light diesel oils
- Vegetable oils including refined oils from 08/11/2013
- Iron and steel – from 08/11/2013

Books of Accounts – Rule 6

- Rule 6 does not list the books to be maintained, however it emphasizes “true, correct and complete accounts” are to be maintained.
- Following are to be maintained generally
 - Purchase account
 - Sales account
 - Stock transfer account
 - Production cum stock register account – Form H
 - Stock register
 - Input tax & Capital goods adjustment account

Books of Accounts – Rule 6 – contd..

- Record of sales through agents
- Record of purchases / goods received for sale from principal
- Invoices
- Certificate of Industrial Inputs
- Registers of Certificate issued
- Registers of Certificate received
- Cash book
- Bank Book
- General ledger

Contents of an invoice – Rule 6(4)

- Name and address of buyer & seller
- Sequential Serial no of invoice
- Particulars of Goods
- Quantity sold
- Value
- Rate & Tax charged
- TIN of the seller
- TIN of the buyer, if the buyer is registered dealer.

Invoice to be made in triplicate – original for buyer, duplicate for seller and third copy to be kept for submission to assessing authorities whenever called for.

Debit Notes/Credit Notes – Rule 10(6)(b)(ii)(c)

- Adjustment for sales and purchase returns shall be allowed only if the goods are returned within a period of six months from the date of purchase / sale respectively.
- Treatment of Discount or special incentives shall be given without affecting tax component in the original invoice so as to retain the quantum of input tax credit already claimed by the buyer.

Treatment of Discounts & Incentives

- Cash / Trade discounts are allowed only if they are disclosed in the invoice itself at the time of sale – Section 2(41)
- Post sale discounts given by way of credit notes shall not be allowed.
- By what ever name the dealer calls that discount that is not deductible

Concept of Works contract in TNVAT

- Sec 2(43) of TNVAT Act defines works contract – Works contract **includes** any agreement for carrying out for cash, deferred payment or other valuable consideration,
 - Building construction
 - Manufacture
 - Processing
 - Fabrication
 - Erection
 - Installation
 - Fitting out
 - Improvement
 - Modification
 - Repair or commissioning of movable or immovable property

Methods of Tax payments of works contract

- Goods identification method – section 5
- Percentage deduction method – Rule 8 (5)
- Compounding Method – Section 6

Goods Identification Method – Sec 5

- Materials involved in the execution of works contract shall be identified.
- Transport charges and conversion charges if any shall be added to the landed cost of material purchased.
- Reasonable profit margin is added to the cost of material plus transport charges and conversion charges.
- Rate of tax for such purchase shall be traced from the First schedule to TNVAT Act.
- Purchase tax under section 12 will apply

Percentage Deduction method – Rule 8(5)

- When the labour and other like charges are not available separately and the same is not ascertainable from the books and records maintained by the dealer, it has to be calculated at the rates specified in Rule 8(5) on contract price.

S. No	Types of WC	Labour
1	Electrical Contracts	15
2	All Structural Contracts	15
3	Sanitary Contracts	25
4	Watch and / or clock repairs Contracts	50
5	Dyeing Contracts	50
6	All other Contract	30

Composition method – Sec 6

- Tax is payable @2% on civil works contract receipts and @ 5% in case of non civil works contract by exercising an option in writing to pay tax under this method.
- VAT is payable on the total contract value.
- Option to be exercised by applying to the assessing authority along with the first monthly return for the financial year or in the first monthly return after the commencement of the works contract.
- Option once exercised shall be final for that financial year.
- Dealers having exercised this option are not entitled to input tax credit.
- Dealer paying tax under this compounding method should not make interstate purchases or import from foreign countries.
- Dealers opting to pay tax under this compounding system of tax payment have to maintain a register with details of contracts and payments received.

WCT TDS – Section 13

- Every person responsible for paying any sum to any dealer for execution of WC shall at time of payment of such sums have to deduct tax as follows.

Nature of Contract	Rate of TDS
Civil Works Contract	2%
Civil Maintenance works contract	2%
All other works contract	5%

Provisions relating to WCT TDS – Rule 9

- TDS to be deducted at the time of payment to the party
- To be remitted on or before 20th of the succeeding month.
- Form R has to be submitted to the assessing authority at the time of remittance of the amount deducted.
- Form T to be given to the deductee for each deduction separately within 15 days of remitting the tax. A copy must be sent to the assessing authority.
- For non-deduction or non-remittance the authorities can recover the TDS with interest @ 2% p.m. and along with penalty

Non applicability of WCT TDS

- If there is no transfer of property in goods during the execution of any work. (E.g. Pure labour contract)
- When the dealer produces no deduction certificate in Form S (obtained from assessing authority)
- Where the amount paid or credited or likely to be paid during the year by such person to the dealer for execution of works contract including civil works contract does not or is not likely to exceed Rs. 1 lakh.
- Interstate works contract

Levy of Purchase Tax u/s 12

- **Applicability**

- Manufacturer
 - As a raw material
 - As a spare parts
 - As an Accessory to an equipment
 - As a capital Goods
 - For captive consumption
- Person rendering works contract or civil construction
- Hotels and restaurants
- Stock transfers to other states

- **Non-Applicability**

- Trader
 - Manufacturer procuring goods for any other purpose specified above. E.g. Office stationery or furniture or A.C Machine etc.,
 - Commodities which are basically exempt from tax
- Take input tax credit of purchase tax subsequent to the month of payment

Zero Rated Sale – Section 18

- Export Sale
- Deemed export sale
 - Sale to exporter
 - Unit in SEZ / STP / EHTP
 - 100% EOUs
 - International organisation sale – listed in Schedule V
- Apply for Refund within 180 days from the date of accrual – if not claimed – lapses to government

Zero Rated Vs Exempted Sale

Transaction	Taxability	Eligibility of Input tax credit
ZERO RATED SALE	ZERO	AVAILABLE
EXEMPTED SALE	NIL	NOT AVAILABLE

Eligibility of Input Tax Credit – Sec 19(2)

- Input tax credit is allowable only for the following purposes
 - Resale within the state or
 - Use as input in manufacturing Taxable goods
 - Use as containers, labels, packing materials
 - Use as capital goods in the manufacture of taxable goods
 - Sale in the course of inter state trade or commerce
 - Sale during the course of export

Hence input tax credit is not allowable for any other purpose other than above. E.g VAT on printing and stationery, office maintenance materials, vehicle maintenance materials etc.,

Time limit of taking input tax credit

– Sec 19(11)

- Credit to be claimed before the end of the relevant financial year or before the end of 90 days from the date of purchase whichever is later.
- Time barred credits to be reversed.

Other reversals not discussed in Form WW

- Tax invoice lost / missed and if AO rejects claim (Rule 10(5) – claim based on duplicate copy shall be presented to the AO within 30 days from which original invoice is lost – After getting orders from the AO only credit is permissible)
- Input tax credit on capital goods claimed but capital goods sold within 3 years – Sec 19(4)(b)
- Arithmetical calculations and wrong workings and claims in invoice.
- Where business is stopped or closed.
- Bogus purchases (Bill traders) – Section 19(13)
- Supplier's registration cancelled but even after cancellation he issues taxable invoice (Section 19(15)) – search may be conducted using www.tinxsys.com

Input Tax credit on capital goods

- Available only for manufacturer
- Those goods meant for manufacture shall alone be eligible.
- 50% of Credit to be taken in the first year and balance 50% in the remaining 2 years.
- For parts and accessories credit can be claimed wholly in the month of purchase itself. Rule 10(4)(b)
- Time limit of 90 days and end of financial year applies to 50% of credit and 100% for parts and accessories also.

Conditions for claiming capital goods credit – Section 19

- To be used in the business of taxable goods
- Use of CG should be within the state
- Use of CG should be for the purpose of manufacture, processing, packing, storing of goods in the course of business.
- Wherever purchase tax is paid for CG that is eligible to be taken
- Date of commencement of production using the relevant CG shall be intimated to the assessing officer within 30 days of such date.
- CG should be in the possession of the dealer during the period of claiming and availing credit. If goods are sold or disposed of or destroyed then entire input tax credit shall be reversed.

Certificate for purchase of industrial inputs – Rule 6(3)(b)

- The purchaser of industrial input shall issue a certificate to the seller comprising the following details
 - TIN of the purchaser
 - Name, address and TIN of the seller
 - Description of the goods purchased
 - Description of the goods manufactured

No time limit is specified for issuing the certificate by the purchaser. Such a certificate may be relied on by the seller at the time of his assessment by the authorities. If the certificate is not available the beneficial rate of tax @ 5% may not be applicable.

Model Industrial Input Certificate

• From _____ TIN _____

• To _____ TIN _____

• **Certificate**

- This is certified that we are registered dealer under TNVAT Act 2006, having TIN _____ and we purchased the following goods vide particulars enclosed hereunder which are used as industrial input. The above goods were used in the process of manufacture of commodities mentioned in enclosed annexure.

Some Recent Amendments / Clarifications

- For Inter state sales, credit is to be reversed up to 3% - i.e. credit is allowed in excess of 3% (Act No 28 of 2013 – w.e.f. 08th Nov, 2013)
 - ITC Reversal Formula
 - Total ITC / Total Sales * CST Sales = Eligible Reversal
 - Eligible Reversal * 3/5 OR 3/14.5 = Reversal of ITC (attached in Annexure III of Form I)
- For inter state stock transfers, credit is to be reversed up to 5% i.e. credit is allowed in excess of 5% (Act No 28 of 2013 – w.e.f. 08th Nov, 2013) – rate of reversal was 3% up to 07th November, 2013.
- ITC Reversal Formula
- Total ITC / Total Sales * Branch Transfer * 5/5 or 5/14.5
- Annexure III substituted vide GO no 41 dated 02nd June 2014 – incorporating all details of reversals under section 19

Clarifications on Annexure V - Circular NO 12/2013

- Closing stock inventory is to be filled in A V only when input tax credit is carried forward.
- Non Applicable in following cases
 - Export Turnover
 - Local purchase @ 14.5% and CST sales
 - Local purchase @ 14.5% and branch transfer
 - Purchase of raw materials @ 14.5% and sale of the same after manufacture @ 5%

Some Important case laws

- Monthly returns already filed can be revised even after filing VAT audit report despite as per statute time limit is 6 months from the last day of the month to which return pertains. Because, errors can be corrected only after audit. **(2014) 41 taxmann.com 19 (P&H)**
- When the purchasing dealer has properly paid the tax to the selling dealer and has proper evidence as laid down in Rule 10(2) of TNVAT Rules, he can not be denied credit simply because selling dealer has not paid the tax and not filed monthly return. **(Sri Vinayaga Agencies Vs The Assistant Commissioner – 29th Jan, 2013 – Madras HC)**
- Also when RC of selling dealer have been cancelled with retrospective effect, ITC reversal is not warranted when RC was in vogue. – **Tamilnadu PlyVs Commercial Tax officer 2014 (8) TMI 22 – Madras High Court**

Case law on addition during inspection proceedings – DCIT Madurai Vs M/s. Jalaram Depot – Madras High Court – Madurai Branch WP No 100/2012 Dt 11/10/2012

- Stock difference can not be arrived in terms of money value in an arbitrary manner and following method may be followed

Opening stock	10,00,000
Purchases	40,00,000
Freight	10,00,000
Manufacturing expenses	20,00,000
Sub-Total - Cost	80,00,000
Cost of goods sold $50L/100+GP(30\%)*100$	38,46,153
Stock to be	41,53,847
Actual Stock	38,00,000
Deficit Stock	3,53,847

No Spot collection – Case law

- During the time of inspection by the enforcement wing officers, spot collection of VAT is against law and the same is without any authority of statutory provisions. HC has directed the enforcement wing officer to return the cheque collected during the time of inspection. Muragents Vs Commercial Tax Officer, Mannargudi and another 61 VST Page 35
- If any statement containing wrong facts are recorded during the time of inspection, the dealer may file a detailed objection informing the real facts immediately after inspection by way of RPAD.

No Purchase Tax on Traders – Case law

- If a trader purchases goods from untaxed sources and sells the same as such (without involved in manufacturing activity) or without dispatch of goods to other states other wise than by way of sale, he will not liable for purchase tax.
- 53 VST page 323 State of Tamilnadu Vs S. Vaithyanatha swamy Madras HC

Restoration of input tax credit

- Petitioner has reversed the entire input tax credit for stock transfer outside the state instead of keeping beyond 3%. This was noticed after 3 years. Hence the petitioner filed an application with the department to consider restoration of input tax credit. Petition was not considered by the department for long time hence they filed a writ petition.
- HC considered the writ and directed to department to consider the representation of the petitioner and to pass appropriate order.
- **Madura coats p ltd Vs Commercial Tax officer - 2014 (7) TMI 2010 – Madras High Court**

COMMON ERRORS THAT MAY BE OBSERVED DURING VAT AUDIT

- Not raising an invoice for sales.
- Non-payment of net tax within 20th of subsequent month.
- Non-payment of VAT on unregistered dealer purchase.
- Tax payments for URD purchases, set off not availed.
- Tax payments for URD purchases, set off availed immediately rather than at the time of sale (dealer) or at the time of use in manufacture (manufacturer).
- Exemptions claimed though items not specifically covered.
- Exemptions claimed though the conditions are not fulfilled.

COMMON ERRORS THAT MAY BE OBSERVED DURING VAT AUDIT

- Stock transfer of goods without payment of CST where the buyer or consignee is known.
- Inputs set offs missed out due to lack of knowledge on admissibility.
- Non reversal of 5% for stock transfer out of the state
- Non reversal of 3% for inter state sales
- Inputs set offs not proportionately reduced for rejection of inputs.
- Set offs availed for inputs used to manufacture exempted items.
- Inputs set off not availed for the inputs used commonly in taxable and no taxable items.

COMMON ERRORS THAT MAY BE OBSERVED DURING VAT AUDIT

- Input set off availed on Xerox copy of tax invoice.
- Availing and utilizing the set off on defective input documents such as: no TIN No., VAT not clearly indicated on invoice, no serial number.
- Availing VAT credit set off on construction materials where the dealer does not deal in such goods
- Not debiting tax when the materials on which set offs are availed are removed to the service wing of the factory or to the service unit.
- Goods being classified under a wrong heading.

COMMON ERRORS THAT MAY BE OBSERVED DURING VAT AUDIT

- Calculation of value for discharging tax without considering the discount granted to customers.
- Frequent delays in taking the input set off necessitating the payment of tax
- The system of non-updation of sales registers for cancelled invoices.
- The absence of a system of recording entry in the job work control register when the goods are sent for job work or when they are returned back along with recording the scrap returned.
- The system of sending and receiving the materials without delivery challans/ documents.

COMMON ERRORS THAT MAY BE OBSERVED DURING VAT AUDIT

- Failure to intimate the Department about the change in the constitution of the firm or company.
- ITC reversal based on department's oral instruction without validating the same with consultants or referring law.
- System of cancellation of invoices without VAT Reversal
- Availing the credit based on material receipt without materials being inwarded – Invoices without GRNs or security gate pass entry
- System of non-reconciliation where materials are sent for job worker. Esp in case of materials sent are in kgs but received in numbers.
- System of non-reconciliation of turnover as per VAT return and Excise returns.
- System of non-reconciliation of ITC figure as per VAT return and GL



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